

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

MARIA DEL REFUGIO BALLI,

Plaintiff,

v.

AKIMA GLOBAL SERVICES, LLC,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

Case No. 1:23:CV-00067

**DEFENDANT AKIMA GLOBAL SERVICES, LLC'S
RESPONSE TO PLAINTIFF'S OBJECTIONS TO
MAGISTRATE'S REPORT AND RECOMMENDATIONS**

RESPECTFULLY SUBMITTED BY:

/s/ Samuel Zurik III
SAMUEL ZURIK III
Attorney-in-Charge
Texas Bar No. 24044397
sz@kullmanlaw.com

THE KULLMAN FIRM
1100 Poydras Street, Suite 1600
New Orleans, Louisiana 70163
(504) 524-4162 – Telephone
(504) 596-4114 – Facsimile

**ATTORNEY FOR DEFENDANT
AKIMA GLOBAL SERVICES, LLC**

NOW COMES Defendant, Akima Global Services, LLC (“Defendant” or “AGS”), and files this Response to Plaintiff’s Objections to the Magistrate’s Report and Recommendations (“Recommendations”). For the reasons set forth in the Motion briefing (Docs. 5, 9) and below, as well as within the Recommendations, the Magistrate’s Recommendations should be adopted and this lawsuit dismissed with prejudice.

Summary

AGS is a wholly owned subsidiary of Akima, LLC, which is a wholly owned subsidiary of NANA (Natives of the Northwest Arctic) Regional Corporation, an Alaska Native Corporation. After filing a charge of discrimination with the EEOC (Doc. 1-1) against AGS, and receiving a Determination and Notice of Rights letter dismissing the charge because the EEOC lacked jurisdiction over the matter (*see* Doc. 1-1, p. 7), Plaintiff Maria Del Refugio Balli (“Balli” or “Plaintiff”) filed the instant suit alleging violations by AGS of 42 U.S.C. § 2000e *et seq.*, Title VII of the Civil Rights Act (“Title VII”).

Balli’s lawsuit should be dismissed with prejudice as her claims under Title VII are not cognizable against AGS because 43 U.S.C. § 1626(g) expressly excludes Alaska Native Corporations, as well as their subsidiaries and affiliates, from the definition of employer within the Title VII statute. On these grounds, AGS moved to dismiss under Fed. R. Civ. P. 12(b)(6). After the matter was fully briefed, the Magistrate issued Recommendations finding that Title VII does not apply, and Plaintiff’s claims should be dismissed with prejudice. (Doc. 14.) Plaintiff has now objected. (Doc. 15.)

LEGAL ARGUMENT

A. Plaintiff Misconstrued the basis for AGS’s motion to dismiss.

In a convoluted and unsupported theory, Plaintiff argues that by entering into a Collective Bargaining Agreement (“CBA”) (a contract with a union—a completely separate party than plaintiff) and generally stating that it was an equal employment opportunity employer on its website, AGS has not only waived any sovereign immunity it had as a Native American Tribe but has further waived the statutory exemption it would have otherwise enjoyed under Title VII. As set forth in AGS’s prior briefing, however, Plaintiff’s theory regarding sovereign immunity and any purported waiver is not only incorrect and unsupported by law or fact, but wholly irrelevant.¹

B. AGS is Exempt from Title VII.

All parties, as well as the Magistrate in his Recommendation, agree that AGS is exempt from the definition of employer under Title VII for the reasons more fully set forth in AGS’s briefing and the Magistrate’s Recommendation; thus, Title VII does not apply to AGS. (Doc. 14, p. 6.) Plaintiff, however, in pointing to cases addressing sovereign immunity, attempts to build a bridge to waiver of a statutory definition under Title VII. She cannot get there. The Magistrate noted that Plaintiff did not actually argue that AGS waived its exclusion from Title VII in her prior opposition brief; rather, she claims that AGS had sovereign immunity, and waived it by entering into a CBA, and by virtue of *that* waiver, somehow *also* subjected itself to Title VII. This argument, regardless of how she tries to connect the unrelated dots, fails.

Moreover, as the Magistrate’s Recommendations made clear, even if Plaintiff had previously argued that AGS waived any exemption from Title VII, an exclusion from the definition of Title VII cannot simply be waived, by any party. Indeed, the Magistrate’s Recommendations

¹ As the Magistrate noted, AGS’s entry into a collective bargaining agreement with a union did not waive its exclusion from Title VII. (Doc. 14, p. 10.)

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of October 2023, I filed the foregoing pleading using the Court's CM/ECF system, which sent notice to all parties of record, including:

Lorenzo W. Tijerina
1911 Guadalupe Street
San Antonio, TX 78207
tasesq@msn.com
Attorney for Plaintiff

/s/ Samuel Zurik III
