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AUG 27 2018

Galanda Broadman PLLC

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM

MARGRETTY RABANG, and ROBERT
RABANG,

Plaintiffs,

v.

RORY GILLIAND, et al.,

Defendants.

Case No.: 17-2-00163-1

**DECLARATION OF RACHEL B.
SAIMONS IN SUPPORT OF
DEFENDANT CHIEF JUDGE
RAYMOND G. DODGE JR.'S MOTION
TO RE-NOTE MOTION TO DISMISS
AND FOR ORDER OF DISMISSAL**

Without Oral Argument

I, Rachel B. Saimons, hereby declare as follows:

1. I am an Associate with Kilpatrick Townsend & Stockton LLP in Seattle, Washington. My Washington State Bar Association number is 46553. I am co-counsel of record for Defendant Raymond G. Dodge, Jr. in this matter. I have personal knowledge of the facts set forth in this declaration.

2. I am also co-counsel of record for Raymond G. Dodge, Jr. in a related case before the Western District of Washington (Case No. 17-cv-00088-JCC) against Judge Dodge and other defendants, alleging violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO").

3. Each of the exhibits hereto are cited within the Motion to Re-Note Motion to Dismiss and for Order of Dismissal, filed herewith.

1 4. Attached hereto as Exhibit A is a true and correct copy of an Order Staying
2 Proceedings in *Rabang, et al. v. Kelly, et al.* (Case No. 17-cv-00088-JCC), dated October 25,
3 2017.

4 5. Attached hereto as Exhibit B is a true and correct copy of an Order Staying
5 Proceedings in *Rabang, et al. v. Kelly, et al.* (Case No. 17-cv-00088-JCC), dated January 29,
6 2018.

7 6. Attached hereto as Exhibit C is a true and correct copy of a letter from the
8 Department of the Interior's Principal Deputy Assistant Secretary, John Tahsuda, to Robert
9 Kelly, dated March 9, 2018.

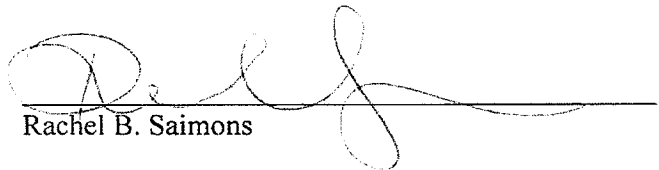
10 7. Attached hereto as Exhibit D is a true and correct copy an Order Dismissing
11 Plaintiffs' Claims in *Rabang, et al. v. Kelly, et al.* (Case No. 17-cv-00088-JCC), dated July 31,
12 2018.

13 8. Attached hereto as Exhibit E is a true and correct copy of a letter from Christy
14 Martin, Judicial Assistant to the Honorable Judge Deborra Garrett, to counsel of record in this
15 underlying litigation, dated August 14, 2018.

16 9. Attached hereto as Exhibit F are true and correct copies of two Nooksack Tribal
17 Council Resolutions: #18-15 – Ratification of Resolution #16-92 (Chief Judge Dodge
18 Appointment), dated May 29, 2018; and #18-36 – Ratification of Phone Polls Dated Between
19 July 19, 2017 and May, 2018.

20 10. I declare, under penalty of perjury under the laws of the State of Washington, that
21 the facts I have provided hereto are true and correct.

22 Executed this 23rd day of August, 2018, at Seattle, Washington.

23
24 
25 Rachel B. Saimons
26
27

1 **CERTIFICATE OF SERVICE**

2 I certify that on August 23, 2018, I caused to have served a true and correct copy of
3 **DECLARATION OF RACHEL SAIMONS IN SUPPORT OF DEFENDANT CHIEF**
4 **JUDGE RAYMOND G. DODGE JR.'S MOTION TO RE-NOTE MOTION TO DISMISS**
5 **AND FOR ORDER OF DISMISSAL**, on the following by the method(s) indicated below:

6 Gabe Galanda _____ E-Service (via the Clerk)
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14 *Attorneys for Plaintiffs*

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17 Nooksack Indian Tribe – Office of Tribal Attorney X U.S. Mail, Postage Prepaid
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19 Deming, WA 98244 _____ Facsimile

20 *Attorneys for Defendants Rory Gilliland,*
21 *Michael Ashby, Andy Garcia, John Does 1-10*

22 DATED this 23rd day of August, 2018.

23 **Kilpatrick Townsend & Stockton LLP**

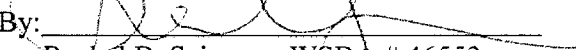
24 By: 
25 Rachel B. Saimons, WSBA # 46553
26 Email: RSaimons@kilpatricktownsend.com
27 *Attorneys for Defendant Chief Judge*
Raymond G. Dodge, Jr.

EXHIBIT A

Declaration of Rachel Saimons in Support of Motion to Re-Note
Motion to Dismiss and for Order of Dismissal

THE 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. C17-0088-JCC

ORDER

This matter comes before the Court on Plaintiffs' motion to compel (Dkt. No. 95), Defendants' motion to quash subpoena *duces tecum* (Dkt. No. 98), motion to strike notices of depositions and for protective order (Dkt. No. 125), and Objector Nooksack Indian Tribe of Washington's motion to quash (Dkt. No. 124). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby ORDERS a stay of proceedings for the reasons explained herein.

I. BACKGROUND

This case arises out of the disenrollment of hundreds of Nooksack tribal members, and the subsequent Department of the Interior (DOI) and Bureau of Indian Affairs (BIA) decisions, also at issue in a related case before this Court.¹ Plaintiffs in this matter are "purportedly

¹ *Nooksack Indian Tribe v. Zinke*, C17-0219-JCC. The Court, on joint motion of the parties, issued a 120-day stay of proceedings on June 27, 2017. (C17-0219-JCC, Dkt. No. 51.)

1 disenrolled” members of the Nooksack Indian Tribe.² (Dkt. No. 64 at 4.) Defendants are
2 members of the Nooksack tribal leadership, tribal court, and other tribal agencies. (*Id.* at 4–6.)
3 The Court has provided a detailed factual background of this case in previous orders. (*See* Dkt.
4 Nos. 62 at 1–6; 63 at 1–2.) The following is a procedural history of the case relevant to the
5 motions pending before the Court.

6 1. Plaintiffs’ Motion to Compel

7 On August 24, 2017, Plaintiffs filed a motion to compel in which they ask the Court to
8 order: (1) Defendant Dodge to produce all responsive documents consistent with Federal Rule of
9 Civil Procedure 34; (2) Defendants Armstrong, Canete, and Kelly Jr. to respond to discovery
10 requests; and (3) Five non-party Nooksack Tribal employees to comply with the Plaintiffs’
11 subpoena *duces tecum*. (Dkt. No. 95 at 2.) Dodge resists discovery on various grounds. (*See*
12 *generally* Dkt. No. 108.) Armstrong, Canete, and Kelly Jr. argue that they do not have to respond
13 to the discovery requests because of their pending interlocutory appeal. (Dkt. No. 102 at 4–5.)

