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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION**

YUROK TRIBE,

Plaintiff,

vs.

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

Defendants

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

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION;
REQUEST FOR JUDICIAL NOTICE;
[PROPOSED] ORDER DENYING
MOTION**

DATE: August 25, 2026

TIME: 11:00 a.m.

Location: Eureka-McKinleyville Courthouse
3140 Boeing Ave.
McKinleyville, CA 95519

Plaintiff Yurok Tribe, a federally recognized Indian tribe ("Plaintiff"), hereby submits its opposition to Defendants City of Trinidad, Cheryl Kelly and Bryce Kenny's (collectively "Defendants") Motion to Dismiss. Defendants' motion should fail because Plaintiff stated a valid federal claim regarding Plaintiff's tribal sovereignty, Defendants' actions are precluded due to the U.S. Constitution's Supremacy Clause and federal preemption doctrine, and because no other parties are necessary to determine whether Defendants encroached on Plaintiff's sovereignty in making findings of fact without legal authority.

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION; REQUEST FOR JUDICIAL NOTICE; [PROPOSED] ORDER DENYING MOTION - 1

Table of Contents

MEMORANDUM OF POINTS AND AUTHORITIES	5
I. INTRODUCTION	5
II. ARGUMENT	10
A. Allegations Involving Tribal Sovereignty State a Claim Presenting a Federal Question, to Which Relief May be Granted – Fed. R. Civ. P. 8(a) and 12(b)(1).....	10
1. Legal Standard	10
2. Argument	11
B. Plaintiff has Stated a Federal Claim upon Which Relief May Be Granted - Rule 12(b)(6).....	13
1. Legal Standard	13
2. Argument	13
C. The Individual Defendants had a Duty to Conduct Respectful and Meaningful Consultation	15
1. Legal Standard	15
2. Argument	16
D. There are no Other Necessary and Indispensable Parties - Rule 12(b)(7).....	17
1. Legal Standard	17
2. Argument	18
III. CONCLUSION.....	19

TABLE OF AUTHORITIES

Constitutional Provisions

Indian Commerce clause, U.S. Const., art. I, sec. 8, cl. 3	6, 10
Supremacy Clause, U.S. Const., art. VI, cl. 2	6

Federal Statutes

Freedom of Information Act (FOIA) laws. <i>See, e.g.</i> , 5 U.S.C. § 552(b)(3)	8
Archeological Resources Protection Act, 16 U.S.C. 470h, § 9	8
25 U.S.C. 7)(B)(ii)	15
Hoop-Yurok Settlement Act of 1988, Pub. L. 100-580, 102 Stat. 2924 (1988), codified at 25 U.S.C. §§1300i-1300i-11	6, 12, 14, 18
28 U.S.C. § 1331	9

State Statutes

Ralph M. Brown Act. <i>See</i> Cal. Gov't Code §§ 54950–54960 (Deering 2026)	8
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Cases

<i>American Indian Law Deskbook</i> , Ch. 1 (Nicholas J. Spaeth ed., 1993)	11
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662, 679 (2009)	13
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544, 555–57 (2007)	12
<i>Cherokee Nation v. Georgia</i> , 30 U.S. 1, 2 (1831)	11
<i>Cherokee Nation</i> , 30 U.S.	11
<i>Chicken Ranch Rancheria of Me-Wuk Indians v. California</i> , 42 F.4th 1024, 1030 (9th Cir. 2022)	15
<i>CP Nat'l Corp. v. Bonneville Power Admin.</i> , 928 F.2d 905, 911 (9th Cir. 1991)	17

