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

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

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRELL PILANT,

Plaintiff,

v.

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

Defendants.

Case No. 3:20-CV-2043-CAB-AHG
District Judge: Hon. Cathy Ann Bencivengo
Mag. Judge: Hon. Allison H. Goddard

Action Date: August 31, 2020

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS BY *SPECIALLY APPEARING* DEFENDANTS, CAESARS ENTERPRISE SERVICES AND CAESARS ENTERTAINMENT, INC., FOR FAILURE TO NAME AN INDISPENSABLE PARTY AND FOR LACK OF JURISDICTION

[Pursuant to FRCP Rule 12(b)(2), Rule 12(b)(7) and Rule 19]

ACCOMPANYING DOCUMENTS: NOTICE OF MOTION AND MOTION; DECLARATIONS OF DENISE TURNER WALSH, PAUL GEORGESON AND ROBERT LIVINGSTON; REQUEST FOR JUDICIAL NOTICE; [PROPOSED] ORDER

Date: November 27, 2020
Courtroom: 15-A

PER CHAMBERS RULES, NO ORAL ARGUMENT UNLESS SEPARATELY ORDERED BY THE COURT

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

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

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

I.

INTRODUCTION

The Rincon Band of Luiseno Indians ("Rincon Band") is a federally recognized Indian tribe which, by virtue of its sovereign immunity, is not subject to suit without consent. The Rincon Casino (commonly known as Harrah's Resort Southern California) ("Rincon Casino"), is a gaming enterprise owned, controlled and operated by the Rincon Band. HCAL, LLC is the managing agent of the Rincon Band, which has as its sole responsibility, assisting the Rincon Band in its operations of the Rincon Casino on a day-to-day basis.

In March 2020, the Rincon Band, a sovereign nation that acts by and through a five-member democratically elected Tribal Council, made the decision to temporarily close all businesses on the Rincon Reservation, including the Rincon Casino, due to concerns associated with the COVID-19 virus. In the weeks that followed closure, the Rincon Band formed a Business and Jobs Recovery Task Force to study options for safely reopening the Rincon Casino informed by guidance published by the National Indian Gaming Commission ("NIGC") and the Centers for Disease Control and Prevention ("CDC").

In May 2020, the Rincon Band prepared a comprehensive reopening plan for the Rincon Casino, which was based on NIGC and CDC health and safety guidelines. The reopening plan set forth detailed measures and precautions to minimize the risks associated with COVID-19 to employees and patrons and was submitted to the NIGC for approval. On May 22, 2020, the Tribal Council made the governmental decision to reopen the businesses on the Rincon Reservation ("Reservation"), including the Rincon Casino. Before doing so, the Rincon Band was transparent about its plan to reopen its casino by sharing that information with its governmental partners, including notice letters to Governor Newsom of the State of California, the San Diego County Board of Supervisors and the San Diego County Sheriff's Office, as well as advance publication of a press release

announcing the reopening plan. On May 22, 2020, the Rincon Casino, along with numerous other local tribal casinos, reopened to the public.

DARRELL PILANT, ("PILANT"), who worked for several years as the general manager of the Rincon Casino, assisted in the Casino's closure in March 2020 and in its May 22, 2020 reopening. Just days before the reopening, PILANT resigned his position as general manager because he claimed to disagree with the Rincon Band's decision to reopen the Casino on May 22, 2020.

PILANT then sued ***Specially Appearing*** Defendants Caesars Enterprise Services, LLC ("CES") and Caesars Entertainment, Inc. ("CEI") seeking damages as a purported whistleblower for the very public decision made by the Tribal Council to reopen the Rincon Casino on May 22, 2020. **Notably, neither CES, nor CEI, had a role in the governmental decision of the Tribal Council to reopen the Rincon Casino or in PILANT's decision to quit his job.**

Specially Appearing Defendants seek an order dismissing PILANT's complaint under well-established Ninth Circuit precedent which deems the Rincon Band a necessary and indispensable party[1] that cannot be joined to this litigation due to its sovereign immunity. Dismissal is required because a potential judgment against ***Specially Appearing*** Defendants would:

- improperly hold ***Specially Appearing*** Defendants liable for conduct and decisions made by the Tribal Council of the Rincon Band;
- intrude upon the sovereignty and jurisdiction of the Rincon Band to exercise its best judgment in the operation of its essential businesses for its benefit and that of its tribal members; and
- require the Court (and/or trier of fact) to improperly step into the shoes of the Tribal Council and second guess the decision-making authority to govern its own affairs, a right wholly reserved to the Rincon Band that is

[1] Some cases cited in support of this motion to dismiss were issued prior to 2007. When Rule 19 was amended in 2007, the word "necessary" was replaced by "required" and the word "indispensable" was removed. The changes were intended to be "stylistic" only and "the substance and operation of the Rule both pre- and post-2007 are unchanged." *Republic of Philippines v. Pimentel*, 553 U.S. 851, 855-56 (2008); *Cachil Dehe Band of Wintun Indians of the Colusa Indian Community v. California, 547 F.3d 962, 969, N.6 (9th Cir. 2008).*

> rooted in foundational principles of Federal Indian Law, including the Indian Gaming Regulatory Act ("IGRA") and the Secretarial Procedures (defined below) issued by the United States Department of the Interior that govern operation of the Rincon Casino.

Dismissal is also proper as the Court lacks personal jurisdiction over ***Specially Appearing*** Defendants CES and CEI, which are not residents of California and not subject to jurisdiction in California.

For the foregoing reasons and as detailed below, pursuant to Rule 12(b)(2) and Rule 12(b)(7) and Rule 19 of the Federal Rules of Civil Procedure, this motion should be granted, and this case dismissed in its entirety.

II.

