



1 judgment, the Court notes on December 10, 2012, the Court received the *Plaintiff's*  
2 *Memorandum of Law in Support of Motion for Summary Judgment, Affidavit of Christianna L.*  
3 *Finnern in Support of Plaintiff's Memorandum of Law in Support of Motion for Summary*  
4 *Judgment, plaintiff's exhibits 1-78, Defendant's Motion for Summary Judgment, Affidavit of*  
5 *Carla M. Bennett, and defendant's exhibits A-FF, all received by the parties' stipulated deadline*  
6 *and properly served upon the opposing parties. See Ho-Chunk Nation Rules of Civil Procedure*  
7 *(hereinafter HCN R. Civ. P.), Rules 5(B), 19(A), 55. Thereafter, on January 4, 2013, the*  
8 *defendants filed the Opposition to Plaintiff's Motion for Summary Judgment.*

10 The Court convened *Oral Argument* on January 15, 2013 at 10:00 a.m. CST. The  
11 following parties appeared at the hearing: Attorney Christianna L. Finnern appearing on behalf  
12 of plaintiff Ho-Chunk Nation; Attorneys Jim Beausoleil and Carla M. Bennett appearing on  
13 behalf of defendants Money Centers of America, Inc. and Money Centers of America of  
14 Wisconsin, Inc.

## 17 APPLICABLE LAW

### 18 CONSTITUTION OF THE HO-CHUNK NATION

#### 19 Article VII – Judiciary

#### 20 Sec. 5. Jurisdiction of the Judiciary

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

### 28 HO-CHUNK RULES OF CIVIL PROCEDURE

#### Rule 8. Requests to Appear before the Traditional Court

1 (B) Requests for Assistance on Matters of Custom and Tradition. Upon a motion of the Court or  
2 by a party, the Trial Court may request assistance from the Traditional Court on matters relating  
3 to custom and tradition of the Nation, pursuant to the HO-CHUNK NATION JUDICIARY  
4 ESTABLISHMENT AND ORGANIZATION ACT, 1 HCC § 1.12.

5 Rule 55. Summary Judgment

6 Any time after the date an *Answer* is due or filed, a party may file a *Motion for Summary*  
7 *Judgment* on any or all of the issues presented in the action. The Court will render summary  
8 judgment in favor of the moving party if there is no genuine issue as to material fact and the  
9 moving party is entitled to judgment as a matter of law.

10 FINANCIAL SERVICES/ONSWITCH™ AGREEMENT

11 Section 6. Payments and Audit.

12 The financial obligations of the parties not specified elsewhere in this Agreement shall be  
13 determined in accordance with Exhibit A hereto and the accounts shall be maintained in  
14 accordance with the generally accepted accounting principles. MCA shall maintain adequate  
15 books and records with respect to the gross revenue and fee income and direct costs with respect  
16 to the services provided by MCA at the HCN Gaming Facilities, and will make such books and  
17 records available for review by HCN, or its duly authorized representatives, during MCA's  
18 normal office business hours at HCN's sole cost and expense upon reasonable notice of MCA by  
19 HCN. MCA shall, at its sole cost, provide the Gaming Establishment with a detailed monthly  
20 statement summarizing and categorizing all transactions.

21 Section 23. Regulatory Requirements.

22 d. MCA agrees that it will not interfere with, or attempt to influence, the internal  
23 affairs or governmental decisions of HCN.

24 **FINDINGS OF FACT**

- 25 1. The parties received proper notice of the January 15, 2013 *Oral Argument*.
- 26 2. The plaintiff, Ho-Chunk Nation (hereinafter Nation), is a federally recognized Indian  
27 tribe located within the boundaries of the State of Wisconsin. Its principal governmental offices  
28 are located at the Tribal Executive Office Building, W9814 Airport Road, Black River Falls, WI  
54615. *Compl.* at 1.

