

THE HONORABLE JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

MARGRETTY RABANG, *et al.*,

Plaintiffs,

v.

ROBERT KELLY, JR., *et al.*,

Defendants.

Case No. 2:17-cv-00088-JCC

**PLAINTIFFS’ SUPPLEMENTAL
RESPONSE TO DEFENDANT
DODGE’S MOTION FOR
SUMMARY JUDGMENT**

I. INTRODUCTION

This is not a summary judgment case. As Plaintiffs made clear in their initial Response,¹ numerous issues of material fact necessitate a jury trial. What cannot be disputed, though, is that “Defendant Dodge knew he lacked authority.” Dkt. #85, at 2.

Through a Tribal Court transcript that Defendant Dodge sprung on Plaintiffs during Magretty Rabang’s deposition on Monday—having not produced it in discovery—this dispositive issue has now been resolved firmly in favor of Plaintiffs. Defendant Dodge knew of DOI’s first determination by no later than November 9, 2016, just as he knew of DOI’s second and third determinations soon after they were each issued. That transcript reveals his longstanding knowledge that he lacked authority, although he has testified under oath before this Court that he

¹ Plaintiffs incorporate by reference the facts and argument set forth in Plaintiffs’ initial response to Defendant Dodge’s summary judgment motion. Dkt. #71 at 1-17.

1 did not know of DOI's first determination "until after this litigation had commenced" on February
2 8, 2017. Notwithstanding, he evicted Plaintiffs Rabang and Elizabeth Oshiro from their homes;
3 in Plaintiff Oshiro's instance, needing to make one more payment before she owned her home
4 outright. Dkt. #72-1. Plaintiff Oshiro is now out of house and home, and \$90,000 in equity. *Id.*

5 Defendant Dodge has perpetrated a fraud upon Plaintiffs, and now upon this Court.
6 Therefore, Plaintiffs respectfully request that Defendant Dodge's Motion for Summary Judgment
7 be DENIED and that this matter proceed to trial as expeditiously as possible.
8

9 **II. STATEMENT OF FACTS**

10 **A. Defendant Dodge Had Actual Knowledge Of DOI's October 17, 2016 Decision;**
11 **Defendant Dodge Admits In Open Court He Read It By November 2016.**

12 To date, Defendant Dodge has, "duly sworn and under oath," testified that:

13 Sometime after it was issued, Judge Dodge became generally aware of the
14 existence of the October 17, 2016 letter, but he was not a recipient of that letter
15 and was not aware of the contents of that letter. He did not receive a copy of the
letter until after this litigation had commenced.

16 and,

17 While Defendant Dodge became generally aware of the existence of the October
18 2016 letter sometime after it was issued, he was not aware of the substance of that
letter and did not receive a copy of the letter until after this litigation had
19 commenced.

20 Dkt. #96-3 at 3, 28-29 (emphasis added); Declaration of Bree R. Black Horse ("Black Horse
21 Decl."), Ex. A (emphasis added). He has also declared under penalty of perjury to this Court that
22 he "eventually learned of and read the letters between AS-IA Roberts and Chairman Kelly,"
23 meaning after the third letter issued on December 23, 2016. Dkt. #67 at ¶46.
24

25 But as Plaintiffs discovered during Plaintiff Rabang's deposition this week, contrary to his
previous misrepresentations, Defendant Dodge had received and read the October 17, 2016, DOI

1 determination by at least November 9, 2016. Black Horse Decl., ¶4; *id.*, Ex. B, at 24; *cf.* Dkt. #67
 2 at ¶46 (Defendant Dodge testifying that he did not “receive a copy of the letter until after this
 3 litigation had commenced.”).²

4 Defendant Dodge knew of the October 17, 2016, DOI determination this *entire* time.

5
 6 *I. Defendant Dodge Admits Knowledge Of DOI’s First Determination In Open Court
 On November 9, 2016.*

7 On November 9, 2016, Defendant Dodge conducted a hearing to evict Ms. Rabang. Black
 8 Horse Dec., Ex. B. Defendant Dodge prevented Ms. Rabang’s attorney from entering the
 9 Nooksack Tribal Court to represent her. *Id.* at 7. Nooksack Tribal Elder and non-lawyer George
 10 Adams spoke on her behalf, informing Defendant Dodge:
 11

12 [T]he issue is still in review of the Bureau of Indian Affairs. And also that all
 13 actions heretofore are from the time of March that the tribal council is null and
 14 void because of lack of quorum and lack of government. . . . [E]verything here is
 subject to that October 17th letter from the Bureau of Indian Affairs dispelling all
 actions since March from hold-over tribal council.

