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 IN OPPOSITION TO DEFENDANTS' MOTION FOR INDICATIVE RULING REGARDING DISMISSAL PURSUANT TO CR 62.1, CR 60(B)(4) AND (5), AND CR 12(H)(3)

I. RELEVANT FACTS

A. This Matter Is Stayed By Court Order; Defendants Fail To Seek Relief From Stay.

This Court denied Kelly Defendants' Fed. R. Civ. P. 12(b)(1) and (6) dismissal motion on April 28, 2017. Dkt. # 62. Kelly Defendants argued that tribal sovereign immunity barred Plaintiffs' RICO claims, and also claimed that a purported "intra-tribal dispute" existed, which they claimed prevented this Court from exercising subject matter jurisdiction over this action. Dkt. ## 34, 53. Kelly Defendants appealed on May 17, 2017. Dkt. # 69. Kelly Defendants have since repeatedly urged a global stay of this matter. Dkt. ## 98 at 6-7; 1-2 at 4-6; 125 at 3-4. Pending appeal, this Court recently extended its stay of this case, with Plaintiffs' support, until April 30, 2018. Dkt. # 140. Defendants, including Defendant "Chief Judge Ray Dodge (collectively "Defendants"), have failed to seek relief from the stay.

GALANDA BROADMAN PLLC
8606 35th Ave., NE, Suite L1
Mailing: PO Box 15146
Seattle, Washington 98115
(206) 557-7509

B. The Ninth Circuit Court Of Appeals Rebukes Defendants' "Remarkable" Exploits.

During oral arguments on the morning of March 9, 2018, it took Ninth Circuit Senior Judge Richard Clifton only fifteen seconds to proclaim that "the facts alleged in this case are really remarkable . . ." *Rabang v. Kelly*, No. 17-35427 (9th Cir. Mar. 9, 2018), Dkt. # 32. After observing "some degree of corroboration from the Department of Interior," he observed:

> So let's see if we have this right:
>
> Your clients postponed elections, purported to act albeit didn't have a legal quorum, disenrolled hundreds of tribal members having the effect of reshaping the electorate before the elections could actually be held, evicting plaintiffs' from their home including some who had substantial investments, terminating health services, cutting off educational assistance, firing the tribal court judge who was about to issue an unfavorable decision, ignoring orders from the Tribe's own court of appeals which it said the rule of law had 'completely broken down,' withdrawing from the established appellate court and creating a new Tribal Supreme Court to which they employed themselves and their allies.
>
> That's a record a tin-pot dictator of a banana republic might be proud of.

Id. That's also a conspiracy, to defraud Plaintiffs of money and property, per 18 U.S.C. § 1962.

The Ninth Circuit's admonition caused Kelly Defendants such concern that they rushed to file their Status Report with Defendant Dodge but without Plaintiffs. Dkt. # 141. They then filed the Motion at bar, also with Defendant Dodge. Dkt. ## 144, 146. They then filed an improper "Notice of Appellants' Motion Regarding Indicative Ruling Pending in the District Court" ("Notice") with the Panel—*i.e.*, before this Court could even "state[] that it would grant the motion or that the motion raises a substantial issue." Fed. R. Civ. P. 61.1(b); *Rabang v. Kelly*, No. 17-35427 (9th Cir. Mar. 21, 2018), Dkt. # 33. In doing so, Kelly Defendants placed the U.S. Department of the Interior's ("DOI") March 9, 2018, interim "recognition of the Nooksack Indian Tribal Council" before the Panel, albeit improperly. *Id.*

GALANDA BROADMAN PLLC
8606 35th Ave., NE, Suite L1
Mailing: PO Box 15146
Seattle, Washington 98115
(206) 557-7509

The Panel also asked Kelly Defendants whether the Ninth Circuit should "ask the [federal] government for its view" on a purported "intra-tribal dispute" jurisdictional question[1] they have primarily pursued on appeal.[2] *Id.*, Dkt. # 32. Appellants unequivocally answered, "yes." *Rabang v. Kelly*, No. 17-35427, Dkt. # 33. Yet through their Motion and Notice they now also seek to moot the chance of that question being posed to and answered by DOI. Dkt. # 142.

