

James Nasella Jr.
1423 Winchester Avenue
Glendale, CA 91201
818-241-3828
Pro Per

FILED

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY Law DEPUTY
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JAMES NASELLA JR.,

Plaintiff,

vs.

THE BARONA VALLEY RANCH

RESORT AND CASINO,

Defendant

) Case No. **12CV2102 BEN JMA**

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BREACH OF TRIBAL COMPACT

WITH THE STATE OF CALIFORNIA

WRONGFUL DEATH

JURY TRIAL DEMANDED

INTRODUCTION

1. No one would think it fair if a court would allow a defendant who is being accused of a wrongful act, to also act as the jury, to be the final judge of whether that defendant has done wrong or not. A court cannot be fair if the defendant is the Jury. Yet this is exactly how the Barona Tribal Court, the only forum where a person can bring a personal injury suit against the Tribe, is set up. The Jury, who decides what party is correct when the Tribe is being sued is composed only of two members of the Tribal Council. This is true even though the Tribe, on Oct. 6, 1999, signed an agreement with the State of California, promising that all Tort claims, including

1 personal injury claims, would be "fairly adjudicated"(Tribal
2 Compact, sec.10.2(d)).(Exhibit A)

3
4 2. Because the Tribe has promised to be fair when
5 deciding tort cases, and because the Tribe only allows members
6 of its own elected Council to be the jury in these cases, and
7 hires its own judge, the Tribal court is, on its face, unfair.
8 Thus, the Tribe knows or should know that it has ignored its
9 promise to the State of California since it made it thirteen
10 years ago. The very principle of the agreement is subverted.

11
12 3. The Plaintiff in this case has previously brought an
13 action in the Barona Court, and the Court very obviously and
14 arbitrarily ruled against the Plaintiff. Because the rules of
15 that same Compact assert that any breach of the Compact signed
16 with the State may only be brought in Federal Court, and because
17 the Barona Valley Ranch of Tribal Indians has breached its
18 promise made in that Compact simply by the very structure of its
19 Tribal Court, the Plaintiff, James Nasella Jr., Pro Per, now
20 brings this action asking for four remedies 1) enjoining the
21 Barona Valley Court to cease and desist as it now exists
22 2)remanding this present case back to the Barona Valley Court's
23 jurisdiction but only if that Court is reconstituted so that it
24 is "fairly adjudicated" as the Compact with the State of
25 California prescribes, the Judge or Arbitrator chosen by mutual

1 consent of the parties and the case decided by a Jury chosen
2 from the general population - not elected Council members of the
3 Tribe, who, by definition, cannot be expected to be impartial.

4 (3) Remanding this action to the Superior Court of California.

5 (4) On broader law, discarding, what U.S. Supreme Court Justice
6 John Paul Stevens, has called, "a concept founded upon an
7 anachronistic fiction" when Tribal Immunity is applied to cases
8 between a tribe and an outside party involved in a commercial
9 transaction. (Oklahoma Tax Commission v Citizens Band,
10 Potawatomi Indian Tribe of Oklahoma Concurring Opinion U.S.
11 1991)

12 13 JURISDICTION AND VENUE

14 4. Jurisdiction derives from case law (Kiowa Tribe
15 of Oklahoma v Manufacturing Technologies, Inc U.S. 1998) which
16 states that a tribe claiming Sovereign Immunity is subject to
17 suit only where Congress had so authorized or *where the tribe*
18 *has waived its immunity by consenting to suit.* (italics mine.)
19 The Barona Band effectively waived its immunity when it signed
20 the Tribal Compact with the State of California in 1999. In
21 that Compact the Tribe "consented to suit" when it promised to
22 "adopt and make available to patrons a tort liability
23 ordinance..... under which the Tribe waives immunity to suit for
24 money damages..." (Compact Sec 9.4, (3) (d)). (Exhibit A)

1 5. Regarding venue, the Compact states "Disagreements that
2 are not otherwise resolved by arbitration or other mutually
3 accepted means may be resolved in the United States District
4 Court where the Tribe's gaming facility is located..." (Compact
5 9.1 (d) (Exhibit A) Because all administrative remedies allowed
6 in the Compact have been exhausted through the Tribal Court and
7 because a letter mailed to the Tribe by Plaintiff seeking
8 arbitration was rejected by the Tribe, the U. S. Federal Court
9 of California, the Southern District located in the same area as
10 the Tribal gaming facility is the proper jurisdiction and venue
11 for this suit. (Exhibits B & C)

12
13
14 **PARTIES**

15 6. Plaintiff James Nasella, Jr. is the son of Ruth Nasella,
16 now deceased. He was a Plaintiff in a wrongful death suit
17 concerning his mother who fell in the Barona Casino, and for
18 which the Barona Tribe was the Defendant. That case was tried in
19 the Barona Valley Court and decided in November of 2010. The
20 structure of that Court, and composition of its Judge and Jury
21 is the subject matter of this case.

