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6
7 **UNITED STATES DISTRICT COURT**

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

10 In the Matter of:

11 WILLIAM ULYSSES McGLAMARY, II,

12 Plaintiff,

13 vs.

14
15 D&L REAL ESTATE ENTERPRISES,
16 LLC and DANLON, INC.

17 Defendants.
18
19

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

**NOTICE OF MOTION AND
MOTION TO DISMISS OR, IN
THE ALTERNATIVE, TO STAY
PROCEEDINGS PENDING
EXHAUSTION OF TRIBAL
REMEDIES; MOTION TO
STRIKE AFFIRMATIVE
DEFENSES; MEMORANDUM OF
POINTS AND AUTHORITIES
AND DECLARATION OF DAVID
EARL JACOBS IN SUPPORT**

Department: Courtroom 1
Time: 9:00 a.m.
Date: June 8, 2026
Honorable Judge Jesus G. Bernal

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21
22
23 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

24 **PLEASE TAKE NOTICE** that on the earliest available hearing date, as set
25 by the Court pursuant to Local Rule 7-3 and this Court's scheduling procedures, or
26 as soon thereafter as the matter may be heard, in Courtroom 1 of the above-entitled
27 Court, located at 3470 Twelfth Street, Riverside, California 92501, Plaintiff
28

1 William Ulysses McGlamary, II ("Plaintiff") will and hereby does move this Court
2 for an order:

- 3 1. Dismissing Defendants' Counterclaim in its entirety pursuant to Federal
4 Rule of Civil Procedure 12(b)(1) for failure to exhaust tribal remedies, or in
5 the alternative staying proceedings pending exhaustion;
- 6 2. Dismissing the Counterclaim pursuant to Rule 12(b)(6) for failure to state a
7 claim upon which relief can be granted; and
- 8 3. Striking certain affirmative defenses pursuant to Rule 12(f).

9
10 This Motion is made pursuant to controlling Supreme Court and Ninth
11 Circuit authority requiring exhaustion of tribal court remedies prior to federal
12 adjudication of issues implicating tribal jurisdiction, including *National Farmers*
13 *Union Ins. Cos. v. Crow Tribe* and *Grand Canyon Skywalk Dev., LLC v. 'Sa' Nyu*
14 *Wa Inc.*, as recognized by this Court in its April 23, 2026 Order.

15
16 This Motion is based on this Notice, the accompanying Memorandum of
17 Points and Authorities, the Declaration of David Earl Jacobs, the pleadings and
18 papers on file in this action, and such further argument and evidence as may be
19 presented to the Court.

20
21 **STATEMENT OF COMPLIANCE WITH LOCAL RULE 7-3**

22 Plaintiff's counsel engaged in a meet and confer process with Defendants'
23 counsel regarding the issues raised in this Motion.

24 With respect to exhaustion, Plaintiff proposed a framework consistent with
25 the Court's April 23, 2026 Order, including a stipulated stay conditioned on
26 Defendants initiating proceedings in the Agua Caliente Band of Cahuilla Indians
27 ("ACBCI") Tribal Court within a defined timeframe. Defendants declined that
28

1 proposal and confirmed in writing that they "will not be initiating proceedings in
2 the ACBCI Tribal Court."

3 With respect to dismissal under Rule 12(b)(6), Plaintiff identified the
4 deficiencies in Defendants' Counterclaim, including that the claims arise from the
5 same underlying lease and possession dispute and fail to state viable causes of
6 action independent of that dispute.

7 With respect to Rule 12(f), Plaintiff identified categories of affirmative
8 defenses that are not cognizable, are pled in conclusory or boilerplate form
9 without supporting facts, or depend on issues Defendants declined to pursue in the
10 Tribal Court. Plaintiff invited Defendants to withdraw or amend such defenses to
11 narrow the issues.

12 Defendants did not agree to withdraw or amend the identified defenses or
13 otherwise resolve the issues raised.

14 Plaintiff has engaged in good faith efforts to meet and confer and remains
15 willing to further narrow the issues; however, in light of the Court's order lifting
16 the stay and the need to preserve applicable deadlines, Plaintiff proceeds with
17 filing.

