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Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANDREA D. GEORGE, Plaintiff, v. COLVILLE CONFEDERATED TRIBES; RODNEY CAWSTON; ANDREW JOSEPH, JR.; JACK FERGUSON; RICHARD SWAN, SR.; MARVIN KHEEL; JOSEPH SOMDAY; JOEL BOYD; RICHARD MOSES; ALICE KOSKELA; SHANNON THOMAS; JASON D'AVIGNON; PETER ERBLAND; EDWARD JURSEK; CARMEL MCCURDY; CHARISSA EICHMAN; MARTY RAAP; NICHELLE BARNABY; SABRINA DESAUTEL; RANDAL STECKEL; DEBRA WULFF; THOMAS MILLER; and SOPHIE NOMEE, Defendants.	No. 2:24-CV-00123-SAB PLAINTIFF'S OBJECTION IN RESPONSE TO DEFENDANTS' MOTIONS TO DISMISS Hearing: March 14, 2025 9:00 am (with oral argument)

I. FACTS

Plaintiff Andrea George previously worked for the Colville Confederated Tribes ("CTC") in various capacities, including as an elected official on the Colville Business Council ("CBC") from July 12, 2018-February 21, 2019. Plaintiff's term expired in July 2020. However, due to an illegal vote by the Respondents on February 21, 2019, Plaintiff was expelled from the CBC.

Prior to serving on the CBC, Plaintiff was the Managing Attorney for the CCT Public Defender's Office, an Associate Judge for the Colville Tribal Court and an attorney in the CCT Office of Reservation Attorney ("ORA"). Plaintiff was terminated from the public defender's position based upon a finding by unauthorized judge of acting with reckless disregard for the truth in a dismissed case in retaliation for reporting the former chief judge for reckless driving and while Plaintiff's 2017 case was pending in tribal court. Defendants caused Plaintiff to lose significant wages and benefits with CCT, irreparable harm to Plaintiff's reputation, denial of employment opportunities and income after targeting Plaintiff and causing the loss of two employment positions with the CCT. The second loss of employment on the CBC resulted from an illegal vote from Cawston after discussion with Koskela, D'Avignon, and/or Thomas. Koskela had previously advised the CBC that the CBC Chairman Michael Finley was not allowed to vote except in the case of a tie and the expulsion vote against former CBC Sylvia Peasley failed between July 2011-July 2012. Defendants vexatiously issued press releases and sought press coverage or statements to damage Plaintiff's reputation and character. Plaintiff and her family left the Colville Indian Reservation ("CIR") in June of 2019, and have no intention to return to the CIR or work for the CCT again. Plaintiff filed the underlying, consolidated cases in Colville Tribal Court, and fully exhausted tribal court remedies without hearings on the merits.

II. RESPONSE IN OBJECTION

Plaintiff Responds in Objection to Defendants' Motions to Dismiss. (ECF 48 and 50).

Subject Matter Jurisdiction and Sovereign Immunity

"Tribal sovereign immunity is 'quasi-jurisdictional'." *Acres Bonusing, Inc. v. Marston*, 17 F.4th 901, 907 (9th Cir. 2021). Simply put, quasi-jurisdictional means it is a legal authority or power that is *not* fully vested in a particular entity. Defendants argued "in civil cases arising

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between Indians…tribal jurisdiction usually will be exclusive." (ECF 48 at 9). Defendants failed to mention that *Sanders v. Robinson* was a case of first impression in federal court for a divorce and custody proceeding stemming from tribal court. *See Sanders*, 864 F.2d 630, 632 (9th Cir. 1988). (ECF 48 at 9). Although the Ninth Circuit was aware of the uniqueness of the *Sanders* case in 1988, their belief that tribal jurisdiction will *usually* be exclusive is outdated, but even thirty years ago the Court recognized that "jurisdiction must therefore lie in state or tribal court, or in both concurrently." *Id.* at 632-33. There are numerous cases where Indians sought relief in state courts, and likely many more where Indians worked through conflict in a traditional way. The *Sanders* court knew tribal court was not the exclusive remedy even if they did not outline all possibilities. *Id.* Federal courts have reviewed many actions in the past involving a tribe, tribal employees, employees of a tribal corporation, non-Indians living or traveling on a reservation or visiting tribal stores or casinos, actions between Indians, and other matters stemming from Indian County. As such, the doctrine and applicability of tribal sovereign immunity (and therefore subject matter jurisdiction) has evolved significantly over the past few decades. Even a cursory review of tribal sovereign immunity or cases related to Indian County reveals the same.

Nonetheless, Plaintiff contends (and cases reveal) that analyzing Defendants' tribal sovereign immunity defense (and a subject matter jurisdiction challenge related to it) is a complicated analysis which considers multiple factors. Namely, the tribal status of parties, the location of alleged facts (on reservation or off), civil or criminal, type of claim or offense charged, if civil—type of relief sought and who is responsible if an adverse judgment is obtained, whether it impacts tribal operations, if civil: if it involves a tribal employee and whether the acts were done in their official capacity or within the scope of their official duties,

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what court the case was filed in, and if civil: whether the Tribe or Congress waived tribal sovereign immunity or consented to the suit. As well, Defendants mistakenly declared all Defendants were either CCT members or employees. (ECF 48 at 10). Erbland and Jursek were neither, Miller's CCT member status fails to provide sovereign immunity coverage, and all employees acted outside the scope of their duties. Additionally, Defendants' argument asserting all Defendants were CCT member or employees fails, as it was related to tribal court jurisdiction, which Defendants also disputed tribal court jurisdiction in Colville Tribal Court.

