

1 PATRICK C. MARSHALL (SBN 112996)
2 REGINALD D. STEER (SBN 056324)
3 **AKIN GUMP STRAUSS HAUER & FELD LLP**
4 580 California Street, Suite 1500
San Francisco, California 94104-1036
Telephone: 415-765-9500
Facsimile: 415-765-9501

5 Attorneys for Defendants
6 **MATTIE MAYHEW and RICKY MAYHEW**

7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10 SACRAMENTO DIVISION

11 **MARK S. ALLEN,**

12 Plaintiff(s),

13 vs.

14 **MATTIE MAYHEW, et al.,**

15 Defendants.

Case No. CIV.S-04-322 LKK CMK (PS)

**NOTICE OF MOTION AND MOTION TO
DISMISS COMPLAINT DATED JULY 6,
2009; MEMORANDUM OF POINTS AND
AUTHORITIES**

16 Judge: Craig M. Kellison
17 Date: October 29, 2009
Time: 10:00 a.m.

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

The Court has before it the remnants of claims under 42 U.S.C. § 1981 made by a former casino surveillance employee, acting *pro se*, related to the termination of his employment. This Court and the Ninth Circuit have given Plaintiff leave to amend twice and he has failed to state valid claims against his former employer, the tribe owning that former employer, the tribe's governing council, and casino management. This Court has, through successive rulings, effectively determined that all parties involved—directly or indirectly—with Plaintiff's employment are immune from suit based on sovereign immunity. The remaining defendants are two individuals, Mattie and Ricky Mayhew, who are the grandparents of tribal children who were temporarily placed with Plaintiff for two months. It is beyond dispute that the Mayhews have never had an employment relationship with or authority over Plaintiff or his casino job. Mattie Mayhew has no connection to the employer casino whatsoever. And while Ricky Mayhew works in casino surveillance, this Court has already ruled that he is immunized from any allegations against him related to his employment.

What remain are § 1981 claims against two individuals that are barred by Ninth Circuit precedent. The Mayhews do not have an employment relationship with Plaintiff as required by § 1981. Neither has ever been Plaintiff's direct or indirect employer, as required by the Ninth Circuit for a § 1981 claim, nor was either one a decision-maker in the termination of Plaintiff as a casino surveillance employee. Consequently, this action should be brought to closure, as Plaintiff cannot amend around his own allegations, this Court's prior rulings and controlling Ninth Circuit law.

II. FACTUAL BACKGROUND

In light of the numerous rulings and orders by this Court and the Ninth Circuit in this matter, we provide the allegations and procedural history related to the instant motion. Plaintiff filed his Third Amended Complaint ("TAC") in June 2008 against twelve individual defendants including the Mayhews (collectively, the "TAC Defendants"). *See generally* TAC (Dkt. No. 59). Plaintiff alleged that the Mayhews' grandchildren were, at the Mayhews' request, placed temporarily in Plaintiff's home. TAC 2:14-23. Plaintiff alleges that he "went to court" over expense reimbursement disputes and adoption

1 issues (which Plaintiff “would not due [sic] as we wanted the children back with their mother”). *Id.* at
 2 2:25-3:4. Plaintiff alleged that the Mayhews “came up with a plan to file false charges against” him
 3 because he “took the [guardianship] incident to court and . . . he is white.” *Id.* at 4:12-14. Plaintiff also
 4 alleged that Ricky Mayhew conspired with certain of the dismissed tribal and casino defendants. *Id.* at
 5 4:14-6:11.

6 This Court dismissed the claims against nine of the twelve TAC Defendants based on sovereign
 7 immunity. March 27, 2009 Order 3:5-23 (Dkt. No. 78). The Court dismissed a tenth TAC Defendant
 8 because Plaintiff’s § 1981 claim stated no facts against her. *Id.* at 5:1-4, 14-15. With respect to the
 9 Mayhews, the Court dismissed the § 1981 retaliation claim. *Id.* at 4:4-8. The Court did not dismiss the
 10 § 1981 claim premised on alleged racial (as opposed to retaliatory) animus based on a single conclusory
 11 allegation: the Mayhews falsely accused him because ““he is white.”” *Id.* at 4:4-24 (quoting TAC 4:12-
 12 14).

