

U.S. COURTS

Chere Souther
POA for Plaintiff Souther
PO Box 112
Kamiah, ID 83536
208-816-3966
cheresouther@gmail.com

AUG - 1 2023
Rcvd *ef* Filed *counter* Time *2:30pm*
STEPHEN W. KENYON
CLERK, DISTRICT OF IDAHO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CHERE SOUTHER- POWER OF
ATTORNEY FOR PLAINTIFF SOUTHER,
Plaintiff,

Civ. No. 3:23-CV-246-DCN

v.

CHERE SOUTHER'S MOTION TO
OPOSE DEFENDANT'S MOTION TO
DISMISS WITH PREJUDICE

NEZ PERCE TRIBE JUDICIAL SERVICES
AKA NEZ PERCE TRIBAL COURT
Defendant

Plaintiff, Chere Souther, Power of Attorney for Matthew Souther, hereinafter referred to as Plaintiff, hereby objects to Defendant's Motion To Dismiss With Prejudice, and requests a formal hearing on this matter.

Plaintiff states the following in objection to the dismissal of this case.

1. The defendant is in direct violation of Indian Civil Rights Act of 1968: 25 USC Ch. 15: 1302 (a)(8), Nez Perce Tribal Code 1-6-2 (d)(k). Individuals acting under color of law on behalf of Defendant have deliberately and repeatedly deprived Plaintiff of his civil rights, which is actionable pursuant to USC Title 42 section 1983.

2. USC Title 28 section 1331 provides that district courts have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

This motion is further supported by Plaintiff's Memorandum In Opposition of Motion to Dismiss.

ANSWER TO: BACKGROUND

Plaintiff concedes that 1) Kathy Taylor was appointed as the Personal Representative of Mary Jane Souther's estate on October 20, 2021. 2) Kathy Taylor filed suit against Plaintiff Souther on March 2, 2022. 3) Plaintiff was served the complaint in that case. However, Plaintiff spent the next 20 days trying to contact anyone who could or would help him respond to the complaint, starting with the Defendant. When Plaintiff was unable to get the defendant to return his messages, he turned to lawyers in the area that might be able to advise him. He was repeatedly told to contact the Defendant, which he again did, with no response. Plaintiff learned that he was to be in court on April 27, 2022 from his father, Edward Souther, since he didn't receive notice of the hearing until after the hearing took place. Plaintiff initiated a case against Kathy Taylor because he disputed the Defendant's jurisdiction and because he worried that he wouldn't get a fair trial since he didn't receive notice of hearing and couldn't even get a phone call returned from the Defendant. Plaintiff explained to the Judge on April 27, 2022 that he didn't receive notice of hearing and that he tried to get legal help with the matter but was unable to. He was given the time he needed to gather what the Judge needed from him. He was also informed by the Judge that the Defendant has a Public Defender that he had a right to talk to. None of his calls to said Public Defender have ever been returned.

Plaintiff began asking for transcripts from the hearings of case CV.22-022 in June of 2022, pursuant to Nez Perce Tribal Code 1-6-2 (k). He continued to make phone calls and send emails to various persons employed by the Defendant, both to request directions on how to file an appeal and to obtain transcripts pertaining to his case. He never received an answer to whether or not he could even file an appeal, nor did he receive instructions to file an appeal. To date, none of Plaintiff's request for records have been honored.

Plaintiff had until December 24, 2022 to file with the District Court on his case but decided to wait since his father received notice of another action against him by Kathy Taylor on October 20, 2022.

