HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

KEVIN MICHAEL BELL

Plaintiff,

v.

CITY OF LACEY; Police Chief DUSTY PIERPOINT individually; Police Commander JOE UPTON individually; City Attorney DAVID SCHNEIDER individually; Mayor ANDY RYDER individually; City Manager SCOTT SPENCE individually; DOEs 1-25 individually; NISQUALLY TRIBE, Nisqually CEO JOHN SIMMONS, individually and Nisqually CFO ELETTA TIAM individually.

Defendants.

NO. 3:18-cv-05918-RBL

DEFENDANT NISQUALLY TRIBE, SIMMONS, AND TIAM'S REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS

Noting Date: May 10, 2019

Defendants Nisqually Tribe, John Simmons, and Eletta Tiam submit this Reply briefing in support of their motion for judgment on the pleadings. Bell's sensationalistic Response fails to establish that Nisqually has expressly waived its immunity to his suit. Moreover, he has failed to establish that Simmons and Tiam cannot likewise claim Nisqually's immunity. Each of Bell's attempts to circumvent sovereign immunity fail, and there is no reason to delay a ruling. Additionally, Bell's claims against Simmons, as well as his conspiracy claims, are not adequately pleaded under federal pleading standards, and Bell has not alleged any meaningful

FLOYD, PFLUEGER & RINGER P.S.
200 WEST THOMAS STREET, SUITE 500
SEATTLE, WA 98119
TEL 206 441-4455
FAX 206 441-8484

facts to warrant amendment. Accordingly, the above defendants request the Court dismiss Bell's lawsuit against them with prejudice.

I. AUTHORITY AND ARGUMENT

A. A determination as to sovereign immunity is not premature.

Bell first argues that he is entitled to additional discovery to determine whether the Nisqually has waived its sovereign immunity. He is mistaken. A trial court does not abuse its discretion to deny jurisdictional discovery when the request is "based on little more than a hunch that it might yield jurisdictionally relevant facts." *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008). Whether to allow jurisdictional discovery is "generally within discretion of the trial judge," and such discovery may be properly denied "when it is clear that further discovery would not demonstrate facts sufficient to constitute a basis for jurisdiction." *Am. W. Airlines, Inc. v. GPA Grp., Ltd.*, 877 F.2d 793, 801 (9th Cir. 1989) (citation omitted).

Bell specifies only one avenue for possible sovereign immunity waiver—Nisqually's insurance policy. But this analysis has already been rejected by the Ninth Circuit. While 25 U.S.C. 5321(c)(3) "expressly precludes the *insurer* from defeating a claim covered by the policy by an invocation of the tribe's sovereign immunity," the statute does not "constitute a waiver of the Tribe's sovereign immunity." *Evans v. McKay*, 869 F.2d 1341, 1346 (9th Cir. 1989) (emphasis in original)*; see also Wilhite v. Awe Kualawaache Care Ctr.*, 2018 U.S. Dist. LEXIS 180905, at *5-6 (D. Mont. Oct. 22, 2018) (stating that statute "exclusively applies to insurers, not tribes, and therefore did not serve as a waiver of the tribe's sovereign immunity"). The *Evans* court further rejected individual claimants' attempt to invoke this provision, holding that "if" the section "constitutes a waiver of sovereign immunity, it is only a very limited waiver authorizing the United States government to claim indemnity against the Tribe." *See Evans*, 869 F.2d at 1346-47.

Bell has not identified any specific facts crucial to an immunity determination, nor specific discovery that could viably uncover a waiver of sovereign immunity. *Cf. Packsys v. Exportadora De Sal, S.A de C.V.*, 899 F.3d 1081, 1094 (9th Cir. 2018) (district court did not

FLOYD, PFLUEGER & RINGER P.S.
200 WEST THOMAS STREET, SUITE 500
SEATTLE, WA 98119
TEL 206 441-4455
FAX 206 441-8484

abuse discretion when movant failed to identify specific facts crucial to immunity determination). Postponing a decision as Bell requests would also contravene Ninth Circuit precedent requiring that tribal sovereign immunity, "*if* invoked at the Rule 12(b)(1) stage, must be addressed and decided." *Pistor v. Garcia*, 791 F.3d 1104, 1115 (9th Cir. 2015) (emphasis in original). It would furthermore unfairly subject Nisqually to litigation burdens. *See United States v. Moats*, 961 F.2d 1198, 1203 (5th Cir. 1992) ("[S]overeign immunity is an immunity from the burdens of becoming involved in any part of the litigation process, from pre-trial wrangling to trial itself."). The Court should deny Bell's request for additional discovery and decide this Motion on the facts and law before it.

