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7 IN THE NOOKSACK TRIBAL COURT

8 MICHELLE JOAN ROBERTS,
Councilmember of the Nooksack Tribal
9 Council, RUDY ST. GERMAIN, Secretary of
the Nooksack Tribal Council, ROBERT JAMES
10 RABANG SR.; enrolled members of the
Nooksack Indian Tribe,

11 Plaintiffs,

12 v.

13 ROBERT KELLY, Chairman of the Nooksack
14 Tribal Council; RICK D. GEORGE, Vice-
Chairman of the Nooksack Tribal Council;
15 AGRIPINA SMITH, Treasurer of the Nooksack
Tribal Council; BOB SOLOMON,
16 Councilmember of the Nooksack Tribal
Council; KATHERINE CANETE,
17 Councilmember of the Nooksack Tribal Council
and Nooksack General Services Executive;
18 LONA JOHNSON, Councilmember of the
Nooksack Tribal Council, in their official
19 capacities,

20 Defendants.

NO.

MOTION TO DISQUALIFY HON.
RAQUEL MONTOYA-LEWIS AND
SUBJOINED AFFIDAVIT OF
PREJUDICE OF PLAINTIFF
MICHELLE JOAN ROBERTS

21 **I. RELIEF REQUESTED**

22 Plaintiffs, who are each subject to disenrollment by Defendants this Friday, August 16,
23 2013 at 10:00 AM via a teleconference in which their remarks are not to exceed ten minutes,

24 MOTION TO DISQUALIFY HON. RAQUEL MONTOYA-LEWIS AND
25 SUBJOINED AFFIDAVIT OF PREJUDICE OF PLAINTIFF MICHELLE
JOAN ROBERTS - 1

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1 respectfully exercise their right to “affidavit” and thereby disqualify Nooksack Tribal Court
2 Chief Judge Raquel Montoya-Lewis from participating in this lawsuit per N.T.C. § 10.07.200.
3 Judge Montoya-Lewis’ impartiality might reasonably be questioned due to her own
4 disenrollment from the Pueblo of Isleta; the subsequent dismissal of her related lawsuit by the
5 United States District Court; and her failure to disclose those matters in *Lomeli v. Kelly*.

6 **II. FACTS**

7 According to papers on file with the U.S. District Court of New Mexico in *Shattuck v.*
8 *Lucero*, Case No. 1:04-cv-01287-JB-WPL, Judge Montoya-Lewis, while living in Washington
9 State, was disenrolled “due to the fact that she does not have 1/2 ‘actual Isleta blood.’” *See*
10 *Shattuck v. Lucero, id.*, First Amended Complaint (Dist. N.M. Nov. 24, 2004), at 7. Judge
11 Montoya-Lewis, along with several other disenrollees, filed suit against the elected leaders of the
12 Isleta Pueblo and its Tribal Council, as well as the U.S. Department of Interior, seeking equitable
13 and other relief. *Id.* Judge Montoya-Lewis’ claims were dismissed for failure to state a claim
14 and for want of jurisdiction. *Id.*, Memorandum Opinion And Order (Aug. 25, 2005), at 7.

15 Plaintiffs herein are peripherally involved in a related lawsuit, *Lomeli v. Kelly*, Nooksack
16 Tribal Court Case No. 2013-CI-CL-001, which is currently on appeal to the Nooksack Court of
17 Appeals. That lawsuit concerns the impending disenrollment of over 300 enrolled Nooksack
18 Tribal members, including Plaintiffs herein. *See* Second Amended Complaint.

19 Plaintiffs Michelle Roberts and Rudy St. Germain are also plaintiffs in a related suit
20 against U.S. Department of Interior officials, which is currently pending in the United States
21 District Court for the Western District of Washington, *St. Germain v. U.S. Dep’t of Interior*, No.
22 C13-845 RSM (W.D. Wa. May 13, 2013).

23 From March 2013 until August 9, 2013, Judge Montoya-Lewis presided over *Lomeli v.*

1 *Kelly*. On August 7, 2013, she dismissed the *Lomeli* Plaintiffs' Second Amended Complaint for
2 lack of standing and for want of jurisdiction. *See* Amended Order Granting Appellees' Motion
3 To Dismiss Second Amended Complaint. On August 9, 2013, she entered a Judgment in favor
4 of the Defendants therein.

5 However, at no time from March 2013 until August 9, 2013, while she presided over
6 *Lomeli v. Kelly* did Judge Montoya-Lewis ever disclose that she was disenrolled; that she filed a
7 related lawsuit against the officials of her former tribe or the Interior Department; or that her
8 lawsuit was dismissed.

