No. 23-7027

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MELISSA PHILLIPS,
Plaintiff-Appellant,
v.

JESSE JAMES, JESSICA BROWN, DAVID DOBSON, AND JESSE PETTY,
Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Oklahoma, No. 21-CV-00256-JFH-GJL (Heil J.)

APPELLEES' OPENING BRIEF

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ORAL ARGUMENT NOT REQUESTED

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STATEMENT OF PRIOR OR RELATED CASES

Pursuant to 10th Cir. R. 28.2(C)(3), there are no prior or related appeals.

STATEMENT OF JURISDICTION

On September 9, 2021, Plaintiff/Appellant Melissa Phillips ("Phillips" or "Appellant") filed her Amended Complaint in the Eastern District of Oklahoma asserting original jurisdiction over federal claims pursuant to 28 U.S.C.A §§ 1331, 2201, 1361, 42 U.S.C. § 1983, the pendant state claims pursuant to 28 U.S.C. § 1367(a), and the 4th and 14th Amendments. *Appellant's App*. at 21. Defendants/Appellees Jesse James, Jessica Brown, David Dobson, and Jesse Petty (collectively, "Choctaw Lighthorse" or "Appellees") filed their Special Appearance and Motion to Dismiss (the "Motion") on January 11, 2022. *Appellant's App*. at 57-74.

Before this Court could consider the issue, however, Plaintiff filed a lawsuit in tribal court, complying with the district court's order below, and rendering this appeal moot. See *Appellant's App.* at 253-280. Had Appellant not done so, this Court would retain appellate jurisdiction pursuant to 28 U.S.C.A. § 1291.

STATEMENT OF THE ISSUES

Appellant filed a civil action seeking damages and equable remedies based on a variety of claims including intentional and negligent infliction of emotional distress, slander, defamation, retaliation, violation of Oklahoma criminal codes, Fourth Amendment and Fourteenth Amendment violations, and due process violations under § 1983. Appellant also claims to seek declaratory relief related to tribal jurisdiction and authorities. Pursuant to tribal sovereign immunity and the tribal exhaustion rule, the district court dismissed the suit. This appeal presents the following four (4) issues for review:

1. Whether tribal sovereign immunity bars any claims alleged by Appellant.

2. Whether the Amended Complaint pled sufficient factual matter to state a claim for relief on its face as required by Rule 8(a)(2).

3. Whether Appellant must exhaust remedies with the tribal judiciary prior to seeking federal court intervention.

4. Whether Plaintiffs' filing of her petition in the tribal court pursuant to the district court order below renders this appeal moot.

STATEMENT OF THE CASE

Appellant, acting *pro se*, filed the underlying suit on August 26, 2021. Although difficult to discern, the Amended Complaint alleged that four individuals, Jesse James, Jesse Petty, Jessica Brown and David Dobson each failed to properly file reports of Protective Order violations or forward the same to the tribal prosecutors for enforcement. *Appellants' App.* at 23-27. Appellant supports these statements with citations to Oklahoma law as well as the federal Violence Against Women Act ("VAWA", or sometimes referred to by Appellant as the "Women Against Violence Act."). *Id*. at 30. Appellant also makes claims of defamation and retaliation under Oklahoma law based on a comment made over the phone to her by Appellee Petty. *Id*. at 31-32.

Based on these authorities, Appellant's requested relief is extensive and would heavily burden non-party, the Choctaw Nation of Oklahoma,[1] if granted:: declaratory judgment that Tribal Courts have authority over non-tribal members to enforce protective order, *Id*. at 34; declaratory judgment that the failure of police supervisors to review audio recording or other evidence is a civil rights violation, *Id.*; injunctive relief compelling the tribe to submit a trespass case to the prosecutor,

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[1] Appellees maintain the Choctaw Nation of Oklahoma is the real party of interest in this proceeding and indispensable party, although the Choctaw Nation is not named as a party by Appellant.

