

**TUNICA-BILOXI TRIBAL COURT**

**TUNICA-BILOXI NATION**

**STATE OF LOUISIANA**

**NO. 18-002**

**DIVISION " "**

**CHRISTY DAUZAT**

**VERSUS**

**GPS HOSPITALITY PARTNERS IV, LLC AND  
TRAVELERS INDEMNITY COMPANY**

**FILED:** \_\_\_\_\_

**EXCEPTION OF LACK OF SUBJECT MATTER JURISDICTION**

**NOW INTO COURT**, through undersigned counsel, comes Defendant, GPS Hospitality Partners IV, LLC, who files this Exception of Lack of Subject Matter Jurisdiction.

For the reasons set forth in the attached memorandum in support, the Supreme Court has repeatedly held that tribal court jurisdiction over nonmembers such as GPS is narrow and is limited to matters that bear on the tribe's right to control entry, internal relations and self-government. Moreover, plaintiff's suit over her personal injuries alone "does not have a direct effect on the political integrity, the economic security, or the health or welfare of the tribe."

For these reasons, this Court should grant the instant Exception of Lack of Subject Matter Jurisdiction and allow this case to be transferred to the United States Federal Court for the Western District of Louisiana.

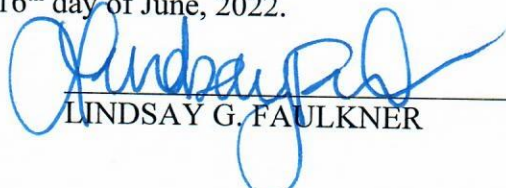
**Respectfully submitted,**



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Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served on counsel of record VIA ELECTRONIC MAIL this 16<sup>th</sup> day of June, 2022.

  
LINDSAY G. FAULKNER

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**RULE TO SHOW CAUSE**

Considering the foregoing:

**IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that Plaintiff, Christy Dauzat, appear and show cause, if any, on the \_\_\_\_ day of \_\_\_\_\_, 2022, at \_\_\_\_\_ am/pm as to why Defendant's Exception of Lack of Subject Matter Jurisdiction should not be granted.

Marksville, Louisiana, this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
**J U D G E**

**PLEASE SERVE:**

Ben James  
Attorney for Plaintiff  
107 North Washington Street  
Marksville, LA 71351

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**MEMORANDUM IN SUPPORT OF EXCEPTION  
OF LACK OF SUBJECT MATTER JURISDICTION**

**NOW INTO COURT**, through undersigned counsel, comes Defendant, GPS Hospitality Partners IV, LLC, who files this Memorandum in Support of its Exception of Lack of Subject Matter Jurisdiction.

**I. FACTS AND BACKGROUND**

Plaintiff filed the instant lawsuit alleging damages as a result of an incident that allegedly occurred on February 13, 2017, at a Burger King location. According to her Petition, as Plaintiff exited her vehicle at the Burger King located at 6773 Highway 1 in Marksville, her left foot stepped into a large pothole, causing her leg(s) to twist and her to fall to the ground.

On July 16, 2009, the Tunica-Biloxi Indian Tribe of Louisiana (the "Tunica-Biloxi Tribe") executed a lease agreement with Strategic Restaurants Acquisition Company, LLC. Pursuant to the Lease, the Tunica Biloxi Tribe, as lessors, allowed Strategic Restaurants, as lessees, to construct and operate a Burger King restaurant on land owned by the Tunica-Biloxi Tribe. The leased property is located at 6773 Highway 1, Marksville, LA 71350. On December 19, 2016, Strategic Restaurants assigned all its rights as lessee under the Lease to GPS Hospitality Partners IV, LLC, the defendant herein.

As set forth herein, the Supreme Court has repeatedly held that tribal court jurisdiction over nonmembers such as GPS is narrow and is limited to matters that bear on the tribe's right to control entry, internal relations and self-government. Moreover, plaintiff's suit over her personal injuries alone "does not have a direct effect on the political integrity, the economic security, or the health or welfare of the tribe." As such, this Exception should be granted.

