

WINNEMUCCA INDIAN COLONY TRIBAL COURT

WINNEMUCCA INDIAN COLONY,

Case No.: 21-WINN-001

Plaintiffs

v.

MYRL AYER, JAMES JAY AYER, STORMY AYER,
LINDA AYER, KEVIN DICK, BRIAN DICK, LES
SMART, JR., DWIGHT BROWN, LOVELLE
BROWN, DOREEN BROWN, ELENA
GEORGE, GILBERT GEORGE, LOUELLA
BROWN aka LOUELLA STANTON, ELDON
BROWN, GILBERT GEORGE, KYLE
MISSOURI, RESIDENTS OF 232 SOUTH
STREET. and all Other Trespassers On The
Lands of The Winnemucca Indian Colony, et al.,

**ORDER AFTER NOVEMBER 22, 2022,
HEARING ON MOTIONS FOR DEFAULT
JUDGMENT; MOTIONS FOR SUMMARY
JUDGMENT AND CROSS-MOTION FOR
SUMMARY JUDGMENT; MOTIONS FOR
STAY; MOTION TO RE-OPEN
DISCOVERY AND EXTEND TIME;
MOTION TO STRIKE TRIAL; MOTION
TO MODIFY DISCOVERY ORDERS;
MOTION TO DISMISS; MOTION FOR
SANCTION OF DEFAULT AND
CONTEMPT; DEFENDANT JIMMY JAY
AYER'S OMNIBUS MOTION TO DIMSIS
AND FOR SUMMARY JUDGMENT**

Defendants

HON. JUDGE PATRICIA LENZI

WHAT OCCURRED

Hearing was held on November 22, 2022 in the above-captioned case. Present were: Norberto Cisneros, Barbara McDonald and Treva Hearne on behalf of the Winnemucca Indian Colony plaintiffs; Alexandra Rawlings and Jimmy Salvator on behalf of Defendants DOREEN BROWN, LOUELLA STANTON, ELDON BROWN, DWIGHT BROWN, ELDON BROWN, DEWAYNE BROWN, ELISA DICK, ELENA LOYA, LOVELLE BROWN, KEVIN DICK, LESLIE SMARTT, JR., AND KYLE MISSOURI; Sandra Freeman on behalf of JIMMY JAY "JJ" Ayers. No appearances were made by Linda Ayer, Stormy Ayer, Brian Dick or Myrl Ayer.¹

The Motions argued on this date were:

1. Motion for Default as to Brian Dick, Myrl Ayer, Stormy Ayer and Linda Ayer
2. Motion for Stay filed by Mr. Salvator on behalf of his clients
3. Motion for Stay filed by Ms. Freeman on behalf of Jimmy Ayer
4. Motion to Reopen Discovery and extend time filed by Ms. Rawlings, argued by Mr. Salvator and Ms. Rawlings
 - a. Motion to Strike Motion to Reopen Discovery; Opposition to Motion to Reopen Discovery
5. Motion to reopen and extend discovery filed by Ms. Freeman on behalf of Jimmy Ayer
6. Motion for Summary Judgment filed by plaintiffs;
 - a. Opposition filed by Ms. Rawlings on behalf of her clients;
7. Motion for Summary Judgment filed by Defendants represented by Ms. Rawlings and Mr. Salvator
8. Motion to Dismiss filed by Ms. Rawlings;

¹ It is noted that these persons have not appeared during several prior hearings, nor has any counsel filed a Notice of Appearance or appeared on the behalf of any of these four persons.

- 1 9. Omnibus Motion to Dismiss and for Summary Judgment filed by Ms. Freeman on behalf of Mr.
2 Jimmy Jay "JJ" Ayer;
3 10. Motion for Sanction of Default Judgment and Contempt filed by Plaintiffs
4 a. Opposition to same filed by Ms. Freeman

5 The following counsel provided oral argument on this date. The court considered all arguments made, read
6 and considered all documents on file in this matter.

7 The court took the arguments and motions, cross motions, oppositions under submission.

8 **FINDINGS OF FACT**

- 9 1. The Complaint in the above-captioned case was filed November 23, 2021.
10 2. Service of process by the Tribe was completed on December 11, 2021. The details of the service are
11 discussed in relevant areas of this Order as they pertain to specific defendants.

12 No rational finder of fact, whether jury or judge, could conclude other than the facts set forth below and no
13 genuine dispute of these material facts exists.

- 14 3. This case was filed on November 23, 2021.
15 4. This case was served on Defendants December 11, 2022, by affixing the Summonses and copies of
16 the Complaint at several locations at the Winnemucca Indian Colony:
17 a. Inside the gate at Bell Street, Lot 40;
18 b. At entrance to the Colony² on South Street, 232 W. South Street, at J-rail barrier on the
19 windshield of one of the two vehicles partially barricading the entrance to the Colony."
20 c. At entrance to mobile home remaining on South Street, Lot 19; having also been placed at
21 gate on front entrance of mobile home on front side of Lot 25 Cinnabar St, Winnemucca
22 Indian Colony, Winnemucca NV."
23 d. At entrance to structure (mobile home) on Lot 31, on Natchez Street, approximately 50-feet
24 beyond Cinnabar Street, Winnemucca Indian Colony, Winnemucca NV;
25 5. Multiple defendants, including Jimmy Jay Ayer, Stormy Ayer, Myrl Ayer, Linda Ayer, Kyle
26 Missouri, Leslie Smartt, Jr., Elena Loya, Lovelle Brown, Louella Stanton, Dewayne Brown, Eldon
27 Brown, Doreen Brown, Dwight Brown and Kevin Dick jointly or individually filed answers on or
28 about December 22-23, 2021.
6. Elisa Dick is not a member of the Winnemucca Indian Colony.
7. Leslie Smartt, Jr. is not a member of the Winnemucca Indian Colony.
8. Jimmy Jay Ayer is not a member of the Winnemucca Indian Colony.
9. Doreen Brown is not a member of the Winnemucca Indian Colony.
10. Myrl Ayer is not a member of the Winnemucca Indian Colony.
11. Linda Ayer is not a member of the Winnemucca Indian Colony.
12. Stormy Ayer is not a member of the Winnemucca Indian Colony.
13. Kevin Dick is not a member of the Winnemucca Indian Colony.
14. Brian Dick is not a member of the Winnemucca Indian Colony.
15. Eldon Brown is not a member of the Winnemucca Indian Colony.
16. Dewayne Brown is not a member of the Winnemucca Indian Colony.
17. Dwight Brown is not a member of the Winnemucca Indian Colony.
18. Louella Stanton is the named Defendant in this matter and is not a member of the Winnemucca
19 Indian Colony.
20 19. Lovelle Brown is a Defendant as either a "Resident of 232 South Street" or "all other Trespassers on
21 the lands of the Winnemucca Indian Colony et al," and is not a member of the Winnemucca Indian
22 Colony.
23 20. Lovelle Brown and Louella Stanton are two different people.³

24 ² Colony means the Winnemucca Indian Colony.

25 ³ The caption of the case is modified to correct their names.

- 1 21. Elena Loya is not a member of the Winnemucca Indian Colony.
- 2 22. Eldon Brown is not a member of the Winnemucca Indian Colony.
- 3 23. Kyle Missouri is not a member of the Winnemucca Indian Colony.
- 4 24. No non-member Residency Permit is in place for Stormy Ayer.
- 5 25. No non-member Residency Permit is in place for Elisa Dick.
- 6 26. No non-member Residency Permit is in place for Myrl Ayer.
- 7 27. No non-member Residency Permit is in place for Brian Dick.
- 8 28. No non-member Residency Permit is in place for Jimmy Jay Ayer.
- 9 29. No non-member Residency Permit is in place for Doreen Brown.
- 10 30. No non-member Residency Permit is in place for Lovelle Brown.
- 11 31. No non-member Residency Permit is in place for Louella Stanton.
- 12 32. No non-member Residency Permit is in place for Kevin Dick.
- 13 33. No non-member Residency Permit is in place for Eldon Brown.
- 14 34. No non-member Residency Permit is in place for Kyle Missouri.
- 15 35. No non-member Residency Permit is in place for Dewayne Brown.
- 16 36. No non-member Residency Permit is in place for Dwight Brown.
- 17 37. No non-member Residency Permit is in place for Elena Loya.
- 18 38. No non-member Residency Permit is in place for Leslie Smartt, Jr.
- 19 39. Residing as a non-member resident of the Winnemucca Indian Colony without a non-member Residency Permit violates WICLOC §6.020.007.
- 20 40. The Interlocutory Appeal filed April 20, 2022, by Defendants Doreen Brown, Dwight Brown, Eldon Brown, Lovelle Brown, Louella Stanton, Elena Loya, Elisa Dick, Kevin Dick, Leslie Smartt, Jr. and Kyle Missouri was dismissed by the ITCAN by Order issued August 31, 2022.
- 21 41. A P.L. 93-638 Contract between the federal government and the Winnemucca Indian Colony does in fact exist.
 - 22 e. A Contract for Judicial Services between the Winnemucca Indian Colony, signed by Chairwoman Judy Rojo and countersigned by Marilyn Bitsillie as contracting officer on behalf of the United States federal Government does in fact exist.
- 23 42. The Housing Ordinance for the Winnemucca Indian Colony has been approved by the Department of the Interior.
- 24 43. Service of the Summons and Complaint on Jimmy Jay Ayer was accomplished by "Documents placed in clear zip-lock folder placed at front entrance to mobile home on front side of Lot 25, Cinnabar Street."
- 25 44. Defendants Kyle Missouri, Leslie Smartt, Jr., Elena Loya, Lovelle Brown, Louella Stanton, Dewayne Brown, Eldon Brown, Doreen Brown, Dwight Brown and Kevin Dick jointly filed an answer in this matter.
- 26 45. Defendant Jimmy Jay Ayer filed an answer⁴ in this matter on December 23, 2021.
- 27 46. Defendant Jimmy Jay Ayer served his answer by himself - emailing it to counsel for Plaintiffs on December 23, 2021.
- 28 47. There is no Jesse Durham, Acting Regional Director of the Department of the Interior, Bureau of Indian Affairs, by letter of January 11, 2022, recognized Judy Rojo as Chairperson of the Winnemucca Indian Colony; recognized Eric Magiera as Vice Chairperson of the WIC; Misty Rojo-Alvarez as Secretary-treasurer of WIC; Shannon Evans and Merlene Magiera as the remaining council members of WIC and the governing body of the Winnemucca Indian Colony. This was not an "interim" recognition.
48. Judy Rojo is the Chairperson of the Winnemucca Indian Colony.
49. The other Tribal Council members of the Winnemucca Indian Colony are: Shannon Evans, Merlene Magiera, Eric Magiera, Misty Morning Dawn Rojo-Alvarez.