B. Bell is not entitled to habeas relief against Nisqually.

Bell next contends he is entitled to habeas relief against Nisqually. He seeks leave to amend his complaint to the extent the Court "does not already consider habeas relief to be in issue," likely because habeas relief has never previously been raised. (Dkt. #39 at 7).

1. Nisqually is not the "individual custodian" of Bell, and is therefore not a proper habeas respondent.

The federal habeas corpus statute requires that the applicant must be "in custody" when the application for habeas corpus is filed. *Carafas v. LaVallee*, 391 U.S. 234, 238, 88 S. Ct. 1556, 20 L.Ed.2d 554 (1968). The respondent in a habeas corpus action "is the individual custodian of the prisoner." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 59, 98 S. Ct. 1670, 56 L.Ed.2d 106 (1978) (citing 28 U.S.C. § 2243). The habeas provisions "contemplate a proceeding against some person who has the *immediate custody* of the party detained, with the power to produce the body of such party before the court or judge, that he may be liberated if no sufficient reason is shown to the contrary." *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 124 S. Ct. 2711, 159 L.Ed.2d 513 (2004) (citing *Wales v. Whitney*, 114 U.S. 564, 574, 29 L. Ed. 277, 5 S. Ct. 1050 (1885)) (emphasis in original).

Bell is not entitled to habeas relief against Nisqually, most fundamentally, because he is not incarcerated by or otherwise in Nisqually's custody. While Bell has a pending criminal

FLOYD, PFLUEGER & RINGER P.S.
200 WEST THOMAS STREET, SUITE 500
SEATTLE, WA 98119
TEL 206 441-4455
FAX 206 441-8484

matter with the City of Lacey, for which he is now released on his own recognizance, that relationship is entirely independent of Nisqually. Nisqually has no immediate actual or theoretical custody over Bell, and certainly no power to produce him before this Court. Thus, while Bell may be able to bring a habeas action against Lacey, he cannot bring one against Nisqually. Plaintiff's statement that Nisqually "has no lawful jurisdiction over him" (Dkt. #39 at 7) is correct in one respect—Nisqually presently has no jurisdiction over him at all.

2. Any habeas claim against Nisqually is similarly not ripe for adjudication.

"A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300, 118 S. Ct. 1257, 140 L.Ed.2d 406 (1998) (citations omitted). Federal courts have previously dismissed unripe, speculative habeas actions. *See, e.g.*, *Aitken v. United States*, 2013 U.S. Dist. LEXIS 124766 (C.D. Cal. Aug. 14, 2013) (dismissing habeas action brought by prisoner to challenge future, undetermined probation terms because such claim was speculative and not ripe); *Isenbarger v. Farmer*, 463 F. Supp. 2d 13, 16 (D.D.C. 2006) (dismissing habeas action based on alleged unlawful extension of soldier's service obligations when petitioner could only speculate as to a future extension of said obligations). Additionally, the speculative nature of Bell's claimed injury by Nisqually—future unlawful custody—"implicates yet another justiciability doctrine: petitioner's standing to pursue the habeas petition." *Isenbarger v. Farmer*, 463 F. Supp. 2d 13, 22 n.4 (D.D.C. 2006).

Regardless of the legal doctrine applied, Bell is in no legal position to challenge a future, hypothetical incarceration by Nisqually. His future relationship with Nisqually necessarily relies upon the assumptions that (1) he will be convicted of a crime and (2) remanded to the Nisqually Jail. But he has not presented any evidence future Nisqually incarceration is certain or even likely, and Nisqually posits it is may not be given Bell's claimed age, medical conditions, and the crime charged. Bell could also be given credit for time served or sent to another detention facility. Thus, the Court should refuse to allow a habeas action as to Nisqually as unripe.

