

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

**THE PUEBLO OF POJOAQUE,  
POJOAQUE PUEBLO GAMING COMMISSION,  
and POJOAQUE GAMING, INC.,**

**Plaintiffs,**

**v.**

**Civ. No. \_\_\_\_\_**

**HONORABLE MATTHEW J. WILSON,  
District Judge, and HENRY MARTINEZ,**

**Defendants.**

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiffs, Pueblo of Pojoaque, Pojoaque Pueblo Gaming Commission, and Pojoaque Gaming, Inc. (collectively “Pojoaque”), for their Complaint against the Defendants state as follows:

**INTRODUCTION**

1. This is an action for declaratory relief pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 2201. Pojoaque seeks a declaration that the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*, does not permit the shifting of jurisdiction from tribal courts to state courts over private personal injury lawsuits brought against tribes or tribal entities with respect to claims arising within Indian country, and thus that the New Mexico state courts do not have jurisdiction over the case captioned *Henry Martinez v. Cities of Gold Casino, The Pueblo of Pojoaque, Pojoaque Pueblo Gaming Commission, and Pojoaque Gaming, Inc.*, No. D-101-CV-2020-02387 (the “Martinez Lawsuit”), pending in the First Judicial District.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this case under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1362 (action brought by Indian tribe), and 28 U.S.C. § 1343 (protection of civil rights).

3. Venue is proper under 28 U.S.C. § 1391(b), inasmuch as all the actions from which the claims arise occurred and are occurring within the District of New Mexico.

### **PARTIES**

4. Plaintiff Pueblo of Pojoaque is a federally recognized Indian tribe located in Santa Fe County, New Mexico.

5. Plaintiff Pojoaque Pueblo Gaming Commission is a governmental body that enforces gaming regulations at the Pueblo.

6. Plaintiff Pojoaque Gaming, Inc., is a tribally chartered corporation wholly owned by the Pueblo of Pojoaque doing business on Pueblo land in the State of New Mexico. Cities of Gold Casino is owned and operated by Pojoaque Gaming, Inc., and is not an independent legal entity of any kind.

7. Defendant Judge Mathew J. Wilson is a New Mexico state district court judge, sitting in Division IX of the First Judicial District (Santa Fe County), who is currently presiding over the *Martinez* Lawsuit.

8. Defendant Henry Martinez is the plaintiff in the *Martinez* Lawsuit.

### **STATEMENT OF FACTS**

9. Pojoaque Gaming, Inc., operates the Cities of Gold Casino (“Cities of Gold”), located on Pojoaque Pueblo land, and thus within Pojoaque Pueblo Indian country, under the terms

of a class III gaming compact entered into between the Pueblo and the State of New Mexico (the “Compact”) pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1994) (“IGRA”), specifically § 2710(d). The Compact was approved by the Secretary of the Interior and was in effect at the time of the accident alleged by Henry Martinez in the *Martinez* Lawsuit.

10. Henry Martinez alleges in the *Martinez* Lawsuit that on or about May 25, 2018, he slipped and fell on the floor of the Cities of Gold Casino due to the negligence of Plaintiffs. **A copy of the First Amended Complaint filed in the *Martinez* Lawsuit is attached hereto as Exhibit 1.**

11. Mr. Martinez brought the *Martinez* Lawsuit under Section 8 of the Compact. Pojoaque agreed in Section 8(a) of the Compact to waive its sovereign immunity for personal injury claims alleged to have been proximately caused by the conduct of the Pueblo’s Gaming Enterprise (i.e., Pojoaque Gaming Inc.), brought by visitors, and agreed to proceed with such claims in binding arbitration or “in a court of competent jurisdiction.” Section 8(a) provides in pertinent part that “any such claim [for personal injury] may be brought in state district court, including claims arising on tribal land, *unless it is finally determined by a state or federal court that IGRA does not permit the shifting of jurisdiction over visitors’ personal injury suits to state court.*” **An excerpt of the Compact is attached hereto as Exhibit 2.**

12. In 2018, the Tenth Circuit determined that IGRA does not authorize tribes to allocate to states jurisdiction over slip and fall tort suits like the one presented by the *Martinez* Lawsuit. *Navajo Nation v. Dalley*, 896 F.3d 1196, 1218 (10<sup>th</sup> Cir. 2018), *cert. denied*, 139 S.Ct. 1600 (2019).

13. Plaintiffs moved to dismiss the *Martinez* Lawsuit. By order filed April 5, 2021, Judge Wilson denied Plaintiff’s motion, ruled that *Doe v. Santa Clara Pueblo*, 2007-NMSC-008, is

controlling, and found that the court had subject matter jurisdiction. **A copy of that Order is attached hereto as Exhibit 3.**

14. Absent congressional legislation to the contrary, as a matter of federal law, state courts may not exercise jurisdiction over suits against Indian tribes, tribal members or tribal entities arising from alleged wrongs committed within Indian Country, nor may a tribe, whether unilaterally or by agreement with a state, validly agree to any such shift in jurisdiction, and the attempted exercise of such jurisdiction by state courts directly undermines “the authority of tribal courts over Reservation affairs,” and thus infringes on “the right of [Pojoaque] to govern [itself].” *Williams v. Lee*, 358 U.S. 217, 223 (1959).

### **COUNT I:**

#### **DECLARATORY JUDGMENT**

15. Judge Wilson, in presiding over the *Martinez* Lawsuit, is acting under color of state law, and without jurisdiction over the subject matter of the lawsuit.

16. Judge Wilson’s determination that the First Judicial District Court has subject matter jurisdiction over the *Martinez* Lawsuit has deprived the Plaintiffs of their liberty interests secured by the due process clause of the 14<sup>th</sup> Amendment to the United States Constitution to have the *Martinez* lawsuit tried in a court that has jurisdiction over the subject matter.

17. Judge Wilson, in presiding over the *Martinez* Lawsuit, and Henry Martinez, by prosecuting his lawsuit in the New Mexico First Judicial District Court, are infringing on the right of the Pueblo to exercise jurisdiction over reservation affairs through its tribal court. Therefore, an actual and justiciable controversy exists between the Pueblo and the Defendants.

WHEREFORE, Plaintiffs respectfully request that this Court issue an order:



A. Declaring that the Indian Gaming Regulatory Act does not permit the shifting of jurisdiction from tribal courts to state courts over tort claims like those brought in the *Martinez* Lawsuit;

B. Declaring that the New Mexico state courts do not have jurisdiction over the *Martinez* Lawsuit;

C. Granting such other and further relief as the Court deems just and appropriate, including without limitation awarding the Plaintiffs' costs and fees incurred in prosecuting this action and in defense of the underlying case in the First Judicial District.

Respectfully submitted,

**RIPLEY B. HARWOOD, P.C.**

By:



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