1 3. The defendant, Money Centers of America, Inc. (hereinafter MCA), is a Delaware  
2 corporation with its principal office located at 700 South Henderson Road, Suite 325, King of  
3 Prussia, Pennsylvania 19406. *Id.*

4 4. The defendant, MCA of Wisconsin, Inc., is a Wisconsin corporation with its principal  
5 office located at 700 South Henderson Road, Suite 325, King of Prussia, Pennsylvania 19406.  
6  
7 *Id.*

8 5. On June 3, 2008, the Nation's Legislature passed a resolution authorizing "the President  
9 or his designee to negotiate and execute an Agreement for both cash access at its casinos and  
10 training in the cash access business for long term development of an economic enterprise with  
11 Money Centers of America." HCN LEG. RES. 06-03-08C.

12 6. On June 10, 2008, MCA Chief Executive Officer Christopher M. Wolfington and former  
13 Executive Director of the Nation's Business Department Joseph E. Decorah initialed a thirty-  
14 three (33) page document consisting of a *Financial Services/OnSwitch™ Agreement* (hereinafter  
15 FSA) and *License, Implementation and Support Agreement* (hereinafter LISA).  
16  
17

18 7. On June 10, 2008, Christopher M. Wolfington and Joseph E. Decorah signed page twelve  
19 (12) of the contractual agreement, also recognized as Exhibit B or the first page of the LISA,  
20 acknowledging the parties' agreement for the Nation to convert to the ONSwitch™ system. *See*  
21 FSA, Sec. 11.  
22

23 8. Following June 10, 2008, the signed and initialed FSA and LISA proceeded for review  
24 and approval by the following Nation employees on the dates listed below:

- |    |    |               |               |
|----|----|---------------|---------------|
| 25 | a. | K. Green      | June 10, 2008 |
| 26 | b. | Linda Pomeroy | June 13, 2008 |
| 27 | c. | Paul Rosheim  | June 16, 2008 |
| 28 |    |               |               |

1 *Def. Ex. O.*

2 9. On June 17, 2008, the President of the Nation, Wilfrid Cleveland, signed the thirty-three  
3 (33) page contract. *Id.*; *Def. Ex. I* at 4.

4 10. Wilfrid Cleveland testified that he was aware that Joseph Decorah initialed and signed  
5 the FSA and LISA prior to affixing his signature to the document. *Def. Ex. I* at 4. Furthermore,  
6 he undertook no efforts to undo the contract or to have Joseph Decorah's signature removed  
7 from the contract. *Id.* Finally, he articulated that it was ordinary for contracts received by the  
8 President to already be signed in part by those working directly with the contract. *Id.*

9 11. Following execution of the FSA and LISA, MCA delivered invoices to the Nation  
10 seeking payment for costs associated with the ONSwitch™ in the following amounts:

13	a.	October 6, 2008	\$41,145.00
14	b.	October 6, 2008	\$1,321,866.98
15	c.	November 5, 2008	\$1,075,052.73

16 *Pl. Ex. 71.*

17 12. The Nation initiated a series of wire transfers on July 30, 2008, November 14, 2008, and  
18 December 16, 2008 for payments associated with the Nation's conversion to the ONSwitch™.

19 *Pl. Ex. 48-50.*

20 21 13. On January 26, 2009, the Wilfrid Cleveland sent by certified mail a correspondence to  
22 MCA acknowledging receipt of three invoices involving the Nation's conversion to the  
23 ONSwitch™ and the Nation's subsequent payment of \$4,186,792.53. *Pl. Ex. 70.* The  
24 correspondence further alleged that the LISA was void and further demanded the return of the  
25 \$4,186,792.53 payments. *Id.*

26  
27  
28

1 14. On August 17, 2009, the Nation sent by facsimile a correspondence to Christopher  
2 Wolfington providing notice of the Nation's intent to cancel the May 10, 2008 contract due to  
3 the alleged breach described in the January 26, 2009 correspondence. *Pl. Ex. 73*.  
4

## 5 6 **DECISION**

7  
8 The Court must determine whether to grant the parties' cross-motions for summary  
9 judgment. Upon review of the pleadings and allowing the parties to present oral argument, the  
10 Court determines that while there exists no genuine disputes as to the majority of material facts  
11 in the instant case, the Court is unable to render judgment to either party as a matter of law. The  
12 analysis of the Court follows below.  
13

