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IN THE TRIBAL COURT OF THE NOOKSACK TRIBE OF INDIANS
FOR THE NOOKSACK INDIAN TRIBE

ADAMS, et al., Appellants, v. *KELLY*, et al., Appellees.	No. 2013-CI-CL-004 DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND DEFENDANTS' BRIEF IN SUPPORT OF THE MOTION TO DISMISS Date: November 5, 2013 Time: 11:00 AM

COME NOW Defendants in the above-entitled action, by and through the Office of Tribal Attorney, without waiving other defenses and objections, and provide this response in opposition to Plaintiffs' Motion for Temporary Restraining Order (TRO) and brief in support of Defendants' cross Motion to Dismiss.

I. INTRODUCTION

On October 23, 2013, Plaintiffs initiated a third lawsuit against Defendants in Tribal Court for equitable relief. The Tribal Court has dismissed two related lawsuits

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against Defendants based on sovereign immunity and standing. *See Roberts, et al. v. Kelly, et al.*, Case No. 2013-CI-CL-003, Order Granting Defendants' Motion to Dismiss (2013); *Lomeli, et al. v. Kelly, et al.*, Case No. 2013-CI-CL-001, Amended Order Granting Defendants' Motion to Dismiss Second Amended Complaint (2013). Plaintiffs allege that Defendants are violating the Nooksack Constitution by failing to validate a recall petition, failing to schedule two requested special meetings, disenrolling four individuals, conducting Council meetings telephonically, employing counsel without the Secretary of the Interior's (Secretary) approval, and passing Disenrollment Procedures.

Defendants oppose Plaintiffs' Motion for TRO, because Plaintiffs are not likely to succeed on the merits, there is no irreparable injury, and injunctive relief is not in the public interest. Defendants also cross move this Court to dismiss Plaintiffs' Complaint for lack of jurisdiction, failure to state a claim upon which relief can be granted, failure to exhaust administrative remedies, and raising nonjusticiable claims under the political question doctrine. As this Court has held in *Roberts* and *Lomeli*, Defendants are immune from suit when they act within the scope of their authority. Defendants have acted within the scope of their authority. This Court also lacks jurisdiction to review certain Council actions, including recall petition determinations and disenrollment determinations. Plaintiffs fail to state a claim upon which relief can be granted, and Plaintiffs failed to exhaust administrative remedies. Lastly, Plaintiffs allege nonjusticiable political questions.

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II. FACT STATEMENT

On March 20, 2013, counsel for the *Lomeli* parties entered into a Stipulation under which the parties agreed, in pertinent part, as follows:

> On or before April 13, 2013, Galanda Broadman will furnish a list of those individuals for whom they are then authorized to act in this matter [*Lomeli*] and in the related proceedings regarding disenrollment of certain Nooksack Tribal members pursuant to Title 63. Defendants will treat Mr. Galanda's letter of March 15, 2013, to Chairman Kelly regarding the Notice of Intent to Disenroll as a timely request for meeting pursuant to Title 63.04.001(B)(2) before the Tribal Council for the individuals identified on that list. No person will be disenrolled prior to completion of the meetings before the Tribal Council, regardless of whether that individual has requested a meeting with the Tribal Council.

Lomeli, Decl. of G. Hurley in Supp. of Defendants' Mot. to Adopt Proposed Findings of Fact and Conclusions of Law Re: Parties and Effect of Stipulation of March 20, 2013 (Hurley Decl.), at Exh. 2. Galanda Broadman submitted a letter and accompanying list of individuals it was authorized to represent in disenrollment proceedings on April 12, 2013. *Id.* at ¶5.

Plaintiffs Nadine Rapada, Rose Hernandez, Cody Narte, and Kristal Trainor have been disenrolled. *Id.* at ¶9. Those four Plaintiffs failed to timely request a meeting with the Council, and the Stipulation did not cover them, because they were not included in the Galanda Broadman representation list of April 12, 2013. *Id.* at ¶9 and Exh. 3.

By its plain terms, the Stipulation provided that each of the 265 disenrollees identified in the April 12, 2013 letter would have his or her disenrollment meeting, and none of the 265 would be disenrolled until after his or her meeting had occurred – even if, as was the case for many of the disenrollees identified in the April 12, 2013 letter, a

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disenrollee had failed to timely request a meeting and thus was subject to automatic disenrollment without a meeting. *Id.* at ¶8.

By e-mail dated May 5, 2013, Galanda Broadman purported to supplement its April 12, 2013, representation list by adding the names of additional disenrollees, including Nadine Rapada, Rose Hernandez, Cody Narte, and Kristal Trainor. Counsel for Defendants did not consent to coverage under the Stipulation for the additional four. *Id.* at ¶ 9.

On August 8, 2013, the Council convened to consider matters related to the disenrollment proceedings. Decl. of R. George ¶4. Given the subject matter of the meeting, the Council voted to excuse Secretary St. Germain and Councilmember Roberts from the meeting due to a conflict of interest. *Id.* The Council then considered the Disenrollment Procedures and various individual disenrollments—eventually passing 25 actions. *Id.* Defendant Kelly, the Chairman, abstained from voting, because there was not a tie. *See id.*

On September 20, 2013, Plaintiff Honorato "Bo" Rapada III (Plaintiff Rapada) submitted receipts for certified mail and 14 packets containing a Statement of Basis for Recall of Nooksack Tribal Council Chairman Robert Kelly and a Recall Petition. Decl. of A. Johnny. Defendants scheduled a Council meeting for October 21, 2013 to review Plaintiff Rapada's submission for validity under Section 60.03.050. Decl. of R. George ¶ 6. Secretary St. Germain demanded that Defendants provide 24 hours' notice for the meeting, which required Defendants to reschedule the Council meeting for October 22,

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2013. *Id.*

On October 22, 2013, the Council reviewed Plaintiff Rapada's Recall Petition and determined that it was invalid. *Id.* at ¶6 and Exh. G. The Recall Petition did not contain the statement required by Section 60.02.050; it failed to provide proper notice under Section 60.02.030 by not informing Defendant Kelly of the timeframe for providing a rebuttal, the consequences for not providing a rebuttal, and how to serve any rebuttal; Plaintiff Rapada failed to provide sufficient proof of service under Section 60.02.030. *Id.* at Exh. G. On October 23, 2013, the Council notified Plaintiff Rapada of the invalid Petition, which means the Council notified Plaintiff Rapada of its determination on the Petition within five days of October 21, 2013. *See id.* Plaintiff Rapada received notice of the invalid Petition on October 24, 2013. Decl. of Service at 1 and Exh. B.

