

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 14-CV-60679-JAL**

LUJEN BRANDS, LLC,  
Plaintiff

vs.

THE SEMINOLE TRIBE OF FLORIDA, INC.,  
MICHAEL ULIZIO, CHRIS OSCEOLA and  
HARD ROCK CAFÉ INTERNATIONAL (USA), INC.  
Defendants.

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**PLAINTIFF'S RESPONSE IN OPPOSITION TO STOFI DEFENDANTS'  
MOTION TO DISMISS**

COMES NOW, Lujen Brands, LLC (hereinafter "Lujen" or "Plaintiff"), by and through the undersigned counsel, pursuant to Fed. R. Civ. P. 12(b)(1) and Southern District of Florida Local Rule 7.1, and hereby files this Response in Opposition to STOFI Defendants' Motion to Dismiss and in support thereof states as follows.

**BACKGROUND**

Plaintiff Lujen filed the instant action pursuant to 28 U.S.C. §1332, based on diversity jurisdiction. STOFI Defendants do not attack the Complaint for a lack of diversity jurisdiction, but allege that the STOFI Defendants all have sovereign immunity from suit and therefore the Court is precluded from adjudicating the matter based upon subject matter jurisdiction. *See* DE 14, pg. 1. Lujen contends that STOFI, a §17 federally chartered corporation established under 25 U.S.C. §477, is not entitled to an extension of the Seminole Tribe of Florida's (hereinafter "the Tribe") sovereign immunity; and that the individual STOFI Defendants acted outside the scope of their respective authority,

and therefore, are likewise not entitled to an extension of the Tribe's sovereign immunity. The Tribe is not a named Defendant, as it has long been recognized as a "domestic dependent nation" with its own constitution, governing body and sovereign immunity. *See Cherokee Nation v Georgia*, 30 US 1, 17 (1831).

### **LEGAL STANDARD**

Dismissal for lack of subject matter jurisdiction is appropriate only when a claim, as alleged, patently fails to present a federal controversy. *See Simanonok v. Simanonok*, 787 F.2d 1517, 1519 (11th Cir.1986). Attacks on subject matter jurisdiction under Rule 12(b) (1) are either "facial" or "factual" attacks. *See Garcia v. Copenhaver, Bell & Assocs., M.D.'s, P.A.*, 104 F.3d 1256, 1260–1261 (11th Cir.1997). With a facial attack, the court is required "merely to look and see if [the] plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion." *See Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir.1990) (citation omitted). In contrast, "factual attacks" dispute "the existence of subject matter jurisdiction in fact, irrespective of the pleadings;" consequently, the reviewing court may consider matters outside the pleadings. *Id.* The instant matter involves a factual attack. *See* DE 14, pg. 4.

### **ARGUMENT**

The basis for federal subject matter jurisdiction that exists in this case is diversity of citizenship.

#### **I. STOFI IS A CITIZEN OF FLORIDA FOR DIVERSITY PURPOSES**

There are three ways for an Indian tribe to form corporations that are distinct from the domestic dependent nation, or constitutional tribe. First, the tribe can follow the

procedures for forming a corporation under state law, just like any non-Indian entity. Second, the tribe can receive a federal charter under §17 of the Indian Reorganization Act of 1934. *See* 25 U.S.C. §461 *et. seq.* The corporate charter does not displace the tribe's governing body. Rather the §17 tribal corporation exists as a separate legal entity alongside the constitutional tribe, which is often organized under §16 of the Indian Reorganization Act. *See* 25 U.S.C. §476. Third, tribal governments can allow for the formation of corporations under tribal law. They can enact their own business codes that authorize the formation of corporations, or they can charter corporations directly through their legislative bodies. The Circuits have split on the issue of the impact of incorporation on diversity jurisdiction.

