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**IN THE
HO-CHUNK NATION TRIAL COURT**

Leilani Jean Chamberlain,
Plaintiff,

v.

Case No.: **CV 05-109**

**Adam Hall, Enrollment Officer of the Ho-
Chunk Nation,**
Defendant.

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**ORDER
(Motion Granted – In Part)**

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INTRODUCTION

The purpose of this order is to address *Plaintiff's Statement of Unresolved Discovery Issues; Motion to Compel Discovery; and Motion for Costs, Fees, and Sanctions* (hereinafter *Motion to Compel*) and whether the defendant is protected by immunity as articulated in the CONSTITUTION OF THE HO-CHUNK NATION (hereinafter CONSTITUTION), ART., XII, § 2. The Court holds that the defendant is not protected by immunity, in this instance, and, therefore, awards a portion of the requested sanctions, fees, and costs. The analysis of the Court follows below.

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PROCEDURAL HISTORY

The Court recounts the procedural history in significant detail within a previous judgment. *Order (Compelling Disc.)*, CV 05-109 (HCN Tr. Ct., Apr. 26, 2010) at 1-2. For purposes of this decision, the Court notes that it earlier instructed the parties to file briefs regarding the issue of sovereign or official immunity. *Order (Issuing Scheduling Directive)*, CV

1 05-109 (HCN Tr. Ct., Mar. 3, 2010) at 6-7. The defendant timely submitted his *Initial Brief*
2 *Addressing Sovereign/Official Immunity in Relation to Plaintiff's Motion for Costs, Fees &*
3 *Sanctions and Related Objections* (hereinafter *Initial Brief*) on March 26, 2010. Subsequently,
4 the plaintiff timely filed *Plaintiff's Response Brief Addressing Sovereign Immunity in Relation to*
5 *Plaintiff's Motion for Costs, Fees & Sanctions* (hereinafter *Response Brief*). On April 21, 2010,
6 the defendant submitted *Respondent's [sic] Motion for Extension of Time in Which to File Reply*
7 *Brief* (hereinafter *Motion for Extension*) and *Motion for Expedited Consideration of*
8 *Respondent's [sic] Motion for Extension of Time*. The Court granted the defendant's *Motion for*
9 *Extension*, and the defendant timely submitted *Respondent's [sic] Reply Brief* (hereinafter *Reply*
10 *Brief*) on April 30, 2010.
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13 **APPLICABLE LAW**

14 **CONSTITUTION OF THE HO-CHUNK NATION**

15 **Art. VII - Judiciary**

16 **Sec. 7. Powers of the Supreme Court.**

17 (a) The Trial Court shall have original jurisdiction over all cases and controversies, both criminal
18 and civil, in law or in equity, arising under the Constitution, laws, customs, and traditions of the
19 Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its officials and employees,
20 shall be a party. Any such case or controversy arising within the jurisdiction of the Ho-Chunk
21 Nation shall be filed in Trial Court before it is filed in any other court. This grant of jurisdiction
22 by the General Council shall not be construed to be a waiver of the Nation's sovereign immunity.

23 (b) The Supreme Court shall have the power to establish written rules for the Judiciary,
24 including qualifications to practice before the Ho-Chunk courts, provided such rules are
25 consistent with the laws of the Ho-Chunk Nation.

26 **Art. XII - Sovereign Immunity**

27 **Sec. 2. Suit Against Officials and Employees.** Officials and employees of the Ho-Chunk
28 Nation who act beyond the scope of their duties and authority shall be subject to suit in equity
only for declaratory and non-monetary injunctive relief in Tribal Court by persons subject to its

1 jurisdiction for purposes of enforcing rights and duties established by the constitution or other
2 applicable laws.

3 HO-CHUNK NATION JUDICIARY ESTABLISHMENT & ORGANIZATION ACT, 1 HCC §
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5 Subsec. 5. Rules and Procedures.

6 c. The Judiciary shall have exclusive authority and responsibility to employ
7 personnel and to establish written rules and procedures governing the use and operation of the
8 Courts.

