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5
6 **UNITED STATES DISTRICT COURT**
7

8 **CENTRAL DISTRICT OF CALIFORNIA- EASTERN DISTRICT**
9

10 In the Matter of:
11 WILLIAM ULYSSES McGLAMARY,
II,

12 Plaintiff,

13 vs.
14

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

17 Defendants.
18
19

Case No 5:25-cv-0141 JGB(SHKx)

**PLAINTIFF’S REPLY IN
SUPPORT OF MOTION TO
REMAND AND REQUEST FOR
ATTORNEY FEES**

Date: April 27, 2026
Time: 9:00 a.m.
Dept: 1
Honorable: Jesus G. Bernal

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1 **I. INTRODUCTION**

2 Defendants' Opposition demonstrates that removal was improper as it now improperly
3 seeks to raise multiple new theories of jurisdiction-none of which were asserted in the Notice of
4 Removal, and each of which fails as a matter of law.

5 Plaintiff's pleading presents a straightforward request for recognition and enforcement of a
6 Tribal Court judgment under settled principles of comity. It does not arise under federal law. It
7 does not raise the federal question concerning possession of Indian trust or allotment lands
8 asserted in the Notice of Removal and therefore fails on its face.

9 Unable to sustain removal on that original basis, Defendants' Opposition abandons the
10 theory asserted in the Notice and substitutes new ones-advancing due process objections, res
11 judicata arguments, and an expanded conception of federal jurisdiction untethered to the removal
12 statute. These theories are raised for the first time in opposition and cannot supply a basis for
13 removal. A notice of removal must stand or fall on the grounds asserted within the statutory
14 period. 28 U.S.C. § 1446.

15 Even if these newly asserted theories were properly before the Court, they would not
16 support federal jurisdiction. A challenge to the procedures employed by a tribal court is, at most, a
17 defense to recognition under principles of comity. It does not appear on the face of Plaintiff's
18 pleading and therefore cannot create federal question jurisdiction.

19 Defendants' Opposition thus reduces to two defective moves: an untimely attempt to
20 supply new jurisdictional theories, and a reconstructed factual narrative designed to manufacture a
21 federal issue where none exists.

22 The record forecloses that effort. The lease expressly governs the bond Defendants claim
23 is "unauthorized." The property they describe as "downtown Palm Springs" is Indian trust land
24 within the Agua Caliente reservation. And the procedural history they recast as a denial of due
25 process is contradicted by the Tribal Court's written order and by Defendants' decision to decline
26 an opportunity to set aside the default.

27 These are not peripheral disputes. They are the foundation of Defendants' attempt to create
28 federal jurisdiction where none exists.

1 Federal jurisdiction cannot be created by revision—of either legal theory or fact.

2 Because Defendants cannot establish jurisdiction on the face of Plaintiff's pleading-and
3 cannot cure that defect through post hoc theories or a reconstructed factual narrative-this action
4 must be remanded.

5
6 **II. STATEMENT OF RELEVANT FACTS**

7 Plaintiff is the owner of allotted land held in federal trust within the Agua Caliente Band
8 of Cahuilla Indians reservation. The subject property is located within the City of Palm Springs,
9 which includes substantial areas of tribal trust land arranged in a checkerboard pattern of
10 alternating one square mile sections, each containing 640 acres.

11 Defendants are nonmember business entities who entered into a long-term lease for the
12 subject property pursuant to a Bureau of Indian Affairs-approved lease. The lease governs the
13 parties' rights and obligations, including provisions commonly associated with a commercial
14 lease.

15 A dispute arose concerning Defendants' performance under the lease best characterized as
16 annual and chronic non-payment of rent during the summer months which delinquencies grew
17 through the years. Various demands for performance were made to include both statutory and
18 BIA initiated notices and demands leading to an eventual unlawful detainer action in state court,
19 which was dismissed for lack of subject matter jurisdiction on the ground that the property is
20 Indian trust land. Bracketing this state court action were two actions seeking bankruptcy court
21 protection initiated by Defendants.

22 Following discharge from the second bankruptcy, Plaintiff filed an action in the newly
23 established Agua Caliente Band of Cahuilla Indians Tribal Court seeking possession and related
24 relief. Defendants appeared and filed an answer. At the initial hearing, the Tribal Court addressed
25 whether entity defendants could appear without counsel and thereafter entered an order striking
26 the answer and entering default. The Court's written order was issued the same day the matter was
27 taken under submission.

