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THE SANTA YNEZ BAND
OF CHUMASH MISSION INDIANS
OF THE SANTA YNEZ RESERVATION,
VINCENT ARMENTA, GARY PACE,
KENNETH KAHN, RICHARD GOMEZ,
and DAVID DOMINGUEZ

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SAVE THE VALLEY, LLC, a California Limited Liability Company,

Plaintiff,

vs.

THE SANTA YNEZ BAND OF CHUMASH INDIANS, an Indian Tribe, VINCENT ARMENTA, Tribal Chairman for the Santa Ynez Band of Mission Indians; GARY PACE, KENNETH KAHN, RICHARD GOMEZ, and DAVID DOMINGUEZ as Business Committee Members for the Santa Ynez Band of Mission Indians,

Defendants.

Case No.: 2:15-cv-02463-RGK-MAN

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

Hearing Date:	June 22, 2015
Time:	9:00 a.m.
Courtroom:	850
Judge:	Hon. R. Gary Klausner

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I. INTRODUCTION

In this case, "Save the Valley," an LLC formed less than a year ago with only one known member, seeks to block the Indian Tribe officially known as The Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation (the "Tribe") from expanding its existing hotel and renovating an associated gaming facility on the Tribe's reservation—a project that will generate revenue supporting vital tribal government programs, such as the Tribe's Education Program and Health Clinic, and that will help address the basic needs of the Tribe's members. The land in question has been held in trust for the Tribe by the United States for over a century, and the gaming facility has been in operation for more than a decade. Indeed, Save the Valley attaches to its Complaint a deed memorializing the transfer of the land to the United States "for the establishment of a permanent Indian Reservation for the perpetual use and occupancy of the Santa Ynez band of Mission Indians." (Compl., Ex. A.) Save the Valley nonetheless contends that the Tribe's reservation, on which the hotel and gaming facility are located, is not in fact tribal trust land and thus that the Tribe's project must be halted. The Complaint offers no factual basis whatsoever for that contention—which is simply false—and, indeed, the deed attached to the Complaint refutes Save the Valley's allegation.

In any event, even leaving aside the Complaint's complete lack of merit, the Complaint must be dismissed. *First*, as a recognized Indian tribe, the Tribe enjoys sovereign immunity from suit, absent express abrogation by Congress or waiver by the Tribe—neither of which the Complaint alleges. The individual defendants, Vincent Armenta, Gary Pace, Kenneth Kahn, Richard Gomez, and David Dominguez, are officials of the Tribe, sued in their official capacities, and thus likewise shielded by the Tribe's sovereign immunity. Save the Valley makes the conclusory assertion that "[s]overeign immunity does not apply because this is an *in rem* proceeding concerning real property held in fee." (Compl. ¶ 11.) But that is not so. Even if there were an "*in*

rem" exception to tribal sovereign immunity—and there is not—this is simply not an *in rem* action. Rather, it is an *in personam* action against the Tribe and its officials seeking to enjoin them from proceeding with the renovations of the Tribe's existing facilities—precisely the kind of action protected by sovereign immunity.

Second, as Save the Valley admits, the United States holds legal title to the land. Accordingly, this lawsuit for a declaration as to the respective property interests of the Tribe and the United States in the land cannot proceed without the United States, which is an indispensable party that has not been joined. And because the United States, like the Tribe, is immune from such a suit, this action cannot go forward.

Accordingly, and as discussed below, Defendants respectfully request that the Court grant this motion and dismiss this case with prejudice.

II. FACTUAL BACKGROUND

The Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation is a federally recognized Indian Tribe whose reservation is located in the County of Santa Barbara, California.[1] (Compl. ¶ 10.) Since 2000, the Tribe has operated a resort and gaming facility, pursuant to a Tribal-State Gaming Compact with the State of California, on land held in trust by the United States for the benefit of the Tribe. (Compl., Ex. D at 3; Compl. ¶ 37.)

A. The Establishment of The Santa Ynez Reservation

The real property referenced in the Complaint (*e.g.*, Compl. ¶ 15) has been reservation land held in trust by the United States for the Tribe since at least 1906, when it came to be known as the "Santa Ynez Reservation." The Santa Ynez Reservation was established as follows. In 1891, Congress passed the Act for the Relief of the

[1] The Tribe's official name, as indicated in the Federal Register, is the "Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation." 80 Fed. Reg. 1942, 1945 (2015). So as not to highlight the falsity of its allegations, Plaintiff has intentionally omitted from the caption of its complaint the portion of the Tribe's name containing the words "Santa Ynez Reservation."

