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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

FLORIDA GIRMAI,

Plaintiff,

vs.

RINCON BAND OF LUISENO INDIANS, CAESARS ENTERTAINMENT CORPORATION, INC., CAESARS ENTERTAINMENT OPERATING COMPANY, HARRAH'S RINCON CASINO AND RESORT, and DOES 1 to 20,

Defendants.

Case No. 11cv2567 JLS (POR)
Judge: Hon. Janis L. Sammartino
Action Date: August 30, 2011

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF *SPECIALLY APPEARING* DEFENDANTS' MOTION TO DISMISS PURSUANT TO F.R.CIV.P. RULE 12(B)(1), (2), (6) AND (7)

ACCOMPANYING DOCUMENTS: NOTICE OF MOTION AND MOTION TO DISMISS; DECLARATION OF DUANE D. HOLLOWAY; DECLARATION OF RONALD R. GIUSSO; REQUEST FOR JUDICIAL NOTICE; (PROPOSED) ORDER

Date: February 16, 2012
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I.

INTRODUCTION

Plaintiff FLORIDA GIRMAI ("GIRMAI") has sued *Specially Appearing* Defendants Rincon Band of Luiseno Indians (erroneously named), Caesars Entertainment Corporation, Inc. (erroneously named and sued), Caesars Entertainment Operating Company (erroneously named and sued), and Harrah's Rincon Casino and Resort (a non-legal entity) in negligence and premises liability for an incident that occurred on September 4, 2009. (Exh. 1, p. 5.) GIRMAI claims that she was traversing an area of the premises when she slipped and fell, sustaining injuries as a result. (*Id.* at pp. 6-8.) The casino, commonly referred to as Harrah's Rincon Casino and Resort (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 (the "Rincon Tribe"). (Holloway Decl., ¶¶ 2, 3.) GIRMAI has not submitted a claim against or with the Rincon Tribe or its Tribal Council as of the date of this filing. (Giusso Decl., ¶ 6.)

Specially Appearing Defendants seek an order dismissing GIRMAI's Complaint because this Court lacks subject matter jurisdiction over GIRMAI's claims which must be brought before the Rincon Tribe based on both the doctrine of sovereign immunity and the IGRA sponsored Tribal-State Gaming Compact.

In addition, *Specially Appearing* Defendant Harrah's Rincon Casino and Resort is a non-legal entity and therefore, necessarily has insufficient minimum contacts with the State of California to be subject to general or specific jurisdiction of this Court. (*See,* Holloway Decl., ¶ 2.) Similarly, *Specially Appearing* Defendants Caesars Entertainment Corporation, Inc., and Caesars Entertainment Operating Company are not proper parties in this lawsuit because they do not own, operate or manage the Casino at issue. (*Id.* at ¶¶ 3-5.) Thus, *Specially Appearing* Defendants Caesars Entertainment Corporation, Inc., and Caesars Entertainment Operating Company, cannot be subject to general personal jurisdiction in California as they lack any of the requisite contacts with

California. Moreover, *Specially Appearing* Defendants Caesars Entertainment Corporation, Inc., and Caesars Entertainment Operating Company, also cannot be subject to specific personal jurisdiction in California in this action because GIRMAI has not articulated, and cannot show by competent evidence, that they have purposefully availed themselves of any of the benefits of this forum, or that the alleged harm suffered by GIRMAI in any way arises out of any forum-related contact *Specially Appearing* Defendants Caesars Entertainment Corporation, Inc., and Caesars Entertainment Operating Company may have with California. Thus, this Court lacks any basis upon which to exercise personal jurisdiction over any of the *Specially Appearing* Defendants.

Additionally, the Rincon Tribe is a necessary and indispensable party which cannot be joined in this action because of its sovereign immunity. Lastly, GIRMAI has failed to state a claim upon which relief may be granted as none of the *Specially Appearing* Defendants owe GIRMAI a duty of care. Accordingly, all claims asserted by GIRMAI in her Complaint against every *Specially Appearing* Defendant must be dismissed.

II.

