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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

GEORGE ENGASSER, an individual,

Plaintiffs,

vs.

TETRA TECH, INC., a Delaware  
Corporation; and DOES 1 through  
100, inclusive,

Defendants.

**CaseNo.2:19-cv-07973-ODW-PLA**

Assigned to Hon. Otis D. Wright, II

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF SPECIALLY  
APPEARING MECHOOPDA  
CULTURAL RESOURCE  
PRESERVATION  
ENTERPRISE’S MOTION TO  
DISMISS TETRA TECH, INC.’S  
THIRD-PARTY COMPLAINT**

**DATE:** August 17, 2020  
**TIME:** 1:30 PM  
**JUDGE:** Hon. Otis D. Wright, II  
**CTRM:** 5D (5<sup>th</sup> floor)

TETRA TECH, INC.,

Third-Party Plaintiff,

vs.

MECHOOPDA CULTURAL  
RESOURCE PRESERVATION  
ENTERPRISE, an unincorporated  
instrumentality of the Mechoopda  
Indian Tribe of Chico Rancheria,

Third-Party Defendant.

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**I. INTRODUCTION**

The Mechoopda Cultural Resource Preservation Enterprise (“Mechoopda Cultural Enterprise”) is a wholly owned, unincorporated entity of the Mechoopda Indian Tribe of Chico Rancheria, California, a federally recognized Indian tribe (“Mechoopda Indian Tribe”). The purpose of the Mechoopda Cultural Enterprise is to facilitate the protection of tribal cultural resources.

On February 19, 2020, Third-Party Plaintiff Tetra Tech, Inc. (“Tetra Tech”) filed a Third-Party Complaint against Mechoopda Cultural Enterprise seeking indemnity, contribution, restitution, and declaratory relief and includes a breach of contract cause of action. This Third-Party Complaint is brought in response to Plaintiff George Engasser’s Complaint against Tetra Tech filed on September 13, 2019 (the “Complaint”). The Complaint is an alleged wage dispute under the Fair Labor Standards Act. However, Mechoopda Cultural Enterprise’s sovereign immunity precludes this Court from acquiring jurisdiction over the Third-Party Complaint.

Mechoopda Cultural Enterprise is making a special appearance for the purpose of moving the Court for an order for dismissing Tetra Tech’s Third-Party Complaint in its entirety and this Motion to Dismiss does not constitute a waiver of its sovereign immunity. This Third-Party Complaint must be dismissed because: (1) Mechoopda Cultural Enterprise is immune from unconsented suit absent congressional abrogation or waiver of that immunity and (2) no such abrogation or waiver has occurred with regard to this Third-Party Complaint or any of its underlying facts. Mechoopda Cultural Enterprise, as a wholly owned, unincorporated entity of the Mechoopda Indian Tribe, enjoys sovereign immunity from suit, absent express abrogation by Congress or waiver by Mechoopda Cultural Enterprise – neither of which the Third-Party Complaint alleges.

1 Accordingly, and as discussed below, Mechoopda Cultural Enterprise  
2 respectfully request that the Court grant this Motion to Dismiss and dismiss the  
3 Third-Party Complaint with prejudice.

4 **II. FACTUAL BACKGROUND**

5 **A. The Mechoopda Indian Tribe of Chico Rancheria.**

6 The Mechoopda Indian Tribe is a federally recognized Indian tribe with  
7 Indian lands in Butte County. 84 Fed. Reg. 1200. The Tribe is governed by the  
8 Constitution of the Mechoopda Indian Tribe of Chico Rancheria, California, as  
9 adopted on February 1, 1998 (“Tribal Constitution”). Declaration of Robyn  
10 Forristel (“Forristel Decl.”) at ¶3, Exh. A.

