HONORABLE ROBERT S. LASNIK

IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RAJU A.T. DAHLSTROM, Plaintiff, v. UNITED STATES OF AMERICA, *et al*., Defendants.	NO. 16-CV-01874-RSL **RESPONSE TO DEFENDANT UNITED STATES OF AMERICA'S MOTION TO DISMISS** NOTED FOR FRIDAY, NOVEMBER 3, 2017

REQUEST FOR CONTINUANCE OR RE-NOTING OF MOTION TO DISMISS

Plaintiff would respectfully request this Motion to Dismiss be continued or re-noted until after Plaintiff's Motion for Leave to File Second Amended Complaint (dkt. 47) has been decided. If the Court grants the motion to amend, then the pending Motion to Dismiss will become moot, and Defendant United States will be required to address the amended complaint.

The United States' pending Rule 12 Motion to Dismiss (dkt. 38) alleges that Plaintiff's First Amended Complaint (dkt. 33) is insufficiently pleaded in several regards, including that Plaintiff has failed to sufficiently plead which portion(s) of an Indian Self-Determination and Education Assistance Act (ISDEAA) contract was being carried out to cause Plaintiff injuries (Motion, dkt. 38, pp. 4-6, 8-11), and that Plaintiff has failed to sufficiently plead any "federal statute, regulation or policy" being violated by the Sauk-Suiattle Indian Tribe actors in their wrongful discharge and retaliation against Plaintiff, as required to avoid application of the first

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prong of the discretionary function exception to the Federal Tort Claims Act set forth in Berkovitz v. United States, 486 U.S. 531, 536 (1988). (Motion, dkt. 38, pp. 11-15)

Plaintiff's Second Amended Complaint (Exhibit 1 to this Motion) seeks to correct these pleading deficiencies by providing additional facts setting forth how the Sauk-Suiattle Indian Tribe actors were carrying out ISDEAA contracts in connection with their hiring, firing and retaliation against Plaintiff, as well as providing a detailed listing and analysis of the numerous federal statutes, regulations, and policies (including constitutional policies) that were being violated in the termination and retaliation against Plaintiff. (*See* prop. Second Amended Complaint, ¶¶ 126-141, pp. 78-85, Ex. 1 to dkt. 47)

The Court has already denied the ISDEAA coverage portion of the United States' motion to dismiss. (dkt. 46) As far as the Berkowitz discretionary function test, Plaintiff needs to defeat the first prong, namely proving violation of a "federal statute, regulation or policy", in order for his wrongful discharge and retaliation claim to proceed under the FTCA. Plaintiff's proposed Second Amended Complaint sets forth the federal statutes and policies that have been violated, and they are also argued in this motion response. However, case law such as Daigle v. Shell Oil Co., 972 F.2d 1527, 1539 (10th Cir.1992), requires a Plaintiff to plead the specific federal statutes, regulations or policies alleged to have been violated in order the defeat the first prong of the Berkowitz discretionary function test. Plaintiff should be allowed to amend its complaint to more specifically plead the violated federal policies. Defendants can brief on these specific policies, and Plaintiff can respond to new motion to dismiss on this.

RESPONSE TO DEFENDANT UNITED STATES' MOTION TO DISMISS

Conspicuously missing in their 12(b)(1) motion,[1] however, is any credible mention of Plaintiff's longstanding efforts to bring to light the ongoing financial corruption of one of

[1] "The Court has serious concerns about the legitimacy of the tactic that Allergan and the Tribe have employed. The essence of the matter is this: Allergan purports to have sold the patents to the Tribe, but in reality, it has paid the Tribe to allow Allergan to purchase—or perhaps more precisely, to rent—the Tribe's sovereign immunity in order to defeat the pending IPR proceedings in the PTO. This is not a situation in which the patentee was entitled to sovereign immunity in the first instance. Rather, Allergan, which does not enjoy sovereign immunity, has invoked the benefits of the patent system and has obtained valuable patent protection for its product, Restasis. But when faced with the possibility that the PTO would determine that those patents should not have been issued, Allergan has sought to prevent the PTO from reconsidering its original issuance decision. What Allergan seeks is the right to continue to enjoy the considerable benefits of the U.S. patent system without accepting the limits that Congress has placed on those benefits through the administrative mechanism for

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tiniest tribe found within the contiguous United States of America (i.e., Sauk-Suiattle Indian Tribe) in their handling of healthcare resources and the gargantuan-fraud wrought against the taxpayers throughout this Country. Additionally, by its acquiescence, the United States of America by dodging their legal responsibility to also protect vulnerable Native American babies from receiving contaminated vaccines through the federal, state, and tribal Vaccines for Children (VFC) programs, in contravention to the established guidelines of promulgated through the Centers for Disease Control ("CDC"), belies its true intentions – namely, to bury this thorny issue deep-down into the superfluous and often intractable arguments surrounding the notion of "sovereign immunity," to distract from the very serious dangers posed by Defendants to the continued viability of children, youth, and their families residing within and outside of the boundaries of the Sauk-Suiattle Indian Reservation --due to the dual-practice of substandard and dangerous medicines provided by (Defendant) Dr. Christine Marie Jody Morlock, a Naturopathic Practitioner, under the direct supervision of Defendant Ronda K. Metcalf, General Manager[2] made subject of Plaintiff's "whistleblowing" and "protected activity" prior to Defendant McDonnell seizing, detaining, and ejecting him off the reservation and terminating his employment in contravention to public policy under federal, state, and tribal laws,2 while he was actively engaged in the furtherance of activities (which is jealously protected under the Federal Tort Claims Act ("FTCA") and the Indian Self-Determination and Education Assistance Act ("ISDEAA"). The ISDEAA provides a mechanism for tribes or tribal organizations to conduct activities previously performed for them by the Department of the Interior, Bureau of Indian Affairs ("BIA") and the Department of Health and Human Services ("Indian Health Service ("IHS"). The Act authorizes (and directs) the Secretaries of these two Departments to enter contracts with tribes at the tribes' request. 25 U.S.C. § 450f(a)(1).

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canceling invalid patents." ALLERGAN, INC., Plaintiff, v. TEVA PHARMACEUTICALS USA..., 2017 WL 4619790, No. 15-1455-WCB, (E.D. Tex. 10/16/2017).

[2] Plaintiff is also claiming negligent supervision by individual defendants as members of the Sauk-Suiattle Indian Tribe, Tribal Council, Tribal Administration, and Individual Supervisory authority over Plaintiff. "As for the negligent supervision claim, the court has allowed this claim to proceed in the past. See, e.g., Anasazi, 2017 WL 2264441, at *7; Doe, 2017 WL 1908591, at *6."

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QUESTIONS PRESENTED: In Berkovitz v. United States, 486 U.S. 531 (1988), and United States v. Gaubert, 499 U.S. 315 (1991), this Court established a two-part inquiry for determining whether the discretionary function exception ("DFE") to the Federal Tort Claims Act ("FTCA") shields government conduct from suit. The first inquiry is whether the challenged conduct is discretionary; that is, whether it involved an element of judgment or choice. If the challenged conduct is discretionary, then the second inquiry is whether it is the type of discretion that Congress intended to protect; that is, whether the conduct is susceptible to social, economic, or political policy analysis. This two-part inquiry, and particularly Gaubert's "susceptibility" approach, have created significant and widespread conflict in the courts of appeals. Fortunately, the Berkovitz defense[3] is inapplicable where public policy –

[3] See also gathering cases: Dalehite v. United States, 346 U.S. 15 (1953); Indian Towing Co. v. United States, 350 U.S. 61 (1955); United States v. S.A. Empresa de Viacao Aerea Rio Grandense (Varig Airlines), 467 U.S. 797 (1984); Berkovitz v. United States, 486 U.S. 531 (1988); and United States v. Gaubert, 499 U.S. 315 (1991). Referring to Dalehite, the Court held the government liable, not because the negligence occurred at the "operational level," but because the government "was obligated to use due care" after it exercised the discretion to maintain the lighthouse. *Id.* at 64, 69. Varig involved two tort suits alleging that the Federal Aviation Administration (FAA) had negligently certified two airplanes before they caught fire. 467 U.S. at 799-800, 803. Congress gave the Secretary of Transportation broad authority to establish and implement a compliance program for airplane safety standards. *Id.* at 804. The Secretary delegated this duty to the FAA, which devised a "spot-check" system. *Id.* at 804-05, 815. This Court held that establishing such a system was a policy decision as to how best to "accommodat[e] the goal of air transportation safety and the reality of finite agency resources," so it was immunized. *Id.* at 820. The Court also held that the DFE protected "the acts of FAA employees in executing the 'spot-check' program," where the employees "were specifically empowered to make policy judgments regarding the degree of confidence that might reasonably be placed in a given manufacturer, the need to maximize compliance with FAA regulations, and the efficient allocation of agency resources." Id. The Varig Court found it "impossible" to precisely define "every contour" of the DFE, but isolated some useful principles: "First, it is the nature of the conduct, rather than the status of the actor, that governs whether the discretionary function exception applies in a given case." *Id.* at 813. "Second, whatever else the discretionary function exception may include, it plainly was intended to encompass the discretionary acts of the Government acting in its role as a regulator of the conduct of private individuals." *Id.* at 813-14. Third, "Congress wished to prevent judicial 'second-guessing' of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort." *Id.* at 814. In Berkovitz, an infant contracted polio from a vaccination. 486 U.S. at 533. His parents alleged that the government wrongfully licensed the drug manufacturer, and wrongfully approved the particular lot's release. *Id.* The basis for the discretionary function exception was Congress' desire to "prevent judicial 'second-guessing' of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort." United States v. Varig Airlines, *supra*, at 814. The exception, properly construed, therefore protects only governmental actions and decisions based on considerations of public policy. *See* Dalehite v. United States, *supra*, at 36. See also: The discretionary function exception, however, does not apply if the acts complained of do not involve the permissible exercise of policy discretion. Thus, if the Bureau's policy leaves no room for an official to exercise policy judgment in performing a given act, or if the act simply does not involve the exercise of such judgment, the discretionary function exception does not bar a claim that the act was negligent or wrongful. Gaubert involved a complex regulatory scheme under which the Dallas branch of the Federal Home Loan Bank Board took over key operational aspects of a thrift. 499 U.S. at 318-19. Among other things, the government replaced officers and directors, made hiring recommendations, and

