IN THE QUINAULT TRIBAL COURT
QUINAULT INDIAN NATION
TAHOLAH, WASHINGTON

BRYAN TARABOCHIA and JOSEPH TARABOCHIA

Plaintiffs,

v.

QUINAULT INDIAN NATION; ALISON BOYER, as Fish and Game Secretary and Licensing Agent for the Quinault Indian Nation Department of Natural Resources; QUINAULT BUSINESS COMMITTEE; GUY CAPOEMAN, individually, and as President; FAWN SHARP, individually; LARRY RALSTON, individually; LATOSHA UNDERWOOD, individually; GINA JAMES, individually, and as First Councilperson; JIM SELLERS, individually, and as Second Councilperson; JOHN BRYSON JR., individually, and as Third Councilperson; NOREEN UNDERWOOD, individually, and as Vice-President; DONALD WAUGH, individually; RYAN HENDRICKS, individually, and as Sixth Councilperson; KRISTEEN MOWITCH, individually, and as Seventh Councilperson; HANNAH CURLEY, individually, and as Enrollment Administrator; SABRINA KRAMER, as Treasurer; MANDY HUDSON-HOWARD, as Secretary; TYSON JOHNSTON, as Fourth Councilperson; BRITTANY BRYSON, as Fifth Councilperson;

Defendants.

Case No.: CV23-015

CORRECTED ORDER ON SUMMARY JUDGMENT MOTIONS

This matter is before the court on the following motions:

1) Quinault Business Committee and Tribal Officials' Motions to Dismiss converted to Motions for Summary Judgment by order of September 11, 2024;

2) Quinault Tribal Officials' Motion for Summary Judgment;

3) Plaintiffs' Motion for Summary Judgment.

The Court by this order decides all pending dispositive motions.

I. BACKGROUND

A. The Parties

Plaintiffs

Plaintiffs are father and son residents of Skamokawa, Washington. According to the Amended Complaint filed at the end of November 2023, Joseph Tarabochia, Jr. ("Joe"), an elder, was then 69 years of age. His son Bryan ("Bryan") was 34 at the time. Joe was first enrolled in the Quinault Tribal Nation in 1965 and again on March 30, 2019 and was given enrollment number 4424.[1] Bryan, enrollment number 4655, was enrolled on March 27, 2021. Plaintiffs are descendants of Olive Goddell Tarabochia, and according to filed declarations are ninth generation descendants of Concomly, headman of the Lower Chinook Indians. Concomly's father is believed to have been a Quinault man, and his mother Tama-i-tama-i, female chief of the Quatsa-mts, who resided at the mouth of the Columbia River. *Declaration of Larry Goddell, Jr.*, Ex. 1 to Plaintiffs' Motion for Summary Judgment. Joseph's mother, grandmother (Lydia Ero Goddell), and great-grandparents (George and Elizabeth Ero) were original allottees. *Plaintiffs' Statement of Facts* (*citing* Exhibit 57 to the Amended Complaint).

By all accounts, Joe Tarabochia and his extended family have harvested fish, shellfish and game in Southwest Washington State for generations. *Declarations of Kathy Rosenmeyer* and *Matthew Tarabochia-Gast,* Ex. 1 to Plaintiffs' Motion for Summary Judgment. According to his own declaration and those of relatives and friends, Joe was among the very first to fish and exercise treaty rights at the off-reservation fishery after Judge Boldt rendered his decision in

[1] According to Joe, his 1965 enrollment records burned in a fire and were lost, necessitating his reenrollment.

United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974). The decision protected the treaty rights of Indian tribes in Washington to fish in their usual and accustomed fishing grounds. According to Joe, the effort came at considerable cost to Joe and his mother, who suffered harassment while fishing, and to his own personal freedom. *Declaration of Joseph Tarabochia,* Ex. 1 to Amended Complaint.

After Bryan's enrollment, Plaintiffs sought fishing and boating permits, as well as benefits, which were denied by QIN through Defendant Boyer, the Nation's licensing agent, and other officials. The stated reason was because they were adoptees subject to a waiting period for certain rights and benefits set forth in QBC Resolution No. 19-147a-98 ("the Resolution").[2] When Bryan persisted in questioning the constitutionality of the Resolution and presenting other legal concerns to government officials, Plaintiffs were emailed a letter from Defendant President Capoeman denying their treaty rights and benefit requests and also denying an audience with the QBC Executive Committee to present their concerns. In January 2023, Plaintiffs gave notice that they intended to file suit over their grievances, and shared their draft complaint. In response, on February 16, 2023, the President corresponded and stated that the Business Committee was considering recommending to the Quinault General Council that Bryan's continued enrollment was not in the best interest of the Quinault Indian Nation. Joe did not receive that letter by either email or regular USPS mail until after February 21, 2023. It is unclear if Bryan received the letter by mail.

The letter stated a meeting was set for February 21, 2023, where Joe and Bryan were invited to be heard about why they should not be disenrolled. Neither Joe nor Bryan attended the

[2] Resolution 19-147a-98 was passed in May 2019 and purportedly applied retroactively to March 29, 2014, with certain limited exceptions. It provided a waiting period for a class of so-called "adopted" members to access fishing and treaty rights and certain benefits. The 2022 Amendment to the Quinault Constitution omitted all reference to adopted members, and any treatment differences regarding treaty rights.

meeting. After recessing into Executive Session, the Quinault Business Committee returned to their open meeting and made a recommendation to the Quinault General Council that the Tarabochias be disenrolled from the Quinault Indian Nation. The vote was by motion and unanimous among all members present.

Joseph Tarabochia and Bryan Tarabochia were disenrolled from the Quinault Indian Nation on March 23, 2023, upon the recommendation of the Quinault Business Committee and vote of the Quinault General Council.[3] The circumstances surrounding the Tarabochias' disenrollment form the basis of these motions.

Defendants

Defendants are the Quinault Indian Nation (sometimes "QIN"), the Quinault Indian Nation Business Committee (hereafter "QBC") and its officers subsequent to 2023 sued only in their official capacity. Also individual QBC members serving at the time of the disenrollment, as well as Enrollment Administrator Hannah Curley ("Curley"), and Licensing Agent Alison Boyer ("Boyer"). QIN is alleged to have waived its sovereign immunity from suit pursuant to the Quinault Indian Nation Constitution and the admitted existence of liability insurance coverage for the errors and omissions of QIN government officials.[4] QBC is sued in its official capacity for injunctive relief only. Defendants are alleged to have violated Plaintiffs' constitutional rights and the Indian Civil Rights Act in enacting the Resolution. The Quinault government is alleged to have improperly taken and converted plaintiffs' property, namely their treaty rights, and Joe's elder payments from the time of their enrollment. There are nine counts arising out of the passage and enforcement of the Resolution, as well as a constitutional due

[3] The General Council is comprised of all members of the Quinault Indian Nation. The disenrollment procedure purportedly followed was one that existed as of the September 2022 amendments.

[4] The current status of the coverage afforded by the insurance carrier to the Defendants is legal defense of the action under a "reservation of rights."

process claim against Defendants for failing to provide due process and follow procedures set forth in the official Tribal Enrollment Manual.

Certain officials and former members of QBC are also sued in their individual capacities for committing a number of common law torts- conspiracy, breach of fiduciary duty, conversion, fraudulent and negligent misrepresentation, malicious prosecution and abuse of process, defamation, libel and slander, false light, invasion of privacy, retaliation, and tortious interference with business expectancy. A negligence claim is made against Defendant Boyer.

B. Timeline of the Litigation

On March 13, 2023, Plaintiffs filed their Complaint, naming the Quinault Business Committee, individual QBC officers and members and the Quinault Fish and Game Secretary/licensing agent for the Quinault Indian Nation as well as the QIN Enrollment Administrator as defendants. On May 10, 2023, Defendants filed a Motion to Dismiss. The Court denied the motion via order dated November 15, 2023, and declined to certify the matter for interlocutory appeal. The Court reasoned that under QIN Title 99, Section 99.02.020, QIN may be sued in Tribal Court with respect to any claim for which the Quinault Tribe is insured, and that QIN held liability insurance for at least some of the claims asserted and for money damages. The Court found that the QIN explicitly waived immunity from suit to the extent of its existing insurance policy.

On November 27, 2023, Plaintiffs filed their Amended Complaint for Declaratory Relief, Injunctive Relief, Compensation and Money Damages. The Quinault Indian Nation answered the Amended Complaint on January 1, 2024, and the QBC and Quinault Tribal Officials filed motions to dismiss that same date. Plaintiffs responded to the dismissal motions on February 1, 2024.

On January 22, 2024 Plaintiffs filed their Motion for Order Regarding Tribal Membership Status. Defendants responded on February 5, 2024. Plaintiffs replied on February 13, 2024, and Defendants sur-replied on March 1, 2024. The Court held a hearing on the Motions to Dismiss and Motion for Membership Status on March 4, 2024. At that time, the parties agreed that Plaintiffs' Motion for Order Regarding Membership Status could be converted to a declaratory judgment action and decided as such. The Court then proceeded to hear argument on the issue of when amendments to the Quinault Indian Nation Constitution become effective. The Court granted the parties leave to file further documentation in support of their positions, which they did on March 30, 2024.

On April 10, 2024, the Court issued its decision, ruling that the Quinault Constitutional Amendments in question became effective on September 10, 2022. At the urging of the parties, the Court certified the order for interlocutory appeal and stayed all proceedings pending decision by the Quinault Indian Nation Court of Appeals. On May 16, 2024, the Court of Appeals declined to hear an interlocutory appeal of the Court's April 10, 2024, Declaratory Judgment Order and dismissed it.

On June 7, 2024, the Court vacated the Order Staying Proceedings entered April 12, 2024. It ordered the parties to restyle the case in light of election of new Business Committee members and officers, and ordered the parties to undertake settlement efforts through mediation.

In July 2024, the Court entered a protective order regarding discovery and compelled production of answers to interrogatories and production of documents. On July 29, 2024, the Defendants requested re-certification of interlocutory appeal to the Court of Appeals, which the Court denied on September 9, 2024, citing the Appeals Court's desire to decide any appeal

upon the completion of the trial court's proceedings. Thereafter, the Court converted any pending motions to dismiss to requests for summary judgment, ruled on various discovery issues that arose, and entered scheduling orders with briefing deadlines on September 12, 2024 and December 10, 2024. Both Plaintiffs and the Quinault Tribal Officials filed for summary judgment on January 13, 2025 and responded on February 10, 2025. Plaintiffs replied to Defendant's Response to their motion on February 25, 2025. Plaintiffs replied to Defendants response. The Court held a motion hearing on all pending summary judgment motions on May 19, 2025.

C. Declaratory Judgment

Black's Law Dictionary defines declaratory judgment as "a binding adjudication that establishes the rights and other legal relationships of the parties without providing for or ordering enforcement." *Declaratory Judgment*, Black's Law Dictionary (11th ed. 2019). The decision to grant declaratory relief is a matter of judicial discretion. *United States v. State of Wash.*, 759 F.2d 1353, 1356 (9th Cir. 1985). With consent of the parties, the Court in this case exercised such discretion, and issued declaratory judgment on April 10, 2024.