11 The governing body of the Tribe is the Tribal Council of the Mechoopda  
12 Indian Tribe (“Tribal Council”). *Id.* at ¶3, Exh. A at Article IV. The Tribal  
13 Council consists of seven (7) members elected at-large from the Tribe. (*Id.*) The  
14 Tribal Constitution provides the Tribal Council with the authority to “promulgate  
15 and adopt ordinances, rules and regulations”; “charter tribal enterprises,  
16 corporations and associates; and “to waive the sovereign immunity of the Tribe to  
17 unconsented lawsuit.” *Id.* at ¶3, Exh. A at Article VII, Section 3(a), (l), (t). Only  
18 the Tribal Council has the authority to waive its sovereign immunity and  
19 contingent that the waiver is “clearly stated in writing and approved by a Tribal  
20 Council Resolution pursuant to a duly called meeting.” *Id.* at ¶3, Exh. A at Article  
21 VII, Section 3(t).

22 Pursuant to its constitutional authority, the Tribal Council resolved to adopt  
23 as tribal law, the Mechoopda Indian Tribe’s Cultural Resource Preservation  
24 Enterprise Ordinance on January 19, 2019. Forristel Decl. ¶¶4-5.

25 **B. Mechoopda Cultural Resource Preservation Enterprise.**

26 On January 19, 2019, in order to facilitate the protection of cultural  
27 resources, the Tribal Council established the Mechoopda Cultural Resource  
28 Preservation Enterprise. Forristel Decl. ¶5, Exh. B. The Mechoopda Cultural

1 Enterprise is a wholly owned, unincorporated entity of the Mechoopda Indian  
 2 Tribe, operating as an arm of the Mechoopda Indian Tribe and sharing the  
 3 Mechoopda Indian Tribe’s sovereignty and sovereign immunity from unconsented  
 4 suit. *Id.* at ¶5, Exh. B at Section 4(e). The governing board of the Mechoopda  
 5 Cultural Enterprise is a three (3) person Board of Directors, including a President  
 6 and two Directors who are each appointed by the Tribal Council and at least two  
 7 (2) must be Tribal Members. *Id.* at ¶5, Exh. B at Section 6(a).

8 The purpose of Mechoopda Cultural Enterprise is to: (1) facilitate the  
 9 protection of cultural resources; (2) further the economic operation and program  
 10 of the Tribe; (3) oversee and manage the assets of Mechoopda Cultural Enterprise;  
 11 (4) be a party or assignee to contracts that further the purpose of Mechoopda  
 12 Cultural Enterprise; and (5) ensure Mechoopda Cultural Enterprise compliance  
 13 with its legal obligations. (Forristel Decl. ¶5, Exh. B at Section 3.) Pursuant to the  
 14 Tribe Council’s delegation of power, the Mechoopda Cultural Enterprise entered  
 15 into the Professional Services Agreement with Tetra Tech to perform Tribal  
 16 Monitoring services on or about March 12, 2019 (“PSA”). Forristel Decl. ¶7, Exh.  
 17 C.

18 **C. The Professional Services Agreement with Tetra Tech.**

19 On or about February 1, 2019, Tetra Tech entered into an agreement with  
 20 the California Department of Resources Recycling and Recovery (“Prime  
 21 Contract). Docket No. 21, (“Third-Party Complaint”) ¶6. Mechoopda Cultural  
 22 Enterprise was not a party to the Prime Contract. The terms of the Prime Contract  
 23 were not incorporated into the PSA and Mechoopda Cultural Enterprise was not  
 24 bound by the terms of the Prime Contract. Forristel Decl. ¶7, Exh. C.

