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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 REPLY 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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I. INTRODUCTION

In its Motion (Mem. in Supp. ("MIS") (Doc. 36-1)), the Community explained that:

- The Community (and the Plan) enjoy sovereign immunity, which precludes Dedicato's suit against it as a matter of well-established law;
- Dedicato cannot establish subject matter jurisdiction over the Community because the FAC does not present a federal question and diversity jurisdiction does not exist because the Community is not a citizen of any State;
- Dedicato cannot establish personal jurisdiction over the Community because the Community has performed no act in or directed to California tied to the instant lawsuit, among other things; and
- Dedicato has failed to state any claims connected to the Community.[1]

Dedicato's Opposition (Mem. in Opp. ("MIO") (Doc. 38)) fails to grapple with the vast majority of the Community's arguments and binding authority. Instead, it submits a series of inconsistent, misleading, and unsupported contentions that fail to meet its burdens to establish subject matter and personal jurisdiction over the Community or to show a waiver of sovereign immunity by the Community. Dedicato, for example, ignores controlling precedent that demonstrates the lack of federal subject matter jurisdiction here and responds with a number of frivolous arguments that in no way address this Court's ability to entertain this matter. It also glosses over controlling precedent concerning the Community's sovereign immunity, which precludes this lawsuit, resorting again to groundless arguments and sheer conjecture.

Accordingly, the Court should dismiss with prejudice Dedicato's FAC in its entirety against the Community for lack of subject matter and personal jurisdiction and failure to state a claim, pursuant to Rules 12(b)(1), (2), and (6).

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[1] This Reply uses the same abbreviations as the Motion.

II. ARGUMENT

A. Subject Matter Jurisdiction Is Lacking.

The absence of subject matter jurisdiction alone necessitates dismissal. *See, e.g.*, *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998) ("The requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the judicial power of the United States and is inflexible and without exception." (internal citation and quotation marks omitted)). Yet, Dedicato's Opposition fails to deal with this threshold defect, on which it has the burden. *See, e.g.*, *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (cited in MIO at 8); *Lacano Invs., LLC v. Balash*, 765 F.3d 1068, 1071-72 (9th Cir. 2014). (*See also* MIS at 3-4.) Dedicato does not dispute that the FAC does not present a federal question. (MIS at 3.) It also does not dispute that the parties are not diverse because the Community is not a citizen of any State for purposes of diversity jurisdiction. (*Id.* at 3-4.) Moreover, it does not (1) reference any supporting jurisdictional allegations in its FAC, (2) address the lack of a federal question or the parties' lack of diversity, or (3) provide any response to case law the Community cited in the MIS, such as *Cook v. AVI Casino Enterprises, Inc.*, 548 F.3d 718, 723-24 (9th Cir. 2008), and *American Vantage Companies, Inc. v. Table Mountain Rancheria*, 292 F.3d 1091, 1096 (9th Cir. 2002) (cited in MIS at 6-7), which hold that a federally recognized tribe is a sovereign nation, not a citizen of any State. (*See* MIO at 9-17; *see also* MIS at 3-4.)

Dedicato's arguments instead are irrelevant, immaterial, and unavailing. Whether the Plan is an arm of the Community (it is) (*see* MIO at 9-11; MIS at 1-2, 6-8) has no bearing on subject matter jurisdiction here. Dedicato sued the Community only, *not* the Community *and* the Plan (FAC ¶¶ 4-8; MIO at 2 ("The Plan … is not a party to this suit, because Dedicato's claims are against the Community.")), and Dedicato concedes that it and the Community are not and cannot be diverse for federal

jurisdictional purposes.[2] Even if Dedicato had named the Plan as a defendant, or if Dedicato amended (it cannot[3]), Dedicato fails to meet its burden to show how inclusion of the Plan establishes jurisdiction. No part of its Opposition explains how involving the Plan would empower the Court to hear Dedicato's claims.

