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9 LLC and Danlon, Inc.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

12 In the Matter of:

Case No. 5:25-cv-01411 JGB (SHKx)

13 WILLIAM ULYSSES McGLAMARY,
14 II,

District Judge: *Hon. Jesus G. Bernal*

15 Plaintiff,

**DEFENDANTS AND COUNTER-
PLAINTIFFS D&L REAL ESTATE
ENTERPRISES, LLC AND
DANLON, INC.'S ANSWER TO
REQUEST FOR COMITY;
APPLICATION FOR
RECOGNITION AND
ENFORCEMENT OF JUDGMENT
AND FOR THE ISSUANCE OF A
WRIT OF POSSESSION**

16 vs.

17 D&L REAL ESTATE ENTERPRISES,
18 LLC and DANLON, INC.

19 Defendants.

20 D&L REAL ESTATE ENTERPRISES,
21 LLC and DANLON, INC.

**DEFENDANTS AND COUNTER-
PLAINTIFFS D&L REAL ESTATE
ENTERPRISES, LLC AND
DANLON, INC.'S
COUNTERCLAIM FOR:**

22 Counter-Plaintiff,

23 vs.

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

- 1. **WRONGFUL EVICTION/
ATTEMPTED WRONGFUL
TERMINATION**
- 2. **BREACH OF CONTRACT**
- 3. **BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING**
- 4. **TORTIOUS INTERFERENCE
WITH PROSPECTIVE
ECONOMIC ADVANTAGE**
- 5. **UNFAIR BUSINESS**

26 Counter-Defendants

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- PRACTICES**
- 6. PRIVATE NUISANCE**
- 7. NEGLIGENCE**
- 8. TRESPASS**
- 9. VIOLATION OF FEDERAL INDIAN LEASING STATUTES AND REGULATIONS**
- 10. SET OFF**
- 11. DECLARATORY AND INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

Action Filed: May 9, 2025
Trial Date: None Set

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ANSWER¹

Defendants and Counter-Plaintiffs D&L Real Estate Enterprises, LLC (“D&L”) and Danlon, Inc. (“Danlon,” and collectively “Defendants”) hereby submit the following answer and affirmative defenses to the Request for Comity; Application for Recognition and Enforcement of Judgment and for the Issuance of a Writ of Possession (“Request”) filed by Plaintiff and Counter-Defendant William Ulysses McGlamary, II (“Plaintiff”).

1. Answering paragraph 1 of the Request, Defendants deny that Plaintiff was granted a judgment in the Agua Caliente Band of Cahuilla Indians Tribal Court located at 980 East Tahquitz Canyon Way, Palm Springs, California 92262 on April 28, 2025 in the matter known as *William Ulysses McGlamary, II v. D&L Real Estate Enterprises, LLC and Danlon, Inc., a California Corporation*, case # CV-2025-0071-UD.

2. Answering paragraph 2 of the Request, Defendants admit that D&L Real Estate Enterprises, LLC is a California Limited Liability company and has filed a statement pursuant to §17060 of the Corporations Code identifying Lonnie Landers as its agent for service of process listing his address as 424 South Indian Canyon Drive, Palm Springs, California 92262.

3. Answering paragraph 3, Defendants admit Danlon, Inc., is a California corporation and its registered agent for service of process is Lonnie Landers listing his address as 424 South Indian Canyon Drive, Palm Springs, California 92262.

4. Answering paragraph 4, Defendants deny the action in this state to enforce the tribal court judgment is not barred by any applicable statute of limitations.

¹ Defendants are simultaneously filing a responsive Opposition and Response to Request for Comity; Application for Recognition and Enforcement of Judgment and for the Issuance of a Writ of Possession.

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THIRD AFFIRMATIVE DEFENSE
(Statute of Limitations)

3. Some or all of Plaintiff’s claims are barred by the applicable statute(s) of limitations.

FOURTH AFFIRMATIVE DEFENSE
(Lack Of Injury and Damages)

4. Plaintiff has not suffered any injury and/or damages as a result of any acts or omissions of Defendants or its agents or employees, and therefore, Plaintiff is barred from asserting any cause of action against Defendants.

FIFTH AFFIRMATIVE DEFENSE
(Fraud)

5. Plaintiff’ purported claims for relief are barred in whole or in part by Plaintiff’ fraud in connection with the contract upon which such claims are based.

SIXTH AFFIRMATIVE DEFENSE
(Misrepresentation)

6. Any of the conduct of Defendants which is alleged to be unlawful or improper was taken as the result of misrepresentations or other wrongful conduct by Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE
(Failure To Mitigate Damages)

7. Plaintiff has failed to take reasonable steps to mitigate his damages, if any, and therefore his claims against Defendants are barred and/or reduced.

EIGHTH AFFIRMATIVE DEFENSE
(Partial Fault Of Third Parties)

8. Defendants is informed and believes, and thereon alleges, that the negligent and/or intentional acts and omissions of third parties contributed to the damages complained of in the Request (if any). Defendants are entitled to a

1 determination of the proportion of fault of those third parties and to a reduction of
2 damages, if any, awarded to Plaintiff in proportion to that fault.

3 **NINTH AFFIRMATIVE DEFENSE**

4 **(Exclusive Fault Of Third Parties)**

5 9. Defendants are informed and believes, and thereon alleges, that the
6 injuries complained of in Request (if any) were caused solely, directly and
7 proximately by the negligent and/or intentional acts or omissions of persons other
8 than Defendants. These other persons are solely responsible for any damages
9 caused thereby.

10 **TENTH AFFIRMATIVE DEFENSE**

11 **(Exclusive Fault Of Plaintiff)**

12 10. The injuries complained of in the Request (if any) were caused solely,
13 directly and proximately by the negligence, carelessness, lack of care, willful
14 misconduct and/or fault of Plaintiff and/or his agents or predecessors. Plaintiff is
15 therefore solely responsible for any damages caused thereby.

16 **ELEVENTH AFFIRMATIVE DEFENSE**

17 **(Consent)**

18 11. The Request is barred, in whole or in part, because Plaintiff consented
19 to the alleged conduct about which he complains.

20 **TWELFTH AFFIRMATIVE DEFENSE**

21 **(Compliance With All Laws)**

22 12. Defendants are absolved from any liability in this action by reason of
23 their full compliance with all statutes, regulations or other laws in effect at the time
24 of the conduct that supposedly gives rise to Plaintiff' injuries.

25 **THIRTEENTH AFFIRMATIVE DEFENSE**

26 **(Waiver)**

27 13. Plaintiff has engaged in conduct and activities sufficient to constitute a
28 waiver of any claim against Defendants.

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FOURTEENTH AFFIRMATIVE DEFENSE

(Estoppel)

14. Plaintiff has engaged in conduct and activities sufficient to estop him from bringing the claims asserted in the Request against Defendants.

FIFTEENTH AFFIRMATIVE DEFENSE

(Laches)

15. Each and every purported claim and cause of action in the Request is barred by laches.

SIXTEENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

16. Each and every purported claim and cause of action in the Request is barred by the doctrine of unclean hands.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

17. Defendants alleges that each and every claim and cause of action asserted against Defendants is barred, in whole or in part, because it would result in unjust enrichment to Plaintiff.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Good Faith)

18. Defendants acted in good faith and with a reasonable belief that their actions were lawful at all times and places mentioned in the Request.

NINETEENTH AFFIRMATIVE DEFENSE

(Justification)

19. Defendants were justified in undertaking actions to protect its interests and acted at all times reasonably and in good faith; consequently, its conduct as alleged in the Request was justified or excused.

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TWENTIETH AFFIRMATIVE DEFENSE
(Full Performance)

20. Defendants fully performed any contractual, statutory or other alleged duties to Plaintiff, other than those which have been excused or discharged, and Plaintiff is thus barred from recovery.

TWENTY-FIRST AFFIRMATIVE DEFENSE
(Necessity)

21. Any of the conduct of Defendants which is alleged to have been unlawful or improper was taken in accordance with business practices and necessity.

TWENTY-SECOND AFFIRMATIVE DEFENSE
(Conditions Precedent)

22. Any obligations on the part of Defendants to Plaintiff are subject to express and/or implied conditions precedent which have not occurred and accordingly, Defendants are not obligated or in any way liable to Plaintiff.

TWENTY-THIRD AFFIRMATIVE DEFENSE
(Set Off)

23. Plaintiff's claim is totally or partially subject to set off in an amount to be proven at trial.

TWENTY-FOURTH AFFIRMATIVE DEFENSE
(Excuse or Discharge)

24. If there were agreements or contracts as alleged in the Request, Defendants' obligations under the contracts have been excused or discharged by Plaintiff or another party's breach thereof.

TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Failure to Perform)

25. Plaintiff has failed to perform its obligations and duties under the terms of the contract alleged in the Request, and is therefore in default and/or material breach of the contract. To the extent it is proven that said defaults and/or material

1 breaches caused Defendants alleged breach, and other additional costs and expenses
2 in an amount subject to proof, that Plaintiff' recovery, if any, should be offset
3 against Defendants' damages, losses and expenses.

4 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**
5 **(Speculative Damages)**

6 26. Some or all of Plaintiff' claims and causes of action fail because any
7 damages are entirely speculative.

8 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**
9 **(Arbitration)**

10 27. Some or all of Plaintiff' claims and causes of action fail because such
11 claims are subject to binding arbitration.

12 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**
13 **(Ripeness)**

14 28. Some or all of Plaintiff's causes of action are not ripe for or subject to
15 judicial review.

16 **TWENTY-NINTH AFFIRMATIVE DEFENSE**
17 **(Lack of Subject Matter Jurisdiction)**

18 29. Some or all of Plaintiff's causes of action fail for lack of subject matter
19 jurisdiction.

20 **THIRTIETH AFFIRMATIVE DEFENSE**
21 **(Lack of/Insufficient Notice)**

22 30. Some or all of Plaintiff's causes of action fail for failure to provide
23 sufficient notice of the alleged violation and of its intention to sue.

24 **THIRTY-FIRST AFFIRMATIVE DEFENSE**
25 **(Ripeness)**

26 31. Some or all of Plaintiff's causes of action fail for lack of ripeness.
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1 **COUNTERCLAIM**

2 Defendants and Counter-Plaintiffs D&L Real Estate Enterprises, LLC
3 (“D&L”) and Danlon, Inc. (“Danlon,” and collectively “Defendants”) hereby allege
4 and counter-complain against Plaintiff and Counter-Defendant William Ulysses
5 McGlamary, II (“Plaintiff”), as follow:

6 **I. JURISDICTION, VENUE, AND NATURE OF ACTION**

7 1. This Court has subject matter jurisdiction over this counterclaim
8 pursuant to 28 U.S.C. § 1331 because the underlying dispute presents federal
9 questions concerning the rights to possession, use, and control of Indian trust and
10 allotted land governed by federal statutes, including but not limited 25 U.S.C. § 415
11 (governing Bureau of Indian Affairs (“BIA”) leases on allotted Indian land). *See,*
12 *e.g., Oneida Indian Nation v. County of Oneida*, 414 U.S. 661 (1974); *Boisclair v.*
13 *Superior Court*, 51 Cal.3d 1140 (1990).

