Michael M. Purpura, State Bar No. 338216
mpurpura@hueston.com
Rajan S. Trehan, State Bar No. 302242
rtrehan@hueston.com
HUESTON HENNIGAN LLP
620 Newport Center Drive, Suite 1300
Newport Beach, CA 92660
Telephone: (949) 229-8640
Facsimile: (888) 775-0898

Attorneys for Koi Nation of Northern California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

FEDERATED INDIANS OF GRATON RANCHERIA,

Plaintiff,

v.

DOUG BURGUM, in his official capacity as Secretary of the Interior, et al.,

Defendants.

FEDERATED INDIANS OF GRATON RANCHERIA,

Plaintiff,

v.

DOUG BURGUM, in his official capacity as Secretary of the Interior, et al.,

Defendants.

Consolidated Case Nos. 3:24-cv-08582-RFL; 3:25-cv-01640

KOI NATION OF NORTHERN CALIFORNIA'S NON-PARTY REPLY IN SUPPORT OF MOTION FOR LIMITED INTERVENTION

ORAL ARGUMENT REQUESTED

Date: June 10, 2025
Time: 10:00 a.m.
Judge: Honorable Rita F. Lin

I. INTRODUCTION

This is not a close call. Controlling Ninth Circuit precedent authorizes Indian tribes like the Koi Nation of Northern California to intervene and move to dismiss actions that affect their existing property rights. *See, e.g.*, *Maverick Gaming LLC v. United States*, 123 F.4th 960 (9th Cir. 2024); *W. Watersheds Project v. Haaland*, 22 F.4th 828, 835 (9th Cir. 2022). Plaintiff Federated Indians of Graton Rancheria may disagree with those precedents, but their force is inescapable. Indeed, Plaintiff all but concedes as much in suggesting that it "may seek to challenge any such precedent before the en banc court and the Supreme Court." MTI Opp. 15, n.6. That is revealing. Plaintiff anticipates losing at least before this Court *and* any three-judge panel on appeal. As it should.

Plaintiff's efforts to avoid that result are meritless. For example, Plaintiff's arguments that Koi Nation's intervention is both untimely and untethered to an existing, protectable interest are both contrary to the binding case law and internally contradictory: by Plaintiff's (il)logic, Koi Nation is at once intervening too soon *and* too late. And Plaintiff's arguments about inadequacy of representation fare no better, turning on material misstatements of both law and fact. Intervention should be granted.

II. ARGUMENT

Koi Nation meets the requirements for intervention. Plaintiff's arguments to the contrary misstate the law and rely on inapposite cases, failing to meaningfully distinguish on-point precedents.

A. Federal Rule of Civil Procedure 24 Broadly Permits Intervention

Plaintiff's misstatements of law begin with the intervention standard. Time and again, the Ninth Circuit has held that Rule 24 must be construed "broadly" and "liberally" in favor of intervention. *W. Watersheds Project*, 22 F.4th at 835; *Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (en banc); *City of Emeryville v. Robinson*, 621 F.3d 1251, 1258 (9th Cir. 2010); *Cal. ex rel. Lockyer v. United States*, 450 F.3d 436, 440 (9th Cir. 2006); *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001).

Plaintiff manufactures a nonexistent exception to that rule. Although it is incorrect to suggest that Koi Nation "seeks to intervene to *block another* from vindicating its rights," MTI Opp. 5—it is Plaintiff that is fighting to block Koi Nation from vindicating *its* rights to develop its land for the benefit of its people—the cases Plaintiff cites for this newly-invented exception are not Rule 24 cases

and, in any event, are inapposite. *Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. California* ("*Colusa*"), 547 F.3d 962, 973 (9th Cir. 2008), held only that courts evaluating claims under "Rule 19" (not "Rule 24," MTI Opp. 4–5) must carefully "identify" (not "scrutinize," MTI Opp. 5) the absent parties' interest at stake. Likewise, *Makah Indian Tribe v. Verity*, 910 F.2d 555, 559 (9th Cir. 1990), was also about Rule 19, not Rule 24, and nothing in the opinion suggests the Ninth Circuit had "no difficulty proceeding 'without' the absent tribe," MTI Opp. 5. On the contrary, the Circuit held that, as to certain claims, the district court reasonably ruled that the absent tribes were "necessary parties" under Rule 19. *Makah*, 910 F.2d at 559. Even in the Rule 19 context, Plaintiff's cases do not support its arguments against dismissal, as discussed in Koi Nation's concurrently filed Reply in Support of the Motion to Dismiss ("MTD Reply"). But they certainly do not supply Plaintiff with a basis for its novel exception to the Rule 24 standard favoring intervention.

