No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

MARK S. ALLEN (Pro-Se) — PETITIONER
(Your Name)

vs.

GOLD COUNTRY CASINO- et. al RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NINTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MARK S. ALLEN
(Your Name)

777 WAGSTAFF ROAD
(Address)

PARADISE, CALIF. 95969
(City, State, Zip Code)

(530) 876-0168
(Phone Number)

## QUESTION(S) PRESENTED

Did the tribe/casino violate the United States Constitution, federal laws and my civil rights, after applying for guardianship of three tribal children in accordance with federal and state laws, and I.C.W.A.?

Did the Ninth Circuit Court err in its' decision that the tribe/casino did not waive its rights by not looking at all relevant material?

Did the tribe/casino violate federal laws thereby allowing the federal courts jurisdiction as allowed for in the United States Constitution, and therefore negate its' sovereign immunity?

Does the tribe/casino enjoy immunity when accepting accusations or charges, known to be false, from a non-tribal member against a non-tribal member?

Did Congress and/or the State of California violate the United States Constitution under the 1st, 5th, and 14th Amendments, as well as the State Of California Constitution under Article I, Sections – 1, 3(a), 3(b)(1), 7(a), 31(a) ?

## LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Berry Creek Rancheria of Tyme Maidu Indians,

Mattie Mayhew,

Does 1 – 200

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

## OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[X] reported at 464 F 3d 1044 (9th CIR 2006); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

## JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 29 Sep 2006.

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION;

ARTICLE III, SECTION 2;
The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.

AMENDMENT I;
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

AMENDMENT V;
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV,
SECTION 1;
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CALIFORNIA CONSTITUTION;

ARTICLE 1 – DECLARATION OF RIGHTS (con't)

Section 3(a). The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

Section 3 (b) (1). The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

Section 7 (a). A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws;

Section 31 (a). The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

## STATEMENT OF THE CASE

In September 2003 my wife and I (in agreement with our children) applied for guardianship of three tribal children, at the request of their maternal grandmother (Mattie Mayhew). We did this action Pro-Se, (as we did not feel at the time that there would be problems to this degree, and were advised that this was the way to go to keep things simple) with help in filling out the forms, and complied with all rules of the courts, state laws and **Title 25> Chapter 21, Indian Child Welfare (I.C.W.A.)** in **Diane and Mark Allen, Guardianship of; Antonio Mayhew, Legend Mayhew, Sequoia Mayhew, (Superior Court of California, County of Butte, Case # FL026400, SEP 15 2003)** as required. In this case Judge McNellis (presiding judge) stated "you made somebody very, very, mad." The judge was able too see that this was not about the children but about somebody who dared to challenge the authority of the tribe/casino.

On October 29, 2003 my wife had taken the children to see their grandmother and was informed by Mattie Mayhew that the tribe was mad and going to cut off the funds for the children. I was then called at home, and informed of the same information. I went in early to work so I could go by the Mayhew house. Once there I talked with Mattie. She advised me that the tribe was cutting off funds for the children because my wife and I went to the superior court for guardianship of her grandchildren after the **I.C.W.A.** director, Ben Jimenez told us "do not go to the white mans' court". I asked Mattie if she still wanted us to take guardianship of her grandchildren, to which she replied, "Yes I do". I informed Mattie that no matter what happens I would continue with the guardianship proceedings for her grandchildren, as I originally promised.

On October 30, 2003 I arrived for work and upon punching in I was met by my department director, Kirby Brown who advised me to follow him to the gaming commissioner's office. After entering I was informed that I was being terminated for violating policies and procedures as well as rules and regulations of the casino. I was informed that a complaint had been filed, against me. After several minutes of my asking who complained and what the complaints were, I was informed that Mattie Mayhew had written a letter containing the accusations. I was never allowed to read or see the letter. I was told that I could file a grievance, as allowed for by the policies and procedures and the rule and regulations. I did so the next day. I heard nothing back from the casino at all. All my attempts to contact the casino were apparently ignored, as people never returned messages, and were too busy to see me when appearing in person.

The tribe/casino never once adhered to their own policies and procedure or their rules and regulations, regarding grievance procedures, how they were to be conducted and time limits for certain actions to take place

Also in October we were advised, by letter, that the tribal council was denying our request for reimbursement, concerning money we had put out for items for the children. We were advised by the **I.C.W.A.** director Ben Jimenez that we would be able to get reimbursed for the money we used for items for the children, as we told him it was

money we had for our own children. The tribe knew or should have known what was going on as the **I.C.W.A.** director, Ben Jimenez, was well aware of the plan to take in all of the children from Tasha Hernandez. We took Anthony into our house in May 2003 and the plans were set to take Legend and Sequoia in as soon as possible. This was all known way in advance and was done with **the I.C.W.A.** director's knowledge. Again the tribe broke a verbal agreement or contract with my family and me, and caused a financial hardship as well as an emotional strain on me and my family.

In November 2003 the tribe filed papers regarding the guardianship saying we had violated several laws or procedures. We subsequently met with the **I.C.W.A.** director, Terilynn C. Steele (Ben Jimenez had passed away), and attempted to work out details regarding the children and visits after going to court and attempting to understand both sides. On our part all we were concerned with was the safety and welfare of the children.

We handled the court case as best we could, due too the fact that I had no income. I believe we returned to court one more time and the tribal representatives met with us after court and again made verbal agreements or contracts as to what would transpire.

In December on the 23rd or 24th, the **I.C.W.A.** director Terilynn Steele came to our house to arrange a visit for the holidays with their mother. She stood in our house and told my family that there would be reimbursement for the items we had bought for the children (and itemized list had been previously given to the tribe and the **I.C.W.A.** director) and that we would have the children back on the next Monday. As soon as I helped get the children into the vehicle, Terilynn stated "you'll only get the baby back on Monday" and then left the property. I had to go in and tell my family that they had just seen the last of the children, as they were not returning and that everything that had just been promised to us and that we had agreed upon was once again nothing more than a lie. This again was a verbal contract that was broken.

