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LISA WILSON

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION

LISA WILSON,

Plaintiff,

v.

UMPQUA INDIAN DEVELOPMENT  
CORPORATION; SEVEN FEATHERS  
CASINO AND HOTEL CORPORATION;  
COW CREEK BAND OF UMPQUA INDIANS  
TRIBAL COURT; TRIBAL COURT JUDGE  
RONALD YOKIM, IN HIS OFFICIAL  
CAPACITY; AND DOES 1-10,

Defendants.

Case No.

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF AND  
FEDERAL REVIEW OF TRIBAL  
COURT DECISION (28 USC §1331)**

**Demand for Jury Trial. F.R.C.P. 38 et  
seq.**

Plaintiff, LISA WILSON ("Ms. Wilson") respectfully requests this Court issue a  
Declaratory Judgment that the Cow Creek Band of Umpqua Indians, Tribal Court, impermissibly  
dismissed Ms. Wilson's complaint for personal injury based on a Tribal ordinance that the Cow  
Creek Band of Umpqua Indians ("Tribe") implemented and which the Tribal Court has  
interpreted

1 to supersede the Tribal State Compact. The Tribal Court’s misinterpretation of the ordinance led to  
2 Ms. Wilson’s case being erroneously dismissed via a motion for summary judgment.

### 3 **I. INTRODUCTION**

4 For over two and a half years Plaintiff Lisa Wilson faithfully prosecuted her personal  
5 injury claim against the Cow Creek Band of Umpqua Indians. As required by federal law, she  
6 was in the process of exhausting her Tribal remedies before the Cow Creek Tribal Court. At the  
7 eleventh hour, some two years *after* she filed her claim, the Tribal Court determined that the  
8 absence of one word, “Secretary,” from a proof of service form forever foreclosed her personal  
9 injury claim against the Tribe.  
10

11 Plaintiff Wilson, on no less than two occasions, one without counsel and one with,  
12 presented her claim to numerous tribal officials and required tribal entities pursuant to the  
13 Tribe’s Tort Claims Ordinance (Ordinance) Section 4-40. (Exhibit A, Tort Ordinance) At no  
14 time did the Tribe, its officials, or its entities *respond or acknowledge* whether Wilson’s claim  
15 form was acceptable at the time of filing. Wilson thereafter, consistent with the Ordinance,  
16 presented her complaint for damages and Tort Claim before the Tribe’s Business Board. The  
17 Board thereafter, including its President and *Secretary*, approved the case for the Tribal Court  
18 where it proceeded until it was dismissed by the Court on summary judgment for the alleged  
19 failure to follow the Tribe’s Notice requirements.  
20  
21

### 22 **II. PARTIES, JURISDICTION AND VENUE**

- 23
- 24 1. Lisa Wilson is a resident of the State of California and resides in Siskiyou County.
  - 25 2. Seven Feathers Hotel and Casino Corporation (“Casino”), is a hotel and casino  
26 owned and operated by Umpqua Indian Development Corporation (“UDIC”), an Indian  
27 Reorganization Act, Section 17 corporation, operated separately from the Cow Creek Tribe of  
28 Umpqua Indians (“Tribe”) residing in Canyonville, Oregon.

1           3.       The Cow Creek Band of Umpqua Indians Economic Development Corporation,  
2 UDIC, is a tribal corporation with its headquarters in Roseburg Oregon. The UDIC Board of  
3 Directors is alleged to have issued the Appellate Order upholding Tribal Court Judge Ronald  
4 Yokim's decision granting summary judgment to the Tribe as to Plaintiff Wilson's tort claim.  
5

6           4.       Cow Creek Band of Umpqua Indians Tribal Court is the Tribal Court of the Cow  
7 Creek Band of Umpqua Indians and is headquartered in Roseburg, Oregon.

8           5.       Judge Ronald Yockim is the Tribal Court Judge who issued the Order dismissing  
9 Plaintiff's complaint. Judge Ronald Yockim's Tribal Court is located in Roseburg, Oregon.  
10

11           **6.**       Jurisdiction is proper in the District of Oregon, pursuant to the Statute, 28 U.S.C.  
12 §1331 as there exists a federal question as to whether or not the Tribe's Tort Claims Ordinance,  
13 which was enforced upon a non-Indian, was lawful and is in conflict with the Tribe's Compact  
14 with the State of Oregon and was properly applied in this case. *Muhammad v. Comanche*  
15 *Nation*, 2010 U.S. Dist. LEXIS 114945 (W.D. Okla. 2010); *Morongo Band v. Rose*, 893 F.2d  
16 1074(9<sup>th</sup> Cir. 1990). Pursuant to Local Rule 3-2 (a)-(b), both Canyonville and Roseburg,  
17 Oregon are within Douglas County and therefore divisional venue lies with the Eugene Division.  
18

19           **7.**       Venue is proper in the District Court of Oregon, because defendants reside in the  
20 State of Oregon and Oregon is where acts giving rise to the causes of action occurred.  
21

### 22                                       **III. ISSUES FOR REVIEW**

23           A.       The Tribal Court of the Cow Creek Band of Umpqua Indians dismissed  
24 Plaintiff Lisa Wilson's trip and fall case because her attorney did not include the  
25 word "secretary" on a proof of service for her Notice of Tort Claim. Did the Tribal  
26 Court err when it applied a strict standard of review of the tort presentation procedure,  
27  
28

1 when that standard of review applied to a different concept—sovereign immunity—  
2 waivers?

