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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. 20-cv-2043 CAB AHG

Judge: Hon. Cathy Ann Bencivengo
Magistrate: Hon. Allison H. Goddard
Action Date: August 31, 2020

**PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

ACCOMPANYING DOCUMENTS:
DECLARATION OF DARRELL PILANT;
REQUEST FOR JUDICIAL NOTICE

Date: November 27, 2020
Courtroom: 15A

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## INTRODUCTION

This is an important case (that has already drawn interest in The San Diego Union Tribune, National Public Radio, and other news and media outlets) involving fundamental rights of California employees to a safe and healthy workplace. The case centers on Caesar's decision to put its employees back to work at Harrah's SoCal Resort in the midst of the COVID-19 pandemic, in flagrant disregard for the advice of California Governor Gavin Newsom, as well as medical and scientific experts. In fact, important evidence in this case is a letter written by Governor Newsom stating unequivocally that the conduct at issue in this case "deeply concerned" him and created a "**serious threat** ... to public health." We also have important evidence that Caesars knew that its decision to return its employees to a workplace that was a cesspool for COVID-19 was "in **defiance** of the Governor."[1]

Critical to this motion, this is a case between an individual employee (who worked and resided in San Diego County), and a multi-**billion** corporation (that is headquartered in Las Vegas, Nevada and does business throughout the country and in fact world-wide). It is not a dispute between Plaintiff and the Rincon Band.

Each and every cause of action plead in this case is a state law employment claim. The employment law claims are properly brought only against Caesars, which undeniably was Mr. Pilant's employer. Mr. Pilant was not employed by the tribe. Mr. Pilant had no contract with the tribe. Mr. Pilant's only employment relationship and only contractual relationship was with Caesars.

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[1] See Declaration of Darrell Pilant filed in opposition to this motion, ¶5.

Caesars seeks to dismiss this action and deprive Mr. Pilant of his day in Court by arguing that the Rincon Band (which takes great pains to ensure that Mr. Pilant would never be deemed to be an employee of the tribe) is an indispensable party to resolving these purely state law employment claims.

Caesars' argument that the Rincon Band (not Caesars) made the decision to reopen the casino is a red herring. Who "unlocked the doors" to the resort does not really matter. The decision that is at the crux of this case is Caesars' decision to send its own workforce back into a workplace that was unsafe and unhealthy. The wrongful termination causes of action in this case are premised on California state law requiring that the employer – in this case Caesars – provide a safe and healthy workplace for its own employees. Caesars, not the tribe, owed that duty of care to Darrell Pilant. And when Caesars insisted that Mr. Pilant return to work at a worksite that Mr. Pilant reasonably believed was unsafe and unhealthy, and Mr. Pilant was forced to resign his employment rather than face these health and safety risks, the ***employment law*** causes of action that are alleged in this case lie against his ***employer*** (not the tribal entity that happens to own the building). As defendants concede, the Rincon Band was not Mr. Pilant's employer, and the tribe therefore is not an indispensable party to resolving employment disputes between Mr. Pilant (the employee) and Caesars (the employer).[2]

Defendants spends most of their moving papers discussing the Rincon Band and the history behind and the rationale for tribal immunity. They also discuss an entity called HCAL, LLC, which did not employ Darrell Pilant and

[2]We believe that discovery will show that Caesars agreed to and/or was complicit in the decision to "reopen" the doors to the resort casino. However, if the Court requires, Plaintiff will amend his Complaint to reflect that the real decision in question in this case is Caesars' decision to send their employees back to work in an unsafe and unhealthy workplace, although we believe it is already clear from a reading of the Complaint as a whole that the "return employees to work" decision is the crux of the case.

which we did not sue in this action. Defendants say nothing about the real issue in this case, and that is the employer's (Caesars') legal duty to provide a safe and healthy workplace for their employees.

Not only is the tribe not a proper party to this action (much less an *indispensable* party), but Mr. Pilant could not sue the Rincon Band even if the tribe *were* his employer. Caesars' argument that Mr. Pilant's state law employment claims (which are properly pleaded) should be dismissed because Mr. Pilant did not join a third party that cannot even be sued in federal court, and which would deprive this court of jurisdiction if it was joined, is perverse, illogical and without any legal authority whatsoever.

