SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
Including Professional Corporations
MATTHEW S. McCONNELL, Cal Bar No. 209672
LUKE J. BICKEL, Cal Bar No. 341210
12275 El Camino Real, Suite 100
San Diego, CA 92130-4092
Telephone: 858.720.8900
Facsimile: 858.509.3691
E mail mmcconnell@sheppard.com
lbickel@sheppard.com

LAW OFFICE OF RICHARD M. FREEMAN
RICHARD M. FREEMAN, Cal Bar No. 61178
14580 North Pauls Spur
Prescott Az, 86305
Telephone: 760.604.1845
Email: rmfreeman.law@gmail.com

Attorneys for Defendants and Counter-Plaintiffs D&L Real Estate Enterprises, LLC and Danlon, Inc

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

In the Matter of: WILLIAM ULYSSES McGLAMARY, II, Plaintiff, vs. D&L REAL ESTATE ENTERPRISES, LLC and Danlon, Inc. Defendants.	Case No. 5:25−cv−01411 JGB (SHKx) *Hon. Jesus G. Bernal* **DEFENDANTS AND COUNTER-PLAINTIFFS' OPPOSITION TO PLAINTIFF AND COUNTER-DEFENDANT'S MOTION TO REMAND** Action Filed: April 27, 2026 Time: 9:00 a.m. Dept.: 1 Judge: Hon. Jesus G. Bernal

D&L REAL ESTATE ENTERPRISES, LLC and Danlon, Inc.

Counter-Plaintiffs,

vs.

WILLIAM ULYSSES McGLAMARY, II; and DOES 1-10.

Counter-Defendants.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authroties

I. INTRODUCTION

This removal comes after years of Plaintiff and Counter-Defendant William Ulysses McGlamary, II's ("Plaintiff") efforts to oust Defendants and Counter-Plaintiffs D&L Real Estate Enterprises, LLC and Danlon, Inc. (collectively "Defendants") from their 30-year BIA-approved leasehold. Having failed in state court (which dismissed for lack of subject matter jurisdiction, a ruling that constitutes *res judicata* on the jurisdictional question), Plaintiff obtained a default judgment in a tribal court created decades after the execution of the Lease and where Defendants never affirmatively consented to its jurisdiction and were denied due process at the bequest of Plaintiff. Plaintiff now seeks to use a comity proceeding in the wrong forum to enforce a void and defective judgment.

Plaintiff moves to remand under 28 U.S.C. § 1447(c), contending this Court lacks subject matter jurisdiction because his "Request for Comity; Application for Recognition and Enforcement of Tribal Court Judgment" does not arise under federal law. Plaintiff is wrong.

As the Notice of Removal plainly explains, Plaintiff's filing seeks to enforce an Agua Caliente Band of Cahuilla Indians ("ACBCI") Tribal Court unlawful detainer judgment against non-Indian lessees on BIA-leased allotted land located on non-reservation land–land whose title is held by the United States for the benefit of the individual allottee, not the Tribe. This squarely raises a federal question:

> "Inherent in the recognition of a tribal court's judgment against a nonmember is a question regarding the extent of the powers reserved to the tribe under federal law. As in previous decisions involving the application of tribal law to nonmembers, we hold that **actions seeking to enforce a tribal judgment against nonmembers raise a substantial question of federal law**."

Coeur d'Alene Tribe v. Hawks, 933 F.3d 1052, 1056 (9th Cir. 2019) (emphasis added). This is such an action.

The Tribal Court's default judgment itself underscores the federal questions at issue. The judgment awards "possession of the premises" to Plaintiff–an Indian

allottee–and simultaneously awards monetary damages, declares the "rental agreement is canceled," and orders the "lease is forfeited." [Dkt. No. 12, RJN, Ex. F.] This dual award is in blatant violation of the Lease itself, which expressly provides that upon default (*which Defendants deny*), the Lessor may either (A) "[c]ollect, by suit or otherwise, all monies as they become due hereunder, or enforce . . . Lessee's compliance with any other provision of this Lease," or (B) "[t]erminate this Lease, which shall exclude recourse to any other remedy." [Dkt. No. 11, Ex. A, Lease § 18.] The Lease's plain language makes these remedies mutually exclusive–yet the Tribal Court awarded both. A court purporting to enforce a possessory interest in a BIA-approved lease cannot disregard the very terms of that lease. This fundamental error further demonstrates why federal review is required.

Plaintiff's comity request necessarily requires adjudication of whether (1) the Tribal Court had jurisdiction over non-Indian lessees on non-reservation land, (2) whether Defendants were afforded due process, and (3) whether enforcement is consistent with federal Indian law. These are all federal questions for this Court.

II. STATEMENT OF RELEVANT FACTS

Defendants hereby incorporate by reference the facts and arguments set forth in their Notice of Removal [Dkt. No. 1] as though fully set forth herein. For purposes of this Motion, the facts alleged in Defendants' Notice of Removal must be taken as true. *See Fidelitad, Inc. v. Insitu, Inc*., 904 F.3d 1095, 1098 (2018).

A. The Lease and Defendants' Long-Standing Leasehold Interest

The underlying lease is BIA Lease No. PSL-360 for 424 S. Indian Canyon Drive, Palm Springs, California, executed July 30, 2002 and BIA-approved September 18, 2002, pursuant to 25 U.S.C. § 415 and 25 C.F.R. Part 162. [Dkt. No. 11, Declaration of Lonnie Landers ("Landers Decl."), ¶ 3, Ex. A.] Title to the allotment is held in the name of the United States for the benefit of the individual allottee, not the Tribe. The property is located in a commercial area of downtown Palm Springs, well outside of the Agua Caliente reservation, and the restaurant

operated thereon is regulated entirely by City, County, and State agencies, as well as BIA rules and regulations–not tribal laws. The Lease term is 30 years with a lessee option to extend for an additional 25 years. [*Id*., ¶ 3, Ex. A.] The original lessee assigned his interest to Defendants on June 23, 2003, with BIA and lessor approval. [*Id*., ¶¶ 4–6, Exs. B–D.] Defendants then invested hundreds of thousands of dollars into improving the property. [*Id*., ¶¶ 4–5.]

