

**IN THE WINNEMUCCA COURT OF INDIAN OFFENSES
FOR THE WINNEMUCCA INDIAN COLONY
WINNEMUCCA, HUMBOLDT COUNTY, NEVADA**

1st MOMENTUM INC. - ALLEN AMBLER)
(MANAGER),; WINNEMUCCA COLONY)
COUNCIL; LINDA AYER, LAURA AMBLER,)
ALLEN AMBLER, JIM AYER,)
ROSEMARY THOMAS, et al.)

Case No.: WIC-CFR-CV-2013-002

Plaintiffs,)

vs.)

THOMAS R. WASSON, JUDY A. ROJO,)
WILFORD CRUTCHER, Jr., WADE BONTA,)
and DOES I-X)

Defendants.)

ORDER

NOW on this 15th day of November, 2017, this matter comes before the Court for disposition proceedings. The Court having reviewed the pleadings of the parties and being advised in the premises, hereby FINDS as follows:

PROCEDURAL HISTORY

1. The instant action was initiated on or about January 7, 2013 in which the Plaintiffs filed a complaint with this Court seeking relief on four claims, to wit: First Claim - Conversion; Second Claim - Declaratory Relief; Third Claim - Injunctive Relief; and Fourth Claim - Unjust Enrichment.

2. That on June 28, 2013, this Court issued an Order in which it denied Plaintiffs' Complaint for Emergency Ex parte Injunctive and Declaratory Relief surrounding an alleged impending election.

3. That the matter set idle until this Court set the case for hearing for January 26, 2017.
4. That the Defendants filed a Request for Continuance on or about December 22, 2016 and the request was sustained with the matter being continued until April 27, 2017.
5. On April 27, 2017, the matter was called for hearing and it was determined there was not proper service upon the plaintiffs. The case was continued until July 27, 2017.
6. On July 27, 2017, the parties appeared and were advised to brief the case regarding disposition. Plaintiffs were to submit their brief on August 27, 2017 and Defendants were to respond by September 27, 2017.
7. The Plaintiffs submitted their brief on August 28, 2017 and same was filed on August 31, 2017.
8. The Defendants submitted their responsive brief on September 25, 2017 and same was filed on September 25, 2017.
9. This Court heard oral supplementation to the briefs on October 26, 2017.

FINDINGS OF FACT

1. The Complaint identifies the Plaintiffs as, Allen Ambler on behalf of himself and doing business as 1st Momentum Inc., Winnemucca Colony Council: Linda Ayer, Laura Amber, Allen Ambler, Jim Ayer and Rosemary Thomas.
2. The Complaint identifies Defendants as Thomas R. Wasson, Judy A. Rojo and Wilford Crutcher, Jr., as well as Does I-X.
3. The Complaint filed herein alleges four issues, two of which have previously been disposed of by an Order of this Court issued on June 28, 2017. The remaining two issues, First Claim - Conversion; and Fourth Claim - Unjust Enrichment survive to be addressed instantler.

4. The Complaint, nor any subsequent pleadings or documents filed herein, specify or otherwise allege damages or sufficient grounds for which Plaintiffs Linda Ayer, Laura Ambler, Allen Ambler, Jim Ayer and Rosemary Thomas in their purported roles as Winnemucca Colony Council members, may be granted relief by this Court as the question of who was the properly authorized Council for the Winnemucca Indian Colony has previously been decided and is now barred by *Res Judicata*. Furthermore, any grievances as a result of that decision are not properly before this Court at this time.

5. That the Defendants, sued in their individual capacities, allege service was not proper and therefore the case should be dismissed pursuant to Federal Rules of Civil Procedure 4(c) and (m).

6. The Court has reviewed the official court record in this matter and finds that service was never effectuated on Wade Bonta or Does I-X and therefore the complaint must be dismissed as to those Defendants as a matter of law.

7. Defendants Thomas Wasson, Judy Rojo and Wilford Crutcher, Jr., have appeared in person on numerous occasions, and/or through counsel, and have not, prior to their final brief, taken any efforts to allege a special appearance; therefore, this Court finds these individuals have actual notice of the complaint filed herein.