In **Navajo Nation v. James W. Norris; Gayle Norris (No. 01-35041, 9th Cir. -Opinion 2003)** the 9th Circuit found for the defendant. Our case was similar to theirs, as the children were born off the reservation. Neither the parents nor the children resided on the reservation. Only the mother, Tasha Hernandez is a tribal member, and she had signed over power of attorney to us and granted us custody, (also two of the three children were not tribal members until we had them in our custody and pressed the tribe for a tribal status for them. It is unclear if the children were made tribal members in violation of tribal law or not). The difference was we were not applying for adoption. We were applying for guardianship as requested by Tasha's mother, Mattie Mayhew and by Tasha herself.

The tribe I would argue violated my Constitutional rights under the **5th Amendment,** by depriving me of life and liberty, as well as due process, and also under the **14th Amendment,** by denying to me due process as well as being denied access to federal and state laws. I also believe under **"ICRA," Title 25, 1302. Constitutional Rights, "No Indian tribe in exercising powers of self-government shall" – "(8) deny to any person within**

**its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;"** the tribe violates the U.S. Code which under **Article III, Section 2, of the United States Constitution** gives the Federal Courts the power to hear this case

The tribe/casino also violated my civil rights under **Title 42, Sections 1981(a)** by, terminating me so as not to have an equal footing in regards to legal assistance, denying me the ability to make and enforce contracts, be parties, and deny me full and equal benefit of all laws and proceedings for the security of persons and property, and shall be subject to like punishment. They violated my civil rights under **Section 1985(3)**, by two or more persons conspiring for the purpose of depriving, either directly or indirectly, any person or class of persons the equal protection of the laws or equal privileges and immunities under the laws.

When we applied for guardianship we followed all laws, federal, state and **I.C.W.A., Title 25>Chapter 21, Indian child Welfare** that were required. This action did not interfere or affect the tribal government at all, but it upset the tribe, as I went to the "white mans court" (a term used by the **I.C.W.A.** director at that time, Ben Jimenez) against their (the tribes) wishes. This action was done to help get things done more quickly for the children.
The tribe however responded by terminating my employment through the casino. This act was done with malice aforethought. They knew without a job I could not afford legal representation and they also knew that there would be great difficulty in fighting for my job due to the "sovereign immunity" status. The tribe does what it wants, when it wants, and does not feel or believe they have to answer to anybody. I have the right to go to court to redress my concerns or grievances about the guardianship issue.

The tribe, through its' **I.C.W.A.** director got the children back under false pretenses, because we did not have and could not afford legal counsel. We have since been advised of what we should have done to safeguard ourselves by an attorney. Also because of this matter we were no longer considered a tribal foster care house. The biggest transgression was that false allegations were made about my wife and me regarding treatment of the children. The **I.C.W.A.** director, Terilynn Steele, made false accusations against us and the Investigators Neva Youngs (SW IV) and Mira Moeller (SWII), did only a partial investigation, relying mostly on statements from Terilynn Steele, Tasha Hernandez, and Antonio Mayhew (4 yrs.) who has had a problem with not telling the truth or the full truth, since we first brought him into our home. We believe this was due to the drug usage of both the mother and father as a defensive response to avoid any altercation. During this so-called investigation, neither my family nor I was ever contacted. In their recommendation that we be denied guardianship and the children be returned to the care of their mother, they forgot certain things and listened to the tribe and the help the tribe stated Tasha would receive. Subsequently the baby Enolie has been placed with Tasha's sister (which is a good thing) and her husband. The other three children since leaving us

have been in about four other foster family homes, and at this time it is unclear if they are together as a family, which is what we set out to do. This was all part of a conspiracy by the tribe, including the **I.C.W.A.** director, and some known and unknown tribal members, to overwhelm my family and me and re-take control of the situation that they had lost. Should I have had the means, that were taken from me, to obtain legal counsel, the outcome would be very different and quite possibly the mother would be off drugs and back with her family as we had originally planned with Tashas' mother.

I would argue, that in retaliation for the guardianship case, I was terminated from my job purposely, by the tribe/casino, violating my civil rights under **Title 42, Sections 1981, 1985,** as well as my **United States Constitutional rights under the First, Fifth, and Fourteenth Amendments, and The Constitution of the State of California, Article I.** This was done with the intent to make an example of me to anyone who would think of challenging the tribe/casino in any way, shape, or form. They also did this too cause and inflict emotional distress upon my family, and me and create a financial hardship on me and my family, which increased the emotional distress as well.

I would argue that the tribe had no reason or business in attacking me (and my family), for doing a lawful act, protected by the **United States Constitution.** My actions did not interfere with tribal economic development, self-sufficiency, tribal government, or with any revenue that supports tribal government.

In **Mark S. Allen v. Gold Country Casino et.al. 464 F.3d 1044, (9th Cir. 2006)** Judge Canby in his decision stated, "The **Indian Gaming Regulatory Act ("IGRA"), U.S.C. Title 25, 2710. Tribal gaming ordinances (d) (1),** required the tribe to authorize the casino through tribal ordinance and an interstate gaming compact. The tribe and California entered into such a compact "on a government-to-government basis." Judge Canby also stated that the employment application stated, " for any reason consistent with applicable state or federal law," or when stated in the employee orientation booklet that it would "practice equal opportunity employment and promotion regardless of race, religion, color, creed, national origin...and other categories protected by applicable federal laws." These statements are not a clear waiver of immunity, citing **C & L Enterprises Inc. v. Citizen Band Potawatomi Indian Tribe, 532 U.S. 411,418 (2001).** At most they might imply a willingness to submit to federal lawsuits.