3  
4 B. Ms. Wilson identified all the appropriate Tribal entities in her Notice of  
5 Tort Claim for her trip and fall case. She timely submitted her Notice of Tort Claim.  
6 Is this substantial compliance with the Cow Creek Band of Umpqua Indians'  
7 ("Tribe") tort presentation procedures, whereby the Tribal Court's grant of  
8 summary judgment should be reversed? If she did not identify the appropriate  
9 entity, it was most likely due to the lack of public information about the Tribe's  
10 legal entities or because Ms. Wilson was not privy to such information until  
11 discovery commenced in the Tribal Court case.<sup>1</sup>

12  
13  
14 C. Ms. Wilson's attorney did not include the word "secretary" on the proof of  
15 service for her Notice of Tort Claim. Is this an example of a mistake, inadvertence, or  
16 excusable neglect in a judgment, that if not reversed would unfairly penalize and  
17 prejudice Ms. Wilson for what amounts to a clerical error?

18  
19  
20 D. Does the Cow Creek Bank of Umpqua Indians' Compact with the State of  
21 Oregon only apply to claims involving employees of the State of Oregon?

22  
23 E. In its Compact with Oregon, the Tribe waived its sovereign immunity  
24 defense for personal injury claims. The waiver makes no reference to claim

25  
26  
27 <sup>1</sup>Wilson only became aware of the Seven Feathers Casino & Resort Corporation on or about  
28 February 18, 2015, after Defendants disclosed the existence of the corporation in its responses to  
Plaintiffs First Set of Interrogatory Requests, provided nearly *a year after* the Tort Claim was  
filed with the Tribe.

1 presentation requirements. In light of the sovereign immunity waiver, must Ms.

2  
3 Wilson submit a tort claim pursuant to the Tribe's ordinances?

4 F. After exhausting her claim in the Tribe's Court, can Plaintiff Wilson now  
5 pursue her tort claims against the Casino in state or federal court pursuant to the  
6 express waiver of sovereign immunity contained in the Tribe's Compact with the  
7 State of Oregon?

8  
9 **IV. STATEMENT OF FACTS**

10 7. For over two and a half years, Plaintiff Lisa Wilson faithfully prosecuted her  
11 personal injury trip and fall claim against the Cow Creek Band of Umpqua Indians  
12 ("Tribe"). As required by law, she was in the process of exhausting her Tribal remedies before  
13 the Cow Creek Tribal Court. As she was winding up her available Tribal remedies,  
14 at the 11th hour, some two years *after* she filed her claim against the Tribe, the Tribal  
15 Court dismissed her case on the flimsiest of all technicalities: the omission of a single  
16 word. That word was "secretary." On the proof of service for her Notice of Tort Claim, her  
17 attorney—not Ms. Wilson—did not use that word. This inadvertent omission resulted in Ms.  
18 Wilson's entire case being thrown out. But Ms. Wilson, on no less than two occasions,  
19 one without counsel and one with, presented her claim to numerous required tribal  
20 officials and entities. She adhered to the applicable ordinance—Tort Claims  
21 Ordinance Section 4-40. This ordinance does not require "strict" compliance. At no  
22 time did the Tribe, its officials or its entities advise that Ms. Wilson's Tort Claim form  
23 was unacceptable. Consistent with her accepted claim form, and in line with the Tribe's  
24 claim presentation ordinance, Ms. Wilson presented her complaint for damages and  
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1 Tort Claim to the Tribe's Business Board. The Board thereafter, including its  
2 President and *Secretary*, approved the case for Tribal Court.

3 8. After two years in Tribal Court, the lower court dismissed her case after the  
4 defendant Tribe filed a summary judgment motion, citing lack of compliance with the Tribe's  
5 tort claim presentation Ordinance. On May 31, 2016, Plaintiff Wilson filed her appeal with the  
6 Tribe's Appellate division. The Court ordered a briefing schedule, with both parties briefing the  
7 matter. On November 7, 2016, the Tribe's Business Board, the Tribe's Appellate Court for all  
8 intents and purposes, denied Plaintiff's appeal. The decision did not contain any reasoning or  
9 analysis for its upholding the Tribal Court order on the summary judgment motion.  
10

11 9. The Tribal Court, however, erred in dismissing the case for the following  
12 reasons: 1) the Tribal Court misapplied a "strict and narrow" standard to Ms. Wilson's tort  
13 claim presentation that is not supported by the applicable Tribal ordinances; 2) regardless,  
14 she substantially complied with the Tribe's tort claim presentation rules; 3) the omission of  
15 single word in a proof of service is excusable neglect that should not unfairly prejudice Ms.  
16 Wilson for what amounts to a simple clerical oversight; 4) the ordinances Ms. Wilson relied  
17 on to present her tort claim are confusing and inconsistent; 5) by accepting her claim two  
18 years ago, defendants waived their tort claim presentation objection; and 6) strict compliance  
19 with the Tribe's tort claim rules is not required because the Tribe waived the requirement in  
20 its Compact with the State of Oregon. The judgment should be reversed and the case remanded  
21 to the Court for further processing, and/or Plaintiff should be found to have exhausted her tribal  
22 remedies and to now be able to pursue her claims in State or Federal court, pursuant to the  
23 waiver of immunity included in the Tribe's Tribal-State Compact.  
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## V. FACTUAL AND PROCEDURAL BACKGROUND

### A. Lisa Wilson's Trip and Fall at The Seven Feathers Hotel and Casino

10. On January 9, 2014, Plaintiff Lisa Wilson, and her dog, Ivy, a border collie, were guests of Defendant Seven Feathers Hotel & Casino. Because she was accompanied by her dog, Ms. Wilson was assigned to an alleged "pet friendly" wing of the hotel. After arrival and check in, Ms. Wilson played some casino games, ate dinner, and then retired for the evening. She awoke the next morning around 6:30. She dressed and packed her belongings. Along with her dog (on a leash) in her left hand and purse and small bag, she exited her room and proceeded to walk to the side exit of the hotel wing towards her parked vehicle. Ms. Wilson pushed open a door with both hands and, upon exiting, her left foot caught part of an unattended floor mat lying near the door, on the cement. It tripped her. She fell, violently, face forward, arms outstretched, hitting her right hip, knee and shoulder.

