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Alaska Native Tribal Health Consortium

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

SOUTHCENTRAL FOUNDATION,

Plaintiff and Counterclaim-Defendant,

v.

ALASKA NATIVE TRIBAL HEALTH  
CONSORTIUM,

Defendant and Counterclaimant.

Case No.: 3:17-cv-00018-TMB

ALASKA NATIVE TRIBAL HEALTH  
CONSORTIUM'S MOTION TO  
DISMISS PURSUANT TO FED. R. CIV.  
P. 12(B)(1) (SOVEREIGN IMMUNITY)

## I. INTRODUCTION

Defendant Alaska Native Tribal Health Consortium (“ANTHC”) moves to dismiss this action under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction.

ANTHC is a consortium of federally recognized Indian tribes and tribal organizations. Under federal law, ANTHC is defined to be a tribe with “the rights and responsibilities” of any tribe – including the right to sovereign immunity from unconsented suit.<sup>1</sup> Tribal sovereign immunity protects ANTHC not only against judgment, but provides immunity from suit.<sup>2</sup> Tribal sovereign immunity implicates the Court’s subject matter jurisdiction to hear an action and may properly be raised in a Civil Rule 12(b)(1) motion to dismiss.<sup>3</sup>

At bottom, Plaintiff (“SCF”) disagrees with certain governance decisions made and authorized by ANTHC’s Board of Directors (the “Board”). Rather than persuading a majority of the Board that ANTHC should be governed in a particular way – for example, by changing the responsibilities of the Executive Committee or revising the Bylaws – SCF asks this Court to interfere with ANTHC’s self-governance and dictate how ANTHC must conduct its affairs. This strikes at the heart of tribes’ rights to sovereign autonomy and the very purpose of sovereign immunity. “[R]esolution in a foreign forum of intratribal disputes of a more ‘public’ character . . . cannot help but unsettle a tribal government’s ability to maintain authority.”<sup>4</sup> It is difficult to

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<sup>1</sup> See 25 U.S.C. § 5381(b) (defining tribal organizations and inter-tribal consortia like ANTHC to be “Indian tribes”).

<sup>2</sup> See, e.g., *Cogo v. Cent. Council of Tlingit & Haida Indians of Alaska*, 465 F. Supp. 1286, 1288 (D. Alaska 1979).

<sup>3</sup> See *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998).

<sup>4</sup> *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 60 (1978); see *id.* at 59 (“[P]roviding a federal forum for issues arising under [a federal statute] constitutes an interference with tribal autonomy and self-government . . . .”); *R.J. Williams Co. v. Fort Belknap Hous. Auth.*, 719 F.2d 979, 983 (9th Cir. 1983) (“[I]f the dispute itself calls into question the validity or propriety of an act fairly  
(continued . . . )

envision a more concrete, direct, and impermissible intrusion on tribal self-government than SCF's request that the Court set aside the Board's decisions about how ANTHC should operate. The Complaint should be dismissed for lack of subject matter jurisdiction due to ANTHC's sovereign immunity from this type of lawsuit.

## II. FACTUAL BACKGROUND

### A. ANTHC

ANTHC is a tribally controlled, nonprofit tribal organization that provides health and other services to Alaska Native and American Indian beneficiaries under federal law.<sup>5</sup> Pursuant to federal law, Alaska's 229 federally recognized tribes and their respective regional health organizations created ANTHC to provide a mechanism for the administration and delivery of a wide range of statewide federal health programs that benefit individual Native Americans and support regional, subregional, and local tribal health programs.<sup>6</sup> ANTHC is authorized to "provide all statewide health services provided by the Indian Health Service of the Department of Health and Human Services through the Alaska Native Medical Center and the Alaska Area

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(. . . continued)

attributable to the tribe as a governmental body, tribal self-government is drawn directly into the controversy.").

<sup>5</sup> See, e.g., 25 U.S.C. § 5301, *et seq.*; see also generally Declaration of Andy Teuber in Support of ANTHC's Motion to Dismiss (Sovereign Immunity) at ¶¶ 3-8 ("Teuber Decl."), filed contemporaneously herewith. In ruling on a Rule 12(b)(1) motion to dismiss for lack of jurisdiction, the Court may go beyond "the four corners of the complaint" in aid of determining its own jurisdiction. See, e.g., *Wood v. City of San Diego*, 678 F.3d 1075, 1083 n.8 (9th Cir. 2012) ("To resolve a [Rule 12(b)(1) factual attack on jurisdiction], the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." (internal quotation marks and citation omitted)).

