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

CARMEN TAGEANT,

Plaintiff,

v.

MICHAEL ASHBY, in his personal capacity,

Defendant.

NO. 18 2 0,0073 37
COMPLAINT

COMES NOW Plaintiff Carmen Tageant, by and through her attorneys of record, Galanda Broadman, PLLC, and, upon her own personal knowledge, and upon information and belief, alleges and claims as follows:

I. PARTIES

1. Plaintiff CARMEN TAGEANT is a 55-year-old female resident of the State of Washington. Ms. Tageant resides in Everson, Washington. She is a member of the Nooksack Indian Tribe.

2. Defendant MICHAEL ASHBY is a resident of the State of Washington. Defendant Ashby resides in Bellingham, Washington. He is not a member of the Nooksack Indian Tribe or any other Indian Tribe. Defendant Ashby was fired from the Ferndale Police Department for department policy violations, before gaining employment with the Nooksack Police Department in 2015. He now holds himself out as the Nooksack Police Chief.

COMPLAINT - 1

GR 1
ORIGINAL

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II. JURISDICTION AND VENUE

3. Jurisdiction and venue are proper in this Court because:

a. The acts alleged herein occurred in Whatcom County. *Outsource Servs. Mgmt., LLC v. Nooksack Bus. Corp.*, 181 Wn.2d 272, 274, 333 P.3d 380 (2014) (“Washington State courts have jurisdiction over civil cases arising on Indian reservations as long as it does not infringe on the sovereignty of the tribe.”);

b. Both parties are residents of Whatcom County;

c. Defendant Ashby is not a member of any tribe. *Maxa v. Yakima Petroleum, Inc.*, 83 Wn. App. 763, 924 P.2d 372 (1996); *Powell v. Farris*, 94 Wn.2d 782, 620 P.2d 525 (1980); and

d. Tribal sovereign immunity does not bar Plaintiff’s personal capacity suit against Defendant Ashby for his own tortious conduct. *Lewis v. Clarke*, __U.S.__, 137 S. Ct. 1285 (2017); Order at 11, *Rabang, et al., v. Kelly, et al.*, 2:17-cv-000888 (W.D. Wash. Apr. 29, 2017), ECF No. 62; *Wright v. Colville Tribal Enter. Corp.*, 159 Wn.2d 108, 116, 147 P.3d 1275 (2006) (en banc); *Pistor v. Garcia*, 791 F.3d 1104, 1112 (9th Cir. 2015) (citing *Maxwell v. Cty. of San Diego*, 708 F.3d 1075, 1089 (9th Cir. 2013)).

III. STATEMENT OF FACTS

4. Defendant Ashby assaulted and battered Ms. Tageant without cause or provocation on January 5, 2018, while wearing a Nooksack Indian Tribe police uniform.

5. As of March 24, 2016, the Nooksack Tribal Council’s refusal to comply with its own laws, for want of the quorum required by the Constitution and Bylaws of the Nooksack Indian Tribe, rendered it defunct; and any post-March 24, 2016, acts of the now Holdover Tribal Council or its subordinate governmental entities or agents are *ultra vires* and void *ab initio*,

1 according to the United States.¹ This includes the post-March 24, 2016, purported appointment
 2 by the Holdover Tribal Council of Defendant Ashby as Nooksack Tribal Police Chief,² or any
 3 post-March 24, 2016, purported act of Defendant Ashby as Nooksack Tribal Police Chief.

