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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

11 LINDA S. JARAMILLO,  
12 Plaintiff,  
13 v.  
14 HARRAH'S ENTERTAINMENT, INC.; and  
15 DOES 1 through 100, inclusive,  
Defendant.

Case No. 09-CV-2559 JM POR  
Action Date: August 31, 2009  
Hon. Jeffrey T. Miller

**MEMORANDUM OF POINTS AND  
AUTHORITIES BY *SPECIALLY  
APPEARING* DEFENDANT HARRAH'S  
ENTERTAINMENT, INC. IN SUPPORT  
OF ITS MOTION TO DISMISS  
PURSUANT TO F.R.CIV.P. RULE  
12(b)(1), (2), (6) AND (7)**

**ACCOMPANYING DOCUMENTS:  
NOTICE OF MOTION AND MOTION;  
DECLARATION OF RONALD R.  
GIUSSO; REQUEST FOR JUDICIAL  
NOTICE; NOTICE OF LODGMENT OF  
EXHIBITS; [PROPOSED] ORDER**

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I.

## **INTRODUCTION**

3 Plaintiff has sued *Specially Appearing* Harrah's Entertainment, Inc. for claims of pain,  
4 suffering, inconvenience and medical expenses as a result of injuries she allegedly sustained as a  
5 patron at the casino and hotel sometimes referred to as Harrah's Rincon Casino & Resort  
6 ("Casino"). The Casino is located on the Rincon Indian Reservation in Valley Center and is  
7 owned, controlled, and operated by the Rincon San Luiseno Band of Mission Indians. Plaintiff  
8 has submitted no claim against or with the Rincon San Luiseno Band of Mission Indians or its  
9 Tribal Council.

10

11        *Specially Appearing* Defendant seeks an order dismissing Plaintiff's Complaint because  
12 this Court lacks subject matter jurisdiction over Plaintiff's claims which must be brought before  
13 the Tribe based on both the doctrine of sovereign immunity and the Tribal-State Gaming  
14 Compact. In addition, the entity Plaintiff sued in this case, *Specially Appearing* Defendant  
15 Harrah's Entertainment, Inc. is the wrong entity. It does not have sufficient minimum contacts  
16 with the State of California to be subject to the jurisdiction of this Court. Thus, this Court lacks  
17 any basis on which to exercise personal jurisdiction over *Specially Appearing* Defendant.  
18 Accordingly, all claims asserted by Plaintiff in her Complaint against *Specially Appearing*  
19 Defendant Harrah's Entertainment, Inc. must be dismissed.

II.

## STATEMENT OF FACTS

23

The following are the facts pertinent to this motion:

24

25 Defendant Harrah's Entertainment, Inc. alleging general negligence and premises liability, and  
26 seeking damages supposedly suffered when she was a patron at the casino commonly referred to  
27 as Harrah's Rincon Casino & Resort. Plaintiff claims that she slipped and fell on water near the  
28 restroom of the Casino. (See, Exhibit A, pg. 5.)

1       2.     *Specially Appearing* Defendant was served with Plaintiff's state court complaint  
 2 on or about October 15, 2009.

3  
 4       3.     *Specially Appearing* Defendant removed the case to the United States District  
 5 Court, Southern District of California, on November 13, 2009. (*See*, Declaration of Ronald R.  
 6 Giusso, ¶ 5.)

7  
 8       4.     The Casino is located on the reservation of the Rincon San Luiseno Band of  
 9 Mission Indians, a federally-recognized sovereign Indian tribe (the "Tribe"). The Casino is  
 10 owned, controlled, and its operations are managed by the Tribe pursuant to the Indian Gaming  
 11 Regulatory Act ("IGRA"), as well as the Tribal-State Gaming Compact between the Tribe and  
 12 the State of California. (*See*, Exhibit B; Exhibit D, ¶ 4.)