18
19 Dated: May 5, 2026

20
21 Respectfully submitted,

22 /s/David Earl Jacobs

23 David Earl Jacobs,

24 Attorney for Plaintiff and Counter-defendant

25 William Ulysses McGlamary, II
26
27
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion presents the issue identified by the Court: whether this case
4 should proceed in light of Defendants' failure to exhaust available Tribal Court
5 remedies.

6 It should not.

7 Defendants' Counterclaim arises from a single dispute concerning the Lease,
8 alleged defaults, cure, assignment, termination, and possession. Defendants
9 appeared in Tribal Court, participated in the proceeding, and allowed default
10 judgment to be entered. Plaintiff thereafter offered to stipulate to setting aside that
11 judgment so the dispute could be litigated on the merits in Tribal Court. (Jacobs
12 Decl. 4, Ex. A.) Defendants did not accept that proposal.

13 Plaintiff again proposed a framework under which Defendants would
14 initiate Tribal Court proceedings, including a stipulated stay tied to exhaustion.
15 (Id. 6, Ex. B.) Defendants responded in writing that they "will not be initiating
16 proceedings in the ACBCI Tribal Court." (Id. 7, Ex. C.)

17 Defendants thus declined to pursue available Tribal Court remedies and
18 now seek to litigate the same underlying dispute through counterclaims and
19 affirmative defenses in this Court.

20 Under controlling law, such claims may not proceed absent exhaustion.
21 Even if the Court were to reach the merits, the Counterclaim fails as a matter of
22 law.

23 Plaintiff also moves to strike certain affirmative defenses that attempt to
24 relitigate unexhausted issues or are otherwise legally insufficient.

25
26 **II. LEGAL STANDARD**

27 **A. Rule 12(b)(1) - Tribal Exhaustion**

28 Before a federal court adjudicates issues implicating tribal adjudicatory

1 authority, parties must exhaust available tribal remedies. *Nat'l Farmers Union Ins.*
2 *Cos. v. Crow Tribe*, 471 U.S. 845, 856-57 (1985); *Iowa Mut. Ins. Co. v. LaPlante*,
3 480 U.S. 9, 16 (1987).

4
5 B. Rule 12(b)(6)

6 To survive a motion to dismiss, a pleading must contain sufficient factual
7 matter to state a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662,
8 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007).

9 Where claims depend on a written agreement, the Court may consider that
10 agreement, and allegations inconsistent with its terms do not control. *Sprewell v.*
11 *Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

12
13 C. Rule 12(f)

14 The Court may strike insufficient defenses or immaterial matter. *Fantasy,*
15 *Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993). Defenses must provide fair
16 notice and factual support. *Wyshak v. City Nat'l Bank*, 607 F.2d 824, 827 (9th Cir.
17 1979).

18
19 **III. DEFENDANTS FAILED TO EXHAUST TRIBAL REMEDIES**

20 Defendants were given a clear opportunity to pursue relief in Tribal Court
21 and declined it.

22 Plaintiff offered to stipulate to setting aside the default judgment so the
23 dispute could be litigated on the merits in Tribal Court. (Jacobs Decl. 4, Ex. A.)
24 Defendants did not pursue that option.

25 Plaintiff later proposed a structured path forward consistent with the Court's
26 framework, including a stipulated stay tied to initiation of Tribal Court
27 proceedings. (Id. 6, Ex. B.) Defendants rejected that approach and stated
28 unequivocally that they "will not be initiating proceedings in the ACBCI Tribal

1 Court." (Id. 7, Ex. C.)

2 Defendants cannot decline to pursue available tribal remedies and then
3 litigate the same issues here.

4 Defendants' position is not that Tribal Court remedies are unavailable,
5 inadequate, or futile. To the contrary, the record reflects that Defendants were
6 expressly offered the opportunity to return to the Tribal Court and litigate the
7 dispute on the merits, and declined to do so. (Jacobs Decl. 4-8.) Their written
8 statement that they "will not be initiating proceedings in the ACBCI Tribal Court"
9 confirms that this is not a case of unavailable remedies, but of remedies
10 deliberately refused. Under these circumstances, exhaustion is not merely
11 required—it is dispositive.

