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17
18 **IN THE TRIBAL COURT**
19 **OF THE COLORADO RIVER INDIAN TRIBES**

20 COLORADO RIVER INDIAN TRIBES,

21 Petitioner and Plaintiff,

22 v.

23 WATER WHEEL CAMP RECREATIONAL
24 AREA, INC., ROBERT JOHNSON, AND DOES
25 1-20,

26 Respondents and Defendants.

Case No. CV-CO-2007-0100

**NOTICE OF MOTION AND MOTION FOR
ISSUANCE OF WRIT OF RESTITUTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

27 NOTICE IS HEREBY GIVEN that Plaintiff Colorado River Indian Tribes ("CRIT" or "Tribe")
28 moves the Court for a Writ of Restitution ordering the immediate eviction of Defendant Water Wheel
Camp Recreational Area, Inc. ("Water Wheel") from the property described in the lease between Water
Wheel and CRIT, attached as Exhibit 1 to CRIT's Petition and Complaint in this action. CRIT also
moves the Court for an award of reasonable expenses incurred in bringing this Motion. The points and
authorities made in support of this motion are set forth below.

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COLORADO RIVER INDIAN TRIBES
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Over two years ago, this Court granted CRIT's petition to evict Defendant Water Wheel from the
4 Tribes' property. The Tribal Court of Appeal upheld the judgment and a federal district court upheld
5 this Court's jurisdiction over Water Wheel. Although Water Wheel has appealed the federal district
6 court's decision, the federal district court denied Water Wheel's request to enjoin this Court from
7 enforcing its order pending resolution of the appeal. Thus, this Court has jurisdiction to enforce its order
8 granting CRIT's petition to evict Water Wheel.

9 To that end, CRIT respectfully requests that this Court issue a Writ of Restitution restoring CRIT
10 to possession of the property occupied by Water Wheel and evicting Water Wheel from the property.

11 **STATEMENT OF FACTS AND PROCEDURE**

12 On October 1, 2007, CRIT filed a Petition for Eviction and Complaint for Damages in Contract
13 and Tort ("Complaint" or "Compl.") in the above-captioned case. Compl. at 1. By this Complaint,
14 CRIT sought (1) to evict Defendant Water Wheel and its President and owner, Robert Johnson, from a
15 26-acre parcel of tribal land described in the lease between Water Wheel and CRIT ("the Property") and
16 (2) to recover related damages. Compl. at 8-9. After several hearings and a three-day trial on the
17 merits, this Court entered a judgment in favor CRIT. Judgment at 14-15 (June 13, 2008). Specifically,
18 the Court found that "CRIT has proven by a preponderance of the evidence that the Tribes are entitled to
19 Judgment *and a Writ of Restitution* against the Defendants ordering their eviction and delivery of the
20 property to the Tribes." Judgment at 2, ¶ 8 (emphasis added). The Court therefore granted CRIT's
21 Petition for Eviction. Judgment at 14. The Court further declared that the lease between Water Wheel
22 and CRIT "ha[d] expired on or about July 7, 2007 and that Defendants have no right, title, and/or
23 interest in the property." Judgment at 15. The Tribal Court of Appeals upheld this judgment in nearly
24 all respects, reversing only the Court's determination that Defendants had intentionally interfered with
25 CRIT's prospective economic advantage.¹

26 _____
27 ¹ Although the Tribal Court of Appeals reversed on this ground, it upheld the Court's determination that
28 Water Wheel and Johnson had unlawfully remained on the Tribe's property after expiration of the lease.
(footnote continued)

1 Both Water Wheel and Johnson then sought federal court review of this Court's determination,
2 upheld by the Tribal Court of Appeals, that it had jurisdiction over them. *See* Exhibit 1.² On September
3 23, 2009, the federal district court of Arizona issued an order holding that this Court had jurisdiction
4 over Defendant Water Wheel, but lacked jurisdiction over Defendant Johnson. *See* Exhibit 2. All
5 parties to that action appealed. *See* Exhibits 3 & 4.

6 Defendant Water Wheel then asked the federal district court for the "immediate entry of a
7 mandatory injunction" prohibiting this Court from enforcing its June 13, 2008 judgment during the
8 pendency of the parties' appeals to the Ninth Circuit. *See* Exhibit 5. The district court denied this
9 motion because Water Wheel had failed to argue that it was likely to succeed on appeal, a condition that
10 must be met for the court to enter an injunction. *See* Exhibit 6 at 2. The district court further noted that,
11 even if Water Wheel had made such an argument, the district court would not have agreed with it, and
12 thus would still have denied Water Wheel's motion. *Id.* at 2 n.1.

13 Despite the rulings of this Court and the Tribal Court of Appeals that Water Wheel has no
14 authority to remain on the Tribe's land, and despite the federal district court's determination that the
15 tribal court had jurisdiction to issue these rulings, Defendant Water Wheel has not vacated the Property.

16 ARGUMENT

17 I. This Court Has Jurisdiction to Issue a Writ of Restitution.

18 CRIT respectfully requests that this Court issue a Writ of Restitution ordering the immediate
19 eviction of Defendant Water Wheel from the Tribe's property and delivery of the premises to CRIT. In
20 its judgment in this action, this Court determined that CRIT was entitled to a Writ of Restitution.
21 Judgment at 2, ¶ 9 ("CRIT has proven by a preponderance of the evidence that the Tribes are entitled to
22 Judgment and a Writ of Restitution against the Defendants ordering their eviction and delivery of the
23

24 Tribal Appeals Court Opinion and Order at 37, 58. Therefore, the Tribal Court of Appeals remanded the
25 case to this Court to recalculate the damages owed to CRIT as a result of Defendants unlawful holdover.
26 *See id.* at 58. The parties submitted briefing on the appropriate method for recalculating these damages
in May 2009, but the Court has not yet issued its final ruling on this matter.

27 ² CRIT attaches to this motion for the Court's convenience copies of the relevant pleadings and orders in
this action. *See* Exhibits 1-6.

1 property to the Tribes.”). The Tribal Court of Appeals upheld this determination. Tribal Appeals Court
2 Opinion and Order at 37, 58.

3 Nothing in the parallel federal court proceedings in this case prevents this Court from issuing the
4 Writ of Restitution to evict Water Wheel. The federal district court concluded that the tribal court has
5 jurisdiction over Water Wheel. *See* Exhibit 2. Although Water Wheel has appealed the district court’s
6 decision, that appeal does not prevent this Court from enforcing its order against Water Wheel in the
7 interim. In fact, the federal district court refused to enjoin this Court from taking action against Water
8 Wheel pending appeal, noting that Water Wheel was unlikely to succeed on appeal and therefore an
9 injunction was unjustified. *See* Exhibit 6. Therefore, this Court may allow CRIT to enforce the
10 judgment against Water Wheel now by issuing the requested Writ.

11 The federal district court did find that this Court lacked jurisdiction over Robert Johnson in his
12 personal capacity. However, CRIT does not seek to enforce this Court’s judgment against Johnson
13 personally. Rather, CRIT seeks a writ ordering the eviction of the agents and employees of Water
14 Wheel, including Robert Johnson in his official capacity as the company’s president.

15 **II. The Proposed Writ of Restitution Is Narrowly Tailored to Evict Only Water Wheel.**

16 A proposed Writ of Restitution is attached to this motion as Exhibit 7. The Proposed Writ
17 complies with the requirements of the CRIT Property Code. *See* Property Code at § 1-104(p) (defining
18 “Writ of Restitution” as “an order of the Tribal Court restoring an owner, lessor or landlord to
19 possession of real property and evicting a lessee, tenant or other occupant therefrom”); *id.* at § 1-318
20 (eviction judgment may be executed by law enforcement officer pursuant to a Writ of Restitution).

21 Moreover, the Tribe has drafted the proposed Writ to direct the Tribal Police to evict only the
22 agents and employees of Water Wheel from the Property. According to deposition testimony of Robert
23 Johnson, the President of Water Wheel, the following individuals are agents or employees of Water
24 Wheel:

- 25 1. Robert Johnson, President and Chief Financial Officer
- 26 2. Christine Johnson, Secretary
- 27 3. Brandon Johnson, Employee
- 28 4. Salvador Sepulveda, Employee

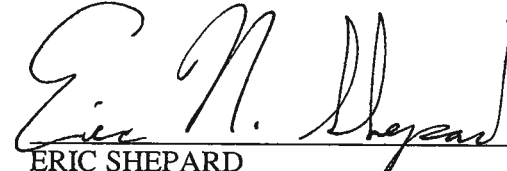
- 1 5. Nellie Toburen, Employee
- 2 6. Patricia Mirindra, Employee

3 See Declaration of W. King, Exh. 1 at 12-13, 28-29 (excerpts of transcript of R. Johnson deposition).
4 There may be additional agents and employees of the company of which the Tribe is not aware. Thus,
5 the Tribe requests a writ of restitution evicting all agents and employees of Water Wheel.

6 **CONCLUSION**

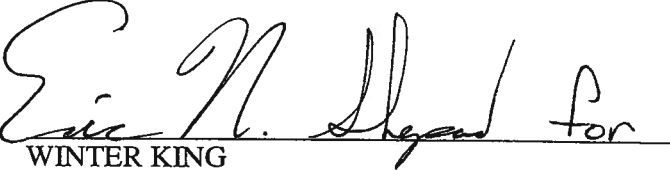
7 For all of these reasons, CRIT respectfully requests that the Court issue a Writ of Restitution
8 evicting Defendant Water Wheel from the Property.

9 DATED: August 17, 2010

COLORADO RIVER INDIAN TRIBES
By: 
ERIC SHEPARD

Attorneys for Colorado River Indian Tribes

14 DATED: August 17, 2010

SHUTE, MIHALY & WEINBERGER LLP
By:  for
WINTER KING

Attorneys for Colorado River Indian Tribes

EXHIBIT 1

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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

WATER WHEEL CAMP)
RECREATIONAL AREA INC.; and)
ROBERT JOHNSON,)
)
Plaintiffs,)
)
v.)
)
THE HONORABLE GARY LARANCE,)
in his capacity as the Chief and Presiding)
Judge of the Colorado River Indian)
Tribes Tribal Court; and PRISCILLA)
HILL, in her capacity as the)
Chief Court Clerk of the Colorado)
River Indian Tribes Tribal Court,)
)
Defendants.)
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**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiffs Water Wheel Camp Recreational Area, Inc. ("Water Wheel") and Robert Johnson, individually, file this Complaint against Defendants, the Honorable Gary LaRance, in his capacity as Chief and Presiding Judge of the Colorado River Indian Tribes Tribal Court ("CRIT Tribal Court"), and Priscilla Hill, in her capacity as Chief Court Clerk for the CRIT Tribal Court, seeking declaratory and injunctive relief against any and all efforts by Defendants to

maintain, prosecute or exercise jurisdiction over an action identified below in the CRIT Tribal Court filed as Case No. CV-CO-2007-0100 (the "Tribal Court Action").

Because plaintiffs are neither Indians nor members of the Colorado River Indian Tribes ("Tribe" or "CRIT") and the actions at issue occurred on lands held in fee by the United States and not in trust for CRIT, the CRIT Tribal Court lacks jurisdiction over Water Wheel and Robert Johnson. In support of this Complaint, Water Wheel and Robert Johnson allege as follows:

PARTIES AND JURISDICTION

1. Plaintiff Water Wheel is a corporation organized and existing under the laws of the State of California with its principal place of business at 29630 Highway 95, Blythe, California 92225. Water Wheel is a non-Indian, family-owned corporation, all shares are owned by non-Indians, and the corporation is not chartered by the Tribe.

2. Plaintiff Johnson is the President, Chief Executive Officer and primary shareholder of Water Wheel. His actions in this matter have been strictly confined to his corporate duties and obligations, and he has never taken any action, signed any documents, or conferred with any official of the Tribe other than in his capacity as President and Chief Executive Officer of Water Wheel.

3. Plaintiff Johnson has been named individually as a defendant in the Tribal Court Action. He has resided in Rancho Mirage, California for years and is not now, and never has been, a member of the Colorado River Indian Tribes.

4. The Honorable Gary LaRance is the Chief and Presiding Judge of the CRIT Tribal Court, in which the Tribal Court Action has been filed. Defendant LaRance exercises administrative and judicial authority and control over the activities and actions of the CRIT Tribal Court and its Judges and Clerks, and is sued here only in his official capacity.

5. Priscilla Hill is the Chief Court Clerk of the CRIT Tribal Court and is sued only in her official capacity. In her official capacity, she, *inter alia*, takes various actions purportedly prescribed by the civil procedures of the CRIT Law and Order Code, controls the activities and actions of the CRIT Tribal Court Clerk's office in Parker, AZ, maintains the Court's files and enters the Court's orders.