13  
 14       5.     The Casino's creation was dependent upon government approval at numerous  
 15 levels, in order for it to conduct gaming activities permitted only under the auspices of the Tribe.  
 16 The IGRA, 25 U.S.C. § 2710(d)(1), required the Tribe to authorize the Casino through a tribal  
 17 ordinance and an interstate gaming compact. The Tribe and California entered into such a  
 18 compact "on a government-to-government basis." These extraordinary steps were necessary  
 19 because the Casino is not a mere revenue-producing tribal business, but pursuant to the IGRA,  
 20 the creation and operation of Indian casinos is designed to promote "tribal economic  
 21 development, self-sufficiency, and strong tribal governments." (*See*, 25 U.S.C. § 2702(1).) One  
 22 of the principal purposes of the IGRA is "to insure that the Indian tribe is the primary  
 23 beneficiary of the gaming operation." (*See, id.*, at § 2702(2).)

24  
 25       6.     As reflected in the Compact that created the Casino, the policy behind  
 26 establishing the Casino was to "enable the Tribe to develop self-sufficiency, promote tribal  
 27 economic development, and generate jobs and revenues to support the Tribe's government and  
 28 governmental services and programs." (*See*, Exhibit B.) The Rincon San Luiseno Band of

1 Mission Indians maintains ultimate authority and control over all operations and decisions  
 2 concerning the business, maintenance, and management of the Casino and the entire Rincon  
 3 Reservation. (See, Exhibit D, ¶ 5.)

4

5       7. On or about November 11, 2009, counsel for *Specially Appearing* Defendant  
 6 advised Plaintiff's counsel of the proper forum to bring his client's claim and offered to provide  
 7 information and examples to Plaintiff's counsel regarding filing a claim with the Tribe under the  
 8 Patron Tort Claims Ordinance. Plaintiff's counsel refused this offer. To this date, Plaintiff has  
 9 filed no claim with the Tribe. (See, Giusso Decl., ¶ 3.)

10

11       8. *Specially Appearing* Defendant Harrah's Entertainment, Inc. is a Delaware  
 12 corporation with its principal place of business located in Las Vegas, Nevada. It does not have  
 13 offices in California; does not own property in California; does not have employees in  
 14 California; and does not conduct business in California. (See, Exhibit D, ¶3.)

15

16

### III.

17       **THE COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION TO**  
 18                   **ADJUDICATE THIS DISPUTE**

19       It is the plaintiff who bears the burden of establishing subject matter jurisdiction. (See,  
 20 *Kokkenen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994); *Penteco Corp. v. Union*  
 21 *Gas Systems, Inc.*, 929 F.2d 1519 (10<sup>th</sup> Cir. 1991); *Stock West Inc. v. Confederated Tribes*, 873  
 22 F.2d 1221, 1225 (9<sup>th</sup> Cir. 1989).) Any party may seek dismissal of an action for lack of subject  
 23 matter jurisdiction. (See, *Napolean Hardwoods, Inc. v. Professionally Designed Benefits, Inc.*,  
 24 984 F.2d 821, 822 (7<sup>th</sup> Cir. 1993).) In considering a motion to dismiss under Rule 12(b)(1),  
 25 courts are not limited to the facts pled in the complaint, but can and should weigh evidence and  
 26 determine facts in order to satisfy itself as to its power to hear the case. (See, *Roberts v.*  
 27 *Corrothers*, 812 F.2d 1173, 1177 (9<sup>th</sup> Cir. 1987).)

28       ///

1       A.    **Indian Tribes Retain Inherent Civil Jurisdiction Over The Conduct Of Non-Indians**  
 2       **Within Their Reservation Unless Congress Expressly Divests The Tribe Of Such**  
 3       **Jurisdiction.**

4           The United States Supreme Court has consistently guarded the authority of Indian  
 5       governments over their reservations. (*See, Williams v. Lee*, 358 U.S. 217, 223 (1959).) Indian  
 6       tribes remain a separate people with power to regulate internal and social relations. (*See, Santa*  
 7       *Clara Pueblo v. Martinez*, 436 U.S. 49, 54 (1978).) This includes claims and transactions  
 8       involving the reservation, as well as non-Indians. (*See, Williams*, 358 U.S. at 223.) In *Montana*  
 9       *v. U.S.*, 450 U.S. 544 (1981), the Supreme Court expounded on the *Williams* decision, holding  
 10      that a Tribe retains civil authority over the conduct of non-Indians within its reservation which  
 11      involve: 1) activities of nonmembers who enter consensual relationships with the tribe or its  
 12      members; or 2) the activities or conduct threatens or has some direct effect on the political  
 13      integrity, the economic security, or the health and welfare of the tribe. (*See, id.*, at 565-566.)

