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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

EXC, Inc., a Nevada corporation, d/b/a  
Express Charters and D.I.A. Express, Inc.;  
Conlon Garage, Inc., a Colorado corporation;  
Go Ahead Vacations, Inc., a Massachusetts  
corporation; Russell J. Conlon, and; National  
Interstate Insurance Company,  
Plaintiffs,

v.

Jamien Rae Jensen, individually, and as parent  
and next friend of D. J. J., and as Personal  
Representative of the Wrongful Death Estate  
of Corey Johnson; Chavis Johnson,  
individually, and as Personal Representative of  
the Wrongful Death Estate of Butch Corey  
Johnson; Margaret Johnson and Frank  
Johnson, individually, and as parents and next  
friends of H. J. and D. J.; Francesca Johnson,  
individually; Justin Johnson, individually;  
Raymond Jensen, Sr., individually; Louise R.  
Jensen, individually; Nicole Jensen,  
individually; Ryan Jensen, individually; Justin  
Jensen, individually; Katrina Jensen,  
individually; Raymond Jensen, Jr.,  
individually, and; Murphy Jensen,  
individually; the Navajo Nation; the Kayenta  
District Court; the Navajo Nation Supreme  
Court; and Judge Jennifer Benally, a judge of  
the Kayenta District Court,  
Defendants.

NO. CV 3:10-cv-08197-PCT-JAT

**JENSEN DEFENDANTS' MOTION  
TO DISMISS WITHOUT  
PREJUDICE**

**Oral Argument Requested**

**COME NOW** Defendants Jamien Rae Jensen et al. (hereinafter Jensen Defendants), by and through their attorneys of record and pursuant to Federal Rule of Civil Procedure 7, and hereby submit their Motion to Dismiss Without Prejudice for the failure of Plaintiffs EXC, Inc., d/b/a Express Charters, et al. (hereinafter EXC Plaintiffs) to exhaust tribal court remedies as required under federal law.

This matter should be dismissed because EXC Plaintiffs have failed to exhaust tribal court remedies where (1) facts bearing on jurisdiction that are as yet unresolved and are as yet in dispute must be determined in the first instance by the Navajo Nation courts and (2) other remedies are available to EXC Plaintiffs under Navajo law and procedure by which they may yet challenge the Navajo Nation courts' jurisdiction. The orderly administration of justice will be best served by allowing the Navajo Nation courts to develop a full record of facts bearing on jurisdiction and affording them a full opportunity to evaluate the factual and legal bases for the challenge to their jurisdiction.

The instant action is prematurely filed and should be dismissed without prejudice rather than stayed. *See National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 857 (1985) ("Whether the federal action should be dismissed, or merely held in abeyance pending the development of further Tribal Court proceedings, is a question that should be addressed in the first instance by the District Court."). Dismissal better serves the interests of judicial economy than a stay of this matter because extensive tribal court remedies must yet be exhausted and because this matter, if not dismissed, will remain stayed and pending on this Court's docket for an inordinate period of time.

Respectfully submitted,

MICHAEL J. BARTHELEMY, ATTORNEY AT LAW, P.C.

August 01, 2011

s/ Michael J. Barthelemy

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LAW OFFICES OF GEOFFREY R. ROMERO

August 01, 2011

s/ Geoffrey R. Romero

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I hereby certify that on this 1st day of August, 2011, I electronically transmitted and mailed by first class mail, postage prepaid, a true and correct copy of the foregoing document to:

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