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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ALTURAS INDIAN RANCHERIA,  
  
Plaintiff,  
  
v.  
  
KENNETH SALAZAR, et al.,  
  
Defendants.

CASE NO. 2:10-cv-01997-LKK-EFB  
  
OPPOSITION TO MOTION FOR  
ORDER ENFORCING JUDGMENT  
AND FINDING DEFENDANTS IN  
CONTEMPT

DATE: November 4, 2013  
TIME: 10:00 a.m.  
JUDGE: Hon. Lawrence K. Karlton  
CTRM: 4, 15<sup>th</sup> Floor

**INTRODUCTION**

On January 11, 2012, the Federal Defendants and the Alturas Indian Rancheria (“Tribe”) entered into a Settlement Agreement and Stipulation For Entry of Judgment and Order (“Settlement Agreement”) that stated: “The BIA has approved the Tribe’s self-determination contract requests for the fiscal years 2009, 2010, 2011, and 2012, and shall transfer the amounts provided in those requests to the Tribe’s bank account . . . in accordance with the terms contained in the contract award documents.” The day after the Court signed the order closing the

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<sup>1</sup> The Federal Defendants are the Department of the Interior, the Secretary of the Interior and the Assistant Secretary-Indian Affairs, as well as three Bureau of Indian Affairs officials, Michael S. Black, Amy Dutschke, and Virgil Akins.

case, the Bureau of Indian Affairs (“BIA”) began paying the self-determination contract funds to the Tribe, and six months later, it had paid all the amounts which the Tribe had requested and the BIA had approved in accordance with the contract award documents executed at the time of the Settlement Agreement. There is thus no violation of the Court’s order, let alone any showing of contempt, by the Federal Defendants.

Nevertheless, the Tribe, which has approximately five adult members, now wants more than the \$719,691 it received last year from the BIA to fund its tribal government. It wants to reopen this case to seek in unspecified amount of “contract support costs” that it had not requested and that BIA had not approved at the time of Settlement Agreement. Indeed, it admits that it did not even begin negotiations for these costs until after judgment was entered in this case. The Tribe’s claim falls outside of the scope of the Settlement Agreement and the Court’s order, and granting it would mean that the Tribe will evade a Indian Self-Determination and Education Assistance Act, P.L. 93-638 (“ISDEAA”) requirement with which every other tribe in the country must comply. The Court should deny the Tribe’s motion in its entirety.

### FACTS

On December 30, 2008, BIA received a request from Darren Rose (“Rose”), Vice-Chairman of the Tribe, to renew the Tribe’s self-determination contract for fiscal year 2009. Declaration of Terry J. Lincoln In Support of Federal Defendants’ Opposition to Motion for Order Enforcing Judgment (“Lincoln Declaration”) ¶ 3 and Exhibit (“Exh.”) 1 at 1. In support of the Tribe’s request, Phillip Del Rosa (“Del Rosa”), Chairman of the Tribe, submitted a budget of \$82,863 for the Tribe’s Consolidated Tribal Government Program (“CTGP”). *Id.* at ¶ 3 and Exh. 1 at 2. Neither the original request nor the submitted budget sought contract support costs. On January 15, 2009, BIA and the Tribe executed the self-determination contract award document for the fiscal year 2009 funds, awarding the requested amount, which BIA paid to the Tribe on March 12, 2009. *Id.* at ¶ 4. The BIA subsequently added \$115,548 in 2009 CTGP funding to the contract, as well as \$8790 in contract support costs. *Id.* at ¶ 4.

In early 2009, the Tribe’s five undisputed members split into two factions, one led by Rose and the other by Del Rosa, fighting over who controlled the Tribe and who was properly

1 considered a member of the Tribe. Docket # 16 at 2. In April and May 2009, both factions  
 2 contacted the BIA regarding their governance and membership dispute. *Id.* at 2-3. This dispute  
 3 lead to the BIA suspending fiscal year 2009 contract payments (Lincoln Declaration at ¶ 4), and  
 4 to a series of administrative appeals, as the two factions jockeyed for power and recognition. *Id.*  
 5 at 2-7.

6 One of these appeals concerned the Tribe's February 2010 contract request for fiscal year  
 7 2010 CTGP funding, which sought \$198,562. *Id.* at 4-7; Docket # 2-2 at 2-5. Because of the  
 8 ongoing dispute over membership and governance, the BIA returned the contract request, which  
 9 action was appealed administratively.<sup>2</sup> Docket # 16 at 6-7. Before the exhaustion of the  
 10 administrative appeals process, however, this lawsuit was filed in July 2010, asking this Court to  
 11 order the BIA to enter into the 2010 contract as requested. Docket # 2. The 2010 contract  
 12 request did not seek any contract support costs. Docket # 2-2 at 2-5.