In the case at bar, the Tribe chose to incorporate STOFI as a §17 federally chartered corporation. The test for determining the state citizenship of a federally chartered corporation involves a three-step sequence: (1) Statutes that provide for federal corporations' citizenship: The state citizenship of many corporations formed under federal law is expressly provided by statute. National banks, for example, are "deemed citizens of the States in which they are respectively located." *See* 28 U.S.C. §1348. (2) The Bankers Trust default rule: If the federally chartered corporation is not governed by statute--and if the exception in step three does not apply--then the Bankers Trust rule still controls and the parties are not diverse. *See Lehman Brothers Bank, FSB v. Frank T. Yoder Mortgage*, 415 F. Supp. 2d 636, 639, 642 (E.D. Va. 2006). (3) The localization exception: The courts have developed a "localization exception" to the Bankers Trust rule. The exception provides that the corporation is considered a citizen of one state if its activities are "localized" within that state. *See Loyola Fed. Sav. Bank v. Fickling*, 58 F.3d

603, 606 (11th Cir.1995) (holding that as a general rule, a corporation chartered pursuant to federal law is not “a citizen of any state for diversity purposes and diversity jurisdiction would not exist unless the corporation’s activities were sufficiently ‘localized’ in one state”).

The Eleventh Circuit Court went on to find that determining whether a federal corporation is localized for diversity purposes should not be simply a question as to whether that corporation’s activities are exclusive to one state. Such an evaluation should involve a more expansive investigation into the corporation’s business. A variety of factors are relevant to this inquiry, such as the corporation’s principal place of business, the existence of branch offices outside the state, the amount of business transacted in different states, and any other data providing evidence that the corporation is local or national in nature. *Id. at 606.*<sup>1</sup>

Most corporations that have satisfied the localization exception are federally chartered credit unions or thrifts. Like §17 corporations, a federal credit union’s membership is often largely confined to a particular community, unless its members are united by another “common bond,” such as a shared occupation. And like §17 corporations, their operations often touch multiple states, even though they are chartered to serve a local community. Yet this has not prevented courts from holding that these financial institutions were sufficiently localized.<sup>2</sup>

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<sup>1</sup> See also *Parker Drilling Co. v. Metlakatla Indian Community*, 451 F. Supp. 1127 (D. Alaska 1978) (holding that §17 tribal corporation “is an Alaskan corporation for diversity purposes” because its “only major business activities, and situs, are located in Alaska”).

<sup>2</sup> See *Loyola Federal*, 58 F.3d at 606 (federally chartered corporation considered Maryland citizen even though one-third of its residential mortgages were in other states); *Sovereign Bank v. Chicago Title Ins. Co.*, 2000 WL 1100800 (E.D. Pa.) (court held that corporation was localized in Pennsylvania even though 143 of its 302 branches were located outside Pennsylvania and it had non-branch offices in seven other states); *Elwert v. Pacific First Fed. Sav’gs & Loan Ass’n of Tacoma, Washington*, 138 F. Supp. 395 (D. Or.

Lujen contends that the evidence the court should consider relevant can be divided into two categories: factual evidence about the location of STOFI's offices, employees, and customers; and primary legal materials like the statute and corporation's federal charter. Unlike the corporations mentioned above, which were created to serve a national purpose, STOFI is obligated to serve the interests of the Tribe that is located in a particular geographically defined location- Florida. *See* DE 14, Exh. C. STOFI is a membership corporation that consists solely of the registered members of the Tribe- who in most cases- live on its reservation in Florida. *Id.* The shares of STOFI must remain wholly owned by the Tribe. *Id.* Moreover, STOFI's charter reveals the corporation's local purpose. *Id.*

Even when a §17 corporation operates in multiple states, the purpose of those activities is to benefit a specific localized community. The Third Circuit relied on a federally chartered corporation's local purpose in *Feuchtwanger Corp. v. Lake Hiawatha Federal Credit Union*, 272 F.2d 453 (3d Cir.1959), in holding that the corporation was sufficiently localized. The court noted that the credit union was chartered "for the purpose of promoting thrift among its members" before concluding that "the statute and the charter combined to make this a peculiarly local institution of a single community in the state of New Jersey." *Id.* at 454-55.

Primary legal materials like the statute and charter can play two roles in helping a court assess whether a §17 corporation is localized. First, they provide readily available evidence of localization, even absent a detailed factual record about the extent of the corporation's operations. Second, when the primary materials indicate the corporation's

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1956) (the first case to adopt the localization exception, corporation deemed a Washington citizen even though two of its five branches were in Oregon).

local character, courts can be more forgiving of substantial out-of-state operations. This is a natural consequence of treating the localization exception as a multifactor standard. *See Loyola Federal*, 58 F.3d at 606. This reasoning is implicit in cases like *Loyola Federal*, *Sovereign Bank*, and *Elwert*, where the courts held that federally chartered corporations were localized despite extensive multistate activities. Applying this rationale to STOFI, the court in *English Interests, LLC v. Seminole Tribe of Fla., Inc.*, 2011 WL 208289 (M.D. Fla. Jan. 21, 2011), could have considered these materials rather than summarily concluding that it lacked evidence of localization.