Similarly, whether "Congress authorized ERISA-related actions against Indian tribes that establish ERISA plans" (*see* MIO at 10, 11-13) is irrelevant. Even if Congress "authorized" suits such as Dedicato's, Congress did not confer federal question or diversity jurisdiction over such suits, nor does Dedicato claim as much. (*See* MIO at 11-13.) Dedicato's misplaced reliance on cases like *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 143 S. Ct. 1689 (2023) (cited in MIO at 12), which addressed the intersection of tribal sovereign immunity and the Bankruptcy Code, over which federal courts have exclusive jurisdiction by statute, underscores that Dedicato must provide an independent basis for jurisdiction. A party's ability to sue is not the same as a court's ability to hear and rule on the suit.[4]

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[2] The Community's Motion is not contingent on the Plan's sovereign immunity, which it clearly possesses and which Dedicato previously acknowledged repeatedly. Cases like *People v. Miami Nation Enterprises*, 386 P.3d 357 (Cal. 2016) (cited in MIO at 10-11), are therefore inapposite. The Motion discusses the Plan because the FAC includes incongruous allegations such as, "This Court has jurisdiction over the Community and the Plan" (FAC ¶ 22), even though Dedicato did not sue the Plan. Dedicato's repeated inability to frame its complaint and state the grounds for the Court's jurisdiction in a direct and plain fashion gives rise to a reasonable inference that the FAC was filed without a reasonable and competent inquiry.

[3] Dedicato does not ask for leave to amend. Rather, it suggests that the Court sua sponte find that, to maintain jurisdiction, the Plan be added as a defendant. Presumably, after such a finding, Dedicato would ask for leave. (MIO at 2-3 ("If the Court determines that the Plan should be a party … Dedicato asks for leave of the Court to add the Plan as a party.").) Dedicato fails to provide any legal support for the concept that the case may be maintained, despite the absence of jurisdiction, pending the addition of a party. The law is clear that the absence of jurisdiction requires dismissal, without exception. *E.g.*, *Steel Co.*, 523 U.S. at 94-95.

[4] Dedicato's frivolous argument, which states,"subject matter jurisdiction exists, because Congress authorized ERISA-related suits against entities, including Indian tribes, that establish ERISA plans" and the Community "is not exempt from such suits"

Finally, even if the Community waived sovereign immunity (which it did not; *see* MIS at 1-3, 6-12; *see also infra* Part II.B), the Community would merely *theoretically* be subject to jurisdiction in federal court. (*See* MIO at 10, 13-17; *see also* MIS at 1-3, 6-12.) The Community would not *actually* be subject to such jurisdiction in this action, because merely waiving sovereign immunity (which, again, the Community did not do) is not the same as enabling a court, particularly one with jurisdiction limited to cases permitted by the Constitution and Congress, to adjudicate an otherwise lawfully precluded suit.[5] There must still be an independent basis to entertain the matter, which Dedicato cannot show.

In sum, Dedicato has failed to state any valid basis for federal subject matter jurisdiction, to marshal any supporting authority, and to articulate a nonfrivolous argument for why its case belongs before this Court. The lack of subject matter jurisdiction requires dismissal.

B. Sovereign Immunity Necessitates Dismissal.

1. Sovereign Immunity Applies and Controls.

Even if jurisdiction existed (which it does not), Dedicato's suit and claims are precluded by sovereign immunity. (MIS at 1-3, 6-12.) Suits against federally recognized Indian tribes are barred by sovereign immunity absent a clear waiver by the tribe or Congress. *E.g.*, *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2030-31 (2014); *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978).

The scope of tribal sovereign immunity—the Community's immunity—is extremely broad. For example, the Supreme Court has held that an Indian tribe is not

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(MIO at 10)—is another example of the lack of Dedicato's reasonable and competent inquiry before filing suit.

[5] This additional frivolous argument, which states, "subject matter jurisdiction exists, because the Community waived sovereign immunity through its TPA Agreement" (MIO at 10), is yet another example of Dedicato's evident lack of sufficient inquiry before suing.

subject to suit in court, even for breach of contract involving off-reservation commercial conduct, unless the tribe clearly waived its immunity. *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 760 (1998) ("Tribes enjoy immunity from suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation."); *see also Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 798-99, 803-04 (2014) (refusing to reverse *Kiowa* because, in part, *Kiowa* "reaffirmed a long line of precedents" and "tribes across the country, as well as entities and individuals doing business with them, have for many years relied on *Kiowa* (along with its forebears and progeny), negotiating their contracts and structuring their transactions against a backdrop of tribal immunity").