14           Tribal authority over the activities of non-Indians on reservation lands is an important  
 15      part of tribal sovereignty. (*See, Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 18 (1987).)  
 16      Unless affirmatively limited by a specific treaty provision or federal statute, jurisdiction over  
 17      civil matters presumptively lies with the Tribe. (*See, id.*)

18           In this case, Plaintiff Linda Jaramillo, a patron of the Casino, is a non-Indian who  
 19      engaged in a consensual relationship with the Tribe on the reservation by voluntarily going to the  
 20      Casino. Plaintiff now claims injuries resulting from her consensual relationship with the Tribe  
 21      related to an occurrence at the Casino that is located on the Tribe's land and that is owned and  
 22      operated by the Tribe. (*See, Exhibit A, ¶¶ Prem.L-1; Prem. L-2; and Prem. L-3.*) Thus Plaintiff's  
 23      claim necessarily affects the political integrity, economic security, and health and welfare of the  
 24      Tribe. As a consequence, this Court lacks subject matter jurisdiction over this matter, and it  
 25      should be dismissed. (*See, Williams*, 358 U.S. at 565-566.)

26      ///

27      ///

1     **B.     The Determination Of Jurisdiction In This Dispute Must Be Made By The Tribe.**

2           The determination of whether a Tribe has jurisdiction over non-Indians in civil cases  
 3 must be made in the first instance by the Tribe itself. (See, *National Farmers Union Insurance v.*  
 4 *Crow Tribe of Indians*, 471 U.S. 845, 856 (1985).) Therefore, this Court must dismiss Plaintiff's  
 5 case so that the claims can be properly brought before the Tribe, who can adjudicate this case  
 6 pursuant to the Patron Tort Claims Ordinance. (See generally, *Allen v. Gold Country Casino*,  
 7 464 F.3d, 1044 (9<sup>th</sup> Cir. 2006); *Kaul v. Wahquahboshkuk*, 838 F.Supp. 515 (D.Kan. 1993).)

8

9           Case law recognizes Congress' commitment to a policy of supporting tribal self-  
 10 government and self-determination. (See, *National Farmers Union Ins.*, 471 U.S. at 856.) This  
 11 policy favors a rule that will provide the forum whose jurisdiction is being challenged the first  
 12 opportunity to evaluate the factual and legal basis for the challenge. (See, *id.*) Therefore, the  
 13 Tribe should have its opportunity to determine its own jurisdiction. Where there is a question of  
 14 jurisdiction, no court should exercise jurisdiction until the parties have exhausted their tribal  
 15 remedies. (See, *Kaul*, 838 F. Supp. at 516.) This rule -- known as the rule of "tribal  
 16 exhaustion" -- encourages tribal self-government by requiring that non-Indian litigants pursue  
 17 their claims before the tribe. Exhaustion of tribal remedies also encourages Tribes to explain to  
 18 the parties the precise basis for accepting jurisdiction which provides other courts with the  
 19 benefit of their expertise in such matters in the event of further judicial review. (See, *National*  
 20 *Farmers Union Ins.*, 471 U.S. at 856.)

21

22           In *Kaul*, the determination of whether tribes have jurisdiction over non-Indians doing  
 23 business on a reservation in a civil case was required to be made in the first instance by the Tribe  
 24 itself. (See, *Kaul*, at 517.) The court in *Kaul* noted that a Plaintiff "is not able to escape the  
 25 exhaustion doctrine by sitting on her tribal remedies." The District Court proceeded to dismiss  
 26 the plaintiff's claim for lack of subject matter jurisdiction, stating: "The better course is to  
 27 dismiss the plaintiff's suit so that she can pursue her tribal remedies." (See, *id.*, at 518.) Here,  
 28 Plaintiff has not filed a claim with the Tribe, and therefore she has not exhausted her tribal

1 remedies. (See, Giusso Decl. ¶ 3.) Therefore, this Court should dismiss Plaintiff's Complaint so  
 2 the issue of jurisdiction may be properly decided by the Rincon Band of Mission Indians Tribe.  
 3