25 On or about March 12, 2019, Mechoopda Cultural Enterprise entered into  
 26 the PSA with Tetra Tech to provide Tribal Monitoring services. Prior to the  
 27 execution of the PSA. Mechoopda Cultural Enterprise and Tetra Tech negotiated  
 28 the terms and conditions of the PSA, including the Compensation of the Tribal

1 Monitors. Forristel Decl. ¶7, Exh. C at Exh. A Section II. Mechoopda Cultural  
 2 Enterprise disclosed to Tetra Tech that it would not pay overtime and this term  
 3 was unambiguously stated in the PSA: “*Over-time and double-time hours will be*  
 4 *paid at the same rate as regular time hours*”. *Id.* The PSA is clear that  
 5 Mechoopda Cultural Enterprise would adhere to all Tribal laws regarding all labor  
 6 matters, which it has done, and regularly does as a responsible Tribal employer.  
 7 Tetra Tech is a California employer and as such is responsible for knowing and  
 8 adhering to Federal and California labor laws. At the time of negotiations, Tetra  
 9 Tech could have bargained for Mechoopda Cultural Enterprise’s adherence to  
 10 California and Federal labor laws but chose not to for business reasons.

11 The PSA acknowledges that Mechoopda Cultural Enterprise is an  
 12 unincorporated instrumentality of the Mechoopda Indian Tribe, a sovereign  
 13 government and federally recognized Indian tribe. Forristel Decl. ¶7, Exh. C,  
 14 Preamble. Further, Mechoopda Cultural Enterprise retained its sovereign  
 15 immunity in the PSA, noting that: “D. Nothing herein shall be construed as a  
 16 waiver of sovereign immunity.” Forristel Decl. ¶7, Exh. C at Terms and  
 17 Conditions, Section IV(D).

18 **D. Meet and Confer with Tetra Tech Regarding Indemnity.**

19 On November 8, 2019, Tetra Tech, through its counsel, and Mechoopda  
 20 Cultural Enterprise, through its counsel, met and conferred pursuant to the PSA  
 21 regarding Tetra Tech’s request for indemnification. Mechoopda Cultural  
 22 Enterprise clarified its participation in the meet and confer meeting did not waive  
 23 its tribal sovereign immunity. Declaration of Christina Kazhe (“Kazhe Decl.”) ¶3.  
 24 During this discussion, Mechoopda Cultural Enterprise explained that the  
 25 indemnification provision was narrowly drafted. “Each party assumes the risk in  
 26 furnishing labor and services provided hereunder” and “will indemnify, hold  
 27 harmless and defend the other Party” due to “intentional misconduct and sole  
 28 negligent acts or omissions...” Forristel Decl. ¶7, Exh. C at Terms and



1 Conditions, Section II (B). Mechoopda Cultural Enterprise further established that  
2 it was operating under the Tribal laws that applied to them, stated that applicable  
3 law in the PSA, including the disclosure of straight time pay in the PSA. *Id.* at  
4 Exh. A Section II. After the conclusion of the meeting, Mechoopda Cultural  
5 Enterprise never heard from Tetra Tech until Tetra Tech served the Third-Party  
6 Complaint seeking indemnity.

7 **III. ARGUMENT**

8 **A. Federal Rule 12(b) Mandates the Dismissal of this Third-Party**  
9 **Complaint.**

10 Mechoopda Cultural Enterprise may properly challenge this Court’s  
11 personal and subject matter jurisdiction over it under Federal Rules of Civil  
12 Procedure 12(b)(1) and 12(b)(2). Rule 12(b) specifically states, “every defense to  
13 a claim for relief in any pleading must be asserted in the responsive pleading if  
14 one is required. But a party may assert the following defenses by motion: (1) Lack  
15 of subject-matter jurisdiction; (2) Lack of personal jurisdiction.” Thus,  
16 Mechoopda Cultural Enterprise’s Motion to Dismiss it proper to challenge Tetra  
17 Tech’s Third-Party Complaint.

