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IN THE TRIBAL COURT OF THE NOOKSACK TRIBE OF INDIANS FOR THE
NOOKSACK INDIAN TRIBE

BELMONT, *et al.*,

Plaintiffs,

v.

KELLY, *et al.*,

Defendants.

Case No. 2014-CI-CL-007

DEFENDANTS' ANSWER AND
COUNTERCLAIM TO PLAINTIFFS'
COMPLAINT

COPY

ANSWER

Defendants in the above-entitled action, by and through their undersigned counsel, answer Plaintiffs' Complaint and counterclaim. Each response below corresponds to the same numbered paragraph of Plaintiffs' Complaint. Defendants deny any allegations in Plaintiffs' Complaint, whether express or implied, that are not expressly admitted in this Answer.

I. INTRODUCTION¹

1. The allegations in Paragraph 1 of Plaintiffs' Complaint are vague and consist of characterizations of Plaintiffs' case as well as legal argument to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 1.

2. Defendants admit that Plaintiffs bring this action against Defendants. Defendants deny that Rose Hernandez, Cody Narte, Antonio Narte, Nadine Rapada, Miana Rabang, and

¹ The headings correspond to headings in Plaintiffs' Complaint. Defendants include them solely to provide convenient reference to the Complaint and do not intend them to form any substantive part of Defendants' Answer. To the extent the headings make substantive allegations, Defendants deny those allegations.

1 Kristal Trainor are enrolled members of the Nooksack Indian Tribe. Defendants aver that
2 Jonathan Bumatay, Donna Cailing, and Roland Cuartero have passed away. Defendants admit
3 that the remaining Plaintiffs have not been disenrolled but aver that the remaining Plaintiffs are
4 subject to pending disenrollment proceedings.² Defendants admit that they are officers,
5 employees, or agents of the Nooksack Tribe but otherwise deny the allegations in Paragraph 2
6 because they consist of characterizations of Plaintiffs' case.

7
8 3. The allegations in Paragraph 3 of Plaintiffs' Complaint consist of legal argument
9 to which no response is required. To the extent that a response is required, Defendants deny the
10 allegations in Paragraph 3.

11 4. The allegations in Paragraph 4 of Plaintiffs' Complaint consist of legal argument
12 to which no response is required. To the extent that a response is required, Defendants deny the
13 allegations in Paragraph 4.

14 II. PARTIES

15 6. Defendants admit that they members of the Nooksack Tribal Council and
16 employees of the Nooksack Tribe but otherwise deny the allegations in Paragraph 6 because they
17 consist of characterizations of Plaintiffs' case.³

18 7. Defendants deny that Rose Hernandez, Cody Narte, Nadine Rapada, Miana
19 Rabang, and Kristal Trainor are enrolled members of the Nooksack Indian Tribe. Defendants
20 aver that Rose Hernandez, Cody Narte, Nadine Rapada, and Kristal Trainor were disenrolled on
21 August 8, 2013, and there is no record of Antonio Narte or Miana Rabang ever being enrolled
22 members. Defendants aver that Jonathan Bumatay, Donna Cailing, and Roland Cuartero have
23 passed away. Defendants admit that the remaining Plaintiffs have not been disenrolled but aver
24 that the remaining Plaintiffs are subject to pending disenrollment proceedings.

25 III. FACTS

8. Defendants admit that the Tribal Council issued a Notice of Meeting and Basis for
Commencement for Disenrollment Proceedings to Eleanor Belmont and Olive Oshiro on or
about May 16, 2014. Defendants admit that Eleanor Belmont and Olive Oshiro were provided a
copy of Title 63 under cover of Resolution No. 05-05 but otherwise deny the remaining
allegations in Paragraph 8 of Plaintiffs' Complaint.

