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10 Attorneys for Navajo Health Foundation–Sage Memorial Hospital, Inc.

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
12 **IN AND FOR THE COUNTY OF APACHE**

13 **CHRISTI EL-MELIGI, et al.,** )  
14 Plaintiffs )  
15 vs. )  
16 **NAVAJO HEALTH FOUNDATION–** )  
17 **SAGE MEMORIAL HOSPITAL, INC.,** )  
an Arizona Corporation, et al., )  
18 Defendants. )

Case No. SO100CV202100183

**SPECIALY APPEARING DEFENDANT**  
**NAVAJO HEALTH FOUNDATION–**  
**SAGE MEMORIAL HOSPITAL, INC.’S**  
**MOTION TO DISMISS AND**  
**MEMORANDUM OF POINTS AND**  
**AUTHORITIES IN SUPPORT**

19 Specially appearing before this Court for the sole and limited purpose of contesting  
20 jurisdiction, and without waiving its sovereign immunity from suit, Defendant Navajo Health  
21 Foundation–Sage Memorial Hospital, Inc. (“Sage Memorial”) hereby moves to dismiss the FIRST  
22

1 AMENDED COMPLAINT (“Complaint”) under Arizona Rule of Civil Procedure (“Rule”)  
2 12(b)(1) for lack of subject matter jurisdiction.

3 **I. BACKGROUND**

4 Defendant Sage Memorial is tribal healthcare entity, organized as an Arizona non-profit  
5 501(c)(3) corporation, that runs a Critical Access Hospital and outpatient clinic in Ganado, Navajo  
6 Nation, Arizona, and an outpatient clinic in Greasewood Springs, Navajo Nation, Arizona. Sage  
7 Memorial incorporated in 1978 to help meet the healthcare needs of Navajo communities in  
8 northeastern Arizona. *See* Decl. of Dolores Noble at ¶ 4.<sup>1</sup> Sage Memorial was organized  
9 “exclusively for charitable, scientific, educational, old age homes, and charitable hospitals” and it  
10 maintains a principal place of business on the Navajo Nation in Ganado, Arizona. Decl. Ex. A at  
11 14. Sage Memorial is certified as a wholly Navajo/Indian owned business and is authorized under  
12 the Navajo Nation Corporation Code to transact business on the Navajo Nation. Decl. Ex. B at  
13 42–43.

15 The Navajo Nation is governed by Legislative, Executive, and Judicial Branches, and its  
16 110 subordinate local “chapters,” each a unit of local government. 26 N.N.C. § 2(6); 2 N.N.C. §  
17 1. Sage Memorial’s eight (8) Chapter members—Cornfields, Ganado, Greasewood Springs,  
18 Kinlichee, Klagetoh, Steamboat, Wide Ruins, and Nazlini Chapters—collectively govern Sage  
19

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20 <sup>1</sup> Defendant respectfully requests this Court to judicially notice Defendant’s publicly filed Articles  
21 of Incorporation and Bylaws (attached as Exhibit A to the Noble Declaration); Docket Entry 25  
22 and its accompanying exhibits in *E.E.O.C. v. Navajo Health Found.-Sage Mem’l Hosp., Inc.*, No.  
23 CV 06-2125-PCT-DGC, 2007 WL 2683825 (D. Ariz. Sept. 7, 2007) which further contain  
founding documents of Sage Memorial (attached as Exhibit B) and Sage Memorial’s government  
contracts (attached as Exhibit C) under Ariz. R. Evid. 201.

