

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA LAND STEWARDSHIP
COUNCIL LLC,

Plaintiff and
Petitioner,

v.

COUNTY OF SHASTA and its
BOARD OF SUPERVISORS,

Respondents and
Defendants.

No. 2:24-cv-00964-JAM-DMC

**ORDER GRANTING PLAINTIFF'S
MOTION TO REMAND AND DENYING
DEFENDANT'S MOTION TO DISMISS**

This matter is before the Court on Plaintiff California Land Stewardship Council LLC's ("Plaintiff") motion to remand, Mot. to Remand, ECF No. 15, and Defendant County of Shasta's ("Defendant" or "County") motion to dismiss, Mot. to Dismiss, ECF No. 7. For the reasons set forth below, the Court GRANTS Plaintiff's motion and DENIES AS MOOT Defendant's motion to dismiss, ECF No. 7.¹

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¹These motions were determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g).

I. ALLEGATIONS AND BACKGROUND

Plaintiff initiated this action by filing a writ of mandate and complaint against Defendants County of Shasta and its Board of Supervisors in Shasta County Superior Court. Compl., Ex. 1 to Notice of Removal, ECF No. 1-1. A first amended complaint was filed shortly thereafter. First Am. Compl. ("FAC"), Ex. 2 to Notice of Removal, ECF No. 1-1 at 17.

Plaintiff's FAC alleges Defendant Shasta County Board of Supervisors (the "Board") unlawfully approved the Intergovernmental Agreement (the "Agreement") between County and Redding Rancheria, a federally recognized native tribe (the "Tribe"), on July 25, 2023. FAC ¶ 2.

The Agreement commits the County to provide services for the Project for a period of up to 30 years, including law enforcement, fire, and other emergency services. In exchange, the Tribe is required to make certain "non-recurring" (or one-time) and "recurring" payments to County. The claimed purpose of those payments is to mitigate the Project's impacts related to providing County services, and other fiscal impacts relating to traffic and roads.

FAC ¶ 3. Plaintiff asserts two state law causes of action alleging the Board's approval of the Agreement violated state and local law. FAC ¶ 10. The first cause of action is a petition for writ of mandate under Cal. Civ. Code § 1085 for failing to comply with Shasta County Contracts Manual, Policy No. 6-101. FAC ¶¶ 39-41. Policy No. 6-101 "requires non-standard contracts to be reviewed and approved as to form by the County Counsel and reviewed and approved by the County's Risk Manager before they are entered into by the County." FAC ¶ 40. The second claim is a taxpayer action for illegal and wasteful expenditure of local agency funds under Cal. Civ. Code § 526a. FAC ¶¶ 43-44.

1 Plaintiff's prayer for relief includes a writ setting aside
2 or rescinding the Agreement and a permanent injunction
3 "prohibiting Respondents from taking acts, spending public funds,
4 or using public resources in furtherance of the Agreement." FAC
5 Prayer for Relief, ECF No. 1-1 at 29.

6 Defendant County removed Plaintiff's action to this Court
7 under 28 U.S.C. §§ 1331, 1441 on the ground that Plaintiff's
8 claims are completely preempted by the Indian Gaming Regulatory
9 Act ("IGRA"), 25 U.S.C. § 2701, *et seq.* Removal, ECF No. 1 at 3.
10 Plaintiff filed the instant motion to remand arguing IGRA does
11 not completely preempt its claims. Mem. of P. & A. ("Mot."), ECF
12 No. 15-1 at 7. Defendant opposed, Opp'n, ECF No. 17, and
13 Plaintiff replied, Reply, ECF No. 19. In support of its
14 opposition, Defendant requests the Court take judicial notice of
15 three documents. Def.'s Req. for Judicial Notice, ECF No. 17-2.
16 Because these documents are not necessary to resolve this motion,
17 Defendant's request is denied.