Tribal sovereign immunity deprives a federal court of subject matter jurisdiction and requires dismissal under Rule 12(b)(1). *E.g.*, *Arizona v. Tohono O'odham Nation*, 818 F.3d 549, 562-63 (9th Cir. 2016); *Miller v. Wright*, 705 F.3d 919, 927 (9th Cir. 2013); *Alvarado v. Table Mtn. Rancheria*, 509 F.3d 1008, 1015-16 (9th Cir. 2007); *see also Pistor v. Garcia*, 791 F.3d 1104, 1111 (9th Cir. 2015). The burden is on a plaintiff to prove an explicit, unequivocal waiver. (*See* MIS at 6-7 (citing cases).)

Dedicato argues that the Community, not Congress, has affirmatively waived its sovereign immunity here. (MIO at 1-3, 13-17.) But it neither points to a clear, explicit, and unequivocal waiver by the Community with respect to it, nor does it cite any legal authority that construes some relevant language or conduct as such a waiver with respect to it. Indeed, the bulk of Dedicato's Opposition fails to include any legal authority supporting its contentions. (*See, e.g.*, MIO at 14-17.)

Dedicato primarily relies *on C&L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 532 U.S. 411 (2001) (*see* MIO at 13-14), but *C&L* illustrates Dedicato's failure to point to the Community's clear, explicit, and unequivocal waiver of its tribal sovereign immunity. In *C&L*, the federally recognized Indian Tribe directly contracted with a construction company; the tribe proposed the contract; the contract

included an arbitration clause and a choice-of-law clause; the arbitration clause required resolution of all contract-related disputes by binding arbitration, permitted an arbitral award to be reduced to judgment "in accordance with applicable law in any court having jurisdiction thereof," and incorporated certain external arbitration rules, which provided that an arbitral award "may be entered in any federal or state court having jurisdiction thereof;" and the choice-of-law clause was "plain" that the "court having jurisdiction" to enforce an arbitral award was the Oklahoma state courts. *Id.* at 414-20. With this background, the Court framed the issue as "whether the Tribe waived its immunity from suit in state court when it expressly agreed to the arbitration of contract disputes with C&L, to the governance of Oklahoma law, and to the enforcement of arbitral awards 'in any court having jurisdiction thereof.'" *Id.* at 414. It concluded that, "by the clear import of the arbitration clause, the Tribe is amenable to a state-court suit to enforce an arbitral award in favor of contractor C&L." *Id.*

C&L is not analogous, because *none* of the facts supporting a waiver there are present here. The Agreement here is between the Community and AmeriBen; Dedicato is neither a party to nor beneficiary from it. Moreover, the Agreement expressly states that AmeriBen's services are subject to (1) "the terms of the Plan," which assert and maintain the Community's sovereign immunity, and (2) "applicable law," which includes the Community's sovereign immunity under, inter alia, *Kiowa* and *Bay Mills.*[6]

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[6] Relatedly, Dedicato's Opposition drops its legal allegation in FAC ¶ 11 that the Community agreed to waive sovereign immunity by the acts of "establishing the Plan" and "retaining AmeriBen to administer it as its TPA." In abandoning that allegation, it concedes that the Community's creation of the Plan, the Plan itself, the Plan's terms, the Community's and the Plan's relation with AmeriBen, and applicable law all preserve the Community's sovereign immunity. (MIS at 8-9; MIS Ex. 1 (Plan Document (Doc. 36-2)) at 149, 153.) In establishing the Plan, as elsewhere in the Plan Document, the Community clearly asserted its sovereign immunity:

> 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

(*E.g.*, FAC ¶ 12 & Ex. A at 1.1, 3.2, 4.3; MIS Ex. 1 (Plan Document (Doc. 36-2)) at 145-46, 149, 153; *see also* MIS at 1-3, 6-12.) Dedicato not only fails to engage with this language, but also never disputes that the Community and AmeriBen lawfully incorporated and otherwise referenced the Plan, applicable law, and the Community's sovereign immunity in the Agreement. The Community's Agreement with AmeriBen not only preserves and maintains its sovereign immunity but also contains no clear, explicit, and unequivocal waiver.