⁴ The court assumes that the documents were filed with the court on the same date they are signed. There is no "filed" stamp on the documents, but the Court is aware of other filed documents that the previously assigned clerk either failed to file stamp at all, or stamped with "Received" and the relevant date entered, as her usual practice. The Court therefore takes the date signed by Defendant Jimmy Jay Ayer as the date the document was filed with the court, disregarding the lack of file stamp appearing on the court's copy of the document in the interests of justice.

- 1 50. The Winnemucca Indian Colony members and governing body have been harmed by the continuing
2 trespass of defendants on the Colony lands: the members cannot reside on their own lands, have had
3 employees and contractors threatened with firearms and ordered off the Colony lands by trespassers,
4 have had a judge recuse himself out of fear for his safety and lives and safety of others, The findings
5 of Fact from the orders issued after hearings of July 12, 2022 and August 29, 2022 are affirmed and
6 incorporated by this reference.
- 7 51. The Winnemucca Indian Colony governing body, namely its Tribal Council, has litigated and
8 attempted to communicate for years and in some cases for decades with the defendants Jimmy Jay
9 Ayer, Linda Ayer, Stormy Ayer, Myrl Ayer, Eldon Brown, Brian Dick, Kevin Dick, Kyle Missouri,
10 Les Smartt, Jr., Elena Loya, Louella Brown aka Louella Stanton, Lovelle Brown, Doreen Brown,
11 Dwight Brown, Dewayne Brown, Elisa Dick to try to get the defendants to leave or agree to abide by
12 the Winnemucca Indian Colony's laws and regulations, to no avail.
- 13 52. Jimmy Jay Ayer, Linda Ayer, Stormy Ayer, Myrl Ayer, Eldon Brown, Brian Dick, Kevin Dick, Kyle
14 Missouri, Les Smartt, Jr., Elena Loya, Louella Brown aka Louella Stanton, Lovelle Brown, Doreen
15 Brown, Dwight Brown, Dewayne Brown, Elisa Dick remain on the lands of the Winnemucca Indian
16 Colony without the express authorization from the Winnemucca Indian Colony's Tribal Council,
17 thereby violating WICLOC Residency Ordinance §6.020.008.
- 18 53. Jimmy Jay Ayer, Linda Ayer, Stormy Ayer, Myrl Ayer, Eldon Brown, Brian Dick, Kevin Dick, Kyle
19 Missouri, Les Smartt, Jr., Elena Loya, Louella Brown aka Louella Stanton, Lovelle Brown, Doreen
20 Brown, Dwight Brown, Dewayne Brown, Elisa Dick have disturbed the peace of other residents of
21 the Winnemucca Indian Colony.
- 22 54. Linda Ayer was banished from the Winnemucca Indian Colony on April 16, 2016 pursuant to WIC
23 Resolution 2016-04-09(c).
- 24 55. The Constitution and Bylaws of the Winnemucca Indian Colony obligates the Winnemucca Indian
25 Colony's Tribal Council to maintain the lands as a resource for the members of the Winnemucca
26 Indian Colony.
- 27 56. The Constitution and Bylaws provide for the qualification for membership in the Winnemucca Indian
28 Colony, Article II.
57. The Constitution and Bylaws does not provide for any other category of membership: not resident
members, trespass members, Filipino members or white members.
58. The Constitution and Bylaws at Article III provides for the Governing Body of the Colony, the
Council.
59. The Constitution and Bylaws provides for the powers to be exercised by the Council in Article VI,
including but not limited to Section 1(b) "to prevent the sale, disposition, lease or encumbrance of
any colony lands, interests in land, or other colony assets without the consent of the council.: and (h)
"to enact ordinances to protect the health, welfare, and property of the members of the colony and for
other purposes considered in the best interest of the Colony."
60. The Tribal Council of the Winnemucca Indian Colony has adopted the resolutions and ordinances
referenced in this Order as WICLOC so as to protect the health, welfare and property of the members
of the Colony.
61. Evicting and banning Jimmy Jay Ayer, Linda Ayer, Stormy Ayer, Myrl Ayer, Eldon Brown, Brian
Dick, Kevin Dick, Kyle Missouri, Les Smartt, Jr., Elena Loya, Louella Brown aka Louella Stanton,
Lovelle Brown, Doreen Brown, Dwight Brown, Dewayne Brown, Elisa Dick, the Residents of 232
South Street and all other Trespassers on the lands of the Winnemucca Indian Colony is in the best
interests of the Colony.
62. The Winnemucca Indian Colony has lawful authority to regulate those residing on its lands.
63. The Winnemucca Indian Colony has lawful authority to exclude non-members from its lands.
64. The Winnemucca Indian Colony is a federally recognized Indian Tribe.

Motion for Default Judgment

Myrl Ayer:

Proof of service filed by the Tribe under WICLOC §1-100-030(2)(g) states the Summons and Complaint
were served on December 11, 2021, by placing them "at entrance to mobile home remaining on South Street,

1 Lot 19; having also been placed at gate on front entrance of mobile home on front side of Lot 25 Cinnabar St,
2 Winnemucca Indian Colony, Winnemucca NV.” At first blush it appears that WICLOC mandates personal
3 service on the defendant if the defendant is located within the WIC lands. However, not only is service by
4 Publication permitted under WICLOC §1-100-030(2)(e), but Alternative Service is permitted under WICLOC
5 §1-100-030(2)(h) if the court deems the method used was “effective in providing the best notice available.”
6 The court concludes that the method used by the Tribe in this instance did indeed provide the “best notice
7 available.” This conclusion is supported by descriptions of confrontations at gunpoint on the Colony lands in
8 the past, threats to kill the process server, and by the fact that the Defendant filed an Answer on December 23,
9 2021, having also filed a Motion to Dismiss.

10 However, the attorney who prepared the Answer and Motion to Dismiss apparently drafted a Certification of
11 Service embedded at the end of the Answer, that provided for the Answer and Motion to Dismiss being
12 served by email on Plaintiffs’ counsel. According to the signed Certification of Service, Defendant Myrl
13 Ayer himself served the documents on December 23, 2021⁵, via email on counsel for Plaintiffs. Defendant
14 Myrl Ayer is a party to the action. Service by him is not permitted WICLOC §1-100-040(2). Moreover, email
15 service was not approved by either party or the court as of that date based on review of the file. In fact, the
16 Summons gave a street address where the documents could be served on counsel for Plaintiffs. In addition,
17 based on the Errata filed by Plaintiffs in their Motion for Default Judgment, they never received service at all,
18 even if sent via email. Therefore, the Court concludes that no service on Plaintiffs was lawfully perfected.
19 Lastly, the Motion to Dismiss and the Answer lacked Defendant Myrl Ayer’s address information. WICLOC
20 §1-100-080(2). As a result, the Answer is found to have not been filed and served properly in this case.
21 Finally, the Motion to Dismiss was never properly served on Plaintiffs.

