IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
Case No. 1:17-cv-00240-MR-DLH

JOSEPH CLARK, On Behalf of Himself and All Others Similarly Situated, **Plaintiff,** **vs.** **HARRAH'S NC CASINO COMPANY, LLC, d/b/a HARRAH'S CHEROKEE CASINO RESORT and d/b/a HARRAH'S CHEROKEE VALLEY RIVER CASINO AND HOTEL, and BROOKS ROBINSON,** **Defendants.**	**DEFENDANTS' LIMITED OBJECTIONS TO THE MAGISTRATE JUDGE'S MEMORANDUM AND RECOMMENDATION**

Pursuant to Federal Rule of Civil Procedure 72(b) and Local Rule 72.1, Defendant Harrah's NC Casino Company, LLC, d/b/a Harrah's Cherokee Casino Resort and d/b/a Harrah's Cherokee Valley River Casino and Hotel, ("Defendant Harrah's") and Defendant Brooks Robinson ("Defendant Robinson") (sometimes collectively "Defendants") hereby timely file and serve these limited objections to the Magistrate Judge's Memorandum and Recommendation, Doc. 53.

INTRODUCTION

The Magistrate Judge's Memorandum and Recommendation recommends Defendant Harrah's Motion to Dismiss be granted and finds this case should be

dismissed under Rule 12(b)(7) of the Federal Rules of Civil Procedure as to both Defendants, because: (1) the Plaintiff's employer, Tribal Casino Gaming Enterprise ("TCGE"), is a necessary party under Rule 19(a) of the Federal Rules of Civil Procedure; (2) TCGE cannot be joined as a party because it is entitled to tribal sovereign immunity; and (3) this action should not proceed without TCGE because it is also an indispensable party under Rule 19(b). *See* Doc. 53, pp. 6-12.

In so doing, the Magistrate Judge determined Plaintiff "was actually employed by TCGE;" TCGE – as the Plaintiff's "'real' employer" – must be joined for complete relief because "Plaintiff's claims are workplace claims;" TCGE must be present in the litigation to protect its interest against Plaintiff's allegations; and "the failure to add TCGE could quite possibly lead to multiple or inconsistent obligations" for TCGE and Defendants with regard to the Plaintiff's employment. Doc. 53, p. 9. The Magistrate Judge then found TCGE cannot be joined because it is entitled to tribal sovereign immunity, and this action should not proceed without TCGE. Doc. 53, pp. 9-12.

Defendants agree with the Magistrate Judge's proposed findings and recommendations as to the Rule 12(b)(7) issues and contend they should be accepted by the Court.

Defendants, however, respectfully submit the Magistrate Judge erred in not also finding this case should be dismissed under Rule 12(b)(1) of the Federal Rules

of Civil Procedure and, in fact, affirmatively recommending Defendant Harrah's Motion to Dismiss pursuant to Rule 12(b)(1) be denied. Doc. 53, pp. 4-6. The grounds for Defendants' contention the Magistrate Judge erred as to the Rule 12(b)(1) portion of the analysis are: (1) sovereign immunity bars the Plaintiff's workplace claims because the "the real party in interest" with regard to such claims is TCGE (a sovereign entity and Plaintiff's actual employer) and (2) the tribal exhaustion doctrine applies to the Plaintiff's claims such that this Court should not exercise jurisdiction over this case unless and until the parties have exhausted their tribal remedies as a matter of comity.

Accordingly, Defendants object to the portion of the Magistrate Judge's Memorandum and Recommendation finding that Defendant Harrah's Motion to Dismiss pursuant to Rule 12(b)(1) should be denied. Doc. 53, pp. 4-6. Defendants contend the Court should reject these portions of the Magistrate Judge's Memorandum and Recommendation, and find this case should also be dismissed under Rule 12(b)(1) for a lack of subject matter jurisdiction and because of comity concerns pursuant to the tribal exhaustion doctrine.

