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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jie Xia, et al.,

10 Plaintiffs,

11 v.

12 Harrah's Arizona Corporation,

13 Defendant.
14

No. CV-23-02086-PHX-GMS

ORDER

15
16 Pending before the Court is Defendant Harrah's Arizona Corporation's Motion to
17 Dismiss (Doc. 11). For the reasons detailed below, Defendant's Motion is denied.

18 **BACKGROUND**

19 The Plaintiffs in this matter are five individuals—Jie Xia, Necy Sundquist, Mary
20 Grace Abon, Susan Samons, and Maria Henry—who each allege Defendant violated
21 various federal laws, including 42 U.S.C. § 1981 and provisions of Title VII, when it
22 terminated Plaintiffs' employment. Plaintiffs are all non-white, female former employees
23 of Defendant. (Doc. 1 at 2–3).

24 Defendant is a Nevada corporation that, pursuant to a management contract with the
25 Ak-Chin Indian Community ("Community" or "Tribe"), operates and manages the
26 Ak-Chin Casino and Resort in Maricopa, Arizona. (*Id.* at 2, 9). The Community is a
27 federally recognized Indian tribe. (Doc. 11-1 at 2). In the Summer of 2022, Harrah's added
28 an electronic craps game called Roll To Win to the casino floor. (Doc. 1 at 3). Roll To

1 Win automated many functions of a traditional craps game, requiring the employee running
2 it to merely input the results of dice rolls. (*Id.* at 3–4). Defendant believed that, due to the
3 automation, Roll To Win required less training to operate and, as a result, employees were
4 sometimes tasked to operate Roll To Win despite the game not being part of their regular
5 rotation. (*Id.* at 4). Plaintiffs were five of such employees. (*Id.* at 6).

6 Over time, Defendants became aware that the Roll To Win tables, as operated, were
7 vulnerable to various cheating strategies used by certain gamblers. (*Id.* at 5). After
8 identifying these strategies, Defendant initiated an investigation which identified between
9 thirteen and nineteen table dealers who were working the Roll To Win tables while
10 cheating occurred. (*Id.* at 6). Plaintiffs allege they received specific written guidance on
11 how to manage the Roll To Win tables only after Defendant completed its investigation.
12 (*Id.*). After Defendant’s investigation, the Ak-Chin Tribal Gaming Agency (“Agency”)
13 began the process of revoking Plaintiffs’ gaming licenses, during which Plaintiffs were
14 suspended from work without pay. (*Id.*). Plaintiffs allege that Caucasian and male
15 employees who managed Roll To Win tables when cheating occurred were not suspended.
16 (*Id.*). At hearings before the Agency, Defendant argued that Plaintiffs colluded with the
17 cheating gamblers, and made those same representations to tribal police and the FBI. (*Id.*
18 at 7). Despite there being no criminal charges brought against Plaintiffs, all five Plaintiffs
19 were ultimately terminated from their employment. (*Id.* at 8). This was each of Plaintiffs’
20 first disciplinary action; Plaintiffs never received any warning or coaching prior to
21 termination, which are typically given in disciplinary cases prior to termination. (*Id.*). In
22 a separate investigation by the Arizona Department of Gaming (“ADOG”), the ADOG
23 refused to revoke Plaintiffs’ gaming licenses and instead determined that cheating occurred
24 because of Defendant’s failure to properly train. (*Id.* at 9–10).

25 On October 5, 2023, Plaintiffs filed this action against Defendant alleging
26 discrimination and retaliation under 42 U.S.C. § 1981, wrongful termination and retaliation
27 under Title VII, and termination in violation of public policy under state law. (*Id.* at 10–
28 15). On December 12, 2023, Defendant filed a Motion to Dismiss solely arguing this Court

1 lacks subject matter jurisdiction because of the Community's sovereign immunity.

2 DISCUSSION

3 I. Legal Standard

4 Federal courts are courts of limited jurisdiction. *Stock W., Inc. v. Confederated*
5 *Tribes of the Colville Rsrv.*, 873 F.2d 1221, 1225 (9th Cir. 1989) (quoting *Owen Equip. &*
6 *Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978)). When subject matter jurisdiction is
7 challenged, the party asserting jurisdiction has the burden of establishing that it exists.
8 *Kingman Reef Atoll Invs., L.L.C., v. United States*, 541 F.3d 1189, 1197 (9th Cir. 2008).
9 Parties may bring either facial or factual subject matter jurisdiction challenges. A facial
10 challenge asserts that the complaint, on its face, fails to allege facts that would invoke
11 federal jurisdiction. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir.2004).
12 A factual attack, on the other hand, disputes the veracity of allegations in the complaint
13 that would, if true, invoke federal jurisdiction. *Id.* When resolving a facial attack on
14 subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), the Court
15 accepts the allegations of the complaint as true. *Mason v. Arizona*, 260 F. Supp. 2d 807,
16 815 (D. Ariz. 2003).