B. Years of Plaintiff's Wrongful Attempts to Oust Defendants

Beginning as early as 2017, Plaintiff and his counsel undertook a systematic effort to dispossess Defendants, erode the lease's value, and frustrate operations in order to undermine the 25-year renewal right of Lessee. [*Id.,* ¶ 8.] After Defendants briefly fell behind on payments in 2019 due to a family medical emergency, Plaintiff responded with a notice of termination and demands to renegotiate the Lease (including eliminating renewal rights). [*Id.*, ¶ 8(b).] Plaintiff's wrongful declaration of an "incurable default" was designed to harass Defendants and destroy the business by undermining its revenue. The incurable default declaration prevented Defendants from obtaining financing, engaging in business planning, marketing the restaurant, purchasing perishable food, and otherwise operating a viable enterprise. [*Id*.] Plaintiff obstructed assignments and sales by withholding consent, asserting "incurable defaults," and stating in writing he would arbitrarily "never" approve an assignment with the renewal option in place. [*Id*., ¶¶ 8(d)–8(f).] Plaintiff also insisted BIA require a $100,000 bond payable within five days, which is unauthorized by the Lease. [*Id*., ¶ 8(g).] The restaurant was forced to shut down as a direct result of Plaintiff's conduct[*Id*.], and ultimately closed in July 2024 due to ongoing default and eviction threats and obstruction. [*Id*. ¶ 8(h).][1]

[1] Notably, every alleged breach by Defendants that forms the basis of Plaintiff's claims occurred before the Tribal Court was even created in October 2024, further undermining any claim that the Tribal Court had jurisdiction over this dispute.

C. Plaintiff's *First* Attempt to Use the Incorrect Forum — State Court

In an attempt to capitalize on his manufactured breaches, Plaintiff turned to the Riverside County Superior Court. Plaintiff first pursued wrongful eviction through a Riverside County Superior Court unlawful detainer filed October 20, 2023. [Dkt. No. 12, Request for Judicial Notice ("RJN"), Ex. A.] However, on May 8, 2024, the state court sustained Defendants' demurrer and dismissed for lack of subject matter jurisdiction over possession claims involving Indian trust land. [Dkt. No. 12, RJN, Ex. B; Dkt. No. 11, Landers Decl., ¶ 9.]

D. Plaintiff's *Second* Attempt to Use the Incorrect Forum — Tribal Court

After being told the state court was the improper forum, Plaintiff seized upon the establishment of the Tribal Court, a forum that did not exist until October 2024, more than two decades after the Lease was executed and the operative facts of this case occurred, as a new vehicle to accomplish what state court refused to do.[2] On March 21, 2025, Plaintiff filed a substantially similar eviction in the Tribal Court. [Dkt. No. 12, RJN, Ex. F; Dkt. No. 11, Landers Decl., ¶ 10, Ex. E.] Plaintiff's method of service (despite knowing Defendants' counsel and owner) was "screwing" papers to the door of the closed restaurant. [*Id*., ¶ 11.]

After finally finding the door-hung notice, Landers hurried to file an answer in tribal court on April 14, 2025, within the required 20 days. [*Id*., ¶ 12.]

At the April 24, 2025 initial hearing, Plaintiff, without prior notice, orally moved to strike the answer and deny Defendants due process and right to a hearing, arguing entity Defendants must appear through counsel–a requirement listed nowhere in the Tribal Court Rules. [*Id*., ¶¶ 13–14, Ex. F.] The judge himself was

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[2] The lease contains no tribal-forum-selection clause, no choice-of-tribal-law provision, and no express waiver or consent submitting disputes to a Tribal Court; instead, it provides for arbitration and states the agreement is governed by federal law and, to the extent applicable, California law. Moreover, the parties could not have intended to consent to a tribal court jurisdiction which did not exist.

initially uncertain, took a 24-hour recess to research the question, and then–after indicating he would apply federal rules and allow Defendants to amend their answer with counsel–inexplicably reversed course and abruptly entered default without any extension. [Dkt. No. 11, Landers Decl., ¶ 14-15 Ex. F-G.][3]

Furthermore, the default review process was unavailable given the Tribal Court's compressed 14-day window, the attorney admission constraints, and the need for Defendants' counsel to first be admitted to the tribal court. [*Id*., ¶¶ 16–17; Dkt. No. 10, Freeman Decl., ¶¶ 4–5; ACBCI Ordinance, App. A, Art. I, § VI; Rule 40(a)("a party may request the Tribal Court to reconsider the judgment no later than fourteen (14) days after a judgment is final.") (emphasis added).]

As a result, the April 28, 2025 default judgment awarded possession to Plaintiff, $516,169 in past-due rent, $100,125 in holdover damages, and $200 in costs (totaling $616,494) and declared the Lease forfeited based on Plaintiff's pleadings alone and without any opportunity for Defendants to (1) appear, and (2) be heard. [Dkt. No. 12, RJN, Ex. F; Dkt. No. 11, Landers Decl., ¶ 15, Ex. G.]

E. Plaintiff's *Third* Attempt to Use the Incorrect Forum - State Court Again

Around May 9, 2025, Plaintiff rushed to initiate the "Request for Comity" proceeding in the state court seeking recognition and enforcement of the tribal

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[3] The Tribal Court Rules do not specifically require an LLC or corporation appear through an attorney, and a party reviewing those rules could reasonably conclude that the proceeding was more akin to an arbitration–a forum in which entities routinely appear through non-attorney representatives and in which consent to the forum is also a prerequisite. Instead, it says, "[a]ny party may, but need not, be represented by an attorney of their choice, except as prohibited by Tribal law." ACBCI Ordinance, App. A, Art. I, § VI, Rule 23. It would be unreasonable to expect a layperson or even a seasoned attorney (and even the tribal court judge) unfamiliar with this newly-created tribal court to know that counsel was required when the court's own written rules were silent on the point. In other words, the tribal court invented this procedural requirement on the spot, applied it retroactively to strike a timely-filed answer, [Id., ¶¶ 13–15, Ex. F.] and then refused to afford the very remedy the judge had just promised. [Id., ¶ 15, Ex. G.]

judgment notwithstanding the prior state court dismissal for lack of subject matter jurisdiction. [Dkt. No. 12, RJN, Ex. F; Dkt. No. 11, Landers Decl., ¶ 18.]

Defendants removed on June 13, 2025, asserting federal question jurisdiction under 28 U.S.C. § 1331, and thereafter filed an Answer and counterclaims including wrongful eviction, substantial damages due to Plaintiff's breaches, attempted wrongful termination, and violation of federal Indian leasing statutes and regulations. [Dkt. No. 12, RJN, Ex. F.]