6. On October 1, 2007, the Tribe initiated the Tribal Court Action against Water Wheel and Johnson in Case No. CV-CO-2007-0100, seeking to evict Water Wheel and confiscate all of its and Johnson's buildings, improvements and personal belongings. A true and correct copy of the Complaint in the Tribal Court Action is attached hereto as Exhibit A.

7. On October 1, 2007, in her capacity as Clerk of the CRIT Tribal Court, defendant Hill issued and served a summons and complaint on Water Wheel and Johnson.

8. The Tribe is attempting to invoke the jurisdictional power of the CRIT Tribal Court to the injury of plaintiffs Water Wheel and Johnson and in violation of federal law and in excess of federal limitations placed upon the power of the CRIT Tribal Court in the exercise of its jurisdiction.

9. In the Tribal Court Action, defendant LaRance denied Water Wheel's and Johnson's Motions to Dismiss for lack of subject matter jurisdiction on January 15, 2008. Water Wheel and Johnson appealed that ruling and the appeal was summarily denied by the Court of Appeals for the Colorado River Indian Tribes on February 14, 2008. On February 26, 2008, the CRIT Tribal Court issued an order scheduling an evidentiary hearing and eviction trial for March 14, 2008 – in violation of federal law and in excess of federal limitations placed on the jurisdiction and power of the CRIT Tribal Court. True and correct copies of the CRIT Tribal Court orders are attached hereto as Exhibits B, C and D.

10. This Court has jurisdiction over the federal questions raised in this Complaint under 28 U.S.C. § 1331 because plaintiffs' claims present questions arising under federal law.

11. An actual case or controversy exists between the parties warranting this Court's declaratory and related relief pursuant to 28 U.S.C. §§ 2201 and 2202.

GENERAL ALLEGATIONS

12. The Tribe's reservation was established by Congress in the territory of Arizona by the Colorado River Reservation Act of March 3, 1865, 13 Stat. 559.

13. The Tribe erroneously claims that its reservation extends beyond the Colorado River into California despite the fact that it is statutorily precluded from having a reservation within California by the California Indian Reservation Act of April 8, 1864, 13 Stat. 39.

14. The Tribe erroneously claims that its reservation extends beyond the Colorado River into California despite the fact that it is statutorily precluded from having a reservation west of the Colorado River by the Colorado River Reservation Act of 1865, which created the CRIT Reservation in the Territory of Arizona only.

15. Water Wheel is a residential resort that leases non-Indian federal fee land from the U.S. Department of the Interior on lands west of the Colorado River (the "Disputed Area").

16. The United States owns the Disputed Area in fee and does not hold it in trust for CRIT or any other tribe.

17. Water Wheel signed a lease on May 15, 1975 with the U.S. Department of the Interior, wherein the United States named CRIT as the lessor, which was approved by the Superintendent of the Colorado River Reservation under delegated authority from the Secretary of the Interior on July 7, 1975. A true and correct copy of the lease is attached as exhibit A to the complaint filed in the Tribal Court Action, which complaint is attached hereto as Exhibit A.

18. Section 34 of the Lease Addendum states that the "[l]essee . . . agree[s] to abide by all laws, regulations, and ordinances of the Colorado River Tribes now in force and effect, or that may be hereafter in force and effect provided, that no such future laws, regulations or ordinances shall have the effect of changing or altering the express provisions and conditions of this lease *unless consented to in writing by the lessee.*" Exhibit A, Exhibit A at 21 (emphasis added).

19. Water Wheel has not "consented to in writing" the jurisdiction of the CRIT Tribal Court. While the lease is silent as to jurisdiction for eviction proceedings and dispute resolution, as a matter of law, Title 25 of the Code of Federal Regulations exclusively governs such matters.

20. The Tribe's Eviction Ordinance, effective October 12, 2006, did not exist as of May 15, 1975 (the date of execution of the lease). The Eviction Ordinance conflicts with Title 25 of the Code of Federal Regulations and Water Wheel has not "consented to in writing" to be subject to the Tribe's Eviction Ordinance.

21. The CRIT Tribal Court lacks jurisdiction to adjudicate matters relating to the conduct of a non-Indian and a non-tribal corporation on land that is not a reservation or otherwise Indian land, and such individual and corporation can challenge any such jurisdictional exercise in federal court without first exhausting tribal remedies. *See Burlington Northern & Santa Fe Railway Co. v. Vaughn*, No. 05-16755 (9th Cir. 2007), *relying on Montana v. United States*, 450 U.S. 544 (1981); *see also Strate v. A-1 Contractors*, 520 U.S. 438 (1997).

22. Under well-established federal law, the CRIT Tribal Court lacks jurisdiction over Water Wheel and Johnson because (a) there is no express congressional grant of tribal jurisdiction over them, (b) there is no consensual relationship between either plaintiff and the Tribe meeting Supreme Court requirements, and (c) no actions of either plaintiff threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Tribe.

23. Any tribal claim that the CRIT Tribal Court has jurisdiction by virtue of property leases affecting the Disputed Area is void because the Tribe is prohibited from exercising leasing authority in the Disputed Area by Public Law 88-302. Public Law 88-302 expressly states that CRIT is prohibited from leasing lands in the Disputed Area until the western boundary of the CRIT Reservation is finally determined. While the Secretary of the Interior issued an Order in 1969 that opined that the CRIT Reservation extended into the Disputed Area, the U.S. Supreme Court rejected the Secretarial Order in *Arizona v. California*, 460 U.S. 605, 630 (1983).

24. The Supreme Court stated that "the Colorado River Tribes will have to await the results of further litigation before they can receive an increase in their water allotment based on the land determined to be part of the reservation." *Arizona v. California*, 460 U.S. at 636, n. 26. There has not been any "further litigation" to determine the western boundary of the CRIT Reservation.

25. In reference to a comment made in the dissenting opinion in that case, the majority stated: "The dissent identifies no plausible basis for its conclusion that an *ex parte* determination by an executive officer of a party to this litigation should constitute a 'final determination' within the meaning of our decree." 460 U.S. at 638, n. 28. Thus, as interpreted by the Supreme Court, there is no Congressional acknowledgement that the Disputed Area is within the CRIT Reservation, and in fact the Court refused to issue to the Tribe water rights associated with the Disputed Area. 460 U.S. at 636.

26. The basis for the CRIT Tribal Court's purported exercise of jurisdiction over non-Indians within the Disputed Area is CRIT's leasing activity in that area, which activity is in direct violation of the leasing prohibition of Public Law 88-302 and the conclusions of the Supreme Court in *Arizona v. California* summarized above in paragraphs 23-25. As such, the CRIT Tribal Court is acting in violation of federal law to the injury of Water Wheel and Johnson. The CRIT Tribal Court has no colorable claim of tribal court jurisdiction. See *Burlington Northern & Santa Fe Railway Co. v. Vaughn*, No. 05-16755 (9th Cir. 2007).

27. Citing Public Law 88-302, the Tribe's Constitution, adopted in February, 1975, acknowledges the Disputed Area is not within the Reservation or otherwise subject to the jurisdiction of the Tribe.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment – Tribal Court Jurisdiction)

28. Plaintiffs reallege and incorporate by reference paragraphs 1-27 above.

29. Pursuant to 28 U.S.C. §§ 2201 and 2202, plaintiffs are entitled to a declaratory judgment declaring that the CRIT Tribal Court has no jurisdiction over Water Wheel or Johnson in the Tribal Court Action or in any other future actions filed in CRIT Tribal Court against Water Wheel or Johnson related to the lease and occupation of lands in the Disputed Area.

SECOND CLAIM FOR RELIEF

(Prohibitory Injunction – Exercise of Tribal Court Jurisdiction)

30. Plaintiffs reallege and incorporate by reference paragraphs 1-27 above.

31. Because the CRIT Tribal Court lacks jurisdiction over Water Wheel and Johnson, any actions by defendants to exercise any authority relying upon such jurisdiction would be arbitrary, capricious, an abuse of discretion, beyond the scope of their authority and not in accordance with law.

32. Because of the CRIT Tribal Court's lack of jurisdiction to adjudicate the Tribal Court Action, as a matter of federal law, plaintiffs Water Wheel and Johnson will incur immediate and irreparable harm including, but not limited to, considerable and unnecessary delay in a case in which the CRIT Tribal Court clearly lacks subject matter jurisdiction, risk of an adverse judgment or other action in CRIT Tribal Court for which they would incur substantial inconvenience and expense to appear and defend themselves, in the absence of preliminary and permanent injunctive relief.

33. A balancing of the relevant hardships favors the entry of a temporary restraining order and preliminary and permanent injunctive relief, and such relief would serve the public interest.

34. The CRIT Tribal Court, through its Chief and Presiding Judge and Clerk – defendants LaRance and Hill and their successors – should be preliminarily and permanently enjoined from adjudicating the Tribal Court Action and from taking any action to further the Tribe's prosecution of Water Wheel and

Johnson in the Tribal Court Action and any other civil litigation in the CRIT Tribal Court.

35. Any actions by defendants to exercise any authority on the basis of CRIT Tribal Court jurisdiction will cause the plaintiffs to suffer irreparable harm for which there is no adequate remedy at law.

36. Plaintiffs are entitled to both temporary and permanent injunctions prohibiting the defendants from taking any actions as to the plaintiffs in the Tribal Court Action or any other civil litigation in the CRIT Tribal Court.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs seek judgment against the defendants, as follows:

A. For a declaratory judgment that the CRIT Tribal Court has no jurisdiction over Water Wheel or Robert Johnson in the Tribal Court Action or in any other actions filed now or in the future against Water Wheel or Robert Johnson arising out of the lease and occupation of lands in the Disputed Area and mentioned in the complaint filed by CRIT in the Tribal Court Action attached hereto as Exhibit A.

B. For a temporary restraining order and preliminary and ultimately for a permanent injunction prohibiting defendants the Honorable Gary LaRance and Priscilla Hill, and their successors in office, from exercising CRIT Tribal Court jurisdiction over Water Wheel and Johnson in the Tribal Court Action, and further to permanently enjoin the CRIT Tribal Court's prosecution,

maintenance, or conducting of any further proceedings in CRIT's Tribal Court Action, including issuing or entering any orders therein.

C. Awarding plaintiffs their costs, attorneys' fees, and all other expenses of this litigation.

D. Awarding plaintiffs such other and further relief as the Court deems just and proper.

DATED this 11th day of March 2008.

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EXHIBIT 2

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Water Wheel Camp Recreational Area,
Inc.; Robert Johnson,

Plaintiffs,

vs.

The Honorable Gary LaRance;
Jolene Marshall,

Defendants.

No. CV-08-0474-PHX-DGC
ORDER

Plaintiffs Water Wheel Camp Recreational Area, Inc. and Robert Johnson have been sued for eviction in an action pending in the Tribal Court of the Colorado River Indian Tribes (“CRIT”). Plaintiffs ask this Court to prevent Defendants – a judge and clerk of the Tribal Court – from proceeding with the Tribal Court action. Plaintiffs argue that the Tribal Court lacks subject matter jurisdiction under *Montana v. United States*, 450 U.S. 544 (1981).

After hearings on two requests for temporary restraining orders, extensive litigation in the Tribal Court and Tribal Court of Appeals, and considerable briefing and oral argument, the Court concludes that the Tribal Court properly exercised jurisdiction over Water Wheel, but not over Robert Johnson. The Court will grant Plaintiffs’ request for declaratory relief with respect to Mr. Johnson and deny it with respect to Water Wheel.

I. Background.

Water Wheel is a California corporation that operates a recreational property on the west bank of the Colorado River near Parker, Arizona. Robert Johnson is the president and

1 primary shareholder of Water Wheel. The recreational property is located on the CRIT
2 reservation and was leased by Water Wheel in 1975. The 32-year lease was entered under
3 the auspices of the Bureau of Indian Affairs (“BIA”), a division of the United States
4 Department of the Interior.¹

5 For the first 25 years, Water Wheel was required to pay rent of \$100 per acre plus a
6 percentage of gross receipts from certain business activities on the property. Dkt. #1-2 at 17-
7 18. Thereafter, Water Wheel was to pay the “then current fair annual rental value of the
8 leased premises” as negotiated between the parties. *Id.* at 17. Beginning in the late 1980s,
9 the parties had various disagreements concerning Water Wheel’s operations and CRIT’s
10 alleged interference with those operations. When the 25-year mark arrived, the parties were
11 unable to agree on a fair annual rental value.

