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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARVIN DONIUS, et al.,

Plaintiffs,

vs.

RAUL A. RAMIREZ, *in his official
capacity as a Rincon Tribal Court Judge,*
et al.,

Defendants.

Case No.: 3:25-cv-01052-RBM-DEB

**ORDER DENYING PLAINTIFFS’
MOTION FOR AN EMERGENCY
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

[Doc. 2]

Pending before the Court is Plaintiffs Marvin Donius and Rincon Mushroom Corporation of America, Inc.’s (collectively, “Plaintiffs”) Motion for an Emergency Temporary Restraining Order and Preliminary Injunction (“TRO/PI”). (Doc. 2.) The Court finds the matter suitable for determination on the papers and without oral argument pursuant to Civil Local Rule 7.1(d)(1). For the reasons set forth below, Plaintiffs’ TRO/PI is **DENIED**.

I. BACKGROUND

A. Tribal Court Proceedings

On August 25, 2015, Plaintiffs filed a Complaint for Declaratory Relief and Injunctive Relief (the “Tribal Court Complaint”) in the Rincon Tribal Court, Intertribal

1 Court of Southern California (the “Tribal Court”) against the Rincon Band of Luiseno
2 Indians and tribal officials (collectively, the “Tribe”) challenging the Tribe’s regulatory
3 jurisdiction over Plaintiffs’ property. (*See* Case No. 3:09-cv-02330-WQH-JLB,¹ Doc. 158-
4 8 at 87–121 [Tribal Court Complaint].²) On May 18, 2017, the Tribal Court found that the
5 Tribe has regulatory jurisdiction over Plaintiffs’ property (the “2017 Jurisdictional Order”).
6 (*See* Case No. 3:09-cv-02330-WQH-JLB, Doc. 160-1 at 5–14 [2017 Jurisdictional Order].)

7 On April 22, 2019, having already established the Tribe’s regulatory jurisdiction
8 over Plaintiffs’ property, the Tribal Court entered a judgment in favor of the Tribe (the
9 “2019 Judgment”). (*See* Case No. 3:09-cv-02330-WQH-JLB, Doc. 160-3 at 84–93 [2019
10 Judgment].) Among other things, the 2019 Judgment required Plaintiffs to submit a
11 business plan to the Tribe “[i]n order to proceed with any development or further use of
12 the [P]roperty” and “provide [the Tribe] access to the property” to allow the Tribe’s experts
13 to assess, among other things, whether “any contamination is present.” (*Id.* at 91–92.)

14 Plaintiffs appealed both the 2017 Jurisdictional Order and the 2019 Judgment to the
15 Court of Appeals for the Rincon Band of Luiseño Indians (the “Tribal Appellate Court”).
16 (*See* Case No. 3:09-cv-02330-WQH-JLB, Doc. 163-1 at 611–653 [Tribal Appellate Court
17 Opinion].) On April 20, 2020, the Tribal Appellate Court upheld the 2017 Jurisdictional
18 Order but reversed and remanded the 2019 Judgment on the grounds that the injunctive
19 relief provided therein was overbroad (the “Tribal Appellate Court Opinion”). (*See e.g.*,
20 *id.* at 650 (“We find that the scope of the injunction exceeds the amount of restraint
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24 ¹ The parties to this action separately identified Case No. 3:09-cv-02330-WQH-JLB as a
25 related case. (*See* Docs. 1-1 (Civil Cover Sheet), 8 (Notice of Related Case).) Accordingly,
26 in addition to the Parties’ briefing, the Court relied on documents from the related case
27 when summarizing the procedural history of this case. *See McVey v. McVey*, 26 F. Supp.
28 3d 980, 984 (C.D. Cal. 2014) (“[P]leadings filed and orders issued in related litigation are
proper subjects of judicial notice under Rule 201.”) (citations omitted).

² The Court cites to the CM/ECF pagination for all documents unless otherwise noted.

1 necessary to protect the Tribe from the potential harm presented by [Plaintiffs’]
2 conduct.”.)

3 On June 26, 2020, the Tribal Court entered an amended judgment modifying the
4 injunctive relief (the “Amended Judgment”). (*See* Case No. 3:09-cv-02330-WQH-JLB,
5 Doc. 160-8 at 188–203 [Amended Judgment].) The Amended Judgment requires Plaintiffs
6 to comply with the Tribe’s laws and regulations, to provide the Tribe and its experts with
7 access to their property, and to remove fuel, hazardous waste, and septage from their
8 property, among other things. (*See id.* at 195–203 (listing the relief provided to the Tribe).)

9 **B. District Court Proceedings**

10 On July 17, 2020, Plaintiffs filed a First Amended Complaint (“FAC”) against the
11 Tribe in Case No. 3:09-cv-02330-WQH-JLB in the Southern District of California. (*See*
12 Case No. 3:09-cv-02330-WQH-JLB, Doc. 132 [FAC].³) In this FAC, Plaintiffs alleged, in
13 pertinent part:

14 On or about 2005, ... the [Tribe], ... including all of the Defendants herein
15 mentioned, ... devised and conspired amongst themselves to effectuate a plan
16 and scheme ... to acquire by unlawful means Plaintiffs’ property, by, among
17 other things, creating and adopting unlawful Tribal environmental ordinances
18 to falsely claim that the Tribe has jurisdiction over Plaintiffs’ use of their
19 property, and that Plaintiffs are purportedly violating the Tribe’s
20 environmental ordinances, for the purpose of pressuring and forcing Plaintiff
21 to sell to the Tribe their property “on the cheap,” knowing that their conduct,
22 and the harassing conduct and false claims of the other Defendants herein, of
asserting regulatory jurisdiction over the use of Plaintiffs’ property would
make Plaintiffs’ property unmarketable and leave Plaintiffs with no choice but
to sell their property to the Tribe.

