Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARGRETTY RABANG, et al.,

Plaintiffs,

v.

ROBERT KELLY, JR., et al.,

Defendants.

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

DEFENDANT CHIEF JUDGE RAYMOND DODGE'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR: JUNE 23, 2017

Defendant Nooksack Tribal Court Chief Judge Raymond G. Dodge, Jr. ("Judge Dodge"), hereby respectfully replies in support of his motion for summary judgment filed May 17, 2017. Dkt. # 66. Summary judgment is warranted as there are no genuine material facts in dispute that Judge Dodge: (1) is entitled to judicial immunity for the eviction orders which underlie Plaintiffs' claims as to him and (2) did not commit a violation of the Federal Racketeer Influenced and Corrupt Organizations Act ("RICO").

This is not a complicated case, despite Plaintiffs' best efforts to make it so. Plaintiffs have amended their Complaint twice, tried to muddle the facts with irrelevant allegations, and submitted over five hundred pages of documents in response to Judge Dodge's motion—most of

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which are inadmissible. These attempts to confuse must not prevail over what is, at its core, an attempt to punish Judge Dodge for doing his job as Chief Judge of the Nooksack Tribal Court.

It is not surprising that Plaintiffs are unhappy that Judge Dodge issued eviction orders. But making decisions and issuing legal orders—even orders with which a party vehemently disagrees—are precisely the types of actions which are protected by the doctrine of judicial immunity, and Plaintiffs have failed to show any dispute of material fact that Judge Dodge is entitled to those protections. Moreover, issuing and mailing eviction orders does not constitute fraud, let alone a violation of RICO. Plaintiffs simply cannot offer any real support for the sensational claims that they have alleged against Judge Dodge.

ARGUMENT

A. Judge Dodge is Entitled to Judicial Immunity

There are two limited exceptions to judicial immunity: (1) a judge is not immune from liability for nonjudicial actions (i.e., actions not taken in a judicial capacity); and (2) a judge is not immune from actions, though judicial in nature, where they are taken in the "complete absence of all jurisdiction." *Mireles v. Waco*, 502 U.S. 9, 12 (1991). As to the second, a judicial officer acts in the clear absence of jurisdiction only if he (a) "knows that he lacks jurisdiction" "or [(b)] acts despite a clearly valid statute or case law expressly depriving him of jurisdiction." *Mills v. Killebrew*, 765 F.2d 69, 71 (6th Cir. 1985) (citing *Rankin v. Howard,* 633 F.2d 844, 849 (9th Cir. 1980)).

Here, Plaintiffs' solely focus on the "knows" portion of the second exception, asserting Judge Dodge knowingly acted in the clear absence of jurisdiction because he has not "unequivocally sworn" that he did not know that his appointment was invalid and unlawful or know of the communications from AS-IA Roberts at the time. Resp. at 18. Contrary to Plaintiffs' attempt to parse Judge Dodge's words to create an issue of fact, his attestations firmly establish that he did not have the requisite actual knowledge to create an exception to judicial immunity.

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First, three of the four orders issued by Judge Dodge which Plaintiffs contend to be fraudulent under RICO were issued in July 2016, three months ***before*** the date of the first letter from AS-IA Roberts. Dkt. # 64, ¶¶ 71, 113(h)–(j).

Second, by the time of the final letter from AS-IA Roberts on December 23, 2016—the only letter which even mentions the Tribal Court—Judge Dodge had already issued the fourth order which Plaintiffs contend to be fraudulent.[1] Dodge Decl., ¶ 45 (Dkt. # 67).

Third, Judge Dodge has made clear that he (correctly) assumed the letters from AS-IA Roberts to Chairman Kelly related solely to enrollment-related actions taken by Tribal Council and not to him or the Tribal Court. *Id.*, ¶¶ 46, 52. In other words, even if he had seen the letters, there is no material factual dispute that, at the time the allegedly four fraudulent orders were issued, Judge Dodge did not have the requisite knowledge that he ***clearly*** lacked jurisdiction. *Stump v. Sparkman,* 435 U.S. 349, 356-57 (1978) (judicial immunity only abrogated where judge "has acted in the clear absence of all jurisdiction").