ANSWER TO: STANDARD OF REVIEW

Plaintiff is in no way bringing suit against Defendant over a breach of contract. Defendant is in direct violation of Indian Civil Rights Act of 1968: 25 USC Ch.15: 1302 (a)(8) and Nez Perce Tribal Code 1-6-2 (d). Defendant has asserted jurisdiction by continuing to allow suit to be brought against Plaintiff. As a person under the Defendants jurisdiction in this matter, the Plaintiff is entitled to Due Process, as set forth by of Indian Civil Rights Act of 1968: 25 USC Ch.15: 1302 (a)(8). Defendant did not notify Plaintiff of further actions taken against him on case CV.22-022. Plaintiff was not served with the Sworn Affidavit dated October 10, 2022. Further, Plaintiff was not, at any time, served Notice of Hearing, dated the same October 20, 2022. Court Clerk perjured themselves by using the Defendant's Seal of the Court to certify that "a true and accurate copy of the PR.22-022, Notice of Hearing was delivered" by mail on October 20, 2022. Plaintiff's father, Edward Souther, was not sent his copy of Notice of Hearing

until November 4, 2022, two days after the Hearing took place, ensuring that Plaintiff knew nothing about the hearing until after it had been held.

Plaintiff was denied the opportunity to appear, to defend himself, to present his own proof and to present witnesses to the Court, all of which he wished to do. The Defendant has, by the actions of those in their employ, left the Plaintiff with no other option but to bring suit on the basis of the violation of his civil rights which are guaranteed to him by the United States Constitution and further guaranteed him by the Indian Civil Rights Act of 1968, which is a subset of most of the rights granted by the both the Constitution and the Bill of Rights, and Defendant's own Code.

ANSWER TO: ARGUMENT

1. PLAINTIFF'S COMPLAINT AGAINST THE NEZ PERCE TRIBE MUST BE DISMISSED BECAUSE THE TRIBE HAS SOVEREIGN IMMUNITY FROM SUIT

Plaintiff has not, at any time, alleged that there is any contractual relationship between himself and Defendant. Defendant is in direct violation of Indian Civil Rights Act of 1968: 25 USC Ch.15: 1302 (a)(8) and Nez Perce Tribal Code 1-6-2 (d)(k). Defendant has asserted jurisdiction by continuing to allow suit to be brought against Plaintiff. As a person under the Defendant's jurisdiction in this matter, the Plaintiff is entitled to Due Process, as set forth by of Indian Civil Rights Act of 1968: 25 USC Ch.15: 1302 (a)(8), where it clearly states that "*No Indian Tribe in exercising powers of self-government shall- deny any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;*". Nez Perce Tribal Code 1-6-2 (d) also states "*The Nez Perce Tribe in exercise of its sovereign powers of self-government shall not: Deny any person within its*

jurisdiction the equal protection of the law or to deprive any person within its jurisdiction of liberty or property without the due process of the law.”

A. The Nez Perce Tribe is a federally recognized Indian Tribe that possesses sovereign immunity from suit.

Plaintiff does not now, nor has he ever, alleged that Defendant is in breach of any contract for any purpose related to evictions. Since Defendant is in direct violation of its own tribal code, it is clear that Defendant lacks proper training- department wide. Defendant robbed Plaintiff of due process with premeditation and malice by deliberately failing to notify him of suit and deliberately not notifying him about the hearing on the matter. Further, Defendant deliberately kept Plaintiff's father from knowing about the hearing until after the hearing had taken place, to ensure Plaintiff would be unable to defend himself. Such flagrant disregard for the Indian Civil Rights Act of 1968 and Defendant's own code clearly indicates a lack of training department wide.

B. Congress has not waived the Nez Perce Tribe's sovereign immunity from suit.

Defendant seems to be implying that, while the Nez Perce Tribe does abide by the Indian Civil Rights Act, and has incorporated it into its Tribal Code, it would only apply to a person being charged as a criminal. However, Indian Civil Rights Act of 1968: 25 USC Ch.15: 1302 (a)(8) makes no distinction between a person being charged civilly or criminally. It clearly states that *“No Indian Tribe in exercising powers of self-government shall- deny any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;”*. Nez Perce Tribal Code 1-6-2 (d) also clearly states *“The Nez Perce Tribe in exercise of its sovereign powers of self-government shall not: Deny any person within its*

jurisdiction the equal protection of the law or to deprive any person within its jurisdiction of liberty or property without the due process of the law."

