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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 THE  
CHER-AE HEIGHTS INDIAN  
COMMUNITY OF THE TRINIDAD  
RANCHERIA'S MOTION FOR LIMITED  
INTERVENTION; REQUEST FOR  
JUDICIAL NOTICE; [PROPOSED]  
ORDER DENYING MOTION TO  
INTERVENE**

Date: August 25, 2026

Time: 11:00 a.m.

Place: Eureka-McKinleyville Courthouse  
3140 Boeing Avenue  
McKinleyville, CA 95519

TO THE HONORABLE COURT:

Plaintiff Yurok Tribe submits its Opposition to the Cher-Ae Heights Indian Community of the Trinidad Rancheria's Motion for Limited Intervention, Request for Judicial Notice, and [Proposed] Order Denying Motion for Limited Intervention.

PLAINTIFF'S OPPOSITION TO THE CHER-AE HEIGHTS INDIAN COMMUNITY OF THE TRINIDAD RANCHERIA'S MOTION FOR LIMITED INTERVENTION; REQUEST FOR JUDICIAL NOTICE; [PROPOSED] ORDER DENYING MOTION TO INTERVENE - 1

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## I. INTRODUCTION

The Yurok Tribe, a federally recognized Indian tribe (“Plaintiff”) has sued the City of Trinidad, Cheryl Kelly, and Bryce Kenny (“Defendants”) for their improper municipal encroachment on Plaintiff’s tribal sovereignty by taking action explicitly preempted by Congressional action (*See* The Hoopa-Yurok Settlement Act of 1988, Pub. L. 100-580, 102 Stat. 2924 (1988) *codified at* 25 U.S.C. §§1300i-1300i-11; *See also*, Plaintiff’s Request for Judicial Notice, ECF. No. 24, the “HYSA”). Defendants’ improper actions “potentially infringed upon the . . . Tribe’s right to decide internal matters concerning cultural issues”. *Vill. of Hotvela Traditional Elders v. Indian Health Servs.*, 1 F.Supp. 2d 1022, 1026 (D. Ariz. 1997) *aff’d*, 141 F.3d 1182 (9th Cir. 1998).

Plaintiff’s action in this Court seeks to defend Plaintiff’s sovereignty and its sovereign rights from unlawful and Congressionally preempted municipal over-reach. (*See United States v. Wheeler*, 435 U.S. 313, 322 (1978) (*quoting* Felix Cohen, *Handbook of Federal Indian Law* 122 (ed. 1945)), *superseded by statute on other grounds*).

The Cher-Ae Heights Indian Community of the Trinidad Rancheria (“Applicant”) has filed a motion for limited intervention (*See* ECF. No. 21; the “Motion”) alleging it has a right and an interest in the transaction Plaintiff complains of and therefore is an indispensable party in Plaintiff’s litigation, so that it may file a Motion to Dismiss for lack of including a required party.

Applicant’s Motion asks this Court to find a legally protected right and interest in Congressionally preempted municipal action encroaching on Plaintiff’s sovereignty. (Motion, p. 5, l. 14-17). No federal statute or case gives one Native American tribe an interest or right in the

1 sovereignty of another Native American tribe. Applicant's Motion cites no such authority.  
2 Applicant's Motion cites no such authority. Motion, pp. 1-17). Not only is Plaintiff's sovereignty  
3 inherent (*Wheeler v. U.S.*, 435 U.S. at 322), Defendants actions are explicitly preempted by the  
4 HYSA. Applicant's Motion fails to submit any admissible evidence demonstrating a legally  
5 protectable right or an interest in Plaintiff's sovereignty or overcoming the Preemption Doctrine.  
6

7 Applicant's Motion fails to argue or establish any *legally protectable* interest or right in  
8 Plaintiff's sovereignty. Instead, Applicant spends most of its Motion raising issues from Case  
9 No. DR180684, *City of Trinidad v. Tsurai Ancestral Society, Yurok Tribe, California State*  
10 *Coastal Conservancy, Trinidad Rancheria*, in the Superior Court of California, County of  
11 Humboldt (the "State Action") (See Motion, I. Background, p.6-8). Applicant provides no  
12 background, argument nor evidence as to how the State Action is a basis for a right or interest in  
13 Plaintiff's sovereignty.  
14

