

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

(1) **UNITED PLANNERS FINANCIAL** )  
**SERVICES OF AMERICA, L.P.,** )

Plaintiff, )

vs. )

Civil Action No. CIV-14-1278-HE

(2) **SAC AND FOX NATION,** a federally- )  
recognized Indian Tribe, and )

(3) **SAC AND FOX NATION HOUSING** )  
**AUTHORITY,** an administrative Department of the )  
Sac and Fox Nation, and )

(4) **SAC AND FOX NATION DISTRICT** )  
**COURT,** and )

(5) **THE HONORABLE DARRELL R.** )  
**MATLOCK, JR.,** *in his official capacity as Judge* )  
*of the Sac and Fox Nation District Court,* )

Defendants. )

**COMPLAINT**  
(Declaratory and Injunctive Relief)

1. This Complaint seeks a declaratory judgment as well as injunctive relief pursuant to 28 U.S.C. §§ 2201-2202 in connection with a lawsuit filed by the Sac and Fox Nation (“Nation”) and Sac and Fox Nation Housing Authority (“Housing Authority”) against United Planners Financial Services of America, L.P. (“United Planners”) in the Sac and Fox Nation District Court. In the Tribal Court action, the Nation and Housing Authority seek damages for alleged breach of fiduciary duty and breach of contract, among other claims, against United Planners arising out of brokerage services United Planners provided to the Defendants (“2014 Tribal Court Action”).

2. The current action is the second attempt by the Nation and Housing Authority to litigate the same claim against United Planners. On January 31, 2011, the Nation and Housing Authority filed an action in the Tribal District Court (“2011 Tribal Court Action”) alleging United Planners breached a contract and breached its fiduciary duty, among other claims, when providing brokerage services United Planners to the Defendants. In the 2011 Tribal Court Action, United Planners filed its answer and sought an injunction against the Nation and Housing Authority, alleging the parties had agreed to submit all disputes to arbitration. The Tribal District Court denied United Planners requested injunction relief. However, the Sac and Fox Nation Supreme Court reversed the District Court denial of injunctive relief, specifically holding that “since this Court finds and holds that any dispute arising under the broker agreements between the parties should be adjudicated in arbitration, this case is remanded to the District Court with instructions to dismiss.” *Sac and Fox Nation Supreme Court Order and Judgment*, pp. 2-3 (September 26, 2013). A copy is attached as Exhibit 1. The Nation and Housing Authority then initiated an arbitration proceeding against United Planners. After submitting the claim to arbitration, the Nation and Housing Authority immediately moved to dismiss their claims, asserting the claims arose more than six years prior to submission to arbitration and the claims were thus not eligible for arbitration. The arbitration panel granted the Nation and Housing Authority’s motion to dismiss to its own arbitration proceeding. Within one day of the dismissal in arbitration, the Nation and Housing Authority filed the 2014 Tribal Court Action.

3. United Planners has exhausted the tribal court remedies. The agreements between United Planners and the Nation and Housing Authority provided that the exclusive forum for resolution of any disputes between the parties would be in an arbitration proceeding. The Sac and Fox Nation Supreme Court affirmed that the Nation and Housing Authority could pursue

their claims in arbitration but not in the Tribal District Court or any other court. The Nation and Housing Authority submitted to the authority panel when they instituted the arbitration proceedings. After submitting all claims between the parties to arbitration, the Nation and Housing Authority then moved to dismiss all their claims. The arbitration panel granted the Nation and Housing Authority's motion to dismiss the arbitration proceeding, dismissing the arbitration case with prejudice.

4. Accordingly, United Planners seek (1) declarations that the Tribal District Court lacks jurisdiction over Plaintiff and the 2014 Tribal Court Action; (2) an injunction against further proceedings in the Tribal District Court; and (3) further relief as set forth below.

#### **THE PARTIES**

1. United Planners is a limited partnership that provides full brokerage, insurance and investment advisory services to more than 300 independent registered representatives and investment advisors throughout the country.

2. The Sac and Fox Nation is a federally-recognized Indian tribe that is headquartered in Lincoln County near Stroud, Oklahoma. The Nation is operated by a five-member Business Committee comprised of persons elected by the Nation's membership. Under the Nation's Constitution, the Business Committee is empowered to conduct the day to day operations of the Nation.

3. The Sac and Fox Nation Housing Authority is an Administrative Department of the Nation with its offices located in Pottawatomie County in Shawnee, Oklahoma.

4. The Sac and Fox Nation Court ("Tribal District Court") is the tribal court for the Sac and Fox Nation and has its chambers in Lincoln County near Stroud, Oklahoma.

5. The Honorable Darrell R. Matlock, Jr. is the Judge of the Sac and Fox Nation Court.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as this action arises under the Constitution, laws, or treaties of the United States, raising the federal question of the scope of adjudicative jurisdiction of the Tribal District Court and the exhaustion of tribal court remedies by United Planners.

7. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) in that all Defendants reside within the district and/or the state of Oklahoma.

### **NATURE OF THE CASE**

8. United Planners provides full brokerage, insurance and investment advisory services throughout the country.

9. The Nation and Housing Authority were customers of United Planners. The relationship lasted for approximately 12 years—from 1994 until 2006. The relationship was evidenced by a series of Account Agreements which would be executed by the parties from time to time.

10. The last Account Agreement executed during the relationship between the parties, dated July 5, 2005, was a two page document with the signatures of the parties appearing on the second page. Immediately above the signature line on the second page is a statement that the “Undersigned has/have carefully read this page, which includes the predispute arbitration clause.” Above that language is an “Arbitration Agreement” that provides “[a]ll parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury.”

11. On January 31, 2011, almost five years after the relationship between the two parties ended, the Nation and Housing Authority filed the 2011 Tribal Court Action.

2011 Tribal Court Action

12. In their Complaint, the Nation and Housing Authority asked “for relief against the defendant for its misconduct, negligence, breach of contract, breach of fiduciary duty, breach of Tribal policies, breach of US Government policies, breach of industry customs, practices, rules and regulations, and failure to supervise.”

13. On February 23, 2011, United Planners filed an answer to the Nation and Housing Authority’s Complaint, asserting as affirmative defenses the court’s lack of personal jurisdiction over United Planners and the Court’s lack of subject matter jurisdiction.

14. On May 24, 2011, United Planners filed a motion to compel arbitration and stay litigation, asserting that “[b]ecause an enforceable agreement to arbitrate exists between the parties and the [Nation’s] claims fall within the scope of the agreement’s arbitration clause, [the Nation has] waived [its] right to trial by jury and this Court should compel arbitration and stay litigation.” The Tribal District Court denied United Planners’ motion to compel the Nation and Housing Authority to arbitrate the claims, holding that neither entity had waived its sovereign immunity by executing the agreements.

15. On January 10, 2012, United Planners served a Demand for Arbitration on the Nation and Housing Authority pursuant to the arbitration clause in the Account Agreements which stated “Arbitration must be commenced by services upon the other party of a written demand for arbitration or a written notice of intention to arbitrate, therein electing the arbitration tribunal. In the event the undersigned does not make such election within (5) days of such demand or notice, then the undersigned authorizes you to do so on behalf of the undersigned.”

16. On January 17, 2012, consistent with the Arbitration clause in the Account Agreements between the parties, United Planners filed a *Statement of Claim* with the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Nation and Housing Authority.

17. On February 8, 2012, the Nation and Housing Authority filed in the 2011 Tribal Court Action a motion to enjoin United Planners from continuing with the FINRA arbitration proceedings.

18. On February 22, 2012, United Planners filed the “FINRA ARBITRATION Submission Agreement” and executed it on behalf of the Nation and Housing Authority as authorized under the Account Agreements. United Planners then filed its own motion in the 2011 Tribal Court Action for an injunction to compel the Nation and Housing Authority to participate in the FINRA arbitration proceedings.

19. On March 16, 2012, the Tribal District Court conducted a hearing on both parties’ motions for injunctive relief. At the conclusion of the hearing, the District Court Judge announced that the “Plaintiff’s [Nation and Housing Authority] application to stay is granted, preventing all arbitration proceedings. The Defendant’s [United Planners] application is denied.” The District Court further directed United Planners to “inform the arbitrator that it was not the Sac and Fox Nation that made the arbitration application.”

20. United Planners appealed the 2011 Tribal Court Action to the Sac and Fox Nation Supreme Court.

*Sac and Fox Nation Supreme Court*

21. On September 26, 2013, the Sac and Fox Nation Supreme Court ***reversed*** the District Court’s Order stating “the Nation may pursue its claims in arbitration if it so chooses to adjudicate its claim against [United Planners], but ***it may not proceed with its case in the District***

*Court or any other court.*” See Exhibit 1, p. 11 (emphasis added). The Supreme Court then remanded the case back to the District Court “with instructions to dismiss without prejudice.”