11. Ms. Wilson got up and walked to her car with her dog. Shortly thereafter, casino security was notified of the tripping incident. Security personnel arrived at the scene, inspected the area, placed Ms. Wilson in a wheel chair and took an incident report. During the inspection, security personnel confiscated and rolled up a floor mat located on the pavement that was within the walkway and near the door she exited. Ms. Wilson identified the mat as the one that tripped her. She described the mat as appearing old, filthy and unsecured to the ground. She did not see any mat warning signs before she opened the exit door. She thereafter took pictures of the floor mat and exit door. As a result of her fall, she suffered intense pain centralized to the right side of her body (shoulder, knee and hip). After the fall, she needed a right hip replacement, right knee surgery, and right shoulder surgery. Experts retained

1 by Ms. Wilson in this matter inspected the accident site and/or reviewed records, pictures and  
2 video of the incident and made the following factual conclusions:

- 3
- 4 • The threshold between the exit door and surface was greater than 1/2 inch at  
5 the exit door and did not comply with Oregon Structural Specialty Code which  
6 facilitated a trip hazard.
- 7 • The casino failed to adhere to American National Standards Institute [ANSI]  
8 1264.2, Provisions of Slip Resistance on Walking/Working Surfaces, for slip  
9 resistance and securement of the mat.
- 10 • The casino failed to properly store and maintain the mats and maintenance  
11 procedures for the mats.
- 12 • No mitigating warnings such as 'watch your step,' "step down," or other  
13 cautionary statements existed to instruct the exit users.
- 14 • Poorly maintained mats in which age and condition were not tracked or  
15 inspected caused the trip hazard of buckling and rippling that facilitated Ms.  
16 Wilson's fall.
- 17 • In viewing the video of Ms. Wilson's fall, the outside lighting of the area was  
18 poor, making the outside camera video difficult to view.
- 19 • The incident occurred when Ms. Wilson was leaving the hotel. It was dark  
20 outside. The lighting was below the standard for the hotel industry, making  
21 it difficult for Ms. Wilson to see as she approached the exit door. The  
22 substandard lighting contributed to the incident.
- 23 • The mat was improper as it had a lower than expected surface and was placed  
24 outside the exit door. The mat was made of rubber material when it should  
25 have been made of absorbent material, e.g. cloth.
- 26 • When Ms. Wilson opened the door to exit, the mat came up creating an  
27 elevated surface on which Ms. Wilson hit her foot when she stepped forward.  
28 This mat placement contributed to the incident.
- The gap between the door exit and the ground surface appears to be a building  
code violation.
- Seven Feathers Hotel and Casino does not have a structured program for the  
inspection or cleaning of mats. Mats should be visually inspected a minimum  
of six times per day. Having failed to do these inspections, Seven Feathers  
Hotel and Casino failed to meet the standard of care for the hotel industry.



1  
2 **B. The Cow Creek Umpqua Tribe's Summary Judgment Motion**

3 12. On January 26, 2016, the Tribe filed its motion for summary judgment. It raised  
4 several issues arguing the lack of disputed material facts to support: (1) a hazardous condition  
5 existed outside the hotel, causing Ms. Wilson's fall; (2) that the Tribe/Hotel/Casino was aware of  
6 the hazard; and (3) that Ms. Wilson's claims should be barred for her failure to comply with pre-  
7 suit notice provisions outlined in the Tribal Code, as well as her failure to sue the correct party.  
8 Plaintiff Wilson responded to the Summary Judgment motion with an Opposition and Reply  
9 briefing.  
10

11  
12 **C. The Tribal Court Grants The Tribe Summary Judgment**

13 13. In granting the Tribe summary judgment, the Tribal Court did not address the  
14 merits of Ms. Wilson's trip and fall or the myriad disputed facts surrounding her fall. Instead,  
15 the Court found in favor of Defendant based on its third argument: Ms. Wilson's alleged failure  
16 to comply with the Tribe's Tort Claims Ordinance. The Court found that Ms. Wilson had not  
17 complied with an alleged Ordinance Section 4-40 ninety (90) day calculation period under 4-40  
18 (a) and failed to serve the Secretary of the Tribe's Corporation pursuant to Section 4-40 (a).  
19

20  
21 **D. Wilson's Appeal to the Tribe's Economic Development Corporation Is Denied**

22 14. On May 22, 2016, Plaintiff Lisa Wilson filed her Notice of Appeal with the  
23 Tribal Court and served Defendants Tribe, Tribal Court and Tribal Economic Development  
24 Corporation. Thereafter, Plaintiff filed her Opening Brief and subsequent to Appellant's  
25 Opening Brief, her Reply Brief. On November 7, 2016, the Tribe's Economic Development  
26 Corporation Board of Directors, to which Plaintiff appealed, upheld the Tribal Court order.  
27