15 Applicant's Motion establishes Applicant desires to settle the State Action, a separate  
16 legal action, with Defendants (Motion, §II, pp. 2-6). Applicants desire to settle litigation with  
17 Defendants is not a "legally protectable interest" under Fed. R. Civ. P. Rule 24. (Motion, §III,  
18 A., pp 6-8). Applicant does not submit any admissible evidence demonstrating this desire is a  
19 *legally protectable* right or interest in Plaintiff's sovereignty.  
20

21 In addition, under the Supremacy Clause of the U.S. Constitution, when a state or local  
22 action or law conflicts with or is preempted by federal law, the federal law prevails and the local  
23 law is rendered legally void and unenforceable. (U.S. Const., art. VI, cl. 2). Congress enacted the  
24 HYSA defining any applicable limitations on Plaintiff's sovereignty, as well as Plaintiff's  
25 reservation boundaries and its relationship with three neighboring Rancherias, including  
26  
27

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Applicant. (*See* HYSA; ECF. 24). Because of Plaintiff's inherent sovereignty and the Preemption Doctrine superseding Defendants' improper findings of fact, Defendants' improper findings of fact are a legal nullity. (U.S. Const., art. VI, cl. 2) If anything, Applicant's Motion alleges an interest in a legal nullity. (Motion, pp. 1-17). A legal nullity does not satisfy the ninth circuit's four-pronged test for intervention. (Fed. R. Civ. P. Rule 24; Motion, pp. 10-13; *United States v. Stringfellow*, 783 F.2d 821, 826 (9th Cir. 1986)). Applicant has neither a right nor an interest in Plaintiff's sovereignty and should not be granted intervention by right or permission.

Plaintiff respectfully submits that the Court may grant Plaintiff relief on its claims against Defendants' encroachment into Plaintiff's sovereignty, a Congressionally preempted field, in the absence of Applicant pursuant to Fed. R. Civ. P. Rule 19(a)(1)(A) and Fed. R. Civ. P. Rule 24.

## II. BACKGROUND

On October 31, 1988, Congress enacted Pub. L. 100-580, 102 Stat. 2924, Congress passed the Hoopa-Yurok Settlement Act<sup>1</sup>. Applicant did not, pursuant to Section 11 of the HYSA, vote to merge with the Yurok Tribe pursuant to the HYSA. Consequently, Applicant has no legally protectable right or interest in Plaintiff's sovereignty, tribal or communal property, resources or rights.

As Garth Sundberg, Sr., Tribal Chairman for Applicant informed Congress in 2019:

... Significantly, Section 11 of the Settlement Act provided three tribes of historic Yurok origin (Trinidad Rancheria, Resighini Rancheria, and Big Lagoon) the option of merging with the Yurok Tribe to be organized pursuant to the Act to govern the Yurok Reservation. All three tribes elected to retain their status as

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<sup>1</sup> *See* Hoopa-Yurok Settlement Act, 25 U.S.C. §§1300i-1300i-11; Pub. L. No. 100-580, 102 Stat. 2924, § 6(d)(3) (1988); *See*, Dkt. 24, Plaintiff's Request for Judicial Notice (hereinafter "HYSA").

1 separately federally organized Indian tribes and declined to merge, but that did  
2 not affect their historic Yurok origin. ... (*citation omitted*).<sup>2</sup>

3 Since the three tribes did not vote to merge with Plaintiff, the HYSA defines the  
4 limitations Congress withdrew from Plaintiff's sovereignty by statute, defined the reservation  
5 boundaries, as well as the relationships of three Rancherias, including Applicant, and Plaintiff  
6 (*See* Dkt. 24, Plaintiff's Request for Judicial Notice). The HYSA grants Applicant no *legally*  
7 *protectable* right or interest in Plaintiff's sovereignty and gave Applicant an opportunity  
8 applicant refused to merge with Plaintiff. (*See* Dkt. 24; *United States v. Wheeler*, 435 U.S. 313,  
9 322 (1978)). Applicant's motion fails to allege, argue, or establish a *legally protectable* right or  
10 interest in Plaintiff's sovereignty or that the HYSA is not controlling over municipal action.  
11

12 Applicant's Motion fails to establish any *legally protectable* interest in Defendants'  
13 encroachment on Plaintiff's tribal sovereignty. Defendants knowingly took action both within  
14 Plaintiff's own sovereignty and which are Congressionally preempted. (*See* Defendants' Motion  
15 to Dismiss, pp. 10-15, ECF 16). Absent a legally protectable right or interest in Defendants'  
16 unlawful and preempted municipal actions, Applicant is not a required party. (Fed. R. Civ. P  
17 Rule 24). Applicant has failed to establish that it has Article III standing to intervene in  
18 Plaintiff's lawsuit and is not a required party to this litigation.  
19