STATEMENT OF FACTS

The following are the facts pertinent to this motion:

1. GIRMAI filed her Complaint on August 30, 2011 against *Specially Appearing* Defendants Rincon Band of Luiseno Indians (erroneously named), Caesars Entertainment Corporation, Inc. (erroneously named and sued), Caesars Entertainment Operating Company (erroneously named and sued), and Harrah's Rincon Casino and Resort (a non-legal entity) alleging negligence and premises liability for a slip-and-fall which occurred at the Casino on September 4, 2009. (Exh. 1.) GIRMAI seeks damages for injuries supposedly suffered to her knee as a result of this incident. (*Id.* at pp. 6-8.)

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2. The Casino is located on the reservation of the Rincon San Luiseno Band of Mission Indians, a federally-recognized sovereign Indian Tribe (the "Rincon Tribe"). (Holloway Decl., ¶ 2.) The Casino is owned, controlled, and its operations are managed by the Rincon Tribe pursuant to the Indian Gaming Regulatory Act ("IGRA"), as well as the Tribal-State Gaming Compact (the "Compact") between the Rincon Tribe and the State of California. (*See, id.*, ¶3; Exh. 2.)

3. The Casino's creation was dependent upon government approval at numerous levels in order for it to conduct gaming activities permitted only under the auspices of the Rincon Tribe. (*See,* Exh. 2.) The IGRA, which establishes the jurisdictional framework that governs Indian gaming, required the Rincon Tribe to authorize the Casino through a tribal ordinance and an interstate gaming compact. (25 U.S.C. § 2710(d)(1).) The Rincon Tribe and California entered into such a compact "on a government-to-government basis." These extraordinary steps were necessary because the Casino is not a mere revenue-producing tribal business, but pursuant to the IGRA, the creation and operation of Indian casinos is designed to promote "tribal economic development, self-sufficiency, and strong tribal governments." (25 U.S.C. §§ 2701(4); 2702(1).) One of the principal purposes of the IGRA is "to ensure that the Indian tribe is the primary beneficiary of the gaming operation." (25 U.S.C. § 2702(2).)

4. As reflected in the IGRA-sponsored Compact that created the Casino, the policy behind establishing the Casino was to "enable the Tribe to develop self-sufficiency, promote tribal economic development, and generate jobs and revenues to support the Tribe's government and governmental services and programs." (Exh. 2, p. 3.) The Rincon Tribe owns and controls the Casino pursuant to a management agreement between the Rincon Tribe and HCAL, LLC. (Holloway Decl. ¶ 3.)

5. *Specially Appearing* Defendant Harrah's Rincon Casino and Resort is not a legal entity. (*Id.* at ¶ 2.)

6. *Specially Appearing* Defendant Caesars Entertainment Corporation, Inc. is erroneously named. The correct name is Caesars Entertainment Corporation. (*Id.* at ¶ 4.) *Specially Appearing* Defendant Caesars Entertainment Corporation, Inc. is a Delaware corporation with its principal place of business located in Las Vegas, Nevada. (*Id.*) It does not have offices in California; does not own property in California; does not have employees in California; does not conduct business in California, and does not have an agent for service of process in California. (*Id.*)

7. *Specially Appearing* Defendant Caesars Entertainment Operating Company is erroneously named. The correct name is Caesars Entertainment Operating Company, Inc. (*Id.* at ¶ 5.) *Specially Appearing* Defendant Caesars Entertainment Operating Company is a Delaware corporation with its principal place of business located in Las Vegas, Nevada. (*Id.*) It does not have offices in California; does not own property in California; does not have employees in California; and, does not conduct business in California. (*Id.*)

8. The IGRA sponsored Tribal-State Gaming Compact between the Rincon Tribe and the State of California required that prior to the commencement of gaming activities, the Rincon Tribe was to carry no less than five million dollars ($5,000,000) in public liability insurance for patron claims, and was to adopt and make available to patrons a tort liability ordinance setting forth terms and conditions under which the Rincon Tribe waives immunity to suit for money damages resulting from intentional or negligent injuries to persons or property at the gaming facility or in connection with the Rincon Tribe's gaming operation, including procedures for processing any claims for such money damages. (Exh. 2, p. 31.) The Rincon Tribe has since adopted the Patron Tort Claims Ordinance (the "Ordinance") which authorizes a "limited waiver of its sovereign immunity to suit but only the forum identified in the Ordinance." (Exh. 3, p. 6, § V.) With regard to the proper forum for commencement of Patrons' claims, the Ordinance states:

> The Tribal Court shall have exclusive jurisdiction to adjudicate actions commenced pursuant to this Ordinance. At any time after the delivery of a Notice of Claim the Patron may commence suit against the Gaming Operation in Tribal Court.