13 Plaintiff’s latest complaint against the Mayhews (the “Current Complaint,” attached as Exhibit A
 14 hereto)¹ is virtually identical to the TAC, and brings claims only against the Mayhews. The Current
 15 Complaint does not—and cannot—allege that either of the Mayhews was or is (1) Plaintiff’s employer,
 16 (2) an employer of any kind, or (3) a decision-maker in the termination of Plaintiff’s employment. *See*
 17 generally Current Complaint.

18 The Court now has before it the legally dispositive question as to whether these § 1981 claims
 19 against the Mayhews must be dismissed because the Mayhews are not Plaintiff’s direct or indirect
 20 employers. Ninth Circuit law makes plain that the Current Complaint should be dismissed without leave
 21 to amend.

22 **III. ARGUMENT**

23 The law in this Circuit firmly establishes that racial discrimination claims under § 1981 are
 24 evaluated under “the same legal principles as those applicable in a Title VII disparate treatment case.”
 25 *Metoyer v. Chassman*, 504 F.3d 919, 930 (9th Cir. 2007) (internal quotations omitted); accord *Surrell v.*
 26 *Cal. Water Serv. Co.*, 518 F.3d 1097, 1103 (9th Cir. 2008). As such, there must “be some connection

27 ¹ As of the date of this filing, the Current Complaint had not yet appeared in this Court’s docket
 28 entries on PACER, and so we have attached it for the Court’s convenience.

1 with an employment relationship for Title VII protections to apply.” *Lutcher v. Musicians Union Local*
2 *47*, 633 F.2d 880, 883 (9th Cir. 1980); accord *Anderson v. Pac. Maritime Ass’n*, 336 F.3d 924, 930 (9th
3 Cir. 2003). The employment relationship must either be “direct”—the usual context for an employment
4 discrimination suit, in which an employee sues his or her own employer for discriminatory acts—or
5 “indirect,” in which case “a defendant *subject to Title VII* interferes with an individual’s employment
6 opportunities with another employer.” *Anderson*, 336 F.3d at 930, 932 (emphasis added) (quoting
7 *Lutcher*, 633 F.2d at 883 n.3); accord *Gomez v. Alexian Bros. Hosp. of San Jose*, 698 F.2d 1019, 1021
8 (9th Cir. 1983). Because “[t]he guarantees of § 1981 and Title VII against racial discrimination are
9 coextensive,” requirement of a direct/indirect employment relationship element applies with equal force
10 to § 1981 claims. *Gomez*, 698 F.2d at 1021-22 (internal quotations omitted). Thus, Plaintiff’s § 1981
11 claims fail unless he can allege that the Mayhews are his direct or indirect employers. See *Anderson*,
12 336 F.3d at 931-32 (affirming dismissal of entity that was neither direct nor indirect employer of
13 plaintiffs under Title VII); *Henderson v. Sony Pictures*, 288 Fed. App’x 387, 389 (9th Cir. 2008) (“The
14 district court properly dismissed with prejudice Henderson’s Title VII claims against Mellon Bank
15 because he failed to allege that he was a direct or indirect employee of Mellon Bank”).

16 Plaintiff has not so alleged and cannot so allege, and this Court should dismiss without leave to
17 amend. See generally Current Complaint. On the other hand, neither Mayhew can be considered
18 Plaintiff’s indirect employer because Plaintiff has not alleged that either is “a defendant *subject to Title*
19 *VII*.” *Anderson*, 336 F.3d at 930, 932 (emphasis added) (quoting *Lutcher*, 633 F.2d at 883 n.3); accord
20 *Gomez*, 698 F.2d at 1021. Plaintiff has not alleged that either Mayhew is an “employer,” “employment
21 agency,” “labor organization,” “training program” or “joint labor-management committee” as defined in
22 Title VII. See 42 U.S.C. § 2000e-2 (listing as potential defendants “employers,” “employment
23 agencies,” “labor organizations” and “training programs”), 42 U.S.C. § 2000e-3 (listing as potential
24 defendants “employers,” “employment agencies,” “labor organizations” and “joint labor-management
25 committees”), 42 U.S.C. § 2000e (defining “employers,” “employment agencies,” “labor organizations,”
26 “training programs” and “joint labor-management committees”).