Defendants additionally object to the Magistrate Judge's finding that Defendant Robinson's Motion to Dismiss should be denied as moot. Doc. 53, p. 1. Defendants understand the recommendation to mean that the case should be dismissed in its entirety as to both Defendants under Rule 12(b)(7). *See* Doc. 53,

p. 12, n. 5. However, declaring Defendant Robinson's Motion to Dismiss "moot" instead of granting it on the same grounds as Defendant Harrah's Motion to Dismiss is granted may create unnecessary confusion and could lead to Plaintiff or other claimants improperly attempting to refile against Defendant Robinson only. Defendant Robinson moved to dismiss on the same grounds as Defendant Harrah's, and the Court should clarify that the claims against Defendant Robinson fail as a matter of law for the same reasons that the claims against Defendant Harrah's fail as a matter of law.

RELEVANT PROCEDURAL BACKGROUND

The operative complaint in this matter is Plaintiff's Amended Complaint. Doc. 29. It alleges that Defendants are liable for unpaid wages, overtime compensation, and statutory penalties resulting from a willful failure to compensate gaming floor employees such as Plaintiff with proper pay, in violation of the Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. § 201, *et seq.*, and the North Carolina Wage and Hour Act ("NCWHA"), N.C. Gen. Stat. § 95-25.1, *et seq.* *See* Doc. 29.

Both Defendants filed Motions to Dismiss the Amended Complaint pursuant to Rules 12(b)(1) and 12(b)(7) on the same grounds, and those Motions were fully briefed by the parties. *See* Docs. 34, 39, 43, 44, 51, *and* 52.

The Magistrate Judge issued his Memorandum and Recommendation on April 27, 2018. Doc. 53. The Magistrate Judge found tribal sovereign immunity did not bar the claims in Plaintiff's Amended Complaint and Defendant Harrah's Motion to Dismiss pursuant to Rule 12(b)(1) should be denied, because neither the Eastern Band of Cherokee Indians ("EBCI") nor TCGE is a named defendant, and Defendant Harrah's is a North Carolina limited liability company that is not owned by the EBCI or TCGE. Doc. 53, pp. 4-6. The Magistrate Judge's proposed findings and recommendations in this regard fail to address Defendants' arguments that these particular claims are barred because sovereign immunity applies where TCGE is "the real party in interest," *see* Docs. 34-1, pp. 5-11; Doc. 43, p. 1-3; Doc. 45, pp. 3-5; Doc. 52, and the tribal exhaustion doctrine bars the Plaintiff's claims as a matter of comity unless and until the parties exhaust their tribal remedies, *see* Docs. 34-1, pp. 12-14; Doc. 43, pp. 7-10; Doc. 45, p. 7. The Magistrate Judge also denied Defendant Robinson's Motion to Dismiss as moot on the grounds that it need not address it given its determination that the case should be dismissed pursuant to Defendant Harrah's Motion to Dismiss under Rule 12(b)(7).

RELEVANT FACTS

EBCI is a federally recognized Indian tribe located in Cherokee, North Carolina. Declaration of Jo Ray, Doc. 34-2, ¶ 4; *see also* 25 U.S.C. § 479a-1 *transferred to* 25 U.S.C. § 5131; 81 Fed. Reg. 5019, 521 (Jan. 29, 2016). EBCI

contracts with Defendant Harrah's to oversee the management of the two tribal casinos at issue in this matter, Harrah's Cherokee Resort and Harrah's Cherokee Valley River Casino and Hotel (the "Tribal Casinos"). Doc. 34-2, ¶ 6. The Tribal Casinos are located on EBCI tribal land in the EBCI reservation. *See id.*

EBCI has delegated its obligations and rights under the management agreement with Defendant Harrah's for the Tribal Casinos to its wholly-owned and operated enterprise TCGE. Doc. 34-2, ¶¶ 3, 7.

Defendants supported their Motions to Dismiss with the Declaration of Jo Ray, TCGE's Regional Vice President of Human Resources and Community Relations, which establishes Plaintiff's employer was TCGE and Plaintiff worked for TCGE – not Defendants – as a table games dealer, dual rate dealer, and floor supervisor at the Tribal Casinos. *Id.* ¶¶ 8. Additionally, Plaintiff's employment with TCGE was conditioned on him passing a background check conducted by the Cherokee Tribal Gaming Commission and Plaintiff was subject to the rules and regulations of the Cherokee Tribal Gaming Commission while he was employed by TCGE at the Tribal Casinos. *Id.* ¶ 9-10. In contrast to TCGE that employs the entire workforce at the Tribal Casinos, Defendant Harrah's has a single employee (Defendant Robinson) who facilitates the management services it provides to EBCI pursuant to the management agreement. *Id.* ¶ 6.

