

Nicholas R. Kloeppel, CSB #186165
Karen J. Roebuck, CSB #160915
THE MITCHELL LAW FIRM, LLP
Attorneys at Law
426 First Street
P. O. Drawer 1008
Eureka, CA 95502
Tel: (707) 443-5643
Fax: (707) 444-9586
Email: nkloeppel@mitchelllawfirm.com

Attorneys for Defendants
CITY OF TRINIDAD, CHERYL KELLY,
and BRYCE KENNY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

YUOK TRIBE,

Plaintiff,

vs.

CITY OF TRINIDAD, CHERYL KELLY,
BRYCE KENNY, DOES 1-20,

Defendants.

Case No.: 1:26-cv-05240-RMI

**NOTICE OF MOTION AND MOTION
TO DISMISS COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

DATE: August 25, 2026

TIME: 11:00 a.m.

LOCATION: Eureka-McKinleyville
Courthouse, 3140 Boeing Ave,
McKinleyville, CA 95519

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
NOTICE	1
MEMORANDUM OF POINTS AND AUTHORITIES	1
I. INTRODUCTION	1
II. STATEMENT OF FACTS	2
III. LEGAL DISCUSSION	6
A. Legal Standards Governing A Motion to Dismiss	6
1. Standard For A Motion To Dismiss Pursuant to Rule 12(b)(1)....	6
2. Standard For A Motion To Dismiss Pursuant to Rule 12(b)(6)....	7
3. Standard For A Motion To Dismiss Pursuant to Rule 12(b)(7)....	8
B. Defendants’ Motion To Dismiss Should Be Granted Without Leave To Amend As To Each Cause of Action On The Ground The Court Lacks Subject Matter Jurisdiction	8
C. Defendants’ Motion To Dismiss Should Be Granted With Prejudice Because Plaintiff Does Not And Cannot Plausibly Plead Facts Sufficient To State Causes Of Action	10
D. Defendants’ Motion To Dismiss Should Be Granted Because The City’s Legislative Action Is Independently Supported By Rational, Non- Ancestry Grounds.....	16
E. All Causes Of Action Against The Mayor and Mayor-Elect Should Be Dismissed Because Plaintiff Does Not And Cannot Allege Sufficient Facts To State A Cause Of Action Against Them And They Are Entitled To Legislative Immunity	18
F. Plaintiff’s Complaint Should Be Dismissed Because Plaintiff Has Failed To Join An Indispensable Party As Required Under Rule 19.....	21
IV. CONCLUSION	25

TABLE OF AUTHORITIES

Cases

<i>Allen v. Gold Country Casino,</i>	
464 F.3d 1044	24
<i>Am. Greyhound Racing, Inc. v. Hull,</i>	
305 F.3d 1015 (9th Cir. 2002)	22
<i>Armour v. City of Indianapolis,</i>	
566 U.S. 673 (2012)	17
<i>Ashcroft v. Iqbal,</i>	
556 U.S. 662 (2009)	7, 8
<i>Asher v. Clay Cnty. Bd. of Educ.,</i>	
585 F.Supp.3d 947 (E.D. Ky. 2022).....	14, 15
<i>Balistreri v. Pacifica Police Department,</i>	
901 F.2d 696 (9th Cir. 1990).....	7
<i>Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation,</i>	
770 F.3d 944 (10th Cir. 2014).....	9
<i>Bell Atl. Corp. v. Twombly,</i>	
550 U.S. 544 (2007)	7, 8
<i>Big Sandy Rancheria Enterprises v. Bonta,</i>	
1 F.4th 710 (9th Cir. 2021).....	12
<i>California v. Cabazon Band of Mission Indians,</i>	
480 U.S. 202 (1987)	12
<i>Canatella v. State of California,</i>	
304 F.3d 843 (9th Cir. 2002).....	15
<i>Caterpillar Inc. v. Williams,</i>	
482 U.S. 386 (1987)	9

1	<i>Chandler v. State Farm Mut. Auto. Ins. Co.,</i>	
2	598 F.3d 1115 (9th Cir. 2010.).....	7
3	<i>Chinn v. The City of Spokane,</i>	
4	No. CV-09-0354-EFS, 2010 WL 2028084 (E.D. Wash. May 17, 2010).....	20
5	<i>Citizens Against Ruining Our Env't v. Bureau of Indian Affs.,</i>	
6	932 F.3d 843 (9th Cir. 2019).....	22, 23, 24
7	<i>City of Los Angeles v. Lyons,</i>	
8	461 U.S. 95 (1983)	15
9	<i>City of Sausalito v. County of Marin,</i>	
10	12 Cal.App.3d 550, (1970).....	11
11	<i>Cnty. House, Inc. v. City of Boise, Idaho,</i>	
12	623 F.3d 945 (9th Cir. 2010).....	19, 20
13	<i>Ctr. for Bio-Ethical Reform, Inc. v. Los Angeles Cnty. Sheriff Dep't,</i>	
14	533 F.3d 780 (9th Cir. 2008).....	19
15	<i>Dawavendewa v. Salt River Project Agricultural Improvement & Power District,</i>	
16	276 F.3d 1150 (9th Cir. 2002).....	22
17	<i>De La Cruz v. Tormey,</i>	
18	582 F.2d 45 (9th Cir. 1978).....	7
19	<i>Est. of Posard v. Los Angeles Cnty. Sheriff's Dep't,</i>	
20	No. CV 23-10460 PA (EX), 2024 WL 5413154 (C.D. Cal. Dec. 5, 2024).....	15
21	<i>F.C.C. v. Beach Commc'ns, Inc.,</i>	
22	508 U.S. 307 (1993)	17
23	<i>First Nat. Ins. Co. of Am. v. Peralta Cnty. Coll. Dist.,</i>	
24	No. 12-CV-5943 JSC, 2013 WL 622944 (N.D. Cal. Feb. 15, 2013)	8
25	<i>Gila River Indian Cnty. v. Henningson, Durham & Richardson,</i>	
26	626 F.2d 708 (9th Cir. 1980).....	9

1	<i>Gottschalk v. City and County of San Francisco,</i>	
2	964 F.Supp.2d 1147 (N.D. Cal. 2013).....	8
3	<i>Heller v. Doe,</i>	
4	509 U.S. 312 (1993)	17
5	<i>High Desert Recreation, Inc. v. Pyramid Lake Paiute Tribe,</i>	
6	No. 306CV0588LRHRAM, 2007 WL 9728727 (D. Nev. June 1, 2007).....	24
7	<i>In re Gilead Scis. Sec. Litig.,</i>	
8	536 F.3d 1049 (9th Cir. 2008)	8
9	<i>Inyo County v. Paiute-Shoshone Indians of the Bishop Cmty. of the Bishop Colony,</i>	
10	538 U.S. 701 (2003)	10
11	<i>Kaahumanu v. Cnty. of Maui,</i>	
12	315 F.3d 1215 (9th Cir. 2003).....	20
13	<i>Kaufmann v. Federal Aviation Admin.,</i>	
14	722 F. Appx 438 (6th Cir. 2018)	15
15	<i>Kawaoka v. City of Arroyo Grande,</i>	
16	17 F.3d 1227 (9th Cir. 1994)	17
17	<i>Kelly v. Wengler,</i>	
18	822 F.3d 1085 (9th Cir. 2016)	7
19	<i>Kentucky v. Graham,</i>	
20	473 U.S. 159 (1985)	19
21	<i>Knapp v. Hogan,</i>	
22	738 F.3d 1106 (9th Cir. 2013)	8
23	<i>Kokkonen v. Guardian Life Ins. Co. of Am.,</i>	
24	511 U.S. 375, (1994)	7
25	<i>Lujan v. Defenders of Wildlife,</i>	
26	504 U.S. 555 (1992)	15