Defendant has asserted jurisdiction by continuing to allow suit to be brought against Plaintiff. As a person under the Defendant's jurisdiction in this matter, the Plaintiff is entitled to Due Process, as set forth by of Indian Civil Rights Act of 1968: 25 USC Ch.15: 1302 (a)(8), and Nez Perce Tribal Code 1-6-2 (d). Individuals in Defendant's employ, acting under color of law, have willfully, with premeditation and malice, orchestrated the deprivation of Plaintiff's civil rights, which is actionable pursuant to USC Title 42 section 1983.

C. The Nez Perce Tribe has not waived its sovereign immunity from suit.

Plaintiff in no way alleges that Defendant has entered any contract with either Plaintiff Souther or Chere Souther for any purpose related to evictions. Defendant has asserted jurisdiction by continuing to allow suit to be brought against Plaintiff. As a person under the Defendants jurisdiction in this matter, the Plaintiff is entitled to Due Process, as set forth by of Indian Civil Rights Act of 1968: 25 USC Ch.15: 1302 (a)(8), and Nez Perce Tribal Code 1-6-2 (d).

By asserting jurisdiction over Plaintiff, Defendant obligated itself to uphold its own Code in dealings with Plaintiff. Defendant is in direct violation of Indian Civil Rights Act of 1968: 25 USC Ch.15: 1302 (a)(8) and Tribal Code, which are express and precise, in that it applies to "*any person within its jurisdiction*".

II. The proper avenue of remedy of the concerns for error in trial procedures should have been an appeal.

Plaintiff tried to contact multiple individuals at Tribal Court over the course of 17 months. Emails and phone calls were made no less than once per month, to individuals department wide, to ask what the proper procedure would be for filing an appeal, and what the timeline would be. Each and every one was ignored. Plaintiff also made numerous direct requests for transcripts of all hearing concerning case CV.22-022. To date, not a single request for those records has been honored. On February 15, 2023 Plaintiff received an email response informing him that there are no transcripts of hearings, only recordings. He called the attached number and left a message stating that he wanted a copy of the recording of each hearing that has taken place on the case. He received a call back at end of business day. Plaintiff was told that since it was end of business day, he would receive a phone call "first thing in the morning, and I will walk you through how to get the recordings". No call ever came. He called again and left a message reiterating that he wanted recordings of every hearing that has taken place in his case. He again got a phone call at end of business day, and was again promised a call "first thing in the morning". All further calls and requests for records have gone unanswered and completely ignored by multiple individuals department wide, including by Defendant's attorney. To now claim that Plaintiff waived his rights to appeal, or that he should trust anyone at Nez Perce Tribe cares about his rights or him at all is laughable. Defendant has acted with premeditation and malice and there is no further reason to have faith or trust in Defendant's ability or willingness correct its grievous actions toward Plaintiff over the course of 17 months. Defendant deliberately kept Plaintiff from being able to file an appeal twice.

III. Chere Souther lacks standing to file this claim as the Power of Attorney for Plaintiff Souther is invalid as he filed his own claim attempting to dismiss the Tribal Court Case in 2022.

Chere Souther has provided proof of Power of Attorney to the appropriate court.

IV. Matthew Souther failed to respond to the Summons in a timely manner, did appear at the hearing Nez Perce Tribal Court, and failed to exhaust all tribal remedies.

Plaintiff filed suit for lack of jurisdiction in U.S. District Court because not one individual at Tribal Court would return a phone call and explain how he should go about filing the same in Tribal Court. At April 27, 2022 hearing, it was acknowledged that Plaintiff filed suit in District Court challenging jurisdiction. It should be noted that that suit also expressly stated by Plaintiff that he feared he would not get a fair trial in Tribal Court. That concern was absolutely valid.

Plaintiff also explained to the Judge at the April 27, 2022 hearing that he had not received Notice of Hearing, and that he only knew to be at the hearing because his father had received Notice of Hearing and told him the date and time. For this reason, the Judge explained what she needed from him and gave him time to gather his proof, which he did. Since Plaintiff's multiple requests for recordings of the hearings on case CV. 22-022 have not been honored, Plaintiff is unable to provide court this proof.

