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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DEDICATO TREATMENT CENTER, INC.,

Plaintiff,

v.

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, a federally recognized Tribe,

Defendant.

No. 2:22-cv-04045-CAS-Ex

DEFENDANT SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS THE FIRST AMENDED COMPLAINT [FRCP 12(b)(1), (2), and (6)]

Date: September 25, 2023
Time: 10:00 a.m.
Place: Courtroom 8D

Honorable Christina A. Snyder

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Salt River Pima-Maricopa Indian Community ("SRPMIC" or the "Community"), a federally recognized Indian Tribe, moves to dismiss with prejudice Plaintiff Dedicato Treatment Center, Inc.'s ("Dedicato") First Amended Complaint ("FAC") (Doc. 24) for lack of subject-matter jurisdiction, lack of personal jurisdiction, and failure to state a claim upon which relief can be granted, pursuant to Rules 12(b)(1), (2), and (6) of the Federal Rules of Civil Procedure.

Under well-established law, Dedicato cannot establish subject matter or personal jurisdiction over the Community. In addition, well-established sovereign immunity principles preclude suing the Community. And, even if Dedicato could overcome these hurdles, which it cannot, the Ninth Circuit has consistently ruled that healthcare providers, such as Dedicato, cannot sue a party such as the Community as Sponsor of the Indian Tribe's healthcare plan under the Employee Retirement Income Security Act of 1974 ("ERISA") either directly or derivatively.

I. BACKGROUND AND ALLEGATIONS DEDICATO'S FAC.

As Dedicato knows, the Community is a federally recognized Indian Tribe, organized pursuant to Section 16 of the Indian Reorganization Act of 1934. (FAC ¶¶ 4-5; *see also* Compl. (Doc. 1) Prelim. Stmt. at 1-2 & ¶¶ 7-11.) It is located exclusively in Arizona. (FAC ¶ 4.) The Community enjoys sovereign immunity. *E.g.*, *Puyallup Tribe, Inc. v. Dep't of Game*, 433 U.S. 165 (1977); *Turner v. United States*, 248 U.S. 354 (1919); Bureau of Indian Affairs, 88 Fed. Reg. 2112, 2114 (Jan. 12, 2023) (listing the Community as a federally recognized Indian Tribe). (*See also* Compl. ¶¶ 9 & 11 ("Both the Indian Community and the Indian Plan enjoy tribal sovereign immunity from lawsuit."); Dedicato Mem. in Opp. to Mot. to Dismiss (Doc. 18) at 1:13 & 7:10-17 (same).)

The Community maintains a self-funded health insurance plan for its members and employees (the "Plan"). (*See* FAC ¶ 6.) The Community is the Plan Sponsor. (Declaration of Patty Powers ("Powers Decl.") ¶ 9 & Ex. 1 (attaching true and correct

copies of excerpts of the Community Plan Document and Summary Plan Description ("Plan Document")) at 145; FAC Prelim. Stat. at 1:4-5 & ¶¶ 6-7, 9, 11-13, 19, 22-23, 25, 27-29, 55, 95, 98-101 (discussing Community's Plan).) *See, e.g.*, *In re Finjan Holdings, Inc.*, 58 F.4th 1048, 1052 (9th Cir. 2023) (explaining court may consider documents discussed in a complaint on a Rule 12(b) motion); *Mendoza v. Amalgamated Transit Union Int'l*, 30 F.4th 879, 884 (9th Cir. 2022) (same). IEC Group, Inc. dba AmeriBen ("AmeriBen") administers the Plan, subject to a Third-Party Administrative and Utilization Management Services Agreement, dated December 12, 2016 (the "Agreement"). (*See* FAC ¶ 7; *see also* FAC ¶ 12 & Ex. A (attaching copy of Agreement to FAC); Civil Min. Order (Doc. 22) at 6 (considering Agreement when attached to previous Mot. to Dismiss (Doc. 17-2 Ex. A)).) As an arm of the Community, the Plan also enjoys sovereign immunity.[1] *E.g.*, *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046 (9th Cir. 2006). (*See also* Compl. ¶¶ 10-11 (same); Dedicato Mem. in Opp. to Mot. to Dismiss (Doc. 18) at 1:13 & 7:10-17 (same).)