Defendants argue this case is an intratribal matter and/or the "Colville Tribes' internal governing" and that this court lacks jurisdiction. (ECF 48 at 9). The proper analysis is not whether this is an intratribal matter, but rather, the analysis should be regarding whether Defendants are liable, under what claims, if or how sovereign immunity applies and to what actions or which Defendants. Defendants denied any relief in any court, and Plaintiff's claims have not been heard on the merits in any jurisdiction. First and foremost, as Defendants are aware and have pointed out through Defendants' filings, Plaintiff named all Defendants in their official and personal capacities. (ECF 49, Exhibits 1 and 3). Although it causes a more critical review of the facts and defendants, there is a mixed bag of tribal and non-Indian defendants, actions done in official *and* unofficial capacities, actions done within and *outside the scope* of official duties, civil rights violations, torts, and relief sought not just from the Defendant Tribe but also from individual Defendants.

Category 1: Non-Tribal Employees, Non-Tribal Officials, and not the Tribe

The First category are non-tribal employees or officials, which includes Defendants Erbland, Jursek, and Miller. Erbland, Jursek, and Miller were not CCT employees or officials

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"during the timeframe asserted," and therefore not covered by the tribe's sovereign immunity. (ECF 47 at 3, ¶¶ 1.14 and 1.15, and at 4, ¶ 1.23; ECF 48 at 10). In fact, Erbland and Miller required their own legal counsel, given they are not covered by CCT's insurance. (ECF 25 and 50). Plaintiff contends Jursek also was not covered by the CCT's insurance January 23-February 1, 2018, "during the timeframe asserted" for Jursek's tortious acts, omissions regarding his lack of judicial status, and derogatory remarks about Plaintiff. (ECF 47; ECF 48 at 10).

At times, tribal sovereign immunity has been interpreted to cover tribal employees and officials acting within the scope of their employment. *Cook v. AVI Casino Enterprises, Inc.*, 548 F.3d 718, 726-727 (9th Cir. 2008). Erbland, Jursek, and Miller did not work for CCT at the times relevant to their tortious conduct, were not CCT officials, and they did not enjoy and were not covered by tribal immunity or tribal official sovereign immunity. *See Cook; Bassett v. Manshantucket Pequot Tribe*, 204 F.3d 343, 360 (2nd Cir. 2000); *White Mountain Apache Indian Tribe v. Shelley*, 107 Ariz. 4, 480 P.2d 654, 658 (1971) (holding tribal sovereign immunity protects officers from suit in official but not individual capacity). Erbland's own attorney stated sovereign immunity does not apply to Erbland. (ECF 29 at 1). Erbland and Miller acknowledge they gave legal advice. (ECF 29 at 2; ECF 30 at 6; ECF 28-2 at 8-9; and ECF 50). Plaintiff contends Erbland provided legal advice to a friend, Defendant Koskela, and Erbland's legal advice was adverse to Plaintiff. (ECF 16 at 22 and 40; ECF 47). Miller provided legal advice to CCT that omitted crucial information about Defendant Nicholson's veracity and an oral witness to Nicholson and Koskela's allegations. (ECF 47). Not only was Erbland and Miller's advice bad or misleading, but it was relied upon by other Defendants, such as Swan, to file ethics charges against Plaintiff, or to cause Plaintiff's expulsion from the CBC. (ECF 16 at 24; ECF 47).

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Erbland and Miller knew or should have known that their advice was incomplete or misleading and/or inaccurate, not provided to the full CBC (which included Plaintiff), and used against Plaintiff. (ECF 16 at 22-26; ECF 47). Erbland provided legal advice to Koskela against Plaintiff which was inconsistent with CTC § 1-8. (ECF 47). Erbland and Miller did more than merely give legal advice and they was part of the conspiracy and collusion amongst and between Defendants to target Plaintiff. (ECF 47). Erbland and Miller knew or should have known their advice was only for the purpose of targeting Plaintiff, would not be covered by tribal immunity, and would be relied upon by others with CCT to harm Plaintiff. (ECF 47) Jursek knew he was not an authorized judicial officer between on or about January 23-February 1, 2018, and he knew or should have known his declarations during what appeared during a court hearing would be relied upon by CCT employees to harm Plaintiff, and he was not a CCT employee and not covered by sovereign immunity. (ECF 47).