14 2. Defendants’ Motion to Quash Subpoena Duces Tecum

15 On August 24, 2017, the Kelly Defendants³ filed a motion to quash a subpoena *duces*
16 *tecum* served by Plaintiffs on Defendants’ counsel, Schwabe, Williamson & Wyatt, P.C.
17 (“Schwabe”). (Dkt. No. 99 at 7–10.) Plaintiffs sought documents purportedly related to Dodge’s
18 involvement in the Kelly Defendants’ alleged scheme to defraud Plaintiffs. (Dkt. No. 104 at 2–
19 3.) The Kelly Defendants argue that the subpoena sought information that was attorney-client
20 privileged, work product, and otherwise confidential. (Dkt. No. 98 at 3–4.)

21 3. Defendants’ Motion to Strike Depositions and for Protective Order

22 On October 10, 2017, the Kelly Defendants filed a motion to strike notices of deposition
23 for Defendants Canete, Armstrong, and Kelly. (Dkt. No. 125 at 4–6.) They also sought a

24 ² The Court expresses no opinion on the validity of the disenrollments by referring to
25 these Nooksack tribal members as “disenrolled.”

26 ³ The Court uses the term “Kelly Defendants” in this order to refer to all of the
Defendants except Raymond Dodge Jr.

1 protective order precluding discovery against the Kelly Defendants while their interlocutory
2 appeal is pending. (*Id.*) Plaintiffs argue that they are entitled to discovery from the Kelly
3 Defendants pertaining to issues raised in Defendant Dodge’s pending motion for summary
4 judgment. (Dkt. No. 127 at 2.)

5 4. Objector Nooksack Tribe’s Motion to Quash

6 On October 17, 2017, the Nooksack Indian Tribe, appearing as a non-party objector, filed
7 a motion to quash subpoenas delivered by Plaintiffs on three tribal employees seeking
8 depositions and tribal documents. (Dkt. No. 124 at 2.) The Tribe asserts that the employees are
9 insulated from the discovery requests based on the doctrine of tribal sovereign immunity. (*Id.*)
10 Plaintiffs argue they are entitled to this discovery under the Federal Rules. (Dkt. No. 127 at 4–5.)

11 5. Nooksack Tribe’s Entry into a Memorandum of Agreement with DOI

12 On August 28, 2017, Defendant Kelly, in his capacity as Chairman of the Nooksack
13 Tribal Council, entered into a Memorandum of Agreement (MOA) with Michael Black, Acting
14 Assistant Secretary – Indian Affairs, on behalf of DOI. (Dkt. No. 117-1 at 8–12.) The MOA’s
15 purpose is to establish a process under which DOI recognizes the Nooksack Tribal Council as the
16 governing body of the Nooksack Indian Tribe. (*Id.* at 8.) Under the MOA, Kelly is required to
17 conduct a Nooksack Tribal Council election within 120 days of signing the agreement. (*Id.*)

18 The MOA reiterates that DOI only recognizes actions taken by the Nooksack Indian
19 Tribal Council prior to March 24, 2016 when a quorum existed. (*Id.*) It further states that “all
20 tribal members purportedly disenrolled since March 24, 2016 are members of the Nooksack
21 Indian Tribe, entitled to vote in Tribal Elections, to run for Tribal office, and to receive the
22 benefits of Tribal membership equally with all other Tribal members.” (*Id.* at 9–10.) Upon
23 certification of the election results, DOI will issue a letter granting full recognition of the
24 Nooksack Indian Tribal Council as the valid governing body of the Nooksack Tribe. (*Id.* at 8.)

25 On September 19, 2017, the Court issued a *sua sponte* order for briefing regarding the
26 MOA (Dkt. No. 115). The Court ordered the parties to explain the effect of the MOA, if any, on

1 the Court’s continued jurisdiction over the lawsuit, as well as the effect of the MOA, if any, on
2 the pending discovery motions and Defendant Dodge’s pending motion for summary judgment.
3 (*Id.*) Being fully advised of the parties’ briefing, the Court issues the following order.

4 **II. DISCUSSION**

5 **A. The Court’s Subject Matter Jurisdiction**

6 When the Court initially held that it had subject matter jurisdiction over this case, it
7 acknowledged that its “jurisdiction [] is not permanent or inflexible.” (Dkt. No. 62 at 11.) That is
8 because, as a general rule, Indian tribes possess inherent and exclusive power over matters of
9 internal tribal governance. *See Nero v. Cherokee Nation*, 892 F.2d 1457, 1463 (10th Cir. 1989);
10 *Goodface v. Grassrope*, 708 F.2d 335, 339 (8th Cir. 1983). The determination of tribal
11 membership has long been recognized as a matter of internal tribal governance to be determined
12 by tribal authorities. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72, n.32 (1978); *Williams v.*
13 *Gover*, 490 F.3d 785, 790 (9th Cir. 2007).

14 At the heart of Plaintiffs’ RICO claims are questions about their membership in the
15 Nooksack Indian Tribe and the actions taken by tribal leadership to renounce their membership.
16 (Dkt. No. 64 at 7) (Defendants carried out “their scheme to defraud Plaintiffs of money,
17 property, and benefits by depriving Plaintiffs of their Tribal membership . . .”). Resolution of
18 these claims would necessarily require the Court to interpret Nooksack tribal law, and address
19 the underlying enrollment dispute—subjects over which federal courts normally do not have
20 jurisdiction. *See e.g., Runs After v. United States*, 766 F.2d 347, 352 (8th Cir. 1985) (“disputes
21 involving questions of interpretation of the tribal constitution and tribal law [are] not within the
22 jurisdiction of the district court.”)

23 In exercising jurisdiction, the Court drew an analogy to the tribal exhaustion rule, which
24 holds that matters of internal tribal governance should not be adjudicated by federal courts unless
25 and until tribal remedies have been exhausted. (Dkt. No. 62 at 7–8); *see e.g., Grand Canyon*
26 *Skywalk Dev., LLC v. ‘Sa’ Nyu Wa Inc.*, 715 F.3d 1196, 1200 (9th Cir. 2013). The Court relied on

1 a narrow exception to the exhaustion rule, which provides for jurisdiction where “exhaustion
2 would be futile because of the lack of adequate opportunity to challenge the [tribal] court’s
3 jurisdiction.” *Grand Canyon Skywalk*, 715 F.3d at 1200. The Court gave deference to several
4 DOI decisions that refused to recognize decisions made by the Nooksack Tribal Council and
5 Judiciary, and concluded that Plaintiffs lacked an adequate opportunity to challenge the tribal
6 court’s jurisdiction. (Dkt. No. 62 at 11.) At the same time, the Court acknowledged that its
7 exercise of jurisdiction was for “the interim period where the tribal leadership is considered
8 inadequate by the DOI.” (*Id.* at 10–11.) The Court stated that “if the DOI and BIA recognize
9 tribal leadership after new elections, this Court will no longer have jurisdiction and the issues
10 will be resolved internally.” (*Id.* at 11.)

11 The MOA entered between Kelly and DOI initiates a process by which the latter will
12 once again recognize Nooksack Tribal leadership. (Dkt. No. 117-1 at 8.) As a result, the outcome
13 of the upcoming Tribal election and corresponding action by DOI could affect the Court’s
14 continued subject matter jurisdiction over Plaintiffs’ lawsuit. Plaintiffs argue that the MOA does
15 not affect the Court’s jurisdiction to continue hearing motions in the interim period because the
16 Nooksack government and judiciary, as noted by DOI’s prior opinion letters, are still “non-
17 functioning.” (Dkt. No. 116 at 19.) Defendants argue that the Court should dismiss Plaintiffs’
18 claims because the MOA is evidence that DOI has recognized that the Tribe now has a
19 functioning government. (Dkt. No. 120 at 4.) The Court does not adopt either of the courses
20 recommended by the parties. Instead, the Court ORDERS a stay of proceedings, to allow for the
21 completion of the process outlined in the MOA and to await the DOI’s recognition decision.

