

**STANDING ROCK SIOUX TRIBAL COURT
STANDING ROCK INDIAN RESERVATION
CIVIL DIVISION**

STANDING ROCK SIOUX TRIBE,)	
)	
Plaintiff,)	Case No. COMP-25-287
)	
v.)	
)	MOTION TO DISMISS
LAKOTA LANGUAGE)	
CONSORTIUM,)	
)	
Defendant.)	
)	

MOTION TO DISMISS

COMES NOW, Lakota Language Consortium, a North Dakota non-profit corporation (“Defendant”), pursuant to Rule 7 of the Rules of Court, Tit. I, Ord. No. 103-21 (2021), and hereby moves this Court to enter an Order dismissing this case for the following reasons:

First, Counts 1-6 should be dismissed pursuant to the applicable six-year statute of limitations, which precludes this Court from exercising jurisdiction. Standing Rock Sioux Tribal Code, Tit. II: Civil Procedures § 2-501.

Second, with regard to Count 7 and its alleged violations of the Tribe’s 2015 Cultural Resource Code, the Court should dismiss the alleged violations that occurred prior to the enactment date of the Cultural Resource Code, January 6,

2015, for failure to state a claim. Plaintiff does not allege that any such law existed prior to 2015, and the 2015 Code does not apply retroactively.

Finally, any remaining allegations from Count 7 should be dismissed because the Tribe's Cultural Resource Code should not be interpreted to prevent individual tribal members from creating and selling or licensing their own works, and in this case, the Lakota speakers at issue knowingly licensed their intellectual property to Defendant in exchange for payments. This type of practice is common among tribal members and the Tribe has never before suggested that it is against tribal law to sell native-themed artwork, record and sell traditional drum circle songs, copyright the telling of a tribal story, or profit from dubbing a movie in the Lakota language.

Defendant's motion is supported by the attached memorandum of law.

Respectfully submitted this 15th day of May, 2026.

/s/ Leroy V. LaPlante, Jr.

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LAKOTA LANGUAGE)	MEMORANDUM OF LAW
CONSORTIUM,)	IN SUPPORT OF
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**DEFENDANT’S MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS**

This Court should dismiss Counts 1-6 (breach of contract) because the claims all accrued more than six years before the Complaint was filed. Therefore, under the Tribe’s statute of limitations, this Court has no jurisdiction over the breach of contract claims. Count 7 fails to state a claim for the allegations that occurred prior to enactment of the Tribe’s 2015 Cultural Resource Code, because Tribal Council did not give that statute retroactive effect. Finally, any remaining allegations in Count 7 should be dismissed because the Cultural Resource Code should not be interpreted to give the Standing Rock Sioux Tribe exclusive ownership of the Lakota language or ownership of property created and controlled by individual tribal members.

I. Statute of Limitations

All of the Tribe's breach of contract claims should be dismissed pursuant to the statute of limitations. The applicable statute of limitations is found in Title II, Chapter 5 of the Standing Rock Sioux Tribal Code (Civil Procedures). This provision states: "The Standing Rock Sioux Tribal Court shall have no jurisdiction over any civil action brought more than six (6) years after the cause of action arose." Standing Rock Sioux Tribal Code, Tit. II, Ch. 5, § 2-501.

In its Complaint, Plaintiff claims: "There is no statute of limitations applicable to any claim in this matter because the Tribe's statutes of limitations for civil cases do not apply to claims by the Tribe." Compl. ¶ 16. Plaintiff cites only to one case—*United States v. Thompson*, 98 U.S. 486 (1878)—for support, stating that "a statute of limitations does not apply to claims by the sovereign unless the statute clearly and expressly states that it applies against the sovereign." Compl. ¶ 16. This rule has its origin in the medieval law of England, and it is sometimes referred to by the Latin phrase "*nullum tempus occurit regi*" – No time runs against the King. *Thompson*, 98 U.S. at 489.

This Court is under no obligation to adopt a rule of construction developed by other courts to interpret English, state or federal statutes. Some state courts have decided not to follow *nullum tempus*, deciding instead to apply their statutes of limitation to the state government, unless the statute says otherwise. *E.g.*, *Shootman v. Dep't of Transp.*, 926 P.2d 1200, 1202-1207 (Colo. 1996); *New Jersey Educ. Facilities Auth. v. Gruzen P'ship*, 592 A.2d 559 (N.J. 1991). Therefore,

despite Plaintiff's characterization, the rule of *nullum tempus* is no longer "firmly established." Compl. ¶ 16.