4 **C. The Patron Tort Claims Ordinance Controls Plaintiff's Claim.**

5 The Tribal-State Gaming Compact between the Tribe and the State of California required  
 6 that prior to the commencement of gaming activities, the Tribe was to carry no less than five  
 7 million dollars (\$5,000,000) in public liability insurance for patron claims, and was to adopt and  
 8 make available to patrons a tort liability ordinance setting forth terms and conditions under  
 9 which the Tribe waives immunity to suit for money damages resulting from intentional or  
 10 negligent injuries to persons or property at the gaming facility or in connection with the Tribe's  
 11 gaming operation, including procedures for processing any claims for such money damages.  
 12 (See, Exhibit B, p. 31.) The Tribe has since adopted the Patron Tort Claims Ordinance (the  
 13 "Ordinance") which authorizes a "limited waiver of its sovereign immunity to suit but only the  
 14 forum identified in the Ordinance." (See, Exhibit C.)  
 15

16 Plaintiff has been advised through her counsel of her rights under the Ordinance.  
 17 Notwithstanding, Plaintiff and her counsel have refused to comply with the Ordinance and have  
 18 not filed any claim on Plaintiff's behalf under the Ordinance. (See, Giusso Decl. ¶ 3.)  
 19

20 Plaintiff contends that while she was present at the Casino, she slipped and fell on water  
 21 near the restroom. (See, Exhibit A, pg. 5.) As such, Plaintiff may file a timely claim with the  
 22 Tribe to avail herself of this limited waiver of sovereign immunity. (See, Exhibit C.)  
 23 Accordingly, this Court should dismiss Plaintiff's Complaint so the issue of jurisdiction may be  
 24 properly decided by the Tribe.  
 25     ///  
 26     ///  
 27     ///  
 28     ///

## IV.

2                   **THIS COURT LACKS PERSONAL JURISDICTION OVER**  
 3                   **SPECIALLY APPEARING DEFENDANT**

4           **A. Authority on Jurisdiction.**

5           Federal Rule of Civil Procedure 12(b)(2) permits a defendant to raise certain defenses by  
 6 a motion to dismiss, including lack of personal jurisdiction. The starting point for determining  
 7 whether personal jurisdiction exists for a defendant sued in federal district court is the long arm  
 8 statute in effect in the state in which the district court is located. (*Aanestad v. Beech Aircraft*  
 9 *Corp.*, 521 F.2d 1298, 1300 (9<sup>th</sup> Cir. 1974).)

10  
 11           Under California law, a court may exercise "jurisdiction" on any basis not inconsistent  
 12 with the Constitution of the United States or the Constitution of [California] or of the United  
 13 States. (Code of Civil Procedure §410.10.) "A State court's assertion of personal jurisdiction  
 14 over a nonresident defendant who has not been served with process within the state comports  
 15 with the requirements of the due process clause of the federal Constitution if the defendant has  
 16 such minimum contacts with the state that the assertion of jurisdiction does not violate  
 17 'traditional notions of fair play and substantial justice.'" (*Vons Companies, Inc. v. Seabest Foods,*  
 18 *Inc.*, 14 Cal.4th 434, 444 (1996), quoting, *International Shoe Co. v. Washington*, 326 U.S. 310,  
 19 316 (1945).)

20  
 21           Personal jurisdiction may be asserted by courts in California in one of two ways --  
 22 general or specific. (*Vons Companies, Inc.*, 14 Cal.4th at 445.) A nonresident defendant may be  
 23 subject to general jurisdiction only if his or her contacts in the forum state are "substantial . . .  
 24 continuous and systematic." (*Perkins v. Benguet Mining Co.*, 342 U.S. 437, 445-446 (1952); *see*  
 25 *also, Helicoptores Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-415 (1984).) Where  
 26 a nonresident defendant does not have the requisite substantial and systematic contacts with the  
 27 forum sufficient to establish general jurisdiction, it may be subject to the specific jurisdiction of  
 28 that forum. However, specific jurisdiction cannot be found unless it is shown by competent

1 evidence that the defendant has purposefully availed itself of forum benefits and the "controversy  
 2 is related to or arises out of a defendant's contacts with the forum." (*Burger King v. Rudzewicz*,  
 3 471 U.S. at 472-473 (1985); *Helicoptores*, 466 U.S. at 414.)

