

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

TERESSA MESTEK,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 21-cv-541
)	
LAC COURTE OREILLES)	
COMMUNITY HEALTH CENTER,)	
LOUIS TAYLOR,)	
(in both his personal and official capacity))	
JACQUELINE BAE, Ph.D.,)	
(in both her personal and official capacity))	
SHANNON STARR, M.D.,)	
(in both his personal and official capacity))	
SARA KLECAN,)	
(in both her personal and official capacity))	
DAVID FRANZ,)	
(in both his personal and official capacity))	
)	
and)	
)	
MICHAEL POPP,)	
in his personal capacity,)	
)	
Defendants.)	

DEFENDANTS’ MOTION TO DISMISS

The Defendants, the Lac Courte Oreilles Community Health Center (the “LCO-CHC”), Lac Courte Oreilles Tribal Chairman Louis Taylor (the “Chairman”), Jacqueline Bae, Shannon Starr, Sara Klecan, David Franz, and Michael Popp (the “Employees”) respectfully request that this matter be dismissed for the following reasons:

1. Under Fed. R. Civ. P. 12(b)(6), the Court must dismiss Plaintiff’s claims for failure to state a claim upon which relief can be granted because the LCO-CHC, a governmental

subdivision of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians (the “Tribe”), is not a person under False Claims Act (“FCA”) since the Tribe is a sovereign federally-recognized Indian tribe;

2. Under Fed. R. Civ. P. 12(b)(1), the Court must dismiss Plaintiff’s claims for lack of subject-matter jurisdiction, because Plaintiff’s federal claims are not colorable and additionally do not support supplemental jurisdiction over the state-law claims;

3. Under the doctrine of sovereign immunity, the Court is precluded from exercising jurisdiction over Counts I, II, III in the amended complaint against the Defendants because LCO-CHC has not waived its sovereign immunity from those claims and the FCA has not abrogated the Tribe’s or LCO-CHC’s sovereign immunity; and

4. In the alternative, Plaintiff failed to exhaust her tribal court remedies, as conditioned by the LCO-CHC policies controlling her employment, before she initiated this action in federal court. If the Court does not grant Defendants’ motion to dismiss, the Court—out of comity to the Tribal Court—should hold this case in abeyance until Plaintiff has properly exhausted her tribal court remedies.

The Defendants file a supporting memorandum and exhibits with this motion. They respectfully request that this matter be decided without a hearing.

WHEREFORE, the Defendants respectfully request that the Court dismiss this case.

Dated: January 18, 2022

RESPECTFULLY SUBMITTED:

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