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PRESERVATION ENTERPRISE

**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  
AMENDED 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 May 18, 2020, Third-Party Plaintiff Tetra Tech, Inc. (“Tetra Tech”) filed an Amended Third-Party Complaint against Mechoopda Cultural Enterprise seeking indemnity, equitable indemnity, contribution, and restitution and unjust enrichment. This Amended 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 Amended 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 Amended 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 Amended 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 Amended 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. 31, (“Amended Third-Party Complaint”) ¶6. Mechoopda  
22 Cultural Enterprise was not a party to the Prime Contract. The terms of the Prime  
23 Contract were not incorporated into the PSA and Mechoopda Cultural Enterprise  
24 was not 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. Tetra Tech is a  
27 sophisticated, international, and billion-dollar company that negotiated and agreed  
28 to the terms of the PSA. In fact, Tetra Tech highly advertises its financial

1 information on their website that they have reached \$3.1 billion in revenue in  
 2 2019. Declaration of Sheila Lamb Carroll ¶3, Exh. D. Prior to the execution of  
 3 the PSA, Mechoopda Cultural Enterprise and Tetra Tech negotiated the terms and  
 4 conditions of the PSA, including the Compensation of the Tribal Monitors.  
 5 Forristel Decl. ¶7, Exh. C at Exh. A Section II. Mechoopda Cultural Enterprise  
 6 disclosed to Tetra Tech that it would not pay overtime and this term was  
 7 unambiguously stated in the PSA: “*Over-time and double-time hours will be paid*  
 8 *at the same rate as regular time hours*”. *Id.* The PSA is clear that Mechoopda  
 9 Cultural Enterprise would adhere to all Tribal laws regarding all labor matters,  
 10 which it has done, and regularly does as a responsible Tribal employer. Tetra Tech  
 11 is a California employer and as such is responsible for knowing and adhering to  
 12 Federal and California labor laws. At the time of negotiations, Tetra Tech could  
 13 have bargained for Mechoopda Cultural Enterprise’s adherence to California and  
 14 Federal labor laws but chose not to for business reasons.

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

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

23 On November 8, 2019, Tetra Tech, through its counsel, and Mechoopda  
 24 Cultural Enterprise, through its counsel, met and conferred pursuant to the PSA  
 25 regarding Tetra Tech’s request for indemnification. Mechoopda Cultural  
 26 Enterprise clarified its participation in the meet and confer meeting did not waive  
 27 its tribal sovereign immunity. Declaration of Christina Kazhe (“Kazhe Decl.”) ¶3.  
 28 During this discussion, Mechoopda Cultural Enterprise explained that the

1 indemnification provision was narrowly drafted. “Each party assumes the risk in  
2 furnishing labor and services provided hereunder” and “will indemnify, hold  
3 harmless and defend the other Party” due to “intentional misconduct and sole  
4 negligent acts or omissions...” Forristel Decl. ¶7, Exh. C at Terms and  
5 Conditions, Section II (B). Mechoopda Cultural Enterprise further established that  
6 it was operating under the Tribal laws that applied to them, stated that applicable  
7 law in the PSA, including the disclosure of straight time pay in the PSA. *Id.* at  
8 Exh. A Section II. After the conclusion of the meeting, Mechoopda Cultural  
9 Enterprise never heard from Tetra Tech until Tetra Tech served the February 19,  
10 2020 Third-Party Complaint seeking indemnity. Docket No. 21.