1	<i>Maverick Gaming, LLC v. United States,</i>	
2	123 F.4th 960 (9th Cir. 2024).....	21, 22, 23, 24
3	<i>Michigan v. Bay Mills Indian Cmty.,</i>	
4	572 U.S. 782 (2014)	24
5	<i>Minnesota v. Clover Leaf Creamery Co.,</i>	
6	449 U.S. 456 (1981)	17
7	<i>Montana v. United States,</i>	
8	450 U.S. 544 (1981)	12
9	<i>Morongo Band of Mission Indians v. California State Bd. of Equalization,</i>	
10	858 F.2d 1376 (9th Cir. 1988).....	10
11	<i>Newtok Village v. Patrick,</i>	
12	21 F.4th 608 (9th Cir. 2021).....	9
13	<i>Norse v. City of Santa Cruz,</i>	
14	629 F.3d 966 (9th Cir. 2010).....	19
15	<i>Oneida Indian Nation of N. Y. State v. Oneida Cnty., New York,</i>	
16	414 U.S. 661 (1974)	9
17	<i>Penobscot Nation v. Georgia-Pac. Corp.,</i>	
18	106 F.Supp.2d 81 (D. Me. 2000).....	9
19	<i>Romero-Ochoa v. Holder,</i>	
20	712 F.3d 1328 (9th Cir. 2013).....	17
21	<i>Safe Air for Everyone v. Meyer,</i>	
22	373 F.3d 1035 (9th Cir. 2004).....	7
23	<i>San Pedro Hotel v. City of Los Angeles,</i>	
24	159 F.3d 470 (9th Cir.1998).....	20
25	<i>Santa Clara Pueblo v. Martinez,</i>	
26	436 U.S. 49 (1978)	24

1	<i>Shermoen v. U.S.</i> ,	
2	982 F.2d 1312 (9th Cir. 1992)	8
3	<i>Skilstaf, Inc. v. CVS Caremark Corp.</i> ,	
4	669 F.3d 1005 (9th Cir. 2012)	8
5	<i>Skokomish Indian Tribe v. United States</i> ,	
6	410 F.3d 506 (9th Cir. 2005)	10
7	<i>United States v. Oakland Cannabis Buyers' Co-op</i> ,	
8	259 F.App'x 936 (9th Cir. 2007)	17
9	<i>Vieux Carre Prop. Owners v. Brown</i> ,	
10	875 F.2d 453 (5th Cir. 1989)	15
11	<i>Ward v. Apple Inc.</i> ,	
12	791 F.3d 1041 (9th Cir. 2015)	22
13	<i>Western Mohegan Tribe & Nation of N.Y. v. New York</i> ,	
14	246 F.3d 230 (2d Cir. 2001)	14, 15
15	<i>White Mountain Apache Tribe v. Bracker</i> ,	
16	448 U.S. 136 (1980)	12
17	<i>White v. Univ. of Cal.</i> ,	
18	765 F.3d 1010 (9th Cir. 2014)	22
19	<i>Williamson v. Lee Optical of Oklahoma Inc.</i> ,	
20	348 U.S. 483 (1955)	17
21	<i>Zixiang Li v. Kerry</i> ,	
22	710 F.3d 995 (9th Cir. 2013)	8
23	Statutes	
24	28 U.S.C. §1331	9
25	28 U.S.C. §1362	9
26	54 U.S.C. §302706	14, 19

1	54 U.S.C. §306108	14
2	Cal. Govt. Code §940.4	11, 18
3	Cal. Govt. Code §949	11, 18
4	Cal. Govt. Code §34000	4, 19
5	Cal. Govt. Code §34002	2
6	Cal. Govt. Code §34102	2
7	Cal. Govt. Code §36501(a).....	4, 19
8	Cal. Govt. Code §36505	12, 18
9	Cal. Govt. Code §36936	11, 20
10	Cal. Govt. Code §65300	4
11	Cal. Code of Civ. Proc. §664.6.....	23
12	Rules	
13	Fed. R. Civ. P. 8	1, 8
14	Fed. R. Civ. P. 12(b)(1)	1, 6, 8
15	Fed. R. Civ. P. 12(b)(6)	1, 7, 8
16	Fed. R. Civ. P. 12(b)(7)	1, 8, 24
17	Fed. R. Civ. P. 19(a)	22, 23
18	Fed. R. Civ. P. 19(b).....	24
19	Regulations	
20	91 Fed. Reg. 4102-4106 (Jan. 30, 2026)	3
21		
22		
23		
24		
25		
26		

NOTICE

PLEASE TAKE NOTICE that on **August 25, 2026, at 11 a.m.**, in the Eureka Division of the Northern District Court located at 3140 Boeing Avenue, McKinleyville, California, defendants CITY OF TRINIDAD, CHERYL KELLY, and BRYCE KENNY (collectively “defendants”) will move the Court for dismissal of this action. This motion is brought pursuant to Federal Rules of Civil Procedure, Rule 8(a), Rule 12(b)(1), Rule 12(b)(6), and Rule 12(b)(7) on the grounds that the Court lacks subject matter jurisdiction to hear the matter, the Complaint fails to state a claim upon which relief can be granted, the individual defendants are entitled to legislative immunity, and the failure to join a party, as set forth below.

Defendants request the Court grant its motion to dismiss and dismiss the Complaint without leave to amend.

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

By way of its Complaint, plaintiff Yurok Tribe seeks declaratory and injunctive relief regarding an appointment of the Cher-Ae Heights Indian Community of the Trinidad Rancheria (“Trinidad Rancheria”) by the City of Trinidad (“City”) to a City advisory committee generally known as the Tsurai Management Team (“TMT”) and the underlying findings and policy considerations made by the City Council in making the appointment and conditioning future City participation on the Trinidad Rancheria’s inclusion. The TMT is not a regulatory or decision-making body—it is an advisory body that provides advice to the City of Trinidad regarding the management of the approximate 12.6 acre City-owned real property parcel that fronts Trinidad State Beach.

Plaintiff’s Complaint is subject to dismissal for several reasons. First, the Court lacks subject matter jurisdiction. There is no federal question or other basis for jurisdiction. Plaintiff only asserts state claims for injunctive and declaratory relief.

Second, the defendants never made the purported findings plaintiff asserts were made. Plaintiff asserts, for example, that the City of Trinidad and defendant Cheryl Kelly unlawfully made findings of fact or a legal determination regarding the Trinidad Rancheria's traditional and/or cultural affiliations with the Village of Tsurai, or their lineal or lateral descendants. The City did not, but appropriately found the Trinidad Rancheria "has asserted and presented credible evidence" regarding their affiliations and lineal or lateral descendants. Third, the City is well within its jurisdiction and municipal police power to appoint the Trinidad Rancheria to an advisory committee regarding management of City-owned real property. Plaintiff has no authority to dictate who is on a City advisory committee nor to dictate the terms under which the City will participate on the TMT. Fourth, the individual defendants (i.e., City Council Members Cheryl Kelly and Bryce Kenny) cannot be liable because they did not make the decisions for which plaintiff complains and are otherwise immune from suit. Finally, plaintiff has failed to join the Trinidad Rancheria, which is an indispensable party to this action and the relief plaintiff seeks.

Based on the foregoing and as discussed more particularly below, defendants' motion to dismiss should be granted on all asserted grounds.

II. STATEMENT OF FACTS

Plaintiff alleges it is a federally recognized Indian tribe. (Dkt. No. 1, ¶10.) Plaintiff also alleges the City is a California general law city, where Cheryl Kelly ("Kelly") is the City's mayor and Bryce Kenny ("Kenny") is the mayor-elect.¹ (*Id.*, ¶¶10-13.) Plaintiff alleges the Trinidad Rancheria was established by the United States

//

¹ "Cities organized under the general law shall be 'general law cities.'" Cal. Govt. Code § 34102. A "mayor" includes the president of the legislative body. Cal. Govt. Code § 34002.

