IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

DOLGENCORP INC., DOLLAR GENERAL CORPORATION, AND DALE TOWNSEND,

Plaintiffs

VERSUS

THE MISSISSIPPI BAND OF CHOCTAW INDIANS, THE TRIBAL COURT OF THE MISSISSIPPI BAND OF CHOCTAW INDIANS, THE HONORABLE CHRISTOPHER A. COLLINS (in his official capacity), and JOHN DOE, A MINOR, BY AND THROUGH HIS PARENTS AND NEXT FRIENDS JOHN DOE, SR. AND JANE DOE

Defendants

CIVIL ACTION NO. 4:08cv22TSL-JCS

PLAINTIFF DALE TOWNSEND'S MEMORANDUM OF AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUCTION

I. INTRODUCTION

On March 10, 2008, Plaintiffs Dolgen, Inc. and Dollar General Corporation (hereinafter collectively referred to as "Dollar General") filed their Motion for Temporary Restraining Order and Preliminary Injunction along with their separate Memorandum in Support of their Motion. Dollar General's Memorandum contains a thorough and concise discussion of the current state of

the law applicable to the exercise of Tribal Court jurisdiction. Plaintiff Townsend will not repeat or rehash Dollar General's discussion of this authority but rather joins in and adopts Dollar General's Memorandum in-so-far-as the arguments advanced by Dollar General are equally applicable to Plaintiff Townsend.

Plaintiff Townsend's Memorandum of Authorities will focus on the additional reasons why the Choctaw Tribal Court has no jurisdiction over Townsend and why injunctive relief is appropriate in this case.

II. BACKGROUND

The Complaint filed against Townsend in the Choctaw Tribal Court arises out of allegations that in July, 2003 Townsend, while employed by Dollar General as a manager at its store located on Tribal land, assaulted an unidentified minor who was a member of the Mississippi Band of Choctaw Indians. In response to these allegations, Plaintiff Townsend met with Melissa Carlton, Assistant Attorney General of the Mississippi Band of Choctaw Indians. *See* Affidavit of Dale Townsend attached hereto as Exhibit "A".

Ms. Carleton advised Mr. Townsend that an allegation had been made against him by a member of the Choctaw Indian Tribe relating to "inappropriate touching." *Id.* Mr. Townsend denied the allegation and continues to deny he ever engaged in such conduct. *Id.* Ms. Carleton informed Townsend that the Attorney General's Office was planning to file a Petition to permanently exclude him from the Choctaw Reservation. *Id.* Ms. Carleton advised Mr. Townsend that if he signed an order agreeing to be permanently excluded from the Reservation, it would be the end of the matter and there would be no further legal proceedings against him. *Id.* Mr. Townsend signed the Order of Exclusion based upon Ms. Carleton's representations and considered the matter closed.

On September 22, 2003, the Mississippi Band of Choctaw Indians, by and through its Attorney General with the concurrence of then Chief Phillip Martin, filed its Petition for Exclusion From the Choctaw Reservation pursuant to Title XX of the Choctaw Tribal Code seeking to permanently exclude Townsend from Choctaw Indian lands. *See* Exhibit "B" attached hereto. On the same date, an Order of Exclusion from the Choctaw Reservation was entered permanently excluding Townsend from inside the boundaries of the Mississippi Band of Choctaw Indians' Reservation lands for any reason whatsoever. *See* Exhibit "C" attached hereto.

On January 6, 2005, a Complaint was filed in the Choctaw Tribal Court styled: *John Doe, Jr., a Minor, by and through his Parents and Next Friends John Doe Sr. and Jane Doe v. Dollar General Corp. and Dale Townsend, Individually and Jointly and Severally with Dollar General Corp.*, Cause No. CV-02-05.

On March 11, 2005, Townsend filed his Motion to Dismiss the Complaint in Cause No. CV-02-05 based upon the fact that the Choctaw Tribal Court lacked jurisdiction over Townsend under either of the exceptions recognized by the United States Supreme Court in *Montana v. United States,* 450 U.S. 544 (1981) and the Tribal Court had waived any jurisdiction it may have otherwise had over Townsend by entering the Order of Exclusion permanently barring him from ever re-entering Reservation lands for any reason.