14 2. This Court also has supplemental jurisdiction over all related claims
15 pursuant to 28 U.S.C. § 1367(a). The counterclaims asserted herein arise out of the
16 same case or controversy as Plaintiff William Ulysses McGlamary, II’s original
17 claims relating to the recognition and enforcement of a tribal court judgment
18 affecting interests in Indian trust land. These claims are so closely related that they
19 form part of the same Article III case or controversy and should be adjudicated
20 together in the interest of judicial economy, consistency, and fairness to all parties.

21 3. Personal jurisdiction over Plaintiff William Ulysses McGlamary, II is
22 proper in this Court because Plaintiff is a party to this action and the events or
23 omissions giving rise to the counterclaim occurred in this judicial district.
24 Plaintiff’s activities in seeking relief regarding property located in the Central
25 District of California, Eastern Division, further establish sufficient minimum
26 contacts such that the exercise of personal jurisdiction comports with traditional
27 notions of fair play and substantial justice.

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1 4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and
2 1441(a), as the property at issue is located within this judicial district and a
3 substantial part of the events or omissions giving rise to the claims occurred within
4 the boundaries of the Central District of California, Eastern Division.

5 5. This counterclaim arises out of a dispute over the possessory and
6 contractual rights relating to a federally approved lease of Indian trust land in which
7 Plaintiff engaged in a series of actions to interfere with Defendants' leasehold
8 interest in the property, clouding the title of the property to prevent assignment or
9 sale of their rights, secure a windfall in property renovations, and effect a wrongful
10 eviction prior to the exercise of a valuable 25-year renewal option. The dispute
11 centers on allegations that Plaintiff violated multiple provisions of the lease and
12 federal law by refusing to accept rental payments from Defendants' permitted
13 affiliate, unreasonably withholding consent to lease assignments, orchestrating and
14 maintaining nuisance conditions detrimental to Defendants' business, obstructing
15 the BIA's ability to monitor the lease, and pursuing serial eviction proceedings in
16 multiple forums (including state and a newly established tribal court) in order to
17 secure a judgment of forfeiture and monetary damages in direct contravention of the
18 lease's exclusive remedies and procedural requirements. Accordingly, this Court is
19 the appropriate and exclusive forum to resolve all issues arising from the parties'
20 dispute.

21 **II. THE PARTIES**

22 6. Defendant and Counter-Plaintiff D&L is a California limited liability
23 company with its principal place of business in Palm Springs, California. Its sole
24 member and managing member is Lonnie Landers.

25 7. Defendant and Counter-Plaintiff Danlon is a California corporation
26 with its principal place of business in Palm Springs, California. Its President, Chief
27 Executive Officer, Secretary, and Treasurer is Lonnie Landers.

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1 8. Upon information and belief, Defendants’ allege Plaintiff and Counter-
2 Defendant is an individual who at all times relevant to this matter resided in the city
3 of Palm Springs, California, in the county of Riverside. Plaintiff is an alleged
4 holder by intestate succession of a beneficial interest in the original Indian allotment
5 in controversy that was originally granted to his grandmother, Lorene Welmas
6 McGlamary Martinez.

7 9. Defendants are unaware of the names of Counter-Defendants identified
8 herein as DOES 1-10, and therefore sues them by those fictitious names.
9 Defendants will seek leave of the Court to amend this Complaint to allege the true
10 names and capacities of the DOE Counter-Defendants, and the roles they played,
11 once their identities and/or manner of participation in the wrongful conduct herein
12 described is ascertained.

13 **III. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

14 **A. Formation and Federal Approval of PSL-360 Lease**

15 10. On July 30, 2002, the U.S. Department of the Interior, through the
16 Bureau of Indian Affairs (“BIA”), approved Business Lease No. PSL-360 covering
17 0.826 acres of restricted tribal land in Palm Springs, Riverside County, California
18 (the “Lease”), located at 424 S Indian Canyon Dr, Palm Springs, CA 92262. A copy
19 of this lease is attached hereto as **Exhibit A**. Under the Lease, which was in a form
20 and format required by the BIA, on behalf of the allottee lessor, the original lessor
21 Georgianna McGlamary, acting as representative of her mother, allottee Lorene
22 Lugo Welmas McGlamary (Allottee No. 36A of the Agua Caliente Band of Cahuilla
23 Indians), granted original lessee Scott P. Timberlake a 30-year lease term
24 (September 18, 2002 to September 17, 2032), with an optional 25-year extension
25 which is to be determined “at the end of the initial term.”

26 11. The initial Guaranteed Minimum Annual Rent (“GMAR”) was \$48,000
27 (\$4,000 monthly), with annual CPI adjustments of 3-4%.

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1 12. Section 15 explicitly permits a sublease or assignment to any
2 “Affiliate” upon notice to lessor and the BIA, without the need for landlord consent.
3 Furthermore, Section 23 explains that unless the Lease provides otherwise, the
4 Lessee may satisfy any required notice, demand, or payment to the Lessor simply by
5 delivering it to the BIA.

6 13. On June 23, 2003, Timberlake assigned his leasehold interest to D&L
7 Enterprises, a California partnership, which was approved by the BIA. In
8 November 2007, D&L Enterprises converted to a limited-liability company, (i.e.,
9 current Defendant D&L). The BIA again approved this second assignment.

10 14. In or around 2005, Defendants opened up and operated the restaurant
11 known as Wang’s In the Desert.

12 **B. Affiliate Subleases to JGH and DANLON and Substantial Improvements**
13 **Made to Leased Property**

14 15. Pursuant to Section 15’s affiliate exception, D&L subleased the
15 Premises to an affiliate, JGH Restaurant Enterprises, Inc. (“JGH”) on June 9, 2007.
16 In an effort to improve the leased property and the restaurant, Defendants (though
17 JGH) acquired a \$400,000 SBA-guaranteed loan to renovate the building on the
18 leased property.

19 16. In September 2012, JGH reorganized as Defendant Danlon, also an
20 affiliate of Defendant D&L (owned and operated by Mr. Landers). Payments were
21 then made monthly to the BIA by Danlon, providing notice to the BIA. Defendants
22 then spent further hundreds of thousands of dollars improving the property to
23 become a highly regarded restaurant in the Palm Springs area.

24 **C. Plaintiff’s Scheme to Oust Defendants from the Property and Terminate**
25 **the Lease**

26 17. On information and belief, Defendants allege that Plaintiff engaged in a
27 scheme to diminish the profitability and value of Defendants’ leasehold interest,
28 cloud the title of the Lease, and force Defendants into default, all with the intention

1 to eventually terminate the Lease and avoid the 25-year renewal option, thereby
2 securing a windfall on the substantial improvements made to the property.

3 **i. Homeless Shelter Adjacent to The Restaurant**

4 18. Plaintiff, through his counsel, intentionally advocated for the operation
5 of a homeless shelter at the office building located on the property adjoining
6 Defendants' restaurant, Wang's In The Desert. Despite community concerns about
7 the proposed shelter's immediate proximity to an established restaurant and
8 hospitality venue, Plaintiff proceeded to facilitate its opening and operation,
9 including with Plaintiff's counsel, David E. Jacobs, advocating for it in at least one
10 city planning commission meeting. Plaintiff's counsel is a tenant of the office
11 building that became the site of the homeless shelter, which was named "Well In
12 The Desert," a name coincidentally similar to Defendants' restaurant.

13 19. Defendants recognize the serious societal needs that shelters are
14 intended to address, and affirm the importance of treating all members of the
15 community with dignity and respect. However, the location and management of the
16 Well In The Desert shelter, as permitted by Plaintiff, resulted in significant negative
17 impacts on Defendants' business and clientele. Defendants received a flood of
18 customer complaints reporting that homeless individuals, many of whom struggle
19 with addiction or mental health challenges, were not adequately supervised.
20 Customers consistently complained of frequent encounters with individuals loitering
21 on the premises, aggressive panhandling, witnessing suspected drug deals, observing
22 drug use, and even being approached in threatening ways as they entered and exited
23 the restaurant. Some customers complained of having their vehicles broken into,
24 while others reported indecent exposure incidents occurring on or near the restaurant
25 property.

26 20. These ongoing problems, which were routinely documented by
27 Defendants and which Defendants are informed and believe resulted in hundreds of
28 calls for police intervention, had a direct and detrimental effect on the restaurant's

1 reputation and profitability. The persistent safety concerns caused regular patrons to
2 stop visiting, dissuaded new customers, and severely disrupted the day-to-day
3 operations of the business. Although Defendants remained sensitive to the needs of
4 vulnerable community members, the placement and operation of the Well In The
5 Desert shelter, particularly under Plaintiff’s control and adjacent to the restaurant,
6 directly contributed to the economic distress and business losses suffered by
7 Defendants, furthering Plaintiff’s effort to force Defendants to vacate the premises.

8 **ii. Initial Attempt to Oust Defendants in Violation of the Lease**

9 21. In late 2019, Defendants missed a small amount of Lease payments
10 while Mr. Landers was dealing with a family medical emergency of a terminally ill
11 parent. Defendants immediately provided both the BIA and the lessor with notice of
12 their diligent and good-faith effort to cure, letting them know rent would be current
13 within a reasonable time (as allowed under Section 18 of the Lease).

14 22. Despite over a decade of successfully operating Wang’s In the Desert
15 under the terms of the Lease, and these diligent efforts to cure, Plaintiff, through his
16 counsel, attempted to seized this opportunity to continue the scheme to oust
17 Defendants from the property. Plaintiff’s counsel served a Notice of Termination,
18 without regard to Defendants’ diligent and good-faith effort to cure under Section 18
19 of the Lease. Plaintiff, through his counsel, then demanded a sweeping “First
20 Amendment” to the Lease, attempting to impose a \$5,000 transfer fee, a \$72,000
21 rental bond, a redevelopment right, higher CPI caps, a removal of the 25-year
22 extension option, and demanded \$42,539 in alleged arrears, before any assignment
23 would be approved. In other words, Plaintiff would continue to harass Defendants,
24 unless Defendants first agreed to renegotiate the terms of the Lease.

25 23. However, by mid-2019, Defendants were again current on their Lease
26 payments.

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1 **iii. Manufactured Concern With Danlon**

2 24. On October 23, 2019, counsel for Plaintiff inexplicably sent a letter to
3 Defendants explaining that, despite Danlon paying rent to the BIA since 2012,
4 Danlon was allegedly an unauthorized sublessee.