Even if some language in the Agreement could be read as a waiver (which it cannot), the waiver would be between the Community and AmeriBen, at most. Dedicato is not a party to or a third-party beneficiary of the Agreement. And Dedicato does not argue that a waiver of sovereign immunity as between a tribe and its TPA, with a similar agreement in the ERISA context, could extend beyond those parties to a third party with no direct connection to the tribe, who the tribe does not know exists, and whose claims are at best indirect, among other things. Even then, *C&L* still would not confer *federal* jurisdiction.

The same problem plagues Dedicato's related and frivolous argument that AmeriBen somehow waived the Community's sovereign immunity on its behalf by allegedly "denying" such immunity in its motion-to-dismiss briefing. (*See, e.g.*, MIO at 1-2 (citing Doc. 17 at 4 n.1).) Supreme Court precedent, including *Kiowa*, *C&L*, *Bay Mills*, *Oklahoma Tax Commission*, and *Santa Clara Pueblo*, and Ninth Circuit

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> 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 SRPMIC. Nothing herein shall be deemed a waiver of sovereign immunity. …

(MIS Ex. 1 (Plan Document (Doc. 36-2)) at 153.)

precedent, including *Tohono O'odham Nation*, *Miller*, and *Alvarado*, squarely hold that the tribe *itself* must effect a waiver. Dedicato offers no authority whatsoever suggesting the existence of the exception it proposes. AmeriBen cannot and did not waive the Community's sovereign immunity.[7]

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

Aside from its general arguments above, Dedicato also argues that three sections of the Agreement between the Community and AmeriBen constitute a waiver of sovereign immunity. (MIO at 14-17.) Dedicato is wrong again. Each theory is wholly unsupported, and Dedicato cannot meet it burden to show that any section of the Agreement is or works a clear, explicit, and unequivocal waiver of the Community's sovereign immunity as a matter of law.

First, Dedicato argues that Section 3.8 works an indirect waiver. (*See* MIO at 7, 14-15.) Section 3.8 provides that "[t]o the extent" Plan participants "*access* … 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." (FAC Ex. A at 3.8 (emphasis added).) The provision plainly applies only where a Plan participant presently uses a third-party provider that had a pre-existing agreement with AmeriBen, as indicated by the use of the present tense "access" and the past tense "contracted." Dedicato concedes that it had no such pre-existing agreement with AmeriBen.[8] (*See id.* ¶¶ 27-31, 40, 46 & 52; MIO at 7, 14-15.) Section 3.8 does *not* state that the Community is bound where Plan participants access a third-party provider

[7] Dedicato's related assertion that, "based, in part, on AmeriBen's denial of the Community's sovereign immunity, the Court … gave Dedicato leave to sue the Community" (*id.*) is a misstatement of the record. The Court's November 22, 2022 Minute Entry Order gave Dedicato leave to file an amended complaint generally, not "to sue the Community," and the Order expressly stated that the Court was not deciding issues of sovereign immunity "at this juncture." (Doc. 22 at 9-10 & n.3.)

[8] Dedicato cannot even state *if* it entered into a contract with AmeriBen. (MIS at 7:7 ("to the extent AmeriBen entered into any contracts with Dedicato").)

who *then* (allegedly) "*contracts*" with AmeriBen or that the Community is bound by new contracts entered into by AmeriBen, nor does Dedicato provide any authority supporting either reading. The control of new contracts is covered in Section 3.7, which gives the Community sole responsibility to negotiate such agreements, and which Dedicato ignores completely. Section 3.8 is by no means a waiver. (*See also* MIS at 9-10.)

Second, Dedicato argues that the indemnification provision in Section 4.2 also works an indirect waiver. (*See* MIO at 7-8, 15-16.) Section 4.2 is a limited indemnification clause between the Community and AmeriBen concerning "willful misconduct, gross negligence or other wrongful act, error or omission in the performance of duties and obligations under this Agreement." (FAC Ex. A at 4.2.) It does not include any defense obligation in any way. And, unlike the arbitration agreement in *C&L*, it does not include a choice-of-law provision, a forum-selection clause, any language that permits entry of a judgment in a state or federal court, or any language that incorporates any of the same. Section 4.2 is not a waiver. (*See also* MIS at 10-11.)

