

Handwritten initials/signature

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUL 23 2015

RUSSELL ALLEN PASSONS
Plaintiff

Phil Lombardi, Clerk
U.S. DISTRICT COURT

VS.

CASE NO. 14-CV-281-JHP TLW

OSAGE NATION GOVERNMENT
et. al.
Defendants

Response to Motion
to Dismiss by United
States of America
Hearing Requested

Response to Defendants Motion to Dismiss

Come now Plaintiff in Pro Se and hereby responds
to Defendants UNITED STATES OF AMERICA Motion to Dismiss.
AS ARGUED HEREIN THE UNITED STATES MOTION MUST BE DENIED.

ARGUMENT

1) Defendants claim that Federal R. Civ. P. 8(d)(2) must be
denied. UNDER Rule 8(d)(3) INCONSISTANT CLAIMS OR DEFENSES, A
PARTY MAY STATE AS MANY SEPARATE CLAIMS OF DEFENSES AS IT HAS
REGARDLESS OF CONSISTENCY THE ISSUES INVOLVED HERE ARE VERY
COMPLEX THEY SPAN FEDERAL RIGHTS VIOLATIONS THAT ARE DECADES OLD
AND CONTINUE TO ACCURE DAILY, IT CONSIST^s PROPERTY DEPRIVATION,
AND THE DEFENDANTS NUMBER 27. ALSO PLAINTIFF MUST WRITE PLEADINGS
BY HAND SO ITS LEGIBLE AND CONFORMS TO COURT RULE, PLAINTIFF
PLEADINGS ARE CONSTRUED SO AS TO DO JUSTICE Rule 8. (e)

2) Defendants claim of Lack of Subject Matter Jurisdiction

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 No Cpy's No Env/Cpy's O/J O/AMJ

UNDER Rule 12 (b)(1) Fed R. Civ P. MUST BE DENIED. PLAINTIFF HAS CORRECTED THE DEFICIENCIES IN NEWLY AMENDED COMPLAINT. AFTER DISCOVERY OF NAMES OF DEFENDANTS WHO ARE ALL SUED IN THEIR INDIVIDUAL CAPACITY UNDER BIVENS DOCTRINE CARLSON V. GREEN, 446 U.S. 14, 100 S.Ct. 1468 (1980) McCloskey v. Mueller, 446 F.3d AT 271-72 (1st Cir 2006) THE COURT DOES HAVE JURISDICTION

3) DEFENDANTS CLAIM THAT PLAINTIFF HAS FAILED TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED MUST BE DENIED. RELIEF CAN BE GRANTED. PLAINTIFF IS ENTITLED TO RELIEF FOR THE DEPRIVATION OF INDIAN PROPERTY THE NON-DISCLOSURE, MISREPRESENTATION, OF PROBATE TRUST BREACH OF TRUST FUNDS, OF PLAINTIFF IMMEDIATE FAMILY'S HEARINGS WHICH HE IS HEIR TOO, ALSO DENIAL OF HIS PRO RATA SHARES FROM FEDERAL DEFENDANTS AS THE LAW REQUIRES THE COURT CAN GRANT BOTH ORDERS, AND INJUNCTIVE RELIEF TO STOP THE FEDERAL RIGHTS VIOLATIONS, AND MAKE THE DEFENDANTS DO THEIR JOBS, PLAINTIFF HAS FILED SEVERAL ADMINISTRATIVE ATTEMPTS TO SETTLE THE DISPUTED FACTS, THE NON ACTION OF BOTH ADMINISTRATIVE DETERMINATION AND FREEDOM OF INFORMATION ACT, BOTH DENIED, AND THE APPEAL PROCESS ALSO DENIED, CONSTITUTES FINAL AGENCY ACTION. DEFENDANTS DON'T DENIE THAT PLAINTIFF IS HEIR AND UNDER THE 1906 ACT, ENTITLED TO ASSETS HEARINGS/PROPERTY OF DEFENDANTS, BUT STATE IMMUNITY- AND LIMITATION IN AN ATTEMPT TO CONTINUE THE FEDERAL RIGHTS VIOLATIONS AND DEPRIVE HIS PROPERTY WITHOUT DUE PROCESS OR JUST COMPENSATION IN VIOLATION OF THE U.S. 5TH AMENDMENT. AND THE OSAGE NATION CONSTITUTION AND THE OSAGE MINERALS ESTATE AND THE ACT OF 1906 THE BUCK STOP WITH THE SUPERINTENDANT OF OSAGE AGENCY AS STATED IN U.S. MOTION TO DISMISS. PAGE 2. LINE 7, 8, 9, 10,