Id. at p. 35; judgment requiring the production of a report of an interaction between Appellee Brown in her capacity as an Lighthorse Officer and the alleged stalker, *Id.* at p. 36; an emergency order compelling a federal prosecutor's investigation into "these allegations and review the evidence [Appellant] can offer…," *Id.*; an order compelling the Choctaw Nation to submit protective order violations to a federal prosecutor, *Id.* at p. 37; declaratory judgment stating that the failure to enforce Appellant's Protective Order "is putting her in danger…," *Id.*; judgment compelling Tribal law enforcement to follow federal statutes, *Id.*; and an order scheduling a hearing for the presentation of evidence regarding allegations, *Id.* at p. 38; $250,000 from Appellees, jointly and severally, for falsely presenting or omitting evidence, defaming Appellant in retaliation of filing a lawsuit, intentional and negligent infliction of emotional distress, and loss of health and peace of mind. *Id*. at 39.

During all relevant times, Appellees were members of the Choctaw Lighthorse (formally, Tribal Police) and performing duties in their official capacity within the Choctaw Nation Reservation. The Choctaw Lighthorse is the Choctaw Nation of Oklahoma's police department. The Choctaw Nation is, and was at all relevant times, a federally recognized Indian nation.

Appellees timely filed a Motion to Dismiss on January 11, 2022. *Id*. at 57-74. The Choctaw Nation raised several defects in the Amended Complaint, including:

sovereign immunity, *Id*. at 61-64; qualified immunity, *Id*. at 64-66; failure to state a claim for which relief may be grated under Rule 12(b)(6), 66-70; and, failure to name indispensable parties. *Id*. at 70-71. On January 18, 2023, the assigned Magistrate Judge entered its Report and Recommendation granting Appellees' Motion based on sovereign immunity, Rule 8(a)(2), and comity. On March 24, 2023, the district court adopted the Report and Recommendation, dismissing Appellant's suit. *Id*. at 293-296.

SUMMARY OF THE ARGUMENT

The district court correctly dismissed Appellant's suit for three (3) reasons. ***First***, the district court properly found that the bulk of the relief sought by Appellant were equitable remedies on how the Choctaw Nation "is to handle its prosecutions of alleged Protective Order violations." *Appellants' App.* at 180. Because of this, the district court correctly held that these allegations and prayers for relief were targeting the Choctaw Nation rather than the named individuals. *Id*. at 181. Finding that the real party in interest as to the equitable prayers was the Choctaw Nation, the district court properly dismissed those claims. *Id*. ***Second*,** the district court correctly found that, with regard to the claims for monetary damages, Appellant failed to plead sufficient factual matter to state a plausible claim in the complaint as required by Rule 8(a)(2). *Id*. at 182. Appellant's claims for monetary damages did not provide enough factual material to allow the district court to construe valid federal claims for monetary damages. *Id*. The district court's dismissal of the federal law claims were also supported by comity in favor of the tribal exhaustion doctrine. ***Finally***, the district court declined to exercise pendent jurisdiction over Appellant's state law claims and determined that amendment would be futile. These findings were sound.

STANDARD OF REVIEW

The standard of review of an order granting a motion to dismiss pursuant to tribal sovereign immunity and tribal exhaustion is the same as other questions of law, *de novo*. *See E.F.W. v. St. Stephen's Indian High Sch*., 264 F.3d 1297, 1303 (10th Cir. 2001) ("We review de novo a district court's dismissal under Rule 12(b)(1) and its ruling on sovereign immunity."). This Court should make an "independent determination of the issues us[ing] the same standard employed by the district court. *Id*. (*quoting Ordinance 59 Ass'n v. United States Dep't of the Interior*, 163 F.3d 1150, 1152 (10th Cir.1998)) ("Accepting the complaint's allegations as true, we consider whether the complaint, standing alone, is legally sufficient to state a claim upon which relief can be granted."). Appellees challenged the lower court's jurisdiction on the basis of tribal sovereign immunity. "In addressing a facial attack, the district court must accept the allegations in the complaint as true." *E.F.W*., 264 F.3d at 1303 (citing *Holt v. United States*, 46 F.3d 1000, 1002 (10th Cir.1995)). And, the party asserting jurisdiction, here, Appellant, has the burned of establishing subject matter jurisdiction. *Basso v. Utah Power & Light Co*., 495 F.2d 906, 909 (10th Cir. 1974).