15 *Id.* at 8. During that same hearing, Ms. Rabang defended herself, relying on DOI’s October 17,
 16 2016, decision: “I have the letter too, stating that anything that [the Tribal Council] have done
 17 after March 24th, 2016 is null and void.”³ *Id.* at 23. Defendant Dodge then responded by
 18 explicitly discussing DOI’s October 17, 2016, determination:
 19

20 _____
 21 ² The two Tribal Court transcripts “offered by Defendant Dodge in the deposition of Plaintiff Margretty Rabang,
 22 which took place on October 9, 2017 . . . had not been disclosed in response to Plaintiffs’ various discovery requests
 23 of Defendant Dodge.” Black Horse Decl., ¶4. Plaintiffs have incurred thousands and thousands of dollars seeking to
 24 prove Defendant Dodge’s knowledge that he lacked authority since this Court granted discovery on that subject on
 25 June 29, 2016. Dkt. #85. Had Defendant Dodge simply produced the transcript that is Exhibit B to the Black Horse
 Decl. as required by this Court’s Order and the discovery rules, a significant amount of time and money could have
 been spared. This Court possesses inherent authority to sanction both attorneys and parties for bad faith litigation.
Trade Associates, Inc. v. Fusion Tech., Inc., No. 09-5804, 2011 WL 5975057, at *4 (W.D. Wash. Nov. 29, 2011)
 (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45-46 (1991)). The standard for applying sanctions under this
 authority is “subjective bad faith,” which occurs when counsel or parties act vexatiously, wantonly, or for oppressive
 reasons. *See id.* (citing *Primus Auto. Fin. Servs., Inc. v. Batarse*, 115 F.3d 644, 646 (9th Cir. 1997)).

³ It was on that very day, March 24, 2016, when Defendant Dodge was first alerted, in person by Michelle Roberts,
 that “as of March 24, 2016, the Nooksack Tribal Council can no longer take any lawful action [A]ny action
 taken by the Tribal Council as of March 24, 2016, is null, void and of no effect” Dkt. #73-1 at 1-2.

1 I have heard of a letter from the Department of Interior. **I've seen it**, but I haven't
2 really read it that much. **I just glanced at it** because I have no authority to do
3 anything about that. As you correctly stated, sir, it is a government-to-government
4 issue and I, thank goodness, am not the government . . . So I don't get to, thank
5 goodness, get involved in that.

6 *Id.* at 24 (emphasis added). Pivotaly, Defendant Dodge had “heard of,” “seen,” and “read” the
7 October 17, 2016 DOI determination before November 9, 2016—long before “this litigation had
8 commenced.”

9 To be clear, this means that Defendant Dodge’s sworn statement, “he was not aware of the
10 substance of that letter and did not receive a copy of the letter until after this litigation had
11 commenced,” is a lie. Dkt. #96-3 at 3, 28.

12 2. *Defendant Dodge Is Further Informed Of DOI’s Decision In Open Court On
13 December 14, 2016.*

14 On December 14, 2016, Defendant Dodge conducted another eviction hearing against Ms.
15 Rabang. *Id.*, Ex. C. By then, DOI had issued its second decision, refusing to recognize Tribal
16 Court decisions made after March 24, 2016. Dkt. #74-5 at 2. Defendant Dodge does not deny
17 then having received or read DOI’s November 14, 2016 determination. Dkt. #67 ¶¶41-42.
18 During the hearing, Ms. Rabang again informed Defendant Dodge that he lacked any authority:
19 “Can I just say one thing though? Everything that has happened from March 24th until now is
20 null and void . . . The BIA sent us a letter” Black Horse Decl., Ex. C at 5.

21 Ignoring both the October 17, 2016, and November 14, 2016, DOI decisions, Defendant
22 Dodge ordered Ms. Rabang’s eviction, which invited DOI’s third determination on December 23,
23 2016. *Id.* at 30; Dkt. #74-17. DOI’s third decision rejected Defendant Dodge’s eviction orders
24 against Plaintiff Rabang, and all other “so-called tribal court action and orders” after March 24,
25 2016. Dkt. #74-17 at 1. Although Defendant Dodge now vaguely claims he “eventually learned

1 of and read” DOI’s December 23, 2016 determination, there is no longer any doubt that
2 Defendant Dodge knew he lacked authority by no later than November 9, 2016. Dkt. #67 ¶46;
3 Black Horse Dec., Ex. B, at 24.