9. Defendants admit that the Notice sent to Eleanor Belmont schedules a meeting
she requested for July 1, 2014 at 9:30 am in order to contest an earlier Notice of Intent to
Disenroll. Defendants admit that the Notice sent to Olive Oshiro schedules a meeting she
requested for July 1, 2014 at 10:30 am in order to contest an earlier Notice of Intent to Disenroll.
Defendants deny any remaining allegations in Paragraph 9 of Plaintiffs' Complaint.

² Defendants also note that several of Plaintiffs' names are misspelled in the caption and
missing suffixes (i.e. Jr., Sr., III). For example, Reanna Rabang should be Rae Anna Rabang and
Francisco A. Rabang should be Francisco G. Rabang.

³ Plaintiffs' Complaint erroneously skipped number 5. In order to track the Complaint,
this Answer also skips number 5.

1 24. Defendants deny the allegations in Paragraph 24.

2 25. Defendants admit that the Notice and Basis documents sent to Eleanor Belmont
and Olive Oshiro were not approved by the Secretary of the Interior.

3 26. Defendants admit that the Tribal Council sent Notice and Basis documents to
4 Eleanor Belmont and Olive Oshiro in order to complete their disenrollment proceedings, but
Defendants otherwise deny the allegations in Paragraph 26 as characterizations of Plaintiffs'
5 case.

6 27. Defendants deny the allegations in Paragraph 27.

7 28. The allegations in Paragraph 28 of Plaintiffs' Complaint consist of legal argument
to which no response is required. To the extent a response is required, Defendants deny the
8 allegations in Paragraph 28.

9 29. The allegations in Paragraph 29 of Plaintiffs' Complaint consist of
characterizations of Plaintiffs' case and legal argument to which no response is required. To the
10 extent a response is required, Defendants deny the allegations in Paragraph 29.

11 30. The allegations in Paragraph 30 of Plaintiffs' Complaint consist of
characterizations of Plaintiffs' case and legal argument to which no response is required. To the
12 extent a response is required, Defendants deny the allegations in Paragraph 30.

13 31. The allegations in Paragraph 31 of Plaintiffs' Complaint consist of requests for
relief and legal argument to which no response is required. To the extent a response is required,
14 Defendants deny the allegations in Paragraph 31.

15 VI. RELIEF REQUESTED

16 Defendants deny that Plaintiffs are entitled to the relief requested in Paragraphs A
through D of their Relief Requested, or to any relief whatsoever. Defendants assert that the
Court should deny all relief requested by Plaintiffs.

17 VII. AFFIRMATIVE DEFENSES

18 1. Plaintiffs' claims, in whole or in part, are moot.

19 2. Plaintiffs have failed to state a claim upon which relief may be granted for some
20 or all of their claims.

21 3. Plaintiffs lack standing to sue on some or all of their claims.

22 4. The Court lacks jurisdiction to hear some or all of Plaintiffs' claims.

23 5. Plaintiffs have failed to establish irreparable harm or any other basis sufficient to
support injunctive relief.

24 COUNTERCLAIM

25 Defendants assert the following counterclaim against Ineligible Plaintiffs:

1 **PARTIES**

2 1. Plaintiffs Rose Hernandez, Cody Narte, Nadine Rapada, and Kristal Trainor
3 (disenrolled Plaintiffs) were disenrolled on August 8, 2013, and they are no longer members of
4 the Nooksack Indian Tribe. Plaintiffs Miana Rabang and Antonio Narte have never been
5 members of the Nooksack Indian Tribe. Plaintiff Selia Rabang appears to be eligible for
6 membership in the Nooksack Indian Tribe. The remaining Plaintiffs have not been disenrolled
7 but they are subject to pending disenrollment proceedings.⁴

8 2. Defendants are Robert Kelly, Chairman of the Nooksack Tribal Council, Rick
9 George, Vice-Chairman of the Nooksack Tribal Council, Agripina Smith, Treasurer of the
10 Nooksack Tribal Council, Bob Solomon, Nooksack Tribal Council member, Katherine Canete,
11 Nooksack Tribal Council member and Nooksack General Manager, Elizabeth King George,
12 Nooksack Tribal Enrollment Director, and Roy Bailey, Nooksack Enrollment Officer.
13 Defendants join the Nooksack Indian Tribe in this Counterclaim.