1	<i>Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Tr.</i> , 463 U.S. 1, 27–28 (1983).....	9
2	<i>Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.</i> , 545 U.S. 308, 312 (2005)	9
3	<i>Leite v. Crane Co.</i> , 749 F.3d 1117, 1121 (9th Cir. 2014).....	10
4	<i>Mendiondo v. Centinela Hosp. Med. Ctr.</i> , 521 F.3d 1097, 1104 (9th Cir. 2008).....	12
5	<i>Montana v. United States</i> , 450 U.S. 544 (1981)	12
6	<i>Muckleshoot Indian Tribe v. U.S. Forest Service</i> , 177 F.3d 800, 810 (9 th Cir. 1999)	16
7	<i>Pauma Band of Luiseno Mission Indians v. California (Pauma II)</i> , 973 F.3d 953, 958 (9th Cir.	
8	2020).....	15
9	<i>Pueblo of Sandia v. United States</i> , 50 F.3d 856, 861-862 (10 th Cir.)	16
10	<i>Safe Air for Everyone v. Meyer</i> , 373 F.3d 1035, 1039 (9th Cir. 2004).....	10
11	<i>Salt River Project Agric. Improvement & Power Dist. v. Lee</i> , 672 F.3d 1176, 1179 (9th Cir.	
12	2012).....	17
13	<i>Seminole Nation v. United States</i> , 316 U.S. 286, 296–97 (1942).....	10
14	<i>Tohono O'odham Nation v. U.S. Bureau of Land Management</i> , 9 th Cir. Ct. of App., Case: 24-	
15	3659, 07/29/2024, DkEntry: 12.1	16
16	<i>United States v. Lara</i> , 541 U.S. 193, 194 (2004).....	10
17	<i>United States v. Wheeler</i> , 435 U.S. 313, 323 (1978)	11
18	<i>Washington v. Confederated Bands & Tribes of Yakima Nation</i> , 439 U.S. 463, 470–471 (1979).....	10
19	<i>Worcester v. Georgia</i> , 31 U.S.....	13
20	<i>Worcester v. Georgia</i> , 31 U.S. 515, 559 (1832)	6, 11

Federal Rules of Civil Procedure

26	Fed. R. Civ. P. Rule 12(b)(1).....	10
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PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS; MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION; REQUEST FOR JUDICIAL NOTICE; [PROPOSED] ORDER DENYING
MOTION - 4

1 Fed. R. Civ. P. Rule 12(b)(6)..... 12

2 Fed. R. Civ. P. Rule 12(b)(7)..... 16

3 Fed. R. Civ. P. Rule 19(a)..... 17, 18

4 **Other Authorities**

5 Op. Sol. M27781, 55 I.D. 14 (25 Oct.

6 1934)..... 13

7 Case No. DR180684, *City of Trinidad v. Tsurai Ancestral Society, Yurok Tribe, California State*

8 *Coastal Conservancy, Trinidad Rancheria*, in the Superior Court of California, County of

9 Humboldt..... 7

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11
12
13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

15
16 Plaintiff filed this lawsuit to determine whether a California general law city has the legal
17 authority to encroach on Plaintiff's tribal sovereignty by make legal determinations regarding
18 "traditional and cultural affiliations" of other Native American tribes to the Yurok village of
19 Tsurai. (Compl., ECF No. 1. at ¶¶ 1–3; 6.). If the Defendants did not have that legal authority
20 and wrongfully encroached on Plaintiff's tribal sovereignty, Plaintiff has asked this court to
21 nullify that improper legal determination and all actions and agreements that incorporate that
22 improper legal finding, as well as issue an injunction preventing further action by Defendants
23 using the improper finding of fact. (Compl. 17–18.). Plaintiff has also requested that any claim
24 by the individual Defendants that they conducted respectful and meaningful consultation with
25 Plaintiff regarding the Yurok village of Tsurai be revoked. (Compl. 15.).

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28 PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS; MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION; REQUEST FOR JUDICIAL NOTICE; [PROPOSED] ORDER DENYING
MOTION - 5

1 Nowhere does Defendants' Motion cite any statute giving Defendants the legal authority
 2 to make a legal determination regarding "traditional and cultural affiliation" of Native American
 3 tribes. Such a citation would clearly defeat Plaintiff's claim.

4
 5 Instead, Defendants' Motion mischaracterizes Plaintiff's lawsuit as seeking "relief
 6 regarding an appointment of the Char-Ae Heights Indian Community of the Trinidad Rancheria
 7 ("Trinidad Rancheria") by the City of Trinidad ("City") to a City advisory committee generally
 8 known as the Tsurai Management Team ("TMT") and the underlying findings and policy
 9 considerations made by the City Council . . .", (Defs.' Mot. to Dismiss, ECF No. 16, at p. 1,
 10 lines 15-21.). Defendants are mistaken.

