

THE HONORABLE JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

MARGRETTY RABANG, *et al.*,

Plaintiffs,

v.

ROBERT KELLY, JR., *et al.*,

Defendants.

Case No. 2:17-CV-00088-JCC

**PLAINTIFFS’ RESPONSE TO  
DEFENDANT RAYMOND DODGE’S  
MOTION TO DISMISS**

Plaintiffs respond to Defendant Raymond Dodge’s Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). Dkt. # 30. The Court must deny Defendant Dodge’s Rule 12(b)(1) motion because it possesses subject matter jurisdiction. Defendant Dodge is not a judge and is therefore not entitled to invoke the defense of judicial immunity.

The Court also must deny Defendant Dodge’s Rule 12(b)(6) motion because Plaintiffs have stated a claim upon which relief can be granted. Plaintiffs have sufficiently pled standing and the predicate acts of mail and wire fraud.

**I. FACTS**

Defendant Dodge is the former in-house attorney and defense counsel for the Nooksack Tribal Holdover Council Defendants—former Tribal Councilmembers who no longer represent the Nooksack Tribe and possess no authority to take governmental action. *See generally* Dkt. # 7

1 at ¶¶ 50, 56, 59. After purporting to fire Nooksack Tribal Court (“NTC”) Chief Judge Susan  
2 Alexander for upholding Plaintiffs’ voting rights, Holdover Council Defendants<sup>1</sup> purported to  
3 replace Judge Alexander with Defendant Dodge, on or about June 13, 2016. *Id.* at ¶ 39; *see also*  
4 *id.* at ¶¶ 50, 56, 59. Neither the firing of Judge Alexander nor the “appointment” of Defendant  
5 Dodge were dispensed by legitimate government actors. *See* Dkt. # 7 at ¶ 69.  
6

7 Since his unlawful “appointment,” Defendant Dodge has acted in concert with the other  
8 RICO Defendants to defraud Plaintiffs of money and property through false pretenses and  
9 representations. Dkt. # 7 at ¶ 3. Defendant Dodge was instrumental in this scheme. *Id.* at ¶¶ 39,  
10 40, 43-46, 49, 67-68, 71. Defendant Dodge directly deprived Plaintiffs Margretty Rabang and  
11 Elizabeth Oshiro of their homes; the thousands of dollars those Plaintiffs had invested in their  
12 homes; the right to civil counsel of Plaintiff Rabang’s choosing at her own expense; and any  
13 opportunity for either Plaintiff to seek recourse against Defendant Dodge’s co-RICO Defendants  
14 in the NTC. *Id.*  
15

16 On October 17, 2016, U.S. Department of the Interior (“Interior”) issued a decision to  
17 Defendant Kelly and Holdover Council Defendants stating that it would only recognize “those  
18 actions taken by the Tribal Council prior to March 24, 2016, when a quorum existed, and will not  
19 recognize any actions taken since that time . . .” Dkt. # 7 at ¶ 50. This includes Holdover  
20 Council Defendants’ appointment of Defendant Dodge as NTC “Chief Judge” on or about June  
21 13, 2016. *Id.* at ¶ 39. Pivotaly, **Defendant Dodge is not a judge**. The U.S. government has  
22 already made this decision, and it is final and binding. Dkt. # 7 at ¶ 69; *see also id.*, at ¶ 56  
23 (recognizing only “decisions of the Northwest Intertribal Court System” *qua* the Nooksack Tribal  
24  
25

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<sup>1</sup> The “Holdover Council Defendants” consist of Defendants Robert Kelly, Jr., Rick D. George, Agripina Smith, Bob Solomond, Lona Johnson, and Katherine Canete. *See* Dkt. # 7 at ¶ 2.

1 Court of Appeals); *Comanche Nation, Okla. v. United States*, 393 F. Supp. 2d 1196, 1206 (W.D.  
2 Okla. 2005) (citing 25 C.F.R. § 2.6(c)).

