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5 IN THE NOOKSACK TRIBAL COURT

6 MICHELLE JOAN ROBERTS, et al.,

7 Plaintiffs,

8 v.

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

21 Defendants.

Case No. 2013-CI-CL-003

MOTION FOR ORDER TO SHOW
CAUSE RE: CONTEMPT

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I. INTRODUCTION

COME NOW, Plaintiffs, and respectfully request that this Court order Defendants to appear personally before the Court and show cause why an order should not be entered holding them in contempt for failure to comply with the Order From Scheduling Hearing issued by this Court in *Lomeli v. Kelly*, No. 2013-CI-CL-001, on March 28, 2013. Declaration of Gabriel S. Galanda in Support of Motion for Contempt (“Galanda Contempt Decl.”), Ex. E.

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1 **II. FACTS**

2 On March 18, 2013, during the Court's initial hearing in this matter, Defendants' counsel,
3 Thomas P. Schlosser, assured the Court that **"whether a person has requested a hearing or
4 not, they are not going to be removed from the rolls until the hearings have been held."**
5 Audio Recording of Hearing (Mar. 18, 2013). A March 18, 2013, letter from Mr. Schlosser
6 memorialized this assurance: "Disenrollment meetings . . . will be set at convenient times with
7 ample opportunity for preparations **In any event, no person will be disenrolled before
8 completion of the timely requested hearings.**" Galanda Contempt Decl., Ex. B (emphasis
9 added). Judge Doucet immediately issued a short stay Order "based on [those] assurances from
10 the attorneys for the Defendants." *Id.*, Ex. C.

11 On March 20, 2013, the Parties filed a Stipulation with the Court dated March 19, 2013,
12 which provides in pertinent part:

13 Undersigned counsel for Plaintiffs and Defendants have conferred and stipulate
14 and agree as follows:

15 1. On or before April 13, 2013, Galanda Broadman will furnish a list of those
16 individuals **for whom they are then authorized to act in this matter and in the
17 related proceedings regarding disenrollment of certain Nooksack Tribal
18 Members pursuant to Title 63.** Defendants will treat Mr. Galanda's letter of
19 March 15, 2013, to Chairman Kelly regarding the Notice of Intent to Disenroll as
20 a timely request for a meeting pursuant to Title 63.04.001(B)(2) before the Tribal
21 Council for the individuals identified on that list.

22 2. **No person will be disenrolled prior to completion of the meetings
23 before the Tribal Council, regardless of whether that individual has
24 requested a meeting with the Tribal Council.**

25 *Id.*, Ex. D ("Stipulation") (emphasis added). On March 28, 2013, this Court "approve[d] this
Stipulation and incorporate[d] it by reference," **thereby reducing it to an Order of the Court.**
Id., Ex E ("Order from Scheduling Hearing"), at 1.

On August 13, 2013, Defendants summarily, and without any hearing or meeting whatsoever, disenrolled at least (1) Rose A. Hernandez, (2) Cody M. Narte, (3) Nadine L. Rapada, and (4) Kristal M. Trainor. Second Declaration of Gabriel S. Galanda (“Second Galanda Decl.”) (filed Aug. 22, 2013), Ex. E. At this time, **there has not yet been one meeting before the Tribal Council** – the meetings are far from complete.

III. LAW AND ANALYSIS

A. **This Court Has Inherent Power And Authority To Hold Appellees In Contempt.**

“Unlike most areas of law, where a legislature defines both the sanctionable conduct and the penalty to be imposed, civil contempt proceedings leave the offended judge solely responsible for identifying, prosecuting, adjudicating, and sanctioning the contumacious conduct.” *United Mine Workers of America v. Bagwell*, 512 U.S. 821, 831 (1994). This “power to impose . . . submission to [the Court’s] lawful mandates,” *Anderson v. Dunn*, 6 Wheat. 204, 227 (1821), is “inherent” and is “necessary to the exercise” of a court’s jurisdiction. *Bagwell*, 512 U.S. at 831 (quoting *United States v. Hudson*, 7 Cranch 32, 34 (1812)); *see also generally T.S. v. Tulalip Tribes*, No. TUL-CV-ET-2012-0478 (Tulalip Tribal Ct. Apr. 9, 2013) (using the tribal court’s inherent contempt authority to hold the Tribe in contempt and issuing attorney’s fees as a sanction, in the face of a sovereign immunity assertion). Because this “power to punish for contempt is inherent[,] it goes beyond the power given to judges by statute.” Laura Hunter Dietz, et al., *Effect of Constitutions and Statutes*, 17 AM. JUR. 2D CONTEMPT § 30 (2d ed., 2013) (citing *U.S. v. Neal*, 101 F.3d 993 (4th Cir. 1996); *U.S. v. Giannattasio*, 979 F.2d 98 (7th Cir. 1992); *Johnson v. Johnson*, 37 S.W.3d 186 (Ark. 2000)); *In re Stopp*, 2 Am. Tribal Law 38, 38 (Cherokee Ct. App. Nov. 1, 2000) (tribal courts have “inherent powers to punish for contempt to maintain dignity and authority”); *In re Wabindato*, No. 99-200-02, 1999 WL 34996414, at *1