23 (*Id.* ¶ 42.) Plaintiffs asserted fourteen causes of action against the Tribe. (*Id.* ¶¶ 87–178.)
24 Plaintiffs also requested declaratory relief as “to whether the ... Tribe has regulatory

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27 ³ Plaintiffs filed their initial complaint on October 20, 2009. (*See* Case No. 3:09-cv-02330-
28 WQH-JLB, Doc. 1.) However, the case was later stayed pending Plaintiffs’ exhaustion of
their tribal remedies. (*See* Case No. 3:09-cv-02330-WQH-JLB, Doc. 65.)

1 jurisdiction over the Plaintiffs’ use of their property” and injunctive relief “prohibiting the
2 [Tribe] from asserting regulatory jurisdiction over Plaintiffs’ use of their property, and
3 from interfering with such use” (*Id.*, Request for Relief.)

4 On June 15, 2021, Plaintiffs filed a motion for summary judgment arguing, in
5 pertinent part, (1) that the Tribal Court lacked jurisdiction over Plaintiffs’ use of their
6 property and (2) that the injunctive relief in the Amended Judgment is overly broad, vague,
7 and ambiguous. (*See* Case No. 3:09-cv-02330-WQH-JLB, Doc. 166 at 26–58, 60–65.) On
8 August 23, 2021, the Tribe filed a cross-motion for summary judgment and an opposition
9 to Plaintiffs’ motion for summary judgment. (*See* Case No. 3:09-cv-02330-WQH-JLB,
10 Doc. 170.) In their cross-motion for summary judgement, the Tribe argued, in pertinent
11 part, (1) that the Tribal Court correctly found that it had jurisdiction over Plaintiffs’ use of
12 their property under the second exception set forth in *Montana v. United States*, 450 U.S.
13 544 (1981) and (2) that Plaintiffs’ challenge to the scope of the injunctive relief granted in
14 the Amended Judgment was not properly before the District Court. (*See* Case No. 3:09-
15 cv-02330-WQH-JLB, Doc. 170-1 at 19–50, 66–67.)

16 In his order on the cross-motions for summary judgment (“MSJ Order”), the
17 Honorable William Q. Hayes found that the Tribe had regulatory jurisdiction over the
18 property. (*See* Case No. 3:09-cv-02330-WQH-JLB, Doc. 176 [MSJ Order] at 19.) Judge
19 Hayes also found that Plaintiffs had not exhausted their tribal remedies with respect to the
20 injunctive relief contained in the Amended Judgment because they had not appealed the
21 Amended Judgment to the Tribal Appellate Court. (*Id.* at 24.) Judge Hayes therefore
22 concluded that “Plaintiffs’ failure to exhaust their tribal remedies with respect to the
23 injunction precludes review of the injunction by this Court.” (*Id.*)

24 The Ninth Circuit Court of Appeals affirmed Judge Hayes’ MSJ Order in its entirety.
25 *See, e.g., Rincon Mushroom Corp. of Am. v. Mazzetti*, No. 23-55111, 2024 WL 3066049,
26 at *1 (9th Cir. June 20, 2024) (“Plaintiffs’ challenges to the tribal court’s subject matter
27 jurisdiction fail.”); *id.* at *2 (“Plaintiffs did not challenge the operative injunction in the
28 tribal appellate court; therefore, this issue is not properly before us.”).

1 **C. Further Tribal Court Proceedings**

2 **1. Civil Contempt Motion and Order**

3 On September 4, 2024, after the Ninth Circuit affirmed Judge Hayes’ MSJ Order,
4 the Tribe filed a Notice and Motion Regarding Civil Contempt (“Civil Contempt Motion”)
5 before the Tribal Court, along with a memorandum in support thereof. (*See* Doc. 10-1 at
6 202–206 [Civil Contempt Motion]; *see also id.* at 213–244 [Memorandum in Support of
7 Civil Contempt Motion].)

8 On February 3, 2025, the Tribal Court found that Plaintiffs “[had] been served with
9 notice of [the] civil contempt proceedings, and [had] been provided the opportunity to be
10 heard, to respond to the Tribe’s motion, and to appear before this Court” but failed to do
11 so. (Doc. 2-1, Declaration of Manuel Corrales, Jr., in Support of Motion for
12 TRO/Preliminary Injunction [“Corrales Decl.”], Ex. 2 [Civil Contempt Order], at 15.) The
13 Tribal Court granted the Tribe’s Civil Contempt Motion (*id.*) and imposed monetary
14 sanctions on Plaintiffs for their continued non-compliance with the Amended Judgment
15 (*id.* at 15–16). The Tribal Court also ruled:

16 In the event [Plaintiffs] have not established to this Court that they are in
17 substantial compliance with the Tribe’s Cleanup Plan and the Amended
18 Judgment on or before the sixtieth (60th) calendar day (aggregate sanctions of
\$350,000.00) from the entry of this Court’s Order, then

19 A. the Tribe is permitted to come onto the Subject Property and remove
20 all structures, equipment and supplies, including all vehicles and
21 trailers, from the Subject Property, and dispose of such structures,
22 equipment and supplies as the Tribe determines, in its sole discretion;
and

23 B. the Tribe is permitted to restrict any and all access for ingress and
24 egress from the Subject Property, except for the sole limited purpose of
25 removing all structures, equipment and supplies.