FLOYD, PFLUEGER & RINGER P.S.
200 WEST THOMAS STREET, SUITE 500
SEATTLE, WA 98119
TEL 206 441-4455
FAX 206 441-8484

3. Bell would lack a viable habeas claim even if Nisqually had custody of him.

Habeas petitions are "designed solely to review the legality or duration of his confinement and is not the proper vehicle to contest a transfer between prisons." *Case v. Miller-Stout*, 2013 U.S. Dist. LEXIS 2890, at *2 (W.D. Wash. Jan. 7, 2013) (Pechman, J.) (citing *Pischke v. Litscher*, 178 F.3d 497, 499 (7th Cir. 1999)), *cert. denied*, 528 U.S. 954 (1999); *see also Muhammad v. Close*, 540 U.S. 749, 750, 124 S. Ct. 1303, 158 L.Ed.2d 32 (2004) ("Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus," whereas "requests for relief turning on circumstances of confinement may be presented in a § 1983 action."). In *Pischke*, state inmates challenged their transfer to private prisons under the Thirteenth Amendment, which the court deemed "thoroughly frivolous" but within the scope of § 1983 rather than habeas. *Pischke*, 178 F.3d. at 500; *see also generally White v. Lambert*, 370 F.3d 1002, 1013 (9th Cir. 2004) (Washington inmate's transfer to out-of-state private prison deemed to not violate liberty interests), *rev'd on other grounds, Hayward v. Marshall,* 603 F.3d 546 (9th Cir. 2010).

Here, Bell does not challenge the fact or duration of his prior confinement, but rather where he was confined. Habeas is not the right vehicle for that type of relief.

4. Even if otherwise proper, the viability of a habeas action does not provide subject matter jurisdiction for Bell's damages claims.

Moreover, even if Bell were entitled to habeas relief (which he is not), such a claim would not suddenly waive or supersede Nisqually's sovereign immunity as to his claim(s) for damages. Damages "are not an available habeas remedy." *Nelson v. Campbell*, 541 U.S. 637, 646, 124 S. Ct. 2117, 158 L.Ed.2d 924 (2004). And although Bell cites *Nelson* to state that civil rights damages actions "fall at the margins of habeas," that court explained that comment by noting that some § 1983 actions are "not cognizable … unless and until the inmate obtains favorable termination of a state, or federal habeas, challenge to his conviction or sentence." *Id.* Nowhere in that case expresses or even implies that a damages action can piggyback upon a

FLOYD, PFLUEGER & RINGER P.S.
200 WEST THOMAS STREET, SUITE 500
SEATTLE, WA 98119
TEL 206 441-4455
FAX 206 441-8484

habeas action to circumvent sovereign immunity. Thus, even if the Court believes this could be an appropriate habeas case, it should nevertheless refuse to allow a damages action to proceed.

C. Bell is not a third-party beneficiary to the jail agreement, and even if he is, any waiver of sovereign immunity as to third-party beneficiaries is not explicit.

Bell's claim that he is a third-party beneficiary to the jail services agreement is unsupported. Under Washington law, the contracting parties must intend to create a third-party beneficiary relationship, which must be more than an incidental or inconsequential benefit. *See Key Dev. Inv., LLC v. Port of Tacoma*, 173 Wn. App. 1, 29, 292 P.3d 833 (2013). Whether a contract is made for the benefit of a third person is one of construction, "determined by the terms of the contract as a whole in the light of the circumstances under which it was made." *Grand Lodge v. United States Fid. & Guar. Co.*, 2 Wn.2d 561, 569, 98 P.2d 971 (1940). Although the undersigned has failed to locate any Washington cases analyzing third-party beneficiaries to a government contract, the balance of authority supports a finding that even though "[g]overnment contracts often benefit the public … individual members of the public are treated as incidental beneficiaries unless a different intention is manifested." Restatement (Second) Contracts § 313, cmt. a (1981).[1]

