

1 FRANK PACINO
1168 Mulberry Street, #27
2 Ukiah, California 95482
Mobile: (619) 957-2490
3 Email: fpac422@lasierra.edu

4 PLAINTIFF, *In Propria Persona*

5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**
11

12
13 FRANK PACINO,

14 Plaintiff,

15 v.

16
17 LUIS OLIVER, et al.,

18 Defendants.
19

Case No. 18-CV-06786-RS

**PLAINTIFF FRANK PACINO'S
RESPONSE TO ORDER REQUESTING
SUPPLEMENTAL BRIEFING**

20 Plaintiff Frank Pacino ("Plaintiff") respectfully submits this supplemental briefing in
21 response to this United States District Courts ("Court") October 4, 2022 Order Requesting
22 Supplemental Briefing.

23 The government and judiciary of the Round Valley Indian Tribes ("Tribe") demonstrate
24 an unwillingness to abide by the tribes Constitution and tribal laws. The tribal councils Motion
25 No. 9 demonstrate this when then-Vice President Carlino Bettega "...made a motion to approve
26 and grant Kathy Oliver life time tenure to stay on the land and occupy the house by
27 resolution...". (ECF 79-1, Exhibit A, p. 8) Despite possessing and exercising jurisdiction in
28 previous and subsequent trespass to Indian allotment cases, some of which the tribal government

possesses fractionated interests, the tribal court dismissed Plaintiff's case for lack of jurisdiction. (ECF 27-1, Exhibit E) The Round Valley Indian Tribes Tribal Court ("Tribal Court") is empowered to exercise jurisdiction over trespass to Indian allotment claims under the Tribe's Law & Order Code, Chapter 1, Section 1.03, which state "The Tribal Court shall have jurisdiction over all violations under this Ordinance." (Exhibit A) In consideration of the tribal government and tribal courts actions, Plaintiff contends that the assertion of tribal jurisdiction serves no purpose other than to delay, is motivated by a desire to harass and is conducted in bad faith.

ARGUMENT

I. DEFENDANT CATHERINE SANCHEZ FREEMAN OLIVER'S ASSERTION OF TRIBAL COURT JURISDICTION SERVES NO PURPOSE OTHER THAN TO DELAY A RESOLUTION TO THIS MATTER

Defendant Catherine Sanchez Freeman Oliver ("Sanchez Freeman Oliver") has been aware of her trespass upon Richard Willits Allotment No. RV-540 621 ("Allotment") since at least December 21, 2017 upon receiving a Bureau of Indian Affairs ("BIA") Cease and Desist Order. (ECF 27-1, Exhibit B, pp. 11-12) Rather than ceasing her trespass, Defendant Sanchez Freeman Oliver has waged a now-approaching five-year battle to violate Plaintiff's property rights, and delay vacating the Allotment. Defendant Sanchez Freeman Oliver sought and received an erroneously adopted resolution granting her life tenure of the Allotment by the Round Valley Indian Tribes ("tribe") tribal council. (ECF 27-1, Exhibit F, pp. 29-30) The tribal councils adoption of the resolution is a violation of Plaintiff's civil rights, specifically the Takings Clause of the Fifth Amendment; denial of Equal Protection, and; denial of Due Process. The Round Valley Indian Tribes Tribal Court ("tribal court") erroneously dismissed Plaintiff's case citing lack of jurisdiction, which Plaintiff contends was at the behest of the tribal council, and a violation of the tribes Separation of Powers as expressed in Article III of the tribes Constitution. (ECF 71-1, p. 13)

Examined together, the actions of Defendant Sanchez Freeman Oliver, the tribal government, and the tribal court show a concerted effort by the parties to violate Plaintiff's property rights, and delay enforcement of federal and tribal laws and regulations. Defendant

Sanchez Freeman Oliver’s assertion of tribal court jurisdiction serves no purpose other than to delay a resolution to this matter. Plaintiff respectfully suggests that the exhaustion of tribal court remedies is not required in this matter because it “would serve no purpose other than delay.” (*Nevada v. Hicks* (2001) 533 U.S. 353, 369)

II. ASSERTION OF TRIBAL JURISDICTION IS MOTIVATED BY A DESIRE TO HARASS, AND IS CONDUCTED IN BAD FAITH

A. The Tribal Court is empowered to exercise jurisdiction over cases involving trespass to Indian allotments under Chapter 1, Section 1.03 of the tribes Law & Order Code. (Exhibit A) To establish jurisdiction in Tribal Court, Plaintiff cited Chapter 5, Section 5.02 of the tribes Law & Order Code, which has been cited by tribal police in tribal court to establish jurisdiction over tribal police citations issued for trespass violations. Plaintiff also cited *Round Valley Indian Tribes v. Bruce Dankmeyer* (September 7, 2017) Case No. LO-17-0029 JW that involved trespass to an Indian allotment, which the tribe also possessed a fractionated interest. Plaintiff contends that although Chapter 1, Section 1.03 was not specifically cited in his original filing in tribal court, there was an implied citation through reference of the Law & Order Code. Plaintiff respectfully suggests that the Tribal Court’s dismissal of his case for lack of jurisdiction was to harass, conducted in bad faith, and to prevent him from protecting his property rights.

