

**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**

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**DEFENDANT AKIMA GLOBAL SERVICES, LLC'S  
REPLY IN SUPPORT OF MOTION TO DISMISS**

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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 Reply in Support of its Motion to Dismiss. For the reasons set forth in the Motion and below, AGS’s motion should be granted 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, or “ANC.” 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), 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”).

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 exempts Alaska Native Corporations, as well as their subsidiaries and affiliates, from the definition of employer within the Title VII context, and thus, from its coverage. On these grounds, AGS filed its motion to dismiss under Fed. R. Civ. P. 12(b)(6). Plaintiff has now filed a Response.

### **LEGAL ARGUMENT**

#### **A. Plaintiff Misconstrues the basis for AGS’s motion to dismiss.**

Plaintiff inexplicably states in her Response brief that AGS seeks to dismiss this lawsuit based on AGS’s sovereign immunity, and further argues that AGS waived its sovereign immunity through a collective bargaining agreement and because it has a non-discrimination policy. But Plaintiff misses the point. AGS’s motion does not raise sovereign immunity as grounds for dismissal, much less even mention the words sovereign or immunity anywhere in the motion. Rather, as AGS clearly states in its brief, the claims against AGS should be dismissed because the

statute does not apply—that is, AGS is exempt from the statutory definition of “employer” under Title VII, the statute that forms the basis for this lawsuit. Plaintiff’s argument regarding sovereign immunity and any purported waiver by virtue of having entered into a collective bargaining agreement is not only incorrect, but wholly irrelevant to the basis for this motion.<sup>1</sup>

**B. AGS is Exempt from Title VII.**

As shown in its motion, Akima is an Alaska limited liability company in which NANA 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. Plaintiff does not dispute, and in fact, acknowledges these facts.

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), exempting such entities from the definition of employer under 42 USC 2000e). Plaintiff does not dispute this, either; rather, she argues that because AGS entered into a collective bargaining agreement and because it has a non-discrimination policy, that somehow equates to a waiver of sovereign immunity, and subjects AGS to a discrimination suit.

There is no merit to this convoluted and misguided theory. Rather, regardless of whether AGS is a party to a collective bargaining agreement or any other contract, and regardless of whether AGS’s own policy and practice is to not discriminate, the fact remains that suit under Title VII is improper against AGS because 43 U.S.C. § 1626(g) expressly exempts it from the statute’s coverage. Thus, *there is no cognizable claim under Title VII against AGS*, completely

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<sup>1</sup> It is further unclear why AGS’s entry into a collective bargaining agreement with a union would waive anything as to a separate, private lawsuit by a former employee. Regardless, this entire argument is misguided and inapplicable.

irrespective of any purported immunity waiver. 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 and at her cost.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of July 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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