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24 RUMSEY INDIAN RANCHERIA OF WINTUN INDIANS OF CALIFORNIA;
25 RUMSEY GOVERNMENT PROPERTY FUND I, LLC; RUMSEY DEVELOPMENT
26 CORPORATION; RUMSEY TRIBAL DEVELOPMENT CORPORATION;
27 RUMSEY MANAGEMENT GROUP; AND RUMSEY AUTOMOTIVE GROUP

28 **UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

RUMSEY INDIAN RANCHERIA OF
WINTUN INDIANS OF CALIFORNIA, et al.,

Plaintiffs,

vs.

HOWARD DICKSTEIN, et al.,

Defendants.

Case No. 2:07-CV-02412-GEB-EFB

**DECLARATION OF MARSHALL
MCKAY IN OPPOSITION TO
DEFENDANTS' MOTION FOR
TERMINATING SANCTIONS
(DISMISSAL) OR, IN THE
ALTERNATIVE, FOR PROTECTIVE
ORDER AND OTHER SANCTIONS**

Judge: Hon. Garland E. Burrell, Jr.
Dept: Courtroom 10
Date: Jan. 28, 2008
Time: 9:00 a.m.

1 I, Marshall McKay, declare as follows:

2 1. I am the Chairperson of the Rumsey Band of Wintun Indians, a sovereign Indian
3 tribe federally recognized and registered as Rumsey Indian Rancheria of Wintun Indians of
4 California (hereinafter "Tribe"). I submit this declaration in opposition to Defendants' Motion
5 for Terminating Sanctions (Dismissal) Or, In The Alternative, For Protective Order And Other
6 Sanctions. The matters set forth herein are within my personal knowledge, and, if called as a
7 witness, I could and would competently testify thereto.

8 2. I have reviewed Defendants' motion. It is filled with misstatements and errors. As
9 I understand Defendants' motion, their theory is that the Tribal Council took retaliatory action
10 against former Tribal Chairperson Paula Lorenzo in an effort to silence her as a witness, on the
11 ground that she "dare[d] to speak out against the claims being asserted against Dickstein and
12 Opper." Defendants' theory is utterly false and omits important facts, as shown below, with a
13 detailed explanation of what occurred, when, and why.

14 3. In January 2006, the Tribe elected a new Tribal Council, and myself as Chairman.
15 In connection with efforts to understand the state of the Tribe's financial affairs, and after having
16 some difficulty getting requested information from our legal counsel, Dickstein & Zerbi, and our
17 financial advisor, Arlen Opper, we retained an outside investigative firm (Kroll). Kroll
18 conducted an investigation, and then presented its preliminary findings to the Tribal Council at a
19 meeting in June 2006. On the basis of that presentation, the Tribal Council voted to terminate its
20 then legal counsel, Howard Dickstein and Jane Zerbi, and Arlen Opper. The investigation
21 continued in order to enable the Tribe to understand the scope of what occurred and explore the
22 actions and omissions of Dickstein, Zerbi and Opper while working for the Tribe. As part of
23 that investigation, the Tribe's new counsel interviewed current and former Tribal Council
24 members. All Tribal members were generally told an investigation was pending. However, in
25 order to protect the investigation's objectivity, the members were not informed of the specific
26 content of the witness interviews.

27 4. One transaction that appeared to be very unusual involved a simultaneous land
28 "sale" and lease back of undeveloped land in West Sacramento known as "the Triangle"

1 property. In that transaction, the Tribe sold 80% of its interest in the property to a company
2 controlled by one of the Tribe's business partners, Mark Friedman, and then simultaneously
3 leased it back from Friedman's company. Based on the records available to the Tribe — all of
4 which the former Tribal Chairperson had signed — there appeared to be no economic substance
5 to the transaction and that it was done solely as some sort of accommodation to Friedman. As
6 part of the transaction, the Tribe had an option to repurchase the land by October 31, 2005, but
7 the Tribe had apparently failed to timely exercise such option.