### 14 15 **I. Summary Judgment Standard**

16  
17 The standard by which the Court examines the parties' cross-motions for summary  
18 judgment is well settled before the Ho-Chunk Nation courts. Pursuant to the *Ho-Chunk Nation*  
19 *Rules of Civil Procedure* (hereinafter *HCN R. Civ. P.*), "[t]he Court will render summary  
20 judgment in favor of the moving party if there is no genuine issue as to material fact and the  
21 moving party is entitled to judgment as a matter of law." *HCN R. Civ. P. 55*. Recognizing the  
22 analogous language contained within the *Federal Rules of Civil Procedure*, the Court has  
23 routinely examined federal jurisprudence for insight in interpreting this grant of authority. *Jean*  
24 *Day, et al. v. HCN Personnel Dept.*, CV 96-15, 5 (HCN Tr. Ct. Aug. 21, 1996); *Vanasco v.*  
25 *National Louis University* 137 F.3d 962, 965 (7th Cir. 1998); *See also Fed. R. Civ. P. 56 (c)*.  
26  
27  
28

1           “Summary judgment is appropriate only when, after reviewing the record in the light  
2 most favorable to the non-moving party, ‘the pleadings, depositions, answers to interrogatories,  
3 and admissions on file, together with the affidavits, if any, show that there is no genuine issue as  
4 to any material fact and that the moving party is entitled to judgment as a matter of law.’”  
5 *Donna L. Peterson v. HCN Compliance Division*, CV 98-51 (HCN Tr. Ct., June 22, 1999) at 3-4  
6 (citing *Vanasco*, 137 F.3d at 965). Furthermore, a non-moving party may not rest on its  
7 pleadings and must instead set forth specific facts showing that there is a genuine issue for trial.  
8 *See Vanasco*, 137 F.3d at 965. A dispute about a material fact is “genuine” only if a reasonable  
9 trier of fact could render a verdict for the non-moving party if the record at trial were identical to  
10 the record compiled in the summary judgment proceeding. *See Griffen v. City of Milwaukee*, 74  
11 F.3d 824, 827 (7th Cir. 1996).  
12  
13

## 14           **II. Cross-Motions for Summary Judgment**

15  
16           The principal contention surrounding both motions concerns the alleged breaches of the  
17 FSA and LISA by the opposing party. The plaintiff contends that the defendants breached the  
18 FSA in three ways. First, that MCA interfered with, or attempted to influence, the internal  
19 affairs or governmental decisions of the Nation in violation of Section 23(d) of the FSA. *Pl.*  
20 *Mem. Of Law in Supp. of Mot. for Summ. J.* at 25-26. The plaintiff asserts that MCA’s  
21 relationships with Timothy Whiteagle and former Nation Legislator Clarence Pettibone  
22 constitutes a material breach of the FSA and LISA, referencing cryptic e-mail correspondences,  
23 substantial fund transfers, the hiring of Legislator Pettibone’s nephew, and other interrelated  
24 events. *Pl. Mem. Of Law in Supp. of Mot. for Summ. J.* at 2-23, 26-29.  
25  
26  
27  
28

1           Second, the plaintiff alleges that MCA refused to reimburse the Nation for vault cash  
2 advances used for filling the Nation’s ATMs, facilitate check cashing, credit/debit card advances,  
3 and other cash access services as well as failed to pay to the Nation fees and commissions earned  
4 through services provided by MCA. *Id.* at 27-28; *See* FSA, Sec. 8. Exhibit A of the FSA  
5 contains the parties’ agreement as to fees and commissions, including the amounts and  
6 percentages per transactions and the frequency of payments. In pertinent part, the provisions  
7 specify that “[t]he amount owing to [the Nation] will be paid in immediately available funds  
8 within twenty-five (25) days after the end of each calendar month.” FSA, Exhibit A. Directing  
9 the Court’s attention to a series of correspondences and spreadsheets prepared during August and  
10 September 2008, the plaintiff claims that MCA failed to return or pay such funds totaling  
11 \$5,078,971.17. *Pl. Mem. Of Law in Supp. of Mot. for Summ. J.* at 28.