<sup>6</sup> See generally Department of the Interior and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-83, § 325(a), 111 Stat. 1543, 1597-99 (1997) (hereinafter "Section 325") (describing authorization of Alaska Native regional health entities to form ANTHC to provide these health services).

Office.”<sup>7</sup> ANTHC works together with Tribal health organizations of the Alaska Tribal Health System to provide comprehensive medical services at Alaska Native Medical Center (“ANMC”), including inpatient hospital care, specialty care, and a wide range of public health and related services to Alaska Natives.<sup>8</sup> For example, ANTHC also builds water and sanitation facilities for Alaska Natives and others living in remote locations.<sup>9</sup> ANTHC also provides technical assistance and logistical support to other tribes and tribal organizations in the Alaska Tribal Health System.<sup>10</sup>

Through Public Law No. 105-83, Section 325 (“Section 325”), Congress authorized ANTHC to enter into contracts, compacts, or funding agreements with the federal government to provide these services.<sup>11</sup> Statewide health services of ANMC and the Alaska Area Office of the Indian Health Service may only be provided by ANTHC, consistent with this federal law.<sup>12</sup> In providing those services, ANTHC’s purpose is “to secure Alaska Native people, Tribes and tribal organizations an organized voice and participation in decisions, developments and implementation of Alaska Native management of the Alaska Native Medical Center and the

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<sup>7</sup> Section 325(a); *see also* Section 325(c) (“All statewide health services provided by the Consortium under this section shall be provided pursuant to contracts or funding agreements entered into by the Consortium under Public Law 93-638 (25 U.S.C. 450 et seq.), as amended . . .”).

<sup>8</sup> *See* Teuber Decl. ¶¶ 3, 5. SCF co-manages certain of these activities, with ANTHC generally focusing on inpatient hospital, outpatient surgery, specialty, ancillary, emergency, and administrative services, while SCF generally focuses on primary care services.

<sup>9</sup> *See id.* ¶ 5.

<sup>10</sup> *See id.*

<sup>11</sup> *See id.*

<sup>12</sup> *See* Section 325(c).

Alaska Area Office of the Indian Health Service and to carry out the purposes of Section 325 of Public Law 105-83.”<sup>13</sup>

ANTHC implements the “Alaska Native management” of these services through its 15-member Board that manages ANTHC’s business and affairs. The Board is composed entirely of representatives of federally recognized tribes and tribal organizations.<sup>14</sup> The legislative history confirms that Section 325’s creation of ANTHC was intended to resolve the challenge of enabling over 200 tribes and tribal organizations to collectively manage and maximize their own high-quality health care without allowing it to be stalled by a small minority. Thus, Section 325 “address[es] the issue of governance of the new Alaska Native Medical Center to ensure efficient, experienced Alaska Native management and control” and “to lay out a framework for Alaska Native governance of the Alaska Native Medical Center and for the Alaska area office.”<sup>15</sup> Section 325 then required the Board to establish its own rules of procedure and stated that Board decisions shall be by majority vote in the event that no consensus can be reached.<sup>16</sup> Within this general “framework,” the remaining details of how ANTHC opted to govern itself were left to the Board.

#### **B. Federal Law and Policy on Tribal Self-Governance**

Congress authorized ANTHC to provide this broad range of healthcare programs and services that benefit Native Americans, with federal funding, as part of a decades-long effort to

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<sup>13</sup> Teuber Decl., Ex. A at 1 (Amended and Restated Bylaws of the Alaska Native Tribal Health Consortium (as of April 6, 2017) (“Bylaws”)).

<sup>14</sup> *See id.* at Article III(A), (D), (F).

<sup>15</sup> S. Rep. No. 105-56, at 109, 110 (July 22, 1997), 1997 WL 414606.