STATEMENT OF FACTS

A. 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, a federally-recognized sovereign Indian tribe. (Turner Walsh Decl., ¶3.) The Rincon Casino is wholly owned and controlled by the Rincon Band pursuant to the IGRA, which establishes the regulatory framework that governs Indian gaming and government-to-government agreements between the Rincon Band and the State of California and, subsequently, with the United States Department of the Interior. (Turner Walsh Decl., ¶4.)

The creation and existence of the Rincon Casino was dependent upon governmental approvals at numerous levels, as gaming activities are only permitted under the auspices of the Rincon Band. (Turner Walsh Decl., ¶5.) Under the IGRA, the Rincon Band was required to enact a tribal gaming ordinance and to negotiate a gaming compact with California to develop and operate the Rincon Casino. (*Id*., ¶6.) 25 U.S.C. §2710(d)(1).) In 1999, the Rincon Band and State of California entered into a Gaming Compact "on a government-to-government basis." (*Id*.)

/ / /

In 2013, the Gaming Compact was superseded by "Secretarial Procedures for the Rincon Band of Luiseno Indians" ("Secretarial Procedures"). (Turner Walsh Decl., ¶7; Exh. 1.) The Secretarial Procedures were issued by the Secretary of the U.S. Department of the Interior ("Department"), vesting authority to oversee compliance with those procedures in the NIGC, as the primary federal regulatory body within the Department charged with oversight of tribal gaming facilities. (*Id*.)

Under the express terms of both the Gaming Compact and Secretarial Procedures, the purpose of the Rincon Casino is to "enable the [Rincon Band] to develop self-sufficiency, promote tribal economic development, and to generate jobs and revenue to support the [Rincon Band's] government and government services and programs." (Turner Walsh Decl., ¶8; Exh. 1.) The Rincon Band exercises ultimate authority and control over civil regulatory matters within the Reservation, including operations and decisions concerning the business, maintenance and management of the Rincon Casino. (Turner Walsh Decl., ¶9.)

The extraordinary steps taken to create the Rincon Casino were necessary because it is not a mere revenue-producing tribal business. Rather, under the IGRA, the creation and operation of Indian casinos is designed to "promote tribal economic development, tribal self-sufficiency, and strong tribal governments." 25 U.S.C. §2701(4); 25 U.S.C. §2701(1). (Turner Walsh Decl., ¶10.) Indeed, the IGRA "ensure[s] that the Indian tribe is the primary beneficiary of the gaming operation." 25 U.S.C. §2702(2).

From its inception, the Rincon Band had an NIGC-approved Management Agreement with its managing agent, HCAL, LLC ("HCAL"). This was specifically approved by the NIGC, which authorizes and oversees management agreements between Tribes and management companies. (Turner Walsh Decl., ¶11.) Under the Management Agreement, the role of HCAL has been to support the Rincon Band in managing its gaming enterprise. (*Id*.) 25 U.S.C. §§2710-2711; 25 CFR Parts 531-37.1. And, while HCAL provides management and oversight of day-to-day

operations of the Rincon Casino, all major decisions, (including, annual plans and budgeting, operations, gaming, capital development, and closing/reopening the Rincon Casino) are subject to the ultimate approval of the Tribal Council. (*Id*.)

B. The Rincon Band Temporarily Closed and Reopened the Rincon Casino

In March 2020, the Tribal Council of the Rincon Band made the governmental decision to temporarily close all businesses on Rincon Reservation, including the Rincon Casino, due to concerns regarding the novel coronavirus and. potential spread of COVID-19 on the Reservation. (Turner Walsh Decl., ¶12.) In the weeks that followed, the Tribal Council formed the Rincon Business and Jobs Recovery Task Force, a multi-disciplinary leadership response team, to advise the Tribal Council on safety protocols for a gradual re-opening of essential businesses on the 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 Rincon Band. (Turner Walsh Decl., ¶13.) The comprehensive reopening plan for the Rincon Casino was informed by guidance from the NIGC and the CDC. The plan is and always was compliant with the NIGC reopening checklist as well as consistent with the variance framework applicable to San Diego County that was issued by the State of California to its political subdivisions. (*Id*.) This reopening plan set forth in detail the precautions and measures that had been and were being taken to minimize risks associated with the spread of COVID-19 to employees and patrons and did so based on the health and safety guidance published by the NIGC, CDC, as well as state and local agencies. (*Id*.)

In addition to obtaining NIGC approval of the reopening plan, the Rincon Band published a press release and issued advance notice of its intent to reopen the Rincon Casino on May 22, 2020 to Governor Newsom, the San Diego County Board of Supervisors, and the San Diego County Sheriff's Office. (Turner Walsh Decl., ¶14; Exh. 2.)

On May 22, 2020, the Tribal Council of the Rincon Band executed on its decision to reopen the Rincon Casino, the same day several other local tribes also reopened their casinos, and more than a week after two other tribal casinos reopened in California. (Turner Walsh Decl., ¶15.)

Specially Appearing Defendants CES and CEI had no role whatsoever in the tribal governmental decision to reopen the Rincon Casino. (Turner Walsh Decl., ¶16; Georgeson Decl., ¶¶2-5; Livingston Decl., ¶3.)

A few days before the reopening, PILANT sent an email announcing his resignation from the position of general manager at the Rincon Casino. In the email, PILANT wrote, in pertinent part:

> . . . I hereby resign my position with Caesars Entertainment as Senior Vice President and General Manager at Harrah's Resort SoCal, effective Thursday, June 18, 2020. The situation at this resort has become untenable for me. **The tribe is planning to open this facility on Friday, May 22nd** against the direction and guidance of both the SD county and CA state governments. **While the tribe and Caesars believe that this is acceptable, I do not**. I cannot agree, in good conscience, to reopen this facility on May 22nd against the advice of all experts and our own local and state governments. Therefore, I must resign my position.
> …
>
> **These circumstances are highly unusual, due to the coronavirus and the tribe exerting its sovereignty** by acting against the guidance and recommendations of the county and state governments, so I fully expect that the company will **honor the one year severance in my employment agreement (which is paid by the tribe as part of our management agreement)**…

(Livingston Decl., ¶4 and Exh. A thereto [emphasis added].)