Mission Indians in the State of California, which established a commission to "arrange a just and satisfactory settlement of the Mission Indians . . . upon reservations which shall be secured to them." (Declaration of Matthew Benedetto ("Benedetto Decl."), Ex. 1 at 7); *see also* 26 Stat. 712. At that time, the Tribe's members resided on land owned by the Roman Catholic Church. In 1897, the Roman Catholic Bishop of Monterey filed a lawsuit to establish that the Church was, in fact, the true owner of the land. (Benedetto Decl. Ex. 1 at 7; Compl. ¶ 18.) Then, after a final judgment was issued in that lawsuit in favor of the Church, the Bishop conveyed the property to the United States to be held in trust for the Tribe, thereby establishing the Santa Ynez Reservation for the Tribe. (Benedetto Decl. Ex. 1 at 7; *id.* Ex. 2.) The Church reserved an easement in the property and a reversionary interest in the event that the Tribe abandoned the land. (Benedetto Decl. Ex. 2 at 3.)

In 1934, the Indian Reorganization Act ("IRA") became law. The IRA provided that it would "not apply to any reservation wherein a majority of the adult Indians . . . shall vote against its application," and required the Secretary of the Interior to hold such elections. (*See* 25 U.S.C. § 478.) The Bureau of Indian Affairs accordingly held an election for the adult Indians of the Santa Ynez Reservation, who voted to accept the IRA. (Benedetto Decl. Ex. 1 at 8-9.)

On January 29, 1938, the Church relinquished its easement and reversionary interest, transferring all of its remaining interests in the land to the United States via quitclaim deed "for the establishment of a ***permanent Indian Reservation*** for the perpetual use and occupancy of the Santa Ynez band of Mission Indians." (Compl., Ex. A (emphasis added).)

B. The Tribe's Compact With The State of California

The Tribe opened its first gaming facility in 1994. On September 10, 1999, the Tribe entered into a Tribal-State Compact (the "Compact") with the State of California, which authorized the Tribe to conduct Class III gaming on its reservation. (Compact at

6, *available at* http://www.cgcc.ca.gov/documents/compacts/original_compacts/Santa_Ynez_Compact.pdf.) One of the express purposes of the Compact was to "[d]evelop and implement a means of regulating Class III gaming, and only Class III gaming, ***on the Tribe's Indian lands***." (*Id.* at 3 (emphasis added).) The Compact further provided that the Tribe may establish gaming facilities "only ***on those Indian lands*** on which gaming may lawfully be conducted under the Indian Gaming Regulatory Act." (*Id.* at 6 (emphasis added.).)

After entering into the Compact, the Tribe expanded its gaming facility and opened a resort in 2001. These facilities were built on the same reservation land where the commercial development project at issue in this case is currently being completed. (Compl., Ex. D at 8.)

C. The Renovation of the Resort On The Santa Ynez Reservation

In July 2014, the Tribe proposed a renovation and expansion of the Tribe's resort (the "Project"). (Compl., Ex. D at 2.) The Project consists of renovations to the existing resort, along with two new structures, located directly adjacent to the current resort. (Compl. ¶ 27; Compl., Ex. I.) From July 15, 2014 to August 14, 2014, before embarking on the Project, the Tribe invited, received, and responded to comments from the public and government agencies. (Compl. ¶ 31; Compl., Ex. E at 5.) For instance, the Federal Aviation Administration concluded in August 2014 that the new structures would not exceed obstruction standards and would not interfere with operations at the Santa Ynez airport. (*See* https://oeaaa.faa.gov/oeaaa/external/searchAction.jsp?Action=displayOECase&oeCaseID=223521195&row=0.) On September 10, 2014, the proposed Project was approved by the Tribe's Business Committee, pursuant to the Tribe's Ordinance No. 4 and the Tribal-State Gaming Compact. (Compl., Ex. H.) Construction began in October 2014. Nearly six months later, Plaintiff filed this action in the United States District Court for the Central District of California. (Dkt. 1.)