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recommended conversion to a federal charter. Id. at 319-20. Ninth Circuit In Dichter-Mad Family Partners, LLP v. United States, the Ninth Circuit collected cases holding that under Gaubert's susceptibility approach, there need not be "actual evidence that policy-weighing was undertaken." 709 F.3d 749, 763 (9th Cir. 2013). But in Bear Medicine v. United States, the Ninth Circuit held that Gaubert's susceptibility approach does not allow ex post rationalizations, or change precedent holding that the failure to carry out safety measures cannot be excused in the name of policy. 241 F.3d 1208, 1216-17 (9th Cir. 2001). Rather, the term "susceptible" "was used illustratively to draw a distinction between protected discretionary activities . . . and unprotected discretionary activities . . . not to widen the scope of the discretionary rule." Id. at 1216. Thus, the Bear Medicine court rejected the government's claim that its failure to ensure worksite safety was based on two "possible" policy considerations, finding no record support for either. *Id.*; *see also* Miller v. United States, 163 F.3d 591, 593, 595 (9th Cir. 1998) (holding that the challenged conduct "need not be actually grounded in policy considerations," but also that the regulations at issue "demonstrate[d]" that the government balanced competing policy considerations). The Ninth Circuit recognizes that the DFE generally does not immunize the government's failure to follow its own safety measures. In Bear Medicine, a member of the Blackfoot Indian Tribe was fatally injured when a tree fell on him during a private logging operation on the Reservation. 241 F.3d at 1211, 1212. **The Bureau of Indian Affairs authorized the contract between the Tribe and a private operator, reserving the right to inspect the site and suspend operations. Id. Asserting the DFE, the BIA claimed that its failure to ensure worksite safety was "a result of two possible balancing judgments": promoting tribal independence, and limited resources. Id. at 1216. The court disagreed, holding that "safety measures, once undertaken, cannot be shortchanged in the name of policy." Id. at 1216-17. Extending the DFE to "the decision to take safety measures" and the failure to follow them, would "allow the Government to 'administratively immunize itself from tort liability under applicable state law as a matter of "policy." ' " Id. at 1215 (quoting McGarry v. United States, 549 F.2d 587, 591 (9th Cir. 1977)). Repeating that "[s]afety measures, once undertaken, cannot be shortchanged in the name of policy,"** the Ninth Circuit held in Whisnant v. United States that the DFE did not immunize governmental failure to inspect a Navy commissary and remediate mold. 400 F.3d 1177, 1182- 83 (9th Cir. 2005). There, the plaintiff became seriously ill after regularly encountering toxic mold in the meat department. *Id.* at 1179- 80. The court held that distinguishing between designing a safety measure and failing to follow it focuses on the nature of the decision, not on the identity of the decisionmaker. *Id.* at 1181 & n.1 (distinguishing the operational/planning distinction rejected in Gaubert, 499 U.S. at 325). "[R]emoving an obvious health hazard is a matter of safety and not policy." *Id.* at 1183. The Whisnant court aligned its decision with Indian Towing. *Id.* at 1182. And the court distinguished Varig, where the regulations specifically empowered FAA regulators "to make policy judgments," holding that Varig involved government oversight of private corporations to achieve maximum regulatory compliance, not the government's own "budget-driven shirking of safe maintenance." Id. at 1184 (emphasis original) (*quoting* Varig, 467 U.S. at 820). Consistent with Varig, the Ninth Circuit has noted one exception: the DFE may immunize the government's implementation of an established regulation that requires government agents to balance competing policy considerations. Id. at 1182 n.3 (*citing* Miller, 163 F.3d at 595-96). For example, the DFE applied in Miller, where Forest Service manual soutlining specific policies and objectives for fire suppression "demonstrated" that implementing those policies required the Forest Service to balance cost, public safety, firefighter safety, and resource damage. Miller, 163 F.3d at 592- 93, 595; *accord* Bailey v. United States, 623 F.3d 855, 861 (9th Cir. 2010), cert. denied, 132 S. Ct. 814 (2011). But since Gaubert, the Ninth Circuit has consistently declined to extend the DFE to the government's failure to carry out its own safety measures: • Young v. United States, 769 F.3d 1047, 1057, 1058 (9th Cir. 2014): the DFE did not immunize the failure to warn about a latent danger the government created, holding that "Because '[i]t is not sufficient for the government merely to [wave] the flag of policy as a cover for anything and everything it does that is discretionary,' we have demanded 'some support in the record' that the particular decision the NPS made was actually susceptible to analysis under the policies the government identified." • Oberson v. United States Dep't of Agric., 514 F.3d 989, 998 (9th Cir. 2008): the DFE did not immunize the Forest Service's failure to post a warning or remedy a hazard on a snowmobile trail; • Bolt v. United States, 509 F.3d 1028, 1034 (9th Cir. 2007): the DFE did not immunize the Army's failure to remove snow and ice from a parking lot; Soldano v. United States, 453 F.3d 1140, 1147 (9th Cir. 2006): the DFE did not immunize the Park's negligence in setting a speed limit; • O'Toole v. United States, 295 F.3d 1029, 1037 (9th Cir. 2002): the DFE did not immunize the government's failure to maintain an irrigation ditch on its own property, where the "danger that the discretionary function exception will swallow the FTCA is

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mandates Plaintiff Dahlstrom to protect babies from dangerous medical practices of Defendants Joseph, Metcalf, and Dr. Christine Marie Jody Morlock, *et al*., and against the Sauk-Suiattle Indian Tribe's individual employees conduct which is solely incompatible to the ISDEAA / AFA in this instant action is a federal mandate that Plaintiff Dahlstrom carryout all of the provisions of the contract and scope of work enumerated in the Scope of Work.

Plaintiff seeks to recover damages as a result of his termination from his position as Director of the Sauk-Suiattle Indian Tribe – Health and Social Service Department for filing written and oral complaints of illegal, civil or criminal violations of law, waste, fraud and abuse throughout the Sauk-Suiattle Indian Tribe's actively accepting funds from the United States of America through their ISDEAA / AFA contracts, and for (emotional injuries sustained as a result of alleged negligence by Defendant Richard M. McDonnell, within the scope of his position as Chief of Sauk-Suiattle Indian Tribe's -) Office of Public Safety. According to Plaintiff's Second Amended Complaint, he was working for the Sauk-Suiattle Indian Tribe.

Pursuant to Fed. R. Civ. P. 56(d), Plaintiff Raju A.T. Dahlstrom request that this Court either deny or continue Defendant UNITED STATES OF AMERICA premature motion to dismiss under Fed. R. Civ. P. 12(b)(1), Dkt. # 38, to allow Plaintiff Raju A.T. Dahlstrom to discover facts necessary to justify his opposition. Defendant United States of America has moved for a motion to dismiss before any document discovery or deposition testimony requests have been served and before any depositions have been taken. Without discovery, Plaintiff cannot gather and present evidence essential to prove his claims against Defendant United States of America and justify his opposition to motion to dismiss.

ARGUMENT

The Court may provide relief from a prior order based on mistake, newly discovered evidence, or misrepresentation. Fed. R. Civ. P. 60(b). The party seeking relief must show

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especially great where the government takes on the role of a private landowner"; • Bei Lei Fang v. United States, 140 F.3d 1238, 1243 (9th Cir. 1998): the DFE did not immunize an EMT's decision whether to stabilize the spine of a person who may have suffered a head or neck trauma; • Faber v. United States, 56 F.3d 1122, 1123, 1127-28 (9th Cir. 1995): the DFE did not immunize the failure to post warnings near a known risk; • Sutton v. Earles, 26 F.3d 903, 906, 910 (9th Cir. 1994): the DFE did not immunize the Navy's failure to post speed limit signs after placing buoys in navigable waterways; • Routh v. United States, 941 F.2d 853, 856 (9th Cir. 1991): the DFE did not immunize the decision to allow a contractor to operate a backhoe without a safety device.

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"extraordinary circumstances justifying the reopening of a final judgment." Wood v. Ryan, 759 F.3d 1117, 1119-20 (9th Cir. 2014) *cert. denied*, 135 S. Ct. 21 (2014). Rule 60(b) does not particularize factors that justify relief, but rather enables courts "to vacate judgments whenever such action is appropriate to accomplish justice." U.S. v. State of Wash., 98 F.3d 1159, 1163 (9th Cir. 1996). Plaintiff argues that the Court should grant his relief from (temporarily answering Defendants' motion to dismiss, Docket No. 38) considering newly discovered evidence contained in the United States of America voluminous documents contained in {Docket No. 38 (23 pages); Docket No. 38-1 (117 pages, attached as Exhibit A)5; Docket No. 38-2, and/or alternatively, grant Plaintiff's (Proposed Second Amended Complaint) which would considerably aid the Court's review and decision on this matter in favor of Plaintiff.

The Federal Tort Claims Act (June 25, 1946, ch. 646, Title IV, 60 Stat. 812, "28 U.S.C. Pt.VI Ch.171" and 28 U.S.C. § 1346(b)) ("FTCA") is a 1946 federal statute that permits private parties to sue the United States in a federal court for most torts committed by persons acting on behalf of the United States. 4 Pub. L. No. 93-638, 88 Stat. 2203 (1975) (codified as 25 U.S.C. §450). This Act is frequently referred to as "P.L. 93-638" or simply "638". Contracts are usually, but not exclusively, for BIA and IHS programs, functions, services, and activities.