9 d. All matters shall be tried in accordance with the Ho-Chunk Rules of Procedures
10 and the Ho-Chunk Rules of Evidence which shall be written and published by the Supreme Court
11 and made available to the public.

12 CONTEMPT ORDINANCE, 2 HCC § 5

13 Subsec. 3. Declaration of Policy. The Ho-Chunk Nation, mindful that the Judiciary
14 represents a fundamental aspect of Tribal sovereignty, recognizes that the Nation's Courts retain
15 the inherent authority to exercise the power of contempt. The contempt power established herein
16 will preserve the dignity and decorum of the Judicial Branch, secure compliance with orders and
17 procedures, and protect the due process rights of those appearing before the Courts.

18 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

19 Ch. I – Introduction to the Rules

20 Rule 2. Liberal Construction.

21 These rules shall be liberally construed to secure a just and speedy determination of every action.

22 Ch. II – Beginning an Action

23 Rule 3. Complaints.

24 General. A civil action begins by one of the following procedures:

25 (A) filing a written *Complaint* with the Clerk of Court and paying the appropriate fees. The
26 *Complaint* shall contain short, plain statements of the grounds upon which the Court's
27 jurisdiction depends, the facts and circumstances giving rise to the action, and a demand for any
28 and all relief that the party is seeking. Relief should include, but is not limited to, the dollar
amount that the party is requesting. The *Complaint* must contain the full names and addresses of
all parties and any counsel, as well as a telephone number at which the complainant may be
contacted. The *Complaint* shall be signed by the filing party and his/her counsel, if any.

1 Ch. V - Discovery

2 Rule 35. Ongoing Obligation.

3 There is an ongoing obligation by any party subject to a discovery request, which continues up to
4 and through the trial, to supplement any response previously answered if new or freshly
5 discovered material previously unavailable is discovered or revealed to them.

6 Rule 36. Protective Orders.

7 For good cause, the Court on its own motion or at the request of any party or witness, may enter
8 an *Order* to protect a party or other person from undue annoyance, embarrassment, oppression or
undue burden or expense.

9 Rule 37. Non-Compliance.

10 If a party fails to appear or respond as requested under these rules, a party may request or the
11 Court may *sua sponte* issue an *Order* requiring a response and imposing costs, attorney's fees,
12 and sanctions as justice requires in order to secure compliance.

13 Rule 38. Power to Compel.

14 The Court retains the inherent authority to compel disclosure of material it has cause to believe is
15 relevant to the matter before it.

16 Ch. VII – Judgments and Orders

17 Rule 53. Relief Available.

18 Except in a *Default Judgment*, the Court is not limited to the relief requested in the pleading and
19 may give any relief it deems appropriate. The Court may only order such relief to the extent
20 allowed by the Ho-Chunk Nation enactments. The Court may order any party to pay costs,
including attorney's fees, filing fees, costs of service and discovery, jury and witness costs.
21 Findings of fact and conclusions of law shall be made by the Court in support of all final
22 judgments.

23 Rule 58. Amendment to or Relief from Judgment or Order.

24 (A) Relief from Judgment. A *Motion to Amend* or for relief from judgment, including a request
25 for a new trial shall be made within ten (10) calendar days of the filing of judgment. The *Motion*
26 must be based on an error or irregularity that prevented a party from receiving a fair trial or a
substantial legal error that affected the outcome of the action.

27 (B) Motion for Reconsideration. Upon motion of the Court or by motion of a party made not
28 later than ten (10) calendar days after entry of judgment, the Court may amend its findings or
conclusions or make additional findings or conclusions, amending the judgment accordingly.

1 The motion may be made with a motion for a new trial. If the Court amends the judgment, the
2 time for initiating an appeal commences upon entry of the amended judgment. If the Court
3 denies a motion filed under this Rule, the time for initiating appeal from the judgment
4 commences when the Court denies the motion on the record or when an order denying the
5 motion is entered, whichever occurs first. If within thirty (30) days after the filing of such
6 motion, and the Court does not decide a motion under this Rule or the judge does not sign an
7 order denying the motion, the motion is considered denied. The time for initiating the appeal
8 from judgment commences in accordance with the *Rules of Appellate Procedure*.

