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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION
12

13 In the Matter of:

14 WILLIAM ULYSSES McGLAMARY,
15 II,

16 Plaintiff,

17 vs.

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

20 Defendants.

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

23 Counter-Plaintiffs,

24 vs.

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

27 Counter-Defendants.
28

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

Hon. Jesus G. Bernal

**DEFENDANTS AND COUNTER-
PLAINTIFFS' OPPOSITION AND
RESPONSE TO PLAINTIFF'S
REQUEST FOR COMITY;
APPLICATION FOR
RECOGNITION AND
ENFORCEMENT OF JUDGMENT
AND FOR THE ISSUANCE OF A
WRIT OF POSSESSION**

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

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1 **I. INTRODUCTION**

2 Defendants Counter-Plaintiffs D&L Real Estate Enterprises, LLC (“D&L”) and Danlon, Inc. (“Danlon,” and collectively “Defendants”) respectfully request this
3 Court deny Plaintiff and Counter-Defendant William Ulysses McGlamary, II’s
4 (“Plaintiff) Application for Comity and related requests for recognition and
5 enforcement of the Agua Caliente Band of Cahuilla Indians Tribal Court default
6 judgment and issuance of a writ of possession. Plaintiff’s tactics of forum shopping
7 through a newly created tribal forum, resort to procedural shortcuts, and pursuit of
8 remedies expressly prohibited by the parties’ 2002 BIA-approved lease, contravenes
9 controlling federal law, tribal jurisdictional limitations, and fundamental notions of
10 contractual certainty and due process.

11
12 A federal court may recognize a tribal court judgment only if the tribal
13 tribunal had both personal and subject-matter jurisdiction, its proceedings satisfied
14 minimum due-process guarantees (including proper notice, counsel, a fair hearing,
15 and an opportunity for appeal), and enforcement of the judgment would not conflict
16 with federal or forum-state public policy. Comity is entirely discretionary and will
17 be withheld wherever a foreign judgment rests on jurisdictional defects, a denial of
18 fundamental fairness, or a result at odds with clear contractual or statutory
19 provisions. None of these prerequisite conditions were met here.

20 First, the Tribal Court never had jurisdiction to adjudicate a dispute involving
21 non-Indian lessees on allotted land off the Agua Caliente Reservation. Absent a
22 clear congressional grant or contractually reserved forum, and in light of the land’s
23 off-reservation status and the Lease’s exclusive federal-law and arbitration
24 provisions, the Tribal Court lacked both subject-matter and personal jurisdiction
25 under Montana and its progeny.

26 Second, the Tribal Court proceedings denied Defendants minimum due
27 process rights. Despite having direct personal contact information for Defendants’
28 officer, Plaintiff effected “service” by door-posting the Complaint on a closed

1 restaurant and mailing to an outdated agent address. At the prove-up hearing,
2 Plaintiff’s counsel moved orally to strike Defendants’ pro se Answer with no written
3 notice or opportunity to respond, and the court entered default just days later without
4 granting the promised time to retain counsel or present evidence. Compounding on
5 this, an unreasonably truncated fourteen-day window for opposing default, coupled
6 with burdensome tribal court attorney admissions requirements, under Tribal Court
7 rules, made any meaningful defense impossible.

8 Third, equitable and public-policy considerations overwhelmingly favor
9 against recognition of a Tribal Court judgment issued under such unfair
10 circumstances. The United States Bureau of Indian Affairs (“BIA”) oversees over
11 twenty thousand BIA-approved leases, each predicated on stable federal or
12 arbitration forums. Retroactive assertion of tribal adjudicatory authority by a forum
13 established in October 2024 would upend settled expectations, chill investment, and
14 destabilize property rights for allottees, lessees, lenders, and third-party investors.

15 Moreover, even if comity were available (which it is not), the default
16 judgment conflicts with Section 18 of the Lease, which permits only two mutually
17 exclusive remedies upon default: (1) either collection of accrued rent while
18 preserving the Lease; or (2) termination of the Lease without any further rent claims.
19 The Tribal Court awarded both money damages and forfeiture, in direct violation of
20 the parties’ express contractual agreement under the Lease.

21 Finally, because the default judgment is void for lack of jurisdiction, denial of
22 due process, public-policy defects, and direct conflict with the Lease, issuance of a
23 writ of possession is likewise unwarranted. Absent a valid, recognized judgment,
24 any effort to oust Defendants from the premises would violate federal law..

25 For these reasons, detailed below, Defendants respectfully request that the
26 Court deny Plaintiff’s Application for Comity, refuse to recognize or enforce the
27 Tribal Court default judgment, and decline to issue a writ of possession.

28

1 **II. STATEMENT OF RELEVANT FACTS**

2 **A. The Initial BIA Lease: Background and Terms**

3 On July 30, 2002, a Bureau of Indian Affairs (“BIA”) Lease No. PSL-360,
4 Allotment No. PS-36A) (the “Lease”) was executed between Georgianna
5 McGlamary, as representative in her private capacity for Lorene Welmas
6 McGlamary (also known as Lorene McGlamary Martinez – now deceased), serving
7 as lessor, and Scott P. Timberlake as lessee. [Declaration of Lonnie Landers
8 (“Landers Decl.”), at ¶¶2-3, Ex. A]. This Lease governs the commercial real
9 property located at 424 South Indian Canyon Drive, Palm Springs, California. [*Id.*].
10 The Lease was formally approved by the BIA, on September 18, 2002. [*Id.*].

11 Importantly, the Lease set an initial term of 30 years, commencing on the
12 effective date of BIA approval. [*Id.*, at §4.2. provided]. The Lease also provides the
13 Lessee, the right to extend the Lease for an additional 25 years, provided certain
14 conditions were met. [*Id.*].

