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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MANUEL CORRALES, JR., a California resident,

Plaintiff,

v.

AMY DUTSCHKE, in her official capacity as the Regional Director of the Bureau of Indian Affairs, Sacramento, California; et al.,

Defendants.

Case No.: 23-cv-1876-JLS-DDL

DEFENDANTS' MOTION TO DISMISS

Date: January 25, 2024
Time: 1:30 p.m.
Judge: Hon. Janis L. Sammartino

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Cases

Statutes

Rules

MOTION

Defendants move to dismiss Plaintiff's complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). This motion is based on the following Memorandum of Points and Authorities, as well as all pleadings and filings in this action, and upon any such other matters or argument that the Court may permit.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through this action, Plaintiff seeks to have the Court compel Defendants to make a statement. Specifically, Plaintiff requests that this Court order Defendants to state that a particular individual (Silvia Burley) had sufficient tribal authority at a particular time (December 2007) to enter into a contract with Plaintiff on behalf of a particular tribe (the California Valley Miwok Tribe). On June 24, 2023, Plaintiff asked Defendants to provide such a statement, and Defendants declined Plaintiff's request. While labeled as a mandamus claim, Plaintiff seeks to compel a discretionary and non-ministerial duty that he has no clear right to request. Further, to the extent Plaintiff alleges that Defendants' decision to decline Plaintiff's request was arbitrary and capricious under the Administrative Procedures Act (APA), he has failed to establish subject matter jurisdiction and failed to state a claim. There are simply no statutory or regulatory mandates to provide Plaintiff the relief he seeks, particularly given his request concerns intratribal disputes. This case should therefore be dismissed for lack of subject matter jurisdiction and/or failure to state a claim. *See* Fed. R. Civ. P. 12(b)(1), 12(b)(6).

II. FACTUAL BACKGROUND

In December 2007, Plaintiff entered into an agreement (the Fee Agreement) to provide legal representation and services to the California Valley Miwok Tribe (the Tribe). ECF No. 1 at 4, ¶ 17. The Fee Agreement was signed by Silvia Burley, purportedly on behalf of the Tribe. ECF No. 1 at 4, ¶ 17. Based on the terms of the Fee Agreement, Plaintiff would be paid for his services from funds held by the California Gambling Control Commission (the Commission) for the Tribe in a Revenue Sharing

Trust Fund (RSTF). ECF No. 1 at 4, ¶ 17. Plaintiff's services under the Fee Agreement were terminated in May 2020. ECF No. 1 at 5, ¶ 19.

The history of the Tribe is long and complex. The Tribe has faced long-running leadership and membership disputes, which has resulted in countless proceedings in federal courts, state courts, federal administrative agencies, and state administrative agencies.[1] Although federally recognized, the Tribe is unorganized with no recognized tribal leader or tribal government. The leadership and membership disputes have been ongoing since at least 1999 and have involved various factions of purported members and leaders; including a faction that recognizes Burley as its tribe leader.

As a non-gaming tribe in California, the Tribe is entitled to annual payments of $1.1 million, drawn from the licensing fees paid by gaming tribes to the Commission and deposited into the RSTF. Around 2005, the Commission "became aware of a dispute over the [T]ribe's membership and leadership as evidenced by ongoing proceedings and litigation involving the [Bureau of Indian Affairs' (BIA's)] relationship with the Tribe." *California Valley Miwok Tribe v. California Gambling Control Commission*, 231 Cal. App. 4th 885, 889 (2014). Based on its awareness of the dispute, beginning in 2005, the Commission suspended its disbursements to the Tribe. *Id.* Specifically, the Commission "suspended its disbursement of the RSTF funds to the Tribe 'pending [the] BIA's recognition of an authorized . . . Tribe leader or leadership group with which to conduct its government[-]to[-]government business.'" *Id.* at 890. A California court of appeal approved the Commission's decision to withhold the RSTF

[1] Multiple courts have provided extensive factual and legal background of the Tribe's leadership and membership disputes. *See, e.g.*, *California Valley Miwok Tribe v. Jewell*, 5 F. Supp. 3d 86 (D.D.C. 2013); *California Valley Miwok Tribe v. Zinke*, No. 2:16-01345 WBS CKD, 2017 WL 2379945 (E.D. Cal. June 1, 2017), *aff'd* 745 Fed. App'x 46 (9th Cir. 2018); *California Valley Miwok Tribe v. California Gambling Control Commission*, 231 Cal. App. 4th 885, 889 (2014).