ARGUMENT

1. STANDARD OF REVIEW

If a party timely objects to a magistrate judge's proposed findings and recommendations, a district court must make a *de novo* determination of the specific portions to which an objection is made. Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1). "The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge to which no objections have been raised." *Madewell v. Harrah's Cherokee Smokey Mountains Casino*, 730 F. Supp.2d 485, 487 (W.D.N.C. 2010). "The district judge may accept, reject or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1).

2. THE MAGISTRATE JUDGE ERRED IN FAILING TO FIND SOVEREIGN IMMUNITY BARS THE PLAINTIFF'S CLAIMS BECAUSE TCGE IS "THE REAL PARTY IN INTEREST."

The United States Supreme Court and the Fourth Circuit have both held that, in determining whether a party is entitled to sovereign immunity, the court must determine if the sovereign is "the real party in interest." *Lewis v. Clarke*, 137 S. Ct. 1285, 1290 (2017); *Martin v. Wood*, 772 F.3d 192, 196 (4th Cir. 2014). The analysis does not depend on the "characterization of the parties in the complaint;" rather, it depends on whether the remedy sought is ***actually against the***

sovereign. *Id*. Therefore, it is the nature of the claims asserted, not the identity of the parties, that determines whether sovereign immunity applies. Otherwise, plaintiffs could improperly circumvent sovereign immunity by failing to sue the real party in interest – exactly what Plaintiff attempts to do in this case. If the sovereign is "the real party in interest," it is irrelevant whether or not it is named as a defendant in the suit. Either way, sovereign immunity bars the plaintiff's claims. *See, e.g.*, *In re State of New York*, 256 U.S. 490, 500 (1921) (application of sovereign immunity is not to be determined "by the mere names of the titular parties but by the essential nature and effect of the proceeding, as it appears from the entire record").

Courts are clear that the focal point must be analyzing the "real affront" to the sovereign by allowing a suit to proceed. *See Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 277 (1997) (quoting *Ford Motor Co. v. Dept. of Treasury of State of Indiana*, 323 U.S. 459, 464 (1945)); *Carpenters Pension Fund of Baltimore, Md. v. Maryland Dept. of Health and Mental Hygiene*, 721 F.3d 217, 222 (4th Cir. 2013). And to that end, the court must consider whether the suit "seeks to impose a liability which must be paid from [the sovereign's] funds . . ." *U.S. ex rel. Barron v. Deloitte & Touche, L.L.P.*, 381 F.3d 438, 440 (5th Cir. 2004); *see also Radin v. U.S.*, 699 F.2d 681, 685 (4th Cir. 1983). Indeed, one purpose of sovereign immunity is to prevent situations where the "nominal" party's

liability will expose the sovereign. *See Innova Hosp. San Antonio, L.P. Blue Cross & Blue Shield of Georgia, Inc.*, 2014 WL 360291, *5 (N.D. Tex. 2014) (federal government, not private FEHBA carrier, was real party in interest, as any liability incurred by carrier would have to be paid from federal treasury); *also Allen v. Gold Country Casino*, 464 F.3d 1044, 1047 (9th Cir. 2006) ("Immunity of the [nominal entity] directly protects the sovereign['s] . . . treasury, which is one of the historic purposes of sovereign immunity").

For example, courts often apply sovereign immunity to cases in which a plaintiff sues state officials or state agencies purportedly in their individual or agency capacities as an end-run to bringing suit against the sovereign. *See, e.g., Martin*, 722 F.3d at 196 (the sovereign is deemed "real party in interest" where FLSA claims were asserted against individual supervisors); *Baird v. Kessler*, 172 F. Supp.2d 1305, 1313 (E.D. Cal. 2001), *aff'd*, 81 Fed. Appx. 249 (9th Cir. 2003) ("even if this court were to find that these [individual] defendants were employers under the FLSA, the matter would be dismissed on the ground of sovereign immunity because the state is the real party in interest").