III. LEGAL ARGUMENT

A. This Court Has Federal Question Jurisdiction Because Plaintiff's Comity Proceeding Necessarily Raises Substantial Questions of Federal Law

The threshold issue is whether Plaintiff's comity proceeding to enforce a Tribal Court default judgment against non-Indian lessees on BIA-leased allotted trust land outside the reservation raises a federal question sufficient to confer jurisdiction on this Court. It does. This is black letter law.

As a preliminary matter, it is Plaintiff who bears the burden of establishing that the rendering Tribal Court had both personal and subject matter jurisdiction over Defendants. *See Wilson v. Marchington*, 127 F.3d 805, 810 (9th Cir. 1997). Plaintiff cannot carry that burden here. Federal courts have jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. An action arises under federal law when federal law "creates the cause of action" or "a substantial question of federal law is a necessary element" of a plaintiff's well-pleaded complaint. *Id*.

i. The *Hawks* Framework Establishes Federal Question Jurisdiction

The dispositive authority here is *Coeur d'Alene Tribe v. Hawks*, where the Ninth Circuit held "actions seeking to enforce a tribal judgment against nonmembers raise a substantial question of federal law." *Hawks*, *supra*, 933 F.3d at 1053 (emphasis added).

In *Hawks*, the Ninth Circuit reasoned that because "federal law defines the outer boundaries of an Indian tribe's power over non-Indians," a tribe seeking to enforce a judgment against a nonmember "was pressing 'the outer boundaries' of its authority" and "was in essence asking the district court to determine whether the Tribal Court validly exercised the powers 'reserved' to it under federal common law." *Id*. at 1056, 1058-59; *see also Wilson v. Marchington*, 127 F.3d 805, 813 (9th Cir. 1997) ("Indian law is uniquely federal in nature, having been drawn from the Constitution, treaties, legislation, and an 'intricate web of judicially made Indian law,'" and "the quintessentially federal character of Native American law, coupled with the imperative of consistency in federal recognition of tribal court judgments, by necessity require that the ultimate decision governing the recognition and enforcement of a tribal judgment by the United States be founded on federal law."); *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 852 (1985) ("The question whether an Indian tribe retains the power to compel a non-Indian property owner to submit to the civil jurisdiction of a tribal court is one that must be answered by reference to federal law, and is a 'federal question' under § 1331.").

The Ninth Circuit further explained recognition would require consideration of "the various factors set forth in *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981), and determine potentially complex questions of land ownership." *Hawks, 933 F.3d at* 1060. *Hawks* grounded its holding in *Chilkat Indian Village v. Johnson,* 870 F.2d 1469, 14373-75 (9th Cir. 1989), and *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1076 (9th Cir. 1990), both holding that a federal question inheres when a tribe invokes its sovereign power against those outside its community.

Plaintiff relies on *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802 (9th Cir. 2011), to argue tribal jurisdiction over non-Indian lessees is well-settled. [Dkt. 29, Motion at 6.] But *Water Wheel* supports Defendants' position. It is critical to understand the factual distinctions. In *Water Wheel*, the

tribe itself was the owner and lessor of the property, the land was located on the reservation, and the lease had expired–the non-Indian lessee was a holdover on tribal land. *Id*. at 805-06. Here, by contrast, the ACBCI is not the owner or lessor and had no approval authority over the Lease. Plaintiff is an allottee, the property is located off-reservation in downtown Palm Springs, and the Lease has not expired,. Finally, every alleged breach by Defendants that forms the basis of Plaintiff's claims occurred before the ACBCI Tribal Court was even created in October 2024, further undermining any claim that the Tribal Court had jurisdiction over this dispute.

Moreover, in *Water Wheel*, the tribal court exercised jurisdiction after a three-day merits trial with full participation by both parties. *Id*. at 806. Here, default was entered after striking Defendants' answer without opportunity to litigate. [Dkt. 11, Landers Decl., at ¶15.] In *Water Wheel*, the lease expressly provided tribal laws applied and the non-Indian lessee had consensually entered into a relationship with the Tribe on tribal land. *Water Wheel*, 642 F.3d at 808. Here, the Tribal Court did not even exist when the Lease was executed, the Lease contains no provision subjecting the parties to tribal law, and Defendants never consented to Tribal Court jurisdiction. [Dkt. 11, Landers Decl., at ¶¶3, 10.] And critically, *Water Wheel* was itself litigated entirely in federal court. Far from supporting remand, *Water Wheel* confirms that the federal analysis of tribal jurisdiction over non-Indians requires federal court adjudication. Plaintiff here essentially attempts to rewrite the lease giving the Tribal Court jurisdiction.

Plaintiff's reliance on *All Mission Indian Housing Authority v. Magante*, 526 F. Supp. 2d 1112 (S.D. Cal. 2007), is also misplaced. *Magante* was a direct unlawful detainer action filed in federal court by a tribal housing authority against tribal members, not a comity proceeding to enforce a tribal judgment against non-Indian lessees. *Magante*, 526 F. Supp. 2d at 1115. No tribal court judgment existed, no comity analysis was required, and the issue of tribal court jurisdiction over a non-tribal member was never considered. *Id*. Moreover, *Magante* involved

eviction of tribal members by a tribal entity, not non-Indian lessees holding a BIA-approved business lease under 25 U.S.C. § 415. The federal interest in the integrity of BIA-approved long-term business leases on non-reservation allotted trust land, and in tribal court authority over non-Indian lessees who never consented to that jurisdiction, is categorically distinct from the routine dispute in *Magante*.

Plaintiff also cites to *Newtok Village v. Patrick*, 21 F.4th 608 (9th Cir. 2021). *Newtok*, however, involved an intratribal governance dispute between competing tribal council factions bearing no resemblance to this case. *Newtok*, 21 F.4th at 611-615 The *Newtok* court itself explicitly distinguished *Hawks* (and the facts of this present situation), observing, "[t]his case is unlike *Coeur d'Alene Tribe*, where the substantial federal question doctrine provided a jurisdictional basis. There, the tribe obtained a tribal court judgment against nonmembers over a property dispute and sought federal recognition and enforcement of the judgment ... held 'a federal question inhered' in the tribe's complaint because it pressed 'the outer boundaries' of its sovereign authority under federal law." *Newtok*, 21 F.4th at 619. Thus, under *Newtok*, this case falls squarely in line with *Hawk*s.