22 **Motion for Default Judgment**

23 **Stormy Ayer:**

24 Proof of service filed by the Tribe under WICLOC §1-100-030(2)(g) states the Summons and Complaint
25 were served on December 11, 2021, by placing them “at entrance to structure (mobile home) on Lot 31, on
26 Natchez Street, approximately 50-feet beyond Cinnabar Street, Winnemucca Indian Colony, Winnemucca
27 NV.” At first blush it appears that WICLOC mandates personal service on the defendant if the defendant is
28 located within the WIC lands. However, not only is service by Publication permitted under WICLOC §1-100-
030(2)(e), but Alternative Service is permitted under WICLOC §1-100-030(2)(h) if the court deems the
method used was “effective in providing the best notice available.” The court concludes that the method used
by the Tribe in this instance did indeed provide the “best notice available.” This conclusion is supported by
descriptions of confrontations at gunpoint on the Colony lands in the past, threats to kill the process server,
and by the fact that the Defendant filed an Answer on December 23, 2021, having also filed a Motion to
Dismiss.

However, the attorney who prepared the Answer and Motion to Dismiss apparently drafted a Certification of
Service embedded at the end of the Answer, that provided for the Answer and Motion to Dismiss being
served by email on Plaintiffs’ counsel. According to the signed Certification of Service, Defendant Stormy
Ayer herself served the documents on December 23, 2021⁶, via email on counsel for Plaintiffs. Defendant

⁵ The court assumes that the documents were *filed* with the court on the same date they are signed. There is no “*filed*” stamp on the documents, but the Court is aware of other filed documents that the previously assigned clerk either failed to file stamp at all, or stamped with “Received” and the relevant date entered, as her usual practice. The Court therefore takes the date signed by Defendant Myrl Ayer as the date the document was *filed* with the court, disregarding the lack of file stamp appearing on the court’s copy of the document in the interests of justice.

⁶ The court assumes that the documents were *filed* with the court on the same date they are signed. There is no “*filed*” stamp on the documents, but the Court is aware of other filed documents that the previously assigned clerk either failed to file stamp at all, or stamped with “Received” and the relevant date entered, as her usual practice. The Court therefore takes the date signed by Defendant Myrl Ayer as the date the document was *filed* with the court, disregarding the lack of file stamp appearing on the court’s copy of the document in the interests of justice.

1 Stormy Ayer is a party to the action. Service by her is not permitted WICLOC §1-100-040(2). Moreover,
2 email service was not approved by either party or the court as of that date based on review of the file. In fact,
3 the Summons gave a street address where the documents could be served on counsel for Plaintiffs. In
4 addition, based on the Errata filed by Plaintiffs in their Motion for Default Judgment, they never received
5 service at all, even if sent via email. Therefore, the Court concludes that no service on Plaintiffs was lawfully
6 perfected. Lastly, the Motion to Dismiss and the Answer lacked Defendant Stormy Ayer's address
7 information. WICLOC §1-100-080(2). As a result, the Answer is found to have not been filed and served
8 properly in this case. Finally, the Motion to Dismiss was never properly served on Plaintiffs.

6 7 **Motion for Default Judgment**

7 **Linda Ayer:**

8 Proof of service filed by the Tribe under WICLOC §1-100-030(2)(g) states the Summons and Complaint
9 were served on December 11, 2021, by placing them "at entrance to mobile home remaining on South Street,
10 Lot 19; having also been placed at gate on front entrance of mobile home on front side of Lot 25 Cinnabar St,
11 Winnemucca Indian Colony, Winnemucca NV." At first blush it appears that WICLOC mandates personal
12 service on the defendant if the defendant is located within the WIC lands. However, not only is service by
13 Publication permitted under WICLOC §1-100-030(2)(e), but Alternative Service is permitted under WICLOC
14 §1-100-030(2)(h) if the court deems the method used was "effective in providing the best notice available."
15 The court concludes that the method used by the Tribe in this instance did indeed provide the "best notice
16 available." This conclusion is supported by descriptions of confrontations at gunpoint on the Colony lands in
17 the past, threats to kill the process server, and by the fact that the Defendant filed an Answer on December 23,
18 2021, having also filed a Motion to Dismiss.

14 However, the attorney who prepared the Answer and Motion to Dismiss apparently drafted a Certification of
15 Service embedded at the end of the Answer, that provided for the Answer and Motion to Dismiss being
16 served by email on Plaintiffs' counsel. According to the signed Certification of Service, Defendant Linda
17 Ayer herself served the documents on December 23, 2021⁷, via email on counsel for Plaintiffs. Defendant
18 Linda Ayer is a party to the action. Service by her is not permitted WICLOC §1-100-040(2). Moreover, email
19 service was not approved by either party or the court as of that date based on review of the file. In fact, the
20 Summons gave a street address where the documents could be served on counsel for Plaintiffs. In addition,
21 based on the Errata filed by Plaintiffs in their Motion for Default Judgment, they never received service at all,
22 even if sent via email. Therefore, the Court concludes that no service on Plaintiffs was lawfully perfected.
23 Lastly, the Motion to Dismiss and the Answer lacked Defendant Linda Ayer's address information. WICLOC
24 §1-100-080(2). As a result, the Answer is found to have not been filed and served properly in this case.
25 Finally, the Motion to Dismiss was never properly served on Plaintiffs. The court grants the Motion for
26 Default of Defendant Linda Ayer.

21 **Motion for Default Judgment**

22 **Brian Dick:**

23 Proof of service filed by the Tribe under WICLOC §1-100-030(2)(g) states the Summons and Complaint
24 were served on December 11, 2021, on "RESIDENTS OF 232 SOUTH STREET, IF ANY, and all other
25 Trespassers on the lands of the Winnemucca Indian Colony et al.," by placing them "at entrance to the
26 Colony⁸ on South Street, 232 W. South Street, at J-rail barrier on the windshield of one of the two vehicles

26 ⁷ The court assumes that the documents were *filed* with the court on the same date they are signed. There is no "*filed*" stamp on the
27 documents, but the Court is aware of other filed documents that the previously assigned clerk either failed to file stamp at all, or
28 stamped with "Received" and the relevant date entered, as her usual practice. The Court therefore takes the date signed by Defendant
Myrl Ayer as the date the document was *filed* with the court, disregarding the lack of file stamp appearing on the court's copy of the
document in the interests of justice.

⁸ Colony means the Winnemucca Indian Colony.

1 partially barricading the entrance to the Colony.” At first blush it appears that WICLOC mandates personal
2 service on the defendant if the defendant is located within the WIC lands. However, not only is service by
3 Publication permitted under WICLOC §1-100-030(2)(e), but Alternative Service is permitted under WICLOC
4 §1-100-030(2)(h) if the court deems the method used was “effective in providing the best notice available.”
5 The court concludes that the method used by the Tribe in this instance did indeed provide the “best notice
6 available.” This conclusion is supported by descriptions of confrontations at gunpoint on the Colony lands in
7 the past, threats to kill the process server, and by the fact that multiple other Defendants to this action have
8 filed Answers, Motion to Dismiss, and numerous other documents in the past 11 months.

9 Here, no answer has been filed.

10 **Motion to Dismiss**

11 **(Filed by Defendants Represented by NLS⁹ December 22, 2021)**

12 Defendants admit this Motion was denied previously. See “*Renewed Motion to Dismiss*,” page 3, lines 7-8.

13 However, the court sets forth additional reasons for denying the initial Motion to Dismiss in this instance, to
14 clarify the court’s prior order of dismissal. Defendants DOREEN BROWN, LOUELLA STANTON, ELDON
15 BROWN, DWIGHT BROWN, ELDON BROWN, DEWAYNE BROWN, ELISA DICK, ELENA LOYA,
16 LOVELLE BROWN, KEVIN DICK, LESLIE SMARTT, JR., AND KYLE MISSOURI, through their
17 counsel filed a Motion to Dismiss on December 22, 2021, at the time they filed their answer in this matter.
18 Service of Process:

19 Proof of service filed by the Tribe under WICLOC §1-100-030(2)(g) states the Summons and Complaint
20 were served on December 11, 2021, on “RESIDENTS OF 232 SOUTH STREET, IF ANY, and all other
21 Trespassers on the lands of the Winnemucca Indian Colony et al.,” by placing them “at entrance to the
22 Colony¹⁰ on South Street, 232 W. South Street, at J-rail barrier on the windshield of one of the two vehicles
23 partially barricading the entrance to the Colony.” At first blush it appears that WICLOC mandates personal
24 service on the defendant if the defendant is located within the WIC lands. However, not only is service by
25 Publication permitted under WICLOC §1-100-030(2)(e), but Alternative Service is permitted under WICLOC
26 §1-100-030(2)(h) if the court deems the method used was “effective in providing the best notice available.”
27 The court concludes that the method used by the Tribe in this instance did indeed provide the “best notice
28 available.” This conclusion is supported by descriptions of confrontations at gunpoint on the Colony lands in
the past, threats to kill the process server, and by the fact that the Defendants represented by Nevada Legal
Services (NLS) filed an Answer on December 22, 2021, having also filed a Motion to Dismiss on the same
date.

The WICLOC does not definitively address Motions to Dismiss in civil cases. In this instance, Defendant
moved to dismiss the Complaint for lack of jurisdiction and failure to state a claim upon which relief can be
granted as a matter of law. As noted by Plaintiffs in their Opposition to the Motion to Dismiss, the applicable
law in this instance is F.R.Civ.Pro. 12(b)(1) and 12(b)(6). This Court must apply federal law when no specific
Tribal law applies. WICLOC § 1-30-030. Using the standards applicable to motions under F.R.Civ.Pro.
12(b)(1) and 12(b)(6), as well as review of this court’s order issued after the July 12, 2022, hearing the Motion
to Dismiss is denied.

