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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

NEWTOK VILLAGE, AND NEWTOK VILLAGE COUNCIL Petitioners, vs. ANDY T. PATRICK, JOSEPH TOMMY, AND STANLEY TOM, Defendants	Case No.: 4:15-CV-00009-RRB **MOTION TO SET ASIDE DEFAULT JUDGMENT**

Pursuant to Rules 55(c) and 60(b)(4) of the Federal Rules of Civil Procedure, Defendants Andy T. Patrick, Joseph Tommy, and Stanley Tom, move to set aside the Default Judgment entered in this matter on November 4, 2015 because the Court lacked subject matter jurisdiction. [Dkt. #16]. Because the Default Judgment is void, Defendants also respectfully request that this Court order restitution of funds paid by Defendants in satisfaction of the void judgment. [Dkt. # 42, 53].

I. PRELIMINARY STATEMENT

Rule 55(c) states "[t]he court may set aside an entry of default for good cause. . ." Good cause exists for this Court to set aside the default judgment in this case because the Court lacked subject matter jurisdiction over this case. The Supreme Court has repeatedly held that "'[f]ederal courts are courts of limited jurisdiction,' possessing only that power authorized by Constitution and statute." *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 373, 377 (1994)). Although the Petitioners alleged that the court had federal question jurisdiction under 28 U.S.C. §1331 and a justiciable Indian Tribe claim under 28 U.S.C. §1362, the Petitioners failed to allege any violations of federal law. Furthermore, the Court failed to find that Defendants violated any federal law, treaty, or United States Constitutional provision. [Dkt. # 16]. This means that this Court lacked jurisdiction over this dispute.

Petitioners' position appears to be that this Court has subject matter jurisdiction over this case simply because an Indian tribe is a party to this suit. But this position is incorrect: under Ninth Circuit precedent, a plaintiff must aver that there has been a violation of a federal law, not just the involvement of an Indian tribe as a party to the suit. *See, e.g.*, *Stock W., Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989); *see also Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians of Florida*, 999 F.2d 503, 507 (11th Cir. 1993); *Martinez v. Southern Ute Tribe*, 249 F.2d 915, 917 (10th Cir. 1957).

Because this Court lacked jurisdiction over this matter, the default judgment it entered is void and this Court should set it aside. All fees collected by Petitioners from Defendants by way of that void judgment should now be returned to Petitioners.

II. FACTUAL AND PROCEDURAL BACKGROUND

Newtok Village is a federally recognized tribe (hereinafter, "the Tribe").[1] According to the Newtok Traditional Council Constitution ("Newtok Constitution"), Tribal leaders serve for either 2 or 3 year terms and are elected at public meetings during the month of October. NEWTOK CONST. art. IV, §VI. Around 2012, a dispute developed as to whether Tribal elections had been held in accordance with the Newtok Constitution. A petition was circulated to hold a Tribal election in October 2012, to elect Tribal leadership. The leadership elected at this meeting is referred to in Interior Board of Indian Appeals ("IBIA") material as the "New Council." In November 2012, another section of the Tribe held a public meeting and elected different leaders. The IBIA refers to this group as the "Old Council." Both sets of leaders sent materials to the Bureau of Indian Affairs ("BIA") alleging that they were the duly-elected leadership of the Tribe. *Newtok Traditional Council v. Acting Alaska Regional Director*, 61 IBIA 167 (Aug. 6, 2015).

The BIA determined that the election held in October 2012 resulted in the election of the legitimate governing body of the Tribe for the limited purpose of entering into Indian Self-Determination and Education Assistance Act ("ISDA") contracts. *See*

[1] Bureau of Indian Affairs, Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 85 Fed. Reg. 5462, 5467 (Jan. 30, 2020), *available at* https://www.federalregister.gov/d/2020-01707.

Decision of Eufrona O'Neill, Acting Regional Director of the Bureau of Indian Affairs Alaska Region (July 11, 2013) (hereinafter "Acting Regional Director Decision").[2]

On September 23, 2015, Petitioners filed this lawsuit against the Defendants. Petitioners requested injunctive relief to "enjoin the Defendants to 1) cease any representation that they are the governing body of Newtok Village, or otherwise represent Newtok Village, 2) turn over all records and property of the Newtok Village, and 3) other relief as may be appropriate." [Dkt. #1].

The Defendants did not respond to the Petition and this Court entered a default judgment against Defendants on November 4, 2015. [Dkt. #16].