26 (*Id.* at 16.)
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1 **2. Writ Petition and Order**

2 On April 6, 2025, Plaintiffs filed a Petition for Writ of Certiorari and/or Writ of
3 Mandate and/or Prohibition or Other Appropriate Relief; Memorandum of Points and
4 Authorities (“Writ Petition”) before the Tribal Appellate Court. (Doc. 10-1 at 5–24 [Writ
5 Petition].) In their Writ Petition, Plaintiffs requested an immediate stay of the Tribal
6 Court’s Civil Contempt Order after receiving notice that the Tribe intended to “forcibly
7 enter” Plaintiffs’ property and “forcibly remove any and all structures, vehicles, equipment,
8 containers and materials and restrict ingress and egress to the property.” (*Id.* at 13 (internal
9 quotation omitted); *see also id.* at 22–23 (“The Tribe is poised to implement the contempt
10 order ... and forcibly enter [Plaintiffs’] property and forcibly remove all structures and
11 items from [Plaintiffs’] property, including non-Indian U.S. citizens, and then shut down
12 all access to the property”).)

13 Plaintiffs argued that the Civil Contempt Order was based on the “illegal” and
14 “excessive in scope” Amended Judgment and the resulting Cleanup Plan. (*Id.* at 14–15;
15 *see also id.* at 16 (“[T]he Tribal Court Civil Contempt Order ... is unlawful and excessive
16 in scope.”); *id.* at 23 (“The Tribe’s purported right to forcibly enter [Plaintiffs’] property
17 and remove all structures and items on his property is based on ... illegal and overly broad
18 injunction language contained in the Amended ... Judgment The Tribe’s Clean[u]p
19 Plan purportedly implementing this Tribal Judgment suffers from the same fate.”).)

20 Plaintiffs concluded, “[p]eople live on the property, including [Plaintiff] Donius, and
21 any such forcible entry and removal of non-Indian U.S. citizens would violate their 4th
22 Amendment rights under the U.S. Constitution. The Tribe intends to sweep clean
23 everything on the property and chain it up.” (*Id.* at 15; *see also id.* at 23 (“The Tribe has
24 no legal right to forcibly remove non-Indian U.S. citizens and their personal belongings
25 from [Plaintiffs’] property and dispose of their property at their discretion. To the extent
26 the Amended ... Judgment can be interpreted to grant the Tribe that right, it should be
27 rejected as a violation of these non-Indian U.S. citizens’ U.S. constitutional rights.”).)

1 On April 17, 2025, the Tribal Appellate Court found that “the record reflects that
2 Petitioners did not appeal from the Amended Judgment” and that “writs of certiorari,
3 mandamus, and prohibition may not be used as a substitute for an authorized appeal.”
4 (Doc. 2-1 at 42 (citing *U.S. Alkali Export Ass’n v. United States*, 325 U.S. 196 (1945)).
5 The Tribal Appellate Court explained, “[a]ny party aggrieved by any final order, or
6 judgment of the [Tribal Court] may appeal such order, or judgment to the [Tribal Appellate
7 Court] ... by filing a notice of appeal with the applicable trial court within forty-five (45)
8 Days after such order, or judgment has been entered.” (*Id.* (quoting Rincon Appellate
9 Court Rules and Procedures § 3.812(a)).) In sum, the Tribal Appellate Court found that
10 Plaintiffs’ Writ Petition was untimely.

11 **D. Plaintiffs’ Complaint**

12 On April 25, 2025, approximately eight days after the Tribal Appellate Court denied
13 Plaintiffs’ Writ Petition, Plaintiffs filed the operative Complaint for Declaratory and
14 Injunctive Relief (“Complaint”) against Defendants Raul A. Ramirez, in his official
15 capacity as a Rincon Tribal Court Judge; Bo Mazzetti, in his official capacity as the Rincon
16 Tribal Chairman; Joseph Linton, in his official capacity as the Rincon Vice Tribal
17 Chairman; Laurie E. Gonzalez, in her official capacity as a Rincon Tribal Council Member;
18 John Constantino, in his official capacity as a Rincon Tribal Council Member; Alfonso
19 Kolb, in his official capacity as a Rincon Tribal Council Member; and the Rincon Band of
20 Luiseno Indians, a federally recognized Indian Tribe (collectively, “Tribal Defendants”)
21 before this Court. (Doc. 1 [Compl].)

