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Attorneys for Defendant Ho-Chunk, Inc.

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

JOHN H. DOSSETT,

Plaintiff,

v.

HO-CHUNK, INC., a tribal corporation formed by the Winnebago Tribe of Nebraska, NOBLE SAVAGE MEDIA, L.L.C, a Limited Liability Company of unknown origin, THE NATIONAL CONGRESS OF AMERICAN INDIANS OF THE UNITED STATES AND ALASKA, an Oklahoma Non For Profit Corporation, and HIGH COUNTRY NEWS, a Colorado Nonprofit Corporation,

Defendants.

Case No.: 3:19-cv-01386

DEFENDANT HO-CHUNK, INC.'S  
RENEWED MOTION TO DISMISS AND  
REQUEST FOR EXPEDITED BRIEFING  
SCHEDULE

### LR-7-1 CERTIFICATION

In compliance with LR-7-1, the parties have made a good faith effort through personal or telephone conferences to resolve the dispute and have been unable to do so.

### MOTION

COMES NOW Defendant Ho-Chunk, Inc. (“HCI”), by and through counsel, and renews its motion to dismiss the instant Complaint for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) based on sovereign immunity from suit. HCI originally moved to dismiss on November 4, 2019 (ECF 35). HCI renews its motion based upon Dossett’s recent communication with the Court, which is discussed in detail in the Memorandum filed herewith. HCI further respectfully requests that this Court Order an expedited briefing schedule on HCI’s renewed motion that requires Mr. Dossett to submit any brief in opposition by **Monday, February 24, 2020**, and permits any replies thereto to be filed by **Tuesday, February 25, 2020**. Good cause exists for expedited briefing, as an oral argument is currently scheduled on the original motion to dismiss on at 10:30 a.m. on **Wednesday, February 26, 2020**, and resolution of this question is both ripe and essential to judicial efficiency.

Date: February 21, 2020

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DEFENDANT HO-CHUNK, INC.'S  
MEMORANDUM IN SUPPORT OF  
RENEWED MOTION TO DISMISS AND  
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On November 4, 2020, Ho-Chunk, Inc. (“HCI”) moved to dismiss John Dossett’s suit against it for lack of subject matter jurisdiction on the basis of tribal sovereign immunity from suit. ECF 35. Specifically, as HCI stated then, “Dossett’s claims against HCI must be dismissed in their entirety under Federal Rule of Civil Procedure 12(b)(1) as HCI is an arm of the Winnebago Tribe of Nebraska and is cloaked with the Tribe’s immunity such that *this court lacks jurisdiction.*” *Id.* at 7 (emphasis added). From the very beginning of this case, John Dossett has demonstrated that he either does not understand or does not care about the jurisdictional nature of tribal sovereign immunity suit.<sup>1</sup> HCI has engaged in frustrating efforts to meet and confer with Mr. Dossett on this issue that have led us to where we are today. John Dossett has pushed HCI, and the Court to the brink of oral argument on a motion dismiss a lawsuit that he brazenly admits is not within this Court’s jurisdiction, but which he refuses to dismiss. As set forth fully in HCI’s opposition to the motion for leave to amend, Dossett has long signaled, without expressly stating, that his suit against HCI was barred by tribal sovereign immunity from suit. As noted in that opposition, that has created its own set of problems for HCI and this Court.

Suddenly today, Dossett *expressly* confirmed in a letter to the Court transmitted by email that he does not believe that this Court enjoys jurisdiction to hear his suit against HCI. Declaration of Nicole Ducheneaux (“Ducheneaux Decl.”) Ex. A. He explains that “[f]or professional reasons, Mr. Dossett does not intend to oppose Ho-Chunk, Inc.’s argument that it is entitled to sovereign immunity in this matter.” He is clear, however, that – notwithstanding his concession that this Court lacks jurisdiction – he is “not willing to voluntarily dismiss” because he does not want to be subject to attorney fees. *Id.* Instead, he wishes this Court and HCI to

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<sup>1</sup> This is discussed in detail in the fact section of HCI’s opposition to Dossett’s motion for leave to amend filed contemporaneously herewith, and which HCI incorporates by reference here.

prepare for this oral argument so that he can “vigorously oppose” anti-SLAPP motions.

