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ROBERT R. COMENOUT, SR.,)	No.
)	
Plaintiff,)	COMPLAINT FOR PRELIMINARY
)	AND TEMPORARY INJUNCTION
v.)	FOR TRESPASS, ABUSE OF
)	PROCESS, BARRATRY,
ROBERT W. WHITENER JR., an)	VIOLATION OF RACKETEER
individual, dba as WHITENER)	INFLUENCED AND CORRUPT
GROUP,)	ORGANIZATION ACT , OTHER
)	CLAIMS AND PENDENT STATE
Defendant.)	LAW CLAIM FOR TORTIOUS
)	INTERFERENCE, HARASSMENT,
)	ATTEMPTED FINANCIAL
)	EXPLOITATION OF ROBERT R.
)	COMENOUT SR., A TRIBAL
)	ELDER AND WHO ALSO
)	QUALIFIES AS A VULNERABLE
)	ADULT UNDER STATE LAW
)	

I. BACKGROUND FACTS

1. Plaintiff is a joint owner of land at 908-920 River Road, Puyallup, Washington inherited by virtue of surviving Edward Comenout Sr., and his spouse. It is Public Domain Trust Allotment, BIA Number 130-1027 and named "Indian Country". The land was acquired in 1926 by Edward A. Comenout Sr., who died in 1929 at age 24. The site is not located on any Indian reservation. Edward A. Comenout Jr., son of Edward Amos Comenout Sr. died June 4, 2010. He owned a majority ownership in the land and left his portion to grand nephews as he had no children. His will did not appoint a personal representative. No personal representative was ever appointed in the BIA probate, that on December 31, 2012 distributed Edward A. Comenout Jr.'s portion of the land. The BIA probate did not probate the permanent buildings on the property. The buildings were to be probated by a state probate. All the owners of the land, including Plaintiff, are qualified Indians except a 1/5 life estate of a non Indian.

2. Commercial sales of convenience store items, by what may be defined in non Indian law as a family partnership operation, have occurred over the many years starting as far back as 1971. Traditional Indian elder rule passed to Plaintiff, Robert R. Comenout Sr., after Edward A. Comenout Jr.'s death. Some of the land was sold in prior years and some was taken by condemnation to construct the adjoining busy highway of River Road, the main road between Puyallup and Tacoma.

1 3. The jurisdiction for purposes of litigation, among the City of
2 Puyallup, Pierce County, state of Washington, the Alcohol and Tobacco
3 Division, the Bureau of Indian Affairs federal agency and the Quinault Indian
4 Nation, has never been determined by the BIA. These six governments and
5 agencies undertake raids, arrests, seizures of goods, and other suits, but
6 none ever extend health, safety or other governmental protections to the site
7 or its occupants. Among other pending suits is a RICO suit by the Quinault
8 Indian Nation v. Edward A. Comenout, Robert R. Comenout Sr. and other
9 owners. No. 3:10-cv-05345-BHS, U.S.D.C., WDNW, pending since 2010.
10 The Nation's attorney, Raymond G. Dodge Jr., in a status report filed April
11 1, 2014 (File Number 29), states that "leasing the property is an acceptable
12 alternative to litigation" thereby admitting an abuse of process. The Quinault
13 Nation has no jurisdiction of the site. The BIA Attorney in charge of the legal
14 matters, Colleen Kelley, in a legal opinion issued June 14, 1993, concluded
15 ". . .it appears no tribal government exercises authority over this parcel."
16 Case law, including *Miami Tribe of Oklahoma v. U.S.*, 656 F.3d 1129, 1143
17 (10th Cir. 2011) requires a Congressional grant of jurisdiction.

18 4. One of the persons who seeks to operate the site is Robert R.
19 Whitener Jr., who does business as Whitener and Associates, Whitener
20 Group TWG and the Whitener Group LLC. He holds himself out as a
21 manager of Whitener Group. He has no authority to act for the Quinault
22 Indian Nation.

