

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

SHAWN LAWRENCE DESAUTEL;
TAMARA DESAUTEL DAVIS;
TONIA RENE DESAUTEL,

Plaintiff(s),

v.

ANITA B. DUPRIS, in her individual capacity;
DENNIS L. NELSON, in his individual capacity;
DAVID C. BONGA, in his individual capacity;
GARY F. BASS, in his individual capacity;
TRUDY FLAMMAND, in her individual capacity;
STEVEN D. AYCOCK, in his individual capacity;
LEE ADOLPH, in his individual capacity;
TED BESSETTE, in his individual capacity;
TERRY FINLEY, in his individual capacity;
MARGIE HUTCHINSON, in her individual capacity;
JEANNE JERRED, in her individual capacity;
ANDY JOSEPH, in his individual capacity;
GENE JOSEPH, in his individual capacity;
CHERIE MOOMAW, in her individual capacity;
BRIAN NISSEN, in his individual capacity;
DOUG SEYMOUR, in his individual capacity;
VIRGIL SEYMOUR, in his individual capacity;
THOMAS W. CHRISTIE, in his individual capacity;
TIMOTHY W. WOOLSEY, in his individual capacity;
JULIANA C. REPP, in her individual capacity;
WAYNE SVAREN, in his individual capacity;
COLVILLE BUSINESS COUNCIL;
COLVILLE TRIBAL COURT

Defendant(s)

NO. CV-11-301-EFS

**PLAINTIFFS' RESPONSE
TO DEFENDANTS'
MOTION TO DISMISS**

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

OCT 11 2011

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

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COME NOW the Plaintiffs and herewith respond to Defendants' Motion to Dismiss and Defendants' Memorandum of Law in Support of Motion to Dismiss as submitted on September 21, 2011.

In renewing Plaintiffs' objection and denial that Evans, Craven & Lackie, PS have authority to represent themselves as "defense counsel" for collective and individual Defendants; Plaintiffs note that the timeframe for receipt of an Order granting Motion to Strike Notice of Appearance may exceed the required 30-day timeframe for Plaintiffs' Response to Defendants' Motion to Dismiss. It is on that basis that Plaintiffs' submit this Response to Defendants' Motion to Dismiss in a timely manner in accordance with LR 7.1(c)(1).

Motion to Dismiss

Defendants' alleged grounds for dismissal included:

1) FRCP 12(b)(1) Lack of Subject Matter Jurisdiction Standard for Dismissal

993 F. 2d 883 - Miller v. Lifestyle Creations Inc, United States Court of Appeals, Ninth Circuit:

"In response to a Rule 12(b)(1) motion, the district court has wide discretion to consider affidavits, documents, and even hold a limited evidentiary hearing. See Wheeler v. Hurdman, 825 F.2d 257, 259 n. 5 (10th Cir.1987). Ordinarily, under Rule 12(b)(1), the burden is on the plaintiff to prove by a preponderance of the evidence that the district court has subject matter jurisdiction. The district court is not precluded from considering conflicting evidence. Moreover, no presumption of truthfulness attaches to the plaintiff's allegations and the existence of disputed material facts will not preclude the district court from evaluating the merits of the jurisdictional claim. See Thornhill Publishing Co. v. General Telephone Corp., 594 F.2d 730, 733 (9th Cir.1979)." (Emphasis added)

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1 "However, when the jurisdictional issue and the merits are "intertwined," or when
 2 the jurisdictional question is dependent on the resolution of factual issues going to
 3 the merits, the district court must apply the summary judgment standard in deciding
 4 the motion to dismiss. Augustine v. United States, 704 F.2d 1074, 1077 (9th
 5 Cir.1983); see also Careau Group v. United Farm Workers of America, 940 F.2d
 6 1291, 1293 (9th Cir.1991). Our case law provides that "the question of jurisdiction
 7 and the merits of an action will be considered intertwined where ... 'a statute
 8 provides the basis for both the subject matter jurisdiction of the federal court and the
 9 plaintiff's substantive claim for relief.' " Sun Valley Gas., Inc. v. Ernst Enterprises,
 10 Inc., 711 F.2d 138, 139-40 (9th Cir.1983) (quoting Timberlane Lumber Co. v. Bank
 11 of America (Timberlane I), 549 F.2d 597, 602 (9th Cir.1976)). In this case, Title
 12 VII provides the basis for both the subject matter jurisdiction and the substantive
 13 claim for relief. See Clark v. Tarrant County, 798 F.2d 736, 742 (5th Cir.1986) (the
 14 question of employee status under Title VII is intertwined with the merits of the
 15 Title VII claim) (citing Sun Valley Gas., 711 F.2d at 139). Thus, the summary
 16 judgment standard must be applied. Augustine, 704 F.2d at 1077; see also Clark, 798
 17 F.2d at 742. (Emphasis added)

