

IN DISTRICT COURT, RAMSEY COUNTY, NORTH DAKOTA

Eunice Davidson, John Chaske,)	
Oliver Gourd, Renita Delorme,)	Civil No:
Lavonne Alberts, Frank Blackcloud,)	
Demus McDonald, Alex Yankton,)	
Members, Committee for Understanding)	
and Respect,)	VERIFIED
)	COMPLAINT FOR SPECIFIC
Plaintiffs,)	PERFORMANCE AND FOR
)	INJUNCTIVE ENFORCEMENT OF
-vs-)	SETTLEMENT AGREEMENT
)	
State of North Dakota, by and through the)	
North Dakota State Board of Higher)	
Education,)	
)	
Defendant.)	

COMMON COUNT

Comes now Plaintiffs, all of whom are members of the Committee for Understanding and Respect and as their Complaint state as follows:

1. That the Plaintiffs are all enrolled members of the Spirit Lake Tribe, a federally recognized Indian tribe by the United States Bureau of Indian Affairs and are all members of the Committee for Understanding and Respect, an unincorporated association.

2. That State Board of Higher Education ("SBHE") is the policy making board for all the institutions of the North Dakota University System. The Board has control and administration of the state colleges and universities.

3. That on October 25, 2007 and October 26, 2007, Defendant entered into a settlement ("settlement agreement") of the litigation entitled State of North Dakota, by and through the North Dakota State Board of Higher Education, and the University of North Dakota, Plaintiff, v. National Collegiate Athletic Association, Defendant, civil number 06-C-01333, venued in the District Court, County of Grand Forks, Northeast Central Judicial District,

involving the use by the University of North Dakota of the name “Sioux” and the “Fighting Sioux” nickname and logo. (“the litigation.”) A certified copy of the settlement agreement is attached hereto as “Exhibit A.” The litigation was settled on the dates stated above under which the University of North Dakota (“UND”) was permitted to use the nickname and related imagery until November 30, 2010 to seek and obtain approval for the nickname and related imagery (hereinafter sometimes referred to as “namesake approval”), referred to in such settlement agreement as the “Approval Period.” The settlement agreement stated at ¶ 2(a) as follows:

a. **Effect of Namesake Approval.** UND will be provided a period of time until November 30, 2010 (the “Approval Period”), to seek and obtain namesake approval for its nickname and related imagery, during which time the Policy will not apply to UND and UND will not be restricted from hosting and bidding to host championship events for which it otherwise would be eligible to host. To secure approval qualifying UND for a namesake exemption from the Policy, UND must have clear and affirmative support for the “Fighting Sioux” nickname and logo, in the form set forth in Subsection 2(c) below, from both the Spirit Lake Tribe (“Spirit Lake”) and the Standing Rock Sioux Tribe (“Standing Rock”). If UND obtains such support within the Approval Period, then the Policy will not apply to UND...

4. The settlement agreement further provided that if namesake approval from the Spirit Lake Tribe and Standing Rock Sioux Tribe was not obtained by November 30, 2010, the “Approval Period,” that UND was required to transition to a new nickname and logo no later than August 15, 2011.

5. The Spirit Lake Tribal Council initially provided a resolution in support of the nickname and logo dated December 13, 2000.

6. That on or about April 23, 2009, as a result of a petition drive initiated by Plaintiffs, the Spirit Lake Tribe conducted a referendum for enrolled tribal members, including Plaintiffs, in order to secure namesake approval from the Spirit Lake Tribe. A significant

majority of the enrolled members of the Spirit Lake Tribe voted in favor of allowing UND to continue using the “Sioux” and “Fighting Sioux” nickname and logo.

7. On September 4, 2009, the Spirit Lake Tribal Council, at a special meeting duly called and convened, unanimously approved Spirit Lake Tribe Resolution No. A05-09-186 in which the Tribal Council officially accepted the election results of April 23, 2009, for UND logo and name retention, and further resolved that the Spirit Lake Tribal Council concurred with the wishes of the Spirit Lake people. A copy of such Resolution is attached hereto as Exhibit B and incorporated by reference.

