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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

TARA JEANNE AMBOH, as Uinta Band
Utah Indian,

Plaintiff,

v.

DUCHESNE COUNTY, a political
subdivision of the State of Utah and
Duchesne County, STEPHEN FOOTE,
Duchesne County Attorney, and
EIGHTH DISTRICT COURT,
DUCHESNE COUNTY,

Defendants.

**DEFENDANT EIGHTH DISTRICT
COURT'S REPLY TO PLAINTIFF'S
RESPONSE TO STATE OF UTAH'S
MOTION TO DISMISS**

Case No. 2:21-cv-00564

Judge Jill N. Parrish

Magistrate Judge Cecilia M. Romero

REPLY ARGUMENT

In response to Defendant State of Utah's Eighth Judicial District Court Motion to Dismiss ([Doc. 23](#)), Plaintiff Tara Amboh provides no relevant facts or substantive legal argument to suggest that Defendants' Motion should not be granted. For this reason alone, the motion may be granted.

In her Response, Plaintiff fails to rebut Defendant's argument or otherwise point to specific factual allegations contained in the complaint that state a plausible claim for relief. Because there is no additional information offered, the specific factual allegations supporting her claims is not readily apparent. When given the opportunity to address the complaint's deficiencies, Plaintiff does not address and defend her arguments.

Rather, Plaintiff in large part asserts new arguments not found in her complaint including the following:

- "actions involving money exchange through court cost or paying state court fees. . . is a violation of the Trade and Intercourse Acts of Congress"(Resp. at 6);
- "Congress created the Allotment Act without the consent of the Indian" (Resp. at 8); and
- "laches does not bar plaintiff Amboh." (Defendants did not make this argument) (Resp. at 11).

This Court may not consider new allegations as evidencing the existence of a plausible legal claim. "A motion to dismiss tests the allegations of the complaint,

not arguments made in briefing.” *Root v. Univ. of Utah*, No. 2:21-cv-00744, 2022 WL 2987317, at *3 (D. Utah July 28, 2022) (unpublished). Plaintiff must assert her arguments in the complaint – the operative document – rather than raising them in the Response. Because she has not, the Court should not consider them and dismiss the complaint.

Even if the Court were to review these new arguments and added facts, they do not remedy the problems highlighted in the Court’s motion:

- Plaintiff is foreclosed from suing the Eighth District Court or Judge Chiara in his official capacity because they are not a “persons” subject to suit under § 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 66 (1989).
- Plaintiff has not stated a plausible claim against the Eighth District Court—Plaintiff has alleged zero facts against it but merely named it in a caption. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also, e.g., Skyline Potato Co. v. Tan-O-On Mktg., Inc.*, No. , 2011 WL 13290274, at * 4 (D.N.M. Jan. 24, 2011) (unpublished) (dismissing a complaint against defendants named in the caption of the complaint where the body of the complaint lacked any factual or legal allegations against them).

- To the extent that Plaintiff has made claims against Judge Chiara, who presided over the prosecution of the State’s case against her, in his individual capacity, they are presumptively for conduct undertaken in his role as a judge, and are therefore barred under the doctrine of judicial immunity. *Mireles v. Waco*, 502 U.S. 9, 9–10 (1991); *Forrester v. White*, 484 U.S. 219, 225–26 (1988); *Stein v. Disciplinary Bd. of Supreme Court of NM*, 520 F.3d 1183, 1189–90 (10th Cir. 2008) (citing *Snell v. Tunnell*, 920 F.2d 673, 686 (10th Cir. 1990)); *Bailey v. Utah State Bar*, 846 P.2d 1278 1280 (Utah 1993) (recognizing judicial immunity barring state law causes of action). Plaintiff’s claim under the Indian Civil Rights Act (“ICRA”), 25 U.S.C. § 1303, fails to state a claim because ICRA does not provide a right of action for damages. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).
- Any recovery under state law is barred by the Governmental Immunity Act of Utah. Utah Code § 63G-6-201(1).
- The Federal Courts Improvement Act, and the Anti-Injunction Act, or the *Younger* abstention doctrine, prevent any claims for injunctive relief. 42 U.S.C. § 1983; 28 U.S.C. § 2283; *Younger v. Harris*, 401 U.S. 37, 41 (1971).

Because Plaintiff fails to rebut Defendants' original arguments in Defendants' Motion, and because the motion demonstrates Defendants' entitlement to dismissal, the Court should grant Defendants' motion and dismiss the case.

RESPECTFULLY SUBMITTED THIS 16th day of February, 2023.

OFFICE OF THE UTAH ATTORNEY GENERAL

/s/ Christiana L. Biggs
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CERTIFICATE OF SERVICE

I certify that on this 16th day of February, 2023, I electronically filed the foregoing, **DEFENDANT EIGHTH DISTRICT COURT'S REPLY TO PLAINTIFF'S RESPONSE TO STATE OF UTAH'S MOTION TO DISMISS**, using the Court's electronic filing system. I also certify that a true and correct copy of the foregoing was placed in outgoing, United States mail, postage prepaid, to the following:

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Plaintiff, pro se

/s/ Shaine Taylor