STATE OF WISCONSIN CIRCUIT COURT BROWN COUNTY

KAREN KATCH,

Plaintiff,

v.

Case No.: 07CV2446
Case Code: 30106

MELINDA DANFORTH, PAUL NINHAM, TRISH KING, MERCIE DANFORTH, KATHY HUGHES, GERALD DANFORTH, PATTY NINHAM-HOEFT, CAROL LIGGINS, PERIL HUFF, WANDA DIEMEL, and PAULA KING DESSART,

Defendants.

PLAINTIFF'S BRIEF IN RESPONSE TO DEFENDANTS' MOTION TO DISMISS

I. PRELIMINARY STATEMENT

Defendants' motion to dismiss must be denied for two simple reasons. First and foremost, Congress has granted jurisdiction to state courts to adjudicate civil claims involving Indians or in which Indians are parties. This has been a long-standing principle since 1953 and has equal application where the particular Indians involved are employees or officials of the tribe.

Second, the Oneida Tribe of Indians of Wisconsin (the "Oneida Tribe" or "Tribe") has waived sovereign immunity in this case. As set forth below, the Oneida Tribe's Legal Department confirmed to Plaintiff, Karen Katch ("Katch"), that she legally could maintain an action in a State of Wisconsin Circuit Court alleging contract and/or tort claims against other tribal members, even where those tribal members are officers or officials. Moreover, the Oneida Tribe's Legal Department stipulated that it would not file a motion to dismiss based upon

sovereign immunity in a case brought by an Administrative Assistant to the Tribe's Business Committee (such as Katch) alleging contract and/or tort claims against members of the Business Committee (such as Defendants) even where the allegations involved officials of the Business Committee and tribal policies and procedures.

Below, Katch conscientiously and diligently unpacks and disproves the arguments raised by Defendants in their motion to dismiss. At the end of the day it is clear that Defendants' arguments are without merit and that its motion to dismiss must be denied in its entirety.

II. ARGUMENT

A. Plaintiff's Claims are not Barred by Federal or State Common Law.

1. History of Oneida Tribe and Federal Law

The U.S. District Court for the Eastern District of Wisconsin recently had occasion to review the history of the Oneida Tribe and the applicability of federal laws to the Tribe. *See Oneida Tribe of Indians of Wisconsin v. Village of Hobart, WI, 2008 WL 821767, *1-*4 (E.D. Wis. 2008).* The Oneida Tribe first established its reservation in 1838 pursuant to a Treaty between the United States and the Tribe. *Id.* At that time in history, the "several Indian nations [constituted] distinct political communities, having territorial boundaries, within which their authority [was] exclusive...." *Id., citing Worcester v. Georgia, 6 Pet. 515, 556-57 (1832).* However, the Constitution granted Congress the ability to regulate Commerce within Indian Tribes, and Congress determined "that all intercourse with [the tribes] would be carried on exclusively by the Federal Government." *Id., citing County of Yakima v. Confederated Tribes and Bands of Yakima Nation, 502 U.S 251 (1992).*

In the latter part of the 19th century and early part of the 20th century, the United States passed legislation with the purpose of assimilating American Indians into mainstream American

culture. *Id., citing General Allotment Act of 1887, 25 U.S.C. § 331 et seq., and the Burke Act of 1906, 25 U.S.C. § 349.* In 1934, however, the United States changed its outlook from Indian assimilation to Indian sovereignty. *Id.* Among other things, the Indian Reorganization Act of 1934 ("IRA") "permitted tribes to organize and adopt constitutions with a congressional sanction of self-government, and it permitted tribes to form business committees or business corporations." *Id., citing, 25 U.S.C. § 476.* Pursuant to the IRA, the Oneida Tribe enacted its Constitution and By-Laws in 1936. *Id.*