In June 2022, Dedicato filed suit against AmeriBen in its capacity as the third-party administrator ("TPA") of the Plan for (1) fraud/intentional misrepresentation; (2) fraud/concealment; (3) negligent misrepresentation; (4) declaratory relief that AmeriBen violated California Health and Safety Code Section 1378.1; and (5) violations of California Business and Professions Code Section 17200, *et seq.*, based on certain services provided to one member of the Community. Dedicato did not sue the Community initially because it agreed that the Community enjoyed sovereign immunity, which precluded Dedicato's claims as a matter of law. (*E.g.*, Compl. Prelim. Stmt. at 1-2 & ¶¶ 9-11, 52, 61-64, 87 & 90-92.) The Court dismissed Dedicato's Complaint under Rule 12(b)(7), finding, *inter alia*, that the Community is an indispensable party but cannot be joined, on November 22, 2022. (Civil Min. Order.)

[1] Because the Plan is an arm of the Community and also enjoys sovereign immunity, references herein to the Community include the Plan.

On December 13, 2022, Dedicato filed its FAC, naming the Community as the sole defendant, and purporting to state claims against the Community for (1) breach of contract, (2) breach of implied contract, (3) breach of the duty of good faith and fair dealing, (4) promissory estoppel, (5) quantum meruit, and (6) unfair competition under the California Business and Professions Code Section 17200, *et seq.* The allegations in the FAC fail to establish subject matter jurisdiction, personal jurisdiction, and any waiver of sovereign immunity. In addition, the FAC fails to plead and cannot plead any entitlement to payment from the Community, which is the linchpin of all six of Dedicato's causes of action in the FAC.

II. ARGUMENT

A. Subject Matter Jurisdiction Is Lacking.

A federal court must possess subject matter jurisdiction to hear a case. *E.g.*, *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). Dedicato is the sole plaintiff and the Community is the sole defendant in the FAC. In the FAC, Dedicato purports to state claims for (1) breach of contract (FAC ¶¶ 57-64), (2) breach of implied contract (*id.* ¶¶ 65-72), (3) breach of the duty of good faith and fair dealing (*id.* ¶¶ 73-78), (4) promissory estoppel (*id.* ¶¶ 79-86), (5) quantum meruit (*id.* ¶¶ 87-91), and (6) unfair competition under the California Business and Professions Code Section 17200, *et seq.* (*id.* ¶¶ 92-102), against the Community, all of which are common law or state law claims. There is no federal question presented in the FAC. Dedicato, therefore, appears to rely on diversity jurisdiction, but it refrains from so stating in the FAC.

The parties, however, are not diverse. Indian tribes and their entities are not state citizens. *E.g.*, *Am. Vantage Cos., Inc. v. Table Mountain Rancheria*, 292 F.3d 1091, 1096 (9th Cir. 2002), *as amended on denial of reh'g* (July 29, 2002) ("[T]he rule that a tribe is not a citizen of any state is supported by the status of Indian tribes as dependent domestic sovereigns. Tribes are, foremost, sovereign nations."). As a result, Dedicato

cannot rely on diversity jurisdiction.[2] *E.g.*, *id.* at 1094-98.

The absence of subject matter jurisdiction alone necessitates dismissal.

B. Personal Jurisdiction Is Lacking.

A federal court must also possess personal jurisdiction over a defendant to hear a case. *E.g.*, *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). It is plaintiff's burden to prove that the Court has personal jurisdiction over the defendant. *E.g.*, *Dole Food Co. v. Watts*, 303 F.3d 1004, 1108 (9th Cir. 2002). Here, the Court may exercise personal jurisdiction that comports with California's long-arm statute and with constitutional due process. *Lee v. City of Los Angeles*, 250 F.3d 668, 692 (9th Cir. 2001). California's long arm jurisdictional statute is coextensive with federal due process requirements, so the jurisdictional analysis under state law and federal due process are the same. *See* Cal. Civ. Proc. Code § 410.10 (authorizing jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States"). "Due process requires that nonresident defendants have certain minimum contacts with the forum state, so that the exercise of personal jurisdiction 'does not offend traditional notions of fair play and substantial justice.'" *Pyle v. Hatley*, 239 F. Supp. 2d 970, 978 (C.D. Cal. 2002). A court's exercise of personal jurisdiction may be either specific or general. *Doe v. Am. Nat'l Red Cross*, 112 F.3d 1048, 1050 (9th Cir. 1997). Neither general nor specific personal jurisdiction exists over the Community in this matter.

