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TSI AKIM MAIDU OF
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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

TSI AKIM MAIDU OF TAYLORSVILLE RANCHERIA

Plaintiff

vs.

UNITED STATES DEPARTMENT OF THE INTERIOR; SARAH JEWELL, in her official capacity as Secretary of the Interior, LAWRENCE S. ROBERTS, in his official capacity as Principle Deputy Assistant Secretary for Indian Affairs of the United States Department of the Interior; and DOES 1 to 100

Defendants

Case No.: 16-cv-7189-LB

PLAINTIFF TSI AKIM MAIDU OF TAYLORSVILLE RANCHERIA'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Judge: Hon. Laurel Beeler
Date: May 25, 2017
Time: 9:30 AM
Ctrm: C, 15th Floor

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INTRODUCTION

Tsi Akim Maidu of Taylorsville Rancheria (the "Plaintiff") seeks judicial review of the June 9, 2015, decision[1] (the "June 9, 2015 Decision") of the Assistant Secretary of Indian Affairs (the "AS-IA") wherein, applying the California Rancheria Act (the "CRA"), AS-IA determined that Plaintiff is a federally terminated tribe. In its June 9, 2015 Decision, AS-IA asserted that, pursuant to the CRA, Defendants' sale of the Taylorsville Rancheria (the "Ranch") terminated Plaintiff's status as a federally recognized tribe.

In this Motion, Defendants raise procedural and substantive challenges to Plaintiff's complaint. Procedurally, Defendants ask the Court to dismiss the action for improper venue. In the alternative, Defendants ask the court to either transfer to the Eastern District (because the Plaintiff and the events underlying the controversy are in Plumas County) or to District of Columbia (because Defendants reside there).

Substantively, Defendants raise two challenges: 1) Defendants argue that Plaintiff's claim under the Administrative Procedure Act (the "APA") fails because Plaintiff is not seeking a review of the AS-IA June 9, 2015 Decision, but rather compelling the Defendants to confer tribal status upon it; and 2) the claim is barred by the statute of limitations because the underlying wrong Plaintiff complains about accrued more than six years ago.

However, Plaintiff contends that venue is proper in this district because majority members of the Plaintiff live in this district, a transfer will cause significant hardship on Plaintiff, and no property or local interests are involved in this action mandating a transfer to a different district. Also, Plaintiff contends that the AS-IA misread the CRA and, as such, acted beyond the scope of its authority. Moreover, Plaintiff contends that this challenge to AS-IA's decision, alleging lack of agency authority, is within the statute of limitations as it is being brought within six-years after the June 9, 2015 Decision. Finally, the APA is applicable because Plaintiff is

[1] Please see declaration of Mogeeb Weiss for a copy of the written decision by AS-IA

expressly seeking a review of AS-IA's June 9, 2015 Decision. As such, Plaintiff asks this Court to deny the Motion.

STANDARD OF REVIEW

I. Improper Venue

Federal Rule of Civil Procedure 12(b) (3) allows a defendant to move to dismiss an action for improper venue. Fed. R. Civ. Proc. 12(b)(3). On a Rule 12 (b) (3) motion, "the pleadings need not be accepted as true, and the court may consider facts outside of the pleadings," but the court must draw all reasonable inferences and resolve all factual conflicts in favor of the non-moving party. *Murphy v. Schneider Nat'l, Inc*., 362 F.3d 1133, 1137 (9th Cir. 2004).

Venue is proper in an action against an agency of the United States or an officer or employee of the United States acting in his/her official capacity in any judicial district in which: (A) the defendant resides; (B) a substantial part of the events or omissions giving rise to the claim occurred or a substantial part of the property that is the subject of the action is situated; or (C) the plaintiff resides if no real property is involved in the action. 28 U.S.C. 1391(e) (1). If venue is improper, district courts have discretion either to dismiss the action, or in the interest of justice, to transfer it to a district where it could have been brought. 28 U.S.C. § 1406(a).

