UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

Jay Meilstrup, Plaintiff, vs. Standing Rock Sioux Tribe, Standing Rock Tribal Council, and Ryan Hertle, Defendants.	)	Case No. 1:25-cv-00162 **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

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INTRODUCTION

[¶1] In moving to dismiss this case, Defendants, Standing Rock Sioux Tribe, Standing Rock Tribal Council and Ryan Hertle, (hereinafter, collectively "Tribe") raise jurisdictional grounds and, as such, Meilstrup is entitled to jurisdictional discovery. When "a defendant moves to dismiss for lack of jurisdiction," Meilstrup "should be allowed discovery on the factual issues raised by the motion." Sizova v. Nat'l Inst. of Standards and Tech, 282 F.3d 1320, 1326 (10th Cir. 2002).

[¶2] This Court should deny Tribe's Motion to Dismiss and grant jurisdictional discovery.

STATEMENT OF THE CASE

[¶3] Plaintiff, Jay Meilstrup (hereinafter "Meilstrup") was hired as the CEO of both casino enterprises owned by the Standing Rock Tribe. He was also the General Manager of Prairie Knights and Grand River Casino.

[¶4] Meilstrup did not "choose" to not go to work. Meilstrup was still working while he was in Pennsylvania. Meilstrup elected to suspend his pay during this time so as not to harm or disadvantage the tribe.

[¶5] The Tribe claims Meilstrup failed to go to work from December 7th through 13th and February 15th through 23rd. Meilstrup was not present on those days, but it should be considered that he worked continuously from October 23rd (his first day) through December 6th with no days off. Meilstrup was Tribe' property and performing his expected duties 45 days without a day off. Then again from December 14th through February 14th continuously with no days off. Meilstrup worked all holidays. As an exempt employee, Meilstrup had no determined schedule nor was any attendance schedule provided or expressed to Meilstrup. Meilstrup was a salaried employee. As CEO, Meilstrup was in a position to establish or change company policy including attendance policy.

[¶6] Meilstrup told the tribe that if they decided to terminate the contract, he would understand and would cooperate. Meilstrup did not ask to ratify his leave.

[¶7] There is an email exchange between the two tribal council members who Meilstrup reported to where they approved Meilstrup's leave through April 1. The tribal council member who approved Meilstrup's leave did so with "apparent authority".

[¶8] Meilstrup did not know there was a procedure to ask for leave. Meilstrup sent an email to the tribal council representative prior to signing the contract notifying them that they had not provided the policies of the tribe as required by them in the contract. The policies were never provided. As Meilstrup requested leave, the HR Director and two tribal council members were involved in the process, who also should have known the process if there was one. The optimum opportunity to address the deviation from policy would be at the time Meilstrup sent the email requesting leave. The tribe gave no opportunity to remedy any perceived breach of the employment contract.

[¶9] On April 2, 2025, Meilstrup received notification of termination from the Tribal Chair. In this letter it was stated that the reason for termination was for breach of contract; however, he was never provided with the policy he was accused of violating. The letter also stated that Meilstrup was eligible for COBRA coverage.

[¶10] On April 7, 2025, Meilstrup's wife attended the local hospital for surgical procedures. They were informed by the hospital that they had no insurance coverage. This caused the procedure to be postponed.

[¶11] Meilstrup's insurance coverage was terminated on March 31, 2025; however, he was not notified that he was terminated until April 2, 2025. Insurance should have been in place through the end of the month of April, giving Meilstrup enough time to secure COBRA coverage.

[¶12] Meilstrup was provided with notification that he was eligible for COBRA. However, on May 7, 2025, Meilstrup received notification from Paycom that his COBRA coverage had been denied as he was terminated for "gross misconduct". This was inconsistent with the letter of termination provided to him by the tribal chair. The gross misconduct determination arrived after the decision to terminate and is inconsistent with the original decision. In the defendant's motion to dismiss, the reason for termination was again changed after the fact to "job abandonment" which is inconsistent with the previous two reasons indicated for termination of the contract.

[¶13] Under COBRA coverage guidelines, the employer must inform an employee of denial within 14 days of termination. Meilstrup was informed of COBRA coverage denial on May 7, 2025, which is 35 days after he had been terminated.

[¶14] Meilstrup disputes that he was terminated for "gross misconduct". He was terminated for breach of contract which was later changed to gross misconduct notification and is now being accused of "job abandonment". The reason for Meilstrup termination was changed multiple times after termination was executed. These changes were made to substantiate the denial of COBRA coverage. Meilstrup was wrongfully prevented from having COBRA coverage through a series of fraudulent and malicious actions by the Defendants.

PROCEDURAL HISTORY

[¶15] Meilstrup filed his Complaint against the Tribe on July 8, 2025.

[¶16] The Tribe filed their Motion to Dismiss and Memorandum on August 8, 2025.

ARGUMENT

1. A dismissal is not appropriate at this stage.

[¶17] A Motion to Dismiss is treated as a Motion for Summary Judgment. Summary judgment is appropriate only where there are no genuine issues as to any material fact and the moving party

is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). If "the evidence as a whole is susceptible of more than one reasonable inference, a jury issue is created" and summary judgment is inappropriate. Myrick v. Prime Ins. Syndicate, Inc., 395 F.3d 485, 489-90 (4th Cir. 2005).