Article VI of the 1975 QIN Constitution, entitled "Ratification" states the Quinault Constitution is effective "when ratified by 2/3 of all members eligible to vote, present and voting at a General Council meeting where debate and vote on the Constitution was placed in the Agenda." The General Council of the QIN has passed about nine constitutional amendments to that Constitution since 1975, some proposed by the membership, and some advanced by the QBC. The amendment relevant to this case passed at a Special Meeting of the Nation's General Council on September 10, 2022. Neither the Annual Meeting Notice, the

Statement of the Amendment, nor the ballots passed out to the voting members with the proposed amendment language contained an effective date.

The Quinault Constitution published prior to the 2023 Annual Meeting incorporated the amendments from September 2022 and referenced September 10, 2022, as the amendment date in the notation. This version of the Constitution was included in the 2023 General Council Report presented to the membership in advance of the March 2023 Annual Quinault General Council Meeting. None reflected any alternate effective date.

The issue of when an amendment to the QIN Constitution is effective in the absence of a published date was one of first impression in the Quinault courts. *Declaratory Judgment Order and Order Certifying Interlocutory Appeal,* CV2013-015, Quinault Tribal Court (April 10, 2024). The Court declared that in the absence of Quinault law establishing when a Quinault Constitutional amendment becomes operational different from that enacting the Constitution, amendments thereto are likewise effective upon passage. It reasoned, "Under accepted statutory principles… [f]or an alternate date to be legally recognizable, it must appear in the proposed amendment itself or in a resolution of the Business Committee passing the proposed amendment or directing notice, as well as in the official notice, and be on the official ballot." The Court rejected defendants' argument that by tribal custom QIN constitutional amendments always become effective one year after passage, because there was evidence presented that the Tribe, the QBC, General Council and Enrollment Committee had enacted and carried out constitutional amendments in less than one year after passage. That information led the Court to find there was no definitive custom or tradition in that regard.

The Court's declaration as applied to the 2022 QIN constitutional amendments means they were effective when the Tribal Secretary announced their passage on September 10, 2022. That adjudication informs this Court's summary judgment decisions.

II. JURISDICTION AND STANDARD OF REVIEW

This case involves the Constitutional and legal authority of the QBC, some of its individual members, and QIN officers to take the actions which are the subject of the case. The jurisdiction of this Court is defined at QIN Title 5 *Courts and Judiciary*, Section 5.01.020 *Scope* as follows:

> "The judicial powers of the Quinault Tribal Courts shall extend to all cases and controversies in law, equity, common law, and Quinault traditional law. The Quinault Tribal Courts shall have power to issue any order or writ necessary and proper to the complete exercise of its jurisdiction."

The Tribal Court has jurisdiction over the Quinault Indian Nation in certain instances pursuant to Title 99 Section 99.020.020 of the QIN Code, which states:

Exceptions to the General Principles of Sovereign Immunity

(a) The Quinault Indian Nation may be sued in Quinault Tribal Court when explicitly authorized by federal law.
(b) The Quinault Indian Nation may be sued in Quinault Tribal Court when explicitly authorized by Resolution of the Quinault Business Committee.
(c) The Quinault Indian Nation may be sued in Quinault Tribal Court with respect to any claim for which the Quinault Indian Nation is insured.
(1) No money judgment on any such claims may be for more than the amount of insurance carried by the Quinault Indian Nation.
(2) Any such judgment may only be satisfied pursuant to the provisions of the policy of insurance in effect at the time of the filing of the suit.
(d) Any officer employee or agent of the Quinault Indian Nation may be sued in Quinault Tribal Court to compel him/her to perform his/her responsibilities under the laws of the Quinault Indian Nation and the United States.
(1) Relief awarded by the Quinault Tribal Court under this Section shall be limited to declaratory or prospective injunctive relief. No temporary or preliminary restraining order may be signed or entered by the Quinault Tribal Court in any action against the Quinault Indian Nation or its officers employees or agents.
(2) No relief may be awarded by the Quinault Tribal Court without actual notice to the

defendants nor before the time provided for answering complaints or orders to show cause.
(3) This paragraph (d) shall not apply to the Quinault Business Committee, the Chairman, the Vice Chairman, the Treasurer, or the Secretary or the members of the Quinault Business Committee.

(emphasis added). This Court previously found that QIN has waived sovereign immunity from suit in the Tribal Court by virtue of the existence of liability insurance and the carrier's defense of the action. Thus, this Court has jurisdiction to hear and decide the claims in this case.

Tribal courts have repeatedly been recognized as having exclusive adjudicatory power over disputes against tribal officials affecting important personal and property interests of individual Indians. *Kennedy v. Hughes*, 60 Fed. Appx. 734, 735, 2003 U.S. App. LEXIS 5475, *1 (10th Cir. N.M. March 20, 2003). This is especially true when the rights at issue require the guarantees of the Indian Civil Rights Act ("ICRA") be upheld. Under Quinault law, this Court is the proper forum to vindicate rights created by the ICRA.

Plaintiffs here allege Defendants have violated the 2022 QIN Constitution and their civil rights as specifically guaranteed by the ICRA. Relevant sections of the QIN Constitution and the substantive rights enumerated in ICRA will thus be considered in deciding this case. Neither party cites to any relevant Quinault Code, Quinault Tribal Court order, or Quinault common law that would provide precedent on the issue of QIN government official immunity, *ultra vires* acts and tort liability.[5] To the extent custom bears on any issues presented in these summary judgment motions, the Court adopts the record developed in its April 10, 2024 order

[5] The Court notes that Defendants presented an affidavit with respect to the purported Quinault Business Committee custom of implementing constitutional amendments, but as addressed in an earlier order, the Court was not persuaded that the affiant's statement of her understanding of when amendments were effective was in fact indicative of, or rose to the level of customary law.

and its determination regarding common law custom. As to other matters where custom and tradition is a consideration, the Court has read and considered historical references presented in Plaintiffs' papers that Defendants have not disputed.

QIN Title 30, *Rules of Civil Procedure*, Rule 30 B.16.020 *Summary Judgment* provides:

> a)A party seeking to recover upon a claimcounterclaim or cross claim or to obtain a declaratory judgment may after the expiration of the period within which the defendant is required to appear or after service of a motion for summary judgment by the adverse party move with or without supporting affidavits for a summary judgment upon all or any part for the claim counterclaim or cross claim.
>
> b) A party against whom a claim counterclaim or cross claim is asserted or a declaratory judgment is sought may move with or without supporting affidavits for a summary judgement as to all or any part thereof.

The standard of review is set forth in QIN Title 30, *Rules of Civil Procedure*, Rule 30 B.16.020 (c):

> The judgment sought shall be granted if the Court finds there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Under this standard, the Court proceeds to decide the dispositive motions.

III. MOTIONS FOR SUMMARY JUDGMENT

Plaintiffs move for summary judgement on claims arising out of three major events: 1) the QBC's May 2019 passage of Resolution 19-147a-98 ("the Resolution") that imposed a five-year waiting period for them and "adopted" members to exercise treaty rights and obtain certain benefits[6]; 2) passage of QIN Constitutional amendments in September 2022 that did away with the category of "adopted" member and removed language allowing the QBC to recommend,

[6] According to documents produced during discovery, as of March 2024, there were 112 members who were over 18 years of age upon enrollment and subject to a five-year moratorium on fishing and benefits. The moratorium never applied to enrollees who were under the age of eighteen at enrollment. It is unclear if or how that moratorium could still be in place for those who were in the middle of the waiting period in 2022, but that is not an issue before the Court.

and the General Council to vote on disenrolling members; and 3) QBC official action in 2023 recommending Plaintiffs' disenrollment and bringing the matter to a vote of the General Council, and upon affirmative vote of that body in March 2023, declaring Plaintiffs disenrolled from the Quinault Indian Nation ("the Relevant Events"). Plaintiffs maintain there are no triable issues surrounding these events as they relate to their claims, and they are entitled to judgment as a matter of law on each of the counts framed in the Amended Complaint. Plaintiffs submit they are entitled to monetary damages against Defendant QBC members arising from their tortious acts, and for injunctive relief against future enforcement of their disenrollment.

Defendant Quinault Business Committee and Defendants in their official capacity contend any claims against them are barred because they are immune from suit. Individual Business Committee members, and Curley and Boyer, additionally maintain there are no disputed material facts as to all claims brought by Plaintiffs against them, and they are entitled to summary judgment. The individual Defendants argue Plaintiffs' claims fail as a matter of law because they have not established any triable issues as to their tort claims, nor provided admissible evidence of damages arising from those claims. They assert that even if damages can be proved, they have not established all the elements necessary to establish liability for their allegedly tortious acts. As such, they assert that all Plaintiffs' tort claims fail.

All defendants maintain that any claims arising out of passage of the Resolution are moot because the Resolution has been rescinded. Defendants request that the suit be dismissed in its entirety.

IV. ANALYSIS

Tribal courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of Indians.

Martinez v. Santa Clara Pueblo, 436 U.S. 49, 98 S. Ct. 1670, 56 L. Ed. 2d 106 (1978). Once discovery has been conducted, documents exchanged, and depositions taken, summary judgment motions are an appropriate means of narrowing the issues that might remain for trial, and even for disposing of a case entirely. In that regard, both sides have filed such motions in this case, contending the material facts are not subject to any genuine dispute. A fact is "material" if it might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505 (1986). A factual dispute is "genuine" only if there is sufficient evidence for a reasonable fact finder to find for the nonmoving party. *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001).

The moving party bears the initial burden of showing there is no genuine dispute of material fact and that it is entitled to prevail as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548 (1986). The burden then shifts to the nonmoving party to identify specific facts from which a factfinder could reasonably find in the nonmoving party's favor. *Id.* at 324; *Anderson*, 477 U.S. at 250. To defeat a summary judgment motion, the nonmoving party "must present significant probative evidence tending to support its claim or defense." *Intel Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991) (quoting *Richards v. Neilson Freight Lines*, 810 F.2d 898, 902 (9th Cir. 1987)). Courts must "view the facts and draw reasonable inferences in the light most favorable" to the nonmoving party. *Scott v. Harris*, 550 U.S. 372, 378, 127 S. Ct. 1769 (2007) (internal quotations and citation omitted). The court may not weigh evidence or make credibility determinations in analyzing a motion for summary judgment because these are not the functions of a judge. *Anderson*, 477 U.S. at 249-50. Nevertheless, the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts. Where

the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Scott*, 550 U.S. at 380 (internal quotation marks omitted) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)). When there is a genuine issue, trial rather than summary judgment is the means of determining what is true.