C. PILANT's Lawsuit

On August 31, 2020, PILANT filed a complaint in Superior Court for the County of San Diego against ***Specially Appearing*** Defendants CES and CEI (the "State Action"). The complaint alleges claims for wrongful termination in violation of public policy; violation of Labor Code §§6310 and 1102.1; and breach of written employment agreement. (Dkt. 1-5.) These claims are based on the contention (albeit false and misguided) that PILANT was a whistleblower even though the Rincon

Band was absolutely transparent with respect to its intent to reopen the Rincon Casino, by announcing the reopening in advance to its state and local government partners as well as the public.

In his complaint PILANT asserts the following pertinent allegations against ***Specially Appearing*** Defendants CES and CEI:

- Harrah's Resort Southern California is owned by the Rincon Band of Luiseno Indians.
- ***Specially Appearing*** Defendant CES contracts with the Rincon Band for the management/operation of Harrah's Resort Southern California.
- In early May 2020, PILANT was contacted by Rincon Tribal Chairman and told that the San Diego County tribes were planning to reopen their casinos on or after May 18, 2020.
- On May 8, 2020, tribal leaders wrote to Governor Newsom and the San Diego County Board of Supervisors Chairman Cox setting forth their plan to reopen.
- In response, Governor Newsom wrote to the Tribal governments:

  > In response, . . . I urge tribal governments to reconsider . . . [I]t is in the best interests of public health to move toward a reopening in concert [with California's phased reopening plan].[2]

- PILANT, as general manager of Harrah's Resort Southern California and who assisted in the steps taken to reopen the Rincon Casino, quit his job just before the reopening because he took issue with the Rincon Band's decision to reopen on May 22, 2020.
- The decision to reopen the Casino violated California law, forced PILANT's resignation and caused him to suffer damages for which he seeks redress.

(*See*, Dkt. 1-5, pp. 3-6, ¶¶ 6, 10, 16, 17, 18.)

Notably, although PILANT alleges three claims based on the assertion that he was some sort of "whistleblower," this contention is utterly belied by his own judicial admissions that show the Rincon Band's decision to reopen the Rincon

[2] In his letter, Governor Newsom acknowledged that the Tribes, as sovereign nations, were authorized to make their own decisions about reopening casinos, regardless of whether the State of California agreed or disagreed with that decision. (Request for Judicial Notice Exh. 3.)

Casino was a transparent and public decision. This decision was approved by the federal government through the NIGC, shared with the State of California, through Governor Newsom and with both San Diego County Board of Supervisors and San Diego County Sheriff's Office. (Turner Walsh Decl., ¶¶13-14; Exh. 2.) Thus, PILANT did not engage in any "whistleblowing" activity[3] under any cognizable theory or the facts pled in his complaint.

III.

THE RINCON BAND IS AN INDISPENSABLE PARTY WHICH CANNOT BE JOINED TO THIS FEDERAL ACTION

PILANT's complaint should be dismissed pursuant to FRCP, Rule 12(b)(7), because the Rincon Band is a necessary and indispensable party under FRCP 19, which cannot be joined to this action without its consent, but without whom this case cannot and should not proceed. Fed. R. Civ. P. 19(b); *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1022 (9th Cir. 2002), *citing, Clinton v. Babbitt*, 180 F.3d 1081, 1088 (9th Cir. 1999). However, because of its sovereignty and well-established doctrine of sovereign immunity from suit, the Rincon Band cannot be joined to this case.

A. The Rincon Band is a Required Party.

FRCP, Rule 19(a) provides:

> *Required Party.* A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:
>
> (A) in that person's absence, the court cannot accord complete relief among existing parties; or

[3] A "whistleblower" objects to or discloses covert information to a government or law enforcement agency, about their employer who has engaged in a violation of state or federal law. "Whistleblower." *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/whistleblower. Accessed 21 Oct. 2020.

> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> > (i) as a practical matter impair or impede the person's ability to protect the interest; or
> >
> > (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

FRCP Rule 19(b) provides:

> When Joinder Is Not Feasible. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:
>
> > (1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;
> >
> > (2) the extent to which any prejudice could be lessened or avoided by:
> >
> > > (A) protective provisions in the judgment;
> > >
> > > (B) shaping the relief; or
> > >
> > > (C) other measures;
> >
> > (3) whether a judgment rendered in the person's absence would be adequate; and
> >
> > (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

1. FRCP 19(a) Factors Are Met, as the Rincon Band's Absence will not Permit Complete Relief Among the Parties.

The Rincon Band clearly meets the criteria of both prongs of FRCP 19(a). It owns and controls the Rincon Casino, and **it** made the decision to reopen its Casino in May 2020. (Turner Walsh Dec., ¶¶ 4, 12-16.) Thus, PILANT's claims cannot be adjudicated without involving the Rincon Band as the owner, operator and decision-maker of the Casino. PILANT's claims also cannot be litigated fairly without trampling on the sovereignty of the Rincon Band and requiring it to explain/defend its decision to reopen its casino. These claims also interfere with:

- the sovereignty of the Rincon Band and its Tribal Council to govern and make decisions for the well-being of its members, including about its essential businesses;

- the guidance and approval issued by NIGC and other federal/state agencies to the Rincon Band which it followed in issuing and implementing its reopening plan;

- specific contractual agreements between Rincon Band and its NIGC-approved managing agent, HCAL; and

- the Rincon Band's management of its essential businesses.

