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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

ROLLING FRITO-LAY SALES, a Delaware
Partnership,

Plaintiff,

v.

REBECCA STOVER, DAVID MONTIEL,
AUK-MORE and THE SALT RIVER PIMA-
MARICOPA INDIAN COMMUNITY
COURT,

Defendants.

NO. CV11-01361-PHX-FJM

**DEFENDANTS MONTIEL AND
ON-AUK-MOR'S MOTION TO
DISMISS FOR LACK OF
PERSONAL AND SUBJECT
MATTER JURISDICTION**

(Oral Argument Requested)

Defendants David Montiel and On-Auk-Mor Trade Center ("Defendants"), and pursuant to Federal Rules of Civil Procedure Rules 12(b)(1) and 12(b)(2), hereby move the Court for an Order dismissing them from this action. Defendants should be dismissed because the Court lacks Personal Jurisdiction over Defendant Montiel, who is a member and resident of the Salt River Pima-Maricopa Indian Community (the "Salt River Community" or the "Reservation"). The Court further lacks subject matter jurisdiction over the incident, since it occurred at the On-Auk-Mor Trade Center, which is located on the Reservation.

As set forth herein, relevant case law provides that the allegations against Defendants can only be maintained in Tribal Court.¹ Thus, the Court should dismiss Defendants for lack of Personal and Subject Matter Jurisdiction.

¹ Ms. Stover currently has an action against Defendants and Frito Lay in the Reservation's Tribal Court.

1 **I. BACKGROUND.**

2 The essence of this action is a personal injury claim. Rebecca Stover, who is
3 a Defendant here in this case, claims she was injured when she slipped on a cardboard box
4 at the On-Auk-Mor Trade Center, a convenient store located on the Reservation.
5 Defendant David Montiel is a member of the Community and the owner of the On-Auk-
6 Mor Trade Center (See also Plaintiff's Complaint, ¶6). Ms. Stover alleges that the
7 cardboard box was left on the floor by a Frito Lay deliveryman. On May 14, 2010,
8 Rebecca Stover filed a personal injury action against Defendants Montiel, On-Auk-Mor,
9 and Frito Lay. The action was filed in the Maricopa County Superior Court, Case number
10 CV2010-015485.

11 On June 15, 2010, Defendants Montiel and On-Auk-Mor filed a Motion to
12 Dismiss the claims against them, based on the fact that the Court lacked Personal
13 Jurisdiction over Defendants, and further lacked Subject Matter Jurisdiction over the
14 matter since it occurred on Indian Land. Defendants asserted that any such claim against
15 Defendants would have to be filed in Tribal Court, as the Salt River Pima-Maricopa
16 Community has their own Tribal Court. The Court agreed and on September 27, 2010,
17 after the Motion was fully briefed, the Court signed the Order granting the Motion and
18 dismissing Defendants Montiel and On-Auk-Mor from the Superior Court action (See also
19 Plaintiff's Complaint, ¶11).

20 On information and belief, Plaintiff then dismissed the Superior Court
21 action and re-filed her claims against all Defendants in Tribal Court. However, Frito Lay
22 has now filed this Complaint here in the United States District Court, seeking an order
23 divesting the Tribal Court of jurisdiction over Ms. Stover's action. Frito Lay seeks an
24 Order from this Court, that Ms. Stover's claims should be adjudicated by this Court; that
25 the Tribal Court be enjoined from proceeding against Frito Lay in Tribal Court; and a
26 declaration that Ms. Stover's claims are barred by Res Judicata, Collateral Estoppel,
27 and/or the two year Statute of Limitations. But the biggest question is: Why did Frito Lay
28 include Defendants Montiel and On-Auk-Mor in this action?

II. THE COURT LACKS PERSONAL JURISDICTION OVER DEFENDANTS, AND SUBJECT MATTER JURISDICTION OVER THIS MATTER.

Federal Rules of Civil Procedure, Rule 12(b)(1) and Rule (12(b)(2) provide that a party must assert both lack of subject matter jurisdiction and lack of personal jurisdiction, via Motion to be made before a responsive pleading is filed. As clearly set forth in Frito Lay's Complaint herein, paragraph six (6), Defendant Montiel is a member of the Salt River Community, and Defendant On-Auk-Mor is located on the reservation. And it is well-settled that actions between Native Americans and Non-Native Americans that arise on the reservation, must be resolved in the Tribal Court.

The seminal case for that is the United States Supreme Court decision in Williams v. Lee, 358 U.S. 217, 79 S.Ct. 269 (1959). Williams involved an action originally filed in State Court by a Non-Native American against a Native-American, to collect for goods sold on credit. Defendants moved for dismissal of the action, claiming that only the Tribal Court had jurisdiction. The Motion was denied, and appealed, until the matter reached the United States Supreme Court, which reversed the decision.