The concept of jurisdiction is so fundamental to legal practice that counsel for HCI has struggled to find some controlling authority that might explain to Mr. Dossett that without jurisdiction, this Court cannot hear any part of Mr. Dossett’s lawsuit, whether it be anti-SLAPP or something else. Counsel for HCI discussed this with Dossett’s counsel in a communication that is attached here, with Rule 408 settlement communications unrelated to Mr. Dossett’s letter to the court redacted. In Dossett’s counsel’s communication, he advised that he intended to send the instant letter to the Court. HCI’s counsel responded, quoting his, Mr. Dossett’s counsel’s email back to him as follows:

Your statement that your client, "does not intend to contest HCI's sovereign immunity argument," and your proposal to, "send a letter to the judge to let her know: 1) that Mr. Dossett has informed HCI that he does not intend to oppose HCI's sovereign immunity argument; 2) it is not necessary for the Court to expend any more court resources on the sovereign immunity argument; and 3) that HCI insists on appearing and arguing its anti-SLAPP motion, which we will oppose", is outrageous. Declining to contest sovereign immunity is conceding that the court lacks jurisdiction to hear the case at all. Why on earth would the court waste its time hearing arguments on anti-SLAPP if you have conceded that the court lacks jurisdiction? If you made that proposal in a motion, you would risk a Rule 11 sanction.

If Mr. Dossett doesn't want to embarrass himself with arguments that contest HCI's immunity from suit, he should dismiss against HCI with prejudice. Otherwise, when we show up at court next Wednesday, without violating the Rule 408 protection, I will indicate to the court that I am unclear about whether Mr. Dossett intends to contest sovereign immunity and then you can explain it and why you are wasting our time in person, assuming you are wise enough not [to] send your proposed letter.

Ducheneaux Decl. Ex. B.

As set forth in HCI’s motion to dismiss (ECF 35), its reply thereto (ECF 50), and its opposition to Dossett’s motion for leave to amend, HCI has struggled with Mr. Dossett’s seemingly unfounded positions on the jurisdiction of this Court and HCI’s sovereign immunity.

As noted in those other documents, Dossett's conduct has caused both delay and prejudice. His letter does the same.

Importantly, however, the letter finally resolves this months' long disagreement. John Dossett has conceded that this Court lacks jurisdiction to hear his lawsuit against HCI. As a matter of law, his lawsuit against HCI should be dismissed with prejudice. In its opposition to Mr. Dossett's motion for leave to amend, HCI has requested costs related to this dispute. HCI hereby reserves its right to seek further redress against Mr. Dossett.

### **CONCLUSION**

For the reasons set forth herein, HCI renews its request that this Court dismiss Mr. Dossett's claims against HCI in their entirety.

### **CERTIFICATE OF SERVICE**

I hereby certify that on February 21, 2020, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

/s/ Nicole E. Ducheneaux

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Defendants.

Case No.: 3:19-cv-01386

DECLARATION OF NICOLE E. DUCHENEAUX IN SUPPORT OF HO-CHUNK INC'  
RENEWED MOTION TO DISMISS AND REQUEST FOR EXPEDITED BRIEFING SCHEDULE



I, Nicole E. Ducheneaux, declare as follows:

1. I am counsel of record for Defendant Ho-Chunk, Inc. I have been admitted to practice *Pro Hac Vice* before this Court.
2. A true and correct copy of a Letter to the Hon. Stacie F. Beckerman , from Scott Whipple dated February 21,2020, is attached here to as **Exhibit A**.
3. A true and correct copy of an e-mail to Scott Whipple , from Nicole Ducheneaux, dated February 20,2020, time 3:51 PM is attached hereto as **Exhibit B**.

I declare under the penalty of perjury that the foregoing is true and accurate to the best of my knowledge.