Here, even though the contract was for the provision of jail services, Bell was at most an incidental beneficiary of the contract. Many other cases have held similarly. *Cf. Flournoy v. Ghosh*, 2010 U.S. Dist. LEXIS 41774, at *8 (N.D. Ill. Apr. 27, 2010) (inmate deemed incidental beneficiary to contract between prison system and third-party medical provider); *Clifton v. Suburban Cable TV Co.*, 642 A.2d 512, 514 (Pa. Super. 1994), *appeal denied*, 649 A.2d 667 (Pa. 1994), *cert. denied*, 513 U.S. 1173 (1995) (although contract between state and cable company was intended to provide services to incarcerated inmates, they, like other members of the general public, were not third-party beneficiaries). In a case with factually

[1] Washington courts have repeatedly relied upon the Restatement of Contracts when analyzing contractual issues, meaning it can fairly be considered persuasive authority. *See generally, e.g., Berg v. Hudesman*, 115 Wn.2d 657, 801 P.2d 222 (1990); *Corbit v. J. I. Case Co.*, 70 Wn.2d 522, 531, 424 P.2d 290 (1967).

FLOYD, PFLUEGER & RINGER P.S.
200 WEST THOMAS STREET, SUITE 500
SEATTLE, WA 98119
TEL 206 441-4455
FAX 206 441-8484

similar allegations from Pennsylvania, a federal court rejected a plaintiff's theory that he was a third-party beneficiary to a contract between the state and an emergency inmate health care provider, noting there was no language in the contact intending to make inmates third-party beneficiaries to the agreement. *See Zeigler v. Correct Care Sys.*, 2018 U.S. Dist. LEXIS 49108, at *8-11 (M.D. Pa. Mar. 26, 2018) (citing other examples therein). Indeed, the jailing agreement in this case, while obviously covering the housing of inmates, does not directly confer any rights upon them, and is instead concerned with the allocation of responsibilities between Nisqually and Lacey. The Lacey City Council sheet attached to Bell's Complaint underscores this point, which highlights only the advantages to Lacey, rather than to its inmates. (Dkt. #1-2 at 21). There is no evidence Lacey or Nisqually intended to confer contractual rights upon inmates when executing the jail services agreements.

More important than Bell's status with respect to the agreement, however, is the contract's lack of an explicit sovereign immunity waiver as to third-party beneficiary claims. Bell asks the Court to stretch to consider him a third-party beneficiary, and then to again stretch the limited sovereign immunity waiver to include third-party beneficiaries. But even if Bell is deemed a third-party beneficiary of the jailing agreement, that document does "not show a clear intention of [Nisqually] to waive its sovereign immunity" as to any third-party beneficiary claims. *Demontiney v. United States*, 255 F.3d 801, 813 (9th Cir. 2001). The agreement expressly notes Nisqually "is a Sovereign Nation with all immunities attendant thereto," other than the specific exception below covering legal disputes "by and between the parties to this agreement," enumerated at the bottom of each page and on the final page. (Dkt. #1-2 at 26-27). It does not contemplate, much less open itself up to, claims by inmates or any other purported third-party beneficiaries. The Defendants therefore ask the Court to reject Bell's attempt to an imply a waiver where one is not unequivocally stated. The Court should deem Nisqually immune from Bell's suit.

//

//

FLOYD, PFLUEGER & RINGER P.S.
200 WEST THOMAS STREET, SUITE 500
SEATTLE, WA 98119
TEL 206 441-4455
FAX 206 441-8484

D. Nisqually is immune regardless of whether it acted outside its sovereignty.

Bell's Response contends Nisqually "acted outside the scope of its sovereignty," and that its immunity is therefore waived "by operation of law." But the Ninth Circuit "has repudiated this theory." *Nero v. Cherokee Nation of Okla.*, 892 F.2d 1457, 1461 (10th Cir. 1989). It held that a tribe "remains immune from suit regardless of any allegation that it acted beyond its authority or outside of its powers." *Chemehuevi Indian Tribe v. Cal. State Bd. of Equalization*, 757 F.2d 1047, 1052 (9th Cir. 1985) (noting that the "outside the scope of a tribe's sovereign power" applies "only in the case of suits against [tribal] officials, where the inquiry is whether an official is protected by the immunity of the sovereign"), *rev'd on other grounds*, 474 U.S. 9, 88 L. Ed. 2d 9, 106 S. Ct. 289 (1985). When tribal officials act beyond their authority, they lose their entitlement to the immunity of the sovereign. *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269, 1271 (9th Cir. 1991).