The Tenth Circuit has held, however, that it reviews "a dismissal for failure to exhaust only for an abuse of discretion." *Enlow v. Moore*, 134 F.3d 993, 994 (10th Cir. 1998) (*citing Texaco, Inc. v. Zah*, 5 F.3d 1374, 1376 (10th Cir.1993)).

While Appellant does not challenge the scope of the tribal exhaustion rule here, the Tenth Circuit has also held that "[t]he proper scope of the tribal exhaustion rule, however, is a matter of law which we review de novo." *Id*. To evade the application of the tribal exhaustion doctrine, Plaintiff must prove a colorable argument that "an assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith, or where the action is patently violative of express jurisdictional prohibitions, or where exhaustion would be futile because of the lack of an adequate opportunity to challenge the court's jurisdiction." *Nat'l Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 857 (1985) (cleaned up).

Finally, "while a *pro se* litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers, a *pro se* plaintiff must nonetheless set forth sufficient facts to support [her] claim." *Florence v. Booker*, 23 Fed. App'x. 970, 972 (10th Cir. 2001) "The broad reading of the plaintiff's complaint does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). With that in mind, Rule 8 provides that a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief" and that "[e]ach allegation[…] be simple, concise and direct." Fed.R.Civ.P. 8(a)(2), (d)(1). "This requirement is designed to force plaintiffs 'to

state their claims intelligibly so as to inform the defendants of the legal claims being asserted.'" *Baker v. City of Loveland*, 686 Fed. App'x. 619, 620 (10th Cir. 2017) (quoting *Mann v. Boatright*, 477 F.3d 1140, 1148 (10th Cir. 2007)).

Utilizing these standards, the lower court's decision should be affirmed.

ARGUMENT

Appellant has repeatedly cast the Choctaw Nation of Oklahoma (the " Choctaw Nation") and its Lighthorse in a terrible light. But Appellant has also lambasted counsel in this case with baseless and wild accusations of conspiracy and criminal conduct. Appellant's rambling and incoherent Opening Brief is just one example of many of her outrageous litigation practices. But sifting through Appellant's allegations as raised in the Complaint, it is clear that dismissal below was appropriate.

I. SOVEREIGN IMMUNITY BARS PLAINTIFF'S CLAIMS

To survive a (12(b)(1) challenge, the party seeking to invoke federal jurisdiction has the duty to establish that such jurisdiction is proper. *Basso v. Utah Power & Light Co*., 495 F.2d 906, 909 (10th Cir. 1974). If jurisdiction is challenged, the party asserting jurisdiction must prove jurisdiction is proper by a preponderance of the evidence, and conclusory allegations will not suffice. *United States ex rel. Hafter D.O. v Spectrum Emergency Care, Inc*., 190 F.3d 1156, 1160 (10th Cir. 1999); *Celli v. Shoell*, 40 F.3d 324, 327 (10th Cir. 1994); *Penteco Corp. Ltd. P'ship – 1985A v. Union Gas System, Inc*., 929 F.2d 1519, 1521 (10th Cir. 1991). The Choctaw Nation is a federally recognized Indian tribe[2] with sovereign immunity

[2] *88 Fed. Reg. 2112, 2114 (Jan. 12, 2023).*

from suit absent congressional abrogation or a clear waiver by the Choctaw Nation. *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998). The Choctaw Nation's sovereign immunity extends to its tribal officers "so long as they are acting within the scope of their official capacities." *See Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1154 (10th Cir. 2011). Furthermore, "tribal immunity protects tribal officials against claims in their official capacity." *Fletcher v. United States*, 116 F.3d 1315, 1324 (10th Cir. 1997); *see also Sanders v. Anoatubby*, 631 Fed. App'x. 618, 621 (10th Cir. 2015) (unpublished); *Burrell v. Armijo*, 456 F.3d 1159, 1174 (10th Cir. 2006).

Under these common law sovereign immunity principles, courts must examine whether "the sovereign is the real party in interest to determine whether sovereign immunity bars the suit." *Lewis v. Clarke*, 581 U.S. 155, 161-162 (2017). The determination requires courts to look beyond the characterization of the parties in the complaint and determine if the remedy sought is really a claim against the sovereign. *Id*.