Plaintiffs additionally argue that Judge Dodge should have known that he lacked jurisdiction because he "maintained a *very* close relationship with the Holdover Defendants as their immediate past in-house attorney and as their handpicked 'Chief Judge.'" Resp. at 18–19 (emphasis original). That Plaintiffs seek to impute knowledge of the letters addressed to Chairman Kelly to Judge Dodge based purely on his past attorney-client relationship with Tribal

[1] The timing of the orders and the letters makes Plaintiffs' Turtle Talk argument all that more absurd. Nonetheless, plaintiffs continue to argue that Judge Dodge "read and continues to read the content posted on Turtle Talk." Resp. at 19. Again, Judge Dodge does not deny that he has read Turtle Talk, only that he "rarely" reads the blog. Dodge Decl., ¶ 47. Occasional readership does not establish that Judge Dodge learned of the letters from that blog, let alone when he learned of them. The blog typically only has immediate access to posts within the last two days. *See* https://turtletalk.wordpress.com/ (last visited June 9, 2017). Links must be clicked for older posts. *Id.* The existence of the blog–to which Judge Dodge does not subscribe (Dodge Decl., ¶ 47)–does not lead inexorably to the conclusion that Judge Dodge knew or should have suspected that he clearly lacked jurisdiction. *E.g., Bibeau v. Pacific Northwest Research Foundation,* 188 F.3d 1105, 1110 (9th Cir. 1999) (refusing to impute knowledge of injury based on wide publicity in news articles); *O'Connor v. Boeing B. Am., Inc*., 311 F.3d 1139, 1147 (9th Cir. 2002) (finding that newspaper reports discussing the contamination on the defendants' property did not necessarily "impute knowledge of them to Plaintiffs"); *In re Burbank Environmental Litigation,* 42 F.Supp.2d 976, 981 (C.D.Cal.1998) (considering fact that plaintiffs subscribed to papers that reported contamination as factor in imputing knowledge of articles).

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Council illustrates the absence of a dispute of material facts. Pure suppositions of counsel do not substitute for facts on summary judgment. No close relationship exists. *See* 2nd Dodge Decl., ¶¶ 3-5 (filed herewith). Even if it did, the mere fact of that relationship, without much more, does not establish that Judge Dodge clearly knew that he lacked jurisdiction. *Fleming v. Dowdell*, 434 F. Supp. 2d 1138, 1157 (M.D. Ala. 2005) (finding judicial immunity where judges "acted unknowingly" because, "to deprive a judicial officer of absolute immunity, he or she must *know* facts which place him or her on notice of the clear absence of subject matter jurisdiction.") (emphasis in original).

Plaintiffs' effort to create an issue of material fact substantially depart from the law of judicial immunity and conveniently ignore that the letters upon which they primarily rely to defeat judicial immunity were sent after the allegedly fraudulent orders issued. Judge Dodge did not knowingly act in the absence of jurisdiction as required to create an exception to absolute judicial immunity. Summary judgment in Judge Dodge's favor is warranted and no amount of discovery would change that legal conclusion.

B. Plaintiffs Offer No Facts Which Support Their RICO Claims Against Judge Dodge

Judge Dodge has never been part of a scheme to defraud Plaintiffs of their enrollment; he took no part in enrollment matters as judge and none of the four predicate acts relate to enrollment. Dodge Decl., ¶ 34; Dkt. # 64, ¶ 152; *id.*, ¶ 113(h)–(j), (v) (discussing eviction orders); 2d Dodge Decl., ¶ 2. To defeat summary judgment, Plaintiffs must present evidence that raises a genuine dispute of material fact as to whether the alleged four predicate acts proximately caused an actionable injury. *Poulos v. Caesars World, Inc.*, 379 F.3d 654, 664 (9th Cir. 2004) ("It is well settled that, to maintain a civil RICO claim predicated on mail [or wire] fraud, a plaintiff must show that the defendants' alleged misconduct proximately caused the injury."). Plaintiffs have not done so. Instead, Plaintiffs identify "four material ways" Judge Dodge joined with others in a scheme to defraud Plaintiffs: (1) while acting as an attorney for the tribe,

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"schem[ing] to have Plaintiffs' counsel disbarred or not allowed to practice in the Nooksack Tribal Court"; (2) "schem[ing] . . . to fire Chief Judge Susan Alexander and then appoint him as "Chief Judge"; (3) "affirmatively misrepresent[ing] himself as 'Chief Judge'; and (4) "issu[ing] invalid and unlawful 'Orders' that deprived Plaintiffs of money and property." Resp. at 20–21. Having been forced to commit these theories to paper, it is abundantly clear that Plaintiffs cannot proceed under RICO against Judge Dodge.