B. Koi Nation Should Be Granted Intervention as of Right

As explained in its motion to intervene, Koi Nation satisfies all of the requirements for intervention as of right under Rule 24(a)(2). MTI 5–14. First, Koi Nation's application was timely, as it was filed at an early stage of the proceeding and without unreasonable delay or prejudice to an existing party. *Id.* 5–7. Second, Koi Nation has interests relating to the Shiloh Site property and the fee-to-trust conveyance that may be compromised by this litigation. *Id.* 7–11. Third, Koi Nation's interests are not adequately represented by the federal government. *Id.* 11–14. Plaintiff's contrary arguments, MTI Opp. 5–15, are unpersuasive.

1. Koi Nation's Motion to Intervene Was Timely Filed

Koi Nation's intervention motion was timely. The motion was filed within four months after Plaintiff first filed suit, just over one month after Plaintiff filed its second complaint, and under two weeks after Plaintiff filed its supplemental complaint. *See* MTI 6. Courts in this Circuit have permitted intervention *years* into litigation. *See* MTI 6–7 (citing cases).

Plaintiff asserts that "[c]ourts do not hesitate to deny intervention under similar circumstances, where the 'parties ha[ve] covered a lot of legal ground,'" MTI Opp. 5 (quoting *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1303 (9th Cir. 1997)), but the circumstances in the cases Plaintiff cites are not remotely similar to the circumstances here. In *Latin American*

Citizens, the proposed intervenor "slept on its intervention rights for more than two years," during which "a lot of water had already passed underneath [the] litigation bridge": (1) "The defendants had appealed the district court's issuance of the preliminary injunction to the Ninth Circuit"; (2) "four sets of parties had successfully intervened in the case"; (3) "The court had provisionally certified a plaintiff class in accordance with Rule 23"; (4) "The defendants had filed, and the district court had denied, a motion to dismiss"; (5) "The defendants had filed an answer"; (6) "The plaintiffs had filed a motion for summary judgment, on which the district court had heard argument, and which it had granted in part and denied in part"; and (7) "discovery had proceeded for roughly nine months." 131 F.3d at 1303, 1308. A substantial series of events also preceded the intervention motion in *Abbit v. ING USA Annuity*, 2016 WL 6092592 (S.D. Cal. Oct. 19, 2016). There, the movant did not seek intervention until nearly two and a half years after the filing of an *amended* complaint, and, during that lengthy period, (1) the court had certified a class; (2) the defendants had filed a motion for summary judgment on the certified class claims; (3) the court had directed dissemination of the class notice; and (4) the class opt-out period had expired. *Id.* at *1–2. The contrast here is stark. Koi Nation moved to intervene before the submission of any answer, the filing of any summary judgment briefing, or the hearing of any argument on the ultimate merits. Unlike the above cases, there have been no interlocutory appeals, class certification motions, or discovery proceedings here.

Plaintiff's assertion that intervention "may be untimely just days into litigation," MTI Opp. 7, cites cases that hold nothing of the sort. Litigation in *NAACP v. New York*, 413 U.S. 345 (1973) had been ongoing for months before a motion to intervene was filed, *see id.* at 357–60 (complaint filed in December 1971; intervention motion filed in April 1972), and the motion to intervene in *Cook Cnty. v. Mayorkas*, 340 F.R.D. 35 (N.D. Ill. 2021), was not filed until over a year and a half of litigation "at all three levels of the judiciary," *id.* at 38, 44 (suit filed in September 2019; intervention motion filed in May 2021). In both of those cases, moreover, proceedings had progressed so substantially that, as Plaintiff acknowledges, intervention would have "severely prejudice[d] the parties." MTI Opp. 7. Specifically, by the time intervention was sought in *NAACP*, the United States had answered the complaint filed by New York, New York had moved for summary judgment, and the United States had *conceded the case* by agreeing "to the entry of the declaratory judgment for

which New York had moved." 413 U.S. at 358–60. It makes sense to deny intervention at such close proximity to finality. And it makes even more sense to deny intervention when a judgment is *already final*, as in *Cook County*, where intervention was sought after (1) the court entered "partial final judgment" in favor of the plaintiff; (2) the defendant filed an appeal but then dismissed it; and (3) the parties stipulated to dismissal of the remaining claim, "ending the case." 340 F.R.D. at 38. That is decidedly not "the situation here." MTI Opp. 7. Plaintiff's reliance on cases so dissimilar from the circumstances here only magnifies the emptiness of Plaintiff's timeliness arguments.