5 25. Two days later, Defendants provided Plaintiff’s counsel a letter
6 informing him of Danlon’s affiliation with D&L. Despite this, Plaintiff’s counsel
7 sent a 30-day notice to quit letter continuing to claim Danlon was an unauthorized
8 sublessee (despite directly quoting the “Affiliate” language in the Lease (Section
9 3.2)).

10 26. In a continued attempt to harass Defendants and cloud the title,
11 Plaintiff’s counsel sent a further letter refusing to approve Danlon (which is
12 explicitly not required for an Affiliate under the Lease), and informing Defendants
13 that he had advised the BIA not to accept payments from Danlon anymore, unless
14 Defendants first agreed to amend the terms of the Lease, and thereby diminish the
15 value of the lease.

16 **iv. Bad-Faith Refusal to Allow Defendants to Assign Their Lease**
17 **Rights and the Restaurant by Clouding Title**

18 27. While still dealing with family medical concerns and concerned with
19 disruptive tactics from Plaintiff and his counsel, Defendants pursued the option of
20 selling their leasehold-rights to a third party. However, over the next few years,
21 Plaintiff refused to allow Defendants to sell their Lease rights and the restaurant,
22 unless Defendants first agreed to amend the terms of the Lease.

23 28. As just one example, Defendants entered into a deal with the original
24 lessee, Timberlake, through Timberlake Holdings, Ltd., who offered \$1,200,000 and
25 opened escrow to cure the alleged defaults in return for an assignment of the Lease.
26 Instead of allowing the sale, Plaintiff, through his counsel, refused, citing an alleged
27 “incurable breach,” further clouding the title of the lease. As a result, the sale and
28 escrow were cancelled. At least two subsequent escrows were similarly cancelled.

1 Again, Plaintiff, through his counsel, refused to approve these lawful and valid
2 assignments unless Defendants first agreed to amend the terms of the Lease to
3 increase the rents and remove the 25-year extension option, and thereby diminish
4 the value of the lease

5 29. As another example, Jansens & Hoes also pursued purchasing
6 assignment of the Lease. However, Jansen & Hoes withdrew its interest when
7 Plaintiff, through his counsel, would only approve of the lawful and valid
8 assignment if Defendants first agreed to negotiate the terms of the Lease to increase
9 the rental minimum and remove the 25-year extension option.

10 30. Plaintiff’s counsel vowed, via an email, that he would “never” allow
11 assignment of the Lease with the 25-year renewal option. In other words, despite
12 Defendant’s ability to assign their rights under the terms of the Lease, Plaintiff and
13 his counsel admitted they would ignore and intentionally thwart these rights, unless
14 Defendants first agreed to amend the terms of the Lease, and thereby diminish the
15 value of the lease.

16 **v. Continued Arbitrary Refusal to Accept Payments from**
17 **Danlon**

18 31. In 2020, the global COVID-19 pandemic began, hitting restaurants with
19 particular force. Government-mandated COVID-19 closures forced Defendants to
20 suspend operations from March 2020 until November 2021.

21 32. On August 2, 2021, in order to bring Defendants current on Lease
22 payments, BIA Superintendent Ollie Beyal requested a \$7,303 rental bond to cover
23 rent arrears for February 2020–June 2021, plus late fees and interest. Defendants,
24 through Danlon then submitted five monthly \$7,303 cashier’s checks (dated June–
25 December 2021).

26 33. Despite these payments, which BIA itself had requested, , Plaintiff’s
27 counsel arbitrarily directed and demanded the BIA on December 13, 2021 to refuse
28 all checks not specifically paid by the account of D&L. Plaintiff, through his

1 counsel, made this demand in contravention of the express Lease terms on affiliates
2 and notwithstanding the fact that Danlon had been making the Lease payments since
3 2012. For the first time, Plaintiff and his counsel alleged Danlon (an affiliate of
4 D&L under the terms of the Lease), was an unauthorized sublessee.

5 34. The BIA subsequently returned four pending checks and disavowed
6 further checks from Danlon, and despite the Lease not requiring the checks to come
7 from a particular checking account.

8 35. On information and belief, Plaintiff also interfered with the BIA’s
9 monitoring of the Lease by demanding that BIA request an excessive bond of
10 \$100,000, well beyond what is required by the Lease, and that it be paid within five
11 days.

12 **vi. Plaintiff Refuses Cash-Buyer Offers to Cure Defaults**

13 36. On August 18, 2023, a business partner of Mr. Landers, James Hudson
14 offered to cure the alleged \$291,488 in rent defaults plus a \$5,000 transfer fee, in
15 exchange for full reinstatement of PSL-360 “as is,” by directly contacting Plaintiff’s
16 counsel via email. Mr. Hudson provided a copy of his bank statement confirming
17 the available funds.

18 37. Plaintiff again refused, labeling the Affiliate sublease to Danlon
19 “incurable,” despite the explicit offer to cure the alleged breach. Again, Plaintiff
20 would not accept this cure unless Defendants first agreed to negotiate the terms of
21 the Lease to increase the rental minimum and remove the 25-year extension option.

22 **vii. Plaintiff’s Additional Invalid Attempts to Wrongfully Evict**
23 **Defendants**

24 38. Beginning after the initial attempt to remove Defendants in 2019,
25 Plaintiff has persisted in a calculated effort to wrongfully evict Defendants from the
26 Lease through a series of improper legal maneuvers and notices. Despite
27 Defendants ongoing willingness to cure any alleged rental defaults and to comply
28

1 with the terms of the Lease, Plaintiff continued to pursue eviction through serial
2 litigation and the use of procedural technicalities through the present time.

3 39. Following the initial 2019 three-day notice to pay or quit, Plaintiff
4 proceeded to bombard Defendants with multiple invalid notices to cure, pay, or quit,
5 without the 30-day cure rights or required notice from the BIA under Section 18 of
6 the Lease, all while refusing to accept Defendants’ numerous offers to cure or assign
7 rights in order to immediately cure the alleged defaults.

8 **D. Bankruptcy Action**

9 40. As a result of Plaintiff’s contrived refusal to accept payments made by
10 Danlon, refusal to accept payment on behalf of Mr. Hudson, continual efforts to
11 frustrate the sale of the Lease, efforts to deny any sale of the restaurant or Lease
12 rights, and actions to continually create uncertainty with constant efforts to “block
13 bust” and shut down the business, Defendants were forced to close the business.
14 D&L filed for Chapter 11 on June 24, 2022 (Case No. 6:22-bk-12412-MH).
15 Plaintiff’s actions were done continuously, despite the fact that Defendants’
16 assignment of the leasehold would be to “deeper pockets” which would further
17 increase lease payments in the future.

18 41. On October 2, 2023, Plaintiff served California 3-day notices to cure
19 bond, taxes, rent, and assignment defaults. However, no notice to cure was provided
20 by the BIA, as required under the Lease.

21 **E. The First Unlawful Detainer – State Court Dismissal for Lack of Subject**
22 **Matter Jurisdiction**

23 42. On October 20, 2023, Plaintiff filed an unlawful detainer complaint
24 against D&L in the Superior Court for the County of Riverside (Case No.
25 UDPS2301119), seeking possession and monetary damages. On May 8, 2024, the
26 Superior Court dismissed the complaint on the correct ground that state courts lack
27 subject matter jurisdiction over claims to possession involving Indian trust land, as
28 held by both controlling federal law under 28 U.S.C. § 1360(b) and the Superior

1 Court of Riverside’s Appellate Division’s published opinion in George Fischer v.
2 Joseph Moscato, Case No. APRI2300056 (March 22, 2024).

3 43. Although Defendants were able to reopen temporarily, due to constant
4 threats of unlawful detainer, Defendants again closed the restaurant in July 2024.

5 **F. Plaintiff’s Forum Shopping: Filing in the Tribal Court Created After**
6 **Lease Execution**

7 44. On March 21, 2025, Plaintiff filed a virtually identical unlawful
8 detainer action in the Agua Caliente Band of Cahuilla Indians Tribal Court (“Tribal
9 Court”) (Case No. CV-2025-0071-UD). Crucially, the Agua Caliente Tribal Court
10 did not exist when the original Lease was executed in 2002, or when the
11 assignments to D&L occurred, and was not established until October 2024, long
12 after the alleged critical events. The Lease does not contemplate or reference this
13 forum for dispute resolution; instead, it requires arbitration if the parties cannot
14 otherwise resolve their dispute.

15 45. Proper notice was not provided in the initial Tribal Court action.
16 Plaintiff, who has been represented by counsel since at least 2019, has regularly
17 communicated with Defendants’ representative, Mr. Landers, including through
18 direct personal contact information in counsel’s possession, including his email and
19 cell-phone number. Despite these established channels, Plaintiff’s counsel initiated
20 the unlawful detainer action by posting the Complaint on the door of the now-closed
21 Wang’s restaurant—which remains closed due to Plaintiff’s actions—on March 31,
22 2025, and by mailing notice to an outdated address associated with a former agent of
23 Defendant D&L. Although Plaintiff’s counsel had actual knowledge of and access
24 to Mr. Landers, Plaintiff relied solely on improper substitute service and failed to
25 direct any notice to him.

26 46. It was only by chance that Defendants’ bookkeeper discovered the
27 posted notice on the restaurant door while stopping to collect mail, and informed
28 Mr. Landers on April 3, 2025 (13 days after the Complaint was filed). As a

1 consequence, Mr. Landers was left with extremely limited time to respond to the
2 unlawful detainer action. Due to improper service, he was unable to retain counsel
3 for the Defendants. Nevertheless, in an effort to comply with procedural deadlines,
4 and with virtually no opportunity to gather evidence or otherwise meaningfully
5 respond to a Complaint filed in an unfamiliar court, Mr. Landers personally drafted
6 and filed an Answer within the Tribal Court's twenty-day responsive pleading
7 period, on August 14, 2025.

8 **G. D&L and Danlon's Stricken Answer and the Entry of Default**

9 47. Confident in his submission, Mr. Landers attended the default prove-up
10 hearing on April 24, 2025. At the hearing, he raised with the judge the issue of
11 improper service and lack of notice. Surprisingly, Plaintiff's counsel made an oral
12 motion to strike the Answer on the basis that Defendants were not then represented
13 by counsel. In the 10-day period between the filing of Defendants' Answer and the
14 prove up hearing, Plaintiff's counsel did not contact Defendants or the Tribal Court
15 to address this alleged deficiency in Defendants' pleading.

16 48. The Tribal Court requested time to review the law in thus matter.
17 Returning after a recess, the Tribal Court explained the Tribal Code contains no
18 requirement that a corporate defendant be represented by counsel and indicated he
19 would consider referring to federal rules, per the Tribal Code. The court then took
20 the matter under submission, expressly assuring Mr. Landers that if it granted
21 Plaintiff's request to strike the Answer, he would be afforded time to retain counsel.

22 49. Contrary to these assurances, and without any advance notice, on April
23 28, 2025, the Tribal Court entered a default for Plaintiff, granting no time for Mr.
24 Landers to engage counsel.

