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ATTORNEYS FOR:
LEONARD WATTERSON

UNITED STATES FEDERAL DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LEONARD WATTERSON,

Plaintiff,

vs.

JULIE FRITCHER AND DOES 1-10,

Defendant(s)

Case No.: 1:17-CV-01020 DAD-JLT

**PLAINTIFFS RESPONSE TO COURT'S
ORDER TO SHOW CAUSE AUGUST 16,
2018**

Plaintiff, Leonard Watterson, provides the following responses to the Honorable Court's
Order to Show Cause, dated August 16, 2018 (DKT 27).

PLAINTIFFS RESPONSE TO COURT'S ORDER TO SHOW CAUSE AUGUST 16, 2018

Introduction

Procedural Status of the Case

Plaintiff, Leonard Watterson, responds to an Order to Show Cause to answer various questions related to litigation filed against Defendant/Trespasser, Julie Fritcher. On July 31, 2017, Plaintiff filed their complaint for trespass and related causes of action. After the time with which to respond to the Complaint had expired, Plaintiff filed a request for Entry of Default. (DKT 1-Main)

On September 27, 2017, Defendant filed a response to the complaint and move to set aside default, a jumbled assortment of incoherent statements, with no proof that Defendant held a valid assignment to the lands in dispute. (DKT 9). The Court with an abundance of caution denied Plaintiffs filed entry of default and permitted Defendant to file their answer. (DKT 15). Since filing the answer to Plaintiffs complaint, Defendant has refused to participate in the litigation, refusing to attend scheduled depositions and refusing to respond to Plaintiffs' Motion for Summary Judgment or attend the hearing on said motion.

On August 16, 2018, the Court issued its order on Plaintiff's Motion for Summary Judgment, denying the motion. The Court along with the decision issued an Order to Show Cause, requesting Plaintiff respond to several questions related to Plaintiff's complaint and legal theories. (DKT 27)

The Dispute

The dispute is a very simple one, "Who holds a valid and enforceable assignment to Lot 28 of the Lone Pine Indian Reservation and who is a trespasser subject to ejectment by the lawful assignee? However, because the subject lands are federal trust lands, the issue is somewhat

1 complex due to the layering of federal law, federal Indian Law, tribal law and Department of
2 Interior administrative procedures.

3 Plaintiff Watterson believes he is the legal assignee because he retains documentation
4 from the Lone Pine Tribal Council and Owens Valley Board of Directors, naming him as the
5 lawful assignee of Lot 28. Plaintiff has provided numerous documents to the Court and
6 Defendant Fritcher, as proof of a valid assignment. Defendant has providing nothing to support
7 her entitlement to Lot 28 or a portion thereof. (Dkt 1, DKT 20 and Plaintiffs Request for Leave
8 to Supplement the Record as to the MSJ)
9

10 The Court, sua sponte, questions Plaintiffs title and is considering dismissing the case
11 due to various factors, including its belief that Plaintiff's claim fails for lack of a signed
12 "approval" of the assignment by the Assistant Secretary of the Interior, or their designee, the
13 Area Director (now the Pacific Regional Director. As will be demonstrated below, the Owens
14 Valley Land Ordinance does not require the Secretary or their designee, "approve" land
15 assignments. Moreover, a 2009 Department of Interior Directive **forbids** Interior Officers from
16 approving Indian Land assignments. Additionally, Plaintiffs Common Law Trespass claim is
17 ripe as claims to possession of Indian lands are not subject to state or federal statutes of
18 limitations. Thus, Plaintiff holds a valid assignment and his trespass claim is ripe for
19 adjudication by the Court, with or without Defendant Fricher's participation.
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23 *a. Dismissal of All DOE Defendants*

24 Plaintiff Watterson does not object to the dismissal of all Doe defendants in the case.
25 Unfortunately, as Defendant has refused to be deposed for this matter, Plaintiff has been unable
26 to determine or discover additional DOE defendants.