22
23 7. Defendant, Barona Band of Mission Indians, is the owner
24 of the Barona Valley Ranch and Casino. It was in that Casino
25 that Ruth Nasella, who was then 84 years old, fell while trying

1 to alight from a stool in front of a slot machine. The Barona
2 Band is the owner and occupier of the Casino where the initial
3 incident of this action occurred, Ruth Nasella's fall. Moreover,
4 it is the Barona Valley Tribal Court and its structure, which
5 encourages unfairness, that is the subject matter of this
6 present suit.

7
8
9 **FACTUAL ALLEGATIONS**

10 8. On March, 2006 Ruth Nasella, while playing at a slot
11 machine at the Barona Casino, was trying to alight from a stool
12 she had been sitting on, when she fell, a distance of five to
13 six feet, her head and face striking the rug covered cement
14 floor. The Casino possesses a security video of this event.

15
16 9. A few days after the fall, Ruth Nasella filed a
17 complaint for damages from the Casino's insurer, Tribal First.
18 That claim was denied. The insurer, which seems to be but an
19 extension of the Tribe, claimed that if any negligence occurred
20 it was caused by Ruth Nasella, the injured party.

21
22 10. In May of 2007, one year and two months
23 after her fall at Barona, Ruth Nasella died. Her attending
24 physician at her death, Dr. Blaine Jackson, specified that her
25 fall at the Casino caused her resultant brain injury and

1 dementia and was a substantial factor in her surprising,
2 unexpected decline and premature death. In the weeks before her
3 death, Ruth Nasella was diagnosed by Dr. Jaffe, a psychiatrist
4 who specializes in dementia, with end-stage dementia caused by
5 the trauma of the fall.

6
7 11. Immediately after Ruth Nasella's fall, Plaintiff and
8 his mother had sought legal advice and were told by more than
9 one legal referral service, that no lawyer would take on a case
10 in the Barona Court. The reason was because there was very
11 little possibility of obtaining a favorable and fair decision by
12 that court.

13
14 12. Plaintiff along with his Siblings filed a pro
15 per complaint in the Barona Valley Court for wrongful death, the
16 only Court available.

17
18 13. During the preliminary phase of those proceedings
19 Plaintiffs filed a motion to have the case tried by an
20 independent arbitrator because the very structure of the Barona
21 Court, where two members of the Tribe, elected Tribal Council
22 Members, act as the Jury and the Tribe hires its own Judge,
23 Gregg Reylea, who had been previously employed by the tribe and
24 was beholden to the tribe for his employment, is on its face,
25 not a forum where a claim can be "fairly adjudicated", as the

1 Compact asserts. The motion claimed that that unfairness
2 violated the Tribal Compact. That motion, without comment, was
3 summarily denied by the Judge Reylea.
4

5 14. During the trial, Plaintiffs presented evidence which
6 demonstrated that:

7 A) Ruth Nasella had complained to the Casino about the
8 height of the stools, giving the Casino notice previous to her
9 fall.

10 B) That the height of the stools was not necessary
11 given the slot machines size, but that the primary reason the
12 stools were higher than a chair of normal height was because it
13 afforded "visibility" of the slot machines to passers by at eye
14 level, that is, enticing them to stop and gamble

15 C) That the average age of gamblers in general had
16 risen dramatically from the time when stools had first been used
17 for slot machines,

18 D) That an older person, especially one who is 84
19 years old, generally has more difficulty climbing up on and
20 down from a stool than a younger person and

21 E) That Ruth Nasella's fall led to the almost
22 immediate decline in her health causing her premature death one
23 year later and the pain and suffering of the intervening time
24 period. And therefore:
25

1 F) That because the height of the stools were not
2 necessary and constituted a danger to older persons and had
3 caused Ruth Nasella's damages and death, Barona was liable to
4 Ruth Nasella's Estate and her family.

5
6 15. During the trial and its preliminary phase, Judge
7 Reylea made several decisions which were severely prejudicial to
8 the Plaintiffs. These were:

9 A. ALLOWING DEFENDANT TO BE REPRESENTED BY AN
10 ATTORNEY WHILE PLAINTIFF WAS NOT - EVEN THOUGH THE
11 BARONA CODE OF CIVIL PROCEDURE STATED OTHERWISE.