22 **B. The Court’s Authority to Stay Proceedings**

23 A district court’s power to stay proceedings “is incidental to the power inherent in every
24 court to control disposition of the cases on its docket with economy of time and effort for itself,
25 for counsel, and for litigants.” *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). Courts
26 have the power to stay proceedings *sua sponte*. See *S.E.C. v. Chestman*, 861 F.2d 49, 50 (2d Cir.

1 1988). When “it is efficient for its own docket and the fairest course for the parties [is] a stay of
2 an action before it,” the district court may do so “pending resolution of independent proceedings
3 which bear upon the case.” *Mediterranean Enters., Inc. v. Ssangyong Corp.*, 708 F.2d 1458,
4 1465 (9th Cir. 1983) (internal quotations omitted). In such circumstances, the Court weighs “the
5 competing interests which will be affected by the granting or refusal to grant a stay.” *Lockyer v.*
6 *Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (citing *Landis*, 299 U.S. at 268). These
7 competing interests are: 1) the possible damage that could result from a stay; 2) the hardship that
8 the party seeking the stay may suffer by being required to go forward; and 3) the orderly course
9 of justice. *Lockyer*, 398 F.3d at 1110.

10 1. Possible Damage Resulting from a Stay

11 Since Plaintiffs argue that the process initiated by the MOA will not affect this litigation,
12 the Court considers the possible damage they would face as a result of a stay. A stay will prevent
13 Plaintiffs from receiving much of the discovery they seek from Defendants. (*See generally* Dkt.
14 No. 95.) In addition, Plaintiffs assert that Defendants continue to deprive them of their rights as
15 tribal members. (Dkt. No. 116 at 5.) Nevertheless, the Court finds that a delay in the proceedings
16 would cause only minimal prejudice to the Plaintiffs for two reasons.

17 First, a stay of proceedings would be short in duration. The length of a requested stay
18 must be balanced against the strength of the justification for it. *Yong v. Immigration and*
19 *Naturalization Serv.*, 208 F.3d 1116, 1119 (9th Cir. 2000) (citation omitted). The Tribal Council
20 election is scheduled for December 2, 2017 (Dkt. No. 117-12 at 2.) Under the MOA, the DOI
21 must issue its recognition decision by December 23, 2017. (Dkt. No. 117-1 at 8.) Accordingly, a
22 stay of proceedings will last for less than 90 days in order to allow the DOI to issue its decision.
23 Furthermore, trial in this case is not scheduled until September 2018, which mitigates the
24 prejudice Plaintiffs face by delaying discovery. (Dkt. No. 90.)

25 Second, the MOA specifically includes language that is meant to reaffirm the rights of
26 Plaintiffs as members of the Nooksack Tribe. (Dkt. No. 117-1 at 8–12.) The agreement states

1 that “all tribal members purportedly disenrolled since March 24, 2016 are members of the
2 Nooksack Indian Tribe, entitled to vote in Tribal Elections, to run for Tribal office, and to
3 receive the benefits of Tribal membership equally with all other Tribal members.” (*Id.* at 9–10.)
4 This provision mitigates the harm to Plaintiffs caused by a stay of proceedings while the terms of
5 the MOA are in effect. Therefore, the Court finds a stay would cause minimal damage.

6 2. Possible Hardship or Inequity Resulting from Going Forward

7 Because Defendants would arguably benefit from a stay of proceedings, the Court
8 considers the hardship that might result from requiring them to proceed with the litigation.
9 Defendant Dodge currently has a motion for summary judgment pending before the Court. (Dkt.
10 No. 66.) The Court does not perceive a hardship to him if it were to adjudicate his motion.

11 The Kelly Defendants, however, occupy a much different procedural position than
12 Dodge. The Kelly Defendants have an interlocutory appeal pending with the Ninth Circuit,
13 which challenges this Court’s denial of their motion to dismiss on grounds of sovereign
14 immunity and jurisdiction. (Dkt. No. 69.) In resisting Plaintiffs’ discovery requests, the Kelly
15 Defendants have argued that this Court was divested of jurisdiction by the appeal and therefore
16 cannot order them to provide discovery. (Dkt. No. 125 at 3–4.) Without addressing the merits of
17 their argument, the Court acknowledges that the Kelly Defendants could face some hardship
18 were they compelled to provide discovery while their appeal is pending at the Ninth Circuit.
19 While the Kelly Defendants have sought an interlocutory appeal, Defendant Dodge has a
20 pending motion for summary judgment for which Plaintiffs seek discovery from the Kelly
21 Defendants. (Dkt. No. 102 at 8–9.) For the purposes of discovery, the issues on appeal are
22 difficult to untangle from the ongoing litigation, particularly because the RICO claims against
23 the codefendants are identical. Therefore, the Court does find that there would be some hardship
24 to the Kelly Defendants if they were forced to proceed with the litigation.

25 3. The Orderly Course of Justice

26 Finally, the Court considers “the orderly course of justice measured in terms of the

1 simplifying or complicating of issues, proof, and questions of law which could be expected to
2 result from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (citing *Landis*, 299
3 U.S. at 254-255). The Court’s primary reason for ordering a stay of proceedings is that DOI’s
4 recognition of the Tribal Council after elections could represent an event of jurisdictional
5 significance. *See supra* Part II.A. The DOI’s action will likely have substantial relevance to—or
6 even control—the Court’s subsequent rulings on this litigation. *Id.* Given that the pending tribal
7 election could affect the Court’s continued jurisdiction over this case, a stay of proceedings
8 could conserve both the Court’s and parties’ resources. Pending before the Court are multiple
9 discovery motions and Defendant Dodge’s motion for summary judgment that could be affected
10 or rendered moot by the DOI’s decision. Therefore, the Court finds that a stay of proceedings
11 would be in line with the orderly course of justice.

12 **III. CONCLUSION**

13 For the foregoing reasons, the Court STAYS all proceedings in this case until January 12,
14 2018. No later than January 12, 2018, the parties are ORDERED to file a joint status report that
15 details the results of the Nooksack Tribal Council election and any subsequent action taken by
16 the DOI in accordance with the MOA. The Clerk is DIRECTED to RENOTE Plaintiffs’ motion
17 to compel (Dkt. No. 95), Defendants’ motion to quash subpoena *duces tecum* (Dkt. No. 98),
18 Defendants’ motion to strike notices of depositions and for protective order (Dkt. No. 125), and
19 Objector Nooksack Indian Tribe of Washington’s motion to quash (Dkt. No. 124) to January 26,
20 2018. The Clerk is further DIRECTED to RENOTE Defendant Dodge’s motion for summary
21 judgment to March 9, 2018.

