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12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION
15

16 WILLIAM ULYSSES McGLAMARY,
17 II,
18 Plaintiff,
19 vs.
20 D&L REAL ESTATE ENTERPRISES,
LLC and Danlon, Inc.,
21 Defendants.

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

**DEFENDANTS AND COUNTER-
PLAINTIFFS' OPPOSITION TO
PLAINTIFF AND COUNTER-
DEFENDANT'S MOTION TO
DISMISS OR, IN THE
ALTERNATIVE, TO STAY
PROCEEDINGS PENDING
EXHAUSTION OF TRIBAL
REMEDIES; MOTION TO STRIKE
AFFIRMATIVE DEFENSES**

22 D&L REAL ESTATE ENTERPRISES,
23 LLC and Danlon, Inc.
24 Counter-Plaintiffs,
25 vs.
26 WILLIAM ULYSSES McGLAMARY,
27 II; and DOES 1-10.
28 Counter-Defendants.

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1 **I. INTRODUCTION**

2 Plaintiff and Counter-Defendant William Ulysses McGlamary, II (“Plaintiff”)
3 wrongfully asks this Court to dismiss or stay Defendants and Counter-Plaintiffs D&L
4 Real Estate Enterprises, LLC and Danlon, Inc.’s (“Defendants”) Counterclaim on the
5 ground that Defendants failed to “exhaust tribal remedies” and failed to “state a claim
6 upon which relief can be granted,” as well as to strike some of Defendants’ affirmative
7 defenses. Plaintiff’s motion rests on three false premises: that (1) Defendants’
8 Counterclaim should properly be heard by the Agua Caliente Band of Cahuilla Indians
9 (“ACBCI”) Tribal Court (“Tribal Court”); (2) Defendants had meaningful, available,
10 and adequate tribal remedies to exhaust; and (3) they simply chose not to pursue them.
11 None are true. Plaintiff’s strategy is transparent: force this dispute back to the very
12 forum that denied Defendants any meaningful opportunity to be heard, stripped their
13 answer on an invented procedural ground, and entered a default judgment without
14 affording Defendants the chance to present a defense—i.e., let history repeat itself.

15 The threshold question is not whether Defendants “exhausted” tribal
16 remedies—it is whether the Counterclaim is properly before this Court. It is: (1) the
17 Tribal Court lacks authority to hear a Counterclaim based on a lease it already
18 invalidated in a final, non-appealable order; (2) the Counterclaim asserts original
19 federal question jurisdiction under 28 U.S.C. § 1331, arising from federal questions
20 concerning Indian trust and allotted land governed by 25 U.S.C. § 415 and 25 C.F.R.
21 Part 162; (3) the Counterclaim is compulsory under Federal Rule of Civil Procedure
22 13(a); (4) there is no consensual relationship between the parties, a BIA-approved
23 Lease, and a Tribal Court that did not exist when the Lease was executed; and (5) this
24 Court has already confirmed federal question jurisdiction over this entire action.

25 The exhaustion doctrine was designed to give a tribal court the first opportunity
26 to determine its own jurisdiction over a proceeding pending before it—not to force a
27 party to initiate affirmative claims in a tribal court that has no pending proceeding on
28 those claims, already issued a final non-appealable judgment, provides no mechanism

1 for the relief sought, and was created after the contract at issue. Exhaustion is *also*
2 *per se* futile because no appellate remedy exists. The Tribal Court’s own governing
3 rules expressly provide that “the decision of the Tribal Court is final and that there is
4 no right to an appeal.” ACBCI Ordinance, App. A, Art. I, § III. Plaintiff has never
5 identified what specific proceeding Defendants would initiate in the Tribal Court—
6 because no such proceeding exists. Moreover, exhaustion is independently excused
7 because: (1) Plaintiff’s invocation of the exhaustion doctrine is motivated by bad faith
8 and a desire to harass; (2) exhaustion would be futile because Defendants were denied
9 any adequate opportunity to challenge the Tribal Court’s jurisdiction; and (3) it is
10 plain that the Tribal Court lacked jurisdiction.

11 The motion to strike is equally meritless. Rule 12(f) motions to strike are
12 disfavored and the defenses asserted are well-pleaded and legally cognizable.

13 Finally, both motions are independently subject to denial on procedural
14 grounds: Plaintiff failed to comply with the seven-day meet-and-confer requirement
15 of Local Rule 7-3 with respect to the mandatory Rule 12(b)(6) component of the
16 motion to dismiss and the Rule 12(f) motion to strike affirmative defenses.

17 For all of these reasons, the Motion should be denied in its entirety.

18 **II. STATEMENT OF RELEVANT FACTS**

19 **A. The BIA Lease and Defendants’ Long-Standing Leasehold**

20 The underlying lease is a BIA Lease, executed July 30, 2002 and BIA-approved
21 September 18, 2002, pursuant to 25 U.S.C. § 415 and 25 C.F.R. Part 162. [Dkt. No.
22 11, Declaration of Lonnie Landers (“Landers Decl.”), ¶ 3, Ex. A.] Importantly, the
23 Lease contains no tribal-forum-selection clause, no choice-of-tribal-law provision,
24 and no express waiver or consent submitting disputes to a Tribal Court. [*Id.*] Instead,
25 it is governed by federal law and California law. [*Id.*]

26 Equally important, the Tribal Court did not exist when the Lease was executed
27 or assigned. [*Id.*, ¶ 10.] Every alleged breach that forms the basis of this action
28 occurred before the Tribal Court was created in October 2024. [*Id.*, ¶¶ 8–9.]

1 **B. Plaintiff’s Manufactured Breaches and Bad-Faith Conduct**

2 Beginning as early as 2017—years before any alleged default—Plaintiff and
3 his *current* counsel engaged in a systematic course of conduct designed to dispossess
4 Defendants of their leasehold interest, erode its value, and undermine Defendants’
5 operations, apparently to evade the Lease’s beneficial twenty-five-year renewal
6 provision and capture the economic value of the Lease for themselves. [*Id.*, ¶ 8.]

7 For example, in 2019, when a family medical emergency temporarily affected
8 Defendants’ ability to manage the business, causing a small number of late payments,
9 Plaintiff’s *current* counsel immediately served a Notice of Termination and demanded
10 onerous changes to the Lease—including increased fees, elimination of Defendants’
11 twenty-five-year renewal rights, and additional payment demands—as a precondition
12 to approving any assignment. [*Id.*, ¶ 8(b).] Although Defendants quickly became
13 current, Plaintiff’s *current* counsel next sent correspondence in October 2019
14 claiming that Danlon—a valid Affiliate paying rent since 2012—was an unauthorized
15 sublessee, refused to acknowledge Danlon as an affiliate, and instructed the BIA to
16 reject lease payments made by Danlon to manufacture a breach unless Defendants
17 agreed to materially renegotiate the Lease on unfavorable terms. [*Id.*, ¶ 8(c).]