22 In their Complaint, Plaintiffs assert three causes of action for: (1) “Violation of U.S.
23 Constitution 4th Amendment Rights Against Unreasonable Search and Seizure of Persons
24 and Personal Property[,]” (2) “Violation of Due Process under the 5th and Fourteenth
25 Amendments to the U.S. Constitution—Enforcing a Tribal Contempt Order Based on an
26 Invalid Tribal Court Judgment[,]” and (3) “Lack of Jurisdiction—Enforcing Tribal
27 Contempt Order to Seize and Destroy Personal Property on Non-Indian Fee Land[.]” (*Id.*
28 at 1.)

1 Plaintiffs explain that they “seek declaratory and injunctive relief against the Tribal
2 Defendants ... enjoining them from enforcing [the Civil] Contempt Order based on an
3 invalid Tribal Court [Amended] Judgment, which the Tribal Defendants believe gives them
4 the right to forcibly enter private, non-Indian fee land outside reservation boundaries, and
5 physically seize and destroy personal property of the non-Indian owner of the land who is
6 a U.S. citizen and the personal property belonging to other non-Indian U.S. citizens
7 residing on the owner’s non-Indian fee land, including removing non-Indian U.S. citizens
8 from the property and forcibly blocking access to the property.”⁴ (*Id.* ¶ 1.)

9 **E. Plaintiffs’ TRO/PI**

10 On April 25, 2025, Plaintiffs also filed their TRO/PI. (Doc. 2.) In their TRO/PI,
11 Plaintiffs argue that they are likely to succeed on the merits of their claims. (*Id.* at 8.)
12 Specifically, Plaintiffs argue that the Civil Contempt Order violates Plaintiff Donius and
13 other third-parties’ Fourth Amendment rights against unreasonable searches and seizures
14 (*id.* at 8–11); that the Amended Judgment upon which the Civil Contempt Order is based
15 is vague, ambiguous, and overly broad in scope (*id.* at 11–14); that the Civil Contempt
16 Order cannot stand because it is based on an invalid judgment (*id.* at 14–15); that the
17 Tribe’s Cleanup Plan is not a court order and therefore Plaintiff cannot be held in contempt
18 for not complying with the plan (*id.* at 15–16); and that the Tribe’s Cleanup Plan is
19 unlawfully broad in scope (*id.* at 16–18). Plaintiffs also assert that they will be irreparably
20 harmed if the Civil Contempt Order is enforced (*id.* at 18) and that the equities and public
21 interest favor immediate relief (*id.* at 18–19).

22 In supplemental briefing ordered by the Court (*see* Doc. 5), Plaintiffs assert that the
23 Tribe must enforce and register the Amended Judgment and the related Civil Contempt
24 Order in federal court pursuant to 28 U.S.C. § 1963, which provides:

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27 ⁴ Plaintiffs allege that their property is outside the reservation boundaries. In fact,
28 Plaintiffs’ property is within the reservation boundaries. (*See* Case No. 3:09-cv-02330-
WQH-JLB, Doc. 176 [MSJ Order] at 3.)

1 A judgment in an action for the recovery of money or property entered in any
2 court of appeals, district court, bankruptcy court, or in the Court of
3 International Trade may be registered by filing a certified copy of the
4 judgment in any other district or, with respect to the Court of International
5 Trade, in any judicial district, when the judgment has become final by appeal
or expiration of the time for appeal or when ordered by the court that entered
the judgment for good cause shown.

6 (Doc. 10 at 7–8.) Plaintiffs argue that § 1963 applies to Tribal Court judgments, including
7 the Amended Judgment and the Civil Contempt Order. (*Id.* at 8–9.) Regarding irreparable
8 harm, Plaintiffs argue that an award of damages is not possible in this case because tribal
9 sovereign immunity shields the tribe from paying for its unlawful acts. (*Id.* at 9–10.)

10 **F. Tribal Defendants’ Opposition**

11 In their Opposition, the Tribal Defendants assert that Plaintiffs’ Complaint is
12 “essentially an appeal” of the Civil Contempt Order and the Tribal Appellate Court’s order
13 denying Plaintiffs’ Writ Petition. (Doc. 11 at 18.) The Tribal Defendants argue that
14 Plaintiffs chose not to appear for the Civil Contempt Motion hearing and therefore have
15 waived on appeal any arguments that should have been made before the Tribal Court. (*Id.*
16 at 17–19.)

17 The Tribal Defendants also assert that Plaintiffs’ Complaint is an attempt to re-
18 litigate the scope of the injunctive relief set forth in the Amended Judgment, which Plaintiff
19 did not appeal to the Tribal Appellate Court and which Judge Hayes declined to review in
20 ruling on the parties’ cross-motions for summary. (*Id.* at 19–22.) The Tribal Defendants
21 therefore argue that Plaintiffs are equally precluded from challenging the scope of the
22 injunctive relief set forth in the Amended Judgment under the doctrines of *res judicata* and
23 the “law of the case.” (*Id.*)

24 Additionally, the Tribal Defendants argue that Plaintiffs have no likelihood of
25 success on the merits of their claims. (*Id.* at 22.) Specifically, the Tribal Defendants argue
26 that Plaintiffs’ loss of property resulting from their contemptuous conduct does not
27 constitute a violation of the Fourth Amendment because the Tribal Defendants are not state
28 actors, and Plaintiffs are free to remain upon or leave the property. (*Id.* at 22–23.) The

1 Tribal Defendants also argue that the injunctive relief set forth in the Amended Judgment
2 is not overbroad. (*Id.* at 24–29.) The Tribal Defendants further argue that Plaintiffs’
3 assertion that the Tribe must register the Amended Judgment or the Civil Contempt Order
4 in federal court is false. (*Id.* at 30.)

