

**RANDAL B. BROWN, WSBA No. 24181**

**RANDAL BROWN LAW OFFICE**

25913 - 163<sup>rd</sup> Avenue S.E.

Covington, WA 98042

Telephone: (253) 630-0794

Email: [brownees2@msn.com](mailto:brownees2@msn.com)

Attorney for Plaintiff Robert R. Comenout Sr.

**ROBERT E. KOVACEVICH, WSBA No. 2723**

**ROBERT E. KOVACEVICH, PLLC**

818 West Riverside Avenue, Suite 525

Spokane, WA 99201-1914

Telephone: (509) 747-2104

Facsimile: (509) 625-1914

Email: [kovacevichrobert@qwestoffice.net](mailto:kovacevichrobert@qwestoffice.net)

Attorney for Plaintiff Robert R. Comenout Sr.

**AARON L. LOWE, WSBA No. 15120**

1403 W. Broadway Avenue

Spokane, WA 99201

Telephone: (509) 323-9000

Facsimile: (509) 324-9029

Email: [aaronllowe@yahoo.com](mailto:aaronllowe@yahoo.com)

Attorney for Plaintiff Robert R. Comenout Sr.

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

ROBERT R. COMENOUT, SR., )

No.

Plaintiff, )

MOTION FOR TEMPORARY  
RESTRAINING ORDER AND FOR  
ORDER TO SHOW CAUSE WHY  
PRELIMINARY INJUNCTION  
SHOULD NOT ISSUE

v. )

ROBERT W. WHITENER JR., an )  
individual, dba as WHITENER )  
GROUP, )

Defendant. )

**I. RELIEF REQUESTED - TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

Plaintiff Robert R. Comenout Sr. is a joint owner of Indian trust land located at 908-920 River Road, Puyallup, Washington named "Indian Country". He lives on the property. Robert R. Comenout's declaration is filed

1 with this motion. He seeks to restrain Defendant, a trespasser, from taking  
2 his vehicles and other property from the site and impounding the property.

3  
4 The Court has jurisdiction pursuant to 25 U.S.C. §§ 345, 1353, 18  
5 U.S.C. § 1151, 28 U.S.C. § 1331 and 18 U.S.C. § 1964(c).

## 6 **II. BACKGROUND**

7 The land in question is a public domain allotment and numbered 130-  
8 127 by the Bureau of Indian Affairs, U.S. Department of Interior. It is  
9 located within Pierce County, Washington. In 1926, Edward A. Comenout  
10 Sr., a full blood Quinault Indian, purchased the site with his Indian trust  
11 funds. It is subject to the inscription in the deed “while title is in the grantee  
12 or heirs, the same shall not be alienated or encumbered without the consent  
13 of the Secretary of the Interior.” Judge Posner, in the recent case of *Oneida*  
14 *Tribe of Indians of Wis. v. Village of Hobart*, 732 F.3d 837, 839 (7<sup>th</sup> Cir. 2013),  
15 notes that Indian property is a federal facility like post offices or military  
16 bases that are subject only to so much state regulation as “the federal  
17 government permits.” This land is a small parcel of less than 1.7 acres.  
18 Robert R. Comenout Sr., is an heir, current elder and joint owner of the land.  
19 He is an enrolled Indian. His brother, Edward A. Comenout Jr. who died  
20 June 4, 2010, who also lived on the property, was majority owner and was  
21 the elder in charge. The land is served by River Road, a four lane road, with  
22 large traffic counts. River Road is the main road between Puyallup and  
23 Tacoma. For many years, a variety store has been operated on the property  
24  
25  
26  
27  
28

1 by a type of family partnership consistent with Indian culture. Defendant,  
2 Whitener, wants to close the store. Robert R. Comenout Sr. succeeded his  
3 brother as resident elder. He and his family, some of whom also are joint  
4 owners, live on the property. The property is not located within an Indian  
5 reservation. All the governments; City of Puyallup, Pierce County, State, BIA,  
6 and ATF attempt to regulate, seize assets, arrest the owners, commence  
7 lawsuits and try to eliminate the allotment, but none offer police protection,  
8 health and safety or other governmental benefits to the property or its  
9 owners.

12 Defendant, Robert W. Whitener Jr., is a competitor in the Indian  
13 convenience store business and seeks to eliminate the current operation by  
14 installing a convenience store selling the same type products now for sale on  
15 the premises. Whitener would use a different manufacturer's products.

17 Based on the threat of removal of Plaintiff's property and that of his  
18 family on January 31, 2015, the threats of Defendant should be taken  
19 extremely seriously and a temporary restraining order should issue, without  
20 notice, until a returnable hearing on a preliminary/permanent injunction can  
21 be had, before some actions occur that everyone may regret.