18 **B. The Court Lacks Jurisdiction Over This Third-Party Complaint**  
19 **Because Mechoopda Cultural Enterprise is Immune from Suit**  
20 **Under the Doctrine of Sovereign Immunity.**

21 This Third-Party Complaint has been filed without the consent of  
22 Mechoopda Cultural Enterprise. Tribal sovereign immunity is a mandatory  
23 doctrine which courts must recognize. *Pan American Co. v. Sycuan band of*  
24 *Mission Indians* 884 F.2d 416, 418 (9th Cir. 1989) (“*Pan American*”). Pursuant to  
25 the doctrine of tribal sovereign immunity, this Court lacks the requisite personal  
26 and subject matter jurisdiction over this Third-Party Complaint because: 1) this  
27 Court must recognize Mechoopda Cultural Enterprise’s sovereign immunity; 2)  
28 Tetra Tech has failed to identify a valid and unequivocal waiver of Mechoopda

1 Cultural Enterprise’s sovereign immunity; and (3) there has been no express  
2 abrogation of tribal sovereign immunity by Congress in the Fair Labor Standards  
3 Act. Consequently, this Court lacks jurisdiction and the Third-Party Complaint  
4 must be dismissed.

5 **i. The Doctrine of Sovereign Immunity Applies to**  
6 **Mechoopda Cultural Enterprise.**

7 As a federally recognized Indian tribe, the Mechoopda Indian Tribe is  
8 entitled to sovereign immunity from unconsented suit absent congressional  
9 authorization or waiver. The Mechoopda Indian Tribe’s sovereign immunity from  
10 suit extends to its tribal entity, the Mechoopda Cultural Enterprise.

11 “Indian tribes have long been recognized as possessing the common-law  
12 immunity from suit traditionally enjoyed by sovereign powers.” *Santa Clara*  
13 *Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) (“*Santa Clara Pueblo*”). The  
14 sovereign immunity of an Indian tribe is coextensive with that of the United States  
15 itself, *Pan American, supra*, 884 F.2d at 418., and thus extends to governmental  
16 and commercial activities whether they occur on or off of a reservation. *See*  
17 *Kiowa Tribe of Oklahoma v. Mfg. Techs, Inc.*, 523 U.S. 751 (1998) (“*Kiowa*”).

18 To date, our cases have sustained tribal immunity from suit without  
19 drawing a distinction based on where the tribal activities occurred....  
20 Nor have we yet drawn a distinction between governmental and  
21 commercial activities of a tribe.... Though respondent asks us to  
22 confine immunity from suit to transactions on reservations and to  
23 governmental activities, our precedents have not drawn these  
24 distinctions.

25 *Id.* at 754-55. Tribal sovereign immunity extends to subdivisions of a tribe. *Id.* at  
26 759. Inclusion of an Indian tribe on the Federal Register list of federally  
27 recognized tribes is generally sufficient to establish a tribe’s entitlement to  
28 sovereign immunity. *Larimer v. Konocti Vista Casino Resort, Marina & RV Park*  
814 F.Supp.2d 952, 955 (N.D. Cal. 2011); *Ingrassia v. Chicken Ranch Bingo and*  
*Casino*, 676 F.Supp.2d 953, 957 (E.D. Cal. 2009). Tribal sovereign immunity is a

1 mandatory doctrine which courts must recognize. *Pan American, supra*, 884 F.2d  
2 at 419.

3 Mechoopda Cultural Enterprise is a wholly owned, unincorporated entity of  
4 the Mechoopda Indian Tribe, operating as an arm of the Mechoopda Indian Tribe  
5 and sharing the Mechoopda Indian Tribe’s sovereignty and sovereign immunity  
6 from unconsented suit. Forristel Decl. ¶5, Exh. B at Section 4(e). By the terms of  
7 the Mechoopda Cultural Enterprise’s establishment, sovereign immunity is  
8 inherent and presumed.

9 Section 16. Sovereign Immunity.

10 (a) As an unincorporated entity wholly owned by the Tribe, the  
11 Enterprise shall be cloaked by tribal and federal law with all the  
12 privileges and immunities of the Tribe, including sovereign immunity  
13 from suit in any state, federal, or tribal court. Nothing contained in  
14 this Ordinance including but not limited to Section 7 shall be deemed  
15 to be a waiver of sovereign immunity by the Enterprise or the Tribe,  
16 its directors, officers, employees or agents or any other  
17 instrumentality of the Tribe from suit, which may be waived only in  
18 accordance with this Section.

