

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

JEANETTE SCOTT,)	
)	
Plaintiff,)	
)	
v.)	Case No. 24-cv-00541-SRB
)	
AHTNA ENGINEERING SERVICES, LLC,)	
d/b/a ADVANCIA + AHTNA)	
JOINT VENTURE, et al.,)	
)	
Defendants.)	

ORDER

Before the Court is Defendant Advancia Technologies, LLC’s (“Advancia”) Motion to Dismiss for Lack of Subject Matter Jurisdiction. (Doc. #195.) For the reasons set forth below, the motion is DENIED.

I. FACTUAL BACKGROUND

Advancia is an Oklahoma LLC, and its sole member is the Potawatomi Business Development Corporation (“PBDC”). PBDC is a corporation organized under the Constitution of the Forest County Potawatomi Community and is wholly owned and controlled by Forest County Potawatomi Community (“the Tribe”). The Tribe is a recognized Indian Tribe of the United States Department of the Interior.

On October 8, 2025, a jury found for Plaintiff Jeanette Scott (“Plaintiff”) on her Missouri Human Rights Act (“MHRA”) age discrimination claim and for Advancia on Plaintiff’s Family Medical Leave Act (“FMLA”) discrimination claim. (Doc. #109.) On December 8, 2025, Advancia filed this pending motion to dismiss for lack of subject matter jurisdiction arguing that

it is entitled to tribal sovereign immunity.¹ Plaintiff disagrees. The parties' arguments are addressed below.

II. LEGAL STANDARD

“A district court has the authority to dismiss an action for lack of subject matter jurisdiction on any one of three separate bases: ‘(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.’” *Johnson v. United States*, 534 F.3d 958, 962 (8th Cir. 2008). Here, the Court considers Plaintiff’s Amended Complaint supplemented by undisputed facts in the record.

III. DISCUSSION

Advancia argues “tribal sovereign immunity shields Advancia from this case since Advancia is an arm of the tribe and nothing waives Advancia’s immunity for Plaintiff’s claims.” (Doc. #196, p. 11.) Plaintiff argues that Advancia is not entitled to tribal immunity, as it is not a “tribal agency” but instead a “separate corporate entity created by the tribe” created under Oklahoma law, twice removed by a liability-shielding entity from the tribe itself.” (Doc. #201, p. 11.)

“Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers.” *Amerind Risk Mgmt. Corp. v. Malaterre*, 633 F.3d 680, 685 (8th Cir. 2011) (quoting *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978)). “Sovereign immunity thus bars suits against Indian tribes ‘absent a clear waiver by the tribe or congressional abrogation.’” *Stathis v. Marty Indian Sch. Bd. Inc.*, 560 F. Supp. 3d 1283, 1291

¹ “The objection that a federal court lacks subject-matter jurisdiction, *see* Fed. Rule Civ. Proc. 12(b)(1), may be raised at any stage in the litigation, even after trial and the entry of judgment[.]” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006).

(D.S.D. 2021) (quoting *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991)). “Entities or agencies that function as an ‘arm’ of a tribe may share in that tribe’s sovereign immunity.” *Id.* at 1293. However, “the Eighth Circuit has not established a specific test or set of factors to consider when deciding whether an organization is entitled to tribal sovereign immunity.” *Id.* at 1293-94. District Courts in the Eighth Circuit have looked to a multi-factor test used by the Tenth Circuit Court of Appeals to determine whether an organization is entitled to tribal sovereign immunity. *See id.* at 1294 (collecting cases). Those factors include:

the relationship between the economic entities and the tribe, including but not limited to: (1) their method of creation; (2) their purpose; (3) their structure, ownership, and management, including the amount of control the tribe has over the entities; (4) whether the tribe intended for the entities to have tribal sovereign immunity; (5) the financial relationship between the tribe and the entities; and (6) whether the purposes of tribal sovereign immunity are served by granting immunity to the entities.

Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino & Resort, 629 F.3d 1173, 1181 (10th Cir. 2010).