Category 2: Individuals acting in their Personal capacity or Outside the Scope of Duties

Tribal sovereign immunity does not extend to actions by tribal employees or officials that fall outside the scope of their official duties. *Cook v. AVI Casino Enterprises, Inc.*, 548 F.3d 718, 726-727 (C.A.9 2008); *Lineen v. Gila River Indian Community*, 276 F.3d 489, 492 (9th Cir. 2002) (Tribal sovereign "immunity extends to tribal officials when acting in their official capacity and within the scope of their authority"); *Stock West Corp. v. Taylor*, 942 F.2d 655, 659 (9th Cir. 1991) (upholding dismissal on grounds based upon principles of comity but left open whether Taylor's role as a CCT official as ORA attorney required dismissal based upon whether conduct was within the scope of Taylor's official duties). Taylor did not seek to expel one of his primary CBC clients like Nicholson and Koskela, but instead he issued a letter to a bank. *Id.*

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Additionally, tribal sovereign immunity does not bar damages against Defendants sued in their personal capacities for actions outside the scope of official duties. *Lewis v. Clarke*, 581 U.S. 155, 137 S.Ct. 1285, 197 L.Ed.2d 631 (2017). *See Marston*, 17 F.4th at 908. "The protection offered by tribal sovereign immunity, *Lewis* held, is no broader than the protection offered by state and federal sovereign immunity." *Marston*, 17 F.4th at 908 (citing *Lewis*, 137 S.Ct at 1292). Even if Defendants acted within the scope of their duties, *Lewis* allows suit against individual Defendants here if the relief sought is against them personally. *Id.* Consistent with *Lewis*, suing CCT employees may be a suit against the sovereign, but not necessarily. *Id.*, 137 S.Ct. at 1290. "Whether the remedy sought is one against the sovereign or the individual officer turns on the distinction between individual-and-official-capacity suits." *Id.*; *Marston*. Furthermore,

> Suits against officials in their personal capacities, Lewis explained, are different. In those cases, the plaintiff 'seeks to impose individual liability upon a government officer for actions taken under color of … law.' [] Then 'the real party in interest is the individual, not the sovereign.' So, although the defendants 'may be able to assert personal immunity defenses (like judicial immunity we discuss below), sovereign immunity does not bar the suit.

Marston, at 909 (citing *Lewis*). It matters not whether CCT agreed to indemnify the official for any liability, but rather "the critical inquiry is who may be legally bound by the court's adverse judgment, not who will ultimately pick up the tab." *Id.* (citing *Lewis*, 137 S.Ct. at 1292-93). For Clarke, it did not matter that he was in his official capacity for his personal, allegedly tortious conduct. *Id.* at 1291. Factual allegations outlined in section 3 below apply to this category as well, but any judgment in category 2 are against named Defendants for their personal liability.

Category 3: Civil Rights Violations by Tribe and Official Acts of Employees within Scope

Tribal sovereign immunity protects Indian tribes from suit absent express authorization by Congress or clear waiver by the Tribe. *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S.

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751, 754, 118 S.Ct. 1700, 140 L.Ed.2d 981 (1998). CCT waived their sovereign immunity from suit under Colville Tribal law for CCT and employees and officials. CTC § 1-5.[1] Regardless of CCT's "common-law immunity from suit," tribal sovereign immunity "is not absolute." (ECF 48 at 12). *U.S. v. Oregon*, 657 F.2d 1009, 1013 (9th Cir. 1981) ("Like other sovereign powers possessed by Indian tribes, it exists only at the sufferance of Congress and is subject to complete defeasance."). *See also Montana v. U.S.*, 450 U.S. 544, 560-563, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981); *U.S. v. Wheeler*, 435 U.S. 313, 323, 98 S.Ct. 1079, 55 L.Ed.2d 303 (1978). Also, "tribal immunity may be pierced by congressional act." *Oregon*, 657 F.2d at 1013. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58, 98 S.Ct. 1670, 56 L.Ed.2d 106 (1978); *Hamilton v. Nakai*, 453 F.2d 152, (9th Cir. 1971), *cert. denied*, 406 U.S. 945, 92 S.Ct. 2044, 32 L.Ed.2d 332 (1972).

Moreover, aside from CCT's explicit waiver under CCT law, Congress also waived sovereign immunity for Defendants pursuant to the Indian Civil Rights Act. *See* 25 U.S.C. §§ 1301-1304. ICRA's waiver applies even for official actions or within scope of employment. *Id.* Tribal sovereign immunity generally does not bar claims for prospective injunctive relief against tribal officers. *Jamul Action Comm. v. Simermeyer*, 974 F.3d 984, 994 (9th Cir. 2020). "Tribal sovereign immunity extends to tribal officers when the sovereign entity is the 'real, substantial party in interest.'" *Id.* (citing *Cook*, 548 F.3d at 727; *Lewis v. Clarke*). "That a suit implicates a tribal officer's official duties does not by itself establish that the tribe is the real party in interest." *Id. See Maxwell v. County of San Diego*, 708 F.3d 1075, 1088 (9th Cir. 2013).