12 In 2001, Plaintiffs attempted to invoke BIA dispute resolution procedures under Title
13 25 of the Code of Federal Regulations. Among other relief, Plaintiffs sought an extension
14 of the lease to compensate for damages allegedly caused by CRIT’s actions. The BIA has
15 never acted on Plaintiff’s petition.

16 Paragraph 29 of the lease required Water Wheel to vacate the property “peaceably and
17 without legal process” when the lease expired in mid-2007. *Id.* at 42. Water Wheel did not
18 vacate the property, but remains there and continues to operate its business. Water Wheel
19 has not paid rent to CRIT since 2005 and paid only a nominal amount in 2003 and 2004.
20 Dkt. #59-2 at 6.

21 When Water Wheel refused to vacate the property, CRIT brought the eviction action
22 in Tribal Court. Plaintiffs responded by asking this Court to enter a temporary restraining
23 order preventing the Tribal Court action from proceeding. Following Supreme Court
24 precedent, the Court required Plaintiffs to exhaust their jurisdictional arguments in Tribal
25 Court and declined to rule until the Tribal Court had made a final decision. Dkt. #18.

26
27 ¹ The United States holds legal title to Indian lands in trust for the benefit of Native
28 Americans. 25 U.S.C. § 348. Congress has authorized the leasing of property on Indian
land, but approval by the Secretary of the Interior is required. 25 U.S.C. § 415(a).

1 The Tribal Court held that it had jurisdiction. A January 15, 2008 order held that
2 Plaintiffs were estopped from contesting CRIT's title to the leased land and that Plaintiffs
3 had consented to the Tribal Court's jurisdiction when they agreed to abide by all tribal laws
4 in paragraph 34 of the lease. Dkt. #1-3 at 2-12.² The Tribal Court's March 18, 2008 order
5 held that Water Wheel and Johnson had entered into a consensual relationship with the tribe
6 under *Montana*, and that the Tribal Court had personal jurisdiction over Johnson. Dkt. #26-3
7 at 2-9. On June 13, 2008, the Tribal Court granted CRIT's petition for eviction, assessed
8 more than \$4,000,000 in damages, attorneys' fees, and litigation costs against Water Wheel,
9 and held Johnson personally liable for the damages, fees, and costs by piercing the corporate
10 veil as a discovery sanction. Dkt. #59-2 at 6-21. The Tribal Court of Appeals affirmed all
11 of the lower court's rulings with the exception of one damages calculation. Dkt. #46-2.
12 Having exhausted their Tribal Court remedies, Plaintiffs now return to this Court and seek
13 a declaration that the Tribal Court lacks jurisdiction.

14 **II. Legal Standard.**

15 Federal courts have the authority to determine whether a tribal court has exceeded the
16 lawful limits of its jurisdiction. *National Farmers Union Ins. Co. v. Crow Tribe*, 471 U.S.
17 845, 853 (1985). Legal questions are reviewed de novo. *AT&T Corp. v. Coeur d'Alene*
18 *Tribe*, 295 F.3d 899, 904 (9th Cir. 2002). Factual findings made by tribal courts are reviewed
19 for clear error. *FMC v. Shoshone-Bannock Tribes*, 905 F.2d 1311, 1313 (9th Cir. 1990).

20 **III. Reservation Status of the Land.**

21 Many of the arguments asserted by Plaintiffs relate to the status of the land leased by
22 Water Wheel. Plaintiffs argue, for example, that the land has never become CRIT tribal land
23 by a valid act of Congress, that the lease is therefore void, and, alternatively, that the lease
24 is only with the United States government and not the tribe. Quite inconsistently, Plaintiffs
25 also assert that they are not challenging the Indian title or reservation status of the land. As
26

27
28 ² Citations to documents in the Court's electronic docket will be to the page numbers
assigned by the electronic docket, not to the page numbers in the documents themselves.

1 the Court noted in its order of March 25, 2009, “Plaintiffs asserted during the telephone
2 conference, as they have in the past, that they will *not* be asking this Court to address the
3 Indian title or reservation status of the land in question.” Dkt. #49 (emphasis added); *see*
4 *also* Dkt. #58. Plaintiffs’ merits brief confirms that “Plaintiffs are not here contesting the
5 reservation status of the land[.]” Dkt. #50 at 15. The Court will hold Plaintiffs to this
6 position.³

7 For the purposes of this decision, the Court assumes that the property occupied by
8 Water Wheel under the lease is CRIT trust land. Such an assumption not only is mandated
9 by Plaintiffs’ position in this case, it also is reasonable. The lease itself identifies CRIT as
10 the “Lessor” of the property. Dkt. #1-2 at 16. A stipulation by the previous owners of Water
11 Wheel resulted in a federal court judgment that the property is owned by the United States
12 “in trust for the Colorado River Indian Tribes[.]” Dkt. #14-4 at 3. And although the
13 relationship was sometimes contentious, Water Wheel and CRIT have dealt with each other
14 as tenant and landlord for more than two decades. Dkt. #26-3 at 4, #1-3 at 5-7. The Court
15 therefore will proceed with the assumption that Water Wheel occupies reservation land.⁴

16 **IV. *Montana* and Its Exceptions.**

17 In *Montana*, the Supreme Court recognized the “general proposition that the inherent
18 sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the
19 tribe.” 450 U.S. at 565. The Court identified two exceptions to this rule, circumstances
20 where “Indian tribes retain inherent sovereign power to exercise some forms of civil
21 jurisdiction over non-Indians on their reservation.” *Id.* First, “[a] tribe may regulate, through
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23 ³ Plaintiffs take this position for good reason. If the Court were to address the status
24 of the leased land, both CRIT and the United States might well be indispensable parties.
25 Because CRIT enjoys sovereign immunity and cannot be sued in this Court absent CRIT
26 consent (which has not been given) or an act of Congress (which has not been cited by the
27 parties), such a claim likely would require dismissal of this action. *See Dawavendewa v. Salt*
River Project, 267 F.3d 1160, 1161-63 (9th Cir. 2002).

28 ⁴ Given this assumption, the Court will not address the land-status and lease-validity
arguments in Plaintiffs’ merits brief. Dkt. #50 at 11-13, 21-37.

1 taxation, licensing, or other means, the activities of nonmembers who enter consensual
2 relationships with the tribe or its members, through commercial dealing, contracts, leases,
3 or other arrangements.” *Id.* Second, “[a] tribe may also retain inherent power to exercise
4 civil authority over the conduct of non-Indians on fee lands within its reservation when that
5 conduct threatens or has some direct effect on the political integrity, the economic security,
6 or the health or welfare of the tribe.” *Id.* at 566.

7 Plaintiffs contend that neither of the *Montana* exceptions allows the Tribal Court to
8 exercise jurisdiction over them. Defendants bear the burden of showing otherwise. *Plains*
9 *Commerce Bank v. Long Family Land and Cattle Company, Inc.*, --- U.S. --- 128 S. Ct. 2709,
10 2720 (2008). Defendants contend that *Montana*’s first exception – the consensual
11 relationship exception – applies to both Water Wheel and Robert Johnson. Defendants
12 advance no argument with respect to the second exception; they do not contend that
13 Plaintiffs’ conduct threatens or has a direct effect on the political integrity, economic
14 integrity, health, or welfare of the tribe. *See* Dkt. #59 at 16-23. The Court therefore will
15 confine its analysis to the first *Montana* exception.

16 The “consensual relationship” of the first exception “must stem from ‘commercial
17 dealing, contracts, leases, or other arrangements[.]’” *Atkinson Trading Company, Inc. v.*
18 *Shirley*, 532 U.S. 1825, 1833 (2001) (quoting *Montana*, 450 U.S. at 565). The relationship
19 also must have some nexus to the tribal regulation in question, in this case the Tribal Court
20 action against Plaintiffs. *Id.*

21 The Court will first address application of the consensual relationship exception to
22 Water Wheel. While discussing Water Wheel, the Court will address Plaintiffs’ argument
23 that specific terms of the lease preclude the exercise of Tribal Court jurisdiction. The Court
24 then will consider the Tribal Court’s jurisdiction over Robert Johnson. Finally, the Court
25 will address arguments made by *amicus curiae*.

1 **V. Jurisdiction Over Water Wheel.**

2 **A. Consensual Relationship.**

3 The most compelling facts in support of a consensual relationship between Water
4 Wheel and CRIT are Water Wheel's 32-year lease of tribal land and its three-year hold-over
5 tenancy on that land. A lease is one of the classic examples of a consensual relationship cited
6 by the Supreme Court in *Montana*. See 450 U.S. at 565. Indeed, it is difficult to think of a
7 more consensual relationship than a nonmember's occupancy of tribal land under a formal
8 written agreement with the tribe. The parties sign a written contract, the nonmember
9 occupies tribal land, the nonmember pays rent for the privilege, and the tribe oversees the
10 tenancy as landlord. Nor can there be any doubt that the tribal regulation in this case – the
11 Tribal Court eviction action – bears a close nexus to the consensual relationship. The lawsuit
12 arises from the lease relationship.

13 In an attempt to overcome the virtually dispositive fact of the lease, Plaintiffs argue
14 that the property does not belong to CRIT, that the lease is not valid, and that the lease is
15 with the United States, not CRIT. Dkt. #50 at 11-13, 21-37. As explained above, each of
16 these arguments is foreclosed by Plaintiffs' repeated concession that this case does not
17 challenge the Indian title or reservation status of the land.⁵

18 Several other facts also support the existence of a consensual relationship. As the
19 Tribal Court found, Water Wheel engaged in "numerous commercial and business dealings
20 and activities on the CRIT reservation," including operating a recreational mobile home
21 resort, selling mobile homes, renting mobile homes and trailer spaces, operating a
22 convenience store and restaurant, selling alcoholic beverages, propane, gas, and groceries,

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24 ⁵ The fact that the land in question is on the CRIT reservation does not take this case
25 outside the ambit of *Montana*. The Supreme Court has held that "the general rule of
26 *Montana* applies to both Indian and non-Indian land. The ownership status of land . . . is
27 only one factor to consider[.]" *Nevada v. Hicks*, 533 U.S. 353, 359-60 (2001); see also
28 *Elliott v. White Mountain Apache Tribal Court*, 566 F.3d 842, 849 (9th Cir. 2009) (*Hicks*
"held that the same principles underlying the two *Montana* exceptions also applied to civil
regulation of nonmembers on lands owned by the tribe.").

1 renting camping spaces, and operating a business office, a boat storage facility, and a marina.
2 Dkt. #26-3 at 4. These factual findings by the Tribal Court must be accepted unless clearly
3 erroneous. *FMC*, 905 F.2d at 1313. Plaintiffs make no attempt to show that they are
4 erroneous.

5 Plaintiffs argue that Water Wheel's relationship with CRIT was involuntary, not
6 consensual. Plaintiff Robert Johnson has provided a declaration in which he recounts the
7 troubled history of the lease. Dkt. #50-1 at 7-15. Johnson states that he purchased the stock
8 of Water Wheel from Bert and Barbara Denham, the corporation's previous owners, in May
9 of 1981.⁶ The purchase included the lease signed in 1975. *Id.* Johnson states that the
10 Denhams told him that the lease was administered by the BIA and never said anything about
11 dealing with CRIT. From 1981 to 1986, Johnson paid rent to the BIA. In 1986, however,
12 the BIA directed Johnson to start paying rent directly to CRIT, which he then did for almost
13 20 years. Johnson states that he started dealing with CRIT on matters such as building
14 permits only when CRIT persuaded the County of Riverside, California, that CRIT had
15 jurisdiction over the land. He asserts that CRIT similarly assumed control of electrical
16 service to the property, ousting Southern California Edison. Johnson complains that CRIT
17 officials treated him unfairly, denying building permits, limiting electrical power, and
18 intimidating employees, all while favoring other riverside properties in which CRIT had a
19 greater financial interest. *Id.* Although these assertions are largely uncontested by CRIT and
20 will be significant in the evaluation of Tribal Court jurisdiction over Johnson, the Court does
21 not find them dispositive on the issue of jurisdiction over Water Wheel.

22 The Court cannot conclude that Water Wheel's relationship with CRIT was
23 involuntary. Documents provided by Defendants show that the previous owners of Water
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26 ⁶ The Tribal Court found that Johnson and his wife purchased 50% of the
27 corporation's stock in 1981 and 50% in 1985, with Johnson becoming the president of Water
28 Wheel in 1985. Dkt. #26-3 at 6. The Court does not find these facts materially different than
Johnson's declaration.

