

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DONALD AND BONNIE POLLARD,
4000 Annie Sunn Lane
Lac du Flambeau, WI 54538

JAMES AND KAREN BAIRD,
3963 S. Annie Sunn Lane
Lac du Flambeau, WI 54538

BIG CROOKED BIG TOP, LLC
4006 Annie Sunn Lane
Lac du Flambeau, WI 54538

AMENDED COMPLAINT

JAMES WILLIAM MILNE,
3935 S. Annie Sunn Lane
Lac du Flambeau, WI 54538

SANDRA P. THOMPSON
3984 S. Annie Sunn Lane
Lac du Flambeau, WI 54538

Case No. 3:23-cv-135

JURY TRIAL DEMANDED

KEVIN AND BARBARA CHRISTENSEN,
3675 Center Sugarbush Lane
Lac du Flambeau, WI 54538

DAVID AND TERESA KIEVET,
AS TRUSTEES OF THE DAVID M. AND
TERESA R. KIEVET LIVING TRUST
DATED MAY 27, 2020,
3625 Center Sugarbush Lane
Lac du Flambeau, WI 54538

SUE PETERSON,
AS CO-TRUSTEE OF THE MARK J.
PETERSON AND SUSAN M. PETERSON
REVOCABLE LIVING TRUST
DATED MARCH 22, 2001
3685 Center Sugarbush Lane
Lac du Flambeau, WI 54538

SPANTON CONTRACTING LLC,
3681 Center Sugarbush Lane
Lac du Flambeau, WI 54538

MICHAEL AND NANCY CLARK
14900 Redpoll Lane
Lac du Flambeau, WI 54538

JOSEPH AND SALLY FERMANICH
14906 Redpoll Lane
Lac du Flambeau, WI 54538

JOSEPH AND MARTHA HUNT,
14862 Redpoll Lane
Lac du Flambeau, WI 54538

STANLEY AND JENNIFER GRIDLEY JOHNSON,
2411 East Ross Allen Lake Lane
LAC DU FLAMBEAU, WI 54538

ANTHONY AND NANCY MARKOVICH,
14857 Big Thunder Lane
Lac du Flambeau, WI 54538

DAVID P. MIESS AND SANDRA J. SCHLOSSER,
14880 Redpoll Lane
Lac du Flambeau, WI 54538

MICHAEL HORNBOSTEL AND MARSHA PANFIL,
14886 Redpoll Lane
Lac du Flambeau, WI 54538

DENNIS AND RACHEL PEARSON,
2540 East Ross Allen Lake Lane
Lac du Flambeau, WI 54538

MICHAEL AND VICTORIA THOMAS
East Ross Allen Lake Lane
Lac du Flambeau, WI 54538

ROBERT AND NICOLE BEER,
2583 Elsie Lake Lane
Lac du Flambeau, WI 54538

JOHN DISCH AND MARY POSSIN,
12593 Elsie Lake Lane
Lac du Flambeau, WI 54538

GARY AND CHRISTINE HUCK
AS TRUSTEES OF THE
GARY J. HUCK TRUST,
12615 Elsie Lake Lane
Lac du Flambeau, WI 54538

JULIE M. KILGER,
12605 Elsie Lake Lane
Lac du Flambeau, WI 54538

STEVEN AND SHARON LEFEBER
AND RYAN LEFEBER,
AS TRUSTEES OF THE
STEVEN P. LEFEBER TRUST
12662 Elsie Lake Lane
Lac du Flambeau, WI 54538

and

THOMAS AND JULIE WALSH
12601 Elsie Lake Lane
Lac du Flambeau, WI 54538

Plaintiffs,

v.

JOHN JOHNSON, SR.,
President of the Lac du Flambeau
Band of Lake Superior Chippewa Indians
418 Little Pines Road
Lac du Flambeau, WI 54538

GEORGE W. THOMPSON,
Vice President of the Lac du Flambeau
Band of Lake Superior Chippewa Indians
418 Little Pines Road
Lac du Flambeau, WI 54538

WILLIAM J. STONE,
Treasurer of the Lac du Flambeau
Band of Lake Superior Chippewa Indians
418 Little Pines Road
Lac du Flambeau, WI 54538

JAMIE ANN MARIE ALLEN,
Secretary of the Lac du Flambeau
Band of Lake Superior Chippewa Indians
418 Little Pines Road
Lac du Flambeau, WI 54538

RAYMOND ALLEN,
Member of the Lac du Flambeau Band of
Lake Superior Chippewa Indians Tribal Council
418 Little Pines Road
Lac du Flambeau, WI 54538

JEFFERY BAUMAN, SR.,
Member of the Lac du Flambeau Band of
Lake Superior Chippewa Indians Tribal Council
418 Little Pines Road
Lac du Flambeau, WI 54538

ERIC CHAPMAN, SR.,
Member of the Lac du Flambeau Band of
Lake Superior Chippewa Indians Tribal Council
418 Little Pines Road
Lac du Flambeau, WI 54538

LYLE THOMAS CHAPMAN,
Member of the Lac du Flambeau Band of
Lake Superior Chippewa Indians Tribal Council
418 Little Pines Road
Lac du Flambeau, WI 54538

PAULA POUPART,
Member of the Lac du Flambeau Band of
Lake Superior Chippewa Indians Tribal Council
418 Little Pines Road
Lac du Flambeau, WI 54538

LOUIS ST. GERMAINE,
Member of the Lac du Flambeau Band of
Lake Superior Chippewa Indians Tribal Council
418 Little Pines Road
Lac du Flambeau, WI 54538

JOSEPH WILDCAT, SR.,
Member of the Lac du Flambeau Band of
Lake Superior Chippewa Indians Tribal Council
418 Little Pines Road
Lac du Flambeau, WI 54538

and

PATRICIA ZIMMERMAN,
Member of the Lac du Flambeau Band of
Lake Superior Chippewa Indians Tribal Council
418 Little Pines Road
Lac du Flambeau, WI 54538

Defendants.

AMENDED COMPLAINT

Plaintiffs, by their attorneys, Reinhart Boerner Van Deuren s.c., as and for their Amended Complaint against the Defendants, aver and show to the Court as follows:

NATURE OF THE ACTION

1. This action seeks prospective injunctive and declaratory relief. Specifically, Plaintiffs seek an injunction requiring Defendants to cease and desist their *ultra vires* actions, including their closure of, and/or their restricting use of, four public roads in Lac du Flambeau, Wisconsin (Annie Sunn Lane, Center Sugarbush Lane, East Ross Allen Lake Lane, and Elsie Lake Lane (individually, “Roadway,” and collectively, the “Roadways”)) and to permanently remove barricades that they erected, or caused to be erected, to prevent access over the Roadways. Plaintiffs also seek a declaratory judgment that the Roadways are public roads and must be open and must remain open for public access.

2. As averred in detail below, on January 31, 2023, the Defendants barricaded and, thereby, closed the Roadways, which, under the Federal-Aid Highway Act of 1956, 23 U.S.C.

