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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 Necy Sundquist, a married woman; Jie Xia, a
10 married woman; Mary Grace Abon, a married
 woman; Susan Samons, a married woman;
11 Mariah Henry, a married woman,

12 Plaintiffs,

13 vs.

14 Harrah's Arizona Corporation, a Nevada
 corporation

15 Defendant.

No. 2:23-cv-02086-GMS

**PLAINTIFFS' OPPOSITION TO
HARRAH'S MOTION TO
DISMISS**

17 Plaintiffs Necy Sundquist, Jie Xia, Mary Grace Abon, Susan Samons, and Mariah
18 Henry ("Plaintiffs"), by and through undersigned counsel, hereby oppose Defendant
19 Harrah's Arizona Corporation's ("Harrah's") motion to dismiss. The Court should not
20 extend tribal sovereign immunity to Harrah's because, among other reasons, Harrah's is
21 a non-tribally owned entity that the Ak-Chin Indian Community has no inherent right to
22 control. Alternatively, if the Court is not inclined to deny Harrah's motion to dismiss,
23 Plaintiffs respectfully request that the Court grant Plaintiffs leave to conduct limited
24 jurisdictional discovery.

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1 **INTRODUCTION**

2 Although Harrah’s doesn’t admit as much in its motion, Harrah’s is asking the
3 Court to break new ground in the law of tribal sovereign immunity. Harrah’s asks the
4 Court to be the first to extend tribal sovereign immunity to an entity that wasn’t formed
5 by a tribe or under tribal law, isn’t owned by a tribe, and whose only relationship to the
6 tribe is contractual. The Court should reject Harrah’s invitation to extend tribal immunity
7 so far. Doing so would provide a colorable argument to every non-tribally owned entity
8 that does business with a tribe that it is “an arm” or “subordinate economic entity” of
9 the tribe.

10 **BACKGROUND**

11 Harrah’s Arizona Corporation is a for-profit corporation organized under the laws
12 of the State of Nevada. *See* Exhibit A: State of Nevada Business Entity Search. Harrah’s
13 is registered to do business in the State of Arizona as a foreign for-profit corporation.
14 *See* Exhibit B: Printout from Arizona Corporation Commission’s Website, *available at*
15 <https://ecorp.azcc.gov/BusinessSearch/BusinessInfo?entityNumber=F00605034>.

16 Harrah’s sole shareholder is Caesar’s Resort Collection, LLC, which is a
17 Delaware limited liability company. *See* Exhibit C: Harrah’s 2022 Annual Report
18 (listing “Caesars Resort Collection, LLC” as “Shareholder”). Caesar’s Resort
19 Collection, LLC “is a Delaware limited liability company and wholly owned by Caesars
20 Entertainment Corporation.” *See* Exhibit D: Caesars Resort Collection, LLC, *Annual*
21 *Report For the Fiscal Year Ended December 31, 2017*, at 3.¹; Exhibit E: January 23,
22 2023 Press Release, *Caesar’s Entertainment, Inc. Announces Prices of Offering of*
23 *Senior Secured Notes*, *available at* <https://investor.caesars.com/news-releases/news->

24 _____
25 ¹ Plaintiffs only attached the first three pages of the Annual Report because the full
26 report is more than 100 pages long. The full report is available at the Security
Exchange Commission’s website at:
https://www.sec.gov/Archives/edgar/data/858339/000085833918000057/a2017q4crce_x991-annualrepo.html

1 [release-details/caesars-entertainment-inc-announces-pricing-offering-senior](#) (noting
2 Caesars Resort Collection, LLC is “a wholly-owned subsidiary of the Company”).

