

THE COLLINS LAW FIRM, PLLC

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Ernest Collins Jr. #017976

Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF ARIZONA**

NADIA DRAKE, an unmarried woman,

Plaintiff,

v.

SALT RIVER PIMA-MARICOPA INDIAN
COMMUNITY, a federally recognized Indian
Tribe, d/b/a TALKING STICK RESORT
AND CASINOFILING,

Defendant.

Civil Action No. CV-19-029557-PHX-DLR

**RESPONSE TO MOTION TO SET ASIDE
CLERK'S ENTRY OF DEFAULT**

Plaintiff, by and through undersigned counsel, responds to Defendant's Motion to Set
Aside Default.

I. Service of Process was Proper and Effective.

Defendant has documented the methods of service effectuated by Plaintiff to serve
Defendant. See also Doc. 9. Plaintiff served Defendant's counsel, who informed Plaintiff's
counsel that they represented Defendant prior to suit being filed, but then refused to "accept"
service of process on behalf of Defendant.

1 Rule 4(e), Federal Rules of Civil Procedure states that service may be made following
2 state law for serving a summons in an action brought in courts of general jurisdiction in the state
3 where the district court is located or where service is made. Under Arizona state law and rules
4 of civil procedure, Rule 4.2, permits service of process outside Arizona (since Defendant is
5 claiming to be a sovereign territory which would mean outside of Arizona) by mail with a
6 signature required. See attached USPS Tracking showing proof of delivery and that it was signed
7 for by I Community on August 9, 2019. Further, since Defendant is claiming to be a sovereign
8 territory (nation), which is akin to a Foreign country, Rule 4(f)(2)(ii), Federal Rules of Civil
9 Procedure permits, using any form of mail that the clerk addresses and sends to the party and that
10 requires a signed receipt. Again, the Summons and Complaint were sent certified with a signature
11 required and it was received and signed for on August 9, 2019. See attached USPS Tracking
12 showing proof of delivery and that it was signed for by I Community on August 9, 2019.
13

14
15
16 The purpose of the service of process rules is to give notice to the Defendant that they are
17 being sued and give them an opportunity to timely respond to said lawsuit. Not only did
18 Defendant's counsel receive the Summons and Complaint but Defendant received and signed for
19 the Summons and Complaint. Yet, they still chose to ignore the Complaint and failed to timely
20 respond.
21

22 Based upon the rules of civil procedure, Defendant was properly served and failed to
23 timely Answer the Complaint. The Default should not be set aside.
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1 Alternatively, if this court were to find that service of process was not proper, Plaintiff
2 would request an extension of time to service Defendant personally to remove any doubt as to
3 service.
4

5 DATED this 2nd day of October, 2019.

6 **THE COLLINS LAW FIRM, PLLC**

7 
8 Ernest Collins Jr.
9 Attorney for Plaintiff

10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on the 2nd day of October, 2019, I electronically transmitted the
12 attached document to the Clerk's Office using the CM/ECF Systems for filing and transmittal of
13 a Notice of Electronic Filing to the following CM/ECT registrant:

14 Caroline Larsen
15 Justin B. Caresia
16 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
17 2415 East Camelback Road, Suite 800
18 Phoenix, Arizona 85016
19 Attorneys for Defendant

20 Samantha Debord
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