4

5 In order for a forum to assert specific (or "limited") jurisdiction over an out-of-state  
 6 defendant who has not consented to suit there, three requirements must be met:

7

- 8 1) The nonresident must engage in an act, consummate a transaction, or perform an  
 9 act by which he purposefully avails himself of the privilege of conducting  
 10 activities in the forum, thereby invoking the benefits and protections of its laws;
- 11 2) The lawsuit must arise out of the nonresident's forum-related activities; and,
- 12 3) The exercise of jurisdiction must be fair and reasonable.

13

14 (*See, Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984); *Helicoptores*, 466 U.S. at 414;  
 15 *Doe v. American National Red Cross*, 112 F.3d 1048, 1051 (9th Cir. 1997); *Core-Vent Corp. v.*  
 16 *Nobel Industries, AB*, 11 F.3d 1482, 1485 (9th Cir. 1993); *Hunt v. Erie Ins. Group*, 728 F.2d  
 17 1244, 1247 (9th Cir. 1984).)

18

19 In determining whether such "minimum contacts" exist for a valid assertion of  
 20 jurisdiction over a non-consenting nonresident, who is not present in the forum, a court must  
 21 look at "the quality and nature of [the nonresident's] activity in relation to the forum [to  
 22 determine whether it] renders such jurisdiction consistent with traditional notions of fair play and  
 23 substantial justice." (*Burnham v. Superior Court of California (County of Marin)*, 495 U.S. 604,  
 24 618 (1990); *International Shoe*, 326 U.S. at 316, 319.) A court will also examine the nature and  
 25 quality of the defendant's contacts in relation to the cause of action. (*Data Disc, Inc. v. Systems*  
 26 *Technology Assocs.*, 557 F.2d 1280, 1287 (9th Cir. 1977).)

27

28

1        The ultimate determination rests on some conduct by which the non-resident has  
 2 purposefully availed itself of the privilege of conducting activities within the forum state to  
 3 invoke its benefits and protections, and a sufficient relationship or nexus between the non-  
 4 resident and the forum state such that it is reasonable and fair to require the non-resident to  
 5 appear locally to conduct a defense. (*Kulko v. Superior Court of California*, 436 U.S. 84, 93-94,  
 6 96-98 (1978); *Khan v. Superior Court*, 204 Cal.App.3d 1168, 1175-1176 (1988).) This latter  
 7 "fairness" finding requires a balancing of the burden or inconvenience to the nonresident against  
 8 the resident plaintiff's interest in obtaining effective relief, and the state's interest in adjudicating  
 9 the particular dispute, which ultimately turns on the nature and quality of the nonresident's  
 10 forum-related activity. (*Kulko*, 436 U.S. at 94; *Khan*, 204 Cal.App.3d at 1179-1180.)

11  
 12        As with any standard that requires a determination of "reasonableness," the "minimum  
 13 contacts" test of *International Shoe* is not to be applied mechanically. Rather, a court must  
 14 weigh the facts of each case. (*Kulko*, 436 U.S. at 92, 98.) Furthermore, as explained by the  
 15 United States Supreme Court, each individual has a liberty interest in not being subject to the  
 16 judgments of a forum with which he or she has established no meaningful minimum "contacts,  
 17 ties, or relations." (*Burger King Corp.*, 471 U.S. at 471-472, quoting, *International Shoe*, 326  
 18 U.S. at 319.) As a matter of fairness, a defendant should not be "hauled into a jurisdiction solely  
 19 as the result of 'random,' 'fortuitous,' or 'attenuated' contacts." (*Id.* at 475.)

20  
 21        When jurisdiction is challenged by a non-resident defendant, the burden is on the plaintiff  
 22 to demonstrate sufficient "minimum contacts" exist between the defendant and forum state to  
 23 justify the imposition of jurisdiction. (*Sibley v. Superior Court*, 16 Cal.3d 442, 445 (1976).)  
 24 Only where a plaintiff is able to meet this burden does the burden shift to the defendant to  
 25 demonstrate that the exercise of jurisdiction would be unreasonable. (*Vons Companies, Inc.*, 14  
 26 Cal.4th at 449.)