28 The Tribal Court thereafter entered judgment awarding possession and related relief.

1 Plaintiff initiated the present action seeking recognition and enforcement of that judgment.

2 Defendants retained counsel and removed the action to this Court. The Notice of Removal
3 asserts federal question jurisdiction.

4 Plaintiff reached out to newly retained counsel and offered to set aside the default and
5 proceed on the merits. Defendants declined that offer.

6

7 **III. DEFENDANTS' NEW AND EXPANDED JURISDICTIONAL THEORIES ARE**
8 **PROCEDURALLY BARRED AND FAIL AS A MATTER OF LAW**

9 Defendants' Opposition advances four jurisdictional theories:

10 (1) a federal common law theory;

11 (2) a due process theory;

12 (3) a counterclaims-based theory; and

13 (4) an expanded theory concerning the "outer boundaries" of tribal authority
14 derived from *Coeur d'Alene Tribe v. Hawkes*.

15 Three of these theories are entirely new. The fourth materially expands the limited
16 proposition asserted in the Notice of Removal.

17 None may be considered.

18 A notice of removal must stand or fall on the jurisdictional grounds asserted within the
19 statutory period. 28 U.S.C. § 1446. A defendant may not cure a defective notice by asserting new
20 theories in opposition. *ARCO Envtl. Remediation, L.L.C. v. Dep't of Health & Envtl. Quality*, 213
21 F.3d 1108, 1117 (9th Cir. 2000).

22 Each of Defendants' theories fails under that rule.

23

24 **A. THE FEDERAL COMMON LAW THEORY (NEW)**

25 Defendants contend that federal jurisdiction exists because federal common law governs
26 disputes involving tribal land or tribal judgments.

27 That argument fails. A case arises under federal law only when a federal issue appears on
28 the face of the plaintiff's well-pleaded complaint. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392

1 (1987).

2 Plaintiff asserts a comity-based enforcement claim. The possible application of federal
3 common law does not convert that claim into one arising under federal law.

4

5 **B. THE DUE PROCESS THEORY (NEW)**

6 Defendants assert that alleged deficiencies in Tribal Court proceedings create federal
7 jurisdiction.

8 They do not.

9 Due process arguments arise, if at all, as defenses to recognition under comity principles.
10 They do not appear on the face of the complaint and therefore cannot create federal jurisdiction.
11 *Franchise Tax Bd., 463 U.S. at 14; Wilson v. Marchington, 127 F.3d 805, 810-11 (9th Cir. 1997).*

12

13 **C. THE COUNTERCLAIMS THEORY (NEW)**

14 Defendants rely on their own counterclaims.

15 That is categorically barred. Federal jurisdiction must appear on the face of the complaint.
16 *Vaden v. Discover Bank, 556 U.S. 49, 60 (2009).*

17

18 **D. THE "OUTER BOUNDARIES" THEORY (IMPROPER EXPANSION OF
19 HAWKES)**

20 Defendants transform a limited citation to *Hawkes* (“the federal government’s unique
21 relationship with Indian tribes”) into a sweeping theory involving federal common law, tribal
22 sovereignty, and jurisdictional limits.

23 This is not clarification— it is amendment.

24 A notice of removal cannot be amended after the statutory period. *ARCO*, 213 F.3d at
25 1117.

26 Even if considered, the argument fails because it raises only defensive issues-not claims
27 appearing on the face of the complaint.

28 ///

1 **E. NONE OF DEFENDANTS' THEORIES SUPPORTS REMOVAL**

2 Each theory is procedurally barred, substantively defective, or both.

3 Taken together, they confirm that Defendants cannot establish jurisdiction under the
4 removal statute.

5 Defendants' inability to sustain removal under the governing rules of federal jurisdiction
6 does not end the analysis. Even if their newly asserted theories were properly before the Court,
7 controlling principles of federal Indian law independently confirm that this dispute belongs in
8 Tribal Court.

9
10 **IV. FEDERAL INDIAN LAW CONFIRMS THAT THIS DISPUTE BELONGS IN**
11 **TRIBAL COURT**

12 **A. GOVERNING FEDERAL INDIAN LAW FRAMEWORK**

13 The governing framework is not unsettled. It is well-defined and firmly established.
14 Indian tribes retain inherent sovereignty over their lands, and disputes arising from those lands are
15 governed by federal law recognizing and protecting that sovereignty. *Oneida Indian Nation v.*
16 *County of Oneida*, 414 U.S. 661, 667-68 (1974) (tribal land rights arise under federal law and are
17 protected as incidents of tribal sovereignty).