15 **B. Assignment of Lease and Corporate Succession**

16 On June 23, 2003, Scott P. Timberlake assigned all interest under the Lease to
17 D&L Enterprises, a California general partnership (transformed into Defendant
18 D&L). [Landers Decl., ¶4, Ex. B]. This assignment was approved by the BIA and
19 the lessors, and a subordinate deed of trust was approved by the BIA and lessors for
20 an affiliate of D&L, JGH Restaurant Enterprises, Inc. (“JGH”). [*Id.*, at ¶4, C].
21 D&L, through JGH, began doing business at that property, spending hundreds of
22 thousands of dollars improving the leased land to open up “Wang’s In The Desert,”
23 a now well-known restaurant. [*Id.* at ¶4].

24 In an effort to enhance both the leased property and Wang’s In The Desert,
25 Defendants, through JGH, secured a \$400,000 SBA-guaranteed loan to renovate the
26 building situated on the leased property. [*Id.* at ¶5]. Defendants subsequently
27 invested additional hundreds of thousands of dollars in further improvements,
28

1 transforming the property into a highly regarded restaurant within the Palm Springs
2 area. [*Id.*].

3 Eventually, the D&L Enterprises, a California general partnership, was
4 converted in to an California limited liability company—Defendant and Co-Plaintiff
5 D&L. [*Id.* at ¶6]. The Lease was transferred through another approved assignment.
6 [*Id.* at ¶6, **Ex. B**]. In September 2012, JGH was reorganized as Defendant and
7 Counter-Plaintiff Danlon, another affiliate of Defendant and Counter-Plaintiff D&L.
8 [*Id.* at 7]. Thereafter, Danlon made monthly payments to the BIA, thereby
9 providing notice of the change to the BIA. [*Id.*].

10 Wang’s In The Desert became a mainstay in Palm Springs, providing income
11 for both Defendants and the allottee. [*See Id.*, at ¶¶5, 8].

12 **C. Rent Payment Issues in 2019: The Pretext for Plaintiff’s Scheme**

13 In 2019, due to an unexpected family medical emergency that required the
14 attention of Lonnie Landers, the owner of Defendants, Defendants missed a small
15 number of rent payments. [*Id.*, at ¶8(b)]. However, by late 2019, D&L had cured
16 all missed payments and brought the account current, as evidenced by subsequent
17 BIA payment records and reconciliation statements. [*Id.*, at ¶8(b)-(c)]. Despite
18 Defendants’ cure, Plaintiff seized on this brief default as a pretext for a systematic
19 effort to dispossess Defendants from the property and obtain a windfall of the
20 valuable improvements. Plaintiff’s apparent motive was also to evade the Lease’s
21 valuable 25-year renewal provision, which if exercised, would have extended
22 Defendants’ leasehold until at least September 2057, taking into account the seven
23 years remaining on the initial term as of 2025. [*Id.*].

24 **D. The First Unlawful Detainer – State Court Dismissal for Lack of Subject**
25 **Matter Jurisdiction**

26 On October 20, 2023, Plaintiff filed an unlawful detainer complaint against
27 D&L in the Superior Court for the County of Riverside (Case No. UDPS2301119),
28 seeking possession and monetary damages. [Landers Decl., ¶9; RJN, **Ex. A**]. On

1 May 8, 2024, the Superior Court sustained D&L’s demurrer, dismissing the
2 complaint on the ground that state courts lack subject matter jurisdiction over claims
3 to possession involving Indian trust land, as held by both controlling federal law
4 under 28 U.S.C. § 1360(b) and the Appellate Division’s published opinion in
5 *George Fischer v. Joseph Moscato*, Case No. APRI2300056 (March 22, 2024).
6 [Landers Decl., ¶9; RJN, Exs. B-C].

7 **E. Plaintiff’s Forum Shopping: Filing in Tribal Court Created After Lease**
8 **Execution**

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

17 Proper notice was not provided in the initial Tribal Court action. [*Id.*, at ¶11].
18 Plaintiff, who has been represented by counsel since at least 2019, has regularly
19 communicated with Defendants’ representative, Mr. Landers, including through
20 direct personal contact information in counsel’s possession, including his email and
21 cell-phone number. [*Id.*]. Despite these established channels, Plaintiff’s counsel
22 initiated the unlawful detainer action by posting the Complaint on the door of the
23 now-closed Wang’s restaurant—which remains closed due to Plaintiff’s actions—on
24 March 31, 2025, and by serving to an outdated address associated with a former
25 agent of Defendant D&L. [*Id.*]. Although Plaintiff’s counsel had actual knowledge
26 of and access to Mr. Landers, they relied solely on improper substitute service and
27 failed to direct any notice to him. [*Id.*].

28

1 It was only by chance that Defendants’ bookkeeper discovered the posted
2 notice on the restaurant door while stopping to collect mail, and informed him on
3 Mr. Landers in April 3, 2025 (13 days after the Complaint was filed). [*Id.*]. As a
4 consequence, Mr. Landers was left with extremely limited time to respond to the
5 unlawful detainer action. [*Id.*, at ¶12]. Due to improper service, he was unable to
6 retain counsel for the Defendants. [*Id.*, at ¶11]. Nevertheless, in an effort to comply
7 with procedural deadlines, and with virtually no opportunity to gather evidence or
8 otherwise meaningfully respond to a Complaint filed in an unfamiliar court, Mr.
9 Landers personally drafted and filed an Answer within the Tribal Court’s twenty-
10 day responsive pleading period, on August 14, 2025. [*Id.*, at ¶12].

