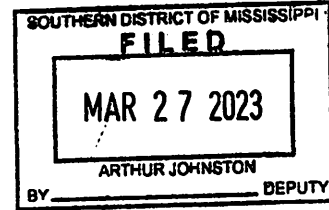


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**IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN  
DISTRICT OF MISSISSIPPI (NORTHERN DIVISION)**

HOWARD BROWN, )  
BRANDON SIBLEY )  
Plaintiffs, )  
V. ) Case No. 3:23-CV-0127-DPJ-FKB  
CHOCTAW RESORT DEVELOPMENT, )  
ET AL., )  
Defendants. )

**REPLY TO DEFENDANTS’ 12(b)(6) MOTION TO DISMISS**

**(ORAL ARGUMENT AGREED)**

COMES NOW the Plaintiffs, of their own accord and free will, to Reply in opposition to Defendants’ *12(b)(6) Motion to Dismiss*, filed by Counsel.

**I. PLAINTIFFS CONCEDE THEY FILED NO DOCUMENTS IN MBCI’S TRIBAL COURT; AS IT WAS NOT WARRANTED BY CHOCTAW CODE**

1. While the affidavit by Veronica Stephens (Doc. 6-9), filed by opposing counsel, is no-doubt a finely constructed affidavit; though it has zero (0) bearing on this case. Counsel, being a well-trained attorney with over forty-four (44) years’ experience, has undoubtedly read the documents he submitted with his *motion to dismiss*. Allow me to bring the Court’s attention to the *Choctaw Tribal Code §1-5-10 – Exhaustion of Administrative Remedies* which states:

*“No Court of the Mississippi Band of Choctaw Indians shall have jurisdiction to entertain any civil suit or action, or any privately initiated criminal complaint,*

***against the Mississippi Band of Choctaw Indians, the Tribal Council, a Tribal government agency or instrumentality, or any Tribal official or employee complaining of the official conduct thereof unless the plaintiff in such action has first exhausted Tribal administrative remedies in an effort to correct the matter complained of; provided, however, that suits, actions or complaints deriving from a decision of an independent agency of the Tribe created by the Tribal Council through provisions of the Tribal Code, such as the Choctaw Gaming Commission created under Title XV, may proceed directly from the independent agency to the Tribal Court without a written complaint having to be filed with the Chief.***

***To exhaust administrative remedies under this section, a petitioner, plaintiff or complaining witness must:***

- (1) “make a good faith effort to invoke and comply with all then existing, reasonable administrative procedures for handling disputes, grievances or complaints applicable to the office or department in which the matter arose; and”***
- (2) “upon compliance with subsection (1) file a written complaint with the Tribal Chief setting out the basis for the complaint and the administrative remedies pursued to correct the matter complained of, with the exception of complaints concerning the decisions of independent agencies, in which case a complaint need not be filed with the Chief.”***
- (3) If the Tribal Chief’s final action on the complaint does not satisfy the complaining party, or if the Tribal Chief has taken no action on the complaint within twenty (20) days of the date it was filed, the complaining party shall be deemed to have exhausted administrative remedies for purposes of this section.***
- (4) Any complaint in the Tribal Court against the Mississippi Band of Choctaw Indians, the Tribal Council, a Tribal government agency or instrumentality or any Tribal official or employee complaining of the official conduct thereof, which fails to demonstrate on its face that the filing party has complied with the requirements of this section shall be dismissed by the court without prejudice to that party’s right to file the suit again when and if these requirements have been met.***

2. Plaintiffs complied with *Choctaw Tribal Code §1-5-10(1)* in late October of 2021, and that letter was received by the Tribe on November 2, 2021, by certified mail bearing #7019 2280 0000 9999 8870. (Exhibit G)

3. Interestingly enough, the Plaintiffs offered to settle this case for \$50,000.00. In light of the nearly \$1 Billion COVID relief money received by the Tribe to date, and the hefty bill Mr. Rogers is running up that would have been very reasonable.