On July 25, 2005, Terry L. Jordan, one of the attorney's for Plaintiff in Cause No. CV-02-05 wrote the Honorable Donald Kilgore, Attorney General for the Mississippi Band of Choctaw Indians and requested that the Attorney General's office "file a Motion to Modify the Exclusion Order so as to allow Townsend to appear and answer to service of process on the Reservation and defend in this lawsuit." *See* Exhibit "D" attached hereto.

On July 28, 2005, a hearing was held in the Choctaw Tribal Court on Townsend's Motion to Dismiss before the Honorable Christopher A. Collins. Judge Collins preliminarily denied Townsend's Motion to Dismiss for lack of jurisdiction but ordered Townsend and Doe to submit further legal memorandums regarding Townsend's argument that the Tribal Court waived any jurisdiction it may have otherwise had over Townsend by entering the September 22, 2003 Order of Exclusion permanently barring Townsend from ever entering onto Choctaw Indian Reservation lands.

No further ruling was made by Judge Collins modifying his denial of Townsend's Motion to Dismiss and on August 12, 2005, Townsend filed a Petition for Permission to Appeal Judge Collin's interlocutory decision denying his Motion to Dismiss with the Choctaw Supreme Court.

On August 16, 2005, Assistant Attorney General, Melissa Carleton, responded to Mr. Jordan's July 25, 2005 letter advising him that "[t]he Tribe is not inclined to file a motion to modify the exclusion order but would like to be noticed on any proceedings in the case." *See* Exhibit "E" attached hereto.

Oral argument on Townsend's interlocutory appeal of Judge Collin's denial of his Motion to Dismiss was ultimately held before the Choctaw Supreme Court on November 16, 2007.

On December 13, 2007, the Attorney General's office filed a Motion to Modify the September 22, 2003 Order of Exclusion. *See* Exhibit "F" attached hereto. The Motion to Modify Townsend's Order of Exclusion was filed in the Choctaw Tribal Court Civil Division in Cause No. CV-1318-2003 more than (4) years after entry of the Order, more than two (2) years after the Attorney General's office declined to file such a motion and less than one (1) month after oral argument before the Choctaw Supreme Court wherein counsel for Townsend argued

that by entering the Order of Exclusion, the Tribal Court waived any jurisdiction it may have otherwise had over Townsend.[1]

On February 7, 2008, the Choctaw Supreme court issued its Memorandum Opinion and Order dismissing Townsend's appeal and remanding the case to the Choctaw Tribal Court for "immediate trial on the merits." *See* Exhibit "G" attached hereto. The Memorandum Opinion, however, precluded any actual trial until the "Tribe's Attorney General's office [had] responded to its position on the 'exclusion' order."[2] *Id.* at 12.

On February 28, 2008, the Attorney General's office served its Ordered Response to Memorandum Opinion and Order stating essentially that the Order of Exclusion should be modified to permit Townsend to come onto Reservation lands so he could be sued in Tribal Court.[3] *See* Exhibit "H" attached hereto. The Attorney General's office further advised the Choctaw Supreme Court that it had filed a motion to modify Townsend's Order of Exclusion on December 13, 2007. *Id.*

On March 3, 2008, the Choctaw Supreme Court issued an Order in Cause No. CV-02-05 granting the Attorney General's Motion to Modify the Order of Exclusion and modified the Order to permit Townsend to come onto the Reservation for all necessary court appearances relevant to adjudication of the lawsuit filed against him in Tribal Court. *See* Exhibit "I" attached hereto.

From this background, Plaintiff Townsend filed his Complaint and the instant Motion for Temporary Restraining Order and Preliminary Injunction.

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[1] On December 18, 2007, Townsend filed his Opposition to Motion to Modify Order of Exclusion.
[2] The Choctaw Supreme Court requested that the Attorney General's office inform the Court whether it insisted on the absolute terms of the exclusion order and whether it was opposed to a limited exception for the sole purpose of allowing Townsend back on the Reservation to defend John Doe's lawsuit. *See* Exhibit "G" at 5.
[3] The Ordered Response bears a filed stamped date of February 1, 2008, but this is an apparent error.

III. ARGUMENT

A. The Tribal court has no jurisdiction over Plaintiff Townsend under the *Montana* Rule.

As discussed by Dollar General in its Memorandum, "the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." *Montana v. United States,* 450 U.S. 544, 565 (1981). Under the so called "*Montana* Rule," there can be no exercise of Tribal jurisdiction over non-Indians except in two circumstances:

> 1. Where non-Indians "enter consensual relationships with the tribe or its members, through commercial dealings, contracts, leases or other arrangements" and
>
> 2. "A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."