4 6. On December 13, 2016, this Court accorded deference to the October 17 and
 5 November 14, 2016, decisions of Lawrence S. Roberts, Principal Deputy Assistant Secretary of
 6 Indian Affairs (“PDAS”) for the U.S. Department of the Interior, not to “recognize as lawful or
 7 carrying any legal effect the actions or decisions of the Nooksack Tribal Council after March
 8 24, 2016” *In re Gabriel S. Galanda, et al. v. Nooksack Tribal Ct.*, No. 16-2-01663-1, Dkt.
 9 No. 55. “This Court, therefore, does not recognize any such post-March 24, 2016 actions of
 10 decisions of the Nooksack Tribal Council” *Id.*

11 7. On December 23, 2016, PDAS Roberts issued a third decision, declaring that
 12 Nooksack law enforcement officers lack tribal or federal authority to carry out “actions taken by
 13 the Tribal council after March 24, 2016.”³

14 8. On December 24, 2017, an August 25, 2017, Memorandum of Agreement
 15 (“MOA”) between former Acting Assistant Secretary of Indian Affairs, Mike Black, and
 16 Nooksack Tribal Chairman Robert Kelly Jr., the Chairman of the Nooksack Tribe—which
 17 temporarily restored recognition of the Nooksack Tribal Council—expired under its own terms.⁴

19 ¹ See Letter from Lawrence Roberts, Principal Deputy Assistant Secretary – Indian Affairs, United States
 20 Department of Interior, to Robert Kelly, Jr., Chairman, Nooksack Indian Tribe (Dec. 23, 2016) (“Roberts’ Third
 21 Decision”), available at <https://turtletalk.files.wordpress.com/2017/01/12-23-16-letter-from-pdas-ia-lawrence-roberts-to-robert-kelly-jr.pdf>; Letter from Lawrence Roberts, Principal Deputy Assistant Secretary – Indian Affairs, United States Department of Interior, to Robert Kelly, Jr., Chairman, Nooksack Indian Tribe (Nov. 14, 2016),
 22 available at <https://turtletalk.files.wordpress.com/2016/11/letter-from-lawrence-roberts-to-chairman-kelly.pdf>;
 Letter from Lawrence Roberts, Principal Deputy Assistant Secretary – Indian Affairs, United States Department of
 23 Interior, to Robert Kelly, Jr., Chairman, Nooksack Indian Tribe (Oct. 17, 2016), available at
 24 <https://turtletalk.files.wordpress.com/2016/10/letter-from-pdas-ia-lawrence-roberts-to-chairman-bob-kelly.pdf>.

² Cf. Order Granting Defendant’s Motion to Dismiss, *Nooksack Indian Tribe v. Zinke*, No. 17-0219-JCC (W.D.
 25 Wash. Feb. 13, 2017), No. 17-0219, ECF No. 43 (“the Court concludes deference is owed to the DOI decisions[.] . .
 . . [t]herefore, the decisions taken and the leadership in place after March 24, 2016, are not valid at this time. . .”).

³ Roberts’ Third Decision, *supra* note 1, at 1.

⁴ Memorandum of Agreement between Michael Black, Acting Assistant Secretary – Indian Affairs, United State
 Department of Interior, and Robert Kelly, Jr., Chairman, Nooksack Indian Tribe (Aug. 25, 2017), available at
<https://turtletalk.files.wordpress.com/2017/09/moa-8-28-17.pdf>.

1 9. As of the date of this filing, the Tribal Council remains unrecognized by the
2 United States, and any and all post-March 24, 2016, actions and decisions of the Holdover
3 Tribal Council—including their appointment of Defendant Ashby as Nooksack Police Chief—
4 and its surrogates—including Defendant Ashby holding himself out as Police Chief—remain
5 *ultra vires*.

6 10. In December of 2017, the Council commenced the General Election procedures
7 for the four Tribal Council seats that are set to expire in March of 2018, which includes Ms.
8 Tageant's seat.

9 11. On January 5, 2018, at 1:58 p.m., Ms. Tageant arrived at the Nooksack Election
10 Board Office in Deming, Washington to deliver her candidate application before the 2:00 p.m.
11 filing deadline. Ms. Tageant sought to run for reelection.

