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

GLORIA MENDOZA *et al.*,

Plaintiffs, **Case No. 1:19-cv-00991-SCY-KK**

v.

FIRST SANTA FE INSURANCE SERVICES, INC. *et al.*,

Defendants.

HUDSON INSURANCE AND TRIBAL FIRST'S MOTION TO DISMISS AND MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' COMPLAINT

MOTION TO DISMSS

Defendants Alliant Specialty Insurance Services, Inc. d/b/a Tribal First ("Tribal First") and Hudson Insurance move to dismiss Plaintiffs' First Amended Complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) and the federal enclave doctrine.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

I. Procedural Posture of This Action.

Plaintiffs filed their Complaint and their First Amended Complaint in New Mexico state court asserting state law violations of the New Mexico Unfair Practices Act, breach of contract, breach of covenant of good faith and fair dealing, and civil conspiracy claims. First. Am. Compl., ECF No. 1 Exs. A and B. Defendant Tribal First timely removed the state action to the United States District Court for the District of New Mexico. ECF No. 1. Defendants Tribal First and Hudson Insurance now move to dismiss Plaintiffs' First Amended Complaint. The incidents that give rise to this lawsuit occurred on the Pueblo of Isleta's Indian reservation, a federal enclave, and thus Plaintiffs' state law claims fail as a matter of law.

II. Applicable Legal Standard.

Rule 12(b)(6) allows dismissal of an action for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). The sufficiency of a complaint "is a question of law, and, when considering a rule 12(b)(6) motion, a court must accept as true the complaint's well-pled factual allegations, view those allegations in the light most favorable to the nonmoving party, and draw all reasonable inferences in the plaintiff's favor." *Kennicott v. Sandia Corp.*, 314 F. Supp. 3d 1142, 1155 (D.N.M. 2018). To survive a rule 12(b)(6) motion to dismiss, a "plaintiff's complaint must contain sufficient facts that, if assumed to be true, state a claim to relief that is plausible on its face." *Id*. at 1156, *citing Bell Atlantic v. Twombly*, 550 U.S. 544, 570 (2007).

III. Argument.

The federal enclave doctrine bars Plaintiffs' state law claims. A federal enclave is federal land within the borders of a state that the Constitution empowers Congress to regulate exclusively. *Allison v. Boeing Laser Technical Services*, 689 F.3d 1234, 1236 (10th Cir. 2012). "The central principal of federal enclave doctrine is that Congress has exclusive legislative authority over these enclaves." *Id.* at 1237. Thus, the "power of Congress over federal enclaves bars state regulation without specific congressional action." *Id*. at 1236. "This exclusive jurisdiction is 'legislative,' meaning the laws and statutes applied to these locations must be supplied by the federal government, not the states." *Id*. citing *Pac. Coast Dairy v. Dep't of Ag. of Cal*., 318 U.S. 285, 294 (1943). States may not legislate with respect to a federal enclave "unless it reserved that right to do so when it gave its consent to purchase by the United States, [and] only State law existing at the time of acquisition remains enforceable, not subsequent laws." *Allison*, 689 F.3d at 1237 quoting *Paul v. U.S*., 371 U.S. 245, 268 (1963) ("future statutes

of the state are not a part of the body of laws in the ceded area."). Notably, "no federal statute yet allows the broad application of state employment, tort, and contract law to federal enclaves. And 'it is well established that in order for Congress to subject a federal enclave to state jurisdiction, there must be specific congressional deferral to state authority over federal property.'" *Sandia Corp.,* 314 F. Supp. 3d at 1165 quoting *West River Elec. Ass'n, Inc. v. Black Hills Power and Light Co*., 918 F.2d 713, 719 (8th Cir. 1990).

The Pueblo of Isleta's lands were confirmed through a Spanish Grant the Pueblo received before the United States obtained political control of New Mexico in 1848 under the Treaty of Guadalupe Hidalgo. *United States v. Abeyta*, 632 F. Supp. 1301, 1303 (D.N.M. 1986) (the Pueblo of Isleta's reservation "stands within the lands conveyed to the United States under the Treaty of Guadalupe Hidalgo"). When New Mexico became a state in 1912, it acknowledged that Pueblo Indian lands "shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States." *United States for & on Behalf of Santa Ana Indian Pueblo v. Univ. of New Mexico*, 731 F.2d 703, 706 (10th Cir. 1984) (citing and quoting New Mexico Enabling Act, Ch. 310, § 2, 36 Stat. 557, 559 (1910)).

The Complaint and First Amended Complaint in this action allege state law claims arising from plaintiffs' employment with the Isleta Resort & Casino on the Pueblo of Isleta's reservation. The Plaintiffs aver in the First Amended Complaint that each of them was injured while "employed at Isleta Resort & Casino." First. Am. Compl. at ¶¶ 22, 23, 24, Sept. 17, 2019. Specifically, Plaintiffs' aver that "[o]n August 24, 2015, Plaintiff Mendoza injured her knee while in the course and scope of her employment with Isleta Resort & Casino." First Am. Compl. at ¶ 22; "On December 18, 2017, Plaintiff Chavez injured his knee carrying chip trays into a vault while in the course and scope of his employment with Isleta Resort & Casino." First

Am. Compl. at ¶ 23; and "On March 14, 2017, Plaintiff Gallegos fell injuring her shoulder while on the premises of Isleta Resort & Casino, entering the employee entrance, in the course and scope of her employment with Isleta Resort & Casino." First Am. Compl. at ¶ 24.

When the federal enclave doctrine applies, federal law bars state claims. *Sandia Corp.*, 314 F. Supp. 3d at 1165 ("The Court concludes that the federal enclave doctrine applies to state employment discrimination claims when the plaintiffs work and are harmed on the federal enclave, even if the employer makes allegedly discriminatory decisions elsewhere."). The critical inquiry is whether "the claims that Plaintiff asserts with regard to her employment 'arose by virtue of [her] employment on the federal enclave.'" *Id*. at 1168 quoting *Smelser v. Sandia Corp.*, No. CIV 17-388, 2018 WL 1627214 (D.N.M. March 30, 2018)(Yarbrough, MJ). Notably, the federal enclave doctrine applies even when decisions are made outside the federal enclave that affect an employee. Courts have held that those decisions, wherever undertaken, "reflected Defendant's employment practices on the enclave." *Sandia Corp.*, 314 F. Supp. 3d at 1169. See also *Benavidez v. Sandia Nat'l Labs*., 212 F. Supp. 3d 1039 (D.N.M. 2016) (applying federal enclave jurisdiction to dismiss state law claims because employee's alleged injuries took place at employer located on Air Force Base, and base was federal enclave). The Tenth Circuit has confirmed that Indian reservations are federal enclaves subject to exclusive federal jurisdiction. *N.L.R.B. v. Pueblo of San Juan*, 276 F.3d 1186, 1191, (10th Cir. 2002) (*en banc*) ("state right-to-work laws are of no effect in federal enclaves such as Indian reservations.").

Because Plaintiffs' state law claims arose on a federal Indian Reservation, they are barred by the federal enclave doctrine.

CONCLUSION

Plaintiffs' state law claims in the First Amended Complaint are barred by the federal enclave doctrine and should be dismissed with prejudice.

Dated: October 29, 2019

Respectfully Submitted,

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Counsel for Defendants Tribal First and Hudson Insurance

CERTIFICATE OF SERVICE

I CERTIFY that on the day of October 29, 2019, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

LeeAnn Ortiz, keeptaosfree@yahoo.com
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/s/ Randolph H. Barnhouse
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