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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEVEN ROGERS-DIAL, an individual;
SUZANNE ROGERS-DIAL, an individual,
and AUTOMOTIVE SPECIALISTS, LLC,
a California limited liability company;

Plaintiffs

vs.

RINCON BAND OF LUISEÑO INDIANS;
BO MAZZETTI; STEPHANIE SPENCER;
CHARLES KOLB; STEVE STALLINGS;
KENNY KOLB; AND DOES 6-25;

Defendants

Case No. 10 CV 2656 - WQH(POR)

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
INJUNCTION AGAINST ALL
DEFENDANTS; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATIONS OF ROBERT
MORENO, STEVEN ROGERS-DIAL,
AND MARVIN DONIUS; AND
[PROPOSED] ORDER**

Judge: Hon. William Q. Hayes
Courtroom: 4, Fourth Floor
Date: April 18, 2011
Time: 11:00 a.m.
Trial Date: None Set

**ORAL ARGUMENT REQUESTED
BY PLAINTIFFS**

**NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 18, 2011 at 11:00 a.m., or as soon thereafter as

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1 counsel may be heard, in Courtroom 4 of the above-entitled Court, located at 940 Front Street, San
2 Diego California, 92101, Plaintiffs Steven and Suzanne Rogers-Dial ("ROGERS-DIAL" or
3 collectively "Plaintiffs") , and Automotive Specialists, LLC ("AUTOMOTIVE SPECIALISTS" or
4 collectively "Plaintiffs"), will move this Court for a Preliminary Injunction ("Motion") enjoining
5 Defendants, and each of them, and their officers, agents, employees, representatives, and all
6 persons acting in concert or participating with them and/or acting on their behalf with regard to an
7 attempt by Defendants to enforce and thereby effectively, barricade Plaintiffs from the access and
8 egress of their leasehold interests.

9
10 By this Motion, Plaintiffs ask that the Court temporarily enjoin the Defendants from such
11 actions until the Court can make a determination, once and for all, as to whether the Defendants'
12 alleged jurisdiction and purported authority exist.

13 Plaintiffs believe that the Defendants do not have such regulatory or adjudicative authority
14 as to either these non-Indian Plaintiffs, or as to the Plaintiffs' non-Indian leaseholds interests, or
15 even generally as to the fee-simple land upon which they are tenants. More importantly, until the
16 Court can resolve the underlying jurisdictional issues, Plaintiffs will continue to suffer serious and
17 irreparable harm.

18
19 For the reasons stated herein, as well as in all of Plaintiffs' prior pleadings and papers, this
20 Motion asks the Court the enjoin, at least on a preliminary basis, the below-described actions and
21 conduct of Defendants which are causing serious and irreparable harm to Plaintiffs.

22 This Motion is and will be based upon Plaintiffs' Memorandum of Points & Authorities,
23
24

1 the Declarations, pleadings and exhibits attached thereto, the records and files in this action, and
2 on any argument that may be presented at the hearing of this matter, and on any other matter that
3 the Court deems appropriate.

4 DATED: March 16, 2011 LAW OFFICES OF NEWELL E. CUMMING

5
6 By: s/ Newell E. Cumming, Esq.
7 Attorney for Plaintiffs Steven and Suzanne Rogers-
8 Dial and Automotive Specialists, LLC
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEVEN ROGERS-DIAL, an individual;
SUZANNE ROGERS-DIAL, an individual,
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KENNY KOLB; AND DOES 6-25;

Defendants

Case No. 10 CV 2656 - WQH(POR)

**PLAINTIFFS' MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Hon. William Q. Hayes
Courtroom: 4, Fourth Floor
Date: April 18, 2011
Time: 11:00 a.m.
Trial Date: None Set

ORAL ARGUMENT REQUESTED

Plaintiffs STEVEN ROGERS-DIAL and SUZANNE ROGERS-DIAL, husband and wife;
(collectively "ROGERS-DIAL") and AUTOMOTIVE SPECIALISTS, LLC, a California limited
liability company ("AUTOMOTIVE SPECIALISTS"); hereby submit the following Memorandum
of Points & Authorities in support of their Motion for a Preliminary Injunction against all
Defendants:

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Federal Cases

Montana v. United States, 450 U.S. 544 (1981)

Donius v. Bo Mazzetti, et al., Case No. 10cv591-WQH-POR)

BNSF Ry. Co. v. Ray, (9th Cir. 2008) 297 Fed. Appx. 675 (unpublished)

Wallett v. Anderson, (D. Conn. 2000) 198 F.R.D. 20

Plains Commerce Bank v. Long Family Land & Cattle Co., (2008) 128 S.Ct. 2709

Federal Statutes

FRCP Rule 56

FRCP Rule 56(f)

42 U.S.C. § 1983

42 U.S.C. § 1985

The Supremacy Clause of the U.S. Constitution (Art. VI, Clause 2)

The Taking, Due Process, and Equal Protection Clauses of the Fifth and Fourteenth Amendments to the Constitution

I. INTRODUCTION

Plaintiffs base this Motion and their underlying Complaint upon the assertion that the Defendants RINCON BAND OF LUISEÑO INDIANS, BO MAZZETTI, STEPHANIE SPENCER, CHARLES KOLB, STEVE STALLINGS, and KENNY KOLB (collectively "RINCON" or "Defendants") do not have regulatory or adjudicative authority as to either these non-Indian Plaintiffs, or as to their non-Indian leasehold interests, or the fee simple land upon which they are tenants. Plaintiffs further contend that the Defendants do not have the authority to subject the Plaintiffs to the jurisdiction of the Intertribal Court, described below, or to force Plaintiffs to abandon their lawful leasehold interests in the Property.