8. On September 18, 2009, at a duly called and convened special meeting of the Spirit Lake Tribal Council, the Tribal Council unanimously passed Spirit Lake Tribe Resolution No. A05-09-191 which resolved as follows:

NOW THEREFORE BE IT RESOLVED, that the Tribal Council hereby AMENDS TRIBAL RESOLUTION NO. A05-09-186 and affirmatively approves and supports UND’s use of the current nickname and related imagery, and hereby confirms Spirit Lake Tribe’s full permission for UND to continue using the Fighting Sioux name and logo and the duration of this authorization shall be perpetual commencing on October 1, 2009.

A copy of this Resolution is attached hereto as Exhibit C and incorporated by reference.

9. At a duly called and convened meeting of the SBHE on October 26, 2007, at Grand Forks, North Dakota, upon the recommendation by North Dakota Attorney General Wayne Stenehjem, the SBHE unanimously approved the settlement agreement regarding the NCAA lawsuit. The official minutes from that meeting of the SBHE set forth that Attorney General Wayne Stenehjem reviewed the terms of the proposed settlement agreement with the SBHE, stating:

UND must receive approval from the two North Dakota Sioux Nation tribal governments by November 30, 2010, to continue use of the

nickname and imagery.

If approval from the two Sioux Nation tribal governments is not received by November 30, 2010, UND will be required to change the nickname and acquire a new logo in order to host post-season championship events. Up until November 30, 2010, the NCAA policy would not apply to UND.

10. At a duly called and convened meeting of the SBHE on December 20, 2007, at Bismarck, North Dakota, during the "UND/NCAA settlement process report and discussion" then President of the SBHE, Mr. John Q. Paulsen, stated as follows:

President Paulsen encouraged board members that, when reflecting on the decision to accept the attorney general's recommended settlement with the NCAA, to thoughtfully consider all of the alternatives and not rush to judgment. In addition, President Paulsen suggested the chancellor should work with high-level officials of state, federal and tribal governments, as well as representatives of UND, to discuss those alternatives without feeling pressured to recommend an immediate solution to an issue that stirs intense emotions on many fronts.

11. Plaintiffs agree with the statement by then-President Paulsen that the SBHE "not rush to judgment."

12. At a duly called and convened meeting of the SBHE on October 16, 2008, the SBHE unanimously adopted an **ACTION PLAN - - SIOUX LOGO** to provide a timeline to the responsibility that the SBHE has in dealing with the Sioux Logo/name and its use in sporting events. This Action Plan stated in part, as follows:

Pursuant to the settlement with the NCAA it is the Board of Higher Education responsibility to work with the Native American tribes to see if a common ground can be obtained on the use of the logo and if not to act to retire the use of the name and logo. The timeline for this action to take place is three years beginning October 26, 2007 recorded in the settlement agreement of the same date. Two years remain on this timeline.

This **ACTION PLAN - - SIOUX LOGO** set forth a series of steps entitled **ACTION 1** through **ACTION IV**. **ACTION 1** approved the **ACTION PLAN - - SIOUX LOGO**. **ACTION II** instructed the Chancellor of the North Dakota University System to form a high level committee to meet with the leaders of both Sioux Nations. **ACTION III**, with a timeline of January, 2009 through October, 2010, instructed the Chancellor to attempt to set up meetings with the Tribal Chairman or designee of both Sioux Nations before January, 2010. **ACTION IV** stated, in part, as follows:

If the meetings have not resulted in an agreement for the use of the name the Chancellor will ask the University President to put together a transition team to retire the use of the Sioux logo and name. This transition team should be made up of UND administration, faculty, students, alumni and staff. This committee should function even when attempts for discussion by the Chancellors committee continue until November 30, 2010.

If the result of the meetings have been positive on the use of the logo a formal long term agreement will be put in place that addresses all concerns. The university and the tribal leaders should meet and come to an agreement prior to November 30, 2010.