1. Method of Creation

Advancia argues that “while [it] is a state chartered, LLC (SOF #1), that alone cannot preclude immunity since tribal immunity is a matter of federal law and is not subject to diminution by the States [and, a]lso a state charter is not dispositive over the remaining factors.” (Doc. #192, p. 12) (internal citation omitted). Plaintiff argues that “this factor favors finding no immunity” because Advancia is “not only [] organized under state, rather than tribal law—it is not owned by the Tribe directly.” (Doc. #201, p. 15.)

The Court agrees with Plaintiff that this factor weighs against the finding of immunity. “Formation under tribal law favors sovereign immunity, while incorporation under state law can,

at least in the Tenth Circuit, preclude an entity from sharing in a tribe's immunity[.]” *Stathis*, 560 F. Supp. 3d at 1294 (citing *Somerlott v. Cherokee Nation Distrib.*, 686 F.3d 1144, 1149–50 (10th Cir. 2012)). The Tenth Circuit in *Somerlott* analogized tribal sovereign immunity to that of the United States, reasoning that because federal sovereign immunity “does not extend to its sub-entities incorporated as distinct legal entities under state law,” the same principle applies to tribes, whose immunity is “coextensive with the sovereign immunity of the United States.” *Somerlott*, 686 F.3d at 1150 (internal citation omitted).

However, the Eighth Circuit has not squarely addressed this issue. As such, while the Court finds this factor weighs against immunity, it declines to treat it as dispositive and will address the remaining factors.

2. Advancia's Purpose

Advancia argues that its “purpose is to provide financial support to the Tribe.” (Doc. #196, p. 12.) Plaintiff argues that Advancia’s Operating Agreement makes no mention of the Tribe, and therefore, this factor weighs against immunity. The Court finds this factor weighs slightly in favor of immunity.

Nothing in Advancia’s Second Amended Operating Agreement mentions the Tribe. Indeed, its stated purpose is to “(a) bid and perform on State Government, Federal Government and commercial contracts, (b) engage in any lawful activity or business and (c) do anything else permitted by § 2002 of the Corporations Code of Oklahoma.” (Doc. #196-1, p. 32.)² However, Advancia is wholly owned by PBDC, which is wholly owned and controlled by the Tribe.

² The Court notes that Advancia attached the Second Amended Operating Agreement as an exhibit to its motion. Given Advancia relies on the Second Amended Operating Agreement, the Court finds that it applies for the purposes of this pending motion. However, Advancia previously filed the Third Amended Operating Agreement in opposition to Plaintiff’s prior motion for partial summary judgment. See Doc. #36-1. The stated purpose in the Third Amended Operating Agreement is to “engag[e] in any and all lawful acts or activities permitted by the laws of Oklahoma.” (Doc. #36-1, p. 32.) The Court also relies on the Third Amended Operating Agreement as it is part of the record and further Advancia relies on it in its reply. See (Doc. #206, p. 10.)

Advancia argues the Court is not limited to the purpose stated in Advancia's Operating Agreements but should look to PBDC's charter that "mandates that 80% of its net profits are distributed to the Tribe and its members." (Doc. #206, p. 11.)

Where an entity is "created for the financial benefit of the Tribe and to enable it to engage in various governmental functions" the second factor weighs in favor of immunity. *Breakthrough*, 629 F.3d at 1192. Advancia is wholly owned by the PBDC, and the mission of the PBDC is "to engage in business diversification activities" that "will enable the Tribe to realize significant economic benefits through business development and diversification." (Doc. #196-1, p. 17.) Although Advancia is not directly controlled by the Tribe, ultimately there is some evidence to suggest that the PBDC formed Advancia for the Tribe's financial benefit as it expressly has the power to "charter subordinate organizations for economic purposes[.]" (Doc. #196-1, p. 20). Assuming the Court should look beyond Advancia's Operating Agreements and to the PBDC's Charter, this factor weighs in favor of immunity.