9 (C) Motion to Modify. After the time period in which to file a *Motion to Amend* or a *Motion for*
10 *Reconsideration* has elapsed, a party may file a *Motion to Modify* with the Court. The *Motion*
11 must be based upon new information that has come to the party's attention that, if true, could
12 have the effect of altering or modifying the judgment. Upon such motion, the Court may modify
13 the judgment accordingly. If the Court modifies the judgment, the time for initiating an appeal
14 commences upon entry of the modified judgment. If the Court denies a motion filed under this
15 Rule, the time for initiating an appeal from the judgment commences when the Court denies the
16 motion on the record or when an order denying the motion is entered, whichever occurs first. If
17 within thirty (30) calendar days after the filing of such motion, and the Court does not decide the
18 motion or the judge does not sign an order denying the motion, the motion is considered denied.
19 The time for initiating an appeal from judgment commences in accordance with the *Rules of*
20 *Appellate Procedure*.

21 (D) Erratum Order or Re-issuance of Judgment. Clerical errors in a Court record, including the
22 *Judgment* or *Order*, may be corrected by the Court at any time.

23 (E) Grounds for Relief. The Court may grant relief from judgments or orders on motion of a
24 party made within a reasonable time for the following reasons: (1) newly discovered evidence
25 which could not reasonably have been discovered in time to request a new trial; (2) fraud,
26 misrepresentation or serious misconduct of another party to the action; (3) good cause if the
27 requesting party was not personally served in accordance with Rule 5(c)(1)(a)(i) or (ii), did not
28 have proper service and did not appear in the action; or (4) the judgment has been satisfied,
released, discharged or is without effect due to a judgment earlier in time.

29 Rule 61. Appeals.

30 Any final *Judgment* or *Order* of the Trial Court may be appealed to the Supreme Court. The
31 *Appeal* must comply with the *Rules of Appellate Procedure*, specifically *Rules of Appellate*
32 *Procedure*, Rule 7, Right of Appeal. All subsequent actions of a final *Judgment* or Trial Court
33 *Order* must follow the *Rules of Appellate Procedure*.

34 FINDINGS OF FACT

35 1. On October 19, 2009, the plaintiff filed her fourth motion to compel discovery, broadly
36 requesting:

1 that the Court issue an order compelling Mr. Hall to provide sufficient and
2 complete responses to Ms. Chamberlain's discovery requests, sanction Mr.
3 Hall for his continued failure to provide adequate discovery responses, and
4 issue an order of relief to Ms. Chamberlain in the form of costs and
attorney fees related to the discovery activities in this litigation.

5 *Mot. to Compel* at 2.

6 2. The discovery process in this case expands over four (4) years. During that time, the
7 defendant missed several key deadlines.

8 a. The defendant failed to respond within the required twenty-five (25) days to the
9 plaintiff's *First Set of Interrogatories and Request for Production of Documents* (hereinafter
10 *First Discovery Request*) submitted on March 13, 2006. *Notice of Mot. & Mot. to Compel Disc.,*
11 *Mot. for Relief from Scheduling Order, & Mot. for New Trial Date*, CV 05-109 (July 26, 2006),
12 Att'y Aff. at 1.

14 b. The defendant failed to provide a proper signature for the *First Discovery Request*
15 until approximately four (4) years after its original due date of April 7, 2006. *Mot. Hr'g* (LPER
16 at 5, Feb. 24, 2010, 01:40:58 CST); *see also Status Hr'g* (LPER at 23, May 13, 2009, 12:59:43
17 CDT).

19 c. The defendant failed to respond within the required twenty-five (25) days to the
20 plaintiff's *Second Set of Interrogatories and Request for Production of Documents* (hereinafter
21 *Second Discovery Request*). *Notice of Mot. & Mot. to Adjudge Def. to be in Contempt of Ct. &*
22 *for Costs, Fees, & Sanctions*, CV 05-109 (Apr. 2, 2009), Att'y Aff. at 1-2.