18 Therefore, if a genuine issue of material fact exists, the motion to dismiss should
 19 have been denied and the question presented to the jury. Id. Otherwise, where "a
 20 statutory right is pursued and the defense raised that the defendant does not come
 21 within the statute, judicial acceptance of the statutory defense is the death knell of
 22 the litigation and is the same as dismissal on the merits." Rogers v. Stratton Indus.,
 23 Inc., 798 F.2d 913, 916 (6th Cir.1986). Thus, it was improper for the district court to
grant the motion to dismiss unless relevant facts as to the status of the out-of-state
sales representatives were not in dispute." (Emphasis added)

2) FRCP 8(a) Claim for Relief Standard for Dismissal

8. A "claim for relief" is defined in Rule 8(a) as having three elements:

- (1) A short and plain statement of the grounds upon which the court's jurisdiction depends;
- (2) A short and plain statement of the claim showing that the pleader is entitled to relief;
- (3) A demand for judgment for the relief the pleader seeks.

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1 The most important part of Rule 8(a) for purposes of a Rule 12(b)(6) Motion to
2 Dismiss is part (2) above: "a short and plain statement of the claim."

3 Plaintiffs' Complaint is not unnecessarily long and complicated to the point of
4 violating FRCP 8(a), despite Defendants' allegations to the contrary, and in reference to
5 self-evident, multiple, examples of federal court cases with a much longer Complaint and
6 more extensive Exhibit(s) than those filed by Plaintiffs in this current action. Moreover, as
7 previously noted above: "the burden is on the plaintiff to prove by a preponderance of the
8 evidence that the district court has subject matter jurisdiction" (Emphasis added)
9

10 In order to properly draft the Complaint, Plaintiffs were faced with the challenge of
11 summarizing 5 ½ years of litigation pertaining to six (6) separate court cases in the Colville
12 Tribal Court, all of which were specifically relevant to Plaintiffs' cause(s) of action here in
13 this court. Plaintiffs noted this challenge in Plaintiffs' Complaint at Page 7, Paragraph 12
14 as follows:
15

16 "Plaintiffs note for the consideration of this court that a comprehensive description
17 of their due process activities within the Executive and Judicial Branches of the
18 Colville Tribal Government, in accordance with the Colville Tribal Constitution and
19 Colville Tribal Code, will be described, out of necessity, in their near entirety
20 through to demonstrated ultimate exhaustion of available due process within the
21 Colville Tribal Court" (Emphasis added)

22 In regards to satisfying FRCP 8(a), Plaintiffs' Complaint contains statements that
23 support the federal court's jurisdiction, allegations of fact that support each claim Plaintiffs
have made, and a request for relief.

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1 **3) FRCP 12(b)(6) Failure to State a Claim Upon Which Relief May Be**
 2 **Granted.**

3 9. In determining whether to grant a motion to dismiss under FRCP 12(b)(6), the
 4 court primarily considers the allegations in the complaint, matters of public record, orders,
 5 items appearing in the record of the case, and exhibits attached to the complaint. Hal
 6 Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1555 n. 19 (9th Cir. 1990); Emrich
 7 v. Touche Ross & Co., 846 F.2d 1190, 1198 (9th Cir. 1987); Mack v. South Bay Beer
 8 Distributors, Inc., 798 F.2d 1279, 1282 (9th Cir. 1986). (Emphasis added) See also 5A
 9 Wright & Miller, Federal Practice and Procedure § 1357 (West 1990). The Complaint
 10 should be construed in the light most favorable to the Plaintiffs, and Plaintiffs' allegations
 11 are taken as true. Scheuer, 416 U.S. at 237.