## ARGUMENT

### A. The case should not be dismissed for failure to join an indispensable party.

Defendants' motion is brought principally under FRCP 12(b)(7) and argues that Plaintiff failed to join a necessary and indispensable party (the Rincon Band) under Rule 19. This argument should be rejected for multiple reasons:

- Caesars waived the arguments it is making in his motion by virtue of express provisions in the written employment agreement Caesars drafted and entered into with Mr. Pilant.
- The Rincon Band is not subject to service of process and joinder of the tribe would, according to Defendants' own arguments, divest this Court of jurisdiction.
- All of the claims asserted by Mr. Pilant are employment law claims arising out of legal duties owed exclusively by Mr. Pilant's employer (Caesars). The tribe was not Mr. Pilant's employer had no role whatsoever in that employment relationship.

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- Adjudication of Mr. Pilant's employment law claims will not infringe upon or interfere with the Rincon Band's sovereign rights or the business operations of Harrah's SoCal Resort. The Rincon Band can continue its business operations at the casino regardless of the outcome of this case. This litigation will not result in any rulings adverse to the tribe.
- In fact, Plaintiff's allegation that Harrah's SoCal Resort should be maintained in a manner that safeguards employee health and safety is actually consistent with, not contrary to, the Rincon Band's Compact with the State of California and its Management Agreement with HCAL, LLC.

1. Caesars waived its arguments because it entered into an employment agreement with Mr. Pilant expressly providing that Mr. Pilant has a right to pursue employment law claims against Caesars (not the tribe) arising out of his employment at Harrah's SoCal Resort.

Mr. Pilant and Caesars are parties to a written employment agreement dated September 6, 2016 (the "Employment Agreement"). The Employment Agreement is referenced in the Complaint and also in the Declaration of Paul Georgeson filed in support of Defendants' removal petition. The Employment Agreement in its entirety is attached as Exhibit A to the Declaration of Darrell Pilant in opposition to this motion.

The Employment Agreement expressly provides that Mr. Pilant and Caesars may bring employment claims against each other. The agreement contains provisions for resolution of employment disputes between Mr. Pilant and Caesars that arose in connection with Mr. Pilant's employment as General Manager of Harrah's SoCal Resort. The Employment Agreement makes absolutely no reference to the Rincon Band or to sovereign immunity. Nor

would one expect such references to the tribe because the only parties to the employment relationship are Mr. Pilant and Caesars.

Section 15 of the Employment Agreement provides:

> **Resolution of disputes.** Any dispute arising in connection with the validity, interpretation, enforcement, or breach of this Agreement or arising out of Executive's employment or termination of employment with the Company [Caesars]; under any statute, regulation, ordinance or the common law; or otherwise arising between Executive, on the one hand, and the Company or any of its Subsidiaries or Affiliates, on the other hand, the parties, shall ... be submitted to binding arbitration before the American Arbitration Association ("AAA") for resolution. (Emphasis added.) See page 13 of Employment Agreement.

Moreover, under section 10(i) (at page 11) of the Employment Agreement, Caesars gave itself the right to go to court for injunctive relief against Mr. Pilant.

The Employment Agreement was drafted entirely by Caesars and was presented to Mr. Pilant on a "take it or leave it" basis. (Pilant Declaration, ¶ 3.)

We make reference to these dispute resolution provisions only to demonstrate that Caesars agreed that Mr. Pilant can bring employment claims against Caesars (and Caesars alone) in connection with his employment at Harrah's SoCal Resort (the very property relevant to this case). Accordingly, Caesars has waived any argument that such claims are barred by sovereign tribal immunity. [Please note that with regard to arbitration as the proper forum, we reserve any and all arguments that the arbitration provision is unenforceable under *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal. 4th 83 (2000) and its progeny.]

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2. The Rincon Band is not an indispensable party that must be joined.

a. The tribe is not subject to service of process and joinder would deprive the court of jurisdiction.

The starting and ending point for application of Rule 19(a) is that only parties who are "subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction" may be joined as a party. Defendant's own moving papers demonstrate that joinder of the Rincon Band will divest the Court of jurisdiction. It is illogical and unjust for Caesars to even argue that Mr. Pilant's case should be dismissed because he did not join a party that is immune from suit and that would divest this Court of jurisdiction.

In any event (and this may be an academic discussion because the tribe cannot be joined), Defendants have failed to meet their burden of proving that the additional conditions for joinder under Rule 19(a) have been met. Rule 19(a) requires joinder only if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(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.

b. The Court can accord complete relief among the existing parties.