3 Caesars Entertainment Corporation is a publicly traded company on the
4 NASDAQ Stock Exchange. *See Caesars Entertainment, Inc. Common Stock, available*
5 *at* <https://www.nasdaq.com/market-activity/stocks/czr>. As such, Caesars Entertainment
6 Inc. is required to make certain filings with the Securities and Exchange Commission,
7 including the Form 10-K. In Caesars Entertainment Corporation’s most recent Form 10-
8 K filing, for the fiscal year ending December 31, 2022, it lists Harrah’s Arizona
9 Corporation as its subsidiary. *See* Exhibit F: Form 10-K for 2022 at PDF page 161,
10 *available at* [https://investor.caesars.com/static-files/abff6ce9-34b1-4057-9c78-](https://investor.caesars.com/static-files/abff6ce9-34b1-4057-9c78-db6bf146c295)
11 [db6bf146c295](https://investor.caesars.com/static-files/abff6ce9-34b1-4057-9c78-db6bf146c295). Further, the Form 10-K lists Harrah’s Ak-Chin—the Community’s
12 casino—as a managed segment of Caesars Entertainment Corporation. *Id.* at PDF page
13 30.

14 Harrah’s relationship with the Ak-Chin Indian Community (“the Community”)
15 is purely contractual. Harrah’s and the Community have entered into a Management
16 Agreement, in which Harrah’s “lends its technical expertise to the Casino and manages
17 the Casino” in exchange for a fee. *See* Doc. 11-1 at ¶ 6. Under the Management
18 Agreement, Harrah’s is permitted to unilaterally withdraw from managing the Casino if,
19 for example, the Community fails to pay Harrah’s. *See* Exhibit G: Management
20 Agreement between the Ak-Chin Indian Community and Harrah’s Arizona Corporation
21 (“Ex. G” or “Management Agreement”) § 11.5(iv) at 38.² Harrah’s may also withdraw

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23 ² Plaintiffs located a copy of the Management Agreement on the National Indian Gaming
24 Commission (“NIGC”) website. [https://www.nigc.gov/images/uploads/approved-](https://www.nigc.gov/images/uploads/approved-management-contracts/akchinharrah02.pdf)
25 [management-contracts/akchinharrah02.pdf](https://www.nigc.gov/images/uploads/approved-management-contracts/akchinharrah02.pdf). The NIGC is the federal agency responsible
26 for approving any “management contract for the operation and management of a class
II gaming activity,” *see* 25 U.S.C. § 2711(a), (b), such as the Management Agreement
between Harrah’s and the Community. Plaintiffs initially requested that Harrah’s
provide a copy of the Management Agreement to which Harrah’s referred in its motion
and in Mike Kintner’s declaration. Harrah’s counsel declined the request, stating: “[W]e
don’t believe we should have to produce documents, particularly those containing

1 from the Management Agreement if continuing to manage the Casino will jeopardize
2 any the licenses of Harrah's affiliates in other jurisdictions. *Id.* § 11.5(ii) at 38.

3 If the Management Agreement is ever terminated by the Community or Harrah's,
4 Harrah's, as an entity, continues to exist and retains rights to property it used to satisfy
5 its contractual obligations to the Community. For instance, after the termination or
6 expiration of the Management Agreement: (1) the Community is prohibited from
7 employing or soliciting certain Harrah's employees "for a period of twelve (12)
8 months," *id.* § 21 at 46-47; (2) the Community is not permitted to "hold itself out as, or
9 continue operation of the Enterprise as a Harrah's casino," and it cannot "utilize any
10 System Marks or any variant thereof in the name of operation of the Enterprise," *id.*
11 § 7.2 at 29; and (3) the Community cannot retain any of Harrah's "proprietary
12 information, techniques and methods" of operating gaming businesses, designing games
13 used in gaming businesses, and training employees in the gaming business, *see id.* at §
14 9.22.2 at 35.

15 The Community has no right to bind or obligate Harrah's, except to the extent
16 that Harrah's allows the Community to bind or obligate it. *Id.* § 9.4 at 32 ("[Harrah's]
17 and the Community shall not be construed as joint venturers or partners of each other by
18 reason of this Agreement and neither shall have the power to bind or obligate the other
19 except as set forth in this Agreement."). And although the Community has oversight
20 over much of Harrah's conduct as it relates to the Casino business, Harrah's has "the
21 exclusive responsibility and authority to direct the selection, control, discipline, and
22 discharge of all employees performing regular services for the Enterprise," *id.* § 4.6.1 at
23 14, which is the very conduct Plaintiffs complain of in this lawsuit.

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confidential information, unless the court denies the motion." *See* Exhibit H: Email
Chain between Mr. Duell and Mr. Prynkiewicz.

