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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MONTANA, GREAT FALLS DIVISION**

EAGLE BEAR, INC. and WILLIAM
BROOKE,

Plaintiff,

vs.

THE BLACKFEET INDIAN NATION
and THE BLACKFEET TRIBAL
COURT,

Defendants.

Cause No. 4:21-cv-00088-BMM-JTJ

**BRIEF IN SUPPORT OF SECOND
MOTION FOR PRELIMINARY
INJUNCTION AND TEMPORARY
RESTRAINING ORDER**

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EXHIBIT INDEX

Exhibits Attached to this Brief

<u>Exhibit</u>	<u>Description</u>
1	Letter from Tribe to Brooke (Apr. 19, 2022)
2	Letter from Tribe to BIA (Apr. 19, 2022)
3	Letter from Westesen to Tribe (Apr. 20, 2022)
4	Letter from McKay to Westesen (Apr. 20, 2022)
5	Email from Brooke to Bird (Apr. 21, 2022)
6	Affidavit of William Brooke (May 3, 2022)
7	Affidavit of Griffin B. Stevens (May 4, 2022)
8	Email from McKay to Westesen (May 6, 2022)

Previously Filed Exhibits Referenced in this Brief

<u>Exhibit</u>	<u>Description</u>
1-2	Lease
1-3	Tribal Court Complaint
1-15	Motion to Dismiss for Mootness, <i>Blackfeet Tribe v. Acting Rocky Mountain Regional Director</i> , IBIA 19-082 (July 26, 2021)
5-1	Plaintiffs' Petition for Pre-Judgment Attachment of Personal Removable Property, <i>Blackfeet Nation v. Eagle Bear, Inc.</i> , No. 2021-CA-055 (Blackfeet Tribal Ct. July 24, 2021)
49-1	Order Vacating Decision and Remanding, <i>Blackfeet Tribe v. Acting Rocky Mountain Regional Director</i> , IBIA 19-082 (Mar. 3, 2022)

Plaintiffs Eagle Bear, Inc. (“Eagle Bear”) and Will Brooke (collectively “Plaintiffs”) submit the following brief in support of their motion to enjoin and restrain the Blackfeet Indian Nation (“Tribe”) from taking possession of and occupying the Campground at issue in this matter and in the underlying Blackfeet Tribal Court (“Tribal Court”) Complaint.

INTRODUCTION

On April 19, 2022, a tribal law enforcement officer appeared at Eagle Bear’s Campground and told an Eagle Bear employee that Eagle Bear had 24 hours to vacate the Campground. The Tribe followed up with a letter directing Eagle Bear to “IMMEDIATELY VACATE” the Campground and that the Tribe would be securing, performing an inventory of, and directing tribal law enforcement officers to patrol the Campground. The next day, Eagle Bear discovered “No Trespassing” signs on the entrances to the Campground.

The parties dispute which authorities have jurisdiction over the Campground and over the question of whether Eagle Bear’s lease of the Campground (“Lease”) has been cancelled. At various times, the Tribe has committed that question to the Bureau of Indian Affairs (“BIA”), the Interior Board of Indian Appeals (“IBIA”), this Court, and the Tribal Court. The Tribe’s Tribal Court Complaint asking for possession of the Campground is presently pending, as is the Tribe’s petition to the Tribal Court for prejudgment attachment of buildings on the Campground.

Nevertheless, the Tribe now purports to extrajudicially take possession of the Campground under its own authority. The Tribe's resort to self-help would not only undermine and avoid the BIA, IBIA, and Tribal Court proceedings now pending, it would also undermine this Court's authority over the present action. In fact, a primary basis for the Tribe's decision to take possession of the Campground is its mistaken claim that this Court made a "determination . . . that the lease was cancelled in 2008." (Ex. 4, Letter from McKay to Westesen (Apr. 20, 2022)).

BACKGROUND

The facts giving rise to this matter and a recitation of the pertinent portions of the Tribe's proceedings before the BIA, IBIA, and Tribal Court have been detailed in the parties' previous filings. (*See, e.g.*, Docs. 5, 12, 15, 19, 23, 25, 33, 35, 45, 48, 49; *see also* DktEntries 6 & 18).¹ Because the Court is familiar with those proceedings and the facts relevant to this matter, Plaintiffs incorporate the discussions in those briefs by reference and will not repeat the background facts of this dispute in detail. Those facts and new developments relevant to this motion are summarized below.