See Montana, 454 U.S. at 565-66.

Neither of these exceptions apply to Plaintiff Townsend. He is a nonmember of the Choctaw Tribe, he had no consensual relationship, contract or other arrangement with the Tribe or its members and his alleged misconduct does not threaten the political integrity, economic security or the health or welfare of the Tribe. These facts alone should end the inquiry regarding Tribal jurisdiction over Townsend. There are, however, additional compelling reasons why the Tribal Court has no jurisdiction over Mr. Townsend.

B. The Order of Exclusion waived any jurisdiction the Tribe may have otherwise had over Townsend and the Tribe is now estopped from attempting to assert jurisdiction over Townsend.

Generally, the law on waiver provides that

> Ordinarily, a waiver operates to preclude a subsequent assertion of the right waived or any claims based thereon. It is well settled that a waiver once made is irrevocable, even in the absence of

> consideration, or of any change in position of the party in whose favor the waiver operates. However, a party that intentionally relinquishes a known right can reclaim the right with the consent of the adversary party. When a party engages in activity that clearly constitutes waiver, the party cannot later claim it did not know its actions amounted to a voluntary and intentional waiver of its rights as a party who consents to an act is not wronged by it, nor may a party plead willful ignorance and escape a waiver. However, a waiver can be retracted at any time before the other party has materially changed position in reliance on the waiver.

28 Am. Jur. 2d Estoppel and Waiver § 200 (2002) (Footnotes omitted).

In addition to this general statement of the law on waiver, the Mississippi Court of Appeals has stated that

> Under Mississippi case law, a "waiver" presupposes a full knowledge of a right existing, and an intentional surrender or relinquishment of that right. It contemplates something done designedly or knowingly, which modifies or changes existing rights, or varies or changes the terms and conditions of a contract. It is the voluntary surrender of a right. To establish a waiver, there must be shown an act or omission on the part of the one charged with the waiver fairly evidencing an intention permanently to surrender the right alleged to have been waived.

Taranto Amusement Company, Inc. v. Mitchell Associates, Inc., 820 So.2d 726, 729-30 (Miss. Ct. App. 2002).

Waiver and estoppel, while often lumped together, are distinctly different claims and/or defenses. *See Glass v. United of Omaha Life Insurance Co.*, 33 F.3d 1341, 1347 (11th Cir. 1994). "Estoppel exists when the conduct of one party has induced the other party to take a position that would result in harm if the first party's acts were repudiated." *Id.* (citing Pitts v. American Security Life Ins. Co., 931 F.2d 351, 357 (5th Cir. 1991)). "Detrimental reliance is a necessary element of estoppel, but is not always a prerequisite for waiver . . ." *Glass*, 33 F.3d at 1347.

In Mississippi, "[a] party asserting equitable estoppel must show (1) that he has changed his position in reliance upon the conduct of another and (2) that he has suffered detriment caused

by his change of his position in reliance upon such conduct." *PMZ Oil Company v. Lucroy,* 449 So.2d 201, 206 (Miss.1984). "The better view is that an equitable estoppel may be enforced in those cases in which it would be substantially unfair to allow a party to deny what he has previously induced another to believe and take action on." *Id.* at 207.

Application of the above waiver and estoppel principles to the undisputed facts surrounding the procurement of the Order of Exclusion in the instant case clearly demonstrates that the Choctaw Tribe, acting through its Attorney General, knowingly, intentionally and voluntarily waived any jurisdiction the Tribe may have had over Townsend and is now estopped from attempting to assert such jurisdiction based upon the promises made to Townsend and his detrimental reliance thereon.