[1] Defendants cite to the Colville Tribal Code. (ECF 48 at 3, FN 1). CBC approved a "waiver of sovereign immunity" for declaratory and injunctive relief, as well as for "monetary damages." Plaintiff and many Defendants are aware CCT paid damages on various claims, CCT tendered claims to their insurance carrier(s), claims have awarded monetary damages with payment from the CCT's insurance, and CCT has waived sovereign immunity in various agreements. Defendants deny wrongdoing in every court and hide behind sovereign immunity to shield themselves from any consequences despite violating Plaintiff civil rights. CTC § 1-5. (ECF 48 and 50). CCT law provides remedies for claims outlined herein, as well as federal law under ICRA and applicable case law. *Id.*

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Nevertheless, Defendants have repeatedly raised an issue of sovereign immunity, and not necessarily denied their wrongful conduct. Instead, Defendants rely upon tribal sovereign immunity to avoid liability, any hearing on the merits, and to evade discovery. Defendants knew or should have known the fake Jursek hearing on February 1, 2018, violated Plaintiff's civil rights and caused Plaintiff's termination the following week when Jursek was not a CCT employee or an authorized judge. (ECF 47). Defendants targeted Plaintiff as the CCT Public Defender's Managing Attorney, and Boyd admitted CBC caused Plaintiff's termination in violation of Plaintiff's civil rights. (ECF 47). Defendants planned to target Plaintiff even before CBC swearing in on July 12, 2018, as Ferguson stated as soon as the votes were certified he would "find a way to get Plaintiff out." (ECF 47). Ferguson's malicious intent, conspiring, and defamation were outside the scope of his official duties as CBC. (ECF 47). Ferguson and Somday met with Koskela before Plaintiff was sworn in to conspire and plan against Plaintiff and to seek Koskela's help with targeting Plaintiff. (ECF 47). This violated Plaintiff's civil rights. Defendants and other CCT employees' wagering scheme was outrageous and was outside the scope of duties, and reflected nefarious intent to target Plaintiff. (ECF 47). Swan colluded and targeted Plaintiff, along with all other Defendants in violation of Plaintiff's civil rights. (ECF 47). Swan disclosed confidential information against Plaintiff and declared erroneous legal conclusion about ethics, in violation of Plaintiff's equal protection, due process, and defamed Plaintiff's reputation. (ECF 47). Koskela targeted Plaintiff and emailed Erbland with confidential information about Plaintiff and CCT operations, outside the scope of her duties and violating her duties and Plaintiff's civil rights and CCT and WSBA confidentiality requirements. (ECF 47). Swan's ethics charges were mishandled by Defendants, causing Plaintiff unnecessary emotional

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distress and led to second (and even worse handling of) unofficial and months later official ethics charge and Plaintiff's expulsion from CBC. (ECF 47). Thomas yelled at Plaintiff, was defensive, aggressive, unprofessional, unreasonable, and acted outside her duties. (ECF 47). Plaintiff was denied due process and equal protection in the second ethics charge through denial of subpoenas and discovery, removal of Plaintiff's attorney very early on, denying cross-examination or calling all witnesses, removing Plaintiff, and allowing Koskela's untimely and unsigned ethics charge which violated CTC § 1-8 and the CCT Constitution by not allowing Plaintiff any opportunity to review her written complaint despite required timelines for notice to Plaintiff. (ECF 47). All Defendants defamed Plaintiff's reputation and character. (ECF 47).

All Defendants targeted, harassed, mistreated, defamed, acted negligently, omitted or concealed information, and/or colluded against Plaintiff—outside the scope of their duties and violating Plaintiff's civil rights. (ECF 47). Ferguson physically threatened Plaintiff outside the scope of his duties. (ECF 47). Ferguson and Moses sexually harassed Plaintiff, again, not within the scope of their official duties. (ECF 47). Thomas and Koskela made false statements against Plaintiff, outside the scope of their duties and intended to harm Plaintiff. (ECF 47). Miller omitted crucial information in his lengthy report. (ECF 47). Jursek held a fake hearing and made slanderous remarks against Plaintiff. (ECF 47). Steckel, Nomee, Wulff, Eichman, McCurdy, D'Avignon, Koskela, and Nicholson allowed Jursek to set and preside over a hearing to harm Plaintiff despite knowledge or easily ascertainable knowledge that Jursek was not an employee or Judge. (ECF 47). Defendants took steps and actively denied Plaintiff an opportunity to answer ethics charges in violation of the Constitution and tribal codes, and violating Plaintiff's civil rights (due process, equal protection, freedom of speech, right to confront and know charges

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against). (ECF 47). Defendants used CCT police to target Plaintiff's family and treat them differently than others in violation of equal protection and civil rights. (ECF 47). Cawston voted illegally and in violation of the CCT Constitution and tribal code, which was not within the scope of his duties and violated Plaintiff's civil rights (equal protection). (ECF 47).