1 Memorial by individually recommending candidates for the Board of Directors. *See* Bylaws at  
2 Art. III, Decl. Ex. A at 19. Directors must also be members of the Navajo Nation. *Id.* at Art II, §  
3 3.5, Decl. Ex. A at 18. Each member Chapter authorizes, by resolution, Sage Memorial to carry  
4 out certain healthcare programs on its behalf. *See* Decl. Ex. B. at 47–64. Since 1999, the Navajo  
5 Nation Council has authorized Sage Memorial to carry out a portion of its Indian Health Service  
6 (“IHS”) programs, functions, services, and activities (“PFSAs”) as a “tribal organization” under  
7 the Indian Self-Determination and Education Assistance Act (“ISDEAA”), Pub. L. 93-638 (1975),  
8 25 U.S.C. § 5301 *et seq.* *See* Decl. Ex. B at 82–88. Sage Memorial has entered into numerous  
9 successive annual contracts with the United States for the provision of healthcare services under  
10 the ISDEAA.  
11

## 12 **II. STANDARD OF REVIEW**

13 A tribal entity’s sovereign immunity from suit, when it has not been unequivocally waived  
14 by the entity or Congress, implicates a court’s subject matter jurisdiction as a matter of law. *See*,  
15 *e.g.*, *Miller v. Wright*, 705 F.3d 919 (9th Cir. 2013) (affirming dismissal for lack of jurisdiction  
16 on sovereign immunity grounds). Arizona courts have recognized the “well-settled principle that  
17 ‘tribal immunity is a matter of federal law and is not subject to diminution by the States.’” *Filer*  
18 *v. Tohono O’Odham Nation Gaming Enter.*, 212 Ariz. 167, 170 (App. 2006) (quoting *Kiowa Tribe*  
19 *of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 756 (1998)). Thus, federal law should generally control  
20 on the issue of sovereign immunity where possible.  
21

22 Subordinate economic organizations of tribes also have sovereign immunity if they meet a  
23 non-exclusive six-part test of tribal control. *Hwal’Bay Ba: J Enterprises, Inc. v. Jantzen*, 248 Ariz.

98, 104 (2020) (hereinafter, “*Hwal’Bay*”). The six factors are: (1) the entity’s creation and business form, (2) the entity’s purpose, (3) the business relationship between the tribe and the entity, (4) the tribe’s intent to share immunity with the entity, (5) the financial relationship between the entity and the tribe, and (6) whether immunizing the entity furthers federal policies underlying sovereign immunity. *Id.* at 104–106. A preponderance of the factors, taken collectively, must indicate that the subordinate economic organization is “part of the tribe” and “serves as the tribe’s vehicle for conducting its affairs, thereby entitling it to share the tribe’s immunity.” *Id.* at 106 (citing *White Mountain Apache Indian Tribe v. Shelley*, 107 Ariz. 4, 7–8 (1971)). This is a test not of “form over substance[,]” but rather an analysis of whether the conduct of the entity is so linked to that of the tribal government that its activities are properly deemed to be those of the tribe. *Hwal’Bay*, 248 Ariz. at 106 (quoting *People v. Miami Nation Enters.*, 2 Cal. 5th 222, 250 (2016)). The *Hwal’Bay* factors demonstrate that Sage Memorial is a subordinate economic organization of the Navajo Nation.

### **III. THIS COURT MAY RESOLVE THIS MATTER SIMPLY BY MAINTAINING CONSISTENCY WITH FEDERAL JURISPRUDENCE**

Arizona courts accord “great[] deference to federal court decisions that interpret federal law.” *PLM Tax Certificate Program 1991-92, LP v. Denton Invs., Inc.*, 195 Ariz. 210, 213 (App. 1999) (citing *First Nat’l Bank of Ariz. v. Carruth*, 116 Ariz. 482, 483 (App. 1977)). Arizona courts defer to federal interpretation of tribal sovereign immunity, *see Tohono O’Odham Nation*, 212 Ariz. at 170, and the *Hwal’Bay* factors “largely align with those identified by other courts” such as federal courts. *Hwal’Bay*, 248 Ariz. at 106 (citing *Breakthrough Mgmt. Grp., v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1181 (10th Cir. 2010)). The federal district court for the

1 District of Arizona, using a similar analysis, has already resolved the immunity question for Sage  
2 Memorial in favor of recognizing immunity. In *E.E.O.C. v. Navajo Health Found.-Sage Mem'l*  
3 *Hosp., Inc.*, the District Court concluded that Sage Memorial has sovereign immunity “as an arm  
4 of a sovereign Indian tribe,” 2007 WL 2683825 at \*1, and observed that:

5       Sage Hospital . . . is controlled by a federally recognized Indian tribe, the Navajo  
6 Nation. . . . Under the Navajo Nation Code, chapters are considered to be the Navajo  
7 Nation itself and therefore enjoy sovereign immunity. Sage Hospital was formed by  
8 eight Navajo chapters to serve the medical needs of their members.