1 Congress.² (*Id.*, ¶25; *see also* Request for Judicial Notice filed herewith [“RJN”],
 2 ***Exhibit A.***)

3 Plaintiff alleges the Tsurai Management Team (“TMT”) was formed in 2005 as
 4 part of a legal settlement with parties including plaintiff and the City but not including
 5 the Trinidad Rancheria. (Dkt. No. 1, ¶32.) Plaintiff alleges the City drafted and adopted
 6 the Tsurai Management Plan (“TMP”). (*Id.*, ¶¶33-34; *see also* RJN, ***Exhibits B-C.***) The
 7 TMT is a City advisory committee. (Dkt. No. 1, ¶¶32-33, 45; and RJN, ***Exhibits B-D.***)

8 Nowhere does plaintiff allege the Yurok Tribe reservation or the Trinidad
 9 Rancheria boundaries are within the City’s boundaries. (Dkt. No. 1, ¶¶4, 24-27, 34, 73,
 10 and generally; *see* RJN, ***Exhibit E.***) To be clear, nowhere is it alleged that the subject
 11 real property constitutes “Indian” land or is subject to federal jurisdiction nor can this be
 12 asserted because the TSA real property is owned by the City of Trinidad as a matter of
 13 law. (*See* RJN, ***Exhibit E.***) Plaintiff merely asserts in general state courts have no
 14 jurisdiction as a matter of federal law if state-court jurisdiction over “Native Americans
 15 or activities on Native American lands would interfere with tribal sovereignty and self-
 16 government.” (Dkt. No. 1, ¶19.)

17 Nor does plaintiff anywhere allege facts a Partial Settlement Agreement (“PSA”)
 18 entered into in 2026 affected Yurok governance or sovereignty. (Dkt. No. 1, ¶¶45 and
 19 generally.)

20 Although unrelated to the Trinidad Rancheria’s appointment to the TMT or
 21 challenged City action, plaintiff also alleges the City adopted General Plan Policy 69
 22 regarding the Tsurai Village in 2018, which included language that there shall be no
 23 disturbance, vegetative removal or construction on certain lands within the Tsurai Study
 24 _____

25 ² The Cher-Ae Heights Indian Community of the Trinidad Rancheria, California is also a
 26 federally recognized Indian Tribe, *see Indian Entities Recognized by and Eligible To
 Receive Services From the United States Bureau of Indian Affairs*, 91 Fed. Reg. 4102-
 4106 (Jan. 30, 2026); *see* RJN, ***Exhibit A.***

1 Area (“TSA”) without the approval of the lineal descendants of Tsurai, the Trinidad
 2 Rancheria, the City, and the State Historic Preservation Office.³ (Dkt. No. 1, ¶35.)

3 According to plaintiff, when the City attempted to reopen a trail without input or
 4 approval of certain direct descendants and plaintiff, the Tsurai Ancestral Society
 5 appealed the permit the City issued to itself to the California Coastal Commission in
 6 2025. (*Id.*, ¶¶39-40.) Plaintiff further claims the Coastal Commission found the City had
 7 not consulted with Native American tribes, including plaintiff. (*Id.*, ¶40.)

8 According to plaintiff, in mid-January 2026, the City, Kelly, and Kenny requested
 9 to consult with plaintiff regarding Tsurai Village, which occurred on January 20, 2026.
 10 (*Id.*, ¶¶41-43, 71-72.) Plaintiff now asserts that Kelly and Kenny requested the
 11 consultation in bad faith. (*Id.*, ¶¶13, 41-42, 56.) According to plaintiff, defendants
 12 claimed they wanted to better understand plaintiff’s position regarding Tsurai Village.
 13 (*Id.*, ¶43.) Plaintiff further claims it explained to Kelly and Kenny that Tsurai Village
 14 was a village in plaintiff’s ancestral territory, discussed Policy 69 and, in plaintiff’s
 15 view, the City could not make findings regarding the Trinidad Rancheria and Tsurai
 16 Village without intruding upon plaintiff’s sovereignty and harming plaintiff. (*Id.*, ¶43.)

17 Plaintiff alleges the City noticed a City Council⁴ meeting for May 6, 2026, with
 18 an agenda item to discuss approval of a PSA with the Trinidad Rancheria and
 19 Authorization for Mayor to Execute Agreement. (*Id.*, ¶44.) (*See* RJN, ***Exhibits F, J-K.***)
 20 Plaintiff asserts the City Council approved a motion adopting Resolution 2026-04 on
 21 May 6, 2026 (Dkt. No. 1, ¶53; and RJN, ***Exhibits C, G.***) Plaintiff alleges the PSA
 22 includes language the City would approve a resolution appointing the Trinidad
 23 Rancheria to the TMT. (Dkt. No. 1, ¶45.) (*See* RJN ***Exhibits B-C.***) Plaintiff initially
 24 _____

25 ³ Cities must adopt a comprehensive, long-term general plan for the physical
 26 development of the city. Cal. Govt. Code § 65300.

⁴ The government of a general law city is vested in a city council. Cal. Govt. Code §§
 36501(a), 34000.

1 alleges “defendants City of Trinidad and Kelly unlawfully made findings of fact or a
2 legal determination that:

3 (a) the Trinidad Rancheria is traditionally and culturally affiliated with the
4 Tsurai Study Area; (b) over sixty percent of the Trinidad Rancheria’s
5 current members are lineal or lateral descendants of the last known
6 individual’s residing in Tsurai village between 1900 and 1916, and that an
7 additional several dozen Trinidad Rancheria members are descendants of
8 Big Lagoon Charlie, a prominent Yurok figure who lived with his family in
9 Trinidad in 1900; (c) Tsurai village lies within the ancestral homeland of
10 the Trinidad Rancheria; and (d) Tsurai village and the cultural landscape of
11 which it is a component is culturally and spiritually significant to the
12 Trinidad Rancheria.

13 (Dkt. No. 1, ¶5; *see also* RJN, *Exhibit B*.)

14 Plaintiff later acknowledges, however, that the actual findings by the City are
15 only that “The Trinidad Rancheria has asserted and presented credible evidence...” of
16 the foregoing. (Dkt. No. 1, ¶45; *see also* RJN, *Exhibit B*.)

17 Plaintiff further claims the PSA includes language the City Council’s factual
18 basis for the appointment shall also include a finding by the City Council that it:

19 [...] recognizes and accepts that both the Trinidad Rancheria and the
20 Yurok Tribe have asserted and presented credible evidence that their
21 Tribes are culturally affiliated with the TSA, but the City is not qualified to
22 be the arbiter of cultural affiliation with regard to either tribe and therefore
23 accepts the assertions of both Tribes with respect and deference to each.

24 (Dkt. No. 1, ¶45; *see also* RJN, *Exhibit B*.)

25 The factual basis for the appointment of the Trinidad Rancheria also includes the
26 following logistical and practical reasons:

[...] the substantial scope and proximity of the Trinidad Rancheria’s
adjacent real property holdings; the Rancheria’s substantial interest in
preservation of coastal trail and beach access in light of adjacent coastal
property holdings; the Rancheria’s past demonstration of support for the
preservation and protection of the TSA property, including, most
significantly, assistance with the relocation of the Trinidad lighthouse; the

Rancheria's non-participation on the TMT has caused the City delay in permitting and planning applications related to the TSA, most notably those impacting adjacent property stormwater and public utility improvements, trail improvements, and coastal access; the Rancheria's lack of participation on the TMT requires the City to convene separate and additional tribal consultations under Policy 69 and related consultation laws and regulations applicable to the City; and the California Coastal Conservancy, an existing member of the TMT, has issued verified discovery responses in the Litigation expressly endorsing the appointment of the Trinidad Rancheria to the TMT.

(See RJN, *Exhibit B*.)

Further, plaintiff alleges the PSA also includes the following:

15. No Adjudication or Impairment of Tribal Rights: For the avoidance of doubt, nothing in this Agreement, City Council Resolution 2026-04, or any related City action shall be construed to waive or impair any sovereignty, governmental authority, cultural affiliation, cultural identity, ancestral claim or other legal right of the Yurok Tribe, the Trinidad Rancheria, the Tsurai Ancestral Society, any lineal descendant, or any other tribe, tribal entity, or person. The City does not purport to determine the relative priority or legal effect of any competing tribal, ancestral, or cultural claim, and expressly disclaims any role as arbiter of such claims.

