

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WISCONSIN**

RED CLIFF BAND OF LAKE SUPERIOR
CHIPPEWA INDIANS,

Plaintiff,

Case No. 18-cv-828-wmc

v.

BAYFIELD COUNTY, WISCONSIN,

Defendant.

DEFENDANT'S SUR-REPLY

Plaintiff Red Cliff Band of Lake Superior Chippewa Indians (“Tribe”), which is represented by experienced legal counsel, acknowledges that it failed to comply with this Court’s long-standing procedure governing motions for summary judgment when the Tribe failed to submit proposed findings of fact in support of its Motion. The Tribe claims this is simply “form over substance” rather than acknowledging the important role proposed findings of fact play in determining what facts are disputed and which are undisputed. The Court should reject the Tribe’s cavalier request that the Court disregard its procedure governing motions for summary judgment.

The Court should also reject the Tribe’s proposal that the Court convert paragraphs in Wade Max Williams’ affidavit into proposed findings of fact and then treat all of these “facts” as undisputed, without any response from Bayfield County. Should the Court allow the Tribe to submit proposed findings of fact, which, under the unique circumstances in this case, Bayfield County opposes, given that the Tribe has had an opportunity to review Bayfield County’s response brief and Bayfield County’s proposed findings of fact, the Court should not permit the Tribe to add any additional proposed findings of fact other than those in the Wade Max Williams’ affidavit

and the Court should not allow the Tribe to provide any response to Bayfield County's proposed findings of fact, which it filed with its responsive materials.

This is a case that ultimately will be decided by the Court, and not a jury, since the only relief being requested is equitable, i.e., declaratory and injunctive relief. This case is scheduled for a non-jury trial on January 29, 2020. The Court has specific requirements for non-jury trials. Given that the deadline for filing dispositive motions has passed, unlike in the case *Davis v. Gee*, Case No. 14-cv-617-wmc (Western District of Wisconsin), cited by the Tribe, and the process of filing proposed findings of fact, responses thereto, and replies will further shorten this Court's time to decide the pending motion, it makes the most sense to simply proceed with the January trial date so there is a complete record. Counsel for Bayfield County believes that ultimately the parties can stipulate to many of the relevant facts and a trial to the Court would take no longer than one trial day. Additionally, counsel for Bayfield County believes this case can be ready for trial in December rather than late January if the Court and the Tribe's counsel have availability in December.

In summary, the Court should: (1) reject the Tribe's proposal for addressing problems of its making – either disregard this Court's procedure or, alternatively, have the Court treat averments in the Wade Max Williams' affidavit as proposed findings of fact and then deem them undisputed without response by Bayfield County; (2) since this case will be tried to the Court and permitting proposed findings of fact, responses thereto, and replies will unnecessarily shorten this Court's time to decide the motion on what will likely not be a complete record, the Court should not permit the Tribe to belatedly file proposed findings of fact; and (3) if it meets the Court and counsel's schedule, the Court should move the trial to the Court in this matter to December. Given

what the parties should be able to stipulate to, there is no reason that trial to the Court should exceed one full trial day.

Dated this 27th day of September, 2019.

AXLEY BRYNELSON, LLP

s/ Michael J. Modl _____

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