UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAYUGA NATION
and JOHN DOES 1–20,

Plaintiffs,

-against-

HOWARD TANNER, Village of Union Springs Code Enforcement Officer, in his Official Capacity; EDWARD TRUFANT, Village of Union Springs Mayor, in his Official Capacity; CHAD HAYDEN, Village of Union Springs Attorney, in his Official Capacity; BOARD OF TRUSTEES OF THE VILLAGE OF UNION SPRINGS, NEW YORK; and THE VILLAGE OF UNION SPRINGS, NEW YORK

Defendants.

NOTICE OF MOTION TO INTERVENE AS DEFENDANT

Docket No.: 5:14-cv-01317 DNH/ATB

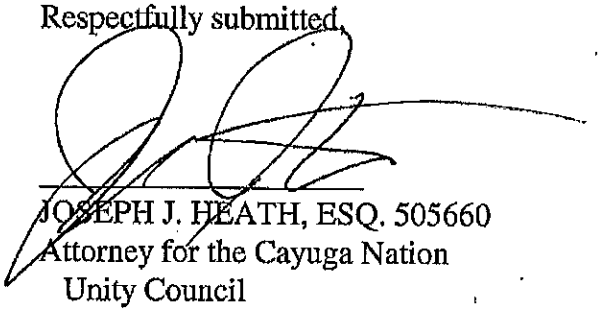
PLEASE TAKE NOTICE, that upon the annexed Declaration of Cayuga Nation Chief Samuel George, dated November 6, 2014; the annexed Declaration of Cayuga Nation Heron Clan representative Karl Hill, dated November 13, 2014; the annexed Declaration of Joseph J. Heath, Esq., dated November 12, 2014, and the Exhibits annexed thereto; and the annexed Memorandum of Law dated November 13, 2014; the Cayuga Nation Unity Council will move this Court, pursuant to the Federal Rule of Civil Procedure 24(a), at a Motion Term at 2:00 p.m., on December 17, 2014, before Hon. David N. Hurd, United States District Court Judge, at the Alexander Pirnie Court House, 10 Broad Street, Utica, New York, or as soon thereafter as counsel may be heard, for an Order granting the motion of the Unity Council to intervene in this action as of right because the Unity Council has an interest in the subject matter of this action; because a disposition of this

action would, as a practical matter, impair and impede the Unity Council's ability to protect that interest; and because the Unity Council's interest cannot be adequately protected by the existing parties. In the alternative, the Unity Council seeks an Order granting permissive intervention, pursuant to Rule 24 (b).

And for such other and further relief as to this court may deem just and proper.

Dated: November 12, 2014

Respectfully submitted,



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PROPOSED DEFENDANT-INTERVENOR CAYUGA NATION UNITY COUNCIL'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE

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The Unity Council as the lawful government of the Cayuga Nation seeks intervention under Rule 24 of the Federal Rules of Civil Procedure as a defendant in order to seek dismissal of this action for lack of subject matter jurisdiction and for failure to name the real party in interest. This Motion is accompanied by a proposed Motion to Dismiss on those grounds. Intervention is sought as of right under Rule 24(a), and, in the alternative, permissively under Rule 24(b).

This Motion is timely because it was filed within 16 days of the filing of this lawsuit, and within the time frame set by the parties and this Court for consideration of Plaintiff's Motion for Preliminary Injunction.

The Unity Council's interest in this lawsuit derives from its obligation as the lawful government of the Cayuga Nation to prevent unauthorized legal actions from being filed in the name of the Nation, and to prevent federal court intrusion into the internal affairs of the Nation. The disposition of this action will, as a practical matter, impair the interests of the Unity Council by allowing unauthorized individuals to represent the Cayuga Nation, thereby impeding the efforts of the Council to govern the Nation according to Cayuga law.

No party to this lawsuit can adequately represent the Unity Council. The putative plaintiff, the "Cayuga Nation," is controlled by Clint Halftown, Tim Twoguns and Gary Wheeler, individuals who were removed from their Nation leadership positions in 2005 and 2011 and therefore have no authority to represent the government of the Cayuga Nation. Defendants cannot adequately represent the Unity Council, the Cayuga Nation's lawful government, because they lack knowledge of Nation law and history and do not, in contrast to the Unity Council, occupy positions of authority within the Nation. Further, Defendants may take positions inimical

to the interests of the Unity Council on the question of the legal status of lands protected by the Treaty of Canandaigua. For these reasons, the requirements of Rule 24(a) are satisfied, and intervention as of right should be granted. In the alternative, intervention should be granted under the permissive intervention criteria of Rule 24(b), because the Unity Council's defense raises legal issues that are identical or similar to those raised by Plaintiffs' complaint and the anticipated defenses of Defendants.

The Unity Council was formed in 2011 pursuant to Cayuga Nation and Haudenosaunee law. *Declaration of Heron Clan Representative Karl Hill on Behalf of Proposed Defendant-Intervenor Unity Council* at ¶ 2 (hereinafter "*Hill Declaration*"). The Cayuga Nation is a member nation of the Haudenosaunee, also known as the Six Nations Confederacy. Since its formation, the Unity Council has governed the Cayuga Nation according to the requirements of Cayuga law, including the fundamental prescription that all decisions of the Cayuga government must be made by consensus of the Nation's Council of Chiefs.

The Unity Council, as formed in 2011, includes representatives of the Heron, Turtle and Bear Clans of the Cayuga Nation. The members of the Unity Council moving to intervene in this action are Chief Samuel George, Chief William Jacobs, Chester Isaac, and Karl Hill. Turtle Clan Mother Brenda Bennett and Turtle Clan representatives Justin Bennett and Samuel Campbell have authorized the filing of these motions on the grounds that (1) Clint Halftown, Timothy Twoguns and Gary Wheeler lack governmental authority to file lawsuits on behalf of the Cayuga Nation; and (2) the gambling hall has never been authorized by the lawful government of the Cayuga Nation and its operation violates Cayuga Nation law. *Declaration of Joseph J. Heath in*

Support of Motion of the Unity Council of the Cayuga Nation to Intervene as Defendant at ¶¶ 5-7 (hereinafter *"Heath Intervention Declaration"*).

The Unity Council, the Nation's lawful government, has not authorized the filing of this lawsuit on the Nation's behalf. No individual has any right to file a lawsuit on the Nation's behalf absent consensus approval and authorization from the Council. No such authorization has been granted to anyone to bring this suit in the name of the Cayuga Nation. *Declaration of Chief Samuel George, Bear Clan, on Behalf of Proposed Defendant-Intervenor Unity Council* at ¶¶ 6, 7 and 15 (hereinafter "*George Declaration*").

Because this action was filed without authorization in the Nation's name, the Unity Council seeks intervention to protect its right to self-government and, more particularly, its authority to control Nation litigation and Nation businesses. Intervention is sought in order to demonstrate that this Court lacks jurisdiction to determine whether the "Cayuga Nation", as purportedly represented by Messrs. Halftown, Twoguns and Wheeler, is the real party in interest. Because this Court lacks subject matter jurisdiction to decide that question, this lawsuit must be dismissed.

This Court cannot resolve the merits of the claims alleged in the Complaint without first determining that the Cayuga Nation is a proper party to assert those claims. That determination, in turn, requires the Court to identify and apply principles of Cayuga law, a task beyond the jurisdiction of federal courts. Stated another way, whether the Cayuga Nation is the real party in interest is a question resolved by interpreting Cayuga law, which federal law relegates exclusively to the Cayuga Nation itself. For this reason, this action should be dismissed for lack of subject matter jurisdiction.

Intervention is also necessary to ensure that Cayuga governmental processes are not subverted by the filing of a lawsuit in the name of a fictitious "Cayuga Nation," and to ensure proper application of the principle that federal courts have no jurisdiction over the internal governmental disputes of Indian nations.

ARGUMENT

I. THE UNITY COUNCIL OF THE CAYUGA NATION IS ENTITLED TO INTERVENE AS OF RIGHT

Rule 24(a) of the Federal Rules of Civil Procedure establishes a four-part test for intervention as of right: a) timeliness; b) assertion of an interest relating to the subject matter of the action; c) practical impairment of the movant's ability to protect that interest; and d) inadequate representation by the parties to the action. The Second Circuit requires each element of this test to be met, in light of the "particular facts of each case." *United States v. Pitney Bowes*, 25 F.3d 66, 70 (2d Cir. 1994). Each element is met here.

A. The Motion to Intervene is Timely.

Timeliness of an intervention motion is to be determined "from all the circumstances." *NAACP v. New York*, 413 U.S. 345, 366 (1973). The Second Circuit has instructed courts to evaluate timeliness according to four sub-factors: a) the length of time the applicant knew or should have known of [its] interest before making the motion; b) prejudice to existing parties resulting from the applicant's delay; c) prejudice to [the] applicant if the motion is denied; and d) [the] presence of unusual circumstances militating for or against a finding of timeliness." *United States v. New York*, 820 F.2d 554, 557 (2d Cir.1987).

The putative Plaintiff here filed this action on October 28, 2014, this motion was filed 16 days later and the hearing date for the motion is the same date for the hearing on the Plaintiff's Motion for Preliminary Injunction. In light of the short lapse of time between the Unity Council's discovery that this action had been filed and the filing of this Motion, this Court need not apply the other three sub-factors. In any event, resolution of the motion will not delay the disposition of this action, nor otherwise prejudice any of the parties. Because this case is at the preliminary injunction stage, intervention will not delay nor prejudice any party in developing and presenting its case. This motion is timely.

B. The Unity Council Asserts an Interest Related to the Subject Matter of this Action.

In order for a party to intervene as of right under Rule 24(a)(2), the party must have an interest in the case that is "'direct, substantial, and legally protectable.'" *United States v. Peoples Benefit Life Ins. Co.*, 271 F.3d 411 (2d Cir. 2001). That standard is satisfied here.

The Unity Council asserts a direct and legally protectable interest in the subject matter of this action. Broadly defined, the subject matter of this action is the right of the Cayuga Nation to conduct Class II gambling within the boundaries of the Cayuga Nation's Treaty of Canandaigua Reservation in accordance with the Indian Gaming Regulatory Act (IGRA). Before that issue may be resolved, however, this Court must determine whether the proper governmental body of the Cayuga Nation authorized the filing of this action and whether the Plaintiff is the real party in interest. In addition, in order to award relief here, the Court must determine that IGRA, which requires approval of a valid tribal ordinance by the National Indian Gaming Commission, protects the Class II gambling at issue in this case. In reaching this decision, the Court would be

required to determine if the 2013 reopening of the gambling hall was properly authorized pursuant to Cayuga Nation law.

It is axiomatic that an action "must be brought by the person who, according to the governing substantive law, is entitled to enforce the right." *Oscar Gruss & Son, Inc., v. Hollander,* 337 F. 3d 186, 193 (2d Cir. 2003). Clint Halftown was removed as a Cayuga Council member in 2005. *See Hill Declaration* at ¶ 10 ("Heron Clan Mother Bernadette Hill removed seatwarmer Clint Halftown from the Nation Council in accordance with Haudenosaunee law in 2005.") His removal was affirmed by consensus of the Nation's Council and Clan Mothers in 2011. *Id.* Mr. Halftown nonetheless claims to be "a member of the governing Council of the Cayuga Nation." *Declaration of Clint Halftown in Support of Plaintiffs' Order to Show Cause* at ¶ 1 (Docket No. 5-8). Upon information and belief, Mr. Halftown asserts authority to file this action in the name of the Cayuga Nation.

The Unity Council has a substantial interest in this Court's determination of whether the filing of this action was properly authorized. Plaintiff cannot make that showing because principles of federal law preclude this Court from resolving the question of whether Mr. Halftown has any governmental authority or whether he had authority to file this action on behalf of the Cayuga Nation. Those questions are part and parcel of an internal governmental dispute within the Cayuga Nation that this Court lacks jurisdiction to resolve. This Court cannot determine the real party in interest or determine whether this action was authorized by the proper government under Cayuga law without impermissibly delving into matters of Cayuga law and procedure. *See, e.g., Kiowa Tribe of Okla. v. Manu. Technologies,* 523 U.S. 751 (1998); *Bowen*

v. Doyle, 880 F. Supp. 99, 113 (W.D.N.Y. 1993) As demonstrated in the Motion to Dismiss filed with this Motion, these principles of federal Indian law require dismissal of this action.

Rule 24(a)'s interest requirement is also satisfied by the significant interest the Unity Council has in maintaining the satisfactory functioning of the Cayuga Nation government in accordance with Cayuga law. That interest requires the Unity Council to take appropriate action to ensure that litigation is not commenced in the name of the Cayuga Nation unless lawful authority for such action has been granted by the Council. Such authority is completely lacking here. *George Declaration* at ¶ 6 ("The Council of the Cayuga Nation has never authorized by consensus the filing of a federal lawsuit in support of the Gambling Hall on the Cayuga Nation territory."); *Hill Declaration* at ¶ 9 ("Clint Halftown has no authority to act on behalf of the Cayuga Nation, either by filing a federal lawsuit in the Nation's name or by operating a Gambling Hall in the name of the Nation on Nation territory.")

An Indian nation's interest in protecting its government has been characterized as "distinct and weighty" by a federal district court in a similar internal governmental dispute. *California Valley Miwok Tribe v. Salazar,* 281 F.R.D. 43, 48 (D. D.C. 2012) (granting intervention to the "General Council" of an Indian tribe in an action brought by the tribal council in order to allow a motion to dismiss on the ground that the court lacked jurisdiction to adjudicate internal tribal disputes). The Unity Council has that same substantial interest here.

In addition to its interest in protecting the right of self-government, the Unity Council has a significant interest in the question of whether the territory set aside by the Treaty of Canandaigua of 1794 is Indian country for purposes of federal law, or, as specifically raised here, the question whether such lands are "Indian lands" within the meaning of the Indian Gaming

Regulatory Act. Although the Unity Council opposes all forms of gambling on Cayuga Nation lands, it supports the position that the Canandaigua Treaty lands are within Indian country. It has a protectable and important interest in any action where that issue is litigated.

Likewise, the Council has an interest in ensuring that IGRA's requirement that Indian nation governments validly approve any Class II gambling enterprises is not subverted. *See* IGRA Section 2710(b)(1)(B). Plaintiffs incorrectly claim, as a basis for their request for declaratory and injunctive relief, that "[i]n 2013 . . . , the Nation authorized the reopening of [the Gambling Hall]." *Complaint for Declaratory and Injunctive Relief* ¶ 27. In fact, there was no such authorization by the Nation in 2013 or any other year. *Hill Declaration* at ¶ 6 ("The Council of the Cayuga Nation has never authorized by consensus the operation of a Gambling Hall on Cayuga Nation territory.") Three members of the Unity Council notified Clint Halftown, Timothy Twoguns and Gary Wheeler that their operation of a gambling hall on Cayuga territory violates Cayuga law and must cease. *See* Letter of January 29, 2014, attached as Exhibit J to *Heath Intervention Declaration.* As the lawful government of the Cayuga Nation with sole authority for determining whether to authorize Class II gambling on Nation territory, the Unity Council has a direct and substantial interest in this action.

C. The Disposition of This Action in the Absence of the Unity Council Would, as a Practical Matter, Impair the Unity Council's Interest.

Rule 24(a)'s third requirement is that the proposed intervenor be "so situated that the disposition of the action may, as a practical matter impair or impede the applicant's ability to protect that interest." Rule 24(a)(2). The Second Circuit has determined that the *stare decisis* effect of an adverse decision may constitute an impairment of the intervenor's ability to protect

its interest in the subject matter. *New York Public Interest Research Group v. Regents of the Univ.*, 516 F.2d 350, 351-52 (2nd Cir. 1975) (holding that a pharmacists' organization had a right to intervene in an action brought by consumers to challenge a state regulation prohibiting the advertisement of prescription drug prices because the intervenor could not challenge the state regulation in subsequent litigation).

The practical impairment requirement is fully satisfied here. The disposition of this action without the participation of the Unity Council will impair its interests in at least two significant ways. First, the Unity Council would not be free to pursue an independent lawsuit because the *stare decisis* effect of a judgment from this Court in favor of Plaintiffs would either explicitly or implicitly include a finding that the fictitious "Cayuga Nation" as represented by Clint Halftown is the real party in interest in this action. The Second Circuit has acknowledged that this form of impairment is sufficient to satisfy the Rule 24 requirement. *Oneida Indian Nation of Wisconsin v. State of New York,* 723 F. 2d 261, 265-266 (2d Cir. 1984) (granting intervention as of right in land claim litigation to the Haudenosaunee or Six Nations Confederacy because "there is a significant likelihood that the ultimate resolution of this litigation will lead to conclusions of law on issues of first impression, or mixed findings of fact and law, which will implicate principles of *stare decisis* with respect to the treaties . . . and the land titles at stake here, and which would control any subsequent lawsuit by the intervenors.")

Whether characterized as a question of law or a question of mixed law and fact, the issue of the authority of the Plaintiff to bring legal actions in the name of the Cayuga Nation will recur frequently, and is especially pertinent in those cases where the sovereignty and right of self-government of the Cayuga Nation are at sake. Because of its *stare decisis* effect, an adverse

ruling on that issue here will impair the Unity Council's ability to protect the Cayuga legal principle that only legal actions authorized by the lawful government of the Nation may be brought in the Nation's name.

Second, as a practical matter, allowing this case to proceed in the name of the "Cayuga Nation" will affect the internal deliberations of the Nation to resolve its ongoing dispute about the proper government with authority to speak for the Nation. *See Heath Intervention Declaration* at ¶¶ 9-21 (explaining the origins and status of Cayuga internal governmental dispute). The Unity Council has been operating as the Nation's government since 2011, but the former leaders who brought this action have defied Nation law and their Clan Mothers and have refused to relinquish their control over certain aspects of the Nation's affairs. *George Declaration* at ¶ 13 ("Heron Clan member Clint Halftown has repeatedly violated Haudenosaunee and Cayuga law by refusing to acknowledge his removal from the Nation Council . . . .")

Under both Cayuga law and federal law, this dispute cannot be resolved by outsiders, including federal or state courts. *Hill Declaration* at ¶ 4 ("Under our law, no outside entity, not the courts, nor the BIA, has the right to determine who our leaders are."); *Bowen v. Doyle*, 880 F. Supp. 99, 113 (W.D.N.Y. 1993) (federal courts may not decide internal governmental disputes of Indian nations).

The Unity Council's interest in upholding this legal principle, and its ability to resolve the dispute by building a functioning government, will be significantly impaired by a ruling from this Court that Clint Halftown, a deposed leader who is operating a gambling facility in violation of Cayuga law, can file and prosecute this action in the name of the Cayuga Nation. *See, California*

Valley Miwok Tribe v. Salazar, 281 F.R.D. at 47 (the interest of the intervening governmental entity of Indian tribe would be impaired because "resolution of the matter in the plaintiff's favor would directly interfere with the governance of the tribe. . . .")

D. The Unity Council's Interest is not Adequately Represented by any Party.

The fourth requirement of Rule 24(a) is satisfied if the movant shows that representation by other parties "may be" inadequate. *Trbovich v. United Mine Workers,* 404 U.S. 528, 538, n.10 (1972). The movant's burden in meeting this requirement "should be treated as minimal." *Id.* In applying this standard, the Second Circuit has instructed that adequate representation is assured "[w]here there is an identity of interest between a putative intervenor and a party." *Washington Elec. Coop., Inc. v. Mass. Mun. Wholesale Elec. Co.*, 922 F.2d 92, 98 (2d Cir. 1990).

This requirement is satisfied. No party's interest in this action is identical to the Unity Council's, and no party can adequately represent the Unity Council's interests here. Plaintiff "Cayuga Nation" as represented by Clint Halftown cannot represent the Unity Council because his claim to governmental authority after his removal is strongly contested by the Unity Council and conflicts with Cayuga Nation law on that subject The adversity of interest between Clint Halftown and the Unity Council precludes a finding that he can adequately represent the Council. *See Oneida Indian Nation of Wisconsin v. State of New York,* 732 F. 2d at 266 (conflicting claims of parties and proposed intervenors "alone precludes representation of the intervenors' interests.") Further, the Unity Council does not condone gambling on Cayuga land and does not share the interest of pursuing gambling, unlike the Plaintiff "Cayuga Nation." *George Declaration* at ¶ 10 ("Our law prohibits all forms of gambling, including bingo.")

Further, the Unity Council directly contests the assertion of Plaintiff "Cayuga Nation" that the Cayuga Nation validly authorized gambling on Nation territory as required by IGRA. *Hill Declaration* at ¶ 14 ("Therefore, our Council has revoked the ordinance purportedly authorizing the Gambling Hall and has advised the National Indian Gaming Commission (NIGC) of this revocation."); *see also* Letter of June 28, 2013, from the Unity Council to Assistant Secretary for Indian Affairs Kevin Washburn, attached as Exhibit I to *Heath Intervention Declaration* ("The Cayuga Nation Unity Council does not support the use of Nation lands for gambling.") The assertion that the Cayuga Nation authorized the gambling that is the subject of this action is essential to the claim for relief of the "Cayuga Nation", a claim the Unity Council opposes.

Although Defendants and the Unity Council have the same goal in having this action dismissed, their interests differ significantly. Defendants are likely to argue that the gambling operation that is the subject of this action is not located within "Indian country" because the land set aside by the Treaty of Canandaigua is not a reservation under federal law. The Unity Council takes the opposite position about the legal status of those lands. Moreover, Defendants may make arguments about the applicability of the defense established by the Supreme Court in *City of Sherrill v. Oneida Indian Nation,* 544 U.S. 197 (2005) with which the Unity Council will strongly disagree.

Finally, the Unity Council is in the best position to present to this Court the unique perspective of the Nation's lawful government on the questions of real party in interest and the scope of federal court jurisdiction over matters of internal Nation governance. The inadequacy of representation requirement is satisfied. *See, California Valley Miwok Tribe v. Salazar,* 281

F.R.D. at 48 (finding inadequacy of representation because "the proposed intervenor's conceptualization of the action, as an internal tribal dispute not amenable to resolution in a federal judicial forum, is not shared by the defendants.").

