

Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DOTTI CHAMBLIN,
Plaintiff,

vs.

TIMOTHY J. GREENE, Chairman of the
Makah Tribal Council, HONORABLE
JOHN HAUPT, Chief Judge of the Makah
Tribal Court, MORISSET, SCHLOSSER,
JOZWIAK & SOMERVILLE, A
Professional Service Corporation

Defendant.

CIVIL ACTION NO. CV14 5491BHS

DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S CIVIL RIGHTS COMPLAINT
FOR LACK OF JURISDICTION, FAILURE
TO STATE A CLAIM UPON WHICH
RELIEF CAN BE GRANTED, AND
INEFFECTIVE SERVICE OF PROCESS

MEMORANDUM OF POINTS AND
AUTHORITIES

NOTE ON MOTION CALENDAR: August 8,
2014

MOTION

Defendants move to dismiss Plaintiff's Civil Rights Complaint (Complaint) for lack of jurisdiction under Federal Rule of Civil Procedure (FRCP) 12(b)(1), failure to state a claim upon which relief can be granted under FRCP 12(b)(6), and ineffective service of process under FRCP 12(b)(5).

Plaintiff attempts to utilize the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302, to gain federal court jurisdiction, but ICRA only gives rise to federal court jurisdiction in criminal cases through habeas corpus petitions.¹ See 25 U.S.C. § 1303; *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 59, 67-70 (1978). This is not a criminal case, and Plaintiff has not filed a habeas corpus petition. There is no federal question jurisdiction under 28 U.S.C. § 1331 or diversity jurisdiction under 28 U.S.C. § 1332 here. In addition, Defendants Greene and Haupt are tribal officials who are immune from suit.

Plaintiff fails to state a claim upon which relief can be granted, because this is not a criminal case and Plaintiff has not filed a habeas corpus petition. In addition, no factual allegation shows a plausible violation of ICRA or any other law. Plaintiff prevailed in the Makah Tribal Court, as the petition for a protection order against Plaintiff was dismissed on April 28, 2014. Motion and Order to Dismiss, Exh. 1.

Plaintiff has not effected proper service of process on any Defendant under federal or state law. Plaintiff herself personally served Defendant Greene, Plaintiff left a copy of the Complaint with Defendant Haupt's clerk, and Plaintiff mailed a copy of the Complaint to Defendant Morisset, Schlosser, Jozwiak & Somerville. A party may not effect service of process under federal or state law. See FRCP 4(c)(2); Washington Civil Court Rule (CR) 4(c).

¹ ICRA applies to Tribes acting in their governmental capacity, which means it does not apply to Defendant Morisset, Schlosser, Jozwiak & Somerville (a non-tribal law firm). Moreover, Defendant Morisset, Schlosser, Jozwiak & Somerville had no knowledge of or involvement in this matter until June 23, 2014, when Plaintiff attempted to serve Defendant Greene with her Complaint. Decl. of Rebecca JCH Jackson.

1 Defendant Haupt's clerk is not an authorized agent to receive service of process, and therefore
2 service of process on Defendant Haupt was ineffective under FRCP 4(e)(2), Revised Code of
3 Washington (RCW) 4.28.080(15) and RCW 4.28.080(16). Neither federal nor state law allows
4 for service of process by mail, which means Defendant Morisset, Schlosser, Jozwiak &
5 Somerville was not effectively served. *See* FRCP 4(e)(2); CR 4(d); RCW 4.28.080(15); RCW
6 4.28.080(16).

7 Defendants' Motion is based on the accompanying Memorandum of Points and
8 Authorities, the Declaration of Rebecca JCH Jackson, and the exhibits, files and records in this
9 action.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 Plaintiff alleges that issuance of a restraining order violates various provisions of ICRA.
13 ICRA is only enforceable in federal courts in criminal cases through a habeas corpus petition
14 under 25 U.S.C. § 1303. *Martinez*, 436 U.S. at 67-70. Since this is not a criminal case and
15 does not involve a habeas corpus petition, there is no federal question jurisdiction. Similarly
16 there is no diversity jurisdiction, and Defendants, apart from the law firm, are immune from
17 suit. Plaintiff fails to allege a claim upon which relief can be granted. Plaintiff also has not
18 properly served any of the Defendants. This Court should dismiss Plaintiff's Complaint.

19 **II. FACT STATEMENT**

20 On January 3, 2014, the Health Director of the Sophie Trettevick Indian Health Clinic,
21 the Makah Tribe's Clinic, filed a Petition for an Order of Protection Against Unlawful
22 Harassment against Plaintiff. Petition for Order of Protection, Exh. 2. On the same day, the
23 Makah Tribal Court granted the Health Director a temporary order of protection. Temporary
24 Order of Protection, Exh. 3. On January 8, 2014, the Sophie Trettevick Indian Health Clinic
25 (Clinic) provided Plaintiff with a Notice of Suspension of Nonemergency Services (Notice)
26 under its Violent Patient Policy. Notice, Exh. 4. The Notice explained that Plaintiff could only

1 use the Clinic for emergency purposes with a police escort, and it explained how Plaintiff
 2 would obtain her regular nonemergency treatment. *Id.* at 2-3. The Notice also outlined
 3 Plaintiff's administrative appeal rights. *Id.* at 3. Plaintiff has not exhausted her administrative
 4 appeal rights.