LEGAL STANDARD

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2 Harrah’s moves to dismiss the Complaint under Rule 12(b)(1), for lack of subject
3 matter jurisdiction. Harrah’s contends it is entitled to tribal sovereign immunity because
4 it is an “arm of the [Ak-Chin Indian Community].” “An entity asserting immunity as an
5 arm of a sovereign tribe must show by a preponderance of the evidence that it is, in fact,
6 an arm of the tribe.” *Tsosie v. N.T.U.A. Wireless LLC*, No. CV-23-00105-PHX-DGC,
7 2023 WL 4205127, at *5 (D. Ariz. June 27, 2023); *McCoy v. Salish Kootenai Coll., Inc.*,
8 334 F. Supp. 3d 1116, 1120 (D. Mont. 2018), *aff’d*, 785 F. App’x 414 (9th Cir. 2019);
9 *Williams*, 929 F.3d 170, 176-77 (4th Cir. 2019) (“Unlike the tribe itself, an entity should
10 not be given a presumption of immunity until it has demonstrated that it is in fact an
11 extension of the tribe.”). Put another way, Harrah’s bears the burden to prove that it is
12 “the kind of tribal entity, analogous to a governmental agency, which should benefit
13 from the defense of sovereign immunity.” *Breakthrough Mgmt. Grp., Inc. v. Chukchansi*
14 *Gold Casino & Resort*, 629 F.3d 1173, 1184 (10th Cir. 2010); *Tsosie*, 2023 WL 4205127
15 at *5.

LEGAL ARGUMENT

17 **I. Harrah’s cannot be an “arm” of the Community because it isn’t owned by**
18 **the Community, formed by the Community, or formed under tribal law.**

19 In support of Harrah’s argument that it “is acting as an arm of the Community,”
20 Harrah’s cites three cases in which the Court determined that an entity was entitled to
21 tribal sovereign immunity as an “arm” or “subordinate economic entity” of the tribe.
22 Doc. 11 at 6-8.³

23 _____
24 ³ In the Ninth Circuit, tribal sovereign immunity extends to “arm[s] of the tribe.” *See*
25 *White v. Univ. of California*, 765 F.3d 1010, 1025 (9th Cir. 2014). Other circuits use
26 different phrases for the type of entity that is entitled to sovereign immunity, such as “a
division of the Tribe,” “a tribal agency,” “a sub-entity of the Tribe,” and a “subordinate
economic entity.” *See Breakthrough Mgmt. Grp.*, 629 F.3d at 1185 n.9. No matter which
term is used, the doctrine recognizing that sovereign immunity extends to entities other
than the tribe itself “has its roots in the Arizona state courts.” *Id.* There’s no indication

1 In each of these three cases, the entities entitled to tribal sovereign immunity were
2 (1) owned by the tribe, (2) formed by the tribe, and (3) formed under tribal law. *See*
3 *White v. Univ. of California*, 765 F.3d 1010, 1025 (9th Cir. 2014) (“the Repatriation
4 Committee was created by resolution of each of the Tribes, with its power derived
5 directly from the Tribes' sovereign authority. The Repatriation Committee is comprised
6 solely of tribal members, who act on its behalf.”); *Breakthrough Mgmt. Grp.*, 629 F.3d
7 at 1191-92 (“[T]he Tribe created the Authority under tribal law” and the Authority is “a
8 wholly owned . . . enterprise of the Tribe”); *Allen v. Gold Country Casino*, 464 F.3d
9 1044, 1045 (9th Cir. 2006) (“Gold Country Casino is a tribal entity . . . [and] wholly
10 owned and operated by the Tribe.”).

11 Harrah’s, on the other hand, isn’t owned by the tribe, wasn’t formed by the tribe,
12 and wasn’t formed under tribal law. *See* Exs. A-F. Rather, Harrah’s was formed under
13 state law by non-tribal actors and the Community doesn’t own Harrah’s. *Id.* It’s no
14 surprise that Harrah’s doesn’t cite any cases where a court extended tribal sovereign
15 immunity to an entity under these circumstances. Upon information and belief, no Court
16 has *ever* applied tribal sovereign immunity to an entity that the tribe did not own or
17 create. *See Johnson v. Harrah's Kansas Casino Corp.*, No. 04-4142-JAR, 2006 WL
18 463138, at *6 (D. Kan. Feb. 23, 2006) (“[I]n virtually all cases where a subordinate
19 economic organization was found, the entity was organized under the tribal constitution
20 or by tribal ordinance.”).