Third, Dedicato argues that, because the Community agreed under Section 3.9 to be "solely responsible for all government compliance obligations," it "could not intend by this agreement to be subject to government compliance obligations and not also be subject to government enforcement of those obligations." (MIO at 16-17.) But Dedicato fails to note that Section 3.9 details the "compliance obligations" it is addressing, which include "completing or filing government-required forms (i.e. Form 5500's)." (FAC Ex. A at 3.9.) And Dedicato fails to cite any authority that a party's agreement to address "compliance obligations" equals agreement to be subject to civil courts for enforcement of the same. The parties contracted as they did; what Dedicato wants to read into Section 3.9 is not part of the Agreement. Section 3.9 is not a waiver. (*See also* MIS at 10.)

Finally, to the extent that Dedicato conjures self-serving hypotheticals to support its waiver argument (*see, e.g.*, MIO at 7-8, 15-17, n.4), such hypotheticals are meaningless, cannot support jurisdiction, and must be rejected. The Ninth Circuit has firmly held that any assessment of a hypothetical claim not before the court cannot give rise to jurisdiction over an actual, asserted claim because jurisdiction must exist for each claim asserted against a defendant. *Picot v. Weston*, 780 F.3d 1206, 1215 n.3 (9th Cir. 2015) ("A plaintiff may not create personal jurisdiction over one claim by arguing that jurisdiction might be proper over a different, hypothetical claim not before the court." (citation omitted)); *see also Steel Co.*, 523 U.S. at 101 ("Hypothetical jurisdiction produces nothing more than a hypothetical judgment—which comes to the same thing as an advisory opinion, disapproved by this Court from the beginning." (citing cases)).

In sum, neither the Agreement nor its terms constitute a clear, explicit, and unequivocal waiver of the Community's sovereign immunity, and Dedicato cannot meet its burden to show as much as a matter of law.

C. Personal Jurisdiction Is Lacking.

The absence of personal jurisdiction presents a further, independent basis for dismissal. Dedicato argues that specific, as opposed to general, personal jurisdiction exists (MIO at 3, 17-21). It does not (MIS at 4-6), for three reasons.

First, the Community neither purposefully directed activities toward nor purposefully availed itself of the privilege of conducting activities in this forum. Dedicato's FAC is devoid of any supporting allegations, and its Opposition does not mention any concerning conduct by the Community *itself*. Instead, the FAC alleges that a dependent of a Community employee, who participated in the Plan, sought treatment from Dedicato for substance abuse in California. (FAC Prelim. Stat. at 1:4-5 & ¶¶ 25-27.) And the closest thing that Dedicato states in its Opposition is that "the Community has a healthcare policy," i.e., the Plan, "that purports to cover members

seeking treatment in California" (MIO at 18). This assertion is not found or grounded in the FAC, Dedicato did not name the Plan as a defendant, it expressly disavows that its FAC targets the Plan (*id.* at 2), and it believes that the Plan is distinct from the Community (*id.* at 10-11). Moreover, Dedicato actively acknowledges and affirms these omissions: "The contacts here are not based on the contacts of any single member or employee." (MIO at 20.)

To try to show personal jurisdiction over the Community nonetheless, Dedicato explicitly relies on "the multiple contacts by AmeriBen" (*id.*), the TPA of the Community's Plan (MIS at 1-2). That argument is legally insufficient. The Court should not accept as true Dedicato's conclusory allegations that AmeriBen is the Community's agent or that any action taken by AmeriBen is attributable to the Community (*see, e.g.*, FAC ¶¶ 8, 59, 96-99) because the Agreement between the Community and AmeriBen, which Dedicato attached to its FAC (FAC ¶ 12 & Ex. 1), squarely contradicts Dedicato's allegations. *E.g.*, *In re Finjan Holdings, Inc.*, 58 F.4th 1048, 1052 n.1 (9th Cir. 2023) ("When a general conclusion in a complaint contradicts specific facts retold in a document attached to the complaint … those specific facts are controlling. Similarly, where a complaint incorrectly summarizes or characterizes a legally operative document attached to the complaint … the document itself is controlling." (citing cases)); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010) ("We are not, however, required to accept as true allegations that contradict exhibits attached to the Complaint … ."); *Rosas v. Carnegie Mortg., LLC*, CV 11-7692 CAS CWX, 2013 WL 791024, at *4 n.3 (C.D. Cal. Feb. 25, 2013) (similar), *judgment entered*, CV11-07692 CAS CWX, 2013 WL 877501 (C.D. Cal. Mar. 6, 2013); *Tyson v. Wells Fargo Bank*, CV 12-5757-CAS MANX, 2012 WL 4107877, at *1 n.3 (C.D. Cal. Sept. 18, 2012) (similar). The Agreement expressly provides that the Community engaged AmeriBen to perform limited, defined services "as an independent contractor only and under no circumstance as a fiduciary of the Plan or as an employee or agent"

