

THREE AFFILIATED TRIBES

IN DISTRICT COURT

FORT BERTHOLD RESERVATION

NEW TOWN, NORTH DAKOTA

Carol Good Bear, Terrance Fredericks, Todd Hall, Patti Jo Hall, Kelly Hosie, and Edward S. "Tyke" Danks,

Plaintiffs,

vs.

Mark N. Fox, as Three Affiliated Tribes' Tribal Chairman, Cory Spotted Bear, as Three Affiliated Tribes' Vice-Chairman, Fred Fox, as Three Affiliated Tribes' Executive Secretary, Mervin Packineau, as Three Affiliated Tribes' Treasurer, Robert White, as Three Affiliated Tribes' Councilman, Sherry Turner-Lone Fight, as Three Affiliated Tribes' Councilwoman, Monica Mayer, as Three Affiliated Tribes' Councilwoman, and The Three Affiliated Tribes' Tribal Business Council,

Defendants.

Case No. CV-2023-0469

COMPLAINT

[¶1] Plaintiffs Carol Good Bear ("Good Bear"), Terrance Fredericks ("Fredericks"), Todd Hall ("T. Hall"), Patti Jo Hall ("P. Hall"), Kelly Hosie ("Hosie"), and Edward S. "Tyke" Danks ("Danks"), by and through their counsel, for their Complaint state and will show as follows:

I. PARTIES

[¶2] Plaintiff Good Bear is a person of Nueta/Mandan and Gros Ventre/Hidatsa descent, is an enrolled member of the Three Affiliated Tribes, residing in New Town, North Dakota 58763.

[¶3] Plaintiff Fredericks is a person of Nueta/Mandan and Gros Ventre/Hidatsa descent, is an enrolled member of the Three Affiliated Tribes, residing in Halliday, North Dakota 58636.

[¶4] Plaintiff T. Hall is a person of Gros Ventre/Hidatsa descent, an enrolled member of the Three Affiliated Tribes, a citizen of the United States, and a beneficiary of the Fort Laramie Treaty of 1851, residing in Bismarck, ND 58504.

[¶5] Plaintiff P. Hall is a person of Nueta/Mandan descent, an enrolled member of the Three Affiliated Tribes, a citizen of the United States, and a beneficiary of the Fort Laramie Treaty of 1851, residing in Bismarck, ND 58504.

[¶6] Plaintiff Hosie is a person of Nueta/Mandan, Gros Ventre/Hidatsa, and Arikara descent, is an enrolled member of the Three Affiliated Tribes, residing in New Town, North Dakota 58763.

[¶7] Plaintiff Danks is a person of Gros Ventre/Hidatsa descent, is an enrolled member of the Three Affiliated Tribes and resides on the Fort Berthold Indian Reservation.

[¶8] Defendant Mark N. Fox is an enrolled member of the Three Affiliated Tribes and is the Chairman of Three Affiliated Tribes Tribal Business Council (“the Council”).

[¶9] Defendant Cory Spotted Bear is an enrolled member of the Three Affiliated Tribes, Councilman for the South Segment, and is the Vice-Chairman of the Council.

[¶10] Defendant Mervin Packineau is an enrolled member of the Three Affiliated Tribes, Councilman for the Northeast Segment, and is the Treasurer of the Council.

[¶11] Defendant Fred Fox is an enrolled member of the Three Affiliated Tribes, Councilman for the East Segment, and is the Executive Secretary of the Council.

[¶12] Defendant Robert White is an enrolled member of the Three Affiliated Tribes and is the Councilman for the Four Bears Segment.

[¶13] Defendant Sherry Turner-Lone Fight is an enrolled member of the Three Affiliated Tribes and is the Councilwoman for the West Segment.

[¶14] Defendant Monica Mayer is an enrolled member of the Three Affiliated Tribes and is the Councilwoman for the North Segment.

II. JURISDICTION AND VENUE

[¶15] This Court has subject matter jurisdiction over this matter by virtue of Title I, Sections 2.1, 2.2, 3.1, 3.2, and 3.3 of the Fort Berthold Code of Law.

[¶16] This Court has personal jurisdiction over the parties by virtue of Title I, Sections 2.1, 2.2, 3.1, 3.2, and 3.3 of the Fort Berthold Code of Law.

[¶17] This Court has jurisdiction over the members and officers of the Council by virtue of exceptions to the doctrine of Sovereign Immunity, namely an exception providing authority for suits requesting injunctive relief against officials acting outside the scope of their authority. *See, e.g., Ex parte Young*, 209 U.S. 123 (1908); *Vann v. Kempthorne*, 534 F.3d 741, 750 (D.C. Cir. 2008) (under *Ex parte Young*, when “[f]aced with allegations of ongoing constitutional and treaty violations, and a prospective request for injunctive relief, officers of the [tribe] cannot seek shelter in the tribe’s sovereign immunity.”); *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 796 (2014) (“[T]ribal immunity does not bar such a suit for injunctive relief against individuals, including tribal officers, responsible for unlawful conduct.”). Also, Article VI, Section 3(b) of the Constitution of the Three Affiliated Tribes provides this Court authority to adjudicate Tribal violations of the Indian Civil Rights Act (“ICRA”), specifically actions seeking injunctive relief against the Council.

[¶18] Venue is proper in this Court because the events and actions/inactions arose within Three Affiliated Tribes, and it is where the Council resides.

III. FACTUAL BACKGROUND

A. Constitutional and Organizational Framework of The Three Affiliated Tribes

[¶19] The Three Affiliated Tribes of Fort Berthold (“the Tribe”) is a federally recognized Indian Tribe organized under the Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation (“Tribal Constitution” or “Constitution,” and “Tribal Bylaws” or “Bylaws,” respectively), which were ratified by a vote of Tribal members on May 15, 1936.

[¶20] The boundaries of the Fort Berthold Indian Reservation were initially established by the Fort Laramie (Horse Creek) Treaty of 1851 (“the Treaty”), a document to which the Mandan, Hidatsa, and Arikara tribes are parties.

[¶21] Pursuant to Section 17 of the Indian Reorganization Act, the Tribe petitioned the Secretary of Interior (“the Secretary”) for a Charter of Incorporation. The Corporate Charter of the Three Affiliated Tribes of the Fort Berthold Reservation (“Tribal Charter” or “Charter”) was issued by the Secretary April 1, 1937, and duly ratified by the Tribe in a referendum April 24, 1937.

[¶22] The Constitution provides the consent of the Tribe to suits for violations of ICRA. Specifically, Article VI, Section 3(b) provides:

The people of the Three Affiliated Tribes, in order to achieve a responsible and wise administration of this sovereignty delegated by this Constitution to the [Council], hereby specifically grant to the Tribal Court the authority to enforce the provisions of the Indian Civil Rights Act, 25 U.S.C. 1301, et seq., including the award of injunctive relief only against the [Council] if it determines through an adjudication that the [Council] has in a specific instance violated the Act.

[¶23] ICRA, 25 U.S.C. § 1301 provides that in exercising powers of self-government, no Indian tribe shall deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

[¶24] Under Article I, Section 4 of the Bylaws, before installation to the Council, elected members are required to subscribe to the oath of office as follows: “I do solemnly swear that I will support

and defend . . . the Constitution and Bylaws of the [Three Affiliated Tribes] . . . and will faithfully and impartially discharge the duties of councilman to the best of my ability.”

[¶25] Article VI, Section 5(b) of the Constitution states that the Council may establish a Tribal Business Council fund by “accepting grants or donations from any person, state, or the United States, or by income from the Tribal enterprises, or by levying assessments . . .”

[¶26] The Constitution also enumerates powers and duties of the Council. Article VI, Section 3 grants the Council “all necessary sovereign authority – legislative and judicial – for the purpose of exercising the jurisdiction granted by the people in Article I of this Constitution.”

[¶27] Article VI, Section 5 states that the Council shall have the powers enumerated therein, but that the exercise of those powers shall be subject to a popular referendum. Article VI, Section 5(c) of the Constitution provides that the Council has the following responsibilities:

To administer any funds or property within the exclusive control of the Tribes to make expenditures from available Tribal funds for public purposes of the Tribes, including salaries or other remuneration of Tribal officials or employees. Such salaries or remuneration shall be paid only for services actually rendered. All expenditures from the Tribal Business Council fund shall be by resolution duly passed by the council to such effect, and the amounts so paid shall be matters of public record at all times.

(Emphasis added).

[¶28] Article VIII of the Constitution reserves the right of Tribal members to demand a referendum “on any proposed or enacted ordinance or resolution of the [Council].”

[¶29] Article I of the Bylaws provides additional duties applicable to particular officers of the Council.

[¶30] Article I, Section 2 of the Bylaws imposes upon the Secretary the duty to “keep all records, minutes of meetings, and an accurate roll of members by communities.” The Secretary shall also

“receive all petitions, applications, and other papers, and prepare them for the action of the council.”