18 Plaintiff and his *current* counsel repeatedly obstructed Defendants’ good-faith
19 efforts to assign or sell their leasehold interest by clouding title, unreasonably
20 withholding consent to qualified buyers, claiming “incurable defaults,” or refusing to
21 process assignments altogether—causing numerous escrows to be opened and
22 subsequently cancelled. [*Id.*, ¶ 8(d).] Plaintiff refused to accept tender unless
23 Defendants agreed to fundamentally renegotiate the Lease, including eliminating the
24 twenty-five-year renewal option and increasing future rent, despite Defendants having
25 spent hundreds of thousands of dollars on leasehold improvements. [*Id.*, ¶ 8(e).]
26 Plaintiff’s *current* counsel stated in writing *he* would “never” approve assignment of
27 the Lease with the renewal option in place, making clear the goal was to block
28 Defendants’ contractual rights and extract additional economic benefit. [*Id.*, ¶ 8(f).]

1 After materially injuring Defendants’ business, Plaintiff and his *current*
2 counsel also interfered with Defendants’ ability to cure any alleged defaults by
3 demanding the BIA require an unreasonable and excessive bond of \$100,000 within
4 an unreasonably short five days—a demand neither authorized nor required by the
5 Lease—again purposely preventing cure. [*Id.*, ¶ 8(g).]

6 **C. Plaintiff’s Forum-Shopping and the Tribal Court Proceedings**

7 To capitalize on manufactured breaches, Plaintiff first improperly pursued
8 wrongful eviction in the Riverside County Superior Court (based on a three-day notice
9 to quit inapplicable to BIA leases). [*Id.*, ¶ 9.] However, on May 8, 2024, the state
10 court sustained Defendants’ demurrer, dismissing for lack of subject matter
11 jurisdiction over possession claims involving Indian trust land. [*Id.*] Plaintiff next
12 seized upon the establishment of the Tribal Court—a forum that did not exist until
13 October 2024, more than two decades after the Lease was executed, and on March 21,
14 2025, Plaintiff filed a substantially similar eviction action in the Tribal Court. [*Id.*, ¶
15 10, Ex. E.] Plaintiff’s method of service (despite knowing Defendants’ counsel and
16 owner) was attaching papers to the door of the closed restaurant. [*Id.*, ¶ 11.]

17 After accidentally finding the door-hung notice, Defendants filed an answer in
18 Tribal Court on April 14, 2025, within its truncated 20-day limit. [*Id.*, ¶ 12.] At the
19 April 24, 2025 initial hearing, Plaintiff, without prior notice, orally moved to strike
20 the answer (in violation of the Tribal Court’s written notice rule), arguing entity
21 Defendants must appear through counsel—a requirement absent in the Tribal Court
22 Rules. [*Id.*, ¶ 13.] The judge took a recess to research the question, and then—after
23 indicating he would apply federal rules and allow Defendants to amend their answer
24 with counsel—inexplicably reversed course, entering default. [*Id.*, ¶¶ 14–15.]¹

25 _____
26 ¹ The Tribal Court Rules contain no provision requiring an LLC appear through
27 licensed counsel. [Dkt. No. 10, Declaration of Richard M. Freeman (“Freeman
28 Decl.”), ¶ 6.] Moreover, the Tribal Court’s selective invocation of federal law is
inconsistent and independently violates due process: the court reached into federal

1 **D. The Default Judgment and the Race to State Court**

2 As a result, the April 28, 2025 default judgment awarded possession to
3 Plaintiff, as well as \$516,169 in past-due rent, \$100,125 in holdover damages, and
4 \$200 in costs (*in direct contravention of lease terms*) and declared the Lease forfeited
5 based on Plaintiff’s pleadings alone and without any opportunity for Defendants to
6 (1) appear, and (2) be heard. [Dkt. No. 11, Landers Decl., ¶ 15, Ex. G.] Plaintiff then
7 raced to state court to initiate the comity proceeding on May 9, 2025, before
8 Defendants’ 14-day window to request reconsideration even expired. [*Id.*, ¶ 18.]

9 **E. Denial Of Remand**

10 This action was removed to federal court on June 6, 2025. [Dkt. No. 1.]
11 Following removal, Defendants extended every professional courtesy to Plaintiff,
12 including agreeing to multiple extensions of Plaintiff’s filing deadlines without
13 condition. [Declaration of Luke J. Bickel (“Bickel Decl.”), at ¶ 11, Ex. C.]

14 On March 10, 2026, Plaintiff filed his Motion to Remand, contending this Court
15 lacked subject matter jurisdiction. [Dkt. No. 29.] On April 23, 2026, the Court denied
16 the Motion to Remand in its entirety. [Dkt. No. 37 (the “Order”).] The Court held
17 that under controlling Ninth Circuit authority, an action to enforce a tribal court’s
18 default judgment against a nonmember “presents a substantial issue of federal law”
19 sufficient for federal question jurisdiction, and that even assuming Defendants failed
20 to exhaust tribal remedies, remand to state court was not the appropriate relief. [*Id.*]

21
22 _____
23 law to impose a counsel requirement, yet simultaneously incredibly refused to apply
24 the federal rule that an entity whose pleading is stricken for lack of counsel must be
25 afforded a reasonable opportunity to retain representation before default is entered.
26 *See United States v. High Country Broad. Co., Inc.*, 3 F.3d 1244, 1245 (9th Cir. 1993).
27 Moreover, the Tribal Court Rules expressly require motions be made upon notice and
28 proper service. ACBCI Ordinance, App. A, Art. III, § III. Plaintiff’s motion to strike
Defendants’ Answer was made orally without any notice or service upon Defendants.
[Dkt. No. 11, Landers Decl., ¶ 13.] The Tribal Court nonetheless granted the motion
on the spot in direct contravention of its own rules. [*Id.*, ¶¶ 13–14, Ex. F.]

1 **F. Inadequate Meet and Confer and Bad Faith**

2 On April 26, 2026, just three days after this Court’s Order, Plaintiff’s counsel
3 sent a meet-and-confer letter proposing a stipulated stay tied to Defendants initiating
4 proceedings in the Tribal Court. [Bickel Decl., at ¶ 4.] On April 28, 2026,
5 Defendants’ counsel explained they were reviewing the letter and would respond that
6 week. [*Id.*, at ¶ 5.] That same day, Plaintiff’s counsel demanded a response, stating
7 he wanted to file his motion “that week.” [*Id.*]

8 On April 29, 2026, Defendants’ counsel proposed a call for 2:00 p.m. and sent
9 a comprehensive written response addressing each issue, including that Plaintiff had
10 “conspicuously not identified in [his] proposed stipulation what proceeding [he was]
11 envisioning Defendants file in the Tribal Court.” [*Id.*, at ¶ 6.] After receiving this
12 email, Plaintiff’s counsel skipped the call, stating, “[i]t appears Defendants do not
13 intend to initiate any proceeding in the Tribal Court. In that case, we will proceed
14 with filing the motion.” [*Id.*, at ¶ 7.]

15 Defendants’ counsel requested hearing dates of June 22 or June 29, 2026. [*Id.*,
16 at ¶ 8.] Plaintiff’s counsel rejected those dates and insisted on the “first available”
17 date. [*Id.*] Defendants’ counsel explained good cause—pending motions,
18 depositions, trial and arbitration commitments, and counsel being gone for a week in
19 May—and reminded Plaintiff that Defendants had been “very accommodating when
20 it came to the briefing schedule on [Plaintiff’s] remand motion” and had “extend[ed]
21 those courtesies without condition.” [*Id.*] This request was denied.