§101 *et seq.* (the “Federal-Aid Highway Act”), as amended; and its Tribal Transportation Program, 23 U.S.C. §§ 201–202 (the “Tribal Transportation Program”), and implementing regulations at 25 C.F.R. Part 170 (the “federal Tribal Transportation Program implementing regulations”), must be open and remain open to the public. Defendants also installed cameras to monitor the comings and goings of Plaintiffs and threatened Plaintiffs with the consequences of alleged trespass if Plaintiffs attempted to circumvent the barricades. On March 13, 2023, the Defendants partially deconstructed portions of the barricades. However, Defendants continue to restrict use of the Roadways, including but not limited to requiring permits to use the Roadways. Each of the foregoing actions violates the Federal-Aid Highway Act, its Tribal Transportation Program, and the federal Tribal Transportation Program implementing regulations. Each of the foregoing actions also exceeds the Lac du Flambeau Band of Lake Superior Chippewa Indians’ (the “Tribe”), and hence the Defendants’, authority under federal Indian law. And each of the foregoing actions has caused, continues to cause, and, unless enjoined, will cause grave risk to public health, safety and welfare and irreparable harm to the Plaintiffs and others similarly situated.

JURISDICTION AND VENUE

3. Jurisdiction is appropriate in this Court pursuant to 28 U.S.C. § 1331 because this case arises under the Constitution, laws, or treaties of the United States. More specifically, this action requires the interpretation of federal laws regarding Indian reservation roads and tribal transportation systems, including without limitation the Federal-Aid Highway Act, the Tribal Transportation Program, and the federal Tribal Transportation Program implementing regulations, and a question grounded in federal Indian common law.

4. Defendants are the officers and members of the Tribal Council of the Tribe. Between at least January 31, 2023 and March 13, 2023, the Defendants violated the Federal-Aid

Highway Act by erroneously asserting that they have a “right to limit access” to certain public roadways in the Town of Lac du Flambeau, Wisconsin (the “Town”) and to barricade, or cause to be barricaded, and by actually barricading, the Roadways. On March 13, 2023, Defendants partially deconstructed the barricades on the Roadways. However, Defendants did so only after they received substantial compensation from the Town to issue to the Town conditional, revocable and temporary access permits¹ (the “Temporary Access Permits”). According to the Defendants’ Resolution (No. 67(23)), by which Defendants approved the issuance of the Temporary Access Permits, the Temporary Access Permits are conditioned on satisfactory performance by the Town and other stipulations set out in Resolution No. 67(23). The term of the Temporary Access Permits is merely 30 days, expiring on April 12, 2023. Resolution 67(23) allows a maximum of two, 30-day renewals at Defendants’ unilateral discretion. If not renewed, the Temporary Access Permits will expire on April 12, 2023. Even if renewed twice, and assuming Defendants do not revoke them sooner and assuming there is no lapse in renewing, the Temporary Access Permits will expire on June 13, 2023, at which point Defendants will fully reconstruct the barricades on the Roadways again. Moreover, the Roadways may be used only by the “homeowners on [the Roadways],” and Resolution No. 67(23) states that the Temporary Access Permits (purportedly) “grant each homeowner on [the Roadways] the ability to lawfully access their property for the duration of the Temporary Access Permit[s].” Defendants’ foregoing actions ignore that, under federal law, the Roadways are public roads and their use can be restricted only as permitted by the Federal-Aid Highway Act and the Tribal Transportation Program. Defendants’ past, ongoing, and imminent

¹ The four revocable temporary access permits are titled, on their face, “Lac du Flambeau Access Permit: Conditional Use / Revocable Permit.”

restrictions on use of the Roadways are unlawful under the Federal-Aid Highway Act and the Tribal Transportation Program.

5. Resolution No. 67(23) and the Temporary Access Permits expressly declare that “[i]ssuance of [any Temporary Access Permits] does not imply any Tribal approval for treatment as [a] public road.” By Defendants’ own admission, Defendants have no intention of ceasing their unlawful actions. To the contrary, the Defendants’ violation of federal law is ongoing and will continue unless court relief is granted to Plaintiffs.

6. Whether Defendants’ actions (barricading the Roadways, issuing permits for use of the Roadways, and threatening to soon fully re-barricade the Roadways) exceed federal Indian law tribal power and authority, and are therefore *ultra vires*, is a federal question. Answering this question necessarily depends on resolution of a substantial question of federal law—interpretation of the Federal-Aid Highway Act—in the context of a federal “common law” issue, that is, the extent to which a tribe has authority to regulate non-tribe members, specifically, the extent to which a tribe that participates in the Tribal Transportation Program has authority to prohibit or restrict non-members from using roads listed by a tribe in the National Tribal Transportation Facilities Inventory.² See *Nat’l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 852–53 (1985); *Plains Commerce Bank v. Long Island Family Land & Cattle Co.*, 554 U.S. 316, 327–28 (2008); *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 27–28 (1983); *Tlopthlocco Tribal Town v. Stidham*, 762 F. 3d 1226, 1234 (10th Cir. 2014). Therefore, the Court has jurisdiction over this suit.

² See *infra* § “The Roadways are Public Under Federal Law and Must Be Kept Open to the Plaintiffs and the General Public.”

7. Defendants' barricading the roads (or causing the roads to be barricaded) violates federal law and thus goes beyond the authority of the Tribe. Therefore, Defendants' actions are *ultra vires*. This suit seeks to enjoin Defendants' *ultra vires* actions that violate federal law and that go beyond the authority of the Tribe to undertake. Thus, Plaintiffs allege an ongoing violation of federal law and seek prospective relief. *See Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002).

8. Defendants threatened to act, acted, continue to act, and will act in violation of federal law and in excess of federal common law limitations placed on the authority of the Tribe, by barricading public roads, which the Tribe lacks the authority to do, thereby inhibiting Plaintiffs from going to and from their homes and inhibiting Plaintiffs' freedom of movement, all to the injury of Plaintiffs. Plaintiffs seek a declaration that the roads at issue are public under federal law and must be kept open for public access such that Defendants shall neither barricade the roads nor limit or attempt to limit use of the roads including without limitation by permits, and Plaintiffs seek injunctive relief requiring Defendants (and those acting in participation or concert with Defendants) to take down these barricades and prohibiting Defendants (and those acting in participation or concert with Defendants) from reconstructing such barricades in the future, and requiring Defendants (and those acting in participation or concert with them) to cease and to take no further action in violation of the Federal-Aid Highway Act, including the Tribal Transportation Program. This is the type of suit that is permissible under the doctrine of *Ex parte Young*. *See BNSF v. Vaughn*, 509 F.3d 1085, 1092 (9th Cir. 2007) (citing *Verizon Md.*, 535 U.S. at 645–46).

9. Venue is appropriate in the Western District of Wisconsin pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because the Plaintiffs and Defendants all have residences in Vilas County in the State of Wisconsin; and/or because all or a substantial part of the events giving rise to the

claim occurred in Vilas County; and/or because all of the property that is the subject of the action is situated in Vilas County.