In **U.S.C. Title 25, 2710 (d) (D) (7) (B) (iv),** in pertinent part states, "The mediator shall select from the two proposed compacts the one which best comports the terms of this chapter and any other **"applicable federal law"** and with the findings and order of the court."

Is the use of **"applicable federal law"** in the **U.S.Code** merely a willingness to submit to federal laws or lawsuits, or is it just what it states, it will apply to all applicable federal laws. I would also argue that this language is the same in federal law, which is used by the tribe in their employment application and their Employee Orientation Booklet, both of which were written by the tribe.

The **"Tribal Gaming Ordinance of the Berry Creek Rancheria"** states;

**"(2) Notice Regarding False Statements,**
A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment. **(U.S. Code. Title 18, 1001)."**

I would argue that this ordinance clearly allows for federal charges to be filed and someone go to jail or fines to be levied under **U.S. Code Title 18, Section 1001.** By listing the specific title and section the tribe/casino is explicitly showing their willingness to use and comply with applicable federal law.

Also in the Applicants Statement it states, **"I understand that federal law prohibits the employment of unauthorized aliens; all persons hired must submit satisfactory proof of employment authorization and identity; failure to submit such proof will result in denial of employment".**
As stated above, it is clear that the tribe/casino is following federal law in regards to employment, and makes sure that I understand that fact, and requires proof from me to work.

At the bottom of the same Statement it has;

**"Hiring: Preference given to all qualified Native American Indians Under the Federal Indian Preference Act (43 cfr, 17.3(d)."** Again this statement clearly indicates that the tribe/casino is complying with federal laws.

If you take all these statements (below) together;

**"Gold Country Casino will practice equal opportunity for employment,"**
**"other categories protected by applicable federal laws,"**
**"for any reason consistent with applicable state or federal law,"**
**" federal law prohibits the employment of unauthorized aliens."**

As well as **Title 18, 1001**, for which one can be arrested and/or fined, listed in the **Tribal Gaming Ordinance of the Berry Creek Rancheria,** plus the section of the **Code of Federal Regulations (43 CFR, 17.3(d)** listed at the bottom of the Applicants Statement, one has to see that the tribe/casino was in fact waiving their sovereign immunity, by seeking to use and apply Federal Law in regards to employment.

This would also answer to Judge Canby's opinion, **Mark S. Allen v. Gold Country Casino et. al. 464 F.3d 1044 (9th Cir. 2006)** where he states," The statements in Allen's employment documents did not approach these explicit waivers of immunity from suit; the statements' references to federal law did not mention court enforcement, suing or

being sued, or any other phrase clearly contemplating suits against the casino. These documents did not amount to an unequivocal waiver of the Casino's sovereign immunity."

Although there is no mention of suing or being sued, the law has never required that the"magic words" stating the tribe hereby waives its sovereign immunity is not required as in,
**Rosebud Sioux Tribe v. Val-U Constr. Co. of South Dakota Inc. 50 F.3d 560,563 (8th Cir. 1995).** Finding waiver through a standard form construction contract in, **C & L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe, 532 U.S. 411, 414 (2001),** and finding different language, or applying certain terms as there was no mention of Indian tribes, was another form of finding waiver in, **Krystal Energy Company v. Navajo Nation, 357 F.3d 1055 (9th Cir. 2004).**

In **Mark S. Allen v. Gold Country Casino et. al. 464 F.3d 1044 (9th Cir. 2006)** Judge Canby refers to **"I.G.R.A." Title 25 U.S.C. 2710**. This is the Tribal Gaming Ordinances that appears to be established in response to **California v. Cabazon Band Of Mission Indians, 480 U.S. 202 (1987).** In this case it was decided that California as a state does not prohibit all forms of gambling but it does regulate gaming. It would appear that this case is also where it led to the fact that gaming compacts should be established.
I believe that this violates my rights under the **U.S.Constitution** under the **First, Fifth and Fourteenth Amendments.** I also believe that the gaming compacts violate not only my **Constitutional Rights**, but also my **California Constitutional Rights under Article 1-Declaration of Rights; Sections; 1, 3(a), 3(b) (1), 7(a), 31(a)**

The compacts established with the State of California do not allow for third party suits, but they also do not allow for the individual citizens rights. The **U.S.Constitution** as well as the **California Constitution** guarantees these rights. I would also question whether the compacts are part of federal law. It is established in **Title 25>Chapter 29> 2710. Tribal Gaming Ordinances, (d) Class III gaming activities; authorization; revocation; Tribal-State compact. (1) (c),** that there are compacts between state governments and tribal government. Does this not make the compacts federal law, and therefore subject to other federal laws?

Under **U.S.C. Title 28> Part IV> Chapter 85, 1362 Indian Tribes;** this law allows for civil actions brought by Indian Tribes, but there is no such law allowing for civil suits brought against Indian Tribes. Furthermore it seems that people are forgetting that the individual tribal members are first, citizens of the United States, whereas they have to be voted on for tribal membership and that can be taken away from them at any time. This seems to make tribes more of a club than of a sovereign nation.

I cannot and am not allowed nor given the chance as guaranteed me, to redress any grievances. I cannot get any due process, and I cannot enjoy life and liberty, as is my right, guaranteed to me by the **United States Constitution, California State Constitution,** as well as the **Indian Civil Rights Act.**

Indian tribes should have to conform with at least federal rights in regards to employment. Our forefathers when establishing the U.S.Constitution did not foresee Tribes running Casinos, Ski Resorts, Hotels, Restaurants, and other businesses. In fact it appears that our forefathers were just trying to civilize the Indians, and commerce would have been trading goods and services for hides and pottery. There is numerous ways to keep their sovereignty without interference, but the laws should and must require tribes like all businesses do, to follow federal laws in regards to employment, when operating as an equal opportunity employer. I would also question the validity and integrity of the investigations of tribes by supposedly impartial persons of the National Indian Gaming Commission. I approached their representatives regarding a matter, was promised and investigation and nothing materialized.