II. Failure to State a Claim

Motions to dismiss for failure to state a claim under Federal Rules of Civil Procedure, Rule 12(b)(6) are viewed with disfavor, and, accordingly, dismissals for failure to state a claim are "rarely granted." *Gilligan v. Jamco Dev. Corp*., 108 F.3d 246, 249 (9th Cir. 1997) (citation omitted). In deciding a motion to dismiss, the court must accept as true the allegations of the complaint and draw reasonable inferences in the plaintiff's favor. *Doe v. United States*, 419 F.3d 1058, 1062 (9th Cir. 2005). Inquiry into the adequacy of the evidence is improper. *Enesco Corp. v. Price/Costco, Inc*., 146 F.3d 1083, 1085 (9th Cir. 1998). A court may not dismiss a complaint "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his

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claims which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

ARGUMENT

I. Venue Is Proper in the Northern District

In this action, Plaintiff seeks a review of an agency decision. No property is involved. Members of the Plaintiff predominantly live in the Northern District. Thus, venue in this district is conclusively proper.

II. Defendants' Motion to Transfer

Alternatively, Defendants seek to transfer this case to District of Columbia or Eastern District. Pursuant to 28 U.S.C. § 1404(a), a District Court may transfer any civil action for the convenience of the parties, witnesses, or in the interests of justice. 28 U.S.C. § 1404(a). District courts have broad discretion to transfer cases, though each transfer must be determined on an individualized basis. *Jones v. GNC Franchising, Inc*., 211 F.3d 495, 498 (9th Cir. 2000). It is the Defendants' burden to demonstrate that an action should be transferred. *Commodity Futures Trading Comm'n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979).

There is a two-part analysis under § 1404(a): First, the Court must decide whether the action "might have been brought" in a transferee court. *Hatch v. Reliance Ins. Co*., 758 F.2d 409, 414 (9th Cir. 1985). If yes, then the Court must consider whether transferring the case is best for convenience and fairness to the parties and the interests of justice. *GNC Franchising*, 211 F.3d at 498-99. Under the second step, the Court may consider factors such as (1) the plaintiff's choice of forum, (2) convenience of the parties and witnesses, (3) ease of access to evidence, (4) local interest in the controversy, (5) familiarity of each forum with the applicable law, and (6) relative congestion in each forum. See *Ctr. For Food Safety v. Vilsack*, No. C 11-00831 JSW, 2011 WL 996343 (N.D. Cal. Mar. 17, 2011).

1. Where the Action Might Have Been Brought

Defendants argue that District of Columbia is proper because Defendants reside there. In

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addition, Defendants contend that Eastern District is proper because the Ranch, the property, was in Plumas County, and the events underlying the dispute, the sale of the Ranch, occurred in Plumas County. However, this latter contention has no merit. First, this action seeks review of a decision of an agency of the government – primarily involving legal analysis. This action does not involve any property, nor are the operative facts crucial to the decision of the Court. Second, this Court is not being asked to adjudicate the rights and duties of parties involving factual analysis unique to the Eastern District. Rather, this is a review of an agency decision focusing on legal analysis. Finally, as stated majority members of Plaintiff live in the Northern District.

Further, the District of Columbia is not proper because a transfer to that district will cause significant prejudice to Plaintiff because majority of Plaintiff's members live in the Northern District and Plaintiff has expended resources in this district. Thus, the proper venue is the Northern District.

2. Factors Concerning Convenience, Fairness, and the Interests of Justice

a. Plaintiff's Choice of Forum

A plaintiff's choice of forum is generally accorded substantial weight, and the defendant bears a considerable burden in justifying transfer. *Pac. Car & Foundry Co. v. Pence*, 403 F.2d 949, 953-54 (9th Cir. 1968); *STX, Inc. v. Trik Stik, Inc*., 708 F. Supp. 1551, 1555-56 (N.D. Cal. 1988). However, the plaintiff's choice of forum is not dispositive. *Knapp v. Wachovia Corp*., No. C 07-4551 SI, 2008 WL 2037611, (N.D. Cal. May 12, 2008). Also, where the operative facts have not occurred within the forum of original selection and that forum has no special interest in the parties or subject matter, the plaintiff's choice of venue merits less deference. *Pac. Car & Foundry*, 403 F.2d at 954.

