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In pro per

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

MANUEL CORRALES, JR., a California resident,

Plaintiff,

vs.

AMY DUTSCHKE, in her official capacity as the Regional Director of the Bureau of Indian Affairs, Sacramento, California; DEB HAALAND, in her official capacity as U.S. Secretary of Interior; and BRYAN NEWLAND, in his official capacity as Assistant Secretary of the Interior – Indian Affairs,

Defendants.

Case No. 3:23-cv-01876-JLS-DDL

OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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

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OTHER AUTHORITIES

Plaintiff MANUEL CORRALES, JR., ("Corrales") submits the following Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss.

I.

INTRODUCTION

Plaintiff, a licensed attorney who formerly represented the California Valley Miwok Tribe ("the Tribe" or "the Miwok Tribe"), a federally-recognized Indian tribe, for almost 13 years, has sued the officials of the U.S. Department of Interior ("DOI")/Bureau of Indian Affairs ("BIA") (collectively "the BIA") under 5 U.S.C §701(b)(2) of the Administrative Procedure Act for their failure to act or otherwise acting inconsistently with prior decisions concerning the scope of their previous decisions designating a Tribal member as a "person of authority" for the Tribe. Plaintiff claims that the Defendants' action/inactions have caused him to lose the right to recover attorney's fees for his work for the Tribe. (ECF No. 1 at 6, ¶ 22). He seeks declaratory relief that their prior decisions designating the Tribal leader as a "person of authority" within the Tribe included authority to hire him as the Tribe's attorney. (ECF No. 1 at 6, ¶ 24).

Specifically, Plaintiff sued the Tribe for recovery of his attorney's fees in the California Superior Court. (ECF No. 1 at 2, ¶ 2). Since the Tribe is currently involved in a Tribal leadership dispute, and has been since 1999, the rival faction opposed the suit and alleged that the Tribal member who signed the Fee Agreement with Plaintiff did not have the authority to do so. (ECF No. 1 at 10, Ex. "1" and ECF No. 1 at 11, Ex. "1" thereto). Although the Tribal member conceded in sworn deposition testimony that she had the authority to retain Plaintiff as the BIA-designated "person of authority," (ECF No. 1 at 67, Ex. "7") both factions opposed Plaintiff's suit on lack of subject matter jurisdiction, claiming that the trial court would be forced to decide a Tribal leadership dispute in resolving Plaintiff's claims for his fees, since the validity of his fee agreement was contested. The trial court agreed, and dismissed Plaintiff suit without prejudice for lack of subject matter jurisdiction. The State Court of Appeal affirmed in a published decision. (ECF No. 1 at 2, ¶ 2).

Although the Court of Appeal acknowledged federal case law allowing judicial deference to the BIA's interim decision of who represents an Indian tribe involved in a

tribal leadership dispute for federal contract funding to conclude that that designated person also has the authority to initiate lawsuits for the Tribe, in dicta, it declined to extend that principle to, or equate it with, authority to contract with an attorney. (ECF No. 1 at 6, ¶ 21).

Plaintiff then contacted the BIA and sought clarification of its earlier decisions designating the Tribal member, Silvia Burley ("Burley"), as the "person of authority" within the Tribe, a designation which she still had at the time she signed Plaintiff's Agreement for the Tribe. (ECF No. 1 at 2, ¶ 3). Plaintiff reminded the BIA that in 2009 he had previously sought approval of his 2007 Fee Agreement with Burley during the time the BIA had designated her as a "person of authority" for the Tribe, and that he had relied upon that designation to enter into the Fee Agreement with Burley, and provide over 13 years of legal service for the Tribe. (ECF No. 1 at 10, Ex. "1"). Instead of clarifying its previous decisions designating Burley as a "person of authority" for the Tribe to include authority to hire lawyers, including Plaintiff, the BIA refused to provide that clarification, and stated inexplicably that it would not "support [Corrales's] assertion that [he] is entitled to attorney's fees for [his] work related to the California Valley Miwok Tribe." (ECF No. 1 at 59, Ex. "4").

As gleaned from the allegations in the Complaint, and the attached exhibits thereto, beginning in 2004, the BIA designated Burley multiple times as a "person of authority" within the Tribe—a designation she used to contract with the federal government (the BIA) for 638 federal contract funding for the Tribe. (Ex. "1" to Complaint, and Exhibits attached thereto). These designations came in the form of decisions. In these decisions, the BIA did not "clarify" or state in any fashion the scope of Burley's authority, including whether that designation authorized her to contract with lawyers. However, Burley regularly submitted a **budget** to the BIA, per statutory requirements, as part of her application for 638 contract funding for the Tribe. (ECF No. 1 at 10, Ex. "1" and ECF No. 1 at 41, Ex. "8" thereto). Part of that proposed budget included payment for legal services. Plaintiff was initially paid for a few months from these 638 federal contract funds that Burley received from the BIA. (ECF No. 1 at 4, ¶ 17). The BIA was also mandated by statute to audit and examine records Burley was required to keep on the funds she received for the Tribe under these 638 federal

contracts. In auditing Burley's records, the BIA knew or should have known that funds were paid to Plaintiff under his Fee Agreement, and therefore knew that Burley had paid him under her authority as a "person of authority" for the Tribe.