27 //

1 ***b. Exhaustion of All Remedies***

2 Plaintiff Watterson has exhausted all remedies available to him.

3 ***The Tribe***

4 As the Court correctly notes the Lone Pine Tribe does not have a formal tribal court or
5 enforcement mechanism, such as a Police Department, with which to enforce tribal law or
6 judgments even if one were available to Plaintiff Watterson. Although the Tribe does have a
7 tribal council, the council also does not have an enforcement mechanism to enforce orders of the
8 Tribal Council. Per the declaration accompanying Plaintiff's Motion to Summary Judgment,
9 Plaintiff has approached the Lone Pine Tribal Council for a resolution to the trespass matter,
10 unfortunately the Tribe, while sympathetic, has not acted. And even if it did act, again there is
11 no enforcement mechanism to carry out any order of eviction.
12

13 ***The Owens Valley Board of Directors***

14 Likewise, the Owens Valley Board of Directors, also does not have authority to evict
15 tribal members from land assignments. Further, there exists no enforcement mechanism within
16 the 1962 Land Ordinance to act on decisions made by the Board. Hence, the Board does not
17 enforce decisions or remove persons from assignments. The extent of the powers of the Owens
18 Board as enumerated in the Ordinance is to merely "approve or disapprove" of land assignments,
19 of which it did as to Lot 28, being lawfully assigned to Plaintiff Watterson.
20

21 ***The Department of the Interior -Bureau of Indian Affairs***

22 As stated during oral argument, the Interior Department, Area Director, (now Pacific
23 Regional Director) appears to have reduced their scope of authority over Indian Land
24 Assignments, in general, and as to assignments arising under the Owens Valley Land Ordinance
25 in particular. As noted in various correspondences that will be discussed in detail later below in
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1 Section K, both the Area Solicitor and Area Director have made it exceedingly clear that they
2 have a limited role with regards to land assignments, in general, and in particular to those
3 assignments approved by the Owens Valley Board. These correspondences correctly clarify that
4 the approving authority for land assignments arising under the Ordinance is the Owens Valley
5 Board. Hence, the Area Director's involvement is not one of "enforcer" of the Land Ordinance
6 provisions and nowhere within the Ordinance does it grant the Area Director the authority to
7 remove anyone, tribal member, non-member or trespasser from Owens Valley land assignments
8 granted by the Board. (Please See Ex. A, 1975 Correspondence from Interior Department
9 acknowledging approval of the assignment and telling Watterson to seek remedy from the Tribe).

10
11
12 Finally, any required exhaustion of administrative remedies should be excused because as
13 noted above, exhaustion would be futile as there is no authority or mechanism to provide
14 Plaintiff the relief he seeks. As noted in Plaintiff Watterson's declaration submitted with the
15 Motion for Summary judgment, Watterson stated that he sought relief from both the Tribe and
16 Owens Valley to no avail. As noted above, the Department of Interior has relinquished its
17 authority over Owens Valley assignments and points Plaintiff to the Tribe for relief. Hence,
18 exhaustion is, for all intent and purpose, futile.

19
20 ***c. Failure to State a Claim***

21 A review of Plaintiff's complaint indicates that Plaintiff included jurisdiction under 25
22 C.F.R. §§162.006 and 163.29, both of which relate to specific land leases respectively.
23 Unfortunately, it appears that these sections were inadvertently held over from a prior litigation
24 that included leases applicable under both statutes. However, that does not end the matter.
25 Plaintiff's complaint pleads a common law trespass claim upon Indian lands, which is the same
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1 claim as a the claim pled by the Onieda Indian Tribe in the *Onieda County v Onieda Ind. Nation*,
 2 470 U.S. 226 (1985).

3 In *Onieda*, the US Supreme Court upheld the claim of possession and also held that a
 4 continued and on-going trespass theory did not bar the statute of limitations on a one-hundred
 5 and seventy-five year old possession claim. Thus, even if the Court were to dismiss these claims
 6 made under the C.F.R., the common law trespass claim would survive, and the case could
 7 continue to trial on that sole claim.
 8

9 ***d. The Statute of Limitations Does Not Bar Plaintiff's Common Law Trespass Claim***

10 Plaintiff's complaint pleads claims of Trespass, Nuisance and Conversion. Plaintiff is
 11 amenable to dismissing the claims related to nuisance and conversion. As such, and so as to not
 12 waste the Court's valuable time, Plaintiff will only respond to the Statute of Limitations issue
 13 related to the common law trespass claim.
 14