13 On September 6, 2011, Del Rosa sent a letter to the BIA seeking funding in connection  
 14 with the Tribe's fiscal year 2009, 2010, 2011, and 2012 self-determination contract requests.  
 15 Lincoln Declaration Exh. 2. Del Rosa did not make any reference to contract support costs. *Id.*  
 16 A few months later, the standoff between the two Tribal factions was resolved. Shortly  
 17 thereafter, on December 2, 2011, the BIA approved the September 6, 2011, contract proposal.  
 18 Lincoln Declaration Exh. 3.

19 One month later, on January 5, 2012, the BIA and the Tribe executed the self-  
 20 determination contract award document. Lincoln Declaration ¶ 7 and Exh.4.<sup>3</sup> The 2012 contract  
 21 includes \$198,547 for fiscal year 2011 CTGP funding, \$198,244 for fiscal year 2012 CTGP  
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23 <sup>2</sup> Although the Tribe asserts that "[i]n January 2010, in response to an internal tribal  
 24 dispute about who constituted members of the Tribe and who constituted the members of the  
 25 Tribe's Tribal Council, the BIA, Northern California Agency, refused to renew the Tribe's self-  
 26 determination contract" (Tribe's Memorandum of Points and Authorities (Docket # 129 or  
 "Motion") at 2; Smith Declaration (Docket # 130) at p. 2, ¶ 3), the Tribe did not actually make a  
 request to renew the self-determination contract until February 2010.

27 <sup>3</sup> The Tribe asserts that the BIA entered into this self-determination contract  
 28 "[s]ubsequent to the issuance of the Judgment." Motion at 3, citing Smith Declaration at ¶ 7 and  
 Exhibit 1. This is incorrect, as is shown on the first page of the Exhibit (self-determination  
 contract dated January 1, 2012, and executed by the parties on January 5, 2012.)

1 funding, and \$198,562 for fiscal year 2010 CTGP funding. *Id.* ¶ 7. The total amount allocated  
 2 for 2011 and 2012 CTGP funding -- \$396,791 – corresponds to the amount in a budget that the  
 3 Tribe submitted for the 2012 contract. *Id.* ¶ 7 and Exh. 4 at 35.<sup>4</sup> The budget submitted by the  
 4 Tribe does not specify any amount for contract support costs.

5 On January 11, 2012, the Federal Defendants and the Tribe settled this lawsuit. The  
 6 Settlement Agreement states in pertinent part that “The BIA has approved the Tribe’s self-  
 7 determination contract requests for the fiscal years 2009, 2010, 2011, and 2012, and shall  
 8 transfer the amounts provided in those requests to the Tribe’s bank account . . . in accordance  
 9 with the terms contained in the contract award documents.” Docket # 126 at 2, ¶ 2. On January  
 10 12, 2012, the Court signed an order requiring the parties to carry out the Settlement Agreement,  
 11 and then closed the case. Docket # 126 at 3.

12 The next day, the BIA paid the Tribe \$99,273, almost half of the contractual funding for  
 13 fiscal year 2011. Lincoln Declaration ¶ 8. On February 7, 2012, BIA paid the Tribe the  
 14 remaining 2009 contractual funds, which totaled \$124,338, including \$8,790 in contract support  
 15 costs. *Id.* ¶ 4. On April 24, 2012, the BIA paid the remainder of the 2011 funding, \$99,274. *Id.*  
 16 ¶ 8. On July 5, 2012, BIA paid a lump sum of \$396,806, which constituted all of the contract  
 17 funding for fiscal years 2010 and 2012, to the Tribe. *Id.* ¶ 9. Accordingly, although the BIA had  
 18 a year to pay all of the self-determination contract funds for 2010 through 2012 to the Tribe, it  
 19 did so in less than six months. *Id.* Exh. 4 at 7 (2012 contract provides that BIA would make  
 20 payments on a quarterly basis, and pay one-quarter of the total amount each quarter).

21 Subsequent to the Court’s order ending this case, the Tribe and the BIA began  
 22 negotiating the cost rate for indirect contract support costs for 2012. Declaration of Wayne  
 23 Smith in Support of Motion for Order Enforcing Judgment (Docket # 130 or “Smith  
 24 Declaration”) at 2, ¶ 9. A year and a half after the Court closed this case, the Tribe and the BIA  
 25 entered into an indirect cost negotiation agreement. Smith Declaration Exh. 2. That agreement  
 26 supplies a provisional rate to use for calculating indirect costs in connection with the Tribe’s  
 27

28 <sup>4</sup> The Tribe subsequently submitted another budget for this contract to include the Tribe’s  
 requested amount for the 2010 CTGP funding, too. *Id.* ¶ 7 and Exhibit 4 at 32.

contracts under the ISDEAA, but the final rate must be submitted based on actual costs. Smith Declaration Exh. 2 at Section II, Paragraphs D.2. and J (“Approval of the indirect cost rate does not mean that an organization can recover more than the actual costs of a particular program or activity.”). The agreement does not itself require the BIA to make any payments to the Tribe.