8. That the facts alleged in the complaint as to Plaintiff, Allen Ambler on behalf of himself and doing business as 1st Momentum Inc, and against the individual defendants fails to state a claim for which relief may be granted as the complaint provides no reference, nor has any evidence been offered, to make a causal connection to the acts complained of and against the defendants individually herein named.

9. The facts alleged in the complaint stem from allegations of wrongdoing by factions of government and there are no facts to substantiate a claim that any of the defendants were acting outside the scope of their actual or perceived authority as members of the Winnemucca Council.

10. The governing body of the Winnemucca Indian Colony has not waived sovereign immunity, nor has it consented to be sued in this Court with regard to this matter.

DECISION

The underlying circumstances which give rise to this action are part of a long internal dispute which has seen its way through multiple administrative and judicial actions. Most, if not all of the allegations of the Plaintiffs, arose out of the Winnemucca Indian Colony's change of leadership. However, those issues have been litigated in another Court, specifically the United States District Court of Nevada, and will not be re-addressed by this Court.

Two of the four allegations of the complaint have been disposed of previously by an Order of this Court issued on June 28, 2013. The remaining two allegations, conversion and unjust enrichment, are at issue here.

The Defendants argue this Court should dismiss the complaint for lack of proper notice consistent with Rules 4(c) and 4(m) of the Federal Rules of Civil Procedure. While this Court agrees the Plaintiffs did not effectuate proper service under the applicable federal laws, the Court is satisfied that "actual notice" and consistent participation by the Defendants is sufficient to meet the principles of due process.

The United States Supreme Court has consistently held the purpose of notice is to ensure due process is afforded a Defendant. That Court has set forth the general principles for notice: "An elementary and fundamental requirement of due process in any proceeding which is to be

afforded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections....But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met the constitutional requirements are satisfied.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-17.

The Supreme Court has also held that substituted service is adequate if such service meets the requirements of due process. The Court has further held that due process is dependent on whether or not the form of substituted service provided for such cases and employed is reasonably calculated to give the Defendant actual notice of the proceedings and an opportunity to be heard. *McDonald v Mabee*, 243 U.S. 90. In the instant case, Defendants Wasson, Rojo and Crutcher had actual notice of the complaint, their counsel has been presented with a copy of the complaint, have participated in all phases of the case, and have been given substantial opportunity to be heard. In fact, counsel for the parties has filed at least one motion for continuance in this matter and did so without entering a special appearance nor did she raise the issue of service at that time. Further, this Court ordered the Plaintiff to provide an actual copy of the complaint during the tenure of this case and at all times relevant the Defendants indicated actual knowledge of the complaint. This Court finds all requirements of due process as to notice and opportunity to be heard have been met and therefore, **OVERRULES** the motion to dismiss for lack of proper service as it relates to Defendants Wasson, Rojo and Crutcher. This Court does however, **FIND** the complaint was not properly served on Defendants Wade Bonta nor Does I-X and must be dismissed as to these individuals.

Plaintiffs have expended much of their effort in the original complaint to express their dissatisfaction with the outcome of previous court decisions made by another court; however, those issues are not proper for consideration in this matter. The Plaintiffs, in their capacity as previous council members are without standing to pursue litigation against the succeeding council members, regardless of the new officials' status as elected or judicially determined. This Court deems all property belonging to the Winnemucca Indian Colony to be just that - tribal property. Only the properly recognized governing officials may take action in the name of the Winnemucca Indian Colony. Thus, the matter is dismissed as to Plaintiffs: Winnemucca Colony Council; Linda Ayer, Laura Ambler, Allen Ambler, Jim Ayer, and Rosemary Thomas.

The dismissal of other movants for lack of standing leaves only Plaintiff Allen Ambler, on behalf of himself and doing business as 1st Momentum Inc., as the only viable plaintiff to be considered in this case. The dismissal as to all other Defendants for lack of service leaves only Thomas Wasson, Judy A. Rojo and Wilford Crutcher, Jr.