<sup>16</sup> Section 325(b). Section 325 goes on to say that ANTHC shall be governed by a 15-member Board of certain representatives, each of whom shall be entitled to cast one vote. *See id.* No additional detail is provided.

allow Native Americans to administer their own programs to the fullest extent possible. In 1975, Congress passed the Indian Self-Determination and Education Assistance Act (“ISDEAA”) to promote “the establishment of a meaningful Indian self-determination policy which will permit the orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.”<sup>17</sup> When Congress expanded ISDEAA in 2000, it confirmed its express policy “to permit an orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority, control, funding, and discretion to plan, conduct, redesign, and administer programs, services, functions, and activities (or portions thereof) that meet the needs of the individual tribal communities.”<sup>18</sup>

ISDEAA contemplates agreements between tribes and the federal government that allow the tribes to administer federal programs that benefit Native Americans.<sup>19</sup> Under an ISDEAA agreement, the federal government supplies funding and other resources to a tribal organization, allowing the tribal organization to plan, conduct, redesign, and administer certain federal programs, services, functions, and activities that the federal government otherwise would have provided directly.<sup>20</sup> The ISDEAA defines “tribal organizations” and “inter-tribal consortia” to be “tribes” with the same rights and responsibilities as tribes.<sup>21</sup> Under Section 325, Congress has authorized agreements between ANTHC, as a tribal organization and inter-tribal consortium, and

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<sup>17</sup> 25 U.S.C. § 5302(b).

<sup>18</sup> Tribal Self-Governance Amendments of 2000, Pub. L. No. 106-260, § 3(2)(F), 114 Stat. 711, 712 (2000).

<sup>19</sup> See Indian Self-Determination Act, Pub. L. No. 93-638, tit. I, §§ 101-102, 88 Stat. 2203, 2206 (1975).

<sup>20</sup> 25 U.S.C. §§ 5385-5388.

<sup>21</sup> See *supra* note 1.

the federal government for funding and delivery of statewide health services for Native Americans in Alaska.

### C. SCF's Challenges to ANTHC's Self-Governance

On January 20, 2017, SCF filed this lawsuit against ANTHC because it disagrees with how ANTHC is governed. SCF repeatedly confirms in its Complaint that its lawsuit seeks to address “corporate governance issues.”<sup>22</sup> For example, SCF acknowledges that the Board adopted Bylaw amendments creating the Executive Committee and delegating certain authority to it, but asserts that this delegation went too far and that the creation of the Executive Committee was improper.<sup>23</sup> SCF contends that the Board adopted the Bylaw amendments in December 2014 with less discussion than SCF wished.<sup>24</sup> SCF also asserts that “certain” unidentified Bylaws as well as the Board’s Code of Conduct and Disclosure Policy – all of which were adopted by the Board – should be required to be amended or rescinded.<sup>25</sup>

SCF concedes that the ANTHC Board members it selected have received much of the sensitive information they requested, but complains that these Board members should be allowed to receive that information in a different format and to share that information more broadly, including with entities like SCF *that directly compete with ANTHC*.<sup>26</sup>

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<sup>22</sup> See Dkt. 2 at 14, ¶ 43 (noting that the dispute “exists between SCF and ANTHC with respect to the governance of ANTHC”); *id.* at 11, ¶ 32 (describing “efforts to correct these governance issues”); *id.* at 11, ¶ 33 (describing efforts to obtain legal opinions “regarding the corporate governance issues” raised by two Board members); *id.* at 15, ¶¶ 46-47 (contending that the “governance requirements in Section 325” dictate certain action by ANTHC).

<sup>23</sup> See *id.* at 7-9, ¶¶ 21-24, 28.

<sup>24</sup> See *id.* at 9, ¶ 28.

<sup>25</sup> See *id.* at 17-19 (Prayers for Relief 4-6).

<sup>26</sup> See *id.* at 9-10, ¶¶ 28-32. ANTHC had offered additional information if these Board Directors signed a confidentiality agreement confirming they would maintain the confidence of that information, but they refused. See *id.* at 11, ¶ 33. The nature of the competition between SCF

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Notably, many of the challenges that SCF has raised to ANTHC's governance have been mooted by the Board's amendments to ANTHC's governing documents. For example, the ANTHC directors selected by SCF asserted that they were not receiving notice of Executive Committee meetings, despite the fact that they were not on the Executive Committee and the 2014 ANTHC Bylaws did not require notice to them. With the September 2016 amendments to ANTHC's Bylaws, notice of Executive Committee meetings must now be provided to all ANTHC Directors.<sup>27</sup> More recently, the Board amended Article VIII(A) of the Bylaws so that "all actions of the Committee must be ratified and approved by a vote of the Board of Directors at its next regular meeting, a special meeting called for the purpose of reviewing the Executive Committee action, or as provided under Article IX in order to be effective." SCF's claims on these points, to the extent they were ever valid, are moot. The Board voluntarily addressed these issues after they were brought to its attention without any judicial compulsion.

