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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA- EASTERN DIVISION

In the Matter of:

WILLIAM ULYSSES McGLAMARY, II,

Plaintiff,

vs.

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

Defendants.

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

PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO DISMISS, OR IN THE ALTERNATIVE, TO STAY THE PROCEEDINGS PENDING EXHAUSTION OF TRIBAL REMEDIES; MOTION TO STRIKE AFFIRMATIVE DEFENSES AND DECLARATION OF DAVID EARL JACOBS IN SUPPORT THEREOF
[Filed Concurrently with Exhibits A-H]

Hearing Date: June 8, 2026
Hearing Time: 9:00 a.m.
Courtroom 1 (Riverside)
Honorable Jesus G. Bernal
United States District Judge

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I. INTRODUCTION

Defendants deliberately rejected available Tribal Court remedies and instead chose expansive federal litigation. Defendants now attempt to excuse that strategic choice by claiming the ACBCI Tribal Court offered no adequate remedies and that exhaustion was therefore futile. Yet Defendants are presently before this Court asserting precisely the jurisdictional and due process challenges they claim could never be reviewed. In other words, judicial review always existed.

Unlike the circumstances presented in Johnson v. Gila River Indian Community, Defendants here were not deprived of all avenues of review or meaningful participation. After sophisticated counsel was retained, Plaintiff immediately sought dialogue concerning the matter. Counsel responded that he had "just been retained," was "trying this week to get up to speed," that "Mr. Hudson is also becoming a client," and that he would "get back" to Plaintiff's counsel "as soon as possible."

But he never did.

Instead, Defendants removed this possessory and comity matter to federal court without further discussion and transformed it into expansive federal litigation involving extensive counterclaims, tort theories, and collateral attacks on Tribal Court jurisdiction. Plaintiff thereafter again sought dialogue and expressly offered to stipulate to vacating the default judgment so the matter could be litigated on the merits in Tribal Court.

Defendants again refused.

This record supports dismissal.

Defendants cannot voluntarily bypass available Tribal Court proceedings, refuse consensual vacatur and merits adjudication, and then invoke their own refusal as proof that exhaustion was futile. See *National Farmers Union Ins. Cos. v. Crow Tribe,* 471 U.S. 845, 856-57 (1985) (tribal exhaustion doctrine requires tribal courts receive first opportunity to evaluate jurisdiction); *Iowa Mut. Ins. Co.*

v. LaPlante, 480 U.S. 9, 16-17 (1987) (federal policy strongly favors Tribal Court exhaustion and Tribal self-government); *Johnson v. Gila River Indian Community*, 174 F.3d 1032, 1036 (9th Cir. 1999) (futility applies where no meaningful tribal remedy remains).

If, however, the Court concludes further Tribal proceedings should occur before dismissal, Plaintiff remains willing to facilitate Tribal exhaustion through consensual vacatur of the Tribal Court default judgment conditioned upon reasonable equitable protections, including undertaking and related relief preserving the parties' respective interests pending exhaustion and adjudication.

This Court possesses broad, inherent equitable authority to fashion such a remedy and stay these federal proceedings to safeguard tribal sovereignty. Where an outright dismissal is not granted, a structured, conditional stay is the preferred vehicle used by federal dockets to preserve comity, allowing the local tribal judiciary the first opportunity to evaluate its own competence and build an informative evidentiary record. See *Allstate Ins. Co. v. Chariot Holdings, Ltd.*, 911 F.3d 1102, 1106 (9th Cir. 2018).

II. DEFENDANTS DELIBERATELY AND REPEATEDLY REFUSED AVAILABLE TRIBAL COURT REMEDIES

The factual record establishes that Defendants made a conscious, strategic choice to refuse available Tribal Court remedies after sophisticated counsel appeared, and after Plaintiff expressly offered to facilitate a full merits adjudication in the local forum (Jacobs Decl. 9-15). Following the entry of the Tribal Court default proceedings, corporate principal Lonnie Landers repeatedly initiated contact with Plaintiff's counsel seeking discussions to reinstate or continue the commercial leasehold arrangement on PSL-360 in direct conjunction with a non-party backer, James Hudson (Jacobs Decl. 9-13). On April 30, 2025, Mr. Landers specifically requested that Plaintiff "withhold taking any further legal

action" because Richard Freeman of Sheppard Mullin would be contacting Plaintiff "very shortly" to settle the outstanding resolution and possession issues (Jacobs Decl. 11).

