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IN THE NINTH CIRCUIT DISTRICT COURT  
IN AND FOR NORTHERN CALIFORNIA

CHRISTIAN LUIZ )  
 )  
VS )  
 )  
NORTHERN CIRCLE INDIAN )  
HOUSING AUTHORITY (NCIHA) )  
& AMERIND RISK TRIBAL )  
WC PROGRAM, & )  
BERKELEY RISK )  
ADMINISTRATORS )

CASE NO: C 18-cv-04712  
OPPOSITION TO MOTION  
TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION  
AND FAILURE TO STATE A CLAIM

Date: October 30, 2018  
Time: 10:00 AM  
Judge: Hon. Robert Illman

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MEMORANDUM OF POINTS AND AUTHORITIES  
IN OPPOSITION OF MOTION TO DISMISS

I. STATEMENT OF ISSUES TO BE DECIDED

1. Whether this court should dismiss this matter for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1).
2. Whether this court should dismiss this matter for failure to state a claim upon which relief can be granted because Plaintiff is not detained for habeas corpus relief.

II INTRODUCTION

Both Petitioner and Defendants have presented pleadings to the court. Petitioner herein adopts and incorporates all prior pleadings.

III LEGAL ARGUMENT

- A. Tribal Sovereign Immunity (lack of jurisdiction) does not prevent this court reviewing the AMERIND Tribal WC Hearing Examiner Findings and Order denying Petitioners' claim for workers compensation benefits.

To invoke a federal court's subject-matter jurisdiction, a plaintiff needs to provide only "a short and plain statement of the grounds for the court's jurisdiction." Fed. R.Civ.P. 8(a)(1). The plaintiff must allege facts, not mere legal conclusions, in compliance with the pleading standards established by *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). See *Harris v. Rand*, 682 F.3d 846, 850-51 (9th Cir.2012). Assuming compliance with those standards, the

1 plaintiff's factual allegations will ordinarily be accepted as true unless challenged by the  
2 defendant. Once a party has moved to dismiss for lack of subject matter jurisdiction under Rule  
3 12(b)(1), the opposing party bears the burden of establishing the Court's jurisdiction, *Kokkonen*  
4 *vs Guardian Life Insurance Company 511. U.S. 375, 277 (1994)*.

5 In civil cases, the Supreme Court has stated a federal court may take action in a matter  
6 arising in Indian country only if a party shows that tribal remedies have been exhausted. *National*  
7 *Farmers Union Insurance vs Crow Tribe of Indians 471 U.S. 845 (1985)*. In other words, the  
8 federal court is a court of last resort. On June 6, 2018, after a cursory review of the medical  
9 record, AMERIND Tribal WC Hearing Examiner Christie Ahern issued a Findings and Order  
10 upholding Berkeley Risk Administrators denial of Petitioner's claim for workers compensation  
11 benefits. As plead, no one has provided any information to Petitioner on how he can appeal what  
12 he believes are a seriously flawed Findings and Order issued by Tribal Hearing Examiner  
13 Christie Ahern, or where to appeal, or even if an appeal is possible. This court appears to be the  
14 only court with jurisdiction, a court of last resort.

15 In and unpublished opinion, which is informative but not binding on this court,  
16 *Christobal Munoz vs Barona Band of Mission Indians* (ECF No4. 17-cv-2092-BAS (2018) (OBJ  
17 Petition to Dismiss Attachment #1) the Southern District of the Ninth Circuit granted defendant's  
18 motion to dismiss for lack of subject matter jurisdiction in a case where Mr. Munoz alleged  
19 violation of due process in Tribal Proceedings under the Indian Civil Rights Act (ICRA). The  
20 Court reasoned that the ICRA has limited application to Habeas Corpus relief, not workers  
21 compensation or torts. While Petitioner does complain of an apparent disregard of due process  
22 within the AMERIND Tribal WC program, and hopefully someday the legislature will address  
23 these failings, he does not believe a formal due process review is necessary for this court to  
24 examine the Findings and Order issued within the AMERIND Tribal WC program. Simply put,  
25 the facts do not support the Findings and Order of the AMERIND Tribal WC Hearing Examiner.

26 With respect to the Declaration of Darlene Tooley dated September 25, 2018, unless Ms.  
27 Tooley is a physician, her statement on causation is irrelevant. The fact that Petitioner has a large  
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1 herniated disc does not preclude a work injury. Further, if the Tribal Court or Berkeley Risk  
2 Administrators received any information from Ms. Tooley regarding Petitioner's injuries, it was  
3 ex parte, and given the very tight relationship of Ms. Tooley with senior management at  
4 AMERIND, this is undoubtedly so.

