


1 Mark S. Allen - Pro Se
2 777 Wagstaff Rd.
3 Paradise, CA 95969
4 (530) 876-0168

FILED

SEP 17 2007

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY  DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

10 **MARK S. ALLEN**

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.

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

**PLAINTIFF'S ANSWER TO
DEFENDANTS MOTION AND
MOTION TO DISMISS**

STATEMENT OF FACTS.

First plaintiff states that this court has jurisdiction in this matter under, Title 28, Section 1331 - Federal Question.

Plaintiff also believes that this court has jurisdiction in this matter under, Title 28, Section - 1343(a)(1)(3)(4) - Civil Rights and Elective Franchise

Second, that the defendant's listed in this case acted in concert and conspired together to deny plaintiff of his civil rights (to make and enforce contracts, to sue, be parties, and to the full and equal benefit of all laws for the security of persons and property), and that all acted as individual citizen's of the United States of America, and are subject to it's laws and the laws of the State of California, wherein the lawsuit (guardianship) was filed.

Plaintiff states that his suit involved the guardianship of three Tribal children. The suit did not affect the tribal government in any way, shape, or form, nor did it involve or have any effect upon the Casino. The only involvement was that of I.C.W.A. in regards to Tribal membership of the children, and where they would be located, therefore this court does have jurisdiction over the defendant's.

Plaintiff states that the defendant's, each and everyone, acting in concert, responded to plaintiff's legal lawsuit, by first creating charges against plaintiff, with false accusations. This was a product of two of the defendants conspiring together so as to start the conspiracy too get plaintiff terminated. From this point each defendant added their own part to the conspiracy. Each used their "position" to keep plaintiff from being able to use the rules and regulations, as well as the policies and procedures that were put in place for employee's who had a disagreement with the Casino over discipline that was deemed appropriate. Plaintiff believes that these rules and regulations as well as the policies and procedures were part of employee

1 rights when hired or what both sides agreed to in a contract. By each individual acting in
2 concert, the conspiracy was able to finally culminate with the termination of plaintiff from
3 his position at the casino. By each individual failing to comply with the rules and policies
4 that were established, plaintiff had no way to defend himself against false accusations. Each
5 defendant was retaliating against defendant for his filing of the guardianship lawsuit, with the
6 knowledge that the Tribe and Casino enjoyed "immunity" from suit. However the defendants
7 did not act on behalf of the Casino, otherwise rules, regulations, policies and procedures would
8 have been followed, as agreed to. Defendants acted on their own and out of anger and
9 frustration, and abused their "positions".

10
11 Plaintiff filed for guardianship on September 15, 2003 and was terminated from his position
12 on October 30, 2003.

13
14 Plaintiff was also denied reimbursement for money spent on the tribal children (an itemized
15 list was given to the tribe, approximately \$3,000.00) and were advised by letter that the tribe
16 does not reimburse and we should have had prior approval. Plaintiff received this denial on
17 October 8, 2003. This was also in direct conflict form what we were advised by the I.C.W.A.
18 representative, Ben Jiminez, who knew of the plan to take in all three of the children so as not
19 to split up brothers and sisters, and in fact was an instrumental part of plaintiff being listed as
20 a "Tribal" foster home. This whole matter (taking in the children) started in May 2003, when
21 plaintiff first took in Anthony Mayhew. The Tribe definitely knew of what was transpiring
22 due to the fact that it was Mr. Jiminez running the program. Mr. Jiminez knew of the plan to
23 take in all three of the children, as no one could be located (within the Tribe) to take in all
24 three children.

25
26 It was also Mr. Jiminez who made the statement, "Do not go to the white man's court".
27
28

1 Plaintiff believes that under Title 42, Section 1981 - Equal Rights Under The Law, it states,
2 "All persons within the jurisdiction of the United States shall have the same right in every
3 State and Territory".

4
5 Clearly this means "All persons" as stated and does not call for a racial minority or a suspect
6 class warranting special protection.

7
8 However, all one has to do is look at this case and the individuals involved and it becomes
9 quite clear that plaintiff is the "minority". Defendants are all "Indian" or employed by
10 "Indians" (except for defendant Mattie Mayhew, although married to an "Indian" and
11 mother to "Indians" and all are trying to use the "sovereign immunity" by hiding behind the
12 "Tribe" or the "Casino".

13
14 The Tribes have the unique position of (as the United States Supreme court declared them)
15 "domestic dependant nations" but it is only Indians that make up these "nations". If you
16 are not Indian (unless by special election) you cannot belong to this "nation", therefore
17 "you" are the minority. You do not have special privileges that being part of a "domestic
18 dependant nation" brings you.

19
20 This classification has in fact created a "Nation" of "racist", due to the fact that they are able
21 to live outside the laws of the United States, but also are able to use the laws of the United
22 States when it is beneficial to them. They (Tribes) feel that they are "superior" to all others
23 because only they "tribes" stand alone as "domestic dependant nations". They (Tribes) have
24 a "dual" citizenship role and use each role to either avoid issues or attack the issues after
25 figuring out which role nets them the most money, or creates the best opportunity for that
26 individual.

1 Plaintiff believes that under these conditions that he is clearly of “ a suspect class” that warrant
2 special protection.

3

4 Plaintiff believes that service of process was duly followed under Rule 4 (e) (2) of the Federal
5 Rules of Civil Procedure.

6

7 Plaintiff had a person over 18 and not a party to this action, deliver by first class mail with a
8 return receipt, a copy of the summons and company for each defendant to defendant’s
9 attorney.

10 Plaintiff further believed he followed the rule as defendant’s attorney never advised plaintiff
11 that he was no longer handling the case for the defendant’s and Mattie Mayhew is not a Tribal
12 member. This seemed like the logical person to serve the summons and complaints to as well as
13 complying with the rules.