24 3. The defendant submitted several supplemental responses to the plaintiff's *First* and
25 *Second Discovery Requests*:

26 a. The defendant submitted three (3) supplemental responses regarding the
27 plaintiff's *First Discovery Request*. The supplemental responses were submitted on October 13,
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1 2006, November 20, 2006, and July 1, 2008. *See Pl. 's Prehearing Br. in Supp. of Mot. to Compel*
2 *Disc. & Mot. for Costs, Fees, & Sanctions*, CV 05-109 (Feb. 22, 2010), Ex. I; *Def.'s Resp. in*
3 *Opp'n to Mot. to Compel & Scheduling Proposal*, CV 05-109 (Feb. 20, 2009), Def. Ex. D.

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5 b. Prior to the February 24, 2010 *Motion Hearing*, the defendant submitted one (1)
6 supplemental response regarding the plaintiff's *Second Discovery Request. Mot. to Compel*,
7 *Att'y Aff.* at 2.

8 4. The defendant makes several arguments regarding why the plaintiff's current *Motion to*
9 *Compel* should be denied. Specifically, the defendant contends that:

10 a. "Supplemental responses were secured without needing a motion to compel"
11 because the defendant's supplemental discovery responses were submitted to the plaintiff on
12 September 25, 2009, prior to the plaintiff's October 19, 2009 *Motion to Compel. Initial Br.* at 4;

13 b. "[S]ince it did not take the petitioner's motion to compel in order to convene a
14 hearing or to resolve the issues, any court order imposing costs, fees, or sanctions would be
15 purely as a punishment to Mr. Hall (or his counsel)." *Reply Br.* at 7. Specifically, granting a
16 request for costs, fees, and sanctions would run contrary to the intent of *Ho-Chunk Nation Rules*
17 *of Civil Procedure* (hereinafter *HCN R. Civ. P.*), Rule 37, which is intended to secure compliance
18 with court orders, not punish for violations. *Id.*;

19 c. He has not violated *HCN R. Civ. P.* 32 or 34, and, therefore, has not violated Rule
20 37. *Reply Br.* at 3; *Initial Br.* at 5;

21 d. Both the defendant and defendant's counsel are immune from the relief requested
22 pursuant to Article XII, Section 2 of the CONSTITUTION. *Initial Br.* at 6.

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24 5. The plaintiff counters by asserting that:
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1 a. Official immunity does not extend to protect the defendant from the imposition
2 of costs, fees, and sanctions for discovery violations, since the CONSTITUTION and *HCN R. Civ.*
3 *P.* provide that the Court may order any party to pay costs, fees, and sanctions. *Resp. Br.* at 6-8;
4 *see also HCN R. Civ. P. 53.*

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6 b. The defendant's "supplemental discovery responses were not secured without the
7 need for [the plaintiff] to file a Motion to Compel Discovery." *Resp. Br.* at 10. The plaintiff
8 "filed her Statement of Unresolved Issues, which was contemplated by this Court's Order if the
9 parties were unable to reach an agreement on any discovery issues." *Id.* at 11-12. The plaintiff
10 filed the *Motion to Compel* since the defendant "did not conscientiously and diligently endeavor
11 to resolve the outstanding discovery issues when he responded by providing the exact same
12 response as before, a matter that was not contemplated by this Court's Order." *Id.* at 12.

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14 6. The plaintiff requests the amount of \$23,948.50 for attorney's fees and \$590.65 for costs,
15 totaling \$24,539.15. *Pl.'s Att'ys Fees & Costs Itemization Related to Mot. to Compel Disc. Dated*
16 *Oct. 19, 2009, CV 05-109 (Mar. 12, 2010), Att'y Aff.* at 4.

