

1 Maria C. Roberts, SBN 137907
mroberts@greeneroberts.com
2 Ryan Blackstone-Gardner, SBN 208816
rbg@greeneroberts.com
3 GREENE & ROBERTS
402 West Broadway, Suite 1025
4 San Diego, CA 92101
Telephone: (619) 398-3400
5 Facsimile: (619) 330-4907

6 Attorneys for *Specially Appearing* Defendants Caesars
Enterprise Services, LLC and Caesars Entertainment,
7 Inc.

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 DARRELL PILANT,

12 Plaintiff,

13 v.

14 CAESARS ENTERPRISE
SERVICES, LLC, a limited
15 liability corporation; CAESARS
ENTERTAINMENT, INC., a
16 corporation; and DOES 1 through
20, inclusive,

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

Case No. **'20CV2043 CAB AHG**

Action Date: August 31, 2020

**NOTICE OF REMOVAL
BY *SPECIALLY APPEARING*
DEFENDANTS CAESARS
ENTERPRISE SERVICES, LLC AND
CAESARS ENTERTAINMENT, INC.**

**[Pursuant to 28 U.S.C. §§ 1331, 1332,
1441(a), 1441(b); 25 U.S.C. § 2701, *et*
seq.]**

**SUPPORTING DOCUMENTS:
CIVIL COVER SHEET;
DECLARATIONS OF MARIA C.
ROBERTS, DENISE TURNER WALSH
AND PAUL GEORGESON**

Greene & Roberts
402 West Broadway, Suite 1025
San Diego, CA 92101
(619) 398-3400

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that ***Specially Appearing*** Defendants, Caesars
 3 Enterprise Services, LLC (“CES”) and Caesars Entertainment, Inc. (“CEI”), hereby
 4 file this Notice of Removal from the Superior Court of the State of California in
 5 and for the County of San Diego, Case No. 37-2020-00030556-CU-WT-CTL (the
 6 “State Action”) to the United States District Court for the Southern District of
 7 California.

8 This Removal is based on two independent grounds:

9 (1) federal question jurisdiction, pursuant to 28 U.S.C. sections 1331 and
 10 1441(a), under the Indian Gaming Regulatory Act (“IGRA,” 25 U.S.C.
 11 §2701, *et seq.*); and

12 (2) diversity of citizenship, pursuant to 28 U.S.C. sections 1332(a), 1441(b),
 13 and 1446(b) as amended by the Federal Courts Jurisdiction and Venue
 14 Clarification Act of 2011, Pub. L. No. 112-63, 125 Stat. 758 (2011).

15 Pursuant to 28 U.S.C. §1446(a), attached hereto collectively as Exhibit 1 is
 16 the entirety of the State Court file. No further proceedings have been had or
 17 documents filed in the Superior Court of the State of California for the County of
 18 San Diego.

19 The facts that entitle ***Specially Appearing*** Defendants to remove this action
 20 include:

21 1. On August 31, 2020, Plaintiff DARRELL PILANT filed a complaint
 22 in the Superior Court of the State of California for the County of San Diego titled:
 23 “*Darrell Pilant v. Caesars Entertainment Services, LLC, a limited liability*
 24 *corporation; Caesars Entertainment, Inc., a corporation; and DOES 1 through 20,*
 25 *inclusive,*” designated as Case No. 37-2020-00030556-CU-WT-CTL (the “State
 26 Action”). The complaint alleged causes of action for: wrongful termination in
 27 violation of public policy; violation of Labor Code §6310; violation of Labor Code
 28 §1102.1; and breach of written employment agreement. (See, Exh. 1, Complaint)

Greene & Roberts
 402 West Broadway, Suite 1025
 San Diego, CA 92101
 (619) 398-3400

2. On September 16, 2020, PILANT caused a copy of the Summons and Complaint to be served on Specially Appearing Defendant CES by personal service on an agent for service of process. (Exh. 1, Proofs of Service of Summons and Complaint.)

