

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

_____)	
THE STATE OF MICHIGAN,)	Case No. 1:12-cv-00962-RJJ
)	
Plaintiff,)	Hon. Robert J. Jonker
)	
vs.)	
)	
THE SAULT STE. MARIE TRIBE OF)	
CHIPPEWA INDIANS,)	
)	
Defendant.)	
)	
_____)	

JOINT MOTION AND STIPULATION

Plaintiff the State of Michigan and Defendant the Sault Ste. Marie Tribe of Chippewa Indians have reached an agreement to resolve the two motions now pending before the Court in this matter. If approved by the Court, the parties' agreement would make the motions hearing currently scheduled for December 9, 2014 unnecessary. The parties respectfully request that the Court adjourn the December 9 hearing and enter the attached proposed order.

The first pending motion is the Tribe's renewed motion to dismiss. Dkt. No. 48. In briefing that motion, the parties agreed that the four counts of the State's complaint against the Tribe must be dismissed in light of the Sixth Circuit's decision in this case. Dkt. No. 42. To resolve remaining disagreement about the prejudicial effect of dismissal of those counts, the parties have agreed on language for a proposed order of dismissal. The language the parties have agreed on is intended to preserve whatever arguments they may have concerning the prejudicial effect of dismissal, should that question arise in future litigation. If that language is acceptable to the Court, the parties respectfully request that the Court enter the proposed order.

The second pending motion is the State's motion under Federal Rule of Civil Procedure 54(b) (Dkt. No. 53) to revise the Court's prior order dismissing claims against individual officers of the Tribe. In briefing this motion, the State has made clear that it intends to pursue new claims against tribal officers in an amended pleading. *See* Dkt. No. 60, at 8-9 & n.3. To relieve the Court of the burden of addressing the Rule 54(b) motion, the parties have agreed to a proposed framework that, if acceptable to the Court, would permit the efficient and orderly consideration of the claims that the State intends to pursue.

Specifically, the parties propose that the State file an amended complaint including its additional claims (if any). The Tribe and its officers will not oppose the State's amendment of its complaint and hereby provide the written consent required for the amendment under Federal Rule of Civil Procedure 15(a)(2). After the amended complaint is filed, the Tribe and its officers anticipate that they will move to dismiss it. Defendants reserve all rights to object to the amended complaint, except that they will not argue that the State was required first to seek to modify the Court's prior order under Rule 54(b).

The joint proposed order includes a suggested schedule for this process. The State would file an amended complaint within 60 days of the entry of the parties' proposed order. Defendants would have 45 days from the filing of the amended complaint to move to dismiss it. The State would have 30 days to file a response in opposition to dismissal, and Defendants would have 15 days to file a reply.

If approved by the Court, this proposed framework and schedule would moot the State's pending Rule 54(b) motion. In seeking this Court's approval of this framework, the parties agree and stipulate that neither the Tribe nor individual tribal officials waive any argument for

dismissal of, or in opposition to, any claim the State may pursue against the Tribe or its officers (other than the necessity of first securing Rule 54(b) relief).

THE STATE OF MICHIGAN

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Dated: December 2, 2014

Respectfully submitted,

THE SAULT STE. MARIE TRIBE OF
CHIPPEWA INDIANS,

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