20  
21 / / /

22 / / /

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23  
24  
25  
26 <sup>2</sup> *See*, Congressional Testimony of Garth Sundberg, Sr., Tribal Chairman of the Cher-Ae Heights Indian Community of the  
27 Trinidad Rancheria before the House Natural Resources Subcommittee for Indigenous Peoples of the United States Regarding  
H.R. 1312, the "Yurok Lands Act Of 2019" on September 19, 2019, at page 7, lines 7-11.

### III. LEGAL STANDARD

#### A. Tribal Sovereignty

A tribe's authority does not spring from federal law but rather derives from the "inherent powers of a limited sovereignty which has never been extinguished." *United States v. Wheeler*, 435 U.S. 313, 322 (1978) (emphasis omitted) (quoting Cohen, *Handbook of Federal Indian Law* 122 (ed. 1945). Tribal sovereignty nevertheless "exists only at the sufferance of Congress and is subject to complete defeasance." *Id.* At 323.

#### B. Motion to Intervene

Federal Rule of Civil Procedure 24(a)(2) permits a party to intervene as a matter of right. The Ninth Circuit has adopted "[a] four-part test . . . to determine whether applications for intervention as a matter of right pursuant to Rule 24(a)(2) should be granted," *Cty. of Orange v. Air Cal.*, 799 F.2d 535, 537 (9th Cir. 1986):

An order granting intervention as of right is appropriate if: (1) the applicant's motion is timely; (2) the applicant has asserted an interest relating to the property or transaction which is the subject of the action; (3) the applicant is so situated that without intervention the disposition may, as a practical matter, impair or impede its ability to protect that interest; and (4) the applicant's interest is not adequately represented by the existing parties.

*Id.* (quoting *United States v. Stringfellow*, 783 F.2d at 826). "Failure to satisfy any one of the requirements is fatal to the application." *Perry v. Proposition 8 Off. Proponents*, 587 F.3d 947, 950 (9th Cir. 2009) (citation omitted). "Generally, Rule 24(a)(2) is construed broadly in favor of proposed intervenors and '[courts] are guided primarily by practical considerations.'" *United States ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391, 1394 (9th Cir. 1992) (quoting *Stringfellow*, 783 F.2d at 826). "The 'liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts.'" *Peruta v. Cty. of San Diego*, 711 F.3d 1193, 1204 (9th Cir. 2013).

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1 570, 577 (9th Cir. 2014) (Thomas, J., dissenting) (quoting *United States v. City of Los Angeles*,  
2 288 F.3d 391, 397–98 (9th Cir. 2002)).

3 An applicant seeking to intervene as a matter of right under Rule 24(a)(2) must also  
4 demonstrate that it possesses Article III standing to participate in the lawsuit as a party. *Jones v.*  
5 *Prince George's Cty.*, 348 F.3d 1014, 1017 (D.C. Cir. 2003). In the Ninth Circuit the  
6 requirement of Article III standing is incorporated into the four-part intervention test as part of  
7 the requirement that the applicant for intervention must “assert an interest relating to the property  
8 or transaction which is the subject of the action.” *Portland Audubon So. v. Hodel*, 866 F. 2d 302,  
9 308 n. 1 (9th Cir. 1989). Regardless of the process, the applicant must establish that it has Article  
10 III standing to intervene under Rule 24(a)(2).  
11

12 Article III standing requires a showing of injury-in-fact, causation, and redressability. *See*  
13 *Deutsche Bank Nat'l Tr. Co. v. Fed. Deposit Ins. Corp.*, 717 F.3d 189, 193 (D.C. Cir. 2013). The  
14 Supreme Court described the “injury-in-fact” element as requiring a showing of an invasion of a  
15 legally protected interest that is (a) concrete and particularized, and (b) actual and imminent, not  
16 conjectural or hypothetical. *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560 (1992). To establish  
17 standing, the petitioner for intervention must establish these factors by affidavit or other evidence  
18 of specific facts. *Id.* at 562. Conclusory statements are not sufficient. *Id.*  
19

20 In evaluating a motion to intervene under Fed. R. Civ. P. Rule 24, “[c]ourts are to take all  
21 well-pleaded, nonconclusory allegations in the motion to intervene, the proposed complaint or  
22 answer in intervention, and declarations supporting the motion as true absent sham, frivolity or  
23 other objections.” *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001). A  
24 decision on a motion to intervene may be made on the papers alone. *Id.*  
25

In addition, in the Ninth Circuit, permissive intervention under Rule 24(b) is discretionary. To be granted, the Applicant would have to establish Applicant's claim or defense and the main action have a question of law or fact in common. See, 7C Wright, Miller & Kane, Federal Practice and Procedure § 1911, 357-63 (2d ed.1986); *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1108-1109 (9<sup>th</sup> Cir. 2002).