21 In the few cases that have considered whether tribal sovereign immunity extended
22 to non-tribally owned economic entities, the courts have determined that tribal immunity
23 *does not* extend to such entities. *See e.g., Humble v. Harrah's NC Casino Co., LLC*, No.
24 1:17CV262, 2018 WL 4576784, at *6 (W.D.N.C. June 1, 2018) (“[T]he only named
25

26 that the Ninth Circuit’s use of the phrase “arm of the tribe,” as opposed to any other
phrase, was anything other than a stylistic choice.

1 defendant in this lawsuit is Harrah's NC Casino Company, LLC d/b/a Harrah's . . .
2 Therefore, Defendant is not entitled to dismissal for lack of subject matter jurisdiction
3 on the basis of tribal sovereign immunity.”); *Harrah's Kansas*, 2006 WL 463138 at *7
4 (refusing to extend tribal sovereign immunity to Harrah's Kansas Casino Corporation
5 and stating that “the lack of control over Harrah's corporate structure by the Tribe weighs
6 heavily against extending its tribal sovereign immunity.”).

7 Categorically, an entity that the tribe does not own, and that the tribe did not
8 create, cannot be “an arm of the tribe.” That’s because, under such circumstances, the
9 tribe has no inherent right to control the entity or the entity’s existence, which are
10 hallmarks of entities that are subordinate to the tribe. *See e.g., White*, 765 F.3d at 1025;
11 *Breakthrough*, 629 F.3d at 1191-92; *Allen*, 464 F.3d at 1045 (9th Cir. 2006). When an
12 entity isn’t owned or created by a tribe, the tribe’s right to control the entity exists only
13 if the entity *voluntarily* submits itself to the tribe’s control.⁴ It follows that an entity that
14 voluntarily submits itself to the tribe’s control can also *unilaterally withdraw* itself from
15 the tribe’s control. Just as an arm can’t separate itself from the service of the body,
16 neither can an entity that claims to be an “arm of the tribe” have the ability to withdraw
17 itself from the service of the tribe. Because Harrah’s can unilaterally withdraw from
18 serving the purposes of the tribe (given it was formed under state law by non-tribal actors
19 and the tribe doesn’t own Harrah’s), it is not an “arm” or “subordinate economic” entity
20 of the Community.

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24 ⁴ For example, as in this case, the Community’s control over Harrah’s is pursuant to a
25 contract, which by its nature, is a *voluntary* exchange of promises. *Cook v. Cook*, 142
26 Ariz. 573, 576 (1984) (“The sine qua non of any contract is the exchange of promises . . . From this exchange flows the obligation of one party to another.”); *State v. Sands*, 145 Ariz. 269, 275 (Ct. App. 1985) (“A contract induced by duress is unenforceable.”).

1 **II. Even if Harrah's were owned and controlled by the Community, the fact**
2 **that Harrah's is incorporated under state law means it cannot claim tribal**
3 **sovereign immunity.**

4 Assuming *arguendo* that the Community exercises sufficient control over
5 Harrah's to make Harrah's an "arm of the tribe," the Community's choice to conduct its
6 business through an entity organized under state law precludes it from claiming tribal
7 sovereign immunity. Harrah's is incorporated in Nevada. Ex. A. The act of incorporating
8 Harrah's under Nevada law made Harrah's subject to suit "in *any* court of law or equity."
9 *See* Nev. Rev. Stat. Ann. § 78.060(d)(2) (emphasis added) ("Every corporation, by virtue
10 of its existence as such, is entitled . . . [t]o sue and be sued in any court of law or
11 equity."); Nev. Const. art. VIII, § 5 ("Corporations may sue and be sued in *all courts*, in
12 like manner as individuals.") (emphasis added).