11 **III. ARGUMENT**

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

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

22 **B. The Court Lacks Jurisdiction Over This Amended Third-Party**  
23 **Complaint Because Mechoopda Cultural Enterprise is Immune**  
24 **from Suit Under the Doctrine of Sovereign Immunity.**

25 This Amended Third-Party Complaint has been filed without the consent of  
26 Mechoopda Cultural Enterprise. Tribal sovereign immunity is a mandatory  
27 doctrine which courts must recognize. *Pan American Co. v. Sycuan band of*  
28 *Mission Indians* 884 F.2d 416, 418 (9th Cir. 1989) (“*Pan American*”). Pursuant to

1 the doctrine of tribal sovereign immunity, this Court lacks the requisite personal  
2 and subject matter jurisdiction over this Amended Third-Party Complaint because:  
3 1) this Court must recognize Mechoopda Cultural Enterprise’s sovereign  
4 immunity; 2) Tetra Tech has failed to identify a valid and unequivocal waiver of  
5 Mechoopda Cultural Enterprise’s sovereign immunity; and (3) there has been no  
6 express abrogation of tribal sovereign immunity by Congress in the Fair Labor  
7 Standards Act. Consequently, this Court lacks jurisdiction and the Amended  
8 Third-Party Complaint must be dismissed.

9 **i. The Doctrine of Sovereign Immunity Applies to**  
10 **Mechoopda Cultural Enterprise.**

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

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

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

26 *Id.* at 754-55. Tribal sovereign immunity extends to subdivisions of a tribe. *Id.* at  
27 759. Inclusion of an Indian tribe on the Federal Register list of federally  
28 recognized tribes is generally sufficient to establish a tribe’s entitlement to

1 sovereign immunity. *Larimer v. Konocti Vista Casino Resort, Marina & RV Park*  
2 814 F.Supp.2d 952, 955 (N.D. Cal. 2011); *Ingrassia v. Chicken Ranch Bingo and*  
3 *Casino*, 676 F.Supp.2d 953, 957 (E.D. Cal. 2009). Tribal sovereign immunity is a  
4 mandatory doctrine which courts must recognize. *Pan American, supra*, 884 F.2d  
5 at 419.

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

12 Section 16. Sovereign Immunity.

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

22 *Id.* at ¶5, Exh. B at Section 16.

23 Courts analyzing the following factors to determine whether a tribe’s  
24 economic entity qualifies as a subordinate economic entity entitled to share in a  
25 tribe’s immunity:

- 26 (1) the method of creation of the economic entities; (2) their purpose;  
27 (3) their structure, ownership, and management, including the amount  
28 of control the tribe has over the entities; (4) the tribe’s intent with  
respect to the sharing of its 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 economic entities.

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

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

26 Tetra Tech acknowledges that Mechoopda Indian Tribe is a “federally  
27 recognized-Indian Tribe.” Amended Third-Party Complaint ¶1. Additionally, Tetra  
28 Tech acknowledges that Mechoopda Cultural Enterprise is “an unincorporated

1 instrumentality of the” Mechoopda Indian Tribe. Forristel Decl. ¶7, Exh. C.,  
2 Preamble. Consequently, this Court does not have jurisdiction over this Amended  
3 Third-Party Complaint because Mechoopda Cultural Enterprise is immune from  
4 suit because sovereign tribal immunity is a jurisdictional bar.

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

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

20 Moreover, the Ninth Circuit has held that “[t]here is a strong presumption  
21 against waiver of tribal sovereign immunity[.]” *Demontiney v. U.S. ex rel. Dept. of*  
22 *Interior, Bureau of Indian Affairs*, 255 F.3d 801, 811. (9th Cir. 2001)  
23 (“*Demontiney*”). It is “the plaintiff” – not the defendant who “bears the burden of  
24 showing a waiver of tribal sovereign immunity.” *Hall v. Mooretown Rancheria*,  
25 2013 U.S. Dist. Lexis 81446, *citing Ingrassia*, 676 F.Supp.2d at 956-57 (E.D. Cal.  
26 2009).

27 Tetra Tech has not alleged that Mechoopda Cultural Enterprise has waived  
28 its sovereign immunity, nor has it provided evidence that a waiver of tribal

1 sovereign immunity exists. This is for good reason as a waiver has not and will  
2 not be provided. Indeed, Mechoopda Cultural Enterprise’s sovereign immunity is  
3 so important to its mission that it can only waive its sovereign immunity “upon  
4 the express written approval” of Mechoopda Cultural Enterprise and the Tribal  
5 Council: Forristel Decl. ¶5, Exh. B at Section 16.

