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Of Attorneys for Plaintiff John Dossett

IN THE UNITED STATES DISTRICT COURT  
FOR THE 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 Not For Profit  
Corporation, and HIGH COUNTRY NEWS,  
a Colorado Nonprofit Corporation,

Defendants.

No. 3:19-cv-01386-SB

JOHN DOSSETT'S REPLY MEMORANDUM  
IN SUPPORT OF MOTION TO AMEND  
(RESPONDING TO NCAI)

Come now Plaintiff John Dossett (Dossett), by and through counsel, in support of his motion to amend the complaint to clarify that Count Five of the First Cause of Action is against NCAI as well as other defendants (Agoyo and Abourzek.)

This amendment is a clarifying amendment. That Dossett was asserting a claim against NCAI under Count 5 was obvious from the allegations of the original complaint. NCAI is clearly included in the Section Header and text but was mistakenly excluded from the parentheses under the header. Pursuant to FRCP 15(a) (2) a party may freely amend when justice requires. Courts apply Rule 15 with "extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (citations omitted).

Count Five alleges defamation. On October 23, 2018, NCAI President Jefferson Keel made a public statement to the Annual Meeting of the National Congress of American Indians. "NCAI doesn't condone harassment of any kind in the workplace, nor have we, nor will we, tolerate it anymore,' Keel said. We will take action when it occurs in the future just like we did in the situation at hand.'" (Paragraph 86 of the Complaint, ECF 1). This statement by NCAI President Keel is in direct reference to Mr. Dossett and did great damage to his reputation. In a context where Mr. Dossett had been labelled a "predator" in national media and then abruptly fired by NCAI, NCAI's argument that Keel was not referencing these allegations of sexual harassment is specious.

NCAI also argues that the amendment is futile, because NCAI President Keel's statement is true. That Mr. Dossett was demoted, then fired, based on either sexual harassment or some other generalized harassment. To the contrary, NCAI's varied and changing rationales for demoting and eventually firing Mr. Dossett, are the central disputed facts in this litigation. The amendment should be allowed to proceed to discovery and litigation on the merits.

There are several NCAI statements prior to this litigation that demonstrate Mr. Dossett was not demoted or fired for sexual harassment. First, the disciplinary memo received by Mr. Dossett on May 2, 2018 does not mention the term "sexual harassment" nor does it find any

violation of NCAI's sexual harassment policy. (Exhibit CC to Dossett Declaration in Opposition, ECF 45.) Second, the statement of the investigating attorney, Sadina Montani, provides written evidence that the investigation made no finding of sexual harassment. In response to Indianz.com, she stated, "I think a statement and denial are appropriate here." (Exhibit DD to Dossett Decl.). Third, on March 8, 2019, NCAI's President Jefferson Keel issued a letter to the NCAI membership with the results of an investigation subsequent to firing Mr. Dossett by the firm Quarles & Brady LLP, which states, "While there were many rumors, this outside firm found no facts to support the rumors." (Complaint ¶ 50, ECF 1.) This evidence is directly contrary to the *post hoc*, unsworn statement made by NCAI's counsel during the recent hearing that "John Dossett was disciplined for sexual harassment. Period."

The "many rumors" are key to understanding how and why this debacle unfolded to devastate Mr. Dossett's career. Statements provided by the investigating attorney, Sadina Montani, reveal NCAI's actual motivation to change Mr. Dossett's job title was a failed effort to protect the NCAI Executive Director, Jacqueline Pata, from the spread of false rumors under a scheme developed by the NCAI Director of Operations, Nicole Hallingstad. This scheme and details of the compromised investigation that followed are set out in paragraphs 27 to 31 of the Complaint, ECF 1, and detailed in paragraphs 38 to 62 of Mr. Dossett's declaration as well as Exhibit DD, ECF 45.<sup>1</sup>

There is evidence of a significant failure of confidentiality regarding the first, vague claim that allowed rumors to proliferate. In 2016, Mr. Dossett helped a heavily intoxicated colleague who had passed out after a staff dinner. The colleague later stated that she couldn't remember what happened, but "she felt uncomfortable." (¶ 25 of Dossett Decl. ECF 45.) This was investigated by the Executive Director and determined a misunderstanding by heavily

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<sup>1</sup> NCAI has accused Mr. Dossett of purloining documents. This is false. On November 4, 2018, Mr. Dossett sent a letter providing an inventory of returned NCAI property, stating that he would retain documents related to NCAI's investigation. On November 20, 2018 NCAI attorney Sadina Montani agreed with his retention of those documents.

intoxicated person. (¶ 27 of Dossett Decl.). In 2017, the NCAI Administrative Board also reviewed the facts after the Director of Operations Nicole Hallingstad filed a complaint, and they decided to take no action and to remove Hallingstad's access to employee files. (Exhibit AA to Dossett Decl.). Despite this, during her investigation Montani learned that, "the incident has been gossiped out extensively in the community." (Exhibit DD to Dossett Decl., ECF 45)

The Montani investigation was prompted by an allegation that Mr. Dossett made an off-color comment. Ms. Montani has stated that the second accusation was a direct result of false rumors that were spread by Nicole Hallingstad and others. "Sarah P was focused at least as much on the previous incident as her own allegations." (Exhibit DD to Dossett Decl.). Importantly, the "previous incident", Mr. Dossett assisting a colleague to the hotel lobby, is not a basis for the May 2, 2018 disciplinary memo following the Montani investigation.