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DECISION

The Court is vested with inherent judicial authority to ensure compliance with its orders.
See HCN JUDICIARY ESTABLISHMENT & ORG. ACT (hereinafter *JUDICIARY ACT*), 1 HCC § 1.5c;
CONTEMPT ORDINANCE, 2 HCC § 5.3; *Gerald Cleveland, Jr. v. Elliot Garvin et al.*, CV 08-36
(HCN Tr. Ct., Jan. 6, 2009) at 9. This authority encompasses a wide range of tools, including the
power to compel, sanction, award attorney fees, and make findings of contempt. *See CONST.*,
ART. VII, § 4; JUDICIARY ACT, 1 HCC § 1.5c; CONTEMPT ORDINANCE, 2 HCC § 5.3; see also
HCN R. Civ. P. 36-38, 53; Order (Compelling Disc.) at 13-14. The Court must presently
determine whether the Court can and should award the plaintiff costs and fees and sanction the

1 defendant for discovery violations and delays. The defendant asserts that the plaintiff's *Motion*
2 *to Compel* is unnecessary since the Court ordered the parties to present any unresolved discovery
3 issues to the Court. *See Order (Denial of Contempt Mot.)*, CV 05-109 (HCN Tr. Ct., Aug. 13,
4 2009) at 30. The defendant further contends that no discovery rules were violated and even if
5 they were, the defendant is immune from paying monetary damages pursuant to the
6 CONSTITUTION. *Reply Br.* at 7-9; *Initial Br.* at 5-10 (citing CONST., ART. XII, § 2).

8 First, the defendant asserts that the plaintiff's *Motion to Compel* should be denied since
9 she received defendant's supplemental responses without needing the *Motion to Compel*. The
10 defendant additionally urges that the plaintiff's *Motion to Compel* proves unnecessary and
11 improper since the Court already directed the parties to present any unresolved discovery
12 disputes to the Court in a previous order. *See Order (Denial of Contempt Mot.)* at 20. The Court
13 agrees that it ordered the parties to present unresolved issues to the court by a date certain.
14 However, the Court disagrees with the defendant's conclusion that the plaintiff could not also
15 file a motion to compel. As stated above, the Court has inherent authority to compel discovery.
16 As such, the parties have the right to request that the Court utilize such authority. To determine
17 otherwise would significantly undermine the inherent authority of the Court.

20 Second, the defendant argues that he did not violate *HCN R. Civ. P.* 32 or 34, as such the
21 Court cannot grant attorney fees, costs, and sanctions pursuant to Rule 37. The relevant rule
22 clearly states: "[i]f a party fails to . . . respond as requested under these rules, a party may request
23 . . . an *Order* requiring a response and imposing costs, attorney's fees, and sanctions as justice so
24 requires in order to secure compliance." *HCN R. Civ. P.* 37. Therefore, as long as an order
25 requires a response to a discovery request, the Court may also order sanctions to secure the
26 compliance of that response. The language "as justice so requires" affords judicial discretion
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1 when determining whether to impose sanctions in conjunction with an order requiring a
2 discovery response.¹ Additionally, the Ho-Chunk Nation Supreme Court has directed that the
3 “rules shall be liberally construed to secure a just and speedy determination of every action.” *Id.*,
4 Rule 2. The underlying direction to achieve justice emphasizes the existence of discretion in
5 employing the use of sanctions to secure compliance with a discovery request.
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7 The defendant has indeed violated the discovery rules, specifically timelines, on more
8 than one occasion. *See Order (Denial of Contempt Mot.)* at 10-11 (the defendant failed to timely
9 respond to the plaintiff’s second discovery request); *Order (Denying Pl.’s Req. for Costs &*
10 *Fees)*, CV 05-109 (HCN Tr. Ct. Aug. 7, 2006) at 5-6. (the defendant failed to timely file
11 mandatory disclosures and a response to the plaintiff’s initial discovery request); *Status Hr’g*
12 (LPER at 23, May 13, 2009, 12:59:43 CDT) (the defendant failed to provide a proper signature
13 for the initial discovery request until approximately four (4) years after its original due date of
14 April 7, 2006). Furthermore, the Court must note that the plaintiff filed four (4) separate motions
15 to compel more sufficient responses to both the *First* and *Second Discovery Requests*. The
16 defendant eventually provided several supplemental answers for some of the requests, thereby
17 establishing that the defendant’s initial responses to both the *First* and *Second Discovery*
18 *Requests* were in fact insufficient. In its previous order, the Court failed to fully address the
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22 ¹ As expressed by the Ninth Circuit Court of Appeals:

23 “[D]iscretion” is defined as: “The power exercised by courts to determine questions to
24 which no strict rule of law is applicable but which, from their nature, and the
25 circumstances of the case, are controlled by the personal judgment of the court.”
26 BOUVIER’S LAW DICTIONARY 884 (8th ed. 1914). Judicial action - discretionary in that
sense - is said to be final and cannot be set aside on appeal except when there is an abuse
of discretion.

27 *Delno v. Market St. Ry. Co.*, 124 F. 2d 965, 967 (9th Cir. 1942). In this regard, the Ho-Chunk Nation Supreme
28 Court has adopted the following definition of abuse of discretion: “any unreasonable, unconscionable and arbitrary
action taken without proper consideration of facts and law pertaining to the matter submitted.” *Daniel*
Youngthunder, Sr. v. Jonette Pettibone et al., SU 00-05 (HCN S. Ct., July 28, 2000) at 2 (quoting BLACK’S LAW
DICTIONARY 11 (6th ed. 1990)).

1 issue of whether providing insufficient and identical answers constitute a violation of *HCN R.*
2 *Civ. P. 32 and 34. Order (Denial of Contempt Mot.)* at 20. The Court now concludes that
3 answering in such a manner is in fact a violation of *HCN R. Civ. R. 32 and 34*, since the very
4 action impedes “a just and speedy determination of every action.”² *HCN R. Civ. P. 2.*

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6 Regarding the current *Motion to Compel*, the Court had to order the defendant to submit a
7 supplemental response to the *Second Discovery Request. See Order (Issuing Scheduling*
8 *Directive)* at 6. The Court notes that the defendant did not indicate his willingness until the
9 *Motion Hearing* to supplement several answers the plaintiff asserted were insufficient and/or
10 identical to previous responses. *Mot. Hr’g* (LPER at 6, Feb. 24, 2010, 02:37:48 CST).
11 Therefore, pursuant to *HCN R. Civ. P. 37*, the Court issued an order directing the defendant to
12 submit a supplemental response. *Order (Issuing Scheduling Directive)* at 6. The Court did not
13 address the issue of sanctions at that time in order to provide the parties an opportunity to
14 address the issue of sovereign immunity raised by the defendant. *Id.* at 7. Since this order
15 represents the final component of a single judgment, the Court may order sanctions in
16 conjunction with its *Order (Issuing Scheduling Directive)* that required the defendant to submit a
17 supplemental response to the *Second Discovery Request.*

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20 Finally, the defendant asserts immunity from the imposition of monetary sanctions. The
21 CONSTITUTION establishes that “[o]fficials and employees of the Ho-Chunk Nation who act
22 beyond the scope of their duties or authority shall be *subject to suit* in equity only for declaratory
23 and non-monetary injunctive relief in Tribal Court by persons subject to its jurisdiction for
24 purposes of enforcing rights and duties established by this constitution or other applicable laws.”

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26 CONST., ART. XII, § 2 (emphasis added). In the past, the Court acknowledged that individual

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² The Court understands that parties may not always have access to required information by discovery deadlines,
which should engender an explanation to that effect in a response. Parties maintain an ongoing obligation to provide
supplemental discovery responses when new information becomes available. *See HCN R. Civ. P. 35.*

1 defendants may possess immunity from suit when the requested relief includes monetary
2 damages. *Kristen White Eagle v. Ho-Chunk Casino et al.*, CV 04-97 (HCN Tr. Ct., Oct. 4, 2005) at 6;
3 *Chloris Lowe, Jr. v. HCN Legislature et al.*, CV 00-104 (HCN Tr. Ct., Mar. 22, 2004) at 23.³
4

5 Unlike previous cases, the question remains whether the current motion is in fact a suit.

6 Chief Justice John Marshall clarified that a suit:

7 is understood to apply to any proceeding in a court of justice, by which an
8 individual pursues that remedy in a court of justice, which the law affords
9 him. The modes of proceeding may be various, but if a right is litigated
10 between parties in a court of justice, the proceeding by which the decision
11 of the court is sought, is a suit.