On January 13, 2016, the Court awarded Petitioners attorney's fees and court costs. [Dkt. # 26, 27]. Since that time, Petitioners have received payment to satisfy the fees and costs through garnishment of Defendants' bank accounts and permanent funds.[3]

III. ARGUMENT AND AUTHORITIES

A. There is No Time Limit for Moving to Set Aside Void Judgments.

The Federal Rules of Civil Procedure sets forth the parameters for the District Court's ability to relieve a party or its legal representative from a final judgment, order, or proceeding. Specifically, Rule 60(b)(4) provides that a "court may relieve a party . . .

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[2] The Regional Director Decision was filed with the Court as Document # 13-3. However, the document filed with the Court excludes page 2 which sets forth the issue as follows: "BIA shall determine the individuals who are authorized representatives of the governing body of Newtok for the limited purposes of taking ISDA contract-related actions such as authorizing P.L. 638 contracts for services to Newtok and its members. . . ." A complete copy of the Regional Director Decision's decision is attached hereto as Exhibit A.

[3] See, e.g., Dkt. 42, 49 and 53.

from a final judgment, order, or proceeding" if the "the judgment is void." Fed.R.Civ.P. 60(b)(4).

A judgment entered by a court that lacks subject matter jurisdiction is void. *See Gonzalez v. Crosby,* 545 U.S. 524, 534 (2005). "A final judgment is 'void' for purposes of Rule 60(b)(4) only if the court that considered it lacked jurisdiction, either as to the subject matter of the dispute or over the parties to be bound, or acted in a manner inconsistent with due process of law." *United States v. Berke*, 170 F.3d 882, 883 (9th Cir. 1999). "A void judgment is a legal nullity and a court considering a motion to vacate has no discretion in determining whether it should be set aside." *Watts v. Pinckney*, 752 F.2d 406, 410 (9th Cir. 1985) (quoting *Jordan v. Gilligan*, 500 F.2d 701, 704 (6th Cir. 1974)).

Unlike other grounds for relief under Rule 60, no time limit exists to bring a motion to vacate a judgment as void. *Walker & Zanger (W. Coast) Ltd. v. Stone Design S.A.*, 4 F. Supp. 2d 931, 934 (C.D. Cal. 1997), *aff'd sub nom.*, *Walker & Zanger (W. Coast) Ltd. v. Stone Design SA*, 142 F.3d 447 (9th Cir. 1998). Unlike motions for relief from judgment pursuant to Rule 60(b)(1),(2), or (3) (which must be filed within one year of the entry of judgment) or motions for relief from judgment pursuant to Rule 60(b)(5) or (6) (which must be filed within a reasonable time), motions to set aside a judgment as void under Rule 60(b)(4) may be brought at any time. *Meadows v. Dominican Republic*, 817 F.2d 517, 521 (9th Cir. 1987).

B. To Invoke Federal Subject Matter Jurisdiction, the Plaintiff Must Aver Subject Matter Jurisdiction in its Complaint.

Federal question jurisdiction provides that "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. §1331. "The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392, (1987). In order for a claim to arise under "federal law for 28 U.S.C. §1331 purposes, "the plaintiff's statement of his own cause of action [must show] that it is based upon federal law" to satisfy the well-pleaded complaint rule. *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009) (citing *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 152 (1908). A case is said to be within a United States District Court's original jurisdiction if its claims are based on either federal question or diversity jurisdiction. *Id*. at 65.

Similarly, under 28 U.S.C. § 1362, "[t]he district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States." Consequently, "jurisdiction does not exist merely because an Indian tribe is a party or the case involves a contract with an Indian tribe." *Stock W., Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). "Nor is there any general 'federal common law of Indian affairs.'" *Coeur d'Alene Tribe v. Hawks*, 933 F.3d 1052, 1055 (9th Cir. 2019) (quoting *Inyo County v. Paiute-Shoshone Indians*, 538 U.S. 701, 712 (2003). If no specific federal

law is alleged, Petitioner must articulate a specific rule of federal common law under which the Tribe's case arises. *Id.* The congressional purpose of 28 U.S.C. §1362 is to "open the federal courts to the kind of claims that could have been brought by the United States as trustee, but for whatever reason were not so brought." *Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 472 (1976).