money from the Tribe. *Corrales v. California Gambling Control Commission*, 93 Cal. App. 5th 286, 291 (2023).[2]

Plaintiff "was retained by Burley in 2007 to attempt to obtain the release of the RSTF money that the Commission was withholding from the Tribe." *Corrales*, 93 Cal. App. 5th at 294. After he entered into the Fee Agreement with Burley, Plaintiff sought BIA approval of the Fee Agreement in 2009. ECF No. 1 at 5, ¶ 18. BIA responded to Plaintiff in 2010, declining to take any action pursuant to a 2000 amendment to 25 U.S.C. § 81 (114 Stat. 46) no longer requiring BIA to approve federally recognized tribes' contracts with attorneys. ECF No. 1 at 24.

In 2019, Plaintiff initiated state court proceedings against the Commission, seeking "a court order establishing that the attorney fees that he was allegedly owed based on his Fee Agreement with Burley should be paid to him directly from the Tribe's RSTF money before that money was released to the Tribe." *Corrales*, 93 Cal. App. 5th at 295. The trial court dismissed his action for lack of subject matter jurisdiction "because it could not decide [Plaintiff's] claims without deciding the purely intratribal issue of whether Burley was, in fact, a member and leader of the Tribe when she entered into the Fee Agreement with Corrales in 2007." *Id.* at 302. The court of appeal affirmed. *Id.* at 295.

In light of the results of his state court litigation concerning the Fee Agreement, Plaintiff wrote a letter to Defendants on June 24, 2023. ECF No. 1 at 11-13. Within his letter, Plaintiff explains that he is entitled to and seeking payment of legal fees and asks that Defendants provide Plaintiff "a short letter clarifying that at the time Burley executed the Fee Agreement with [Plaintiff, her] authority included signing the subject Fee Agreement for legal services that included litigation on behalf of the Tribe." ECF

[2] In 2019, it was alleged that the Tribe's RSTF amount totaled over $16 million. *Corrales*, 93 Cal. App. 5th at 295.

No. 1 at 12. On September 27, 2023, Defendants responded and declined his request (the BIA Letter). ECF No. 1 at 60.

III. LEGAL STANDARDS

A. Rule 12(b)(1): Lack of Subject Matter Jurisdiction

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) challenges the Court's subject matter jurisdiction. A lack of jurisdiction is presumed unless the party asserting jurisdiction establishes that it exists. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Thus, the plaintiff bears the burden of proof on a Rule 12(b)(1) motion to dismiss for lack of jurisdiction. *Sopcak v. N. Mountain Helicopter Serv.*, 52 F.3d 817, 818 (9th Cir. 1995). If the court determines that it does not have subject matter jurisdiction, it must dismiss the claim. Fed. R. Civ. P. 12(h)(3).

B. Rule 12(b)(6): Failure to State a Claim

A Federal Rule of Civil Procedure 12(b)(6) motion to dismiss "tests the legal sufficiency of a claim." *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). "Rule 12(b)(6) is read in conjunction with Rule 8(a), which requires not only 'fair notice of the nature of the claim, but also grounds on which the claim rests.'" *Zixiang Li v. Kerry*, 710 F.3d 995, 998-99 (9th Cir. 2013) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 n.3 (2007)). To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While allegations of material fact are taken as true and construed in the light most favorable to the non-moving party, the court need not accept as true allegations that are conclusory, legal conclusions, unwarranted deductions of fact, or unreasonable inferences. *Twombly*, 550 U.S. at 555 ("a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do"). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Iqbal*, 556 U.S. at 679 (quoting Fed.

R. Civ. P. 8(a)(2)). A court may consider matters of public record on a motion to dismiss, and in doing so "does not convert a Rule 12(b)(6) motion to one for summary judgment." *Mack v. South Bay Beer Distributors*, 798 F.2d 1279, 1282 (9th Cir. 1986), *abrogated on other grounds, Astoria Federal Savings and Loan Ass'n v. Solimino*, 501 U.S. 104, 111 (1991).

