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FILED

FEB 19 2008

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY JMS
DEPUTY CLERK

6 **IN THE UNITED STATES DISTRICT COURT FOR THE**
7 **EASTERN DISTRICT OF CALIFORNIA**
8
9

10 **MARK S. ALLEN (Pro Se)**

11 **Plaintiff(s),**

12 **vs.**

13 **MATTIE MAYHEW, RICKY**
14 **MAYHEW, KIRBY BROWN,**
15 **ELEANOR BOULTON, GUS**
16 **MARTIN, BRIAN SANDUSKY, ERIN**
17 **HARTER, ED WHITE, JIMMY**
18 **EDWARDS, DEBBIE ARMUS,**
19 **LEATHA CHASE, GOODIE MIX,**
20 **TERRILYN STEELE, MIKE**
21 **HEDRICK, ART HADLEY, TASHA**
22 **HERNANDEZ,**
23 **DOES 1 THROUGH 50.**

24 **Defendants.**
25
26
27
28

CASE No: CIV.S-04-0322 LKK KJM-PS

Plaintiff's
Objections to Magistrate Judge's
Findings and Recommendations

1 Plaintiff disagrees with the following recommendations;

2
3 First, that defendants motion to dismiss be granted in part and denied in part;

4 Plaintiff feels and believes that all charges should be granted and all the defendants be held
5 accountable for their actions.

6
7 Second, defendant's motion to dismiss for lack of subject matter jurisdiction be granted as to
8 defendants Edwards, Armus, Chase and Mix;

9 Plaintiff feels and believes these defendants are responsible as they themselves knew of the
10 investigation conducted against plaintiff and knew of the application for guardianship. These
11 defendants condoned the investigation and knew of the false charges made, and of the alleged
12 investigations done by Brown and Hatley. Furthermore this action was started in a court of law
13 in the State of California, in accordance with plaintiffs Constitutional rights as well as those
14 afforded him by the State of California. The defendants for this issue in court were no more
15 than plaintiff, a U.S. citizens. As such they had no right to deprive me of my Constitutional
16 and civil rights, which they in fact did. Defendants used their positions and standing to allow
17 plaintiff to be terminated by using false charges and then not allowing plaintiff to use any
18 defense or policies and procedures or rules and regulations that the tribe and casino put into
19 place.

20
21 Third, the motion to dismiss plaintiff's claims under 42 U.S.C.~1985 be denied;

22 Plaintiff agrees with this as concerning all defendants.

23
24 Fourth, the motion to dismiss plaintiff's claims under 42 U.S.C.~1985 be granted;

25 Plaintiff disagrees with this, as section 1985 states, "for the purpose of depriving, either directly
26 Or indirectly, any person or class of persons of the equal protection of the laws, or of equal
27 privileges and immunities under the laws". The keyword here is "Person". Plaintiff does not

1 have to be a member of a suspect or quasi-suspect class. The law clearly states "Person".
2 Plaintiff also believes in this instance he is of a suspect or quasi-suspect class. The Supreme
3 court gave tribes their "domestic dependant nation" status and thereby created a different class,
4 but it is one that they did not allow for and did not make any lawful adjustment for this "class"
5 that they created. This "class" makes their own laws, do not have to obey other laws, and are
6 apparently not bound to follow the United States Constitution unless they choose to "waive"
7 their rights. However they as a class are allowed to sue States should they believe they have
8 had their rights violated. One cannot honestly say that we are equals.

9
10 Fifth, the motion to dismiss for failure to properly serve defendants be granted as to all
11 defendants except Mattie Mayhew;
12 Plaintiff disagrees with this due to the fact that all these defendants were listed in plaintiffs first
13 amended complaint as Does 1-300. Due to the nature of the suit, plaintiff allowed for all tribal
14 members as well as casino employees', when originally listing the tribe and casino as
15 defendants. Defendants attorney represented the tribe, the casino, Mattie Mayhew and Does 1-
16 300, and had to know full well that Does 1-300 would have to be tribal members or casino
17 employees' by the mere nature of the suit. Defendants attorney was hired by the tribe and
18 casino to represent them as well as Mattie Mayhew and is still representing them. Defendants
19 attorney is still trying to claim sovereign immunity for all defendants' as listed in his Motion to
20 Dismiss. This again clearly shows he is still working for the tribe and casino and has never
21 stopped, and he is their appointed representative for the tribe and casino as well as its' members
22 and employee's. Plaintiff believes that by these actions from defendants attorney he did in fact
23 serve a copy of the summons and complaint legally as allowed for under 4(e)(2)© by delivering
24 a copy of each to an agent authorized by appointment or by law to receive service of process.

