

and injunctive relief for wrongs committed by the Defendants in violation of the Treaty of 1866, 42 U.S.C. § 1983, and common law. As a legal and factual backdrop to her claims, Plaintiff seeks to enforce the judgment that was rendered by the Honorable Senior United States District Judge Thomas F. Hogan, in a case known as *The Cherokee Nation v. Nash et. al*, Case No. 13-01313(TFH), which held that Article 9 of the Treaty of 1866 between the United States and Cherokee Nation entitles Plaintiff as a descendant of Cherokee Freedmen to “all the rights native Cherokees.” Judge Hogan’s order was rendered on August 30, 2017. By a separate order dated February 20, 2018, Judge Hogan entered another Order and Judgment, and he expressly retained jurisdiction in the matter to enforce the Final Judgement which addressed whether the descendants of the Cherokee Freedmen have the same rights as the native Cherokees. Since the time of Judge Hogan’s Final Judgment, Defendant Cherokee Nation has done absolutely nothing to make the Plaintiffs financially and emotionally whole because of its intentional discrimination that was the bedrock of Judge Hogan’s Final Judgment. Moreover, the United States violated Plaintiffs’ rights under 42 U.S.C. § 1983 after they were clearly established by Judge Hogan’s order—rights that were clearly established by the Treaty of 1866 at the time it was written. To that end, Plaintiffs seek to hold the federal officials accountable for their deliberate indifference.

With this introduction of the case, Plaintiffs assert the following claims against the Defendants:

GENERAL ALLEGATIONS:

1. Plaintiff, Lucia Pharr Hinton, a resident of the State of North Carolina, who currently resides in the Commonwealth of Virginia, in the City of Virginia Beach.
2. Plaintiff’s mother was named Frances Pharr. Mrs. Pharr’s parents were named Lumn and Beulah Pharr.

3. Lumn and Beulah Pharr were Plaintiff's grandparents.
4. Lumn Pharr's parents met on the Trail of Tears in or about 1838. Lumn's mother was full blood Cherokee Indian.
5. Plaintiff brings his action on behalf of herself Plaintiff the heirs of Lumn and Beulah Pharr [hereinafter referred to collectively as "Plaintiffs"].
6. Defendant Cherokee Nation is a sovereign Indian nation recognized by the United States of America.
7. Ordinarily, as a sovereign nation, Defendant Cherokee Nation is immune from suit by a private citizen in the courts of the United States. However, Plaintiff alleges that Defendant Cherokee Nation waived immunity by suing in one or more district courts of the United States, in which it raised the same issues that give rise to the Plaintiffs' claims.
8. Defendant Chuck Hoskins, Jr. ["Hoskins"] is a member of the Defendant Cherokee Nation and he serves as its principal chief and its highest executive officer. Defendant is sued in his individual capacity as the Chief of the Cherokee Nation. Upon information and belief, Defendant Hoskins is a resident of an unknown county in the State of Oklahoma.
9. There are several predecessors who served as the Chief of the Cherokee Nation before Defendant Hoskins, whose names are unknown. Therefore, these unknown Chiefs are named as Defendant John Does 1-10, which is a fictitious name that represents all past chiefs for the Cherokee Nation.
10. Bureau of Indian Affairs is a federal United States agency, which is part of the Secretary of Interior. As a federal agency, the Bureau of Indian Affairs' mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes, and Alaska Natives, which includes the

supervision and administration of treaties between United States government and Defendant Cherokee Nation.