Under **ACTION IV**, the deadline of November 30, 2010, is stated as the date that the **“USE OF LOGO ISSUE IS RESOLVED.”**

Plaintiffs and other enrolled members of the Spirit Lake Tribe, and the Spirit Lake Tribe, in good faith, relied upon the deadline in the settlement agreement and in the **ACTION PLAN - - SIOUX LOGO** of November 30, 2010, for the Spirit Lake Tribe and Standing Rock Sioux Tribe to provide the required nickname and logo approval to the SBHE.

13. At the duly called and convened board meeting of the SBHE on May 14, 2009, Plaintiffs Eunice Davidson and John Chaske, were present at the meeting as representatives of the Spirit Lake Sioux Tribe and asked the SBHE not to shorten the current timeline for resolution of the nickname and logo so that the Spirit Lake Tribe and the Standing Rock Sioux Tribe could

go through the referendum process. In spite of such request, the SBHE passed a resolution at this meeting to retire the "Sioux" nickname and logo, effective October 1, 2009, with full retirement of the nickname and logo completed August 1, 2010, unless the Standing Rock Sioux Tribe and the Spirit Lake Tribe gave namesake approval consistent with the terms of the settlement agreement and the namesake approval be binding upon the tribes for a period of not less than thirty (30) years.

Both the shortening of the Approval Period from November 30, 2010 to October 1, 2009, and the requirement for a thirty year namesake approval, are in violation and contrary to the settlement agreement signed by the State of North Dakota and the NCAA in the litigation.

14. The Spirit Lake Tribe has complied with the SBHE shortened deadline of October 1, 2009, through Spirit Lake Tribe Resolutions A05-09-186 and A05-09-191.

15. Plaintiffs believe that that the Standing Rock Sioux Tribe will conduct either a tribal referendum or tribal council vote within the Approval Period for the namesake, nickname, and logo. Standing Rock Sioux Tribal Chairman Charles W. Murphy sent a letter dated October 30, 2009 to Mr. William Goetz, Chancellor, North Dakota University System, stating in part that his new administration is open to discuss the matter, without deadlines. A copy of this letter is attached hereto as Exhibit D. Based upon information published in the Grand Forks Herald, it appears that the SBHE will not extend the deadline to the Standing Rock Sioux Tribe beyond November 19, 2009, its next scheduled meeting.

16. That the actions of the SBHE in shortening the Approval Period by over one year are a violation of the settlement agreement. The actions of the SBHE in requiring a thirty year approval, is also in violation of the settlement agreement as a thirty-year time period was not a part of the settlement of the litigation.

17. That the actions of the SBHE in unilaterally shortening the approval period and the requirement of the thirty year namesake approval are arbitrary and capricious and in violation of the settlement agreement.

18. That Plaintiffs wrote to Ritchie Smith, President of the State Board of Higher Education, on or about October 26, 2009, requesting that the new deadline of October 31, 2009, for the Standing Rock Sioux Tribe approval of the namesake, nickname, and logo, unilaterally set by the SBHE, be rescinded on the basis of tribal election of the new Tribal Chairman and Tribal Council member for the Standing Rock Sioux Tribe to allow the Standing Rock Sioux Tribe time to approve the use of the namesake, nickname, and logo. This request was either denied or ignored by the SBHE.

STANDING

19. Plaintiffs have standing to bring this action as all are enrolled members of the Spirit Lake Tribe and are descendants of the indigenous people of the Northern Great Plains and are intended and/or incidental beneficiaries of the settlement agreement of the litigation between the State of North Dakota, et al. and the NCAA. That settlement agreement provided at page 2, as follows:

WHEREAS, UND recognizes that North Dakota Sioux Tribes, as the descendants of the indigenous people of the Northern Great Plains who UND strives to honor with its nickname, have important contributions in determining whether, to what extent and in what manner the "Sioux" name and the "Fighting Sioux" nickname or logo should continue to be used in conjunction with the athletic tradition at UND; and...

COUNT ONE – SPECIFIC PERFORMANCE

20. Plaintiffs reallege ¶ 1 through 19 above.

21. That the settlement agreement entered into between the State of North Dakota and the NCAA, under North Dakota law, is a contract, which is capable of being specifically enforced under N.D.C.C. Ch. 32-04. Spirit Lake Tribe, of which Plaintiffs are enrolled members, has fully complied with all requests and requirements of the SBHE under such settlement agreement.

