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vs.

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE LAS	VEGAS TRIBE OF PA	IUTE	
INDIANS,	, a federally recognized l	Indian	tribe

CASE NO.:

Plaintiff,

COMPLAINT FOR DECLARATORY RELIEF

CHRISTOPHER W. PHEBUS, an individual,

Defendant.

The Las Vegas Tribe of Paiute Indians (the Tribe), as and for its Complaint for Declaratory Relief against Christopher W. Phebus (Phebus), complains and alleges as follows:

PARTIES AND JURISDICTION

- The Tribe is a federally recognized Indian tribe that was organized pursuant to the 1. Indian Reorganization Act, 25 U.S.C. §§ 461 et seq., and a Tribal Constitution approved by the Tribe on June 24, 1970.
- 2. Phebus is a citizen of the State of Nevada, a former member of the Tribe, and a resident on the Las Vegas Paiute Colony, located near downtown Las Vegas, Nevada.

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3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 2201.

GENERAL ALLEGATIONS

- 4. Phebus was enrolled as a member of the Tribe between 1983 and 1999.
- 5. In July 1999, the Las Vegas Paiute Tribal Council voted to disenroll approximately one-fourth of the then-tribal members, including Phebus.
- 6. Following his disenrollment, Phebus has been cited or arrested by the Tribal police and convicted and/or sentenced by the Las Vegas Paiute Tribal Court (the Tribal Court) numerous times for engaging in illegal and/or socially inappropriate conduct while attempting to persuade the Tribal Court, Tribal members, Tribal police officers, and Tribal Council members that his disenrollment was improper. He has routinely disregarded the orders of the Tribal Court, which has resulted in several jail sentences for contempt, and at least one trespass order that barred him from being present on Tribal property for a period of two years.
- 7. Phebus has consistently maintained that his disenrollment is a barrier to Tribal Court jurisdiction. On at least two occasions, however (most recently in October 2011), the Tribal Court expressly determined that it has criminal jurisdiction over Phebus pursuant to United States v. Bruce, 394 F.3d 1215 (9th Cir. 2005), based on his status as an Indian.
- The Las Vegas Paiute Tribal Law and Order Code (the Tribal Code) authorizes the 8. creation of the Tribal Court. At all relevant times, the Tribal Court acted within the jurisdiction conferred upon it by the Tribe.
- The Tribe filed a criminal complaint in November 2012, charging Phebus with 9. violating Tribal Code Section 5-60-020 (Improper Influence in Official Matters), based on Phebus' threats to throw a rock through the window of the office of Don Belcher, the Tribal Chief of Police. Following a trial to the bench in December 2012, during which Phebus expressly admitted all of the requisite elements of the crime, the Tribal Court adjudicated Phebus guilty as charged and imposed a six-month jail sentence. Phebus was subsequently remanded to the custody of the Bureau of Indian Affairs.

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- 10. In January 2013, Phebus filed a motion in the Tribal Court, wherein he requested that the sitting Tribal Court judge recuse himself from all future matters involving Phebus. The Tribal Court treated the motion as a notice of appeal from the judgment of conviction.
- 11. Pursuant to the Tribal Code, the Tribe convened a three-member panel of judges (the Tribal Court of Appeals) for purposes of hearing Phebus' appeal. The judges included a former California state court and tribal judge, a Wyoming tribal judge, and a Utah appellate court judge. All of the judges had significant experience adjudicating legal matters involving Indians.
- 12. Following a hearing at which Phebus and the Tribe presented their respective arguments regarding the sufficiency of conviction and the appropriateness of the sentence, the Tribal Court of Appeals issued a written decision wherein it concluded that the Tribal Court did not have criminal jurisdiction over Phebus because he is not a member of the Tribe, nor is he enrolled in any other federally recognized Indian tribe. A copy of the decision is attached as Exhibit 1.
- 13. The Tribal Court of Appeals is the court of last resort for criminal legal matters that are initiated in the Tribal Court; neither the Tribal Constitution nor the Tribal Code provides for an appeal or other review of a decision of the Tribal Court of Appeals in such matters.
 - 14. The Tribe has exhausted all available Tribal remedies.

FIRST CLAIM FOR RELIEF **Declaratory Relief**

- 15. The Tribe repeats, realleges, and incorporates by reference all of the allegations contained in paragraphs 1-15 above, as though set forth in full and at length.
- An actual, ripe, and justiciable controversy exists between the parties regarding the 16. Tribal Court's criminal jurisdiction over Phebus and other individuals who are not enrolled in any federally recognized tribe, but who satisfy the definition of "Indian" under the Indian Civil Rights Act, 25 U.S.C. §§ 1301, et seq.

WHEREFORE, the Tribe prays for relief as follows:

1. For a declaration that the Tribal Court has criminal jurisdiction over Phebus and all other individuals who satisfy the definition of "Indian" under the Indian Civil Rights Act; and

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McDONALD CARANO WILSON LLP

By:

For such other and further relief as the Court deems just and proper.

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Attorneys for the Las Vegas Tribe of Paiute Indians

2.

Dated: October <u>30</u>, 2013.