5 On April 28, 2014, the Clinic moved to voluntarily dismiss the Petition for Order of
 6 Protection, and the Court granted the Clinic's Motion to Dismiss. Motion and Order to
 7 Dismiss, Exh. 1. Thus, Plaintiff is not under a Makah Tribal Court order of protection or
 8 restraining order arising from the facts of this case. On June 16, 2014, the Makah Court of
 9 Appeals denied and dismissed Plaintiff's appeal of the Tribal Court's Order to Dismiss,
 10 because Plaintiff prevailed in that the Petition for Order of Protection against her was
 11 dismissed. Order Denying and Dismissing Appeal, Exh. 5. Plaintiff is now appealing a case
 12 that she won.

13 **II. LEGAL ARGUMENT**

14 **A. There Is No Federal Court Jurisdiction in This Matter.**

15 Federal courts "are courts of limited jurisdiction." *Owen Equip. & Erection Co. v.*
 16 *Kroger*, 437 U.S. 365, 374 (1978). Federal question jurisdiction under 28 U.S.C. § 1331
 17 requires a plaintiff's complaint to "establish either (1) that federal law creates the cause of
 18 action or (2) that the plaintiff's asserted right to relief depends on the resolution of a substantial
 19 question of federal law." *Peabody Coal Co. v. Navajo Nation*, 373 F.3d 945, 949 (9th Cir.
 20 2004). To determine whether a claim arises under federal law, the courts must look to "what
 21 necessarily appears in the plaintiff's statement of his [or her] own claim in the bill or
 22 declaration, unaided by anything alleged in anticipation of avoidance of defenses which it is
 23 thought the defendant may interpose." *Oklahoma Tax Comm'n v. Graham*, 489 U.S. 838, 841
 24 (1989) (quoting *Taylor v. Anderson*, 234 U.S. 74, 75–76 (1914)).

25 Plaintiff alleges claims under ICRA, 25 U.S.C. § 1302. The Supreme Court has made
 26 clear that ICRA may only be enforced in federal court in criminal cases through a habeas

1 corpus petition under 25 U.S.C. § 1303.² *Martinez*, 436 U.S. at 67-70. This is not a criminal
2 case, and Plaintiff has not filed a habeas corpus petition. Even if the criminal requirement was
3 ignored and Plaintiff's Complaint was erroneously construed to be a habeas corpus petition, an
4 ICRA habeas corpus action requires the petitioner to be in custody. *Jeffredo v. Macarro*, 599
5 F.3d 913, 918 (9th Cir. 2010). In *Jeffredo*, the Ninth Circuit determined that "denial of access
6 to certain facilities does not pose a severe actual or potential restraint on the Appellants'
7 liberty." *Jeffredo*, 599 F.3d at 919. There is no custody or detention when a tribal member is
8 denied access to certain facilities. *Id.* Not only does a limit on Plaintiff's access to the Clinic
9 fail to rise to the level of detention required for a habeas corpus action, but the Tribal Court did
10 not ultimately limit Plaintiff's access to the Clinic. *See* Motion and Order to Dismiss, Exh. 1.

11 Plaintiff did not allege diversity jurisdiction, and there is no diversity jurisdiction under
12 28 U.S.C. § 1332, because the Plaintiff and all Defendants are domiciled in Washington.

13 Additionally, Defendants Greene and Haupt are immune from suit. Sovereign
14 immunity acts as a jurisdictional bar to bringing suits against tribes unless Congress has
15 authorized the lawsuit or a tribe has waived its immunity. *Martinez*, 436 U.S. at 58-59; *Kiowa*
16 *Tribe of Oklahoma v. Mfg. Technologies, Inc.*, 523 U.S. 751, 754 (1998). Waivers of immunity
17 must be clear, express, unequivocal, and cannot be implied. *Martinez*, 436 U.S. at 58.
18 Sovereign immunity also applies to tribal officials and employees acting within the scope of
19 their authority. *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476, 479 (9th Cir. 1985);
20 *United States v. Yakima Tribal Court*, 806 F.2d 853, 861 (9th Cir. 1986), *cert. denied*, 481 U.S.
21 1069 (1987). Plaintiff does not allege that either Defendant Greene or Defendant Haupt acted
22 outside the scope of their authority. Plaintiff does not allege facts constituting plausible
23 wrongdoing on the part of Defendant Greene or Defendant Haupt. There has been no waiver of
24 sovereign immunity, and Defendants Greene and Haupt have acted within the scope of their
25 authority, which means they are immune from suit.

26 ² *See supra* Note 1.