Plaintiff asserts that the Indian Self-Determination and Education Assistance Act ("ISDEAA") reference or documents through the budgeting contract process between the Council and the Bureau of Indian Affairs ("BIA") to operate the tribal BIA/ICWA & BIA/Law enforcement programs provides sufficient basis to find jurisdiction in this matter. Plaintiff essentially argues that tribal officials or employees should be considered federal actors when they act pursuant to an ISDEAA contract. Plaintiff argues that claims against tribal officials or employees under contract as federal actors should be directly subject to the FTCA and, in turn, subject to discovery.

In his The False Claims Act (FCA), 31 U.S.C. §§ 3729 – 3733. 8 2017 WL 1064399. (only the Westlaw citation is currently available. United States District Court, W.D. Washington, at Seattle. Raju DAHLSTROM, et al., Plaintiffs, v. SAUK-SUIATTLE INDIAN TRIBE, et al., Defendants. CASE NO. C16-0052JLR. Signed 03/21/2017. Note: The United States of America declined to Intervene in Plaintiff's FCA action) ---once again rendering tribal youth, children, and families, vulnerable adults and Elders to "dangerous medicine" at

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the Sauk-Suiattle Indian Reservation. Specifically, Plaintiff's "(Amended) Complaint for Monetary Damages under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346 et seq., under Bivens, and under Washington common law torts" contains a Footnote 5 –that reads as follows: A "self-determination contract" is "a contract ... between a tribal organization and the appropriate Secretary for the planning, conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law." 25 U.S.C. § 450b(j). The self-determination contracts provide for the allocation of federal funds to the tribe or organization assuming responsibility for these programs or services. Id. § 450j–1. See: Colbert v. U.S., 785 F.3d 1384 (2015).

Under the ISDEAA, tribes and tribal organizations may enter into a contract with the federal government where the federal government will supply funding to the tribal organizations to assume the administration of programs that the federal government would have otherwise administered on behalf of the tribe. Hinsley v. Standing Rock Child Protective Services, 516 F.3d 668, 670 (8th Cir. 2008); Manuel v. U.S., 2014 WL 6389572, at *5 (E.D. Cal. Nov. 14, 2014). These contracts are known as "self-determination contracts." Hinsley, 516 F.3d at 670. Indian tribes, tribal organizations, or Indian contractors should be deemed part of the BIA when they have contracted through an authorized ISDEAA contract. Department of the Interior Related Agencies Appropriations Act, 1991, Pub.L. No. 101-512, Title III, § 314, 104 Stat. 1915, 1959-60 (1990) (codified at 25 U.S.C. § 450f notes); Manuel, 2014 WL 6389572, at *5. Tort claims against tribes, tribal organizations, and their employees, that arise out of a self-determination contract should be considered claims against the United States and subject to the "full extent of the FTCA." Hinsley, 516 F.3d at 672. Plaintiff has submitted a copy of an ISDEAA authorized self-determination contract between the Council and the Secretary of Interior or the Secretary of Health and Human Services, for and on behalf of the United States through his False Claims Act7 (FCA) suit against the Sauk-Suiattle Indian Tribe, et al. 8 The Sauk-Suiattle Indian Tribe signed contracts with the BIA/ICWA and IHS providing medical, health, and social services for the relevant periods of Plaintiff's employment at the Sauk-Suiattle Indian Tribe –through acceptance of and performance of self-determination contracts, which has never been disputed by the Sauk-Suiattle Indian Tribe. These tribal officials and employees acting under the ISDEAA self-determination contract9 should be

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subject to the FTCA and the allegations of Plaintiff's Complaint. The United States cannot be sued without its consent. The FTCA waives, however, the United States' historic defense of sovereign immunity. The FTCA authorizes suits against the United States for damages for injury or loss of property. Hinsley, 516 F.3d at 671. The Court may enforce federal subpoenas issued to non-party federal officials to produce official records or to testify despite claims of immunity. Robinson v. County of San Joaquin, 2014 WL 1922827, at *1 (E.D. Cal. May 14, 2014) (citing Exxon Shipping Co. v. United States Dep't of Interior, 34 F.3d 774, 778 (9th Cir. 1994)). The Ninth Circuit in Exxon Shipping Company limited 5 U.S.C. § 301— the statute that permits the head of the federal agency to "prescribe regulations" that govern the use of its records. Exxon Shipping Co., 34 F.3d at 777. The Ninth Circuit stated that 5 U.S.C. § 301 should not "by its own force, authorize federal agency heads to withhold evidence sought under valid federal subpoena." Id. The court should instead apply the Federal Rules of Civil Procedure to "adequately consider" the government's "unique interests" when the United States represents a party to the underlying action. *Id.* at 780. The Council entered into an ISDEAA contract for the operations of the BIA/ICWA, BIA/Law enforcement, IHS/health and social services on the Sauk-Suiattle Indian Reservation. The Council and its tribal members should be deemed part of the BIA/IHS and subject to the FTCA. The Council and its tribal members should be subject to discovery related to the health and social services and law enforcement activities covered by the ISDEAA contract.

Plaintiff sues the United States under the Federal Tort Claims Act (FTCA), 26 U.S.C. §2674. He sues the UNITED STATES OF AMERICA and individual defendants, presumably, for common law negligence under this court's supplemental jurisdiction, 28 U.S.C. §1367(a). Pursuant to Fed. R. Civ. P. 12(b)(1), the United States now moves to dismiss the FTCA claim against it, asserting there is no subject matter jurisdiction because Plaintiff was not acting pursuant to the contract between the U.S. Department of Health and Human Services (HHS) and the Sauk-Suiattle Indian Tribe or for that matter the individual defendants nor the Sauk-Suiattle Indian Tribe, furthermore, that he was not acting within the scope of his employment with the Tribe.

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A. **12(b)(1) Motions**:

There are two types of 12(b)(1) motions. A "facial attack" attacks subject matter jurisdiction solely on the basis of the allegations in the complaint, together with documents attached to the complaint, judicially noticed facts, and any undisputed facts evidenced in the record. All of these are construed in a light most favorable to the plaintiff. A "factual attack" attacks subject matter jurisdiction as a matter of fact based on extrinsic evidence apart from the pleadings. The primary difference between the two types of attack is that whereas under a facial attack, the court must consider the allegations of the complaint as true, under a factual attack, the court determines the facts for itself. Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). Where extrinsic evidence is disputed, the court may weigh the evidence and determine the facts in order to satisfy itself that it has power to hear the case. Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987). The burden of proof is on the plaintiff as the party who invoked federal jurisdiction. Stock West, Inc. v. Confederated Tribes of Colville Reservation, 873 F.2d 1221, 1225 (9th Cir. 1989). Where the facts are controverted, or credibility issues are raised, the court, in its discretion, can order an evidentiary hearing to determine its own jurisdiction. Rosales v. United States, 824 F.2d 799, 803 (9th Cir. 1987). For reasons discussed infra, the court finds it can treat and resolve the United States' 12(b)(1) motion as a "facial attack" based on the allegations in the Plaintiff's First Amended Complaint, together with certain undisputed facts evidenced in the record.

B. **ISDEAA / Annual Funding Agreement**.

The Indian Self-Determination and Education Assistance Act of 1975 ("ISDEAA"), Public Law 93-368, authorizes federal agencies to contract with Indian tribes to provide services on the reservation. Snyder v. Navajo Nation, 382 F.3d 892, 896 (9th Cir. 2004). "The purpose of the ISDEAA is to increase tribal participation in the management of programs and activities on the reservation." Id. at 896-97. In order to "limit the liability of tribes that agreed to these arrangements, Congress [ ] provided that the United States would subject itself to suit under the Federal Tort Claims Act . . . for torts of tribal employees hired and acting pursuant to such self-determination contracts under the ISDEAA." Id. at 897. "The FTCA provides a waiver of the United States government's sovereign immunity for tort claims arising out of the conduct of government employees acting within the scope of their employment." Adams v. United States,

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429 F.3d 1049, 1051 (9th Cir. 2005)(citing 28 U.S.C. §1346(b)(1)). "The FTCA provides that the government 'shall be liable . . . in the same manner and to the same extent as a private individual under like circumstances . . . .'" Garcia v. United States, 826 F.2d 806, 809 (9th Cir. 1987)(quoting 28 U.S.C. §2674).

A two-part analysis is used when determining whether the actions or omissions of a tribal employee are covered under the FTCA. The first inquiry is whether the tribal employee is a federal employee and focuses primarily on the scope of the ISDEAA contract and whether the contract authorized the acts or omissions forming the basis of the underlying claim. Allender v. Scott, 379 F.Supp.2d 1206, 1211 (D. N.M. 2005). If the court concludes that the claim at issue resulted from the performance of functions under the ISDEAA contract and that the tribal employee should be deemed a federal employee, the second inquiry examines whether the tribal employee was acting within the scope of his employment. Id. at 1211, 1218.

The scope of the employment is determined according to the principles of respondeat superior of the state in which the tort occurred, in this case, Washington. Lutz v. Secretary of the Air Force, 944 F.2d 1477, 1488 (9th Cir. 1991). Under Washington law, the test for determining whether an employee acted within the scope of his employment is: Whether the employee was, at the time, engaged in the performance of the duties required of him by his contract of employment, or by specific direction of his employer; or . . . whether he was engaged at the time in the furtherance of the employer's interest. Dickinson v. Edwards, 105 Wn.2d. 457, 716 P.2d 814, 819 (Wash. 1986) (emphasis in original). The Washington Supreme Court has emphasized the importance of the benefit to the employer in applying this test.