9 **III. AUTHORITY**

10 N.T.C. § 10.07.200 allows a criminal party one opportunity to establish "prejudice by
11 motion, supported by affidavit that the judge before whom the action is pending is prejudiced
12 against such party, so that such party believes that he or she cannot have a fair and impartial trial
13 before such judge." *See also* N.T.C. § 10.03.060 (requiring disqualification in civil matters
14 based on a judge's "interests which may be affected by the outcome" or personal knowledge
15 "which would prevent him or her from considering all sides impartially.") The subjoined
16 Affidavit of Plaintiff Michelle Roberts establishes the prejudice needed to automatically
17 disqualify Judge Montoya-Lewis from this lawsuit. *Id.*

18 Federal law, which this Court looks to for procedural guidance, provides useful guidance
19 on the topic of judicial prejudice and partiality. A federal judge must "disqualify himself in any
20 proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a).¹
21 According to the federal common law: "The goal . . . is to avoid even the appearance of
22 partiality," *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860 (1988) (quotes

23 ¹ The principles expressed in federal statute echo those set forth in Rule 2.11 of the American Bar Association
24 Model Code of Judicial Conduct, which many Indian Courts follow.

omitted), and thus “what matters is not the reality of bias or prejudice but its appearance,” *Liteky v. United States*, 510 U.S. 540, 548 (1994). In other words, so long as a judge’s impartiality might reasonably be questioned, recusal is required “even though no actual partiality exists . . . because the judge actually has no interest in the case or because the judge is pure in heart and incorruptible.” *Liljeberg*, 486 U.S. at 860 (quotation marks omitted). Indeed, disqualification is required here as Judge Montoya-Lewis’ ability to be fair and impartial to Plaintiffs given her own very personal knowledge of and interests in disenrollment issues, and thus her ability to consider “all sides impartially,” have been reasonably questioned. N.T.C. §§ 10.03.060, .07.200; *see* subjoined Affidavit of Michelle Roberts.

IV. CONCLUSION

Upon Judge Montoya-Lewis’ disqualification, a Tribal Judge Magistrate should be immediately appointed to preside over this lawsuit given the accompanying Motion For Temporary Restraining Order, as the outcome of this suit, if not that Motion, will “impact individual lives in the deepest possible ways.” *Lomeli v Kelly*, Amended Order Granting Defendants’ Motion to Dismiss Second Amended Complaint (Nooksack Ct. Aug. 7, 2013), at 19.

DATED this 13th day of August, 2013.



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AFFIDAVIT

I, Michelle Joan Roberts, say:

1. I am over eighteen years of age and am competent to testify, and have personal knowledge of the facts set forth herein. I am an enrolled member of the Nooksack Tribe and an elected Nooksack Tribal Councilperson. Since at least February 12, 2013, I have been subject to disenrollment proceedings by the Defendants to this action. I am a co-Plaintiff in the federal court lawsuit related to my and my family's proposed disenrollment, *St. Germain v. U.S. Dep't of Interior*, No. C13-845 RSM (W.D. Wa. May 13, 2013). I am scheduled for a telephonic disenrollment meeting before the Tribal Council, on less than five working days notice, this Friday, August 16, 2013, at 10:00 AM.

2. I am aware that Nooksack Tribal Court Judge Raquel Montoya-Lewis was disenrolled from her former tribe, the Pueblo of Isleta, in 2004. I am also aware that she unsuccessfully sued officials of her former tribe as well as the U.S. Department of Interior in federal court, in relation to her dismissal. I have watched the *Lomeli v. Kelly* lawsuit, Nooksack Tribal Court Case No. 2013-CI-CL-001, play out since it was filed by several of my family members in March 2013. I am further aware that at no time in the *Lomeli v. Kelly* lawsuit, before Judge Montoya-Lewis dismissed that lawsuit and entered judgment last week in favor of the same Defendants I have now sued in this action, did she disclose her own disenrollment from her former tribe or her subsequent dismissal from federal court.

3. I believe Judge Montoya-Lewis' personal interests in issues of disenrollment may be affected by the outcome of this lawsuit, and her intimate personal knowledge of the topic would prevent him or her from considering all sides of this dispute impartially.

4. In addition, in the *Lomeli v. Kelly* lawsuit, my relatives and I were subject to a series of "security" orders issued by Judge Montoya-Lewis, whereby she prevented us from even entering the Nooksack Tribal Courthouse to witness the proceedings concerning our fate as Nooksack Tribal members. The Rapada, Rabang and Narte-Gladstone families are not a security

1 threat, and we should have never been treated as such by the Tribal Court or Tribal Council. I
2 believe those orders demonstrate bias and prejudice against my family members and against me,
3 on the part of Judge Montoya-Lewis.

4 5. Accordingly, I do not believe that I can have a fair and impartial trial before Judge
5 Montoya-Lewis were she to preside over this lawsuit. Therefore, I exercise my statutory right,
6 according to N.T.C. § 10.07.200, to automatically disqualify Judge Montoya-Lewis from this
7 lawsuit.

8 The foregoing statement is made under penalty of perjury under the laws of the Nooksack
9 Tribe and the State of Washington and is true and correct.

10 SIGNED in Deming, Washington and DATED this 13th day of August, 2013.

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12 MICHELLE JOAN ROBERTS

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