



IN THE PASKENTA BAND OF NOMLAKI INDIANS
TRIBAL COURT

GERALDINE FREEMAN and INES CROSBY,

Plaintiffs,

v.

ANDREW FREEMAN, et al.,

Defendants.

NO. PTCV-14-001

MOTION FOR PRELIMINARY
INJUNCTION AND DEFAULT
JUDGMENT

**Preliminary Injunction Hearing: May
29, 2014 at 3:00 pm**

**Requested Default Judgment Hearing:
June 20, 2014**

I. FACTS

Plaintiffs hereby incorporate the facts and evidence offered with their Motion for Temporary Restraining Order. Since that motion was filed the following has transpired, in violation of the Temporary Restraining Order ("TRO") issued by this Court on May 9, 2014:

- On May 10, 2014, Defendants purported to hold a General Council meeting, even though pursuant to Resolution No. 2004-0433, the "General Council Special Meeting [was] canceled." See Second Declaration of Geraldine Freeman in Support of Temporary Restraining Order ("Decl."), Exhibits A-B. Defendants also violated the TRO's mandate that Defendants not "gather[] at Carlino's Event Center at Rolling Hills Casino on May 10, 2014." *Id.*

- On or about May 10, 2013, Defendants purported to create their own court and issue orders restraining Plaintiffs, in violation of the TRO's mandate that Defendants not "interfere[] in Paskenta Tribal governmental . . . affairs, including . . . purporting to take action

MOTION FOR PRELIMINARY INJUNCTION AND DEFAULT
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1 as members of the Tribal Council.” *Id.*, Ex. C. Defendants have stated that *this* Court is a
2 “sham.” *Id.*

3 • In early May 2014, Defendant Chuck Galford, a non-Indian lawyer practicing in
4 Portland, Oregon, continued in his attempt to have the Federal Aviation Administration
5 acknowledge a fabricated bill of sale that would transfer title to an aircraft owned by the Tribe to
6 some new entity known as N611MP, LLC. Mr. Galford’s attempts to steal the Tribe’s jet
7 violated the TRO’s mandate that he not “interfere[] in Paskenta Tribal governmental or business
8 affairs, including, but not limited to, purporting to hold [himself] out, or purporting to take
9 action, as agent[] of the Tribe or its subordinate entities.” *Id.*, Ex. D.

10 • On May 14, 2014, Defendants’ attorney sent a “cease and desist” letter to one of
11 the Tribal Council’s hired investigators, Dennis Joyce, requesting that he quit contact with the
12 persons who are now illegally running the Tribe’s Casino. This letter was issued, again, in
13 violation of the TRO’s mandate that Defendants not “interfere[] in Paskenta Tribal governmental
14 . . . affairs, including . . . purporting to take action as members of the Tribal Council.” *Id.*, Ex. E.
15 Of equal concern, Defendants are concealing their wrongdoing at the Casino.

16 • Defendants continue to exclude Tribal Councilpersons David Swearinger, Leslie
17 Lohse, Geraldine Freeman, and Allen Swearinger, from the Casino, in defiance of the April 21,
18 2014 letter from the National Indian Gaming Commission to Andrew Freeman, expressing grave
19 concern that the Tribal Council “remains excluded from the premises” and that gaming occurring
20 at the Rolling Hills Casino “is not being conducted by the Band—that is, by the governmental
21 authority recognized by the Secretary of the Interior—or by an entity licensed by the tribal
22 government pursuant to NIGC regulations.” Complaint, Appendix C; Decl., at 2.

23 • On May 16, 2014, the Tribe Council issued a Notice of Rolling Hills Casino
24 Closure pursuant to Tribal Council Resolution No. 2004-0435 and the Tribal Gaming
25 Commission’s facility licensed revocation letter dated May 15, 2014. *Id.* Exs. F, G, H.¹ The
facility license revocation letter explains that the Commission, “with outside assistance from
former Federal Bureau of Investigation agents, has preliminary confirmed or revealed the
following improper or illegal activities at Rolling Hills Casino”:

¹ Plaintiffs will likely seek an order of contempt soon.

