

1 Jack W. Fiander, General Counsel
2 Sauk-Suiattle Indian Tribe
3 5318 Chief Brown Lane
4 Darrington, WA 98241
5 (360) 436-0139
6 (509) 961-0096
7 towtnuklaw@msn.com

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON

10 **RAJU DAHLSTRON, et al.,**

11 Plaintiff,

12 v.

13 **SAUK-SUIATTLE INDIAN TRIBE, et al.,**

14 Defendant.

) No. 2:16-cv-00052-JLR
)
)

15 **MOTION TO DISMISS COMPLAINT**

) Note for Hearing:
)

16 Thursday, February 16, 2017 at 11:00 a.m.
17 Without Argument

18 INTRODUCTION

19 Plaintiff Raju Dahlstrom initiated this civil action naming the Sauk-Suiattle Indian
20 Tribe and certain officers and employees of the Sauk-Suiattle Indian Tribe as defendants.

21 MOTION

22 Defendant Sauk-Suiattle Indian Tribe moves the Court and the United States Attorney
23 to dismiss this action.

24 For the following reasons, the motion should be granted.

25 STANDARD OF REVIEW

26
27
28
29 MOTION - 1

Sauk-Suiattle Incian Tribe
Office of Legal Counsel
5318 Chief Brown Lane
Darrington, WA 98241
(360) 436-0139

1 For purposes of ruling upon a motion to dismiss, the Court accepts as true all well-
 2 pleaded allegations contained in the complaint, with doubts resolved in favor of the non-
 3 moving party. Fed. R. Civ. P. 12 (b) (6).
 4

5 28 U.S.C. 1915 (e) (2) provides that notwithstanding any filing fee that may have been
 6 paid the court shall dismiss the case at any time if the court determines that ...the action or
 7 appeal is frivolous or malicious, failes to state a claim on which relief may be granted, or seeks
 8 monetary relief against a defendant who is immune from such relief.
 9

10 FACTS

11 Although it is not expressly alleged in the Complaint, the Court may take judicial notice
 12 pursuant to Fed. R. Civ. P. 201 that the Sauk-Suiattle Indian Tribe is a federally recognized
 13 Indian Tribe. *See* 81 Fed. Reg. 26829 (May 4, 2016) (list of Indian tribes recognized by the
 14 U.S. Dept of Interior). Paragraph 5 of plaintiff's complaint seeks relief against defendant
 15 Sauk-Suiattle Indian Tribe and "its respective individual employees[.]" Paragraphs 31 through
 16 35 of plaintiff's complaint, taken as true, demonstrate that each named defendant engaged in
 17 the acts complained of in their official capacity as officers, employees or agents of the Sauk-
 18 Suiattle Indian Tribe.
 19
 20

21 ARGUMENT

22 It is too firmly established to be questionable that, absent a waiver of sovereign
 23 immunity, Indian tribes with a governing body recognized by the United States government are
 24 immune from suit. United States v. United States Fidelity & Guaranty Company, 309 U.S. 506
 25 (1940). There is nothing in the False Claims Act, 31 U.S.C. 3729, *et seq.*, which waives the
 26 immunity from suit of the Sauk-Suiattle Indian Tribe or any other Indian tribe.
 27
 28

29 MOTION - 2

Sauk-Suiattle Incian Tribe
 Office of Legal Counsel
 5318 Chief Brown Lane
 Darrington, WA 98241
 (360) 436-0139

1 In fact, Indian tribes do not fall within the scope of the False Claims Act. The False
 2 Claims Act applies to any person who:

3 (a) Knowingly presents, or causes to be presented, a false or fraudulent claim for
 4 payment or approval;

5 (b) knowingly makes, uses, or causes to be made or used, a false record or
 6 statement material to a false or fraudulent claim;

7 (c) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

8 (d) has possession, custody, or control of property or money used, or to be used,
 9 by the Government and knowingly delivers, or causes to be delivered, less than all
 10 of that money or property;

11 (e) is authorized to make or deliver a document certifying receipt of property used,
 12 or to be used, by the Government and, intending to defraud the Government,
 13 makes or delivers the receipt without completely knowing that the information on
 the receipt is true;

14 (f) Knowingly buys, or receives as a pledge of an obligation or debt, public
 15 property from an officer or employee of the Government, or a member of the
 16 Armed Forces, who lawfully may not sell or pledge property; or

17 (g) knowingly makes, uses, or causes to be made or used, a false record or
 18 statement material to an obligation to pay or transmit money or property to the
 19 Government, or knowingly conceals or knowingly and improperly avoids or
 decreases an obligation to pay or transmit money or property to the Government.