C. DOI Withholds "Full Recognition" Pending Regular Election.

On the afternoon of March 9, 2018, DOI Principal Deputy Assistant Secretary of Indian Affairs ("PDAS") John Tahsuda recognized "the validity of the Tribal Council . . . until the results of the general election originally scheduled for March 17, 2018, can be certified."[3] ("Regular Election"). Dkt. # 141-1; *see also* Dkt. # 139-1, at 1 (extending interim recognition "for the limited purposes of receiving ISDEAA funding and conducting the Nooksack Tribal Council election scheduled for March 17, 2018."). PDAS Tahsuda has yet to "grant[] **full recognition** of the Nooksack Tribal Council," as contemplated by the August 25, 2017, Memorandum of Agreement ("MOA"). Dkt. # 121-1, ¶D (emphasis added).

In extending DOI's interim recognition, PDAS Tahsuda also extended DOI's authority over the Regular Election, having ordered that "all those purportedly disenrolled members since March 24, 2016, are entitled to vote . . . ." Dkt. # 139-1, at 1. He also instructed that "candidate packets made available to qualified individuals"—*i.e.*, including those purportedly disenrolled

[1] Plaintiff-Appellees explained in oral argument that it is actually a justiciability question, which is not properly before the Ninth Circuit on an interlocutory basis. *Rabang v. Kelly*, No. 17-35427 (9th Cir. Mar. 9, 2018), Dkt. # 32.
[2] Plaintiff-Appellees have all but abandoned what they once described as "the threshold sovereign immunity question . . . on appeal." Dkt. # 125; # 144; *Rabang v. Kelly*, No. 17-35427 (9th Cir. Mar. 9, 2018), Dkt. # 32.
[3] Based on "administrative record review," only, per Paragraph D of the MOA, the BIA did not "identif[y] any reason to reject the validity of the Special Election." Dkt. # 141-1; Dkt. # 143, ¶6;. Dkt. # 121-1. No federal civil or criminal authorities have yet resolved Plaintiffs' claims of vote bribery or ballot stuffing, as detailed and corroborated to the BIA on December 11, 2017. Dkt. # 143-1. Plaintiffs hope to prove those claims here under 18 U.S.C. § 1962.

GALANDA BROADMAN PLLC
8606 35th Ave., NE, Suite L1
Mailing: PO Box 15146
Seattle, Washington 98115
(206) 557-7509

members. Dkt. # 141-1. In adding those conditions, PDAS Tahsuda deviated from the "form" full recognition letter negotiated with Defendant Kelly last summer and appended as Exhibit A to the MOA. *Compare* Dkt. # 141-1, *with* Dkt. # 121-1 (Ex. A). In turn, Defendants have picked and chosen what parts of DOI's instructions to honor. *See* Dkt. # 145, ¶¶3-4.

D. Defendants Flout Federal Authority; Accelerate Their Scheme to Defraud Plaintiffs.

Even before PDAS Tahsuda's interim recognition decision of March 9, 2018, Defendants denied Plaintiffs the right "to receive the benefits of Tribal membership equally with all other Tribal members" as affirmed by the MOA. Dkt. ## 72; 121-1, ¶E; 134 at 1-2; 135-1; 143-4. From at least August 2017, to December 24, 2017, to March 5, 2018, Defendants continued to not only deny Plaintiffs equal protection in violation of the MOA, but also to further defraud them of money and property—federally funded health care benefits in particular. *Id.*