D'Avignon and Koskela as his supervisor violated their duties as ORA duties with ongoing obligations to Plaintiff as a former client. (ECF 47). D'Avignon drafted a transcript without client approval or knowledge, and it was intended to target a part of his primary client in violation of CTC § 1-8, CTC § 1-4, and contractual duties. (ECF 47). D'Avignon could not be the attorney for CBC and be a witness against Plaintiff. (ECF 47). Thomas prosecuted Swan's ethics charges. (ECF 47). No ORA attorney represented the full CBC, and ORA ignored duties to Plaintiff and full CBC, to target Plaintiff and submit complaints to obtain Plaintiff's expulsion. (ECF 47). Koskela, Thomas, D'Avignon, Raap, Eichman, McCurdy, Erbland,[2] and Miller failed to communicate to Plaintiff and the full CBC as the primary client in an effort to conceal their efforts and target Plaintiff (outside the scope of duties). (ECF 47). All Defendants' mishandling and blind efforts to target and expel Plaintiff caused mishandling of both ethics charges in violation of Plaintiff's civil rights and was outside the scope of official duties. (ECF 47). Koskela knew Plaintiff received late subpoenas, including for Koskela to testify, in violation of Plaintiff's civil rights and timelines outlined in CTC § 1-8. (ECF 47). Koskela concealed her testimony and role, outside the scope of her duties. (ECF 47). Koskela and Thomas spoke about Koskela's conflict, Thomas' assignment, reassignment to D'Avignon, and acted adverse to their duties to CCT as well as Plaintiff and CBC. (ECF 47). ORA Attorneys either refused to acknowledge that

[2] Plaintiff contends Erbland was not an employee, and his status in the case appears to confirm this. Plaintiff also confirmed with CCT employees while on CBC, Erbland was not paid by CCT for advice to CCT in July 2018.

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Plaintiff was part of their primary client, or intentionally disregarded their duties to Plaintiff as a member of CBC as their primary organizational client to target Plaintiff. (ECF 47).

Even after being expelled, Defendants continued to harm Plaintiff. Somday refused to certify Plaintiff for CBC candidacy on March 19, 2019, based upon the expulsion in violation of the CCT Constitution. (ECF 47). All Defendants caused Plaintiff financial and emotional harm, including significant loss of wages and benefits, denial of employment opportunities with CCT and other employers, and harmed Plaintiff's reputation and character. (ECF 47) Joseph admitted Plaintiff got a "bad deal" and Defendants should have supported Plaintiff. (ECF 32-1). This was an admission of a party opponent. Cawston acknowledged he voted to expel Plaintiff and asked ORA Defendant(s) about whether the ethics process had been followed and whether he could vote, suggesting he was aware there were flaws in the process and there was an issue with whether he could vote to expel Plaintiff—but he did it anyhow in violation of the Constitution and tribal laws. (ECF 47). This was an admission of a party opponent. Ferguson acknowledged ethics do now always follow the tribal code, he too was not allowed to present evidence, and that ORA "cover[s] it all up," and the tribe or CBC "refus[ed] to go by there own rules." (ECF 47).

ORA knew or should have known they had a duty to Plaintiff equally with other CBC, and the full CBC was their primary client. (ECF 47). Koskela, Thomas, D'Avignon, McCurdy, Raap, and Eichman colluded against Plaintiff. (ECF 47). Thomas and Koskela sought or prosecuted Swan's ethics charge against Plaintiff, which violated prior ORA legal memorandum and CTC §§ 1-4 and 1-8. (ECF 47). ORA Defendants and Miller hid their intentions, refused to communicate or provide documents to Plaintiff, and acted outside the scope of their official duties to harm Plaintiff. (ECF 47). ORA Defendants did not represent Plaintiff, and instead

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sought a legal opinion, made false statements, prosecuted or tried to unofficially initiate ethics charges without signing a sworn statement under oath and following the tribal code, and failed to provide discovery or adhere to Plaintiff's civil rights. (ECF 47). ORA Defendants committed malpractice and misrepresented to Cawston that he was allowed to vote on Plaintiff's expulsion. (ECF 47). Especially when Koskela previously advised a different CBC Chairman he was unable to vote on an expulsion and the expulsion failed without the 8 affirmative votes regarding Sylvia Peasley between July 2011-July 2012.

Category 4: Official Actions within Scope of employee or that of a Tribe; Non-civil rights; No waiver by Tribe or Congress

Plaintiff contends this last category applies to some actions outlined herein, but the majority of conduct complained of falls into the second or third categories outlined above. Where Defendants' actions did not violate Plaintiff's civil rights under CTCRA and ICRA (such as due process and equal protection guarantees) or done outside the scope of their duties or if relief is sought against the named individual, Plaintiff acknowledges conduct within the scope of official duties, done as an employee of the CCT, and where relief is only sought against the CCT without any express waiver, then the conduct falls here. However, very little is included in this fourth category, but CCT expressly waived its own sovereign immunity as well as that which may have covered employees or officials under tribal law. CTC § 1-5. Federal law under ICRA and applicable case law also waive sovereign immunity for Defendants' conduct. Koskela's advice to Plaintiff and other incoming CBC regarding prior ORA opinions, including that a prior ORA written legal opinion advised CBC that ORA should not advise on ethics charges falls here. (ECF 47). Former CCT employee Thomas Tremaine investigating Plaintiff was within his scope of employment, although Tremaine violated Plaintiff's confidential employment records or

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information in violation of CTC § 10-2. (ECF 47). Filing a garden variety ethics charge against a CBC consistent with the tribal constitution and tribal laws is included herein and may be within the scope of a CCT employee. Still, Swan's ethics charge clearly fell outside CTC § 1-8 for alleged conduct by Plaintiff before she was on the CBC. (ECF 47). Defendants' repeated tries to hire Jursek is included here, although repeated efforts violated CBC policies and procedures. (ECF 47). If Defendants did not act outside the scope of his/her duties, if Defendants were not acting in concert or conspiring to target or harm Plaintiff, if CCT had not expressly waived sovereign immunity for civil rights violations, if the US Congress had not expressly waived sovereign immunity under ICRA, if relief was not sought against named individuals in their personal capacity or from them personally, then Defendants' conduct might fall here. (ECF 47).

