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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BARBARA RATCLIFFE,

Plaintiff,

v.

YOCHA DEHE WINTUN NATION,

Defendant.

Case No. 2:24-CV-02748-WBS-CSK

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT YOCHA DEHE WINTUN NATION'S MOTION TO DISMISS

Date: January 6, 2025
Time: 1:30 PM

Judge: Hon. William B. Shubb
Date Action Filed: October 4, 2024

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1. INTRODUCTION

The Court should dismiss Barbara Ratcliffe's ("Ratcliffe") complaint. The Court has no subject-matter jurisdiction over this lawsuit because Ratcliffe's state-law employment claims involve no federal question. There is no diversity between Ratcliffe and Defendant Yocha Dehe Wintun Nation, a federally recognized tribal government (the "Tribe") because while Ratcliffe may be a citizen of California, the Tribe is a citizen of no state. Diversity jurisdiction extends only to cases between parties of two different states; the Tribe as a defendant destroys diversity. The Court can and should dismiss this case for this reason alone.

Even if the Court did find it had subject-matter jurisdiction over Ratcliffe's claims, the Court should still dismiss this case because the Tribe enjoys sovereign immunity from suit. As a sovereign, federally recognized and self-governing nation, the Tribe cannot be sued absent a clear and explicit waiver of sovereign immunity. The complaint contains no allegations even attempting to overcome the Tribe's sovereign immunity. The Court should dismiss this case for this reason as well.

2. FACTS

Ratcliffe filed her complaint on October 4, 2024 against the "Yocha Dehe Wintun Nation d/b/a Cache Creek Casino Resort." Dkt. 1. She alleges that she was employed by the Tribe's Cache Creek Casino Resort ("Cache Creek") as an "IT Project Manager." *Id.*, ¶ 1. She alleges that Cache Creek terminated her employment on April 25, 2023. *Id.*, ¶ 2. She also alleges that because Cache Creek "did not cite any formal policy violations or work performance issues that could have justified her termination," and because Cache Creek "did not have a written remote work policy that might have clarified expectations regarding the use of work equipment . . . for personal matters," she believes her termination was "influenced by factors related to her race, sex, and familial status." *Id.* Other than stating her race, sex, and familial status, she alleges no evidence supporting her theory other than an (apparent) inference. *Id.*, ¶¶ 4.

Ratcliffe goes on to allege that her termination "raises significant concerns about potential discriminatory motives behind her termination"; that her termination "appears to be influenced by discriminatory motives related to her race, sex, sexual orientation, and familial status"; and that

she "has a strong legal basis to claim that her termination was unlawful under FEHA [the California Fair Employment and Housing Act]." Dkt. 1 at ECF p. 2:19-20; ECF p. 5:17-20. Ratcliffe seeks general and compensatory damages along with statutory attorney's fees and costs. *Id.* at ECF p. 4:2-5.[1]

3. ARGUMENT

To entertain Ratcliffe's lawsuit, the Court must have subject-matter jurisdiction. *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982). "Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 376 (1994). Federal courts "presum[e] that a cause lies outside this limited jurisdiction, [citations], and the burden of establishing to the contrary rests upon the party asserting jurisdiction" *Id.* (citations omitted). Neither federal question nor diversity jurisdiction exists in this case. A motion made under Federal Rule of Civil Procedure 12(b)(1) addresses a lack of subject-matter jurisdiction. Fed. R. Civ. P. 12(b)(1) ("[A] party may assert the following defenses by motion: (1) lack of subject-matter jurisdiction[.]"). Here, there is no federal question or diversity jurisdiction, and the Tribe's sovereign immunity otherwise deprives the Court of subject-matter jurisdiction. *Pistor v. Garcia*, 791 F.3d 1104, 1111-12 (9th Cir. 2015) (holding tribal sovereign immunity is appropriately evaluated by a Rule 12(b)(1) motion).

A. The Court Lacks Federal Question Jurisdiction Because Ratcliffe Asserts Only State-Law Claims

Federal question jurisdiction exists for a "cause of action created by federal law," or where a state law claim "turn[s] on substantial questions of federal law[.]" *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005).

[1] The Court could easily dismiss Ratcliffe's complaint under Rule 12(b)(6), though this motion focuses on other issues. The complaint equivocates about the strength of her allegations ("raises significant concerns about potential discriminatory motives," "appears to be influenced," "has a strong legal basis to claim"). And, though irrelevant because the Tribe enjoys sovereign immunity, the complaint also does not allege, as required for a FEHA claim (and without admitting that FEHA or its procedures could or do apply to the Tribe), that Ratcliffe exhausted administrative remedies with the state. *Alexander v. Community Hosp. of Long Beach*, 46 Cal. App. 5th 238, 250-51 (2020); *Yurick v. Superior Court*, 209 Cal. App. 3d 1116, 1120-21 (1989).