(Dkt. No. 1, ¶51; *see also* RJN, *Exhibit B*, section III.15.)

Plaintiff contends Kelly had no authority to execute the PSA as it was outside the scope of her authority as the City's mayor because the findings were "improper." (Dkt. No. 1, ¶¶8, 20, 48-49, 54-55, Exhibit A.) Further, plaintiff contends the City, Kelly, and Kenny took improper action intruding on plaintiff's cultural and tribal sovereignty and such actions are preempted by federal law. (*Id.*, ¶¶57-59.)

III. LEGAL DISCUSSION

A. Legal Standards Governing A Motion To Dismiss.

1. Standard For A Motion To Dismiss Pursuant to Rule 12(b)(1).

Pursuant to Federal Rules of Civil Procedure 12(b)(1), a district court must dismiss a complaint if it lacks subject-matter jurisdiction. "A Rule 12(b)(1) jurisdictional

1 attack may be facial or factual.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039
 2 (9th Cir. 2004). A facial attack is based on an assertion that allegations in the complaint
 3 are “insufficient on their face to invoke federal jurisdiction.” *Id.* A factual attack
 4 disputes the validity of allegations that, if true, would invoke federal jurisdiction. *Id.*
 5 “Federal courts are courts of limited subject matter jurisdiction. A party alleging subject
 6 matter jurisdiction has the burden of establishing it.” *Kelly v. Wengler*, 822 F.3d 1085,
 7 1094 (9th Cir. 2016) (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375,
 8 377, (1994)). Once a defendant moves to dismiss for lack of subject matter jurisdiction,
 9 the plaintiff bears the burden of establishing the court’s subject matter jurisdiction.
 10 *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010.)

11 2. Standard For A Motion To Dismiss Pursuant to Rule 12(b)(6).

12 Pursuant to Federal Rules of Civil Procedure 12(b)(6), a district court must
 13 dismiss a complaint if it fails to state a claim upon which relief can be granted. A motion
 14 to dismiss should be granted unless the plaintiff has alleged “enough facts to state a
 15 claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
 16 570 (2007). A claim is plausible on its face when the plaintiff pleads facts that “allows
 17 the court to draw the reasonable inference that the defendant is liable for the misconduct
 18 alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). Thus, a Rule
 19 12(b)(6) motion is proper when there is either “the lack of a cognizable legal theory or
 20 the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v.*
 21 *Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990); *see also De La Cruz v.*
 22 *Tormey*, 582 F.2d 45, 48 (9th Cir. 1978).

23 Plaintiff must allege facts sufficient to “raise a right to relief above the
 24 speculative level.” *Twombly*, 550 U.S. at 555, 570. Although the court should accept the
 25 plaintiff’s allegations as true and draw all reasonable inferences in favor of the plaintiff
 26 in deciding whether the plaintiff has stated a claim, the court should not accept as true

1 “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
 2 inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008); *see also*
 3 *Ashcroft*, 556 U.S. at 678 “[t]hreadbare recitals of the elements of a cause of action,
 4 supported by mere conclusory statements, do not suffice”].

5 A complaint needs a “short and plain statement of the claim showing that the
 6 pleader is entitled to relief.” Fed. R. Civ. P., Rule 8(a)(2). “Rule 12(b)(6) is read in
 7 conjunction with Rule 8(a), which requires not only ‘fair notice of the nature of the
 8 claim, but also grounds on which the claim rests.’” *Zixiang Li v. Kerry*, 710 F.3d 995,
 9 998-999 (9th Cir. 2013) (quoting *Twombly*, 550 U.S. at 556 n.3). Rule 8 is violated when
 10 a pleading “says too little” and “when a pleading says too much.” *Knapp v. Hogan*, 738
 11 F.3d 1106, 1108 (9th Cir. 2013). Rule 8 can serve as a basis for dismissal in spite of the
 12 merit of any individual claims. *See Gottschalk v. City and County of San Francisco*, 964
 13 F.Supp.2d 1147, 1154-1155 (N.D. Cal. 2013).

14 A court may take judicial notice of matters of public record on a motion to
 15 dismiss. *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1016 n.9 (9th Cir. 2012).

16 3. Standard For A Motion To Dismiss Pursuant to Rule 12(b)(7).

17 Pursuant to Federal Rules of Civil Procedure 12(b)(7), a court may dismiss a
 18 complaint for a party’s failure to join persons whose presence is needed for a just
 19 adjudication. *First Nat. Ins. Co. of Am. v. Peralta Cmty. Coll. Dist.*, No. 12-CV-5943
 20 JSC, 2013 WL 622944, at *2 (N.D. Cal. Feb. 15, 2013); *Shermoen v. U.S.*, 982 F.2d
 21 1312, 1317 (9th Cir. 1992).

22 B. Defendants’ Motion To Dismiss Should Be Granted Without Leave To 23 Amend As To Each Cause of Action On The Ground The Court Lacks 24 Subject Matter Jurisdiction.

25 Plaintiff has not alleged a federal question as to the First, Second, and Fourth
 26 causes of action. Although federal jurisdiction is asserted in support of the Third cause of
 action, the statute upon which plaintiff relies only applies to federal agencies, not a state

1 municipal entity like the City of Trinidad. As a result, the Court lacks subject matter
2 jurisdiction and the motion to dismiss should be granted.

3 Plaintiff alleges the action is brought pursuant to 28 U.S.C. §§ 1331 and 1362.
4 (Dkt. No. 1, ¶¶17, 20.) Jurisdiction is conferred on district courts for civil actions arising
5 under the Constitution, law, or treaties of the United States and of all civil actions
6 brought by any federally recognized Indian tribe wherein the matter in controversy arises
7 under the Constitution, laws, or treaties of the United States. 28 U.S.C. §§ 1331, 1362.

8 Under the well-pleaded complaint rule, “federal jurisdiction exists only when a
9 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”
10 *Newtok Village v. Patrick*, 21 F.4th 608, 616 (9th Cir. 2021) (quoting *Caterpillar Inc. v.*
11 *Williams*, 482 U.S. 386, 392 (1987)). “A cause of action ‘arises under’ federal law ‘only
12 if federal law ‘creates the cause of action’ or a ‘substantial question of federal law is a
13 necessary element’ of a plaintiff’s well-pleaded complaint.” *Newtok Village*, 21 F.4th at
14 616. *See also Penobscot Nation v. Georgia-Pac. Corp.*, 106 F.Supp.2d 81, 86 (D. Me.
15 2000), *aff’d on other grounds*, 254 F.3d 317 (1st Cir. 2001) [“the well-pleaded complaint
16 rule analysis of section 1331 applies equally to the assertion of jurisdiction here under
17 section 1362.”] Where an underlying right or obligation arises only under state law, it
18 does not give rise to federal question jurisdiction. *Oneida Indian Nation of N. Y. State v.*
19 *Oneida Cnty., New York*, 414 U.S. 661, 675 (1974); *see also Gila River Indian Cmty. v.*
20 *Henningson, Durham & Richardson*, 626 F.2d 708, 715 (9th Cir. 1980); *Becker v. Ute*
21 *Indian Tribe of the Uintah and Ouray Reservation*, 770 F.3d 944, 948-949 (10th Cir.
22 2014).

23 Here, plaintiff alleges no causes of action arising under the Constitution, law, or
24 treaties of the United States. (Dkt. No. 1, generally.) Moreover, “[A] district court is
25 powerless to grant leave to amend when it lacks jurisdiction over the original

26 //

complaint.” *Morongo Band of Mission Indians v. California State Bd. of Equalization*, 858 F.2d 1376, 1380 n.2 (9th Cir. 1988).

There is no appropriate basis for subject matter jurisdiction asserted and, as a result, the motion to dismiss should be granted without leave to amend.