After March 9, 2018, Defendants have doubled down. They continue to deny Councilwoman Tageant her Tribal Council seat. Declaration of Carmen Tageant ("Tageant Decl."), ¶2. Seeking to have it both ways, Kelly Defendants advise this Court that they "dispute the validity of Mr. Tahsuda's inclusion of Ms. Tageant as a current Council member," but proclaim that he "affirmed the validity of the Nooksack Tribal Council as the governing body of the Nooksack Tribe." Dkt. # 145, ¶¶3-4. On the ground in Deming, Defendants Kelly and Katrice Rodriguez keep the doors of the Tribal Council and Election Office closed to her—quite literally, with the purported Police Chief's violent help—while Defendant Dodge holds the doors of the Tribal Courthouse closed to her. Dkt. # 134-4; Tageant Decl., ¶¶3-8, Ex. A; Declaration of Gabriel S. Galanda ("Galanda Decl."), Ex. A. Defendants do so despite PDAS Tahsuda's clear instruction—like prior DOI or BIA directives dating back to October 2016—that she be seated at

GALANDA BROADMAN PLLC
8606 35th Ave., NE, Suite L1
Mailing: PO Box 15146
Seattle, Washington 98115
(206) 557-7509

the Nooksack Tribal Council table. Dkt. ## 74-5 at 1; 136-1 (Sept. 7, 2017: "Within seven days, reinstate Councilmember Tageant, and ensure her full access to Council meetings.").

Even more germane here, Kelly Defendants also deny Plaintiffs and other members the right to run for office, and to vote, in the Regular Election, despite PDAS Tahsuda's directives to the contrary. Dkt. ## 141-1; # 139-1, at 1. Eligible candidates have been told, "your enrollment status is in question," and thus been disqualified from running. Dkt. # 143-2. Qualified voters have been told: "I can't give you verification because you are disenrolled," and thus been denied ballots. Dkt. # 143-4; Galanda Decl., Exs. B-N. Kelly Defendants have made it plain to Plaintiffs: "we are unable to provide you any and all services until further notice." Dkt. # 143-3, ¶3; Declaration of Michelle Roberts, Ex. D.

Notwithstanding *numerous* federal statutes and tribal judicial decisions that still enjoin Defendants from disenrolling Plaintiffs[4]—all of which laws were affirmed by PDAS Lawrence

[4] *St. Germain v. Acting N.W. Reg'l Dir.*, 17 IBIA No.16-022 (Bd. of Indian App. 2016) (Appealing "whether the Superintendent and Regional Director approved the Tribe's proposed amend to Title 63 in accordance with the administrative rules, procedures, and laws that direct BIA decision making."); 43 C.F.R. § 4.314(a) (2004) ("No decision of an administrative law judge, Indian probate judge, or BIA official that at the time of its rendition is subject to appeal to the Board, will be considered final . . . ."); 25 C.F.R. § 2.6(a) (1989) ("No decision, which at the time of its rendition is subject to appeal to a superior authority in the Department, shall be considered final . . . ."); 25 C.F.R. § 2.6(b) (1989) ("Decisions made by officials of the Bureau of Indian Affairs shall be effective when the time for filing a notice of appeal has expired and no notice of appeal has been filed."); Order at 2, *Michelle Roberts, et al., v. Robert Kelly, et al.*, No. 2013-CI-CL-003 and *Belmont, et al, v. Kelly, et al.*, No. 2014-CI-CL-007, (Nooksack Tribal Ct. Feb. 26, 2015) ("the Parties shall maintain the status quo . . . until a decision approving 19 20 Title 63 becomes final for the Department of the Interior pursuant to 25 C.F.R. § 2.6."), available at https://turtletalk.files.wordpress.com/2015/02/order.pdf; *see also* Opinion at 9, *Michelle Roberts, et al., v. Robert Kelly, et al.*, No. 2013- CI-CL-003 (Nooksack Tribal App. Ct. Mar. 18, 2014) ("[T]hese procedures were not properly adopted in accordance with the strict requirements of the Nooksack Constitution, and any procedural rules governing disenrollment proceedings must be adopted by ordinance and the ordinance approved by the Secretary of the Interior as provided for in the Nooksack Constitution."), available at https://turtletalk.files.wordpress.com/2014/03/roberts-v-kelly-coa-opinion.pdf; Decision and Order Granting Plaintiffs' Motion for Preliminary Injunction, *Belmont et al, v. Kelly, et al.*, No. 214-CI-CL-007 (Nooksack Tribal Ct. June 12, 2014) (granting Plaintiff's motion for preliminary injunction holding "[t]his approach appears to be an attempt to circumvent the very clear holdings of the Court of Appeals that disenrollment procedures . . . must be approved by the Secretary of the Interior . . . ."), available at https://turtletalk.files.wordpress.com/2014/06/belmont-v-kelly-case-no-2014-ci-cl-007-decision-and-order- granting-plaintiffs-motion-for-preliminary-injunction.pdf; Order Enjoining Disenrollment Proceedings, *Michelle Roberts, et al., v. Robert Kelly, et al*., No. 2013-CI-CL-003 (Nooksack Tribal Ct. Mar. 31, 2014) (Court "hereby issues a permanent injunction against the Defendants enjoining them from undertaking disenrollment proceedings . . . ."),