11 **F. D&L and Danlon’s Stricken Answer and the Entry of Default**

12 Confident in his submission, Mr. Landers attended the Initial Hearing on
13 April 24, 2025. [*Id.*, at ¶13]. At the hearing, he raised with the judge the issue of
14 improper service and lack of notice. [*Id.*]. Surprisingly, Plaintiff’s counsel made an
15 oral motion to strike the Answer on the basis that Defendants were not represented
16 by counsel. [*Id.*]. In the 10-day period between the filing of Defendants’ Answer
17 and the Initial Hearing, Plaintiff’s counsel did not once contact Defendants or the
18 Court to address this alleged deficiency in Defendants’ pleading. [*Id.*].

19 The court, equally surprised by this request, requested time to review the law
20 and took the matter under submission. [*Id.*, at ¶14]. The court assured Mr. Landers
21 that if it granted Plaintiff’s request to strike the Answer, he would be afforded time
22 to retain counsel. [*Id.*]. Returning after a 24-hour recess, the judge emailed both
23 parties, and explained the tribal code contains no requirement that a corporate
24 defendant be represented by counsel and indicated he would refer to federal rules,
25 per the Tribal Code. [Landers Decl., at ¶14, Ex. F].

26 Contrary to these assurances, on April 28, 2025, the court unexpectedly
27 entered a default for Plaintiff, granting no time for Mr. Landers to engage counsel.
28 [Landers Decl., at ¶15, Ex. G].

1 Further complicating the matter, and unbeknownst to Mr. Landers, the tribal
2 code prescribed only fourteen days to oppose the default. [Landers Decl., at ¶16;
3 RJN, **Ex. D**]. In other words, Defendants were only provided 14 days to find
4 counsel, retain counsel, review the lengthy record with counsel, and then draft a
5 request to reconsider the default. At the same time, admission to the tribal court for
6 counsel can take up to fifteen days [Landers Decl., at ¶16; Declaration of Ricard M.
7 Freeman (“Freeman Decl.” at ¶4, **Ex. A**], requiring first a certificate of standing
8 from the state bar, which itself can take up to twelve days [Landers Decl., at ¶16;
9 RJN, **Ex. E**].

10 By the time Mr. Landers was able to locate appropriate counsel, allow
11 prospective counsel to conduct a conflict check, execute an agreement, and have
12 counsel admitted to the Tribal Court, the fourteen-day opposition period had already
13 expired. [Landers Decl. at ¶17; Freeman Decl., at ¶¶2-7].

14 **G. The Lease’s Default Provisions and Violation by Plaintiff’s Conduct**

15 The default judgment entered by the tribal court awarded both substantial
16 monetary damages and cancellation/forfeiture of the lease. [Landers Decl. at ¶15,
17 **Ex. G**]. The Lease’s default provision (Section 18) explicitly requires the Lessor to
18 elect between two exclusive remedies: either (A) “collect, by suit or otherwise, all
19 monies as they become due hereunder, or enforce. . . Lessee’s compliance with any
20 other provision of the Lease,” or (B) “terminate this Lease,” in which event the
21 Lessor is foreclosed from suing for further rent. [Landers Decl., **Ex A**]. Plaintiff’s
22 strategy of seeking both back rent and forfeiture (all without providing Defendants
23 the opportunity to respond) is in direct contravention of the Lease’s terms. [*Id.*].

24 **H. Renewed State Court Enforcement Action, Despite Prior Jurisdictional**
25 **Bar**

26 Shortly thereafter, on May 9, 2025, Plaintiff’s counsel filed the current
27 request for comity in state court, seeking enforcement of the Tribal Court’s default
28 judgment. [Landers Decl. at ¶18; RJN, **Ex. F**]. This was done despite Plaintiff’s

1 knowledge, confirmed both by the trial court’s order and controlling California
2 appellate precedent, that state courts lack subject matter jurisdiction to adjudicate
3 disputes regarding Indian trust land. [See RJN, B-C]. The case was set for hearing
4 on June 26, 2025.

5 Again, despite being made abundantly aware of the issue with insufficient
6 notice, being informed that Plaintiff was in the process of retaining Sheppard Mullin
7 as counsel, and being provided with the email for counsel Richard M. Freeman,
8 Plaintiff only gave notice by posting a copy of the door of Wang’s, which
9 Defendants’ bookkeeper did not find until May 15, 2025. [Landers Decl. at ¶18;
10 Freeman Decl. at ¶3].

11 **I. Plaintiff’s Evident Scheme to Evict for Personal Gain**

12 The chronology and procedural context make clear that Plaintiff’s conduct
13 constitutes a scheme to wrongfully evict D&L and Danlon in direct violation of the
14 Lease’s express provisions. Plaintiff’s goal is to terminate the Lease in order to
15 obtain a windfall on property value and improvements and extinguish the lease prior
16 to the 25-year extension option, contrary to the parties’ bargained-for contractual
17 rights. [See Landers Decl. at ¶19]. To do so, Plaintiff forum-shopped from state
18 court to the recently created tribal court, manufactured procedural technicalities to
19 secure a default, and immediately sought state court enforcement, disregarding both
20 the Lease and the prior state court ruling, to secure the full economic benefit of early
21 possession of the Lease and deprive Defendants of their renewal rights and value of
22 the lease.