Nisqually is entitled to sovereign immunity regardless of whether it "acted outside the scope of its sovereignty," which it denies. And while Bell has not expressly alleged that either Tiam or Simmons acted outside the scope of their authority as tribal executives by signing the jailing agreements, he could not reasonably do so. This ultra vires argument should not preclude Nisqually, Simmons, or Tiam from invoking sovereign immunity.

E. Nisqually's sovereign immunity reaches Tiam and Simmons.

Defendants admit that applicable law allows Bell to stylize his claims against Tiam and Simmons in a manner suggesting that he seeks individual relief against them, rather than against Nisqually. However, courts "may not simply rely on the characterization of the parties in the complaint, but rather must determine in the first instance whether the remedy sought is truly against the sovereign." *Lewis v. Clarke*, 137 S. Ct. 1285, 1291, 197 L.Ed.2d 631 (2017); *see also generally Cook v. AVI Casino Enters.*, 548 F.3d 718, 727 (9th Cir. 2008) (cautioning circumvention of tribal immunity through "a mere pleading device") (citation omitted). This "under-the-hood" analysis as to suits against tribal officers requires courts to be sensitive to whether "the judgment sought would expend itself on the public treasury or domain, or

FLOYD, PFLUEGER & RINGER P.S.
200 WEST THOMAS STREET, SUITE 500
SEATTLE, WA 98119
TEL 206 441-4455
FAX 206 441-8484

interfere with the public administration, or if the effect of the judgment would be to restrain the [sovereign] from acting, or to compel it to act." *Maxwell v. Cty. of San Diego*, 708 F.3d 1075, 1088 (9th Cir. 2013).

Bell's claims against Simmons and Tiam do not arise from a car crash as in *Lewis*, nor from medical negligence case as in *Maxwell*. They instead relate to a policy decision made by a tribal executive at the highest level. Allowing these claims to proceed against Simmons and Tiam, notwithstanding their characterization as "individual capacity" claims, would interfere with the effective administration of Nisqually's government; it may well influence current and future Nisqually executives to avoid making policy decisions on behalf of—and for the benefit of—the tribe for fear of individual liability. Bell's complaints against Tiam and Simmons also flow directly from decisions they could *only* take in their official capacity, and some of the claims Bell brings (such as for specific relief against them) are applicable *only* if they use their official positions. *Cf. Long v. Barrett*, 2018 U.S. Dist. LEXIS 57583, at *13-14 (D.N.J. Apr. 3, 2018) (actions defendant "could undertake only as the tribe's Director of Finance" and "not … as an individual" factored into dismissal of both official and individual capacity claims).[2] The defendants therefore request the Court allow Simmons and Tiam to invoke Nisqually's sovereign immunity for their official-capacity policy decision, notwithstanding Bell's characterization of the claims against them.

F. Bell's allegations against Simmons fail to meet federal pleading standards, as do his alleged conspiracy claims.

Federal pleading standards, while not requiring detailed factual allegations, do not allow for complaints that tender "naked assertions" devoid of "further factual enhancement." *See Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L.Ed.2d 868 (2009). In *Iqbal*, the court held that a complaint's allegations that then-Attorney General John Ashcroft was the

[2] Notably, the *Long* court also cited *Iqbal*, noting that the plaintiff's "conclusory allegations" of collusion and conspiracy are "not factual allegations that give rise to an inference of liability," and therefore dismissed plaintiff's deficient claims. *See Long*, 2018 U.S. Dist. LEXIS 57583, at *16.