4 **B. Defendant Dodge Was A Primary Architect Of Defendants’ Scheme To Defraud.**

5 *1. Defendant Dodge Orchestrated The Disbarment Of Plaintiffs’ Counsel.*

6 Plaintiffs have alleged that February 24, 2016, “did not mark the first occasion in which
7 Defendant Dodge manipulated tribal political legislative processes to cause the disbarment of his
8 opposing counsel, believing he and his client were free of impunity,” and that “when Defendant
9 Dodge was Attorney General for the Quinault Indian Nation, he likewise orchestrated the
10 disbarment of counsel adverse to his client, the law firm of MacDonald Hoague & Bayless, also
11 for want of a tribal business license.” Dkt. #64 ¶44. Third-party discovery obtained from
12 MacDonald Hoague & Bayless (“MH&B”) now substantiates Plaintiffs’ allegations, and
13 underscores Defendant Dodge’s primary role in Defendants’ scheme to defraud Plaintiffs,
14 particularly through the deprivation of their right to counsel.
15

16
17 On October 29, 2012, while he was Quinault Attorney General, Defendant Dodge filed a
18 Complaint and Motion For A Temporary Restraining Order against MH&B and two of its lawyers
19 in their personal capacities, seeking “an ex-parte restraining order” to prevent them “from
20 continuing to engage in business without a business license issued by the Quinault Indian Nation
21 and to further restrain their criminal conduct.” Black Horse Decl., Ex. D. Supported by a 15-
22 page sworn Declaration of his, and without providing MH&B any notice of his Complaint or
23 motion, Defendant Dodge obtained that *ex parte* TRO. *Id.*, Exs. F, G. As MH&B explained to
24 the Quinault Nation Tribal Court:
25

The Attorney General’s investigating into whether Defendants possessed a

1 business license, his failure to notify Defendants and to ask for compliance before
2 filing a lawsuit, and the timing of his announcement and of his filing of his lawsuit
3 (which he personally signed) all speaks volumes. These circumstances strongly
4 suggest that the Attorney General acted on a retaliatory motive rather than a good
5 faith effort to ensure compliance with the Business Code. Further, the fact that
6 Mr. Dodge decided to sue the individual attorney in the *Pura* case in their personal
capacities (along with their law firm), rather than limiting the lawsuit to the actual
“business” (which is the law firm), shows a level of personal animosity that
undermines any legitimate motive behind the suit.

7 *Id.*, Ex. H. MH&B remains banned from the Quinault Nation Bar to this day.

8 What’s more, after the Quinault Nation Chief Judge reported Defendant Dodge to the
9 Quinault Business Committee for his “unethical and improper” behavior, she was terminated. *Id.*,
10 Ex. I; Dkt. #74-9 at 4-5.

11 Here, by December 2015, Defendant Dodge brought his playbook to Nooksack, where he
12 called the plays, first, to disbar opposing counsel and then, to terminate the Chief Judge when she
13 exposed his unethical behavior.

14
15 2. *Defendant Dodge Lies That He Knows Nothing About The Termination of Chief
16 Judge Susan Alexander.*

17 Plaintiffs propounded discovery requests to Defendant Dodge, asking him to “[i]dentify⁴
18 any event or non-privileged communication related to the termination of Nooksack Tribal Court
19 Chief Judge Susan Alexander on or about March 28, 2016,” and to produce all related documents.
20 Dkt. #96-1 at 8. Also under oath, Defendant Dodge disclaimed any knowledge regarding the
21 termination of Chief Judge Susan Alexander, **claiming he “had no involvement in the
22 termination of Judge Alexander.”** Dkt. #96-3 at 13 (emphasis added); Black Horse Decl., Ex.

23 A. However, third-party discovery reveals that Defendant Dodge in fact possesses knowledge
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25

⁴ As defined in Plaintiffs’ first discovery requests to Defendant Dodge: “Identify” when used with respect to an event means to (a) describe the event regarding which you have knowledge, (b) state the date on which it occurred, and (c) identify all persons having knowledge of same. An event shall include, without limitation, any written or verbal communications.” Dkt. #96-1 at 3.

