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NOT FOR PUBLICATION

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 LDFS LLC,

10 Plaintiff,

11 v.

12 IEC Group Incorporated,

13 Defendant.
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No. CV-17-08046-PCT-JJT

ORDER

15 At issue is Defendant IEC Group Incorporated's Motion to Dismiss for Failure to
16 Join a Necessary and Indispensable Party (Doc. 11, MTD). After considering the Motion,
17 Plaintiff's Response (Doc. 12, Resp.), and Defendant's Reply (Doc. 15, Reply), the Court
18 found this matter appropriate for resolution without oral argument. *See* LRCiv 7.2(f). For
19 the reasons that follow, the Court will grant Defendant's Motion.

20 **I. BACKGROUND**

21 Plaintiff alleges the following facts in the Complaint. (Doc. 1, Compl.) Plaintiff
22 LDFS LLC d/b/a U.S. Renal Care Flagstaff Dialysis ("LDFS") is the owner of a dialysis
23 center in Flagstaff, Arizona known as "DSI Flagstaff." (Compl. ¶ 8.) Defendant IEC
24 Group, Inc. d/b/a AmeriBen ("AmeriBen") is a Third-Party Administrator that hired CSG
25 Consulting, Inc. ("CSG") as a medical fee negotiator. (Compl. ¶¶ 9-10.) LDFS alleges
26 that it negotiated a pricing agreement through CSG with AmeriBen related to payments
27 to LDFS for services provided to a patient at DSI Flagstaff. (Compl. ¶ 3.) LDFS alleges
28 that CSG was acting as AmeriBen's agent and was authorized "to negotiate with and

1 enter into agreements with providers regarding the payment level for services provided to
2 dialysis patients whose claims were to be processed and paid by AmeriBen.”
3 (Compl. ¶ 10.) This pricing agreement provides that AmeriBen would pay LDFS for its
4 services at an amount equal to 60 percent of LDFS’s billed charges. (Compl. ¶ 4.)
5 AmeriBen has not paid LDFS for certain services and, as a result, LDFS now raises two
6 state law claims against AmeriBen. The first is a breach of contract claim for the failure
7 to pay the full amount of bills under the pricing agreement. The second claim is for
8 damages arising from two checks sent from AmeriBen to LDFS that bounced.

9 Because this is a Federal Rule of Civil Procedure 12(b)(7) motion to dismiss for
10 failure to join an indispensable party, Defendant AmeriBen attached evidence to its
11 Motion that introduces the role of an absent party, the Tuba City Regional Healthcare
12 Corporation (“TCRHCC”). The TCRHCC is a non-profit healthcare corporation
13 incorporated under Navajo Nation laws and owned by the Navajo Nation. (MTD at 2.)
14 TCRHCC provided the health care plan covering the patient treated at DSI Flagstaff.
15 (MTD at 4.)

16 First, AmeriBen attached to its Motion a “Third-Party Administrative and
17 Utilization Managements Services Agreement” (“TPA Agreement”) between AmeriBen,
18 as Third Party Administrator, and TCRHCC, as Plan Sponsor and/or Administrator of the
19 Plan. (Doc. 11-1, Decl. of Bryan Hall (“Hall Decl.”) ¶ 4 & Ex. 1 (“TPA Agreement”).) In
20 the TPA Agreement, AmeriBen and TCRHCC agreed that AmeriBen is solely an
21 independent contractor and is not a fiduciary of the Plan or an employee or agent.
22 (TPA Agreement ¶ 3.1.) The TPA Agreement states that AmeriBen has no responsibility
23 for any funding of Plan benefits and that TCRHCC is solely responsible for the
24 negotiation and substance of any contracts with stop-loss insurers, pharmacy benefit
25 management companies, preferred provider organizations, and any other third-party
26 service provider organizations or vendors directly contracted by TCRHCC.
27 (TPA Agreement ¶¶ 3.4, 3.5.) The Agreement also states that TCRHCC will be bound by
28 the terms of the agreements between any third-party service providers or vendors that

1 directly contract with AmeriBen. (TPA Agreement ¶ 3.6.) Moreover, all Plan benefit
2 payments made by AmeriBen will take the form of checks drawn on an account
3 designated by TCRHCC for such purpose, and TCRHCC will establish, maintain, and
4 reconcile this account. (TPA Agreement ¶ 5.1.) Finally, the Agreement states that
5 TCRHCC, “and not AmeriBen, has the final discretionary authority to determine what
6 benefits will be paid by the Plan.” (TPA Agreement Art. IV.)

7 Second, AmeriBen attached to its Motion a letter from CSG to LDFS evidencing
8 the pricing agreement related to payment for costs of services at DSI Flagstaff.
9 (Hall Decl. ¶ 7 & Ex. 2 (“CSG Letter”).) This letter expressly states that “this agreement
10 does not constitute a guarantee of benefits.” (CSG Letter.) Third, AmeriBen attached a
11 letter from LDFS to TCRHCC—not AmeriBen—requesting an appeal and demanding
12 payment from TCRHCC for services at DSI Flagstaff. (Hall Decl. ¶ 10 & Ex. 3 (“USRC
13 Letter”) at 1.) Finally, AmeriBen attaches the two bounced checks that were written to
14 LDFS. (Hall Decl. ¶¶ 12-13 & Ex. 4 (“Bounced Checks”).)