GALANDA BROADMAN PLLC
8606 35th Ave., NE, Suite L1
Mailing: PO Box 15146
Seattle, Washington 98115
(206) 557-7509

Roberts[5]—Kelly Defendants have re-disenrolled Plaintiffs in furtherance of their scheme to defraud them of money and property, including their homes. *See id*.; Dkt. ## 74-16; 74-5; 74-17.

Defendants' "remarkable" behavior has never been sanctioned by the United States—quite the opposite—nor should this Court tolerate it per Rules 62.1 and 60(b).

II. ARGUMENT

A. Defendants' Motion is Improper Without Any Relief From Stay.

The Court has not lifted its latest stay. Dkt. # 140. Defendants should have either sought relief from the Court's stay to file their Rule 62.1 motion, or waited until it expired on April 30, 2018. On this basis alone, the Court should deny the Motion. If, however, the Court is inclined to consider the Motion, irrespective of the stay and the Ninth Circuit's pending decision, Plaintiffs will seek leave to amend their complaint to detail Defendants' fraudulent activities since Plaintiffs' last amendment on May 3, 2017—most notably vote bribery and ballot stuffing, via mail and wire fraud predicate acts,[6] in the Special Election. Dkt. ## 64; 143-1.

B. The Court Should Deny Defendants' Rule 62.1 Motion.

Defendants argue "this Court should issue an indicative ruling to dismiss on jurisdictional grounds." Dkt. # 144 at 3. Having now abandoned tribal sovereign immunity argument, Defendants resort to an "intra-tribal dispute"-justiciability claim, contending that *parts of* PDAS

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available at https://turtletalk.files.wordpress.com/2014/04/roberts-v-kelly-order-permanently-enjoining-disenrollment-proceedings.pdf; Second Order Granting Request to Join April 15, 2016, Motion and Be Subject to June 28, 2016, Order, *Belmont, et al, v. Kelly, et al*., No. 2014-CI-CL-007 (Nooksack Tribal App. Ct. Sept. 28, 2016) (order granting Formal Indications to 127 more plaintiffs regarding Nooksack Tribal Court June 28, Order); Order Granting Requests to Join April 15, 2016, Motion and Be Subject to June 28, 2016, Order, *Belmont, et al, v. Kelly, et al.*, No. 2014-CI-CL-007 (Nooksack Tribal App. Ct. Sept. 21, 2016) (order granting Formal Indications to 17 plaintiffs regarding Nooksack Tribal Court June 28, 2016 Order).

[5] Per the MOA, it was understood that Defendant Kelly "agree[d] to abide by the decisions of the Tribal Court and Tribal Court of Appeals finding that persons who were the target of disenrollment proceedings remain members of the Nooksack Indian Tribe, entitled to all the benefits of Tribal membership," such as the Tribal Court and Court of Appeals injunctions cited at n.5. Galanda Decl., Ex. O. But he and his fellow RICO Defendants never did, and they never had any intention of doing so. *See e.g.* Dkt. ## 72; 121-1, ¶E; 134 at 1-2; 135-1; 143-4.