B. Plaintiff Fails to State a Claim Upon Which Relief Can Be Granted.

Under FRCP 12(b)(6), federal courts may dismiss a petition if it fails to state a claim upon which relief can be granted. 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 Supreme Court recently explained that where a complaint’s “well-pleaded facts do not permit the court to infer more than the 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 complaint 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.* Conclusory allegations are not entitled to the presumption of truth. *Khalik v. United Air Lines*, 671 F.3d 1188, 1193 (10th Cir. 2012); *see also Heyer v. Governing Bd. of Mt. Diablo Unified Sch. Dist.*, 521 F. App’x 599, 600-01 (9th Cir. 2013). While pro se pleadings are liberally construed, they “must still present factual allegations sufficient to state a plausible claim for relief.” *Perkins v. Matthews*, 13-17064, 2014 WL 3037551, at *1 (9th Cir. July 7, 2014) (citing *Hebbe v. Pliler*, 627 F.3d 338, 341–42 (9th Cir.2010)).

1 Plaintiff alleges that Defendants violated 25 U.S.C. §§ 1302(9), (8), (6), and (1).
2 Complaint at 2-3.³ As noted above, federal courts may only enforce ICRA in criminal cases
3 through a petition for habeas corpus. *Martinez*, 436 U.S. at 67-70. Plaintiff therefore fails to
4 state a claim under ICRA for which she can obtain any relief, because this is a civil matter and
5 Plaintiff did not petition for habeas corpus. As explained above in Note 1, ICRA applies to
6 tribes acting in their governmental capacity, so ICRA does not apply to Defendant Morisset,
7 Schlosser, Jozwiak & Somerville (a non-tribal law firm). Even if Plaintiff could get civil relief
8 in this Court under ICRA, Plaintiff prevailed below. Plaintiff also fails to allege any facts
9 showing that a bill of attainder was passed, due process protections were violated, her criminal
10 proceeding rights were violated, or that her right to petition for redress of a grievance was
11 violated. *See* 25 U.S.C. §§ 1302(a)(9), (8), (6), and (1).

12 Plaintiff appears to allege that Defendant Morisset, Schlosser, Jozwiak & Somerville, in
13 addition to a tribal employee, failed to provide discovery. Complaint at 2. Again, Defendant
14 Morisset, Schlosser, Jozwiak & Somerville did not have knowledge of or involvement in this
15 matter until June 23, 2014, which means Defendant Morisset, Schlosser, Jozwiak & Somerville
16 did not and could not have prevented any discovery in this matter below. *See* Decl. of Rebecca
17 JCH Jackson.

18 If Plaintiff desires to challenge the Clinic's administrative suspension of nonemergency
19 services, she must follow the appeal procedures provided in the Notice. *See* Notice, Exh. 4
20 at 3. Plaintiff cannot use a Tribal Court action in which she prevailed to challenge an
21 administrative action—even more so when there is no federal court jurisdiction, she has not
22 exhausted tribal remedies, or alleged facts sufficient to state a claim of plausible wrongdoing.

23
24
25
26

³ Defendants assume that Plaintiff intended to allege that Defendants violated 25 U.S.C.
§§ 1302(a)(9), (8), (6), and (1).

C. Plaintiff Has Not Effectively Served Defendants.

FRCP 4(c)(2) provides that service of a summons and complaint may be made by any person who is at least 18 years old and not a party. FRCP 4(e) governs service of a summons and complaint on an individual within a judicial district of the United States. FRCP 4(e)(2) provides for (a) personal service, (b) leaving a copy “at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there,” or (c) delivering a copy “to an agent authorized by appointment or by law to receive service of process.” FRCP 4(e)(1) allows service by following state law in courts of general jurisdiction in the state where the district court is located.

Washington CR 4(c) provides that service of summons and process, except when service is by publication, shall be made by the sheriff of the county, his or her deputy, or any person over 18 years of age who is competent to be a witness in the action, other than a party. RCW 23B.05.040 and RCW 4.28.080(9) require personal service on various officers or agents of corporations or personal service on the Secretary of State in certain circumstances not applicable here. RCW 4.28.080(15) provides that unless otherwise specified, service of process must be made upon a defendant personally, or by leaving a copy of the summons at the house of his or her usual abode with a person of suitable age and discretion who resides therein. If service of process cannot be provided under the terms of RCW 4.28.080(15) with reasonable diligence, the summons may be served by leaving a copy at the defendant’s “usual mailing address with a person of suitable age and discretion who is a resident, proprietor, or agent thereof, and by thereafter mailing a copy by first-class mail, postage prepaid, to the person to be served at his or her usual mailing address.” RCW 4.28.080(16).

On June 23, 2014, Plaintiff served Defendant Greene personally, and she served Defendant Haupt by delivering a copy to his Clerk, Sarah Parker. Plaintiff served Defendant Morisset, Schlosser, Jozwiak & Somerville by mail. Such service of process was ineffective under federal and state law. Plaintiff is a party, which means her service of process on

1 Defendants was ineffective. Also, Defendant Haupt's clerk is not his authorized agent, and
2 therefore leaving a copy of the summons and Complaint with the clerk failed to effectively
3 serve Defendant Haupt. Finally, service of process on Defendant Morisset, Schlosser, Jozwiak
4 & Somerville by mail was not effective either.