22 On April 30, 2026, (*only five days before filing the present motion*) Plaintiff’s
23 counsel raised, for the first time, Rule 12(b)(6) grounds for dismissal of the
24 Counterclaim. [*Id.*, at ¶ 12.] Defendants’ counsel observed that Plaintiff’s counsel
25 had altered the email chain by removing Defendants’ prior emails—including
26 requests for a reasonable briefing schedule and their showing of good cause. [*Id.*]
27 When Defendants’ counsel addressed this, Plaintiff’s counsel responded Defendants
28 had “plenty of man power to include associates, paralegals, legal secretaries and

1 secretaries to assist you on silly little matters like 14 vs 12 point type. I do not.
2 Courtesy, or lack thereof, begets courtesy, or lack thereof.” [*Id.*] On May 1, 2026,
3 Defendants’ counsel provided a substantive written response addressing each of
4 Plaintiff’s newly raised Rule 12(b)(6) arguments. [*Id.*, at ¶ 13.]

5 On May 4, 2026 (*one day before filing the present motion*) Plaintiff’s counsel
6 raised for the first time a potential Rule 12(f) motion to strike affirmative defenses,
7 identifying three general categories of allegedly deficient defenses but declining to
8 specify which of Defendants’ thirty-two affirmative defenses fell into which category.
9 [*Id.*, at ¶ 14.] Defendants’ counsel responded the same day, requesting Plaintiff
10 identify each challenged defense by number and articulate the grounds for each
11 challenge. [*Id.*] Plaintiff refused. [*Id.*] On May 5, 2026, Defendants’ counsel
12 reiterated: “We want to be clear that we are not trying to be difficult, and we are
13 attempting to engage in the meet and confer process in good faith. . . Without that
14 specificity, we simply cannot provide an accurate or meaningful response, assess
15 which, if any, defenses to withdraw or amend, or meaningfully narrow the issues in
16 dispute.” [*Id.*, at ¶ 15.] Without further communication, Plaintiff filed his motion that
17 same day. [*Id.*] Thus, Plaintiff’s counsel began the meet and confer process on April
18 30, 2026, with respect to his 12(b)(6) motion, and May 4, 2026, with respect to his
19 12(f) motion, both filed on May 5, 2026, before the expiration of the seven-day rule.

20 **III. LEGAL STANDARD**

21 Federal courts have original jurisdiction under 28 U.S.C. § 1331 over civil
22 actions arising under the Constitution, laws, or treaties of the United States, and
23 supplemental jurisdiction under 28 U.S.C. § 1367(a) over claims so related as to form
24 part of the same case or controversy. A counterclaim that independently arises under
25 federal law is properly before a federal district court. *Levin Metals Corp. v. Parr-*
26 *Richmond Terminal Co.*, 799 F.2d 1312, 1315 (9th Cir. 1986).

27 A federal court must *generally* require exhaustion of tribal court remedies.
28 *Nat’l Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 857

1 (1985). Exhaustion is a prudential, comity-based doctrine—not a jurisdictional
2 requirement—designed to allow tribal courts a full opportunity, *including appellate*
3 *review where it exists*, to determine their own jurisdiction. *Strate v. A-1 Contractors*,
4 520 U.S. 438, 451 (1997). However, the Ninth Circuit recognizes four exceptions:

- 5 (1) an assertion of tribal jurisdiction is motivated by a desire to harass
or is conducted in bad faith;
- 6 (2) the action is patently violative of express jurisdictional prohibitions;
- 7 (3) exhaustion would be futile because of the lack of adequate
opportunity to challenge the court’s jurisdiction; or
- 8 (4) it is plain that no federal grant provides for tribal governance of
nonmembers’ conduct on land covered by Montana’s main rule.

9 *Grand Canyon Skywalk Dev., LLC v. ‘Sa’ Nyu Wa Inc.*, 715 F.3d 1196, 1200 (9th Cir.
10 2013); *see also Nevada v. Hicks*, 533 U.S. 353, 369 (2001). Moreover, the doctrine
11 requires exhaustion only of available remedies. *See Iowa Mut. Ins. Co. v. LaPlante*,
12 480 U.S. 9, 16-17 (1987). Where no tribal remedy remains, there is nothing left to
13 exhaust. *Johnson v. Gila River Indian Cmty.*, 174 F.3d 1032, 1036 (9th Cir. 1999)
14 (“if a functioning appellate court does not exist, exhaustion is per se futile.”).

15 **IV. ARGUMENT**

16 **A. The Counterclaim Must Be Heard in Federal Court**

17 **1. The Tribal Court Has No Authority Over The Counterclaim**

18 Plaintiff bears the burden of establishing that the Tribal Court had jurisdiction
19 over Defendants—he has not come close to meeting it. As the party invoking tribal
20 court jurisdiction, Plaintiff must affirmatively demonstrate that the Tribal Court
21 possessed both subject matter and personal jurisdiction over Defendants. *See Wilson*
22 *v. Marchington*, 127 F.3d 805, 810–11 (9th Cir. 1997). Curiously, Plaintiff’s
23 memorandum does not even contain the word “jurisdiction.” Instead, he shifts the
24 burden to Defendants. That is not how the law works. Regardless, the Tribal Court
25 lacked jurisdiction on multiple independent grounds.

26 *First*, a tribe’s adjudicative jurisdiction does not exceed its legislative
27 jurisdiction. *Strate*, 520 U.S. at 453. The threshold inquiry is therefore “whether the
28 [Tribe]—either as an exercise of their inherent sovereignty or under grant of federal

1 authority—can regulate” the conduct at issue. *Hicks*, 533 U.S. at 358. The Supreme
2 Court has left open whether adjudicative jurisdiction may be narrower still,
3 acknowledging that “[t]hat formulation leaves open the question whether a tribe’s
4 adjudicative jurisdiction over nonmember defendants equals its legislative
5 jurisdiction.” *Id.* Thus, even if the Tribe possessed some residual legislative authority
6 over allotted trust lands—which Defendants dispute—it would not follow that it may
7 exercise adjudicative jurisdiction over a BIA-approved commercial lease to which the
8 Tribe is not a party. Public Law 280 further constrains any such residual authority.
9 As this federal district court held in *City of Palm Springs*—a case arising from the
10 very same checkerboard allotted lands at issue here—“whatever attributes of
11 sovereignty [the Tribe] do possess may be overridden, suppressed or entirely
12 eliminated by Acts of Congress, which has plenary authority over Indian lands.” *See*
13 *Agua Caliente Band of Mission Indians’ Tribal Council v. City of Palm Springs*, 347
14 F.Supp.42, 50 (C.D. Cal. 1972). Subsection (c) of 28 U.S.C. § 1360 provides that
15 tribal ordinances are enforceable only “if not inconsistent with any applicable civil
16 law.” *Id.* Because Congress has divested the Tribe of legislative authority superior
17 to the state over these allotted lands, the Tribal Court cannot possess adjudicative
18 jurisdiction exceeding that diminished legislative authority. *Strate*, 520 U.S. at 453.

