

Honorable James L. Robart

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

ANNETTE CADET,

Plaintiff,

v.

SNOQUALMIE CASINO,

Defendant.

Civil Action No. 2:19-cv-01953-JLR

**SNOQUALMIE CASINO’S MOTION TO
DISMISS COMPLAINT AND
MEMORANDUM IN SUPPORT
THEREOF**

**NOTE ON MOTION CALENDAR:
MARCH 20, 2020**

INTRODUCTION

Pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(5), and 12(b)(6), Defendant Snoqualmie Casino (“Defendant” or “Casino”) respectfully moves the Court to dismiss Plaintiff Annette Cadet’s (“Plaintiff”) Complaint for a Civil Case Alleging Negligence with prejudice and without leave to amend.

As explained below, Plaintiff’s Complaint should be dismissed for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) based on Plaintiff’s failure to identify a basis for jurisdiction and the Casino’s unwaived sovereign immunity from suit. Plaintiff’s Complaint should also be dismissed because it fails to state a claim on which relief can be granted under Fed. R. Civ. P. 12(b)(6). Alternatively, the Court should dismiss Plaintiff’s Complaint because it is procedurally deficient, given that Plaintiff failed to effectuate proper service under Fed. R. Civ. P. 12(b)(5).

STATEMENT OF FACTS

1
2 On November 27, 2019, Plaintiff filed a Motion for Leave to Proceed In Forma Pauperis.
3 Attached to the Motion for Leave to Proceed In Forma Pauperis was a Complaint for a Civil
4 Case Alleging Negligence, naming Snoqualmie Casino as the Defendant. Dkt. 1-1. Plaintiff is a
5 *pro se* litigant and filed her Complaint using a template form provided by the Court, which
6 provides certain boxes and sections to be filled out by the Plaintiff. Although Plaintiff completed
7 some of the sections, she left other portions blank, including the sections in which the plaintiff is
8 to indicate whether the trial is jury/non-jury; the address and other contact information for the
9 defendant; and the basis for jurisdiction. *Id.*

10 Plaintiff alleges in her Complaint that on May 3, 2018, at the Snoqualmie Casino, “‘The
11 Casino security asked to leave.’ Casino provided transportation to go and at 2 am refused to
12 transport me after I lost all money and have no other options.” *Id.* Plaintiff further alleges that the
13 Casino caused her injuries by: “Racial discrimination (video footage),” “Police assault and False
14 accusations,” and “1 year lost of job (Background check pending).” *Id.* at 5. Plaintiff alleges that
15 the amount in controversy is \$100,000 for “emotional stress, job lost, personal injuries and racial
16 discrimination.” *Id.* For relief, Plaintiff claims damages for “shoulder pain (dislocated),” “left
17 arm pain,” “job canceled me because of false accusations. Background check pending.” *Id.* at 6.

18 On December 30, 2019, Plaintiff filed a Complaint identical to the one originally filed
19 with the Court on November 27, 2019. Dkt. 7. On December 31, 2019, the Court Clerk sent an
20 instruction letter and blank summons to Plaintiff for Plaintiff to complete and return for issuance.
21 No other entries appear on the docket for this case.

22 On January 27, 2020, Defendant received a copy of the Complaint and the summons,
23 dated January 21, 2020, sent via certified mail. Declaration of Mary Lou Patterson (“Patterson
24 Decl.”) ¶ 3. To date, Plaintiff has not served the Complaint and summons on the Casino or
25 provided a return of service to the Court. *Id.*, ¶ 4.

ARGUMENT

A. Standards of Review

1. Dismissal Under 12(b)(1)

Courts have repeatedly acknowledged that the question of tribal sovereign immunity is a matter of subject matter jurisdiction which can be challenged in a motion to dismiss under Rule 12(b)(1). *Pistor v. Garcia*, 791 F.3d 1104, 1111 (9th Cir. 2015) (holding motion to dismiss for lack of subject matter jurisdiction to be “the proper vehicle for invoking sovereign immunity from suit”); *Miller v. Wright*, 705 F.3d 919, 922 (9th Cir. 2013) (affirming the district court’s dismissal of action for lack of subject matter jurisdiction in light of the tribe’s sovereign immunity). On a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), the party asserting jurisdiction bears the burden of establishing subject matter jurisdiction. *Miller*, 705 F.3d at 923 (citing *Robinson v. United States*, 586 F.3d 683, 685 (9th Cir. 2009)).