25
26 Sixth, defendants Edwards, Armus, Chase and Mix be dismissed with prejudice as protected
27 under tribal immunity;

1 Plaintiff heartily disagrees with this and presents further evidence as to a waiver of their
2 immunity and possibly the sovereign immunity claimed by the tribe and casino.

3
4 Under the GAMING ORDINANCE OF THE BERRY CREEK RANCHERIA it states;

5
6 (2) Notice Regarding False Statements.

7
8 A false statement on any part of your application may be grounds for not hiring you, or for firing
9 you after you begin work. Also, you may be punished by fine or imprisonment.

10 (U.S. Code, title 18 ~1001)

11
12 U.S.Code, Title 18,~1001-Statements or entries generally;

13 (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction
14 of the executive, legislative, or judicial branch of the Government of the United states,
15 knowingly and willfully-

16 (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

17 (2) makes any materially false, fictitious, or fraudulent statement or representation; or

18 (3) makes or uses any false writing or document knowing the same to contain any material
19 false, fictitious, or fraudulent statement or entry;

20
21 shall be fined under this title, imprisoned not more than 5 years or, if the offense involves
22 international or domestic terrorism (as defined in section 2331), imprisoned not more than 8
23 years or both.

24
25 (b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for
26 statements, representations, writings or documents submitted by such party or counsel to a
27 judge or magistrate in that proceeding.

1 ©) With respect to any matter within the jurisdiction of the legislative branch, subsection (a)
2 shall apply only to-
3 (1) administrative matters, including a claim for payment, a matter related to the procurement
4 of property or services, personnel or employment practices, or support services, or a document
5 required by law, rule or regulation to be submitted to the congress or any office or officer
6 within the legislative branch; or
7 (2) any investigative review, conducted pursuant to the authority of any committee,
8 subcommittee, commission or office of the Congress, consistent with applicable rules of the
9 House or senate.

10

11 This act committed by the tribe of listing (U.S.Code, title 18 ~1001) clearly indicates that they
12 have in fact waived their sovereign immunity to the tribe and casino.

13

14 In Mark S. Allen v. gold country Casino, et al., 464 F.3d 1044 (9th Cir. 2006),

15 [5] The casino did not waive immunity when it referenced federal laws in Allen's employment
16 materials. These statements were not a clear waiver of immunity. At most they might imply a
17 willingness to submit to federal lawsuits, but waivers of tribal sovereign immunity may not be
18 implied. [6] the statements' references to federal law did not mention court enforcement, suing
19 or being sued, or any other phrase contemplating suits against the casino.

20

21 Clearly this is a waiver of tribal sovereign immunity as they (the tribe) wrote and ratified this
22 Gaming Ordinance in compliance with the I.G.R.A. The tribe wrote in the U.S.Code, title and
23 section, so they are clearly listing a federal law, and that law allows for court enforcement.

24

25 It also allows that they, the tribe, accept that this code, section and title fall within the
26 jurisdiction of the government of the United States, thereby allowing me as a citizen the right
27 to fight in a court of law.

28

1 To deny this is a waiver of sovereign immunity or falls into the categories listed by Judge
2 Canby in his opinion for the Ninth Circuit Court, would be a travesty and a miscarriage of
3 justice. To finally have something that the tribe(s) deny they ever had or that they intended to
4 mislead employee's with is unheard of, but this document proves that it occurs.

5
6 According to the title and section I could be fined arrested or both, but should either or both
7 occur I can fight them in a court of law so that I could prove my innocence.

8
9 Plaintiff attempted to get this into evidence when he appealed his case to the Ninth Circuit
10 Court of Appeals (listed above) by the attorney who was appointed to plaintiff by the Ninth
11 Circuit Court, he did not feel that was beneficial to my case. I did and still do feel it is
12 definitely a piece of evidence that cannot be overlooked, or state that it does not meet the
13 criteria for a waiver of sovereign immunity by the tribe.

14
15 Plaintiff believes that this evidence should allow him to have his First amended complaint
16 revisited in regards to listing the tribe and the casino as defendants as well as any tribal member
17 or casino employee.

18
19 Seventh, defendants Boulton, Martin, Sandusky, Ricky Mayhew, Harter, White, and
20 Hernandez be dismissed without prejudice for failure to state a claim;

21
22 Boulton, Martin, and Sandusky were Gaming Commissioners and therefore responsible for the
23 investigation that was completed by both Brown and Hatley. They were party to both
24 investigations as well as the evidence they claimed was used against plaintiff. Boulton only
25 asked why I had said things against the casino and did not want to hear my answer. Their
26 minds were made up because they knew exactly what had transpired regarding the evidence

1 and the investigation.