[6] *See* Galanda Decl., Exs. B-N.

GALANDA BROADMAN PLLC
8606 35th Ave., NE, Suite L1
Mailing: PO Box 15146
Seattle, Washington 98115
(206) 557-7509

Tahsuda's interim recognition decision of March 9, 2018, divest this Court of jurisdiction over Plaintiffs' RICO claims concerning Defendants' past conduct. *Id.* at 2-3.

This Court may dispose of a Rule 62.1 motion by deferring considering; denying the motion; stating that it would grant the motion upon a remand for that purpose; or explaining that the motion raises a substantial issue. Fed. R. Civ. P. 62.1(a). Here, this Court should deny the motion for two reasons: (1) PDAS Tahsuda's interim recognition decision does not affect this Court's federal question jurisdiction over Plaintiffs' RICO claims; and (2) the Ninth Circuit, at Defendant-Appellees' prompting, is now poised to decide that very same issue.

First, PDAS Tahsuda's decision does not divest this Court of jurisdiction: it does not retroactively ratify Defendants' fraudulent behavior; nor does it reverse or invalidate PDAS Roberts' determinations that Kelly Defendants lacked authority when they defrauded Plaintiffs.[7] Dkt. ## 74-16; 74-5; 74-17. In fact, PDAS Tahsuda has twice affirmed PDAS Roberts' determinations. Dkt. # 141-1 ("qualified individuals" are entitled to run in the Regular Election); Dkt. # 139-1, at 1 ("all those purportedly disenrolled members . . . are entitled to vote.").

Pivotally, RICO violations stem from **past conduct**. *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989). "It is well settled that a defendant's voluntary cessation of a challenged practices does not deprive a federal court of its power to determine the legality of the practice." *Friends of the Earth, Inc. v. Laidlaw Envir. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (internal quotations omitted). "[I]f it did, the courts would be compelled to leave 'the defendant free to return to his old ways.'" *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 n.10

[7] This Court also did not "determine[] the DOI decisions were invalid" in *Nooksack Indian Tribe v. Zinke*, No. 17-0219 (W.D. Wash.), which the Court indicated might have caused it to lose jurisdiction here, and the "Nooksack Tribe" did not appeal the dismissal of its suit challenging PDAS Roberts' three determinations. *See* Dkt. # 62 at 11.

GALANDA BROADMAN PLLC
8606 35th Ave., NE, Suite L1
Mailing: PO Box 15146
Seattle, Washington 98115
(206) 557-7509

(1982). PDAS Tahsuda's March 9, 2018, decision is immaterial to Plaintiffs' RICO claims for past fraud.

Second, Kelly Defendants' "intra-tribal dispute" justiciability challenge is before the Ninth Circuit. They shoe-horned it into their sovereign immunity appeal, and furthered their cause by bringing PDAS Tahsuda's decision before the Panel through their improper Notice. *Rabang v. Kelly*, No. 17-35427 (9th Cir. Mar. 21, 2018), Dkt. # 33. It would be imprudent for this Court "to issue an indicative ruling reconsidering the same question being reviewed by the court of appeals" (that is, to the extent the Panel deems the "intra-tribal dispute" inextricably intertwined with the sovereign immunity jurisdictional issue). *Retirement Bd. of Policemen's Annuity and Ben. Fund of City of Chicago v. Bank of New York Mellon*, 297 F.R.D. 218, 221 (S.D.N.Y. 2013). An indicative ruling would "only interrupt[] the appellate process." *Id.* The Court should therefore deny Defendants' Motion, or defer it until the Ninth Circuit rules.

C. The Court Should Indicate Denial Of Defendants' Rule 60(b) Motion.

If this Court is inclined to consider Defendants' Motion, this Court should indicate that it will deny Defendants' Rule 60(b) motion.