12 PART I Sec 1 A of the Barona Code of Civil Procedure
13 stated at the time, "If a Claimant is not represented
14 by an attorney, the Defendant will also not be permitted to be
15 represented by counsel..." (Exhibit D)

16 Judge Reylea's interpretation of that rule was that the
17 words meant that Barona had the *option* of having its own
18 attorney if Plaintiff did not. The words of the Code indicating
19 that Barona "will also not be permitted to be represented by
20 counsel" cannot be interpreted to mean that Barona had the
21 "option" of choosing to be represented by Counsel. The meanings
22 of having an "option" or choice and "will not per permitted" are
23 phrases that are directly opposite in meaning. This ruling
24 serves to illustrate how Barona's rules for fairness were
25 constantly changed by the Judge to serve Barona's interests.

1 B. MUCH OF THE TIME FOR PRETRIAL DISCOVERY WAS SPENT BY
2 PLAINTIFF'S TRYING TO OBTAIN A COPY OF THE SECURITY VIDEO, WHICH
3 SHOWS RUTH NASELLA'S FALL. THE MOTION WAS DENIED BECAUSE
4 BARONA'S SUPERVISOR FOR LOSS PREVENTION COULD NOT REMEMBER THE
5 CASINO EVER HAVING RELEASED SUCH A VIDEO.

6
7 Plaintiffs were only allowed to see the video by travelling
8 to the Casino (a 300 mile round trip) and viewing it under
9 "supervised conditions". Trying to coordinate schedules for
10 such an undertaking, not being able to run the tape back and
11 forth at will, made studying the video very difficult and next
12 to impossible. During the trial, it was revealed inadvertantly
13 by the Barona Representative that it may have been possible to
14 obtain a copy of the video if permission had been asked of the
15 Gambling Commission.

16 The significance of the video, slowing it down, was
17 important in judging what actually occurred during Ruth
18 Nasella's fall and what what caused it. It was also significant
19 in identifying witnesses to the fall. All of this was prevented
20 by the lack of availability of the video. Yet, in reality having
21 a copy of the video did no more to violate Casino security
22 issues or trade secrets (objections made by Barona) than merely
23 walking into the Casino and having a live look.

1 C. JUDGE REYLEA ABRUPTLY HALTED DISCOVERY AND RUSHED THE
2 TRIAL'S BEGINNING WITH THE STATEMENT THAT "PLAINTIFF'S HAD SEEN
3 THE VIDEO ENOUGH"

4
5 Plaintiffs had not seen the video enough. Moreover,
6 Plaintiffs never had an opportunity to study the video, or hire
7 an expert to do so, though Plaintiff's had enquired from a
8 physical therapist who deals with older persons whether it was
9 dangerous for an 85 year old person to climb up and down on a
10 stool one foot above the floor and were told, "Isn't it
11 obviously dangerous?"

12 Also the sudden rush to commence the trial, prevented
13 Plaintiff's from identifying any witnesses to the fall (ie.
14 Casino Employees), who might have seen what occurred or had
15 conversations with those who had seen what occurred or had
16 conversations with those involved in the fall.

17 After a five day trial, the Court, whose decision, without
18 comment or explanation, was voted on by the two Tribal Council
19 members and judge Reylea, was that the Plaintiffs did not prove
20 "negligence." There was no explanation for the decision.

21
22 **REQUEST FOR RELIEF**

23 15. Plaintiff requests that the action be remanded to the
24 California Superior Court, where it should have been in the
25 first place. Barring that, Plaintiff requests that the case be
remanded back to the Barona Court, but only if that Court be

1 enjoined from operating as it now does, which is in an unfair
2 manner, and that it either operate with an arbitrator or judge
3 chosen with the consent of both parties and a jury of citizens
4 from the population at large-not Members of the Tribal Council.

5
6 **CONSTITUTIONAL ISSUE - SOVEREIGN IMMUNITY**

7 16. The Defendant, Barona, will argue that according to
8 the Compact signed with the State of California, only the State
9 of California may sue for breach of the Compact. Yet, as a
10 practical fact, the State of California will rarely if ever be a
11 plaintiff in the Barona Court. Practically speaking, only
12 individuals are plaintiffs in that Court. But, according to the
13 Compact, individuals cannot claim a breach of the Compact, even
14 though there exists, in the structure of that Court, a blatant,
15 public and obvious breach by Barona of the Compact they signed
16 with the State of California. (Though Plaintiff claims as an
17 Agent or Citizen of the State of California, he does represent
18 the State) As stated above, Plaintiff had been told that it was
19 common knowledge among lawyers that an injured party stood no
20 chance of prevailing in the Barona Court.

21 17. Underlying the many impediments to a fair judicial
22 hearing by parties injured by the Tribe's negligence or
23 contract breaches is the legal idea of "Tribal Immunity"
24 a concept whose validity should lapse, whenever a Tribe no
25 longer needs special protection and becomes a major participant

1 in the commerce of the United States. According to United States
2 Supreme Court Justice, Anthony Kennedy, regarding Tribal
3 Immunity....