IV. ARGUMENT

A. Plaintiff's Request to Compel Agency Action Should be Dismissed for Lack of Subject Matter Jurisdiction or, Alternatively, Failure to State a Claim

Plaintiff's second cause of action improperly seeks injunctive relief. *See* ECF No. 1 at 7-8, ¶¶ 25-29. Specifically, Plaintiff seeks to have the Court order Defendants to state that Burley had authority to sign the Fee Agreement on behalf of the Tribe in December 2007. ECF No. 1 at 8, ¶ 29. This cause of action appears to seek mandamus relief under 28 U.S.C. § 1361. *See* ECF No. 1 at 3, ¶ 7. However, to the extent Plaintiff is seeking to compel agency action under 5 U.S.C. § 706(1), *see* ECF No. 1 at 3, ¶ 9, his claim fails for the same reasons as his mandamus claim fails. *See Independence Mining Co. v. Babbitt*, 105 F.3d 502, 507 (9th Cir. 1997) ("[T]he Supreme Court has construed a claim seeking mandamus . . . 'in essence,' as one for relief under § 706 of the APA."). Plaintiff's request seeks to compel a non-ministerial and discretionary act beyond the limits of relief contemplated through mandamus. As Plaintiff has no right to seek performance of his request, the Court lacks subject matter jurisdiction over Plaintiff's claim, and Plaintiff has failed to state a claim for such relief.

Mandamus is an extraordinary remedy. *See Cheney v. U.S. Dist. Ct. for Dist. of Columbia*, 542 U.S. 367, 392 (2004) (Stevens, J., concurring); *Kildare v. Saenz*, 325 F.3d 1078, 1084 (9th Cir. 2003). It is intended to provide a remedy only when a plaintiff has exhausted all other avenues of relief and only if the defendant owes a clear nondiscretionary duty. *Heckler v. Ringer*, 466 U.S. 602, 616 (1984). The Ninth Circuit has articulated that mandamus "is available to compel a federal official to perform a duty only if: (1) the individual's claim is clear and certain; (2) the official's duty is

nondiscretionary, ministerial, and so plainly prescribed as to be free from doubt[;] and (3) no other adequate remedy is available." *Kildare*, 325 F.3d at 1084 (citing *Patel v. Reno*, 134 F.3d 929, 931 (9th Cir. 1997)). If a plaintiff cannot satisfy all three threshold requirements, the claim must be dismissed for lack of subject matter jurisdiction. *Illinois v. Ferriero*, 60 F.4th 704, 714 (D.C. Cir. 2023).

Further, "the only agency action that can be compelled under the APA is action legally *required*." *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 63 (2004) (emphasis in original). Consistent with the tenet that mandamus is an extraordinary remedy, courts will correct only "transparent violations of a clear duty to act." *In re Aiken County*, 645 F.3d 428, 436 (D.C. Cir. 2011). "[A] claim under § 706(1) can proceed only where a plaintiff asserts that an agency failed to take a *discrete* agency action that it is *required to take*." *Norton*, 542 U.S. at 64 (emphasis in original). The Supreme Court noted that the purpose of the limited application of section 706(1) "is to protect agencies from undue judicial interference with their lawful discretion, and to avoid judicial entanglement in abstract policy disagreements which courts lack both expertise and information to resolve." *Id*. at 66. In particular, "[t]he prospect of pervasive oversight by federal courts over the manner and pace of agency compliance with [broad] congressional directives is not contemplated by the APA." *Id*. at 67.

"The party seeking mandamus must show that 'its right to issuance of the writ is clear and indisputable.'" *Vince v. Mabus*, 956 F. Supp. 2d 83, 87 (D.D.C. 2013) (quoting *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988)). "If a plaintiff has no legal entitlement to the relief sought, a 'clear and certain' claim cannot exist, and the writ will not lie." *Lowry v. Barnhart*, 329 F.3d 1019, 1021 (9th Cir. 2003). "Mandamus petitioners can satisfy neither of the first two requirements if the act they seek to compel is discretionary, as government officials have no clear duty to perform such acts and petitioners have no clear right to compel them to do so." *Thomas v. Holder*, 750 F.3d 899, 903-04 (D.C. Cir. 2014) (finding Attorney General has discretion

on whether and how to classify a controlled substance and could not be compelled to reclassify).