19 *Id.* at ¶5, Exh. B at Section 16.

20 Courts analyzing the following factors to determine whether a tribe’s  
21 economic entity qualifies as a subordinate economic entity entitled to share in a  
22 tribe’s immunity:

- 23 (1) the method of creation of the economic entities; (2) their purpose;  
24 (3) their structure, ownership, and management, including the amount  
25 of control the tribe has over the entities; (4) the tribe’s intent with  
26 respect to the sharing of its sovereign immunity; (5) the financial  
27 relationship between the tribe and the entities; and (6) whether the  
28 purposes of tribal sovereign immunity are served by granting  
immunity to the economic entities.

*Breakthrough Mgmt. Group, Inc. v. Chukchansi Gold Casino & Resort*, 629 F. 3d  
1173, 1187-1188 (2010).

First, the Mechoopda Indian Tribe created the Mechoopda Cultural  
Enterprise under its Tribal Constitution. Forristel Decl. ¶7, Exh. B, at Section 2.  
The Mechoopda Indian Tribe explicitly states that the Mechoopda Cultural

1 Enterprise shall be considered an unincorporated enterprise of the Mechoopda  
2 Indian Tribe, be wholly owned by the Mechoopda Indian Tribe and operated for  
3 the benefit of the Mechoopda Indian Tribe, with the benefits of economic  
4 development inuring to the benefit of the Mechoopda Indian Tribe and its Tribal  
5 Members. *Id.*, Exh. B at Section 5. Second, the purpose of the Mechoopda Cultural  
6 Enterprise is to facilitate the protection of cultural resources, further the economic  
7 operation and program of the Mechoopda Indian Tribe, and develop and operate a  
8 cultural resource protection and monitoring entity for the best interest of the  
9 Mechoopda Indian Tribe. Forristel Decl. ¶¶4, 7, Exh. B at Section 3. Third, the  
10 Mechoopda Cultural Enterprise is governed by a three-member Board of Directors  
11 appointed by the Tribal Council and at least two (2) Directors are required to be  
12 Tribal Members. Forristel Decl. ¶7, Exh. B at Section 6(a). Fourth, the Mechoopda  
13 Indian Tribe clearly intended to share its sovereign immunity with the Mechoopda  
14 Cultural Enterprise by including a section labeled “Sovereign Immunity” in the  
15 Ordinance. *Id.* at Section 16. Fifth, Mechoopda Cultural Enterprise distributes  
16 income to the Mechoopda Indian Tribe for the benefit of providing essential  
17 government services or providing for the Mechoopda Indian Tribe and its Tribal  
18 Members. *Id.* at Section 9. Sixth, the Mechoopda Cultural Enterprise is so closely  
19 related to the Mechoopda Indian Tribe that its activities are properly deemed to be  
20 those of the Mechoopda Indian Tribe. The Mechoopda Cultural Enterprise plainly  
21 promotes and supports the Mechoopda Indian Tribe’s purpose of protecting  
22 cultural resources.

23 Further, Tetra Tech acknowledges that Mechoopda Cultural Enterprise is a  
24 “federally recognized-Indian Tribe.” Third-Party Complaint ¶1; Forristel Decl. ¶7,  
25 Exh. C., Preamble. Consequently, this Court does not have jurisdiction over this  
26 Third-Party Complaint because Mechoopda Cultural Enterprise is immune from  
27 suit because sovereign tribal immunity is a jurisdictional bar.