22. That Plaintiffs are intended or incidental beneficiaries of the contract created by the settlement agreement in the litigation.

23. That the settlement agreement set forth an Approval Period which expires on November 30, 2010. Defendant SBHE, through its public meetings and minutes of those meetings, has stated that it will shorten such Approval Period. The last available minutes from the SBHE indicated such Approval Period was shortened to October 1, 2009 for the compliance of Standing Rock Sioux Tribe with the SBHE requirements for namesake, logo, and nickname approval and for a thirty year duration agreement.

24. Upon information and belief, the October 1, 2009 deadline has been extended by the SBHE to October 31, 2009. The unilateral imposition of October 31, 2009 deadline is in violation and in breach of the settlement agreement.

25. The unilateral requirement of a thirty year agreement with the Spirit Lake Tribe and the Standing Rock Sioux Tribe was not a part of the settlement agreement and its unilateral imposition by the SBHE and is in violation of that settlement agreement.

26. That Plaintiffs have requested that the SBHE not terminate the Sioux nickname and logo as of October 31, 2009 to provide adequate time for the Standing Rock Sioux Tribe new tribal government to decide its position on the issue. SBHE has not replied to Plaintiffs.

27. Plaintiffs seek an order of the court requiring SBHE to adhere to the

November 30, 2010 deadline as set forth in the settlement agreement.

28. That money damages would be insufficient or inadequate to compensate Plaintiffs.

COUNT TWO - PROMISSORY ESTOPPEL

29. Plaintiffs reallege ¶ 1 through 28 above.

30. That as a result of the settlement agreement of the litigation, the SBHE was required to obtain the approval of the Spirit Lake Tribe and the Standing Rock Sioux Tribe to the use by UND of the Sioux namesake, nickname, and logo by November 30, 2010. In reliance upon the Approval Period set forth in the settlement agreement, Plaintiffs and others were instrumental in securing signatures for a petition to have the name and logo retention by UND placed upon a referendum ballot of the Spirit Lake Tribe. Results of that referendum showed a significant majority of the enrolled voting members of the Spirit Lake Tribe approved the use of the namesake, nickname, and logo by UND. Plaintiffs did so in reliance upon the SBHE adhering to the timeline for the approval period set forth in the settlement agreement.

31. Plaintiffs' action in initiating, supporting, and distributing the petition for the Spirit Lake Tribe referendum were done in reliance upon the terms of the settlement agreement including the deadline for the Approval Period.

32. Plaintiffs requested, in writing, that SBHE allow adequate time for Standing Rock Sioux Tribe to conduct a referendum or tribal council vote, after its change in government, on the issue of the use by UND of the Sioux namesake, nickname, and logo. The SBHE has not responded to such request.

33. Based upon promissory estoppel, Plaintiffs request the SBHE be required to adhere to the deadline set forth in the settlement agreement for the Approval Period.

COUNT THREE – INJUNCTIVE RELIEF

34. Plaintiffs reallege ¶ 1 through 33 above.

35. That Plaintiffs seek injunctive relief under N.D.C.C. Ch. 32-06.

36. That all Plaintiffs are enrolled members of the Spirit Lake Tribe and intended or incidental beneficiaries of the SBHE settlement with the NCAA. The SBHE has become the “trustee” of the nickname and logo for the Sioux People of North Dakota.

37. The settlement agreement specifically set forth an Approval Period until November 30, 2010 for the Spirit Lake Tribe and Standing Rock Sioux Tribe to obtain namesake approval for UND Sioux nickname and related imagery. The Spirit Lake Tribe has provided such written approval through its Tribal Resolutions Nos: A05-09- November 30, 2010 to provide namesake approval to the SBHE.