First, general jurisdiction may be asserted over the Community only if its activities within California are so "substantial" or "continuous and systematic" as to render the Community at home in California. *LP Digital Sols. v. Signifi Sols., Inc.*, 921 F. Supp. 2d 997, 1004 (C.D. Cal. 2013) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). "This standard is exacting, 'because a finding

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[2] Dedicato knows as much because it already told the Court that "it is 'not feasible' to join the Community to this suit, because joinder would destroy diversity jurisdiction." (Mem. in Opp. at 23:3-6 (citing *Carnero v. Boston Sci. Corp.*, 433 F.3d 1, 18-19 (1st Cir. 2006)).)

of general jurisdiction permits a defendant to be haled into court in the forum state to answer for any of its activities anywhere in the world." *Id.* (quoting *Brand v. Menlove Dodge*, 796 F.2d 1070, 1073 (9th Cir. 1986)).

The Community is not at home in California. (Powers Decl. ¶¶ 4-8.) And Plaintiff cannot and does not contend that the Arizona-based Community is at home in California. To be sure, the FAC is devoid of any such allegations.

Second, a court may assert specific jurisdiction over a nonresident defendant based on that defendant's forum-related activities. The test for specific personal jurisdiction has three parts: (1) the defendant must purposefully avail itself of the privilege of conducting activities in the forum; (2) the claim must arise out of or result from the defendant's forum-related activities; and (3) the exercise of jurisdiction must be reasonable. *E.g.*, *LP Dig. Sols.*, 921 F. Supp. 2d at 1005 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)); *Myers v. Bennett Law Offices*, 238 F.3d 1068, 1072 (9th Cir. 2001).

The Community has performed no act in California tied to the instant lawsuit, according to the FAC. Rather, the FAC confirms merely that a single member of the tribe sought substance abuse treatment there. (*See* FAC ¶¶ 25-27.) The undersigned counsel has encountered no legal support for the proposition that a federally recognized Indian Tribe may be haled into a court based on the contacts of a single member or employee, let alone a single contact by a single member or employee. Indeed, such a holding would permit an absurd result and allow for an unreasonable exercise of jurisdiction virtually anywhere due to the actions of just one of thousands of members.

As an attempted end run around this well-established law, Dedicato alleges that the actions of AmeriBen may be imputed to the Community, because AmeriBen was acting as the Community's agent in administering the Plan. (*See id.* ¶¶ 8, 59 & 96.) Dedicato knows this assertion is groundless, too.

The Agreement, a copy of which Dedicato attached to its FAC, expressly

provides that the Community engaged AmeriBen to perform defined services "as an independent contractor only and under no circumstance as a fiduciary of the Plan or as an employee or agent." (*Id.* ¶ 12 & Ex. A (Agreement) § 3.3; *see also id.* § 3.5 ("AmeriBen has no discretionary authority or control over the management or disposition of Plan assets, and no authority over or responsibility for Plan administration other than the Services."), § 3.6 ("AmeriBen has no responsibility for any funding of Plan benefits, or decisions regarding Plan design, including adoption of or amendments to the Plan document or Summary Plan Description."), § 4.1 ("[The Community], and not AmeriBen, has the final discretionary authority to determine what benefits will be paid by the Plan.").)

The absence of personal jurisdiction presents a further, independent basis for dismissal.