14 **JURISDICTION**

15 3. This Counterclaim arises under the Nooksack Constitution; Ineligible Plaintiffs
16 are not properly enrolled and yet they intend to vote in the upcoming Nooksack election. This
17 Court has exclusive jurisdiction to enforce the Nooksack Constitution.

18 **FACTS**

19 4. In December of 2012, Terry St. Germain, one of the Ineligible Plaintiffs here,
20 sought to have his children enrolled in the Nooksack Tribe by submitting applications for
21 enrollment. On December 19, 2012, the Tribal Council heard the enrollment applications for
22 others applying for enrollment at a special meeting. Roy Bailey, Enrollment Officer, did not
23 present the St. Germain children's applications to the Tribal Council at that meeting.

24 5. Rudy St. Germain, the Tribal Council Secretary at the time, asked why the St.
25 Germain children were not presented for enrollment, and Mr. Bailey responded that the
applications did not provide information that would make the children eligible for enrollment.
Rudy St. Germain noted that if the St. Germain children were not eligible for enrollment, neither
was he.

6. Tribal Council Chairman Kelly and Mr. Bailey did further research at the Bureau
of Indian Affairs' (BIA) Regional Office regarding the enrollment status of the St. Germain
children. During the Tribal Council's January 8, 2013 regular meeting, Mr. Bailey explained
that they could not find any documents to support enrollment of the St. Germain children. Mr.
Bailey also explained that supporting documents for enrollment of approximately 300 enrolled
Nooksack members were either missing or never existed.

⁴ When this Counterclaim refers to Ineligible Plaintiffs, it refers only to those Plaintiffs
who are subject to pending disenrollment proceedings. Defendants do not bring any claims in
this Counterclaim against Selia Rabang or any named Plaintiffs who are not subject to pending
disenrollment proceedings.

1 7. On February 12, 2013, Chairman Kelly called a special meeting, during which the
2 Council passed Resolution Nos. 13-02, 13-03, and 13-04. Resolution No. 13-02 provided that
3 notice would be given to each enrolled member who descended from Annie James (George) or
4 Andrew James and claims the right to membership through lineal descendancy of an original
Nooksack Public Domain allottee. Notices of Intent to Disenroll were sent to approximately 300
tribal members notifying them of their rights under Title 63, which governs disenrollment
procedures.

5 8. On March 1, 2013, the Tribal Council passed Resolution No. 13-38, which
6 authorized a request to hold a Secretarial election to amend the Nooksack Constitution by
7 deleting one grounds for membership—Article II, § 1(h). The Secretary of the Interior held an
election on June 21, 2013, and the constitutional amendment passed. The BIA certified the
election on August 2, 2013.

8 9. On March 13, 2013, six people who received Notices of Intent to Disenroll filed
9 suit in this Court seeking to enjoin the Tribal Council from conducting disenrollment
10 proceedings. This Court dismissed that case, and the Nooksack Court of Appeals upheld this
11 Court's Dismissal. *See Lomeli v. Kelly*, Case No. 2013-CI-APL-002, Opinion (January 15,
12 2014).

13 10. On March 15, 2013, Ineligible Plaintiffs requested disenrollment meetings with
14 the Tribal Council pursuant to Title 63, § 63.04.001(B)(2). Since March 15, 2013, Ineligible
15 Plaintiffs have filed multiple lawsuits in order to avoid the meetings that they requested.

16 11. In addition to the *Lomeli* lawsuit, Plaintiffs have filed five other lawsuits
17 (described below) in this Court generally seeking to enjoin the Tribal Council from completing
18 disenrollment proceedings or holding the hearings Ineligible Plaintiffs requested.