Further, as confirmed by the Defendants' recent conduct, this litigation is about much more than competing jurisdictions or legal authorities. Instead, it is about efforts by the Defendants to force, one way or another, the Plaintiffs, and their landlord, from the subject property. The Plaintiffs' landlord is Marvin Donius ("Donius"), who has previously appeared in this Court relating to his dispute with Defendants.

The Defendants defend their actions by asserting that they do have such jurisdiction and authority over the Plaintiffs. Plaintiffs, of course, deny that the Defendants have such jurisdiction and authority as to the Plaintiffs' leasehold interests, and initiated this lawsuit to seek the Court's assistance.

Whatever the ultimate legal conclusion of this dispute may be, in the meantime the Plaintiffs are suffering serious harm. To prevent, at least temporarily, further imminent harm to Plaintiffs because of the Defendants' actions, this Motion seeks to have the Court return the parties to the status quo, before the Defendants' injunction was imposed, until a final determination from

1 this Court can be made. By doing so, the Court will enable Plaintiff Automotive Specialists,
2 LLC ("AUTOMOTIVE SPECIALISTS") to continue its business operation on its leasehold
3 property, and resume performing its work pursuant to its contracts with the California Highway
4 Patrol and San Diego County Sheriff's Department.

5 Similarly, with a Preliminary Injunction in place, Plaintiffs Steve and Suzanne Rogers-Dial
6 can restore the free access to and from their home and business operation. The bottom line is
7 that if a Preliminary Injunction is not issued on behalf of Plaintiffs, the businesses of both parties
8 will fail, and irreparable harm will result.

9
10 From the perspective of Plaintiffs and Donius, the underlying dispute relates to the
11 Defendants' efforts to find a basis to force Plaintiffs from the Property, and to thereby ultimately
12 acquire full control and ownership of the Property. This Court is already familiar with litigation
13 involving Marvin Donius, the owner of the subject property, and the same Defendants. In the
14 instant lawsuit, however, Plaintiffs assert their rights, not as Property owners, but as parties with
15 valid and enforceable leasehold interests.

16
17 As mentioned above, although this Court has been involved with related cases involving
18 the Plaintiffs' landlord, Donius, that individual is not a party herein, and the legal and factual
19 issues relating to the Plaintiffs' leasehold interests have not been previously presented to the Court.
20 This Motion for Preliminary Injunction anticipates that at some point in this litigation this Court
21 will ultimately resolve the issues relating to the Property, of which the Plaintiffs' leasehold
22 interests are comprised. In the meantime, the Plaintiffs are suffering serious and imminent harm.

23
24 Plaintiffs' decided to file their Complaint and this Motion because of the desperate
25 situation they face. If injunctive relief against Defendants is not granted soon, the Plaintiffs will

1 lose their respective businesses, and the ROGERS-DIAL family will be forced out of their home.
2 As a result of the urgency and seriousness of this matter, Plaintiffs' urge the Court to enjoin, on a
3 preliminary basis, Defendants from enforcing their injunction. Further, the Plaintiffs' (and
4 presumably the Defendants) need time to undertake appropriate discovery. A Preliminary
5 Injunction would also provide the parties with time to complete their discovery.

6 For the reasons stated below, Plaintiffs respectfully request that this Court issue a
7 Preliminary Injunction to prevent severe and irreparable harm to the Plaintiffs, which is likely to
8 worsen soon if the Court does not offer some temporary protection to these parties.
9

10 II. SUMMARY OF FACTS

11 The dispute between the Defendants and Donius, as owner of the Property, is not new to
12 this Court, as confirmed by the reassignment of Plaintiffs' Complaint to this Court. In addition,
13 a history of this dispute, from the Plaintiffs' point of view, has already been provided to the Court
14 in their Complaint and subsequent filings. By this reference, Plaintiffs hereby incorporate into,
15 and make a part hereof, those pleadings and exhibits previously filed with this Court on behalf of
16 Plaintiffs.
17

18 However, notwithstanding the long history of related litigation, this is the first time these
19 Plaintiffs have appeared before this Court. It is also the first time that legal issues relating to the
20 Plaintiffs' leasehold rights on the Property have come before the Court, including whether the
21 Defendants can assert jurisdiction with regard to Plaintiffs' leasehold interests, and thereby deprive
22 these parties of due process.
23

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