IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALICIA SISAUDIA, *Plaintiff*, v. UNITED STATES DEPARTMENT OF THE INTERIOR, et al., *Defendants*.	)	Case No. 1:22-cv-3689-CJN

MEMORANDUM IN SUPPORT OF CHEROKEE NATION DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

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INTRODUCTION AND BACKGROUND

This case is a later-filed companion to *Hess v. United States Department of the Interior*, No. 1:22-cv-03385, filed with this Court on November 4, 2022. A comparison of Plaintiff's Complaint to the complaint filed in *Hess* reveals that, aside from the respective plaintiff's personally identifying information and related case histories, they are identical.[1] Further, as revealed by an affidavit she submitted in a guardianship proceeding collateral to the *Hess* matter[2], the plaintiff in *Hess* is Plaintiff's brother.

As was true in *Hess*, Plaintiff's Complaint seeks a declaration that would, in effect, compel the Cherokee Nation District Court to assume jurisdiction of the child custody and visitation aspects of her divorce action in Arizona. *See* Compl., ECF No. 1 ¶¶ 2, 41.7.

Plaintiff and her husband were married on November 17, 2007, in Denver, Colorado, and remain (for the moment) husband and wife. They have one minor child, ACS.

On October 21, 2020, Plaintiff filed a verified petition for dissolution of her marriage in the Superior Court of Maricopa County, Arizona, where the entire family

[1] This and all other facts discussed in this section are not subject to dispute and are judicially noticeable because they are described in court records in related cases, *see Baker v. Henderson*, 150 F. Supp. 2d 13, 15 (D.D.C. 2001) (citing *Marshall Cnty. Health Care Auth. v. Shalala*, 988 F.2d 1221, 1226 (D.C. Cir. 1993)), and can be considered on a Rule 12(b)(1) and (6) motion.

[2] *In re AMH*, Cherokee Nation District Court Case No. CVGD-2021-531.

resided.[3] Her petition requests, *inter alia*, an award of sole custody of ACS, and seeks to limit her husband's access to supervised parenting time. She also filed Emergency Motion for Pre-decree Temporary Order for Custody Without Notice in the case on that date.

On February 11, 2021, the Arizona court entered a Stipulated Temporary Order that was signed as "APPROVED AS TO FORM AND CONTENT" by Plaintiff, her husband, and their respective attorneys in that case.[4] Among the stipulations contained in that order, Plaintiff agreed that "[a]t the time the proceeding commenced, the State of Arizona was, and still is, the 'home state' of the Minor Children as the term 'home state' is defined in A.R.S. § 25-1002 and in the Parental Kidnapping Prevention Act of 1980, 28 U.S.C. § 1738(A)." She further stipulated and agreed: (1) that she would have exclusive possession and use of the marital residence located in Arizona; (2) that "the parties shall share joint legal decision making with Mother as the primary residential parent"; (3) that her husband would have weekly parenting time with ACS in Arizona as detailed in the order, along with time on or near any major holidays; (4) that a comprehensive family evaluation would be conducted; and (5) that she would receive an agreed monthly sum as temporary child support.

The Arizona court has since appointed a behavioral health professional in the case, ordered, and received a comprehensive family evaluation report.

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[3] *Sisaudia v. Kumar*, Case No. FC2020-053311.

[4] The stipulated order was signed by the parties and their attorneys on December 11, 2020.

On March 3, 2022, Plaintiff filed a paternity action in the Cherokee Nation District Court seeking sole custody of ACS and alleging, *inter alia*, that "[n]o other court has made a determination of paternity, for custody and visitation, nor for child support"—this, despite her stipulation and agreement to the Arizona court's temporary order addressing these issues over a year earlier.

The Cherokee Nation District Court dismissed Plaintiff's paternity action on June 17, 2022, noting that the Arizona court has jurisdiction. Plaintiff did not appeal the dismissal.

As indicated by filings made in the Arizona court and the Cherokee Nation District Court, it appears that Plaintiff and her family resided continuously in Arizona prior to her divorce filing and continue to do so. Plaintiff's child has never resided in Oklahoma, much less within the bounds of the Cherokee Nation Reservation.