D. The Parties Named In The Complaint

Plaintiff, Save the Valley, purports to be an organization comprised of adjacent land owners and users of the Santa Ynez airport, although it does not identify any individual property owners or members of the organization.[2] (Compl. ¶ 6.) Contending that the land on which the Project is being built is not held in trust for the Tribe, that the Project violates various state and federal regulations, and that the Project will cause "a sharp decrease in property values and use and enjoyment of their real property" (Compl. ¶¶ 8, 16, 29-33, 36), Plaintiff seeks a "judicial determination and judgment concerning the correct legal status of this land" under the Declaratory Judgment Act and an injunction to halt the Project. (Compl. ¶¶ 16, 36, 48, 49, 56.) The Complaint names as defendants the Tribe and four tribal officials who are sued "in their official capacity." (Compl. ¶ 10.) The Complaint does not name the United States.

III. ARGUMENT

A. The Court Lacks Jurisdiction Over This Action Because The Tribe And Its Officers Are Immune From Suit

The Court lacks subject-matter jurisdiction over this lawsuit because the Tribe's sovereign immunity bars the suit. That is a question of law properly resolved on a motion to dismiss under Fed. R. Civ. P. 12(b)(1). *Murgia v. Reed*, 338 F. App'x 614, 615 (9th Cir. 2009). Where the court finds that a defendant is immune from suit and such immunity has been neither waived nor abrogated, the complaint must be dismissed for lack of subject matter jurisdiction. *Luther v. IRS*, No. EDCV 99-0388(VAPX), 2000 WL 1141744, at *2 (C.D. Cal. Mar. 1, 2000).

1. The Law of Tribal Sovereign Immunity

It is well-established that Indian tribes and their governing bodies possess

[2] Save the Valley filed its Articles of Organization ("Articles") of a Limited Liability Company, form LLC-1, with the California Secretary of State on July 7, 2014. (Benedetto Decl. Ex. 3.) Defendants believe that this "organization" is comprised of just the one member identified in the Articles. (*Id.*)

common-law immunity from suit. *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2027 (2014); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978); *Burlington N. R.R. Co. v. Blackfeet Tribe of Blackfeet Indian Reservation*, 924 F.2d 899, 901 (9th Cir. 1991). Indian tribes and their governing bodies may not be sued absent waiver of immunity by the tribe or abrogation of tribal immunity by Congress, and any such waiver or abrogation must be express and unequivocal. *Santa Clara Pueblo*, 436 U.S. at 58-59; *Burlington Northern*, 924 F.2d at 901. Indeed, the Supreme Court has "time and again treated the 'doctrine of tribal immunity [as] settled law' and dismissed any suit against a tribe absent congressional authorization (or a waiver)." *Bay Mills*, 134 S. Ct. at 2030-31 (*quoting Kiowa Tribe of Okla. v. Mfg. Tech., Inc.*, 523 U.S. 751, 756 (1998)). Tribal immunity applies equally to suits brought by States and suits brought by private parties, and there is no exception for suits arising from a tribe's commercial activities, even when those activities take place off Indian lands. *Kiowa*, 523 U.S. at 758; *see also Bay Mills*, 134 S. Ct. at 2036-39 (explaining *Kiowa*).

In short, "[t]he baseline position . . . is tribal immunity; and '[t]o abrogate [such] immunity, Congress must 'unequivocally' express that purpose.'" *Bay Mills*, 134 S. Ct. at 2031 (quoting *C & L Enters., Inc. v. Citizen Band Potawatomi Tribe of Okla.*, 532 U.S. 411, 418 (2001)). When a tribe is sued, "[t]he upshot is this: Unless Congress has authorized [the suit], [Supreme Court] precedents demand that it be dismissed." *Bay Mills*, 134 S. Ct. at 2032.

Tribal sovereign immunity extends beyond the collective tribal entity so as to protect tribal officials acting in their representative capacity and within the scope of their valid authority. *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476, 479 (9th Cir. 1985); *Miller v. Wright*, 705 F.3d 919, 927-28 (9th Cir. 2013) ("A suit against the Tribe and its officials in their official capacities is a suit against the tribe [and] is barred by tribal sovereign immunity unless that immunity has been abrogated or waived.") (internal citations omitted).

