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10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

11 IN AND FOR THE COUNTY OF APACHE

12 Christi El-Meligi, a single woman; Netrishia) Case No.: S0100CV202100183
13 Dalgai, a single woman,)

14 Plaintiffs,)

15 v.)

16 **PLAINTIFFS' FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

17 Navajo Health Foundation – Sage Memorial) **(Assigned to the Honorable Garrett L.
18 Hospital, Inc., an Arizona corporation; ABC) Whiting)**
19 Corporations I-X; Jane Does I-X,)

20 Defendants.)
21

22 Pursuant to the Court's Minute Entry dated April 20, 2022, Plaintiffs hereby submit
23 their Findings of Fact and Conclusions of Law relative to Defendant's Motion to Dismiss.

24 **FINDINGS OF FACT**

25 1. Plaintiff Christi El-Meligi is the former Chief Executive Office of Sage, who was
initially hired by a third-party management company, Razaghi Healthcare, in September 2013
and subsequently directly hired as an employee of Sage Memorial Hospital in September 2018.
Plaintiff Netrishia Dalgai served as Sage's Chief Operations Officer from January 2016 and was

1 initially hired by the third-party management company and subsequently directly hired as an
2 employee of Sage Memorial Hospital in September 2018 until both Plaintiffs were terminated
3 from their employment on October 4, 2021.

4 2. Razaghi Healthcare provided management services to Sage from 2008 until 2018
5 and along with Plaintiffs, was responsible for the day-to-day operation and management of
6 Sage.
7

8 3. Sage is a private Arizona corporation which was incorporated in 1978 and
9 continues to provide health services for the persons within the hospital's service area. This
10 includes Navajo and non-Navajo individuals in the Ganado, Arizona area and also outside of the
11 Ganado, Arizona area.
12

13 4. The Navajo Nation does not own and has never been affiliated with the business
14 or management of the hospital or clinics operated by Sage and does not have oversight over
15 Sage. The hospital, clinics, and other buildings where Sage operates the business of healthcare
16 in Ganado, Arizona are wholly owned by the Presbytery of Grand Canyon and are located on
17 land that is and has been owned by the Presbyterian Church since 1920.
18

19 5. Pursuant to its bylaws, Sage has an all-Navajo board of directors which is separate
20 and is not affiliated with or owned or operated by the Navajo Nation tribal government.
21 Although the board of directors consisted of 8 individuals who resided in each of the Chapter
22 area locations in the Ganado service area, in 2014 the bylaws were amended to reduce the
23 number of directors to 7 and in 2017 the bylaws were further amended to reduce the number of
24 directors to five. See, Defendant's Motion to Dismiss, Exhibit A, p. 17. At the time of
25 Plaintiffs' termination of employment, 3 board members were all from one Chapter area and the

1 other two board members were from 2 separate Chapter areas. Each of the 8 area Chapters is
2 therefore not represented on the Sage board, nor were the newly selected board members
3 recommended representatives of Chapters. Further, neither the Chapters or the Navajo Nation
4 have the authority to appoint the hospital's board members and neither have any business,
5 financial affiliation, or authority to manage the business of Sage.
6

7 6. Due to financial difficulties, in 2003 the board and Sage executives decided to
8 attempt to contract with Indian Health Service as a way to increase Sage's funding. Sage
9 received its first contract with IHS in 2009, thirty years after it was first incorporated with the
10 State of Arizona.
11

12 7. Sage has always maintained general liability and directors and officers insurance
13 to protect Sage against any liabilities incurred by the corporation and its agents. See Plaintiff's
14 Response to Motion to Dismiss, Exhibit 5.

15 8. In 2019, Arts Locating, LLC, a utilities contractor, sued Sage in Navajo County
16 Superior Court, Cause No. S0900CV201900279, for work performed on behalf of Sage. The
17 matter resolved in 2020 by a payment by Sage, not the Navajo Nation. Sage did not allege tribal
18 immunity as an affirmative defense.
19

20 **CONCLUSIONS OF LAW**

21 1. Dismissal is appropriate under Rule 12(b)(6) only if "as a matter of law
22 plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of
23 proof." *Coleman v. City of Mesa*, 230 Ariz. 352, 284 P.3d 863, 867 (Ariz. 2012) (citing *Fid.*
24 *Sec. Life Ins. Co. v. State Dep't of Ins.*, 191 Ariz. 222, 224 ¶ 4, 954 P.2d 580, 582 (1998)). In
25 determining if a complaint states a claim on which relief can be granted, courts must assume

1 the truth of all well-pleaded factual allegations and indulge all reasonable inferences from
2 those facts, but mere conclusory statements are insufficient. *Id.*

3 2. This case is controlled by *Dixon v. Picopa Construction Company*, 722 P.2d 1104
4 (Ariz. 1989) and the Arizona Supreme Court’s decision in *Hwal Bay Ba: J. Enterprises, Inc. v.*
5 *Jantzen*, 248 Ariz. 98 (2020) and the six-factor test announced in the latter case concerning
6 when a subordinate economic organization has a Tribe’s tribal immunity. Sage has the burden
7 of proving by a preponderance of the evidence that it is a Tribe’s subordinate economic
8 organization for sovereign immunity purpose. *Id.* at 102.

9
10 3. Factor 1 focuses on the entity’s creation and business form. Because Sage was
11 incorporated in the State of Arizona in 1978, the Arizona Supreme Court has held that fact of
12 incorporation “weighs heavily” against a finding that Sage is a subordinate economic
13 organization. *Dixon*, 722 P.2d at 1111; *Hwal Bay*, 248 Ariz. at 104-105. The case law cited by
14 Defendant on this issue is inapposite in light of clearly established Arizona law. This factor
15 heavily favors Plaintiffs.