On October 20, 2022, after Plaintiff was robbed of his first opportunity to appeal his case, a Sworn Affidavit was issued by Kathy Taylor, claiming non-payment and damages. Plaintiff's father received a copy of the Affidavit on or about October 27, 2022. Plaintiff has included a copy of the unopened envelope that contains his copy of the Affidavit, clearly postmarked two days after (Nov. 4, 2022) the scheduled hearing, which took place on November 2, 2022. Plaintiff also includes copy of Notice of Hearing, along with the envelope it came in, also clearly postmarked (Nov. 4, 2022), two days after the hearing took place. Plaintiff did not receive Notice of Hearing at all. He is, in fact, not even listed on the Certificate of Service. Defendant's Court Clerk used the

Nez Perce Indian Tribe Seal of the Court to certify that a copy of Notice of Hearing was mailed to each person on the Certificate of Service on October 20, 2022. Since Edward Souther's was not mailed until November 4, 2022, this is an outright falsehood. The only reason for Edward's Notice of Hearing to be deliberately kept from him is so he (Edward) could not notify Plaintiff (Matthew) to be at a hearing that Plaintiff had no knowledge of, a second time. This is proof that the Defendant has acted with premeditation and outright malice toward the Defendant.

Further, the Second Amended Judgement, filed Dec. 6, 2022 states that "Respondent, Matthew Souther, received notice of the hearing and failed to appear or respond to the Petitioner's request", which is inaccurate and untrue, as evidenced by Plaintiff's accompanying documents.

Since Plaintiff's repeated requests, over the span of 17 months, for recording of all hearings held in regards to case CV. 22-022 have not been honored, Plaintiff can't possibly be able to mount a suitable appeal. Plaintiff has now been robbed of the ability to appeal a second time.

Conclusion

Defendant, acting under color of law, has repeatedly and deliberately violated Plaintiff's civil rights. Defendant had clearly failed to train individuals in its employ adequately to carry out duties of the court. Plaintiff in no way alleges that Defendant has entered any contract with either Plaintiff Souther or Chere Souther for any purpose related to evictions. Plaintiff made every effort to learn how to file an appeal and to learn exactly he was being accused of by asking repeatedly for recordings of hearings held about him. Further, Plaintiff possess unopened correspondence directly from Defendant that proves beyond the shadow of a doubt that Defendant knowingly and willfully violated Plaintiff's civil rights, by violating Defendant's own Tribal Code.

Therefore, this case should proceed, the punitive damages Chere Souther requested and any other relief this Court sees proper and justified.

Dated: July 26, 2023

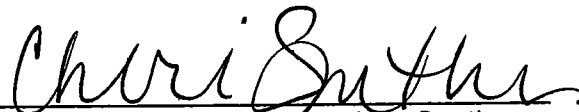
Respectfully Submitted:

Chere Souther
POA for Plaintiff Souther
PO Box 112
Kamiah, ID 83536
208-816-3966
cheresouther@gmail.com

I HEREBY CERTIFY that on the 1st day of August 2023, I filed the foregoing personally at the US District Court Coeur d'Alene Office, 6450 North Mineral Drive, Coeur d' Alene, ID 83815 and served the following Participant in the manner indicated

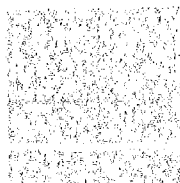
Via Priority Mail, addressed as follows:

