

1 Colin M. Proksel
2 California Bar Number 295929
3 Arizona Bar Number 034133
4 OSBORN MALEDON, P.A.
5 2929 North Central Avenue, 20th Floor
6 Phoenix, Arizona 85012
7 (602) 640-9000
8 cproksel@omlaw.com

9 Attorneys for Salt River Pima-Maricopa Indian Community

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 DEDICATO TREATMENT CENTER,
13 INC.,

14 Plaintiff,

15 vs.

16 SALT RIVER PIMA-MARICOPA
17 INDIAN COMMUNITY, a Federally
18 recognized Tribe,

19 Defendant.

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

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF DEFENDANT
SALT RIVER PIMA-
MARICOPA INDIAN
COMMUNITY’S MOTION FOR
SANCTIONS PURSUANT TO
RULE 11 OF THE FEDERAL
RULES OF CIVIL PROCEDURE**

Date: October 23, 2023

Time: 10:00 a.m.

Place: Courtroom 8D

Honorable Christina A. Snyder



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	<u>Page</u>
I. BACKGROUND	1
II. ARGUMENT.....	4
A. Legal Standard.....	4
B. The Court Should Issue Sanctions Because Dedicato’s Claims are Frivolous	5
C. The Court Should Sanction Dedicato and Its Counsel for the Community’s Attorneys’ Fees and Costs.....	6
III. CONCLUSION.....	6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

Cases

Allen v. Gold Country Casino,
464 F.3d 1044 (9th Cir. 2006)2

Christian v. Mattel, Inc.,
286 F.3d 1118 (9th Cir. 2002)4, 5

Gaskell v. Weir,
10 F.3d 626 (9th Cir. 1993)6

Holgate v. Baldwin,
425 F.3d 671 (9th Cir. 2005)5

Islamic Shura Council of S. Cal. v. FBI,
757 F.3d 870 (9th Cir. 2014)5

Puyallup Tribe, Inc. v. Dep’t of Game,
433 U.S. 165 (1977).....1

Sneller v. City of Bainbridge Island,
606 F.3d 636 (9th Cir. 2010)5

Turner v. United States,
248 U.S. 354 (1919).....1

Other Authorities

88 Fed. Reg. 2112 (Jan. 12, 2023).....1

88 Fed. Reg. 2114 (Jan. 12, 2023).....1

Fed. R. Civ. P. 11(c)(2)5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

Salt River Pima-Maricopa Indian Community (“SRPMIC” or the “Community”), a federally recognized Indian Tribe, moves for sanctions in the form of its reasonable attorneys’ fees and costs in moving 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, because the FAC is frivolous under Rule 11(b)(2)-(3). 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.¹

I. BACKGROUND.

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. (July 31, 2023 Declaration of Patty Powers (Doc. 36-2) ¶ 9 & Ex. 1 (attaching true and correct

¹ 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.

1 copies of excerpts of the Community Plan Document and Summary Plan Description)
2 at 145; FAC Prelim. Stat. at 1:4-5 & ¶¶ 6-7, 9, 11-13, 19, 22-23, 25, 27-29, 55, 95, 98-
3 101 (discussing Community’s Plan).) IEC Group, Inc. dba AmeriBen (“AmeriBen”)
4 administers the Plan, subject to a Third-Party Administrative and Utilization
5 Management Services Agreement, dated December 12, 2016. (See FAC ¶ 7; see also
6 FAC ¶ 12 & Ex. A (attaching copy of agreement to FAC); Civil Min. Order (Doc. 22)
7 at 6 (considering agreement when attached to previous Mot. to Dismiss (Doc. 17-2 Ex.
8 A)).) As an arm of the Community, the Plan also enjoys sovereign immunity.² E.g.,
9 *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046 (9th Cir. 2006). (See also Compl.
10 ¶¶ 10-11 (same); Dedicato Mem. in Opp. to Mot. to Dismiss (Doc. 18) at 1:13 & 7:10-
11 17 (same).)

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

24 On December 13, 2022, despite previously acknowledging the Community’s
25 sovereign immunity, Dedicato filed its FAC, naming the Community as the sole
26

27 ² Because the Plan is an arm of the Community and also enjoys sovereign
28 immunity, references herein to the Community include the Plan.