Plaintiff's claim of "prejudice," *id*. 5–6, also rings hollow. There is no substance to Plaintiff's assertion about what "a typical intervention" entails, and intervenors who "make arguments on the merits" may often seek "to cut off [the] litigation altogether." *Id.* The fact that intervention should dispose of Plaintiff's "legal claim," *id.* 5, has nothing to do with the *timing* of Koi Nation's motion and is instead a function of the "wall of circuit authority in favor of dismissing actions in which a necessary party cannot be joined due to tribal sovereign immunity." *Maverick*, 123 F.4th at 981–82 (citation omitted). That is why "the only 'prejudice' that is relevant" to the timeliness inquiry "is that which flows from a prospective intervenor's failure to intervene after [it] knew, or reasonably should have known, that [its] interests were not being adequately represented—and not from the fact that including another party in the case might make resolution more 'difficult.'" *Smith v. Los Angeles Unified Sch. Dist*., 830 F.3d 843, 857 (9th Cir. 2016) (citation omitted). The cases Plaintiff cites, *Waller v. Fin. Corp. of Am*., 828 F.2d 579, 583 (9th Cir. 1987), and *White v. Univ. of Cal*., 765 F.3d 1010, 1028 (9th Cir. 2014), are inapposite: they do not even allude to prejudice in the context of the *timeliness* inquiry.

Nor does the timing of Koi Nation's motion have any bearing on the supposed "prejudice" Plaintiff asserts. *See* MTI Opp. 5–6. If Koi Nation had attained an interest sufficient to support intervention before the DOI took the Shiloh Site into trust, intervention would have yielded precisely the same result—dismissal on sovereign immunity grounds—that it warrants now. Indeed, far from supporting Plaintiff's motion "to grant preliminary relief," *id.* 6, earlier intervention would have instead supplied the Court with an alternative basis to *deny* a preliminary injunction, because Koi Nation's assertion of sovereign immunity would have foreclosed any "likelihood of success on the

merits," *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). Plaintiff's assertion that Koi Nation "sat on its hands" or "carefully engineered delay," MTI Opp. 6, is also wrong. Even now that the DOI has taken the Shiloh Site into trust, Plaintiff claims that Koi Nation *still* "lacks a legally protected interest" sufficient to support intervention. *Id.* 1, 7–11. That is incorrect, but it is premised on the proposition that Koi Nation is seeking intervention *too soon* and has only a "*future* interest." *Id.* 7 (emphasis added). The argument that Koi Nation is seeking intervention too soon is of course incompatible with the argument that Koi Nation is seeking intervention too late. In reality, Koi Nation's motion to intervene was filed at the most appropriate time: after the DOI took the Shiloh Site into trust, thereby solidifying Koi Nation's interest in this litigation, but before the case had progressed to a point at which intervention might result in any genuine and substantial prejudice to the parties. The Ninth Circuit "discourage[s] premature intervention" and "do[es] not require hasty intervention." *Kalbers v. U.S. Dep't of Justice*, 22 F.4th 816, 823 (9th Cir. 2021) (citation omitted). Koi Nation's intervention motion was timely.

2. Koi Nation Has Legally Protectable Interests Supporting Intervention

Koi Nation also satisfies the second and third requirements for intervention as of right: it "claims an interest relating to the property or transaction that is the subject of the action," and the disposition of this action "may as a practical matter impair or impede [Koi Nation's] ability to protect its interest." Fed. R. Civ. P. 24(a)(2). Consistent with the mandate to interpret "these requirements broadly in favor of intervention," *W. Watersheds*, 22 F.4th at 835, the standard to establish them is "practical and equitable" and applied to "broaden[] access to the courts." *Wilderness Soc'y*, 630 F.3d at 1179 (citation omitted). "[T]he 'interest' test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Id.* (citation omitted).

Plaintiff's claim that Koi Nation lacks a sufficient protectable interest, MTI Opp. 7–11, mischaracterizes the law and flounders on the facts. As to the law, Plaintiff manufactures a "vested" interest requirement that does not exist. MTI Opp. 7, 11. In fact, "[n]o specific legal or equitable interest need be established"; rather, an intervenor's asserted interest need only be "protectable under some law" and related to "the claims at issue." *FaceTec, Inc. v. Jumio Corp.*, 2024 WL 4703142, at

*3 (N.D. Cal. Nov. 1, 2024) (quoting *Sw. Ctr.*, 268 F.3d at 818). Even an interest "that is contingent upon the outcome of the litigation" may suffice. *City of Emeryville*, 621 F.3d at 1259. If "the pending litigation" will result in "a practical impairment of [the movant's] interests," the interest requirement is satisfied. *Wilderness Soc'y*, 630 F.3d at 1179 (citation omitted).