3. In accordance with 28 U.S.C. §1446(d), the undersigned counsel certifies that a copy of this Notice of Removal and all supporting papers will be promptly served on PILANT's counsel and will be filed with the Clerk of the Superior Court for the County of San Diego. (Roberts Decl., ¶3.)

4. This Notice of Removal is effected properly and timely pursuant to 28 U.S.C. § 1446(b). (Exh. 1, Proofs of Service of Summons and Complaint.)

5. For purposes of removal, venue is proper in the Southern District of California pursuant to 28 U.S.C. §1441(a), because the Superior Court where the removed case was pending is located within the District. *Specially Appearing* Defendants reserve the right to move to transfer venue pursuant to FRCP 12(b)(3) and/or 28 USC §§1404, 1406, as venue is likely proper in Nevada.

As shown below, this Action may be removed to district court pursuant to 28 U.S.C. §§1331, 1332, 1441, and 1446, and 25 U.S.C. §2701, *et seq.*

REMOVAL BASED ON FEDERAL QUESTION JURISDICTION UNDER THE INDIAN GAMING REGULATORY ACT

Specially Appearing Defendants may properly remove the complaint to federal court on the basis of federal question jurisdiction pursuant to 28 U.S.C. §1331, as this case is one over which this Court has original jurisdiction under:

- a) 28 U.S.C. §1331, which provides that “district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States”;
- b) 25 U.S.C. §2701, *et seq.*, which completely preempts the claims asserted in the complaint; and

c) Article I Section 8 of the United States Constitution, which provides that the real party-in-interest is a federally-recognized Indian Tribe and, thus, a domestic sovereign nation.

The Rincon Casino:

The Rincon Casino, which operates under the fictitious name Harrah's Resort Southern California, is located on the reservation of the Rincon Band of Luiseño Indians, a federally-recognized sovereign Indian tribe (the "Rincon Band"). (Turner Walsh Decl., at ¶3.)

The Rincon Casino is wholly owned and controlled by the Rincon Band pursuant to IGRA, which establishes the regulatory framework that governs Indian gaming, as well as under government-to-government agreements between the Rincon Band and the State of California and, subsequently, with the United States Department of the Interior. The creation and existence of the Rincon Casino was dependent upon government approval at numerous levels, in order for it to conduct gaming activities permitted only under the auspices of the Rincon Band. IGRA required the Rincon Band to authorize the creation of the Rincon Casino through a specific tribal ordinance and a Gaming Compact with the State of California, or Secretarial Procedures issued by the United States in lieu of a Gaming Compact. (Turner Walsh Decl., ¶4.) 25 U.S.C. §2701, *et seq.*

The creation and existence of the Rincon Casino was dependent upon government approval at numerous levels, in order for it to conduct gaming activities permitted only under the auspices of the Rincon Band. IGRA required the Rincon Band to authorize the creation of the Rincon Casino through a specific tribal ordinance and a Gaming Compact with the State of California, or Secretarial Procedures issued by the United States in lieu of a Gaming Compact. (Turner Walsh Decl., ¶4.) 25 U.S.C. §2701, *et seq.*

///

///

1 In 1999, the Rincon Band and the State of California entered into a Gaming
2 Compact “on a government-to-government basis.” (Turner Walsh Decl. ¶5.)

3 In 2013 the Gaming Compact was superseded by “Secretarial Procedures for
4 the Rincon Band of Luiseno Indians.” (Turner Walsh Decl., ¶6.) The Secretarial
5 Procedures were issued under IGRA by the Secretary for the United States
6 Department of the Interior, vesting authority to oversee compliance with those
7 Procedures in the National Indian Gaming Commission (“NIGC”), a federal
8 regulatory body within the authority of the Department of the Interior, with
9 oversight of the operations of the gaming enterprise of the Casino. The Secretarial
10 Procedures govern the Rincon Band’s gaming operations as a means of ensuring
11 compliance with IGRA. (*Id.*)

12 Under the express terms of the Secretarial Procedures, the purpose of the
13 Rincon Casino is to “enable the [Rincon Band] to develop self-sufficiency, promote
14 tribal economic development, and to generate jobs and revenue to support the
15 [Rincon Band’s] government and governmental services and programs.” (Turner
16 Walsh Decl., ¶7.)