C. **The Petitioners' Complant Failed to Invoke Federal Jurisdiction.**

Petitioners' complaint failed to plead any claims arising under federal law, treaty, or the United States Constitution. In addition, Petitioners' complaint failed to assert any law that Defendants allegedly violated or would give rise to federal court jurisdiction. In fact, the complaint is totally lacking in any allegations that Defendants violated federal law. The general assertion of federal question jurisdiction and the fact that an Indian Tribe filed a federal lawsuit are *not* sufficient to invoke federal jurisdiction.

The *only* thing that Petitioners' complaint *does* say is that "[t]he Court has jurisdiction over the subject matter of this complaint under 28 U.S.C. §1331 (Federal Questions), and §1362 (Indian Tribe Plaintiff)." [Dkt. # 1 at 1-2, ¶6]. But these generalized assertions do not suffice.

"The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc.*, 482 U.S. at 392. Petitioners' complaint nowhere identifies any controversy arising under federal law. The claims presented by the Petitioners are fruits

of internal tribal disputes, not claims under federal law. The fact that the BIA made a decision involving the Newtok Tribe and contracting does not create a federal question.

The fact that the plaintiff is an Indian Tribe does not change this conclusion. Yes, Petitioners allege that the court has jurisdiction under 28 U.S.C. §1362 (Indian Tribe Plaintiff). But, no, the Complaint fails to allege any violations of federal law. Therefore, this Court does not have subject matter jurisdiction under 28 U.S.C. §1362. §1362 provides that the district courts have jurisdiction over civil actions brought by federally recognized Tribes only in disputes arising under the Constitution, federal laws, or treaties of the United States. 28 U.S.C. §1362. Here, the Petition nowhere even suggests a dispute arising under the Constitution, federal laws, or treaties of the United States.

The Ninth Circuit has made clear that "federal question jurisdiction does not exist merely because an Indian tribe is a party or the case involves a contract with an Indian tribe." *Stock W., Inc.*, 873 F.2d at 1225. Other circuits are in accord with the Ninth Circuit.[4]

Petitioners' allegations that Defendants took records without village permission, and that Petitioners had paramount possessory interest in the records, constitute claims for

[4] *Tamiami Partners, Ltd.*, 999 F.2d at 507 ("mere assertion that [a federal] district court had federal question jurisdiction [because a tribe is a party to the suit]… without alleging facts necessary to support a federal question, fails to give the district court subject matter jurisdiction."); *see Martinez*, 249 F.2d at 917 (holding that "federal courts are courts of limited jurisdiction…" and that "they do not have jurisdiction merely because an Indian who is a ward of the government is a party or because property or contracts of Indians are involved….").

conversion and do not arise under federal law for federal jurisdiction purposes. *Chilkat Indian Vill. v. Johnson*, 870 F.2d 1469, 1472-73 (9th Cir. 1989). Without the requirement of a federal controversy, "the federal courts might become a small claims court for all such disputes." *Stock W., Inc.*, 873 F.2d at 1226. Furthermore, the intent behind Congress' creation of 28 U.S.C. §1362 was to open up "the federal courts to the kind of claims that could have been brought by the United States [in its role] as trustee." *Moe*, 425 U.S. at 472.

Petitioners' allegations that Defendants are not the proper leaders of the Tribe, and that others are, is a classic intratribal dispute and does not create federal jurisdiction. *Kaw Nation ex. rel. McCauley v. Lujan*, 378 F.3d 1139 (10th Cir. 2004) is illustrative. There, certain elected members (the "Council Members") of the Kaw Nation of Oklahoma (the "Kaw") executive council filed a complaint in tribal court alleging that, under tribal law, the tribe had improperly appointed Phil Lujan as a tribal judge. *Id.* at 1140-41. Lujan ruled against the Council Members, finding that he was properly appointed. *Id.* at 1141. Subsequently, the Council Members challenged the validity of the appointments of Charles Tripp and Charles Morris as justices on the Kaw's Supreme Court. *Id.* Approximately three years after the latter challenge, Guy Munroe ("Tribal Chairman"), the Kaw's chairman, filed suit in tribal court seeking to remove the Council Members. *Id.* Lujan then enjoined the tribal council members at issue from voting as members of the council. *Id.* The Council Members subsequently filed suit in federal court, invoking the court's jurisdiction under §1331 and §1362, seeking a declaration that Lujan, Tripp, and