11
 12 Defendants' Motion fails to address or even mention the foundational issue of
 13 encroachment on Plaintiff's tribal sovereignty. Instead, Defendants argue the actions taken are
 14 within a municipality's "fundamental jurisdiction" because municipalities have jurisdiction to
 15 pass resolutions. (Mot. 11:21-25.). However, Plaintiff alleged its tribal sovereignty has been
 16 harmed by Defendants' unauthorized actions (Compl. ¶¶ 1-3; 6-8; 35; 45-46; 49; 52; 54-55;
 17 57-59; 61-65; 67-68; 74; 76; 81-83; 85-86.) and that Defendants' actions are preempted by
 18 federal law. *See* Supremacy Clause, U.S. Const., art. VI, cl. 2. (Compl. ¶29¹; *See* Plaintiff's
 19 Request for Judicial Notice).

20
 21 Defendants' actions and Motion demonstrate a lack of understanding regarding
 22 Native American tribal sovereignty. Defendants' Motion fails to acknowledge that Native
 23

24
 25
 26
 27 ¹ *See* Hoopa-Yurok Settlement Act of 1988, Pub. L. 100-580, 102 Stat. 2924 (1988), codified at 25 U.S.C.
 §§1300i-1300i-11; *See* Plaintiff's Request for Judicial Notice filed concurrently with this Opposition.
 28 PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS; MEMORANDUM OF POINTS AND
 AUTHORITIES IN OPPOSITION; REQUEST FOR JUDICIAL NOTICE; [PROPOSED] ORDER DENYING
 MOTION - 6

American tribes possess inherent tribal sovereignty (*Worcester v. Georgia*, 31 U.S. 515, 559 (1832)), that Congress has plenary power over Native American tribes (*See* Indian Commerce clause, U.S. Const., art. I, sec. 8, cl. 3; Supremacy Clause, U.S. Const., art. VI, cl. 2), and that Congress has legislated the rights of Plaintiff and surrounding Rancherias to claim any interest or right in Plaintiff's tribal or communal property, resources, or rights within the Yurok Tribe, thereby preempting any state action regarding Plaintiff's sovereignty in this area. (*See* Hoopa-Yurok Settlement Act, 25 U.S.C. §§1300i-1300i-11; Pub. L. No. 100-580, 102 Stat. 2924, § 6(d)(3) (1988) (hereinafter "HYSA")). Defendants' Motion fails to mention the HYSA or address federal preemption at all.

In addition, Defendants' Motion alleges that "[n]or does plaintiff anywhere allege facts a Partial Settlement Agreement ('PSA') entered into in 2026 affected Yurok Governance or sovereignty". (Mot. 3:17–19.). Plaintiff's Complaint clearly alleges that the improper findings of fact this PSA incorporates, at their core, violate Plaintiff's tribal sovereignty and detail a history of Defendants' disregard for Plaintiff's sovereignty over the Yurok village of Tsurai. (Compl. ¶¶ 1–3; 6–8; 18; 20; 29; 35; 46; 49; 54–55; 61–64; 69; 74; 76; 81–85.).

Further, Defendants seem to argue tribal sovereignty may be encroached upon because "[c]ities may also compromise any pending legal action in which they are a party" citing to California statutes. (Mot. 11:25–26.). Defendant City instituted Case No. DR180684, *City of Trinidad v. Tsurai Ancestral Society, Yurok Tribe, California State Coastal Conservancy, Trinidad Rancheria*, in the Superior Court of California, County of Humboldt (the "State Action"), which it now seeks to partially settle with its improper finding (Compl. ¶ 35.). Defendants never consulted Plaintiff before suing Plaintiff, even though Defendant City

1 represented to that court that it had (Compl. ¶ 36.). Plaintiff successfully demurred to that state
2 suit on the grounds of sovereign immunity (Compl. ¶ 37.). In essence, Defendants argue they
3 can now lawfully settle Defendant City's State Action in which it was unable to include Plaintiff,
4 in a manner that encroaches on Plaintiff's sovereignty. Defendants offer no valid authority for
5 this proposition.
6