28

1                                    **ii. Waivers of Tribal Sovereign Immunity Must be Clear and**  
2                                    **Express and may not be Implied.**

3                    Indian tribes and their governing bodies may not be sued absent waiver of  
4 immunity by the tribe or abrogation of tribal immunity by Congress, and any such  
5 waiver or abrogation must be express and unequivocal. *Kiowa, supra*, 523 U.S.  
6 751 at 58-59. It is well settled that a waiver of tribal sovereign immunity cannot  
7 be implied but must be unequivocally expressed. *See Kiowa, supra*, 523 U.S. 751;  
8 *Santa Clara Pueblo, supra*, 436 U.S. at 58-59. The requirement that the waiver be  
9 “unequivocally expressed” is not a “requirement that may be flexibly applied or  
10 even disregarded based on the parties or the specific facts involved.” *Ute*  
11 *Distribution Corp. v. Ute Indian Tribe* 149 F.3d 1260, 1267 (10th Cir. 1998). “In  
12 the absence of a clearly expressed waiver by either the tribe or Congress, the  
13 Supreme Court has refused to find a waiver of tribal immunity based on policy  
14 concerns, perceived inequities arising from the assertion of immunity, or the  
15 unique context of a case.” *Id.*

16                    Moreover, the Ninth Circuit has held that “[t]here is a strong presumption  
17 against waiver of tribal sovereign immunity[.]” *Demontiney v. U.S. ex rel. Dept. of*  
18 *Interior, Bureau of Indian Affairs*, 255 F.3d 801, 811. (9th Cir. 2001). It is “the  
19 plaintiff” – not the defendant who “bears the burden of showing a waiver of tribal  
20 sovereign immunity.” *Hall v. Mooretown Rancheria*, 2013 U.S. Dist. Lexis  
21 81446, *citing Ingrassia*, 676 F.Supp.2d at 956-57 (E.D. Cal. 2009).

22                    Tetra Tech has not alleged that Mechoopda Cultural Enterprise has waived  
23 its sovereign immunity nor has it provided evidence that a waiver of tribal  
24 sovereign immunity exists. This is for good reason as a waiver has not and will  
25 not be provided. Indeed, Mechoopda Cultural Enterprise’s sovereign immunity is  
26 so important to its mission that it can only waive its sovereign immunity “upon  
27 the express written approval” of Mechoopda Cultural Enterprise and the Tribal  
28 Council: Forristel Decl. ¶5, Exh. B at Section 16.

1           Section 16. Sovereign Immunity.

2           (b) The Enterprise may waive its sovereign immunity when  
3           necessary, in the best business judgment of the Board, to serve a  
4           substantial advantage or benefit for the Enterprise or the Tribe. Any  
5           waiver shall become effective only upon the express written approval  
6           of the Enterprise and the Tribal Council. Any waiver of sovereign  
7           immunity shall be specific and limited as to (i) duration, (ii) the  
8           beneficiary, (iii) the scope of the waiver, (iv) the nature and  
9           description of the property or funds, if any, of the Enterprise,  
10          available to satisfy any order or judgment, (v) the particular court or  
11          courts having jurisdiction over the Enterprise, and (vi) the law that  
12          shall be applicable thereto. Any express waiver of sovereign  
13          immunity by resolution or contract of the Enterprise shall not be  
14          deemed a waiver of the sovereign immunity of the Tribe, its  
15          directors, officers, employees or agents or any other instrumentality  
16          of the Tribe, and no such waiver by the Enterprise shall create any  
17          liability on the part of the Tribe or any other instrumentality of the  
18          Tribe for the debts and obligations of the Enterprise, or shall be  
19          construed as a consent to the encumbrance or attachment of any  
20          property of the Tribe or any other instrumentality of the Tribe based  
21          on any action, adjudication or other determination of liability of any  
22          nature incurred by the Enterprise. The acts and omissions of the  
23          Enterprise, its directors, officers, employees or agents shall not create  
24          any liability, obligation or indebtedness either of the Tribe or payable  
25          out of assets, revenues or income of the Tribe.

16          *Id.* The PSA with Tetra Tech does not include any of these terms nor meet any of  
17          the requirements for a valid waiver of sovereign immunity by Mechoopda Cultural  
18          Enterprise.

