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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[1]These 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.

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

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

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

1. 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

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

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

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

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

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

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

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

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

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

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

2. Futility Doctrine

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

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

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

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

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

3. Fees Under 28 U.S.C. § 1447(c)

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

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

III. ORDER

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

IT IS SO ORDERED.

Dated: July 3, 2024

JOHN A. MENDEZ,
SENIOR UNITED STATES DISTRICT JUDGE