4
5 "There are reasons to doubt the wisdom of perpetuating the
6 doctrine. At one time, the doctrine of tribal immunity from
7 suit might have been thought necessary to protect nascent
8 tribal governments from encroachments by States. In our
9 interdependant and mobile society, however, tribal immunity
10 extends beyond what is needed to safeguard tribal self-
11 governance. This is evident when tribes take part in the
12 Nation's commerce. Tribal enterprises now include ski
13 resorts, gambling and sales of cigarettes to non-Indians..
14 In this economic context, immunity can harm those who..
15 do not know of tribal immunity, or who have no choice in
16 the matter, as in the case of tort victims" (Kiowa Tribe of
17 Oklahoma v. Manufacturing Technologies U.S., 1998)

18 18. The Barona Ranch and Casino, a multi-million dollar a
19 year enterprise, has long passed the time when it's nascent
20 "tribal government" has needed the special Federal protection
21 of Sovereign Immunity, especially against individual members of
22 the Public at large. The pendulum has swung the other way.
23 An Individual, like Ruth Nasella, has much less power when
24 compared to the tribe and is legally unsuspecting, when he walks
25 into the Barona Casino and, as it now stands, may suffer injury
because of Barona's negligence but have no recourse beyond the
(*prima facie*) unfair Barona Court. The public at large have
become victims because the machinery of their government,
legislative and judicial, State and Federal, have lacked the
foresight to protect them on the Barona Reservation in the same
legal manner they expect to be protected on the streets of their
own cities and states. These are the citizens who have "no

1 choice", the unsuspecting "tort victims" as Justice Kennedy has
2 specified above in Kiowa Tribe.

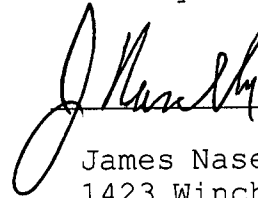
3
4 **CONCLUSION**

5 At the moment, hundreds of Individuals a day visit the
6 Barona Casino. They are, as Ruth Nasella was, the only
7 Protection they have from injury due to Barona's negligence is
8 the judgement of the Tribe itself in its Tribal Court. Because
9 individuals are not given the right to sue the Tribe in any
10 Court because the Compact does not specifically give it. (Except
11 as in this case the Plaintiff is an "Agent" of the State of
12 California because it is a Citizen of that State), individuals
13 have no recourse to appeal a judgement of the Court. And the
14 Tribe has cynically taken advantage of this lack of a way of
15 Appeal by knowingly violating the Compact. The Tribal Court is
16 not "fair". Nor did it act fairly in this case.

17 Courts have hesitated to act in a case by an Individual
18 Because they have waited for guidance from the legislature.
19 Still, it could not have been the intention of the legislatures,
20 Of the Federal or State Government or the Governor of the State
21 of California that individuals would be allowed to use Indian
22 Casinos without tort protection. That intention by the
23 legislative and executive branches of the government can be
24 reasonably surmised by the Court so that this illegal breach of
25 the Compact may be remedied and the Citizenship at large may

1 obtain the legal protection and orderliness they have come to
2 expect from their government.
3
4
5
6
7

8 Dated this 27th day of August,
9 2012

10 

11 James Nasella Jr.
12 1423 Winchester
13 Avenue
14 Glendale, CA 91201
15 818-241-3828
16
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25

Exhibit A

TRIBAL-STATE COMPACT
BETWEEN
THE STATE OF CALIFORNIA
AND THE
BARONA BAND OF MISSION INDIANS

Exhibit A

effective, but may be re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections, and thereafter submitted to the Tribe for comment as provided in subdivision (c).

(e) The Tribe may object to a State Gaming Agency regulation on the ground that it is unnecessary, unduly burdensome, or unfairly discriminatory, and may seek repeal or amendment of the regulation through the dispute resolution process of Section 9.0.

Sec. 9.0. DISPUTE RESOLUTION PROVISIONS.

Sec. 9.1. Voluntary Resolution; Reference to Other Means of Resolution. In recognition of the government-to-government relationship of the Tribe and the State, the parties shall make their best efforts to resolve disputes that occur under this Gaming Compact by good faith negotiations whenever possible. Therefore, without prejudice to the right of either party to seek injunctive relief against the other when circumstances are deemed to require immediate relief, the parties hereby establish a threshold requirement that disputes between the Tribe and the State first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions, and conditions of this Gaming Compact, as follows:

(a) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.

(b) The parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than 10 days after receipt of the notice, unless both parties agree in writing to an extension of time.