12
 13 Defendants have asserted an affirmative defense of a qualified immunity in this Rule
 14 12(b)(6) motion. Vaughn v. U.S. Small Business Administration, 65 F.3d 1322, 1325 (6th
 15 Cir. 1995); Sveeggen v. U.S., 988 F.2d 829, 831 (8th Cir. 1993). Dismissal is appropriate
 16 where the Complaint fails to allege any facts that would cast doubt on, or invite inquiry as
 17 the scope of an immunity based on the Defendant's alleged malice or bad faith. Franklin v.
 18 Zuber, 56 F.R.D. 601, 604 (S.D.N.Y. 1972). (Emphasis added)

19
 20 For Defendants to prevail on this Motion to Dismiss under Federal Rule of Civil
 21 Procedure 12(b)(6), it must appear beyond doubt that Plaintiffs can prove no set of facts in
 22 support of Plaintiffs' claim(s) which would entitle Plaintiffs to relief. Conley v. Gibson,
 23

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355 U.S. 41, 45-46 (1957); *Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir. 1993). In reviewing the sufficiency of the Complaint, the issue is not whether Plaintiffs will ultimately prevail, but whether Plaintiffs are entitled to offer evidence to support the claim(s) asserted. *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974).

Memorandum of Law

PLEADINGS BEFORE THE COURT AND BACKGROUND

Plaintiffs' Complaint and Exhibit(s) filed with the Complaint indicate Plaintiffs are seeking PRIMARILY to challenge the collective and individual action(s) by Defendants in their INDIVIDUAL CAPACITY(S) without applicable sovereign and/or official immunity; and to establish that Defendants have violated Plaintiffs' constitutional and civil rights under the U.S. Constitution and applicable U.S. Code.

Plaintiffs' seek to SUPPLEMENT their PRIMARY challenge above with an invitation to this court to establish jurisdiction over their enrollment matter as a distinguished exception to *Santa Clara Pueblo v Martinez*, without challenging it's overall status as federal law continuing forward in regards to federal involvement in intramural tribal enrollment disputes. *Santa Clara Pueblo v Martinez* would continue to prevail assuming that specific Indian tribe in question had established timely jurisdictional authority to render an enrollment decision within it's jurisdiction; that specific Indian tribe in question did not seek court costs, attorney's fees in their respective tribal court against a

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1 party seeking a change in enrollment status without prior support of a court decision to do
2 so; and that specific tribal court does not award that specific Indian tribe court costs and
3 attorney's fees for a court "decision" rendered without jurisdictional authority to do so; and
4 where such a decision to award court costs, attorney's fees is in direct violation of that
5 specific Indian tribal code governing such award of court costs, attorney's fees.

6
7 Plaintiffs are unaware of ANY case law within the federal court system regarding
8 tribal matters, enrollment or otherwise, wherein tribal government defendants have sought
9 in their respective tribal court, and have been awarded, court costs and attorney fees,
10 without a TIMELY JURISDICTIONAL BASIS under tribal law, and in DIRECT
11 VIOLATION OF APPLICABLE TRIBAL CODE, as well as contemporaneous
12 VIOLATION of individual tribal member civil and constitution rights as United States
13 citizens.
14

15 As such, Plaintiffs contend that EVERY SINGLE legal authority Defendants have
16 cited in their Motion to Dismiss and Memorandum of Law is OFF-POINT in attempting to
17 address the above consideration(s) within this current action in the United States District
18 Court, Eastern District of Washington. Defendants' cited legal authority(s) are
19 IRRELEVANT as to deciding this present motion, or underlying civil action.
20

21 Defendants claim lack of subject matter jurisdiction by this court, but yet attempt to
22 present futile, substantive arguments in support of Defendants' action(s) within the
23 Colville Tribal Court as a matter of tribal law, without ANY SINGLE CITATION of

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1 applicable tribal law in support. Defendants are clearly annoyed with Plaintiffs' extensive
 2 and relevant allegation(s), complete citation(s) of tribal law in support; and preliminary
 3 foreclosure of ANY and ALL applicable matters of tribal law as submitted in the
 4 Complaint and attached Exhibit(s) in regards to the merits of this case under tribal law.
 5 Plaintiffs' efforts in this regard also deter from Defendants' efforts to obfuscate and detract
 6 from the relevant issues in question. These apparent fact(s) readily explain the stated basis
 7 for Defendants' Motion to Dismiss under FRCP 8(a).
 8

9 Plaintiffs' have previously addressed; in the Complaint and with citation of
 10 applicable tribal code and attached Exhibit(s) with appropriate documentation; the
 11 following matters of tribal law as raised in Defendants' Motion to Dismiss:
 12