5  
6 B. This court should NOT dismiss this matter for failure to state a claim upon  
7 which relief can be granted because Petitioner seeks review of a Findings  
8 and Order issuing from an AMERIND Tribal WC Hearing Examiner.  
9 There is no other court with jurisdiction, and Petitioner has stated facts  
10 sufficient to support his claim.

11  
12 In the Original Petition filed by Petitioner, Item "I" asserts a claim of laches regarding  
13 any denial of his claim filed on February 14, 2018. In the Findings and Order issued within the  
14 AMERIND Tribal WC program, the Tribal court found that Petitioner filed a second claim for  
15 workers compensation benefits on February 14, 2018. However, based upon statements from Mr.  
16 Weathers, Berkeley Risk Administrators only shows one claim for Petitioner in their system, the  
17 January 22, 2018, denied claim ( Personal Communication July 24, 2018 email).

18 If the court is inclined to dismiss Petitioner's request for relief based upon the Motion  
19 filed by Mr. Weathers, thus honoring the AMERIND Tribal WC Hearing Examiner Findings and  
20 Order, what happens to the second claim? There appears to be no means to compel Berkeley  
21 Risk Administrators to provide benefits under the second claim, for the Tribal court does not  
22 provide a means of enforcement. Berkeley Risk Administrators can, and has, acted with impunity  
23 because it is immune from legal proceedings in any court regarding its conduct, or lack thereof.  
24 Under California Code of Regulation 10109 a claims administrator must conduct a reasonable  
25 and timely investigation upon receiving notice or knowledge of an injury or claim for a workers'  
26 compensation benefits. This seems prudent even if it is not Federal law.

27 In every contract or agreement there is an implied promise of good faith and fair dealing.  
28 This means that each party will not do anything to unfairly interfere with the rights of any other

1 party to receive benefits under the agreement, for example terminating medical coverate earlier  
2 than agreed to prevent a surgery ( Declaration of Christian Luiz Item #8, Objection to Petition to  
3 Dismiss Attachment #2). Aside from the considerable hurdles Petitioner has faced in the  
4 AMERIND Tribal WC program, there was a second claimed injury. It is supported by a medical  
5 report stating Petitioner's medical condition had gotten worse, i.e. a cumulative trauma. Further,  
6 the Tribal court Findings and Order from June 6, 2018, indicate that a second claim was filed and  
7 that a cumulative trauma was found, yet Berkeley Risk Administrators has still not acted.  
8 Petitioner therefore asks this court to consider that Berkeley Risk Administrators has failed to  
9 timely deny his February 14, 2018, claim and therefore must provide the workers compensation  
10 benefits to which he is entitled, retroactive payment of wage loss from the last day Petitioner  
11 worked, medical treatment, mileage, and all benefits allowed by law under the NCIHA workers  
12 compensation policy with AMERIND.

13 For the reasons stated above, and the declarations attached to these pleadings, Petitioner  
14 through counsel, requests this court to deny Defendants Motion to Dismiss filed on September  
15 25, 2018.

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18 Respectfully Submitted

19 /s/ Ronald Glenn Mahurin

DATE: 10/06/2018

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Uniform Assigned Name Ronald Mahurin Point Arena  
EAMS ID 4066526  
EAMS Administrator Name: Ronald Mahurin  
EAMS Administrator Phone 650-573-5637  
EAMS Administrator Email mahurinlaw@yahoo.com

CHRISTIAN LUIZ VS NORTHERN CIRCLE INDIAN HOUSING AUTHORITY

CERTIFICATE OF SERVICE  
(Proof of Service)

I, Ronald Glenn Mahurin, declare that:

1. At the time of service I was at least 18 years of age.
2. My Business Address is 42500 Eureka Hill Road, Point Arena, CA 95468
3. I am employed in the county where the mailing occurred.
4. I served copies of the following documents:

OPPOSITION TO PETITION TO DISMISS + attachments 1&2  
DECLARATION OF CHRISTIAN LUIZ  
Motion for Leave to Amend Pleadings  
ADR Certification  
Consent to Magistrate Judge  
Petition for Habeas Corpus

By placing true copies in a sealed envelope with postage fully paid and depositing the envelope in the United States Mail in Point Arena California to the individuals listed below.

Christian Luiz (Electronic service)

Mr. Thomas Weathers  
1000 Fourth Street Suite 500  
San Rafael, CA 94901

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Ronald G. Mahurin

Date: 10/09/2018