13 Similarly, when Harrah's was registered as a foreign corporation in Arizona,
14 Harrah's became subject to all the laws to which an Arizona corporation is subject. *See*
15 A.R.S. § 10-1505(B). All Arizona corporations "shall be subject to be sued, *in all courts*,
16 in like cases as natural persons." Ariz. Const. art. XIV, § 1 (emphasis added). As such,
17 to the extent the Community chose to operate its tribal business through Harrah's, it
18 accepted that tribal sovereign immunity wouldn't be available.

19 Indeed, in *Somerlott v. Cherokee Nation Distributors, Incorporated*, the Tenth
20 Circuit categorically held that tribally-owned entities incorporated under state law are
21 not entitled to tribal sovereign immunity. *Somerlott*, 686 F.3d 1144 (10th Cir. 2012).
22 The Court further held that "the subordinate economic entity test," (which is the test
23 Harrah's asks the Court to apply here) "is inapplicable to entities which are legally
24 distinct from their members and which voluntarily subject themselves to the authority
25 of another sovereign which allows them to be sued." *Id.* at 1149-50. The Tenth Circuit
26 stated:

In concluding a subordinate economic entity analysis
applied to this case, the district court overlooked a crucial
distinction between CND and the entities at issue in previous

1 cases in which the test has been applied: CND is
2 incorporated under state law. By contrast, the entities to
3 which a subordinate economic entity test has traditionally
4 been applied, like the Casino and Authority in
5 [*Breakthrough Management Group*], have all been
6 organized, in some form or another, under tribal law.

4 *Id.*

5 In reaching this opinion, the Court noted that “[t]ribal sovereign immunity is
6 deemed to be coextensive with the sovereign immunity of the United States.” *Id.* at 1150.
7 Because “courts have held the United States' sovereign immunity does not extend to its
8 sub-entities incorporated as distinct legal entities under state law,” tribal sovereign
9 immunity does not extend to entities owned by the tribe and incorporated under state
10 law. *Id.* In conclusion, the Court held that, “CND, a separate legal entity organized under
11 the laws of another sovereign, Oklahoma, cannot share in the Nation's immunity from
12 suit, and it is not necessary to apply the six-factor [*Breakthrough Management*] test.”

13 Justice Neil Gorsuch (then Judge Gorsuch) joined the opinion and drafted a
14 concurrence. In relevant part, the concurrence forcefully states: “[N]o matter how
15 broadly conceived, sovereign immunity has never extended to a for-profit business
16 owned by one sovereign but formed under the laws of a second sovereign when the laws
17 of the incorporating second sovereign expressly allow the business to be sued.” *Id.* at
18 1154 (Gorsuch J. concurring opinion).

19 The logic in *Somerlott* applies with even more force here. To the extent that the
20 Community has chosen to operate its casino business through a non-tribally owned
21 corporation that is incorporated under state law, it is precluded from claiming tribal
22 sovereign immunity. Harrah’s subjected itself to suit in *all courts* when it was
23 incorporated, and the Community subjected itself to the same, to the extent it operates
24 its business through Harrah’s.

25 ...

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1 **III. Harrah’s isn’t entitled to tribal sovereign immunity under the facts of this**
2 **case, even if Harrah’s isn’t categorically excluded for claiming immunity.**

3 Plaintiffs maintain that it is inappropriate to apply the *Breakthrough Management*
4 factors, given that Harrah’s isn’t tribally owned, tribally created, or created under tribal
5 law. Even the Tenth Circuit—the circuit from which the test derived—deems the test
6 inappropriate under these circumstances. Nevertheless, in an exercise of thoroughness,
7 Plaintiffs address the five *Breakthrough Management* factors as adopted by the Ninth
8 Circuit in *White*, 765 F.3d at 1025. Applying these factors conclusively establishes that
9 Harrah’s isn’t an arm of the Community and isn’t entitled to tribal sovereign immunity.