In this case, Plaintiff has brought suit against the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation ("the Tribe"), a federally recognized Indian tribe, as well as its tribal officers in their official capacities. (Compl. ¶ 10 ("The individual Defendants are sued herein in their official capacity as Chairman and Business Committee members.").) The Complaint does not allege that the Tribe's sovereign immunity has been abrogated by Congress or waived. Hence, the Defendants are immune from suit, and this case must be dismissed.

2. No "*In Rem*" Exception To Sovereign Immunity Applies Here

Recognizing the broad reach of tribal sovereign immunity, Plaintiff attempts to shoehorn its case into an alleged "*in rem*" exception to tribal sovereign immunity, stating in a conclusory fashion, without citation to any authority, that "[s]overeign immunity does not apply [on these facts] because this is an *in rem* proceeding concerning real property held in fee." (Compl. ¶ 11.) This argument is wrong for at least three independent reasons: There is no such exception that could apply here, this is not an *in rem* proceeding, and it does not involve land held in fee by the Tribe (as the Complaint elsewhere admits).

First, as a threshold matter, neither the Supreme Court nor the Ninth Circuit has ever recognized any *in rem* exception to tribal sovereign immunity. To the contrary, the Supreme Court has repeatedly refused to create judicial exceptions to tribal immunity, explaining that only Congress may restrict tribes' immunity from suit. *See, e.g.*, *Kiowa*, 523 U.S. at 754-55 (refusing to "draw[] a distinction based on where the tribal activities occurred" or "between governmental and commercial activities of a tribe"); *Bay Mills*, 134 S. Ct. at 2037 (again refusing to impose such limitations: "[I]t is fundamentally Congress's job, not ours, to determine whether or how to limit tribal immunity"). Those decisions make clear that it is improper to "draw[] distinctions that might constrain the broad sweep of [tribal] immunity in the absence of express action by Congress." *Cayuga Indian Nation of N.Y. v. Seneca County*, 761 F.3d 218, 220 (2d Cir.

2014) (discussing *Bay Mills*). Indeed, the Second Circuit has held that the Supreme Court's precedent precludes any *in rem* exception to tribal immunity from suit, "declin[ing] to draw . . . a distinction between *in rem* and *in personam* proceedings" that would permit a foreclosure proceeding against Indian fee-owned property in an attempt to recover uncollected *ad valorem* property taxes where there was neither waiver of immunity by the tribe nor congressional authorization of the suit. *Id.* at 221 ("[T]here is no distinction between suits against [the tribe] directly, and suits against its property.") (quoting *The Siren*, 74 U.S. 152, 154 (1868)).

To be sure, the Supreme Court has held that a State or political division of a State may impose a property tax on land owned by Indian tribes in fee where Congress has "made its intention to [authorize such taxation] unmistakably clear." *Cnty. of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251, 258 (1992) (citation omitted). Specifically, *Yakima* held that Congress's decision in the General Allotment Act to transfer certain tribal lands to fee ownership and to "remove[]" "all restrictions as to sale, incumbrance, or taxation of said land" evinced a clear intention to permit *ad valorem* taxation of such lands even where held in fee by an Indian tribe. *Yakima*, 502 U.S. at 255 (citation omitted); *see id.* at 259. *Yakima* characterized such a tax as an exercise of "*in rem*" jurisdiction by the county because "[t]he tax . . . creates a burden on the property alone." *Id.* at 265-66. By contrast, *Yakima* refused to permit imposition of an excise tax on sales of fee land because such a tax was not clearly "taxation of . . . land," but instead a tax on the "activity of selling the land." *Id.* at 268-69 (citation omitted).

But *Yakima* and other cases to the same effect are irrelevant here. At the outset, *Yakima* did not concern tribal immunity from suit. As the Supreme Court has made clear, "[t]o say substantive state laws apply to off-reservation conduct . . . is not to say that a tribe no longer enjoys immunity from suit." *Kiowa*, 523 U.S. at 755; *see Cayuga*, 761 F.3d at 221 (distinguishing "tribal immunity *from suit*" from "immunity from . . .

powers of the states such as the levying of taxes"). For that reason, the Second Circuit in *Cayuga* refused to permit states to bring foreclosure suits to recover uncollected taxes levied against land owned in fee by Indian tribes, even though the taxes themselves were permissible. *Cayuga*, 761 F.3d at 220-21.