19 *Second*, there is no relevant consensual relationship between the nonmember
20 and the tribe or its members, with a nexus to the regulation imposed. *See Atkinson*,
21 532 U.S. at 656 (“[A] nonmember’s consensual relationship in one area . . . does not
22 trigger tribal civil authority in another.”). The BIA-approved Lease is between
23 Defendants and an individual allottee—not the Tribe. The Tribe is not a party to the
24 Lease, exercised no approval authority over it, and is not a party to this action. The
25 Lease contains no tribal-forum-selection clause, no choice-of-tribal-law provision,
26 and no express submission to tribal adjudicative authority. Moreover, the Tribal
27 Court is an arm of the Tribe itself, and its judge accordingly owes an inherent loyalty
28 to the Tribe and its members creating a structural conflict of interest that makes the

1 voluntary consent of a non-Indian party critical to the exercise of tribal adjudicative
2 authority. *See Acres Bonusing, Inc. v. Marston*, 17 F.4th 901, 905 (9th Cir. 2021).
3 Absent a consensual relationship, Defendants cannot be compelled to litigate in a
4 forum whose adjudicator is, by design, an instrumentality of the opposing sovereign.

5 *Third*, the BIA—not the Tribe—exercised exclusive authority over this Lease.
6 Allotment leases on individually held trust land are subject to direct BIA supervision,
7 approval, and oversight—not tribal governance. *See* 25 C.F.R. Part 162, Subparts C–
8 D. The Lease was “entered into pursuant to the provisions of the Act of August 9,
9 1955, as amended and as subsequently modified, 25 U.S.C. 415, as implemented by
10 Part 162 – Leasing and Permitting – of the Code of Federal Regulations, Title 25
11 Indians.” [Dkt. No. 10, Ex. A (BIA Lease No. PSL-360), at 1.] Rent is payable to
12 “the BUREAU OF INDIAN AFFAIRS, for the account of Lessor,” [*id.* § 5], and the
13 Lease is governed “exclusively by the provisions hereof and by the laws of the United
14 States and, to the extent applicable, California law”—with no reference to tribal law
15 or tribal court jurisdiction, [*id.* § 36.11]. Defendants’ sole relationship was with an
16 individual allottee under a federally supervised instrument.

17 *Fourth*, the Tribe exercised no governmental functions over the Premises.
18 Based on approximately two decades of operating Wang’s In The Desert at 424 South
19 Indian Canyon Drive, Palm Springs, California, its owner Lonnie Landers attests that
20 regulatory authority over alcohol licensing and food safety oversight at the Premises
21 was exercised by the County of Riverside, not the ACBCI; that police authority over
22 the Premises and the surrounding area was exercised by the City of Palm Springs, not
23 the ACBCI; and that fire protection services for the Premises were likewise provided
24 by the City of Palm Springs, not the ACBCI, with no tribal police or tribal fire services
25 operating at or serving the Premises. [Supp. Landers Decl., ¶¶ 4–6.] The ACBCI
26 reservation lands in Palm Springs are arranged in a “checkerboard” pattern of
27 alternating tribal and non-tribal sections, such that the Premises are indistinguishable
28 from surrounding non-reservation commercial properties to any observer. *See City of*

1 *Palm Springs*, 347 F.Supp. at 44. The Tribe’s wholesale delegation of core
2 governmental functions—law enforcement, fire protection, food safety, and alcohol
3 regulation—to state and local authorities is dispositive evidence that the Tribe does
4 not exercise the sovereign authority over these lands that would support tribal
5 adjudicatory jurisdiction.

6 In sum, Plaintiff has offered no jurisdictional analysis, no identification of a
7 qualifying consensual relationship, no evidentiary showing that Defendants’ conduct
8 threatened tribal welfare, and no response to the structural deficiencies rendering the
9 Tribal Court’s jurisdiction plainly lacking. This trust land is held for the benefit of an
10 individual allottee, not the Tribe; the Lease is a BIA-approved instrument subject to
11 comprehensive federal regulation under 25 U.S.C. § 415 and 25 C.F.R. Part 162; the
12 Tribe exercised no regulatory authority over the Lease or the business conducted on
13 the Premises; and the Tribe delegated its core governmental functions to state and
14 local authorities. Under these circumstances, the trust-land status of the Premises
15 does not supply the jurisdictional basis that Plaintiff has failed to establish through
16 any other means.

17 **2. The Counterclaim is Properly Before This Court**

18 Plaintiff claims the Tribal Court is the proper forum for the Counterclaims.
19 This simply is not true. The Counterclaim was never before the Tribal Court, and the
20 exhaustion doctrine does not apply to it.

21 *First*, the exhaustion doctrine gives a tribal court the first opportunity to
22 determine its own jurisdiction over a matter pending before it. *National Farmers*
23 *Union, supra*, 471 U.S. at 856. It was never designed to force a party to initiate new,
24 affirmative claims in a tribal court that has no pending proceeding on those claims,
25 has already issued a final non-appealable judgment, provides no mechanism for relief
26 sought, and was created after the parties entered their contract. The Tribal Court’s
27 unlawful detainer action addressed only possession—it did not adjudicate wrongful
28

1 eviction, violations of 25 U.S.C. § 415 and 25 C.F.R. Part 162, tortious interference,
2 nuisance and negligence, or declaratory relief regarding Defendants’ renewal rights.

3 *Second*, the Counterclaim asserts original federal question jurisdiction under
4 28 U.S.C. § 1331 because the underlying dispute presents federal questions
5 concerning the rights to possession, use, and control of Indian trust and allotted land
6 governed by federal statutes, including 25 U.S.C. § 415. *See Oneida Indian Nation*
7 *v. County of Oneida*, 414 U.S. 661 (1974). The Ninth Cause of Action for violations
8 of 25 U.S.C. § 415 and 25 C.F.R. Part 162 independently arises under federal law.
9 The remaining Counterclaims are within this Court’s supplemental jurisdiction under
10 28 U.S.C. § 1367(a), as they arise out of the same case or controversy as Plaintiff’s
11 comity petition and form part of the same Article III case or controversy.

12 *Third*, the Counterclaims are compulsory under Federal Rule 13(a). Plaintiff’s
13 action seeks enforcement of the Tribal Court judgment and a writ of possession—all
14 arising from the Lease and the possessory rights to the property. Defendants’
15 Counterclaims arise from the same Lease, the same property, and the same conduct
16 by Plaintiff. Federal procedural law required Defendants to assert these counterclaims
17 here as Plaintiff’s Comity Petition is properly in federal court.

18 *Fourth*, the BIA-approved Lease—a federally approved instrument entered
19 pursuant to 25 U.S.C. § 415 and 25 C.F.R. Part 162—contractually requires federal
20 and, to the extent applicable, California law, and makes no reference to any tribal
21 court forum or law. [Dkt. 10, Ex. A, § 30; § 36.11.] The Tribal Court did not exist
22 when the Lease was executed in 2002. Plaintiff cannot demand exhaustion of a forum
23 the parties never agreed to and that the governing instrument does not recognize.