On the facts, Koi Nation amply satisfies the standard, including any supposed "vesting" requirement. The tribe has protectable interests "relating to" both "the property"—the Shiloh Site—and the "transaction"—the fee-into-trust conveyance—"that [are] the subject of the action." Fed. R. Civ. P. 24(a)(2). Plaintiff claims that Koi Nation has "no existing" legally protected interests, MTI Opp. 8, but, in fact, Koi Nation has multiple such interests.

First, trust status bestows sovereign rights to exercise jurisdiction over trust land. Although land owned in fee simple is not "Indian country" subject to tribal jurisdiction, *Alaska v. Native Vill. of Venetie Tribal Gov't*, 522 U.S. 520, 523 (1998), "the federal government confers tribal jurisdiction over lands it acquires in trust for the benefit of tribes," *Club One Casino, Inc. v. Bernhardt*, 959 F.3d 1142, 1149–50 (9th Cir. 2020). Thus, the conveyance and acceptance of the Shiloh Site into trust was an event of jurisdictional significance. In fact, "protecting the trust status of Indian land" is itself an interest so meaningful that Congress long ago enacted a statute for the "primary purpose" of advancing that interest. *Grondal v. Mill Bay Members Ass'n, Inc*., 471 F. Supp. 3d 1095, 1120 (E.D. Wash. 2020), *clarified* 2020 WL 4590527 (E.D. Wash. July 28, 2020), and *aff'd sub nom. Grondal v. United States*, 21 F.4th 1140 (9th Cir. 2021). Koi Nation's interest in protecting the trust status of its land is "a protected interest." *Jamul Action Comm. v. Simermeyer*, 974 F.3d 984, 997 (9th Cir. 2020). That the loss of protected trust status in *Jamul* could have resulted in even more serious harm to the tribe is of no moment. Rule 24(a)(2) requires a "significantly protectable" interest, *Wilderness Soc'y*, 630 F.3d at 1179, not a showing that "existential rights" are at stake, MTI Opp. 10.

Second, trust acquisition yields non-contingent and immediate existing legal benefits. In addition to immediately conferring tribal jurisdiction, the trust land also "is generally not subject to (1) state or local taxation; [or] (2) local zoning and regulatory requirements." *Club One*, 959 F.3d at 1149; *accord Cass Cnty. v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103, 114 (1998); *United States v. Humboldt Cnty*., 615 F.2d 1260, 1261 (9th Cir. 1980). These existing "legally recognized

property interests" are all dependent on continued trust status. *See Prieto v. United States*, 655 F. Supp. 1187, 1192 (D.D.C. 1987). That is why, historically, "many American Indians who owned fee-simple allotments that passed out of trust status were often driven to sell those allotments precisely because of their newfound tax burden." *Grondal*, 21 F.4th at 1157–58. It is also why the Ninth Circuit held in *Scotts Valley Band of Pomo Indians of Sugar Bowl Rancheria v. United States*, 921 F.2d 924 (9th Cir. 1990), that the City of Chico was entitled to intervention as of right when tribes sought "to restore the federal trust status" of land "within the City's municipal boundaries." *Id.* at 925–26. Because the restoration of trust status would have dismantled the City's power to tax and regulate the subject property, it had a "protectable interest" sufficient to demand intervention. *Id.* at 927–28. The same analysis applies here: Koi Nation has a protectable interest in maintaining trust status in order to preserve its sovereign tax and regulatory authority over the Shiloh Site.

Moreover, Plaintiff's claim that Koi Nation acquired no property rights upon the transfer of the Shiloh Site into trust status, *see* MTI Opp. 8, is belied by Plaintiff's own prior arguments in this litigation. In seeking a temporary restraining order, Plaintiff urged that trust status would confer on Koi Nation quintessential property rights of ownership, control, and the right to exclude. Specifically, Plaintiff argued that "when the land is put into a federal trust, state historical and cultural resource law would be replaced by applicable federal law, which would give the Koi Nation control over these Southern Pomo cultural objects and ancestral remains, to the exclusion of Southern Pomo tribes like [Plaintiff]" and that "the Koi Nation would receive priority for ownership and control" of objects and resources on the land. Dkt. 13, Mot. for TRO at 1, 2–3, 14, 17; *accord* Dkt. 77, Supp. Compl. ¶¶ 7, 24, 54 (advancing similar claims). Having successfully obtained a TRO by advancing these claims, Plaintiff should be judicially estopped from now repudiating them. *See Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782–83 (9th Cir. 2001).