18 That sovereignty includes the authority to regulate the use and occupancy of tribal land
19 and to adjudicate disputes arising from consensual relationships formed on that land. *Merrion v.*
20 *Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1982) (power to regulate and tax activities on tribal
21 land is a fundamental attribute of sovereignty).

22 The Supreme Court's decision in *Montana v. United States*, 450 U.S. 544 (1981), does not
23 alter that principle. *Montana* addresses the limits of tribal authority over nonmembers on
24 non-Indian land. *Id.* at 565. It does not govern conduct occurring on tribal land, where sovereignty
25 derives directly from the land itself.

26 The Ninth Circuit has made this distinction explicit. Where nonmembers enter into
27 consensual relationships and conduct activities on tribal land, tribal jurisdiction arises from the
28 tribe's inherent sovereign authority and is not constrained by *Montana*. *Water Wheel Camp*

1 *Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 813-15 (9th Cir. 2011) (holding *Montana*
2 inapplicable to nonmember conduct on tribal land and affirming tribal jurisdiction).

3 Federal law further requires that challenges to tribal jurisdiction be addressed in the first
4 instance through tribal court proceedings. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 15-16
5 (1987) (tribal courts are the appropriate forum in the first instance); *Nat'l Farmers Union Ins. Cos.*
6 *v. Crow Tribe*, 471 U.S. 845, 856-57 (1985) (requiring exhaustion of tribal remedies before
7 federal intervention).

8
9 **B. THIS CASE FALLS SQUARELY WITHIN THAT FRAMEWORK**

10 This case presents precisely the type of dispute governed by these principles.

11 Defendants entered into a long-term leasehold relationship involving Indian trust land and
12 conducted commercial activities on that land. The dispute arises directly from that relationship
13 and from conduct occurring on the land itself.

14 Under *Oneida, Merrion, and Water Wheel*, jurisdiction lies in Tribal Court.

15
16 **C. MONTANA DOES NOT APPLY AND CANNOT CREATE FEDERAL**
17 **JURISDICTION**

18 Defendants' reliance on *Montana* is misplaced.

19 *Montana* addresses limits on tribal authority over nonmembers on non-Indian land. 450
20 U.S. at 565. It has no application where, as here, the conduct arises on Indian trust land.

21 The Ninth Circuit has squarely rejected attempts to extend *Montana* into this context.
22 Where a dispute arises from nonmember conduct on tribal land, *Montana* does not apply. *Water*
23 *Wheel*, 642 F.3d at 814.

24 Accordingly, once the status of the land is properly understood, Defendants'
25 *Montana*-based framing collapses. There is no "outer boundary" issue, no jurisdictional
26 ambiguity, and no basis for federal intervention.

27 ///

28 //

1 **D. TRIBAL EXHAUSTION IS REQUIRED AND FORECLOSES REMOVAL**

2
3 Even if Defendants' jurisdictional challenge had merit-which it does not-federal law
4 requires that such challenges be presented in the first instance to the Tribal Court. *Iowa Mutual*,
5 480 U.S. at 15-16; *Nat'l Farmers*, 471 U.S. at 856-57.

6 This exhaustion requirement reflects a foundational principle of federal Indian law: tribal
7 courts must be afforded the first opportunity to evaluate their own jurisdiction.

8 Removal is not a substitute for tribal exhaustion.

9 Defendants' attempt to invoke federal jurisdiction without first pursuing available tribal
10 remedies is therefore inconsistent with governing law.

11 Defendants' failure to establish jurisdiction under both the governing rules of removal and
12 controlling principles of federal Indian law underscores the nature of their Opposition.

13 Unable to ground removal in either doctrine, Defendants turn instead to a reconstructed
14 factual narrative-one that attempts to recast the lease, the status of the land, and the Tribal Court
15 proceedings themselves.

16 Those assertions do not establish jurisdiction. They are addressed in turn below.

17
18 **V. DEFENDANTS' FACTUAL ASSERTIONS AND PROCEDURAL NARRATIVE**
19 **ARE CONTRADICTED BY THE RECORD AND CANNOT SUPPORT**
20 **REMOVAL**

21 Defendants' Opposition does not merely advance new jurisdictional theories. It depends on
22 a series of factual assertions and procedural characterizations that are contradicted by the
23 governing documents and the record.