27        ///

28        ///

1       Finally, motions to dismiss under Rule 12(b)(2) may test either the plaintiff's theory of  
 2 jurisdiction or the facts supporting such theory. (*Credit Lyonnais Securities, Inc. v. Alcantara*,  
 3 183 F.3d 151, 153 (2d Cir. 1999).) When the motion to dismiss challenges the facts alleged, a  
 4 Rule 12(b)(2) motion must be decided on the basis of competent evidence. (*Data Disc, Inc. v.*  
 5 *Systems Technology Associates, Inc.*, 557 F.2d 1280, 1289 (9<sup>th</sup> Cir. 1977).) The court cannot  
 6 assume the truth of allegations in a pleading that is contradicted by a sworn affidavit. (*Id.*, at  
 7 1284; *Wenz v. Memery Crystal*, 55 F. 3d 1503, 1505 (10<sup>th</sup> Cir. 1995) (holding only  
 8 uncontested "well pled facts of plaintiff's complaint, as distinguished from mere cursory  
 9 allegations, must be accepted as true"); *Dever v. Hentzen Coatings, Inc.*, 380 F.3d 1070, 1074 8<sup>th</sup>  
 10 Cir. 2004) (same).)

11  
 12       When declarations submitted on the motion to dismiss raise issues of credibility or  
 13 disputed facts, the court may order a preliminary hearing pursuant to Federal Rule 12(d) to  
 14 resolve any contested issues. (F.R.Civ.P. 12(d).) In such a situation, the plaintiff is obligated to  
 15 establish the requisite jurisdictional facts by a preponderance of the evidence, just as it would  
 16 have to do at trial. (*Data Disc, Inc.*, 557 F.2d at 1285; *DeMelo v. Toche Marine, Inc.*, 711 F.2d  
 17 1260, 1271, fn. 12 (5<sup>th</sup> Cir. 1983) (stating that where the facts are contested, a full evidentiary  
 18 hearing on jurisdiction must be afforded).)

19  
 20       B. **Specially Appearing Defendant Utterly Lacks Sufficient Contacts With**  
 21 **California To Be Brought Before The Court Under Either A Theory of General**  
 22 **or Specific Jurisdiction.**

23       1.       **Specially Appearing Defendant Lacks Continuous and Systematic**  
 24 **Contacts With California.**

25       As noted above, a Court may exercise general jurisdiction over a defendant who has  
 26 substantial, continuous, and systematic contacts with the forum state. (*Helicopteros*, 466 U.S. at  
 27 414-415.) Here, *Specially Appearing* Defendant utterly lacks sufficient contacts with California  
 28 to support this Court's assertion of general jurisdiction over them. *Specially Appearing*

1 Defendant Harrah's Entertainment, Inc. is a foreign entity who does not have offices in  
 2 California, does not own property in California, does not have employees in California, and does  
 3 not conduct business in California. (*See, Exhibit D, ¶ 3.*) The Casino is owned, controlled, and  
 4 operated by the Tribe. (*Id. at ¶ 4.*) *Specially Appearing* Defendant has absolutely no case-  
 5 related contacts with California in this matter, and Plaintiffs can present no competent,  
 6 admissible evidence that would suggest otherwise. (*Id. at ¶ 3.*) Accordingly, *Specially*  
 7 *Appearing* Defendant has no systematic and continuous contacts with California which would  
 8 justify this Court's exercise of general jurisdiction over it. (*See, Helicopteros*, 466 U.S. at 414-  
 9 415.)