On October 8, 2013, the Council passed Resolution 13-156, which interprets Article VI, Section 1(D) of the Constitution. Decl. of R. George ¶5. The Resolution explains that the Council does not interpret Article VI, Section 1(D) as requiring Secretarial approval of the Tribe's legal counsel or counsel fees. *Id.* at Exh. A.

III. LEGAL ARGUMENT

Defendants are immune from suit, the Tribe has not waived sovereign immunity, and this Court lacks jurisdiction to hear this case. Additionally, Plaintiffs failed to exhaust administrative remedies, and Plaintiffs present nonjusticiable political issues. Plaintiffs' Motion for TRO must fail, because they cannot demonstrate a likelihood of success on the merits, there is no irreparable harm, and injunctive relief is not in the

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public interest.

A. Defendants are Immune from Suit and This Court Lacks Jurisdiction.

This Court lacks jurisdiction because the Nooksack Indian Tribe, the Council, and tribal officials are immune from suit. An Indian tribe is immune from suit because it is a sovereign entity with common law immunity. *Cline v. Cunanan*, Case No. NOO-CIV-02/08-5, 5-6 (Nooksack Ct. App. 2009); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). Sovereign immunity acts as a jurisdictional bar to bringing suits against tribes unless Congress has authorized the lawsuit or a tribe has waived its immunity. *Martinez*, 436 U.S. at 58-59; *Kiowa Tribe of Oklahoma v. Mfg. Technologies, Inc.*, 523 U.S. 751, 754 (1998). Waivers of immunity must be clear, express, unequivocal, and cannot be implied. *Olson v. Nooksack*, 6 NICS App. 49, 52-53 (Nooksack Ct. App. 2001) (citing *Martinez*, 436 U.S. at 60). Sovereign immunity also applies to tribal officials and employees acting within the scope of their authority. *Cline*, Case No. NOO-CIV-02-08-5, at 6 (citing *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476, 479 (9th Cir. 1985); *United States v. Yakima Tribal Court*, 806 F.2d 853, 861 (9th Cir. 1986), *cert. denied*, 481 U.S. 1069 (1987)); *see also Mitchell v. Pequette*, CV-07-38, 2008 WL 8567012 at *7-9 (Leech Lake Tribal Court May 9, 2008) (holding that tribal employees retained sovereign immunity even though the plaintiff alleged that the employees acted outside the scope of their authority, because the plaintiff failed to legally or factually support this allegation). Tribal sovereign immunity "extends to actions brought against tribes in tribal court." *Olson*, 6 NICS App. at 51.

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In the *Cline* case, the plaintiff-appellants sued the Council Chairman and the Council for declaratory relief and damages based on allegations of civil rights violations and a challenge to the Nooksack Tribal Election Ordinance. *Cline*, Case No. NOO-CIV-02-08-5, at 1. The Nooksack Court of Appeals found that the appellees retained sovereign immunity even though the complaint named individual officers. *Id.* at 7. Importantly the Court found that, "[t]he Nooksack Tribal Council and its officers need to be able to enact ordinances and conduct business without constantly having to defend themselves against suit."

The Nooksack Constitution entrusts the Council with the authority to establish the Tribal Court by ordinance. *Const.*, art. VI, § 2(A)(1). Article VI, § 2(A)(3) of the Constitution provides that the Tribal Court shall have jurisdiction "over all matters concerning the establishment and functions of tribal government, provided that nothing herein shall be construed as a waiver of sovereign immunity by the tribal government." Under this jurisdictional provision, a suit against the Tribal Government and the Council can only proceed when there is an express waiver of sovereign immunity. *Cline*, Case No. NOO-CIV-02/08-5, at 6.

The Council acted upon its constitutional authority to establish a tribal court by ordinance when it adopted Title 10—the Nooksack Indian Tribe's Tribal Court System and Court Rules. The Tribal Court has limited civil and criminal subject matter jurisdiction only as to matters "specifically enumerated in the Nooksack Code of Laws. Title 10, § 10.00.030. Title 10, § 10.00.050 provides for exclusive, original jurisdiction

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in the Tribal Court in any matter where the Tribe or its officers and employees are parties in their official capacities, but this jurisdiction is limited by the following sentence:

> Nothing contained in the preceding sentence or elsewhere in this Code shall be construed as a waiver of the sovereign immunity of the Tribe or its officers or enterprises unless specifically denominated as such and the court is expressly prohibited from exercising jurisdiction over the Nooksack Indian Tribe without and [sic] express wavier [sic] of sovereign immunity.

Title 10, § 10.00.050. Title 10 contains an additional provision explaining that nothing in Title 10 or any other law waives the Tribe's, its officials', its entities', or its employees' immunity without an express waiver enacted by the Council. Title 10, § 10.00.100.[1] Neither Congress[2] nor the Council has expressly waived the Tribe's sovereign immunity, as required under the Constitution, Title 10, and federal law.

1. The *Ex parte Young* doctrine, to the extent it applies in the tribal context, does not strip Defendants of their sovereign immunity.

Under *Ex parte Young*, 209 U.S. 123 (1908), state officials may be sued in their official capacity for violating a federal law when the plaintiff seeks prospective, equitable relief.[3] *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146

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[1] In addition, § 60.05.060 of the Constitutional Petition Ordinance states that "[n]othing in this Title shall be deemed or construed to be a waiver of the sovereign immunity of the Nooksack Indian Tribe, its officials, its entities, or employees acting within their official or individual capacities."