Morris were not properly appointed to serve as judges for the Kaw Nation. *Id.* The court held that the Council Members did not properly invoke the court's jurisdiction under § 1362 because they "cite[d] no federal law allegedly violated by the manner in which Lujan, Morris, and Tripp acquired their judgeships." *Id.* at 1143. Rather, the court reasoned that "[a] dispute over the meaning of a tribal law…" like the one presented in the Council Member's suit, is "[a] dispute over the meaning of a tribal law[, which] does not 'arise under the Constitution, laws or treaties of the United States,' as required by 28 U.S.C. §§1331 and 1362." *Id.*

D. Federal Courts Do Not "Umpire" Intratribal Disputes.

The main purpose of the Petition was to have the District Court settle and enforce the Newtok Tribe's internal leadership dispute. The Petition focused on legitimizing the New Council as the leadership for the Newtok Tribe and preventing the Old Council from representing the Tribe in any matters, even though the BIA's determination was limited to ISDA contracting. *See* Acting Regional Director Decision at 2. The federal government had a responsibility to recognize and deal with some tribal governing body in furtherance of its trust responsibility. *Goodface v. Grassrope*, 708 F.2d 335, 339 (8th Cir. 1983) ("[t]he BIA, in its responsibility for carrying on government to government relations with the tribe, is obligated to recognize and deal with some tribal governing body"). However, the Petitioners asked the Court to extend this limited determination to all matters.

"Indian tribes are 'distinct, independent political communities, retaining their original natural rights'" in matters of local self-government. *Santa Clara Pueblo v.*

Martinez, 436 U.S. 49, 55 (1978) (quoting *Worcester v. Georgia*, 6 Pet. 515, 559 (1832). Furthermore, "[i]nternal matters of a tribe are generally reserved for resolution by the tribe itself, through a policy of Indian self-determination and self-government as mandated by the Indian Civil Rights Act." *Hammond v. Jewell*, 139 F. Supp. 3d 1134, 1137 (E.D. Cal. 2015) (quoting *Timbisha Shoshone Tribe v. Kennedy*, 687 F. Supp. 2d 1171, 1185 (E.D. Cal. 2009).

It is a well-settled principle that federal courts lack subject matter jurisdiction to determine which group is the governing body of a tribe. *See, e.g., Wheeler v. United States Dep't of the Interior*, 811 F.2d 549, 552-53 (10th Cir. 1987) (providing that when a party has an issue with an intratribal election dispute, it should seek relief in tribal court); *Boe v. Fort Belknap Indian Cmty. of Fort Belknap Reservation*, 642 F.2d 276, 278 (9th Cir. 1981) (explaining that the Indian Civil Rights Act only provides a habeas remedy for parties whose rights have been violated under tribal law, and that the habeas remedy does not give federal courts power to interfere with tribal elections); *U.S. Bancorp v. Ike*, 171 F. Supp.2d 1122, 1125 (D. Nev. 2001) (explaining that federal courts "do not have jurisdiction to determine which group is the governing body of [a tribe]"). Election disputes between competing tribal councils are nonjusticiable, intratribal matters. *Sac & Fox Tribe of the Mississippi in Iowa v. Bur. of Indian Affairs*, 439 F.3d 832, 835 (8th Cir. 2006). "Typically, the courts are reluctant to resolve . . . intratribal disputes at all because their resolution is viewed as an intrusion into Tribal sovereignty." *Kaw Nation v. Norton*, 405 F.3d 1317, 1325 (Fed. Cir. 2005). Moreover, the Supreme Court has repeatedly stated

that "'[f]ederal courts are courts of limited jurisdiction,' possessing 'only that power authorized by Constitution and statute.'" *Gunn*, 568 U.S. at 256 (quoting *Kokkonen*, 511 U.S. at 377). This case does not fall within the scope of this Court's limited jurisdiction.

In *Ike*[5], the Mose group and the Ike Group made competing claims that they were the governing authority of the Te-Moak Tribe of Western Shoshone Indians of Nevada (the "Te-Moak"). 171 F. Supp.2d at 1124. A Court of Indian Offenses ("CFR") judge issued a restraining order against the Mose Group, which barred the group's entry into the Te-Moak's tribal offices, "effectively [deciding] which group of tribal members was the legitimate leadership. *Id.* at 1125. U.S. Bancorp, N.A. d/b/a U.S. Bank of Nevada ("Bancorp"), filed suit "seeking to relieve itself of any liability with regard to the accounts it [held] for the Te-Moak." *Id.* at 1124. Bancorp based its suit off the claim that it was "impossible to know which of the two groups [was] the rightful leadership of the Te-Moak, and, therefore, that it risks liability in releasing funds." *Id.* The court held that it lacked subject matter jurisdiction to determine which group was the governing body of the Te-Moak. *Id.* at 1125. The court reasoned that "[d]eciding a question involving a tribal election dispute is *solely a matter of tribal law*, and [federal courts] do not have the jurisdiction to address this question." *Id.* (*emphasis* added).