7 Instead, Defendants confuse legal issues regarding tribal sovereignty (Compl. ¶¶ 1-3; 6.)
8 with jurisdiction and a team formed in settlement of various litigations - the Tsurai Management
9 Team ("TMT")(Compl. ¶ 32.) - to care for the Yurok village of Tsurai. Defendants have
10 repeatedly attempted to unilaterally alter the TMT, make it a city advisory committee, and
11 subject it to the Ralph M. Brown Act. *See* Cal. Gov't Code §§ 54950-54960 (Deering 2026).
12 (Mot. 1:15-23.). Defendants inexplicably seek to publicize information regarding Native
13 American burial grounds which is confidential, heavily protected and generally exempt from
14 disclosure under state open record and federal Freedom of Information Act (FOIA) laws. *See*,
15 *e.g.*, 5 U.S.C. § 552(b)(3); Archeological Resources Protection Act, 16 U.S.C. 470h, § 9.
16
17

18 Defendants further attempt to argue another Native American tribe Defendants are
19 litigating with in the State Action needs to be joined in this action that Plaintiff brought regarding
20 Plaintiff's sovereignty (Mot. 8:17-21). Defendant City sued Plaintiff as well as another Native
21 American tribe. (Compl. ¶35). Plaintiff successfully demurred and was dismissed from the State
22 Action on the grounds of sovereign immunity. (Compl. ¶¶ 35-37.). Ignoring this outcome,
23 Defendants now repeatedly argue that another tribe is essential to determining if Defendants
24 encroached on Plaintiff's sovereignty (Mot. pp. 21-24.). Defendants' motion, however, fails to
25 explain how another Native American tribe is relevant to Plaintiff's sovereignty.
26
27

1 Similarly, Defendants' Motion fails to cite any statutory authority providing that the
2 individual defendants may consult with a Native American tribe on one subject (Compl. ¶¶ 41–
3 43.), completely ignore Plaintiff's input at that consultation (Compl. ¶¶ 56–59; Ex. A.) and
4 subsequently make findings of fact not consulted on regarding "traditional and cultural
5 affiliations" of another Native American tribe to the Yurok village of Tsurai.
6

7 Defendants' Motion attempts to litigate Defendant City's State Action here in federal
8 court when its legal authority to encroach on Plaintiff's sovereignty is being challenged. (Compl.
9 ¶ 35–36.). Plaintiff has already successfully demurred to Defendants' State Action (Compl. ¶
10 37.), and that litigation is immaterial to whether Defendants had the legal authority to encroach
11 on Plaintiff's sovereignty.
12

13 Finally, this Court will be able to determine if a California general law City encroached
14 on Plaintiff's sovereignty without any other Native American tribe by looking to powers
15 delegated to states and municipalities under the Tenth Amendment to the U.S. Constitution. In
16 addition, Congress has specifically addressed Plaintiff's sovereignty, and how Plaintiff alone has
17 the interest and right in Plaintiff's sovereignty, interests or rights in the tribal or community
18 property, resources and rights of Plaintiff, preempting any such action by a municipality. The
19 Court may determine if Defendants acted within their legal authority without the inclusion of any
20 other Native American tribe, and therefore no other Native American tribe is "essential" or
21 "necessary" to this litigation.
22

23
24 / / /

25 / / /

26 / / /

II. ARGUMENT

A. Allegations Involving Tribal Sovereignty State a Claim Presenting a Federal Question, to Which Relief May be Granted – Fed. R. Civ. P. 8(a) and 12(b)(1)

1. Legal Standard

Under 28 U.S.C. § 1331, federal district courts “shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” To establish that federal question jurisdiction exists, the party seeking to invoke the Court’s jurisdiction must show that “federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 27–28 (1983). Section 1331 is ordinarily invoked as a basis for federal subject matter jurisdiction when a plaintiff alleges a claim that arises under federal law. *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 312 (2005).

Defendants’ Motion demonstrates an unfamiliarity with federal Indian law and that questions regarding tribal sovereignty present federal questions that arise under the U.S. Constitution. *Seminole Nation v. United States*, 316 U.S. 286, 296–97 (1942). Defendants’ Motion explicitly admits Defendants took the “appropriate” (Mot. 2:5.) action for which Plaintiff complains. (Mot. 2:5–7.).