Moreover, *Yakima* turned on the Supreme Court's conclusion that, in the General Allotment Act, Congress had clearly authorized the *ad valorem* property taxes on Indian fee-owned land. *See Yakima*, 502 U.S. at 269. The Ninth Circuit has refused to extend *Yakima* beyond that narrow holding. *See Gobin v. Snohomish Cnty.*, 304 F.3d 909, 915 (9th Cir. 2002) (explaining that Congress's decision to make Indian land alienable did not "authorize[] any other State regulation" and refusing to permit county to regulate land use of Indian fee-owned land). In contrast, Congress has manifested no intent to permit a suit like the one here.[3]

Second, in any event, even if there were an "*in rem*" exception to tribal sovereign immunity from suit (which there is not), this is not an *in rem* action. An *in rem* action, by definition, seeks relief only against *property*, not *persons*. *See Restatement (Second) of Judgments* § 6 (1982) (explaining that *in rem* actions include proceedings in which land is forfeited to the government, such as a condemnation or eminent domain action;

[3] A few state court decisions have allowed actions involving property title disputes to proceed "*in rem*" against property alleged to be held in fee by an Indian tribe or a tribal member without discussion of express congressional authorization. *See Cass Cnty. Joint Water Res.Dist. v. 1.43 Acres of Land in Highland Twp.*, 643 N.W.2d 685 (N.D. 2002) (permitting eminent domain action against Indian fee-owned land); *Miccosukee Tribe of Indians of Fla. v. Dep't of Envtl. Prot.*, 78 So.3d 31, 34 (Fla. Dist. Ct. App. 2011) (same); *Smale v. Noretep*, 208 P.3d 1180, 1181 (Wash. Ct. App. 2009) (permitting action to quiet title to Indian fee-owned land); *Anderson & Middleton Lumber Co. v. Quinault Indian Nation*, 929 P.2d 379 (Wash. 1996) (en banc) (permitting action to partition and quiet title against land acquired in fee by Indian tribe by warranty deed). It is difficult to reconcile these decisions with the controlling Supreme Court and Ninth Circuit precedent discussed above, and it is altogether unclear whether these cases are, in fact, good law. In any event, because this case is neither a quiet title suit nor an eminent domain action, and does not involve land held in fee by the Tribe, those decisions provide no support for Save the Valley's position.

proceedings to quiet title to land; and probate proceedings that resolve competing claims to property). Cases that have permitted proceedings to go forward against Indian fee-owned land based on a distinction between *in rem* and *in personam* jurisdiction all involve true *in rem* actions against the property in question—eminent domain or quiet title suits. *See supra* n.3. Here, by contrast, the relief sought by Save the Valley is *not* against the land, but against the Tribe and its officers: Save the Valley is seeking an injunction barring the Tribe and its officers from proceeding with the Project. That is a quintessential *in personam* action.

Nor does Save the Valley's request for a declaratory judgment transform this into an *in rem* action. *See State Eng'r of State of Nevada v. S. Fork Band of Te-Moak Tribe of W. Shoshone Indians of Nevada*, 339 F.3d 804, 810 (9th Cir. 2003) (to determine whether an action is *in rem* or *in personam*, the court must "'look behind the form of the action' to 'the gravamen of a complaint and the nature of the right sued on'") (citation omitted). The gravamen of the Complaint is that the Tribe's project threatens to cause economic damages to Plaintiff and that the Project should be halted. (*E.g.*, Compl. ¶ 7 ("Plaintiff, its members and constituents have standing because they will suffer injury in fact if the Defendants are allowed to further develop their property . . . Property values of the residential and ranch land owned by Plaintiff's members and constituents will decrease if Defendants complete their . . . project."); *id*. ¶ 8 ("By engaging [in the Project], Defendant[s] have and will cause direct injury to Plaintiff, its members and constituents, namely a sharp decrease in property values and use and enjoyment of their real property.").) A request for a declaratory judgment as to the permissible use of land, coupled with an injunction against the occupant's use, is in no way *in rem*. *See, e.g.*, *Grondal v. United States*, No. CV-09-0018-JLQ, 2012 WL 523667, at *9 (E.D. Wash. Feb. 16, 2012) (estoppel claim against tribe, although related to land, was not action *in rem*). Indeed, Save the Valley would have no standing to bring a true *in rem* proceeding against the land, as it has not alleged that it has any

interest in the land. *See Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199, 2206 (2012) (a plaintiff must "assert[] his own right to disputed property" to bring a quiet title action).

