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3 Galanda Broadman PLLC

4 IN THE NOOKSACK TRIBAL COURT  
5 FOR THE NOOKSACK INDIAN TRIBE  
6 DEMING, WASHINGTON

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JUN 24 2014  
FILED BY  
*[Signature]*

4 ST. GERMAIN et. al.,

Case No.: 2013-CI-CL-005

5 v.

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS AND  
DENYING PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT**

6 KELLY, et. al.

7  
8 **THIS COURT** held a hearing on April 9, 2014 to address the *Defendant's Motion to Dismiss*  
9 and the Plaintiff's *Motion for Summary Judgment*. The Plaintiffs were represented by attorneys  
10 Ryan Dreveskracht and Amber Penn-Roco. The Defendants were represented by attorneys Tom  
11 Schlosser and Rickie Armstrong. After hearing from the parties and reviewing the record, the Court  
12 issues the following:

13  
14 **DECISION**

15 On December 3, 2013, the Tribal Council passed Resolution 13-171 that provided Christmas  
16 Support in the amount of \$250; that resolution limited \$250 checks to enrolled tribal members "not  
17 subject to pending disenrollment proceedings." On December 13, 2013, the Tribal Council passed a  
18 second resolution, Resolution 13-181, superceding 13-171. 13-181 states that if the potential  
19 disenrollees are not disenrolled, they will received 2013 Christmas check funds then. This Court  
20 issued an *Order Granting Motion for Temporary Restraining Order* on December 18, 2013, finding  
21 that the initial checks for \$250 that were cut and sent out to tribal members (excluding those  
22 potential disenrollees) under the authority of Resolution 13-171 and violated the Nooksack Indian  
23 Tribe's Tribal Constitution. On February 7, 2014, this Court denied the Plaintiffs' *Motion for*  
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1 *Contempt*, after finding that checks issued after December 18<sup>th</sup> were issued under the authority of  
2 Resolution 13-181, the validity of which this Court did not reach in the TRO because the original  
3 checks were issued under the authority of 13-171.

4 In addition to the Christmas check issue, the Plaintiffs also argue that the Defendants failed  
5 to call a Special Meeting requested by Plaintiffs, and that Defendants have violated the Indian  
6 Gaming Regulatory Act (IGRA) when it issued the Christmas Support checks. The Defendants have  
7 moved this Court to dismiss the Complaint; the Plaintiffs filed a cross *Motion for Summary*  
8 *Judgment* in their favor.

9 In the interim, between the filing of the *Complaint* and the filing of the *Motions*, the  
10 Nooksack Court of Appeals ruled in two matters, *Lomeli v. Kelly*, 2013-CI-APL-002 and *Roberts v.*  
11 *Kelly*, 2013-CI-CL-003. After reviewing these decisions, the Court finds the Plaintiffs *Complaint* in  
12 this matter should be dismissed.

### 13 **A. Christmas Check Resolutions**

14 When the Court issued its Order on December 18, 2013, it noted that its *Order* was both  
15 preliminary and related only to the Resolution under which the checks were initially disbursed. The  
16 Tribal Council superceded that Resolution with Resolution 13-181, and the Council included a  
17 “carve out” provision that ensured that if the Plaintiff potential disenrollees were not disenrolled,  
18 they would be eligible to receive the 2013 Christmas Distribution checks.

19 In the *Roberts* decision, the Nooksack Court of Appeals held that a similar resolution  
20 regarding “Back to School” support sufficiently protected the interests of the potential disenrollees:

21 The trial court correctly found, “the proposed disenrollees have not lost access to such  
22 support if the proceedings conclude with their continued tribal enrollment.” Order at 13. The  
23 children that have been temporarily denied payment of benefits may in fact receive benefits  
24 in the future. This undisputed fact leads to the conclusion that the only relief available to the  
children is a court order that the Nooksack Tribe make immediate financial payment to  
Appellants while disenrollment proceedings are pending or stayed. Under our holding in

1           *Lomeli*, the sovereign immunity of the Tribe prevents the Nooksack courts from ordering an  
2 immediate payment of funds, or any other remedy that creates a money judgment in favor of  
the Appellants. *Roberts*, 10.

3 Resolution 13-181 reflects an identical carve out to the Back to School resolution. The potential  
4 disenrollees will still have access to 2013 Christmas Support when the disenrollment issues are  
5 ultimately resolved. Resolution 13-171 is no longer in effect; Resolution 13-181 is and sufficiently  
6 protects the interests of the potential disenrollees.

### 7           **B. Special Meetings**

8           The Special Meetings issue has also been addressed by the Nooksack Court of Appeals. In  
9 *Lomeli*, the Court held “the adherence to [Nooksack Tribal Constitution] Bylaws is a political  
10 question not subject to judicial review.” *Lomeli*, 21. The Court has no jurisdiction to order the  
11 Defendants to take any action related to the Special Meetings, which are provided for under the  
12 Nooksack Tribal Constitution’s Bylaws.

### 13           **C. Indian Gaming Regulatory Act**

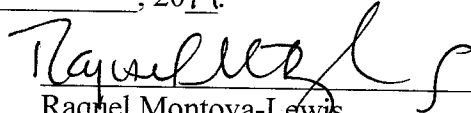
14           The Plaintiffs claim that this Court should enjoin the Defendants from expending funds for  
15 2013 Christmas support because “the ‘discretionary funds’ for the Nooksack Tribal Christmas per  
16 capita distribution come from the Tribal Council’s budget, and include net Class II and Class III  
17 gaming revenues derived from the Tribe’s Nooksack River Casino and Northwood Casino . . . and  
18 the Tribe does not have, and has never had, a revenue allocation plan approved by the U.S.  
19 Department of the Interior . . . under 25 U.S.C. 2710(a)(3)(A-D), (d)(1)(A)(ii).” *Complaint*, 8. This  
20 Court has addressed its subject matter jurisdiction in other related cases and, applying that same  
21 analysis, finds it has no jurisdiction over this claim. Under 25 U.S.C.2710(a)(3)(A-D), tribes may  
22 engage in per capita distributions when those allocation plans have been approved by the Secretary  
23 of the Interior. This Court has no jurisdiction to review a claim that the Tribe has or has not  
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1 violated 25 U.S.C. 2710(a)(3)(A-D) as that determination is clearly reserved to the federal courts  
2 through IGRA.

3 This Court hereby dismisses the *Complaint* and denies the Plaintiffs' *Motion for Summary*  
4 *Judgment*.

5 **SO ORDERED.**

6 DATED this 24 day of June, 2014.

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8 Raquel Montoya-Lewis  
9 Chief Judge, Nooksack Tribal Court  
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