Mr. Freeman did not contact Plaintiff. Instead, five days later, Mr. Landers again contacted Plaintiff to push for further settlement discussions involving Mr. Hudson (Jacobs Decl. 13). Driven by these persistent representations, Plaintiff's counsel personally initiated dialogue with Mr. Freeman to address the dispute, the status of the Tribal Court default, and a path forward for local merits adjudication (Jacobs Decl. 13). Mr. Freeman responded the same day, confirming: "I have just been retained and I am trying this week to get up to speed. Mr Hudson is also becoming a client and we are finalizing that engagement. I will get back to you as soon as possible when that engagement is finalized" (Jacobs Decl. 14).

Thus, immediately following the default proceedings: (1) sophisticated federal counsel had already been retained; (2) James Hudson was actively involved and funding the matter; and (3) litigation strategy was actively being evaluated (Jacobs Decl. 14-16). Yet, despite representing that he would follow up once "up to speed," Mr. Freeman never did so (Jacobs Decl. 16). Defendants never sought reconsideration in the Tribal Court, never sought relief from the default judgment, and never attempted to file any merits-based pleadings in that forum (Jacobs Decl. 16-18). Instead, Defendants bypassed the local forum entirely and chose immediate federal expansion through removal and the filing of broad, collateral counterclaims.

More importantly, on June 14, 2025, after further consulting with his client, Plaintiff's counsel wrote directly to Mr. Freeman and expressly offered to execute a mutual stipulation to vacate the Tribal Court default judgment so the entire leasehold case could be litigated on the merits in the Tribal Court (Jacobs Decl. 19-21). Defendants flatly refused that proposal (Jacobs Decl. 21). Defendants cannot voluntarily bypass structured Tribal Court proceedings, reject multiple

formal offers of consensual vacatur, and then cite their own deliberate inaction as proof that the local forum offered no adequate remedies. The procedural history demonstrates that a meaningful avenue of review always existed; Defendants simply refused to walk through it.

III. THE TRIBAL COURT WAS FUNCTIONING AS A JUDICIAL BODY EXERCISING ADJUDICATORY DISCRETION UNDER ADOPTED FEDERAL COURT RULES

Defendants repeatedly characterize the Tribal Court proceedings as arbitrary, lawless, and procedurally illegitimate. The Tribal Court's own detailed, written Order demonstrates the exact opposite (Jacobs Decl. Ex. A). The Tribal Court explicitly invoked Rule 17 of the Tribal Court Rules-which expressly mandates the application of federal law where Tribal law is silent-to address the threshold question of artificial entity representation (Jacobs Decl. 3-7). Recognizing the absence of controlling Tribal ordinances on point, the Court stated: "Since there is no relevant Agua Caliente Tribal law on point, the Court must first look to federal law to resolve the question" (Jacobs Decl. 4).

The Tribal Court thereafter strictly relied upon longstanding, binding federal precedents, including *Rowland v. California Men's Colony*, 506 U.S. 194 (1993) and *United States v. High Country Broadcasting Co., Inc.*, 3 F.3d 1244 (9th Cir. 1993), to conclude that artificial corporate entities may not appear in court through non-lawyer representatives. The striking of the non-compliant pleadings and the subsequent entry of default was not an invented procedural trap; it was the direct, predictable application of federal law principles explicitly incorporated into the Tribal forum via Rule 17.

Furthermore, during those open-court proceedings, Lonnie Landers explicitly stated on the record that he had been "advised by counsel he could answer and appear In Pro Per," thereby establishing a clear, textbook baseline to

seek relief from default based upon attorney fault (Jacobs Decl. 6). A judicial body possessing the structured authority to interpret its rules, incorporate federal case law, strike non-compliant pleadings, and enter default judgment naturally possesses the corresponding equitable authority to revisit, reconsider, or vacate its own orders in the interests of justice. Defendants, however, chose to assume the conclusion of "futility" rather than test it. The exhaustion doctrine does not permit a litigant to manufacture a procedural logjam through invited error, refuse a structural cure, and then brandish that self-created posture to strip a tribal sovereign of its adjudicatory jurisdiction.

