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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JAN 31 2018

DAWN MARIE DELEBREAU,

Plaintiff.

v.

CHRISTINA DANFORTH, LARRY BARTON,
MELINDA DANFORTH, JAY FUSS, and
GERALDINE DANFORTH

Case No.: 17-CV-01221

Defendants.

MOTION TO QUASH MOTION TO DISMISS

On or about January 24, 2018, the Attorney for the Defendants, C. Danforth, L. Barton, M. Danforth, and G. Danforth filed a Defendant's Motion to Dismiss with the Court based on three separate grounds being 1) the failure to state a claim for which relief can be granted, 2) subject matter jurisdiction, and 3) statute of limitations. The Defendant's have previously pandered these grounds to this Court in Doc.#16 nearly three months ago.

ANSWER

This Court has jurisdiction per U.S. Constitution Article III, Section 2 such that this Court's judicial power extends to all cases, in law and equity, arising under the Constitution, and the laws of the United States. For example, 41 U.S.C. § 4712 Enhanced Whistleblower Protection is within this Court's jurisdiction to adjudicate and thus subject matter jurisdiction. The analysis of this suggests the intent of Congress is to protect employees who protect federal funds such as the Plaintiff from reprisal for whistleblowing activities in connection with fraud see *United States v. Jay L. Fuss*, 17-cr-92-WCG held in this Court. The Enhanced Whistleblower Protection applies

1 to *all* employees where there is a connection to a federal grant or contract and whistleblower
2 protections cannot be waived. Whistleblower protections were federally-triggered when the
3 Plaintiff disclosed federal HUD waste, fraud, and abuse to the grantee, Office of Inspector
4 General, and the Federal Bureau of Investigation.

5
6 The doctrine of sovereign immunity does not apply because whistleblower protections were
7 federally-triggered see 41 U.S.C. § 4712 thus this case is properly before this Court see 28 U.S.C.
8 § 1331 such that district courts shall have original jurisdiction of all civil actions and federal
9 questions arising under the constitution and federal laws such as federal whistleblower laws, as
10 intended by Congress. Sovereign immunity does not apply because individuals knowingly
11 participated in federal prohibited retaliatory action such that Defendant individuals, not the tribe
12 are the real parties of interest see *Lewis et al., v. Clarke*, S.Ct (2017). For example, the Plaintiff
13 was discharged, demoted, and discriminated against see 41 U.S.C. § 4712. The analysis of this
14 suggests a federal question, a suit brought against individual racketeers who knowingly
15 participated in patterns of federally prohibited retaliation and thus sovereign immunity does not
16 and cannot apply see *Lewis et al., v. Clarke*, S.Ct (2017). Just because the Oneida Nation says
17 this case is a sovereign immunity case, does not make it so because it is a fallacy of
18 generalization *id.* Further, why should the Oneida General Tribal Council be held liable for tribal
19 employees who knowingly violate federal law; for this reason, this Court cannot allow those who
20 violate federal law to hide behind the thin veil of sovereignty. In other words, those who claim to
21 be sovereign yet violate federal law are not above the law yet believe so only because their claim
22 of sovereignty allows perpetrators to get away with violations of law.

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24 The Defendants inappropriately suggest they are not liable for their prohibited whistleblower
25 retaliation. Why is this so? Federally prohibited whistleblower retaliation was not done in a
26 vacuum inferring collusion and patterns of retaliatory actions were not at first clearly known
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1 because of the promise and guise of “working together” to get to the “truth” of the fraud whilst
2 using Plaintiff’s evidence of HUD waste, fraud, and abuse see RICO, 18 U.S.C. § 96. Working
3 together included helping, supporting, and providing evidence for the Oneida Nation, federal
4 agents, investigators, and auditors. Plaintiff was led to believe by the Defendants that all would
5 be well and that indemnification would be full and just after all HUD fraud evidence,
6 investigations, indictments, *inter alia* were completed, therefore, with the exception of the
7 court-dependency tolling rule (January 3, 2018, *United States v. Jay L. Fuss*), tolling, and the
8 tolling rule is unknown and thus statutes of limitations can only be constructed during the
9 discovery process. In other words, Defendant’s claim that this case ought to be dismissed is
10 arbitrary and capricious because the statute of limitations tolling and the rule is unknown,
11 notwithstanding the court-dependency rule, thus tolling and other applicable rules can only be
12 elucidated through the discovery construction process.

