

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SABRINA LARSEN,

Plaintiff,

v.

No. 1:23-cv-00449-JCH-JMR

**HILTON MANAGEMENT, LLC,
and JOHN DOES 1-10,**

Defendants.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on *Defendant Hilton Management, LLC's Motion to Dismiss* (ECF No. 8). The case arises out of a 2023 slip-and-fall at the Hilton Santa Fe Buffalo Thunder (“Buffalo Thunder”). *See* Compl. ¶ 6 (ECF No. 1-2). According to an affidavit from an employee of Hilton Management, LLC (“Defendant Hilton”), Buffalo Thunder is independently owned and operated by Buffalo Thunder Inc. pursuant to a franchise agreement. *See* Def.’s Ex. A, ¶¶ 1, 3. Defendant Hilton is not a party to the franchise agreement; does not own, operate, manage, or control Buffalo Thunder; does not employ or supervise anyone working at Buffalo Thunder; and does not occupy Buffalo Thunder’s premises. *See id.* ¶¶ 4-10.

Federal Rule of Civil Procedure 12(b)(2) authorizes a court to dismiss a complaint for “lack of personal jurisdiction.” Rule 12(b)(6) authorizes a court to do the same for “failure to state a claim upon which relief can be granted.” And Rule 12(b)(1) authorizes dismissal for “lack of subject-matter jurisdiction.”

First, Defendant Hilton argues that Ms. Larsen has not established personal jurisdiction over it. *See* Def.’s Br. 2 (ECF No. 8-1). As Defendant Hilton points out, “[t]he plaintiff bears the burden of establishing personal jurisdiction.” *Shrader v. Biddinger*, 633 F.3d 1235, 1239 (10th

Cir. 2011). Second, Hilton argues that because it “had nothing to do with either the hotel franchise agreement or the operations or management of the hotel,” the complaint fails to state a claim against Defendant Hilton. ECF No. 8-1, at 4. Based on these two arguments, Defendant Hilton requests dismissal of the claims against it under Rules 12(b)(2) and (b)(6). *See id.*

Third, Defendant Hilton asserts that, if the Court dismisses the claims against it, the remaining Doe defendants would be either tribal employees or entities. *See id.* at 5. According to Defendant Hilton, this case would then involve “a (presumably) non-Indian Plaintiff, an Indian defendant, and a slip and fall that occurred on Indian Land.” *Id.* at 7. As a result, Defendant Hilton requests that this Court dismiss the case for lack of subject matter jurisdiction under Rule 12(b)(1). All told, Defendant Hilton requests a dismissal without prejudice. *Id.* at 8.

Ms. Larsen agrees with Defendant Hilton. *See* Pl.’s Resp. 1 (ECF No. 11) (“Plaintiff is unable to make a colorable argument in opposition to the Motion.”). Still, she asks for limited jurisdictional discovery. To support this request, Ms. Larsen points to a state-court case arising out of a 2016 slip-and-fall at Buffalo Thunder. There, Defendant Hilton appeared to recognize it was subject to the state court’s jurisdiction. *See id.*

But as Ms. Larsen candidly acknowledges, the facts (if any) supporting personal jurisdiction over Defendant Hilton in that case were “probably superseded” by Buffalo Thunder’s current franchise agreement. *Id.*; *see also* Def.’s Reply 1 (ECF No. 12) (stating that current franchise agreement superseded jurisdictional facts from state-court case); Def.’s Ex. B, ¶ 1, 4-5 (ECF No. 8-3) (affidavit of Chief General Counsel for Pueblo of Pojoaque describing franchise agreement); Def.’s Ex. C (ECF No. 8-4) (current franchise agreement.) Thus, the state-court case about the 2016 slip-and-fall does not support jurisdictional discovery here.

Like Defendant Hilton, Ms. Larsen requests a dismissal without prejudice if the Court were to deny her discovery request.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that *Defendant Hilton Management, LLC's Motion to Dismiss (ECF No. 8)* is **GRANTED**. Plaintiff Sabrina Larsen's claims, and thus this case, are **DISMISSED WITHOUT PREJUDICE**.



SENIOR UNITED STATES DISTRICT JUDGE