[¶18] The burden is initially on the moving party to establish the basis for its motion. Celotex, 477 U.S. at 323. If the moving party is able to meet this burden, the burden shifts to the nonmoving County Comm'rs, 945 F.2d 716,718 (4th Cir. 1991). Evidence must be vied in the light most favorable to the nonmoving party, and the nonmoving party enjoys the benefit of all reasonable inferences to be drawn from the facts. Bryand v. Bell Atlantic Md., Inc., 288 F.3d 124, 132 (4th Cir. 2002).

[¶19] A fact is "material" if it might affect the outcome of the case, and a factual dispute is "genuine" if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The basic inquiry is whether the evidence presents a sufficient disagreement to require full consideration on the merits by a jury, Hareysville Mut. Ins. Co. v. Packer, 60 F.3d 1116, 1120 (4th Cir. 1995).

[¶20] "A complaint shall not be dismissed for its failure to state a claim upon which relief can be granted unless it appears beyond a reasonable doubt that Meilstrup can prove no set of facts in support of a claim entitled him to relief." Young v. City of St. Charles, Mo., 244 F.3d 623, 627 8th Cir. 2001). When considering a motion to dismiss under Rule 12(b)(6), the court must accept all factual allegations in the complaint s true. Levy v. Ohl, 477 F.3d 988, 991 (8th Cir. 2007) (quoting DuBois v. Ford Motor Credit Co., 276 F.3d 1022 (8th Cir. 2002)). The court may generally only look to the allegations contained in the complaint to make a Rule 12(b)(6) determination. McAuley v. Fed. Ins. Co., 500 F.3d 784, 787 (8th Cir. 2007).

2. Meilstrup is entitled to jurisdictional discovery on disputed facts.

[¶21] In attempting to dismiss this case, Tribe raises the arguments that leave was approved on the part of Meilstrup and that he was discharged for misconduct. Consideration of Tribe' Motion should be denied pending exhaustion of discovery.

3. Tribal Courts do not have jurisdiction over ERISA actions.

[¶22] Relying on the United States Supreme Court's decision in Nevada v. Hicks, 533 U.S. 353 (2001), the Kansas federal district court held that tribal courts are not courts of general jurisdiction, and without an explicit grant of jurisdiction over ERISA claims by Congress, tribal courts lack jurisdiction over such claim. Coppe v. The Sac & Fox Casino Healthcare Plan, (D. Kan. 2015). Meilstrup is not a tribal member, and the Tribe have no right to govern him as a member of the tribe. Exhaustion of tribal court remedies is not required to proceed on Meilstrup's claim because tribal sovereign immunity is waived for ERISA claims. Vandever v. Osage Nation Enter., Inc. (N.D. Okla. 2009).

[¶23] ERISA expressly supersedes and preempts tribal law. ERISA contains a broad-based express preemption clause. 29 U.S.C. §1144(a). Just like with state claims, tribal law is preempted and removed to federal court because it falls within the scope of ERISA and all the related issues therein including breach of fiduciary duties on the part of Tribe. Darcangelo v. Verizon commc'ns, 292 F.3d 181, 192, 195 (4th Cir 2002); 29 U.S.C. §§ 1132(a)(1)-(4).

[¶24] ERISA's civil enforcement section gives the participant the right to sue "to force disclosure of certain information, to recover benefits due under the plan, to clarify the right to future benefits, or to enforce rights under ERISA or the plan." Darcangelo, 292 F.3d at 192. ERISA permits a beneficiary to bring a civil action to obtain "appropriate equitable relief" to redress ERISA violations. 29 U.S.C. §1132(a)(3)(B).

4. This Court has concurrent jurisdiction over state contract claims.

[¶25] Federal question jurisdiction permits an individual to bring a claim in federal court if it arises under federal law. 28 U.S.C. §1332. Federal question subject-matter jurisdiction is frequently derived from federal statutes granting a cause of action to a party who has suffered injury, in this case related to ERISA. 28 U.S.C. §1367 provides for supplemental jurisdiction in federal court to hear a claim over which it does not have independent subject-matter jurisdiction if the claim is related to a claim over which the federal court does have independent jurisdiction. In this case there is also diversity of jurisdiction in that Meilstrup and Tribe are in different states.

5. Meilstrup has presented a federal question upon which relief can be granted.

[¶26] In his Complaint, Meilstrup asserts ERISA and COBRA violations on the part of the Tribe. Such allegations are sufficient to warrant the jurisdiction of this Court. At the pleading state, general factual allegations of injury suffice. National Organization for Women, Inc. et. al. Scheidler, 510 U.S. 249 (1994); Sierra Club and Environmental Technology Council, Inc. v. EPA, 292 F.3d 895, 989-899 (D.C. Cir. 2002).

CONCLUSION

[¶27] **FOR THE FOREGOING REASONS,** Meilstrup respectfully requests that this Court deny the Tribe's Motion to Dismiss.

Dated this 6th day of September, 2025.

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