14           Third, asserting that the Nation never intended to enter into the LISA contract, the  
15 plaintiff asserts MCA failed to return substantial payments made towards the establishment of  
16 the ONSwitch™. *Id.* at 28-29. The plaintiff urges the Court to find that Joseph Decorah did not  
17 possess the authority to execute portions of the parties’ agreement, particularly the LISA, thereby  
18 invalidating the Nation’s election to convert to the ONSwitch™. *Id.* at 23-25, 28. Despite this  
19 position, the Nation nevertheless initiated several wire transfers of funds to pay costs invoiced  
20 pursuant to the LISA after its execution. *Pl. Ex.* 48-50. The plaintiff alleges that the failure to  
21 return such funds qualifies as a breach of the parties’ agreements and requests the advanced  
22 amount of \$4,186,792.53. *Id.* at 28.

25           Alternatively, the plaintiff requests that this Court declare the FSA and LISA void *ab*  
26 *initio*. *Id.* at 29. The plaintiff characterizes the parties’ agreements as though they were not  
27 properly executed or contrary to law by incorporating arguments concerning Joseph Decorah’s  
28

1 lack of authority to enter the LISA on the Nation's behalf and the alleged bribes and improper  
2 conduct arising between MCA, Timothy Whiteagle, and Clarence Pettibone. *Id.* at 29.  
3 Consequently, the Court is urged to return the parties to the position had the contracts never been  
4 entered, purportedly necessitating a return of \$9,265,763.70 by MCA to the Nation. *Id.* at 29-30.  
5

6 Conversely, the defendants contend that the Nation entered into the FSA and LISA as  
7 binding contracts and that the Nation breached the agreements by demanding repayment of  
8 money earned and paid to MCA, denying having authorized the execution of the LISA, violating  
9 the exclusivity provisions of the agreements, and soliciting MCA's employees for employment.  
10 *Def. Mot. for Summ. J.* at 18. As a result, the defendants request that this Court rule in their  
11 favor as a matter of law and convene a future hearing to determine the appropriate amount of  
12 damages flowing from the Nation's breach. *Def. Mot. for Summ. J.* at 18.  
13

14 The Court recognizes two (2) critical determinations in disposing of both parties'  
15 motions. First, the Court must determine whether the Nation properly entered and is therefore  
16 bound by the terms and conditions of the LISA. This initial inquiry proves vital as rejecting the  
17 validity of the LISA would effectively demonstrate that MCA invoiced, billed and wrongfully  
18 retained in excess of four (4) million dollars paid for goods and services which the Nation did  
19 not agree to purchase. If bound by the agreement, however, the Nation's action in not only  
20 failing to fulfill its financial obligations in accordance with the contract but also demanding  
21 repayment of funds rightfully paid arguably constitutes a contractual breach. The timing of such  
22 demands would also predate MCA's failure to return vault cash advances, which the plaintiff  
23 argues constitutes a breach in and of itself.  
24  
25

26 Second, the Court must determine whether the facts surrounding the communications,  
27 financial transactions, and other events surrounding the relationship between MCA, Timothy  
28

1 Whiteagle, and Clarence Pettibone constitute a material breach of the agreements by interfering  
2 with, or attempting to influence, the internal affairs or governmental decisions of the Nation.  
3 FSA, Sec. 23(d). With the majority of both parties' motions depending on whether the Nation  
4 terminated the FSA and LISA prematurely or without cause, a determination as to whether  
5 improper conduct occurred and the effect, if any, of whether such conduct predated the Nation's  
6 January 26, 2009 and August 17, 2009 correspondences proves crucial.  
7

8  
9 **A. Void *Ab Initio***

10  
11 Prior to addressing the two above-referenced inquiries, the Court shall briefly tend to the  
12 plaintiff's alternative request for declaratory relief proclaiming both the FSA and LISA void *ab*  
13 *initio*. *Pl. Br. Supp. Summ. J.* at 29-30. The plaintiff contends that such relief would mandate  
14 returning the parties in the position they would have been had the parties never executed either  
15 agreement and ordering MCA to return calculated damages totaling \$9,265,763.70. *Id.*