4. Plaintiffs received a denial letter dated October 28, 2021, from the Risk Management Clerk, Jarred Montoya, in response to their first letter regarding their claim (Exhibit H)

5. Plaintiffs complied with *Choctaw Tribal Code §1-5-10(2)* in April of 2022. (Exhibit I)

6. Defendant Ben failed to respond or act with the twenty (20) days allowed by *Choctaw Tribal Code §1-5-10(3)*

7. Now, let me bring the Court's attention to the *Choctaw Tort Claims Act* (Doc. 6-8 on page 8) §25-1-6 'Statute of Limitations; Notice of Claim Requirements and Administrative Exhaustion. It states as follows:

***(1) Any person having a claim for injury arising under the provision of this Title against the Tribe or an employee of the Tribe acting within the course and scope of his employment shall be required, and hereby is required, to first make such claim with the Tribe by filing a Notice of Claim with the Attorney General of the Tribe within one (1) year after the date of the tortious, wrongful, or otherwise actionable conduct on which the liability phase of the action is based. The Notice of Claim shall be in writing, delivered in person or by registered or certified United States Mail. Every Notice of Claim shall contain a short and plain statement of the facts upon which the claim is based, including the circumstances which brought about the injury, the extent of the injury, the time and place the injury occurred, the names of all persons known to be involved, the amount of money damages sought, and the residence of the person making the claim at the time of the injury and at the time of the filing of the Notice. The Choctaw Attorney General shall have six (6) months to review and evaluate any such claims and make a recommendation to the Tribal Chief as to whether and on what terms settlement may be advisable. This administrative review period constitutes an administrative exhaustion procedure respecting tort claims within the meaning of §1-5-10(2)(a), Choctaw Tribal Code.***

**(2) No lawsuit shall be filed upon any such claim until and unless the six (6) month administrative review period created by §25-1-6(1) shall have expired and the other administrative exhaustion requirements of §1-5-10, Choctaw Tribal Code, have been satisfied.**

8. The *Choctaw Tort Claims Act §25-1-6 (1)* first asks that a Plaintiff petition the Attorney General for permission to sue; Plaintiffs complied. **(Exhibit A of Doc.**

**1.)** Next, the *Choctaw Tort Claims Act §25-1-6 (1)* refers to the *Choctaw Tribal Code §1-5-10(2)* which, as stated above, Plaintiffs complied with in April of 2023. **(Exhibit I)**

9. Finally, the *Choctaw Tort Claims Act §25-1-6 (2)* refers to the *Choctaw Tort Claims Act §25-1-6 (1)* and the *Choctaw Tribal Code §1-5-10(1)*; As stated above, the Plaintiffs have satisfied all of the conditions set forth for exhausting administrative remedy.

10. Should Counsel and the Tribe ignore the time Plaintiffs spent in District Court in the remedy of this issue that would cause prescription referenced in the *Choctaw Tort Claims Act §25-1-6(1)* then, once again, Plaintiffs have exhausted administrative remedy.

11. On page 13 of his *memorandum in support of the Motion to Dismiss (Doc. 6)* Mr. Rogers states that, “Plaintiffs did not thereafter seek any judicial relief in the Choctaw Tribal Court to challenge that denial on a tolling or any other theory regarding the Choctaw Attorney General’s rejection of their tort claim.”

12. While Plaintiff’s realize that it is Mr. Rogers job is to exhaust the Plaintiffs’ resources, delay proceedings, bring up issues outside of the complaint, and increase litigation expense, Mr. Rogers cites NO PRECEDENT, NO CASE LAW, and NO

RULE that would allow for an end run around the Attorney General's rejection of the Plaintiffs' claims based on an affirmative defense of Statute of Limitations.

13. Further, Plaintiffs do not seek to challenge the authority of the Choctaw Attorney General or the policies she has in place to accept or deny claims, much less reconfigure Tribal government; merely to redress for the crimes committed against Plaintiffs at the Tribe's Casino.

14. This is nothing short of harassment of the Plaintiffs.

15. Mr. Rogers wants to put Plaintiffs in an endless cycle of futile efforts before he places any facts on the record about the incident in question.

16. Mr. Rogers has failed to state even one (1) case that describes a Plaintiff similarly situated as the Plaintiffs here. Plaintiffs are not a corporations and the Plaintiffs; here have made a claim regarding unalienable right violations, which corporations cannot do, along with Federal Questions which cannot be answered in Tribal Court and ONLY be adjudicated in an Article III Courtroom.