II. IN THE ALTERNATIVE, THE UNITY COUNCIL MEETS THE CRITERIA FOR PERMISSIVE INTERVENTION

Permissive intervention requires a showing that the movant "has a claim or defense that shares with the main action a common question of law or fact." Rule 24(b)(1)(B). The Court must also consider whether intervention will "unduly delay or prejudice the adjudication of the rights of the original parties." Rule 24(b)(3). Both requirements are met here.

In its accompanying motion to dismiss, the Unity Council argues that this action should be dismissed because the "Cayuga Nation" as represented by Clint Halftown is not the real party in interest, and because federal courts do not have jurisdiction over the internal matters of governance of an Indian nation, especially when there is a dispute within the nation about the identity of the lawful government and a dispute about the interpretation of Nation law. The issue of whether the "Cayuga Nation" is a proper plaintiff inheres in Plaintiff's complaint and, upon information and belief, that issue is likely to be included in the defenses raised by the Defendants. Moreover, upon information and belief, the Defendants will also argue that this Court lacks jurisdiction. As a result, the commonality requirement of Rule 24 is satisfied.

Unity Council intervention will not delay the prosecution of this action. The Unity Council will adhere to the litigation deadlines imposed by the Court. The issues raised by the Unity Council's motion to dismiss can be resolved without extensive factual development through discovery. The legal issues raised by the motion can be considered and resolved

according to the same briefing schedule applicable to the other parties. Further, no party will be prejudiced by the Unity Council's intervention. Intervention is sought at the earliest stage of this case. Both the putative Plaintiff and the Defendants will be able to present their cases without limitation or delay. The participation of the Unity Council will contribute to the resolution of the issues raised by Plaintiff's complaint and Defendants' defenses. Permissive intervention should be granted.

CONCLUSION

This case raises significant issues related to the right of the Cayuga Nation to self-government. The Unity Council seeks intervention to protect that right. It satisfies the requirements for intervention as of right under Rule 24(a). In the alternative, permissive intervention should be granted to the Unity Council to allow it participation as a defendant. The Motion to Intervene should be granted.

Dated: November 13, 2014

Respectfully Submitted,

s/Joseph J. Heath

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Attorneys for the Cayuga Nation Unity Council

UNITED STATES DISTRICT COURT
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Defendants.

DECLARATION IN SUPPORT OF MOTION TO INTERVENE and MOTION TO DISMISS

Docket No.: 5:14-cv-01317 DNH/ATB

DECLARATION OF CHIEF SAMUEL GEORGE, BEAR CLAN, ON BEHALF OF PROPOSED DEFENDANT-INTERVENOR UNITY COUNCIL

SAMUEL GEORGE, under the penalty of perjury, duly affirms, deposes and says that:

1. I am a condoled Chief for the Bear clan of the Cayuga Nation. In this capacity, I am a member of the Cayuga Nation Council, also known as the Unity Council. The Nation Council is the lawful government for the Cayuga Nation. This Declaration is based on my personal knowledge.

2. As a Chief, one of my responsibilities is to ensure that our Great Law of Peace

is followed and understood by our people and to educate clan members about the Great Law of Peace, which governs the Haudenosaunee (Six Nations) Confederacy and each of its member nations, including the Cayuga Nation.

3. Under our law, no outside entity, not the courts, nor the BIA, has the right to determine who our leaders are. The Cayuga Nation and its citizens have that exclusive right.

4. Pursuant to the Great Law, our Council makes decisions by consensus. This means that if one or more Council members opposes a decision, that decision cannot go forward until or unless we come to one mind.

5. The Council of the Cayuga Nation has never authorized by consensus the operation of a Gambling Hall on Cayuga Nation territory. There was no consensus authorizing this Gambling Hall in 2005 and no consensus authorization to reopen it in 2013. I first learned of the Gambling Hall's reopening when it was reported in the media.

6. The Council of the Cayuga Nation has never authorized by consensus the filing of a federal lawsuit in support of the Gambling Hall on Cayuga Nation territory. I first learned of this lawsuit when attorneys for the Defendants contacted my attorneys after the filing of the suit.

7. Clint Halftown has no authority to act on behalf of the Cayuga Nation, either by filing a federal lawsuit in the Nation's name or by operating a Gambling Hall in the name of the Nation on Nation territory. Likewise, Timothy Twoguns and Gary Wheeler have no such authority.

8. Heron Clan Mother Bernadette Hill removed seatwarmer Clint Halftown from the Nation Council in accordance with Haudenosaunee law. Turtle Clan mother Brenda Bennett removed Timothy Twoguns and Gary Wheeler from the Council in accordance with Haudenosaunee law.

9. Nonetheless, Mr. Halftown, Mr. Twoguns, and Mr. Wheeler (the "former leaders") continue to act as if they are lawful leaders of the Cayuga Nation.

10. The Great Law prohibits our Nation from offering organized gambling, including games of chance considered to be Class II and Class III gambling under federal law, on our Nation territory. Our law prohibits all the forms of gambling, including bingo.

11. Our Council expressly prohibited the Gambling Hall by letter to Mr. Halftown, Mr. Wheeler, and Mr. Twoguns on January 29, 2014. (Attached as Exh. A). Our letter expresses the decision of the Nation as to Cayuga Nation law on this matter and directs Mr. Halftown to cease operation of the illegal Gambling Hall. Mr. Halftown has refused to follow this directive.

12. Therefore, our Council has revoked the Nation ordinance purportedly authorizing the Gambling Hall and has advised the National Indian Gaming Commission (NIGC) of this revocation. *See* Letter to NIGC (Attached as Exh. B). Because there is no valid authorization from the Nation for the Gambling Hall, any prior approval of the Gambling Hall by the NIGC as required pursuant to the Indian Gaming Regulatory Act has been nullified.

13. Heron clan member Clint Halftown has repeatedly violated Haudenosaunee

and Cayuga law by refusing to acknowledge his removal from the Nation Council; by purporting to represent the Nation in its dealings with the United States and the State of New York; and, most recently, by asking the federal courts to confirm his purported position as a Nation leader and to bless his illegal gambling enterprise. His operation of a Gambling Hall within the Nation's treaty-protected territory is a grave offense under our law.

14. Even if the former leaders were part of our government, there could be no consensus authorization for the operation of the Gambling Hall. They have argued to the BIA that they remain on our Council as it was comprised in 2005, with Chief William Jacobs, myself, and Chester Isaac as the other three members of the six-member Council. I have never agreed by consensus to allow gambling on our territory in violation of our law; nor to my knowledge has Chief Jacobs or Mr. Isaac.

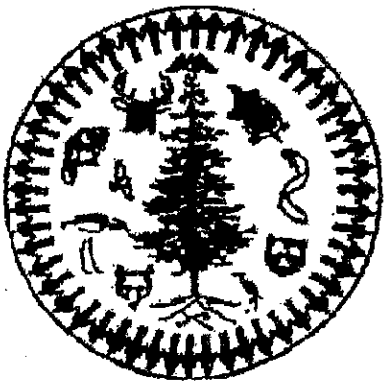
15. Even if they were still part of our government, there could be no consensus authorization for the filing of a federal lawsuit to protect the Gambling Hall. They have argued to the BIA that they remain on our Council as it was comprised in 2005, with Chief William Jacobs, myself, and Chester Isaac as the other three members of the six-member Council. I have never agreed by consensus to allow the filing of a federal lawsuit to protect the Gambling Hall being illegally operated on our territory; nor to my knowledge has Chief Jacobs or Mr. Isaac.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6 day of November, 2014

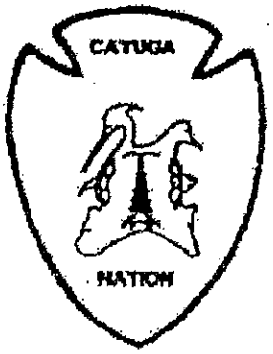
CHIEF SAMUEL GEORGE

EXHIBIT A



HAUDENOSAUNEE

CAYUGA NATION
P. O. Box 116
Akron, New York 14001
Telephone: (716) 542-2285
Facsimile: (716) 706-1221



January 29, 2014

Clint Halftown
Timothy Twoguns
Gary Wheeler
PO Box 803
Seneca Falls, NY 13148

Greetings,

We write to request that you immediately cease gambling activities on Cayuga territory. Such activities violate Cayuga law and have never been authorized by any Council of the Cayuga Nation. To be clear, we – three of the six members of the 2005 Cayuga Nation Council – oppose any organized gambling on Cayuga lands. We have never authorized such activities.

In addition, we oppose your effort to have land taken into trust by the United States for gambling purposes. We are deeply concerned that your land into trust application not only seeks to continue Class II gambling on Cayuga lands, but also seeks to bring to Cayuga ancestral territory a Class III gaming facility. As half of the Cayuga Nation Council recognized by the United States in 2005, we emphatically reject any such effort. It is unauthorized and inconsistent with Cayuga Nation law.

We believe that by bringing such illegal activities to Cayuga territory, you are acting against the best interests of Cayuga Nation citizens and of generations yet to come. We support pro-Cayuga economic development initiatives that benefit our people and do not violate our law.

Oneh,

Chief William C. Jacobs
Heron Clan

Chief Samuel George
Bear Clan

Chester Isaac
Bear Clan

EXHIBIT B

CAYUGA NATION UNITY COUNCIL
POB 169
SENECA FALLS, NY 13148

315-712-4252 FAX: 315-712-4371

November 6, 2014

Jonodev Osceola Chaudhuri
Acting Chairman
National Indian Gaming Commission
90 K Street NE
Suite 200
Washington, DC 20002
Fax: (202) 632-7066

Dear Mr. Chaudhuri:

Greetings from the Cayuga Nation. I write on behalf of the Nation's lawful government, the Council of Chiefs, known as the Unity Council.

We recently learned that Clint Halftown, a former leader of the Nation, has filed a federal lawsuit seeking declaratory and injunctive relief to prevent the Village of Union Springs from enforcing state and local law against Mr. Halftown's Gambling Hall, which is located within the Cayuga Nation's Reservation territory.

Although Mr. Halftown's lawsuit claims that in 2013, the Nation authorized the reopening of the Bingo Hall, in fact the government of the Cayuga Nation has never validly authorized the reopening of this facility, which is being operated in violation of Nation law.

As memorialized in the attached letter of January 29, 2014, the Council of the Cayuga Nation finds that the Gambling Hall violates Nation law and must be closed. We advised Mr. Halftown of the Council's determination and directed that he close the Gambling Hall. He has not done so. Our January 29, 2014 letter serves also to repeal any ordinance purporting to authorize gambling on Nation lands, and as a result nullifies NIGC approval of Mr. Halftown's gambling enterprise pursuant to Section 2710(b),(1)(B) of the Indian Gaming Regulatory Act. We ask that the NIGC honor this repeal.

As you may know, the BIA determined in May of this year that it no longer recognized Mr. Halftown as the Nation's representative for purposes of government-to-government relations with the United States. *See* May 15 Letter of Eastern Regional Director Franklin Keel, attached. The BIA recognized Mr. Halftown's removal in August 2011, and while that recognition was overturned on procedural grounds by the IBIA in early 2014, the BIA is currently determining whether the requisite federal need exists to recognize our Nation's new leadership.

Regardless of who the BIA might choose to recognize as the leaders of the Nation, there has been no consensus Council approval of this Gambling Hall as required by our law. Mr. Halftown's claim to continued power rests on the contention he remains part of a six member Council that governs the Nation and that includes Chief Samuel George, Chief William Jacobs, and Chester Isaac. Half of that Council opposes the Gambling Hall and has never authorized it; as does the entire Unity Council, our Nation's lawful government.

We are deeply concerned that Mr. Halftown has misled the NIGC regarding Nation authorization for his Gambling Hall and is seeking to use the federal courts and an illicit gambling enterprise to maintain a hold on power, contrary to the will of the people of the Cayuga Nation. We respectfully request that you withdraw NIGC approval of Mr. Halftown's gambling enterprise until and unless it is validly authorized by the Cayuga Nation pursuant to Cayuga law.

Sincerely,

Karl Hill
Heron Clan Representative
Cayuga Nation Council of Chiefs

cc: Kevin Washburn, Assistant Secretary – Indian Affairs
Sarah Harris, Chief of Staff to the Assistant Secretary – Indian Affairs
Jody Cummings, Senior Counselor to the Solicitor
Bruce Maytubby, Acting Director, Eastern Regional Office, BIA
Bella Sewall Wolitz, Office of the Solicitor, Department of Interior

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAYUGA NATION
and JOHN DOES 1–20,

Plaintiffs,

-against-

HOWARD TANNER, Village of Union Springs Code Enforcement Officer, in his Official Capacity;
EDWARD TRUFANT, Village of Union Springs Mayor, in his Official Capacity;
CHAD HAYDEN, Village of Union Springs Attorney, in his Official Capacity;
BOARD OF TRUSTEES OF THE VILLAGE OF UNION SPRINGS, NEW YORK; and
THE VILLAGE OF UNION SPRINGS, NEW YORK

Defendants

DECLARATION IN SUPPORT OF MOTION TO INTERVENE and MOTION TO DISMISS

Docket #: 5:14-cv-1317 DNH/ATB

DECLARATION OF HERON CLAN REPRESENTATIVE KARL HILL ON BEHALF OF PROPOSED DEFENDANT-INTERVENOR UNITY COUNCIL

KARL HILL, under the penalty of perjury, duly affirms, deposes and says that:

1. I am a Faithkeeper and Clan Representative for the Heron clan of the Cayuga Nation. In this capacity, I am a member of the Cayuga Nation Council, also known as the Unity Council. The Nation Council is the lawful government for the Cayuga Nation. This Declaration is based on my personal knowledge.

2. Pursuant to Cayuga Nation law, the Unity Council became the lawful government of the Cayuga Nation in 2011, when all three clans and all three Clan Mothers agreed upon the new Council. *See* Unity Council Resolution 001-2011 (Attached as Exh. A).

3. As a Clan Representative, one my responsibilities is to ensure that our Great Law of Peace is followed and understood by our people and to educate clan members about the Great Law of Peace, which governs the Haudenosaunee (Six Nations) Confederacy and each of its member nations, including the Cayuga Nation.

4. Under our law, no outside entity, not the courts, nor the BIA, has the right to determine who our leaders are. The Cayuga Nation and its citizens have that exclusive right.

5. Pursuant to the Great Law, our Council makes decisions by consensus. This means that if one or more Council members oppose a decision, that decision cannot go forward until or unless we come to one mind.

6. The Council of the Cayuga Nation has never authorized by consensus the operation of a Gambling Hall on Cayuga Nation territory. There was no consensus authorizing this Gambling Hall in 2005 and no consensus authorization to reopen it in 2013. I first learned of the Gambling Hall's reopening when it was reported in the media.

7. The Council of the Cayuga Nation has never authorized by consensus the filing of a federal lawsuit in support of the Gambling Hall on Cayuga Nation territory. I first learned of this lawsuit when attorneys for the Defendants contacted my attorneys after the filing of the suit.

8. Clint Halftown has no authority to manage or control the Cayuga Nation businesses, as he was removed from any business related position of authority. *See* Consensus Decision 003-2014, which relieved him and other "key employees" of their duties within the Nation enterprises. (Attached as Exh. B).

9. Clint Halftown has no authority to act on behalf of the Cayuga Nation, either by filing a federal lawsuit in the Nation's name or by operating a Gambling Hall in the name of the Nation on Nation territory. Likewise, Timothy Twoguns and Gary Wheeler have no such

authority.

10. Heron Clan Mother Bernadette Hill removed seatwarmer Clint Halftown from the Nation Council in accordance with Haudenosaunee law in 2005. Turtle Clan mother Brenda Bennett removed Timothy Twoguns and Gary Wheeler from the Council in accordance with Haudenosaunee law. These removals were affirmed by the Nation's Clan Mothers and Council in 2011. *See* Exh. A.

11. Nonetheless, Mr. Halftown, Mr. Twoguns, and Mr. Wheeler (the former leaders) continue to act as if they are lawful leaders of the Cayuga Nation.

12. The Great Law prohibits our Nation from offering organized gambling, including games of chance considered to be Class II and Class III gambling under federal law, on our Nation territory. Our law prohibits all the forms of gambling, including bingo.

13. Our Council expressly prohibited the Gambling Hall by letter to Mr. Halftown, Mr. Wheeler, and Mr. Twoguns on January 29, 2014. Our letter expresses the decision of the Nation as to Cayuga Nation law on this matter and directs Mr. Halftown to cease operation of the illegal Gambling Hall. Mr. Halftown has refused to follow this directive.

14. Therefore, our Council has revoked the Nation ordinance purportedly authorizing the Gambling Hall and has advised the National Indian Gaming Commission (NIGC) of this revocation. Because there is no valid authorization from the Nation for the Gambling Hall, any prior approval of the Gambling Hall by the NIGC as required pursuant to the Indian Gaming Regulatory Act has been nullified.

15. Heron clan member Clint Halftown has repeatedly violated Haudenosaunee and Cayuga law by refusing to acknowledge his removal from the Nation Council; by purporting to represent the Nation in its dealings with the United States and the State of New York; and, most

recently, by asking the federal courts to confirm his purported position as a Nation leader and to bless his illegal gambling enterprise. His operation of a Gambling Hall within the Nation's treaty-protected territory is a grave offense under our law.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13 day of November, 2014

Karl Hill

HERON CLAN REPRESENTATIVE KARL HILL

EXHIBIT A

HAUDENOSAUNEE
CAYUGA NATION
P. O. Box 116
Akron, New York 14001
Telephone: (716) 542-2285
Facsimile: (716) 706-1221

CAYUGA NATION
RESOLUTION 11-001

CAYUGA NATION COMPOSITION AND FEDERAL RECOGNITION

WHEREAS, on June 1, 2011 in accordance with Cayuga Nation customs, laws and traditions; it has become necessary to reflect the following changes to the Cayuga Nation Council;

WHEREAS, the composition of the Cayuga Nation Council is comprised of the following: Sachem Chief-William C. Jacobs; Clan Mother- Bernadette Hill; Faithkeeper-Karl Hill; and Faithkeeper-Tammy VanAernam; Seatwarmer-Dan Hill, for the Heron Clan; and Sachem Chief-Samuel George; Clan Mother-Inez Jimerson; Faithkeeper-Alan George; Faithkeeper-Pamela Isaac; and Representative-Chester Isaac, for the Bear Clan; and Representative-Justin Bennett; Representative-Samuel Campbell; and Clan Mother-Brenda Bennett, for the Turtle Clan.

THEREFORE BE IT NOW RESOLVED, that Clint Halftown, Federally Recognized Representative and Timothy Twoguns, Alternate Federally Recognized Representative, both of the Cayuga Nation, are no longer duly recognized as the authorized Bureau of Indian Affairs (BIA) Representative and Alternate.

WHEREAS, Clint Halftown is no longer recognized as the Heron Clan Representative; Clan Mother-Bernadette Hill has appointed Karl Hill, currently serving as a Faithkeeper, as the duly recognized Heron Clan Representative.

THEREFORE BE IT NOW RESOLVED, that Sachem Chief, William C. Jacobs and Sachem Chief Samuel George are now recognized as the Federally Recognized Representative and the

Federally Recognized Alternate, for the Bureau of Indian Affairs (BIA) and all other federal, state and local entities.

Oneh,

Cayuga Nation Council

William C. Jacobs – Sachem Chief , Heron Clan, Federally Recognized Representative

Samuel George – Sachem Chief, Bear Clan Alternate Federally Recognized Representative

Justin Bennett -Turtle Clan Representative

Samuel Campbell - Turtle Clan Representative

Chester Isaac-Bear Clan Representative

Karl Hill – Faithkeeper, Heron Clan Representative

EXHIBIT B

CD 003-2014
Cayuga Nation Enterprises and Businesses

CAYUGA NATION UNITY COUNCIL

CONSENSUS DECISION

CD 003-2014

THE CAYUGA NATION UNITY COUNCIL FINDS AS FOLLOWS:

1. On June 1st, 2011, in accordance with Cayuga Law and the Great Law of Peace the Cayuga Nation Council composition was changed and the Consensus Decision Making Process was reaffirmed to govern the internal and external affairs of the Cayuga Nation and its Enterprises and businesses;

2. The Cayuga Nation Enterprises and businesses, are a matter of internal exclusivity to the Cayuga Nation, governed only by the Cayuga Nation Council and not by any outside foreign entity, specifically the State of New York and the Federal Government of the United States of America;

3. The revenues of the Cayuga Nation Enterprises and its businesses are deposited into bank account(s) of which Clint Halftown has signature authority. The Council also acknowledges and recognizes the possiblity of others who may have signature authority to the Cayuga Nation Enterprise and business bank account(s);

4. Clint Halftown has held and continues to hold himself out as an Executive Officer or any equivalent position responsible for the overall management and operations of the all the Cayuga Nation Enterprises and businesses.

5. Mr. Halftown is also joined with "key employees" that assist in the management and operation of the Cayuga Nation Enterprises and businesses. These "key employees" are: BJ Radford, Victoria Hess, Irene Jimerson, Gerald Jimerson Sr., Timothy Twoguns, Gary Wheeler, Dick Lynch, Patti Costello, Seth Halftown and Lee Halftown

THEREFORE, THE UNITY COUNCIL ADOPTS THE FOLLOWING CONSENSUS DECISION EFFECTIVE IMMEDIATELY:

A. Clint Halftown and all other designees to Cayuga Nation Enterprise and business funds shall no longer have signature authority on any and all bank account(s) associated with Cayuga Nation Enterprises and businesses.

B. All "key employees" are hereby laid off due to reorganzation of the Cayuga Nation Enterprises and businesses and are eligible for unemployment benefits.