PARTIES

Plaintiffs

10. Plaintiffs Donald and Bonnie Pollard (the “Pollards”) are adult individuals who own a residence at the address 4000 Annie Sunn Lane, Lac du Flambeau, WI 54538.

11. Plaintiffs James and Karen Baird (the “Bairds”) are adult individuals who own a residence at the address 3963 Annie Sunn Lane, Lac du Flambeau, WI 54538.

12. Plaintiff Big Crooked Big Top LLC (“Big Crooked LLC”) is a Wisconsin limited liability company, which owns a residence at the address 4006 Annie Sunn Lane, Lac du Flambeau, WI 54538.

13. Plaintiff James William Milne (“Milne”) is an adult individual who owns a residence at 3935 S. Annie Sunn Lane, Lac du Flambeau, WI 54538.

14. Plaintiff Sandra P. Thompson (“Thompson”) is an adult individual who owns a residence at the address 3984 Annie Sunn Lane, Lac du Flambeau, WI 54538.

15. Plaintiffs Kevin and Barbara Christensen (“Christensens”) are adult individuals who own a residence at the address 3675 Center Sugarbush Lane, Lac du Flambeau, WI 54538.

16. Plaintiffs David and Teresa Kievet (“Kievets”) are adult individuals and trustees of the David M. and Teresa R. Kievet Living Trust, dated May 27, 2020, which owns a residence at the address 3625 Center Sugarbush Lane, Lac du Flambeau, WI 54538.

17. Plaintiff Sue Peterson (“Peterson”) is an adult individual and co-trustee of the Mark J. Peterson and Susan M. Peterson Revocable Living Trust, dated March 22, 2001, which owns a residence at the address 3685 Center Sugarbush Lane, Lac du Flambeau, WI 54538.

18. Plaintiff Spanton Contracting LLC is a Wisconsin limited liability company, which owns a residence at the address 3681 Center Sugarbush Lane, Lac du Flambeau, WI 54538.

19. Plaintiffs Michael and Nancy Clark (“Clarks”) are adult individuals who own a residence at the address 14900 Redpoll Lane, Lac du Flambeau, WI 54538.

20. Plaintiffs Joseph and Sally Fermanich (“Fermanichs”) are adult individuals who own a residence at the address 14900 Redpoll Lane, Lac du Flambeau, WI 54538.

21. Plaintiffs Joseph and Martha Hunt (“Hunts”) are adult individuals who own a residence at the address 14862 Redpoll Lane, Lac du Flambeau, WI 54538.

22. Plaintiffs Stanley Johnson and Jennifer Gridley Johnson (“Johnsons”) are adult individuals who own a residence at the address 2411 East Ross Allen Lake Lane, Lac du Flambeau, WI 54538.

23. Plaintiffs Anthony and Nancy Markovich (“Markoviches”) are adult individuals who own a residence at 14857 Big Thunder Lane, Lac du Flambeau, WI 54538.

24. Plaintiffs David P. Miess (“Miess”) and Sandra J. Schlosser (“Schlosser”) are adult individuals who own a residence at 14880 Redpoll Lane, Lac du Flambeau, WI 54538.

25. Plaintiffs Michael Hornbostel (“Hornbostel”) and Marsha Panfil (“Panfil”) are adult individuals who own a residence at 14866 Redpoll Lane, Lac du Flambeau, WI 54538.

26. Plaintiffs Dennis and Rachel Pearson (“Pearsons”) are adult individuals who own a residence at the address 2540 East Ross Allen Lake Lane, Lac du Flambeau, WI 54538.

27. Plaintiffs Michael and Victoria Thomas (the “Thomases”) are adult individuals who own a lot on East Ross Allen Lake Lane, Lac du Flambeau, WI 54538.

28. Plaintiffs Robert and Nicole Beer (“Beers”) are adult individuals who own a residence at the address 12583 Elsie Lake Lane, Lac du Flambeau, WI 54538.

29. Plaintiffs John Disch (“Disch”) and Mary Possin (“Possin”) are adult individuals who own a residence at the address 12593 Elsie Lake Lane, Lac du Flambeau, WI 54538.

30. Plaintiffs Gary and Christine Huck (“Hucks”) are adult individuals and trustees of the Gary J. Huck Trust, which owns a residence at the address 12615 Elsie Lake Lane, Lac du Flambeau, WI 54538.

31. Plaintiff Julie M. Kilger (“Kilger”) is an adult individual who owns a residence at the address 12605 Elsie Lake Lane, Lac du Flambeau, WI 54538.

32. Plaintiffs Steven, Sharon and Ryan Lefebber (“Lefebbers”) are adult individuals and trustees of the Steven P. Lefebber Trust, which owns a residence at the address 12662 Elsie Lake Lane, Lac du Flambeau, WI 54538.

33. Plaintiffs Thomas and Julie Walsh (the “Walshes”) are adult individuals who own a residence at the address of 12601 Elsie Lake Lane, Lac du Flambeau, WI 54538.

Defendants

34. Defendant John Johnson, Sr. is the President of the Lac du Flambeau Band of Lake Superior Chippewa Indians, whose office is located at 418 Little Pines Road in Lac du Flambeau, WI 54538. Upon information and belief, Mr. Johnson was personally present during the erection of the barricades and supervised the same.

35. Defendant George Thompson is the Vice President of the Lac du Flambeau Band of Lake Superior Chippewa Indians, whose office is located at 418 Little Pines Road in Lac du Flambeau, WI 54538. Upon information and belief, Mr. Thompson assisted in physically placing the barricades.

36. Defendant William J. Stone is the Treasurer of the Lac du Flambeau Band of Lake Superior Chippewa Indians, whose office is located at 418 Little Pines Road in Lac du Flambeau, WI 54538.

37. Defendant Jamie Ann Marie Allen is the Secretary of the Lac du Flambeau Band of Lake Superior Chippewa Indians, whose office is located at 418 Little Pines Road in Lac du Flambeau, WI 54538.

38. Defendant Raymond Allen is a Member of the Lac du Flambeau Band of Lake Superior Chippewa Indians Tribal Council, whose office is located at 418 Little Pines Road in Lac du Flambeau, WI 54538.

39. Defendant Jeffery Bauman, Sr. is a Member of the Lac du Flambeau Band of Lake Superior Chippewa Indians Tribal Council, whose office is located at 418 Little Pines Road in Lac du Flambeau, WI 54538.

40. Defendant Eric Chapman, Sr. is a Member of the Lac du Flambeau Band of Lake Superior Chippewa Indians Tribal Council, whose office is located at 418 Little Pines Road in Lac du Flambeau, WI 54538.

41. Defendant Lyle Thomas Chapman is a Member of the Lac du Flambeau Band of Lake Superior Chippewa Indians Tribal Council, whose office is located at 418 Little Pines Road in Lac du Flambeau, WI 54538. Upon information and belief, Mr. Chapman assisted in physically placing the barricades.

42. Defendant Paula Poupart is a Member of the Lac du Flambeau Band of Lake Superior Chippewa Indians Tribal Council, whose office is located at 418 Little Pines Road in Lac du Flambeau, WI 54538.