Rather, the Court is free to adopt a plain-language reading of the tribal code that follows the statute's text and would prevent untimely lawsuits by all parties, including the Tribe. By its own terms, the statute of limitations applies to "any civil action," making no exception for civil actions brought by the Tribe or any other governmental entity. Such a plain language reading of the statute would recognize sound public policy, because otherwise, the Tribe would have no time constraints on its lawsuits and could dredge up actions that are far too stale for proper adjudication.

Alternatively, even if this Court is inclined to recognize the doctrine of *nullum tempus*, it should follow modern federal courts that limit application of the doctrine to those cases where the government plaintiff is acting in its sovereign capacity and bringing claims to protect a public right. *E.g.*, *Washington Metro. Area Trans. Auth. v. Ark Union Station, Inc.*, 268 F. Supp. 3d 196, 201 (D.D.C. 2017). In contrast, where a government plaintiff is acting in its proprietary capacity and bringing claims to protect its own property or commercial interests, these courts do not recognize the *nullum tempus* doctrine and they apply the statute of limitations to government actions. *E.g.*, *Alaska v. Express Scripts, Inc.*, 774 F. Supp. 3d 1150, 1162-63 (D. Alaska 2025) ("even if *nullum tempus* could release a state from a federal statute of limitations, it does not apply when the government seeks to vindicate a private right") (internal quotation omitted); *Milcrofton Util. Dist. of*

Williamson Cty. v. City of Brentwood, 458 F. Supp. 3d 757, 768-69 (M.D. Tenn. 2020) (holding that the doctrine of *nullum tempus* does not apply because “operation of public utilities, though unquestionably a matter of public interest, is generally considered a proprietary rather than a governmental function”); *Town of Smyrna v. Mun. Gas Auth. of Ga.*, 129 F. Supp. 3d 589, 596-97 (M.D. Tenn. 2015) (quoting *Hamilton Cty. Bd. of Educ. v. Asbestospray Corp.*, 909 S.W.2d 783, 785 (Tenn. 1995) (“the statute [of limitations] does run against a county or municipality in respect of its rights or claims which are of a private or corporate nature”); *Dorsey v. R.F.C.*, 101 F. Supp. 197, 199 (N.D. Ill. 1951) (holding that the statute of limitations applied to government agency “created by Congress to carry out certain proprietary and commercial activities”), *aff’d*, 197 F.2d 468 (7th Cir. 1952).

In this case, Plaintiff’s first six counts are for breach of contract. Compl. ¶¶ 77-106. A breach of contract claim is a classic example of a proprietary claim, where one party fights to protect the agreement it negotiated with the other party. *United States v. Georgia-Pacific Co.*, 421 F.2d 92, 101 (9th Cir. 1970) (“the Government is suing to enforce a contract between it and a third party, and is thus acting as a private party would.”); *United States v. Gilead Sciences, Inc.*, 515 F. Supp. 3d 241, 251 (D. Del. 2021) (“In the contract context, the government acts as a private party, and is therefore subject to the same laws as other litigants”). As explained by one federal district court:

In ordinary contractual relations with its citizens, the government enjoys the same privileges and assumes the same liabilities as does its citizens. This is distinguished from the situation where the sovereign is seeking to enforce a public right or protect a public interest, for

example, eminent domain or an exercise of the taxing power. In the latter case the government is not bound by ordinary rules of private contract law or by doctrines of estoppel or waiver. When the government enters the market place, however, and puts itself in the position of one of its citizens seeking to enforce a contractual right (*i.e.*, one which arises from express consent rather than sovereignty), it submits to the same rules which govern legal relations among its subjects.

McQuagge v. United States, 197 F. Supp. 460, 469 (W.D. La. 1961) (citing cases).

Therefore, even if the Court decides to read the doctrine of *nullum tempus* into the Tribe's statute of limitations, it should refrain from applying the doctrine to the private-action claims in Counts 1-6 and dismiss those counts for being untimely.

II. Actions Prior to Enactment of Codes

Count 7 of Plaintiff's Complaint alleges violations of the Standing Rock Cultural Resource Code of 2015. Compl. ¶¶ 107-116. The Complaint also contains an allegation that Defendant violated the Tribe's Education Code, Title XXXV, Section 35-901, *see* Compl. ¶¶ 43-44, the current version of which was enacted in 2023, but this allegation is not carried forward into a Count. In any case, Plaintiff fails to state a claim for any alleged violations of the 2015 Cultural Resource Code or the 2023 Education Code based on actions that took place prior to the enactment dates of those laws, and those allegations should be dismissed.

This Court should not give retroactive application to the Tribe's Cultural Resource or Education Codes. As stated by the U.S. Supreme Court:

“Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.” *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (citing cases). “Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted.” *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994) (footnote omitted).