22. On October 8, 2013, the Nation filed a *Motion to Modify Order* with the Supreme Court, asking that the Court “stay, hold in abeyance, or administratively close the case pending FINRA’s ruling on eligibility.”

23. On April 14, 2014, the Sac and Fox Nation Supreme Court denied the Nation’s motion to modify its order and remanded the case back to the District Court with instructions to dismiss. A copy of this Sac and Fox Nation Supreme Court *Order* denying the motion to modify is attached as Exhibit 2.

24. On April 30, 2014, the Sac and Fox District Court entered an Order on Mandate. A copy of the District Court Order of Mandate is attached as Exhibit 3.

*FINRA Arbitration Proceedings*

25. The original *Statement of Claim* was filed on January 17, 2013. A copy of the *Statement of Claim* is attached hereto as Exhibit 4<sup>1</sup>.

26. On October 8, 2013, the same day they filed the Motion to Modify with the Supreme Court, the Nation and Housing Authority filed with FINRA a *Motion to Dismiss Under FINRA Rule 12206(a)*. This rule authorizes dismissal of claims that are more than six years old at the time the demand for arbitration is filed. In that motion, the Nation and Housing Authority stated they were seeking damages for actions taken by United Planners prior to 2004.

27. On November 15, 2013, FINRA sent a letter to the Nation and Housing Authority informing them that the *Statement of Claim* was deficient and they must submit a Submission

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<sup>1</sup> The *Statement of Claim* contained Exhibits A, B and C. The approximate 61 pages of documents contained in Exhibits A and B are not included with the *Statement of Claim* attached as Exhibit 4 to the Complaint.

Agreement within 30 days or the case would be closed. The Nation and Housing Authority did not respond to that letter.

28. On January 28, 2014, FINRA sent a “FINAL NOTICE” to the Nation and Housing Authority stating the deficiencies previously identified had not been corrected and if the Submission Agreement was not submitted within 30 days then the case would be closed.

29. On March 7, 2014, the Nation and Housing Authority acknowledged FINRA’s jurisdiction over the dispute between the parties when they filed their executed Submission Agreements with FINRA. The Submission Agreements signed and filed by both the Nation and Housing Authority state “the undersigned parties hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, and all related cross claims, counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the FINRA By-Laws, Rules, and Code of Arbitration Procedure.” Copies of the Nation’s and Housing Authority’s Submission Agreements are attached hereto as Exhibit 5 and Exhibit 6.

30. On August 28, 2014, the FINRA arbitration panel conducted an Initial Pre-Hearing Conference. During the conference, the Nation and Housing Authority re-asserted their motions to dismiss their own arbitration proceeding. The panel set a hearing on the Nation and Housing Authority’s motion for October 20, 2014.

31. On October 20, 2014, the panel considered the Nation and Housing Authority’s motion that the request for arbitration be dismissed because the claims the Nation and Housing Authority were asserting arose more than six years before the filing of the *Statement of Claims* and thus not eligible for arbitration under FINRA Rule 12206(a).



32. On October 21, 2014, the arbitration panel granted the Nation and Housing Authority's motion to dismiss their own arbitration claim. The Order dismissing the arbitration claim with prejudice is attached as Exhibit 7.

2014 Tribal Court Action

33. On October 22, 2014, the Nation and Housing Authority filed a new complaint in the Nation's District Court. A copy of the Complaint is attached as Exhibit 8.

34. In their Complaint, the Nation and Housing Authority asked "for relief against the defendant for its misconduct, negligence, breach of contract, breach of fiduciary duty, breach of Tribal policies, breach of US Government policies, breach of industry customs, practices, rules and regulations, and failure to supervise." Verbatim, the same relief sought in the 2011 Tribal Court Action.

Exhaustion of tribal court remedies

35. This Court can and should grant United Planners the declaratory, injunctive, and other relief requested in this Complaint because United Planners has exhausted its tribal court remedies.

36. In response to the 2011 Tribal Court Action, the Sac and Fox Nation Supreme Court determined that "the Nation may pursue its claims in arbitration if it so chooses to adjudicate its claim against [United Planners], but ***it may not proceed with its case in the District Court or any other court.***" The 2014 Tribal Court Action is a blatant attempt to re-litigate a claim that the Nation's Supreme Court has already determined may only be brought in arbitration. United Planners has exhausted its tribal court remedies.

37. Further, even if the Supreme Court had not already resolved the matter, exhaustion is not required in this action because (1) the 2014 Tribal Court Action patently

violates the parties' mutual agreement to submit all disputes to arbitration, expressly prohibiting the Tribal District Court from exercising jurisdiction over United Planners or the subject matter of the 2014 Tribal Court Action; (2) the assertion of Tribal District Court jurisdiction is made for purposes that bring it within the exceptions to the exhaustion principle; and (3) adherence to the exhaustion requirement would serve no purpose other than delay.

### **CLAIMS FOR RELIEF**

#### **FIRST CAUSE OF ACTION**

(Declaratory Judgment, 28 U.S.C. § 2201-2202)

38. United Planners realleges the allegations set forth in Paragraphs 1 through 37 and same are incorporated as if fully set forth.

39. An actual and justiciable controversy currently exists between United Planners and all Defendants concerning the Tribal District Court's jurisdiction over United Planners and the 2014 Tribal Court Action. A declaration by this Court as to the Tribal District Court's jurisdiction would terminate the controversy giving rise to this cause of action.

40. Based on the allegations above, United Planners is entitled to a declaration that the Tribal District Court lacks jurisdiction over United Planners and the 2014 Tribal Court Action.

#### **SECOND CAUSE OF ACTION**

(Injunctive Relief, Fed. R. Civ. P. 65)

41. The Nation and Housing Authority's pursuit of the 2014 Tribal Court Action, and the Tribal Court's exercise of jurisdiction over the 2014 Tribal Court Action and United Planners, is contrary to federal constitutional requirements, to other federal law, and to the

binding agreement, as recognized by the Sac and Fox Nation Supreme Court, between the parties that all disputes would be submitted to arbitration.

42. The Tribal District Court's exercise of jurisdiction poses an immediate threat of irreparable harm to United Planners for which no adequate legal remedy exists. The irreparable harm includes: (a) United Planners faces the risk of judgment by a court that has no jurisdiction over it; (b) the Tribal District Court's exercise of jurisdiction would deny United Planners the benefit of the explicitly bargained-for forum-selection provisions in the Account Agreements; and (c) United Planners will be forced to expend unnecessary time, effort, and expense that it will be unable to recoup litigating the 2014 Tribal Action in Tribal District Court, which does not have jurisdiction over it.

43. The irreparable harm to United Planners in absence of injunctive relief outweighs any hardship to the Defendants if injunctive relief is granted because United Planners has already exhausted tribal court remedies.

44. The issuance of an injunction against further proceedings in the Tribal District Court will serve the public interest in (a) enforcing negotiated contractual promises; (b) ensuring the proper allocation of jurisdiction and authority between federal and tribal courts; and (c) not allowing a disappointed tribal litigant to continue re-filing cases in tribal courts after that tribe's Supreme Court has already ruled on the claim.

WHEREFORE, United Planners respectfully seeks the following relief:

1. A declaration, pursuant to 28 U.S.C. § 2201-2202, that the Tribal Court lacks subject-matter jurisdiction over United Planners and the 2014 Tribal Court Action;
2. Preliminary and final injunctive relief against the Nation and Housing Authority enjoining them from proceeding against Plaintiffs in the Tribal District Court;

3. Preliminary and final injunctive relief against any further proceedings in the 2014 Tribal Court Action;
4. An award of costs, fees and other disbursements allowed by law; and
5. Such further relief as the Court deems just and appropriate.

**PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 57,  
UNITED PLANNERS REQUESTS A SPEEDY HEARING  
ON ITS REQUEST FOR DECLARATORY RELIEF.**

Dated this 14<sup>th</sup> day of November, 2014.

Respectfully submitted,

By: s/David McCullough  
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From:

09/26/2013 15:39

#622 P.002/013

**IN THE SUPREME COURT FOR THE SAC AND FOX NATION  
STROUD, OKLAHOMA**

United Planners' Financial Services )  
of America, a limited partnership, )

Defendant/Appellant, )

vs. )

Sac and Fox Nation, )  
Sac and Fox Nation Housing )  
Authority, )

Plaintiffs/Appellees. )

Case No. APL-12-01

FILED  
IN THE SUPREME COURT  
BY 9-26-2013 3:35 pm  
CLERK  
BY CLERK DEPUTY

**ORDER AND JUDGMENT**

**TRIAL COURT REVERSED, IN PART, AND AFFIRMED, IN PART  
AND CASE REMANDED WITH INSTRUCTIONS TO DISMISS**

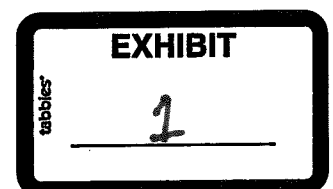
**Counsel of Record:**

Randall K. Calvert and Denielle N. Williams, CALVERT LAW FIRM, Oklahoma City, Oklahoma, for Plaintiffs/Appellees,

David McCullough, DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P., Norman, Oklahoma, for Defendant/Appellant.

