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6 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
7 **IN AND FOR THE COUNTY OF WHATCOM**

8 GEORGE ADAMS and ELILE ADAMS,

9 Plaintiffs,

10 v.

11
12 RAYMOND DODGE, MICHAEL ASHBY,
13 FRANCISCO SANCHEZ, DANIEL
14 BENNETT, BRANDON FARSTAD, and
15 JOHN DOES 1-5,

Defendants.

Case No. 19-2-01552-37

DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES TO FIRST
AMENDED COMPLAINT, AND
COUNTERCLAIM

16 Defendants Raymond Dodge, Michael Ashby, Francisco Sanchez, Daniel Bennett,
17 Brandon Farstad and John Does 1-5 ("Defendants"), by and through counsel of record, hereby
18 provide their answers and affirmative defenses, and counterclaim to Plaintiff's First Amended
19 Complaint as follows:

20 **PARTIES**

21 1. Answering Paragraph 1, Defendants lack sufficient knowledge to admit or deny
22 the allegations, and therefore, DENY the same.

23 2. Answering Paragraph 2, Defendants lack sufficient knowledge to admit or deny
24 the allegations, and therefore, DENY the same. Defendants specifically DENY that Plaintiff
25 Elile Adams was a Lummi Nation citizen at the time of filing of the lawsuit.

26 3. Answering Paragraph 3, Defendant Judge Dodge ADMITS the allegations of the
27 first sentence, DENIES that he "purports" to be the Nooksack Tribal Chief Judge because he is,

1 in fact, the Chief Judge of that Court, DENIES that the Tribal Court is located off-reservation,¹
2 and DENIES that he is sued in his personal capacity.

3 4. Answering Paragraph 4, Defendant Ashby ADMITS the allegations of the first
4 sentence, DENIES that he “purports” to the Nooksack Tribal Chief of Police because he is, in
5 fact, the Chief of Police, and DENIES that he is sued in his personal capacity.

6 5. Answering Paragraph 5, Defendant Sanchez ADMITS the allegations of the first
7 and second sentences, but DENIES that he is sued in his personal capacity.

8 6. Answering Paragraph 6, Defendant Bennett ADMITS the allegations of the first
9 and second sentences, but DENIES that he is sued in his personal capacity.

10 7. Answering Paragraph 7, Defendant Farstad ADMITS the allegations of the first
11 and second sentences, but DENIES that he is sued in his personal capacity.

12 8. Answering Paragraph 8, Defendants lack sufficient knowledge to admit or deny
13 the allegations, and therefore, DENY the same.

14 JURISDICTION AND VENUE

15 9. Answering Paragraph 9, the allegations are legal conclusions for which no
16 response is required. To the extent an answer is required, Defendants DENY the same.

17 10. Answering Paragraph 10, the allegations are legal conclusions for which no
18 response is required. To the extent an answer is required, Defendants DENY the same.

19 11. Answering Paragraph 11, the allegations are legal conclusions for which no
20 response is required. To the extent an answer is required, Defendants DENY the same.

21 12. Answering Paragraph 12, the allegations are legal conclusions for which no
22 response is required. To the extent an answer is required, Defendants DENY the same.
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24 _____
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26 ¹ A “Praecipe Re: First Amended Complaint” was filed by Plaintiffs on September 13, 2019 purporting to amend
27 Plaintiffs’ allegation to reflect the fact that the Tribal Court is located on Tribal trust land. However, because a
28 Praecipe cannot substitute for a Second Amended Complaint to correct the misstatement of fact, Defendant Judge
Dodge responds to the First Amended Complaint.

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2 **STATEMENT OF FACTS**

3 **A. INTRODUCTION**

4 13. Answering Paragraph 13, Defendants Ashby, Sanchez, Bennett and Farstad
5 (collectively, "Tribal Police Defendants") ADMIT that Plaintiffs were arrested. The remaining
6 allegations are legal conclusions for which no response is required. To the extent an answer is
7 required, Defendants DENY the same.