C. Clint Halftown shall cease and desist and be removed from all managerial and operational activity associated with his self-appointed position as an Executive Officer or any equivalent position responsible for the Cayuga Nation Enterprises and business and is hereby placed on "Investigation and Adminstrative Leave" without pay until a full

investigation of his activities associated with the Cayuga Nation Enterprises and businesses has been completed and a final decision is made on his employment by the Cayuga Nation Council.

D. A full and complete forensic audit shall be conducted on the Cayuga Nation Enterprises and businesses immediately following the removal of Clint Halftown and lay off of "key employees".

Oneh,

CAYUGA NATION UNITY COUNCIL

Dated: 1-15 2014

William C. Jacobs-Sachem Chief,
Heron Clan, Federally Recognized Rep.

Samuel George- Sachem Chief, Bear Clan
Alternate Federally Recognized Rep.

Justin Bennett-Turtle Clan Representative

Samuel Campbell-Turtle Clan Representative

Chester Isaac-Bear Clan Representative

Karl Hill-Faithkeeper, Heron Clan Representative

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAYUGA NATION
and JOHN DOES 1–20,

Plaintiffs,

-against-

HOWARD TANNER, Village of Union Springs Code Enforcement Officer, in his Official Capacity;
EDWARD TRUFANT, Village of Union Springs Mayor, in his Official Capacity;
CHAD HAYDEN, Village of Union Springs Attorney, in his Official Capacity;
BOARD OF TRUSTEES OF THE VILLAGE OF UNION SPRINGS, NEW YORK; and
THE VILLAGE OF UNION SPRINGS, NEW YORK

Defendants.

DECLARATION IN SUPPORT OF MOTION TO INTERVENE

Docket No.: 5:14-cv-01317 DNH/ATB

DECLARATION OF JOSEPH J. HEATH IN SUPPORT OF MOTION OF THE UNITY COUNCIL OF THE CAYUGA NATION TO INTERVENE AS DEFENDANT

JOSEPH J. HEATH, ESQ., under the penalty of perjury, hereby declares, affirms and says that:

1. I am an attorney duly licensed to practice law in the courts of the State of New York and I have been so licensed since 1975. I have been admitted to practice in the U.S. District Court for the Northern District of New York since 1976. I make this Declaration in Support of the Motion by the Cayuga Nation Unity Council to Intervene, pursuant to Federal Rule of Civil Procedure 24 (a) and (b). I make the statements in this Declaration based on my personal knowledge.

2. The Plaintiffs in this action purport to be the "Cayuga Nation" and 20 unnamed "John Doe" plaintiffs. However, this action was not authorized by the lawful government of the

Cayuga Nation.

3. This action violates the law of the Cayuga Nation because it seeks to advance the pro-gambling agenda of a former Nation leader, contrary to the Nation's laws, and is based on the incorrect claim that the Nation has authorized the Gambling Hall that is the subject of the action.

4. The Cayuga Nation is currently involved in an internal dispute about the lawful government of the Nation. Any decision on the merits of this action will embroil the Court in that ongoing internal leadership dispute, and require the Court to make decisions that interpret Cayuga Nation law and procedures.

5. The lawful government of the Cayuga Nation changed in 2011, when the Nation's three clan mothers reformed the Council of Chiefs. Pursuant to a consensus resolution enacted on June 1, 2011, the Unity Council's composition was established as follows:

a. Heron Clan: Chief William Jacobs and representative Karl Hill;

b. Bear Clan: Chief Samuel George and representative Chester Isaac; and

c. Turtle Clan: representatives Justin Bennett and Samuel Campbell.

6. This Motion is filed on behalf of the Unity Council by Chief Samuel George, Chief William Jacobs, Bear Clan Representative Chester Isaac, and Heron Clan Representative Karl Hill.

7. Turtle Clan Mother Brenda Bennett and Turtle Clan representatives Justin Bennett and Samuel Campbell have authorized the filing of this Motion to intervene and the proposed motion to dismiss on the grounds that: (a) Clint Halftown, Timothy TwoGuns and Gary Wheeler lack governmental authority to file lawsuits on behalf of the Cayuga Nation; and (b) the

Gambling Hall has never been authorized by the lawful government of the Cayuga Nation and its operation therefore violates Cayuga Nation law.

8. As the lawful government of the Cayuga Nation, the Unity Council has an interest in this action because:

a. Actions taken on behalf of the Cayuga Nation cannot be taken by individuals not authorized by the lawful government of the Nation;

b. This action violates Cayuga Nation law both substantively and procedurally, in that the filing of the action was not authorized by a consensus decision of the Nation's governing body, the Cayuga Nation Unity Council; the "Cayuga Nation" is not the real party in interest; and the Cayuga Nation has expressly revoked any authorization for Class II gambling activities on its lands as required by the Indian Gaming Regulatory Act, 25 U.S.C. § 2710(b)(1)(B);

c. This action interferes with the Nation's right to self-governance.

THE CAYUGA NATION LEADERSHIP DISPUTE:

9. The current leadership dispute stems from the refusal of three former members of the Nation's Council of Chiefs to abide by Cayuga law and leave their positions. The Bureau of Indian Affairs currently does not recognize any individual as a leader of the Cayuga Nation. *See* Letter of BIA Eastern Regional Director Franklin Keel, May 15, 2014 (attached as Exhibit "A"). A brief history of the dispute follows.

10. In November, 2004, then "federal representative" Clint Halftown unilaterally signed an agreement with then New York Governor George Pataki to settle the Nation's historic land claim action, in exchange for a Catskill casino and $60 million in attorneys fees. This

unauthorized action was not approved by any other member of the Nation's Council and was immediately opposed by all other Council members. Mr. Halftown's unilateral action fractured the Council and did not lead to settlement of the land claim or establishment of a casino.

11. This fracture was the subject of a federal lawsuit, initiated in February of 2005, entitled *Cayuga Nation of New York v. Clint Halftown, Sharon L. LeRoy and Anita Thompson*, Docket No: 05-CV-0195 (March 31, 2005). In that action, Gary Wheeler and Tim TwoGuns, under the title of the Cayuga Nation, sued Mr. Halftown and his mother. Senior District Court Judge Frederick Scullin promptly dismissed the action, on motion by Mr. Halftown, because the District Court lacked subject matter jurisdiction over an internal nation leadership dispute. This unreported decision is annexed hereto as Exhibit "B".

12. Since 2005, multiple requests have been made to the Bureau of Indian Affairs to resolve the issue of whom the United States should recognize as the legitimate government of the Cayuga Nation, with some of the former Nation Council members taking different positions at different times. This leadership dispute has also been reviewed twice by the Interior Board of Indian Appeals (IBIA).

13. Both the BIA and the IBIA have consistently recognized that under Cayuga Nation law the Nation is governed by a six member Council and that Council decisions are made by consensus.

14. On June 1, 2011, an historic change took place within the Cayuga Nation leadership, with the formation of the Unity Council, made up of the Chiefs and clan

representatives listed in ¶ 5 above and supported and confirmed by the three Clan Mothers. [1]

15. The formation of the Unity Council and the consensus reached in support thereof was reported to the BIA in June of 2011. Letter of Joseph Heath to BIA Eastern Regional Director Franklin Keel, June 9, 2011, annexed hereto as Exhibit "C". This submission was followed by extensive briefing by both parties.

16. On August 19, 2011, the Eastern Regional Director issued a Decision recognizing the Unity Council as the new governing body of the Cayuga Nation:

> I conclude that the source of the changes outlined above was the action of each clan mother in carrying out her traditional clan responsibilities. I would be remiss if I failed to recognize the results of this exercise of ancient traditional authority by the Clan Mothers. As noted above, by Haudenosaunee tradition, the Clan Mothers are the persons tasked with the responsibility of appointing representatives of their respective clans to serve on the Nation Council.
>
> Therefore, for purposes of the government-to-government relationships between the United States and the Cayuga Nation, I recognize the Nation [Unity] Council as set out in Cayuga Nation Resolution 11-001. Further, I recognize Mr. William C. Jacobs and Mr. Samuel George as the federal representatives designated by the new Nation Council.

This Decision is annexed hereto as Exhibit "D".

17. In September of 2011, Messrs. Halftown, TwoGuns and Wheeler appealed this August 19, 2011 recognition Decision to the Interior Board of Indian Appeals. Under the rules of procedure of the IBIA, that appeal automatically stayed the effectiveness of the recognition decision, and Mr. Halftown remained in control of all of the Nation businesses and funds.

---

[1] In June of 2011, the Bear Clan Mother was Inez Jimerson. Clan Mother Jimerson passed away in 2012 and that clan selected Pamela Oaks as the new Bear Clan Mother.

18. Extensive briefing took place before the BIA, which asked in late 2012 that the parties address the question whether, as a procedural matter, the requisite need for a federal recognition decision had been shown.

19. On January 16, 2014, the IBIA issued a decision vacating the Eastern Region's recognition of the Unity Council on procedural grounds. The IBIA did not reach the merits of the Eastern Region's decision to recognize the Unity Council:

> In reaching this conclusion, we are only recognizing that when the Decision was issued, there was an ongoing dispute between the factions. We express no opinion, of course, on the Interested Parties' argument that as a matter of Cayuga law and tradition, the clan mothers' action to remove a seatwarmer from the Council is final and thus the dispute has been resolved as a matter of tribal law. That argument, of course, goes to the underlying merits of the dispute as presented to BIA for a decision.

This decision is reported at 58 IBIA 171, and it is annexed hereto as Exhibit "E".

20. In late April of 2014, this internal Cayuga leadership dispute resulted in a peaceful transition of control over some Cayuga Nation businesses and buildings that had been under the control of Mr. Halftown, enacted by the Nation's lawful leadership and supported and executed by its citizens. Mr. Halftown sued the Unity Council in the supreme courts of Cayuga County and Seneca County and these actions were properly dismissed on the grounds that courts lack subject matter jurisdiction over internal Indian nation leadership disputes. Appeals of these dismissals are pending in the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department. The Seneca County Supreme Court's Dismissal of May 19, 2014, is annexed hereto as Exhibit "F". The Cayuga County Supreme Court's Dismissal of June 19, 2014, is annexed hereto as Exhibit "G".

21. Plaintiffs in this action and proposed Defendant-Intervenor have submitted briefs to the BIA regarding whether the requisite procedural requirements have been met in order for the Eastern Region to make a recognition decision at this time. The Eastern Region's determination on that question and on the merits of the leadership dispute is pending. During the pendency of these determinations, the BIA is not recognizing any leader of the Nation. *See* BIA Tribal Leaders Directory, attached as Exhibit "H". At this time, therefore, the BIA does not recognize Mr. Halftown in any leadership role within the Cayuga Nation.

THE UNITY COUNCIL'S INTERESTS IN THIS ACTION:

22. This action involves one Cayuga Nation business, a gambling hall. Plaintiffs claim that a loss of revenue from the gambling hall would constitute irreparable harm. This action also involves purported Nation laws and governmental decisions, such as the decision to reopen the gambling hall, in July of 2013. The broader issue of whether the Cayuga Nation sanctions organized gambling on its territory -- extremely divisive issue within the Nation and its government – is fundamental to this action. Finally, this action involves the intra-governmental relationship between the Nation and the village of Union Springs.

23. The Unity Council's fundamental opposition to gambling is well known to Mr. Halftown and his small faction. On June 28, 2013, just days before the unauthorized reopening of this gambling hall, the Unity Council sent a letter to Kevin Washburn, the Assistant Secretary for Indian Affairs in the Interior Department, which clearly stated, *inter alia*: "The Cayuga Nation Unity Council does not support use of Nation lands for gambling." This letter is annexed hereto as Exhibit "I".

24. Subsequently, on January 29, 2014, three members of the Unity Council, who had

also been members of the Council of which Mr. Halftown was a part, wrote to Mr. Halftown, Mr. Twoguns and Mr. Wheeler:

> We write to request that you immediately cease gambling activities on Cayuga territory. Such activities **violate Cayuga law** and have never been authorized by any Council of the Cayuga Nation. . . . We believe that by bringing such illegal activities to the Cayuga territory, you are acting against the best interests of Cayuga Nation citizens and of generations yet to come. We support pro-Cayuga economic development initiatives that benefit our people and **do not violate our law**. (Emphasis added.)

This letter is annexed hereto as Exhibit "J".

25. Since May of 2011, the Unity Council has expended a good deal of time and resources towards healing the previously hostile relationships with local governments with the Nation's historic Canandaigua Treaty recognized reservation. Some progress has been made and some healing has occurred.

26. Given this diplomatic policy of the Unity Council, any hostile law suit against any local municipality would require extensive discussion, within the Clans, and a clear, consensus decision of the Council before it could be filed. No such discussion was undertaken and no consensus decision was reached, and therefore this action was filed in violation of Cayuga Nation law, policy and tradition.

27. On some issues, Defendant Village of Union Springs and the Unity Council have agreement and could probably work cooperatively. On October 31, 2014 a meeting was held in my office with Village Attorney Chad Hayden, Mayor Trufant and village litigation counsel Cornelius Murray. The meeting was cooperative and productive. The village does not object to this Motion to Intervene. However, it was clear from this meeting that the village understands that they could not properly represent the interests of the Unity Council, as there are some issues

upon which the Village and the Unity Council have fundamental differences.

I declare under penalty of perjury that the above factual allegations are true and correct.

Dated: November 12, 2014
Syracuse, New York

JOSEPH J. HEATH
Counsel for the Unity Council of the
Cayuga Nation

LIST OF EXHIBITS TO DECLARATION OF JOSEPH J. HEATH IN SUPPORT OF MOTION TO INTERVENE

Exhibit A: Letter of BIA Eastern Regional Director Franklin Keel dated May 15, 2014

Exhibit B: Memorandum-Decision and Order - *Cayuga Nation of New York v. Clint Halftown, et al.* (March 31, 2005)

Exhibit C: Letter of Joseph Heath to BIA Eastern Regional Director Franklin Keel dated June 9, 2011

Exhibit D: Keel Decision dated August 19, 2011

Exhibit E: 58 IBIA 171 (01/16/2014)

Exhibit F: *Cayuga Nation, et al. v. William Jacobs, et al.*, 986 N.Y.S. 2d 791 (May 19, 2014)

Exhibit G: *Cayuga Nation, et al. v. William Jacobs, et al.*, Order (June 19, 2014)

Exhibit H: BIA Tribal Leaders Directory (2014)

Exhibit I: Letter to Kevin Washburn dated June 28, 2013

Exhibit J: Letter to Clint Halftown, Timothy Twoguns and Gary Wheeler dated January 29, 2014

EXHIBIT A

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Eastern Regional Office
545 Marriott Drive, Suite 700
Nashville, TN 37214

MAY 15 2014

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Cayuga Nation
P.O. Box 116
Akron, New York 14001

Cayuga Nation
P.O. Box 803
Seneca Falls, NY 13148

Ladies and Gentlemen:

The Eastern Regional Office ("Region") is in receipt of several recent submissions from individuals claiming to represent the Cayuga Nation ("Nation"):

- Two letters dated March 12, 2014 from the Cayuga Nation Unity Council ("Unity Council"), one of which transmits an application to obtain funds for water management within Cayuga territory pursuant to Consensus Decision 006-2014 and another which claims that pursuant to Consensus Decision 004-2014, Federal funding intended to benefit the Nation is not to be directed to Ms. Sharon LeRoy and Mr. Clint Halftown and that these individuals are not authorized to "drawdown" funds provided to the Nation. Both March 12 letters are signed by Mr. William C. Jacobs and Mr. Samuel George as representatives of the Nation.

- A letter dated April 24, 2014 from Mr. Halftown to modify an existing Indian Self Determination Act (ISDA) contract for the Nation's transportation program.

- Two letters dated May 5, 2014 from the Unity Council informing the Eastern Regional Director of actions taken more recently by the Unity Council concerning the Nation's businesses and administrative offices. One of these letters ends with a series of three questions regarding the status of BIA recognition of the Nation's leadership.

- A May 13, 2014 email from a representative for Mr. Halftown to Department of the Interior officials claiming that Mr. Halftown is the Nation's Federal representative.

All of these letters, along with their attachments, are enclosed. In response to the Unity Council's March 12 correspondence, the Region has sent out two requests to Mr. Jacobs for approval of proposed contract modifications to an existing ISDA agreement for Community Services. The Region needs authorized signatures from Nation representatives on these modifications. These unsigned contract modifications are also enclosed.

The long-running dispute over the political leadership of the Cayuga Nation has been brought to the attention of the Eastern Regional Office on multiple occasions. This dispute was the subject of a recent Interior Board of Indian Appeals ("IBIA") decision, *Cayuga Nation of New York, et al. v. Eastern Regional Director, BIA*, 58 IBIA 171 (2014) ("*Cayuga*"). The IBIA found procedural defects in the Region's earlier attempt to recognize certain tribal leadership. The IBIA decision vacated the Region's 2011 recognition decision "without expressing any view on the merits of the underlying dispute, the current leadership of the Nation, or the identity or scope

of authority of any individual to represent or take action on behalf of the Nation." *Id.* at 172. The IBIA made it clear throughout the decision that the Region is barred from issuing any decision whatsoever regarding tribal leadership during a governance dispute unless there is a matter that requires BIA action pending before the Region that triggers the need to take a position on the dispute.[1] The IBIA's decision states, "if there *is* a separate need for Federal action, which in turn requires a recognition decision, it would be BIA's responsibility to make a decision about whom to recognize, setting forth its reasoning and justification, and providing appeal rights to interested parties." *Id.* at 181 n.7.

Given all of these developments, the Region seeks the parties' views on the following issues: (1) whether there are matters pending before the Region such as those described above involving the Cayuga Nation's ISDA grants and the request for funds for water management that require Federal action and trigger the need for a decision as to who is the Nation's Federal representative; and (2) whom the Region should recognize as the leadership of the Cayuga Nation. At this time and until the Region resolves these issues, the Region will maintain the status quo with respect to the Cayuga Nation's drawdown authority. By doing so, the Region does not express any view recognizing either side; keeping drawdown authority with the current individual, while declining to accept signed contract modifications and act on other funding requests until the Region has gathered additional information maintains the status quo pending careful consideration of these issues.

Accordingly, by this letter, the Region hereby requests that all interested parties in this dispute submit any views or supplemental materials that you wish the Region to consider in rendering a determination concerning the issues outlined above. Materials must be received by the Region

[1] The IBIA provided a crystal clear statement of its views regarding the need for BIA neutrality in its August 28th Order Denying Motions to Place the Decision into Effect. The Board explained that in its view, any recognition of Halftown would constitute an improper intrusion into tribal affairs. Footnote 4 of that order states: "...Appellants' [Halftown et al.'s] argument . . . appears to assume that some type of recognition decision by BIA was appropriate at the time the Regional Director issued the Decision. Appellants 'solution' was for the Regional Director to apply the ordinary default practice . . . of recognizing on an interim basis the last-recognized representative and the last-recognized Council. But when there is an internal governance dispute within a tribe, any decision by BIA that has the effect of taking sides in the dispute, or appearing to do so, even if only on an interim basis, necessarily intrudes into tribal affairs, even if it is for the narrowly limited purpose of BIA taking some required action. The intrusion may be legally excused, under the circumstances, but it is still an intrusion. Thus, the Board does not share Appellants' apparent view that if BIA were to decide (i.e., assuming there was a need for BIA action) to deal with Halftown, or with the last-recognized Council, while the dispute remains pending, such a decision would not constitute an intrusion into tribal affairs." (emphasis in original). Footnote 7 in the *Cayuga* decision is also on point and further cautions BIA against aligning itself with either side in a pending intertribal dispute until required to do so (even while an appeal is pending before the IBIA): "The Regional Director suggests that as long as the Decision is stayed by this appeal, 'BIA is required to continue to recognize a Cayuga council composed of [the Halftown faction and Jacobs faction].' That is not the case. If there is no separate need for Federal action during the Nation's tribal government dispute, BIA is not required to recognize anyone as the Nation's representative or any composition of the Council, nor would it be appropriate for BIA to do so . . . ." Emphasis in original. The IBIA concludes by holding that "if it becomes necessary for the Regional Director to issue a new decision, when a separate matter presents itself for BIA action that would implicate the tribal dispute, the Regional Director will have the benefit of, and may respond as necessary to, the parties' arguments on the merits as set forth in briefs in this appeal and in any supplemental submissions to the Regional Director." *Id.* at 186.

within thirty (30) calendar days from the date of this letter in order to be considered in any decision that the Region may determine appropriate.

Again, this correspondence should not be construed as BIA taking any position on the leadership dispute within the Cayuga Nation. The purpose of this letter is only to solicit the views of interested parties, as directed by the IBIA. Accordingly, this letter does not adversely affect any interested party, and therefore does not require notification of appeal rights. 25 C.F.R. § 2.7. This letter is being provided to the two addresses of the Cayuga Indian Nation of which the Region is aware based on recent letterhead, as well as attorneys that have previously and recently represented the respective parties to this leadership dispute to BIA's knowledge. The recipients are hereby advised that the addressing of this letter is subject to the same caveat set forth in the *Cayuga* decision. *Cayuga*, 58 IBIA at 171 n. 1. If any of the attorneys to which this letter was sent are no longer acting as counsel in this matter, please so advise and the Region will remove that name and address from the mailing and distribution list.

Sincerely,

Franklin Keel
Director, Eastern Regional Office

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE CAYUGA INDIAN NATION OF NEW YORK,

Plaintiff,

v. **5:05-CV-195 (FJS/DEP)**

CLINT HALFTOWN, SHARON L. LeROY, and ANITA THOMPSON,

Defendants.