There are 4 causes of action asserted in this case. All 4 are California state law employment claims asserted (properly) against Mr. Pilant's employer (Caesars):

- Wrongful termination in violation of public policy. This is common law tort claim based on the seminal case of *Tameny v. Atlantic Richfield Co.*, 27 Cal. 3d 167 (1980). Under *Tameny* and its well-established progeny, if a termination of employment violates California public policy, it gives rise to a tort claim against the employer. See CACI 2430 jury instruction. A wrongful termination in violation of public policy claim is "personal injury" claim subject to the 2-year statute of limitations for torts. *Romano v. Rockwell International, Inc.*, 14 Cal. 4th 479 (1996). Here, as alleged in the Complaint, the public policy is the employer's legal obligation to provide a safe and healthful workplace for its employees.

In the context of this claim, an employee does not have to report the alleged violation of law to a government or law enforcement agency. It is sufficient if the employee reports an alleged violation internally to his employer. *Gantt v. Sentry Insurance*, 1 Cal. 4th 1083, 1090-1091 (1992). Again, as alleged in the Complaint, Mr. Pilant reported his health and safety concerns to Caesars management, to no avail.[3]

- Violation of Cal. Labor Code § 6310. The second cause of action is brought under Cal. Labor Code § 6310(a) which provides that an employer may not discharge any employee because the employee has made a complaint to his employer regarding employee safety or health concerns.

- Violation of Cal. Labor Code § 1102.1. The third cause of action is brought under Cal. Labor Code § 1102.5 which provides that an employer may not discharge any employee because the employee disclosed information to

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[3] Defendants' seizing upon the word "whistleblower" demonstrates a fundamental lack of understanding of basic employment law. The term "whistleblower" appears one time in the complaint (in the first sentence of the introduction). The employment law bar knows that this term is a general descriptive term that applies to common law claims and certain statutory claims asserted in this case (where the employee blows the whistle internally to his or her employer) or to various whistleblower statutes which are not asserted in this case (where the person blows the whistle to the government.

the employer which the employee reasonably believes is a violation of or noncompliance with local, state or federal law.

- Breach of written employment agreement. The fourth cause of action is for breach of a written employment contract between 2 parties – Mr. Pilant and Caesars. See Exhibit A to the Declaration of Darrell Pilant filed in opposition to this motion. The tribe, of course, is not party to Mr. Pilant's Employment Agreement.

In short, it is clear that all 4 claims are asserted against the correct parties – Mr. Pilant's employer -- and, in fact, there are no viable claims against the tribe (even if the tribe was not immune and subject to the jurisdiction of this Court).

Either Caesars constructively terminated Mr. Pilant's employment in violation of public policy or it did not. The trier of fact can make that determination and therefore "completely accord relief among the existing parties."

c. Caesars has not met its burden of providing that the Rincon Band has an interest in the subject matter of the action and that disposing of the action in the absence of the tribe would impair or impede the tribe's ability to protect its interests.

Again, the subject matter of the litigation is simply an employment law dispute between an employee and his employer. Mr. Pilant is not seeking an injunction to shut down or restrict any of the operations of Harrah's SoCal Resort. The outcome of this litigation will in no way curtail the tribe or Caesars from continuing to operate the resort and subjecting the Caesars employees and the public to the threat of COVID-19 if that is what they choose to do. The only determination in the case at bar will be whether Caesars wrongfully terminated Mr. Pilant's employment and/or breached his employment agreement.

This case is analogous to the case before the United States Supreme Court in *Lewis v. Clarke*, 137 S. Ct. 1285 (2017). In that case, individuals brought a personal injury action against an employee of the tribe who caused a car accident while he was conducting official business on behalf of the tribe. The Supreme Court held that the sovereign immunity doctrine did not support dismissal:

> This is a negligence action arising from a tort committed by Clarke on an interstate highway within the State of Connecticut. The suit is brought against a tribal employee operating a vehicle within the scope of his employment but on state lands, and the judgment will not operate against the Tribe. This is not a suit against Clarke in his official capacity. It is simply a suit against Clarke to recover for his personal actions, which "will not require action by the sovereign or disturb the sovereign's property." [Citation omitted.] (Emphasis added.)