(Exh. 3, p. 8, § VI(F).)

9. As of the filing of this motion, GIRMAI has not filed a claim with the Rincon Tribe. (Giusso Decl. ¶ 6.)

III.

THIS COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION TO ADJUDICATE THIS DISPUTE

It is GIRMAI who bears the burden of establishing subject matter jurisdiction. (*Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994); *Penteco Corp. Ltd. Partnership-1985A v. Union Gas Sys., Inc.*, 929 F.2d 1519 (10th Cir. 1991); *Stock West, Inc. v. Confederated Tribes of Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989).) Any party may seek dismissal of an action for lack of subject matter jurisdiction. (*Napoleon Hardwoods, Inc. v. Professionally Designed Ben., Inc.*, 984 F.2d 821, 822 (7th Cir. 1993).) In considering a motion to dismiss under Rule 12(b)(1), courts are not limited to the facts pleaded in the complaint, but can and should weigh evidence and determine facts in order to satisfy itself as to its power to hear the case. (*Roberts v. Corrothers,* 812 F.2d 1173, 1177 (9th Cir. 1987).)

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

The United States Supreme Court has consistently guarded the authority of Indian governments over their reservations. (*Williams v. Lee,* 358 U.S. 217, 223 (1959).) Indian tribes remain a separate people with power to regulate internal and social relations. (*Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 54 (1978).) This includes claims and transactions involving the

reservation, as well as non-Indians. (*Williams, supra, 358* U.S. at 223.) In *Montana v. United States*, 450 U.S. 544 (1981), the Supreme Court expounded on the *Williams* decision, holding that a tribe retains civil authority over the conduct of non-Indians within its reservation which involve: (1) activities of non-members who enter consensual relationships with the tribe or its members; or (2) the activities or conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe. (*Id.* at 565-566.)

Tribal authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty. (*Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 18 (1987).) Unless affirmatively limited by a specific treaty provision or federal statute, jurisdiction over civil matters presumptively lies with the tribe. (*Id.*) Federal preemption and infringement upon tribal autonomy are the two barriers to the exercise of state authority over Tribes, and "[e]ither basis, standing alone, can be a sufficient basis for holding state law inapplicable to activity undertaken on the reservation." (*Confederated Tribes of Siletza Indians of Oregon v. State of Oregon*, 143 F.3d 481, 486 (9th Cir. 1998).)

In this case, GIRMAI, a patron of the Casino, is a non-Indian who engaged in a consensual relationship with the Rincon Tribe on the reservation by voluntarily entering the Casino. GIRMAI now claims injuries resulting from her consensual relationship with the Rincon Tribe related to an occurrence at the Casino that is located on the Rincon Tribe's land and which is owned and operated by the Rincon Tribe. (Exh. 1, pp. 4-5.) Thus, GIRMAI's claim necessarily affects the political integrity, economic security, and health and welfare of the Rincon Tribe. As a consequence, this Court lacks subject matter jurisdiction over this matter, and GIRMAI's Complaint should be dismissed. (*Williams, supra,* 358 U.S. at 565-566.)

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

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

Indeed, case law recognizes Congress' commitment to a policy of supporting tribal self-government and self-determination. (*National Farmers Union Ins. Cos.*, *supra,* 471 U.S. at 856.) This policy favors a rule that will provide the forum whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal basis for the challenge. (*Id.*) Therefore, the Rincon Tribe should have its opportunity to determine its own jurisdiction and implement its own policy adjudicating claims such as GIRMAI's. Indeed, where there is a question of jurisdiction, no court should exercise jurisdiction until the parties have exhausted their tribal remedies. (*Kaul, supra*, 838 F. Supp. at 516.) This rule – known as the rule of "tribal exhaustion" – encourages tribal self-government by requiring that non-Indian litigants pursue their claims before the tribe. Exhaustion of tribal remedies also encourages tribes to explain to the parties the precise basis for accepting jurisdiction which provides other courts with the benefit of their expertise in such matters in the event of further judicial review. (*National Farmers Union Ins. Cos., supra*, 471 U.S. at 856.)