Then, in 1953, Congress enacted Public Law 83 – 280 ("Public Law 280"). Public Law 280, which is comprised of three federal statutes, transferred legal authority effecting Indian tribes from the federal government to state governments. *See 18 U.S.C. §1162, 28 U.S.C. §1360, and 25 U.S.C. 1321-1326.* In particular Public Law 280 gave six states extensive criminal and civil jurisdiction over Indian lands. *Id.* The State of Wisconsin was one of the six states named under Public Law 280. *Id.*

The relevant text of Public Law 280[1] states as follows:

> **18 U.S.C. §1162. State Jurisdiction over offenses committed by or against Indians in the Indian country.**
>
> **(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:**
>
> ***State or Territory*** ***Indian country affected***

[1] The full text of Public Law 280 is attached hereto as Exhibit A.

of	
Alaska	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country within the State.

28 U.S.C. § 1360. STATE CIVIL JURISDICTION IN ACTIONS TO WHICH INDIANS ARE PARTIES .

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	*Indian country affected*
Alaska	All Indian country within the State.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation.

Wisconsin All Indian country within the State.

25 U.S.C. § 1321. ASSUMPTION BY STATE OF CRIMINAL JURISDICTION

(a) *Consent of United States; force and effect of criminal laws*
The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

25 U.S.C. § 1322. ASSUMPTION BY STATE OF CIVIL JURISDICTION

(a) *Consent of United States; force and effect of civil laws*
The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

...

(c) *Force and effect of tribal ordinances or customs*
Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

See 18 U.S.C. §1162, 28 U.S.C. §1360, and 25 U.S.C. §1321 & §1322.

Section 2 of Public Law 280, 18 U.S.C. §1162, granted the State of Wisconsin broad criminal jurisdiction over offenses committed by or against Indians. Section 4 of Public Law 280, 28 U.S.C. §1360, granted the State of Wisconsin broad civil jurisdiction over civil actions involving Indians. However, Public Law 280 does not grant the State of Wisconsin general civil regulatory authority. *See Bryan v. Itasca County, 426 U.S. 373 (1976).*

Congress' enacted Public Law 280 for the purpose of correcting the "problem of lawlessness on certain Indian reservations, and the absence of adequate tribal institutions for law enforcement." *Bryan, at 379,* citing, *Goldberg, Public Law 280: The Limits of State Jurisdiction over Reservation Indians, 22 U.C.L.A.L.Rev. 535, 541-542 (1975).* With regard to the grant of civil authority to the states, the *Bryan* Court went on to explain that:

> **"the sparse legislative history of s 4, subsection (a) seems to have been primarily intended to redress the lack of adequate Indian forums for resolving private legal disputes between reservation Indians, and between Indians and other private citizens, by permitting the courts of the States to decide such disputes; this is definitely the import of the statutory wording conferring upon a State 'jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in . . . Indian country . . . to the same extent that such State . . . has jurisdiction over other civil causes of action.' With this as the primary focus of s 4(a), the wording that follows in s 4(a) 'and those civil laws of such state . . . that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State' authorizes application by the state courts of their rules of decision to decide such disputes....The Act and its legislative history virtually compels our conclusion that the primary intent of s 4 was to grant jurisdiction over private civil litigation involving reservation Indians in state court."**

Bryan, at 383-84 (bold added). The Court further explained that several tribal reservations were specifically exempted from Public Law 280 because those reservations had adequate "law-and-order organizations" in place. *Id.,* citing *H.R.Rep.No.848, p. 7, U.S.Code Cong. & Admin.News 1953, p. 2413.* As Justice Diane S. Sykes of the Wisconsin Supreme Court put it, "Public Law

280 concerns providing Indian litigants with jurisdictional options beyond the tribal courts, not depriving tribal courts of jurisdiction that they otherwise rightfully possess as the courts of an independent sovereign." *Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians, 265 Wis.2d 64, 665 N.W.2d 899 (2003).* Wisconsin Courts have applied Public Law 280 consistently since its enactment. *See Teague; In re Commitment of Burgess, 258 Wis.2d 548, 654 N.W.2d 81 (2002); State ex rel. Lykins v. Steinhorst, 197 Wis.2d 875, 541 N.W.2d 234 (Wis.App. 1995).*