The Tribe first attempted to take Eagle Bear's Campground by BIA and IBIA proceedings. In 2017 it, asked the BIA to cancel Eagle Bear's Lease. In

¹ References herein to "DktEntry" are to the numbered docket entries in *Eagle Bear, Inc. v. Blackfeet Indian Nation*, No. 21-36033 (9th Cir.)

response, the BIA ordered the Tribe and Eagle Bear to arbitrate the Tribe's allegations. The Tribe appealed that order to the IBIA. (*See* Doc. 23 at 3-5).

When the IBIA was recently confronted with the Tribe's new argument that the Lease was cancelled in 2008, it remanded the matter to the BIA. The BIA is presently considering whether the Lease was cancelled in 2008 and has indicated that it is working to issue a decision. (*See* Doc. 23 at 5-6; Doc. 49 at 2; Doc. 49-1). The status quo—namely the Lease's continued effect—is preserved while that decision is pending. *See* 25 C.F.R. §§ 2.6 & 162.470(b); 43 C.F.R. § 4.314(a); *Spicer v. Eastern Oklahoma Reg. Dir.*, 50 IBIA 328, 331 (2009) (a BIA decision is automatically stayed during the appeal process); *Two Hundred and Seventy-one Enrolled Nooksak Indians v. Northwest Reg. Dir.*, 61 IBIA 77, 83 (2015) (denying Tribe's attempt to "preempt BIA's appeal regulations" and holding the underlying decision "was not immediately effective, but was instead subject to the automatic stay found in 25 C.F.R. § 2.6.").

The Tribe, however, has sought to abandon the BIA and IBIA proceedings. Claiming that those proceedings were moot (Doc. 23 at 6; Doc. 1-15), the Tribe attempted to take Eagle Bear's Campground by pursuing eviction in the Tribal Court. (Doc. 1-3). In addition to filing its Tribal Court Complaint, the Tribe also filed a motion for pre-judgment attachment in which the Tribe asked the Tribal Court to allow it to attach and take possession of Eagle Bear's cabins on the

Campground. (Doc. 5-1). The present lawsuit concerns whether the Tribal Court can exercise jurisdiction over that eviction despite the ongoing BIA and IBIA proceedings and the federal nature of the Tribe's allegations that the Lease was cancelled in 2008. The Tribe has argued that the Tribal Court is the only court that can exercise jurisdiction over this matter. (*E.g.*, Doc. 14 at 16-17).

Nevertheless, the Tribe has once again abandoned the proceedings it has instituted. It is now resorting to self-help and threatening to simply take the relief it has requested from the Tribal Court. On April 19, 2022, a tribal law enforcement officer appeared at the Campground and told an Eagle Bear employee that Eagle Bear had 24 hours to vacate the Campground. (Ex. 6, Brooke Aff. at ¶ 3). Several hours later, Will Brooke received a letter from the Tribe in which the Tribe directed Eagle Bear to "IMMEDIATELY VACATE" the Campground. (*Id.* at ¶ 4; Ex. 1, Letter from Tribe to Brooke (Apr. 19, 2022)). As it did before the IBIA, BIA, Tribal Court, and this Court, the Tribe alleged that the Lease was cancelled in 2008, that Eagle Bear is a holdover tenant, and that Eagle Bear has "no right to occupy" the Campground. (*Id.*) The Tribe wrote:

Any access to the former leased Blackfeet Nation Land without prior notice to and permission from the Blackfeet Nation shall be deemed a trespass.

The property will be secured, an inventory of the buildings and equipment will be conducted, and a general assessment of the property will be done. The Blackfeet Nation will not attempt to occupy any

locked structure. The property will be secured and monitored by Blackfeet Law Enforcement and Blackfeet Fish & Game Wardens.

(Id.)

Likewise, the Tribe wrote to the BIA that:

Eagle Bear and its agents will no longer be allowed to illegally occupy Blackfeet Nation Land as it has for the past 13 years. Be advised that the Blackfeet Nation will secure the 54-acre [sic] commercial property . . . and will prevent Eagle Bear and its agents from entering the property and operating the campground. The Blackfeet Nation will not enter the buildings or remove personal property, but it will take an inventory of the buildings and grounds for internal Blackfeet Nation records.

Blackfeet Law Enforcement Services and Blackfeet Fish and Game will patrol the 54-acre area for trespassers.