- An attempt to draw down the balance of the Tribe's \$20,000,000 line of credit with Wells Fargo Bank, on April 18, 2014;
- The cashing of Rolling Hills Casino employee paychecks at the casino cage since late April 2014;
- The issuance of \$100 in cash to Paskenta Tribal members from the casino cage, on May 10, 2014;
- The recent cancellation of the Loomis armored car transport service, which for several prior years the Tribe used to transport cash deposits from the Rolling Hills Casino to secure financial repositories; and
- The transportation of large amounts of cash out of Rolling Hills Casino and into a white Sport Utility Vehicle on several mornings at approximately 4:00 a.m., to an off-site location where the cash transferred to other persons.

The Council-issued casino closure notice provides that: "Any person who enters or remains at the Rolling Hills Casino is subject to":

- Civil citation for trespass;
- Exclusion from the casino and all other Paskenta Indian country lands and properties;
- Paskenta Tribal law enforcement physical detention and removal, assessment of civil fines, seizure of security, and citation into the Paskenta Band of Nomlaki Indians Tribal Court; and
- Referral to United States and California state authorities for arrest and criminal prosecution.

Id., Ex. G. As with this Court's TRO, Defendants ignore the Council's governmental actions.

II. LEGAL STANDARD

P.T.C. § 7.11.1 lays out the legal standard for the issuance of a preliminary injunction:

A party may ask the Judge for a preliminary injunction that prohibits or requires particular action by another party to maintain the *status quo* until the Tribal Court has a chance to reach a final decision in the case. The Tribal Court shall grant the order if the person requesting it shows that there is a good chance that he or she will succeed on the merits and that he or she will suffer permanent harm if the injunction is not issued. Unless otherwise stated in the injunction, a preliminary injunction remains effective until final judgment in the case.

1 And under P.T.C. § 7.11.2,

2 Generally, the Judge should not issue an injunction unless the party to be enjoined
3 first has notice and an opportunity to be heard in Tribal Court. The Judge,
4 however, may issue a temporary restraining order prohibiting or requiring
5 particular action by a party to keep things as they are pending the Tribal Court's
6 final decision without prior notice and hearing; but only when the requesting party
7 shows by sworn statement or oral testimony that he or she will suffer permanent
8 harm if the order is not issued before the opposing party can be notified and
9 heard, and that he or she reasonably tried to notify the opposing party of when the
10 request would be made.

11 P.T.C. § 7.12.1 lays out the legal standard for the issuance of a default judgment as
12 follows:

13 A defendant's failure to file and serve an answer upon the plaintiff within the
14 thirty (30) day answering period is a default, and provides grounds for judgment
15 against the defendant granting the relief requested in the complaint. The Tribal
16 Court shall not issue a default judgment, however, unless the plaintiff makes a
17 written motion for a default judgment and serves a copy of the motion on each
18 defendant. The motion for default judgment shall state a time, no sooner than
19 three (3) days after service of the motion, when the plaintiff will argue the motion
20 to the Judge. If the defendant files an answer to the complaint at or before the
21 time that the motion is to be argued to the Judge, the Judge shall not grant a
22 default judgment, and the matter shall proceed as though answered on time. If the
23 defendant does not answer by that time, a default judgment shall be entered.

24 As to relief granted in the default judgment, generally the relief requested in the
25 complaint is granted. *Id.* The Judge may, however, "refuse to grant the relief requested by the
plaintiff if granting the relief would be contrary to Tribal or other applicable law or would be
unjust." P.T.C. § 7.12.2.

26 III. MOTION FOR PRELIMINARY INJUNCTION

27 A. Plaintiffs are Likely to Succeed on the Merits.

28 a. The governing body of the Tribe is its **five-person** Tribal Council.

29 The Tribe is governed by a five-person Tribal Council, not merely by its Chairperson.

1 Const., art. III, §1. The Tribal Council, acting in concert, possesses the constitutional authority
2 to, among other responsibilities: (1) enter into contracts and agreements, and to conclude those
3 contracts and agreements; (2) promote the health and general welfare of the Tribal members; (3)
4 to exclude unwanted persons from tribal lands; (4) manage the Tribe's economic affairs and
5 administer Tribal funds; (5) initiate legal action on behalf of the Tribe; (6) regulate subordinate
6 organizations, such as the Rolling Hills Casino and the Rolling Hills Health Clinic and their
7 agents; (7) review and rescind any action exercised by the Tribe's subordinate entities; and (8)
8 preserve, protect, and uphold the Tribe's Constitution. Const., art. VI, § 1. Article VI, Section 2
9 of the Tribe's Constitution provides that "[t]he Tribal Council" — not the Tribal Council
10 Chairperson alone — is the entity that possesses the "powers necessary to implement specific
11 provisions of this Constitution and to effectively govern the affairs of the Band."
12