15 **II. LEGAL STANDARDS**

16 Rule 12(b)(7) of the Federal Rules of Civil Procedure allows a court to dismiss a
17 case for failure to join a party under Rule 19. Rule 19(a)(1)(A) provides that a person
18 “must be joined as a party” if “in that person’s absence, the court cannot accord complete
19 relief among existing parties.” Further, Rule 19(a)(1)(B) provides that a person “must be
20 joined as a party” if “that person claims an interest relating to the subject of the action
21 and is so situated that disposing of the action in the person’s absence may: (i) as a
22 practical matter impair or impede the person’s ability to protect the interest; or (ii) leave
23 an existing party subject to a substantial risk of incurring double, multiple, or otherwise
24 inconsistent obligations because of the interest.” If that required person cannot be joined,
25 then “the court must determine whether, in equity and good conscience, the action should
26 proceed among the existing parties or should be dismissed.” Fed. R. Civ. P. 19(b).

27 Rule 19 provides a three step process for determining whether the court should
28 dismiss an action for failure to join a purportedly indispensable party. *United States v.*

1 *Bowen*, 172 F.3d 682, 688 (9th Cir. 1999). “First, the court must determine whether the
2 absent party is ‘necessary[.]’ . . . If the absent party is ‘necessary,’ the court must then
3 determine whether joinder is ‘feasible.’ Finally, if joinder is not ‘feasible,’ the court must
4 decide whether the absent party is ‘indispensable[.]’” *Id.* (internal citations omitted). In
5 order to determine ‘indispensability,’ the court must determine “whether ‘in equity and
6 good conscience’ the action can continue without” the necessary party. *Id.* (internal
7 citations omitted).

8 The court may consider a movant’s exhibits attached to its Rule 12(b)(7) motion
9 because the movant bears the burden to show “the nature of the interest possessed by an
10 absent party and that the protection of that interest will be impaired by the absence.”
11 *Citizen Potawatomi Indian Tribe of Okla. v. Collier*, 17 F.3d 1292, 1293 (10th Cir. 1994).
12 (citations omitted).

13 **III. ANALYSIS**

14 **A. TCRHCC is a Necessary Party**

15 The first issue to resolve is whether TCRHCC is a necessary party to LDFS’s two
16 claims. First, the gravamen of the breach of contract claim is the alleged failure to pay
17 LDFS for certain dialysis treatment costs at DSI Flagstaff. Any agreement to pay LDFS
18 for such services is authorized and controlled by the TPA Agreement between AmeriBen
19 and TCRHCC. Underlying the pricing agreement between AmeriBen and LDFS is the
20 core issue of eligibility for coverage, which is determined by TCRHCC. Indeed, the
21 pricing agreement expressly states that it “does not constitute a guarantee of benefits.”
22 (CSG Letter.) The evidence shows that TCRHCC, not AmeriBen, determines what
23 payments will be made. (TPA Agreement Art. V.) Although the issue LDFS raises in its
24 breach of contract claim—the enforceability of the pricing agreement—will affect the
25 determination of the amount to be paid, the question of whether payment should be made
26 necessarily involves TCRHCC. Therefore, TCRHCC is a necessary party to the
27 resolution of this claim.

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1 Second, the gravamen of the claim for bounced checks is the insufficient amount
2 of funds in the account on which the checks were written. The evidence shows that the
3 funds are from TCRHCC's account. (Bounced Checks; TPA Agreement ¶ 5.1.) Even if
4 AmeriBen wrote the checks, TCRHCC, as account holder, is a necessary party to LDFS's
5 claim under Rule 19.

6 **B. It is not Feasible to Join TCRHCC**

7 The Court must next determine whether it is feasible to join TCRHCC as a party
8 to this lawsuit. AmeriBen states that it is not feasible to join TCRHCC because the
9 Navajo Nation enjoys sovereign immunity from LDFS's claims. (MTD at 7.) At this
10 stage, it is not clear to the Court whether sovereign immunity applies because any
11 number of waivers may exist. Indeed, as AmeriBen states, LDFS's claims may actually
12 fall under an Employment Retirement Income Security Act (ERISA) plan, which may in
13 turn waive sovereign immunity for TCRHCC. (MTD at 7.) Further, as LDFS states,
14 AmeriBen submitted only excerpts of the TPA Agreement between AmeriBen and
15 TCRHCC, and missing portions may contain a waiver of sovereign immunity.
16 (Resp. at 9-10.) Therefore, the Court cannot yet determine if LDFS's claims against
17 TCRHCC would be barred by the doctrine of sovereign immunity.