8 14. Answering Paragraph 14, Tribal Police Defendants ADMIT that they appeared to
9 make an arrest based on a warrant issued by the Nooksack Tribal Court. Defendant Judge Dodge
10 ADMITS that Plaintiff Elile Adams failed to personally appear for a criminal hearing in the
11 Nooksack Tribal Court on July 11, 2019, despite having previously signed a "Promise to
12 Appear." Defendant Dodge ADMITS that Plaintiff Elile Adams' lawyer did appear. Defendant
13 Judge Dodge ADMITS that Plaintiff Elile Adams has appeared before the Tribal Court twice in
14 the criminal matter and in a civil action previously, and that he issued a warrant for her arrest
15 following her failure to appear in the criminal matter. Defendants lack sufficient knowledge to
16 admit or deny the remaining allegations, and therefore, DENY the same.

17 15. Answering Paragraph 15, Defendant Judge Dodge DENIES the same.

18 16. Answering Paragraph 16, Tribal Police Defendants DENY the same.

19 17. Answering Paragraph 17, Tribal Police Defendants ADMIT that Plaintiff George
20 Adams was released at the scene and that Plaintiff Elile Adams was arrested based on a valid
21 warrant issued by the Nooksack Tribal Court. Tribal Police Defendants DENY the remaining
22 allegations.

23 18. Answering Paragraph 18, Tribal Police Defendants DENY the same.

24 **B. DEFENDANT DODGE AND THE NOOKSACK TRIBAL "JUSTICE SYSTEM"**

25 19. Answering Paragraph 19, Defendants lack sufficient knowledge to admit or deny
26 the allegations, and therefore, DENY the same. The newspaper article citation in FN 1 speaks for
27 itself and is the best evidence of its contents.

28 20. Answering Paragraph 20, Defendants lack sufficient knowledge to admit or deny

1 the allegations, and therefore, DENY the same.

2 21. Answering Paragraph 21, Defendants lack sufficient knowledge to admit or deny
3 the allegations, and therefore, DENY the same.

4 22. Answering Paragraph 22, Defendant Judge Dodge admits that he was the former
5 lawyer for the Nooksack Indian Tribe and that he was appointed Chief Judge of the Tribal Court.
6 Defendants lack sufficient knowledge to admit or deny the remaining allegations, and therefore,
7 DENY the same. The record in the federal case cited to in FN 2 speaks for itself and is the best
8 evidence of its contents.

9 23. Answering Paragraph 23, the letter speaks for itself and is the best evidence of its
10 contents. Defendants DENY any remaining allegations.

11 24. Answering Paragraph 24, the letter speaks for itself and is the best evidence of its
12 contents. Defendants DENY any remaining allegations.

13 25. Answering Paragraph 25, Defendant Judge Dodge ADMITS the first part of the
14 first sentence, that Plaintiff George Adams appeared in a representative capacity on Ms.
15 Rabang's behalf. As to the remainder of the first sentence, Defendant Judge Dodge DENIES
16 Ms. Rabang "was unlawfully facing eviction" and that he "disbarred lawyers and excluded them
17 from court." As to the remainder of the allegations of paragraph 25, Defendant Judge Dodge
18 lacks sufficient knowledge to admit or deny the allegations, and, therefore, DENIES the same.

19 26. Answering Paragraph 26, the cited court ruling speaks for itself and is the best
20 evidence of its contents. Defendants DENY any remaining allegations.

21 27. Answering Paragraph 27, the letter speaks for itself and is the best evidence of its
22 contents. Defendants DENY any remaining allegations.

23 28. Answering Paragraph 28, the NAICJA Letter speaks for itself and is the best
24 evidence of its contents. Defendant Dodge DENIES the remaining allegations.

25 29. Answering Paragraph 29, Defendants lack sufficient knowledge to admit or deny
26 the allegations, and therefore, DENY the same.

27 30. Answering Paragraph 30, the letter speaks for itself and is the best evidence of its
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1 contents. Defendants DENY any remaining allegations.

2 31. Answering Paragraph 31, Defendants lack sufficient knowledge to admit or deny
3 the allegations, and therefore, DENY the same.

4 32. Answering Paragraph 32, the letter speaks for itself and is the best evidence of its
5 contents. Defendants DENY any remaining allegations.