Defendants seek dismissal under Rules 8(a) for failing to state a claim and that the Court lacks subject-matter jurisdiction. (Mot. 8; 10.). A factual attack on jurisdiction “contests the truth of the plaintiff’s factual allegations, usually by introducing evidence outside the pleadings.” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (citing *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004)). A “facial attack,” by contrast “accepts the truth of the plaintiff’s allegations but asserts that they ‘are insufficient on their face to invoke federal

jurisdiction.” *Id.* (quoting *Safe Air for Everyone*, 373 F.3d at 1039). Defendants’ Motion fails under either analysis.

2. Argument

Defendants argue that Plaintiff has failed to state a federal question. (Mot. 8:24.) Congress has the power to “regulate Commerce with foreign Nations, and among the several States, and with Indian tribes.” U.S. Const. art. I, § 8, cl. 3. The Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that have been consistently described as “plenary and exclusive.” *United States v. Lara*, 541 U.S. 193, 194 (2004); *Washington v. Confederated Bands & Tribes of Yakima Nation*, 439 U.S. 463, 470–471 (1979). Native American tribes were defined as “domestic dependent nations” with a relationship to the United States like that of a “ward to his guardian.” *Cherokee Nation v. Georgia*, 30 U.S. 1, 2 (1831). The United States recognized the tribes are:

“distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed. . .”

Worcester v. Georgia, 31 U.S. 515, 559 (1832).

Worcester and *Cherokee Nation* laid out the following fundamental principles that have governed the relationship of tribes to the federal government ever since: (1) that by reason of their aboriginal political and territorial status Indian tribes retain elements of sovereignty, (2) that conquest leaves tribal sovereignty subject to attenuation by Congressional legislation but not by the states, and (3) by virtue of their limited sovereignty and dependency on the United States the

1 federal government has a fiduciary responsibility toward the tribes. *See American Indian Law*
2 *Deskbook*, Ch. 1 (Nicholas J. Spaeth ed., 1993).

3 Tribal sovereignty flows from the status of Native American tribes under international
4 common law, recognized by the United States through hundreds of Native American treaties and
5 federal statutes. *Cherokee Nation*, 30 U.S. at 17. Native American tribes still possess those
6 aspects of sovereignty not withdrawn by treaty or statute. *United States v. Wheeler*, 435 U.S.
7 313, 323 (1978). Plaintiff's Complaint alleges a federal question since Defendants' actions in
8 making the findings of fact regarding "traditional and cultural affiliations" of Native American
9 tribes with the Yurok village of Tsurai encroaches on Yurok Tribal sovereignty.
10

11
12 In addition, Defendants' actions in making findings of fact regarding the "traditional and
13 cultural affiliations" of a Native American tribe to the Yurok village of Tsurai directly conflicts
14 with the Congressional action taken in the HYSA. (See Plaintiff's Request for Judicial Notice).
15 The federal scheme laid out in the HYSA addressed Rancherias as well as any person who
16 elected to receive a lump sum payment under the HYSA and their inability to make claims to
17 Yurok tribal or communal property, resources, or rights or regarding the Yurok Tribe itself.
18 HYSA § 6(d)(3). The HYSA is so pervasive that it leaves no room for state or municipal
19 regulation. Defendants' Motion fails to address the HYSA or how Defendants' actions are
20 exempt from federal preemption.
21

22 Finally, Defendants' Motion alleges that their "express language" cannot "intrude upon
23 Yurok Tribe's sovereign immunity" (Mot. 12:18–20.) and "bears no clear relation to tribal self-
24 government or internal relations." (Mot. 12:22–23 (citing *Montana v. United States*, 450 U.S.
25

544 (1981)).). However, *Montana* is not on point, as *Montana* addressed tribal civil jurisdiction and regulatory authority, not Plaintiff's tribal sovereignty or cultural sovereignty.