C. Sovereign Immunity Necessitates Dismissal.

1. Sovereign Immunity Applies and Controls.

Even if jurisdiction existed, which it does not, Dedicato's claims are precluded by well-established principles of sovereign immunity. "As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998) (emphasis added); *see also Cook v. AVI Casino Enters.*, 548 F.3d 718, 725 (9th Cir. 2008) ("Tribal sovereign immunity protects Indian tribes from suit absent express authorization by Congress or clear waiver by the tribe."). A waiver of sovereign immunity "cannot be implied but must be unequivocally expressed." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) (quoting *United States v. Testan*, 424 U.S. 392, 399 (1976)). The Supreme Court has "time and again treated the doctrine of tribal immunity as settled law and dismissed any suit against a tribe absent congressional authorization (or a waiver)." *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2030–31 (2014) (cleaned up). This sovereign immunity deprives a federal court of

subject matter jurisdiction and requires dismissal under Rule 12(b)(1). *See Alvarado v. Table Mountain Rancheria*, 509 F.3d 1008, 1015-16 (9th Cir. 2007).

"Plaintiff carries the burden to find and prove an explicit waiver of sovereign immunity." *Villegas v. United States*, 963 F. Supp. 2d 1145, 1154 (E.D. Wash. 2013) (citing *Dunn & Black, P.S. v. United States*, 492 F.3d 1084, 1088 (9th Cir. 2007)); *see also Jewel v. Nat'l Sec. Agency*, 965 F. Supp 2d 1090, 1106 (N.D. Cal. 2013) (citing *Prescott v. United States*, 973 F.2d 696, 701 (9th Cir. 1992)); *Engasser v. Tetra Tech, Inc.*, 519 F. Supp. 3d 703, 707 (C.D. Cal. 2021) (the plaintiff bringing an action against a tribe bears the burden to show waiver of tribal sovereign immunity); *Ingrassia v. Chicken Ranch Bingo & Casino*, 676 F. Supp. 2d 953, 956 (E.D. Cal. 2009) ("The plaintiff bears the burden of showing a waiver of tribal sovereign immunity.").

Neither congressional authorization nor a clear and unequivocal waiver exists as to any of the claims Dedicato has asserted against the Community in the FAC. In fact, Dedicato's original Complaint contains no less than a dozen allegations recognizing that the Community had not and did not waive sovereign immunity:

- "[T]he Indian Plan enjoys immunity from civil suit, unless it agrees to waive that immunity." (Compl. Prelim. Stmt. at 1:21-25.)
- "[T]he Indian Plan … has not waived sovereign immunity as to civil claims asserted by healthcare providers." (*Id.* at 2:6-8.)
- "On information and belief, Dedicato has no claims it may bring against the Indian Plan for breach of contract or other remedies … ." (*Id.* at 2:1-13.)
- "[T]he Indian Plan – [h]as not waived sovereign immunity and does not allow Dedicato to pursue claims against it … ." (*Id.* ¶ 52(a).)
- "[T]he Indian Plan had not waived 'Sovereign Immunity,' that is, immunity to civil suits by medical providers for services rendered and unpaid to the Plan's insureds." (*Id.* ¶ 61.)
- "[T]he Indian Plan had not waived Sovereign Immunity." (*Id.* ¶ 62.)

- "[T]he Indian Plan had not waived Sovereign Immunity." (*Id.* ¶ 63.)
- "[T]he Indian Plan had not waived Sovereign Immunity." (*Id.* ¶ 64.)
- "[T]he Indian Plan has not waived Sovereign Immunity." (*Id.* ¶ 87.)
- "[T]he Indian Plan has not waived Sovereign Immunity." (*Id.* ¶ 90.)
- "[T]he Indian Plan has not waived Sovereign Immunity." (*Id.* ¶ 91.)
- "[T]he Indian Plan has not waived Sovereign Immunity." (*Id.* ¶ 92.)

The Community's sovereign immunity is another separate ground requiring dismissal of the FAC.

2. Dedicato's Attempts to Plead Waiver of Sovereign Immunity Are Unsupported, Unwarranted, and Unavailing.

Contrary to its prior allegations in its original complaint, Dedicato appears to allege five theories in its FAC under which it asserts that the Community waived sovereign immunity and purportedly "agree[d] to be subject to civil claims in state or Federal court." (*See* FAC ¶¶ 10-23.) Each theory is unsupported and unwarranted. None unequivocally shows that the Community "agreed" to be sued in federal court or waived its sovereign immunity. And Dedicato has already conceded the illegitimacy of its positions: "On information and belief, Dedicato has no claims it may bring against the Indian Plan for breach of contract or other remedies … ." (Compl. Prelim. Stmt. at 2:12-14.) Dedicato admittedly did not have a good faith basis to sue the Community in June 2022, when it had the same information it currently possesses. It follows that it surely does not have a good faith basis to sue the Community now.