Similarly, this is a wrongful termination action (including personal injury and contract claims) against Mr. Pilant's employer, and any judgment in this action will not operate against the tribe or disturb the tribe's property. Nor will a resolution of this dispute prejudice the tribe or infringe on its sovereign rights. See also discussion in section A.3(b) of this brief immediately below.

d. Caesars has not met is burden of providing that disposing of the action in the tribe's absence would leave Caesars subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations.

As discussed in more detail in section A.3(b) below, the Rincon Band is able to operate the casino only because it has entered into a Compact with the State of California in which it has agreed that it will not conduct gaming in a manner that endangers the public health, safety or welfare and that it will adopt and comply with standards no less stringent than federal workplace and occupational safety and health standards. Because this this case involves Caesars' obligation to provide its workforce with a safe and healthy workplace,

it will not lead to a result inconsistent with the tribe's own obligations.

For all of the above reasons, joinder of the tribe is not required under Rule 19(a).

3. The factors set forth in Rule 19(b) for cases where joinder is not feasible weigh heavily, if not entirely, against dismissal.

FRCP 19(b) provides:

(b) 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. (Emphasis added.)

As explained above, the Rincon Band is not a party who is "required to be joined," so there is no need for the Court to examine the 4 Rule 19(b) factors. In any event, consideration of these factors should compel the Court to deny the motion.

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a. There is no prejudice that justifies dismissal of this action.

There is no prejudice to the tribe or to Caesars that would support dismissal of this action.

Again, we reiterate that we are not making any claims against the Rincon Band in this action. We are not seeking any rulings, determinations, judgments or injunctions against the Rincon Band. Any decisions rendered in this matter would not be binding in any way against the Rincon Band.

The fact that the tribe may have to "explain" its decision to reopen the casino is not "prejudice." One or more tribal members may (or may not) choose to testify, but that would not violate sovereign immunity.

Furthermore, this action will not in any way trample upon or infringe the tribe's sovereign rights under the Rincon Band's Compact with the State of California or its Management Agreement with HCAL, LLC. In fact, the claims made in this case are consistent with, not contrary to, the provisions of both the Compact and the Management Agreement.

Indian tribes are required to comply with the provisions of 25 USC §2710 in order to conduct gaming activities on reservations. Under 25 USC §2710(b)(2)(E), tribes must ensure that the gaming facility and gaming operations are conducted "in a manner which adequately protects the environment and the public health and safety."

In their moving papers, Caesars makes general (if not superficial) references to the Compact and the "Management Agreement, but make only conclusory representations that these documents provide that tribe maintains authority and control over the casino building which it owns. However, despite frequent and heavy reliance on these documents, Caesars did not include these documents as exhibits so as to allow the Court to see the detail. This is likely because these documents contain several provisions that undermine Defendants' arguments. We were able to obtain these documents from filings

Caesars made in another federal court case and we have attached them to our Request for Judicial Notice.

The Gaming Compact between the Rincon Band and the State of California contains the following provisions:

> Sec. 10.1. PUBLIC AND WORKPLACE HEALTH SAFETY, AND LIABILITY.
>
> Sec. 10.1. The Tribe will not conduct Class III gaming in a manner that endangers the public health, safety or welfare.
>
> Sec. 10.2. Compliance. For the purposes of this Gaming Compact, the Tribal Gaming Operation shall: (e) Adopt and comply with standards no less stringent than federal workplace and occupational safety and health standards; [and] (f) Comply with ... applicable federal law regarding public health and safety.

See Plaintiff's Request for Judicial Notice, Exhibit 1 (at pp. 34-35 of 61).

Thus, the Compact establishes that the tribe is already obligated to ensure that Harrah's SoCal resort is safe for employees and the public.

The Management Agreement between the Rincon Band and HCAL, LLC (the "Management Agreement") contain the following provisions:

> 4.1. Manager's Authority and Responsibility. Manager shall have, subject to the terms of this Agreement, the exclusive authority to conduct and direct all business and affairs in connection with the day-to-day management and maintenance of the Enterprise, the Facility, and the Property, including, but not limited to, the establishment of operating days and hours to the extent authorized by law. The Tribe agrees that it will not interfere with the Manager's obligations under this Agreement. (Emphasis added.)
>
> 4.6.1 Manager's Responsibility. Manager shall have, subject to the terms of this Agreement, the exclusive responsibility and authority to direct the selection, control, discipline, and discharge of all employees performing regular services for the Enterprise in connection with the maintenance and management of the Enterprise and the Facility and any activity upon the Property. (Emphasis added.)