17 The Rincon Band exercises ultimate authority and control over civil
18 regulatory matters within the Rincon Reservation, including operations and
19 decisions concerning the business, maintenance, and management of the Rincon
20 Casino. (Turner Walsh Decl., ¶8.)

21 From its inception, the Rincon Band had an NIGC-approved Management
22 Agreement (“Agreement”) with its managing agent, HCAL, LLC, for operation of
23 the Rincon Casino. *See*, 25 U.S.C. §§2710-11; 25 C.F.R. Parts 531-37.1. Under the
24 Agreement, the role of HCAL is to assist the Rincon Band in managing its gaming
25 enterprise on a day-to-day basis, again, with the approval of the NIGC. And, while
26 HCAL provides management and oversight of day-to-day operations of the Rincon

27 ¹ The NIGC ensures that tribes own and are the primary beneficiaries of the Indian
28 gaming facilities (*see* 25 U.S.C. § 2702(2)) and that management companies do not
have any proprietary interest in a tribe’s gaming facility. 25 U.S.C. §2710(b)(2)(A).

1 Casino, all major decisions, including annual plan and budgeting, operations,
 2 gaming, capital development, and closing/reopening the Rincon Casino, are subject
 3 to the ultimate approval of the Rincon Band. (Turner Walsh Decl., ¶9.)

4 The extraordinary steps taken to create the Rincon Casino were necessary
 5 because it is not a mere revenue-producing tribal business. Rather, under IGRA,
 6 the creation and operation of Indian casinos is designed to “promote tribal
 7 economic development, tribal self-sufficiency, and strong tribal government.” 25
 8 U.S.C. §2701(4); *see also* 25 U.S.C. §2702(1). Indeed, a principal purpose of
 9 IGRA is to “ensure that the Indian tribe is the primary beneficiary of the gaming
 10 operation.” 25 U.S.C. §2702(2).

11 IGRA’s comprehensive and sophisticated regulatory scheme preempts the
 12 application of state law and state jurisdiction, except to the limited extent agreed to
 13 by an Indian Tribe in a Tribal-State Compact, which is not at issue here. *See*,
 14 *Gaming Corp. of America v. Dorsey & Whitney*, 88 F.3d 536, 544 (8th Cir. 1996)
 15 (examination of IGRA, its legislative history, and jurisdictional framework, shows
 16 Congress intended it to “completely preempt state law”); *United Keetoowah Band*
 17 *of Cherokee v. State of Oklahoma*, 927 F.2d 1170, 1177-79 (10th Cir. 1991):
 18 *Flandreau Santee Sioux v. Noem*, 938 F.3d, 928,937 (8th Cir. 2019); *Video Gaming*
 19 *Technologies v. Rogers County Board of Tax Roll Corrections*, ___ P.2d ___, 2019
 20 WL 6877904 (Okla. Supreme Ct 2019). *See also*, *Murphy v. N.C.A.A.*, 138 S.Ct.
 21 1461, 1480-81 (2018)(preemption “reflects a congressional decision to foreclose
 22 any state regulation in the area, even if it is parallel to federal standards”).

23 Accordingly, IGRA provides this Court with original jurisdiction for
 24 removal. *Cabazon Band of Mission Indians v. Wilson*, 124 F.3d 1050, 1056 (9th
 25 Cir. 1997) (“By envisioning the enforcement of a compact and any contractual
 26 obligations pursuant to a compact in federal court, IGRA necessarily confers
 27 jurisdiction to the federal courts.”); *Tavares v. Harrah’s Operating Co.*, 2013 U.S.
 28 Dist. LEXIS 60922 at *3 (S.D. Cal. Apr. 29, 2013) (noting case properly removed

1 action to federal court by asserting plaintiff's claims are preempted by IGRA and
 2 "the real party in interest is a federally recognized Indian Tribe that is a domestic
 3 sovereign under Article I, Section 8 of the United States Constitution").