More specifically, the Fourth Circuit has held in the context of workplace related claims that "if a statute treats an individual state employee as the employer, the real party in interest is in reality the state itself." *Montgomery v. Maryland*, 266 F.3d 334, 340 (4th Cir. 2001), *vacated on other grounds by* 535 U.S. 1075 (2002)

(citing *Luder v. Endicott*, 253 F.3d 1020, 1022–23 (7th Cir.2001)); *see also Lopez Rosario v. The Police Department*, 126 F.Supp.2d 167, 171 (D. Puerto Rico 2000) (citing *Hale v. State of Arizona*, 993 F.2d 1387, 1399 (9th Cir.1993)) (finding that "the conduct complained of 'is not personal, and money damages for wages due would be paid out of the state treasury'").

These cases establish that the actual employer is the real party in interest when relief is sought pursuant to the FLSA and similar wage and payroll related statutes such as the NCWHA: first, because it is the actual employer that will be responsible for paying any backwages that may ultimately be deemed owed to its employees; and second, it is the actual employer that will be responsible for altering its payroll practices going forward in order to bring them into compliance with the relevant statutes.

In this case, the Magistrate Judge correctly determined: Plaintiff "was actually employed by TCGE;" TCGE – as the Plaintiff's "'real' employer" – must be joined for complete relief because "Plaintiff's claims are workplace claims;" TCGE must be present in the litigation to protect its interest against Plaintiff's allegations; and "the failure to add TCGE could quite possibly lead to multiple or inconsistent obligations" for TCGE and Defendants with regard to the Plaintiff's employment. Doc. 53, p. 9. It was error, therefore, for the Magistrate Judge not to

also find that TCGE is the real party in interest and its sovereign immunity operates to bar the Plaintiff's claims against Defendants.

The Fourth Circuit's decision in *Martin v. Wood* is particularly instructive here. Defendants are no different than the "nominal" supervisors named as defendants in the complaint in *Martin*. In that case, the Fourth Circuit observed the "complaint alleges that [the individual supervisors] had authority to authorize overtime pay and refused to do so and that, if they had authorized overtime pay, it would have been funded by [the entity entitled to sovereign immunity]." *Martin*, 772 F.3d at 196. Accordingly, the court held that the entity entitled to sovereign immunity was the real party in interest and the claims against the individual supervisors were barred by sovereign immunity. Likewise, any relief sought against Defendants in their supervisory and managerial capacities would directly affect and be funded by the Plaintiff's actual, real employer, TCGE. Because TCGE is the real party in interest, its sovereign immunity extends to Defendants, and the Plaintiff's claims against Defendants should be dismissed pursuant to Rule 12(b)(1) for a lack of subject matter jurisdiction.

3. THE MAGISTRATE JUDGE ERRED IN FAILING TO RECOMMEND PLAINTIFF'S CLAIMS SHOULD ALSO BE DISMISSED PURSUANT TO THE TRIBAL EXHAUSTION DOCTRINE.

"The tribal court exhaustion rule 'provides that 'as a matter of comity, a federal court should not exercise jurisdiction over cases arising under its federal

question or diversity jurisdiction, if those cases are also subject to tribal jurisdiction, until the parties have exhausted their tribal remedies.'"" *U.S. v. Tsosie*, 92 F.3d 1037, 1041 (10th Cir. 1996) (internal citations omitted).[1]

The rule is intended to advance "'Congress's 'strong interest in promoting tribal sovereign immunity.'" *Id.* (internal citations omitted). It does this by creating two long-standing exceptions to the general rule that "the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." *Montana v. U.S.*, 450 U.S. 544, 565 (1981).

First, a "tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangement." *Id.* Second, a "tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee land within its reservations when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Id.* at 566.

Because of the public policy support for the rule, where tribes possess authority to regulate the activities of nonmembers, "'[c]ivil jurisdiction over

[1] Even though the "tribal exhaustion doctrine" is not jurisdictional in nature, "but rather is a matter of comity," courts have routinely addressed it under Rule 12(b)(1) motions. *See, e.g., Madewell*, 730 F. Supp.2d at 488; *Fidelity & Guaranty Ins. Co. v. Bradley*, 212 F. Supp.2d 163, 164 (W.D.N.C. 2002); *Jaramillo v. Harrah's Entertainment, Inc.*, Case No. 09 CV 2559 JM (POR), 2010 WL 653733 * 1 (S.D. Cal. Feb. 16, 2010).