## II. LAW AND ARGUMENT

### A. Legal Standard

Unlike all other types of declinatory exceptions, the exception of lack of subject matter jurisdiction is non-waivable, and may be raised at any stage of litigation.<sup>1</sup> Subject matter jurisdiction is “the legal power and authority of a court to hear and determine a particular class of actions or proceedings, based upon the object of the demand, the amount in dispute, or the value of the right asserted.”<sup>2</sup> Such jurisdiction is “created by the constitution or legislative enactment, and it cannot be waived or conferred by the consent of the parties.”<sup>3</sup>

### B. Tribal Court Jurisdiction Over Non-Members

The United States Supreme Court has repeatedly affirmed the general rule that, absent a different congressional direction, Indian tribes lack civil authority over non-members, with two narrow exceptions. *Montana v. United States*, 450 U.S. 544, 565-66 (1982), *Strate v. A-1 Contractors*, 520 U.S. 438 (1997), (“Our case law establishes that, absent express authorization by federal statute or treaty, tribal jurisdiction over the conduct of nonmembers exists only in limited circumstances.”); *TTEA v. Ysleta Del Sur Pueblo*, 181 F.3d 676, 684 (5th Cir. 1999) (superseded by statute on other grounds) (“A tribal court generally does not have jurisdiction over non-Indian defendants.”)

Under the *Montana* rule, a tribal court can exercise jurisdiction over a non-member such as GPS only in two circumstances:

A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. ... A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

*Montana*, 450 U.S. at 565-566. The two exceptions have come to be known as the “consensual relationship,” or “first” exception and the “self-governance” or “second” exception.

The consensual relationship exception is a narrow one. “A nonmember's consensual relationship in one area thus does not trigger tribal civil authority in another--it is not ‘in for a

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<sup>1</sup> *Piper v. Olinde Hardware & Supply Co.*, 288 So.2d 626, 628 (La. 1974); La. C.C.P. art. 925(C).

<sup>2</sup> La. C.C.P. art. 2.

<sup>3</sup> *Peter Vicari General Contractor, Inc. v. St. Pierre*, 02-250 (La. App. 5 Cir. 10/16/02), 831 So.2d 296, 299.

penny, in for a pound’.”<sup>4</sup> “Montana’s consensual relationship exception requires that the tax or regulation imposed by the Indian tribe have a nexus to the consensual relationship itself.”<sup>5</sup>

Montana’s consensual relationship exception only applies to “commercial dealing, contracts, leases, or other arrangements.”<sup>6</sup> In *Plains Commerce*, the Court provided additional strictures to be utilized in the “consensual relationship” analysis. It emphasized that meeting the “consensual relationship” exception cannot rest solely on consent. Rather, because non-Indians have no participation in Indian government, jurisdiction must also be based in the need of the tribe to protect its and its members interests.<sup>7</sup>

With regard to the second exception, In *Montana*, 450 U.S. at 564, the Supreme Court stated that this exception does not expand tribal jurisdiction “beyond what is necessary to protect tribal self-government or to control internal relations.”<sup>8</sup> In particular, the United States Supreme Court in *Atkinson* held that, “unless the drain of the nonmember’s conduct upon tribal services and resources is so severe that it actually ‘imperil[s]’ the political integrity of the Indian tribe, there can be no assertion of civil authority beyond tribal lands.”<sup>9</sup> In this case, it is undisputed that GPS Hospitality Services, LLC and its members are not members of the Tunica Biloxi Tribe, or any other Indian tribe.<sup>10</sup>

**C. *Plains Commerce* Demands More Than the Existence Of A Consensual Relationship; It Demands A Consensual Relationship That Bears On The Tribe’s Internal Relations Or Self Governance**

In analyzing the consensual relationship exception, it is not enough that GPS received an economic benefit from the relationship with the Tribe. Rather, because non-Indians have no participation in Indian government, jurisdiction must also be based in the need of the Tribe to preserve tribal self-government and control internal relations.

[N]onmembers have no part in tribal government—they have no say in the laws and regulations that govern tribal territory. Consequently, those laws and regulations may be fairly imposed on nonmembers only if the nonmember has consented, either expressly or by his actions. Even then, the regulation must stem from the tribe’s inherent sovereign authority to set conditions on entry, preserve tribal self-government, or control internal relations.<sup>11</sup>

<sup>4</sup> *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 656, 121 S.Ct. 1825 (2001) (citation and internal quotation marks omitted).

<sup>5</sup> *Id.* at 656.

<sup>6</sup> *Atkinson Trading Co.*, 532 U.S. at 655.

<sup>7</sup> *Smith v. Salish Kootenai College*, 434 F.3d 1127, 1137 (9th Cir. 2006).

<sup>8</sup> *Montana*, 450 U.S. at 56

<sup>9</sup> *Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001)

<sup>10</sup> Despite requesting confirmation from Plaintiff’s counsel, Defendant has no information to date that confirms that Plaintiff is a member of the tribe.