24 While Defendants invoke the principle that allegations in a notice of removal are accepted
25 as true, that principle does not require the Court to accept assertions that are directly refuted by
26 controlling documents or undisputed evidence. Where the record contradicts a defendant's
27 characterization of the facts, those assertions cannot sustain federal jurisdiction.

28 Nor are these disputes incidental. Each is advanced to recast the nature of the land, the

1 governing law, and the Tribal Court proceedings in order to manufacture a federal question where
2 none exists.

3 When measured against the actual record, they fail.

4

5 **A. THE BOND REQUIREMENT IS GOVERNED BY THE EXPRESS TERMS OF**
6 **THE LEASE**

7 Defendants' Assertion (Opp. at 3:20-22):

8 "Plaintiff also insisted BIA require a \$100,000 bond payable within five days, which is
9 unauthorized by the Lease."

10 That assertion is contradicted by the lease itself.

11 Section 7 of the lease provides:

12 "Within thirty (30) days after the approval of this Lease by the Secretary, Lessee shall post
13 a bond (or cash equivalent, or negotiable United States Treasury obligations), satisfactory
14 to the Secretary in the amount of not less than the monthly installment of GMAR due
15 under Section 5 above. Said bond, or cash equivalent, or negotiable United States Treasury
16 obligations shall be maintained at all times in an amount not less than the monthly
17 installment of GMAR due under Section 5 above, unless and until the requirements for
18 such bond or cash equivalent is waived by the Secretary. Should waiver of rent bond be
19 granted, the Secretary may require Lessee to furnish bond at a later date, and Lessee
20 hereby agrees to comply with said request. The Secretary shall have the right to use said
21 bond or cash equivalent to pay rent that is in default, for the benefit of Lessor during the
22 term of this Lease (subject to Lessee's right to cure said default)." (Emphasis added)

23 This language expressly requires a bond, requires that it be maintained, contemplates
24 waiver and subsequent compliance upon request, and authorizes its application in the event of
25 default.

26 It does not support Defendants' claim that a bond requirement is "unauthorized by the
27 Lease."

28 Defendants' position is further contradicted by their own course of performance. When
previously in default, Defendants complied with a bond demand under this same lease. (Jacobs
Decl. ¶ 1.)

///

///

///

1 **B. "DOWNTOWN PALM SPRINGS" - MISCHARACTERIZATION OF INDIAN**
2 **TRUST LAND**

3 Defendants' Assertion (Opp. at 2:27-3:2):

4 "The property is located in a commercial area of downtown Palm Springs, well outside of
5 the Agua Caliente reservation, and the restaurant operated thereon is regulated entirely by
6 City, County, and State agencies, as well as BIA rules and regulations—not tribal laws."

7 This statement mischaracterizes both the location and therefore legal status of the property
8 as well as the governing law.

9 The Agua Caliente reservation is a checkerboard of alternating 640-acre sections of land,
10 much of which is allotted trust land within the reservation.

11 The subject property lies within Section 14-a 640-acre parcel of contiguous reservation
12 land in the heart of Palm Springs. That same section includes major tribal enterprises, including
13 the Agua Caliente Casino, the Spa at Séc-he, and the Agua Caliente Cultural Museum.

14 Its location within the city does not alter its legal status as Indian trust land. *United States*
15 *v. Celestine*, 215 U.S. 278, 285 (1909).

16 Defendants' own conduct confirms the governing legal framework. They operated a
17 commercial enterprise on Plaintiff's trust land subject to the Agua Caliente Tribal Code, including
18 compliance with tribal business regulation, permitting and the payment of tribal food and
19 beverage taxes.

20 The Tribe maintains a comprehensive regulatory structure governing commercial activity
21 on tribal lands, including licensing, taxation, and operational oversight—an exercise of inherent
22 sovereignty.

23 This is not incidental. It is the very conduct that gives rise to tribal jurisdiction.

24 The Supreme Court has long recognized that such authority is fundamental. In *Merrion v.*
25 *Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1982), the Court held that the power to tax and
26 regulate nonmember commercial activity on tribal land is "an essential attribute of Indian
27 sovereignty."

28 Against this backdrop, Defendants attempt to manufacture a jurisdictional dispute under
Montana v. United States, 450 U.S. 544 (1981). But *Montana* governs the limits of tribal authority

1 over nonmembers on non-Indian land. It has no application to conduct occurring on Indian trust
2 land, where tribal authority arises directly from the land itself. See *Water Wheel Camp*
3 *Recreational Area, Inc. v. LaRance*, 642 F.3d 802 (9th Cir. 2011).