11. Defendant Darryl LaCounte [“LaCounte”] is a United States Citizens of an unknown county and unknown state. Defendant LaCounte is the current Director of the Bureau of Indian Affairs, a United States government agency responsible for administering the treaties and laws between the United States government and The Cherokee Nation. Defendant LaCounte is served in his individual capacity.
12. There are several predecessors who served as Director of the Bureau of Indian Affairs before Defendant LaCounte, whose names are unknown. Therefore, these unknown Directors of the Bureau of Indian Affairs are named as Defendants Sam Does 1-10, which is a fictitious name that represents all past Directors.
13. This action is brought to redress claims that the Treaty of 1866, 42 U.S.C. § 1983, and common law. Therefore, subject matter jurisdiction is based on 28 U.S.C. § 1331. Jurisdiction is also proper under 28 U.S.C. § 1362 because Judge Hogan retained jurisdiction in the matter as previously discussed.
14. Venue is also proper under 28 U.S.C. § 1391(b), (1), (2), and (3), and because of Judge Hogan’s order, as previously discussed, which retained jurisdiction in a matter which gave rise to the core issue in this case.

FIRST CLAIM FOR RELIEF:
(Violation of the Treaty of 1866)
[Against Defendant Cherokee Nation Only]

15. Plaintiffs incorporate by reference the allegations contained in paragraphs one through fourteen within this First Claim for Relief as if fully set out herein.
16. In 1866, following the Civil War, each of the Five Indian Tribes entered into treaties with the United States containing provisions addressing the status and rights of freed slaves and

persons of African descent residing among the Five Tribes [hereinafter referred to as the “Treaty of 1866”].

17. Defendant Cherokee Nation signed and entered the Treaty of 1866 with the United States government.
18. The Treaty of 1866 is still a current and enforceable treaty between the Defendant Cherokee Nation and the United States.
19. Article 9 of the Treaty of 1866 entitles the descendants of the Cherokee Freedmen to “all the rights of native Cherokee.”
20. Plaintiffs are descendants of the Cherokee Freedmen, and as such, they are entitled to all of the rights of the native Cherokee, including all the rights and privileges the native Cherokees receive as a result of the Treaty of 1866 and as a result of any other statutory rights they enjoy as a result of their relationship with the United States of America.
21. As a result of the Treaty of 1866, the native Cherokees have enjoyed a substantial economic benefit from the Cherokee Nation, including but not limited to the use or deed of land, monthly stipends, health coverage benefits, and other known and unknown tangible economic benefits from the Cherokee Nation.
22. In on or about 2007, Defendant Cherokee Nation amended its constitution “to limit citizenship in the Cherokee Nation to only those persons who were descended from individuals who appeared on the Dawes Rolls as Cherokee, Shawnee or Delaware by blood” [hereinafter referred to as the “2007 Amendment”].
23. In 2017, Judge Hogan declared that Plaintiffs enjoy the same rights as the native Cherokees under the Treaty of 1866.

24. As a direct and proximate result of the 2007 Amendment, Plaintiffs were constitutionally denied all economic benefits that the native Cherokee received from the Defendant Cherokee, from 2007 to present, all in a excess Ninety Million Dollars (\$90,000,000.00).
25. Moreover, from the inception of the Treaty of 1866 to the 2017, Defendant Cherokee Nation administered the benefits emanating, directly or indirectly from the Treaty of 1866, in a biased and discriminatory way that excluded the benefits from flowing to the Plaintiff, all in an amount to be determined at trial, which will be proved during discovery from the records and files solely in the care and custody of Defendants.
26. In denying the Plaintiffs the same economic rights as native Cherokees, as heretofore alleged, Defendant Cherokee Nation violated the express terms and conditions of the Treaty of 1866.
27. As a direct and proximate cause of Defendant Cherokee Nation's violation of the Treaty of 1866, Plaintiffs suffered economic damages of more than Ninety Million Dollars (\$90,000,000.00), collectively. Therefore, Plaintiffs are entitled to a judgment of compensatory damages for the amount alleged against Defendant Cherokee, jointly and severally.

SECOND CLAIM FOR RELIEF:

(Violation of Section 1983)

[Defendants LaCounte and Sam Does 1-10 Only]

[Bivens Action]

28. Plaintiffs incorporate by reference the allegations contained in paragraphs one through twenty-seven within this Second Claim for Relief as if fully set out herein.
29. Plaintiffs' rights are protected by 42 U.S.C. § 1983 ["Section 1983"].