8 5. After the termination of Dickstein, Zerbi and Opper, Friedman took the position
9 that the Tribe had lost this interest in the property, as the Tribe's prior advisors had apparently
10 failed to advise the Tribe to timely exercise the option, to the detriment of the Tribe. As
11 troubling, the Triangle transaction documents were signed by Paula Lorenzo and recorded in the
12 Yolo County Recorder's Office several days *before* this transaction was even brought before the
13 Tribal Council by Dickstein, Zerbi and Opper.

14 6. As part of the Tribe's effort to protect its position in the property, the Tribe's legal
15 counsel (attorneys from Sonnenschein Nath & Rosenthal LLP) needed to interview Ms. Lorenzo
16 regarding the transaction. The Tribe's attorneys needed to ask questions of her to gain a full
17 understanding of what occurred, including an understanding of who had brought this "deal" with
18 no economic substance to the Tribe and what had been represented to Ms. Lorenzo to cause her
19 to execute these documents. However, the former Chairperson declined repeated requests from
20 the Tribe's attorneys to schedule a meeting to discuss the Triangle. Therefore, to facilitate such
21 a meeting, the Tribal Council authorized me to send Ms. Lorenzo a letter underscoring the
22 importance of the need for her to meet with the Tribe's legal counsel for this purpose. We
23 believed that her failure to provide the Tribe basic information about this transaction could
24 impede or defeat the Tribe's ability to protect its interests in connection with the Triangle. For
25 that reason, and at the Tribal Council's direction, I sent Ms. Lorenzo a letter, dated April 10,
26 2007, explaining the need for her to meet with the Tribe's legal counsel. A true and correct copy
27 of that letter is attached hereto as Exhibit "A."

28 7. Notwithstanding this letter, meetings between Ms. Lorenzo and the Tribe's legal

1 counsel were scheduled on several occasions and Ms. Lorenzo either failed to appear or the
2 meeting was canceled by her at the last minute. It is my understanding that when she did finally
3 did appear to meet with the Tribe's lawyers, the meeting lasted but a few minutes, with Ms.
4 Lorenzo leaving abruptly without providing any substantive information. The Tribal Council
5 was disappointed in the inability of the Tribe's counsel to secure needed information from a
6 Tribal member, particularly from the former elected Chairperson of the Tribal government. This
7 information was not only needed for the Tribe to have a full understanding as to the actions and
8 omissions of its prior advisors, but also to understand whether the former Chairperson was
9 misled when taking the actions she did. This frustration culminated in a decision by the Tribal
10 Council to take action against Ms. Lorenzo for her non-cooperation in this investigation and
11 hold an intra-tribal hearing before the Community Council, the purposes of which were
12 several—specifically, (1) to relate the final results of the investigation to the Tribal membership;
13 (2) to notify the Community Council that the former Chairperson had failed to cooperate in the
14 investigation, and in particular, in the Tribe's efforts to ascertain what occurred in connection
15 with a variety of actions and transactions involving its prior advisors; and (3) to let the
16 Community Council decide what action, if any, should be taken.

17 8. After the Tribal Council decided in June 2007 to hold an intra-tribal hearing before
18 the Community Council, the Tribe's legal counsel was charged with exploring potential judicial
19 dispute resolution processes that the Tribe might use, since the Tribe presently has no formal
20 tribal court. Legal counsel was also charged with identifying a potential independent counsel or
21 mediator who could present the evidence and lead the hearing. Status reports were provided to
22 the Tribal Council at the meetings that followed, and an independent counsel with experience in
23 holding such hearings (Richard Armstrong of Rosette & Associates) was ultimately identified
24 and retained by the Tribe.

25 9. The Tribal Council notified the former Chairperson of its decision by letter on or
26 about September 4, 2007, a true and correct copy of which is attached hereto as Exhibit "B."
27 Contrary to the suggestion of Defendants' motion, the Tribal Council's decision to suspend Ms.
28 Lorenzo from her positions, *with pay*, pending the hearing, was the result of her failure to

1 cooperate in an investigation that simply sought information from her, not a particular result.
2 The decision was not driven by her decision to sign documents that appeared to support
3 Dickstein, Zerbi and Opper. In the view of the Council, those documents (when ultimately
4 discovered) were simply consistent with her entire course of non-cooperative conduct in
5 connection with the Tribe's investigation.