2. Defendants' Sovereign Immunity and Preemption Arguments Fail

Generally speaking, Indian Tribes enjoy sovereign immunity from lawsuits. *See Landreman v. Martin, 191 Wis.2d 787, 801, 530 N.W.2d 62 (Ct.App. 1995),* citing *Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).* Indian tribes can be sued only under circumstances where Congress has authorized the suit or the tribe has waived its sovereign immunity. *See Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc., 523 U.S. 751, 754 (1998) (citations omitted).*

Immunity from lawsuits applies to the Tribe, itself, not to its members. *See Landreman, at 801.* As discussed above, individual members of Indian tribes may be sued civilly in state courts pursuant to Public Law 280. The only circumstance under which an individual tribal member might enjoy sovereign immunity is where: (1) he or she is an officer or official of the tribe; and (2) he or she is being sued for an act committed within the scope of his or her representative capacity. *Id.,* citing *Davids v. Coyhis, 869 F.Supp. 1401, 1409 (E.D. Wis. 1994) (stating that the officers would be acting outside the scope of their representative capacity if their actions violated the law)(citation omitted).* Logically speaking, if the party-tribal member either is not an official or is not acting within the scope of his or her representative capacity,

sovereign immunity does not apply. *See Burlington Northern R. Co. v. Blackfeet Tribe of Blackfeet Indian Reservation, 924 F.2d 899 (9th Cir. 1991) (reversed on other grounds),* citing *Puyallup Tribe, Inc. v. Department of Game, 433 U.S. 165, 171 (1977).*

One test for determining whether the tribal officer or official was acting within the scope of his or her representative capacity is to investigate the intent of the alleged act and the outcome of the alleged act. If the alleged act was done with the intent for personal gain and not in furtherance of any legitimate tribal goal, the act falls outside the scope of his or her representative capacity. *See Landreman at 802-03.* Similarly, if the alleged act resulted in some personal gain to the officer or official and not in a gain to the Oneida Tribe, the act falls outside the scope of his or her representative capacity. *Id.*

However, if the tribal officer or official is accused of violating the law, he or she is not acting within the scope of his or her representative capacity, and, therefore, tribal sovereign immunity does not apply. *See Burlington at 901,* citing *California v. Harvier, 700 F.2d 1217, 1218-20 (9th Cir. 1983);* see also *Santa Clara Pueblo, Chemehuevi Indian Tribe v. Calif. Bd. Of Eqaulization, 757 F.2d 1047, 1051-52 (9th Cir. 1985) (rev'd in part on other grounds).* Indeed, litigants may file and maintain lawsuits against tribal officials for the purpose of enjoining violations of state law. *See Puyallup Tribe, Inc., at 171.*

a. Sovereign Immunity Does Not Apply to Defendants Liggins, Diemel, Huff, and Dessart because they are not Officers or Officials of the Oneida Tribe.

Defendants state in their brief that defendants Carol Liggins ("Liggins"), Wanda Diemel ("Diemel"), Peril Huff ("Huff") and Paula King Dessart ("Dessart") are employed in an administrative capacity. *Def. Br. at 2.* In particular, Liggins and Diemel serve as Administrative Aides while Huff and Dessart serve as Administrative Staff. *Id.*

Defendants argue that "[they] *are officials and employees of the Oneida Tribe, and are entitled to protection of sovereign immunity*." *Def. Br. at 6* (emphasis added). However, Defendants already conceded that Liggins, Diemel, Huff and Dessart are not officers or officials with the Oneida Tribe. Indeed, Defendants have not submitted any evidence, by affidavit or otherwise, confirming that any of these individuals are officers or officials of the Oneida Tribe.

The *Landreman* Court specifically stated, which Defendants quoted in their brief, that "Tribal **officers**...share the tribe's immunity if their actions are within the scope of their representative capacity." *Landreman, at 801 (emphasis added).* Liggins, Diemel, Huff and Dessart are not Tribal officers. Defendants have conceded this fact. Therefore, tribal immunity does not and cannot apply to these four defendants.

b. Defendants Were Not Acting Within the Scope of their Representative Capacities.