FLOYD, PFLUEGER & RINGER P.S.
200 WEST THOMAS STREET, SUITE 500
SEATTLE, WA 98119
TEL 206 441-4455
FAX 206 441-8484

"principal architect" of a policy, and then-FBI Director Robert Mueller was "'instrumental' in adopting and executing" the policy, were "conclusory and not entitled to be assumed true" irrespective of their "extravagantly fanciful nature." *Id.* at 680-81. Moreover, the factual allegations actually considered by the court must "plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

Defendants' Motion argued that Bell's claims against Simmons, seemingly premised entirely upon the latter's execution of one document after his incarceration, failed to state an act or omission by him that injured Bell. (Dkt. #36 at 11). Bell counters that Simmons was Nisqually's CEO and "personally administer[ed]" the jail services agreement. (Dkt. #39 at 13). But Bell has pleaded no specific facts that Simmons "personally administered" the jail services agreement on behalf of Nisqually, and Bell can only "infer that Simmons was the C.E.O. during the administration of the Agreement/conspiracy" based on the date he executed the inapplicable jail services agreement. (Dkt. #39 at 12-13). The conclusory, unspecific allegations do not comply with federal pleading standards and cannot carry Bell's claims forward. Moreover, there is no connection between Simmons' purported "administration" of the agreement and any injury to Bell. Bell's conclusory allegations are akin to those lodged against Ashcroft and Mueller in *Iqbal*, warranting dismissal.

Analysis of Bell's § 1983 conspiracy claim is no different; his complaint fails to state the "specific facts" necessary "to support the existence of the claimed conspiracy." *Burns v. County of King*, 883 F.2d 819, 821 (9th Cir. 1989); *see also Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982) ("Vague and conclusory allegations of official participation in civil rights violations are not sufficient to withstand a motion to dismiss."). Bell's Complaint relies upon broad, conclusory allegations of conspiracy devoid of substance. Equally important is Bell's failure to adequately allege that Simmons or Tiam conspired "to deprive *him* of *his* constitutional rights." *Ting v. United States*, 927 F.2d 1504, 1512 (9th Cir. 1991) (emphasis

FLOYD, PFLUEGER & RINGER P.S.
200 WEST THOMAS STREET, SUITE 500
SEATTLE, WA 98119
TEL 206 441-4455
FAX 206 441-8484

added). At most, they executed the agreement without knowledge of Bell. Accordingly, any conspiracy claim should be dismissed.

G. Bell has not exhausted his tribal court remedies as to his negligence claims.

Bell argues that his lack of consent to interactions with Nisqually obviate the tribal remedy exhaustion requirement. They do not.

Whether to require a party to exhaust tribal court remedies "involves a discretionary exercise of a court's equity powers." *Stock W. Corp. v. Taylor*, 964 F.2d 912, 917 (9th Cir. 1992) (citations omitted). In *Taylor*, the Ninth Circuit affirmed a district court's decision to dismiss a case for failure to exhaust tribal remedies, holding that tribal court jurisdiction was colorable where a non-tribe member sued a tribe in a contract and tort dispute and the key events may have taken place on tribal lands. *See id.* at 917-19; *see also Warn v. E. Band of Cherokee Indians*, 858 F. Supp. 524, 527 (W.D.N.C. 1994) ("The fact that the Plaintiffs are non-Indians does not prohibit the Tribal Court from exercising civil jurisdiction over this matter."). The Court must determine "how the claims are related to tribal lands"; "If Plaintiff's claim is directly tied to events that occurred on tribal land, then tribal jurisdiction is colorable and the exhaustion of tribal remedies is required." *Wilson v. Horton's Towing*, 906 F.3d 773, 779 (9th Cir. 2018) (citations omitted).

The Nisqually Tribal Court has colorable jurisdiction over Bell's tort claims[3] because they occurred on tribal land. Accordingly, the Nisqually Tribal Court "must be given an opportunity to address the jurisdictional question first." *Id.* at 780.

H. The general statute for personal injury actions does not apply to Bell's "false imprisonment" claim.

The final portion of Bell's Response argues that his Fourth Amendment claim is not time-barred because the three-year statute of limitations under RCW 4.16.080, rather than two-

[3] Nisqually does not assert that its courts have jurisdiction over Bell's purported § 1983 claim(s). *See Nevada v. Hicks*, 533 U.S. 353, 369, 121 S. Ct. 2304, 150 L.Ed.2d 398 (2001).