### ARGUMENT

The Tribe has made no attempt to show that it requested contract support costs which the BIA approved prior to the date of the Settlement Agreement but failed to pay. As a result, it has not shown that the Federal Defendants have failed to perform specific acts which this Court ordered as part of a judgment, as is required by Fed. R. Civ. P. 70. *See* Fed. R. Civ. P. 70 (“If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done – at the disobedient party’s expense—by another person appointed by the court”); *Westlake North Property Owners Ass’n v. City of Thousand Oaks*, 915 F.2d 1301, 1304 (9th Cir. 1990) (“According to its plain language, this rule [Fed. R. Civ. P. 70] applies only to parties who have failed to perform specific acts pursuant to a judgment.”). Similarly, the Tribe makes no attempt to meet the moving party’s burden in a civil contempt action, namely to “show[] by clear and convincing evidence that the contemnors violated a specific and definite order of the court.” *FTC v. Enforma Natural Prods., Inc.*, 362 F.3d 1204, 1211 (9th Cir. 2004), quoting *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999) (quoting *Stone v. City and County of San Francisco*, 968 F.2d 850, 856 n. 9 (9th Cir. 1992)). Accordingly, the Court should deny the Tribe’s motion in its entirety.

The Court’s order in this case required “that the parties carry out the terms and conditions of the foregoing stipulation.” Docket # 126 at 3. The “foregoing stipulation” referred to the Settlement Agreement between the Federal Defendants and the Tribe executed on January 11, 2012, which stated in pertinent part that “The BIA has approved the Tribe’s self-determination contract requests for the fiscal years 2009, 2010, 2011, and 2012, and shall transfer the amounts provided in those requests to the Tribe’s bank account . . . in accordance with the terms contained in the contract award documents.” Docket # 126 at 2, ¶ 2. However, the Tribe fails to

1 identify even one of its self-determination contract requests from 2009 through 2012 in which it  
2 sought contract support costs, let alone a request that it had made and the BIA had approved at  
3 the time of the Settlement Agreement. This is probably because the Tribe did not include  
4 contract support costs as part of its contract requests. Thus, for example, the Tribe's 2010 self-  
5 determination contract request, which is attached to the Complaint and was the basis for this  
6 lawsuit, does not request any amount for contract support costs. Docket # 2-2 at 2-5. The same  
7 is true for the other years. *See, e.g.*, Lincoln Declaration Exhs. 1 and 2. As a result, it has failed  
8 to show any violation of the Settlement Agreement, let alone produce "clear and convincing  
9 evidence" that "a specific and definite order of the court" was violated.

10 Further evidence that the Tribe did not include contract support costs in the 2010-2012  
11 self-determination contract requests which the BIA had approved at the time of the Settlement  
12 Agreement is that, by the Tribe's own admission, it did not even begin negotiations with the BIA  
13 regarding those costs until after the Court issued its order closing this case. Motion at 3, citing  
14 Smith Declaration, p. 2 at ¶ 9. This also means that the Tribe is trying to obtain something it had  
15 not even started negotiating for, let alone obtained agreement on when the Settlement Agreement  
16 was signed and the Court order was entered. This is no basis for a Rule 70 motion, which is  
17 another reason that the Court should reject the Tribe's motion.

18 Instead of making any effort to show that there was a violation of the Settlement  
19 Agreement, the Tribe claims that the BIA has not paid "the contract support costs that they are  
20 required to pay to the Tribe under the terms of the self-determination contract for government  
21 operations entered into between the Tribe and the [BIA] pursuant to the [ISDEAA]." Motion at  
22 2. This fails for at least two reasons. First, the Settlement Agreement (and accordingly, the  
23 Court's order) did not require compliance with the contract award documents as a whole, but  
24 only that the BIA pay the amounts provided in the contract requests that it had approved at the  
25 time of the Settlement Agreement "in accordance with the terms contained in the contract award  
26 documents." Docket # 126 at 2, ¶ 2. Alleged violations of the contract award documents that do  
27 not pertain to payment of the amounts the Tribe requested and the BIA approved cannot form the  
28 basis for a Rule 70 motion in this case. Again, "the amounts provided in those requests" (Docket

# 126 at 2, ¶ 2) did not include contract support costs, but only included base funding, and the Tribe admits that it received the base funding amounts “pursuant to the Judgment.” Motion at 3 (“Pursuant to the Judgment, the BIA paid to the Tribe the base funding that the federal government was obligated to pay to the Tribe for the years 2009-2012.”) As a result, the Tribe has utterly failed to show a violation of the Settlement Agreement and the Court’s order.