1 Plaintiff's § 1981 claims should also be dismissed following the district court's ruling in *Drake v.*
 2 *City and County of Denver*, 953 F. Supp. 1150, 1158 (D. Colo. 1997). Like Plaintiff here, the plaintiff in
 3 *Drake* brought § 1981 claims alleging that non-employers made "negative statements" about him, which
 4 resulted in the plaintiff not being employed. *Id.* The *Drake* court held that because neither defendant
 5 was the plaintiff's "employer" when it allegedly made "negative statements" about the plaintiff, the
 6 plaintiff had "failed to allege facts sufficient to state a claim for relief under Title VII or § 1981 and
 7 those claims [were] therefore dismissed." *Id.* Similarly, because neither Mayhew was Plaintiff's
 8 employer in this case—directly or indirectly—Plaintiff's § 1981 claim should be dismissed.² Moreover,
 9 the Current Complaint should be dismissed without leave to amend because Plaintiff has not alleged and
 10 cannot allege that either of the Mayhews is an "employer," "employment agency," "labor organization,"
 11 "training program" or "joint labor-management committee" as defined in Title VII. *See, e.g., Sisseton-*
 12 *Wahpeton Sioux Tribe of Lake Traverse Indian Reservation, N. Dak. & S. Dak. v. United States*, 90 F.3d
 13 351, 355-56 (9th Cir. 1996) (affirming district court's denial of leave to amend where amendment would
 14 have been futile and plaintiff had previously amended complaint).

15
 16 ² We note that there is dicta in the February 20, 2009 Findings and Recommendations ("F&R")
 17 (Dkt. No. 75) relating to decisions outside the Ninth Circuit on the issue of whether a plaintiff can
 18 properly sue non-employers under § 1981. F&R 16:18-17:4. This issue was not before the Court at that
 time, and has therefore not been ruled upon by the Court. Hence, this motion to dismiss.

19 Moreover, the cases cited in the F&R are distinguishable from this case. All of them concern
 20 claims against defendants who were "indirect employers" under the Ninth Circuit's test and/or were
 21 decision-makers in the adverse employment actions against the respective plaintiffs. *See Kolb v. State of*
 22 *Ohio, Dep't of Mental Retardation & Developmental Disabilities, Cleveland Developmental Center*, 721
 23 F. Supp. 885, 902, 905-06 (N.D. Ohio 1989) (upholding § 1981 claim against defendant who terminated
 24 plaintiff); *Faraca v. Clements*, 506 F.2d 956, 957-58 (5th Cir. 1975) (defendant made decision not to hire
 25 plaintiff); *Coley v. M&M Mars, Inc.*, 461 F. Supp. 1073, 1075 (M.D. Ga. 1978) (upholding claims
 26 against supervisor who fired defendant and his superiors); *Shirkey v. Eastwind Cmty. Dev. Corp.*, 941 F.
 27 Supp. 567, 570-71, 573-74 (D. Md. 1996) (upholding claim against defendant organization that would
 28 have likely qualified as "indirect" employer under Ninth Circuit test, and that made decision not to
 contract with plaintiff); *Daniels v. Pipefitters' Ass'n Local Union No. 597*, 945 F.2d 906, 915 (7th Cir.
 1991) (upholding claim against defendant labor organization that would have qualified as "indirect"
 employer under Ninth Circuit test, and whose interference necessarily precluded plaintiff's
 employment); *al-Khazraji v. St. Francis College*, 784 F.2d 505, 507, 518 (3d Cir. 1986) (upholding
 claims against tenure committee members who decided not to grant plaintiff tenure).