First, Dedicato alleges, "In establishing the Plan, and in retaining AmeriBen to administer it as its TPA, the Community agreed to waive sovereign immunity and be subject to civil claims arising under the Plan through the Employee Retirement Income Security Act (ERISA)." (FAC ¶ 11.) But Dedicato knows that its assertion is incorrect as a matter of fact and law. The Plan plainly confirms that the Community did not waive its sovereign immunity with respect to the Plan:

> The Plans are sponsored by the SRP-MIC, a federally recognized tribal government, with recognized sovereign powers and immunity. To the extent a Plan is treated as a separate "entity" of the Community, it shall be treated as a subordinate entity of the Community, with all the attributes of sovereignty. To the extent permitted at law, no judicial review shall be permitted other than as provided in the claims procedures set forth herein, and only after full administrative exhaustion. Any judicial review related to this the Plan shall, to the extent permitted at law, be within the exclusive jurisdiction of the SRP-MIC Tribal Courts and shall be governed and construed by and in accordance with the laws of the SRP-MIC.
> Nothing herein shall be deemed a waiver of sovereign immunity. No reference to any federal or State statute herein is a waiver of sovereign immunity or a waiver of any exemptions to which the Community or its Plans are entitled, including those Plans that qualify as governmental plans under ERISA Section 3(32) and Section 906 of the PPA. …

(Powers Decl. ¶ 9 & Ex. 1 (Plan Document) at 153; *see also id.* at 149 (supporting same).)

Second, Dedicato alleges that, "[u]nder Section 3.8 of the Agreement, the Community agreed to be bound by the terms of the contracts AmeriBen entered into with Dedicato, because AmeriBen contracted with Dedicato, a 'third-party service provider.'" (FAC ¶ 14; *see also id.* ¶¶ 12-13.) This language is far from a clear and unequivocal waiver of sovereign immunity. Section 3.8 of the Agreement provides:

> To the extent Client and/or the participants of Client's Plan access stop-loss insurers, pharmacy benefit management companies, preferred provider organizations, or any other third-party service providers or vendors directly contracted with AmeriBen, Client agrees to be bound by the terms of the agreement(s) between such vendor(s) and AmeriBen. Upon request, AmeriBen will provide copies of such contract(s) to Client.

(*Id.* ¶ 12 & Ex. A (Agreement) § 3.8.) The provision plainly applies only where a Plan participant accesses the use of a third-party service provider that had a pre-existing agreement with AmeriBen, as indicated by the clear use of the past-tense form of the word contract. Dedicato had no such pre-existing agreement with AmeriBen. (*See id.* ¶¶ 27-31, 40, 46 & 52.)

Dedicato was also well aware that it had no guarantee of payment. (*See* Compl. ¶¶ 16(k), 17(h) & 21.) The Plan so states: "The Salt River Pima-Maricopa Indian Community self funds the medical, dental and vision expense benefits under the Plan.

[AmeriBen] administer[s] payment of claims, but do[es] not insure or otherwise guarantee any of the benefits under the Plan." (Powers Decl. ¶ 9 & Ex. 1 (Plan Document) at 146; *see also* FAC ¶ 12 & Ex. A (Agreement) § 1 (stating that AmeriBen is to "perform the [defined] Administration Services in accordance with the terms of the Plan, subject to the review and direction of the Client and applicable").) The Agreement is structured to reinforce this point. (FAC ¶ 12 & Ex. A (Agreement) §§ 1.1(a)-(h), 3.5-3.6 & 5.1.)

Third, Dedicato alleges, "Because the Community agreed under Section 3.[9] (sic) of the Agreement to be 'solely responsible for all government compliance obligations,' the Community agreed to be subject to civil courts for enforcement of all such government compliance obligations." (FAC ¶ 16; *see also id.* ¶ 15.) The language in Section 3.9 of the Agreement is not a clear and unequivocal waiver of sovereign immunity either.