9       . . .

10       Because the hospital has been formed by eight political subdivisions of the Navajo  
11 Nation, and those eight chapters select and are represented by members of the  
12 hospital’s board of directors, the Court finds that the Navajo Nation exercises  
13 sufficient control over the hospital to render it a tribal entity [entitled to immunity.]

14 *Id.* at \*2 (internal citations omitted). The District Court also concluded that Sage Memorial’s  
15 status as a “tribal organization” under the ISDEAA “supports the conclusion that the hospital  
16 serves as an arm of the Navajo Nation” and therefore is afforded immunity. *Id.* In doing so, the  
17 District Court recognized that the ISDEAA and federal laws exempting tribes from suit “attempt  
18 to aid tribal entities in their efforts to conduct their own affairs and economic activities with as  
19 much autonomy as possible.” *Id.* (citing *Pink v. Modoc Indian Health Project, Inc.*, 157 F.3d 1185,  
20 1188–89 (9th Cir. 1998)). Accordingly, Defendant urges this Court to accord deference to the  
21 federal District Court’s immunity analysis and reach the same conclusion for Sage Memorial here.

#### 22 **IV. SAGE MEMORIAL’S DERIVATIVE IMMUNITY AS A SUBORDINATE** 23 **ECONOMIC ORGANIZATION DEPRIVES THIS COURT OF JURISDICTION**

      Sage Memorial is dependent on the authorization and support of its member Navajo  
Chapter governments to operate, and it is an arm of the Navajo Nation filling a critically under-  
resourced governmental function—far different from a private, for-profit economic venture or

1 other state-incorporated non-profits that may operate in the public sector but are not fulfilling  
2 government functions. Sage Memorial simply steps into the shoes of the Navajo government for  
3 the purposes of delivering healthcare to the Ganado region. In substance and in form, Sage  
4 Memorial serves as an arm of the Navajo Nation and its Chapters.

5       1. *Sage Memorial's Creation and Business Form Suggest It Is A Subordinate Economic*  
6       *Organization*

7       Under the first *Hwal'Bay* factor, the Court “should consider who created the entity, under  
8 what authority, and the entity’s structural form . . . .” *Hwal'Bay*, 248 Ariz. at 104. Although the  
9 *Hwal'Bay* Court noted that incorporation weighs against a finding of economic subordination,  
10 248 Ariz. at 104, that court did not address the relevant distinctions between for-profit and non-  
11 profit organization. Originally founded as Navajo Nation Health Foundation, Inc., Sage Memorial  
12 is the first Native-managed private comprehensive healthcare system in the country, and has been  
13 managed since 1978 by an independent, entirely Navajo Board of Directors. Decl. at ¶¶ 4, 6.  
14 Defendant Sage Memorial has historically received and continues to rely on funding primarily  
15 through ISDEAA contracts with the IHS to provide health services to Native Americans, rather  
16 than through independent economic activity. Decl. at ¶¶ 8–9. Thus, non-profit incorporation is not  
17 an indicator of economic independence. Sage Memorial’s structure and relationship with the tribe  
18 is not unlike many other tribal health organizations across the country that are formed as consortia  
19 of member tribes to pool federal healthcare resources in rural areas. *See, e.g., Pink*, 157 F.3d at  
20 1187, 1189 (nonprofit corporation created and controlled by the Alturas and Cedarville Rancherias  
21 entitled to sovereign immunity); *Manzano v. S. Indian Health Council, Inc.*, No. 20-CV-02130-  
22 BAS-BGS, 2021 WL 2826072, at \*1 (S.D. Cal. July 7, 2021) (non-profit healthcare corporation  
23

1 formed by membership of seven tribes entitled to sovereign immunity); *Barron v. Alaska Native*  
2 *Tribal Health Consortium*, 373 F. Supp. 3d 1232, 1234, 1240 (D. Alaska 2019) (tribal health  
3 organization formed by membership of Alaska native villages entitled to sovereign immunity).  
4 Limited funding sources and other economic realities of Indian Country make these organizations  
5 necessary to efficiently deliver critical government-funded healthcare services to remote tribal  
6 communities.