1 regarding her termination. Black Horse Decl., Ex. J. **He knows, and has admitted in writing,**
2 **as to exactly what “got Susan Alexander terminated.”** *Id.*

3 That is, Judge Alexander’s March 21, 2016 Order Re: Resolution #16-18 And Due
4 Process in *Belmont v. Kelly*, where she suggested that Plaintiffs’ counsel were disbarred without
5 any “notice and an opportunity to be heard,” and she excoriated Defendant Dodge (then Tribal
6 Attorney, prior to his alleged “appointment” to the bench) for plagiarizing a brand “new
7 Advocates Code of Conduct, adopted by the Tribal Council through Resolution #16-28 on
8 February 24, 2016,” at Nooksack in order to disbar his opponents. *Id.*, Attachment to Ex. J at 5,
9 10, 14 n.4. Defendant Dodge claims he “does not recall whether he drafted Nooksack Tribal
10 Council Resolution No. 16-27,” although he certainly recalls not having drafted its companion,
11 Resolution No. 16-28, which was passed by holdover council Defendants moments later on
12 February 24, 2016. *Id.*, Ex. K. Defendant Dodge has not been forthright.

13
14
15 3. *Defendant Dodge Hires Personal Friend To Serve As “Judge Pro Tem” In Order*
16 *To Deny Plaintiffs Their Right To Counsel And Due Process.*

17 By the fall of 2016, Defendant Dodge sought out and hired an old law school “friend,”
18 Milton Rowland of Foster Pepper, PLLC’s Spokane office, to serve “as judge *pro tem* for the
19 Nooksack Nation . . . to decide four cases” involving Plaintiffs. *Id.*, Exs. L, M. Knowing Mr.
20 Rowland “well,” Defendant Dodge recruited and handpicked him for the position—even signing
21 Mr. Rowland’s contract on behalf of the Tribe. *Id.*, Exs. N-P.

22 Mr. Rowland was not entirely new to Nooksack. Defendant Dodge, as Senior Tribal
23 Attorney, had consulted him in December 2015, wondering whether Defendant Katherine Canete
24 could sue “the 306” for slander; and in January 2016, seeking advice in Plaintiffs’ voting rights
25

1 lawsuit, *Belmont v. Kelly*.⁵ *Id.*, Exs. Q, R. In reference to *Belmont*, Defendant Dodge then told
2 Mr. Rowland he was “asking the court to remove Mr. Galanda from the Tribal Court bar.” *Id.*
3 Defendant Dodge would forgo asking Judge Alexander to disbar Plaintiffs’ counsel, in favor of
4 having holdover council Defendants legislate Galanda Broadman’s disbarment. *See id.*,
5 Attachment to Ex. J.

6
7 By October 2016, Mr. Rowland issued an *ex parte* TRO against the Northwest Intertribal
8 Court System (“NICS”) in a lawsuit filed by holdover council Defendants in the name of the
9 Tribe, which essentially extinguished the Nooksack Tribal Court of Appeals. Black Horse Decl.,
10 Ex. U. That lawsuit concerned, in large part, the Appeals Court’s restoration of Galanda
11 Broadman’s right to practice law at Nooksack. *See id.* Not only had Mr. Rowland provided
12 Defendant Dodge counsel on that topic dating back to January 2015, but he had also eventually
13 reviewed “the resolutions pertaining to Galanda’s disbarment” on an extra-record basis. *Id.*, Ex.
14 V. Meanwhile, Mr. Rowland, like Defendant Dodge, would never convene any of Plaintiffs’
15 cases, including Plaintiff Rabang’s lawsuit to enjoin her disenrollment. *Id.*, Exs. W, X.

16
17 On October 18, 2016, Mr. Rowland read DOI’s first decision on Turtle Talk, expressing to
18 a colleague: “I can’t believe Chairman Kelly hasn’t called the election as required.” *Id.*, Ex. Y.

19
20 On December 14, 2016, recognizing DOI’s second decision that refused to recognize post-
21 March 24, 2016, decisions by the Tribal Court, Mr. Rowland quipped: “the BIA is wrong about
22 my hire. I was NOT hired by the Council, I was hired by the CEO [Defendant Canete], whose
23 authority has nothing to do with the number of Council members and their tenure.” *Id.*, Ex. Z
24 (emphasis in original). But like Defendant Dodge, Mr. Rowland had read DOI’s determinations,
25 and knew full well he, too, lacked authority. And like Defendant Dodge, Mr. Rowland should

⁵ Since bringing him on at Nooksack, Defendant Dodge has also called Mr. Rowland for personal bankruptcy advice, and to defend him from this RICO action. Black Horse Decl., Exs. S, T.

1 have never accepted his purported appointment to the Nooksack bench in the first place, on the
2 appearance of fairness grounds alone. *See State v. Romano*, 34 Wash. App. 567, 567-70 (1983).