[¶31] Article I, Section 3 of the Bylaws enumerates the duties of the Treasurer of the Council as follows:

The Treasurer of the Tribal Business Council shall accept, receipt for, keep and safeguard all funds in the custody of the Council, whether they be Tribal funds or special funds for which the council is acting as trustee or custodian. He shall deposit all such funds in a bank or elsewhere as directed by the council and shall make and keep a faithful record of such funds, and shall report on all receipts and expenditures and the amount and nature of all funds in his possession or custody to the council at regular meetings and at such other times as requested by the council, his reports to be in writing and matters of record. He shall not expend or otherwise disburse any funds in his possession or in the possession or custody of the Tribal Business Council except when he is authorized to do so by resolution duly passed by the council.

(Emphasis added). This section also provides that “[t]he books and records of the Treasurer shall be audited at least once each year by a competent auditor employed by the council. The Treasurer shall be required to be under a surety bond satisfactory to the council and to the Commissioner of Indian Affairs.” (Emphasis added).

[¶32] In addition to the Constitution and By-laws, the Council is also governed by the Charter, Section 9 of which explicitly provides “The officers of the Tribe shall maintain accurate and complete public accounts of the financial affairs of the Tribe, which shall clearly show all credits, debts, pledges, and assignments . . .” (Emphasis added).

[¶33] Additionally, Article VI of the Treaty provides “The parties to the second part of this treaty have selected principals or head-chiefs for their respective nations, through whom all national business will hereafter be conducted, do hereby bind themselves to sustain said chiefs and their successors during good behavior.”

B. The Council and its Historical Financial Practices

[¶34] Mark Fox was first elected Chairman of the Council in 2014 and remains Chairman at this time.

[¶35] Cory Spotted Bear was appointed as Vice-Chairman in 2022 and remains Vice-Chairman at this time.

[¶36] Fred Fox was appointed as Executive Secretary of the Council (“Secretary”) in 2016 and remains Secretary at this time.

[¶37] Mervin Packineau was appointed as Treasurer of the Council in 2009 and remains Treasurer at this time.

[¶38] Robert White was elected as the Four Bears Segment’s Councilman in 2022 and remains a Councilman at this time.

[¶39] Sherry Turner-Lone Fight was elected as the West Segment’s Councilwoman in 2020 and remains a Councilwoman at this time.

[¶40] Monica Mayer was elected as the North Segment’s Councilwoman in 2016 and remains a Councilwoman at this time.

[¶41] Austin Gillette (“Gillette”) was an elected member of the Council from 1974 through 1982, and again from 1988 through 2004. Exh. A, Affidavit of Austin Gillette.

[¶42] Gillette served in various roles as an elected member of the Council, first serving as the Councilman for the East Segment from 1974 through 1978, then serving as Chairman of the Council from 1978 through 1982, and again serving as Councilman for the East Segment from 1988 through 2004. *Id.*

[¶43] According to Gillette, despite the Tribe’s lack of a finance department in 1974, the Council’s practice was to ensure that before any expenditures were made from the Tribal Business Council

fund (“the Fund”), a resolution was proposed, discussed, and passed in an open, public meeting of the Council. Gillette affirmed that during his time on the Council, “[a]ll payments made by the [Council] were approved in open meetings of the [Council],” and all information regarding expenditures was made public pursuant to the Constitution and Bylaws. *Id.*

[¶44] Also, Gillette identified that at some point during his term as Chairman, there were concerns raised about handing out the Tribe’s financial information for all to see. Despite those concerns, rather than entirely concealing financial records, the Council continued to discuss receipts and expenditures at its regular meetings and continued to create written reports on those receipts and expenditures for each regular meeting, but simply changed its practice from handing information out to everyone at every meeting to making the information available upon request. *Id.*

[¶45] An interest-bearing note is an obligation that constitutes an expenditure under the Constitution and Bylaws. Former Council members and lenders have always recognized this fact, so all interest-bearing notes were authorized by formal resolution disclosing the amount of the note, the interest on the note, and the term of the note. *See e.g.* Resolution Nos. 00-16-MWJr., 00-324-AG, 01-296-MWJR, 03-139-RP, 08-75-JB, and 10-016-VJB. This Constitutionally mandated process allows Councilmen and Tribal members to participate in the decision-making process and make informed decisions concerning such obligations before the Chairman making such decisions on his or her own through Executive Action.

C. The Council’s Current Financial Practices

[¶46] The Secretary administers a Records Office for the Tribe that maintains a website (“the Records Website”) containing records of minutes from regular and special meetings of the Council and resolutions considered and passed by the Council. *See* <https://www.mhanation.com/tat-records-office>.

[¶47] The Records Website contains records of minutes from Council meetings dating back to 1960, while certain resolutions are available dating back to 1956. Although some minutes and resolutions are missing, a review of the records provides a competent history of the Council's activities concerning budgets, audits, tribal businesses chartered, and expenditures and receipts.

[¶48] Dating back to at least 2009, the minutes of the Council's regular meetings provide no record of Mervin Packineau as Treasurer of the Council ("Treasurer Packineau") providing a written record of the receipts and expenditures, financial statements, or audits of the Tribe or any of the enterprises it has chartered. Also, there is no record of Treasurer Packineau providing a detailed, comprehensive oral report explaining the receipts and expenditures of the Tribe, sharing any audits of the Tribe or any financial statements or audits for any of the Tribe's chartered enterprises.

[¶49] Upon information and belief, Treasurer Packineau has disbursed monies from the Fund for home purchases and other items and services without any resolution duly passed by the Council, and without making the amounts expended for such homes part of any written report or a matter of public record.

[¶50] Upon information and belief, Treasurer Packineau has never reported on all receipts and expenditures at the regular meetings of the Council, and Plaintiffs are unaware of any instance in which he made such a report.

[¶51] Upon information and belief, Treasurer Packineau has failed to create, maintain, and provide to the public reports on all receipts and expenditures of the Council, and Plaintiffs are unaware of any instance in which he has issued such a public report. As outlined below, requests to Treasurer Packineau to provide budgetary information in conformity with the Constitution and Bylaws have been met with no response.

[¶52] The resolutions provided on the Records Website provide record that the Council has chartered approximately 26 for-profit Tribal enterprises that appear to still be operating. A review of the minutes on the Records Website provides no record of Treasurer Packineau providing any financial statements or audits concerning any of those enterprises, and Plaintiffs are unaware of any such statements or audits.

[¶53] 4Bears Casino & Lodge provides financial reports to the Council, but all reports are provided during closed sessions. So, the financial reports, including receipts and expenditures, of 4Bears Casino & Lodge are concealed from the Tribal members. The concealed information includes donations and special interest payments, complimentary items and services (i.e. “comps”), and gifts—all of these transactions are done in secret. The Tribal members have a Constitutional right to know the transactions of 4Bears Casino & Lodge.

[¶54] The resolutions provided on the Records Website additionally provide a record of at least, seventeen (17) non-profit development organizations, corporations, or authorities, created and maintained by the Council from 1985 to present. A review of the minutes on the Records Website provides no record of Treasurer Packineau ever providing any financial statements or audits concerning any of these entities, and Plaintiffs are unaware of any such statements or audits.

[¶55] Upon information and belief, the Tribe possesses a number of financial accounts that the Council utilizes for deposits of receipts and withdrawals for expenditures.

[¶56] At some point, the Council established the *Nuxbaaga Iidaa Uuh Waa Zaah, Salmis waaplsis, Aki numuk aki tawatesh sha geddish* (“the People’s Fund”). The People’s Fund is funded by revenue from the Tribe’s non-renewable oil and gas assets. Upon information and belief, the Council established an account for the People’s Fund with the Bureau of Trust Fund Administration (“BTFA”) entitled Proceeds of Labor Account PL10017014.

[¶57] In 2013, the Council established a department to administer the People's Fund under Resolution No. 13-004-VJB ("the People's Fund Department"). Pursuant to Resolution No. 13-004-VJB, the People's Fund Department was to establish a distribution and eligibility plan. Resolution No. 13-004-VJB identified that at the time of its passage in January 2013, the People's Fund contained over \$100,000,000.00.

[¶58] In 2014, under Resolution No. 14-112-VJB, the Council approved a distribution and eligibility plan put forth by the People's Fund Department. Section 3 of the distribution and eligibility plan recommended "allocating eighty percent (80%) of the Tribe's non-renewable oil and gas resource revenues to The People's Fund and has limited the use of the principal amount of investment except as may be authorized by the Business Council in the future." Upon information and belief, in addition to the BTFA account for the People's Fund, the Council also established a separate account with the BTFA for the remainder of the revenue from the Tribe's non-renewable oil and gas resources, account PL7228700.

[¶59] Resolutions provided on the Records Office Website reveal that the Council has made numerous draw downs on trust funds managed by the BTFA from the Tribe's Economic Recovery Fund, Proceeds of Labor Account PL7228700 and Proceeds of Labor Account PL10017014. Said withdrawals total \$1,579,079,002.44 from 2010 through 2022. Throughout that duration, to Plaintiffs' knowledge, Treasurer Packineau has never provided a report, written or verbal, on the status or balance of the People's Fund, despite the fact that he receives a monthly Tribal Trust Statement for the People's Fund from the BTFA.

[¶60] A comparison of the Tribe's budget expenditures from 2010 through 2022 against the monies the Council has drawn down from the trust accounts and additional revenue from oil and

gas taxes provide reason for concern about the Council's spending, the financial state of the Tribe, and the state of the People's Fund.