B. Plaintiff has Stated a Federal Claim upon Which Relief May Be Granted - Rule 12(b)(6)

1. Legal Standard

Rule 12(b)(6) provides for dismissal if the complaint "fail[s] to state a claim upon which relief can be granted[.]" Fed. R. Civ. P. 12(b)(6). "Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendonado v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a Rule 12(b)(6) motion, the complaint must present enough facts to state a claim that is "plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–57 (2007). A claim is facially plausible when it pleads factual content that allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)

2. Argument

In an opinion by the Solicitor of the Department of Interior in 1934, Solicitor Margold outlined how tribal sovereignty is an inherent right that only Congress may encroach upon:

[T]hose powers which are lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which have never been extinguished. Each Indian tribe begins its relationship with the Federal Government as a sovereign power, recognized as such in treaty and legislation. The powers of sovereignty have been limited from time to time by special treaties and laws designed to take from the Indian tribes control of matters which *in the judgment of Congress*, these tribes could no longer be permitted to handle. The statutes of Congress, then, must be examined to determine the limitations of tribal sovereignty rather than to determine its sources or its positive content. *What is not expressly limited remains with the domain of tribal sovereignty.*

1 Op. Sol. M27781, 55 I.D. 14 (25 Oct. 1934) (*emphasis added*).

2 Justice Marshal discussed in *Worcester v. Georgia* encroaching on tribal sovereignty, as
3 being without cause:

4
5 A state claims the right of sovereignty, commensurate with her territory; as the
6 United States claim it, in their proper sphere, to the extent of the federal limits.
7 This right or power, in some cases, may be exercised, but not in others. Should a
8 hostile force invade the country, at its most remote boundary, it would become the
9 duty of the general government to expel the invaders. But it would violate the
solemn compacts with the Indians, without cause, to dispossess them of rights
which they possess by nature, and have been uniformly acknowledged by the
federal government.

10 *Worcester v. Georgia*, 31 U.S. at 591 (1832)

11 Defendants' Motion presents no legal authority negating Plaintiff's right to govern its
12 own internal affairs nor explains how "traditional and cultural affiliations" to the Yurok village
13 of Tsurai do not remain exclusively within Plaintiff's sovereignty. *Wheeler*, 435 U.S. at 324.
14 Instead, Defendants' Motion addresses real property (Mot. 3.) and Policy 69 (which excludes
15 Plaintiff to another tribe's benefit) (Mot. 3.). Defendants' Motion allows all allegations
16 contained in Plaintiff's complaint to be presumed as true. Fed. R. Civ. P. Rule 12(b).
17

18 Further, and as discussed under Rule 12(b)(1) above, Defendants' actions in making the
19 improper findings of fact regarding "traditional and cultural affiliations" of any Native American
20 tribe to the Yurok village of Tsurai and then incorporating that finding into a Partial Settlement
21 Agreement and resolution, is expressly preempted by the actions of Congress in enacting the
22 HYSA. See HYSA § 6(d)(3). Defendants' motion completely fails to address or cite authority
23 explaining why the HYSA doesn't preclude Defendants' improper actions.
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28 PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS; MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION; REQUEST FOR JUDICIAL NOTICE; [PROPOSED] ORDER DENYING
MOTION - 14

C. The Individual Defendants had a Duty to Conduct Respectful and Meaningful Consultation

Defendants' Motion appears to argue that a mayor (Defendant Kelly) and mayor-elect (Defendant Kenny) may consult a Native American tribe on one topic (to understand Plaintiff's position on its ancient village of Tsurai) and then make findings of fact offensive to and disrespectful of the input at that consultation (that another Native American tribe has "traditional and cultural affiliation" to the Yurok village of Tsurai). (Mot. 18–21.). Defendants Kelly and Kenny gave no indication they would wade into an area preempted by both Plaintiff's sovereignty and Congressional action in the HYSA when consulting with Plaintiff.

