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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Gregory F. Mullally

Appellant,

vs.

Havasu Landing Casino, an enterprise of the Chemehuevi Indian Tribe, Jackie Gordon, Personally and as General Manager of the Havasu Landing Casino, Manual Jacques, Personally and Mary Petersen, Personally, Does 1 - 10.

Appellees

9TH Cir. Case No:

13-55152

Originating Court Case No:

EDCV07-1626 VAP (DTBx)

APPELLANT'S INFORMAL RESPONSE BRIEF

COMES NOW the Appellant, Gregory F. Mullally (hereinafter "I" or "me") in response to the Opposition Brief filed by the Defendants.

In my initial Appeal Brief I gave examples of what the District Court did wrong when it dismissed my various causes of action. The Defendants, unsupported by factual evidence, try to demonstrate why this Court should reject that evidence. In their brief they call me a liar, allege that their actions did not cause me harm and argue that I have deliberately wasted the Court's time.

In this rebuttal I will demonstrate again that the District Court erred, that I have not been the one who has been deliberately hiding evidence, misleading the Court or wasting the Court's time.

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1. In my Brief I argued I was not afforded due process of law in Tribal Court, and that the District Court erred by dismissing my allegations of Defamation and Conversion based on comity.

The Defendants claim at Page 23 of their brief that the "Tribal Court afforded (me) due process pursuant to rules and procedures that mirror those of the federal courts," Nothing can be further from the truth.

In *Wilson v. Marchington* 197 F. 3d 805 - 1997 this Court determined "A federal court must also reject a tribal judgment if the Defendant was not afforded due process of law." This Court noted "Due process, as that term is employed in comity, encompasses most of the *Hilton* factors, namely that there has been opportunity for a full and fair trial before an impartial tribunal that conducts the trial upon regular proceedings after proper service or voluntary appearance of the Defendant, and that there is no showing of prejudice in the tribal court or in the system of governing laws.

This Court also noted in the Restatement (Third) "that the judiciary was dominated by the political branches of government or by an opposing litigant, or that a party was unable to obtain counsel, to secure documents or attendance of witnesses, or to have access to appeal or review, would support a conclusion that the legal system was one whose judgments are not entitled to recognition."

I have enumerated the ways I was denied due process:

• I was unable to secure documents or witnesses as the Tribal Court Clerk repeatedly refused my requests to file Motions. Instead, the Clerk relied on defense attorney Marston to draft responses rejecting those Motions. Marston's own billing records document this.[1]

• The Tribal Clerk refused to issue me Subpoenas so that I could conduct discovery in direct violation of the Chemehuevi Indian Tribe's Rule 22 "Parties shall have the right to engage in discovery for the purpose of

[1] The defendants have furnished with their Opposition copies of the Tribal Ordinances that I refer to in this brief. For the most part, the first time I have seen the Ordinances is when I received them with their Brief.

preparing for a hearing or trial" and Rule 23, "Federal Rules of Civil Procedure, Rules 26 through 37 shall apply and govern all discovery..."

• On June 29, 2009, the Tribal Court issued an order advising me that my original Motion for Default failed to comply with Court Rule 14(d). However, the Clerk delayed mailing the order so I did not receive it until July 10 (after the time for response had run).

• On July 20, 2009, I filed a second Motion for Default. The Clerk falsely claimed to the District Court that she had misplaced my Motion. The District Court, relying only on unsupported Defense testimony, said, "the Tribal Court later may have misplaced Plaintiff's proof of service." This does not square with the facts. When I contacted her, the Clerk verbally acknowledged that she had the Motion and would send me an exemplified copy of the filing, something she never did.

• I was unable to secure exemplified copies of my Motions from the Clerk. The Clerk advised me on August 21, 2009 that she would mail an exemplified copy "as soon as she could pull the file," but never did. This is the same Motion the District Court guessed that she " may have misplaced".

• On September 1, 2009, I sent the Clerk a registered letter regarding our August conversation and again asked the Clerk to send an exemplified copy of my Motion, a scheduling order and the docket sheet. The Clerk never responded.

• On October 9, 2009, I sent another registered letter reminding the Clerk of my multiple inquiries of when my Motion would be calendared, for a copy of the docket sheet and for Subpoenas. The Clerk did not respond.

• Marston refused multiple requests to confer for a discovery scheduling conference in direct violation of Chemehuevi Rule 27(a). He told me "we're not doing discovery."

• The Tribal Clerk conducted numerous *ex parte* conversations with Marston. One was regarding my original application for Default Judgment. Marston wrote a letter that the Clerk then forwarded on her letterhead rejecting my Motion for default judgment against Hill "for form."

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• After I re-filed the Motion of Default against Hill the Clerk conducted another *ex parte* conversation notifying Marston that I had filed a second request for judgment. Even though this "misplaced" Motion was clearly in her possession, the Clerk delaying 5 months to file it.

• The Tribal Court judge issued an order on June 29, 2009, stating that the "Clerk did not enter default under Rule 34(a) and Plaintiff never requested that she do so." This statement is blatantly false, as I had filed multiple Motions seeking default, and the Tribal Judge, the Clerk and Marston conducted *ex parte* conversations about those default Motions.

• According to billing records, on October 7, 2009, Marston conducted an *ex parte* phone conference with Judge Moeller to discuss my Motion for Summary Judgment (the "misplaced" Motion). These *ex parte* conversations are in violation of the Rules of Admission and Professional Conduct of the Chemehuevi Indian Tribe as well as the Rules of Professional Conduct of the California Bar, to which Marston belongs. Marston's *ex parte* communications to the Clerk and the Tribal Judge are prohibited under both Tribal rules as well as California Bar Rule 11 (C).

2. If the above-enumerated facts are not sufficient to demonstrate that the Tribal Court denied me due process, it is also clear the Chemehuevi Court is dominated by the political branches of the tribe or by the opposing litigant:

a. The Court is operated by and for the Chemehuevi Tribe.

b. The Tribe staffs the Court.

c. The Tribe employs the Tribal Judge, the Clerk and pays Marston.

d. Marston is the Tribal court's associate judge.

e. The Chief Judge, the Clerk and Marston conducted multiple *ex parte* telephone conversations regarding my case. Marston composed the letters to be sent to me under the Clerk's signature. In other words, the defense composed and/or reviewed the Clerk's letters rejecting the various claims and Motions I made to its benefit.

f. The Tribe stood to gain financially when I lost in their Court. When the Tribal Court dismissed my case it then found me liable to the Tribe for over $130,000.00.