of the Plan or the Community. (FAC ¶ 12 & Ex. 1 at 1.1, 3.3; *see also* MIS at 5-6.)

Furthermore, Dedicato still has not shown jurisdiction. "Jurisdiction is proper … where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (quoting *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957)) (emphasis in original). Purposeful direction or availment cannot arise from "'fortuitous' or 'attenuated' contacts or the 'unilateral activity of another party or a third person.'" *Id.* at 475 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984), *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 299 (1980), and *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984).) And, in any event, there is no substantial connection due to the attenuated link between the employee's dependent taking the underlying insurance card out of state and merely "present[ing] it" in California (FAC ¶ 27), Dedicato's transmission of a copy of the card to its TPA Vertex Healthcare Services, Inc. in an unspecified location (*id.* ¶ 28), Vertex's perfunctory calls from an unspecified location with AmeriBen in an unspecified location (*e.g.*, *id.* ¶¶ 29, 35, 42), and the lack of any written agreement between Dedicato, on the one hand, and AmeriBen or the Community, on the other, among other things. *See Burger King*, 471 U.S. at 475 n.18 (holding single acts "may not be sufficient to establish jurisdiction if their nature and quality and the circumstances of their commission create only an attenuated affiliation with the forum").)

Second, Dedicato's claims do not arise out of or result from the Community's forum-related activities. While the Opposition falsely and baselessly asserts that the *Community* "sought Dedicato's provision of treatment here in California," "approved that treatment," and "lured Dedicato," among other things (MIO at 20), the FAC alleges none of them—nor could it, because none is true.

Third and finally, even if Dedicato had satisfied the first two prongs above, the

exercise of jurisdiction would not be reasonable. Dedicato does not claim that the Community has interjected itself into California, or that California has any particular interest in adjudicating this matter. It also does not claim that *it* has a particular interest in adjudicating this matter in California and not in the Community's Tribal Courts, that it cannot or could not sue in Tribal Court, or that California is somehow the most efficient forum. Dedicato argues only that the Community would not be unduly inconvenienced or burdened. (*See* MIO at 20-21.) The Community, however, has sovereign rights, it has not and will not waive those rights, and these rights render the exercise of jurisdiction unfair and unreasonable, even if the exercise of jurisdiction would pose minimal or no inconvenience. *See Bristol-Myers Squibb Co. v. Super. Ct.*, 582 U.S. 255, 263 (2017) (holding that legal issues such as or akin to federalism may divest courts of power to act "[e]ven if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation" (quoting *World-Wide Volkswagen*, 444 U.S. at 294)); *Am. Vantage*, 292 F.3d at 1096.

Nor does Dedicato's authority support its position. For example, *McGow v. McCurry*, 412 F.3d 1207 (11th Cir. 2005) (cited in MIO at 18), is an out-of-circuit case that involved an auto insurance policy that explicitly provided coverage in all fifty states, an auto accident in Georgia, a tortfeasor residing in Georgia, and a plaintiff who filed suit in Georgia. The case is too factually different to provide guidance.[9] *McGee*,

[9] The *McGow* Court relied in part on the Ninth Circuit's decision in *Farmers Insurance Exchange v. Portage La Prairie Mutual Insurance Company*, 907 F.2d 911, 913 (9th Cir. 1990), which noted that "[a] health insurance policy is typically sued upon where the insured resides." *McGow*, 412 F.3d at 1215. The *McGow* Court also indicated that the Eleventh Circuit could follow a minimum-contacts rule that would diverge from the Ninth Circuit's case law. *See McGow*, 412 F.3d at 1215 n.4 ("The Ninth Circuit has held that minimum contacts do not exist where the insurer's policy provides for nationwide coverage, but the forum state is not the site of the accident." (citing *Hunt v. Erie Ins. Group*, 728 F.2d 1244, 1248 (9th Cir. 1984))).