[¶61] The Council's budget resolutions provided on the Records Office Website show that from 2010 through 2022, the Council purportedly expended \$4,827,027,000.00 from the General Fund. During this same time, the Tribe's known receipts amounted to the following: \$2,307,133,165.56 in oil and gas tax revenue and \$1,579,079,002.44 in drawdowns from the People's Fund, Economic Recovery Fund, and other BTFA trust accounts for total receivables of \$3,886,212,168.00. The discrepancy between the amounts expended and receivables disclosed to the public appears to be a deficit of \$940,814,832.00.

[¶62] In 2020, the Council passed Resolution No. 20-170-FWF declaring the Tribe's "intention to reimburse expenditures from the proceeds of tax-exempt obligations" in an amount "not to exceed \$150,000,000.00". This resolution suggests the Council has pre-emptively authorized and obligated the Tribe to take on loans of up to \$150,000,000 to finance "all or a portion of the MHA Nation's capital improvement and infrastructure costs for FY 2020 and 2021 with tax exempt obligations". However, a search of the resolutions filed with Secretary's Record Office does not reveal any resolutions actually authorizing tax exempt obligations to the Tribe. Any loans committing the Tribe to pay interest constitute an expenditure required to be authorized by resolution; failure to pass such a resolution is violation of the Tribe's Constitution. Tribal members have a Constitutional right to know all the terms of all loans and obligations binding the Tribe and the right to be heard on the same before the Chairman and the Council obligating the Tribe to such loans.

[¶63] The \$150,000,000 tax exempt obligations, which the Tribe appears to have incurred, fall far short of the \$940,814,832 deficit that the Tribe appears to have incurred. Upon information and

belief, the Council has committed the Tribe to other obligations far exceeding the \$150,000,000 in order to cover the Council's deficit spending. There are no resolutions on record supporting a \$150,000,000 obligation or any amounts exceeding \$150,000,000.

[¶64] Treasurer Packineau has failed to ensure annual audits of the books and records of the Treasurer are completed. Requests to the Council to make public any audits that have been completed have been met with silence.

[¶65] Since 2010, the last audit known by Plaintiffs to have been conducted of the books and records of the Treasurer was completed in 2021 and was for the fiscal year that ended September 30, 2018 ("the 2018 Audit"). On July 26, 2023, MHA Nation published a news article that confirmed audits have not been completed for 2020, 2021, and 2022.

[¶66] Despite multiple requests by members of the Tribe, the Council refused to reveal the results and conclusions of the 2018 Audit.

[¶67] A summary of the 2018 Audit was eventually leaked to an unknown Facebook page. The leak of the 2018 Audit summary found on Facebook by Plaintiffs revealed the auditing firm, Moss Adams, issued two adverse opinions and four disclaimed opinions with respect to the books and records of the Treasurer. Exh. B. Plaintiffs do not possess, or have access to, the full 2018 Audit, but it appears to be a summary of the full audit.

[¶68] Moss Adams' adverse opinions regarding the 2018 Audit are indicative of improper and/or negligent activity in the bookkeeping of the Council.

[¶69] The leak of the 2018 Audit also revealed that Moss Adams included a disclaimer regarding the Tribe's "major governmental funds." The basis for that disclaimer stated as follows: "Due to the inadequacy of accounting records to support financial balances for the year ended September 30, 2018, we were unable to adequately test receivables, equity interest in discrete component

units, capital assets, and all liabilities, net position, fund balances, transfers, revenues, and expenses.” *Id.*, at p. 2. The disclaimer also stated: “Because of the significance of the matter described in the [basis], we have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on the financial statements of the governmental activities and each major governmental fund of the Tribes.” *Id.*

[¶70] Moss Adams’ 2018 Audit adverse opinions were issued regarding the Tribe’s Major Enterprise Fund and Aggregate Discretely Presented Component Units. The basis for the adverse opinion stated as follows:

The financial statements do not include financial data for the Tribes’ legally separate blended and discrete component units . . . Because of this departure from accounting principles generally accepted in the United States of America, the assets, liabilities, net position, revenues, and expenses of 4 Bears Casino & Lodge, blended component unit, which would have been reported as business-type activities and major proprietary fund, would have increased by approximately \$103,474,000, \$42,606,000, \$60,869,000, \$54,981,000, and \$60,521,000, respectively.

Id. (Emphasis added).

[¶71] Upon information and belief, the Council has not conducted or submitted a federal program audit for 2020, 2021, or 2022, and Plaintiffs are unaware of any such audit for these years. Regardless, if there have been any audits, then they are not public record for the Tribe’s members to review and consider.

[¶72] Upon information and belief, the Council’s failure to conduct and submit federal program audits has led to the Bureau of Indian Affairs’ Contract Office issuing two warning letters to the Council for not submitting the 2019 audit (which was just submitted in February of this year), one warning letter for not submitting the 2020 audit, and one warning letter for not submitting the 2021 audit. Any letters should be in the possession of the Council, and have not been made public or

otherwise available to Tribal members. Upon information and belief, failure to submit audits to the BIA results in sanctions against the Tribe involving loss of contract support costs from the BIA.

[¶73] Upon information and belief, there are ongoing improprieties which have been allowed to continue by Treasurer Packineau's failure to conduct annual audits as required by Article I, Section 3 of the Bylaws. According to an Affidavit by FBI Agent Jake O'Connell filed in support of the criminal complaint against Francisco Javier Solis Chacon ("Chacon") for paying kickbacks to the two councilman and two tribal employees that were criminally charged for taking the kickbacks. At the 2017 Reservation Economic Summit, Chacon claimed he had "four of the six" Councilmen on his payroll. Exh. C, Affidavit of Jacob O'Connell in Support of Chacon Complaint, page 6. Three of the six Councilmen that were on the Council in 2017 are no longer on the Council. Therefore, between one and three Councilmen Chacon asserted he had on "his payroll" are still serving on the Council. Upon information and belief, the Chairman and the Council have not taken any action to determine if other Councilmen also took kickbacks from Chacon because nothing has been made public regarding any investigations on this subject matter.

[¶74] Chacon's allegations concerning other councilmen taking kickbacks is supported by other statements he made. For instance, Chacon said that one of the Councilmen he paid kickback to received his payments via check, "but that other TBC members were smarter about concealing their payments and were paid through other means." *Id.* One Councilmen who took kickbacks from Chacon specifically told Chacon that he was going to talk with his employee and tell him he should be paid in cash because taking checks would "get you in trouble." Exh. D, Affidavit of Jacob O'Connell in Support of Phelan and Reeves Complaints, p. 6. During an interview with the FBI, Chacon stated "working on the FBIR saw like being in Mexico, if you knew the right people, you could do whatever you wanted". Exh. C. Chacon was obviously talking about knowing the

Tribe's Councilmen. The same Councilmen that have refused or otherwise failed to conduct audits and provide written records of the receipts and expenditures of the Tribe.

[¶75] Federal Bureau of Investigations ("FBI") Agent Jacob O'Connell also stated in his affidavit that the FBI met with Wipfli CPA's and Consultants ("Wipfli") on September 12, 2018. Wipfli advised the FBI they had been hired by the Tribe to conduct a review of several of the Tribe's programs, including the Four Bears Segment. Wipfli's auditors reported the Four Bears Segment representative was "uncooperative with their audit." Exh. C, p. 10.

[¶76] The FBI subpoenaed bank records and conducted a forensic audit of bank records concerning Chacon's various business dealings with the Tribe and the Segments and found Chacon's businesses were paid over \$17,250,000 from approximately January of 2012 through January of 2020 from the Tribe and the segments. Exh. D, p. 3. The West Segment alone paid Chacon's companies \$7,489,000 from February of 2014 through October of 2019. It is unclear what amounts the Tribe and other segments may have paid to Chacon's companies from 2012 through 2020 in order to account from the remaining \$9,750,000 and how much of this money Chacon may have paid to the other two Councilmen on "his payroll".

[¶77] Audits of all contracts and funds paid to Chacon's companies from the Tribe's finance department and/or all segments are necessary to determine the total amounts paid to Chacon's companies and who else may have received kickbacks from Chacon. The Tribal Council has had at least five years or more to conduct such audits and take action to prosecute others who may have received kickbacks but inexplicably, it has done nothing.

[¶78] As of the date of this complaint, Chacon and the four others involved in his kickback scheme pled guilty to various charges that were filed against them. Judgments have been filed against all

of the defendants and restitution totaling \$1,467,690.00. Upon information and belief, the Tribe has not taken any action whatsoever against any of the five defendants to recover these funds.

[¶79] According to the Tribe's own budgets and resolutions, the Tribal Council has spent well over two billion dollars (\$2,000,000,000.00) on projects on the Fort Berthold Indian Reservation since 2012. Upon information and belief, most of these projects have exceeded the amount authorized by Resolution.

[¶80] Treasurer Packineau and the Council's failure to accurately account for the receipts, expenditures, and assets of the Tribe on a regular basis is a violation of the Constitution, Bylaws, and Charter. These violations create and perpetuate the opportunity for misuse of Tribal assets, both by Council members and other individuals or entities, distrust of Tribal governance, and unnecessary and unhealthy tension between Tribal officials and Tribal members.