1 defendant, and purporting to state claims against the Community for (1) breach of
2 contract, (2) breach of implied contract, (3) breach of the duty of good faith and fair
3 dealing, (4) promissory estoppel, (5) quantum meruit, and (6) unfair competition under
4 the California Business and Professions Code Section 17200, *et seq.*

5 On July 17, 2023, the Community provided a letter to Dedicato’s counsel,
6 explaining that the FAC suffered from incurable deficiencies that posed Rule 11
7 concerns. (Declaration of Colin M. Proksel (“Proksel Decl.”) ¶¶ 2-4 & Ex. 1.)
8 Specifically, the Community underscored that Dedicato’s FAC was baseless because,
9 *inter alia*, well-established sovereign immunity principles preclude suing the
10 Community, and, under other well-established law, Dedicato cannot establish subject
11 matter or personal jurisdiction over the Community. (*Id.* Ex. 1.)

12 On July 20, 2023, the parties conferred concerning the Community’s July 17,
13 2023 letter. (*Id.* ¶¶ 5-8 & Ex. 2.) During the conferral, counsel for Dedicato (1) did
14 not push back against any of the Community’s arguments, which it conceded were well-
15 reasoned; (2) made no contention that Dedicato had a non-frivolous basis to assert its
16 claims against the Community; and (3) made no indication that counsel had conducted
17 a cursory, let alone competent, inquiry before bringing its claims against the
18 Community. (*Id.* ¶¶ 9-11.) Instead, it noted that it wanted its day in court. (*Id.* ¶ 12.)
19 Ultimately, counsel for Dedicato declined to withdraw the FAC. (*Id.* ¶ 13.)

20 The Community filed its Motion to Dismiss and supporting Memorandum of
21 Points and Authorities August 1, 2023. (Doc. 36.) Thereafter, the Community drafted
22 the instant motion and served it on Dedicato’s counsel on August 14, 2023. (*Id.* ¶ 14.)
23 The Community complied with the twenty-one-day safe harbor period, during which
24 Dedicato refused to withdraw its First Amended Complaint.

25 The Community now respectfully requests that the Court sanction Dedicato and
26 its counsel for violating Rule 11(b)(2) and (3) of the Federal Rules of Civil Procedures.
27 Fed. R. Civ. P. 11(b)(2)-(3) (requiring counsel to certify, “after an inquiry reasonable
28

1 under the circumstances,” that a pleading’s “claims ... and other legal contentions are
2 warranted by existing law or by a nonfrivolous argument for extending, modifying, or
3 reversing existing law or for establishing new law” and “the factual contentions have
4 evidentiary support”); *see also id.* 11(c)(4) (sanction may include “an order directing
5 payment to the movant of part or all of the reasonable attorney's fees and other expenses
6 directly resulting from the violation”) & 11(c)(5)(A) (“The court must not impose a
7 monetary sanction: against a represented party for violating Rule 11(b)(2)[.]”).

8 Dedicato has violated Rule 11(b)(2) because its claims and other legal
9 contentions are *not* warranted by existing law or by a nonfrivolous argument for
10 extending or modifying existing law or for establishing new law, and any competent
11 inquiry would have concluded that the claims are frivolous.

12 **II. ARGUMENT.**

13 **A. Legal Standard.**

14 “An attorney’s signature on a complaint is tantamount to a warranty that the
15 complaint is well grounded in fact and ‘existing law’ (or proposes a good faith
16 extension of the existing law).” *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir.
17 2002).

18 Particularly, in relevant part Rule 11(b) provides:

19 By presenting to the court a pleading, written motion, or other paper—
20 whether by signing, filing, submitting, or later advocating it—an attorney
21 or unrepresented party certifies that to the best of the person's knowledge,
22 information, and belief, formed after an inquiry reasonable under the
23 circumstances: . . . (2) the claims, defenses, and other legal contentions
24 are warranted by existing law or by a nonfrivolous argument for
extending, modifying, or reversing existing law or for establishing new
law; [and] (3) the factual contentions have evidentiary support or, if
specifically so identified, will likely have evidentiary support after a
reasonable opportunity for further investigation or discovery[.]

25 Fed. R. Civ. P. 11(b)(2)-(3).

26 “Rule 11 is intended to deter baseless filings in district court and imposes a duty
27 of reasonable inquiry so that anything filed with the court is well grounded in fact [and]

1 legally tenable[.]” *Islamic Shura Council of S. Cal. v. FBI*, 757 F.3d 870, 872 (9th Cir.
2 2014) (internal citation and quotation marks omitted).