See Plaintiff's Request for Judicial Notice, Exhibit 2 (at pp. 42-45 of 102).

Thus, the Management Agreement establishes that Caesars, not the tribe, is responsible for all employment and personnel decisions, including decisions to send its own employees back to work. In fact, Mr. Pilant (who was the highest-ranking executive on site at the resort) states in his declaration in opposition to this motion that the Rincon Band was never involved in the hiring, firing or discipling of Caesars' employees during his entire tenure as General Manager. (Pilant Declaration, ¶ 6.) That was the exclusive province of Caesars (the employer), in accordance with the terms of the Management Agreement as well as in actual practice.

Defendants also argue that allowing the case to proceed would impair the tribe's interests because any award to Mr. Pilant would be treated as an operating expense and essentially "paid" by the tribe under the Management Agreement. Even if that were true, this argument was squarely rejected by the Supreme Court in *Lewis v. Clarke, supra*:

> "We hold that an indemnification provision cannot, as a matter of law, extend sovereign immunity to [non-tribe defendants]. ... Our analysis [in a prior sovereign immunity case] turned on where the potential legal liability lay, not from whence the money to pay the damages award ultimately came. ... The critical inquiry is who may be legally bound by the court's adverse judgment, not who will ultimately pick up the tab." 237 S. Ct. at 1293-129447.

Finally, any argument that Caesars is somehow the "arm" of the Rincon Band of Luiseño Indians is unsupported and downright shameful.

We ask the Court to bear in mind that the entities being sued here are huge corporations with properties and business operations throughout the United States and indeed across the world. In fact, according to a press release from Caesars' website announcing the July 2020 merger between Caesars and

Eldorado:

> "Caesars Entertainment, Inc. ("Caesars," "Caesars Entertainment", or the "Company", formerly known as Eldorado Resorts, Inc. or "Eldorado") announced today that it completed its acquisition of Caesars Entertainment Corporation ("CEC"). The transaction creates the largest casino and entertainment company in the U.S. ... The transaction further enhances Caesars' position as the leading regional and destination gaming operator in the U.S. The combined company owns and operates more than 55 casino properties worldwide, including an iconic portfolio of eight casino hotel properties on the Las Vegas Strip. Additionally, Caesars owns or operates casinos in 16 states across the U.S. including Nevada, Colorado, Missouri, Iowa, Florida, Mississippi, Louisiana, Ohio, Illinois, Indiana, New Jersey, Pennsylvania, Arizona, North Carolina, California and Maryland."

See Plaintiff's Request for Judicial Notice, Exhibit 3.

In addition, Caesars announced publicly that Eldorado's buyout of Caesars was valued at **$17.3 BILLION** (that's billion with a "b"). See Plaintiff's Request for Judicial Notice, Exhibit 4.

b. A judgment rendered in the absence of the tribe would be adequate.

For the reasons mentioned above, a judgment rendered in this action would be "adequate." A determination in this action will simply resolve the employment claims between Mr. Pilant and Caesars and will not be binding upon the tribe or affect the tribe's rights.

c. Plaintiff would have no remedy, much less an adequate remedy, if the case is dismissed.

Defendants' papers concede that if the Court dismisses this action, Mr. Pilant will have no adequate remedy to redress the alleged wrongs. This would be a draconian result, and should be a very important factor given that Rule 12(b) requires that the Court's weighing of factors must be made "in equity and good conscience." The only equitable and conscientious result here is for the

Court to allow this action to proceed.[4]

4. At a minimum, the Court should allow Plaintiff to conduct discovery.

For all the above reasons, the Rincon Band is not an indispensable party and Mr. Pilant should be allowed to pursue his employment law claims against his employer. In closing, however, we note that much of the defense brief is an argument on the merits. They argue that certain documents (which they have not provided to the court) support their position. They argue that the casino was reopened in a careful and safe manner. We disagree, and believe the evidence will show a significant COVID outbreak among the Harrah's SoCal Resort employees and the casino patrons because, among other things, it is virtually impossible to maintain safe social distancing at gaming tables and elsewhere throughout the facility (as foreshadowed by Governor Newsom in his letter where he warns that reopening the casino case "deeply concerned" him and created a "serious threat ... to public health)." But, for purposes of this motion, the point is that these matters should be resolved by the trier of fact and it would be premature to dismiss the action. At a minimum, Plaintiff has the right to conduct discovery on these critical issues.