Here, the default judgment this Court issued in 2015 aimed at resolving whether the Defendants must cease representing itself as the Newtok Village's actual governing body and whether they must turn over all records and property of the Newtok Village—

[5] This case was an interpleader action. *Ike*, 171 F. Supp.2d at 1124.

both issues turning on determining which group is the legitimate governing body of the tribe. Similarly, in *Ike*, the court was presented with an issue that turned on resolving whether the Mose Group or the Ike Group was the legitimate governing authority of the Te-Moak. Thus, this Court had no subject matter jurisdiction under §1331 when it issued the default judgment in 2015 because, in that judgment, the Court primarily sought to—and did—resolve which group was the governing body of the Newtok Village. Accordingly, this Court had no subject matter jurisdiction when it issued default judgment in 2015.

E. The default judgment entered by the court is void and unenforceable.

When a Court enters a judgment that lacks subject matter jurisdiction, the judgment is void. *See Gonzalez,* 545 U.S. at 534. "It is well settled that a judgment is void 'if the court that considered it lacked jurisdiction of the subject matter.'" *Watts*, 752 F.2d at 409; *Textile Banking Co., Inc. v. Rentschler*, 657 F.2d 844, 850 (7th Cir.1981) (judgment is void if the court lacked jurisdiction); *Marshall v. Board of Ed. Bergenfield, N.J.*, 575 F.2d 417, 422 (3d Cir.1978) (judgment may be void and therefore subject to relief under 60(b)(4) if rendering court lacked subject matter jurisdiction).

Since the Court lacks subject matter jurisdiction in this matter, the Court must set aside the void and unenforceable judgment entered by the Court in this case. Courts do not have discretion to decline to vacate a void judgment. *Walker & Zanger (W. Coast) Ltd.*, 4 F. Supp. 2d at 934, *aff'd sub nom. Walker & Zanger (W. Coast) Ltd.*, 142 F.3d 447;

Watts, 752 F.2d at 410 ("a void judgment is a legal nullity and a court considering a motion to vacate has no discretion in determining whether it should be set aside").

The Supreme Court has recognized that "[c]ourts have an independent obligation to determine whether subject-matter jurisdiction exists, even when no party challenges it." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) (citing *Arbaugh v. Y & H Corp*., 546 U.S. 500, 514 (2006)). Here, although the Defendants did not challenge the Petition, the Court should have evaluated the pleading and found that it lacked subject matter jurisdiction to issue the relief requested by Petitioners.

In *Morgan Equipment Co. v. Novokrivorogsky State Ore Mining and Processing Enterprise,* Morgan Equipment Company ("Morgan") had a contract dispute with a Ukrainian mining entity ("Mine")—over fifty percent of which is owned by a foreign state. 57 F. Supp.2d 863, 865 (N.D. Cal. 1998). Morgan filed suit in the Northern District Court of California against Mine. *Id.* at 867. Mine failed to answer the complaint and failed to attend status conferences regarding the case. *Id.* Approximately eight months after Morgan filed suit, the court granted Morgan's request for entry of default and Morgan then applied for entry of default against Mine. *Id.* Mine failed to appear at both a status conference and evidentiary hearing after being notified of the proceedings. *Id.* The court later entered default judgment against Mine. *Id.* A little over two years after the default judgment was entered, Mine filed a motion to set aside the default judgment pursuant to Rule 60(b)(4). *Id.* Morgan challenged the motion, arguing that the court had jurisdiction because jurisdiction was either established by the Foreign Sovereign Immunities Act

("FSIA") or because Mine waived sovereign immunity. *Id.* at 869, 873. The court held that Mine's motion to set aside the default judgment must be granted because it lacked subject matter jurisdiction over the contractual dispute. *Id.* at 873. The court reasoned that because it lacked subject matter jurisdiction over the dispute, where Morgan could neither establish jurisdiction under the FSIA nor that Mine had waived its sovereign immunity, the judgment was void and it "has no discretion to deny relief from judgment." *Id.* at 868, 873.