13
14 The Chairperson, on the other hand, presides at all meetings of the Tribal Council and the
15 General Council and signs all contacts, leases, or other documents approved by the Tribal
16 Council or the General Council. Const., art. VIII, § 1. Further, the Chairperson generally
17 supervises Tribal officers, employees, and committees of the Tribe to see that duties delegated to
18 those entities by the Tribal Council are properly performed. *Id.* Nothing in the Constitution
19 grants the Tribal Council Chairperson the authority to unilaterally remove elected officers of the
20 Tribal Council, appoint new officers, or disenroll members of the Tribe.
21

22 The Chairman's unilateral actions purporting to take these steps on April 12, 2014, were
23 *ultra vires*, void *ab initio*, and as a consequence, of no legal effect. *See e.g. Honyaoma v.*
24 *Nuvamsa*, 7 Am. Tribal Law 320, 329 (Hopi Ct. App. Jan. 28, 2008) (acts taken without
25 "constitutional authority" are "without the effect or force of law"); *Tribal Ogema v. Tribal*

1 Council, No. 07-091-GC, 2007 WL 6900797, at *2 (Little River Tribal Ct. Jul. 31, 2007) (acts
2 taken without constitutional authority are “void and ha[ve] no effect”).

3 In order to ensure the health and general welfare of the Tribe, Mr. Freeman must be
4 enjoined from purporting to exercise those powers explicitly delegated to *the five-person* Tribal
5 Council per Article VI, Section 1 of the Tribe’s Constitution and from otherwise acting beyond
6 the scope of his constitutional authority. Likewise, Ambrosia Rico, Andrew Alejandre, and
7 Latisha Miller must be enjoined interfering in any Tribal governmental affairs by holding
8 themselves out as so-called “Tribal Councilpersons.” The Tribal Council has not delegated any
9 governmental authority to these persons; they are fraudulently impersonating government
10 officials.
11

12 b. Defendants have been excluded from all tribal lands.
13

14 By Resolution No. 2014-0424, the Tribal Council has taken action to protect the Tribe's
15 sovereign lands and operations from continued harm. To that effect, the Tribal Council has
16 excluded from all lands described in Article I of the Tribal Constitution the following
17 Defendants: Bruce Thomas, Chuck Galford, Terry Contreras, Jeff Realander, Gary Poyner,
18 Dennis Kinney, Kate Grissom, Bob Cloud, Dan Largent, Art Felix, Lori LaGrande, Vicky Roy,
19 Deanna Drake, Dustin Wayne, David Carter, Mary Sweet, Russell Dennis, Nobadel Davis, Paul
20 Lay, Hal Hensley, Anthony Boerner, Nathan Platte, Sherry Freeman, and Amy Gonczeruk.
21 Article I of the Tribal Constitution extends the Tribe’s jurisdiction to “all lands” that the Tribe
22 possesses “legal or beneficial title.”²
23

24
25 ² This includes, but is not limited to: (1) the Rolling Hills Casino outbuildings, parking lots, and grounds located at 2655 Everett Freeman Way, Corning California; (2) the golf course, clubhouse, parking lot, related facilities at the Rolling Hills Casino known as “Sevillano Links”; (3) the hunting and fishing club, clubhouse and facilities located

1 Plaintiff Geraldine Freeman is a Paskenta Tribal member, the Tribe's elected Tribal
2 Council Secretary, and a member of Board of Directors for the Rolling Hills Health Clinic and
3 Dental Lab. Having brought this suit in her own personal and official capacity, and as *parens*
4 *patriae* on behalf of the Paskenta Tribe's entire membership, Ms. Freeman has a clear legal and
5 equitable right to be free from interference on Tribal lands from the above-named excluded
6 persons and a well-grounded fear of immediate invasion of that right given Defendants' threats
7 to illegally remove *her* from those lands.
8

9 Plaintiff Ines Crosby is a Paskenta Tribal member and Chair of the Board of Directors for
10 the Rolling Hills Health Clinic and Dental Lab. Plaintiff Crosby, too, has a clear legal and
11 equitable right to be free from interference on Tribal lands from the above-named excluded
12 persons and a well-grounded fear of immediate invasion of that right given Defendants' threats
13 to illegally remove *her* from those lands.
14