In *Kaul*, the determination of whether tribes have jurisdiction over non-Indians doing business on a reservation in a civil case was required to be made in the first instance by the tribe itself. (*Kaul, supra,* 838 F.Supp. at 517.) The court in *Kaul* noted that a Plaintiff "is not able to escape the exhaustion doctrine by sitting on her tribal remedies." (*Id.*) The District Court proceeded to dismiss the plaintiff's claim for lack of subject matter jurisdiction, stating: "The better course is to

dismiss the plaintiff's suit so that she can pursue her tribal remedies." *(Id.* at 518.) Here, GIRMAI has not filed a claim with the Rincon Tribe, and therefore she has not exhausted her tribal remedies. (Giusso Decl., ¶ 6.) The tribal exhaustion rule requires that GIRMAI pursue her claim with the Rincon Tribe. Therefore, this Court should dismiss GIRMAI's Complaint so the issue of jurisdiction may be properly decided first by the Rincon Tribe.

C. The Patron Tort Claims Ordinance Controls GIRMAI's Claim.

Where a compact exists between a State and an Indian Tribe, the courts must look to the contractual agreement between the entities for direction in determining whether state or federal law will apply. (*Confederated Tribes of Siletza Indians of Oregon v. State of Oregon*, 143 F.3d at 485.) This is so because "the Compact, a direct result of federal authority granted through IGRA, serves as the basis for any analysis of federal preemption. Without either IGRA or the Compact, there would be simply no question of federal law at stake." (*Id.* at 484-485.) Indeed, the Court stated "the Compact itself controls. To the extent the Compact specifically permits or prohibits the release of the Report, the parties are bound by it." (*Id.* at 485.)

The IGRA sponsored Compact negotiated between the State of California and the Rincon Tribe specifically contemplates how patrons of the Casino will be allowed to adjudicate personal injury tort claims arising on the Casino. Indeed, the Tribal-State Gaming Compact between the Rincon Tribe and the State of California required that prior to the commencement of gaming activities, the Rincon Tribe was to carry no less than five million dollars ($5,000,000) in public liability insurance for patron claims, and was to adopt and make available to patrons a tort liability ordinance setting forth terms and conditions under which the Rincon Tribe waives immunity to suit for money damages resulting from intentional or negligent injuries to persons or property at the gaming facility or in connection with the Rincon Tribe's gaming operation, including procedures for processing any claims for such money damages. (Exh. 2, p. 31.) The Rincon Tribe has since adopted the Patron Tort Claims Ordinance (the "Ordinance") which authorizes a limited waiver of

its sovereign immunity to suit but only the forum identified in the Ordinance. (Exh. 3, p. 6, § V.) With regard to the proper forum for commencement of Patrons' claims, the Ordinance states:

> The Tribal Court shall have exclusive jurisdiction to adjudicate actions commended pursuant to this Ordinance. At any time after the delivery of a Notice of Claim the Patron may commence suit against the Gaming Operation in Tribal Court.

(Exh. 3, p. 8, § VI(F).)

Here, GIRMAI contends that while she was present at the Casino on September 4, 2009, she sustained an injury as a result of a slip and fall. (Exh. 1, pp. 6-8.) GIRMAI has a legal forum in which to pursue her damages through the Rincon Tribe, and may file a claim with the Rincon Tribe in order to avail herself of this limited waiver of sovereign immunity. (Exh. 3.) GIRMAI has an alternative forum in which she may pursue her claim personal injury damages. Thus, in line with the narrow mandates of the Patron Tort Claims Ordinance, this Court should dismiss GIRMAI's Complaint so the issue of jurisdiction may be properly decided in the first instance by the Rincon Tribe.

IV.

THIS COURT LACKS PERSONAL JURISDICTION OVER *SPECIALLY APPEARING* DEFENDANTS

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 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).)

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"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., supra*, 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 Consol. Mining Co.*, 342 U.S. 437, 445-446 (1952); *see also, Helicopteros Nacionales de Colombia 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 evidence that the defendant has purposefully availed itself of forum benefits and the "controversy is related to or arises out of a defendant's contacts with the forum." (*Burger King Corp. v. Rudzewicz*, 471 U.S. 462 at 472-473 (1985); *Helicopteros, supra,* 466 U.S. at 414.)