Here, Lujen is unaware of the extent of STOFI's business activities inside and outside of Florida. Accordingly, Lujen requests jurisdictional discovery to determine the level of localization and then leave to amend its Complaint as necessary, if the court is inclined to conclude that the Complaint does not sufficiently allege subject matter jurisdiction. Amendment of Lujen's Complaint would not be futile as discussed in detail below.

## II. STOFI IS NOT ENTITLED TO SOVEREIGN IMMUNITY

As discussed above, STOFI is a federally chartered tribal corporation, pursuant to §17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. §477. *See* DE 14, pg. 6. STOFI is a separate and distinct commercial entity from the Tribe. *See* DE 14, pg. 7. STOFI operates in accordance with a corporate charter and by-laws, rather than the Tribe's constitution. *Id.* STOFI is governed by a Board of Directors that is different from the elected members of the Tribal Council who govern the Tribe, despite a common member. *See* DE 14, pgs. 4, 7. The local business interests of STOFI include agriculture, citrus, tobacco and cattle. The Tribe conducts business separate and apart from the

commercial business enterprises associated with STOFI. Accordingly, STOFI is a localized separate and distinct economic entity in creation and practice from the Tribe, and as such, should not be entitled to an extension of the Tribe's sovereign immunity.

STOFI Defendants cite to *Maryland Cas. Co v. Citizens Nat'l. Bank of West Hollywood*, 361 F.2d 517 (5<sup>th</sup> Cir. 1966) and *Inglish Interests, LLC v. Seminole Tribe of Fla. Inc.*, 2011 WL 208289 (M.D. Fla. Jan. 21, 2011), as the legal bases which establish that the Tribe's sovereign immunity extends to STOFI. *See* DE 14, pg. 9. The Court in *Maryland Cas.* held that STOFI was entitled to sovereign immunity based upon the language in its corporate charter, which was approved by the Secretary of the Interior. *Id.* at 520-521. There, the Court found that because 25 U.S.C. §477 gives the Secretary of the Interior the power to approve a corporate charter, that the Secretary of the Interior also has the authority to grant that corporate entity an extension of the Tribe's sovereign immunity. *Id.* This was an error. The statutory language expressly provides the following:

Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands, and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law, but no authority shall be granted to sell, mortgage, or lease for a period exceeding twenty-five years and trust or restricted lands included in the limits of the reservation. *See* 25 U.S.C. §477.

The statute limits the powers the Secretary of the Interior may bestow upon the corporate entity and the extension of the Tribe's sovereign immunity is not one of the enumerated powers. *Id.* As such, the holding of *Maryland Cas.* incorrectly interpreted 25 U.S.C. §477 and STOFI is not statutorily entitled to an extension of the Tribe's sovereign

immunity. Indeed, the court in *English Interests* points out the fact that STOFI's amended corporate charter "both *presumed* that the corporation had sovereign immunity and allowed the corporation to waive sovereign immunity..." See *English Interests* at \*6. (emphasis added).

Moreover, the court in *English Interests*, briefly mentions that case law has extended Indian sovereign immunity to entities other than the literal "Tribe," including those engaged in economic activities, provided that the relationship between the tribe and the entity is sufficiently close to properly permit the entity to share in the tribe's immunity. *Id.* at \*6. (citing to *Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino and Resort*, 629 F.3d 1173(10<sup>th</sup> Cir. 2010)). Notably, the court cites to *Breakthrough Mgmt.* but neglects to consider the six factors enumerated therein to determine whether the Tribe's sovereign immunity should, in fact, be extended to STOFI. Lujen contends that the Tribe's sovereign immunity should not be extended to STOFI based upon the following analysis.