IV. THE COUNTERCLAIM REMAINS A LEASEHOLD, DEFAULT, AND POSSESSION DISPUTE SUBJECT TO MANDATORY EXHAUSTION

In an effort to escape the mandatory requirements of the tribal exhaustion doctrine, Defendants attempt to recast their pleadings as an independent assortment of federal statutory violations and common-law tort claims untethered from the underlying leasehold. Their own operative Counterclaim completely refutes this characterization. The Counterclaim is explicitly built upon allegations of wrongful lease termination, interference with assignment rights, interference with contract cure rights, impairment of commercial leasehold value, improper lease enforcement protocols, and a continuing right to physical possession and economic exploitation of PSL-360.

These extensive claims are not collateral to the leasehold controversy; they are the leasehold controversy itself. Every asserted cause of action arises directly from a single, indivisible nucleus of operative facts concerning whether a default occurred, whether cure efforts were sufficient, who holds valid assignment rights, and who is legally entitled to physical possession of Indian trust land. Litigants cannot evade federal comity principles or the tribal exhaustion doctrine simply by

applying creative tort labels to a core landlord-tenant dispute.

This action remains, at its foundational core, a possessory and leasehold dispute involving the continuing occupation and commercial exploitation of tribal trust land. The Ninth Circuit has long established that a tribe possesses inherent regulatory and adjudicatory jurisdiction over non-Indians operating a commercial leasehold on tribal trust land. *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802 (9th Cir. 2011). Whether Defendants' underlying jurisdictional and due process objections have merit is not the question currently before this Court. The sole question is whether Defendants may refuse to litigate those leasehold merits in the Tribal Court while simultaneously demanding that a federal district court adjudicate those exact same possessory and leasehold rights. Under established comity principles, they may not.

V. THE COUNTERCLAIM FAILS TO STATE TRULY INDEPENDENT FEDERAL CLAIMS

Defendants assert that their claims escape tribal exhaustion because they arise independently under 25 U.S.C. § 415, 25 C.F.R. Part 162, and federal common law. However, the Counterclaim fails to identify any express private right of action permitting a commercial lessee to sue an Indian landowner directly for damages under those provisions. *Alexander v. Sandoval*, 532 U.S. 275 (2001) remains fully controlling on this point. Federal statutory and regulatory frameworks do not create private damages remedies against landowners absent clear, unambiguous congressional intent.

The statutory provisions and BIA regulations cited by Defendants exist to govern internal Bureau of Indian Affairs administration, leasing approval procedures, and federal regulatory oversight frameworks. They do not create a generalized federal tort regime designed to convert every standard commercial lease default involving Indian trust land into an independent federal damages

action. Defendants continuously conflate comprehensive federal regulation with a congressionally created private right of action; under long-standing Supreme Court precedent, they are not the same.

Defendants' own stated theories confirm this fatal defect. The Counterclaim repeatedly alleges that Plaintiff improperly interfered with BIA-supervised assignment procedures, local cure protocols, and ongoing lease administration. This remains an explicit dispute concerning the interpretation, performance, and enforcement of the lease contract itself. Defendants' accompanying common-law tort and Unfair Competition Law (UCL) claims are entirely derivative of this underlying leasehold dispute, repackaging the exact same core transactional grievances without identifying any independent, non-derivative injury separate from the alleged impairment of their possessory interest in PSL-360. Similarly, their claims for declaratory and injunctive relief merely request judicial declarations concerning lease validity, assignment compliance, and possessory rights. Because these claims are structurally derivative of the underlying leasehold controversy, they remain fully subject to mandatory tribal exhaustion.

VI. THE COURT SHOULD RETAIN LIMITED JURISDICTION OVER UNDERTAKING, JOINDER, AND ENFORCEMENT ISSUES

While Plaintiff invoked tribal exhaustion and remains fully prepared to facilitate an immediate merits adjudication in the Tribal Court through a consensual, stipulated vacatur, the procedural posture of this case has been radically altered by Defendants' strategic maneuvers. Absent a formal stipulation by the parties, a standard, unconditional return to the Tribal Court to move to set aside the default judgment presents a significant procedural trap (Jacobs Decl. ¶ 40). Because Defendants have sat on their hands for over one year before seeking this relief, the Tribal Court may legally lack the power to grant a contested motion to vacate under its own local rules or strict jurisdictional time limitations (Jacobs

Decl. ¶ 40). If an unconditional, contested motion is denied by the Tribal Court on those technical, timing-based grounds, Defendants will undoubtedly rush back to this federal forum claiming that their tribal remedies were "futile" (Jacobs Decl. ¶ 40).