16  
17 Recognized routinely throughout the history of the Nation's judiciary, this Court is  
18 prohibited from adjudicating claims in the absence of subject matter jurisdiction. *Ho-Chunk*  
19 *Nation v. Harry Steindorf, et al.*, CV 99-82 (HCN Tr. Ct., Feb. 11, 2000) at 10; *aff'd*, SU 00-04  
20 (HCN S. Ct., Sept. 29, 2000). As articulated in this Court's prior decision, the agreements  
21 validly entered between the parties confer this Court's sole source of subject matter jurisdiction  
22 when addressing contractual disputes. *Order (Motion to Dismiss for Lack of Jurisdiction:*  
23 *Granting in Part and Denying in Part)*, CV 10-54 (HCN Tr. Ct., Dec. 28, 2010) at 11-12; *see*  
24 *also Ho-Chunk Nation v. B & K Builders, Inc. et al.*, CV 00-91 (HCN Tr. Ct., June 20, 2001);  
25 *HCN Treasury Dept., et al. v. Corvettes on the Isthmus, et al.*, CV 05-82 (HCN Tr. Ct., Jan. 5,  
26 2007), *aff'd*, SU 07-03 (HCN S. Ct., Nov. 19, 2007).  
27  
28

1           Whereas courts of sister jurisdictions may grant such declaratory relief and allow for a  
2 calculation of damages under a Uniform Commercial Code, the Ho-Chunk Nation Supreme  
3 Court has affirmatively recognized no such ability of this Court. *Corvettes*, SU 07-03 at 2 n.1  
4 (recognizing that while the Nation has enacted a UNIFORM COMMERCIAL CODE ORDINANCE, 5  
5 HCC § 7, “its breadth is so truncated as to be nearly useless.”). Therefore, assuming *arguendo*  
6 that this Court were to declare both agreements void, the plaintiff would have “effectively  
7 pleaded itself out of this Court’s jurisdiction,” thus inhibiting this Court from granting any relief,  
8 including the return of over nine (9) million dollars. *Order (Motion to Dismiss for Lack of*  
9 *Jurisdiction: Granting in Part and Denying in Part)*, CV 10-54 (HCN Tr. Ct., Dec. 28, 2010) at  
10 11-12.  
11  
12

13  
14           **B. Validity of the *License, Implementation and Support Agreement (LISA)***  
15

16           Unlike early contract cases presented before this Court, the parties raise no dispute as to  
17 whether the Ho-Chunk Nation Legislature delegated to the President the authority to enter into a  
18 contract on the Nation’s behalf. *See Ho-Chunk Nation v. B & K Builders, Inc., et al.*, CV 00-91  
19 (HCN Tr. Ct., June 20, 2001). The parties have not presented a scenario whereby no signed  
20 contract exists. *Corvettes*, CV 05-82. At dispute in the instant case is whether the Nation  
21 entered, and is therefore bound, by the terms and conditions of the LISA due to the fact that  
22 Joseph Decorah signed a particular page of the document in lieu of President Wilfrid Cleveland.  
23

24           There appears to exist no genuine dispute as to any material facts surrounding the process  
25 by which MCA CEO Chris Wolfington, Joseph Decorah, and Wilfrid Cleveland affixed their  
26 initials and/or signature to the FSA and LISA. On June 3, 2008, the Ho-Chunk Nation  
27 Legislature passed a resolution authorizing “the President or his designee to negotiate and  
28

1 execute an Agreement for both cash access at its casinos and training in the cash access business  
2 for long term development of an economic enterprise with Money Centers of America.” HCN  
3 LEG. RES. 06-03-08C. Thereafter, a copy of the complete thirty-three (33) page document  
4 consisting of the FSA and LISA and bearing the signature of Chris Wolfington advanced through  
5 several of the Nation’s executive departments. A contract routing sheet confirms that the  
6 documents were received and signed by the following governmental officials on the dates listed  
7 below:

9	Joseph Decorah	June 10, 2008
10		
11	K. Green	June 10, 2008
12	Linda Pomeroy	June 13, 2008
13	Paul Rosheim	June 16, 2008
14	Wilfrid Cleveland	June 17, 2008