22 DATED this 25th day of October 2017.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE

EXHIBIT B

Declaration of Rachel Saimons in Support of Motion to Re-Note
Motion to Dismiss and for Order of Dismissal

THE 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. C17-0088-JCC

ORDER

This matter comes before the Court on the parties' joint status report filed on January 12, 2018 (Dkt. No. 132). The Court has also reviewed several documents subsequently filed by the parties regarding the status of this case (Dkt. Nos. 136, 137, 138, 139). Having considered these documents, and the relevant record, the Court STAYS all proceedings in this matter until April 30, 2018.

I. BACKGROUND

The Court has provided a detailed factual and procedural background of this case in previous orders that it will not repeat here. (*See* Dkt. Nos. 62 at 1–6, 63 at 1–2, 130 at 1–4.) On August 28, 2017, Defendant Robert Kelly Jr. (“Kelly”), in his capacity as Chairman of the Nooksack Tribal Council, entered into a Memorandum of Agreement (MOA) with Michael Black, Acting Assistant Secretary–Indian Affairs, on behalf of the Department of the Interior (“DOI”). (Dkt. No. 117-1 at 8–12.) The MOA’s primary purpose was to establish a process

1 under which DOI would once again recognize the Nooksack Tribal Council as the governing
2 body of the Nooksack Indian Tribe. (*Id.* at 8.) The MOA required Kelly to conduct a Nooksack
3 Tribal Council election within 120 days of signing the agreement. (*Id.*) DOI was to issue a letter
4 granting full recognition of the Nooksack Tribal Council after its review of the certified election
5 results, the final resolution of any challenges to those results, and the endorsement or non-
6 endorsement of the results by the Director of the Bureau of Indian Affairs' (BIA) Pacific
7 Northwest Region. (*Id.* at 9.)¹

8 On October 25, 2017, the Court stayed all proceedings in this case until January 12, 2018.
9 (Dkt. No. 130.) The Court anticipated that DOI would render its recognition determination, or
10 withhold such recognition, shortly after the 120-day deadline established in the MOA to conduct
11 the election—approximately the beginning of January. (Dkt. Nos. 132, 139-1.)

12 The Nooksack Tribe's general election was held on December 2, 2017, and the Election
13 Board certified the results on December 8, 2017. (Dkt. No. 132 at 2.) As of January 16, 2018, the
14 election results are still being reviewed by BIA's Regional Director. (Dkt. No. 139-1 at 2.) As a
15 result, DOI has extended the rights and obligations outlined in the MOA until it renders a final
16 determination regarding the validity of the 2017 general election, or until March 30, 2018,
17 whichever occurs first. (*Id.* at 3.)

18 **II. DISCUSSION**

19 The Court has repeatedly stated that DOI's recognition of the Nooksack Tribal Council
20 could affect its jurisdiction over this case. (*See* Dkt. Nos. 62 at 11, 130 at 2.) The Court is
21 sensitive to the fact that this case implicates issues of tribal governance and membership—issues
22 that federal courts are typically foreclosed from adjudicating. *See, e.g., Santa Clara Pueblo v.*
23 *Martinez*, 436 U.S. 49, 72, n.32 (1978). The Court's sensitivity is only heightened as additional
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25
26 ¹ Plaintiffs state in the joint status report that they and others have challenged the election
results. (Dkt. No. 132 at 5–6.)

1 tribal elections occur that could influence the shape of this case going forward.²

2 The primary purpose of the stay, then, was to await DOI's post-election decision
3 regarding recognition. (Dkt. No. 130 at 7) ("DOI's recognition of the Tribal Council after
4 elections could represent an event of jurisdictional significance.") Given that DOI is still
5 reviewing the election results, the Court must consider whether it is appropriate to extend the
6 stay or proceed with the case. In the joint status report, Plaintiffs ask the Court to extend the stay
7 by 90 days. (Dkt. No. 132 at 10.) Defendants express no position on the stay, but have previously
8 asked the Court to dismiss the Plaintiffs' claims because the MOA represented sufficient
9 recognition of the Nooksack Tribal Government. (Dkt. No. 120 at 4.)

10 The reasons for the initial stay persist. While DOI has not issued a recognition decision,
11 its decision appears forthcoming. (See Dkt. No. 139-1 at 2) (DOI extended interim recognition as
12 provided in the MOA until no later than March 30, 2018). The Court concludes that extending
13 the stay will not prejudice the parties. A 90-day extension is short in duration, and the Court can
14 amend its case scheduling order to avoid harsh or impractical deadlines once the litigation
15 proceeds. In addition, DOI has reiterated that "all those purportedly disenrolled members since
16 March 24, 2016, are entitled to vote in Tribal elections." (*Id.*) This reaffirmation of rights
17 mitigates the prejudice to Plaintiffs by delaying their lawsuit.

18 A stay of proceedings will avoid piecemeal litigation. Defendant Raymond Dodge has
19 filed a motion for summary judgment with the Court, and the Kelly Defendants³ have an
20 interlocutory appeal pending at the Ninth Circuit.⁴ (Dkt. Nos. 66, 69.) There are several
21 discovery disputes pending with the Court that need to be resolved before ruling on Dodge's

22 ² In addition to the 2017 general election currently under review, a separate Tribal
23 Council election is scheduled for March 17, 2018. (Dkt. No. 139-1 at 2.) Plaintiffs state that if
24 the stay were lifted they would seek leave to amend their complaint to include additional
25 allegations against Defendants arising from their conduct related to the 2017 election. (Dkt. No.
26 132 at 10.)

³ The Court uses "Kelly Defendants" to refer to all Defendants except Raymond Dodge.

⁴ Oral argument is scheduled for March 9, 2018. (Dkt. No. 132 at 10.)

1 motion for summary judgment; however, complete resolution of those disputes is difficult while
2 the Kelly Defendant's interlocutory appeal is pending. (See Dkt. Nos. 95, 98, 124, 125.) As the
3 Court noted in its previous order granting the stay, "for the purposes of discovery, the issues on
4 appeal are difficult to untangle from the ongoing litigation, particularly because the RICO claims
5 against the codefendants are identical." (Dkt. No. 130 at 7.)

6 Finally, given that DOI's recognition decision could affect the Court's continued
7 jurisdiction over this case, a stay will conserve resources. The multiple discovery motions and
8 Defendant Dodge's motion for summary judgment could be influenced or rendered moot by the
9 DOI's decision. Therefore, the Court finds that a 90-day extension of the stay "is efficient for its
10 own docket and the fairest course for the parties." *Mediterranean Enters., Inc. v. Ssanyong*
11 *Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983) (internal quotations omitted).

12 **III. CONCLUSION**

13 For the foregoing reasons, the Court STAYS all proceedings in this case until April 30,
14 2018. The parties are ORDERED to file a joint status report that notifies the Court of any action
15 regarding DOI's issuance of a recognition decision pursuant to the MOA or the status of that
16 decision. The Clerk is DIRECTED to RENOTE Plaintiffs' motion to compel (Dkt. No. 95),
17 Defendants' motion to quash subpoena *duces tecum* (Dkt. No. 98), Defendants' motion to strike
18 notices of depositions and for protective order (Dkt. No. 125), and Objector Nooksack Indian
19 Tribe of Washington's motion to quash (Dkt. No. 124) to April 30, 2018. The Clerk is further
20 DIRECTED to RENOTE Defendant Dodge's motion for summary judgment to June 15, 2018.
21 The Court will issue a subsequent minute order that amends the scheduling order in this case.