Plaintiff's Arizona case is currently set for trial to begin on January 10, 2023.

STATEMENT OF THE CASE

Plaintiff now contends that the Cherokee Nation District Court possesses sole and exclusive jurisdiction of all custody and visitation issues arising in any divorce action involving Cherokee children, without regard to where said children might reside. *See* Compl., ECF No. 1 ¶¶ 2, 15-38, 41.7. She further argues that the Cherokee Nation District Court has no discretion or authority to decline to exercise jurisdiction in such cases and can thus be compelled to hear and rule upon all such child-related issues arising from divorce filings across the entire United States. *See* Compl., ECF No. 1 ¶¶ 36-39. She seeks a declaratory judgment from this Court "that the Cherokee

Nation District Court has jurisdiction over all tribal members for all civil matters not limited by Congress regardless of where they live, including CVPAT-22-114." Compl., ECF No. 1 ¶ 41.7.

STANDARD OF REVIEW

To survive a motion to dismiss under Rule 12(b)(1), Plaintiff bears the burden of demonstrating the court's subject-matter jurisdiction over the claims asserted. *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015). When considering a Motion to Dismiss under Rule 12(b)(1), the Court must "'construe the complaint liberally, granting plaintiff the benefit of all inferences that can be derived from the facts alleged, and upon such facts determine jurisdictional questions." *Am. Nat'l Ins. Co. v. FDIC*, 642 F.3d 1137, 1139 (D.C. Cir. 2011) (quoting *Thomas v. Principi*, 394 F.3d 970, 972 (D.C. Cir. 2005)). However, the Court is not obligated to accept plaintiff's inferences if they are unsupported by facts as alleged in the complaint or amount to nothing more than assertions of legal conclusions. *See Browning v. Clinton*, 292 F.3d 235, 242 (D.C. Cir. 2002). "In determining whether there is jurisdiction, the Court may 'consider the complaint supplemented by undisputed facts evidenced in the record, or the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.'" *Kialegee Tribal Town v. Zinke*, 330 F. Supp. 3d 255, 262 (D.D.C. 2018) (quoting *Coal. for Underground Expansion v. Mineta*, 333 F.3d 193, 198 (D.C. Cir. 2003); citing *Jerome Stevens Pharms., Inc. v. FDA*, 402 F.3d 1249, 1253 (D.C. Cir. 2005)). Absent subject matter jurisdiction over a case, the court must dismiss it. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506-07 (2006).

A Rule 12(b)(6) motion tests a complaint's legal sufficiency. To survive a Rule 12(b)(6) motion, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 556. A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555 (citations omitted). Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." *Id.* at 557.

On a Rule 12(b)(6) motion, the court can consider, in addition to the materials in the complaint and any materials incorporated into it or attached to it, matters of public record and other materials that are subject to judicial notice. *N. Am. Butterfly Ass'n v. Wolf*, 977 F.3d 1244, 1249 (D.C. Cir. 2020); *Abhe & Svoboda, Inc. v. Chao*, 508 F.3d 1052, 1059 (D.C. Cir. 2007); *EEOC v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624 (D.C. Cir. 1997). The court may also consider "'documents upon which the plaintiff's complaint necessarily relies even if the document is produced not by the plaintiff in the complaint but by the defendant in a motion to dismiss.'" *In re Domestic Airline Travel Antitrust Litig.*, 221 F. Supp. 3d 46, 54-55 (D.D.C. 2016) (quoting *Ward v. D.C. Dep't of Youth Rehab. Servs.*, 768 F. Supp. 2d 117, 119 (D.D.C. 2011)).

ARGUMENT AND AUTHORITIES

Plaintiff's claims are legally flawed. Her requested relief, if granted, would create a practical nightmare in the Cherokee Nation District Court and in courts

across the nation presented with divorce actions involving custody and visitation issues impacting Cherokee children. Moreover, it would undermine the intent and nullify the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act[5] in all such cases.