The emphasis is on the benefit to the employer rather than the control or involvement of the employer. Id. "[I]f the purpose of serving the employer's business 'actuates the servant to any appreciable extent,'" the employer is liable for the conduct of the employee, even if the employee's predominant motive is to benefit himself. Vollendorff v. United States, 951 F.2d 215, 218 (9th Cir. 1991) (quoting Leuthold v. Goodman, 157 P.2d 326, 330 (Wash. 1945)).

SCOPE OF CONTRACTS

Plaintiff Raju A.T. Dahlstrom (hereinafter, "Plaintiff" or "Dahlstrom") hereby additionally alleged in Second Amended Complaint, against the UNITED STATES OF

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AMERICA and fourteen employees[4] of the SAUK-SUIATTLE INDIAN TRIBE OF WASHINGTON (hereinafter, "SSIT", "Tribal Council" or "Reservation")[5] for (retaliatory) wrongful termination of his employment in contravention of public policy and law of the Sauk-Suiattle Indian Tribe; State of Washington, and the United States of America for engaging in or filing oral or written complaints of health and safety violations while carrying out, implementing or operating under the Self-Determination and Education Assistance Act ("Self-Determination Act" or "ISDEAA"), codified principally at 25 U.S.C. § 450, *et seq*., under Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346 *et seq*., under *Bivens*, and brings additional claims: unconstitutional search and seizure in violation of the Fourth Amendment, under 42 U.S.C. § 1983 and Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics;[6] unconstitutional infringement of the freedom of speech in violation of the First

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[4] Individual defendants: The Honorable Norma Ann Joseph, Kevin Joseph Lenon, Thomas Lee DeCoteau, Karen Risamarie Misanes, Patrick Owen Roberts, Jr., Ronda Kaye Metcalf, Cammie Carrigan, Christine Banks; George Bailey, Jack Warren Fiander, Robert Larry Morlock, Christine Marie Jody Morlock, Susan Harriet Yurchak, and Richard M. McDonnell, are eligible for federal legal representation under ISDEAA / AFA contract indemnification coverage. Note: The Department of Justice (DOJ) has long recognized that personal liability tort claims against federal employees implicate the interests of the United States. Accordingly, 28 U.S.C. § 517 authorizes DOJ attorneys to defend these claims in accordance with guidelines found at 28 C.F.R. §§ 50.15 and 50.16. *See also* USAM § 4-5.412. Individual capacity representation is available for current or former federal employees who have been "sued, subpoenaed, or charged in their individual capacities." 28 C.F.R. § 50.15 (2010). DOJ attorneys should look for three things when evaluating a case: (1) whether the employee is named in the caption as required by Fed. R. CIV. P. 10(a); (2) whether there is an allegation that the employee acted wrongfully; and (3) whether the prayer for relief seeks monetary damages. If all three of these things are present in the complaint, the employee can and should request individual capacity representation. Individual capacity representation by a DOJ attorney is not mandatory. A federal employee may retain counsel at his own expense, but this is rarely done. Most employees prefer representation by a DOJ attorney because there is no cost to the employee. The guidelines require that employees seeking individual capacity representation make a request through their employing agency. 28 C.F.R. § 50.15(a)(1) (2010). Unless the request is "clearly unwarranted," the agency is obligated to forward it to the appropriate litigating division, along with the court papers served on the employee and an "agency statement." *Id.* See: **November 2010 Volume 58 Number 6** United States Department of Justice Executive Office for United States Attorneys Washington, DC 20530 H. Marshall Jarrett. The United States Attorneys' Bulletin is published pursuant to 28 CFR § 0.22(b). The United States Attorneys' Bulletin is published bimonthly by the Executive Office for United States Attorneys, Office of Legal Education, 1620 Pendleton Street, Columbia, South Carolina 29201. Accessible online at: https://www.justice.gov/sites/default/files/usao/legacy/2010/12/06/usab5806.pdf.

[5] ***Sauk-Suiattle Indian Tribe of Washington*** is a federally recognized tribe. Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, **82 Fed. Reg. 4918** (Jan. 17, 2017). Accessible online at: Government Publishing Office (US) https://www.gpo.gov/fdsys/pkg/FR-2017-01-17/pdf/2017-00912.pdf.

[6] 403 U.S. 388, 392 (1971) (holding that a remedy is available for a federal agent's violation of a citizen's Fourth Amendment right to be free from warrantless searches and seizures).

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Amendment, under § 1983 and Bivens; false arrest, under tribal, state, and federal laws; and under the Federal Tort Claims Act ("FTCA"); false imprisonment, under Washington law and the FTCA; assault and battery, by brandishing and/or threatening or positioning a gun –that could result in significant bodily injury or death for Plaintiff's complaining of health and safety concerns –specifically regarding SSIT's placing of vulnerable babies, children, youth, and their families, vulnerable adults and Elders –enrolled and non-enrolled members of the SAUK-SUIATTLE INDIAN TRIBE (accessing their social and health services; Child Protection and Child Welfare Services) that could have resulted in significant emotional and outrages emotional distress --with intentions to bring about bodily injury or dead) in contravention to tribal, State of Washington or United States constitutional law (under the First, Fourth, Fifth, Eight, and Fourteenth Amendments to the United States' Constitutions, and the FTCA; constitutional deprivations by the Office of Public Safety, SSIT, and under Monell v. Department of Social Services;[7] malicious institution or extra-judicial prosecution or process in violation of the Fourth Amendment, under tribal, State of Washington law, and the United States law, and under the FTCA, and § 1983; retaliatory discharge in violation or in contravention and under the ISDEAA/AFA contracts between the SSIT and the United States and Washington common tort laws and other federal statutes that prohibit retaliation for reporting health and safety violations while carrying out or implementing the ISDEAA/AFA. Additionally, the following tribal, state or federal statutes banning retaliatory discrimination or termination of employment (in contravention to public policy) for complaining of health and safety violations by written or oral complaints are prohibited through and by the implementation and carrying out ISDEAA/AFA are included, but are not limited to the following: **Self-Determination and Education Assistance Act** ("Self-Determination Act" or "ISDEAA"), codified principally at 25 U.S.C. § 450, et seq., (e.g., (1) Self-Determination Agreement between Sauk-Suiattle Tribal Council, Contract No. GTP10T12608[8], Department

[7] 436 U.S. 658, 694 (1978) (holding that a municipality is subject to suit under 42 U.S.C. § 1983 when a constitutional deprivation is the result of a policy or custom instituted by its policymakers).

[8] On page 71/157 of the ISDEAA/AFA it contains under SANCTIONS: Failure to maintain the integrity of contract funds shall result in imposition of one or more of the following sanctions: (a) Pursuant to Section 5(d) of Public Law 93-638, as amended (25 USC 450c(d), funds paid to the Contractor and not used for purposes for which they are paid shall be repaid to the Treasury of the United States; and, (b) Cancellation of Advance

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of the Interior, Bureau of Indian Affairs, Puget Sound Agency, Public Law 93-638, as amended with Sauk-Suiattle Tribal Council, Signed on 05/11/2005, 157 page document; (2) **Sauk-Suiattle Indian Tribe's** ISDEAA /AFA Contract between Department of Health and Human Services – Indian Health Services Department of the Interior – Bureau of Indian Affairs UNITED STATES OF AMERICA & SAUK-SUIATTLE INDIAN TRIBE (Northwest Region/Puget Sound Agency/District V, Annual Funding Agreement – FY 2008. Contract No. CTP10T12615: Program: Law & Justice, Including Uniform Police, Criminal Investigations and Law Enforcement Radio Communication and Dispatch Services (Attachment 2 Work Agreement under AFA – Contract Provisions require amongst other things, the full implementation of STATEMENT OF WORK, UNIFORMED POLICE PROGRAM STANDARDS), covered under the FTCA for liabilities; (3) Sauk-Suiattle Tribal Council Resolution# 01/04/14, accepting $575.637.00, under the INDIAN HEALTH SERVICES AFA, Contract No. 248-96-0027,[9] , Approved on January 3, 2014, accepting provisions under Sauk-Suiattle Indian Tribe -Health & Social Services –Program Description mandating compliance with Clinical Services: (a) IHS-Manual, Part 3, Chapter 2-9, 13-15, 18, 21; (b) Federally Qualified Health Center Services, 42 CFR Part 405; (c) Washington State licensing requirements for physicians, physician assistants, nurse practitioners, and nurses; (d) reporting requirements; and (e) HIPAA compliance. Section 9: "The SSIT Health and Social Services Director (Director) is responsible for culturally appropriate program development, annual plans and budgets; directs, implements, policy development, provides reports, and evaluates health

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Payment methodology and invocation of 'other payment methodologies' as provided in provision 2, above; (c) Sanctions shall remain in place until the Contractor provides assurance that the impropriety which resulted in the imposition of sanctions has been rectified and will not reoccur. Additionally, Section 11, Federal Tort Claims Act (FTCA): (a) FTCA Coverage: For purpose of FTCA coverage, the Contractor and its employees (including individuals performing personal services, contracts with the Contractor to provide health care services) are deemed to be employees of the Federal government while performing work under this contract. This status is not changed by the source of the funds used by the Contractor to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the Contractor.

[9] Under this 2014 AFA contracts, Plaintiff was directly responsible for implementing the following: (a) IHS., Manual. Part I, Chapters 8-9. Part 3, Chapter H; (b) Occupational Safety and Health Administration (OSHA) Regulations; (c) National Fire Protection Association (NFPA) safety policies; (d) American with Disabilities Act (ADA); (e) Reporting requirements; and (f) HIPAA compliance.