(Ex. 2, Letter from Tribe to BIA (Apr. 19, 2022)).

On April 20, 2022, counsel for Eagle Bear responded to the Tribe's letter and denied the Tribe's right to take possession of the Campground. (Ex. 3, Letter from Westesen to Tribe (Apr. 20, 2022)). The Tribe responded by posting "No Trespassing" signs at the entrances to the Campground.



(Ex. 6, Brooke Aff. at ¶ 5).

Ignoring the briefing to this Court and to the Ninth Circuit Court of Appeals, the Tribe wrote that Eagle Bear had “failed to articulate any legal theory whatsoever to support [its] claim that the [alleged 2008] cancellation” was ineffective. (Ex. 4, Letter from McKay to Westesen (Apr. 20, 2022)). Ignoring this Court’s clear direction that its Order on Preliminary Injunction was not an “adjudication on the ultimate merits” and that its analysis was “confine[d]” to the incomplete record before it, the Tribe also wrote that this Court determined that “the lease was cancelled in 2008.” (*Id.*; Doc. 27 at 3-4). On those bases, the Tribe

“stands by” its April 19 letter and decision to take possession of the Campground.

(*Id.*)

Since receiving the Tribe’s April 19 letter, Eagle Bear has attempted to reach an agreement or other resolution with the Tribe that would allow Eagle Bear to exercise its legal right to operate the Campground for its 2022 season without interference. Eagle Bear has also asked the BIA to take action to protect Eagle Bear’s rights under the Lease. (*E.g.*, Ex. 5, Email from Brooke to Bird (Apr. 21, 2022)). Neither effort has been successful. On May 6, 2022, the Tribe informed Eagle Bear that “[t]he Blackfeet Nation stands by and will enforce the notice to Eagle Bear that it will not be allowed to operate the campground during the 2022 season or thereafter.” (Ex. 8, Email from McKay to Westesen (May 6, 2022)). Eagle Bear is now, therefore, asking this Court to preserve the status quo and to prevent the Tribe from resorting to self-help remedies before this matter is resolved.

The Tribe is employing extra-judicial self-help to obtain the precise remedies it seeks in its pending Tribal Court Complaint and pending petition for preliminary attachment. (*See* Docs. 1-3 & 5-1). Although it presented the question of whether the Lease was cancelled in 2008 to the Tribal Court and the BIA, although the BIA is presently considering whether the Lease was cancelled (Doc. 49-1 at 4-5), and although the Lease gives sole authority to administer and cancel

the Lease to the BIA, the Tribe now purports to resolve the federal question of whether the Lease was cancelled and to administer the Lease itself. (Ex. 1). The question of whether the Lease was cancelled has not been resolved, is not unilaterally resolvable by the Tribe, and is presently and properly before the BIA. (Doc. 49-1). The Lease remains in effect while a decision from the BIA is pending. *See* 25 C.F.R. §§ 2.6 & 162.470(b).

STANDARD OF LAW

The Court previously set out the applicable legal standard in Doc. 27, Order on Preliminary Injunction (Nov. 17, 2021):

A plaintiff who seeks a preliminary injunction or temporary restraining order must establish four elements: 1) that it will likely succeed on the merits; 2) that it will suffer irreparable harm in the absence of preliminary relief; 3) that the balance of equities tips in its favor; and 4) that an injunction will serve the public interest. [*Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)]. Courts in the Ninth Circuit apply a sliding scale approach to preliminary relief. *See All for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

The reviewing court must balance the elements “so that a stronger showing of one element may offset a weaker showing of another.” *Id.* Even “serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Id.* at 1135.

DISCUSSION

1. The Court should preliminarily enjoin the Tribe from taking possession of the Campground.

Because the subject of this Second Motion for Preliminary Injunction is different and narrower than the subject of Eagle Bear's first Motion for Preliminary Injunction (Docs. 4 & 5), and because the Tribe's resort to self-help remedies have further tipped the preliminary injunction elements in Eagle Bear's favor, the Court should grant the Second Motion and enjoin the Tribe from taking possession of the Campground pending administrative review of the 2008 Lease cancellation question.

a. Plaintiffs are likely to succeed on the merits of their claim for injunctive relief.