APPEARANCES	OF COUNSEL
SONNENSCHEIN NATH & ROSENTHAL LLP 1221 Avenue of the Americas 24th Floor New York, New York 10020 Attorneys for Plaintiff	**RAYMOND J. HESLIN, ESQ.** **ROBERT P. MUVEY, ESQ.**
GREEN & SEIFTER, ATTORNEYS, PLLC 900 One Lincoln Center Syracuse, New York 13202 Attorneys for Defendants	**DANIEL J. FRENCH, ESQ.** **LAWRENCE M. ORDWAY, ESQ.** **KIMBERLY M. ZIMMER, ESQ.**
EDWARD Z. MENKIN, ESQ. State Tower Building Suite 209 109 South Warren Street Syracuse, New York 13202 Attorneys for Respondents Daniel J. French and Green & Seifter, Attorneys, PLLC	**EDWARD Z. MENKIN, ESQ.**

SCULLIN, Chief Judge

MEMORANDUM-DECISION AND ORDER

I. BACKGROUND

Plaintiff bring this action seeking a declaratory judgment that Defendant Halftown is not an authorized representative of the Cayuga Indian Nation of New York ("Nation")[1] and further seeking an injunction requiring Defendants to surrender the Nation's books and records and to provide an accounting.

Plaintiff's complaint alleges the following facts: that, on November 14, 2004, the Cayuga Nation Council of Chiefs, Representatives and Clan Mothers ("Council"), adopted a resolution authorizing Defendant Halftown to enter into an agreement ("Settlement Agreement") with the State of New York to settle *Cayuga Indian Nation of N.Y. v. Pataki*, 5:80-cv-930-NPM (N.D.N.Y. filed Nov. 19, 1980) ("Land Claim Litigation"); that, on November 17, 2004, Defendant Halftown, as a duly authorized representative, executed the Settlement Agreement on behalf of the Nation; and that, thereafter, on December 31, 2004, and January 18 and 19, 2005, Defendant Halftown wrote letters to Governor Pataki in an attempt to repudiate the Settlement Agreement.

Plaintiff's complaint also asserts that on February 7, 2005, the Council adopted a resolution revoking all authority that it had previously given Defendant Halftown and removing Defendant LeRoy as Secretary and Treasurer of the Nation. Finally, the complaint alleges that Plaintiff has discovered that Defendants LeRoy and Thompson[2] were paid grossly exaggerated salaries, that some of the Nation's business records are missing, and that Defendants Halftown and LeRoy misallocated federal funds that had been designated for the Nation.

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[1] Since the parties disagree as to whether Plaintiff properly represents the Nation, the Court will distinguish between Plaintiff and the Nation as appropriate.

[2] Plaintiff alleges that Defendant Thompson is the Nation's former office administator.

Presently before the Court are (1) Plaintiff's motion for a preliminary injunction[3] and (2) Plaintiff's application for an order to disqualify Daniel J. French, Esq. and Green & Seifter, Attonerys, PLLC (collectively "Respondents") as attorneys for Defendants pursuant to DR 9-101(B), 18 U.S.C. § 207(a), and/or DR 5-107(A)(1).

II. DISCUSSION

A. Preliminary injunction standard

Generally, "[t]o obtain a preliminary injunction the moving party must show, first, irreparable injury, and, second, either (a) likelihood of success on the merits, or (b) sufficiently serious questions going to the merits and a balance of hardships decidedly tipping in the movant's favor." *Green Party of N.Y. State v. N.Y. State Bd. of Elections*, 389 F.3d 411, 418 (2d Cir. 2004) (citation omitted). However, when a party seeks a preliminary injunction that alters the status quo, it "must show a '"substantial" likelihood' of success." *Id.* (quotation

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[3] Plaintiff specifically seeks an order enjoining Defendants

> (a) from entering the Nation's offices; (b) from interfering with the audit of R.A. Mercer; (c) from denying access to the Nation's books and records to R.A. Mercer; (d) from the management and operation of the Nation's businesses, including all check writing authority; (e) from interfering with R.A. Mercer's oversight of the Nation's business ventures, including its selection of appropriate signatories to all checks issued by the Nation; (f) from interfering with the settlement entered into between the Nation and the State of New York; or (g) from acting on behalf of the Nation or its business . . . .

See Dkt. No. 9 at 2. Although not included in the ultimate order portion of the proposed injunction, Plaintiff also seeks an order authorizing "R.A. Mercer" to oversee the Nation's businesses and to select appropriate signatories. *See id.* at 1. It appears that both sides recognize R.A. Mercer & Co. P.C. as the Nation's accountant at least for the purpose of certain audits.

omitted).

The likelihood that Plaintiff will succeed on the merits depends, as an initial matter, on whether this Court has jurisdiction over this action. "The requirement that jurisdiction be established as a threshold matter 'spring[s] from the nature and limits of the judicial power of the United States' and is 'inflexible and without exception.'" *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998) (quotation omitted). Without subject matter jurisdiction, the Court has no power to pronounce on the merits of this action. *See id.* at 101-02.

Plaintiff has the burden of demonstrating that the Court has subject matter jurisdiction. *See Shenandoah v. Halbritter*, 366 F.3d 89, 91 (2d Cir. 2004) (citation omitted). Plaintiff alleges that this Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, 1362, 1367, 2201, 2202. Section 1337 creates jurisdiction for actions arising under commerce and antitrust regulations, none of which Plaintiff has identified as being involved in this case. Section 1367 creates supplemental jurisdiction, which depends upon the Court first having original jurisdiction. Sections 2201 and 2201 create declaratory and auxiliary remedies; they do not create bases of jurisdiction.

That leaves § 1331[4] and/or § 1362 as a basis for the Court's subject matter jurisdiction over this matter.[5] Under either provision, the Court only has jurisdiction if the matter at issue arises under federal law. A case arises under federal law "only when a federal question is

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[4] Section 1331 provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

[5] Section 1362 provides that "[t]he district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1362.

presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (citation omitted). Plaintiff contends that its complaint presents a federal question because it concerns the Settlement Agreement.

Contrary to Plaintiff's contention, this action does not arise under the Settlement Agreement. Plaintiff essentially claims that Defendant Halftown has misrepresented his authority as a representative of the Nation and that Defendants have prevented access to the Nation's offices and business records and have misappropriated the Nation's funds. The relief that Plaintiff seeks – a declaration that Defendant Halftown is not an authorized representative of the Nation and an order requiring Defendants to surrender the Nation's books and records to and provide an accounting – neither touches upon the legitimacy or execution of the Settlement Agreement nor arises from an interpretation of the Settlement Agreement or any provision of federal law.[6]

Despite Plaintiff's characterizations of its allegations, Plaintiff's complaint clearly asks the Court to decide who represents the Cayuga Nation and to interpret and enforce the Council's

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[6] Furthermore, although the Settlement Agreement does provide that

> [a]ny action brought by any Party arising from, relating to, or seeking to enforce this Agreement, or any of the terms therein, the Federal Settlement Litigation, or the State Settlement Litigation shall be brought in the United States District Court for the Northern District of New York, and the Parties expressly consent to the jurisdiction and venue in such court over such actions . . . .

See Dkt. No. 11 at Exhibit "I" at 22, it is not yet in effect. Specifically, the Agreement provides that it "shall not take effect or be binding upon the Parties, and shall not become effective, until all the following actions have been performed and completed . . . ." *See id.* at 6. Two of those actions are the New York State Legislature's and the United States Congress' enactment of certain legislation. *See id.* Neither legislative body has enacted any such legislation.

resolutions. This is, in effect, a request for the Court to resolve a dispute involving tribal authority and tribal law. "A dispute over the meaning of tribal law does not 'arise under the Constitution, laws, or treaties of the United States' . . . ." *Kaw Nation ex rel. McCauley v. Lujan*, 378 F.3d 1139, 1143 (10th Cir. 2004) (internal citations omitted); *accord Shenandoah v. U.S. Dep't of Interior*, 159 F.3d 708, 712-13 (2d Cir. 1998) (citations omitted). Furthermore, whether phrased in terms of jurisdiction or justiciability, federal courts have consistently held that they do not have the authority to resolve internal tribal disputes.[7]

Finally, insofar as Plaintiff seeks review of the Bureau of Indian Affairs' ("BIA") determination that Defendant Halftown is the Nation's representative for dealings with the federal government,[8] Plaintiff faces at least two jurisdictional hurdles. First, Plaintiff has not named the Secretary of the Interior as a Defendant. Second, Plaintiff has not exhausted its administrative remedies. "Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. . . ." 5 U.S.C. § 704. "No decision, which at the time of its rendition is subject to appeal to a superior authority

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[7] *See, e.g., In re Sac & Fox Tribe of Miss. in Iowa/Meskwaki Casino Litig.*, 340 F.3d 749, 763 (8th Cir. 2003) (citation omitted) ("Jurisdiction to resolve internal tribal disputes, interpret tribal constitutions and laws, and issue tribal membership determinations lies with Indian tribes and not in the district courts."); *Crowe v. E. Band of Cherokee Indians, Inc.*, 506 F.2d 1231, 1233 (4th Cir. 1974) (citations omitted); *Motah v. U.S.*, 402 F.2d 1, 1 (10th Cir. 1968) (citations omitted) ("The action stems from an internal controversy among Indians over tribal government, a subject not within the jurisdiction of the court as a federal question."); *Quair v. Sisco*, No. CVF025891RDCDLB, 2004 WL 3214396, *29 (E.D. Cal. July 26, 2004) (quotation omitted); *Barnes v. White*, 494 F. Supp. 194, 200 (N.D.N.Y. 1980) ("[P]laintiffs' complaint stems from an intratribal dispute which federal policy dictates should be handled within the Tribe and not by this Court.").

[8] *See* Dkt. No. 32 at 3 (March 17, 2005 letter from the Regional Director of the BIA stating that the BIA recognizes Defendant Halftown as the Nation's representative in its intergovernmental relationship with the federal government).

in the Department, shall be considered final so as to constitute Departmental action subject to judicial review under 5 U.S.C. § 704 . . . ." 25 C.F.R. § 2.6(a) (2005); *see also Shenandoah*, 159 F.3d at 712-13 (citations omitted).[9]

For the above-stated reasons, the Court finds that Plaintiff cannot show a likelihood of success of the merits because the Court is without jurisdiction to entertain this action. Accordingly, the Court denies Plaintiff's motion for a preliminary injunction.[10]

B. Plaintiff's application for an order to disqualify Respondents as counsel for Defendants

Plaintiff contends that Respondent French, while serving as the United States Attorney for the Northern District of New York, participated personally and substantially in the Land Claim Litigation. Plaintiff also speculates that Respondent French gained confidential

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[9] Although neither party refers to it, 25 U.S.C. § 233 is at least arguably relevant to this action. Section 233 provides, in pertinent part, that

> [t]he courts of the State of New York under the laws of such State shall have jurisdiction in civil actions and proceedings between Indians or between one or more Indians and any other person or persons to the same extent as the courts of the State shall have jurisdiction in other civil actions and proceedings, as now or hereafter defined by the laws of such State . . . .

25 U.S.C. § 233. However, § 233 is inapplicable for at least two reason. First, § 233 concerns state-court jurisdiction; nothing in this statute creates "grounds for this Court to exercise federal question jurisdiction over this action or overrule[s] the existing limits on federal jurisdiction." *Frazier v. Turning Stone Casino*, 254 F. Supp. 2d 295, 304 (N.D.N.Y. 2003). Second, " the Nation's rights to self-government and exclusive jurisdiction over its internal affairs are treaty rights and cannot be abrogated absent a 'clear and plain' showing that Congress intended to interfere with those rights," and such a showing has not been made. *Bowen v. Doyle*, 880 F. Supp. 99, 116 (W.D.N.Y. 1995).

[10] As the Court noted at oral argument, based upon the Court's finding that it lacks jurisdiction, a motion to dismiss this action is in order.

information in the course of that participation that he can now use to the Nation's disadvantage and that, therefore, the Court should disqualify him and his firm from representing Defendants in this action.

In support of its contention, Plaintiff has submitted two affidavits. Martin R. Gold, a member of Sonnenschein Nath & Rosenthal, LLP, apparently served as one of the Nation's counsel during the Land Claim Litigation. He states, in pertinent part, that

> 5. Mr. French personally appeared in Judge McCurn's courtroom during jury selection, at which time the Justice Department attorneys introduced him to me, and I participated in discussions with him and the Justice Department attorneys concerning strategy in jury selection. Mr. French discussed with us his views on the jury pool, and their potential predispositions.
>
> 6. Toward the end of the jury trial, I recall working with the Justice Department attorneys in a conference room in the United States Attorney's office at which time Mr. French entered the room and discussed the case. I do not recall the specific discussion, but it related to the status of the proceedings, with which he expressed familiarity.
>
> 7. In addition, I recall instances during the trials in which the Justice Department attorneys mentioned to me that they had discussed one or another issue with Mr. French.

See Affidavit of Martin R. Gold, sworn to March 8, 2005, at ¶¶ 5-7. Plaintiff's counsel, Raymond J. Heslin, was trial counsel during the Land Claim Litigation and states, in pertinent part, that "[d]uring the several hearings and trials in Syracuse, I met with Mr. French and other attorneys of the United States Attorney's Office and discussed substantive aspects of the case on several occasions in the United States Attorney's Office and over lunch in the cafeteria. . . ." *See* Affidavit of Raymond J. Heslin, sworn to February 28, 2005, at ¶ 7.

In response to Plaintiff's contentions, Respondent French states, in pertinent part, that

> [c]ontrary to what plaintiffs' purported counsel have represented or intimated to the Court, I did not . . . have a "personal and substantial

> involvement" in the litigation of the Land Claim; indeed, I had virtually no involvement. I did not share or learn any confidences of the Cayuga Indian Nation (despite the litigation reality that the Nation and the United States were united in interest as parties), nor did I participate in strategy discussions or decisions engaged in by the representatives of the United States Department of Justice who were actually litigating the matter. I do not recall any lunch much less a lunch-time conversation with Mr. Heslin on any subject related to the Land Claim case and I absolutely deny ever engaging in what he has characterized as "substantive discussions" with him or anyone else about the Land Claim matter.

See Affidavit of Daniel J. French, sworn to March 3, 2005, at ¶ 5.

Plaintiff argues that the Court should disqualify Respondents under a federal criminal statute[11] and under two provisions of the Disciplinary Rules of the Code of Professional Responsibility.[12] Although the Code of Professional Responsibility does not bind federal courts,

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[11] 18 U.S.C. § 207(a)(1) provides, in pertinent part, that

> [p]ermanent restrictions on representation on particular matters.—Any person who is an officer or employee . . . of the executive branch of the United States . . . and who, after the termination of his or her service or employment with the United States . . . knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States . . . on behalf of any other person (except the United States . . .) in connection with a particular *matter*—
>
> (A) in which the United States . . . is a party or has a direct and substantial interest,
>
> (B) in which the person *participated personally and substantially* as such officer or employee, and
>
> (C) which involved a specific party or specific parties at the time of such participation,
>
> shall be punished as provided in section 216 of this title.

18 U.S.C. § 207(a)(1) (emphasis added).

[12] DR 9-101(B) provides, in pertinent part, that

> [e]xcept as law may otherwise explicitly permit:

(continued...)

they

often look to it for guidance in deciding motions to disqualify. *See Guerrilla Girls, Inc. v. Kaz*, No. 03 Civ. 4619(LLS), 2004 WL 2238510, *2 (S.D.N.Y. Oct. 4, 2004) (citing cases).

"The objective of the disqualification rule is to 'preserve the integrity of the adversary process' . . . ." *Evans v. Artek Sys. Corp.*, 715 F.2d 788, 791 (2d Cir. 1983) (internal citation omitted).

"[D]isqualification has been ordered only in essentially two kinds of cases:

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[12](...continued)

1. A lawyer shall not represent a private client in connection with a *matter* in which the lawyer *participated personally and substantially* as a public officer or employee, and no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:
   a. The disqualified lawyer is effectively screened from any participation, direct or indirect, including discussion, in the matter and is apportioned no part of the fee therefrom; and
   b. There are no other circumstances in the particular representation that create an appearance of impropriety.
2. A lawyer having information that the lawyer knows is confidential government information about a person, acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A firm with which that lawyer may knowingly undertake or continue representation in the matter only if the disqualified lawyer is effectively screened from any participation, direct or indirect, including discussion, in the matter and is apportioned no part of the fee therefrom.

* * *

N.Y. Comp. Codes R. & Regs. tit. 22, § 1200.45(b) (2004) (emphasis added). DR 5-107(A) provides, in pertinent part, that "[e]xcept with the consent of the client after full disclosure a lawyer shall not: 1. Accept compensation for legal services from one other than the client. . . ." N.Y. Comp. Codes R. & Regs. tit. 22, § 1200.26(a) (2004).

> (1) where an attorney's conflict of interests in violation of Canons 5 and 9 of the Code . . . undermines the court's confidence in the vigor of the attorney's representation of his client, . . . or more commonly (2) where the attorney is at least potentially in a position to use privileged information concerning the other side through prior representation. . . ."

Bobal v. Rensselaer Polytechnic Inst., 916 F.2d 759, 764-65 (2d Cir. 1990) (quotation omitted). "[U]nless an attorney's conduct tends to 'taint the underlying trial,' . . . by disturbing the balance of the presentations in one of [these] two ways . . . , courts should be quite hesitant to disqualify an attorney." *Bd. of Educ. of City of N.Y. v. Nyquist*, 590 F.2d 1241, 1246 (2d Cir. 1979) (internal citation omitted).

The Court has before it conflicting affidavits. Regardless, even if the facts asserted in Plaintiff's supporting affidavits are true, they do not demonstrate that Respondent French participated substantially in the Land Claim Litigation. Furthermore, even if Respondent French had participated substantially in the Land Claim Litigation, that would only disqualify him as counsel for Defendants if the instant action involved the same matter as the Land Claim Litigation, which the Court has already found it does not. Accordingly, because Plaintiff's submissions do not satisfy the standard for disqualification, the Court denies without prejudice Plaintiff's application for an order to disqualify Respondents as counsel for Defendants.

III. CONCLUSION

After carefully considering the file in this matter, the parties' submissions and oral arguments, and the applicable law, and for the reasons stated herein as well as at oral argument, the Court hereby

ORDERS that Plaintiff's motion for a preliminary injunction is **DENIED**; and the Court

further

ORDERS that Plaintiff's application for an order disqualifying Respondents as attorneys for Defendants is **DENIED.**

IT IS SO ORDERED.

Dated: March 31, 2005
Syracuse, New York

Frederick J. Scullin, Jr.
Chief United States District Court Judge

EXHIBIT C

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June 9, 2011

VIA ELECTRONIC and FIRST CLASS MAIL

Mr. Franklin Keel, Director
Bureau of Indian Affairs, Eastern Region
United States Department of Interior
545 Marriott Drive, Suite 700
Nashville, TN 37214

**RE: CAYUGA NATION OF NEW YORK:
AN HISTORIC UNITY WITHIN THE CAYUGA NATION COUNCIL**

Dear Director Keel:

I write on behalf of Chiefs William Jacobs and Samuel George; Clan Mothers Bernadette Hill, Inez Jimerson and Brenda Bennett; Faithkeepers Karl Hill, Tammy VanAernam and Allen George; and Chester Isaac, Daniel C. Hill, Justin Bennett and Samuel Campbell.

As my clients have informed you, on June 1st, a newly unified Cayuga Nation Council of Chiefs enacted Cayuga Nation Council Resolution # 11-001. This historic resolution, attached as Exhibit "A", together with the events that preceded it, represent a watershed in recent Cayuga history.

For the first time since 2003, the governing body of the Cayuga Nation, the Council of Chiefs, is fully unified, as are the three Cayuga Clan Mothers and the Nation's Faithkeepers. All members of the newly constituted Nation Council have thus come together and unified, under the spirit of the Haudenosaunee Great Law of Peace, which mandates that leaders "put their good minds together, to find solutions that are good for everyone and for the seven generations yet to come."

We urge you to promptly recognize the newly constituted Cayuga Nation government and representatives, as affirmed in Resolution # 11-001.

Cayuga Nation Law:

As you know, the BIA is obligated to respect Cayuga Nation law and the decisions made by the Nation pursuant to that law. (IBIA Order of May 4, 2009 at 186), (hereinafter, the "IBIA Order"). The Eastern Regional Director and the Interior Board of Interior Appeals have, since 2005, made a number of findings concerning Cayuga law. "The Cayuga Nation follows an oral legal tradition known as 'The Great Law of Peace'...[and] has no written law, court, or body other than the Council itself for resolving disputes that arise within the Council." (IBIA at 167.) The absence of written Cayuga Nation law does not provide a basis upon which the BIA can decline to respect a decision of the Nation. (IBIA Order at 189.)

"The Nation is comprised of five clans" and "Clan Mothers of each clan designate two full-blooded chiefs" to serve on the Nation Council, the Nation's governing body. (IBIA Order at 167.) Today, only three Cayuga clans are active, and in the absence of condoled Chiefs, Clan Mothers are responsible for appointing "seatwarmers," or clan representatives, to serve on the Council. (IBIA Order at 167.) Clan Mothers also have authority to remove seatwarmers from the Council. (Letter of Franklin Keel to Josepth Heath, March 15, 2005.) When a Clanmother passes away, her clan selects a new Clanmother to take her place.

Decisions of the Cayuga Nation Council must be made by consensus. (IBIA Order at 168.) However, consensus can be reached with some opposition from Council members to the final decision. (Letter of Keel to Heath, March 15, 2005.)

While no formal written document is required in order for a lawful decision of the Cayuga Council to be made, the Cayuga Nation Council has at times utilized resolutions to express its consensus decisions and to memorialize other matters related to Cayuga governance. (Letter of Franklin Keel to Cayuga Nation Council, May 31, 2006.)

Events Leading Up to the Unity Resolution:

In recent years, the Halftown administration, using federal funds, has purchased homes for Cayuga citizens to return to their homelands within the territory protected by the Canandaigua Treaty and has provided many of these returning citizens with jobs. This effort began as a very positive plan and its impact was, at first, positive. Unfortunately, like all actions of the partial Nation Council over the past five years, this decision was not made by a consensus of the full Council.

Moreover, in 2010 and 2011, a number of Cayuga citizens began to report receiving heavy-handed and arbitrary treatment by the Halftown administration with respect to employment and housing, as well as to voice concerns about the lack of transparency and accountability in Cayuga Nation finances controlled by Mr. Halftown.