On September 17, 2003, the Tribe acting through its Assistant Attorney General Melissa Carleton set about to negotiate an agreement with Mr. Townsend whereby Townsend agreed to the Order of Exclusion in exchange for no further legal proceedings being brought against him. *See* Exhibit "A," *supra.* The Order of Exclusion clearly and unambiguously stated that Mr. Townsend is "permanently excluded from the Choctaw Indian Reservation" and that should he "be found within the boundaries of the Choctaw Indian Reservation lands for any reason whatsoever, . . . [he] shall be charged with Trespass in the United States Federal Court." Exhibit "C," *supra.* The Order of Exclusion was signed, filed and made immediately effective on September 22, 2003. The Order contained no provision allowing for Mr. Townsend's return to the Reservation although Title XX of the Choctaw Tribal Code expressly contemplates that orders excluding persons from the Choctaw Reservation may contain language specifying the

conditions, if any, under which such persons may return to Reservation lands. *See* Title XX of the Choctaw Tribal Code. The Tribe negotiated and received exactly what it bargained for.[4]

Prior to agreeing to the Order of Exclusion, Mr. Townsend possessed many valuable legal rights under the Choctaw Tribal Code. He had the right to a hearing to challenge the reasons for his exclusion from Reservation lands. *See* Title XX of the Choctaw Tribal Code. During this hearing, he could have been represented by counsel, presented evidence in his defense, confronted his accuser, cross examined witnesses and, if necessary, appealed the Trial Court's decision to the Choctaw Court of Appeals under Choctaw Tribal Code § 20-1-4. In addition to these valuable legal rights, Mr. Townsend gave up his job because he could no longer return to the Reservation to his place of employment. Mr. Townsend also forever relinquished the right to return to the Reservation to visit friends, shop, conduct business, play golf or for any other purpose whatsoever.

Mr. Townsend gave up all of these rights in reliance on the Attorney General's representations to him that if he would sign the agreed Order of Exclusion, it would be the end of the matter. *See* Exhibit "A," *supra.* Had Mr. Townsend known or been advised that the Attorney General or Tribe were leaving the possibility open for him to later be sued in Tribal Court based on the same reasons for which the Order of Exclusion was sought, Mr. Townsend would in all likelihood not have agreed to the Order of Exclusion but instead elected to defend himself in Tribal Court in September, 2003, attempted to save his job and preserve the other valuable rights he was relinquishing.

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[4] By analogy, it has been observed in the context of criminal proceedings that "[a] finding of true waiver applies with even more force when, . . . defendants not only failed to object to what they now describe as error, but they actively solicited it, in order to procure a perceived sentencing benefit . . . [W]hen defendants obtain 'precisely what they affirmatively sought, it ill behooves [them] now to complain' of error . . ." *United States v. Quinones*, 122807 FED2, 04-5554 (Dec. 28, 2007).

It is apparent that it was both the Tribe's and Townsend's intent and understanding when the Order of Exclusion was entered on September 22, 2003 that the Tribal Court's interest in Mr. Townsend was over. No provisions for Mr. Townsend's return to the Reservation or further exercise of the Tribal Court's jurisdiction over Mr. Townsend were included in the Order of Exclusion. It is also apparent that as of August 16, 2005, almost two (2) years after entry of the Order of Exclusion, the Attorney General was still of the opinion that any Tribal interest in Mr. Townsend ended with the September 22, 2003 Order of Exclusion because the Attorney General's office wrote to John Doe's attorney that the "Tribe is not inclined to file a motion to modify the exclusion order . . ." Exhibit "E," *supra*. Finally, the Attorney General's office has never challenged, contradicted or attempted to explain the statements attributed to Ms. Carleton in Mr. Townsend's Affidavit, namely that she told Mr. Townsend "that if [he] signed the order of Exclusion, it would be the end of the matter and there would be no further legal proceedings against [him]." Exhibit "A," *supra*.

On December 13, 2007, however, over four (4) years after entry of the Order of Exclusion, more than two (2) years after the Attorney General's office declined to file a motion to modify the Order of Exclusion and less than one (1) month after oral argument before the Choctaw Supreme Court, the Attorney General's office decided to file its Motion to Modify the Order of Exclusion.

The Motion to Modify was filed in Cause No. CV-1318-2003 in the Tribal Court's Civil Division. The March 3, 2003 Order granting the Motion was entered by the Choctaw Supreme Court in Cause No. CV-02-05.[5] Apart from the fact the Order granting the Motion to Modify was issued in a *different* cause number and by a *different* court than in which the Motion to

[5] In discussions with the attorneys for the Tribe on March 14, 2008, the Tribe's attorneys advised Plaintiffs' counsel that they intended to request that the Choctaw Supreme Court vacate its March 3, 2008 Order as it was not issued in the proper cause and presumably have the Order reissued in the correct cause by the proper court.