As Plaintiffs explained in their briefing on their first Motion for Preliminary Injunction, Plaintiffs are likely to succeed on the merits because the Tribal Court plainly lacks jurisdiction over the claims and defendants in the Tribal Court Complaint. The Tribal Court lacks jurisdiction because, in part: (a) the allegations in the Tribal Court Complaint raise questions of federal law, including whether the Lease was cancelled in 2008; (b) the BIA has exclusive jurisdiction over this matter and deference to BIA's primary jurisdiction is appropriate; and (c) the BIA is an indispensable party that cannot be sued in Tribal Court. (Doc. 5, Brief in Support of Motion for Preliminary Injunction at 15-27; *see also* Doc. 15, Reply

Brief in Support of Motion for Preliminary Injunction at 3-5; DktEntry 6, Appellants' Opening Brief at 29-55; DktEntry 18, Appellants' Reply Brief at 6-30). The Court rejected these arguments and decided that Eagle Bear was unlikely to succeed on its Complaint because "[t]he record at this stage appears to indicate that the BIA cancelled the lease." (Doc. 27, Order on Preliminary Injunction at 9).

Eagle Bear respectfully disagrees with that conclusion. (*E.g.*, DktEntry 6 at 26-28). More importantly, whether the Lease was cancelled is a federal question that the BIA is presently considering at the direction of the IBIA. (Doc. 49-1 at 1-2, 4-5 (The Tribe argues "on appeal that the Lease was previously canceled by the Superintendent in a decision dated June 10, 2008. . . . The Regional Director requests a voluntary remand 'so that a decision may be made on the validity of the Superintendent's June 10, 2008, decision to cancel the lease.' . . . On remand, the Regional Director shall consider and address, as appropriate, the issues and arguments raised by the Tribe and Eagle Bear in their submissions filed in this appeal.")). The status of the Lease is simply not a question that the Tribal Court can resolve. Likewise, that question has not been resolved by this Court, as the Tribe claims in attempting to justify its self-help actions. (*Compare* Ex. 4, Letter from McKay to Westesen (Apr. 20, 2022) *with* Doc. 27 at 3-4).

Most importantly for the present motion, the question of whether the Lease was cancelled certainly is not a question that the Tribe can unilaterally resolve, as

the Tribe has purported to do in its April 19, 2022 letter and with its “No Trespassing” postings. (Ex. 1). Under the terms of the Lease, the Tribe cannot cancel the Lease. The BIA is, instead, the only party that may cancel and administer the Lease. (Doc. 14 at 9 (“only the BIA could cancel the lease, after due notice and an opportunity to cure”)). Likewise, any disputes related to the Lease are subject to arbitration. (Doc. 1-2 at Ex. A ¶¶ 2, 7). The Tribe cannot simply take the relief that it seeks from both the Tribal Court and the BIA while questions regarding its ability to pursue that relief are pending before this Court.

For these reasons—and for the other reasons identified in Eagle Bear’s previous briefing—Eagle Bear is likely to succeed on the merits of the immediate issue. The Tribe lacks authority to eject Eagle Bear while the Lease in question is the subject of BIA review. At the very least, there are “serious questions going to the merits” of the Tribe’s self-help authority considering that the Lease cancellation is unresolved and unresolvable by the Tribal Court. *All for the Wild Rockies*, 632 F.3d at 1131.

b. Eagle Bear is likely to suffer irreparable harm without a preliminary injunction.

Eagle Bear will suffer irreparable harm without a preliminary injunction because the Tribe seeks to evict Eagle Bear from the Campground and to obtain prejudgment seizure of the entire Campground, effectively cancelling all of Eagle Bear’s business activity. The Tribe has already posted “No Trespassing” signs on

the entrances to the Campground and has threatened to direct Tribal law enforcement to prevent Eagle Bear, its employees, or its guests from entering the Campground. (Ex. 6, Brooke Aff. at ¶¶ 3-5; *see also* Exs. 1 & 4).

The Tribe previously responded to Eagle Bear's injunction request by arguing that irreparable harm was unlikely because:

No action on the Blackfeet Nation Defendant's motion for prejudgment attachment will take place in the Tribal court until after the 2021 summer tourist season. Plaintiffs' 'sky is falling' assertions that the Tribal Court is going to attach the Kamping Kabins and prevent their occupancy this summer are borderline ridiculous. The real purpose of the Blackfeet Nation's Petition for Pre-judgment attachment is to prevent Eagle Bear and Brooke from attempting to remove the cabins from the site.