24 *Fifth*, this Court has already confirmed federal question jurisdiction over this
25 entire action, holding that an action to enforce a tribal court’s default judgment against
26 a nonmember “presents a substantial issue of federal law” sufficient for federal
27 question jurisdiction. [Dkt. No. 37 (citing *Coeur d’Alene Tribe v. Hawks*, 933 F.3d
28 1052, 1057 (9th Cir. 2019)).]

1 Thus, this Court is the proper forum for adjudication of Defendants’ claims.

2 **3. Plaintiff Failed to Comply with Local Rule 7-3**

3 As a separate procedural matter, the Rule 12(b)(6) component of this motion
4 should be denied for failure to comply with L.R. 7-3’s meet-and-confer requirement.

5 Plaintiff’s counsel first raised Rule 12(b)(6) grounds on April 30, 2026. [Bickel
6 Decl., at ¶ 12.] Plaintiff filed his motion on May 5, 2026—only five days later. Local
7 Rule 7-3 requires that the meet-and-confer conference “take place in person, by
8 telephone, or via video conference at least 7 days prior to the filing of the motion.”
9 L.R. 7-3. No such conference occurred. The Court “may decline to consider a motion
10 unless it meets the requirements of L.R. 7-3 through 7-8.” L.R. 7-4. The Rule
11 12(b)(6) portion should be denied on that independent procedural ground.

12 **B. Exhaustion Would be *Per Se* Futile**

13 As a threshold matter, the exhaustion doctrine does not apply to the
14 Counterclaim. The exhaustion rule applies to challenges to tribal court jurisdiction
15 over proceedings pending in tribal court—not to affirmative counterclaims raising
16 independent federal statutory questions that were never subject to tribal court
17 proceedings. *Nat’l Farmers Union, supra*, 471 U.S. at 856–57. Moreover, Plaintiff’s
18 demand that Defendants exhaust tribal remedies with respect to the Counterclaim is
19 particularly untenable given that the Tribal Court has already entered a final, non-
20 appealable judgment declaring the Lease forfeited. Defendants’ Counterclaims are
21 premised on the validity and enforceability of that very Lease. Plaintiff is asking this
22 Court to compel Defendants to pursue claims based on a Lease that the Tribal Court—
23 in the same proceeding Plaintiff now invokes—has already declared void and
24 forfeited through a wholly defective default proceeding. There is no coherent theory
25 under which Defendants could litigate Counterclaims premised on a subsisting
26 leasehold interest before the same forum that has already extinguished that interest.

27 **1. *Even if Required, Exhaustion is Already Complete***

28

1 *Even if exhaustion were required*, it is already complete as a matter of law. The
2 Tribal Court’s own governing rules expressly provide that “the decision of the Tribal
3 Court is final and that there is no right to an appeal.” ACBCI Ordinance, App. A, Art.
4 I, § III. Where a tribal court’s own rules categorically foreclose appellate review,
5 there is no remedy to exhaust. Plaintiff has never identified what specific proceeding
6 Defendants would initiate in the Tribal Court—because no such proceeding exists.
7 Nor could one exist in any meaningful sense: the Tribal Court has already entered a
8 final judgment declaring the Lease forfeited. Any proceeding Defendants might
9 initiate would be premised on a Lease that the same court has already declared void.
10 Plaintiff cannot simultaneously rely on the Tribal Court’s final forfeiture judgment as
11 the basis for his Comity Petition while demanding that Defendants return to that same
12 forum to litigate Counterclaims that presuppose the Lease remains in force.

13 The exhaustion doctrine requires parties to navigate through available tribal-
14 court review—including appellate review when it exists. *Iowa Mut. Ins. Co.*, *supra*,
15 480 U.S. at 16-17. Conversely, where no such review exists, exhaustion cannot
16 logically be demanded. Defendants specifically called this out in their meet-and-
17 confer correspondence, noting that they “believe that is because you cannot as no such
18 proceeding exists.” [Bickel Decl., ¶ 6.] Plaintiff has offered no answer.

19 Ninth Circuit case law confirms this. In *Grand Canyon*, the Ninth Circuit
20 reaffirmed that the futility exception applies where there is a “lack of adequate
21 opportunity to challenge the court’s jurisdiction,” identifying the paradigm cases as
22 those involving no functioning appellate court. *Grand Canyon*, *supra*, 715 F.3d at
23 1200-01. The absence of a functioning appellate process is core to the futility inquiry.

24 The ACBCI Tribal Court has no appellate process. Defendants have already
25 exhausted all available tribal remedies when the Tribal Court issued its final, non-
26 appealable default judgment. There is nothing left to exhaust. To the extent Plaintiff
27 contends a narrow post-judgment reconsideration mechanism exists, that remedy is
28 unavailable. The Tribal Court rules provide a party may request reconsideration no

1 later than 14 days after a judgment is final. [ACBCI Ordinance, App. A, Art. I, §
2 VI.]² That window has long lapsed from the April 28, 2025 default.

3 Thus, the motion to dismiss or stay on exhaustion grounds should be denied.

4 **2. *Alternatively, Defendants Are Excused From Exhaustion***

5 Even setting aside the threshold arguments above, all three remaining
6 exceptions to the exhaustion requirement apply here: (1) bad faith and desire to harass;
7 (3) futility due to lack of adequate opportunity to challenge jurisdiction; and (4) plain
8 lack of tribal court jurisdiction. *Grand Canyon, supra*, 715 F.3d at 1200.

9 a. *This is Motivated by Bad Faith and a Desire to Harass*

10 The first exhaustion exception applies where “an assertion of tribal jurisdiction
11 is motivated by a desire to harass or is conducted in bad faith.” *Nevada v. Hicks*, 533
12 U.S. 353, 369 (2001); *Elliott*, 566 F.3d at 847. Here, both the Tribal Court and
13 Plaintiff acted in bad faith, and their conduct was inextricably intertwined.

14 The Tribal Court’s conduct at the April 24, 2025 hearing was paradigmatically
15 bad faith. The judge took a recess to research whether entity defendants were required
16 to appear through counsel—a requirement found nowhere in the Tribal Court’s own
17 written rules—initially indicated there was no such requirement, stated he would
18 apply federal rules allowing Defendants to amend their answer with counsel, and then
19 reversed course and entered default a few days later, cancelling the hearing before a
20 chance to obtain counsel. A court that invents a procedural requirement, applies it
21 retroactively to strike a timely-filed answer, and refuses to afford the very remedy the
22 judge had just promised cannot be said to have conducted proceedings in good faith.

23 _____
24 ² Counsel wishing to appear in the Tribal Court must first be admitted, a process that
25 requires time and a certificate of standing from the State Bar which the Tribal Court
26 itself admits on its application should be received within “10-15 days following an
27 attorney’s receipt of the certificate of good standing which, per the State Bar, are “sent
28 within 10 to 12 business days of receipt of your request.” [Dkt 12, Exs. D-E.] Thus,
the 14-day rule combined with the admission delay would cause any reconsideration
deadline to lapse before counsel could be admitted to practice in the Tribal Court.

1 *See Wilson v. Marchington*, 127 F.3d 805, 811 (9th Cir. 1997) (evidence “that a party
2 was unable to obtain counsel” supports non-recognition of a tribal judgment). This
3 conduct reflects the exercise of power in an arbitrary and partial manner
4 fundamentally incompatible with the impartiality that comity presupposes.