When these citizens began to ask questions about Cayuga governmental matters including finances, the long-standing exclusion of the Heron and Bear Clan representatives from the Council meetings and decisions, and the lack of transparency in their government, these citizens began to face retaliation. They reported being fired, suspended or demoted without notice or due process; being subject to unannounced housing inspections; and receiving eviction notices from the local Sheriff's Department. The citizens told their Clan Mothers that these housing inspections were invasive and not done in a professional manner.

These and other troubling developments led the returned citizens, including leaders and members of Turtle Clan, to meet and begin to unify with the Heron and Bear Clans. Following the early 2010 death of former Turtle Clan mother Lena Pierce, Brenda Bennett was selected by her clan to serve as Turtle Clan Mother in August 2010. See "*New Turtle Clan Mother: Follow the correct procedure and the proper process, the members of the Cayuga Nation Turtle Clan recently selected a new Clan Mother*," attached as Exhibit "B". As Turtle Clan Mother, Ms. Bennett helped to organize some of these meetings and exercised her role in overseeing the activities of the Turtle Clan representatives to the Nation Council, Timothy Twoguns and Gary Wheeler.

Whatever the validity of Cayuga citizens' detailed and grave reports of retaliatory action, threats, and lack of transparency – and substantial evidence exists to support such validity – the political import of the citizens' experiences was to spur a reunification of the three active clans of the Cayuga Nation. In late 2010 and early 2011, the Turtle, Bear, and Heron clans came together in recognition of the need to reform the Cayuga Nation government consistent with traditional Cayuga Nation law and custom.

These efforts toward reunification were welcomed and support by the Heron and Bear Clan leaders, who have worked for years to heal the rift within the Nation and have tried unsuccessfully for much of that time to convene, attend, or establish mediation for meetings of Nation Council representatives from all three clans. These joint clan meetings culminated in a gathering of all three active clans on May 26th to discuss the growing problems with the Nation's governance and citizens' grievances.

At that meeting, a decision was made that as many Chiefs, Clan Mothers, Faithkeepers and Clan representatives as possible would attend the scheduled open meeting

of Mr. Halftown's so-called Council on June 1st. In accordance with Cayuga Nation laws and customs, all Council meetings must be open to all citizens. The Chiefs, Clan Mothers, Faithkeepers and representative intended to attend this meeting present their concerns directly to Mr. Halftown. Information about this meeting was provided by Mr. Halftown to all Council members and many citizens. (See May 23, 2011 e-mail of Clint Halftown to Brenda Bennett et al., setting Council meeting for June 1 at 11 am, attached as Exhibit "C".)

In subsequent days, the Halftown administration, having learned of the growing opposition to its practices, fired some employees, suspended others, and served additional housing notices. These actions were taken against individuals participating in the Cayuga clan reunification efforts. For example, see the May 31st termination letter from Mr. Halftown to Justin Bennett, attached hereto, as Exhibit "D-1", and the warning letter to Mr. Bennett, which threatens that his housing could be taken away at any moment, because his continued housing remains "subject . . . to reconsideration and redetermination at any time as circumstances may warrant." This housing letter is attached hereto as Exhibit "D-2?'.

Following these developments, Turtle Clan Mother Brenda Bennett called a Turtle Clan meeting for May 31st and asked the two seated Clan representatives to the Council, Timothy Twoguns and Gary Wheeler to attend and explain why these retaliatory measures were being taken against the citizens. Mr. Wheeler attended but failed to provide a satisfactory response to the citizens' concerns. Ms. Bennett removed him from his Clan representative to the Nation Council position, an action he verbally accepted before numerous witnesses. He said he was only holding on to his seat until someone else could be nominated, so that the new clan representative could address the current problems facing the Nation and the Council. At this May 31st Turtle Clan meeting, Mr. Wheeler went on to say that Mr. Halftown and Mr. Twoguns should also resign their representative positions Mr. Twoguns defied his Clan Mother by refusing to attend the Clan meeting and was also removed as a result of all the concerns about his actions. Ms. Bennett then appointed Samuel Campbell and Justin Bennett to fill these two Turtle Clan representative positions.

On June 1st, when the Chiefs, Clan Mothers, Faithkeepers and Clan representatives attempted to attend the Council meeting at the Nation's offices, they were barred from the premises. When they were prevented from attending the meeting, they, along with other concerned Cayuga Nation citizens, staged a peaceful protect outside the offices. (See June 2, 2001 news article from *Auburn Citizen*, attached as Exhibit "E.")

Following the Halftown administration's decision to shut down the June 1st meeting, which locked all Nation leaders and citizens out of the Nation office, a meeting of the newly constituted Nation Council was called for that evening, with ample notice to Mr. Halftown

via e-mail and text messages. (See e-mail correspondence, attached as Exhibit "F.") By his repeated use of the term "my clan ***monster***," Mr. Halftown is apparently referring disrespectfully to Heron Clan Mother Bernadette Hill. (Emphasis added.) Mr. Halftown refused to attend and also declined to use the call-in information provided to him by Mr. Bennett, but the meeting proceeded with full representation of all three clans and the newly constituted Council.

At the June 1 Council meeting, Heron Clan Mother Bernadette Hill affirmed her removal of Clint Halftown from the Council and affirmed that Karl Hill was serving on the Nation Council, as Heron Clan representative. Together with BIA-recognized Council members Chester Isaac (who participated by phone), Samuel George, and William Jacobs; the newly appointed Turtle Clan representatives Samuel Campbell and Justin Bennett; and Heron Clan representative, Karl Hill; the Council discussed and adopted Resolution # 11-001. The Resolution is the result of a consensus action by the newly constituted Council, with the full support of the Clan Mothers as well as the Nation's Faithkeepers.

As you have seen, the newly constituted Nation Council, by its resolution of June 1st, revokes the designation of Clint Halftown as Nation Representative to the federal government and bestows that designation on William Jacobs. Likewise, the resolution revokes the designation of Timothy Twoguns as alternate Federal representative and bestows that designation on Samuel George. As you know, William Jacobs and Samuel George are longtime members of the Council recognized by the BIA. These decisions were by consensus.

The Cayuga leaders and citizens are excited by the unity that has been achieved in recent days and weeks and are eager to move forward and administer their Nation in a more open and democratic manner, unified and with consensus.

The Response of the Halftown Administration

Attached, as Exhibit "G", please find a copy of a June 2nd statement that was faxed by Mr. Halftown from Lakeside Trading, one of the Nation's businesses, to the *Finger Lakes Times*, attempting to label the historic reunification of the three active Cayuga clans the result of actions by "individuals" who were "trespassing" on Nation property as a "dissident faction".

The unity now evident on the Cayuga Nation Council and within the three active clans shows this to be a mischaracterization. The Clan Mothers of all three active Cayuga Nation clans, together with all Clan representations, and all Faithkeeper are much more that a group

of "individuals" or a "dissident group". Instead, pursuant to Cayuga Nation law, they constitute the rightful government of the Cayuga Nation.

Affidavits of Cayuga Nation Council representatives and Clan Mothers:

Pursuant to your requests, all six Council members who adopted and signed Resolution # 11-001 have prepared and executed Affidavits. Additionally, all three Cayuga Nation Clan Mothers have prepared and executed Affidavits, which attest to their tenure in office and their selections for Clan representatives to the Nation Council. These Affidavits are collectively attached as Exhibit "H".

Application of Cayuga Law to the Facts

Cayuga Nation and Haudenosaunee law and customs provides that a Clan Mother can validly remove clan representatives from the Council when they act in defiance of her direction, or when she concludes that their actions are harmful to the Clan, the Nation, or the Nation's citizens. Mr. Wheeler acknowledged this authority, when he accepted his removal by Ms. Bennett on May 31st. Clan Mothers also have the related authority to name new clan members to act as the clan's representative on the Council, as was done on the 31st with Justin Bennett and Samuel Campbell, for the Turtle Clan.

Then, the newly constituted Nation Council met on June 1st, with ample notice to Mr. Halftown, which he chose to ignore. The composition of the Council is set forth in the second paragraph of Resolution # 11-001. The six Council members: Chiefs Samuel George and William Jacobs, the two new Turtle Clan representatives, Justin Bennett and Samuel Campbell; Bear Clan representative Chester Isaac; and the Heron Clan representative unanimously affirmed Heron Clan Mother Bernadette Hill's earlier removal of Clint from the Council, under Cayuga Nation and Haudenosaunee law and customs, and her subsequent replacement of Mr. Halftown with Karl Hill, as the Heron Clan representative..

This newly constituted, full Council, with agreement of all six representatives, enacted Resolution # 11-001, which revokes Mr. Halftown's position as federally recognized representative, and Mr. Twoguns's position as alternate federally recognized representative. Further, Resolution # 11-001 appoints and recognizes Chief William Jacobs as federally recognized representative, and Chief Samuel George as alternate federally recognized representative

Even if Mr. Halftown argues that he was not properly removed, the Cayuga Nation Council, as of June 1st, would have consisted of six representatives, one of whom refused

to attend the meeting, or even to participate by telephone. Resolution # 11-001 was supported by the five participating representatives, as Council members. The adoption of the Resolution sufficiently evidences consensus according to Cayuga Nation and Haudenosaunee law and custom. This is particularly true because Cayuga Nation and Haudenosaunee law and custom mandate that a Chief or representative abstain from any matter that affects him personally or that affects his family.

Further, Mr. Halftown has claimed that his "Council" decisions over the past five years, all of which have excluded Chiefs Jacobs and George and representative Isaac, have been valid, despite having been made by only three of the six BIA recognized Council members. It would be disingenuous for Mr. Halftown to now claim that a decision by 5 of the 6 Council members which directly affects him, is not valid because he chose to neglect his duties and not attend the meeting.

This law and custom has served the Cayuga Nation for hundreds of years and it has never been suggested that individual Council members can flout the Council's will by refusing to participate in Council decision-making.

Resolution # 11-001 raises two matters for Bureau review: (1) The removal of the previous federally recognized representative and the alternate, and (2) Their replacement with new federally recognized representative and alternate. The other recent matters that developed pursuant to Cayuga Nation and Haudenosaunee law and custom and which therefore do not require review by the Bureau are: (a) The removal and replacement of the two Turtle Clan representatives to the Nation Council by the Turtle Clan Mother, (b) The Heron Clan Mother's appointment of a new Heron Clan representative to the Council; and (c) The unanimous Council affirmation of the Clan Mothers' actions.

Conclusion:

Therefore, on behalf of all three Cayuga Nation Clan Mothers, all of its Faithkeepers and all of its clan representatives to the Nation Council, I urge you to recognize Resolution # 11-001 as a valid exercise of Cayuga Nation law and to recognize the new federally recognized representative and the new alternate. We urge you to recognize the historic unity embodied in this Resolution.

We request copies of all documents that your office has received on this matter and reserve the right to respond after our review. We propose to notify you within 24 hours of receipt of such documents whether we will need more time to respond. Please let us know if this request will be granted. I am sending Mr. French a copy of this correspondence and

it attachment and Exhibits.

Sincerely yours,

Joseph J. Heath

Enc.

cc: Cayuga Nation Council of Chiefs
Daniel J. French, Esq.

EXHIBIT D

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Eastern Regional Office
545 Marriott Drive, Suite 700
Nashville, TN 37214

AUG 19 2011

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Sirs:

In early June, we were informed by Cayuga Nation ("Nation") members that some clan representatives had been removed and new clan representatives appointed. According to them, as a result of these actions, new members of the Nation's Council had been installed and new federal representatives had been designated. They informed us of these changes so that the Bureau of Indian Affairs (BIA) could acknowledge and begin dealing with the newly appointed federal representatives.

These actions were followed by a controversial confrontation between supporters of the alleged new Nation's Council and some members of the incumbent Council. Soon, the Regional Office was bombarded with information and allegations from attorneys who represent both factions.

To help us address this issue, I asked both attorneys to submit their positions as to the actions just described. The purported new Council is represented by Joseph Heath, Attorney, and the incumbent Council members (Mr. Clint Halftown, Mr. Tim Twoguns, and Mr. Gary Wheeler) are represented by Mr. Daniel French and Mr. Lee Alcott, Attorneys. (Hereafter, the parties shall be referred to as Mr. Heath's clients and the clients of Messrs. French & Alcott.) On July 5, all submissions had been received and have now been considered.

Analysis

Issues presented for my review include the reconstitution of the Council of the Cayuga Nation, the validity of employment terminations, whether protests were violent or peaceful, whether the Nation Council's actions were in keeping with previous BIA decisions, and whether all previously-recognized Council members were allowed to fully participate in directing the affairs of the Nation. However, the pivotal issue presented is whether the actions of Mr. Heath's clients in reconstituting the Nation's Council and appointing new federal representatives were valid and should be given appropriate weight by the BIA. That is the matter on which this decision focuses.

As to the allegations of wrongdoing by both parties concerning waste, fraud or misuse of Nation's funds, either the Federal Bureau of Investigation or the Department of the Interior's Office of the Inspector General are appropriate points of contact for such matters. Those complaints should be addressed to those entities.

Here, we have two parties alleging that they are the appropriately-recognized federal representatives that the BIA should deal with. The BIA does not appoint the Nation's leaders. The choice of leadership resides within the Nation. For the limited purpose of determining to whom BIA funds are appropriately directed in carrying out the government-to-government relationship, the BIA, in its capacity as a steward of federal funds and programs provided to Indian tribes and nations, can only recognize or not recognize the actions of a nation in choosing its leaders. That is the limited scope of this determination.

Our examination of the allegations indicates that the actions triggering the earlier decisions can be distinguished from the circumstances of today's controversy. The earlier decisions dealt with an attempt by 5 members of the Council to remove Mr. Halftown from his position on the Council and as the Nation's federal representative, along with a quick reversal of position by two of those voting for his removal. (BIA decisions of March 15, 2005 and May 31, 2006 along with a subsequent IBIA decision of May 4, 2009.)

In the present instance, the alleged new Nation Council resulted from action of the three Clan Mothers, not an action of only one clan mother or the members of the Nation Council as in the previous cases. (I note that although these earlier decisions discussed Clan Mother Hill's dismissal of Mr. Halftown, the major focus of the decisions was on the Council action and the question of consensus.)

The clients of Messrs. French & Alcott categorically deny the validity the actions of Mr. Heath's clients on the bases of *collateral estoppel* and *res judicata*. Their assertion is that previous BIA decisions of March 15, 2006 and May 31, 2006 along with a subsequent IBIA decision (May 4, 2009) regarding the Nation's leadership are essentially permanent. That view would appear to

ignore the right of the Nation, in following its customs and traditions, to choose or change its leadership at any time in response to changing circumstances.

In their sworn statements, the three Clan Mothers state that on May 31, Turtle Clan Mother Bennett relieved Mr. Timothy Twoguns and Mr. Gary Wheeler of their appointments as Turtle Clan representatives. In their places, she appointed Mr. Justin Bennett and Mr. Sam Campbell. At the same time, Heron Clan Mother Hill confirmed the status of Mr. William C. Jacobs as a representative of the Heron Clan. She also states that she relieved Mr. Clint Halftown of his appointment as Heron Clan representative in July of 2003, and at that time she appointed Mr. Karl Hill in his place and confirms Mr. Hill's present status as replacement for Mr. Halftown. Bear Clan Mother Jimerson confirmed the status of Mr. Samuel George and Mr. Chester Isaac as representatives of the Bear Clan.

Thus, the actions of the Clan Mothers resulted in the replacement of three representatives of their respective clans. The representatives appointed by the Clan Mothers then unanimously issued Cayuga Nation Resolution 11-001, announcing those changes and noted that Mr. Halftown and Mr. Twoguns were no longer the federal representatives of the Cayuga Nation. (Although Mr. Isaac's signature is missing from the resolution, his sworn affidavit indicates that he is in full agreement with the resolution. My understanding is that he participated in the meeting by telephone.)

The unanimity of the signatories of the resolution negates any need for discussion of consensus in this instance.

All three women have submitted affidavits as to their status and actions on May 31. Although the clients of Messrs. French & Alcott deny the validity of those actions, we note that neither party has ever denied the authority of Clan Mothers, under ancient Haudenosaunee custom, to choose clan representatives who sit on the Nation's Council. Nor has either party denied the legitimacy or status of the Clan Mothers involved in this matter. Recognition of Ms. Brenda Bennett as new Turtle Clan Mother (in the place of the late Ms. Lena Pierce) was duly noted on the Cayuga Nation's website. In fact, all three women's names appear as acknowledged Clan Mothers on the website. Ms. Hill and Ms. Jimerson, as well as Ms. Bennett's predecessor, are clearly acknowledged as such in the previous BIA decisions of March 15, 2006 and May 31, 2006 and the IBIA decision of May 4, 2009.

Decision

Based on the foregoing, I conclude that the source of the changes outlined above was the action of each clan mother in carrying out her traditional clan responsibilities. I would be remiss if I failed to recognize the results of this exercise of ancient traditional authority by the Clan Mothers. As noted above, by Haudenosaunee tradition, the Clan Mothers are the persons tasked

with the responsibility of appointing representatives of their respective clans to serve on the Nation Council.

Therefore, for purposes of the government-to-government relationship between the United States and the Cayuga Nation, I recognize the Nation Council as set out in Cayuga Nation Resolution 11-001. Further, I recognize Mr. William C. Jacobs and Mr. Samuel George as the federal representatives designated by the new Nation Council.

Appeal Rights

This decision may be appealed to the Interior Board of Indian Appeals, 801 North Quincy Street, MS-300-QC, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310 - 4.340. Your notice of appeal to the Board must be signed by you or your attorney and **must be mailed within 30 days of the date you receive this decision**. Your notice of appeal must be original; **no facsimile copies (faxes) will be accepted**. The notice of appeal should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs, 4140 MIB, U.S. Department of the Interior, 1849 C Street, N.W., MS 4141, Washington, D.C. 20240, (2) each interested party known to you, and (3) this office. Your notice of appeal sent to the Board must certify that you have sent copies to these parties. If you are not represented by an Attorney, you may request assistance from this office in the preparation of your appeal. If you file a notice of appeal, the Board will notify you of further appeal procedures. If a notice of appeal is not timely filed, this decision will become final for the Department of the Interior at the expiration of the thirty (30) day appeal period. A timely appeal will stay this decision. No extension of time can be granted for the filing of the notice of appeal.

This document is being provided to all interested parties through their counsel.

Sincerely

Franklin Keel
Director, Eastern Region

EXHIBIT E

INTERIOR BOARD OF INDIAN APPEALS

Cayuga Indian Nation of New York, Clint Halftown, Tim Twoguns, and Gary Wheeler v. Eastern Regional Director, Bureau of Indian Affairs

58 IBIA 171 (01/16/2014)

Related Board cases:
49 IBIA 164

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

CAYUGA INDIAN NATION OF NEW YORK, CLINT HALFTOWN, TIM TWOGUNS, AND GARY WHEELER, Appellants,	)	Order Vacating Decision
v.	)	Docket No. IBIA 12-005
EASTERN REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	January 16, 2014

The Cayuga Indian Nation of New York (Nation), Clint Halftown, Tim Twoguns, and Gary Wheeler (collectively, Appellants) appealed to the Board of Indian Appeals (Board) from an August 19, 2011, decision (Decision) of the Eastern Regional Director (Regional Director), Bureau of Indian Affairs (BIA), concerning the composition of the Nation's Council of chiefs and seatwarmers and the identity of the Nation's representatives for government-to-government relations.[1] The Regional Director decided that the Nation, through its clan mothers, had removed and replaced Halftown, Twoguns, and Wheeler from the Nation's Council, and that the newly constituted Council had appointed new representatives of the Nation for government-to-government purposes.

[1] This appeal involves a dispute concerning the leadership of the Nation. The Board's reference to the Nation and the Nation's Council, in whose name certain pleadings have been filed, shall not be construed as expressing any view on the merits of the dispute or on the authority of any attorney to file pleadings on behalf of either the Nation or the Nation's Council. For purposes of this decision, the Board uses the terms "Council" or "Nation's Council" to refer to the council consisting of chiefs and/or seatwarmers, who are also sometimes characterized as the "representatives" of their respective clans to the Council.

The parties also use the term "representatives" to refer to the two individuals designated by the Council as the Nation's representatives to BIA for government-to-government purposes. It is undisputed in this appeal that the Council currently consists of a total of six individuals—two each from three clans—but three members of the Council are disputed, as are the identities of the Nation's two representatives for government-to-government purposes.

After briefing on the merits of the appeal was completed, the Board denied a motion by the Regional Director and Interested Parties to place the Decision into immediate effect and ordered supplemental briefing by the parties on a threshold issue not previously addressed in the appeal: Was it even appropriate, at the time the Decision was issued, for BIA to issue a decision on the composition of the Council or the identity of the Nation's representatives? *See* Order Denying Motion to Place Decision into Effect, Aug. 28, 2012 (Order Denying Motion).[2]

After considering the supplemental briefs and the record, we conclude that the Regional Director impermissibly intruded into tribal affairs by issuing the Decision. At the time he did so, there was no separate matter pending before BIA that independently required or warranted BIA action which, in turn, made it necessary for BIA to address the internal dispute. We therefore vacate the Decision without expressing any view on the merits of the underlying dispute, the current leadership of the Nation, or the identity or scope of authority of any individual to represent or take action on behalf of the Nation.

Background

I. History of the Tribal Dispute Preceding the Decision

The Nation is governed by oral law and traditions. *See George v. Eastern Regional Director*, 49 IBIA 164, 167 (2009). Cayuga law and traditions "mirror" the law and traditions of the Haudenosaunee (Iroquois) Confederation, of which the Nation is a member. Letter from Keith M. Harper and Daniel J. French to Patrice Kunesh, Oct. 17, 2011 (Administrative Record (AR) Tab 25); *see George*, 49 IBIA at 167.