Even if some of these acts were done in an "official" capacity like Clarke, since many of these acts were done as a personal vendetta against Plaintiff, with malice, or in violation of applicable laws, the individuals should be liable since the judgment will not bind the Tribe or its instrumentalities. The Ninth Circuit has engaged in a "remedy-focused analysis" and that tribal sovereign immunity turns on whether the suit is against the tribal official in his personal or official capacity." *Marston*, 17 F.4th 901. *See Pistor v. Garcia*, 791 F.3d 1104, 1114 (9th Cir. 2015); *Maxwell*, 708 F.3d at 1087-88. Even if actions in the Complaint were done in an official capacity, many actions were outside the scope of duties. Contrary to Defendants' position, tribal sovereign immunity does not apply when the judgment will not operate against CCT, and it does not "revolve around whether issues pertaining to tribal governance would be touched on in the litigation." *Marston*, 17 F.4th at 911 (citing *Pistor*, 791 F.3d at 1113). Higher courts direct not to distinguish "between garden variety torts and ones with a relationship to tribal governance." *Id.*

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Service of Process

All Defendants have been served or attempted to be served, and proof of service has been filed with the Court of these efforts. Pursuant to federal law, service may be accomplished by "any person who is at least 18 years old and not a party." Fed. R. Civ. P. 4(c)(2). Defendants "may be served in a judicial district of the United States by following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made." Fed. R. Civ. P. 4(e)(1). Many Defendants were personally served consistent with Fed. R. Civ. P. 4(e)(2)(A). For other defendants, such as Cawston and Koskela, a copy of the summons and complaint were left "at the individual's dwelling or usual place of abode with someone of suitable age and discretion who reside there." Fed. R. Civ. P. 4(e)(2)(B). (ECF 6: Cawston; ECF 17: Koskela). Both were present at home, but their spouse accepted service. For CCT, a copy was delivered to "an agent authorized by appointment or by law to receive service of process." Fed. R. Civ. P. 4(e)(2)(C). (ECF 39). Defendants appear to complain about the location of service of process for some Defendants, but Eichman and Barnaby refused to accept service when attempts were made at the CCT ORA. (ECF 48 at 17).

Statute of Limitations

Plaintiffs are mistaken when they alleged the complaint "on its face reveals that the plaintiff's claims is barred by a statute of limitations." (ECF 49 at 15). Under *Tregenza v. Great Am. Commc'ns Co.*, the prior rule in that circuit was overturned and the facts are easily distinguishable. Defendants failed to cite binding precedent and refuse to acknowledge the complaint outlines that Plaintiff fully exhausted tribal court remedies and timely filed here. *Id.*, 12 F.3d 717, 719 (7th Cir. 1993). (ECF 48 at 15). As well, the Ninth Circuit called into doubt *Tregenza* regarding inquiry notice coupled with reasonable diligence for the one-year statute of

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limitations for the securities fraud investor. *Berry v. Valence Tech., Inc.*, 175 F.3d 699, 704 (9th Cir. 1999). The doctrine of federal court abstention known as "tribal exhaustion rule" derived from *Nat'l Farmers Union Ins. Co. v. Crow Tribe*, 471 U.S. 845, 105 S.Ct. 2447, 85 L.Ed.2d 818 (1985). "The federal policy supporting tribal self-government directs a federal court to stay its hand in order to give the tribal court a full opportunity to determine its own jurisdiction [] considerations of comity direct that tribal remedies be exhausted before the question is addressed by the District Court." *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 15-16, 107 S.Ct. 971, 94 L.Ed.2d 10 (1987). Federal courts are intended as alternatives to state courts, and tribal court has the same potential and federal courts try to prevent "interfering with tribal self-government" to allow a tribal court to review a case. *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1226-1227 (9th Cir. 1989). *See also* W. Canby, *American Indian Law* 151-52 (1981). As decided previously with CCT in *Stock West*, "if tribal remedies were exhausted on the jurisdiction issue, the district court would have jurisdiction under 28 U.S.C. § 1331 to review the tribal court's finding of jurisdiction." *Id.* at 1227. CCT Tribal Court had their opportunity to determine CCT laws and Plaintiff's claims, but no trial has occurred or any hearing on the merits, CCT tribal court lacks independence from the CBC, and the harms done to Plaintiff are ripe for review by this Court at this time. (ECF 47).