15 Section 8.6 of the Paskenta Tribal Law and Order Code specifically grants to private
16 parties the authority to commence a citizen suit against trespassers. *See* P.T.C. § 8.6 ("A private
17 person may commence an action pursuant to . . . this Code."). Clearly, Resolution No. 2014-
18 0424 decrees these Defendants as trespassers. *See* P.T.C. § 8.3 (a person commits the civil
19 infraction of trespass if he or she unlawfully enters or remains on Tribal lands); P.T.C. § 8.5
20

21 to the west of Golf Course operating under the name of "Clear Creek Sports Club at Rolling Hills," which includes
22 1,400 acres of hunting ground, a clubhouse and lodging facilities, a trap rang firearms range, and a pond; (4) two
23 hotels that are attached to immediately adjacent to the Casino, known as The Lodge Vagabond Inn and the Inn at
24 Rolling Hills; (5) an RV park located next to the Casino known as the "RV Park at Rolling Hills"; (6) a Chevron gas
25 station located next to the Rolling Hills Casino; (7) a truck stop facility located next to the Rolling Hills Casino; (8)
an equestrian facility, parking lots, and related buildings and improvement also located on the Casino grounds; (9)
the MD Barnmaster offices, sales, and display yard located at 3489 South Highway 99 West, Corning, California;
(10) an office located at 1012 South Street, Orland, California; (11) the Rolling Hills Medical Clinic located at 2540
Sister Mary Columbia Drive, Red Bluff, California; (12) the Rolling Hills Medical Clinic consisting of two separate
buildings located at 740 Solano Street and 705 East Street, Corning, California.

1 (denoting "Tribal Council Resolutions" as rendering a person's presence on Tribal lands a
2 "trespass"). A TRO must issue.

3 **B. Plaintiffs Will Suffer Irreparable Harm if the Requested Relief is Not Granted.**

4 Plaintiffs have shown that Defendants will continue to violate rights secured to Plaintiffs
5 under the Tribe's Constitution unless the requested relief is issued. Plaintiffs' constitutional
6 rights will continue to be harmed unless the requested injunctive relief is issued. "The loss of
7 these rights constitutes an irreparable injury that cannot be compensated by remedies at law."
8 *United Food & Commercial Workers Local 99 v. Bennett*, No. 11-0921, 2013 WL 1289781, at
9 *39 (D. Ariz. Mar. 29, 2013); *see also Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d
10 1046, 1059 (9th Cir. 2009) ("Unlike monetary injuries, constitutional violations cannot be
11 adequately remedied through damages and therefore generally constitute irreparable harm.");
12 *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) ("It has long been
13 established that the loss of constitutional freedoms, 'for even minimal periods of time,
14 unquestionably constitutes irreparable injury.'") (quoting *Elrod v. Burns*, 427 U.S. 347, 373
15 (1976)); 11A Wright & Miller, FED. PRAC. & PROC. § 2948.1 (2d ed. 2004) ("When an alleged
16 deprivation of a constitutional right is involved, most courts hold that no further showing of
17 irreparable injury is necessary.").

18 **C. The Balance of Equities and the Public Interest Militate in Plaintiffs' Favor.**

19 The balance of hardships tips sharply in favor of injunction for multiple reasons.
20 Plaintiffs seek to restore peace and order to the Paskenta Rancheria and to assure the non-
21 Paskenta world that their investments with Paskenta are safe and secure. Defendants,
22 conversely, seek to alter the very fabric of the Tribe, to take steps that cannot be undone, and to
23

1 change the future of all Tribal members forever. Plaintiffs have run an effective Paskenta
2 government for at least two years. An injunction preserving that status until a final judgment can
3 be rendered — by all indication at this point a default judgment, *see* Decl., Ex. G — will not
4 inconvenience Defendants, let alone cause them a hardship. Tribal members have a profound
5 interest in the even-handed constitutional application of their laws and the protection of
6 individuals from renegades and armed thugs.

8 Resolution No. 2014-0424 has explicitly and unequivocally excluded the remaining
9 Defendants from the Tribe's lands because of their aid to Mr. Freeman and the Tribal
10 Defendants' hostile takeover. For their own purposes, these Defendants have taken managerial
11 control over the Tribe's Casino and other operations, which they now run without regard to basic
12 security measures or compliance with federal, Tribal, or state law. As it stands under Resolution
13 No. 2014-0424, these Defendants have absolutely no right to step foot on these lands —
14 enjoining them from entering Tribal lands will literally have no effect upon these Defendants'
15 interests.

