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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JOSEPH HARRIS,

Plaintiff,

vs.

SAN MANUEL BAND OF MISSION  
INDIANS, SAN MANUEL INDIAN  
BINGO AND CASINO, and DOES 1  
through 50, inclusive,

Defendants.

CASE NO.

**PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION TO  
DISMISS Fed. R. Civ. P. 12(b)(1), (7)**

Date: May 4, 2015

Time: 10:00 a.m.

Judge: Hon. S. James Otero

Courtroom: 1

**INTRODUCTION**

Defendants SAN MANUEL BAND OF MISSION INDIANS and SAN  
MANUEL INDIAN BINGO AND CASINO seek an order dismissing Plaintiff's  
Complaint arguing this Court lacks subject matter jurisdiction over Plaintiff's  
claims. This is a claim against Defendants SAN MANUEL BAND OF MISSION  
INDIANS, SAN MANUEL INDIAN BINGO AND CASINO, and DOES 1

1 through 50, inclusive for the wrongful termination of Plaintiff JOSEPH HARRIS  
2 in violation of public policy.  
3

4 Defendant argues that such claims must be brought exclusively before the  
5 Tribe based on both the doctrine of sovereign immunity and the Tribal-State  
6 Gaming Compact. Plaintiff brings this Wrongful Termination in Violation of  
7 Public Policy claim supported by The California False Claims Act (Gov.C. §  
8 12650 et seq.). As such, this claim is authorized for an individual (“qui tam  
9 plaintiff”) to sue for a violation of the Act on behalf of a defrauded governmental  
10 entity. [Gov.C. § 12652(c)(1)]  
11  
12

13 Defendant’s contention is that Plaintiff has taken Tribal-State Gaming  
14 Compact of 1999 as amended in Section 10.2(d) out of context. Plaintiff disagrees.  
15  
16

17 Defendants argue issues of fact claiming that Plaintiff must first exhaust the  
18 Tribe’s administrative remedies per the “Tribal Dispute Resolution Process” before  
19 pursuing any tort claims. However, as addressed in Plaintiff’s Complaint, Plaintiff  
20 was summarily informed by Tribal Counsel that no dispute resolution process  
21 within the Tribe was available to him.  
22  
23

24 Defendants’ further argue issues of fact that the appeal process following  
25 Plaintiff’s wrongful termination was completed, the decision final, and that  
26 Plaintiff had no right to sue. This covert, corrupt, and conflicting appeal process  
27 which plaintiff exhausted left him with “no further remedy” is a public policy  
28

1 violation as contemplated by The California False Claims Act (Gov.C. § 12650 et  
 2 seq.). (See Defendants' Motion to Dismiss, page 10 at line 3).

### 4 **DISCUSSION**

#### 5 **A. Plaintiff Has Established Jurisdiction**

6 Plaintiff is informed and believes and therein does not contest that at all  
 7 times mentioned herein Defendant SAN MANUEL BAND OF MISSION  
 8 INDIANS a federally-recognized sovereign Indian tribe (hereafter "Tribe"), and  
 9 the State of California, a sovereign State of the United States (hereafter  
 10 "State"), pursuant to the Indian Gaming Regulatory Act of 1988 (P.L. 100-497,  
 11 codified at 18 U.S.C. Sec. 1166 et seq. and 25 U.S.C. Sec. 2701 et seq.) (hereafter  
 12 "IGRA"), and any successor statute or amendments.

13 Defendants argue that California's employment laws do not apply to the  
 14 Tribe on its reservation. However, the Pursuant to the Tribal-State Gaming  
 15 Compact of 1999, as amended between the State of California and the San Manuel  
 16 Band of Mission Indians, in Section 10.2(d)(e), the Tribe must: "Adopt and comply  
 17 with standards no less stringent than federal workplace and occupational health and  
 18 safety standards." This would place the claim of this complaint within the scope of  
 19 this Court's jurisdiction.

#### 20 **B. Tribal Sovereign Immunity Has Been Waived by Express and** 21 **Unequivocal Terms**

1 Defendants correctly argue that “There is a strong presumption against  
2 waiver[s] of tribal sovereign immunity.” Demontiney v. United States, 255 F.3d  
3 801, 811 (9<sup>th</sup> Cir. 2001). However, Defendants attempt to skirt the plain, express,  
4 and unequivocal terms as found in the Tribal-State Gaming Compact of 1999.  
5 Citing a myriad of factually unrelated cases, Defendants ignore the plain language  
6 applicable to this complaint found in the Tribal-State Gaming Compact, as  
7 amended between the State of California and the San Manuel Band of Mission  
8 Indians, in Section 10.2(d)(i),  
9  
10  
11

12 “The Tribe shall, in the exercise of its sovereignty, waive its right to assert  
13 its sovereign immunity in connection with United States District Court  
14 where the Tribe’s Gaming Facility is located and the Ninth Circuit Court of  
15 Appeals (and any successor court), or, if the federal court declines to hear  
16 the action, in any action brought in the courts of the State of California that  
17 are located in San Bernardino County, including courts of appeal, to (1)  
18 enforce the parties’ obligation to arbitrate, (2) confirm, correct, modify, or  
19 vacate the arbitral award rendered in the arbitration, or (3) enforce or  
20 execute a judgment based upon the award. The Tribe agrees not to assert,  
21 and will waive, any defense alleging improper venue or forum non  
22 conveniens as to such state courts.”  
23  
24  
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**C. The Compact is Enforceable Between the State and the Tribe as JOSEPH HARRIS is a “Qui Tam” Plaintiff With Standing.**

The conduct which the Plaintiff complains of in this Complaint, and which is alleged in Plaintiff’s Complaint, was a violation of public policy. The Defendants, and all of them, willfully, intentionally, and with oppression, malice, and fraud, and was carried out with conscious disregard of Plaintiff JOSEPH HARRIS’s rights guaranteed by Federal, State, and Tribal law, pursuant to which Plaintiff is entitled to an award of exemplary damages according to proof.

Plaintiff JOSEPH HARRIS has standing to sue under The California False Claims Act (Gov.C. § 12650 et seq.) under the alleged public policy violations. This authorizes an individual (“qui tam plaintiff”) to sue for a violation of the Act on behalf of a defrauded governmental entity. [Gov.C. § 12652(c)(1)]

Although the governmental entity is the real party in interest, it does not become a party unless it chooses to intervene. [See Armenta ex rel. City of Burbank v. Mueller Co. (2006) 142 CA4th 636, 641, 47 CR3d 832, 835]

The Act makes a limited, conditional, partial assignment of the governmental entity's claim to the “qui tam plaintiff” (up to 50% of any recovery, if the governmental entity declines to join the action).[See Gov.C. § 12652(g)(3)-(5)]

The result is that JOSEPH HARRIS, as a “qui tam plaintiff” has a personal

1 stake in the action, and standing to sue on the governmental entity's behalf as well  
2 as his own. [Armenta ex rel. City of Burbank v. Mueller Co., supra, 142 CA4th at  
3 641, 47 CR3d at 835]  
4

5 Furthermore, as a qui tam plaintiff, there is no conflict with Federal Rule of  
6 Civil Procedure 19.  
7

8 **CONCLUSION**

9  
10 Based on the foregoing, plaintiff respectfully requests that this Court deny  
11 defendant's motion.  
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13  
14 DATED: March 13, 2015  
15 ASSOCIATES,

STANTON T. MATHEWS &  
*A LAW CORP.*

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18 By: \_\_\_\_\_  
19 ANDREW J. NISSEN, Attorneys for  
20 Plaintiff, JOSEPH HARRIS  
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