Finally, Plaintiff's reliance on *Stimson Lumber Company v. Coeur d'Alene Tribe*, No. 2:22-cv-00367-DCN (D. Idaho Mar. 2, 2023), is likewise untenable. In *Stimson*, a non-Indian corporation sought a pre-judgment declaration that a lease's forum-selection clause precluded tribal court proceedings before any tribal judgment existed. *Stimson*, No. 2:22-cv-00367-DCN, at *1-3. The court dismissed because it could resolve the forum-selection clause as a matter of contract interpretation without engaging federal Indian law. Id., at *5. This case is precisely the situation *Stimson* distinguished:

> "Stimson's briefing relies on *Nat'l Farmers*, a case in which the Supreme Court considered whether a default judgment issued by a tribal court was enforceable against non-Indian state entities. *See id*. It held that the question of whether 'federal law has divested the Tribe of this aspect of sovereignty' was a federal one and that jurisdiction was proper under 28 U.S.C. § 1331. *Id*

> Similarly, at oral argument, Stimson relied on *Coeur d'Alene Tribe v. Hawks*, a case in which the Ninth Circuit considered 'whether the grant of federal question jurisdiction in 28 U.S.C. § 1331 encompasses an action to recognize and enforce a tribal court's award against nonmembers of a tribe.' 933 F.3d at 1053. The court held that 'actions seeking to enforce a tribal judgment against nonmembers raise a substantial question of federal law' and so created federal question jurisdiction. *Id*. at 1053-54. As in *Nat'l Farmers*, the case centered on a tribal court's default judgment. *Hawks*, 933 F.3d at 1054. The court reasoned that, 'in order to enforce the judgment, [it] would be required to determine the extent of the Tribal Court's jurisdiction over nonmembers, a question that federal law governs.' *Id*. . . ."
>
> The case before the Court is distinguishable from both *Nat'l Farmers* and *Hawks*. , , Unlike *Hawks,* where the court could not determine whether the default judgment was enforceable without first considering the proper scope of tribal jurisdiction, this Court could interpret the lease terms without ever engaging federal common law. . ."

Stimson, No. 2:22-cv-00367-DCN, at *6-8 (emphasis added). As *Stimson* makes clear, it has no application to the present case where the Tribal Court judgment exists, there is no lease term granting jurisdiction, and the comity proceeding requires direct engagement with federal common law questions of tribal adjudicative authority over nonmembers under *Nat'l Farmers* and *Hawks*. Among the issues that must be decided is whether the Tribal Court had subject matter jurisdiction over the present dispute concerning a BIA-approved lease between a non-Indian and Indian on non-reservation land where the Tribe is not a party and the lease does not provide any jurisdiction to the Tribal Court (which created decades after execution). *Stimson* makes clear that this question is for a federal court.

Clear federal law and Plaintiff's own legal authorities leave no doubt that federal question jurisdiction exists, and Plaintiff's Motion should be denied.

ii. Federal Law Governs Recognition of Tribal Judgments

Having established that *Hawks* confers federal question jurisdiction, the next issue is what body of law governs the recognition of tribal judgments and what standards apply. The governing standard is federal common law.

"[T]he principles of comity, not full faith and credit, govern" recognition of tribal judgments, and these principles derive from federal law because "Indian law is

uniquely federal in nature." *Wilson*, *supra*, 127 F.3d at 807; *AT & T Corporation v. Coeur D'Alene Tribe*, 295 F.3d 899, 903 (9th Cir. 2002) ("Two circumstances preclude recognition: when the tribal court either lacked jurisdiction or denied the losing party due process of law."). Under *Wilson*, federal courts must refuse recognition of a tribal court judgment if: (1) the tribal court lacked jurisdiction; or (2) the defendant was not afforded due process. These grounds are mandatory.

a. The Tribal Court Lacked Subject Matter and Personal Jurisdiction

The existence of both personal and subject matter jurisdiction is a "necessary predicate for federal court recognition and enforcement of a tribal judgment." *Id*. at 811. Whether a tribal court had subject matter jurisdiction over nonmembers is itself a federal question. *Hawks*, 933 F.3d at 1060. The comity review here requires determination of: (1) whether the Tribal Court had subject matter jurisdiction over non-Indian lessees under a federally-approved BIA lease; (2) whether the Tribal Court had proper personal jurisdiction over Defendants who never assented to its jurisdiction; and (3) whether Defendants were afforded due process. Each inquiry requires application of federal Indian law.

The factual record demonstrates the Tribal Court's jurisdiction is not merely questionable, it is absent, rendering the judgment void as a matter of law. Here, every relevant factor weighs against jurisdiction: (1) the Tribal Court did not exist when the Lease was executed in 2002 and was not established until October 2024–more than two decades later; (2) Defendants are non-Indian lessees who entered into a BIA-approved lease with an individual allottee–not the Tribe–and at no point agreed to submit to tribal adjudicative authority; (3) the Lease contains no provision subjecting the parties to tribal law or tribal court jurisdiction, and Defendants never consented to the Tribal Court's jurisdiction; (4) title to the allotment is held by the United States for the benefit of the individual allottee, not the Tribe, and the Tribe exercised no approval authority over the Lease and is not a party to this action; (5)

the subject property is not located on tribal land; it is situated in downtown Palm Springs, regulated entirely by City, County, and State agencies and by BIA rules and regulations; (6) no tribal laws apply to the operation of the business or the terms of the Lease. In reality, Plaintiff is an individual allottee pursuing a commercial landlord-tenant dispute on allotted (not tribal) trust land–a dispute that does not implicate tribal self-governance or the Tribe's sovereign authority over its own lands and members.

Because the Tribal Court lacked subject matter jurisdiction, the resulting judgment is necessarily void. Under *Wilson*, these are mandatory grounds for non-recognition that must be adjudicated under federal law, in federal court. *Wilson*, 127 F.3d at 807 ("[B]ecause the tribal court lacked jurisdiction, its judgment is not entitled to recognition in the United States courts.").