Third, no alleged "*in rem*" exception to tribal sovereign immunity for fee lands owned by a tribe could apply here, where the land in question is *not owned in fee by the Tribe*. Save the Valley affirmatively alleges that the land is owned *by the federal government*. (*E.g.*, Compl. ¶ 15 ("The real property at issue was acquired in fee by the United States from the Catholic Church pursuant to a quit claim deed on January 29, 1938."); *id*. ¶¶ 28, 37, 38.) No court has held that an action against a tribe may be maintained based on purported "*in rem*" jurisdiction over *federal* land (whether that land is fee or trust land).[4]

B. The Complaint Must Be Dismissed For Failing To Join The United States, A Necessary And Indispensable Party

Plaintiff's Complaint must also be dismissed for an additional, independent reason: Plaintiff has failed to join, and is unable to join, the United States, which, as the owner of the land at issue, is a necessary and indispensable party.

A complaint must be dismissed under Fed. R. Civ. Proc. 12(b)(7) when a plaintiff fails to join an indispensable party under Rule 19. *See, e.g., Dawavendewa v. Salt River Project Agric. Improvement & Power Dist.*, 276 F.3d 1150, 1155 (9th Cir. 2002). Rule 19 requires a three-step inquiry, asking (i) whether an absent party is necessary; (ii) if so, whether joinder of the party is feasible; and (iii) if joinder is not feasible, whether the case can proceed without the absent party. *Id*.

[4] The Complaint at one point suggests that one could "assume" that the land is Indian-owned fee land. (Compl. ¶ 39 ("Even if we assume that the Catholic Church gifted the land to the Indian descendants . . .").) That "assumption," however, is belied by the Complaint's own affirmative allegations, as well as the exhibits to the Complaint, which clearly establish that title to the land is held by the United States. (Compl. ¶ 15 & Ex. A, C.)

As noted above, the Complaint affirmatively alleges that the United States owns the land, and the attachments to the Complaint establish that the United States in fact holds title to the land. The United States thus "claims an interest" in the land within the meaning of Rule 19(a) and is a necessary party. *See, e.g.*, *Minnesota v. United States*, 305 U.S. 382, 386 (1939) ("A proceeding against property in which the United States has an interest is a suit against the United States."). The United States is also indispensable to any action, such as this one, that involves land held by the United States for use and occupancy by Indian tribes. *See Minnesota*, 305 U.S. at 386 (United States was an indispensable party in condemnation proceeding involving tribal land it held in trust for tribe); *Carlson v. Tulalip Tribes of Wash.*, 510 F.2d 1337, 1339 (9th Cir. 1975) (holding that United States was a necessary party in dispute involving tribal lands held in trust by the United States). Yet the United States has not been named as a defendant. Because the United States is an indispensable party that has not been named, the case may not proceed.

Not only has Plaintiff failed to name the United States in this case, its failure to do so cannot be cured. *See Dawavendewa*, 276 F.3d at 1155 (after determining that a party is necessary, the Court must consider whether joinder of the party is feasible). The United States, like the Tribe, "is a sovereign, and, as such, is immune from suit unless it has expressly waived such immunity and consented to be sued." *McGuire v. United States*, 550 F.3d 903, 910 (9th Cir. 2008) (internal citations and quotations omitted); *Dep't of Army v. Blue Fox, Inc.*, 525 U.S. 255, 260 (1999). The United States has not waived its sovereign immunity here. Thus, the United States may not be joined to this action, in which it is a necessary and indispensable party, and the case must be dismissed with prejudice.

IV. CONCLUSION

For the foregoing reasons, the Defendants respectfully request that the Court grant their Motion to Dismiss with prejudice.

Dated: May 22, 2015

WILMER, CUTLER, PICKERING, HALE AND DORR LLP

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Appearing specially so as to not waive sovereign immunity