14

15 Plaintiff believed that this met with and complied with the Rules. Plaintiff’s belief was
16 furthered when defendant’s attorney contacted plaintiff and requested an extension of two
17 weeks (which plaintiff granted) for defendant’s reply. Plaintiff subsequently received a letter
18 from defendant’s attorney confirming our agreement.

19

20 Plaintiff’s termination has caused emotional and physical distress to him. It created a financial
21 hardship that was not previously present. Plaintiff’s termination has caused his family to
22 suffer emotional distress as well.

23

24 Under, STATEMENT OF FACTS AND PROCEEDINGS, (A),
25 defendant’s voice that plaintiff alleged retaliation for voicing concerns about “rats” and also
26 about plaintiff having applied to “the white mans court”.

27

28

1 Plaintiff has always voiced first and second in the complaint and first amended complaint
2 that he was fired for racial discrimination and for applying for guardianship of three tribal
3 children.

4
5 This has never wavered or changed.

6
7 Plaintiff as explained in the previous pages has always believed that he was terminated for
8 applying for guardianship of three tribal children and because he is white.

9
10 Rats were mentioned after those two reasons, believing that the Casino was violating
11 "whistle blower" laws. The Ninth Circuit Court of Appeals, decided plaintiff could not sue
12 the Tribe of Casino but left open suits against individuals.

13
14 Under (C),

15 Plaintiff still believes that it can be proven that he is correct in these charges. The statement
16 by Tasha Mayhew, (**I told them not to fire you over this**) certainly goes to show plaintiff
17 was correct and the "**white mans court**" court remark not only indicates racial discrimination
18 but shows what the individuals (defendants) were upset about.

19
20 Under III (B),

21 Plaintiff also believes that all the individuals did not act in their capacities as agents or tribal
22 officials in the course and scope of their duties. They acted out of anger, frustration, and
23 hatred, and used their positions to vent their feelings and to make what upset them go away.
24 Those defendants that are not agents or officials of the tribe, acted at the behest of other
25 defendants, against plaintiff, to attack him where he would be unable to fight back. Defendants
26 (Tasha Mayhew) statement clearly shows that plaintiff is exactly correct as to how and why the

1 individuals (defendants) came after plaintiff.

2

3 Defendants were not acting in their official capacity for the Casino or the Tribe, otherwise
4 they would have followed their own rules and regulations as well as policies and procedure.

5

6 Plaintiff knows that this can be proven in court due to actions taken against him, dates that
7 he was notified of occurrences, dates and times of other listed occurrences along with the
8 policies and procedures manual and the rules and regulations manual, that call for certain things
9 to be done and within certain time allowance.

10

11 Plaintiff's only change has come as to how defendant Mattie Mayhew, was involved. Plaintiff
12 believes it was more involved than originally thought, and defendant, Tasha Mayhew also
13 played a part in this conspiracy against plaintiff.

14

15 Plaintiff has always believed those defendants listed were all part of this conspiracy, but listed
16 them as DOES 1 - 200 in the original and first amended complaint. Plaintiff, also believes
17 that there may be more individuals involved but until certain items (evidence) can be looked at,
18 plaintiff cannot name others at this time, and has does 1- 50 listed.

19

20 Under III ©)

21 Plaintiff, does not believe he is circumventing anything. Plaintiff, firmly believes that these
22 individuals (defendants), are responsible for his termination. Nothing has changed in
23 plaintiff's mind, but the courts ruled that I could not hold the Casino or Tribe responsible. I
24 may not agree with this decision but I will and must abide by it until something changes.

25

26 Plaintiff firmly believes that all defendants are United States Citizens, acted as such, and

27

28

1 should be treated as such.

2

3 Plaintiff had started a legal action that did not interfere with Tribal Government in any way,
4 shape or form.

5

6 Other cases have had people adopting Tribal Children under much of the same circumstances,
7 (living off the reservations, parents requesting others take care of them, sign away parental
8 rights etc.) but plaintiff was not trying to adopt, but only act as guardians for the well being
9 of the children until the natural mother was fit to regain custody of her children.

10

11 Plaintiff, was denied the ability to make and enforce contracts, to sue, be parties, and to the
12 full and equal benefit of all laws and proceeding for the security of persons and property,
13 which violate my civil rights.

14

15 This was accomplished by all defendants acting in concert, and functioning as a conspiracy by
16 all defendants, as well as being done to plaintiff with malice.

17

18 Plaintiff prays that the court denies the defendants motion to dismiss.

19

20

21

22 Mark S. Allen

13 Sep 07

23 **Mark S. Allen - Pro Se**

Date

24 **777 Wagstaff Rd.**

25 **Paradise, Ca. 95969**

26 **(530) 876-0168**

27

28

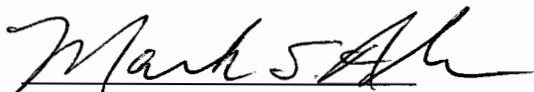
CERTIFICATE OF SERVICE

CASE # CIV S-04-322 LKK KJM-PS

I hereby certify that two true copies of the **PLAINTIFF'S ANSWER TO DEFENDANTS MOTION AND MOTION TO DISMISS**, and one copy of **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 14 September 2007 in Paradise, Calif.

Pillsbury Winthrop Shaw Pittman LLP
Attn: Blain I. Green
P.O. Box 7880
50 Fremont Street
San Francisco, Calif. 94120-7880

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.



Mark S. Allen (Pro Se)
777 Wagstaff Rd.
Paradise, Calif. 95969
(530) 876-0168 (Hm.)

14 SEP 07
Date