2. Dismissal Under 12(b)(5)

Fed. R. Civ. P. 12(b)(5) addresses insufficient service of process. The procedural requirements for proper service are set forth in Fed. R. Civ. P. 4 and they are incorporated by Rule 12(b). A Rule 12(b)(5) motion is therefore the proper vehicle for challenging the mode of delivery or lack of delivery of the summons and complaint. *Wasson v. Riverside Cty.*, 237 F.R.D. 423, 424 (C.D. Cal. 2006). The improper service of a summons is the appropriate subject for an objection under Rule 12(b)(5). 5A Wright & Miller, Federal Practice and Procedure, § 1353, pp. 334–35 (3d ed.2004).

3. Dismissal Under 12(b)(6)

A defendant may move for dismissal under Rule 12(b)(6) when a plaintiff fails to state a claim upon which relief can be granted. In reviewing a motion to dismiss, the court must accept as true a complaint’s well-pleaded facts and construe them in the light most favorable to the non-moving party. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). However, conclusory allegations of law and unwarranted interferences will not defeat an otherwise proper Rule 12(b)(6) motion. *Vasquez v. L.A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007). To survive a

1 motion to dismiss, a plaintiff must cite facts supporting a “plausible” cause of action. *Bell*
2 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007).

3 **4. Standard for *Pro Se* Litigants**

4 Where a plaintiff is *pro se*, particularly in styled-civil rights cases as this, courts should
5 construe pleadings liberally and afford the plaintiff any benefit of the doubt. *Wilhelm v. Rotman*,
6 680 F.3d 1113, 1121 (9th Cir. 2012). “[B]efore dismissing a pro se complaint the district court
7 must provide the litigant with notice of the deficiencies in his complaint in order to ensure that
8 the litigant uses the opportunity to amend effectively.” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th
9 Cir. 2012) (quoting *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)). A court should
10 grant a *pro se* plaintiff leave to amend a defective complaint “unless it is absolutely clear that the
11 deficiencies of the complaint could not be cured by amendment.” *Akhtar*, 698 F.3d at 1212
12 (quoting *Shucker v. Rockwood*, 846 F.2d 1202, 1203-04 (9th Cir. 1988) (per curiam)).

13 **B. This Action Should Be Dismissed With Prejudice Because the Court Lacks Subject** 14 **Matter Jurisdiction Over This Dispute**

15 **1. Plaintiff Has Failed to Assert a Basis for Federal Court Jurisdiction**

16 Federal courts are courts of limited jurisdiction. *Stock West, Inc. v. Confederated Tribes*,
17 873 F.2d 1221, 1225 (9th Cir. 1989). Thus, the plaintiff bears the burden of establishing subject
18 matter jurisdiction. *Haisten v. Grass Valley Medical Reimbursement Fund, Ltd.*, 784 F.2d 1392,
19 1396 (9th Cir. 1986). Fed. R. Civ. P. 8(a) provides that “[a] pleading that states a claim for relief
20 must contain: (1) a short and plain statement of the grounds for the court's jurisdiction, unless the
21 court already has jurisdiction and the claim needs no new jurisdictional support; (2) a short and
22 plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for
23 the relief sought, which may include relief in the alternative or different types of relief.” When it
24 appears that the court lacks subject matter jurisdiction over the matter, the court is required to
25 dismiss the action. Fed.R.Civ.P. 12(h)(3); *Augustine v. United States*, 704 F.2d 1074, 1077 (9th
26 Cir.1983). Ordinarily, a district court should dismiss an action for lack of jurisdiction without
27 prejudice so that the plaintiff may reassert his or her claim in a competent court. *Frigard v.*

1 *United States*, 862 F.2d 201, 204 (9th Cir.1988).

2 Here, Plaintiff has failed to allege any basis for the Court's jurisdiction, in violation of
3 Rule 8(a)(1). Because the absence of any allegation asserting subject-matter jurisdiction leaves
4 both the Casino and the Court unable to determine on what basis the Plaintiff asserts that federal
5 court jurisdiction exists, the Court should dismiss Plaintiff's Complaint for this significant
6 procedural insufficiency. *See Puget Soundkeeper All. v. APM Terminals Tacoma, LLC*, C17-
7 5016 BHS, 2019 WL 399026, at *3 (W.D. Wash. Jan. 31, 2019). As noted below, although
8 generally it would be appropriate to grant Plaintiff, as a *pro se* litigant, leave to amend this
9 deficiency, because the Complaint must be dismissed on sovereign immunity grounds, which
10 cannot be cured by amendment, the Court should instead dismiss the Complaint. *See Akhtar*, 698
11 F.3d at 1212.