17. The Tribal Court is NOT nor will EVER BE an Article III Court.

18. Clearly, the Tribe knew what they were doing was wrong, because they promptly suspended the mask policy upon the filing of this lawsuit

19. Plaintiff Brown, while filming with his phone, entered the UTE Indian Mountain Casino in Colorado back in August of 2022.

20. ALL Casino doors were locked, a fire hazard, and the only entrance was through the main entrance of the attached hotel. **(Video available upon request)**

21. Seven (7) days after Plaintiff Brown entered this Casino while filming and questioning an older white gentleman in the Casino's Management, that tribe also suspended its mask policies. This is no coincidence, and Plaintiff Brown expects to see Carl Bryant Rogers on the other end of that lawsuit in the near future.

## II. CONCLUSION

Since the Choctaw Tribal Court can be nothing other than an administrative court, then it appears from reading the *Choctaw Tribal Code* and the *Choctaw Tort Claims Act* that the Plaintiffs have now exhausted their administrative remedies. The *Choctaw Tort Claims Act §25-1-6(2)* specifically states that "No lawsuit shall be filed upon any such claim until and unless the six (6) month administrative review period created by *§25-1-6(1)* shall have expired and the other administrative exhaustion requirements of *§1-5-10, Choctaw Tribal Code*, have been satisfied. If the Choctaw Tribal Court wanted this action in their jurisdiction, then the Attorney General for the Choctaws, Cheryl Hamby, would have so stated, by granting Plaintiffs the right to sue in Tribal Court.

Plaintiffs clearly warned the Attorney General in their letter (**Exhibit I**) about the tolling that was necessarily paused for the duration of the action in Federal District Court, and she freely chose to relinquish jurisdiction over Plaintiffs' claims in Choctaw Tribal Court.

Whether the Statute of Limitations for the administrative Choctaw Tribal Court is up or not, Plaintiffs have done their due diligence in following the rules pointed

out by Mr. Rogers. Plaintiffs cannot be blamed for the fact that the Mr. Rogers and his clients are not on the same page regarding this claim. It seems as if the Attorney General might have erred in the denial of Plaintiffs' claims, considering that nearly \$1 Billion in Federal COVID relief monies is now at stake; should Defendants be convicted of discrimination in Federal Court.

If the Tribe wishes to avoid this possible surrender of Federal COVID monies, then Plaintiffs suggest that they admit their wrong and take out their checkbook. Should this Court stay or dismiss these proceedings based on failure to exhaust Tribal Court remedy, then Plaintiffs will appeal to the 5<sup>th</sup> Circuit.

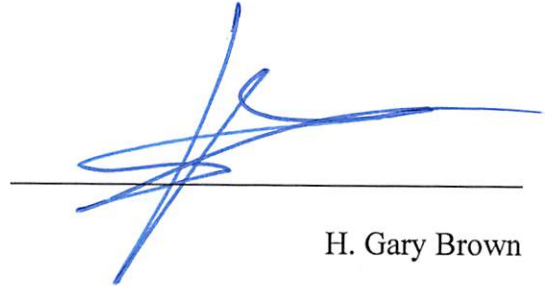
Now, Plaintiffs realize that it is the job of Mr. Rogers to delay proceedings and attempt to exhaust the Plaintiffs' resources by forcing filing fees in this court and that on his clients' behalf, but his clients have been given the opportunity to accept jurisdiction and they have clearly refused. Therefore, Plaintiffs are left with ONLY this Court as their sole authority to redress for grievances.



Howard Brown, *Pro Se*

**CERTIFICATE OF SERVICE**

UNDER PENALTY OF PERJURY, I CERTIFY that a copy of the foregoing was provided by regular U.S. mail to C. Bryant Rogers, counsel of record for the Defendants at Post Office Box 1447 in Santa Fe, New Mexico 87504-1447 this 24<sup>th</sup> day of March, 2023.



H. Gary Brown

STATE OF LOUISIANA

EAST BATON ROUGE PARISH

BEFORE ME personally appeared Howard Gary Brown who, being by me first duly sworn and identified in accordance with Louisiana law, did execute the foregoing in my presence this 24<sup>th</sup> day of March, 2023



*Sharon M. Odom*  
Sharon M. Odom, Notary No. 67667  
My commission expires: *At Death*