20 31 U.S.C. 3729. The term “person”, within the meaning of the Act, is defined as “any
 21 individual, partnership, corporation, association, or private organization”. Ordinary rules of
 22 statutory construction (*expression unio exclusion alterius*) are to the effect that, where certain
 23 items or classifications to which the statute applies are expressly enumerated, others may not
 24 be implied. Nowhere is it evident in the False Claims Act that it was intended by Congress to
 25 be applicable to sovereign tribal nations or to impliedly abrogate the doctrine of tribal
 26 sovereign immunity. Such abrogation or waiver of immunity from suit of Indian tribes and
 27

28 MOTION - 3

Sauk-Suiattle Incian Tribe
 Office of Legal Counsel
 5318 Chief Brown Lane
 Darrington, WA 98241
 (360) 436-0139

their officials acting in their official capacity must be “unequivocally expressed” by Congress or the governing body of the tribe. Santa Clara Pueblo v. Martinez. 436 U.S. 49 (1978).

Plaintiff’s Dahlstrom’s complaint for the most part alleges claimed irregularities in billing and payment matters engaged in by the Sauk-Suiattle Indian Tribe Health Clinic operated by the Sauk-Suiattle Indian Tribe (Complaint, ¶ 36) pursuant to a contract with the United States Indian Health Service pursuant to the Indian Self-Determination Act, 25 U.S.C. 450, *et seq.*, the Indian Health Care Improvement Act, and certain state and federal “vaccines for children” programs. Nothing in such statutes provide for suits against Indian tribes.

In fact, with respect to Indian tribal self-determination or self-governance contracts, Congress provided a process for disputing contract claims and, specifically, provided that:

Nothing in this Chapter shall be construed as—

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe[.]

25 U.S.C. § 5332.

CONCLUSION

Movant expresses no opinion upon the merits of Plaintiff Dahlstrom’s allegations which appear to arise from an employment termination or personnel disciplinary action, except to state that this Court is not the proper forum for addressing them. The potentially affected state and federal funding agencies have extensive internal audit and regulatory compliance processes

1 to determine whether certain costs are allowable or disallowable. Nothing, however, confers
2 jurisdiction upon this court to entertain plaintiff's civil action.

3
4 Due to the immunity from suit of the Sauk-Suiattle defendants, the absence of express
5 unequivocal waivers of such immunity, the express definition of persons and entities to which
6 the False Claims Act applies, and the express preservation of tribal immunity in 25 U.S.C.
7 5332, Plaintiff's complaint must be dismissed as it fails to state a claim upon which this Court
8 can grant relief. Additionally, although it cannot be unequivocally concluded that plaintiff's
9 suit was "malicious", numerous subsections of 28 U.S.C. 1915 (d) require dismissal.
10 Reviewed in the light of firmly established federal law, the filing of the suit is so contrary to
11 existing law as to be frivolous [28 USC 1915 (e) (2) (B) (i)], that it fails to state a claim upon
12 which relief can be granted, *id.* (subsection (ii)), and that it (iii) seeks monetary relief against a
13 defendant who is immune from such relief.
14
15

16 Movant defers to the Court to determine whether the frivolous and vexatious nature of
17 plaintiff's suit merits imposition of costs or sanctions. It should be of concern to the Court that
18 Plaintiff's summonses name as his attorney a licensed attorney in this district for the purpose of
19 answering the complaint. Although no signature appears thereon, state courts have imposed
20 Rule 11 sanctions upon counsel filing civil actions under similar circumstances where
21 immunity plainly barred suit. Suarez v. Newquist, 70 Wn. App. 827 (1993).
22
23

24 For the foregoing reasons, the Complaint must be dismissed, either upon defendant's
25 motion or by the Court *sua sponte*.¹
26

27
28 ¹ It should also be noted that the complaint should be dismissed as to all defendants, either upon
29 grounds that they were tribal employees or agents or officials acting in their official tribal
MOTION - 5

1 DATED this 12th day of January, 2017.

2 Respectfully submitted,

3 *S/ Jack W. Fiander*

4
5 Jack W. Fiander, WSBA 13116
6 Counsel for Defendant
7 Sauk-Suiattle Indian Tribe
8 Tribal Defendants
9 (509) 961-0096 or (509) 969-4436
10 towtnuklaw@msn.com

11 CERTIFICATE OF SERVICE

12 The undersigned certifies that the foregoing motion was filed with the Clerk of Court using the CM/ECF system and served electronically upon:

13 Annette Louise Hayes
14 Kerry Jane Keefe
15 Assistant United States Attorneys
16 Western District of Washington
Kerry.keefe@usdoj.gov

17 Robert W. Ferguson
18 Washington State Attorney General
19 judyg@atg.wa.gov

20 With a copy placed in first class mail addressed to:

21 Raju A.T. Dahlstrom
22 1411 Eaglemont Place
23 Mount Vernon, WA 98274

24 S/ Jack W. Fiander

25
26
27 capacity or upon grounds that the Sauk-Suiattle Indian Tribe is a necessary indispensable party
28 which cannot be joined pursuant to Fed. R. Civ. P. 19 due to its immunity from suit.

29 MOTION - 6

Sauk-Suiattle Incian Tribe
Office of Legal Counsel
5318 Chief Brown Lane
Darrington, WA 98241
(360) 436-0139