19                 The PSA with Tetra Tech itself specified that Mechoopda Cultural  
20          Enterprise retained its full right to sovereign immunity, noting that: “D. *Nothing*  
21          *herein shall be construed as a waiver of sovereign immunity.*” Forristel Decl. ¶7,  
22          Exh. C at Terms and Conditions, Section IV(D) (Emphasis added). At no time did  
23          the Tribal Council, pursuant to the Tribal Constitution, and the Mechoopda  
24          Cultural Enterprise’s Board of Directors, pursuant to the Ordinance, review or  
25          approve a waiver of sovereign immunity in favor of Tetra Tech. Forristel Decl.  
26          ¶¶8-9.

27                 Tetra Tech has failed to establish the existence of any waiver of tribal  
28          sovereign immunity. Therefore, Tetra Tech does not and cannot demonstrate that

1 Mechoopda Cultural Enterprise waived its sovereign immunity, expressly or  
2 otherwise.

3 **iii. Congress Has Not Abrogated Mechoopda Cultural**  
4 **Enterprise’s Tribal Sovereign Immunity.**

5 Like triable waivers of sovereign immunity, congressional abrogation cannot  
6 be implied. *See Okla. Tax Comm’n v. Citizen Band of Potawatomi Tribe of Okla.*,  
7 498 U.S. 505, 509 (1991) [holding that an abrogation of tribal sovereign immunity  
8 by Congress cannot be determined by implication and must be expressly stated];  
9 *C&L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 532  
10 U.S. 411, 418 (2001) [“To abrogate tribal immunity, Congress must  
11 ‘unequivocally’ express that purpose.”].

12 Tetra Tech has not shown that Congress has abrogated Mechoopda Cultural  
13 Enterprise’s sovereign immunity for the purpose of this Third-Party Complaint.  
14 Tetra Tech simply alleges that this Court has subject matter jurisdiction pursuant to  
15 28 U.S.C. §1367 because the claims are related to the claims in the Complaint.  
16 Third Party Complaint ¶4. The claims in the Complaint are for violations of the  
17 Fair Labor Standards Act. Docket No. 1, ¶ 9. Tetra Tech has failed to allege a  
18 provision in the Fair Labor Standards Act that demonstrates that Congress has  
19 expressly abrogated tribal immunity thus allowing Tetra Tech to bring suit against  
20 Mechoopda Cultural Enterprise for indemnity and breach of contract based on  
21 alleged violations of the Fair Labor Standards Act.

22 Tetra Tech is without any substantive right of action under which it may sue  
23 Mechoopda Cultural Enterprise, and therefore, this Court lacks subject matter  
24 jurisdiction in this case.

25 **C. Tetra Tech’s Third-Party Complaint Lacks Diversity**  
26 **Jurisdiction.**

27 It is unclear if Tetra Tech is asserting diversity jurisdiction, as it alleges the  
28 Court possess personal jurisdiction over Mechoopda Cultural Enterprise because

1 Mechoopda Cultural Enterprise has its principal place of business in California  
2 and the contract was performed in California. Third-Party Complaint ¶5.  
3 However, Indian tribes and their unincorporated entities cannot sue or be sued in  
4 federal court based on diversity jurisdiction because they are not citizens of any  
5 state. *American Vantage Companies, Inc. v. Table Mountain Rancheria*, 292 F.2d  
6 1091, 1098 (9th Cir. 2002). Therefore, diversity jurisdiction does not exist, and  
7 this Court lacks jurisdiction.

8 **IV. CONCLUSION**

9 For the reasons set forth above, Mechoopda Cultural Enterprise’s Motion to  
10 Dismiss must be granted, because under the well-established doctrine of tribal  
11 sovereign immunity, this Court does not have personal jurisdiction over the  
12 Mechoopda Cultural Enterprise, a wholly owned, unincorporated entity of a  
13 federally-recognized Indian tribe or subject matter jurisdiction over this Third-  
14 Party Complaint against it.

15 Dated: April 27, 2020

16 CARROLL & ASSOCIATES PC

17  
18 By: /s/ Sheila Lamb Carroll  
19 Sheila Lamb Carroll (SBN 142764)  
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22 Mechoopda Cultural Resource Preservation  
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