3 Rule 11 also contains a safe harbor provision. *See* Fed. R. Civ. P. 11(c)(2).
4 Under it, “Rule 11 sanctions may not be imposed if the challenged claim is withdrawn
5 within 21 days after service of the sanctions motion.” *Sneller v. City of Bainbridge*
6 *Island*, 606 F.3d 636, 639 (9th Cir. 2010) (citing Fed. R. Civ. P. 11(c)(2)). The purpose
7 of this provision is to provide “protection against sanctions if [litigants] withdraw or
8 correct contentions after a potential violation is called to their attention.” Fed. R. Civ.
9 P. 11 Advisory Committee Notes.

10 **B. The Court Should Issue Sanctions Because Dedicato’s Claims Are**
11 **Frivolous.**

12 Dedicato and its counsel should be sanctioned because the claims in the FAC are
13 legally and factually baseless. “Where, as here, the complaint is the primary focus of
14 Rule 11 proceedings, a district court must conduct a two-prong inquiry to determine (1)
15 whether the complaint is legally or factually ‘baseless’ from an objective perspective,
16 and (2) if the attorney has conducted ‘a reasonable and competent inquiry’ before
17 signing and filing it.” *Christian*, 286 F.3d at 1127 (citation omitted). “[T]he mere
18 existence of one non-frivolous claim in a complaint does not immunize it from Rule 11
19 sanctions.” *Holgate v. Baldwin*, 425 F.3d 671, 677 (9th Cir. 2005). Dedicato’s claims
20 fail both prongs of this inquiry.

21 Turning to the first prong, the Community’s Motion to Dismiss elucidates that
22 Dedicato’s claims are objectively meritless. The Community incorporates the Motion
23 to Dismiss (Docs. 36 & 39) by reference such that the arguments are fully set forth
24 herein.³

25 Turning to the second prong, the nature of the parties’ July 20, 2023 conferral
26 makes clear that Dedicato’s counsel did not conduct a cursory, let alone a competent

27
28 ³ The Community does so for economy purposes, not to exceed page limits.

1 inquiry, before filing the FAC. During the conferral, counsel for Dedicato provided
2 absolutely no pushback against the Community’s July 17, 2023 letter, which set forth
3 each argument creating a basis for dismissal and for Rule 11 sanctions. When pressed,
4 Dedicato cited no argument or authority in its favor, leading the Community to believe
5 that Dedicato had encountered none. However, had counsel conducted a competent
6 inquiry, he would have readily discovered that, as described above, well-established
7 principles provide myriad bases for dismissal. Dedicato’s claims simply cannot
8 proceed in this Court.

9 **C. The Court Should Sanction Dedicato and Its Counsel for the**
10 **Community’s Attorneys’ Fees and Costs.**

11 “Where the original complaint is the improper pleading, all attorney fees
12 reasonably incurred in defending against the claims asserted in the complaint form the
13 proper basis for sanctions.” *Gaskell v. Weir*, 10 F.3d 626, 629 (9th Cir. 1993).
14 Although the FAC was not the original complaint, it was the original pleading asserted
15 against the Community. Accordingly, all work on this matter by counsel for the
16 Community originated with the FAC. Thus, an award of all attorney fees incurred is
17 the appropriate sanction.

18 The Community therefore respectfully requests that the Court award sanctions
19 in the amount of the attorneys’ fees and costs that it reasonably incurred in defending
20 against Dedicato’s frivolous claims. The Community further requests the opportunity
21 to provide briefing on the amount and reasonableness of the sanction award.

22 **III. CONCLUSION.**

23 Based on the foregoing, Dedicato and its counsel filed frivolous claims against
24 the Community. Yet, upon being served with the instant motion, Dedicato refused to
25 withdraw the FAC. Consequently, the Court should issue sanctions against Dedicato
26 and its counsel in an amount that covers the Community’s attorneys’ fees and costs
27 incurred in defending against Dedicato’s frivolous claims.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED September 13, 2023.

OSBORN MALEDON, P.A.

By s/Colin M. Proksel
Colin M. Proksel
2929 North Central, 20th Floor
Phoenix, Arizona 85012-2793

Attorneys for Defendant Salt River
Pima-Maricopa Indian Community