**Chief Justice O. Joseph Williams:**

In this case, Defendant-Appellant United Planners Financial Services of America ("Broker") appeals from an Order of the Sac and Fox Nation District Court granting a motion filed by Plaintiffs-Appellees Sac and Fox Nation and Sac and Fox Housing Authority (collectively, the "Nation") that enjoins Broker



from proceeding with an arbitration before the Financial Industry Regulatory Authority, a non-party in this case, involving claims originally brought by the Nation in the District Court. The Nation objects to having its claims heard in arbitration, but, rather, it seeks to pursue its legal remedies in the Nation's courts. Broker contends that the parties' broker agreements foreclose relief to be sought in any judicial forum, but, rather, the agreements require that any dispute between the Nation and Broker be heard in arbitration.

The Nation is the one who is seeking affirmative relief against Broker, so the central issue before this Court is: which forum, if any, is the appropriate forum to adjudicate the Nation's claims against Broker. For the reasons provided below, we decide that the Nation, if it wishes to pursue any arbitrable<sup>1</sup> claims it may have against Broker, must seek to adjudicate such claims in arbitration and not in the Nation's courts or any other judicial forum, as required by the parties' agreements. We do not find tribal sovereign immunity to be an issue in this case insofar as the Nation, as the party seeking affirmative relief, seeks a forum to adjudicate its claims. We do find, however, that the record fails to reveal a clear and express waiver of tribal sovereign immunity that would require us to compel the Nation to participate in arbitration. In other words, the Nation is free to pursue its claims in arbitration, or not, but it cannot be compelled to participate in arbitration without a valid express waiver of the Nation's sovereign immunity.

Thus, this Court REVERSES the District Court, in part, and AFFIRMS the District Court, in part. Furthermore, since this Court finds and holds that any dispute arising under the broker agreements between the parties should be

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<sup>1</sup> From the record, it does not appear that the question of arbitrability of the underlying claims was at issue before the District Court. Likewise, we do not address that issue on appellate review.

adjudicated in arbitration, this case is remanded to the District Court with instructions to dismiss.

## I. FACTUAL BACKGROUND

This case originated out of a Complaint filed by the Nation in the Sac and Fox Nation District Court on January 31, 2011, against Broker, an Arizona limited partnership providing broker services for the Nation. (App. Rec. at 1). The Nation seeks civil damages against Broker on the basis that Broker, *inter alia*, allegedly had “invested [Nation] funds improperly and in violation of proper practices dictated by industry custom, practices, rules and regulations and the guidelines and policies of Nation and U.S. Government.” (App. Rec. at 2).

The Nation is a federally-recognized Indian tribe headquartered in Stroud, Oklahoma. (App. Rec. at 1). The Sac and Fox Housing Authority is a tribal governmental entity of the Nation providing housing services for Nation members. (App. Rec. at 1). The Nation is governed by its own Constitution which establishes a Business Committee consisting of five elected individuals<sup>2</sup> to transact business and “otherwise speak or act on behalf of” the Nation, except that the Nation’s Governing Council, consisting of the entire tribal membership eighteen years of age and older, is recognized in the Constitution as the Supreme governing body for the Nation with certain reserved powers bestowed upon it. *See* Article II, Sac and Fox Nation Const.

Broker provides broker services for its clients, including the Nation. The Nation and Broker maintained a business relationship for twelve years—from 1994 until 2006.<sup>3</sup> There is no dispute that the Nation and Broker established

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<sup>2</sup> The Nation’s Business Committee consists of a Principal Chief, a Second Chief, a Secretary, a Treasurer, and one Committee member. *See* Article III, Sac and Fox Nation Const.

<sup>3</sup> In its appellate brief-in-chief, the Nation claims it opened over fifty accounts with Broker from 1996 to 2006; however, the Nation’s original Complaint

and maintained a business relationship for a number of years. Broker had provided the Nation with broker services and Broker was compensated for those services for many years. Broker claims the terms of this business relationship were evidenced by a series of "Account Agreements" between Broker and authorized representative(s) of the Nation. (Appellant Brief at 3). The Nation, on the other hand, argues that it had simply approved and executed "New Account Forms" that were nothing more than information gathering forms with "boilerplate mouse print" on the back side of the document. (Appellee Brief at 9). These agreements, which are included in the record as attachments to Broker's motion to compel, will be referenced herein as simply the "broker agreements".

There is no dispute that the Nation was engaged in a business relationship with Broker and that certain broker agreements memorializing the relationship was a part of the transaction. There is a dispute, however, whether the general approval of the broker agreements also extends to a specific approval of any waiver of tribal sovereign immunity by the Nation. In this case, we find and therefore hold that it does not.

## II. PROCEDURAL BACKGROUND

The Nation's Complaint against Broker was filed on January 31, 2011. (App. Rec. at 1). Broker filed its Answer on February 23, 2011. (App. Rec. at 7). Before reaching the merits of the Nation's Complaint, Broker filed a motion to compel and to stay the litigation on May 24, 2011, requesting that the District Court order the Nation to pursue its claim in arbitration in accordance with the broker agreements between the parties. (App. Rec. at 18). Attached to Broker's motion to compel as Exhibit "1" are copies of the broker agreements (titled "New Account Form") establish the business relationship between the Nation and

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(App. Rec. at 7) asserts it entered into a broker agreement with Broker in 1994, and this relationship lasted until 2006. In its Answer (App. Rec. at 8), Broker concurs the relationship lasted from 1994 to 2006.



Broker and contain certain key terms regarding the nature of the broker service to be performed by Broker.<sup>4</sup> (App. Rec. at 29-84). A significant issue in this case is the scope and applicability of an arbitration clause included in the broker agreements.

On November 8, 2011, the District Court entered an order denying Broker's motion to compel arbitration and to stay the case. (App. Rec. at 166). The District Court also directed the parties to engage in mediation. (App. Rec. at 167). Subsequently, on or about January 17, 2012, Broker unilaterally initiated arbitration proceedings on behalf of the Nation before the Financial Industry Regulatory Authority.<sup>5</sup> (App. Rec. at 203-271).

By motion filed in the Nation's District Court on February 8, 2012, the Nation sought to enjoin Broker from continuing with the arbitration proceedings. (App. Rec. at 189). Broker responded on February 23, 2012, with an objection to the Nation's motion and with its own "alternative" motion for injunctive relief asking the District Court to require the Nation to participate in arbitration. (App. Rec. at 295).

On March 16, 2012, the District Court issued an Order granting the Nation's motion to enjoin Broker from continuing with the arbitration proceedings and denying the "alternative" motion filed by Broker. (App. Rec. at

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<sup>4</sup> Broker refers to the documents as "Account Agreements" although they each are actually titled "New Account Form".

<sup>5</sup> Broker asserts it initiated the arbitration on behalf of the Nation in accordance with a section of the arbitration clause authorizing a party to proceed with election of an arbitration tribunal on behalf of the other party when said party does not make an election within five days of notice or demand for arbitration. (*See e.g.*, App. Rec. at 31).

339). Broker filed its Notice of Appeal on April 5, 2012, seeking review of the March 16, 2012, Order of the District Court. (App. Rec. at 343).<sup>6</sup>

### III. STANDARD OF REVIEW

The District Court's Order of March 16, 2012, makes no determinable findings of fact upon which we may review and decide whether an abuse of discretion has occurred in granting or denying injunctive relief. However, it is apparent that the District Court's order reflected its interpretation and construction of the broker agreements and arbitration clauses in accordance with certain legal principles pertinent to valid waivers of tribal sovereign immunity. Whether a party can assert sovereign immunity is a legal question subject to *de novo* review. *Sac and Fox Nation v. Hanson*, 47 F.3d 1061, 1063 (10<sup>th</sup> Cir. 1995).<sup>7</sup> Thus, we employ a *de novo* standard of review in this case.<sup>8</sup>

### IV. ANALYSIS

This case presents several interesting issues requiring us to consider the proper forum for the adjudication of the Nation's claim on the merits in light of

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<sup>6</sup> The record reveals that the District Court entered a court minute with its rulings on March 16, 2012 and, subsequently, a formal written order, approved by the parties, memorializing the March 16, 2012, court minute was filed in the court record on May 18, 2012. Appellant's Notice of Appeal was filed on April 5, 2012, before the formal written order was filed on May 18, 2012; however, this Court takes notice that the May 18, 2012, order accurately reflects the ruling of the District Court upon which the issues in this appeal are based, and no party has objected to this situation. Thus, this Court is satisfied that the issues on appeal have been properly preserved and presented under Sac and Fox law.