Multiple sources informed Montani during her investigation that the second allegation against Mr. Dossett was a scheme intended to discredit NCAI Executive Director Jacqueline Pata. "Nicole (and others) are not respecting [intoxicated colleague] in this situation, which is a complaint that [she] and others shared with me. The idea that others would use [her] as a pawn against Jackie has rightly infuriated some folks." (Exhibit DD to Dossett Decl.).

This "pawn" statement by Montani demonstrates the false motivations for the second complaint against Dossett and his demotion. Montani believed that people were "rightly infuriated" by this scheme. But Montani's investigation recommended no action against Nicole Hallingstad, and instead set up Mr. Dossett as a scapegoat. The real question for Montani is why she refused to consider false motives during her investigation, but was eager to question them four months later when it was leaked to the press.

The second allegation accused Mr. Dossett of a rude comment, while watching sports, after working hours, overheard by a colleague he did not supervise. Mr. Dossett has consistently denied this allegation and believes that he was misheard in a noisy and crowded hotel lobby.

This second complaint realleges the first non-incident, and that Hallingstad was being mistreated

by Ms. Pata. (Exhibit BB to Dossett Decl.). These facts support Montani's statement that it was a plot to discredit Pata.

Even if it were true, which Mr. Dossett denies, a single offhand comment in these circumstances does not provide a basis for a finding of sexual harassment. Such conduct must be "sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment." Oregon Administrative Rules 839-005-0010(4)(A). This is the reason that the NCAI disciplinary memo included no finding or mention of sexual harassment.

Yet, Ms. Pata was facing rumors and complaints concerning many aspects of her management, led by Ms. Hallingstad. (Exhibit AA to Dossett Decl.) On information and belief, NCAI and Montani changed the scope of the investigation to unrelated complaints and manufactured reasons to demote Mr. Dossett as a way for Ms. Pata to be seen as taking action. The flimsy nature of these unrelated and undisclosed complaints is detailed in paragraphs 58 to 63 of Mr. Dossett's Declaration. Mr. Dossett offered evidence that the Director of Operations Nicole Hallingstad was spreading false rumors in a plot against the Executive Director. This evidence was suppressed, in violation of the NCAI Employee Handbook which provides that "[t]he organization recognizes that every investigation requires a determination based on all the facts in the matter." (Exhibit 1 to NCAI's Motion to Dismiss and Special Motion to Strike, ECF 41.)

Mr. Dossett was fired because false allegations went to the press and were embarrassing to NCAI, and to avoid disclosure of the compromised investigation and dysfunction at NCAI. When the news articles appeared accusing him of being a "predator," Mr. Dossett urged the NCAI Executive Committee to retain independent counsel and conduct its own investigation of the matter. (Exhibit NN to Dossett Decl.) Fearing this exposure, Pata, likely based on Montani's advice, refused any independent investigation overseen by the NCAI Executive Committee and instead attempted to force Mr. Dossett to resign. *See* Paragraphs 84 to 89 of Dossett Declaration

in Opposition, ECF 45. Again, NCAI's Executive Committee eventually did undertake an independent investigation by the firm Quarles & Brady, and according to NCAI President Keel, "[w]hile there were many rumors, this outside firm found no facts to support the rumors." (Complaint ¶ 50, ECF 1.)

In sum, there is evidence that Mr. Dossett's demotion was not based on findings of sexual harassment. Instead, he was a convenient scapegoat who had been the subject of unsubstantiated rumors. The amendment is not futile.

As demonstrated above, Dossett is prepared to meet his burden regarding Count Five of his defamation claim. Regardless, at this stage of the proceeding, it is not for the Court to make a determination of whether Dossett has done so, but rather whether he has met his burden to move forward with the allegations. As demonstrated in his Opposition to Defendants' Motions to Dismiss and Special Motions to Strike and oral argument on the same, Dossett should be allowed to amend his complaint to correct this clerical error and prosecute all of his defamation claims against NCAI, including Count Five. That being said, Dossett has no objection to the Court first ruling on NCAI's pending anti-SLAPP motion before ruling on Dossett's Motion to Amend.

DATED: March 9, 2020.

By: /s/ B. Scott Whipple  
B. Scott Whipple

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of March, 2020, I served the foregoing DOSSETT REPLY MEMORANDUM IN SUPPORT OF MOTION TO AMEND (RESPONDING TO NCAI) 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.

DATED this 9<sup>th</sup> day of March, 2020.

/s/ B. Scott Whipple  
B. Scott Whipple, OSB #983750