THE FINAL DECISION OF THE WILLS, AND PROBATE, OF THE STATE COURT IS BOUND BY FEDERAL DEFENDANTS, THE DEFENDANTS CLAIM THAT ALL THIS IS A STATE LAW ACTION AND THAT FEDERAL RIGHTS VIOLATIONS IS NOT A CLAIM UPON WHICH RELIEF CAN BE GRANTED IN THE FEDERAL COURT MUST BE DENIED. IN POLLARD V. GEO GROUP INC 2010 WL 22 46918*10 (HOLDING) "THE MERE AVAILABILITY OF A STATE LAW REMEDY DOES NOT COUNSEL AGAINST A GIVEN CAUSE OF ACTION"; THE COURT SHOULD REMEMBER THAT THE SUPREME COURT HAS SAID FEDERAL RIGHTS SHOULD NOT BE SUBJECT TO THE "VAGARIES" OF STATE LAW; CARLSON V. GREEN 446 U.S. 14, 22, 100 S.Ct. 1468 (1980) POLLARD V. GEO GROUP INC 2010 WL 2246918*12 IN BIVEN V. SIX UNKNOWN NAMED AGENTS OF FEDERAL BUREAU OF NARCOTICS U.S. 388, 392-97 91 S.Ct. 1999 (1971) THE COURT HAS SAID THAT BIVENS ESTABLISHED THAT THE VICTIMS OF A CONSTITUTIONAL VIOLATIONS BY FEDERAL AGENTS HAVE A RIGHT TO RECOVER DAMAGES AGAINST THE OFFICIAL IN FEDERAL COURT DESPITE THE ABSENCE OF ANY STATE CONFERRING SUCH A RIGHT. HARTMAN V. MOORE 547 U.S. 250 254 n.2, 126 S.Ct. 1296 (2002) (QUOTING CARLSON V. GREEN, 446 U.S. 14, 18, 100 S.Ct. 1468 (1980))

4) DEFENDANTS CLAIM OF 28 USC 1357 NOT PROVIDING JURISDICTION FOR DEFENDANTS MUST BE DENIED. ALL DEFENDANTS HAVE DENIED PLAINTIFF HIS FEDERAL RIGHTS, FOR HIS REQUEST FOR REDRESS OF HIS IMMEDIATE FAMILY'S INHERITABLE PROPERTY IN TRUST WITH FEDERAL DEFENDANTS. PLAINTIFF IS SUING FOR COLLECTION OF HIS CORPUS IN THE OBTAINABLE HEADRIGHTS, ILLEGALLY OBTAINED BY DEFENDANTS UNDER THE ACT OF CONGRESS 1906 ACT THESE REVENUES ARE PAID IN QUARTERLY PER CAPITA PAYMENTS TO DEFENDANTS UNLAWFULLY PLAINTIFF SEEKS RESTITUTION AND BACKPAY THIS STATUTE FITS THE BILL AND IS CONSTRUED SO AS TO DO JUSTICE

5) Defendants claim that U.S.C. 28 § 1343(a) does not provide jurisdiction, must be denied, Plaintiff has amended his complaint for individual capacity under Bivens doctrine the act of Congress which is the 1906 Act, USAGE MINERAL ALLOTMENT ESTABLISHMENT WHERE PASSED FOR THE PROTECTION OF FEDERAL RIGHTS THE USAGE AND PLAINTIFF. THE FEDERAL QUESTION OF CONGRESS CONSENT TO SUIT UNDER BIVENS IS APPLICABLE UNDER U.S.C. 28 § 1343, (a) (4) STATES

TO RECOVER DAMAGES OR TO SECURE EQUITABLE OR OTHER RELIEF UNDER ANY ACT OF CONGRESS PROVIDING FOR THE PROTECTION OF CIVIL RIGHTS.

