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6  
7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE DISTRICT OF ARIZONA**

9 Kristan L. Sears,

10 Plaintiff,

11 v.

12  
13 Gila River Indian Community, Greg  
Mendoza (Governor), William Rhodes  
14 (Former Governor), Pam Johnson  
(Community Manager), Randy Tracy  
15 (Director DRS), Ron Lopez (Deputy  
Director DRS), Sydney McKinney  
16 (Director Human Resources), Debbie  
17 Mercado (Employee Relations),

18 Defendants.

No. 2:12-CV-02203-PHX-ROS

**REPLY ON MOTION TO  
DISMISS**

19  
20 Defendant Gila River Indian Community (the “Community”) in reply to  
21 Plaintiff’s Response to Defendant’s Motion to Dismiss hereby moves this  
22 Court to dismiss this matter on the grounds that (1) the court lacks subject  
23

1 matter jurisdiction; and (2) the claims are barred by the doctrine of sovereign  
2 immunity.

3 **I. PLAINTIFF ADMITS THE GILA RIVER INDIAN**  
4 **COMMUNITY IS A SOVEREIGN NATION, FEDERALLY**  
5 **RECOGNIZED, AND THAT THE DEFENDANTS ARE AGENTS**  
6 **OF THE COMMUNITY.**

7 Plaintiff admits in her Response to the Defendant's Motion to Dismiss  
8 that the Gila River Indian Community is a sovereign nation, federally  
9 recognized, and that the defendants are employed by the Community and  
10 acting as agents for the Gila River Indian Community. Doc. 13 at 8.  
11 Defendants filed affidavits that they were acting within their official capacity  
12 and scope of their employment with the Community. Doc. 12-1. Doc. 12-2.  
13 Doc. 12-3. Plaintiff in opposing the motion to dismiss did not file any  
14 affidavits or provide any evidence to satisfy her burden of establishing  
15 jurisdiction. *Safer Air for Everyone v. Meyer*, 373 F.3d 1035 at 1039 (citation  
16 omitted). Because the defendants were acting in their official capacity and  
17 within the scope of authority they are shielded from plaintiff's lawsuit under  
18 sovereign immunity. *Davis v. Littell*, 398 F.2d 83 (9th Cir. 1968); *United*  
19 *States v. Oregon*, 657 F.2d 1009 (9th Cir. 1982); *Lineen v. Gila River Indian*  
20 *Community*, 276 F.3d 489 (9th Cir. 2002); *Cook v. Avi casino Enterprises,*  
21 *Inc.*, 548 F.3d 718 (9th Cir. 2008). And while the Plaintiff attempts to cite,  
22 incorrectly, a Gila River Indian Community appellate court decision regarding  
23

1 sovereign immunity, tribal court decisions and tribal court appellate decisions  
2 have no precedential or binding authority on federal courts on a federal law  
3 issue.

4 **II. THE PLAINTIFF FAILS TO ALLEGE ANY VALID BASIS**  
5 **BY WHICH THE COURT MAY EXERCISE JURISDICTION.**

6 In order to avoid dismissal, Plaintiff must allege a valid basis or claim  
7 by which this Court may exercise subject matter jurisdiction. While Plaintiff  
8 cites to a number of federal laws, none of those laws authorize her suit or  
9 provide a basis for this Court to exercise jurisdiction over an Indian tribe,  
10 tribal officials and tribal employees for what is essentially a tribal matter  
11 governed by tribal law.

12  
13 Plaintiff mistakenly attempts to rely on bills, statutes, the United States  
14 Constitution, and case law that do not provide the court any valid basis for  
15 jurisdiction over this case. For instance, Plaintiff wrongly attempts to rely on  
16 two bills (the American Indian Equal Justice Act and the American Indian  
17 Tort Liability Insurance Act) which were introduced but never received a  
18 majority vote for approval by the United States Senate and the United States  
19 House of Representatives, and were never submitted to the President of the  
20 United States for signature to become a law and never assigned an official  
21 number. The fact that a bill is introduced and published on [thomas.loc.gov](http://thomas.loc.gov)  
22 does not mean the bill is a law. Further, Plaintiff attempts to illogically  
23

1 conclude that because a tribe, under a tribe's inherent tribal sovereignty,  
2 enacts a tribal torts claim act therefore somehow means the American Indian  
3 Equal Justice Act and American Indian Tort Liability Insurance Act are laws  
4 (Plaintiff believes those two bills ostensibly became laws without a majority  
5 vote in either the United States Senate or the United States House of  
6 Representatives and without signature by the President of the United States).  
7 Doc. 13 at 6-8. Plaintiff errs when misconstruing 28 U.S.C. § 1362, which  
8 provides that the district court shall have jurisdiction over civil actions  
9 brought by an Indian tribe or band; however, Plaintiff misconstrues that statute  
10 to say "district court shall have jurisdiction of civil actions in claims against  
11 an Indian tribe." Doc. 13 at 14. Plaintiff further errs in attempting to rely on  
12 an inapplicable case as precedent, where the issue involved state law and  
13 federal constitutional claims. Doc. 13 at 18-19. The Due Process Clause  
14 under the Fourteenth Amendment to Constitution of the United States relates  
15 solely to action by a state government, and has no application to actions of  
16 Indian tribes. *Talton v. Mayes*, 163 U.S. 376 (1896); *Rice v. Sioux City*  
17 *Memorial Park*, 249 U.S. 70 (1955); *Barta v. Oglala Sioux Tribe of Pine*  
18 *Ridge Res.*, 259 F.2d 553 (8th Cir. 1958); *Twin Cities Chippewa Tribal*  
19 *Council v. Minnesota Chippewa Tribe*, 370 F.2d 529 (8th Cir. 1967).

1 **CONCLUSION**

2 Plaintiff has failed to allege any valid basis or claim by which this  
3 Court may exercise subject matter jurisdiction. None of the laws Plaintiff  
4 cites authorizes suit or provides a basis for this Court to exercise jurisdiction  
5 over an Indian tribe, tribal officials and tribal employees in a tribal matter  
6 essentially governed by tribal law. Plaintiff's claim of wrongful termination is  
7 a tribal employment matter that falls within the tribe's role of self-governance  
8 and not subject to interference from other sovereigns. The Community and  
9 Community officials and employees are immune from suit as there has been  
10 no waiver or abrogation of sovereign immunity.  
11

12  
13 WHEREFORE Defendant Gila River Indian Community prays that this  
14 Court dismiss this matter for lack of subject matter jurisdiction, dismiss this  
15 matter under the doctrine of sovereign immunity, and for such other relief as  
16 the Court deems proper.

17 RESPECTFULLY SUBMITTED this 11th day of March, 2013.

18  
19 s/Rebecca A. Hall  
20 Linus Everling  
21 Thomas L. Murphy  
22 Rebecca A. Hall  
23 *Attorneys for Defendants*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 11, 2013, I electronically transmitted the  
3 foregoing document to the Clerk's Office of the United States District Court for  
4 the District of Arizona using the CM/EMF system for filing and mailed a copy  
5 via first class United States Postal Service to Plaintiff:  
6

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9 Casa Grande, Arizona 85193

10 s/Rebecca A. Hall  
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