19 12. On August 13, 2013, Ineligible Plaintiffs filed the *Roberts v. Kelly*, Case No.
20 2013-CI-CL-003, lawsuit to halt the disenrollment process.⁵ Ineligible Plaintiffs challenged the
21 disenrollment procedures that the Tribal Council passed in Resolution No. 13-311. This Court
22 dismissed the *Roberts* case on October 17, 2013, and the Nooksack Court of Appeals upheld the
23 Trial Court's Order but found that the disenrollment procedures had to be approved by the
24 Secretary of the Interior. *Roberts v. Kelly*, Case No. 2013-CI-APL-003, Opinion (March 18,
25 2014). The *Roberts* Court of Appeals found that the Tribal Council's disenrollment procedures
provided due process.⁶ Opinion at 9.

 13. On October 23, 2013, Ineligible Plaintiffs filed the *Adams v. Kelly (Adams I)*,
Case No. 2013-CI-CL-004, lawsuit alleging that the Defendants violated the Constitution by
failing to validate a recall petition against Chairman Kelly, disenrolling certain individuals,
conducting telephonic Council meetings, employing counsel without Secretarial approval, and
passing disenrollment procedures. This Court dismissed the *Adams I* case on February 7, 2014
based on nonjusticiability and *res judicata*/collateral estoppel.

⁵ Plaintiffs were added in the First Amended Complaint filed on August 21, 2013.

⁶ The Court of Appeals found two provisions failed to meet due process—the restriction
on representation and the ability to shorten the timeframe to prepare for disenrollment meetings.

1 14. On December 9, 2013, Ineligible Plaintiffs filed the *St. Germain v. Kelly*, Case
2 No. 2013-CI-CL-005, lawsuit seeking to force the Tribal Council to provide Christmas payments
3 to those subject to pending disenrollment proceedings and call a special meeting. This Court
4 dismissed the *St. Germain* case on June 24, 2014 on the grounds that those subject to pending
disenrollment proceedings would get the Christmas checks upon a finding by the Tribal Council
that they are validly enrolled and that the special meeting issue was a nonjusticiable political
issue already decided by the Court of Appeals in *Lomeli*.

5 15. On January 23, 2014, Ineligible Plaintiffs filed the *Adams v. Kelly (Adams II)*,
6 Case No. 2014-CI-CL-006, lawsuit seeking to enjoin the Tribal Council from using the “base
7 enrollee” requirement in Title 63 in disenrollment proceedings. Ineligible Plaintiffs also
8 challenged the removal of two Tribal Council members. This Court dismissed the *Adams II* case
9 on June 26, 2014 on the grounds that the “base enrollee” issue had already been litigated and the
10 removal of Council members issue was a nonjusticiable political issue. In that Order, this Court
11 explained that “Plaintiffs litigated the constitutionality of Resolution 13-02, sought
reconsideration of this issue and were denied by the Court of Appeals. They cannot continue to
attempt new arguments over the same issues and actions taken by the Defendants by a new
lawsuit with an argument they either have already made, or already should have made.”
Ineligible Plaintiffs failed to timely appeal the *Adams II* decision, and the Nooksack Court of
Appeals upheld this Court’s determination not to grant an extension of time. *See Adams v. Kelly*,
Case No. 2014-CI-APL-007, Opinion (Nov. 13, 2014).

12 16. On May 30, 2014, Ineligible Plaintiffs filed their Complaint in this case seeking to
13 enjoin disenrollment proceedings. This Court issued a preliminary injunction on June 12, 2014,
14 finding that the Notice and Basis documents constituted rules that must be approved by the
Secretary of the Interior. The Court’s Order retains the status quo to this day.