Nez Perce Tribe
Office of Legal Counsel
PO Box 305
Lapwai, ID 83540

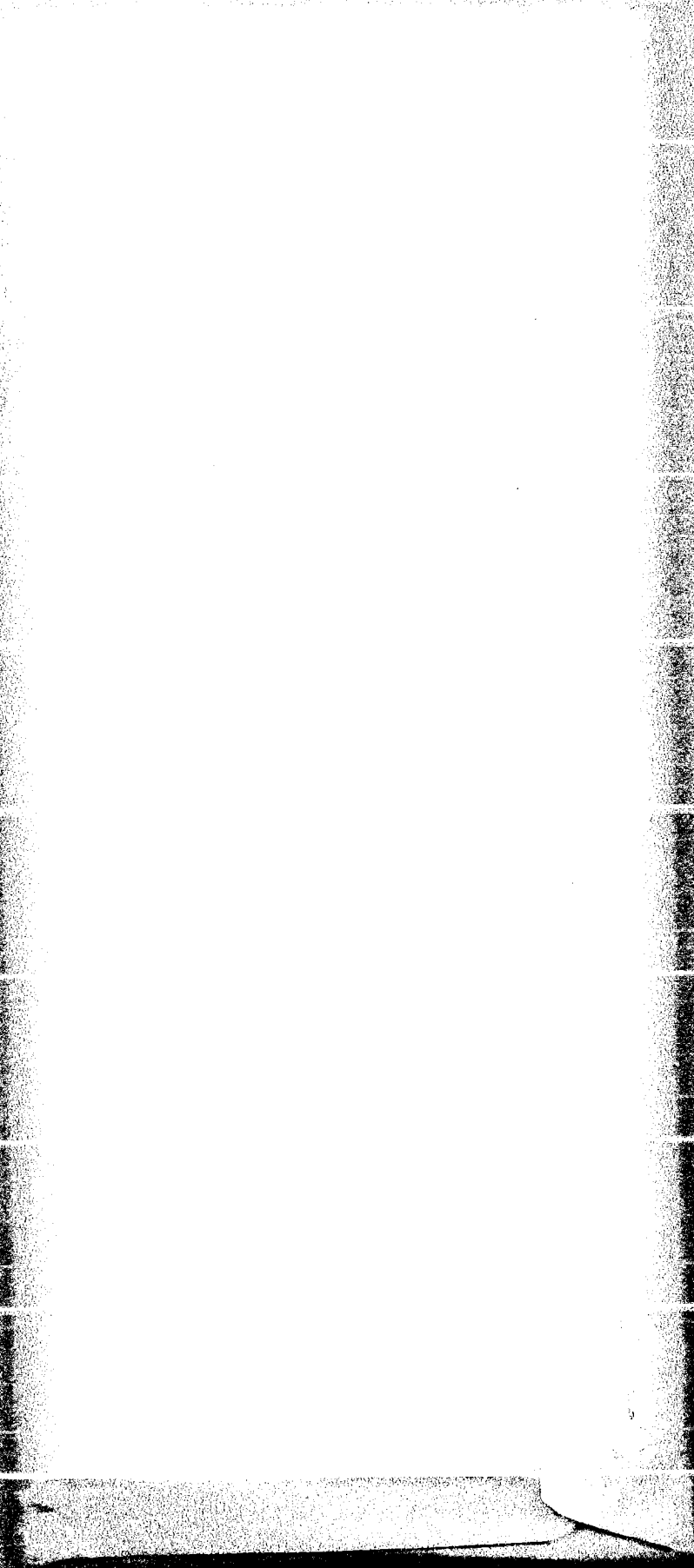

Chere Souther, POA for Matthew Souther

OFFICIAL SERVICES
PO BOX 305
LAPWV#1 IDAHO 83540

Matthew Souther
PO Box 112
Kamiah, ID 83536



POSTAGE
\$0.10
US POSTAGE



FILED

OCT 20 2022

IN THE NEZ PERCE TRIBAL COURT
IN AND FOR THE NEZ PERCE RESERVATION

TIME 12:08 PM
M. [Signature]
COURT CLERK

)	CASE NO.: CV. 22-022
)	
KATHY TAYLOR,)	NOTICE OF HEARING
Petitioner,)	
)	
v.)	
)	
MATTHEW SOUTHER,)	
Respondent.)	

You are hereby notified that the above-entitled case has been set for hearing at the hour of **1:30 pm** this **2nd day of November, 2022**, before a Judge of the above-entitled Court.