### **III. ARGUMENT**

#### **A. ANTHC Is Entitled to Sovereign Immunity**

It is well settled that "[a]s 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."<sup>28</sup> As a tribal organization established by federally recognized tribes and operating under an ISDEAA

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and ANTHC, and between SCF and other regional health entities represented on ANTHC's Board, is addressed in detail in ANTHC's accompanying motion for summary judgment.

<sup>27</sup> The Bylaws previously allowed the Executive Committee to establish its own rules regarding notice in light of the nature of its functions. In September 2016, the Board modified this provision so that all Directors receive notice of committee meetings. *See* Bylaws, Article VIII(A), (C).

<sup>28</sup> *Kiowa Tribe of Okla.*, 523 U.S. at 754 (collecting cases).



agreement, ANTHC is a statutorily defined Indian tribe.<sup>29</sup> Because ANTHC is a tribal organization providing services under a Title V self-governance compact and funding agreement on behalf of tribes, it is entitled to the same rights and responsibilities as the tribes themselves:

In any case in which an Indian tribe has authorized another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out programs, services, functions, or activities (or portions thereof) on its behalf under this subchapter,<sup>[30]</sup> the authorized Indian tribe, *inter-tribal consortium, or tribal organization shall have the rights and responsibilities of the authorizing Indian tribe* (except as otherwise provided in the authorizing resolution or in this subchapter). In such event, the term “Indian tribe” as used in this subchapter shall include such other authorized Indian tribe, inter-tribal consortium, or tribal organization.<sup>[31]</sup>

These rights include sovereign immunity from unconsented suit.<sup>32</sup> “The immunity extends to suits for declaratory and injunctive relief.”<sup>33</sup> ANTHC is therefore entitled to sovereign immunity under Title V of ISDEAA from this suit seeking declaratory relief.

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<sup>29</sup> 25 U.S.C. § 5381(b) (defining a tribal organization operating under an ISDEAA contract to be an “Indian tribe”). SCF concedes that ANTHC is an inter-tribal consortium and a tribal organization under the ISDEAA. *See* Dkt. 2 ¶ 2 (incorrectly citing the definition from 25 U.S.C. § 450b(l), which is now located at 25 U.S.C. § 5304(l)); *id.* ¶ 3 (“Defendant ANTHC is an inter-tribal consortium[.]”). The Alaska Supreme Court recognizes that ANTHC is a “tribal organization.” *See Alaska Native Tribal Health Consortium v. E.R.*, 84 P.3d 418, 426 (Alaska 2004).

<sup>30</sup> This authorization was provided under Section 325(a) and the regional health entities’ subsequent formation of ANTHC.

<sup>31</sup> 25 U.S.C. § 5381(b) (emphasis added).

<sup>32</sup> *See Pink v. Modoc Indian Health Project, Inc.*, 157 F.3d 1185 (9th Cir. 1998); *J.L. Ward Assocs., Inc. v. Great Plains Tribal Chairman’s Health Bd.*, 842 F. Supp. 2d 1163, 1171-77 (D.S.D. 2012); 25 U.S.C. § 5332(1) (nothing in ISDEAA should be construed as “affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe”).

<sup>33</sup> *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269, 1271 (9th Cir. 1991) (noting that it is “absolutely clear” that an Indian tribe possesses common-law immunity that extends to suits for declaratory relief, and that this immunity is not defeated by an allegation that the Indian tribe acted beyond its powers); *Ingrassia v. Chicken Ranch Bingo & Casino*, 676 F. Supp. 2d 953, 957 (E.D. Cal. 2009); *Boricchio v. Casino*, No. 1:14-CV-818 AWI SME et al., (continued . . .)