5 **III. CONCLUSION**

6 For the reasons and facts stated above, Defendants respectfully request that this Court
7 dismiss Plaintiff's Complaint for lack of jurisdiction under FRCP 12(b)(1), failure to state a
8 claim upon which relief can be granted under FRCP 12(b)(6), and ineffective service of process
9 under FRCP 12(b)(5).

10 Respectfully submitted this 11th day of July, 2014.

11
12 MORISSET, SCHLOSSER, JOZWIAK & SOMERVILLE

13
14 s/Frank R. Jozwiak

s/Rebecca JCH Jackson

15 Frank R. Jozwiak, Wash. Bar No. 9482
16 Rebecca JCH Jackson, Wash. Bar No. 44113
17 Attorneys for Defendants
18 801 Second Avenue, Suite 1115
19 Seattle, WA 98104-1909
20 f.jozwiak@msaj.com
21 r.jackson@msaj.com
22 Tel: 206-386-5200
23
24
25
26

CERTIFICATE OF SERVICE

I certify that on July 11, 2014, I caused the foregoing DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S CIVIL RIGHTS COMPLAINT, MEMORANDUM OF POINTS AND AUTHORITIES, DECLARATION OF REBECCA JCH JACKSON, EXHIBITS, PROPOSED ORDER, AND CORPORATE DISCLOSURE STATEMENT to be electronically filed with the Clerk of the United States District Court for the Western District of Washington using the CM/ECF system, and I caused the foregoing documents to be mailed, by transmitting a true and correct copy via First Class Mail with all costs of delivery prepaid, to the following non-CM/ECF participant:

Dotti Chamblin
PO Box 597
Neah Bay, WA 98357

s/Rebecca JCH Jackson
Rebecca JCH Jackson

T:\WPDOCS\0050\02674\Chamblin v. Greene et al\Pleadings\Motion to Dismiss FILE.docx
rsj:7/11/14

EXHIBIT LIST

- Exhibit 1 Motion and Order to Dismiss, *Sophie Trettevick Indian Health Center, et al. v. Dorothy Chamblin*, Case No. 0004-AH-01/14, April 28, 2014
- Exhibit 2 Petition for Order of Protection, *Sophie Trettevick Indian Health Center, et al. v. Dorothy Chamblin*, Case No. 0004-AH-01/14, January 3, 2014
- Exhibit 3 Temporary Order of Protection, *Sophie Trettevick Indian Health Center, et al. v. Dorothy Chamblin*, Case No. 0004-AH-01/14, January 3, 2014
- Exhibit 4 Notice of Suspension of Nonemergency Services, *Sophie Trettevick Indian Health Center, et al. v. Dorothy Chamblin*, Case No. 0004-AH-01/14, January 8, 2014
- Exhibit 5 Order Denying and Dismissing Appeal, *Sophie Trettevick Indian Health Center, et al. v. Dorothy Chamblin*, Case No. 0004-AH-01/14, June 16, 2014

EXHIBIT 1

Filed

APR 28 2014

Makah Tribal Court

011:22AM

MAKAH TRIBAL COURT

Soffie Trettevick Indian Health Center
(STIHC), Betsy Buckingham,

Petitioner,

vs.

Dorothy Chamblin,

Respondent.

Case No: 0004-AH-01/14

MOTION and ORDER TO DISMISS

COMES NOW, Ruth Hahn, representing STIHC/Betsy Buckingham, Petitioner, moves to dismiss this matter. Petitioner believes at this time it would be in the interest of justice. However, isn't conceding that the actions alleged did not occur.

STIHC further believes they have a remedy at this time whereby the Petitioner has advised Respondent, Ms. Chamblin by letter under the terms of the "Violent Patient Policy" will provide direct services only in the form of emergency medical care with a police officer present to ensure the safety of STIHC staff.

Respondent, Ms. Chamblin has been advised of the appeal process, as it is detailed in the letter of January 8, 2014.

STIHC will continue to provide contract health services care to Ms. Chamblin through the Patient Advocate, Liza Smith, R.N. to ensure that Dorothy Chamblin is afforded allowable contract health services.

The suspension of services is in effect for a 12 month period beginning January 8, 2014.

Makah Tribal Court
CERTIFIED COPY


Filed

APR 28 2014

Makah Tribal Court

The Petitioner, STIHC, moves to have this case dismissed .

Dated this 28 day of April 2014.

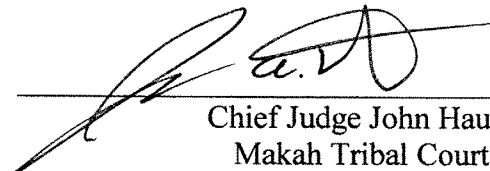

Ruth Hahn, Prosecutor

ORDER

THE TRIBE'S MOTION IS HEREBY ☒ GRANTED ☐ DENIED.

This matter is dismissed.

IT IS SO ORDERED THIS 28 DAY of April, 2014.