15 *Def. Ex. O.*

16  
17 While an additional contract routing sheet bearing only the signatures of Joseph Decorah  
18 and Paul Rosheim exists, the plaintiff appears to offer no evidence or argument contesting that  
19 Wilfrid Cleveland possessed the entire thirty-three (33) page document at the time he reviewed  
20 and signed the agreement on June 17, 2008. *Id.* at 2. Rather, Wilfrid Cleveland’s deposition  
21 testimony reveals that at time he signed the agreement, both Joseph Decorah and Chris  
22 Wolfington had already initialed each page of the document and affixed their respective  
23 signatures to the first page of the LISA or page twelve (12) of the document. *Def. Ex. I* at 4.

24  
25 The plaintiff urges the Court to disregard the signed agreement and Wilfrid Cleveland’s  
26 testimony for several reasons. First, the plaintiff argues that “[o]nly the President was authorized  
27 to execute the [c]ontract.” *Pl. Mem. Of Law in Supp. of Mot. for Summ. J.* at 28. To the  
28

1 contrary, the Legislature’s action expressly authorizes “the President *or his designee* to negotiate  
2 and execute an Agreement for both cash access at its casinos and training in the cash access  
3 business for long term development of an economic enterprise with Money Centers of America.”  
4 HCN LEG. RES. 06-03-08C (emphasis added). Second, the plaintiff alleges that Wilfrid  
5 Cleveland did not designate Joseph Decorah to enter the agreement on his behalf. *Pl. Mem. Of*  
6 *Law in Supp. of Mot. for Summ. J.* at 28. As articulated above, Wilfrid Cleveland’s sworn  
7 testimony supports the unavoidable conclusion that certain portions of contracts were routinely  
8 signed by anyone who would work closely with the contract, that he recognized Joseph Decorah  
9 had signed the LISA, and that he took no action to remove Joseph Decorah’s signature from the  
10 LISA or take other actions to avoid entering the LISA prior to signing the agreement. *Def. Ex. I*  
11 at 4.

14 Third, the plaintiff asserts and the Court recognizes that the Nation could only elect to  
15 convert to the ONSwitch™ in writing. *Pl. Mem. Of Law in Supp. of Mot. for Summ. J.* at 28.  
16 Section 11(a) of the FSA states in part, “HCN has the option, at its sole discretion and with 90  
17 days prior written notice, to elect to convert to MCA’s ONSwitch™. However, contrary to the  
18 plaintiff’s assertions, the Court fails to realize how the written and signed LISA attached to the  
19 FSA fails to satisfy such requirement or provide all involved parties notice of the Nation’s intent  
20 to convert to the ONSwitch™.  
21

23 Finally, the plaintiff points to employment termination of Joseph Decorah and MCA’s  
24 representations to the United States Securities and Exchange Commission that the Ho-Chunk  
25 Nation had not exercised its option to convert to the ONSwitch™. *Pl. Mem. Of Law in Supp. of*  
26 *Mot. for Summ. J.* at 28. Avoiding speculation as to the motives of both parties in their actions  
27 following the June 17, 2008 contract signing, the Court remains extremely hesitant to set aside  
28

1 and ignore a written agreement signed by both parties and the testimony of Wilfrid Cleveland in  
2 favor of such tangential evidence.

3 Accordingly, in holding that the *License, Implementation and Support Agreement* is a  
4 valid contract binding on the Ho-Chunk Nation and Money Centers of America, the Court  
5 recognizes no breach in MCA's actions in billing for and retaining monies associated with the  
6 ONSwitch™.