3. I filed my initial lawsuit on December 8, 2007, asserting a claim against Jacques Vasquez for defamation, and against Does 6 - 10 for conversion, (although I identified the person who took my property as the "casino attorney").

On March 3, 2008 the Court dismissed some of my claims, and stayed action on the remaining claims to allow me to exhaust my tribal remedies. Among those stayed claims were those for conversion and defamation.

At the time the Court ordered that I exhaust my tribal remedies, the Chemehuevis did not have an ordinance prohibiting conversion or defamation. Consequently, the Tribal Court did not have original subject jurisdiction over those acts as it only had jurisdiction over subject matter enumerated by Tribal ordinance.

In *National Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 9th Cir. Case No. 13-55152, U.S. 845 (1985), and Iowa Mutual Ins. Co. v. LaPlante, 480 U .S. 9 (1987) the Supreme Court ruled that Defendants in tribal court actions must exhaust available tribal court remedies before proceeding with a parallel action in federal court. At the same time, the Court held that Defendants could challenge the tribal court's exercise of jurisdiction over them in federal court after exhausting tribal court remedies.

The Supreme Court clearly held that, after the parties have exhausted the remedies available in a tribal court, a district court has federal question jurisdiction to review whether a tribal court has exceeded the lawful limits of its jurisdiction. *Nat'l Farmers*, 471 U.S. at 856; see also *Iowa Mut.*, 480 U.S. at 16 (applying National Farmers' exhaustion rule to diversity cases and holding that, in such cases, a federal court should "stay its hand in order to give the tribal court a full opportunity to determine its own jurisdiction"). The requirement of exhaustion permits a "full record to be developed in the Tribal Court before either the merits or any question concerning appropriate relief is addressed [in the federal district court].... [It will also] encourage tribal courts to explain to the parties the precise basis for accepting

jurisdiction, and will also provide other courts with the benefit of their expertise in such matters in the event of further judicial review." *Nat'l Farmers,* 471 U.S. at 856–57.

Though a federal court has jurisdiction to hear a case originating within Indian Country, under *National Farmers* and *Iowa Mutual*, a federal court must abstain until the plaintiff has exhausted his or her remedies in tribal court to allow the tribal court to determine its own jurisdiction over the matter. The Supreme Court has now imposed certain rules and exceptions (in addition to the exception contained in *Montana*) that limit the exhaustion doctrine, on a case-by-case basis. The Tenth Circuit summarized the possible exceptions in *Burrell v. Armijo*, 456 F.3d 1159, 1168 (10th Cir.2006):

(1) "where an assertion of tribal jurisdiction 'is motivated by a desire to harass or is conducted in bad faith,' " *National Farmers*, 471 U.S. at 857 n. 21 (internal citation omitted); (2) "where the [tribal court] action is patently violative of express jurisdictional prohibitions,", id.; (3) "where exhaustion would be futile because of the lack of an adequate opportunity to challenge the [tribal] court's jurisdiction," id.; (4) '[w]hen ... it is plain that no federal grant provides for tribal governance of nonmembers' conduct on land covered by [the main rule established in *Montana v. United States*]," *Strate v. A–1 Contrs.*, 520 U.S. 438, 459 n. 14; or, (5) it is otherwise clear that the tribal court lacks jurisdiction so that the exhaustion requirement " 'would serve no purpose other than delay,' " *Nevada v. Hicks*, 533 U.S. 353, 369 (2001)(internal citation omitted).

At the time that the Defendants argued I should have to exhaust my Tribal remedies, Defendants' attorney knew that the Tribal Court lacked subject matter jurisdiction and that Tribal remedies were unavailable to me. Unfortunately, I did not as Tribal ordinances had been systematically withheld from me.

I could never get copies of Tribal Ordinances. The first time I had the opportunity to read Chemehuevi Ordinance No. 08-03-29-8 (the Conversion Ordinance) and Ordinance No. 08-03-29A (the Defamation ordinance) was when I was served with the Defendants' response brief.

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It is clear from the documents filed by the Defendants (Excerpts of the Record, Vol. 3) that the Tribal Court did not have the authority to hear either of these causes of action when I first filed my lawsuit. The Tribe adopted both ordinances on March 29, 2008, some four months after I filed in District Court.

A reading of the Conversion and Defamation Ordinance leads one to believe that the timing and the wording of each was in part influenced by the lawsuit that I had filed in the District Court. If they are compared to Ordinances the Tribe adopted earlier, important changes become apparent.

First, the new Ordinances make clear that "case law developed by the California courts will provide (only) guidance, but not be binding on the Tribal Court, in interpreting this Ordinance." This effectively undercuts any ability to prosecute a case relying on established precedent.

Second, each of these new Ordinances took effect retroactively. I would invite the members of this Court to read the other Ordinance the Defendants have given you and see for yourselves.

It also appears that Marston authored these Ordinances as his law firm's document tracking information can be found on the lower left corner of each page of each new ordinance.

At the time Defendants' attorney argued for removal to the Tribal Court, he knew that there was no Tribal Ordinance regarding either Defamation or Conversion, and he was aware the Tribal Court lacked jurisdiction. Had I known, I would have immediately brought this to the attention of the District Court and asked the District Court to rule on the issue of subject matter jurisdiction. However, since the Tribal Clerk and the Defendants' attorney kept the Ordinance hidden from me until now, I was ambushed. Now that it is clear when the Tribal Ordinances were adopted, and when the Tribal Court was given subject matter jurisdiction, I would asked the Appeals Court determine whether there was a colorable basis for the exercise of tribal jurisdiction at the time the District Court ordered this matter removed to Tribal court.

I ask this Court to review the totality of the record of my conversion

and defamation claims *de novo*, determine whether the District Court erred when it remanded my case, then erred again when it honored the Tribal Court decision by dismissing my causes of action over which the Tribal Court did not have original subject jurisdiction when I filed them.

By dismissing my case against the Defendants because they had been adjudged innocent in Tribal Court (a Court that in all likelihood shouldn't have had jurisdiction over them in the first place) the District Court not only allowed the Defendants to avoid prosecution for their tortuous actions, but also enabled the Tribal Court to impose huge monetary levies on me, finding me liable for not only the legal fees Mr. Marston claimed he amassed in Tribal Court, but also for those he claimed he had incurred in the Federal Court. It should be clear that the Defendants were adjudged by the Tribal Court under an Ordinance that was written not only well after they had committed their tortuous acts, but under an Ordinance that had their interests in mind, making it impossible to prosecute my case.