25 50. Further complicating the matter, and unbeknownst to Mr. Landers, the
26 Tribal Code prescribed only fourteen days to oppose the default. In other words,
27 Defendants were only provided 14 days to find counsel, retain counsel, review the
28 record with counsel, and then draft a request to reconsider the default. At the same

1 time, admission to the Tribal Court for counsel not yet “admitted” to the Tribal
2 Court can take up to fifteen days requiring first a certificate of standing from the
3 state bar, which itself can take up to twelve more days.

4 51. By the time Mr. Landers was able to locate appropriate counsel,
5 execute a retainer agreement, and have counsel admitted to the Tribal Court, the
6 fourteen-day opposition period had already expired.

7 **H. The Lease’s Default Provisions and Violation by Plaintiff’s Conduct**

8 52. The default judgment entered by the Tribal Court awarded both
9 substantial monetary damages and cancellation/forfeiture of the Lease. The Lease’s
10 default provision (Section 18) explicitly requires the Lessor to elect between two
11 exclusive remedies: either (A) “collect, by suit or otherwise, all monies as they
12 become due hereunder, or enforce. . . Lessee’s compliance with any other provision
13 of the Lease,” or (B) “terminate this Lease,” in which event the Lessor is foreclosed
14 from suing for further rent. Plaintiff’s strategy of seeking both back rent and
15 forfeiture (all without providing Defendants the opportunity to respond) is in direct
16 contravention of the Lease’s terms.

17 **I. Renewed State Court Enforcement Action, Despite Prior Jurisdictional**
18 **Bar**

19 53. Shortly thereafter, on May 9, 2025, Plaintiff’s counsel filed the current
20 request for comity in state court, seeking enforcement of the Tribal Court’s default
21 judgment. This was done despite Plaintiff’s knowledge—confirmed both by the
22 trial court’s order and controlling California appellate precedent—that state courts
23 lack subject matter jurisdiction to adjudicate disputes regarding Indian trust land.
24 The case was set for hearing on June 26, 2025.

25 54. Again, despite being made abundantly aware of the issue with
26 insufficient notice, Plaintiff only gave notice by posting a copy of the door of
27 Wang’s, which Defendants’ bookkeeper did not find until May 15, 2025.

28

1 **J. Plaintiff's Evident Scheme to Evict for Personal Gain**

2 55. The chronology and procedural context make clear that Plaintiff's
3 conduct constitutes a scheme to wrongfully evict D&L and Danlon in direct
4 violation of the Lease's express provisions. Plaintiff's goal is to terminate the Lease
5 prior to the 25-year extension option, contrary to the parties' bargained-for
6 contractual rights. To do so, Plaintiff forum-shopped from state court to the recently
7 created Tribal Court, manufactured procedural technicalities to secure a default, and
8 immediately sought state court enforcement, disregarding both the Lease and the
9 prior state court ruling, to secure the full economic benefit of early forfeiture or
10 possession of the Lease and deprive Defendants of their renewal rights and value of
11 the Lease. Plaintiff's conduct, as alleged herein, was for the purpose of attempting
12 to orchestrate the appearance of material breaches and significant damages to
13 themselves in order to justify termination of the Lease, and disruption for
14 Defendants' ability to assign and sell the Lease and improvements.

15 **K. Defendants' Compliance and Damages**

16 56. Plaintiffs' repeated refusals, efforts to cancel of escrow agreements,
17 and UD filings have caused Defendants and their affiliates to lose millions in sale
18 proceeds, incur substantial legal fees, and face the constant threat of wrongful
19 eviction. No lawful basis exists to terminate or amend the federally approved PSL-
20 360 Lease. Defendants therefore seek compensatory damages, injunctive and
21 declaratory relief to enforce the Lease's original terms, compel approval of a
22 qualified assignee, and enjoin further eviction efforts.

23 **FIRST CAUSE OF ACTION**

24 **(Wrongful Eviction/Attempted Wrongful Termination)**

25 **Against Plaintiff and Does 1-10**

26 57. Defendants reallege and incorporate by reference all preceding
27 paragraphs in this Counterclaim as though fully set forth herein.

28

1 58. On or about July 30, 2002, BIA approved the Lease. This Lease was
2 subsequently assigned to Defendants on or about June 23, 2003, with BIA approval,
3 and it governs the relationship between Plaintiff and Defendants.

4 59. The Lease is a binding and enforceable agreement, which provides
5 Defendants with valuable rights to possess, use, and enjoy the Premises, including: a
6 30-year initial term with a 25-year renewal option (Section 4.2); rights to assign or
7 sublease to affiliates (Section 15); detailed notice and cure provisions (Section 18);
8 and other contractual protections, including quiet enjoyment (Section 36.14).

9 60. The Lease expressly requires that, in the event of any alleged default by
10 Defendants, the BIA must provide written notice of default and a 30-day
11 opportunity to cure, with concurrent notice to the BIA (Section 18). Only after this
12 notice and cure period may the Lessor elect to pursue either collection of monies
13 owed or termination of the Lease—but not both.

14 61. Beginning in at least 2017 and continuing to the present, Plaintiff,
15 individually and through his counsel, undertook a coordinated campaign to
16 wrongfully deprive Defendants of their leasehold rights and evict them from the
17 Premises prior to vesting of the 25-year extension. Plaintiff’s conduct included, but
18 was not limited to:

- 19 i. Engaging in a campaign intended to deprive Defendants of their
20 leasehold rights and economic benefit of the Lease by orchestrating
21 conduct designed to diminish the value and operation of
22 Defendants’ business;
- 23 ii. Facilitating the operation of a homeless shelter adjacent to
24 Defendants’ restaurant, substantially interfering with Defendants’
25 use and enjoyment of the Premises and causing significant
26 economic loss;
- 27 iii. Seeking to declare Defendants in default and pursue remedies
28 during the COVID-19 pandemic, without regard for the excusing or

- 1 delaying effect of force majeure events under Section 34 of the
2 Lease, which expressly suspends performance obligations impacted
3 by events outside a party’s reasonable control, such as governmental
4 shutdowns or acts of God;
- 5 iv. Attempting to terminate the Lease by issuing state-law “notice to
6 cure, pay, or quit” forms, despite the absence of any provision in the
7 Lease authorizing such state procedures for termination. This
8 conduct contravenes Section 18 of the Lease, which solely governs
9 defaults and termination and requires written notice from the
10 Secretary and an opportunity to cure, rather than self-help remedies
11 or state statutory forms;
- 12 v. Repeatedly bypassing the Lease’s required notice and cure
13 provisions by serving defective three-day notices or other self-help
14 demands, without providing the contractually or federally required
15 30-day cure period and BIA notice;
- 16 vi. Attempting to secure a default and terminate the Lease without
17 possessing the requisite authority under the terms of the Lease and
18 federal law;
- 19 vii. Unreasonably and arbitrarily withholding consent to assignments,
20 sales, or transfers of Defendants’ leasehold interest, in violation of
21 Section 15 and despite Defendants’ willingness to cure alleged
22 defaults;
- 23 viii. Refusing to accept or direct the BIA to accept rent payments
24 tendered by Defendants or their permitted affiliate Danlon, despite a
25 long-standing practice and the Lease’s requirement that payment
26 may be delivered to the BIA (Sections 5, 23), and in violation of
27 Section 15 which allows payments by sublessees, thereby
28 manufacturing alleged monetary defaults;

- ix. Fabricating, in an effort to cloud title and obstruct Defendants’ rights, a “non-curable default” and made conclusory determinations regarding curability. This exceeded the scope of Section 16.8 of the Lease, which narrowly defines non-curable defaults as those either construed to be non-curable or, by their nature, not feasible or practical to cure. None of the default allegations made against Defendants satisfied those criteria, and Plaintiff’s actions in this regard constituted an improper and pretextual attempt to block assignment or renewal;
- x. Unreasonably and arbitrarily refusing to recognize Defendants’ bona fide cure attempts or accept proper payments, when given Defendants promptly and in good faith initiated diligent efforts to cure, as expressly permitted and required by Section 18 of the Lease after being given notice of any purported default (even if such notice was procedurally improper);
- xi. Imposing unlawful conditions on amendments, assignments, or transfers, such as excessive transfer fees, removal of the 25-year extension option, and other terms not authorized by the Lease;
- xii. Interfering with the BIA’s ability to monitor the Lease and demanding the BIA request and unreasonable bond;
- xiii. Rejecting valid tenders of cure from Defendants and qualified third-party buyers;
- xiv. Engaging in serial forum shopping by filing repeated eviction actions in state and tribal court, despite prior dismissals for lack of jurisdiction and contrary to the Lease’s dispute resolution requirements;
- xv. Fabricating technical or pretextual default grounds and creating artificial bases for termination;

1 xvi. Engaging in conduct that substantially interfered with Defendants’
2 right to the quiet enjoyment and beneficial use of the Premises, as
3 expressly protected by Section 36.14, and depriving Defendants of
4 peaceful and uninterrupted possession, in direct violation of the
5 Lease’s guarantee that Defendants would be able to peaceably and
6 quietly enjoy the property without disturbance from Plaintiff or
7 those claiming under Plaintiff;

8 xvii. Improperly seeking both termination and collection of back rent, in
9 direct violation of the exclusive remedies provision of the Lease
10 (Section 18) which requires the Lessor to elect a single remedy in
11 the event of default.

12 62. Plaintiff, as lessor and through the Bureau of Indian Affairs (the
13 government drafter of the Lease), is subject to the principle that any contractual
14 ambiguities are to be construed in favor of Defendants as lessee; Plaintiff’s attempts
15 to exploit or unreasonably interpret any ambiguous provisions to Defendants’
16 detriment constitutes a further contractual breach inconsistent with federal law and
17 the parties’ intent.

18 63. At all times, Defendants remained ready, willing, and able to cure any
19 alleged breach, and took reasonable steps to resolve any purported default or dispute
20 in accordance with the Lease and applicable law. Plaintiff nevertheless rejected
21 these efforts and persisted in improper efforts to wrongfully evict Defendants and
22 terminate their leasehold rights.

23 64. Plaintiff’s conduct constituted wrongful eviction and attempted
24 wrongful termination under both California law and applicable federal regulations
25 governing Indian trust land. Plaintiff’s actions deprived Defendants of their
26 contractual rights, the right to quiet enjoyment of the property, their property
27 interests, and the economic benefit of their leasehold, all in ways not permitted
28 under the Lease or by law.