3 On December 23, 2016, Interior issued a decision to Defendant Kelly and Holdover  
4 Council Defendants that most directly addressed the invalidity of Defendant Dodge's "orders" as  
5 NTC "Chief Judge." Dkt. # 7 at ¶ 69. Interior informed Holdover Council Defendants:  
6

7 It has come to the Department's attention that orders of eviction may have been  
8 recently issued to be served by the Nooksack Chief of Police or could be issued  
9 and served in the near future. **It appears that such orders are based on actions  
10 taken by the Tribal Council after March 24, 2016. Therefore, as explained to  
11 you above and in the previous letters to you, those orders are invalid and the  
12 Department does not recognize them as lawful . . . .**

11 *Id.* (emphasis added). Again, Defendant Dodge is not a judge and his orders are invalid and  
12 unlawful. *Id.* The U.S. government has declared as much.<sup>2</sup>

## 13 II. ARGUMENT

14 This Court possesses subject matter jurisdiction. Per final and binding federal agency  
15 action, Defendant Dodge is not a judge. He cannot invoke the defense of judicial immunity. The  
16 Court must therefore deny Defendant Dodge's Rule 12(b)(1) motion to dismiss. Plaintiffs have  
17 stated a claim upon which relief can be granted. Plaintiffs have adequately pled concrete injury  
18 and causation, and thus possess standing to pursue their RICO claims. Plaintiffs have likewise  
19 adequately pled predicate acts. The Court therefore also must deny Defendant Dodge's Rule  
20 12(b)(6) motion to dismiss.  
21

22  
23 <sup>2</sup> The Whatcom County Superior Court has already "accord[ed] substantial deference" to Interior's decision not to  
24 recognize actions taken by the Holdover Council Defendants after March 24, 2016, including "orders" issued by  
25 Defendant Dodge. *In re Gabriel S. Galanda, et al. v. Nooksack Tribal Ct.*, No. 16-2-01663-1, Dkt. # 55 (Whatcom  
Cty. Sup. Ct. Dec. 13, 2016) (Order Denying Nooksack Police Chief's Motion to Vacate Order Domesticating  
Foreign Judgment & Quash Execution & Enforcement). Declaration of Bree R. Black Horse ("Black Horse Decl."),  
Ex. A. Plaintiffs ask this Court to take judicial notice of this Whatcom County Superior Court Order. The Court may  
take judicial notice of state court orders as undisputed matters of public record pursuant to Fed. R. Evid. 201.  
*Khazali v. Berns*, No. 16-1022, 2016 WL 4479915, at \*1 n.3 (W.D. Wash. Aug. 24, 2016); *Reyn's Pasta Bella, LLC  
v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006); *Harris v. Cty. of Orange*, 682 F.3d 1126, 1131-32 (9th Cir.  
2012).

1 **A. The Court Should Decline To Take Judicial Notice Of The Documents Appended To**  
 2 **Defendant Dodge’s Motion To Dismiss.**

3 Defendant Dodge submitted a declaration in support of his motion, appending what he  
 4 describes as two NTC “orders” to his declaration. Dkt. ## 31-1, 31-2. Plaintiffs contend—and  
 5 the United States agrees—however, that these “orders” are invalid and unlawful. Dkt. # 7 at ¶¶  
 6 39, 69. The “orders” are fraudulent and were central to Defendant Dodge and the RICO  
 7 Defendants’ scheme to deprive Plaintiffs of money and property. Dkt. # 7 at ¶¶ 44-47, 67-68.

8 The Court may only judicially notice documents that are not subject to reasonable dispute.  
 9 Fed. R. Evid. 201(b); *Untied States v. Ritchie*, 342 F.3d 903, 908-09 (9th Cir. 2003). The exhibits  
 10 to Defendant Dodge’s declaration clearly are subject to dispute. The Court should therefore  
 11 decline to take judicial notice of these “orders,” and exclude them pursuant to Rule 12(d).<sup>3</sup>

12  
 13 **B. Defendant Dodge Is Not Entitled To Judicial Immunity—He Is Not A Judge.**

14 Defendant Dodge has moved to dismiss this action pursuant to Rule 12(b)(1) based on his  
 15 claim that he “like all jurists, has absolute immunity for action taken in his judicial capacity.”  
 16 Dkt. # 30 at 3. Defendant Dodge is not, however, a “judge” entitled to invoke the defense of  
 17 judicial immunity. *See* Dkt. # 7 at ¶¶ 39, 50, 56, 69. The Court must therefore deny Defendant  
 18 Dodge’s Rule 12(b)(1) motion to dismiss.

19 This Court should accord deference to Interior’s decision not to recognize Defendant  
 20 Dodge as NTC “Chief Judge,” Dkt. # 7 at ¶ 50, 56, 69, or to recognize orders issued by Defendant  
 21 Dodge as either lawful or valid. *Id.* at ¶ 69. *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504,  
 22 512 (1994). Courts generally should not substitute their judgment for that of Interior; particularly  
 23 not on a Rule 12(b)(1) motion; and especially while the underlying agency action is under review  
 24  
 25

<sup>3</sup> In the alternative, if the Court chooses not to exclude these exhibits, Defendant Dodge’s motion should be converted to a Rule 56 motion and Plaintiffs should be given an opportunity to conduct discovery for the same reasons discussed in Plaintiffs’ Motion to Continue. Dkt. # 43.