II. PARTIES, JURISDICTION AND VENUE

5. Plaintiff, Robert R. Comenout Sr., is a resident of the state of Washington and resides at the property location, 908½ River Road, Puyallup, Washington 98271.

6. Defendant, Robert R. Whitener Jr., is an individual and resides at Olympia, Washington. He, on information and belief, is the managing partner of a company called the Whitener Group. It is a consulting firm that advises Indian tribes. He is a former CEO of Island Enterprises, a Squaxin Island tribal corporation that manufactures cigarettes and operates retail cigarette stores as economic development enterprises.

7. This Court has exclusive subject matter jurisdiction pursuant to 25 U.S.C. § 345, 28 U.S.C. § 1353, 18 U.S.C. § 1151(c), 28 U.S.C. § 1331 and 18 U.S.C. § 1964(a). See, *Nahno-Lopez v. Houser*, 625 F.3d 1279, 1282 (10th Cir. 2010), *Cohen's Handbook of Federal Indian Law* § 7.04[1][d] pages 620-1 (Nell Jessup Newton ed. 2012); *Canby, American Indian Law*, 5th ed. 2009, p. 248.

8. Venue is proper in the Western District. 28 U.S.C. § 128(b).

III. OPERATIVE FACTS

9. For over two years, Defendant, Robert R. Whitener Jr., has been desirous of participating in or operating a convenience store business on the trust property at 908-920 River Road, Puyallup, Washington. The convenience store would allegedly sell cigarettes without state of Washington

1 cigarette stamps on them.

2
3 10. In a draft of a proposed lease presented to Plaintiff in 2013, the
4 following terminology was included (QIN is an abbreviation of Quinault
5 Indian Nation):

6 The additional rent is based primarily on cigarette sales.
7 Therefore, QIN recognizes that the cigarette agreement between
8 Puyallup Tribe of Indians and the State of Washington is
9 different than the QIN agreement, so in order to not create
10 unfair competition Lessee further agrees to require Quinault
11 Nation Enterprise Board limit pricing to be no lower than legal
12 advertised pricing of existing Puyallup Tribe of Indians licensed
13 retail stores and no lower than agreed to pricing with the State
14 of Washington for cigarettes made by Skookum Creek Tobacco
15 of which QIN is a minority owner. QIN recognizes that
16 Puyallup Tribe of Indians is eligible and able to take part in
17 this consortium if it so chooses.

18 This collusion of retailers is an agency pricing scheme to set prices. A similar
19 scheme was ruled as an anti trust violation by Judge Denise Cote, District
20 Judge, in *U.S. v. Apple Inc.* No. 1:12-cv-02826-DLC on July 10, 2014. The
21 case is on appeal.

22 11. Plaintiff's advisors raised concerns that this agreement on
23 pricing would possibly be a Sherman Act (15 U.S.C. § 1, 13) violation. The
24 clause was omitted. However, thereafter Plaintiff and his advisors were
25 systematically excluded from any further negotiation. The result is tortious
26 interference with right to contract. A contract of lease adhesion was
27 presented to, but never signed by Plaintiff. After that, Defendant participated
28 in a take it or leave it lease forced on Plaintiff by Defendant and others.

1 Defendant Whitener, who is not a Quinault Indian or Quinault Tribal
2 Member, has attempted to utilize the Quinault Indian Nation and the
3 Puyallup Indian Tribe using the tribes as a front to lend their governmental
4 immunity in order to make agreements with each other and the state. The
5 state seeks to make sure retail pricing of cigarettes by non Indian retail
6 convenience stores would be the same or similar to non Indian cigarette
7 sales. This insures cigarette taxes to the state.
8
9

10 12. Drafts of purported leases of the site were submitted to Plaintiff,
11 Robert R. Comenout Sr., who is a part owner of the site and who reviewed
12 the drafts with his advisors. Plaintiff objected to many unfair provisions in
13 the lease, especially the anti trust price fixing and the duration. The lease
14 would give the cartel possession of the site for 50 years. The participants in
15 the scheme used the lease to force Plaintiff into a minority voting position
16 contrary to elder rule. This violated the assimilation sought by Congress
17 when the site was purchased in 1926.
18
19