15 It is black letter law that federal lands are not subject to claims of adverse possession.
 16 Although Defendant is alleged to have resided on the lands in excess of 30 years, she is unable to
 17 "perfect" a claim of right as to the lands, in general, pursuant to 43 U.S.C. §1068 et seq, which
 18 prohibits adverse possession of federal lands where the lands are disputed as to ownership.
 19

20 ***i. As Held in Onieda County v Onieda Indian Tribe, Statute of Limitations Do not***
 21 ***Apply to Common Law Claims of Possession of Tribal Lands***

22 The six-year statute of limitations does not apply to Plaintiff Watterson's Common Law
 23 claim of right to possession. In *Onieda County v Onieda Ind. Nation*, 470 U.S. 226 (1985) the
 24 Onieda Tribe filed suit against the County to reclaim the right to possess Indian lands of which
 25 the County retained. The lands were allegedly taken during the revolutionary war, in excess of
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1 175 years prior to the claim being brought by the Tribe and vastly exceeding the six-year statute
2 of limitations for federal and state actions.

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5 Onieda County thereafter filed a motion to dismiss the Tribe's claims, arguing the Tribe's
6 claims were barred by the Statute of Limitations. The Court, in finding on behalf of the Tribe,
7 held that federal common law claims for possession are not subject to the statute of limitations
8 and that the land claims could move forward under a theory of "continuing trespass".

9
10 Here, similar to the claims in Onieda, Defendant Fritcher's trespass has been ongoing and
11 "continuous" in excess of thirty (30) years, one hundred and forty-five years less than the claims
12 allowed to move forward in *Onieda*. Hence, under *Onieda*, the length of time of the trespass is
13 irrelevant when involving Indian lands and a claim of right to possession.

14
15 Plaintiff's claim to possess the entirety of Lone Pine Assignment #28 is analogous to the
16 possessory rights claim brought by the Onieda and allowed by the Court to continue to trial.
17 Plaintiff as the Owens Valley Board assignee of Assignment 28, has a similar vested right to
18 possession of the assignment, as the Onieda did to reclaim possession of their lands.

19
20 In sum, Plaintiff's trespass claim is a common law claim to possession of Indian lands
21 and is not subject to federal or state statute of limitations. Thus, the claim is ripe should move
22 forward to trial.

23 ***i. The Merits of Plaintiffs Claim – Require that Plaintiff Prevail and the Court's Denial***
24 ***of Plaintiff's Motion for Summary Judgment be Reconsidered, or alternatively the***
25 ***Case be set for Trial***

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27 The Court dismissed Plaintiff's motion for summary judgment based mostly on the belief
28 that the lack of an *approval* of Watterson's Assignment by the Interior Assistant Secretary or
their designee, the Area Director, doomed the claim. However, Plaintiff Watterson's claim

1 should survive and move to trial because the Ordinance does not require the Area Director
2 “Approve” land assignments. Moreover, nowhere within the Ordinance does the word “approval”
3 by the Area Director appear.

4 Ordinance Section B(3) states as follows:

5 **[The Board] “Transmits approved applications to the Area Director for his review**
6 **and consideration”;**

7 **Land Ordinance Section (B)(3)** (See Decl., W Smith at ¶4-5 and Ex. A, Land
8 Ordinance).

9 The language of the Ordinance does not state that the Area Director shall *approve* Owens
10 Valley Board approved land assignments. It merely states that the Owens Valley Board
11 approved assignments are to be *considered* by the Area Director. Webster’s Dictionary defines
12 “consider” as “matured by extended deliberative thought” or “viewed with respect or esteem”.
13 Neither of these definitions require action. Moreover, the second definition, “viewed with
14 respect or esteem” seems to acknowledge an approval of the subject to be “considered”. In this
15 case the allotment would remain approved.

16
17
18 *i. The Regional Solicitor’s 1977 Correspondence*

19 A Regional Solicitor correspondence of August 22, 1977 appears consistent with
20 Plaintiffs assertion that the Area Director is not required to approve of Owens Valley Land
21 Assignments. Specifically, the Regional Solicitor states in their correspondence to the
22 Superintendent of the Central California Agency that:

23
24 **“The Owens Valley Band can assign their lands in virtually any manner they**
25 **choose. So long as the tribal ordinance does not conflict with federal statutes**
26 **against alienation or encumbrances, 25 U.S.C. §85 et seq and 25 U.S.C. §177**
27 **et seq., a tribe has complete authority to make assignments of tribal lands to**
28 **its members on whatever terms it deems to be in the Tribe’s best interest.”**

Although, the subject of the correspondence was specific to the number of lots that can be assigned to an assignee by a particular tribe, the proposition remains the same, no approval by the Area Director is required for assignments approved by the Owens Valley Board of Directors.