6 **C. WHATCOM COUNTY AND DEFENDANT DODGE'S TRIBAL COURT**
7 **PROCEEDINGS**

8 33. Answering Paragraph 33, as to the first sentence, Defendant Judge Dodge
9 ADMITS that Mr. Galindo initiated a parenting plan action against Plaintiff Elile Adams in
10 Whatcom County Superior Court as part of a child support case brought against Mr. Galindo. As
11 to the second sentence of paragraph 33, Defendant Judge Dodge ADMITS that such an order was
12 issued. As to the third sentence of paragraph 33, Defendant Judge Dodge lacks sufficient
13 knowledge to admit or deny the allegations, and, therefore, DENIES the same.

14 34. Answering Paragraph 34, as to the first sentence, Defendant Judge Dodge
15 ADMITS that Plaintiff Elile Adams sought a Temporary Ex-Parte Order of Protection. As to the
16 second sentence of paragraph 34, Defendant Judge Dodge lacks sufficient knowledge to admit or
17 deny the allegations, and, therefore, DENIES the same. As to the third sentence of paragraph 34,
18 Defendant Judge Dodge DENIES that he "ostensibly presided," but ADMITS that Temporary
19 Ex-Parte Order of Protection was issued.

20 35. Answering Paragraph 35, as to the first sentence, Defendant Judge Dodge
21 DENIES that he himself initiated the parenting action against Plaintiff Elile Adams sua sponte
22 and that he lacked authority to act as Nooksack Tribal Court Chief Judge. As to the second
23 sentence of paragraph 35, the allegations are legal conclusions for which no answer is required;
24 to the extent an answer is required, Defendant Judge Dodge DENIES the same. As to the third
25 sentence of paragraph 35, Defendant Judge Dodge lacks sufficient knowledge to admit or deny
26 the allegations, and, therefore, DENIES the same. As to the fourth sentence of paragraph 35,
27 Judge Dodge DENIES that he "proceeded anyway, himself preparing and issuing a purported

1 Order titled, 'Parenting plan, Visitation Schedule.'"

2 36. Answering Paragraph 36, as to the first sentence, Defendant Judge Dodge
3 ADMITS that Plaintiff Elile Adams appeared in some of her court cases, but DENIES he has
4 "endlessly harassed Elile Adams through an abuse of judicial process—at least 18 times." As to
5 the second sentence of paragraph 36, Defendant Judge Dodge lacks sufficient knowledge to
6 admit or deny the allegations, and, therefore, DENIES the same.

7 37. Answering Paragraph 37, Defendant Judge Dodge ADMITS that he has issued
8 orders in his official capacity as Tribal Court Judge but DENIES the remaining allegations.

9 38. Answering Paragraph 38, Defendant Bennett ADMITS that a citation was issued,
10 which speaks for itself and is the best evidence of its contents. Defendant Judge Dodge and
11 Defendant Bennett DENY the remaining allegations.

12 39. Answering Paragraph 39, as to the first two sentences, Defendant Judge Dodge
13 ADMITS that Plaintiff Elile Adams appeared and plead not guilty and that she was assigned a
14 public defender. Defendant Judge Dodge ADMITS that he has not recused himself but DENIES
15 the remaining allegations.

16 40. Answering Paragraph 40, Defendants lack sufficient knowledge to admit or deny
17 the allegations, and therefore, DENY the same. Defendant Judge Dodge DENIES the allegations
18 as to him.

19 41. Answering Paragraph 41, as to the first sentence, Defendant Judge Dodge
20 ADMITS that Plaintiff Elile Adams filed a "Voluntary Non-Suit." As to the remainder of the
21 first sentence, Dodge DENIES the Nooksack Tribal Court was "nonfunctional." As to the
22 second sentence, the allegations are legal conclusions for which no answer is required; to the
23 extent an answer is required, Defendant Judge Dodge DENIES the same.

24 42. Answering Paragraph 42, the case file speaks for itself and is the best evidence of
25 its contents.

26 43. Answering Paragraph 43, as to the first sentence, Defendant Judge Dodge
27 ADMITS that Mr. Deming appeared. As to the remaining allegations, Defendant Judge Dodge

1 lacks sufficient knowledge to admit or deny the allegations, and therefore, DENIES the same.

2 44. Answering Paragraph 44, Defendant Judge Dodge ADMITS that a warrant was
3 issued due to her failure to appear. Defendant Judge Dodge DENIES any remaining allegations.

4 45. Answering Paragraph 45, Defendant Sanchez DENIES the same.