However, this Court need not address the merits of Plaintiff's claims. Plaintiff is barred from proceeding against the Cherokee Nation or its Principal Chief, Chuck Hoskin, Jr. (collectively, the Cherokee Nation Defendants) by the doctrine of sovereign immunity. Plaintiff cites no express waiver of sovereign immunity that might allow this action to proceed against the Cherokee Nation Defendants. Further, Plaintiff has failed to properly plead any action against the Nation's Principal Chief that might allow circumvention of the sovereign immunity doctrine. Plaintiff also failed to exhaust tribal remedies before filing suit in this Court and has failed to state a claim that can be granted. Accordingly, this action must be dismissed.

I. Plaintiffs' claims must be dismissed for lack of subject matter jurisdiction.

A. Sovereign immunity bars Plaintiffs' claims against the Cherokee Nation Defendants.

The sovereign immunity of the Cherokee Nation (hereinafter "Nation") and its Principal Chief, Chuck Hoskin, Jr. (hereinafter "Principal Chief"), bars Plaintiffs' claims, and they must be dismissed under Rule 12(b)(1) for lack of subject matter jurisdiction.

[5] Codified federally at 28 U.S.C. § 1738A.

As sovereigns, Indian tribes enjoy immunity against suits. *Vann v. Kempthorne*, 534 F.3d 741, 746 (D.C. Cir. 2008) (citing *Kiowa Tribe v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998); *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 509 (1991); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58–59 (1978); *Puyallup Tribe, Inc. v. Dep't of Game*, 433 U.S. 165, 172 (1977); *United States v. U.S. Fid. & Guar. Co.*, 309 U.S. 506, 512 (1940); *Wichita & Affiliated Tribes v. Hodel*, 788 F.2d 765, 771 (D.C.Cir.1986)). Sovereign immunity of tribes is a threshold matter of subject matter jurisdiction, "which may be challenged by a motion to dismiss under Fed. R. Civ. P. 12(b)(1)." *Miner Elec., Inc. v. Muscogee (Creek) Nation*, 505 F.3d 1007, 1009 (10th Cir. 2007) (citing *E.F.W. v. St. Stephen's Indian High Sch.*, 264 F.3d 1297, 1302-03 (10th Cir. 2001)); *see also Saucier v. Katz*, 533 U.S. 194, 201 (2001), receded from on other grounds by *Pearson v. Callahan*, 555 U.S. 223 (2009). Under the doctrine of tribal sovereign immunity, an Indian tribe is immune from suit unless Congress has specifically authorized suit or the tribe has expressly waived its immunity. *Kiowa*, 523 U.S. at 754. The U.S. Supreme Court has "time and again treated the 'doctrine of tribal immunity [as] settled law' and dismissed any suit against a tribe absent congressional authorization (or a waiver)." *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 789 (2014) (alteration in original) (quoting *Kiowa*, 523 U.S. at 756). Accordingly, any waiver of a tribe's sovereign immunity, whether by Congress or by the tribe itself, "cannot be implied but must be unequivocally expressed." *Santa Clara*, 436 U.S. at 58.

Plaintiff never alleges that Congress abrogated the Nation's tribal sovereign immunity from this suit, nor that the Nation waived its own immunity. There has never been such a waiver or abrogation–and as we now explain, the only exception to tribal sovereign immunity that Plaintiff alleges in her complaint is unavailable to her. Thus, Plaintiff's Complaint must be dismissed as a matter of law.

B. The *Ex Parte Young* doctrine does not extend to the Nation's Principal Chief in the context of this case.

Plaintiff attempts to circumvent the Nation's immunity by naming the Nation's Principal Chief as a defendant, citing as a basis *Vann v. Kempthorne*, 534 F.3d 741 (D.C. Cir. 2008). Compl., ECF No. 1, ¶8. However, the circumstances and underlying rationale of *Vann* render its holding inapplicable in the context of this case.