To apply a statute retroactively, the legislative body must provide a clear indication of that intent, because “retroactive statutes raise particular concerns. The Legislature’s unmatched powers allow it to sweep away settled expectations suddenly and withhold individualized consideration. Its responsiveness to political pressures poses a risk that it may be tempted to use retroactive legislation as a means of retribution against unpopular groups or individuals.” *Landgraf*, 511 U.S. at 266. “The largest category of cases in which we have applied the presumption against statutory retroactivity has involved new provisions affecting contractual or property rights, matters in which predictability and stability are of prime importance.” *Id.* at 271 (footnote omitted).

This Court should be just as concerned about giving the Tribe’s laws retroactive effect. Nowhere in the applicable codes did Tribal Council express an intent to apply the laws retroactively, and the Court should infer no such

intent. The Tribe’s Complaint contains numerous allegations concerning conduct that occurred before the enactment date of the Cultural Resource Code—January 6, 2015 and the Education Code—February 2, 2023. Those allegations, and the claims based on those allegations, should be dismissed for failure to state a claim upon which relief may be granted.

III. Cultural Resource Code Does Not Apply to Tribal Member Property

After dismissing the pre-Code allegations, the remaining allegations (2015-2025) should also be dismissed. These allegations fail to state a claim because the Cultural Resource Code should not be interpreted to restrict individual tribal members from selling or otherwise making money from the cultural resources that they create.

The Cultural Resource Code declares: “All archaeological and cultural resources found on tribal lands, are the property of the tribe.” Cultural Resource Code, Tit. XXXII, Ord. No. 189, Ch. 13 § 32-1301. “The SRST THPO [Tribal Historic Preservation Office] has the right to exclude from publication and/or to keep confidential any information regarding archeological and cultural resources, including properties of spiritual religious and cultural significance.” *Id.*

Furthermore, the Cultural Resource Code prohibits, within the exterior boundaries of the Standing Rock Reservation, the “[s]elling, purchasing, exchanging, transporting, and receiving of archeological and cultural resources[.]” Cultural Resource Code, Tit. XXXII, Ord. No. 189, Ch. 10 § 32-1002(c); *see also id.*, Ch. 19 (Violations and Fees), where this prohibition is identified as § 32-1802.(a)(4).

The Cultural Resource Code defines “Cultural Resource” as:

Any product of human creation or activity or any object or place given significance by human action, knowledge or belief. Cultural Resources include buildings and other structures, land forms, archaeological sites, traditional cultural properties, and districts. This also includes, but is not limited to, pottery, basketry, weapons, projectiles, tools, structures, rock paintings, graves, human skeletal material, organic waste, by-products from manufacture, landscape, rock cairn, burial mound, rock shelters, apparel, shipwreck, or any part of the above items, land site, sacred site, stone feature site, fossilized bone, human skeletal and tissue material, and /or animal skeletal and tissue material, any textile material or animal skin or parts, including natural organic and inorganic material; **and may include intangible resources that represent the Lakota/Dakota language, oral history and oral knowledge, as well as Lakota/Dakota place names of landscapes, drainages and water ways.**

Cultural Resource Code, Tit. XXXII, Ord. No. 189 at 45, Defns. #14 (emphasis added).

In this lawsuit, the Tribe is asking the Court to interpret the Cultural Resource Code broadly, such that it would apply to recordings of interviews and story-telling that individual tribal members sat for, in exchange for payments of money, through agreed-upon transactions with the LLC. *See* Compl. ¶ 46 (“Delores Taken Alive signed an agreement with the LLC on the Reservation that paid elders up to fifty dollars (\$50.00) per hour, in exchange for the alleged exclusive rights to publish what they shared.”); *see also* Compl. Ex. G (Sound Recording Releases). The first such release states:

I, [LYLE NOISY HAWK]_____, (Speaker) for good and valuable consideration, the receipt of which is acknowledged, give to Lakota Language Consortium Inc. (Recorder), its legal representatives, successors, and all persons or corporations acting with its permission, unrestricted permission to copyright

and/or use, and/or publish sound and video recordings of me, and the analog or digital information pertaining to them in all current or future formats, or in which I may be included in whole or in part, distorted in form, or reproductions thereof for any other lawful purpose.