The Statute of limitations is tolled while the case was pending in Colville Tribal Court between January 29, 2019-April 12, 2022. (ECF 47). Presumably, had Plaintiff failed to exhaust tribal court remedies, then Defendants would seek dismissal on that basis. *See Nat'l Farmers Union*; *Stock West*; and *Iowa Mutual Ins. Co.* Generally, exhaustion of tribal court remedies is required, although there are exceptions (which do not apply here), and it is surprising if CCT

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wishes to undo the policy of tribal court exhaustion which supports tribal self-government and self-determination. *Atkinson Trading Co. v. Shirley*, 210 F.3d 1247, 1250 (10th Cir. 2000). Plaintiff commenced this action related to civil rights as claims arose in Colville Tribal Court well within the four years of the cause of action accruing pursuant to the Indian Civil Rights Act ("ICRA") under 28 U.S.C. § 1658(A). With tolling while Plaintiff exhausted tribal court remedies, these consolidated cases were timely filed after fully exhausting tribal court remedies and filing this case under ICRA and review of tribal, federal, and state rights and causes of action. Regarding claims which fall under tribal law, Plaintiff had three years to file in tribal court, which Plaintiff accomplished and Defendants cited. (ECF 48 at 10). With regards to any claims under Washington State law, which Defendants pointed out regarding defamation, Plaintiff filed this matter exactly two years after fully exhausting tribal court remedies. (ECF 47). Since Plaintiff needed to exhaust tribal court remedies and the statute of limitations was tolled while the matter proceeded in tribal court, tort claims such as defamation are timely.

Res Judicata

Defendants raise res judicata but suggest it "is not implicated" and again assert that Plaintiff misunderstands tribal court exhaustion. (ECF 48 at 15). It seems Defendants are confused about whether res judicata applies, but Defendants' own argument related to res judicata fails in their motion because Plaintiff's claims have never been heard on the merits in any court which would "trigger[ed]" the doctrine after a "final judgement on the merits." (ECF 48 at 14). Sovereign immunity prevented any hearing on the merits or sufficient consideration by CCT tribal court. Defendants' case citation to *Sidhu* is also misplaced, in that this case herein does not involve collective bargaining agreement ("CBA") or arbitration, a repudiation requirement, or any exhaustion requirement in a grievance procedure in a CBA. *Sidhu v. Flecto*

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Co., 279 F.3d 896, 900 (9th Cir. 2002). (ECF 48 at 14). Even if Plaintiff's claims were heard on the merits in tribal court, federal courts are authorized to review that decision. No second bite at the apple can occur, when no original opportunity to be heard on the merits was ever provided.

Civil Rule 8 and the Complaint

Defendants argue the Complaint should be dismissed under Civil Rule 8. (ECF48 at 6-8). Plaintiff agrees that Federal Rule of Civil Procedure 8(a)(2) requires only "a short a plain statement of the claim showing that the pleader is entitled to relief in order to give the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). Plaintiff is obligated to provide enough factual allegations to raise a right to relief above the speculative level. *Id. See* 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235-236 (3d ed.2004). The Complaint under Rule 8(a)(2) must "possess enough heft to show that the pleader is entitled to relief." Also, "under the relaxed pleading standard of the Federal Rules, the idea was not to keep litigants out of court but rather to keep them in. The merits of a claim would be sorted out during a flexible pretrial process, and, as appropriate, through the crucible of trial." *Twombly*, 550 U.S. at 575 (Stevens and Ginsburg Dissent). The "court was interested in what a complaint must contain, not what it may contain." *Id.* at 580. Plaintiff seeks relief here for civil rights violations alleging individual and tribal liability that would be inconsistent with a liberal system of notice pleading. See *Leatherman v. Tarrant County Narcotics Unit*, 507 U.S. 163, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993). Plaintiff also had to outline which Defendants are liable to Plaintiff for which wrongs, which unfortunately required more explanation than the average complaint. What Defendants refuse to acknowledge is Plaintiff's effort to consolidate, agreement to dismiss one case entirely, and try to join together individuals and claims that overlap into one case. (ECF 48).

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Unfortunately, numerous Defendants are involved in the host of tortious conduct against Plaintiff, and the consolidated complaint significantly reduced the information from both cases. Again, Rule 8 is important to ensure that enough information is provided to litigants, which was accomplished in the consolidated complaint. (ECF 47). If Plaintiff tried to separate out claims, Defendants likely would have sought dismissal for failure to name a necessary and indispensable party, or sought more sanctions for number of cases filed. Defendants also specifically reference discovery as part of their argument, but Plaintiff has been unable to obtain *any* discovery from Defendants, whether it was requested in the quasi-administrative CBC ethics hearing in February 2019, the two CCT tribal court cases, the two CCT tribal court appellate matters, or cases in federal court. (ECF 48 at 7). *See Bautista v. L.A. Cty.*, 216 F.3d 837, 841 (9th Cir. 2000). Defendants cited *Cafasso v. Gen. Dynamics C4 Sys.*, to support their Rule 8 complaint, which is not helpful, given the allegations there required compliance under Rule 8(a) and 9(b) relating to fraud under the FCA, and included a 733-page pleading. *Id.*, 637 F.3d 1047, 1055 (9th Cir. 2011). (ECF 48 at 7). The facts do not apply here. Still, under *Cafasso*, the Ninth Circuit noted even where a complaint was "excessive in detail, [it] was written with sufficient clarity and organization such that the defendants would have no difficulty in responding to the claims." *Id.* at 1059 (citing *Hearns v. San Bernadino Police Dep't*, 530 F.3d 1124, 1131 (9th Cir. 2008)). It is clear here that Defendants do not struggle to respond to the claims in the consolidated complaint and understand the legal and factual issues outlined in the Complaint. (ECF 47, 48, 49, and 50).