23 **III. LEGAL STANDARDS**

24 Recognition of a tribal court judgment under the principle of comity is
25 “discretionary, not mandatory.” See *Bird v. Glacier Elec. Coop., Inc.*, 255 F.3d
26 1136, 1140 (9th Cir. 2001); *Wilson v. Marchington*, 127 F.3d 805, 810 (9th Cir.
27 1997) (“Although the status of Indian tribes as ‘dependent domestic nations’
28 presents some unique circumstances, comity still affords the best general analytical

1 framework for recognizing tribal judgments.”). While federal courts often given
2 deference to tribal court judgment under principles of comity, federal courts will
3 refuse to recognize a tribal court judgment “when the tribal court either lacked
4 jurisdiction or denied the losing party due process of law.” *AT & T Corporation v.*
5 *Coeur D’Alene Tribe*, 295 F.3d 899, 903 (9th Cir. 2002); *FMC Corp. v. Shoshone-*
6 *Bannock Tribes*, 942 F.3d 916, 930 (9th Cir. 2019) (“First, we will not recognize
7 and enforce a judgment if the tribal court did not have both personal and subject
8 matter jurisdiction. (citation). Second, we will not enforce a judgment if the tribal
9 court denied due process to the losing party.”) Furthermore, federal courts may
10 refuse to recognize tribal court judgments “on equitable grounds as an exercise of
11 discretion.” *AT & T Corporation*, 295 F.3d at 903.

12 **IV. ARGUMENT**

13 **A. The Court Should Decline to Apply Principles of Comity**

14 As addressed in detail below, the Tribal Court (1) lacked jurisdiction, (2)
15 denied Defendants due process of law, and (3) public policy considerations weigh
16 strongly in favor of refusing to recognize the Tribal Court’s judgment.

17 **i. The Tribal Court Never Had Jurisdiction To Hear Plaintiff’s The** 18 **Unlawful Detainer Action**

19 A federal court must first determine whether a tribal court had subject matter
20 jurisdiction to determine whether it may enforce a tribal court judgment. *FMC*
21 *Corp.*, 942 F.3d at 931. Importantly, “[t]he lack of personal jurisdiction mandates
22 rejection of a foreign judgment under the Restatement (Third) and that requirement
23 must logically extend to tribal judgments. *Wilson, supra*, 127 F.3d at 810-11. A
24 lack of subject matter jurisdiction is equally detrimental. *Id.* (Accordingly, the
25 existence of both personal and subject matter jurisdiction is a necessary predicate for
26 federal court recognition and enforcement of a tribal judgment.”). Here, the Tribal
27 Court lacked both personal and judgment matter jurisdiction over Defendants
28 because the claims at issue concern a non-Indian lessee under a BIA lease of allotted

1 land located outside the geographic boundaries of the tribal reservation, and no facts
2 support the assertion of tribal regulatory or adjudicatory authority under established
3 precedent.

4 *a. Tribal Court Lacked Jurisdiction over a Non-Indian Under*
5 *The Montana Factors*

6 The Supreme Court and the Ninth Circuit have repeatedly affirmed that,
7 absent express congressional authorization, tribal courts are courts of limited
8 jurisdiction, and any exercise of jurisdiction over non-members—particularly non-
9 Indian lessees—must be carefully scrutinized and is generally impermissible.

10 While tribes retain “inherent sovereign power to exercise some forms of civil
11 jurisdiction over non-Indians on their reservations,” that authority is limited to (1)
12 regulation of activities of non-members who enter consensual relationships with the
13 tribe or its members (through commercial dealing, contracts, leases, or other
14 arrangements); and (2) regulation of non-member conduct that “threatens or has
15 some direct effect on the political integrity, the economic security, or the health or
16 welfare of the tribe.” *Montana v. United States*, 450 U.S. 544, 565-66 (1981). Any
17 tribal assertion of jurisdiction over non-members falling outside these narrow
18 exceptions is invalid unless explicitly authorized by Congress.

19 Here, the lease in question is on allotted land that, while still “Indian country”
20 for some purposes, lies outside the exterior boundaries of the reservation and is not
21 subject to the tribe’s ordinary territorial jurisdiction. As the Supreme Court
22 endorsed in *Wilson*, tribal court adjudicatory power extends no further than its
23 legitimate regulatory authority. *Wilson, supra*, 127 F.3d at 814-15 (citing *Strate v.*
24 *A-1 Contractors*, 520 U.S. 438, 438 (1997)). When the land in question is not tribal
25 land within the reservation boundaries, but rather an individual allotment located
26 off-reservation, the case for jurisdiction is even weaker. *See Plains Commerce Bank*
27 *v. Long Family Land & Cattle Co.*, 554 U.S. 316, 333 (2008) (“Tellingly, with only
28 ‘one minor exception, we have never upheld under Montana the extension of tribal

1 civil authority over nonmembers on non-Indian land.”) (citing *Nevada v. Hicks*, 533
2 U.S. 353, 360 (2001).). The mere fact that the land is allotted and subject to federal
3 restrictions does not convert it into a tribal regulatory enclave, nor does it empower
4 tribal courts to resolve disputes between non-Indians and Indians arising there
5 unless one of the Montana exceptions is clearly satisfied.

6 Addressing *Montana*, neither exception is applicable here. As a primary
7 matter, Defendants did not consent (nor could they) to the Tribal Court’s
8 jurisdiction. Thus, there is no valid “consensual relationship” jurisdiction here. As
9 the lease documents demonstrate, Defendants lease was entered into in September
10 2002, decades before the formation of the tribal court. [Landers Decl., at **Ex. A**].
11 Furthermore, the lease contains no provision at any point for tribal court jurisdiction.
12 *Id.* At the time the lease was entered into, the only available forums to hear an issue
13 concerning allotted land were (1) arbitration,¹ and (2) the federal court. Notably, the
14 Lease itself makes no mention of tribal law, and instead states, “[t]his lease shall be
15 governed exclusively by the provisions hereof and by the laws of the United States
16 and, to the extent applicable, California law. [Landers Decl., **Ex. A**, §36.11]. The
17 tribal court’s assertion of judicial authority was not contemplated or accepted by the
18 parties. In the absence of a clear, contractual agreement to tribal adjudication, and
19 in light of the off-reservation status of the land, the first Montana exception does not
20 apply and alone precludes jurisdiction. *See Wilson, supra*, 127 F.3d at 809 (“No
21 legal judgment has any effect, of its own force, beyond the limits of the sovereignty
22 from which its authority is derived.”).