[2] Inclusion of the Indian Civil Rights Act in the Constitution does not constitute a waiver of sovereign immunity. *Cline*, Case No. NOO-CIV-02/08-5, at 6; *Martinez*, 436 U.S. at 58-73; *Gallegos v. Jicarilla Apache Nation*, 97 F. App'x 806, 811 (10th Cir. 2003).

[3] Plaintiffs allege that seek only prospective relief and do not seek affirmative relief. *See* Plaintiffs' Compl. 12-18. Yet, Plaintiffs causes of action include allegations regarding Plaintiff Rapada's Recall Petition, which was already deemed invalid, and the

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(1993). This doctrine is based on the need to protect the supremacy of federal law, and it expressly does not apply against a state official when that official is accused of violating a state law. *Pennhurst State Sch. & Hosp. v. Halderman* (*Pennhurst*), 465 U.S. 89, 105-06 (1984); *AUTO v. Washington*, 175 Wn. 2d 214, 231, n.3 (2012). When a state official is accused of violating a state law, the "entire basis for the doctrine of *Young* . . . disappears." *Pennhurst*, 465 U.S. at 106. Similarly, there is no basis to apply *Ex parte Young* when a tribal official is accused of violating tribal law.[4] As the Trial Court has found in a related case, in "the tribal context, the [*Ex parte Young*] analogy is inelegant and, quite frankly, fairly tortured." *Roberts, et al.*, Order Granting Defendants' Motion to Dismiss, at 5. There are six qualifications for *Ex parte Young* to apply,[5] and many simply

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disenrollment of four individuals. *See id.* There is no prospective relief that can be granted related to these causes of action.

[4] Because *Ex parte Young* is concerned with the supremacy of federal law, the issue of a state official's authority under state law rarely arises. However, in the tribal context, the scope of a tribal official's authority is often the issue that determines whether sovereign immunity protects the official. Thus the sovereign immunity inquiry in the tribal context is somewhat analogous to proceedings under the Federal Tort Claims Act where the question of the employee's scope of authority is intertwined with sovereign immunity and the court's jurisdiction. *E.g., Hamm v. United States,* 483 F.3d 135, 137 (2d Cir. 2007).

[5] In order to apply:

> (1) the state officer sued must have a duty to enforce the challenged state law; (2) the action by the state officer under state law must constitute an alleged violation of federal law; (3) the federal law allegedly violated must be the 'supreme law of the land'; (4) *Young* will not apply if federal law provides such an intricate remedial scheme that the court concludes that Congress did not intend for cases under Ex Parte Young [sic]; (5) Young will not apply if allowing suit would interfere with special state sovereignty interests; and (6) the Court has imposed significant restrictions on the remedies available under Ex parte Young.

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do not fit in the tribal context. *Id.*

In *Cline*, the Nooksack Tribal Court of Appeals explained that the *Ex parte Young* doctrine allows "individual governmental officers [to] be sued for declaratory or injunctive relief where the actions taken exceed his or her authority." Case No. NOO-CIV-02/08-5, at 6. However, the *Cline* Court did not hold that the *Ex parte Young* doctrine would ever apply in the Nooksack tribal context. Case No. NOO-CIV-02/08-5. Even if a *Young*-like doctrine does apply in this Court, it would not allow Appellants to continue this suit, because Appellees acting within the scope of their authority under tribal law retain sovereign immunity,[6] which means this Court lacks jurisdiction.

2. The *Verizon* case does not allow for *Ex parte Young* applicability against a tribal official for an alleged violation of a tribal law.

Plaintiffs assume that *Ex parte Young* applies in the Nooksack tribal context, and they rely on the federal Supreme Court's *Verizon Maryland v. Public Service Commission* (*Verizon*), 535 U.S. 635 (2002) decision to allege that the *Young* doctrine waives Defendants' immunity here. Plaintiffs' Compl. 5:20-23; Plaintiffs' Mot. for TRO 2:21-22 – 3:1-2. *Verizon* states that to determine "whether the doctrine of *Ex parte Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a 'straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" 535 U.S. at 645. In

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Avoiding Sovereign Immunity: The Doctrine of Ex parte Young, 13 Fed. Prac. & Proc. Juris. § 3524.3, at 2 (3d ed.)

[6] Appellees have not acted beyond the scope of their authority, which means *Young* does not strip them of immunity. *See* discussion *infra* subsection 3.

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Idaho v. Coeur d'Alene Tribe of Idaho, the federal Supreme Court found that:

> [t]o interpret *Young* to permit a federal-court action to proceed in every case where prospective declaratory and injunctive relief is sought against an officer, named in his individual capacity, would be to adhere to an empty formalism and to undermine the principle, reaffirmed just last Term in *Seminole Tribe,* that Eleventh Amendment immunity represents a real limitation on a federal court's federal-question jurisdiction.

Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 270 (1997).

Despite *Verizon*'s call for a straightforward inquiry, the Supreme Court has expressly evaluated whether state officials acted beyond the scope of their authority when deciding whether the *Young* doctrine stripped the officials of their immunity. *Florida Dep't of State v. Treasure Salvors, Inc.*, 458 U.S. 670, 688-92 (1982) (plurality). The Ninth Circuit also recently delved into whether tribal officials acted within the scope of their authority to assess tribal taxes. *Miller v. Wright*, 705 F.3d 919, 927-28 (9th Cir. 2013) *cert. denied,* 133 S. Ct. 2829 (U.S. 2013). In *Miller*, the plaintiffs alleged that tribal officials were not immune from suit, because they were allegedly assessing unconstitutional taxes and therefore acting beyond the scope of their authority. *Id.* at 927. The Court found that the "Tribe's sovereign immunity . . . extend[ed] to its officials who were acting in their official capacities and within the scope of their authority when they taxed transactions occurring on the reservation." The Ninth Circuit specifically determined that the tribal officials were acting within the scope of their authority. The federal application of *Young* is anything but clear except for the fact that federal courts do not apply *Young* when a tribal official is alleged to have violated a tribal law. *Burlington Northern & Santa Fe Railway Co. v. Vaughn*, 509 F.3d 1085, 1092 (9th Cir. 2007); *N.*

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States Power Co. v. Prairie Island Mdewakanton Sioux Indian Cmty., 991 F.2d 458, 460 (8th Cir. 1993); *Northern Arapahoe Tribe v. Harnsberger*, 697 F.3d 1272, 1281-82 (10th Cir. 2012); *Tamiami Partners, Ltd. ex rel. Tamiami Dev. Corp. v. Miccosukee Tribe of Indians*, 177 F.3d 1212, 1225-26 (11th Cir. 1999); *Vann v. Kempthorne*, 534 F.3d 741, 749-50 (D.C. Cir. 2008). *Frazier v. Turning Stone Casino*, 254 F. Supp. 2d 295, 310 (N. Dist. N.Y. 2003) (citing *CSX Transp., Inc. v. New York State Office of Real Prop. Servs.*, 306 F.3d 87, 98 (2nd Cir. 2002)).

