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**UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF NEVADA**

FRANK IRESON,

Plaintiff,

vs.

AVI CASINO ENTERPRISES, INC., a  
Foreign Corporation, d/b/a AVI RESORT &  
CASINO; DOES I-X, inclusive,

Defendants.

Case No. 2:17-CV-987

**DEFENDANT'S MOTION  
TO DISMISS**

Defendant Avi Casino Enterprises, Inc. ("ACE") d/b/a Avi Resort & Casino,  
hereby moves to dismiss the Complaint pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6)  
and as supported by the following Memorandum of Points and Authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. AVI CASINO ENTERPRISES HAS SOVEREIGN IMMUNITY**

The plaintiff filed this suit against a tribal business enterprise alleging that he was

1 injured when he tripped and fell on the premises of the Avi Resort and Casino,  
2 Complaint at ¶ 6, on the Fort Mojave Indian Reservation. Putting aside whether  
3 Diversity of Citizenship exists between the plaintiff, who is identified as a citizen of  
4 California and a resident of Arizona, and a casino that is wholly owned and operated by  
5 the Fort Mojave Tribe, there can be no dispute that defendant ACE functions as an arm  
6 of the tribe and is protected by tribal sovereign immunity. *See Cook v. Avi Casino*  
7 *Enterprises, Inc.*, 548 F.3d 718 (2008), *cert. denied* 129 S. Ct 2159 (2009).  
8

9 The plaintiff alleges that on April 8, 2015, he was a guest or invitee at the Avi  
10 Casino when he tripped and fell due to an unsafe condition on the premises. Complaint  
11 at ¶ 6. He did not allege that he filed suit in tribal court or complied with the tribe's tort  
12 claims ordinance or the procedural requirements for claims against the tribe and tribally-  
13 owned business enterprises. Instead, he filed suit in U.S. District Court on April 6,  
14 2017, just two days before the two year statute of limitations expired under Nevada law.  
15 This court has no jurisdiction over a Federally-recognized Indian tribe or a wholly-  
16 owned tribal business entity, at least without the tribe's consent to and a waiver of the  
17 tribe's inherent sovereign immunity.  
18

19 For more than 185 years, the United States Supreme Court has recognized that  
20 Indian tribes are domestic dependent sovereigns, which have "territorial boundaries,  
21 within which their authority is exclusive, and have a right to all the lands within those  
22 boundaries, which is not only acknowledged, but guaranteed by the United States." *See*  
23 *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 557 (1832). Each tribe exercises inherent  
24 authority over their members and territories, and jurisdiction over civil disputes arising  
25 on the reservation is specifically vested in tribal court and governed by tribal law. *See*  
26

1 *Williams v. Lee*, 358 U.S. 217 (1959); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49  
2 (1978); *Oklahoma Tax Commissions v. Citizen Bank of Potowatomi Indian Tribe*, 498  
3 U.S. 505 (1991). It is well-established that Indian tribes and tribally-owned businesses  
4 are immune from suit unless Congress has abrogated sovereign immunity or the tribe has  
5 expressly waived its immunity. *Kiowa Tribe of Oka. V. Mfg Tech. Inc.*, 523 U.S. 751,  
6 754, 118 S. Ct. 1700 (1998). “Sovereign immunity involves a right which courts have  
7 no choice, in the absence of a waiver, but to recognize.” *California v. Quechan Tribe of*  
8 *Indians*, 595 F.2d 1153, 1155 (9th Cir. 1979).

10 It is noteworthy that the 9<sup>th</sup> Circuit Court of Appeals issued a published opinion  
11 holding that the same entity, Avi Casino Enterprises, Inc., is cloaked with sovereign  
12 immunity because it is wholly-owned and operated by the Fort Mojave Tribe. *See Cook*  
13 *v. Avi Casino Enterprises, Inc.*, 548 F.3d 718 (2008), *cert. denied* 129 S. Ct 2159 (2009).  
14 It is well-established, in this circuit and elsewhere, that a tribe’s subordinate commercial  
15 organizations, such as tribal corporations and economic “enterprises,” share the tribe’s  
16 sovereign immunity. *Allen v. Gold Country Casino*, 464 F.3d 1044 (9th Cir. 2006)  
17 (Indian casino functions as an arm of the tribe and has sovereign immunity); *In re:*  
18 *Green*, 980 F.2d 590 (9th Cir. 1992) (business corporation created under tribal law is  
19 clothed with the tribe’s sovereign immunity); *Elliot v. Capital Int’l. Bank and Trust*, 870  
20 F. Supp. 733, 735 (E.D. Tex. 1994) (sovereign immunity for limited liability bank  
21 chartered, governed and owned by Indian tribe). In the *Cook* case, the 9<sup>th</sup> Circuit Court  
22 of Appeals affirmed the dismissal of the Avi Casino Enterprise (“ACE”) on the basis of  
23 sovereign immunity because ACE was a tribal entity that functioned as an arm of the  
24 tribal government. *Cook v. Avi Casino Enterprises, Inc.*, 548 F.3d 718, 726 (2008). As  
25  
26

1 such, not only was ACE absolutely immune from suit, tribal sovereign immunity applied  
2 to the individual casino employees in that case. *Cook*, 548 F.3d at 726-727.