None of the cases cited in the F&R present the facts that are dispositive here. Plaintiff has not
 alleged that either of the Mayhews had any decision-making role in his termination. Indeed, the only
 case of which we are aware in which a plaintiff sued defendants with no decision-making role is the
 aforementioned *Drake* case, in which the § 1981 claims were dismissed.

EXHIBIT A

COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Mark S. Allen - Pro Se
777 Wagstaff Rd.
Paradise, CA 95969
(530) 876-0168

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

MARK S. ALLEN

Plaintiff(s),

vs.

**MATTIE MAYHEW,
RICKY MAYHEW, et al.**

Defendants.

CASE No: CIV.S-04-0322 LKK CMK-PS

**COMPLAINT FOR;
VIOLATION OF CIVIL RIGHTS UNDER;
U.S. CODE, TITLE 42;
SECTION 1981(a)
EQUAL RIGHTS UNDER THE LAW
AND RETALIATION**

THIRD AMENDED COMPLAINT

1 Comes now the Plaintiff and complains of the defendants and each of them as
2 follows;

3
4 STATEMENT OF FACTS.
5

6 Plaintiff states that he and his family took in four of the defendant's, Mattie Mayhew and Ricky
7 Mayhew's, grandchildren at her request. The first was in May 2003, and arrangements were
8 being made to take in two others plus a newborn that was due.

9 Plaintiff and his wife had talked with the I.C.W.A director at the time, Ben Jimenez, and it was
10 understood that plaintiff and his family would take care of all the children when it was feasible,
11 but while talking to Mr. Jimenez about certain legal issues, Mr. Jimenez stated "do not go to the
12 white man's court".

13
14 In August 2003 plaintiff and his family took in the other two grandchildren plus the newborn
15 baby.

16
17 In August 2003 plaintiff's wife wrote the tribe for reimbursement of funds that plaintiff had
18 used for the children, and were told by Mr. Jimenez they would be reimbursed for. We were
19 denied by the tribe who stated were never advised of anything and should have been informed
20 of anything before. Furthermore we were turned down by state entity's for assistance as the
21 state said the children were tribal. This situation and other legal issues, as well as the defendant
22 Mattie Mayhew, requesting we adopt the children,(which we would not due as we wanted the
23 children back with their mother), were the reasons we went to court.

24
25 On October 29,2003 plaintiff's wife was at defendant's (Mayhew) house visiting with the
26 grandchildren, plaintiff received a phone call requesting he stop by before going to work, which
27 he did. At that time plaintiff was informed by defendant (Mayhew) that the tribe was very

1 pissed off because we had taken the matter to court. I asked the defendant, Mayhew if she still
2 wanted us to apply for guardianship of her grandchildren, and she replied she did. Defendant
3 Mayhew also advised that the tribe was going to cut off funds for the children. After some
4 discussion plaintiff then left and went on to work.

5
6 Plaintiff states that on October 30,2003 he arrived at work early as usual and nothing was said.
7 As soon as plaintiff punched in for work he was met by defendant, Kirby Brown, who had
8 plaintiff follow him to the gaming commissioner's office which plaintiff did.

9 Plaintiff was met by Eleanor Boulton, Gus Martin, Brian Sandusky, and Ricky Mayhew. At this
10 time plaintiff was informed that charges had been made against him and then the general
11 charges were described. All defendant's would not elaborate but finally stated that the charges
12 were filed by defendant, Mattie Mayhew.

13 Plaintiff was not allowed to answer to anything but only to deny certain allegations presented by
14 Eleanor Boulton, who questioned what plaintiff had supposedly stated to defendant Mattie
15 Mayhew. This indicated that all present had read these accusations and either authorized an
16 alleged investigation or knew that no investigation had been conducted. Also it appears that
17 defendant Ricky Mayhew was involved in this alleged investigation.