12 *Janet Funmaker v. Libby Fairchild*, CV 06-61 (HCN Tr. Ct., Mar. 7, 2007) at 12 n.5 (quoting
13 *Weston v. City Council of Charleston*, 27 U.S. 449, 487 (1829)), *aff'd*, SU 07-05 (HCN S. Ct.,
14 Aug. 31, 2007). The matter currently before the Court does not represent a suit since the law
15 does not afford the remedy requested. The plaintiff requests sanctions derived from the Court's
16 inherent authority as expressed within the *HCN R. Civ. P.*, not sanctions derived from pure
17 legislative enactments or constitutional requirements. The *HCN R. Civ. P.* are not laws within
18 Justice Marshall's definition because they do not represent a source of subject matter
19 jurisdiction. CONST., ART. VII, § 5(a). The Ho-Chunk Nation General Council delegated
20 exclusive constitutional authority to the Ho-Chunk Nation Supreme Court "to establish written
21 rules for the Judiciary." *Id.*, ART. VII, § 7(b); *see also* JUDICIARY ACT, 1 HCC § 1.5c; *Bonnie*
22 *Smith v. HCN Gaming Comm'n*, SU 01-02 (HCN S. Ct., May 11, 2001) at 2. Pursuant to this
23 delegation, the Supreme Court adopted the *HCN R. Civ. P.* on May 11, 1996, which "govern the
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25 ³ The Court has only addressed the issue of sovereign immunity in the context of discovery in one other instance. In
26 *Cleveland*, the defendants (legislators) were subpoenaed for depositions and asserted immunity from suit. The Court
27 held that the defendants improperly and prematurely asserted immunity for the purpose of entirely precluding
28 discovery. *Cleveland*, CV 08-36 (HCN Tr. Ct., Feb. 2, 2009) at 18. Specifically, the Court stated "[w]hether the
officials or employees act under the umbrella of sovereign immunity or possess some form of general official
immunity from suit, the Court still must engage in fact-finding to deduce the presence of an alleged constitutional or
statutory violation." *Id.* Unlike the issue in *Cleveland*, this case involves discovery violations, not an outright refusal
to engage in the discovery process.

1 procedure of the Trial Court in all actions and proceedings.” *HCN R. Civ. P.* 1. Consequently,
2 the proffered constitutional defense is inapplicable to proceedings arising from discovery
3 violations, since such proceedings do not constitute suits arising from substantive law.
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5 Applying Justice Marshall’s definition of a suit to the instant facts, while also abiding by
6 the Ho-Chunk Nation Supreme Court’s straightforward textual approach to constitutional
7 interpretation, reveals that sovereign immunity simply does not apply in this context.⁴
8 *Cleveland*, CV 08-36 (HCN Tr. Ct., Feb. 2, 2009) at 18. The constitutional limitation of granting
9 injunctive and non-monetary relief applies solely to suits arising “under the Constitution, laws,
10 customs, and traditions of the Ho-Chunk Nation.” CONST., ART. VII, § 5(a). The plaintiff’s
11 *Motion to Compel*, includes a request for costs, fees, and sanctions arising from judicial rules and
12 is separate from the original cause of action. Specifically, the request for costs, fees, and
13 sanctions derives from the Courts’ inherent and independent authority. The purpose of Article
14 XII, section 2 is to establish a constraint upon “enforc[ing] rights and duties established by this
15 constitution or other applicable laws,” it does not constrain the Court from ensuring compliance
16 with its procedural rules.
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19 **THEREFORE**, in conjunction with the *Order (Issuing Scheduling Directive)* and for the
20 reasons stated above, the Court orders the defendant to pay the amount of \$6,453.50 to the
21 plaintiff for costs, fees, and sanctions associated with preparation of the October 19, 2009
22 *Motion to Compel*.⁵ The Court considers this assessment as just under the circumstances. The
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25 ⁴ The Court recognizes that past requests from individual parties for reimbursement of attorney’s fees against the
26 Ho-Chunk Nation have been denied on the basis of sovereign immunity. For example, in *White Eagle*, the plaintiff’s
27 initial request for relief included a request for attorney’s fees. *See HCN R. Civ. P.* 3(A). The requested relief
constituted part of a petition arising under substantive law, *i.e.*, HO-CHUNK NATION PERSONNEL POLICIES &
PROCEDURES MANUAL. *White Eagle*, CV 04-97 at 5-6. The issue currently in front of the Court is distinguishable
from *White Eagle* since the requested relief does not arise from substantive law.

