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ENTERTAINMENT, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LINDA S. JARAMILLO,

Plaintiff,

v.

HARRAH'S ENTERTAINMENT, INC.; and
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**

Date: 1/22/10
Time: 1:30 p.m.
Courtroom: 16

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I.

INTRODUCTION

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

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

II.

STATEMENT OF FACTS

The following are the facts pertinent to this motion:

1. Plaintiff filed her Complaint on August 31, 2009 against *Specially Appearing* Defendant Harrah's Entertainment, Inc. alleging general negligence and premises liability, and seeking damages supposedly suffered when she was a patron at the casino commonly referred to as Harrah's Rincon Casino & Resort. Plaintiff claims that she slipped and fell on water near the 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 insured 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 (10th Cir. 1991); *Stock West Inc. v. Confederated Tribes*, 873
 22 F.2d 1221, 1225 (9th 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 (7th 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 (9th 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
 19 In this case, Plaintiff Linda Jaramillo, a patron of the Casino, is a non-Indian who
 20 engaged in a consensual relationship with the Tribe on the reservation by voluntarily going to the
 21 Casino. Plaintiff now claims injuries resulting from her consensual relationship with the Tribe
 22 related to an occurrence at the Casino that is located on the Tribe's land and that is owned and
 23 operated by the Tribe. (*See, Exhibit A, ¶¶ Prem.L-1; Prem. L-2; and Prem. L-3.*) Thus Plaintiff's
 24 claim necessarily affects the political integrity, economic security, and health and welfare of the
 25 Tribe. As a consequence, this Court lacks subject matter jurisdiction over this matter, and it
 26 should be dismissed. (*See, Williams*, 358 U.S. at 565-566.)

27 ///

28 ///

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 (9th 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.

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IV.

THIS COURT LACKS PERSONAL JURISDICTION OVER
SPECIALLY APPEARING DEFENDANT

A. Authority on Jurisdiction.

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

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

Personal jurisdiction may be asserted by courts in California in one of two ways -- general or specific. (*Vons Companies, Inc.*, 14 Cal.4th at 445.) A nonresident defendant may be subject to general jurisdiction only if his or her contacts in the forum state are "substantial . . . continuous and systematic." (*Perkins v. Benguet Mining Co.*, 342 U.S. 437, 445-446 (1952); see also, *Helicoptores Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-415 (1984).) Where a nonresident defendant does not have the requisite substantial and systematic contacts with the forum sufficient to establish general jurisdiction, it may be subject to the specific jurisdiction of 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 "hailed 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 (9th 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 (10th Cir. 1995) (holding only
 8 uncontroverted "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 8th
 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 (5th 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 ///

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

V.

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

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

A. The Tribe is a Necessary Party.

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

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(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).)

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

B. The Tribe is An Indispensable Party.

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

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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 (10th 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.)

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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.

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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-State 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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VII.

CONCLUSION

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

DATED: November 20, 2009

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ENTERTAINMENT, INC.