Several courts have recently reaffirmed these principles as well. In *M.J. ex rel. Beebe v. U.S.*, the Ninth Circuit held that because the parties stipulate that the tribal police officer was acting in his "official capacity when he engaged in the conduct giving rise to" the plaintiff's claims, he was "immune from tort liability

under tribal sovereign immunity." 721 F.3d 1079, 1084 (9th Cir. 2013). Here, Appellant has not once disputed that the Choctaw Lighthorse were acting in their official capacities in the conduct arising to Appellant's Complaint. "If the Defendants were acting for the tribe within the scope of their authority, they are immune from Plaintiff's suit regardless of whether the words 'individual capacity' appear on the complaint." *Murgia v. Reed*, 338 Fed. Appx. 614, 616 (9th Cir. 2009).

The Seventh Circuit in *Genskow v. Prevoust* also adopted this view when a plaintiff sued tribal officers in their individual capacities for injuries suffered when the plaintiff was removed from tribal property. No. 20-1601, 2020 WL 525970 (7th Cir. Sept. 3, 2020) (unpublished) (Attached hereto as *Attachment 5* pursuant to Fed. R. App. P. 32.1). There, the court found sovereign immunity barred suit. *Id*. Although the tribal officers were sued in their "individual capacity," the causes of action occurred on tribal land and proceeding with the lawsuit "'at odds with … tribal self-government' and 'undermine the authority of tribal forums' which 'have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personnel and property interests of both Indians and non-Indians." *Id.* at *2 (*quoting Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 64-65 (1978)).

Even state courts have participated in this analysis. In *Brown v. Garcia*, plaintiffs sued tribal officials for defamation and false light regarding dissemination of plaintiffs' names in an Order of Disenrollment. 17 Cal. App. 5th 1198, 1200 (Oct. 31, 2017). Plaintiffs sued the defendants in their personal capacity claiming they acted outside of the scope of tribal authority. *Id.* at 1201-02. The defendants moved to quash the summons and complaint asserting that the court would be required to "review and interpret tribal law, custom and practice." *Id.* In its decision, the court considered whether sovereign immunity applied, and considered earlier cases in making its determination:

> In any suit against tribal officers" the court "must be sensitive to whether 'the judgement sought would expend itself on the public treasury or domain, or ***interfere with the public administration***, *or* ***if the effect of the judgement would be to restrain the [sovereign] from acting***, *or to* ***compel it to act***.'"

Id. at 1205. (internal citations omitted) (emphasis added). "Despite plaintiffs' careful pleading, their action sought to hold defendants liable for their ***legislative functions*** and is thus 'in reality an ***official capacity suit***' ***properly subject to sovereign immunity***.'" *Id*. at 1207. (internal citations omitted) (emphasis added). This suit, especially because Appellant cannot provide a short and plain statement to the contrary, contains only allegations against Appellees.

Though Appellant pled conclusory statements that she sued Appellees in their individual capacities, the individuals are being sued solely for conduct occurring while acting in their police functions as officers of the Choctaw Nation and participating in matters involving only the interest of the Choctaw Nation. To that point, there are several examples throughout the Complaint which illustrates that Appellant's interactions with Appellee was in their roles as officers of the Choctaw Nation. *See Appellants' App.* at 19 ("… the new added defendant James Pettey who is Choctaw Tribal Police Director and oversees conduct of the first three defendants"); *Id*. at 20 ("Defendants Jessica Brown, David Dobson and Lt. Jesse James work out of McAlester area for Choctaw Tribal police, while defendant Jesse Petty works out of Durant location. This makes this court an appropriate venue."); *Id*. at 22 ("So Jessica Brown, being told of another incident of abuse, instructed plaintiff to 'call dispatch so she could be dispatched out to assist.'"); *Id*. at 26 ("Plaintiff spoke to Jessy Petty about that being protective order violation to defy police and deputy instruction to stop shooting unsafely, and doing so in close proximity to her and he said he would send it to the prosecutor and is recorded as such saying that."); *Id*. at 31 ("Plainly some officers did their jobs fairly because she was able to get a protective order, no thanks to the defendants from other police who did reports on incidents."); *Id*. ("Yet they do not make the decisions on what happens