This Court is obligated to consider the allegations of the complaint in the most favorable light on behalf of the moving party. However, a plaintiff's obligation to "provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do. Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaints allegations are true." *Bell Atlantic Corp. v Twombly*, 550 U.S. 544, 545 (2007).

In the instant case, the Plaintiff has made broad and wide-sweeping allegations but has failed to provide plausible grounds that would entitle him to relief on the face of the complaint. The Plaintiff has offered no additional evidence nor provided any testimony that would give this

Court sufficient information to move from a “conceivable allegation to a plausible” claim. *Id* at p. 547. The Plaintiff has failed to provide even the most limited causal connection to the Defendants in their individual capacity, and for this reason Plaintiff’s request for relief is DENIED.

Furthermore, this Court FINDS that the agreement, if any, as alleged to be in existence between 1st Momentum and Allen Ambler was made with the Winnemucca Indian Colony as a federally recognized tribe and any disputes resulting from that agreement should be appropriately alleged against the Winnemucca Indian Colony as a tribe. While the complaint does not name the Winnemucca Indian Colony as a Defendant, the allegations considered in the most favorable light to the Plaintiff would require the tribe be a necessary party. The Court is not aware of the Winnemucca Indian Colony waiving its right to sovereign immunity nor has the Tribe consented to be sued in this Court pursuant to 25 C.F.R. Part 2, Section 11.118(b).

IT IS SO ORDERED.



MARSHA HARLAN, MAGISTRATE

**IN THE WINNEMUCCA COURT OF INDIAN OFFENSES
FOR THE WINNEMUCCA INDIAN COLONY
WINNEMUCCA, HUMBOLDT COUNTY, NEVADA**

MEMBERS OF THE WINNEMUCCA)
INDIAN COLONY: CONNIE ADAMSON,)
ILAH AITKEN, ALLEN AMBLER, AMELIA)
AYER, CAROLYN AYER, LINDA AYER,)
JIM AYER, MYRL AYER, MICHELLE)
COCHRANE, CHARLENE DRESSIER,)
CLORINDA A. GEORGE, LAURA)
HALLOCK, TANIA HAYES THOMAS,)
LOREN LEGGETT, CANDELERIA LEON,)
JERRY LEON, ALICIA LEON, ELANA LOYA,)
ROSEMARY THOMAS, EUGENE THOMAS,)
VIVIAN LEYVA-WALTERS, et al.)

Case No.: WIC-CFR-CV 2013-006

Plaintiffs,)

vs.)

INTERIM COUNCIL; THOMAS R. WASSON,)
CHAIRMAN, JUDY ROJO, MISTY ROJO,)
KATHERINE HASBROUCK, ERIC MAGIERA,)

ELECTION COMMITTEE, CHAIRWOMAN)
JUDY ROJO, et al.)

Defendants.)

ORDER

NOW on this 15th day of November, 2017, this matter comes before the Court for disposition proceedings. The Court having reviewed the pleadings of the parties and being fully advised in the premises, hereby FINDS as follows:

PROCEDURAL HISTORY

1. The instant action was initiated on or about August 2, 2013 in which the Plaintiffs requested Injunctive and Declaratory relief as to two claims: First Claim - request for the Court

to provide preliminary, declaratory and injunctive relief as to the disenfranchisement of Winnemucca Indian Colony members in the June 29, 2013 election; and Second Claim - request for declaratory and injunctive relief as to violations of Winnemucca Indian Colony Ordinance 301 (Elections).

2. That during the pendency of this matter, the Plaintiffs have sought an Order for Partial Summary Judgement. Also during the pendency of this case, the Defendants have sought to dismiss, or in the alternative, transfer this case to the United States District Court in Nevada (Reno).

3. That the issues which gave rise to this Complaint pertain to allegations of disenfranchised Winnemucca Indian Colony members and the impact of such disenfranchised members inability to participate in tribal elections.