In *Breakthrough Mgmt.*, the Tenth Circuit concluded that the following factors would be helpful in informing their inquiry to determine if a tribe's economic entity qualifies as a subordinate economic entity entitled to share in a tribe's immunity: (1) the method of creation of the economic entities; (2) their purpose; (3) their structure, ownership, and management, including the amount of control the tribe has over the entities; (4) the tribe's intent with respect to the sharing of its sovereign immunity ; (5) the financial relationship between the tribe and the entities; and (6) the policies underlying tribal sovereign immunity and its connection to tribal economic development, and whether those policies are served by granting immunity to the economic entities. *Id.*



(citing *Dixon v. Picopa Const. Co.*, 772 P.2d 1104, 1111(1989) (“Tribal immunity should only apply when doing so furthers the federal policies behind the immunity doctrine.” (citing Note, *Tribal Sovereign Immunity: Searching for Sensible Limits*, 88 Colum. L.Rev. 173, 183, 186 (1988))); *Gavle Little Six Inc.*, 555 N.W.2d 284, 294 (Minn. 1996) (courts should determine “whether federal policies intended to promote Indian tribal autonomy are furthered by the extension of immunity to the business entity”). Those policies include protection of the tribe’s monies, see *Calif. v. Cabazon Band of Mission Indians*, 480 U.S. 202, 218–19, 107 S.Ct. 1083 (1987); *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046–47 (9<sup>th</sup> Cir. 2006), as well as “preservation of tribal cultural autonomy, preservation of tribal self-determination, and promotion of commercial dealings between Indians and non-Indians,” *Dixon*, 772 P.2d at 1111.

The first factor, the method of creation of STOFI weighs against the conclusion that it is a subordinate economic entity entitled to tribal sovereign immunity. It is undisputed that STOFI is a federally chartered corporation created under 25 U.S.C. §477. The Tribe could have created STOFI under tribal law, but it didn’t. STOFI admits that it operates under a separate corporate charter and by-laws, not the Tribe’s constitution. See DE 14, pg. 6. Unlike *Breakthrough Mgmt.* and *Native American Distributing v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288 (10<sup>th</sup> Cir. 2008), this lends support to the conclusion that STOFI was created by the Tribe acting in its corporate capacity, not its governmental capacity. *Accord*, 546 F.3d at 1294.

The second factor weighs in favor of immunity because STOFI was created for the financial benefit of the Tribe. The third factor in the court’s analysis: the structure, ownership and management of STOFI weighs against extending the Tribe’s immunity to

STOFI. STOFI is controlled by its Board of Directors, which is different than the Tribal Council- although there is one member in common- the Tribal Council does not control STOFI's Board. *See* DE 14, Exh. C., pg. 2, Article V, Section 1 and pg. 6, Article II, Section 1. STOFI has broad corporate powers. *Id.* at Article VI. The Tribal Council does not have unrestricted power to arbitrarily remove members of STOFI's Board. *See* DE 14, Exh. C, pg. 9, Article III, Section 7 and pg. 10, Article IV, Section 2. Ownership of STOFI is vested in the registered members of the Tribe. But the CFO, Defendant Ulizio was not even a member of the Tribe.

The fourth factor weighs in favor of concluding that the Tribe's immunity extends to STOFI as it is clear that the Tribe intended to share its tribal immunity with STOFI. However, the fifth factor: the financial relationship between the Tribe and STOFI weighs against extending immunity to STOFI. STOFI operates as a separate and distinct corporate entity. The Tribe is insulated from the corporate debts and obligations of STOFI. *See* DE 14, Exh. C. pg. 3, Article VII. And, the corporate administration and accounting activities are not controlled or exercised by the Tribal Council. *See* DE 14, Exh. A, pg.5, Article V Section 5. The most significant part of the Tribes revenues come from gaming and hospitality which the Tribe conducts through a separate economic entity- the Hard Rock Hotel and Casino.

And finally, the court should conclude that the sixth factor: the overall purposes of tribal sovereign immunity are not served by a conclusion that the Tribe's sovereign immunity extends to STOFI. The §17 corporation was intended to improve the economic lot of tribes that elected to adopt a federal charter. The charters issued after the Indian Reorganization Act's enactment in 1934 often state that the purpose of the §17

corporation is to “further the economic development” of the tribe- as does STOFI’s. *See* DE 14, Exh. C, Article II. Yet, non-Indian companies may be deterred from doing business with tribes and their corporations because of the legal uncertainties that arise.