Due process in reference to tribes as in, **One Hundred Eight Employees of the Crow Tribe of Indians v. Crow Tribe of Indians, 2001 Crow 10 (Crow Court of Appeals 2001)** means everything to the respected tribes and members. A panel of visiting judges in 1994 heard this case. Due to violations of Crow tribe's resolution in regards to the case it was reheard. Due process is one of the main reasons for the rehearing and apparently plays a large part within the tribe. It also takes into consideration the **Indian Civil Rights Act (I.C.R.A.), 25 U.S.C. 1302.** This case also recognizes the ability of a Tribal Council to hear appeals under Tribal law without violating the I.C.R.A.'s "due process" clause, and also covers tribal grievances in accordance with Tribal policy.

In **Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978)**, the defendant had a hearing before the tribe which gave her "due process" in regards to the Tribe, under **ICRA, 25 U.S.C. 1302 (8).** In **Mark S. Allen v. Gold Country Casino et. al., 464 F.3d, 1044 (9th Cir. 2006)** plaintiff is never allowed any hearing in regards to policies and procedures or rules and regulations, by casino officials or by the Tribal Council. It is unknown what Tribal law there is, as plaintiff is never advised of anything. Plaintiff is ignored.

Apparently two out of three tribes value "due process" in regards to **ICRA 25 U.S.C 1302 (8)**, as well as constitutional consideration, and the third has no apparent laws, policies, procedures, rules, regulations or any desire to care about "due process".

I would argue that a Tribe cannot hide behind "sovereign immunity" when it is relying on accusations (false) made by a non-member against a non-tribal member. This person, Mattie Mayhew, is a citizen of the State of California, and of the United States of America, subject to its' laws, and rules. **Mrs. Mayhew is not a Tribal member** as it has been stated in **Mark S. Allen v. Gold Country Casino, et. al. 464 F.3d 1044 (9th Cir. (2006),** and enjoys no benefits of a tribal member except those benefits she gets by being married to a tribal member. As these accusations in no way effect the tribal government, the tribe should be held responsible for their actions. They should be held to a higher standard to affect themselves as a responsible and self determining body functioning as a government that they so arduously argue that they are.

I believe that the tribe/casino has violated the **U.S. Constitution, Laws of the United States** and possibly of treaties made. This case therefore comes under the **United States**

**Constitution, Article III, Section 2,** and it therefore automatically falls under federal courts jurisdiction, but more than that, is the fact that this should automatically deny the tribe/casino the ability to claim "sovereign immunity." This would be due to the fact that the tribe/casino is not willing to follow any rules or laws, as enumerated in the U.S.Code or by any tribal laws.

Under **Title 28> Part IV> Chapter 85>**
**1343. Civil Rights and elective franchise,**
allows that district courts shall have jurisdiction of any civil action authorized by law to be commenced by any person;

(1) To recover damages for injury to his person or property or because of the deprivation of any right or privilege of a citizen of the United states, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42; and in
(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent; and in
(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

In **Mark S. Allen v. Gold Country Casino et. al., 464 F.3d 1044 (9th Cir. 2006)** Judge Canby in his opinion writes " Similarly, we affirm the dismissal of his claim under 28 U.S.C. 1343 because this jurisdictional statute does not provide a cause of action."

I believe there is a cause of action under federal laws because of the deprivation of my right or privilege as a citizen of the United States as well as acts done in furtherance of a conspiracy. Also that acts of the conspiracy were allowed to continue by those who knew what was occurring was in violation of my rights and privileges as a United States citizen. Furthermore to redress the deprivation under color of a statute, ordinance, regulation or custom of rights, privileges or immunities secured by the Constitution or by an act of Congress for equal rights of all persons within the jurisdiction of the United States. Clearly the tribe/casino has ordinances, customs, regulations and falls within the jurisdiction of the United States. The tribe's members are all United States citizens.

In **Mark S. Allen v. Gold Country Casino et. al., 464 F.3d 1044 (9th Cir. 2006)**, the case is partly remanded under **U.S.C. Title 25, Sections 1981 and 1985,** allowing for the chance to amend my complaint and assert the two claims intelligibly, against individuals. This remand should apply to the Tribe/casino, as they are responsible for the violations, as well as the individuals that the 9th Circuit is allowing me to amend my complaint for. Also the compact between the state and the tribe (government-to-government basis) falls under federal law, statute, or regulation and subsequently has been violated by the tribe/casino, thereby creating a cause of action that should be allowed to be proven in a federal court.

The tribe/casino has never denied the facts of the case in the previous courts, but merely rely on a" sovereign immunity" position, taking the stance that they are "untouchable" by anyone.

## REASONS FOR GRANTING THE PETITION

"Equal Justice For All."

Indian law is one that the court(s) are getting tired of dealing with, but it is one that needs the most guidance. People have to be given the chance to understand how the laws are being applied and why they are being applied in a certain manner. People also need to have a clear understanding that everything granted them by the laws of the United States and those rights granted by the United States Constitution are being applied to benefit all people and not just for some to hide behind

People like me, the everyday man and/or woman on the street, the working class or "blue collar" people, the people working in the casinos, the people who are frequenting these establishments. These are the people having to fight for our rights. Rights we assumed would be granted, as they are everywhere else in the United States. Rights that were granted under the United States Constitution. Nothing was ever mentioned by anyone during elections or when placed on ballots as propositions, that people would not have or be entitled to these Constitutional Rights, when on Indian land or in dealings with Indians. Things such as termination, sexual harassment, retaliation, discrimination, injuries, and various civil rights violations are occurring, and it is not until this time that people are finding out that they have no rights.