4 **The Complaint:**

5 In the complaint, PILANT asserts the following pertinent allegations against
 6 ***Specially Appearing*** Defendants CES and CEI as his purported "joint employers":

- 7 • At the time he resigned, he was employed as the Senior Vice President
 8 and General Manager of Harrah's Resort Southern California;
- 9 • Harrah's Resort Southern California is owned by the Rincon Band of
 10 Luiseno Indians;
- 11 • ***Specially Appearing*** Defendant CES contracted with the Rincon Band
 12 and is responsible for the management/operation of Harrah's Resort
 13 Southern California; and
- 14 • In early May 2020, PILANT was contacted by Rincon Tribal
 15 Chairman Bo Mazzetti and was told that the San Diego Tribes were
 16 going to inform Governor Newsom that the Tribes were planning to
 17 reopen all of their casinos on or after May 18, 2020...on May 8, 2020,
 18 the Tribal leaders sent a letter to Governor Newsom and San Diego
 19 County Board of Supervisors Chairman Cox setting forth their plan to
 20 reopen.

21 (See, Complaint, at ¶¶ 10, 16, 17.)

22 In March 2020, the Rincon Band made the decision to temporarily close all
 23 businesses on the Reservation (including the Casino) due to concerns regarding the
 24 novel coronavirus and potential spread of coronavirus disease ("COVID-19") on
 25 the Rincon Reservation. (Turner Walsh Decl., ¶10.) In the weeks that followed, the
 26 Tribal Council formed the Rincon Business and Jobs Recovery Task Force, a multi-
 27 disciplinary leadership response team, to advise the Tribal Council on safety
 28 protocols for the gradual reopening of essential businesses on the Rincon
 Reservation. (*Id.*) The Rincon Casino, which provides the vast majority of tribal
 governmental revenue, was deemed by the Tribal Council to be essential critical
 infrastructure for the Band. (*Id.*)

///

1 A comprehensive reopening plan was developed for the Rincon Casino based
 2 on guidance from the NIGC and the Centers for Disease Control and Prevention
 3 (“CDC”). The plan was compliant with the NIGC reopening checklist and
 4 consistent with the variance framework applicable to San Diego County, as issued
 5 by the State of California. (Turner Walsh Decl., ¶10.) The plan set forth in detail
 6 the precautions and measures that had been and were being taken to minimize risks
 7 associated with the spread of COVID-19 to employees and patrons and did so based
 8 on the health and safety guidance published by the NIGC and CDC. (*Id.*)

9 The Rincon Band, which acts by and through a democratically elected five-
 10 member Tribal Council, serves as the ultimate governing body of the Rincon
 11 Reservation. (Turner Walsh Decl., ¶11.) On May 22, 2020, consistent with the
 12 Tribal Council’s directive to reopen essential businesses, the Rincon Casino
 13 reopened along with at least 6 other local tribal casinos. ***Specially Appearing***
 14 Defendants CES and CEI had no role whatsoever in the decision to reopen the
 15 Rincon Casino when it reopened on May 22, 2020. (*Id.*)

16 As the general manager at the Rincon Casino, PILANT was directly involved
 17 in paving the way for the Casino to reopen. (Complaint, ¶¶10, 23.) PILANT now
 18 sues ***Specially Appearing*** Defendants seeking damages for his choice to quit his job
 19 because he took issue with the decision of the Tribal Council to reopen the Casino.
 20 (*Id.* at ¶¶25; Turner Walsh Decl., ¶11.)