12 **2. The Snoqualmie Casino Is Immune From Plaintiff's Suit**

13 It is well-established that Indian tribes are generally immune from lawsuits. *United States*
14 *ex rel. Cain v. Salish Kootenai Coll., Inc.*, 862 F.3d 939, 943 (9th Cir. 2017); *Burlington N. &*
15 *Santa Fe Ry. Co. v. Vaughn*, 509 F.3d 1085, 1090 (9th Cir. 2007). Tribal sovereign immunity
16 protects Indian tribes from suit absent express authorization by Congress or clear waiver by the
17 tribe and applies to the tribe's commercial, as well as, governmental activities. *Cook v. AVI*
18 *Casino Enterprises, Inc.*, 548 F.3d 718, 725 (9th Cir. 2008). This immunity extends not just to
19 tribal government functions, but to tribal commercial enterprises, regardless of where they occur.
20 *Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.*, 523 U.S. 751, 754–75 (1998). Courts have also
21 affirmed that tribal casinos enjoy the tribe's immunity from suit. *Cook*, 548 F.3d at 726; *Allen v.*
22 *Gold Country Casino*, 464 F.3d 1044, 1047 (9th Cir. 2006). A tribe and its enterprises are
23 therefore only subject to suit only where Congress has authorized it or the tribe has clearly and
24 expressly waived its immunity. *Kiowa*, 523 U.S. at 754.

25 Plaintiff has sued the Snoqualmie Casino, a commercial enterprise of the Snoqualmie
26 Tribe. Both the Tribe and the Casino are immune from suit. Thus, absent a clear and unequivocal
27 waiver from the Tribe or Congress, the Casino may not be sued. *See Allen v. Gold Country*

1 *Casino*, 464 F.3d 1044, 1045 (9th Cir. 2006) (affirming district court’s dismissal of claims
2 against casino because record and the law established that it functioned as an arm of the Tribe).

3 Here, there is no waiver of immunity provided by Congress. However, the Snoqualmie
4 Tribe has established a limited waiver of sovereign immunity through the passage of its Tort
5 Claims Act. Snoqualmie Tribal Code, Title 8, Chapter 7, *available at*
6 <http://www.snoqualmieltribe.us/TribalCodes>. The Act affirms that the Tribe is immune from suit,
7 “except to the extent that the Tribal Council expressly and unambiguously waives its sovereign
8 immunity.” Tort Claims Act, § 3.0. Pursuant to the Tort Claims Act, “[p]eople who are injured
9 by the negligent and wrongful acts and/or omissions of Tribal officers, agents, or employees can
10 be provided a legal remedy that is consistent with the Tribal Council’s constitutional obligation
11 to protect Tribal assets and resources that are vital to the continued operation of Tribal
12 governmental operations and programs.” *Id.*, § 3.0. The Act provides that it “sets forth the
13 **exclusive manner** in which tort claims involving the Snoqualmie Indian Tribe shall be filed,
14 administered, and adjudicated.” *Id.* (emphasis added).

15 In providing a limited waiver of its immunity, the Tribe sets forth very specific
16 procedural requirements within the Act, including time limitations for filing an action and notice
17 requirements for making a claim. Among them, the Act requires a tort claimant to notify the
18 Tribal Council Secretary and Tribe’s In-House Legal Counsel of the alleged injury no more than
19 180 days after the act or omission giving rise to the injury, and for the tort claimant to wait a
20 period of at least 90 days—but no more than 270 days—after giving notice to the Tribe before
21 filing suit. *Id.*, § 10.0. Further, under the Act, tort claims can **only** be brought in Snoqualmie
22 Tribal Court, not in state or federal court. *Id.* The Act also states that it “shall be narrowly and
23 strictly construed” and the limited waiver is “expressly conditioned upon the claimant’s full and
24 complete compliance with all of the procedures set forth in this Chapter.” *Id.*

25 Importantly for purposes of the Tribe’s deliberate and limited waiver, Plaintiff generally
26 alleges a negligent or wrongful act or omission by the Tribe or its officers, agents, or employees.
27 Accordingly, the Tort Claims Act provides her exclusive remedy for an action against the Tribe

1 for her alleged injuries. However, Plaintiff has failed to meet the requirements of the Tort Claims
2 Act in a number of ways, the most meaningful of which is that she filed suit in this Court, rather
3 than in Snoqualmie Tribal Court. Additionally, Plaintiff failed to follow the notice requirements
4 in the Act, and waited too long to make a claim. Based on her failure to strictly comply with
5 these procedures, the limited waiver of sovereign immunity that the Tribe has expressed for tort
6 claims does not extend to Plaintiff's current Complaint.