18
19 Plaintiff met with Erin Harter, the next day to file an appeal. Plaintiff requested to meet with
20 Mr. Ed White, but was denied. After that plaintiff talked to Harter, once more but then she
21 never met with plaintiff again or returned his phone calls. Plaintiff was never allowed to meet
22 with White, as allowed. Plaintiff was advised by letter that an investigation was done by
23 defendant, Hatley, who was a subordinate to Mickel Hedrick, the director of security. Plaintiff
24 was advised that the investigation could not confirm nor dismiss the charges. However a full
25 investigation was not done.

26
27 Plaintiff was advised on October 30, 2003 that , Kirby Brown had conducted an investigation

1 and he found the allegations to be true which was resulting in plaintiff's termination.

2

3 Plaintiff states that defendant, Mattie Mayhew conspired with her husband defendant Ricky
4 Mayhew, and came up with a plan to file false charges against plaintiff. This was done do to the
5 fact that plaintiff took the incident to court and that he is white. Defendant Ricky Mayhew then
6 conspired with kirby Brown to state and investigation had been conducted when in fact none
7 had. Defendant Mayhew and Kirby Brown then approached Boulton, Martin, and Sandusky
8 and advised them of the situation whereby the plan to terminate plaintiff was affirmed and the
9 supposed, reason but no answers were given to plaintiff.

10 Mayhew and Brown needed to have Boulton, Martin and Sandusky cooperation in this falsified
11 charge and investigation otherwise some problem with their plan could arise and not look
12 appropriate. After being terminated plaintiff was only allowed to meet with Erin Harter
13 although plaintiff was promised a meeting with Ed White. Harter lied to plaintiff by telling him
14 a meeting would be arranged and she herself would again meet with plaintiff. Harter did not
15 keep her word, and no more meetings were held, no phone calls returned. A letter was later
16 sent to plaintiff by Ed White saying they could not confirm nor deny the charges and plaintiff
17 was still terminated.

18

19 Art Hatley is suppose to have conducted this alleged investigation but none was ever
20 conducted. Hedrick was directly involved with this supposed investigation as he was Hatley's
21 superior, and was suppose to approve of anything done or submitted by Hatley. Hedrick had to
22 know and approve of this so called investigation and had to go along with it for the same
23 reasons as all the others. This kept the conspiracy against plaintiff on going but gave it the
24 outward look of being a regular personnel problem so no attention would be drawn to it.

25

26 The defendants each and everyone conspired using the false charges so they could put plaintiff
27 in the position of having no recourse, as the tribe can and did claim that they have sovereign

28

1 immunity from suit. The individuals used their positions to further the conspiracy along by not
2 following their jobs and in fact neglected their responsibilities
3 as prescribed by their own rules and regulations as well as their policies and procedures. Each
4 defendant knew of the false charges which they acted on, or in this case purposely avoided
5 doing what was written and required of them, per their own rules and regulations as well as
6 policies and procedures.

7
8 Plaintiff also states that there were two court dates in December 2003, both of which were
9 attended by plaintiff and his wife as well as tribal representatives.

10
11 On December 23, 2003 the I.C.W.A. director and Steele after meeting with defendant
12 Hernandez, came to plaintiff's house. Plaintiff talked with Steele who had made promises of
13 getting plaintiff reimbursed for money spent originally for the children. Steele, stated she
14 wanted to take the children to see their mother for Christmas. Plaintiff and family agreed, but
15 once the children were in the Steele's vehicle she advised plaintiff that the children would not
16 be returning. Steele waited for the children to be loaded into the vehicle as she knew plaintiff
17 (because of her meeting with Hernandez) would not do anything to endanger the children.
18 Plaintiff states that Steele violated a verbal contract or agreement when she took the children
19 and left. Plaintiff states that Steele and Hernandez had conspired on this plan for some time,
20 because they did not want to return to court. Money for the children had been cut off by
21 Hernandez at the urging of Steele sometime before but plaintiff and his family still cared for
22 the children at their expense. Plaintiff believes that Steele and Hernandez, then planned that
23 Hernandez start paying as agreed (originally) for the children, and in that manner Steele
24 pointed out that she was working to get everything taken care of as originally agreed, but what
25 she had done was laid the ground work for her to take the kids as she and Hernandez had
26 planned and conspired in committing'