4. I was not provided an opportunity to appeal the Tribal Court's decision absolving the Defendants from their tortuous acts despite a Chemehuevi Tribal Ordinance allowing appeals.

• The Chemehuevi Tribe has not established an appeals court, nor have they any process whereby I had access to any type of independent review. Section 1.070 (C) of the Chemehuevi's own Ordinance to Establish a Tribal Court says, "Any party who is aggrieved by any final order, commitment or judgment of the Tribal Court may appeal."

• When the Tribal Court found me liable for attorney Marston's legal fees I was not able to appeal this decision, or have it independently reviewed. According to Mr. Marston's argument before the District Court, the Tribal Court decision is "not open to appeal."

5. The District Court, with no other evidence other than unsupported Defense claims, erred when it concluded that I was afforded due process and that I had been given the right to present evidence. The District Court ignored the fact that the Tribal Court had not given me the ability to do Discovery. Sworn testimony taken for the Federal action shows that the Defendants Gordon and Peterson deliberately hid or destroyed discoverable

evidence by causing the physical destruction their computer's hard drives effectively preventing e-discovery. Additionally, the Defendants never produced documents that I personally created, stored on both my work computer and server at the Havasu Landing resort and later subpoenaed. Only when I filed Motions to Compel and the Magistrate Judge ordered the Defendants to produce was I able to secure discoverable documents, most produced just days before the District Court granted defendant's Summary Judgment motion.

The District Court erred when it determined that I had been given the right to "file motions and respond to motions". The District Court seemingly overlooked the fact that the Motions I filed were either rejected (with the defense attorney drafting the rejection letters), "lost" until circumstances dictated that timing was favorable to the defense to allow them to be filed, or that I was given insufficient time to appear and respond to defense Motions.

The District Court, while recognizing some Chemehuevi law and procedural policy, ignored others to my detriment. By recognizing the Tribal judgment and dismissing my causes of action the Court granted comity and recognized the Tribal Court's decision, even though such recognition flies in the face of precedent established in previous Federal cases and enumerated by this Court in *Wilson v. Marchington* and *Bird v. Glacier Electric Cooperative, Inc.*

As a final note, the District Court refused to consider some of the evidence I submitted to it because I had failed to file an affidavit. The Defendants argue at Page 31 of their brief that I never moved the District Court for permission "to file a simple piece of paper authenticating [his] documents". The Defendants claim the District Court never "refused to give [me] permission to correct this error.

The District Court's minute order of 5/4/2011 clearly stated that it was granting Defendants' Motion to Dismiss as to Plaintiff's defamation and conversion claims without leave to amend. As I understood the ruling, the Court was telling me that I did not have the right to change anything and then bring it back before that Court.

What I did do was file an immediate Appeal of the District Court's

ruling to the Ninth Circuit. This Court properly rejected my Appeal because final adjudication at the District level had not been reached.

As a pro se Plaintiff I have done my best to understand various Court rules. It never occurred to me that I might have been able to file some sort of document with the District Court authenticating my documents after the Court dismissed my claim without leave to amend. I also thought that the correct way to proceed was to appeal that Court's decision to the Ninth Circuit.

To summarize, when I filed my case the District Court had original subject jurisdiction over most of my case. Mr. Marston misled the District Court, demanding that my case be removed to the Tribal Court even though he knew the Tribal Court lacked subject matter jurisdiction.

Since neither the Court nor I knew that the Tribal Court lacked subject matter jurisdiction, the matter was removed to Tribal Court. The Tribe then quickly passed Ordinances, apparently written by Mr. Marston, which gave the Tribal Court subject matter jurisdiction retroactively.

The Tribal justice system deliberately and systematically denied me due process. I could not get copies of the Tribal ordinances. I could not conduct discovery, subpoena witnesses, file Motions, or get docket sheets. I did not receive scheduling orders in a timely fashion. I was not given any right to appeal.

I certainly was not given "due process pursuant to rules and procedures that mirror those of the federal courts" as the Defendants argue. In truth, any semblance of due process In Tribal Court went right out the window.

6. In my Initial Brief I stated that the Court erred by refusing to allow my Motion to Amend as it pertained to my claim for defamation against defense attorney Marston, and by refusing to allow me to proceed in my conversion claim against him.

Attorney Marston argues that he enjoys immunity from suit as a "Tribal Official". He also argues that the Tribal Court had subject matter

jurisdiction over claims of defamation and conversion.

As previously discussed, one could reasonably argue that Defendant Marston wrote each of the Tribal defamation and conversion ordinances in light of him being charged under them specifically so the Tribal Court might have subject matter jurisdiction, and so that these matters could be heard in Tribal court, where he had undue influence over the process. Had Mr. Marston been honest, Tribal exhaustion should not have been necessary as it pertained to either defamation or conversion.

Mr. Marston challenges my right to sue him based on his claim of tribal immunity. As I previously stated, Marston is not a tribal member. He is not an employee in the sense of the word "employee". Marston is an independent contractor who bills the Tribe on an hourly basis for services he performs for the Tribe.

Marston claims that he is a Tribal official, and protected from suit by the doctrine of sovereign immunity. However, the record shows Tribal officials are not immune from suits for deliberate torts. The Tribe has expressly waived sovereign immunity as it applies to tortfeasors.

Nothing in Marston's job description as "tribal attorney" gives him the right to steal people's private property or deliberately slander them. Such actions are necessarily outside the scope of his official duties and responsibilities to the Tribe.

Outside counsel for a Tribe enjoys sovereign immunity when he is acting in his official capacity. The Tribal court record documents Marston himself testifying that a Tribal official cannot be acting in his official capacity, but only in his private one, when he deliberately commits a tortious act. I agree with his analysis and would have presented the transcript of his remarks to the Court if I had been able to obtain it, which I was not.

I am not suing Marston in his role of tribal attorney. I am suing him as a private individual who deliberately slandered me and improperly took my property. The Tribe is not a party to this suit. My suit does not challenge tribal action or policies, nor seek damages from the Tribe. The Tribe cannot be held liable to judgment.