43. Defendant Louis St. Germaine is a Member of the Lac du Flambeau Band of Lake Superior Chippewa Indians Tribal Council, whose office is located at 418 Little Pines Road in Lac du Flambeau, WI 54538.

44. Defendant Joseph Wildcat, Sr. is a Member of the Lac du Flambeau Band of Lake Superior Chippewa Indians Tribal Council, whose office is located at 418 Little Pines Road in Lac du Flambeau, WI 54538.

45. Defendant Patricia Zimmerman is a Member of the Lac du Flambeau Band of Lake Superior Chippewa Indians Tribal Council, whose office is located at 418 Little Pines Road in Lac du Flambeau, WI 54538.

PLAINTIFFS' ACCESS TO AND FROM THEIR HOMES IS BLOCKED

46. The only roadway access to the Pollards' property is via Annie Sunn Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

47. The only roadway access to the Bairds' property is via Annie Sunn Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

48. The only roadway access to Big Crooked LLC's property is via Annie Sunn Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

49. The only roadway access to Mr. Milne's property is via Annie Sunn Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

50. The only roadway access to Ms. Thompson's property is via Annie Sunn Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

51. The only roadway access to the Christensens' property is via Center Sugarbush Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

52. The only roadway access to the Kievets' property is via Center Sugarbush Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

53. The only roadway access to Ms. Peterson's property is via Center Sugarbush Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

54. The only roadway access to the Spanton Contracting LLC's property is via Center Sugarbush Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

55. The only roadway access to the Clarks' property is via East Ross Allen Lake Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

56. The only roadway access to the Fermanichs' property is via East Ross Allen Lake Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

57. The only roadway access to the Hunts' property is via East Ross Allen Lake Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

58. The only roadway access to the Johnsons' property is via East Ross Allen Lake Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

59. The only roadway access to the Markoviches' property is via East Ross Allen Lake Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

60. The only roadway access to the Mr. Miess' and Ms. Schlosser's property is via East Ross Allen Lake Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

61. The only roadway access to Mr. Hornbostel's and Ms. Panfil's property is via East Ross Allen Lake Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

62. The only roadway access to the Pearsons' property is via East Ross Allen Lake Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

63. The only roadway access to the Thomases' property is via East Ross Allen Lake Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

64. The only roadway access to the Beers' property is via Elsie Lake Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

65. The only roadway access to the Mr. Disch's and Ms. Possin's property is via Elsie Lake Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

66. The only roadway access to Ms. Kilger's property is via Elsie Lake Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

67. The only roadway access to the Hucks' property is via Elsie Lake Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

68. The only roadway access to the Walshes' property is via Elsie Lake Lane, which access was blocked because of the barricade Defendants unlawfully placed on the road, as averred below.

69. All Plaintiffs are irreparably harmed by the ongoing constraints posed by the cement blocks, the barricades, and the revocable temporary access permits, including by the Defendants' ongoing violation of federal law by the Defendants limiting use of the Roadways that are "public roads" under federal law by barricading them and by requiring access permits and by the Defendants placing, assisting in placing, or causing the placement of, concrete or cement blocks that presently remain on the Roadways.

70. All Plaintiffs will soon be further irreparably harmed when the revocable temporary access permits are no longer in effect and the barricades are fully reconstructed (the chains

connecting the concrete or cement blocks on the Roadways are relocked and the wood barriers reinstalled on the Roadways).

THE ROADWAYS AT ISSUE

71. Annie Sunn Lane, Center Sugarbush Lane, East Ross Allen Lake Lane, and Elsie Lake Lane (i.e., the Roadways) cross over Indian land and non-Indian land within the exterior boundaries of the Lac du Flambeau Reservation.

72. Each Roadway, including the portions that cross Indian land and the portions that cross non-Indian land, is a “public road,” as defined in 23 U.S.C. § 101(a)(23).

73. Attached as Exhibit A is a survey completed in 2019 by Steigerwaldt Land Surveying, LLC (“Steigerwaldt”) which shows and describes the 1916.1 feet (approximately .36 miles) of Annie Sunn Lane at issue. In addition to the portion of Annie Sunn Lane shown on the survey, the Defendants have also barricaded that portion of Annie Sunn Lane (approximately .5 miles) running in a northerly and southerly direction between Little Trout Road and that portion shown of the survey.

74. Attached as Exhibit B is a survey completed in 2018 by Steigerwaldt which shows and describes the 745.4 feet (approximately .14 miles) of Center Sugarbush Lane at issue.

75. Attached as Exhibit C is a survey completed in 2018 by Steigerwaldt which shows and describes the 159.5 feet (approximately .03 miles) of East Ross Allen Lake Lane at issue.

76. Attached as Exhibit D is a survey completed in 2019 by Steigerwaldt which shows and describes the 450.2 feet (approximately .085 miles) and the 781.2 feet (approximately .15 miles) of Elsie Lake Lane at issue.

**THE ROADWAYS ARE PUBLIC UNDER FEDERAL LAW AND MUST BE KEPT
OPEN TO THE PLAINTIFFS AND THE GENERAL PUBLIC**

77. The federal Tribal Transportation Program (the “TTP”), formerly known as the Indian Reservation Roads Program (“IRR”), was established to help provide safe and adequate transportation and public road access to and within Indian reservations and lands.

78. The Tribe voluntarily elects to participate in the federal TTP.

79. The Tribe has identified roads that are part of its “Tribal Transportation System.” Such roads are listed in an inventory of tribal transportation facilities maintained by the Secretary of the Interior in cooperation with the Secretary of the Federal Highway Administration. 23 U.S.C. § 202(b)(1)(A). The inventory is referred to as the National Tribal Transportation Facilities Inventory, or NTTFI.

80. By law, the roads listed in the NTTFI are “public roads,” i.e., roads that are under the jurisdiction of and maintained by a “public authority” (a federal, state, county, town or township, Indian Tribe, municipal or instrumentality with authority to maintain the road) (23 U.S.C. §§101(a)(22), (23), and (33); 25 C.F.R. § 170.5; and 25 C.F.R. § 170.114(a)) and that are open for public travel (*Id.*).

81. All roads listed in the NTTFI must be open and available for public use as required by 23 U.S.C. §§ 101(a)(22), (23), and (33); 25 C.F.R. § 170.5; and 25 C.F.R. § 170.114(a).

82. The Tribe elects to list each Roadway in the NTTFI, as a result of the Tribe listing the Roadways in its IRR Inventory as averred below.

83. The Tribe’s recent IRR Official Indian Reservation Road Inventory (the “IRR Inventory”), dated January 24, 2023 (one week before the Defendants closed the Roadways), lists the roads and mileage most recently reported by the Tribe.

84. The Tribe's IRR Inventory lists:

- 0.5 miles of Annie Sunn Lane, which includes a substantial portion of the .86 miles at issue on Indian land that was barricaded;
- 0.8 miles of Center Sugarbush Lane, which includes the 745.4 feet (approximately .14 miles) at issue on Indian land that was barricaded;
- 0.6 miles of East Ross Allen Lake Lane, which includes the 159.5 feet (approximately .03 miles) at issue on Indian land that was barricaded; and
- 0.8 miles of Elsie Lake Lane, which includes the 781.2 feet (approximately .15 miles) at issue on Indian land that was barricaded.