23 Nor can the tribal court rely on the second *Montana* exception: Defendants’
24 occupancy of the land under a BIA lease on allotted non-Tribal land, does not
25 “threaten” the political integrity, economic security, or health and welfare of the
26 tribe. The dispute is a straightforward landlord-tenant disagreement, arising under—

27 _____
28 ¹ [Landers Decl., **Ex. A**, at §30].

1 and strictly governed by—federal law, not tribal ordinances. Specifically, the Agua
2 Caliente Band of Cahuilla Indians does not govern the land in question in this lease,
3 the City of Palm Springs does. *See The Agua Caliente Band of Mission Indians’*
4 *Tribal Council v. City of Palm Springs*, 347 F.Supp. 42, 53 (C.D. Cal. 1972)
5 (holding “1. That the Indian land in question was legally incorporated into the City
6 of Palm Springs. 2. That the City’s zoning ordinances apply to and are enforceable
7 upon Indian lands to the same extent and with the same effect as they are
8 enforceable upon non-Indian land. 3. That Public Law 280, granting as it does to the
9 State of California authority to exercise its police power over Indian lands, is not
10 unconstitutional.”). Furthermore, the economic value of the lease goes to the
11 individual allottee, the lease holder, and the state and federal government, but not
12 the tribe. *See Herpel v. County of Riverside*, 45 Cal.App.5th 96, 122 (2020)
13 (affirming that the City of Palm Springs may collect taxes in Agua Caliente Band of
14 Cahuilla Indians land). Therefore, there is no “demonstrably serious” political,
15 economic, or health and welfare concern giving the Tribal Court jurisdiction over
16 Defendants. *Cf. Wilson v. Marchington*, 127 F.3d at 815 (“To invoke the second
17 Montana exception, the impact must be demonstrably serious and must imperil the
18 political integrity, the economic security, or the health and welfare of the Tribe.”).

19 Because neither of the *Montana* factors are met, the Tribal Court lacked
20 jurisdiction of non-Indians (Defendants) on non-Indian land (the allotted land).

21 *b. Tribal Court Lacked Regulatory Authority over Defendants*

22 Third, adjudicatory jurisdiction of the tribal court must be coterminous with
23 regulatory authority on the land in question. *See Strate, supra*, 520 U.S. at 453.
24 Where a tribe lacks regulatory jurisdiction—because the land is not within the
25 reservation, and the dispute does not implicate tribal self-government or internal
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27
28

1 relations²—there is no basis to exercise judicial power over non-members regarding
2 their use of the land. The *Oneida Indian Nation* line of cases, beginning with
3 *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 661 (1974) (“*Oneida I*”),
4 and reaffirmed in *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 226
5 (1985) (“*Oneida II*”), further confirm that disputes concerning Indian property
6 interests, including those in allotted lands, are uniquely federal matters, and that the
7 federal courts are the exclusive forum for the resolution of possessory disputes
8 regarding Indian trust or restricted property when the United States is a party or has
9 a trust interest, unless Congress has expressly provided otherwise.

10 Finally, as in *Wilson*, federal courts should not give “full faith and credit” to
11 tribal court judgments, but only recognize such judgments as a matter of comity
12 where the tribal court has both personal and subject matter jurisdiction and where
13 the decision meets minimum requirements of due process. *Wilson, supra*, 127 F.3d
14 at 811, 815 (“The principles of comity require that a tribal court have competent
15 jurisdiction before its judgment will be recognized by the United States courts.
16 Because the tribal court did not have subject matter jurisdiction. . . [plaintiff]’s
17 judgment may neither be recognized nor enforced in the United States courts.”)
18 Here, the tribal court lacked both personal and subject matter jurisdiction for the
19 reasons described above, and its default judgment should be given no effect.

20 For all the foregoing reasons, the tribal court’s judgment must be deemed
21 void for lack of jurisdiction. This Court should accordingly deny recognition of the
22 default judgment and hold that this dispute was not within the authority of the tribal
23 court.

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27 ² The Tribes reservation in a checkerboard. The allotment at issue here is not within
28 any of the tribes squares. [RJN, **Ex. G** (with link to map)].

1 **ii. The Tribal Court Denial Defendants of Due Process**

2 Stated plainly, “[a] federal court must also reject a tribal judgment if the
3 defendant was not afforded due process of law.” *Wilson*, 127 F.3d at 811; *Bird v.*
4 *Glacier Elec. Coop., Inc.*, 255 F.3d 1136, 1142 (9th Cir. 2001) (“a district court
5 cannot properly give comity to a tribal court judgment if the tribal court proceedings
6 violated due process.”) This is because “[t]he guarantees of due process are vital to
7 our system of democracy” and court require “we must ask no less of Native
8 American tribes.” *Wilson*, 127 F.3d at 811. While “[c]omity does not require that a
9 tribe utilize judicial procedures identical to those used in the United States Courts,”
10 the court in *Wilson* explained those variations that would deny due process:

11 Due process, as that term is employed in comity, encompasses most of
12 the *Hilton* factors, namely that there has been opportunity for a **full and**
13 **fair trial** before an impartial tribunal that conducts the trial upon
14 regular proceedings after **proper service or voluntary appearance** of
15 the defendant, and that there is no showing of prejudice in the tribal
16 court or in the system of governing laws. Further, as the Restatement
17 (Third) noted, evidence “that the judiciary was dominated by the
18 political branches of government or by an opposing litigant, **or that a**
19 **party was unable to obtain counsel**, to secure documents or
20 attendance of witnesses, or to **have access to appeal or review**, would
21 support a conclusion that the legal system was one whose judgments
22 are not entitled to recognition.”