[¶81] Upon information and belief, the failure to conduct annual audits of the books and records of the Treasurer as required by Section 3, Article I of the Bylaws has resulted in severe detriment to the Tribe, members of the Tribe, and the overall assets of the Tribe.

[¶82] Chairman Mark Fox and the Tribe's Chief Financial Officer, Whitney Bell, gave an oral and written report on the Tribe's "financial situation" to the Tribe's elders on July 20, 2023 at the MHA Nation Elder's Summer Outreach Event. This inaccurate, misleading, and incomplete report was published in the MHA Times on July 26, 2023. The report underscores the need for the Council to strictly abide by the Constitution and provide financial reports showing all expenditures and receipts of the Tribe and all its entities. For instance, the numbers in the report do not reconcile in the following respects:

- a. The heading on for the General Operating Expenditures of the Tribe are reported to be \$285,374,806 but the expenditures listed under that heading add up to \$298,172,955 for a discrepancy totaling \$12,798,898.
- b. The report states that \$357,318,656 was expended on Special Projects but the expenditures listed under Special Projects total \$357,144,212 for a discrepancy totaling \$174,444.
- c. The report also states Disbursements to Tribal Members totaled \$228,004,362 the line items under disbursements only total \$106,334,300 for a discrepancy totaling \$121,670,062.

[¶83] The report also fails to provide any information concerning the Tribe's debts. The report does not provide any financial information concerning the Section 17 Corporation, the 4Bears Casino & Lodge or the Tribe's many for-profit and non-profit companies. For that reason, the report is inaccurate, misleading, and incomplete. The Tribal membership has a Constitutional right to accurate financial information, and the inaccurate "financial situation" report that was provided to the elders on July 20, 2023 confirms the need for transparency.

[¶84] Upon information and belief, Treasurer Packineau is not secured by a surety bond. This is to the detriment of the members of the Tribe.

[¶85] A review of the Council's regular meeting minutes on the Records Website provides a record of the Council utilizing ratifications at its regular meetings on numerous occasions to approve of executive actions taken during previous Executive Committee meetings. Although the subject matter of the executive actions being ratified varies, many involve expenditures of Tribal funds.

[¶86] The Council does not provide adequate notice of its meetings relative to the subject matter of the meetings before the meetings occur, which is a due process violation of the Tribal

community. The meetings themselves also violate due process because, among other things, the Council has closed session meetings—the Tribal members are given an opportunity to be involved or heard in those discussions. The notices and meetings are inadequate and violate due process.

[¶87] Upon information and belief, when the Council engages in ratifications of executive committee actions relating to expenditures, there is no meaningful, public discussion of the expenditures and no ample opportunity for members of the Tribe to discover the amount and nature of any expenditures or provide meaningful input on such expenditures. The Council’s ratifications are not resolutions and do not comply with the requirements under the Constitution.

[¶88] Additionally, upon information and belief, Chairman Fox began issuing unilateral “Executive Actions” between regular Council meetings that he then has the Chief Executive Officer present for ratification at regular Council meetings. A review of the Council’s regular meeting agendas and the agendas of committee meetings reveals that the “Executive Actions” are generally not listed in specificity and are instead listed categorically as “Executive Actions.”

[¶89] Upon information and belief, because of the lack of information about the “Executive Actions” before the Council’s regular meetings, the subject matter of those “Executive Actions” first raised, if it is even raised at all, at the regular meetings of the Council, again with no prior notice and no opportunity for meaningful, public discussion on the subject matter of the actions before their approval/denial. Also, unilateral “Executive Action” is not supported by the Constitution or Bylaws and blanket ratification of these secretive actions frustrates the resolution process required with regard to expenditures.

[¶90] To that end, on or about July 2, 2020, the Council closed on its first property purchase in Las Vegas for \$12,000,000.00. The Council also paid a Real Property Transfer Tax on the purchase in the amount of \$61,200. The total amount paid for this property was \$12,061,200. Although that

purchase was approved by Resolution No. 20-120-FWF, the financing for said purchase was not authorized or approved by that resolution. Indeed, nearly a week after its purchase and without an authorizing resolution, the Council authorized a loan from Goldman Sachs via ratification of an executive order entitled EA2020-22. Specifically, the Council indicated that Goldman Sachs managed the Tribe's investments and offered the Tribe a loan for the Las Vegas property, which was secured by the Tribe's investments. It is believed, but not known, that the Council leveraged additional Tribal assets originally held with Payden and Rygel for this particular loan via ratification of Executive Order EA2021-01, entitled "Transfer of Investment Income Held by Payden and Rygel to Goldman Sachs to Increase Margin Lending Capacity for Capital and Infrastructure Projects."

[¶91] The nature and extent of any loans, or other debts and obligations, utilized by the Tribal Council remains secret. Also, the specific investments, and the amount of any investments securing any loans, debts, or obligations is unknown to the Tribal members.

[¶92] On or about December 30, 2022, the Council closed on a property purchase in Las Vegas, Nevada for \$92,820,000.00. The Council also paid a Real Property Transfer Tax on the purchase in the amount of \$473,382.00. The total amount paid for this property was \$93,293,382.00. A resolution was never publicly discussed or passed for the purchase of this property nor for the payment of the Real Property Transfer Tax. Further, Treasurer Packineau and the Council failed to make public the amount expended for this property or the source of the monies expended on the property – rather, the expenditure was made public only after several local and regional news agencies reported on it. The Tribe's members still do not know the source of the funds used to purchase the property.

[¶93] On or about April 5, 2023, the Council closed on an additional 1.1-acre parcel of property in Las Vegas for \$10,250,000.00. The Council also paid a Real Property Transfer Tax on the purchase in the amount of \$52,250.00. A resolution was never publicly discussed or passed for the purchase of this property. The total amount paid for this property was \$10,302,250.00. Again, the purchase was made public only after several local and regional news agencies reported on it and the Tribe's members do not know the source of funds used to purchase the property.

[¶94] Given Treasurer Packineau and the Council's willingness to expend large sums of money from Tribal funds, in addition to inundating the Tribe's investments for properties in Las Vegas in contravention of the Constitution, Bylaws, and Charter, it is believed that since 2010, there have been numerous other expenditures made from Tribal funds absent any resolution duly passed by the Council or a public record and accounting of such expenditures. It is also believed that the Council has consistently and continuously leveraged the Tribe's assets in order to make risky purchases such as the Las Vegas properties without appropriate notice to the Tribe's members or due process of law.

[¶95] Given Treasurer Packineau and the Council's willingness to expend large sums of money from Tribal funds for properties located in Las Vegas in contravention of the Constitution and Bylaws, it is believed that since 2010, there have been numerous other expenditures made from the Tribal funds absent any resolution duly passed by the Council or a public record and accounting of such expenditures.

D. Plaintiffs' Requests to the Council and Interest in Communal Property

[¶96] On February 16, 2023, Plaintiffs Good Bear and Fredericks sent written correspondence to Treasurer Packineau, requesting records of receipts, expenditures, and other various financial information dating back to fiscal year 2010 in conformity with the Bylaws and Constitution. Exh.

E. Specifically, Plaintiffs Good Bear and Fredericks requested the following: A detailed monthly report of all monies deposited and withdrawn from the Fund; an annual report detailing the total of all bonuses and royalties received by or otherwise credited to the Tribe from fiscal year 2010 to present; a detailed accounting of federal funding received and expended by the Tribe from fiscal year 2014 to present; and, budgetary information outlining line item explanations of revenues and expenditures to account for the budget doubling from fiscal year 2018 to fiscal year 2022. Treasurer Packineau never responded to those requests.

[¶97] On February 21, 2023, Plaintiffs Good Bear and Fredericks sent additional correspondence addressed to Chairman Fox and Treasurer Packineau requesting financial information about the Tribe's Section 17 Corporation created under the Charter, namely: Annual profit and loss statements for the Tribe's Corporation from 2010 through 2022; Annual balance sheets for the Tribe's Corporation from 2010 through 2022; and, Annual ledgers showing all receipts and expenditures of the Tribe's Corporation from 2010 through 2022. Exh. F. Chairman Fox and Treasurer Packineau never responded to those requests.

[¶98] On February 23, 2023, Plaintiffs Good Bear and Fredericks sent additional correspondence addressed to Chairman Fox, Secretary Fox, and Treasurer Packineau, requesting records of all homes purchased by the Council with monies from the Fund from fiscal year 2010 through present. Exh. G. That correspondence also requested a list of the resolutions authorizing said home purchases. Chairman Fox, Secretary Fox, and Treasurer Packineau never responded to those requests.

[¶99] On February 24, 2023, Plaintiffs Good Bear and Fredericks sent additional correspondence addressed to Chairman Fox and Treasurer Packineau requesting financial information for business organizations chartered by the Council, namely: 1. A list of all non-Section 17 Chartered business

entities and the date of their formation; 2. A report listing all monies the Tribe has invested in such entities from 2000 through 2022; and, 3. A report listing the monies received by the Tribe as a return on investments in those entities from 2000 through 2022. Exh. H. Chairman Fox and Treasurer Packineau never responded to those requests.