The first three of these alleged acts are woefully insufficient because they do not come close to meeting the "proximate cause" requirement of RICO – i.e., the requirement of a "'direct causal connection' between the predicate offense and the alleged harm,'" "rather than a connection that is "'too remote,' purely contingent,' or 'indirec[t].'" *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 8, 10-11 (2010). "[T]he central question [a court] must ask is whether the alleged violation led directly to the plaintiff's injuries." *Anza v. Ideal Steel Supply Corp*., 547 U.S. 451, 461 (2006). Even if there was a factual basis for these allegations—which there is not—these acts could not have "led directly" to Plaintiffs' harm.

The first two acts occurred while Judge Dodge was serving as Tribal Attorney; however, each of the four predicate acts occurred, by Plaintiffs' own allegations, between July 11, 2016 and December 23, 2016—***after*** Judge Dodge was acting as a judge. Nothing about these acts led directly to the alleged injury of loss of business or property. Dkt. #64, ¶ 152. At the time Nooksack Indian Housing Authority began the eviction proceedings against Plaintiff Oshiro, Judge Dodge was not even employed by the Tribe. Dodge Decl., ¶ 6 (Dkt. # 67). The third, the alleged misrepresentation by Judge Dodge that he was a "Chief Judge", also fails direct causal connection. This circular argument ultimately relates back to whether Judge Dodge had actual knowledge that he lacked jurisdiction at the time he issued the orders, which he did not. Moreover, holding himself out as "Chief Judge" did not lead directly to the alleged injury of loss of business or property. There were numerous intervening causes, including: the filing of the

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actions by the Nooksack Indian Housing Authority; Ms. Oshiro's failure to appear; and Ms. Rabang's failure to present evidence of a signed lease. *Id.,* ¶¶ 12-33. The Court should find that a number of steps separate the alleged predicate acts from the asserted injury, and that Plaintiffs have not created a genuine issue of material fact. *See Hemi*, 559 U.S. at 15 ("multiple steps . . . separate the alleged fraud from the asserted injury").

The fourth action by Judge Dodge—the issuing of the eviction orders against Plaintiffs—at least refers to the predicate acts that purport to make Judge Dodge liable under RICO. But, they still cannot form the basis a RICO case against Judge Dodge. The issuance of the orders cannot be considered to have been acts of criminal fraud. *Sun Sav. and Loan Assoc. v. Dierdorff*, 825 F.2d 187 (9th Cir. 1987) (requiring specific intent to deceive); *see Efron v. Embassy Suites (Puerto Rico) Inc.,* 223 F.3d 12, 20-21 (1st Cir. 2000) *cert. denied*, 532 U.S. 905 (2001) (routine judicial conduct cannot become a basis for a RICO suit). Moreover, the Court has previously dismissed the RICO Section 1962(c) claim against the Tribe's legal counsel, Rickie Armstrong, because of the nature of his role. Dkt. # 62. As the Court noted, it was Mr. Armstrong who filed the complaint for the Nooksack Indian Housing Authority and prosecuted the case that ultimately led to the eviction orders. *Id*. at 14. Plaintiffs cannot now premise their claim against Judge Dodge merely on the fact that he, like Mr. Armstrong, was in the chain of events.

Merely saying so fails to concoct a crime where none exists. There is no evidence of fraud, and Judge Dodge neither devised nor participated in a scheme to defraud Plaintiffs of their Tribal membership. There is no dispute of material fact that Judge Dodge's four acts related to eviction are divorced from the alleged RICO scheme, and the predicate acts of mail and wire fraud were not the proximate cause of Plaintiffs' injury. Judge Dodge is entitled to summary judgment and no amount of discovery will change that conclusion.

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C. Most of the Statements and Exhibits Plaintiffs Offer Are Inadmissible

Consistent with their efforts to obfuscate the legal issues in this case, Plaintiffs have submitted over 500 pages of exhibits. *See* Dkt. ## 71-74, 77. Voluminous as they may be, the exhibits must be disregarded by this Court in considering Judge Dodge's summary judgment motion. Pursuant to Rule 56(c)(1), a party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
>
> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence. Fed. R. Civ. P. 56(c). As explained below, many documents are immaterial to the motion and the Court should decline to consider them in support of Plaintiffs' response. Other documents are not based on personal knowledge, contain hearsay, or are otherwise inadmissible, and they should be stricken from the record.