1 Wheel, the Denhams, were sued in 1973 in the United States District Court for the Central
2 District of California. The plaintiff was the United States, presumably acting on behalf of
3 CRIT. Although pleadings from the case have not been provided, letters between the
4 litigation counsel and the stipulated judgment that resolved the case show that the lawsuit
5 concerned the tribe's ownership of the property on which Water Wheel was operating.
6 Dkt. #14-4, 59-1 at 27-36.⁷ The lawsuit was settled with a stipulated judgment that the
7 "United States . . . is the owner in trust for the Colorado River Indian Tribes of the real
8 property and premises" (Dkt. #14-4 at 2-3), and with the parties' execution of the lease
9 (Dkt. #59-1 at 35). In other words, the Denhams settled the lawsuit by conceding that the
10 land was held in trust for the tribe and receiving a 32-year lease in return. Water Wheel the
11 corporation, through its owners, thus entered the lease voluntarily and with full knowledge
12 that the land was tribal property.

13 The lease was signed approximately two months after the stipulated judgment was
14 entered. By its terms, the lease is "between THE COLORADO RIVER INDIAN TRIBES,
15 hereinafter called the 'Lessor,' . . . and WATER WHEEL CAMP RECREATION AREA,
16 INC., a California Corporation, hereinafter called the 'Lessee[.]'" Dkt. #1-2 at 16. The first
17 page of the lease bears the title of the BIA and states that the lease is being entered "under
18 the provisions of the Act of April 30, 1964 (78 Stat. 186), as supplemented by Part 131,
19 Leasing and Permitting, of the Code of Federal Regulations, Title 25 – Indians, and any
20 amendments thereto relative to business leases on restricted Indian lands[.]" *Id.* The lease
21 was signed by the Chairman and Secretary of the CRIT Tribal Council on behalf of the
22 "LESSOR: COLORADO RIVER TRIBES." The lease was signed by Bert Denham,
23 President, on behalf of the "LESSEE: WATER WHEEL CAMP RECREATION AREA,
24 INC." *Id.* at 20. The acknowledgment of Water Wheel's signature states that the lease is

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27 ⁷ Plaintiffs have not objected to the Court's consideration of these documents.
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1 entered “as the free and voluntary act of said corporation.” *Id.* at 21. The lease was
2 approved by the BIA through the BIA Superintendent of CRIT. *Id.* at 22.

3 Given this history, there can be no doubt that Water Wheel entered the lease
4 voluntarily and with full knowledge that the property was CRIT trust land. Water Wheel
5 subsequently engaged in several decades of commercial activity on the land. The Court finds
6 that Defendants have carried their burden of showing that Water Wheel and CRIT entered
7 into a consensual relationship, and that the relationship bears a direct nexus with the Trial
8 Court action. The first *Montana* exception applies to Water Wheel.⁸

9 **B. Does the Lease Deprive the Tribal Court of Jurisdiction?**

10 Plaintiffs contend that the lease itself makes clear that only the Secretary of the
11 Interior may bring an action for breach of the lease. Given this clear term of the lease, they
12 argue, the Tribal Court cannot exercise jurisdiction over Water Wheel.

13 **1. Waiver of Tribal Sovereign Powers.**

14 The ability of a tribe and a nonmember to contract away tribal court jurisdiction is
15 clear. A tribe can waive sovereign immunity by contract. *Pan American Co. v. Sycuan Band*
16 *of Mission Indians*, 884 F.2d 416, 418-19 (9th Cir. 1989). If a Tribe can waive sovereign
17 immunity by contract, certainly it can waive tribal court jurisdiction by the same means.
18 Furthermore, federal cases recognize that exhaustion of tribal court remedies is not necessary
19 when a forum selection clause provides that there is no tribal court jurisdiction. *See, e.g.,*
20 *FGS Constructors, Inc. v. Carlow*, 64 F.3d 1230, 1233 (8th Cir. 1995); *Alzheimer & Gray v.*
21 *Sioux Mfg. Corp.*, 983 F.2d 803, 814-15 (7th Cir. 1993). These cases necessarily assume that
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25 ⁸ Given the Court’s conclusion that *Montana*’s first exception provides a basis for
26 Tribal Court jurisdiction over Water Wheel, the Court need not address Defendants’
27 argument that CRIT’s inherent authority to exclude nonmembers from its land provides such
28 a basis. Dkt. #59 at 13-16. The Court will address this issue below with respect to Plaintiff
Robert Johnson.

1 a forum selection clause defeats tribal court jurisdiction, rendering exhaustion of the
2 jurisdiction issue unnecessary.⁹

3 The Supreme Court has made clear, however, that a tribal waiver of a sovereign power
4 should not be inferred lightly. “[S]overeign power, even when unexercised, is an enduring
5 presence that governs all contracts subject to the sovereign’s jurisdiction, and will remain
6 intact unless surrendered *in unmistakable terms.*” *Merrion v. Jicarilla Apache Tribe*, 455
7 U.S. 130, 148 (1982) (emphasis added). The plaintiffs in *Merrion* argued that the tribe had
8 lost its power to impose a severance tax on oil and gas because the tax was not mentioned
9 in the BIA-approved mineral lease for the tribal land. The Supreme Court disagreed, finding
10 that a failure expressly to preserve that power in the lease did not constitute a waiver of the
11 power. *Id.*

12 The Ninth Circuit likewise has held that waiver of a tribe’s sovereign power will be
13 found only if stated in “sufficiently clear contractual terms.” *Arizona Public Service Co. v.*
14 *ASPAAS*, 77 F.3d 1128, 1135 (9th Cir. 1996). Citing *Merrion*, the Ninth Circuit held that the
15 Navajo Nation had, in a BIA-approved lease, made an “unmistakable waiver” of its power
16 to regulate employment practices on leased tribal land. The Court of Appeals accordingly
17 affirmed the district court’s injunction against the tribe’s regulatory efforts. *Id.*

18 In light of *Merrion* and *Arizona Public Service*, the Court must consider whether the
19 lease in this case deprives the Tribal Court of jurisdiction in sufficiently clear and
20 unmistakable terms.

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24 ⁹ The ability of a tribe and a nonmember to agree to a dispute-resolution forum other
25 than tribal court was recognized by the dissent in *Plains Commerce Bank* – a dissent that
26 took a generally broad view of tribal court jurisdiction. As Justice Ginsburg explained,
27 “[h]ad the Bank wanted to avoid responding in tribal court or the application of tribal law,
28 the means were readily at hand: The Bank could have included forum-selection, choice-of-
law, or arbitration clauses in its agreements with the [tribal members.]” *Plains Commerce*
Bank, 128 S.Ct. at 2729 (Ginsburg, J., concurring in part and dissenting in part).

1 **2. Plaintiffs' Lease Arguments.**

2 Plaintiffs' strongest argument focuses on paragraph 21 of the lease, a paragraph titled
3 "DEFAULTS":

4 Should Lessee default in any payment of monies or fail to post bond, as
5 required by the terms of this lease, and if such default shall continue uncured
6 for the period of Fifteen (15) days after written notice by *the Secretary* to the
7 Lessee, or should Lessee breach any other covenant of this lease, and if the
8 breach of such other covenant shall continue uncured for a period of sixty (60)
9 days after written notice thereof by *the Secretary* to the Lessee, then *the*
10 *Secretary* may either:

11 A. Proceed by suit or otherwise to enforce collection or to enforce
12 any other provision of this lease; or

13 B. Re-enter the premises and remove all persons and property
14 therefrom[.]

15 *Id.* at 38-39 (emphasis added).

16 This paragraph designates the Secretary of the Interior as the individual who may give
17 notice to Water Wheel of breaches and bring an action to enforce the terms of the lease. This
18 authority applies not only to rent collection, but to "any other provision of this lease." *Id.*
19 Paragraph 21 later makes a distinction for breaches of the lease caused by insolvency or
20 bankruptcy of the Lessee: "Any action taken or suffered by Lessee as a debtor under any
21 insolvency or bankruptcy act shall constitute a breach of this lease. In such an event *the*
22 *Lessor and the Secretary* shall have the options set forth in sub-Articles A and B above." *Id.*
23 at 39 (emphasis added). The lease thus specifically states when "the Secretary" may bring
24 a suit to enforce the lease and when "the Lessor and the Secretary" may bring such an action.
25 The Lessor – CRIT – is granted a role in enforcement only when the Lessee becomes
26 insolvent or bankrupt, something that has not occurred in this case.

27 Although this argument carries some persuasive force, the Court concludes that
28 paragraph 21 is not a sufficiently clear waiver of tribal sovereign power to satisfy the
requirements of *Merrion* and *Arizona Public Service*. The Court reaches this conclusion for
five reasons.

1 First and most importantly, paragraph 21 provides that the Secretary can bring an
2 action for breach of the lease, but does not expressly prohibit CRIT from doing so. The
3 Supreme Court has held that a tribe does not waive its sovereign powers by failing to
4 preserve them in a lease: “It is one thing to find that the Tribe has agreed to sell the right to
5 use the land and take from it valuable minerals; it is quite another to find that the Tribe has
6 abandoned its sovereign powers simply because it has not expressly reserved them through
7 a contract.” *Merrion*, 455 U.S. at 146. “To presume that a sovereign forever waives the right
8 to exercise one of its sovereign powers unless it expressly reserves the right to exercise that
9 power in a commercial agreement turns the concept of sovereignty on its head, and we do not
10 adopt this analysis.” *Id.* at 148.

11 Second, paragraph 22 of the lease expressly recognizes that CRIT, as Lessor, may
12 bring an action against Water Wheel. It reads:

13 If action be brought by Lessor in unlawful detainer for rent or any sums of
14 money due under this lease, or to enforce performance of any of the covenants
15 and conditions of this lease, and Lessor prevails in said action, the Lessee shall
pay reasonable attorneys fees to Lessor, to be fixed by the court as part of the
costs in any such action.

16 Dkt. #1-2 at 41. Plaintiffs seek to limit the effect of this paragraph by arguing that it operates
17 only in the narrow sphere preserved for the tribe in paragraph 21 – when Water Wheel
18 becomes insolvent or bankrupt. The Court cannot agree. Paragraph 22 specifically mentions
19 “unlawful detainer,” while paragraph 21 does not. An action for unlawful detainer is
20 separate from a breach-of-contract claim and seeks “to return a wrongfully held tenancy (as
21 one held by a tenant after the lease has expired) to its owner.” *Black’s Law Dictionary* at
22 1574 (8th ed.). Paragraph 22 thus contemplates an action different from the breach-of-lease
23 actions addressed in paragraph 21 and cannot reasonably be confined to a mere subset of
24 paragraph 21.¹⁰

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26 ¹⁰ Plaintiffs rely on paragraph 29 to argue that the only remedy available in the event
27 of Water Wheel’s holdover is an action for breach of the lease. Requiring Water Wheel to
28 vacate the property promptly on expiration of the lease, as paragraph 29 requires, is not the

1 Third, paragraph 21 mentions only breaches of the lease; it does not address tort
2 claims that might arise from the landlord-tenant relationship. CRIT asserted a tort claim
3 against Plaintiffs in the Tribal Court. Nothing in paragraph 21 suggests that such a claim
4 may be asserted only by the Secretary.

5 Fourth, paragraph 21 is permissive, not mandatory. It states that the Secretary “may”
6 bring a suit or re-enter the premises in the event of a breach. If the Secretary were being
7 recognized as the only person on earth who could act when Water Wheel breaches the lease
8 or wrongfully holds over, one would expect that the Secretary’s obligation to act would be
9 mandatory. The fact that paragraph 21 is permissive suggests that it merely is a recognition
10 of what the Secretary may do in the event of a breach, not the establishment of the sole
11 means for addressing legal issues arising from the lease.

12 Fifth, paragraph 23 of the lease gives CRIT a role in enforcement actions. It concerns
13 holding over by Water Wheel and reads as follows:

14 Lessee agrees to remove all property removable under the terms of this lease
15 prior to the termination or expiration of this lease; provided, however, that if
16 this lease is terminated prior to the expiration date, Lessee shall have thirty
17 (30) days after the termination to remove all such property. Should the Lessee
18 fail to remove any such property within the specified time, Lessor shall have
19 the right to remove it and dispose of it or have it stored all at Lessor’s expense.

20 Dkt. #1-2 at 41. If actions arising from wrongful holding over by Water Wheel were the
21 exclusive province of the Secretary, the lease would not grant CRIT a role in the process.¹¹

22 In sum, the Court concludes that paragraph 21 of the lease does not waive CRIT’s
23 power to commence the Tribal Court action “in unmistakable terms” as required by *Merrion*

24 _____
25 same as providing that all other remedies for a wrongful holdover are foreclosed. The Court
26 reads paragraph 29 as imposing an additional obligation on Water Wheel, not as foreclosing
27 other CRIT remedies.