The Ninth Circuit decision in *Confederated Tribes of Chehalis Indian Reservation v. Lujan*, 928 F.2d 1496 (9th Cir. 1991) is instructive. There, several Tribes filed suit (without naming the Quinault Indian Nation) against federal officials challenging the United States' recognition of the Quinault Indian Nation as the sole governing authority for the Quinault Indian Reservation. On appeal from a district court order granting a motion to dismiss under Rule 19, the Ninth Circuit affirmed dismissal under Rule 19, concluding the Quinault Indian Nation was a necessary and indispensable party to the action because the claims, if successful would not afford complete relief to the plaintiffs because it would not be binding on the Quinault Indian Nation which could continue to assert sovereign powers and management responsibilities over the reservation.

Because the Quinault Indian Nation's legal interest in the litigation as the exclusive governing authority over the Quinault Indian Reservation would be impaired if the litigation proceeded without them, the Ninth Circuit held: "[t]he Tribe is most certainly a party whose interests are affected, and in whose absence [because of its immunity from suit] complete relief may not be afforded." *Confederated Tribes*, *supra*, 928 F.2d at 1498.

The same holding applies here. The Rincon Band is a necessary and indispensable party, which cannot be subject to suit without its consent. Further, because ***Specially Appearing*** Defendants had no role in the decision to reopen the Rincon Casino in May 2020, they should have the right to require the Rincon Band

to answer for its decision and defend against the claims pled by PILANT. *Shermoen v. United States* 982 F.2d 1312, 1317 (9th Cir. 1992) (Absent tribes had interest in preserving their own sovereign immunity, with a concomitant "right not to have [their] legal duties judicially determined without consent.").

A full and fair adjudication of liability on PILANT's claims simply cannot occur in the absence of the Rincon Band being joined as a necessary party. *See*, Fed. R. Civ. P. 19(a); *Jamul Action Committee v. Simermeyer*, 974 F.3d 984, 997 (9th Cir. 2020) (Group challenging National Indian Gaming Commission's approval of Jamul Indian Community's gaming ordinance cannot proceed in Tribe's absence); *Dine Citizens Against Ruining Our Environment v. Bureau of Indian Affairs*, 932 F.3d 843, 852 (9th Cir. 2019) (Lawsuit challenging re-authorization of coal mining activities by business wholly owned by the Navajo Nation cannot proceed in Tribe's absence); *Friends of Amador County v. Salazar*, 554 Fed. Appx. 562, 564 (9th Cir. 2014) (Lawsuit against United States challenging eligibility of Tribe and its lands for tribal gaming cannot proceed in Tribe's absence); *Skokomish Indian Tribe v. Forsman*, 738 Fed. Appx. 406, 408 (9th Cir. 2018); (Lawsuit by a Tribe challenging the treaty-based fishing rights of another Tribe cannot proceed in the effected Tribe's absence); *Am. Greyhound Racing, Inc*., 305 F.3d at 1022 (Lawsuit by racetrack owners to enjoin Arizona from entering new, renewed, or modified gaming compacts with tribes properly dismissed under Rule 19 as tribes had an interest in and were necessary/indispensable parties to the action); *Dawavendewa v. Salt River Project Agr. & Power Dist*., 276 F.3d 1150, 1155-1158 (9th Cir. 2002) (Navajo Nation held to be necessary and indispensable party to employment case by unsuccessful employment applicant who challenged job preferences extended to tribal members); *McClendon v. United States*, 885 F.2d 627, 633 (9th Cir. 1989) (Tribe necessary party to action seeking to enforce lease agreement it signed); *Quileute Indian Tribe v. Babbitt*, 18 F.3d 1456, 1460 (9th Cir. 1994) (Suit by Quileute Tribe against United States seeking to challenge

Department of Interior's decision related to another Tribe properly dismissed for failure to name other Tribe as necessary/indispensable party); *Enterprise Mgt. Consultants, Inc. v. United States*, 883 F.2d 890, 893 (10th Cir. 1989) (Tribe is necessary party to case seeking to invalidate its contracts); *Wichita and Affiliated Tribes of Oklahoma v. Hodel*, 788 F.2d 765, 774 (D.C. Cir. 1986) (Tribe's interest in a trust renders it necessary party to suit by tribe seeking future trust distribution).

2. Failure to Join the Rincon Band Impairs Its Protected Interests

Under Rule 19(a)(2), an absent party is ***necessary*** to a case if it has or claims "an interest relating to the subject of the action," and disposition of the action in its absence may "as a practical matter impair or impede [its] ability to protect that interest." Fed. R. Civ. P. 19(a)(2)(i); *Dawavendewa, supra*, at 1156; *Dine Citizens, supra, 932 F.3d at 852* (case threatening rights to Navajo Nation); *Jamul Action Committee, supra,* 974 F.3d at 997; *Lomayaktewa v. Hathaway*, 520 F.2d 1324, 1325 (9th Cir. 1975) (Finding Hopi Indian tribe a necessary party under Rule 19(a)(2) in a suit by an individual challenging a lease which affected economic interests of Hopi tribe).

A finding that a party is necessary to the action only requires that the party have an interest in the action: "A person ... shall be joined as a party in the action if ... the person claims an interest relating to the subject of the action...." Fed. R. Civ. P. 19(a)(2); *Shermoen, supra*, 982 F.2d at 1317 (Courts are required to protect interested party's right to be heard and participate in adjudication of claimed interest, even if the dispute is ultimately resolved to detriment of that party).

Under the IGRA, the Rincon Band is charged with "the sole proprietary interest and responsibility for the conduct of any gaming activity," and to ensure that net revenue from tribal gaming is used to fund tribal government operations and programs, provide for the general welfare of the tribe and its members, promote tribal economic development, donate to charitable organizations or help fund operations of local agencies. 29 U.S.C. §2701(4). The IGRA also makes clear that

tribal gaming is to be controlled by Indian tribes, as a means to ensure tribes are the primary beneficiaries of gaming. 29 U.S.C. §2701(4), (5).

