

FILED
2019 MAR 18 PM 3:22
U.S. DISTRICT COURT
SOUTHERD DISTRICT OF NEW YORK
JAMES M. CONNELLEY, JR., CLERK

Appellee.

Case No. SC-2015-07

² *Unger v. CNCCA*, SC-2015-07, March 20, 2017 *Opinion*.

District Court struck Count II, *inter alia*, from her *Complaint*.³ Therefore, the only claim remaining in the District Court case underlying this appeal is Count I of the Appellant's *Complaint*.

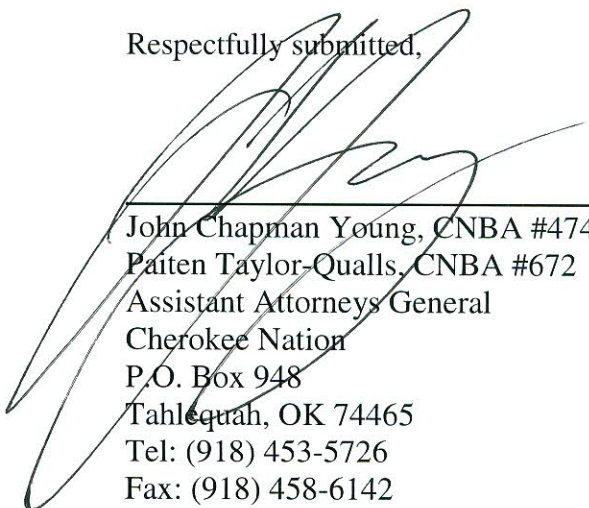
While the Appellant frames the issue here as seeking review of her Count I dismissal, she is really seeking to re-litigate the dismissal of Count II. This is of particular concern, considering the only avenue through which the Appellant could have established a basis for statutory damages was through Count II. **Count II has been dismissed, appealed, affirmed, and stricken from this case.**⁴ The Appellant's arguments offered in her recent *Reply* exclusively concern her entitlement to those dismissed statutory damages. The basis for statutory damages has been dismissed and any arguments or exhibits in support of the same are wholly immaterial, especially considering that the same could not be presented to the District Court after this appeal. The arguments and the unverified exhibit contained in the Petitioner's *Reply* serves no other purpose than to confuse the issues before this Court. What is more, the attached "Exhibit 'B'" is not what it purports to be. The title page identifying it as an "exhibit" cites a JAT order, while the actual attachment is an unrelated legislative act.

Therefore, the Appellee respectfully requests that the Court strike the Appellant's *Reply Brief and Motion to [sic] Exhibit with Representations of the Attorney General's Office* as immaterial to the issue on appeal.

³ *Unger v. CNCCA*, CV-2014-94, August 16, 2018 *Order Granting Defendant's Motion to Strike Plaintiff's Complaint*.

⁴ *See Unger v. CNCCA*, CV-2014-94, June 26, 2015 Order; *Unger v. CNCCA*, SC-2015-07, March 20, 2017 Opinion; and *Unger v. CNCCA*, CV-2014-94, *Order Granting Defendant's Motion to Strike Plaintiff's Complaint*.

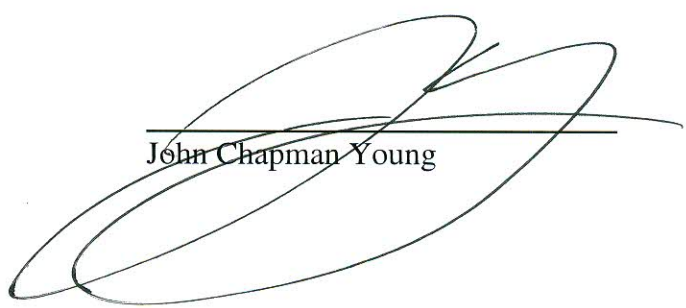
Respectfully submitted,



John Chapman Young, CNBA #474
Paiten Taylor-Qualls, CNBA #672
Assistant Attorneys General
Cherokee Nation
P.O. Box 948
Tahlequah, OK 74465
Tel: (918) 453-5726
Fax: (918) 458-6142
john-young@cherokee.org
paiten-qualls@cherokee.org
Attorneys for Appellee

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above was e-mailed to Counsel for the Appellant, Chad Smith, chad@chadsmith.com and by USPS at 22902 S. 494 Road, Tahlequah, OK 74464 on March 18, 2019.



John Chapman Young