Here, Plaintiff "requests the Court order Defendants to clarify Burley's status as a 'person of authority' with respect to the Fee Agreement signed in 2007 with Plaintiff." ECF No. 1 at 8, ¶ 29. However, there is no mandatory, non-discretionary duty to provide a letter stating that a certain person had tribal authority to enter into a contract for legal services with Plaintiff in December 2007. Plaintiff himself acknowledges that there is no such mandatory, non-discretionary duty by failing to point to any statute or regulation that requires such agency conduct. To the contrary, as BIA indicated in its 2010 letter to Plaintiff declining to act on his request at that time, and acknowledged by Plaintiff in his complaint, Congress has directed the Department of the Interior that there is no mandate to approve or acknowledge agreements before they are entered into between tribes and attorneys. *See* ECF No. 1 at 5, ¶ 18; ECF No. 1 at 24; 25 U.S.C. § 81(f)(1) (providing that "[n]othing in this section shall be construed to . . . require the Secretary to approve a contract for legal services by an attorney"). Moreover, it is "a bedrock principle of federal Indian law that every tribe is capable of managing its own affairs and governing itself." *Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1263 (D.C. Cir. 2008); *see Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 n.32 (1978) ("A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community"); *Cahto Tribe of Laytonville Rancheria v. Dutschke*, 715 F.3d 1225, 1226 (9th Cir. 2013) (finding claims nonjusticiable where litigants seek "a form of relief that the federal courts cannot provide, namely, the resolution of the internal tribal leadership dispute"). "[T]he BIA has the authority to make recognition decisions regarding tribal leadership, but only when the situation has deteriorated to the point that recognition of some government was essential for *Federal* purposes. . . . Internal dysfunction or paralysis within tribal governance standing alone, however, does not permit the BIA to decide who constitutes the legitimate leadership of a tribe." *Cayuga Nation v. Tanner*, 824 F.3d

321, 328 (2d Cir. 2016) (internal citations and quotations omitted). "Claims are therefore nonjusticiable where litigants seek a form of relief that the federal courts cannot provide, namely, the resolution of the internal tribal leadership dispute." *Alturas Indian Rancheria v. Bernhardt*, No. 19-16885, 2023 WL 385176, at *1 (9th Cir. Jan. 25, 2023) (internal quotation and citation omitted).

Further, Plaintiff is not simply asking BIA to "clarify" if a certain individual had authority to enter into the Fee Agreement on behalf of the Tribe; Plaintiff is asking for BIA to state that Burley had tribal authority to sign the Fee Agreement for the Tribe. *See* ECF No. 1 at 1,¶ 1; ECF No. 1 at 2, ¶ 3; ECF No. 1 at 12 ("I am hereby requesting, a short letter clarifying that at the time Burley executed the Fee Agreement with me . . . she was authorized to initiate lawsuits on behalf of the Tribe, given her BIA-designation at the time as a 'person of authority,' and that authority included signing the subject Fee Agreement for legal services."); ECF No. 1 at 56 ("All I need is a short statement to the effect stating that on December 13, 2007, when Silvia Burley signed the Fee Agreement with Manuel Corrales, Jr., she was the designated 'person of authority' within the [Tribe], and she therefore had the authority to sign the Fee Agreement for the Tribe."); ECF No. 1 at 58 ("All I need is a short statement to the effect stating that on December 13, 2007, when Silvia Burley signed the Fee Agreement with Manuel Corrales, Jr., she was the designated 'person of authority' within the [Tribe], and she therefore had the authority to sign the Fee Agreement for the Tribe."); ECF No. 1 at 62 ("As set forth in my letter, I clearly state that I am asking for a one sentence letter stating to the effect that on December 13, 2007, when Silvia Burley signed the [] Fee Agreement with me, she was the designated 'person of authority' with the [Tribe], and therefore she had the authority to sign the Fee Agreement for the Tribe.").

Compelling the substance of an agency response is clearly discretionary and Plaintiff's claim, thus, cannot be clear and certain. *See Patel*, 134 F.3d at 931-32 (finding that mandamus jurisdiction exists "when the suit challenges the authority of

the consul to take or fail to take an action as opposed to a decision taken within the consul's discretion"). The Court order requested is beyond the jurisdiction of the court. *See Norton*, 542 U.S. at 65 (within certain circumstances, "a court can compel the agency to act, but has no power to specify what the action must be"). Accordingly, Defendants respectfully request that the Court dismiss Plaintiff's claim seeking to compel agency action for lack of subject matter jurisdiction.

Plaintiff also fails to state a claim to compel agency action upon which relief may be granted. *See Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008) (dismissal under Rule 12(b)(6) is appropriate when the complaint lacks a cognizable legal theory or the absence of sufficient facts to support a cognizable legal theory). Plaintiff cannot prevail on any claim seeking to compel agency action because, as explained above, it cannot show that his claim is "clear and certain" and that Defendants have a duty that "is nondiscretionary, ministerial, and so plainly prescribed as to be free from doubt." *Kildare*, 325 F.3d at 1084; *Patel*, 134 F.3d at 931. Accordingly, Plaintiff's claim seeking to compel agency action fails for failure to state a claim.