Cline, which was decided well after *Verizon*, found that naming individual officers in a complaint does not automatically allow a case to proceed. Case No. NOO-CIV-02/08-5, at 7. The Nooksack Court of Appeals explained that the "Nooksack Tribal Council and its officers need to be able to enact ordinances and conduct business without constantly having to defend themselves against suit." *Id.* Sovereign immunity means immunity from suit and not simply a "defense to liability," which means it is "effectively lost if a case is erroneously permitted to go trial." *Puerto Rico Aqueduct & Sewer Auth.*, 506 U.S. at 144 (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)). *Ex parte Young* does not apply here, because Plaintiffs only allege violations of tribal law, and Defendants have acted within the scope of their authority.

3. Defendants have acted within the scope of their authority.

The Council notified Plaintiff Rapada that his Recall Petition was invalid within the time required by Title 60. The Council has discretion to schedule special meetings as it sees fit, and Plaintiffs' claims related to the special meetings are not ripe. The Council

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acted pursuant to the Constitution and Title 63 in disenrolling Plaintiffs Nadine Rapada, Rose Hernandez, Cody Narte, and Kristal Trainor. Similarly, the Council has properly conducted meetings, contracted with legal counsel to defend the Council's actions in this litigation, and passed procedures related to disenrollment proceedings pursuant to the Constitution and Title 63.

a. *The Council acted within its authority when it deemed Plaintiff Rapada's Recall Petition invalid.*

The Constitutional Petition Ordinance states that the "Council shall have thirty (30) calendar days from receipt of the Petition to either accept it as valid or reject the Petition as invalid. The Petitioner will be notified of the Council's decision within five (5) days of the decision." Title 60, § 60.03.050. This Section goes on to explain what happens when the Council determines that a Petition fails to meet the standards of Title 60 or that a Petition meets the standards of Title 60. *See id.* If the Council determines that a Petition does not meet the requirements of Title 60, the Petition is deemed invalid, and the Petitioner will be notified within five days of the decision. *Id.* at (A). In that instance, the Petitioner may file a written request for reconsideration with the Council within five days of receipt of notice of the invalid Petition. *Id.* The Council's decision is final. *Id.* If the Council finds that the Petition meets Title 60's standards, the Council must declare the Petition valid. *Id.* at (B). Only a finding of a valid Petition requires that a special election be held. *Id.* Title 60 does not state that failing to timely decide whether a Petition is valid or invalid deems the Petition valid as alleged by Plaintiffs. *See* Title 60; Plaintiffs' Mot. for TRO 2:5-6.

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In a related case, this Court has determined that it could "only act to grant prospective, injunctive relief in this matter should the actions taken by the Defendants clearly and unambiguously violate their official duties in ways more egregious than an error of law." *Lomeli*, Order Denying Mot. for Prelim. Inj., at 9:18-20 (May 20, 2013). Determining that Plaintiff Rapada's Recall Petition was invalid under Title 60 on the 31st day rather than the 30th day constitutes a mere error of law at most.[7] Plaintiffs were not prejudiced or harmed in any manner by the one-day delay, because the Council notified Plaintiff Rapada of the invalidity of the Petition and the reasons for invalidity within five days of October 21, 2013—the 30th day for review.[8] *See* Decl. of R. George ¶6; Decl. of Service at 1 and Exhs. A-B. Moreover, Plaintiff Rapada still had five days to file a request for reconsideration. *See* Title 60, § 60.03.050(A). To date, no Plaintiff, including Plaintiff Rapada, has requested reconsideration of the Council's determination that the Recall Petition fails to meet Title 60's standards. Decl. of A. Johnny.

The Council properly found that Plaintiff Rapada's Recall Petition failed to satisfy the requirements of Title 60, because it lacked the statement required by Section 60.02.050, it failed to provide sufficient information to Chairman Kelly, the potential recallee, under Section 60.02.030(A), and there was insufficient proof of service under Section 60.02.030(B). *See* Decl. of R. George, Exh. G. Defendants acted within the

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[7] The Council attempted to determine the validity of the Recall Petition by the 30th day, October 21, 2013, but Secretary St. Germain demanded 24 hours' notice of the meeting. Decl. of R. George ¶6.

[8] Technically, the 30th day fell on the weekend before October 21, 2013, so the deadline became October 21, 2013. *See* Title 60, § 60.05.010.

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scope of their authority as the Council in determining that the Recall Petition was invalid.

b. *Plaintiffs' claims regarding special meeting requests are not ripe.*

Article II, Section 5 of the Bylaws states that:

> [s]pecial meetings of the tribal council shall also be held upon written request of either two (2) members of the tribal council or by petition signed by twenty five (25) legal voters of the tribe. Such written request shall be filed with the chairman or the secretary of the tribal council, and he shall notify the tribal council members twenty-four (24) hours before the date of such tribal council meetings.