In contravention to federal law governing the rights and obligations of Indian tribes as sovereign nations, the lawsuit filed by PILANT is a direct effort to impede upon and impose liability for a governmental decision made by the Tribal Council of the Rincon Band in its capacity as the owner and operator of the Rincon Casino. The claims pled are all based on the key allegation that PILANT disagreed with the decision by the Rincon Band "to reopen Harrah's Resort SoCal on May 22, 2020" which he asserts was contrary to the direction of "California and local government and health experts and officials," in violation of California law. (Dkt. 1-5, ¶15, 21.)

In the complaint PILANT falsely asserts that all decisions to reopen the Rincon Casino were made by ***Specially Appearing*** Defendants. However, this is undermined by his own resignation letter, in which he admits that Rincon Band decided to reopen the casino and did so as an exercise of its tribal sovereignty. (Livingston Decl., ¶ 4 and Exh. A thereto.) This is also supported by PILANT's complaint, including his allegation that in response to tribal letters sent to the State of California advising of the plan to reopen casinos on or before May 22, 2020, Governor Newsom wrote back on May 15, 2020. In Governor Newsom's response, he acknowledged the sovereignty of Indian tribes:

> I understand that some tribal governments are planning on reopening casinos on their lands as early as today. This deeply concerns me and ***I urge tribal governments to reconsider*** and instead to make those decisions based on how they align with the current local public health conditions and the statewide stage of reopening. . . .
>
> ***I am not asking that tribal governments receive authorization from the state or local governments prior to moving forward . . . However, in the spirit of sovereign-to-sovereign engagement, I respectfully request [that until certain criteria are met] . . . your tribal casinos remain closed***.

(Dkt. 1-5, ¶18; Request for Judicial Notice "RJN," Exh. 3.) Governor Newsom's letter recognized that tribal governments, **not the state,** are the decisionmakers with respect to governing businesses and commercial affairs on Indian reservations. (*Id*.)

The Rincon Band has an unquestionable, legally-protected interest that is being directly attacked and challenged by PILANT in his lawsuit - the operation of the Rincon Casino as an essential business. Under the IGRA, the Rincon Band also has a fundamental right and obligation to make the most important decisions regarding the operations, finances, licensing, gaming, capital development, safety of operations and the closing/reopening of the Rincon Casino. These types of issues are left to the Rincon Band and the instant litigation threatens to impair the Rincon Band's ability to make such decisions and fulfill its duties to its tribal members.

Thus, any potential judgment in this case rendered in the absence of the Rincon Band would: (1) intrude upon the sovereignty/jurisdiction of the Rincon Band to govern and do what is best for it as a nation, for its members and its businesses, including one of its essential business; (2) negatively effect on the Rincon Band's sovereign capacity to negotiate contracts regarding the operation of its gaming enterprise and to govern; (3) expose the Rincon Band's treasury to cover any costs or awards associated with this litigation; and, (4) hold ***Specially Appearing*** Defendants liable for decisions they did not make and over which they lacked control.

In *Kescoli v. Babbitt*, 101 F.3d 1304, 1309 (9th Cir. 1996), the Ninth Circuit determined that the Navajo Nation and the Hopi Indian Tribe, by virtue of their sovereignty, had sufficient interests to be indispensable parties because the case challenged mining agreements negotiated by the Tribes to strike a balance between receiving mining royalties and protecting sacred Indian sites. *Kescoli, supra,* 101 F.3d at 1309-10.

Similarly, in *Jamul Action Committee, supra*, an action was brought to enjoin construction of an Indian casino on the theory that the Indian tribe constructing it was not a federally-recognized tribe and its land did not qualify as "Indian land," eligible for gaming under the IGRA. The district court entered an order dismissing

the lawsuit for failure to join a required party, which the Ninth Circuit affirmed on appeal. *Jamul Action Committee, supra*, 974 F.3d at 996-998; *see also, Shermoen, supra*, 982 F.2d at 1317; *McClendon v. United States, supra*, 885 F.2d at 633.

Similarly, here, the Rincon Band has an interest in striking the appropriate balance in the management of its essential businesses without interference from other governments. *Kescoli, supra,* 101 F.3d at 1310. Lawsuits, such as PILANT's, that seek to challenge the Rincon Band's right to govern and make decisions regarding on-reservation affairs and the expenditure of tribal government revenue, are an unlawful interference with the Rincon Band's right and ability to govern effectively. *Pit River Home & Agr. Co-op. Ass'n v. United States*, 30 F.3d 1088, 1101 (9th Cir. 1994) (Case would impair the Tribal Council's legally-protected interest in governing the Tribe); *Quileute Indian Tribe, supra*, 18 F.3d at 1460; *Confederated Tribes of Chehalis Indian Reserv., supra,* 928 F.2d at 1498 (Impairment exists if case seeks rejection of Tribe's ability to govern).

Again, the very purpose of the Rincon Casino is to "enable the [Rincon Band] to develop self-sufficiency, promote tribal economic development, and to generate jobs and revenue to support the [Rincon Band's] government and government services and programs." (Turner Walsh Decl., ¶8; Exh. 1).) 25 U.S.C. §2701(4). The Rincon Band has fundamental governmental and economic interests to control operations and decisions concerning the Rincon Casino – interests which are directly implicated by this lawsuit.

Further, PILANT asserts he is entitled to one year of severance to be "paid by the tribe as part of our management agreement." (Dkt. 1-5, ¶52, 55; Livingston Decl., ¶4 and Exh. A thereto.) If PILANT prevails, this claim would result in the Rincon Band being financially liable for its governmental decision to reopen, based on its NIGC-approved contractual relationship with HCAL, and, if so, this would result in requiring the Rincon Band to cover any amount awarded to PILANT as an operating expense of the Rincon Casino, having a direct impact on its economic

interests and sovereignty. For this reason as well, the Rincon Band has a protectable interest in **this litigation** which will be impaired by its absence.