(Doc. 14, Defendants' Memorandum in Opposition to the Plaintiffs' Motion for Preliminary Injunction at 27-28 (emphasis added)). Likewise, at the hearing on Eagle Bear's first Motion for Preliminary Injunction, the Tribe represented:

They are not going to suffer irreparable injury. . . . And as I said in my brief, that was some . . . the sky is falling argument anyway because it's not our intention when we filed the petition for prejudgment attachment of those cabins to go out there and occupy them with members of the Blackfeet Tribe. . . . [T]he intent there was for those cabins to remain there. When the Blackfeet nation gets its land back, it can continue to operate its campground. . . . So that's intended to keep them there, not interfere in the operation of the lease. It wouldn't make any good business sense for the Blackfeet Nation to go out there and disrupt operation of the campground at the end and ruin whatever has gone on when we're going to take it over and try to do the best with it ourselves. So there's no chance of irreparable injury.

(Doc. 33 at 33:3-20 (emphasis added)).

Nevertheless, the Tribe is now taking precisely the “borderline ridiculous” actions that Eagle Bear was concerned with. (Doc. 14 at 27-28). The Tribe acknowledges that its actions do not “make any good business sense” and will “ruin” Campground operations. (Doc. 33 at 33:16-20). But the Tribe is not even waiting for the Tribal Court to act on its petition for pre-judgment attachment before doing so. Instead, the Tribe is resorting to self-help on the mistaken basis that this Court already determined “that the lease was cancelled in 2008” and that Eagle Bear has not provided any “legal theory” to the contrary. (Ex. 4, Letter from McKay to Westesen at 2 (Apr. 20, 2022)). The Tribe has—in writing and through the actions of tribal law enforcement officers—began to take possession of, secure, and prevent Eagle Bear’s entrance onto the Campground. (*Id.*; Ex. 1, Letter from Tribe to Brooke (Apr. 19, 2022); Ex. 6, Brooke Aff. at ¶¶ 3-5).

We are now on the eve of Eagle Bear’s 2022 summer camping season with the Campground set to open on May 19, 2022. (Ex. 6, Brooke Aff. at ¶ 6). Eagle Bear is in the process of investing over \$50,000 into the Campground in preparation to open for the 2022 summer season. (*Id.*) Eagle Bear is fully booked with thousands of reservations for the summer. (*Id.*) In a matter of weeks, Eagle Bear will begin hosting guests from many parts of the country and the globe. (*Id.*) Unless the Tribe’s self-help actions are enjoined and Eagle Bear is able to exercise its legal right to operate the Campground for its 2022 season, these guests will be

met with the Tribe's "No Trespassing" signs and no way to access their accommodations. (*See id.* at ¶¶ 3-7). Without access to the Campground to prepare for and to open for the 2022 summer camping season, Eagle Bear will be unable to operate, unable to collect revenue, see its global reputation irreparably harmed, and suffer crippling financial damage. (*Id.* at ¶¶ 6-7). Campground operations will be ruined. (Doc. 33 at 33:16-20).

Additionally, the Campground requires ongoing maintenance. (Ex. 6, Brooke Aff. ¶ 8). If the Campground is simply locked up and ignored during the summer 2022 camping season, the Campground and its facilities will suffer damage. (*Id.*)

The Court previously recognized that Plaintiffs would suffer irreparable harm without a preliminary injunction. (Doc. 27 at 21). By threatening and beginning to take possession of, secure, and prevent Eagle Bear's access to the Campground now, the Tribe has made the likelihood of harm to Eagle Bear even greater and more tangible. (Ex. 1; Ex. 4; Ex. 6, Brooke Aff. at ¶¶ 3-8; Doc. 33 at 33:16-20).

c. The equities and balance of hardships tips sharply in Eagle Bear's favor.

While the Tribe's threatened actions would have a devastating impact on Eagle Bear's business as well as the vacations of thousands of people, enjoinder of the Tribe's threatened self-help would have little impact on the Tribe. The Tribe

would suffer no significant loss by waiting for agency action and a subsequent court decision before attempting to retake possession of the Campground.

Although the Court previously decided that the harm to the Tribe from delaying the Tribal Court proceedings balanced equally with the likelihood of irreparable harm to the Plaintiffs, the Court was concerned in this analysis with a delay in adjudication of the Tribe's rights. (Doc. 27 at 22). Granting the presently requested preliminary injunction would not delay any such adjudication and instead would merely require the Tribe to pursue an adjudication rather than self-help. The Tribe will not suffer any harm or unfair delay by being made to finish the administrative and court proceedings it started.

