

RECEIVED
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DEC 04 2013

FILED _____
DOCKETED _____
DATE _____ INITIAL _____

JAMES NASELLA, JR.
1423 Winchester Avenue
Glendale, California 91201

Pro Se

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JAMES NASELLA, JR.)	Case No. 13-56108
)	
Plaintiff - Appellant,)	D.C. No. 3:12-cv-02102-BEN-JMA
)	U.S. District Court of Southern
vs.)	California, San Diego
)	
THE BARONA VALLEY RANCH RESORT)	
)	APPELLANT'S RESPONSE TO
AND CASINO)	APPELLEE'S ANSWER
)	
Defendant - Appellee,)	

Plaintiff, James Nasella, asserts a few answers to
Appellee's Objections.

FEDERAL COURT JURISDICTION

Appellee objects to Federal Court Jurisdiction. However,
the Tribal Compact, which the Barona Tribe has signed, directs
that a breach of that Compact is an action that belongs in the
United States Federal Court nearest the Tribe, here, the
Southern District.

WRONGFUL DEATH IN FEDERAL COURT

Wrongful Death is not a proper action for the subject
matter jurisdiction of a Federal Court. It is proper subject
matter jurisdiction for State Court. However, once the breach of

1 the State Compact is established in Federal Court, then the
2 Wrongful Death action may be handled in State, California
3 Superior Court.

4
5 **AGENCY THEORY AND PLAINTIFF'S STANDING TO BRING SUIT**

6 Plaintiff asserted an Agency theory of Standing in his
7 original suit in the Lower Court. That theory was rejected by
8 the Court. Plaintiff once again asserts that theory because he
9 believe that the facts will bear him out.

10 When the State of California insisted that Barona "fairly"
11 adjudicate all tort claims as a condition of receiving a gaming
12 license, the State of California was not acting upon its own
13 behalf or its own interests but was acting upon the interests
14 and behalf of its citizens and other individuals who are present
15 or enter the State of California. The State of California was
16 the representative for Plaintiff, James Nasella Jr. or in this
17 case, his mother Ruth Nasella.

18 Because the Barona Court is, on its face, unfair, where the
19 Tribal Council, the Defendant, is the Jury, the Tribe is not
20 "fairly" dealing with tort claims. Also, it is highly unlikely
21 or impossible that the State of California will ever be a
22 Plaintiff in the Barona Court. It is likely that Barona may
23 assert that the State of California has no standing in accusing
24 the Barona Court of being unfair because it was not a Plaintiff
25 in the Court. Plaintiff, James Nasella Jr., however was a
26 Plaintiff who now asserts that the Court is unfair. And as an
27 individual that the State of California had intended to protect
28 by an Agency theory asserts that he therefore has standing and

1 is a proper Plaintiff in Federal Court.

2
3 **REMEDIES IN EQUITY**

4 Plaintiff originally sought an remedy enjoining the Barona
5 Court to cease and exist in its unfair manner. Plaintiff wishes
6 to assert that such a remedy in equity is based on the common
7 law principle of "preventing injustice."

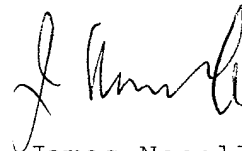
8 A Court that enjoins the Barona Court from existing as it
9 does, where the Defendant is the Jury, cannot help but on the
10 fact of the facts, prevent injustice.

11 **CONCLUSION**

12 Plaintiff's main argument is that the U.S. Supreme Court
13 has questioned the validity of tribal immunity, especially as it
14 applies to a wealthy Tribe in a commercial setting, as Barona is
15 in this case.

16 Also, this is a case important to society. Thousands of
17 persons enter the Barona Casino each month, unaware that they do
18 not enjoy the protections against injury that they possess
19 everywhere else in the United States

20
21 DATED: November 30, 2013
22 _____



James Nasella Jr.
Pro Se