13 1. Plaintiffs' Case No. CV-OC-2005-25353 Enrollment Appeal as filed on
 14 September 7, 2005, wherein Plaintiffs "filed suit challenging the Tribe's enrollment
 15 ruling". (Emphasis added) Case No. CV-OC-2005-25353 was subsequently declared an
 16 Enrollment Appeal by the Colville Tribal Court on September 27, 2007. (Order Granting
 17 Respondent's Motion for Attorney's Fees, Case No. CV-OC-2005-25353 Exhibit 22).
 18

19 The ramifications under tribal law of Defendants' admission above include:

20 CTC 8-1-200, Who May Appeal:

21 (b) No appeal of decisions regarding adoption shall be allowed. (Emphasis
 22 added)
 23

1 CTC 8-1-200(b), in conjunction with Case No. CV-OC-2005-25353 Exhibit 22,
 2 precluded any attempted argument as submitted in Defendants' Motion to Dismiss and
 3 Memorandum of Law alleging applicability of the Colville Tribal Code's adoption
 4 procedures in regards to ANY of the named Plaintiffs.

5
 6 CTC 8-1-201, Tribal Court Jurisdiction—Limited Waiver of Sovereign Immunity:

7 "The Tribal Court of the Confederated Tribes shall have exclusive jurisdiction to
 8 hear all appeals of disenrollment or enrollment decisions in the manner set out in this
Chapter. No jury shall be allowed in disenrollment or enrollment matters.

9 To the extent necessary for the hearing of appeals under this Chapter, and as limited
 10 by this Chapter, the Tribes hereby makes a limited waiver of its immunity from suit
 11 in the Colville Tribal Court for the purpose of hearing appeals from enrollment
 12 decisions of the Enrollment Committee and issuing judgment as provided in this
Chapter." (Emphasis added)

13 CTC 8-1-202, Form of Procedure, Time Limit, Effect of Petition for Adoption states
 14 in relevant part:

15 "Appeals from disenrollments or denials of enrollment by the Enrollment Committee
 16 shall proceed in the Tribal Court pursuant to the sections of the Colville Tribal Code
 17 governing Civil Actions and Civil Rules of Court except where specifically provided
 18 in this Chapter. No appeal may be brought under this section unless it is filed within
one (1) year of the decision of the Enrollment Committee to disenroll or deny
enrollment." (Emphasis added)

19 CTC 8-1-125, Determination Procedure of the Enrollment Committee:

20 (h) A final denial of enrollment shall not be reopened by the Tribes without a
 21 showing that the Applicant denied enrollment has available for immediate
 22 presentation substantial, credible, new evidence. A decision by the Executive
 23 Department or the Enrollment Committee that substantial, credible, new evidence
does not exist to reopen an enrollment, shall be appealable only on that specific issue
under the Subchapter on Appeals under this Chapter. (Emphasis added)

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1 By general admission of Defendants, Plaintiffs were individual "adopted" into
 2 membership in the Colville Confederated Tribes during October 2000. CTC 8-1-202 can
 3 only timely apply for a declared Enrollment Appeal by the Colville Tribal Court on
 4 September 27, 2007; as filed by Plaintiffs on September 7, 2005 in regard to Defendant
 5 Colville Business Council's Answer to Civil Complaint as filed on September 2, 2005;
 6 wherein the Enrollment Committee decided to "deny enrollment" to Plaintiffs in response
 7 to Plaintiffs' March 25, 2004 submitted "substantial, credible, new evidence" to reopen
 8 Plaintiffs' original denial(s) of enrollment that occurred in September 1965, April 1967,
 9 and March 1970, respectively.

11 Plaintiffs are unaware of ANY OTHER correspondence from collective and/or
 12 individual Defendants within one (1) year prior to Plaintiffs' September 7, 2005 submitted
 13 Case No. CV-OC-2005-25353 Enrollment Appeal meeting the requirements of CTC 8-1-
 14 202 above. Plaintiffs' are also unaware of ANY OTHER denial(s) of enrollment by the
 15 Enrollment Committee other than those having occurred in September 1965, April 1967,
 16 and March 1970, respectively.