(c) If the dispute is not resolved to the satisfaction of the parties within 30 calendar days after the first meeting, then either party may seek to have the dispute resolved by an arbitrator in accordance with this section, but neither party shall be required to agree to submit to arbitration.

(d) Disagreements that are not otherwise resolved by arbitration or other mutually acceptable means as provided in Section 9.3 may be resolved in the United States District Court where the Tribe's Gaming Facility is located, or is to be located, and the Ninth Circuit Court of Appeals (or, if those federal courts lack jurisdiction, in any state court of competent jurisdiction and its related courts of appeal). The disputes to be submitted to court action include, but are not limited to, claims of breach or violation of this Compact, or failure to negotiate in good faith as required by the terms of this Compact. In no event may the Tribe be precluded from pursuing any arbitration or

herein shall be construed as submission of the Tribe to the jurisdiction of those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(c) Comply with the building and safety standards set forth in Section 6.4.

(d) Carry no less than five million dollars (\$5,000,000) in public liability insurance for patron claims, and that the Tribe provide reasonable assurance that those claims will be promptly and fairly adjudicated, and that legitimate claims will be paid; provided that nothing herein requires the Tribe to agree to liability for punitive damages or attorneys' fees. On or before the effective date of this Compact or not less than 30 days prior to the commencement of Gaming Activities under this Compact, whichever is later, the Tribe shall adopt and make available to patrons a tort liability ordinance setting forth the terms and conditions, if any, under which the Tribe waives immunity to suit for money damages resulting from intentional or negligent injuries to person or property at the Gaming Facility or in connection with the Tribe's Gaming Operation, including procedures for processing any claims for such money damages; provided that nothing in this Section shall require the Tribe to waive its immunity to suit except to the extent of the policy limits set out above.

(e) Adopt and comply with standards no less stringent than federal workplace and occupational health and safety standards; the Gaming Operation will allow for inspection of Gaming Facility workplaces by state inspectors, during normal hours of operation, to assess compliance with these standards, unless inspections are regularly made by an agency of the United States government to ensure compliance with federal workplace and occupational health and safety standards. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(f) Comply with tribal codes and other applicable federal law regarding public health and safety.

(g) Adopt and comply with standards no less stringent than federal laws and state laws forbidding employers generally from discriminating in the employment of persons to work for the Gaming Operation or in the Gaming Facility on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability; provided that nothing herein shall preclude the tribe from giving a preference in employment to Indians, pursuant to a duly adopted tribal ordinance.

(h) Adopt and comply with standards that are no less stringent than state laws prohibiting a gaming enterprise from cashing any check drawn against a federal, state,

Exhibit A

IN WITNESS WHEREOF, the undersigned sign this Addendum on behalf of the State of California and the Barona Band of Mission Indians.

STATE OF CALIFORNIA

Gray Davis

By Gray Davis
Governor of the State of California

Executed this 8th day of October,
1999, at Sacramento, California.

**BARONA BAND OF MISSION
INDIANS**

Cliff M. LaChappa /s/

By Clifford M. LaChappa, Sr.
Chairperson of the Barona Band of
Mission Indians

Executed this 6th day of October,
1999, at Barona Indian, California.
Reservation

Exhibit B

April 12, 2011

The Barona Band of Mission Indians Tribal Office
1095 Barona Road
Lakeside, CA 92040

Attention: Loss Prevention Manager

To Whom It May Concern

I object to the decision and the composition of the The Barona Tribal Court as I experienced them during the case, The Children of Ruth Nasella v Barona, which ended in November of 2010. As an agent, citizen, of the State of California, I assert that the Barona Band has breached the Tribal Compact it signed with the State of California because it did not "...fairly..." adjudicate Plaintiffs' ("...patrons' claims..."), (Barona Compact with the State of California 10/10/1999 Sec. 10.2 (d). In order to remedy my damages I ask for "...good faith negotiation..." with the Barona Band or "... arbitration... "as specified in the Compact. (Compact Sec. 9.1 (b) (c))

LEGAL BASIS FOR THIS DEMAND LETTER

The Compact mentioned above provides in the event of a Dispute between the State of California and the Tribe that the parties participate in good faith negotiation to come to a Voluntary Resolution. (Compact Sec 9.1) and a) a..." party shall give to the other.... a written notice setting forth....the issues to be resolved." And b)" The parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not less than ten days after receipt of the notice...."

And sec 9.1 c) If the dispute is not resolved to the satisfaction of the parties within 30 Calendar days after the first meeting, then either party may seek to have the dispute resolved by an arbitrator in accordance with this section, but neither party shall be required to submit to arbitration."