The plaintiffs in *Vann* filed suit in federal court to challenge the Nation's decision to exclude them from eligibility to vote in tribal elections. In their amended complaint, they named federal officials, the Nation, and tribal officers in those officers' official capacities, and argued that their exclusion from tribal voting violated federal law. 534 F.3d at 744. On appeal, the D.C. Circuit first determined that (as here) the tribe itself was protected from suit by sovereign immunity, then reviewed whether sovereign immunity also served to protect tribal officers, *Id.* at 746-749. It concluded that they were not under the doctrine of *Ex Parte Young*, 209 U.S. 123 (1908).

The court explained that "[t]he basic doctrine of *Ex parte Young* can be simply stated. A federal court is not barred by the Eleventh Amendment from enjoining state

officers from acting unconstitutionally, either because their action is alleged to violate the Constitution directly or because it is contrary to a federal statute or regulation that is the supreme law of the land." 534 F.3d at 749 (quoting 17A CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE & PROCEDURE § 4232 (3d ed. 2007)). The court concluded "it [is] clear that tribal sovereign immunity does not bar suit against tribal officers" brought under *Young*, because the Supreme Court had concluded in *Santa Clara Pueblo* that such suits could be brought against tribal officers. *Id.*

To determine whether a complaint properly relies on *Young* to avoid the "[sovereign immunity] bar to suit, a court need only conduct a 'straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" *Verizon Md., Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 646 (2002) (quoting *Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261, 296 (1997) (O'Connor, J., concurring in part & concurring in judgment) and citing *id.* at 298-99 (Souter, J., dissenting)).[6] However, *Young* requires that the named officer "must have some connection with the enforcement of the act, or else it is merely making him a party as a representative of the state, and thereby attempting to make the state a party." *Young*, 209 U.S. at 157.

> The fact that the state officer, by virtue of his office, has some connection with the enforcement of the act, is the important and material fact, and

[6] *Young* does not authorize claims against sovereign governments or their agencies, "regardless of the relief sought." *See P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993) (citing *Cory v. White*, 457 U.S. 85 (1982)), and is therefore entirely unavailable as to Plaintiff's claim against the Nation.

> whether it arises out of the general law, or is specially created by the act itself, is not material so long as it exists.

Id.

In this case, *Young* will not preserve Plaintiff's claims against the Principal Chief for two reasons. First, Plaintiff has not alleged an ongoing violation of federal law inherent in the Cherokee Nation District Court's decision not to take jurisdiction over the custody issues pending in her Arizona divorce case—nor could she, as we explain further *infra*, because no federal law establishes that the Nation has exclusive jurisdiction over off-reservation cases, or that it must exercise jurisdiction over such cases. Second, Plaintiff has not alleged any action or continuing inaction by the Principal Chief that violates federal law.

Plaintiff seeks relief that would, as a practical matter, compel the Cherokee Nation District Court to exercise jurisdiction over child custody and visitation issues pending in Plaintiff's divorce case, to the exclusion of the Arizona court in which she originally brought suit. But, crucial to this analysis, the Principal Chief does not control or direct the Cherokee Nation District Court and is not responsible for its determinations. The Cherokee Nation Constitution[7], Articles V, VII, and VIII, establishes a tripartite government with distinct executive, legislative, and judicial branches, similar to the United States federal government. The Nation's judiciary is as a wholly separate and independent branch of the Nation's government, *see* art. VIII, which is not answerable to the executive branch, of which the Principal Chief is

[7] *Available at* https://www.cherokee.org/media/lsufapj1/constitution-of-the-cherokee-nation-1999-online.pdf.

the head, *id.* art. VII, § 1. The Principal Chief cannot direct the Nation's courts to do anything, and relief against him would have no effect on the tribal courts. Thus, even assuming Plaintiff had properly alleged claims under the doctrine of *Ex Parte Young*, which he has not, those claims would fail.

In sum, Plaintiff has failed to properly plead any claim that would overcome the Cherokee Nation Defendants' sovereign immunity protection here. Because *Young* is unavailable, this suit against the Principal Chief is barred by tribal sovereign immunity. Accordingly, Plaintiffs' claims against the Principal Chief must be dismissed for lack of subject matter jurisdiction.