7         Unlike other healthcare entities in the United States, tribal health organizations and entities  
8 carry out tribal government services under the ISDEAA regardless of state incorporation. As other  
9 courts have observed, “incorporation under state law does not change an entity’s tribal status” and  
10 is not determinative of immunity. *Manzano*, 2021 WL 2826072, at \*7 (citing *EEOC*, 2007 WL  
11 2683825, at \*3); *see also Am. Vantage Cos. v. Table Mountain Rancheria*, 292 F.3d 1091, 1099  
12 (9th Cir. 2002) (“A tribe that elects to incorporate [itself] does not automatically waive its tribal  
13 sovereign immunity by doing so.”); *Duke v. Absentee Shawnee Tribe of Okla. Hous. Auth.*, 199  
14 F.3d 1123, 1125 (10th Cir. 1999) (“[T]he mere organization of such an entity under state law does  
15 not preclude its characterization as a tribal organization as well.”); *White v. Univ. of Cal.*, No. C  
16 12-01978 RS, 2012 WL 12335354, at \*8 (N.D. Cal. Oct. 9, 2012), *aff’d*, 765 F.3d 1010 (9th Cir.  
17 2014) (rejecting “the suggestion that the [tribal entity’s] corporate status impacts its claim to  
18 immunity . . . .”); *Giedosh v. Little Wound Sch. Bd., Inc.*, 995 F. Supp. 1052, 1058–59 (D.S.D.  
19 1997) (holding that tribal school board’s incorporation as a nonprofit under South Dakota law did  
20 not affect its status as an “Indian tribe”). State incorporation is not detrimental to tribal immunity  
21  
22  
23

1 status. Therefore, Sage Memorial’s method of organization does not forfeit its sovereignty, and it  
2 remains an arm and subordinate entity of its Navajo Chapters.

3       2. *Sage Memorial’s Purpose Strongly Dictates That It Is A Subordinate Economic*  
4       *Organization*

5       For the second factor, the Court must look to “whether the entity exists solely as a profit-  
6 making venture that merely generates revenue for the tribe or its members, or whether it also  
7 assists the tribe in carrying out its governmental functions, such as promoting tribal or economic  
8 development, preserving cultural autonomy, or funding governmental services.” *Hwal’Bay*, 248  
9 Ariz. at 105. Engaging solely in commercial activity weighs against immunity, but “further[ing]  
10 goals of tribal self-governance, even if the entity also has a commercial purpose . . . weighs in  
11 favor of immunity.” *Id.* (internal citations omitted).

12       As addressed above, Sage Memorial only carries out governmental functions—tribal  
13 healthcare services—that would otherwise be provided by the Navajo Nation, or by the federal  
14 government if the Navajo Nation so chose. The purpose of the ISDEAA Contract that Sage  
15 Memorial entered pursuant to the Navajo Nation’s contracting authority is “to carry out a  
16 meaningful self-determination policy” and “to maintain and improve the health of the Navajo  
17 Tribal members consistent with and as required by the Federal Government’s historical and unique  
18 legal relationship to Indian People, including the Navajo Nation . . . .” Contract § 2, Decl. Ex. C  
19 at 2. Sage Memorial was born in an era of tribal self-determination, and by its formation  
20 empowered Navajos and Chapterhouses to take control of former church-run services to provide  
21 those services directly to their communities. Because of its non-profit status and exclusively  
22 “charitable, scientific, [and] educational” purpose, Sage Memorial can make no distributions to  
23