<sup>7</sup> Federal law may be applied in this Court when the laws of the Nation do not specifically address an issue. Title 9, Section 8 of the Nation's Code.

<sup>8</sup> Further, to the extent we find the District Court committed errors of law in its holding, the District Court's decision as to the parties' request for injunctive relief may also be considered an abuse of discretion. *Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 269 F.3d 1149, 1153 (10<sup>th</sup> Cir. 2001) ("A district court abuses its discretion when it commits an error of law or makes clearly erroneous factual findings).

the Nation's assertion that its sovereign immunity from suit precludes from requiring the claims to be heard in arbitration, and in light of Broker's argument that the parties' agreements requires any dispute be resolved through binding arbitration, not in any court.

The U.S. Supreme Court in *Kiowa Tribe of Oklahoma v. Manufacturing Technologies*, 523 U.S. 751, 754 (1998), held that "[A]s a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." Tribal sovereign immunity applies to a tribe's commercial as well as its governmental activities. *Id.* at 754-55. A tribe's waiver of immunity to be sued must be unequivocal. *C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411, 418 (2001).

In *C & L Enterprises*, the U.S. Supreme Court held that an arbitration clause in a standard form agreement entered into between the respondent Indian tribe and a contractor constituted a waiver of immunity for claims to be heard in arbitration and for any arbitration award to be enforceable in state court. *C & L Enterprises, Inc.*, 532 U.S. at 414. While the instant case does involve an arbitration clause in the broker agreements, the facts in this case are significantly distinguishable from the facts in *C & L Enterprises*.

First, unlike the Indian tribe in *C & L Enterprises*, the Nation in this case is the party seeking affirmative relief against Broker. The tribe in *C & L Enterprises* attempted to use sovereign immunity as a defense to the claims asserted against it, but, here, the Nation is not facing claims against it by the Broker to which the defense of sovereign immunity might be applicable in certain contexts. The Nation's sovereign immunity is not really at issue insofar as it is the party seeking affirmative relief against Broker. Thus, Broker may not simply rely on *C & L Enterprises* in support of its argument that the Nation should be compelled to arbitrate in this case.

Second, unlike the contract at issue in *C & L Enterprises*, the Nation in this case asserts that the arbitration clause in the broker agreement was not validly approved by the Business Committee in accordance with tribal law. In its November 9, 2011, Order<sup>9</sup>, the District Court found that the broker agreements that were admitted into the record at the hearing (without objection) were entered into with authorized representatives of the Nation. Although the District Court also found that Broker failed to establish a valid waiver of tribal sovereign immunity, neither party has asserted that there was no valid broker agreement between the Nation and Broker. Further, on appeal, no party has challenged the District Court's finding that authorized representatives of the Nation executed the broker agreements.

There is nothing in the record indicating that the Business Committee met, voted, and approved by resolution or otherwise any specific arbitration clause with Broker or approved any broker agreement, by reference to a specific agreement, which contained an arbitration clause. We do not find any error with the District Court's finding that authorized representatives of the Nation did execute the broker agreements with Broker. This is because certain officials of the Nation were authorized by resolution to "sell, assign and endorse for transfer, certificates representing stocks, bonds, or other securities now registered or hereafter registered in the name of this corporation." (App. Rec. at 85-88). But this general approval to engage in broker activities does not rise to the level of an express approval of any arbitration clause or waiver of tribal sovereign immunity. Thus, while we find that the broker agreements were validly approved by the Nation, we do not find valid approval of the arbitration clause that would subject the Nation to be compelled to arbitrate.

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<sup>9</sup> In this case, Broker appeals the District Court's March 16, 2012, Order; however, the March 16 order also references and incorporates the District Court's November [8], 2011, ruling in support. (App. Rec. at 346). The order was dated November 8, but the order was filed on November 9.

From:

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#622 P.010/013

The reason the broker agreements, in general, and the arbitration clause in the broker agreements, specifically, can be treated differently, for purposes of this case, is because the standard to validly waive tribal sovereign immunity requires something more than mere approval and execution of a contract by an authorized tribal official. Tribal law will dictate the proper approval for achieving a valid waiver of tribal sovereign immunity. This may be different from tribe to tribe.

For the Nation, there is no question that the Business Committee is delegated with the constitutional authority to transact business and “otherwise speak or act on behalf of” the Nation. See Sac and Fox Const., Art. II. Thus, we would need to see evidence in this case that the Business Committee met and approved by a vote, in accordance with the Nation’s rules and procedure, the arbitration clauses in question or, at the very least, the broker agreements that contained the arbitration clauses, in order to signify that the Business Committee was authorizing possible arbitration on behalf of the Nation. The record does not reveal any such evidence.<sup>10</sup> We, therefore, affirm the District Court’s order denying the Broker’s motion to compel.

Even though we hold that the Nation cannot be compelled to arbitrate against its will due to the lack of a clear and express approval of a waiver of tribal sovereign immunity in the form of an arbitration clause, that does not require us to render invalid those *other* terms of the broker agreements which do not invoke the Nation’s immunity. In this case, the Nation has not asserted a plausible argument that, as the party seeking affirmative relief, it should be free to ignore that part of the agreement that requires arbitration to resolve a dispute rather than filing an action in any court, including the Nation’s courts.

---

<sup>10</sup> There is also nothing in the record indicating the Board of Commissioners for the Sac and Fox Housing Authority met and approved by proper procedure any arbitration clause or any broker agreement that contained an arbitration clause.

This is akin to a forum selection clause that may be agreed upon by any party to an agreement, including an Indian tribe or tribal entity, without invoking issues of tribal sovereign immunity. As stated, the Nation cannot be compelled to arbitrate its claims with Broker, but, if it chooses to do so, the Nation will have to adjudicate such claims in arbitration, in accordance with the broker agreements.<sup>11</sup> We, therefore, reverse the District Court insofar as the District Court has enjoined Broker to not continue with the arbitration proceedings<sup>12</sup> in order to allow the case to continue in the District Court.

While the broker agreements do preclude the claims from being adjudicated in a judicial forum, the same parties to the agreement could very well amend or waive that part of the agreement and consent to have their claims heard in court, assuming jurisdiction exists. We are mindful that, while seeking to have the Nation's claims heard in arbitration, Broker has been participating in the District Court proceedings without special appearance and challenging tribal court jurisdiction; further, Broker has not sought dismissal for lack of jurisdiction or otherwise.<sup>13</sup> Broker has filed an Answer, participated in

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<sup>11</sup> In its appellate brief, the Nation claims that, in its motion to compel, Broker did not include copies of all the specific broker agreements upon which the Nation seeks damages; however, the Nation has also not asserted that the broker agreements upon which it seeks damages contains any different language regarding arbitration that would be relevant in this appeal. Further, as the party seeking affirmative relief, the Nation would have presumably made a determination before filing its Complaint about specific transaction(s) supporting any cause of action against Broker. The Complaint does not specify any broker agreement that is the subject of the claims. Thus, it is a bit disingenuous for the Nation to now assert that Broker failed to produce the specific broker agreements upon which the Nation seeks damages.

<sup>12</sup> We do not speak to any issue of jurisdiction or procedural rule of the arbitration, including whether any statute of limitation precludes the arbitration, before the Financial Industry Regulatory Authority or any other arbitrator. Such issues will have to be addressed by any party who seek to address the claims in arbitration, if a party so chooses.

<sup>13</sup> Notably, the record does not reveal that Broker has really challenged the subject matter jurisdiction of the District Court. In its Motion to Compel

discovery and hearings, and has even sought affirmative relief before the District Court<sup>14</sup> (e.g., entering into joint motions to extend deadlines, App. Rec. at 154-156 and 168-174).

The District Court did not rule and make any findings of law and fact on whether Broker has effectively consented to tribal court jurisdiction and, by both parties participating in the District Court, the preclusion in the broker agreement against judicial remedies has been waived or tacitly amended to permit adjudication in court. Therefore, that issue is not before us on appeal. Our holding is that, per the broker agreements, the Nation may pursue its claims in arbitration if it so chooses to adjudicate its claim against Broker, but it may not proceed with its case in the District Court or any other court. Since no claim arising under the broker agreements by the Nation against Broker may be adjudicated in the District Court, this cause is remanded with instructions to dismiss without prejudice.