The Nation has been involved in a governance dispute since 2004, when the Council split into factions. The dispute, as it stood in 2006, was the subject of an earlier appeal in which the Board affirmed a decision by the Regional Director declining a request from one faction to "withdraw" BIA's recognition of Appellant Halftown as the Nation's designated representative for government-to-government purposes as relevant to an Indian Self-Determination and Education Assistance Act (ISDA) contract between the Nation and BIA. *George*, 49 IBIA at 180. BIA's previous identification of Halftown as the Nation's

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[2] The Interested Parties who collectively intervened in this appeal identify themselves as the Cayuga Nation Council and Chiefs William Jacobs and Samuel George; Clan Mothers Bernadette Hill, Inez Jimerson, and Brenda Bennett; Faithkeepers Karl Hill, Alan George, Tammy VanAernam, and Pamela Isaac; and Clan Representatives Chester Isaac, Daniel C. Hill, Justin Bennett, and Samuel Campbell. *See* Motion of Cayuga Council to Have Decision Made Effective Immediately, Sept. 29, 2011, at 1.

representative was based on action by the Council in 2003.[3] In the *George* appeal to the Board, no party challenged the composition of the Council as it stood in 2005, or at least as it was identified by the Regional Director at that time: Appellants Halftown, Twoguns, and Wheeler ("Halftown faction"); and Interested Parties William Jacobs, Samuel George, and Chester Isaac ("Jacobs faction"). *Id.* at 175. In *George*, the Jacobs faction contended that a 5-member "consensus" of the Council (all except Halftown) had acted to remove Halftown as the Nation's representative.[4] Twoguns and Wheeler, who subsequently realigned with Halftown, purported to revoke their consent to remove Halftown. The Regional Director concluded that there was insufficient evidence for him to "withdraw" BIA's recognition of Halftown, whom BIA had previously recognized as the Nation's representative for government-to-government purposes. *Id.* at 180. The Board affirmed that decision.

Even while the *George* appeal was pending, and separate from the issue of whether Halftown was still designated as the Nation's representative, the factions continued to disagree on whether or to what extent actions that had been taken by Halftown had been authorized by a consensus of the Council. Thus, they continued to disagree about whether Halftown, even in the role of representative, was exceeding his authority. Neither the Regional Director nor the Board addressed the scope of authority vested in Halftown as the Nation's representative, with respect to ISDA contracts or any other matters. *Id.* at 165, 187.

In 2008, the Jacobs faction wrote to the Regional Director and asked that a moratorium be placed on fee-to-trust applications that it contended had been submitted by Halftown without having been approved by a consensus of the Council. Letter from Jacobs, George, and Isaac to Regional Director, Jan. 9, 2008 (AR Tab 14F). After *George* was decided, the Jacobs faction continued to take the position that Halftown had not been authorized to submit land-into-trust applications on behalf of the Nation, although in correspondence to the Regional Director and the Assistant Secretary – Indian Affairs (Assistant Secretary) in 2010, the Jacobs faction stopped short of repeating its request for a

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[3] In 2003, following Chief Vernon Isaac's death, the Council consisted of Halftown, Jacobs, Twoguns, and Wheeler. That 4-member Council recognized Halftown as the Nation's representative and Twoguns as an alternate representative. *George*, 49 IBIA at 169. The scope of the representatives' authority is defined by the Council.

[4] The parties agreed in *George* that the Council must act by consensus. In *George*, the Halftown faction argued that consensus "is achieved only when *all* of the members of the Nation's Council are 'of one mind.'" *George*, 49 IBIA at 165; *see also id.* at 188 (Halftown testified that consensus meant unanimity and that disputes were tabled until agreement occurs).

moratorium, but insisted that any lands restored to the Nation must be held by the Nation in the same manner as they had been before they were illegally taken. *See* Letter from Jacobs, George, and Isaac to Assistant Secretary, Nov. 19, 2010 (AR Tab 14G); Letter from Jacobs, George, and Isaac to Regional Director, Nov. 19, 2010 (AR Tab 14G). In May 2011, without addressing the tribal dispute, the Regional Director transmitted the Nation's fee-to-trust application to the Assistant Secretary, recommending approval of a 129.14-acre transaction. *See* Appellants' Consolidated Response, June 6, 2012, Ex. A (Declaration of Halftown) & Ex. [A]12 (Memorandum from Regional Director to Assistant Secretary, May 4, 2011).

In another matter, in 2009, after the Board decided *George*, BIA apparently accepted a proposal submitted by Sharon LeRoy, as the Executive Administrator of the Nation, for a Community Services Program ISDA contract for the years 2009-2012. *See* Appellee's Supplemental Brief, Sept. 24, 2012, at 12 & Ex. B. The Regional Director submitted to the Board a partial copy of the proposal for the contract, but no documentation associated with the Regional Director's consideration and approval of the proposal. No party has disputed the existence of the 2009-2012 contract, but the contract itself is not part of the Regional Director's administrative record for the Decision, nor has any party provided the Board with a copy. Thus, we cannot determine who the actual signatories are to the contract, who is authorized to request drawdowns, and the schedule for drawdowns to fund the contract.

Between 2009, when the Board decided *George*, and 2011, when the most recent developments within the Nation occurred, the dispute between the Halftown faction and the Jacobs faction continued to fester, focusing on what, if any, present-day continuing substantive authority had been vested in Halftown by the Council, and whether the Halftown faction could operate as the Council—i.e., with less than a full 6-member consensus.[5]

[5] Notwithstanding its prior representations, *see supra* note 4, the Halftown faction apparently sometimes takes the position that the Council can take affirmative action (and not simply table a matter) based on the unanimity of only three members of the Council—or at least the three-member Halftown faction if the Jacobs faction is not present. The Jacobs faction accuses the Halftown faction of excluding them from Council meetings, which the Halftown faction denies, and the Halftown faction in turn accuses the Jacobs faction of refusing to participate in Council meetings. Each faction accuses the other of imposing unreasonable pre-conditions for a meeting of the full Council.

II. The Request for BIA to Recognize New Representatives and the Regional Director's Decision

On June 1, 2011, the Nation's Turtle Clan Mother, Brenda Bennett (Bennett), wrote to the Regional Director "in reference to the serious and critical issues facing the Cayuga Nation community," complaining about the Halftown administration's allegedly hostile treatment of Nation citizens who expressed disagreement with the Halftown faction, and advising the Regional Director that Twoguns and Wheeler had been "released" as the Turtle Clan representatives (to the Council), and had been replaced with Justin Bennett and Samuel Campbell. Letter from Brenda Bennett to Regional Director, June 1, 2011 (AR Tab 5). Bennett asked that the two newly-selected individuals "be officially recognized by [BIA]." *Id.* at 2 (unnumbered). She enclosed a summary of "Concerns/Issues" regarding the Halftown-controlled government, and also enclosed "Cayuga Nation Resolution 11-001," titled "Cayuga Nation Composition of Federal Recognition." AR Tab 5.

Resolution 11-001 recites that the Council, in addition to Jacobs, George, and Isaac (whose positions on the Council are undisputed), now includes representatives Justin Bennett and Samuel Campbell (for the Turtle Clan) and seatwarmer Dan Hill (for the Heron Clan), replacing Twoguns and Wheeler (Turtle Clan), and Halftown (Heron Clan), who are no longer recognized by their clan mothers as representatives to the Council.[6] The Resolution also states that Halftown and Twoguns are no longer recognized as the Nation's representatives to BIA, and have been replaced by Jacobs and George. *Id.*

Bennett's letter was followed by another letter from an attorney for Interested Parties, referring to the "newly unified" Council and the "historic unity" among the Council, "the three Cayuga Clan Mothers and the Nation's Faithkeepers." Letter from Joseph J. Heath to Regional Director, June 9, 2011 (AR Tab 8). Heath urged the Regional Director "to promptly recognize the newly constituted Cayuga Nation government and representatives, as affirmed in Resolution # 11-001." *Id.* at 1. Heath outlined the events leading up to the changes, including a litany of complaints against the Halftown faction. The letter explained how Twoguns and Wheeler had been removed by Clan Mother Bennett. It did not articulate the circumstances of Halftown's removal from the Council, but asserted that even if Halftown argued that he had not properly been

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[6] Although Resolution 11-001 identifies Dan Hill as a seatwarmer for the Heron Clan, it also recites that Clan Mother Bernadette Hill appointed "Karl Hill, currently serving as a Faithkeeper, as the duly recognized Heron Clan Representative," and the Resolution itself is signed by "Karl Hill – Faithkeeper, Heron Clan Representative," but not by Dan Hill. As noted earlier, *supra* note 2, Interested Parties identify Dan Hill as a clan representative and Karl Hill as a faithkeeper.

removed, his refusal to attend or participate by telephone in the Council meeting allowed the five Council participants to act by consensus to remove him as the Nation's representative to BIA. *Id.* at 6-7.

The Halftown faction responded and asked the Regional Director to reject, on the merits, or as in part barred by the preclusive effect of the *George* decision, the Jacobs faction's request that he find that Halftown and Twoguns are no longer the Nation's designated representatives for government-to-government purposes. *See* Letter from Daniel J. French to Regional Director, June 24, 2011 (AR Tab 13). Additional correspondence from attorneys for both factions followed, with each side arguing the merits of the tribal issues and urging for or against BIA recognition of a new composition of the Council and newly designated representatives. *See* AR Tabs 15, 16, 18.

On August 19, 2011, the Regional Director issued the Decision. The Decision begins by stating that BIA had been informed in early June by members of the Nation that some clan representatives had been removed and new representatives appointed. Although no faction had suggested that the purported developments within the Nation would affect the administration of the Nation's Community Services ISDA contract (and if so, how), nor did Resolution 11-001 refer to any changes in the administration of the Nation's existing ISDA contract, the Regional Director stated that "[f]or the limited purpose of determining to whom BIA funds are appropriately directed in carrying out the government-to-government relationship, the BIA, in its capacity as a steward of federal funds and programs . . . can only recognize or not recognize the actions of a nation in choosing its leaders. That is the limited scope of this determination." Decision at 2. The remainder of the Decision addressed the merits of the tribal dispute, concluding that "for purposes of the government-to-government relationship between the United States and the Cayuga Nation, I recognize the Nation Council as set out in Cayuga Nation Resolution 11-001," and "recognize . . . Jacobs and . . . George as the federal representatives designated by the new Nation Council." *Id.* at 4.

III. Appeal Proceedings and Briefing on Whether the Regional Director Was Justified in Addressing the Tribal Dispute

The Halftown faction appealed to the Board. Interested Parties quickly responded by filing a motion to have the Decision placed into immediate effect, pursuant to 25 C.F.R. § 2.6(a) and 43 C.F.R. § 4.314(a), or in the alternative, for expedited consideration of the appeal. Subsequently, the Regional Director also filed a motion to make the Decision effective immediately. The Board allowed briefing on the motions to place the Decision into effect, and subsequently took the motions under advisement and ordered briefing on the merits.

On August 28, 2012, the Board denied the motions to place the Decision into effect, finding that the Regional Director and Interested Parties had not demonstrated that compelling circumstances existed that warranted such action by the Board. Critically, in denying the motion, we found that we were "unable to determine, as a threshold matter, what specific request for action or decision was pending before the Regional Director at the time of the Decision that required BIA to address the tribal dispute and to make any determination on the composition of the Nation's Council or its representative(s)." Order Denying Motion at 2.

The Board ordered supplemental briefing from the parties to address several Board decisions issued since *George*—none of which had been mentioned by the parties—that reemphasized, reiterated, and applied, as relevant to tribal disputes, the principles of tribal self-determination and sovereignty, and the corresponding principle of BIA noninterference in those disputes unless required. *See, e.g., Committee to Organize the Cloverdale Rancheria Government v. Acting Pacific Regional Director*, 55 IBIA 220 (2012) (affirming BIA decision not to address a tribal dispute on the ground that there was no Federal action required, but vacating—on that same ground—the portion of the decision that purported to "continue" to recognize the council with which BIA had a past relationship). The Board ordered the parties to identify what separate request or matter was pending at the time the Decision was issued (1) that required BIA action; and (2) which, in order to take that action, required BIA to decide the composition of the Nation's Council or the identity of the Nation's representative(s) for the matter at issue. Order Denying Motion at 3-4.

In response, Interested Parties and the Regional Director argue, first, that BIA has an independent, stand-alone obligation to intervene and decide a tribal government dispute when BIA's failure to do so would leave the tribe without an operative government. Second, they argue that even if no such stand-alone obligation exists, there were three separate matters that required BIA action at the time the Decision was issued, which in turn required the Regional Director to address the tribal dispute on the merits: (1) a pending agreement between the U.S. Department of Homeland Security (DHS) and the Nation; (2) a request by Interested Parties that the Department of the Interior (Department) stay further consideration of the fee-to-trust application submitted by Halftown; and (3) BIA's need to know to whom to direct funding for an existing ISDA contract with the Nation.

Appellants argue that the Decision should be vacated because BIA does not have authority to intervene in a tribal dispute unless a separate matter requires BIA action and, in turn, implicates the government-to-government relationship and necessitates a BIA decision addressing the merits of a tribal dispute. Appellants contend that none of the three matters posited by Interested Parties and the Regional Director triggered a need for BIA action which, in turn, required the Regional Director's issuance of a decision addressing the tribal dispute.

Discussion

We agree with Appellants that the Regional Director committed procedural error in issuing the Decision, and therefore we vacate the Decision. We address in turn each of the arguments raised by Interested Parties and the Regional Director.

I. Does BIA have an Independent Obligation to Intervene and Decide a Tribal Government Dispute Whenever a Tribe Appears Incapable of Resolving the Dispute by Itself?

Interested Parties and the Regional Director argue that when there is a dispute within a tribe over the leadership of the tribe, BIA has an independent obligation to decide whom to recognize when internal tribal processes for resolving the dispute have been exhausted and there is a danger that the tribe may be incapable of sorting out the dispute by itself, thus leading to tribal governmental paralysis. Interested Parties' Supplemental Brief, Sept. 24, 2012, at 1, 4. The Regional Director contends that issuance of the Decision was necessary and justified because BIA has an obligation to ensure "that the Nation is not left with an inoperative government." Appellee's Supplemental Brief, Sept. 24, 2012, at 2; *see id.* at 3 ("BIA cannot refrain from recognizing a tribal leader when the effect is to leave a tribe without a functional government."). The Regional Director contends that the Decision was predicated on his understanding that the Nation was "at an impasse, with no ability to achieve effective government." *Id.* at 17.

The Regional Director cites our decision in *George*, involving an earlier iteration of the same tribal dispute, as establishing "an important exception" to the general rule that BIA may not render a tribal leadership recognition decision in a vacuum, because in *George* the parties did not dispute the need for a BIA recognition decision, yet no discrete and separate matter requiring BIA action was identified. Appellee's Supplemental Brief, Sept. 24, 2012, at 3. The Regional Director suggests that it would be a change in Board precedent if the Board were to hold that BIA was not permitted to intervene in the dispute in order to ensure that the Nation has a functional government. *Id.*

In our view, the Regional Director and Interested Parties read judicial and Board precedent too broadly, but to the extent Board precedent may be unclear or even arguably inconsistent, we clarify and confirm our conviction that more recent Board precedent more accurately and correctly reflects the principles of tribal sovereignty and self-determination that serve to constrain BIA's intrusion into internal tribal disputes, unless it is truly necessary as an incident to satisfying some separate Federal obligation.

At least since 1996, the Board has recognized that BIA has the authority to make a determination on tribal leadership "when the situation [has] deteriorated to the point that recognition of some government was *essential for Federal purposes*." *Wadena v. Acting Minneapolis Area Director*, 30 IBIA 130, 145 (1996) (emphasis added). A corollary is that BIA has "both the authority and responsibility to interpret tribal law *when necessary to carry out the government-to-government relationship* with the tribe." *United Keetoowah Band of Cherokee Indians v. Muskogee Area Director*, 22 IBIA 75, 80 (1992) (emphasis added); *see also Ransom v. Babbitt*, 69 F. Supp. 2d 141, 151-52 (D.D.C. 1999) (Department has authority to review tribal procedures "when it is forced to recognize" tribal leadership). And it is well-established that in executing responsibilities for carrying on government relations with a tribe and providing necessary day-to-day services, *BIA* may not effectively *create* a hiatus in tribal government by simultaneously recognizing two tribal governments or declining to recognize any tribal government. *Goodface v. Grassrope*, 708 F.2d 335, 338-39 (8th Cir. 1983).

But disfunctionality or even paralysis within a tribal government, standing alone, does not necessarily, or even ordinarily, mean that *BIA* has created a hiatus in the tribal government, nor does it trigger some free-standing obligation for BIA to end the stalemate to ensure that the tribal government remains functional, even when the government-to-government relationship is not, at the time, implicated in any concrete way. As Appellants argue, and as the Board has held, no statute or regulation imposes on BIA a free-standing obligation to intervene in a tribal dispute solely for the *tribe's* sake—i.e., to save a tribe from its own disfunctionality, even when the tribal dispute has not yet in fact affected BIA's ability to carry out its responsibilities. *See* Appellants' Supplemental Brief Reply Brief, Oct. 15, 2012, at 7 (citing *Alturas Indian Rancheria v. Pacific Regional Director,* 54 IBIA 138, 143 (2011)); *see also Wasson v. Western Regional Director*, 42 IBIA 141, 153 (2006) (the appellants' request for recognition was "fatally flawed because it does not seek recognition for the purpose of the conduct of any specified BIA function or program").

The Regional Director relies in part on our decision in *LaRocque v. Aberdeen Area Director*, 29 IBIA 201 (1996), arguing that in *LaRocque* we affirmed a BIA area director's recognition decision when his interpretation of tribal law was not only reasonable "but also avoid[ed] the absurd result of rendering the tribal government totally inoperative." Appellee's Supplemental Brief, Sept. 24, 2012, at 15 (quoting *LaRocque*, 29 IBIA at 204). But that case does not stand for the proposition that BIA may intervene in tribal affairs whenever necessary to prevent a tribal dispute from rendering a tribal government totally inoperative. The Board's language must be read in context: The Board was justifying the reasonableness of BIA's interpretation of tribal law, not addressing whether BIA's intervention itself was justified. That issue—whether there was a matter pending that permitted BIA to issue a decision that interpreted tribal law—had been addressed earlier in the decision. *See LaRocque*, 29 IBIA at 202 ("the Area Director notified the Tribe that

matters were pending which required the recognition of a tribal government for the purposes of carrying out the Federal government-to-government relationship").

Nor does the Federal court decision in *Winnemucca Indian Colony v. United States*, 837 F. Supp. 2d 1184 (D. Nev. 2011), which is also relied on by both the Regional Director and Interested Parties, support their position. In *Winnemucca*, the Colony sued the United States for interfering with its own activities on tribal trust lands. *See id.* at 1187-88. The suit was prompted when BIA law enforcement officers threatened to arrest individuals for trespass on tribal trust land. The individuals had been authorized to be there by Thomas Wasson, as Chairman of the Winnemucca Indian Colony. BIA's actions regarding possible trespass on lands owned by the United States in trust for the tribe—whether or not otherwise misguided in that case—implicated Wasson's authority and status. *See also Wasson v. Western Regional Director*, 52 IBIA 353, 358-60 (2010) (ordering BIA to address an earlier trespass allegation by the Wasson faction, and recognizing that BIA's decision may need to address the tribal government dispute).

We recognize that while the principle that BIA has the authority to intervene in tribal disputes "when necessary to carry out the government-to-government relationship with [a] tribe," *United Keetoowah*, 22 IBIA at 80, has been often stated, the predicate—that such intervention be based, in fact, on necessity—has not always been raised by parties to appeals, nor has it necessarily been raised or expressly addressed *sua sponte* by the Board. For example, in *George*, the parties did not dispute the premise that BIA recognition of a tribal representative was necessary for conducting government-to-government business, as relevant to an ISDA contract. *See George*, 49 IBIA at 164, 187. It may well be that the premise should have been questioned or more closely examined. What is more important, in our view, is that in *George*, the Board plainly reaffirmed the principle that "[r]ecognition is not required in the abstract," and that BIA is not required to make *any* recognition decision if it is not needed for government-to-government purposes. *Id.* at 186. Thus, we reject the Regional Director's argument that *George* should be read as creating an exception to the rule that BIA is precluded from intervening in tribal disputes unless essential for Federal purposes.

Instead, we reaffirm the Board's case law that principles of tribal sovereignty and self-determination must prevail, and must act as constraints on BIA intervention, when there is no separate matter that requires or separately triggers a need for BIA action that implicates the government-to-government relationship, and which in turn necessitates a BIA decision on the tribal dispute. *See Cloverdale*, 55 IBIA 220 (BIA may not address a tribal dispute when there is no separate Federal action required); *Coyote Valley Band of Pomo Indians v. Acting Pacific Regional Director*, 54 IBIA 320 (2012) (vacating BIA decisions addressing a tribal dispute when BIA had not identified any required BIA action that prompted BIA's intervention); *Pueblo de San Ildefonso v. Acting Southwest Regional Director*,

54 IBIA 253 (2012) (vacating BIA recognition decision because there was no evident need for Federal action); *Phillip Del Rosa v. Acting Pacific Regional Director*, 51 IBIA 317 (2010) (same).[7]

II. Were There Separate Pending Matters That Required or Warranted BIA Action Which, in Turn, Required a Determination on the Tribal Dispute?

A. Pending Memorandum of Understanding with DHS

The Regional Director and Interested Parties contend that even if BIA has no stand-alone obligation to ensure that the tribal dispute does not render the Nation unable to function, there were three separate matters that required BIA action at the time the Decision was issued, which in turn required the Regional Director to address the tribal dispute on the merits. The first such matter relied upon is a pending Memorandum of Understanding (MOU) that apparently had been negotiated by Halftown, purportedly on behalf of and as authorized by the Nation, and DHS, relating to the Western Hemisphere Travel Initiative concerning entry into and departure from the United States. In a letter to the Jacobs faction in 2008, DHS indicated that it would rely on BIA to determine points of contact for Federally recognized tribes, and that DHS follows guidelines set by BIA when addressing Federally recognized tribal entities. *See* Interested Parties Supplemental Brief, Sept. 24, 2012, Ex. F. According to Interested Parties and the Regional Director, because DHS was relying on BIA to determine whether Halftown was authorized to represent the Nation, the Regional Director was justified in issuing the Decision.