A matter is not ripe when "the existence of the dispute hangs on future contingencies that may or may not occur." *Porter v. Jones,* 319 F.3d 483, 490 (9th Cir. 2003) (quoting *Clinton v. Acequia Inc.* 94 F.3d 568, 572 (9th Cir. 1996)). The Bylaws do not require the Council to schedule a special meeting within a certain period of time. Plaintiffs requested meetings on October 7, 2013 and October 11, 2013. Compl. 8-9. The Council may schedule these meetings at any time as long as 24 hours' notice is given to councilmembers. There is no dispute at this point.

c. *The Council complied with the Constitution and Title 63 when it disenrolled Nadine Rapada, Rose Hernandez, Cody Narte, and Kristal Trainor, and the Stipulation does not provide for relief.*

The Constitution gives the Council the authority to enact laws governing loss of membership. *Const.* art. II, §§ 2 and 4. Title 63 states that:

> A member identified as subject to disenrollment pursuant to the above sub-section shall be notified by certified mail, return receipt requested, of the intent to disenroll. Included in the notice shall be the option to request a meeting with the Tribal Council within thirty (30) days of the receipt of the letter. If no request is received within thirty (30) days the person is automatically removed from the roll book by resolution.

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Section 63.04.001(B)(2). Nadine Rapada, Rose Hernandez, Cody Narte, and Kristal Trainor did not timely request a meeting with the Council. *Lomeli*, Fourth Decl. of C. Bernard in Supp. of Opp'n to Mot. for Order to Show Cause Re: Contempt (Fourth Decl. of C. Bernard), at ¶16 (November 1, 2013). On August 8, 2013, the Council passed Resolutions automatically disenrolling these four Plaintiffs under Section 63.04.001(B)(2). *Id.* at ¶18 and Exhs. E-H. Defendants plainly acted within the scope of their authority in following Title 63.

Title 63 also states that the "Nooksack Tribal Court shall not have subject matter jurisdiction to hear cases under this ordinance. Any reconsideration of Nooksack Tribal Council enrollment decisions are to be made under the procedures set forth in this ordinance." § 63.00.003. Plaintiffs request that the Court direct the Council "to stop violating the March 20, 2013, Stipulation, by carrying out the automatic disenrollment of Plaintiffs Nadine Rapada, Rose Hernandez, Cody Narte, and Kristal Trainor." This Court lacks jurisdiction over the Council's disenrollment determinations, which means the Court cannot grant Plaintiffs requested relief.[9]

Plaintiffs allege that the Stipulation in *Lomeli* prohibited disenrolling these four Plaintiffs, but the Stipulation does not apply at all in this case – as this Court has previously recognized:

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[9] Defendants also move to dismiss under Federal Rule of Civil Procedure (FRCP) 12(b)(1), because this Court plainly lacks subject matter jurisdiction over Plaintiffs' allegations regarding disenrollment determinations. When deciding "whether a challenge to subject matter jurisdiction is warranted under FRCP 12(b)(1), the court need not accept the factual allegations in the complaint as true." *Chaganti v. I2 Phone Int'l, Inc.*, 635 F. Supp. 2d 1065, 1070 (N.D. Cal. 2007) *aff'd*, 313 F. App'x 54 (9th Cir. 2009).

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> Plaintiffs seek enforcement of a stipulation related to the *Lomeli* matter. As the Court has noted in a prior Order denying the *Plaintiffs' Motion for Contempt*, this case is not the appropriate vehicle by which to address the Stipulation or the actions taken with regard to it. As the Court attempted to make plain to the Plaintiffs, filing a motion regarding matters in *Lomeli* should be filed under the *Lomeli* caption. It's unclear how the Plaintiffs sought enforcement of that Stipulation in this case when the underlying theory of their suit is action for declaratory, injunctive *prospective* relief, but the fact that they sought enforcement under this case rather than the original case to which the Stipulation applies is fatal to this claim.

Roberts, Order Granting Defendant's [sic] Mot. to Dismiss, at 14:2-9 (October 17, 2013); *see also Roberts*, Second Amended Order Denying Emergency TRO, at 9:18 – 10:5 (August 21, 2013). Even if the Stipulation did apply, it did not constitute an agreement by Defendants that the Tribe would cease all disenrollment proceedings.[10] On the contrary, the Stipulation only concerned disenrollment proceedings for those individuals represented by Galanda Broadman as of April 12, 2013. *Lomeli*, Hurley Decl., at ¶9 and Exh. 3.

d. *The Council has held special meetings in accordance with the Bylaws.*

Plaintiffs allege that Defendant Kelly has convened special meetings in violation of Article II of the Bylaws and Article III, Section 2 of the Constitution. Compl. 11:9-14. The Bylaws do not specify where a special meeting must take place, and the Bylaws do not demand physical presence at a special meeting. Article III, Section 2 of the Constitution merely states the composition of the Tribal Council. The Council has

[10] Even if the Stipulation and *Ex parte Young* apply in this case, Plaintiffs could not obtain their requested relief, because "[i]t is well established that *Ex parte Young* does not permit individual officers of a sovereign to be sued when the relief requested would, in effect, require the sovereign's specific performance of a contract." *Tamiami Partners, Ltd. ex rel. Tamiami Dev. Corp.*, 177 F.3d at 1226.

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discretion to set its own procedures, and Plaintiffs' allegations related to those procedures raise nonjusticiable political questions. *See Const.* art. VI, § 1(J); discussion *infra* Section D. Defendants have acted within the scope of their authority by calling special meetings pursuant to tribal law.

e. *Defendants have properly employed counsel.*

Plaintiffs claim that Defendants have unlawfully employed counsel, because the Secretary has not approved of the choice of counsel or the fee arrangements. Compl. 11-12. The Constitution gives the Council the authority to "employ attorneys of record or representatives, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior." *Const.* art. VI, § 1(D).

The Tribe has the authority to interpret its Constitution. When the Constitution was enacted, federal law required Secretarial approval of the Tribe's counsel and fee agreement, but 25 U.S.C. § 81 has been repealed in relevant part. The related regulations, 25 C.F.R. §§ 88-89 have also been reserved—except as to the Five Civilized Tribes. Moreover, 25 U.S.C. 458cc(h)(2) states that 25 U.S.C. §§ 81 and 476 do "not apply to attorney and other professional contracts by Indian tribal governments participating in Self-Governance under this part." Likewise, 25 U.S.C. § 450l(c)(b)(15)(A) states that 25 U.S.C. §§ 81 and 476 do "not apply to any contract entered into in connection with this Contract." This litigation is connected to the Tribe's self-determination functions and contracts, which means federal law does not require Secretarial approval of counsel or the fee agreement. Since the federal law underlying

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Article VI, Section 1(D) of the Constitution no longer applies, the Tribe may interpret its Constitution in a manner that avoids the futile act of requesting Secretarial approval. On October 8, 2013, the Council approved Resolution 13-156, which interprets Article VI, Section 1(D) "as not requiring submission to BIA or Secretarial approval of the Nooksack Indian Tribe's 'choice of counsel' and 'fixing of fees'...." Decl. of R. George, Exh. A.