10 A. The Method of Creation of the Economic Entities

11 The first factor the Ninth Circuit considers “[i]n determining whether an entity is
12 entitled to sovereign immunity as an ‘arm of the tribe,’” is “the method of creation of
13 the economic entities.” *Id.* As detailed above, Harrah’s was incorporated by non-tribal
14 actors under state law, and the Community does not own Harrah’s. *See* Exs. A-F. Where
15 a tribe doesn’t wholly own the entity, and where the entity wasn’t formed under tribal
16 law, other courts “have declined to confer tribal immunity.” *Tsosie v. N.T.U.A. Wireless*
17 *LLC*, No. CV-23-00105-PHX-DGC, 2023 WL 4205127, at *3 (D. Ariz. June 27, 2023)
18 (“[Navajo Tribal Utility Authority] does not wholly own Wireless, and Wireless was not
19 formed under the laws governing the Tribe. Other courts considering similar
20 circumstances have declined to confer tribal immunity.”). This factor, at minimum,
21 weighs against immunity, if it doesn’t fully preclude Harrah’s from claiming immunity.

22 B. The Purpose of Harrah’s

23 The second factor, Harrah’s “purpose,” also weighs against finding immunity.
24 Harrah’s contends that its “sole purpose is to manage the Casino for and on the
25 Community’s behalf.” But that’s demonstrably false. Although Harrah’s *currently*
26

1 manages the Casino pursuant to a contract, Harrah’s ultimate purpose is not coextensive
2 with the Community’s purpose.

3 As a non-tribally owned for-profit corporation, Harrah’s exists to benefit its
4 shareholders, not the Community. *See* A.R.S. § 10-830(D)(1) (“[I]n determining what is
5 in the best interests of the corporation, a director . . . [m]ust consider the effect of a
6 proposed action or inaction on the shareholders and whether a proposed action or
7 inaction may further the purposes of the corporation.”). The Management Agreement is
8 littered with examples proving that Harrah’s purpose extends far beyond benefiting the
9 Community. For example, Harrah’s obligation to manage the Casino only continues for
10 as long as the Community compensates Harrah’s in accordance with the terms of the
11 Management Agreement. If “the Community fails to make any payment to [Harrah’s]
12 within the time specified” in the Management Agreement, “[Harrah’s] may terminate
13 th[e] Agreement by written notice effective upon receipt.” *See* Ex. G at § 11.5(iv) at 38.
14 Harrah’s sole purpose, therefore, is not “to manage the Casino for and on the
15 Community’s behalf,” if fulfilling this purpose is conditioned on payment by the
16 Community.

17 Other provisions of the Management Agreement prove that Harrah’s purpose is
18 to benefit itself and its shareholders, not the Community. Section 21 of the Management
19 Agreement prohibits the Community from employing or soliciting certain Harrah’s
20 employees “for a period of twelve (12) months after the termination or expiration of
21 th[e] Agreement.” *Id.* at § 21 at 46-47. Section 7.2 makes clear that the Community is
22 not permitted to “hold itself out as, or continue operation of the Enterprise as a Harrah’s
23 casino” once the Management Agreement terminates, and further clarifies that Harrah’s
24 retains the rights to all Harrah’s “System Marks” during and after the Management
25 Agreement term. *Id.* § 7.2 at 29. And Section 11.5 allows Harrah’s to terminate the
26 Management Agreement if performance under the agreement “will jeopardize the

1 retention of any license, or approvals granted thereunder, held by [Harrah’s] or *any of*
2 *its Affiliates in other jurisdiction [sic].*” *Id.* § 11.5(ii) at 38 (emphasis added). These
3 provisions prove that Harrah’s ultimate allegiance is not to the Community. This factor
4 weighs against recognizing tribal sovereign immunity.

5 C. Structure, Ownership, Management, and Control of the Entity

6 Third, the Ninth Circuit considers the entity’s “structure, ownership, and
7 management, including the amount of control the tribe has over the entit[y].” *White*, 765
8 F.3d at 1025. This factor weighs strongly against immunity.

9 Harrah’s is a wholly separate legal entity from the Community. *See* Exs. A-F.
10 The Community doesn’t own Harrah’s; Harrah’s is owned by Caesar’s Resort
11 Collection, LLC, which is wholly owned by Caesars Entertainment Corporation. *Id.*
12 Although Harrah’s argues, “[t]he Community has the right to exercise control over
13 Harrah’s,” this is only true to the extent that Harrah’s *allows the Community to exercise*
14 *such control.* *See* Ex. G § 9.4 at 32 (“[Harrah’s] and the Community shall not be
15 construed as joint venturers or partners of each other by reason of this Agreement and
16 *neither shall have the power to bind or obligate the other except as set forth in this*
17 *Agreement.*”) (emphasis added).