We initially note that the DHS correspondence was not addressed to the Regional Director, nor was it in the form of a request to BIA. It is not part of the Regional Director's administrative record for the Decision, meaning that it was not utilized by the

[7] The Regional Director suggests that as long as the Decision is stayed by this appeal, "BIA is required to continue to recognize a Cayuga council composed of [the Halftown faction and Jacobs faction]." Appellee's Supplemental Brief, Sept. 24, 2012, at 16. That is not the case. If there is no separate need for Federal action during the Nation's tribal government dispute, BIA is not required to recognize anyone as the Nation's representative or any composition of the Council, nor would it be appropriate for BIA to do so. *See Cloverdale*, 55 IBIA at 225-26 (vacating the portion of a BIA decision that otherwise (correctly) declined to intervene in a tribal dispute but then stated that BIA "continues" to recognize the council it had previously recognized). And if there *is* a separate need for Federal action, which in turn requires a recognition decision, it would be BIA's responsibility to make a decision about whom to recognize, setting forth its reasoning and justification, and providing appeal rights to interested parties.

Regional Director in issuing the Decision. *See* 43 C.F.R. § 4.335 (BIA's record certification).[8] But even if DHS's correspondence to the Jacobs faction had been considered by the Regional Director, it could not have served as the necessary justification for issuing the Decision.

In the correspondence to the Regional Director leading up to the Decision, the Halftown faction expressly informed the Regional Director that due to the tribal governance dispute, the Nation—i.e., Halftown, with whom DHS apparently had been negotiating—had decided to *postpone* signing an MOU. The Regional Director relies on this "indefinite[] postpone[ment]" of the MOU signing as "signaling that the Appellants viewed [BIA's] decision as bearing upon" which party to this appeal DHS would work with. Appellee's Supplemental Brief, Sept. 24, 2012, at 13. That may well be the case. But whether intended or not by Appellants, their willingness to effectively table further proceedings with DHS while the dispute remained unresolved served, if anything, to *remove* this as a possible justification for BIA intervention and issuance of a decision.[9]

Moreover, as we held in *Alturas*, BIA does not have some independent duty to serve as the arbiter for tribal disputes for the convenience of other agencies or third parties. 54 IBIA at 143-44. Thus, while the emergence of the present dispute possibly could have served as a reason for the Regional Director to advise DHS of the existence of the dispute, the pendency of a proposed MOU—by then tabled by Halftown—could hardly serve as a separate matter requiring BIA action and necessitating BIA's intervention in the dispute.

B. Land-Into-Trust Application and Interested Parties' Stay Request

The Regional Director and Interested Parties also contend that the Regional Director and the Assistant Secretary had pending before them, at the time the Decision issued, a request from Interested Parties to stay consideration of the land-into-trust application submitted by Halftown. They argue that resolution of the stay request—an

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[8] Nor did the Regional Director refer to the pending MOU with DHS in his affidavit to support making the Decision effective immediately. *See* Motion of Appellee to Make Decision Effective Immediately, Oct. 26, 2011, Ex. A (Affidavit of Franklin Keel).

[9] To the extent Interested Parties and the Regional Director contend that a requirement for BIA action was triggered by DHS's need to determine whether Halftown was authorized to speak for the Cayuga Nation, it is unclear why the Regional Director would have waited until 2011 to act, when the Jacobs faction had been contending for some time that under the Council as recognized for purposes of the Regional Director's 2006 decision, Halftown lacked such authority in the absence of a consensus decision by the entire 6-member Council.

apparent reference to the correspondence in 2008 and 2010 from the Jacobs faction to the Regional Director, *see supra* at 173-74—required the Regional Director to determine if the trust application had been submitted by the legitimate representatives of the Nation.[10]

But the land-into-trust application was not pending before the Regional Director when he issued the Decision. *See supra* at 174 (Regional Director transmitted the land-into-trust application to the Assistant Secretary on May 4, 2011). Thus a request for the Department to stay consideration of the application could not serve as the separate matter that required action *by the Regional Director*. The Regional Director argues that because the matter was briefed to him, and has now been briefed to the Board, administrative efficiency would be well served by a decision on the merits. That misses the point. Neither the Regional Director nor the Board serve as general arbiters of disputes that may be implicated in matters that are pending before other Departmental officials. When the Regional Director transmitted the land-into-trust application to the Assistant Secretary for consideration, any request to stay consideration was for the Assistant Secretary, not the Regional Director, to decide.

C. ISDA Contract Administration and Funding

The final argument made by the Regional Director and Interested Parties is that the administration and funding of an existing ISDA contract between BIA and the Nation required BIA to issue a decision on the composition of the Council and the designation of the Nation's representatives. In some cases, an ISDA contract may have action-triggering events that do indeed require BIA to address an internal tribal dispute and to make a tribal leadership determination in order to take some ISDA action. But in other cases, even a tribal governance dispute involving a purported change in tribal leadership does not necessarily directly and immediately affect the administration of an ISDA contract, nor require BIA to address the dispute. As the Board recognized in *Coyote Valley*, not all interaction between BIA and a tribe regarding the administration of an ISDA contract requires a determination of the tribe's political leadership. 54 IBIA at 326 n.12. In that case, we recognized that "ISDA may require BIA to act on a request for approval of an ISDA document from a tribe," but we found that the regional director in that case "did not produce or identify any such request as the foundation to justify issuance of the decisions." *Id.* at 327.

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[10] Interested Parties suggest that they reiterated the stay request in a June 16, 2011, meeting, but it appears that their request at that time was directed to the Halftown faction in the context of exploring mediation. No reiteration of the request appears to have been directed to the Regional Director.

Similarly, in the present case, the Regional Director has not produced or identified any ISDA document that had been presented to him, either by Halftown or LeRoy, or by Jacobs or George as the newly-designated representatives, that required BIA action. Instead, Interested Parties (and the Regional Director) would have us simply assume that the administration and funding of the Nation's contract required a Federal recognition decision because in the absence of a decision, Federal funds would improperly be "disbursed to an individual who is no longer the Nation['s] representative," and contract money would continue to be used to pay the salary of LeRoy, who is "nominally employed" by the Nation but who allegedly has refused to follow direction from the Interested Parties and the newly constituted Council. Interested Parties' Response to Appellants' Supplemental Brief, Oct. 15, 2012, at 6; Interested Parties' Supplemental Brief, Sept. 24, 2012, at 12-13. But as Appellants point out, Interested Parties concede that LeRoy remains employed by the Tribe. Resolution 11-001 does not purport to relieve LeRoy of her position, or instruct BIA to no longer accept her as having any authority or role in relation to obtaining the Nation's funding under the contract. Nor is there any documentation in the record to show what Halftown's role is in the ongoing administration of the contract, or that a request was submitted to BIA to amend the contract in a way that would change any role he may have.

ISDA contracts are predicated on a government-to-government relationship, and on BIA's statutory obligation to contract certain programs and functions to tribes, if requested to do so. But once an ISDA contract is executed, the rights and obligations of the parties are governed by the contract, and changes to the contractual relationship are not to be taken lightly or informally. Funds are directed according to the terms of the contract. If a change in the designated tribal representative on an existing contract is to be made, it is for the tribe, not BIA to initiate the request for change. No such request is incorporated in Resolution 11-001. And unless the change in the designated tribal representative has some actual practical effect on administration of the contract, e.g., to change the authority for requesting drawdowns or to change where such drawdowns are to be directed, it still may not require BIA to intrude in the internal affairs of the tribe by addressing a tribal dispute.

Of course, a tribal request to renew a contract requires tribal authorization, which in turn may require BIA to determine the composition of the Council and whether the individual submitting the proposal was authorized to do so by the Council. But no such proposed contract request was pending when the Regional Director issued the Decision.

Instead of waiting for an ISDA matter to arise that required BIA action, and which may (or may not) have required a determination on the tribal governance dispute, the Regional Director acted in anticipation that ISDA funding might *become* an issue. But in so doing, the Regional Director intruded into the tribal dispute and undermined the right and

responsibility of the tribe to have the maximum opportunity to resolve the dispute by itself. *See Cloverdale*, 55 IBIA at 225.[11]

We note that over a year after the Decision was issued, and while this appeal was pending, LeRoy apparently submitted a new proposal to BIA for a 3-year Community Services Program ISDA contract, which purportedly was authorized by a duly enacted resolution of the Council. *See* Interested Parties' Supplemental Brief, Sept. 24, 2012, Ex A. As Appellants correctly argue, that post-decisional submission could not serve as the justification for the Regional Director to have issued the Decision. *See Cloverdale*, 55 IBIA at 224 ("Appellants' *post-decisional* request cannot serve as the predicate to either require or justify an *earlier* decision by BIA on the internal tribal dispute."); *San Ildefonso*, 54 IBIA at 259 ("The cornerstone of any decision by BIA to recognize a tribal government should be a present Federal need to do so, not an anticipated need at a future date."). Instead, it could at best serve as justification for a future decision.[12]

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[11] In reaching this conclusion, we are only recognizing that when the Decision was issued, there was a continuing dispute between the factions. We express no opinion, of course, on Interested Parties' argument that as a matter of Cayuga law and tradition, the clan mothers' action to remove a seatwarmer from the Council is final and thus the dispute has been resolved as a matter of tribal law. That argument, of course, goes to the underlying merits of the dispute as presented to BIA for a decision.

[12] No party has informed the Board what happened to LeRoy's submission. Appellants assert that a decision by BIA to approve or deny the application submitted by LeRoy would not necessitate a decision regarding the Nation's leadership, but it is not at all clear why that would be the case for an ISDA proposal based on purported authorization and action by the Council. At a minimum, in light of the tribal dispute, action on the proposal presumably would require a decision that included appeal rights, with proper notice to all interested parties.

And even if, as the Halftown faction contends, the Council composition did not change in 2011, it would not follow that the Regional Director could accept the submission without possibly needing to address the tribal dispute, in light of the governance structure of the Nation. *See George*, 49 IBIA at 187 (Regional Director has discretion to decide whether and what form of verification may be appropriate to show Council approval of Halftown's action); *see also Bucktooth v. Acting Eastern Area Director*, 29 IBIA 144, 151 (1996) ("BIA has the right to require proof of the validity of Council enactments relevant to the government-to-government relationship whenever there is a question as to the validity of those enactments."). Absent proper grounds for declination, Indian tribes have a statutory right to enter into ISDA contracts, but they are not required to choose to do so. Nothing in *Goodface* prohibits a tribe from letting its own authorization for a contract lapse, even if

(continued...)

Conclusion

We conclude that by issuing the Decision when there was no separate matter that was pending that required or warranted BIA action, and which in turn would have necessitated a determination on the tribal dispute, the Regional Director impermissibly infringed on the sovereign rights of the Nation by intruding into tribal affairs. In vacating the Decision, we make no assumptions about the willingness or the ability of the tribal parties to resolve the dispute among themselves, although the pendency and disposition of this appeal has provided and will provide them additional time to do so without Federal interference. And if it becomes necessary for the Regional Director to issue a new decision, when a separate matter presents itself for BIA action that would implicate the tribal dispute, the Regional Director will have the benefit of, and may respond as necessary to, the parties' arguments on the merits as set forth in briefs in this appeal and in any supplemental submissions to the Regional Director.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board vacates the Decision.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

(...continued)
to do so results in a contractual hiatus. BIA cannot supply the necessary authorization from a tribe if such authorization does not exist as a matter of tribal law.

EXHIBIT F

Cayuga Nation v. Jacobs
Supreme Court, Seneca County, New York. May 19, 2014 986 N.Y.S.2d 791 2014 N.Y. Slip Op. 24132 *(Approx. 6 pages)*

986 N.Y.S.2d 791
Supreme Court, Seneca County, New York.

CAYUGA **NATION**, Lakeside Enterprises, Inc. Clint Halftown, Tim Twoguns, Gary Wheeler, Richard N. Lynch, and B.J. Radford, Plaintiffs,

v.

William JACOBS, Samuel George, Bernadette Hill, Brenda Bennett, Karl Hill, Alan George, Pamela Isaac, Chester Isaac, Daniel Hill, Justin Bennett, Samuel Campbell, and John Does 1–100, Defendants.

May 19, 2014.

Synopsis

Background: Individual Cayuga Indians, a Cayuga **Nation** enterprise, and, purportedly, the Cayuga **Nation** itself brought action against other Cayuga Indians, alleging causes of action for trespass, conversion, tortious interference with prospective business relations, replevin, and ejectment. Plaintiffs sought preliminary and permanent injunctions preventing defendants from entering properties and defendants moved to dismiss.

Holding: The Supreme Court, Dennis F. Bender, J., held that Supreme Court lacked subject matter jurisdiction over claims.

Plaintiffs' motions denied; defendants' motions granted.

West Headnotes (2)

Change View

1 **Indians** State Courts

Although New York Courts do not have subject matter jurisdiction over the internal affairs of Indian Tribes, they do have subject matter jurisdiction over, inter alia, private civil claims by Indians against Indians.

2 **Indians** State Courts

Allegations by individual Cayuga Indians, a Cayuga **Nation** enterprise, and, purportedly, the Cayuga **Nation** itself against other Cayuga Indians, alleging various claims, including trespass and conversion, regarding various **Nation** properties, were fundamentally founded upon question of who had right to lead **Nation**, and therefore, Supreme Court lacked subject matter jurisdiction over claims; dispute involved proper identity of **Nation's** ruling council's membership and decision by court would interfere with tribal sovereignty and self government. McKinney's CPLR 3211(a)(2).

Attorneys and Law Firms

**792* Daniel French, Esq. & Lee Alcott, Esq., of Counsel, David W. DeBruin, Esq., Pro Hoc Vice, & Joshua M. Segal Pro Hoc Vice, French–Alcott, PLLC, On Behalf of the Plaintiffs.

Joseph J. Heath, Esq., On Behalf of the Defendants.

Frank F. Fisher, Esq., On Behalf of Seneca County.

Opinion

DENNIS F. BENDER, J.

This Court has multiple applications in front of it. The named plaintiffs are individual Cayuga Indians, a Cayuga **Nation** enterprise, and purportedly, the Cayuga **Nation** itself. The named defendants, as well as presumably the "John Does", are also all individual Cayuga Indians. The complaint alleges causes of action for trespass, conversion, tortious interference with prospective business relations, replevin and ejectment. All of the actions revolve around an alleged

illegal "take over" of the **Nation's** Offices, its two Lakeside Trading Facilities, and its 154 acre farm, on April 28, 2014.The plaintiffs request a determination that trespass, conversion, and tortious interference occurred, and seek an order directing the defendants and their agents to immediately vacate the properties and surrender personal property taken. They further ask that the defendants and their agents be preliminarily and permanently enjoined from entering the properties, exercising any control over personal property at the locations, and from taking any action to disrupt the commercial activities of the **Nation** or its affiliates.

An order to show cause was issued by this Court which included a temporary restraining order against the defendants.

> The plaintiffs subsequently brought a second application requesting the Court to make some specific directions concerning service of the original order to show cause, and a third application seeking a finding of contempt upon the failure of the defendants to comply with the restraining order.

The defendants responded by moving to dismiss the complaint in its entirety on **793* various grounds including among others, that this Court lacks subject matter jurisdiction pursuant to CPLR section 3211(a)(2), and that the Court lacks personal jurisdiction over the individually named defendants pursuant to CPLR section 3211 (a)(8), because they are all leaders of the Cayuga **Nation** acting in their official capacities and therefore may be not be sued without their consent.

Thereafter, Seneca County, in which this action was initiated, moved to intervene, seeking an order dismissing the action or directing its removal to the federal courts, and directing the Cayuga **Nation** to reimburse Seneca County for any costs incurred enforcing any orders which result from this action.

All matters were made returnable on May 16, 2014. [1]

At oral argument, the Court first granted the *pro hac vice* applications of David W. DeBurin, Esq. and Joshua M. Segal, Esq., to appear on behalf of the plaintiffs, finding the requisite showing of good standing and said applicants' familiarity with the standards of professional conduct within New York State was made pursuant to 22NYCRR520.11. It also granted Seneca County's application to intervene.

Subject Matter Jurisdiction

1 The plaintiffs argue that this Court has jurisdiction to determine the underlying civil causes of action pursuant to 25 U.S.C. section 233 and Indian Law Section 5. "Although New York Courts do not have subject matter jurisdiction over the internal affairs of Indian Tribes, (see *Bowen v. Doyle,* 880 F.Supp. 99, 122 –123), they do have subject matter jurisdiction over, *inter alia,* "private civil claims by Indians against Indians". (*People v. Anderson,* 137 A.D.2d 259, 270, 529 N.Y.S.2d 917 (4th Dept.1988); *accord, Seneca v. Seneca* 293 A.D.2d 56, 58–59, 741 N.Y.S.2d 375 (4th Dept.2002).

2 The plaintiff's argument has strong surface appeal. While questions of fact certainly exist regarding the specifics of the incidents of April 28, 2014, there is no question but that the businesses and property involved are Cayuga **Nation** property, and it is not denied that the actions of the defendants disrupted businesses activity. It is no less evident that at least some of the defendants have no respect for this Court's temporary order which would have maintained the previous *status quo.*[2] As counsel for the plaintiffs seem to suggest, it would seem to fly in the face of reason to argue that there is nothing this Court can do.

Counsel for the plaintiffs further argues strenuously that this Court does not need to resolve the issue of leadership of the **Nation**. Well detailed was the history, much undisputed, of the status of the individually named plaintiffs amongst the **Nation's** ruling authorities, and their past and present involvement in the running of the **Nation's** affairs. Much was also made of ***794** the history of Mr. Halftown as the recognized representative of the **Nation** for the Bureau of Indian Affairs (BIA.)

Clearly however, this is not a simple case of "private civil claims of Indians against Indians", and thus, contrary to plaintiffs' counsel's suggestion during oral argument, a ruling contrary to the plaintiffs does not mean that "anyone acting under color of Indian Law is entitled to take possession." Although the plaintiffs argue that their causes of action are directed at individuals, the responding papers make clear, and the plaintiffs do not question, that three of the named defendants are council members and three others are **clan mothers**, all thus being in one capacity or another, Cayuga **Nation** leaders.[3] It is equally evident that the plaintiffs' contention is that the named defendants are orchestrating the actions of the "John Doe" defendants. Notably, there is a dearth of allegations regarding any direct involvement by any of the named defendants at any of the incidents.

The conceded underlying dispute between the factions regarding the proper identity of the **Nation's** ruling council's membership as well as the federal representative to the BIA is longstanding. While it appears that plaintiffs Halftown, Twoguns and Wheeler were at some point properly made members of the ruling council, and that Halftown was properly appointed as the federal representative for dealings with the BIA, less clear is their current status. Alleged in the affidavit of defendant Samuel George is the assertion that in late May and early June of 2011, pursuant to Cayuga Law and custom, the **clan mothers** of the Cayuga **Nation** "reformed" the governing **Nation** Council, retaining three of the Council's BIA recognized members and removing and replacing Plaintiffs Halftown, Twoguns, and Wheeler. (Paragraph **6**, George Affidavit). The affidavit also sets forth, which is not in dispute, that the Franklin Keel, the Director of the Eastern Region of the BIA, recognized that change in government, and found defendants Jacobs and George to be the federal representatives designated by the new **Nation's** Council (August 19, 2011 letter from the United States Department of Interior to Attorneys Daniel J. French, Lee Alcott and Joseph Heath, attached to Defendants' moving papers). Although that determination was later vacated, (58 IBIA 171), such was on procedural grounds. Predicated upon the Interior Board of Indian Appeals (IBIA)'s curious determination that there were no pending issues between the **Nation** and the BIA, it stated it was not appropriate for the determination to be made.Further, even though the BIA has not recognized anyone other than Halftown as the representative of the **Nation**, the BIA has emphasized that his authority is defined and controlled by the **Nation** and not by the BIA. *George, et al v. Eastern Regional Director BIA,* 49 IBIA 164 (2009).

Most recently, a letter dated May 15, 2014, was sent by Director Keel, which seeks presentations to the BIA by the two factions addressing whether "(1) .... there are [now] matters pending before ***795** the Region ... that .... trigger the need for a decision as to who is the **Nation's** federal representative; and (2) whom the region should recognize as the leadership of the Cayuga **Nation**." The plaintiffs' attorney made much of the fact the letter states that "the region will maintain the status quo with respect to the Cayuga **Nation's** draw down authority". Notably however, it was limited to the sole identified issue, and more important, the correspondence also states that the decision to do so "does not express any view recognizing either side." That letter, as well as the above cited decision of the IBIA vacating Mr. Keel's previous decision on procedural grounds, hardly justifies the conclusion that Mr.

Halftown or the other individually named plaintiffs retain legitimate authority to determine the **Nation's** affairs.

The question of who is in charge, and resultantly who has the authority to speak for the **Nation** and control its property and businesses, is thus the fundamental question that must be answered. Absent a preliminary determination of that question, no justiciable issue is capable of being addressed by this Court.

The foregoing is not changed by the matter of *Farrer v. Piecuch,* 278 A.D. 1011, 106 N.Y.S.2d 157 (4th Dept.1951), cited by the plaintiffs for the proposition that the leadership issue need not be decided to address the pending action. Because the plaintiffs have been in control of the properties for years, *Farrer* says they must prevail. In that case the Court held that because the respondents had enjoyed peaceable possession for many years of a parcel of real property, their failure to show title did not preclude an action in trespass where the appellants showed no better title in themselves. The distinction of course, is that here, by analogy, this Court may not consider whether the defendants have "better title".

Despite the foregoing, this Court finds no authority which would justify the request of Seneca County that the matter be transferred to the Federal District Court of Western New York or to the Bureau of Indian Affairs for determination.