Dated: February 21, 2020

By:   
Nicole E. Ducheneaux

**CERTIFICATE OF SERVICE**

I hereby certify that on February 21, 2020, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

*/s/ Nicole E. Ducheneaux*

Case No. 3:19-cv-01386-SB

**HO-CHUNK, INC.**

**EXHIBIT A**

Case No. 3:19-cv-01386-SB

# Whipple Law Office, LLC

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February 21, 2020

Via E-mail to [sbpropdoc@ord.uscourts.gov](mailto:sbpropdoc@ord.uscourts.gov)

Hon. Stacie F. Beckerman  
U.S. District Court for the District of Oregon  
1000 SW Third Avenue  
Portland, OR 97204

Re: *Dossett v. H-Chunk, Inc. et al.*  
U.S. District of Oregon Case No. 3:19-01386-SB

Dear Judge Beckerman:

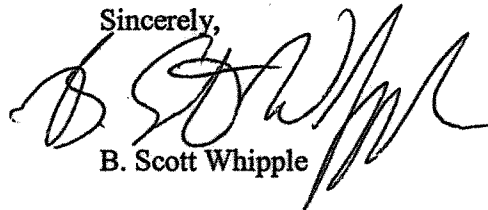
I represent plaintiff John H. Dossett in the above-referenced case. I write to you regarding the 10:30 a.m. hearing on Wednesday, February 26, 2020.

For professional reasons, Mr. Dossett does not intend to oppose Ho-Chunk, Inc.'s ("HCI") argument that it is entitled to sovereign immunity in this matter. I have advised counsel for HCI of this fact. I believe that the Court will appreciate knowing that it is not necessary to expend any further resources on that argument. Mr. Dossett will vigorously oppose all of the defendants' anti-SLAPP motions

At this time, Mr. Dossett is not willing to voluntarily dismiss HCI as a defendant in this matter because it may allow HCI to argue that it is entitled to attorney fees under ORS 31.152. Mr. Dossett has not been able to reach an agreement with HCI on this issue and it is my understanding that counsel for HCI will appear at the hearing.

Thank you in advance for your time and attention to this matter.

Sincerely,



B. Scott Whipple

cc: Counsel of Record (via e-mail)

Case No. 3:19-cv-01386-SB

**HO-CHUNK, INC.**

**EXHIBIT B**

Case No. 3:19-cv-01386-SB

**Vivian Windham**

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**From:** Nikki Ducheneaux  
**Sent:** Thursday, February 20, 2020 3:51 PM  
**To:** Scott Whipple  
**Cc:** anthony@galandabroadman.com; Filing; Andrew Paris  
**Subject:** RE: Dossett v. Indianz.com

Scott,

[REDACTED]

Your statement that your client, "*does not intend to contest HCI's sovereign immunity argument,*" and your proposal to, "*send a letter to the judge to let her know: 1) that Mr. Dossett has informed HCI that he does not intend to oppose HCI's sovereign immunity argument; 2) it is not necessary for the Court to expend any more court resources on the sovereign immunity argument; and 3) that HCI insists on appearing and arguing its anti-SLAPP motion, which we will oppose*", is outrageous. Declining to contest sovereign immunity is conceding that the court lacks jurisdiction to hear the case at all. Why on earth would the court waste its time hearing arguments on anti-SLAPP if you have conceded that the court lacks jurisdiction? If you made that proposal in a motion, you would risk a Rule 11 sanction.

If Mr. Dossett doesn't want to embarrass himself with arguments that contest HCI's immunity from suit, he should dismiss against HCI with prejudice. Otherwise, when we show up at court next Wednesday, without violating the Rule 408 protection, I will indicate to the court that I am unclear about whether Mr. Dossett intends to contest sovereign immunity and then you can explain it and why you are wasting our time in person, assuming you are wise enough not send your proposed letter.

[REDACTED]

[REDACTED]

[REDACTED]

Please keep me apprised of how you intend to handle the suit against HCI going forward.

Thanks,

Nikki