Under the Solicitor's interpretation of the Ordinance, Watterson's Assignment to Lot 28 is valid because it does not conflict with either federal statutes against alienation or encumbrances. (See Id. at ¶6 and Ex. B, Solicitor's 1977 Correspondence to Area Director).

ii. The Area Director's 1984 Correspondence to the Owens Valley Board

An additional correspondence, dated August 28, 1984, from the Area Director to the Owens Valley Board further clarifies the role of the Area Director concerning the Land Ordinance. The Area Director correspondence is specific to approvals of land assignments. The Area Director states expressly in the correspondence that Owens Valley was to "approve" assignments and the Area Director was merely to "review and consider them." Hence, no approval by the Area Director is required for Owens Valley Board approved assignments. Thus, Plaintiff Watterson has a valid and Board approved assignment and a claim to possess the assignment and eject Defendant Fritcher from it. The case should move forward to trial. (See Id. at ¶6 and Ex. C, Area Director's 1984 Correspondence to Owens Valley Board of Directors)

iii. The Interior Departments' Current Policy on Indian Land Assignments Expressly Prohibits Their Approval by Department Officials

Pursuant to the most recent Interior Indian Affairs Directive, dated February 11, 2009, document Identification Number, 52IAM 10, *Land Assignments*, it is the express Department policy that officials not approve Indian land assignments. 52IAM 10 expressly states:

Policy. It is the policy of the Bureau of Indian Affairs (BIA) that the Secretary or his/her designee shall not approve land assignments on tribal trust land. Any document creating such an assignment is not a title document; and therefore, shall not be recorded by the BIA Land Titles and Records Office (LTRO).

1 Interior Indian Affairs Directive 52IAM 10, February 11, 2009 (See Id. at ¶7, Ex. C, 2009
2 Interior Department Directive on Indian Land Assignments).

3 Thus, as interior plays no role in the approval process for Land Assignments on Tribal
4 land, and the Ordinance does not require Secretary approval, it is the Owens Valley Board that is
5 the approver. As such, Plaintiff Watterson had a valid land assignment in Lot 28. (See Id at ¶8).

6
7 ***j. Plaintiff should be allowed to amend his Complaint if it would assist the Court to***
8 ***narrow the issues to be brought forth to Trial.***

9 Plaintiff's suggestion at oral argument as to a potential amendment of the complaint was
10 stated specifically to assist the court to narrow the issues with which to focus on at a future trial.
11 Plaintiff would not be seeking to add new matter or request additional discovery. Plaintiff would
12 also be amenable to a bench trial as opposed to the requested jury trial as this case appears now
13 to be more a question of law as opposed to one of fact. (Does Plaintiff possess a valid Land
14 Assignment? If Plaintiff does poseses a valid assignment and Defendant does not, nor has she
15 presented any evidence supporting her right to occupy the assignment, Plaintiff indeed has the
16 right to eject Defendant from the assignment).

17
18 Plaintiff has provided additional facts and documents to clarify that Plaintiff has a valid
19 land assignment, issued and approved by the Owens Valley Board. Plaintiff admits that this case
20 has been challenging due to the absence of defense counsel and the lack of cooperation of
21 Defendant/Trespasser Fritcher. However, Plaintiff believes that he has a meritorious claim of
22 right to possess Assignment #28 and that Defendant Fritcher does not and that because of the
23 validity of the assignment he has a right to eject Defendant Fritcher. If it would assist the court
24 to amend the complaint to narrow the issues and propose a bench trial as opposed to a jury trial,
25 Plaintiff is willing to consider such amendments.
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Conclusion

As set forth above, Plaintiff has addressed all concerns of the court related to its Order to Show Cause and requests the Court permit the case to move to trial on the merits. Plaintiff has made a good faith effort to bring forth valid claims, supported by law, and does not believe that the case should be dismissed or counsel should be subjected to Rule 11 sanctions.

Date August 24, 2018

Duran Law Office

_____/S/____Jack Duran_____
Jack Duran Attorney for L. Watterson