12 12. As Ms. Tageant approached the front door of the Elections Board Office,
13 Defendant Ashby saw her, with application materials in hand, and locked the front door. As it
14 was not yet 2:00 p.m., Ms. Tageant knocked on the front door. Defendant Ashby opened the
15 front door in response, and allowed Ms. Tageant into the building.

16 13. Upon entering, Ms. Tageant announced that she was there to turn in her candidate
17 application. At the same moment when Election Superintendent Katrice Rodriguez announced
18 to her, "you're too late," Defendant Ashby forcefully grabbed both of Ms. Tageant's arms just
19 above her elbows and violently pushed her back. Defendant Ashby battered Ms. Tageant
20 without provocation.

21 14. Ms. Tageant was stunned by Defendant Ashby's action, telling him, "what are
22 you doing? Don't touch me."

23 15. Defendant Ashby again reached for Ms. Tageant, and out of fear, she stepped
24 backward out of his reach and extended her arm to keep Defendant Ashby away from her.
25

1 Again, Ms. Tageant told Defendant Ashby not to put his hands on her again. Defendant Ashby
2 assaulted Ms. Tageant without provocation.

3 16. Ms. Tageant feared what would happen if she stayed; so, she exited the building
4 and walked back to the safety of her car. As she was walking to her car, she kept looking over
5 her shoulder, afraid Defendant Ashby would follow her.

6 17. As Ms. Tageant drove away from the Elections Board Office, Defendant Ashby
7 came outside and made a point of making eye contact with and smirking at her in an
8 intimidating manner.

9 18. On the afternoon of January 5, 2018, when Defendant Ashby assaulted and
10 battered Ms. Tageant, the Nooksack Tribal Council lacked recognition and Defendant Ashby
11 lacked any tribal or federal law enforcement authority according to the United States. He acted
12 in his personal capacity that afternoon.

13 19. Since the assault and battery, Ms. Tageant has experienced severe emotional
14 trauma. She has been paralyzed with fear, not only for herself, but for her children as well.
15 While at home, Ms. Tageant is careful to ensure that her doors and windows are locked at all
16 times, checking the locks throughout the day. Already, Ms. Tageant experiences flashbacks of
17 the incident that cause her to become shaky and to cry. She has been unable to sleep, terrorized
18 with nightmares of this incident. Due to this trauma and the effect on her life, including the loss
19 of an opportunity to run for re-election, Ms. Tageant has begun experiencing depression.

20 20. On January 9, 2018, Ms. Tageant went, upon successive referrals, to receive
21 medical and mental health care from the Nooksack Tribal Clinic, Nooksack Domestic Violence
22 and Sexual Assault Services, Whatcom County Domestic Violence and Sexual Assault Services
23 ("DVSAS"), and Lummi Nation Victims of Crime, for the emotional trauma she has suffered as
24 a result of Defendant Ashby's assault and battery of her. Ms. Tageant was prescribed
25 medication to ease her anxiety and to allow her to sleep.

COMPLAINT - 5

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1 21. By January 10, 2018, Ms. Tageant reported Defendant Ashby's assault and
2 battery of her, in part at the recommendation of DVSAS, with the U.S. Department of the
3 Interior Office of Tribal Justice, the Bureau of Indian Affairs Puget Sound Agency
4 Superintendent, and the Whatcom County Sheriff.

5 22. This is not the first time Defendant Ashby has attempted to intimidate Ms.
6 Tageant, or other Nooksack Indian women. After Ms. Tageant filed for a protection order
7 against Nooksack Tribal Chairman Kelly in the summer of 2017, Defendant Ashby began
8 shooting shotguns as "target practice," immediately behind Ms. Tageant's home while her
9 children were playing outside. Defendant Ashby's intimidation caused Ms. Tageant to drop the
10 request for a protection order. Now, however, Ms. Tageant is determined to hold Defendant
11 Ashby accountable for his actions.

12 **IV. FIRST CAUSE OF ACTION – BATTERY**

13 23. Defendant Ashby intentionally, and without Ms. Tageant's consent, physically
14 grabbed both of her arms and shoved her backward with excessive force.