16
17 4. Factor 2 focuses Sage’s purpose, *i.e.*, does Sage generate revenue for the tribe or
18 its members or whether it assists the tribe in carrying out its governmental functions. If the tribe
19 has formal control of the entity but has contracted out its management, this factor may weigh
20 either for or against immunity. *Hwal Bay*, 248 Ariz. At 105. In this case, not only did Sage
21 contract out its management but it is not and has never been owned by the Navajo Nation.
22 Further, Sage has never been financially affiliated or managed by the Navajo Nation. Although
23 none of the funding received by Sage generates revenue for the tribe or its members, Plaintiffs
24
25

1 concede Sage provides a federal governmental function in providing healthcare to the Ganado
2 service area which the federal government otherwise provide. This factor favors Defendant.

3 5. Factor 3 examines the structure, management and ownership of the entity. *Hwal*
4 *Bay*, Ariz. at 105. The Navajo Nation has no ownership interest or business affiliation in the
5 Sage hospital or clinics where Sage provides healthcare to the Ganado service area. Sage hired
6 a third-party management company, Razaghi Healthcare, in 2008, which hired Plaintiffs and
7 they operated the Sage facilities until 2018. The Sage board has not managed the day-to-day
8 operations of Sage since sometime prior to 2008 and only meets quarterly to receive
9 management reports and to provide strategic directives. Currently and due to a 2014 and further
10 2017 bylaw amendment, all 8 of the chapters do not have representation on the board. This
11 factor supports a finding Sage is not a subordinate economic organization of the Navajo Nation
12 and favors Plaintiffs.

13 6. Factor 4 focuses on the tribe's intent to share immunity with the entity, which can
14 be reflected by declarations and actions. *Hwal Bay*, 248 Ariz. at 105. The Sage articles of
15 incorporation and bylaws are totally devoid of evidence demonstrating the tribe's intent to share
16 its immunity with Sage. Due to Sage's long business practice of the procurement of liability
17 insurance protecting Sage from liability from negligence or other torts, Sage is responsible for
18 its own torts, and not the Navajo Nation. Due to Sage's procurement of extensive liability
19 insurance coverage and the absence of any intent of the Navajo Nation to share its immunity
20 with Sage, this factor favors Plaintiffs. *Dixon*, 722 P.2d at 1109-1111; *Hwal Bay*, 248 Ariz. at
21 105.

1 7. Factor 5 focuses on the financial relationship between the entity and the Tribe.
2 The Court should determine whether the Tribe’s assets are protected from judgments entered
3 against the entity and whether enforcement of any judgment against the entity would
4 “effectively strike a blow against the Tribal treasury.” *Id.* at 106. Due to Sage’s current and
5 historical practice of procuring extensive liability insurance, extending immunity to Sage is not
6 necessary to protect Tribal assets. There is no evidence the Navajo Nation has ever paid any
7 liability incurred by Sage nor any evidence to support Defendant’s contention that judgments
8 against Sage would be paid from funds it otherwise must use to provide healthcare services.
9 Sage is not affiliated with the Navajo Nation financially or as a business and is not owned or
10 operated by the Navajo Nation. This factor favors Plaintiffs.

13 8. Factor 6 focuses on whether immunizing the entity furthers federal policies
14 underlying sovereign immunity such as protection of tribal assets, preservation of Tribal culture
15 autonomy, preservation of tribal self-determination, and promotion of commercial dealings
16 between Indians and non-Indians. In light of Sage’s long business practice of procuring
17 extensive liability insurance, it is clear that Sage intends to reduce risk of liability to itself. Since
18 Sage and the Navajo Nation do not share any business affiliation, the tribal assets are not at risk.
19 Policies protective of tribal cultural autonomy and self-determination remain unhindered by
20 permitting subject matter jurisdiction here. This private action does not in any fashion limit the
21 Navajo Nation’s powers of self-determination nor the manner in which it exercises those
22 powers. Finally, dealings between Indian and non-Indian tribes is furthered by withholding
23 immunity in this case, as granting immunity may deter non-Indians from doing business with
24 Sage. *Dixon*, 722 P.2d at 1111-1112. Factor 6 favors Plaintiffs.

1 9. The Court finds *E.E.O.C. v. Navajo Health Found.- Sage Mem'l Hosp., Inc.*, 2007
2 WL 2683823 (D.Ariz. Sept. 7, 2007) distinguishable because: (1) that Court did not consider
3 the various factors identified in *Hwal Bay*; (2) the Court was addressing whether Sage was
4 entitled to Title VII's tribal exemption, not tribal immunity; (3) the bylaws have changed the
5 number of board seats as compared to 2007 from 8 to 5, which factor was heavily emphasized in
6 *E.E.O.C.*; and (4) Sage entered a third-party management contract with Razaghi Healthcare the
7 year following the *E.E.O.C.* decision and Razaghi was responsible for managing the day-to-day
8 operations of Sage from 2008 until September 2018. *Dixon*, 772 P.2d at 1111, *Hwal Bay*, 248
9 Ariz. at 107.

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11 10. The Court finds the majority of the six *Hwal Bay* factors favor Plaintiffs and that
12 Sage is not a subordinate economic organization of the Navajo Nation and is therefore not
13 entitled to tribal immunity. The Court finds it has subject matter jurisdiction and Defendant's
14 Motion to Dismiss is denied.

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16 Dated this 29th day of April 2022.

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19 /s/ Tod F. Schleier
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