4 Once the true status of the land is recognized, Defendants' jurisdictional theory collapses.
5 There is no "non-reservation" issue, no *Montana* question, and no basis for federal jurisdiction.

6 Defendants cannot operate a business on Indian trust land, comply with tribal taxation and
7 regulatory requirements, and then deny the existence of tribal authority to manufacture a federal
8 question.

9 This position is not grounded in the governing law or the facts-it is a litigation construct
10 advanced to create jurisdiction where none exists.

11 This mischaracterization serves an evident purpose: to avoid the jurisdictional
12 consequences that follow from conduct occurring on tribal land. Under *Water Wheel Camp*
13 *Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 813-15 (9th Cir. 2011), tribal courts retain
14 jurisdiction over nonmembers engaging in activities on tribal land.

15 Once the true status of the land is recognized, Defendants' jurisdictional argument
16 collapses.

17
18 **C. DEFENDANTS' "WRONG FORUM" ARGUMENT SEEKS TO ELIMINATE**
19 **EVERY FORUM EXCEPT THE ONE THEY PREFER**

20 Defendants contend that Plaintiff has repeatedly pursued this dispute in the "wrong
21 forum."

22 That position collapses under scrutiny.

23 State courts lack jurisdiction over possessory actions involving Indian trust land. Plaintiff
24 therefore proceeded in Tribal Court-the forum recognized under federal law as having primary
25 authority over disputes arising on tribal land.

26 Defendants' argument effectively eliminates every available forum except federal court.

27 Jurisdiction, however, is not created by process of elimination.

28 Defendants' position is not a jurisdictional principle. It is a litigation preference.

1 **D. DEFENDANTS' DUE PROCESS NARRATIVE IS CONTRADICTED BY THE**
2 **RECORD**

3 1. THE HEARING AND PURPORTED "24-HOUR RECESS"

4 Defendants' Assertion (Opp. at 4:20-5:4):

5 "At the hearing, Plaintiff, without prior notice, orally moved to strike the answer and deny
6 Defendants due process and right to a hearing, arguing Defendants must appear through
7 counsel-a requirement listed nowhere in the Tribal Court Rules. The Judge himself was
8 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."

9 This account is contradicted by the record.

10 The Tribal Court did not take a "24-hour recess," nor did it reverse a previously announced
11 ruling. The matter was taken under submission during the hearing and decided that same day, as
12 reflected in the Court's written order emailed to the parties by the court that afternoon.

13 There was no intervening delay and no reversal. Defendants' description is not a matter of
14 interpretation-it is inconsistent with the Court's written order.

15
16 2. DEFENDANTS' CLAIM THAT THE TRIBAL COURT "INVENTED" A RULE
17 REQUIRING COUNSEL

18 Defendants further contend that the Tribal Court "invented" a requirement that entity
19 defendants appear through counsel, asserting that such a rule appears "nowhere" in the Tribal
20 Court Rules and would not be apparent to a layperson or even an attorney unfamiliar with the
21 forum.

22 "The Tribal Court Rules do not specifically require an LLC or corporation appear through
23 an attorney, and a party reviewing those rules could reasonably conclude that the
24 proceeding was more akin to an arbitration—a forum in which entities routinely appear
25 through non-attorney representatives and in which consent to the forum is also a
26 prerequisite. Instead, it says, "[a]ny party may, but need not, be represented by an attorney
27 of their choice, except as prohibited by Tribal law." ACBCI Ordinance, App. A, Art. I, §
28 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.]” (Opp 5 fn3)
(Emphasis added)

1 This argument misstates settled law.

2 The ordinance language Defendants cite mirrors federal law. 28 U.S.C. § 1654 provides
3 that parties may "plead and conduct their own cases personally or by counsel." Courts have
4 uniformly held that this language does not permit artificial entities to appear without counsel.
5 *Rowland v. California Men's Colony*, 506 U.S. 194, 201-02 (1993).

6 The same rule applies under California law. *CLD Constr., Inc. v. City of San Ramon*, 120
7 Cal. App. 4th 1141, 1146 (2004).

8 There is nothing novel about this requirement or language used in the ACBCI Ordinance
9 which mirrors both state and federal law. It is a fundamental and universally applied rule of
10 practice.

11 Defendants' suggestion that the Tribal Court "invented" such a rule-while citing language
12 materially indistinguishable from federal and state provisions-reflects a mischaracterization of
13 both the law and the role of Tribal Courts.