18 What is clear to the Court is that joinder of TCRHCC would destroy federal
19 diversity jurisdiction under 28 U.S.C. § 1332, which is the basis for subject matter
20 jurisdiction in this case. AmeriBen provides evidence that TCRHCC is a tribal entity
21 located in Arizona. (MTD at 7.) As the Ninth Circuit has found, Indian tribes and their
22 entities are not state citizens. *Am. Vantage Cos., Inc. v. Table Mtn. Rancheria*, 292 F.3d
23 1091, 1095 (9th Cir. 2002). Consequently, presence of a tribal entity destroys diversity
24 jurisdiction. *Id.* (citing *Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous.*
25 *Auth.*, 207 F.3d 21, 27 (1st Cir. 2000)). Therefore, because the sole jurisdictional basis of
26 this action is diversity of the parties, joining TCRHCC in this action is not feasible.

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1 **C. TCRHCC is an Indispensable Party**

2 The last step in the three part process is to determine whether “in equity and good
3 conscience,” the action can continue without the necessary party. *Bowen*, 172 F.3d at
4 688. To make this determination, the Court considers four factors: (1) the prejudice to
5 any party or to the absent party; (2) whether relief can be shaped to lessen prejudice; (3)
6 whether an adequate remedy, even if not complete, can be awarded without the absent
7 party; and (4) whether there exists an alternative forum.” *Dawavendewa v. Salt River*
8 *Project Agric. Improvement & Power Dist.*, 276 F.3d 1150, 1161-62 (9th Cir. 2002).

9 First, there is a significant likelihood of prejudice to Defendant AmeriBen. If this
10 case continues without TCRHCC, AmeriBen may be forced to bear the expense and
11 burden of bringing a separate action to enforce its rights under the TPA Agreement.
12 (MTD at 8.) Under this Agreement, AmeriBen bears no responsibility for payment or
13 authorization of benefits and is entitled to indemnification by TCRHCC. (TPA
14 Agreement ¶ 3.4, Art. IV.) As a matter of equity, the first factor weighs in favor of
15 finding TCRHCC’s indispensability.

16 Indeed, the only way relief can be shaped to lessen the prejudice against
17 AmeriBen would be if TCRHCC became a Defendant in the suit. Moreover, in view of
18 the evidence before the Court, LDFS has no remedy without TCRHCC. The claims in
19 LDFS’s Complaint center around (1) benefit payments that can only be authorized by
20 TCRHCC, and (2) the checks that were drawn from TCRHCC’s account, which only it
21 has the authority to “establish, maintain and reconcile.” (MTD at 9 & TPA Agreement
22 ¶ 1.) In other words, because AmeriBen has no authority over the authorization of benefit
23 payments or the accounts from which the checks were drawn, LDFS cannot find relief
24 without joining TCRHCC in the suit. Therefore, the second and third factors also weigh
25 in favor of finding TCRHCC’s indispensability.

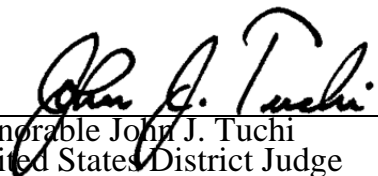
26 Finally, LDFS is able to bring these claims through an alternative forum of either
27 state or tribal court. Because the Court has concluded that joining TCRHCC would
28 destroy federal diversity jurisdiction, state court may provide an alternative forum to

1 bring LDFS's state law claims. Alternatively, the location of the conduct that serves as
2 the basis of these claims may compel LDFS to exhaust its remedies in tribal court before
3 proceeding in state or federal court. *See Williams v. Lee*, 358 U.S. 217, 223 (1959)
4 (holding that state courts had no jurisdiction over a civil claim against a tribal member for
5 a transaction occurring on the Navajo reservation); *Window Rock Unified School Dist. v.*
6 *Reeves*, No. 13-16259, 2017 U.S. App. WL 2784165, at *26 (9th Cir. June 28, 2017)
7 (finding if the conduct at issue in a civil lawsuit occurred on tribal land over which the
8 tribe has the right to exclude, such that tribal court jurisdiction is at least colorable or
9 plausible, exhaustion in the tribal forum is required before bringing suit in federal district
10 court); *Marcean v. Blackfeet Housing Authority*, 540 F.3d 916, 920-21 (9th Cir. 2008);
11 *Sharber v. Spirit Mountain Gaming, Inc.*, 343 F.3d 974, 976 (9th Cir. 2003) (finding
12 tribal exhaustion requirements apply equally to questions of tribal sovereign immunity).
13 Because LDFS can bring these claims in an alternative forum, the fourth factor also
14 weighs in favor of finding TCRHCC's indispensability. TCRHCC is indispensable but
15 cannot be joined in this suit, and the Court will therefore grant AmeriBen's Motion to
16 Dismiss.

17 **IT IS ORDERED** granting Defendant's Motion to Dismiss for Failure to Join an
18 Indispensable Party (Doc. 11). Plaintiff's claims are dismissed.

19 **IT IS FURTHER ORDERED** directing the Clerk to enter judgment accordingly
20 and close this case.

21 Dated this 27th day of July, 2017.

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25 Honorable John J. Tuchi
26 United States District Judge
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