Finally, Mr. Marston makes a collateral attack on my definition of "tribal employee". I have been unable to find a definition of tribal employee in the Chemehuevi ordinances or statutes. I have been unable to find any precedent setting Federal Court cases that adequately define the term. Although it does not constitute legal precident, the IRS published the best definition I can find. According to this Federal agency, Marston is not an "employee" but rather an independent contractor. It would seem to me that a Federal definition should be given as much, if not more, weight than Marston'a unsupported claims.

Employers withhold income taxes, withhold and pay social security and Medicare taxes, and pay unemployment tax on wages paid to an employee. According to Marston's billing records he is a self-employed individual who bills the Tribe on an hourly basis for his services. He has not presented any evidence that the Tribe withholds payroll taxes, social security taxes, unemployment taxes or anything else on the money it pays him.

7. In my Appellant's brief I claimed the Court erred when it dismissed my Fourth Cause of Action (Intentional Misrepresentation – Mary Peterson, Jackie Gordon, Jay Hill) against the Defendants.

The District Court's factual conclusion that I had not relied on false representations to my detriment because the alleged misrepresentations occurred after I had accepted employment with the Casino is wrong.

I specifically alleged in my First Amended Complaint that "Mary Peterson, Jackie Gordon, Jay Hill each represented to (me) that (I) was covered under the provisions of the Family and Medical Leave Act of 1993(FMLA). Both Hill and Gordon discussed FLMA leave as part of the Employee Handbook orientation presentation each made."

I further alleged, "as part of my employment agreement, Defendants Peterson, Gordon and Hill collectively and severally represented to (me) that I would be given FMLA if (I) required such leave."

There was absolutely nothing in those pleadings that should have led the Court to believe that that I was already an employee of the Casino when it was explained to me that I would receive FMLA if I should need it.

The fact of the matter was that I was not an employee when these false promises were made to me. I specifically stated in my First Amended Complaint, and later reiterated, "(t)he promise of Family Medical Leave, as well as the other promises contained within the Havasu Landing Casino Policies and Procedures publication, was important to (me) in convincing me to accept my position with the Casino."

I don't know how I could have been any clearer.

The Supreme Court fashioned a rule of special solicitude for pro se pleadings. Accordingly, "*pro se* complaint[s], 'however inartfully pleaded,' [are] held to 'less stringent standards than formal pleadings drafted by lawyers.'" *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (quoting Haines v. Kerner, 404 U.S. 519, 520-21 (1972) (per curiam)).

In recognition of the abnormally high potential for meritorious *pro se* complaints to be dismissed, the Supreme Court relaxed pleading standards for pro se litigants to ensure that they receive their "day in court."6 *See* Edward M. Holt, *How to Treat "Fools": Exploring the Duties Owed to Pro Se Litigants in Civil Cases*, 25 J. LEGAL PROF. 167, 168-69 (2001) (asserting that the Supreme Court responded to the potential for unfair dismissal of pro se cases by requiring judges to liberally construe *pro se* litigants' complaints).

In *Haines v. Kerner*, the Court held that judges should liberally construe pro se pleadings. 404 U.S. 519, 520-21 (1972) (per curiam). The Court has reaffirmed the lenient standard in cases following its initial pronouncement in *Haines*. *See, e.g.*, Fed. Express Corp. v. Holowecki, 128S. Ct. 1147, 1158 (2008) ("Even in the formal litigation context, *pro se* litigants are held to a lesser pleading standard than other parties."); *Estelle v. Gamble,* 429. It further stated that allegations such as those asserted by [the *pro se*] petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence.

Had the District Court given me the opportunity to offer supporting evidence that the fraud the Defendants perpetrated on me took place before I was hired, then was continued after I was hired, I would have done so. I have the documentary evidence proving I was given the Employee

handbook, its provisions explained to me, and that I was required to agree to those provisions and accept them BEFORE my employment began. Although I do not know if it is appropriate, I have summarized and attached copies of that documentary evidence, which was only provided to me by the Defendants pursuant to the Magistrate Judge's order, herewith[2]:

A. Document 1. Disclosure Statement - I signed the "Disclosure Statement" on July 1, 2003 as indicated by my signature and handwritten date on the bottom of the document. This Statement clearly indicated that as of that date I had not been hired. The specific verbiage may be found at the bottom of the document. It says, "I understand that IF EMPLOYMENT IS EXTENDED (emphasis added), I will abide by all tribal laws and jurisdictions of the Chemehuevi Indian Tribe".

B. Document 2. Drug and Alcohol Consent Form - I also signed this document on July 1, 2003. The final paragraph reads "once employed (emphasis added), my personal belongings and person may be searched at any time and freely consent to such search". This clearly indicates I was given this document BEFORE I was employed.

C. Document 3 - Personnel Policies and Procedures - I signed and dated this document on July 1, 2003. It verifies that I read through the Personnel Policies and Procedures of the Havasu Landing Resort and Casino and after explanation I "understand the Policies and Procedures thoroughly". It was at this time that the promise of FMLA leave, if I should need it, was made to me. I signed this document before I was hired.

D. Documents 4 & 5 - Casino Insurance Forms - The Casino required all employees to complete these forms. Please note that each of these documents contains a line labeled Date of Hire. In each case, these documents show that I was hired on July 3, 2003 two days AFTER I read the Policies and Procedures Manual, and I was promised that as part of my proffered employment package I would receive FMLA leave if I needed it. I started working on July 4, 2003.

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[2] Judge Bristow ordered the Defendants to produce these documents by December 5, 2012. I was unable to lodge them as evidence before the District Court before Judge Phillips dismissed my case on December 20.

These documents should prove the District Court erred when it ruled that FMLA was offered to me after I was hired, rather than before. Once again, had I believed that the employer was lying to me, I would have in all likelihood not accepted their offer of employment.

According to Defendant Peterson, I am the ONLY employee that has ever been denied FMLA leave when qualified. The Defendants made their promise of FMLA leave to every employee at the Casino. I am the only person they did not keep their promise to.

The District Court said that FLMA does not entitle me to any monetary benefit. This is clearly erroneous. Since the damages recoverable under FMLA are defined and measured by actual monetary losses, which is limited to two or three years depending on circumstances and the manner in which the Act was violated, my damages in terms of lost wages have easily surpassed $100,000.00.

8. The Defendants ask "Did the Tribal Court have subject matter jurisdiction over the claims set forth in the complaint filed in the Tribal Court by Appellant?" The Defendants claim that it did.