Dedicato's allegation in the FAC is also false. Section 3.9 of the Agreement provides, "The Client is solely responsible for all government compliance obligations, such as completing or filing government-required forms (i.e. Form 5500's), except the 1099, which AmeriBen will file annually on behalf of the Client." (*Id.* ¶ 12 & Ex. A (Agreement) § 3.9.) Section 3.9 nowhere states that the Community agreed to be responsible for government compliance obligations.

In context, Section 3.9 has no connection to civil jurisdiction of state or federal courts. Rather, this section addresses forms that are part of ERISA's reporting and disclosure framework, which is intended to ensure that benefit plans are operated and managed in accordance with certain prescribed standards. And, as noted above under the first point in this Section, the Plan Agreement plainly states that the Community did not waive its sovereign immunity.

Fourth, Dedicato alleges, "Because of Section 4.[2] (sic), and other provisions of the Agreement, the Community entered into the Agreement knowing it would be

subject to civil claims in state or Federal court regarding the administration and payment of benefits under the Plan." (FAC ¶ 19; *see also id.* ¶¶ 17-18 & 20.) Again, this language—some of which Dedicato fails to specify—is not a clear and unequivocal waiver of sovereign immunity. Section 4.2 of the Agreement provides:

> Other Disputes. Each party shall indemnify, defend and hold harmless the other party [sic] and its officers, directors, employees, elected officials, agents, successors and assigns ("Indemnified Parties") from and against any and all liability, loss, damage, claims or expenses of any kind whatsoever, including without limitation, reasonable attorneys' fees and costs of defense, that may be sustained, suffered, recovered or incurred by any Indemnified Party that arise from or are in any way connected with any willful misconduct, gross negligence or other wrongful act, error or omission in the performance of duties and obligations under this Agreement by the Indemnifying Party, its subcontractors or anyone for whom the Indemnifying Party is responsible.

(*Id.* ¶ 12 & Ex. A (Agreement) § 4.2.) No part of Section 4.2 is a waiver of sovereign immunity, let alone an unequivocal one.

Section 4.2 is inapplicable. Section 4.2 concerns all disputes *other* than claims for payment of benefits, which are covered in Section 4.1. Dedicato ignores Section 4.1 undoubtedly because it provides that "[the Community], and not AmeriBen, has the final discretionary authority to determine what benefits will be paid by the Plan," and Dedicato's lawsuit "is a case for services rendered and unpaid." (FAC Prelim. Stmt. at 1:2.)

Fifth and finally, Dedicato alleges that "AmeriBen admits the Community has waived sovereign immunity in this case" because AmeriBen stated, in its motion to dismiss, "it bears noting that Ninth Circuit authority holds that Indian tribes waive their sovereign immunity when they operate health plans governed by [ERISA]." (FAC ¶ 22 (quoting Oct. 11, 2022 Mem. in support of Mot. to Dismiss (Doc. 17-1) at 4:23-28 (citing *Lumber Indus. Pension Fund v. Warm Springs Forest Prods. Indus.*, 939 F.2d 683, 685 (9th Cir. 1991))).) The law and the allegations in Dedicato's original Complaint, which the Community has already pointed out, demonstrate that this proposition is wrong as a matter of law.

Moreover, *Warm Springs* is inapposite. In that case, a pension fund brought an action under ERISA against a tribally-owned-and-operated sawmill to recover pension contributions to the tribal pension plan. 939 F.2d at 684. Under a collective bargaining agreement with the Lumber and Sawmill Workers Union, the mill was required to make pension contributions on behalf of its employees to the Lumber Industry Pension Fund through June 30, 1998. *Id.* In December 1987, however, the mill stopped making contributions to the Fund on behalf of approximately ninety of its employees and began making contributions to the tribal pension plan. *Id.* The Court concluded that ERISA applied to the mill as an employer under ERISA and as a commercial activity that did not fall within the tribal self-government exception to ERISA's general applicability:

> The tribe was free to form and operate a tribal pension plan, and the mill was free to transfer its employees to that plan at the end of the collective bargaining agreement term. But, by transferring its employees to the tribal plan before the bargaining agreement expired, the mill exposed itself to possible liability for unpaid contributions to the Fund. The mill is not protected from such liability under the self-government exception.