7 Plaintiff's failure to fully and completely comply with the procedural requirements of the
8 Act thus precludes her from filing suit against the Tribe. And, in any event, the Tort Claims Act
9 has never authorized Plaintiff to file suit in this Court. The Court should therefore dismiss
10 Plaintiff's Complaint in its entirety with prejudice for lack of subject matter jurisdiction under
11 Rule 12(b)(1).

12 **C. Plaintiff Has Failed to State a Claim on Which Relief Can Be Granted**

13 Plaintiff alleges in her Complaint that on May 3, 2018, Snoqualmie Casino Security
14 asked her leave, but then "refused to transport" her after she lost all of her money and "ha[d] no
15 other options." Dkt. 7 at 5. She further alleges racial discrimination, "false accusations," and that
16 she lost her job. *Id.* These statements, even if construed as true and analyzed under the liberal
17 notice pleading standards, do not "state a claim to relief that is plausible on its face" under
18 *Twombly*, 550 U.S. at 570.

19 While dismissal with leave to amend would normally be appropriate in response to
20 failure to state a claim on which relief may be granted and other procedural deficiencies,
21 particularly given her status as a *pro se* litigant, because the Court lacks subject matter
22 jurisdiction over this dispute due to the Casino's sovereign immunity, leave to amend would be
23 futile. Accordingly, the Court should dismiss Plaintiff's Complaint without leave to amend.

24 **D. Plaintiff Has Failed to Effectuate Proper Service Under the Federal Rules**

25 Fed. R. Civ. P. 4(b) provides that "[o]n or after filing the complaint, the plaintiff may
26 present a summons to the clerk for signature and seal. If the summons is properly completed, the
27 clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons—or a

1 copy of a summons that is addressed to multiple defendants—must be issued for each defendant
 2 to be served.” Fed. R. Civ. P. 4(c) further requires that “[a] summons must be served with a copy
 3 of the complaint. The plaintiff is responsible for having the summons and complaint served
 4 within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who
 5 makes service.” Unless a defendant has waived service, the Federal Rules of Civil Procedure
 6 require service of the summons and complaint to be made by “[a]ny person who is at least 18
 7 years old and not a party.” *Id.*

8 Plaintiff failed to properly serve the Casino with a copy of the Complaint and summons,
 9 as required by the Rule. Because there was no request made to the Casino to waive service,
 10 service requires Plaintiff to have either hired a professional process server to serve the summons
 11 and Complaint or have any person who is at least 18-years-old and not a party to the lawsuit
 12 serve the summons and Complaint. To date, the Casino has not been so served; it has only
 13 received a copy of the Complaint and summons via certified mail on January 27, 2020. Patterson
 14 Decl., ¶¶ 3–4. It further appears from the docket that Plaintiff has not returned the summons to
 15 the Clerk to be served on the Casino. The method of service via mail does not meet the
 16 requirements of Fed. R. Civ. P. 4. Service has not been properly executed and Plaintiff’s
 17 Complaint should be dismissed.

CONCLUSION

19 Based on the foregoing, the Snoqualmie Casino respectfully requests that the Court
 20 dismiss Plaintiff’s Complaint with prejudice and without leave to amend.

21 DATED this 24th day of February, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2020, I caused a true and correct copy of the foregoing **SNOQUALMIE CASINO'S MOTION TO DISMISS COMPLAINT AND MEMORANDUM IN SUPPORT THEREOF** to be served via Certified Mail, Return Receipt requested, to the following parties:

Annette Cadet
P.O. Box 1237
Bellevue, WA 98009

Plaintiff

DATED this 24th day of February 2020.

Kilpatrick Townsend & Stockton, LLP

By: Rebecca Horst

Rebecca Horst
Paralegal