28 ¹¹ Plaintiffs argue that paragraph 23 limits the tribe’s role to situations where the BIA
has terminated the lease before its expiration date. The Court, however, reads the last
sentence of paragraph 23 as referring to the entire paragraph, not simply to the proviso of the
next-to-last sentence. Dkt. #1-2 at 41.

1 or in “sufficiently clear contractual terms” as required by *Arizona Public Service*. The Tribal
2 Court’s power has not been waived in the lease.¹²

3 What is more, the lease and paragraph 21 expired in mid-2007, before the Tribal Court
4 action was commenced. Although lease terms generally continue to govern the parties’
5 relationship during a holdover period, *see* Restatement (Second) of Property (Landlord and
6 Tenant) § 14.7 (1977), the parties in this case expressly provided otherwise. Paragraph 23
7 provides that “[h]olding over by the Lessee after the termination or expiration of this lease
8 shall not constitute a renewal or extension thereof *or give the Lessee any rights hereunder*
9 or in or to the leased premises.” Dkt. #1-2 at 41 (emphasis added). Thus, even if paragraph
10 21 could be read as granting Plaintiffs the right to be free from a Tribal Court action while
11 the lease was in existence, paragraph 23 makes clear that Plaintiffs could not claim that right
12 after the lease expired.

13 **C. Plaintiffs’ Regulation-Based Argument.**

14 Plaintiffs argue that the Tribal Court’s assertion of jurisdiction conflicts with
15 regulations promulgated by the BIA. Dkt. #50 at 18. Plaintiffs characterize this as a
16 preemption argument. The thrust seems to be that BIA regulations leave no room for the
17 tribe’s exercise of jurisdiction in this case. The Court does not agree.

18 The BIA regulations in question specify what the BIA will do in the event of lease
19 violations; they do not expressly limit what the tribe can do. *See* 25 C.F.R. §§ 162.613-

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24 ¹² Plaintiffs also argue that the Tribal Court action is based on a 2006 tribal ordinance
25 to which they never consented as required by paragraph 34 of the lease. Paragraph 34
26 requires Plaintiffs’ consent, however, only if the new ordinance “shall have the effect of
27 changing or altering the express provisions and conditions of this lease[.]” Dkt. #1-2 at 43.
28 Because the Court does not find that the lease makes the Secretary the exclusive enforcing
authority, the eviction ordinance does not change or alter an express provision of the lease
and therefore does not require Plaintiffs’ written consent.

1 162.623.¹³ The Court therefore does not read the regulations as limiting Tribal Court
2 authority that otherwise is available under *Montana*.

3 Moreover, the regulations recognize that Indian tribes may invoke “remedies available
4 to them under the lease.” 25 C.F.R. § 162.619(a)(3); *see also* 25 C.F.R. § 162.612(a) (“A
5 lease of tribal land may provide the tribe with certain remedies in the event of a lease
6 violation”). As explained above, paragraph 22 of the lease recognizes that CRIT may
7 bring a legal action for “unlawful detainer” and “to enforce any of the covenants and
8 conditions of this lease.” Dkt. #1-2 at 41. Given this provision, the Court cannot conclude
9 that the regulations preclude the tribe from initiating an action in Tribal Court.

10 **D. Water Wheel Conclusion.**

11 Water Wheel entered into a consensual relationship with CRIT and therefore is subject
12 to Tribal Court jurisdiction under *Montana*’s first exception. Provisions of the lease and the
13 applicable regulations do not require a different conclusion.

14 **VI. Tribal Court Jurisdiction Over Robert Johnson.**

15 **A. Consensual Relationship.**

16 The consensual relationship question is more difficult with respect to Robert Johnson.
17 The Tribal Court made several factual findings in support of its jurisdiction over Johnson.
18 First, the court noted Water Wheel’s commercial dealings with CRIT. Dkt. #26-3 at 5. It
19 then made the following factual findings with respect to Johnson: he acquired the stock of
20 Water Wheel and became its president; he hired, paid, and supervised Water Wheel
21 employees on the leased property; he met approximately 15 times with CRIT’s commercial
22 manager, 50 to 75 times with CRIT’s building and safety office, and 15 times with CRIT’s

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24 ¹³ The regulations at 25 C.F.R. §§ 162.100 and 162.600 are successors to 25 C.F.R.
25 § 131, the regulation incorporated into the lease. Although these new regulations were
26 promulgated in 2001, long after the lease was executed, the lease incorporates by reference
27 the BIA regulations and “any amendments thereto relative to business leases on restricted
28 Indian lands.” Dkt. #1-2 at 16. The 2001 regulations are therefore deemed to be part of the
lease and are relevant to the Court’s decision. Both sides have cited extensively to the 2001
regulations in this litigation.

1 hydrology engineer to discuss Water Wheel operations; he submitted several written requests
2 for additional development at the property; he negotiated monthly and annual rent with
3 CRIT; and he continues to operate the business on CRIT land. *Id.* at 7.¹⁴

4 Johnson does not dispute these factual findings, but he does dispute that his contacts
5 with CRIT were consensual. Johnson's declaration swears that the Denhams told him rent
6 would be paid to the BIA and building supervision on the property would be performed by
7 the County of Riverside inspectors. Johnson further asserts that he was to obtain electrical
8 power from Southern California Edison. These assertions are supported by the lease.
9 Section IV of the lease calls for rent "payments to be made to the Bureau of Indian Affairs."
10 Dkt. #1-2 at 17. Paragraph 5 of the Addendum (which was attached to the lease when it was
11 executed in 1975) states that plans and designs for buildings on the property would be
12 "approved by the State of California and Riverside County." *Id.* at 27. Paragraph 14 of the
13 Addendum recognizes that Water Wheel will have the right to enter into power agreements
14 with public utilities such as Southern California Edison. *Id.* at 33. Johnson further swears
15 that he paid rent to the BIA until the BIA told him to begin making payments to CRIT in
16 1986 (Dkt. #50-1 at 8), that he obtained building permits from Riverside County until CRIT
17 intervened in 1983 and took over inspection and permitting at the site (*id.* at 9), and that he
18 dealt with Southern California Edison to obtain power for the property until CRIT intervened
19 (*id.*). While these assertions do not change the fact that Water Wheel's lease was with CRIT,
20 they do provide support for Johnson's claim that *he* did not intentionally enter into a
21 consensual relationship with the tribe.

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23
24 ¹⁴ The Tribal Court also found that Johnson "is in fact a party to the Lease." *Id.* In
25 support of this significant finding, the court cited to "all of the above findings of fact." *Id.*
26 This finding is clearly erroneous. The lease was executed in 1975, several years before
27 Johnson acquired any interest in Water Wheel. Johnson did not sign the lease or any
28 amendment to the lease. The parties have identified no other basis for concluding that
Johnson personally is a party to the lease.

1 Johnson protested CRIT's interference by writing letters to the BIA in 1985, twice in
2 1989, and five times in 2000. *Id.* at 10-11. Johnson wrote letters of protest to CRIT in 1989
3 and 1990. *Id.* at 11-12. In 2001, Johnson and Water Wheel filed a Request for Action with
4 local BIA officials, asserting that Water Wheel was being treated improperly by CRIT and
5 had suffered more than \$900,000 in damages. *Id.* at 12-13. As already noted, the BIA never
6 acted on the Request. *Id.*

7 Defendants have presented no evidence to contest Johnson's factual assertions. They
8 rely instead on the Tribal Court's factual findings. Although the Tribal Court found that
9 Johnson had extensive contacts with CRIT, it did not address the voluntariness of those
10 contacts. *See* Dkt. #26-3 at 5-7. Defendants have the burden of proof with respect to
11 *Montana's* consensual relationship exception. *Plains Commerce Bank*, 128 S. Ct. at 2720.
12 The Court concludes that they have not shown that Johnson's contacts with the tribe were
13 voluntary.¹⁵

14 The question the Court must answer, then, is whether a nonmember's extensive but
15 largely involuntary dealings with a tribe satisfy the consensual relationship exception. The
16 parties have cited no case on point and the Court has found none. The Supreme Court
17 recently has made clear, however, that the *Montana* consensual relationship exception is
18 satisfied only when a nonmember has consented to tribal jurisdiction. As the Court explained
19 in *Plains Commerce Bank*, a nonmember may not be subjected "to tribal regulatory authority
20 without commensurate consent." 128 S. Ct. at 2724. The Court explained that "nonmembers
21 have no part in tribal government – they have no say in the laws and regulations that govern
22 tribal territory. Consequently, those laws and regulations may be fairly imposed on
23 nonmembers only if the nonmember has consented, either expressly or by his actions." *Id.*

24
25 ¹⁵ CRIT does present three letters in which Johnson, acting on behalf of Water Wheel,
26 proposed to the tribe that additional commercial development be permitted on the property.
27 Dkt. #59-1 at 38-41. The Court does not find these letters inconsistent with Johnson's
28 assertion that he was forced to deal with the tribe and tried repeatedly, yet unsuccessfully,
to obtain permission for additional development.

1 The question is whether Johnson – not Water Wheel – entered into a consensual
2 relationship with CRIT. Stated differently, have Defendants, who bear the burden of proving
3 a consensual relationship, shown that Johnson personally chose to enter into a consensual
4 relationship with the tribe. The Supreme Court has made clear that mere physical presence
5 on reservation property is not enough. *See Nevada v. Hicks*, 533 U.S. 353 (2001). And
6 while it is true that Johnson acquired a corporation that had a lease with the tribe and
7 therefore could be charged with knowing that the corporation may be subject to tribal
8 regulation, he did so, the unrebutted evidence suggests, understanding that *he* would be
9 dealing largely with the BIA, Riverside County, and Southern California Edison. Such an
10 understanding by Johnson cannot fairly be characterized as his personal consent to the tribe’s
11 jurisdiction. The Court concludes that Defendants have not presented evidence sufficient to
12 show that Johnson personally entered into a consensual relationship with the tribe.

13 The Supreme Court has stated that *Montana’s* exceptions are limited and should not
14 be construed broadly. *Plains Commerce Bank*, 128 S. Ct. at 2720. Although this is a close
15 question, the Court concludes that Defendants have not met their burden of showing that
16 *Montana’s* consensual relationship exception applies to Robert Johnson.¹⁶

17 **B. Other Johnson Issues.**

18 Defendants assert that the Tribal Court has jurisdiction over Johnson based on
19 paragraph 34 of the lease. Paragraph 34 provides that Water Wheel and its “agents” and
20 “employees” will abide by tribal laws and regulations. Dkt. #1-2 at 43. Nothing in the
21 paragraph suggests, however, that Water Wheel is agreeing that its agents and employees
22 personally are subject to Tribal Court jurisdiction. Nor could Water Wheel enter into such
23 an agreement on behalf of Johnson, a future owner who was not affiliated with the
24

25
26 ¹⁶ Because the Tribal Court decision merely recounted Johnson’s contacts with the
27 tribe and did not address the voluntariness of those contacts (Dkt. #26-3 at 5-7), there is no
28 factual finding of voluntariness to which the clearly erroneous standard can be applied.

1 corporation when the lease was signed. Defendants have presented no evidence that Johnson
2 somehow authorized Water Wheel to consent to jurisdiction on his behalf.

3 As a discovery sanction, the Tribal Court pierced the corporate veil and held Johnson
4 personally liable for damages caused by Water Wheel. Dkt. #59-2 at 17-21. This sanction
5 was based on Johnson's failure to respond to discovery in the Tribal Court. *Id.* Piercing the
6 corporate veil was used by the Tribal Court to impose liability, not to satisfy *Montana's* first
7 exception or establish Tribal Court jurisdiction. *See* Dkt. #59-2 at 17-18. Defendants do not
8 contend that it provides a basis for jurisdiction over Johnson.

9 **C. CRIT's Inherent Power to Exclude.**

10 Tribes have inherent power to exclude nonmembers from tribal lands. *See Plains*
11 *Commerce Bank*, 128 S. Ct. at 2723; *Duro v. Reina*, 495 U.S. 676, 696 (1990); *New Mexico*
12 *v. Mescalero Apache Tribe*, 462 U.S. 324, 333 (1983). Defendants argue that this inherent
13 power provides a basis for jurisdiction over Johnson independent of *Montana*. For two
14 reasons, the Court does not agree.