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Here, there is no federal question jurisdiction. Ratcliffe's complaint does not attempt to establish that her claims arise under or otherwise implicate federal law. Instead, Ratcliffe pleads two causes of action solely under California law: a claim explicitly brought under California's FEHA (Dkt. 1 at 2:12-3:9) and a claim styled as "Wrongful Termination in Violation of Public Policy" and explicitly referencing the claim as being brought "under California law[.]" *Id.* at 3:10-15; *see also id.* at 3:19-20 (concluding complaint by stating Ratcliffe "has a strong legal basis to claim that her termination was unlawful under FEHA."). Ratcliffe cites no federal law giving rise to her claims. Likewise, FEHA claims do not implicate "substantial questions of federal law" because FEHA, as a state antidiscrimination statute, creates a "mandatory and independent state right" to be free of employment and housing discrimination prohibited by the act. *See Chmiel v. Beverly Wilshire Hotel Co.*, 873 F.2d 1283, 1286-87 (9th Cir. 1989).

B. This Court Lacks Diversity Jurisdiction Because the Tribe Is Not A Citizen of a State

Diversity jurisdiction may exist where all parties are "citizens of different States." 28 U.S.C. § 1332(a). "Most courts to have considered the question – including the First, Second, Eighth, and Tenth Circuits – agree that unincorporated Indian tribes cannot sue or be sued in diversity because they are not citizens of any state." *Am. Vantage Cos. v. Table Mountain Rancheria*, 292 F.3d 1091, 1095 (9th Cir. 2002) (collecting cases). The Ninth Circuit "agree[d] that the majority of courts have decided this question correctly and adopt[ed] the majority rule." *Id.* Here, the Tribe is not incorporated under any law. Declaration of Sarah Choi, ¶ 2. Therefore, it is not a citizen of any state and diversity jurisdiction does not exist because this case is not between "citizens of different States"; it is between (presumably) a citizen of California and an unincorporated entity with no state citizenship.[2]

[2] Diversity jurisdiction also requires that the amount in controversy be greater than $75,000, exclusive of interests and costs. 28 U.S.C. § 1332(a). Ratcliffe's complaint does not contain any dollar figure or other information from which the Court can determine what the possible amount in controversy is, so this requirement is also unsatisfied.

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C. Even if the Court had Subject-Matter Jurisdiction, the Tribe Enjoys Sovereign Immunity from Suit

The Court can and should dismiss this case for lack of subject-matter jurisdiction. But, even if the Court found that it had subject-matter jurisdiction, it should still dismiss it. The Tribe is a sovereign, federally recognized Indian nation. As such, the Tribe enjoys sovereign immunity from suit in this case.

An Indian tribe's sovereign immunity has elements of both subject matter and personal jurisdiction, and for that reason, a motion to dismiss is recognized as the appropriate procedural vehicle to challenge jurisdiction on the basis of tribal immunity. *Cadet v. Snoqualmie Casino*, 469 F. Supp. 3d 1011, 1014 (W.D. Wash. 2020) ("Given that '[t]ribal sovereign immunity is a quasi-jurisdictional issue,' the court cannot proceed without first determining whether it has jurisdiction in this case") (*citing Pistor*, 791 F.3d at 1111 ("Although sovereign immunity is only quasi-jurisdictional in nature, Rule 12(b)(1) is still a proper vehicle for invoking sovereign immunity from suit.")). Because the Court's very power to hear the case is at stake, and because sovereign immunity is a defense to suit and not merely liability, the jurisdictional defense should be resolved at the outset. *See, e.g.*, *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 430–31 (2007) ("a federal court generally may not rule on the merits of a case without first determining that it has jurisdiction over the category of claim in suit (subject-matter jurisdiction) and the parties (personal jurisdiction).").

Of course, as the party invoking the Court's jurisdiction, Ratcliffe bears the burden of proving it exists. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 376-378 (1994); *Safe Air For Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (when a defendant makes a factual 12(b)(1) challenge "by presenting affidavits or other evidence properly brought before the court, the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction.'"); *Drake v. Salt River Pima-Maricopa Indian Cmty.*, 411 F. Supp. 3d 513, 519 (D. Ariz. 2019) ("When a tribal defendant raises sovereign immunity . . . the plaintiff bears the burden of demonstrating that immunity does not apply") (citing *Baker v. United States*, 817 F.2d 560, 562 (9th Cir. 1987) (placing burden of

overcoming sovereign immunity on plaintiff)).