To break this procedural logjam and ensure a guaranteed, protected path to a merits-based trial despite the passage of more than a year, Plaintiff is entirely willing to execute an immediate stipulated, consensual vacatur of the judgment—thereby completely bypassing any local procedural time-bars—but only if Defendants are required to post an adequate financial undertaking to protect Plaintiff during the ensuing litigation (Jacobs Decl. ¶ 41).

The current record further reflects that following an early mediation, James Hudson and Lonnie Landers entered into a separate arrangement whereby Mr. Hudson completely finances this expansive federal litigation in exchange for long-term control over the leasehold interest and related economic rights on PSL-360 (Jacobs Decl. ¶¶ 29-37; Ex. H). Mr. Hudson's financial and operational entanglement long predates this federal lawsuit, including documented proposed acquisition efforts during prior bankruptcy filings, direct operational funding, and continuing litigation financing (Jacobs Decl. ¶¶ 30-33). Rather than focusing on reopening the existing restaurant operations, the subsequent discussions between counsel shifted entirely toward an expansive, multi-acre commercial redevelopment plan, though no substantive proposals were ever formally produced (Jacobs Decl. ¶ 35).

The record reflects severe, structural collectability concerns regarding the nominal Defendants, including recurring leasehold delinquencies, major arrearages, returned checks, and an open admission by corporate counsel that "getting paper judgments against D&L and DANLON won't do them much good" (Jacobs Decl. 24-28; Ex. G). As documented by BIA ledger entries, these defaults reflect a twenty-year history of structural insolvency rather than an isolated

transactional anomaly (Jacobs Decl. Ex. G). Under these asymmetric circumstances-where an unexposed financier drives federal litigation behind empty shell companies-equity requires that any exhaustion stay occur under conditions preserving the parties' financial interests (Jacobs Decl. ¶ 41).

Accordingly, Plaintiff remains willing to stipulate to an immediate vacatur of the default judgment conditioned upon: (1) the prompt pursuit of a merits-based trial in the Tribal Court; (2) the posting of a formal financial undertaking with the Clerk of this Court in the amount of $300,000 to secure Plaintiff's mounting costs and contractual fees; and (3) this Court retaining limited continuing jurisdiction over security supervision, contractual attorneys' fees, and joinder issues (Jacobs Decl. ¶ 43).

To prevent any ambiguity, Plaintiff intends to aggressively seek this $300,000 financial undertaking to secure its continuing litigation costs and risks regardless of the forum (Jacobs Decl. ¶ 44). Even if this Court denies our motion to dismiss or stay and forces this matter to remain in federal court, Plaintiff will immediately move for an equivalent undertaking here to mitigate the severe collectability threats posed by these nominal, insolvent corporate Defendants (Jacobs Decl. ¶ 44). However, because Defendants have spent over a year actively evading local processes, judicial economy heavily favors forcing them to exhaust their Tribal Court remedies before this Court spends its own finite resources adjudicating expansive, collateral federal counterclaims (Jacobs Decl. ¶ 45).

Plaintiff further respectfully submits that limited joinder-related proceedings concerning Mr. Hudson remain appropriate under Federal Rules of Civil Procedure 19 and 21. Plaintiff does not presently seek a federal adjudication of the underlying leasehold merits against Mr. Hudson. Rather, the record demonstrates that Mr. Hudson has financed and promoted the expansive federal litigation posture now before this Court, stands to benefit economically from long-term possession of PSL-360, and is directly implicated in the equitable, undertaking,

and enforcement issues arising from a high-stakes strategy pursued through nominally insolvent entities (Jacobs Decl. ¶¶ 41-44). Retaining limited jurisdiction preserves sovereign tribal exhaustion while ensuring that the non-party economic interest holder driving this litigation cannot deploy shell companies to insulate himself from the financial and contractual consequences of this federal expansion.

VII. DEFENDANTS' REQUEST FOR SANCTIONS IS WHOLLY MERITLESS AND REPRESENTS A TRANSPARENT EFFORT TO DISTRACT THE COURT

Defendants' accompanying request for monetary sanctions is an abusive litigation tactic manufactured entirely from routine scheduling friction, mischaracterized professional courtesy, and administrative nits looking to be picked (Jacobs Decl. ¶ 47). The record demonstrates that Plaintiff has acted in consistent good faith, while Defendants have utilized procedural technicalities to evade the core jurisdictional issue of tribal exhaustion.