1 in another proceeding.<sup>4</sup> *Barnes v. U.S. Dep't of Transp.*, 655 F.3d 1124, 1132 (9th Cir. 2011).  
2 Interior's decision is final and binding. 25 C.F.R. § 2.6(c). Unless and until that changes,  
3 Defendant Dodge cannot be afforded the cloak of the judiciary.

4 Defendant Dodge has failed to carry his burden of proof. *Hafer v. Melo*, 502 U.S. 21, 29  
5 (1991). Defendant Dodge has not presented any evidence that Interior's decision not to recognize  
6 him as "Chief Judge" or deem valid or lawful any of the "orders" he had issued while illegally  
7 occupying the NTC "Chief Judge" position have been withdrawn by Interior or overturned by the  
8 courts. Defendant Dodge has failed to show that the judicial immunity he seeks to invoke is  
9 justified under these circumstances. *Burns v. Reed*, 500 U.S. 478, 486-87 (1991). Accordingly,  
10 the Court must deny his Rule 12(b)(1) motion to dismiss.

11  
12 **B. Plaintiffs Have Adequately Pled Their RICO Claims Against Defendant Dodge.**

13 Defendant Dodge moves pursuant to Rule 12(b)(6) to dismiss Plaintiffs' RICO claims  
14 based on his purported judicial immunity as "Chief Judge" of the now-defunct NTC, lack of  
15 standing, and failure to plead adequately predicate acts. Dkt. # 30 at 6-7. Plaintiffs address each  
16 challenge in turn.

17  
18 **1. Judicial Immunity Does Not Bar RICO Claims Against Defendant Dodge.**

19 Defendant Dodge, again, argues that judicial immunity bars Plaintiffs' RICO claims. Dkt.  
20 # 30, at 7. This situation is *sue generis*, both factually and legally. Nowhere else has a defense  
21 attorney for holdover governmental actors ever received a judicial "appointment" from those  
22 actors; and, in turn, flouted federal determinations that he and those actors are illegitimate by  
23 issuing orders against those actors' opponents to deprive them of due process, the right to  
24

25  

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<sup>4</sup> The Holdover Council Defendants, masquerading as the Nooksack Tribe, have challenged Interior's final agency action in *Nooksack Indian Tribe v. Zinke*, 2:17-cv-0129-TSZ (W.D. Wash.).

1 counsel, and house and home. As discussed *supra*, Section II(A), Defendant Dodge is not entitled  
2 to the judicial cloak; he is not, and never has been, a judge.

3 Defendant Dodge represents that judicial immunity bars all of Plaintiffs' RICO claims.  
4 *Id.* Defendant Dodge has misrepresented the law. The RICO statute does not bar claims against  
5 judges. 18 U.S.C. § 1964. In fact, judicial immunity itself has limits. *Stump v. Sparkman*, 435  
6 U.S. 349, 356-57, 360 (1978). All of the cases Defendant Dodge cites in support of his claim to  
7 judicial immunity involve judges lawfully appointed pursuant to Article III of the U.S.  
8 Constitution or by other legitimate state procedures. Dkt. # 30, at 7-8. None of the cases  
9 Defendant Dodge cites examine whether a person who was knowingly and unlawfully  
10 "appointed" by individuals masquerading as a government—all of whom remain unrecognized by  
11 the U.S. government—is entitled to defraud the public, and personally benefit from the fraud,  
12 under the guise of judicial immunity.  
13

14  
15 Defendant Dodge proposes an absurd abuse of judicial immunity. Running Defendant  
16 Dodge's theory to its logical conclusion, mob bosses would be allowed to escape conviction  
17 simply by having their co-conspirators in public office anoint them "judges."