1 70. Plaintiff breached the Lease, including but not limited to, in the
2 following ways:

- 3 i. Engaging in a campaign intended to deprive Defendants of their
4 leasehold rights and economic benefit of the Lease by orchestrating
5 conduct designed to diminish the value and operation of
6 Defendants’ business;
- 7 ii. Facilitating the operation of a homeless shelter adjacent to
8 Defendants’ restaurant, substantially interfering with Defendants’
9 use and enjoyment of the Premises and causing significant
10 economic loss;
- 11 iii. Seeking to declare Defendants in default and pursue remedies
12 during the COVID-19 pandemic, without regard for the excusing or
13 delaying effect of force majeure events under Section 34 of the
14 Lease, which expressly suspends performance obligations impacted
15 by events outside a party’s reasonable control, such as governmental
16 shutdowns or acts of God;
- 17 iv. Attempting to terminate the Lease by issuing state-law “notice to
18 cure, pay, or quit” forms, despite the absence of any provision in the
19 Lease authorizing such state procedures for termination. This
20 conduct contravenes Section 18 of the Lease, which solely governs
21 defaults and termination and requires written notice from the
22 Secretary and an opportunity to cure, rather than self-help remedies
23 or state statutory forms;
- 24 v. Repeatedly bypassing the Lease’s required notice and cure
25 provisions by serving defective three-day notices or other self-help
26 demands, without providing the contractually or federally required
27 30-day cure period and BIA notice;
- 28

- 1 vi. Attempting to secure a default and terminate the Lease without
2 possessing the requisite authority under the terms of the Lease and
3 federal law;
- 4 vii. Unreasonably and arbitrarily withholding consent to assignments,
5 sales, or transfers of Defendants’ leasehold interest, in violation of
6 Section 15 and despite Defendants’ willingness to cure alleged
7 defaults;
- 8 viii. Refusing to accept or direct the BIA to accept rent payments
9 tendered by Defendants or their permitted affiliate Danlon, despite a
10 long-standing practice and the Lease’s requirement that payment
11 may be delivered to the BIA (Sections 5, 23), and in violation of
12 Section 15 which allows payments by sublessees, thereby
13 manufacturing alleged monetary defaults;
- 14 ix. Fabricating, in an effort to cloud title and obstruct Defendants’
15 rights, a “non-curable default” and made conclusory determinations
16 regarding curability. This exceeded the scope of Section 16.8 of the
17 Lease, which narrowly defines non-curable defaults as those either
18 construed to be non-curable or, by their nature, not feasible or
19 practical to cure. None of the default allegations made against
20 Defendants satisfied those criteria, and Plaintiff’s actions in this
21 regard constituted an improper and pretextual attempt to block
22 assignment or renewal;
- 23 x. Unreasonably and arbitrarily refusing to recognize Defendants’
24 bona fide cure attempts or accept proper payments, when given
25 Defendants promptly and in good faith initiated diligent efforts to
26 cure, as expressly permitted and required by Section 18 of the Lease
27 after being given notice of any purported default (even if such
28 notice was procedurally improper);

- 1 xi. Imposing unlawful conditions on amendments, assignments, or
- 2 transfers, such as excessive transfer fees, removal of the 25-year
- 3 extension option, and other terms not authorized by the Lease;
- 4 xii. Interfering with the BIA's ability to monitor the Lease and
- 5 demanding the BIA request and unreasonable bond;
- 6 xiii. Rejecting valid tenders of cure from Defendants and qualified third-
- 7 party buyers;
- 8 xiv. Engaging in serial forum shopping by filing repeated eviction
- 9 actions in state and tribal court, despite prior dismissals for lack of
- 10 jurisdiction and contrary to the Lease's dispute resolution
- 11 requirements;
- 12 xv. Fabricating technical or pretextual default grounds and creating
- 13 artificial bases for termination;
- 14 xvi. Engaging in conduct that substantially interfered with Defendants'
- 15 right to the quiet enjoyment and beneficial use of the Premises, as
- 16 expressly protected by Section 36.14, and depriving Defendants of
- 17 peaceful and uninterrupted possession, in direct violation of the
- 18 Lease's guarantee that Defendants would be able to peaceably and
- 19 quietly enjoy the property without disturbance from Plaintiff or
- 20 those claiming under Plaintiff;
- 21 xvii. Improperly seeking both termination and collection of back rent, in
- 22 direct violation of the exclusive remedies provision of the Lease
- 23 (Section 18) which requires the Lessor to elect a single remedy in
- 24 the event of default.

25 71. Plaintiff, as lessor and through the Bureau of Indian Affairs (the
26 government drafter of the Lease), is subject to the principle that any contractual
27 ambiguities are to be construed in favor of Defendants as lessee; Plaintiff's attempts
28 to exploit or unreasonably interpret any ambiguous provisions to Defendants'

1 detriment constitutes a further contractual breach inconsistent with federal law and
2 the parties' intent.

3 72. Plaintiff's breaches have deprived Defendants of the benefit of their
4 bargain, interfered with their statutory and contractual rights, undermined their
5 ability to sell or assign the leasehold, and caused Defendants to suffer substantial
6 damages, including lost profits, lost sale and assignment proceeds, lost goodwill,
7 attorneys' fees, costs of litigation, and other actual and consequential damages
8 according to proof at trial and subject to applicable law.

9 73. As a direct and proximate result of Plaintiff's material breaches of the
10 Lease, Defendants have sustained and will continue to sustain economic and non-
11 economic damages in an amount to be determined at trial and according to
12 applicable law.

13 **THIRD CAUSE OF ACTION**

14 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

15 **Against Plaintiff and Does 1-10**

16 74. Defendants reallege and incorporate by reference all preceding
17 paragraphs in this Counterclaim as though fully set forth herein.

18 75. On or about July 30, 2002, BIA approved the Lease. This Lease was
19 subsequently assigned to Defendants on or about June 23, 2003, with BIA approval,
20 and governs the relationship between Plaintiff and Defendants.

21 76. Every contract, including the Lease at issue, contains an implied
22 covenant of good faith and fair dealing that neither party will do anything to unfairly
23 interfere with the right of the other party to receive the full benefit of their bargain
24 or otherwise deprive the other of the benefits of the contract.

25 77. Defendants have at all times complied with their obligations under the
26 Lease, or have made good-faith efforts to resolve any alleged defaults, or
27 performance has been excused by Plaintiff's conduct or by operation of law.

28

1 78. Plaintiff, acting individually and through his counsel, breached the
2 implied covenant of good faith and fair dealing by, among other things:

- 3 i. Engaging in a campaign intended to deprive Defendants of their
4 leasehold rights and economic benefit of the Lease by orchestrating
5 conduct designed to diminish the value and operation of
6 Defendants’ business;
- 7 ii. Facilitating the operation of a homeless shelter adjacent to
8 Defendants’ restaurant, substantially interfering with Defendants’
9 use and enjoyment of the Premises and causing significant
10 economic loss;
- 11 iii. Seeking to declare Defendants in default and pursue remedies
12 during the COVID-19 pandemic, without regard for the excusing or
13 delaying effect of force majeure events under Section 34 of the
14 Lease, which expressly suspends performance obligations impacted
15 by events outside a party’s reasonable control, such as governmental
16 shutdowns or acts of God;
- 17 iv. Attempting to terminate the Lease by issuing state-law “notice to
18 cure, pay, or quit” forms, despite the absence of any provision in the
19 Lease authorizing such state procedures for termination. This
20 conduct contravenes Section 18 of the Lease, which solely governs
21 defaults and termination and requires written notice from the
22 Secretary and an opportunity to cure, rather than self-help remedies
23 or state statutory forms;
- 24 v. Repeatedly bypassing the Lease’s required notice and cure
25 provisions by serving defective three-day notices or other self-help
26 demands, without providing the contractually or federally required
27 30-day cure period and BIA notice;
- 28

- 1 vi. Attempting to secure a default and terminate the Lease without
2 possessing the requisite authority under the terms of the Lease and
3 federal law;
- 4 vii. Unreasonably and arbitrarily withholding consent to assignments,
5 sales, or transfers of Defendants’ leasehold interest, in violation of
6 Section 15 and despite Defendants’ willingness to cure alleged
7 defaults;
- 8 viii. Refusing to accept or direct the BIA to accept rent payments
9 tendered by Defendants or their permitted affiliate Danlon, despite a
10 long-standing practice and the Lease’s requirement that payment
11 may be delivered to the BIA (Sections 5, 23), and in violation of
12 Section 15 which allows payments by sublessees, thereby
13 manufacturing alleged monetary defaults;
- 14 ix. Fabricating, in an effort to cloud title and obstruct Defendants’
15 rights, a “non-curable default” and made conclusory determinations
16 regarding curability. This exceeded the scope of Section 16.8 of the
17 Lease, which narrowly defines non-curable defaults as those either
18 construed to be non-curable or, by their nature, not feasible or
19 practical to cure. None of the default allegations made against
20 Defendants satisfied those criteria, and Plaintiff’s actions in this
21 regard constituted an improper and pretextual attempt to block
22 assignment or renewal;
- 23 x. Unreasonably and arbitrarily refusing to recognize Defendants’
24 bona fide cure attempts or accept proper payments, when given
25 Defendants promptly and in good faith initiated diligent efforts to
26 cure, as expressly permitted and required by Section 18 of the Lease
27 after being given notice of any purported default (even if such
28 notice was procedurally improper);

- 1 xi. Imposing unlawful conditions on amendments, assignments, or
- 2 transfers, such as excessive transfer fees, removal of the 25-year
- 3 extension option, and other terms not authorized by the Lease;
- 4 xii. Interfering with the BIA's ability to monitor the Lease and
- 5 demanding the BIA request and unreasonable bond;
- 6 xiii. Rejecting valid tenders of cure from Defendants and qualified third-
- 7 party buyers;
- 8 xiv. Engaging in serial forum shopping by filing repeated eviction
- 9 actions in state and tribal court, despite prior dismissals for lack of
- 10 jurisdiction and contrary to the Lease's dispute resolution
- 11 requirements;
- 12 xv. Fabricating technical or pretextual default grounds and creating
- 13 artificial bases for termination;
- 14 xvi. Engaging in conduct that substantially interfered with Defendants'
- 15 right to the quiet enjoyment and beneficial use of the Premises, as
- 16 expressly protected by Section 36.14, and depriving Defendants of
- 17 peaceful and uninterrupted possession, in direct violation of the
- 18 Lease's guarantee that Defendants would be able to peaceably and
- 19 quietly enjoy the property without disturbance from Plaintiff or
- 20 those claiming under Plaintiff;
- 21 xvii. Improperly seeking both termination and collection of back rent, in
- 22 direct violation of the exclusive remedies provision of the Lease
- 23 (Section 18) which requires the Lessor to elect a single remedy in
- 24 the event of default.

25 79. Plaintiff, as lessor and through the Bureau of Indian Affairs (the
26 government drafter of the Lease), is subject to the principle that any contractual
27 ambiguities are to be construed in favor of Defendants as lessee; Plaintiff's attempts
28 to exploit or unreasonably interpret any ambiguous provisions to Defendants'

1 detriment constitutes a further contractual breach inconsistent with federal law and
2 the parties' intent.