18 CTC 8-1-200(b) prevents the September 27, 2007 Colville Tribal Court declaration
 19 of Case No. CV-OC-2005-25353 as an Enrollment Appeal from reaching Defendants'
 20 claimed "adoption" of Plaintiffs into membership in the Colville Confederated Tribes that
 21 occurred during October 2000. CTC 8-1-200(b), in conjunction with CTC 8-1-202 for a
 22 declared Enrollment Appeal by the Colville Tribal Court on September 27, 2007, forces a
 23

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1 reconsideration under tribal law of Plaintiffs' original denials of enrollment that occurred
2 in September 1965, April 1967, and March 1970, respectively.

3 Defendants' have steadfastly, stubbornly, and ultimately maliciously, refused to
4 accept the above ramifications of tribal law to the overall detriment of the fundamental
5 integrity of the Colville Tribal Government as an effective ruling body; and
6 contemporaneously in the process, the committing of multiple violation(s) of Plaintiffs'
7 constitutional and civil rights as U.S. citizens outside of any alleged protection(s) of tribal
8 sovereign immunity or official immunity of collective and individual Defendants, to such
9 an extent that the intervention of the federal court is required here to re-affirm that Rule of
10 Law exists within the Executive and Judicial Branches of the tribal government of the
11 Confederated Tribes of the Colville Reservation.

12 As documented in Plaintiffs' Case No. CV-OC-2005-25353 Exhibit(s) 23-25,
13 Plaintiffs' Tamara Desautel Davis and Tonia Rene Desautel filed Affidavit(s) to Join Case
14 No. CV-OC-2005-25353 Enrollment Appeal on April 24, 2008, and Plaintiffs filed a
15 Motion for an Order to Join Plaintiffs' Tamara Desautel Davis and Tonia Rene Desautel as
16 Petitioners on April 29, 2008. Defendant Steven D. Aycock denied Plaintiffs' Motion in
17 his Order Denying Abeyance in Part and Holding in Abeyance in Part as entered on April
18 30, 2008 (Case No. CV-OC-2005-25353 Exhibit 26).

19 As documented in the Complaint and Exhibit(s), Plaintiffs did pursue all of their
20 available "appeal rights through the tribal court system" with demonstrated lack of
21

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1 appropriate due process per the Colville Tribal Constitution and the Colville Tribal Code.

2 Defendants also directly admitted the eventual, total, breakdown of due process, and by
3 implication, Rule of Law, in the Colville Tribal Court system:

4 “(Plaintiffs’) enrollment appeal action as well as collateral actions against
5 trial court judges and appellant court judges reached the point that the tribal court
6 system would not accept any further filings on the part of (Plaintiffs) in relation to
7 the enrollment appeal or collateral suits against tribal council members, judges, and
8 attorneys”

9 The point “reached” above was where collective and individual Defendants could
10 not address Plaintiffs’ pleading(s) consistent with the Colville Tribal Constitution and
11 Colville Tribal Code in a manner that would enable collective and individual Defendants to
12 avoid incrimination for their action(s) against Plaintiffs, that were devoid of any adherence
13 to Rule of Law within the jurisdiction of the Confederated Tribes of the Colville
14 Reservation.

15 Plaintiffs renew their objection(s), as submitted in previous court document(s) in this
16 matter, that Defendants have not appeared before this court. In particular, the governing
17 body of the Colville Tribe, Colville Business Council, and the constitutionally-established
18 tribal court system for the Colville Tribe, Colville Tribal Court, have each failed to appear
19 before this court. Each of these governing bodies are proper Defendants for their action(s)
20 as a governing body against Plaintiffs in the absence of jurisdictional authority as
21 previously established through the Complaint and Exhibit(s). Each of these governing
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23

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bodies were served with a Waiver of Service of the Summons by Plaintiffs on August 17, 2011, with a required response date 30 days later.

As of the current date of Plaintiffs' Response Memorandum, the Colville Business Council and the Colville Tribal Court have each failed to provide any form of reply to this Waiver of Service of the Summons by an authorized representative. "Defendant counsel" has proffered signed Waiver Forms (for which action(s) "Defendant counsel" is currently the subject of a Motion for Sanctions by this court) "on behalf" of the other twenty-one (21) named Defendant(s) in this action.

Plaintiffs admit a "typographical error" in reference to Title 18 U.S. Code § 4985 241, Conspiracy against Rights.