3. The Substantial Risk of Inconsistent or Multiple Obligations by Virtue of the Rincon Band's Legally Protected Interests

The adjudication of this case in the Rincon Band's absence, also threatens to leave ***Specially Appearing*** Defendants CES and CEI subject to substantial risk of incurring multiple and inconsistent obligations. Holding one or both liable for the Rincon Band's decision to reopen its casino may subject them to inconsistent obligations of either refusing to fulfill contractual obligations to support operation of the Rincon Casino or face the consequences of refusing to do so. This also renders the Rincon Band a necessary party under Rule 19(a)(2)(ii).

B. The Rincon Band Cannot Be Joined Due to its Sovereign Immunity.

Indian tribes are sovereign entities, with sovereign immunity from lawsuits. *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 788 (2014); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 57–58 (1978); *Tamiami Partners, LTD. v. Miccosukee Tribe of Indians*, 63 F.3d 1030, 1050 (11th Cir. 1995) (Allowing suit against a tribe to proceed would render tribal sovereign immunity "meaningless"). Tribes are subject to suit only where Congress has expressly authorized or where a tribe waived immunity and consented to suit. *Kiowa Tribe of Okla. v. Manufacturing Technologies, Inc*., 523 U.S. 751, 754 (1998). **Absent such authorization or waiver/consent, courts do not have jurisdiction over lawsuits against Indian tribes**. *Warburton/Buttner v. Sup. Ct.* 103 Cal.App.4th 1170, 1182 (2002). The United States Supreme Court has consistently guarded the authority of Indian governments over their reservations. *Williams v. Lee*, 358 U.S. 217, 223 (1959). Indian tribes are a separate people with power to regulate internal and social relations, including claims and transactions involving the reservation, as well as non-Indians. *Williams, supra*, 358 U.S. at 223; *Santa Clara Pueblo, supra*, 436 U.S. at 54.

In *Montana v. U.S.*, 450 U.S. 544 (1981), the Supreme Court expounded on the decision in *Williams*, 358 U.S. 217, finding tribes retain civil authority, even over the conduct of non-members within their reservation, when non-members enter consensual relationships with the tribe or its members and/or for activities or conduct that threatens or has a direct effect on the political integrity, economic security, or health/welfare of the tribe. *Id.* at 565-566. Tribal authority over the activities of non-Indians on reservation lands is integral to tribal sovereignty. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 18 (1987). Unless affirmatively limited by a specific treaty provision or federal statute, jurisdiction over all civil matters lies ***presumptively*** with the tribe. *Iowa Mut. Ins. v. LaPlante, supra*, 480 U.S. at 18.

Federal preemption and infringement upon tribal autonomy are two barriers to the exercise of state authority over tribes, and "[e]ither basis, standing alone, can be a sufficient basis for holding state law inapplicable to activity undertaken on the reservation." *Confederated Tribes of Siletz Indians of Oregon v. State of Oregon*, 143 F.3d 481, 486 (9th Cir. 1998).

PILANT's failure to name the Rincon Band as a party in this lawsuit which is premised upon its decision to reopen the Rincon Casino and the blatant attempt to hold ***Specially Appearing*** Defendants liable for that decision is a thinly veiled, unlawful effort to avoid the sovereign immunity of the Rincon Band. In *Shermoen v. United States, supra*, 982 F.2d 1319, the Ninth Circuit addressed a similar ploy and affirmed dismissal for failure to join tribal entities as necessary parties:

> A suit is against [a] sovereign if judgment sought would expend itself on the public treasury or domain, or interfere with the public administration, or if the effect of the judgment would be to restrain the Government from acting, or to compel it to act.

Id. at 1320 (citations omitted). Where, as here, the relief sought will operate against a sovereign, the suit is barred. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101–02 (1984).

/ / /

C. The Case Cannot Proceed Without the Rincon Band Under Rule 19(b).

The Rincon Band is a necessary and indispensable party to this case under the four factors of FRCP 19(b). *Am. Greyhound Racing, Inc., supra*, 305 F.3d at 1024. A party is indispensable if, in "equity and good conscience," the court should not allow the action to proceed in its absence. *Id.*; *Kescoli, supra*, 101 F.3d at 1310. To make this determination, courts balance four factors: (1) prejudice to any party or to the absent party; (2) whether relief can be shaped to lessen prejudice; (3) if an adequate remedy, even if incomplete, can be awarded without the absent party; (4) whether an alternative forum exists. *Id*. Here, all four factors are met.

1. Prejudice

The prejudice to the Rincon Band in not being named by PILANT stems from the same impairment of legal interests that makes it a necessary party to this action. *Clinton, supra*, 180 F.3d at 1090 (Determining prejudice under Rule 19(b) is the same as the inquiry under Rule 19(a)). *Confederated Tribes of Chehalis, supra*, 928 F.2d at 1499. An adverse ruling or judgment will also prejudice ***Specially Appearing*** Defendants, as they will be forced to defend not only their own conduct and interests, but the conduct, interests and decision-making of the Rincon Band. This prejudice alone warrants dismissal of this action under Rule 19(b). *Lucero v. Lujan*, 788 F.Supp. 1180, 1183 (D.N.M. 1992); *Dawavendewa, supra*, 276 F.3d at 1150 (Tribe indispensable party based on prejudice to it warranting dismissal).

The absence of the Rincon Band from this case will result in prejudice to the Rincon Band and permit PILANT to attack its governmental integrity to make decisions as a sovereign with regard to essential businesses, like the Rincon Casino, that provides the vast majority of tribal governmental revenue necessary for operation of services and programs on the Rincon Reservation. The Rincon Band's absence will also prejudice ***Specially Appearing*** Defendants**,** who had no role in the Tribal Council's decision to reopen the Rincon Casino, but will be forced to defend the actions and decisions of the Rincon Band, while being exposed to liability for

said decisions ***without the presence of the Rincon Band***. (Turner Walsh Decl., ¶16; Georgeson Decl., ¶¶2-5; Livingston Decl., ¶3.) This runs afoul of the law, is not equitable and provides the justification as defined by law for dismissal of this case.