Specifically, the Supreme Court held that allowing State Court to exercise jurisdiction would "undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves." 358 U.S. at 222, 79 S.Ct. at 272. The Court further emphasized that it was immaterial that Plaintiff was not a Native American, since he was on the Reservation and the transaction took place there. The Supreme Court dismissed the matter, recognizing that the Court has "consistently guarded the authority of Indian governments over their reservations. Congress recognized this authority in the Navajos in the Treaty of 1868, and has done so ever since." 358 U.S. at 222, 79 S.Ct. at 272. *See also* Enriquez v. Superior Court, In and For Pima County, 115 Ariz. 342, 565 P.2d 522 (Ariz.App.1977)² (Assumption of jurisdiction by a state court would infringe upon the right of Native Americans to make

² A case in which the Court granted a Motion for Dismissal for lack of personal and subject matter jurisdiction.

1 and be governed by their own laws, which includes the right to determine what conduct on
 2 the reservation will subject resident Native Americans to civil liability).

3 The same applies here. Ms. Stover was on the Reservation when the incident
 4 occurred. Defendant is a member and resident of the Salt River Community, and the
 5 owner of the On-Auk-Mor Trade Center, which is located on the Reservation. Previously,
 6 in Superior Court, the Court correctly ruled that it did not have jurisdiction over
 7 Defendants and this matter, as it properly belonged in Tribal Court. Subsequently, Ms.
 8 Stover re-filed her claim in Tribal Court. Now, Frito Lay objects to the Tribal Court's
 9 adjudication over Ms. Stover's claims, but Defendants see no reason Frito Lay's
 10 Complaint should include or apply to Defendants. Rather, the matter, at least as it relates
 11 to Defendants Montiel and On-Auk-Mor, is now properly before the Tribal Court and
 12 should stay there.

13 Indeed, the Salt River Community has established its own Court system in
 14 accordance with their rights of self-government, as set forth above. And as adopted by
 15 Congress, and enforced by our Country's highest Court, exercising jurisdiction over
 16 Defendants in this matter would improperly infringe on those rights. Therefore,
 17 Defendants respectfully request that the Court dismiss this action as to Defendants
 18 Montiel and On-Auk-Mor, for lack of Personal and Subject Matter Jurisdiction.

19 **III. THE DOCTRINE OF COLLATERAL ESTOPPEL BARS PLAINTIFF** 20 **FROM MAINTAINING THIS ACTION AGAINST DEFENDANTS.**

21 The doctrine of Collateral Estoppel generally bars re-litigation of the same
 22 issues. Burlington Northern R. Co. v. Hyundai Merchant Marine Co., Ltd., 63 F.3d 1227
 23 (C.A.3 (N.J.),1995). The doctrine precludes issues that were actually litigated and were
 24 essential to the action. The following conditions are required:

- 25 1) the issue sought to be precluded is the same as that involved in the
- 26 2) the issue in question was actually litigated;
- 27 3) it was determined by a final and valid judgment; and
- 28 4) the determination was essential to the prior judgment;

63 F.3d at 1231-1232.

1 Here, paragraph eleven (11) of Plaintiff's Complaint plainly sets forth the
2 fact that Ms. Stover's action was originally filed in Superior Court but dismissed on
3 Motion for Lack of Jurisdiction. Thus, on the face of the Complaint itself, it is clear that
4 the issue of whether a Non-Tribal Court has jurisdiction over Defendants was previously
5 litigated. It was adjudged and determined by a valid Order dismissing Defendants, and
6 that Order was essential to the action. So much so that it prompted Ms. Stover to dismiss
7 the action in its entirety and re-file in Tribal Court.

8 As such, not only is there no independent basis for jurisdiction over Defendants, but this
9 very issue was already litigated and decided in a prior action involving all the parties
10 herein. Accordingly, Defendants respectfully request that the Court grant this motion and
11 dismiss David Montiel and On-Auk-Mor Trade Center from this action.

12 **IV. CONCLUSION.**

13 Based on the foregoing, Defendants respectfully request that the Court grant
14 the Motion and dismiss Defendants from this action. The proper forum for Plaintiff to
15 pursue Defendants is in the Tribal Court of the Salt River Indian Community, where the
16 subject incident occurred.

17 DATED this 5th day of December, 2011.

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20 By /s/Shaye Mann

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CERTIFICATE OF SERVICE

I certify that on December 5, 2011, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to those attorneys registered with the CM/ECF:

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