1. The Premature Discovery Accusation is Flatly False:

Defendants' headline claim that Plaintiff "served" premature Requests for Admissions in violation of Rule 26(d)(1) is a deliberate mischaracterization of a routine logistical email. No discovery was ever formally served, and no proof of service was ever generated or filed (Jacobs Decl. ¶ 48). Plaintiff's counsel merely emailed a draft set of fifteen (15) focused RFAs to query counsel regarding their service preferences, explicitly asking: "Gentlemen: Need I mail discovery to you, or will you agree to electronic service?" (Jacobs Decl. ¶ 48). To characterize a standard professional inquiry regarding electronic service protocols as sanctionable behavior is entirely dishonest. Under Federal Rule of Civil Procedure 5(d), a discovery request must be formally served with an accompanying certificate of service to carry any legal consequence (p. 11). Because the draft inquiries were never formally executed, served, or filed onto the

electronic docket, they remain legally non-existent for the purposes of a Rule 26 enforcement motion (p. 11). Defendants are asking this Court to issue monetary sanctions over an informal scheduling email, exposing the frivolous nature of their entire application (p. 11).

2. The Meet-and-Confer Process Was Conducted in Complete Good Faith:

Defendants' contention that Plaintiff bypassed Local Rule 7-3 or compressed the meet-and-confer window to "harass" the defense is a bad-faith distortion of the parties' communications (Jacobs Decl. ¶ 49). Plaintiff engaged in a legitimate conference regarding both the dismissal grounds and the motion to strike. Defense counsel used the meet-and-confer process not to find substantive common ground, but to aggressively pick nits, drag their feet, and manufacture technical objections to delay the ultimate return of this matter to the Tribal Court.

3. Defendants Suffer Zero Prejudice From a Corrected Formatting Issue:

Defendants' attempt to demand monetary sanctions over a previously corrected clerical formatting issue from a prior remand motion is a transparent effort to clutter the record (Jacobs Decl. ¶ 50). The replacement of the oversized brief via a standard ex parte application was open, transparent, and intended to achieve strict compliance with this Court's Standing Orders. It caused absolutely zero substantive prejudice to Defendants and does not come close to meeting the high threshold required for a finding of bad faith.

4. Protecting a Client from a One-Year Litigation Delay is Not "Harassment":

Plaintiff's counsel has never manipulated, altered, or "scrubbed" email correspondence presented to this Court (Jacobs Decl. ¶ 51). Plaintiff has consistently provided true and correct copies of all relevant communications. While Plaintiff's counsel accurately observed that a prominent federal firm like Sheppard Mullin possesses more than adequate internal "manpower" to handle standard motion deadlines, the refusal to grant an expansive multi-month scheduling extension was driven by a professional duty to protect the Plaintiff

from further delay. Defendants have spent over a year evading local tribal processes; they cannot demand sanctions simply because Plaintiff declined to allow this federal litigation to languish further.

VIII. CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, Plaintiff respectfully requests that this Court enforce the mandatory doctrine of tribal exhaustion and fashion an order providing the following relief:

1. **DISMISS** this action in its entirety, without prejudice, to allow the underlying leasehold, default, and possessory claims to be adjudicated on the merits in the Agua Caliente Band of Cahuilla Indians (ACBCI) Tribal Court; or, in the alternative,

2. **STAY** these federal proceedings pending the complete exhaustion of Tribal Court remedies, and explicitly condition said stay upon:

a. Defendants posting a formal financial undertaking with this Court in the amount of $300,000 to secure Plaintiff's continuing costs, contractual attorney's fees, and mounting litigation risks; and

b. The execution of a stipulated, consensual vacatur of the Tribal Court default judgment-conditioned upon the filing of said undertaking-thereby neutralizing any local procedural or one-year time-bars and ensuring an immediate path to a merits-based trial in the local forum;

3. **RETAIN** limited continuing federal jurisdiction over the stayed action specifically to supervise the financial security, oversee necessary joinder proceedings concerning James Hudson, and adjudicate ultimate fee-shifting or enforcement disputes; and

4. **DENY** Defendants' baseless and manufactured request for monetary sanctions in its entirety.

DATED: May 25, 2026

LAW OFFICE OF DAVID EARL JACOBS

/s/ David Earl Jacobs

David Earl Jacobs

Attorney for Plaintiff and Counter defendant

William Ulysses McGlamary, II