Undisputed Material Facts Relevant to Summary Judgment Claims

The Court finds the following material facts, cited in the motions and attached them and to other papers, or in the case of QIN, referenced in its answer that they "speak for themselves" are relevant to the analysis:

1. On March 7, 2022 Plaintiff Bryan Tarabochia emailed the QBC Executive Committee expressing concern about the legality of the Resolution and requested a meeting with them. He included a "Letter of Legal Concern" ("the Letter") and a Declaration by Joe Tarabochia. At the end of the letter under the heading "Closing Requests," he requested an answer to a question about whether individual members retained rights under the Quinault Treaty despite the passage of the Resolution; an order from the QBC restoring treaty rights of adoptees to be exercised in common with other tribal members, and to be placed on the fishery waitlist for a fishing permit. *Letter from Tarabochia to the QBC Executive Committee*, Exhibit 10 to the Amended Complaint.

2. The Letter states that Joe requests an honorary fisher spot on the Chehalis River and his elder pension. Joe supports his requests in his declaration. *Declaration of Joseph Tarabochia,* Exhibit 10 to the Amended Complaint.

3. The email asks that they be placed on the March 14, 2022 QBC meeting in Executive Session to discuss the concerns and requests in Executive Session. *Letter*, Exhibit 10 to the Amended Complaint.

4. On March 11, 2022 Defendant QBC President Capoeman responded via emailed letter to Bryan, declining the request for a meeting and stating, "Your complaint is with the Quinault General Council, and that is the correct forum where your complaints should be brought forward." *Letter from Capoeman to B. Tarabochia* Exhibit 12 to the Amended Complaint.

5. Joseph Tarabochia took his requests to the QBC. At the March 22, 2022 General Council Annual Meeting, Defendant Secretary Underwood announced that Joe

Tarabochia's request for all tribal elders to be deemed eligible for benefits allocated to elders would move forward and be placed on the Agenda as a General Session discussion item, but that his request to present a motion to waive the five year treaty moratorium would not. The minutes reflect the latter matter was considered a "personal issue." *Minutes of March 22, 2022 General Council Meeting*, Exhibit 14 to the Amended Complaint. The elder benefits matter was not resolved in March and continued to the next meeting.

6. On September 10, 2022, Joe Tarabochia requested his session item on benefits for all elders be stricken from the Special Council meeting where it had been placed. *Letter from Joseph Tarabochia*, Exhibit 15 to the Amended Complaint.

7. On January 24, 2023, Plaintiffs served a document to the QBC and Office of the Attorney General entitled "Notice- Complaint for Declaratory Relief, Injunctive Relief, Compensation and Money Damages." The Complaint alleged that the Resolution was unlawful and violated their civil rights as adopted by the Nation via the ICRA. The pleading was sent via certified mail, return receipt. The return card shows January 27, 2023, as the delivery date. *Complaint*, Exhibit 19 to the Amended Complaint.

8. On February 16, 2023, Defendant Capoeman wrote a letter addressed to both Tarabochias at a PO Box address advising "the Quinault Business Committee is considering a recommendation to the General Council that your continued enrollment is not in the best interest of the Quinault Indian Nation." The letter cited Article II, Section 7 of the Quinault Constitution as authority for the action. It advised they would have an opportunity to appear before the QBC on February 21, 2023 "to be heard about why you should not be disenrolled." The letter advised the Tarabochias not to contact any of the QBC members or staff in the meantime. *Letter from Capoeman to Tarabochias*, Exhibit 22 to the Amended Complaint.

9. On February 17, 2023 at 11:48 am Defendant Underwood emailed Bryan Tarabochia with the letter attached. She stated in the email she did not have an email address for Joseph Tarabochia. She advised the attached letter was sent to the addresses for them on file. *Email from Underwood to B. Tarabochia*, Exhibit 22 to the Amended Complaint.

10. On February 17 at 12:57 pm Underwood sent an email recalling the message "Letter from President Capoeman." At 1:00 pm Underwood sent another email with the letter attached. *Email from Underwood to B. Tarabochia*, Exhibit 22 to the Amended Complaint.

11. USPS Tracking information shows the letter mailed to Joseph Tarabochia at the P.O. Box address was available for pickup after February 24, 2023 at 8:31 am. Exhibit 23 to the Amended Complaint.

12. At the February 21, 2023 QBC Special Meeting, an announcement was made by Defendant QBC member Kristeen Mowitch that "we didn't even receive notice that they got our email" and "there was no official notice that they got it [the February 16 Letter]." *Transcription of February 21, 2023 QBC Special Meeting, Statement of K. Mowitch*, Exhibit 26 to the Amended Complaint.

13. At the February 21, 2023 QBC Special Meeting, after the President announced the agenda item for possible disenrollment, he stated he had a prepared statement to read for the record. He read that the QBC believed that disenrolling adoptees Joseph Tarabochia and Bryan Tarabochia was in the best interest of the Nation because the QBC had adopted Resolution 19-147a-98, and "Joseph Tarabochia and Bryan Tarabochia have repeatedly refused to comply with the will of the General Council and the Business Committee with respect to the Moratorium." *Transcription of February 21, 2023 QBC Special Meeting, Statement of B.Capoeman*, Exhibit 26 to the Amended Complaint.

14. President Capoeman referenced a "failure to adhere to the decisions of the General Council and the Business Committee." Also that the Tarabochias had made "demands to obtain special rights that they are not otherwise eligible," which he stated "show a lack of respect for the Nation, its history and the Nation's treaty rights." *Transcription of February 21, 2023 QBC Special Meeting, Statement of G. Capoeman*, Exhibit 26 to the Amended Complaint.

15. The statement references the Letter and states, "these are some of the requests that have been made." *Transcription of February 21, 2023 Special Meeting, Statement of B. Capoeman*, Exhibit 26 to the Amended Complaint.

16. At that meeting, a request was made to state what notice of the meeting was given to both Bryan and Joe Tarabochia. The Secretary responded that the Letter was emailed to Bryan without a "a read receipt," then recalled and sent with a read receipt, which was never shown to her as received. Then the letter was mailed certified and non-certified to three different addresses. There is no indication that Bryan ever received the letter except by email, or that Joseph received the letter until after the meeting. *Minutes of February 21, 2023 Special QBC Meeting*, Exhibit 54 to the Amended Complaint; *Transcription of February 21, 2023 QBC Special Meeting*, Exhibit 26 to the Amended Complaint.

17. A letter from Bryan Tarabochia was read to the QBC members on February 21, 2023 by his relative. The letter included the statement that the QBC had been served with a complaint to be filed in the Quinault Tribal Court and that he considered the parties were in litigation over the issues they had raised in 2022 and subsequent to that date. *Letter from B. Tarabochia to QBC*, Exhibit 26 to the Amended Complaint.

18. Discussion about taking action to recommend the Tarabochias's disenrollment took place in a QBC Executive Session, which they were not advised about nor attended. *Transcription of February 21, 2023 QBC Special Meeting*, Exhibit 26 to the

Amended Complaint; *Minutes of February 21, 2023 Special QBC Meeting*, Exhibit 54 to the Amended Complaint.

19. The QIN Enrollment Manual in place in February 2023, speaks to the issue of notice and burden of proof in the case of disenrollment. Section XII B. is identified as the process for the Business Committee to use when initiating disenrollment proceedings. It sets out a "clear and convincing" evidence standard for disenrollment. It states at paragraph 3. "All notifications required under this Section B will be accomplished by regular mail and certified mail, return receipt requested, to the last address on file with the enrollment office, and publication once in the Nugguam." *Enrollment Manual,* Exhibit 27 to the Amended Complaint.

20. The Enrollment Manual with respect to disenrollment further states that when an investigation into disenrollment is warranted, the affected member will be notified of the reasons for the investigation and be given the opportunity to review the evidence being used, and thirty days to request a hearing after an enrollment decision. *Enrollment Manual,* Exhibit 27 to the Amended Complaint.

21. On March 9, 2023, President Capoeman wrote to the Tarabochias and denied their request to rescind their February 16 letter to allow them 30 days to prepare a defense to disenrollment and a hearing. *Letter from G. Capoeman to B and J Tarabochia*, Exhibit 30 to the Amended Complaint.

22. The ballot for disenrollment presented to the QIN voting members in March 2023 for Joseph Tarabochia reads in part as follows: "Joseph Tarabochia and Bryan Tarabochia have repeatedly refused to comply with the will of the General Council with respect to the Moratorium. In addition to the failure to adhere to the decisions of the General Council and the Business Committee, the Tarabochias have aggressively made demands to obtain special rights that they are not otherwise eligible for, including:

    - A permanent fishing ground on the Chehalis River
    - Quinault Indian Nation boat decals
    - Retroactive elder pension payments
    - Placement on the 1966 rolls

Ballot, Exhibit 31 to the Amended Complaint. No evidence was formally presented at the meeting to support these allegations against Joe.

23. The ballot for disenrollment presented to the QIN voting members in March 2023 for Bryan Tarabochia reads in part as follows: "Joseph Tarabochia and Bryan Tarabochia have repeatedly refused to comply with the will of the General Council with respect to the Moratorium. In addition to the failure to adhere to the decisions of the General Council and the Business Committee, the Tarabochias have

aggressively made demands to obtain special rights that they are not otherwise eligible for, including:

- A permanent fishing ground on the Chehalis River
- Quinault Indian Nation boat decals
- Retroactive elder pension payments
- Placement on the 1966 rolls

Ballot, Exhibit 31 to the Amended Complaint. No evidence was formally presented at the meeting to support these allegations against Bryan.

24. At the March 2023 Annual Meeting, Defendant Curley voiced her position during the comment time relative to the disenrollment consideration. She stated that the proceedings could have been avoided if the Tarabochias had not put on a "lawyer hat." *Minutes of March 2023 General Council Meeting,*

25. QIN has admitted that the QBC members owe a general fiduciary duty to the QIN members. *Answer to Request for Admission Number 74*, Exhibit 18 to Plaintiffs' MSJ.

26. Bryan Tarabochia admitted at deposition that Plaintiffs had not retained an expert, to testify as to damages from their claimed lost fishing revenue, and had not at that time calculated the damages their claimed to have lost as a result of not being allowed a permit to fish. *Deposition of Bryan Tarabachia* at p. 80: 0-11; 81:2-8, Mallory Declaration at 12, Exhibit J.

QIN, QBC and Tribal Officials' Immunity

The threshold question in this case is whether QIN, QBC and the Tribal Defendants are entitled to sovereign and/or qualified immunity. With respect to QIN, this Court has already ruled the presence of liability insurance coverage is an explicit waiver of QIN's sovereign immunity under the QIN Constitution. Defendant QIN has admitted there is a liability policy in place that covers the errors and omissions of its government officials and monetary damages, therefore the Court will proceed as if the waiver will be effective to the extent of covered liability and monetary damages.