22 DATED this 26th day of January 2017.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE

EXHIBIT C

Declaration of Rachel Saimons in Support of Motion to Re-Note
Motion to Dismiss and for Order of Dismissal



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 09 2018

The Honorable Robert Kelly
Chairman, Nooksack Tribal Council
P.O. Box 157
Deming, Washington 98244

Dear Chairman Kelly:

Pursuant to the Memorandum of Agreement between you and the Acting Assistant Secretary – Indian Affairs (Acting Assistant Secretary), endorsed by the Acting Assistant Secretary on August 25, 2017, the Nooksack Tribe of Indians (Tribe) conducted a special election which concluded on December 2, 2017 (Special Election), to fill four seats on the Tribe’s tribal council (Tribal Council). The Tribe’s Election Board certified the results of the Special Election on December 8, 2017. The Regional Director of the Northwest Region of the Bureau of Indian Affairs informed me, by memorandum dated March 7, 2018, that the Bureau of Indian Affairs has not identified any reason to reject the validity of the Special Election.

Therefore, consistent with commitments made by the Acting Assistant Secretary in the Memorandum of Agreement referenced above, I hereby recognize the validity of the Tribal Council comprised of the four Tribal Council members elected in 2014 and the four Tribal Council members elected in the Special Election:

| | |
|--------------------------|---------------|
| Robert Kelly | Chairman |
| Richard “Rick” D. George | Vice-Chairman |
| Agripina “Abbie” Smith | Treasurer |
| Nadene Rapada | Secretary |
| Robert “Bob” Solomon | Position A |
| Carmen Tageant | Position B |
| Roy Bailey | Position C |
| Katherine Rose Romero | Position D |

Recognition of the Tribal Council comprised of the above-listed members shall extend until the results for the general election originally scheduled for March 17, 2018, can be certified. The Bureau of Indian Affairs expects that such election will be scheduled and candidate packets made available to qualified individuals as soon as practicable. I look forward to working with the Nooksack Tribe in the future.

Sincerely,

John Tahsuda
Principal Deputy Assistant Secretary – Indian Affairs
Exercising the Authority of the Assistant Secretary –
Indian Affairs

EXHIBIT D

Declaration of Rachel Saimons in Support of Motion to Re-Note
Motion to Dismiss and for Order of Dismissal

THE 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. C17-0088-JCC

ORDER

This matter comes before the Court on Plaintiffs' response to the Court's order to show cause (Dkt. No. 159) and Defendants' responses¹ (Dkt. Nos. 161, 164). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby DISMISSES Plaintiffs' complaint without prejudice and without leave to amend for the reasons explained herein.

I. BACKGROUND

This case arises out of the disenrollment of hundreds of members of the Nooksack Indian Tribe and subsequent Department of the Interior ("DOI") and Bureau of Indian Affairs ("BIA") decisions regarding the federal government's recognition of the Nooksack Tribal Council. The

¹ Defendants Kelly, George, Smith, Solomon, Johnson, Canete, King George, Romero, Edwards, and Armstrong ("Kelly Defendants") filed a consolidated response (Dkt. No. 161). Defendant Raymond Dodge Jr. ("Dodge") filed a separate response. (Dkt. No. 164.)

1 Court has provided a detailed factual background of this case in prior orders. (*See* Dkt. Nos. 62 at
2 1–6, 63 at 1–2, 130 at 1–4.) What follows is the relevant factual and procedural background
3 leading to the Court’s present decision.

4 Plaintiffs in this matter are “purportedly disenrolled” members of the Nooksack Indian
5 Tribe.² (Dkt. No. 64 at 4.) Defendants are current and former members of the Nooksack Indian
6 Tribal Council and other figures within the tribal government. (*Id.* at 4–6.) Plaintiffs bring suit
7 against Defendants for alleged violations of the federal Racketeer Influenced and Corrupt
8 Organizations Act, 18 U.S.C. § 1964 (“RICO”). (*Id.* at 1.) Plaintiffs allege that Defendants
9 abused their positions within the tribal government to carry out a scheme to defraud them of
10 money, property, and benefits “by depriving [them] of their tribal membership.” (*Id.* at 7.) To
11 carry out this scheme, Plaintiffs allege that Defendants, among other things, illegally postponed
12 elections, took legislative action through the Tribal Council without a required quorum, and
13 actively prevented Plaintiffs and their attorneys from challenging Defendants’ actions in the
14 Nooksack Tribal Court. (*See generally* Dkt. No. 64.) In response to these actions, the DOI issued
15 a series of decisions declaring that it would not recognize the legislative or judicial actions taken
16 by the Tribe until a special election was held in accordance with tribal law. (*Id.* at 17–22.)

17 The Court previously denied the Kelly Defendants’ motion to dismiss Plaintiffs’
18 complaint for lack of subject matter jurisdiction and on sovereign immunity grounds. (Dkt. No.
19 63.) Notwithstanding the Kelly Defendants’ characterization of Plaintiffs’ claims as a non-
20 reviewable intra-tribal dispute, the Court ruled that it had subject matter jurisdiction over the
21 case during the period that DOI refused to recognize the actions taken by the Nooksack Tribal
22 Council. (*Id.* at 11.) The Kelly Defendants timely filed an interlocutory appeal challenging the
23 Court’s decision. (Dkt. No. 69); *Rabang v. Kelly*, No. 17-35427 (9th Cir. 2018).

24 On August 28, 2017, Defendant Kelly, in his capacity as Chairman of the Nooksack
25

26 ² As it has done throughout this case, the Court expresses no opinion on the validity of
the disenrollments by referring to these Nooksack tribal members as “disenrolled.”

1 Tribal Council, entered into a Memorandum of Agreement (“MOA”) with the Acting Assistant
2 Secretary – Indian Affairs, on behalf of the DOI. (Dkt. No. 117-1 at 8–12.) Under the MOA, the
3 DOI agreed to recognize the Nooksack Tribal Council as the governing body of the Nooksack
4 Tribe, if the Tribe conducted a special election within a specified period. (*Id.* at 8.) In light of the
5 MOA, the Court ordered a stay of proceedings, as the DOI’s recognition of the Tribal Council
6 could represent an event of “jurisdictional significance.” (Dkt. No. 130 at 8.)

7 Since the Court entered its stay, the Nooksack Tribe has conducted two elections. On
8 December 2, 2017, the Tribe held a special election to fill four seats on the Tribal Council. (Dkt.
9 No. 145-1.) On March 9, 2018, the DOI concluded that the election results were valid and,
10 pursuant to the MOA, once again recognized the Tribal Council. (*Id.*; Dkt. No. 162-2 at 2–6.) On
11 May 5, 2018, the Tribe held a general election to select a Chairman and fill three seats on the
12 Tribal Council. (Dkt. No. 162-4 at 2.) On June 11, 2018, the DOI’s Principal Deputy Assistant
13 Secretary – Indian Affairs, wrote a letter to the Tribe’s new Chairman acknowledging his
14 election and the election of the new Tribal Council members. (Dkt. No. 160-1 at 2.)