with the reports if they go to the court or prosecutors office. The supervisors do. That would be defendants Jessie James and Jessie Petty."). In fact, each of the facts supporting the Amended Complaint surrounded Appellants contentions that Appellees were not doing fulfilling their official duties owed to the Choctaw Nation and its Reservation to her liking. *See Id*. at 33 ("The Oklahoma Choctaw Nation is in defiance of said ruling and if allowed to prevail can affect all tribes across the nation being stripped of their powers."); *Id*. at 38 ("A county DA would not do such. A county DA would call the sheriff department and tell them to do a report. He could also refer an issue to state agency.").

Moreover, the relief requested hinges on either forcing Appellees to take some action in their official capacity, which is essentially compelling the Choctaw Nation to take an action, or seeks monetary damages for the failure of the Choctaw Nation personnel. In her Opening Brief, Appellant actually appears to disavow her suit for damages. *See Appellant's Opening Brief*, Doc. 010110892459 at p. 5 ("That was NOT a suit for damages against defendants! It was a request for criminal investigation in acts of Michael Burrage and police defendants."). In either instance, as noted by the district court, the policies and procedures of the Choctaw Nation are central for determination of this action and the real party at interest is the Choctaw Nation, triggering sovereign immunity. *Appellants' App.* at 36-28, 184.

As the district court held, Appellant's claims against Appellees for equitable relief compelling the Choctaw Nation to do something triggers sovereign immunity. *Appellants' App.* at 181. Appellees would further argue that the hard to reconcile allegation for monetary damages is also barred by sovereign immunity as Appellant has the burden of invoking jurisdiction, and did not clearly provide justification to assert jurisdiction in light of the 12(b)(1) challenge. As the district court noted, Appellant's basis for "monetary damages claims is not entirely clear." *Appellants' App.* at 181. Thus, all of Plaintiff's claims for relief directed at the Choctaw Nation's officials, must be dismissed based on sovereign immunity.

II. THE AMENDED COMPLAINT DID NOT CONTAIN A SORT AND PLAIN STATEMENT SHOWING APPELLANT WAS ENTITLED TO RELIEF AS REQUIRED BY RULE 8(A)(2).

Under Rule 8, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief" and that "[e]ach allegation[…] be simple, concise and direct." Fed.R.Civ.P. 8(a)(2), (d)(1). "This requirement is designed to force plaintiffs 'to state their claims intelligibly so as to inform the defendants of the legal claims being asserted.'" *Baker v. City of Loveland*, 686 Fed. App'x. 619, 620 (10th Cir. 2017) (*quoting Mann v. Boatright*, 477 F.3d 1140, 1148 (10th Cir. 2007)). "Thus, we have held that a complaint can run afoul of Rule 8 through unnecessary length and burying of material allegations in 'a morass of irrelevancies.'" *Id*. And courts have discretion to dismiss suits which violate Rule 8

when the complaint imposes a heavy burden to determine what allegations or claims are being made. *Id*. at 621-22. Moreover, "[t]his is not just a minimum standard for a plaintiff but also a protection for a defendant." *Reitmire v. United States*, CIV-18-1035-G, 2019 WL 419288, at *1 (W.D. Okla. Feb. 1, 2019) (Attached hereto as *Attachment 6* pursuant to Fed. R. App. P. 32.1). "Dismissal for violating Rule 8 is appropriate when a complaint is so unintelligible that it does not give fair notice to a defendant of the plaintiff's claims." *Id*.