1 (Little River Ct. App. June 16, 1999) (“The power of the courts to punish for contempt is
2 inherent. The source of this power is the duty of the court to preserve its own effectiveness.”)
3 (citations omitted).

4 Accordingly, sovereign immunity affords Defendants no protection here. *Id.*; *Aqua Bar*
5 *& Lounge, Inc. v. U. S. Dept. of Treasury Internal Revenue Service*, 539 F.2d 935, 942 (3rd Cir.
6 1976); *U.S. v. Ray*, 273 F.Supp.2d 1160, 1167 (D. Mont. 2003) (holding that the “argument is
7 that sovereign immunity prevents this Court from doing anything to enforce [its] Order . . .
8 eviscerates the independence of the judiciary to manage assigned cases. The . . . argument
9 makes little sense”).

10 As parties to the original action, Plaintiffs may invoke the Court’s power by initiating a
11 proceeding for civil contempt.¹ *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 444-45
12 (1911). Although sanctions for violating an order are generally administered in the action
13 wherein the court issued the violated order, *see Baker by Thomas v. General Motors Corp.*, 522
14 U.S. 222, (1998), courts ultimately do have the ancillary power to “exercise jurisdiction to
15 adjudicate an alleged violation of an . . . order issued in a[nother] proceeding.”² *Minnesota Mut.*
16 *Life Ins. Co. v. Ensley*, 174 F.3d 977, 986 (9th Cir. 1999) (citing *Davis v. Prudential Ins. Co.*,
17 331 F.2d 346 (5th Cir. 1964); *Pope v. Cauffman*, 885 F.Supp. 1451, 1455 (D. Kan. 1995)); *see*
18 *also Morehouse v. Pacific Hardware & Steel Co.*, 177 F. 337, 340 (9th Cir. 1910) (“[T]he power
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20 ¹ Plaintiffs’ First Amended Complaint in this action very specifically alleges that: “Defendants issued Notices of
21 Automatic Disenrollment to Plaintiffs Nadine Rapada, Rose Hernandez, Cody Narte and Kristal Trainor, alleging
22 that they ‘received proper notice but did not timely request hearings’ — despite the fact that the disenrollment
23 meetings before the Tribal Council has not even commenced, let alone completed. Such also contravenes the
24 Stipulation entered on March 20, 2013.” *Id.*, at 7, ¶13; 11, ¶26; 13, ¶¶41, 43; at 15, ¶51.

² Note that the analysis is different if the motion involves an alleged violation of an order issued by **another court**,
instead of **another proceeding or action**. *See Waffenschmidt v. MacKay*, 763 F.2d 711, 716 (5th Cir. 1985)
 (“Enforcement of an order through a contempt proceeding must occur in the issuing jurisdiction because contempt is
an affront to the court issuing the order.”), *cert. denied*, 474 U.S. 1056 (1986); *W.T. and K.T. ex rel. J.T. v. Bd. of*
Educ. of School Dist. of New York City, 716 F.Supp.2d 270, 290 n. 15 (S.D.N.Y. 2010) (parties must “seek relief
from the court that entered that order.”).

1 of a court . . . to punish for a contempt . . . is a power which is inherent in all courts. . . . A
2 proceeding to punish for contempt committed in violation of an [order] issued in any suit or
3 proceeding is a proceeding entirely distinct and separate from that in which the [order] was
4 issued.”); *In re Manufacturers Trading Corp.*, 194 F.2d 948, 955 (6th Cir. 1952) (same); *In re*
5 *Zyprexa Injunction*, 474 F.Supp.2d 385 (E.D.N.Y. 2007) (same).