17 II. Analysis

18 Defendant challenges this Court's subject matter jurisdiction by arguing it is
19 protected by the Community's tribal sovereign immunity. "Indian tribes are 'domestic
20 dependent nations' that exercise inherent sovereign authority over their members and
21 territories. Suits against Indian tribes are thus barred by sovereign immunity absent a clear
22 waiver by the tribe or congressional abrogation." *Okla. Tax Comm'n v. Citizen Band*
23 *Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991). Tribal sovereign immunity
24 extends to tribal business activities. *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046
25 (9th Cir. 2006). Whether a particular business venture enjoys tribal sovereign immunity
26 turns on whether "the entity acts as an arm of the tribe so that its activities are properly
27 deemed to be those of the tribe." *Id.*

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1 In determining whether an entity is entitled to sovereign
2 immunity as an ‘arm of the tribe,’ we examine several factors
3 including: ‘(1) the method of creation of the economic entities;
4 (2) their purpose; (3) their structure, ownership, and
5 management, including the amount of control the tribe has over
6 the entities; (4) the tribe’s intent with respect to the sharing of
its sovereign immunity; and (5) the financial relationship
between the tribe and the entities.’

7 *White v. Univ. of Cali.*, 765 F.3d 1010, 1025 (9th Cir. 2014). Accordingly, non-
8 governmental tribal businesses commonly enjoy sovereign immunity. *See Allen*, 464 F.3d
9 at 1047 (holding a casino wholly owned and operated by the Tribe enjoyed sovereign
10 immunity); *Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d
11 1173, 1191–92 (10th Cir. 2010) (holding a Tribal Economic Development Authority,
12 formed under the laws of the tribe, enjoyed sovereign immunity).

13 Under the above factors, Defendant is not an arm of the Community and, thus,
14 cannot claim the Community’s sovereign immunity. First, Defendant is formed under the
15 laws of the state of Nevada, not under the laws of the Community. Second, while
16 Defendant’s successful operations results in increased Community funds, Defendant is a
17 for-profit corporation. The profits it generates are not returned to the Tribe, but to the
18 corporate shareholders. While Defendant presumably generates these profits through its
19 expertise in managing and operating the Community’s casino, such profits are not the
20 Tribe’s. Even though the Community’s purpose in contracting with Defendant is to
21 generate revenue for the Tribe, Defendant’s purpose is to take a portion of that revenue for
22 its shareholders, which, notably, does not include the Community.

23 Third, as mentioned above, the Tribe does not own or manage the Defendant. The
24 Community may have leverage over the Defendant in that it can choose to terminate its
25 management agreement with Defendant. The Community also has the regulatory control
26 that any sovereign has over a gaming operation within its sovereign territory. To the extent
27 there is any other direct Community control over Defendant, such control does not rise to
28 such a level so that Defendant is an arm of the tribe.

1 Fourth, there is no evidence that the Community ever intended to share its sovereign
2 immunity with Defendant. There are no declarations by Community Council, sections of
3 the management agreement, or ordinances that indicate Defendant may use the Tribe's
4 sovereign immunity. Finally, as discussed above, the financial relationship between the
5 Community and the Defendant is clear: The Community pays Defendant to operate and
6 manage the Community's casino using its expert knowledge. For those services,
7 Defendant earns a fee. The Community does not, for example, own any portion of
8 Defendant.

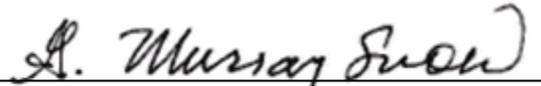
9 Considering these factors, Defendant is not an arm of the Community. Accordingly,
10 Defendant does not enjoy the Community's sovereign immunity.

11 **CONCLUSION**

12 Accordingly,

13 **IT IS THEREFORE ORDERED** that Defendant Harrah's Arizona Corporation's
14 Motion to Dismiss (Doc. 11) is **DENIED**.

15 Dated this 10th day of May, 2024.

16 

17 G. Murray Snow
18 Chief United States District Judge