5 Finally, the Tribal Defendants argue that the “balance of hardships” does not weigh
6 in favor of granting Plaintiffs’ TRO/PI because Plaintiffs have not proffered “any effort to
7 comply with the terms of the Amended Judgment,” which threatens the Tribe’s reservation.
8 (*Id.* at 30–31.)

9 **II. LEGAL STANDARD**

10 Federal Rule of Civil Procedure (“Rule”) 65 governs injunctions and restraining
11 orders. Rule 65(a)(1) provides, “[t]he [C]ourt may issue a preliminary injunction *only on*
12 *notice* to the adverse party.” Fed. R. Civ. P. 65(a)(1) (emphasis added). Relatedly, Rule
13 65(b)(1) provides, “[t]he [C]ourt may issue a temporary restraining order without written
14 or oral notice to the adverse party or its attorney *only if*: (A) specific facts in an affidavit
15 or a verified complaint clearly show that immediate and irreparable injury, loss, or damage
16 will result to the movant before the adverse party can be heard in opposition; and (B) the
17 movant’s attorney certifies in writing any efforts made to give notice and the reasons why
18 it should not be required.” Fed. R. Civ. P. 65(b)(1) (emphasis added).⁵

19 “A plaintiff seeking a preliminary injunction must establish [1] that he is likely to
20 succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of
21 preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction
22 is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)
23 (citations omitted). “A preliminary injunction is an extraordinary remedy never awarded
24 as of right.” *Id.* at 24 (citations omitted).

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27 ⁵ Plaintiffs’ initial TRO/PI filing did not indicate whether they were seeking a TRO without
28 notice pursuant to Rule 65(b)(1), but Defendants were later served and have had an
opportunity to respond. (*See* Docs. 4–5, 11.)

1 **III. DISCUSSION**

2 As set forth above, Plaintiffs must establish (1) a likelihood of success on the merits
3 of their claims, (2) irreparable harm, (3) that the balance of equities weighs in their favor,
4 and (4) that the requested injunction is in the public interest. *See Winter*, 555 U.S. at 20.
5 For the reasons set forth below, the Court finds that Plaintiffs have not established a
6 likelihood of success on the merits of their claims, and Plaintiffs’ TRO/PI must be denied.

7 **A. Likelihood of Success on the Merits**

8 “Likelihood of success on the merits is the most important *Winter* factor; if a movant
9 fails to meet this threshold inquiry, the court need not consider the other factors, in the
10 absence of serious questions going to the merits.” *Disney Enters., Inc. v. VidAngel, Inc.*,
11 869 F.3d 848, 856 (9th Cir. 2017) (internal quotations and citations omitted).

12 As set forth above, Plaintiffs assert three causes of action: (1) “Violation of U.S.
13 Constitution 4th Amendment Rights Against Unreasonable Search and Seizure of Persons
14 and Personal Property[,]” (2) “Violation of Due Process under the 5th and Fourteenth
15 Amendments to the U.S. Constitution—Enforcing a Tribal Contempt Order Based on an
16 Invalid Tribal Court Judgment[,]” and (3) “Lack of Jurisdiction—Enforcing Tribal
17 Contempt Order to Seize and Destroy Personal Property on Non-Indian Fee Land[.]” (*Id.*
18 at 1.) The Court addresses the likelihood of success on each cause of action in turn.

19 **1. Unreasonable Search and Seizure—First Claim for Relief**

20 “To succeed on their Section 1983 claims, Plaintiffs must demonstrate that the action
21 (1) occurred ‘under color of state law,’ and (2) resulted in the deprivation of a constitutional
22 or federal statutory right.” *Warkentine v. Soria*, 152 F. Supp. 3d 1269, 1281 (E.D. Cal.
23 2016) (quoting *Leer v. Murphy*, 844 F.2d 628, 632–33 (9th Cir.1988)). Here, Plaintiffs
24 allege that the Tribal Defendants, acting under the color of state law, deprived them of their
25 Fourth Amendment right against unreasonable search and seizure. (*See Compl.* ¶¶ 41–51.)

26 “The Fourth Amendment, made applicable to the states by the Fourteenth
27 Amendment, protects ‘persons, houses, papers, and effects, against unreasonable searches
28 and seizures.’” *Warkentine*, 152 F. Supp. 3d at 1282 (quoting U.S. Const. amend. IV).

1 “Whether a search or seizure is at issue, the relevant inquiry under the Fourth Amendment
2 is one of reasonableness[,]” which “depends upon the particular facts and circumstances.”
3 *Id.* (citations omitted).