C. Defendants’ Motion To Dismiss Should Be Granted With Prejudice Because Plaintiff Does Not And Cannot Plausibly Plead Facts Sufficient To State Causes Of Action.

The motion to dismiss should be granted and plaintiff’s Complaint dismissed with prejudice because plaintiff’s claims are unsupported by plausible allegations that plaintiff’s constitutional rights or other federal laws were violated, and are otherwise contrary to judicially noticeable facts and the law.

The sole claims asserted in the Complaint sound in declaratory and injunctive relief.⁵ Plaintiff alleges the City entered into a PSA, as authorized by City Resolution, to make an appointment of the Trinidad Rancheria to a City advisory committee previously established in 2005. (Dkt. No. 1, ¶¶32, 45, 47, 51, 53, *see Exhibits B-C, G.*) Plaintiff alleges in conclusory fashion and contrary to the actual findings of fact cited by plaintiff in the Complaint and otherwise subject to judicial notice, that the City’s actions were outside the scope of state authority granted to it. (Dkt. No. 1, ¶¶14, 46, 48 and 67-68.)

The gravamen of plaintiff’s claims is that the City exceeded its authority and intruded on plaintiff’s cultural and tribal sovereignty in appointing the Trinidad Rancheria to the TMT because, in doing so, it made determinations regarding the Trinidad Rancheria’s traditional and cultural affiliations with the Yurok Village of Tsurai, and its Native American lineal or lateral descendants to the detriment of plaintiff.

⁵ Although plaintiff references section 1983 in the caption and footer of the Complaint, no section 1983 claim is asserted. (*See generally*, Dkt. No. 1.) Further, a tribe is not a “person” authorized to sue under section 1983. *Inyo County v. Paiute-Shoshone Indians of the Bishop Cmty. of the Bishop Colony*, 538 U.S. 701, 704 (2003); *see also Skokomish Indian Tribe v. United States*, 410 F.3d 506, 514 (9th Cir. 2005).

(*Id.*; *see also* Dkt.1 ¶¶5 and 6.) It did not. The only finding of fact bearing in any way on plaintiff’s claims is the City found the Trinidad Rancheria “has asserted and presented credible evidence” of the following:

(a) the Trinidad Rancheria is traditionally and culturally affiliated with the Tsurai Study Area; (b) over sixty percent of the Trinidad Rancheria’s current members are lineal or lateral descendants of the last known individuals residing in Tsurai village between 1900 and 1916, and that an additional several dozen Trinidad Rancheria members are descendants of Big Lagoon Charlie, a prominent Yurok figure who lived with his family in Trinidad in 1900; (c) Tsurai village lies within the ancestral homeland of the Trinidad Rancheria; and (d) Tsurai village and the cultural landscape of which it is a component is culturally and spiritually significant to the Trinidad Rancheria.

(Dkt. No. 1, ¶45; and *see* RJN, *Exhibit B.*)

The City further clarified elsewhere in the PSA it was not making the determinations plaintiff asserts were made by stating:

15. No Adjudication or Impairment of Tribal Rights: For the avoidance of doubt, nothing in the PSA or resolution shall be construed to waive or impair any sovereignty, governmental authority, cultural affiliation, cultural identity, ancestral claim or other legal right of the Yurok Tribe, the Trinidad Rancheria, the Tsurai Ancestral Society, any lineal descendant, or any other tribe, tribal entity, or person. The City does not purport to determine the relative priority or legal effect of any competing tribal, ancestral, or cultural claim, and expressly disclaims any role as arbiter of such claims.

(*See* RJN, *Exhibit B.*)

To be sure, as a matter of settled law, the municipal action challenged is within the City’s fundamental jurisdiction. California cities may pass resolutions. Cal. Govt. Code § 36936. “A resolution is usually a mere declaration with respect to future purpose or proceedings of the board.” *City of Sausalito v. County of Marin*, 12 Cal.App.3d 550, 565, (1970). Cities may also compromise any pending legal action in which they are a party. Cal. Govt. Code §§ 949, 940.4. Cities may also appoint members to an advisory

1 committee and control its own participation in such committees. Cal. Govt. Code §
2 36505.

3 As a matter of well settled law, no state entity or city may intrude upon a
4 federally recognized tribe’s sovereignty unless Congress has expressly so provided. *Big*
5 *Sandy Rancheria Enterprises v. Bonta*, 1 F.4th 710, 724-725 (9th Cir. 2021); *California*
6 *v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987), *superseded by statute on*
7 *other grounds*; *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980).
8 Indeed, as plaintiff alleges, “municipal actions have no legal force or effect regarding
9 Indian tribes.” (Dkt. No. 1, Exhibit A.) Tribes retain inherent power to determine tribal
10 membership, regulate domestic relations among members, and to prescribe rules of
11 inheritance for members. *Montana v. United States*, 450 U.S. 544, 564 (1981). State
12 action may not burden “the right of reservation [I]ndians to make their own laws and be
13 ruled by them.” *Big Sandy Rancheria Enterprises* 1 F.4th at 724-725. Indian tribes retain
14 attributes of sovereignty over both their members and their territory “[b]ut tribal
15 sovereignty does not extend ‘beyond what is necessary to protect tribal self-government
16 or to control internal relations.’” *Id.* at 725.

17 As noted above, the City specifically disclaimed in the PSA the Yurok Tribe’s
18 asserted injury by way of express language and, as a result, plaintiff cannot plausibly
19 plead the Trinidad Rancheria’s participation on the TMT in any way intrudes upon the
20 Yurok Tribe’s sovereign immunity. (Dkt. No. 1, generally.) The City’s adoption of the
21 resolution and execution of the PSA, placing the Trinidad Rancheria on a city advisory
22 committee “bears no clear relationship to tribal self-government or internal relations.”
23 *Montana*, 450 U.S. at 564. Plaintiff alleges no facts that defendants took action
24 determining tribal membership, descendency, regulated domestic relations among
25 plaintiff’s members, prescribed rules of inheritance for members, or interfered with
26 plaintiff’s right to make its own laws and be ruled by them. (Dkt. No. 1, ¶¶32, 45, 47,

51, 53, 58, 82, and generally; *see Exhibits B-C*.) Indeed, the allegations in the Complaint and that are subject to judicial notice establish that the City did not affect plaintiff’s sovereign status, made no decisions regarding tribal membership status, nor made any determinations regarding traditional and/or cultural affiliations of any tribes that would be binding on any tribes. (*See generally*, Dkt. No. 1.) No aspect of tribal self-governance of plaintiff is alleged to have been impacted. (*Ibid.*)

What plaintiff characterizes as a “legal determination” or “findings of fact” made by the City are simply statements of undisputed facts as to what the Trinidad Rancheria asserts. (Dkt. No. 1, ¶¶5-6, 8, 16, 46, 48-49, 54, 61-62, 65, 69, 74, 81, 84, 85.) The City of Trinidad assessed, in its municipal discretion, the assertions of the Trinidad Rancheria, without concluding that these assertions were true, when it appointed the Trinidad Rancheria to the TMT, the City’s advisory committee. (*Id.*, ¶45; *see RJN Exhibit B-D, G.*) The PSA further provides that “... the City is not qualified to be the arbiter of cultural affiliation” with regard to either the Trinidad Rancheria or the plaintiff and “therefore accepts the assertions of both Tribes with respect and deference to each.” (Dkt. No. 1, ¶45; *see RJN Exhibit B.*)

The City made an appointment to its own advisory committee regarding the management of land of land located within the City’s municipal boundaries and owned by the City. (Dkt. No. 1, ¶¶4, 45, 53; *see RJN, Exhibits B-C, E.*) The City’s isolated action and partial settlement of state litigation with the Trinidad Rancheria solely concerns inclusion on the committee for City land-management decisions. Rather than intrude upon tribal sovereign governance, nothing in the PSA shall be construed to waive or impair any sovereignty, governmental authority, cultural affiliation, cultural identity, ancestral claim or other legal right of plaintiff or any lineal descendant. (Dkt. No. 1, ¶51; *see RJN, Exhibits B-C.*) Further, as the plain text makes clear, the City “does not purport to determine the relative priority or legal effect of any competing

1 tribal, ancestral, or cultural claim, and expressly disclaims any role as arbiter of such
2 claims.” (*Id.*)

3 Plaintiff simply makes conclusory assertions that the City asserted jurisdiction
4 over Native American traditional and cultural affiliation, made improper “Findings of
5 Fact” regarding Native American traditional and cultural affiliations as well as lineal and
6 lateral descendancy. (Dkt. No. 1, ¶¶7, 54, 57, 59, 64, 84, and generally.) Nowhere does
7 plaintiff allege the appointment of the Trinidad Rancheria to the City advisory
8 committee affects plaintiff’s rights.