17 An injunction would clearly not harm the public interest. On the contrary, “[a]s a
18 practical matter, if a plaintiff demonstrates both a likelihood of success on the merits and
19 irreparable injury, it almost always will be the case that the public interest will favor the
20 plaintiff.” *Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1427 n. 8
21 (3d Cir. 1994).

23 **D. Service**

24 Pursuant to P.T.C. § 7.11.2, “[g]enerally, the Judge should not issue an injunction unless
25 the party to be enjoined first has notice and an opportunity to be heard in Tribal Court.” Here,

1 Plaintiffs have been in the process of serving Defendants for the last several weeks—and have
2 given Rosette Law Offices abundant notice since at least May 9, 2014 (Declaration of Molly
3 Jones, Exs. A-G)—but service of process has been made more difficult insofar as Defendants
4 have excluded Tribal Police Chief Clay Parker from the Casino. Decl., at 1. Proof of service
5 accompanies the filing of this Motion, and will otherwise be filed by no later than May 28, 2014.
6

7 IV. MOTION FOR DEFAULT JUDGMENT

8 Plaintiffs filed their Complaint in this action on May 5, 2014. Defendants have indicated
9 that they will not answer the Complaint because, they assert, they “ha[ve] not previously and
10 do[] not currently recognize the validity or legitimacy” of this Court; they maintain it is a
11 “sham.” Decl., Ex. G. If Defendants do not soon answer, P.T.C. § 7.12.1 mandates that “a
12 default judgment shall be entered.” Plaintiffs request that a hearing on their motion for default
13 judgment be held on June 20, 2014. Proof of service of this Motion will be provided prior to
14 June 20.
15

16 V. CONCLUSION

17 Plaintiffs respectfully request that:

18 1. Andrew Freeman, Ambrosia Rico, Andrew Alejandre, and Latisha Miller be
19 enjoined from interfering in Paskenta Tribal governmental or business affairs, including, but not
20 limited to, purporting to hold themselves out, or purporting to take action, as members of the
21 Tribal Council.
22

23 2. That Bruce Thomas, Chuck Galford, Terry Contreras, Jeff Realand, Gary
24 Poyner, Dennis Kinney, Kate Grissom, Bob Cloud, Dan Largent, Art Felix, Lori LaGrande,
25

1 Vicky Roy, Deanna Drake, Dustin Wayne, David Carter, Mary Sweet, Russell Dennis, Nobadel
2 Davis, Paul Lay, Hal Hensley, Anthony Boerner, Nathan Platte, Sherry Freeman, Amy
3 Gonczeruk, Dennis Barnes, Lynda Braeger, Maria Duby, Gretchen Allen, Jim Willis, Zak
4 Zacharia, Zaks Security One, John Does 1-100, and Jane Does 1-100, be enjoined from entering
5 or being present in any manner upon any of the lands described in Article I of the Tribe's
6 Constitution, and, further, that these Defendants be enjoined from interfering in any and all
7 Paskenta Tribal governmental or business affairs, including, but not limited to, purporting to
8 hold themselves out, or purporting to take action, as agents of the Tribe or its subordinate
9 entities.
10

11 3. That a default judgment be issued declaring that, in addition to the above, the
12 following four individuals are currently the rightful and legitimate elected officials of the
13 Paskenta Rancheria Tribal Council in accordance with Article VI, Section 1 of the Tribe's
14 Constitution:
15

- 16 1. David Swearinger, Vice-Chairman
- 17 2. Leslie Lohse, Treasurer
- 18 3. Geraldine Freeman, Secretary
- 19 4. Allen Swearinger, Member At-Large

20
21 ///

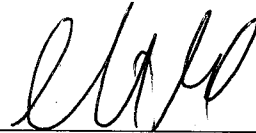
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1 and further, that Per Resolution No. 2004-0433 the position of Tribal Chairperson is currently
2 vacant.

3 DATED this 27th day of May, 2014.

4 

6 Gabriel S. Galanda

7 Scott Wheat

8 Anthony S. Broadman

9 Ryan D. Dreveskracht

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