## V. CONCLUSION

Based on the foregoing, it is the holding and decision of this Court that:

- A) The District Court's ruling that the Nation's sovereign immunity has not been validly waived to compel the Nation to participate in arbitration is **AFFIRMED**.

---

arbitration (App. Rec. 18-88), Broker even requests a stay of the case until the arbitration proceedings are completed, suggesting that the District Court maintains jurisdiction over the parties and the subject matter, but that the court proceedings will be on hold until after arbitration. This is not consistent with a position that the District Court lacks jurisdiction. Broker refers to Section 3 of the Federal Arbitration Act (9 U.S.C. § 3) as requiring a court to enter a stay until arbitration is completed; however, Section 3 applies to pending cases in federal court, not a tribal court.

<sup>14</sup> In its March 16, 2012, Order, the District Court also notes that Broker "does not oppose entering into a scheduling order." App. Rec. at 346.

From:

09/26/2013 15:47

#622 P.013/013

- B) The District Court's ruling enjoining the Broker from participating in arbitration and permitting the Nation's case on the merits to proceed in the District Court is **REVERSED**.
- C) The case is hereby **REMANDED** to the District Court with instructions to dismiss without prejudice consistent with this ruling.



---

**O. JOSEPH WILLIAMS**  
**CHIEF JUSTICE**

**CONCUR: VICE-CHIEF JUSTICE POSEY**  
**JUSTICE DAKIN**  
**JUSTICE LENORA**  
**JUSTICE TAYLOR**



IN THE SUPREME COURT FOR THE SAC AND FOX NATION  
STROUD, OKLAHOMA

United Planners' Financial Services )  
of America, a limited partnership, )

Defendant/Appellant, )

vs. )

Sac and Fox Nation, )  
Sac and Fox Nation Housing )  
Authority, )

Plaintiffs/Appellees. )

Case No. APL-12-01

**FILED**  
IN THE SUPREME COURT  
DATE 4/15/14  
DOCKET PAGE RECORDED  
SAC & FOX NATION  
BY J. M. MUM CLERK  
DEPUTY

ORDER

On September 26, 2013, this Court entered in this case its *Order and Judgment* holding, among other things, that, per the parties' broker agreements, Appellees may pursue their claims in arbitration if they so choose, but they may not proceed with their claims in the District Court. This Court thus remanded this case to the District Court with instructions to dismiss without prejudice.

On October 14, 2013, Appellees filed a *Motion to Modify Order* requesting that this Court modify its order so that the District Court stay the case, hold it in abeyance, or place it on administrative hold, rather than dismissing it without prejudice. Appellant filed its response on October 24, 2013, requesting this Court deny Appellees' motion.

This Court is not persuaded that any part of its holding in its *Order and Judgment* should be modified. The Court's ruling was based on the facts contained in the appellate record, and, as a result, this Court determined that



the proper course of action was for the case to be remanded with instructions to dismiss. Any course of action that may or may not occur between the parties in the arbitration process with the Financial Industry Regulatory Authority does not warrant a modification to this Court's ruling.

The Appellees' *Motion to Modify Order* is therefore DENIED.

Dated this 14<sup>th</sup> day of April 2014.



---

O. JOSEPH WILLIAMS  
CHIEF JUSTICE

CONCUR: VICE-CHIEF JUSTICE POSEY  
JUSTICE DAKIN  
JUSTICE LENORA  
JUSTICE TAYLOR

04/30/2014 17:27 9184466133

MATLOCK LAW

PAGE 02

**SAC AND FOX DISTRICT COURT  
STROUD, OKLAHOMA**

FILED  
IN THE DISTRICT COURT

2014 MAY -1 A 8:27

SAC AND FOX NATION  
SAC AND FOX HOUSING AUTHORITY,

Plaintiffs,

v.

UNITED PLANNERS' FINANCIAL  
SERVICES OF AMERICA,

Defendants.

No. APL-12-01

Case No. CIV-2011-06  
Judge Matlock

CLERK OF DISTRICT COURT  
CLERK

BY: *A. Matlock* DEPUTY

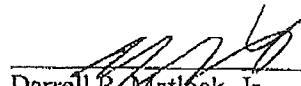
**ORDER ON MANDATE**

The above-entitled case having been before the Sac and Fox Nation Supreme Court, and the Supreme Court having issued its mandate affirming the *Order and Judgment* entered on September 26, 2013, remanding this case to the District Court with instructions for the District Court to dismiss without prejudice, and the Court being fully advised in the premises,

NOW, THEREFORE, IT IS ORDERED that the mandate be spread upon the records of this Court.

IT IS FURTHER ORDERED that the above-styled case is dismissed without prejudice.

Dated this 30<sup>th</sup> day of April, 2014.

  
\_\_\_\_\_  
Darrell R. Matlock, Jr.  
Judge of the District Court

**EXHIBIT**

3

tabbles

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
DEPARTMENT OF ARBITRATION**

In the matter of arbitration between:  
  
SAC AND FOX NATION  
SAC AND FOX NATION HOUSING  
AUTHORITY.,

Claimants,

v.

UNITED PLANNERS FINANCIAL  
SERVICES OF AMERICA,, LP.

Respondent.

FINRA Case No. \_\_\_\_\_

**STATEMENT OF CLAIM**

The Respondent United Planners' Financial Services, by and through its counsel David McCullough and Bryan J. Nowlin of the law firm of Doerner, Saunders, Daniel & Anderson, L.L.P., and pursuant to the arbitration agreement of the parties, submit the Complaint attached as Exhibit C as the Claimant Sac and Fox Nation and Sac and Fox Housing Authority's Statement of Claim, and would show the panel as follows:

1. The mandatory arbitration agreements of the Sac and Fox Nation and Sac and Fox Housing Authority with FINRA member United Planners Financial Services of America require arbitration of disputes.

2. The New Account forms executed by duly-authorized members of the Sac and Fox tribal government each contain binding arbitration clauses. The arbitration clause further incorporates the rules of the NASD arbitration forum, now FINRA. True and correct copies of the new account forms containing the arbitration clauses are attached as Exhibit A. True and

**EXHIBIT**

tabbies

4

correct copies of the authorizing resolutions from the Sac and Fox business committee are attached as Exhibit B.

3. On January 31, 2011, the Sac and Fox Nation and Sac and Fox Housing Authority (collectively "Claimants") filed a claim against United Planners in the Sac and Fox District Court.

4. On January 10, 2012 pursuant to the arbitration clause, United Planners formally demanded arbitration of the claims asserted against it. On January 11, 2012, counsel for the Claimants stated they would not be making demand for arbitration and were waiving the five day election provision.

5. Pursuant to the arbitration clause, upon the refusal of the Sac and Fox Nation and Sac and Fox Housing Authority to submit a claim to arbitration, United Planners is authorized to file the claim as an arbitration on behalf of the Sac and Fox Nation and Sac and Fox Housing Authority. Specifically, the clauses state as follows:

Arbitration must be commenced by services upon the other party of a written demand for arbitration or a written notice of intention to arbitrate, therein electing the arbitration tribunal. In the event the undersigned does not make such election within (5) days of such demand or notice, then the undersigned authorizes you to do so on behalf of the undersigned.

6. Pursuant to the binding arbitration clause, the Respondent United Planners hereby files the Complaint attached as Exhibit C as the Statement of Claim in this matter on behalf of the Sac and Fox Nation and Sac and Fox Housing Authority.

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL  
& ANDERSON, L.L.P.

By: 

Bryan J. Nowlin, OBA No. 21310  
Williams Center Tower II  
2 West Second Street, Suite 700  
Tulsa, Oklahoma 74103  
(918) 582-1211; (918) 591-5362 (fax)  
[bnowlin@dsda.com](mailto:bnowlin@dsda.com)

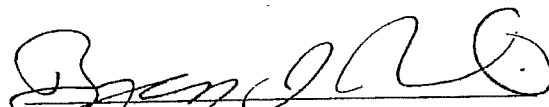
David McCullough, OBA No. 10898  
1800 N. Interstate Drive, Suite 123  
Norman, Oklahoma 73102  
Ph: 405-319-3501  
Fx: 405-319-3509  
[dmccullough@dsda.com](mailto:dmccullough@dsda.com)

*Attorneys for Respondent United Planners*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 17 day of January, 2012, a true and correct copy of the above and foregoing document was sent via email and U.S. mail, to counsel for Claimant:

Randall Calvert  
Denielle Williams  
Calvert Law Firm  
1041 NW Grand Blvd.  
Oklahoma City, OK 73118  
[rcalvert@calvertlaw.com](mailto:rcalvert@calvertlaw.com)  
[dwilliams@calvertlaw.com](mailto:dwilliams@calvertlaw.com)

  
Bryan J. Nowlin

**SAC AND FOX NATION DISTRICT COURT  
STROUD, OKLAHOMA**

**FILED  
IN THE DISTRICT COURT**

**2011 JAN 31 P 3:03**

**SAC AND FOX NATION  
CHARLOTTE CARTWRIGHT, COURT CLERK**

SAC AND FOX NATION, )  
SAC AND FOX HOUSING AUTHORITY, )  
Plaintiffs, )

vs. )

Case No.: CU-11-06 BY: \_\_\_\_\_ DEPUTY.

