

1 is entitled to tribal sovereign immunity against Mr. Cadet’s suit.¹ (*See* MTD at 5-7; MTD
2 Reply at 1-3.) In support of that argument, Snoqualmie avers that it is entitled to tribal
3 sovereign immunity because it is “a commercial enterprise of the Snoqualmie Tribe.”
4 (*See id.* at 5-7.)

5 The court recognizes that tribal sovereign immunity can extend to tribal
6 commercial enterprises, including tribal casinos. *See Kiowa Tribe of Oklahoma v. Mfg.*
7 *Techs., Inc.*, 523 U.S. 751, 759-60 (1998) (holding that tribal sovereign immunity applies
8 to a tribe’s governmental and commercial activity); *Cook v. AVI Casino Enters., Inc.*, 548
9 F.3d 718, 726-27 (9th Cir. 2008) (holding that tribal casino was entitled to tribal
10 sovereign immunity because “the settled law of our circuit is that tribal corporations
11 acting as an arm of the tribe enjoy the same sovereign immunity granted to a tribe
12 itself”); *Allen v. Gold Country Casino*, 464 F.3d 1044, 1047 (9th Cir. 2006) (“In light of
13 the purposes for which the Tribe founded this Casino and the Tribe’s ownership and
14 control of its operations, there can be little doubt that the Casino functions as an arm of
15 the Tribe. It accordingly enjoys the Tribe’s immunity from suit.”). As cases like *Cook*
16 and *Allen* recognize, however, the question of whether a commercial entity functions as
17 “an arm of the Tribe,” such that extension of a tribe’s immunity to the commercial entity
18 is appropriate, is highly fact-specific. *See Cook*, 548 F.3d at 726 (concluding that “[t]he
19 record supports the district court’s conclusion that ACE and Avi Casino function as an

21 ¹ Snoqualmie also moves to dismiss for lack of subject matter jurisdiction based on Ms.
22 Cadet’s failure to articulate a basis for subject matter jurisdiction in her complaint. (*See* MTD at
4-5.) As discussed below, the court declines to address this argument at this time.

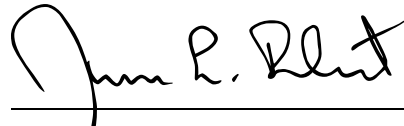
1 arm of the Fort Mojave Tribe” because evidence showed that the casino was created by a
2 tribal ordinance and intergovernmental agreement; the casino was wholly owned and
3 managed by the tribe; the economic benefits of the casino inure to the tribe’s benefit; the
4 tribe was the sole shareholder of the casino and performs all shareholder functions; and a
5 majority of the board members of the casino must be tribe members); *Allen*, 464 F.3d at
6 1046-47 (expressing “little doubt that [a] Casino function[ed] as an arm of the Tribe”
7 because the record showed that the tribe owned and operated the casino; the casino had
8 been authorized by tribal ordinance and an interstate gaming compact; the casino served
9 to promote the tribe’s self-sufficiency, economic development, and employment
10 opportunities; and the economic advantages of the casino inured to the benefit of the
11 tribe). Here, Snoqualmie presents no evidence in support of its contention that it is “a
12 commercial enterprise of the Snoqualmie Tribe.” (*See* MTD at 5-7.) Accordingly, on the
13 current record, the court cannot determine whether Snoqualmie is entitled to tribal
14 sovereign immunity.

15 Although Snoqualmie’s failure to submit any evidence in support of its motion
16 would typically provide grounds for the court to deny the motion, “[t]ribal sovereign
17 immunity is a quasi-jurisdictional issue that, if invoked at the Rule 12(b)(1) stage, must
18 be addressed and decided.” *Pistor v. Garcia*, 791 F.3d 1104, 1115 (9th Cir. 2015).
19 Thus, the court ORDERS Snoqualmie to show cause why it is entitled to tribal sovereign
20 immunity. Snoqualmie shall file its response to this order to show cause no later than 14
21 days after the filing date of this order. Ms. Cadet may, but is not required to, file a
22 response to the court’s order to show cause within the same timeframe. The court further

1 directs the parties to limit their responses to no more than 10 pages, excluding
2 declarations, affidavits, or other evidentiary materials that the parties may wish to file.
3 Upon receiving the parties' responses, if any, the court will address Snoqualmie's tribal
4 immunity argument and its argument that Ms. Cadet's complaint failed to establish that
5 the court has subject matter jurisdiction over her claims.² (*See* MTD at 4-7.)

6 Because the court cannot consider Snoqualmie's motion until resolves
7 Snoqualmie's jurisdictional arguments, the court STRIKES Snoqualmie's motion to
8 dismiss (Dkt. # 9) without prejudice to refile the motion in the event the court
9 concludes that it has subject matter jurisdiction and Snoqualmie is not entitled to tribal
10 sovereign immunity. The court DIRECTS the Clerk to remove Snoqualmie's motion to
11 dismiss (Dkt. # 9) from the docket.

12 Dated this 1st day of May, 2020.

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15 JAMES L. ROBART
16 United States District Judge

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20 ² Like Snoqualmie's tribal immunity argument, Snoqualmie's alternative argument that
21 the court lacks subject matter jurisdiction over Ms. Cadet's complaint must be resolved before
22 reaching other threshold issues or the merits of Ms. Cadet's claims. *See Arbaugh v. Y&H Corp.*,
546 U.S. 500, 501 (2006) (“[C]ourts . . . have an independent obligation to determine whether
subject-matter jurisdiction exists[.]”); *Bibiano v. Lynch*, 834 F.3d 966, 970 n.4 (9th Cir. 2016)
 (“Courts should generally decide, as a threshold matter, whether they have subject matter
jurisdiction before moving on to other, non-merits threshold issues.”).