15 First, the Supreme Court has made clear that the *Montana* framework governs a tribe's
16 exercise of its inherent sovereign powers, including its power to exclude nonmembers from
17 tribal land. In *Plains Commerce Bank* the Court noted that tribes retain limited sovereign
18 power to govern themselves and regulate their internal affairs, explaining that "[t]he
19 regulations we have approved under *Montana* all flow directly from these limited sovereign
20 interests." 128 S.Ct. at 2723 (emphasis added). The Court then provided examples of the
21 sovereign powers "approved under *Montana*," the first of which was the power relied on by
22 Defendants – "[t]he tribe's 'traditional and undisputed power to exclude persons' from tribal
23 land." *Id.* (quoting *Duro*, 485 U.S. at 696). Later, referring to all the examples it had cited,
24 the Court explained that "these sorts of regulations are permissible under *Montana*["] *Id.*
25 The Court also observed that the tribal regulation permitted under *Montana* "must stem from
26 the tribe's inherent sovereign authority to set conditions on entry [i.e., the power to exclude],
27 preserve tribal self-government, or control internal relations." *Id.* at 2724. *Plains Commerce*

28

1 *Bank* thus suggests that a tribe’s inherent power to exclude nonmembers is one of the powers
2 regulated by the *Montana* framework, not a power independent of it.

3 The Supreme Court provided a similar discussion of *Montana*’s sweep in *Strate v. A-1*
4 *Contractors*, 520 U.S. 438 (1997). *Strate* characterized *Montana* as “the pathmarking case
5 concerning tribal civil authority over nonmembers.” *Id.* at 445. *Strate* explained that
6 “[w]hile *Montana* immediately involved regulatory authority, the Court broadly addressed
7 the concept of ‘inherent sovereignty’” and “delineated – in a main rule and exceptions – the
8 bounds of the power tribes retain to exercise ‘forms of civil jurisdiction over non-Indians.’”
9 *Id.* at 453. The Supreme Court thus made clear that *Montana*’s framework encompasses a
10 tribe’s inherent sovereign powers over nonmembers.

11 A case cited by Defendants, *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476
12 (9th Cir. 1985), supports this conclusion. The White Mountain Apache Tribe excluded
13 *Hardin*, a nonmember, from the reservation based on his federal criminal conviction for
14 concealment of stolen property. *Id.* at 478. In upholding the exclusion, the Ninth Circuit
15 noted that *Montana* permitted tribes to exercise “‘some forms of *civil* jurisdiction over non-
16 Indians on their reservation.’” *Id.* (quoting *Montana*, 450 U.S. at 565) (emphasis in *Hardin*).
17 The Ninth Circuit made clear that the tribe’s exclusion of *Hardin* satisfied both *Montana*
18 exceptions. It concluded that “[t]he intent of the tribal ordinance is merely to remove a
19 person who ‘threatens or has some direct effect on the . . . health or welfare of the tribe,’” *id.*
20 at 479, a direct quotation of *Montana*’s second exception. See *Montana*, 450 U.S. at 566.
21 The Court then found that “[w]hen a nonmember has entered into a consensual relationship
22 with the Tribe or its members the Tribe retains ‘inherent power to exercise civil authority
23 over the conduct of [the nonmembers] on fee lands within its reservation.’” *Id.* (quoting
24 *Montana*, 450 U.S. at 565-566). This is a direct quotation of *Montana*’s first exception. The
25
26
27
28

1 *Hardin* decision thus supports the conclusion that a tribe's power to exclude must be
2 exercised within the *Montana* framework.¹⁷

3 Second, even if the Tribal Court action could be justified on the basis of the tribe's
4 power to exclude nonmembers, the tribal lawsuit in this case seeks to do much more. The
5 Tribal Court held Johnson liable for breach of the lease, failure to pay rent, and the tort of
6 intentional interference with prospective economic advantage. Dkt. #59-2. The Tribal Court
7 found Johnson to be the alter ego of Water Wheel and personally liable for all of Water
8 Wheel's liabilities, including attorneys' fees and costs. *Id.* Such a sweeping imposition of
9 liability does far more than exclude Johnson from tribal land.

10 In sum, *Plains Commerce Bank*, *Strate*, and *Hardin* compel the conclusion that a
11 tribe's power to exclude nonmembers must be exercised within the *Montana* framework.
12 Because the Tribal Court in this case had no authority over Johnson under *Montana*'s first
13 exception and Defendants do not contend that the second exception applies, no basis for
14 tribal jurisdiction over Johnson exists. Nor could the power to exclude provide a basis for
15 the broad imposition of damages, attorneys' fees, and alter ego liability attempted in this
16 case.¹⁸

17
18
19 ¹⁷ Defendants cite *Alire v. Jackson*, 65 F. Supp. 2d 1124, 1128 (D. Ore. 1985), a case
20 in which a nonmember was excluded from the Warm Springs Indian Reservation after being
21 charged with child neglect. The nonmember sought a writ of habeas corpus in federal court.
22 The district court concluded that the writ could issue only if the tribal court's exclusion was
23 criminal in nature. Because the district court found the exclusion to be a civil action under
24 the tribe's inherent power to exclude nonmembers, it denied the writ. *Id.* The court did not
25 address *Montana* or its exceptions. Given the Supreme Court and Ninth Circuit suggestions
26 that a tribe's power to exclude is governed by *Montana*, the decision in *Alire* provides scant
27 support for concluding otherwise.

28 ¹⁸ The Court concludes only that the tribe's power to exclude nonmembers does not
provide a basis for the Tribal Court action. The Court does not address whether or how the
tribe might otherwise exercise this power. Specifically, the Court expresses no view on
whether CRIT may exclude Johnson from tribal land.

1 **D. Johnson Conclusion.**

2 Defendants have not carried their burden of proving that Robert Johnson entered into
3 a consensual relationship with CRIT. Paragraph 34 of the lease and the tribe's inherent
4 power to exclude nonmembers do not provide a jurisdictional basis for the Tribal Court
5 action. The Tribal Court therefore may not exercise jurisdiction over Johnson.

6 **VII. Amicus Briefs.**

7 With the Court's permission, CRIT filed amicus briefs on the merits of this action.
8 Dkt. ##70, 71. CRIT urges the Court to dismiss this action because CRIT is an indispensable
9 party under Federal Rule of Civil Procedure 19 and has not been sued. CRIT makes several
10 arguments. The Court finds none of them persuasive.

11 CRIT argues that it is an indispensable party because Plaintiffs have challenged
12 CRIT's ownership of the leased land and the validity of the lease. Dkt. #70. As noted above,
13 however, the Court will not address the title of the land or the validity of the lease. The
14 Court has assumed for purposes of this action that the land belongs to the tribe and the lease
15 is valid.

16 CRIT argues that it is an indispensable party because it has an interest in preserving
17 the Tribal Court judgment in this case. In response to a different tribe's argument that it was
18 an indispensable party, the Ninth Circuit held that the "tribe does not have 'a legally
19 protected interest in maintaining a court system.'" *McDonald v. Means*, 309 F.3d 530, 541
20 (9th Cir. 2002) (quoting *Yellowstone County v. Pease*, 96 F.3d 1169, 1173 (9th Cir. 1996)).
21 *A fortiori* the tribe does not have a legally protected interest in a particular judgment of that
22 court system. Furthermore, if the judgment against Johnson was entered without jurisdiction,
23 it is "null and void." *Plains Commerce Bank*, 128 S. Ct. at 2716. The tribe has no legally
24 protected interest in a null and void judgment.

25 CRIT argues that it has an interest in protecting tribal sovereign immunity, but this
26 action does not challenge CRIT's sovereign immunity. It concerns Tribal Court jurisdiction.
27 It is well settled that "federal courts are the final arbiters of federal law, and the question of
28

1 tribal court jurisdiction is a federal question.” *FMC*, 905 F.2d at 1314. As the Ninth Circuit
2 further observed, “holding that a tribe is a necessary party ‘whenever [its] jurisdiction is
3 challenged would lead to absurd results.’” *McDonald v. Means*, 309 F.3d 530, 541 (9th Cir.
4 2002) (quoting *Yellowstone*, 96 F.3d at 1173).

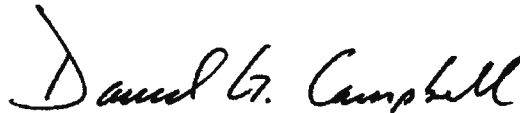
5 Finally, CRIT asserts that it can enforce the Tribal Court judgment against Johnson
6 regardless of this Court’s ruling. Dkt. #70 at 11. As the Supreme Court has explained,
7 however, a tribal court decision entered without jurisdiction is null and void. *Plains*
8 *Commerce Bank*, 128 S. Ct. at 2716. The tribe cannot enforce a null and void judgment.

9 **IT IS ORDERED:**

10 1. Plaintiffs’ request for declaratory relief is **denied** with respect to Plaintiff
11 Water Wheel Camp Recreational Area, Inc., and **granted** with respect to Plaintiff Robert
12 Johnson. The CRIT Tribal Court lacks subject matter jurisdiction over Johnson, and the
13 judgment against him in Case No. CV-CO-2007-0100 is null and void. Defendants are
14 directed to vacate the judgment and to cease any litigation concerning Robert Johnson
15 personally.

16 2. The Clerk shall terminate this action.

17 DATED this 22nd day of September, 2009.

18
19
20 

21 _____
22 David G. Campbell
23 United States District Judge
24
25
26
27
28

EXHIBIT 3

BY SPECIAL APPEARANCE

2008 APR 15 PM 3:21
COLORED RIVER INDIAN TRIBES

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Attorney at Law
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Parker, Arizona 85344
Tel: 928-669-6565
Fax: 928-669-6868
Attorney for Defendant Water Wheel

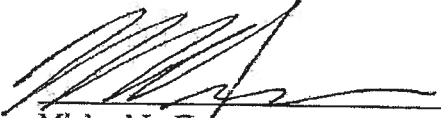
Fred Welch
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Tel: 928-669-5892
Fax: 928-669-5893
Attorney for Defendant Robert Johnson

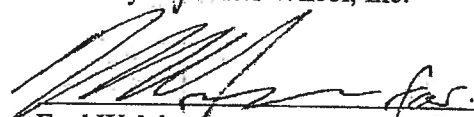
**IN THE TRIBAL COURT
OF THE COLORADO RIVER INDIAN TRIBES**

COLORADO RIVER INDIAN TRIBES	)	Case No. CV-CO-2007-0100
)	
Plaintiff,)	
)	
v.	)	NOTICE OF APPEAL
)	
WATER WHEEL CAMP RECREATIONAL)	
AREA, INC., ROBERT JOHNSON, AND)	
DOES 1-20,)	
)	
Defendants.)	

Defendants Water Wheel Camp Recreational Area, Inc. ("Water Wheel") and Robert Johnson hereby lodge this Notice of Appeal. Defendants are appealing this Court's Order of March 18, 2008, denying Defendant Water Wheel's Motion to Dismiss and denying Defendant Johnson's Motion to Dismiss, a copy of the Court's Order is attached hereto as Exhibit A. Along with this Notice of Appeal, Defendants are contemporaneously filing a Petition for Appeal and a Motion for Stay to halt all further proceedings pending the outcome of the Defendants' jurisdictional challenge herein noticed for appeal.

DATED this 25th day of March, 2008.


Michael L. Frame
Attorney for Water Wheel, Inc.


Fred Welch
Attorney for Robert Johnson

CERTIFICATE OF SERVICE

I certify that on the 25th day of March, 2008, I served by first class mail, postage prepaid, upon the following persons at the addresses listed, the above entitled document:

Eric Shepherd
Office of Attorney General
Route 1, Box 23-B
Parker, AZ 85344

Ellison Folk
Winter King
Shute, Mihaly & Weinberger
396 Hayes Street
San Francisco, CA 94102

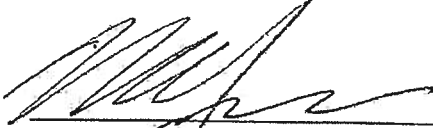

Michael L. Frame
Attorney for Water Wheel, Inc.

EXHIBIT A

IN THE TRIBAL COURT
OF THE COLORADO RIVER INDIAN TRIBES
PARKER, ARIZONA

COLORADO RIVER INDIAN TRIBES,
Petitioner/Plaintiff,
vs.
WATER WHEEL CAMP RECREATIONAL
AREA, INC., ROBERT JOHNSON, and DOES
1-20,
Respondents/Defendants.

Case No. CV-CO-2007-0100

ORDER

RECEIVED

MAR 19 2008

Michael L. Frame
Attorney At Law

This matter was heard on March 14, 2008 to consider the remaining arguments of Defendants' in their motion to dismiss claiming that this Court lacks adjudicatory, personal and subject matter jurisdiction.¹

Plaintiff Colorado River Indians Tribes (CRIT) appeared through attorneys Eric Shepard, Winter King and Amanda Garcia. Defendant Robert Jonson (Johnson) appeared with attorney Fred Welch. Defendant Water Wheel Camp Recreation Area, Inc., (Water Wheel) appeared through attorney Michael Frame.