UNITED PLANNERS' FINANCIAL )  
SERVICES OF AMERICA, a limited )  
partnership )  
Defendant. )

**COMPLAINT**

COME NOW, Plaintiffs, Sac and Fox Nation of Oklahoma ("Nation") and Sac and Fox Housing Authority ("Housing") and for their causes of action against Defendant, United Planners' Financial Services of America ("United Planners") hereby allege and state the following:

1. United Planners is an Arizona limited partnership with offices throughout the United States including an Oklahoma City, Oklahoma office.
2. Nation is a Federally Recognized Tribe located in Stroud, Oklahoma, organized under the Oklahoma Indian Welfare Act.
3. Housing is an Administrative Department of Nation.
4. Meetings and/or interactions between Nation, Housing and United Planners regarding Nation's and Housing's investments occurred on Tribal Land at Nation's Tribal Headquarters in Stroud, Oklahoma.
5. Jurisdiction and Venue are proper in the District Court for the Sac and Fox Nation.



6. Joinder of Housing's and Nation's claims is permissive under Title 6 § 304 of the Sac and Fox Nation Code of Laws.

#### **FACTUAL BACKGROUND**

7. Nation and Housing each entered into a broker agreement with United Planners' broker in or around 1994. The relationship continued until 2006.
8. In addition to the industry customs, practices, rules and regulations, Nation and the Government of the United States of America ("U.S. Government") set forth specific guidelines and policies to be followed when investing Nation's and Housing's funds.
9. United Planners promised to abide by guidelines and policies for investing funds of the Nation and Housing.
10. United Planners invested Nation's and Housing's funds improperly and in violation of proper practices dictated by industry custom, practices, rules and regulations and the guidelines and policies of Nation and U.S. Government.

#### **CAUSES OF ACTION**

11. United Planners breached its duty to provide Plaintiffs with competent and professional services in compliance with the guidelines and policies of Nation, U.S. Government and industry customs, practices, rules and regulations.
12. United Planners breached the agreements with Nation and Housing by not investing Housing's and Nation's funds in compliance with the guidelines and policies of Nation, U.S. Government and industry customs, practices, rules and regulations.
13. United Planners had a fiduciary duty to Nation and Housing. United Planners breached its fiduciary duty by improperly investing Nation and Housing funds in



breach of the guidelines and policies of Nation, U.S. Government and industry customs, practices, rules and regulations.

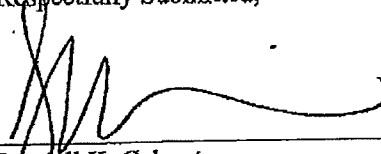
14. United Planners breached Nation's investment policies, U.S. Government's investment policies and industry practices, rules and regulations by improperly investing Nation's and Housing's funds.
15. United Planners had a duty to supervise all its employees. Its negligence in supervising Robert Shepherd, its employee, resulted in damage to the Plaintiffs.

#### **REQUEST FOR RELIEF**

WHEREFORE, Nation and Housing pray for relief against the defendant for its misconduct, negligence, breach of contract, breach of fiduciary duty, breach of Tribal policies, breach of US Government policies, breach of industry customs, practices, rules and regulations, and failure to supervise. Housing and Nation pray for judgment against Defendant for:

- i) Actual Damages to Housing and Nation each in excess of Ten Thousand Dollars (\$10,000);
- ii) Disgorgement of all commissions and profits received by Defendant from transactions in Nation's and Housing's accounts;
- iii) The lost opportunity to earn what the Plaintiffs' account would have earned if invested properly, or interest at the legal rate;
- iv) All costs, expenses, attorneys fees and other fees incurred in pursuing this claim; and
- vi) Such other and further relief as this Court deems just and appropriate.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'R. Calvert', written over a horizontal line.

Randall K. Calvert  
Denielle N. Williams  
CALVERT LAW FIRM  
1041 NW Grand Boulevard  
Oklahoma City, OK 73118  
Telephone: 405-848-5000  
Facsimile: 405-848-5052  
[rcalvert@calvertlaw.com](mailto:rcalvert@calvertlaw.com)  
[dwilliams@calvertlaw.com](mailto:dwilliams@calvertlaw.com)

*Attorneys for Plaintiffs*

**FINRA ARBITRATION Submission Agreement**

---

In the Matter of the Arbitration Between

Name(s) of Claimant(s)

Sac and Fox Nation  
Sac and Fox ~~Nation~~ Housing Authority

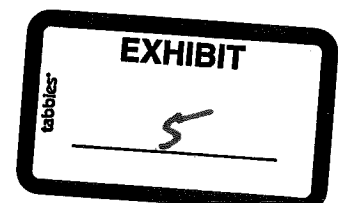
12-00195

Name(s) of Respondent(s)


United Planners' Financial Services Of

---

1. The undersigned parties ("parties") hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, and all related cross claims, counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the FINRA By-Laws, Rules, and Code of Arbitration Procedure.
2. The parties hereby state that they or their representative(s) have read the procedures and rules of FINRA relating to arbitration, and the parties agree to be bound by these procedures and rules.
3. The parties agree that in the event a hearing is necessary, such hearing shall be held at a time and place as may be designated by the Director of Arbitration or the arbitrator(s). The parties further agree and understand that the arbitration will be conducted in accordance with the FINRA Code of Arbitration Procedure.
4. The parties agree to abide by and perform any award(s) rendered pursuant to this Submission Agreement. The parties further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.



5. The parties hereto have signed and acknowledged the foregoing Submission Agreement.

 Chief of Sac and Fox Nation 3/07/14  
Sac and Fox Nation ~~Housing Authority~~ Date  
State Capacity if other than individual (e.g., executor, trustee, corporate officer)

LC43A: SUBMISSION AGREEMENT  
idr: 02/09/2009

RECIPIENTS:

Randall Calvert, Esq., Sac and Fox Nation Housing Authority  
Calvert Law Firm, 1041 NW Grand Blvd., Oklahoma City, OK 73118

FINRA ARBITRATION Submission Agreement

Claimant(s)

In the Matter of the Arbitration Between

12 - 00195

Name(s) of Claimant(s)

Sac and Fox Nation  
and

Sac and Fox ~~Nation~~ Housing Authority

and

Name(s) of Respondent(s)

United Planners Financial Services of America, LP

1. The undersigned parties ("parties") hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, and all related cross claims, counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the FINRA By-Laws, Rules, and Code of Arbitration Procedure.
2. The parties hereby state that they or their representative(s) have read the procedures and rules of FINRA relating to arbitration, and the parties agree to be bound by these procedures and rules.
3. The parties agree that in the event a hearing is necessary, such hearing shall be held at a time and place as may be designated by the Director of Arbitration or the arbitrator(s). The parties further agree and understand that the arbitration will be conducted in accordance with the FINRA Code of Arbitration Procedure.
4. The parties agree to abide by and perform any award(s) rendered pursuant to this Submission Agreement. The parties further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.
5. The parties hereto have signed and acknowledged the foregoing Submission Agreement.

Linda Standing, Chairperson

Sac and Fox Housing Authority

Claimant Name (please print)

Linda Standing

2/20/14

Claimant's Signature

Date

State capacity if other than individual (e.g., executor, trustee or corporate officer)

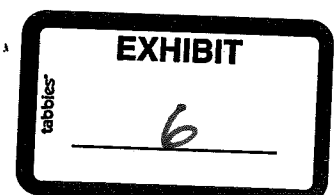
Claimant Name (please print)

Claimant's Signature

Date

State capacity if other than individual (e.g., executor, trustee or corporate officer)

If needed, copy this page.





**Award Information Sheet**

**Case Number:** 12-00195

To prepare an award, FINRA Dispute Resolution needs certain information from the panel. After the panel has reached a decision, please provide the following information to the staff person assigned to the case.

1. Please indicate the nature of the **initial** claim that was filed. Note: AP is the abbreviation for Associated Person.