3. Structure

Advancia argues that it is a "single-member LLC wholly owned by the Tribe through PBDC, and PBDC controls Advancia's manager, budget, allocations, distributions, major decisions, and operating agreement amendments." (Doc. #196, p. 13.) Plaintiff argues that "[Advancia] has a sole Member—not the Tribe, but PBDC" and that this factor weighs against immunity. (Doc. #201, p. 17.) The Court finds this factor weighs against immunity.

"While [Advancia] is fully owned by the PBDC, that fact alone does not support a finding of sovereign immunity." *Hunter v. Redhawk Network Sec.*, LLC, No. 6:17-CV-0962-JR, 2018 WL 4171612, at *4 (D. Or. Apr. 26, 2018), report and recommendation adopted, No. 6:17-CV-0962-JR, 2018 WL 4169019 (D. Or. Aug. 30, 2018).

If the tribe retains some ownership and formal control over the entity but has contracted out its management, this factor may weigh either for or against immunity depending on the particular facts of the case. Evidence that the tribe actively directs or oversees the operation of the entity weighs in favor of immunity; evidence that the tribe is a passive owner, neglects its governance roles, or otherwise exercises little or no control or oversight weighs against immunity.

People v. Miami Nation Enters., 386 P.3d 357, 373 (Ca. 2016) (applying the *Breakthrough* factors).

Here, Advancia’s Third Amended Operating Agreement establishes that it is a manager-managed liability company. Under the Agreement, the sole Member, PBDC, “will not engage in the management of the Company or decisions regarding the Company’s activities in the regular course of business[.]” (Doc. #36-1, p. 33.) Advancia offers no evidence that either the Tribe or PBDC “oversees the operation” of Advancia. *Id.* To the contrary, the record reflects that PBDC’s role as sole Member is limited to approving extraordinary actions such as amending the Articles of Incorporation, approving any waiver of sovereign immunity, disposing of a majority or greater of the Advancia’s assets, settling judgments, or winding up the company. These powers do not amount to day-to-day control or operational oversight. Rather they suggest PBDC is a “passive owner[.]” *Id.* Accordingly, the evidence indicates that PBDC is not actively involved in Advancia’s management, and therefore, this factor weighs against sovereign immunity.

4. Intent for Tribal Sovereign Immunity

Advancia argues that the PBDC “expressly conferred its sovereign immunity” to it. (Doc. #196, p. 13.) The Third Amended Operating Agreement contains a provision stating that “pursuant to the corporate charter” of PBDC, the Tribe “hereby confers on [Advancia] sovereign immunity from suit to the same extent that the [Tribe] would have such sovereign immunity if it engaged in the activities undertaken by the Company.” (Doc. #36-1, pp. 36-37.)

However, this factor is “so easy to meet” that other courts have discounted it. *Ransom v. GreatPlains Fin., LLC*, 148 F.4th 141, 152 (3d Cir. 2025); *see also People*, 386 P.3d at 379 (“such a formal statement of immunity is not sufficient here to tip the balance in favor of immunity.”). The Court finds this factor does not tip the scale in favor of immunity.

5. Financial Relationship between Advancia and the Tribe

Advancia argues that “all revenue generated by Advancia is distributed via PBDC to the Tribe and its members, so the Tribe depends on Advancia for revenue, and a judgment against Advancia could significantly impact the Tribe and its members via PBDC.” (Doc. #196, p. 13.) Plaintiff argues that “no profits of [Advancia] directly go to the Tribe—they pass through [PBDC] first, and may well be diminished by salaries and expenses of that corporation.” (Doc. #201, p. 18.) The Court agrees with Plaintiff.

This “factor asks how a judgment against the firm would affect the tribe’s finances. It favors immunity if the tribe would be directly liable for a judgment.” *Ransom*, 148 F.4th at 152. Advancia is a separate limited liability corporation, which insulates the PBDC and the Tribe from liability. “A suit against [Advancia] would only affect [Advancia’s] corporate assets, and would not reach the other holdings of the PBDC or the PBDC itself[,]” let alone the Tribe. *Hunter*, 2018 WL 4171612, at *5.