The court accepts as true all undisputed allegations of fact made by the (Plaintiffs) non-moving party and
draws all reasonable inferences from those facts in the non-moving party's favor. *Trusted Integration, Inc. v.*
United States, 659 F.3d 1159, 163 (Fed. Cir. 2011); *Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir.
1995). The court may also consider undisputed facts contained in the record. *Herbert v. Nat'l Acad. Of Scis*,
974 F.2d 192, 197 (D.C.Cir. 1992). The burden is on the plaintiff to show jurisdiction by a preponderance of
the evidence. *Taylor v. United States*, 303 F.3d 1357, 1359 (Fed. Cir. 2002). Matters outside the pleadings

⁹ NLS represents Defendants DOREEN BROWN, LOUELLA STANTON, ELDON BROWN, DWIGHT BROWN, ELDON
BROWN, DEWAYNE BROWN, ELISA DICK, ELENA LOYA, LOVELLE BROWN, KEVIN DICK, LESLIE SMARTT, JR.,
AND KYLE MISSOURI.

¹⁰ Colony means the Winnemucca Indian Colony.

1 related to the issue of subject matter jurisdiction can be considered on a motion to dismiss for lack of
jurisdiction. *Capitol Indl Is. - EMI, Inc. v. Bennett*, 681 F.2d 1107, 1118 n. 29 (9th Cir. 1982).

2 In evaluating a defendant's motion to dismiss pursuant to F.R.Civ.P. 12(b)(6), all facts alleged in the
3 complaint must be accepted as true and construed in the light most favorable to the plaintiff. *Lee v. City of*
Los Angeles, 250 F.3d 668, 677 (9th Cir. 2001); *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989).
4 Rule 12(b)(6) motions are "viewed with disfavor" and "rarely granted." *Hail v. Santa Barbara*, 833 F.2d
1270, 1274 (9th Cir. 1986). Review is based strictly on the contents of the complaint. *Buckey v. County of Los*
5 *Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). Dismissal is inappropriate "unless it appears beyond doubt that
the plaintiff can prove no set of facts in support of the claim entitling plaintiff to relief." *Livid Holdings Ltd v.*
6 *Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005). Here, as is addressed elsewhere in this Order,
Plaintiff can prove operative facts in support of the Complaint. As a result, this court concludes that the
7 Motion to Dismiss should be denied.

8 This court concluded in the Order issued after the July 12, 2022, hearing that trespass is an ongoing tort,
therefore the statute of limitations has not run. Even so, as alleged in the Complaint Cause of Action 1, the
9 trespass is due to Defendants having failed to obtain individual non-member Residency Permit as of the date
of filing of the Complaint. The claim in the Complaint as alleged is clearly within the six-year statute of
10 limitations. The other counts do not relate to trespass, per se. Count 2 alleges the Defendants have not paid
rent pursuant to an Agreement with the Tribe, thereby violating the Housing Law of the Tribe by not keeping
11 their residence property in compliance with WIC's Housing Law, and other allegations. Again, as alleged
these are current conditions and well within any statute of limitations. Similarly, Counts 3-6 allege current
12 actions by Defendants, not ancient actions.

13 The Defendants argue that there is not a valid P.L. 93-638 contract in place. The court has the contract in its
possession, having received it directly from the BIA, and further takes judicial notice of the contract for
14 judicial services. The court met with BIA officials on August 19, 2022, pursuant to the 93-638 contract
requirement for oversight and review.¹¹

15 As noted in the July 12, 2022, order, the court found that the Complaint stated claims on which relief can be
16 granted. The court has subject matter jurisdiction over civil causes of action, WICLOC §§1-20-010 and 1-20-
020 as well as housing issues under WICLOC §6-30-02(A), (B), and (C).

17 Defendants variously claim to reside within the territory of the Winnemucca Indian Colony at one time or
18 currently. As a result, the Tribe and the Tribal Court have personal jurisdiction over them as individuals.
WICLOC §1-20-020(b)(1)(A) and (B). The status of the current government of the Tribe, its leadership, the
19 validity of its Constitution, and the validity of its laws was decided in the July 12, 2022, and August 29, 2022,
hearings. The court is not persuaded to view those conclusions of fact and law differently at this time.

20 For the reasons stated above, the Motion to Dismiss filed at the time of the Answer being filed by Defendants
21 represented by NLS was denied in the court's ruling issued after the July 12, 2022, hearing.

22 **Reviewed Motion to Dismiss Filed November 7, 2022, by Defendants Represented by NLS**

23 The arguments raised in the renewed Motion to Dismiss were available to Defendants at the time the initial
Motion to Dismiss was filed but were not raised at the time of the initial Motion to Dismiss. Under F.R.Civ.P.
24 12(g) this Motion is denied because these specified defenses should have been raised at the time of the initial
Motion. They do not fall under the exceptions under F.R.Civ.P. 12(h) (2) or (3). The court fully adopts the
25 arguments of Plaintiffs in the "Plaintiff's Motion to Strike Renewed Motion to Dismiss." The Renewed
Motion to Dismiss is stricken.

26 **Motion for Reconsideration of March 14, 2022, Order Filed by Plaintiffs**

27 The court finds this Motion is moot and is denied.

28 ¹¹ The Court is aware that this is new information being provided to the parties. The two page contract will be provided to the parties
separately. There are attachments to the contract that may be addressed later.

1 **Motion for Stay filed by Defendants Represented by NLS, Filed April 20, 2022**

2 The Motion for Stay was previously denied in this Court's Order issued after the July 12, 2022, hearing. For
3 the same reasons stated in that Order, the decision to deny the stay is affirmed.

3 **Motion for Stay filed by Defendant Jimmy Ayer Filed October 13, 2022, Counter Motion for Default
4 Judgment filed by Plaintiffs**

4 The Motion for Stay is couched incorrectly as a motion relating to a final judgment when it was issued clearly
5 as a temporary order by this court. The order precluding Mr. Ayer from the property was temporary, pending
6 further order of the court. The court has read and considered the arguments of counsel for Mr. Ayer and the
7 opposition filed by the Tribe's counsel. The Motion for Stay is denied.

6 However, the court will permit Mr. Ayer to have two hours on the property only if accompanied by BIA law
7 Enforcement on a date and at a time before December 31, 2022, when BIA Officers can be on site to provide
8 a civil stand-by for Mr. Ayer to retrieve any personal property of his remaining on site. Mr. Ayer and all
9 persons accompanying him must not possess any weapons or ammunition, to include firearms, cross bows,
10 knives, chemical sprays, incendiary devices, matches, lighters, accelerants, or any other item useable as a
11 weapon. He and all persons accompanying him or assisting him are permitted on Colony only if they each
12 consent to search of their persons, vehicles, and possessions by law enforcement for weapons and
13 ammunition. He must further consent to search of the residence, all out buildings and containers for weapons.
14 Failure to consent to search for weapons will result in no permission to enter the Colony. He and all persons
15 assisting him must not enter the property without BIA Law Enforcement being present and permitting their
16 entry.

12 The Tribe may be present themselves or through designees as observers if no communication occurs between
13 Mr. Ayer and his assistants, and the Tribal members or their designees. The Court will consider contempt
14 action against any person disobeying this provision. Any dispute over property Mr. Ayer intends to remove
15 may be documented by both parties, and must remain on site with a motion filed within 5 business days, to
16 request this court to address and decide the dispute.

15 For the reasons stated in Mr. Ayer's Reply to the Opposition to Request for Stay, the Counter Motion for
16 Sanction of Default is denied.

17 **Motion to Reopen Discovery, Extend Time, Strike Trial, Modify Discovery Orders filed by Defendants
18 Represented by NLS**

18 This court previously concluded that the WICLOC, including Title 1, is a validly passed and enforceable law.
19 See *Order After Hearing of July 12, 2022* at 3 and fn 2, issued in this case.

19 Likewise, this court has already concluded that the Federal Rules of Civil Procedure can *supplement* the
20 WICLOC to the extent the WICLOC does not address an issue. *Id at 6-7.*

21 The Moving party argues that WICLOC Title 6 § 4 does not apply to this case because the defendants did not
22 have leases signed with the Plaintiffs, therefore the Court must permit depositions and all discovery pursuant
23 to F.R.Civ.Pro. 26 because the parties stipulated to use the Federal Rules of Civil Procedure. The Defendants
24 argue that the stipulation was to *all* of the Federal Rules of Civil Procedure, presumably to the exclusion of
25 WICLOC or at least to the exclusion of WICLOC Rules the Defendants don't want to rely on when
26 inconvenient for Defendants. This Court clarified in its Order after the July 12, 2022, hearing that the Federal
27 Rules were a supplement to the extent the WICLOC was silent and a provision could be found under the
28 Federal Rules.