18 There exists no basis for Defendant Dodge's claim to judicial immunity from this suit.  
19 The Court should therefore deny his motion.  
20

## 21 **2. Plaintiffs Have Adequately Pled Facts Supporting A Concrete Injury.**

22 Defendant Dodge claims Plaintiffs lack standing because they have "not identifi[ed] a  
23 tangible financial loss." Dkt. # 30 at 10. Plaintiffs must adequately plead injury to property and  
24 financial loss to sustain a RICO claim. *Diaz v. Gates*, 420 F.3d 897, 900 (9th Cir. 2005).  
25 Plaintiffs Margretty Rabang and Elizabeth Oshiro have alleged numerous facts sufficient to show  
that Defendant Dodge caused them concrete financial losses. *Canyon Cty. v. Syngenta Seeds*,

1 *Inc.*, 519 F.3d 969, 972 (9th Cir. 2008). Plaintiffs therefore possess standing to pursue their  
2 RICO claims. *Id.*, at 979.

3 Plaintiffs Margretty Rabang and Elizabeth Oshiro allege that Defendant Dodge defrauded  
4 them of their monetary *investments* in their homes by fraudulent orders issued on July 11, 2016,  
5 and December 15, 2016, respectively. Dkt. # 7 at ¶¶ 43, 45-46, 49, 67-68. Plaintiff Margretty  
6 Rabang had invested at least \$9,326.68 in her home since 2006. *Id.* at ¶ 4. Plaintiff Elizabeth  
7 Oshiro had similarly invested in her home since 2002. *Id.* at ¶ 8. “Money, of course, is a form of  
8 property.” *Canyon Cty.*, 519 F.3d at 976.

9  
10 Plaintiff Elizabeth Oshiro also alleges that Defendant Dodge defrauded her of actual  
11 physical possession of her home by July 27, 2016, which caused additional financial losses. *Id.* at  
12 ¶¶ 45-46. Plaintiff Margretty Rabang further alleges that Defendant Dodge deprived her of any  
13 recourse to salvage the \$9,326.68 investment she had made in her home. Dkt. # 7 at ¶ 49.

14  
15 Plaintiffs Rabang and Oshiro have pled adequately concrete financial loss based on  
16 Defendant Dodge’s fraudulent acts. Dkt. # 7 at ¶¶ 43, 45-46, 49, 67-68. Contrary to Defendant  
17 Dodge’s claims, Plaintiffs have “concretely identify[ed] a tangible financial loss.” Plaintiffs’  
18 allegations that they were deprived of money and property as a result of Defendant Dodge’s  
19 fraudulent conduct are sufficient to confer RICO standing. *Canyon Cty.*, 519 F.3d at 976.  
20 Accordingly, the Court must deny Defendant Dodge’s motion to dismiss for lack of standing.

## 21 **2. Plaintiffs Adequately Allege Causation.**

22  
23 Next, Defendant Dodge argues that Plaintiffs “fail to plead facts demonstrating causation  
24 as to [Defendant] Dodge.” Dkt. # 30 at 10. Plaintiffs can maintain their RICO action because  
25 they have pled “not only that the defendant’s violation was a ‘but for’ cause of his injury, but that  
it was the proximate cause as well.” *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 268-69



1 (1992). Proximate causation under RICO “requires that there must be a direct relationship  
2 between the injury asserted and the injurious conduct alleged.” *Id.* For RICO purposes, the  
3 proximate cause of an injury is “a substantial factor in the sequence of responsible causation.”  
4 *Oki Semiconductor Co. v. Wells Fargo Bank, Nat. Ass’n*, 298 F.3d 768, 773 (9th Cir. 2002). In  
5 determining whether Plaintiffs have adequately alleged proximate causation, the Court considers  
6 (1) whether there are more direct victims of Defendant Dodge’s wrongful conduct who can be  
7 counted on to vindicate the law as private attorneys general; (2) whether it will be difficult to  
8 ascertain the amount of Plaintiffs’ damages attributable to Defendant Dodge’s wrongful conduct;  
9 and, (3) whether the courts will have to adopt complicated rules apportioning damages to obviate  
10 the risk of multiple recoveries. *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1169 (9th Cir. 2002).  
11 The central question when evaluating Plaintiffs’ RICO claims for proximate causation is whether  
12 the alleged violation led directly to Plaintiffs’ injuries. *Canyon Cty.*, 519 F.3d at 979.

13  
14  
15 There exists a direct casual relationship between Defendant Dodge’s actions and the  
16 concrete financial losses alleged by Plaintiffs Rabang and Oshiro. The basis of Defendant  
17 Dodge’s RICO violation are his wire communications with the other RICO Defendants regarding  
18 the scheme to defraud Plaintiffs and the mailing of his fraudulent orders executing that scheme to  
19 Plaintiffs.<sup>5</sup> Dkt. # 7 at ¶¶ 43-46, 49, 53, 67-68, 71; *see also id.* ¶¶ 85, 87. Plaintiffs’ alleged harm  
20 is the loss of the investments in their homes and Plaintiff Elizabeth Oshiro’s unlawful eviction  
21 from her home. *Id.* at ¶¶ 44-47, 67-68. Here, the causal chain is not difficult to ascertain because  
22 no alternative cause exists that might be the actual harm to Plaintiffs other than Defendant  
23 Dodge’s invalid orders. *Canyon Cty.*, 519 F.3d at 983.