3 4. *Defendant Dodge Relies On A Draft Tribal Court Assessment That Was Never*
4 *Finalized And Is “Dead,” According To DOI.*

5 As recent as last Friday, Defendant Dodge continues to place great emphasis on an
6 assessment of the Nooksack Tribal Court that was “completed” as of April 4, 2017. Dkt. #118 at
7 6 (citing Dkt. #67-2). He claims that the assessment helps establish that “the Nooksack Tribal
8 Court is fully functional.” *Id.* Defendant Dodge is, once again, not being forthright.

9 As it turns out, that assessment was never finalized; it still exists in draft. *Id.* It was never
10 even presented to the Nooksack Tribe, as required, perhaps because the Tribal Council lacks
11 quorum. *See Black Horse Decl.*, Ex. AA. According to the BIA on June 21, 2017: “The
12 government will not be presenting the tribal court assessment to Nooksack. So, yes **it is dead**
13 **forever.**”⁶ *Id.*, Ex. BB (emphasis added).

14 More importantly, it appears that in February 2017, the BIA consultant Karen Gottlieb
15 spoke with Defendant Dodge about the assessment, **and DOI’s determinations.** *Id.*, Ex. CC. As
16 the consultant explains: “When I talked to the judge on Monday [January 30, 2017] he told me
17 they were still having serious political problems, but I mentioned very little of all that in the
18 report - just a sentence or two here and there about the disenrollment fall-out **and nothing about**
19 **the BIA letters re: elections etc.**” *Id.* (emphasis added). Indeed, everyone involved at
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⁶ So, too, is the Nooksack rule of law at Nooksack, on Defendant Dodge’s watch. *Black Horse Decl.*, Ex. DD at 1 (NICS on August 15, 2016: “at Nooksack the rule of law is dead.”); *see also id.*, Ex. EE at 1 (NICS on September 21, 2016: “the orders of this [Appeals] Court have been unlawfully ignored and the rule of law on the reservation . . . has completely broken down.”).

1 Nooksack since October of 2016 knew about DOI's three determinations, including Mr. Rowland,
2 Ms. Gottlieb, and Defendant Dodge.⁷

3 4 5 **III. ARGUMENT**

6 The Court must deny Defendant Dodge's motion for summary judgment because issues of
7 material fact exist regarding (1) judicial immunity; (2) Defendant Dodge's scheme to defraud
8 regarding the mail and wire fraud predicate acts; and (3) Defendant Dodge's intent to defraud
9 regarding the mail and wire fraud predicate acts. These genuine issues of material fact preclude
10 summary judgment. Fed. R. Civ. P. 56(a).

11 **A. Issues Of Material Fact Preclude Summary Judgment On Judicial Immunity.**

12 At no point has Defendant Dodge unequivocally sworn that he did not know (1) that
13 holdover council Defendants' appointment of him as "Chief Judge" was illegal; or (2) of the three
14 DOI decisions at or around the time they were each issued. Dkt. #67 ¶¶40, 41, 42, 46. Rather,
15 Defendant Dodge intentionally avoids this point altogether by noting, for example, that the DOI
16 letters were not addressed to him. *Id.* ¶¶40, 42. The closest Defendant Dodge comes to opining
17 on his knowledge of the letters is this vague and noncommittal statement: "[w]hen I eventually
18 learned of and read the letters between DOI and Chairman Kelly, I assumed that they related to
19 actions taken by the Tribal Council with respect to enrollment, and did not apply to me or this
20 Tribal Court."⁸ *Id.* ¶46. Defendant Dodge then provided only evasive and ambiguous answers to
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25 ⁷ Everyone involved also reads Turtle Talk. Defendant Dodge's claim that he doesn't is untrue. *See* Black Horse Decl., Ex. T (Mr. Rowland: "Yesterday Ray Dodge called to say that the Dept. of Interior send [sic] out auditor types to review the court system . . . [Ms. Gottlieb] is very aware of Turtle Talk and all the issues raging around the Nooksack 306 . . ."); *see also id.*, Ex. Y.

⁸ Defendant Dodge's statement here is curious considering that DOI's third decision specifically addresses and invalidates his eviction orders against Plaintiff Rabang. Dkt. #74-17.

1 discovery requests regarding his knowledge of DOI’s decisions,⁹ stating he was only provided a
 2 copy after this litigation had commenced.¹⁰ Dkt. #96-3 at 3, 28. Newly discovered¹¹ evidence
 3 demonstrates, however, that Defendant Dodge had knowledge of DOI’s determinations.¹² That
 4 evidence demonstrated that Defendant Dodge has lied before this Court.