ISSUES TO BE RESOLVED

Structures of the Barona Tribal Court which are Unfair to a Plaintiff and are a Breach of the Compact

1. The Tribal Court hires its own judge, who has been a judge before for the Tribe and is dependent on the Tribe's approval for future employment as a Judge. This paid employee makes critical substantive decisions during a trial and pretrial, but, worse, takes part and presumably votes on the final decision of the Court.

Exhibit C



April 28, 2011

James Nasella, Jr.
1423 Winchester Ave.
Glendale, CA 91201

Dear Mr. Nasella:

Your letter of April 12, 2011 has been received and reviewed.

You cite Section 9.1 of the Barona Band of Mission Indians' compact with the state of California, to support your claims. You misinterpret this section. The first sentence of Section 9.1 states, "In recognition of the government-to-government relationship of the Tribe and the State, the parties shall make their best efforts..." This section refers only to disagreements between the Tribe and the State, not to third party tort claims, such as yours.

Your reliance on the U.S. Constitution is likewise misguided. The U.S. Constitution does not apply to Indian tribes. *U.S. v. Percy* (9th Cir. 2001) 250 F.3d 720. *Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 98 S.Ct. 1670.

Lastly, pursuant to tribal sovereign immunity principles, an Indian tribe is subject to suit only where Congress has so authorized or where the Tribe has waived its immunity by consenting to suit. *Kiowa Tribe of Okla. v. Manufacturing Technologies, Inc.* (1998) 523 U.S. 751, 118 S.Ct. 1700. Absent such authorization or consent, the courts do not have subject matter jurisdiction over suits against a tribe. Barona has waived sovereign immunity only in its own forum. The tribe did not waive its sovereign immunity, either in the Compact or in its Tort Claims Ordinance, to a suit against it in state court for tort claims. *Lawrence v. Barona* (2007) 153 Cal App 4th 1364.

You had your day in court. We are now considering this matter closed. Any attempts to relitigate this case, will be vigorously opposed.

Sincerely,

Kathryn Clenney
Tribal Attorney

Exhibit D

BARONA BAND OF MISSION INDIANS

CODE OF CIVIL PROCEDURE

PART I - SELF-REPRESENTED CLAIMANTS

Section 1 - Applicability

- A. These procedures only apply to Claimants that wish to represent themselves. If a Claimant is not represented by an attorney, the Defendant will also not be permitted to be represented by counsel, but the agency or enterprise may be represented by an employee, or by a Claims Adjustor retained by Tribal First.
- B. If the Claimant retains counsel, the Code of Civil Procedure for Claimants Represented by Counsel is applicable.

Section 2 - Initiating an Action

- A. A case may be initiated, pursuant to the Barona Band of Mission Indians Tort Claims Ordinance, by forwarding a Notice of Appeal and a \$50 check made payable to the Barona Band of Mission Indians, to Kathryn Clenney, Esq., Law Offices of Art Bunce, P.O. Box 1416, Escondido, California 92033-1416, with a copy to the tribal enterprise against which the claim is made.
- B. The Defendant shall file Notice of Response at the address specified in Section 1(A) above, with a copy served upon the Plaintiff within 30 days of receipt.

Section 3 - Filing Fees

Notices of Appeal filed with the Barona Tribal Office must be accompanied by a filing fee of \$50 payable to the Barona Band of Mission Indians. Filing fees may be paid by personal check, cashier's check or money order.

Section 4 - Interpreters

English is spoken in Barona Tribal Court. If an interpreter is needed, this service shall be the Claimant's sole responsibility.

Section 5 - Case Management Conference

- A. The Barona Tribal court shall calendar a Case Management Conference to take place within 60 days of receipt of the Defendant's Response to Notice of Appeal. The conference may take place telephonically.

Exhibit B

April 12, 2011

The Barona Band of Mission Indians Tribal Office
1095 Barona Road
Lakeside, CA 92040

Attention: Loss Prevention Manager

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ISSUES TO BE RESOLVED

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1. The Tribal Court hires its own judge, who has been a judge before for the Tribe and is dependent on the Tribe's approval for future employment as a Judge. This paid employee makes critical substantive decisions during a trial and pretrial, but, worse, takes part and presumably votes on the final decision of the Court.

