

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI (Northern (Jackson))**

HOWARD BROWN and BRANDON SIBLEY,	)	
	)	
	)	
Plaintiffs,	)	
	)	
V.	)	Civil Action No. 3:22-cv-00256-DPJ-FKB
	)	
CHOCTAW RESORT DEVELOPMENT ENTERPRISE, ET AL.,	)	
	)	
	)	
Defendants.	)	
	)	

**MOTION TO DISMISS FOR FAILURE TO EXHAUST TRIBAL REMEDIES AS TO
ALL BUT PLAINTIFFS' 42 U.S.C. § 1983 CLAIMS**

(ORAL ARGUMENT REQUESTED)

COME NOW the Defendants by and through their counsel of record and hereby move per Rule 12(b)(6) F.R.Civ.P. that the Court dismiss all the claims pled in this action (except for Plaintiffs' claims based on 42 U.S.C. § 1983) for Plaintiffs' failure to exhaust tribal remedies in the Choctaw Tribal Courts as to those other claims as required by federal law, one consequence of which being that the Complaint fails to state claims upon which this Court may grant relief in the present posture of the case, and in support of this Motion would show the Court as follows:

1. The institutional Defendants named in the Complaint¹ are identified as the "Choctaw Resort Development Enterprise" ("CRDE") (Compl., in the caption and at ¶ 15) and as the "Mississippi Band of Choctaw Indians" ("MBCI" or the "Tribe") (Compl., in the caption and at ¶s 5, 16, and 17).

¹ In violation of the pleading requirement at Rule 10(b), F.R.Civ.P., Plaintiffs did not number any of the allegations in their 27 page Complaint. To facilitate Defendants' Response to this Complaint, Defendants have hand-numbered each allegation as shown on the hand-marked copy of the Complaint attached to this Motion as **Exhibit 1**.

2. The individual Defendants in this suit are identified as:

(1) “William Sonny Johnson ... Chief Executive Officer for Choctaw Resort Development Enterprise” (Compl., in the caption and at ¶ 19);

(2) “Chief Cyrus Ben ... Chief of the Mississippi Band of Choctaw Indians” (Compl., in the caption and at ¶ 18);

(3) Four John Doe parties referenced as “security officers and armed man ... employed by the Choctaw Resort Development Enterprise” (Compl., in the caption and ¶ 20).

3. The Tribe’s status as a federally recognized Indian Tribe has been expressly recognized by the United States in the Official List of “Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs” published at 87 Federal Register 4636, 4638 (January 28, 2022) (**Exhibit 2**), of which this Court may take judicial notice per 44 U.S.C. § 1507, and in U.S. Supreme Court rulings referenced in Defendants’ Memorandum filed in support of this Motion. This is also confirmed by the Tribe’s Constitution cited at ¶s 17 and 104 of the Complaint, a true and correct copy of which is attached hereto as **Exhibit 3**.

4. Also, as is made clear by Choctaw Tribal Ordinance 56 and Choctaw Tribal Council Resolution CHO-00-010, true and correct copies of which are appended to this Motion as **Exhibits 4 and 5**, the Choctaw Resort Development Enterprise (“CRDE”) which operates the Tribe’s resorts, including the Golden Moon (and Silverstar) Casinos and Hotels is not an entity separate and apart from the MBCI. Instead, CRDE is just a d/b/a name for this unincorporated tribal enterprise. This is confirmed by the plain text of Choctaw Tribal Council Resolution CHO 00-010 and Choctaw Ordinance 56 (**Exhibits 4 and 5**), the relevant excerpts of which are set out in Defendants’ Memorandum filed in support of this Motion. Those show that, in fact, MBCI and CRDE share the same employer identification number. Thus, CRDE is the Tribe itself.

5. The individual Defendants are all alleged to be officials or employees of the MBCI or the MBCI d/b/a CRDE (Compl., ¶s 18-20), and Plaintiffs allege that all the events giving rise to this suit occurred at the Golden Moon Hotel and Casino (Compl., ¶s 25, 26, 27-71). That facility is owned and operated by the Tribe and located on Choctaw Reservation lands. This is confirmed by the Choctaw Gaming Commission license issued for the Golden Moon Hotel and Casino issued to the Mississippi Band of Choctaw Indians d/b/a Choctaw Resort Development Enterprise for that facility “located at Choctaw Indian Reservation.” (**Exhibit 7**).

6. Plaintiffs have sued all Defendants (hereafter the “Tribal Defendants”) based on the MBCI’s enactment of and the individual Tribal Defendants’ action to implement and enforce (at the Tribe’s Golden Moon Casino & Hotel) a tribal mask mandate, enacted as a tribal public health emergency measure authorized by Choctaw Tribal Ordinance 50-A, cited in the Chief’s Executive Order No. 2020-06-B “Reinstatement of Face Covering Requirement.” That Executive Order is referenced in the Complaint at ¶s 23, 24, 82 and appended thereto as Exhibit A. A true and correct copy of Choctaw Tribal Ordinance 50-A is attached hereto as **Exhibit 6**.

7. For the reasons set out in the Memorandum of Law filed in support of this Motion, Plaintiffs are required to exhaust their tribal remedies before seeking relief in this Court on all of their claims, except the claims seeking relief under 42 U.S.C. § 1983 (as to which the Choctaw Courts may not exercise jurisdiction); and, this Court has a duty to dismiss all the other claims pled in this suit until Plaintiffs have satisfied their duty to exhaust their tribal remedies in the Choctaw Tribal Courts as to all of those other claims).

8. Defendants, when required to answer in the appropriate court, will respond to the merits and/or with various Rule 12(b) motions (and will raise other dispositive defenses against Plaintiffs’ claims). However, under the tribal exhaustion doctrine the proper forum for

addressing Plaintiffs' non-§ 1983 claims and the Tribal Defendants' defenses in the first instance is the Choctaw Tribal Courts.

9. Pursuant to Local Rule 7(b)(4), Tribal Defendants have filed a Memorandum in Support of this Motion to Dismiss, both filed simultaneously herewith.

WHEREFORE, for the above and foregoing reasons and as more fully articulated in the Memorandum submitted in support hereof, Defendants pray for an Order dismissing all the claims pled in Plaintiffs' Complaint for failure to exhaust their tribal remedies, except those seeking relief under 42 U.S.C. § 1983, and for such other and further relief as the Court deems just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically pursuant to CM/ECF procedures, which cause the parties or counsel to be served by electronic means, as more fully reflected in the Notice of Electronic Filing.

s/ C. Bryant Rogers