In this case, many members of the Plaintiff live in this District. Plaintiff has spent considerable time and money in retaining counsel, researching its case, marshalling its evidence, and communicating with its members all in this district. Further, the case involves review of an

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agency decision and does not involve any local interest or property rights. The operative facts in this action is the lawfulness of an agency decision and has no relation to Eastern District. As such, Plaintiff's choice should be given maximum deference.

b. Convenience of the Parties & Access to Evidence

Under this factor, the Court evaluates how transfer will impact each side's ability to bring-forth evidence and witnesses. *Decker Coal Co v. Commonwealth Edison Co* 805 F.2d 834, 843, (9th Circ. 1986)

Plaintiff's members live in this district. A transfer to a different district will greatly impact Plaintiff's ability to bring forth witnesses and evidence in the event there is a hearing. Plaintiff's members cannot afford to travel to Eastern District and coordinate the litigation of this case. The convenience of evidence and witnesses favor Plaintiff and the Northern District. Defendants cannot show any prejudice by remaining in the Northern District. This factor favors Plaintiff.

c. Local Interest in the Controversy

Under this factor, the Court considers "local interest in having localized controversies decided at home" *Decker Coal* 805 F.2d at 843 (*Internal citation deleted*)

In this case, there are no overarching localized issues that mandate a transfer. A decision in this case in the Northern District will not have any impact on the Plumas County or any other county. Moreover, most of Plaintiff's members live in the Northern District and have expended resources and have institutional interest in this case in this district. This factor weighs against transfer.

d. Familiarity of Each Forum

It is undisputed that all districts will be equally familiar with the applicable law in this case. This factor is neutral.

e. Relative Congestion in each Forum

Plaintiff has no information on this factor.

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f. Balancing the Factors

The balance of factors favors against transfer. Members of the Plaintiff who predominantly live in the Northern District have expended considerable resources in this District in preparing for this case. The Members of the Plaintiff have waited long-time for this opportunity. The members of the Plaintiff will be financially prejudiced if the case is transferred to Eastern District. This case involves a review of a government agency decision and the locus of operative facts given that the members of the Plaintiff live in this District is in this district. Thus, a balancing of the factors weigh against any transfer.

III. The Action Is Not Barred by the Statute of Limitations

In the June 9, 2015 Decision, former Assistant Secretary for Indian Affairs wrote that "in coordination with the Solicitor's Office, we have concluded that because Congress terminated the Tsi Akim Maidu, it cannot be acknowledged by the Department." The AS-IA further stated its June 9, 2015 Decision that "The Department's sale of the Rancheria pursuant to Congressional mandate qualified as Congressional termination of the Federal relationship."

In its June 9, 2015 Decision, AS-IA applied the CRA to decide the status of the Plaintiff. Plaintiff filed this action asking the Court to review such June 9, 2015 Decision alleging that in issuing its June 9, 2015 Decision, AS-IA exceeded constitutional and statutory authority as applied to Plaintiff. Plaintiff filed this action within 16 months after the June 9, 2015 Decision.

In *Wind River v. United States* 946 F.2d 710 (9th Circ. 1991) Plaintiff challenged the Bureau of Land Management's (the "BLM") decision to designate certain lands as Wilderness Study Areas (the "WSA"). In March 30, 1979, the BLM published in the Federal Register its decision establishing 138 WSA. Plaintiff staked its claim on certain land within the WSA – WSA 243. In 1986 and 1987, Plaintiff petitioned the BLM to declare WSA 243 invalid – meaning as land not suitable for Wilderness Study Areas. The BLM declined. In September 22, 1989, Plaintiff filed a complaint for review. The District Court granted the government's motion

to dismiss due to six-year statute of limitations on civil actions against the United States.

However, the 9th Circuit recognized an exception to the six-year statute of limitations[2]. The Court said "If, however, a challenger contests the substance of an agency decision as exceeding constitutional or statutory authority, the challenger may do so later than six years following the decision by filing a complaint for review of the adverse application of the decision to the particular challenger. Such challenges, by their nature, will often require a more "interested" person than generally will be found in the public at large" *Id.* 715.

The facts in this case are similar. In this case, Congress passed the CRA in 1960 which directed the Secretary of the Interior to sell lands designated for the Indians of California. The Ranch designated for the Plaintiff was sold in 1964. However, in June 9, 2015, when Plaintiff sought clarification about its status as a federally recognized Indian Tribe, Defendants said that Plaintiff "may not receive recognition by the Department" because Congress has forbidden a Federal Relationship with Plaintiff due to the sale of the Ranch pursuant to CRA.