21 Based on foregoing facts, federal law (IGRA) applies to the claims, defenses
 22 and material issues raised in this case. 25 U.S.C. 2701 *et. seq.* IGRA applies,
 23 because all decisions related to the operations of the Rincon Casino, including the
 24 closing and reopening of the Casino, were made by the Rincon Band under the
 25 authority vested in it by IGRA. The Secretarial Procedures issued by the United
 26 States Department of the Interior, govern the Rincon Band’s gaming operations to
 27 ensure compliance with IGRA. (Turner Walsh Decl., ¶5.) Moreover, there is an
 28 extensive body of long-standing Federal law that recognizes the principle of

1 inherent tribal sovereignty and the right to self-government as fundamental
 2 attributes of tribal governments except to the extent divested by Congress. *Gaming*
 3 *Corp. of America v. Dorsey & Whitney, supra*, 88 F.3d at 544; *United Keetoowah*
 4 *Band of Cherokee v. State of Oklahoma, supra*, 927 F.2d at 1177-79; *Flandreau*
 5 *Santee Sioux v. Noem, supra*, 938 F.3d, at 937 (8th Cir. 2019); *Video Gaming*
 6 *Technologies v. Rogers County Board of Tax Roll Corrections, supra*, ___ P.2d ___,
 7 2019 WL 6877904; *see also, Murphy v. N.C.A.A., supra*, 138 S.Ct. at 1480-81;
 8 *Johnson v. M'Intosh*, 21 U.S. 543 (1823); *Cherokee Nation v. Georgia*, 30
 9 U.S. 1 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832); *Michigan v. Bay*
 10 *Mills*, 134 S.Ct. 2024 (2014); *Cabazon Band of Mission Indians v. Wilson, supra*,
 11 124 F.3d 1056; *Tavares v. Harrah's Operating Co., supra*, 2013 U.S. Dist. LEXIS
 12 60922 at *3.

13 **REMOVAL BASED ON DIVERSITY (28 U.S.C. § 1332(a))**

14 This Action is also one over which the Court has original jurisdiction under
 15 the provisions of 28 U.S.C. §1332, which allows removal of an action if (a) the
 16 action is between citizens of different states, and (b) the amount in controversy
 17 exceeds \$75,000, exclusive of interest and costs. Removal is proper, here, on the
 18 basis of diversity of citizenship pursuant to 28 U.S.C. §1332(a) as both conditions
 19 are met.

20 **Diversity of Citizenship:**

21 This case is between citizens of different states. PILANT is (and was at the
 22 time this action was commenced) a citizen of the State of California within the
 23 meaning of 28 U.S.C. §1332(a). (Complaint, ¶3.) In contrast, *Specially Appearing*
 24 Defendant CES is now, and was at the time this action was commenced, a citizen of
 25 Nevada within the meaning of 28 U.S.C. §1332(c)(1), having been established in
 26 Delaware, with its principal place of business in Nevada. (Georgeson Decl., ¶3.)

27 ///

28 ///

1 Similarly, *Specially Appearing* Defendant CEI is now, and was at the time
 2 this action commenced, a citizen of the state of Nevada within the meaning of 28
 3 U.S.C. §1332(c)(1), having been incorporated in Delaware, with its principal place
 4 of business in Nevada. (*See*, Georgeson Decl., ¶3.)

5 Because PILANT and *Specially Appearing* Defendants CES/CEI are citizens
 6 of other states, there is complete diversity between the parties and removal is also
 7 proper under 28 USC §1332.

8 **Amount in Controversy:**

9 For purposes of removal, “the sum claimed by the plaintiff controls” unless it
 10 is made in bad faith. *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 399 (9th Cir.
 11 2010) (quoting *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289
 12 (1938)). Courts “must assume that the allegations of the complaint are true and
 13 assume that a jury will return a verdict for the plaintiff on all claims made in the
 14 complaint.” *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F.
 15 Supp.2d 993, 1001 (C.D. Cal. 2002) (citation, internal quotation marks, and
 16 alterations omitted). The ultimate inquiry is what amount is placed “in
 17 controversy” by the complaint. *Lewis*, 627 F.3d at 401; *see also, Rippee v. Boston*
 18 *Market Corp.*, 408 F.Supp.2d 982, 986 (S.D. Cal. 2005) (“It’s not a question as to
 19 what you would owe. It’s a question as to what is in controversy.”).