5 46. Answering Paragraph 46, Defendants lack sufficient knowledge to admit or deny
6 the allegations, and therefore, DENY the same.

7 47. Answering Paragraph 47, Tribal Police Defendants ADMIT that Plaintiff Elile
8 Adams was arrested, but DENY the remaining allegations.

9 48. Answering Paragraph 48, the order speaks for itself and is the best evidence of its
10 contents.

11 49. Answering Paragraph 49, Defendant Dodge DENIES he personally issued the
12 Notice of Hearing, which speaks for itself and is the best evidence of its contents. Defendants
13 DENY the remaining allegations.

14 50. Answering Paragraph 50, Defendant Dodge admits he issued the Criminal
15 Summons, which speaks for itself and is the best evidence of its contents. Defendants DENY the
16 remaining allegations.

17 51. Answering Paragraph 51, Defendant Judge Dodge admits that orders were issued
18 to continue the hearing, which orders speak for themselves and are the best evidence of their
19 contents.

20 52. Answering Paragraph 52, Defendant Judge Dodge DENIES the same.

21 **D. THE EVENTS OF JULY 30, 2019**

22 53. Answering Paragraph 53, Tribal Police Defendants DENY the same.

23 54. Answering Paragraph 54, Tribal Police Defendants ADMIT that Plaintiff George
24 Adams told them that Plaintiff Elile Adams was enrolled with the Lummi Indian Nation. Tribal
25 Police Defendants DENY the remaining allegations.

26 55. Answering Paragraph 55, Tribal Police Defendants DENY the same.

27 56. Answering Paragraph 56, Tribal Police Defendants ADMIT the incident was

1 recorded, including by a body camera. The recorded conversation speaks for itself and provides
2 the best evidence of its contents.

3 57. Answering Paragraph 57, Tribal Police Defendants ADMIT the incident was
4 recorded, including by a body camera. The recorded conversation speaks for itself and provides
5 the best evidence of its contents. Tribal Police Defendants DENY the remaining allegations.

6 58. Answering Paragraph 58, Tribal Police Defendants ADMIT the incident was
7 recorded, including by a body camera. The recorded conversation speaks for itself and provides
8 the best evidence of its contents. Tribal Police Defendants DENY the remaining allegations.

9 59. Answering Paragraph 59, Tribal Police Defendants ADMIT that a facsimile was
10 received after the incident, which speaks for itself and is the best evidence of its contents. Tribal
11 Police Defendants DENY the remaining allegations.

12 60. Answering Paragraph 60, Tribal Police Defendants ADMIT the incident was
13 recorded, including by a body camera. The recorded conversation speaks for itself and provides
14 the best evidence of its contents. Tribal Police Defendants DENY the remaining allegations.

15 61. Answering Paragraph 61, Tribal Police Defendants DENY the same.

16 62. Answering Paragraph 62, Defendants lack sufficient knowledge to admit or deny
17 the allegations, and therefore, DENY the same.

18 63. Answering Paragraph 63, Tribal Police Defendants ADMIT that Plaintiff Elile
19 Adams was arrested and transported to Whatcom County jail. Tribal Police Defendants DENY
20 the remaining allegations.

21 64. Answering Paragraph 64, Defendants lack sufficient knowledge to admit or deny
22 the allegations, and therefore, DENY the same.

23 65. Answering Paragraph 65, Defendants lack sufficient knowledge to admit or deny
24 the allegations, and therefore, DENY the same.

25 66. Answering Paragraph 66, Defendants lack sufficient knowledge to admit or deny
26 the allegations, and therefore, DENY the same.

27 67. Answering Paragraph 67, Defendants lack sufficient knowledge to admit or deny
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1 the allegations, and therefore, DENY the same.

2 **CAUSES OF ACTION**

3 **A. FIRST CAUSE OF ACTION – NEGLIGENCE AND GROSS NEGLIGENCE**

4 68. Answering Paragraph 68, the allegations are legal conclusions for which no
5 response is required. To the extent an answer is required, Tribal Police Defendants DENY the
6 same.

7 69. Answering Paragraph 69, the allegations are legal conclusions for which no
8 response is required. To the extent an answer is required, Tribal Police Defendants DENY the
9 same.