2

3 Ricky Mayhew as I had stated collaborated with wife, to make up false charges and then
4 assisted Kirby Brown in his investigation. Ricky Mayhew was present when I was taken to the
5 Gaming commissioners office.

6

7 Harter was the Human resources director and did not follow her job functions regarding
8 personnel and their rights when terminated. Again this person knew what the outcome was
9 going to be before I was even talked to. She then refused to take calls or see me after the
10 initial visits to her office.

11

12 White was the Casino Manager at that time and he too did not follow policies and procedures
13 or the rules and regulations that his office stated he was to follow. Again he knew what the
14 outcome was to be before I was even questioned.

15

16 Hernandez is the children's (guardianship applied for) mother and had made the statement
17 "I told them not to fire you over this". Clearly she knew about the conspiracy against me and I
18 believe worked with Terrilyn Steele in the plan to take her children back by a false promise.
19 Hernandez had several dealings with the I.C.W.A. And their representing her and her children.
20 At first it was with us (Plaintiff and family) but at the end it was against us using whatever
21 tactic they felt would benefit them best.

22

23 Eighth, this action should proceed against defendants Mattie mayhew, Kirby Brown, Art Hatley
24 and Terrilyn Steele based on a violation of 42 U.S.C.~1981 only;

25

26 Plaintiff does not agree with the 1981 only charges, for reasons explained above. All these

27

28

1 defendants acted against a person (me) and did it with the intent of taking away my civil and
2 constitutional rights. This was done with malice and a complete disregard for the laws of the
3 United States of America.

4
5 Ninth, plaintiff be ordered to effect proper service of process as to defendants Brown, Hatley
6 and Steele; and

7
8 Tenth, once proper service of process has been completed, the remaining defendants be ordered
9 to file a responsive pleading with 20 days.

10
11 Plaintiff believes that what he listed for his response under the fifth recommendation, answers
12 this recommendation as well.

13
14 Plaintiff acknowledges that he in his zealously to respond to the court in a timely matter
15 omitted some of charges in the first amended complaint, but should plaintiff have to due a third
16 amended complaint, he will get in the necessary Constitutional violations as well as get into the
17 charges regarding deficiencies he may have omitted.

18
19 Plaintiff prays that the court reverse some of its' findings and the charges against individuals
20 named.

21
22 Plaintiff also noticed the absence of Mike Headrick name, but feels he was also responsible
23 with the investigation due to his job of being the head of security and would have been involved
24 with the investigation along with Hatley.

25
26 Plaintiff prays that the Court review the evidence presented and attached as pages A and A1,
27
28

1 regarding the Gaming Ordinance of the Berry Creek Rancheria.

2

3 Plaintiff has the entire ordinance which is signed and dated. It was given to plaintiff to read
4 and follow. Plaintiff prays that court apply this evidence in the manner prescribed.

5

6

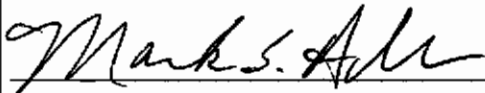
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Mark S. Allen - Pro Se

Date

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GAMING ORDINANCE

OF THE

BERRY CREEK RANCHERIA

A

(1) Privacy Ordinance Notice:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. §2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a Tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a Tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a Tribe's being unable to hire you in a Primary Management Official or Key Employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(2) Notice Regarding False Statements.

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment. (U.S. Code, title 18, § 1001)

b. Any existing Key Employee or Primary Management Official, or any other Class A licensee unless otherwise specifically exempted by the Gaming Commission, that has not completed an application form containing the language set forth in Section 11.a. (1) and (2) above, shall be notified that they must either:

(1) Complete a new application form that contains the Privacy Ordinance Notice and the Notice Regarding False Statements; or

(2) Sign a statement that contains the Privacy Ordinance Notice and consent to the routine uses described in that notice, and sign a statement that contains the Notice Regarding False Statements.

Section 12. Class III Gaming; Tribal-State Compacts.

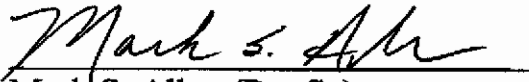
In addition to the provisions set forth above, no Class III

CERTIFICATE OF SERVICE

NO. CIV. S-04-0322 -LKK -CMK

I Hereby certify that a true copy of **PLAINTIFF'S OBJECTION TO MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATIONS AND CERTIFICATE OF SERVICE** was served on defendants attorney in the above civil action, by placing the documents in an addressed, sealed envelope, clearly labeled to identify the person served at the address listed below, by certified mail with a return receipt request on this date, 15 February 2008 in Paradise, California.

Pillsbury Winthrop Shaw Pittman LLP
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15 FEB 08
Date