Jurisdictional barriers that prevent parties from consistently accessing a convenient and reliable forum likely contribute to underinvestment. Professor Dao Lee Bernardi-Boyle writes,

[M]any outsiders feel that tribal court systems are often an inadequate substitute. “There is a widespread feeling held by many non-Indians that tribal judges are biased against them. There are also complaints of incompetence, and even corruption in some tribal courts.” If a tribal court is the only court with jurisdiction over a tribe, an outside investor may worry about having a fair means of enforcing a contract against the tribe. . . . [M]any tribes have developed or have begun to develop reliable court systems. While tribes are waiting for non-Indians to recognize their advances, they need to be able to assure that they can be held accountable in non-tribal court.<sup>3</sup>

Federal jurisdiction is especially important in transactions involving tribal corporations because there are strict limits on state court jurisdiction over suits against tribal entities. The non-Indian plaintiff who does not have access to state court has an especially compelling interest in invoking diversity jurisdiction to gain access to federal court. Without access to federal court, the non-Indian plaintiff would either be left to hope that the tribal court elects to assert jurisdiction over the case or be deprived of a forum altogether.<sup>4</sup>

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<sup>3</sup> *See* Dao Lee Bernardi-Boyle, *State Corporations for Indian Reservations*, 26 Am Indian L Rev 41, 54 (2001).

<sup>4</sup> *See* Jean Pendleton, Note, *Iowa Mutual Insurance Co. v. LaPlante and Diversity Jurisdiction in Indian Country: What If No Forum Exists?*, 33 SD L Rev 528, 542 (1988).

These layers of uncertainty are a concern for non-Indians that would like to do business with a tribal corporation but are wary of litigating a potential dispute in a tribal court. And this, in turn, should likely concern tribal corporations that would like to do business with non-Indians and would prefer to secure better terms by being able to make promises that are consistently enforceable in a forum that the non-Indian party finds convenient and reliable. Considering all of the aforementioned factors, Lujen contends that STOFI and the Tribe are not so closely related that this court should extend the Tribe's sovereign immunity to STOFI.

### III. INDIVIDUAL STOFI DEFENDANTS ACTED OUTSIDE THE SCOPE OF THEIR AUTHORITY THEREFORE THEY ARE NOT ENTITLED TO SOVEREIGN IMMUNITY

“Tribal officers are protected by tribal sovereign immunity when they act in their official capacity and within the scope of their authority” *See Tamiami Partners, LTD v. Miccosukee Tribe of Indians of Florida*, 177 F.3d 1212, 1225 (11<sup>th</sup> Cir.1999); *Tenneco Oil Co. v. Sac & Fox Tribe of Indians*, 725 F.2d 572, 576; *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908).<sup>5</sup> In the instant matter, Lujen has alleged that the individual STOFI Defendants Ulizio and Osceola, both acted outside the scope of their respective authority. *See* DE 1. The doctrine of tribal immunity does not extend to tribal officials when acting outside their authority in violation of state law. *See Puyallup Tribe, Inc. v. Washington Game Dept.*, 433 U.S. 165, 171-72, 97 S.Ct. 2616 (1977). As individual STOFI Defendant Osceola admits in a text message to Lujen's Managing Member Iudice, Ulizio “did not have the authority” to make the deal with Lujen and

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<sup>5</sup> It is unclear whether individual STOFI Defendant Osceola was also a tribal officer at the relevant times. Defendant Ulizio is not a member of the Tribe, nor an officer of STOFI. *See* DE 14, Exh.C., pg.10, Article IV, Section 1.

Candlebox. *See* Exhibit 1. Indeed, Osceola later admits that he is only “one vote” of STOFI’s Board of Directors. It is evident from that statement that he was aware of the fact that, he too, lacked the requisite authority to make the deal with Lujen and Candlebox- contrary to the verbal representations he made to Iudice and the members of Candlebox. *See* Exhibits 1, 2 and 3.

Tribal officers enjoy a qualified rather than an absolute immunity. *See Tenneco Oil*, 725 F.2d at 576. When the complaint alleges that the named officer defendants have acted outside the amount of authority that the sovereign is capable of bestowing, an exception to the doctrine of sovereign immunity is invoked. *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 69 S.Ct. 1457, 93 L.Ed. 1628 (1949). Here, based upon STOFI’s own charter and by-laws, the deal with Lujen and Candlebox had to be approved by a majority vote of STOFI’s Board of Directors- not any one individual Board member or the CFO. *See* DE 14, Exh. C, pg. 6, Article II, Section 5.