6 Section 16. Sovereign Immunity.

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

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

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

1 approve a waiver of sovereign immunity in favor of Tetra Tech. Forristel Decl.  
2 ¶¶8-9.

3 The PSA does contain a narrowly drafted indemnification provision in  
4 which “[e]ach Party assumes the risk in furnishing the equipment, labor, materials  
5 and services provided hereunder” and “will indemnify, hold harmless and defend  
6 the other Party” due to “intentional misconduct and sole negligent acts or  
7 omissions...” Forristel Decl. ¶7, Exh. C at Terms and Conditions, Section II (B).  
8 But nowhere in the PSA, or in this indemnification provision, does Mechoopda  
9 Cultural Enterprise explicitly waive its sovereign immunity.

10 Tetra Tech does not allege or argue that the PSA includes an express  
11 waiver of Mechoopda Cultural Enterprise’s sovereign immunity. The selective  
12 quoting of the dispute resolution provision in the PSA in the Amended Third-  
13 Party Complaint does not, under any circumstances, qualify as a waiver of tribal  
14 sovereign immunity, let alone an express waiver of sovereignty. Amended Third-  
15 Party Complaint ¶16. The dispute resolution provision includes the following  
16 language, “[a]ny court with competent jurisdiction shall have the authority to  
17 enforce this provision and to determine if the meet and confer process has been  
18 satisfied.” Forristel Decl. ¶7, Exh. C at Terms and Conditions, Section IV(F).  
19 However, this “sue or be sued clause” is not a clear, explicit, and unambiguous  
20 waiver of Mechoopda Cultural Enterprise’s sovereign immunity as it is restricted  
21 and limited by Section IV(D) of the Terms and Conditions of the PSA, the Tribal  
22 Constitution, and the Ordinance. *Sanchez v. Santa Ana Gold Club, Inc.*, 136 N.M.  
23 682, 685-686 (2004).

24 Tetra Tech has failed to establish the existence of any waiver of tribal  
25 sovereign immunity. Therefore, Tetra Tech does not and cannot demonstrate that  
26 Mechoopda Cultural Enterprise, an entity of the Mechoopda Indian Tribe of Chico  
27 Rancheria, waived its sovereign immunity, expressly or otherwise.

28 ///

1                                    **iii. Congress Has Not Abrogated Mechoopda Cultural**  
2                                    **Enterprise’s Tribal Sovereign Immunity.**

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

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

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

23                                    **C. Tetra Tech’s Amended Third-Party Complaint Lacks Diversity**  
24                                    **Jurisdiction.**

25            It is unclear if Tetra Tech is asserting diversity jurisdiction, as it alleges the  
26 Court possess personal jurisdiction over Mechoopda Cultural Enterprise because  
27 Mechoopda Cultural Enterprise has its principal place of business in California  
28 and the contract was performed in California. Amended Third-Party Complaint

1 ¶5. However, Indian tribes and their unincorporated entities cannot sue or be sued  
2 in federal court based on diversity jurisdiction because they are not citizens of any  
3 state. *American Vantage Companies, Inc. v. Table Mountain Rancheria*, 292 F.2d  
4 1091, 1098 (9th Cir. 2002). Therefore, diversity jurisdiction does not exist, and  
5 this Court lacks jurisdiction.

6 **IV. CONCLUSION**

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

13 Dated: June 1, 2020

14 CARROLL & ASSOCIATES PC

15  
16 By: /s/ Sheila Lamb Carroll  
17 Sheila Lamb Carroll (SBN 142764)  
18 Samantha I. Pranatadjaja (SBN 305383)  
19 Attorneys for Third Party Defendant  
20 Mechoopda Cultural Resource Preservation  
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