1. The Court Should Not Consider Plaintiffs' Immaterial Statements

Plaintiffs have failed to create a material dispute of fact. *See, e.g.*, *Sullivan v. Henry Smid Plumbing & Heating Co., Inc*., 2006 WL 980740, at *2 (N.D. Ill. Apr. 10, 2006) (court need not have ruled on the merits of motions to strike argumentative and evasive responses where the responses failed to raise any genuine issue of material fact). And, this Court should disregard any statements or evidence from Plaintiffs that do not amount to material facts. "[S]tatements based on speculation, improper legal conclusions, personal knowledge, or argumentative statements are not facts and can only be considered as arguments, not as facts, on a motion for summary judgment." *Gaub v. Prof'l Hosp. Supply, Inc.*, 845 F. Supp. 2d 1118, 1128 (D. Idaho 2012); *see*

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also Tibbetts v. RadioShack Corp., 2004 WL 2203418, at * 16 (N.D. Ill. Sept. 29, 2004) (disregarding submissions which contained statements that relied on documents improperly in the record); *Rosado v. Taylor*, 324 F.Supp.2d 917, 920 n. 1 (N.D. Ind. 2004) (ignoring facts set forth in response to motion for summary judgment to the extent they were "argumentative or conclusory"). Nor may the Court rely on statements in a party's opposition as facts; the Court should examine the submitted evidence itself. *Id.* Similarly, statements in declarations based on speculation or improper legal conclusions, or argumentative statements, are not facts and likewise are not considered. *Burch v. Regents of Univ. of California*, 433 F. Supp.2d 1110, 1119 (E.D. Cal. 2006).

Plaintiffs make a number of allegations in their Response which, in addition to being inaccurate, are immaterial to the four predicate acts alleged as to Judge Dodge. Among these allegations are that Judge Dodge: drafted a new Election Ordinance to "gerrymander voting and otherwise rig" the February and March 2016 Nooksack elections (Resp. at 2); sought to enjoin Plaintiffs from voting in the elections (*id.*); made various improper legal maneuvers while acting as Senior Tribal Attorney (*id.* at 3– 4); sought to disbar opposing counsel while he was employed by the Quinault Indian Nation (*id.* at 5); and numerous other allegations about actions that occurred before Dodge was Chief Judge and do not directly relate to Plaintiffs' four mail and wire fraud claims. These allegations and documents are not material because, even if they are assumed to be true, they do not relate to the issues raised on summary judgment—i.e., judicial immunity and sufficiency of Plaintiffs' evidence of RICO violations as to the four predicate acts that occurred, by Plaintiffs' own allegations, between July 11, 2016 and December 23, 2016.[2]

[2] Conspiratorial acts that cause the injury must still be an act of racketeering as defined by section 1961(1). *See Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 295 (9th Cir. 1990) (holding "that the district court did not err in dismissing Reddy's § 1962(d) claim on standing grounds because the act of terminating Reddy's employment is not a predicate act as defined by § 1961(1), . . ."), *cert denied,* 112 S. Ct. 332 (1991); *see also Beck v. Prupis*, 529 U.S. 494, 505 (2000) (concluding that an "injury caused by an overt act that is not an act of racketeering or otherwise wrongful under RICO . . . is not sufficient to give rise to a cause of action under § 1964(c) for a violation of §1962(d)."). None of these are predicate acts and are immaterial.

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Plaintiffs have proffered over 500 pages in exhibits, many of which are not material to this motion. For example, the Declaration of Michelle Roberts—who is not a party to this case—includes an attestation that she filed certain documents in Nooksack Tribal Court which purportedly "explain[ed]" to Judge Dodge that any action taken by the Nooksack Tribal Council was unlawful. Roberts Decl., ¶ 6 (Dkt. # 77). This statement and the corresponding exhibits are immaterial because even if Ms. Roberts had filed the documents as she asserts, those documents were a motion for declaratory judgment and declaration[3]—i.e., argument, not facts.

Ms. Oshiro's declaration and exhibit is flawed for it has nothing to do with Judge Dodge or the four predicate acts. Ms. Oshiro attaches a complaint she wrote to HUD on September 2, 2016 against "Executive Housing Director Katrice Romero." Dkt. # 72-1 at 1. There is no reference to Judge Dodge or his actions at all.