Exhibit B

2. As the Court is structured members of the Tribal Council act as the Jury. Since the Articles of Confederation(1777), based on the English Common Law, the Framers of the American Constitution through the Seventh Amendment and later the Federal Rules of Civil Procedure (38) (foot note #1) and the U. S. Supreme Court (Beacon Theaters v Westover & Baylis v Traveler's Ins.) the American Legal System has jealously guarded the right of a person to have an independent jury of citizens in civil and criminal cases in order to insure the fairness of the judicial system. The tradition is continued in California Statute. It is doubtful a court in the United States would consider a jury of Council Members, who actually represent the Defendant a "fair" or even a Constitutionally valid jury. The Seventh Amendment guarantees a Jury to a Plaintiff who seeks legal (money) damages. Because Children v Barona was a case for personal injury and wrongful death and because it asked for as a remedy, money, or legal damages it is a case exactly covered by the Seventh Amendment. Because the structure of the Barona Court violates the Seventh Amendment of the U.S. Constitution, it is doubtful that any Federal or State Court in California would find the structure of the Barona Tribal Court fair. Therefore Barona has breached its duty to deal "fairly" with a "patron's" claim, and therefore breached its agreement with the State of California.

Specific Decisions made by the Court in Plaintiffs Case Which Were Unfair Breaching the Compact

1. When Plaintiff first filed his action in the Barona Valley Court, Rule XII of Barona Tort Claims Ordinance (9/28/04), which governed trials in the Court stated, "Parties may be represented by counsel if they so desire, however, representation is not required. If a plaintiff is not represented by counsel, the Tribe, its representatives and officers shall also not be represented by counsel." Judge Reylea, Judge in this case, ruled that Barona could be represented by counsel because the rule, as he interpreted it, meant that if the plaintiff was not represented by counsel, as we were not in this case, Barona still had the option of hiring counsel, which Barona did. To read Rule XII "shall not be represented by counsel" to mean the Tribe could be represented if it wanted to is simply an almost opposite interpretation of its obvious meaning. The decision on the application of this rule is emblematic of the lack of professionalism in the judicial decisions made in this case. Decisions were not made based on law; decisions were made on the basis of what benefited the Barona Tribe.

Footnote 1

U.S. Constitution Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..."

Federal Rules of Civil Procedure 38

a) Right Preserved

The right of a trial by jury as declared by the Seventh Amendment to the U.S. Constitution is preserved.

2. Plaintiff's were denied the benefit a receiving a copy of the Security DVD which showed my mother's fall. The Barona Court Rules of Civil Procedure allow a copy to be provided with a "court order". Plaintiff's applied for a Court order and after several months Judge Reylea denied that application because Plaintiffs had seen the DVD "enough". In order to view the DVD Plaintiff James Nasella Jr. had to travel 300 miles round trip and watch it at the Barona Security trailer. When plaintiffs maintained after the denial that such viewing and study might take months, they were informed that the trial would begin within a few weeks. Plaintiffs were denied access to study the most important evidence of the case. Moreover, as Plaintiffs rushed to gather evidence for trial which was suddenly and unfairly imminent, Defendant's counsel objected to most of Plaintiff's evidence because it was not provided in a timely manner. Most of Plaintiff's evidence was conditionally accepted by Judge Reylea under "advisement." Plaintiffs had no way of knowing whether its validly obtained and relevant evidence was ever actually evaluated by the judge and jury in this case.
3. A Pretrial motion made by plaintiffs to remove the action to an independent arbitrator or another court independent of the tribe because the forum was inherently unfair was dismissed by Judge Reylea with no explanation.
4. At trial, plaintiffs provided ample evidence that:
 1. My mother had given notice to the Casino that the slot machine stool she had to sit on was too high for her age and abilities.
 2. The basic reason for the heights of the slot machines was "visibility" to encourage potential gamblers to use them.
 3. That the height of the stool contributed to her fall.
 4. That patrons at the Barona Casino had grown dramatically older and less physically able to negotiate the height of slot machine stools during the last two decades and that the Casino owed a duty of care to those patrons.
 5. That her fall caused a medically diagnosed "brain trauma", a dementia which handicapped her for the last year of her life.
 6. Through medical testimony by the doctor who treated her after she was hospitalized ten months after she fell, her fall was the contributing factor in her decline and through documentary diagnosis her dementia had developed to "end stage" causing her lack of appetite and inability to move which caused her death.

After this evidence was presented the judge and jury of the Barona Tribal Court decided that the Plaintiffs had not demonstrated that Barona was "negligent" and that Barona was not responsible for my mother's fall and her disability, death and damages. Because the Plaintiff's overwhelmingly proved that Barona was negligent, I object to this decision and demand the remedies for my damages.

Exhibit B

Remedies Demanded INJUNCTION That the Barona Tribal Court cease and desist acting as it now acts, and that its cases be heard by an independent arbitrator as occurs in the cases of other Tribal Nations or that its tort cases be handled in State or Federal Court.

LEGAL DAMAGES The original tabulation of plaintiffs' damages in this case, \$4,263,650.00, which I will share with the original plaintiffs. (I intend to Constitutionally dispute Barona's rule that it is not responsible for exemplary damages.)

REMAND FOR RETRIAL That the case be heard in a forum such as independent arbitration, Federal or State Court as outlined above.