#### IV. ARGUMENT

##### A. Proposed Applicant's Motion is Timely and Irrelevant to Plaintiff's Injury to Its Sovereignty from Defendants' Unlawful and Preempted Actions

Plaintiff does not dispute that Applicant's Motion is timely; Plaintiff disputes that 1) Applicant's Motion alleges any *legally protectable* interest in Plaintiff's sovereignty or Congressionally preempted action, 2) Applicant interests as argued are adequately protected by Defendants similar arguments, and that 3) failing to establish a common issue, Applicant is not a required nor necessary party.

Plaintiff has alleged that Defendants illegally encroached on Plaintiffs' sovereignty when they made unlawful findings of fact regarding "traditional and cultural affiliations" of another Native American tribe to the Yurok village of Tsurai. (Complaint ¶¶1, 5-8). Applicant's Motion fails to argue or establish that a California general law city has the legal authority to encroach on tribal sovereignty or take actions preempted by Congressional action. (Motion pp. 1-17). The Motion therefore fails the second and third prongs of the *Stringfellow* four-part test by not asserting an interest relating to the property or transaction which is the subject of the action, Plaintiff's tribal sovereignty.

Applicant incorrectly informs the Court that this lawsuit is about Applicant. (Motion p.5, l. 24-p. 6, l.1). Plaintiff's lawsuit was brought to protect Plaintiff's sovereignty. (Compl. ¶¶1, 5-  
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8, 29, 45-59). The first words of Plaintiff's complaint are "Tribal Sovereignty". (Compl. ¶1).

Applicant's desire to protect Defendants' unlawful and preempted actions are legally insufficient for Applicant to establish standing in this case. Applicant claims:

Trinidad Rancheria has a significant and protectable legal interest in the benefits of the settlement agreement it entered with the City to resolve one of its causes of action against the City in the State Case, and the Tribe's ability to pursue its remaining causes of action.

(Motion, p. 12, l. 22-24). Applicant's Motion establishes Applicant has a desire to settle the State Action (Motion, §III, A., pp 6-8), which is irrelevant to Plaintiff's sovereignty, and not a *legally protectable* interest in Plaintiff's sovereignty, failing the third prong of the *Stringfellow* test.

In addition, Plaintiff successfully demurred to the State Action and was dismissed on the grounds of Plaintiff's sovereign immunity. (See Compl., ECF 1, ¶¶35-37). To allow Defendants and Applicant to re-litigate their State Action issues in Plaintiff's federal lawsuit defending its sovereignty, would render Plaintiff's dismissal from the State Action and sovereign immunity meaningless.

Applicant has established no *legally protectable* interest in Plaintiff's sovereignty, the subject of Plaintiff's complaint. (Compl. ¶¶1, 5-8, 29, 45-59). In essence, Applicant asks this Court to conflate Plaintiff's tribal sovereignty with Applicant's purely derivative interest in Defendant's unlawful municipal encroachment onto Plaintiff's sovereignty which is insufficient to intervene as a matter of right under Rule 24(a)(2).

Furthermore, Defendants' make the same arguments as Applicant regarding Applicant being a required party and raising the State Action proceedings (*See* ECF 16, p. 21-24; Motion pp.13-15), adequately representing Applicant's alleged interest(s) in Plaintiff's sovereignty.

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Applicant submitted no affidavits or any other evidence to support its contention that it has an interest in Plaintiff's sovereignty as a matter of right or permission pursuant to Fed. R. Civ. P. Rule 24. The conclusory and unsupported statements made by Applicant's Motion are not evidence and are not sufficient to establish standing. *See Deutsche Bank Nat'l Tr. Co. v. Fed. Deposit Ins. Corp.*, 717 F.3d at 193. Instead, through a series of mischaracterizations and conclusory statements, Applicant misrepresents the nature of Plaintiff's lawsuit to fabricate a standing claim. (Motion, p.5, l. 11-p. 8, l. 6).