LEGAL AUTHORITY & ARGUMENT

1.7. Summary of Argument, Exhaustion - The Complaint and Exhibit(s) appended to the Complaint set forth Defendants' collective violation(s) of Plaintiffs' constitutional and civil rights as citizens of the United States of America due to collective and individual action(s) against Plaintiffs in absence of jurisdictional authority as conferred by the sovereign jurisdiction of the Colville Confederated Tribes. IN ADDITION, the contemporaneous violation(s) of tribal law enable a distinguished consideration of the subject matter of this Complaint by this federal court of an otherwise intramural affair of the Colville Tribe in respect to membership enrollment.

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1 Plaintiffs' Tamara Desautel Davis and Tonia Rene Desautel attempted to join
 2 Plaintiffs' Case No. CV-OC-2005-25353 Enrollment Appeal in the Colville Tribal Court
 3 through affidavit and motion as of April 29, 2008, during which time Plaintiffs' September
 4 27, 2007 declared Enrollment Appeal by the Colville Tribal Court was under extended,
 5 untimely, review by the Colville Tribal Court of Appeals Defendant(s) in general violation
 6 of the Colville Tribal Court of Appeals Court Rules (COACR).
 7

8 Plaintiffs' 92-page Complaint plus Exhibit(s) meets the requirements of FRCP 8(a)
 9 per the previous discussion. Defendants complain they are "excessive" because they
 10 effectively foreclose in advance all attempted Defendants argument(s) to establish a "legal
 11 authority and argument" in support of Defendants' Motion to Dismiss, such as those
 12 presented in Defendant's "Memorandum of Law".
 13

14
 15 **2. Federal Subject Matter Jurisdiction** – Plaintiffs' assert that a genuine
 16 dispute of material fact(s) is ongoing with collective and individual Defendants, both
 17 previously in the Colville Tribal Court, and in this federal court, despite physical proof as
 18 consistently provided by Plaintiffs' in each venue. Defendants have continued their
 19 reliance upon their denial of the following material fact(s) in providing their current
 20 Motion to Dismiss and supporting Memorandum of Law. Nearly EVERY SINGLE ACT
 21 of Defendants' WRONGDOING can be traced back to Defendants' steadfast, stubborn,
 22 and malicious denial of these incontrovertible material fact(s):
 23

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a. Resolution 2007-214.gov (Case No. CV-OC-2005-25353 Exhibit 14) as passed unanimously by Defendant Colville Business Council on April 5, 2007; and as affirmed by each of the named Colville Business Council Defendants; thereby authorizing Defendant Juliana C. Repp to pursue collection of court costs, attorney fees under Colville Tribal Code 8-1-207 in the Colville Tribal Court and Colville Tribal Court of Appeals against Plaintiffs in the total amount of \$19,223.76; as based upon a July 31, 2006 Colville Tribal Court order entered without subject matter jurisdiction by the Colville Tribal Court. Subject Matter Jurisdiction for Plaintiffs' Case No. CV-OC-2005-25353 Enrollment Appeal in the Colville Tribal Court did not exist on April 5, 2007, a condition that would continue until Plaintiffs' Case No. CV-OC-2005-25353 was declared an Enrollment Appeal by the Colville Tribal Court later on September 27, 2007.

b. Defendant Steven D. Aycock's Order Granting Respondent's Motion for Attorney's Fees (Case No. CV-OC-2005-25353 Exhibit 22), as entered on September 27, 2007, INITIALLY established subject matter jurisdiction of the Colville Tribal Court for the FIRST TIME for Case No. CV-OC-2005-25353. The apparent, obvious intent(s) of the Colville Tribal Court to declare Case No. CV-OC-2005-25353 as an Enrollment Appeal under the Colville Tribal Code, as evidenced by Plaintiffs' Complaint and Exhibit(s), were to provide Defendant Colville Business Council with a plausible basis to both collect court costs, attorney's fees

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1 with an apparent tie-in with the Colville Tribal Code, and to enable Defendant
2 Colville Business Council to "prevail" in Case No. CV-OC-2005-25353 Enrollment
3 Appeal with an apparent tie-in with the Colville Tribal Code. Contemporaneously,
4 ANY and ALL implications of declaring Plaintiffs' original September 7, 2005
5 filing of Case No. CV-OC-2005-25353 as an Enrollment Appeal under the Colville
6 Tribal Constitution and the Colville Tribal Code were deliberately ignored by the
7 Colville Tribal Court, a practice that has continued to the present day by Defendants
8 in their Motion to Dismiss and Memorandum of Law in support.
9
10