Tribal courts regularly address the issue of tribal official and individual liability by reference to their own precedents, and/or federal or other tribal court decisions concerning similar claims. That practice is supported in Quinault law. QIN Title 12 Section12.01.020 *Authority and Basis of Decisions* states:

> (a) In all cases otherwise properly before the Quinault Tribal Court and Court of Appeals, decisions on matters of both substance and procedure will be based in sequence upon the following:
> (1) The Constitution of the Quinault Indian Nation.
> (2) The Indian Civil Rights Act, 25 U.S.C. Section 1302 et seq.
> (3) Ordinances of the Quinault Indian Nation.
> (4) Resolutions of the Quinault Indian Nation.
> (5) The customs, traditions and culture of the Quinault Indian Nation, including its common law.
> (6) The laws, rules and regulations of other Indian tribes and cases interpreting such laws, rules and regulations.
> (7) The laws, rules and regulations of the United States, the State of Washington and other states and cases interpreting such laws, rules and regulations, but only with respect to procedural matters.

In this case, neither party cites to any relevant Quinault Code, Quinault Tribal Court order, Quinault common law, or tribal custom that would aid this Court in resolving the issue of immunity and *ultra vires* acts.[7] To the extent it bears on any issues presented in these summary judgment motions, the Court adopts the record developed in its April 10, 2024 order and its determination that there was no specific common law custom regarding the effective date of constructional amendments when the effective date on the official proposal and ballot is silent. As such, the Court has established a legal standard to allow for effective dates different from when an affirmative vote is certified, but only when that date is presented in writing on the ballot and notice. *See Order on Declaratory Judgment,* April 10, 2024. As to other matters

[7] The Court notes that Defendants presented an affidavit with respect to the purported Quinault custom of implementing constitutional amendments, the Court was not persuaded that the affiant's statement of her understanding of when amendments were effective was in fact indicative of, or rose to the level of custom..

where custom and tradition is a consideration, the Court adopts the historical references presented in the parties' papers.

Tribal courts have undertaken considerable analysis about when tribal official actions are *ultra vires* their authority such that any immunity they possess is waived. In *Whitetail v Chaske*, 1992 Northern Plains App. LEXIS *6; 1992 NPICA 6, for example, the Northern Plains Intertribal Court of Indian Appeals held that tribal court judicial review of officials' actions was warranted despite the officials' claim of immunity from suit. After a Devil's Lake Sioux tribal council district election was held, tribal election board officials met to hear a challenge from the loser concerning voter coercion at the election poll. At the close of an admittedly proper meeting, the Tribe's Election Board voted to hold a new election due to improprieties. A day later, most of the Board reconvened and reversed their earlier decision. *Id.* at *2. The aggrieved candidate sued the election board by their individual names as "members of the Election Board" for meeting improperly, and the matter was decided by the trial court in plaintiff's favor. Defendants appealed.

The Northern Plains Intertribal Court of Appeals considered defendants' claim of sovereign immunity and ruled that both courts had jurisdiction to examine the actions of the tribal officials and declare their actions void when appropriate: "When public officials act outside the scope of their authority, the cloak of immunity dissolves and courts of law are authorized to review their actions." *Id.* at *6. The court proceeded to examine whether the Board had been conferred authority to hold the meeting in the manner it did and concluded it had not. *Id.* The court cited case precedent, which held: "Governmental officials or Tribal officials may be subjected to suit for acts done under authority not validly conferred, or for acts in excess of their authority." *Id.* at *7. The court held that because the meeting was improperly called, the election board

members were acting outside their authority, and all action taken at the second meeting was null and void.[8] The court affirmed the lower court's ruling that a new election must be held.

Sovereign immunity is no defense to tribal officers when injunctive relief is sought. The *Whitetail* Appeals Court barred the Election Board from carrying out any of the actions decided in the second meeting, because "an official acting in excess of his authority cannot claim immunity from an "injunctive process." *Id.* at *7, *citing Wells v. Nelson Blaine, Jr.* CV-OS-OS-91 (Northern Plains App.1991), *Davis v. Littell,* 398 F.2d 83 (9th Cir. 1968) *cert. den.* 393 U.S. 1018, 89 S. Ct. 621, 21 L. Ed. 2d 562 (1969) and *Burlington Northern v. Blackfeet Tribe*, 924 F.2d 899 (9th Cir. 1991). In *Somers v. Oneida Bingo & Casino General Manager*, 2006 WL 6488211, at *4 (Oneida Trial Ct. 2006), the court held "[T]he Tribe's sovereign immunity permits suits by tribal members against entities, and/or officials for prospective injunctive relief." *See also Littlejohn v. Smith*, 12 Am. Tribal Law 347, 348 (Cherokee Nation Supreme Court 2015). As such, Plaintiffs in this case may maintain their claim against defendant officials for prospective injunctive relief in their official capacity.

Common law tort claims against individuals are also the proper subject of adjudication by tribal courts. However, a government official sued in his individual capacity is entitled to qualified immunity: (1) if the conduct attributed to him was not prohibited by federal law; (2) where that conduct was so prohibited, if the plaintiff's right not to be subjected to such conduct by the defendant was not clearly established at the time it occurred; or (3) if the defendant's action was "objectivel[y], legal[ly] reasonable[]...in light of the legal rules that were clearly established at the time it was taken. *In re NHBP Election Bd. Decision*, 2021 Nottawaseppi Huron Band Sup. LEXIS 2, *13-14. Monetary damage claims are allowed. The Navajo

[8] Because defendants had no authority to call and hold the second meeting, the Court ruled any actions arising at that gathering were null and void *ab initio,* meaning void from the time it they were taken. *Id.* at *7-8.

Supreme Court in *Chapo v. Navajo Nation*, for example, addressed whether an individual tribal officer can be subject to an individual capacity lawsuit for monetary damages in tribal court if she acts "outside the scope of her employment and/or authority." 5 Am. Tribal Law 384, 391 (2004). Answering affirmatively, the court noted such holding was based on "well-established principle." *Id.*

QIN and QBC Officials Acting Outside the Scope of their Authority

QIN's immunity in this case, if any, only extends to tribal officials and employees while acting within their scope of authority. *See Bradley v. Tulalip Tribes*, 2012 Tulalip App. LEXIS 10, *18 (Tulalip Tribal Court of Appeals May 22, 2012). The rationale behind conferring such immunity is that QIN officials must be able to exercise his or her duties free from intimidation, harassment and the threat of lawsuits for performing those acts of the tribal government that are within the scope of the official's duties. *Satiacum v. Sterud* 10 ILR 6013, 6016 (Puy. Tr. Ct., Apr. 23, 1982)). To be shielded, the Defendant officials must be acting in their representative capacity on behalf of QIN, a tribal agency or arm of tribal government, i.e., a commission or board, and performing a legally authorized duty. Officials are not authorized to violate their legal duties, including their vow to protect the welfare of their members and observe their constitutional/ICRA rights. *See Hoopa Valley Tribal Council v. Marshall,* 10 NICS App 1.3 (Hoopa Valley Tribal Court App. 2011). However, it is not enough that he or she makes an error in the exercise of authority they possess. *Ultra vires* liability is grounded on an officer's total lack of delegated authority. *United Tribe of Shawnee Indians v. United States*, 253 F.3d 543, 548–49 (10th Cir. 2001).

With the *Chaske* analysis as guidance, this Court examines the authority of the QBC in February 2023 to hold a special QBC meeting for the purpose of deciding whether to

recommend Plaintiffs' disenrollment. It is undisputed that in September 2022, the Quinault General Council passed constitutional amendments that explicitly divested the QBC of the authority to recommend disenrollment of any Quinault Tribal members. This edict left the Defendant QBC without authority to hold any meeting to consider disenrollment in February 2023. As such, any meeting called and carried out in contravention of the 2022 Quinault Constitution would be *ultra vires* the QBC members' authority. Since they had no authority to make any recommendations of disenrollment, their acts relating thereto as well as the General Council's vote to disenroll are void *ab initio*- meaning from the inception of their efforts to disenroll Plaintiffs, and of no effect. Under well-established immunity principles, the QBC members then in office can be held liable for acting outside their authority at an improperly called meeting. Actions by the QBC in 2023 outside the QIN's constitutional processes mandated for the governing body to meet, and their known disregard of the limitations imposed on the parameters of their office by the People resulted in *ultra vires* acts.[9] The Court finds the QBC and QBC members in their official capacity are not immune from suit for injunctive relief.

In making this pronouncement, this Court is mindful of the importance of tribal membership[10], and the desirability of preserving Quinault Tribal culture as it relates to QIN Tribal membership. As argued by Plaintiffs, and undisputed by Defendants, QIN disfavors disenrollment. In fact, Plaintiffs claim they are the only members in Quinault history to be

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[9] The same applies to the defendant employees undertaking actions beyond any authority they possess. In this case, Defendant Boyer did not have authority to refuse to give Bryan an application for licenses, permits or decals, because she had no authority to consider or rule on the applications. The applicable regulations gave that power to appointed board members. Because she acted at the behest of others however, and the claims are covered elsewhere, the Court declines to hold her individually liable.

[10] As explained by the Little River Band of Ottawa Indians Court of Appeals in *Samuelson v. Little River Band Enrollment Comm 'n*, "Tribal membership for Indian people is more than mere citizenship in an Indian tribe. It is the essence of one's identity, belonging to community, connection to one's heritage and an affirmation of their human being place in this life and world. In short, it is not an overstatement to say that it is everything. In fact, it would be an understatement to say anything less. Tribal membership completes the circle for the member's physical, mental, emotional and spiritual aspects of human life. " 2007 WL 6900788, at *2 (Little River Ct. App. Jun. 24, 2007).

subject to a disenrollment vote by the General Council. *Plaintiffs' Motion for Summary Judgment,* Exhibit 17. This result respects the cultural shift in the General Council's efforts to harmonize the membership into one, and their vote not only to rescind the constitutional power of the QBC to recommend disenrollment, but their own ability to vote to disenroll.

Officials sued in their personal capacity come to court as individuals and, although entitled to certain personal immunity defenses, cannot claim sovereign immunity from suit, so long as the relief is not sought from the government treasury. *Pistor v. Garcia,* 791 F. 3d 1104, 1108 (9th Cir. 2015). Common law tort claims against individuals are another proper subject of adjudication by the QIN courts. QIN Title 5, Section 5.01.020. The test is whether the facts alleged, taken in the light most favorable to the Plaintiffs, show that the official's conduct violated a right that was clearly established in light of the specific context of the case at the time of the alleged misconduct. *Jensen v. Brown*, 131 F.4th 677, 683 (9th Cir. Nev. March 10, 2025). In the context of this case, there is no more fundamental right held by QIN members, affirmed by the Nation's adoption of the ICRA and explicitly set forth in QIN law and policy, than the right to due process. Plaintiffs' rights in that regard were clearly established when the QBC members sought to disenroll them. As such, the alleged torts committed by the individuals are properly considered below.

