

1 **WO**

2

3

4

5

6

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

7

8

9

Alberta M Seamon,

No. CV-23-08523-PCT-MTL

10

Plaintiff,

**ORDER**

11

v.

12

Navajo Nation Gaming Enterprise, et al.,

13

Defendants.

14

15

Before the Court is Defendants Navajo Nation Gaming Enterprise (“NNGE”) and Colleen Davis’s Motion to Dismiss. (Doc. 18.) Because NNGE is immune from Plaintiff Alberta Seamon’s claims as an arm of the Navajo Nation, and because Ms. Davis cannot be held individually liable under Title VII of the Civil Rights Act or Title I of the Americans with Disabilities Act (“ADA”), the Court will grant the Motion.

16

17

18

19

20

**I.**

21

Ms. Seamon, pro se, is a member of the Diné Nation, also known as the Navajo Nation. (Doc. 9 at 2.) She was employed by NNGE as an administrative assistant at the Twin Arrows Casino and Resort. (*Id.*) She was terminated after approximately four months. (*Id.*)

22

23

24

25

Ms. Seamon alleges that she was wrongfully terminated and seeks money damages. (*See generally* Doc. 9.) She claims that Defendants violated her rights, discriminated against her based on “race, religion, national origin, and disability (epileptic seizure),” and created a hostile work environment. (*Id.* at 2.) Ms. Seamon says that the hostile work

26

27

28

1 environment exacerbated her disability. (*Id.*) She specifically accuses Ms. Davis, an NNGE  
2 employee at the Twin Arrows Casino and Resort, of “harass[ing] and bull[ying her]  
3 whenever she spoke her Indigenous language or shared her Diné culture with guests.” (*Id.*)

4 Ms. Seamon states that she brings claims “of employment discrimination,  
5 harassment, and wrongful termination under federal and state laws.” (*Id.* at 1.) But she does  
6 not specify what these laws are. Viewing her allegations liberally and wholistically, the  
7 Court takes Ms. Seamon to allege violations of Title VII of the Civil Rights Act and Title  
8 I of the ADA. (*See generally* Doc. 9.)

9 Defendants move to dismiss Ms. Seamon’s Amended Complaint under Federal  
10 Rules of Civil Procedure 12(b)(1) and 12(b)(6). (*Id.*) Because the Court finds that it lacks  
11 subject matter jurisdiction over this case as NNGE is immune from Ms. Seamon’s claims  
12 and there is no individual liability under Title VII of the Civil Rights Act or Title I of the  
13 ADA, it does not reach Defendants’ arguments brought pursuant to Rule 12(b)(6).

## 14 II.

15 Federal Rule of Civil Procedure 12(b)(1) authorizes a court to dismiss claims over  
16 which it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). A Rule 12(b)(1)  
17 challenge may be facial or factual. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). When  
18 a defendant argues that the claims in the complaint, even if true, are insufficient to establish  
19 subject matter jurisdiction, the challenge is a facial one. *Safe Air for Everyone v. Meyer*,  
20 373 F.3d 1035, 1039 (9th Cir. 2004). In a facial challenge to subject matter jurisdiction  
21 under Rule 12(b)(1), courts must accept all material allegations in the complaint as true  
22 and construe the complaint in favor of the plaintiff. *White*, 227 F.3d at 1242. “By contrast,  
23 in a factual attack [to subject matter jurisdiction], the challenger disputes the truth of the  
24 allegations that, by themselves, would otherwise invoke federal jurisdiction.” *Safe Air for*  
25 *Everyone*, 373 F.3d at 1039. Courts may look beyond the complaint only when a defendant  
26 brings a factual attack against jurisdiction. *White*, 227 F.3d at 1242. In that instance, the  
27 court “also need not presume the truthfulness of the plaintiffs’ allegations.” *Id.* Here,  
28 Defendants’ challenge is facial. (*See generally* Doc. 18.)