(1) Federal Law Deprives Courts of Jurisdiction in Lawsuits Against Sovereign Tribes Absent Congressional or Tribal Consent

As the U.S. Supreme Court enunciated long ago, Indian tribes "are 'distinct, independent political communities, retaining their original natural rights' in matters of local self-government." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978) (quoting *Worcester v. Georgia*, 31 U.S. 515, 559 (1832)). Though no longer "possessed of the full attributes of sovereignty" (*United States v. Kagama*, 118 U.S. 375, 381 (1886)), "Indian tribes have long been recognized as possessing the common law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo*, 436 U.S. at 58 (internal quotations, and citations, omitted); *see also Puyallup Tribe v. Washington Dep't of Game*, 433 U.S. 165, 172-73 (1977); *Am. Vantage Cos.*, 292 F.3d at 1096 (tribes are "aboriginal entities antedating the federal [and state] governments" and are "domestic dependent nations" entitled to immunity from suit) (cleaned up). Furthermore, federal recognition is dispositive of tribal status and determines whether a tribal entity possesses sovereign immunity. *Puyallup*, 433 U.S. at 172 (entity's immunity from jurisdiction depends on whether it is a "recognized Indian tribe").

Because preserving tribal resources and autonomy is vitally important, tribal immunity is broad, extending to commercial and governmental activities, both on and off the reservation. *See Kiowa Tribe*, 523 U.S. at 760 ("tribes enjoy immunity from suits on contracts, whether those contracts involve governmental or commercial activities"); *Am. Vantage Cos.*, 292 F.3d at 1100 ("A tribe does not shed immunity merely by embarking on a commercial enterprise").

Indeed, tribes may only be sued if Congress abrogates that immunity, or the tribe itself relinquishes it.[3] *Kiowa Tribe*, 523 U.S. at 754, 757, 760. Congressional abrogation of tribal

[3] States cannot abrogate tribal sovereign immunity at all. It is "a matter of federal law not subject to diminution by states." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 789 (2014). Thus, FEHA, a state law, and any related "public policy," constitute "no authority to abrogate [the Tribe's] tribal immunity, nor is there any assertion that Congress abrogated Tribal immunity with respect to the state law claims asserted here." *Block v. Tule River Tribal Council*, 2022 WL 2533483, at *6 n. 10 (E.D. Cal. July 7, 2022) (citing *Drake* for holding that "dismiss[ed] state law claims because '[t]he same analysis that precludes Plaintiff's federal claims also precludes her

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immunity will only be applied where a court can say "with perfect confidence that Congress in fact intended . . . to abrogate sovereign immunity, and imperfect confidence will not suffice." *Deschutes River Alliance v. Portland Gen. Elec. Co.*, 1 F.4th 1153, 1159 (9th Cir. 2021) (quoting *Dellmuth v. Muth*, 491 U.S. 223, 231 (1989)).

As for waiver, because the effective waiver of tribal immunity turns on the tribe's actual consent (*United States v. U.S. Fidelity & Guar. Co.*, 309 U.S. 506, 514 (1940)), waivers "cannot be implied but must be unequivocally expressed." *Santa Clara Pueblo*, 436 U.S. at 58-59; *see also Quinault Indian Nation v. Pearson for Estate of Comenout*, 868 F.3d 1093, 1098-99 (9th Cir. 2017) (tribal sovereign immunity may be abrogated by "an unequivocal waiver" or "unequivocal consent") (citing *Rupp v. Omaha Indian Tribe*, 45 F.3d 1241, 1245 (8th Cir. 1995) ("nothing short of an express and unequivocal waiver can defeat the sovereign immunity of an Indian nation")); *Executive Committee of the Wichita Tribe v. Bell*, 2 Okla. Trib. 107, 111, 1990 WL 655879 (Wichita Tribe Ct. Indian App. 1990) ("absent an unmistakable waiver of immunity, no court can maintain suit or enter judgment against an Indian tribe without its consent" (citing, among others, *USF&G* and *Santa Clara Pueblo*)).