The Ninth Circuit decision *Pink v. Modoc Indian Health Project, Inc.* is directly analogous and illustrates that ANTHC is entitled to assert tribal sovereign immunity. In *Pink*, the Ninth Circuit held that a non-profit corporation was entitled to sovereign immunity when it was organized by tribal governments to deliver health care services under an ISDEAA agreement with the Indian Health Service.<sup>34</sup> The entity's Board of Directors consisted of members of the participating tribal governments.<sup>35</sup> This holding is consistent with holdings by other courts that similar tribal organizations were "tribes" entitled to sovereign immunity.<sup>36</sup> Like the tribal organization in *Pink*, ANTHC is a non-profit corporation serving more than one tribe, formed for the purpose of providing health care services under an ISDEAA agreement with the Indian Health Service.<sup>37</sup> Aside from certain exceptions, ANTHC serves only Alaska Native and American Indian beneficiaries.<sup>38</sup> ANTHC's entire Board of Directors is composed of Alaska Natives, representing each organized regional health entity as well as tribes that have chosen to provide their own health services.<sup>39</sup> Under *Pink*, ANTHC is entitled to sovereign immunity.

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2015 WL 3648698, at \*3 (E.D. Cal. June 10, 2015); *Salton Sea Venture, Inc. v. Ramsey*, No. 11cv1968-IEG (WMC), 2011 WL 4945072, at \*5 (S.D. Cal. Oct. 18, 2011); *Maxwell v. Cty. of San Diego*, No. 07cv2385 JAH(WMc), 2008 WL 11333627, at \*3 (S.D. Cal. June 3, 2008); *Wisconsin v. Ho-Chunk Nation*, 512 F.3d 921, 928 (7th Cir. 2008).

<sup>34</sup> See 157 F.3d at 1188-89.

<sup>35</sup> See *id.*

<sup>36</sup> See, e.g., *Hagen v. Sisseton-Wahpeton Cmty. Coll.*, 205 F.3d 1040, 1043 (8th Cir. 2000) (community college chartered, funded, and controlled by tribe is a tribal agency entitled to sovereign immunity); *Dillon v. Yankton Sioux Tribe Hous. Auth.*, 144 F.3d 581, 583-84 (8th Cir. 1998) (housing authority established by a tribal council is a tribal agency entitled to sovereign immunity); *Taylor v. Ala. Intertribal Council Title IV J.T.P.A.*, 261 F.3d 1032, 1036 (11th Cir. 2001) (intertribal consortium with a board of directors dominated by tribal members was entitled to sovereign immunity).

<sup>37</sup> See Teuber Decl. ¶¶ 3-6; Section 325(a)-(c).

<sup>38</sup> See Teuber Decl. ¶ 7.

<sup>39</sup> See *id.* ¶ 8; Bylaws at Article III(A).

Application of sovereign immunity here is especially appropriate because SCF's lawsuit fundamentally challenges how ANTHC governs itself. SCF asks the Court to intrude upon matters of tribal self-governance at ANTHC to effect changes that are contrary to the will of the Board. SCF demands that the Court declare that: the Board's delegation of certain authority was invalid; SCF and other entities must be provided with confidential and privileged information, contrary to Board-approved policies; certain directors are compelled to share with SCF all information obtained from ANTHC, contrary to Board-approved policies; some unidentified Bylaws must be amended in some unspecified way; and ANTHC'S Board-approved Code of Conduct and Disclosure policy must be amended or rescinded.<sup>40</sup> Congress expressly sought to transition away from "Federal domination of programs" by giving Indian tribes, including an intertribal consortium like ANTHC, "meaningful authority" and "control" to administer those programs.<sup>41</sup> Congress likewise confirmed that Section 325 was intended to ensure "Alaska Native management and control" of ANMC and related health services, but left ANTHC's Board with discretion as to how best to effectuate that control.<sup>42</sup> SCF's lawsuit seeks to re-assert Federal domination by demanding that the Court decide how ANTHC should govern itself, what information should be disclosed to non-Board members, and what Board-approved policies are satisfactory. This is necessarily an invasive, disruptive, and dangerous exercise. The act of adjudicating intratribal governance disputes necessarily subjects the tribes and the intertribal consortium to Federal domination, contrary to Congress's direction that tribes and tribal organizations be permitted to self-govern. Recognizing and applying sovereign immunity here,

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<sup>40</sup> Dkt. 2 at 17-18 (Prayer for Relief 1).

<sup>41</sup> *Supra* note 18 and accompanying text.