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and social service programs and personnel, and applicable standards as enumerated in the AFA agreement, with FTCA coverage.[10]

Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671–2680, for various negligent and intentional torts. claims of negligent training and supervision, and intentional misconduct by Defendant Richard M. McDonnell[11] (and) all individual defendants in the employ or members of the Sauk-Suiattle Indian Tribal Council, and the Sauk-Suiattle Indian Tribe's Administration, including employees of the Finance Office, and Human Resources. As State of Washington, respondeat superior law, allows for Defendants' torts against Plaintiff Dahlstrom may have been within the scope of their employment. A factfinder could reasonably decide that defendants misconduct constituted an abuse of power lawfully vested in individual defendants (including Defendants McDonnel and Owens) rather than an unlawful usurpation of power the officers did not rightfully possess," and that their motives (law enforcement) included serving a government purpose. The FTCA provides a limited waiver of the federal government's sovereign immunity, allowing civil claims against the United States for "the negligent or wrongful act or omission" of a federal employee "acting within the scope of his

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[10] All citations in this Second Amended Complaint and Defendants' Exhibits are subsumed in this Complaint as Exhibits to Plaintiff's Amended Complaint which identifies ISDEAA / AFA agreements within or without the immediate control of the Plaintiff. Such as: Contract Numbers -GTP10T12608, CTP10T12615, 248-96-0027, and other Contract documents between the SSIT and the United States presently unavailable due to lack of discovery.

[11] BEFORE THE CRIMINAL JUSTICE TRAINING COMMISSION IN AND FOR THE STATE OF WASHINGTON, ***In re*** the Certification of CLAUDE L. COX Respondent. NO. 15-586 STATEMENT OF CHARGES On or about July 14, 2015, the Washington State Criminal Justice Training Commission (Commission) discovered that CLAUDE L. COX (Respondent), a certified tribal police officer knowingly falsified or omitted material information on an application for training or certification to the Commission. CLAUDE COX'S submission of false or omitted material information to the Commission constitutes grounds for revoking his peace officer certification under RCW 43.101.105(1)(b)…COUNT III: On or about August 4, 2013, CLAUDE COX knowingly falsified or omitted material information on an application for training or certification to the Commission when he submitted Form CJTC 1903 – Notice of Peace Officer Hire for **Officer Richard M. McDonnell**, declaring, by his signature, under penalty of perjury that the requirements of RCW 43.101.095 and Chapter 139-07 WAC had been met for Mr. McDonnell. DATED this 23rd day of February 2016. By: TISHA JONES, MANAGER Peace Officer Certification Criminal Justice Training Commission. Note: Plaintiff Dahlstrom is not aware of what the ultimate outcome of this Judicial Inquiry, but believes that this relevant to his complaint as to Defendant McDonnell's deficiencies which may be in derogation to the ISDEAA/AFA entered between the Sauk-Suiattle Indian Tribe and Department of the Interior, UNITED STATES OF AMERICA. This information is accessible online at: http://bloximages.newyork1.vip.townnews.com/yakimaherald.com/content/tncms/assets/v3/editorial/f/14/f14ade1e-126d-11e6-9af7-f3aa277dd253/572ab88925bcd.pdf.pdf.

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office or employment." liable to the claimant in accordance with the law of the place where the act or omission occurred." Id.; cf. id. § 2674 ("The United States shall be liable . . . in the same manner and to the same extent as a private individual under like circumstances"). 28 U.S.C. § 1346(b)(1). Under the FTCA the United States is liable on tort claims "under circumstances where the United States, if a private person, would be. Plaintiff Dahlstrom asserts claims under the FTCA for negligent supervision and training, false arrest, wrongful imprisonment, abuse of process, malicious prosecution, and intentional infliction of emotional distress. She alleges that individual Defendants (The Honorable Joseph, Metcalf, McDonnell, Bailey, Dr. Morlock, Defendant Morlock, and some members of the Sauk-Suiattle Tribal Council), falsely engaged in a campaign to retaliate against Plaintiff for his efforts to comply with the provisions of the ISDEAA / AFA contracts requiring strict and lawful adherence to providing and ensuring high quality medical and social service interventions (inclusive of 3rd party billings) to enrolled and non-enrolled members (and residence of the Sauk-Suiattle Indian Reservation) which was categorially ignored by the named individual defendants, resulting in his being subject to retaliatory (administrative paid reassignment off reservation) and then subject to retaliatory firings on or about November 16, 2015, and December 8, 2015, respectively. Additionally, the illegal arrest, detention, pre-textual tribal council prosecution or deliberations, seizure, detention, and subsequently being escorted off the reservation under heavy law enforcement actions. Plaintiff Dahlstrom alleges that SSIT negligently "failed to properly train, supervise, and oversee individual defendants."

Under the **Indian Child Welfare Act ("ICWA"), 25 U.S.C. §§ 1901–1963.**[12] ICWA, and the enabling regulations promulgated by the BIA, with full participation in developing,

[12] Congress enacted ICWA in 1978 to address the policies and practices that resulted in the ''wholesale separation of Indian children from their families.'' See H.R. Rep. No. 95–1386, at 9. After several years of investigation, Congress had found that an alarmingly high percentage of Indian families [were] broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies. 25 U.S.C. 1901(4). The congressional investigation, which resulted in hundreds of pages of legislative testimony compiled over the course of four years of hearings, deliberation, and debate, revealed ''the wholesale separation of Indian children from their families.'' 1 H.R. Rep. No. 95– 1386, at 9. The empirical and anecdotal evidence showed that Indian children were separated from their families at significantly higher rates than non-Indian children. In some States, between 25 and 35 percent of Indian children were living in foster care, adoptive care, or institutions. Id. Indian children removed from their homes. were most often placed in non-Indian foster care and adoptive homes. AIPRC Report at 78–87. These separations contributed to a number of problems, including the erosion of a generation of Indians from Tribal communities, loss of Indian traditions and culture, and long-term emotional

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testifying, in the final rule entitled Indian Child Welfare Act Proceedings, 81 Fed. Reg. 38,778 (June 14, 2016) (the "Final Rule") (codified at 25 C.F.R. pt. 23). Specifically, in or about April 2015 (and continuing), Plaintiff filed complaints of Child Abuse and Neglect[13] internally and/or eternally regarding the negligence of the Sauk-Suiattle Indian Tribe in their handling of vaccines, the provisions of safe water resources, and continued compromise of medical/privacy information, under HIPPA, which resulted in his ultimate firing from his position as Director of Health and Social Services with the Sauk-Suiattle Indian Tribe. Additionally, Defendant McDonnell was made fully aware of these child endangerment concerns on or about October 22, 2015, when his subject Plaintiff to deprivation of his civil rights for his exercise of his First

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effects on Indian children caused by loss of their Indian identity. See 1974 Senate Hearing at 1– 2, 45–51 (statements of Sen. James Abourezk, Chairman, Subcomm. on Indian Affairs and Dr. Joseph Westermeyer, Dep't of Psychiatry, University of Minn.). Congress found that removal of children and unnecessary termination of parental rights were utilized to separate Indian children from their Indian communities. The four leading factors contributing to the high rates of Indian child removal were a lack of culturally competent State child-welfare standards for assessing the fitness of Indian families; systematic due-process violations against both Indian children and their parents during child-custody procedures; economic incentives favoring removal of Indian children from their families and communities; and social conditions in Indian country. H.R. Rep. No. 95–1386, at 10–12. Congress also found that many of these problems arose from State actions, i.e., that the States, exercising their recognized jurisdiction over Indian child-custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. 25 U.S.C. 1901(5). The standards used by State and private child-welfare agencies to assess Indian parental fitness promoted unrealistic non-Indian socioeconomic norms and failed to account for legitimate cultural differences in Indian families. Time and again, ''social workers, ignorant of Indian cultural values and social norms, ma[d]e decisions that [we]re wholly inappropriate in the context of Indian family life and so they frequently discover[ed] neglect or abandonment where none exist[ed].'' H.R. Rep. No. 95–1386, at 10. For example, Indian parents might leave their children in the care of extended-family members, sometimes for long periods of time. Social workers untutored in the ways of Indian family life assumed leaving children in the care of anyone outside the nuclear family amounted to neglect and grounds for terminating parental rights. Yet, the House Report noted, this is an accepted practice for certain Tribes. *Id*. Accessible online at: Government Publishing Office: https://www.gpo.gov/fdsys/pkg/FR-2016-06-14/pdf/2016-13686.pdf.

[13] See also: 1See Problems that American Indian Families Face in Raising Their Children and How These Problems Are Affected by Federal Action or Inaction: Hearing Before the Subcomm. on Indian Affairs of the S. Comm. on Interior and Insular Affairs, 93rd Cong. (1974) (hereinafter, ''1974 Senate Hearing''); Task Force Four: Federal, State, and Tribal Jurisdiction, American Indian Policy Review Commission Task Force Four, Report on Federal, State, and Tribal Jurisdiction (1976) (hereinafter ''AIPRC Report''); 123 Cong. Rec. 21042–44 (June 27, 1977); To Establish Standards for the Placement of Indian Children in Foster or Adoptive Homes, to Prevent the Breakup of Indian Families, and for Other Purposes: Hearing on S. 1214 Before the S. Select Comm. on Indian Affairs, 95th Cong. (1977) (hereinafter ''1977 Senate Hearing''); S. Rep. No. 95–597 (1977); 123 Cong. Rec. 37223–26 (Nov. 4, 1977); To Establish Standards for the Placement of Indian Children in Foster or Adoptive Homes, To Prevent the Breakup of Indian Families, and for Other Purposes: Hearing on S. 1214 Before the Subcomm. On Indian Affairs and Public Lands of the H. Comm. on Interior and Insular Affairs, 95th Cong. 29 (1978) (hereinafter, ''1978 House Hearing''); H.R. Rep. No. 95–1386 (1978); 124 Cong. Rec. H38101–12 (1978).