1. The Court Should Indicate Rule 60(b)(4) Motion Denial.

Defendants argue that "[b]ecause the DOI and BIA recognize tribal leadership following the Special Election, the Court lacks jurisdiction, the order denying the Kelly Defendants' motion to dismiss is void and must be set aside." Dkt. # 144 at 9.

Under Rule 60(b)(4), this Court may relieve a party from an order if it is void as "so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010). The list

GALANDA BROADMAN PLLC
8606 35th Ave., NE, Suite L1
Mailing: PO Box 15146
Seattle, Washington 98115
(206) 557-7509

of such qualifying "infirmities" is "exceedingly short," reserving Rule 60(b)(4) relief for the exceptional case where even an "arguable basis for jurisdiction" was absent. *Id.*; *see also United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 661-62 (1st Cir. 1990) ("[T]otal want of jurisdiction must be distinguished from an error in the exercise of jurisdiction, and . . . only rare instances of a clear usurpation of power will render a judgment void"); *Kansas City S. Ry. Co. v. Great Lakes Carbon Corp.*, 624 F.2d 822, 825 (8th Cir.), *cert. denied*, 449 U.S. 955 (1980) ("[P]lain usurpation of power occurs when there is a 'total want of jurisdiction' as distinguished from 'an error in the exercise of jurisdiction.'").

Thus, the question before this Court is whether on April 27, 2017, there was any colorable basis for this Court to have asserted jurisdiction and denied Kelly Defendants' motion to dismiss. When this Court issued that order it clearly possessed a "colorable basis" to assert jurisdiction over Plaintiffs' RICO claims based on, at the least, 18 U.S.C. § 1964(c), the U.S. Supreme Court's decision in *Lewis v. Clarke*, 137 S. Ct. 1285 (2017), and PDAS Roberts' three determinations regarding the illegitimacy of the Nooksack Tribal Council. Dkt. ## 74-16; 74-5; 74-17. Defendants have failed to demonstrate that this Court "lacked even an arguable basis for jurisdiction" at the moment when it denied the Kelly Defendants' dismissal motion, as required of them under Rule 60(b)(4). *See Espinosa*, 559 U.S. at 271. This Court should therefore indicate that it would deny Defendants' Rule 60(b)(4) motion.

2. The Court Should Also Indicate Rule 60(b)(5) Motion Denial.

Defendants further argue that this Court should "relieve the Kelly Defendants from the order denying their dismissal o[n] subject matter jurisdiction grounds" under Rule 60(b)(5) because "'it is no longer equitable' to give the judgment prospective application." Motion at 9.

GALANDA BROADMAN PLLC
8606 35th Ave., NE, Suite L1
Mailing: PO Box 15146
Seattle, Washington 98115
(206) 557-7509

Rule 60(b)(5) equitable relief lies is wholly discretionary, *Gilmore v. California*, 220 F.3d 987, 1007 (9th Cir. 2000), and an extraordinary remedy, justified only under "exceptional circumstances." *Maraziti v. Thorpe*, 52 F.3d 252, 254 (9th Cir. 1995).

3. This Court's Order Denying Defendants' Dismissal Motion Has No Prospective Application.

This Court may modify an order under Rule 60(b)(5) only to the extent it has unfair "prospective application." *Twelve John Does v. Dist. of Columbia*, 841 F.2d 1133, 1138 (D.C. Cir. 1988). According to the Ninth Circuit: "Virtually every court order causes at least some reverberations into the future, and has, in that literal sense, some prospective effect . . . . That a court's action has continuing consequences, however, does not necessarily mean that it has 'prospective application' for the purposes of Rule 60(b)(5)." *Maraziti*, 52 F.2d at 254 (internal quotation omitted). Courts generally limit Rule 60(b)(5) relief to injunction orders or consent decrees, which are executory in nature as requiring performance by the parties. *Id.; see, e.g., Agostine v. Felton*, 521 U.S. 203, 215 (1997); *Rufo v. Inmates of the Suffolk Cty. Jail*, 502 U.S. 367 (1992); *Bellevue Assoc. v. United States*, 165 F.3d 1249 (9th Cir. 1999).