Second, the Tribe fails in any event to identify the provisions in the contract award document for 2010 through 2012 that require any such payment. It cites the “Smith Declaration, Exhibit 1, p.8,” in support of this claim (Motion at 6), but that Exhibit (which is the contract award document for 2010 through 2012) does not specify any amount to be paid for contract support costs. As for the 2009 contract award document, it did require payment of \$8790 in contract support costs, but the BIA paid that amount to the Tribe on February 7, 2012. Lincoln Declaration ¶ 4.<sup>5</sup> Nor can the separate indirect cost rate agreement that the Tribe and BIA entered into on June 25, 2013 – eighteen months after the Settlement Agreement and the Court’s order -- serve as the basis for an order under Rule 70 that the BIA pay the contract support costs for 2010-2012. It is not discussed in the Tribe’s contract requests nor is it part of the “contract award documents” in place at the time of the Settlement Agreement, and it does not itself require the BIA to make any payments. *See* Smith Declaration Exhibit 2.

Because the Tribe lacks any basis for claiming that the failure to pay contract support costs is a violation of the Court’s order, it devotes most of its argument to discussing two Supreme Court cases concerning the ISDEAA -- *Salazar v. Ramah Navajo Chapter*, 132 S.Ct. 2181 (2012), and *Cherokee Nation of Okla. v. Leavitt*, 543 U.S. 631 (2005). Motion at 7-10. Again, neither the Settlement Agreement nor the Court’s order require the BIA to comply with the ISDEAA, and thus any alleged violations of that Act cannot form the basis for a Rule 70 motion in this case.

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<sup>5</sup> The Tribe claims in its Motion at 3 that the BIA failed to pay the Tribe any contract support costs for 2009, but the Smith Declaration upon which it relies says only that contract support costs were not paid for 2010 through 2012. Smith Declaration ¶ 8.



Moreover, these cases do not support the Tribe's demand that the Court "order the Federal Defendants to pay all of the contract support costs to which it is obligated [*sic*] under the Tribe's self-determination contract for 2010-12." Motion at 11. First, unlike the Tribe here, the tribes in those cases had complied with the Contract Disputes Act in bringing their claims to enforce their contracts, as required by the ISDEAA. *Ramah*, 132 S.Ct. at 2188; *Cherokee Nation*, 543 U.S. at 635-36; 25 U.S.C. § 450m-1(a) and (d) ("The Contract Disputes Act . . . shall apply to self-determination contracts. . ."). Second, unlike the 2012 self-determination contract at issue here, both *Ramah* and *Cherokee Nation* involved tribes whose self-determination contracts included specific provisions regarding the payment of contract support costs. See *Ramah v. Salazar*, 644 F.3d 1054, 1061 (10<sup>th</sup> Cir. 2011), *aff'd* 132 S.Ct. 2181; *Cherokee Nation*, 543 U.S. at 635. Third, *Ramah* does not support the Tribe's assertion that if Congressional appropriations are insufficient to pay for the contract support costs it is requesting here, "the federal government must pay the costs from the Judgment Fund." Motion at 10. What *Ramah* actually says is that "judgments against the Government under [the Contract Disputes] Act are payable from the Judgment Fund." *Ramah*, 132 S.Ct. at 2193 (quoted in the Motion at 10.) This case does not involve a judgment under the Contract Disputes Act.

As *Ramah* shows, if the Tribe believes that the BIA has violated the ISDEAA by failing to pay contract support costs, its remedy lies elsewhere, not in a motion under Rule 70 to enforce a Court order that says nothing about the ISDEAA. "[T]he [ISDEAA] makes clear that if the Government fails to pay the amount contracted for, then the tribal contractors are entitled to pursue "money damages" in accordance with the Contract Disputes Act." *Ramah*, 132 S.Ct. at 2187. See also *Cherokee Nation*, 543 U.S. at 639. Among other things, the Contract Disputes Act requires claimants to "present" their claims to the contracting officer for decision (41 U.S.C. § 605(a) before filing a district court case; this promotes judicial efficiency by allowing the agency to either resolve the claim or narrow the dispute, for example by determining the amount of money that is actually at issue. The Tribe should not be allowed to evade the requirements that all other tribes who have a dispute with the Government over ISDEAA indirect support costs must comply with, namely compliance with the Contract Disputes Act.



**CONCLUSION**

For all the foregoing reasons, the Court should deny the Tribe's motion to enforce the settlement agreement and for contempt.

Dated: October 21, 2013

Respectfully submitted,

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By: /s/ Sylvia Quast  
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