The nature of the hearing is as follows: **Non-Payment and Damages**

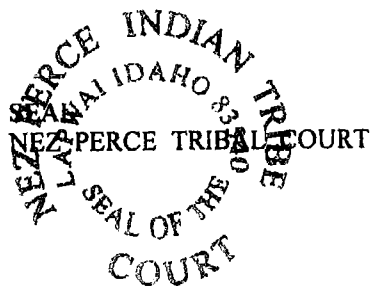
If you wish to submit documents, please do so prior to the court hearing. If other parties are involved, you must provide them with copies of all documents you are submitting to the Court.

If you wish to appear by telephonic hearing, please submit a request two days in advance before the hearing.

DATED this 20th day of October, 2022.

M. [Signature]

Court Clerk, Nez Perce Tribal Court



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of October, 2022, a true and accurate copy of the **PR. 22-022, Notice of Hearing** was delivered to the following by the method indicated below:

Kathy Taylor
PO Box 394
Lapwai, ID 83540

(✓) Mailed

Raymond L. Souther, Jr.
PO Box 590
Kooskia, ID 83539

(✓) Mailed

Edward J. Souther
PO Box 112
Kamiah, ID 83536

(✓) Mailed

Maple Stuivenga
PO Box 236
Kamiah, ID 83536

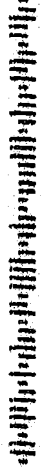
(✓) Mailed

Wanda Souther
PO Box 163
Lapwai, ID 83540

(✓) Mailed

By: 
Court Clerk, Nez Perce Tribal Court

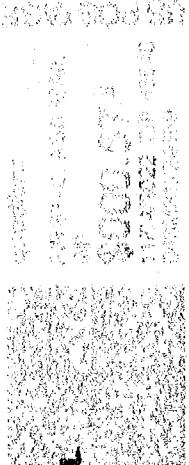
JUDICIAL SERVICES
NEZ PERCE TRIBES
P.O. BOX 305
LAPWAI, IDAHO 83640



212110-95538

Edward J. Souther
PO Box 112
Kamiah, ID 83536

11 AM 2202 NOV 4
SPOKANE WA 990



FILED

OCT 20 2022

IN THE NEZ PERCE TRIBAL COURT
IN AND FOR THE NEZ PERCE RESERVATION

TIME 9:37 AM
[Signature]
COURT CLERK

SWORN AFFIDAVIT

I, Kathy J. Taylor, THE UNDERSIGNED, BEING DULY SWORN, DEPOSES AND SAYS:

Per CV 22-022, I have not received any money from Matthew Souther. After viewing the trailer there has been a lot of damage done to the trailer. I informed my siblings that this must have happened after I informed him to move out of the trailer in January 2022. My mother, Mary Jane Souther, left this trailer ~~and the trailer to her daughter Wanda Souther. She was homeless at that time. Our mother's remains were cremated and was buried on the said property September 22, 2021.~~ At this time, my sister, Maple Souther, asked to use the bathroom in the trailer which he told her to go ahead and use it. She noticed the carpet which her ex-husband, Bob Kirtland, had installed was still in place. She took off her shoes and went to use the bathroom. Everything in the trailer looked fine then. I strongly believe after I wrote him a letter asking him to move out of the trailer, he was on a mission to destroy the trailer. I have attached pictures of the trailer after he moved out. The only carpet that was left in trailer was where the couch and tv were. Most of the floors are all stained where his dogs went pee. Bob had a fairly new stove in the kitchen and that was gone also. You can see in the pictures that when Matt moved the stove out he damaged the kitchen tile. I have enclosed pictures of that also.

He tried to move one of the sheds towards my brother, Edward Souther's home. The shed was ruined when he pulled it out. I am not sure why he tried to move this when it is part of the property that was given to Wanda. I have attached the letter from Bob Kirtland giving our mother the sheds. I have also attached prices back then what it would cost to replace everything. Labor cost weren't included. The estimated labor cost at that time to replace the carpet was \$500 to 700 dollars. The cost at that time was 2,219.23 for the carpet and pad. That doesn't even include the cost of the damaged floors with all that pee. Nor the cost to replace the stove in the kitchen.