Modify was filed, unilateral modification of the agreed Order of Exclusion almost five (5) years after it was entered without Mr. Townsend's consent just so he can be sued by John Doe in Tribal Court offends all notions of justice and fairness. *See PMZ Oil v. Lucroy, supra* 449 So.2d at 207 ("equitable estoppel . . . enforced [when] substantially unfair to allow a party to deny what he has previously induced another to believe and take action on").

In summary, by entering the Order of Exclusion without providing any conditions upon which Mr. Townsend could return to the Reservation, the Tribe knowingly, intentionally and voluntarily waived any jurisdiction it may have had over Mr. Townsend. Moreover, Mr. Townsend's reliance on the representations of the Tribe's Attorney General that if he signed the Order of Exclusion no further legal proceedings would be brought against him and his relinquishment of valuable rights in exchange for this promise operate to estop the Tribe from unilaterally modifying the Order of Exclusion almost five (5) years later.

C. Modification of the Order of Exclusion is also inappropriate under the Choctaw Rules of Civil Procedure.

Rules 59(e) and 60 of the Choctaw Rules of Civil Procedure address amendment of judgments or orders. Rule 59(e) provides that a motion to amend a previous judgment must be brought within ten (10) days of the entry of the judgment. Obviously, the Attorney General's December 13, 2007 Motion to Modify filed more than four (4) years after the Order of Exclusion was entered is untimely under Rule 59(e). Moreover, the Motion to Modify does not satisfy the substantive requirements for amendment under Rule 59(e).

Amendment under Rule 60 of the Choctaw Rules of Civil Procedure is also inappropriate. Rule 60(a) addresses the power that the Tribal Court enjoys to correct or amend any orders on account of a clerical mistake. This power may be exercised at any time, either on motion or on the court's own initiative.

> The phrase [clerical mistake] describes the type of error identified with mistakes in transcription, alteration or omission of any papers which are traditionally or customarily handled or controlled by clerks but which papers or documents must be handled by others. It is a type of mistake or omission mechanical in nature which is apparent on the record and which does ***not involve a legal decision or judgment by an attorney or judge.***

In re Merry Queen Transfer Corp., 266 F.Supp. 605, 607 (E.D.N.Y.1967) (emphasis added).

A Rule 60(a) motion 'can be utilized only to make the judgment or other document speak the truth; it cannot be used to make it say something other than was originally pronounced." *Whitney National Bank of New Orleans v. Smith,* 613 So.2d 312, 315 (Miss. 1993). Modification of the Order of Exclusion in the instant case whole-heartedly changes the legal intent and meaning of the Order. It renders the Order no longer an agreed Order and subjects Townsend to the jurisdiction of a Tribal Court where his rights under the United States Constitution do not apply. *See Nevada v. Hicks,* 533 U.S. 353, 383 (2001) (Souter, J., concurring) ("it has been understood for more than a century that the Bill of Rights and the Fourteenth Amendment do not of their own force apply to Indian tribes"). Thus, modification is not authorized under Rule 60(a).

Rule 60(b) enumerates several reasons an order may be vacated only on motion and not on the Courts' own initiative. Also, like Rule 59(e), there are time limitations for bringing a Rule 60(b) motion. A Rule 60(b) (1), (2) or (3) motion based upon fraud, misrepresentation or other misconduct of an adverse party, accident or mistake, newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b) must be brought no later than six (6) months after the Order of Exclusion was entered. Rule 60(b)(4), (5) or (6) motions based on a void judgment, satisfaction, release or discharge of a judgment or reversal of a prior judgment, or that it is no longer equitable that the judgment

should have application or any other reason justifying relief from a judgment must be brought within a reasonable time.

The Attorney General's Motion to Modify Order of Exclusion purports to be brought pursuant to Choctaw Rules of Civil Procedure 60(b)(5) and (b)(6). *See* Exhibit "F," *supra.* Apart from the fact that there are no grounds to bring a Rule 60(b) motion, modification pursuant to Rule 60(b) is inappropriate because the Motion to Modify was not brought within six (6) months for reasons (1), (2) and (3) or within a "reasonable time" after entry of the Order of Exclusion for reasons (4), (5) and (6).[6]

In short, the Choctaw Supreme Court's March 3, 2008 modification of the Order of Exclusion almost five (5) years after it was entered is simply not supported by the Choctaw Rules of Civil Procedure.