28 //

1 **VI. STANDARD OF REVIEW**

2 15. A Tribal Court's grant of summary judgment is reviewed de novo. See *Grigsby v.*  
3 CMI Corp., 765 F.2d 1369, 1373 (9th Cir.1985). This Court should apply the same standard as  
4 that employed by the trial court under Fed. R. Civ. P. 56(c): the Court will affirm only if the  
5 record, read in the light most favorable to the non-moving party, reveals no genuine issues of  
6 material fact and establishes that the moving party is entitled to judgment as a matter of law. *Id.*  
7

8  
9 **A. The Tribal Court Mistakenly Applied The Strict and Narrow**  
10 **Construction Provision To The Notice of Claims Code Section (4-**  
11 **40) Instead of The Proper Waiver of Sovereign Immunity Section**  
12 **(4-50)**

13 16. The Tribal Court erred when it applied the strict and narrow construction  
14 language of the Tribe's ordinance 4-40, which is only applicable to sovereign immunity waivers  
15 and not the presentation of Tort Claims. The Tribal Court dismissed Ms. Wilson's case based on  
16 one reason: she, through her attorney, did not include the word "secretary" on her Notice of Tort  
17 Claim proof of service. Ms. Wilson's Tort Claim complied with the Tribe's Tort Claim ordinance  
18 in every other way and was, in fact, considered by the Tribe's "secretary."

19 17. Specifically, on March 27, 2014, less than three months after her January 10,  
20 2014 fall, Ms. Wilson prepared a "Notice of Tort Claim." This document described the location  
21 of injury, description of occurrence, cause of the injury, and nature of the injury. The Notice of  
22 Tort Claim included a cover letter addressed to Travelers' Insurance Company, the Tribe's  
23 insurer.  
24

25 18. The Notice of Tort Claim included a proof of service, sent by certified mail. It  
26 was mailed to the Umpqua Indian Development Corporation's Chief Executive Officer, the  
27 Seven Feathers Hotel and Casino's General Manager/Loss Prevention Division, and  
28

1 Travelers Insurance Company. It was also sent by certified mail, in separate envelopes, to  
2 the Cow Creek Band of Umpqua Indians, attention Tribal Chairperson and General Counsel.  
3 It was not sent to the Tribe's "secretary" of the Board of Directors. (Ex. B, Notice of Tort  
4 Claim).  
5

6 19. Tribal Ordinance 4-40 is called "Procedure for Giving Notice of Claims and  
7 Filing Actions." To comply with this ordinance, Ms. Wilson had to do three things. First, she  
8 had to send by certified mail, return receipt requested, a written Notice of Claim to two agents  
9 of the Tribe: "the Secretary of the Board of Directors *and* the Office of Tribal Attorney."  
10 (Tribal Ordinance 4-40(a), emphasis added) within ninety (90) days.  
11

12 20. Since the injury involved a Tribal Business Corporation—the Seven Feathers  
13 Hotel & Casino, a division of the Umpqua Indian Development Corporation—the Notice of  
14 Claim also had to be sent to the Chief Executive Officer of the Umpqua Indian Development  
15 Corporation. (Tribal Ordinance 4-40(a).) Ms. Wilson did send the Notice of Claim to the  
16 Chief Executive Officer of the business corporation, but instead of addressing her envelope to  
17 the "Secretary" of the Tribe's Board of Directors she addressed it to "Tribal Chairperson." The  
18 Notice of Claim was also sent within the ninety (90) day period required by 4-40 which ran  
19 from January 10, 2014, Wilson's injury date. The 90-day period would have expired on  
20 **Thursday, April 10, 2014.** The Tribal Court stated in its decision that the Notice of Claim  
21 *was late*, when the Notice's proof of service was **dated March 27, 2014, some fourteen days**  
22 **BEFORE the 90-day period would have expired.** This holding is clearly erroneous. The  
23 Tribal Court dismissed Ms. Wilson's case because instead of sending the Notice of Claim to  
24 the "Secretary" and "Tribal Attorney," she sent it to the "Tribal Chairperson" and "General  
25  
26  
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1 Counsel." The Tribal Court ruled that not sending the Notice of Claim to the "Secretary"  
2 violated the Tribal Ordinance 4-40(a).

3 21. It held:

4  
5 **"The Court has jurisdiction over civil matters pursuant to Title 4 of the Tribal**  
6 **Code, however before this court can exercise any civil jurisdiction the**  
7 **procedural requirements of Section 4-40 must be strictly complied with."**

8 22. In so ruling, the Court held that Ms. Wilson did not comply with Tribal  
9 Ordinance 450(e), which says: "The procedures and standards for giving notice of claims  
10 and commencing actions in Tribal Civil Court provided in Section 4-50 of this Code are  
11 integral parts of the limited waiver of sovereign immunity provided by this Code and shall  
12 be strictly and narrowly construed. . ." (Tribal Ordinance 4-50(e), emphasis added.) The  
13 strict and narrow construction the court relies on applies to Tribal Ordinance 4-50, not  
14 Ordinance 4-40, the claims presentation ordinance. Ordinance 4-50 concerns limitations on  
15 waivers of sovereign immunity. Subdivision (e) of Ordinance 4-50 references a strict and  
16 narrow construction provided in Section 4-50, but not 4-40. Section 4-50(e), says: "A tort  
17 claim for monetary damages against the Tribe shall be forever barred unless written notice of  
18 the claim is presented to the Tribe and an action for monetary damages relating to any such  
19 claim is commenced in Tribal Civil Court in compliance with Section 4-40 of this Code."  
20

21 23. Here, Ms. Wilson did present the notice of claim to the Tribe. The strict and  
22 narrow construction applies to Ordinance 4-50, **not** the claims ordinance 4-40. Accordingly, the  
23 Tribal Court erred when it applied the strict and narrow construction to Ms. Wilson's Notice of  
24 Claim. The Tribal Court's grant of summary judgment should be reversed.