<input type="checkbox"/> Customer vs. Member & AP	<input type="checkbox"/> Member vs. Member & AP
<input type="checkbox"/> Non-Member vs. Member	<input type="checkbox"/> Customer vs. Member
<input type="checkbox"/> Member vs. Member	<input checked="" type="checkbox"/> Other <u>MEMBER FILED COMPLAINT</u>
<input checked="" type="checkbox"/> Member vs. Customer	<u>ON BEHALF OF CLAIMANT</u>
<input type="checkbox"/> Customer vs. AP	<input type="checkbox"/> Member vs. AP
<input type="checkbox"/> AP vs. Customer	<input type="checkbox"/> AP vs. Member
	<input type="checkbox"/> AP vs. Member & AP

2. Change of party representation, if any?

NO

3. Who did counsel/representative for <sup>ORIGINAL</sup> claimant state that they want reflected on the Award as counsel/representative?

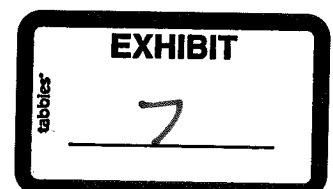
DAVID MCCOLLOUGH - RESPONDENT'S  
ATTORNEY

4. Who did counsel/representative for <sup>ACTUAL CLAIMANT</sup> respondent state that they want reflected on the Award as counsel/representative?

RANDALL CALVERT & DENALLE WILLIAMS-CHANEY

5. Parties who did not appear, if any?

ALL PARTIES APPEARED BY COUNSEL



6. Did a party have an expert witness testify? If yes, which party?

NO

7. Hearing dates, with the time the hearing started and concluded, excluding deliberation sessions:

10-20-14 10AM CDT - 10:30AM CDT

8. Were any amendments made to the pleadings at the hearing?

☐ Yes ☒ No

(a) If an amendment was made to the pleadings, was it oral or written?

☐ Oral ☐ Written

(b) If any amendments were made to the pleadings, please describe below:

9. Did a party file a motion to dismiss?

☒ Yes ☐ No (if No, please proceed to Question 10)

(a) Which party filed the motion? - THE PARTIES AGREED THAT  
THE ARBITRATION SHOULD BE DISMISSED.  
☐ Claimant ☐ Respondent

If more than one Claimant or Respondent named in the case, please identify the moving party:

DISMISSAL IS WITH PREJUDICE TO  
RE-FILE OF ARBITRATION

(b) Was the motion to dismiss filed before or after the conclusion of the non-moving party's case-in-chief?

☒ Before ☐ After

(c) Was the motion to dismiss filed by a clearing firm?

☐ Yes ☒ No

(d) Was the motion granted or denied?

☒ Granted ☐ Denied

(e) Briefly describe the basis for the panel's decision on the motion:

PARTIES AGREED THAT CLAIMS  
WERE NOT SUBJECT TO ARBITRATION  
FINRA RULE 12206(A)

10. Did the parties file a substantive or procedural motion other than a motion to dismiss?

☐ Yes ☒ No (if No, please proceed to Question 11)

(a) Which party filed the motion?

☐ Claimant ☐ Respondent

If there is more than one Claimant or Respondent named in the case,  
please identify the moving party:

(b) Does the moving party seek expungement? (If Yes, please see "Expungement"  
section below.)

☐ Yes ☐ No

(c) Please describe the motion, the response, and the panel's ruling below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Was any party's final damage requests presented at the close of the hearing different from  
what were requested in their pleading requesting damages? See the *Hearing Script* section  
T.

☐ Yes ☐ No NO DAMAGE REQUEST  
WAS MADE

(a) If yes, please identify the party and its final damage request below: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

12. Did anything unusual occur at the hearing that the panel wishes to include in the award?

☐ Yes ☒ No

(a) If the answer to this question is yes, please describe below (please attach additional  
pages if necessary): \_\_\_\_\_

PAGES 4-15 N/A  
DELETED



Respondent #1 is assessed \_\_\_\_\_

Respondent #2 is assessed \_\_\_\_\_

16. Forum Fees:

*HEARING FEES ~~MAINTAINED~~  
 CHARGED: 1/2 UNITED PLANNERS  
 1/2 SAC AND FOR ACTION*

Arbitrators, in their awards, shall determine the amount chargeable to the parties as forum fees and shall determine who shall pay such forum fees. Forum fees may be described as the direct costs of administering the arbitration proceeding. They consist of filing fees, hearing fees, fees for decisions rendered on discovery-related motions without a pre-hearing conference, and fees for decisions on contested motions requesting the issuance of a subpoena without a pre-hearing conference. Filing fees are designed to cover some of the actual costs incurred by FINRA Dispute Resolution from the initial filing of a claim up to the pre-hearing conference. Hearing session fees are designed to cover some of the actual costs of administering a hearing. Fees for decisions rendered on discovery-related motions on the papers, and for decisions on contested motions requesting the issuance of a subpoena without a pre-hearing, are designed to cover payments made to arbitrators for these decisions.

Forum fees chargeable to the parties shall be assessed on a per hearing session basis, or for decisions rendered on discovery-related motions on the papers or contested motions for the issuance of a subpoena without a pre-hearing conference. A hearing session is any meeting among the parties and the panel that lasts four hours or less, including a pre-hearing conference with the panel. As a general rule, the aggregate chargeable for each hearing session *may equal but shall not exceed* the amount of the largest initial hearing deposit made by any party. **For example**, if the largest initial hearing session deposit is \$750, the panel may charge or assess up to \$750 per hearing session. (If you decide to assess forum fees against a customer staff will inform you of the rule that applies.) The total amount of forum fees that a panel may assess is determined by multiplying the number of hearing sessions times the hearing deposit. **For example**, if there were four hearing sessions and the largest initial hearing session deposit is \$750, the panel may assess total forum fees up to four (4) times \$750.

In addition, a panel may assess for pre-hearing conferences held with the parties and the full panel or one arbitrator. In the **above example**, if one pre-hearing conference lasting one session in duration was conducted among the parties with the full panel, the panel may assess an additional amount up to \$750. If one pre-hearing conference lasting one session in duration was conducted among the parties with the Chairperson only, the panel may assess an additional amount up to \$450.

Additionally, the panel may assess fees for decisions rendered on discovery-related motions on the papers. The panel may assess an additional amount of \$200 per arbitrator for each arbitrator who participates in the decision on the discovery-related motion. The panel may also assess fees for decisions on contested motions requesting the issuance of a subpoena without a pre-hearing conference. The panel may assess \$200 per arbitrator for each arbitrator who participates in the decision on the contested subpoena request. This honorarium is paid on a per case basis to each arbitrator who decides the contested subpoena request. Parties shall not be assessed more than \$600

in fees per case for decisions rendered on contested subpoena requests without a pre-hearing conference.

The panel may assess forum fees among the parties in any fashion. In deciding how to assess forum fees among the parties, the panel might consider the following factors:

- Temporary waivers of filing fees or hearing session deposits granted because of financial hardship.
- Actions by any party that may have prolonged the length of the hearing.
- The legitimacy of arguments made or positions taken.
- Disruptions or time delays caused during hearing sessions.
- The ultimate merits of the case (i.e., who prevailed or substantially prevailed).

**To calculate the total amount of forum fees the panel may assess in this arbitration, this office has provided you with the amount of the hearing session deposit for a pre-hearing conference session and for a regular hearing session.**

Please note: The panel may decide to allocate the fees for decisions rendered on discovery-related motions on the papers, and for decisions on contested motions requesting the issuance of a subpoena without a pre-hearing conference, in the same manner as the pre-hearing conference sessions and hearing sessions. If, however, the panel decides to allocate the fees in a different manner, please provide a list of each discovery-related motion and advise how the panel wishes to allocate the related fee. Please note that each arbitrator is only compensated \$200 per case for a decision rendered on a contested motion requesting the issuance of a subpoena without a pre-hearing conference. Also, parties shall be assessed a maximum of \$600 per case for decisions on contested motions requesting the issuance of a subpoena without a pre-hearing conference.

**Calculation of Forum Fees:**

\_\_\_ Regular Hearing sessions x \$\_\_\_\_\_ Hearing session deposit = \$\_\_\_\_\_

**plus** \_\_\_ Pre-hearing sessions with ~~three~~ arbitrators x \$\_\_\_\_\_ Hearing session deposit = \$\_\_\_\_\_

**plus** \_\_\_ Pre-hearing sessions with **one** arbitrator x \$\_\_\_\_\_ Hearing session deposit = \$\_\_\_\_\_

**plus** \_\_\_ Decisions rendered on discovery-related motions with one arbitrator x \$200.00

**plus** \_\_\_ Decisions rendered on discovery-related motions with two arbitrators x \$400.00

**plus** \_\_\_\_\_ Decisions rendered on discovery-related motions with three arbitrators x  
\$600.00

**plus** \_\_\_\_\_ Arbitrator(s) x \$200 per case for decisions rendered on contested subpoena  
requests (maximum assessment of \$600 per case)

Total Forum Fees = \$ \_\_\_\_\_

**Provide below the specific parties against whom the forum fees are to be  
assessed and the specific dollar amounts.**

Claimant(s) \_\_\_\_\_ assessed \$ \_\_\_\_\_

\_\_\_\_\_ assessed \$ \_\_\_\_\_

Respondent(s) \_\_\_\_\_ assessed \$ \_\_\_\_\_

\_\_\_\_\_ assessed \$ \_\_\_\_\_

(a) Please indicate whether you wish to have the respondent(s) reimburse the  
claimant(s) for any claim-filing fee paid to FINRA Dispute Resolution.