I had Bob Kirtland meet us up at the trailer to go through it since he was the last person to live

(PLEASE ATTACH OTHER PAGES AS NEEDED)

I have made the above statement consisting of 14 pages, and I attest under penalty or perjury (NPTC § 1-1-101) that this is a true accurate statement of events that took place.

DATED this 20 day of October, 2022.


SIGNATURE

(ALL INFORMATION MUST BE PROVIDED FOR REQUEST TO BE CONSIDERED)

PHYSICAL ADDRESS: _____
MAILING ADDRESS: _____
HOME/MESSAGE: _____ PHONE: _____
WORK PHONE: _____

On 20th day of October, 2022, before me the under signed Notary Public, personally appeared Kathy Taylor, known to me to be the person whose name is subscribed to the foregoing instrument, and he/she acknowledged to me the he/she executed the same.

IN WITNESS WHEREOF, I have set my hand and seal the day and year as above written.



Shanelle M. Freouf
Notary Public in and for the
State of Idaho
Residing at Lewiston
Commission Expires 9/20/27

THIS REQUEST IS HEREBY:

APPROVED [] DENIED: []

Judge, Nez Perce Tribal Court

Date

SEAL
NEZ PERCE TRIBAL COURT

Noz Perce Tribe
P.O. Box 305
Lapwai, ID 83540

Edward J. Souther
PO Box 112
Kamiah, ID 83536

NEZ PERCE TRIBAL COURT

FILED

DEC 06 2022

TIME 3:59 PM
Malcolm Young
COURT CLERK

IN THE NEZ PERCE TRIBAL COURT
IN AND FOR THE NEZ PERCE RESERVATION

Kathy Taylor,
Petitioner

CASE NO. CV. 22-022

vs.

2ND AMENDED JUDGMENT

Matthew Souther,
Respondent

THIS MATTER having come before the above-entitled Court on November 15, 2022, upon a request of the Petitioner, Kathy Taylor, to amend the Judgment previously issued by this Court on May 16, 2022, to reflect the damages which she alleges were caused by the Respondent and found upon his surrender of the property. The Petitioner, Kathy Taylor, appeared in person. The Respondent, Matthew Souther, received notice of the hearing and failed to appear or respond to the Petitioner's request. The Court, having considered the sworn testimony of the parties, as well as the papers and pleadings on file herein, and good cause now appearing,

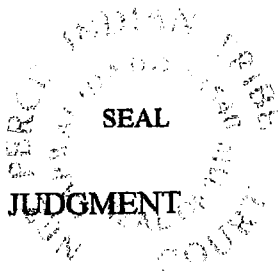
IT IS THEREFORE ORDERED that the Judgment dated May 16, 2022 is hereby amended as follows:

1. Petitioner is awarded \$2119.23 for damage to the property, and payable to the Estate of Mary Jane Souther. This is in addition to any other amount previously awarded in this matter.
2. All other provisions of the previous Judgments shall remain in effect.

DATED this 6th day of December, 2022.



TRIBAL COURT JUDGE



NEZ PERCE TRIBAL COURT

CERTIFICATE OF MAILING

IT IS HEREBY CERTIFIED that the undersigned is the Clerk of the above-entitled Court; that on the 7th day of December, 2022 the undersigned enclosed a true and correct copy of the 2ND AMENDED JUDGMENT, to which the certificate is attached, in envelopes addressed to:

Kathy Taylor
PO Box 394
Lapwai, ID 83540

Matthew Souther
PO Box 112
Kamiah, ID 83536

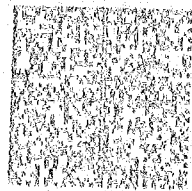
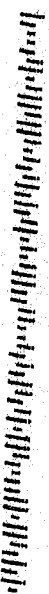
DATED this 7th day of December, 2022

Mark A. Jensen
Clerk

Nez Perce Tribe
Judicial Services
PO Box 305
Lapwai, ID 83540

Matthew Souther
PO Box 112
Kamiah, ID 83536

8355630112 8001



Quodiam
FIRST CLASS MAIL
EPA
800.672
12/07/2023 ZIP 83540
C45N631Z4683
US POSTAGE