3 In the *Cook* case, the District Court determined, and the 9<sup>th</sup> Circuit agreed, that  
4 Avi Casino Enterprise, Inc. was a Tribal corporation, formed under Tribal law, governed  
5 by the Tribal Council for the benefit of the Tribe, and with revenue being deposited into  
6 the Tribal treasury. Thus, like the *Allen v. Gold County Casino* case, the dispositive  
7 issue was not whether the tribal corporation was engaged in some commercial activity,  
8 but instead was whether it was owned and controlled by the Tribe.  
9

10 With the Tribe owning and operating the Casino, there is no  
11 question that these economic and other advantages inure to  
12 the benefit of the Tribe. Immunity of the Casino directly  
13 protects the sovereign Tribe's treasury, which is one of the  
14 historic purposes of sovereign immunity in general. . . . **In**  
15 **light of the purposes for which the Tribe founded this**  
16 **Casino and the Tribe's ownership and control of its**  
17 **operations, there can be little doubt that the Casino**  
18 **functions as an arm of the Tribe. It accordingly enjoys**  
19 **the Tribe's immunity from suit.**

20 *Allen v. Gold Country Casino*, 464 F.3d 1044 (9th Cir. 2006) (emphasis added); *Cook v.*  
21 *Avi Casino Enterprises, Inc.*, 548 F.3d 718, 726 (9<sup>th</sup> Cir. 2008).

22 In this case, the plaintiff alleges that Avi Casino Enterprises is a “foreign”  
23 corporation created under tribal law that owns and operates a casino in Clark County,  
24 Nevada. To be more precise, Avi Casino Enterprises is a *tribal* corporation, wholly  
25 owned by the Fort Mojave Tribe, which operates the Avi Resort and Casino on  
26 reservation lands within the State of Nevada. As noted in the *Cook* opinion: “Avi  
Casino is owned and operated by Avi Casino Enterprises, Inc., a corporation organized  
under the Fort Mojave Business Corporation Ordinance, which is a tribal law of the Fort

1 Mojave Indian Tribe.” *Cook v. Avi Casino Enterprises, Inc.* 548 F.3d 718, 721.  
2 Furthermore, as the 9<sup>th</sup> Circuit concluded, Avi Casino Enterprise, Inc., (“ACE”) is  
3 “wholly owned and controlled” by the Fort Mojave Tribe and “ACE and Avi Casino  
4 function as an arm of the Fort Mojave Tribe.” *Id.* at 721 and 725. Thus, while there  
5 might be diversity jurisdiction, the court concluded that ACE and the individual  
6 employees named as defendants must be dismissed based on tribal sovereign immunity.  
7 “As a tribal corporation and an arm of the Fort Mojave Tribe, ACE enjoys sovereign  
8 immunity from Cook’s suit.” *Id.* at 726.  
9

10 **CONCLUSION**

11 For the foregoing reasons, plaintiff’s complaint against Avi Casino Enterprises,  
12 Inc., must be dismissed.

13 RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of May, 2017.  
14

15 BURCH & CRACCHIOLO, P.A.

16 By /s/ Kenneth Januszewski  
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**PROOF OF SERVICE**

STATE OF ARIZONA                     )  
  ) ss.  
COUNTY OF MARICOPA             )

I, Maria Silva, the undersigned, declare as follows:

I am over 18 years of age and not a party to the within action; my business address is: 702 East Osborn Road, Suite 200, Phoenix, Arizona 85014.

On May 10, 2017, I served a copy of the accompanying document(s) entitled: ***Defendant's Motion to Dismiss*** on the following interested parties:

Steven M. Burris, Esq.  
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[ X] **BY U.S. MAIL** by following ordinary business practice, placing a true copy thereof enclosed in a sealed envelope, for collection and mailing with the United States Postal Service where it would be deposited for first class delivery, postage fully prepaid, in the United States Postal Service that same day in the ordinary course of business.

[ X] **BY ELECTRONIC SERVICE (via individual persons)** by electronically transmitting the document(s) listed above to the email address(es) of the person(s) set forth above. The transmission was reported as completed and without error.

I certify under penalty of perjury that the foregoing is true and correct and that the declaration was executed on May 10, 2017 at Phoenix, Arizona.

/s/Maria Silva