18 The Tribe, who is not a party to this action, filed a motion
19 to intervene by special appearance for the limited purpose of
20 filing a motion to dismiss under Rule 12(b)(7) of the Federal
21 Rules of Civil Procedure for failure to join a party under Rule
22 19. Mot. to Intervene, ECF No. 22. The Tribe contends the
23 action must be dismissed because, under Rule 19, it is a
24 necessary party that cannot be joined since it has sovereign
25 immunity. ECF No. 22-1 at 12. Also pending before the Court is
26 Defendant County's motion to dismiss Plaintiff's FAC. County's
27 Mot. to Dismiss, ECF No. 7. Before considering either motion,
28 the Court must first determine if it has jurisdiction.

II. OPINION

A. Legal Standard

Under 28 U.S.C. § 1441, a defendant may remove a civil action from state to federal court if there exists original jurisdiction. See City of Chicago v. Int'l Coll. of Surgeons, 522 U.S. 156, 163 (1997). "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Courts strictly construe the removal statute against removal and federal jurisdiction must be rejected if there is any doubt as to the right of removal. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). The party seeking removal bears the burden of establishing jurisdiction. Emrich v. Touche Ross & Co., 846 F.2d 1190, 1195 (9th Cir. 1988).

B. Analysis1. Complete Preemption

Defendant County argues this Court has jurisdiction because IGRA completely preempts Plaintiff's state law claims. Removal at 3. Defendant does not argue the court has subject matter jurisdiction through any other means. See generally Removal; Opp'n.

"It is long settled law that a cause of action arises under federal law only when the plaintiff's well-pleaded complaint raises issues of federal law." Metro. Life Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987). Under the well-pleaded complaint rule, "jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). "As a

1 general rule, absent diversity jurisdiction, a case will not be
2 removable if the complaint does not affirmatively allege a
3 federal claim." Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 6
4 (2003). Plaintiff's complaint asserts only state law causes of
5 action. See generally FAC.

6 Complete preemption is an exception to the well-pleaded
7 complaint rule. See Caterpillar, 482 U.S. at 393. When a
8 federal statute is found to completely preempt a state-law claim,
9 the "pre-empted state law is considered, from its inception, a
10 federal claim, and therefore arises under federal law." Id.
11 Therefore, complete preemption "is really a jurisdictional rather
12 than a preemption doctrine, as it confers exclusive federal
13 jurisdiction in certain instances where Congress intended the
14 scope of federal law to be so broad as to entirely replace any
15 state-law claim." Dennis v. Hart, 724 F.3d 1249, 1254 (9th Cir.
16 2013) (quotation marks and citation omitted). For this reason,
17 complete preemption has been referred to as "super preemption."
18 Retail Prop. Tr. v. United Broth. of Carpenters and Joiners of
19 Am., 768 F.3d 938, 947 (9th Cir. 2014).

20 Complete preemption is distinct from the doctrine of
21 ordinary or defensive preemption. Retail Prop., 768 F.3d at 948.
22 "In spite of its title, the 'complete preemption' doctrine is
23 actually a doctrine of jurisdiction and is not to be confused
24 with ordinary preemption doctrine (although it is related to
25 preemption law)." Balcorta v. Twentieth Cent.-Fox Film Corp.,
26 208 F.3d 1102, 1107 n.7 (9th Cir. 2000). Unlike complete
27 preemption, ordinary or defensive preemption does not establish
28 federal jurisdiction and thus cannot be a ground for removal.

1 Retail Prop., 768 F.3d at 948.

2 Complete preemption arises only in “extraordinary”
3 situations and “only when Congress intends not merely to preempt
4 a certain amount of state law, but also intends to transfer
5 jurisdiction of the subject matter from state to federal court.”
6 Wayne v. DHL Worldwide Express, 294 F.3d 1179, 1183 (9th Cir.
7 2002). “To determine whether a claim is completely preempted,
8 the court asks whether Congress ‘(1) intended to displace a
9 state-law cause of action, and (2) provided a substitute cause of
10 action.’” Saldana v. Glenhaven Healthcare LLC, 27 F.4th 679, 686
11 (9th Cir.), cert. denied, 143 S. Ct. 444, 214 L. Ed. 2d 253
12 (2022) (quoting City of Oakland, 969 F.3d at 906); see also
13 Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 8 (2003).