The Ninth Circuit has ruled that, for the purposes of a Federal Rules of Civil Procedure Rule 60(b)(4) motion, a district court's judgment is void for lack of subject matter jurisdiction when the party that was awarded judgment failed to meet the mandates of a jurisdictional statute. *Watts*, 752 F.2d at 408-09. In *Watts*, Paul Watts and Lynn Watts (collectively, the "Watts") filed a diversity action claim against Loren Pinckney ("Pinckney). *Id.* at 407. The Watts later amended their suit against Pinckney under the Suits in Admiralty Act ("SSA") and added the United States as a defendant. *Id.* at 407. The district court initially entered judgment against both the United States and Pinckney. *Id.* The United States then appealed, and the Ninth Circuit reversed the district court's holding as it applied to Pinckney because, under the SSA, the Watts' "remedy was solely against the United States." *Id.* Pinckney then filed a motion pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure to request that judgment against him be vacated as void, and for a restitution of funds paid in satisfaction for that judgment. *Id.* at 408. The district court granted Pinckney's motion pursuant to Rule 60(b)(4), and the Watts then

appealed. *Id.* The court held that the district court properly granted Pinckney's Rule 60(b)(4) motion because the court lacked subject matter jurisdiction. *Id.*at 409. The court reasoned that the judgment was void for lack of subject matter jurisdiction because the statute strictly provided that remedy for an aggrieved party may only be brought against the United States. *Id.* at 409.

Here, the Petitioners failed to meet the statutory requirements of 28 U.S.C. § 1331 and § 1362 because their complaint did not rest on claims under federal law, as required by these statutes. Rather, the Petitioners' seek to resolve matters that federal courts have repeatedly determined fall solely under the scope of not federal but, rather, tribal law—determining which group is the governing body of the tribe.[6] This is like *Watts*, where the SSA plainly provided that the Watts could only seek relief from the United States, and the Watts, instead, named Pinckney—a party that was clearly not the United States. Furthermore, like Watts, where the court entered a judgment against Pinckney, despite the fact that the SSA required that the Watts could only name the United States as a party, the district court entered judgment for the Petitioners despite the fact that courts in the Ninth Circuit and its sister circuits have repeatedly held that federal district courts do not have jurisdiction over tribal election disputes. Accordingly, this Court's default judgment from 2015 is void and must be set aside under FRCP Rule 60(b)(4) for lack of subject matter jurisdiction.

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[6] *See, e.g., Wheeler*, 811 F.2d at 552-53; *Boe*, 642 F.2d at 278; *Ike*, 171 F. Supp.2d at 1125.

F. A motion to set aside a default judgment under Rule 60(b)(4) is not subject to any time limitations.

Although the Court entered the Default Judgment on November 4, 2015, there is no time limit to request relief to set aside a default judgment under Rule 60(b)(4) of the Federal Rules of Civil Procedure. Under the Federal Rules of Civil Procedure, motions for relief pursuant to Rule 60(b)(1), (2), or (3) must be filed within one year of the entry of judgment. Motions for relief from judgment pursuant to Rule 60(b)(5) or (6) must be filed within a reasonable time. However, "[t]here is no time limit on a Rule 60(b)(4) motion to set aside a judgment as void." *Meadows*, 817 F.2d at 521. Therefore, motions to set aside a judgment as void under Rule 60(b)(4) may be brought at any time."[*Id*. The aforementioned rule requires the court to set aside the default judgment in this case regardless of when it is entered.

G. Defendants are Entitled to Restitution

Since the judgment issued in this case is void, Defendants are entitled to restitution under Rule 60(b)(4) of the Federal Rules of Civil Procedure. *Watts*, 752 F.2d at 409-410.

IV. CONCLUSION

For the aforementioned reasons, this Court should set aside the default judgment, the underlying entry of default, and issue a restitution order requiring Petitioners to return the funds paid by Defendants under that void judgment.

DATED this _29th_ day of December, 2020 at Anchorage, Alaska.

NORTHERN JUSTICE PROJECT, LLC
Attorneys for Defendants

By:___/s/ James J. Davis, Jr._____
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CERTIFICATE OF SERVICE

I hereby certify that on December 29th, 2020, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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