20 13. Robert R. Comenout Sr. and his family live on the site.
21 Defendant promised to purchase personal property Plaintiff owned on the
22 site, but no specific sums were ever offered. The sums, if paid according to
23 the adhesion lease, were to be deposited for distribution to others. No
24 arrangements to vacate the residence, or the store property, were ever made
25 by anyone. Defendant threatened Plaintiff that Defendant could cause
26 Plaintiff to be arrested by federal authorities, or the federal or other
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1 governments would commence additional suits against Plaintiff if he did not
2 agree to the non negotiable lease conditions. The threats were continued and
3 repeated by Defendant when personally present at Plaintiff's store on
4 December 9, 2014. These were again repeated to Plaintiff's attorney, Randal
5 Brown, on January 2, 2015 in a telephone conversation.
6

7
8 14. Plaintiff suffered a debilitating stroke years ago. He is confined
9 to a wheelchair a majority of the time and is physically handicapped. The
10 living area has permanent wheelchair access including a ramp to the second
11 story living quarters. Plaintiff is over 82 years old and qualifies as a
12 vulnerable adult under state law, due to his physical handicap.
13 Wash.Rev.Code § 74.34.020(2)(d); (6)(c) and (17)(a).
14

15 15. On January 9th, 2015, Defendant, personally or by direction and
16 control without prior notice to Plaintiff during the night time, tacked a sign
17 on a telephone pole on or near the right-of-way onto the property stating:
18

19 **This property is leased to the Quinault Indian Nation - as**
20 **of January 31 all personal or other property must be**
21 **removed from this parcel. Only limited personal property**
22 **may remain for Robert Comenout and his immediate**
23 **family. This notice includes personal goods, commercial**
24 **goods, cars, and trailers. Any property remaining on this**
25 **site will be impounded or moved. For questions or**
26 **concerns contact Tessa, TWG at 360 688 1004.**

27 In a conference call on December 9, 2014, Robert Whitener stated that
28 the operation of Duane Harris, another owner but not Robert R. Comenout
Sr., would be posted requiring Harris to cease business. Harris is a part

1 owner but does not live on the property. When the number is called, the
2 answering service states that the number is the telephone number of the
3 Whitener Group. Repeated calls have been made but no live voice answers.
4

5 16. Defendant has never indicated that he has authority to act for
6 the Quinault Indian Nation. No legal action has been brought in any court
7 seeking ejection of Plaintiff from the site for any reason. Prior to the posting,
8 Robert A. Comenout Sr. and other owners, on December 23, 2014, timely
9 appealed a purported lease on the property that Plaintiff and some other
10 owners had also not signed. The appeal was in proper form and appealed to
11 the BIA pursuant to applicable appeal regulations. The appeal alleged
12 jurisdictional and other constitutional rights objections. It also contained a
13 position paper on jurisdiction. It also noted that the large buildings
14 occupying the lands were not probated by the BIA.
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17 **IV. OPERATIVE FACTS REGARDING INJUNCTION**

18 17. Defendant Whitener, on January 9, 2015, posted a sign on a
19 telephone pole on the property where Plaintiff resides with his family.
20 Plaintiff is part owner of the real estate where he resides and where the
21 Indian Country Store is also located. The street address is 908-920 River
22 Road, Puyallup, Washington 98371. The land is held in trust by the Bureau
23 of Indian Affairs and is Public Domain Allotment No. 130-1027. Defendant
24 has no agreement of any kind whatsoever with Plaintiff and has presented no
25 written agreement conferring him any rights or interest in the property.
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1 18. Defendant in a telephone call has indicated that he wants the
2 other owners to vacate but would not direct any action against Plaintiff.
3 Taking vehicles away from the premises, leaves Plaintiff (who is confined to
4 a wheelchair) without any transportation in an emergency, is constructive
5 eviction.
6