25  
26 **B. MS. WILSON "SUBSTANTIALLY COMPLIED" WITH THE NOTICE**  
27 **OF CLAIMS PROVISIONS WHEN SHE IDENTIFIED ALL**  
28 **APPROPRIATE ENTITIES IN HER TORT CLAIM**

1  
2 24. Ms. Wilson substantially complied with Tribal Ordinance 4-40. She sent by  
3 certified mail her Notice of Claim to five individuals: 1) the chair of the Tribe; 2) general  
4 counsel for the Tribe; 3) the Chief Executive Officer of the Umpqua Indian Development  
5 Corporation; 4) the General Manager/Loss Prevention Division for the Seven Feathers Hotel  
6 and Casino; and 5) the Tribe's insurer, Travelers Insurance Company.  
7

8 25. The Tribe's ordinance at Section 4-20, "Definitions," at subsection (i) lists the  
9 following as entities comprising the "Tribe:" "including, but not limited to any branch, office,  
10 department, agency, commission, utility, authority, instrumentality, enterprise, Tribal Business  
11 Corporation or other entity of the Tribe."  
12

13 26. Ms. Wilson complied with the Ordinance Section 4-40 when she identified all  
14 relevant entities requiring notice of her tort claim. Further, in compliance with Tribal Ordinance  
15 4-50(e), Ms. Wilson presented her claim "to the Tribe." Additionally, the Casino's Safety  
16 Director testified in deposition that *he received and forwarded Ms. Wilson's claim to the Tribe's*  
17 *insurance carrier, Travelers Insurance, for processing.* The "Casino" is an "enterprise" of the  
18 Cow Creek Band of Umpqua Indians. After Mr. Popsil, the Casino's Safety Director, forwarded  
19 the claim to the Tribe's insurance carrier, Travelers Insurance, Travelers denied the claim upon  
20 receiving it. This claim was Wilson's original claim which Mr. Popsil handled on behalf of the  
21 Tribe. It was filed without the benefit of counsel and was also filed within the 90-day period, as  
22 it was denied by the Tribe's carrier on January 27, 2014. (Exhibit C). Thus, before Counsel's  
23 "alleged" incomplete notice, of which Plaintiff was never appraised of, Plaintiff had provided  
24 "Notice" to the Tribe of her claim consistent with the Tribe's Ordinance.  
25  
26  
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28

1           27. On or about February 7, 2014, Ms. Wilson retained legal counsel. Her counsel  
2 thereafter forwarded a supplemental claim, discussed above. The only thing missing on the proof  
3 of service, that met all Tort Ordinance 4-40 requirements, was the word "Secretary"—nothing  
4 more. This is substantial compliance. The Tribal Court's grant of summary judgment should be  
5 reversed. Substantial compliance with claims procedures has been deemed sufficient by  
6 the 9<sup>th</sup> Circuit and Oregon State Court. *Yunker v Muntnoma County*, 32 Ore.App.551; 574  
7 P.2d 696 (1978); *URA v. Lackey*, 275 Ore. 35; 549 P.2d 657 (1976); *Brown v. Portland School*  
8 *District* 291 Ore. 77 (1981); *Comfort v Jackson County*, 2010 U.S. Dist. LEXIS 32349.

9  
10  
11           **C. MS. WILSON SHOULD NOT BE PENALIZED DUE TO HER**  
12           **ATTORNEY'S HONEST CLERICAL OMISSION OF A SINGLE**  
13           **WORD**

14           28. A notice of tort claim must be presented no later than 90 days after the act giving  
15 rise to the injury. (Tribal Ordinance 4-40(c).) The deadline to submit Ms. Wilson's  
16 claim was therefore on or about April 10, 2014. In February 2014, Ms. Wilson retained  
17 counsel. On March 27, 2014, her counsel supplemented her tort claim. Her counsel did not  
18 include the word "secretary" on a proof of service. This was not Ms. Wilson's fault. She should  
19 not be penalized on account of an honest clerical oversight.

20  
21           29. If anything, Ms. Wilson's counsel's omission is excusable neglect. This Court  
22 may correct a clerical mistake or a mistake arising from oversight or omission whenever one is  
23 found in a judgment, order, or other part of the record. Fed.R. Civ. P. 60(a). The grounds for  
24 relief from a final judgment, order, or proceeding include "mistake, inadvertence, surprise, or  
25 excusable neglect." Fed. R. Civ. P. 60(b)(1). Where a party seeks relief under Rule 60(b)(1)  
26 based upon "excusable neglect," the court applies the same three factors governing the inquiry  
27 into "good cause" under Rule 55(c). *United States v. Signed Personal Check No. 730 of Yubran*  
28

1 *S. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010). The determination of what conduct constitutes  
2 "excusable neglect" under Rule 60(b)(1) and similar rules "is at bottom an equitable one,  
3 taking account of all relevant circumstances surrounding the party's *omission*." *Pioneer Inv.*  
4 *Svcs. Co. v. Brunswick Assoc. Ltd.*, 507 U.S. 380, 395 (1993).