### 23 **III. ADDITIONAL STATEMENT OF FACTS**

24 On January 9, 2015, Defendant Robert W. Whitener Jr., who has no  
25 right or agreement of any kind to impound or take anything from the  
26 property, in the nighttime, tacked or delegated someone to tack a sign on a  
27



1 telephone pole on or within the right-of-way to the property. The sign states:

2           **This property is leased to the Quinault Indian Nation - as**  
3           **of January 31 all personal or other property must be**  
4           **removed from this parcel. Only limited personal property**  
5           **may remain for Robert Comenout and his immediate**  
6           **family. This notice includes personal goods, commercial**  
              **goods, cars, and trailers. Any property remaining on this**  
              **site will be impounded or moved.**

7 The sign also lists the person to call, Tessa, and phone number 360-688-  
8 1004. No live voice answers but the voice mail message states that it is the  
9 Whitener Group's office. Robert Whitener is the manager of Whitener Group.  
10

11           Defendant has no permission of any kind and is a trespasser if he  
12 attempted to seize any assets of the business located on the property. The  
13 property is also the living quarters of Plaintiff and his family. The living  
14 quarters are integrated into the business part of the property. Robert  
15 Whitener has no known connection or authority to act for the Quinault  
16 Indian Nation. The lease has not been signed by Plaintiff. Plaintiff as a joint  
17 tenant cannot be removed from property he owns. The Quinault Indian  
18 Nation has no right to govern property. It is not on the Quinault reservation,  
19 which is about 130 miles away.  
20  
21

22           The threat of the erratic and dangerous behavior of Defendant has even  
23 more potential for violence for the reason that no government extends any  
24 police protection to Plaintiff or his family. City, state and federal enforcement  
25 officers do not respond to requests of Plaintiff, including requests to stop the  
26 suspected illegal drug trafficking by others on the property.  
27  
28

1 Defendant in the past has insulted Plaintiff, spoke to him in a  
2 derogatory and demeaning manner, ridiculed his legitimate concerns and has  
3 cooperated with others in an attempt to terminate Plaintiff's occupancy.  
4 Defendant has, on December 9, 2014 in a conference phone call, personally  
5 stated that he would try to eject other owners from the property. He now  
6 seeks to eject Plaintiff from the business and constructively remove him from  
7 his home.  
8

9  
10 Defendant Whitener for years attempted to be the operator of a  
11 competing convenience store to be located on the property. Robert R.  
12 Comenout Sr. owns the property in joint ownership and cannot be evicted  
13 from the site. Defendant Whitener has no authority of any kind to remove  
14 or impound any property nor prevent anyone from using the site. It is a  
15 public domain trust allotment restricted by the federal government through  
16 the Bureau of Indian Affairs. The BIA has never attempted to remove  
17 Plaintiff, his property or close the business. The Defendant is not an agent  
18 of the BIA.  
19  
20

#### 21 **IV. STATEMENT OF ISSUES**

22 Whether a temporary restraining order should issue preventing  
23 Defendant from taking any property from the site or engaging in other  
24 behavior described herein.  
25

26 Whether an order to should issue directing Defendant to show cause  
27 why a preliminary injunction should not issue.  
28

## V. ARGUMENT

Fed.R.Civ.P. 65 and federal case law allow the federal courts to issue temporary restraining orders. A Plaintiff seeking a preliminary injunction must establish that he or she is likely to succeed on the merits, that he or she will suffer irreparable harm in the absence of preliminary relief, that the balance of equities tip in his or her favor and that the injunction is in the public interest. *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1060 (9<sup>th</sup> Cir. 2014). All factors favor Plaintiff. See also *F.D.I.C. v. Garner*, 125 F.3d 1272, 1277 (9<sup>th</sup> Cir. 1997); *Sega Enters., Ltd. v. Accolade, Inc.*, 977 F.2d 1510, 1517 (9<sup>th</sup> Cir. 1992). Moreover, an injunction should issue if the moving party has raised questions serious enough to require litigation. *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105-6 (9<sup>th</sup> Cir. 2012); *Dataphase Systems Inc. v. C.L. Systems Inc.*, 640 F.2d 109, 113 (8<sup>th</sup> Cir. 1981); *County of Alameda v. Weinberger*, 520 F.2d 344, 349-50 fn. 12 (9<sup>th</sup> Cir. 1975).

Entry of a preliminary injunction (or TRO) is appropriate in this case under the Ninth Circuit tests.

### **A. Robert R. Comenout Sr. Can Demonstrate Probable Success on the Merits and the Possibility of Irreparable Injury.**

It is undisputed that Robert R. Comenout Sr. is part owner of the property. It is also undisputed that Robert W. Whitener Jr. has no legal or contractual right to enter the property, or remove or impound any of their property. The status quo that commenced in 1926 will be destroyed and the occupancy cannot be restored by a damage award.



1 Therefore, there is no doubt that Defendant, Robert Whitener, in his  
2 previous actions, as well as his threatened actions, has acted and will  
3 probably act in violation of the law by trespassing on a federally recognized  
4 public domain allotment created by federal law. Therefore, Plaintiff's case on  
5 the merits has much more than probable success. It is owner attempting to  
6 preserve living quarters and business against a trespasser. Further, to the  
7 extent that Defendant Robert Whitener intends to take over the business on  
8 the property, his actions in constructively evicting the owners, taking their  
9 property and damaging trust property are patently unlawful and  
10 unconstitutional. Preventing violation of a party's constitutional rights to  
11 occupancy of a residence and business is in the public interest. *Arizona*  
12 *Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1069 (9<sup>th</sup> Cir 2014) citing  
13 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9<sup>th</sup> Cir. 2012).