<sup>42</sup> *Supra* note 15 and accompanying text.

on the other hand, allows the tribes to debate and determine the best path forward for themselves. “The common law sovereign immunity possessed by [an Indian tribe] is a necessary corollary to Indian sovereignty and self-governance.”<sup>43</sup> This immunity is one of “the core aspects of sovereignty that tribes possess.”<sup>44</sup> ANTHC, through its Board, should be permitted to decide its own fundamental governance issues, including whether or not confidential and privileged information may be shared with others, and how much authority should be delegated to committees.

If the Court accepts SCF’s invitation to interfere with ANTHC’s self-governance, it is unclear where and when that interference will end. SCF may next object that the executive team has been delegated too much authority (or that no executive team was specified in Section 325 at all), and therefore all authority for running ANTHC must run directly and exclusively through the Board. SCF’s primary contention, simply stated, is that Section 325 contemplates governance by the Board and therefore the Board should be prohibited from delegating certain responsibilities to a committee that is a subset of that entity. Congress placed no such limitations on the Board, however. Given Congress’s clear direction that it was empowering Alaska Native management to govern ANTHC, it is difficult to infer such a stark limitation on the Board’s self-governance authority. “Although Congress has plenary authority over tribes, courts will not lightly assume that Congress in fact intends to undermine Indian self-government.”<sup>45</sup> That, however, is precisely the type of light assumption that SCF’s case hinges upon. The Court should reject SCF’s efforts to undermine tribal self-government.

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<sup>43</sup> *Three Affiliated Tribes of Fort Berthold Reservation v. World Eng’g*, 476 U.S. 877, 890 (1986).

<sup>44</sup> *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2030 (2014).

<sup>45</sup> *Id.* at 2032.

Sovereign immunity bars suit against a tribe, except where it has been waived. Tribal sovereign immunity can only be waived by a direct act of Congress or by a deliberate, clear, and unequivocal waiver by the tribe.<sup>46</sup> Waiver of tribal sovereign immunity or Congressional abrogation must be unequivocally expressed, and cannot be implied.<sup>47</sup> Here, there has been neither a “clear and unequivocal waiver” of tribal sovereign immunity nor any Congressional abrogation of ANTHC’s sovereign immunity. ANTHC has not waived its sovereign immunity with respect to SCF’s claims. There is no waiver of any kind referenced in the Complaint, the Bylaws, or anywhere else. SCF does not allege otherwise.<sup>48</sup> Nor could it so allege; ANTHC has not waived its immunity with respect to these claims and Congress has not abrogated its immunity. Rather, ISDEAA explicitly preserves tribal sovereign immunity.<sup>49</sup> Tribal sovereign immunity is jurisdictional, its recognition is not discretionary, and it bars suit against a tribe irrespective of the court’s viewpoint on the merits of the substantive allegations of the claim.<sup>50</sup> Accordingly, as ANTHC is an Indian tribe under controlling federal law and therefore enjoys the same sovereign immunity as those tribes, this action against ANTHC must be dismissed for lack of subject matter jurisdiction under Civil Rule 12(b)(1).

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<sup>46</sup> *Id.* at 2030-31.

<sup>47</sup> *Santa Clara Pueblo*, 436 U.S. at 59; *Demontiney v. United States*, 255 F.3d 801, 811 (9th Cir. 2001) (“There is a strong presumption against waiver of tribal sovereign immunity.”).

<sup>48</sup> See Dkt. 2 (no allegation that ANTHC waived sovereign immunity).

<sup>49</sup> See 25 U.S.C. § 5332(1) (“Nothing in this subchapter shall be construed as . . . affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe[.]”); 25 U.S.C. § 5396(a) (clarifying that § 5332(1) applies to “compacts and funding agreements authorized by this subchapter”).

<sup>50</sup> *Puyallup Tribe, Inc. v. Dep’t of Game of State of Wash.*, 433 U.S. 165, 172-73 (1977).

#### IV. CONCLUSION

For the foregoing reasons, ANTHC respectfully asks the Court to dismiss this action with prejudice and to award ANTHC its reasonable attorneys' fees and costs.

DATED: August 16, 2017

STOEL RIVES LLP

By: /s/ James E. Torgerson  
JAMES E. TORGERSON  
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Attorneys for Defendant and Counterclaimant  
Alaska Native Tribal Health Consortium

#### CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2017, I filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States District Court – District of Alaska by using the CM/ECF system. Participants in this Case No. 3:17-cv-00018-TMB who are registered CM/ECF users, and who are listed below, will be served by the CM/ECF system.

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