Violation of the Indian Civil Rights Act

The ICRA is an express divestiture of tribal authority, providing, among other things, that no Indian tribe may deny to any person within its jurisdiction freedom of speech, the equal protection of its laws or deprive any person of liberty or property without due process of law. 25 U.S.C.S. § 1302 *et seq*. The purpose of the ICRA is to prohibit Indian tribal governments from violating the civil rights of individual members of an Indian tribe. *Thompson v. New*

York, 487 F. Supp. 212, 215 (N.D.N.Y. December 13, 1979). In passing the ICRA, Congress sought to impose certain restrictions upon tribal governments similar to those contained in the Bill of Rights and the Fourteenth Amendment. *Macarthur v. San Juan County*, 309 F.3d 1216 (10th Cir. 2002). In *Means v Wilson*, 522 F.2d 833, 840 (8th Cir. 1975) the Eighth Circuit Court of Appeals held that "the plain language on the face of the statute [ICRA]...makes it clear that Congress intended to constrain actions of the tribe and tribal bodies." The vehicle for examining whether constitutional rights of Indians have been violated is tribal courts.

In pertinent part, Title I of the ICRA applies many of the individual protections afforded by the Bill of Rights to the application of Indian laws. Those protections include the right to be free from the deprivation of liberty or property without due process of law. *Santa Ynez Band of Mission Indians v. Torres,* 262 F. Supp. 2d 1038, 1039, 2002 U.S. Dist. LEXIS 26573, *1 (Central Dist. Cal. August 27, 2002). This Court has been directed by QIN Title 12 Section 12.01.020(2) to apply the ICRA to its analysis and decision making in this case. The ICRA at 25 U.S.C.S. § 1302 (1) and (8) are express directives that QIN may not deny to any person within its jurisdiction freedom of religion, speech, the equal protection of its laws or deprive any person of liberty or property without due process of law.

Some of Plaintiffs' claims in this case are framed as civil rights claims, namely that the QBC acting on behalf of QIN violated their civil rights when they invoked an unconstitutional Resolution, denied their ability through the Resolution to exercise their religious practices through hunting and gathering, took unauthorized action against them for speaking in opposition to the Resolution, and denied Joseph's ability to express himself at the Annual General Council Meeting. They further claim the Defendant QIN through the QBC denied them due process in the manner in which the QBC went about seeking their disenrollment. Due

process guaranteed by the ICRA means that the QBC, while exercising the powers of self-government, cannot deny to any person in its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

Tribal membership and the benefits that come with it are important property rights. Embedded in these concepts is the tribal tradition that governance include fundamental fairness and substantive justice. In *In re J*, the Nottawaseppi Huron Band of the Potawatomi Tribe Court discussed "fundamental fairness" in relation to that tribe's traditional concepts, noting that they go beyond an undefined standard set forth in its constitution or code. *In re J,* 2023 Nottawaseppi Huron Band Tribal LEXIS 1, *9-10 (Nottawaseppi Huron Band of the Potawatomi Tribe Tribal Court April 15, 2023). The Court noted that when the tribal community is not adequately advised of what is required or prohibited because key terms in a governing document are not defined, any action taken by virtue of uninformed or misinformed dictates are not in harmony with the traditional concepts of fundamental fairness. As such, those actions can and should be invalidated.

The court in its opinion discusses the "Void for Vagueness" doctrine recognized in federal courts, as well as many state and tribal courts. *Id.* at *9-10. It cited the definition of the doctrine provided by Black's Law Dictionary:

A law which is so obscure in its promulgation that a reasonable person could not determine from a reading what the law purports to command or prohibit is void as violative of due process.

The court stated, "In other words, the Void for Vagueness Doctrine states that, if a reasonable person does not understand what the law requires or forbids, it violates due process." *Id.* at 10. It concluded that even if a person charged with violation of a code is afforded a hearing, same will not be sufficient to meet due process guarantees if the standard upon which the person's

actions are judged are vague and fail to provide guidelines. As such, the court found the laws in question in violation of equal protection and due process guarantees.

As described above, the QBC was without authority in February 2023 to hold any meeting where Plaintiffs' disenrollment was considered. Even if that meeting was somehow adjudged constitutional, it still would have violated Plaintiffs' due process rights as set forth in the Enrollment Manual.[11] Not only did the QBC go forward with the meeting on very short notice, it did so knowing it had no evidence that Joseph had received notice of the meeting, specifically because the QBC Secretary announced that the notice it sent via regular US mail had come back because of an improper address. The only notice was in the form of letter correspondence dated February 16, 2023, wherein the President of the QBC advised, "the Quinault Business Committee is considering a recommendation to the General Council that your continued enrollment is not in the best interest of the Quinault Indian Nation," Undisputed Fact No. 8; *Exhibit 23* to the Amended Complaint. The letter was not notice that the meeting the QBC was holding was intended to be a hearing, complete with investigation, charges, and evidence as required by the QIN disenrollment process. Thereafter, QBC took official action on February 21, 2023, in executive session, without the Plaintiffs present, making a disenrollment recommendation by simple motion without any stated support or justification. (*Minutes of QBC Special Meeting,* Exhibit 54 to the Amended Complaint). The motion passed by a vote of 8 for 0 against, 1 abstain.

Furthermore, even as the language relied on by the QBC had been included in the Constitution for about ten years before being removed, the QBC had apparently made no attempt to define

[11] The QBC maintains it rescinded parts of the Manual that pertained to required due process at the meeting on February 21, 2023. Undertaking that action to avoid proper notice and to have to articulate the standard that supported the action is itself a violation of due process.

terms in law, nor described what would be considered a violation of the "best interest" standard. The record reflects QBC members were upset with a letter and notice that Bryan had sent to them questioning the constitutionality of the Resolution, but there is no indication how such an exercise of free speech would not be in the best interest of QIN. That letter was not sent or endorsed by Joseph.

When terms are not defined, and there is little or no guidance in the law to define the terms, there can be no consistency in interpretation. *See In re J* at *8. The terms will be defined by whoever is interpreting and applying the law at the time. In reference to question put to the General Council, "best interest" meant whatever the QBC and specifically the President said it meant when he presented the issue for vote. This does not provide adequate notice to the Community, much less to the Plaintiffs, as to any expected behavior, especially since it occurred either a year earlier, or was something they were legally entitled to undertake. The fact the provision had never been utilized in the past, nor subjected to the kind of debate and community discussion required before a law is passed, is further indicative of how vague the purported controlling law was. That the QBC would not define to Plaintiffs what they had done to violate the standard, nor give them time to present a defense as requested, further highlights the due process violations. QBC's failure to provide any guidance as to the meaning of the phrase or the standard it applied to each Plaintiff, and then forcing Plaintiffs and the General Council to guess at what "the best interest of the welfare of the Nation" means led to discussion about the subject that devolved into improper speculation, heightened emotions based on misinformation, unseemly behavior, confusion, and ultimately a rushed vote to disenroll.

For the purposes of summary judgment and the remedies allowed for violation of the ICRA and QIN law and policy, it is undisputed that QIN through the QBC invoked a repealed

constitutional provision (which had the effect of the making the Resolution unlawful) and presented false information to wrongfully influence the removal of enrolled members of the Tribe. The actions were outside the parameters of its authority and not in conformity with Plaintiffs' due process rights as guaranteed by the Nation in their own governing policies.

Defendants' Claims of Mootness

Defendants claim that with membership's passage of a motion made pursuant to a 2024 General Session agenda item to "lift the five year moratorium and make everyone equal as enrolled tribal members with all rights that go with an enrolled tribal member," and the Business Committee's rescission of Resolution No. 19-147a-98 on August 12, 2024, Plaintiffs' claims relating to the unlawfulness of the Resolution are moot. Defendants cite a Ninth Circuit case, *Board of Trustees of Glazing Health and Welfare v. Chambers*, 941 F. 3d 1195 (9th Cir 2019)("*Chambers*") in support of the doctrine that repeal of offending legislation renders an action challenging such legislation moot. Plaintiffs do not challenge that the Resolution has been rescinded, but respond that the claims are not moot because there is an exception to the doctrine cited in *Chambers*- namely there are circumstances that would allow the General Council or QBC to reenact the same or similar legislation again against new adult enrollees. Plaintiffs also note that General Council instructions are more accurately characterized as exercises of expression rather than legal mandates.

While QBC failures to timely react to General Council mandates is certainly evident in the past, the chances that the current QBC would now ignore a constitutional amendment is not supported in the record. Albeit, different Business Committees may have implemented past amendments without explanation or adherence to a governmental scheme or even a purported

customary practice, but that subject has now been visited and decided by the Court on April 10, 2024. The Court finds that the Constitutional Amendments of September 10, 2022, rendered QBC Resolution No. 19-147a-98 of no legal consequence as a matter of law as of that date. As such, claims challenging the lawfulness of the Resolution are moot. Such ruling has no bearing, however, on the Court's decision on Plaintiffs' right to challenge the unlawfulness of their disenrollment, and the due process violations set forth above.

Tort Claims Against the Individual Defendants

Officials sued in their personal capacity come to court as individuals and, although entitled to certain personal immunity defenses, cannot claim sovereign immunity from suit so long as the relief not sought from the government treasury. *Pistor v. Garcia,* 791 F. 3d 1104, 1108 (9th Cir. 2015). Qualified immunity, however, is an affirmative defense that must be explicitly pled in the answer to provide notice to the parties and be avail themselves to the claim.[12] *Navajo Nation v. Crockett,* 1996 Navajo Supp. LEXIS 14. If the conduct in question does not violate clearly established statutory or constitutional rights of which a reasonable person would have known, or is within the legislative function, tribal officials are entitled to qualified immunity. *Harlow v Fitzgerald,* 457 U.S. 800, 818 (1982). The Court has already ruled that the facts alleged, taken in the light most favorable to the non-moving party, show that the QIN officials' conduct was outside their authority and violated Plaintiffs' constitutional rights. Those rights were clearly established when the individual QBC defendants undertook to recommend disenrollment in the manner they did, which amounts to misconduct. *See Jensen v. Brown*, 131 F.4th 677, 683 (9th Cir. Nev. March 10, 2025). As a result of the Court's ruling, any torts

[12] In its Motion to Dismiss, the QBC references the QIN answer as its own. The QBC officials answered November 3, 2025 and asserted a number of affirmative defenses, including qualified immunity, which the Court has addressed here.

committed by individual defendants in association with disenrolling Plaintiffs' claims are actionable, and could result in liability and damages.

A tort claim can arise from the common law, a statute, or both. *Delorge v. Mashantucket Pequot Gaming Commission*, 2 Mash 236, 1997 Mashantucket Trib. LEXIS 14. A statutory tort is a breach of a statutory duty. Common law refers to a body of unwritten laws developed through judicial decisions. Common law evolves as courts resolve disputes and establish new legal principles. This Court has not been provided any Quinault statutory law or decisions from the Quinault courts addressing the various tort claims asserted by Plaintiffs. Defendants cite to Washington State common law to show that Plaintiffs have not met the elements to succeed on any of their tort claims. Plaintiffs do not object to the Court utilizing those standards, therefore the Court will analyze their common law claims by comparing the undisputed facts to the elements of each tort.