10 70. Answering Paragraph 70, the allegations are legal conclusions for which no
11 response is required. To the extent an answer is required, Tribal Police Defendants DENY the
12 same.

13 71. Answering Paragraph 71, the allegations are legal conclusions for which no
14 response is required. To the extent an answer is required, Tribal Police Defendants DENY the
15 same.

16 72. Answering Paragraph 72, the allegations are legal conclusions for which no
17 response is required. To the extent an answer is required, Tribal Police Defendants DENY the
18 same.

19 **B. SECOND CAUSE OF ACTION – FALSE IMPRISONMENT**

20 73. Answering Paragraph 73, the allegations are legal conclusions for which no
21 response is required. To the extent an answer is required, Defendants DENY the same.

22 74. Answering Paragraph 74, the allegations are legal conclusions for which no
23 response is required. To the extent an answer is required, Defendants DENY the same.

24 75. Answering Paragraph 75, the allegations are legal conclusions for which no
25 response is required. To the extent an answer is required, Defendants DENY the same.

26 76. Answering Paragraph 76, the allegations are legal conclusions for which no
27 response is required. To the extent an answer is required, Defendants DENY the same.

1 77. Answering Paragraph 77, the allegations are legal conclusions for which no
2 response is required. To the extent an answer is required, Defendants DENY the same.

3 **C. THIRD CAUSE OF ACTION – ASSAULT AND BATTERY**

4 78. Answering Paragraph 78, Tribal Police Defendants DENY the same.

5 79. Answering Paragraph 79, Tribal Police Defendants DENY the same.

6 80. Answering Paragraph 80, the allegations are legal conclusions for which no
7 response is required. To the extent an answer is required, Tribal Police Defendants DENY the
8 same.

9 81. Answering Paragraph 81, the allegations are legal conclusions for which no
10 response is required. To the extent an answer is required, Tribal Police Defendants DENY the
11 same.

12 82. Answering Paragraph 82, the allegations are legal conclusions for which no
13 response is required. To the extent an answer is required, Tribal Police Defendants DENY the
14 same.

15 **D. FOURTH CAUSE OF ACTION – OUTRAGE**

16 83. Answering Paragraph 83, the allegations are legal conclusions for which no
17 response is required. To the extent an answer is required, Defendants DENY the same.

18 84. Answering Paragraph 84, the allegations are legal conclusions for which no
19 response is required. To the extent an answer is required, Defendants DENY the same.

20 85. Answering Paragraph 85, the allegations are legal conclusions for which no
21 response is required. To the extent an answer is required, Defendants DENY the same.

22 86. Answering Paragraph 86, the allegations are legal conclusions for which no
23 response is required. To the extent an answer is required, Defendants DENY the same.

24 **E. FIFTH CAUSE OF ACTION – FALSE ARREST**

25 87. Answering Paragraph 87, Defendants DENY the same.

26 88. Answering Paragraph 88, Defendants DENY the same.

27 89. Answering Paragraph 89, Defendants DENY the same.

1 **F. SIXTH CAUSE OF ACTION – NEGLIGENT INFLICTION OF EMOTIONAL**
2 **DISTRESS**

3 90. Answering Paragraph 90, Defendants DENY the same.

4 91. Answering Paragraph 91, the allegations are legal conclusions for which no
5 response is required. To the extent an answer is required, Defendants DENY the same.

6 **JURY DEMAND**

7 92. Answering Paragraph 92, the allegation is a legal conclusion for which no
8 response is required.

9 **PRAYER FOR RELIEF**

10 In answering Plaintiffs' prayer for relief, Defendants DENY that Plaintiffs are entitled to
11 the relief requested or any relief whatsoever.

12 **AFFIRMATIVE DEFENSES**

13 1. Plaintiffs have failed to state a claim upon which relief may be granted.

14 2. Plaintiffs' claims against Defendant Judge Dodge are barred by the doctrine of
15 judicial immunity.

16 3. Defendants are entitled to qualified immunity.

17 4. Defendants were, at all times relevant, acting in their official capacities and are,
18 therefore, cloaked by the sovereign immunity of the Nooksack Indian Tribe.

19 5. Defendants, at all times relevant, acted under color of law.

20 6. Plaintiffs' claims are barred in whole or in part by the doctrine of *in pari delicto*.