People, regular citizens like myself are unable to obtain legal counsel, because we cannot afford legal counsel. Attorneys do not want to fight for people's rights due to the "sovereign immunity" status of tribes, and does not believe it is a worthwhile investment. When an attorney is willing to take a case the fee's are outrageous, and again the "sovereign immunity" status plays a part.

These are reasons for granting the petition.

This case affects the entire nation, as casinos and other tribal businesses are springing up throughout the United States, and employing non-Indians. The Indians state in employment ads or other various means that they are the "counties" (within that certain state) largest employers, with good pay, benefits, and creating new jobs, but yet, by law, Indians are not "employers" and cannot be treated as such. If they do not feel like paying someone, they do not have to, and nothing can be done.

This is a reason for granting the petition.

States and Indians have compacts saying that they will treat each other on a government-to-government relationship, but that is not the case. Indians do not follow what they indicate in the compacts they will due, and then state that's not how it is written. Indians do not follow the Health and Safety Codes, and are not being checked as they state they are not within those rules or laws. What about an outbreak of HEPITITUS or AIDS. If people get infected then who is at fault?

This is a reason for granting the petition.

Congress established gaming laws for the Indians, and allows for Indians to take states to court if they feel they have not been dealt fairly with when negotiating a compact, but the state has no such law. Gaming was allowed because it was said that states already had gaming and were just regulating gambling. These laws affect commerce but no laws were established regarding civil and other rights in regards to employment, as there is with other employers within the United States dealing with commerce.
The government as well as the individual states have not looked out for, or were prevented from protecting their citizens.

This is a reason for granting the petition.

No one is asking anything that cannot be accomplished without taking sovereignty away from the Indians. To treat employees as they are treated throughout the United States, would not involve interference into tribal matters, such as membership, laws (affecting members), inheritance and other tribal matter, within their reservations, but;

The Tribe/casino, United States Congress, State of California Officials, have violated federal laws and in turn violated the United States Constitution, and the Constitution of the State of California. This cannot and should not be allowed and people should be given their inalienable rights as guaranteed.

No one can be "ABOVE THE LAW"

These are the reasons I believe, for granting the petition.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mark S. Allen

Date: 22 Dec 06

464 F.3d 1044
464 F.3d 1044, 06 Cal. Daily Op. Serv. 9219, 2006 Daily Journal D.A.R. 13,274
**(Cite as: 464 F.3d 1044)**

Briefs and Other Related Documents
Allen v. Gold Country CasinoC.A.9 (Cal.),2006.
United States Court of Appeals,Ninth Circuit.
**Mark S. ALLEN**, Plaintiff-Appellant,
v.
GOLD COUNTRY CASINO; The Berry Creek Rancheria of Tyme Maidu Indians; Mattie Mayhew, Defendants-Appellees.
**No. 05-15332.**

Argued and Submitted Aug. 14, 2006.
Filed Sept. 29, 2006.

**Background:** Former employee of casino, which was owned and operated by Indian tribe, brought action against employer. The United States District Court for the Eastern District of California, Lawrence K. Karlton, J., dismissed the claims. Plaintiff appealed.

**Holdings:** The Court of Appeals, Canby, Circuit Judge, held that:

(1) casino acted as arm of tribe, and thus was entitled to tribal sovereign immunity, and

(2) casino did not waive tribal sovereign immunity.

Affirmed in part, reversed in part, and remanded.
West Headnotes
**[1] Federal Courts 170B 776**

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
The Court of Appeals reviews de novo questions of sovereign immunity and subject matter jurisdiction.

**[2] Indians 209 27(1)**

209 Indians
209k27 Actions
209k27(1) k. Rights of Action. Most Cited Cases
Tribal sovereign immunity extends to business activities of the tribe, not merely to governmental activities.

**[3] Indians 209 27(1)**

209 Indians
209k27 Actions
209k27(1) k. Rights of Action. Most Cited Cases
When an Indian tribe establishes an entity to conduct certain activities, the entity is immune if it functions as an arm of the tribe.

**[4] Indians 209 32(12)**

209 Indians
209k32 Jurisdiction and Government of Indian Country and Reservations
209k32(12) k. Gaming; Bingo. Most Cited Cases
Casino, which was owned and operated by Indian tribe, acted as arm of tribe, and thus casino was entitled to tribal sovereign immunity in former employee's lawsuit; casino's creation was dependent upon government approval in order for it to conduct gaming activities, tribe authorized casino through tribal ordinance and interstate gaming compact, and compact provided that casino would enable tribe to develop self-sufficiency and promote tribal economic development.

**[5] Indians 209 32(12)**

209 Indians
209k32 Jurisdiction and Government of Indian Country and Reservations
209k32(12) k. Gaming; Bingo. Most Cited Cases
Casino, which was owned and operated by Indian tribe, did not waive tribal sovereign immunity by providing in employment application and employee handbook that employee could be terminated for any reason consistent with applicable state or federal law and that it would promote equal opportunity employment in compliance with federal law; statements were not clear waivers of immunity and did not mention court enforcement, suing or being sued, or any other phrase clearly contemplating suits against the casino.

[6] **Indians 209 ⚷27(1)**

209 Indians
209k27 Actions
209k27(1) k. Rights of Action. Most Cited Cases
Waivers of tribal sovereign immunity may not be implied.

[7] **Indians 209 ⚷27(1)**

209 Indians
209k27 Actions
209k27(1) k. Rights of Action. Most Cited Cases
Exceptions to sovereign immunity outlined in Foreign Sovereign Immunities Act did not apply to tribal sovereign immunity; Act specified exceptions to immunity of foreign states, which tribe was not. 28 U.S.C.A. § 1605.