Additionally, Plaintiffs lack standing to raise this claim. The federal Supreme Court has found that:

> a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 573-74 (1992); *see also United States v. Richardson*, 418 U.S. 166 (1974) (dismissing a taxpayer suit alleging that the federal government's failure to disclose the Central Intelligence Agency's expenditures violated the federal Constitution). Plaintiffs stand in the same position as every tribal member in alleging that the Council's choice of legal counsel and fee agreements violates the Constitution; Plaintiffs allege only a "generally available grievance." *See id.* The Council has properly employed counsel to defend itself, the Tribe, and tribal officials against this litigation, and Plaintiffs lack standing.

f. *Secretary St. Germain and Councilmember Roberts were conflicted out of the August 8, 2013 special meeting, and Defendant Kelly rightly abstained from voting.*

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The Council met on August 8, 2013 to vote on the Disenrollment Procedures and the automatic disenrollment of certain individuals who failed to timely request a meeting with the Council. Decl. of R. George ¶4. Since the meeting concerned the disenrollment proceedings and Secretary St. Germain and Councilmember Roberts are potential disenrollees, the Council excused them under Title 65, the Conflict of Interest and Nepotism Code. *Id.* Six members of the Council were present at the meeting, which constituted a quorum under Article II, Section 4 of the Bylaws. As long as the quorum standard is met, the Council "may proceed to transact any business that may come before it." Bylaws, art. II, § 4. The Council properly considered the business before it on August 8, 2013.

Plaintiffs also allege that Defendant Kelly violated the Bylaws[11] by abstaining from voting. Compl. 12:7-10. Article I, Section 1 of the Bylaws states that it is the "duty of the chairman to preside at all meetings of the tribal council. He shall have a vote only when a tie occurs." No law prohibits a chairperson from abstaining. On the contrary, a chairperson may abstain or decide not to be counted at all. To abstain is to explicitly refrain from voting. *See* Black's Law Dictionary 8 (7th Ed. 1999) (defining abstain as "[t]o refrain from doing something"). Defendant Kelly properly abstained from voting during the August 8, 2013 special meeting, because there was no tie. *See* Decl. of R. George ¶4.

[11] Plaintiffs assert that Article II, Section I of the Bylaws prohibits the Chairman from voting or abstaining, but Article II, Section I only concerns assembling the Council after an election and appointing a sergeant-at-arms.

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g. *The Disenrollment Procedures do not need Secretarial approval.*

Plaintiffs allege that the Disenrollment Procedures violate the Constitution, because they were not approved by the Secretary. Compl. 15:6-17. Plaintiffs base their allegations on Article II, Section 2 of the Constitution, which states that the "Tribal Council shall have the power to enact ordinances in conformity with this constitution, subject to the approval of the Secretary of the Interior, governing future membership in the tribe, including adoptions and loss of membership." The Constitution only requires ordinances governing membership to be approved by the Secretary. There is no approval requirement for mere procedures.

Here, the Procedures do not alter Title 63, which has been approved by the Secretary, and the Procedures do not impose any substantive requirements. The Procedures simply provide detail as to the process of one stage of the disenrollment proceedings—the meetings—in order to avoid confusion. The Constitution grants the Tribal Council the authority to "adopt resolutions regulating the procedures of the tribal council itself…[,]" and this authority allowed the Council to adopt the Disenrollment Procedures. *Const.*, art. VI § 1(J).

B. Plaintiffs Fail to State a Claim Upon Which Relief Can Be Granted.

Plaintiffs' claims fail to state a claim upon which relief can be granted under FRCP 12(b)(6). A pleading must include a "short and plain statement of the claim showing that the pleader is entitled to relief." FRCP 8(a)(2). The federal Supreme Court recently explained that where a petition's "well-pleaded facts do not infer more than the

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mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (quoting FRCP 8(a)(2)). A pleading that merely contains "'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

In order to survive a Rule 12(b)(6) motion to dismiss, factual allegations in the pleading "must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true . . . ." *Twombly*, 550 U.S. at 555. That is, a petition must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). The *Iqbal* Court clarified that "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* There must be more than "a sheer possibility that a defendant has acted unlawfully." *Id.*

While courts assume factual allegations in a complaint are true, conclusions of law disguised as fact and unwarranted inferences of fact are not accepted as true – nor are they viewed in the light most favorable to the plaintiffs. *Newport News Shipbuilding & Dry Dock Co. v. Schauffler,* 303 U.S. 54, 57 (1938); *Western Mining Council v. Watt,* 643 F.2d 618, 624 (9th Cir. 1981) ("[w]e do not, however, necessarily assume the truth of legal conclusions merely because they are cast in the form of factual allegations."). Here Plaintiffs' facts do not present cognizable claims, because there is no redressable

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wrongdoing.

As explained above, the Council validly rejected Plaintiff Rapada's Recall Petition on October 22, 2013, and the Council informed Plaintiff Rapada of the invalidity of the Petition and the reasons for invalidity within five days of October 21, 2013. Decl. of R. George ¶6; Decl. of Service at 1 and Exhs. A-B. While the Council's determination on the Petition was one day late, Plaintiffs have no remedy. Neither Title 60 nor the Constitution allows a Petition to be deemed valid if the Council does not make a timely determination, and the Council's decision as to a petition's validity is final. Title 60, § 60.03.050(A); *Const.* art. V, § 4(A). Plaintiffs seek retrospective relief, which is barred even if *Ex parte Young* applied to this case. *See* discussion *supra* Section A.

