

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 27 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

HUNG M. NGUYEN,

Plaintiff-Appellant,

v.

CACHE CREEK CASINO RESORT,

Defendant-Appellee.

No. 21-15351

D.C. No. 2:20-cv-01748-TLN-KJN

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Troy L. Nunley, District Judge, Presiding

Submitted January 19, 2022**

Before: SILVERMAN, CLIFTON, and HURWITZ, Circuit Judges.

Hung M. Nguyen appeals pro se from the district court's judgment dismissing his action for lack of subject matter jurisdiction. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Cook v. AVI Casino Enters., Inc.*, 548 F.3d 718, 722 (9th Cir. 2008). We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

The district court properly dismissed Nguyen's action because Nguyen failed to satisfy his burden of establishing that tribal sovereign immunity did not bar his action. *See Pistor v. Garcia*, 791 F.3d 1104, 1111 (9th Cir. 2015) ("In the context of a Rule 12(b)(1) motion to dismiss on the basis of tribal sovereign immunity, the party asserting subject matter jurisdiction has the burden of proving its existence, i.e. that immunity does not bar the suit." (citation and internal quotation marks omitted)). Furthermore, Nguyen did not pursue the remedies available to him.

We reject as without merit Nguyen's contentions that the district court was biased and prejudiced against him.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Nguyen's motion for judicial notice is denied as unnecessary.

AFFIRMED.

Dated this is 02nd day of January, 2022.

Respectfully submitted

By: /s/

Hung M Nguyen

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