It should be noted that Plaintiffs do not seek recovery from QIN resources, but from proceeds of an insurance policy the Nation carries to cover its officials from wrongful acts while in office. However, Plaintiffs must still prove the elements of the claimed torts as well as damages to recover.

A) Claims Regarding Civil Conspiracy

Plaintiffs allege that two or more of the Defendants agreed to work in concert to unconstitutionally strip Plaintiffs of their Tribal rights. The elements of civil conspiracy are: 1) an act done by two or more people pursuant to a scheme, combined to establish an unlawful purpose, or combined to establish a lawful purpose by unlawful means, which 2) which results in damage to the plaintiff. *All Star Gas, Inc. v. Bechard*, 100 Wash. App. 732, 740, 998 P.2d 367 (2000) The standard of proof is clear and convincing evidence.

In their summary judgment motion, Plaintiffs present argument concerning a possible conspiracy, but do not cite any admissible evidence to support who was involved in the scheme and how it came about. Defendants cite to Bryan's deposition wherein he states he does not have any proof in the form of a writing, email, or other evidence that any QBC members worked together to prior to February 2023 to accomplish their disenrollment. *Deposition of Bryan Tarabochia,* p. 48, l. 4-9. Exhibit A to Mallory Declaration. It is possible that was the case, but at this stage, to overcome summary judgment, something more than speculation must be presented. Summary judgment for Defendants on this claim is appropriate.

B) Claims Regarding Breach of Fiduciary Duty

To prevail on a breach of fiduciary claim, Plaintiffs must establish: 1) the existence of a duty owed, 2) a breach of that duty, 3) a resulting injury, and 4) that the claim breached was the proximate cause of the injury. In determining whether a duty is owed, a court must not only decide who owes the duty, but also to whom the duty is owed, and what is the nature of the duty owed. The existence of a legal duty is a question of law.

In *Ho-Chunk Nation v. Lang*, 1999 Ho-Chunk Trial LEXIS 1, *29-30, the Ho-Chunk Nation ("HCN") Trial Court considered whether an employee of the Nation breached her fiduciary duty by civil conversion of federal funds awarded to the Nation. The Court started its analysis by reference to the Black's Law Dictionary definition of "fiduciary" as an individual "having the duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking." The court then looked to the Nation's adopted personnel manual that required the defendant in the case to provide "faithful and effective performance" on behalf of the Nation as a condition of employment, and declared the defendant a fiduciary.

The court observed that when an employee or official is acting within the scope of his/her duties on behalf of the Nation, the Nation protects him or her by its sovereign immunity clause. But in this case, "the defendant did act outside the scope of her authority, thus violating Ho-Chunk tribal law," and therefore lost the Nation's protection from suit and liability. *Id.* at *30. It found the defendant had accepted the duty to adhere to the policies of the HCN when she accepted employment, and as a director accepted additional duties to comply with federal and tribal laws. The court concluded that by failing to spend funds in accordance with the tribe's policies, "all of the defendant's actions are a direct violation of her fiduciary duty to the Nation as an employee."

The court next examined causation. It found the defendant's inappropriate actions jeopardized not only the Nation's ability to serve its surrounding communities, but potentially jeopardized the safety of HCN member children. *Id.* at *32. As such, the court found her breach of fiduciary duty resulted in damage to the Plaintiff Nation, and awarded monetary damages to it.

Article I, Section 2 of the Quinault Constitution provides the QIN has a duty to "provide for the general safety and welfare of all persons acting by the right of membership." The QIN upholds that duty through its elected officials, who are charged with and swear to "preserve, support and protect the Constitution, By-Laws, Tribal Code of Laws and Quinault River Treaty of 1855." It is undisputed that during all Relevant Events, Joe was a member of the QIN. After the passage of the Resolution, Bryan was enrolled as a member in 2021. By virtue of their position as tribal officials of the QIN, and their oath to support and follow the QIN Constitution and laws, the QBC members were fiduciaries and owed a duty to the Plaintiffs as tribal members to provide for their general welfare and act in good faith and with fundamental

fairness within the laws they were bound to uphold when dealing with them. They have admitted as much. Undisputed Fact No. 25.

Breach of a fiduciary duty imposes liability in tort. *Miller v. U.S. Bank*, 72 Wash. App. 416, 426, 865 P .2d 536 (1994). By failing to recognize the 2022 QIN Constitutional Amendments, holding unauthorized meetings, promoting unauthorized action against Plaintiffs, and providing false information to the General Council, the QBC in 2023 breached its sworn duties to the Nation, the members and specifically the Plaintiffs as a matter of law. These omissions make the members of the 2023 QBC liable as a matter of law for breach of their fiduciary duties.

The resulting injury to Plaintiffs suffered as a result of the individual QBC Defendants' actions is described in the Bryan's deposition testimony:

" ...there was all of the yelling and shouting at the meeting because of what the Business Committee presented here in Exhibit 5, this ballot, with false information...The whole gym was erupting and yelling and that's not-- you know, I've been to other General Council Meetings, and they're not like that...And they wouldn't have been doing all that yelling had the Business Committee not taken the action unlawfully to publish this information which is false...this whole disenrollment thing and this ballot and getting called greedy, we wouldn't have gone in front of a gym of over 700 people. And there was yelling and name calling and profanity. And, you know, when that happens, your tribe is only a few thousand people, and you're before over 700 of them, and you're the focal point, there's no recovering from that in terms of your reputation..."

Deposition of Bryan Tarabochia at 98:12-15,100:3-13, 93:22-94:4, Exhibit I to Plaintiffs' Resp. to Defs. MSJ. Even in the absence of the 2022 amendments, a causal link was undeniably established when the QBC failed to follow its sworn duty and its own procedures as set forth in the Nation's Enrollment Manual. It is undisputed the QBC failed to give proper notice of their meeting, failed to give Plaintiffs the standard for their proposed action, failed to establish their findings were supported by clear and convincing evidence, failed to allow a reasonable

time for Plaintiffs to respond to whatever the QBC considered "evidence," and denied a request by Plaintiffs to have that opportunity. Rather, they appear to have rush a falsely worded ballot for disenrollment to present to the General Council to meet a perceived deadline for doing so. All these actions are in opposition to their duties to the QIN and its members in 2023. The Court finds these errors to be the proximate cause of the Plaintiffs injuries, for which the Defendant QBC members in 2023 are liable. Summary judgment to Plaintiffs on this claim is warranted.

C) Claims Regarding Malicious Prosecution and Abuse of Process

To succeed on an action for malicious prosecution, a plaintiff must plead and prove: (1) that the prosecution claimed to have been malicious was instituted or continued by the defendant; (2) that there was want of probable cause for the institution or continuation of the prosecution; (3) that the proceedings were instituted or continued through malice; (4) that the proceedings terminated on the merits in favor of the plaintiff, or were abandoned; and (5) that the plaintiff suffered injury or damage as a result of the prosecution. *Hanson v. Snohomish*, 121 Wn.2d 552, 558, 852 P.2d 295 (1993). To establish the tort of abuse of process, a claimant must prove (1) an ulterior purpose to accomplish an object not within the proper scope of the process, (2) an act not proper in the regular prosecution of proceedings, and (3) harm proximately caused by the abuse of process." *Bellevue Farm Owners Ass'n v. Stevens*, 394 P.3d 1018, 1024 (Wash. Ct. App. 2017).

Plaintiffs argue the disenrollment process from February 2023 through March 2023 was malicious because there was no probable cause for prosecuting the charges listed on the ballot, and it contained false information about them. Defendants particularly complain about the discussions at the General Council meeting that ultimately resulted in the General Council

voting to disenroll them. Alternatively, they maintain the QBC abused a process they were not authorized to undertake, and did so in an improper manner.

Clearly the purpose of the QBC in February 2023 was to disenroll Plaintiffs, as the Chairman came to the February 21 meeting with a prepared statement claiming intent to do so. Undisputed Fact 13. But as of September 10, 2022, the QBC had no authority to meet and take action on disenrollment, nor to present the question to the General Council in March 2023. Thus, the first prong of the test is satisfied. Even if the QBC was somehow allowed to pursue their task, it could not be accomplished within the scope of the process undertaken. From the beginning, the individual QBC members at that time failed to follow the process established by vote of the QBC for disenrollment. The Undisputed Facts show that the QBC failed to follow its own rules for giving notice of possible disenrollment, did not provide the specific allegations nor give Plaintiffs an opportunity to view the evidence, and provided Plaintiffs no meaningful time to prepare a defense. By the March 2023 meeting, it accused both Plaintiffs in the ballot of doing things it knew one or neither of them did, and used inflammatory misstatements in both the ballot and at the General Council meeting that were not true. These acts were not proper in the regular course of disenrollment proceedings and were the proximate cause of harm to Plaintiffs-namely disenrollment.

While the Court does not have enough evidence to find that the QBC's actions in February 2023 were malicious, the QBC was negligent in how they went about the task of disenrollment and the errors they made certainly resulted in an abuse of the process for disenrollment. Summary judgment to Defendants on the malicious prosecution claim and for Plaintiffs on the abuse of process claim is appropriate.

D) Claims Regarding False Light and Invasion of Privacy

To state a false light claim, Plaintiffs must establish: (1) someone publicizes a matter that places the plaintiff in a false light, (2) "the false light would be highly offensive to a reasonable person," and (3) "the actor knew of or recklessly disregarded the falsity of the publication and the false light in which the other would be placed." *Corey v. Pierce Cnty.*, 225 P.3d 367, 373 (Wash. App. 2010). To establish an invasion of privacy claim, a plaintiff must plead the following elements: (I) "[A]n intentional intrusion, physically or otherwise, upon the solitude or seclusion of plaintiff, or his private affairs;" (2) "[W]ith respect to the matter or affair which plaintiff claims was invaded, that plaintiff had a legitimate and reasonable expectation of privacy;" (3) "[T]he intrusion would be highly offensive to a reasonable person; and (4) "[T]hat the defendant's conduct was a proximate cause of damage to the plaintiff." *Doe v. Gonzaga Univ.*, 143 Wash.2d 687, 705-706, 24 P.3d 390 (2001), rev'd on other grounds, 536 U.S. 273 (2002).

The summary judgment record does not raise a triable issue as to whether Plaintiffs had a reasonable expectation of privacy regarding the Letter. Granted, they did request a meeting in executive session to discuss it, but it is hard to characterize their legal concerns, as "private affairs." The fact the individual QBC Defendants at the time twisted their requests into what they characterized as aggressive demands and utilized them as the basis for a disenrollment recommendation goes to the issue of false light, but it has not been proven that Plaintiffs had a reasonable expectation as a matter of law that the Letter would remain private. As such their claim for invasion of privacy must fail.