11 **3,4,6. Sovereign Immunity, Constitutional Claim, Federal Civil Rights Claims –**

12 As previously discussed, Plaintiffs deny that Defendants' submitted arguments and legal
13 authorities are relevant for this current action. Defendants have proposed connection(s)
14 between prior decided cases in the federal court system and this present action which
15 simply do not exist. Plaintiffs' do not require reliance upon the Indian Civil Rights Act,
16 Indian Gaming Regulatory Act, or any other federal statute governing strictly Indian affairs
17 in order to reach collective and individual Defendants in this court acting in their
18 INDIVIDUAL CAPACITY, and acting without conferred jurisdictional authority as
19 mandated by the sovereign jurisdiction of the Confederated Tribes of the Colville
20 Reservation.
21
22
23

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In order to prevail in this present action, Plaintiffs merely require reliance upon the U.S. Constitution, U.S. Code, and existing case law governing cases that are on-point for resolving Plaintiffs' established cause(s) of action here in this court.

5. Individual Immunity – Defendants have incorrectly stated:

"Further, after (Plaintiffs) did not prevail on appeal, (Plaintiffs) filed suit in tribal court"

Plaintiffs' filed Case No. CV-OC-2008-28266 on August 18, 2008, and as amended on August 21, 2008. Case No. AP07-017 in the Colville Tribal Court of Appeals as of those dates was in a period of extreme violation of the timeframes required under the Court of Appeals Court Rules (COACR) for due process of review of Case No. CV-OC-2005-25353 as a newly-declared Enrollment Appeal on September 27, 2007. Case No. AP07-017 was not eventually "decided" until four (4) months later on December 18, 2008 after a legally unintelligible "review" of Plaintiffs' Case No. CV-OC-2005-25353 Enrollment Appeal which denied the necessary implications of a declared Enrollment Appeal as of September 27, 2007, according to the Colville Tribal Code, and continuing forward.

Defendants' "discussion" of Individual Immunity in regards to Case No. CV-OC-2008-28266 fails to address obvious violations of due process by collective and individual Plaintiffs as demonstrated throughout Plaintiffs' Complaint and Exhibit(s). The INDIVIDUAL CAPACITY decision by Defendant Gary F. Bass to conclude "due process" for Plaintiffs' claim(s) in the Colville Tribal Court on February 2, 2011 once and for all, is

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TONIA RENE DESAUTEL
Plaintiff(s)**

1 more properly characterized as a calculated capitulation by Defendants in an attempt to
2 protect their individual, professional reputation(s) and perceived integrity and visibility of
3 the Colville Business Council and the Colville Tribal Court, as opposed to an exhaustive
4 affirmation of a just verdict against Plaintiffs. Defendants asserted in this regard:

6 “(Plaintiffs’) chose to sue tribal judges, business council members, and tribal
7 attorneys in tribal court designating them in their official and representative
8 capacity, and now cannot claim to sue the same individuals in their individual
9 capacity in an effort to pursue federal claims in federal court.

10 Plaintiffs did not claim either Defendant individual or official capacity in their Case
11 No. CV-OC-2008-28266 Complaint in the Colville Tribal Court. In their *pro se*
12 capability(s), Plaintiffs did not perceive an apparent distinction under tribal law in that
13 regard to obtain judicial relief, and no distinction was signified in Plaintiffs’ Complaint in
14 the Colville Tribal Court, as opposed to this current action in federal court. Regardless,
15 Defendants’ “argument” above is a moot point in regard to rendering appropriate due
16 process and a just verdict in Case No. CV-OC-2008-28266, which Defendant officer(s) of
17 the Colville Tribal Court clearly did not.

18 In summary as to this issue, collective and individual Defendants declined to
19 establish a position in regard to Individual Immunity of Defendants within Case No. CV-
20 C-2008-28266 in the Colville Tribal Court, nor on any other relevant issue now before this
21 court. Despite this fact, Defendants apparently expect this court to establish a position
22

23
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**SHAWN LAWRENCE DESAUTEL;
TAMARA DESAUTEL DAVIS;
TONIA RENE DESAUTEL**
Plaintiff(s)

1 Defendants were unwilling to establish "intramurally" within the Colville Tribal Court,
2 despite more than ample opportunity to do so.