85. Only the Secretary of the Interior or the public authority having jurisdiction over a road listed in the NTTFI may restrict road use or close roads temporarily. They may do so only in very limited circumstances and must “consult[] with [the] Tribe and applicable private landowners” in doing so, unless there is a concern about “immediate safety or life-threatening situation[].” 25 C.F.R. §§ 170.114(a)-(b).

86. On the NTTFI, the Tribe identifies the “owner” – i.e., “the public authority responsible for operating or maintaining a particular road,” as the Town or Vilas County for each of the Roadways. 52 IAM 9-H, § 2.2(2).

87. The Town maintains Center Sugarbush Lane, East Ross Allen Lake Lane, Elsie Lake Lane, and the north-south portion of Annie Sunn Lane. Individual landowners who use Annie Sunn Lane maintain the east-west portion of that road.

88. Over the years, the Tribe has signed various agreements with the Town of Lac du Flambeau, such as the Acknowledgement of Public Authority Responsibility (APAR) in 2007, whereby the Tribe agreed that the Roadways “will continue to be owned by the Town and opened to the public for travel.”

89. The Bureau of Indian Affairs (“BIA”) has likewise opined that, because the Roadways are listed on the approved NTTFI (formerly IRR), the Roadways “must be open to the public.”

90. Upon information and belief, the Tribe receives federal funding for listing the Roadways on the NTTFI.

THE DEFENDANTS HAVE UNLAWFULLY BARRICADED THE ROADWAYS

91. Because of the Federal-Aid Highway Act and Tribal Transportation Program, specifically, 23 U.S.C. §§ 101(a)(22), (23), and (33), 23 U.S.C. §§ 201–202, and 25 C.F.R. §§ 170.5 & 170.114(a), Defendants lacked, and continue to lack, the power and authority to restrict access to, or close, the Roadways. Further, in disregard of 25 C.F.R. § 170.114(a), Defendants failed, and continue to fail, to consult with the Secretary of the Interior and/or the affected landowners, including Plaintiffs before closing or attempting to close the Roadways.

92. Despite the Tribe’s assurances that the Roadways are public and the fact that federal law clearly requires the Roadways to remain open to the public, on January 31, 2023, Defendants placed barricades across the Roadways, or otherwise caused those barricades to be placed across the Roadways, thereby closing the Roadways and restricting or completely preventing the Plaintiffs’ ability to get to and from their respective properties.

93. Furthermore, in conjunction with placing the barricades to block the Roadways, Defendant President John Johnson, Sr. announced that any non-Tribal members who went around the barricades to travel on the closed portions of the Roadways would be considered “trespass[ers].”

94. Defendants acted, and continue to act, unilaterally and in violation of law. Both the decision to block and the placing of the barricades across the Roadways were *ultra vires* acts.

95. Defendants have since partially deconstructed the barricades by removing the chains that connect the pair of cement blocks on each Roadway, but this status is only temporary, and Defendants have threatened to place the barricades back on the Roadways as averred below.

**UNLAWFUL ROAD CLOSURES CREATE A
PUBLIC SAFETY EMERGENCY AND IMMINENT THREAT
TO THE PUBLIC'S HEALTH, SAFETY AND WELFARE**

96. The barricades on each of the Roadways consisted of two large concrete or cement blocks with a locked chain connecting the blocks as well as a wooden barricade in front of the chain. Keys are required to open the lock on the chain connecting the concrete or cement blocks. Defendants have given only a select few tribal members access to the keys and permission to open the locked chain lock. Due to the revocable temporary access permits issued to the Town, the chains connecting the concrete or cement blocks have been temporarily removed. However, the concrete or cement blocks on the Roadways remain in place.

97. Upon the revocation or expiration of the revocable temporary access permits, the Defendants will relock, or will cause the locking of, the chains connecting the concrete or cement blocks on the Roadways.

98. Immediately below is a photo of Defendants' fully constructed barricade blocking Annie Sunn Lane. Presently, the wooden barricade is not in the depicted location and the chain

does not currently connect the two concrete or cement blocks. However, the two concrete or cement blocks currently remain in place on the Roadway.



99. Immediately below is a photo of Defendants' fully constructed barricade blocking Center Sugarbush Lane. Presently, the wooden barricade is not in the depicted location and the

chain does not currently connect the two concrete or cement blocks. However, the two concrete or cement blocks currently remain in place on the Roadway.



100. Immediately below is a photo of Defendants' fully constructed barricade blocking East Ross Allen Lake Lane. Presently, the wooden barricade is not in the depicted location and the

chain does not currently connect the two concrete or cement blocks. However, the two concrete or cement blocks currently remain in place on the Roadway.



101. Immediately below is a photo of Defendants' fully constructed barricade blocking Elsie Lake Lane. Presently, the wooden barricade is not in the depicted location and the chain does

not currently connect the two concrete or cement blocks. However, the two concrete or cement blocks currently remain in place on the Roadway.



102. Barricading the Roadways and now limiting use of the Roadways to only “homeowner[s] [(i.e., the Plaintiffs)] on [the Roadways] to lawfully access their property”³ jeopardize the health, welfare and safety of the Plaintiffs and other residents on the Roadways.

103. When the chains connecting the concrete or cement blocks on the Roadways are locked, first responders, such as firefighters, non-tribal law enforcement officers, paramedics and emergency medical technicians need to stop to open the locks on the barricades, which lengthens the wait time for Plaintiffs to receive emergency response services.

³ Resolution No. 67(23).

104. Removal of the chains connecting the blocks on the Roadways does not ensure entrance for emergency responders because the permits only grant homeowners access to use the road.

105. Snowbanks, trees and natural terrain in some areas prevented vehicles from going around the barricades, even in an emergency.

106. Mail delivery persons also needed to seek permission to deliver mail.

107. Due to the barricades and Defendants' communications to the U.S. Postal Service, Plaintiffs were only able to receive mail two-to-three times per week.

108. At one point in March, the mail delivery was completely stopped by the Defendants' threats and actions.

109. The Roadways are the sole means of Plaintiffs' vehicular access to their respective properties. With the Roadways closed, the Plaintiffs were completely landlocked.

110. Defendants' barricades prevented Plaintiffs from freely leaving leave their residential neighborhoods, even to obtain basic necessities such as food, household items and health supplies.

111. Defendants' barricades prevented Plaintiffs from freely entering their residential neighborhoods.

112. Defendants' barricades prevented Plaintiffs from any reasonable entrance to and any reasonable exit from Plaintiffs' homes.

113. Plaintiffs were only permitted by Defendants to leave their residences if they have medical appointments, and even then, they must call tribal police to open the locked chains. One time, it took tribal police 50 minutes to locate the correct key.

114. Plaintiffs were threatened by Defendants that, if they leave for any other reason, they will not be allowed back through the barricades to return to their homes.