355 U.S. 220 (cited in MIO at 19), concerned a life insurance policy that was delivered in California, the policyholder lived and died in California, the policyholder had paid the premiums by mail from California, and the carrier mailed the policyholder confirmation of the policy in California prior to death. It, too, is far too distinguishable to be instructive.

The lack of personal jurisdiction separately and independently requires dismissal.

D. The Parties Agree that ERISA Does Not Enable Dedicato to Sue the Community.

In its FAC, Dedicato implies that ERISA itself somehow enables it to sue the Community. (*See* FAC ¶ 11.) Given this vague allegation, the Community explained in its Motion why ERISA does not enable Dedicato to sue it. (MIS at 12-14.) It did *not* argue that ERISA preemption applies. Dedicato's Opposition clarifies that its claims do not arise under ERISA and that it has no legal basis or right to sue the Community under ERISA. (*See* MIO at 22 ("Admittedly, Dedicato is not allowed to bring a direct cause of action against a plan administrator under ERISA, nor as an assignee of any Plan member. Dedicato does not allege any claims under ERISA, nor as an assignee of the Patient. Dedicato alleges contract-related claims here … .").)

The parties' agreement that ERISA does not enable Dedicato to sue the Community obviates the need for the Court to address this arguable barrier to Dedicato's lawsuit, but it also confirms the complete absence of even a potential federal question arising in this matter. Because Dedicato cannot show that diversity jurisdiction exists, this action must be dismissed with prejudice in its entirety.

III. DEDICATO'S OTHER POINTS ARE MERITLESS.

Dedicato makes three other arguments of note. None has any merit.

The Community obviously did not make any "affirmative representations" to this Court in the previous dispute, which was solely between Dedicato and AmeriBen,

and to which the Community was not a party. (*See* MIO at 2.) The Community's position on its sovereign immunity here is, therefore, not some "about-face position i[n] an attempt … to use sovereign immunity as both a sword and a shield." (*See id.*) This assertion is yet another example of Dedicato's many frivolous contentions.

And Dedicato's objection to the Community's use of excerpts of the Plan is meritless. (*See* MIO at 17 n.5.) Dedicato affirmatively addressed the Plan at length in the FAC (*see* FAC Prelim. Stat. at 1:4-5 & ¶¶ 6-7, 9, 11-13, 19, 22-23, 25, 27-29, 55, 95, 98-101), so the Community is entitled to use the Plan here. *See, e.g.*, *In re Finjan Holdings, Inc.*, 58 F.4th 1048, 1052 (9th Cir. 2023); *Mendoza v. Amalgamated Transit Union Int'l*, 30 F.4th 879, 884 (9th Cir. 2022). (*See also* MIS at 1-2.) Dedicato also states no basis to indicate or suggest that the excerpts are anything less than true and correct.

Lastly, in a footnote, and without any development, if the Court is inclined to dismiss under Rule 12(b)(2), Dedicato asks for leave "to undertake discovery on the Community's contacts with California healthcare providers." (MIO at 21 n.7.) The Court need not reach the issue of personal jurisdiction, but if it does, discovery is unnecessary and unwarranted. Dedicato appears to be asking for discovery that would speak to general, not specific, personal jurisdiction, but Dedicato has invoked specific, not general, personal jurisdiction to bring this case. (*Id.* at 3, 17-21.) This request is, therefore, a fishing expedition. In any event, because there is no dispute over "pertinent facts bearing on the question of jurisdiction," Dedicato's own authority states that Court may reject the request. *See Orchid Biosciences, Inc. v. St. Louis Univ.*, 198 F.R.D. 670, 672 (S.D. Cal. 2001) (cited in MIO at 7 n.7.) Dedicato has failed to state even a potential showing of personal jurisdiction. The Court should deny its baseless request.

IV. CONCLUSION

For the foregoing reasons and those stated in the Motion, the Community respectfully requests that the Court dismiss with prejudice Dedicato's FAC for lack of

subject-matter jurisdiction, lack of personal jurisdiction, and/or 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, respectively.

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