B. The Court has Personal Jurisdiction over the Defendants in this action.

Defendants' argument under FRCP 12(b)(2) that this Court lacks personal jurisdiction over Caesars is (and we are being charitable here) weak if not frivolous.

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[4] This is particularly true since the sovereign immunity doctrine was created "almost by accident" *Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.*, 523 U.S. 751. 756 (1998). The Supreme Court noted: "There are reasons to doubt the wisdom of perpetuating the [tribal immunity] doctrine. ... "[A]t one time, the doctrine of tribal immunity from suit might have been thought necessary to protect nascent tribal governments from encroachments by States. In our interdependent and mobile society, however, tribal immunity extends beyond what is needed to safeguard tribal self-governance." 523 U.S. at 758.

As the Court knows, the California long-arm statute is very broad. California courts may exercise jurisdiction over nonresidents "on any basis not inconsistent with the Constitution of this state or of the United States." CCP § 410.10. The statute "manifests an intent to exercise the broadest possible jurisdiction, limited only by constitutional considerations." *Sibley v. Superior Court*, 16 Cal. 3d 442, 445 (1976).

A state may constitutionally exercise personal jurisdiction over a nonresident defendant as long as the defendant has "minimum contacts" with that forum such that "maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington* 326 U.S. 310, 316 (1945); Sibley, supra, 16 Cal. 3d at 445.

Regular and substantial conduct by a foreign corporation of business within a state alone will subject that corporation to the personal jurisdiction of the state's courts. *International Harvester Co. v. Kentucky*, 234 U.S. 579 (1914).

Furthermore, it is blackletter law that personal jurisdiction exists where a cause of action "arises out of or relate to" the defendant's forum-related activity. *Burger King v. Rudzewicz*, 471 U.S. 462, 472 (1985); *Buckeye Boiler Co. v. Superior Court*, 71 Cal. 2d 893, 898-899 (1969).

Finally, "an affiliation between the forum and the underlying controversy" or "an activity or occurrence that *takes place in the forum State*" will subject a non-resident to personal jurisdiction in the forum state. *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017).

In fact, the Defendants in their moving papers cite to many of these fundamental principles:

> "[I]n order for a court to exercise specific jurisdiction, the suit must arise out of or relate to the defendant's contacts with the forum. [Citations omitted.] 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. ... Thus, "specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." Id. See Defendants' memorandum of points and authorities, p. 22.

Under the authorities cited above, and also cited by Defendants, it is clear that the Court has personal jurisdiction over the Defendants in this action.

The following facts are undisputed and convincingly establish that Caesars conducts substantial business in California, that the case is based on activities and occurrences that took place in California, and that that the controversy or dispute "arises out of" and is "related to" Caesars' California-related activity:

- Harrah's So Cal Resort (the epicenter of this dispute) is located in California;
- The employment agreement between Mr. Pilant and Caesars was executed in California (Pilant Declaration, ¶ 3);
- Mr. Pilant worked almost exclusively in California at the Harrah's SoCal Resort throughout his tenure as General Manager (Pilant Declaration, ¶ 2);
- Harrah's SoCal Resort generates more than $300 million per year in revenue (Pilant Declaration, ¶ 7);
- The unsafe and unhealthy working conditions about which Mr. Pilant complained were in California;
- The alleged constructive termination of Mr. Pilant's employment occurred in California; and
- The action involves fundament issues of California public policy and California has a strong interest in the subject matter at issue.

For these reasons, the Court has personal jurisdiction over these non-resident Defendants.

## CONCLUSION

Defendants have failed to meet their burden of establishing that the Rincon Band is an indispensable party in what is purely and employee-employer dispute or that the Court lacks jurisdiction over this action given that the case arises out of and is related solely to California-based conduct.

Accordingly, the motion should be denied and Mr. Pilant should be given his day in court on his claims that are grounded on well-established and important issues of California public policy.

Dated: November 6, 2020

Respectfully submitted,

By /s Anthony F. Pantoni
Anthony F. Pantoni
Attorney for Plaintiff
Darrell Pilant