II. Plaintiff's claims must be dismissed for failure to state a claim upon which relief can be granted.

Additionally, Plaintiff has failed to state a claim on which relief can be granted by failing to exhaust tribal remedies and by raising a claim with no merit. Her Complaint must be dismissed under Rule 12(b)(6) for those reasons, as well.

A. Plaintiff failed to exhaust tribal remedies.

Plaintiff failed to exhaust available tribal remedies before instituting this suit. "Motions to dismiss for failure to exhaust tribal remedies are considered under Federal Rule of Civil Procedure 12(b)(6)." *Muscogee Creek Indian Freedmen Band, Inc. v. Bernhardt*, 385 F. Supp. 3d 16, 20 (D.D.C. 2019) (citing *National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 856 (1985)). In *National Farmers Union*, despite finding that a tribal court's adjudicative jurisdiction over a case was a federal question supporting federal court jurisdiction under 28 U.S.C. § 1331, the Court required that the issue of tribal jurisdiction first be litigated in tribal

court. 471 U.S. at 852. Acknowledging Congress' policy of supporting tribal self-government and self-determination, the court reasoned that "the first opportunity to evaluate the factual and *legal bases*" of challenges to tribal jurisdiction properly rests with the tribal courts, so that other courts may "benefit from their expertise." *Id.* at 856 (emphasis added). And that door swings both ways, giving the tribal court first opportunity to determine whether it should accept jurisdiction, as "[e]xhaustion of tribal court remedies, moreover, will encourage tribal courts to explain to the parties the precise basis for accepting jurisdiction, and will also provide other courts with the benefit of their expertise in such matters in the event of further judicial review." *Id.* at 857..

Iowa Mutual Ins. Co. v. LaPlante extended the exhaustion requirement, noting that the ability to unconditionally circumvent tribal jurisdiction in favor of federal jurisdiction would "infringe upon tribal law-making authority, because tribal courts are best qualified to interpret and apply tribal law." 480 U.S. 9, 16 (1987). Thus, "[a]t a minimum, exhaustion of tribal remedies means that tribal appellate courts must have the opportunity to review the determinations of the lower tribal courts." *Id.* at 17. "Until appellate review is complete, the [tribal courts] have not had a full opportunity to evaluate the claim and federal courts should not intervene." *Id.*

Here, Plaintiff filed a paternity action in the Cherokee Nation District Court seeking full custody of her child on March 3, 2022. The court dismissed the case on June 17, 2022, concluding that the Arizona state court in which Plaintiff originally filed was properly exercising jurisdiction. Plaintiff could have appealed the dismissal.

She failed to do so. Thus, even assuming Plaintiff could properly establish a waiver of sovereign immunity (she cannot), the Cherokee Nation District Court has concluded that it lacks jurisdiction to hear Plaintiff's child custody issues. That judicial determination became the law of the case when Plaintiff failed to appeal.

Now, Plaintiff seeks to use this Court as a makeshift appellate forum to "correct" the tribal district court's decision instead of relying on the Nation's own Supreme Court to litigate her arguments as tribal appellate procedure requires. *See* Cherokee Nation Code Annotated tit. 20, App. 1, Rule 50 *et seq*. Allowing that gambit would undermine tribal self-government, and weighs heavily in favor of dismissal of this action. *See Muscogee Creek Indian Freedmen*, 385 F. Supp. 3d at 21; *accord LECG, LLC v. Seneca Nation of Indians*, 518 F. Supp. 2d 274, 277 (D.D.C. 2007).

Plaintiff's failure to exhaust tribal remedies is fatal to her suit in this Court. Her Complaint should be dismissed.

B. Plaintiff's claims fail as a matter of law.

Additionally, Plaintiff's claims must be dismissed because they fail as a matter of law. Plaintiff alleges that the Cherokee Nation's courts have exclusive jurisdiction that they must exercise over disputes involving Nation citizens wherever they arise, *see* Compl., ECF No. 1 ¶¶ 21, 28, 35, based on the 1866 Treaty of Washington with the Cherokee, July 19, 1866, 14 Stat. 799 ("1866 Treaty"), *see* Compl., ECF No. 1 ¶ 36. That argument is simply wrong.