5 Plaintiff’s own conduct reinforces the bad faith finding. Plaintiff made an oral
6 motion to strike Defendants’ timely-filed answer without prior written notice, without
7 service, and without affording Defendants any opportunity to respond—in direct
8 contravention of the Tribal Court’s own rules requiring that motions be made upon
9 notice and proper service. *See* [ACBCI Ordinance, App. A, Art. III, § III.] Plaintiff
10 then raced to state court to initiate the comity proceeding on May 9, 2025—before
11 Defendants’ 14-day reconsideration window had even expired. A party cannot
12 manufacture a procedural bar through its own wrongful conduct and then invoke that
13 bar as a shield. To permit such a result would reward Plaintiff’s gamesmanship and
14 punish Defendants for a failure that Plaintiff himself engineered. The bad faith
15 exception exists to prevent precisely this outcome. That Plaintiff now seeks to compel
16 Defendants back to the same forum confirms that the exhaustion argument is
17 motivated not by respect for comity, but by the calculated expectation that Defendants
18 will again be denied a fair hearing.

19 b. *No Opportunity to Challenge Tribal Court’s Jurisdiction*

20 The third exception applies where “exhaustion would be futile because of the
21 lack of an adequate opportunity to challenge the [tribal] court’s jurisdiction.” *Elliott*,
22 566 F.3d at 847. Two independent and compounding circumstances render
23 exhaustion futile here: (a) no Tribal Court appellate review, and (b) Defendants were
24 denied any meaningful opportunity to participate.

25 *First*, the Tribal Court’s own governing rules expressly provide that “the
26 decision of the Tribal Court is final and that there is no right to an appeal.” [ACBCI
27 Ordinance, App. A, Art. I, § III.] *Second*, Defendants were denied any adequate
28 opportunity to challenge the Tribal Court’s jurisdiction. The exhaustion doctrine

1 presupposes the party seeking to avoid it had a meaningful opportunity to participate
2 in tribal proceedings. Here, Defendants were never given that opportunity. The
3 Tribal Court’s selective invocation of an unwritten counsel requirement—while
4 refusing to apply the well-established federal rule that a corporation must be afforded
5 a reasonable opportunity to retain representation before default is entered—reflects
6 precisely the kind of proceeding that cannot serve as the predicate for requiring
7 exhaustion. *See United States v. High Country Broad. Co., Inc.*, 3 F.3d 1244, 1245
8 (9th Cir. 1993). A party cannot be required to “exhaust” a forum in which it was
9 denied the opportunity to participate.

10 The combination of a categorical bar on appellate review and denial of any
11 meaningful opportunity to participate renders exhaustion futile.

12
13 c. *The Tribal Court Lacked Jurisdiction, Such That
Exhaustion Would Serve No Purpose Other Than Delay*

14 The fourth exception applies when “it is ‘plain’ that tribal court jurisdiction is
15 lacking, so that the exhaustion requirement ‘would serve no purpose other than
16 delay.’” *Elliott*, 566 F.3d at 847. If “jurisdiction is ‘colorable’ or ‘plausible,’”
17 exhaustion is required; but where jurisdiction is plainly lacking, the exhaustion
18 requirement must give way. *Atwood v. Fort Peck Tribal Court Assiniboine*, 513 F.3d
19 943, 948 (9th Cir. 2008). Here, the Tribal Court plainly lacked jurisdiction, and the
20 procedural circumstances confirm that conclusion.

21 The jurisdictional deficiencies here are not close questions. Every relevant
22 factor weighs against jurisdiction: (1) the Tribal Court did not exist when the Lease
23 was executed in 2002; (2) Defendants are non-Indian lessees who entered into a BIA-
24 approved lease with an individual allottee—not the Tribe—and never agreed to
25 submit to tribal adjudicative authority; (3) the Lease contains no provision subjecting
26 the parties to tribal law or jurisdiction; (4) title to the allotment is held by the United
27 States for the benefit of the allottee, not the Tribe; and (5) no tribal laws apply to the
28 operation of the business or the terms of the Lease.

1 The procedural circumstances further confirm jurisdiction was lacking. A
2 tribal court judgment is not entitled to recognition where the defendant was not
3 afforded due process, requiring “opportunity for a full and fair trial before an impartial
4 tribunal” after “proper service or voluntary appearance.” *Wilson*, 127 F.3d at 810–
5 11. Evidence that “a party was unable to obtain counsel, to secure documents or
6 attendance of witnesses” supports non-recognition. *Id.* at 811.

7 The due process deficiencies here are egregious. A court that disregards its
8 own procedural requirements in order to grant a dispositive motion against a party
9 who had no notice of it cannot be said to have conducted proceedings consistent with
10 due process. Where the Tribal Court plainly lacked jurisdiction over non-Indian
11 lessees on allotted trust land under a BIA-approved lease to which the Tribe was not
12 a party, and where the proceedings denied Defendants any meaningful opportunity to
13 be heard, adherence to the exhaustion requirement “would serve no purpose other than
14 delay.” *Strate, supra*, 520 U.S. at 459 n.14. The exhaustion doctrine is a mechanism
15 for comity—not a tool to insulate a void judgment from any review whatsoever.

16 Requiring Defendants to pursue claims in the Tribal Court would not advance
17 any legitimate comity interest—it would simply delay federal adjudication of issues
18 that are undeniably federal in character. The prior Tribal Court proceedings
19 demonstrate precisely why Plaintiff seeks to return to that forum: it is the only forum
20 in which Plaintiff has obtained relief, and only because Defendants were denied the
21 opportunity to defend themselves. These are precisely the federal questions this Court
22 has jurisdiction to resolve. *See Hawks, supra*, 933 F.3d at 1060.

23 **3. Plaintiff’s “Offer to Set Aside” Does Not Create Futility**

24 Plaintiff argues his June 14, 2025 “offer” to stipulate to setting aside the default
25 so the matter could return to the Tribal Court for merits adjudication demonstrates the
26 availability of tribal remedies. This argument fails for several reasons.

27 *First*, Plaintiff’s offer was not a “tribal remedy”—it was a proposal to relitigate
28 the entire underlying dispute in the same forum Defendants contend lacks authority,

1 and which provides no right of appeal. Tribal “exhaustion” refers to exhausting the
2 remedies provided by the tribal court system itself, not agreeing to the opposing
3 party’s litigation strategy preferences. *Second*, the Tribal Court’s own rules do not
4 provide an adequate mechanism for the relief Plaintiff demands or for any meaningful
5 appellate review. *Third*, and most fundamentally, Plaintiff’s offer required
6 Defendants to submit to a forum that has already entered a final, non-appealable
7 judgment declaring the Lease forfeited. Defendants’ Counterclaims are premised on
8 the validity and continued enforceability of that Lease. Returning to the Tribal Court
9 to litigate those claims would require Defendants to pursue relief based on a leasehold
10 interest that the same court has already extinguished by final judgment.