9 Furthermore, as a matter of law, the Third cause of action should be dismissed
10 because the cited statute, 54 U.S.C. § 302706 of the National Historic Preservation Act,
11 only applies to federal agencies—not state municipalities. (Dkt. No. 1, 15:2.)
12 Accordingly, plaintiff has not alleged facts sufficient to state a cause of action for
13 violation of this federal law.

14 In carrying out its responsibilities under section 306108 of this title, a
15 Federal agency shall consult with any Indian tribe or Native Hawaiian
16 organization that attaches religious and cultural significance to property
described in subsection (a).

17 54 U.S.C. § 302706(b).

18 The responsibilities under 54 U.S.C. § 306108 are those upon the head of any
19 federal agency having direct or indirect jurisdiction over a proposed federal or federally
20 assisted undertaking. “For federal undertakings at historic sites eligible for the National
21 Register, the NHPA requires *federal agencies* to consult with Indian tribes that attach
22 religious or cultural significance to the affected properties.” *Asher v. Clay Cnty. Bd. of*
23 *Educ.*, 585 F.Supp.3d 947, 967 (E.D. Ky. 2022). The *Asher* court further described other
24 circuits had found violations of this law can only be committed by a federal agency:

25 In *Western Mohegan Tribe & Nation of N.Y. v. New York*, 246 F.3d 230
26 (2d Cir. 2001), a Native American tribe moved for a preliminary
injunction against the State of New York and various state offices and
officials claiming that the development of a state park on state-owned

property in Schodack Island violated the NHPA. *Id.* at 232. The Second Circuit dismissed the claim, finding “the law makes it clear that violations of the NHPA can only be committed by a federal agency.” *Id.* Other circuits, including the Sixth Circuit, have held similarly. *Kaufmann v. Federal Aviation Admin.*, 722 F. Appx 438, 442 (6th Cir. 2018) (“NEPA, the NHPA, and the Transportation Act generally apply only to federal agencies.” (emphasis added)); see also *Vieux Carre Prop. Owners v. Brown*, 875 F.2d 453, 458 (5th Cir. 1989).

Asher, 585 F.Supp.3d at 967–68.

Plaintiff alleges the City is a California city and Council Members Kelly and Kenny are the mayor and mayor-elect. (Dkt. No. 1, ¶¶6, 11-12.) Nowhere does plaintiff allege defendants are a federal agency or head of a federal agency. (Dkt. No. 1, generally.)

Plaintiff’s request for declaratory and injunctive relief should also be dismissed because, as described above, plaintiff has not identified any allegedly federal law that the City purportedly violated nor pleaded sufficient facts supporting any violation of federal law. To obtain prospective relief, a plaintiff must show that he has suffered or is threatened with a “concrete and particularized” legal harm, coupled with “a sufficient likelihood that he will again be wronged in a similar way.” *Canatella v. State of California*, 304 F.3d 843, 852 (9th Cir. 2002) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) and *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983)). Plaintiff’s prospective relief claim “rises and falls” with its federal claims. *Est. of Posard v. Los Angeles Cnty. Sheriff’s Dep’t*, No. CV 23-10460 PA (EX), 2024 WL 5413154, at *7 (C.D. Cal. Dec. 5, 2024), *aff’d*, No. 24-7534, 2026 WL 371400 (9th Cir. Feb. 10, 2026). However, plaintiff fails to allege a federal claim and has not pleaded any facts to meet this standard.

Simply stated, the allegations in the Complaint and as set forth in the PSA, which is subject to judicial notice, establish that plaintiff does not and cannot state a viable claim. The motion to dismiss should be granted without leave to amend.

1 **D. Defendants’ Motion To Dismiss Should Be Granted Because The**
 2 **City’s Legislative Action Is Independently Supported By Rational,**
 3 **Non-Ancestry Grounds.**

4 Although plaintiff focuses solely on the cultural-affiliation and ancestry language
 5 as the basis for its challenge, plaintiff’s claims should be dismissed with prejudice
 6 because the City Council’s approval of Resolution 2026-04 and the PSA is
 7 independently supported by multiple rational, non-ancestry grounds. (Dkt. No. 1, ¶¶6-7,
 8 14-16, 46, 54, 57, 59, 61, 63-65, 69, 81-83; *See* RJN, ***Exhibits B-C, G.***)

9 The City did not approve the Resolution or PSA solely, or even necessarily,
 10 because of the cultural-affiliation language plaintiff challenges. (*See* RJN, ***Exhibits B-***
 11 ***C.***) As noted above, the City was careful not to assign priority or arbitrate these
 12 competing ancestral claims asserted by the two Tribes. (*Id.*) Moreover, the City
 13 separately recites in the PSA practical and logistical reasons supporting the Trinidad
 14 Rancheria’s appointment to the Tsurai Management Team, including:

15 [...] the substantial scope and proximity of the Trinidad Rancheria’s
 16 adjacent real property holdings; the Rancheria’s substantial interest in
 17 preservation of coastal trail and beach access in light of adjacent coastal
 18 property holdings; the Rancheria’s past demonstration of support for the
 19 preservation and protection of the TSA property, including, most
 20 significantly, assistance with the relocation of the Trinidad lighthouse; the
 21 Rancheria’s non-participation on the TMT has caused the City delay in
 22 permitting and planning applications related to the TSA, most notably
 23 those impacting adjacent property stormwater and public utility
 24 improvements, trail improvements, and coastal access; the Rancheria’s
 25 lack of participation on the TMT requires the City to convene separate and
 26 additional tribal consultations under Policy 69 and related consultation
 laws and regulations applicable to the City; and the California Coastal
 Conservancy, an existing member of the TMT, has issued verified
 discovery responses in the Litigation expressly endorsing the appointment
 of the Trinidad Rancheria to the TMT.

(*See* RJN, ***Exhibits B-C.***)

 These are all legitimate municipal, land-management, administrative, and
 litigation-settlement considerations. Municipal legislative judgments are entitled to

1 substantial judicial deference. Where no suspect classification or fundamental right is
 2 implicated, legislative action is valid if there is “any reasonably conceivable state of
 3 facts that could provide a rational basis” for the action. *F.C.C. v. Beach Commc’ns, Inc.*,
 4 508 U.S. 307, 313 (1993); *see also Williamson v. Lee Optical of Oklahoma Inc.*, 348
 5 U.S. 483, 485-488 (1955). “[C]ourts review challenged legislation with the presumption
 6 that it will be found valid unless it bears no rational relationship to a legitimate
 7 legislative purpose. *United States v. Oakland Cannabis Buyers' Co-op*, 259 F.App'x 936,
 8 938 (9th Cir. 2007).

9 Courts do not require legislative bodies to prove the reasons actually relied upon
 10 were correct, optimal, or supported by formal evidentiary findings; rather, “[w]here there
 11 are ‘plausible reasons’” for the legislative action, the judicial inquiry is at an end.
 12 *F.C.C.*, 508 U.S. at 313–15; *Romero-Ochoa v. Holder*, 712 F.3d 1328, 1331 (9th Cir.
 13 2013). The party challenging legislative action bears the burden “to negative every
 14 conceivable basis which might support it.” *Heller v. Doe*, 509 U.S. 312, 320 (1993); *see*
 15 *also Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981). Rational-basis
 16 review also permits legislative bodies to consider administrative convenience and
 17 practical governance concerns. *Armour v. City of Indianapolis*, 566 U.S. 673, 681–85
 18 (2012).

19 This deference applies with particular force to municipal land-use and local
 20 governance decisions. The Ninth Circuit applied rational-basis principles to municipal
 21 planning decisions and rejected constitutional challenges where a city’s action was
 22 rationally related to legitimate public purposes. *Kawaoka v. City of Arroyo Grande*, 17
 23 F.3d 1227, 1234–36 (9th Cir. 1994). Here, the City’s decision to settle TMT
 24 appointment-related litigation, structure participation on a City advisory body, reduce
 25 administrative burdens, coordinate consultation, and improve management of City-
 26 owned property satisfies rational-basis review. (*See* RJN, *Exhibits B-C, J-K*)

Plaintiff focuses on the cultural-affiliation language, but that does not provide a basis to invalidate the Resolution or PSA. (Dkt. No. 1, generally.) The City Council had independent, non-cultural and non-ancestry reasons for its action. (*See* RJN, *Exhibits B-C*.) The City owns the Tsurai Study Area, participates in implementation of the Tsurai Management Plan, and has authority to determine who may participate in a City-related advisory process concerning City-owned property. Cal. Govt. Code § 36505. (*See* RJN, *Exhibit E*.) The City also has authority to resolve pending litigation and to structure its own future participation in the TMT. Cal. Govt. Code §§ 949, 940.4., 36505. The practical grounds recited in the PSA are more than sufficient to support the City's action. (*See* RJN, *Exhibit B*.)

Accordingly, even accepting plaintiff's allegations as true for purposes of this Motion, plaintiff cannot plausibly allege that the City's approval of Resolution 2026-04 and the PSA was arbitrary, irrational, or ultra vires. At minimum, the existence of these independent rational bases precludes the sweeping relief plaintiff seeks, including nullification of the Resolution, invalidation of the PSA, and rescission of the Trinidad Rancheria's appointment to the TMT.

The motion to dismiss should be granted and the Complaint dismissed with prejudice.

E. **All Causes Of Action Against The Mayor and Mayor-Elect Should Be Dismissed Because Plaintiff Does Not And Cannot Allege Sufficient Facts To State A Cause Of Action Against Them And They Are Entitled To Legislative Immunity.**

Plaintiff does not and cannot allege sufficient facts to state a claim against the mayor or mayor-elect, Council Members Kelly and Kenny. In addition, they are entitled to absolute legislative immunity.

Plaintiff does not allege whether Kelly and Kenny are being sued in their official or personal capacity. (Dkt. No. 1, ¶¶5, 8, 12, 13, 41, 43, 48-50, 52, 54-59, 63, 69, 72-77,

82, and generally.) *See Kentucky v. Graham*, 473 U.S. 159, 165 (1985) [personal or individual-capacity suits seek to impose personal liability on a government official whereas official-capacity suits are to be treated as a suit against the government entity.] “When both a municipal officer and a local government entity are named, and the officer is named only in an official capacity, the court may dismiss the officer as a redundant defendant.” *Ctr. for Bio-Ethical Reform, Inc. v. Los Angeles Cnty. Sheriff Dep’t*, 533 F.3d 780, 799 (9th Cir. 2008). The only allegations regarding Kelly and Kenny concern official municipal action and the requested relief is institutional, so they should be dismissed.

A California city acts through its city council. Cal. Govt. Code §§ 36501(a), 34000. The Trinidad City Council authorized the mayor to execute the PSA. (*See* RJN, *Exhibits B-C, G.*) Plaintiff alleges no facts the mayor and mayor-elect took any action regarding the resolution and PSA outside of action taken by the City through its City Council. (Dkt. No. 1, ¶¶5, 44-45, 47-55, 57-59, 63, 69, 82, and generally; *see* RJN, *Exhibits B-C, F-G.*)

Plaintiff’s claims that Kelly and Kenny did not engage in meaningful consultation with plaintiff also fail because, as discussed above, there are no allegations Kelly or Kenny are part of a federal agency to which 54 U.S.C. § 302706 applies. (Dkt. No. 1, ¶¶12-13.)

Moreover, Kelly and Kenny are also entitled to absolute legislative immunity. Local government officials are entitled to legislative immunity for their legislative actions, and this immunity extends to claims for injunctive relief. *Norse v. City of Santa Cruz*, 629 F.3d 966, 976-977 (9th Cir. 2010); *Cnty. House, Inc. v. City of Boise, Idaho*, 623 F.3d 945, 959 (9th Cir. 2010). Whether an act is legislative depends on the “character and effect” of the particular act at issue. *Id.* at 960. In *Cnty. House, Inc.*, the court discussed there are four factors in determining whether an act is legislative in its

1 character and effect:

2 (1) whether the act involves ad hoc decisionmaking, or the formulation of
3 policy; (2) whether the act applies to a few individuals, or to the public at
4 large; (3) whether the act is formally legislative in character; and (4)
5 whether it bears all the hallmarks of traditional legislation.” *Kaahumanu*,
6 315 F.3d at 1220 (citation and internal quotation marks omitted). The first
7 two factors are largely related, as are the last two factors, and they are not
8 mutually exclusive. *Kaahumanu*, 315 F.3d at 1220; *San Pedro Hotel v.*
9 *City of Los Angeles*, 159 F.3d 470, 476 (9th Cir.1998).

10 *Cnty. House, Inc.*, 623 F.3d at 960.

11 An ad hoc decision is made with particular end or purpose, as distinguished from
12 a coordinated policy. *Cnty. House*, 623 F.3d at 961. Here, the City Council’s decision to
13 enter into the PSA appointing the Trinidad Rancheria to the city advisory committee was
14 a policy decision. *Kaahumanu v. Cnty. of Maui*, 315 F.3d 1215, 1220 (9th Cir. 2003).

15 The next factor is whether the act in question applies to a few individuals or to the
16 public at large. Entering the PSA to appoint the Trinidad Rancheria to the TMT is a
17 legislative act because the public at large is ultimately impacted by the determination of
18 who is on a city advisory committee to govern City-owned property and, as noted in the
19 PSA itself, numerous practical policy considerations informed the City’s appointment of
20 the Trinidad Rancheria as further discussed in Legal Discussion § III.D, above. *See*
21 *Chinn v. The City of Spokane*, No. CV-09-0354-EFS, 2010 WL 2028084, at *5 (E.D.
22 Wash. May 17, 2010), *aff’d sub nom. Chinn v. City of Spokane*, 429 F.App’x 673 (9th
23 Cir. 2011).

24 Finally, the adoption of the resolution and execution of the PSA by the City is
25 formally legislative in character and bears all the hallmarks of traditional legislation.
26 Resolutions require a recorded majority vote of the total membership of the city council.
Cal. Govt. Code § 36936; *see* RJN, *Exhibits B-C, F-G*. Kelly and Kenny are entitled to
absolute legislative immunity.

1 The motion to dismiss should be granted as to Kelly and Kenny without leave to
2 amend.

3 **F. Plaintiff's Complaint Should Be Dismissed Because Plaintiff Has**
4 **Failed To Join An Indispensable Party As Required Under Rule 19.**

5 The motion to dismiss should be granted because plaintiff has failed to join the
6 Trinidad Rancheria, a federally recognized Indian tribe and a party to the challenged
7 Partial Settlement Agreement ("PSA"). (*See* RJN, *Exhibits A, B.*) The omission is
8 dispositive and the Complaint should be dismissed with prejudice.

9 Plaintiff does not merely challenge an abstract City finding. Plaintiff asks this
10 Court to declare void, enjoin, rescind, and prevent implementation of the PSA and the
11 Trinidad Rancheria's appointment to the TMT. The City does not have the ability to
12 assert all of the arguments the Trinidad Rancheria would assert, nor can the City fully
13 appreciate the Trinidad Rancheria's asserted cultural ties to the 12.6 acre City-owned
14 real property. The relief requested would directly impair the Trinidad Rancheria's
15 contractual, governmental, and practical interests and, as a result, the Trinidad Rancheria
16 is a required party under Rule 19(a). The action cannot proceed in equity and good
17 conscience and must be dismissed under Rules 12(b)(7) and 19(b) because the Trinidad
18 Rancheria cannot be joined without its consent due to tribal sovereign immunity.

19 Rule 19 requires a three-step inquiry. First, the Court determines whether the
20 absent party is "required" under Rule 19(a). Second, if the party is required, the Court
21 must determine whether joinder is feasible. Third, if joinder is not feasible, the Court
22 must determine whether, in equity and good conscience, the action should proceed
23 among the existing parties or be dismissed. *Maverick Gaming, LLC v. United States*, 123
24 F.4th 960, 972 (9th Cir. 2024).

25 A party is required if: (A) in that person's absence, the court cannot accord
26 complete relief among existing parties; or (B) that person claims an interest relating to

1 the subject of the action and is so situated that disposing of the action in the person's
 2 absence may, as a practical matter, impair or impede the person's ability to protect the
 3 interest or leave an existing party subject to a substantial risk of inconsistent obligations.
 4 Fed. R. Civ. P. 19(a)(1).

5 Trinidad Rancheria is required under Rule 19(a). The challenged action is the
 6 City's approval and execution of a settlement agreement—a contract—between the City
 7 and the Trinidad Rancheria. The PSA grants the Trinidad Rancheria contractual rights
 8 and benefits, including appointment to the TMT, City participation in future TMT
 9 meetings conditioned on the Trinidad Rancheria's participation, dismissal and waiver
 10 provisions resolving claims between the City and the Trinidad Rancheria, and provisions
 11 requiring the parties to cooperate in defending future third-party claims related to the
 12 PSA. (Dkt. No. 1, ¶¶45, 51, 53; *see* RJN, **Exhibits B-C**.) Plaintiff's requested relief
 13 would nullify, impair, or prevent implementation of that contract. A signatory to an
 14 agreement is ordinarily a required party where the litigation seeks to invalidate, rescind,
 15 or otherwise decimate the agreement.

16 Ninth Circuit authority strongly supports dismissal where court action would
 17 impair a tribe's contractual interests and expose the existing defendant to inconsistent
 18 obligations. *Dawavendewa v. Salt River Project Agricultural Improvement & Power*
 19 *District*, 276 F.3d 1150, 1155-62 (9th Cir. 2002); *Maverick Gaming*, 123 F.4th at 972-80
 20 (9th Cir. 1992); *Diné Citizens Against Ruining Our Env't v. Bureau of Indian Affs.*, 932
 21 F.3d 843, 852-57 (9th Cir. 2019); *White v. Univ. of Cal.*, 765 F.3d 1010, 1026-28 (9th
 22 Cir. 2014); *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1025 (9th Cir. 2002).
 23 Indeed, "a party to a contract is necessary, and if not susceptible to joinder,
 24 indispensable to litigation seeking to decimate that contract." *Ward v. Apple Inc.*, 791
 25 F.3d 1041, 1053 (9th Cir. 2015).

26 //

1 In *Maverick Gaming*, for example, the Ninth Circuit affirmed dismissal where the
 2 plaintiff sought relief that would invalidate tribal-state gaming compacts, holding that
 3 the affected tribe had a legally protected interest that would be impaired in its absence
 4 and could not be joined due to sovereign immunity. *Maverick Gaming*, 123 F.4th at 977-
 5 80. The same logic applies here—plaintiff seeks relief that would invalidate or prevent
 6 implementation of the PSA and rescind the Trinidad Rancheria’s TMT appointment, but
 7 plaintiff has not joined the Trinidad Rancheria in this lawsuit. (See RJN, *Exhibit B*.)

8 The Trinidad Rancheria’s interests are not adequately represented by the City.
 9 Although the City and the Rancheria presently share an interest in defending the PSA,
 10 their interests are not identical. The City is a municipal landowner and defendant
 11 seeking to defend its authority to manage City-owned property, settle litigation, and
 12 structure participation in a City advisory process. The Trinidad Rancheria, by contrast,
 13 has its own sovereign, governmental, contractual, and participation interests in the PSA,
 14 including protection of its appointment to the TMT and preservation of the settlement
 15 benefits it negotiated. The Ninth Circuit has rejected the assumption that a governmental
 16 defendant necessarily represents an absent tribe’s interests where the tribe has distinct
 17 sovereign or contractual interests at stake. *Maverick Gaming*, 123 F.4th at 977-78; *Diné*
 18 *Citizens*, 932 F.3d at 855-56.

19 Additionally, the Trinidad Rancheria is a required party because its absence will
 20 leave the City, an existing party, “subject to a substantial risk of incurring double,
 21 multiple, or otherwise inconsistent obligations because of the interest.” Fed. R. Civ. P.
 22 19(a)(1)(B)(ii). The Humboldt County Superior Court has retained jurisdiction over the
 23 settlement agreement, including enforcement thereof, pursuant to California Code of
 24 Civil Procedure § 664.6. (See RJN, *Exhibit H*, 1356:4-26, *Exhibit I*, 1969:8-24.)
 25 Without the Trinidad Rancheria as a party, the City could be exposed to inconsistent
 26 obligations regarding the TMT.

1 Joinder is not feasible because the Trinidad Rancheria is a federally recognized
 2 Indian tribe that possesses sovereign immunity from suit absent an unequivocal waiver
 3 or congressional abrogation. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978);
 4 *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788-89 (2014); *Allen v. Gold*
 5 *Country Casino*, 464 F.3d 1044, 1047; *High Desert Recreation, Inc. v. Pyramid Lake*
 6 *Paiute Tribe*, No. 306CV0588LRHRAM, 2007 WL 9728727, at *2 (D. Nev. June 1,
 7 2007). (See RJN, *Exhibit A*.) There has been no waiver of sovereign immunity by the
 8 Trinidad Rancheria. Accordingly, the Trinidad Rancheria cannot be joined.

9 Dismissal is therefore required pursuant to Rule 19(b) for several reasons. First, a
 10 judgment rendered in the Rancheria's absence would prejudice the Rancheria by
 11 impairing its negotiated PSA rights and TMT appointment. The City would also be
 12 prejudiced because it would be exposed to inconsistent obligations for the reasons set
 13 forth above. Second, the prejudice cannot be meaningfully reduced by shaping relief,
 14 because plaintiff's requested relief is directed at the validity and implementation of the
 15 PSA and the Trinidad Rancheria's appointment to the TMT. Third, a judgment in the
 16 Trinidad Rancheria's absence would be inadequate because it would purport to
 17 adjudicate the validity and effect of a contract and appointment affecting an absent
 18 sovereign signatory. Fourth, the Ninth Circuit has emphasized that tribal sovereign
 19 immunity strongly favors dismissal where a required tribe cannot be joined. *Maverick*
 20 *Gaming*, 123 F.4th at 980; *Diné Citizens*, 932 F.3d at 857.

21 Based on the foregoing, the motion to dismiss should therefore be granted under
 22 Rules 12(b)(7) and 19.

23 //

24 //

25 //

26 //

1 **IV. CONCLUSION**

2 For the aforementioned reasons, the City of Trinidad, Cheryl Kelly, and Bryce
3 Kenny respectfully request that their motion to dismiss should be granted without leave
4 to amend.

5 DATED: June 30, 2026

THE MITCHELL LAW FIRM, LLP

6
7 /s/ Nicholas R. Kloeppel

Nicholas R. Kloeppel

Karen J. Roebuck

Attorneys for Defendants

8 CITY OF TRINIDAD, CHERYL KELLY, and
9 BRYCE KENNY