27

28

1 Had plaintiff had the funds to have legal counsel or advise this would not have occurred.

2

3 A court date in January 2004 was attended by plaintiff and his wife but not by any tribal
4 representatives as they had already obtained the children by false pretenses and were basically
5 untouchable due to their status.

6

7 Plaintiff states that his civil rights were violated due to his being white and going to court, and
8 that because of this, he was retaliated against. Plaintiff further states that his civil liberties were
9 violated because plaintiff was prevented from obtaining legal representation, not allowed to
10 redress grievances, denied freedom of speech, and also believes this falls under cruel and
11 unusual punishment.

12

13 In November 2003 while plaintiff and his wife had taken Hernandez, children to see her at
14 children's services, it came up that plaintiff was not working and Hernandez stated "I told them
15 not to fire you over this". This statement just reassured what plaintiff had known all along, that
16 all named defendant's (and possibly others) had fired him for being white and going to court
17 against their wishes.

18

19 I had every legal right and the backing of the constitution to take this matter to court without
20 fear of reprisal, intimidation, harassment, retaliation, and racism. I was denied that right and
21 they (defendants) prevented authorities from the state, from giving or securing to me equal
22 protection of the laws of the State of California, and the UNITED STATES CONSTITUTION

23

24 In **CBOCS WEST, INC. v. HUMPHRIES**, (U.S. SUPREME COURT, No. 06-1431,
25 decided May 27, 2008 - The Supreme held that Section 1981 encompasses retaliation claims.

26

27 Plaintiff has always maintained that this action against him was retaliation for his going to the

28

1 Superior Court of Butte County, in regards to guardianship of the children, and a violation of
2 his civil rights as well as his Constitutional rights.

3
4
5 To further show the connections or in linking all defendant's together, and also listed another
6 complaint due to this evidence in the complaint.

7
8 In *Allen v. Gold Country Casino et. al.*, (464 F. 3d 1044 9th Cir. 2006) Judge Canby in his
9 opinion for the court wrote "The casino's creation was dependant upon government approval at
10 numerous levels, in order for it to conduct gaming activities permitted only under the auspices
11 of the Tribe. The Indian gaming Regulatory Act ("IGRA"), 25 U.S.C. 2710(d)(1), required the
12 Tribe to authorize the Casino through a tribal ordinance and an interstate gaming compact. He
13 further writes "the statements' references to federal law did not mention court enforcement,
14 suing or being sued, or any other phrase clearly contemplating suits against the Casino."
15 Also contained within his opinion are references to plaintiffs statements such as "for any reason
16 consistent with applicable state or federal law," and "practice equal opportunity employment
17 and promotion regardless of race, religion, color, creed, national origin...and other categories
18 protected by applicable federal laws." He also wrote "that at most they might imply a
19 willingness to submit to federal lawsuits, but waivers of tribal sovereign immunity may not be
20 implied."

21 Plaintiff would point out that he believes this matter comes under both legislative and judicial
22 jurisdiction, and presents a clear waiver of the tribe/casinos sovereign immunity as well as for
23 individuals who claim them as well, due to their position.

24
25 As pointed out by Judge Canby, a gaming ordinance was needed for certain gambling, and that
26 ordinance was submitted by the tribe and signed by the chairman. It was the tribe who wrote
27 in the gaming ordinance "U.S. Code, title 18, 1001" just after writing "Also, you may be

28

1 punished by fine or imprisonment.”

