

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBERT LEWIS, individually; TINA
ARMSTRONG, and individual,

Plaintiffs,

vs.

RYAN SALES, an individual law enforcement
officer of the Puyallup Tribal Police; LT.
WILLIAM LOESCHER, an individual law
enforcement officer of the Puyallup Tribal
Police, CHIEF JOE DUENAS, an individual and
as Chief of Police for the Puyallup Tribal Police
Department in his official capacity; and DOES 2-
6 inclusive;

Defendants.

NO. 3:18-CV-05196-TLF

DEFENDANTS' RESPONSE TO
PLAINTIFFS' REQUEST FOR LEAVE
TO DISMISS AND RE-FILE IN TRIBAL
COURT

Defendants Ryan Sales, William Loescher, and Joe Duenas submit the following brief response to Plaintiffs' Request for Leave to Dismiss and Re-File in Tribal Court. Defendants do not oppose dismissal of this lawsuit, and therefore do not oppose that portion of Plaintiffs' requested relief.

However, Defendants oppose any Court instruction regarding refiling this case in tribal court. Plaintiffs argue that a lawsuit brought in tribal court under the Indian Civil Rights Act is the proper course after agreeing to dismissal of their tort claims (Dkt. #37) and, now, their 42

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U.S.C. § 1983 claims. (*See* Dkt. #48). But the Indian Civil Rights Act “does not create rights as against individuals.” *Spotted Eagle v. Blackfeet Tribe of Blackfeet Indian Reservation*, 301 F. Supp. 85, 90 (D. Mont. 1969); *see also Means v. Wilson*, 522 F.2d 833, 841 (8th Cir. 1975) (the Indian Civil Rights Act “provides rights only against the tribe and governmental subdivisions thereof, and not against tribe members acting in their individual capacities.”). Thus, any such cause of action would be futile as to the Defendants, and Plaintiffs have not identified any other viable basis for relief against them in any capacity or venue.

Accordingly, if the Court grants Plaintiffs’ request for dismissal, it should do so with prejudice. Plaintiffs’ case against the above-named defendants should moreover proceed no further in any venue. Defendants finally urge the Court not to provide any instructions to Plaintiffs regarding further litigation in tribal court.

DATED this 11th day of March, 2019.

FLOYD, PFLUEGER & RINGER, P.S.

By: /s/Thomas B. Nedderman
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 William Loescher and Chief Joe Duenas

DECLARATION OF SERVICE

Pursuant to 28 U.S.C § 1746” and the laws of the United States of America, I declare under penalty of perjury and the laws of the State of Washington that on the below date, I delivered a true and correct copy of DEFENDANTS’ RESPONSE TO PLAINTIFFS’ REQUEST FOR LEAVE TO DISMISS AND RE-FILE IN TRIBAL COURT via the method:

M. Jeffery Kallis	<i>Co-Counsel for Plaintiff</i>	<input type="checkbox"/> Via Messenger
321 High School Rd. D3		<input type="checkbox"/> Via Email
Bainbridge Island, WA 98110		<input type="checkbox"/> Via Facsimile
Tel: 888-441-1529		<input type="checkbox"/> Via U.S. Mail
Jeff.Kallis@kallislaw.com		<input checked="" type="checkbox"/> Via CM/ECF

Thomas S. Olmstead	<i>Co-Counsel for Plaintiff</i>	<input type="checkbox"/> Via Messenger
The Law Office of Olmstead & Somers, LLC		<input type="checkbox"/> Via Email
P.O. Box 68		<input type="checkbox"/> Via Facsimile
Poulsbo, WA 98370		<input type="checkbox"/> Via U.S. Mail
Tel: 360-779-8980		<input checked="" type="checkbox"/> Via CM/ECF
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DATED this 11th day of March, 2019.

/s/Monica Howard
Monica Howard, Legal Assistant