Chief Judge John Haupt
Makah Tribal Court

Makah Tribal Court
CERTIFIED COPY

EXHIBIT 2

Filed

JAN 03 2014

Makah Tribal Court

@ 3:10pm

ST IHC
Elizabeth Buckingham
Lynn Shuffeten

MAKAH TRIBAL COURT
IN AND FOR THE MAKAH NATION

Case No.: 0004-AH-01/14

Petitioner,

vs.

Dorothy Chamblin

Respondent.

PETITION FOR AN ORDER OF PROTECTION
AGAINST UNLAWFUL HARASSMENT

Jurisdiction:

1. ☒ I, or a member of my immediate family is a/an victim of unlawful harassment as defined by MLOC § 5.1.10 (a) (1) and as described in the statement below.
2. ☒ I live in Neah Bay, WA at the address listed below.
☐ I left my residence because of harassment and Neah Bay is either my new/former residence.
3. ☒ Age of the Petitioner/victim is: ☒ 18 or over; ☐ under 18.
☒ Age of respondent is: ☒ 18 or over; ☐ under 18.

REQUEST FOR **TEMPORARY ORDER OF PROTECTION**: An emergency exists as described in the following statement. I need a temporary restraining order issued immediately without notice to the respondent until a Show Cause hearing can be held to avoid irreparable injury. I request a Temporary Anti-Harassment Protection Order that will:

☒ **RESTRAIN** Respondent from threatening, without lawful authority, orally, in writing or by conduct to cause bodily injury in the future or to maliciously do any other act that is intended to substantially harm me or any member of immediate household/family with respect to his/her physical or mental health and safety.

☒ **RESTRAIN** Respondent from coming near or from having any contact whatsoever, in person or through others, by telephone, by mail, or by any other means, directly or indirectly, except for mailing court documents, with ☒ me ☒ other; *Sophie Trethvik Indian Health Center staff.*

☒ **EXCLUDE** Respondent from ☒ my residence ☒ my workplace ☐ my school ☐ other: _____

☐ **PROHIBIT** Respondent from knowingly coming within, or knowingly remaining within 100 feet of ☒ residence ☒ workplace ☐ school, ☐ other _____

FOLLOWING A SHOW CAUSE HEARING I REQUEST AN ANTI-HARASSMENT PROTECTION ORDER (PERMANENT) THAT WILL:

☒ **RESTRAIN** Respondent from threatening, without lawful authority, orally, in writing or by conduct to cause bodily injury in the future or to maliciously do any other act that is intended to substantially harm me or any member of immediate household/family with respect to his/her physical or mental health and safety.

☒ **RESTRAIN** Respondent from coming near or from having any contact whatsoever, in person or through others, by telephone, by mail, or by any other means, directly or indirectly, except for mailing court documents, with ☒ me ☐ other; _____

Page 1 of 2 - Petition for Anti-Harassment

Makah Tribal Court
CERTIFIED COPY

☒ EXCLUDE Respondent from ☒ my residence ☒ my workplace ☐ my school ☐ other: _____

☒ PROHIBIT Respondent from knowingly coming within, or knowingly remaining within 100 feet of
☒ residence ☒ workplace ☐ school, ☐ other _____

STATEMENT:

HARRASMENT means that, within the exterior boundaries of the Makah Indian Reservation, someone intentionally conveys an oral or written threat or a threat implied by conduct to 1) cause bodily injury in the future to the person threatened or to a member of the immediate family of the person threatened; or 2) cause physical damage to the property of the person threatened or a member of the of the immediate family of the person threatened; or 3) to subject the person threatened, or a member of the immediate family of the person threatened, to physical confinement or restraints; or 4) maliciously to do any other act that is intended to substantially harm the person threatened, or a member of the immediate family of the person threatened, with respect to his/her physical or mental health or safety; and 5) the person by words or conduct places the person threatened in reasonable fear that the threat will be carried out.

Please see attached document.

Filed

JAN 03 2014

Makah Tribal Court
 @ 3:10pm S

If you know the Respondent(s) has Weapons

Check all that apply:

☒ Guns/Rifles ☐ Knives ☐ Explosives ☐ Other _____ Fill in the "Other"

box if the respondent has a different kind of weapon than what is listed on the form.


"Location of Weapons," _____ where respondent(s) has the weapon(s).

Check all history that may apply: You may check more than one box.

☐ Alcohol or Drug Abuse, and ☐ Mental health problems ☐ Anger or violent issue

I declare under the penalty of perjury under the laws of the Makah Nation and the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

Dated 1/3, 2014 at Neah Bay, Washington.


 Petitioner

Voluntary Statement

1/3/2013

1:56 pm

Dottie Chamblin told me that she will shoot Lynn Shuffelen. She stated this at least twice when I met with her today at 12:00 noon.

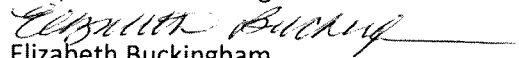
I fear for Lynn Shuffelen's safety at this point.

Ms. Chamblin was explaining a complaint to me at my office today. I had requested Liza Smith, Patient Advocate to come to my office so she could work with Ms. Chamblin about her complaint, as that is my normal process.