15 17. Throughout the six lawsuits before this Court, Ineligible Plaintiffs moved for
16 multiple “emergency” temporary restraining orders, preliminary injunctions, motions to compel,
17 and motions to disqualify the judge and undersigned counsel. This Court denied all but two of
those motions; this Court entered the preliminary injunction in this case on June 12, 2014, and in
Roberts, 2013-CI-CL-003, this Court enjoined the Tribal Council from undertaking
disenrollment proceedings under Resolution No. 13-111 on March 31, 2014.⁷

18 18. In addition to the six lawsuits before this Court and the Nooksack Court of
19 Appeals, two Ineligible Plaintiffs—Rudy St. Germain and Michelle Roberts—filed suit in the
20 federal District Court in the Western District of Washington on May 31, 2013. *St. Germain v.*
United States Department of the Interior, 13-cv-00945-RAJ (May 31, 2013). The Western
District of Washington dismissed that suit with prejudice on October 30, 2015 (Dkt 71).

21 19. In order to comply with *Roberts*, No. 2013 CI-APL-003, the Tribal Council
22 passed Resolution No. 14-112 on October 10, 2014, which amended Title 63 to include the
23 disenrollment procedures that were approved by the *Roberts* Court of Appeals and requested

24 ⁷ This Court initially entered a temporary restraining order regarding the Christmas
25 checks in the *St. Germain* case, but this Court ultimately dismissed the *St. Germain* case. *See*
supra Paragraph 14.

1 Secretarial approval.⁸ The BIA Superintendent approved Resolution No. 14-112 and the
2 amended Title 63 on October 24, 2014. The Superintendent also sent Resolution No. 14-112 and
3 the amended Title 63 to the BIA Regional Director for review. On January 7, 2015, the Regional
4 Director concurred with the Superintendent's approval of Resolution No. 14-112 and the
5 amended Title 63 and explained that the effective date of the approval was October 24, 2014.
6 On January 13, 2015, the Superintendent informed the Tribal Council of the Regional Director's
7 concurrence and stated that the approval was effective October 24, 2014.

8 20. On February 3, 2015, Ineligible Plaintiffs appealed the Superintendent's approval
9 by sending Notices of Appeal to the Superintendent and Interior Board of Indian Appeals
10 (IBIA).⁹ The IBIA issued a narrow decision finding that the Superintendent's approval of the
11 Enrollment Ordinance was appealable, and the Regional Director erred in failing to address the
12 appeal and in making the Superintendent's approval effective when it should have been subject
13 to the automatic stay in 25 C.F.R. § 2.6. *Two Hundred and Seventy-One Enrolled Nooksack
14 Indians v. Northwest Regional Director*, 61 IBIA 77, 83-85 (2015). The IBIA only found it had
15 jurisdiction over "the Regional Director's procedural determination regarding the effectiveness
16 of the Superintendent's decision and appeal rights within BIA." *Id.* at 84 n.11. The IBIA
17 remanded the matter to the Regional Director for consideration of Ineligible Plaintiffs' appeal of
18 the Superintendent's approval. *Id.* at 84-85.

19 21. On November 17, 2015, the Regional Director upheld the Superintendent's
20 approval of Resolution No. 14-112 and the amendments to Title 63.

21 22. On November 23, 2015, Ineligible Plaintiffs appealed the Regional Director's
22 decision to the IBIA.

23 23. The Tribal Council initiated disenrollment proceedings against Ineligible
24 Plaintiffs nearly three years ago, and Ineligible Plaintiffs have filed eight separate actions to
25 delay completion of the disenrollment process.

26 24. Ineligible Plaintiffs have voted in elections since receiving their Notices of Intent
27 to Disenroll.

28 25. Upon information and belief, Ineligible Plaintiffs intend to vote in the upcoming
29 Nooksack primary election on February 20, 2016 and the general tribal election on March 19,
30 2016.

31 CAUSE OF ACTION: Injunctive Relief Regarding Protection of Election

32 26. Defendants incorporate and reallege the foregoing allegations.

33 27. The Nooksack Constitution provides that only enrolled members of the Nooksack
34 Indian Tribe may vote in tribal elections. *Const. Art. IV*, §1.