2

3 It is crystal clear that the tribe knowingly meant to use the United States Code, and by using the
4 code waives its' sovereign immunity from suit against the tribe/casino as well as for
5 individuals. No one entity can list the use of the U.S.Code only for itself. If you apply the law
6 then you are bound to it. But more importantly you are bound to the entire U.S.Code and its'
7 applications. No entity can pick and choose what law they want, but don't want any of the
8 other (laws) one(s).

9 By using the U.S. Code the tribe/casino has made its' statement that they are using and intend to
10 follow federal laws.

11

12 The courts have stated that any waiver must be explicit but it has never required invocation of
13 "magic words" stating that "the tribe hereby waives its sovereign immunity." **Rosebud Sioux**
14 **Tribe v. Val-U Constr. Co. Of South Dakota, Inc., (50 F.3d 560, 563 8th Cir1995).**

15

16 First under Title 18, Section 1001, by placing the posters concerning state and federal
17 employment laws by the time clock for employees to see, the casino used a "device" as well as
18 by "scheme and/or trick" to falsify and conceal true and factual rights the employee's had.

19

20 Secondly, numerous statements by defendants to plaintiff and others during our employment
21 were "false" and "fictitious" with the intent of keeping the employee's from obtaining the truth
22 about rules and regulations as well as policies and procedures that were never intended for the
23 employee's to have.

24

25 Thirdly, when Judge Canby writes that at most they might imply a willingness to follow to
26 submit to federal lawsuits, is due to statements written by the tribe/casino, (as well as
27 individual defendants) and has to be taken for what it states, as they are "documents" listing

28

1 what procedures an employee is guaranteed for grievances and for other employee complaints.
2 If you do not follow these documents as you have written them or deny to the employee those
3 rights in those "documents" then you have violated the U.S.Code that you (tribe/casino) wrote
4 into the gaming ordinance.

5
6 In regards to "any matter within the jurisdiction of the legislative branch" applies to the
7 individuals as well as the tribe/casino due to the fact that it is a personnel or employment
8 practices, or a document required by law rule, or regulation to be submitted to the Congress or
9 any office or officer within the legislative branch.

10

11 This is clearly a personnel or employment practice, involving a document required by law and
12 regulation and submitted to any office or officer within the legislative branch. The National
13 Indian Gaming Commission (NIGC) is clearly an office within the legislative branch under the
14 Department of the Interior, and clearly the Commissioner is an officer within that department.

15

16

17

JUDGEMENT OF RELIEF

18

19

Wherefore, plaintiff prays general against the defendants and each of them.

20

21

22

23

RELIEF I

24

25

Plaintiff is seeking damages in the amount of \$500,000.00 (five hundred thousand dollars) from
each (2) defendant.

26

27

28

1
2
3 RELIEF II

4 Punitive damages in the amount of \$3,000,000.00 (Three million dollars) in that the defendants
5 conduct was extreme and outrageous and went beyond all possible bounds of decency, and are
6 utterly intolerable in a civilized community. Plaintiff now suffers emotional and some physical
7 distress of such a nature that no reasonable person should be expected to endure. This was all
8 caused by the defendant's actions.

9
10 Plaintiff's family also suffers emotional distress due to the defendant's actions, and plaintiff
11 believes that this is what the defendants originally intended to have occur with as much malice
12 as possible.

13
14 Plaintiff and his family are still having to deal with written statements issued by the Berry Creek
15 Rancheria of Tyme Maidu Indians, Indian Children Welfare Act (I.C.W.A.) representative,
16 who are attempting to malign plaintiff and his family and destroy their name by making false
17 and erroneous allegations, with no regards to the truth of the incidents they write about, and
18 with the intent of still inflicting emotional and physical distress on the plaintiff and his family.

19
20 Costs of suit, and such other relief as the Court deems proper

21
22
23 JURY TRIAL DEMAND

24
25 Plaintiff hereby request/demands trial by jury.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Mark S. Allen

6 July 09

Mark S. Allen - Pro Se
777 Wagstaff Rd.
Paradise, Ca. 95969
(530) 876-0168

Date