Moreover, Plaintiff cannot bootstrap jurisdiction over non-Indian lessees by hauling them before the Tribal Court, which has no nexus whatsoever to the property or the Lease. To permit an individual allottee to conscript a non-Indian lessee into a tribal forum that had no involvement in the creation, approval, or administration of the Lease would fundamentally undermine the very purpose of the BIA leasing program established under 25 U.S.C. § 415 and 25 C.F.R. Part 162. The federal leasing framework was designed to encourage non-Indian investment in Indian and allotted trust lands by providing a stable, federally-regulated mechanism through which non-Indians could enter into long-term business leases with the assurance that their rights would be governed by federal law and protected by federal oversight. If a lessor could, at will, drag a non-Indian lessee into the Tribal Court–a court that played no role in the lease and bears no connection to the underlying property–no rational investor would risk the capital expenditure necessary to develop allotted trust land. Such a result would eviscerate the congressional policy underlying the BIA leasing statutes and render the federal regulatory framework a nullity.

b. The Tribal Court Deprived Defendants of Due Process

Even if the Tribal Court had jurisdiction (*it clearly did* not), a federal court must reject a tribal judgment if the defendant was not afforded due process of law.

Due process requires "opportunity for a full and fair trial before an impartial tribunal" after "proper service or voluntary appearance"; evidence that "a party was unable to obtain counsel" supports non-recognition. *Wilson*, at 811 (citing *Hilton v. Guyot*, 159 U.S. 113, 117, (1895)). The Restatement (Third) of Foreign Relations Law provides that denial of counsel undermines the fairness required to recognize a foreign judgment. Evidence that "a party was unable to obtain counsel, to secure documents or attendance of witnesses" supports a conclusion that the legal system's judgments are not entitled to recognition. *Wilson*, 127 F.3d at 811.

The due process deficiencies here are egregious–all of which were done at the behest of Plaintiff. The Tribal Court Rules contain no express provision requiring a limited liability company or corporation appear through licensed counsel. This is not a technical omission; it is a substantive gap that rendered the applicable standard unknowable. A managing member of an LLC who reviews the Tribal Court's written rules and finds no counsel requirement cannot be faulted for concluding that self-representation is permissible. This is particularly so given that the Tribal Court, by its own design and structure, more closely resembles an arbitral forum than a court of general jurisdiction: it was created only in October 2024, it operates under a limited body of written rules, and it expressly provides that its judgments are final with no right of appeal. A party would have no basis to conclude that counsel was required.

Moreover, the Tribal Court's own rules provide that federal law applies to its proceedings, yet the Tribal Court failed to apply those very protections. Default was obtained through a procedurally defective process in which Defendants' answer was stricken without affording them a meaningful opportunity to retain counsel or

request reconsideration.[4] To punish Defendants for failing to anticipate a rule the Tribal Court itself *did not know existed until it researched the question overnight* is fundamentally at odds with due process. The judge took a 24-hour recess to research the issue, initially indicated there was no tribal rule requiring counsel, stated he would apply federal rules and allow Defendants to amend their answer with counsel, and then–without any advance notice–reversed course and entered default. [Dkt. No. 11, Landers Decl., ¶¶ 14–15, Ex. F.] This is the paradigmatic case of a rule invented on the spot and applied retroactively to the prejudice of the party who had no notice of it.

Moreover, the Tribal Court's selective invocation of federal law is internally inconsistent and independently violates due process: the court reached into federal law to impose a counsel requirement that does not appear in its own rules, yet simultaneously refused to apply the federal procedural protections that accompany that very standard–including the well-established federal rule that a corporate entity whose pleading is stricken for lack of counsel must be afforded a reasonable opportunity to retain representation before default is entered. S*ee United States v. High Country Broad. Co., Inc*., 3 F.3d 1244, 1245 (9th Cir. 1993). A court cannot selectively borrow from federal law to disadvantage a party while discarding the federal protections that would have remedied that disadvantage.

Compounding all of the foregoing, the Tribal Court violated its own procedural rules in granting the motion to strike in the first instance. The Tribal

[4] The tribal court judgment is also facially inconsistent with the Lease, which provides forfeiture and damages as alternative, not cumulative, remedies. Yet the default judgment simultaneously declares the Lease forfeited and awards $616,494 in past-due rent, holdover damages, and costs. These remedies are inherently contradictory: forfeiture extinguishes the lessee's obligations, while damages for unpaid rent presuppose their continued existence. A lessor cannot forfeit a lease and simultaneously recover damages premised on the lessee's ongoing duty to perform. This internal contradiction further demonstrates the judgment is void and underscores the necessity of federal court review

Court Rules expressly require that motions be made upon notice and proper service. *See* ACBCI Ordinance, App. A, Art. III, § III ("Motions"). Plaintiff's motion to strike Defendants' Answer was made orally, without prior written notice, without service upon Defendants, and without affording Defendants any opportunity to prepare a response. The Tribal Court nonetheless granted the motion on the spot in direct contravention of its own rules. A court that disregards its own procedural requirements in order to grant a dispositive motion against a party who had no notice of it cannot be said to have conducted proceedings consistent with due process. That is not the application of law. It is the arbitrary exercise of power, and it is precisely the kind of proceeding that federal courts must refuse to recognize under the comity framework.

In sum, recognition of a tribal court judgment is governed by federal common law, and the mandatory grounds for non-recognition (here, a lack of jurisdiction and denial of due process) are federal questions that must be adjudicated in federal court.

iii. Plaintiff's "Narrow Comity Review" Argument Is Specious

Plaintiff's contention that comity review is too narrow to raise a federal question is fundamentally wrong. Plaintiff incorrectly claims the scope of review does not require adjudicating federal land title, federal statutes, or BIA regulations, and accordingly does not present a substantial federal question. The multitudes of federal case law finding federal jurisdiction contradicts this argument.

The rule is clear: comity review of a tribal court judgment necessitates federal question jurisdiction because the very threshold inquiry under comity (*i.e.*, whether the tribal court had subject matter and personal jurisdiction) is a question of federal law. *See Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1227 (9th Cir. 1989). Moreover, as the party seeking recognition and enforcement, Plaintiff bears the affirmative burden of establishing that the rendering Tribal Court had both personal and subject matter jurisdiction over Defendants. *Wilson*, *supra*, 127 F.3d at 810; *see also* Restatement (Third) of Foreign Relations Law § 482 (placing the

burden on the party seeking recognition to demonstrate the rendering court's jurisdiction). Plaintiff cannot satisfy that burden here.