[¶100] On February 27, 2023, Plaintiffs Good Bear and Fredericks sent additional correspondence addressed to Chairman Fox and Treasurer Packineau requesting financial information regarding the operation of 4Bears Casino & Lodge, namely: 1. The monies received from and paid to the 4Bears Casino & Lodge from 2010 through 2022; 2. The monies loaned to the 4Bears Casino & Lodge from 2010 through 2022, if any, and the balance due as of January 1, 2023, on any loans; 3. The profit and loss reports for the 4Bears Casino & Lodge from 2010 through 2022; 4. The balance sheet for the 4Bears Casino & Lodge as of December 31, 2023; and, 5. All audits for the 4Bears Casino & Lodge from 2010 through 2022. Exh. I. Chairman Fox and Treasurer Packineau never responded to those requests.

[¶101] On March 8, 2023, Plaintiff Terry Fredericks attended a Tribal Business Council meeting and distributed a letter stating he was there to present the resolutions that he and Carol Good Bear submitted to the Council for its consideration and potential referendum vote. Exh. J. The Council heard Mr. Fredericks in a closed session as its first order of business. During that closed session, Councilman Packineau crumpled up Mr. Fredericks letter and threw it in the garbage. Chairman Fox specifically told Mr. Fredericks that they would have the Tribe's legal department review the resolutions and get back to him. Terry Fredericks has not heard anything from Chairman Mark Fox or Secretary Fred Fox since that closed session meeting.

[¶102] Plaintiffs Good Bear and Fredericks have also attempted to obtain relief, financial transparency, and accountability through the referendum process provided for by Article VIII of

the Constitution. Plaintiffs Good Bear and Fredericks have drafted a number of petitions for distribution to enrolled members of the Tribe for their signatures as required by Article VIII. However, Article VIII's provision requiring signatures of ten percent of qualified voters of "each community" includes individuals not living on the reservation. According to the Tribal Enrollment website, approximately 8,135 voters live off-Reservation while just 3,661 voters live on-Reservation. Plaintiffs Good Bear and Fredericks require a mailing list for qualified voters of the Tribe in order to meet the ten-percent signature requirement especially when it comes to reaching out to off-Reservation voters.

[¶103] The Tribe has more than 11,796 qualified voters, with less than 3,700 of those enrolled living on Fort Berthold. There are more than 8,100 off-Reservation voters who live in every state and Canada, and the only practical method of contact for these qualified voters to consider referendum is via mail. As a result, neglecting to provide Plaintiffs with eligible voter information frustrates the process outlined for referendum in Article VIII and unconstitutionally denies Plaintiffs their right to redress against the Council. It is also a violation of due process rights of all qualified Tribal voters.

[¶104] On May 25, 2023, Plaintiffs Good Bear and Fredericks sent to Secretary Fox a letter requesting voter information so they could comply with the requirements of Article VIII of the Constitution regarding their draft petitions. Plaintiffs Good Bear and Fredericks did not receive a response from Secretary Fox.

[¶105] Plaintiffs have a vested communal interest in the Fund and any property owned by the Tribe because the Tribe has long embraced the communal concept of ownership of tribal property. *See Bordeaux v. Wilkinson, et al.*, 21 ILR 6131, 6132 (Ft. Bert. Tr. Ct. 1993) ("The Plaintiff and the Defendant Officers] have the right to sit at the same table, because they are all enrolled tribal

members. The Defendants have the right to decide whether and how to distribute what is on the table, because that is one of their duties as Council members. But, when they make rules on how to distribute things, they have to follow those rules. When the rules are broken, they can be enforced by anyone sitting at the table.”) (Emphasis added). A number of the Plaintiffs are also trust allottees.

IV. CAUSES OF ACTION

**FIRST CAUSE OF ACTION - VIOLATIONS OF THE CONSTITUTION
(ASSERTED AGAINST DEFENDANTS CHAIRMAN FOX, VICE-CHAIRMAN SPOTTED BEAR,
TREASURER PACKINEAU, SECRETARY FOX, COUNCILMAN WHITE, COUNCILWOMAN TURNER-
LONE FIGHT, & COUNCILWOMAN MAYER)**

[¶106] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶107] Under Article VI, Section 5(c) of the Constitution, Chairman Fox, Vice-Chairman Spotted Bear, Treasurer Packineau, Secretary Fox, Councilman White, Councilwoman Turner-Lone Fight, and Councilwoman Mayer (collectively, “the Council Members”) are prohibited from taking executive action to make expenditures and are afforded a power to make expenditures only through resolutions.

[¶108] Under Article VI, Section 5(c) of the Constitution, the Council Members must ensure that any expenditures or disbursements from Tribal funds were made only pursuant to a resolution duly passed by the Council before the Tribe makes expenditures and disbursements.

[¶109] Under Article VI, Section 5(c) of the Constitution, the Council Members must make any and all amounts paid from Tribal funds matters of public record.

[¶110] Under Article VIII of the Constitution, enrolled members of the Tribe have the right to a referendum upon presenting a petition signed by ten percent of the qualified voters of each community.

[¶111] The Council Members' engagement in and ratification of executive committee actions for expenditures are direct violations of Article VI, Section 5(c) of the Constitution.

[¶112] The Council Members' blanket ratification of any unilateral "Executive Actions" by Chairman Fox are direct violations of Article VI, Section 5(c) of the Constitution.

[¶113] The Council Members' disbursement of approximately \$93,293,382.00 to purchase a property in Las Vegas, Nevada, was made absent any resolution passed by the Council which directly violates Article VI, Section 5(c) of the Constitution.

[¶114] The Council Members' disbursement of approximately \$93,293,382.00 to purchase a property in Las Vegas, Nevada, was made absent any public record of the amount expended for the property, in direct violation of Article VI, Section 5(c) of the Constitution.

[¶115] The Council Members' disbursement of \$10,302,250.00 to purchase an additional property in Las Vegas, Nevada, absent any resolution passed by the Council is in direct violation of Article VI, Section 5(c) of the Constitution.

[¶116] The Council Members' disbursement of \$10,302,250.00 to purchase an additional property in Las Vegas, Nevada, absent any public record of the amount to be expended for the property is in direct violation of Article VI, Section 5(c) of the Constitution.

[¶117] Any additional disbursements from Tribal funds made by the Council Members before the Council passes a resolution to such effect are direct violations of Article VI, Section 5(c) of the Constitution.

[¶118] Any additional disbursements from Tribal funds made by the Council Members without making the amounts expended matters of public record are direct violations of Article VI, Section 5(c) of the Constitution.

[¶119] Secretary Fox's failure to provide Plaintiffs Fredericks and Good Bear with the information required to collect signatures from qualified voters renders Plaintiffs Fredericks and Good Bear's referendum rights under Article VIII meaningless and therefore constitutes a violation of Article VIII. Secretary Fox's failures also disenfranchise all Tribal members from participating in the referendum process.

**SECOND CAUSE OF ACTION - VIOLATIONS OF THE BYLAWS
(ASSERTED AGAINST DEFENDANT TREASURER PACKINEAU)**

[¶120] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶121] Under Article I, Section 3 of the Bylaws, Treasurer Packineau had a duty to make and keep a faithful record of all funds kept by the Council, to report on all receipts and expenditures and the amount and nature of all funds in his possession at regular meetings of the Council, and to make those reports in writing and matters of public record.

[¶122] Under Article I, Section 3 of the Bylaws, Treasurer Packineau had a duty to refrain from disbursing monies from the Fund before a resolution being duly passed by the Council to such effect.

[¶123] Under Article I, Section 3 of the Bylaws, Treasurer Packineau had a duty to ensure that annual audits of Tribal books and records were conducted.

[¶124] Under Article I, Section 3 of the Bylaws, Treasurer Packineau is required to be under a surety bond satisfactory to the Council and to the Commissioner of Indian Affairs.

[¶125] Treasurer Packineau's failure to make and keep a faithful record of all funds kept by the Council is a direct violation of Article I, Section 3 of the Bylaws. Said failure is evidenced by Treasurer Packineau's inability to provide such records to Plaintiffs Good Bear and Fredricks upon reasonable request on February 16, 2023.

[¶126] Treasurer Packineau's failure to report on all receipts and expenditures and the amount and nature of all funds in his possession or custody at regular meetings of the Council, as evidenced by the minutes of the regular meetings of the Council, is a direct violation of Article I, Section 3 of the Bylaws.

[¶127] Treasurer Packineau's failure to make monthly written expenditure and receipt reports on all funds within his possession matters of public record is a direct violation of Article I, Section 3 of the Bylaws. This failure is evidenced by Treasurer Packineau's inability to provide said reports to Plaintiffs Good Bear and Fredericks on reasonable request.

[¶128] Treasurer Packineau's failure to make monthly written reports on receipts from the Tribe's for-profit business organizations matters of public record is a direct violation of Article I, Section 3 of the Bylaws. This failure is evidenced by the creation of the organizations through resolutions passed by the Council, but zero record of any receipts from those organizations being presented at the Council's regular meetings. This failure is additionally evidenced by Treasurer Packineau's inability to provide records of said receipts to Plaintiffs Good Bear and Fredericks on reasonable request.

[¶129] Treasurer Packineau's failure to publicly report, either in writing or verbally, on the expenditure of approximately \$93,293,382.00 on or about December 30, 2022, for a property in Las Vegas, Nevada, is a direct violation of Article I, Section 3 of the Bylaws.

