

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LINDA S. JARAMILLO,

Plaintiff,

vs.

HARRAH'S ENTERTAINMENT, INC.; and
DOES 1 through 10, inclusive,

Defendants.

CASE NO. 09 CV 2559 JM (POR)

**ORDER GRANTING MOTION TO
DISMISS**

Doc. No. 5

Plaintiff Linda Jaramillo (“Jaramillo”) filed this tort action in state court. (Doc. No. 1). Jaramillo alleges she was injured while a “business invitee” at Harrah’s Rincon Casino & Resort (the “Casino”) in Valley Center, California. (Doc. No. 1). The Casino is located on the reservation of the Rincon San Luiseno Band of Mission Indians (the “Tribe”), a federally-recognized sovereign Indian tribe. (Doc. No. 5, Ex. 4). Defendant Harrah’s Entertainment, Inc. (“Harrah’s”) removed the action to this court based upon diversity jurisdiction. (Doc. No. 1). Despite this, Harrah’s now moves under Federal Rule of Civil Procedure 12 to dismiss the action for lack of subject matter jurisdiction, lack of personal jurisdiction, failure to state a claim upon which relief can be granted, and failure to join a party under Rule 19. (Doc. No. 5).

The court finds this motion appropriate for disposition without oral argument. *See* CivLR 7.1(d)(1). Plaintiff failed to file an opposition to Defendant’s motion to dismiss. Pursuant to local rules, if a party fails to file an opposition, “that failure may constitute a consent to the granting of the

1 motion.” CivLR 7.1(f)(3)(c). Nonetheless, the court will rule on the merits of Defendant’s motion.
 2 For the following reasons, the court hereby GRANTS Defendant’s motion to dismiss.

3 **I. LEGAL STANDARDS**

4 In general, “the inherent sovereign powers of an Indian tribe do not extend to the activities of
 5 nonmembers of the tribe.” *Montana v. United States*, 450 U.S. 544, 565 (1981). However, there are
 6 two exceptions to this general rule. First, a “tribe may regulate, through taxation, licensing, or other
 7 means, the activities of nonmembers who enter consensual relationships with the tribe or its members,
 8 through commercial dealing, contracts, leases, or other arrangement.” *Id.* at 565. Second, a “tribe
 9 may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee land
 10 within its reservations when that conduct threatens or has some direct effect on the political integrity,
 11 the economic security, or the health or welfare of the tribe.” *Id.* at 566. Where tribes possess
 12 authority to regulate the activities of nonmembers, “[c]ivil jurisdiction over [disputes arising out of]
 13 such activities presumptively lies in the tribal courts.” *Strate v. A-1 Contractors*, 520 U.S 438, 453
 14 (1997) (quoting 480 U.S. at 18).

15 Therefore, when there is a “colorable question” whether a tribal court has subject matter
 16 jurisdiction over a civil action, federal courts will stay or dismiss the action and “permit a tribal court
 17 to determine in the first instance whether it has the power to exercise subject-matter jurisdiction” over
 18 the dispute. *Stock West Corp. v. Taylor*, 964 F.2d 912, 919 (9th Cir. 1992). But exhaustion in the
 19 tribal court is required as a matter of comity, not as a jurisdictional prerequisite. *Iowa Mut. Ins. Co.*
 20 v. *LaPlante*, 480 U.S. 9, 16 n.8 (1987). The fact that there is no tribal action pending does not defeat
 21 the tribal exhaustion requirement. *Sharber v. Spirit Mountain Gaming, Inc.*, 343 F.3d 974, 976 (9th
 22 Cir. 2003).

23 **II. DISCUSSION**

24 Jaramillo’s complaint raises a “colorable question” regarding tribal jurisdiction. Arguably,
 25 non-Indians who enter the Rincon reservation to enjoy the goods or services of the Casino are entering
 26 a commercial relationship with the Tribe. As a “business invitee” at the Casino, Jaramillo essentially
 27 alleges the existence of a commercial relationship. Jaramillo’s allegations indicate that this
 28 commercial relationship was formed with Harrah’s, but because the Tribe owns the Casino, Jaramillo

1 at least arguably created a commercial relationship with the Tribe as well.

2 The Tribe owns the Casino and its operations are intertwined with Tribal welfare. The Casino
3 is designed to promote “tribal economic development, self-sufficiency, and strong tribal
4 governmen[t].” 25 U.S.C. § 2702(1). Although the pleadings do not make clear who is responsible
5 for day-to-day operations of the Casino, the Tribal-State Compact between the State of California and
6 the Tribe ensures that the Tribe is ultimately responsible for the Casino’s operations. (See Doc. No.
7 5, Ex. 2). Therefore, any guest of the Casino arguably enters a commercial relationship with the Tribe
8 and is subject to the Tribe’s civil jurisdiction regarding disputes that arise out of that relationship.
9 Because the Tribe may have civil jurisdiction over this dispute, this court must give the tribal court
10 the first opportunity to determine its own jurisdiction. *Stock West*, 964 F.2d at 919.

11 When a court finds, as here, that tribal exhaustion is required, the court can stay or dismiss the
12 action, although it is error to dismiss for lack of subject matter jurisdiction. *Sharber*, 343 F.3d at 976.
13 As Jaramillo failed to file an opposition to the motion to dismiss, the court finds dismissal appropriate.
14 Therefore, the court hereby GRANTS Defendant’s motion to dismiss. The Clerk of the Court is
15 directed to close the file.

16 **IT IS SO ORDERED.**

17 DATED: February 16, 2010


18 _____
19 Hon. Jeffrey T. Miller
United States District Judge

20
21
22
23
24
25
26
27
28