My contention, if I am compelled to pursue this action, will be that the justice as meted out by the Barona court is illusory – that while the form of a court exists – because the defendant in tort cases, the Tribe, controls the judge and the jury is the defendant – there is no compulsion for the finders of fact to judge a case “fairly” and the Tribe thus is breaching its agreement with the State of California as long as the Court exists in its present form. The practical effects of this breach is very dangerous to the Citizens of California who are supposed to be protected by the Compact. In terms of public policy and welfare Californians as patrons of the Casino are unknowingly entering a place where they have no actual legal protection if they are injured. Moreover, it may be only human for the Tribe, in knowing that they have no actual liability, not to be as vigilant as they should be in protecting its patrons from harm.

I would appreciate a written answer to my enquiry. The rules in the Compact allow for a meeting of parties within ten days of receipt of a Party's claims. (My claims) They also allow for the matter to be determined by an Arbitrator within 30 days, though neither party can be compelled to submit to Arbitration. If I have not heard back from the Barona Band within 35 or 40 days, I intend to bring these unresolved issues to another Court – The Compact states that the proper court is the Federal District Court in the District in which the Tribe is located – Federal Court Southern California District (sec 9.1 d)

Sincerely

James Nasella Jr.
1423 Winchester Avenue
Glendale, CA 91201
818-241-3828

Cc: Lynne Beekman

Exhibit C



April 28, 2011

James Nasella, Jr.
1423 Winchester Ave.
Glendale, CA 91201

Dear Mr. Nasella:

Your letter of April 12, 2011 has been received and reviewed.

You cite Section 9.1 of the Barona Band of Mission Indians' compact with the state of California, to support your claims. You misinterpret this section. The first sentence of Section 9.1 states, "In recognition of the government-to-government relationship of the Tribe and the State, the parties shall make their best efforts..." This section refers only to disagreements between the Tribe and the State, not to third party tort claims, such as yours.

Your reliance on the U.S. Constitution is likewise misguided. The U.S. Constitution does not apply to Indian tribes. *U.S. v. Percy* (9th Cir. 2001) 250 F.3d 720. *Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 98 S.Ct. 1670.

Lastly, pursuant to tribal sovereign immunity principles, an Indian tribe is subject to suit only where Congress has so authorized or where the Tribe has waived its immunity by consenting to suit. *Kiowa Tribe of Okla. v. Manufacturing Technologies, Inc.* (1998) 523 U.S. 751, 118 S.Ct. 1700. Absent such authorization or consent, the courts do not have subject matter jurisdiction over suits against a tribe. Barona has waived sovereign immunity only in its own forum. The tribe did not waive its sovereign immunity, either in the Compact or in its Tort Claims Ordinance, to a suit against it in state court for tort claims. *Lawrence v. Barona* (2007) 153 Cal App 4th 1364.

You had your day in court. We are now considering this matter closed. Any attempts to relitigate this case, will be vigorously opposed.

Sincerely,

Kathryn Clenney
Tribal Attorney

Exhibit D

BARONA BAND OF MISSION INDIANS

CODE OF CIVIL PROCEDURE

PART I - SELF-REPRESENTED CLAIMANTS

Section 1 - Applicability

- A. These procedures only apply to Claimants that wish to represent themselves. If a Claimant is not represented by an attorney, the Defendant will also not be permitted to be represented by counsel, but the agency or enterprise may be represented by an employee, or by a Claims Adjustor retained by Tribal First.
- B. If the Claimant retains counsel, the Code of Civil Procedure for Claimants Represented by Counsel is applicable.

Section 2 - Initiating an Action

- A. A case may be initiated, pursuant to the Barona Band of Mission Indians Tort Claims Ordinance, by forwarding a Notice of Appeal and a \$50 check made payable to the Barona Band of Mission Indians, to Kathryn Clenney, Esq., Law Offices of Art Bunce, P.O. Box 1416, Escondido, California 92033-1416, with a copy to the tribal enterprise against which the claim is made.
- B. The Defendant shall file Notice of Response at the address specified in Section 1(A) above, with a copy served upon the Plaintiff within 30 days of receipt.

Section 3 - Filing Fees

Notices of Appeal filed with the Barona Tribal Office must be accompanied by a filing fee of \$50 payable to the Barona Band of Mission Indians. Filing fees may be paid by personal check, cashier's check or money order.

Section 4 - Interpreters

English is spoken in Barona Tribal Court. If an interpreter is needed, this service shall be the Claimant's sole responsibility.

Section 5 - Case Management Conference

- A. The Barona Tribal court shall calendar a Case Management Conference to take place within 60 days of receipt of the Defendant's Response to Notice of Appeal. The conference may take place telephonically.