**B. The Hoopa-Yurok Settlement Agreement Preempts any Municipal Action in this Area and Does Not Grant Applicant a Legally Protectable Right or Claim In Plaintiff's Sovereignty.**

Applicant voted not to merge with Plaintiff pursuant to the HYSA, and Applicant's Motion makes no argument that it has a claim, interest, or right in Plaintiff's sovereignty. (*See* footnote 2, *above*). Defendants had no legal ability to make findings of fact in an area within tribal sovereignty and covered by an act of Congress. (*See*, Supremacy Clause, U.S. Const., art. VI, cl. 2). Nowhere does Applicant's Motion address how federal preemption does not apply to Defendants' actions.

Applicant's Motion makes no claim to a right or interest in Plaintiff's sovereignty, no claim that it merged with the Yurok Tribe, and no claim that Applicant or has any "interest or right, whatsoever in the tribal, communal ... property, resources, or rights within , or appertaining to ... the Yurok Tribe ...". *See* HYSA, Sec. 6 (d)(3). Applicants' Motion fails to satisfy the final three prongs of the *Stringfellow* test.

**C. Proposed Applicant Has no Rights or Interest in Plaintiff's Sovereignty and Has Not Established a Common Question for Permissive Intervention.**

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As detailed above, since Applicant's Motion makes no argument or showing it has a common question of law or fact to Plaintiff's sovereignty, the requirement of permissive intervention has not been satisfied either. Fed. R. Civ. P. 24(b). Plaintiff submits it would be an error in discretion for this Court to allow Applicant, who voted under the HYSA not to merge with Plaintiff, whose Motion has established no right or interest in Plaintiff's sovereignty, tribal or communal property, resources, to permissively intervene in this matter. (*See* Dkt. 24; HYSA).

The Court should deny Proposed Applicant's Motion for "limited" intervention pursuant to FRCP Rules 19 and 24. Plaintiff submits this Court may grant complete relief to Plaintiff on its claim against Defendants in the absence of the Applicant. *See* Fed. R. Civ. P. Rule 19(a)(1)(A).

**D. Proposed Applicant Makes Arguments Contained in Defendants' Motion To Dismiss And Is Adequately Represented.**

Finally, "[i]n determining whether an applicant's interest is adequately represented by the parties, [courts] consider (1) whether the interest of a present party is such that it will undoubtedly make all the intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether the would-be intervenor would offer any necessary elements to the proceedings that other parties would neglect." *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 838 (9<sup>th</sup> Cir. 1996) (citing *California v. Tahoe Regional Planning Agency*, 792 F.2d 775, 778 (9<sup>th</sup> Cir. 1986)). The Ninth Circuit has noted that this inquiry parallels that of Rule 19(a) in assessing an absent party's necessity. *See Shermoen v. United States*, 982 F.2d 1312, 1318 (9<sup>th</sup> Cir. 1992). Although the burden of establishing that the existing parties do not adequately represent its interests falls on the prospective intervenor, "the requirement of inadequate representation is satisfied if the applicant shows that representation

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1 'may be' inadequate." *Id.* (citing *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir.  
 2 1983); *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)A).

3 Plaintiff demurred to and was dismissed from the State Action. (ECF 1, ¶¶35-37).  
 4 Applicant's Motion fails to establish a *legally protectable* right or interest in Plaintiff's  
 5 sovereignty. Defendants make similar arguments to Applicant in Defendants' Motion to Dismiss  
 6 that Applicant is a required party because of the State Action. (ECF 16, 21-24). Since  
 7 Defendants' and Applicant's Motions both fail to address, argue or introduce any admissible  
 8 evidence establishing a right to encroach on Plaintiff's sovereignty or that Defendants' action are  
 9 not preempted by the HYSA, Applicant's alleged interest in Plaintiff's sovereignty is  
 10 adequately represented by Defendants.  
 11

#### 12 V. CONCLUSION

13 The Applicant's Motion for Limited Intervention for the sole purpose of bringing a  
 14 Motion to Dismiss on the grounds of sovereign immunity should be denied in its entirety for  
 15 failure to state any legally protectable, non-preempted interest related to the subject of Plaintiff's  
 16 action, and its interests being adequately represented by Defendants.  
 17

18 DATED: 20. July. 26

19 Respectfully Submitted,

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