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Amendment rights to Free Speech concerning the conduct of Defendants illegal acts – endangering the lives of tribal and non-tribal members of the SAUK-SUIATTLE INDIAN TRIBE.

Pursuant to the **Patient Protection and Affordable Care Act** (ACA), 26 U.S.C.A. § 4980H (Large employer mandates for Native-American tribe, like the Sauk-Suiattle Indian Tribe,[14] with over a hundred employees supporting over approximately 210 or so enrolled members of which about thirty to forty live within the 26-acre of the reservation in the foothills of the Cascades), and anti-retaliation provision under: Affordable Care Act (ACA) (2010) [29 U.S.C. § 218c]. "Protects employees from retaliation for reporting violations of any of title 1 of the ACA, including but not limited to discrimination based on an individual's receipt of health insurance subsidies, the denial of coverage based on a preexisting condition, or an insurer's failure to rebate a portion of an excess premium. 29 CFR 1984. On or about May 2015, Plaintiff was ordered by Defendants Joseph and Metcalf to artificially decrease ACA-eligible tribal/non-tribal member(s), immediate/extended families to swell the tribal rolls to reach maximum saturation in the Resource and Patient Management System (RPMS)[15] to artificially and illegally increase AFA funding for FYI 2015, 2016, 2017. These orders were knowingly illegal and in contravention to the ACA guidelines and the Indian Health Services' RPMS protocols. Further, the Affordable Care Act (ACA) (2010) [29 U.S.C. § 218c]. Protects employees from retaliation for reporting violations of any provision of title I of the ACA, including but not limited to discrimination based on an individual's receipt of health insurance subsidies, the denial of coverage based on a preexisting condition, or an insurer's failure to rebate a portion of an excess premium. 29 CFR 1984.

Further under **The Health Insurance Portability and Accountability Act of 1996**[16] (**HIPAA**; Pub.L. 104–191, 110 Stat. 1936, enacted August 21, **1996**) was enacted by

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[14] See: ***Norther Arapaho Tribe v. Burwell***, 118 F. Supp.3d 1264 (2015).

[15] See RPMS explanations for generating income and other financial advantages at Indian Health Services website, at: https://www.ihs.gov/RPMS/.

[16] Presently, there is more than several hundred discrete and direct violations of HIPPA, both (civil and criminal) potentially exposing the Sauk-Suiattle Indian Tribe, the U.S. Department Health and Human Services ("DSHS"), Indian Health Services. Additionally, Plaintiff has provided documentation to the United States Justice Department (DOJ) for further investigation and action. To date, the United States of America as not provided any additional details regarding their investigations into Plaintiff's filing of a 680 (plus) page document pertaining to

the United States Congress and signed by President William Jefferson Clinton in **1996**. The Sauk-Suiattle Indian Tribe is mandated under the ISDEAA/AFA (FY: 2013, 2014, 2015) to comply with all provisions of HIPPA. On or about April 2015, and (continuing), the Sauk-Suiattle Indian Tribe continues to violate patient privacy information through Defendant Dr. Morlock and her assistance. Specifically, Dr. Morlock has permitted under her watch substantial access/release of personal HIPPA information to be made available to personnel and non-personnel alike within and outside of the Sauk-Suiattle Tribal Clinic located on the Sauk-Suiattle Indian Reservation. As a direct result of bringing Dr. Morlock's continued violations of HIPPA –to Defendant Metcalf, he was subject to disciplinary actions, adverse employment actions, including termination from his employment as Director of the Health and Social Services, a position which he held supervisory and leadership authority over from on or around April 27, 2015 through October 22, 2015.

Plaintiff was provided the **SAUK-SUIATTLE INDIAN TRIBE'S EMPLOYEE HANDBOOK**: 710 Problem Resolution / Grievance[17] found at: Sauk-Suiattle Indian Tribe's "Employee Handbook: Policy Statement: "It is the policy of the Sauk-Suiattle Indian Tribe to encourage open and candid communication between managers and employees in all areas of employee concern and to resolve employee grievances in an effective and timely manner. Furthermore, it is the policy of Sauk-Suiattle Indian Tribe to encourage employees to disclose improper actions of supervisors and management without ***fear of retaliation***. **Please note that this grievance process ONLY applies to current employees of Sauk-Suiattle**."[18] However, on or about November 16, 2015, or soon thereafter, Plaintiff Dahlstrom was notified of his termination from his position as Director of Health and Social Services (and as a Tribal ICW

Defendants' HIPPA violations -impacting approximately over a hundred plus enrolled and non-enrolled members of the Sauk-Suiattle Indian Tribe or residence or non-residence of the Sauk-Suiattle Indian Reservation.

[17] See: Sauk-Suiattle Indian Tribe Employee Handbook -Resolution with an Effective Date: 09/02/2005 by Resolution #9/12/05; Revision Date: 09/19/2006 by Resolution #9/22A/06; 03/22/2007 by Resolution #03/37A /07. See Exhibit A to the United States' Motion to Dismiss: 2:16-cv-01874-RSL-103, Document 38-1 Filed: 09/01/2017. Page 103 of 117.

[18] See also: Sauk-Suiattle Indian Tribe Employee Handbook –the former Resolution 718 Problem Resolution/Grievance with an Effective Date: 09/02/2005 by Resolution #9/12/05. Revision Date: 09/19/2006 by Resolution #9/22A/06; 03/22/2007 by Resolution #03/37A /07; 04/1/2011 by Resolution #04/4/11, which lacks the previous approved language as follows: "**Please note that this grievance process ONLY applies to current employees of Sauk-Suiattle.**" (Special emphasis added).

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Social Worker), through a letter from the Sauk-Suiattle Indian Tribe delivered through the United States Postal Services ("USPS") a termination letter and he proceeded to file an employment grievance under the former:718 Problem Resolution/Grievance found at: Sauk-Suiattle Indian Tribe's Employee Handbook: 718 Problem Resolution/Grievance which mysteriously lacks necessary disclaimer regarding the applicability of the anti-retaliation policy as its currently implemented. This clearly raises a dispute as to the authenticity of the document provided by the United States of America and/or a minimum, the Sauk-Suiattle Indian Tribe –as now abandoned the anti-retaliation provision in the workplace out of existence –and thus making in inapplicable to all employees (past, present, prospective) of the Sauk-Suiattle Indian Tribe.

The **SAUK-SUIATTLE INDIAN TRIBE – Family Code** -Adopted 10/14/87, Resolution #55B-87. Adopted 5/10/88, Part IV, Resolution #8/88. Amended 3/23/89. Specifically, as a mandatory reporter of Child Abuse and Neglect (CA/N), Plaintiff lodged complaints involving Defendant Dr. Morlock's conduct in or around April 2015 (and continuing) regarding child endangerment complaints inconsistent with the AFA/Scope of Work and the use of spoiled, compromised vaccines against enrolled and non-enrolled members of the Sauk-Suiattle Indian Tribe despite warnings to halt this unsafe and dangerous practices. Instead Defendants protected Defendant Morlock's illegal and dangerous medical care and actions inconsistent with the CDC's and Indian Health Services requirements. Namely, under the tribal reporting requirements, it states: "The care of children is both a family and tribal responsibility. Any member of the Sauk-Suiattle Indian Tribe, persons residing (residing) within the jurisdiction of the Tribe, and tribal employees, who have reason to believe that a youth has been abused or neglected (as provided in section 2.1.010 (a), (b), (c), or (d)) is required to a file a complaint for youth in need of care under Chapter 2.1. If Tribal Law Enforcement and the Indian Child Welfare Worker are not available to receive a complaint, the reporter shall report to the Bureau of Indian Affairs Enforcement. If BIA Enforcement is unavailable, the report shall be made to the state of Washington Child Protective Services. See: Page 15, Chapter 2.1.030 Mandatory Reporting of Abuse and Neglect, accessible online at: www.sauk-suiattle.com/Documents/Family Code.pdf.

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Under **Section 11(c) of the Occupational Safety & Health Act** (OSHA) (1970) [29 U.S.C. § 660(c)]. Protects employees from retaliation for exercising a variety of rights guaranteed under the Act, such as filing a S&H complaint with OSHA or their employers, participating in an inspection, etc. 29 CFR 1977.

Safe Drinking Water Act (SDWA) (1974) [42 U.S.C. § 300j-9(i)]. Protects employees from retaliation for, among other things, reporting violations of the Act, which requires that all drinking water systems assure that their water is potable as determined by the Environmental Protection Agency. 29 CFR 24. On or around May 2015, Plaintiff Dahlstrom filed an oral complaint with Aaron Harris, Water Safety Coordinator, Sauk-Suiattle Indian Tribe. Specifically, Plaintiff reported to Mr. Harris that the water quality and the unsafe water provided to youths living on reservation housing (youths under tribal court jurisdiction) were reportedly being subject to hazardous drinking water coming out of wells that had not been examined. Defendant Metcalf demanded that Plaintiff back-off from following with the drinking water –indicating that it adversely affect the property value and the State of Washington threatening to not approve the tribal housing unit for placement of foster children (tribal and non-tribal) in their commercially-developed housing for Sauk-Suiattle Indian Tribe's children and other tribally enrolled members from various tribal communities within the State of Washington. Because of Plaintiff's complaint regarding water safety, Defendant Metcalf caused to remove Plaintiff from continuing to monitor water safety –despite his having responsibility for ensuring the health, safety, and welfare of all enrolled and non-enrolled members of the Sauk-Suiattle Indian Tribe, third-party participants, and Veterans accessing their health and social services through the Sauk-Suiattle Indian Reservation.