2. Relief Cannot be Shaped to Minimize Prejudice

No relief in this case can be fashioned to mitigate the prejudice to the Rincon Band and ***Specially Appearing*** Defendants. **Any** award of damages to PILANT in this case would amount to an imposition of liability against ***Specially Appearing*** Defendants for decisions of the Rincon Band. This would impermissibly implicate the Rincon Band's contractual rights under the Management Agreement governing the Rincon Casino and intrude upon the Rincon Band's sovereign immunity and self-governance of its affairs, including the operation of its essential businesses. This factor also weighs in favor of dismissal. *Clinton, supra*, 180 F.3d at 1090; *Kescoli, supra*, 101 F.3d at 1310–11; *Pit River Home, supra* 30 F.3d at 1101–03 (Tribe is an indispensable party to claims asserted by Indian families to ownership of land held in trust for the Tribe by the United States); *Dawavendewa*, *supra*, 276 F.3d at 1163 (No relief to plaintiff will mitigate prejudice to Navajo Nation's contractual rights and self-governance).

3. There Is No Adequate Remedy Absent the Rincon Band, as *Specially Appearing* Defendants Cannot Properly Defend/Represent the Rincon Band.

For the same reasons discussed above as to the inability to shape relief, partial relief in this case is also not adequate to minimize the prejudice. Again, any damages awarded in this case would necessarily and unjustly hold ***Specially Appearing*** Defendants liable for actions and decisions of the Rincon Band, with which ***Specially Appearing*** Defendants had no role. Any award to PILANT would be treated as an operating expense of the Rincon Casino under the Management Agreement. This impermissibly implicates the Rincon Band's economic interests and the contractual rights running between the Rincon Band and its NIGC-approved Managing Agent, HCAL, pursuant to the Management Agreement governing the

Rincon Casino. (Turner Walsh Decl., ¶17; Dkt 1-5.)

Specially Appearing Defendants, who lack the defense of sovereign immunity, cannot possibly defend the decisions or protect the interests of the Rincon Band in its absence and should not be required to do so. *Pit River Home, supra*, at 1101 (Adequate judgment cannot be fashioned in the absence of the Tribal Council without prejudicing the its rights to govern the Tribe); *see also, Shermoen, supra*, 982 F.2d at 1320 (The relief sought would prevent the absent tribes from exercising sovereignty over the reservations allotted to them by Congress, which would be an "intolerable burden on governmental functions.").

4. Alternative Forum.

Finally, there is no appropriate alternative forum, however, the Ninth Circuit has repeatedly held that even without an alternative forum, dismissal of the case is required. *Quileute Indian Tribe v. Babbitt, supra*, 18 F.3d at 1460 (The only factor in favor of allowing Quileutes to maintain action is lack of any other forum. Nonetheless, the "lack of an alternative forum does not automatically prevent dismissal of a suit."); *Makah Indian Tribe v. Verity*, 910 F.2d 555, 560 (9th Cir. 1990) ("[P]laintiff's interest in litigating a claim may be outweighed by a tribe's interest in maintaining its sovereign immunity"); *Enterprise Mgt. Consultants, Inc., supra*, 883 F.2d at 894 (Dismissal turns on fact that society has consciously opted to shield Indian tribes from suit without congressional or tribal consent."); *Confed. Tribes of Chehalis, supra*, 928 F.2d at 1498; *Clinton v. Babbitt, supra*, 180 F.3d at 1090 (Tribe's interest in maintaining its sovereign immunity outweighs plaintiff's interest in litigating their claim).

As is clear, even if PILANT has no alternative forum, under the authorities discussed above, dismissal of this action is warranted.

/ / /

/ / /

/ / /

IV.

THE COURT LACKS PERSONAL JURISDICTION OVER *SPECIALLY APPEARING* DEFENDANTS CES AND CEI

A. Authority on Personal Jurisdiction

The Fourteenth Amendment limits the personal jurisdiction of state courts. *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773, 1779 (2017); *World–Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 291 (1980); *International Shoe Co. v. Washington,* 326 U.S. 310, 316–317 (1945). Because "[a] state court's assertion of jurisdiction exposes defendants to the State's coercive power," it is "subject to review for compatibility with the Fourteenth Amendment's Due Process Clause," *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918 (2011), which "limits the power of a state court to render a valid judgment against a nonresident defendant." *Bristol-Myers Squibb, supra*, 137 S.Ct. at 1779; *World–Wide Volkswagen, supra*, 444 U.S. at 291.

The starting point for determining whether personal jurisdiction exists for a defendant sued in federal district court is the long arm statute in effect in the state in which the district court is located. *Aanestad v. Beech Aircraft Corp*., 521 F.2d 1298, 1300 (9th Cir. 1974). California's long-arm statute only authorizes California courts to exercise jurisdiction on a basis which is not inconsistent with the Constitution of the United States and/or the Constitution of California. Code Civ. Proc. §410.10. Each individual has a liberty interest in not being subject to the judgments of a forum with which they established no meaningful minimum "contacts, ties or relations." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-472 (1985), quoting, *International Shoe Co*., 326 U.S. at 319. As a matter of fairness, a defendant should not be "haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts" with the forum state. *Id.* at 475.

Personal jurisdiction can be asserted by courts in one of two ways: general or

specific. *Vons Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal. 4th 434, 445 (1996). A nonresident defendant is not subject to general jurisdiction unless their contacts with the forum are "substantial," or "continuous and systematic." (*Id.*) To determine whether contacts are sufficiently substantial, continuous, and systematic, courts consider the contacts' longevity, continuity, volume, economic impact, physical presence, and integration into the state's regulatory or economic markets. *College-Source, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1074 (9th Cir. 2011). General jurisdiction is not shown by the mere existence of a relationship between a parent and subsidiary, and personal jurisdiction over a parent is not based on the subsidiary's minimum contacts with the forum. *Doe v. Unocal Corp.*, 248 F.3d 915, 925 (9th Cir. 2001), abrogated on other grounds.