6 10. Indeed, the decision to initiate action against the former Chairperson occurred more
7 than a month before the Tribal Council would engage in mediation with Dickstein, Zerbi and
8 Opper. Thus, when the Tribal Council decided to initiate action against the former Chairperson
9 in June 2007, it had no knowledge that she had signed any written documents purporting to
10 support Dickstein, Zerbi and Opper. It did not discover this fact until more than a month later, at
11 the subsequent mediation on July 25, 2007, when Dickstein, Zerbi and Opper produced these
12 documents to the mediator. (As it happens, we have since learned that the former Chairperson
13 did not even draft these documents (a true and correct copy of one such document is attached
14 hereto as Exhibit "C"); we now understand they were created and drafted by Dickstein and
15 Zerbi, with Opper's apparent involvement.)

16 11. In addition, when the Tribal Council decided in June 2007 to bring the former
17 Chairperson before the Community Council, and when it thereafter notified Ms. Lorenzo of this
18 fact and that she would be suspended (with pay) from her government positions pending this
19 hearing, the Tribal Council had not yet even decided to proceed with litigation against Dickstein,
20 Zerbi and Opper. Indeed, we remained hopeful that our claims against Dickstein, Zerbi and
21 Opper could be resolved short of litigation, by mediation. We did not lose that hope until
22 October 2, 2007, at which point we decided to proceed with litigation — almost a month after
23 the second mediation session had occurred on September 8, 2007.

24 12. Moreover, after the Tribal Council did decide to proceed with litigation, it also
25 concluded it needed to allow this court proceeding to run its course and suspend the intra-tribal
26 hearing process. Therefore, the entire premise of Defendants' motion — that the Tribal Council
27 decided to take action against Paula Lorenzo in an effort to silence or influence her as a witness
28 in this litigation — is patently false. In truth, the decision to initiate action against Ms. Lorenzo

1 and bring her before the Community Council had already been made — before the Tribe had
2 decided to even proceed with litigation, and in addition, before the Tribe was even aware she
3 had signed documents prepared by the Dickstein firm.

4 13. After the Tribal Council notified Ms. Lorenzo of this action by letter delivered in
5 early September 2007, the Tribal Council met with her and discussed its action. Based on those
6 discussions, I now understand from Ms. Lorenzo that she was frustrated by the lack of
7 communication between herself and the Tribal Council concerning the investigation. However,
8 as has been explained to her, no member of the Tribal Council knew the content of witness
9 interviews while the investigation while it was underway. I now realize that the Tribal Council
10 could have done a better job of explaining the process to Ms. Lorenzo, and I regret that we did
11 not do so in an effort to alleviate her concerns; however, I am not sure it would have been
12 enough to combat her fear and distrust, which we now understand was being fueled by Dickstein
13 and Opper.

14 14. Defendants' suggestion that there is something nefarious about the Tribal Council's
15 decision to suspend the former Chairperson from her governmental positions — with full pay —
16 is unfounded. The Tribal Council had no choice but to remove from the government an
17 individual who was failing to cooperate with the government's investigation into what occurred,
18 particularly where the individual was the former Chairperson of the government and who
19 continued to hold important governmental positions. Her failure to cooperate with an
20 investigation by failing to provide basic information to the Tribe was inconsistent with her
21 duties to the government. By suspending her, we proceeded in the same manner that any public
22 body or corporate board faced with similar facts would proceed. Indeed, the Tribal Council
23 would have failed in its duties to the Tribe had it refrained from acting or had it acted otherwise.