4 Plaintiffs allege that the Civil Contempt Order violates Plaintiff Donius’ and other
5 third-parties’ Fourth Amendment rights⁶ against unreasonable searches and seizures
6 because it “permits the Tribe to: ‘come onto [Plaintiff] Donius’ property and remove all
7 structures, equipment and supplies, including all vehicles and trailers ... and dispose of
8 such structures, equipment and supplies as the Tribe determines in its sole discretion” and
9 “restrict any and all access for ingress and egress” (Compl. ¶¶ 41–42.) Plaintiffs
10 then allege that the Amended Judgment “permits this action as well, and it is the basis for
11 the contempt order, it, too, is unconstitutional and thus void.” (*Id.* ¶ 47.) Plaintiffs also
12 alleges that the Tribe is impermissibly exercising criminal jurisdiction over Plaintiffs. (*See*
13 *id.* at ¶¶ 48–50.) Finally, Plaintiffs allege that “the Tribal Defendants ... [are] acting under
14 color of law by seeking to enforce the [Civil] Contempt Order under the authority of the
15 U.S. District Court.” (*Id.* ¶ 51.) Plaintiffs claim, however, “that authority is lacking ...
16 because ... the Trib[al] [Defendants] never registered the Amended ... Judgment with the
17 federal court system.”⁷ (*Id.*) As set forth below, the Court finds that Plaintiffs have failed
18 to establish a likelihood of success on the merits for this unreasonable search and seizure
19 claim.

20 First, the Court finds that the Tribal Defendants are not acting under the color of
21 state law. The law in the Ninth Circuit is clear that “actions under [§] 1983 cannot be
22 maintained in federal court for persons alleging a deprivation of constitutional rights under
23 [the] color of tribal law.” *Pistor v. Garcia*, 791 F.3d 1104, 1114 (9th Cir. 2015) (internal
24

25 ⁶ “[A plaintiff] cannot maintain a federal civil action to redress injuries to others, or to
26 assert the rights of nonparties.” *Bellack v. United States*, 962 F.2d 13 (9th Cir. 1992) (citing
27 *Tileston v. Ullman*, 318 U.S. 44 (1943)). The Court will disregard allegations and
28 arguments concerning the rights of third parties residing on Plaintiff Donius’ property.

⁷ Plaintiffs repeat these allegations as argument in their TRO/PI. (*See* Doc. 2 at 8–11.)

1 quotation omitted). Because Plaintiffs allege that the Tribal Defendants entered and
2 destroyed Plaintiffs’ property pursuant to the *Tribal Court’s* Civil Contempt Order, based
3 on the *Tribal Court’s* Amended Judgment, not state or federal law, the Tribal Defendants
4 cannot be held liable under § 1983. Plaintiffs also have not provided any authority to
5 support their position that the presence of San Diego County police alters this analysis.
6 Plaintiffs’ unreasonable search and seizure claim, brought under § 1983, fails on this basis
7 alone.

8 Second, while Plaintiffs correctly note that the Tribe does not have criminal
9 jurisdiction over non-Indians like Plaintiff Donius, *see Oliphant v. Suquamish Indian*
10 *Tribe*, 435 U.S. 191, 195 (1978), Plaintiffs have not clearly explained how the Tribal
11 Defendants are impermissibly exercising criminal jurisdiction over Plaintiffs as opposed
12 to its regulatory or adjudicative jurisdiction, *see e.g., Hardin v. White Mountain Apache*
13 *Tribe*, 779 F.2d 476, 478 (9th Cir. 1985) (finding that the exclusion of non-Indians from a
14 reservation falls within the Indian tribe’s civil powers) (emphasis added). As alleged,
15 Plaintiffs’ Complaint focuses on the destruction of Plaintiffs’ personal property pursuant
16 to the *Civil Contempt Order*. (*See* Compl. ¶ 1 (“Tribal officials forcibly entered [Plaintiff]
17 Donius’ property on April 24, 2025, and began destroying and removing his personal
18 property.”); *id.* ¶ 39 (“The Tribal Defendants are now poised to enforce the [Civil]
19 Contempt Order and ... remove and destroy on the property, including structures and
20 personal property belonging to others.”). The Court is not persuaded that the Tribal
21 Defendants are impermissibly exercising criminal jurisdiction over Plaintiffs.

22 Finally, Plaintiffs have not provided sufficient support or authority for their position
23 that the Tribal Defendants “must first register the Amended ... Judgment in federal court
24 and then enforce it in federal court” (Doc. 2 at 11; *see also* Compl. ¶ 51.) While
25 U.S.C. § 1963 provides that “[a] judgment in an action for the recovery of money or
26 property ... may be registered by filing a certified copy of the judgment in any other district
27 ... when the judgment has become final by appeal or expiration of the time for appeal[,]”
28 this provision applies only to the recovery of “money or property,” not the injunctive relief

1 at the forefront of Plaintiffs’ Complaint. While the Civil Contempt Order does provide for
2 monetary sanctions, Plaintiffs do not appear to challenge those sanctions.

3 In sum, Plaintiffs have failed to establish a likelihood of success on its unreasonable
4 search and seizure claim, and Plaintiffs’ TRO/PI must be denied with respect to this claim.