Sound Recording Release between Lyle Noisy Hawk and Lakota Language Consortium (July 19, 2007). All ten (10) of the releases/licenses provided in Exhibit G to the Complaint, signed with the individual Lakota speakers, contained language identical to the language quoted above, recognizing that each Lakota speaker received “good and valuable consideration” for the recordings and the copyright/publishing license.¹

Courts should interpret statutory language “in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *Milwaukee Police Ass’n v. Flynn*, 213 F. Supp. 3d 1113, 1116 (E.D. Wis. 2016) (internal quotation omitted). The context of the Tribe’s Cultural Resource Code makes it clear that the focus is on protecting archeological resources, historic properties, buildings, land forms, funerary objects, view sheds, and traditional cultural properties, any of which may be threatened by a “planned activity,” Tit. XXXII § 32-1101, defined as: “Any federal undertaking or any construction project, mining activity, land

¹ In October 2022, the Lakota Language Consortium sent all 12 of these Lakota language recordings to the Tribe so that the Tribe could become a steward of the recordings and community members could have increased access to them. Along with the recordings, Lakota Language Consortium provided the Tribe with a worldwide, royalty-free, irrevocable license to these materials.

exchange or other project that disturbs the earth that has the potential to unearth or impact cultural resources and that is: (a) Conducted by an applicant on all lands within the exterior boundaries of the SRST as defined under 32-701 of this Code or a professional where such activity has a direct effect on the resources, spiritual/sacred practices, ceremonies, political integrity, the economic security or the health and welfare of the Standing Rock Sioux Tribe[.]” Defns. No. 31. The Code also defines “Cultural Resource” to include “intangible resources that represent the Lakota/Dakota language, oral history and oral knowledge, as well as Lakota/Dakota place names of landscapes, drainages and water ways.” Defns. No. 14.

Because the Code prohibits the selling, purchasing, or receiving of “cultural resources” within the exterior boundaries of the Standing Rock Reservation, Tit. XXXII § 32-1002, the scope of this definition is critical, not only to Defendant in this case, but also to many tribal members who regularly sell intangible resources that they create and which represent the Lakota/Dakota language, oral history, oral knowledge, or Lakota/Dakota place names. Under the broad interpretation of this statute that the Tribe now requests, any traditional story put into writing and sold or licensed to others would be a violation of the Code, if done without permission from Tribal Council. Under such a broad interpretation, any use of the Lakota language for a profit-making endeavor, such as films dubbed in the Lakota language, would be a violation of the Code if done without a license or other

express permission from the Tribal Council. Likewise, any artwork depicting or naming a Lakota/Dakota landscape, drainage or waterway could not be sold by a tribal member without Tribal Council's permission.

In order to avoid this absurd and unintended result, the Court should interpret the Cultural Resource Code to apply only to intellectual property that the Tribe already owns through some other mechanism. In other words, the Code should apply to any artwork, books, recordings, etc. that the tribal government, or any department or agency thereof, has created or which it owns through other legitimate means such as donation or purchase.

If the Standing Rock Sioux Tribe's language program had recorded Lakota speakers, with the speakers' permission/license granted to the Tribe, then those recordings would belong to the Tribe, and if Defendant had somehow taken those recordings without the Tribe's permission to use in Defendant's business, then under the suggested interpretation, this would be a violation of the Code. But of critical importance here, that is not what happened. As alleged in Plaintiff's Complaint, here, every single Lakota speaker made an agreement with Defendant—not the Tribe—and received compensation from Defendant—not the Tribe—for the recordings that were made and licensed for Defendant's later commercial use. The tribal government was not involved. Nor should it have been, as these were private transactions between the Lakota Language Consortium and individual tribal members.

To avoid an unintended, absurd result, the Court should interpret the Code’s definition of “Cultural Resource” to be limited—in dealing with intangible resources or intellectual property—to such works that are *owned by the Tribe* through some mechanism other than the Cultural Resource Code, such as would be the case if the Tribe created, purchased, or received the work by donation. In this case, neither the Lakota speakers nor the recorders were employees of the tribal government and no tribal government resources were used to make the recordings. Therefore, the Court should find that the allegations do not state a claim for violation of the Cultural Resource Code.

CONCLUSION

The Court should dismiss this Complaint in its entirety. The breach of contract claims in Counts 1-6 are barred by the statute of limitations. The allegations in Count 7 that concern actions prior to January 2015 cannot state a claim because the Cultural Resource Code is not retroactive. Finally, the Court should interpret the Cultural Resource Code, insofar as it may prohibit the sale of intellectual property on the Reservation, as applying only to intellectual property *owned by the Tribe*, which in this case, was not the situation.

Respectfully submitted on this 15th day of May, 2026.

/s/ Leroy V. LaPlante, Jr.

Leroy V. LaPlante, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May 2026, I electronically filed a copy of the foregoing with the Clerk of the Standing Rock Sioux Tribal Court by email. All counsel of record in the case have been copied and service will be accomplished by email.

/s/ Lena Dassonville-Ajit
Lena Dassonville-Ajit