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7 **UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

8 ALICIA SISAUDIA,

9 Plaintiff,

10 vs.

11 UNITED STATES DEPARTMENT OF THE
INTERIOR,
12 1849 C Street, N.W.
Washington, D.C. 20240, and

13 DEB HAALAND, in her official capacity as
14 the Secretary of the U.S. Department of the
Interior,
15 1849 C Street, N.W.
Washington, D.C. 20240,

16 THE CHEROKEE NATION,
17 and CHUCK HOSKIN, Jr.,
Principal Chief of the Cherokee Nation
18 W.W. Keeler Tribal Complex 17675 S.
Muskogee Ave. Tahlequah, OK 74464

19 Defendants.

Case No. 1:22-cv-3689-CJN

**RESPONSE TO CHEROKEE NATION
DEFENDANTS' MOTION TO DISMISS
AND MEMORANDUM OF LAW**

RECEIVED

2/3/2023

Clerk, U.S. District & Bankruptcy
Court for the District of Columbia

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21 Plaintiff, Alicia Sisaudia, hereby files the following in response to the CHEROKEE
22 NATION DEFENDANTS' MOTION TO DISMISS AND MEMORANDUM OF LAW:

**RESPONSE TO CHEROKEE NATION DEFENDANTS' MOTION TO DISMISS
AND MEMORANDUM OF LAW- 1**

1 1. Defendant Cherokee Nation and Principal Chief, Chuck Hoskin Jr., seem to be relying
2 heavily upon sovereign immunity. However, sovereign immunity does not apply in an
3 action for declaratory relief when the defendants are alleged to have acted
4 unconstitutionally, which is exactly what is alleged in the instant case. “The defendant
5 would be right if the characterization of the issues were correct...What the plaintiffs do
6 demand is that the defendant be enjoined from acting in a manner which violates his
7 statutory duties under the Economic Opportunity Act or that he be declared to be acting
8 unconstitutionally. Thus this suit clearly falls within the exception to the doctrine of
9 sovereign immunity which allows suits against federal officials who have allegedly
10 acted beyond their statutory powers or have exercised their statutory powers in a
11 constitutionally void manner.” Local 2677, Am. Fed'n of Gov't Emp. v. Phillips, 358 F.
12 Supp. 60, 68 (D.D.C. 1973). In Phillips, the Court refused to allow the defendants to
13 invoke sovereign immunity because the plaintiff had alleged they’d acted outside their
14 powers under federal law. This is precisely what the Plaintiff herein is alleging: that the
15 Defendants acted outside their authority when claiming they had no jurisdiction over
16 this matter. Additionally, violating the Cherokee Constitution by not enforcing the law
17 is a violation of federal law because federal law regulates the Cherokee Constitution
18 when it was allowed to be reestablished by the Oklahoma Indian Welfare Act (OIWA).
19 The OIWA only allows the Cherokee Constitution to be passed or changed when the
20 United States, who is the external sovereign by Treaty, grant’s approval.

21 2. The Plaintiff does not want to force the Cherokee Nation tribal court to do anything.
22 Rather, the Plaintiff only wants the Declaratory relief to specifically affirm that if an
Indian tribe has adopted the UCCJEA, then it applies to them and the various states
must treat them as a state in terms of its applicability. If an Indian tribe has not passed a

1 law to adopt the UCCJEA, then they are not bound by it and retain exclusive
2 jurisdiction over the child custody and visitation decisions for all tribal children
3 regardless of where they reside. This Declaratory Relief will not force an Indian tribe to
4 take up child custody cases because they can always pass a law adopting the UCCJEA,
5 so they only have to handle cases where the child lives in the reservation. The
6 Defendants, and more especially the Principal Chief Chuck Hoskin Jr, is responsible for
7 the passage of any such UCCJEA tribal law and for its enforcement on everyone in the
8 tribe once passed. If the Cherokee Nation truly wanted such a law, he would have
9 submitted to the Tribal Council a UCCJEA law for its passage. This would have
10 allowed the Cherokee Nation to have relinquished that part of their sovereignty and
11 prevented any potential chaos that the Defendants are claiming. This Declaratory Relief
12 will clarify who has jurisdiction and then the Indian tribes can then decide how to run
13 their own courts in the application of that jurisdiction. This Declaratory Relief will
14 simply be helping the Indian tribes, in the trust relationship that the United States has
15 with them, to understand their jurisdiction, as to when they have it and when they do
16 not. This will also help to inform the various states about tribal jurisdiction and help the
17 Indian tribes to retain their sovereignty.