5 **2. Violation of Fourteenth Amendment Due Process—Second Claim for**
6 **Relief**

7 “Plaintiffs appear to assert [a procedural due process theory] for relief under to 42
8 U.S.C. § 1983.” *Los Alamitos Med. Ctr., Inc. v. Loc. Initiative Health Auth. for Los*
9 *Angeles*, 680 F. Supp. 3d 1169, 1174 (C.D. Cal. 2023). “To obtain relief on a procedural
10 due process claim, [a] plaintiff must establish the existence of ‘(1) a liberty or property
11 interest protected by the Constitution; (2) a deprivation of the interest by the government;
12 and (3) lack of process.’” *Shanks v. Dressel*, 540 F.3d 1082, 1090 (9th Cir. 2008) (quoting
13 *Portman v. County of Santa Clara*, 995 F.2d 898, 904 (9th Cir.1993)).

14 Plaintiffs allege that the Tribal “Defendants’ actions in pursuing contempt
15 proceedings in the Tribal ... Court and then seeking to enforce [the Civil] Contempt Order
16 that purportedly allows the Tribe to forcibly remove [Plaintiff] Donius’ property from his
17 land violates [Plaintiff] Donius’ *due process rights guaranteed under the 14th Amendment*
18 *to the U.S. Constitution.*” (Compl. ¶ 52 (emphasis added).) Plaintiffs allege that they “are
19 entitled to have any enforcement of the Amended ... Judgment, including any contempt
20 proceedings for purportedly violating that [Amended] Judgment, determined in the U.S.
21 District Court” (*Id.*) Plaintiffs then allege (1) that the Amended Judgment, upon which
22 the Civil Contempt Order is based, is vague, ambiguous, and overbroad (*id.* ¶¶ 53–61); (2)
23 that the overbroad, vague, and ambiguous Amended Judgment cannot be the basis for the
24 Civil Contempt Order (*id.* ¶¶ 62–65); (3) that Plaintiffs cannot be held in contempt for
25 violating the Tribal Defendants’ Cleanup Plan because it is not a court order (*id.* ¶¶ 66–
26 67); and (4) that *Montana* regulatory jurisdiction is not warranted under the present
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1 circumstances (*id.* ¶¶ 72–77).⁸ As set forth below, the Court finds that Plaintiffs have failed
2 to establish a likelihood of success on the merits for this due process claim.

3 As discussed above in Section III.A.1, the Tribal Defendants cannot be held liable
4 under § 1983 because the Tribal Defendants entered and destroyed Plaintiffs’ property
5 pursuant to the Tribal Court’s Civil Contempt Order, based on the Tribal Court’s Amended
6 Judgment, not state or federal law. *See Pistor*, 791 F.3d at 1114.

7 Additionally, many of Plaintiffs’ allegations and arguments concern the validity and
8 breadth of the Amended Judgment, on which the subsequent Civil Contempt Order and the
9 Tribal Defendants’ Cleanup Plan are based. (*See* Compl. ¶¶ 53–65; Doc. 2 at 11–15.)
10 However, as Plaintiffs concede, Plaintiffs never appealed the Amended Judgment to the
11 Tribal Appellate Court. (*See e.g.*, Compl. ¶ 26.) For this reason, Judge Hayes previously
12 found that Plaintiffs had not exhausted their tribal remedies with respect to the scope of the
13 injunctive relief contained in the Amended Judgment, which precluded the District Court’s
14 review of the injunctive relief contained in the Amended Judgment. (*See* Case No. 3:09-
15 cv-02330-WQH-JLB, Doc. 176 [MSJ Order] at 24.) The Ninth Circuit affirmed. *See*
16 *Rincon Mushroom Corp. of Am.*, 2024 WL 3066049, at *2.

17 Here too, the Court is precluded from reviewing the scope of the injunctive relief
18 contained in the Amended Judgment. *See Demontiney v. U.S. ex rel. Dep’t of Interior,*
19 *Bureau of Indian Affs.*, 255 F.3d 801, 814 (9th Cir. 2001) (finding that the plaintiff had not
20 demonstrated that his tribal remedies were inadequate or nonexistent because the plaintiff
21 did not appeal the Tribal Court’s dismissal of his action, the dismissal was without
22 prejudice, and the Tribe contended that there are further tribal remedies available). In
23 addition, Plaintiffs seemingly concede that they have not exhausted their tribal remedies.
24 Plaintiffs allege in their Complaint that the Amended Judgment allows “[e]ither party ...
25 [to] file a motion related to modifying or enforcing the April 22, 20219 Judgment as
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28 ⁸ Plaintiffs repeat these allegations as argument in their TRO/PI. (*See* Doc. 2 at 11–18.)

1 modified by this Order.” (Compl. ¶ 72 (quotation omitted); *see also* Case No. 3:09-cv-
2 02330-WQH-JLB, Doc. 160-8 [Amended Judgment] at 203.) Plaintiffs have not filed any
3 such motion. Thus, while Plaintiffs did not timely appeal the Amended Judgment, they are
4 not without tribal remedies.