☐ Yes ☐ No

(b) Please indicate whether forum fees are to be assessed **jointly and severally**  
against any of the parties. ☐ Yes ☐ No

If yes, please state below the parties to be assessed **jointly and severally**.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**17. Injunctive Relief Fees:**

a. The Injunctive Relief Rule<sup>1</sup> provides that the increased arbitrator honoraria for the  
hearing on the request for permanent injunction should be assessed equally against  
the parties but that the arbitrators may reallocate this additional amount among the  
parties in the award. Please indicate how these additional honoraria should be  
assessed:

Claimant #1 is assessed \_\_\_\_\_

Claimant #2 is assessed \_\_\_\_\_

Respondent #1 is assessed \_\_\_\_\_

<sup>1</sup> Industry Code: Rule 13804; Old Code: Rule 10335

Respondent #2 is assessed \_\_\_\_\_

If the assessment is joint and several against any party, state below the parties against whom it is made (circle all that applies):

- i. Claimants only
- ii. Respondents only
- iii. Claimants and Respondents

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- b. The Injunctive Relief Rule also provides that the parties are jointly liable for the reasonable travel-related costs and expenses of an arbitrator who is required to travel to a hearing location other than the arbitrator's primary hearing location(s). The Rule further provides that the arbitrators may reallocate this expense. Please indicate how the expenses should be assessed.

Arbitrator \_\_\_\_\_, traveled outside his or her assigned hearing location and incurred \$ \_\_\_\_\_ in reasonable travel-related costs and expenses.

Arbitrator \_\_\_\_\_, traveled outside his or her assigned hearing location and incurred \$ \_\_\_\_\_ in reasonable travel-related costs and expenses.

Arbitrator \_\_\_\_\_, traveled outside his or her assigned hearing location and incurred \$ \_\_\_\_\_ in reasonable travel-related costs and expenses.

The parties are liable for those reasonable travel related costs and expenses as follows:

Claimant #1 is assessed \_\_\_\_\_

Claimant #2 is assessed \_\_\_\_\_

Respondent #1 is assessed \_\_\_\_\_

Respondent #2 is assessed \_\_\_\_\_

If the assessment is joint and several against any party, state below the parties against whom it is made (circle all that applies):

- i. Claimants only
- ii. Respondents only
- iii. Claimants and Respondents

\_\_\_\_\_  
\_\_\_\_\_

---

c. Is a disciplinary referral appropriate in this case? ☐ Yes ☐ No

If a referral is appropriate, contact the staff assigned to the case for guidance and a copy of the Arbitrator Disciplinary Referral Form.

Thank you for your service in this matter. FINRA Dispute Resolution looks forward to working with you again in the future.

---

**SAC AND FOX NATION DISTRICT COURT  
STROUD, OKLAHOMA**

FILED  
IN THE DISTRICT COURT

2011 JAN 31 P 3:03

SAC AND FOX NATION  
CHARLOTTE CARTWRIGHT, COURT CLERK

SAC AND FOX NATION, )  
SAC AND FOX HOUSING AUTHORITY, )  
Plaintiffs, )

vs. )

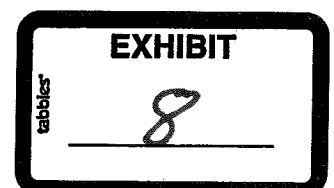
Case No.: CIV-11-06 BY: \_\_\_\_\_ DEPUTY.

UNITED PLANNERS' FINANCIAL )  
SERVICES OF AMERICA, a limited )  
partnership )  
Defendant. )

**COMPLAINT**

COME NOW, Plaintiffs, Sac and Fox Nation of Oklahoma ("Nation") and Sac and Fox Housing Authority ("Housing") and for their causes of action against Defendant, United Planners' Financial Services of America ("United Planners") hereby allege and state the following:

1. United Planners is an Arizona limited partnership with offices throughout the United States including an Oklahoma City, Oklahoma office.
2. Nation is a Federally Recognized Tribe located in Stroud, Oklahoma, organized under the Oklahoma Indian Welfare Act.
3. Housing is an Administrative Department of Nation.
4. Meetings and/or interactions between Nation, Housing and United Planners regarding Nation's and Housing's investments occurred on Tribal Land at Nation's Tribal Headquarters in Stroud, Oklahoma.
5. Jurisdiction and Venue are proper in the District Court for the Sac and Fox Nation.



6. Joinder of Housing's and Nation's claims is permissive under Title 6 § 304 of the Sac and Fox Nation Code of Laws.

#### **FACTUAL BACKGROUND**

7. Nation and Housing each entered into a broker agreement with United Planners' broker in or around 1994. The relationship continued until 2006.
8. In addition to the industry customs, practices, rules and regulations, Nation and the Government of the United States of America ("U.S. Government") set forth specific guidelines and policies to be followed when investing Nation's and Housing's funds.
9. United Planners promised to abide by guidelines and policies for investing funds of the Nation and Housing.
10. United Planners invested Nation's and Housing's funds improperly and in violation of proper practices dictated by industry custom, practices, rules and regulations and the guidelines and policies of Nation and U.S. Government.

#### **CAUSES OF ACTION**

11. United Planners breached its duty to provide Plaintiffs with competent and professional services in compliance with the guidelines and policies of Nation, U.S. Government and industry customs, practices, rules and regulations.
12. United Planners breached the agreements with Nation and Housing by not investing Housing's and Nation's funds in compliance with the guidelines and policies of Nation, U.S. Government and industry customs, practices, rules and regulations.
13. United Planners had a fiduciary duty to Nation and Housing. United Planners breached its fiduciary duty by improperly investing Nation and Housing funds in

breach of the guidelines and policies of Nation, U.S. Government and industry customs, practices, rules and regulations.

14. United Planners breached Nation's investment policies, U.S. Government's investment policies and industry practices, rules and regulations by improperly investing Nation's and Housing's funds.
15. United Planners had a duty to supervise all its employees. Its negligence in supervising Robert Shepherd, its employee, resulted in damage to the Plaintiffs.

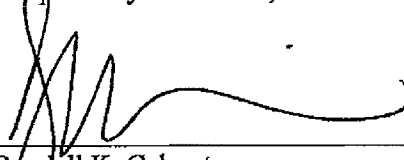
#### **REQUEST FOR RELIEF**

WHEREFORE, Nation and Housing pray for relief against the defendant for its misconduct, negligence, breach of contract, breach of fiduciary duty, breach of Tribal policies, breach of US Government policies, breach of industry customs, practices, rules and regulations, and failure to supervise. Housing and Nation pray for judgment against Defendant for:

- i) Actual Damages to Housing and Nation each in excess of Ten Thousand Dollars (\$10,000);
- ii) Disgorgement of all commissions and profits received by Defendant from transactions in Nation's and Housing's accounts;
- iii) The lost opportunity to earn what the Plaintiffs' account would have earned if invested properly, or interest at the legal rate;
- iv) All costs, expenses, attorneys fees and other fees incurred in pursuing this claim; and
- vi) Such other and further relief as this Court deems just and appropriate.



Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'R. Calvert', written over a horizontal line.

Randall K. Calvert  
Denielle N. Williams  
CALVERT LAW FIRM  
1041 NW Grand Boulevard  
Oklahoma City, OK 73118  
Telephone: 405-848-5000  
Facsimile: 405-848-5052  
[rcalvert@calvertlaw.com](mailto:rcalvert@calvertlaw.com)  
[dwilliams@calvertlaw.com](mailto:dwilliams@calvertlaw.com)

*Attorneys for Plaintiffs*

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

United Planners Financial Services of America, L.P.

(b) County of Residence of First Listed Plaintiff Oklahoma

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

David McCullough, OBA #10898

1800 N. Interstate Dr., Ste 211

Norman, OK 73072 phone: 405-319-3901

**DEFENDANTS**

Sac and Fox Nation, Sac and Fox Nation Housing Authority, Sac and Fox Nation District Court, The Honorable Darrell R. Matlock, Jr.,

County of Residence of First Listed Defendant Lincoln

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

Declaratory and Inj. relief--Challenge Tribal Court jurisdiction over the Plaintiff; exhaustion of tribal court remedies

**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/14/2014

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE