

EXHIBIT B

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

CALIFORNIA TRIBAL FAMILIES COALITION,
 YUOK TRIBE, CHEROKEE NATION,
 FACING FOSTER CARE IN ALASKA, ARK OF
 FREEDOM ALLIANCE, RUTH ELLIS CENTER,
 and TRUE COLORS, INC.,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as
 Secretary of Health and Human Services,
 JOOYEUN CHANG, in her official capacity as
 Acting Assistant Secretary for the Administration for
 Children and Families, U.S. DEPARTMENT OF
 HEALTH AND HUMAN SERVICES, and
 ADMINISTRATION FOR CHILDREN AND
 FAMILIES,

Defendants.

Case No. 20-cv-6018 (MMC)

**DECLARATION OF CHAIRPERSON
 JOSEPH L. JAMES
 IN SUPPORT OF PLAINTIFFS'
 MOTION FOR
 SUMMARY JUDGMENT**

1 I, Joseph L. James, hereby state as follows:

2 1. The information set forth in this affidavit is based on my personal knowledge.

3 2. I am the Chairman of the Yurok Tribe (“Tribe”). I was elected by Primary Election on
4 October 30, 2018.

5 3. The Tribe is a federally recognized Indian tribe with a 55,890-acre reservation located
6 in Northern California. Comprised of 6,357 enrolled members and 3,908 total households—the large
7 majority of which are family or multi-family households—the Yurok Tribe is the largest Native
8 American tribe in California. The Tribe provides services to the 1,937 households that live in its
9 service area, which includes Del Norte, Trinity and Humboldt Counties in California, as well as
10 tribal members throughout North America.

11 4. The Tribe’s ICWA-eligible or enrolled children live across North America because
12 tribal members live across the United States.

13 5. The Tribe provides a variety of services through its designee Yurok Health and Human
14 Services (“YHHS”), the Tribe’s social services agency that has a title IV–E “pass-through
15 agreement” with the State of California. As part of that work, YHHS collaborates with state and
16 county child welfare agencies to ensure that the agencies are properly implementing ICWA to
17 protect Yurok children.

18 6. The Tribe also provides direct services to children eligible for tribal membership and
19 their families, including, but not limited to: joint intake and investigation of reports of abuse and
20 neglect with County agencies; reunification and maintenance services designed to ensure the safety
21 of children in their homes and placements; prevention services designed to reduce the likelihood
22 that a child will be removed from the home; referrals to other services to strengthen families; and
23 case management services and court intervention services for children and parents designed to
24 ensure YHHS involvement throughout the life of a child’s court case. In addition, the Tribe
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1 intervenes and participates in ICWA cases heard in state courts throughout California and the Pacific
2 Northwest.

3 7. The Tribe also maintains a Wellness Court, with separate calendars for families, adults,
4 and youth, that provides services such as foster care placement, counseling sessions, and drug
5 testing.

6 8. The 2020 Final Rule's removal of ICWA data elements harms the Yurok Tribe in at least
7 three ways, impairing its ability to provide services to Yurok children and vindicate its rights under
8 ICWA.

9 9. *First*, the 2020 Final Rule prevents the Tribe from identifying recurring ICWA
10 implementation issues and working with state title IV–E agencies to fix those problems.

11 10. For example, state child welfare agencies have historically struggled to consistently
12 identify Indian children, including Yurok children, and to provide timely inquiry and notice of such
13 cases to the child's tribe. This issue would have been addressed by the 2016 Final Rule, which
14 included data elements designed to track and improve state title IV–E agencies efforts to identify
15 and notify tribes of Indian children. Among other things, the 2016 Final Rule required the agencies
16 to report whether they inquired about a child's ICWA status with specified persons in the child's
17 life. Agencies were required to report whether they had made inquiries with the child, the biological
18 or adoptive mother, the biological or adoptive father, the child's Indian custodian, and the extended
19 family. In contrast, the 2020 Final Rule requires agencies to report only whether they made
20 "inquiries" at all as to the child's ICWA status. By removing the more detailed inquiry data
21 elements, along with others, the 2020 Final Rule makes it much more difficult for Yurok to assess
22 whether the title IV–E agencies within its jurisdiction are actually making the inquiries required by
23 ICWA. This in turn makes it more difficult for YHHS to work with those agencies to improve the
24 identification of the Tribe's children.

1 11. Other data elements in the 2016 Final Rule would also help the Tribe know which of its
2 eligible and enrolled children and families are involved in the system. For example, the 2016 Rule
3 required title IV-E agencies to report the date that the agency first discovered information indicating
4 the child is or may be an Indian child as defined in ICWA, all federally recognized Indian tribe(s)
5 that may potentially be the Indian child's tribe(s), and the Indian tribe that the court determined is
6 the Indian child's tribe for ICWA purposes. Each of those elements would help the Tribe identify
7 key decision-making points and would improve the Tribe's ability to be involved with its entire
8 service array at a much earlier stage.

10 12. By making it more difficult for Yurok to identify its children, the 2020 Final Rule
11 increases the risk that Yurok children will be removed without the Tribe's input and intervention,
12 placed in non-Native homes, and simply be lost to the Tribe. The Rule also makes it more difficult
13 for the Tribe to keep its children safe and provide other services. These outcomes harm the Tribe's
14 sovereign interests and contravene its rights under ICWA.

16 13. For example, in a recent case, a state child welfare agency became aware of a Yurok
17 child living in a dangerous home, but either failed to identify the child as a Yurok child or failed to
18 provide the Tribe with timely notification of the case. Because the Tribe was not notified, we were
19 unable to provide our services—which are designed to ensure the safety of children in their homes
20 and placements—in a timely fashion. By the time YHHS became aware of the case and was able to
21 intervene, events at the home had already escalated, resulting in severe injuries to the child. In such
22 instances, proper ICWA implementation is critical because it provides the Tribe with the opportunity
23 to protect its children and provide culturally appropriate services to families. As noted above, the
24 2020 Final Rule makes it more difficult for the Tribe to ensure proper ICWA implementation, and
25 thus increases the likelihood that Yurok children will not receive the protection they need.
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1 14. Similarly, when Yurok children are not identified in the State and County systems, the
2 Tribe is unable to provide the educational support that Yurok foster children are entitled to receive.
3 For example, the Tribe has a good working relationship with Del Norte County Schools, which
4 operates a multi-disciplinary convening to ensure tribal children who are in foster care,
5 guardianship, and/or Indian Custodianship, and who have established unmet educational needs are
6 properly identified. Unidentified Yurok foster children will not receive this support. Nor is the Tribe
7 Wellness Court able to provide services to the homes of ICWA-eligible children without this
8 coordination and identification. As noted above, the Wellness Court provides a variety of services
9 to families, including counseling, drug testing, and assisting with family reunification.
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11 15. Unidentified Yurok children are also deprived of the Tribe's ability to design foster care
12 exit plans tailored for tribal children. Without access to those plans, unidentified children are denied
13 specialized tribal services such as post-foster care education and employment opportunities;
14 transitional youth support; and supplemental education, such as cultural learning, language classes,
15 Wellness & Healing projects, and Tribal Youth Convenings.
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17 16. *Second*, the 2020 Final Rule impedes the Yurok Tribe's ability to accurately track the
18 number and location of Yurok children in state care, which in turn impedes its ability to effectively
19 administer its child welfare services through the Tribe's agency. Under the 2016 Final Rule, state
20 child welfare agencies would have been required to report each child's tribe as formally determined
21 by the court. The 2020 Final Rule removed that data element, requiring state agencies to report only
22 the tribes that are *potentially* the child's tribes. This data element will not yield an accurate count of
23 Yurok's tribal children, as state child welfare agencies are often over-inclusive when listing
24 potential tribal affiliations at the outset of the ICWA inquiry process, including tribes of which the
25 child is not an eligible member.
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1 17. Without the ability to track and count its children, the Tribe cannot effectively plan for
2 or administer the various social services and court services offered through YHHS and the Yurok
3 Tribe's Wellness Court. For example, without an accurate count of Yurok children in state care,
4 YHHS and its Wellness Court are unable to estimate the number of cases the Tribe may expect to
5 transfer to tribal court, which in turn impedes a wide variety of planning decisions, such as how
6 many caseworkers to hire, planning for service needs, and requesting allocated funds through its
7 IV-E pass-through agreement with California.
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9 18. Inaccurate tracking by state title IV-E agencies also forces the Tribe to spend valuable
10 staff time and hours on ICWA inquiries from state title IV-E agencies. In the average year, the Tribe
11 dedicates 210-280 hours per year responding to roughly 140 ICWA inquiries. Approximately 40%
12 of that time is spent dealing with duplicates and responses regarding children that are not eligible to
13 be tribal members. The 2016 Final Rule would have reduced the number of inquiries on behalf of
14 ineligible children, as well as duplicates, because the agency would have to do proper inquiry to
15 ensure the information in the notice is correct before sending it. As it stands, the errors in the notice
16 due to lack of proper inquiry create duplicated notices and notices that do not include enough
17 information to make a meaningful determination of tribal membership.
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19 19. *Third*, the amount of funds the Tribe receives from California under its pass-through
20 agreement depends on the number of children the Tribe brings into tribal court under ICWA's
21 transfer jurisdiction provision. But, as noted above, the Tribe's ability to know and provide that
22 information is impeded by the 2020 Final Rule since State and County agencies are not required to
23 track and report which Tribe's children are in County care. Similarly, the lack of data on the number
24 of Yurok children in foster care impairs the Tribe's ability to obtain other sources of funding for
25 both YHHS and the Wellness Court, which rely on such data to apply for other state and federal
26 funding.
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1 20. I declare under penalty of perjury under the laws of the United States that the foregoing
2 is true and correct to the best of my knowledge.

3 Dated: May 11, 2021

Respectfully submitted,

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6 Joseph L. James

7 CHAIRPERSON, Yurok Tribe
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