The question should not be whether or not the Tribal Court had subject matter jurisdiction over the claims I filed in Tribal Court, but whether or not the District Court should have ordered me to remove most of those claims to Tribal Court in the first place, and whether or not attorney Marston, knowing that the Tribe did not have subject matter jurisdiction, should have asked the Court to require that I pursue Tribal exhaustion before prosecuting my claims.

The Tribal Court was given subject matter jurisdiction over my claims of Conversion and Defamation AFTER I had filed in the District Court. The Tribal Court was given subject matter jurisdiction over my claims only after I filed my complaint with the Chemehuevi Tribal Council. Meeting at the end of March, the Council delayed acting on my complaint until they could adopt their new ordinances. Since they had my complaint in front of them, it was easy for Tribal Council to adopt ordinances in direct response to my complaints.

Had those new ordinances not been adopted after the fact, the Tribal Court would never have had jurisdiction over the Defamation or Conversion claims. Even after the Chemehuevis changed their laws, the Defendants admit at Page 4 of their Reply brief that the Tribal Court did not have jurisdiction over my claims of Interference with Contract Relations, or Fraud.

9. The District Court's conclusion that Peterson and Gordon did not interfere with my disability insurance contract is clearly erroneous. Here is why:

A. On May 16, 2011 I filed my First Amended Complaint. To plead my case for Deliberate Interference I alleged the following:

• At Line 76 I stated "Mary Peterson, under the direction of Jackie Gordon, refused to submit the paperwork required by Colonial Insurance so I might collect under my policy. Each intended to disrupt my ability to collect under my contract."

• At Line 77 I stated "Plaintiff asked Peterson on multiple occasions, both by certified letter and e-mail, to file the necessary paperwork. She responded to me with an e-mail stating that she was refusing to complete the forms because she was 'only following orders'".

• At Line 78 I stated "By refusing to file and/or directing that the required paperwork not be filed, Peterson and Gordon intentionally intended to impede performance, attempted to induce a breach or disrupt the contractual relationship between Plaintiff and my insurance company, and made Plaintiff's attempts to collect under my policy extremely difficult."

• At Line 79 I stated "Peterson finally submitted the paperwork required by Colonial Insurance some eight months after Plaintiff had requested that she do so."

• At Line 80 I stated "Because she refused to submit the required paperwork to Colonial Insurance, I was denied the benefits I should have received under my disability policy for many months. Since I was unable to work because of my ongoing medical condition, and because of the actions of Peterson and Gordon Plaintiff suffered grave financial hardship. I was forced to rely on the kindness of friends to obtain funds to help me pay my

medical and other expenses.

These pleading, I believe, are concise and to the point (other than I did not do the calculation of how long my benefits were delayed correctly). They are certainly not "generalities". Bad math or not, it is true that I was unable to receive benefits under my policy because Peterson, acting under Gordon's orders, refused to return the documents I needed to complete my insurance claim.[3]

B. The Defendants continually reference my original Complaint, finding it important that my first Claim with Colonial was denied. Both the Defendants and the Court give little weight to the fact that I made claims with Colonial and that both of these claims were filed well before I filed my First Amended Complaint. My First Amended Complaints speaks only to the Defendants refusing to return the paperwork to me so that Colonial might process my claim, and that because of their action processing of my claim was delayed to my detriment.

In my amended Complaint I stated "Mary Peterson, under the direction of Jackie Gordon, refused to submit the paperwork required by Colonial Insurance so I might collect under my policy. Each intended to disrupt my ability to collect under my contract." I simply said what they did, which was to make sure that I did not have the paperwork I needed to file with Colonial. Such deliberate interference is a direct violation of California law.

I did not think it important that I related the number of claims that I filed under my policy. To me, the important thing to plead was that I was unable to be paid under the terms of my policy with Colonial Insurance because the Defendants' actions delayed performance. I also showed that I was injured because of the Defendant's action.

C. The District Court ruling that I had "conflated" claims seems poorly taken. In fact, I never even used the word "claim" in my complaint. I said that Defendant Peterson refused to send the paperwork I asked her to send so that I might collect under my contract. I said that I asked Defendant Peterson on numerous occasions (very important verbiage) to get me the

[3] I agree with Mr. Marston that my calculation of delay was incorrect.

insurance form. I said that Defendant Jackie Gordon had ordered Defendant Peterson not to fill out that form.

I perhaps erroneously did not specify which specific claim of mine to Colonial was detrimentally affected because the Defendant's action. I didn't know the Court would find that necessary and reject my pleading because I didn't.

When the District Court dismissed my cause of action against the Defendants for Intentional Interference, I had not been given the opportunity to present the Court with all the facts because the Court dismissed my claims before discovery closed. Less than two weeks before the Court ruled did I receive most of evidence that had a direct bearing on this case, and then only because the Magistrate Judge had ordered the Defendants to produce it.

Other belated evidence I was unable to give the Court is testimony from Colonial Insurance. I took a deposition on November 28, 2012 of Ms. Felecia Robinson, a litigation support specialist for Colonial. I did not receive transcripts of the Deposition until after the Court had ruled.

I asked Ms. Robinson if there was any record of Colonial Insurance receiving the Employer's Form in the year 2007 (this is the form Mary Peterson said she refused to send based on Jackie Gordon's orders not to send it). Ms. Robinson answered that there was no record that Colonial had ever received the form from Peterson in 2007.

In their Opposition Brief, Defendants allege on Page 18, Line 43 "On November 28, 2007 Peterson faxed the completed employer information section of the Colonial Claim form to Colonial.

This is just not true.

I took a Deposition of Mary Peterson in September 2012. I asked her to bring to the Deposition records of her fax transmissions. Since a fax utilizes the telephone lines, there should have had a record of the call placed from her machine to Colonial's machine if she indeed sent the fax. She did not produce the records I asked for at Deposition, nor has she ever

produced them. Colonial's representative says Colonial never receivedthe employer's form (either by fax or by mail)[4] from Defendant Peterson until April 9, 2008.

Unfortunately, I was unable to present any of this evidence to the Court as it ruled before discovery was closed.

D. The Defendants are lying when they say they did not know about my second claim to Colonial. I produced a letter dated January 10, 2008 of addressed to Peterson asking her once again to complete and "fill out that form so I can collect from my policy" I told her that I was "once again enclosing the form in blank" and reminded her that it would "only take a minute of your time."