4. That at the time of filing of this matter, a case was simultaneously being heard in the United States District Court, District of Nevada (Reno) and was styled Civil Case No.: 3:11-cv-00622-RCJ-VPC. That case was initiated in August 2011 and concluded in June 2016. the matter involved substantially the same issues, specifically the proper recognition and authority of the Winnemucca Indian Colony Council and the rightfully recognized membership of the Winnemucca Indian Colony.

5. That during the US District Court proceedings, Special Tribal Judge Timothy Shane Darrington was appointed on February 10, 2014.

6. That Special Tribal Judge Darrington entered an Order resolving the issue of membership on January 16, 2015.

7. That on January 21, 2016, Special Tribal Judge Darrington's Order of January 16, 2015 was appealed to the Inter-Tribal Court of Appeals of Nevada, Case No. ITCN-AC/CV-15-011. The Inter-Tribal Court of Appeals of Nevada upheld Special Tribal Judge Darrington's Order as it pertained to membership. The Inter-Tribal Court of Appeals for Nevada denied a request for reconsideration on April 10, 2016.

8. On July 27, 2017, the parties appeared and were advised to brief the case regarding disposition. Plaintiffs were to submit their brief on August 27, 2017 and Defendants were to respond by September 27, 2017.

9. The Plaintiffs submitted their brief on or about August 28, 2017 and same was filed on August 31, 2017.

10. The Defendants submitted their responsive brief on September 25, 2017 and same was filed on September 25, 2017.

11. This Court heard oral supplementation to the briefs on October 26, 2017.

FINDINGS OF FACT

1. The issues giving rise to the Complaint filed instantler, are moot as settled by the Orders of the United States District Court, District of Nevada (Reno), styled Civil Case No.: 3:11-cv-00622-RCJ-VPC, and the Inter-Tribal Court of Appeals for Nevada, Case No.: ITCN-AC/CV-15-011.

2. The issues pertaining to valid membership rolls have been previously decided and are therefore moot and barred by the Doctrine of Res Judicata.

3. In addition to the case being barred by Res Judicata, Plaintiff's admittedly are not on the recognized membership roll and therefore lack standing to pursue recourse as to the validity of the 2013 and subsequent, election outcomes.

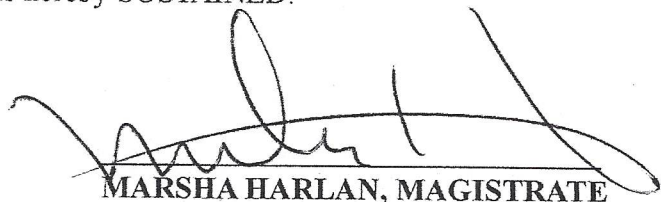
DECISION

The allegations contained in this complaint have been substantially and thoroughly litigated in the District Court of Nevada; before a Special Tribal Court Judge (Judge Timothy Shane Darrington); and the Inter-Tribal Court of Appeals for Nevada.

The above named Courts have issued rulings which affectively have rendered this matter moot. Therefore, this Court FINDS that re-litigation of these issues is barred by the Doctrine of Res Judicata as all claims have been sufficiently litigated and decided and are therefore precluded from further Orders of this Court.

The Defendant's Motion to Dismiss is hereby SUSTAINED.

IT IS SO ORDERED.



MARSHA HARLAN, MAGISTRATE

**IN THE WINNEMUCCA COURT OF INDIAN OFFENSES
FOR THE WINNEMUCCA INDIAN COLONY
WINNEMUCCA, HUMBOLDT COUNTY, NEVADA**

MEMBERS OF THE WINNEMUCCA)
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HALLOCK, TANIA HAYES THOMAS,)
LOREN LEGGETT, CANDELERIA LEON,)
JERRY LEON, ALICIA LEON, ELANA LOYA,)
ROSEMARY THOMAS, EUGENE THOMAS,)
VIVIAN LEYVA-WALTERS, et al.)

Case No.: WIC-CFR-CV 2013-003

Plaintiffs,)

vs.)

