

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

JAMES V. NGUYEN,

Case No. 0:18-cv-00522-SRN-KMM

Plaintiff,

v.

AMANDA G. GUSTAFSON; HENRY M.
BUFFALO, JR., in his official capacity as
Tribal Court Judge of the Shakopee
Mdewakanton Sioux Community Tribal
Court, of the Shakopee Mdewakanton
Sioux Community; THE SHAKOPEE
MDEWAKANTON SIOUX
COMMUNITY TRIBAL COURT

**NGUYEN’S SUPPLEMENTAL
MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION AND
EXPEDITED HEARING**

Defendants.

INTRODUCTION

Plaintiff James Nguyen (“Nguyen”) submits this supplemental memorandum of law identifying cases in the 8th Circuit, and additional federal cases, in which a tribal court and/or a tribal court judge were named as defendants in actions challenging jurisdiction. Nguyen’s counsel requested permission from the Court to submit a supplemental memorandum addressing the above-described issue during oral argument on Nguyen’s motion for preliminary injunction which was heard before the United States District Court on March 16, 2018. The United States District Court granted Nguyen permission to submit a supplemental memorandum at that hearing.

ARGUMENT

I. Nguyen’s action Judge Henry M. Buffalo, Jr. and The Shakopee Mdewakanton Sioux Community Tribal Court should be allowed to proceed because they are named in their official capacities as the Tribal Court judge and Tribal Court in the dissolution action which is the subject of this case.

Nguyen named Defendants Henry M. Buffalo, Jr. (“Judge Buffalo”) and the Shakopee Mdewakanton Sioux Community Tribal Court (“Tribal Court”) as parties in this case because Judge Buffalo is presiding over the dissolution case in Tribal Court which Nguyen is seeking to enjoin in this case. Judge Buffalo and the Tribal Court were named as defendants to ensure that the adjudication of the dissolution case is enjoined in connection with Nguyen’s motion for preliminary injunction. Additionally, there are numerous cases in which tribal court judges and tribal courts are named as defendants in cases involving challenges to jurisdiction.

Cases in the 8th Circuit in which tribal court judges and tribal courts are named as defendants in cases challenging jurisdiction include: *Dish Network Service, L.L.C. v. Laducer*, 725 F.3d 877 (8th Cir. 2013); *Colombe v. Rosebud Sioux Tribe*, 747 F.3d 1020 (8th Cir. 2014); and *Hornell Brewing Co. v. Rosebud Sioux Tribal Court*, 133 F.3d 1087 (8th Cir. 1998). In *Dish Network*, the Honorable Madonna Mercellais, in her official capacity as Chief Judge of the Turtle Mountain Band of Chippewa Indians Tribal Court was named as a defendant. *See Dish Network*, 725 F.3d 877. In *Colombe*, the Rosebud Sioux Tribe and Judge Sherman Marshall, in his official and individual capacities, were named as defendants. *See Colombe*, 747 F.3d 1020. In *Hornell Brewing*, the Rosebud

Sioux Tribal Court and the Honorable Stanley Whiting, pro-tem tribunal judge, were named as defendants in that case. *See Hornell Brewing*, 133 F.3d 1087. Additionally, cases in other federal jurisdictions include tribal court judges and/or tribal courts as defendants, including: *Dolgenercorp, Inc. v. The Mississippi Band of Choctaw Indians*, 746 F.3d 167 (5th Cir. 2014) (naming the tribe and tribal court as defendants); and *Sprint Communications Company L.P. v. Wynne*, 121 F.Supp3d 893 (D.S.D. August 4, 2015) (naming the Chief Judge and tribal commissioners as defendants).

In *Dish Network*, plaintiff addressed the issue of immunity preemptively in its brief to the district court, but defendants did not address immunity in their brief and neither the district court nor the 8th Circuit addressed immunity in its opinions. In the other cases cited herein, defendants did not raise immunity and the courts did not address immunity in those actions.

In this case, Nguyen set forth his arguments at the hearing on his motion for preliminary injunction as to why immunity should not preclude him from proceeding against Judge Buffalo or the Tribal Court in this case. The primary issue addressed at oral argument was that Nguyen is not seeking affirmative relief or monetary relief against Judge Buffalo and the Tribal Court, but rather those parties were named as defendants because of the procedural posture of the dissolution case and to prevent the adjudication of the dissolution case in Tribal Court if this court grants Nguyen's motion for preliminary injunction. Notwithstanding that basis for naming Judge Buffalo and the Tribal Court as defendants in this case, Nguyen contends that this case and a preliminary injunction issued by this Court would prevent Defendant Amanda Gustafson from

continuing to litigate the dissolution case in Tribal Court if this Court grants Nguyen's injunction.

CONCLUSION

For the reasons set forth in Nguyen's initial memorandum of law in support of his motion for preliminary injunction, the arguments of Nguyen's counsel at the hearing on Nguyen's motion for preliminary injunction, and based on the case law cited herein, Nguyen respectfully requests that this Court restrain and enjoin the Defendants from continuing to prosecute and adjudicate *In Re the Marriage of Gustafson and Nguyen*, Court File No. 867-17 pending the outcome of this litigation regarding personal jurisdiction and subject matter jurisdiction.

Dated: March 19, 2018

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