1. Legal Standard

The Ninth Circuit has recognized, under the Federal Indian Gaming Regulatory Act ("IGRA"), state attempts to negotiate topics outside those listed in IGRA amounts to "bad faith", when the state did not respect tribal sovereignty and demanded things unrelated to negotiations.² *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1030 (9th Cir. 2022). In *Chicken Ranch*, the Court discussed the burden shifting that occurs when bad faith in negotiations under IGRA is alleged stating the plaintiff tribe must first, "upon the introduction of evidence," demonstrate that the state has not negotiated in good faith. (*See* § 2710(d)(25 U.S.C. 7)(B)(ii)). Following that initial showing, "the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith." *Id.*: *see also Pauma Band of*

² Plaintiff acknowledges Defendants are not negotiating under IGRA, are not a federal agency, or federal employees. However, Plaintiff submits there are parallels in conduct, and this is why the same standard for "bad faith" should apply to any governmental entity or government official funded by taxpayer dollars
PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION; REQUEST FOR JUDICIAL NOTICE; [PROPOSED] ORDER DENYING MOTION - 15

1 *Luiseno Mission Indians v. California (Pauma II)*, 973 F.3d 953, 958 (9th Cir. 2020). While bad
 2 faith in that case was statutorily defined, Plaintiff submits that the spirit and reasoning of these
 3 decisions regarding the burden of proof regarding bad faith in consultation should be applied to
 4 the individual Defendants' wrongful conduct encroaching on Plaintiff's sovereignty.
 5

6 2. Argument

7 Defendants' Motion does not introduce facts alleging the consultation occurred in good
 8 faith (Mot. 18–21.) and resorts to recitation of a municipality's ability to make ad hoc decisions
 9 (Mot. 20:9–12.) and adopt resolutions. (Mot. 20:22–26.).
 10

11 Defendants cite no facts or law permitting a state or municipality to consult a Native
 12 American tribe on one topic when intending to use information gathered at consultation to act on
 13 different topic. The Tenth Circuit held that an agency fails its "good faith" obligation if it merely
 14 "perfunctorily" asks a tribe for information without actively sharing the project details it has, or
 15 if it withholds crucial documents until the eleventh hour. *Pueblo of Sandia v. United States*, 50
 16 F.3d 856, 861-862 (10th Cir.). Defendants issued Defendant City a development permit
 17 regarding a trail through the Tsurai study area in May of 2025 (Compl. ¶ 39) and only consulted
 18 Plaintiff after the California Coastal Commission found a substantial issue with the permit
 19 because Defendants had not consulted Plaintiff. (Compl., ¶ 40-41). Meaningful consultation
 20 must be established early in the planning phases; it cannot be satisfied by retroactive consultation
 21 after the agency has effectively finalized its decisions. *Muckleshoot Indian Tribe v. U.S. Forest*
 22 *Service*, 177 F.3d 800, 810 (9th Cir. 1999). Federal agencies can also fail the good faith standard
 23 if they refuse to consider rerouting or modifying projects to avoid severe adverse effects to
 24 Traditional Cultural Properties (TCPs). *Tohono O'odham Nation v. U.S. Bureau of Land*
 25
 26
 27

1 *Management*, 9th Cir. Ct. of App., Case: 24-3659, 07/29/2024, DkEntry: 12.1, Page 1 of 42.

2 Plaintiff submits these cases describe the individuals Defendants' bad faith and improper purpose
3 in consulting with Plaintiff.

4
5 **D. There are no Other Necessary and Indispensable Parties - Rule 12(b)(7)**

6 1. Legal Standard

7 Plaintiff questions the legal authority a California general law city has to make legal
8 determinations regarding the "traditional and cultural affiliations" of any Native American tribe
9 regarding the Yurok village of Tsurai. (Compl. ¶ 6.). Defendants have moved to dismiss the
10 Plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(7) for not including the Cher-Ae Heights
11 Indian Community of the Trinidad Rancheria ("Intervenor"), another Native American tribe
12 located adjacent to Defendant City and located on purchased land in Yurok Ancestral Territory.
13 (Mot. 21, § F.).