1 Nation. 5 N.N.C. §§ 1701 (establishing NNGE), 1702(A) (stating that NNGE is “wholly  
2 owned by the Navajo Nation”). “District courts in this circuit have recognized that  
3 subsidiaries that are wholly owned by an Indian tribe or an arm of the tribe enjoy tribal  
4 immunity.” *Tsosie*, 2023 WL 4205127, at \*2; *see also Dine Citizens Against Ruining Our*  
5 *Env’t v. Bureau of Indian Affs.*, 932 F.3d 843, 856 (9th Cir. 2019) (recognizing that the  
6 Navajo Transitional Energy Company was an arm of the Navajo Nation in part because it  
7 was organized under Navajo law and wholly owned by the Navajo Nation).

8 **B.**

9 Similarly, the second factor weighs in favor of NNGE’s position because NNGE  
10 was created “to conduct gaming operations within the Navajo Nation under the auspices of  
11 the Indian Gaming Regulatory Act of 1988 . . . , Navajo Gaming Ordinance . . . and the  
12 gaming compacts entered into between the Navajo Nation and any State.” 5  
13 N.N.C. § 1703(A). Its purpose is also to “generate gaming revenues and provide a fair  
14 return to the Navajo Nation.” *Id.* § 1703(B). The Ninth Circuit has previously recognized  
15 such an arrangement as suggesting that the entity is an arm of the tribe. *See Allen v. Gold*  
16 *Country Casino*, 464 F.3d 1044, 1046-47 (9th Cir. 2006) (recognizing the defendant casino  
17 as an arm of the Tyme Maidu Tribe in part because it was created to conduct gaming on  
18 behalf of the tribe).

19 **C.**

20 The third factor also supports NNGE’s recognition as an arm of the tribe. NNGE is  
21 closely controlled by the Navajo Nation. *See generally* 5 N.N.C. §§ 1701-19. It is subject  
22 to the Navajo Nation Council’s legislative oversight. *Id.* § 1718. Its board of directors  
23 manages its internal operations on behalf of the Navajo Nation Council. *Id.* § 1707(A).  
24 That board consists of nine members, a majority of whom must be enrolled members of  
25 the Navajo Nation. *Id.* § 1707(B), (D). Finally, its board members must be confirmed by  
26 the Navajo Nation Council. *Id.* § 1707(C). These circumstances further indicate that NNGE  
27 is an arm of the Navajo Nation. *See Cook v. AVI Casino Enters.*, 548 F.3d 718, 726 (9th  
28 Cir. 2008) (finding that the defendant casino was an arm of the Fort Mojave Tribe in part

1 because a majority of its board of directors must be tribe members and the tribe counsel  
2 performed corporate shareholder functions for the benefit of the tribe).

3 **D.**

4 The fourth factor also weighs in NNGE’s favor. The Navajo Nation has expressly  
5 extended its sovereign immunity to NNGE. 5 N.N.C. § 1702(C) (“As a legal entity of the  
6 Navajo Nation, the [Navajo Nation Gaming] Enterprise is entitled to the privileges and  
7 immunities of the Navajo Nation. The Enterprise shall possess all of the attributes of  
8 Navajo sovereignty, including but not limited to immunity from suit . . .”). Moreover, the  
9 Navajo Nation Sovereign Immunity Act, passed by the Navajo Nation Council, states that  
10 the Navajo Nation is a sovereign nation immune from suit and includes NNGE within the  
11 definition of the “Navajo Nation.” 1 N.N.C. §§ 552(Q), 553(A).