15 24. This unwanted and unlawful, physical contact caused Ms. Tageant to suffer great
16 anxiety about the possibility of further unwanted contact by Defendant Ashby.

17 25. As a proximate result of the acts alleged herein Ms. Tageant suffered harm,
18 entitling her to damages in an amount to be proven at trial.

19 26. This harm includes objectively verifiable monetary losses, such as medical
20 expenses and loss of earnings.

21 27. This harm also includes subjective, nonmonetary losses, including, but not limited
22 to pain, suffering, loss of enjoyment of life, mental anguish, and emotional distress.

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1 **V. SECOND CAUSE OF ACTION – ASSAULT**

2 28. After physically grabbing and shoving Ms. Tageant, Defendant Ashby stepped
3 towards her again. Ms. Tageant stepped backward out of Defendant Ashby's reach. This was
4 an intentional attempt to inflict injury on Ms. Tageant.

5 29. Through his conduct, Defendant Ashby placed Ms. Tageant in a state of fear of
6 imminent, harmful, and unwanted physical contact.

7 30. As a proximate result of the acts alleged herein Ms. Tageant suffered harm,
8 entitling her to damages in an amount to be proven at trial.

9 31. This harm includes objectively verifiable monetary losses, such as medical
10 expenses and loss of earnings.

11 32. This harm also includes subjective, nonmonetary losses, including, but not limited
12 to pain, suffering, loss of enjoyment of life, mental anguish, and emotional distress.

13 **VI. THIRD CAUSE OF ACTION – INFLICTION OF EMOTIONAL DISTRESS**

14 33. Defendant Ashby's conduct towards Ms. Tageant was extreme and outrageous.
15 Defendant Ashby intentionally caused Ms. Tageant emotional distress by: (1) grabbing her and
16 pushing her without provocation and (2) attempting to grab her a second time. As a result of
17 Defendant Ashby's conduct, Plaintiff suffered legally compensable emotional distress damages.

18 34. As a proximate result of the acts alleged herein Ms. Tageant suffered harm,
19 entitling her to damages in an amount to be proven at trial.

20 35. This harm includes objectively verifiable monetary losses, such as medical
21 expenses and loss of earnings.

22 36. This harm also includes subjective, nonmonetary losses, including, but not limited
23 to pain, suffering, loss of enjoyment of life, mental anguish, and emotional distress.

24 **VII. JURY DEMAND**

25 Ms. Tageant hereby demands a jury.

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VIII. PRAYER FOR RELIEF

WHEREFORE, Ms. Tageant prays as follows against Defendant Ashby in his personal capacity:

1. For judgment against the Defendant Ashby for general, special, and punitive damages, including damages for pain, suffering, and terror, in an amount to be proven at trial;
2. For compensatory damages to include, but not restricted to, damages for emotional distress and mental anguish in amounts to be proven at trial;
3. An award of reasonable attorneys' fees and costs;
4. Any and all applicable interest on the judgment; and
5. For such additional relief as this Court may deem just and proper.

DATED this 10th day of January, 2018.

GALANDA BROADMAN, PLLC



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Superior Court ----- Whatcom County ----- Washington State

Carmen Tageant,

vs.

Michael Ashby, in his personal capacity,

GR-17 Declaration

I DECLARE THAT:

1. I am over the age of 18 years, competent to be a witness, and not a party to this action.
2. I received, by electronic means, a document for filing in the above captioned case.
3. I have examined said document, found it clear and discernible, and attached this Declaration thereto.
4. I received said document on: 01/10/2018
5. The name of said document was: Complaint
6. The number of pages in said document, including this Declaration, was: 9

I declare under the penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge.

Signed on 01/10/2018

4th Corner Network, Inc.
110 Prospect St.
Bellingham, WA 98225
360-671-2455


Linda Duralla
329918

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