[8] **Action 13 ⚷5**

13 Action
13I Grounds and Conditions Precedent
13k5 k. Criminal Acts. Most Cited Cases

**Civil Rights 78 ⚷1330(1)**

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1330 Private Right of Action
78k1330(1) k. In General. Most Cited Cases

**Conspiracy 91 ⚷7.5(1)**

91 Conspiracy
91I Civil Liability
91I(A) Acts Constituting Conspiracy and Liability Therefor
91k7.5 Conspiracy to Interfere with Civil Rights
91k7.5(1) k. In General. Most Cited Cases
Statutes establishing criminal liability for certain deprivations of civil rights did not give rise to civil liability. 18 U.S.C.A. § § 241, 242.

*1045 Donald Earl Childress III, Jones Day, Washington, D.C., for the plaintiff-appellant.
Blaine I. Green, Pillsbury, Winthrop, Shaw, Pittman, LLP, San Francisco, CA, for the defendants-appellees.

Appeal from the United States District Court for the Eastern District of California; Lawrence K. Karlton, Senior Judge, Presiding. D.C. No. CV-04-00322-LKK.

Before CANBY, THOMPSON, and HAWKINS, Circuit Judges.

**OPINION**

CANBY, Circuit Judge.
Mark Allen is a former employee of the Gold Country Casino, which is owned and operated by the Tyme Maidu Tribe of the Berry Creek Rancheria in California. After the Casino fired Allen, he sued it and the Tribe. The district court dismissed the claims against the Tribe and the Casino on the ground of sovereign immunity. Allen concedes the Tribe's immunity, but argues that the district court erred in extending that immunity to the Casino without scrutinizing the relationship between the Tribe and the Casino. We find no error in the district court's dismissal of Allen's claims against the Casino because the record and the law establish sufficiently that it functions as an arm of the Tribe.

Allen also asserted various claims against Mattie Mayhew, a tribal member, and John Doe defendants. We reverse in part the district court's dismissal of these claims and remand for consideration of Allen's claims under 42 U.S.C. § § 1981 and 1985, along with any state law claims over which the district court may exercise supplemental jurisdiction.

**I. Facts**

Allen was employed by Gold Country Casino as a surveillance supervisor. Gold Country Casino is a tribal entity formed by a compact between the federally recognized Tyme Maidu Tribe and the State of California. The Casino is wholly owned and operated by the Tribe. Allen contends he was discharged in retaliation for reporting rats in the Casino's restaurant and for applying to "the white man's court" for guardianship of three tribal children.

Allen obtained a right to sue letter from the Equal Employment Opportunity Commission and, proceeding pro se, filed this action in federal district court. Allen named as defendants the Casino, the Tribe, Mattie Mayhew, and John Does 1 thru 300, against whom he asserted various employment, civil

rights, and conspiracy claims. The magistrate judge recommended that the claims against the Tribe be dismissed on the ground of sovereign immunity. The magistrate judge assumed without analysis that the Tribe's immunity extended to the Casino. The magistrate judge found that the only remaining claim was for false accusations against Mayhew. He recommended dismissal for lack of subject matter jurisdiction because this was a non-federal claim. The district court adopted these recommendations and dismissed all claims.

On appeal, Allen, who is now represented by counsel, concedes that the Tribe is immune from suit. But he contends that this immunity does not extend automatically to the Gold Country Casino. He urges that the district court be required to apply a three-part test to determine whether the Casino is "analogous to a governmental ***1046** agency or operating in a governmental capacity as an arm of the tribe." Allen argues in the alternative that, if the Casino is immune, it waived its immunity by referring to federal law in its employment materials.

[1] We review de novo the district court's dismissal under Federal Rule of Civil Procedure 12(b). *See, e.g., Decker v. Advantage Fund, Ltd.*, 362 F.3d 593, 595-96 (9th Cir.2004). We also review de novo questions of sovereign immunity and subject matter jurisdiction. *Orff v. United States*, 358 F.3d 1137, 1142 (9th Cir.2004).

## II. Discussion

### A. Sovereign Immunity of the Casino

[2][3] Although the Supreme Court has expressed limited enthusiasm for tribal sovereign immunity, the doctrine is firmly ensconced in our law until Congress chooses to modify it. *See Kiowa Tribe v. Mfg. Techs., Inc.*, 523 U.S. 751, 757-60, 118 S.Ct. 1700, 140 L.Ed.2d 981 (1998). This immunity extends to business activities of the tribe, not merely to governmental activities. *See id.* at 760, 118 S.Ct. 1700; *Am. Vantage Cos. v. Table Mountain Rancheria*, 292 F.3d 1091, 1100 (9th Cir.2002). When the tribe establishes an entity to conduct certain activities, the entity is immune if it functions as an arm of the tribe. *See, e.g., Marceau v. Blackfeet Hous. Auth.*, 455 F.3d 974, 978 (9th Cir.2006) (holding that Blackfeet Tribe's sovereign immunity extends to Blackfeet Housing Authority); *Redding Rancheria v.Super. Ct.*, 88 Cal.App.4th 384, 388-89, 105 Cal.Rptr.2d 773 (2001) (holding that off-reservation casino owned and operated by tribe was arm of the tribe, and therefore was entitled to sovereign immunity); *Trudgeon v. Fantasy Springs Casino*, 71 Cal.App.4th 632, 642, 84 Cal.Rptr.2d 65 (1999) (recognizing sovereign immunity of for-profit corporation formed by a tribe to operate the tribe's casino). The question is not whether the activity may be characterized as a business, which is irrelevant under *Kiowa*, but whether the entity acts as an arm of the tribe so that its activities are properly deemed to be those of the tribe.

[4] Allen's contention that the district court erred in failing to scrutinize the nature of the relationship between the Tribe and the Casino fails to accord sufficient weight to the undisputed fact that the Casino is owned and operated by the Tribe. Allen recognized the reality of the Casino as an arm of the Tribe when he sued the Tribe "d.b.a." ("doing business as") the Casino. And this is no ordinary business. The Casino's creation was dependent upon government approval at numerous levels, in order for it to conduct gaming activities permitted only under the auspices of the Tribe. The Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2710(d)(1), required the Tribe to authorize the Casino through a tribal ordinance and an interstate gaming compact. The Tribe and California entered into such a compact "on a government-to-government basis."