7 19. Defendant Whitener does not own or lease the land and has no
8 legal right of and kind, nor has he commenced any legal action against
9 Plaintiff of any kind, and especially none concerning vacating the property.
10

11 20. Defendant Whitener has several times threatened Plaintiff Robert
12 R. Comenout Sr., by stating in the presence of, or on a telephone conference
13 with others listening, that Robert R. Comenout Sr. must sign a lease giving
14 the Quinault Indian Nation the right to occupy the trust land to avoid state
15 or federal civil or criminal proceedings against Plaintiff. These threats were
16 repeated by Defendant on December 9, 2014, in a conference call and to
17 Plaintiff's advisor, Randal Brown, by a telephone call on December 24, 2014.
18

19 21. The posting of a sign on a telephone pole violates Pierce County
20 Municipal Ordinance PCC 18B.10.060A.3 (Utility Pole). It also violates the
21 county right-of-way rules sections 12.28.010 (county code) and 18B.20.020,
22 declaring posting illegal. Failure to comply with sign requirements in Pierce
23 County is a misdemeanor; Pierce County Development Regulation
24 18B.10.070(B). In the past, the City of Puyallup has moved against Plaintiff
25 who attempted to erect a permanent sign and entered a cease and desist
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1 order.

2
3 22. By posting a document intended to be, or resembling legal
4 process, that in fact is not legal process, Defendant Whitener violated the
5 state barratry statute, Wash.Rev.Code § 9.12.010. The statute states that
6 every person who serves or sends any document purporting to be or
7 resembling legal process, that is not in fact legal process, is guilty of a
8 misdemeanor. It is abuse of process.
9

10 23. The continued threats to obtain criminal and civil proceedings
11 unless Plaintiff agrees to sell personal items, remove himself and family to
12 certain lands and to vacate, also constitute malicious harassment within
13 Wash.Rev.Code § 9A.36.078, 080(1)(c). The threats occurred within this
14 district. Wash.Rev.Code § 9A.46.030. Malicious harassment is a felony and
15 can be punishable by up to ten years imprisonment.
16

17 24. Defendant Whitener will profit financially by removal of Plaintiff.
18 His threats are extortion, are within Wash.Rev.Code § 9A.56.120 and is a
19 Class B felony that allows a sentence of up to ten years in prison.
20 Wash.Rev.Code § 9A.20.021(1)(b). If Defendant seeks to remove Plaintiff and
21 impound his property by January 31, 2015, immediate and irreparable injury
22 will occur. Plaintiff therefore seeks a restraining order and a preliminary
23 injunction against Defendant prohibiting Defendant from entering the
24 property, removing any of Plaintiff's property, or impounding or removing
25 Plaintiff, his family or his property.
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V. COUNT ONE - RICO VIOLATIONS

25. Plaintiff incorporates the preceding allegations as if fully set forth in this cause of action.

26. This court has jurisdiction of RICO violations pursuant to 18 U.S.C. § 1964(a), (c). RICO violations include any threat or extortion prohibited by local law. 18 U.S.C. § 1961(1), 18 U.S.C. § 1951(a) and (b)(2 and 3) and Wash.Rev.Code §§ 9A.56.120, 9A.04.110(28)(d). Defendant Whitener has committed RICO violations over a sustained period. Defendant Whitener engaged in a pattern of racketeering activity by repeatedly threatening criminal and civil remedies against Plaintiff on December 9, 2014 and December 24, 2014, and by causing an act of barratry on January 9, 2015. He has also made prior threats constituting malicious harassment, threats to remove Plaintiff's property, and unlawful constructive eviction of living quarters occupied by Plaintiff and his family. The acts have been made by telephone call, and relate to a common plan to evict Plaintiff and terminate Plaintiff's business. Defendant will profit from the eviction and termination as he seeks to obtain revenue from locating a business competing with Plaintiff's elder rule of a family partnership business on the site. The activity of Defendant has affected interstate commerce and commerce on land in which the United States has jurisdiction. Other individuals have attempted to coerce Plaintiff to sign agreements to sell assets and vacate the premises. Plaintiff has attempted discovery but has