21 7. Plaintiffs have failed to mitigate claimed damages, if any.

22 8. Plaintiffs' injuries, if any, were sustained as a direct and proximate result of
23 Plaintiffs' own conduct.

24 9. Plaintiffs' claims are barred by the doctrine of unclean hands or are otherwise
25 equitably estopped.

26 10. Plaintiffs' claims are frivolous under RCW 4.84.185.

27 11. Defendants have, at all times relevant, acted in good faith.

1 County Sheriff and Wendy Jones, Whatcom County Chief of Corrections, in the United States
2 District Court for the Western District of Washington on August 9, 2019 (*Adams v. Elfo, et al.* –
3 Case 2:19-cv-01263-JCC-MLP (W.D. Wash)), which remains pending.

4 3. The litigation against the Tribe and Tribal officials and Tribal employees
5 continues apace despite the actions of the United States to recognize the Nooksack Tribal
6 Council.

7 4. On August 25, 2017, Michael S. Black, then Acting Assistant Secretary – Indian
8 Affairs, entered into a Memorandum of Agreement (“MOA”) with Chairman Kelly, the purpose
9 of which was “to provide and to outline a procedure whereby” the Assistant Secretary (on behalf
10 of Interior) would recognize a tribal council as the governing body of the Nooksack Indian Tribe
11 (“Tribe”).

12 5. On December 2, 2017, the Tribe concluded a Special Election. The election was
13 observed and verified by the Bureau of Indian Affairs pursuant to the MOA.

14 6. On March 7, 2018, the Bureau of Indian Affairs Acting Northwest Regional
15 Director endorsed the Special Election, finding that it was conducted in accordance with the
16 Tribe’s Constitution, Bylaws, and Tribal Law and Ordinances.

17 7. On March 9, 2018, Principal Deputy Assistant Secretary (“PDAS”) Tahsuda
18 issued a decision “to recognize the validity of” the Nooksack Tribal Council as it was comprised.

19 8. On March 15, 2018, following the United States’ March 9 decision to recognize
20 the validity of the Tribal Council, the Tribal Council passed Resolution #18-15 to ratify the
21 previous appointment of Chief Judge Dodge to the Nooksack Tribal Court.

22 9. On April 5, 2018, four unsuccessful candidates to the Special Election,
23 represented by Plaintiffs’ counsel, filed an appeal with the Interior Board of Indian Appeals
24 seeking review of the BIA Regional Director’s March 7, 2018 memorandum endorsing the
25 validity of the Special Election. *Robert Doucette, Bernadine Roberts, Saturnino Javier, and*
26 *Tresea Doucette v. Acting Northwest Regional Director, Bureau of Indian Affairs*, 65 IBIA 183
27 (2018) (Dkt. #162-3). The Board dismissed the appeal on April 17, 2018 for lack of jurisdiction

1 10. The Tribe's General Election was held on May 5, 2018. The Tribe's Election
2 Superintendent certified those election results and provided the certification to the Bureau of
3 Indian Affairs.

4 11. On May 29, 2018, the Nooksack Tribal Council ratified a number of phone polls
5 which occurred between July 2017 and May 2018. Among the polls was Resolution #18-15, in
6 which the current federally-recognized Tribal Council ratified Chief Judge Dodge's 2016
7 appointment to the Nooksack Tribal Court.

8 12. On May 21, 2018, Acting Northwest Regional Director Tammie Poitra sent a
9 letter to Nooksack Tribal Council Chairman Roswell "Ross" Cline, stating her intent to
10 "acknowledge and congratulate [him] as the Chairman of the Nooksack Indian Tribe."

11 13. On June 11, 2018, PDAS Tahsuda sent Chairman Cline a letter congratulating
12 him on his recent election as Chairman of the Tribe and inviting Chairman Cline to meet.

13 14. Undaunted, on June 12, 2018, another group of Nooksack Tribal members, also
14 represented by Plaintiffs' counsel, filed another appeal to the Interior Board of Indian Appeals,
15 seeking review of the May 21, 2018 letter from the BIA acknowledging Chairman Cline
16 claiming that they were unlawfully disqualified from voting in the May 5, 2018 General Election
17 and that Regional Director Poitra's decision to recognize Chairman Cline was arbitrary and
18 capricious. *Belmont*, 65 IBIA at 283. The IBIA once again dismissed the appeal for lack of
19 jurisdiction finding that the appeal was "at its core, a tribal enrollment dispute."