14 Framed as they present it, the argument reduces to the proposition that a Tribal Court
15 applying a rule consistent with federal and state law is somehow acting outside the bounds of
16 judicial authority. That position finds no support in governing law.

17

18 3. DEFENDANTS OMIT THEIR ACTUAL NOTICE, SERVICE, AND PARTICIPATION

19 Defendants' due process narrative omits critical facts now established by Plaintiff's
20 declaration.

21 On April 8, 2025-more than two weeks before the hearing-Lonnie Landers, acting as agent
22 for service of process, sent a written communication acknowledging the Tribal Court eviction
23 action but challenging service while simultaneously engaging in settlement discussions, saying:

24 It seems this is in everyone's best interest.... If not, it seems the Landlords will be
25 choosing to forgo money they would otherwise not be able to recover—getting paper
26 judgments against D&L and DANLON won't do them much good.
(Jacobs Decl. ¶¶ 2-4, Ex. 1.)

26

27 On April 11, 2025, Plaintiff met with Mr. Landers and personally effected service of
28 process. (Jacobs Decl. ¶ 4.)

1 Defendants nevertheless continued to pursue settlement. On April 21, 2025-prior to the
2 hearing-Mr. Landers submitted a further proposal seeking to resolve the dispute. (Jacobs Decl.,
3 Ex. 2.)

4 These facts establish actual notice, personal service, and active participation well before
5 the hearing.

6
7 4. DEFENDANTS DID NOT REQUEST A CONTINUANCE OR SEEK TIME TO
8 OBTAIN COUNSEL

9 At the Tribal Court hearing, Mr. Landers did not request a continuance to obtain counsel
10 and did not indicate that additional time was required.

11 The first reference to retaining counsel occurred only after entry of judgment. (Jacobs
12 Decl. ¶ 11.)

13 Defendants' present claim that they were denied an opportunity to be heard is inconsistent
14 with their conduct at the hearing.

15
16 5. DEFENDANTS DECLINED AN OPPORTUNITY TO SET ASIDE DEFAULT

17 After Defendants retained counsel, Plaintiff contacted Mr. Freeman and offered to set
18 aside the default so the matter could proceed on the merits in the appropriate forum.

19 That offer was declined. (Jacobs Decl., Ex. 3)

20 Defendants' assertion that they were denied procedural remedies is therefore incomplete
21 and misleading.

22
23 6. DEFENDANTS' DUE PROCESS ARGUMENT IS A POST HOC RECONSTRUCTION,
24 NOT A BASIS FOR JURISDICTION

25 Taken together, Defendants' account is not a description of the proceedings, but a
26 reconstruction of them.

27 Even if accepted, these assertions would bear only on a potential defense to recognition
28 under principles of comity.

1 They do not appear on the face of Plaintiff's pleading and cannot create federal question
2 jurisdiction.

3
4 **E. PLAINTIFF'S DECLARATION IS PROPERLY SUBMITTED TO REBUT NEW**
5 **FACTUAL ASSERTIONS RAISED IN OPPOSITION**

6 Defendants' Opposition introduces a new factual narrative concerning service, notice, and
7 the Tribal Court proceedings.

8 In particular, Defendants assert that:

- 9 ● they lacked proper service,
10 ● were denied a meaningful opportunity to be heard,
11 ● and were unable to obtain relief from default.

12 These assertions were not presented in the Notice of Removal and are raised for the first
13 time in opposition.

14 Where an opposing party raises new facts or theories in opposition, the Ninth Circuit
15 permits the submission of evidence in reply to rebut those new matters. *Provenz v. Miller*, 102
16 F.3d 1478, 1483 (9th Cir. 1996).

17 Plaintiff's declaration is submitted solely for that purpose-to address Defendants' newly
18 asserted factual claims regarding notice, service, and procedural fairness.

19 It does not introduce new grounds for relief, but responds directly to Defendants' revised
20 narrative.

21 The declaration establishes:

- 22 ● Defendants had actual notice of the Tribal Court action prior to the hearing;
23 ● service of process was effected, including personal service on Defendants' agent;
24 ● Defendants actively engaged in settlement discussions before the hearing;
25 ● no request for a continuance or additional time to retain counsel was made; and
26 ● Plaintiff offered to set aside the default after Defendants retained counsel, which
27 offer was declined.

28 (Jacobs Decl. ¶¶ 2-13, Exs. 1-3.)