[¶130] Treasurer Packineau's failure to publicly report, either in writing or verbally, on the expenditure of approximately \$10,302,250.00 in or about April of 2023, for an additional property in Las Vegas, Nevada, is a direct violation of Article I, Section 3 of the Bylaws.

[¶131] Treasurer Packineau's failure to publicly report, either in writing or verbally, on the expenditure of unknown, undisclosed amounts for purchases of homes and other properties and services is a direct violation of Article I, Section 3 of the Bylaws.

[¶132] Treasurer Packineau's disbursement of approximately \$93,293,382.00 on or about December 30, 2022, for a property in Las Vegas, Nevada, absent any resolution to authorize the expenditure, is a direct violation of Article I, Section 3 of the Bylaws.

[¶133] Treasurer Packineau's disbursement of approximately \$10,302,250.00 in or about April of 2023, for an additional property in Las Vegas, Nevada, absent any resolution to authorize the expenditure, is a direct violation of Article I, Section 3 of the Bylaws.

[¶134] Treasurer Packineau's disbursement of unknown, undisclosed amounts for purchases of homes and other properties and services on numerous occasions, in the absence of resolutions authorizing said purchases, is a direct violation of Article I, Section 3 of the Bylaws.

[¶135] Treasurer Packineau's disbursement of any additional funds for expenditures in the absence of resolutions authorizing said expenditures is a direct violation of Article I, Section 3 of the Bylaws.

[¶136] Treasurer Packineau's failure to ensure that the books and records are audited annually is a direct violation of Article I, Section 3 of the Bylaws.

[¶137] Treasurer Packineau's failure to ensure that he was secured by a surety bond to the satisfaction of the Council and Commissioner of Indian Affairs is a direct violation of Article I, Section 3 of the Bylaws.

**THIRD CAUSE OF ACTION - VIOLATIONS OF THE CHARTER
(ASSERTED AGAINST DEFENDANTS CHAIRMAN FOX, VICE-CHAIRMAN SPOTTED BEAR,
SECRETARY FOX, AND TREASURER PACKINEAU)**

[¶138] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶139] Under Section 9 of the Charter, Chairman Fox, Vice-Chairman Spotted Bear, Secretary Fox, and Treasurer Packineau (collectively, “the Officers”) had a duty to maintain accurate and complete public accounts of the financial affairs of the Tribe, which shall clearly show all credits, debts, pledges, and assignments, and to furnish to the Bureau of Indian Affairs an annual balance sheet and report of the financial affairs of the Tribe.

[¶140] The Officers have failed to maintain accurate and complete accounts of the financial affairs of the Tribe clearly showing all credits, debts, pledges, and assignments, specifically evidenced by: (1) A \$93,293,382.00 expenditure for a property in Las Vegas on or about December 30, 2022, with zero record of the amount paid outside of local news media reports; (2) The absence of any written or verbal reports of expenditures and receipts of the Tribe, either at the regular meetings of the Council, or available for inspection elsewhere; (3) The Officers’ failure to provide records of the expenditures, receipts, assets, and liabilities of the Tribe to Plaintiffs Good Bear and Fredericks upon request; (4) The disclaimed opinions as laid out in the 2018 Audit, citing lack of financial records or generally accepted accounting principles as the basis for an inability to draw conclusions from the Tribe’s records; and, (5) The adverse opinions as laid out in the 2018 Audit, citing lack of financial records or generally accepted accounting principles as the basis for disproportionate assets, liabilities, receipts and expenditures as they relate to the 4Bears Casino & Lodge.

[¶141] The Officers’ failure to maintain accurate and complete accounts of the financial affairs of the Tribe clearly showing all credits, debts, pledges, and assignments is a direct violation of Section 9 of the Charter.

[¶142] Upon information and belief, the Officers have failed to furnish to the Bureau of Indian Affairs an annual balance sheet and report of the financial affairs of the Tribe since fiscal year 2019.

[¶143] The Officers' failure to furnish to the Bureau of Indian Affairs an annual balance sheet and report of the financial affairs of the Tribe since fiscal year 2019 is a direct violation of Section 9 of the Charter which could or will have an impact on Tribal funds due to penalties involving the loss of contract support costs.

**FOURTH CAUSE OF ACTION - VIOLATIONS OF ICRA
(ASSERTED AGAINST THE COUNCIL)**

[¶144] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶145] The Council had a duty under ICRA to refrain from depriving any persons of property without due process of law.

[¶146] Plaintiffs have a vested communal interest in the money contained in the Fund, as well as any other property of the Tribe, under the Tribe's long-recognized communal concept of ownership of tribal property. *See Bordeaux*, 21 ILR 6131, 6132 (Ft. Bert. Trib. Ct. 1993).

[¶147] The Constitution and Bylaws explicitly outline the procedural due process required before making expenditures from the Fund, with both expressing that no expenditure may be made absent a resolution duly passed by the Council to such effect. *See* Constitution, Article VI, Section 5(c); Bylaws, Article I, Section 3.

[¶148] The Council's disbursement from the Fund of approximately \$93,293,382.00 to purchase a property in Las Vegas, Nevada, was made absent any resolution passed by the Council which directly violates Article VI, Section 5(c) of the Constitution and Article I, Section 3 of the Bylaws. Said violation constitutes deprivation of communal property without due process of law.

[¶149] The Council's disbursement from the Fund \$10,302,250.00 to purchase an additional property in Las Vegas, Nevada, absent any resolution passed by the Council is in direct violation of Article VI, Section 5(c) of the Constitution and Article I, Section 3 of the Bylaws. Said violation constitutes deprivation of communal property without due process of law.

[¶150] The Council's expenditure of unknown, undisclosed amounts for purchases of homes and other properties absent any resolutions duly passed by the Council to such effect are direct violations of Article VI, Section 5(c) of the Constitution and Article I, Section 3 of the Bylaws. Said violations deprive Plaintiffs of communal property interests without due process of law.

[¶151] Any additional disbursements from the Fund made by the Council before passing a resolution to such effect are direct violations of Article VI, Section 5(c) of the Constitution and Article I, Section 3 of the Bylaws. Said violations constitute deprivations of communal property without due process of law.

**FIFTH CAUSE OF ACTION - WRITS OF PROHIBITION AND INJUNCTION
(ASSERTED AGAINST ALL DEFENDANTS)**

[¶152] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶153] As set forth above, each of the Defendants' actions are illegal and constitute violations of the Constitution, Bylaws, Charter, and ICRA, and permanently impact the Plaintiffs' vested interests in Tribal funds and property by virtue of the recognition of communal property rights by the Tribe.

[¶154] Because the Defendants' actions permanently impact the Plaintiffs' vested interests in Tribal funds and property, in addition to Plaintiffs' due process rights under the Constitution, Bylaws, Charter, and ICRA, Defendants' continued illegal actions will cause irreparable harm to Plaintiffs and the Tribe.

[¶155] Given the explicit commands, duties, and obligations laid out by the Constitution, Bylaws, Charter, and ICRA, and the Defendants' failure to obey those commands, duties, and obligations, the Plaintiffs have a substantial likelihood of success on the merits before this Court.

[¶156] Additionally, because Defendants' illegal actions contravene duties and obligations set forth in constitutional and other legal documents explicitly passed by enrolled Tribal members, the public interest factor strongly favors Plaintiffs.

[¶157] As noted above, Defendants' continued illegal actions will result in continued and further permanent and irreparable harm to Plaintiffs. In contrast, enjoining Defendants from continuing to engage in their illegal actions and/or reversing harm done by said illegal actions simply returns Defendants to the status quo – that is, fulfilling the obligations and duties set forth by the Constitution, Bylaws, Charter, and ICRA. Thus, the balance of the harms strongly favors Plaintiffs as well.

[¶158] Plaintiffs' need for immediate relief based upon the above factual allegations is clear.

**SIXTH CAUSE OF ACTION – WRIT OF MANDAMUS
(ASSERTED AGAINST THE COUNCIL AND TREASURER PACKINEAU)**

[¶159] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶160] Under Article I, Section 3 of the Bylaws, Packineau has the following duties:

The Treasurer of the Tribal Business Council shall accept, receipt for, keep and safeguard all funds in the custody of the Council, whether they be Tribal funds or special funds for which the council is acting as trustee or custodian. He shall deposit all such funds in a bank or elsewhere as directed by the council and shall make and keep a faithful record of such funds, and shall report on all receipts and expenditures and the amount and nature of all funds in his possession or custody to the council at regular meetings and at such other times as requested by the council, his reports to be in writing and matters of record. He shall not expend or otherwise disburse any funds in his possession or in the possession or custody of the Tribal Business Council except when he is authorized to do so by resolution duly passed by the council.

[¶161] Under Article I, Section 3 of the Bylaws, the Council has the duty to employ a competent auditor to audit the books and records of the Treasurer, and this audit is required at least annually.

[¶162] Under Article VI, Section 5(c) of the Constitution, the Council and Packineau have a duty to, among other things, administer any funds or property within the exclusive control of the Tribes.

Also, “[a]ll expenditures from the Tribal Business Council fund shall be by resolution duly passed by the council to such effect, and the amounts so paid shall be matters of public record at all times.”

[¶163] The Council and Packineau have breached their duties to the tribal members by keeping accounting activities secret from the public.