After considering the testimony of Robert Johnson, Plaintiffs Exhibits and arguments of counsel, the Court finds as follows;

Re: Defendant Water Wheel's Motion to Dismiss

On October 19, 2007, Defendant Water Wheel filed a Motion to Dismiss making six (6) separate arguments for dismissal of the action. On January 15, 2008, the Court entered an Order denying the arguments set forth in paragraphs

¹ On October 19, 2007, Defendants Water Wheel and Robert Johnson filed Motions to Dismiss setting forth several grounds for dismissal of the Complaint. On January 15, 2008, the Court entered an Order disposing of several of the arguments. The January 15th Order denied that part of Defendants' Motion to Dismiss which argued that the Colorado River Indian Tribes (CRIT) lacked jurisdiction because the Water Wheel Resort property is not a part of the CRIT reservation. See January 15, 2008 Order.

1, 2, 3 and 5 of the Motion to Dismiss. Paragraphs 1, 2 and 3 argued in various forms that the Colorado River Indian Tribes (CRIT) lacked jurisdiction because the Water Wheel Resort property is not a part of the CRIT reservation. See January 15, 2008 Order. Paragraph 5 argued that the CRIT failed to join the United States as an indispensable party to the complaint.

The Court set the argument in paragraph 4 of Water Wheel's Motion to Dismiss for a hearing on March 14, 2008. In paragraph 4, Water Wheel argues that "[t]his action must be dismissed because defendant Water Wheel Camp Recreation Area, Inc., is non-Indian, who neither explicitly or impliedly has consented to the jurisdiction of, or undertaken any conduct within, the exterior boundaries of the Colorado River Indian Tribes and is therefore beyond the jurisdiction of this Court."

In *United States v. Montana*, 450 U.S. 544 (1981), the United States Supreme Court held that a tribe may regulate, through taxation, licensing, or other means, the activities of non-Indians who enter consensual relationships with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements.

The Court finds that the CRIT has met its burden of proof and established that this Court has adjudicatory jurisdiction to hear the cause of action against Water Wheel.

1. It is undisputed that Water Wheel is a non-Indian owned corporation and business entity, therefore, making *Montana* applicable. It is also undisputed that Water Wheel is incorporated under the laws of the State of California.

2. The Court finds that Water Wheel entered into a consensual relationship with the CRIT or its members, through commercial dealings, specifically by entering into a thirty-two (32) year "Business Lease" (Plaintiff's Exhibit 1) with the CRIT to lease CRIT tribal property and, pursuant to that Lease, engaged and conducted numerous commercial and business dealings and activities on the CRIT reservation.

3. Plaintiff's Exhibit 1 is the "Business Lease." The Lease shows that Defendant Water Wheel (the "Lessee") entered a thirty-two (32) year "Business Lease" with the CRIT (the "Lessor"). The Lease began in June 1975.

4. Beginning in June 1975 and for the next thirty-two (32) years, Water Wheel operated and engaged in numerous commercial and business activities and dealings with the CRIT, including but not limited to:

5. Operation of a recreational mobile home resort (see Plaintiff's Exhibits 1, 28, testimony of Robert Johnson, and numerous other Exhibits),

6. Sale of mobile homes (see Plaintiff's Exhibit 16),

7. Rental of mobile home and trailer spaces, lots or sites (see Plaintiff's Exhibit 28),

8. Operation of a convenience store (see Plaintiff's Exhibits 1, testimony of Robert Johnson, and numerous other Exhibits),

9. Operation of a restaurant (see Plaintiff's Exhibit 16),

10. Sale of alcoholic beverages (see Plaintiff's Exhibit 14),

11. Sale of propane, gas and groceries (see Plaintiff's Exhibit 16),

12. Rental of trailer and camping spaces (see Plaintiff's Exhibit 14 and numerous other Exhibits),

13. Maintenance and operation of a:

a. business office (see testimony of Robert Johnson),

b. boat storage (see Plaintiff's Exhibit 38, 39) and

c. Marina, and

14. Payment of monthly and annual rent to the CRIT (Plaintiff's Exhibits 1, 14, 17, 18 and testimony of Robert Johnson).

Several other Exhibits admitted at the hearing also support the Court's findings. The Exhibits listed above only partly demonstrate and support the Court's findings of Water Wheel's commercial and business activities and dealings with the CRIT. The Court did list each of Plaintiff's Exhibits and explain how that Exhibit demonstrates the manner and extent of Water Wheel's commercial dealings with the CRIT.

Based on the above, the Court DENIES Water Wheel's motion to dismiss for lack of adjudicatory jurisdiction.

**Re: Defendant Robert Johnson's Motion to Dismiss
for Lack of Adjudicatory Jurisdiction**

On October 19, 2007, Defendant Robert Johnson filed a Motion to Dismiss making seven (7) separate arguments for dismissal of the action. On January 15, 2008, the Court entered an Order denying the arguments set forth in paragraphs 1, 2, 3 and 6 of the Motion to Dismiss. Paragraphs 1, 2 and 3 argued in various forms that the Colorado River Indian Tribes (CRIT) lacked jurisdiction because the Water Wheel Resort property is not a part of the CRIT reservation. See January 15, 2008 Order. Paragraph 6 argued that the CRIT failed to join the United States as an indispensable party to the complaint.

The Court set the arguments in paragraphs 4 and 5 of Johnson's Motion to Dismiss for a hearing on March 14, 2008. In paragraph 4, Johnson argues that "[t]his action must be dismissed because defendant Robert Johnson is non-Indian, who neither explicitly or impliedly has consented to the jurisdiction of, or undertaken any conduct within, the exterior boundaries of the Colorado River Indian Tribes and is therefore beyond the jurisdiction of this Court."

In *United States v. Montana*, 450 U.S. 544 (1981), the United States Supreme Court held that a tribe may regulate, through taxation, licensing, or other means, the activities of non-Indians who enter consensual relationships with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements.

The Court finds that Plaintiff CRIT has met its burden of proof and established that this Court has adjudicatory jurisdiction to hear the cause of action against Robert Johnson.

15. It is undisputed that Defendant Robert Johnson is a non-Indian.

16. In finding adjudicatory jurisdiction over Robert Johnson, the Court adopts all findings of fact relevant to Defendant Water Wheel stated above (paragraphs 1-14 above), including the additional findings:

17. Robert Johnson did not have a business or ownership interest in Water Wheel Camp Recreation Area, Inc., in 1975 when the lease was signed and entered into (see testimony of Robert Johnson),

18. In 1981, Robert Johnson bought 50% of the Water Wheel stock. In 1985, he bought the remaining 50% of the stock so that he and his wife owned 100% of the Water Wheel stock (see testimony of Robert Johnson).

19. In 1985, Johnson became President of Water Wheel Camp Recreation Area, Inc. As of this date, he is still President of Water Wheel Camp Recreation Area, Inc. aka Water Wheel Resort (see testimony of Robert Johnson),

20. Beginning in 1985 and for the next twenty-two (22) years, Defendant Johnson, as President of Water Wheel, operated and maintained Water Wheel pursuant to the Business Lease (see testimony of Robert Johnson and Plaintiff's Exhibits),

21. As President and owner of Water Wheel, Johnson engaged in numerous commercial and business activities and dealings with the CRIT on the CRIT reservation, including but not limited to:

22. See paragraphs 1 – 14 under Defendant Water Wheel above which are incorporated herein as to Defendant Johnson,

23. Hiring, paying and supervising Water Wheel employees,

24. Requesting, attending and participating in numerous business meetings with CRIT Tribal employees, staff, tribal departments and offices to discuss Water Wheel business matters, development projects, and property and building inspections. Per the testimony of Robert Johnson, he met with Herman Laffoon, Jr., Commercial Manager, Realty Services, Colorado River Indian Tribes, Parker, Arizona approx. 15 times to discuss buildings projects. Some of the meetings occurred at the Water Wheel resort property and some occurred in Mr. Laffoon's office on the CRIT reservation in Parker, Arizona. Per the testimony of Robert Johnson, he met with Ambrose Howard, Building and Safety Office, Colorado River Indian Tribes, Parker, Arizona approx. 50 to 75 times to discuss Water Wheel building and other development projects. Some of the

meetings occurred at the Water Wheel resort property and some occurred in Mr. Howard's office on the CRIT reservation. Per the testimony of Robert Johnson, he met with Grant Buma, Hydrologist Engineer, Colorado River Indian Tribes, Parker, Arizona, approx. 15 times to discuss development projects at the Water Wheel resort property.

25. Submitting several written requests and correspondence to the CRIT to develop additional projects at the Water Wheel Resort site. (Plaintiff Exhibits 25, 28, 38, 42, 51, 56, 57, 58), and

26. Re-negotiating the monthly and annual rent of the Water Wheel property (Plaintiff's Exhibit 77, 84, 85, 87).

27. As of this date, Johnson continues to remain on the Water Wheel Resort property and continues to operate the Water Wheel Resort business pursuant to the Lease

Once again, other Exhibits admitted during the hearing support the Court's findings. The Exhibits listed above only partly demonstrate and support the Court's findings that Defendant Johnson engaged in commercial and business activities and dealings with the CRIT. This Court did not list each of Plaintiff's Exhibits and explain how that Exhibit demonstrates the manner and extent of Defendant Johnson's commercial dealings and business contacts with the CRIT.

Based on the above, the Court DENIES Robert Johnson's motion to dismiss for lack of adjudicatory jurisdiction.

**Re: Defendant Robert Johnson's Motion to Dismiss
Because He is Not a Party To The Lease**

In paragraph 5 of the Motion to Dismiss, Johnson argues that "[t]his action must be dismissed because defendant, Robert Johnson, a non-Indian, is not a party to the lease forming the basis of the complaint and is therefore beyond the jurisdiction of this Court."

The Court finds that all the above findings of fact (paragraphs 1-27 above) establish that Robert Johnson is in fact a party to the Lease.

Based on the above, the Court DENIES Robert Johnson's motion to dismiss on grounds that he is not a party to the lease.

**Re: Defendant Robert Johnson's Motion to Dismiss
For Lack Of Personal Jurisdiction**

The Court finds that the above findings of fact (paragraphs 1-27 above) also establish sufficient minimum contacts with the CRIT and the CRIT reservation by Defendant Johnson so that the Tribal Court may exercise personal jurisdiction over him.

Based on the above, the Court DENIES Robert Johnson's motion to dismiss for lack of personal jurisdiction.

Re: Subject Matter Jurisdiction

The Court finds that it has subject matter jurisdiction over the CRIT's complaint for Eviction and Damages (Breach of Lease), as follows:

28. Article XII, Section 2 of the CRIT's Constitution states:

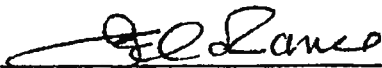
"The judicial power of the courts of the Colorado River Indian Tribes shall extend to all cases and matters in law and equity arising under this Constitution and law-laws, and the ordinances of the tribes, subject to any limitations, restrictions or exceptions imposed by or under the authority of the Constitution or laws of the United States.

29. Pursuant to L&O Code, Section 102(b), the Tribal Court "shall have jurisdiction over all civil causes of action and over all controversies between any persons" "[s]ubject to any limitations, restrictions or exceptions imposed by or under the authority of the Constitution or laws of the United States, or by the Constitution or Bylaws of the Tribes, or by the ordinances or codes of the Tribes, or by express provision elsewhere in this Code."

30. Section 1-304 of the CRIT Property Code provides that a landlord may commence an action for eviction and related relief in Tribal Court to recover possession of property and other relief. See Property Code Section 1-102. (The provisions of the property Code "govern relationships between all landlords and tenants and over all property whether private or public real property within the exterior boundaries of the CRIT reservation and subject to the authority of the Tribes.")

The Court finds that the above provisions of law establish the Court's subject matter jurisdiction over the CRIT's Complaint for Eviction and Damages in Contract (Lease).

SO ORDERED this 18th day of March, 2008.



Gary LaRance, Judge, CRIT Tribal Court

A COPY of the forgoing was mailed/delivered this 18th day of March, 2008 to:

Eric Shepard
Colorado River Indian Tribes
Office of Attorney General
Route 1, Box 23-B
Parker, AZ 85344

Winter King
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San Francisco, CA 94102

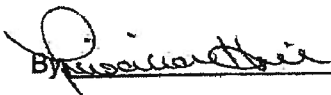
Michael Frame
1308 Joshua Ave.
Parker, AZ 85344

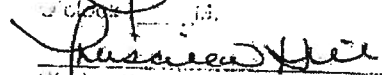
Fred Welch
1112 Arizona Ave.
Parker, AZ 85344

Colorado River Indian Tribes
State of Arizona
County of La.Paz

CERTIFICATION

I hereby certify that this is a true and correct copy of the instrument filed in my office on this 18th day of March, 2008 at 1:07 o'clock P.M.