STOFI Defendants initially rely upon cases which involve Tribal officials, and then argue that an extension of any immunity granted to those officials should also extend to STOFI’s officials, employees and agents. *See* DE 14, pg. 14. First, the case at bar is distinguishable from *Taylor* in that Lujen is not pursuing claims against members of an “intertribal consortium,” nor seeking redress for matters that “concern tribal self-governance, reservation administration and other intramural Indian matters.” As stated above, it is unclear if Defendant Osceola was a tribal official at the relevant time and Ulizio is not a member of the Tribe. The instant case is also distinguishable from *Tamiami Partners*, because Lujen has alleged that Defendants Osceola and Ulizio acted outside the scope of their authority.

As to STOFI Defendants' argument that tribal immunity should be extended to officials, employees and agents of STOFI, as discussed in *Seminole Police Dep't.*, the instant case is likewise distinguishable on those facts. Unlike *Seminole Police Dep't.*, Lujen does not contend that STOFI has waived sovereign immunity by virtue of accepting the benefits of Florida Statutes. Lujen contends that STOFI is not entitled to sovereign immunity because it is not a subordinate economic entity sufficiently close to the Tribe to warrant extension of the Tribe's immunity. Accordingly, Defendants Ulizio and Osceola cannot benefit from such an extension, as they were acting outside the scope of their respective authority.

Contrary to STOFI Defendants' assertion that this matter is akin to that of the *Ransom* case, the facts belie that claim. This case was not "an erroneous exercise of delegated duties," as evidenced by Defendant Osceola's text message. He was aware at the time he made the false representations to Iudice and the members of Candlebox that there was no deal and no funds would be forthcoming. Clearly, Ulizio's representation that the deal was done and no Board vote or approval was needed was patently false.

Moreover, Lujen is seeking redress from STOFI, Ulizio, Osceola and Hard Rock Café International (USA), Inc. Lujen contends that each party Defendant benefitted from the actions of Ulizio and Osceola. STOFI and Hard Rock received increased revenue and positive publicity from the actions of Lujen and Candlebox; and the individual STOFI Defendants Ulizio and Osceola maintained their positions of influence and related salaries.

In sum, Lujen filed a four count Complaint alleging fraudulent misrepresentation, promissory estoppel, unjust enrichment and tortious interference with a business

relationship. *See* DE 1. The claims are based upon the Letter of Intent (hereinafter “LOI”) executed by Defendant Ulizio, as well as the verbal promises and assurances made by Defendant Ulizio, Defendant Osceola and other STOFI Board Members like Larry Howard. Defendants Ulizio and Osceola acted outside the scope of their authority and Lujen detrimentally relied on their unauthorized misrepresentations.

The Complaint clearly alleges that the individual STOFI Defendants acted outside the scope of their authority and made false representations upon which Lujen detrimentally relied. Lujen has been damaged due to the actions of STOFI Defendants: Candlebox fired Lujen as a direct and proximate result of the failure of STOFI to provide the promised funds necessary for their 20<sup>th</sup> anniversary tour; Lujen lost the money it would have been entitled to had the promises been fulfilled; Lujen lost future revenue that would have been generated through Lujen’s work managing Candlebox; and Lujen suffered substantial harm to its reputation in the industry among managers and promoters. *See* Exhibits 1 and 3.<sup>6</sup> These facts establish a case or controversy and consequently warrant denial of STOFI Defendants’ Motion to Dismiss.

WHEREFORE, Plaintiff Lujen respectfully requests that this honorable court deny STOFI Defendants’ Motion to Dismiss or in the alternative grant jurisdictional discovery and leave to amend its Complaint as necessary.

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<sup>6</sup> These facts establish that Lujen has Article II standing, as it has pled that it (1) suffered an actual or prospective injury as a result of the putatively illegal conduct of the Defendants; (2) that the injury can be fairly traced to the challenged conduct of the Defendants’; and (3) that the injury is likely to be redressed through court action.

Dated: May 19, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was electronically filed with the Clerk of Court and served on all counsel or parties of record via CM/ECF on May 19, 2014, pursuant to the attached Service List.

s/ Stefanie C. Moon, Esq.  
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