13
14 Collusion and racketeering limitations tolling infer pendency of court action i.e. *United States*
15 *v. Jay L. Fuss*, and deliberate concealment of injury i.e. stringing the Plaintiff along making the
16 Plaintiff believe that indemnification was forthcoming see RICO, 18 U.S.C. § 96. In addition, the
17 Plaintiff exercised due diligence; abiding by the Defendant’s continuous pleadings to help and
18 support, when and where possible, in all ongoing HUD fraud investigation activities, providing
19 evidence and testimony, whilst unbeknownst to the Plaintiff, Defendant’s actively conspired to
20 conceal their misrepresentations to indemnify Plaintiff and to further discriminate in tribal
21 employment opportunities see RICO, 18 U.S.C. § 96. Whistleblowing only provided the impetus
22 for Defendant’s to funnel organized prohibited retaliation to exact unequivocal, devastating
23 financial, physical, and emotional harm to the Plaintiff, and the Plaintiff’s family.

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25 The Defendants have demonstrated to the Court their advocacy for all the Statement-of-Claim
26 elements in favor of the Plaintiff. For example, again, the Plaintiff states, the Plaintiff has been
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1 discharged, demoted, and discriminated against in violation of 41 U.S.C. § 4712 and thus is
2 entitled to relief. The Defendants further ask for factual allegations such as the Plaintiff being
3 demoted and fired; are these not factual incidences when the Defendant's themselves cite
4 transfers, reassignments, demotion, and termination see Doc.#39 (p.3-4)? The Defendants ask,
5 "What might be the reasonable inferences in favor of the Plaintiff (*Palka v. Shelton*, 623 F.3d 447
6 (7th Cir. 2010))?"
7

- 8 1. Let this Court first consider, would a reasonable person believe that a grantee who receives
9 federal funding be expected to follow federal law as a prerequisite for receiving federal
10 funding? A reasonable person would believe that if other HUD agencies such as the
11 Atlanta Housing Authority or the Chicago Housing Authority must follow federal laws it
12 infers other HUD agencies such as the Oneida Housing Authority would also need to
13 follow federal laws.
14
- 15 2. The Defendants ask, did the Plaintiff provide evidence of HUD fraud to the grantee and
16 federal authorities and agencies? The answer is yes see *United States v. Jay L. Fuss*
17 resulting in an indictment, guilty pleading, and sentencing of Jay L. Fuss. For the sake of
18 argument let us call the *United States v. Jay L. Fuss* case, all supporting documents, and
19 testimony a fact.
20
- 21 3. The Defendants ask, would a reasonable person believe that it is plausible that the Plaintiff
22 would experience reprisal; prohibited retaliation i.e. demotion, termination, transfers *inter*
23 *alia* for providing evidence of HUD fraud? If a reasonable person would believe this is so,
24 why wouldn't a U.S. District Court Judge also believe this to be so?
25
- 26 4. The Defendants ask, would a judge reasonably believe it is plausible that the Defendants
27 were in positions of authority sufficient to draw a reasonable inference that the Defendants
28 might be liable for the misconduct alleged? For example, are the treasurer and CFO in a

1 position of authority and influence to cause the Plaintiff harm? Considering HUD fraud a
2 reasonable person would think so.

3
4 The Defendants ask, are the reasonable inferences 1-4 *supra* enough to raise a right to
5 relief above a speculative level see *DeKeyser v. Thyssenkrupp Waupaca, Inc.* 589 F. Supp. 2d
6 1026? As the Defendant's claim, and eloquently state "the allegations of the complaint of a *pro se*
7 plaintiff are entitled to liberal construction" such that Defendants meticulously argued and filled
8 in the blanks for the Plaintiff (Doc.#39, p. 6). In addition, the Defendants gloriously state, "the
9 essence of liberal construction is to give the *pro se* Plaintiff a break" (Doc.#39, p. 6). Yet,
10 Plaintiff suggests the blanks are filled, the Pleading is sound and rather understandable. The
11 Defendants state again, the *pro se* complaint must be liberally construed and provide some factual
12 evidence, see fact *supra* item 2 (Doc.#39, p. 7). In sum, the Defendant's herein demands this
13 Court analyze the *pro se* reasonable inferences and claims simply because of *pro se* liberal
14 construction (Doc.#39, p. 7).

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16 **ACCORDINGLY**, the *pro se* Plaintiff hereby moves the Court to *liberally construe*,
17 *inferences and claims* and quash Defendant's Motion to Dismiss.
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21 *Paul M. Hellebreath*
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