Still, "the district judge should first consider less drastic alternatives" than dismissal, such as to replead, and to consider the strength of the Plaintiff's case. *McHenry v. Renne*, 84 F.3d 1172, 1178 (9th Cir. 1996) (citing *Von Poppenheim v. Portland Boxing & Wrestling Comm'n*,

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442 F.2d 1047, 1054 (9th Cir. 1971); *Nevijel v. N. Coast Life Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981). Here, Plaintiff's case is very strong, and Defendants have done everything within their individual and collective power to prevent relief or even a hearing on the merits that would uncover their misconduct and collusion against Plaintiff in violation of numerous laws, including Plaintiff's civil rights. The onslaught in many forums has been incredibly difficult, and very few pursue claims against Tribes in any venue or forum due to the significant hurdles. This honorable Court should deny the dismissal motions and allow an exchange of discovery, a hearing on the merits, and to provide relief to Plaintiff in an important case surrounding tribal immunity and whether there is any consequences to tribes and their employees, or other individuals. (ECF 47).

Sanctions Requested

Defendants failed to caption a motion for sanctions. (ECF 48 and 50). Both motions to dismiss also fail to include in the Relief Requested section a motion for sanctions. (ECF 48 and 50). Instead, the majority of Defendants ask for the Court to "invite Defendants to submit a fee petition." (ECF 48 at 2). An invitation is not a motion, and the motion for sanction is not properly plead. (ECF 48 and 50). In fact, Local Civil Rule ("LCivR") 7(a)(1) requires the "motion" to "set forth supporting factual assertions and legal authority." Defendants failed to outline factual assertions or legal authority which support any award of fees or costs (which were not requested in a motion), and case law and general citations to Rule 11 are inadequate to award sanctions. Plaintiff did not bring this action in bad faith, the cases were not filed for an "improper purpose or without support in law or evidence." (ECF 48 at 16). *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir. 2001). Defendants' claim that this case is "vexatious and frivolous" suit is inaccurate. (ECF 48 at 17). There is no basis for sanctions against Plaintiff, although Plaintiff acknowledges this honorable Court's ability to grant sanctions when warranted. Despite

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Defendants' allegations that Plaintiff's claims are frivolous or vexatious, the claims are not "groundless or without foundation" or that there was any "subjective bad faith." *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978). The US Supreme Court encourages tribal court exhaustion to support tribal self-governance. Plaintiff has not engaged in any unethical, inappropriate, or harassing behavior. On the contrary, Plaintiff has sought judicial review of various illegal actions by Defendants against Plaintiff pursuant to various laws, in appropriate and civilized forums. Review of tribal courts is prescribed by Congress and the highest federal court, the United States Supreme Court. ICRA, 25 U.S.C. § 1302. *Nat'l Farmers Union*; *Iowa Mutual Ins. Co.*; *Nevada v. Hicks*, 533 U.S. 353, 121 S.Ct. 2304, 150 L.Ed.2d 398 (2001); and a host of others federal cases and acts of Congress.

Defendants failed to cite any relevant statute related to the claims herein which would allow sanctions, costs, or attorney's fees. Generally, sanctions are available for frivolous actions that cannot be supported by any rational argument on the law or the facts. That is not applicable here. Unlike the legal counsel in *Fink v. Gomez* which Defendants cited, Plaintiff has not made a series of statements to the district court that justified sanctions such as acting "with reckless disregard for the truth, which rose to the level of objective bad faith," or made admissions about misleading the court "for the purpose of gaining tactical advantage" in another case. *Id.*, 239 F.3d 989, 991 (9th Cir. 2001). In *Fink*, sanctions were not imposed in the lower court proceeding leading up to that case, and the lower court's hearing was set *sua sponte* by the district court judge. *Id.* Plaintiff is not deserving of any sanctions, and Plaintiff request this honorable Court deny Defendants' motion or invitation.

III. CONCLUSION

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Plaintiff respectfully requests this honorable Court deny the Defendants' motions to dismiss. Plaintiff also respectfully requests this honorable Court deny the Defendants' motion for sanctions, costs, and/or attorneys' fees.

DATED this 11th day of December, 2024.

ANDREA D. GEORGE, Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Thomas Nedderman	tnedderman@nwtrialattorneys.com
William Dow	wdow@nwtrialattorneys.com
Christopher Kerley	Ckerley@ecl-law.com

DATED this 11th day of December, 2024.

ANDREA D. GEORGE, Plaintiff

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