1 its members or generate profits. Arts. of Incorporation, Arts. IV–V, Decl. Ex. A at 14. It is not  
2 engaging in purely economic activity in the way other tribal corporations and businesses may.  
3 Further, in requiring an all-Navajo Board of Directors and hiring tribal employees under the Indian  
4 employment preference provisions of both the ISDEAA Section 7(b), 25 U.S.C. § 5307(b), and  
5 Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.*, Sage Memorial generally  
6 “contributes to . . . general tribal and economic development” by “train[ing] Tribal members” and  
7 “[e]mploy[ing] them . . . .” *Hwal’Bay*, 248 Ariz. at 107. Sage Memorial works in tandem with  
8 other governmental healthcare providers, such as the Navajo Nation Department of Health and  
9 the IHS to provide a public benefit for Navajo citizens. Thus, its fundamental purpose is  
10 governmental rather than commercial, which supports the recognition of tribal sovereign  
11 immunity.  
12

13       3. *Sage Memorial’s Business Relationship with Navajo Nation Is One of Complete*  
14       *Control, Suggesting It Is Economically Subordinate to the Navajo Nation*

15       Sage Memorial’s relationship to its member Chapters is one of complete control. Under  
16 this factor, the Court “examines the structure, management, and ownership of the entity” that  
17 “should illuminate the tribe’s ownership interest and the amount of control exercised by it over  
18 the entity’s affairs.” *Hwal’Bay*, 248 Ariz. at 105. This control “does not require directing day-to-  
19 day operations but addresses the tribe’s involvement in the direction and control of the entity.” *Id.*  
20 (citations omitted). The Court should also weigh “whether the entity represents the tribe in any  
21 capacity.” *Id.* The more the entity represents the tribe’s interests, the more likely the entity is an  
22 arm of the tribe for immunity purposes. *Id.*  
23

1 Sage Memorial's member Chapters have direct control and influence over its management.  
2 As noted in Sage Memorial's Bylaws, "[s]eats on the Board of Directors are intended to be filled  
3 by persons recommended to the Board by the Navajo Nation Chapters within the hospital's service  
4 area [its Chapters]." Art. III, Decl. Ex. A at 19. Directors serve four-year staggered terms. *Id.* Art.  
5 II, § 5, Decl. Ex. A at 18. Further, each member Chapter "provide[s] the names of up to two  
6 individuals meeting the qualifications for Directors specified in these Bylaws for the remaining  
7 Board members to consider for selection as a Director . . . [and] [a] majority vote of the remaining  
8 Directors is required to select a person for the position of Director." *Id.* Art. III, Decl. Ex. A at 19.  
9 Directors must also be enrolled Navajo members. *Id.* Art. II, § 3.5, Decl. Ex. A at 18.  
10

11 Sage Memorial also represents its Chapters and the Navajo Nation in certain respects. As  
12 noted above, both the Navajo Nation and each member Chapter authorize Sage Memorial to carry  
13 out certain portions of federal healthcare programs on their behalf by express resolution. *See* Decl.  
14 Ex. B. at 47–88; Ex. A at 28. Authorizing Sage Memorial to enter into ISDEAA contracts on  
15 behalf of the tribe relieves the Chapters and the Navajo Nation of the duty to independently  
16 negotiate federal healthcare contracts for services in the Ganado service area. That authorization,  
17 however, can be revoked by the Navajo Nation and/or the Chapters, thus providing another  
18 method of control over Sage Memorial. For example, the Navajo Nation Council's Health,  
19 Education, & Human Services Committee exercises oversight over Sage Memorial. Part of Sage  
20 Memorial's ISDEAA administrative functions also include "[o]rganizing, coordinating, and  
21 executing internal budget and financial operations and coordination with external funding sources  
22 such as the Navajo Area Indian Health Service, and the Arizona Department of Health Services,  
23

1 and the maintenance of regulatory federal, state and local regulations.” Decl. Ex. C at 33. In this  
2 sense, Sage Memorial not only relieves the Navajo Nation and individual member Chapters from  
3 having to provide independent medical services to their Chapters, but Sage Memorial acts as the  
4 vehicle for these Chapters to interact with the state and federal government for accreditation and  
5 negotiation of healthcare functions. Thus, the Navajo Nation’s control and Sage Memorial’s  
6 representation of the Chapters for the federal ISDEAA contracting purposes—contracts that only  
7 tribes and tribal entities may enter—weigh in favor of tribal immunity.