14
15 A party may move to dismiss a complaint for "failure to join a party under Rule 19." Fed.
16 R. Civ. P. 12(b)(7). This rule is designed "to protect the interests of absent parties, as well as
17 those ordered before the court, from multiple litigation, inconsistent judicial determinations or
18 the impairment of interests or rights." *CP Nat'l Corp. v. Bonneville Power Admin.*, 928 F.2d 905,
19 911 (9th Cir. 1991). Rule 19 requires a three-step inquiry: (1) whether the absent party is
20 necessary under Rule 19(a) (*i.e.*, required to be joined, if feasible); (2) if so, whether it is feasible
21 to order that absent party be joined; and (3) if joinder is not feasible, whether the case can
22 proceed without the absent party or whether it must be dismissed. *Salt River Project Agric.*
23 *Improvement & Power Dist. v. Lee*, 672 F.3d 1176, 1179 (9th Cir. 2012). Intervenor does not
24 satisfy these inquiries.

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28 PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS; MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION; REQUEST FOR JUDICIAL NOTICE; [PROPOSED] ORDER DENYING
MOTION - 17

2. Argument

Defendants appear to argue that Intervenor has an interest and a right in Plaintiff's sovereignty. Defendants fail to understand federal Indian law.

Under Rule 19(a), a party is "necessary" if "in that person's absence, the court cannot accord complete relief among the parties" or "that person claims an interest relating to the subject of the action" such that it would "impair or impede the person's ability to protect the interest" or would "leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest." Fed. R. Civ. P. 19(a)(1)(A)-(B). The fact that Intervenor is a party to the partial settlement agreement that incorporates the improper finding of fact (Mot. 21.) does not address whether Defendant City had the legal authority to make the improper findings of fact that encroached on Plaintiff's sovereignty.

Defendants contend Intervenor is a necessary party to this lawsuit because the Court cannot afford complete relief. (Mot. 21.). However, Defendants' statement is conclusory without demonstrating what Intervenor has to do with Plaintiff's sovereignty. Native American tribes are not fungible. Intervenor has no interest or right in Plaintiff's sovereignty, interests or rights in the tribal, communal property, resources or rights of Plaintiff. This is due to Plaintiff's inherent sovereignty and because Congress has preempted this subject matter in the HYSA. Defendants' Motion does not mention nor address Plaintiff's sovereignty, the HYSA, nor the federal preemption doctrine.

Intervenor is not necessary because its absence will not deny complete relief to Plaintiff. Plaintiff is defending its tribal sovereignty which includes its cultural sovereignty. Intervenor has

1 no interest nor rights in Plaintiff's sovereignty, resources, or rights (*see* HYSA, § 6(d)(3)) and is
2 thus not required to be joined under Rule 19(a)(1)(A).

3 If Defendants exceeded their legal authority to make findings of fact regarding
4 "traditional and cultural affiliations" of other Native American tribes to the Yurok village of
5 Tsurai, doing so encroached on Yurok Tribal sovereignty. If the Court voids that finding of fact
6 and any document(s) or official action(s) by Defendants that incorporated that improper finding
7 of fact, as well as claims by Defendants that they conducted respectful and meaningful
8 consultation, Plaintiff will have secured the requested relief.
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11 Second, because Intervenor has no interest or right in Plaintiff's sovereignty, interests or
12 rights in the tribal, communal property, resources or rights of Plaintiff, Intervenor is not
13 necessary to be joined under the remaining prongs of the Rule 19(a) test. The Court will be able
14 to determine whether Defendants had the legal authority to make legal determinations regarding
15 the "traditional and cultural affiliations" of any Native American tribe to the Yurok village of
16 Tsurai, or whether Defendants improperly encroached on the tribal sovereignty of Plaintiff,
17 without the joinder of any additional Native American tribes.
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19 **III. CONCLUSION**

20 For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendants'
21 Motion to Dismiss the Complaint. Defendants' Motion does not address federal Indian law,
22 tribal sovereignty, nor explain why the preemption doctrine and the HYSA do not apply to their
23 improper actions. Defendants argue their resolutions, agreements, and ad hoc decisions take
24 precedence over Plaintiff's sovereignty and federal law. Plaintiff requests the Court find all of
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1 the Defendants' actions in encroaching on Plaintiff's sovereignty improper and without legal
2 authority.

3 Plaintiff has requested leave to amend its Complaint to correct any errant citation(s) in
4 Plaintiff's Complaint and extends that request to any other defects the Court determines exist in
5 Plaintiff's Complaint.
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8 DATED: 14 July 26

Respectfully Submitted,

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11 By: 

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