35 ⁸ Resolution No. 14-112 only included the disenrollment procedures that the *Roberts*
36 Court of Appeals approved and not the two provision that were found to offend due process.

37 ⁹ It is unclear whether Ineligible Plaintiffs constitute the same individuals listed as
38 Appellants in the Notice of Appeal, but it appears that each Appellant on the Notice of Appeal is
39 also a party here; regardless, Ineligible Plaintiffs are certainly in privity with the Appellants.

1 28. The Tribal Council has initiated disenrollment proceedings against Ineligible
2 Plaintiffs, because documentary evidence demonstrates that they were erroneously enrolled and
do not meet the Constitutional standards for membership.

3 29. Ineligible Plaintiffs requested disenrollment meetings with the Tribal Council, but
4 Ineligible Plaintiffs have filed eight legal actions to avoid the convening of those very
disenrollment meetings.

5 30. The Tribal Council has requested that Ineligible Plaintiffs provide documentation
6 showing they are properly enrolled. The vast majority of Ineligible Plaintiffs have refused to
provide such information or to explain how they could qualify for enrollment.¹⁰

7 31. The Tribal Council has amended Title 63 to include the disenrollment procedures
8 approved by the *Roberts* Court of Appeals. The amended Title 63 has been Secretarially
approved, but Ineligible Plaintiffs continue to press appeals of the Secretarial action.

9 32. Ineligible Plaintiffs' continued litigation has unduly delayed completion of the
disenrollment meetings despite Secretarial approval.

10 33. Upon information and belief, Ineligible Plaintiffs intend to vote in the upcoming
11 Nooksack primary election on February 20, 2016 and the general tribal election on March 19,
2016.

12 34. Ineligible Plaintiffs' participation in the upcoming elections would subvert the
13 electoral process and injure the integrity of the elections, because Ineligible Plaintiffs are not
properly enrolled members of the Nooksack Indian Tribe. Ineligible Plaintiffs' frivolous appeal
14 to the IBIA should not allow them to vote as Nooksack tribal members and attempt to control
this Tribe.

15 35. Defendants have clear legal and/or equitable rights to protect the Nooksack
16 electoral process, and Defendants rightfully fear immediate invasion of those rights. Ineligible
Plaintiffs have acted to avoid and delay their disenrollment meetings, and they continue to do so
17 to the detriment of the Nooksack Tribe. The equities favor granting injunctive relief in favor of
Defendants. If this Court does not enjoin Ineligible Plaintiffs from voting, Defendants will suffer
18 irreparable injury. There is no plain, speedy, or adequate remedy in the ordinary course of law.

19 36. An actual controversy exists between the parties, and a judicial determination
resolving the controversy is necessary.

20 RELIEF REQUESTED

21 WHEREFORE, Defendants pray for relief as follows:

22 1. For injunctive relief enjoining Ineligible Plaintiffs from voting in the February 20,
2016 primary election and March 19, 2016 general tribal election;

23 2. For attorney's fees and costs; and

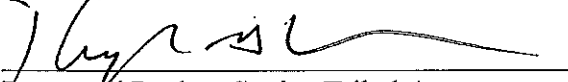
24 _____
25 ¹⁰ 23 Ineligible Plaintiffs provided responses to meeting Notices and Basis Packets, but
none of those responses demonstrate that Ineligible Plaintiffs are properly enrolled.

1 3. For such other relief as the Tribal Court may deem just and equitable.

2
3
4 Respectfully submitted this 18th day of December, 2015.

5
6 /s/ par telephonic approval 12-18-15

7 Thomas P. Schlosser
8 Rebecca JCH Jackson
9 Morisset, Schlosser, Jozwiak & Somerville
10 Attorneys for Defendants

11 

12 Raymond Dodge, Senior Tribal Attorney
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14 Attorneys for Defendants
15 Office of Tribal Attorney, Nooksack Indian Tribe

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