[¶164] This Court should issue a writ of mandamus to command the Council and Packineau to produce a full list of all accounts that contain Tribal funds or special funds, and all accounts that the Council and Packineau have access or control to, including at a minimum, the following accounts:

1. All accounts regarding each of the for-profit Tribal enterprises;
2. All accounts regarding each of the non-profit development organizations, corporations, or authorities, created and maintained by the Council;
3. All accounts regarding the operation of 4Bears Casino & Lodge;
4. All accounts regarding the People’s Fund, including the Proceeds of Labor Account PL10017014;
5. All accounts containing revenue from the Tribe’s non-renewable oil and gas resources, including account PL7228700;
6. All accounts regarding the Tribal Business Council Fund;
7. All accounts regarding the General Fund;
8. All accounts regarding revenue and expenditures;
9. All accounts regarding assets and investments of the Tribe; and
10. All accounts regarding credits, debts, loans, obligations, pledges, and assignments of the Tribe.

(hereinafter “All Tribal Accounts”).

[¶165] This Court should issue a writ of mandamus to the Council and Packineau to command them to produce detailed statements for All Tribal Accounts.

[¶166] This Court should issue a writ of mandamus to the Council and Packineau to command them to retain a competent auditor to audit the books and records of the Treasurer for all years in which an audit has not been performed.

[¶167] This Court should issue a writ of mandamus to the Council and Packineau to conduct and submit a federal program audit for all years in which an audit has not been conducted or submitted, including 2020, 2021, and 2022, at a minimum.

[¶168] This Court should issue a writ of mandamus to the Council and Packineau to command them to produce annual profit and loss statements for the Tribe's Corporation since 2010; annual balance sheets for the Tribe's Corporation since 2010; and, annual ledgers showing all receipts and expenditures of the Tribe's Corporation since 2010.

**SEVENTH CAUSE OF ACTION – WRIT OF MANDAMUS
(ASSERTED AGAINST SECRETARY FOX AND THE COUNCIL)**

[¶169] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶170] Under Article I, Section 2 of the Bylaws imposes upon Secretary Fox the duty to “keep . . . an accurate roll of members by communities.”

[¶171] Secretary Fox also has a duty to “receive all petitions, applications, and other papers, and prepare them for the action of the council.”

[¶172] Plaintiffs have a right to a referendum process under Article VIII of the Constitution.

[¶173] On May 25, 2023, Plaintiffs Good Bear and Fredericks sent to Secretary Fox a letter requesting voter information so they could comply with the requirements of Article VIII of the Constitution regarding their draft petitions.

[¶174] To date, Secretary Fox has failed and refused to comply with Plaintiffs' requests, which is a violation of the Bylaws and Constitution. It is also a violation of Plaintiffs' due process rights.

[¶175] This Court should issue a writ of mandamus to Secretary Fox to command him to produce the complete and accurate roll of all members, by their respective communities. The roll should include all members' names and last known mailing addresses.

[¶176] This Court should issue a writ of mandamus to Secretary Fox, and the Tribal Council, commanding that a neutral third-party oversee the referendum process. This writ should include a command that Secretary Fox and the Tribal Council are not to be involved in the referendum process in any way, other than providing a complete and accurate roll of all members.

**EIGHTH CAUSE OF ACTION – CONSTRUCTIVE TRUST AND ACCOUNTING
(ASSERTED AGAINST THE COUNCIL AND TREASURER PACKINEAU)**

[¶177] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶178] The Constitution and Bylaws explicitly outline the procedural due process required before making expenditures from the Fund. No expenditure may be made absent a resolution duly passed by the Council authorizing the expenditure. All of which is for the purpose of transparency of the public funds.

[¶179] In addition to the Constitution and By-laws, the Tribal Business Council is governed by the Charter, Section 9 of which explicitly provides “The officers of the Tribe shall maintain accurate and complete public accounts of the financial affairs of the Tribe, which shall clearly show all credits, debts, pledges, and assignments.”

[¶180] The Council and Treasurer Packineau have control and access to all accounts that contain tribal funds, including All Tribal Accounts.

[¶181] The Council and Treasurer Packineau owe a fiduciary duty to the Tribal members relative to all of these accounts.

[¶182] The Council and Treasurer Packineau owe a duty to render an account for each of these accounts to the Tribal members.

[¶183] The Tribal members do not have access to these accounts, and do not have knowledge of the assets, debits, and credits of these accounts.

[¶184] The Council and Treasurer Packineau have kept secret the assets, debits, and credits of these accounts.

[¶185] There is a need for discovery as to the existence of all accounts to which the Council and Treasurer Packineau have access, possession, custody, or control.

[¶186] There is a need for discovery as to the existence and contents of all accounts that contain funds of the Tribe, and all accounts to which the Tribe has an interest.

[¶187] The Council must account for, and pay distributions to the Tribal members, in order to restore what is rightfully theirs relative specifically to the People's Fund. A constructive trust should be imposed to prevent the Council and Treasurer Packineau from expending what is rightfully due to the Tribal members. The amount of any distributions will need to be determined within a reasonable time after disclosure and review.

**NINTH CAUSE OF ACTION – DECLARATORY JUDGMENTS
(ASSERTED AGAINST ALL DEFENDANTS)**

[¶188] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶189] An actual controversy has arisen amongst the interested parties.

[¶190] Under the Tribal Constitution, Bylaws, Charter, and ICRA, 28 U.S.C.A. § 2201, N.D.C.C. § 32-23-01, and other applicable laws, this Court has the power to declare the rights, status, and other legal relations of the Parties and the Tribe.

[¶191] This Court's declarations may be either affirmative or negative in form and effect.

[¶192] Plaintiffs are entitled to a declaration that the Defendants have violated the Constitution, Bylaws, Charter, and ICRA, as described in the previous allegations.

[¶193] Plaintiffs are entitled to a declaration that their Constitutional rights, and the Constitutional rights of all Tribal members, have been violated by the Council, as described in the previous allegations.

[¶194] Plaintiffs are entitled to all costs and attorneys' fees sustained in having to prosecute this action.

Attorneys' Fees and Costs Under Private Attorney General Doctrine

[¶195] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶196] Plaintiffs' success in this action benefits a broader, ascertainable class of people (enrolled members of the Tribe) in the same manner as themselves.

[¶197] Plaintiffs' success in this action promotes adherence to principles and policies which the people of the Three Affiliated Tribes and, more broadly, Congress, have identified as being of the utmost importance.

[¶198] Plaintiffs' success in this action will result in a substantial benefit to the Tribe and the Tribe's enrolled members and prevents an abuse which would be prejudicial to the rights and interests of both the Tribe and the Tribe's enrolled members.

[¶199] Requiring Plaintiffs to bear the burden of costs and fees in an action regarding the rights of thousands of other enrolled members and for which the causes arise out of improper actions of the Council, the Council's members, the Officers, or Treasurer Packineau, would be inequitable and result in a detriment to the ability of others to enforce their rights against the Council in the future.

V. PRAYER FOR RELIEF

[¶200] WHEREFORE, Plaintiffs request judgment as follows:

a. That a judgment be entered against the Council Members as follows:

i. Declaring that:

1. Under Article VI, Section 3 of the Constitution, the Council Members are prohibited from engaging in or ratifying executive

committee actions or unilateral “Executive Actions” taken by Chairman Fox;

2. Before making expenditures from the Fund, the Council Members have a duty under Article VI, Section 5(c) the Constitution to pass a resolution effectuating the expenditure, and that the amount of the expenditure must be a matter of public record at all times;
3. The Council Members violated the Constitution when they engaged in or ratified executive committee actions or unilateral “Executive Actions” taken by Chairman Fox;
4. The Council Members violated the Constitution when they purchased a Las Vegas property on or about December 30, 2022, because they failed to pass a resolution to that effect before the purchase and failed to make the amount so paid a matter of public record;
5. The Council Members violated the Constitution when they expended funds on an additional Las Vegas property on or about April 2023, because they failed to pass a resolution to that effect before the purchase and failed to make the amount so paid a matter of public record;
6. The Council Members violated the Constitution by making any expenditures pursuant to blanket ratifications of executive actions rather than resolutions;

7. The Council Members violated the Constitution by making any additional expenditures from the Fund absent a resolution passed to that effect and without making the amount paid a matter of public record at all times; and,

ii. Directing that:

1. Before making any expenditures from the Fund, the Council Members must pass a resolution to the effect of the purchase;
2. The Council Members must make each and every expenditure from the Fund a matter of public record, either before or immediately following the expenditure;
3. The Council Members must sell the Las Vegas property purchased on or about December 30, 2022, and return all funds expended to the Fund;
4. The Council Members must sell the Las Vegas property purchased in or about April 2023, and return all funds expended to the Fund;
5. The Council Members must refrain from making expenditures from the Fund pursuant to blanket ratifications of executive actions; and,
6. The Council Members must refrain from making any additional expenditures from the Fund before passing resolutions to the effect of said expenditures and without making the amounts paid matters of public record at all times.

b. That a judgment be entered against Treasurer Packineau as follows:

i. Declaring that:

1. Under Article I, Section 3 of the Bylaws, Treasurer Packineau has a duty to make and keep a faithful record of all funds kept by the Council, to report on all receipts and expenditures and the amount and nature of all funds in his possession at regular meetings of the Council, and to make those reports in writing and matters of public record;
2. Under Article I, Section 3 of the Bylaws, Treasurer Packineau has a duty to refrain from disbursing monies from the Fund before a resolution being duly passed by the Council to such effect;
3. Under Article I, Section 3 of the Bylaws, Treasurer Packineau has a duty to ensure that annual audits of his books and records were conducted;
4. Treasurer Packineau's failure to make and keep a faithful record of all funds kept by the Council is a direct violation of Article I, Section 3 of the Bylaws;
5. Treasurer Packineau's failure to make monthly written expenditure and receipt reports on all funds within his possession matters of public record is a direct violation of Article I, Section 3 of the Bylaws;
6. Treasurer Packineau's failure to make monthly written expenditure and receipt reports on all funds within his possession matters of public record is a direct violation of Article I, Section 3 of the Bylaws;

7. Treasurer Packineau's failure to make monthly written reports on receipts from the Tribe's for-profit business organizations matters of public record is a direct violation of Article I, Section 3 of the Bylaws;
8. Treasurer Packineau's failure to ensure his books and records were audited on an annual basis is a direct violation of Article I, Section 3 of the Bylaws;
9. Treasurer Packineau's failure to ensure he was under a surety bond satisfactory to the Council and Commissioner of Indian Affairs is a direct violation of Article I, Section 3 of the Bylaws;
10. Treasurer Packineau's failure to publicly report, either in writing or verbally, on the expenditure of approximately \$93,293,382.00 on or about December 30, 2022, for a property in Las Vegas, Nevada, is a direct violation of Article I, Section 3 of the Bylaws;
11. Treasurer Packineau's failure to publicly report, either in writing or verbally, on the expenditure of \$10,302,250.00 in or about April of 2023, for an additional property in Las Vegas, Nevada, is a direct violation of Article I, Section 3 of the Bylaws;
12. Treasurer Packineau's failure to publicly report, either in writing or verbally, on the expenditure of unknown, undisclosed amounts for purchases of homes and other properties and services is a direct violation of Article I, Section 3 of the Bylaws;

13. Treasurer Packineau's disbursement of approximately \$93,293,382.00 on or about December 30, 2022, for a property in Las Vegas, Nevada, absent any resolution to authorize the expenditure, is a direct violation of Article I, Section 3 of the Bylaws;
14. Treasurer Packineau's disbursement of \$10,302,250.00 in or about April of 2023, for an additional property in Las Vegas, Nevada, absent any resolution to authorize the expenditure, is a direct violation of Article I, Section 3 of the Bylaws;
15. Treasurer Packineau's disbursement of unknown, undisclosed amounts for purchases of homes and other properties and services on numerous occasions, in the absence of resolutions authorizing said disbursements, is a direct violation of Article I, Section 3 of the Bylaws; and,
16. Treasurer Packineau's disbursement of any other funds for expenditures in the absence of resolutions authorizing said expenditures are direct violations of Article I, Section 3 of the Bylaws.

ii. Directing that:

1. Treasurer Packineau must prepare and keep a record of all funds kept by the Council;

2. Treasurer Packineau must create written reports for each regular meeting of the Council which show all receipts and expenditures of the Tribe and the amount and nature of all funds in his possession;
3. By a date reasonably set by the Court, Treasurer Packineau must provide written reports for each regular meeting of the Council which show all receipts and expenditures of the Tribe and the amount and nature of all funds in his possession dating back to 2010;
4. Treasurer Packineau's written reports and records regarding funds kept by the Council, funds in Treasurer Packineau's possession, and expenditures and receipts of the Tribe, must be matters of public record, accessible to enrolled members of the Tribe at all times;
5. Before making any expenditures from funds kept by the Council, Treasurer Packineau must ensure that a resolution authorizing the expenditure was passed by the Council;
6. Treasurer Packineau must ensure his books and records are audited on an annual basis;
7. At a date reasonably set by the Court, Treasurer Packineau must ensure his books and records from previous years are audited, dating back to at least 2010; and,
8. Treasurer Packineau must operate under a surety bond satisfactory to the Council and the Commissioner of Indian Affairs.

c. That a judgment be entered against the Officers as follows:

- i. Declaring that:

1. Under Section 9 of the Charter, the Officers had a duty to maintain accurate and complete public accounts of the financial affairs of the Tribe, which shall clearly show all credits, debts, pledges, and assignments, and to furnish to the Bureau of Indian Affairs an annual balance sheet and report of the financial affairs of the Tribe;
2. The Officers failed to maintain accurate and public accounts of the financial affairs of the Tribe clearly showing all credits, debts, pledges, and assignments, and said failure is a direct violation of Section 9 of the Charter;
3. The Officers failed to provide to the Bureau of Indian Affairs an annual report of the Tribe's financial affairs, and said failure is a direct violation of Section 9 of the Charter.

ii. Directing that:

1. The Officers must maintain accurate and public accounts of the financial affairs of the Tribe clearly showing all credits, debts, pledges, and assignments in accordance with Section 9 of the Charter; and,
2. The Officers must provide the Bureau of Indian Affairs an annual report of the Tribe's financial affairs.

d. That a judgment be entered against the Council as follows:

i. Declaring that:

1. The Council had a duty under ICRA to refrain from depriving any person of property without due process of law;

2. The Constitution and Bylaws explicitly outline the procedural due process required before making expenditures from the Fund, with both expressing that no expenditure may be made absent a resolution duly passed by the Council authorizing the expenditure;
3. The Council's disbursement from the Fund of approximately \$93,293,382.00 to purchase a property in Las Vegas, Nevada, was a deprivation of communal property without due process of law in violation of ICRA because it was an expenditure in the absence of a resolution authorizing the expenditure;
4. The Council's disbursement from the Fund \$10,302,250.00 to purchase an additional property in Las Vegas, Nevada, is a planned deprivation of communal property without due process of law in violation of ICRA because it is an expenditure in the absence of a resolution authorizing the expenditure;
5. The Council's expenditure of unknown, undisclosed amounts for purchases of homes and other properties absent any resolutions authorizing the expenditures are deprivations of communal property without due process of law in violation of ICRA; and,
6. Any additional disbursements from the Fund made by the Council before passing a resolution to such effect are deprivations of communal property without due process of law in violation of ICRA.

ii. Directing that:

1. The Council must comply with procedural due process requirements when expending communal funds;
 2. The Council must sell the Las Vegas property purchased on or about December 30, 2022, and return all funds expended to the Fund; and,
 3. The Council must refrain from purchasing an additional Las Vegas property unless and until a resolution is passed authorizing the expenditure before executing the purchase.
- e. That a judgment be entered against the Council as follows:
- i. Declaring that the Defendants have violated the Constitution, Bylaws, Charter, and ICRA, as described in the previous allegations.
 - ii. Declaring that the Constitutional rights, and the Constitutional rights of all Tribal members have been violated by the Council, as described in the previous allegations.
- f. That a judgment be entered against the Council and Treasurer Packineau as follows:
- i. Declaring that the Council and Treasurer Packineau must account for, and pay distributions to the Tribal members, in order to restore what is rightfully theirs relative specifically to the People's Fund. A constructive trust will be imposed to prevent the Council and Treasurer Packineau from expending what is rightfully due to the Tribal members. The amount of any distributions will need to be determined within a reasonable time after disclosure and review.
- g. A writ of mandamus be issued to Secretary Fox and the Council as follows:

- i. A writ of mandamus issued to Secretary Fox to command him to produce the complete and accurate roll of all members, by their respective communities. The roll should include all members' names and last known mailing addresses; and
 - ii. A writ of mandamus issued to Secretary Fox, and the Tribal Council, commanding that a neutral third-party oversee the referendum process. This writ should include a command that Secretary Fox and the Tribal Council are not to be involved in the referendum process in any way, other than providing a complete and accurate roll of all members.
- h. A writ of mandamus be issued to the Council and Treasurer Packineau as follows:
 - i. A writ of mandamus issued to command the Council and Packineau to produce a full list of all accounts that contain Tribal funds or special funds, and all accounts that the Council and Packineau have access or control to, including at a minimum, All Tribal Accounts.
 - ii. A writ of mandamus issued to the Council and Packineau to command them to produce detailed statements for All Tribal Accounts.
 - iii. A writ of mandamus issued to the Council and Packineau to command them to retain a competent auditor to audit the books and records of the Treasurer for all years in which an audit has not been performed.
 - iv. A writ of mandamus issued to the Council and Packineau to conduct and submit a federal program audit for all years in which an audit has not been conducted or submitted, including 2020, 2021, and 2022, at a minimum.

- v. A writ of mandamus issued to the Council and Packineau to command them to produce annual profit and loss statements for the Tribe's Corporation since 2010; annual balance sheets for the Tribe's Corporation since 2010; and, annual ledgers showing all receipts and expenditures of the Tribe's Corporation since 2010.
- i. Awarding attorneys' fees and costs to the Plaintiffs under the private attorney general doctrine, and other applicable laws, with Defendants to be jointly and severally liable for payment of those costs and fees.

Dated this 5th day of September, 2023.

LARSON · KING, LLP

By 

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