[disputes arising out of] such activities presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute . . .'" *See, e.g.*, *Madewell*, 730 F. Supp.2d at 488 (citing *Strate v. A-1 Contractors*, 520 U.S. 438, 453 (1997)). Additionally, "[w]hen there is a 'colorable question' as to whether a tribal court has subject matter jurisdiction over a civil action, a federal court should stay or dismiss the action so as to 'permit a tribal court to determine in the first instance whether it has the power to exercise subject matter jurisdiction.'" *See, e.g.*, *Madewell*, 730 F. Supp.2d at 488 (citing *Stock West Corp. v. Taylor*, 964 F.2d 912, 919 (9th Cir. 1992)).

This Court need look no further than its own precedent to find that Plaintiff's claims against Defendants raise at least a "colorable question" of tribal jurisdiction such that they should be dismissed pursuant to the tribal exhaustion doctrine. In *Madewell*, casino patrons brought personal injury claims for a slip and fall at one of the Tribal Casinos against Defendant Harrah's. *Madewell*, 730 F. Supp.2d at 486-487. This Court recognized that the plaintiffs were not members of the EBCI and that Defendant Harrah's was a legal entity separate from the EBCI organized under the laws of North Carolina. *Id.* at 488. Nevertheless, this Court granted Defendant Harrah's Motion to Dismiss based on the tribal exhaustion doctrine because the events which gave rise to the plaintiff's claims occurred on tribal

property and "[t]he operation and management of the [Tribal Casinos] clearly implicates the economic interests and welfare of the [EBCI]." *Id.* at 488-489.

In this case, Plaintiff voluntarily accepted employment with TCGE, a wholly owned subsidiary and operating enterprise of the EBCI, at the Tribal Casinos which are owned by the EBCI and located on tribal land; Plaintiff agreed to be subject to the rules and regulations of the Cherokee Tribal Gaming Commission while he was employed at the Tribal Casinos by TCGE; and Plaintiff's employment with TCGE was conditioned on him passing a background check conducted by the Cherokee Tribal Gaming Commission. Accordingly, Plaintiff indisputably entered into a consensual employment and commercial relationship with TCGE, a tribal enterprise. Moreover, the operation and management of the Tribal Casinos and TCGE's potential employment related obligations with regard to its employees at the Tribal Casinos clearly implicate the economic interests and welfare of TCGE and, therefore, the EBCI. As set forth above, it would be TCGE that would be ultimately responsible for paying any allegedly owed backwages to Plaintiff if Plaintiff prevails on his claims because it was his actual employer. Likewise, it would be TCGE that would be ultimately responsible for bringing its employment and payroll practices into compliance with the FLSA and/or NCWHA should violations of those Acts be established in this matter. As such, the Plaintiff's claims against Defendants raise at least a "colorable question" of tribal

jurisdiction such that they should be dismissed pursuant to the tribal exhaustion doctrine. *See, e.g., Madewell*, 730 F. Supp.2d at 488-489; *Jaramillo*, 2010 WL 653733 * 2 (finding that a business invitee at a tribal casino managed by Defendant Harrah's was subject to the tribal exhaustion doctrine because she had created a commercial relationship with the tribe by being a guest at its casino).

Plaintiff argues that there should be a pending tribal court action and evidence that there exists a tribal forum for the Plaintiff's claims before the tribal exhaustion doctrine applies. Doc. 39, pp. 11-12, 17. Plaintiff's contentions are incorrect. It is well-established that lack of a pending tribal action does not defeat the tribal exhaustion requirement. *Madewell*, 730 F. Supp.2d at 489; *Tsosie*, 92 F. 3d at 1041; *Fidelity & Guaranty Ins. Co.*, 212 F. Supp.2d at 167; *Jaramillo*, 2010 WL 653733 *1. Furthermore, there does not need to be evidence that the tribal court recognizes Plaintiff's causes of action for the tribal exhaustion doctrine to apply; rather, the very purpose of the exhaustion doctrine is "to permit a tribal court to determine in the first instance whether it has the power to exercise subject matter jurisdiction." *See, e.g., Madewell*, 730 F. Supp.2d at 488.

Plaintiff also argues that non-members of the tribe are not subject to the tribal exhaustion doctrine except for in limited circumstances, and that those circumstances only apply where the tribe has affirmatively intervened as a party and carried the burden of providing the "need for exhaustion." Doc. 39 pp. 11-16.