Third, Plaintiff's claim that "DOI's decision *did not confer gaming rights on Koi*," MTI Opp. at 8, is also wrong. Although Koi Nation has no existing right to conduct *Class III* gaming, trust status provided the tribe with the immediate right to operate Class I gaming. *See Club One*, 959 F.3d at 1147 & n.2; 25 C.F.R. § 501.2(b); 25 U.S.C. § 2710(a)(1). Koi Nation is also *currently* entitled to conduct Class II gaming on the Shiloh Site because it adopted a gaming ordinance that was approved

by the National Indian Gaming Commission. *See* Dkt. 81-8; 25 U.S.C. §2710(b)(1). And Koi Nation now also has the legal right to negotiate a tribal-state gaming compact to pursue Class III gaming, with a corresponding legal duty on the State "to enter into compact negotiations in good faith" upon request. *Kansas ex rel. Schmidt v. Zinke*, 861 F.3d 1024, 1032–33 & n.4 (10th Cir. 2017); *accord* 25 U.S.C. § 2710(d)(3)(A); *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1024 (9th Cir. 2002) (discussing "[t]he *sovereign power* of the tribes *to negotiate* compacts" (emphases added)).

All of the cases Plaintiff cites, MTI Opp. 8–9, are distinguishable because the absent parties' interests at issue were prospective or legally unprotected. The absent tribes' interests in *Colusa* were "future" interests in the relative "probability" of obtaining certain gaming licenses, which entailed "attenuated" "speculation"; and the interest of "freedom from competition" in the gaming industry, which, "without more, is not 'legally protected.'" 547 F.3d at 971, 973. The absent miners in *N. Alaska Envtl. Ctr. v. Hodel* had only "pending plans" to mine, which afforded them "no legal entitlement to any given set of procedures." 803 F.2d 466, 468–69 (9th Cir. 1986). Similarly, the district court in *Jamul* reasoned that the absent tribe "ha[d] no legally protectable interest in the federal defendants' execution of a NEPA review," *Jamul Action Comm. v. Chaudhuri*, 200 F. Supp. 3d 1042, 1052 (E.D. Cal. 2016), which is not comparable to Koi Nation's concrete property interests. Moreover, the *Jamul* district court's sparsely reasoned ruling regarding NEPA was left in place *only* because the NEPA claim was then dismissed on summary judgment and waived on appeal. *Jamul*, 974 F.3d at 991. The Ninth Circuit expressly held that the tribe, as here, had "a protected interest in the trust status of its land" and that even "challenges to prospective agency decisions" supported dismissal where those challenges would have "retroactive effects on the [tribe's] existing sovereign and proprietary interests." *Id.* at 997. *Makah* is even less helpful to Plaintiff. There, the absent tribes *had* an interest sufficient to challenge the federal government's reallocation of a completed salmon harvest; their interest was insufficient only insofar as it might have related to "*prospective*" relief affecting "the *future* conduct of the administrative process." 910 F.2d at 559 (emphases added). Koi Nation's interests are existing and protectable.

Critically, it is Koi Nation, not Plaintiff, that is seeking to intervene. Plaintiff's argument that *its* own claims are "purely procedural," MTI Opp. 3, 14, "mistakenly focuses on the underlying legal

claim instead of the property or transaction that is the subject of the lawsuit." *Wilderness Soc'y*, 630 F.3d at 1178. "Administrative procedures" may be "the only things at stake" *for Plaintiff*, MTI Opp. 9, but a decision reversing or impairing the Shiloh Site's trust status "will have direct, immediate, and harmful effects upon [Koi Nation's] legally protectable interests," *Sw. Ctr.*, 268 F.3d at 818.