20 15. Plaintiffs Robert Doucette, Bernadine Roberts, Saturnino Javier, and Tresea
21 Doucette then filed a lawsuit against the United States alleging that endorsing the results of
22 primary and general elections conducted by the Tribe was arbitrary and capricious under the
23 federal Administrative Procedures Act. *Doucette et al. v. Bernhardt et al. (Zinke)* – Case No.
24 C18-0859-TSZ (W.D. Wash.).

25 16. On August 8, 2019, Plaintiff George Adams posted or re-posted a Facebook post
26 from Plaintiffs' counsel stating "Pretend Judge Ray Dodge cancelled 'court' today...."

27 17. On August 9, 2019, District Judge Zilly, of the United States District Court for the
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1 Western District of Washington, issued an order rejecting these plaintiffs' continued challenge to
2 the Tribe's government, holding that "Given the amount of scrutiny and involvement the BIA
3 had in the election process, the Court is persuaded that Interior more than satisfactorily
4 discharged its duty to ensure that the Nooksack Tribal Council recognized by PDAS Tahsuda, in
5 his role as Acting Assistant Secretary, was "duly constituted" and represented the Tribe "as a
6 whole." The ruling is presently on appeal.

7 18. Days later, on or about August 13, 2019, the website Last Real Indians
8 (www.lastrealindians.com) published an article about this lawsuit, which included comments by
9 Plaintiff Elile Adams in which she states, "[Judge] Dodge has made my life a living
10 nightmare...So much so that I have sought asylum and protection from him in the Lummi
11 Nation."

12 19. Also on August 13, 2019, an article appears in the *Lynden Tribune* in which
13 Plaintiffs' counsel echoed the words of his client and is reported to have said "This is the lengths
14 [Ms. Adams] has taken to get away from Ray Dodge, who has become an abuser in his own
15 right".

16 **FIRST COUNTERCLAIM FOR RELIEF – LIBEL**

17 20. Defendant Judge Dodge incorporates by reference counterclaim paragraphs 1-19
18 as if fully set forth herein.

19 21. Libel is written defamation. Print publications, images and online statements fall
20 under the libel category.

21 22. Plaintiff Elile Adams made a false and unprivileged statement of fact about
22 Defendant Judge Dodge to the website Last Real Indians.

23 23. Plaintiff George Adams made a false and unprivileged statement of fact about
24 Defendant Judge Dodge on Facebook.

25 24. Plaintiffs published or caused to be published the false and unprivileged
26 statements.

27 25. Plaintiffs' false and unprivileged statements are, and at all relevant times were, of
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1 a matter and character that have the tendency to injure Defendant Judge Dodge's reputation.

2 26. Plaintiffs acted with malice and/or reckless disregard for the truth by making
3 these false statements.

4 27. Plaintiffs false and unprivileged statements are libelous on their face.

5 28. Plaintiffs' false statements have and continue to proximately cause harm to
6 Defendant Judge Dodge in an amount to be determined at trial.

7 29. As may be necessary, this counterclaim constitutes an adequate request for
8 Plaintiffs to correct or clarify their false statements under RCW 7.96.040(4).

9 **JURY DEMAND**

10 30. Defendant Judge Dodge demands a jury.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, having stated their Answer and Affirmative Defenses, and Counterclaim
13 Defendants pray for relief as follows:

- 14 A. For dismissal of Plaintiffs' claims against them in their entirety;
15 B. For an award of damages to Defendant Judge Dodge on his counterclaim;
16 C. For an award of Defendants' reasonable attorney fees and expenses incurred
17 herein; and
18 D. For such other and further relief as the Court deems just and equitable.

19 DATED this 17th day of September, 2019.

20
21 By: 

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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2019, I caused a true and correct copy of the foregoing document to be served via First-Class Mail to the following parties:

Gabriel S. Galanda
Ryan D. Dreveskracht
Bree R. Black Horse
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DATED this 17th day of September, 2019.

Kilpatrick Townsend & Stockton, LLP

By: 

Rob Roy Smith

Email: rsmith@kilpatricktownsend.com