3 80. Plaintiff's conduct was undertaken not to serve any legitimate purpose
4 under the Lease, but rather to frustrate the reasonable expectations of Defendants
5 and to deprive them of the full use and economic value of their leasehold.

6 81. As a direct and proximate result of Plaintiff's breach of the implied
7 covenant of good faith and fair dealing, Defendants have suffered, and will continue
8 to suffer, damages including but not limited to lost profits, loss of leasehold value,
9 lost goodwill, attorneys' fees, costs of litigation, and other consequential and
10 incidental damages in an amount according to proof at trial and subject to applicable
11 law.

12 **FOURTH CAUSE OF ACTION**

13 **(Tortious Interference with Contract and Prospective Economic Advantage)**

14 **Against Plaintiff and Does 1-10**

15 82. Defendants reallege and incorporate by reference all preceding
16 paragraphs in this Counterclaim as though fully set forth herein.

17 83. On or about July 30, 2002, BIA approved the Lease. This Lease was
18 subsequently assigned to Defendants on or about June 23, 2003, with BIA approval,
19 and governs the relationship between Plaintiff and Defendants. The Lease governed
20 Defendants' rights and obligations relating to the operation of the restaurant and
21 their economic interest in the business.

22 84. Throughout the term of the Lease, Defendants entered into negotiations
23 and agreements with third-party buyers and assignees, including, but not limited to,
24 Timberlake Holdings, Ltd., and Jansens & Hoes, among others, who offered to
25 purchase or assume Defendants' leasehold interest and ownership interest in the
26 restaurant for substantial consideration. These agreements and negotiations
27 constituted current and prospective economic relationships, the successful
28 consummation of which would have benefitted Defendants.

1 85. Plaintiff was aware of Defendants’ contractual rights under the Lease
2 and of their ongoing negotiations and economic relationships with these third-party
3 buyers and assignees. Plaintiff was also aware that completion of such assignments
4 and sales was contingent upon compliance with the Lease and receipt of requisite
5 consents and approvals.

6 86. Plaintiff engaged in wrongful acts designed to disrupt and ultimately
7 destroy Defendants’ existing contractual rights and prospective business
8 relationships, including but not limited to:

- 9 i. Engaging in a campaign intended to deprive Defendants of their
10 leasehold rights and economic benefit of the Lease by orchestrating
11 conduct designed to diminish the value and operation of
12 Defendants’ business;
- 13 ii. Facilitating the operation of a homeless shelter adjacent to
14 Defendants’ restaurant, substantially interfering with Defendants’
15 use and enjoyment of the Premises and causing significant
16 economic loss;
- 17 iii. Seeking to declare Defendants in default and pursue remedies
18 during the COVID-19 pandemic, without regard for the excusing or
19 delaying effect of force majeure events under Section 34 of the
20 Lease, which expressly suspends performance obligations impacted
21 by events outside a party’s reasonable control, such as governmental
22 shutdowns or acts of God;
- 23 iv. Attempting to terminate the Lease by issuing state-law “notice to
24 cure, pay, or quit” forms, despite the absence of any provision in the
25 Lease authorizing such state procedures for termination. This
26 conduct contravenes Section 18 of the Lease, which solely governs
27 defaults and termination and requires written notice from the
28

- 1 Secretary and an opportunity to cure, rather than self-help remedies
2 or state statutory forms;
- 3 v. Repeatedly bypassing the Lease’s required notice and cure
4 provisions by serving defective three-day notices or other self-help
5 demands, without providing the contractually or federally required
6 30-day cure period and BIA notice;
- 7 vi. Attempting to secure a default and terminate the Lease without
8 possessing the requisite authority under the terms of the Lease and
9 federal law;
- 10 vii. Unreasonably and arbitrarily withholding consent to assignments,
11 sales, or transfers of Defendants’ leasehold interest, in violation of
12 Section 15 and despite Defendants’ willingness to cure alleged
13 defaults;
- 14 viii. Refusing to accept or direct the BIA to accept rent payments
15 tendered by Defendants or their permitted affiliate Danlon, despite a
16 long-standing practice and the Lease’s requirement that payment
17 may be delivered to the BIA (Sections 5, 23), and in violation of
18 Section 15 which allows payments by sublessees, thereby
19 manufacturing alleged monetary defaults;
- 20 ix. Fabricating, in an effort to cloud title and obstruct Defendants’
21 rights, a “non-curable default” and made conclusory determinations
22 regarding curability. This exceeded the scope of Section 16.8 of the
23 Lease, which narrowly defines non-curable defaults as those either
24 construed to be non-curable or, by their nature, not feasible or
25 practical to cure. None of the default allegations made against
26 Defendants satisfied those criteria, and Plaintiff’s actions in this
27 regard constituted an improper and pretextual attempt to block
28 assignment or renewal;

- 1 x. Unreasonably and arbitrarily refusing to recognize Defendants’
- 2 bona fide cure attempts or accept proper payments, when given
- 3 Defendants promptly and in good faith initiated diligent efforts to
- 4 cure, as expressly permitted and required by Section 18 of the Lease
- 5 after being given notice of any purported default (even if such
- 6 notice was procedurally improper);
- 7 xi. Imposing unlawful conditions on amendments, assignments, or
- 8 transfers, such as excessive transfer fees, removal of the 25-year
- 9 extension option, and other terms not authorized by the Lease;
- 10 xii. Interfering with the BIA’s ability to monitor the Lease and
- 11 demanding the BIA request and unreasonable bond;
- 12 xiii. Rejecting valid tenders of cure from Defendants and qualified third-
- 13 party buyers;
- 14 xiv. Engaging in serial forum shopping by filing repeated eviction
- 15 actions in state and tribal court, despite prior dismissals for lack of
- 16 jurisdiction and contrary to the Lease’s dispute resolution
- 17 requirements;
- 18 xv. Fabricating technical or pretextual default grounds and creating
- 19 artificial bases for termination;
- 20 xvi. Engaging in conduct that substantially interfered with Defendants’
- 21 right to the quiet enjoyment and beneficial use of the Premises, as
- 22 expressly protected by Section 36.14, and depriving Defendants of
- 23 peaceful and uninterrupted possession, in direct violation of the
- 24 Lease’s guarantee that Defendants would be able to peaceably and
- 25 quietly enjoy the property without disturbance from Plaintiff or
- 26 those claiming under Plaintiff;
- 27 xvii. Improperly seeking both termination and collection of back rent, in
- 28 direct violation of the exclusive remedies provision of the Lease

1 (Section 18) which requires the Lessor to elect a single remedy in
2 the event of default.

3 87. Plaintiff's actions were intentional and without legitimate justification,
4 and were undertaken with the specific purpose and intent to interfere with
5 Defendants' contractual rights and to disrupt Defendants' existing and prospective
6 economic business opportunities.

7 88. As a direct and proximate result of Plaintiff's wrongful conduct,
8 Defendants' economic relationships with prospective assignees and buyers were
9 disrupted and rendered impossible to consummate. Defendants suffered the loss of
10 specific, identifiable assignment proceeds from sales, loss of profits and business
11 goodwill, and other economic injury, including but not limited to attorneys' fees and
12 other expenses, all in an amount according to proof at trial and subject to applicable
13 law.

14 **FIFTH CAUSE OF ACTION**

15 **(Unfair Business Practices - California Business and Professions Code section**
16 **17200 et seq)**

17 **Against Plaintiff and Does 1-10**

18 89. Defendants reallege and incorporate by reference all preceding
19 paragraphs in this Counterclaim as though fully set forth herein.

20 90. At all relevant times, Plaintiff has engaged in a course of conduct that
21 constitutes unlawful, unfair, and/or fraudulent business practices within the meaning
22 of California Business and Professions Code section 17200 et seq. ("Unfair
23 Competition Law" or "UCL").

24 91. The acts and practices alleged herein, including but not limited to:

25 i. Engaging in a campaign intended to deprive Defendants of their
26 leasehold rights and economic benefit of the Lease by orchestrating
27 conduct designed to diminish the value and operation of
28 Defendants' business;

- 1 ii. Facilitating the operation of a homeless shelter adjacent to
- 2 Defendants’ restaurant, substantially interfering with Defendants’
- 3 use and enjoyment of the Premises and causing significant
- 4 economic loss;
- 5 iii. Seeking to declare Defendants in default and pursue remedies
- 6 during the COVID-19 pandemic, without regard for the excusing or
- 7 delaying effect of force majeure events under Section 34 of the
- 8 Lease, which expressly suspends performance obligations impacted
- 9 by events outside a party’s reasonable control, such as governmental
- 10 shutdowns or acts of God;
- 11 iv. Attempting to terminate the Lease by issuing state-law “notice to
- 12 cure, pay, or quit” forms, despite the absence of any provision in the
- 13 Lease authorizing such state procedures for termination. This
- 14 conduct contravenes Section 18 of the Lease, which solely governs
- 15 defaults and termination and requires written notice from the
- 16 Secretary and an opportunity to cure, rather than self-help remedies
- 17 or state statutory forms;
- 18 v. Repeatedly bypassing the Lease’s required notice and cure
- 19 provisions by serving defective three-day notices or other self-help
- 20 demands, without providing the contractually or federally required
- 21 30-day cure period and BIA notice;
- 22 vi. Attempting to secure a default and terminate the Lease without
- 23 possessing the requisite authority under the terms of the Lease and
- 24 federal law;
- 25 vii. Unreasonably and arbitrarily withholding consent to assignments,
- 26 sales, or transfers of Defendants’ leasehold interest, in violation of
- 27 Section 15 and despite Defendants’ willingness to cure alleged
- 28 defaults;

- 1 viii. Refusing to accept or direct the BIA to accept rent payments
2 tendered by Defendants or their permitted affiliate Danlon, despite a
3 long-standing practice and the Lease’s requirement that payment
4 may be delivered to the BIA (Sections 5, 23), and in violation of
5 Section 15 which allows payments by sublessees, thereby
6 manufacturing alleged monetary defaults;
- 7 ix. Fabricating, in an effort to cloud title and obstruct Defendants’
8 rights, a “non-curable default” and made conclusory determinations
9 regarding curability. This exceeded the scope of Section 16.8 of the
10 Lease, which narrowly defines non-curable defaults as those either
11 construed to be non-curable or, by their nature, not feasible or
12 practical to cure. None of the default allegations made against
13 Defendants satisfied those criteria, and Plaintiff’s actions in this
14 regard constituted an improper and pretextual attempt to block
15 assignment or renewal;
- 16 x. Unreasonably and arbitrarily refusing to recognize Defendants’
17 bona fide cure attempts or accept proper payments, when given
18 Defendants promptly and in good faith initiated diligent efforts to
19 cure, as expressly permitted and required by Section 18 of the Lease
20 after being given notice of any purported default (even if such
21 notice was procedurally improper);
- 22 xi. Imposing unlawful conditions on amendments, assignments, or
23 transfers, such as excessive transfer fees, removal of the 25-year
24 extension option, and other terms not authorized by the Lease;
- 25 xii. Interfering with the BIA’s ability to monitor the Lease and
26 demanding the BIA request and unreasonable bond;
- 27 xiii. Rejecting valid tenders of cure from Defendants and qualified third-
28 party buyers;

- 1 xiv. Engaging in serial forum shopping by filing repeated eviction
- 2 actions in state and tribal court, despite prior dismissals for lack of
- 3 jurisdiction and contrary to the Lease’s dispute resolution
- 4 requirements;
- 5 xv. Fabricating technical or pretextual default grounds and creating
- 6 artificial bases for termination;
- 7 xvi. Engaging in conduct that substantially interfered with Defendants’
- 8 right to the quiet enjoyment and beneficial use of the Premises, as
- 9 expressly protected by Section 36.14, and depriving Defendants of
- 10 peaceful and uninterrupted possession, in direct violation of the
- 11 Lease’s guarantee that Defendants would be able to peaceably and
- 12 quietly enjoy the property without disturbance from Plaintiff or
- 13 those claiming under Plaintiff;
- 14 xvii. Improperly seeking both termination and collection of back rent, in
- 15 direct violation of the exclusive remedies provision of the Lease
- 16 (Section 18) which requires the Lessor to elect a single remedy in
- 17 the event of default.