115. Plaintiffs were not only unable to drive vehicles past the barricades, but they were also threatened with the consequences of alleged trespass if they went around the barricades on foot or by any other means. In addition, cameras were installed at the barricades to monitor Plaintiffs' movements, resulting in further intimidation of the Plaintiffs.

116. Although some Plaintiffs had some limited ability to access basic necessities such as food by walking or snowmobiling across frozen lakes in the area, Plaintiffs' ability to do so was quite literally disappearing; as the weather continued to warm up and the ice on top of the lakes melted, it became too dangerous for Plaintiffs to attempt to walk or snowmobile across them.

117. Some Plaintiffs and other residents impacted by Defendants' unlawful closure of the Roadways were forced to flee their homes in order to ensure that critical care for infirm family members or for themselves was not interrupted.

118. If the barricades are fully reconstructed such that the chains connecting the concrete or cement blocks on the Roadways are again locked, the above-averred circumstances relating to Plaintiffs when the chains are connected and locked on the Roadways will exist again.

119. There is an absolute immediate need to keep the Roadways open to avert imminent harm to Plaintiffs and other residents similarly situated.

120. Plaintiffs have been irreparably harmed and continue to be harmed by the Defendants' unlawful actions in barricading, and threatening to barricade, the Roadways.

121. Plaintiffs continue to be irreparably harmed by the imminent highly likely prospect of the Defendants again fully reconstructing the barricades on the Roadways.

122. Plaintiffs face highly likely imminent irreparable harm by and will be irreparably harmed when the Defendants again fully reconstruct the barricades on the Roadways, which is threatened and likely to happen on June 13, 2023, if not earlier.

123. Plaintiffs and other landowners similarly situated are fearful of retaliation if they even attempt to use the Roadways or get involved in this lawsuit.

124. Prior to this lawsuit, Plaintiffs attempted to negotiate with the Tribe to keep the roads open, but the Tribe has been completely unreasonable, demanding \$10 million and then raising that demand to \$20 million, leaving the Plaintiffs with no other remedy than to seek relief in Court.

125. Since closing the Roadways, Plaintiffs have been receiving offers from tribal members to sell their properties for 25 cents on the dollar. One Plaintiff received an offer of \$5,000 for her home.

126. Plaintiffs have also received threats on social media from Defendants or other tribal members to leave and never come back.

127. Other Plaintiffs have now been banished by the Defendants from buildings owned by the Tribe or any tribal entities, supposedly in retaliation for the Plaintiffs' participation in this lawsuit and/or for speaking publicly about the Defendants' actions.

TEMPORARY, REVOCABLE ACCESS PERMITS

128. Since the filing on this lawsuit, the Town obtained on March 13, 2023, a "Lac du Flambeau Access Permit: Conditional Use/Revocable Permit" for each of the four Roadways (the "Revocable Temporary Access Permits") upon payment of \$5,000 per road and other certain terms and conditions.

129. The Revocable Temporary Access Permits are an agreement or agreements between the Town and the Tribe. The Plaintiffs are not parties to the agreement or agreements relating to the permits.

130. The Revocable Temporary Access Permits were issued to the Town, not to Plaintiffs.

131. The Revocable Temporary Access Permits are revocable.

132. The Revocable Temporary Access Permits are temporary.

133. The stated purpose of the Revocable Temporary Access Permits is for “Temporary Access Permit to traverse Tribal Land.”

134. The Revocable Temporary Access Permits deny that the Roadways are public roads.

135. The Revocable Temporary Access Permits each state: “Issuance of permit does not imply any Tribal approval for treatment as public road.”

136. Resolution No. 67(23), which approved the Revocable Temporary Access Permits, states: “The issuance of any Temporary Access Permits does not imply any Tribal approval for treatment as a public road for the applicable road.”

137. Provided that the Defendants do not revoke or terminate the Revocable Temporary Access Permits sooner, the term of each Revocable Temporary Access Permit is 30 days, so each expires on April 12, 2023.

138. Per Resolution No. 67(23), the Revocable Temporary Access Permits can be renewed but only for a maximum of two additional 30-day terms.

139. If the Defendants exercise their self-declared unilateral discretion and renew the Revocable Temporary Access Permits twice, and if there is no lapse between any renewal, and if

the Defendants do not revoke the permits or renege on the agreement with the Town, the Defendants will fully reconstruct the barricades on or immediately after June 13, 2023.

140. Due to the Revocable Temporary Access Permits, on March 13, 2023, the chains between the concrete or cement blocks on the Roadways were unlocked and removed. However, the concrete or cement blocks that the chains were attached to remain in place on the Roadways.

141. The Revocable Temporary Access Permits state that certain terms and conditions must be met by the Town in order to renew the Revocable Temporary Access Permits, including payment of additional fees, and threaten closure if the Town fails to properly renew the permits.

142. The Revocable Temporary Access Permits each state: “***Failure to renew the temporary access permit will result in immediate denial of access.***” (Emphasis in original).

143. By their terms, the Revocable Temporary Access Permits are conditional and restrict use of the Roadways. Thus, their issuance by Defendants is an ongoing violation of federal law, specifically, the Federal-Aid Highway Act, by Defendants.

144. By their terms, the Revocable Temporary Access Permits are conditional and restrict use of the Roadways. Thus, the permits themselves each are ongoing violations of federal law, specifically, the Federal-Aid Highway Act.

145. Resolution No. 67(23) states that upon the payment of the permit fee and issuance of the permits, the “temporary removal of the chain[s] blocking access to the road[s]” will be approved, “but not the existing cement barricades.”

146. The Defendants placing, assisting in placing, or causing the placement of concrete or cement blocks that remain on the Roadways through the present is also an ongoing violation of federal law, specifically, the Federal-Aid Highway Act.

COUNT I
(DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF)

147. Plaintiffs hereby incorporate by reference the averments contained in the above paragraphs as though set forth fully herein.

148. The controversy between the parties is substantial, immediate, and real. Defendants' ongoing *ultra vires* actions, including erecting, or causing to be erected, barricades that prevented Plaintiffs from accessing their homes and thereby causing Plaintiffs irreparable harm and issuing the Temporary Revocable Access Permits, which condition and restrict access to, use of, and travel over the Roadways, violate federal law, specifically, the Federal-Aid Highway Act and Tribal Transportation Program, exceed the Tribe's (and, hence, the Defendants') federal Indian law authority, and cause Plaintiffs ongoing irreparable harm.

149. The Defendants placing, assisting in placing, or causing the placement of concrete or cement blocks that remain on the Roadways through the present is an additional ongoing violation of federal law, specifically, the Federal-Aid Highway Act and Tribal Transportation Program.

150. The Defendants' issuance of temporary permits in order for Plaintiffs to freely go to and from their homes and the Defendants' placing, assisting in placing, or causing the placement of concrete or cement blocks on the Roadways that currently remain in place, irreparably harm the Plaintiffs and will cause additional irreparable harm in the absence of court intervention.

151. The Roadways have only been temporarily reopened due to the Town being allowed to purchase the Revocable Temporary Access Permits. However, the Defendants continue to threaten to close the Roadways if certain terms and conditions are not met, and they have kept the concrete or cement blocks in place for a main purpose of reattaching the chains and locks again soon.