23 *Id.* (quoting Restatement (Third) § 482 cmt. b.); Here, the exact concerns articulated
24 in *Wilson* evidencing a clear breach of a defendants due process occurred.

25 **a. There Was No “Full and Fair Trial” after “Proper Service or**
26 **Voluntary Appearance”**

27 The judgment against Defendants should not be recognized because the Tribal
28 Court proceedings deprived Defendants of fundamental due process rights. Due
process requires that a party receive notice reasonably calculated to apprise them of
the action and afford them an opportunity to present their objections. See *Mullane*
v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (“An elementary
and fundamental requirement of due process in any proceeding which is to be
accorded finality is notice reasonably calculated, under all the circumstances, to

1 apprise interested parties of the pendency of the action and afford them an
2 opportunity to present their objections.). Here, both the method and substance of
3 notice of the Tribal Court unlawful detainer action were deficient, and the
4 subsequent proceedings compounded those deficiencies, ultimately depriving
5 Defendants of a fair opportunity to be heard.

6 First, Defendants did not receive proper notice of the unlawful detainer
7 action. Under Federal Rule of Civil Procedure 4(h), “Serving a Corporation,
8 Partnership, or Association” is effectuated “(A) in the manner prescribed by Rule
9 4(e)(1) for serving an individual; or (B) by delivering a copy of the summons and of
10 the complaint to an officer, a managing or general agent, or any other agent
11 authorized by appointment or by law to receive service of process and—if the agent is
12 one authorized by statute and the statute so requires—by also mailing a copy of each
13 to the defendant; or (2) at a place not within any judicial district of the United
14 States, in any manner prescribed by Rule 4(f) for serving an individual, except
15 personal delivery under (f)(2)(C)(i). Under Rule 4(d)(3), personal service “upon a
16 domestic or foreign corporation” is effected by serving “an officer, a managing or
17 general agent, or any other agent authorized by appointment or by law to receive
18 service of process.”³

19 Here, Despite Plaintiff’s counsel having been in regular direct contact with
20 Defendants’ officer, Mr. Landers, since at least 2019, and knowing his personal
21 contact information, Plaintiff’s counsel chose not to serve or ever notify Mr.
22 Landers and instead attempted “service” by merely posting the complaint on the
23 door of the closed Wang’s restaurant and mailing notice to an outdated address for a
24 prior agent for service of process for Defendants. [Landers Decl., at ¶11]. Such
25 methods fall well short of the constitutional standards for notice. It was only by
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27 ³ The Tribal Court purports to state Federal Procedurals rules applied to the
28 proceedings.

1 happenstance that an associate of Mr. Landers discovered the posted complaint and
2 notified him, leaving Mr. Landers minimal time to respond. This lack of notice
3 deprived Defendants of the basic procedural protections upon which due process
4 depends. *See Securities & Exch. Comm’n v. Ross*, 504 F.3d 1130, 1138 (9th Cir.
5 2007) (“service of process has its own due process component, and must be ‘notice
6 reasonably calculated. . . to apprise interested parties of the pendency of the action
7 and afford them an opportunity to present their objections.’”) (quoting *Mullane*, 339
8 U.S. at 314.).

9 Second, Plaintiff’s oral motion to strike Defendants’ Answer due to lack of
10 legal representation was improper and severely prejudicial. Under the Federal Rules
11 of Civil Procedure, a substantive motion—such as a motion to strike a pleading—must
12 be made in writing and served with appropriate notice to the opposing parties,
13 affording them an opportunity to respond. *See Fed. R. Civ. P. 7(b), 12(f)*. The
14 requirement of a written, noticed motion is fundamental to civil procedure and exists
15 to prevent “trial by surprise.” Plaintiff’s counsel’s decision to proceed via an oral
16 ambush motion deprived Defendants of the opportunity to prepare and present
17 argument or seek representation in time to respond.

18 *b. Defendants Were Unable to Obtain Counsel In Contravention of*
19 *Federal Standard*

20 The Tribal Court’s actions further undermined due process by defaulting
21 Defendants despite representing to Mr. Landers in open court that, if the Answer
22 was struck, he would be granted time to obtain counsel. [Landers Decl. at ¶¶14-15].
23 The Agua Caliente Tribal Court Code is silent on whether a corporation needs to be
24 represented by counsel. [See RJN, Ex. D] Instead of allowing Defendants to
25 represent themselves in the absence of Tribal Court rules, on April 28, 2025, the
26 Tribal Court entered default judgment for Plaintiff without any further opportunity
27 for Defendants to appear or object, ostensibly based on federal requirements that a
28 corporation be represented by counsel and cannot appear *pro se*. [Landers Decl. at

