UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ALEXANDRIA PARROTTA,

Plaintiff,

v.

ISLAND RESORT AND CASINO,

Defendant.

Case No. 2:24-cv-00056

Hon. Robert J. Jonker

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PLAINTIFF'S OBJECTIONS TO,
AND REQUEST FOR REVIEW OF, THE MAGISTRATE JUDGE'S
JANUARY 16, 2025 REPORT AND RECOMMENDATION ECF NO. 12

Plaintiff, by and through her attorneys, Hurwitz Law PLLC, respectfully submits the following objections to ECF No. 12 pursuant to 28 U.S.C §636(b)(1)(C); Fed. R. Civ. P. 72(b)(2); and W.D. Mich. LCivR 72.3(b).

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STATEMENT OF OBJECTION

Plaintiff is contesting the Magistrate Judge's conclusion that Defendant Island Resort and Casino did not waive its sovereign immunity from FLSA private enforcement.

INTRODUCTION

Plaintiff Alexandria Parrotta objects to the January 16, 2025 Report and Recommendation ("R&R") (ECF No. 12) because the Magistrate Judge either misinterprets or mistakenly changed a critical phrase in Defendant's Constitution that expressly prohibits Defendant from exercising its powers to conflict with ***any*** law of the United States that applies to it. While the R&R correctly determined that the FLSA did apply to Defendant, *i.e.*, the "FLSA does apply to [Hannahville Indian Community]," the R&R wrongly concludes that "[a]t most, the tribe implies a willingness to submit to applicable federal laws." This Court should revise the R&R because the Magistrate Judge inserted "would not" in the place of "shall not," thus ascribing to Defendant's Constitution a different meaning than Defendant intended. Defendant's Constitution does not state that it ***would not*** "exercise any of the foregoing powers so as to conflict with any of the laws of the United States which apply," but instead it states that it "***shall not***." The "shall not" language is dispositive on the issue of whether Defendant waived immunity.

STANDARD OF REVIEW

Objections to a Magistrate Judge's Recommendations

If a party objects to portions of a Magistrate Judge's Report and Recommendation, the Court reviews those portions *de novo*. *Lardie v. Birkett,* 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002). The Federal Rules of Civil Procedure dictate this standard of review in Rule 72(b)(3), which states that:

> **Resolving Objections**. The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

Fed. R. Civ. P. 72(b)(3). "*De novo* review in these circumstances requires at least a review of the evidence before the Magistrate Judge; the Court may not act solely on the basis of a Magistrate Judge's Report and Recommendation." *U.S. v. White*, 295 F. Supp. 2d 709, 712 (E.D. Mich. 2002) (*citing* 12 Wright, Miller & Marcus, *Federal Practice and Procedure: Civil 2d* § 3070.2 (1997)); *see also Hill v. Duriron Co.,* 656 F.2d 1208, 1215 (6th Cir. 1981). "The Court may supplement the record by entertaining additional evidence, but is not required to do so." *White*, 295 F. Supp. 2d at 712. "After reviewing the evidence, the Court is free to accept, reject, or modify the findings or recommendations of the Magistrate Judge." *Id*. (citing *Lardie,* 221 F. Supp. 2d at 807).

ARGUMENT

The R&R correctly held that that the "FLSA does apply to [Hannahville Indian Community]," which means that private suit is an available remedy "where Congress has authorized such actions ***or the tribe has waived its immunity***." ECF No. 12, PageID.190. However, the R&R incorrectly stated, "the tribe's statement that it ***would not*** 'exercise any of the foregoing powers so as to conflict with any of the laws of the United States which apply' to the tribe does not constitute a clear waiver of immunity." *Id.* at PageID.195. The R&R used that "would not" language to conclude that "[a]t most, the tribe ***implies*** a willingness to submit to applicable federal laws[]" and that "waivers of tribal sovereignty may not be implied." *Id.* However, the R&R misstated the language in Defendant's Constitution. Article V – Powers of the Council §(12) of the Constitution and Bylaws of the Hannahville Indian Community [of] Michigan [Approved July 23, 1936] [Amended April 15, 2020; Approved May 6, 2020] states that Defendant reserves the right "[t]o make rules for its own procedure and the conduct of its business of governing the Community, and to delegate to committees of the Council any of the foregoing powers, reserving the right to review any action taken under such delegated powers." ECF No.

10-1, PageID.113. Article V -12 §2. states explicitly "[t]he Council ***shall not*** exercise any of the foregoing powers so as to conflict with any laws of the United States which apply to the Hannahville Indian Community." *Id*. This means that where a federal law is applicable to Defendant, such as the case with the FLSA, Defendant ***shall not*** exercise any power through its counsel conflicting with that law. That is unambiguous language that cannot be ascribed a different meaning by the Magistrate Judge because "shall not" may be reasonably construed as a prohibition. *People v. Haveman*, 328 Mich.App. 480 (2019). Plaintiff therefore objects to the R&R on the basis that Defendant's own Constitution does not ***imply*** "a willingness to submit to applicable federal laws." In fact, Defendant's own Constitution explicitly demands that HIC "***shall not*** exercise" any of their powers "to conflict with ***any*** laws of the United States which apply to the Hannahville Indian Community." ECF No. 12, PageID.195; ECF No. 10-1, PageID.113.

It is important that 29 U.S.C. § 216(b) states in relevant part that "[a]n action to recover the liability prescribed in the preceding sentences may be maintained against any employer (including a public agency) in ***any Federal or State court*** of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated." Because the FLSA applies to Defendant and Defendant expressly states in its Constitution that it "***shall not***" exercise "any of the foregoing powers so as to conflict with ***any*** laws of the United States which apply to the Hannahville Indian Community" this matter belongs in this Court. Defendant's tribal court jurisdiction is limited by either a federal statute and/or its own constitution. Maintaining this action in a jurisdiction or locale other than federal or state court would violate the FLSA's jurisdictional prohibitions, as well as Defendant's Constitution. Because the R&R incorrectly determined that Defendant's Constitution did not waive Defendant's right to immunity with respect to federal laws, Plaintiff respectfully requests

that this Court hold (1) that the FLSA applies to Defendant; and (2) that Defendant's Constitution waives sovereign immunity.

CONCLUSION

For these reasons, Plaintiff requests that this Court disregard portions of the R&R and deny Defendant's Motion to Dismiss.

Respectfully submitted,

HURWITZ LAW PLLC

/s/ *Colin H. Wilkin*
Colin H. Wilkin (P86243)
Attorney for Plaintiffs

Dated: January 30, 2025

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.2(b)

Plaintiff Alexandria Parrotta hereby certifies that Plaintiff's Objections to the Magistrate Judge's Report and Recommendation (ECF No. 12) complies with Local Rule 7.2(b) and contains 998 words, excluding the Table of Contents, Index of Authorities, Index of Exhibits, Signature Blocks, and Proof of Service. The word processing software used to generate word count was Microsoft Word for Office, Version 2308 (Build 16731.20234).

Respectfully Submitted,

HURWITZ LAW PLLC

/s/ *Colin H. Wilkin*
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Dated: January 30, 2025

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2025 I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the attorney(s) of record.

/s/ Colin H. Wilkin