Equally important, courts construe waivers of a tribe's sovereignty strictly and "there is a strong presumption against waiver of tribal sovereign immunity." *Demontiney v. United States*, 255 F.3d 801, 811 (9th Cir. 2001); *Deschutes River Alliance*, 1 F.4th at 1159 (same, quoting *Demontiney*), *Ingrassia v. Chicken Ranch Bingo &* Casino, 676 F. Supp. 2d 953, 956 (E.D. Cal. 2009) (same); *Soghomonian v. United States*, 82 F.Supp.2d 1134, 1140 (E.D. Cal. 1999) (tribal "[w]aivers of sovereign immunity are construed narrowly and in favor of the sovereign"); *Lane v. Pena*, 518 U.S. 187, 192 (1996) ("a waiver of the Government's sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign"); *Quieletue Indian Tribe v. Babbitt*, 18 F.3d 1456, 1460 (9th Cir. 1994) (tribe's voluntary participation in proceedings "is not express and unequivocal waiver of tribal immunity that we require in this circuit"). This hurdle can only be overcome if a tribe's waiver was "clear" and "unequivocal." *Demontiney*, 225 F.3d

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claims under state tort law'")).

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at 811 (waiver must be "unequivocally expressed") *citing Santa Clara Pueblo,* 436 U.S. at 58*; C&L Enters. v. Citizen Band Potowatomi Indian Tribe of Okla*., 532 U.S. 411, 418 (2001) (tribe's waiver must be "clear"); *Pan American Co. v. Sycuan Band of Mission Indians*, 884 F.2d 416, 419 (9th Cir. 1989) ("tribal sovereign immunity remains intact unless surrendered in express and unequivocal terms.").

Finally, equitable considerations have no bearing on whether a tribal government may be sued, as sovereign immunity is a question of jurisdiction, not equity. *Puyallup*, 433 U.S. at 171-72; *see also California v. Quechan Tribe of Indians*, 595 F.2d 1153, 1155 (9th Cir. 1979) (sovereign immunity "involves a right which courts have no choice, in the absence of a waiver, but to recognize"); *Pan American*, 884 F.2d at 419 (sovereignty is not "subject to the vagaries of the commercial bargaining process or the equities of a given situation."); *Ute Distribution Corp. v. Ute Indian Tribes*, 149 F.3d 1260, 1267 (10th Cir. 1998) ("[T]he Supreme Court has refused to find a waiver of tribal immunity based on policy concerns, perceived inequities arising from the assertion of immunity, or the unique context of a case.").

(2) The Tribe Possesses Sovereign Immunity From Suit and Ratcliffe Fails to Carry Her Burden of Showing a Congressional or Tribal Waiver

The Tribe is a federally recognized Indian government. 89 FR 944, 947 (Jan. 8, 2024) (listing Yocha Dehe as a "tribal entity" recognized by the United States).[4] A tribe's inclusion on the federal list of recognized tribes establishes its federal recognition and, thus, its entitlement to sovereign immunity as a matter of law. *See Ingrassia*, 676 F. Supp. 2d at 957. Ratcliffe has sued the Tribe in its own name and thus the Tribe's sovereign immunity is squarely implicated.

As discussed above, only Congress or the Tribe can waive the Tribe's sovereign immunity from suit. Abrogation by Congress must be unmistakable and clear in the text of the relevant statutes. No federal statute is implicated, so Congressional abrogation does not apply, and

[4] The Tribe requests the Court take judicial notice of the cited Federal Register section and the fact that the Tribe is federally recognized. 44 U.S.C. § 1507 ("The contents of the Federal Register shall be judicially noticed"); Fed. R. Evid. 201(b)(2); *Friends of Amador County v. Salazar*, 554 F. App'x 562, 565 (9th Cir. 2014) (status as federally recognized tribe through listing in Federal Register "properly subject to judicial notice").

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indeed, Ratcliffe does not even try to allege that Congress abrogated the Tribe's immunity here.

The only possibility, then, is that the Tribe waived its sovereign immunity for employment lawsuits like Ratcliffe's. Ratcliffe's complaint makes no attempt to state, or even suggest, that the Tribe has waived its sovereign immunity in this instance. Besides subject matter jurisdiction, it is Ratcliffe's burden to show that there has been an effective waiver of sovereign immunity, enabling the Court to hear this case. *Safe Air For Everyone*, 373 F.3d at 1039; *Drake*, 411 F.Supp.3d at 519. Her complaint utterly fails even to attempt to carry that burden, and the Court should resolve the question against her and dismiss this case.

4. CONCLUSION

The Court lacks subject-matter jurisdiction over this case because there is no federal question or diversity jurisdiction. The Court can and should dismiss this case for that reason alone. Even if the Court proceeds past that issue, the Tribe enjoys sovereign immunity from suit. Ratcliffe's complaint contains no facts that would abrogate that immunity, and the Court can and should dismiss this case on that additional ground.

Dated: November 7, 2024

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