12 This is precisely the issue identified by the Court in its April 23, 2026
13 Order: whether the case should proceed in light of exhaustion. Defendants' refusal
14 to pursue Tribal Court remedies answers that question.

15 This is not a case in which Defendants attempted to exhaust and were
16 prevented from doing so. Nor is it a case in which Tribal Court remedies are
17 uncertain or unavailable. It is a case in which Defendants were given a clear
18 opportunity to return to the Tribal Court, were offered a stipulation to set aside the
19 judgment, and expressly declined to do so. Under these circumstances, allowing
20 Defendants to proceed here would defeat the purpose of the exhaustion doctrine
21 by permitting a party to bypass the tribal forum altogether.

22

23 **IV. THE COUNTERCLAIM SEEKS TO RELITIGATE THE**
24 **UNDERLYING DISPUTE**

25 Defendants' claims arise from Plaintiff's enforcement of the Lease, including
26 alleged default, cure, assignment, termination, and possession. These are the same
27 issues that were or should have been addressed in Tribal Court.

28 If these claims were permitted to proceed, this action would necessarily

1 expand into a full adjudication of lease compliance, default, and possessory
2 rights-the very issues that fall within the Tribal Court's authority and that
3 Defendants declined to pursue there. The exhaustion doctrine exists to prevent
4 precisely that result.

5 A party may not recast a dispute over contractual and possessory rights as
6 independent tort claims. See *Erlich v. Menezes*, 21 Cal. 4th 543, 551 (1999)
7 (contract breaches do not become torts absent independent duty).

8
9 **V. EVEN IF CONSIDERED, THE COUNTERCLAIM FAILS UNDER**
10 **RULE 12(b)(6)**

11 Each of Defendants' claims arises from the same underlying dispute
12 concerning lease enforcement, default, and possession-issues that were or should
13 have been addressed in the Tribal Court. Defendants cannot avoid exhaustion by
14 recasting that dispute as tort or statutory claims.

15
16 A. First Cause of Action - Wrongful Eviction

17 This claim challenges the validity of eviction proceedings and resulting
18 possession determinations. It is inseparable from the Tribal Court proceedings
19 and barred. Litigation-related conduct is privileged and cannot form the basis for
20 tort liability. *Silberg v. Anderson*, 50 Cal. 3d 205, 212 (1990) (litigation privilege
21 applies broadly to communications in judicial proceedings).

22
23 B. Second Cause of Action - Breach of Contract

24 To state a claim, Defendants must identify a specific contractual obligation
25 and breach. *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011).

26 The Lease governs assignment and transfer and requires approval or written
27 notice.

28 Defendants do not plausibly allege compliance. Where allegations

1 contradict the contract, the contract controls. *Sprewell*, 266 F.3d at 988.

2
3 C. Third Cause of Action - Implied Covenant

4 The implied covenant claim duplicates the contract claim and attempts to
5 impose obligations inconsistent with the Lease. *Guz v. Bechtel Nat'l, Inc.*, 24 Cal.
6 4th 317, 349-50 (2000).

7
8 D. Fourth Cause of Action - Interference

9 Defendants do not allege a valid expectancy, a compliant assignment
10 request, or independently wrongful conduct. *Korea Supply Co. v. Lockheed*
11 *Martin Corp.*, 29 Cal. 4th 1134, 1153-59 (2003).

12
13 E. Fifth Cause of Action - UCL

14 The claim is derivative and fails because the underlying claims fail.
15 *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999).
16 The UCL also provides only equitable relief, not damages. *Id.* at 179.