6 This Court has power and authority to hold Defendants in contempt of the Order From
7 Scheduling Hearing that was issued in *Lomeli v. Kelly*, No. 2013-CI-CL-001, on March 28, 2013.
8 Here, as described below, because Defendants are in direct violation of that Order, the use of the
9 Court’s inherent contempt power is clearly warranted.

10 **B. Appellees Are In Contempt of Court.**

11 “To prove civil contempt the court must find that (1) a valid court order existed, (2) the
12 [non-moving party] had knowledge of the order, and (3) the [non-moving party] disobeyed the
13 order.” *John T. ex rel. Paul T. v. Delaware County Intermediate Unit*, 318 F.3d 545, 552 (3d
14 Cir. 2003) (citation omitted). Once the movant makes a *prima facie* showing “that the
15 contemnors violated a specific and definite order of the court[, t]he burden then shifts to the
16 contemnors to demonstrate why they were unable to comply.” *FTC v. Affordable Media, LLC*,
17 179 F.3d 1228, 1239 (9th Cir. 1999) (quotation omitted). When the burden is on the contemnors,
18 they “must show they took every reasonable step to comply.” *Stone v. City and County of San*
19 *Francisco*, 968 F.2d 850, 856 (9th Cir. 1992); *SEC v. Children’s Internet, Inc.*, No. 06-6003,
20 2009 WL 2160660, at *2 (N.D. Cal. July 20, 2009). There is no good faith exception to the
21 requirement of obedience to a court order. *Stone*, 968 F.2d at 856; *In re Crystal Palace*
22 *Gambling Hall, Inc.*, 817 F.2d 1361, 1365 (9th Cir. 1987).

1 Here, Defendants are in contempt of that portion of the Order from Scheduling Hearing
2 that incorporated and restrained Defendants from the following conduct:

3 **No person will be disenrolled prior to completion of the meetings before the**
4 **Tribal Council, regardless of whether that individual has requested a**
meeting with the Tribal Council.

5 Galanda Decl., Ex. D.

6 On August 13, 2013, Defendants summarily, and without any hearing or meeting
7 whatsoever, disenrolled at least (1) Rose A. Hernandez, (2) Cody M. Narte, (3) Nadine L.
8 Rapada, and (4) Kristal M. Trainor. Second Galanda Decl., Ex. E. In their Notices of
9 Disenrollment, Defendants claim that these individuals did not formally request a disenrollment
10 meeting or hearing with Tribal Council. *Id.* But the terms of the Stipulation, incorporated into
11 an Order of this Court, absolutely prohibited the disenrollment of these persons: “[n]o person
12 will be disenrolled prior to completion of the meetings before Tribal Council, regardless of
13 whether that individual has requested a meeting with the Tribal Council.” The Stipulation
14 could not be clearer. Rose A. Hernandez, Cody M. Narte, Nadine L. Rapada, and Kristal M.
15 Trainor received no meeting. Instead, Defendants reneged on the promise they made in the
16 Stipulation³, violated an Order of this Court, and disenrolled at least four Plaintiffs summarily.

17 **IV. CONCLUSION**

18 In light of the above, Plaintiffs respectfully request that this Court direct Defendants to
19 appear personally before the Court and show cause why an order holding them in contempt
20 should not be issued.

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23 ³ A stipulation that is by incorporated into an order of the Court is “stamped it with the requisite ‘judicial
24 imprimatur,’” *Carbonell v. I.N.S.*, 429 F.3d 894, 902 (9th Cir. 2005), which, here, renders noncompliance with the
Stipulation and Order contemptuous. *Roberson v. Giuliani*, 346 F.3d 75, 82 (2d Cir. 2003).

1 DATED this 18th day of September, 2013.

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5 _____
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I, Gabriel S. Galanda, 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 employed with Galanda Broadman, PLLC, counsel of record for Appellants.

2. Today, I caused the attached documents to be delivered to the following:

Grett Hurley
Rickie Armstrong
Tribal Attorney
Office of Tribal Attorney
Nooksack Indian Tribe
5047 Mt. Baker Hwy
P.O. Box 157
Deming, WA 98244

A copy was emailed to:

Thomas Schlosser
Morisset, Schlosser, Jozwiak & Somerville
1115 Norton Building
801 Second Avenue
Seattle, WA 98104-1509

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

DATED this 18th day of September, 2013.

At Hand

GABRIEL S. GALANDA