152. The parties have adverse legal interests. While the Defendants assert that they can barricade, otherwise limit the use of the Roadways (such as via issuance of permits), and place concrete or cement blocks on the Roadways and that Plaintiffs' past and any future use of the Roadways constitutes trespass, Plaintiffs, as averred above, rely on federal law as indisputably providing that the Roadways are public roads, and must be kept open to the public, pursuant to 23 U.S.C. §§ 101(a)(22), (23) and (33), 23 U.S.C. §§ 201–202, 25 C.F.R. § 170.5, and 25 C.F.R. § 170.114(a), and on federal Indian law authority, which Defendants have exceeded, and that Defendants cannot lawfully barricade, otherwise limit the use of the Roadways such as via issuance of permits, or place concrete or cement blocks on the Roadways. These two positions are mutually exclusive.

153. The Court's decision on whether the Roadways are public and must be kept open to the public pursuant to 23 U.S.C. §§ 101(a)(22), (23) and (33), 23 U.S.C. §§ 201–202, 25 C.F.R. § 170.5, and 25 C.F.R. § 170.114(a) will aid in resolving the controversy between the parties. Ultimately, the Court's determination that the Defendants' actions were and are *ultra vires* will resolve the controversy between the parties.

154. Entry of an order enjoining and ordering Defendants to cease and desist their *ultra vires* actions is appropriate and proper relief in this action.

155. Without injunctive relief from the Court, Defendants will continue to prohibit public access to the Roadways, threaten to block Plaintiffs from traveling over public roads (and the only roads) to and from their residences by barricading the Roadways, violate federal law by limiting use of the public roads at issue via requiring permits to access the Roadways, and Defendants will very likely barricade the Roadways again upon expiration or unilateral revocation of the Revocable Temporary Access Permits.

156. Plaintiffs will continue to be irreparably harmed unless the Court issues a judgment pursuant to 28 U.S.C. §§ 2201 & 2202 declaring that Defendants' actions have been and continue to be *ultra vires* and grants preliminary and permanent injunctive relief, pursuant to Fed. R. Civ. P. 65, enjoining Defendants from further *ultra vires* actions, requiring Defendants to remove, or cause the removal of, all remaining barricades or portions thereof, prohibiting reconstruction of the barricades, enjoining and prohibiting any permit-issuing regime relating to the Roadways and any other effort to limit use of the Roadways or interfere with Plaintiffs' or the public's use of the Roadways, requiring the Roadways to be kept open to the public.

COUNT II
(ANTICIPATED PRIVATE NUISANCE)

157. Plaintiffs hereby incorporate by reference the averments contained in the above paragraphs as though set forth fully herein.

158. By this cause of action, Plaintiffs "present[] an application to a court of equity to restrain a threatened or prospective nuisance." *Wergin v. Voss*, 179 Wis. 603, 606, 192 N.W. 51 (1923).

159. The Court may enjoin a threatened or anticipated nuisance, public or private. *Id.*; *Krueger v. AllEnergy Hixton, LLC*, 2018 WI App 60, ¶¶13-14, 384 Wis. 2d 127, 918 N.W.2d 458 ("[O]ne recognized variation on a private nuisance claim is aptly referred to as an anticipated private nuisance claim."); *Rogers v. John Week Lumber Co.*, 117 Wis. 5, 93 N.W. 821 (1903).

160. The Defendants intentionally and unreasonably erected barricades on the Roadways.

161. The Defendants were not and are not privileged to erect or maintain barricades on the Roadways under federal law, as averred above.

162. The barricades prevented the Plaintiffs from going to and from their homes for a period of almost six weeks.

163. Certain Plaintiffs were prevented from leaving their properties, while others fled their homes and were prevented from returning to their properties, due to the Defendants' actions as averred above, including but not limited to the Defendants placing, assisting in placing, or causing the placement of the barricades on the Roadways.

164. The Defendants' intentional and unreasonable barricading of the Roadways is a condition or activity that unduly interferes with the private use and enjoyment of Plaintiffs' land.

165. Plaintiffs' complete inability to return to their respective homes due to the barricades is an undue interference with Plaintiffs' private use and enjoyment of their land.

166. Complete denial of access to Plaintiffs' land is an ultimate undue interference with Plaintiffs' private use and enjoyment of their land, as they cannot at all use their land and thus cannot at all enjoy their land.

167. Plaintiffs' complete inability to return to their respective homes due to the Defendants' anticipated conduct (re-barricading the Roadways) will cause undoubted harm.

168. Plaintiffs' substantial and unreasonable inability to freely leave and return to their respective homes is an undue interference with Plaintiffs' private use and enjoyment of their land.

169. Plaintiffs' substantial and unreasonable inability to freely leave and return to their respective homes due to Defendants' anticipated conduct (re-barricading the Roadways) will cause undoubted harm.

170. Unrestricted reasonable access to and from one's home is main condition or circumstance by which Plaintiffs privately use and enjoy their land. This condition or

circumstance allows for family, friends, and associates to visit Plaintiffs at any time; it allows for delivery of essentials like propane gas; it allows for the ability to go to the grocery store to get food and return home in order to survive; it allows people to receive their prescription medications needed to remain healthy and survive; it allows people who need caregiving to receive caregiving.

171. The Defendants' barricades on the Roadways wholly restrict reasonable access to and from Plaintiffs' homes and thereby unduly interfere with Plaintiffs' private use and enjoyment of their land.

172. The Defendants' will very likely reconstruct, assist in reconstructing, or cause the reconstruction of, the barricades on the Roadways upon the revocation or expiration of the Revocable Temporary Access Permits.

173. It clearly appears that a nuisance will necessarily result from the Defendants' contemplated act which Plaintiffs seek to enjoin.

174. Defendants' intentional and unreasonable conduct at issue that is likely and imminent (re-barricading the Roadways) will necessarily or certainly create a private nuisance, as averred above.

175. The resulting nuisance from Defendants' likely, imminent conduct at issue (re-barricading the Roadways) will cause Plaintiffs harm that is inevitable and undoubted, that is, if Defendants' very likely imminent conduct does occur, then Plaintiffs' harm is guaranteed and undoubted.

176. Plaintiffs are entitled to injunctive relief to prevent the nuisance that will be caused by the Defendants' likely, imminent full reconstruction of the barricades.

COUNT III
(ANTICIPATED PUBLIC NUISANCE)

177. Plaintiffs hereby incorporate by reference the averments contained in the above paragraphs as though set forth fully herein.

178. By this cause of action, Plaintiffs “present[] an application to a court of equity to restrain a threatened or prospective nuisance.” *Wergin v. Voss*, 179 Wis. 603, 606, 192 N.W. 51 (1923).

179. The Court may enjoin a threatened or anticipated nuisance, public or private. *Id.*; *Krueger v. AllEnergy Hixton, LLC*, 2018 WI App 60, ¶¶6 n.2, 13–14, 384 Wis. 2d 127, 918 N.W.2d 458 (noting that *Wergin*, which the *Krueger* court relies on, “also contemplates anticipated *public* nuisance claims” (emphasis in original)); *Rogers v. John Week Lumber Co.*, 117 Wis. 5, 93 N.W. 821 (1903).