1 been refused reasonable requests for depositions and meetings. The
2 individuals are in conspiracy with Defendant. They have refused to meet to
3 continue to negotiate reasonable terms. Plaintiff will take discovery of
4 Raymond G. Dodge Jr., who has issued three affidavits in aid of the
5 Washington State Department of Revenue who seized Plaintiff's property but
6 has now refused to attend depositions sought by Plaintiff. Martina Garrison
7 also refused to be deposed as did Douglas Smythe who Dodge represented.
8
9

10 27. The Ninth Circuit in *Yakama Nation v. Gregoire*, 658 F.3d 1078,
11 1088 (9th Cir. 2011) held that an Indian retailer is not required to collect state
12 cigarette tax and that the Indian retailer is an exempt person under
13 Wash.Rev.Code §§ 82.24.080, and 900. The holding states "The language
14 also indicates that if an Indian retailer ever found itself facing a State
15 collection effort for the retailer's non-payment of tax, the retailer would be
16 shielded from civil and criminal liability." *Id.* at 1088. 18 U.S.C. § 2346(b)(1)
17 excludes tribal Indians on trust land from civil liability for violations of the
18 contraband cigarette tax act.
19
20

21 **VI. COUNT TWO - MALICIOUS HARASSMENT, OUTRAGE AND**
22 **INTENDED TRESPASS**

23 28. Plaintiff incorporates the preceding allegations as if fully set forth
24 in this cause of action.

25 29. On December 9, 2014, December 24, 2014 and January 9, 2015,
26 Defendant committed 3 acts and more at prior times against Plaintiff as
27
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1 alleged in the preceding paragraphs that were willful and malicious with
2 intent to cause fear, intimidation, abuse or damage to Plaintiff, his living
3 quarters and business and force Plaintiff to leave property in Puyallup,
4 Washington in which he lived and which he was the reigning Indian elder
5 and part owner.
6

7
8 30. The conduct of Defendant against Plaintiff were also acts of
9 extortion by Defendant, who intends to use the property for the same type
10 business now conducted on the premises. The conduct of Defendant is
11 placing or directing the placing of a sign on Plaintiff's occupied and partially
12 owned property on January 9, 2015 and listing Defendant's business phone
13 seeking to constructively evict Plaintiff is extreme conduct so outrageous in
14 character and so extreme in degree beyond the bounds of decency, is
15 atrocious, and utterly intolerable in a civilized and well established Indian
16 community and against a distinguished Indian family. It was also a trespass
17 and intended trespass violating an allotment 25 U.S.C. § 345. It was
18 intended and did cause emotional distress to Plaintiff, a vulnerable adult.
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21 **COUNT THREE - CIVIL CONSPIRACY**

22 31. Plaintiff re-alleges and incorporates herein the foregoing
23 allegations of this Complaint.
24

25 32. Defendant Robert R. Whitener has conspired with members of
26 the quinalt Indian Nation, their attorneys and others to remove Plaintiff and
27 his family and take his property from the trust land and close down any
28

1 economic activity on the site by Plaintiff.

2
3 33. The conspiracy violates Plaintiff's right of occupancy as an
4 owner, violates his right to live on the property and his right as current elder
5 to rule the site. The conspiracy violates Indian law, common federal law and
6 trespass.

7
8 34. The threats of Robert Whitener Jr. and posting of removal signs
9 on the property are a willful and wanton intent to harm Plaintiff and interfere
10 with Plaintiff's current and prospective business advantage and rights to
11 personal living occupancy of Plaintiff. The demands of Robert Whitener Jr.
12 were made in the company of other persons who also tried to entice Plaintiff
13 to give up his rights.

14
15 35. The object of the conspiracy is to allow Robert Whitener Jr., in
16 common with the Quinault Indian Nation, to create an economic
17 development enterprise that would sell competing products at the same site
18 by alliance with a manufacturer who manufactures competing products that
19 will be sold at retail.