In December 2007 my doctor certified me disabled because of my severely deteriorated knees. After discussing his findings with him I scheduled surgery with a specialist.

On January 10, 2008 I wrote Defendant Peterson telling her that I had not yet received the Employer's form I had requested months before, and informed her that I still needed it. Characteristically, she once again refused to honor my request, and did not respond by sending the employer's form to either me or to Colonial.

In Deposition, Defendant Peterson claims she never received my letter. Circumstances seem to belie that claim. Although she says she never got my letter, documents she produced show that within days of the date she should have received that letter she contacted a Colonial sales representative to find out "what kind of policy (I) had". This was the only contact she made with Colonial until April 2008, when she finally mailed in the Employer's form. In Deposition she claims she doesn't remember why she contact the Colonial representative then. Reasonably, one would think that if she had done everything she needed to do so that I could submit my claim months before (which she hadn't), and had no reason to worry about my policy and

[4] In deposition, Defendant Peterson said she actually mailed the form to Colonial in November. This statement contradicts earlier statements filed with the District Court.

the consequences of not returning the form to me (which she did), she wouldn't have cared what kind of policy I had in January on 2008.

In summary, the Court erred in dismissing my claim for Intentional Interference. In pleading, I clearly stated that the Defendants had engaged in behavior designed to disrupt my ability to collect under my contract. Had they sent me the paperwork I asked them to send, either in November or in January, I would have been able to successfully file my claim.

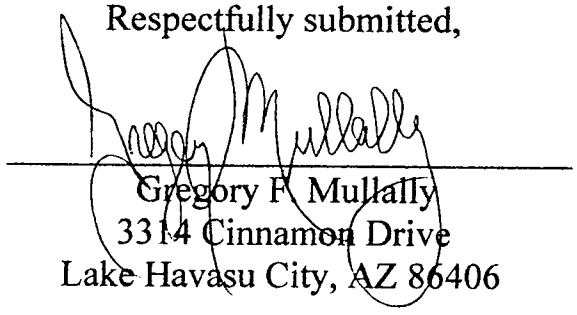
When I filed my suit in District Court I alleged that the Defendants interfered with my ability to collect under my policy. The District Court focused on the fact that my first claim had been denied. That in and of itself has absolutely nothing to do with what the Defendants were determined to do, that being to block any attempts that I might make to enforce the terms of my policy. The District Court overlooked the fact that the form the Defendants refused to send me was not claim specific, and had they complied with my request and sent me the form in November, even though my first claim was denied, the very same document would have supported and allowed me to collect on my second claim filed shortly thereafter.

CONCLUSION

I ask that I have the opportunity to present these clear-cut violations of California laws to a jury so that they might have the chance to decide whether or not the Defendants broke the law. For this reason I am asking this Appeals Court to find that I was systematically denied due process, and that the District Court reached conclusions leading to a dismissal of my case in error. I ask this Court to find in my favor and remand my case back to the District Court for trial.

Dated: August 19, 2013

Respectfully submitted,



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Pro Se

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Gregory F. Mullally Appellant, vs. Havasu Landing Casino, an enterprise of the Chemehuevi Indian Tribe, Jackie Gordon, Personally and as General Manager of the Havasu Landing Casino, Manual Jacques, Personally and Mary Petersen, Personally, Does 1 - 10. Appellees	9TH Cir. Case No: 13-55152 Originating Court Case No: EDCV07-1626 VAP (DTBx)

DOCUMENTS

The Defendants produced the following documents only after Judge Bristow ordered them to do so. They were produced on December 5, 2012, too late for me to file them as part of the official record, and only two weeks before Judge Phillips granted the Defense Motion for Summary Judgment.

A. Document 1. Disclosure Statement
B. Document 2. Drug and Alcohol Consent Form
C. Document 3. Personnel Policies and Procedures
D. Documents 4 & 5. Casino Insurance Forms

DOCUMENT 1

Disclosure Statement

11 DISCLOSURE STATEMENT - PLEASE CAREFULLY READ BEFORE SIGNING

I certify that all information provided in this employment application is true and complete.
I understand that any false information or omission may disqualify me from further consideration for employment and may result in my dismissal if discovered at a later date.

I understand that the employer may request an investigative consumer report from a consumer reporting agency. This report may include information as to my character, reputation, personal characteristics and mode of living obtained from interviews with neighbors, friends, former employers, schools and others.

I understand I have a right to make a written request with a reasonable time for the disclosure of the name and address of the consumer reporting agency so that I may obtain a complete disclosure of the nature and scope of the investigation.

I authorize the investigation of any or all statements contained in this application and also authorize any person, school, current employer (except as previously noted), past employers and organizations named in this application to provide relevant information and opinions that may be useful in making a hiring decision.

I release such persons and organizations from any legal liability in making such statements.

I understand that passage of a drug test would be a precondition of employment and that as a condition of employment, I will be required to execute a waiver of my right to privacy and consent to random drug tests on the job.

I understand that if I am extended an offer of employment, it may be conditioned upon my successfully passing a complete pre-employment physical and /or psychological examination.

I consent to the release of any or all medical information as may be deemed necessary to judge my capability to do the work for which I am applying.

I UNDERSTAND THAT THIS APPLICATION OR SUBSEQUENT EMPLOYMENT DOES NOT CREATE A CONTRACT OF EMPLOYMENT, NOR GUARANTEE EMPLOYMENT FOR ANY DEFINITE PERIOD OF TIME. IF EMPLOYED, I UNDERSTAND THAT I HAVE BEEN HIRED AT THE WILL OF THE EMPLOYER AND MY EMPLOYMENT MAY BE TERMINATED AT ANY TIME, WITH OR WITHOUT CAUSE AND WITH OR WITHOUT NOTICE, SUBJECT TO THE POLICIES AND PROCEDURES MANUAL OF HAVASU LANDING RESORT AND CASINO.

I UNDERSTAND THAT IF EMPLOYMENT IS EXTENDED, I WILL ABIDE BY ALL TRIBAL LAWS AND JURISDICTIONS OF THE CHEMEHUEVI INDIAN TRIBE.

I have read, understand, and by my signature consent to these statements.