18 Harrah’s has a corporate structure that is wholly separate from the Community’s
19 authority. Harrah’s officers are listed on the Arizona Corporation Commission website
20 with no indication that any are affiliated with the Community. *See* Exhibit B. The
21 officers are “paid entirely by the Manager,” which is Harrah’s, not the Community. *See*
22 Ex. G § 2.46 at 6. And the Management Agreement does not include any provisions in
23 which the Community may change the corporate structure or otherwise remove and
24 replace Harrah’s officers. “[T]he lack of control over Harrah’s corporate structure by the
25 Tribe weighs heavily against extending its tribal sovereign immunity.” *Harrah’s Kansas*,
26 2006 WL 463138 at *7.

1 D. The Tribe's Intent to Share Sovereign Immunity

2 The fourth factor is “the tribe's intent with respect to the sharing of its sovereign
3 immunity.” *White*, 765 F.3d at 1025. Harrah’s doesn’t make any argument in its motion
4 that the Community intended to share its sovereign immunity with Harrah’s. Nor does
5 the Management Agreement provide any indication that the Community intended to do
6 so.

7 On the contrary, the Management Agreement mentions the “Community’s
8 sovereign immunity” several times, but never once allows Harrah’s to share in the
9 sovereign immunity. *See e.g.*, Ex. G § 4.2.4 at 13, § 7.3 at 29; § 9.3 at 32. Instead, the
10 Management Agreement specifically provides that, “[t]he Community shall control the
11 conduct of any . . . suit as to any issues raised concerning the Tribe’s status as a Federally
12 recognized Indian Tribe, its sovereignty or its immunity from suit.” *See id.* § 7.3 at 29.
13 If Harrah’s were to share in the immunity of the Community, the Community would not
14 have to express that *it* shall control the conduct of any suit in which those issues are
15 raised.

16 E. The Financial Relationship between the Tribe and the Entity.

17 Finally, the Ninth Circuit considers the financial relationship between the tribe
18 and the entity when evaluating whether the entity is an arm of the tribe. *White*, 765 F.3d
19 at 1025. Here, the Community and Harrah’s have a voluntary financial relationship. It’s
20 only partially true, as Harrah’s states, that “the Community is financially responsible for
21 defending this lawsuit and paying any settlement or judgment.” In actuality, pursuant to
22 the terms of the Management Agreement, both Harrah’s and the Community ultimately
23 pay for the costs of lawsuits.

24 Section 9.7 states that “[a]ll liabilities, costs and expenses, including reasonable
25 attorneys’ fees and disbursements incurred in defending and/or settling any . . . claim or
26 legal action which are not covered by insurance shall be an Operating Expense.” Ex. G

1 § 9.7 at 32. Operating Expenses reduce the Net Revenue generated by the Community
2 and Harrah's. *Id.* §§ 2.57-2.59 at 7-8. Reduced Net Revenue results in a reduced
3 Management Fee for Harrah's, because the Management Fee is "stated as a percent of
4 Net Revenue." *Id.* § 6.1 at 27. Reduced Net Revenue also results in a lower distribution
5 to the Community. *Id.* § 6.4 at 28.

6 Although any settlement or judgment against Harrah's may affect the
7 disbursements made to the Community, there's no indication in the Management
8 Agreement that any other Community assets will be affected by a judgment. Moreover,
9 the Community's financial obligation to Harrah's arises out of a voluntary agreement,
10 which indicates the Community intended to be liable for Harrah's litigation expenses.
11 This factor, therefore, is neutral in terms of whether tribal sovereign immunity should
12 be granted. *See Harrah's Kansas.*, 2006 WL 463138 at *6 (holding that Harrah's Kansas
13 Casino Corporation was not entitled to sovereign immunity, even where "money
14 expended from the business account for litigation expenses would be diverted from the
15 net revenue otherwise payable to the Tribe").