10

11       2.       **This Court May Not Exercise Specific Jurisdiction Over *Specially***  
 12       **Appearing Defendant.**

13       *Specially Appearing* Defendant Harrah's Entertainment, Inc. has submitted competent  
 14 evidence that its principal place of business is located in Las Vegas, Nevada. (*See, Exhibit D, ¶*  
 15 *3.*) It does not have offices in California, does not own property in California, does not have  
 16 employees in California, and does not conduct business in California. (*Id.*) Moreover, *Specially*  
 17 *Appearing* Defendant neither owns nor operates the Casino; the Tribe owns, controls, and  
 18 manages the Casino, in compliance with the Tribal-State Gaming Compact. (*See, Exhibit B;*  
 19 *Exhibit D, ¶ 4.*)

20

21       Any exercise of personal jurisdiction over *Specially Appearing* Defendant would  
 22 therefore offend notions of fair play and substantial justice for several reasons. (*Burger King*, 471  
 23 U.S. at 477.) This Court should consider the burden on the *Specially Appearing* Defendant, the  
 24 forum state's interest in adjudicating the dispute, the Plaintiff's interest in obtaining convenient  
 25 and effective relief, the interstate judicial system's interest in obtaining the most efficient  
 26 resolution of controversies, and the shared interest of the several states in furthering fundamental  
 27 substantive social policies. (*Id.*)

28       ///

1        Subjecting *Specially Appearing* Defendant to personal jurisdiction in California under the  
2 circumstances would place an enormous burden on *Specially Appearing* Defendant. Such a  
3 ruling would allow any plaintiff, in any location, to sue a defendant even when that defendant  
4 does not conduct any business in the forum. Furthermore, this result would fundamentally alter  
5 the personal jurisdiction analysis by allowing the location of plaintiff to control where a  
6 defendant could be sued. Personal jurisdiction must focus on a defendant's contacts with a  
7 given forum, not simply where a plaintiff is located. (*Calder v. Jones*, 465 U.S. 783 (1984);  
8 *Helicopteros*, 466 U.S. at 46-417.) Where, as here, a defendant does not conduct business in the  
9 forum, and its employees do not engage in the acts alleged in the Complaint, whether in  
10 California or otherwise, a plaintiff's location in the forum cannot reasonably form the basis for  
11 personal jurisdiction over that defendant. California has little, if any, interest in adjudicating this  
12 dispute given these facts. Thus, Plaintiff's case must be dismissed for lack of personal  
13 jurisdiction.

V

**THE TRIBE IS AN INDISPENSABLE PARTY WHICH  
CANNOT BE JOINED IN THE FEDERAL ACTION**

18        This action must also be dismissed pursuant to Rule 12(b)(7) of the Federal Rules of  
19 Civil Procedure because the Tribe is a necessary and indispensable party which, because of its  
20 sovereign immunity, cannot be joined to this action. Under Rule 19, the Tribe is both a necessary  
21 and indispensable party, without which the action should not proceed. (F.R.Civ.P. 19(b);  
22 *American Greyhound Racing v. Hull*, 305 F.3d 1015, 1022 (9<sup>th</sup> Cir. 2002), *citing, Clinton v.*  
23 *Babbitt*, 180 F.3d 1081, 1088 (9<sup>th</sup> Cir. 1999).)

## 25 A. The Tribe is a Necessary Party.

26       Federal Rule of Civil Procedure, Rule 19(a) provides for joinder of a party as "necessary"  
27 to the action, where any of the following are met:

28 | //

(1) in the person's absence complete relief cannot be accorded among those already parties, or

(2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may

(i) as a practical matter impair or impede the person's ability to protect that interest, or

(ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

(See, F.R.Civ.P. Rule 19(a).)

11        Here, the Tribe meets the requirement of Rule 19(a)(1) and (2)(ii), as resolution of  
12 Plaintiff's complaint will turn on who, if anyone, bears responsibility for the alleged injury at the  
13 hotel and casino, which is owned and controlled exclusively by the Tribe. Inasmuch as the Tribe  
14 has ownership and ultimate authority over the Reservation and the Casino, a full and fair  
15 adjudication of liability, if any, cannot possibly occur in the absence of the Tribe being joined as  
16 a necessary party.

## **B. The Tribe is An Indispensable Party.**

19 A necessary and indispensable party must be joined for an action to proceed. (*American  
20 Greyhound*, 305 F.3d. at 1024.) Where, as here, joinder of the Tribe as an indispensable party is  
21 not possible because of the Tribe's sovereign immunity, the action cannot proceed in "equity and  
22 good conscience" and must be dismissed. (*Id.*)

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25 | //

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1        The four factors to determine whether an absent, necessary party is indispensable are: (1)  
 2 to what extent a judgment rendered in the person's absence might be prejudicial to the person or  
 3 those already parties; (2) the extent to which, by protective provisions in the judgment, by the  
 4 shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a  
 5 judgment rendered in the person's absence will be adequate; and (4) whether the plaintiff will  
 6 have an adequate remedy if the action is dismissed for nonjoinder. (F.R.Civ.P. Rule 19(b).)