These extraordinary steps were necessary because the Casino is not a mere revenue-producing tribal business (although it is certainly that). The IGRA provides for the creation and operation of Indian casinos to promote "tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(1). One of the principal purposes of the IGRA is "to insure that the Indian tribe is the primary beneficiary of the gaming operation." *Id.*, § 2702(2). The compact that created the Gold Country Casino provides that the Casino will "enable the Tribe to develop self-sufficiency, promote tribal economic development, and generate jobs and revenues to support the Tribe's government***1047** and governmental services and programs."

With the Tribe owning and operating the Casino, there is no question that these economic and other advantages inure to the benefit of the Tribe. Immunity of the Casino directly protects the sovereign Tribe's treasury, which is one of the historic purposes of sovereign immunity in general. *Cf. Alden v. Maine*, 527 U.S. 706, 750, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999) (noting that sovereign

immunity protects the financial integrity of States, many of which "could have been forced into insolvency but for their immunity from private suits for money damages"). In light of the purposes for which the Tribe founded this Casino and the Tribe's ownership and control of its operations, there can be little doubt that the Casino functions as an arm of the Tribe. It accordingly enjoys the Tribe's immunity from suit. *See Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth.*, 207 F.3d 21, 29 (1st Cir.2000) (stating that tribal housing authority "as an arm of the Tribe, enjoys the full extent of the Tribe's sovereign immunity"); *Marceau*, 455 F.3d at 978 (recognizing that tribal sovereign immunity "extends to agencies and subdivisions of the tribe").

### B. Waiver of Immunity

[5][6] The Casino did not waive immunity when it provided in Allen's employment application that he could be terminated "for any reason consistent with applicable state or federal law," or when it stated in the Employee Orientation Booklet that it would "practice equal opportunity employment and promotion regardless of race, religion, color, creed, national origin ... and other categories protected by applicable federal laws." These statements are not a "clear" waiver of immunity. *See C & L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe*, 532 U.S. 411, 418, 121 S.Ct. 1589, 149 L.Ed.2d 623 (2001). At most they might imply a willingness to submit to federal lawsuits, but waivers of tribal sovereign immunity may not be implied. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58, 98 S.Ct. 1670, 56 L.Ed.2d 106 (1978) (explaining that a waiver of immunity "must be unequivocally expressed").

This case is distinguishable from *C & L Enterprises* and *Marceau*. In *C & L Enterprises*, the Supreme Court held that the tribe waived its immunity by expressly agreeing to arbitration of disputes and to "enforcement of arbitral awards 'in any court having jurisdiction thereof.' " 532 U.S. at 414, 121 S.Ct. 1589. In *Marceau*, the tribe established a housing authority by ordinance that gave the tribe's "irrevocable consent to allowing the Authority to sue and be sued in its corporate name," and further provided that any judgment against the Authority would not be a lien on the Authority's property but would be paid out of "its rents, fees or revenues." 455 F.3d at 981. The statements in Allen's employment documents did not approach these explicit waivers of immunity from suit; the statements' references to federal law did not mention court enforcement, suing or being sued, or any other phrase clearly contemplating suits against the Casino. These documents did not amount to an unequivocal waiver of the Casino's sovereign immunity.

[7] Allen further argues that we should analogize the purported waiver of tribal immunity to waivers of immunity under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1605. That Act specifies exceptions to the immunity of foreign states, *see* § 1605(a), which the Tribe is not. As we pointed out in ***1048***Richardson v. Mt. Adams Furniture (In re Greene)*, 980 F.2d 590 (9th Cir.1992), the fact that Congress limited the immunity of foreign sovereigns simply underscores the breadth of sovereign immunity in the absence of congressional action; because Congress has not limited the immunity of Indian tribes, it retains its full force. *See id.* at 594; *see also Kiowa*, 523 U.S. 751, 759-60, 118 S.Ct. 1700, 140 L.Ed.2d 981. There is simply no room to apply the FSIA by analogy, as Allen would have us do. The FSIA precludes immunity of a foreign state when that state engages in commercial activities in the United States. 28 U.S.C. § 1605(a)(2). To apply that provision to the Tribe would contravene the Supreme Court's decision in *Kiowa*, holding that tribal immunity extended to commercial activities of the tribe. *Kiowa*, 523 U.S. at 760, 118 S.Ct. 1700. FSIA also permits a waiver of immunity to be implied, *see* 28 U.S.C. § 1605(a)(1), while the Supreme Court permits no such implied waiver in the case of Indian tribes. *See, e.g., Santa Clara Pueblo*, 436 U.S. at 58, 98 S.Ct. 1670. We accordingly decline Allen's invitation to apply FSIA by analogy to tribal sovereign immunity.

### C. Allen's Remaining Claims

Although the issue is not free from doubt, we conclude that the district court erred in its dismissal of the remainder of the complaint on the ground that it presented no federal claims against Mayhew and the unnamed defendants. Allen's pro se pleadings are unquestionably difficult to decipher, but they must be liberally construed. *See Ortez v. Washington County*, 88 F.3d 804, 807 (9th Cir.1996). In his response to the defendants' motion to dismiss, Allen explained that he was asserting against all defendants a claim under 42 U.S.C. § 1985. He also accused all defendants except Mayhew of violating 42 U.S.C. § 1981. Giving Allen the benefit of doubt, we conclude that he should be given the opportunity to amend his complaint to assert these two claims intelligibly. We express no opinion, of

course, on the procedural or substantive merits of the claims beyond permitting Allen to assert them.