5  
6 30. Here, Ms. Wilson has been greatly prejudiced because her entire case has been  
7 thrown out due to the omission of a single word on a proof of service. Instead of "secretary," her  
8 counsel sent the notice of claim to "Tribal Chairperson." This is an honest mistake or  
9 inadvertence. At most it is excusable neglect. The Tribal Court's grant of summary judgment  
10 should be reversed so as to not prejudice Ms. Wilson.

11  
12 **D. THE TRIBE'S NOTICE OF CLAIMS CODE SECTION VIOLATES**  
13 **DUE PROCESS BECAUSE IT IS INCONSISTENT, UNCLEAR, AND**  
14 **CONFUSING**

15 31. The Tribal Ordinance sections the Tribal Court relied on are unclear,  
16 inconsistent and confusing. There is no question that all the relevant Tribal entities had notice  
17 of Ms. Wilson's claim. The case was litigated for over two years. The claim was denied. The  
18 claim was thoroughly investigated. The Tribe contested liability.

19 32. Yet Ms. Wilson's case was nevertheless dismissed based on conflicting  
20 provisions in the Tribe's Tribal Ordinances. The conflicting provisions are: 1) section 4-  
21 40(a) describes who is supposed to receive the notice of tort claim; 2) section 4-50(e) states  
22 that strict and narrow compliance is the standard for limited waivers of sovereign immunity  
23 (not applicable here); 3) section 4-50(e) references both section 4-50 and 4-40, rendering it  
24 unclear if the strict and narrow compliance standard applies to sections 4-50, 4-40, or both;  
25 4) section 450(e) says that a tort claim that is "presented to the Tribe" complies with section  
26 4-40, which did occur.  
27  
28

1  
2  
3 33. The interplay of ordinances at issue here is confusing. Ms. Wilson should not be  
4 penalized because the ordinances are vague and unclear. Accordingly, the Tribal Court's grant  
5 of summary judgment should be reversed. Ms. Wilson should be allowed to pursue her claim on  
6 the merits.

7  
8 34. This case was litigated for over two years. Ms. Wilson's claim was denied and contested  
9 on the merits. No one ever advised Ms. Wilson or her attorney that her notice of claim was  
10 deficient. The omission of the word "secretary" on the proof of service could easily have been  
11 corrected. She supplemented her claim on March 27, 2014, in advance of the April 10, 2014  
12 deadline. Ms. Wilson's case should not be dismissed given Defendants had notice of her claim,  
13 and there was time to augment her proof of service by serving it on the Tribe's "secretary." The  
14 Tribal Court's grant of summary judgment should be reversed and remanded back to Tribal  
15 Court.

16  
17  
18 **E. THE GRANT OF SUMMARY JUDGMENT WAS ERROR**  
19 **BECAUSE DEFENDANT DEVELOPMENT CORP. APPROVED**  
20 **THE PRESENTATION OF THE CLAIM TO THE TRIBAL**  
21 **COURT WITHIN TWO YEARS—WITHIN OREGON'S TWO-**  
22 **YEAR STATUTE OF LIMITATIONS PERIOD— RESULTING IN**  
23 **A WAIVER OF ANY TECHNICAL NOTICE PROVISION**  
24 **VIOLATION**

25 35. As stated previously, Ms. Wilson substantially complied with Ordinance  
26 Section 4-40 under the federal doctrine of substantial compliance. In the event this Court  
27 does not conclude substantial compliance exists, Ms. Wilson's claim satisfies Oregon law.  
28 Defendant Umpqua Indian Development Corporation received, reviewed and accepted  
Plaintiff's claim and complaint on or about July 13, 2014. Oregon law has been adopted by



1 the Tribe, pursuant to Ordinance Section 4-20. Oregon personal injury claims have a two-  
 2 year statute of limitations. (Ore. Rev. Stat. Section 12.110(1)). The Tribe's secretary's  
 3 review and acceptance of the claim in July 2014 was within Oregon's limitations period  
 4 (through January 10, 2016—two years after Ms. Wilson's injury). The motion for summary  
 5 judgment should be reversed and remanded back to Tribal Court.  
 6  
 7

8 **F. THE TRIBAL COURT ERRED IN GRANTING SUMMARY**  
 9 **JUDGEMENT BECAUSE THE CLAIM WAS DENIED BY THE**  
 10 **TRIBE'S INSURER ON ITS MERITS, RESULTING IN A WAIVER**  
 11 **OF ANY TECHNICAL NOTICE PROVISION VIOLATION**

12 36. The Defendant Tribe's insurer denied Ms. Wilson's claim on the merits. The  
 13 insurer is an agent of Defendants. Since its agent accepted and denied Ms. Wilson's claim,  
 14 Defendants have waived any technical notice violation. For this reason as well, the summary  
 15 judgment motion should be reversed. (Ex. C. Denial of Claim)

16 **G. MS. WILSON NEED NOT COMPLY WITH THE TRIBE'S TORT**  
 17 **CLAIMS PROCEDURES BECAUSE THE TRIBE HAS WAIVED**  
 18 **ITS SOVEREIGN IMMUNITY FOR THIRD PARTY CLAIMS**

19 37. A federal court has jurisdiction to determine whether the Tribe waived its  
 20 immunity to suits brought in State and Federal court via its Indian Gaming Regulatory Act  
 21 ("IGRA") required Tribal-State Compact. (Ex. D, Tribal-State Compact pp. 00074-00076)  
 22 *Cabazon Band of Mission Indians v. Wilson*, 124 F.3d 1050, 1056 (9th Cir. 1997) ("The  
 23 Compacts quite clearly are a creation of federal law; moreover, IGRA prescribes the  
 24 permissible scope of the Compacts. We conclude that the Bands' claim to enforce the Compacts  
 25 arises under federal law and thus that we have jurisdiction pursuant to 28 U.S.C. §§ 1331 and  
 26 1362.").