Plaintiff filed an action within 16 months after the AS-IA June 9, 2015 Decision requesting judicial review of that Decision. Thus, pursuant to reasoning in *Wind River* the action is within the statute of limitations.

IV. The APA Provides for Waiver of Sovereign Immunity

1. APA

Under the APA, sovereign immunity is waived for actions seeking relief other than money damages. "The legislative history of this provision could not be more lucid. It states that this language was intended "to eliminate the defense of sovereign immunity with respect to any action in a court of the United States seeking relief other than money damages and based on the assertion of unlawful official action by a Federal officer...." *Schnapper v. Foley* 667 F.2d 102,

[2] 28 U.S.C. § 2401(a) creates a general six-year statute of limitations for actions brought against the United States. 28 U.S.C. § 2401(a)

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107-108 (D.C. Cir 1981.)

In this case, Defendants admit that the APA provides for a waiver of sovereign immunity. However, Defendants contend that Plaintiff's claims under the APA fail for two reasons: 1) because Plaintiff is not seeking a review of an agency decision but rather the grant of tribal status, Plaintiff is deprived of the benefit of the waiver of sovereign immunity available under the APA; and 2) Even if the waiver of sovereign immunity is available, Plaintiff's claims are not viable because no agency inaction is implicated (there is no duty to recognize Plaintiff as a federal tribe.) Defendants confuse the issues in their own Motion to Dismiss and misread the allegations of the complaint.

In this Motion to Dismiss, the first issue is whether Plaintiff can take advantage of the waiver of sovereign immunity by Petitioning this Court to review the government's June 9, 2015 Decision. An Agency of the United States issued a decision that expressly affects the rights of Plaintiff. Plaintiff has petitioned this Court for a review of that decision. Thus, waiver of sovereign immunity is available. The second issue is whether the gravamen of Plaintiff's complaint is a review of the June 9, 2015 Decision or an order to compel recognition of tribal status.

2. Agency Inaction

Defendants contend that Plaintiff's complaint does not implicate any agency inaction because only the political branch of the government can grant federal recognition. In support of its reasoning, Defendants cite the case of *Robinson v. Salazar*, 885 F. Supp. 2d 1002, 1031 (E.D. Cal. 2012). However, Defendants misread the *Robinson* case both factually and legally. In *Robinson*, the Plaintiff sought to compel the Department of the Interior (Salazar) to place Plaintiff on the List of Federally Recognized tribes and to protect the Tribe's right to land. The Court declined because no law obligated the government to place the Plaintiff on the List.

However, the facts in this case is distinguishable. In this case, Plaintiff asks the Court to

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review AS-IA's June 9, 2015 Decision and determine whether the CRA affects the status of the Plaintiff as an Indian Tribe. Plaintiff is neither explicitly nor implicitly seeking to obtain status. Plaintiff contends that the AS-IA misinterpreted the CRA, and took this misinterpretation one step further by alleging that Plaintiff "cannot receive recognition by the Department."

Under the Administrative Procedure Act, a reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law...." 5 U.S.C. § 706(2)(A). The Supreme Court has held that the ultimate standard of review under 5 U.S.C. § 706(2)(A) is a narrow one, noting that a court is not empowered by section 706(2)(A) to substitute its judgment for that of the agency. *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Ins*. Co., 463 U.S. 29, 43 (1983.) However, the Court also noted that a reviewing court must conduct a searching and careful inquiry into the facts. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416, (1971).

In this case, Plaintiff is asking this Court to review the CRA and determine if the application of the CRA – sale of the Ranch – affects the status of the Plaintiff as a federal tribe. Plaintiff contends that neither the purchase of the Ranch nor the sale of the Ranch affects the status of the Plaintiff as an Indian Tribe. Plaintiff contends that the June 9, 2015 Decision is an abuse of discretion because it misreads the CRA. Thus, Plaintiff's claim under the APA is viable because it implicates a decision by the agency of the United States that directly affects Plaintiff.

CONCLUSION

For reasons discussed, Plaintiff respectfully requests that the Court deny the Motion.

Dated: May 4, 2017

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By: _____
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