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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

DOSSETT REPLY MEMORANDUM IN
SUPPORT OF MOTION TO AMEND
COMPLAINT (RESPONDING TO HO-
CHUNK, INC.)

Pursuant to Federal Rules of Civil Procedure 15(a) and 15(c), and Local Rule 15, Plaintiff, John Dossett, has moved for leave to file an Amended Complaint. The proposed amendment adds Acee Agoyo and Kevin Abourezk as defendants in their individual capacities based on the representation of counsel for Ho-Chunk, Inc. that Noble Savage Media, L.L.C. does not exist as an entity. Agoyo and Abourezk are the co-authors of the Indianz.com news articles that defamed Mr. Dossett. The amendment would add additional facts showing Agoyo and Abourezk have made new publications of the same defamatory statements within the past year.

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).

Ho-Chunk, Inc. argues that this motion to amend is procedurally disruptive and was filed both too soon and too late.¹ Mr. Dossett does not contest Ho-Chunk, Inc.'s argument this Court does not have jurisdiction over Ho-Chunk, Inc. based on its assertion of sovereign immunity. However, Mr. Dossett is entitled to relief for defamatory articles published by Indianz.com. Indianz.com is a national media publication which misrepresented its ownership. Until recently the "Noble Savage Media, L.L.C." corporate name remained on the Indianz.com website, where the "About" page stated that Indianz.Com is a product of Ho-Chunk, Inc. and Noble Savage Media, a Native American-owned media firm. (This webpage appears to have been recently removed from the Indianz.com website.) Indianz.com published a news article that labelled Mr. Dossett a sexual "predator" based on false, unsourced, office gossip and destroyed his reputation

¹ Ho-Chunk, Inc. states that it had a "frustrating back and forth in which Dossett's counsel was repeatedly unavailable for a telephone conference ... and ultimately required HCI to move for two motions to extend time to file its motion to dismiss to avoid Dossett's threat to request that the court deny HCI's motion for failure to abide by Local Rule 7-1(a). HCI cherry picked certain email correspondence to support this false narrative. As set forth in the supporting Declaration of B. Scott Whipple, the *short* delay for conferral was for good cause and the second extension of time was agreed upon so that the various motions would be on the same briefing and oral argument schedule.

and career. He seeks to only establish the truth and recover his reputation by asserting claims against appropriate parties. Those parties are Acee Agoyo and Kevin Abourezk as defendants in their individual capacities.

The proposed amended complaint adds Acee Agoyo and Kevin Abourezk as defendants for the First Cause of Action, Count One for Defamation, for the Second Cause of Action regarding injunctive relief, and the Fourth Cause of Action regarding Intentional Interference with Economic Relations. The subsequent publication of Indianz.com defamatory news articles occurred on February 15, 2019, and multiple later dates, and the motion was filed to timely meet a one-year statute of limitations for defamation caused by that new publication.²

Mr. Dossett is eager to dismiss Ho Chunk as a defendant because its sovereign immunity defense is an unnecessary diversion of attention and resources from his underlying claims. Attempts to get Ho-Chunk, Inc. to agree to not seek attorney fees based upon its unfounded anti-SLAPP motion have failed. Therefore, Mr. Dossett is reluctant to dismiss voluntarily because of a Ninth Circuit opinion that holds that a party that is dismissed voluntarily after filing an anti-SLAPP motion is the prevailing party and entitled to fees. *Law Offices of Bruce Altschuld v. Wilson* (9th Cir. 2015). Instead he seeks an order from this Court dismissing Ho Chunk on the basis of jurisdiction.

Amendment of the complaint is not futile. A one-year statute of limitations does not bar adding additional defendants to Count One defamation claims for two reasons. First, the amendment relates back to the original date of filing under FRCP 15(c). Second, Defendants Agoyo and Abourezk have made new publications of the same article on multiple subsequent occasions.

Finally, Ho Chunk, Inc.'s sovereign immunity is not implicated in a suit against Agoyo

² Counsel for Mr. Agoyo and Mr. Abourzek agreed to a short tolling agreement and Dossett's Motion to Amend filed on February 19, 2020, is timely with respect to all of the articles set forth in Paragraph 62 of the proposed First Amended Complaint, including the February 15, 2019 article.

and Abourezk in their individual capacities. The Supreme Court has held that tribal sovereign immunity is not implicated in a suit against tribal employees in their individual capacity. *Lewis v. Clarke*, 137 S.Ct. 1285, 581 U.S. ___, (2017) (“in a suit brought against a tribal employee in his individual capacity, the employee, not the tribe, is the real party in interest and the tribe’s sovereign immunity is not implicated.”). At a minimum, joining Agoyo and Abourezk provides the opportunity to seek damages and declaratory relief, establishing that Mr. Dossett is not a “predator” to be feared by women, money damages, and any other just and appropriate relief. *Maxwell v. County of San Diego*, 708 F.3d 1075, 1089 (9th Cir. 2013). (“We therefore hold that sovereign immunity does not bar the suit against the Viejas Fire paramedics as individuals. The Viejas Band is not the real party in interest. The Maxwells have sued the Viejas Fire paramedics in their individual capacities for money damages. Any damages will come from their own pockets, not the tribal treasury.”) Should Ho-Chunk, Inc. file a motion pursuant to Rule 19 that it is a necessary party, Mr. Dossett will respond to any such motion in due course.

This motion to amend is not for purposes of delay and is submitted in good faith. Mr. Dossett originally focused his claims on the media institutions that published the defamatory statements and did not see the need to make claims against individual defendants until learning that Noble Savage Media, L.L.C. is not an existing corporate entity.

CONCLUSION

For the reasons stated above, Plaintiff respectfully asks the Court to grant its Motion for Leave to File Its Amended and Complaint, without conditions, except that Mr. Dossett does not object to Ho-Chunk, Inc.’s request that the Court first rule on its Pending Motion to Dismiss and Special Motion to Strike 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 HO-CHUNK, INC.) 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/ B. Scott Whipple
B. Scott Whipple, OSB #983750