SIGNATURE: _____ DATE: 7-01-03

12 TURN THIS APPLICATION IN TO HAVASU LANDING RESORT AND CASINO

HAVASU LANDING RESORT AND CASINO
HUMAN RESOURCE DEPARTMENT
P. O. BOX 1707 HAVASU LAKE, CA 92363
(800) 307-3610 (760) 858-4593 FAX (760) 858-4295
www.havasulanding.com
email: havasu1@havasulanding.com

THIS SPACE BELOW IS FOR OFFICE PERSONNEL USE ONLY:

DEPARTMENT:	
SOURCE OF APPLICATION:	
POSITION:	
START DATE:	
COMMENTS:	

DOCUMENT 2

Drug and Alcohol Consent form

HAVASU LANDING CASINO

DRUG AND ALCOHOL POLICY
CONSENT FORM

I acknowledge that I have received a copy of the Havasu Landing Drug and Alcohol Policy and agree to be bound by the provisions of the Drug and Alcohol Policy as it now exists or may in future be amended.

I understand that I may be required to submit to drug or alcohol testing, or both, at any time and consent to the taking of samples by an accepted medical method, including blood, urine or both. Further, I give my consent for the release of test results by the designated medical facility or other qualified laboratory personnel to authorized Havasu Landing Casino personnel only.

The purpose of this analysis is to determine the presence of drugs and/or alcohol in carrying out the provisions of Havasu Landing Casino's Drug and Alcohol Policy.

I understand that once employed, my personal belongings and person may searched at any time and freely consent to such search.

X _____
EMPLOYEE OR APPLICANT

7/1/13
DATE

GREGORY MULLALLY
PRINTED NAME

I.D. NUMBER

BY: _____

ITS: _____

DOCUMENT 3

Personnel Policies and Procedures

HAVASU LANDING
RESORT & CASINO
An Enterprise of the Chemehuevi Indian Tribe

PERSONNEL POLICIES AND PROCEDURES

This will verify that I, [redacted], have read through the through the Personnel Policies and Procedures of the Havasu Landing Resort and Casino and having explained to me any questions I had, I now understand the Policies and Procedures thoroughly.

SIGNED: [redacted]

DEPARTMENT: Casino

DATE: 7/1/13

WITNESS: [redacted] 347 (HR)
DEPARTMENT MANAGER

CC: PERSONNEL FILE

Please note date I was given Handbook & FMLA promised to me

P.O. BOX 1707 • HAVASU LAKE, CA. 92363 • Phone: (760) 858-4593 • FAX: (760) 858-4295

DOCUMENT 4 & 5

Casino Insurance Forms

all sections that apply.

FILED

To Be Completed by Employer

☒ New ☐ Dependent Add/Delete ☐ Change Name/Address ☐ Cancel ☐ Date of Change

Group Specifics

Position/Title

Hours Worked 40

Plan Selected
Medical QA-5
Dental

Reason for Application
☐ New Group Plan
☒ Annual Open Enrollment
☐ New Hire
☐ Status Change
☐ Life event/date
☐ Other

Product Selection
Health ☒ Yes ☐ No
Life ☐ Yes ☐ No
$
Dep Life ☐ Yes ☐ No
Dental ☐ Yes ☐ No
Vision ☐ Yes ☐ No
Other

Employee Type
Active ☒ Yes
COBRA/St Cont ☐ Yes
Hourly ☒ Yes
Salary ☐ Yes
Union ☐ Yes
Non-Union ☐ Yes
Other

A. Employee Information DATE OF HIRE 7/2/2003

First Name	MI	Last Name	Social Security Number	Home Phone / Work Phone
GREGORY	F	MULLALLY	517-48-6704	928 208-925 / 800 307-3610 x

Address: 3314 CINNAMON DRIVE | Apt # | City: LHC | State: AZ | Zip: 86406 | Email Address: gmullally@hotmail.

Language preference for receiving plan information: ☒ English ☐ Other

B. Family Information List All Enrolling (Attach ... essary) Marital Status ☒ Single ☐ Marri...

Last Name	First Name	MI	Sex	Relationship*	Birth...	Weight	Full-Time Student	Physician**
Employee			M F	Self	02-09	220	☐ Yes ☐ No	THOMAS WRONA
			M F	Spouse/Dom. Partner				
			M F				☐ Yes ☐ No	

714.1
61 109.8

*IMPORTANT: Please use the UnitedHealthcare directory of providers to choos... ...ysician (Primary Care) for yourself and each ... your covered dependents. for UnitedHealthcare Select and Select Plus only. **I... ...d dependent, legal documentation must be attached. Please see employer representative for more information about the qua... ...full-time student status. If dependent does n... with eligible employee, please provide address on a separate sheet.

C. Product Selection (Please check all that apply)*

Person	Medical	Life	Sup Life	Sup AD&D	Dental	V...	LTD	Dual Option Plan Number
Employee	☒	$	$	$				
Spouse/Dom. Partner		$						
Dependents		$						

*Benefit offerings are dependent upon employer election

Life Beneficiary's Full Name and Address | Relationship

D. Other Coverage Information

☒ Yes ☐ No Has anyone on this application been covered with health benefits, including coverage with UnitedHealthcare within the past 2 years? List dates c... 2003 - Pre... all family members covered

☐ Yes ☒ No Are you or any of your dependents covered by Medicare? Reason ☐ Ove... ☐ Kidne... ...bled | Covered by Part ☐ A ☐ B

If yes, Name of Medicare Beneficiary | Date Medicare ben... | Claim Number

E. Waiver of Coverage

I decline coverage for:
☐ Myself and all dependents
☐ Spouse/Dom. Partner
☐ Dependent Children

Declining coverage due to existence of other coverage:
☐ Spouse's /Dom. Partner Employer's Plan
☐ Individual Plan ☐ Covered by Medicare ☐ Medicaid
☐ COBRA from Prior Employer ☐ VA Eligibility
☐ Tri-Care ☐ Other
☐ I (we) have no other coverage at this time

I understand that ...verage at this time. I ... not be allowed to ... ...ss I experience a life change event, at the ...ollment period or ... late enrollee, if applic... ...derstand that pre-existing limitations ... explained in the Rights and Responsibili... which I have received with this form.

...oyee Initials | Date

F. Signature

I authorize United HealthCare Insurance Company and its affiliates ('The Company and Affiliates') to obtain, use and disclose my medical, claim or benefit records, including any individually identifiable health information containec ... records. I understand these records may contain information created by other persons or entities (including health care providers) as well a... ...nation regarding the use of drug, alcohol, mental health (other than psychotherapy notes), sexually transmitted disease and reproductive hea... services. I authorize any health care provider, pharmacy benefit manager, other insurer or reinsurer, hospital, clinic or other medical facility, health care clearinghouse, and any of their affiliates, representatives or business associates, to disclose my information to The Company and Affiliates. I

(continued on bac...