11 Plaintiff’s offer to “set aside” the default does not undo the Tribal Court’s
12 forfeiture ruling or restore the Lease to good standing—it merely invites Defendants
13 to re-enter a forum that already adjudicated the foundational premise of their claims
14 against them, without any appellate check on that determination. Plaintiff’s offer
15 required Defendants to submit to a forum that (a) did not exist when the Lease was
16 executed, (b) is not contemplated by the Lease, (c) entered a default based on a rule it
17 invented overnight on an improper oral motion, (d) provides no appellate review, and
18 (e) has already declared the Lease forfeited by final judgment. Accepting such an
19 “offer” would not be exhausting tribal remedies—it would be voluntarily submitting
20 to a pericardially deficient and patently inequitable process.

21 **4. The Court’s Order Does Not Require Exhaustion**

22 Plaintiff leans heavily on this Court’s Order, which noted the proper remedy
23 for failure to exhaust is dismissal or a stay, and invited Plaintiff to file the appropriate
24 motion. [Order, at 3.] Critically, the Order reads: “Should Plaintiff seek to dismiss
25 or stay his action, he may file the appropriate motion.” [*Id.* (emphasis added).]

26 The Court’s Order expressly refers to “his action”—i.e., Plaintiff’s Comity
27 Petition—not to Defendants’ Counterclaims. [*Id.*] Defendants respectfully submit
28 the Court’s invitation was directed at Plaintiff’s own claims, not at Defendants’

1 Counterclaims, which assert independent federal questions and are compulsory. The
2 Court’s Order also did not hold that Defendants failed to exhaust tribal remedies. The
3 Court identified the four recognized exceptions to the exhaustion requirement, leaving
4 the issue open to this briefing. [*Id.*] As Defendants noted in their meet-and-confer
5 correspondence: “the Court did not opine that you should seek [a stay/dismissal], and
6 it certainly did not make a ruling regarding whether Defendants failed to exhaust tribal
7 remedies. That issue remains to be litigated. . .” [Bickel Decl., at ¶ 6].

8 In sum, the Counterclaim is properly before this Court because: (1) the Tribal
9 Court lacks authority; (2) the Counterclaim asserts original federal question
10 jurisdiction; (3) the Counterclaims are compulsory; (4) the creation of the Tribal Court
11 postdates the contract by more than two decades; (5) this Court already confirmed
12 federal question jurisdiction; and (6) exhaustion is already complete and
13 independently excused. The motion to dismiss or stay should be denied.

14 **C. Plaintiff’s Own Conduct Demonstrates a Stay Is Not Warranted**

15 Plaintiff’s simultaneous pursuit of discovery independently warrants denial of
16 the motion to stay. On May 11, 2026—six days after filing the present motion—
17 Plaintiff served Requests for Admissions on Defendants. Putting aside that a party
18 may not seek discovery before the a rule 26(f) conference (no conference has occurred
19 [Bickel Decl., at ¶17.]), Plaintiff’s service of discovery requests necessarily
20 presupposes that this action will proceed on the merits—a position fundamentally
21 irreconcilable with a genuine belief proceedings should be stayed pending exhaustion.
22 By seeking a stay while simultaneously propounding discovery, Plaintiff wants to halt
23 Defendants’ ability to prosecute Counterclaims while advancing his own case through
24 discovery directed at Defendants. Granting a stay under these circumstances would
25 be fundamentally unfair and prejudicial to Defendants. Plaintiff’s decision to serve
26 discovery while his own stay motion is pending fatally undercuts the credibility of
27 that motion and provides an independent basis for its denial.

28

1 Plaintiff’s conduct reveals the true purpose of the stay motion: to obtain an
2 advantage by halting Defendants’ ability to prosecute their Counterclaims while
3 simultaneously advancing his case through discovery. This is not the conduct of a
4 party acting in good faith to preserve comity with a tribal forum—it is the conduct of
5 a party seeking to use procedural mechanisms to gain a tactical advantage. Plaintiff’s
6 decision to serve discovery while his own stay motion is pending fatally undercuts
7 the credibility of that motion and provides an independent basis for its denial.

8 **D. The Motion to Strike Affirmative Defenses Should Be Denied**

9 **1. Plaintiff Failed to Adequately Meet And Confer**

10 Before filing a motion, Local Rule 7-3 requires the moving party engage in a
11 meaningful meet-and-confer conference in person, by telephone, or video conference
12 at least seven days prior to the filing. Plaintiff ignored the seven-day requirement,
13 failed to engage in a meaningful conference, and never held a valid conference.

14 Plaintiff first raised the possibility of a Rule 12(f) motion on May 4, 2026—
15 one day before filing on May 5, 2026—falling six days short of Local Rule 7-3’s
16 mandatory seven-day minimum. See L.R. 7-3; L.R. 7-4. [Bickel Decl., at ¶ 14.]
17 Moreover, Plaintiff identified only three general categories of allegedly deficient
18 defenses but refused to identify which of Defendants’ thirty-two affirmative defenses
19 fell into which category, naming only five by way of “example.” [Id.] Defendants’
20 counsel responded that same day, requesting specificity so that Defendants could
21 “provide an accurate or meaningful response, assess which, if any, defenses to
22 withdraw or amend, or meaningfully narrow the issues in dispute.” [Id.] Plaintiff
23 refused. [Id.] On May 5, 2026, Defendants’ counsel reiterated their request,
24 explaining they wished to “avoid a situation where the scope of Plaintiff’s concerns
25 expands with each response, turning this meet and confer into a piecemeal exercise
26 with a moving goalpost,” and that “[o]therwise, this is asking Defendants to do
27 Plaintiff’s homework.” [Id., at ¶ 15.] Without further communication, Plaintiff filed
28 this motion that same day. [Id.]

1 A “meet-and-confer” that refuses to provide information necessary to
2 meaningfully engage is no meet-and-confer. Defendants were prepared to assess each
3 challenged defense and, where appropriate, withdraw or amend defenses that were
4 genuinely deficient. [*Id.*, at ¶ 15.] Plaintiff’s refusal deprived Defendants of that
5 opportunity. Plaintiff never held an actual conference regarding the Rule 12(f)
6 motion—the entirety of his purported meet-and-confer consisted of a single email sent
7 one day before filing, which does not satisfy the conference requirement.

8 The motion to strike should be denied on each of these procedural grounds.

9 **2. There is No Basis To Strike The Affirmative Defenses**

10 Beyond procedural issues, Plaintiff’s motion to strike lacks any legal or factual
11 basis. Rule 12(f) motions are “disfavor[ed]” and “infrequently granted.” *Fernandez*
12 *v. CoreLogic Credco, LLC.*, 593 F.Supp.3d 974, 994 (2022). Plaintiff advances three
13 categories of defenses he claims should be stricken: (1) defenses “based on
14 unexhausted issues”; (2) “non-cognizable” defenses; and (3) “boilerplate” defenses.
15 All three challenges fail.