Many of the exhibits attached to the Declaration of Gabe Galanda are similarly immaterial to Judge Dodge's summary judgment motion, including: most of the pleadings from *Roberts v. Kelly, Belmont v. Kelly,* and other litigation to which Judge Dodge is not a party; and documents relating to matters before he was either employed by the Tribe at all or as a Judge. [Dkt. # 74-1 (Ex. A); Dkt. # 74-2 (Ex. B); Dkt. # 74-4 (Ex. D); Dkt. # 74-19 (Ex. S); Dkt. # 74-20 (Ex. T); Dkt. # 74-22 (Ex. V); Dkt. # 74-25 (Ex. Y); Dkt. # 74-26 (Ex. Z); Dkt. # 74-29 (Ex. CC); Dkt. # 74-30 (Ex. DD); Dkt. # 74-33 (Ex. GG); Dkt. # 74-34 (Ex. HH); Dkt. # 74-40 (Ex. NN); Dkt. # 74-42 (Ex. PP); Dkt. # 74-50 (Ex. XX); Dkt. # 74-51 (Ex. YY); Dkt. # 74-56 (Ex. DDD); Dkt. # 74-57 (Ex. EEE)[4]]; the Nooksack Election Ordinance [Dkt. # 74-3 (Ex. C)]; the *Pura v. Quinault Housing Authority* opinion issued by the Quinault Indian Nation Court of Appeals [Dkt. # 74-9 (Ex. I)]; correspondence between Plaintiffs' counsel and former Nooksack

[3] The declaration contains an attestation from Ms. Roberts that she contacted then-attorney Dodge "to coordinate scheduling"—not that she provided him with notice that he lacked judicial authority. Dkt # 73-2 (Ex. B to Roberts Decl.); Dkt. # 77, Roberts Decl., ¶ 3.

[4] Plaintiffs also claim that Exhibits DDD (Dkt. # 74-56) and EEE (Dkt. # 74-57) show that Judge Dodge was "still involved with the NTC after April 29, 2016." Resp. at 8. These claims are perplexing because Ex. DDD is a Notice of Appearance filed February 29, 2016—while Dodge was still employed as Senior Tribal Attorney—and Ex. EEE is a Notice of Withdrawal filed after Judge Dodge had resigned.

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Counsel [Dkt. ## 74-13, 74-14 and 74-15 (Exs. M, N, O)]; correspondence between former Nooksack Judge Susan Alexander and the Bellingham Herald [Dkt. # 74-18 (Ex. R)]; correspondence from Garvey Schubert Barer regarding Tribal business license [Dkt. ## 74-31, 74-32 and 74-38 (Exs. EE, FF, LL)]; and a Request for Qualifications for a Tribal Pro Tem Judge [Dkt. # 74-37 (Ex. KK)].

While Plaintiffs seek to tell a story, the narrative they weave fails to create a genuine issue of fact for trial as to the specific mail and wire fraud claims advanced against Judge Dodge. The Court should decline to consider these exhibits, and the statements in the Response that rely thereon, in considering summary judgment.

2. The Court Should Strike Certain Inadmissible Evidence From the Record

An affidavit or declaration used to support or oppose a motion for summary judgment must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated. Fed. R. Civ. P. 56(c)(4). In contravention of that rule, Plaintiffs have filed multiple declarations with the Court attaching numerous exhibits containing statements which are not made on personal knowledge, contain hearsay, or otherwise contain assertions which would not be admissible in evidence. *See* Fed. R. Evid. 602 ("A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."); Fed. R. Evid. 802 (hearsay is not admissible absent a specific exception). Judge Dodge hereby respectfully moves to strike certain inadmissible statements and documents from the record pursuant LCR 7(g).

a. Exhibits Related to WSBA Grievance

Plaintiffs submit a copy of a letter from attorney Chris Howard in response to a WSBA grievance filed by Michelle Roberts against Judge Dodge. Dkt. # 74-12 (Ex. L to Galanda Decl.). This document is inadmissible and should be stricken for two reasons.

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First, it is hearsay. Plaintiffs' counsel is neither the author nor the recipient of the letter, and therefore has no personal knowledge of its creation and cannot speak to its truth. Hearsay is inadmissible on summary judgment. *Orr v. Bank of America, NT & SA*, 285 F.3d 764, 778 (9th Cir. 2002); *see also* Fed. R. Evid. 602.