28 ⁵ The award corresponds with the time period of September 25, 2009 to October 19, 2009. The Court stated at the
Motion Hearing that the *Cost Itemization* should be limited to only those costs associated with the preparation of the
October 19, 2009 *Motion to Compel*. LPER at 13, Feb. 24, 2010, 03:07:35 CDT. The plaintiff, in fact, submitted a

1 Court shall not restrict the defendant from seeking reimbursement from the Ho-Chunk Nation or
2 contribution from defendant's counsel.⁶ See *Cobell v. Norton*, 213 F.R.D. 48, 62 (D.D.C. 2003)
3 (sanctioning a government attorney and choosing not to prevent the attorney from seeking
4 reimbursement from the government employer); but cf. *Chilcutt v. United States*, 4 F.3d 1313,
5 1326 (5th Cir. 1993) (upholding the decision of the district court to prevent the sanctioned
6 attorney from seeking reimbursement from the government employer).
7

8 The parties retain the right to file a timely post judgment motion with this Court in
9 accordance with *HCN R. Civ. P. 58*, Amendment to or Relief from Judgment or Order.
10 Otherwise, "[a]ny final *Judgment* or *Order* of the Trial Court may be appealed to the Supreme
11 Court. The *Appeal* must comply with the *HCN R. App. P.*, specifically Rule 7, Right of Appeal."
12 *HCN R. Civ. P. 61*. The appellant "shall within sixty (60) calendar days after the day such
13 judgment or order was rendered, file with the Supreme Court Clerk, a *Notice of Appeal* from
14 such judgment or order, together with a filing fee as stated in the appendix or schedule of fees."
15 *HCN R. App. P. 7(b)(1)*. "All subsequent actions of a final *Judgment* or Trial Court *Order* must
16 follow the [*HCN R. App. P.*]." *HCN R. Civ. P. 61*.
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19 **IT IS SO ORDERED** this 30th day of July 2010, by the Ho-Chunk Nation Trial Court
20 located in Black River Falls, Wisconsin within the sovereign lands of the Ho-Chunk Nation.
21

22 _____
23 Honorable Todd R. Matha⁷
24 Chief Trial Court Judge

25 *Cost Itemization* with costs incurred from May 18, 2009 to February 25, 2010. The Court deems the *Cost Itemization*
26 excessive. As a result, the Court derives the awarded amount from the defendant's suggestion that if the Court
27 intended upon granting plaintiff's *Motion to Compel*, the amount should be limited to the date upon which the
28 defendant submitted his response to the plaintiff's *Second Discovery Request* (Sep. 25, 2009), until the date the
29 plaintiff filed her current *Motion to Compel* (Oct. 19, 2009).

⁶ The Court must presume the defendant's responsibility for the sanctionable activity since the plaintiff did not attempt to attribute the conduct to defendant's counsel. See *Mot. to Compel* at 2 ("Ms. Chamberlain also renews her request that the Court . . . sanction Mr. Hall for his continued failure to provide adequate discovery responses"). Furthermore, defendant's counsel did not accept responsibility for the defendant's conduct.

⁷ The Court appreciates the assistance of Law Clerk Rebecca L. Maki in the preparation and drafting of this opinion.