<sup>11</sup> *Plains Commerce*, at 2724.

In the case at bar, in no sense can it reasonably be said that the Tribal Court's assuming jurisdiction over the Plaintiffs claim against GPS is necessary to protect tribal self-government or control internal relations. Further, the trip and fall claim has no connection tribal self-government and internal relations. Likewise, the operation of a Burger King fast-food restaurant has no bearing on the internal relations and tribal self-governance. For these reasons, the Exception of Lack of Subject Matter Jurisdiction should be granted.

**D. There Is No Qualifying Impact on The Tribe's Political Integrity, Economic Security, Health, Or Welfare.**

In *Plains Commerce Bank v. Long Family Land & Cattle Company, Inc.*, 554 U.S. 316 (2008), the Court discussed the second exception, holding:

The second exception authorizes the tribe to exercise civil jurisdiction when non-Indians' "conduct" menaces the "political integrity, the economic security, or the health or welfare of the tribe." *Montana*, 450 U.S. at 566, 101 S.Ct. 1245. The conduct must do more than injure the tribe, it must "imperil the subsistence" of the tribal community. *Ibid*. One commentator has noted that "th[e] elevated threshold for application of the second Montana exception suggests that tribal power must be necessary to avert catastrophic consequences." *Cohen* § 4.02[3][c], at 232, n. 220. 554 U.S. at 341.

In *Atkinson Trading*, the Court noted that Montana's second exception "is only triggered by nonmember conduct that *threatens* the Indian tribe, it does not broadly permit the exercise of civil authority wherever it might be considered necessary to self-government."<sup>12</sup> The nonmember's on-reservation conduct "must do more than injure the tribe, it must imperil the subsistence of the tribal community" and "must be necessary to avert catastrophic consequences."<sup>13</sup> A "generalized threat that torts by or against its members pose for any society, is not what the second *Montana* exception is intended to capture... Rather, the second exception envisions situations where the conduct of the nonmember poses a direct threat to tribal sovereignty."<sup>14</sup> *Town Pump, Inc. v. LaPlante*, 394 Fed. Appx 425 425, 427-428 (9th Cir. 2010) (upholding a permanent injunction against an enrolled member of the Blackfeet Nation from prosecuting claims in the Blackfeet Tribal Court against nonmembers, despite allegations of "personal injury by toxic discharges from a Town Pump gas station within the exterior boundaries of the Blackfeet Indian Reservation," because plaintiff's suit over her personal injuries alone "does

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<sup>12</sup> 532 U.S. at 657, n. 12

<sup>13</sup> *Plain Commerce Bank*, 554 U.S. at 341.

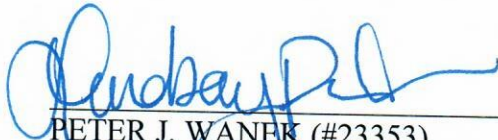
<sup>14</sup> *Philip Morris USA, Inc. v. King Mountain Tobacco Company*, 569 F.3d 932, 943- 944 (9th Cir. 2009). *Accord: State of Montana Department of Transportation v. King*, 191 F.3d 1108, 1114 (9th Cir. 1999)

not have a direct effect on the political integrity, the economic security, or the health or welfare of the tribe”).

Under these authorities, *Montana*’s second exception cannot support the tribal court jurisdiction over GPS. The claim against GPS in this case is an alleged trip and fall incident that occurred in the parking lot of a Burger King located on tribal land. It cannot be reasonably argued that regulation of a trip and fall incident at a fast-food restaurant “essential to tribal self-government or internal relations” *Nevada v. Hicks*, 533 U.S. at 364, and does not “‘imperil the subsistence’ of the tribal community” in the sense that “tribal power must be necessary to avert catastrophic consequences.” *Plains Commerce Bank*, 554 U.S. at 341. Moreover, the tribe has not sought to initiate any action in the tribal court related to this case, and there are no issues or claims in the case that require the unique expertise of the tribal courts to help resolve. While the tribe may have a “financial interest” in their lease with GPS for the Burger King, that does not equate to a threat to the “financial security” of the tribe.

**WHEREFORE**, for the reasons set forth herein, this Court should grant the instant Exception of Lack of Subject Matter Jurisdiction and allow this case to be transferred to the United States District Court for the Western District of Louisiana.

**Respectfully submitted,**



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Attorneys for Defendant

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LINDSAY G. FAULKNER