20
21 36. Plaintiff, as a direct and proximate result of the activity of Robert
22 Whitener in a conspiracy with others, has suffered direct and consequential
23 damage destroying Plaintiff's rights to contract and prospective business
24 advantage to contract with other retailers or manufacturers.
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COUNT FOUR - CIVIL TRESPASS

37. Plaintiff re-alleges and incorporates herein the foregoing allegations of this Complaint.

38. On January 9, 2015, or thereabout, Defendant, without consent or authority and against the will of Plaintiff, entered or caused others to enter on property partially owned by Plaintiff, and posted a sign on a telephone pole on Plaintiff's property or right-of-way to the property. The sign is set forth in full in paragraphs above. It specified that Plaintiff and his family, who lie on the premises, vacate the property by January 31, 2015. He also threatens to impound autos and other property of Plaintiff.

39. Defendant threatens to continue to trespass, will evict Plaintiff and his family from their living quarters, will prevent Plaintiff from conducting a variety store on the premises and also threatens to impound Plaintiff's property. Plaintiff has a right to exclusive possession of the property against Defendant who has no right of any kind in the property.

40. Plaintiff believes that the threat of continued trespass will continue and if not restrained will result in irreparable harm to Plaintiff and his family, and will deprive Plaintiff from use of the property. The property is allotted land under federal jurisdiction 25 U.S.C. § 345.

41. Plaintiff has personal and business expectancy on the property as it is currently opened for retail sales to the public. Interruption of customer access is irreparable damage that will be extremely difficult if not

1 impossible to quantify into damages. Any damage award would be
2 inadequate.

3
4 42. The trespass of Defendant is malicious and intended to provide
5 financial gain to Defendant and his co-conspirators.

6 WHEREFORE, Plaintiff requests that Defendant be restrained and
7 enjoined and general damages be awarded to Plaintiff including damage for
8 emotional distress.
9

10 **PRAYER FOR RELIEF**

11 Plaintiff demands judgment against Defendant as follows:

12 For temporary, preliminary and permanent injunctions against Plaintiff
13 enjoining Defendant from trespass and any action to evict Plaintiff, his family
14 or to remove or impound any of Plaintiff's property or allowing a takeover of
15 business on the property. Judgment equal to three times the damage caused
16 by Defendants racketeering activity pursuant to 18 U.S.C. § 1964.
17

18 Judgment for damage caused by interference with Plaintiff's business
19 and malicious harassment.
20

21 That this Court award monetary damages for extortion, abuse of
22 process, tortious interference, trespass, intended trespass, harassment and
23 all other violations by Defendant against Plaintiff, both emotional and loss of
24 income in an amount to be determined by the Court, to be awardable under
25 the law and facts to be presented on the trial of this matter and for such
26 other and further relief as to the Court deems just and proper and for
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1 attorney's fees pursuant to 18 U.S.C. § 1964.

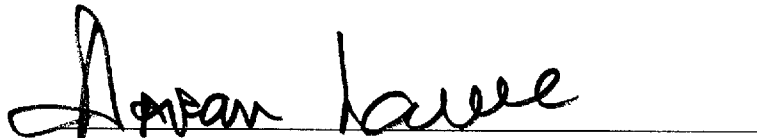
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3 DATED this 22nd day of January, 2015

4
5 

6 RANDAL B. BROWN, #24181
7 Attorney for Plaintiff Robert R. Comenout Sr.

8
9 

10 ROBERT E. KOVACEVICH, #2723
11 Attorney for Plaintiff Robert R. Comenout Sr.

12
13 

14 AARON L. LOWE, #15120
15 Attorney for Plaintiff Robert R. Comenout Sr.

16 **VERIFICATION**

17 Plaintiff, Robert R. Comenout, Sr., certifies under the penalties of
18 perjury under the laws of the United States that he has read the foregoing
19 Complaint and that it is true and correct except for paragraphs alleged upon
20 information and belief which he believes are true and correct.

21
22 DATED this 22nd day of January, 2015.

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25 ROBERT R. COMENOUT, SR.
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