25 Title 6 does apply, even if Section 4 describes more formal relationships for landlord and tenant.

26 "SECTION 1 GENERAL PROVISIONS 6-030-01 Applicability

27 A. The following Title shall hereinafter be referred to as the "Winnemucca Indian Colony
28 Housing Ordinance". It shall apply to any and all arrangements, formal or informal,
 written or oral, in selling, buying, renting, leasing, occupying or using any and all

1 **housing, dwellings or accommodations for human occupation and residence on the**
2 **Winnemucca Indian Colony.** It shall also apply to any and all mortgages, leasehold
3 mortgages and agreements to secure an interest in a building or real property within
4 Winnemucca Country.

5 B. This ordinance along with the Mobile Home Ordinance and amendment, the Residency
6 Ordinance 601 and 601(A) adopted October 21, 2017 shall comprise Title 6 of the Law &
7 Order Code of the Winnemucca Indian Colony and any Ordinances adopted after this date
8 shall be included within this Title 6, hereinafter referred to as the Housing Title.

9 C. The following arrangements are not governed by this Title:

- 10 1. Residence at an institution, public or private, if incidental to detention or the
11 provision of medical, geriatric, educational, counseling, religious or similar service; or
- 12 2. Occupancy in a hotel, motel, RV lot rental, or other commercial lodging.

13 6-030-02 Jurisdiction.

14 A. **Jurisdiction is extended over all buildings and lands intended for human dwelling,**
15 **occupancy or residence which may lie within:**

16 1. **The boundaries of the Winnemucca Indian Colony;**

17 2. Lands owned by, held in trust for, leased or used by the Colony, its
18 members, its Housing Program, or any other entity of the Colony; or

19 3. The Indian Country of the Colony, as may be defined from time to time by
20 the laws of the Colony and of the United States.

21 B. **Jurisdiction is extended over all persons or entities within the jurisdiction of the**
22 **Colony who sell, rent, lease or allow persons to occupy housing, dwellings or**
23 **accommodations for the purpose of human dwelling, occupancy or residence, and all**
24 **persons who buy, rent, lease or occupy such structures.** Jurisdiction is also extended to any
25 person or entity who mortgages or otherwise secures an interest in a structure or building on
26 Colony land. Such jurisdiction is extended over all persons and entities, **whether or not they**
27 **are members of the Winnemucca Indian Colony** or have a place of business on the
28 Winnemucca Indian Colony. Any act on the Colony by a person or entity pertaining to the
subject matter of this Title shall be subject to jurisdiction of the Colony.

C. Jurisdiction over all matters which arise under this Title shall be exercised by the
Winnemucca Indian Colony Tribal Court. The Winnemucca Indian Colony does not waive its
sovereign immunity under this Title." (*emphasis added*).

This court concludes that the timelines, and indeed all aspects of Title 6, §4 do apply in this case.

Defendants claim that they have not been afforded due process in this matter if they are not granted an additional five months of discovery and two more months of motions before trial, even though in this case alone they have had a year of notice and time to investigate, and by their own admission have litigated these same claims over the past four years or more in the now defunct C.F.R. Court, the Nevada Federal District Court, the Interior Board of Indian Appeals, this court and the Inter Tribal Court of Appeals of Nevada (ITCAN). The Fifth Amendment of the United States Constitution states in relevant part, that "no person shall be...deprived of life, liberty, or property, without due process of law...". Due process requires notice "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Jones v. Flowers*, 547 U.S. 220, 225 (2006)). Defendants cite the Indian Civil Rights Act (ICRA) of 1968, which states that "[n]o Indian tribe in exercising powers of self-government shall deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law." 25 U.S.C. § 1302(a)(8). Here, the defendants have been afforded over a year of hearings in this case alone and multiple years of litigation on virtually the same issues in multiple forums. Due process does not equate with defendant's apparent belief they must prevail or due process was not afforded to them.

1 Although Defendants give passing reference to WICLOC 1-100-140(2), this section makes clear the Court is well within its authority to limit discovery. WICLOC §1-100-140(2) states:

2 "The Court shall have the absolute discretion to decide whether to permit any discovery
3 procedures. In exercising such discretion, the Court shall consider whether all parties are
4 represented by counsel, whether unreasonable delay in bringing the case to trial will result,
5 and whether the interests of justice will be promoted. The taking of depositions or the
6 requesting of admissions, the propounding of interrogatories and other discovery procedures
7 may be available to a party only upon obtaining prior permission of the Court."

8 "The scope of discovery is, of course, within the broad discretion of the trial court. *Ghandi v. Police Dep't of*
9 *Detroit*, 747 F.2d 338, 354 (6th Cir.1984), *appeal after remand*, 823 F.2d 959 (6th Cir.1987), *cert.*
10 *denied*, 484 U.S. 1042, 108 S.Ct. 774, 98 L.Ed.2d 861 (1988). "An order denying further discovery will be
11 grounds for reversal only if it was an abuse of discretion resulting in substantial prejudice." *Ibid.* " *Lewis v.*
12 *ACB Business Services, Inc.* 135 F. 3rd 389, 402 (6th Cir. 1998).

13 This court has read and considered the arguments of Defendants and does not find good cause to extend
14 discovery any further than it has. The Defendants in this case have received notice of this action, and have
15 been provided an opportunity to be heard. They are represented by counsel. They have had opportunities to
16 provide and have provided to them written discovery. Moreover, they have literally had years of
17 representation of these same defendants on virtually the same issues in multiple forums and yet continue to as
18 for further discovery which this court concludes at this point is for nothing more than to delay trial. The
19 defendants have been afforded "literally decades" of litigation, to quote counsel for one defendant.

20 Defendants fail to include as an alternative, a particular section of WICLOC that is approved by the
21 Department of the Interior and directly on point in this case, namely Title 6, Section 6-060-110:

22 "The Winnemucca Indian Colony Council, as a sovereign tribal government, may take self-
23 help to compel a person who is in trespass, has no written authority to occupy the premises
24 no matter how long the occupation has existed to cause or effect the evacuation of a premises
25 by giving notice to quit and waiting for the period of time stated on the notice to quit or
26 longer. In no event does the Colony waive its right to evacuate the premises by self-help
27 because the time in the notice to vacate has been exceeded. When compliance with a written
28 lease or trespass or unlawful occupation has occurred, the Colony shall remove the property
and persons by summary eviction. Examples of Summary eviction Examples of Summary
eviction are: no written lease with the Colony Council, the tenant is a holdover, or not a
rightful occupant of the property, such as an heir or successor in interest is not provided for in
the lease, without obtaining a court order. All other landlords on the Winnemucca Indian
Colony, except by mutual consent of the parties, may compel a tenant to vacate any premises
by giving notice to quit and obtaining a court order as provided in Title 6."

Justice delayed is justice denied. Here, the court concludes that the interests of justice require this case to
move forward without further delay. The parties have literally had years to litigate, negotiate, and potentially
settle this particular matter. Neither side has made a proposal to settle that is palatable to the opposing party.

Defendants' motion to Motion to Reopen Discovery, Extend Time, Strike Trial, Modify Discovery Orders
filed by Defendants Represented by NLS is denied.

**Motion to Reopen Discovery, Extend Time, Motion to Reset December 14, 2022 Trial, Motion to
Modify Orders Re Discovery filed by Defendant Jimmy Jay Ayer**

Interestingly, counsel states the "parties are still seeking to meet and confer" (Motion at P 6, item 16) mere
sentences and the very next paragraph after mentioning "there are decades of litigation files to access,
understand, and synthesize because this case is truly the culmination of years of contentious litigation
between the parties" all while asking for more time after decades of time litigating the same issues. Defendant
Ayer joins in the NLS arguments in his Motion.

1 Defendant Ayer cites *Hickman v. Taylor*, 329 U.S. 495 for the proposition that motions to compel in
2 discovery phase are necessary. Defendant fails to read a few sentences further in the decision: “But discovery,
3 like all matters of procedure, has ultimate and necessary boundaries. As indicated by [Rules 30\(b\) and](#)
4 [\(d\)](#) and [31\(d\)](#), limitations inevitably arise when it can be shown that the examination is being conducted in
5 bad faith or in such a manner as to annoy, embarrass or oppress the person subject to the inquiry. And as [Rule](#)
6 [26\(b\)](#) provides, further limitations come into existence when the inquiry touches upon the irrelevant or
7 encroaches upon the recognized domains of privilege.” *Hickman at 507-508*. This court concludes that after
8 “literally decades of litigation” it is time to end discovery and reach a decision.

9 For the same reasons addressed in the Order denying the Motion to Reopen Discovery filed by the Co-
10 Defendants represented by NLS, and the reasons cited above, the court denies the Motion made by Mr.
11 Jimmy Jay Ayer.