FLOYD, PFLUEGER & RINGER P.S.
200 WEST THOMAS STREET, SUITE 500
SEATTLE, WA 98119
TEL 206 441-4455
FAX 206 441-8484

year statute of limitations under RCW 4.16.100. (Dkt. #39 at 17). Bell refers to Defendants' arguments as "false" and "frivolous." (Dkt. #39 at 17).

But Defendants merely took Bell at his word; Bell's second claim, according to his complaint, is for "False Imprisonment under the Fourth Amendment (against all defendants)." (Dkt. #1-2 at 13). Defendants therefore have asked for this claim to be deemed time barred under the statute that requires "false imprisonment" actions to be brought "within two years." RCW 4.16.100(1). Bell does not dispute that he filed this action more than two years after the supposed false imprisonment. Thus, the Court should bar any § 1983 or state tort false imprisonment claim.

II. CONCLUSION

Based on the foregoing, Nisqually, Tiam, and Simmons respectfully request the Court dismiss Bell's Complaint against them.

DATED this 10th day of May, 2019.

FLOYD PFLUEGER & RINGER, P.S.

/s/Thomas B. Nedderman
Thomas B. Nedderman, WSBA No. 28944
William J. Dow, WSBA No. 51155
FLOYD, PFLUEGER & RINGER P.S.
200 W. Thomas Street, Suite 500
Seattle, WA 98119
Tel (206) 441-4455
Fax (206) 441-8484
tnedderman@floyd-ringer.com
wdow@floyd-ringer.com
Counsel for Defendants Nisqually Tribe, CEO John Simmons and CFO Eletta Tiam

DECLARATION OF SERVICE

Pursuant to RCW 9A.72.085, I declare under penalty of perjury and the laws of the State of Washington that on the below date, I delivered a true and correct copy of DEFENDANT NISQUALLY TRIBE, SIMMONS, AND TIAM'S REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS via the method indicated below to the following parties:

Jackson Millikan Millikan Law Firm 2540 Kaiser Rd NW Olympia, WA 98502 jackson@millikanlawfirm.com	*Counsel for Plaintiff*	[ ] Via Messenger [ ] Via Email [ ] Via Facsimile [ ] Via U.S. Mail [X] Via CM/ECF
Kent Underwood Underwood Law 705 S. 9th Street, Suite 205 Tacoma, WA 98405 Kent@underwoodlaw.us	*Counsel for Plaintiff*	[ ] Via Messenger [ ] Via Email [ ] Via Facsimile [ ] Via U.S. Mail [X] Via CM/ECF
Robert W. Novasky Forsberg & Umlauf, P.S. 1102 Broadway Ste 510 Tacoma, WA 98402-3534 rnovasky@FoUm.law	*Counsel for Defendants Does 1-25*	[ ] Via Messenger [ ] Via Email [ ] Via Facsimile [ ] Via U.S. Mail [X] Via CM/ECF
John E. Justice Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S. P.O. Box 11880 Olympia, WA 98058 jjustice@lldkb.com	*Counsel for Lacey Defendants*	[ ] Via Messenger [ ] Via Email [ ] Via Facsimile [ ] Via U.S. Mail [X] Via CM/ECF
Daniel F. Mullin Aaron P. Gilligan 101 Yesler Way, Suite 400 Seattle, WA 98104 dmullin@masattorneys.com agilligan@masattorneys.com	*Counsel for Lacey Defendants*	[ ] Via Messenger [ ] Via Email [ ] Via Facsimile [ ] Via U.S. Mail [X] Via CM/ECF

DATED this 10th day of May, 2019 at Seattle, Washington.

/s/Monica R. Howard
Monica R. Howard, Legal Assistant

FLOYD, PFLUEGER & RINGER P.S.
200 WEST THOMAS STREET, SUITE 500
SEATTLE, WA 98119
TEL 206 441-4455
FAX 206 441-8484