24 15. Also entirely baseless is Defendants' suggestions that the action was politically
25 driven by my desire to strengthen my personal position and secure my re-election. First of all,
26 the Tribal Council unanimously decided to take this action, not simply me. Second, if it were
27 politically motivated, the Tribal Council would have simply meted out the sanction, rather than
28 referring the matter to entire Tribal membership for action. Third, Defendants' assertion that

1 this lawsuit is “about Tribal politics,” and an effort by me in particular to “strengthen [my grip]
2 on the position of Tribal Chairperson” is patently absurd. The pursuit of this litigation was a
3 decision made by the Tribal Council, and it was a decision that was not lightly made. Finally, it
4 bears noting that the Tribal Council has authorized the retention of independent counsel to
5 represent Ms. Lorenzo, to ensure her interests are fully protected.

6 16. Defendants suggest that the Tribe has somehow threatened to expel Ms. Lorenzo
7 from the Tribe’s membership ranks and that is absolutely false. The Tribal Council has never
8 considered that action towards Ms. Lorenzo, and did not ask the Community Council to consider
9 it. Nor would the Tribal Council ever do so. Defendants are simply making this up, apparently
10 to instill fear in Ms. Lorenzo.

11 17. I am familiar with the content of a document purporting to be “minutes” of a
12 Casino Board meeting supposedly held in June 2006, after the termination of Dickstein, Zerbi
13 and Opper. To my knowledge, the document was not within the Tribe’s records but was
14 produced to the Tribe by Dickstein, Zerbi and/or Opper at a mediation. The document
15 addresses the termination of Dickstein, Zerbi and Opper, and contains statements that appear to
16 defend Dickstein, Zerbi and Opper in various ways. Among other things, the document purports
17 to address their right to use (for personal purposes) a private jet in which the Tribe possesses a
18 partial interest; the basis for Dickstein & Zerbi’s compensation; their handling of a trust account
19 holding Tribal funds; and the manner by which Opper handled the Tribe’s various investments
20 and reported same to the Tribal Council. I now understand from the former Chairperson that
21 there was no official Board meeting, that the document purporting to be meeting minutes was
22 actually drafted by Dickstein or at his direction, with an instruction by him to Ms. Lorenzo to
23 sign such a document.

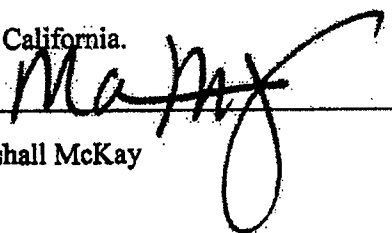
24 18. Defendants’ motion is filled with many other statements of fact that are both
25 inaccurate and irrelevant, and in an apparent effort to gratuitously malign or impugn my
26 integrity. For example, Defendants assert that after my election to Tribal Chairman,
27 “[n]umerous” governmental positions “changed hands,” as I purportedly “handed out lucrative
28 committee positions to [my] family members.” In truth, after my election, the Tribal Council

1 solicited members of the entire Tribal community to volunteer to serve on the Tribe's various
2 committees. Many expressed interest, and all who signed up were appointed to those
3 committees by the Tribal Council. In January 2007, the Tribal Council also created additional
4 positions on the Tribe's Fire Commission so as to allow for greater Tribal member participation
5 on that body, as there was much interest. All who volunteered for positions on the Commission
6 were appointed to such by the Tribal Council. There also were vacancies on the Board of
7 Directors for Cache Creek Casino Resort, and the Tribal Council voted to fill one of those
8 vacancies with my brother, Randall Knight, who has since died. His vacant position was
9 thereafter filled by Harriet Roberts, my sister, by the action of the Tribal Council. The fact that
10 they are my relatives is hardly surprising; indeed, we are a small tribe and I am related to most
11 Tribal members, including Paula Lorenzo.

12 19. I have not spoken with Paula Lorenzo about this motion to dismiss or the provision
13 of any declaration in connection with the Tribe's opposition to this motion, and I did not ask her
14 to submit one. To my knowledge, no member of the Tribal Council has done so.

15 I declare under penalty of perjury under the laws of the State of California and the United
16 States that the foregoing is true and correct to the best of my knowledge and recollection.

17 Executed this 14th day of January 2008 at Sacramento, California.

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19 _____
20 Marshall McKay

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EXHIBIT A



RUMSEY INDIAN RANCHERIA

Yocha-De-Ile

April 10, 2007

Paula Lorenzo Tackett
P.O. Box 62
Brooks, California 95606

Re: Triangle Property

Dear Paula:

Sanford Kingsley, one of the lawyers for the Tribe, has been trying to reach you unsuccessfully for over a month to discuss the circumstances under which Rumsey GFP I, LLC agreed to transfer its 40% interest in the Scanvik property in West Sacramento (otherwise known as "the Triangle"). Specifically, the Tribal Council would like to have a better understanding of why the option to reacquire the property was not exercised by October 31, 2005.

This issue is of paramount importance to the Tribal Council. By failing to exercise the option, the Tribe may have lost a substantial asset. It is the Tribal Council's belief that the transfer of the 40% interest in the property is invalid, but your assistance is needed to establish that position.

Please contact Mr. Kingsley immediately to set up a meeting. Because the Tribe's investigation of this transaction is attempting to determine whether any persons may have liability for the outcome of this transaction, your failure to cooperate may have adverse consequences. We look forward to your prompt cooperation.

Very truly yours,

EXHIBIT B



Rumsey Indian Rancheria

YOCHA-DE-HE

*Rumsey Band of
Mintun Indians*

TRIBAL COUNCIL

Marshall McKay
Chairman

Bessey Villalobos
Secretary

Anthony Roberts
Treasurer

Twila Freave
Council Member

Cynthia Clark
Council Member

Dear Paula,

As you know, for more than a year now, the Tribe has been investigating monies received and actions taken by its former advisors and legal counsel while you were Tribal Chairperson, with particular focus on Arlen Opper and Howard Dickstein. These persons, in whom we had placed our trust and confidence, were hired to protect the interests of the Tribe above the interests of all others, including themselves. We are not at liberty to discuss the results of that investigation, except to say that the Tribal Council believes the Tribe possesses legal claims against Mr. Opper, Mr. Dickstein, and others, and ~~we are presently in the process of mediating~~ those claims to avoid the need for litigation against these persons. We were, however, shocked at the mediation session, to learn that you provided Mr. Opper and Mr. Dickstein a letter for the mediation that is not only inconsistent with the facts (as shown by the Tribe's investigation), but that actually appears to be designed to support Mr. Opper's and Mr. Dickstein's position (and excuse your own prior actions) *at the expense of the Tribe.*

This action is inexcusable, although not entirely inconsistent with your conduct since the investigation began. Specifically, we have previously asked you to cooperate with the Tribe's investigators, both to allow them to share with you what they have discovered from the evidence, as well as to question you about information you have and thereby gain information that may assist the Tribe. Your cooperation has been limited at best. Your conduct is fundamentally inconsistent with your duties as the former Tribal Chair and as an appointed member to Tribal government. Your actions are not acceptable and are detrimental to the best interests of the Tribe. Therefore, the Tribal Council has voted to suspend you from all of your appointed positions, pending a hearing before the Community Council at a time and date to be determined. The Community Council can then decide, based upon the evidence presented at such hearing, whether these and other potential sanctions should be effected permanently.

Effective immediately, you are suspended from and are not to attend the meetings for the following: the Casino Board, the Fire Commission, the Community Fund Board and the Property, Farm and Ranch Committee. The compensation that you receive in connection with these positions will not be suspended until after the Community Council has an opportunity to consider the evidence and take appropriate action. You will be contacted further regarding the details of the hearing.

Sincerely,

Tribal Council

EXHIBIT C

July 20, 2007

Dear Arlen, Howard and Jane:

I know that the dispute Marshall has with you all is still going on and I want to say again that I think we all need to fight back because we did nothing wrong. I have no problem with everything we did being made public - in a lawsuit if necessary.

First, they keep saying there is nothing in the minutes to prove that any of us had authority to do what we did. The minutes were the responsibility of the tribal secretary Marshall McKay. The Tribal Council asked him again and again to take minutes over the years. He said it wasn't his job, but that's not what the constitution and bylaws say. Sometimes Bessey took the minutes, sometimes one of the tribal staff took minutes, and some of the time nobody took minutes, and Marshall would not take responsibility and is now blaming me and you. They also need to remember we are an Indian tribe, not a corporation. Before I was on the Council, the Tribe had only one meeting a year, and no minutes were taken. It was never our way to write everything down. If that is what Marshall wants to do now, then he can do that.

They also say that I did things myself without approval from the Tribal Council or Board of Directors. As you know, I took everything to the Tribal Council. We met at regular meetings, special meetings, by conference calls when we couldn't get everybody together, and informally because we are a community. Not a company. The Tribal Council asked me to take care of business because I was there everyday at the tribal office and casino. And this is what I did because Tribal Council authorized me to do it. Most of the time I depended upon Bessey, Yolanda and Elaine because Marshall was not there. He missed a lot of meetings and some of the time slept through the meetings he did come to and didn't seem to be all there if you know what I mean.

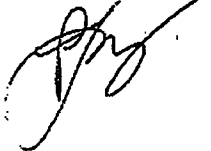
We asked Arlen to go out there and research business opportunities for us and then he always had to bring it back to us to tell us about it and get our approval. Nothing went forward without our approval. Arlen always told us when he had a financial interest in any investment. He went through his financial interest and the business deals in detail with us before we approved it. It was okay with us that he was making money. We thought it was good that he made good money if we did. It was an incentive. And I stand by that. Howard and Jane, you weren't there for most of this because we relied on Arlen as our financial advisor. Sometimes he used special business lawyers and consultants. You took care of tribal government and casino work. And many times Howard you were asked to consult with Marshall because he didn't attend the meeting and you were asked to call him, but I know he was hard to reach and he never called me. He never emailed me. Everybody knows I was accessible 24 hours a day and I returned my calls and emails. Marshall may want to do things differently now in setting up business investments, and that is fine. But we went from nothing to assets of over \$1 billion during the time I was Chair. And I stand by what we did and what we achieved for the Tribe.

The other thing they are talking about is the trust account. The Board of Directors knew all about the trust account. Howard, I knew your office sent accounting statements on it to Cache Creek every month. Nobody ever had a problem with it. No auditors, accounting staff ever said there was anything wrong with your accounting. This is all just another way of Marshall trying to show we were all doing something wrong because some things are not in minutes that he refused to take responsibility for that our tribal constitution and bylaws gave him. I talked to Randall and Rocky at one time about his not doing his responsibility and their response was, well then fire him.

Howard, we asked you to handle NetJets and other consultants and administrative payments because we did not have any security or continuity at the tribal office. Staff kept changing and our tribal government was in a growth period but did not have much experience. It is easy to look back now and say we should have done things like a big corporation, maybe if Marshall had lived on the reservation ever then maybe he could have come to more meetings, and maybe then he would understand better where we came from and how far we've come. Because to this day he still does not reside on the reservation. Up until recently the Tribal Council felt the safest thing to do was to use your office to take care of administrating the NetJets and arranging flights and paying bills.

Marshall is also saying that we didn't have authority to use NetJets for personal flights at the rate approved by Cache Creek and then the Council again and again. When we first got NetJets, they were pretty new and they didn't have so many planes, as they do now. We had a total of 50 hours and were assessing how many hours we'd need and were waiting for more contract hours for planes we wanted to become available, so we put a cap of 10 hours on the use each year by members and consultants who were allowed to use the plane. This included members and each of you. Soon after new contract hours became available and we realized what our business needs were, we upped our hours so that we had 100s of available hours and the Council authorized the use by the same people without any cap. It all worked out fine because we had plenty of time for both business and personal use. Almost all the members used the plane. What especially angers me is that since he became Chair, Marshall uses the plane to commute from Los Angeles where he lives once or twice every week, and brings the consultants he hired and his wife with him. The rest of us live on the Rancheria.

Walk in beauty always,

A handwritten signature in black ink, appearing to be the initials 'JMS' or similar, written in a cursive style.