5
 6 First, Ms. Rabang and her spokesperson, Mr. Adams, personally informed Defendant
 7 Dodge three separate times of DOI’s decision not to recognize as valid any post-March 24, 2016
 8 Nooksack Tribal Council actions, including his appointment, due to lack of quorum. Black Horse
 9 Decl., Ex. A at 8, 23-24; *id.*, Ex. B at 24. More significantly, and contrary to his representations
 10 to this Court and Plaintiffs, Defendant Dodge has himself admitted that he knew of and had
 11 obtained the October 17, 2016, DOI letter as of early November, 2016.¹³ *Id.*, Ex. A at 24.

12
 13 Second, since at least December of 2015, Defendant Dodge maintained a very close
 14 relationship with the Holdover Defendants as their immediate past in-house attorney and as their
 15 handpicked “Chief Judge.” Put plainly by the United States, “the Kelly Faction . . . filled the
 16 Chief Judge position with the Tribe’s former in-house counsel.” *Nooksack Indian Tribe v. Zinke*,
 17 No. 17-0219 (W.D. Wash. Apr. 3, 2017), Dkt. #26 at 8. This kind of relationship suggests—and
 18 invites a jury question—as to whether the Holdover Defendants and Defendant Dodge informed

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 20 ⁹ This is exactly the type of misleading testimony prohibited by *Washington State Physicians Insurance Exchange*
 21 *and Ass’n v. Fisons*. 122 Wash. 2d 299 (1993); *see also Appling v. State Farm Mut. Auto. Ins. Co.*, 340 F.3d 769,
 22 786 (9th Cir. 2003) (quoting *Fisons*, 122 Wash. 2d at 344-45).

21
 22 ¹⁰ A judicial officer acts in clear absence of jurisdiction where he knows he lacks jurisdiction. *Rankin v. Howard*,
 23 633 F.2d 844, 849 (9th Cir. 1980). Defendant Dodge clearly knew about the DOI decisions. Black Horse Decl., Ex.
 24 B at 8, 23-24. Defendant Dodge’s claim that he did not “receive” the DOI decisions until after this litigation had
 25 commenced therefore fail.

23
 24 ¹¹ Plaintiffs also incorporate by reference the previously submitted evidence on this point. Dkt. ##73-1; 73-2; 73-3;
 25 73-4; 73-5; 74-42; 74-43; 74-44; 74-45; 74-46; 74-47; 74-48; 74-49.

24
 25 ¹² Defendant Dodge cannot hide behind the guise of an inability to recall to demonstrate that there is an absence of
 genuine issue of fact. Just as a plaintiff is not able to create an issue of material fact through sham affidavits and an
 inability to recall facts, Defendant Dodge is not able to claim an absence of a material fact by claiming to not recall
 facts. *See Yeager v. Bowlin*, 693 F.3d 1076 (9th Cir. 2012) (holding plaintiff could not respond approximately 185
 times with “I don’t recall” during a deposition, but then conveniently remember material facts in his affidavit in
 opposition to motion for summary judgment).

¹³ *See also* Fed. R. Civ. P. 26(g)(3).

1 each other, and discussed, the Roberts Decisions as they were issued.

2 Third, the evidence shows that Defendant Dodge knew of the DOI's first decision as early
3 as October 18, 2016. Dkt. #74-42. He can no longer deny knowing of that decision by no later
4 than November 9, 2016. Black Horse Decl., Ex. B at 24. He had reason to know that the
5 Holdover Defendants lacked legitimacy dating as far back as the day that became true, March 24,
6 2016. Dkt. ## 73-1; 73-2; 73-3; 73-4.

7 Fourth, the evidence quite clearly indicates that Defendant Dodge (and all of his
8 colleagues) read and continues to read the content posted on Turtle Talk, where each of the three
9 DOI decisions were published shortly after they were issued. Dkt. ## 74-43; 74-44; 4-45; 74-99;
10 Black Horse Decl., Exs. T, Y Conspicuously, Defendant Dodge does not swear that he did not
11 see or read any of the three DOI determinations on Turtle Talk. Dkt. #67 at ¶¶39-42, 45-46.
12

13 At a minimum, this evidence would allow a reasonable fact-finder to conclude that
14 Defendant Dodge was aware of the invalidity of his appointment and the three DOI decisions,
15 despite his ambiguous representations to the contrary.
16