12 **Law Related to Service of Summonses and Complaints**

13 Service of a summons WICLOC §1-100-030(2)(c)(1) would require personal service. However, WICLOC
14 §1-100-030(2)(f) permits Alternative Service: “If other forms of personal service have been attempted and
15 service has not been effected, the Court may order service by mail to the last known address, or any other
16 method of service that the Court deems effective in providing the best notice available. Service by mail shall
17 be by sending certified return receipt requested and regular mail. Service shall be effective if the letter sent by
18 regular mail is not returned within thirty (30) days.” And under WICLOC §1-100-030(2)(h), service may be
19 effected at “any time in its discretion and upon such terms as it deems just, the Court may allow any process
20 or proof of service thereof result to the substantial rights of the party against whom the process issued.”

21 In this case, it is apparent that on multiple occasions, the Winnemucca Indian Colony’s government and its
22 agents, the BIA officers enforcing laws on the WIC lands, and outside contractors working for the WIC on
23 the WIC lands have faced armed confrontations, threats, barricades, protests, assaults, concerns so significant
24 that the Chief Judge for the WIC Tribal Court recused himself from this case due to fears for his own safety
25 simply for presiding as a judge in this case. Personal service, this court concludes, was impossible due to the
26 actions of the defendants and their supporters. Here, these defendants filed answers and have extensively
27 litigated this case. For these reasons, this court concludes the substantial rights of the defendants have been
28 protected and the service of process was adequate.

18 **Legal Standard for Summary Judgment**

19 Pursuant to the Winnemucca Indian Colony Law and Order Code (WICLOC), and stipulation of the parties at
20 a prior hearing, the Tribal court applies the Federal Rules of Civil Procedure to the extent the WICLOC does
21 not have a Rule on point.¹² Here the WICLOC does have law on point regarding summary judgment.

22 In addition, the Tribal court applies Winnemucca Indian Colony Law and Order Code, Section 1-100-100(5),
23 which states:

24 *Motion for Summary Judgment.*

25 *a. For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim may,*
26 *at any time after the expiration of the period within which the defendant is required to*
27 *appear, or after service of a motion for summary judgment by the adverse party, move with*
28 *or without supporting affidavits for a summary judgment in his favor upon all or any part of*
the claim, counterclaim, or cross-claim.

b. For Defending Party. A party against whom a claim, counterclaim, or cross-claim is
asserted may, at any time, move with or without supporting affidavits for a summary
judgment in his favor as to all or any part of the claim, counterclaim, or cross-claim.

c. Motion and Proceedings. The motion and supporting affidavits, memoranda of law, and
any other supporting documentation shall be filed and served at least twenty-eight (28) days
before the time fixed for the hearing as set by the Court. Any opposing affidavits shall be filed

¹² See Order After Hearing of August 29, 2022, in this case.

1 and served no later than fourteen (14) days prior to the hearing. Any counter response shall
2 be filed and served no later than three (3) days prior to the hearing. The judgment sought
3 shall be rendered if the pleadings, depositions, and admissions on file, together with the
4 affidavits, if any, show that there is no genuine issue as to any material fact and that the
5 moving party is entitled to judgment as a matter of law.

6 d. Case not fully Adjudicated on Motion. If on motion under the rule judgment is not
7 rendered upon the whole case or for all relief asking and a trial is necessary, the Court, at
8 the hearing of the motion, by examining the pleadings and the evidence before it and by
9 interrogating counsel, shall, if practicable, ascertain what material facts exist without
10 substantial controversy and what material facts are actually and in good faith controverted.
11 It shall then make an order specifying the facts that appear without substantial controversy,
12 including the extent to which the amount of damages or other relief is not in controversy, and
13 directing such further proceedings in the action as are just. Upon the trial of the actions, the
14 fact so specified shall be deemed established, and the trial shall be conducted accordingly.

15 e. Form of Affidavits – Further Testimony – Defense Required. Supporting and opposing
16 affidavit shall be made on personal knowledge, shall set forth such facts as would be
17 admissible in evidence, and shall show affirmatively that the affiant is competent to testify to
18 the matters stated. Sworn or certified copies of all papers or parts referred to in an affidavit
19 shall be attached or served along with the affidavit. The Court may permit affidavits to be
20 supplemented or opposed by depositions, summary judgment is made and supported as
21 provided in this rule, an adverse party may not rest upon the mere allegations or denials of
22 his pleading, but his response, by affidavits or as otherwise provided in this rule, must set
23 forth specific facts showing that there is a genuine issue for trial. If he does not so respond,
24 summary judgment, if appropriate, shall be entered against him.

25 f. Affidavits made in bad faith. Should it appear to the satisfaction of the Court at any time
26 that any of the affidavits presented pursuant to this rule are presented in bad faith or solely
27 for the purpose of delay, the Court shall order the party employing them to pay to the other
28 party the amount of the reasonable expenses which the filing of the affidavits caused him to
incur, including reasonable attorneys' fees and any offending party or attorney may be
adjudged guilty of contempt.

g. Form of order. The order granting or denying the motion for summary judgment shall
include the grounds for the ruling, including any documents and other evidence called to the
attention of the Court before the order on summary judgment was entered.

19 Under the Federal Rules of Civil Procedure, Motions for Summary Judgment are addressed under FRCP 56,
20 and therefore this Court applies both in this case.

21 In this case, if the case were to be tried to verdict, the standard of proof would be preponderance of the
22 evidence. WICLOC §§6-060-02(D); 6-060-05; 9-80-030. The court applies preponderance of the evidence to
23 the summary judgment evidence.

24 Summary judgment should be granted if the record, taken as a whole “shows that there is no genuine dispute
25 as to any material fact and the movant is entitled to judgment as a matter of law.” FRCP 56(a). “A genuine
26 dispute of material fact exists only ‘if the evidence is such that a reasonable jury could return a verdict for the
27 nonmoving party.’” *IntelliClear, LLC v. ETC Global Holdings, Inc.*, 978 F.3rd 653, 657(9th Cir. 2020), *citing*
Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Despite defendants’ arguments to the contrary, no
28 reasonable finder of fact could conclude that the governing body of the Winnemucca Indian Colony is any
governing body other than Judy Rojo as Chairperson of the Winnemucca Indian Colony; Eric Magiera as
Vice Chairperson of the WIC; Misty Rojo-Alvarez as Secretary-treasurer of WIC; Shannon Evans and
Merlene Magiera as the remaining council members of WIC and the governing body of the Winnemucca
Indian Colony.

Initially, the moving party bears the burden of “identifying portions of the record that demonstrate the
absence of a fact or facts necessary for one or more essential elements of each claim.” *IntelliClear v. ETC*,

1 *Ibid.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)). Once that
2 burden is met, the opposing party must show in its response that there is a genuine issue of fact that a jury
3 might find for the opposing party in order to have the motion for summary judgment dismissed. *Ibid.*,
4 citing *Anderson*, 477 U.S. at 250, 106 S.Ct. 2505.

5 “[T]he entry of summary judgment, after adequate time for discovery and upon motion, against a party who
6 fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on
7 which that party will bear the burden of proof at trial” is mandatory under FRCP 56(c). *Celotex Corp. v.*
8 *Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). If, however, “the moving party fails to
9 meet [its] initial burden, the motion [for summary judgment] must be denied, regardless of the nonmovant’s
10 response.” *Pioneer Expl., LLC v Steadfast Ins. Co.*, 767 F.3d 503 (5th Cir. 2014).

11 When reviewing the record, this court resolves all ambiguities and draws all permissible factual inferences in
12 favor of the non-moving party. *Patterson v. County of Oneida* 375 F.3d 206, 218 (2nd Cir. 2004). There is no
13 genuine issue for trial if there is insufficient evidence for a jury to return a verdict for the nonmoving party.
14 *Anderson v. Liberty Lobby, Inc.* 547 U.S. 242, 249-51, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986).

15 **Defendants’ Summary Judgment Motions –**

16 **Both as to NLS-represented Defendants and Jimmy Jay Ayer**

17 When viewing Defendants’ Motion for Summary Judgment, this court concludes that affidavits are not
18 required. WICLOC §1-100-100. The court finds it rather curious that Defendants cite Title 1 while claiming it
19 is invalid and unenforceable. This court nevertheless finds the WICLOC valid and enforceable and applies it
20 as appropriate in this case.

21 Defendants cite the doctrine of laches applies because the WIC Council has not acted soon enough, while
22 arguing that the WIC Tribal Council, and its predecessors, have litigated with Defendants for years, if not
23 decades. The record is replete with evidence that the WIC Tribal Council simply has not ever “slept on its
24 rights,” but has litigated unceasingly to enforce its authority and rights, in every forum available to it: federal
25 district court, the 9th Circuit Court of Appeals, the now defunct Winnemucca C.F.R. Court, the IBIA, the Inter
26 Tribal Court of Appeals of Nevada and this court.

27 Defendants’ argument that the doctrine of equitable estoppel applies is belied by the extensive evidence in the
28 record that the Winnemucca Indian Colony’s true and recognized government has unceasingly communicated
their intent to enforce the Tribe’s laws, and ensure all residents of the Colony lands agree to be subject to the
WICLOC and applicable Tribal regulations, or be ejected, banished and/or evicted from the Colony lands..