14 The United States Supreme Court has identified only three
15 complete preemption statutes, and IGRA is not of them. See
16 Saldana, 27 F.4th at 686. The Ninth Circuit has not explicitly
17 addressed whether IGRA completely preempts state law claims,
18 Runyan v. River Rock Ent. Auth., No. C 08-1924 VRW, 2008 WL
19 3382783, at *5 (N.D. Cal. Aug. 8, 2008), but “[s]ome district
20 courts in this circuit have suggested that Ninth Circuit
21 precedent implicitly rejects the applicability of complete
22 preemption to the IGRA.” Osceola Blackwood Ivory Gaming Grp.,
23 LLC v. Picayune Rancheria of Chukchansi Indians (“Osceola”), 272
24 F. Supp. 3d 1205, 1212 (E.D. Cal. 2017) (citing Runyan, 2008 WL
25 3382783; Keim v. Harrah's Operating Co., No. 09cv1732 BTM (AJB),
26 2010 WL 28536, at *1-2 (S.D. Cal. Jan. 5, 2010); Kersten v.
27 Harrah's Casino-Valley Ctr., No. 07cv0103 BTM(JMA), 2007 WL
28 951342, at *2 (S.D. Cal. Feb. 27, 2007)); see also Confederated

1 Tribes of Siletz Indians of Oregon v. Oregon, 143 F.3d 481, 486
2 n.7 (9th Cir. 1998).

3 In the absence of clear Ninth Circuit authority, Defendant
4 relies on Gaming Corp. of Am. v. Dorsey & Whitney, 88 F.3d 536
5 (8th Cir. 1996), an Eight Circuit decision, to support its
6 position. Opp'n at 12. There, the court found "IGRA has the
7 requisite extraordinary preemptive force necessary to satisfy the
8 complete preemption exception to the well-pleaded complaint
9 rule," because "[t]he statute itself and its legislative history
10 show the intent of Congress that IGRA control Indian gaming and
11 that state regulation of gaming take place within the statute's
12 carefully defined structure." Gaming Corp. of Am. v. Dorsey &
13 Whitney, 88 F.3d at 547 (8th Cir. 1996). Even if this Court were
14 to find Gaming Corp. to be persuasive authority and that IGRA
15 possessed extraordinary preemptive force such that Congress
16 intended it to displace state law claims, Defendant has not
17 identified a substitute federal statute. Defendant contends it
18 need not do so, relying on Gaming Corp. Opp'n at 13 n.4. While
19 identifying a substitute cause of action may not be necessary in
20 the Eighth Circuit, the law is clear in the Ninth: complete
21 preemption applies only if both prongs of the two-part test are
22 satisfied. Saldana, 27 F.4th at 688-89 ("(1) did Congress intend
23 to displace a state-law cause of action and (2) did Congress
24 provide a substitute cause of action?" (emphasis added)); City of
25 Oakland, 969 F.3d at 902-03; Dennis, 724 F.3d at 1254-55.

26 Therefore, Defendant has failed to meet its burden in
27 demonstrating the Court has subject matter jurisdiction over this
28 action under a theory of complete preemption. Nothing in this

1 Order, however, prevents Defendant from raising preemption as a
2 defense.

3 2. Futility Doctrine

4 Defendant requests that if the Court finds it lacks
5 jurisdiction, it should dismiss this action because remand would
6 be futile. Opp'n at 10. Specifically, Defendant argues remand
7 is futile because, on remand, the state court would dismiss the
8 action under Cal. Civ. Code § 389(b) since the Tribe is a
9 necessary party who, through its sovereign immunity, cannot be
10 joined. Id.

11 "If at any time before final judgment it appears that the
12 district court lacks subject matter jurisdiction, the case shall
13 be remanded." 28 U.S.C. § 1447. Under a narrow exception, a
14 district court may dismiss an action in which it lacks
15 jurisdiction if it is "absolutely certain" that a state court
16 would dismiss the action on remand. Polo v. Innoventions Int'l,
17 LLC, 833 F.3d 1193, 1198 (9th Cir. 2016).