180. The Defendants intentionally and unreasonably erected barricades on the Roadways.

181. The Defendants were not and are not privileged to erect or maintain barricades on the Roadways under federal law, as averred above.

182. The barricades prevented the Plaintiffs from going to and from their homes—located on the land which they possess—for a period of almost six weeks and prevented the public from accessing or using the roads for any lawful purpose.

183. The Defendants’ will very likely reconstruct, assist in reconstructing, or cause the reconstruction of, the barricades on the Roadways upon the revocation or expiration of the Revocable Temporary Access Permits.

184. The Defendants' intentional and unreasonable barricading of the Roadways is a condition or activity which substantially, unreasonably, or unduly interferes with a public right or the use and enjoyment of public space or with the activities of an entire community.

185. The Roadways that were barricaded by the Defendants and very likely will soon again be barricaded by the Defendants are "public roads" under federal law, as averred above.

186. Barricading of the Roadways was and will again be interference with a public right, that is, the right of the public to access the Roadways pursuant to federal law designating the roads as "public roads," as averred above.

187. The nature of the Defendants' anticipated activity (barricading the Roadways) provides no direct practical or economic benefit to the Defendants, other than to require the Town to pay money for Revocable Temporary Access Permits to use public roads required to remain open under federal law.

188. Public use of the Roadways does not interfere with the Defendants' use (or the lack thereof) of the Roadways. Thus, Defendants' wholly or significantly preventing any public use of or access to the Roadways is unreasonable.

189. The barricading of the Roadways occurs on "public roads" per federal law, as averred above.

190. The degree of the injury inflicted by the barricaded Roadways is high, and the character of the injury inflicted by the barricaded Roadways is extensive, because family, friends, associates, delivery services, and passersby are entirely prevented from accessing or using the Roadways that are "public roads" under federal law, in addition to the Plaintiffs' complete denial of access to their land to reenter when excluded therefrom or Plaintiffs' substantial and unreasonable inability to freely leave and return to their respective homes.

191. Barricading of the Roadways is a significant interference with the public health, the public safety, the public peace, the public comfort, and the public convenience.

192. The Defendants' highly likely, imminent conduct (fully reconstructing the barricades on the Roadways) is proscribed by federal law.

193. The Defendants' conduct (barricading the Roadways and imminently re-barricading the Roadways) has produced, continues to produce, and will further produce long-lasting (if not permanent) detrimental effect.

194. The Defendants' know and have reason to know that the Defendants' conduct (barricading the Roadways and imminently re-barricading the Roadways) had, has, and will have a significant effect upon the public right, that is, the complete denial of the Plaintiffs' and public's use of and access to the Roadways, which caused, causes, and will further cause severe and extensive effects on the Plaintiffs, their families, friends, and associates, passersby, and the public.

195. It clearly appears that a nuisance will necessarily result from the Defendants' contemplated act of fully reconstructing the barricades on the Roadways which Plaintiffs seek to enjoin on their behalf and for the public.

196. Defendants' intentional and unreasonable conduct at issue that is likely and imminent (re-barricading the Roadways) will necessarily or certainly create a public nuisance, as averred above.

197. The resulting public nuisance from Defendants' very likely imminent conduct at issue (re-barricading the Roadways) will cause Plaintiffs and the public harm that is inevitable and undoubted, that is, if Defendants' very likely imminent conduct does occur, then Plaintiffs' and the public's harm are guaranteed and undoubted.

198. Plaintiffs have suffered and will suffer harm of a kind different from that suffered by the public exercising the public's right to access and use public roads that was, is, and will be the subject of the Defendants' barricading and re-barricading, in that Plaintiffs' harm is, in part, the inability to freely and reasonably return to or exit and reenter their personal dwellings and to maintain normal livelihoods connected to their homes, as well as extreme stress and anxiety and other mental conditions from such inability.

199. Plaintiffs are entitled to injunctive relief to prevent the nuisance that will be caused by the Defendants' likely, imminent full reconstruction of the barricades.

COUNT IV
(IN THE ALTERNATIVE, IMPLIED EASEMENT)

200. Plaintiffs hereby incorporate by reference the averments contained in the above paragraphs as though set forth fully herein.

201. If the Tribe takes action to remove the Roadways from the approved NTTFI, Plaintiffs have implied easements to use the Roadways for access to and from their respective properties.

202. The land comprising the Lac du Flambeau Indian Reservation, including Plaintiffs' properties and the parcels improved by the Roadways, was reserved to the Tribe by the Treaty of 1854, 10 Stats., 1109.

203. Parcels of land on the Lac du Flambeau Reservation were appropriated to individual tribal members pursuant to the Treaty of 1854 and/or other federal law from whose successors Plaintiffs acquired title.

204. The only means of access to Plaintiffs' properties since severance of the parcels, has been by use of the roads within the unallotted part of the reservation, namely, the Roadways.

205. Without access to and use of the Roadways, Plaintiffs' properties are landlocked.

206. Plaintiffs are entitled to a declaratory judgment and/or order confirming that Plaintiffs have implied easements for the benefit of their respective properties, that the Roadways are within said implied easements, and that the Roadways must remain open.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, Plaintiffs, by and through their attorneys, respectfully request that the Court enter judgment in their favor and against Defendants as follows:

(a) A preliminary injunction requiring the Roadways to remain open for public use until a final order is entered by this Court.

(b) A permanent injunction requiring the Roadways remain open for public use.

(c) A declaration that the Roadways are public and must be kept open to the public pursuant to the Federal-Aid Highway Act and its Tribal Transportation Program, and the federal Tribal Transportation Program implementing regulations, specifically but not limited to 23 U.S.C. §§ 101(a)(22), (23) and (33), 25 C.F.R. § 170.5, and 25 C.F.R. § 170.114(a), and other applicable law.

(d) An order requiring the Defendants to cease and desist from taking any further action to restrict Plaintiffs from freely using the Roadways to access their properties or homes, including (but not limited to) via the issuance of permits.

(e) An order requiring the Defendants to remove the concrete or cement blocks from the Roadways and to not replace such blocks with the same or similar tangible objects.

(f) An order enjoining the Defendants from explicitly or impliedly threatening the Plaintiffs with the consequences of alleged trespass from the Plaintiffs' use of the Roadways to freely access their properties or homes or for related purposes.

(g) An order enjoining the Defendants' anticipated conduct that will or would cause private nuisance to the Plaintiffs.

(h) An order enjoining the Defendants' anticipated conduct that will or would cause public nuisance.

(i) In the alternative to the above-prayed for declaration, an order, in recordable form, that the Plaintiffs (and their heirs, assigns, successors, invitees, nominees, and legal representatives) have implied easements to use the Roadways in their present location to access their respective properties or homes and for related purposes.

(j) All other relief deemed just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs request a jury trial on all issues so triable.

Dated this 27th day of March 2023.

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