1 ¶14, Ex. F]. At the same time, the Tribal Court failed to apply the same federal
2 standards to Plaintiff, who was granted the ability to make a dispositive motion
3 orally and without prior notice, and did not afford Defendants the same leeway to
4 seek or oppose default. [*Id.*, at Ex. F-G]. As a general matter, when a party is not
5 properly represented, the corporation is ordered to retain counsel before any default
6 is entered. *See, e.g., United States of Am. v. High Country Broad. Company, Inc.*, 3
7 F.3d 1244, 1245 (9th Cir. 1993) (“When it became apparent that Crisler (who was
8 not a licensed attorney at that time) was attempting to represent High Country, the
9 district court ordered High Country to retain counsel for the duration of the
10 litigation.”); *Flora Construction Co. v. Fireman’s Fund Insurance Co.* 307 F.2d 413
11 (10th Cir. 1962) (defendant corporation that appears via its nonattorney president
12 allowed time to secure attorney); *Southwest Exp. Co., Inc. v. I.C.C.*, 670 F.2d 53
13 (5th Cir. 1982) (corporation given time to cure deficiencies in its petition, including
14 lack of attorney signature); *United States v. 9.19 Acres of Land, Marquette Co.,*
15 *Mich.*, 416 F.2d 1244 (6th Cir. 1969) (holding it was an abuse of discretion to deny
16 a continuance when non-attorney corporate president learns one week before trial he
17 cannot represent corporation and cannot locate an attorney); *Strong Del. Min. Ass’n*
18 *v. Board of App. of Cook Cty.* 543 F.2d 32 (7th Cir. 1976) (corporation whose
19 complaint filed by non-attorney president given leave to file an amended complaint
20 by locally licensed attorney). The court’s inconsistent application of procedural
21 standards resulted in fundamental unfairness to Defendants are extreme prejudice in
22 not being able to obtain representation or defend itself.

23 Moreover, the Tribal Court’s fourteen-day window for opposing default could
24 not, under the circumstances, amount to a reasonable and fair opportunity to be
25 heard. [RJN, Ex. D]. First and foremost, under federal law, Defendants would have
26 been granted “a reasonable time” and up to a year to move to set aside the default
27 judgment. FRCP §§ 55(c) and 60(b). Additionally, Defendants (through no fault of
28 their own) were already deprived of meaningful notice of the Complaint and were

1 then forced to scramble and retain qualified counsel. [Landers Decl. at ¶¶11-12].
2 Defendants were not able to enter an agreement competent counsel of their choosing
3 until May 13, 2025. [Freeman Decl. at ¶3]. The procedural rules for admission in
4 the Tribal Court require counsel be admitted to the Tribal Court. [RJN, **Ex. D**].
5 According to the Tribal Court, once the application is submitted it can take up to 15
6 days to be admitted. [Freeman Decl. at ¶4, **Ex. A**]. The Rules also include a
7 requirement that counsel first submit a certificate of standing, adding an additional
8 delay of up to 12 days for counsel’s admission. [Freeman Decl. at ¶4; **Ex. A** RJN
9 **Ex. E**]. Despite Defendants and counsel’s best efforts, Counsel was not admitted
10 until May 27, 2025, two weeks after the Tribal Court’s deadline to move to
11 reconsider the default, and counsel was not informed of admittance until June 5,
12 2025, after receiving notice in the mail. [Freeman Decl. at ¶4]. In other words, the
13 Tribal Court made it practically impossible for Defendants to obtain representation
14 of their choosing and timely oppose the default within the tribal window—a
15 fundamental violation of due process.

16 Fundamental fairness dictates that procedural rules must allow a genuine
17 opportunity to prepare a defense; here, Defendants had none.

18 *c. Defendants Were Deprived of a Jury and No Appeal*

19 Layered atop these due process deficiencies explained above, Defendants
20 were deprived of additional basic protections: under Tribal Court rules, no right to a
21 jury trial exists and there is no right to appeal from the Tribal Court’s decision.
22 [RJN, **Ex. D**]. The resulting proceeding thus lacked the most fundamental features
23 of fairness found in both federal and state systems—an impartial jury and a
24 meaningful appellate remedy. U.S. Const. amend. VI (“In Suits at common law,
25 where the value in controversy shall exceed twenty dollars, the right of trial by jury
26 shall be preserved.”); *Bird, supra*, 255 F.3d at 1141; *Wilson, supra*, 127 F.3d at 811
27 (“The tribal court proceedings must afford the defendant the basic tenets of due
28 process or the judgment will not be recognized by the United States.”); *see also*,

1 *Maldonado v. Superior Court*, 162 Cal.App.3d 1259, 1267 (1984) (“the long-
2 established statutory right to jury trial in unlawful detainer actions in California, and
3 the fundamental policy of construction favoring the right to a jury trial, we conclude
4 that section 1171 affords petitioner the right to trial by jury in her trial de novo on
5 appeal from the judgment taken against her in the unlawful detainer action in the
6 small claims court.”).

7 For all these reasons, the process afforded Defendants in the Tribal Court
8 failed to comport with the minimum standards of due process required by the United
9 States Constitution. Under well-established law, a default judgment obtained
10 through such fundamentally unfair proceedings cannot be recognized by this Court.
11 See *Wilson v. Marchington*, 127 F.3d 805, 810-11 (“A federal court must also reject
12 a tribal judgment if the defendant was not afforded due process of law.... The
13 guarantees of due process are vital to our system of democracy.”). Accordingly, the
14 Comity Motion must be denied.

15 *d. The Tribal Court Ignored Federal Laws and Regulations*

16 The Tribal Court’s proceedings and default judgment are further invalid
17 because they disregarded controlling federal statutes and regulations governing
18 BIA-approved leases of Indian trust and allotted land. These federal laws preempt
19 both tribal and state law in matters relating to the administration, enforcement, and
20 termination of such leases. Recognition of the Tribal Court’s judgment would
21 directly conflict with these mandatory federal requirements, including the following:

22 Federal regulations require that any termination, modification, or enforcement
23 action relating to a BIA-approved lease must be subject to explicit BIA oversight
24 and approval. *See* 25 CFR §§ 162.106, 162.449–453. An Indian allottee cannot
25 unilaterally terminate a lease absent BIA consent, and no substitution of another
26 forum, such as a tribal court, can circumvent this requirement. Here, the Tribal
27 Court proceeded to adjudicate default, forfeiture, and possession issues without
28 evidence of BIA approval or compliance with the regulatory process for lease

1 termination. This is necessary because under 25 CFR §§ 162.108, 162.221, and
2 162.106(b), the BIA acts as a fiduciary to guard against arbitrary or inequitable
3 conduct by the lessor, and to protect the lessee from unauthorized use or
4 dispossession. The Tribal Court’s proceedings dispensed with this federal
5 safeguard, proceeding without involving BIA review, participation, or confirmation
6 that the agency’s fiduciary obligations had been met.

