

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11) Civil No. 11cv503-L(JMA)
12 ANAHID MANOUKIAN,)
13) **ORDER REMANDING ACTION TO**
14) **STATE COURT**
15)
16 v.)
17 HARRAH'S ENTERTAINMENT ,INC.,)
18 et al.,)
19)
20)
21 Defendants.)
22 _____

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18 On March 11, 2011 Defendants filed a notice of removal, removing from State court this
19 slip and fall action by a casino patron against the casino and other defendants. The notice of
20 removal is based on diversity jurisdiction and, alternatively, federal preemption, and 28 U.S.C.
21 Section 1441.

22 “Federal courts are courts of limited jurisdiction. They possess only that power
23 authorized by Constitution or a statute, which is not to be expanded by judicial decree. It is to be
24 presumed that a cause lies outside this limited jurisdiction and the burden of establishing the
25 contrary rests upon the party asserting jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*,
26 511 U.S. 375, 377 (1994); *see also Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 684
27 (9th Cir. 2006).

28 Consistent with the limited jurisdiction of federal courts, the removal statute is strictly

1 construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992);
 2 *see also Sygenta Crop Prot. v. Henson*, 537 U.S. 28, 32 (2002); *O'Halloran v. University of*
 3 *Wash.*, 856 F.2d 1375, 1380 (9th Cir. 1988). “The strong presumption against removal
 4 jurisdiction means that the defendant always has the burden of establishing that removal is
 5 proper.” *Gaus*, 980 F.2d at 566; *see also Nishimoto v. Federman-Bachrach & Assoc.*, 903 F.2d
 6 709, 712 n.3 (9th Cir. 1990); *O'Halloran*, 856 F.2d at 1380. “The traditional rule of burden
 7 allocation in determining removal jurisdiction was meant to comport with what the Supreme
 8 Court has termed ‘[t]he dominant note in the successive enactments of Congress relating to
 9 diversity jurisdiction,’ that is, ‘jealous restriction, of avoiding offense to state sensitiveness, and
 10 of relieving the federal courts of the overwhelming burden of business that intrinsically belongs
 11 to the state courts in order to keep them free for their distinctive federal business.’” *Abrego*
 12 *Abrego*, 443 F.3d at 685, quoting *Indianapolis v. Chase Nat'l Bank*, 314 U.S. 63, 76 (1941).

13 Defendants removed this action based on diversity jurisdiction under 28 U.S.C. Section
 14 1332(a). Original jurisdiction exists in cases of complete diversity, where each of the plaintiffs
 15 is a citizen of a different state than each of the defendants, and the amount in controversy
 16 exceeds \$ 75,000. 28 U.S.C. §1332(a); *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

17 One of the named Defendants in this case is Rincon Band of Luiseno Indians, a federally
 18 recognized Indian tribe (“Rincon Band”). Indian tribes such as Defendant Rincon Band are “not
 19 ‘citizen[s]’ of a state within the meaning of the federal diversity statute, 28 U.S.C. § 1332(a)(1),
 20 and thus cannot sue or be sued in diversity.” *Am. Vantage Co's., Inc. v. Table Mountain*
 21 *Rancheria*, 292 F.3d 1091, 1093 (9th Cir. 2002). Another named Defendant is Harrah’s Rincon
 22 Casino & Resort (“Casino”). Defendants did not address the citizenship of this Defendant at all.
 23 Accordingly, Defendants failed to establish complete diversity as required by 28 U.S.C. Sections
 24 1332 and 1441.

25 In the alternative, Defendants contend that Plaintiff’s slip and fall claim is preempted by
 26 the Indian Gaming Regulatory Act, 25 U.S.C. § 2700 *et seq.* (“IGRA”). In determining whether
 27 federal law preempts state law with respect to activities on tribal lands, “courts must apply
 28 standards different from those applied in other areas of federal preemption.” *Confederated*

1 *Tribes of Siletz Indians of Or. v. Oregon*, 143 F.3d 481, 486 (9th Cir. 1998). Furthermore, in
 2 cases where on-reservation conduct involving non-tribal members is involved, “the Indian tribes
 3 do not have an automatic exemption from state law.” *Id.* Plaintiff, who is apparently not a
 4 member of the Rincon Band or any other Indian tribe, was allegedly a patron at the Casino when
 5 he slipped and fell. His claim is based on California common law of negligence.

6 “Preemption generally applies in Indian law where the application of state law interferes
 7 or is incompatible with federal or tribal interests as reflected in federal law.” *Confederated*
 8 *Tribes of Siletz Indians of Or.*, 143 F.3d at 487 (internal quotation marks and citation omitted).
 9 “IGRA’s core objective is to regulate how Indian casinos function so as to ‘assure the gaming is
 10 conducted fairly and honestly by both the operator and players.’” *Baron Band of Mission*
 11 *Indians v. Yee*, 528 F.3d 1184, 1193 (9th Cir. 2008), quoting 25 U.S.C. § 2702(2). Additionally,
 12 its purpose is “to provide a statutory basis for the operation of gaming by Indian tribes as a
 13 means of promoting tribal economic development, self-sufficiency, and strong tribal
 14 governments; [¶] . . . to shield [Indian tribes] from organized crime and other corrupting
 15 influences, to ensure that the Indian tribe[s are] the primary beneficiar[ies] of the gaming
 16 operation . . . and [¶] to declare that [independent Federal regulation] for gaming on Indian lands
 17 . . . [is] necessary to meet congressional concerns regarding gaming and to protect such gaming
 18 as a means of generating tribal revenue.” 25 U.S.C. § 2702. Based on the allegations in the
 19 complaint and Defendants’ argument in the notice of removal, it does not appear that California
 20 negligence law interferes with or is incompatible with IGRA. California negligence law does
 21 “not seek to usurp tribal control over gaming nor [does it] threaten to undercut federal authority
 22 over Indian gaming.” *Confederated Tribes of Siletz Indians of Or.*, 143 F.3d at 487. Defendants
 23 therefore have not met their burden of showing that Plaintiff’s negligence action is preempted by
 24 IGRA.

25 The facts and arguments presented in the notice of removal do not meet the burden of
 26 establishing removal jurisdiction. “If at any time before final judgment it appears that the
 27 district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C.
 28 § 1447(c). This action is **REMANDED** to the Superior Court of the State of California for the

1 County of San Diego.

2 **IT IS SO ORDERED.**

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4 DATED: April 7, 2011

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6 COPY TO:

7 HON. JAN M. ADLER
8 UNITED STATES MAGISTRATE JUDGE

9 ALL PARTIES/COUNSEL

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M. James Lorenz
United States District Court Judge