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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

REBECCA SWEARINGER and KIM FREEMAN, on
behalf of themselves and the Tribal membership,

Plaintiffs,

v.

PASKENTA BAND OF NOMLAKI INDIANS TRIBAL
BUSINESS COUNCIL, DOES

Defendant.

CV 13 2642

Case No.
Hon.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

NC

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This action is brought by Rebecca Swearingen, Kim Freeman ("Plaintiffs"). Plaintiffs seek declaratory and injunctive relief for Defendant's: 1) violation of federal law, 25 U.S.C. 1300m-4(b)(2), 2) violation of their rights under the Tribal Constitution, and 3) violation of their rights to due process.
2. Plaintiffs have been punished without the benefit of due process for exercising their

rights of free speech under the Tribal Constitution as required by federal law.

3. Plaintiffs have lost the entitlements extended to them as members without due process and in violation of the Tribal Constitution for appealing a tribal election.
4. Defendant, a federally recognized Indian Tribe, has refused to recognize the Constitutional requirements for holding valid elections.
5. Defendant has engaged in unlawful behavior by taking retribution on those who have appealed their unlawful acts.
6. Defendant has denied the Plaintiffs their rights to due process, to vote and to appeal under the United States Constitution and the Tribal Constitution.
7. Now, after having sought assistance from the Bureau of Indian Affairs only to have their appeals rejected without adequate consideration, the Plaintiffs herein file this action.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 in that this action arises under the Constitution and laws of the United States.
9. Venue lies in this District pursuant to 28 U.S.C. § 1391(b)(1) and (2) because the Defendant resides in the District and “. . . a substantial part of the events or omissions giving rise to the claim occurred . . .” in this District.
10. The Paskenta Band of Nomlaki Indians has violated a federal statute and thus may not raise sovereign immunity as a defense. *Donovan v. Coeur d’Alene Tribal Farm*, 751 F.2d 1113, 1116 (9th Cir. 1985).

PARTIES

11. Plaintiffs are enrolled members of the Paskenta Band of Nomlaki Indians.
12. The Defendant is the Paskenta Band of Nomlaki Indians.

STATEMENT OF FACTS

The Paskenta Band of Nomlaki Indians

13. The Bureau of Indian Affairs ("BIA") is a sub-agency within the United States Department of Interior and lists the Defendant as a federally recognized Tribe.
14. The Paskenta Band of Nomlaki Indians (PBNI) has approximately 240 members and 2,000 acres of land held in trust by the Bureau of Indian Affairs.
15. No housing is available so no members live on the Tribal land located in Tehama County, California.
16. The Tribe is governed by a Constitution and a series of Ordinances.
17. The Tribe also operates the Rolling Hills Casino and owns several other business ventures but the specifics are unknown to the members.

History of the Tribe

18. On August 18, 1958, Congress enacted the California Rancheria Act, authorizing-but not requiring-the Secretary of the Interior to terminate the trust status of the lands and the status as Indian of the people of 41 specifically enumerated California Rancherias, including the PBNI.
19. Under the California Rancheria Act, termination was to be the result of a process in which the Rancheria Indians of California could decide to accept termination in exchange for free title of Rancheria assets, and the provision of certain improvements and services aimed at providing the soon-to-be-terminated Indians with adequate infrastructure to subsist without treatment as Indians by the federal government.
20. The process for termination under the California Rancheria Act required the Secretary of the Interior, after consultation with the Indians of the Rancheria to be terminated, to

prepare a Distribution Plan detailing the measures that would be undertaken to successfully achieve the requirements of the Act.

21. The Paskenta Band was legislatively terminated in 1958 pursuant to the California Rancheria Act. Pub. L. No. 85-671, 72 Stat. 619. On November 2, 1994, Congress enacted the Paskenta Band Restoration Act ("Restoration Act"). Pub. L. No. 103-454, 108 Stat. 4794, codified at 25 U.S.C. § 1300m – 1300m-7.

The Defendant has Violated Federal Law

22. Defendant violated Plaintiff's rights guaranteed under the Tribal Constitution which governs membership as a specific requirement of federal law.
23. Defendant may not violate the Tribal Constitution or enact laws inconsistent with the Tribal Constitution. *Id.*

The Defendant has Violated the Tribal Constitution

24. The Defendant allegedly passed the "Membership Act" which seeks to govern current members in violation of the Tribal Constitution
25. The Defendant created a series of penalties against members for exercising rights guaranteed under the Tribal Constitution .
26. The Defendant punished the Plaintiff's for appealing a Tribal Election and petitioning for redress of grievances, both rights guaranteed under the Tribal Constitution.

Defendant Denied the Plaintiffs the Right to Due Process

27. Defendant denied Plaintiff's access to the full law they allegedly violated.
28. Defendant denied Plaintiff's right to petition for redress and instead held ad hoc hearing.
29. Defendant allowed the Complainant, a Tribal Council member, to participate in the decision despite the obvious conflict of interest.

**FIRST CAUSE OF ACTION
(Violation of Federal Law)**

30. The Plaintiffs re-allege paragraphs 1 through 56, and incorporate those paragraphs herein as if set forth in full.
31. Defendant intentionally and unlawfully enacted an Ordinance in violation of federal law.
32. Defendant intentionally and willfully employed said Ordinance in order to deprive Plaintiffs of their rights pursuant to the Tribal Constitution protected by federal law.

**SECOND CAUSE OF ACTION
(Violation of Tribal Constitution)**

33. The Plaintiffs re-allege paragraphs 1 through 56, and incorporate those paragraphs herein as if set forth in full.
34. Defendant intentionally denied Plaintiffs their rights to express themselves, petition for redress of grievances and due process.
35. Defendant intentionally held a biased and discriminatory hearing to present the appearance of fairness.

WHEREFORE, the Tribe prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that this Court enter an order:

- A. Directing the PBNI Tribal Government to immediately restore the Plaintiffs to their status as members with full benefits; and
- B. Directing the PBNI Tribal Government to fully compensate the Plaintiffs for all lost benefits, including health care, elder care and bonuses; and
- C. Directing the PBNI Tribal Government to forgo any further violations of Tribal law.
- D. Awarding the Plaintiffs attorneys' fees and reasonable expenses incurred in connection

with this action; and

E. Granting such other relief as the court deems just and proper.

Dated: June 10, 2013

REBECCA SWEARINGER and KIM FREEMAN,
on behalf of themselves and the Tribal membership

/S/ Jeffrey Daly, Esq.
Jeffrey Daly, Esq.
Attorney for the Defendants

CERTIFICATE OF SERVICE

I, Joseph L. Kitto, hereby certify that on June 10, 2013, I caused the foregoing to be served upon counsel of record through the Court's electronic service system.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 10, 2013 at Lower Lake, California.

By: /s/ Joseph L. Kitto, Esq.
Joseph L. Kitto, Esq.
Attorney for the Defendants