15 Following the DOI’s recognition decision, the Kelly Defendants asked the Court to issue
16 an indicative ruling to the Ninth Circuit stating that if the Court of Appeals remanded the
17 Defendants’ interlocutory appeal, this Court would dismiss the case for lack of subject matter
18 jurisdiction. (Dkt. No. 144 at 2.) The Court denied Defendants’ motion, reasoning that the Court
19 of Appeals was poised to render a decision on that very issue. (Dkt. No. 153 at 5.) In response,
20 the Kelly Defendants filed a voluntarily dismissal of their interlocutory appeal, which the Ninth
21 Circuit granted. (Dkt. No. 157); *See also Rabang v. Kelly*, No. 17-35427, Dkt. No. 36 (9th Cir.
22 2018).

23 The Court lifted its stay and ordered Plaintiffs to show cause why their complaint should
24 not be dismissed for lack of subject matter jurisdiction pursuant to the DOI’s recognition
25 decision and the Court’s prior rulings. (Dkt. No. 156.) Plaintiffs filed a response (Dkt. No. 161)
26 and both the Kelly Defendants and Defendant Dodge submitted an answer (Dkt. Nos. 161, 164).

1 **II. DISCUSSION**

2 From the outset, the Court has made clear that its jurisdiction over this case “is not
3 permanent or inflexible.” (Dkt. No. 63 at 11.) In exercising jurisdiction, the Court drew an
4 analogy to the tribal exhaustion rule, which holds that matters of internal tribal governance
5 should not be adjudicated by federal courts unless and until tribal remedies have been exhausted.
6 (*Id.* at 7–8); *see Grand Canyon Skywalk Dev., LLC v. ‘Sa’ Nyu Wa Inc.*, 715 F.3d 1196, 1200
7 (9th Cir. 2013). The Court relied on a narrow exception to the exhaustion rule, which provides
8 for jurisdiction where “exhaustion would be futile because of the lack of adequate opportunity to
9 challenge the [tribal] court’s jurisdiction.” *Grand Canyon Skywalk*, 715 F.3d at 1200.

10 The Court gave deference to the DOI decisions that refused to recognize actions taken by
11 the Nooksack Tribal Council and Court, and concluded that Plaintiffs lacked an adequate
12 opportunity to challenge the Tribal Court’s jurisdiction. (Dkt. No. 63 at 11.) At the same time,
13 the Court acknowledged that its exercise of jurisdiction was for “the interim period where the
14 tribal leadership is considered inadequate by the DOI.” (*Id.* at 10–11); *See Attorney’s Process &*
15 *Investigation Servs., Inc. v. Sac & Fox Tribe of Mississippi in Iowa*, 609 F.3d 927, 943 (8th Cir.
16 2010) (BIA’s recognition decision between two competing tribal factions is made on an “interim
17 basis” and once “the dispute is resolved through internal tribal mechanisms, the BIA must
18 recognize the tribal leadership embraced by the tribe itself.”)

19 The Court previously stated that “if the DOI and BIA recognize tribal leadership after
20 new elections, this Court will no longer have jurisdiction and the issues will be resolved
21 internally.” (Dkt. No. 63 at 11.) These circumstances have come to pass. The DOI recognized the
22 Nooksack Tribal Council as the Tribe’s governing body, following the agency’s validation of the
23 December 2017 special election. (Dkt. No. 145-1.) The Court’s original basis for exercising
24 jurisdiction under an exception to the tribal exhaustion rule no longer exists.

25 The Court concludes that it lacks subject matter jurisdiction over Plaintiffs’ claims. In
26 general, Indian tribes possess inherent and exclusive power over matters of internal tribal

1 governance. *See Nero v. Cherokee Nation*, 892 F.2d 1457, 1463 (10th Cir. 1989); *Goodface v.*
2 *Grassrope*, 708 F.2d 335, 339 (8th Cir. 1983). The determination of tribal membership has long
3 been recognized as a matter of internal tribal governance to be determined by tribal authorities.
4 *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72, n.32 (1978) (holding that tribes are immune
5 from federal court jurisdiction in disputes regarding challenges to tribal membership); *Williams*
6 *v. Gover*, 490 F.3d 785, 790 (9th Cir. 2007) (“[the Tribe] had the power to squeeze the plaintiffs
7 out, because it has the power to define its own membership. It did not need the BIA’s permission
8 and did not ask for it . . .”).

9 At the heart of Plaintiffs’ RICO claims is a dispute about their membership in the
10 Nooksack Indian Tribe and the actions taken by tribal leadership to renounce their membership.
11 (Dkt. No. 64 at 7) (Defendants carried out “their scheme to defraud Plaintiffs of money,
12 property, and benefits by depriving Plaintiffs of their Tribal membership . . .”). While Plaintiffs
13 are correct that federal courts have jurisdiction over RICO claims, they refuse to acknowledge
14 that resolution of their claims—whether on summary judgment or at a jury trial—would
15 ultimately require the Court to render a decision about Plaintiffs’ enrollment status. (Dkt. No. 48
16 at 3–4.) Plaintiffs cannot eliminate this inherent issue just by bringing their challenge as a civil
17 RICO action. *See In re: Sac & Fox Tribe of the Miss. In Iowa/Meskwaki Casino Litig.*, 340 F.3d
18 749, 767 (8th Cir. 2003).

19 To resolve the enrollment dispute underlying Plaintiffs’ claims, the Court would also
20 have to interpret and make rulings regarding Nooksack Tribal law. The parties strenuously
21 dispute whether Defendants’ actions were taken in accordance with Tribal law and the Nooksack
22 Constitution. (*Compare* Dkt. No. 34 at 12–13, *with* Dkt. No. 48 at 3–4.) To resolve these
23 disputes, the Court would necessarily have to make rulings on tribal law that go beyond the
24 scope of a district court’s jurisdiction. *See, e.g., Runs After v. United States*, 766 F.2d 347, 352
25 (8th Cir. 1985) (“disputes involving questions of interpretation of the tribal constitution and
26 tribal law [are] not within the jurisdiction of the district court.”)

1 The Court cannot avoid interpreting tribal law simply by relying on prior decisions by the
2 DOI and Nooksack Tribal Court of Appeals. While the Court previously gave deference to
3 DOI's opinions about the Tribal Council's actions, such deference was only warranted in regard
4 to DOI's interim recognition decision. *See Cayuga Nation v. Tanner*, 824 F.3d 321, 328 (2d Cir.
5 2016) ("BIA 'has both the authority and responsibility to interpret tribal law when necessary to
6 carry out the government-to-government relationship with the tribe.'") (quoting *United*
7 *Keetoowah Band of Cherokee Indians*, 22 IBIA 75, 80 (1992)). It would be inappropriate,
8 however, for the Court to adjudicate Plaintiffs' claims by using DOI's decisions as authoritative
9 rulings on tribal law. *See Sac & Fox Tribe of Mississippi in Iowa*, 609 F.3d at 943 (whether tribal
10 chairman "was properly removed from office and whether he had general authority to act on
11 behalf of the Tribe in a governmental capacity are pure questions of tribal law, beyond the
12 purview of the federal agencies and the federal courts."))

13 Nor can the Court rely on prior tribal court opinions to resolve the parties' disputes
14 regarding the legitimacy of Defendants' actions. (*See* Dkt. No. 34 at 12–13.) That is particularly
15 true in light of actions taken by the Tribal Council since DOI's recognition decision. (*See* Dkt.
16 No. 152-1) (resolution adopting all of the actions taken by the Chairman and Tribal Council
17 during the period the DOI refused to recognize the Nooksack Tribal Council).