12 **E.**

13 Lastly, the fifth factor likewise indicates that NNGE is an arm of the Navajo Nation.  
14 NNGE and the Navajo Nation share close financial ties. All of NNGE’s net gaming  
15 revenues are distributed to the Navajo Nation to be used: “(1) to fund tribal government  
16 operations and/or programs; (2) to provide for the general welfare of the tribe and its  
17 members; (3) to promote tribal economic development; (4) to donate to charitable  
18 organizations; and/or (5) to help fund operations of local government agencies.” 12  
19 N.N.C. § 2202 (cleaned up); *see also* 5 N.N.C. § 2005. The fact that “the economic benefits  
20 produced by the casino inure to the [Navajo Nation’s] benefit” further suggests that NNGE  
21 is an arm of the Navajo Nation. *Cook*, 548 F.3d at 726.

22 All five *White* factors favor NNGE’s position. Accordingly, the Court finds that  
23 NNGE is an arm of the Navajo Nation and entitled to sovereign immunity.

24 **IV.**

25 Ms. Seamon does not deny that NNGE is an arm of the Navajo Nation. Instead, she  
26 states that “[w]hile NNGE may assert sovereign immunity as an arm of the Navajo Nation,  
27 such immunity should not shield them from accountability for alleged discriminatory  
28 practices and a hostile work environment. The circumstances of this case warrant

1 consideration beyond the blanket application of sovereign immunity.” (Doc. 22 at 1.)

2 It is unclear what Ms. Seamon means by “the circumstances of this case.” The Court  
3 takes her to argue that NNGE has waived its sovereign immunity with respect to her claims.  
4 NNGE may indeed waive its immunity, but to do so the waiver must “be approved by the  
5 [board of directors] by a duly adopted resolution.” 5 N.N.C. § 1705(F). Ms. Seamon has  
6 not alleged that any such resolution has been passed. To the contrary, at oral argument she  
7 confirmed that none has.

#### 8 V.

9 Finally, Ms. Seamon’s claim against Ms. Davis fails. The Ninth Circuit held that  
10 there is no individual liability under Title VII of the Civil Rights Act in *Miller v. Maxwell’s*  
11 *International Inc.*, 991 F.2d 583, 587-88 (9th Cir. 1993) (“[T]his court’s ruling in *Padway*  
12 [v. *Palches*, 665 F.2d 965 (9th Cir. 1982)] that individual defendants cannot be held liable  
13 for damages under Title VII is good law.”). And “[b]ecause Title I of the ADA adopts a  
14 definition of ‘employer’ and a remedial scheme that is identical to Title VII, [the] bar on  
15 suits against individual defendants also applies to suits brought under Title I of the ADA.”  
16 *Walsh v. Nev. Dep’t of Hum. Res.*, 471 F.3d 1033, 1038 (9th Cir. 2006) (cleaned up); *see*  
17 *also Purcell v. Am. Legion*, 44 F. Supp. 3d 1051, 1056 (E.D. Wash. 2014) (“Numerous  
18 courts, including the Ninth Circuit, have held that there is no individual liability for ADA  
19 violations.”).

#### 20 VI.

21 Ms. Seamon’s Amended Complaint must be dismissed because her claims fail as a  
22 matter of law. Moreover, these fatal defects cannot be cured, and thus, the Court will not  
23 grant her leave to amend. *See Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007  
24 (9th Cir. 2009) as amended (Feb. 10, 2009) (noting that the Court may deny leave to amend  
25 where amendment would be futile).

26 Accordingly,

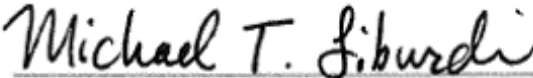
27 **IT IS ORDERED** that Defendants Navajo Nation Gaming Enterprise and Colleen  
28 Davis’s Motion to Dismiss (Doc. 18) is **granted**.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IT IS FURTHER ORDERED** that Ms. Seamon’s Amended Complaint (Doc. 9) is **dismissed with prejudice.**

**IT IS FINALLY ORDERED** that the Clerk of Court shall enter judgment in Defendants Navajo Nation Gaming Enterprise and Colleen Davis’s favor and close this case.

Dated this 26th day of June, 2024.

  
\_\_\_\_\_  
Michael T. Liburdi  
United States District Judge