7

8        *Specially Appearing* Defendant will be prejudiced as a result of the Tribe not being joined  
 9 to this action. Plaintiff's complaint alleges obligations purportedly owed by the Tribe, for which  
 10 the Tribe has defenses, and it is not *Specially Appearing* Defendant's obligation to defend those  
 11 claims. *Specially Appearing* Defendant would be prejudiced significantly if forced to take a  
 12 position potentially in conflict with that of the Tribe because the Tribe is not a party to this action  
 13 and is unable to defend itself. Moreover, there is a potential that an unfavorable ruling or  
 14 judgment may be entered against *Specially Appearing* Defendant, if forced to defend not only its  
 15 own interests, but those of the Tribe. This prejudice is sufficient to warrant dismissal of this  
 16 action under 19(b). (*Lucero v. Lujan*, 788 F.Supp. 1180, 1183 (D.N.M. 1991), *aff'd*, 959 F.2d  
 17 245 (10<sup>th</sup> Cir. 1992).) Thus, the Rule 19(b) factors weigh strongly in favor of a finding that the  
 18 Tribe is an indispensable party to this action. Because the Tribe has sovereign immunity and  
 19 cannot be joined, this action must be dismissed and allowed to proceed pursuant to the  
 20 procedures in place under the Tribal-State Gaming Compact and the Patron Tort Claims  
 21 Ordinance.

22

23        Additionally, Plaintiff has an alternative forum to pursue her claim under the procedures in  
 24 place pursuant to the Tribal-State Gaming Compact and the Patron Tort Claims Ordinance. (*See*,  
 25 Exhibits B, C.) Plaintiff's counsel was apprised of the alternative forum, but Plaintiff's counsel  
 26 has refused to file a claim pursuant to the terms as set forth in the Ordinance. (Giusso Decl. ¶ 3.)

27        // /

28        // /

1 *Specially Appearing* Defendant should not be forced to litigate this case in an improper forum  
 2 simply because Plaintiff refuses to avail herself of the proper forum about which she and her  
 3 counsel have been informed.

4

5 **VI.**6 **PLAINTIFF FAILS TO STATE A PROPER CLAIM**  
 7 **UPON WHICH RELIEF MAY BE GRANTED**

8 Even if the Court did have subject matter jurisdiction over Plaintiff's claim, this case  
 9 should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, as  
 10 Plaintiff has not alleged a valid claim upon which relief could be granted. The Casino is located  
 11 on the Reservation of the Rincon San Luiseno Band of Mission Indians, a federally-recognized  
 12 sovereign Indian tribe, and is owned and operated by the Tribe under the Indian Gaming  
 13 Regulatory Act, as well as the Tribal-Sate Gaming Compact between the Tribe and the State of  
 14 California. (Exhibit D, ¶ 4.)

15

16 *Specially Appearing* Defendant owes Linda S. Jaramillo no duty of care. As noted above,  
 17 *Specially Appearing* Defendant Harrah's Entertainment, Inc. is a foreign corporation  
 18 headquartered in Las Vegas, Nevada. It is the Tribe which owns and operates the Casino. (*See*,  
 19 *id.*) Plaintiff has named the wrong entity. Thus, Plaintiff's claims fail as a matter of law against  
 20 Harrah's Entertainment, Inc., and her Complaint must be dismissed.

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22    ///

23    ///

24    ///

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VII.

## **CONCLUSION**

3 The law is clear that Plaintiff's claims must be brought, not in this Court, but before the  
4 Tribe based on the doctrine of sovereign immunity and the Tribal State Gaming Compact.  
5 Therefore, this Court lacks subject matter jurisdiction. In addition, this action must be dismissed  
6 pursuant to Rule 12(b)(2), (6) and (7) as set forth herein.

8 | DATED: November 20, 2009

## STOKES ROBERTS & WAGNER

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