Entitlement to relief requires more than just "labels and conclusions or a formulaic recitation of the elements", *Robbins v. Okla.*, 519 F.3d 1242, 1247 (10th Cir. 2008), and conclusory allegations that lack supporting factual averments are insufficient to state a claim. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (citations omitted). "[I]n analyzing the sufficiency of the plaintiff's complaint, the court need accept as true only the plaintiff's well-pleaded factual contentions, not [their] conclusory allegations." *Id.*; *see also, Ruiz v. McDonnell*, 299 F.3d 1173, 1181 (10th Cir. 2002) ("All well-pleaded facts, *as distinguished from conclusory allegations*, must be taken as true.") (*quoting Swanson v. Bixler*, 750 F.2d 810, 813 (10th Cir. 1984)) (emphasis added); *Bryan v. Stillwater Bd. of Realtors*, 578 F.2d 1319, 1321 (10th Cir. 1977) ("allegations of conclusions or opinions are not sufficient when no facts are alleged by way of the statement of claims."); *Oppenheim*

v. Sterling, 368 F.2d 516, 519 (10th Cir. 1966) ("unsupported conclusions of the pleader may be disregarded.").

"Thus, in ruling on a motion to dismiss, the Court should disregard all conclusory statements of law and consider whether the remaining specific factual allegations, if assumed to be true, plausibly suggest the defendant is liable." *Kan. Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1214 (10th Cir. 2011). Here, the Amended Complaint is too unintelligible and confusing to meet the standard. The lower court properly dismissed Appellant's claims pursuant to Rule 8(a)(2) because it is so bogged down in a marsh of immaterial facts and conclusory statements it is unclear what mechanism of relief is available to Appellant that does not runs directly into the Choctaw Nation's sovereignty.

III. THE DISTRICT COURT PROPERLY USED ITS DISCRETION IN DISMISSING APPELLANT'S REMAINING CLAIMS BASED ON COMITY

Using discretionary authority, the district court found, *sua sponte*, that as a matter of comity, it should not exercise jurisdiction in favor of tribal court exhaustion. Viewing the Complaint in a light most favorable to Appellant, the court appropriately held that the lawsuit was a reservation affair which required abstention from exercising federal court jurisdiction. *Appellants' App.* at 183-185. As a matter of diligence, the district court went on to find that even absent the finding of

reservation affair implications, the National Farmers analysis supported dismissal in favor of judicial exhaustion in the Choctaw Nation court system.

A. This matter is a reservation affair, thus creating a presumption in favor of tribal exhaustion.

This Court has held that a "strict view of tribal exhaustion" is appropriate in cases like this:

> We have taken a strict view of the tribal exhaustion rule and have held that federal courts should abstain when a suit sufficiently implicates Indian sovereignty or other important interests. As the Tribal Claimants correctly assert, this court at times abstains without making a detailed comity analysis, holding that when the dispute is a 'reservation affair' there is no discretion not to defer. When the activity at issue arises on the reservation, comity concerns almost always dictate that the parties exhaust their tribal remedies before resorting to the federal forum.

Kerr-McGee Corp. v. Farley, 115 F.3d 1498, 1507 (10th Cir. 1997) (citations omitted and cleaned up). The presumption of "reservation affair" is at the zenith when the activities giving rise to the suit occurred in the reservation. *Id*. ("When the activity at issue arises on the reservation, comity concerns 'almost always dictate that the parties exhaust their tribal remedies before resorting to the federal forum.'" (citation omitted)). Citing this Tenth Circuit rationale, the district court determined that "the tribal nexus is strong, as is the interest of the tribe in protecting the rights of its members and employees." *Appellants' App.* at 184.

In *Kerr-McGee Corp*., this Court weighed the comity factors only because the nuclear production at issue there was "of national interest, the mill sold its entire production to the federal government, and the orderly administration of claims arising out of the United States' atomic energy and weapons program implicates concerns far beyond the borders of the reservation." *Id.* at 1508. Similar consideration does not apply here. The matters complained about by Appellant are only internal relations of the Choctaw Nation such as the handling of protective orders and tribal police conduct on the Choctaw Nation Reservation.

B. Moreover, the National Farmers' Comity Analysis supports tribal court exhaustion.

While the comity consideration is not necessary because this matter is a reservation affair, the district court's analysis was indeed proper. The three considerations outlined in *Kerr-McGee Corp*. are as follows:

> *National Farmers* recognizes that three specific interests are advanced by proper application of the rule: (1) furthering congressional policy of supporting tribal self-government; (2) promoting the orderly administration of justice by allowing a full record to be developed in the tribal court; and (3) obtaining the benefit of tribal expertise if further review becomes necessary.