17 **C. Issues Of Material Fact Preclude Summary Judgment On The Scheme To Defraud.**

18 Defendant Dodge represents to the Court that he “has never involved himself in an
19 enrollment decision made by the Tribal Council.” Dkt. #66 at 19. This is contrary to the
20 evidence—Defendant Dodge has been involved in decisions regarding Plaintiffs’ membership
21 status and collateral issues since the inception of the scheme to defraud. Dkt. ##74-2–74-4; 74-6–
22 74-8; 74-12–74-15; 74-19–74-26; 74-27–74-28; 74-34; 74-38; 74-40–74-41; 74-44–74-46; 74-
23 54–74-57; Black Horse Decl., Exs. B, C, J, L-U.
24

25 Defendant Dodge, together with the other RICO Defendants, schemed to deprive Plaintiffs
of money and property in at least four material ways. First, Defendant Dodge schemed to have

1 Plaintiffs’ counsel disbarred or not allowed to practice in the Nooksack Tribal Court, so Plaintiffs
2 could be deprived of money and property without legal recourse in a Tribal Court he and the
3 Holdover Defendants controlled. *See* Black Horse Decl., Exs. B, L, O; Dkt. ##74-6; 74-7; 74-9;
4 74-13; 74-15; 74-23; 74-24; 74-27; 74-28; 74-31; 74-38. Defendant Dodge developed this plan to
5 disbar Plaintiffs’ counsel at least as of January 2016, when he informed his old friend Mr.
6 Rowland of his intent to do so. Black Horse Decl., Ex. Q at 2.

8 Second, Defendant Dodge schemed with the holdover council Defendants to fire Chief
9 Judge Alexander and then appoint him as “Chief Judge,” even though he knew they lacked the
10 authority to do so after March 24, 2016. Black Horse Decl., Exs. J, K; Dkt. #74-18. He knew
11 exactly why she was fired because he was involved in her firing. *Id.* Defendant Dodge then
12 handpicked Mr. Rowland to facilitate Defendants’ scheme to shut Plaintiffs and their counsel out
13 of Tribal Court. *Id.*, Exs. L, O, P. In fact, before Mr. Rowland ruled in favor of holdover council
14 Defendants to enjoin the Nooksack Tribal Court of Appeals from operating, Defendant Dodge
15 sent Mr. Rowland the “decision that got Susan Alexander fired”—what can only be seen as
16 encouragement that Mr. Rowland avoid also ruling against holdover council Defendants, *or else*.
17 *Id.*, Ex. J at 1. Third, after holdover council Defendants fraudulently appointed Defendant Dodge
18 to the Nooksack bench, he then proceeded to overthrow the Tribal Court and affirmatively
19 misrepresent himself as “Chief Judge,” even though his appointment was invalid under the
20 Nooksack Constitution based on the Council’s lack of quorum and each of DOI’s three decisions.
21 Dkt. #67 at ¶¶5, 12-33; Dkt. ##74-5; 74-16; 74-17; Black Horse Decl., Exs. J, O, P. Fourth,
22 Defendant Dodge, fraudulently misrepresenting himself as “Chief Judge,” then proceeded to issue
23 invalid and unlawful “Orders” that deprived Plaintiffs of money and property. Dkt. #67 at ¶¶5,
24 12-33; Dkt. #74-54. He continues to fraudulently play judge today. Dkt. #67 ¶5.

1 Again, it is no coincidence that not long after Defendant Dodge's arrival at Nooksack,
2 beginning in December of 2015: (1) the Tribal Council election was cancelled; (2) Plaintiffs'
3 counsel was disbarred from Tribal Court; (3) the Chief Judge was fired and replaced by him and
4 his old friend, causing the rule of law to completely break down; and in turn, (4) Plaintiffs were
5 evicted from their homes, deprived of monetary investments in those homes, and denied benefits
6 of monetary value. Plaintiffs have produced evidence showing that Defendant Dodge was crucial
7 in laying the foundation for the RICO Defendants' scheme to defraud Plaintiffs, and once he
8 unlawfully ascended to the Nooksack bench, was instrumental in carrying out that scheme. *See*
9 *Zinke*, No. 17-0219, Dkt. #26 at 8 ("the Nooksack Tribal Court began refusing to act on
10 complaints challenging the legality of the Kelly Faction's actions."). In fact, Defendant Dodge
11 helped kill the entire Nooksack Judiciary, simply in order to defraud Plaintiffs. *See* Black Horse
12 Decl., Ex. DD at 1 ("at Nooksack the rule of law is dead."); *see also id.*, Ex. EE at 1.