1  
2 38. Even if this Court concludes Ms. Wilson did not comply with the Tribe's  
3 tort presentation rules, the grant of summary judgment should still be reversed. In her  
4 opposition to Defendants' motion for summary judgment, Ms. Wilson argued that her case  
5 may go forward because she need not comply with the Tribe's tort claim presentation  
6 procedure in that the Tribe has waived its sovereign immunity to state and federal court. The  
7 Tribe waived its sovereign immunity by way of its IGRA-required Compact with the State of  
8 Oregon. (Exhibit D, Cow Creek Band –State of Oregon compact). Ms. Wilson argued that  
9 the Tribe's Compact, which waived sovereign immunity, did not have any notice of claim  
10 restrictions, so she did not have to comply with them (even though she complied). That is,  
11 the sovereign immunity waiver did not require "strict and narrow" compliance with the  
12 Tribe's tort presentation ordinance.  
13  
14

15  
16 39. The Tribal Court dismissed this argument entirely, stating that the Tribe's  
17 Compact with Oregon did not apply to third party claims like Ms. Wilson's; it only applied to  
18 employees of the State of Oregon. The Tribal Court's conclusion that the Tribe's Compact  
19 only benefits state employees is incorrect, however. (Ex. E, Tribal Court Order and Appellate  
20 Court order upholding Tribal Court order).  
21

22 40. Federal law requires that "[g]eneral principles of federal contract law govern  
23 compacts which were entered pursuant to the IGRA." *Pauma Band of Luiseno Mission Indians v*  
24 *California*, 2015 WL 9245245 at \*4 (9th Cir. 2015) ["[A] contract must be discerned within its  
25 four corners, extrinsic evidence being relevant only to resolve ambiguity in the [contract]."  
26 *United States v Asarco Inc.*, 430 F3rd 972, 980 (9th Cir. 2005)]. This Court, therefore, must  
27 review and analyze the four corners of the Tribe's Compact with Oregon. A plain reading of  
28

1 the Compact language demonstrates the clear intentions of the parties (Oregon and Tribe).  
2 The Tribe waived immunity to claims in State, Federal and Tribal court, *without notice*  
3 *restrictions*. Additionally, the Compact language is *clear and unambiguous in that the*  
4 *carrier, Tribe and tribal entities are barred* from raising sovereign immunity up to the limits  
5 of the insurance policy (\$2,000,000). The Tribe cannot now by ordinance, narrow the  
6 conditions of the waiver of immunity granted in the Compact via a Tribal Tort Ordinance that  
7 interprets a waiver more *strictly and narrowly* than the waiver language granted by the  
8 Compact. In doing so, the Tribe is violating the express terms of its Compact with Oregon.  
9

10  
11 41. Additionally, the Tribal Court incorrectly interprets the Tribal-State Compact  
12 regarding third-party rights. The Court states that the waiver of immunity contained within  
13 the Compact, does not generally waive immunity to the public, but only waives immunity to  
14 employees or agents of the State of Oregon. A plain reading of the Compact, Section G  
15 indicates that the waiver of immunity is contained in section VIII titled "**Additional**  
16 **Regulations Regarding Class III Gaming.**" This section contains the following additional  
17 regulations: Gaming, Identification Badges, Credit, Prohibition on Minor Play, Prohibition  
18 of Firearms, Liability for Damages to Persons and Property and Indemnification. These  
19 regulations in Section VIII are not limited to "Oregon government workers or agents."  
20  
21

22  
23 42. Further, while there are requirements for state actors being additional  
24 insureds to the required \$250,000/\$2 million policy, a plain reading of the text of Liability  
25 for Damages to Persons and Property contains no such limitation. The section concerning  
26 additional insureds supplements the general requirement for \$2,000,000 in A rated insurance  
27  
28

1  
2 for damages to "persons or property," generally—not damages to Oregon state workers or  
3 agents.

4 43. The Tribal State Compact expressly states, in its preamble, that its  
5 contents are to "protect the gaming public." Preamble section C (3) expressly states:  
6

7 **"[T]he Relationship between the state and the Tribe rests on a mutual trust**  
8 **and the recognition that each has a duty to protect the gaming public through**  
9 **separate responsibilities set forth in this IGRA compact."**

10 44. Hence, a clear reading of the Compact preamble finds no ambiguity and thus  
11 the sovereign immunity waiver *is* applicable to third-parties such as Plaintiff Wilson.