- 17 3. The United States Supreme Court explicitly stated in 1993 that they had not yet decided
18 whether or not an Indian tribe's civil authority over its members extends over them
19 when not residing in Indian Country. They stated "Because all of the tribal members
20 earning income from the Tribe may live within Indian country, this Court need not
21 determine whether the Tribe's right to selfgovernance could operate independently of
22 its territorial jurisdiction to pre-empt the State's ability to tax income earned from work

1 performed for the Tribe itself when the employee does not reside in Indian country."
2 (*Oklahoma Tax Comm'n v. Sac and Foc Nation*, 508 U.S 114 (1993)). Additionally,
3 another guiding principle was delivered by the United States Supreme Court when they
4 said, that the "tradition of Indian sovereignty over the reservation and tribal members
5 must inform the determination whether the exercise of state authority has been
6 preempted by operation of federal law." (*White Mountain Apache*
7 *Tribe v. Bracker*, 448 U. S. 136, 142. Pp. 123-126.). This informs us that the Indian
8 tribes have sovereignty over both their land AND their tribal members. The United
9 States Supreme Court has recognized again and again that the fundamental principle of
10 Indian tribes' internal sovereignty is the supreme control over their lands and their
11 citizens, while not expressing that the control over their citizens is directly tied to their
12 lands.

13 4. The Defendants claimed that *National Farmers Union Ins. Cos. v. Crow Tribe of*
14 *Indians*, 471 U.S. 845 (1985) requires a case to go completely through a tribes' courts
15 prior to being able to be heard in a federal court. This would normally be the case, but
16 there are a few extenuating circumstances with this particular case that make it so that it
17 would not be correct to be exhausted through the Cherokee Nation tribal courts prior to
18 being heard in this Court. These circumstances are that firstly this issue of the
19 applicability of the UCCJEA to the Indian tribes has already been heard and exhausted
20 through multiple Indian tribal courts, just not the Cherokee Nation court. Secondly,
21 there are multiple jurisdictions involved in this case and if any of them rules that they
22 have jurisdiction instead of the other, they will be imposing themselves as an external
sovereign over the other. The only external sovereign over the Indian tribes and the

1 various states is the United States. But, if this Court decides that the case must be
2 exhausted through the Cherokee Nation courts first, the Plaintiff asks that the Court
3 please grant an abeyance instead of simply dismissing this case, so that a reconsider and
4 subsequent appeal, if necessary, can occur within the Cherokee Nation courts.

5 5. Defendants also appear to allege the Cherokee Nation district court judge or a
6 representative of the judicial branch of the Cherokee Nation government must,
7 themselves, be joined as a party herein for proper remedy. If the Court agrees, the
8 Plaintiff asks that the Court please allow the Motion for Joinder of such a party instead
9 of simply dismissing the case.

10 6. The Plaintiff denies all claims unless specifically admitted so that it cannot be claimed
11 that the Plaintiff agreed to something that was not specifically addressed in this
12 response.

13 WHEREFORE, Plaintiff respectfully requests that the Court deny the CHEROKEE
14 NATION DEFENDANTS' MOTION TO DISMISS AND MEMORANDUM OF LAW and
15 allow the case to continue forward against the Defendants, particularly Principal Chief Chuck
16 Hoskin Jr. because he is responsible for passing a UCCJEA law if the Cherokee Nation desires
17 one, so that the issue of tribal jurisdiction and the applicability of the UCCJEA to the Indian
18 tribes can finally be resolved, and if needed, allow the Plaintiff to join the appropriate party
19 from the Cherokee Nation Judicial branch.

20 **DATED:** February 3, 2023

21 By: /s/ Alicia Sisaudia

22 _____
Alicia Sisaudia, Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2023, I electronically filed the above and foregoing document with the Clerk of Court via the email for the civil office for filing and caused it to be e-mailed to the Defendants’ e-mail addresses listed in her signature on the motion.

/s/ Alicia Sisaudia

Alicia Sisaudia