7 Furthermore, lessee protections under 25 CFR § 162.450 require that, before
8 termination or cancellation, the alleged breaching party must receive written notice
9 of default and an opportunity to cure. The Lease itself incorporates these rights.
10 [Landers Decl., **Ex. A**, at 1]. The Tribal Court proceedings failed to ensure that
11 Defendants received proper and timely notice, let alone a full and fair opportunity to
12 cure any alleged breach. The Court moved forward based on defective service and
13 with no demonstration that the federally mandated cure period had been honored.

14 Under both the Lease and 25 CFR §§ 162.449–453, a lessor must elect
15 remedies in the event of default. Landers Decl., **Ex. A**, at §18. The lessor is entitled
16 to either to collect money owed or to terminate the lease, but not both. *Id.* The
17 Tribal Court ignored this restriction, awarding Plaintiff both back rent and lease
18 termination/forfeiture, in direct conflict with federal regulations and the express
19 terms of the Lease. [Landers Decl., **Ex. G**].

20 Finally, federal law protects the rights of lessees to assign, sublet, and receive
21 compensation for improvements on BIA-approved leases, subject to BIA approval.
22 *See* 25 CFR §§ 162.616 and 162.464. The Tribal Court failed to make any findings
23 regarding these federal protections for Defendants’ affiliations, subtenancies, or the
24 substantial improvements made to the property.

25 By ignoring these governing federal statutes and regulations (including, but
26 not limited to, 25 CFR §§ 162.106, 162.108, 162.221, 162.449–453, 162.450,
27 162.464, 162.616, and 162.609–615), the Tribal Court acted *ultra vires*, and its
28 resulting judgment is void and unenforceable as a matter of law.

1 **iii. Public Policy Weighs In Favor Of Denying Recognition of the**
2 **Tribal Court Judgment**

3 “Federal court may, in its discretion, decline to recognize and enforce a tribal
4 judgment on equitable grounds, including the following circumstances. . . .
5 recognition of the judgment, or the cause of action upon which it is based, **is against**
6 **the public policy of the United States or the forum state in which recognition of**
7 **the judgment is sought.** *Wilson, supra*, 127 F.3d at 810 (emphasis added).

8 As reflected by publicly available data from the Bureau of Indian Affairs
9 (BIA) Palm Springs Agency, there currently exist 1,175 commercial leases, 7,671
10 residential subleases, and 11,118 timeshares on Indian land leases within this
11 agency’s jurisdiction. [RJN, Ex. G]. These are not mere statistics, they represent
12 thousands of businesses, homeowners, and investors who have entered into long-
13 term contractual relationships based on clear, historically established jurisdictional
14 frameworks and dispute-resolution mechanisms, most of which explicitly or
15 implicitly presume the availability of federal or state court jurisdiction, or neutral
16 arbitration. Permitting the Agua Caliente Tribal Court—an entity which was not
17 even established until October 2024—to retroactively assert exclusive jurisdiction
18 over lease disputes arising from these longstanding BIA-approved leases would be
19 profoundly destabilizing. Virtually all of these leases were negotiated and executed
20 long before the Tribal Court existed; likely do not include any provision for tribal
21 court jurisdiction, and the vast majority of parties (particularly non-Indian) never
22 consented, explicitly or by implication, to resolution of their lease disputes in this
23 newly-formed forum.

24 Such a dramatic shift in jurisdiction would inject unprecedented uncertainty
25 into the legal landscape governing leasehold interests in Palm Springs and the
26 surrounding region. Lessees, homeowners, lenders, and allottees would be left
27 unsure of their rights, the applicable rules, and even the identity of the tribunal
28 empowered to resolve their disputes. This uncertainty would have a chilling effect

1 on investment, development, and the stability of residential and commercial
2 property markets throughout the region. Commercial actors, in particular, require
3 predictability to enter long-term leases, secure financing, and make meaningful
4 improvements to property. The prospect that, decades after contract formation, their
5 leasehold rights and remedies could be subjected to the evolving procedures and
6 untested jurisprudence of a previously nonexistent tribal court would deter both
7 current and prospective participants from engaging in the Palm Springs market.

8 Moreover, to permit a *post hoc* expansion of tribal court jurisdiction over
9 thousands of leases and subleases would threaten the core public policy values of
10 contractual certainty, fair notice, and mutual assent. It would undermine the BIA's
11 oversight role and the well-established expectation among allottees and non-Indian
12 parties that their property rights will be protected and disputes will be resolved in
13 the manner bargained for and contemplated at the inception of their relationships.
14 Such an outcome would ultimately be detrimental not only to non-Indians and
15 commercial parties, but also to Indian allottees themselves, whose ability to attract
16 investment and obtain fair value for their allotments depends on the stability and
17 predictability of the system as a whole.

18 This Court should reject any enforcement or recognition of judgments, or
19 attempts to issue writs of possession, predicated on the unilateral assertion of a new
20 jurisdictional regime by the Tribal Court over preexisting lease relationships. Doing
21 so is necessary to safeguard public policy, encourage economic development, and
22 protect the legitimate contractual and property interests of all parties subject to the
23 BIA's jurisdiction in the Coachella Valley.

24 **V. Writ of Possession Is Not Warranted**

25 For all the reasons addressed above, Court should deny application of the
26 principles of comity and not recognize the Tribal Court Judgment. For these same
27 reasons, the Court should not enforce the judgment and issue a write of possession.

28