17 Without order of the Court, Plaintiff, by past governmental inaction  
18 and Defendant's threats, fears that his interests will not be protected by the  
19 local law enforcement authorities. Attempts at police protection have been  
20 fruitless in the past. If Defendant attempts to take over the property, Plaintiff  
21 may be in the untenable position of not being able to do anything about it  
22 without a court order.

25 There is no question that Robert R. Comenout Sr. will suffer immediate  
26 and irreparable harm if the injunction sought is not granted. Robert  
27 Whitener's proven track record of two (2) years of attempted takeover is

1 evidence enough, but when combined with his most recent threats on  
2 January 9, 2015 by posting the sign, there is no question that Defendant is  
3 out to take their commercial and personal property and disrupt the  
4 occupancy. He cannot be allowed as a trespasser to remove, injure and  
5 impound persons and property of persons living and working on the property  
6 owned by them.  
7

8  
9 **B. Even if the Court Does Not Find Probable Success on the Merits,**  
10 **There Is at Least the Existence of Serious Questions Going to the**  
11 **Merits and the Balance of Hardships Tips Sharply in Favor of**  
12 **Robert R. Comenout Sr.**

13 While Plaintiff certainly meets the more strict standard, even under a  
14 “serious questions” test, Plaintiff is entitled to this relief. In fact, even if he  
15 had some affirmative powers with regard to the land, Defendant certainly  
16 does not have the power as a trespasser to remove, impound or destroy  
17 property and the business of the owner now conducted on the property.  
18 Defendant, a trespasser, basically intends to landlock the site from the rest  
19 of the world, preventing access in or out. This is a violent disregard of all  
20 law.

21 Certainly, the balance of hardships tips sharply in favor of Plaintiff.  
22 The commercial goods, cars and trailers are absolutely necessary to enable  
23 Plaintiff to live and work on the site. The Plaintiff simply seeks to prevent  
24 Defendant from trespassing and engaging in destructive behavior in and  
25 around property jointly owned by Plaintiff. Plaintiff seeks to preserve the  
26 status quo that has existed since 1926. The Court should have no qualms  
27



1 about protecting the integrity of the federally restricted site. Defendant has  
2 no ownership or any interest in any of the property, hence Defendant is not  
3 harmed in any way by an injunction.  
4

5 **C. Notice Should Not Be Required (Fed.R.Civ.P. 65(b)).**

6 The purpose of obtaining a temporary restraining order on an *ex parte*  
7 basis should be reserved, as it is in this case, for maintaining status quo:  
8

9 Ex parte temporary restraining orders are no doubt necessary  
10 in certain circumstances, but under federal law they should be  
11 restricted to serving their underlying purpose of preserving the  
12 status quo and preventing irreparable harm just so long as is  
13 necessary to hold a hearing, and no longer.

14 *Granny Goose Foods v. Teamsters*, 415 U.S. 423, 439, 94 S.Ct. 1113, 39  
15 L.Ed.2d 435 (1974).

16 In this case, the Plaintiff wants nothing more than the continued  
17 status quo, uninterrupted and unimpeded use of their own residence and  
18 business without Defendant or others taking property, blocking access,  
19 damaging property, or in any other way constructively evicting Plaintiff and  
20 his family, and causing trouble for all who have legitimate access to the  
21 property. Under the circumstances, no bond should be required as  
22 Defendant has no right or ownership to any of the property. Only status quo  
23 is requested.

24 Plaintiff will give notice to Defendant by email of any notice of hearing  
25 including all pleadings.  
26

27 Lastly, unlike some forms of restraining order, Defendant has no right  
28

1 to the property or to regulate it. He is a trespasser. Plaintiff is simply  
2 seeking to have this order in hand to help local governmental law  
3 enforcement protect the peace and prevent Defendant Whitener from taking  
4 the law in his own hands by constructively evicting Plaintiff and impounding  
5 any of Plaintiff's assets. Defendant has absolutely no right to do anything.  
6 Prior conduct of Defendant indicating he thinks he is capable of takeover is  
7 just that, and in light of his recent promises to now take such action, the  
8 sought after restraining order is absolutely indispensable.

## 11 VI. CONCLUSION

12 For the above mentioned reasons, this Court should therefore issue an  
13 injunction against Defendant prohibiting any removal in the form as  
14 submitted herewith. Additionally, the matter should be set over for a hearing  
15 within ten days on whether the temporary restraining order will continue as  
16 a preliminary or permanent injunction.

18 DATED this 22<sup>nd</sup> day of January, 2015.

19   
20  
21 RANDAL B. BROWN, #24181

22 Attorney for Plaintiff Robert R. Comenout Sr.

23   
24 ROBERT E. KOVACEVICH, #2723

25 Attorney for Plaintiff Robert R. Comenout Sr.

26   
27 AARON L. LOWE, #15120

28 Attorney for Plaintiff Robert R. Comenout Sr.