8  
9 *4. The Navajo Nation and Chapters Have Demonstrated Intent to Share Immunity*

10 For the fourth *Hwal’Bay* factor, the Court looks to declarations and actions that evince an  
11 intent for the tribe to share its immunity. *Hwal’Bay*, 248 Ariz. 98, 105. Although neither Sage  
12 Memorial’s Articles of Incorporation nor Bylaws expressly make note of immunity, nor do  
13 authorizing resolutions from the Navajo Nation and Chapters, the actions of the Navajo Nation  
14 and the Chapters indicate an intent to share their immunity with Sage Memorial. This, however,  
15 is common simply because the extension of tribal immunity is assumed. Section 9 of Sage  
16 Memorial’s ISDEAA Contract with IHS explicitly states that “[n]othing in this Contract or in each  
17 AFA shall be construed to waive the sovereign immunity of the Navajo Nation.” Decl. Ex. C at  
18 13. This understanding is reflected in federal law. The ISDEAA notes that where a tribe has  
19 authorized a tribal organization “to plan for or carry out [PFSAs] on its behalf . . . [the] tribal  
20 organization shall have the rights and responsibilities of the authorizing Indian tribe” and in such  
21 event “the term ‘Indian tribe’ as used in [the ISDEAA] shall include such . . . tribal organization.”  
22 25 U.S.C. § 5381(b); *see also* 25 U.S.C. § 5304(l) (defining “tribal organization” as a tribe or  
23

1 group of tribes for Title I of the ISDEAA) . Sovereign immunity is an explicit right enjoyed by an  
2 “Indian tribe.” *Id.* § 5332(a). As a tribal organization under the ISDEAA, it follows that Sage  
3 Memorial would also be entitled to sovereign immunity as an ‘Indian Tribe.’ *Manzano*, 2021 WL  
4 2826072, at \*9. Tribes and tribal organizations assume that immunity is part and parcel with  
5 ISDEAA contracting status.

6         ISDEAA contracting status itself is indicative of intent to share immunity. The Southern  
7 District of California observed that although the ISDEAA contract was clear in its intent to share  
8 immunity between member tribes and a tribal health organization, the Southern Indian Health  
9 Council, Inc. (SIHC), it was “[l]ess clear . . . whether the Member Tribes themselves intended to  
10 share this immunity with SIHC.” *Manzano*, 2021 WL 2826072, at \*9. The *Manzano* Court went  
11 on to note that although “the record does not contain an express statement of intent by the Member  
12 Tribes to share sovereign immunity, there are several indications in the [authorizing] resolutions  
13 . . . that reflect the Member Tribes’ intent to assert their own sovereignty and SIHC’s concomitant  
14 autonomy.” *Id.* These indications include acknowledgment that the “transfer of power between  
15 IHS and SIHC was in the interest of the Member Tribes” so that SIHC could “better assert its  
16 sovereign status and that of its Members by assuming greater funding for and control over its  
17 operations” and the express authority to enter the Compact “to carry out the services provided by  
18 the SIHC in a manner consistent with the Compact and SIHC’s self-governance[.]” *Id.* (internal  
19 quotation marks omitted).