3
4 Case No. CV-OC-2008-28266 sat inactive in the Colville Tribal Court for twenty-six
5 (26) months; and further for twenty (20) months subsequent to a standing Motion to
6 Dismiss in the Colville Tribal Court as filed on March 10, 2009 by Defendant Thomas W.
7 Christie of the Office of Reservation Attorney on behalf of Defendants (Case No. CV-OC-
8 2008-28266 Exhibit 5); said Motion to Dismiss itself was submitted nearly six (6) months
9 after the required timeframe for an Answer to the Case No. CV-OC-2008-28266 Civil
10 Complaint under the Colville Tribal Code had expired; and in the face of Plaintiffs' Motion
11 for Default Judgment (Case No. CV-OC-2008-28266 Exhibit 2) as submitted on
12 September 29, 2008 without response by the Colville Tribal Court!!

13
14 Defendant officers of the Colville Tribal Court now inexplicably request this federal
15 court to grant their Motion to Dismiss which Defendants themselves were unwilling to
16 perform "intramurally" when faced with this similar matter in Case No. CV-OC-2008-
17 28266 in the Colville Tribal Court.

18
19 Plaintiffs summarily deny that ANY of the collective or individual Defendants
20 functioned in a representative capacity, nor within the scope of their authority, so as to
21 avert subject matter jurisdiction of this federal court in this present action as based upon
22 alleged judicial and/or official immunity.
23

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TONIA RENE DESAUTEL
Plaintiff(s)**

CONCLUSION

1) Contrary to Defendants' assertion(s), federal subject matter jurisdiction applies.

2) Plaintiffs Tamara Desautel Davis and Tonia Rene Desautel have clearly exhausted their tribal court remedies in all respects as demonstrated throughout the Complaint and Exhibit(s), and federal subject matter jurisdiction applies.

3) Plaintiffs have appropriately plead their claim(s) against Defendants, and have alleged claim(s) upon which relief can be granted and as such dismissal is not required.

The Complaint must (should) not be dismissed.

RESPECTFULLY SUBMITTED this 7th day of October, 2011.

Signature: Shawn Lawrence Desautel

Name: Shawn Lawrence DesAutel

Address: 1005 W. North Ave.

Chewelah, WA 99109

Telephone Number: 509-935-4672

Signature: Tamara Desautel Davis

Name: Tamara Desautel Davis

Address: 7315 W. Lund

Rathdrum, ID 83858

Telephone Number: 208-755-1318

Signature: Tonia Rene Desautel

Name: Tonia Rene Desautel

Address: 19029 E. Boone #20

Spokane Valley, WA 99016

Telephone Number: 702-281-7826

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**SHAWN LAWRENCE DESAUTEL;
TAMARA DESAUTEL DAVIS;
TONIA RENE DESAUTEL
Plaintiff(s)**

CERTIFICATE OF SERVICE

Plaintiffs hereby certify that on the 7th day of October, 2011, Plaintiffs filed the foregoing document with the Clerk of Court. Plaintiffs certify that a true and correct copy of said Motion was sent to all case participants in the following manner:

<input checked="" type="checkbox"/>	U.S. Mail – Postage Prepaid
<input type="checkbox"/>	Personal Service
<input type="checkbox"/>	Other

Parties Served:

Attn: Everett B. Coulter, Jr.
 Evans, Craven & Lackie, P.S.
 818 W. Riverside, Suite 250
 Spokane, WA 99201-0910

DATED this 7th day of October, 2011.

Signature:

Shawn Lawrence DesAutel

Name:

Shawn Lawrence DesAutel

Address:

1005 W. North Ave.

Chewelah, WA 99109

Telephone Number:

509-935-4672

Signature:

Tamara Desautel Davis

Name:

Tamara Desautel Davis

Address:

7315 W. Lund

Rathdrum, ID 83858

Telephone Number:

208-755-1318

Signature:

Tonia Rene Desautel

Name:

Tonia Rene Desautel

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19029 E. Boone #20

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**PLAINTIFFS' RESPONSE TO
 DEFENDANTS' MOTION TO DISMISS**

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**SHAWN LAWRENCE DESAUTEL;
 TAMARA DESAUTEL DAVIS;
 TONIA RENE DESAUTEL
 Plaintiff(s)**