Plaintiff's invocation of *Wilson* to defeat federal jurisdiction is not only unavailing, it affirmatively supports this Court's jurisdiction. As explained above, *Wilson* held that "because the tribal court lacked jurisdiction, its judgment is not entitled to recognition in the United States courts." *Wilson*, 127 F.3d at 807. Importantly, the *Wilson* court conducted that analysis in federal court, applying federal common law, to determine the tribal court lacked jurisdiction. Plaintiff's suggestion that under *Wilson* federal courts do not have jurisdiction to hear comity motions is simply incorrect. As expressly held by the Ninth Circuit in *Wilson* :

> "The principles of comity require that a tribal court have competent jurisdiction before its judgment will be recognized by the United States courts. Because the tribal court did not have subject matter jurisdiction over Marchington or Inland Empire Shows, Inc., Wilson's judgment may neither be recognized nor enforced in the United States courts."

Id. at 815. Moreover, *Wilson* did not involve removal or state court jurisdiction, and did not hold federal courts are the improper forum for comity motions. Instead, *Wilson* confirms: (a) federal courts adjudicate tribal court judgment recognition; (b) the applicable law is federal common law; and (c) the mandatory review of tribal jurisdiction and due process with respect to a comity motion is a federal inquiry. *Wilson* confirms, rather than undermines, federal jurisdiction.

Here, Plaintiff seeks to enforce a Tribal Court default judgment against non-Indian lessees on federally-leased allotted trust land outside the reservation. As detailed above, and as confirmed by *Wilson*, it is for a federal court to determine whether the Tribal Court had subject matter jurisdiction.

In sum, the comity review required here is not narrow. *Hawks* establishes that enforcement of a tribal judgment against nonmembers raises a substantial federal question. *Wilson* confirms that the governing law is federal common law and that the mandatory grounds for non-recognition (i.e., lack of jurisdiction and denial of due process) are federal inquiries. The Tribal Court's jurisdiction is absent,

rendering the judgment void *ab initio*. And Plaintiff's own cited authority confirms that federal courts are the proper forum for this determination.

B. The Well-Pleaded Complaint Rule Does Not Bar Removal as the Federal Question Inheres in the Very Nature of Plaintiff's Comity Petition

Plaintiff's contention that the well-pleaded complaint rule bars removal because any federal issues are anticipated defenses is foreclosed by binding Ninth Circuit authority. The Ninth Circuit established the well-pleaded complaint rule does not bar federal jurisdiction in tribal judgment enforcement actions against nonmembers because the federal question inheres in the very nature of the enforcement claim itself.

Under the well-pleaded complaint rule, a case arises under federal law when "federal law 'creates the cause of action" or "a substantial question of federal law is a necessary element of a plaintiff's well-pleaded complaint." *Hawks, supra*, 933 F.3d at 1055. In *Hawks*, the court held the federal question inheres in the complaint itself and it is not merely an anticipated defense. *Id*. at 1058-59. A tribe seeking to apply its authority to nonmembers must prove "its authority, under federal law, to enact and enforce this ordinance against non-members" *Id*. at 1057, and "[i]t would be too technical ... to focus only on the ultimate ordinance, which is not federal, and to ignore the necessity for the Village to prove its disputed federal power" *Chilkat*, *supra*, 870 F.2d at 1474. Moreover, in *Morongo*, the court held a federal question inhered in the complaint because "in attempting to enforce its ordinance against [a nonmember], the Band necessarily invoked its sovereign power and relies on its disputed ability, under principles of federal common law, to apply that power against one outside of its community." *Morongo, supra*, 893 F.2d at 1076.

The same logic applies with even greater force here: Plaintiff's comity petition cannot succeed unless the court determines the validity of the Tribal Court's exercise of sovereign judicial power over non-Indian lessees on non-reservation land. This is a question of federal law that inheres in the very nature of the claim.

Plaintiff's Request for Comity is not simply a request to "stamp" a judgment. It asks a court to recognize and enforce a Tribal Court default judgment that: (1) was entered against non-Indian lessees who hold a federally-approved lease on federal trust land outside the reservation; (2) ordered forfeiture of a federally-approved long-term leasehold; (3) was obtained through a default in a tribal court that had no prior existence; and (4) awarded in excess of $616,000.

The Tribal Court default judgment awards possession to Plaintiff and the Lease is forfeited. Critically, the Lease expressly provides that upon default, the Lessor may either collect monies due or terminate the Lease, but that termination "shall exclude recourse to any other remedy." [Dkt No. 11, Ex. A, § 18.] The Tribal Court awarded both in direct violation of the Lease's mutually exclusive remedy structure. The court cannot enforce this judgment without first determining under federal law whether there was tribal jurisdiction over non-Indians, due process compliance, and whether the judgment itself is consistent with the terms of the BIA-approved Lease it purports to enforce. That determination appears on the face of what Plaintiff must prove and this Court must decide. Thus, it is not an anticipated defense, but rather, it is an essential predicate of Plaintiff's petition to confirm.

Thus, the well-pleaded complaint rule does not bar removal.

C. <u>The State Court Never Had and Does Not Retain Jurisdiction</u>

Plaintiff claims the state court from which this action was removed "retains" subject matter jurisdiction over this dispute. In reality, the state court <u>never had jurisdiction</u>, and removal to this Court was both proper and necessary.

Federal courts have long recognized that disputes over possession of allotted Indian trust lands cannot be adjudicated in state court without explicit congressional authorization. *Williams v. Lee*, 358 U.S. 217, 223 (1959) ("There can be no doubt that to allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs."). Congress's occupation of the field of Indian land leasing, as it has through 25 U.S.C. § 415 and 25 C.F.R. Part 162, is a

comprehensive federal regulatory scheme that preempts state court jurisdiction. As the California Supreme Court held in *Boisclair v. Superior Court*, 51 Cal.3d 1140, 1152 (1990), courts must look beyond the face of the complaint to the substance of the claimed grievance: where one possible outcome of the litigation is a determination affecting Indian trust land, the state court is barred from assuming jurisdiction. The *Boisclair* court emphasized federal regulation of Indian land is "exclusive," and state courts cannot adjudicate "the ownership or right to possession of [Indian] property or any interest therein" under 28 U.S.C. § 1360(b). *Id*. at 1147-48. Although Plaintiff styles this case as a state-law comity proceeding, the substance of the claim is a dispute over possession of Indian trust land–precisely the type of action that § 1360(b) bars state courts from adjudicating.