D. All elements necessary for the grant of injunctive relief are present.

It is well established that to be entitled to injunctive relief, the applicant must show

> (1) a substantial likelihood that he will prevail on the merits, (2) a substantial threat that he will suffer irreparable injury if the injunction is not granted, (3) his threatened injury outweighs the threatened harm to the party whom he seeks to enjoin, and (4) granting the preliminary injunction will not disserve the public interest.

Lake Charles Diesel, Inc. v. General Motors Corp., 328 F.3d 192, 195-96 (5th Cir. 2003).

In the instant case, Plaintiff Townsend has carried his burden of satisfying each of these elements:

1. Substantial likelihood of success on the merits.

Application of the *Montana* Rule and its exceptions to the claims alleged against Townsend, clearly illustrates that there is no Tribal jurisdiction over Townsend. Moreover, the

[6] The Choctaw Supreme Court's March 3, 2008 Order does not state the basis upon which the Attorney General's Motion to Modify was granted. *See* Exhibit "I," *supra.*

circumstances under which the Order of Exclusion was obtained, the promises made to Townsend by the Attorney General, Townsend's reliance on these promises, the rights relinquished by Townsend and the plain wording of the Order itself without any conditions for Townsend's return to the Reservation, clearly illustrate waiver of any Tribal jurisdiction that may have otherwise existed and that the Tribe is now estopped from asserting jurisdiction over Townsend. Thus, there is a substantial likelihood that Townsend will prevail on the merits of his Complaint.

2. Substantial threat of irreparable injury if the injunction is not granted.

If Townsend, a non-Tribal member, is subjected to a jury trial in the Choctaw Tribal Court, there is a substantial threat that he will suffer irreparable injury. The irreparable injury includes, but is not limited to, Townsend being deprived of a trial by a jury of his peers in a fair and unbiased forum as well as other basic Constitutional protections afforded him as a citizen of the United States. Additionally, for almost five (5) years Townsend has upheld his end of the bargain regarding the Order of Exclusion. He lost his job and gave up other valuable rights. To now subject him to the jurisdiction of the Choctaw Tribal court will deprive him of any benefit he may have realized from giving up those rights. Thus, the requirement of substantial threat of irreparable injury is easily met if Townsend's request for injunctive is not granted.

3. Threatened injury outweighs the harm to Defendants.

The threatened injury to Townsend of subjecting him to Tribal jurisdiction where none exists or where it has been waived if it ever did exist and where the Tribe is estopped from asserting such jurisdiction clearly outweighs the harm the injunction may cause to the Defendants. The Tribe really has no basis to argue injury in the first place because acting through its Attorney General, it got exactly what it bargained for in the Order of Exclusion. The

only Defendant who could remotely argue injury is John Doe. Any injury to Doe pales in comparison to the injury that likely will be suffered by Townsend if subjected to the Tribal Court jurisdiction. Doe on the other hand is free to pursue his claims against Townsend and/or Dollar General in state or federal court. Thus, the requirement that the threatened injury to Townsend outweighs the harm to Defendants is satisfied.

4. The injunction is not contrary to public policy.

The grant of the injunctive relief requested by Plaintiff Townsend will not offend public policy. To the contrary, not granting the relief requested by Townsend would offend public policy. If Townsend's request for injunctive relief is not granted, Townsend will be subjected to Tribal Court jurisdiction where none exists either under the *Montana* Rule or because it was waived. Additionally, the Tribe is estopped from asserting jurisdiction over Mr. Townsend based upon the Attorney General's promises to Mr. Townsend and his reliance thereon. Thus, granting the injunctive relief requested in the instant case is clearly not contrary to public policy.

IV. CONCLUSION.

For all of the above reasons, Plaintiff Townsend respectfully submits that he is entitled to both temporary and preliminary injunctive relief enjoining any further action against him in the Choctaw Tribal Court.

Respectfully submitted, this the 19th day of March, 2008.

s/WILLIAM I. GAULT, JR. (MSB#4774)
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CERTIFICATE OF SERVICE

I, William I. Gault, Jr., do hereby certify that I electronically field the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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And I hereby certify that I have mailed via United States the document to the following non-ECF participants:

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This 19th day of March, 2008.

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