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5 IN THE COURT OF THE TULALIP TRIBES OF WASHINGTON
6 TULALIP INDIAN RESERVATION
7 TULALIP, WASHINGTON

8 PHYLLIS JEAN BRADLEY, a/k/a FAYE
9 BRADLEY,

10 Plaintiff,

11 v.

12 TULALIP TRIBES, and JOHN and JANE
13 DOES 1-20, et al,

14 Defendants.

NO. TUL-CV-GC-2011-0118

DEFENDANT TULALIP TRIBES'
MOTION TO DISMISS BASED ON
TULALIP TORT CLAIMS ACT
ORDINANCE 122

15 **I. RELIEF REQUESTED**

16 Plaintiff maintains that she suffered economic and non-economic injuries as the result
17 of a criminal prosecution initiated by Defendant Tulalip Tribes ("Tribes") on or about
18 November 20, 2009 and concluded on June 23, 2010. *See* Cause No. TUL-Cr-SO-2009-
19 0792. Plaintiff filed this civil action for damages in Tribal Court on March 16, 2011,
20 asserting a cause of action for abuse of process and wrongful prosecution.

21 The Tribes specifically prohibits this type of lawsuit and there is no exception or waiver
22 to the Tribes' sovereign immunity. Specifically, Ordinance 122 -Tort Claims, Section
23 5(d)(3) states there shall be no exception or waiver of sovereign immunity for any claim of

24 DEFENDANT TULALIP TRIBES' MOTION
25 TO DISMISS BASED ON TULALIP TORT
CLAIMS ACT ORDINANCE 122- 1

FLOYD, PFLUEGER & RINGER P.S.
300 TRIANON BUILDING, 2505 THIRD AVENUE
SEATTLE, WA 98121-1445
TEL 206 441-4455
FAX 206 441-8484

monetary damages for any injury alleged to have resulted from any intentional tort, including the abuse of process and malicious prosecution. As a result, the Tribes request this Court to dismiss all of Plaintiff's claims with prejudice.

II. STATEMENT OF FACTS

Plaintiff filed her Complaint on March 16, 2011.¹ In the Complaint, Plaintiff pleads two separate causes of action: malicious prosecution and abuse of process.²

Paragraph 3.11 of the Complaint states: "It is believed, and therefore alleged, that the actions described above constitute an abuse of process that has directly caused damage to Plaintiff."³

Paragraph 3.12 of the Complaint states: "It is believed, and therefore alleged, that the actions described above constitute a wrongful prosecution of criminal proceedings against Plaintiff that has directly caused damage to Plaintiff."⁴

Plaintiff did not plead any other recognized cause of action in her Complaint.⁵

III. ISSUES PRESENTED

Should the Court dismiss Plaintiff's claims against the Tribes because Ordinance 122, Section 5(d)(3) specifically bans lawsuits brought against the Tribes for any intentional tort, including malicious prosecution and abuse of process?

¹ See Complaint attached to the Declaration of Thomas B. Nedderman ("Nedderman Dec.") as Ex. A.

² Complaint, ¶¶ 3.11-3.12.

³ Complaint, ¶ 3.11 (emphasis added).

⁴ Complaint, ¶ 3.12 (emphasis added).

⁵ See Complaint.

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IV. EVIDENCE RELIED UPON

This Motion is based upon the Declaration of Thomas B. Nedderman and the attachments thereto, and the pleadings on file in this case.

V. LEGAL ARGUMENT

Plaintiff's claims should be dismissed because Ordinance 122 5(d)(3) specifically disallows lawsuits brought against the Tribes for malicious prosecution and abuse of process. The Tribes are immune from suits based upon these causes of action.

Ordinance 122 provides a forum for tort claims in the Tulalip Tribal Court. Ordinance 122, Section 1(b) states that "The Board of Directors recognizes that the Tribes are immune from suit, except to the extent such immunity is expressly waived..."⁶ The Ordinance proceeds to state:

The Board of Directors declares that the purpose of this Ordinance is to establish a limited waiver of Tribal sovereign immunity consistent with the ability of the Tribes to continue (i) to provide governmental services which promote health, safety and economic security for the residents of and visitors to the lands of the Tribes and (ii) to provide a remedy to private persons who are injured by negligent or wrongful acts or omissions of the Tribes or its agents, employees or officers.⁷

However, sovereign immunity is not waived with regard to some specific causes of action. In particular, Ordinance 122, Section 5(d)(3) states as follows:

Notwithstanding any other provision of this Ordinance, there shall be no exception to or waiver of sovereign immunity for any claim of monetary damages for any injury alleged to have resulted from any:

...