1 This evidence directly rebuts Defendants' claims regarding service, notice, and procedural
2 fairness.

3 It also confirms that Defendants' due process argument is not a jurisdictional issue, but a
4 litigation position advanced only after removal.

5
6 **VI. DEFENDANTS' OWN FRAMING CONFIRMS THE ABSENCE OF**
7 **JURISDICTION**

8 “Plaintiff’s comity request necessarily requires adjudication of whether (1) the Tribal
9 Court had jurisdiction over non-Indian lessees on non-reservation land, (2) whether Defendants
10 were afforded due process, and (3) whether enforcement is consistent with federal Indian law.
11 These are all federal questions for this Court.” (Opp. at 2:12-15)

12 Defendants' framing depends on premises that do not appear in the complaint and are
13 contradicted by the record. These are defenses, not jurisdictional bases.

14 Starting with (3): is enforcement consistent with Federal Indian Law

15 The Supreme Court has long recognized that tribal authority over tribal lands is a core
16 attribute of sovereignty. *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 667-68 (1974).
17 While *Montana v. United States*, 450 U.S. 544 (1981), addresses limits on non-Indian land, it
18 does not restrict tribal authority over conduct on tribal land. Where a dispute arises from a
19 consensual relationship on tribal land, tribal authority applies. *Water Wheel Camp Recreational*
20 *Area, Inc. v. LaRance*, 642 F.3d 802, 813-15 (9th Cir. 2011).

21 This case falls squarely within that framework. Defendants' reliance on *Montana* is
22 misplaced, and their effort to manufacture a federal issue fails.

23 Consistent with this body of law, the Tribal Court properly exercised jurisdiction over
24 nonmember business entities conducting business on tribal land and subject to tribal regulation.
25 Any challenge to the regularity of the Tribal Court proceedings presents, at most, an anticipated
26 defense to recognition. It does not transform this comity action into one arising under federal law.

27 ///

28 ///

1 **VII. ATTORNEYS' FEES ARE WARRANTED UNDER 28 U.S.C. § 1447(c)**

2 Under 28 U.S.C. § 1447(c), a court may award attorneys' fees incurred as a result of
3 improper removal. The standard is whether the removing party lacked an objectively reasonable
4 basis for seeking removal. *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005).

5 That standard is met here.

6 Defendants' Notice of Removal asserted federal question jurisdiction where none exists.
7 Plaintiff's pleading seeks recognition and enforcement of a Tribal Court judgment under principles
8 of comity. It does not arise under federal law, and Defendants identified no federal cause of action
9 on the face of the complaint.

10 Defendants' Opposition confirms the absence of a reasonable basis for removal. Rather
11 than defend the jurisdictional theory asserted in the Notice of Removal, Defendants abandon it
12 and advance multiple new theories not previously asserted, including arguments based on due
13 process, res judicata, and an expanded conception of federal jurisdiction.

14 As set forth above, those theories are procedurally improper and cannot supply a basis for
15 removal. A defendant may not cure a defective notice of removal by asserting new jurisdictional
16 grounds in opposition. See *ARCO Envtl. Remediation, L.L.C. v. Dep't of Health & Envtl. Quality*,
17 213 F.3d 1108, 1117 (9th Cir. 2000).

18 This sequence—removal on one theory, followed by abandonment of that theory and
19 substitution of new ones—demonstrates that Defendants lacked an objectively reasonable basis
20 for removal at the outset.

21 The burden imposed by Defendants' conduct is reflected in the scope of this Reply.
22 Plaintiff was required to address not only the improper removal asserted in the Notice, but an
23 expanded set of jurisdictional theories and factual assertions raised for the first time in opposition.
24 This necessitated additional factual development, including submission of a supplemental
25 declaration and exhibits to correct the record.

26 These additional efforts-and the resulting fees-were directly caused by Defendants'
27 decision to abandon their original theory and advance new ones outside the removal period.

28 The same is true of the factual assertions advanced in support of removal. As detailed in

1 Section V, Defendants' Opposition relies on characterizations of the lease, the status of the land,
2 and the Tribal Court proceedings that are contradicted by the governing documents and the record.

3 While fees are not awarded as a matter of course, they are appropriate where removal
4 imposes unnecessary costs and burdens on the opposing party. *Martin*, 546 U.S. at 140.

5 Here, Plaintiff has been required to respond not only to an improper removal, but to an
6 expanded set of jurisdictional theories and a reconstructed factual narrative. The result has been
7 the unnecessary expenditure of time and resources to address arguments that should not have been
8 advanced.