5 Plaintiffs suggest that their Writ Petition exhausted their tribal remedies with respect
6 to the Amended Judgment. (*See* Doc. 2 at 6 (“Plaintiffs exhausted their Tribal Court
7 remedies by seeking writ review with the Tribal Court of Appeals, which denied
8 Plaintiffs[’] Petition.”); *id.* at 7 (“Plaintiffs have exhausted their Tribal Court remedies.”);
9 Compl. ¶¶ 8, 11.) However, Plaintiffs do not explain how or why their Writ Petition, filed
10 in response to the Civil Contempt Order nearly five years after the Amended Judgment, is
11 sufficient to exhaust their tribal remedies with respect to that Amended Judgment, upon
12 which the Civil Contempt Order is based. Further, as the Tribal Appellate Court noted,
13 Plaintiffs’ Writ Petition cannot be used as a substitute for an authorized appeal under
14 Rincon Appellate Court Rules and Procedures § 3.812(a), which provides that a notice of
15 appeal with the applicable trial court may be filed within 45 days of the challenged order
16 or judgment. (Doc. 2-1 at 42 (citing *U.S. Alkali Export Ass’n v. United States*, 325 U.S.
17 196 (1945).) A review of the record demonstrates that Plaintiffs’ Writ Petition was not
18 filed within 45 days of *either* the Amended Judgment *or* the Civil Contempt Order.
19 Therefore, Plaintiffs have not exhausted their tribal remedies with respect to either
20 document. *See Demontiney*, 255 F.3d at 814.⁹

21 Further, the Court is not persuaded by Plaintiffs’ argument that they cannot be held
22 in contempt for violating the Tribal Defendants’ Cleanup Plan because it is not a court
23 order. (*See* Compl. ¶¶ 66–67.) The Amended Judgment specifically permits the Tribe to
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26 ⁹ Because the Court finds that Plaintiffs have failed to exhaust their tribal remedies with
27 respect to the Amended Judgment and the Civil Contempt Order, the Court need not reach
28 the Tribal Defendants’ arguments regarding the doctrines of *res judicata* and the “law of
the case.” (*See* Doc. 11 at 19–22.)

1 “set a cleanup plan in place[.]” (Case No. 3:09-cv-02330-WQH-JLB, Doc. 160-8
2 [Amended Judgment] at 196.)

3 Lastly, the Court is also not persuaded by Plaintiffs argument that *Montana*
4 regulatory jurisdiction is not warranted under the present circumstances. (See Compl. ¶¶
5 72–77.) As set forth above, Judge Hayes already found that the Tribe has regulatory
6 jurisdiction over Plaintiffs’ property (see Case No. 3:09-cv-02330-WQH-JLB, Doc. 176
7 [MSJ Order] at 19), and the Ninth Circuit affirmed, see *Rincon Mushroom Corp. of Am.*,
8 2024 WL 3066049, at *1. The Court will not re-visit the issue here.

9 Therefore, Plaintiffs have failed to establish a likelihood of success on its Fourteenth
10 Amendment due process claim, and Plaintiffs’ TRO/PI must be denied with respect to this
11 claim.

12 **3. Lack of Jurisdiction to Impose Tribal Contempt Order—Third Claim for**
13 **Relief**

14 In their third claim for relief for “Lack of Jurisdiction to Impose Tribal Contempt
15 Order,” Plaintiffs allege:

16 [T]he Tribal ... Court has no jurisdiction to issue a civil contempt order
17 against Plaintiffs and enforce it by permitting the Tribe to forcibly enter
18 [Plaintiff] Donius’ property and seize his ... personal property and destroy all
19 structures on the property without a warrant. The authority the Tribal Court
20 claims it has to do so does not exist, as herein alleged. Since the Tribe cannot
21 exercise criminal jurisdiction over [Plaintiff] Donius, it has no authority to
22 issue any warrant to allow the seizure activities set forth in the Tribal Trial
23 Court’s Contempt Order. Accordingly, the Tribal ... Court lacks jurisdiction
24 to issue any Contempt Order requiring Plaintiffs to pay to the Tribal ... Court
25 \$350,000, or any amount, and to order the removal of all property and items
26 from [Plaintiff] Donius’ property if that amount in contempt sanctions is not
27 paid. As explained, that right belongs exclusively to the U.S. District Court.
28 ... Accordingly, Plaintiffs are entitled to prospective injunctive relief
directing Defendants to refrain from attempting to exercise jurisdiction over
Plaintiffs and Donius’ property as a means to enforce the Tribal Trial Court’s
Contempt Order.

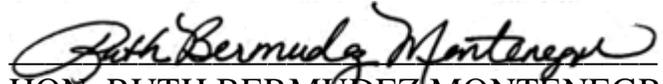
1 As set forth above (*see* Section III.A.1–2), Judge Hayes already found that the Tribe has
2 regulatory jurisdiction over Plaintiffs’ property, and Plaintiffs have not clearly explained
3 how the Tribal Defendants are impermissibly exercising criminal jurisdiction over
4 Plaintiffs as opposed to its regulatory jurisdiction. As such, Plaintiffs have failed to
5 establish a likelihood of success on this claim, and Plaintiffs’ TRO/PI must be denied with
6 respect to this claim.

7 **IV. CONCLUSION**

8 Based on the foregoing, Plaintiffs’ TRO/PI is **DENIED**. Plaintiffs have not
9 demonstrated that the “extraordinary remedy” of injunctive relief is warranted in this case.
10 *See Winter*, 555 U.S. at 24.

11 **IT IS SO ORDERED.**

12 DATE: May 19, 2025

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14 HON. RUTH BERMUDEZ MONTENEGRO
15 UNITED STATES DISTRICT JUDGE
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