18 These acts all constitute unlawful, unfair and/or fraudulent business acts or practices
19 prohibited by Cal. Bus. & Prof. Code § 17200.

20 92. Plaintiff’s conduct is “unlawful” under the UCL because it violates
21 federal law regulating Indian trust lands, as well as controlling provisions of the
22 Lease governing notice, cure, and exclusive remedies, and further constitutes a
23 violation of the implied covenant of good faith and fair dealing.

24 93. Plaintiff’s conduct is “unfair” because it offends established public
25 policy, is substantially injurious to Defendants, and provides Plaintiff with an unfair
26 competitive or economic advantage without justification.

27 94. Plaintiff’s conduct is also “fraudulent” in that it is likely to deceive
28 members of the public, specifically, potential buyers, assignees, business partners,

1 or market participants, regarding the validity of Defendants' leasehold interest, the
2 enforceability of Defendants' assignment and renewal rights, and the proper
3 mechanisms and forums for enforcement and adjudication of such contractual rights.

4 95. As a direct and proximate result of Plaintiff's unlawful, unfair, and/or
5 fraudulent business practices, Defendants have suffered and will continue to suffer
6 economic and non-economic injuries, including loss of sale and assignment
7 proceeds, loss of leasehold value, lost profits and goodwill, litigation costs, and the
8 deprivation of valuable contractual rights. Defendants are entitled to restitution,
9 disgorgement of all ill-gotten gains obtained through such unfair business practices,
10 declaratory relief, injunctive relief, and all other relief permitted by law, in an
11 amount according to proof at trial.

12 96. Unless enjoined by the Court, Plaintiff will continue to engage in the
13 unlawful, unfair, and fraudulent business practices alleged herein, causing further
14 irreparable harm to Defendants for which there is no adequate remedy at law

15 **SIXTH CAUSE OF ACTION**

16 **(Private Nuisance)**

17 **Against Plaintiff and Does 1-10**

18 97. Defendants reallege and incorporate by reference all preceding
19 paragraphs in this Counterclaim as though fully set forth herein.

20 98. At all relevant times, Defendants possessed leasehold rights to operate
21 their restaurant business, Wang's In The Desert, at 424 S Indian Canyon Dr, Palm
22 Springs, CA 92262, pursuant to the Lease approved by the BIA, and subsequently
23 assigned to Defendants.

24 99. Defendants' right to quiet enjoyment and use of the Wang's In The
25 Desert for a successful restaurant business is expressly recognized and protected by
26 the Lease, as well as by law.

27 100. Beginning in or about 2017, Plaintiff, with knowledge of Defendants'
28 business operations and rights, intentionally facilitated and permitted the operation

1 of a homeless shelter (Well in the Desert) on an adjacent property owned and/or
2 controlled by Plaintiff, with full awareness of its immediate proximity to the
3 restaurant and foreseeable impact on Defendants' leasehold.

4 101. The manner in which Plaintiff facilitated and allowed the operation of
5 the homeless shelter resulted in uncontrolled and unsupervised activity on or near
6 the Wang's In The Desert, including but not limited to frequent loitering, aggressive
7 panhandling, suspected drug transactions and use, public intoxication, indecent
8 exposure, property damage, and criminal activity. These conditions led to a
9 substantial and unreasonable interference with Defendants' use and enjoyment of
10 the Wang's In The Desert, including loss of clientele, diminution in business
11 reputation, and direct negative impacts on normal business operations.

12 102. The resulting ongoing conditions were not of a type or degree to
13 constitute a mere annoyance or inconvenience but amounted to a substantial
14 interference that would be offensive or cause discomfort to a reasonable business
15 operator in Defendants' position.

16 103. Plaintiff permitted and maintained these conditions with the knowledge
17 of the harm being caused to Defendants and their business. Despite receiving
18 customer complaints, police reports, and notice from Defendants of the impact,
19 Plaintiff failed to remedy the situation or take reasonable steps to abate the nuisance.

20 104. As a direct and proximate result of Plaintiff's creation and maintenance
21 of the nuisance, Defendants have sustained and will continue to sustain damages,
22 including but not limited to business interruption, loss of profits, loss of business
23 goodwill, costs of security and mitigation, attorneys' fees, costs of litigation, and
24 other consequential and incidental damages, all in an amount according to proof at
25 trial and subject to applicable law.

26 **SEVENTH CAUSE OF ACTION**

27 **(Negligence)**

28 **Against Plaintiff and Does 1-10**

1 105. Defendants reallege and incorporate by reference all preceding
2 paragraphs in this Counterclaim as though fully set forth herein.

3 106. At all relevant times, Plaintiff owed Defendants a duty of care to
4 exercise reasonable management and control over property owned or controlled by
5 Plaintiff adjacent to Defendants' leased Premises, so as not to unreasonably interfere
6 with Defendants' business operations or quiet enjoyment.

7 107. Beginning in or about 2017, Plaintiff breached this duty by facilitating,
8 permitting, and failing to adequately supervise the operation of a homeless shelter
9 (Well in the Desert) immediately adjacent to Defendants' restaurant, Wang's In The
10 Desert.

11 108. Plaintiff knew or should have known that inadequate supervision and
12 management of the shelter would result in recurring public disturbances, including
13 loitering, aggressive panhandling, illicit drug activity, indecent exposure, property
14 crimes, and public safety threats in and around Defendants' business.

15 109. Despite repeated complaints, police interventions, and notice from
16 Defendants describing these adverse impacts, Plaintiff failed to take reasonable or
17 adequate steps to supervise, mitigate, or abate the shelter's negative effects on
18 Defendants' business environment and customers.

19 110. As a direct and proximate result of Plaintiff's negligent conduct in
20 connection with the management, operation, and supervision of the adjacent
21 homeless shelter, Plaintiff caused Defendants to suffer significant harm, including
22 loss of customers, business reputation, goodwill, revenue, and value of the
23 leasehold, as well as other consequential damages in an amount according to proof
24 at trial and subject to applicable law.

25 **EIGHTH CAUSE OF ACTION**

26 **(Trespass)**

27 **Against Plaintiff and Does 1-10**

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1 111. Defendants reallege and incorporate by reference all preceding
2 paragraphs in this Counterclaim as though fully set forth herein.

3 112. At all relevant times, Defendants leased and operated a restaurant
4 business, Wang's In The Desert, on the Premises pursuant to a Lease approved by
5 the BIA, and subsequently assigned to Defendants.

6 113. Defendants' right to quiet enjoyment and beneficial use of the Premises
7 is expressly protected by the Lease and applicable law.

8 114. Beginning in or about 2017, Plaintiff permitted and facilitated the
9 establishment and operation of a homeless shelter (Well in the Desert") in a building
10 adjacent to Defendants' restaurant, fully aware of its immediate proximity and
11 foreseeable consequences to the restaurant's operation.

12 115. Plaintiff allowed and failed to reasonably supervise or control the
13 shelter's operation, resulting in frequent and severe disturbances in and around
14 Defendants' business, including but not limited to: loitering, aggressive
15 panhandling, drug use and sales, public intoxication, indecent exposure, property
16 damage, and reported criminal conduct.

17 116. These ongoing activities directly and substantially interfered with
18 Defendants' use and enjoyment of the Premises and caused regular customers to
19 cease patronizing the restaurant, deterred new business, and severely undermined
20 the business's reputation and security.

21 117. The interference was substantial and unreasonable, and caused
22 Defendants to make numerous complaints to Plaintiff, city authorities, and law
23 enforcement, all to no meaningful response or remedial action by Plaintiff.

24 118. The nuisance conditions described above were a direct, foreseeable
25 result of Plaintiff's actions and inactions in permitting, maintaining, and failing to
26 abate or appropriately manage the shelter's impact, and would be considered
27 offensive and disruptive to any reasonable business operator in Defendants'
28 position.

1 119. As a direct and proximate result of Plaintiff's conduct, Defendants have
2 suffered, and will continue to suffer, damages including but not limited to: loss of
3 business goodwill, lost profits, loss of the value of their leasehold interest, increased
4 security and mitigation expenses, and other consequential damages in an amount
5 according to proof at trial and subject to applicable law.

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NINTH CAUSE OF ACTION
(Violation Of Federal Indian Leasing Statutes And Regulations)
Against Plaintiff and Does 1-10

120. Defendants reallege and incorporate by reference all preceding paragraphs in this Counterclaim as though fully set forth herein.

121. At all relevant times, the Lease and relationship concerning the subject property was for a parcel of federally restricted Indian trust/allotted land which was governed by federal statutes and regulations, including but not limited to:

- i. 25 U.S.C. Section 415 (Leases of restricted Indian lands for business purposes);
- ii. 25 CFR Part 162 (Leases and Permits on Indian Lands), including:§
 - 162.106 (General lease provisions and authorized uses);
 - a. Section 162.108, Section 162.221 (BIA oversight, enforcement, duty of impartiality);
 - b. Sections 162.449–453 (Lease termination, cancellation, and BIA approval requirements);
 - c. Section 162.450 (Notice of default and opportunity to cure);
 - d. Section 162.464 (Compensation or removal rights for tenant improvements);
 - e. Section 162.609, Section 162.615 (Renewal, preference, and right of first refusal);

- 1 f. Section 162.616 (Assignment and subleasing requirements);
- 2 g. Section 162.106(b) (Protection from unauthorized use and
- 3 trespass).

4 122. The BIA-approved Lease incorporated by reference and was subject to
5 these federal statutes and regulations, which govern the rights and obligations of
6 lessors and lessees on Indian trust land.