7  
8  
9 **C. Governmental Interference or Influence**

10  
11 Having recognized a valid, binding LISA, the Court turns to the plaintiff's allegations  
12 that MCA engaged in conduct which interfered with, or attempted to influence, the internal  
13 affairs or governmental decision of the Ho-Chunk Nation. *Pl. Mem. Of Law in Supp. of Mot. for*  
14 *Summ. J.* at 2-23, 26-29; FSA, Sec. 23(d). The plaintiff supplied the Court with exhibits  
15 including, but not limited to, e-mail correspondences between Timothy Whiteagle and Chris  
16 Wolfington that elicit substantial compensation, some purportedly to serve Clarence Pettibone,  
17 testimony of various individuals employed by Support Consultants, Inc. and MCA which  
18 signifies that the method in which MCA paid Timothy Whiteagle was not routine, bank records  
19 establishing the transfer of substantial sums of money, a portion ultimately advanced to Clarence  
20 Pettibone, records of Timothy Whiteagle and Clarence Pettibone's federal indictment and  
21 criminal convictions, and information concerning MCA's hiring of Clarence Pettibone's nephew.  
22 Faced with these allegations, the defendants argue that MCA engaged in nothing more than  
23 permissible marketing of the company's products and services and further contend the referenced  
24 stipulation constitutes an assurance of future acts following contract execution rather than a  
25 warranty of prior conduct, Timothy Whiteagle was a commissioned consultant, and the  
26  
27  
28

1 employment of Jon Pettibone was encouraged if not required by the FSA. *Def. Mot. for Summ.*  
2 *J.* at 9-12; *Opp'n to Pl.'s Mot. for Summ. J.* at 1-7.

3 The Court remains cognizant of the standards it must employ when examining motions  
4 for summary judgment, and although both parties assert there exists no genuine dispute as to any  
5 material fact, the sharp divide in adopted factual inferences precludes this Court from granting  
6 judgment in either party's favor. *See EEOC v. Steamship Clerks Union, Local 1066*, 48 F.3d  
7 594, 603 n.8 (1st Cir. 1995) ("the mere fact that all parties move simultaneously for summary  
8 judgment neither unties the district court's hands nor renders the customary standard of review  
9 obsolete.").

10  
11  
12 Additionally, assuming *arguendo* that the Court were to determine MCA's actions  
13 breached both agreements, seemingly absent from the parties' briefs, oral argument, and this  
14 Court's jurisprudence is the legal effect such holding would have on this contract dispute.  
15 Unflattering evidence of MCA's actions aside, it is impossible to ignore that the Nation's  
16 January 26, 2009 and August 17, 2009 correspondences demanding the return of funds and  
17 providing notice of termination were founded on MCA's billing and retention of payments  
18 associated with the LISA rather than what has become the plaintiff's central argument before the  
19 Court. Consequently, what effect, if any, a party's undiscovered material breach may have when  
20 such actions predate another party's termination of a contract without cause is central to the  
21 instant case. **THEREFORE**, the Court hereby **DENIES** both parties' motions for summary  
22 judgment and deems appropriate an evidentiary trial limited to the issue of whether MCA's  
23 actions comprise efforts to wrongfully influence the Nation's governmental operations.  
24 **ACCORDINGLY**, the Court shall convene a *Scheduling Conference* on Tuesday, May 7, 2013  
25 at 2:30 p.m. CDT to determine a briefing schedule and potential trial date, as necessary.  
26  
27  
28

1 The parties retain the right to file a timely post-judgment motion with this Court in  
2 accordance with *HCN R. Civ. P. 58*, Amendment to or Relief from Judgment or Order.  
3 Otherwise, "[t]he time for taking an appeal shall begin from the date the judgment is filed with  
4 the [Trial Court] Clerk [of Court]." *HCN R. Civ. P. 57*. Since this decision represents a nonfinal  
5 judgment, "[a]n appeal from [this] interlocutory order maybe [*sic*] sought by filing a petition for  
6 permission to appeal with the Supreme Court Clerk within ten (10) calendar days after the entry  
7 of such order with proof of service on all other parties to an action." *Ho-Chunk Nation Rules of*  
8 *Appellate Procedure*, Rule 8.  
9

10 **IT IS SO ORDERED** this 10th day of September 2013, by the Ho-Chunk Nation Trial  
11 Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.  
12

13  
14  
15 \_\_\_\_\_  
16 Honorable Amanda L. Rockman  
17 Associate Trial Court Judge  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Ho-Chunk Nation Court System  
P.O. Box 70  
Black River Falls, WI 54615  
(715) 284-2722 or 800-434-4070