The WICLOC Residency Ordinance exists and the quote from its language is accurate. The reference to “7.8”
in the Complaint is an obvious typographical error: the section is actually numbered 6.020.007 and 6.020.008.
The court finds this argument at best an artful and creative lawyerly argument, but that does not mean it is “a
genuine issue of material fact.” It is not. No reasonable jury or judge or finder of fact could conclude as much
in favor of defendants.

The Housing Ordinance is not applied retroactively. The ordinance was adopted by the Winnemucca Indian
Colony Tribal Council on October 9, 2021. It was effective immediately. Article VI, Section 3 of the WIC
Constitution states, in pertinent part: “Any council legislation *which is subject to Secretarial approval* ... shall
become effective upon approval or if no action is taken, within ninety (90) days after being received by the
Superintendent.” (*emphasis added*). The Secretary of the Interior no longer requires tribes to submit their
proposed ordinances for approval. Winnemucca Indian Colony Constitution, Art. VI, Sec. 1(g) and (h). Even
though WIC references its Constitutional “90-day rule” by allowing the Regional Director 90 days to either
approve or disapprove an ordinance, that does not make the “90 day rule” mandatory under Tribal or federal
law. See WIC Constitution, Art VI, Sec. 3. Silence is deemed approval by the Regional Director. See,
generally, 25 U.S.C. §§5302(b) and 5328(b) “The provisions of this chapter shall supersede any conflicting
provisions of law (including any conflicting regulations) in effect on the day before October 25, 1994, and the
Secretary is authorized to repeal any regulation inconsistent with the provisions of this chapter.” And
§5373(d)(2) “Subject to section 101(a) of the PROGRESS for Indian Tribes Act and except with respect to

1 programs described under section 5363(c) of this title, this subchapter shall supersede any conflicting
2 provision of law (including any conflicting regulations).” In addition, 80 Fed. Reg. 63,094, October 19, 2015,
3 provides additional guidance. “For many tribes, the requirement for Secretarial elections or Secretarial
4 approval is anachronistic and inconsistent with modern policies favoring tribal self-governance. The rule
5 includes language clarifying that a tribe reorganized under the IRA may amend its governing document to
6 remove the requirement for Secretarial approval of future amendments. The Department encourages
7 amendments to governing documents to remove vestiges of a more paternalistic approach toward tribes. ...”
8 The Secretary of the Interior has delegated the authority to approve tribal ordinances to the Regional
9 Directors per 3 Indian Affairs Manual 4, 1.7(2) which states, in part: “1.7 Authorities that are Redelegated
10 only to Regional Directors. ... 2. Approval of Tribal Codes and Ordinances.” Essentially, the Secretary of the
11 Interior and Regional Directors allow review, as a courtesy to Tribes with a clause of this sort in the Tribe’s
12 Constitution. Here, however, the WIC has a second clause that governs in analyzing the impact of the two
13 sections: Article VI, Section 2 “The council shall exercise such further powers as may be in the future
14 delegated to it by the government of the United States or the State of Nevada.” Here, the federal government
15 has delegated to tribes the ability to pass ordinances without seeking Secretarial approval. This squarely
16 places Sections 2 and 3 in conflict *only* if read in such a way as to conclude that Section 3 mandates
17 Secretarial approval. On its face, this Section obviously does not require Secretarial approval, but allows for
18 Secretarial approval and a date by which no action is equivalent to approval. This court does not read them in
19 conflict, but harmonizes Sections 2 and 3. Since Secretarial approval is no longer needed, the Tribe can enact
20 laws without sending them for Secretarial review and approval because this step is no longer required and is
21 therefore a “further power” delegated to the WIC by the United States.

22 The Tribe’s Constitution was approved in 1970. The Defendants’ attempt to litigate it now – Fifty two years
23 after it was enacted and approved – is more appropriate to view as barred by laches and equitable estoppel
24 using the very same authorities and arguments posted by Defendants in their Motions for Summary
25 Judgment.

26 The Third Cause of Action does not apply to Mr. Jimmy Jay Ayer. Plaintiffs did file this Cause of Action
27 against nor did Plaintiffs seek Summary Judgment as to Mr. Jimmy Jay Ayer on this Cause of Action.

28 The Fourth Cause of Action does apply to Mr. Jimmy Jay Ayer since this court concludes below that he is
indeed a non-member who does not have a non-member Residency Permit, resulting in him being a
trespasser.

Documents Relevant to this Decision

The court incorporates by this reference all documents on file in this case by all parties. The court also
considers the entirety of the WIC Constitution and Bylaws and the WICLOC. The court considers in
particular the Jesse Durham letter of January 11, 2022, the PL 93-638 Contract for Judicial Services with the
WIC Tribe and Marilyn Bitsillie as signatory for the United States, the WICLOC, and the WIC Constitution.

ORDER:

1. This court grants summary judgment in favor of Plaintiffs in whole as to:
 - a. Cause of Action 1 as it applies to Jimmy Jay Ayer, Linda Ayer, Stormy Ayer, Myrl Ayer, Eldon Brown, Brian Dick, Kevin Dick, Kyle Missouri, Les Smartt, Jr., Elena Loya, Louella Brown aka Louella Stanton, Lovelle Brown, Doreen Brown, Dwight Brown, Dewayne Brown, and Elisa Dick;
 - b. Cause of Action 2 as it applies to Jimmy Jay Ayer, Linda Ayer, Stormy Ayer, Myrl Ayer, Eldon Brown, Brian Dick, Kevin Dick, Kyle Missouri, Les Smartt, Jr., Elena Loya, Louella Brown aka Louella Stanton, Lovelle Brown, Doreen Brown, Dwight Brown, Dewayne Brown, Elisa Dick,
 - c. Cause of Action 3 as it applies to Linda Ayer, Elisa Dick, Les Smartt, Jr.
 - d. Cause of Action 4 as it applies to Jimmy Jay Ayer, Linda Ayer, Stormy Ayer, Myrl Ayer, Eldon Brown, Brian Dick, Kevin Dick, Kyle Missouri, Les Smartt, Jr., Elena Loya, Louella

1 Brown aka Louella Stanton, Lovelle Brown, Doreen Brown, Dwight Brown, Dewayne
2 Brown, Elisa Dick

3 e. Cause of Action 5 as to Dwight Brown, Bryan Dick, Jimmy Jay Ayer, Meryl Ayer, Stormy
4 Ayer, Elena Loya and any persons residing with her, Elisa Dick¹³, Les Smartt, Jr., Kyle
5 Missouri, Kevin Dick, Brian Dick, and Linda Ayer.

6 f. Cause of Action 6.

- 7 2. The Court grants summary judgment in favor of Defendants Jimmy Jay Ayer, Stormy Ayer, Myrl
8 Ayer Eldon Brown, Brian Dick, Kevin Dick, Kyle Missouri, Elena Loya, Louella Brown aka
9 Louella Stanton, Lovelle Brown, Doreen Brown, Dwight Brown, Dewayne Brown, in whole as to
10 Cause of Action 3.
- 11 3. This court denies all other summary judgment motions filed by defendants.
- 12 4. For the reasons stated above, the Motion to Dismiss filed at the time of the Answer being filed by
13 Defendants represented by NLS was denied in the court's ruling issued after the July 12, 2022,
14 hearing.
- 15 5. The Renewed Motion to Dismiss by Defendants represented by NLS is stricken.
- 16 6. The Court finds the Motion for Reconsideration filed by Plaintiffs March 14, 2022, is moot and is
17 denied.
- 18 7. The Motion for Stay was previously denied in this Court's Order issued after the July 12, 2022,
19 hearing. For the same reasons stated in that Order, the decision to deny the stay is affirmed.
- 20 8. For the reasons stated in Mr. Ayer's Reply to the Opposition to Request for Stay, the Counter
21 Motion for Sanction of Default is denied.
- 22 9. Defendants' motion to Motion to Reopen Discovery, Extend Time, Strike Trial, Modify Discovery
23 Orders filed by Defendants Represented by NLS is denied.
- 24 10. For the same reasons addressed in the Order denying the Motion to Reopen Discovery filed by the
25 Co-Defendants represented by NLS, and the reasons cited above, the court denies the Motion
26 made by Mr. Jimmy Jay Ayer.
- 27 11. A fine of \$100 per day, per defendant, commencing December 11, 2021 is imposed on Jimmy Jay
28 Ayer, Linda Ayer, Stormy Ayer, Myrl Ayer, Eldon Brown, Brian Dick, Kevin Dick, Kyle
Missouri, Les Smartt, Jr., Elena Loya, Louella Brown aka Louella Stanton, Lovelle Brown,
Doreen Brown, Dwight Brown, Dewayne Brown, Elisa Dick, and Leslie Smartt, Jr.. The court will
accept sufficient proof to show defendants were NOT residing on the WIC, thereby lowering the
fines imposed for all continuous days since that date if the defendants can show they have not
returned to the WIC lands.
12. Defendants Eldon Brown, Kevin Dick, Kyle Missouri, Les Smartt, Jr., Elena Loya, Louella Brown
aka Louella Stanton, Lovelle Brown, Doreen Brown, Dwight Brown, Dewayne Brown, Elisa
Dick, and Leslie Smartt, Jr. are ordered to vacate the Winnemucca Indian Colony no later than 4:00
p.m. on December 9, 2022.
13. Defendants Jimmy Jay Ayer, Eldon Brown, Kevin Dick, Kyle Missouri, Les Smartt, Jr., Elena
Loya, Louella Brown aka Louella Stanton, Lovelle Brown, Doreen Brown, Dwight Brown,
Dewayne Brown, Elisa Dick, and Leslie Smartt, Jr. are ordered banished from the Winnemucca
Indian Colony Tribal lands for a period of 10 years.
14. As to all defendants 10 years means until December 2, 2032.
15. All defendants must not possess any firearms or other weapons or ammunition while remaining on
or vacating the Winnemucca Indian Colony lands.
16. The Motion for Stay filed by Defendant Jimmy Jay Ayer is denied.
- a. The court permits Mr. Jimmy Jay Ayer to have two hours on the property only if
accompanied by BIA law Enforcement on a date and at a time before December 31, 2022,
when BIA Officers can be on site to provide a civil stand-by for Mr. Ayer to retrieve any
personal property of his remaining on site. Mr. Ayer and all persons accompanying him must
not possess any weapons or ammunition, to include firearms, cross bows, knives, chemical
sprays, incendiary devices, matches, lighters, accelerants, or any other item useable as a
weapon. He and all persons accompanying him or assisting him are permitted on Colony only