7 123. Defendants, as lessees under a BIA-approved business lease, were
8 entitled to the rights and protections provided under the above-cited statutes and
9 regulations, including but not limited to:

- 10 iii. The right to use, possess, assign, and renew the lease as authorized
11 (25 U.S.C. section 415; 25 CFR sections 162.106, 162.609, 162.615,
12 162.616);
- 13 iv. The right to notice and an opportunity to cure alleged defaults, with
14 30 days' written notice and BIA oversight (25 CFR section 162.450,
15 sections 162.449–453);
- 16 v. Protection of tenant improvements and the right to compensation or
17 removal (25 CFR section 162.464);
- 18 vi. Protection from arbitrary termination, modification, or refusal to
19 process payments, assignments, or subleases (25 CFR section
20 162.106, 162.108, 162.616).

21 124. Plaintiff, both individually and through counsel, violated the above
22 statutes and regulations in multiple respects, including but not limited to:

- 23 vii. Initiating or attempting to effectuate lease termination, cancellation,
24 or forfeiture without BIA approval or in disregard of BIA's
25 exclusive authority (25 CFR Sections 162.449–453; 25 CFR section
26 162.108);

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- 1 viii. Failing to provide, or instructing others not to provide, the required
- 2 written notice of default and opportunity to cure prior to seeking
- 3 remedies, in violation of Lease terms and 25 CFR section 162.450;
- 4 ix. Arbitrarily refusing to accept or causing the BIA to reject lease
- 5 payments from valid affiliates, thereby manufacturing meritless
- 6 defaults (25 CFR section 162.449, 162.106, 162.108);
- 7 x. Unreasonably refusing or conditioning approval of assignments and
- 8 subleases, or imposing unauthorized demands as a predicate to
- 9 Plaintiff's consent or BIA action (25 CFR section 162.616);
- 10 xi. Interfering with BIA monitoring, oversight, and administration of
- 11 the lease, including demanding excessive bonds or additional terms
- 12 outside the four corners of the Lease and federal regulations (25
- 13 CFR section 162.108, 162.221);
- 14 xii. Seeking both termination of the lease and back rent, in direct
- 15 violation of the exclusive remedies provision (25 CFR section
- 16 162.449–453);
- 17 xiii. Failing to safeguard Defendants' rights in improvements, or seeking
- 18 forfeiture of such improvements outside the scope of law (25 CFR
- 19 section 162.464);
- 20 xiv. Failing to protect Defendants from third-party interference, trespass,
- 21 or unauthorized use as required by the regulations (25 CFR section
- 22 162.106(b)).

23 125. Plaintiff's violations of 25 U.S.C. section 415 and 25 CFR Part 162
24 deprived Defendants of statutory and regulatory rights and protections, and resulted
25 in substantial economic and non-economic damages, including lost leasehold value,
26 lost business goodwill and profits, impairment of improvements, loss of assignment
27 or renewal rights, litigation expense, and other harm in an amount according to
28 proof at trial.

1 126. As a direct and proximate result of Plaintiff’s violation of federal
2 Indian leasing statutes and regulations, Defendants have suffered and will continue
3 to suffer injury as described above, and are entitled to:

4 127. A judicial declaration that Plaintiff’s actions violated federal statutes
5 and regulations governing Indian trust land leasing;

6 128. Injunctive relief preventing further violations and compelling
7 compliance with all applicable regulations and federal law;

8 129. Damages, restitution, and any other relief as the Court may deem just
9 and proper under federal and equitable principles.

10 **TENTH CAUSE OF ACTION**

11 **(Set Off)**

12 **Against Plaintiff and Does 1-10**

13 130. Defendants reallege and incorporate by reference all preceding
14 paragraphs in this Counterclaim as though fully set forth herein.

15 131. Plaintiff has asserted and continues to assert monetary claims against
16 Defendants, including demands for alleged unpaid rent, damages, penalties, or other
17 amounts said to arise under the Lease or by virtue of alleged conduct by Defendants.

18 132. As detailed in the preceding allegations, Plaintiff’s actions, including,
19 but not limited to, wrongful attempts at eviction, arbitrary and bad-faith refusals to
20 accept lease payments and cure offers, interference with lawful assignments and
21 sales, breaches of the Lease, and related conduct, have directly and proximately
22 caused Defendants to suffer damages. These damages include, but are not limited
23 to, lost profits, loss of leasehold and business value, attorneys’ fees and costs,
24 mitigation expenses, and other consequential and incidental harm.

25 133. Federal law permits a right of setoff as an equitable remedy, and
26 Federal Rule of Civil Procedure 13 allows for counterclaims seeking relief arising
27 out of the same transaction or occurrence as the opposing party’s claim. Under
28 applicable principles of equity and common law, Defendants are entitled to have any

1 judgment or monetary award sought by Plaintiff reduced or completely offset by the
2 amount of damages, losses, or obligations Plaintiff owes Defendants as described in
3 this Counterclaim.

4 134. As a result, Defendants affirmatively seek a determination that any
5 obligations found owing by Defendants to Plaintiff shall be offset, in whole or in
6 part, by amounts proven at trial to be owed by Plaintiff to Defendants, including,
7 without limitation, those amounts sought as damages under Defendants'
8 counterclaims.

9 135. Defendants further request that, in the event the Court finds Plaintiff
10 entitled to any recovery, the Court authorize and order that any such award be
11 reduced or extinguished by the value of Defendants' proven claims for damages,
12 and that Defendants receive all further or appropriate relief as the Court deems just
13 and proper under the circumstances.

14 **ELEVENTH CAUSE OF ACTION**

15 **(Declaratory and Injunctive Relief)**

16 **Against Plaintiff and Does 1-10**

17 136. Defendants reallege and incorporate by reference all preceding
18 paragraphs in this Counterclaim as though fully set forth herein.

19 137. An actual and justiciable controversy exists between Defendants and
20 Plaintiff concerning their respective rights, remedies, and obligations under the
21 Lease, including the ongoing validity and enforceability of the Lease, Defendants'
22 rights to possess, use, and enjoy the property, and the appropriate procedures and
23 forum for resolving disputes as set forth in the Lease and governed by federal law.

24 138. Plaintiff has asserted, and continues to assert, claims for the termination
25 and forfeiture of Defendants' leasehold interest, and has sought recognition and
26 enforcement of a tribal court judgment obtained through improper procedures.
27 Plaintiff has also refused to honor Defendants' contractual rights to assign or
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1 transfer the leasehold, to cure any alleged default, and to exercise the 25-year
2 renewal option, in violation of the Lease and federal law.

3 139. Defendants contend that Plaintiff's alleged default notices, efforts to
4 terminate the leasehold, and attempts to recognize and enforce the default tribal
5 court judgment are invalid, unenforceable, and contrary to both federal law and the
6 express provisions of the Lease.

7 140. Defendants are entitled to a judicial determination and declaration of
8 their rights under the Lease, including but not limited to:

- 9 i. A declaration that the Lease remains valid and enforceable;
- 10 ii. A declaration that Defendants are entitled to possession, use, and
11 enjoyment of the Premises, subject to the Lease;
- 12 iii. A declaration that Plaintiff's efforts to terminate or forfeit
13 Defendants' leasehold, or to seek enforcement of the tribal court
14 judgment, are improper and unenforceable;
- 15 iv. A declaration of Defendants' rights to assign the leasehold interest,
16 to cure any alleged default, and to exercise the 25-year renewal
17 option; and
- 18 v. A declaration of the parties' respective obligations as to notice, cure,
19 and dispute resolution under the Lease.

20 141. Defendants have no adequate remedy at law for the threat to their
21 property rights, leasehold value, and business operations posed by Plaintiff's
22 conduct, and will suffer irreparable harm absent the issuance of appropriate
23 injunctive relief. Plaintiff's conduct threatens an ongoing loss of business, value,
24 and rights which cannot be fully redressed through monetary damages alone.

25 142. Accordingly, Defendants are entitled to the issuance of temporary,
26 preliminary, and permanent injunctive relief, restraining Plaintiff and those acting in
27 concert with him from:
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- 1 vi. Taking any steps to terminate or forfeit Defendants' leasehold
- 2 interest except in compliance with the Lease and controlling federal
- 3 law;
- 4 vii. Refusing to process or approve a qualified assignment or transfer of
- 5 the leasehold;
- 6 viii. Interfering with Defendants' rights under the Lease, including the
- 7 25-year renewal option;
- 8 ix. Seeking to recognize or enforce the default tribal court judgment or
- 9 any eviction proceeding not compliant with the Lease and
- 10 applicable law.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Defendants pray for relief and judgment against Plaintiff as
13 follows:

- 14 1. Denial of Plaintiff's Request for Comity and Recognition of Tribal
- 15 Court Judgment: An order refusing to recognize or enforce the Agua Caliente Band
- 16 of Cahuilla Indians Tribal Court judgment or to issue a writ of possession in favor of
- 17 Plaintiff;
- 18 2. For actual, general, specific, consequential, and incidental damages
- 19 suffered by Defendants, including but not limited to lost profits, loss of business
- 20 goodwill, lost value of the leasehold and restaurant, and amounts stemming from
- 21 tortious conduct, according to proof at trial;
- 22 3. For all statutory, civil, and other penalties to which Defendants may be
- 23 entitled;
- 24 4. For exemplary and punitive damages as permitted by law on all
- 25 applicable causes of action;
- 26 5. For an award of Defendants' reasonable attorneys' fees and expenses
- 27 incurred herein, as permitted by statute, contract, and/or law;

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1 6. Pre- and Post-Judgment Interest: For pre- and post-judgment interest as
2 allowed by law;

3 7. A judicial declaration of the respective rights and obligations of the
4 parties under the Lease, including but not limited to:

5 i. That the Lease remains valid and enforceable;

6 ii. That Defendants are entitled to possess, use, and enjoy the Premises,
7 including all rights to assignment, renewal, and quiet enjoyment
8 under the Lease;

9 iii. That Plaintiff's efforts to terminate or forfeit the leasehold, or to
10 enforce the tribal court judgment, are invalid and unenforceable;

11 iv. That Defendants are entitled to cure any alleged default in
12 accordance with the Lease and federal law; and

13 v. That the parties are required to adhere to the Lease's dispute
14 resolution procedures;

15 8. Preliminary and permanent injunctive relief enjoining Plaintiff and all
16 those acting in concert with him from:

17 i. Terminating or forfeiting Defendants' leasehold interest except in
18 full compliance with the Lease and applicable law;

19 ii. Refusing to process, approve, or permit a qualified assignment or
20 transfer of the leasehold;

21 iii. Interfering with Defendants' rights to possess, use, and enjoy the
22 Premises, including the 25-year renewal option;

23 iv. Seeking to enforce or recognize the tribal court judgment or any
24 eviction not compliant with the Lease and applicable law;

25 9. For such other and further legal or equitable relief as the Court may
26 deem just and proper.

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