16 a. *Defenses Based on “Unexhausted Issues.”*

17 From what Defendants can surmise (*although not articulated in his briefing*),
18 Plaintiff’s primary argument is that defenses going to the merits of the underlying
19 lease dispute must be stricken because they depend on issues Defendants “declined to
20 exhaust” in Tribal Court. But as demonstrated above, exhaustion is already complete
21 or excused as futile. Plaintiff cannot use a Rule 12(f) motion to relitigate the
22 exhaustion issue. Moreover, Defendants’ defenses going to Tribal Court jurisdiction
23 and due process are not merely “merits” defenses—they are defenses to the specific
24 claim Plaintiff asserts, namely recognition and enforcement of the Tribal Court
25 judgment. Under *Wilson*, federal courts must refuse recognition of a tribal court
26 judgment if: (1) the tribal court lacked jurisdiction; or (2) the defendant was not
27 afforded due process. *Wilson v. Marchington*, 127 F.3d 805, 810 (9th Cir. 1997).
28 Defenses grounded in exactly those recognized grounds for non-recognition are not

1 immaterial or impertinent—they are the very defenses the law contemplates in this
2 type of proceeding.

3 b. “Non-Cognizable” Defenses.

4 Plaintiff claims that certain defenses, such as setoff and reservation of rights,
5 are not affirmative defenses. He provides no legal basis for this claim. First, setoff
6 is a recognized defense under Ninth Circuit caselaw. *United States v. Kernen Constr.*,
7 349 F.Supp.3d 988, 1000 (2018) (“Recoupment and setoff are equitable defenses
8 under which a defendant may seek to offset sums owing to the plaintiff against sums
9 owing from the plaintiff to the defendant.”). Second, reservation of rights is standard
10 pleading practice and gives appropriate notice of Defendants’ intent to assert
11 additional defenses as discovery develops. Thus, neither defense should be stricken.

12 c. “Boilerplate” Defenses.

13 Plaintiff argues various defenses are conclusory without identifying any of
14 them (despite multiple requests to do so). But federal pleading standards for
15 affirmative defenses are not so demanding as to require the level of factual detail
16 Plaintiff seeks at this stage. The Ninth Circuit has consistently applied a “fair notice”
17 standard to affirmative defenses even after the Supreme Court’s decisions in
18 *Twombly* and *Iqbal*. See *Barnes v. AT & T Pension Ben. Plan-Nonbargained*
19 *Program*, 718 F.Supp.2d 1167 (2010) (“the key to determining the sufficiency of
20 pleading an affirmative defense is whether it gives plaintiff fair notice of the
21 defense.”) (quoting *Wyshak*, 607 F.2d at 827.). The defenses as pleaded provide fair
22 notice of the legal theories Defendants intend to pursue, which is all that is required
23 under *Wyshak*. A motion to strike is not an appropriate vehicle for a mini-trial on the
24 substantive merits of each individual affirmative defense, and thus should be denied.

25 **V. Request for Sanctions**

26 Defendants respectfully request that the Court impose sanctions on Plaintiff
27 and his counsel pursuant to its inherent authority and Local Rule 83-7. The conduct
28 at issue is not an isolated misstep—it is a series of procedural violations, each

1 requiring Defendants to expend time and resources opposing motions that should
2 never have been filed in the manner they were.

3 The pattern is as follows. First, Plaintiff filed a 19-page reply brief in violation
4 of this Court’s Standing Order and then filed an ex parte application seeking leave to
5 file the oversized brief on the same day—necessitating Defendants’ first opposition.
6 [Bickel Decl., at ¶ 18.] Second, rather than file a compliant brief, Plaintiff filed a
7 second ex parte application seeking leave to substitute a purportedly “conforming”
8 brief that was itself non-compliant, having been formatted in 12-point font rather than
9 the 14-point font required by LR 11-3.1.1—necessitating Defendants’ second
10 opposition. [*Id.*] Third, Plaintiff filed the Rule 12(b)(6) component of his motion to
11 dismiss only five days after first raising those arguments, falling short of the seven-
12 day meet-and-confer requirement. [*Id.*, at ¶ 16.] Fourth, Plaintiff filed the motion to
13 strike after a single day of *purported* meet-and-confer, without ever holding an actual
14 conference and without identifying the specific defenses he intended to challenge.
15 [*Id.*, at ¶¶ 14–15.] Fifth, while his motion to stay remains pending, Plaintiff served
16 discovery on Defendant Danlon, Inc. on May 11, 2026. [*Id.*, at ¶ 17.] Each violation
17 was avoidable and imposed a burden on Defendants.

18 The filing of the present motion is particularly troubling because it was
19 deliberately timed to maximize inconvenience to Defendants’ counsel. Defendants’
20 counsel explained their May schedule included pending motions, depositions, and
21 trial and arbitration commitments, and that counsel would be out of the office for a
22 week in May, and respectfully requested hearing dates of June 22 or June 29, 2026.
23 [*Id.*, at ¶ 8.] Plaintiff’s counsel rejected those dates, insisted on the “first available”
24 hearing date, offering no justification, and responded that Defendants had “plenty of
25 man power to include associates, paralegals, legal secretaries and secretaries to assist
26 you on silly little matters like 14 vs 12 point type. I do not. Courtesy, or lack thereof,
27 begets courtesy, or lack thereof.” [*Id.*, at ¶ 12.] This is not the conduct of a party
28 acting in good faith—it is the conduct of a party using procedural mechanisms as

1 instruments of harassment. This conduct needlessly required Defendants to choose
2 between filing an emergency ex parte application to continue the hearing date or
3 racing to complete an opposition to three motions (styled as one) while out of town
4 and inundated with other commitments. Defendants chose the latter. Given the
5 procedural defects, rushed manner in which it was filed, lack of substance and
6 authority in Plaintiff’s Motion, and refusal to accommodate scheduling, Defendants
7 are curious if this exercise was an attempt to increase Defendants’ costs.

8 This pattern mirrors the gamesmanship Plaintiff’s counsel exhibited in the
9 Tribal Court proceedings—making an oral motion to strike Defendants’ answer
10 without prior notice, without affording Defendants any opportunity to respond, and
11 then racing to state court before the 14-day reconsideration window expired. [Dkt.
12 No. 11, Landers Decl., ¶¶ 13–15, 18.] This is a pattern. Courts have inherent authority
13 to sanction parties and counsel for conduct that abuses the judicial process. *Chambers*
14 *v. NASCO, Inc.*, 501 U.S. 32, 43–46 (1991). The Ninth Circuit has affirmed this
15 authority extends to monetary sanctions where a party has acted in bad faith. *Fink v.*
16 *Gomez*, 239 F.3d 989, 992 (9th Cir. 2001) (“Sanctions are available if the court
17 specifically finds bad faith or conduct tantamount to bad faith.”). This Court
18 independently authorizes monetary sanctions, costs, and attorneys’ fees where
19 counsel’s conduct is willful or rises to the level of bad faith. L.R. 83-7.

20 Defendants respectfully request that the Court impose sanctions in an amount
21 sufficient to compensate Defendants for the attorneys’ fees and costs incurred in
22 connection with all three oppositions, and to deter future non-compliance.

23 **VI. Conclusion**

24 For all of the foregoing reasons, Defendants respectfully request that the Court:
25 (1) deny Plaintiff’s Motion to Dismiss the Counterclaim or, in the Alternative, to Stay
26 Proceedings Pending Exhaustion of Tribal Remedies; (2) deny Plaintiff’s Motion to
27 Strike Affirmative Defenses, and (3) impose sanctions on Plaintiff and his counsel for
28 their blatant and repeated procedural abuses.