20  
21         Both the Navajo Nation and the member Chapters have made similar statements. In the  
22 Steamboat Chapter’s authorizing resolution, for example, the Chapter agreed that authorization  
23

1 would “be in the best interest of the Navajo Health Foundation, the Chapter, patients[] residing in  
2 the service delivery area, and the Navajo Nation . . . .” Decl. Ex. B at 61. The Navajo Nation  
3 Health and Social Services Committee similarly resolved that “through the contracting process,  
4 [Sage Memorial] shall develop local health care management capabilities; establish a working  
5 relationship with the Navajo Nation and the federal government to assure quality healthcare for  
6 the affected patient population and provide meaningful local participation in the delivery of health  
7 care programs and services to the Navajo and eligible Indians in the service area. . . .” Decl. Ex. B  
8 at 87. As the *Manzano* Court recognized, “[t]hese principles of self-governance and self-  
9 determination are central to sovereign immunity, and . . . it [is] reasonable to infer that Member  
10 Tribes’ involvement in a tribal organization like SIHC that seeks to promote these ideals manifests  
11 their intent to share sovereign immunity with SIHC.” 2021 WL 2826072, at \*9; *see also Barron*,  
12 373 F. Supp. 3d at 1240 (upholding sovereign immunity for tribal health consortium because its  
13 purpose of “entering into ‘self-determination and self-governance agreements’ . . . is ‘core to the  
14 notion of sovereignty.’”). Most courts do not “infer that [a tribal organization] waived its  
15 sovereign immunity based solely on the omission of any mention of immunity in some of its  
16 documents or filings.” *Manzano*, 2021 WL 2826072, at \*12. Sage Memorial maintains that  
17 although the record lacks express statements of intent, other expressions demonstrate the Navajo  
18 Nation’s and its Chapters’ intents to share immunity.  
19

20  
21 *5. The Financial Relationship Between Sage Memorial and Its Member Chapters  
Weighs in Favor of Sovereign Immunity.*

22 The fifth *Hwal’Bay* factor looks to “whether the tribe’s assets are protected from  
23 judgments” or “whether enforcement of any judgment . . . would ‘effectively strike a blow against

1 the tribal treasury’ due to the tribe’s heavy dependence on entity revenues to fund governmental  
2 functions.” *Hwal’Bay*, 248 Ariz. at 106 (quoting *Miami Nation Enters.*, 2 Cal. 5th at 248).

3 Sage Memorial is entrusted with caring for the health of Navajo members and stewarding  
4 millions of dollars of funding each year that would otherwise be directly contracted and  
5 administered by the tribe. The financial relationship between the Navajo Nation and Sage  
6 Memorial is critical to the very existence of the hospital. The tribal share of IHS funds—which  
7 are only available because of Sage Memorial’s certification by and relationship to the tribe—  
8 enable it to keep operating, and those funds are necessary to provide its services. The *Manzano*  
9 Court recognized the interdependent nature of the relationship between tribes and tribal  
10 organizations entering ISDEAA contracts, observing that the tribal health organization in that case  
11 “cannot receive funding without the involvement of the Member Tribes” and “[a]s such, the  
12 funding secured . . . directly benefits the Member Tribes’ interest in the health and welfare of its  
13 members and in their own self-governance.” *Manzano*, 2021 WL 2826072, at \*10. Sage  
14 Memorial’s financial accounts are not directly linked to those of the Navajo Nation or the Chapter  
15 governments, but judgments against Sage Memorial would be paid from funds it otherwise must  
16 use to provide governmental healthcare services and to which the tribe is entitled under the  
17 ISDEAA. Monetary suits against Sage Memorial would strike a blow to the Navajo Nation’s share  
18 of funds for providing services to its members. Thus, tribal sovereign immunity here would protect  
19 the Navajo Nation’s interests.  
20

21  
22 6. *Immunizing Sage Memorial from Suit Furthers Federal Policies Underlying*  
23 *Sovereign Immunity and Should Strongly Weigh in Favor of Tribal Immunity.*

1 The Court must finally consider whether recognizing sovereign immunity for the tribal  
2 entity would further federal policies underlying sovereign immunity. *Hwal'Bay*, 248 Ariz. at 106.  
3 These policies include: “[p]rotection of tribal assets, preservation of tribal cultural autonomy,  
4 preservation of tribal self-determination, and promotion of commercial dealings between Indians  
5 and non-Indians.” *Dixon v. Picopa Const. Co.*, 160 Ariz. 251, 258 (1989).