Ms. CHamblin became agitated, wouldn't look at me and started methodically stating her concerns in a rapid fashion. She said she is tired of dealing with Lynn Shuffelen. She said Lynn won't pay for her pain pills. She said she is sick and tired of Lynn Shuffelen. She said "I am going to shoot Lynn Shuffelen. I am sick and tired of her not paying for my pills. She has no right to do that to me. I am just going to shoot Lynn Shuffelen."

I tried to re-engage her with the present complaint as a means to get her back in conversation with me. I was waiting for Liza Smith to arrive at my office. I was concerned that Ms. Chamblin was not actually communicating with me rather she was on some sort of psychological script that caused her to make one statement after the other in a rapid fashion and with this statement that she would shoot Lynn Shuffelen.

I request a restraining order from her on behalf of the clinic as well as Lynn Shuffelen.


Elizabeth Buckingham,

Health Director

Sophie Trettevick Indian Health Clinic

Filed

JAN 03 2014

Makah Tribal Court

~ 3:10pm S

Makah Tribal Court
CERTIFIED COPY

Exhibit 2

EXHIBIT 3

Filed

JAN 03 2014

Makah Tribal Court
@ 3:22 PMMAKAH TRIBAL COURT
IN AND FOR THE MAKAH NATIONElizabeth Buckingham On Behalf Of The
Sophie Trettevick Indian Health Center
Facility and Staff AND Lynn Shuffelene

Petitioner,

vs.

Dorothy Chamblin

Respondent.

Case No.:0004-AH-01/14

TEMPORARY ORDER OF PROTECTION
AGAINST UNLAWFUL HARASSMENT

Hearing Date:1/16/2014 1:30 AM

FOR GOOD CAUSE SHOW, the Court finds that an emergency exists and that a Temporary Order of Protection Against Harassment should be issued to avoid irreparable harm. IT IS THEREFORE ORDER THAT:

- ☒ Respondent is RESTRAINED from threatening, without lawful authority, orally, in writing or by conduct to cause bodily injury in the future or to maliciously do any other act that is intended to substantially harm to **Sophie Trettevick Indian Health Center Staff AND Lynn Shuffelene** or any member of his/her immediate household/family with respect to his/her physical or mental health and safety.
- ☒ Respondent RESTRAINED from coming near or from having any contact whatsoever, in person or through others, by telephone, by mail, or by any other means, directly or indirectly, except for mailing court documents, with; **Sophie Trettevick Indian Health Center Staff AND Lynn Shuffelene**
- ☒ Exclude Respondent from Petitioner's ☒ residence ☒ work place ☐ school ☐ Other _____
- ☒ Respondent is PROHIBITED from knowingly coming within, or knowingly remaining within 100 feet of **Sophie Trettevick Indian Health Center Staff AND Lynn Shuffelene**;
- ☐ Other: _____

Respondent is directed to appear and show cause why this temporary order should not be made final for one year or more and why the Court should not order the relief requested by the petitioner or other relief.

FAILURE TO APPEAR AT THE HEARING MAY RESULT IN THE COURT GRANTING SUCH RELIEF. THE NEXT HEARING DATE AND TIME IS SHOWN IN THE CAPTION ON PAGE ONE.

WARNINGS TO RESPONDENT: Violation of this order with actual notice of its terms is a criminal offense under MLOC 5.4.15 and will subject a violator to arrest. Violation of this order is a Class B offense with a possible maximum penalty of three months in jail and/or fine not to exceed \$200.00. YOU CAN BE ARRESTED EVEN IF THE PERSON OR PERSONS WHO OBTAINED THIS ORDER INVITE OR ALLOW YOU TO VIOLATE THE ORDER'S PROHIBITIONS. You have sole responsibility to avoid or refrain from violating the Order's provisions. Only the Court can change

the Order upon request. Pursuant to 18 USC § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory any tribal land within the United States shall accord full faith and credit to this Order.

IT IS FURTHER ORDER that the clerk of the Court shall forward a copy of this order on or before the next judicial day to Neah Bay Public Safety ☐ County Sheriff where **RESPONDENT LIVES** which shall personally serve Respondent with a copy of this Order, and shall promptly complete and return to this Court proof of service, and shall enter it into a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

TO: NEAH BAY POLICE; when serving this temporary order you should know the following information may apply.

If you know the Respondent(s) has Weapons

Check all that apply:

☐ Guns/Rifles ☐ Knives ☐ Explosives ☐ Other _____ Fill in the

"Other" box if the respondent has a different kind of weapon than what is listed on the form.

"Location of Weapons," _____ where respondent(s) has the weapon(s).

Check all history that may apply: You may check more than one box.

☐ Alcohol or Drug Abuse, and ☐ Mental health problems ☐ Anger or violent issue

This Temporary Order of Protection Against Harassment is effective until the next hearing, unless the hearing is continued for good cause.

So Ordered this 3rd day of January, 2014.