The BIA is presently considering whether the Lease was cancelled in 2008, as the Tribe alleges in the Tribal Court Complaint and in its April 19, 2022 letter. (Doc. 49-1 at 1-2, 4-5). Although it denies that the Lease cancellation question is properly before the BIA, the Tribe has implicitly acknowledged that it cannot unilaterally act on the alleged cancellation and take possession of the Campground without some court or administrative action. (*See* Doc. 1-3, Tribal Court Complaint). Indeed, the Tribe requested the very same relief that it now threatens to take—pre-judgment repossession of the Campground and the property thereon—from the Tribal Court. (Docs. 1-3 & 5-1). Although the Tribal Court does not have jurisdiction over the Lease cancellation question or the Tribe's

claims, it is clear that some court or administrative agency must act before the Tribe can purport to take the Campground from Eagle Bear.

Requiring the Tribe to wait for such action will cause no cognizable detriment to the Tribe, while allowing the Tribe to proceed without court or administrative authority will cause irreparable harm to Eagle Bear. Indeed, the Tribe has acknowledged that its actions will “ruin” the Campground. (Doc. 33 at 33:16-20). Thus, the balance of equities tips sharply in Plaintiffs’ favor.

d. A preliminary injunction will serve the public interest.

A preliminary injunction will serve all of the same public interests in judicial efficiency and in enforcing arbitration and forum selection agreements that supported Plaintiffs’ first Motion for Preliminary Injunction. (Doc. 5, Brief in Support of Motion for Preliminary Injunction at 31-32). More critically, however, the public interest is even more strongly served by a preliminary injunction now that the Tribe is threatening to resort to extrajudicial self-help in the face of pending agency action.

It is well-established that a party cannot “take the law into his own hands” or extrajudicially take possession of disputed property, because such forcible remedies necessarily cause a breach of public peace. *E.g., Eichhorn v. De La Cantera*, 255 P.2d 70, 73 (Cal. App. 1953); *Spinks v. Equity Residential Briarwood Apartments*, 171 Cal.App.4th 1004, 1039 (Cal. App. 2009); *see also, e.g., Talamini*

v. Allstate Ins. Co., 470 U.S. 1067, 1070-71 (1985) (“The courts provide the mechanism for the peaceful resolution of disputes that might otherwise give rise to attempts at self-help.”) (Stevens, J., joined by Brennan, Marshall, and Blackman, JJ. concurring); *Weitz v. Green*, 230 P.3d 743, 756 (Idaho 2010) (“This Court strongly disfavors the resort to forceful self-help in resolving property disputes.”); *People v. Tufunga*, 987 P.2d 168, 169 (Cal. 1999) (recognizing “strong public policy considerations disfavoring self-help through force or violence, including the forcible recapture of property”); *Salisbury Livestock Co. v. Colorado Cent. Credit Union*, 793 P.2d 470, 473 (Wyo. 1990) (recognizing that “courts disfavor self-help repossession” and interpreting a statute that “extends a conditional self-help privilege to secured parties” “narrowly to reduce the risk to the public of extrajudicial conflict resolution”); *Quinn v. LMC NE Minneapolis Holdings, LLC*, ___ N.W.2d ___, 2022 WL 997877 at *5 (Minn. Ct. App. Apr. 4, 2022) (recognizing the “longstanding policy of our law to discourage landlords from taking the law into their own hands, and that court decisions and statutory law have looked with disfavor upon any use of self-help to dispossess a tenant in circumstances which are likely to result in breaches of the peace” (internal quotation marks and alterations omitted)); *State v. Smith*, 86 A.3d 498, 521 (Conn. 2014) (Sheldon, J. concurring) (recognizing a “public policy of this state disfavoring the use of violent self-help to resolve private disputes over property”).

Public interest is best served by promotion of administrative and judicial resolution of property disputes and suppression of self-help actions. Indeed, the Blackfeet Tribal Law and Order Code seems to acknowledge this principle in its prohibition against “pre-judgment attachment, garnishment or repossession” absent a court order. Blackfeet Tribal Law & Order Code Chapter 2, Part II, Section 9.