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

1) The nonresident must engage in an act, consummate a transaction, or perform an act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;

2) The lawsuit must arise out of the nonresident's forum-related activities; and

3) The exercise of jurisdiction must be fair and reasonable.

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

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

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

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As with any standard that requires a determination of "reasonableness," the "minimum contacts" test of *International Shoe* is not to be applied mechanically. Rather, a court must weigh the facts of each case. (*Kulko, supra*, 436 U.S. at 92, 98.) Furthermore, as explained by the United States Supreme Court, each individual has a liberty interest in not being subject to the judgments of a forum with which he or she has established no meaningful minimum "contacts, ties, or relations." (*Burger King Corp., supra,* 471 U.S. at 471-472, *quoting International Shoe, supra,* 326 U.S. 310, 319.) As a matter of fairness, a defendant should not be "hailed into a jurisdiction solely as the result of 'random,' 'fortuitous,' or 'attenuated' contacts." (*Id.* at 475.)

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

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

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

B. *Specially Appearing* Defendants Utterly Lack Sufficient Contacts With California To Be Brought Before The Court Under Either A Theory of General or Specific Jurisdiction.

1. *Specially Appearing* Defendants Lacks Continuous and Systematic Contacts With California.

As noted above, a Court may exercise general jurisdiction over a defendant who has substantial, continuous, and systematic contacts with the forum state. (*Helicopteros, supra,* 466 U.S. at 414-415.) Here, *Specially Appearing* Defendants utterly lack sufficient contacts with California to support this Court's assertion of general jurisdiction over them. *Specially Appearing* Defendant Harrah's Rincon Casino and Resort is not even a legal entity. (Holloway Decl., ¶ 2.) The casino known as "Harrah's Rincon Casino & Resort" is located on the reservation of the Rincon San Luiseno Band of Mission Indians, a federally-recognized sovereign Indian tribe. (*Id.*) The Casino is owned, controlled, and operated by the Rincon Tribe. (*Id.*)

Moreover, *Specially Appearing* Defendants Caesars Entertainment Corporation, Inc., and Caesars Entertainment Operating Company, are Delaware corporations with their principal places of business located in Las Vegas, Nevada. (Holloway Decl., ¶¶ 4-5.) Neither *Specially Appearing* Defendant Caesars Entertainment Corporation, Inc., nor *Specially Appearing* Defendant Caesars Entertainment Operating Company, has offices in California. (*Id.*) They do not own property in California; do not have employees in California; and they do not conduct business in California.

(*Id.*) Additionally, *Specially Appearing* Defendant Caesars Entertainment Corporation, Inc. does not have an agent for service of process in California. (Holloway Decl., ¶ 4.)

None of the *Specially Appearing* Defendants have case-related contacts with California in this matter, and GIRMAI cannot, and has not, presented admissible evidence that would suggest otherwise. Accordingly, *Specially Appearing* Defendants have absolutely no systematic and continuous contacts with California which would justify this Court's exercise of general jurisdiction over them. *(Helicopteros, supra,* 466 U.S. at 414-415.)

2. This Court May Not Exercise Specific Jurisdiction Over *Specially Appearing* Defendants.

None of the *Specially Appearing* Defendants own or operate the Casino; the Rincon Tribe owns, controls, and manages the Casino in compliance with the IGRA sponsored Tribal-State Gaming Compact. (Exh. 2; Holloway Decl., ¶ 2.) The Rincon Tribe owns and controls the Casino pursuant to a management agreement between the Rincon Tribe and HCAL, LLC. (*Id.* at ¶ 3.)

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

Subjecting *Specially Appearing* Defendants to personal jurisdiction in California under these circumstances would place an enormous burden on *Specially Appearing* Defendants. 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 the plaintiff to control where a defendant could be sued. Personal jurisdiction must focus on a defendant's contacts with a given forum, not simply were a plaintiff is located. *(Calder v. Jones,* 465 U.S. 783 (1984); *Helicopteros, supra,* 466 U.S. at 416-417.) In this case, *Specially Appearing* Defendant Harrah's Rincon Casino and Resort is not even a legal entity, and therefore has no contacts with California. (Holloway Decl., ¶ 2.) The Casino is entirely controlled by the Rincon Tribe. (*Id.*) Equally important is the fact that *Specially Appearing* Defendants Caesars Entertainment Corporation, Inc. and Caesars Entertainment Operating Company are Delaware corporations with their principal places of business located in Las Vegas, Nevada. (Holloway Decl., ¶¶ 4-5.) Neither *Specially Appearing* Defendants Caesars Entertainment Corporation, Inc., nor *Specially Appearing* Defendant Caesars Entertainment Operating Company, has offices in California. (*Id.*) They do not own property in California; do not have employees in California; and they do not conduct business in California. (*Id.*) Additionally, *Specially Appearing* Defendant Caesars Entertainment Corporation, Inc. does not have an agent for service of process in California. (Holloway Decl., ¶ 4.)