Similarly, Plaintiffs have not violated any law by not yet scheduling special meetings requested by Secretary St. Germain, Councilmember Roberts, and 27 tribal members or by conducting special meetings telephonically. There is no set timeframe for scheduling special meetings under Article II, Section 5 of the Bylaws. The Bylaws do not require in-person special meetings, and the Council may determine the time and place of its meetings with public safety in mind. *See Lomeli*, Amended Order Granting Defendants' Motion to Dismiss Second Amended Complaint at 18:10-12.

Plaintiffs fail to state a claim upon which relief can be granted related to the Disenrollment Procedures and the employment and fee agreements of the Tribe's legal counsel, because Secretarial approval is not necessary. As explained above, Article II, Section 2 of the Constitution only requires Secretarial approval for ordinances governing

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the loss of membership and not for mere procedures clarifying Title 63's requirements. On October 8, 2013, the Council passed Resolution 13-156, which interprets Article VI, Section 1(D) of the Constitution. Decl. of R. George ¶5. Federal law no longer requires Secretarial approval of the Tribe's choice of counsel or fee agreements. *See* discussion *supra* Section A. In light of the change in federal law, the Council interprets the Constitution as not requiring Secretarial approval of the employment and fee agreements of the Tribe's legal counsel. There is no violation of law here.

The Council has fulfilled its responsibility under the Constitution and Title 63 by disenrolling Plaintiffs Nadine Rapada, Rose Hernandez, Cody Narte, and Kristal Trainor. Plaintiffs' interpretation of the March 20, 2013 Stipulation is a legal conclusion and not a factual allegation, which means this Court need not assume its truthfulness. *See Newport News Shipbuilding & Dry Dock Co.*, 303 U.S. at 57; *Western Mining Council*, 643 F.2d at 624. Title 63 requires the automatic disenrollment of a person subject to disenrollment who fails to timely request a meeting with the Council. Title 63, § 63.04.001(B)(2). These four, disenrolled Plaintiffs were subject to disenrollment and failed to timely request meetings with the Council. *Lomeli*, Hurley Decl. ¶9. Additionally, Plaintiffs have no remedy, because disenrollment determinations by the Council are final, and this Court has no jurisdiction over them. *See* discussion *supra* Section A.

Plaintiffs' allegations fail to state a claim upon which relief can be granted under FRCP 12(b)(6).

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C. Plaintiffs Failed to Exhaust Administrative Remedies.

Alternatively, if this Court finds that it has jurisdiction over this case and Plaintiffs stated a valid claim, this Court should nevertheless dismiss this case, because Plaintiffs did not exhaust administrative remedies.[12] The Hoopa Valley Court of Appeals held that the Trial Court violated the law when it took jurisdiction of a termination dispute—contravening the administrative process set up for termination disputes. *Matilton v. Hoopa Valley Tribe*, 7 NICS App. 65, 69 (2005). Despite an eight-year delay to hear the termination dispute, the Hoopa Court of Appeals found that the statutory scheme required exhaustion of administrative remedies. *Id*; *see also Hoopa Valley Tribe v. Grant*, 5 NICS App. 142 (1999) (requiring exhaustion of administrative remedies in a different personnel matter).

Under the tribal exhaustion rule, the federal Supreme Court requires that federal courts abstain from hearing certain cases related to tribes until the plaintiff has exhausted his or her tribal court remedies. *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845 (1985); *Iowa Mut. Ins. Co. v.LaPlante*, 480 U.S. 9, 17 (1987). This stems from the fact that tribes have the right "to make their own laws and be ruled by them." *Williams v. Lee*, 358 U.S. 217, 220 (1959). As one Ninth Circuit Court stated, "[t]he Supreme Court's policy of nurturing tribal self-government strongly discourages federal courts from assuming jurisdiction over unexhausted claims." *Selam v. Warm Springs*

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[12] Plaintiff Cody Narte requested reconsideration of his disenrollment on September, 12, 2013. *Lomeli,* Fourth Decl. of C. Bernard, at ¶23. While Plaintiff Narte has not failed to exhaust his administrative remedies, his claim is not ripe, as the reconsideration process must be allowed to run its course.

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Tribal Corr. Facility, 134 F.3d 948, 953 (9th Cir. 1998) (holding that a habeas petitioner waived a claim not presented to the tribal court of appeals). The Tenth Circuit also requires exhaustion under the Indian Reorganization Act. *United Tribe of Shawnee Indians v. United States*, 253 F.3d 543, 550-51 (10th Cir. 2001). Tribes are sovereign governments, and as such, tribal processes must be exhausted before the next level of review.

Here, Plaintiffs have not exhausted their remedies with the Tribal Council on their claims related to the Recall Petition and disenrollment of Plaintiffs Nadine Rapada, Rose Hernandez, and Kristal Trainor. With respect to the Recall Petition, Plaintiff Rapada had to file his request for reconsideration within five days of receipt of the notice of invalidity, but to date, he has not done so. Title 60, § 60.03.050(A); Decl. of A. Johnny. Since Plaintiff Rapada did not timely file a request for reconsideration, he failed to exhaust his administrative remedies. The Council's determination on his recall petition is final, and this Court cannot offer another remedy. The Court must abide by the recall process – not least because this process provides for due process.

Plaintiffs Nadine Rapada, Rose Hernandez, and Kristal Trainor failed to timely request reconsideration of their disenrollments, which means the disenrollments are now final. *See* Title 63, § 63.04.001(B)(2). The Tribal Court does not have jurisdiction over the Council's disenrollment determinations. Title 63, § 63.00.003. The exhaustion doctrine demands dismissal of these claims.

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D. Plaintiffs Raise Nonjusticiable Political Questions.

This Court should refrain from reviewing matters concerning the Tribal Council's rules of internal procedure, because such matters are nonjusticiable political questions. In *Baker v. Carr*, the seminal case regarding the political question doctrine, the federal Supreme Court stated that "prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department...." 369 U.S. 186, 217 (1962).