INTERIM COUNCIL; THOMAS R. WASSON,)
CHAIRMAN, JUDY ROJO, MISTY ROJO,)
KATHERINE HASBROUCK, ERIC MAGIERA,)
ELECTION COMMITTEE, CHAIRWOMAN)
JUDY ROJO, et al.)

Defendants.)

ORDER

NOW on this 15th day of November, 2017, this matter comes before the Court for disposition proceedings. The Court having reviewed the pleadings of the parties and being fully advised in the premises, hereby FINDS as follows:

PROCEDURAL HISTORY

1. The instant action was initiated on or about June 19, 2013 in which the Plaintiffs requested an emergency temporary restraining order to prohibit Defendants from holding an election to the Winnemucca Indian Colony to elect council members.

2. That this Court issued an Order on June 28, 2013 in which it denied Plaintiff's Complaint and request for Injunctive relief.

3. That the issues which gave rise to this Complaint pertain to properly recognized Colony Council Members, both before and after elections, as well as recognition of specific individuals for membership.

4. That at the time of filing of this matter, a case was simultaneously being heard in the United States District Court, District of Nevada (Reno) and was styled Civil Case No.: 3:11-cv-00622-RCJ-VPC. That case was initiated in August 2011 and concluded in June 2016. the matter involved substantially the same issues, specifically the proper recognition and authority of the Winnemucca Indian Colony Council and the rightfully recognized membership of the Winnemucca Indian Colony.

5. That during the US District Court proceedings, Special Tribal Judge Timothy Shane Darrington was appointed on February 10, 2014.

6. That Special Tribal Judge Darrington entered an Order resolving the issue of membership on January 16, 2015.

7. That on January 21, 2016, Special Tribal Judge Darrington's Order of January 16, 2015 was appealed to the Inter-Tribal Court of Appeals of Nevada, Case No. ITCN-AC/CV-15-011. The Inter-Tribal Court of Appeals of Nevada upheld Special Tribal Judge Darrington's Order as

it pertained to membership. The Inter-Tribal Court of Appeals for Nevada denied a request for reconsideration on April 10, 2016.

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11. This Court heard oral supplementation to the briefs on October 26, 2017.

FINDINGS OF FACT

1. The issues giving rise to the Complaint filed instanter, are moot as settled by the Orders of the United States District Court, District of Nevada (Reno), styled Civil Case No.: 3:11-cv-00622-RCJ-VPC and the Inter-Tribal Court of Appeals for Nevada, Case No.: ITCN-AC/CV-15-011.

2. The issue of a properly authorized and recognized tribal council has been decided by the Bureau of Indian Affairs and by subsequent election by eligible voters.

DECISION

The allegations contained in this complaint have been substantially and thoroughly litigated in the District Court of Nevada, before a Special Tribal Court Judge (Judge Timothy Shane Darrington) and the Inter-Tribal Court of Appeals for Nevada.

The above named Courts have issued rulings which affectively have rendered this matter moot. Therefore, this Court FINDS that Re-litigation of these issues is barred by the Doctrine of Res Judicata as all claims have been sufficiently litigated and decided and are therefore precluded from further Orders of this Court.

The Defendant's Motion to Dismiss is hereby SUSTAINED.

IT IS SO ORDERED.



MARSHA HARLAN, MAGISTRATE

AGENDA FOR DECEMBER 18, 2017, 1:30 P.M.
BIA AND WINNEMUCCA INDIAN COLONY

1. Date certain set for Phase 1 on 20 acres so all parties can make travel arrangements.
2. Date certain for community meeting led by R.J. Eben, police, Colony Council.
3. Date certain determined for first notice of evictions: January 1, 2018.
4. Grant status for Winnemucca Indian Colony operations.
5. Documents to be produced in response to request from May 2017.
6. Legal Survey of the lands of the Winnemucca Indian Colony.
7. Update on status of William Bills' fraudulently holding himself out as Winnemucca Indian Colony in San Joaquin County, California.
8. Lands of Winnemucca Indian Colony to be cleaned and available for economic development by April 1, 2018.

Clarification on travel approval

Copy of letter written by RJ re: William Bills

Copy of all persons residing on colony - law enforcement