Moreover, 28 U.S.C. § 1360(b) specifically bars state court jurisdiction over actions involving Indian trust property. Even in states where Public Law 280 extends state civil jurisdiction into Indian country, § 1360(b) provides that such grant shall not "confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein." 28 U.S.C. § 1360(b). This jurisdictional bar applies whenever one party claims the disputed property is Indian trust land, and one possible outcome of the litigation is a finding that the property is in fact Indian trust land. *Boisclair*, 51 Cal.3d at 1152-53. The *Boisclair* court further held that courts must look "beyond the verbiage of the state court complaint to the substance of plaintiff's claimed grievance" to determine whether the case involves Indian property rights. Id. at 1155. Here, the comity proceeding falls squarely within § 1360(b)'s jurisdictional bar. All matters involving the leasing of allotted trust lands and enforcement of BIA lease terms remain within the federal sphere. *See, e.g*., 25 U.S.C. § 2; 25 U.S.C. § 415; 25 C.F.R. § 162.108.

Here, the prior Riverside County Superior Court dismissal for lack of subject matter jurisdiction independently bars the comity proceeding from being heard in

state court. On May 8, 2024, the Riverside County Superior Court sustained Defendants' demurrer and dismissed Plaintiff's unlawful detainer action for lack of subject matter jurisdiction over possession claims involving Indian trust land. [Dkt. No. 12, RJN, Ex. B; Dkt. No. 11, Landers Decl., ¶ 9.] That determination is *res judicata* on the question of state court subject matter jurisdiction over this dispute and constitutes the law of the case. The doctrine of res judicata bars relitigation of issues that were actually litigated and necessarily decided in a prior proceeding between the same parties. *See Mycogen Corp. v. Monsanto Co*., 28 Cal.4th 888, 896 (2002). The state court's determination that it lacked subject matter jurisdiction over possession claims involving Indian trust land is a final adjudication on the merits of the jurisdictional question. If the state court lacked jurisdiction to hear the underlying possession claim, it equally lacks jurisdiction now to hear a proceeding to enforce a Tribal Court judgment arising from precisely that same underlying claim. The procedural vehicle of a comity petition cannot confer subject matter jurisdiction that the state court has already determined it does not possess. A state court cannot do indirectly through comity what it cannot do directly and the removal of this comity proceeding to federal court was proper because federal court, not state court, is the only court with subject matter jurisdiction to entertain this dispute.

Accordingly, the state court's prior jurisdictional ruling independently confirms that removal to federal court was proper.

D. <u>Plaintiff's Tribal Exhaustion Argument Does Not Carry Weight</u>

Plaintiff next argues Defendants failed to exhaust tribal remedies before seeking federal court review of the Tribal Court judgment. This argument is without merit.

In general, the exhaustion doctrine requires parties to exhaust tribal remedies before challenging tribal court jurisdiction in federal court. *Nat'l Farmers*, *supra*, 471 U.S. at 847. However, the Ninth Circuit recognizes four exceptions: "(1) when an assertion of tribal court jurisdiction is motivated by a desire to harass or is

conducted in bad faith; (2) when the tribal court action is patently violative of express jurisdictional prohibitions; (3) when exhaustion would be futile because of the lack of an adequate opportunity to challenge the tribal court's jurisdiction; and (4) when it is plain that tribal court jurisdiction is lacking, so that the exhaustion requirement would serve no purpose other than delay." *Knighton v. Cedarville Rancheria of Northern Paiute Indians*, 234 F.Supp.3d 1042, 1050-51 n.15 (2017); *Strate v. A-1 Contractors*, 520 U.S. 438, 459 n.14 (1997) ("Therefore, when tribal court jurisdiction over an action such as this one is challenged in federal court, the otherwise applicable exhaustion requirement, [internal citation], must give way, for it would serve no purpose other than delay."). At least three of these exceptions apply here.

As detailed above, the Tribal Court plainly lacked jurisdiction over Defendants or this dispute, independently defeating Plaintiff's exhaustion argument. Moreover, the exhaustion doctrine applies only to litigants who had a meaningful opportunity to participate in tribal proceedings and elected not to exhaust available remedies. Defendants were not allowed to do anything in the Tribal Court. At Plaintiff's request, Defendants were precluded from asserting their right. A default judgment obtained by striking a party's answer without any opportunity to retain counsel is not a "full and fair trial before an impartial tribunal" and cannot serve as the predicate for requiring exhaustion. *See Wilson*, *supra*, 127 F.3d at 811.

Independently, Plaintiff cannot invoke the exhaustion doctrine because Plaintiff himself–with the Tribal Court's assistance–ensured Defendants could not exhaust tribal remedies. Plaintiff made an oral motion to strike Defendants' timely-filed answer, argued that entity defendants must appear through counsel despite no such express requirement in the Tribal Court Rules, and immediately moved for default–all without affording Defendants any opportunity to retain counsel or cure the alleged defect. [Dkt. No. 11, Landers Decl., ¶¶ 13–15, Ex. F.] The Tribal Court, despite initially indicating it would allow Defendants to amend their answer with

counsel, reversed course and entered default on April 28, 2025, without any extension. [*Id*., ¶ 15, Ex. G.] Plaintiff then raced to state court to initiate the comity proceeding on May 9, 2025–before Defendants' 14-day tribal window to request reconsideration had even expired. [Dkt. No. 11, Landers Decl., ¶ 18.] A party cannot manufacture a procedural bar through its own wrongful conduct and then invoke that bar as a shield. *See Intamin, Ltd. v. Magnetar Techs. Corp*., 623 F.Supp.2d 1055, 1074 (2009) ("the unclean hands doctrine 'closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant.'"). To permit such a result would reward Plaintiff's gamesmanship and punish Defendants for a failure that Plaintiff himself engineered.