115 F.3d at 1507. Here, Appellant's entire case revolves around tribal employees' actions and omissions in the tribal legal system. While Appellees completely deny

the allegations made by Appellant, each of her claims arise from her interactions with the tribal police in the Choctaw Nation Reservation.

Further, Congress has not waivered on its special attention to tribal self-government: especially with the amendments to the Violence Against Women Act ("VAWA") in recent years which increased tribal jurisdiction over certain matters. 25 U.S.C.A. § 1304. Moreover, Appellant acknowledges this several times in the Amended Complaint. *Appellants' App.* at 32-33 ("Cornbread mafia is to ignore United States Supreme court ruling, federal statutes and Acts that give Tribes ability to issue protective orders over non tribal member, and crimes if misdemeanor against tribal member by non tribal member can go to tribal court and or federal court.").

Moreover, as far as counsel understands it, Appellant has seemingly filed this action in the District Court for the Choctaw Nation. *See Appellant's Opening Brief*, Doc. 010110892459 at p. 5; *Appellant's App.* at 253-280. Thus, the tribal court should be allowed to fully develop the record in that case. *Kerr-McGee Corp.*, 115 F.3d at 1507. "Exhaustion of tribal court remedies, moreover, will encourage tribal courts to explain to the parties the precise basis for accepting jurisdiction, and will also provide other courts with the benefit of their expertise in such matters in the event of further judicial review." *Nat'l Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 857, 105 S. Ct. 2447, 2454, 85 L. Ed. 2d 818 (1985).

Appellant should be made to develop her case in tribal court so that the Tribal court has an opportunity to determine jurisdiction and viability of claims under tribal law and policy.

Also, as the district court pointed out, Appellant "directly implicates tribal law and policy and the interpretation thereof." *Appellant's App.* at 184. The only way to obtain tribal expertise in the matters of tribal law, policy, practices, is through tribal court exhaustion. *Kerr-McGee Corp.*, 115 F.3d 1498, 1507. As Appellant cites several tribal laws supporting her claims, this matter should be deferred to tribal court. *See Appellant's Opening Brief*, Doc. 010110892459 at pp. 4-5; *Appellant's App.* at 233-234, 242-243.

IV. APPELLANT'S APPEAL IS MOOT IN LIGHT OF HER FILING WITH THE TRIBAL COURT PURSUANT TO THE LOWER COURT'S ORDER

Appellant has accepted the Court's order and complied with the tribal exhaustion doctrine. *Appellant's App.* at 253-280. Because of this, the tribal district court and appellate courts should be given the opportunity to make its determinations. "The federal policy of promoting tribal self-government encompasses the development of the entire tribal court system, including appellate courts. At a minimum, exhaustion of tribal remedies means that tribal appellate courts must have the opportunity to review the determinations of the lower tribal courts." *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16–17, 107 S. Ct. 971, 977, 94

L. Ed. 2d 10 (1987). To remove all doubt, Appellant attached to the tribal court complaint page 11 of the adopted Report and Recommendation from the district court and underlined "jurisdiction, until the parties have exhausted their tribal remedies." *Appellant's App.* at 280. Because Appellant has engaged the tribal court system, this appeal should be rendered moot. If this Court does not find this appeal moot, Appellant's filing of the tribal court complaint supports the comity analysis argued above and provided in the district court's decision.

CONCLUSION

Appellant failed to show the lower Court incorrectly dismissed the Amended Complaint, and any amendment would be futile regardless for the reasons stated herein and due to Appellee's additional grounds supporting dismissal raised below but not determined by the lower Court (such as qualified immunity and failure to state a claim pursuant to 12(b)(6)). For the reasons set forth above, Appellees request that the Court affirm the district court dismissal of all Plaintiff's claims against them and grant further relief this Court deems just and equitable.

Respectfully submitted,

s/ J. Renley Dennis

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I hereby certify that on August 24, 2023, I electronically transmitted the attached document to the Clerk of Court using the Electronic Case Filing System for filing. Based on the records currently on file in this case, the Clerk of Court will transmit a Notice of Electronic Filing to those registered participants of the ECF System. I hereby certify that I have mailed, postage prepaid, via First Class mail to the following:

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