30. Section 1983 was initially passed in 1871, just five years after the Treaty of 1866 was entered into between the United States and Defendant. Therefore, Section 1983 has applied almost from the inception of the Treaty of 1866.

31. Section 1983 states, in pertinent part, the following:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . .

32. Defendant LaCounte and Defendants Sam Does 1-10 [hereinafter referred as “the U.S; Defendants”] were responsible for ensuring that Defendant fairly and administratively abide by the Treaty of 1866.

33. The U.S. Defendants violated Plaintiffs rights under the color of federal law by failing to ensure that Defendant Cherokee Nation and its official carry out the terms and conditions of the Treaty of 1866.

34. It was clearly established at the time the Treaty of 1866 was ratified that the Plaintiffs enjoyed rights under the Treaty of 1866.

35. The U.S. Defendants, acting under the color of federal law, violated Plaintiffs’ rights which were secured by the Constitution and laws of the United States, in one or more of the following ways:

- a. Violated the Privileges and Immunities Clause of Article IV, Section 2 of the United States Constitution by ensuring that non-white descendants of the Cherokee Nation received the economic benefits emanating directly or indirectly from the Treaty of 1866 but failing to protect the rights of the Plaintiffs.

- b. Violated the express language of the Treaty of 1866 which was enacted for the benefit of the Plaintiffs.
- c. Violated the substantive and procedural due process clause of the United States Constitution.
- d. Specifically, the U.S. Defendants' action violated Plaintiffs rights protected by the Treaty of 1866,

36. At all times relevant to this lawsuit, the U.S. Defendants were acting under the color of federal authority.

37. Other than seeking redress under Section 1983, Plaintiffs do not have a statutory remedy to address the constitutional violations by the U.S. Defendants. Therefore, it is an appropriate remedy to impose damages against the said federal officials.

38. All of the Plaintiffs constitutional rights, as violated by the U.S. Defendants were clearly established in the "particularized" sense that "[t]he contours of the right [were] sufficiently clear that a reasonable official would understand that what he is doing violates that right."

39. As a direct and proximate cause, the U.S. Defendants violating Plaintiff's constitutional rights, Plaintiffs suffered economic damages of more than Ninety Million Dollars (\$90,000,000.00), collectively. Therefore, Plaintiffs are entitled to a judgment of compensatory damages for the amount alleged, jointly and severally, against the U.S. Defendants.

THIRD CLAIM FOR RELIEF:

(Conversion)

[Against Defendant Cherokee Nation only]

[In alternative, in the event funds are not released]

40. Plaintiffs incorporate by reference the allegations contained in paragraphs one through thirty-nine within Third Claim for Relief as if fully set out herein.

41. Notice of this lawsuit is a demand to Defendant Cherokee Nation to release any and all funds claimed by the Plaintiffs.
42. The Defendant Cherokee Nation is unlawfully and without legal justification committing an unauthorized detention of funds and other economic tangibles owned by the Plaintiff.
43. The Treaty of 1866 gives the Plaintiffs the rights to the funds and other economic tangibles being retained by the Defendant Cherokee.
44. Defendant Cherokee Nation's actions constitute an unlawful conversion.
45. As a direct and proximate cause of Defendant Cherokee Nation's conversion, Plaintiffs suffered economic damages of more than Ninety Million Dollars (\$90,000,000.00), collectively. Therefore, Plaintiffs are entitled to a judgment of compensatory damages for the amount alleged against Defendant Cherokee, jointly and severally.

WHEREFORE, having alleged its Claims against the Defendants, Plaintiffs seek the following relief:

- a. For a judgment of actual damages against the Defendants, jointly and severally, in an amount of more than Ninety Million Dollars (\$90,000,000.00), or in an amount to be proved at trial.
- b. For any other relief this Court deems just and proper, including injunctive relief.

PLAINTIFFS REQUEST A JURY TRIAL.

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Dated May 18, 2023

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On consideration of Admission
Pro Hac Vice