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, GIRMAI's case must be dismissed for lack of personal jurisdiction.

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V.

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

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

A. The Rincon 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:

> (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.(F.R.Civ.P. 19(a).)

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

B. The Rincon Tribe is An Indispensable Party

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

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

Specially Appearing Defendants will certainly be prejudiced as a result of the Rincon Tribe not being joined to this action. GIRMAI's Complaint alleges obligations purportedly owed by the Rincon Tribe, for which the Rincon Tribe has defenses, and it is not *Specially Appearing* Defendants' obligation to defend those claims. *Specially Appearing* Defendants would be prejudiced significantly if forced to take a position potentially in conflict with that of the Rincon Tribe because the Rincon Tribe is not a party to this action and is unable to defend itself. (Exh. 3, p. 6 § V.) Moreover, there is a potential that an unfavorable ruling or judgment may be entered against *Specially Appearing* Defendants, if forced to defend not only its own interests, but those of the Rincon Tribe. This prejudice is sufficient to warrant dismissal of this action under Rule 19(b. (*Lucero v. Lujan,* 788 F.Supp. 1180, 1183 (D.N.M. 1991), *aff'd,* 959 F.2d 245 (10th Cir. 1992).)

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Thus, the Rule 19(b) factors weigh strongly in favor of a finding that the Rincon Tribe is an indispensable party to this action. Because the Rincon Tribe has sovereign immunity and cannot be named or joined, this action must be dismissed and allowed to proceed pursuant to the procedures in place under the IGRA sponsored Tribal-State Gaming Compact and the Patron Tort Claims Ordinance. Additionally, GIRMAI has an alternative forum to pursue her claims under the procedures in place pursuant to the IGRA sponsored Tribal-State Gaming Compact and the Patron Tort Claims Ordinance. (Exhs. 2, 3.)

VI.

GIRMAI FAILS TO STATE A PROPER CLAIM UPON WHICH RELIEF MAY BE GRANTED

Even if the Court did have subject matter jurisdiction over GIRMAI's claim, this case should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, as GIRMAI has not alleged a valid claim upon which relief could be granted against any *Specially Appearing* Defendant. The Casino is located on the Reservation of the Rincon San Luiseno Band of Mission Indians, a federally-recognized sovereign Indian Tribe, and is owned and operated by the Rincon Tribe under the Indian Gaming Regulatory Act, as well as the IGRA-sponsored Tribal-State Gaming Compact between the Rincon Tribe and the State of California. (Holloway Decl., ¶ 2.)

Specially Appearing Defendants owe GIRMAI no duty of care, because as noted above, GIRMAI has named a non-legal entity, as well as two additional entities who do not own, operate, or manage the Casino. (*Id.*) The Rincon Tribe owns and operates the Casino which is located on its land. (*Id.*) The Rincon Tribe owns and controls the Casino. (*Id.* at ¶ 3.) Thus, GIRMAI's claims fail as a matter of law against *Specially Appearing* Defendants and her Complaint must be dismissed.

VII.

CONCLUSION

The law is clear that GIRMAI's claims must be brought, not in this Court, but before the Rincon Tribe based on the doctrine of sovereign immunity and the IGRA sponsored Tribal-State Gaming Compact because the Court lacks personal jurisdiction over *Specially Appearing* Defendants. Additionally, the Rincon Tribe is a necessary and indispensable party that cannot be joined. Finally, GIRMAI has failed to state a claim upon which relief can be granted. For all of these reasons, *Specially Appearing* Defendants respectfully request that the Court dismiss this action pursuant to Rule 12(b)(1), (2), (6) and (7).

DATED: November 10, 2011

STOKES ROBERTS & WAGNER

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