In support of this flawed argument, Plaintiff points to authority that deals with the tribal exhaustion doctrine in the context of "nonmembers on non-Indian fee land" or in the context of non-members in a business owned by a nonmember. *See, e.g.*, *Plains Commerce Bank v. Long Family Land and Cattle Co.*, 554 U.S. 316, 330 (2008) (discussing the applicability of the tribal exhaustion doctrine where the tribe was attempting to regulate the activity of nonmembers on non-Indian fee land); *Tidwell v. Harrah's Kansas Casino*, 322 F.Supp.2d 1200, 1206 (D. Kan. 2004) (noting that the matter was not a traditional "reservation affair" because the dispute was between "two non-tribal members arising under federal law, which took place in a casino owned by a nonmember"); *Solis v. Matheson*, 563 F.3d 425, 428 (9th Cir.2009) (holding that the FLSA could be enforced where the defendant business was not owned by the tribe).

That authority is entirely inapplicable here. It is undisputed that the Tribal Casinos are on tribal land and are owned by the EBCI. Additionally, as set forth above, Plaintiff voluntarily entered into an employment and commercial relationship with TCGE a wholly owned enterprise of the EBCI; and the management and operations of the Tribal Casinos clearly implicate the economic interests of the EBCI. In such circumstances, it is well-settled that the tribal exhaustion doctrine remains applicable, even when nonmembers are involved.

As such, the Magistrate Judge should have also recommended Plaintiff's claims should be dismissed under Rule 12(b)(1) pursuant to the tribal exhaustion doctrine and as a matter of comity. *See, e.g., Madewell*, 730 F.Supp.2d at 489; *Jaramillo,* 2010 WL 653733 *2.

4. THE MAGISTRATE JUDGE ERRED BY NOT FINDING THAT DEFENDANT ROBINSON'S MOTION TO DISMISS SHOULD ALSO BE GRANTED.

Defendants additionally object to the Magistrate Judge's finding that Defendant Robinson's Motion to Dismiss should be denied as moot. Doc. 53, p. 1. Defendants understand the recommendation to mean that the case should be dismissed in its entirety as to both Defendants under Rule 12(b)(7). *See* Doc. 53, p. 12, n. 5. However, declaring Defendant Robinson's Motion to Dismiss "moot" instead of granting it on the same grounds as Defendant Harrah's Motion to Dismiss is granted may create unnecessary confusion and could lead to Plaintiff or other similarly situated claimants improperly attempting to refile against Defendant Robinson only, when any such claims should be precluded by the Court's ruling in this case as a matter of law. Defendant Robinson moved to dismiss on the same grounds as Defendant Harrah's, and the Court should clarify that the claims against Defendant Robinson fail as a matter of law for the same reasons that the claims against Defendant Harrah's fail as a matter of law.

CONCLUSION

For each of the foregoing reasons, the Court should accept and adopt the portions of the Magistrate Judge's Memorandum and Recommendation finding that TCGE is a necessary and indispensable party to this lawsuit that cannot be joined, and recommending that Harrah's Motion to Dismiss under Rule 12(b)(7) be granted. *See* Doc. 53, pp. 6-12.

This Court, however, should reject the portions of the Magistrate Judge's Memorandum and Recommendation finding that the Court has subject matter jurisdiction over the Plaintiff's claims and Defendant Harrah's Motion to Dismiss pursuant to Rule 12(b)(1) should be denied, *see* Doc. 53, pp. 4-6, because they constitute legal error for each of the reasons specified above. This Court should instead find this case should additionally be dismissed under Rule 12(b)(1) for a lack of subject matter jurisdiction and pursuant to the tribal exhaustion doctrine.

The Court should also reject the Magistrate Judge's recommendation that Defendant Robinson's Motion to Dismiss should be denied as moot, and should instead grant Defendant Robinson's Motion to Dismiss for each of the same reasons as Defendant Harrah's Motion to Dismiss.

This the 11th day of May, 2018.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he electronically filed the foregoing *Defendants' Limited Objections to the Magistrate Judge's Memorandum and Recommendation* with the Clerk of Court using the CM/ECF system and he served the foregoing document upon the attorneys shown below by transmittal of a Notice of Electronic Filing:

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This the 11th day of May, 2018.

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