If Allen proceeds in district court with these federal claims, the district court may have supplemental jurisdiction over Allen's state-law claims under 28 U.S.C. § 1367. We therefore vacate the dismissal of Allen's state-law claims for lack of supplemental jurisdiction, so that the district court may consider anew its jurisdiction over those claims.

[8] We affirm the dismissal of Allen's claims under 18 U.S.C. § § 241 and 242 because these are criminal statutes that do not give rise to civil liability. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.1980). Similarly, we affirm the dismissal of his claim under 28 U.S.C. § 1343 because this jurisdictional statute does not provide a cause of action. *See Ellis v. Cassidy*, 625 F.2d 227, 229 (9th Cir.1980). The district court also properly dismissed Allen's claim under 42 U.S.C. § 1983 because there is no allegation that any defendant was acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 45-46, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988).

### III. Conclusion

We affirm the district court's judgment dismissing Allen's claims against the Tribe and Casino on the ground of sovereign immunity. We also affirm the dismissal of claims against the individual defendants under 18 U.S.C. § § 241 and 242, as well as claims under 28 U.S.C. § § 1343 and 1983. We vacate and remand the judgment of dismissal without prejudice in favor of Mayhew and the Doe defendants because Allen asserted federal claims against those defendants under 42 U.S.C. § 1985. Allen also asserted claims against the Doe defendants***1049** under 42 U.S.C. § 1981. Finally, we vacate the dismissal of state-law claims for lack of supplemental jurisdiction, and remand for any appropriate exercise of supplemental jurisdiction over those claims.

The parties will bear their own costs on appeal.

**AFFIRMED IN PART; VACATED AND REMANDED IN PART.**

C.A.9 (Cal.),2006.
Allen v. Gold Country Casino
464 F.3d 1044, 06 Cal. Daily Op. Serv. 9219, 2006 Daily Journal D.A.R. 13,274

Briefs and Other Related Documents (Back to top)

- 2006 WL 2426973 (Appellate Brief) Appellees' Supplemental Answering Brief (May 15, 2006)
- 2006 WL 2378236 (Appellate Brief) Plaintiff-Appellant's Supplemental Opening Brief (Apr. 14, 2006)
- 2005 WL 2933005 (Appellate Brief) Appellees' Brief (Aug. 5, 2005) Original Image of this Document (PDF)

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# UNITED STATES DISTRICT COURT

# EASTERN DISTRICT OF CALIFORNIA

**JUDGMENT IN A CIVIL CASE**

**MARK S ALLEN,**

CASE NO: **2:04-CV-00322-LKK-CMK**

V.

**- GOLD COUNTRY CASINO, ET AL.,**

---

XX — **Decision by the Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

**THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE COURT'S ORDER OF 2/9/05**

---

**Jack L. Wagner**
Clerk of the Court

ENTERED: **February 9, 2005**

by: /s/ - M. Krueger
Deputy Clerk

APP. "B"

MIME-Version:1.0 From:caed_cmecf_helpdesk@caed.uscourts.gov To:caed_cmecf_nef@caed.uscourts.gov Bcc:
caed_cmecf_lkk@caed.uscourts.gov, Message-Id: Subject:Activity in Case 2:04-cv-00322-LKK-CMK (PS) Allen v. Gold Country Casino, et al \"Judgment\" Content-Type: text/html

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*Eastern District of California - Live System*

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The following transaction was received from Krueger, M entered on 2/9/2005 at 9:34 AM PST and filed on 2/9/2005

***Case Name:*** (PS) Allen v. Gold Country Casino, et al
***Case Number:*** 2:04-cv-322
***Filer:***
*WARNING: CASE CLOSED on 02/09/2005*
***Document Number:*** 25
***Docket Text:***
JUDGMENT dated *2/9/05* in favor of Defendants against Plaintiff signed by Judge Lawrence K. Karlton on 2/9/05. (Krueger, M)

The following document(s) are associated with this transaction:

**2:04-cv-322 Notice will be electronically mailed to:**

Blaine I Green bgreen@pillsburywinthrop.com, jgirard@pillsburywinthrop.com

**2:04-cv-322 Notice will be delivered by other means to:**
Mark S Allen
777 Wagstaff Road
Paradise CA 95969

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK S. ALLEN

Plaintiff, No. CIV S-04-322 LKK CMK PS

vs.

GOLD COUNTRY CASINO et al.,

Defendants. ORDER

_____/

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On December 23, 2004, the magistrate judge filed findings and recommendations herein, which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within twenty days. Plaintiff has filed objections to the findings and recommendations; the undersigned has considered the objections and has determined there is no need to modify the findings and recommendations based on the points raised in the objections.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the entire

file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed December 23, 2004 are adopted in full;

2. Defendant's motion for to dismiss is granted.

DATED: February 8, 2005.

/s/ Lawrence K. Karlton
UNITED STATES DISTRICT JUDGE



APP. "B"

MIME-Version:1.0 From:caed_cmecf_helpdesk@caed.uscourts.gov To:caed_cmecf_nef@caed.uscourts.gov Bcc:bgreen@pillsburywinthrop.com,caed_cmecf_cmk@caed.uscourts.gov,caed_cmecf_lkk@caed.uscourts.gov,jgirar Message-Id: Subject:Activity in Case 2:04-cv-00322-LKK-CMK (PS) Allen v. Gold Country Casino, et al "Order Dismissing Case" Content-Type: text/html

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***Case Name:*** (PS) Allen v. Gold Country Casino, et al
***Case Number:*** 2:04-cv-322
***Filer:***
***WARNING: CASE CLOSED on 02/09/2005***
***Document Number:*** 24
***Docket Text:***
ORDER signed by Judge Lawrence K. Karlton on 2/8/05 ORDERING that the Fs filed 12/23/04 are ADOPTED in full. Defendant's Motion to Dismiss [14] is GRANTED. CASE DISMISSED. (Krueger, M)

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