Because the underlying allegations in this law suit are fundamentally founded upon the longstanding question of who has the right to lead the **Nation**, no determination could be made by this Court without interfering with tribal sovereignty and self government. Accordingly, this Court lacks subject matter jurisdiction of the preliminary question in the case. *Iowa Mutual Insurance v. LaPlante,* 480 U.S. 9, 15, 107 S.Ct. 971, 94 L.Ed.2d 10 (1987); *Bowen v. Doyle,* 880 F.Supp. 99, (W.D.N.Y.1995).

Contempt

People v. Anderson, 137 A.D.2d 259, 529 N.Y.S.2d 917 (4th Dept.1988), is not dispositive. Like this case, *Anderson* dealt with the Court's authority to issue a preliminary injunction and temporary restraining order to maintain the status quo. In upholding that authority, the Court noted that the issue of leadership could not be determined on a preliminary basis, deferring that decision to the trial of the injunctive action. *Id,* at p. 269, 529 N.Y.S.2d 917. Also as here, the action was brought not against the tribe, but against named and unnamed individuals. Despite

those similarities, both parties here agree that as a matter of law, this Court lacks authority to decide the issue of leadership.

In any event, because this Court finds it lacked subject matter jurisdiction when the initial order was made, the order was manifestly devoid of validity. Accordingly, despite the actual contempt shown, this Court cannot punish a violation of such order. **796 Schulz v. State,* 86 N.Y.2d 225, 232, 630 N.Y.S.2d 978, 654 N.E.2d 1226 (1995); cert. den. 516 U.S. 944, 116 S.Ct. 382, 133 L.Ed.2d 305 (1995); *Morrison v. Budget Rent–A–Car Systems, Inc.,* 230 A.D.2d 253, 657 N.Y.S.2d 721 (2d Dept.1997); *In re B.H.,* 29 Misc.3d 161, 169–170, 904 N.Y.S.2d 653 (N.Y.Fam.Ct., 2010).A sorry aspect of this matter is that the Cayuga **Nation** has a great deal of responsibility for this situation by its failure to set forth the specific requirements or procedure to change leadership within the **Nation**. While trumpeting its right of self rule, as observed in the IBIA decision, 49 IBIA 164 (2009), the **Nation** "... has no written law, Court or body other than the Council itself for resolving disputes within the Council." Counsel's comment at oral argument that the law "resides in the hearts and minds of the Cayuga People" is, as this long standing dispute shows, hardly conducive of rational adjudication. Reliance upon oral tradition and ruling by consensus, however that is defined by the Cayuga **Nation**, may have served the **Nation** well in pre-colonial or colonial times. It is clearly ill suited for the twenty-first century.

This Court finally notes that counsel for the plaintiffs acknowledged that there is a civilized way to resolve this dispute, referencing the BIA's letter of May 15, 2014. If sincere, it would behoove the named plaintiffs to agree with the defendants that intervention by the BIA is necessary, and specify what issues need resolved, including "whom should be recognized as the leadership of the Cayuga **Nation**." Good leadership would likewise suggest that each side tell their followers that further confrontations pending resolution are counterproductive. It is evident that emotions are running high. A lack of a clear and unequivocal statement that confrontations are not countenanced by leadership will likely be viewed as tacit approval of further action by individuals which sadly to date, has involved allegations of criminal activity.

The motions of the plaintiffs are denied and dismissed and the defendants' motion for dismissal of the action due to the lack of subject matter jurisdiction is granted, without costs. Seneca County's application to transfer the matter is also denied, and

the ancillary relief requested by the county is denied as moot, and without addressing the propriety of it.

THIS CONSTITUTES THE DECISION AND JUDGMENT OF THE COURT.

Parallel Citations

2014 N.Y. Slip Op. 24132

Footnotes

1 For the first time, at oral argument, counsel for the defendants raised a question whether the summons in this matter had been filed or served upon his clients. This morning, Monday, May 19, 2014, he requested he be allowed to submit a four-page memorandum of law on that issue. The request was denied by the Court. Nothing has been or was proposed to be presented under oath to support counsel's claim, and the Court notes a copy of the summons was attached to the copy of the complaint provided to the Court with the first application. Both bore a time stamp from the County Clerk's Office. While the challenge may very well have merit if the summons was not served, dismissal on that ground would have been without prejudice.

2 Counsel for the defendants conceded the lack of compliance. Asked by what authority the order was ignored, counsel simply stated "Cayuga Law", whatever that might mean.

3 This also raises the issue of sovereign immunity. While it is not generally available to individuals, sovereign immunity does apply when the individuals are being named because of actions being taken in their apparent official capacities as Council members. 41 Am Jur.2d Indians, § 9, *Native Americans; Catskill Development LLC v. Park Place Entertainment Corp.*, 206 F.R.D. 78 (S.D.N.Y.2002); reconsid. denied 204 F.Supp.2d 647 (S.D.N.Y.2002). The other individually named defendants also sit on the council according to the defendants, as either faith keepers or seatwarmers. (Ex. A, Defendants' motion papers, "Cayuga **Nation** Resolution 11–001".)

End of Document

EXHIBIT G

At a term of the Supreme Court of the State of New York, held in and for the County of Cayuga at the Cayuga County Courthouse in Auburn, New York on the 20th day of May, 2014.

FILED
CAYUGA COUNTY CLERK
Jun 25,2014 02:34P
Susan M. Dwyer
D J

PRESENT: HONORABLE THOMAS G. LEONE
Acting Justice of the Supreme Court

SUPREME COURT
STATE OF NEW YORK: COUNTY OF CAYUGA

CAYUGA NATION, LAKESIDE ENTERPRISES, INC., CLINT HALFTOWN, TIM TWOGUNS, GARY WHEELER, RICHARD N. LYNCH, AND B.J. RADFORD,

Plaintiffs,

-vs-

WILLIAM JACOBS, SAMUEL GEORGE, BERNADETTE HILL, BRENDA BENNETT, KARL HILL, ALAN GEORGE, PAMELA ISAAC, CHESTER ISAAC, DANIEL HILL, JUSTIN BENNETT, SAMUEL CAMPBELL, AND JOHN DOES 1-100,

Defendants.

ORDER

Index #2014-451

Plaintiffs, having moved this Court by Order to Show Cause for a Preliminary Injunction; and Defendants, having moved this Court by Order to Show Cause for an Order dismissing Plaintiffs' Complaint;

NOW, UPON READING AND FILING Plaintiffs' Summons and Complaint dated May 1, 2014; Plaintiffs' Amended Order to Show Cause signed May 1, 2014; the Affirmation of Daniel J.

French, Esq., dated May 1, 2014, together with the exhibits annexed thereto; the Affirmation of Daniel J. French dated May 1, 2014; the Affirmation of Daniel J. French pursuant to § 202.7(f) of the Uniform Rules dated May 1, 2014; the Affidavit of Clint Halftown sworn to May 1, 2014; the Affidavit of BJ Radford sworn to May 1, 2014; the Supplemental Affidavit of BJ Radford sworn to May 1, 2014; the Affidavit of Michael Gustina sworn to May 1, 2014; the Affidavit of Bradley Hanna sworn to May 1, 2014; the Affidavit of Joseph Law sworn to May 1, 2014; the Affidavit of Ed Otter sworn to May 1, 2014; Plaintiffs' Memorandum of Law dated May 1, 2014; the Affidavit of B.J. Radford sworn to May 4, 2014; and the Affidavit of Michael Gustina pursuant to § 202.7(f) of the Uniform Rules sworn to May 5, 2014, all submitted in support of Plaintiffs' Order to Show Cause; and

NOW UPON READING and FILING Defendants' Order to Show Cause dated May 16, 2014; and the Affirmation of Joseph J. Heath, Esq. dated May 14, 2014, together with the exhibits annexed thereto; and Defendants' Memorandum of Law dated May 14, 2014, together with the exhibits annexed thereto, all submitted in support of Defendants' Order to Show Cause, and in opposition to Plaintiffs' Order to Show Cause; and

NOW, UPON READING AND FILING the Affirmation of Daniel J. French dated May 16, 2014, together with the exhibits annexed thereto; the Affirmation of Gabriel M. Nugent dated May 16, 2014; and Plaintiffs' Reply Memorandum of Law, undated, in further support of Plaintiffs' Order to Show Cause and in Opposition to Defendants' Order to Show Cause; and

UPON the appearances of counsel, Jenner & Block, (David W. DeBruin, Esq., of counsel, *pro hac vice*), and French-Alcott, PLLC, (Daniel J. French, Esq., of counsel), on behalf of Plaintiffs; and Joseph J. Heath, Esq., on behalf of Defendants;

AND, the Court having duly deliberated thereon and rendered its May 20, 2014 Decision; it is hereby,

ORDERED, that Plaintiffs' application for a preliminary injunction be and the same is hereby denied in all respects; and it is further,

ORDERED, that Defendants' Motion to Dismiss be and the same is hereby granted in all respects for lack of subject matter jurisdiction; and it is further;

ORDERED, that this case be and the same is hereby dismissed and the Order to Show Cause signed and entered by this Court on May 1, 2014, be and same is hereby vacated.

Dated: June 19, 2014

Acting Supreme Court Justice

Enter: _____

FRENCH-ALCOTT, PLLC

12332.1

EXHIBIT H

BUREAU OF INDIAN AFFAIRS

TRIBAL LEADERS DIRECTORY

Includes BIA Region & Agency Contacts

2014 FALL/WINTER EDITION
Semiannual Publication

Published by the Bureau of Indian Affairs, Office of Indian Services, Division of Tribal Government Services

The Directory is not an official listing of the federally recognized tribes; however, it should be used in conjunction with the current Federal Register Notice of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, which is the official listing of all federally recognized tribes in the U.S. pursuant to Section 104 under the Federally Recognized Indian Tribe List Act of 1994 (Pub. L. 103-454, 108 Stat. 4791-4792). The most recent Notice was published in the Federal Register, 79 Fed. Reg. No. 19 (January 29, 2014).

Initially developed as an internal reference document to aid division employees in their work, the Directory is now one of Indian Affairs' most requested publications, used by federal, state and local governments, news media, business, researchers, and the general public to connect with Indian Country. In response to the volume of requests, the Directory is now posted on the Bureau of Indian Affairs web site at the following internet address:

http://www.bia.gov/WhoWeAre/BIA/OIS/TribalGovernmentServices/TribalDirectory/index.htm

For more information, contact the Division of Tribal Government Services at (202) 513-7641

NOTE: Tribal elections and other changes in tribal leadership occur throughout the year. The information contained in this edition was the most current information available at the time of publication and will remain until the publication of the next edition. All updates are coordinated through BIA central and regional Tribal Government Services offices.

Tribal Leaders and
BIA Servicing Offices

Eastern Region

Edward Peter-Paul, Chief
Aroostook Band of Micmacs
P.O. Box 772
Presque Isle, ME 04769
Phone No: **(207) 764-1972** Fax No: **(207) 764-7667**

e-mail address: epeterpaul@micmac-nsn.gov
website: http://www.micmac-nsn.gov Package
Delivery Address:
7 Northern Road, Presque Isle, ME 04769
BIA Servicing Office: Eastern Regional Office

Nation Representative
Cayuga Nation
CONTACT BIA EASTERN REGIONAL OFFICE
FOR FURTHER INFORMATION
Phone No: Fax No:

e-mail address: Not Available
website: Not Available
Package Delivery Address:
Not Available
BIA Servicing Office: Cherokee Agency

Lovelin Poncho, Chairman
Coushatta Tribe of Louisiana
P.O. Box 818
Elton, LA 70532
Phone No: **(337) 584-1401** Fax No: **(337) 584-1507**

e-mail address: cbertrand@coushattatribela.org
website: http://www.coushattatribela.org
Package Delivery Address:
1940 C.C. Bel Road, Elton, LA 70532
BIA Servicing Office: Eastern Regional Office

Brenda Commander, Tribal Chief
Houlton Band of Maliseet Indians
88 Bell Road
Littleton, ME 04730
Phone No: **(207) 532-4273** Fax No: **(207) 532-2660**

e-mail address: Tribal.Chief@maliseets.com
website: http://www.maliseets.com
Package Delivery Address:
SAME
BIA Servicing Office: Eastern Regional Office

William Harris, Chief
Catawba Indian Nation
996 Avenue of the Nations
Rock Hill, SC 29730
Phone No: **(803) 366-4792** Fax No: **(803) 327-4853**

e-mail address: bill.harris@catawbaindian.net
website: http://www.catawbaindian.net
Package Delivery Address:
SAME
BIA Servicing Office: Eastern Regional Office

John Paul Darden, Chairman
Chitimacha Tribe of Louisiana
P.O. Box 661
Charenton, LA 70523
Phone No: **(337) 923-4973** Fax No: **(337) 923-6848**

e-mail address: info@chitimacha.gov
website: http://www.chitimacha.gov Package
Delivery Address:
155 Chitimacha Loop, Charenton, LA 70523
BIA Servicing Office: Eastern Regional Office

Michell Hicks, Principal Chief
Eastern Band of Cherokee Indians
Qualla Boundary
P.O. Box 455
Cherokee, NC 28719
Phone No: **(828) 497-7000** Fax No: **(828) 497-7007**

e-mail address: michhick@nc-cherokee.com
website: http://www.cherokee-nc.com
Package Delivery Address:
88 Council House Loop Road, Cherokee, NC 28719
BIA Servicing Office: Cherokee Agency

B. Cheryl Smith, Principal Chief
Jena Band of Choctaw Indians
P.O. Box 14
Jena, LA 71342
Phone No: **(318) 992-2717** Fax No: **(318) 992-8244**

e-mail address: Chief@jenachoctaw.org
website: http://www.jenachoctaw.org Package
Delivery Address:
1052 Chanaha Hina Street, Trout, LA 71371
BIA Servicing Office: Eastern Regional Office

EXHIBIT I

CAYUGA NATION UNITY COUNCIL
Post Office Box 169
Seneca Falls, NY 13148

June 28, 2013

Mr. Kevin Washburn
Assistant Secretary – Indian Affairs
United States Department of Interior
1849 C Street NW
Washington, DC 20240

Dear Assistant Secretary Washburn:

Greetings from the Cayuga Nation Unity Council. We write to urge you to refrain, for the time being, from taking any action on a Land into Trust application submitted by a former member of our Nation's Council. That application has never been approved by the Nation's Council – either our current Council or any former Council – as required by our law. As we understand it, the application seeks to have land taken into trust for the purpose of developing gambling facilities on that land. The Cayuga Nation Unity Council does not support use of Nation lands for gambling. Although we strongly believe that land must be restored to our Nation, the process for doing so and the purposes for which such land is restored must comply with our laws.

The pending application was submitted in 2005 by a single member of the Nation's six-member governing Council. The full Nation Council never approved the application by consensus, as required by Cayuga law. As you may know, the BIA and IBIA have recognized this consensus requirement as Cayuga law that federal agencies must respect. *See* Order of the Interior Board of Indian Appeals of May 4, 2009, Dkt. No. 06-74-A.

In 2011, pursuant to Cayuga law and custom and with full consensus, the Cayuga Nation reformed its governing Nation Council, retaining three members and removing and replacing three, including the Council member who submitted the land into trust application.

The Cayuga Nation Council is thus currently composed of Chief William Jacobs, Chief Samuel George, Chester Isaac, Justin Bennett, Samuel Campbell, and Karl Hill. Chief William Jacobs is the federal representative to the United States and its agencies. The following individuals are no longer members of the Cayuga Nation Council and have no authority to speak for the Cayuga Nation: Clint Halftown, Timothy Twoguns and Gary Wheeler.

On August 19, 2011, Bureau of Indian Affairs Eastern Region Director Franklin Keel recognized these changes for the purposes of the government to government relationship between the United States and the Cayuga Nation. (See attached). Unfortunately, the former federal representative and two other former members of the Council appealed Mr. Keel's determination

to the Interior Board of Indian Appeals. By filing this appeal, they caused the BIA's recognition decision to be stayed, creating confusion and uncertainty not only for our relationship with the United States, but also within our Nation. Director Keel, together with the lawful government of the Cayuga Nation, has requested that the Board affirm his recognition decision as soon as possible. Briefing on the appeal concluded in 2012, and we expect a decision soon.

The government of the Cayuga Nation recognized by the United States during pendency of the IBIA appeal is comprised of three members of the Unity Council (Chief William Jacobs, Chief Samuel George, and Chester Isaac) as well as the three former leaders (Clint Halftown, Timothy Twoguns, and Gary Wheeler). As noted above, this government never approved by consensus the application submitted to the Department of Interior in 2005.

Action at this time by the Department of Interior on a land into trust application that involves gambling and was never approved by the Nation's lawful government, would seriously complicate our Nation's efforts to restore unity and promote policies consistent with our laws and benefitting all our people. We strongly support restoration to the Nation of the Cayuga Nation's ancestral homelands. However, we also insist that our Nation be governed by our laws, which require consensus of the full Nation Council for major decisions.

We are particularly concerned about the request that Cayuga Nation trust lands be approved for gambling, which is a very divisive issue within our Nation and which is contrary to our customary teachings and beliefs. We oppose any gambling on Cayuga Nation lands and, in addition, oppose any efforts by the State of New York or other Indian tribes to make decisions without our consent about what occurs on our lands. For this reason, we oppose the proposed agreement between the Oneida Indian Nation and the State of New York, and would like to discuss that matter with you.

Thank you for your attention to these matters.

Oneh,

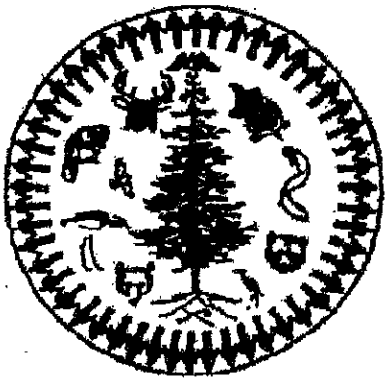
Chief William Jacobs

William C. Jacobs
Sachem Chief, Heron Clan
Federal Representative, Cayuga Nation

Enclosure

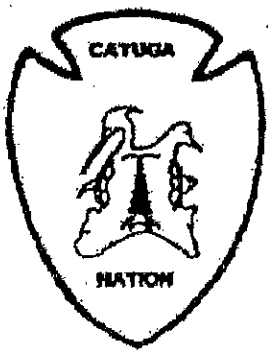
cc: Hilary Thompkins, Solicitor, Department of the Interior
Jody Cummings, Deputy Solicitor – Indian Affairs, Department of Interior
Franklin Keel, BIA Eastern Regional Director

EXHIBIT J



HAUDENOSAUNEE

CAYUGA NATION
P. O. Box 116
Akron, New York 14001
Telephone: (716) 542-2285
Facsimile: (716) 706-1221



January 29, 2014

Clint Halftown
Timothy Twoguns
Gary Wheeler
PO Box 803
Seneca Falls, NY 13148

Greetings,

We write to request that you immediately cease gambling activities on Cayuga territory. Such activities violate Cayuga law and have never been authorized by any Council of the Cayuga Nation. To be clear, we – three of the six members of the 2005 Cayuga Nation Council – oppose any organized gambling on Cayuga lands. We have never authorized such activities.

In addition, we oppose your effort to have land taken into trust by the United States for gambling purposes. We are deeply concerned that your land into trust application not only seeks to continue Class II gambling on Cayuga lands, but also seeks to bring to Cayuga ancestral territory a Class III gaming facility. As half of the Cayuga Nation Council recognized by the United States in 2005, we emphatically reject any such effort. It is unauthorized and inconsistent with Cayuga Nation law.

We believe that by bringing such illegal activities to Cayuga territory, you are acting against the best interests of Cayuga Nation citizens and of generations yet to come. We support pro-Cayuga economic development initiatives that benefit our people and do not violate our law.

Oneh,

Chief William C. Jacobs
Heron Clan

Chief Samuel George
Bear Clan

Chester Isaac
Bear Clan

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAYUGA NATION
and JOHN DOES 1–20,

Plaintiffs,

-against-

HOWARD TANNER, Village of Union Springs Code Enforcement Officer, in his Official Capacity;
EDWARD TRUFANT, Village of Union Springs Mayor, in his Official Capacity;
CHAD HAYDEN, Village of Union Springs Attorney, in his Official Capacity;
BOARD OF TRUSTEES OF THE VILLAGE OF UNION SPRINGS, NEW YORK; and
THE VILLAGE OF UNION SPRINGS, NEW YORK

Defendants.

DECLARATION OF SERVICE

Docket No.: 5:14-cv-01317 DNH/ATB

DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States of America, over the age of 18 years, and not a party to the above-entitled action. My business address is 2030 Addison Street, Suite 410, Berkeley, California, 94704.

On November 13, 2014, I electronically filed on behalf of the Proposed Intervenor the Cayuga Nation Unity Counsel following documents in Cayuga Nation, et al. v. Howard Tanner, et al., Docket No. 5:14-cv-01317-DNH-ATB:

1) **NOTICE OF MOTION TO INTERVENE AS DEFENDANT**
2) **PROPOSED DEFENDANT-INTERVENOR CAYUGA NATION UNITY COUNCIL'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE**
3) **DECLARATION OF CHIEF SAMUEL GEORGE, BEAR CLAN, ON BEHALF OF PROPOSED DEFENDANT-INTERVENOR UNITY COUNCIL**
4) **DECLARATION OF HERON CLAN REPRESENTATIVE KARL HILL ON BEHALF OF PROPOSED DEFENDANT-INTERVENOR UNITY COUNCIL**
5) **DECLARATION OF JOSEPH J. HEATH IN SUPPORT OF MOTION OF THE UNITY COUNCIL OF THE CAYUGA NATION TO INTERVENE AS DEFENDANT**
6) **DECLARATION OF SERVICE**

by using the CM/ECF system, which generated and transmitted a notice of electronic filing to the registered parties in the above-entitled case.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on November 13, 2014, at Berkeley, California.

Martha Morales