20 Where the existence of diversity jurisdiction depends on the amount in
 21 controversy, “the district court may consider whether it is ‘facially apparent’ from
 22 the complaint that the jurisdictional amount is in controversy.” *Singer v. State*
 23 *Farm Mut. Auto Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997). If the complaint is not
 24 specific as to the amount of damages claimed, “the court may consider facts in the
 25 removal petition and may ‘require the parties to submit summary-judgment-type
 26 evidence relevant to the amount in controversy at the time of removal.’” *Id.*,
 27 (citation omitted). In these situations, “the removing defendant bears the burden of

28 ///

1 establishing, by a preponderance of the evidence” the amount in controversy.
 2 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

3 Thus, when the allegations in a complaint do not establish the amount in
 4 controversy, a removing defendant can do so by “provid[ing] evidence establishing
 5 that it is ‘more likely than not’ that the amount in controversy exceeds” the
 6 requisite amount in controversy. *Id.*; see also, *Dart Cherokee Basin Operating Co.,*
 7 *LLC v. Owens*, 574 U.S. 81, 89 (2014) (“[A] defendant’s notice of removal need
 8 include only a plausible allegation that the amount in controversy exceeds the
 9 jurisdictional threshold.”); *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699
 10 (9th Cir. 2007) (“[W]here it is unclear or ambiguous from the face of a state-court
 11 complaint whether the requisite amount in controversy is pled. . . . we apply a
 12 preponderance of the evidence standard.”).

13 In his complaint, PILANT does not identify the amount in controversy, but
 14 does allege:

- 15 • An Employment Agreement between PILANT and CEC provided,
 16 among other things, that if he is terminated for reasons other than
 17 “Cause,” he is entitled to severance pay equal to 12 months’ base
 salary.
- 18 • ***Specially Appearing*** Defendants breached the Employment
 19 Agreement by failing to pay PILANT the severance payments to
 which he is entitled.
- 20 • Accordingly, PILANT is entitled to the severance of at least 12 months
 21 of pay under the Employment Agreement.
- 22 • In addition, PILANT asserts claims past and future compensation and
 23 benefits, general damages, as well as for punitive damages and
 attorneys’ fees.

24 (Exh. 1, Complaint, ¶¶35, 36, 40, 42, 43, 47, 49, 50, 52, 53, 55, 56.)

25 Although PILANT failed to attach or cite in the complaint the essential terms
 26 of the Employment Agreement, said Agreement in effect related to his role as
 27 general manager at the Rincon Casino, provided, at the time of its execution, for an
 28 annual base salary to Pilant of \$315,000. (Georgeson Decl., ¶4.) The Court can

1 also consider PILANT's claims for fees, costs, and punitive damages, in
 2 determining whether a complaint meets the \$75,000 threshold of 28 U.S.C.
 3 §1332(a). *See, e.g., Bell v. Preferred Life Assurance Soc'y*, 320 U.S. 238, 240
 4 (1943) ("Where both actual and punitive damages are recoverable under a
 5 complaint, each must be considered to the extent claimed in determining
 6 jurisdictional amount.") (footnote omitted); *Galt G/S v. JSS Scandinavia*, 142 F.3d
 7 1150, 1155-1156 (9th Cir. 1998) (attorneys' fees may be taken into account to
 8 determine jurisdictional amount). Thus, by PILANT's own allegations, the amount
 9 in controversy far exceeds \$75,000.

10 Because there is complete diversity and because the amount in controversy
 11 threshold is met, the requirements for removal under 28 U.S.C. §§1332(a) and
 12 1441(a) are satisfied.

13 WHEREFORE, pursuant to 28 U.S.C. § 1331(a) and 1441(a), ***Specially***
 14 ***Appearing*** Defendants CES and CEI remove this case from the Superior Court of
 15 the State of California in and for the County of San Diego to the United States
 16 District Court for the Southern District of California.

17
 18 DATED: October 16, 2020

GREENE & ROBERTS

19
 20
 21 By: /s/ Maria C. Roberts

Maria C. Roberts

22 Ryan Blackstone-Gardner Attorneys for
 23 *Specially Appearing* Defendants Caesars
 24 Enterprise Services, LLC and Caesars
 25 Entertainment, Inc.
 26
 27
 28