17
18 F. Sixth Cause of Action - Nuisance

19 A nuisance claim requires control over the condition causing harm. See
20 *Melton v. Boustred*, 183 Cal. App. 4th 521, 542 (2010).
21 Defendants do not plausibly allege control, duty, or causation.

22
23 G. Seventh Cause of Action - Negligence

24 The economic loss rule bars recovery for purely economic damages arising
25 from contract. *Erlich*, 21 Cal. 4th at 551-52; see also *Rattagan v. Uber Techs.,*
26 *Inc.*, 17 Cal. 5th 1, 31-32 (2024).

27
28 H. Eighth Cause of Action - Trespass

1 Trespass requires unauthorized physical entry. *Civic W. Corp. v. Zila*
2 *Indus., Inc.*, 66 Cal. App. 3d 1, 16 (1977).

3 No such entry is alleged.

4
5 I. Ninth Cause of Action - Federal Leasing Violations

6 Federal statutes create private rights of action only where Congress clearly
7 intends. *Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2001).

8 No such right exists here.

9
10 J. Tenth Cause of Action - Setoff

11 Setoff is a remedy, not an independent cause of action.

12
13 K. Eleventh Cause of Action - Declaratory Relief

14 Declaratory relief requires a viable underlying claim. *Jenkins v. JPMorgan*
15 *Chase Bank, N.A.*, 216 Cal. App. 4th 497, 514-15 (2013).

16
17 **VI. MOTION TO STRIKE AFFIRMATIVE DEFENSES**

18 A. Meet and Confer and Timing

19 Plaintiff engaged in a meet and confer process and invited Defendants to
20 withdraw or amend deficient defenses. (Jacobs Decl. 9-13.) Defendants declined.

21 This motion is filed following the Court's April 23, 2026 order lifting the
22 stay and is necessary to preserve applicable deadlines. Allowing these defenses to
23 proceed would invite relitigation of unexhausted issues through a different
24 procedural posture.

25
26 B. Defenses Based on Unexhausted Issues

27 Defendants assert defenses based on alleged default, performance, and
28 justification. These depend on issues Defendants refused to litigate in Tribal

1 Court. (Jacobs Decl. 4-8.)

2 Such defenses are improper and should be stricken.

3

4 C. Non-Cognizable Defenses

5 Setoff and reservation of rights are not affirmative defenses and should be
6 stricken.

7

8 D. Boilerplate Defenses

9 Several defenses are conclusory and unsupported by facts and should be
10 stricken under *Wyshak*.

11

12 **VII. DISMISSAL SHOULD BE WITH PREJUDICE**

13 The defects are legal and not curable. Leave to amend should be denied.
14 *Foman v. Davis*, 371 U.S. 178, 182 (1962).

15

16 **VIII. CONCLUSION**

17 Defendants were given a clear opportunity to litigate their dispute in the
18 Tribal Court and declined to do so. They now seek to litigate that same dispute in
19 this Court through counterclaims and affirmative defenses. The exhaustion
20 doctrine does not permit that result. This case should proceed, if at all, within the
21 framework identified by the Court-not as a substitute forum for issues Defendants
22 chose not to pursue in the Tribal Court.

23 The Counterclaim should be dismissed, or alternatively stayed pending
24 exhaustion, and the identified affirmative defenses should be stricken to prevent
25 expansion of the case beyond the limited issues properly before the Court.

26 ///

27 ///

28 ///

1 For the foregoing reasons, Plaintiff William Ulysses McGlamary, II
2 respectfully requests that the Court: (1) Dismiss Defendants' Counterclaim in its
3 entirety; (2) or, in the alternative, Stay these proceedings pending the total
4 exhaustion of tribal remedies; and (3) Strike the identified affirmative defenses.
5 This will prevent the expansion of this case beyond the limited comity issues
6 properly before this Court.

7
8 Dated: May 5, 2026

9 Respectfully submitted,

10 /s/David Earl Jacobs

11 David Earl Jacobs,

12 Attorney for Plaintiff and Counter-defendant

13 William Ulysses McGlamary, II
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