Not so their claim that tribal officials cast them in a false light when they published the disenrollment ballot. Undisputed Material Facts 22 and 23 set forth the relevant language

published via the ballots. They state that each of the Tarabochias refused to comply with the moratorium established by the Resolution, but make those statements without presenting any evidentiary support to the General Council. Undisputed Facts 22, 23. The language of the ballot detailing the ways each had "aggressively" demanded special treatment is objectively false. During his deposition, Bryan testified that he did not demand anything from the Tribe, but only requested what he would be entitled to if the Resolution was rescinded. *QBC Officials Motion for Summary Judgment,* Bryan Depo. at 69:23-25; Mallory Declaration at paragraph 12, Exhibit J. Plaintiffs have established through their presentation that they did not refuse to comply with the will of the General Council, and they did not make aggressive demands- in fact they did not *demand* anything. Specifically, neither demanded a permanent fishing ground on the Chehalis River, they did not demand boat decals or retroactive elder pension payments, and they did not present anything regarding placement on the 1966 rolls. Bryan Depo. at 70-72. Plaintiffs claim the General Council relied on all these false statements to arrive at their disenrollment vote. The Court agrees this must be the case.

The Court finds the undisputed facts establish as a matter of law that the ballot the QBC presented to the General Council contained false information, and presented the Plaintiffs in a false light. There is nothing in the record to support the claim made in the ballot that "Joseph Tarabochia and Bryan Tarabochia have repeatedly refused to comply with the will of the General Council with respect to the Moratorium." Challenging the lawfulness of the Resolution that established the moratorium is not refusing to comply with it. In fact, there is nothing in all the pleadings to indicate that the Plaintiffs ever wrongfully fished, gathered, received benefits and/or did anything else that did not "comply" with the moratorium. A reasonable QIN tribal member would be offended by their Tribal officials claiming repeated noncompliance with

tribal dictates, when none existed, and such is proven here. There is ample evidence in the form of meeting minutes and deposition testimony to show that both Joe and Bryan were damaged by the reaction of the QBC and QIN membership to the individual QBC defendants' characterization of their conduct. Beginning with Defendant Capoeman's written statement presented in the public portion of the February 21, 2023 QBC Special Meeting, continuing with the printed ballots that were objectively false, and the comments made in the General Council meeting, Plaintiffs were cast in a false light. The fact that the individual QBC members did not ensure their statements and especially that ballots were accurate is an omission on their part that subjects them to tort damages. The Court finds the undisputed material facts warrant summary judgment for Plaintiffs on their false light claim.

E) Claims Regarding Conversion and Loss of Property Rights

Conversion involves three elements: (l) willful interference with chattel belonging to the plaintiff, (2) by either taking or unlawful retention, and (3) thereby depriving the owner of possession. *Burton v. City of Spokane*, 16 Wash. App. 2d 769,482 P.3d 968, 970 (2021). While Joe was denied his right to elder benefits which were due him after September 2022, there is no evidence that any of the individual defendants specifically undertook to deprive him of those benefits. Bryan's rights are speculative at best. Joseph's claims for additional rights after September 2022 are more plausible, but not developed enough to support his claims as a matter of law at this stage of the litigation. Summary judgment for the individual defendants on these claims is appropriate.

F) Claims of Fraudulent and Negligent Misrepresentation

For a plaintiff to prevail on a claim for fraudulent misrepresentation, the plaintiff must prove that: (1) the defendant made a false representation; (2) the defendant knows or believes

that the representation is not as the defendant represented, or that the representation was recklessly made; (3) the defendant intended to deceive or to induce the other party to act or refrain from action in reliance on the misrepresentation; and (4) the plaintiff relied on the misrepresentation to his or her detriment. Fraudulent conduct is never presumed, neither should its existence rest on mere suspicion or surmise. *Durrett v Petritsis*, 1970, 474 P2d 487, 489 (N.M 1970). Each of the essential elements for fraudulent misrepresentation must be proven by clear and convincing evidence. *GMAC v. Bitah*, 1988 Navajo Sup. LEXIS 2, *7-8.

To recover on a negligent misrepresentation claim, Plaintiff must prove by "clear, cogent, and convincing evidence" that: (1) Defendants supplied Plaintiff with false information as to an existing fact; (2) Defendants knew or should have known that the information was supplied to guide Plaintiff in the transaction; (3) Defendants were negligent in obtaining or communicating the false information; (4) Plaintiff relied on the false information; (5) Plaintiff's reliance was reasonable; and (6) the false information proximately caused Plaintiff's damages. *Ross v. Kirner*, 172 P.3d 701, 704 (Wash. 2007).

Plaintiffs argue the disenrollment ballot the Tribal Officials provided to the General Council contained false information. The Court agrees. They further contend they did not make aggressive demands, neither demanded a permanent fishing ground on the Chehalis River, they did not aggressive demand boat decals or retroactive elder pension payments, and they did not ask for placement on the 1966 rolls. True again. *Deposition of Bryan Tarabochia* at p. 70-72, Mallory Declaration at paragraph 11, Exhibit I at 15. However, Plaintiffs have not proven by evidence that rises to the necessary threshold of "clear and convincing" that the QBC defendants intended to deceive *them* through affirmative acts of misfeasance. While the Court rejects Defendants explanation that Plaintiffs are simply making a semantic argument, because

what is "aggressive" to the Business Committee may not be to Plaintiffs, the Court agrees that Plaintiffs have not shown that Tribal Officials supplied the Plaintiffs with false information as to an existing fact that Plaintiffs relied on. Summary Judgment to the appropriate Defendants on these claims is warranted.

G) <u>Summary Judgment Claims Regarding Defamation, Libel and Slander</u>

To state a claim for defamation, Plaintiffs must establish: (1) falsity, (2) an unprivileged communication, (3) fault, and (4) damages. *Herron v. KING Broad. Co.*, 112 Wash.2d 762, 768(1983). Plaintiffs argue certain tribal officials defamed them when they spoke falsehoods and published the ballot for their disenrollment containing false information. *Deposition of Bryan Tarabochia* at p. 87:18-20; Mallory Decl. Paragraph12, Exhibit J. Plaintiffs argue specifically that Defendant Capoeman defamed them when reading the ballot at the General Council meeting and making associated comments, some that contradicted what was on the ballot but were also false, and that Defendant Curley defamed them when she said the disenrollment proceedings could have been avoided if Plaintiffs had not put on a lawyer hat. See Undisputed Fact No. 24.

Defendants maintain Plaintiffs' claims fail because the ballot did not contain false information and Defendant Curley stated an opinion, not a fact. With respect to the ballot, Defendants maintain the ballot simply restated the requests originally made by Plaintiffs in the Letter, however that is simply not true. Nowhere in the Letter does Bryan aggressively demand a permanent fishing ground on the Chehalis River, Quinault Indian Nation boat decals, retroactive elder pension payments or placement on the 1966 rolls. Joseph requests an honorary fisher spot on the Chehalis River and his elder pension, but does not demand either. Neither mention the 1966 rolls.

Speech should be delivered with respect and honesty, especially in the context of a person in position of power attempting to persuade a vote like the one here. *See Navajo Nation v. Crockett,* 1996 Navajo Supp. LEXIS 14. The QBC's wording on the ballot, and Capoeman's statement on February 21, 2023 as well as his comments on March 25, 2023 were neither. Capoeman states without support, and not as an opinion or as part of his duties as President under any QIN policy, that Plaintiffs refused to comply with the will of the General Council with respect to the moratorium. This undoubtedly left the impression they had failed to comply with respect the fishing and gathering ban and slandered them. Capoeman further states to the General Council members that Plaintiffs' violation is "challenging the authority of this body," meaning the authority of General Council. Nowhere does he state that the Plaintiffs had actually *not* failed to comply with the Resolution, and that their requests had occurred over a year earlier and where now going to be resolved through Tribal Court proceedings. Nor did he explain that Plaintiffs had every right to challenge the legality of the Resolution in Tribal Court. These facts were true, important and relevant to General Council members. Capoeman's speech was dishonest, disrespectful, and defamatory in that regard.

Statements of opinion "are not actionable." *Robel v. Roundup Corp.*, 148 Wn.2d 35, 59 P.3d 611, 621 (Wash. 2002) (*en banc*) (citation omitted). With respect to Defendant Capoeman, he used his position at the microphone not to offer his opinion, but to state falsehoods as fact. Curley's actions on the other hand, are less clear. Plaintiffs admit they do not know whether her statement was an opinion or fact. *Deposition of Bryan Tarabochia* at p. 90: 19-21. The undisputed facts indicate she waited in line with other tribal members and then voiced her concerns. The Court cannot say that Defendant Curley's statements are more than opinion, thereby rising to the level of slander. Recognizing the high threshold for success of these

claims, the Court finds the QBC defendants who approved the ballot committed libel, and Defendant Capoeman slandered Defendants, and summary judgment for Plaintiffs on these claims is appropriate. Summary Judgment for defendant Curley is granted.

H) Summary Judgment Claims Regarding Retaliation

To state a claim for retaliation, Plaintiffs must plead the following elements: (I) Plaintiff engaged in a protected activity, (2) Plaintiff was thereafter subjected to adverse employment action by the Tribal Officials; and (3) that a causal link exists between the two. *Ray v. Henderson*, 217 F.3d 1234, 1240 (9th Cir. 2000); *Donahue v. Central Wash. Univ.*, 140 Wash. App. 17, 163 P.3d 801, 806 (Wash. Ct. App. 2007). Defendants have not submitted any reasonable explanation for initiating disenrollment proceedings over a year after the Letter that purportedly led the individual QBC members to seek disenrollment. Since the vote for disenrollment is of record and no individual member has provided any evidence of why they took action when they did, the inescapable conclusion is they did so in retaliation for the Tarabochias initiating legal action, a protected activity. However, the second prong of the retaliation test is not met, namely that the Defendants took adverse employment action against them, and Plaintiffs have not put forth any evidence or argument that excuses that omission. Summary judgment for Defendants is required on this claim.

I) Claims Regarding Tortious Interference with Business Expectancy

To state a claim for tortious interference with business expectancy, Plaintiffs must plead the following elements: "(l) the existence of a valid contractual relationship or business expectancy, (2) that defendants had knowledge of that relationship, (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy, (4) that defendants interfered for an improper purpose or used improper means, and (5) resultant

damage." *Manna Funding, LLC v. Kittitas Cnty.*, 295 P.3d 1197, 1207 (Wash. App. Ct. 2013). A plaintiff must show future business opportunities "are a reasonable expectation and not merely wishful thinking[.]" *Life Designs Ranch, Inc. v. Sommer*, 364 P.3d 129, 138 (2015). Plaintiffs argue the Tribal Officials' denial of allowing Plaintiffs to exercise their treaty fishing rights is a violation of their business expectancy. *Deposition of Bryan Tarabochia* at 107:13-18. However, neither Plaintiff has provided any admissible evidence of a business owned by them, or that success was eminent should they have been allowed to fish or exercise treaty rights. Defendants point out that a tortious interference with business expectancy claim requires Plaintiffs to show a valid contractual relationship or business expectancy. *Kittitas Cnty.*, 295 P.3d at 1207. The Court agrees that Plaintiffs have shown neither. Summary Judgment to the individual Defendants on this claim is appropriate.