Under **Sarbanes-Oxley Act** (SOX) (2002), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Public Law No. 111-203) [18 U.S.C. § 1514A]. Protects employees of certain companies from retaliation for reporting alleged mail, wire, bank or securities fraud; violations of the SEC rules and regulations; or violations of federal laws related to fraud against shareholders. The Act covers employees of publicly traded companies, including those companies' subsidiaries, and employees of nationally recognized statistical rating organizations, as well as contractors, subcontractors, and agents of these employers. 29 CFR 1980.

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The **False Claims Act, 31 U.S.C. § 3729 et seq.,**[19] **and analogous state statutes.** In and around May 2015 (and continuing), Plaintiff reported through internal and external complaints that some of the Individual Defendants named in this instant action were actively defrauding the United States of America and the State of Washington, which was inconsistent with the ISDEAA/AFA contracts. For his complaints, Plaintiff was dismissed from his employment at the Sauk-Suiattle Indian Tribe on or about November 16, 2015 and December 8, 2015, respectively. Note: The FCA was amended in 2009 and 2010: The Fraud Enforcement and Recovery Act of 2009 ("FERA") and the Patient Protection and Affordable Care Act (also referred to as the ACA or "PPACA"). Many of these changes to the FCA were requested by federal prosecutors to give them new powers and reverse specific court rulings. They were the most significant changes since FCA amendments passed in 1986.

Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq., as amended by the Multiemployer Pension Plan Amendment Act of 1980 ("MPPAA"), 29 U.S.C. § 1381 et seq., and by regulations implementing those laws. ERISA imposes joint and several liability for that withdrawal liability on all "trades or businesses" under "common control" with the withdrawing employer. See 29 U.S.C. § 1301(b)(1). On or about May 2015, Plaintiff Dahlstrom was asked by Defendant Metcalf to increase employee-contribution to the tribally offered ERISA and demanded a report of employees (including Plaintiff) for their refusal to participate in this program. Plaintiff informed Defendant Metcalf that concerns where being raised as to the viability of the ERISA matching-fund as employees where complaining of the lack of transparency in the tribal funded program. Defendant Metcalf insisted that Plaintiff not engage in a request for increased transparency or engage any further on the issue of the viability of the program –as (he) and by extension the employees were not expected to be a part of the governance or administration of the program.

[19] Plaintiff Dahlstrom maintains a separate FCA-complaint which is being actively litigated in the United States District Court for the Western District of Washington. A recent decision from the Honorable Robart regarding the viability of his FCA action can be accessed as follows: Dahlstrom v. Sauk-Suiattle Indian Tribe, et al., 2017 WL 1064399, United States District Court, W.D., Washington, at Seattle. (Dkt. No. 39). March 21, 2017, available online at: https://www.narf.org/nill/bulletins/federal/documents/dahlstrom_v_sauk_suiattle.html.

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Vaccines for Children[20] - Omnibus Budget Reconciliation Act of 1993, P.L. 103-66 § 13631 | Social Security Act (SSA), § 1928(a); 42 U.S.C. § 1396s(a). The VFC program is a Medicaid benefit that provides free vaccines to eligible children. The Centers for Medicare & Medicaid Services (CMS) delegates the program's implementation to CDC, which purchases VFC vaccines and distributes them to VFC providers. CMS reimburses CDC for the cost of the vaccines and for program management. In 2010, the program cost $3.6 billion and approximately 44,000 providers participated. These providers ordered approximately 82 million VFC vaccine doses to administer to an estimated 40 million children. Children eligible to participate in the VFC program may not otherwise be vaccinated because of inability to pay. They include Medicaid-eligible, uninsured, American Indian/Alaska Native, and/or underinsured children who receive care through a Federally Qualified Health Center (FQHC) or Rural Health Clinic (RHC). In 2011, approximately 70 percent of VFC-eligible children were enrolled in Medicaid. Vaccines administered through the VFC program are licensed by the Food and Drug Administration (FDA) and approved for program inclusion by CDC. Licensed vaccines are labeled with required storage temperature ranges and expiration dates. Vaccines must be stored within the required ranges to ensure that the vaccines maintain the highest possible level of strength (i.e., potency) and effectiveness (i.e., efficacy). Additionally, vaccines must not be administered after their expiration dates because they may lose potency and efficacy, reducing their ability to provide maximum protection against preventable diseases. VFC vaccines protect children against 16 preventable diseases: [diphtheria, mumps, haemophilus influenzae type b, pertussis, hepatitis A, pneumococcal disease, hepatitis B, polio, human papillomavirus, rotavirus, influenza, rubella (German measles), measles, tetanus, meningococcal disease, and varicella (chickenpox).[21]

[20] See: Department of Health and Human Services OFFICE OF INSPECTOR GENERAL VACCINES FOR CHILDREN PROGRAM: VULNERABILITIES IN VACCINE MANAGEMENT, by: Daniel R. Levinson Inspector General June 2012 OEI-04-10-00430. Accessible at: https://oig.hhs.gov/oei/reports/oei-04-10-00430.pdf.

[21] See: Vaccines Information Statements, Centers for Disease Control and Prevention, United States Department of Health and Social Services. Accessible online at: https://www.cdc.gov/vaccines/hcp/vis/about/facts-vis.html.

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National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-10 et seq. (hereinafter "Vaccine Act" or "the Act") National Vaccine Injury Compensation Program. On or about April 27, 2015 (and continuing throughout his employment), Plaintiff Dahlstrom informed Defendants (and individual defendants –all employees of the Sauk-Suiattle Indian Tribe) of ongoing concern about the safety, efficacy, and viability of the Vaccines for Children –as managed by Defendant Dr. Christine Marie Jody Morlock, due to: repeated power outages, multiple shifting or relocation of products, fraud, waste, and abuse, and continued failure of Defendant Dr. Morlock's refusal to provide or educate children, youth, and their families, parents, vulnerable Adults, and Elders prior to her administration of vaccines or other injected materials. Specifically, Defendant Dr. Morlock maintained a steadfast refusal to comply with the VISs are required by law. Namely, all vaccine providers, public or private, are required by the National Vaccine Childhood Injury Act (NCVIA – 42 U.S.C. § 300aa-26 to give the appropriate VIS to the patient (or parent or legal representative) prior to every dose of specific vaccines. In or around August 2015, Plaintiff was notified by Defendant Dr. Morlock in front of Defendant Dr. Yurchak that she had administered a vaccine on a tribal youth, without the requisite VISs notification, and alternatively failed to notify the child/parent/legal guardian that the said vaccines were under quarantined due to question raised as to the safety or efficacy of the suspect vaccines. Defendant Dr. Morlock flagrantly and with civil and criminal intensions to exercise the administration of these vaccines despite these restrictions imposed by the Plaintiff, Stephen J. Waszak, MD., and Dr. Thomas Weiss, Portland Area Health Services. In or about December 1, 2015, Defendant Robert L. Morlock was appointed Director of the Human Resources for Sauk-Suiattle Indian Tribe and was placed in charge of investigating Plaintiff's complaint filed against his wife, Defendant Dr. Morlock, for the Child Abuse and Neglect (CA/N), the tribal VFC program's waste, fraud, and abuse. Subsequently, Plaintiff was subjected to retaliatory firings from his position as Director of the Health and Social Services – for carrying and implementing the requirements of the ISDEAA / AFA contract requirements.[22] Additionally, on or about October 2015 (Prior to October 22, 015), Plaintiff

[22] A copy of OIG report regarding vaccine vulnerabilities were provided to Defendant Metcalf on or about May 2015, by Plaintiff.

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filed a complaint with Skagit County –Vaccines Program Coordinator advising of the ongoing issues relating to the safety or efficacy of the vaccines and the waste, fraud, and abuse of the VFC by the Defendant Dr. Morlock and Defendant Metcalf, and the Sauk-Suiattle Indian Tribe and requested an emergency response to Plaintiff's complaint. This VFC-complaint was also provided to than Director of the Human Resources (Defendant George Bailey) prior to Plaintiff being involuntarily administratively reassigned off the Sauk-Suiattle Indian Reservation until his firing on or about November 16, 2015, and December 8, 2015, respectively.

Section 102(c) of the ISDEAA, 25 U.S.C. §450f(c), requires the Secretary of Health and Human Services or the Secretary of the Interior, or both, to obtain or provide liability insurance or equivalent coverage for Indian tribes carrying out agreements pursuant to the ISDEAA.1 Section 102(d), 25 U.S.C. §450f(d), provides that with respect to any claims by any person for personal injury, including death, resulting from the performance of "medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations," or with respect to any such claims by any person resulting from the operation of an emergency motor vehicle, an Indian tribe carrying out a self-determination agreement "is deemed to be part of the Public Health Service in the Department of Health and Human Services while carrying out any such contract or agreement and its employees . . . are deemed employees of the Service while acting within the scope of their employment in carrying out the contract or agreement." The scope of the aforementioned IHS Contract and AFA is broad enough that this court should conclude that the SAUK-SUIATTLE INDIAN TRIBE and by extension the UNITED STATES OF AMERICA authorized the act and employment relationship with the Sauk-Suiattle Indian Tribe on behalf of the UNITED STATES, thus forming the basis of the tort claim. Plaintiff employment activities –implementing the ISDEAA Contracts / Annual Funding Agreement falls within the broad purview of both the BIA/IHS Contract Number(s): GTP10T12608, CTP10T12615, 248-96-0027.

According to the Sauk-Suiattle Indian Tribe's ISDEAA / AFA, Plaintiff's employment responsibilities includes or listed as one of the PFSAs in the accompanying AFA. Therefore, Plaintiff is deemed a federal employee for FTCA purposes. The IHS Contract and AFA are not specifically limited to strictly medical-related functions. While it is true that Section 102(d) of the ISDEAA appears to limit itself to medical-related claims, the applicable regulations found

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in 25 C.F.R. §§900.180-210, and referenced in the AFA, do not. Those regulations recognize that medical-related claims and non-medical-related claims may arise from the performance of functions under self-determination contracts, including those with the Department of Health and Human Services.