While the Court notes that 40% of PBDC’s net profits are to be distributed to the tribal government and another 40% to individual tribal members, Advancia “must do more than simply assert that it generates some revenue for the tribe in order to tilt this factor in favor of immunity.” *People*, 386 P.3d at 374. Here, Advancia has “omit[ted] any mention of how much revenue actually reaches [the Tribe’s] coffers[.]” *Id.* at 377; *see also Breakthrough*, 629 F.3d at p. 1194 (evidence showing that monthly payments to the Tribe could be as much as \$1,000,000.00 per

month). Advancia has not “carried its burden” that there is a “close financial relationship” between itself and the Tribe.

Accordingly, because any potential judgment would not directly affect the Tribe or its treasury, this factor weighs against immunity.

6. Purposes of Tribal Immunity

Not every court appears to analyze this last factor separately. *See Ransom*, 148 F.4th at 152 (collecting cases) (noting that it is “weave[d] into the other factors”). Assuming this factor warrants separate consideration, Advancia argues that “applying immunity to Advancia fulfills the purpose of tribal sovereign immunity to protect the Tribe’s coffers and supports its chartering subordinate entities for economic purposes, including business diversification, to promote tribal self-governance and economic development, including through commercial dealings with others.” (Doc. #196, p. 13.) Plaintiff argues that these facts do not support the purpose of tribal immunity. The Court agrees with Plaintiff.

The Tribe does not directly own Advancia. As a result, extending immunity does not “directly protect[] the sovereign Tribe’s treasury[.]” *Allen v. Gold Country Casino*, 464 F.3d 1044, 1047 (9th Cir. 2006) (noting one of the historic purposes of sovereign immunity in general is to protect the financial integrity of States). Further, as the purposes of tribal immunity appear to look most closely at the preceding factors of “purpose, control, and financial relationship[.]” only the purpose factor weighed slightly in favor of immunity. *People*, 386 P.3d at 378.

Accordingly, applying the *Breakthrough* factors, conducting an “overall assessment” of evidence, and for the additional reasons provided by Plaintiff, the Court finds that Advancia is not entitled to tribal sovereign immunity. *Id.* at 374.³

IV. CONCLUSION

Accordingly, Advancia’s Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. #195) is DENIED.

IT IS SO ORDERED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

Dated: January 21, 2026.

³ Even assuming Advancia is protected by tribal sovereign immunity, the Court finds that it has expressly waived its immunity. A waiver of immunity “cannot be implied but must be unequivocally expressed.” *Santa Clara Pueblo v. Martinez*, 436 U.S.49, 58 (1978).

Here, the Third Amended Operating Agreement provides that Advancia “hereby consents to sue and be sued in any of the United States Federal Courts . . . for all matters relating to the [Small Business Association’s] (“SBA”) programs including, but not limited to, 8(a) BD program participation, loans, and contracts performance.” (Doc. #36-1, p. 37.)

The United States District Court for the District of Oregon analyzed an almost identical provision and found that it constituted a waiver of sovereign immunity with “language [that] is sufficiently broad enough to grant federal courts’ jurisdiction over employment related matters” because the SBA prohibits discrimination in employment. *Hunter*, 2018 WL 4171612, at *7; *see also* 13 C.F.R. § 113.1 (the SBA prohibits discrimination and effectuates “to the fullest extent possible the nondiscrimination policies of the Federal Government.”). The Court agrees with the *Hunter* court’s reasoning and concludes that age discrimination falls within the federal government’s nondiscrimination policies, as expressed in the Age Discrimination Employment Act.

The United States District Court for the District of Maine has come to a similar conclusion as the *Hunter* Court. *See, e.g., Rassi v. Fed. Program Integrators, LLC*, 69 F. Supp. 3d 288, 292 (D. Me. 2014) (sue and be sued clause is sufficiently broad enough to encompass claim of retaliation under False Claims Act because it relates to “program participation.”).