18 The Supreme Court in Int'l Primate Prot. League v.
19 Administrators of Tulane Educ. Fund, 500 U.S. 72, 89 (1991)
20 declined to apply the futility doctrine and questioned whether
21 this doctrine remains good law since it conflicts with the plain
22 text of 28 U.S.C. § 1447: if jurisdiction is lacking, "the case
23 shall be remanded." The Ninth Circuit has also questioned the
24 validity of this doctrine. Polo, 833 F.3d at 1197; Sauk-Suiattle
25 Indian Tribe v. City of Seattle, 56 F.4th 1179, 1189-90 (9th Cir.
26 2022), cert. denied, 144 S. Ct. 74 (2023). In a concurring
27 opinion joined by the remaining judges, Judge Bennett stated
28

1 “[the Ninth Circuit] should reconsider the futility exception *en*
2 *banc* and abandon it.” Sauk-Suiattle Indian Tribe, 56 F.4th at
3 1191 (9th Cir. 2022) (Bennett, J.) (concurrency).

4 However, because the Ninth Circuit has declined to
5 invalidate the doctrine *sua sponte*, “precedent thus continues to
6 recognize the futility exception.” Id. at 1190. A closer look
7 at this precedent, however, reveals that the futility doctrine is
8 not mandatory but discretionary. Polo, 833 F.3d at 1197 (“a
9 district court may dismiss a removed case without remanding it
10 back to state court if remand would be futile.” (emphasis
11 added)); Glob. Rescue Jets, LLC v. Kaiser Found. Health Plan,
12 Inc., 30 F.4th 905, 920 n.6 (9th Cir. 2022) (“A narrow ‘futility’
13 exception to this general [remand] rule permits the district
14 court to dismiss an action rather than remand it if there is
15 ‘absolute certainty’ that the state court would dismiss the
16 action following remand.” (emphasis added)); Sauk-Suiattle Indian
17 Tribe, 56 F.4th at 1189 (same). The Court declines to exercise
18 its discretion to dismiss this removed case rather than remand it
19 since it does not find absolute certainty that the state court
20 will dismiss the action on remand.

21 3. Fees Under 28 U.S.C. § 1447(c)

22 Plaintiff contends Defendant’s grounds for removal was
23 objectively unreasonable and requests the Court award fees in
24 the amount of \$5,000 under 28 U.S.C. § 1447(c), even though a
25 greater amount was expended in bringing this motion. Mot. at
26 16-19. Specifically, Plaintiff argues Defendant’s “unreasonable
27 construction of authority and [] selective quotation in its
28 removal papers” support fees in this context. Id. at 19. In

1 addition to arguing the law compelling remand is not well
2 established, Defendant argues Plaintiff failed to establish its
3 attorneys' hourly rates are reasonable. Opp'n at 17 n.8. The
4 Court agrees. Plaintiff does not provide the Court with
5 sufficient information to determine whether these rates are
6 reasonable, such as Plaintiff's counsels' skill, experience, and
7 the prevailing rate for similar legal work in the Eastern
8 District. See Dhillon Decl., ECF No. 15-2; Chalmers v. City of
9 Los Angeles, 796 F.2d 1205, 1210 (9th Cir. 1986), opinion
10 amended on denial of reh'g, 808 F.2d 1373 (9th Cir. 1987)
11 ("Determination of a reasonable hourly rate is not made by
12 reference to rates actually charged the prevailing party.").
13 Plaintiff's request for fees is thus denied.

14 III. ORDER

15 For the reasons set forth above, the Court GRANTS
16 Plaintiff's motion to remand (ECF No. 15) and REMANDS this case
17 to Shasta County Superior Court. Lacking jurisdiction, the Court
18 DENIES AS MOOT Defendant's motion to dismiss (ECF No. 7).

19 IT IS SO ORDERED.

20 Dated: July 3, 2024

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23 JOHN A. MENDEZ
24 SENIOR UNITED STATES DISTRICT JUDGE
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