B. Plaintiff's Request for Review of the BIA Letter Under 706(2)(A) Should be Dismissed for Lack of Subject Matter Jurisdiction

Plaintiff also argues that the BIA Letter was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" under 5 U.S.C. § 706(2)(A). ECF No. 1 at 8, ¶¶ 30-33. However, given that the BIA Letter as a response to Plaintiff's request was committed to the agency's discretion and there exists no meaningful standard against which this Court may judge the response, there is no jurisdiction for this Court to review the agency's action.

The APA provides that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702. However, the APA also places limits on when agency action is subject to judicial review. "Agency

action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." 5 U.S.C. § 704; *Navajo Nation v. Dep't of the Interior*, 876 F.3d 1144, 1171 (9th Cir. 2017) ("[]§ 704's requirement that to proceed under the APA, agency action must be final or otherwise reviewable by statute is an independent element without which courts may not determine APA claims"). Reviewable "agency action" is defined to include "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). "While this definition is 'expansive,' federal courts 'have long recognized that the term [agency action] is not so all-encompassing as to authorize . . . judicial review over everything done by an administrative agency.'" *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800-01 (9th Cir. 2013) (quoting *Fund for Animals, Inc. v. U.S. Bureau of Land Management*, 460 F.3d 13, 19 (D.C. Cir. 2006)). Further, to qualify as "final," the challenged agency action must "mark the consummation of the agency's decision making process" and "must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997).

While Plaintiff labels the BIA Letter as a "final agency action," the Letter is not a final agency action as contemplated by the APA. The agency's discretionary decision not to state that Burley had authority is not a "final agency action" because it does not determine the rights or obligations of the parties of the present matter, nor are there legal consequences flowing from the act. *See Gallo Cattly Co. v. U.S. Dep't of Agriculture*, 159 F.3d 1194, 1199 (9th Cir. 1998); *Safeco Insurance Co. of America v. Nelson*, 468 F. Supp. 3d 1291, 1299 (S.D. Cal. 2020).

Further, there is no meaningful standard upon which the Court can review the agency's discretionary response. Agency actions are presumptively reviewable under the APA. *Perez v. Wolf*, 943 F.3d 853, 860 (9th Cir. 2019). This presumption in favor of judicial review of final agency actions, however, is overcome "in 'the rare instances where statutes are drawn in such broad terms that in a given case there is no law to

apply,' thereby leaving the court with no 'meaningful standard against which to judge the agency's exercise of discretion.'" *Id.* (quoting *Webster v. Doe*, 486 U.S. 592, 599 (1988)). When there is "no law to apply," judicial review under the APA is not available. *Id.* at 861; *Hyatt v. Office Management & Budget*, 908 F.3d 1165 (9th Cir. 2018) (holding that agency action undertaken pursuant to the Paperwork Reduction Act's direction that the agency must take "appropriate remedial action, if necessary" is not reviewable and "committed to the agency's discretion" because "[t]here is no express standard in the PRA to guide [the agency] in determining whether any particular remedy is either 'appropriate' or necessary'"). Here, there is simply "no law to apply" and no meaningful standard against which to judge the agency's discretionary response. Notably, Plaintiff points to no standard within his complaint.

Accordingly, Plaintiff's request to review the BIA Letter under § 706(2)(A) should be dismissed for lack of subject matter jurisdiction.

C. Plaintiff's Request for Review of the BIA Letter Under 706(2)(A) Should be Dismissed for Failure to State a Claim

Alternatively, if the Court finds that it has jurisdiction over Plaintiff's 706(2)(A) claim, Plaintiff has also failed to state a claim upon which relief may be granted. Plaintiff's APA claim alleges that BIA's refusal to state that Burley had authority to enter into the Fee Agreement on behalf of the Tribe in 2007 was arbitrary and capricious and contrary to law. ECF No. 1 at 29-30, ¶¶ 2-6. However, to support this allegation, Plaintiff only points to his own dissatisfaction with the response.