As the *Burlington* Court made clear, a tribal officer or official is not acting within the scope of his or her representative capacity if he or she is alleged to have violated the law. *See Burlington at 901.* Certainly, the Oneida Tribe and Defendants would agree that the tribe's officers and officials are expected and have an obligation to comply with any and all applicable laws, regulations, and ordinances. And, certainly the Oneida Tribe and Defendants would agree that engaging in conduct in violation of those laws, regulations, and ordinances would be a personal act of the individual tribal member and not an act of the Oneida Tribe.

Here, Katch has alleged that Defendants have engaged in unlawful conduct. Specifically, she alleged that Defendants engaged in the unauthorized invasion of privacy, in violation of Wis. Stat. § 995.50; intentionally interfered with her contract; breached the implied covenant of good faith and fair dealing; and engaged in a civil conspiracy. Moreover, Katch will establish that

Defendants conducted also violated Oneida Tribe policies, procedures and laws. In light of *Burlington*, these alleged unlawful acts require a finding that Defendants acted outside the scope of their respective representative capacity. Therefore, tribal immunity does not apply in this case.

c. The Oneida Tribe has Waived Sovereign Immunity in this Case.

As stated above, Indian tribes can be sued only under circumstances where Congress has authorized the suit or the tribe has waived its sovereign immunity. *See Kiowa Tribe of Oklahoma, 523 U.S. 751.* Katch already has demonstrated that Congress authorized her lawsuit pursuant to Public Law 280 and applicable common law. Katch also is able to demonstrate that the Oneida Tribe waived its sovereign immunity in this case.

On October 26, 2007, Katch's legal counsel contacted the Oneida Tribe's Legal Department and spoke with attorney Nelsen Wahlstrom. *McDonald Aff. at ¶ 2.* Katch's counsel contacted the Oneida Tribe's Legal Department to discuss the circumstances under which a tribal official could be sued in state circuit court. *McDonald Aff. at ¶ 2.* In particular, Katch's counsel explained to the Oneida Tribe's Legal Department that his law firm represented a female employed by the Oneida Tribe as an Administrative Assistant to the Tribe's Business Committee. *McDonald Aff. at ¶ 2.* Katch's counsel further explained that his client had potential contract and tort claims against individual tribal members seated on the Business Committee, and specifically stated that, in his estimation, several of these individuals were officers of the Business Committee. *McDonald Aff. at ¶ 2.*

Katch's counsel and the Oneida Tribe's Legal Department then discussed the application of Public Law 280 to the facts presented by Katch's counsel. *McDonald Aff. at ¶ 3.* At that time, the Oneida Tribe's Legal Department stated to Katch's legal counsel that a lawsuit could be

maintained in a State of Wisconsin Circuit Court alleging contract and/or tort claims against the individuals referenced by Katch's counsel, including, but not limited to, officers of the Business Committee, and that such action, if filed, would not be met with a motion to dismiss based upon sovereign immunity by the Tribe. *McDonald Aff. at ¶ 3.* The Oneida Tribe's Legal Department further stated that such an action could be maintained even if the allegations involved a potential violation of Oneida Tribe's policies and procedures. *McDonald Aff. at ¶ 3.* The Oneida Tribe's Legal Department supported its determination by explaining that the Oneida Tribe does not have a statute or common law rule granting individuals a private right of action to sue another tribal member under the Tribe's current adjudicatory system.[2] *McDonald Aff. at ¶ 3.*

Katch filed her Complainant with the Brown County Circuit Court in reliance on the Oneida Tribe's waiver of sovereign immunity and stipulation to not file a motion to dismiss on the grounds of sovereign immunity.[3] Indeed, Katch was surprised to learn that Defendants filed a motion to dismiss based upon sovereign immunity.

