

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

BELVA ANN NAHNO-LOPEZ, et al.)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 08-CIV- 01147 F
)	
JEFF HOUSER, et al.)	
)	
Defendants.)	
)	

**BRIEF IN SUPPORT OF DEFENDANTS’ MOTION TO STRIKE CLAIM
FOR RELIEF PURSUANT TO RULE 12(f) OF THE FEDERAL RULES**

Rule 12(f) of the Federal Rules of Civil Procedure provides that “[t]he court may strike from a pleading any redundant, immaterial, impertinent or scandalous matter.” This Court is empowered to strike a prayer for relief pursuant to Rule 12(f) where damages sought thereby are not recoverable as a matter of law. See, e.g., Questrom v. Federated Dep’t Stores, Inc., 41 F.Supp 2d 294 (S.D.N.Y. 1999), aff’d, 242 F.3d 367 (2d Cir. 2001) (granting motion to strike portions of plaintiff’s prayer for relief). See also, Wells v. Board of Trustees of the Cal. State Univ., 393 F.Supp. 2d 990, 994-95 (N.D.Cal. 2005).

Plaintiffs have sought relief including “[a]n order requiring the Defendant(s) to pay treble damages, in an amount to be proven at trial, but believed to exceed \$15,000,000 including any consequential damages, plus interest, attorney fees and costs associated with the bringing of this action.” Complaint, Prayer for Relief, ¶ 6.

However, the protection of sovereign immunity extends, not just to Indian Tribes, but to Tribal officials “acting in their representative capacity and within the scope of their authority.” Hardin v. White Mountain Apache Tribe, 779 F.2d 476, 479 (9th Cir. 1985); see also, Dry v.

United States, 235 F.3d 1249, 1253 (10th Cir. 2000). The immunity of an Indian Tribe also extends to its commercial enterprises¹, see, e.g., Ramey Constr. Co., Inc. v. Apache Tribe of the Mescalero Reservation, 673 F.2d 315, 320 (10th Cir. 1982) (tribal resort “clothed with the sovereign immunity of the Tribe”), and employees of those Tribal enterprises.² Bassett v. Mashantucket Pequot Museum and Research Ctr., Inc., 221 F.Supp. 271, 281 (D.Conn. 2002); Frazier v. Turning Stone Casino, 254 F.Supp. 295, 307 (N.D.N.Y. 2003).

The sole means of overcoming the defense of sovereign immunity interposed by Tribal officials derives from the doctrine of Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), which in some circumstances may apply to permit suit against Tribal officials in their individual capacities, but only where “the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.” Verizon Md. Inc. v. Pub. Serv. Comm’n., 535 U.S. 635, 645, 122 S.Ct. 1753, 152 L.Ed. 2d 871 (2002).

The lone possible warrant for “prospective” injunctive relief represented by the Ex parte Young doctrine simply does not extend to the “treble damages” and other economic relief sought in ¶ 6 of the Complaint’s prayer for relief. We respectfully submit the Court should therefore grant this Motion to Strike pursuant to Rule 12(f) of the Federal Rules of Civil Procedure. Defendants submit a proposed Order via email as required by Local Rule.

¹Here Plaintiffs have described Defendant Fort Sill Apache Casino only as “a privately owned gaming facility conducting business in the private sector, Complaint, ¶ 9, and “established by the ... Tribe ... as an economic development project ...” id., ¶ 19, representations which themselves indicate the Casino is “clothed with the sovereign immunity of the Tribe” that owns and established it. Ramey Constr. Co., supra, 673 F.2d at 320.

²Plaintiffs have also named the General Manager of the Fort Sill Apache Casino in his individual capacity. Complaint, ¶ 8.

Respectfully submitted this 4th day of February, 2009.

/s/ Robert E. Prince

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