The Tribe has previously resorted to various administrative and judicial authorities to obtain the relief it seeks: first to the BIA, then the IBIA, and then to the Tribal Court. It now resorts to self-help and has simply taken the precise relief that it has previously sought. The BIA is the only body with jurisdiction over Lease cancellation. The Tribe’s efforts to avoid that administrative process—or the Tribal Court’s process or any other judicial process—is improper, is contrary to public policy, and should be enjoined.

2. The Court should temporarily restrain the Tribe from taking possession of the Campground while a hearing on Eagle Bear’s motion for preliminary injunction is pending.

The Court may issue a temporary restraining order if “[1] specific facts in an affidavit or verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and [2] the movant’s attorney certifies in writing any efforts to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1). Because Eagle Bear has met these elements, the Court should issue a temporary

restraining order pending a hearing on Eagle Bear's motion for preliminary injunction.

First, as discussed above and as established by the affidavit of Will Brooke that is attached hereto, Eagle Bear will suffer immediate and irreparable injury if the Tribe is not enjoined from taking possession of and excluding Eagle Bear from the Campground. The Campground is set to open for its summer 2022 season on May 19, 2022. (Ex. 6, Brooke Aff. at ¶¶ 6-7). Eagle Bear has spent significant amounts of time and money preparing to open. (*Id.*) Eagle Bear is fully booked with thousands of reservations for the summer. (*Id.*) Members of the public will have flown or driven thousands of miles expecting to find a place to stay when they arrive at the Campground but, unless the Tribe's self-help actions are enjoined, they will be met with the Tribe's "No Trespassing" signs and no way to access the Campground. (*See id.*) Without access to the Campground to prepare for and to open for the 2022 summer camping season, Eagle Bear will be unable to collect revenue, see its global reputation irreparably harmed, and suffer crippling financial damage. (*Id.*) Indeed, the Tribe has acknowledged that Campground operations will be ruined. (Doc. 33 at 33:16-20).

Because normal briefing schedules will not resolve this issue before May 19, 2022 and because Eagle Bear will be forced to cancel reservations, delay opening, and harm its reputation if it is not able to access and allow guests onto the

Campground in the coming weeks, such damage will result before the Tribe can be heard on the present motion. (Ex. 6, Brooke Aff. at ¶¶ 6-7).

Second, as set out in the affidavit attached hereto and the below certificate of service, Eagle Bear informed the Tribe of its intention to seek preliminary injunctive relief and a restraining order on May 3, 2022. (Ex. 7, Stevens Aff. at ¶ 3). The Tribe has been served with a copy of this brief and Eagle Bear's motion. (Certificate of Service, *infra*; see Ex. 7, Stevens Aff. at ¶ 4). The Tribe has been given notice of this motion and has informed Eagle Bear that it intends to oppose this motion. (Ex. 7, Stevens Aff. at ¶¶ 3-4). The Court should issue a temporary injunction before the Tribe is heard on this motion because delay in restraining the Tribe's efforts to disrupt Campground operations will cause immediate and irreparable harm. (Ex. 6, Brooke Aff. at ¶¶ 6-7).

CONCLUSION

The Court should grant Plaintiffs' Second Motion for Preliminary Injunction and Temporary Restraining Order and enjoin the Tribe's threatened self-help because:

- There is at least a serious question about whether the Tribal Court can resolve the federal question of whether the Lease has been cancelled and no question that the Tribe is unable to unilaterally and extrajudicially resolve the question;

- Eagle Bear will suffer irreparable harm if the Tribe is not enjoined;
- The balance of equities tips sharply in favor of preventing the irreparable harm Eagle Bear will suffer rather than allowing the Tribe to avoid judicial and administrative systems by exercising self-help; and
- The public interest is served by preventing self-help and promoting administrative and judicial resolution of the present disputes.

Dated this 6th day of May, 2022.

CROWLEY FLECK PLLP

By /s/ Griffin B. Stevens

Neil G. Westesen

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(d)(2)(E), I certify that this brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Office Word, is 4,833 words long, excluding the Caption, the Certificates of Service and Compliance, Tables of Contents and Authorities, and Exhibit Index.

Dated this 6th day of May, 2022.

CROWLEY FLECK PLLP

By /s/ Griffin B. Stevens
Griffin B. Stevens

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May, 2022, a true and correct copy of the foregoing was delivered by the following means to the following:

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<input checked="" type="checkbox"/> ECF	<i>Attorney for Blackfeet Tribe and Blackfeet Tribal Court</i>

/s/ Griffin B. Stevens
Griffin B. Stevens