Since the Oneida Tribe has waived sovereign immunity in this case, its motion to dismiss must be denied in its entirety.

3. Defendants' Comity Argument Fails

Contrary to Defendants' contention, Wisconsin courts have refused jurisdiction involving tribal members in limited situations. As noted above, Public Law 280 grants state courts the authority to adjudicate lawsuits involving Indians or in which Indians are named as parties. The case cited by Defendants, *Mills v. Vilas County Board of Adjustments*, 261 Wis.2d 598, 660

[2] Interestingly, this is the primary reason for Congress enacting Public Law 280.
[3] This is not to say that Katch would not have filed her claims with the Brown County Circuit Court absent the Oneida Tribe's waiver of sovereign immunity, as she already has demonstrated that such waiver is not required in this case.

N.W.2d 705 (Ct.App. 2003) involved interpretation of the tribe's constitution and legislative actions.

The present case does not involve interpretation of the Oneida Tribe Constitution or any legislative action. Rather, Katch has filed a run-of-the-mill civil action falling under the umbrella of Public Law 280. This situation fits more squarely under the Court's rationale of *Teague*, where the Court explained that "[c]omity, being a rule of practice and not a rule of law, rests upon the exercise of sound judicial discretion." *Teague, 236 Wis.2d at 406.* The Court then encouraged state courts and tribal courts to engage in a dialogue where competing interests might arise. *Id. at 407.*

Put simply, Defendants' reliance on the principles of comity is misplaced. While the principles of comity may have application in some cases, it certainly does not have any application here. Therefore, Katch's lawsuit cannot be dismissed under the principles of comity, or under any other law or principle for that matter.

C. Plaintiff has Stated a Claim for Which Relief Can be Granted.

A motion to dismiss for failure to state a claim upon which relief can be granted tests the legal sufficiency of the plaintiff's complaint. *See Doe v. Archdiocese of Milwaukee, 211 Wis.2d 312, 331, 565 N.W.2d 94 (1997).* To determine whether the plaintiff has stated a claim upon which relief can be granted, the test applied by the court is whether the "complaint contains sufficient details to give the defendant and the court a fair idea of what the plaintiff is complaining about. *See Wolnak v. Cardiovascular & Thoracic Surgeons, 287 Wis.2d 560, 706 N.W.2d 667 (Ct.App. 2005).*

The facts alleged in the complaint and all reasonable inferences drawn therefrom are taken as true under a motion to dismiss. *See Doe v. Archdiocese of Milwaukee, 211 Wis.2d at*

320 (citation omitted). A claim cannot be dismissed "unless it appears to a certainty that no relief can be granted under any set of facts that plaintiff can prove in support of his allegations." *See* Morgan v. Pennsylvania General Ins. Co., *87 Wis.2d 723, 732, 275 N.W.2d 660 (1979).*

Defendants contend that Katch's Complaint should be dismissed because it allegedly does not comply with Wisconsin's notice pleading statute. Section 802.08 of the Wisconsin Statutes governs the manner in which pleadings must be drafted. In pertinent part, section 802.08 states:

> "802.02 General rules of pleading.
>
> (1) Contents of pleadings. A pleading or supplemental pleading that sets forth a claim for relief, whether an original or amended claim, counterclaim, cross claim or 3rd-party claim, shall contain all of the following:
>
> (a) **A short and plain statement of the claim, identifying the transaction or occurrence or series of transactions or occurrences out of which the claim arises and showing that the pleader is entitled to relief.**
>
> (b) A demand for judgment for the relief the pleader seeks.

Wis. Stat. § 802.02(1) (emphasis added).