Second, the letter is supposed to be confidential. Under Rule 3.2(a) of the Rules of Enforcement for Lawyer Conduct (ELC), "[a]ll disciplinary information that is not public information as defined in rule 3.1(b)[5] is confidential, and is held by the Association under the authority of the Supreme Court . . .." ELC 3.4(a) permits the grievant, respondent lawyer, or a witness to disclose confidential materials related to disciplinary information. Here, however, it is Plaintiffs' counsel that disclosed the letter. Plaintiffs' counsel had no authorization to do so—and seems to have included the letter merely to disparage Judge Dodge. Such unauthorized disclosure may subject a person to an action for contempt and may also be grounds for discipline. ELC 3.2(f). At the least, the letter should not be considered on summary judgment.[6]

b. Other Inadmissible Statements and Documents

Plaintiffs have submitted numerous statements which are not properly before this Court because they are not based on personal knowledge and/or are hearsay.

In Michelle Roberts's Declaration, she recounts out-of-court conversations offered for the truth of the matter asserted, including: statements allegedly made by the Nooksack Tribal Council regarding elections (Dkt. # 77, ¶ 4); and statements allegedly made by Tribal Court Clerk Betty Leathers in response to Ms. Roberts attempting to file certain court papers (*id.*, ¶¶ 6, 7). These statements should be stricken as hearsay.

Several exhibits attached to the Galanda Declaration are also not made on personal knowledge (FRE 602), and represent out of court statements offered for the truth of the matter

[5] ELC 3.1(b) permits public access to certain information, which does not include correspondence from the grievant's legal counsel.

[6] The same holds true with respect to Galanda Decl., Dkt. # 74-27 (Ex. AA), which is a copy of a letter from attorney Rebecca Jackson to the WSBA relating to a grievance filed against her by Ms. Roberts.

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asserted. These classic examples of inadmissible hearsay are as follows: the April 21, 2016 letter from former Judge Alexander to the Bellingham Herald [Dkt. # 74-18 (Ex. R.)]; the April 21, 2016 letter from Rebecca Jackson to Felice Congalton [Dkt. # 74-27 (Ex. AA)]; the June 8, 2016 letter from Judith Endejan to Katherine Canete [Dkt. # 74-31 (Ex. EE)]; May 16, 2016 letter from Katherine Canete to Garvey Schubert Barer [Dkt. # 74-32 (Ex. FF)]; April 12, 2017 letter from Ray Dodge to National American Indian Court Judges Association [Dkt. # 74-47 (Ex UU)]; March 24, 2017 letter from National American Indian Court Judges Association to Ray Dodge [Dkt. # 74-52 (Ex. ZZ)]; and February 8, 2016 U.S. Department of Interior Memorandum regarding "Monitoring Report – Nooksack Contract #A07AV00182 [Dkt. # 74-59 (Ex. GGG)].[7] Each of these exhibits should be stricken from the record as they are not based on the declarant's personal knowledge (FER 602) and are not admissible evidence.

In ruling on the Judge Dodge's motion, the Court is restricted to considering evidence that is both properly authenticated and admissible. *Orr v. Bank of America, NT & SA*, 285 F.3d 764, 773 (9th Cir. 2002). The statements and documents above do not constitute evidence that the Court may consider, and Plaintiffs have failed to create a genuine dispute of fact for trial.

CONCLUSION

For the foregoing reasons, Judge Dodge respectfully requests that summary judgment be granted in his favor.

DATED this 9th day of June, 2017.

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[7] Documents, including pleadings in a separate matter, must be properly authenticated pursuant to FRE 901 or 902. *Orr*, 285 F.3d 764 at 778; *Canada v. Blain's Helicopter's, Inc.*, 831 F.2d 920, 925 (9th Cir. 1987) ("In order to be considered by the court 'documents must be authenticated by an attached to an affidavit that meets the requirements of [Fed.R.Civ.P.] 56(e) and the affiant must be the person through whom the exhibits could be admitted into evidence.'"). Even if authenticated, pleadings filed in an unrelated matter are hearsay if submitted to prove the truth of the matter asserted. FRE 801, 802. The documents should be stricken.

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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2017, I electronically filed the foregoing **DEFENDANT CHIEF JUDGE RAYMOND DODGE'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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DATED this 9th day of June, 2017.

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