38. Plaintiffs, as descendants of the North Dakota Sioux Tribes, are honored by the “Fighting Sioux” nickname and logo used by UND, and will suffer irreparable injury if the Approval Period set forth in the settlement agreement is unilaterally terminated by SBHE before Standing Rock Sioux Tribe has the benefit of the full period of time in such Approval Period to vote or otherwise act upon UND’s use of the Fighting Sioux nickname and logo. The plaintiffs are bringing this action because they strongly believe to lose the this identification with North Dakota’s oldest institution of Higher Education will cause isolation and a diminishing of public interest, knowledge and respect for the Sioux history and culture and will be detrimental and not in the best interests of their people.

39. That Plaintiffs are informed and believe that UND has used the “Sioux” or “Fighting Sioux” nickname and logo continuously since 1930. The use of the name “Sioux” and

“Fighting Sioux” and logo by UND is a source of great respect and honor to the Plaintiffs and other descendants of the North Dakota Sioux Tribes.

40. That Plaintiffs believe that if the continued use of the “Sioux” and “Fighting Sioux” nickname and logo are voted on by the members of the Standing Rock Sioux Tribe, or by the Standing Rock Sioux Council, that approval for continued use will be granted during the Approval Period set forth in the settlement agreement.

41. Enrolled members of the Spirit Lake Tribe and the Standing Rock Sioux Tribe, who were not parties to this lawsuit, will be irreparably harmed if the Approval Period is unilaterally shortened or terminated by the SBHE. The plaintiff's efforts will have counted for nothing.

42. As shown by numerous newspaper articles, editorials, and letters to the editor, members of the public of the State of North Dakota have expressed a strong support for the continued usage by UND of the “Sioux” and “Fighting Sioux” nickname and logo.

43. That the Plaintiffs believe they have a substantial likelihood of success on the merits in the one or more of the other counts in this lawsuit.

44. Money damages are not requested by Plaintiffs and the harm suffered to Plaintiffs and others by the unilateral action of the SBHE in terminating the Approval Period it agreed to in the settlement of the litigation cannot be compensated by money damages.

45. The SBHE has stated that in addition to approval by the Spirit Lake Tribe and the Standing Rock Sioux Tribe for the continued use of the “Sioux” and “Fighting Sioux” nickname and logo, that a thirty year agreement by both Tribes is required. To the best of Plaintiffs' knowledge, the Spirit Lake Tribal government has indicated to SBHE that it would sign an appropriate thirty year agreement. No such agreement has been presented to or discussed with

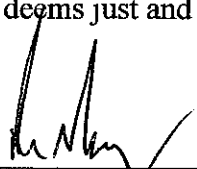
the Spirit Lake Tribe. A thirty year agreement is not part of the settlement agreement made by the Plaintiffs in the litigation.

46. Plaintiffs seek injunctive relief prohibiting the SBHE from terminating the Approval Period before November 30, 2010 and prohibiting the SBHE from requiring a written thirty year agreement with the Spirit Lake Tribe and Standing Rock Sioux Tribe to be reached during the Approval Period.

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For the Court to order specific performance of the settlement agreement, namely that the Approval Period shall extend to November 30, 2010 as set forth in the settlement agreement.
2. That the SBHE be ordered not to require a written thirty year agreement with the Spirit Lake Tribe and Standing Rock Sioux Tribe.
3. That the Court issue a temporary restraining order prohibiting the SBHE from terminating the Approval Period before November 30, 2010.
4. That the Court issue a preliminary and permanent injunction prohibiting the SBHE from terminating the Approval Period before November 30, 2010.
5. For Plaintiffs' costs and disbursements incurred herein.
6. For such other relief as the Court deems just and proper.

Dated this 3rd day of November, 2009.



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Attorneys for Plaintiffs

VERIFICATION

Oliver Gourd, being first duly sworn, deposes and states that he is a Plaintiff in the above and foregoing Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be on information and belief, and as to those matters, believes them to be true.

Oliver Gourd, Jr
Oliver Gourd

STATE OF NORTH DAKOTA)
)
)ss
COUNTY OF ~~RAMSEY~~ ^{Benson})

Subscribed and sworn to before me this 4th day of November, 2009.

Lili M Demarce
Notary Public

My Commission Expires: _____
(SEAL)