3. Koi Nation's Interests Are Not Adequately Represented

Koi Nation also easily satisfies the "minimal" burden of showing that its interests "may" be inadequately represented by the federal government. *W. Watersheds*, 22 F.4th at 840. While Koi Nation and DOI may "share an interest in the ultimate outcome of this case," their motivations diverge: DOI may have "an interest in defending its own analysis that formed the basis of its decision" to take the Shiloh Site into trust, but Koi Nation has a distinct interest in "defending the approval" of the conveyance "to ensure the continued operation of [the trust]." *Maverick*, 123 F.4th at 974–75; *Diné Citizens Ruining Our Env't v. Bureau of Indian Affs.*, 932 F.3d 843, 855 (9th Cir. 2019). The "stakes of this litigation" for Koi Nation are thus substantially higher "and implicate sovereign interests in self-governance." *Maverick*, 123 F.4th at 974–75; *Deschutes River All. v. Portland Gen. Elec. Co.*, 1 F.4th 1153, 1163 (9th Cir. 2021). That ends the matter.

Plaintiff again resorts to constructing a hurdle the law does not erect. There is no requirement that an intervenor must "identify specific arguments they would raise that the existing parties would not." MTI Opp. 12. Nor is there any merit to Plaintiff's *ipse dixit* assertion that "the usual practice is to deny intervention" if a proposed intervenor fails to identify specific arguments the parties are unlikely to raise. *Id.* In fact, in two of the three cases Plaintiff cites as evidence of that purported "usual practice," intervention was *granted*. *Alto v. Black*, 738 F.3d 1111, 1119–20 (9th Cir. 2013); *Sw. Ctr. for Biological Diversity v. Babbitt*, Case No. 2:95-CV-2833 (D. Ariz.), Dkt. 55 (Jul. 2, 1997).

Regardless, Koi Nation *did* articulate arguments it would raise that the government likely would not, including that if DOI defied its own regulations in approving the Shiloh Site conveyance—as Plaintiff contends—then those regulations should be struck down as inconsistent with the statutory text. MTI 13. Plaintiff claims this analysis is "beyond speculative," MTI Opp. 12, but it is akin to the analysis in *Maverick*. There, the government could not be expected to advance an argument inconsistent with a federal statute. *Maverick*, 123 F.4th at 977 & n.17. Here, DOI

cannot be expected to argue against the validity of its own regulations. The government is an inadequate representative "because the 'Federal Defendants interest *might* diverge from that of' the Tribe if the district court decided that 'the federal agencies' analyses underlying the approval was flawed." *Id.* at 977 (citation omitted). And "amicus status is not sufficient," to protect Koi Nation's rights. *See id.* at 981. Amicus status does not allow a party "to raise issues or arguments formally and gives it no right of appeal." *United States v. City of Los Angeles*, 288 F.3d 391, 400 (9th Cir. 2002). Moreover, it is plainly not the same as joinder "as a party," which is what the rule requires. Fed. R. Civ. P. 19(a)(1).

Finally, it is also black letter law in this Circuit that "[i]n disputes involving intertribal conflicts, the United States cannot properly represent any of the tribes without compromising its trust obligations owed to all tribes." *Quileute Indian Tribe v. Babbitt*, 18 F.3d 1456, 1460 (9th Cir. 1994). Plaintiff suggests that this rule "is an issue only when the tribes compete for the same, finite resources," MTI Opp. 14, but this case squarely fits that bill: Plaintiff has repeatedly asserted that it *is* competing for the same resources—i.e., "ownership" and "control" of "cultural resources," "sacred objects," and "ancestral remains." *See, e.g.*, Dkt. 13 at 1, 2–3, 14, 17; Dkt. 77 ¶¶ 1, 7, 23, 24, 54. Accordingly, the Court should grant intervention as of right.

C. Alternatively, Koi Nation Should Be Granted Permissive Intervention

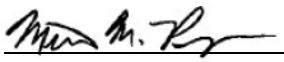
Alternatively, as explained in Koi Nation's motion, MTI 14–15, the Court should grant permissive intervention for the limited purpose of filing a Rule 19 motion. Koi Nation's interests are weighty and substantial. Even if those interests are not "legally protectable"—which they are—permissive intervention dispenses with that requirement, *Emp. Staffing Servs., Inc. v. Aubry*, 20 F.3d 1038, 1042 (9th Cir. 1994), and affords the Court "broad discretion," *United States v. $129,374 in U.S. Currency*, 769 F.2d 583, 586 (9th Cir. 1985), to ensure that Koi Nation's voice is heard.

III. CONCLUSION

For the foregoing reasons, this Court should grant Koi Nation's intervention motion.

Dated: May 19, 2025

HUESTON HENNIGAN LLP

By: 

Michael M. Purpura
Rajan S. Trehan
Attorneys for Koi Nation of Northern California
620 Newport Center Drive, Suite 1300
Newport Beach, CA 92660
mpurpura@hueston.com
rtrehan@hueston.com