Consistent with Section 102(d), 25 C.F.R. §900.190 provides: [N]o claim may be filed against a self-determination contractor or employee for personal injury or death arising from the performance of medical, surgical, dental, or related functions by the contractor in carrying out self-determination contracts under the [ISDEAA]. Related functions include services such as those provided by nurses, laboratory and x-ray technicians, emergency medical technicians and other health care providers including psychologists and social workers. All such claims shall be filed against the United States and are subject to the limitations and restrictions of the FTCA. But there is also 25 C.F.R. §900.204, recognizing that the scope of self-determination contracts is broad enough to encompass non-medical-related functions: contractor or employee based upon performance of non-medical-related functions under a self-determination contract. Claims of this type must be filed against the United States under the FTCA. The negligence claim at issue in this case resulted from the performance of a non-medical-related function authorized under the ISDEAA contract. Therefore, Plaintiff is deemed a federal employee and an FTCA claim against the United States is the exclusive means by which Plaintiff can seek to recover damages for alleged negligence or retaliatory conduct of the Sauk-Suiattle Indian Tribe and the individual defendants as he was implementing the ISDEAA / AFA in 2013, 2014, 2015, as required by public policy, tribal, state, and federal statutes –governing the IHS/BIA contracts and under the scope of work carried out on behalf of the UNITED STATES OF AMERICA. The next question is whether at the time of the alleged act of negligence and retaliatory discharge –was due to his acting within the scope of his employment with the Sauk-Suiattle Indian Tribe, such that the United States can be held liable under the FTCA.

PLAINTIFF'S SCOPE OF EMPLOYMENT AND TRIBE'S SCOPE OF WORK THROUGH THE ISDEAA / AFA

Defendants cannot, however, escape their retaliatory conduct as exhibited in September 29, 2015, Defendant Ronda Kay Metcalf stated to Plaintiff:

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…Well you asked for the position, the promotion, the pay raise…now make the vaccine issue go away and focus on building the program and leave Dr. Morlock alone…

Plaintiff Raju A.T. Dahlstrom hereby notify the Court of a decision of the United States Supreme Court,[23] issued on April 25, 2017, Lewis v. Clarke, U.S., 137 S. Ct. 1285, 197 L. Ed. 2d 631 (2017), establishes that the employees and officers here may be sued individually.[24] Therein the Court held that in a suit brought against a tribal employee in his individual capacity, the employee—not the tribe—is the real party in interest and the tribe's sovereign immunity it not implicated. *Id*. at 5-8. Additionally, Plaintiff notifies the Court of a relevant (recent) decision regarding the reach of retaliation[25] in the employment (ERISA)[26] context in ***Sexton v. Panel Processing, Inc*., 754 F.3d 332 (2014):** This interpretation not only respects the meaning—indeed accounts for the broadest possible meaning—of these terms, but it also respects the different ways ***Congress has dealt with retaliation in the work place***. Congress has enacted roughly **forty anti-retaliation laws**, *see* Jon O. Shimabukuro et al., Cong. Research Serv., R43045, *Survey of Federal Whistleblower and Anti–Retaliation Laws* (2013), and they tend to include two distinct types of prohibitions. The first protects employees who oppose, report or complain about unlawful practices. *See, e.g.,* 29 U.S.C. § 218c(a) (Consumer Financial Protection Act) ("provided ... information relating to any violation"); *id.* § 215(a) (Fair Labor Standards Act) ("filed any complaint"); 42 U.S.C. § 2000e–3(a) (Title VII)

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[23] See: *Kasten v. Saint-Gobain Performance Plastics Corp.,* 131 S. Ct. 1325, 1331 (2011). The Kasten decision suggested that when dealing with ambiguous anti-retaliation provisions, courts should resolve the ambiguity in favor of protecting employees if it is in accordance with the statute's purpose.

[24] See also: ***Soaring Eagle Casino & Resort v. N.L.R.B.,*** 791 F.3d 648, 665 (6th Cir. 2015), cert. denied, 136 S. Ct. 2509 (2016), to determine whether the NLRA applied to an Indian casino operating on tribal trust land.

[25] See also gathering cases: *Sexton v. Panel Processing, Inc.,* 754 F.3d 332, 333-35 (6th Cir. 2014); George v. Junior Achievement of Cent. Ind., Inc., 694 F.3d 812, 813-14 (7th Cir. 2012); Edwards v. A.H. Cornell & Son, Inc., 610 F.3d 217, 223 (3d Cir. 2010); Nicolaou v. Horizon Media, Inc., 402 F.3d 325, 327 (2d Cir. 2005); King v. Marriott Int'l, Inc., 337 F.3d 421, 427 (4th Cir. 2003); Anderson v. Elec. Data Sys. Corp., 11 F.3d 1312, 1312- 13 (5th Cir. 1994); Hashimoto v. Bank of Haw., 999 F.2d 408, 409-10 (9th Cir. 1993). See also: REINSTATING EMPLOYER ACCOUNTABILITY BY PROTECTING ALL FORMS OF WHISTLEBLOWING: ERISA SECTION 510, by Roshni Hemlani, J.D. Candidate, 2015, Fordham University School of Law. Copyright 2014 by the authors. Fordham Journal of Corporate & Financial Law / produced by The Berkeley Electronic Press (bepress). http://ir.lawnet.fordham.edu/jcf.

[26] Employee Retirement Income Security Act of 1974, 29 U.S.C. ch. 18 (2012).

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("opposed any ... unlawful employment practice"). The second protects employees who participate, testify or give information in inquiries, investigations, proceedings or hearings. *See, e.g.,* 29 U.S.C. § 218c(a) (Patient Protection and Affordable Care Act) ("assisted or participated ...in ... a proceeding"); *id.* § 2615(b) (Family and Medical Leave Act) ("given ... any information in connection with any inquiry or proceeding"); 42 U.S.C. § 12203(a) (Americans with Disabilities Act) ("participated in any manner in an investigation, proceeding, or hearing"). Most anti-retaliation laws include both types of clauses. *See, e.g.,* ***336** 6 U.S.C. § 1142(a) (National Transit Systems Security Act); 7 U.S.C. § 26 (Commodity Exchange Act); 15 U.S.C. § 78u–6(h)(1)(A) (Securities Exchange Act); *id.* § 2087(a) (Consumer Product Safety Act); 29 U.S.C. § 215(a) (Fair Labor Standards Act); *id.* § 218c(a) (**Patient Protection and Affordable Care Act**); *id.* § 623(d) (Age Discrimination in Employment Act); *id.* § 660(c)(1) (Occupational Safety and Health Most anti-retaliation laws include both types of clauses. *See, e.g.,* ***336** 6 U.S.C. § 1142(a) (National Transit Systems Security Act); 7 U.S.C. § 26 (Commodity Exchange Act); 15 U.S.C. § 78u–6(h)(1)(A) (Securities Exchange Act); *id.* § 2087(a) (Consumer Product Safety Act); 29 U.S.C. § 215(a) (Fair Labor Standards Act); *id.* § 218c(a) (Patient Protection and Affordable Care Act); *id.* § 623(d) (Age Discrimination in Employment Act); *id.* § 660(c)(1) (Occupational Safety and Health Act); *id.* § 2615(b) (Family and Medical Leave Act); 30 U.S.C. § 815(c) (Federal Mine Safety and Health Act); 42 U.S.C. § 12203(a) (Americans with Disabilities Act); 42 U.S.C. § 2000e–3(a) (Title VII); 49 U.S.C. § 31105(a) (Commercial Motor Vehicle Safety Act); *id.* § 60129(a) (Pipeline Safety Improvement Act). Many of these laws were in existence before 1974, when Congress enacted ERISA. *See* the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Occupational Safety and Health Act, and Title VII."

It appears that at the time of retaliatory discharge (See Second Amended Complaint), Plaintiff was engaged in the performance of the duties required of him by "ISDEAA / AFA" under the self-determination agreement between the Tribes and the United States. It further appears that at the time of his employment with the SAUK-SUIATTLE INDIAN TRIBE, Plaintiff was acting at the specific direction of his employer (SAUK-SUIATTLE INDIAN TRIBE). Nevertheless, there simply is no question that Plaintiff was engaged in the furtherance of his employer's (SAUK-SUIATTLE INDIAN TRIBE) interest. It is undisputed that

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completion of the scope of all of his work covered under the ISDEAA / AFA 2013, 2014, 2015, thus resulting in full compliance to the contract obligations entered between of the SAUK-SUIATTLE INDIAN TRIBE and the UNITED STATES OF AMERICA.

CONCLUSION

The Motion to Dismiss filed by Defendant United States of America should be DENIED. Plaintiff prays that the FTCA claim against the United States should proceed. Accordingly, the claims against the named individual Defendants and Defendant UNITED STATES OF AMERICA should not be DISMISSED.

Respectfully submitted October 30, 2017.

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Proof of Service

I certify that, on October 30, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following registered with CM/ECF, including the Honorable Robert S. Lasnik, and all counsel of record for the other parties to this case, including the following people listed on the system: Jack Warren Fiander: towtnuklaw@msn.com; jdfiander@msn.com; Richard Lamar Pope, Jr: rp98007@gmail.com; Thomas B. Nedderman: tnedderman@floy-ringer.com; Tricia S. Boerger tricia.boerger@usdoj.gov; CaseView.ECF@usdoj.gov; ECFCiv.USAWAW@usdoj.gov; eli.quintana@usdoj.gov, julene.delo@usdoj.gov.

Signed at Bellevue, Washington this 30th day of October 2017.

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