

**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.

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Case No. 1:23:CV-00067

**DEFENDANT AKIMA GLOBAL SERVICES, LLC'S
MOTION TO DISMISS AND
INCORPORATED MEMORANDUM IN SUPPORT**

RESPECTFULLY SUBMITTED BY:

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

NOW COMES Defendant, Akima Global Services, LLC (“Defendant” or “AGS”), and files this Motion to Dismiss and Incorporated Memorandum in Support, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the following reasons, AGS’s motion should be granted and this lawsuit dismissed with prejudice.

FACTUAL AND PROCEDURAL BACKGROUND

AGS¹ is a wholly owned subsidiary of Akima, LLC,² which is a wholly owned subsidiary of NANA Regional Corporation, an Alaska Native Corporation.³ On December 22, 2022, Plaintiff, Maria Del Refugio Balli (“Plaintiff” or “Balli”), filed a Charge of Discrimination (hereinafter “Charge”) against AGS with the Equal Employment Opportunity Commission (“EEOC”) alleging discrimination, retaliation, and a hostile work environment based on sex and a prior charge, related to her employment with AGS and subsequent removal from her position. (Doc. 1-1.)

On January 30, 2023, the EEOC issued a Determination and Notice of Rights (“Determination”) letter dismissing the Charge because it lacked jurisdiction over the matter as the employer is a tribal entity. (*See* Doc. 1-1, p. 7.) On May 1, 2023, Balli 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”).

¹ *See* public filings with the Secretaries of State for the State of Virginia, attached as Exhibit 1-1, and State of Alaska for AGS, attached as Exhibit 1-2. *Swindol v. Aurora Flight Scis. Corp.*, 805 F.3d 516, 519 (5th Cir. 2015) (holding that a court may judicially notice facts in the public records contained in a Secretary of State’s websites).

² *See* public filing with the Secretary of State for the State of Alaska for Akima LLC, attached as Exhibit 2.

³ *See* public filing with the Secretary of State for the State of Alaska for NANA Regional Corp., attached as Exhibit 3.

Balli's lawsuit should be dismissed with prejudice as her claims under Title VII are not cognizable against AGS because Title VII expressly exempts Alaska Native Corporations, as well as their subsidiaries and affiliates, from the definition of employer, and thus, from its coverage.

ARGUMENT

A. Federal Rule of Civil Procedure 12(b)(6) Standard.

To defeat a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "The court's task is to determine whether the plaintiff has stated a legally cognizable claim that is plausible, not to evaluate the plaintiff's likelihood of success." *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010).

In reviewing a Rule 12(b)(6) motion, a court must accept all well-pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff. *Sonnier v. State Farm Mutual Auto. Ins. Co.*, 509 F.3d 673, 675 (5th Cir. 2007). The court is not bound to accept legal conclusions as true, however, and only a complaint that states a plausible claim for relief survives a motion to dismiss. *Iqbal*, 129 S.Ct. at 1949-50.

In ruling on a motion to dismiss under 12(b)(6), a court may not look beyond the pleadings. *Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999). The pleadings include the complaint and any documents attached to it. *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498-99 (5th Cir. 2000).

a. As a Wholly Owned Subsidiary of an Alaska Native Corporation, Akima Global Services, LLC is Exempt from the Definition of Employer under Title VII.

Pursuant to the Alaska Native Claims Settlement Act ("ANCSA"), 85 Stat. 688, 43 U.S.C. § 1601 *et seq.*, and as a wholly-owned subsidiary of an Alaskan Native Corporation, AGS is

exempt from Title VII's definition of covered employer. As set forth in the Determination letter, the EEOC acknowledged this exemption and dismissed the Charge against AGS on this basis. (Doc 1-1, p. 7.) Likewise, this Court should dismiss the allegations by Plaintiff in this lawsuit.

Akima is an Alaska limited liability company in which NANA (Natives of the Northwest Arctic) Regional Corporation, an ANC, has a 100% ownership interest. NANA Regional Corporation was one of the twelve regional corporations formed by ANCSA. AGS is a wholly-owned subsidiary of Akima.

Entities owned by a "Native Corporation" formed under ANCSA are expressly exempted from Title VII's definition of "employer." See 43 U.S.C. § 1626(g).⁴ The exemption also extends to "affiliate" entities in which the Native Corporation has at least a twenty-five percent (25%) equity ownership interest. *Id.* See also *Abikar v. Bristol Bay Native Corp.*, 300 F. Supp. 3d 1092, 1098–99 (S.D. Cal. 2018) (wholly owned subsidiaries and affiliates of Alaskan Native Corporation are excluded from the definition of employer under Title VII); *Daniels v. Chugach Gov't Servs., Inc.*, 149 F. Supp. 3d 183, 189 (D.D.C. 2016) (a subsidiary of the Chugach Native Association, which qualifies as an Alaska Native Corporation ("ANC") is exempt from the definition of employer under Title VII); *Aleman v. Chugach Support Servs., Inc.*, 485 F.3d 206, 210 (4th Cir. 2007) (acknowledging exemption of Alaska Native Corporations and Indian tribes); *Pink v. Modoc Indian Health Project, Inc.*, 157 F.3d 1185, 1188 (9th Cir.1988) (same); *Pratt v. Chenega Integrated Systems*, 2007 WL 2177335 (N.D. Cal. 2007) ("Because Chenega is owned by an Alaska Native Corporation... and [Alaskan Native Corporations] are exempt from Title VII's

⁴ For the purposes of implementation of the Civil Rights Act of 1964, a Native Corporation and corporations, partnerships, joint ventures, trusts, or affiliates in which the Native Corporation owns not less than 25 per centum of the equity shall be within the class of entities excluded from the definition of "employer" ... 43 U.S.C.A. § 1626(g).

definition of “employer,” Chenega cannot be sued under Title VII.”); *Malabed v. North Slope Borough*, 42 F. Supp. 2d 927, 934 (D. Alaska 1999), *aff’d* 335 F.3d 864 (9th Cir. 2003) (“Native corporations and their subsidiaries are exempted from Title VII”).⁵

As Akima and AGS are wholly equity owned by an Alaska Native Corporation they are affiliates expressly excluded from the definition of an employer under Title VII. Accordingly, Plaintiff’s claims against AGS pursuant to Title VII are not viable, and thus, must be dismissed.

CONCLUSION

For the foregoing reasons, AGS respectfully requests that this Court dismiss Plaintiff’s claims against it with prejudice.

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⁵ See also *Thomas v. Choctaw Management/Service Enterprise*, 313 F.3d 910, 911 (5th Cir. 2002) (affirming District Court's granting of Defendant's Motion to Dismiss because, inter alia, Indian Tribes are exempt from the definition of employer under Title VII).

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June 2023, I filed the foregoing pleading using the Court's CM/ECF system, which sent notice to all parties of record, including:

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