By  _____



Clerk of Tribal Court

Colorado River Indian Tribes
Parker, Arizona 85344

EXHIBIT 4

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Albuquerque, NM 87120
tim_vollmann@hotmail.com
Ph: 505-792-9168

Attorney for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

WATER WHEEL CAMP)	
RECREATIONAL AREA, INC.,	)	No. 2:08-CV-474-PHX-DGC
and ROBERT JOHNSON,)	
)	
Plaintiffs,	)	DEFENDANTS' NOTICE OF APPEAL
)	
v.)	
)	
The Honorable GARY LARANCE, and)	
JOLENE MARSHALL,)	
)	
Defendants.)	
_____)	

Defendants Gary LaRance, Chief Judge of the Tribal Court of the Colorado River Indian Tribes (CRIT), and the Chief Clerk of the Tribal Court hereby notice their appeal to the United States Court of Appeal for the Ninth Circuit from that portion of the Order entered on September 23, 2009 [Docket # 83], which granted Plaintiffs' request for declaratory relief with respect to Plaintiff Robert Johnson, ruling that the CRIT Tribal Court lacks subject matter jurisdiction over Plaintiff Robert Johnson, ruling that the judgment against Mr. Johnson in Tribal Court Case No. CV-CO-2007-0100 is null and

void, and directing Defendants¹ to vacate the Tribal Court judgment and to cease any litigation concerning Robert Johnson personally.

Dated: October 22, 2009

Respectfully submitted,

_____/s/_____

Tim Vollmann
Attorney for Defendants
3301-R Coors Rd. N.W. #302
Albuquerque, NM 87120
Telephone: 505-792-9168
tim_vollmann@hotmail.com

¹ The position of Chief Clerk of the CRIT Tribal Court is currently vacant, as Defendant Jolene Marshall recently resigned. An employee of the Tribal Court is currently serving in that capacity on an "Acting" basis. The Complaint sought relief against the Chief Clerk in her official capacity only, and Rule 25(d) automatically authorizes substitution of the successor of a resigning public officer. Defendants see no point in identifying the Acting Chief Clerk by name, as the employee acting in that role may change from time to time until a permanent replacement is named. The Court will be advised when a successor has been named to replace Ms. Marshall.

CERTIFICATE OF SERVICE

I, Tim Vollmann, hereby certify that on October 22, 2009, I electronically filed the foregoing Defendants' Notice of Appeal, using the CM/ECF system, which sent copies of the filing automatically to the following counsel for Plaintiffs and *amicus curiae* Colorado River Indian Tribes:

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EXHIBIT 5

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

WATER WHEEL CAMP)	
RECREATIONAL AREA, INC., <i>et al.</i>,	)	CIV 08-474-PHX-DGC
)	
Plaintiffs,)	
	)	PLAINTIFF WATER WHEEL'S
	)	MOTION FOR ORDER ENJOINING
v.	)	TRIBAL COURT DEFENDANTS
	)	TO ORDER STAY DURING
	)	PENDENCY OF APPEAL
THE HONORABLE GARY LARANCE,)	
<i>et al.</i> ,)	
Defendants.)	
_____)	

Pursuant to Fed. R. App. P. 8 and Fed. R. Civ. P. 62(c), plaintiff Water Wheel Camp Recreational Area, Inc. ("Water Wheel") makes application to, and moves this Court for the immediate entry of a mandatory injunction to compel defendants The Honorable Gary LaRance, Chief and Presiding Judge of the Colorado River Indian Tribes ("CRIT" or "Tribe") Tribal Court (the "CRIT Tribal Court"), and Priscilla Hill, Chief Court Clerk for the CRIT Tribal Court, their

successors, and any and all persons acting by or through them, to stay the Tribal Court's June 13, 2008 Order¹ during the pendency of the cross appeals of this Court's September 23, 2009 Order (Docket No. 83) to the United States Court of Appeals for the Ninth Circuit.

In support of this motion, Water Wheel states the following:

1. On October 22, 2009, the Tribal Court defendants filed an appeal of the portion of this Court's September 23 Order concluding that the Tribal Court did not have jurisdiction over Robert Johnson. *Water Wheel Camp Recreational, Inc., et al. v. Gary LaRance, et al.*, CA9 Docket No. 09-17349.

2. On October 23, 2009, Plaintiff Water Wheel filed a cross appeal in the Ninth Circuit, seeking review of this Court's conclusion that Tribal Court jurisdiction over Water Wheel was proper. *Water Wheel Camp Recreational, Inc., et al. v. Gary LaRance, et al.*, CA9 Docket No. 09-17357 (Cross Appeal).

3. Notwithstanding the pending appeals, CRIT is now threatening to enforce the Tribal Court's eviction order of June 13, 2008 and has notified Water Wheel and its resident sublessees of the Tribe's intention to immediately utilize self-help to evict Water Wheel from the leasehold without any further judicial assistance or process. *See* Letter to the Members of Water Wheel Resort, from Eldred Enas, Chairman, CRIT (Oct. 21, 2009), attached as Exhibit A hereto.

4. The Tribe has also declared that its ultimate intention is to "take over the management and operation of the Resort" immediately after evicting Water Wheel. *Id.*

5. Water Wheel continues to occupy the leasehold and operate its business, with the understanding that the validity of the Tribal Court's jurisdiction over Water Wheel and, thus, the

¹ Docket No. 59-2, at 6-21.

validity of the Tribal Court's eviction order is now before the Court of Appeals for the Ninth Circuit.

6. Absent judicial relief from this Court to stay the Tribal Court order of eviction, CRIT's threatened self-help action is imminent and would have the devastating affect on Water Wheel of entirely foreclosing its ability to manage and operate its business.

7. As the validity of the Tribal Court's jurisdiction over Plaintiff Water Wheel is now before the Court of Appeals, the appropriate remedy is for this Court to preserve the *status quo* during the pendency of the appeals by mandatorily enjoining Judge LaRance to issue and Clerk Hill to enter a stay of the Tribal Court orders of eviction until the appeal is resolved. *See Natural Res. Def. Council, Inc. v. SW Marine Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001) ("district court retains jurisdiction during the pendency of an appeal to act to preserve the *status quo* . . ." which is merely an extension of the power it always inherently possessed to preserve the *status quo* during appeal).

WHEREFORE, plaintiff Water Wheel respectfully requests that this Court:

A. Enter immediately a mandatory injunction directing the Tribal Court Defendants to issue a stay of the Tribal Court orders with respect to Water Wheel, which stay shall remain in full force and effect until the Court of Appeals for the Ninth Circuit has entered a final order ruling on the merits of Water Wheel's claims in the matter of *Water Wheel Camp Recreational, Inc., et al. v. Gary LaRance, et al.*, CA9 Docket No. 09-17357.

B. Grant to Water Wheel such other and further relief as this Court deems just and equitable under the circumstances.

DATED this 10th day of November 2009.

DICKINSON WRIGHT PLLC

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Plaintiffs' **MOTION FOR ORDER ENJOINING TRIBAL COURT DEFENDANTS TO ORDER STAY DURING PENDENCY OF APPEAL** has been filed with this Court and served via ECF/Pacer upon counsel of record on this 10th day of November 2009.

s/ Dennis J. Whittlesey
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EXHIBIT 6

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REGULATORY INDIAN TRIBES
RG

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Water Wheel Camp Recreational Area,
Inc.; Robert Johnson,

Plaintiffs,

vs.

The Honorable Gary LaRance;
Jolene Marshall,

Defendants.

No. CV-08-0474-PHX-DGC

ORDER

In March of 2008, Plaintiffs Water Wheel Camp Recreational Area, Inc. and Robert Johnson filed suit in this Court, seeking a declaration that the Colorado River Indian Tribe's Tribal Court has no jurisdiction over them. Dkt. #1. On September 23, 2009, this Court denied declaratory relief as to Water Wheel and granted it as to Johnson. Dkt. #83. Water Wheel has appealed the Court's decision and has filed a motion pursuant to Federal Rule of Civil Procedure 62 asking the Court to enjoin the Tribal Court from enforcing its judgment until the appeal is decided. Dkt. #89. For the reasons that follow, the Court will deny the motion.

Rule 62 provides that "[w]hile an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's right." Fed. R. Civ. P. 62(c). A party seeking relief under Rule 62 "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the

1 absence of relief, that the balance of equities tips in his favor, and that a stay is in the public
2 interest.” *Humane Soc’y of the U.S. v. Gutierrez*, 558 F.3d 896, 896 (9th Cir. 2009) (citing
3 *Winter v. NRDC, Inc.*, — U.S. —, 129 S. Ct. 365, 374 (2008)); see *Nken v. Holder*, — U.S.
4 —, 129 S. Ct. 1749, 1761 (2009).

5 Water Wheel argues that the Court should apply the sliding scale analysis previously
6 used by the Ninth Circuit for injunctive relief and stays pending appeal. See, e.g., *Golden*
7 *Gate Rest. Ass’n v. City & County of S.F.*, 512 F.3d 1112, 1115-1116 (9th Cir. 2008) (stating
8 that a party seeking a stay must show either a probability of success on the merits and the
9 possibility of irreparable injury, or that serious legal questions are raised and the balance of
10 hardships tips in its favor). That standard, however, has been rejected by the Supreme Court.
11 See *Winter*, 129 S. Ct. at 374. Courts in the Ninth Circuit now apply the four-part test cited
12 above. See *Am. Trucking Ass’n, Inc. v. City of L.A.*, 559 F.3d 1046, 1052 (9th Cir. 2009)
13 (preliminary injunction); *Humane Soc’y of the U.S.*, 558 F.3d at 896 (stay pending appeal);
14 see also *Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. California*, No.
15 CIV 2-04-2265 FCD KJM, 2009 WL 2971547, at *2 n.3 (E.D. Cal., Sept. 14, 2009) (refusing
16 to apply sliding scale analysis to a request for stay). The first two factors of the four-part test
17 – likelihood of success on the merits and irreparable injury – are the most critical and must
18 be satisfied before the second two factors are considered. *Nken*, 129 S.Ct. at 1761 (citing
19 *Winter*, 129 S. Ct. at 375).

20 Water Wheel does not argue that it is likely to succeed on appeal. It argues instead
21 that an injunction is appropriate because there are serious legal questions at issue and the
22 balance of hardships tips in its favor. Dkt. #94 at 3. Under the cases cited above, this
23 showing does not entitle Water Wheel to an injunction.¹

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25
26 ¹ Even if Water Wheel had argued that it was likely to succeed on the merits of the
27 appeal, the Court would disagree. For the reasons set forth in the Court’s order on the merits
28 of this dispute (Dkt. #83), the Court concludes that Defendants are likely to prevail on Water
Wheel’s appeal.

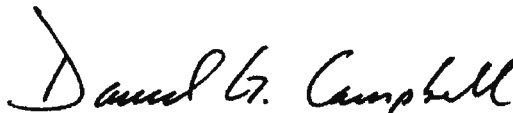
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Given that the Court will deny the motion for an injunction pending appeal, the Court will deny Defendants' motion for leave to file surreply (Dkt. #95) as moot. In ruling on this motion, the Court considered Water Wheel's proposed memorandum of points and authorities (Dkt. #93-1). The proposed memorandum, however, did not alter the Court's decision, and the Court will deny the motion for leave to file the proposed memorandum (Dkt. #93) as moot.

IT IS ORDERED:

1. Water Wheel's motion for an injunction pending appeal (Dkt. #89) is **denied**.
2. Water Wheel's motion for leave to file memorandum of points and authorities (Dkt. #93) is **denied as moot**.
3. Defendants' motion for leave to file surreply (Dkt. #95) is **denied as moot**.

DATED this 18th day of December, 2009.



David G. Campbell
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2010, the foregoing NOTICE OF MOTION AND MOTION FOR ISSUANCE OF WRIT OF RESTITUTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT was personally delivered to the Tribal Court of the Colorado River Indian Tribes for filing to:

Clerk of the Tribal Court
Colorado River Indian Reservation
26600 Mohave Road
Parker, AZ 85344

I further certify that on August 17, 2010, I caused to be served via U.S. Certified Mail, Return Receipt one copy of NOTICE OF MOTION AND MOTION FOR ISSUANCE OF WRIT OF RESTITUTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT to the following:

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Attorney for Defendant Robert Johnson

17th I declare the above to be true and correct under penalty of perjury. Executed this
day of August, 2010, at Parker, Arizona.