12 Therefore, since the sovereign immunity waiver does not require strict and narrow compliance  
13 with the Tribe's tort presentation ordinance, Ms. Wilson did not have to strictly and narrowly  
14 follow that ordinance. That is, she was not required to list "secretary" on her proof of service.  
15

16 45. Lastly, Compact Section H, "Indemnification," merely modifies section G's  
17 reference to the insurance policy requiring the state and its officers be added insureds. Any  
18 other interpretation renders the policy of insurance redundant. If the Compact were to apply  
19 *only* to Oregon officials and agents, because of the indemnification of the officers and agents  
20 by the Tribe in Section H, why would the Tribe require insurance for personal injury and  
21 property damage? The Court's reliance on the Tribe's ordinance over and above the terms of  
22 the IGRA Class III Compact that grants it Class III gaming rights, to the detriment of its  
23 patrons, and to escape paying personal injury claims, is not only a violation of the Compact and  
24 the IGRA, but a violation of business best practices. In sum, why would any patron patronize  
25 Seven Feathers Casino, if the Tribe refuses to abide by the Compact and pay claims to its  
26  
27  
28

1 patrons? Under the Tribal Court's conclusion, only Oregon employees could be compensated by  
2 Tribal insurance as patrons of the Tribe's hotel and casino. All other members of the public  
3 would have no recourse because the Tribe would invoke sovereign immunity, rendering the  
4 insurance provisions in the Compact meaningless, and the tort presentation rules in the Tribe's  
5 ordinance an exercise in futility.  
6  
7

8 46. The Tribal Court's conclusion that its Compact with Oregon only applies to  
9 state employees, and not casino and hotel visitors, defies logic. The Compact was obviously  
10 negotiated to benefit the people of Oregon—not just state employees. For this reason as well,  
11 the grant of summary judgment should be reversed. Ms. Wilson should be permitted to  
12 pursue her case on the merits.  
13  
14

15 **H. PERSUASIVE AUTHORITY PERMITS THE FEDERAL COURT**  
16 **TO DETERMINE WHETHER WILSON COMPLIED WITH THE**  
17 **TRIBE'S CLAIMS ORDINANCE NOTICE PROVISIONS**

18 47. In *Campo Band v. Superior Court*, D046568 (Fourth District California Court  
19 of Appeal, March 2006), the California Appellate Court was faced with a similar decision  
20 when the Campo Band, a San Diego, California based Indian tribe, determined, unilaterally,  
21 that a tort claimant's claim was not presented according to the Tribe's Tort Claims  
22 Ordinance. The Court in *Campo Band* held that the Tribe's compact with the State of  
23 California included a waiver of immunity over patron tort claims and that the waiver  
24 included arbitration as a means of resolving tort claim disputes.  
25

26 48. Here, the Tribe's compact with the State of Oregon also includes a waiver of  
27 immunity of claims in "Tribal, State or Federal court." The Cow Creek Tribal Court has  
28 determined that Ms. Wilson's tort claim did not comply with the Tribe's tort claims

1 ordinance. The court did so while Ms. Wilson was exhausting her administrative remedies  
2 with the Tribe, pursuant to federal law, prior to seeking relief in federal court. Under  
3 *Campo Band*, the Oregon federal court, as one of the court venues with which the Tribe  
4 unequivocally waived its immunity, has jurisdiction to review and reverse the Tribal Court's  
5 determination that Ms. Wilson's claim did not comply with the Tribe's Ordinance.  
6

7  
8 **I. MYRIAD DISPUTED FACTS NECESSITATE THAT THE TRIBAL  
COURT'S SUMMARY JUDGMENT ORDER BE REVERSED**

9  
10 49. As presented in Ms. Wilson's opposition to defendants' motion for summary  
11 judgment, a plethora of disputed facts warrant reversal of the Court's grant of summary  
12 judgment. No less than three pages of disputed facts were submitted by Ms. Wilson from her  
13 Oregon Safety Expert, Patrick Redlinger, who prepared the report after physically inspecting  
14 the Casino and Hotel, injury area, and reviewing the depositions of Ms. Wilson and defense  
15 witnesses. Further, Ms. Wilson's Hospitality Expert, Michael Nichols, submitted a declaration  
16 after review of discovery, including a lack of injury area sweep sheets, and photographs of the  
17 injury site, setting forth additional disputed facts. Defendant submitted no expert declarations,  
18 just the declaration and excerpts of the deposition of the Casino's Safety Director. These disputed  
19 facts are another reason why the Tribal Court decision should be remanded back to the Tribal  
20 Court.  
21  
22

23  
24 **PRAYER FOR RELIEF**

25 1. The Court should issue an Order reversing the Order of the Tribal Board of  
26 Directors that upheld Judge Ronald Yokim's finding of summary judgment against Mrs.  
27 Wilson and this case should be remanded to the Tribal Court for trial on the merits;  
28

1           2.       The Court should issue a declaratory judgment, finding that Plaintiff Wilson  
2 has exhausted her Tribal remedies and may now pursue her claims in state or federal court as  
3 an alternative to Tribal Court pursuant to the terms and conditions of the Cow Creek Band of  
4 Umpqua Indians-State of Oregon, Tribal-State Compact, waiver of Tribal immunity for tort  
5 and property claims to state, federal or tribal court;

6           3.       The Court should issue an Order enjoining Defendants UIDC, Seven Feathers  
7 Casino & Resort Corporation, the Tribal Court and Judge Ronald Yokim from interfering, in  
8 any manner, with Ms. Wilson's pursuit of her claims against Defendant Seven Feathers Casino  
9 & Resort Corporation, in state court;

10          4.       Reasonable Attorney's fees and costs of filing this action and the prior actions  
11 Plaintiff was required to file to challenge the Tribal Court and Tribal Board of Directors  
12 finding and upholding of the Tribe's Motion for Summary Judgment.

13          5.       Demand for Jury Trial F.R.C.P. 38.

14                   Dated: January 25, 2017

15                   Kevin Chames

16   By: /KEVIN CHAMES/

17   Kevin Chames

18   Attorney for Plaintiff

19   LISA WILSON  
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