IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

BILLY CYPRESS, et al.,	)	
	)	Case No. 1:14-cv-22066-KMW
Plaintiff,	)	
	)	
v.	)	
	)	
UNITED STATES, et al.,	)	
	)	
Defendant.	)	
	)	

UNITED STATES' REPLY IN SUPPORT OF MOTION TO DISMISS

Plaintiffs brought this suit seeking a declaration that certain distributions from the Miccosukee Tribe of Indians are not subject to federal income tax. The United States moved to dismiss this case under Fed. R. Civ. P. 12(b)(1) for failure to identify an applicable waiver of the United States' sovereign immunity. Plaintiffs' response continues to rely on statutory provisions that do not waive the United States' sovereign immunity for this case and have nothing to do with taxation of the Miccosukee Tribe's distributions. Therefore, the Court should dismiss this case for lack of jurisdiction based on the United States' sovereign immunity.

The plaintiffs' primary mistake in their response is their misunderstanding of the applicable standard for pleadings and motions to dismiss. While courts presume *factual* allegations to be true for purposes of a motion to dismiss, the same presumption of correctness does not apply to legal conclusions, even if such legal conclusions are couched as factual allegations. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Griffin Indus., Inc. v. Irvin*, 496 F.3d 1189, 1206 (11th Cir. 2007) ("[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions."). The interpretation of a statute is a pure question of law. *E.g.*, *Am. United Life Ins. Co. v. Martinez*,

480 F.3d 1043, 1058 (11th Cir. 2007). Nonetheless, the plaintiffs attempt to rely on their interpretation of statutes as set forth in the complaint and argue that such interpretations "must be construed as true for purposes of ruling on a motion to dismiss." Response, Docket No. 19, at 6. These assertions are incorrect.

In their response, the plaintiffs continue to rely on two statutes that do not allow the requested relief. The first is the Miccosukee Reserve Area Act or MRAA. *Id*. (citing 25 U.S.C. § 1741). As noted in our motion to dismiss, the MRAA does not grant any rights for individuals to bring suits, and even if it did, the MRAA has nothing to do with taxes. The MRAA did not grant any rights to bring suits to avoid any tax. The plaintiffs also cite 25 U.S.C. § 459e. As noted in our motion to dismiss, this provision only excepts from taxation certain lands identified in § 459a, which do not include any Miccosukee land. Plaintiffs attempt to overcome the plain language of these statutes by citing their allegations in the complaint that the MRAA allows individuals to bring suits and that § 459e applies to the Miccosukee distributions. Response, at 6-7, 10-11. These allegations are legal conclusions which are not entitled to a presumption of correctness. Thus, these allegations are not a substitute for applying the clear meaning of the statutes, which do not provide jurisdiction in this case.[1]

Plaintiffs also argue incorrectly that they lack an adequate alternative remedy because a proper suit challenging the plaintiffs' tax liabilities would have to be dismissed because the Tribe could not be joined as a party. Response, at 8. Plaintiffs argue that a refund action pursuant to

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[1] Plaintiffs' response additionally reasserts Plaintiffs' reliance on the Administrative Procedures Act, which Plaintiffs acknowledge incorporates the prohibition against declaratory judgments restraining assessment or collection of taxes in 28 U.S.C. § 2201. Response, at 7; *see* U.S. Motion, Docket No. 11, at 11.

28 U.S.C. § 1346 would require joinder of the Tribe because such a suit could impair the Tribe's interests. *Id*. (citing Fed. R. Civ. P. 19(a)(1)(B)). It is unclear to the United States how or why the Tribe would be a necessary party to a tax refund suit by an individual tribal member, and even if the Tribe were a necessary party, it is unclear how a court would rule on any hypothetical motion to dismiss for failure to join the Tribe. *See* Fed. R. Civ. P. 19(b) (identifying factors to weigh and consider in determining whether a suit should proceed without a necessary party). The plaintiffs' farfetched and unclear hypothetical does not provide a basis to find jurisdiction in this case. Further, if the Tribe is a necessary party to an individual member's refund suit raising the same claims as this case, it is unclear why the Tribe is not also a necessary party to this case. If the plaintiffs' were correct that the Tribe is a necessary party, then this suit too should be subject to dismissal for the plaintiffs' failure to join the Tribe. The United States has not argued and does not contend that the Tribe is a necessary party to this case; thus it is at best unclear how joinder problems would render alternative remedies available to plaintiffs inadequate.

Because plaintiffs have failed to identify a valid waiver of sovereign immunity and have instead based their argument on the incorrect proposition that legal conclusions in the complaint should be deemed true, the Court should dismiss this case for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). Plaintiffs have also asked for a hearing on this matter. The United States believes that the Court may resolve this matter on the papers.

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served by electronic means on October 27, 2014, on all counsel or parties of record on the Service List below.

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