⁶ See Ordinance 122, § 1(b), attached to Nedderman Dec. as Ex. B.

⁷ Ordinance 122, § 1(c).

1 3. Any intentional tort, including but not limited to assault, battery, false
2 imprisonment, **malicious prosecution, abuse of process**, libel, slander,
3 defamation, misrepresentation, deceit, interference with contract rights, or
4 interference with prospective economic advantage, except that this
5 provision does not immunize the Tribes for any acts or omissions of
6 investigative or law enforcement officers giving rise to claims for assault,
battery, false arrest, false imprisonment or malicious prosecution, provided
that for purposes of this subsection "investigative or law enforcement
officer" means any agent, employee or officer of the Tribes who is
empowered to execute searches, to seize evidence, or to make arrests under
Tribal law[.]”⁸

7 Pursuant to Ordinance 122, there is no exception to tribal immunity for causes of action
8 for malicious prosecution and abuse of process. Plaintiff's Complaint was brought against the
9 Tribes. Plaintiff's criminal trial in Tulalip Tribal Court formed the basis of the allegations. In
10 pleading a cause of action for malicious prosecution, Plaintiff stated that "the actions
11 described above constitute a wrongful prosecution of criminal proceedings against
12 Plaintiff[.]”⁹ (Emphasis added). Plaintiff's allegations are predicated upon criminal
13 proceedings instituted by the Tribes. Thus, the allegations do not fit into any exception or
14 waiver of tribal sovereign immunity. As a result, Plaintiff's causes of action for malicious
15 prosecution and abuse of process are barred by the tribal immunity granted in Ordinance 122.

16 VI. CONCLUSION

17 Ordinance 122 upholds tribal sovereign immunity for any claim of monetary damages
18 for any injury alleged to have resulted from any intentional tort, including abuse of process
19 and malicious prosecution, which are the only causes of action plead by Plaintiff. Those
20 claims are predicated upon the institution of criminal proceedings against Plaintiff in Tribal
21

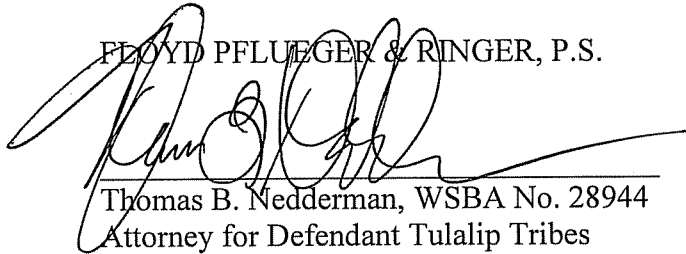
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23 ⁸ Ordinance 122, § 5(d)(3) (emphasis added).

⁹ Complaint, ¶3.12.

1 Court. Consequently, Plaintiff's claims are barred because of tribal sovereign immunity as
2 defined by Ordinance 122, Section 5(d)(3). Accordingly, the Tribes respectfully request this
3 Court for an order of dismissal with prejudice.

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5 DATED this 3rd day of May 2011.

6 FLOYD PFLUEGER & RINGER, P.S.

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8 Thomas B. Nedderman, WSBA No. 28944
9 Attorney for Defendant Tulalip Tribes

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington, that on the date noted below, a true and correct copy of the foregoing was delivered and/or transmitted in the manner(s) noted below:

Charles R. Hostnik
Anderson Hostnik, PLLC
6915 Lakewood Drive West, Suite A-1
Tacoma, WA 98467

Counsel for Plaintiff

☐ Via Facsimile
☒ Via U.S. Mail
☐ Via Messenger
☐ Via Email

DATED this 3rd day of May, 2011.


Erin M. Beck, Legal Assistant

DEFENDANT TULALIP TRIBES' MOTION
TO DISMISS BASED ON TULALIP TORT
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