Id. at 685 (applying *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113, 1116 (9th Cir. 1985)).

There are no factual similarities between this matter and *Warm Springs*, nor does *Warm Springs* address the terms of the Community's Plan or its Agreement with AmeriBen. And, AmeriBen does not have any authority to waive the Community's sovereign immunity, and it has not, in fact, attempted any waiver.

In summary, the Community's sovereign immunity bars Dedicato's suit.

D. ERISA Does Not Enable Dedicato to Sue the Community.

Even if Dedicato could overcome the fatal barriers presented by the lack of subject matter *and* personal jurisdiction *and* the application of sovereign immunity, the FAC is premised on Dedicato's alleged ability to sue the Community as a Plan Sponsor under ERISA. (*E.g.*, FAC ¶ 11.) There is no basis in law that enables Dedicato to maintain such a lawsuit.

The Ninth Circuit has squarely held that health care providers, which are

designated to receive payment from a health plan administrator for medical services, cannot bring suit directly against administrators under ERISA. *See generally DB Healthcare, LLC v. Blue Cross Blue Shield of Ariz., Inc.*, 852 F.3d 868 (9th Cir. 2017); *see also Spinedex Physical Therapy USA Inc. v. United Healthcare of Ariz., Inc.*, 770 F.3d 1282, 1288-89 (9th Cir. 2014) (holding, in part, health care providers are not "beneficiaries" within the meaning of ERISA's enforcement provisions). Simply put, Dedicato has no basis to sue the Community directly under ERISA.

Dedicato has no basis to sue the Community derivatively under ERISA either. It does not allege that "A.N.," the patient, assigned it any rights, let alone the right to reimbursement under the Plan. Nor could it. The Plan contains an express anti-assignment clause:

> No assignment shall create any enforceable right against the Plan(s) or the SRP-MIC or any other party unless the assignment is accepted in writing by the party who the assignment purports to bind. In that event, the written acceptance shall apply only to the party electing to be so bound, and only to the extent of the obligations expressly set forth in the assignment. No assignment shall be valid to the extent it purports to convey rights in excess of those set forth in this Plan.
>
> Coverage and your rights under this Plan may not be assigned either before or after receiving health care services without the express written permission of the Plan Sponsor. Benefits payable shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge by any person or entity without the express written permission of the Plan Sponsor; however, a Plan Participant may direct that benefits due him/her, be paid to a Health Care Provider in consideration for hospital, medical, prescription drug, dental and/or vision care services rendered, or to be rendered. A direction to pay a provider is not an assignment of any right under this Plan or under ERISA, is not authority to act on a Participant's behalf in pursuing and appealing a benefit determination under the Plan, is not an assignment of fiduciary duty, and is not an assignment of any legal or equitable right to institute any court proceeding. Any attempted assignment is void (invalid) and not recognized by the Plan, if performed without the Plan's express written permission (consent).

(Powers Decl. ¶ 9 & Ex. 1 (Plan Document) at 153.)

The Ninth Circuit has repeatedly upheld the validity of such provisions. *E.g.*, *DB Healthcare*, 852 F.3d at 876 (9th Cir. 2017); *Spinedex Physical Therapy USA*, 770

F.3d at 1296; *Davidowitz v. Delta Dental Plan of Cal., Inc.*, 946 F.2d 1476, 1481 (9th Cir. 1991); *see also Eden Surgical Ctr. v. Cognizant Tech. Sols. Corp.*, 720 Fed. App'x 862, 863 (9th Cir. 2018); *Brand Tarzana Surgical Inst., Inc. v. Int'l Longshore & Warehouse Union-Pac. Mar. Ass'n Welfare Plan*, 706 Fed. App'x 442, 443 (9th Cir. 2017).

Accordingly, Dedicato has no legal basis or right to sue the Community under ERISA.

III. CONCLUSION

For the foregoing reasons, the Community respectfully requests that the Court dismiss with prejudice Dedicato's FAC for lack of subject-matter jurisdiction, lack of personal jurisdiction, and failure to state a claim upon which relief can be granted, pursuant to Rules 12(b)(1), (2), and (6) of the Federal Rules of Civil Procedure.

DATED August 1, 2023

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