Plaintiffs' Request for Injunctive Relief

Sovereign immunity is no defense to tribal officers when injunctive relief is sought against officials acting outside their authority. The *Whitetail* Appeals Court barred the Devil's Lake Tribal Election Board from carrying out any of the actions decided in the second meeting, because "an official acting in excess of his authority cannot claim immunity from an "injunctive process."" *Id.* at *7, *citing Wells v. Nelson Blaine, Jr.* CV-OS-OS-91 (Northern Plains App.1991), *Davis v. Littell,* 398 F.2d 83 (9th Cir. 1968) *cert. den.* 393 U.S. 1018, 89 S. Ct. 621, 21 L. Ed. 2d 562 (1969) and *Burlington Northern v. Blackfeet Tribe*, 924 F.2d 899 (9th Cir. 1991). In *Somers v. Oneida Bingo & Casino General Manager*, 2006 WL 6488211, at *4 (Oneida Trial Ct. 2006), the court held "[T]he Tribe's sovereign immunity permits suits by tribal members against entities, and/or officials for prospective injunctive relief." *See also Littlejohn v. Smith*, 12 Am. Tribal Law 347, 348 (Cherokee Nation Supreme Court 2015).

As the U.S. Supreme Court noted in *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 689-90, 69 S.Ct. 1457, 93 L.Ed. 1628 (1949), the doctrine does not apply in such cases because "the conduct against which specific relief is sought is beyond the officer's power and is, therefore, not the conduct of the sovereign." 337 U.S. at 690 [69 S.Ct. 1457]. Any other rule would mean that a claim of sovereign immunity would protect an entity exercising power it does not possess. *Tenneco Oil Co. v. Sac & Fox Tribe*, 725 F.2d at 574 (10th Cir. 1984).

Given the Court's ruling that the 2023 QBC acted outside their authority in recommending disenrollment, Plaintiffs may maintain their claim against defendant QBC officials for prospective injunctive relief in their official capacity. To obtain a permanent injunction, Plaintiffs must establish the following four factors: (1) success on the merits of the claim; (2) irreparable injury to the movant if the injunction is denied; (3) the injury to the movant outweighs the injury to the other party under injunction; and (4) the injunction is not adverse to the public interest. This standard is similar to that for a preliminary injunction, the only measurable difference being that a permanent injunction requires showing actual success on the merits. *Prairie Band Potawatomi Nation v. Wagnon*, 476 F.3d 818, 822 (10th Cir. 2007). Whether to grant a permanent injunction is the equitable discretion of the court. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)("The decision to grant or deny permanent injunctive relief is an act of equitable discretion by the district court.").

The most common test courts use to determine whether the movant's claim shows "reasonable probability that he will ultimately be entitled to the relief sought" is violation of existing law. *Automated Mktg. Sys., Inc. v. Martin*, 467 F.2d 1181, 1183 (10th Cir. 1972). Where a movant can prove that the non-movant(s) is in violation of existing law, the first

element to issue an injunction is fulfilled. *Milsen Co. v. Southland Corp.*, 454 F.2d 363, 367 (7th Cir. 1971). As to factor one, Plaintiffs proved their claim that the 2022 Constitutional Amendment divested the QBC of authority to recommend disenrollment, and it is undisputed that the QBC violated their own tribal dictates regarding notice and due process. Thus they have succeeded on the merits of that claim, and the first prong of the test is met.

As to factor two, Plaintiffs are further required to show that irreparable harm is likely in the absence of this Court granting their requested relief. *Winter*, 555 U.S. at 22. Irreparable harm is "generally an action that cannot be undone or remedied with money." *Kasee v. Drew-Skenandore*, 2010 WL 7746038, at *1 (Oneida Trial Ct. 2010). A violation of a party's constitutional rights equates to irreparable injury. *Taylor v. Haugaard*, 360 F. Supp. 3d 923 (D. S.D. 2019). In this case, it is without question the Plaintiffs have established they will suffer irreparable injury without the injunction being granted-they have shown what they have been denied in terms of their place as members of QIN and in terms of loss of medical care, ability to fish, gather and participate in ceremonies, and other injury as a result of being disenrolled.

In *LaRose v. Wilson*, 2003 WL 26066795, at *8 (Leech Lake Trial Div. 2003) the tribal court determined that the public interest weighed in favor of granting an injunction in an unconstitutional removal because there were a substantial number of voters who favored the officer subject to removal. The show of support for Plaintiffs through the comments of fellow tribal elders and members who disapproved of the process is similar here. Additionally, the equities favor that Plaintiffs, and others like them, to always be afforded due process and a fair and accurate proceeding to determine if action such as that taken here is warranted. The QBC knew or should have known due process this is a requirement, but failed to afford it. The QBC specifically approved and adopted an enrollment manual that had strict notice requirements in

regard to enrollment/disenrollment. Yet they refused to honor those rights with respect to Plaintiffs, and could do so again in the future. The QIN members' best interests require the Court strictly enforcing QIN's own requirements in that regard.

Injunctive relief is often granted in tribal removal proceedings where the law of removal is not followed and injunctive relief is in the public interest. *See, e.g., Davis v Colegrove*, PO-20-007 (Hoopa Valley Dist. Ct. 2024) (Injunction prohibiting Chairman's removal hearing granted) *Monetathchi v. Flyingman*, 10 Okla. Trib. 376 (Cheyenne-Arapaho Trial Ct. 2007) (Preliminary injunction issued preventing removal of tribal officer); *White Wing v. Ho-Chunk Nation General Council ex rel. Cloud*, 5 Am. Tribal Law 197, 206. This is especially true when there are questionable motives behind the removal. The Court finds the best interests of the Quinault public are served by the issuance of a permanent injunction. Any other result will pave the path for others to be subject to and suffer the same illegalities.

In this case Plaintiffs have established through Court order, sworn complaint, affidavit and testimony: 1) they have succeeded on the merits of their claims for declaratory judgment and violation of civil rights- Defendants acted in contravention of the Quinault Constitution, the ICRA, and the Tribe's adopted process for ensuring due process in disenrollment cases; 2) they are suffering and will continue to suffer irreparable harm-being barred from membership in QIN- in the absence of injunctive relief; 3) the balance of equities, namely upholding the Constitution and laws/policies of the QIN, are in their favor; and 4) that an injunction is in the public interest. *See Winter v. Natural Resources Defense Council, Inc.*. 555 U.S. 7, 20 (2008). As such, the Court finds Plaintiffs are entitled to a permanent injunction prohibiting Defendant QBC, QBC members in their official capacity, and Defendant tribal officers and their successors from taking any prospective action to keep Plaintiffs off the membership rolls,

to deny them any benefits afforded tribal members, to withhold from Joseph any elder benefits/privileges to which he might be entitled as a member of QIN.

Damages

In addition to multiple hearings, the Court held a number of status conferences in this case and adopted a scheduling order for discovery and depositions. The Court compelled the Defendants to produce fishing catch and tax records that Plaintiffs could use to formulate a damage theory and present damages amounts related to their inability to fish and gather. In doing so, the Court made it abundantly clear to Plaintiffs on multiple occasions that in order for the Court to consider a claim for economic damages, including their claimed lost fishing revenue as a result of being denied a fishing permit, they were going to need to name and present an expert witness who could support their position via supporting report and deposition, and if necessary, at trial. Plaintiffs did not retain such a person. Instead, Bryan his own has attempted to extrapolate information provided into a damage figure, even as he has no expertise in that regard. As Defendants point out, when the time came to do so, Bryan was not prepared to present an economic damage dollar figure based on an analysis of the information to a reasonable certainty. In short, Plaintiffs have not presented any admissible evidence of economic damages.

The Court itself cannot arrive at a lost economic damages figure given the many factors that impact same. With respect to lost fishing revenue, such things as the boat utilized, time of year spent fishing, weather and fishing conditions, geographic locale, crew, market demand, price, and other factors all play into such a calculation. Any person presenting a figure for economic damages would need to be qualified to analyze the data and be able to explain the variables and how they arrived at their conclusions. Without that information, economic damages are too speculative.

By virtue of prevailing on some of their claims, Plaintiffs are entitled to non-economic damages. As such, the Court will set a trial on the issue of appropriate compensatory damages for Joseph Tarabochia and appropriate compensatory damages for Bryan Tarabochia. Each Plaintiff should limit his testimony to non-economic, compensatory damages which are the direct and proximate result of wrongful deprivation/impairment of civil rights and the pain and suffering caused by the tortious errors and omissions of the individual defendant QBC members from 2022-2023 and thereafter. The Defendants against whom judgment has been entered will be able to cross-examine on those issues if they so choose, and the Court may ask questions.

CONCLUSION

This case has raised issues of first impression which are complex and have been litigated over many months. More difficult is the emotional nature of the subject matter. A great sadness underlies the proceedings, which have impacted generations of the families involved, tribal officials, tribal members, and the entire Quinault community. Through their actions, the QBC members have declared the QIN Constitution and laws can be skirted under pretense, and without regard to the rights of their members. When tribal officials believe they can engage in unconstitutional actions unchecked by the judiciary– a grave scenario for a constitutional government exists. This Court has attempted to right that wrong.

IT IS HEREBY ORDERED that Summary Judgment in GRANTED in favor of Plaintiffs and against the Defendants on their claims for violation of their due process and free speech rights and that the QBC members acted outside their authority when they recommended the Plaintiffs be disenrolled. Defendants and each of them are permanently enjoined from prospectively considering Plaintiffs as disenrolled from QIN, and from refusing to recognize

Joseph Tarabochia and Bryan Tarabochia as members of the Quinault Indian Nation, with all their rights and privileges attendant thereto.

IT IS HEREBY FUTHER ORDERED that Summary Judgment is GRANTED to the individual Defendants on the following counts sounding in common law tort: conspiracy, conversion, loss or property rights, fraudulent and negligent misrepresentation, malicious prosecution, invasion of privacy, retaliation and tortious interference with business expectancy.

IT IS FURTHER ORDERED that Summary Judgment is GRANTED to the Plaintiffs and against defendant individual QBC members Guy Capoeman, Fawn Sharp, Larry Ralston, Latosha Underwood, Gina James, Jim Sellers, John Bryson Jr., Noreen Underwood, Donald Waugh, Ryan Hendricks and Kristeen Mowitch for their errors and omissions leading to breach of fiduciary duty, abuse of process, defamation, libel and slander, and false light.

IT IS FURTHER ORDERED that Summary Judgment is GRANTED to Defendants Alison Boyer and Hannah Curley, individually.

IT IS FURTHER ORDERED THAT claims arising from the enforcement of Resolution 19-147a-98 are deemed MOOT.

SO ORDERED this 3rd day of November, 2025

Theresa L. Edwards

TRIBAL COURT JUDGE