Consistent with these principles, in order for a court to exercise specific jurisdiction, the suit must arise out of or relate to the defendant's contacts with the forum. *Bristol-Myers Squibb Co., supra,* 137 S. Ct. at 1780; *Burger King Corp. v. Rudzewicz, supra*, 471 U.S. at 472–473; *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984). Thus, there must be "an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Id.*, citing *Goodyear, supra*, 564 U.S., at 919. Thus, "specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Id.*

In addressing the question of personal jurisdiction, courts must consider a variety of interests, but the "primary concern" is "the burden on the defendant." *Bristol-Meyers Squibb Co., supra,* 137 S.Ct. at 1780, citing *World-Wide Volkswagen, supra*, 444 U.S. at 292. Assessing this burden requires courts to consider practical problems resulting from litigating in the forum, but it also encompasses the more abstract matter of submitting to the coercive power of a forum that may have little legitimate interest in the claims in question. *Id.* As the

Supreme Court held, restrictions on personal jurisdiction "are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States." *Id.*

Further, for courts to exercise specific jurisdiction over a claim, there must also be an "affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State." *Bristol-Myers Squibb Co., supra,* 137 S.Ct. at 1781, citing *Goodyear, supra,* 564 U.S., at 919, 131 S.Ct. at 2846. When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State. *Id.*, citing *Goodyear, supra,* 564 U.S. at 931 (Even regular sale of a product in a state does not "justify the exercise of jurisdiction over a claim unrelated to those sales").

Nonresident defendants can only be subject to specific jurisdiction in the forum state where it is shown by *competent evidence* that a foreign defendant purposefully availed itself of forum benefits and that the "controversy is related to or arises out of a defendant's contacts with the forum." *Helicopteros Nacionales de Columbia, S.A., supra, 466* U.S. at 414. To assert ***specific*** jurisdiction over a foreign defendant, three requirements must be met:

> (1) the nonresident must engage in acts, consummate transactions, or perform acts by which he purposefully avails himself of the privilege of conducting activities in the forum, invoking the benefits and protections of its laws;
>
> (2) the lawsuit must arise out of the nonresident's forum-related activities; and,
>
> (3) the exercise of jurisdiction must be fair and reasonable.

Core-Vent Corp. v. Nobel Industries AB, 11 F.3d 1482, 1485 (9th Cir. 1993), citing, *Lake v. Lake,* 817 F.2d 1416, 1421 (9th Cir. 1987); *Doe v. American Nat'l Red Cross,* 112 F.3d 1048, 1051 (9th Cir. 1997).

Whether sufficient "minimum contacts" exist for valid assertion of specific

jurisdiction over a nonconsenting foreign defendant who is not present in the forum, courts must look at "the quality and nature of [the nonresident's] activity in relation to the forum [to determine whether it] renders such jurisdiction consistent with traditional notions of fair play and substantial justice." *Burnham v. Sup. Ct.*, 495 U.S. 604, 618 (1990) (int. citations omitted). Courts also look at the nature and quality of the contacts as related to claims pled. *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1287 (9th Cir. 1977).

B. *Specially Appearing* Defendants Are Not Subject to Personal Jurisdiction in California.

Specially Appearing Defendant CEI is a Delaware corporation with its principal place of business in Nevada. It has no offices, owns no property, conducts no business and does not have an agent for process in California.[4] (Georgeson Decl., ¶3.) ***Specially Appearing*** Defendant CES is a Delaware limited liability company with its principal place of business in Nevada. It does not have offices or own property in California. (Livingston Decl., ¶3.) Therefore, ***Specially Appearing*** Defendants cannot be subject to general jurisdiction in California as they do not have "substantial…continuous and systematic" contacts with the state. *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 437, 445-446 (1952); *Helicopteros Nacionales de Columbia, S.A., supra*, 466 U.S. at 414-415.

Specially Appearing Defendants also lack the requisite contacts with California to be subject to specific personal jurisdiction here. CEI has no case-related contacts whatsoever with California – no offices, business conducted, no property in California and no relationship with PILANT. (Georgeson Decl., ¶¶3-4.) Thus, CEI did not purposefully avail itself of conducting business in California and, although CES had an employment agreement with PILANT that required him to

[4] While not directly pertinent to this motion, CEI is not a proper party to this case. Prior to July 20, 2020, CEI was named Eldorado Resorts, Inc. and there was no company named CEI. Further, prior to July 20, 2020, Eldorado Resorts, Inc. (now known as CEI) had absolutely no relationship with Caesars or any casinos owned, operated, or managed by Caesars. To the extent that the Court does not grant the instant Motion to Dismiss, CEI reserves its rights to seek dismissal on the separate grounds that it is not a proper party to this action.

serve as general manager of the Rincon Casino, the presence of one employee is not sufficient for jurisdiction. (Livingston Decl., ¶3.) *Parnell Pharmaceuticals, Inc. v. Parnell, Inc.*, 2015 WL 5728396, at *5 (N.D. Cal. Sept. 30, 2015).

There is no legal basis for the Court to exercise jurisdiction over the ***Specially Appearing*** Defendants, as they are foreign defendants which lack the requisite contacts with California to be haled into court in this state.

V.

CONCLUSION

Under the doctrine of sovereign immunity and under the IGRA, the Rincon Band is a necessary and indispensable party to this case, which cannot be joined because of its sovereign immunity. Moreover, the court lacks personal jurisdiction over ***Specially Appearing*** Defendants CEI and CES. For these reasons, the Court should properly dismiss this entire action.

Dated: October 23, 2020

GREENE & ROBERTS

By: */s/ Maria C. Roberts*
Maria C. Roberts
Ryan Blackstone Gardner
Attorneys for ***Specially Appearing*** Defendants Caesars Enterprise Services, LLC and Caesars Entertainment, Inc.