16 **IV. If the Court is disinclined to deny the motion to dismiss, the Court should**
17 **afford Plaintiffs the opportunity to conduct limited discovery.**

18 As shown above, four factors weigh in favor of denying Harrah's tribal sovereign
19 immunity. Harrah's is not tribally owned, nor created under tribal law. The Community
20 has no right to control Harrah's, absent Harrah's consent. Even then, the Management
21 Agreement does not permit the Community to change Harrah's corporate structure or
22 remove any corporate officers. Harrah's operates as a for-profit business, and although
23 it manages the Community's Casino, Harrah's has corporate interests beyond the
24 welfare and benefit of the Community. These facts make it clear that Harrah's isn't
25 entitled to immunity.

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1 To the extent the Court is not yet inclined to deny Harrah’s motion, the Court
2 should grant Plaintiffs limited discovery for the purpose of obtaining information and
3 documents to controvert Harrah’s claim to sovereign immunity.⁵ Discovery “should be
4 granted where pertinent facts bearing on the question of jurisdiction are controverted . . .
5 or where a more satisfactory showing of the facts is necessary.” *Wells Fargo & Co. v.*
6 *Wells Fargo Exp. Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977). Limited jurisdictional
7 discovery does not “undermine the principles of sovereign immunity” where Plaintiffs
8 have offered “specific and substantive allegations” that, if confirmed, would justify the
9 denial of tribal sovereign immunity. *See Gibbs v. Plain Green, LLC*, 331 F. Supp. 3d
10 518, 532 (E.D. Va. 2018); *see also United States ex rel. Cain v. Salish Kootenai Coll.,*
11 *Inc.*, 862 F.3d 939, 945 (9th Cir. 2017) (“On remand, the district court shall allow
12 appropriate discovery before determining whether the College is an arm of the Tribe
13 under *White*.”).

14 The discovery Plaintiffs seek is related to the *Breakthrough Management* factors
15 adopted by the Ninth Circuit in *White*. First, Plaintiffs are entitled to the current
16 Management Agreement between Harrah’s and the Community (assuming Exhibit G is
17 not current) because the Management Agreement defines the scope of the relationship
18 between Harrah's and the Community. Second, Plaintiffs are entitled to Harrah’s
19 Bylaws, which would confirm Harrah’s corporate structure and whether the Community
20 has any control over Harrah’s corporate governance. Third, Plaintiffs should be
21 provided information about what, if any, tribal affiliation Harrah’s corporate officers
22 have. Fourth, Plaintiffs desire Harrah’s Articles of Incorporation, which will reveal
23 whether Harrah’s legal business purpose is limited to operating the Community’s
24 Casino, or whether Harrah’s is permitted to operate for “any legal purpose.” Fifth,
25

26 ⁵ Plaintiffs’ entire Opposition to the Motion to Dismiss was based on publicly-
available documents.

1 Plaintiffs should be granted discovery to determine the Community’s intent with regard
2 to its tribal sovereign immunity. Finally, Plaintiffs are entitled to confirmation that
3 Harrah’s is wholly owned by Caesar’s Resort Collection, LLC—and not owned by the
4 Community.

5 Plaintiffs respectfully request that the Court grant Plaintiffs leave to conduct
6 limited jurisdictional discovery, including the foregoing types of discovery, if the Court
7 does not deny Harrah’s motion to dismiss.

8 **CONCLUSION**

9 The Court should deny Harrah’s motion to dismiss because it is not “an arm” or
10 “subordinate economic entity” of the Community. Harrah’s is wholly independent of the
11 Community, except that they have a contractual relationship governed by the
12 Management Agreement. In the alternative, Plaintiffs respectfully request that the Court
13 grant Plaintiffs leave to conduct limited jurisdictional discovery.

14 DATED this 17th day of January, 2024.

15 **BURCH & CRACCHIOLO, P.A.**

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19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on the 17th day of January, 2024, I electronically transmitted
21 this document to the Clerk of the United States District Court for the District of Arizona
22 by using the CM/ECF System for filing and transmittal to the registered participants as
indicated on the Notice of Electronic Filing, and paper copies will be mailed to those
indicated as non-registered participants.

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