18 Plaintiffs have not provided the Court with sufficient reasons to find that it retains
19 jurisdiction over their claims. Plaintiffs first assert that subject matter jurisdiction is determined
20 at the time a lawsuit is filed. (Dkt. No. 159 at 4.) But the authority Plaintiffs cite in support of
21 their position deals primarily with cases involving diversity jurisdiction. *See, e.g., Freeport-*
22 *McMoRan, Inc. v. K N Energy, Inc.*, 498 U.S. 426, 428 (1991). None of the cases Plaintiffs cite
23 deal with the facts presented by this case. Moreover, Plaintiffs' position is not supported by the
24 directive contained in Federal Rule of Civil Procedure 12(h)(3) that "[i]f the court determines at
25 any time that it lacks subject-matter jurisdiction, the court must dismiss the action."

26 Plaintiffs next assert that the Court retains jurisdiction under the law of the case doctrine.

1 “Under the ‘law of the case’ doctrine, ‘a court is generally precluded from reconsidering an issue
2 that has already been decided by the same court, or a higher court in the identical case.’” *United*
3 *States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997) (quoting *Thomas v. Bible*, 983 F.2d 152,
4 154 (9th Cir. 1993)). Application of this doctrine does not preclude the Court from reconsidering
5 its jurisdiction. In fact, the Court is bound to reconsider its ruling on subject matter jurisdiction
6 based on its prior rulings.³ (Dkt. No. 62 at 11) (“[I]f the DOI and BIA recognize tribal leadership
7 after new elections, this Court will no longer have jurisdiction and the issues will be resolved
8 internally.”). The Court similarly disagrees with Plaintiffs’ argument that the Kelly Defendants
9 are judicially estopped from re-litigating the issue of subject matter jurisdiction because they
10 voluntarily dismissed their interlocutory appeal, which addressed that very issue. (Dkt. No. 159
11 at 5–6.) The Court is *sua sponte* readdressing its jurisdiction based on a change in circumstances
12 and its prior rulings—the Kelly Defendants’ dismissal of their appeal has no bearing on the
13 Court’s inquiry.

14 Plaintiffs finally argue that their RICO claims deal with past fraudulent conduct that is
15 unaffected by the DOI’s recent recognition of the Tribal Council. (*Id.* at 7.) Plaintiffs assert that
16 the DOI’s recognition decision did not undue its previous opinions concluding that the Tribal
17 Council and Tribal Court had acted without authority. (*Id.*) The Court disagrees. The relevant
18 issue for assessing the Court’s jurisdiction is whether the DOI recognizes the Tribal Council as
19 the governing body of the Nooksack Tribe. (*See* Dkt. No. 62 at 11.) In the absence of such
20 recognition, the Court gave deference to the DOI’s opinions and found it had jurisdiction for an
21 interim period. (*Id.*) Pursuant to the MOA and the DOI’s recent recognition decision, the DOI’s
22 past decisions no longer provide a basis for this Court to exercise jurisdiction.

23 _____
24 ³ The Court is also bound by Federal Rule of Civil Procedure 12(h)(3) to reconsider the
25 question of subject matter jurisdiction. *See Leeson v. Transamerica Disability Income Plan*, 671
26 F.3d 969, 976 (9th Cir. 2012) (“federal courts have a continuing independent obligation to
determine whether subject-matter jurisdiction exists”) (citation and internal quotations omitted).

1 Although the Court concludes that it no longer has subject matter jurisdiction over this
2 case, it does not at all think, as Defendants suggest, that “the cloud over the Tribe” has been
3 removed. (Dkt. No. 164 at 2.) Plaintiffs’ allegations against Defendants, which have been well
4 documented in this lawsuit and elsewhere, are highly concerning. Nevertheless, it is for the
5 Nooksack Tribe, not this Court, to resolve Plaintiffs’ claims.

6 **III. CONCLUSION**

7 Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(h)(3), the Court
8 DISMISSES Plaintiffs’ complaint without prejudice and without leave to amend. The Clerk is
9 DIRECTED to close this case.

10 DATED this 31st day of July 2018.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE

EXHIBIT E

Declaration of Rachel Saimons in Support of Motion to Re-Note
Motion to Dismiss and for Order of Dismissal

FILED
COUNTY CLERK

2018 AUG 14 A 10:49

WHATCOM COUNTY
WASHINGTON

Superior Court of the State of Washington

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Judge's Chambers and Courtroom on
2nd floor



Whatcom County Courthouse
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August 14, 2018

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Seattle, WA 98101

RE: RABANG v GILLILAND, et al
Whatcom County Cause No. 17-2-00163-1

Dear Counsel:

Judge Garrett is in receipt of the two Notices of Decision filed July 31st. She appreciates the update, but has asked me to communicate to you that the Court will not take any action unless a party makes a formal motion with notice and an opportunity to respond in the normal course.

Sincerely,

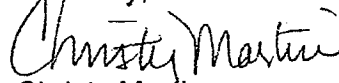
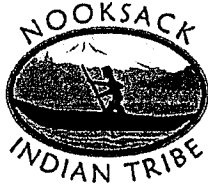

Christy Martin

EXHIBIT F

Declaration of Rachel Saimons in Support of Motion to Re-Note
Motion to Dismiss and for Order of Dismissal



NOOKSACK TRIBAL COUNCIL

4979 Mt. Baker Hwy, Suite G.
PO Box 157
Deming, WA 98244

RESOLUTION #18-15 March 15, 2018

TITLE: RATIFICATION OF RESOLUTION # 16-92 (CHIEF JUDGE DODGE APPOINTMENT)

WHEREAS, the Nooksack Indian Tribe is a party to the Treaty of Point Elliot dated January 22, 1855, 12 Stat. 927, and is a sovereign, federally-recognized Indian Tribe; and

WHEREAS, the Nooksack Tribal Council is the governing body of the Nooksack Indian Tribe in accordance with Article III, Section 1 of its Constitution and Bylaws approved by the Deputy Assistant Secretary of Indian Affairs on September 24, 1973, as amended; and

WHEREAS, the health, safety, welfare, education, economic security, employment and preservation of cultural and natural resources are primary goals and objectives of the Nooksack Indian Tribe; and

WHEREAS, in March 2016, the Tribe had not yet held election for (4) Council positions and consistent with Tribal law four (4) councilpersons continued to hold the positions as "holdovers" pending election;

WHEREAS, while the (4) councilpersons were in holdover status, the Tribal Council passed Resolution #16-92 on July 20, 2016;

WHEREAS, following the passage of Resolution #16-92, the former Acting Assistant Secretary of Indian Affairs ("AS-IA") issued a series of letters refusing to recognize actions by the Tribal Council following March 24, 2016 due to a late election, which conclusions conflicted with Tribal law;

WHEREAS, following issuance of the former Acting AS-IA's letters, the Chairman of the Nooksack Tribal Council and AS-IA entered into a Memorandum of Agreement wherein, upon the conclusion of a Special Election, the AS-IA would permanently recognize Tribal Council;

WHEREAS, on December 8, 2017, the Election Board certified the results of the General Election, on December 9, 2017, the Councilmembers elect were sworn into office, and the Special Election has concluded; and

WHEREAS, as the former AS-IA's series of letters created unnecessary doubt as to the validity of Resolution #16-92, the Tribal Council desires to eliminate all doubt and resolve the issue of

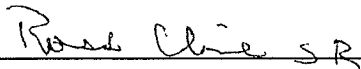
NOW THEREFORE BE IT RESOLVED, that the Tribal Council hereby officially ratifies phone polls dated between July, 2017 and May, 2018 (detailed above); and

BE IT FURTHER RESOLVED, that the Chairman (or other councilperson in his/her absence) is hereby authorized and directed to execute this resolution and any documents connected here within, and the Vice-Chairman (or other councilperson in his/her absence) are authorized and directed to execute the following certification.