13
14
15 Drawing all inferences in Plaintiffs' favor, a rationale fact-finder will easily determine
16 from this evidence that Defendant Dodge both devised and participated in a scheme to defraud
17 Plaintiffs of money and property.

18 **C. Issues Of Material Fact Preclude Summary Judgment On Specific Intent To**
19 **Defraud.**

20 Defendant Dodge's specific intent to defraud Plaintiffs is obvious through his conduct as
21 both Senior Nooksack Tribal Attorney and Tribal Court "Chief Judge" for holdover council
22 Defendants, as well as through circumstantial evidence and evidence regarding the scheme to
23 defraud itself. First, Defendant Dodge was integral in laying the groundwork for the cancellation
24 of Tribal elections so holdover council Defendants could maintain power in order to carry out the
25 scheme to defraud Plaintiffs. Dkt. ##74-2-74-4, 74-55. Second, Defendant Dodge acted to

1 disbar Plaintiffs' counsel and refused to admit later-retained counsel to practice before the Tribal
 2 Court. Dkt. ##74-6; 74-7; 74-9; 74-13; 74-15; 74-23; 74-27; 74-28; 74-31; 74-38; Black Horse
 3 Decl., Exs. D-I. Third, Defendant Dodge orchestrated the firing of Chief Judge Alexander, who
 4 continually ruled against him and holdover council Defendants and in favor of Plaintiffs and his
 5 opposing counsel. Dkt. #74-18; Black Horse Decl., Exs. J, K. Fourth, Defendant Dodge
 6 fraudulently ascended to, and continues to misrepresent himself as Chief Judge, despite the
 7 invalidity of his appointment. Dkt. # 67 at ¶¶5, 12-33; Dkt. ##74-5; 74-16; 74-17. Fifth, once he
 8 had control of the Tribal Court, Defendant Dodge appointed his friend, Mr. Rowland, to act as a
 9 pro tem judge, who immediately ruled in favor of holdover council Defendants and effectively
 10 ended the Tribal Court of Appeals' operations. Black Horse Decl., Exs. L, O, P, J. Sixth, while
 11 Defendant Dodge misrepresents himself as Chief Judge, he continues to carry out the scheme to
 12 defraud by repeatedly issuing invalid and unlawful orders, undeterred by DOI's decisions. *See*
 13 Dkt. #67 at ¶¶5, 12-33; Dkt. ##74-5; 74-16; 74-17; Dkt. #67 at ¶5.

14 Drawing all inferences in Plaintiffs' favor, a reasonable jury will easily find from this
 15 evidence that Defendant Dodge possessed the specific intent to defraud Plaintiffs.

18 V. CONCLUSION

19 Defendant Dodge was advised, over and over again—on March 24, 2016; April 8, 2016;
 20 October 11, 2016; October 17, 2016; October 18, 2016; November 9, 2016; November 16, 2016;
 21 December 14, 2016; and December 23, 2016—that he lacked authority. Black Horse Decl., Exs.
 22 B at 8, 23-24; *id.*, Ex. C at 5; Dkt. ##73-1–73-4.; Dkt. ##74-40; 74-41; 74-16; 74-43; 74-49; 74-
 23 17.¹⁴

24 Because questions of material fact as to his knowledge abound at this early stage,
 25

¹⁴ He was told this again on August 25, 2017, when DOI entered into an MOA with Defendant Kelly and affirmed each of its determinations in 2016. Dkt. #121-1, ¶B.

1 Defendant Dodge’s summary judgment motion must be DENIED. Defendant Dodge cannot hide
2 behind judicial immunity. He is not a legitimate judge. He lacks authority. He knows it, and has
3 known it since the day he purportedly took the bench at Nooksack. The evidence of Defendant
4 Dodge’s RICO violations that Plaintiffs have adduced thus far—and there will be much more as
5 discovery progresses¹⁵—must be allowed to go to a jury.
6

7 DATED this 11th day of October, 2017.

8 GALANDA BROADMAN PLLC

9 /s/ Gabriel S. Galanda

10 /s/ Anthony S. Broadman

11 /s/ Ryan D. Dreveskracht

12 /s/ Bree R. Black Horse

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¹⁵ Notwithstanding this Response, Plaintiffs ask this Court to rule on the pending discovery motions and further authorize full discovery as to Defendant Dodge with a view towards trial against him.