¹³ Also known as Eliza Dick.

1 if they each consent to search of their persons, vehicles, and possessions by law enforcement
2 for weapons and ammunition. He must further consent to search of the residence, all out
3 buildings and containers for weapons. Failure to consent to search for weapons will result in
4 no permission to enter the Colony. He and all persons assisting him must not enter the
property without BIA Law Enforcement being present and permitting their entry. The WIC
Tribe and their agents may not enter the property until Mr. Ayer has completed this process
or January 1, 2023, whichever occurs first.

5 **17. FURTHER ORDER AS TO MYRL AYER**

- 6 a. The court grants the Motion for Default of Defendant Myrl Ayer and the following relief:
7 b. **Myrl Ayer is immediately evicted from the Winnemucca Indian Colony and must
vacate the lands no later than December 2, 2022 at 4:00 p.m.;**
8 c. That Myrl Ayer has no right title or authority to reside or remain on the lands of the
Winnemucca Indian Colony;
9 d. That Myrl Ayer is prohibited from reentering the lands of the Winnemucca Indian Colony for
a term of ten (10) years from this date of December 2, 2022, unless otherwise allowed by the
10 Council by written waiver of entry;
11 e. That Myrl Ayer is prohibited from interfering with, harassing or threatening all contractors of
the Colony, all utility workers, and all service personnel entering the lands of the Colony to
12 assist the Colony or residents of the Colony; and
13 f. That as to Myrl Ayer, the court declares that the elected and serving Council of the
Winnemucca Indian Colony is: Judy Rojo, Eric Magiera, Misty Morning Dawn Rojo
Alvarez; Shannon Evans and Merlene Magiera;
14 g. A judgement in the amount of all reasonable attorneys fees and costs incurred by the
Winnemucca Indian Colony in this action as to Myrl Ayer, to be submitted to the court no
later than January 13, 2023.

15 **18. FURTHER ORDER AS TO STORMY AYER**

- 16 a. The court grants the Motion for Default of Defendant Stormy Ayer and the following relief:
17 b. **Stormy Ayer is immediately evicted from the Winnemucca Indian Colony and must
vacate the lands no later than December 2, 2022 at 4:00 p.m.;**
18 c. That Stormy Ayer has no right title or authority to reside or remain on the lands of the
Winnemucca Indian Colony;
19 d. That Stormy Ayer is prohibited from reentering the lands of the Winnemucca Indian Colony
for a term of ten (10) years from this date of December 2, 2022, unless otherwise allowed by
20 the Council by written waiver of entry;
21 e. That Stormy Ayer is prohibited from interfering with, harassing or threatening all contractors
of the Colony, all utility workers, and all service personnel entering the lands of the Colony
to assist the Colony or residents of the Colony; and
22 f. That as to Stormy Ayer, the court declares that the elected and serving Council of the
Winnemucca Indian Colony is: Judy Rojo, Eric Magiera, Misty Morning Dawn Rojo
Alvarez; Shannon Evans and Merlene Magiera;
23 g. A judgement in the amount of all reasonable attorneys fees and costs incurred by the
Winnemucca Indian Colony in this action as to Stormy Ayer, to be submitted to the court no
later than January 13, 2023.

24 **19. FURTHER ORDER AS TO LINDA AYER**

- 25 a. Remedies granted include all remedies requested in the Complaint;
26 b. **Linda Ayer is immediately evicted from the Winnemucca Indian Colony and must
vacate the lands no later than December 2, 2022 at 4:00 p.m.;**
27 c. Linda Ayer was banished by Tribal Resolution 2016-04-09(d) and remains banished from
Winnemucca Indian Colony lands;
28 d. That Linda Ayer has no right title or authority to reside or remain on the lands of the
Winnemucca Indian Colony;

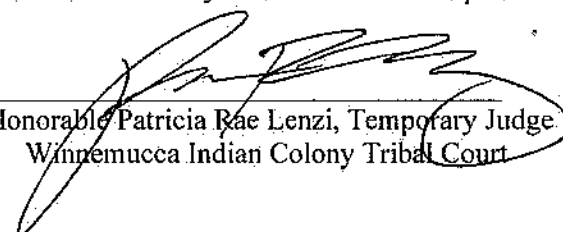
- e. That Linda Ayer is prohibited from reentering the lands of the Winnemucca Indian Colony for a term of ten (10) years from this date of December 2, 2022, unless otherwise allowed by the Council by written waiver of entry;
- f. That Linda Ayer is prohibited from interfering with, harassing or threatening all contractors of the Colony, all utility workers, and all service personnel entering the lands of the Colony to assist the Colony or residents of the Colony; and
- g. That as to Linda Ayer, the court declares that the elected and serving Council of the Winnemucca Indian Colony is: Judy Rojo, Eric Magiera, Misty Morning Dawn Rojo Alvarez; Shannon Evans and Merlene Magiera;
- h. A judgement in the amount of all reasonable attorneys fees and costs incurred by the Winnemucca Indian Colony in this action as to Linda Ayer, to be submitted to the court no later than January 4, 2023.

20. FURTHER ORDER AS TO BRIAN DICK:

- a. The court grants the Motion for Default of Defendant Brian Dick and the following relief:
- b. **Brian Dick is immediately evicted from the Winnemucca Indian Colony and must vacate the lands no later than December 2, 2022 at 4:00 p.m.;**
- c. That Brian Dick has no right title or authority to reside or remain on the lands of the Winnemucca Indian Colony;
- d. That Brian Dick is prohibited from reentering the lands of the Winnemucca Indian Colony for a term of ten (10) years from this date of December 2, 2022, unless otherwise allowed by the Council by written waiver of entry;
- e. That Brian Dick is prohibited from interfering with, harassing or threatening all contractors of the Colony, all utility workers, and all service personnel entering the lands of the Colony to assist the Colony or residents of the Colony; and
- f. That as to Brian Dick, the court declares that the elected and serving Council of the Winnemucca Indian Colony is: Judy Rojo, Eric Magiera, Misty Morning Dawn Rojo Alvarez; Shannon Evans and Merlene Magiera;
- g. A judgement in the amount of all reasonable attorneys fees and costs incurred by the Winnemucca Indian Colony in this action as to Myrl Ayer, to be submitted to the court no later than January 13, 2023.

21. Trial in this matter is stricken. A status hearing as to damages and attorneys fees is set for February 28, 2023 at 9:30 a.m. via ZOOM. Parties may submit briefs as to damages and attorneys fees no later than December 23 January 13, 2023 for opening briefs, responses by February 3, 2023, and replies to responses by February 17, 2023. All documents must be filed by 4:00 p.m. on the date indicated with disclosure to opposing counsel or self-represented defendant provided by the same date and time, or memorandum to the court why service was not completed.

DATED this 2nd day of December, 2022


 Honorable Patricia Rae Lenzi, Temporary Judge
 Winnemucca Indian Colony Tribal Court

XC: Original to Court

- Treva Hearne, counsel for Winnemucca Indian Colony
- Norberto Cisneros, counsel for Winnemucca Indian Colony
- Nevada Legal Services [James Salvator and Alexandra Rawlings], counsel for Defendants DEWAYNE BROWN, DOREEN BROWN, LOUELLA STANTON, ELDON BROWN, DWIGHT BROWN, ELENA LOYA, ELISA DICK, LOVELLE BROWN, KEVIN DICK, LESLIE SMARTT, JR., and KYLE MISSOURI
- Sandra Freeman, counsel for JIMMY JAY "JJ" AYER
- BIA Chief Wayne Hubanks

Defendants individually who are self-represented at the address on file in this case -

Sent By Clerk Guerrero on Date 12/2/2022