CERTIFICATION

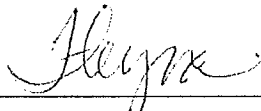
I, the undersigned do hereby certify that the Nooksack Tribal Council is composed of eight (8) members, of which 8 were present, constituting a quorum of a duly called meeting thereof held on this 29 day of May, 2018, and that the above Resolution #18-36 approving the **RATIFICATION OF PHONE POLLS DATED BETWEEN JULY, 2017 AND MAY, 2018** (detailed above) were duly enacted by the Council Members vote of: 7 **FOR**, 0 **OPPOSED**, and 0 **ABSTENTIONS**, and since its approval this resolution has not been altered, rescinded, or amended in any way.

Dated this 29 day of May 2018.

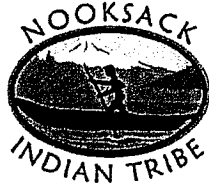


Ross Cline, Sr., Chairman
Nooksack Tribal Council

ATTEST:



Frank Leyva, Secretary
Nooksack Tribal Council



NOOKSACK TRIBAL COUNCIL

4979 Mt. Baker Hwy, Suite G.
PO Box 157
Deming, WA 98244

RESOLUTION #18- 36
May 29, 2018

TITLE: RATIFICATION OF PHONE POLLS DATED BETWEEN JULY 19, 2017 AND MAY, 2018

WHEREAS, the Nooksack Indian Tribe is a party to the Treaty of Point Elliot dated January 22, 1855, 12 Stat. 927, and is a sovereign, federally-recognized Indian Tribe; and

WHEREAS, the Nooksack Tribal Council is the governing body of the Nooksack Indian Tribe in accordance with Article III, Section 1 of its Constitution and Bylaws approved by the Deputy Assistant Secretary of Indian Affairs on September 24, 1973, as amended; and

WHEREAS, the health, safety, welfare, education, economic security, employment and preservation of cultural and natural resources are primary goals and objectives of the Nooksack Indian Tribe; and

WHEREAS, by way of phone polling, Tribal Council tentatively approved:

| Date Polled: | Description: | Department: |
|--------------|--|-------------------|
| 7/19/17 | Authority for the Chairman to Sign the DOI MOA | Council |
| 7/25/17 | Authority for the Chairman to sign the Dentons Contract for the Northwood Matter | Council |
| 8/1/17 | Back to School Checks 2017 | Council |
| 8/1/17 | Graduation Honorariums | Council |
| 8/17/17 | Approval of Head Start to have 2017 Summer School | Education |
| 8/17/17 | Attorney Ryan Mills Contract for ICW | ICW |
| 8/17/17 | Passenger Van Purchase | Health |
| 8/17/17 | Bellaire Charters Contract (Elder Travel) | Social Services |
| 8/17/17 | ATNI Annual Dues and Appointing Delegates | Council |
| 8/17/17 | NCAI Annual Dues and Appointing Delegates | Council |
| 9/8/17 | Promissory Note from the Tribe to Northwood | Council |
| 9/18/17 | Grant Application for the Ecology Combined Clean Water FY2019 Grant | NR |
| 9/18/17 | Contract for Lego Robotics | Health |
| 9/18/17 | 2017 Hunting Regulations | Hunting Committee |
| 9/18/17 | Budget Modification for the Election Fund | Council |
| 9/18/17 | GM Authority to change statutory fees, assessments, fees, penalties and compensation schedules within ordinances | Council |

| | | |
|----------|---|-----------------|
| 9/27/17 | Mt. Baker Roofing Contract | Education |
| 11/17/17 | Remote Medical International Wilderness First Aid Course Agreement | NR |
| 12/6/17 | 2017 Holiday Support | Council |
| 12/7/17 | RT Hawk Contract for Housing Tax Credit Project | Housing |
| 12/14/17 | Nolan Roofing Contract | Housing |
| 1/17/18 | Amendments to Title 62 – Election Ordinance and Bylaws | Council |
| 1/25/18 | Reso #18-1 (PP) Acceptance of the Head Start 2018 Non-Competitive 5 Year Award | Education |
| 1/25/18 | Contract for Pediatric Dentist Linsenmayer | Health |
| 1/25/18 | 2018 Holiday Calendar | HR |
| 1/25/18 | Washington State Land Access Agreement | NR |
| 1/25/18 | Resolution #18-1 2018 Head Start Non Competitive Grant | Education |
| 1/30/18 | Resolution #18-10 Suspension of the 2018 Tribal Council Election | Council |
| 2/9/18 | Marr's Heating Contract | Education |
| 2/9/18 | Amendment to Grant A07AV00183 Fy2017 RPI Funding | NR |
| 2/9/18 | Acceptance of Award of the EPA PPG Grant 2018-2019 | NR |
| 2/9/18 | Contract for ARNP Marlene Bishop | Health |
| 2/16/18 | Capitol Hill Policy Group contract | Council |
| 2/27/18 | Signatory Authority for Housing Director to sign and to submit Compliance Reports | Housing |
| 2/27/18 | Wave Broadband Contract | IT |
| 3/15/18 | Resolution #18-12 Budgets and Expenditures | Council |
| 3/15/18 | Resolution #18-13 Terminal Allocation Agreement | Council |
| 3/15/18 | Resolution #18-14 Housing Conveyances | Council |
| 3/15/18 | Resolution #18-15 Chief Judge Appointment | Council |
| 3/15/18 | Resolution #18-16 Judge Pro Tem Appointment | Council |
| 3/15/18 | Resolution #18-17 New Enrollments #16-1 - #16-34 | Council |
| 3/15/18 | Resolution #18-18 Omnibus | Council |
| 3/15/18 | Resolution #18-19 Tribal Policies | Council |
| 3/15/18 | Resolution #18-20 Terminal Allocation Agreement | Council |
| 3/15/18 | Resolution #18-21 2017-2020 Tribal TANF Plan | Social Services |
| 4/2/18 | Pharmacy & EHR Informatics Amendment 1 | Health |
| 4/2/18 | Bellaire Charters Contract (Elder Travel) | Social Services |
| 4/24/18 | Attorney Shepherd Contract | Council |
| 4/26/18 | Passenger Van Purchase | Education |
| 4/30/18 | Publishing Annual Performance Report 2017 | Housing |
| 4/30/18 | Maxim Contract | Health |
| 4/30/18 | Contract for Rainier Theory | Health |
| 4/30/18 | 2017-2020 Tribal TANF Plan | Social Services |
| | | |