Although this Court's denial of Kelly Defendants' dismissal motion has continuing consequences just like any other order, these consequences do not amount to the type of unfair prospective application necessary to justify Rule 60(b)(5) relief, especially because the Court's April 27, 2017, Order is not executory in nature; it does not require any performance by the Parties. *Maraziti*, 52 F.2d at 254. Rule 60(b)(5) is inapposite here.

4. PDAS Tahsuda's Interim Recognition Decision Is Not A Changed Circumstance That Warrants Rule 60(b)(5) Relief.

GALANDA BROADMAN PLLC
8606 35th Ave., NE, Suite L1
Mailing: PO Box 15146
Seattle, Washington 98115
(206) 557-7509

Defendants contend that PDAS Tahsuda's interim recognition decision represents a change in circumstance that justifies relief from the Court's April 27, 2017, Order. Dkt. # 144 at 9. Again, PDAS Tahsuda's decision on March 9, 2018, has no bearing on that Order; it does not negatively affect PDAS Roberts' prior determinations that Defendants behaved fraudulently. Dkt. ## 141-1; 74-16; 74-5; 141-1; 139-1, at 1. DOI's extension of interim recognition to the Tribal Council simply does not divest this Court of jurisdiction. *See Friends of the Earth*, 528 U.S. at 189. Nor is it the change in circumstance required under Rule 60(b)(4).

5. Defendants' Latest Fraudulent Actions Foreclose Any Equitable Relief.

A party seeking relief under Rule 60(b)(5) must prove equitable circumstances that compel such relief. *Badgley v. Santacroce*, 853 F.2d 50, 54 (2d Cir. 1988). The unclean hands doctrine "closes the door of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief." *Precision Instr. Mfg. Co. v. Auto Maint. Mach. Co.*, 324 U.S. 806, 814 (1945). It requires that those seeking equity have acted fairly and without fraud or deceit as to the controversy at bar. *Johnson v. Yellow Cab Transit Cor.*, 321 U.S. 383, 387 (1944). Defendants' hands are soiled; they are not clean now, and never have been. *See supra*, § I(D); Dkt. ## 132 at 3-10, 136, 142, 143-1. By their most recent fraudulent actions, Defendants have foreclosed equitable relief under Rule 60(b)(5).

D. This Court Should Deny Defendants' Motion Pursuant To Rule 12(h)(3).

Defendants finally argue that "[t]his Court should *sua sponte* update its examination of its jurisdiction, and indicate to the Ninth Circuit that the changed circumstances would cause the Court to dismiss if the Ninth Circuit remanded the claims for that purpose." Motion at 10. As previously noted, however, it would be imprudent for this Court to issue an indicative ruling

GALANDA BROADMAN PLLC
8606 35th Ave., NE, Suite L1
Mailing: PO Box 15146
Seattle, Washington 98115
(206) 557-7509

given the current posture of the Ninth Circuit. *See Griggs*, 459 U.S. at 58-59; *Retirement Bd. of Policemen's Annuity and Ben. Fund of City of Chicago*, 297 F.R.D. at 221.

A proposed Order accompanies this Response.

DATED this 26th day of March, 2018.

GALANDA BROADMAN PLLC

/s/ Gabriel S. Galanda
/s/ Anthony S. Broadman
/s/ Ryan D. Dreveskracht
/s/ Bree R. Black Horse

Gabriel S. Galanda, WSBA #30331
Anthony S. Broadman, WSBA #39508
Ryan D. Dreveskracht, WSBA #42593
Bree R. Black Horse, WSBA #47803
P.O. Box 15416
8606 35th Avenue NE, Suite L1
Seattle, WA 98115
PH: 206-557-7509
FX: 206-299-7690
gabe@galandabroadman.com
anthony@galandabroadman.com
ryan@galandabroadman.com
bree@galandabroadman.com

Attorneys for Plaintiffs