Finally, exhaustion is per se futile because no appellate remedy exists. The absence of a functioning appellate court renders exhaustion futile as a matter of law. *See Krempel v. Prairie Island Indian Cmty*., 125 F.3d 621, 622 (8th Cir. 1997); *Johnson v. Gila River Indian* Cmty., 174 F.3d 1032, 1036 (9th Cir. 1999) (holding that the lack of a briefing schedule, scheduled appellate argument, or meaningful response to a notice of appeal created sufficient doubt that a functioning appellate court existed, rendering exhaustion futile). Here, the situation is even more stark: the Tribal Court's own governing rules expressly provide that "the decision of the Tribal Court is final and that there is no right to an appeal." ACBCI Ordinance, App. A, Art. I, § III. Where the tribal court's own rules categorically foreclose appellate review, there is no remedy to exhaust. Requiring Defendants to exhaust nonexistent remedies before a court whose own rules declare its judgments final and unappealable would serve no purpose other than delay.

The facts here confirm that exhaustion was neither available nor required and Plaintiff's tribal exhaustion doctrine is inapplicable here.

E. Under § 1331, Federal Courts Have Independent Jurisdiction Over Disputes Arising From BIA Leases

Independent of the comity analysis set forth above, this Court has federal question jurisdiction under 28 U.S.C. § 1331 on additional and independently sufficient grounds when the underlying dispute arises from a federally-created and federally-regulated leasehold interest on allotted trust land.

The Lease at issue is BIA Lease No. PSL-360, created pursuant to 25 U.S.C. § 415 and approved, regulated, and administered under 25 C.F.R. Part 162. The leasehold interest held by Defendants is not a creature of state law or tribal law, it is a federally-created interest on federally-held trust land, subject to comprehensive federal regulation from inception through termination. Section 415 authorizes the leasing of restricted Indian lands only with the approval of the Secretary of the Interior, and the implementing regulations prescribe the terms, conditions, and procedures governing such leases, including requirements for BIA approval of assignments, subleases, and lease modifications. 25 C.F.R. §§ 162.301–162.367. Any dispute over the validity, forfeiture, or termination of such a lease necessarily requires interpretation and application of these federal statutes and regulations.

Where, as here, a party seeks to terminate a BIA-approved long-term business lease and dispossess the lessees of a federally-created leasehold interest, the dispute arises under federal law. *See Oneida Indian Nation v. County of Oneida,* 414 U.S. 661, 667, 94 S. Ct. 772, 39 L. Ed. 2d 73 (1974) ("Given the nature and source of the possessory rights of Indian tribes to their aboriginal lands, particularly when confirmed by treaty, it is plain that the complaint asserted a controversy arising under the Constitution, laws, or treaties of the United States within the meaning of both § 1331.").

Here, Plaintiff seeks to enforce a Tribal Court judgment that purports to forfeit a BIA-approved lease, terminate a federally-created leasehold interest, and award possession of allotted trust land. These are all matters governed by federal

statute and regulation. Each of these inquiries independently arises under federal law and independently supports this Court's jurisdiction under 28 U.S.C. § 1331.

Accordingly, even apart from the *Hawks* comity analysis, this Court has federal question jurisdiction over this action.

F. This Court Must Retain Jurisdiction Over Defendants' Counterclaim, Which Independently Arises Under Federal Law

While Plaintiff's Motion to Remand does not squarely address Defendants' counterclaim, the logical implication of Plaintiff's remand argument is that the entire case, including the counterclaim, should be returned to state court. If this is Plaintiff's position, it would be mistaken. Defendants' counterclaim independently arises under federal law. This Court has original federal question jurisdiction over the counterclaim and supplemental jurisdiction over all related claims.

Federal district courts have original jurisdiction under 28 U.S.C. § 1331 over civil actions arising under federal law. They also have supplemental jurisdiction under 28 U.S.C. § 1367(a) over claims that are "so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." A counterclaim that independently arises under federal law is properly before a federal district court regardless of the removability of the original action. *Levin Metals Corp. v. Parr-Richmond Terminal Co*., 799 F.2d 1312, 1315 (1986) ("The district court's simultaneous dismissal of [ ] counterclaim is, however, separately reviewable if the counterclaim is supported by a basis for federal subject matter jurisdiction that exists independent of the original complaint.").

After removal, Defendants filed an Answer and asserted counterclaims including wrongful eviction, attempted wrongful termination, breach of contract, and violation of federal Indian leasing statutes and regulations, alleging federal question jurisdiction under 28 U.S.C. § 1331 and supplemental jurisdiction under § 1367(a). The Lease was entered pursuant to 25 U.S.C. § 415 and 25 C.F.R. Part 162 governing leasing of restricted Indian lands. Defendants' claims that Plaintiff

violated federal Indian leasing statutes and regulations in pursuing this eviction–including by making unauthorized demands for bond payments, interfering with federally-approved assignments, and attempting to forfeit a BIA-approved lease through a default judgment obtained in an improper court–arise squarely under federal law. Even if the Court were to conclude the original comity petition alone did not present a federal question (*it does*), the counterclaim independently provides this Court jurisdiction, and supplemental jurisdiction extends to all related claims in the same case or controversy. Remanding the entire case would improperly strip this Court of jurisdiction over claims that belong before it.

This Court has independent federal question jurisdiction over Defendants' counterclaim and supplemental jurisdiction over all related claims.

G. Attorney's Fees Under 28 U.S.C. § 1447(c) Are Not Warranted

The law is crystal clear that removal was proper here. Indeed, Plaintiff's effort to remand this action to a state court that has already ruled it lacks subject matter jurisdiction over this very dispute renders Plaintiff's Motion to Remand and request for attorney's fees not merely unwarranted, but severely inappropriate.

IV. Conclusion

The standard on a motion to remand is straightforward: remand must be denied where the federal court has jurisdiction. Here, under *Hawks* and its progeny, this Court's federal question jurisdiction is certain. Remand is therefore improper.

The time has come for a full reckoning of Defendants' claims against Plaintiff in a full and fair hearing before this Court–the only court with jurisdiction over this dispute. Plaintiff's tortured efforts to pursue this matter in every forum other than where it legally belongs must end. Plaintiff's attempt to avoid federal court can only be interpreted as an effort to evade a full examination of his systematic acts to destroy the Lease and Defendants' business. Defendants have substantial claims for damages arising from Plaintiff's misconduct and are prepared to prosecute them vigorously in this Court at the earliest opportunity.

Dated: April 3, 2026

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By */s/ Luke J. Bickel*
MATTHEW S. McCONNELL
LUKE J. BICKEL

Attorneys for Defendant
D&L REAL ESTATE ENTERPRISES, LLC
and DANLON, INC.