24  
25 <sup>5</sup> Defendant Dodge’s use of the mails or wires need not be an essential element of the scheme in order to violate the  
mail and wire fraud statutes. *Pereira v. United States*, 347 U.S. 1, 8 (1954). A violation of the wire or mail fraud  
statutes occurs if the communication “is part of the execution of the scheme as conceived by the perpetrator at the  
time.” *Schmuck v. United States*, 489 U.S. 705, 715 (1989). It is enough if the continuing success of the fraudulent  
scheme depends upon the transmission of items or information via the mails or wires. *Id.*, at 711-14.



### 3. Plaintiffs Have Pled Sufficient Predicate Acts.

Defendant Dodge claims that Plaintiffs have not sufficiently pled mail and wire fraud. Dkt. # 30 at 12. As a threshold matter, Plaintiffs will first address Defendant Dodge's attempt to misrepresent Plaintiffs' alleged fraudulent scheme. In challenging the sufficiency of Plaintiffs' mail and wire fraud claims, Defendant Dodge describes the alleged scheme as one to deprive Plaintiffs of tribal membership only. *Id.* This is inaccurate. Plaintiffs allege that Defendant Dodge, in concert with the other RICO Defendants, "devised or intended to devise a scheme to defraud Plaintiffs of money, property, and other tribal, state and federal benefits of monetary value by depriving Plaintiffs of their tribal membership by means of false or fraudulent pretenses and representations." Dkt. # 7 at ¶ 20. Plaintiffs' allegations regarding Defendant Dodge relate directly to this scheme. *Id.* at ¶¶ 44-47, 67-68 (alleged deprivation of money); ¶ 45 (alleged deprivation of property). Defendant Dodge's claim that his actions do not relate to the scheme to defraud Plaintiffs are unfounded. Dkt. # 30 at 12-13.

Defendant Dodge also argues "there is no alleged false representation." Dkt. # 30, at 13. Defendant Dodge misunderstands Plaintiffs' claims. Plaintiffs allege that Defendant Dodge falsely represented himself as NTC "Chief Judge." Dkt. # 7 at ¶¶ 2, 17, 39, 50, 56, 69. Accordingly, Plaintiffs allege that the "orders" Defendant Dodge issued while masquerading as "Chief Judge" are likewise false representations. *Id.* at ¶¶ 45-46, 67-68, 87. Contrary to Defendant Dodge's claims, Plaintiffs have adequately alleged several false representations perpetrated by Defendant Dodge.

### III. CONCLUSION

Although lawyers should not make decisions for the client, they must urge compliance with law and must refrain from aiding a client in unlawful objectives. Model Rules of Prof'l

1 Conduct, Preamble, ¶ 16. Here, Defendant Dodge not only violated this most critical tenet of  
2 attorney practice, he went above and beyond by knowingly and willfully participating in, and  
3 personally benefiting from, Holdover Council Defendants’ conspiracy to defraud Plaintiffs under  
4 guise of “Chief Judge.” Upon receipt of the Federal Government’s final determination as to the  
5 Holdover Council Defendants’ illegitimacy, at the very latest, Defendant Dodge knew what he  
6 was doing was unlawful. Yet he continued, and continues, to act for Holdover Council  
7 Defendants. Defendant Dodge is not a judge; he is not entitled to claim judicial immunity.  
8

9 Defendant Dodge’s motion otherwise fails as outlined above. A proposed order  
10 accompanies this Response.

11 DATED this 20th day of March, 2017.

12 GALANDA BROADMAN PLLC

13 /s/ Bree R. Black Horse  
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MARGRETTY RABANG, *et al.*,

Plaintiffs,

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ROBERT KELLY, JR., *et al.*,

Defendants.

Case No. 2:17-cv-00088-JCC

**CERTIFICATE OF SERVICE**

On March 20, 2017, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF System, which will send electronic notification of such filing to the following parties:

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Signed under penalty of perjury and under the laws of the United States this 20th day of  
March, 2017.

  
Bree R. Black Horse

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