Plaintiff points to no authority establishing that the Nation's courts must exercise jurisdiction where they might be able to exercise it, even if that would be contrary to tribal law. She makes only a conclusory assertion that the Cherokee

Nation District Court is "obligated" to exercise jurisdiction over every case "which properly comes before it." Compl., ECF No. 1 ¶ 37. These legal conclusions are unsupported by any authorities or facts. The court is not obligated to accept them and should not. *See Browning*, 292 F.3d at 242.

As to her allegation that the Nation's courts have exclusive jurisdiction over off-reservation disputes involving Nation citizens, Plaintiff cites only to Article 13 of the 1866 Treaty, which provides that "the judicial tribunals of the nation shall be allowed to retain exclusive jurisdiction in all civil and criminal cases *arising within their country* in which members of the nation, by nativity or adoption, *shall be the only parties*, *or where the cause of action shall arise in the Cherokee Nation*, except as otherwise provided in this treaty." *Id*. (emphasis added). Plainly—and contrary to Plaintiff's assertion that the Nation's jurisdiction is based only on citizenship, not territory, *see* Compl., ECF No. 1 ¶ 23—this language only applies to causes of action arising "within" the Cherokee Nation's "country." That "country" is the Cherokee Nation Reservation. *See Hogner v. State*, 2021 OK CR 4, ¶¶ 9-11, 18, 500 P.3d 629, 631-34; *Spears v. State*, 2021 OK CR 7, ¶¶ 11-15, 485 P.3d 873, 876-77, *cert. denied* 142 S. Ct. 934 (2022). The boundaries of the Reservation are those described in the 1835 Treaty of New Echota, art. 2, Dec. 29, 1835, 7 Stat. 478, as modified made by the 1866 Treaty itself, *see* 1866 Treaty arts. 17, 21, and the Act of March 3, 1893, § 10, ch. 209, 27 Stat. 612, 640-43. *See* Cherokee Nation Const. art. II (describing the Nation's territorial jurisdiction). Arizona is not within those boundaries, and so Article 13 has no application to Plaintiff's dispute there.

Plaintiff points to some other federal law authorities which she alleges did not diminish the Nation's jurisdiction, but she never alleges that those authorities conferred exclusive jurisdiction on the Nation, and so they cannot serve to support her allegation of exclusive tribal jurisdiction off the Reservation. Although Plaintiff alleges that the Cherokee Nation Constitution vests tribal courts with off-reservation jurisdiction, nothing in Article VIII of the Constitution establishes that tribal courts have *exclusive* off-reservation jurisdiction. And in any event, a *Young* action cannot be used to award retroactive relief, such as Plaintiff seeks here by attempting to force a tribal court to take jurisdiction over a closed case that she herself abandoned by failing to appeal. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 105-06 (1984) ("[A]n award of retroactive relief necessarily 'fall[s] afoul of the Eleventh Amendment if that basic constitutional provision is to be conceived of as having any present force.' (quoting *Rothstein v. Wyman*, 467 F.2d 226, 237 (2d Cir. 1972) (McGowan, J., sitting by designation), *cert. denied*, 411 U.S. 921 (1973)).

CONCLUSION

For the foregoing reasons, the Cherokee Nation Defendants respectfully request that this Court dismiss Plaintiff's Complaint for lack of subject matter jurisdiction under Rule 12(b)(1) and failure to state a claim under Rule 12(b)(6).

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Respectfully submitted,

Dated: January 6, 2023

By: */s/ Frank S. Holleman*

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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2023, I electronically filed the above and foregoing document with the Clerk of Court via the ECF System for filing and caused it to be e-mailed to the Plaintiff's e-mail address listed in her signature on the complaint.

/s/ Frank S. Holleman
Frank S. Holleman