6) Defendants claim that Bivens does not provide jurisdiction must be denied. Plaintiff has amended his complaint after discovering defendants by name, and is suing them in an individual capacity

THE SUPREME COURT EMPHASIZED THAT THE PURPOSE OF BIVENS IS TO DETER INDIVIDUAL FEDERAL OFFICERS FROM COMMITTING CONSTITUTIONAL VIOLATIONS MALLESKO 534 U.S. AT 70.

7) Defendants claim that U.S.C. 28 § 2415 does not provide jurisdiction must be denied. THIS U.S.C. WHICH DEALS WITH INDIAN CLAIMS LIMITATION ACT OF 1982. PORTRINE OF THIS U.S.C. IS CONSTRUCTED TO DO JUSTICE FOR PARTIES IN INDIAN PROPERTY ISSUES LIKE PLAINTIFFS U.S.C. 28 § 2415(c) STATES.

(C) NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE TIME FOR BRINGING AN ACTION TO ESTABLISH THE TITLE TO, OR RIGHT OF POSSESSION OF. REAL OR PERSONAL PROPERTY

PLAINTIFF IS ASKING THE COURT TO GIVE EQUAL DUE PROCESS AND TO CONSIDER THAT THE UNITED STATES AND PLAINTIFF ARE ADDRESSING INDIAN CLAIMS AND THIS CASE IS A CONTINUING HARM/WRONG, THE DENIAL OF FEDERAL RIGHTS ACCRUES QUARTERLY SINCE JUNE 28, 1906. ANNUALLY QUARTERLY PER CAPITA PAYMENTS

8). DEFENDANTS CLAIM THAT 5. U.S.C. § 702 A.P.A. DOES NOT HAVE JURISDICTION MUST BE DISMISSED. WHEN DEFENDANTS DID NOT RESPOND TO PLAINTIFFS' REQUEST FOR ADMINISTRATIVE DETERMINATION OF DECEDANTS HEADRIGHTS A.P.A. BECAME VALID FINAL AGENCY ACTION. PLAINTIFF IS ENTITLED TO PROBATE RECORDS AND AN ACCOUNTING OF WHO HAS OBTAINED HIS PROPERTY WITHOUT DISCLOSURE OR JUST COMPENSATION. ALL RECORDS SINCE 1906 ARE ON FILE IN THE OSAGE AGENCY, PLAINTIFF FILED A FREEDOM OF INFORMATION ACT REQUEST NOVEMBER 2014 AND THE FOLLOW UP APPEAL TO THE APPEAL DEPARTMENT. ALL ADMINISTRATIVE REMEDIES HAVE BEEN DENIED ALL FINAL AGENCY ACTION. ALL THESE FINAL DECISIONS VALIDATE JURISDICTION

A FINAL ACTION IS DEFINITIVE STATEMENT OF THE AGENCY'S POSITION WITH DIRECT AND IMMEDIATE CONSEQUENCES FOX V. LAPPIN 441 F. Supp. 2d 203-207 (D MASS. 2005)

CONCLUSION

PLAINTIFF ASK THE COURT TO DISMISS THE DEFENDANTS MOTION TO DISMISS, BOTH THE UNITED STATE AND OSAGE NATION, DO NOT DENIE THE FACTUAL ALLEGATIONS BUT CLAIM THEY HAVE IMMUNITY AND TIME LIMITATIONS BAR ME FROM THE PROPERTY AND FEDERAL RIGHTS PROTECTIONS I'm BEING DENIED, I HAVE AMENDED THE COMPLAINT AND TRYED TO KEEP IT SHORT BUT THE NUMBER OF DEFENDANTS THE FACT I WANTED TO ASSURE THE COURT THE FACTS, I'm NOT AN ATTORNEY AND PRAY THE COURT GRANTS THE RELIEF PRAYED FOR IN THIS PLEADING, PLAINTIFF IS SUFFERING GREATLY WITHOUT THE PROPERTY OR MONIES THAT ARE AND WILL BE DENIED HIM IF THESE VIOLATIONS ARE NOT CORRECTED. THIS DEPRIVATION SPANS PLAINTIFFS WHOLE LIFE AND WILL PASS IT UNDER THE ACT OF CONGRESS AND THE ACT OF 1906. THANK YOU

DATED 7-15-2015

Russell Allen Passaris
PLAINTIFF IN PRO SE