B. Plaintiff’s case was dismissed by the tribal court for failure to “...point to some statute, law or rule that created an expressed or implied *right of action* allowing him/her to seek redress in court for the alleged harm.”, to “...point to a provision of the Constitution, law, rule, ordinance or custom of the Tribe, or a federal statute or provision of the Code of Federal Regulation that confers upon the *tribal court* jurisdiction to hear their claims”, and to “articulate a valid basis of this court’s jurisdiction.” (ECF 27-1, Exhibit E, pp. 25-26) At the hearing before the Tribal Court, Plaintiff cited the previously mentioned *Dankmeyer* case and previous cases before the tribal court involving trespass to tribal land and Indian allotments, which the tribal court exercised jurisdiction under the tribes Law & Order Code. In its *Decision of the Court (Amended)*, the Tribal Court stated a judicial standard that it does not consistently follow, and

1 demonstrated in *Round Valley Indian Tribes v. Carlos Bettega* (2020) Case No. RVIT-CV-2020-
2 0021 JW, filed by then-Chief of Police Michael L. Henry, Round Valley Indian Tribes Tribal
3 Police. (Exhibit B) This case originated as a dispute between then-Vice President Carlino
4 Bettega and his brother Carlos Bettega concerning unlawful marijuana cultivation on Indian
5 allotments (William Frank and John Lawley) having numerous heirs with undivided interests.
6 The Tribal Court did not dismiss the Tribes case filed on behalf of Virginia Bettega citing and
7 upholding the judicial standard it expressed in Plaintiffs case. Rather, in its *Order of the Court*,
8 the presiding officer allowed the previously issued Cease and Desist Order to remain in effect,
9 appointed counsel to Virginia Bettega, and ordered that Virginia Bettega's counsel be
10 compensated by the Round Valley Indian Tribes. (Exhibit C) In this instance the Tribal Court
11 demonstrates its lack of interest in equal administration of justice. Plaintiff respectfully suggests
12 the assertion of tribal jurisdiction is motivated by a desire to harass, and is conducted in bad
13 faith.

14 C. The Round Valley Indian Tribes Court of Appeals is deprived of jurisdiction to hear
15 Plaintiffs appeal under Rule 3(a)(i) of the Rules of Court for the Round Valley Indian Tribes
16 Court of Appeals, which state that "An appeal to the Court of Appeals shall be made no later
17 than thirty (30) calendar days after the entry of the final written judgment or order of the Tribal
18 Court." (Exhibit D) The Tribal Court's *Decision of the Court (Amended)* issued four years ago
19 exceeds the thirty (30) calendar day window of opportunity for Plaintiff to file an appeal. Even
20 if Plaintiff were to receive a grand of relief from the late filing of an appeal under Rule 3(a)(iii),
21 Plaintiff contends that he has already received prejudicial treatment by the tribal courts presiding
22 officer, whom is also the presiding officer of the tribal appellate court. In considering of this,
23 Plaintiff respectfully suggests that the assertion of tribal jurisdiction is motivated by a desire to
24 harass, and is conducted in bad faith.

27 //

28 //

III. ROUND VALLEY INDIAN TRIBES TRIBAL COURT

A. Structure and Composition

The composition of the Tribal Court and Tribal Court of Appeals is outlined in Article VI, Section 4 and Section 5 of the tribes Constitution. Section 4 states that “The Tribal Court shall be composed of one Chief Judge and such Associate Judges as may be determined necessary by the Tribal Council. (ECF 71-1, pp. 18-19) As of the date of this filing, the Tribal Court website provides outdated information concerning the composition of the Tribal Court and the Tribal Court of Appeals.¹ The lack of publicly accessible information about the Tribal Court and the Tribal Court of Appeals leads Plaintiff to the conclusion that the tribal judiciary is not operating in accordance with Article VI, Section 7 of the tribes Constitution. (ECF 71-1, p. 19)

B. Cases for Appellate Review

Although the right to appeal a judgment or verdict to the Tribal Court of Appeals is provided under Article II, Section 12 of the tribes Constitution, Plaintiff declined to file an appeal because of his understanding of the tribes Constitution that prevents further litigation following final decision of the Tribal Court of Appeals.

C. Flexibility with Tribal Court Filings

Plaintiff is unaware of equitable flexibility with tribal court filings. Defendant Sanchez Freeman Oliver, in her Declaration in Support of Motion to Enlarge Time stated that she received the assistance of then-tribal council member Kathleen Willits in preparing and filing documents, as well as from tribal court clerk Amanda Pinola-Want² in meeting procedural requirements of the tribal court, and; sought “...funds to help pay for legal costs of this suit,....” (ECF 79-1, pp. 2-3) Through their actions, the tribal court and tribal government demonstrate themselves to be institutions lacking equitability.

//

//

//

¹ <https://www.rvit.org/tribal-court/about-tribal-court>

² Amanda Pinola-Want is the step-daughter of John F. Oliver and Catherine Sanchez Freeman Oliver, and the half-sister of Defendant Luis Oliver.

CONCLUSION

Plaintiff respectfully contends that this United States District Court is the sole venue where he may receive justice, and in consideration of the foregoing arguments, respectfully suggests that assertion of tribal jurisdiction serves no purpose other than to delay, and is motivated by a desire to harass and is conducted in bad faith.

Dated: October 25, 2022

Respectfully Submitted:



FRANK PACINO

Plaintiff, *In Propria Persona*

1168 Mulberry Street, #27

Ukiah, California 95482

Mobile: (619) 957-2490

Email: fpac422@lasierra.edu