Tribal Court Judge

Filed

JAN 03 2014

Makah Tribal Court

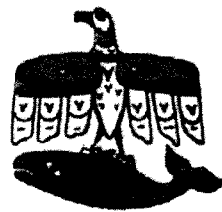
03:22pm J

Makah Tribal Court
CERTIFIED COPY

EXHIBIT 4



SOPHIE TRETTEVICK INDIAN HEALTH CENTER



1. P.O. BOX 410 NEAH BAY. WA 98357 (360) 645-2233 Fax

January 8, 2014

Dorothy Chamblin
310 Second Avenue
PO Box 597
Neah Bay, WA 98584

Filed

JAN 08 2014

Makah Tribal Court
@ 3:01 pm

Re: Notice of Suspension of Nonemergency Services

Dear Ms. Chamblin:

This letter shall be your notice of suspension of nonemergency services and the information detailing how you will obtain modified nonemergency health care from the STIHC.

By letter dated January 3, 2014, you were provided a copy of the Violent Patient Policy of the Sophie Trettevick Indian Health Center (STIHC) and you were informed:

1. That based on your repeated statements that you would "shoot Lynn Shuffelen," the STIHC will, under the terms of the Policy, provide direct services to you only in the form of emergency medical care with a police officer present to ensure the safety of STIHC staff; and
2. That the STIHC would provide detailed information to you to explain how it will provide you your routine medical care and contract health services care in light of application of the Policy.

In addition, on January 3, 2014, in accordance with Violent Patient Policy V.3.j., STIHC caused entry of a temporary protection order against you based on the threats you made against STIHC staff. This order prohibits you from "having any contact whatsoever, in person or through others, by telephone, by mail, or by any other means, directly or indirectly, except for mailing court documents, with [STIHC] Staff and Lynn [Shuffelen]," excluding you from the STIHC work place, and prohibiting you from knowingly coming within, or knowingly remaining within 100 feet of STIHC staff and Lynn Shuffelen. The temporary protection order identifies a hearing date for January 16, 2014 at 1:30 pm to determine whether the order should be made permanent for one year or more.

After being served with the January 3 protection order, you attempted to contact me at the STIHC and left the following message on my STIHC extension:

"Friday at 4:37 pm Voicemail:

Hi Betsy, I called back to let you know I got this harassment order, an urgent harassment order from a policeman from the watcha ma call it. It says I can't go around what's her name um Lynn Shuffelen and I never did. I never have. I never harassed her. I'll get a chance to say that in court. This changes the complexion

Makah Tribal Court
CERTIFIED COPY

Exhibit 4

of things. And I want to know if Liza is still my liaison. Or if Liza your witness. So if Liza is my witness then that changes protection for me when I go to the clinic. And so, with that Betsy I wished I could talk to you and I guess that is the way politics go. I am okay with it. This is going to help me get into the newspaper, Council, everybody under the sun. and um. Okay here is a voluntary statement, okay I found this in the back. Alright, I was not agitated. I was excited because something needs to be done. Even now. This is the beginning. I am sorry Betsy. That's the way it is. That's the way politics go. And it clearly states you are on the other side too. You're talking to an elder. How can an elder get a gun and go do those things when she can barely walk out of the house. Okay. I got a court date for the 16th, that's going to be good. Thank you. Bye."

Notice of 12-Month Suspension of Nonemergency Services

Based on your noncompliance with the protective order and your threat statement made on You are hereby notified that, in accordance with Violent Patient Policy V.2.j and based on the threats you made on two separate occasions on January 3, 2013 to harm STIHC staff, I am hereby suspending nonemergency services to you effective on the date of this letter for a 12-month period.

Notice of Police Accompaniment for Emergency Services

This letter will hereby serve as notice that STIHC will provide emergency services to you only if you are accompanied by a police officer.

Your Current Routine Medical Care and Contract Health Services Care

In addition to notifying you of the suspension of services and the requirement for police accompaniment for emergency services, this letter is intended to provide detailed information to you to explain how your routine medical care and contract health services care will be provided in light of this suspension of nonemergency services and the protection order.

You were receiving the following nonemergency routine medical care and contract health services from the STIHC:

- Dispersal of prescriptions, in accordance with your primary and secondary insurance policies and, if necessary, contract health services
- CHR transportation
- Pain management (via contract health services) by Dr. Bergman, M.D. (Port Angeles)

Modifications to Provide You Routine Medical Care and Contract Health Services Care

The following describes how the STIHC will now provide your nonemergency, routine medical care and contract health services. For all purposes of communicating about your health care, your contact shall be Liza Smith, STIHC Patient Advocate:

- All prescriptions shall be filled by Safeway Pharmacy (or authorized pharmacy) in Port Angeles and subscriptions paid for by your primary, secondary, and if applicable contract health service funds)

Filed

JAN 08 2014

Makah Tribal Court
CERTIFIED COPY

Makah Tribal Court
03:01 PM

- Gas voucher in lieu of CHR transportation
- Submission of medical billing statements for purchased contract health services shall be the responsibility of Liza Smith
- Requests for contract health services referrals
- Pain management (via contract health services) by Dr. Bergman, M.D. (Port Angeles)

The STIHC will immediately seek a modification of the current protection order to permit you to lawfully contact Liza Smith, STIHC Patient Advocate, so that your modified routine medical care and contract health services care may continue through the period of suspension. The STIHC will also seek to have the time period of the permanent protection order the same as the period of suspension of services.