Wisconsin's notice pleading statute does not require the complaining party to provide a comprehensive statement of facts. *See* Lacy v. Huibregtse, *2008 WL 961138 (Wis.App. 2008) (publication pending),* citing *Wis. Stat. § 802.02(1).* Rather, the complaining party need "only give the opposing party fair notice of what the claim is and the grounds upon which it is based." *See* Hertlein v. Huchthausen, *133 Wis.2d 67, 72, 393 N.W.2d 299 (Ct.App. 1986).* **Indeed, even where the complaint is barebone or conclusory, the complaint passes muster under Wis. Stat. § 802.02(1).** *See* Grams v. Boss, *97 Wis.2d 332, 294 N.W.2d 473 (1980) (abrogated on other grounds).*

In *Grams*, the plaintiffs alleged that their licenses had been terminated; that they had been ridiculed and disparaged; that "defendants' conduct was intended and designed to force plaintiffs out of business; and that defendants' conduct constituted a conspiracy in 'restraint of trade.'" *Grams, at 352.* The Court then drew an inference from the allegations that "but for the illegal restraint the plaintiffs could be competing in the sale of AHS insurance contracts and that its being restrained has adverse effects on competition." *Id.* While noting that the complaint could have included additional information, the Court held that the plaintiffs' barebone and conclusory allegations, in fact, stated a claim on which relief could be granted. *Id.*

In the present case, Katch set forth several factual allegations followed by very specific legal claims incorporating her factual allegations. As stated above, Wisconsin's notice pleading statute requires only that the defendants be put on notice of what Katch is complaining about. *See Heartlein, 133 Wis.2d at 72.* Defendants clearly have notice of what Katch is complaining about, as they have specifically addressed each and every legal claim in detail in their brief. *Def. Br. at pp. 10-16.* For Defendants to argue otherwise is disingenuous.

Therefore, in accordance with Wis. Stat. § 802.02 and the litany of cases concerning notice pleading in the State of Wisconsin, Katch has complied with Wisconsin's notice pleading statute. Defendants' motion to dismiss must be denied in its entirety.

D. Defendants Improperly Requested this Court to Consider Imposing Sanctions Under Wis. Stat. § 802.05(3).

Wisconsin Statute Section 802.05(3) authorizes the Court to impose sanctions against a party where he or she has not made a reasonable inquiry into the facts and law governing the case. *See Wis. Stat. § 802.05(2) and (3).* To do so, however, the party seeking sanctions must comply with the requirements of 802.05(3), which states in pertinent part:

> "(3) **Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that sub. (2) has been violated, the court may impose an appropriate sanction upon the attorneys, law firms, or parties that have violated sub. (2) or are responsible for the violation in accordance with the following:
>
> (a) *How initiated.* 1. "By motion." A motion for sanctions under this rule **shall be made separately from other motions or requests** and shall describe the specific conduct alleged to violate sub. (2). The motion shall be served as provided in s. 801.14, but **shall not be filed with or presented to the court unless, within 21 days after service of the motion or such other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.** If warranted, the court may award to the party prevailing on the motion reasonable expenses and attorney fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees."

Wis. Stat. § 802.05(3) (emphasis added).

This statue imposes two very simple requirements on Defendants. First, Defendants cannot include a motion for sanctions within another motion or request. *Id.* Second, even if Defendants had submitted a separate motion for sanctions (which they did not), they were required to present the motion to Plaintiff and permit Plaintiff to investigate the motion for 21 days before filing the same with the Court. *Id.*

Defendants failed to comply with either requirement of Wis. Stat. § 802.05(3). Therefore, its request must be denied without more. In the event Defendants do wish to file such a motion, it must be drafted separately and contain specific references to the record and law in support of its motion before presenting the same to Plaintiff. Defendants are hereby on notice that Plaintiff does not consider the one-sentence statement on page 3 of their motion to dismiss a motion for sanctions under Wis. Stat. § 802.05(3).

Finally, even assuming that Defendants had properly filed a motion for sanctions (which they did not), the foregoing discussion makes clear that Plaintiff's claims are well based in fact

and law. Therefore, Defendants' request for the Court to consider imposing sanctions must be denied in its entirety.

III. CONCLUSION

For all these reasons, Plaintiff respectfully requests this Court to deny Defendants' motion to dismiss in its entirety.

Dated at Milwaukee, Wisconsin this 14th day of April, 2008.

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