In *U.S. v. Ballin*, the Supreme Court reviewed the rules of the House of Representatives to determine whether a valid vote occurred. *U.S. v. Ballin* 144 U.S. 1 (1892). In reviewing the power of the House of Representatives, the Court found that pursuant to the federal Constitution, "each House may determine the Rules of its Proceedings" as long as there is not an obvious violation of fundamental rights in the process. *Id.* at 5; *see also In re Application of Lamb*, 169 A.2d 822, 832-34 (N.J. 1961) (holding that unless there is "an obvious violation of fundamental rights," we owe no duty or obligation to intervene). Regardless of the wisdom or usefulness of the rule the House adopted, the Court held that "[t]he power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and, within the limitations suggested, absolute and beyond the challenge of any other body or tribunal." *Ballin*, 144 U.S. at 5; *see also Abood v. League of Women Voters of Alaska*, 743 P.2d 333, 349-40 (Alaska 1987) (holding that it is the legislature's prerogative to make, interpret, and enforce its own procedural rules, and the judiciary

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cannot compel the legislature to exercise a purely legislative prerogative). Legislatures may also disregard their own rules and still avoid judicial review. *State ex rel. City Loan & Sav. Co. v. Moore*, 177 N.E. 910, 911 (Ohio 1931) ("[h]aving made the rule, it should be regarded, but a failure to regard it is not the subject-matter of judicial inquiry").

Similarly, the New Hampshire Supreme Court held that the legislative body's determination to close a meeting, contrary to state law, was a matter of the legislature's adherence to its own rules and a matter entirely within legislative control and discretion. *Hughes v. Speaker of the New Hampshire House of Representatives* 876 A.2d 736, 746 (N.H. 2005); *see also State ex rel. La Follette v. Stitt*, 114 Wis.2d 358, 338 N.W.2d 684, 687 (Wis. 1983) ("If the legislature fails to follow self-adopted procedural rules in enacting legislation, and such rules are not mandated by the constitution, courts will not intervene to declare the legislation invalid"). Further, the Vermont Supreme Court held that the legislature is the sole judge of whether a member should be disqualified due to a conflict of interest. *Brady v. Dean*, 790 A.2d 428, 432 (Vt. 2001).

Here, Article VI, Section 1(J) of the Constitution reserves to the Council alone the authority to adopt internal procedures, and questions concerning the Council's application and interpretation of those procedures are nonjusticiable political questions. Plaintiffs' claims for equitable relief regarding holding special meetings telephonically and excusing members for conflicts of interest concern only the Council's internal procedures, and these claims should be dismissed as nonjusticiable political questions.

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E. Plaintiffs Fail to Establish the Right to a Temporary Restraining Order.

The standard for issuing a TRO is essentially the same as that for issuing a preliminary injunction. *Beaty v. Brewer*, 649 F.3d 1071 (9th Cir. 2011). To be entitled to injunctive relief, a movant must demonstrate (1) that s/he is likely to succeed on the merits, (2) that s/he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his or her favor, and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008); *National Meat Ass'n v. Brown*, 599 F.3d 1093, 1097 (9th Cir. 2010); *see also Beardslee v. Woodford*, 395 F.3d 1064, 1067 (9th Cir. 2005). The burden of persuasion falls on the movant, and the movant must make "a clear showing." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (*per curiam*). An injunction is an "extraordinary remedy never awarded as of right." *Winter*, 555 U.S. at 24.

A plaintiff may obtain a preliminary injunction by demonstrating either: "(1) a likelihood of success on the merits and the possibility of irreparable injury, or (2) the existence of serious questions going to the merits and the balance of hardships tipping in [the movant's] favor." *MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 516 (9th Cir. 1993). Plaintiffs cannot meet their high burden.

There is no likelihood that Plaintiffs will prevail on the merits. Black's Law Dictionary defines the "likelihood-of-success-on-the-merits test" as "[t]he rule that a litigant who seeks [preliminary relief] must show a reasonable probability of success . . . ." Black's Law Dictionary 1012 (9th ed. 2009). Here, Defendants are immune from suit,

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and the *Ex parte Young* doctrine does not strip them of immunity. *Supra* Section A. This Court lacks jurisdiction to review the Council's determination on the Recall Petition under Section 60.03.050(A) of Title 60. In addition, Plaintiffs failed to state a claim upon which relief can be granted. *Supra* Section B. Plaintiffs also failed to exhaust administrative remedies. *Supra* Section C.

Plaintiffs have not demonstrated irreparable harm. The alleged irreparable injury "must be both certain and great; it must be actual and not theoretical." *Wis. Gas Co. v. Fed. Energy Regulatory Comm'n*, 758 F.2d 669, 674 (D.C. Cir. 1985); *see also Associated General Contractors of California, Inc. v. Coalition for Economic Equity*, 950 F.2d 1401 (9th Cir. 1991) (a plaintiff seeking injunctive relief must do more than merely allege imminent harm sufficient to establish standing; s/he must demonstrate immediate, threatened injury as a prerequisite). Plaintiffs make conclusory allegations of irreparable harm but fail to include any facts demonstrating actual harm. Additionally, Plaintiffs cannot be irreparably harmed when they failed to exhaust administrative remedies and could submit a new recall petition at any time.

The public interest also weighs heavily against granting injunctive relief here. Plaintiffs ask this Court to enjoin Defendants from interfering with the holding of a special recall election against Defendant Kelly, yet there is no pending special recall election. The Council rightly determined that Plaintiff Rapada's Recall Petition failed to comply with Title 60 and was therefore invalid. Decl. of R. George, Exh. G. Only a valid petition results in a special election. Title 60, § 60.03.050 (B). Thus, Plaintiffs

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request that this Court change the Council's final determination as to the validity of Plaintiff Rapada's Recall Petition, which constitutes a request that the Court act beyond its jurisdiction. The public interest certainly does not favor extra-jurisdictional action.

Lastly, there are no serious questions going to the merits, and the balance of equities tips in Defendants' favor when Plaintiffs ask the Court to act beyond its jurisdiction. Plaintiffs fail even the less stringent test for injunctive relief.

IV. CONCLUSION

For the foregoing reasons, Defendants request that the Court deny Plaintiffs' Motion for TRO and grant Defendants' Motion to Dismiss Plaintiffs' Complaint.

Respectfully submitted this 4th day of November, 2013.

_____

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