Clarification of Role of Liza Smith

As stated above, Liza Smith, STIHC Patient Advocate, will be your sole contact for purposes of communicating with the STIHC regarding your ongoing, nonemergency health care. Ms. Smith is a tribal employee of the STIHC and is legally obligated to keep confidential all of your private health information. However, any statements you make to her that are not "private health information" are not confidential. Ms. Smith is also a mandatory reporter and must report any threats to the health or welfare of any person. While Ms. Smith is a patient advocate to assist you in navigating the health care system, she is not authorized to assist you in legal matters.

Additional Requirement for Reauthorization to Receive Care at the Clinic

In accordance with Violent Patient Policy V.3.d., I hereby request that you participate in a psychiatric evaluation before I reauthorize you to receive routine services at the STIHC. All costs of the evaluation will be paid by the STIHC and the evaluating physician will be identified by STIHC. The basis for this request is that I personally observed you display homicidal ideation and delusions at the time you made the threat, and I have also observed what appears to be periods where you are detached from reality. If the violent behavior you have threatened is caused in any manner by an organic condition (such as a brain tumor), it is essential that such a condition be taken into account in determining the length of suspension, if any. Once the temporary protection order is modified, please contact Liza Smith at (360) 645-2492 to arrange this evaluation.

Once I receive this evaluation, I will reconsider the length of time of the suspension. If I can shorten the suspension, I will also seek modification of any permanent order to be consistent with the modified suspension. Our goal is to re-establish care for you.

Appeal

In accordance with Violent Patient Policy VI, you may appeal this temporary suspension by submitting a dated written statement of the reasons you disagree with my decision to Meredith Parker, General Manager. In the event the General Manager upholds this decision, you may appeal in writing to the Governing Body. The decision of the Governing Body is final.

Makah Tribal Court
CERTIFIED COPY

JAN 08 2014

Makah Tribal Court
@ 3:01 pm
Exhibit 4

Sincerely yours,
SOPHIE TRETTEVICK INDIAN HEALTH CENTER

A handwritten signature in cursive script, appearing to read "Elizabeth Buckingham".

Elizabeth Buckingham
Health Director

Enclosure: Patient Rights and Responsibilities

Filed

JAN 08 2014

Makah Tribal Court

23:01 PM S

Makah Tribal Court
CERTIFIED COPY

EXHIBIT 5

MAKAH COURT OF APPEALS
NEAH BAY, WASHINGTON

Filed

JUN 16 2014

Makah Tribal Court

The Sophie Trettevick Indian Health Center
(STIHC), Betsy Buckingham,

Petitioner/Appellee,

vs

Dorothy Chamblin,

Respondent/Appellant

Case No. 0004-AH-01/14

ORDER DENYING AND DISMISSING
APPEAL

I. Order Denying and Dismissing the Appeal

The Appellant, Dorothy Chamblin, is patient at the STIHC in Neah Bay, WA. The STIHC alleged that Chamblin had engaged in inappropriate and abusive conduct against STIHC staff which included an allegation that she had made threats against some staff members. The STIHC filed this action seeking injunctive relief. On April 28, 2014 the STIHC moved to dismiss the petition for injunctive relief and stating that it would seek remedy through an STIHC administrative policy. The Court granted the motion to dismiss. Chamblin filed a Notice of Appeal in which she seeks redress to her claim that her access to the STIHC has been limited by their internal administrative procedures. That appeal is denied for lack of jurisdiction.

That the Notice of Appeal was filed timely and in proper form. However, the jurisdiction of the Makah Court of Appeal is limited to appeals filed by aggrieved persons. (Title 1 Chapter 9 § 1.9.04) Chamblin is not an aggrieved party in the matter before the Court. The petition filed against her was dismissed and for all practical

Order Dismissing Appeal

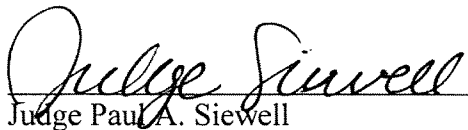
Makah Tribal Court
CERTIFIED COPY

Exhibit 5

1 purposes she had prevailed in the action. Her request for redress of grievance she
2 perceives to have regarding limitations placed upon her services at STIHC are not
3 properly before this Court. The Court of Appeals may only here appeals from final
4 orders of the trial court. The validity of the administrative proceedings at STIHC have
5 not been the subject of adjudication and final order in the trial court and therefore
6 cannot be considered by the Court of Appeals. (Title 1 Chapter 9 § 1.9.01)

7 The Court, for the reasons stated above does hereby deny and dismiss the appeal.

8
9 Ordered this 13th day of June, 2014

10
11 
12 Judge Paul A. Siewell

13 Makah Court of Appeals

Filed

JUN 16 2014

Makah Tribal Court

14 Telephonic Signature: 8:54 AM
15
16
17
18
19
20
21
22
23
24
25

Makah Tribal Court
CERTIFIED COPY