A Court may overturn an agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Review under the APA is deferential, and a court must not "substitute its judgment for that of the agency." *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see Kern County Farm Bureau v. Allen*, 450 F.3d 1072, 1076 (9th Cir. 2006) ("The arbitrary and capricious standard is highly deferential, presuming the agency action to be valid and requires affirming the agency action if a reasonable basis

exists for its decision."). Courts "have held it an abuse of discretion for [an agency] to act if there is no evidence to support the decision or if the decision was based on an improper understanding of the law." *Tongatapu Woodcraft Hawaii Ltd. v. Feldman*, 736 F.2d 1305, 1308 (9th Cir. 1984) (internal quotations omitted).

Plaintiff does not identify any regulation, rule, or procedure that was not followed by Defendants. Instead, Plaintiff labels Defendants' response as arbitrary and capricious based on his dissatisfaction. Plaintiff's allegations are "unadorned, the-defendant-unlawfully-harmed-me accusation[s]." *Iqbal*, 556 U.S. at 662. The Court should not accept speculative, implied allegations in the complaint; rather, it must "examine whether [they] follow from the description of facts as alleged by the plaintiff." *Holden v. Hagopian*, 978 F.2d 1115, 1121 (9th Cir. 1992) (citation omitted); *see Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) ("Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences."). As explained, Plaintiff cannot point to any procedure, statute, or regulation that was violated, missed, or not considered. Accordingly, his APA claim should also be dismissed for failure to state a claim.

D. Plaintiff's Declaratory Judgment Claim Should be Dismissed

Plaintiff's declaratory relief cause of action is an improper cause of action. *See* ECF No. 1 at 6-7, ¶¶ 23-24. "The 'Declaratory Judgment Act creates a remedy for litigants but is not an independent cause of action.'" *Renovate America, Inc. v. Lloyd's Syndicate 1458*, No. 3:19-cv-01456-GPC-WVG, 2019 WL 6716735, at *5 (S.D. Cal. Dec. 10, 2019) (quoting *Cty. of Santa Clara v. Trump*, 267 F. Supp. 3d 1201, 1215-16 (N.D. Cal. 2017)); *see also* 28 U.S.C. § 2201 (referring to the Declaratory Judgment Act as a "remedy"). "[T]he Declaratory Judgment Act is not a jurisdictional statute. It does not create subject matter jurisdiction where none otherwise exists. It only creates a particular kind of remedy available in actions where the district court already has jurisdiction to entertain a suit." *Jarrett v. Resor*, 426 F.2d 213, 216 (9th Cir. 1970). Accordingly, because Plaintiff's complaint seeks to use the Declaratory Judgment Act

as an independent cause of action to obtain affirmative relief, it must be dismissed. Further, given Plaintiff's mandamus and APA claims lack jurisdiction, and fail to state claim, Plaintiff's declaratory relief claim must also be dismissed. *See City of Reno v. Netflix, Inc.*, 52 F.4th 874, 878 (9th Cir. 2022) ("The Declaratory Judgment Act does not provide a cause of action when a party, such as [Plaintiff], lacks a cause of action under a separate statute and seeks to use the Act to obtain affirmative relief.").

E. The Court Lacks Jurisdiction to Decide Tribal Authority

Although Plaintiff provides no legal basis for the Court to consider his request, Plaintiff also requests that the Court find that Burley had the proper tribal authority in 2007 to enter into the Fee Agreement on behalf of the Tribe. *See* ECF No. 1 at 2, ¶ 3; *id.* at 9, ¶¶ 1, 3 (Prayer for Relief). However, "federal courts lack authority to resolve internal disputes about tribal law." *Cayuga Nation*, 824 F.3d at 327 (citing *Shenandoah v. U.S. Dep't of Interior*, 159 F.3d 708, 712 (2d Cir. 1998); *Runs After v. United States*, 766 F.2d 347, 352 (8th Cir. 1985)). "The Supreme Court has uniformly recognized that one of the fundamental aspects of tribal existence is the right to self-government." *Alturas Indian Rancheria*, 2023 WL 385176, at *1 (internal quotation and citation omitted). Decisions regarding tribal leadership and tribal authority are internal disputes centering around tribal law. *See Santa Clara Pueblo*, 436 U.S. at 72 n.32 ("A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community."); *see also Cal. Valley Miwok Tribe*, 515 F.3d at 1263. Accordingly, Plaintiff's request of the Court must be dismissed.

V. CONCLUSION

For the foregoing reasons, the Court should rule Plaintiff has failed to establish subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) and has failed to state a claim under Fed. R. Civ. P. 12(b)(6).

Dated: December 18, 2023

Respectfully Submitted,

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