6 Sage Memorial once again emphasizes that it is a federally funded, non-profit entity set up  
7 exclusively to provide health services on behalf of its member Navajo Chapters. Its formation is  
8 an extension of these Chapters’ exercise of self-determination, as they have collectively set up  
9 Sage Memorial to help provide and take over certain federal healthcare functions. The Court  
10 should weigh heavily Sage Memorial’s designation as a tribal organization under the ISDEAA in  
11 support of federal policy defending immunity. Under Sage Memorial’s FY2022 Annual Funding  
12 Agreement, the hospital provides significant inpatient and outpatient services to eligible Indian  
13 beneficiaries in the service area. *See* Decl. Ex. C at 72–76. As other courts have observed,  
14 Congress passed the ISDEAA in an “attempt to aid tribal entities in their efforts to conduct their  
15 own affairs and economic activities with as much autonomy as possible.” *Pink*, 157 F.3d at 1189–  
16 90. Sage Memorial’s status as a Navajo ISDEAA contractor clearly demonstrates a federal and  
17 tribal intent for immunity. Allowing suits to proceed in state court against Sage Memorial could  
18 compromise the delivery of these vital services, which only harms tribal self-determination. And  
19 recognizing immunity here is unlikely to “deter persons or entities from entering into contractual  
20 relationships with that Indian corporation or any other Indian corporation.” *Dixon*, 160 Ariz. at  
21 259. Experienced, savvy contractors such as Sage Memorial and the Navajo Nation have the  
22  
23

1 expertise and means to determine when a waiver of immunity is appropriate in contracting with  
2 non-tribal entities—and have established alternative venues of dispute resolution. *See* Tit. 7,  
3 Navajo Nation Code.

4 Navajo self-determination is also strongly implicated by this decision. The *Dixon* Court  
5 noted that it was dealing with a “private action based on an off-reservation tort [that] does not in  
6 any fashion limit the [tribe’s] powers nor the manner in which it exercises those powers.” *Id.* at  
7 258–59. Here, the Court faces an internal dispute between former executive employees of Sage  
8 Memorial that is wholly contained within the scope of Sage Memorial’s on-reservation business.  
9 There is an entire body of Navajo employment law and Navajo dispute resolution systems that  
10 would better serve the underlying claims to the Complaint. *See* Tit. 15, Navajo Nation Code. To  
11 recognize immunity in state court so that this matter could be handled in accordance with well-  
12 established tribal law and procedure would support the legal and cultural autonomy of the Navajo  
13 Nation in relation to its Navajo Chapter-organized businesses. Because Sage Memorial, a wholly  
14 Navajo-government-controlled non-profit, simply steps into the shoes of its member Chapters to  
15 carry out federal healthcare functions and services and does not operate a commercial enterprise  
16 separate from its Chapters, it should share in the tribe’s sovereign immunity from suit. Sage  
17 Memorial’s sovereign immunity should be preserved to further federal self-determination policies  
18 and to respect the cultural autonomy of the Navajo Nation.  
19

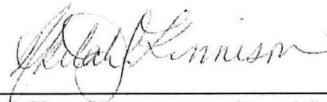
## 20 **V. CONCLUSION**

21 For the reasons set forth herein, Defendant Sage Memorial requests that the Court grant its  
22 Motion to Dismiss and dismiss Plaintiff’s claims in their entirety. At least a majority of the  
23

1 *Hwal'Bay* factors support recognizing that Sage Memorial is an arm of the Navajo Nation for  
2 immunity purposes. Defendant Sage Memorial hospital respectfully moves for this Court to  
3 dismiss for lack of subject matter jurisdiction to adjudicate claims against a tribal entity that  
4 possesses sovereign immunity from suit.

5 Respectfully submitted this 20th day of December, 2021.

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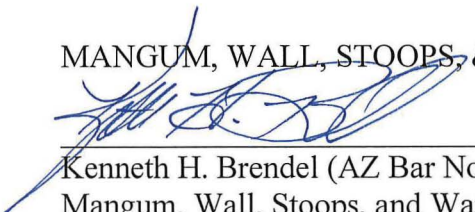
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