CALIFORNIA LAW PROHIBITS AN HIV TEST FROM BEING REQUIRED OR USED BY HEALTH CARE SERVICE COMPANIES AND INSURANCE COMPANIES AS A CONDITION OF OBTAINING COVERAGE.

...00 2251 1.05

Please note "Date of Hire" filled in by Employer was AFTER FMLA was promised to me, not before as District Court ruled.

FORT DEARBORN LIFE INSURANCE COMPANY
ENROLLMENT FORM (Please Print)

☐ New Enrollment ☐ Change

BASIC COVERAGE(S)
Basic Life/AD&D ☒ YES ☐ NO

EMPLOYER: If group is self-administered, submit enrollment form *only* if evidence of insurability is required. If group is not self administered, submit enrollment form to us.

EMPLOYEE NAME — LAST	FIRST	MIDDLE INITIAL	SEX	DATE OF BIRTH	DATE OF HIRE (FULL TIME)
MULLALLY	GREGORY	F	M ☒ F ☐	02-09-1946	07-03-03

SOCIAL SECURITY NO. (THIS IS YOUR CERTIFICATE NO.)	EARNINGS		JOB TITLE	CLASS
17 48 6704	$ 40,000.00	☐ Weekly ☐ Monthly ☒ Annual	SHIFT MANAGER	

EMPLOYER	GROUP NO./ACCOUNT NO.	LOCATION
KAVAEV LANDING RESORT & CASINO	/	

BENEFICIARY DESIGNATION (For Employee Only: Must Be Completed if you have applied for life or AD&D insurance) If two or more primary beneficiaries are named, and you do not list benefit percentages, proceeds will be paid in equal shares to the named primary beneficiaries who survive you. If no primary beneficiary survives you, proceeds will be paid to the contingent beneficiary(ies). If you list benefit percentages, the total must equal 100%. (Employee is the beneficiary of proceeds from spouse or child coverage.)

	FIRST NAME LAST NAME	DATE OF BIRTH	RELATIONSHIP	SOCIAL SECURITY #	BENEFIT %
Primary	KATHLEEN MEYER	03-01-1950	FRIEND	566 86 5421	100 %
Primary					%
Contingent					%

I HEREBY REQUEST TO BE INSURED AND AUTHORIZE DEDUCTIONS, IF ANY, FROM MY COMPENSATION FOR MY SHARE OF THE COST OF THE BENEFITS TO WHICH I MAY BE ENTITLED UNDER THE GROUP POLICY (IES) ISSUED TO THE EMPLOYER LISTED ABOVE. I UNDERSTAND THAT IF I AM NOT ACTIVELY AT WORK ON THE EFFECTIVE DATE OF MY COVERAGE, MY INSURANCE WILL NOT BEGIN UNTIL THE DAY I RETURN TO WORK. FOR THOSE COVERAGES I HAVE DECLINED, I UNDERSTAND THAT IF I CHOOSE TO ENROLL AT A LATER DATE, MY COST MAY BE HIGHER AND A HEALTH QUESTIONNAIRE MAY BE REQUIRED.

WARNING: Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement may be guilty of insurance fraud. (ORC Section 3999.21) (not enforceable in OR or VA)

EMPLOYEE SIGNATURE Gregory Mullally DATE 2, 19, 04

FOR FDL USE ONLY

9-552-998

Z4305 R10/99

PLEASE NOTE
"DATE OF HIRE"
(what I thought)

Gregory F. Mullally
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Lake Havasu City, AZ 86406
(928) 208-9230
gmullally@hotmail.com
Pro Se

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Gregory F. Mullally

Plaintiff

vs.

Jacques Vasquez, a.k.a. Manual Jacques, Charles Wood, Ronald Escobar, Jackie Gordon, Jay Hill, Mary Petersen, Ve'la"aa White, Lester Marston, and Does 1 – 20.

Defendants

9TH Cir. Case No: 13-55152

Originating Case No:
EDCV07-1626 VAP (DTBx)

AFFIDAVIT AND DECLARATION IN SUPPORT OF APPELLANT'S INFORMAL BRIEF

I, Gregory F. Mullally, being first duly sworn, deposes and says:

1. I am the Plaintiff in the above-entitled action.

2. I am submitting this affidavit and declaration in support of my informal reply brief. The information contained therein is of my own personal knowledge and if called as a witness in these proceedings, I could competently testify thereto.

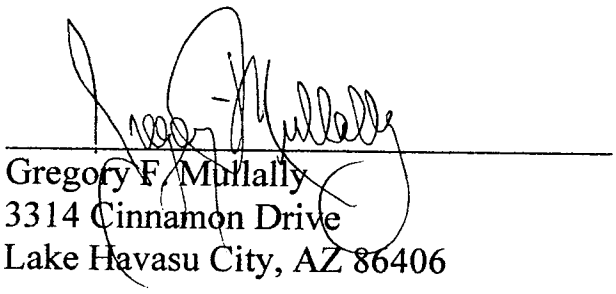
I declare under penalty of perjury that the foregoing is true and correct; executed on August 19, 2013 at Lake Havasu City, Arizona.

Gregory F. Mullally, Plaintiff

CERTIFICATE OF SERVICE

I certify that a copy of the Appellant's Informal Response Brief and Appellant's Affidavit and Declaration in Support of Appellant's Response Brief was served upon the Defendants by placing the aforementioned documents in the U.S. mail on August 19, 2013, postage paid and addressed to the person listed below:

Lester J. Marston
Rapport and Marston
405 W. Perkins St
Ukiah, CA 95482



Gregory F. Mullally
3314 Cinnamon Drive
Lake Havasu City, AZ 86406

Form 6. Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

☒ this brief contains 6872 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), *or*

☐ this brief uses a monospaced typeface and contains _____ lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

☒ this brief has been prepared in a proportionally spaced typeface using *(state name and version of word processing program)* Microsoft Word *(state font size and name of type style)* 14 & 12 (footnotes) point Times New Roman, *or*

☐ this brief has been prepared in a monospaced spaced typeface using *(state name and version of word processing program)* _____ with *(state number of characters per inch and name of type style)*

_____

Signature /s/ Gregory F. Mullally

Attorney for Pro Se

Date August 19, 2013