9 The scope of the Reply itself reflects the burden imposed by Defendants' shifting
10 positions.

11 Plaintiff attempted to resolve these issues without motion practice, including in-person
12 meetings and written communications addressing the jurisdictional defects, but Defendants
13 declined to engage.

14 An award of fees under § 1447(c) is therefore warranted.

15
16 **VIII. CONCLUSION**

17 The removing party bears the burden of establishing federal jurisdiction, and removal
18 statutes are strictly construed against removal. Federal courts are courts of limited jurisdiction.
19 The requirement that jurisdiction appear on the face of the well-pleaded complaint serves as a
20 structural constraint on the scope of federal adjudicatory authority.

21 Recognition and enforcement of tribal court judgments under principles of comity do not,
22 without more, give rise to a federal question. To hold otherwise would convert routine
23 enforcement proceedings—arising from disputes adjudicated in tribal courts—into matters of
24 federal jurisdiction, notwithstanding the absence of a federal claim on the face of the complaint.

25 This case does not approach that threshold. Defendants' Notice of Removal fails on its
26 face, and Defendants' subsequent effort to supply jurisdiction through new theories and
27 reconstructed facts underscores the absence of any legitimate basis for federal jurisdiction.

28 Defendants' removal fails for multiple independent reasons, each independently sufficient

1 and collectively dispositive.

2 First, the Notice of Removal does not establish federal question jurisdiction under the
3 well-pleaded complaint rule. Plaintiff's pleading seeks recognition and enforcement of a Tribal
4 Court judgment under settled principles of comity. It does not assert a federal claim, and
5 jurisdiction cannot be manufactured by defenses or anticipated challenges to that judgment.
6 *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 10-12 (1983).

7 Second, Defendants' Opposition confirms that removal cannot be sustained on the grounds
8 asserted in the Notice. Rather than defend the theory actually invoked, Defendants advance
9 multiple new jurisdictional theories for the first time in opposition. Those theories are
10 procedurally barred and cannot cure a defective notice of removal. 28 U.S.C. § 1446; *ARCO*
11 *Envtl. Remediation, L.L.C. v. Dep't of Health & Envtl. Quality*, 213 F.3d 1108, 1117 (9th Cir.
12 2000).

13 Third, Defendants' due process arguments do not create federal jurisdiction. At most, they
14 present a defense to recognition under principles of comity. They do not appear on the face of
15 Plaintiff's pleading and therefore cannot support removal.

16 Fourth, federal Indian law independently confirms that this dispute belongs in Tribal
17 Court. The conduct at issue arises from Defendants' leasehold relationship on Indian trust land,
18 and the Tribal Court's exercise of jurisdiction falls squarely within the framework recognized in
19 *Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9, 15-16 (1987), and *Water Wheel Camp*
20 *Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 813-15 (9th Cir. 2011). Any challenge to tribal
21 jurisdiction must be addressed in accordance with the tribal exhaustion doctrine, not through
22 removal.

23 Fifth, the factual premises advanced in support of removal do not withstand comparison to
24 the governing documents and the record. Defendants' assertions regarding the lease, the status of
25 the land, and the proceedings in Tribal Court are contradicted by the lease itself, by the undisputed
26 status of the property as Indian trust land, and by the Tribal Court's written order.

27 Finally, the broader context underscores the absence of any legitimate basis for federal
28 jurisdiction. Defendants' leasehold difficulties arise not from any defect in forum, but from their

1 inability to perform under the lease, as reflected in delinquency and bankruptcy filings. The
2 present removal functions not as a jurisdictional necessity, but as a delay mechanism.

3 That is not a basis for federal jurisdiction. It is confirmation that none exists.

4 Because Defendants cannot establish jurisdiction on the face of the complaint, cannot rely
5 on untimely new theories, and cannot transform defenses or factual disputes into a federal
6 question, this Court lacks subject matter jurisdiction.

7 Plaintiff respectfully requests that the Court award attorneys' fees pursuant to 28 U.S.C. §
8 1447(c) in the amount of \$46,875. This amount reflects the reasonable fees incurred as a direct
9 result of Defendants' improper removal, and the additional work necessitated by Defendants'
10 abandonment of their original jurisdictional theory and assertion of new theories and factual
11 contentions for the first time in opposition.

12 Remand is required.

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Respectfully submitted,

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David Earl Jacobs, Attorney for Plaintiff
William Ulysses McGlamary, II

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