During the time Burley was the BIA-designated "person of authority" for the Tribe, Plaintiff contacted the BIA in 2007 and requested that it approve the Fee Agreement he had entered into with Burley. (ECF No. 1 at 10, Ex. "1" and ECF No. 1 at 11, Ex. "1" thereto). The BIA told Plaintiff he did not need BIA approval, and took no action on his request. (ECF No. 1 at 10, Ex. "1" and ECF No. 1 at 24, Ex. "2" thereto). This led Plaintiff to believe that Burley had the authority to contract with him on behalf of the Tribe based on her status as the "person of authority" for the Tribe. (ECF No. 1 at 2, ¶ 4).

The BIA knew or should have known that should there be a dispute over Plaintiff's fees with the Tribe, Plaintiff's claim would be barred for lack of subject matter jurisdiction, if there was still a leadership dispute and the rival faction challenged Burley's authority to contract with Plaintiff. It knew that Plaintiff had engaged in legal services with the Tribe through Burley, because it was a party to some of the litigation with Plaintiff as the Tribe's attorney of record, and because it audited Burley's records where she paid Plaintiff for a few months with 638 federal contract funds. (ECF No. 1 at 2, ¶ 4).

Plaintiff's request that the BIA clarify its previous decisions designating Burley as the Tribe's "person of authority" was not a stand-alone request. It was a request that extended back to the BIA's 2004 and subsequent decisions, and the BIA's 2010 response to Plaintiff's request for approval of his Fee Agreement, that impacted, and presently impacts, Plaintiff's right to recover his earned fees for work done for the Tribe. Instead of clarifying its previous decisions regarding Burley's authority in 2007, the BIA stated simply that it would refuse to assist Plaintiff in the recovery of his fees. This was an arbitrary and capricious final agency decision which was an abuse of discretion or otherwise not in accordance with the law, and which has caused Plaintiff to suffer his constitutionally protected property rights in recovering his earned legal fees with the Tribe.

II.

LEGAL STANDARD

A. Rule 12(b)(1) motion for lack of subject matter jurisdiction.

Where a Rule 12(b)(1) motion attacks the facial allegations of the complaint, together with documents attached to the complaint, the court must consider those allegations of the complaint as true. Safe Air for Everyone v. Meyer (9th Cir. 2004) 373 F.3d 1035, 1039. In addition, "imperfections in pleading style will not divest a federal court of jurisdiction where the complaint as a whole reveals a proper basis for jurisdiction." Cook v. Winfrey (7th Cir. 1998) 141 F.3d 322, 326.

B. Rule 12(b)(6) motion to dismiss for failure to state a claim.

Rule 12(b)(6) motions to dismiss for failure to state a claim are "especially disfavored" and are "rarely granted." Broam v. Bogan (9th Cir. 2003) 320 F.3d 1023, 1028. They are "especially disfavored" where the complaint sets forth a novel legal theory "that can best be assessed after factual development." McGary v. City of Portland (9th Cir. 2004) 386 F.3d 1259, 1270.

On a motion to dismiss under Rule 12(b)(6), the court must "accept as true all of the factual allegations set out in plaintiff's complaint, draw inferences from those allegations in the light most favorable to plaintiff, and construe the complaint liberally." L-7 Designs, Inc. v. Old Navy, LLC (2nd Cir. 2011) 647 F.3d 419, 429. All reasonable inferences from the facts alleged are drawn in plaintiff's favor in determining whether the complaint states a valid claim. Barker v. Riverside County Office of Ed. (9th Cir. 2009) 584 F.3d 821, 824. On the other hand, courts "are not bound to accept as true *legal conclusions* couched as a factual allegation." Bell Atlantic Corp. v Twombly (2007) 550 U.S. 544, 555. The sole issue raised by a Rule 12(b)(6) motion is whether the facts pleaded would, if established, support a plausible claim for relief. Thus, no matter how improbable the facts alleged are, they must be accepted as true for purposes of the motion. Twombly, supra at 556; Ocasio-Hernandez v. Fortuno-Burset (1st Cir. 2011) 640 F.3d 1, 12-13 (court may not "attempt to forecast a plaintiff's likelihood of success on the merits"). Subject to the "plausibility" requirement, "a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts alleged is improbable, and that a recovery is very remote and unlikely." Twombly, supra. In

addition, the question of plaintiff's ability to prove his or her allegations, or possible difficulties in making such proof, is generally of no concern in ruling on a Rule 12(b)(6) motion. Courts are only concerned with "whether [plaintiffs] are entitled to offer evidence to support their claims." Nami v. Fauver (3rd Cir. 1996) 82 F.3d 63, 65; Allison v. California Adult Authority (9th Cir. 1969) 419 F.2d 822, 823.

The test in ruling on a Rule 12(b)(6) motion to dismiss is whether the facts, as alleged, support any valid claim entitling plaintiff to relief … not necessarily the one intended by plaintiff. Thus, a complaint should not be dismissed because plaintiff erroneously relies on the wrong legal theory if the facts alleged support any valid theory. Alvarez v. Hill (9th Cir. 2008) 518 F.3d 1152, 1158.

III.

ARGUMENT

A. THE TRIAL COURT HAS SUBJECT MATTER JURISDICTION TO REVIEW THE BIA'S FAILURE TO ACT, AND ACTING INCONSISTENTLY WITH ITS PRIOR DECISIONS, IN VIOLATION OF A NON-DISCRETIONARY DUTY UNDER THE APA

1. Legal standard under the APA.

The Administrative Procedure Act ("APA") requires the Court to "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 law." 5 U.S.C. §706(2)(A). "Final agency action for which there is no other adequate remedy in a court [is] subject to judicial review." 5 U.S.C. §704. Judicial review under the APA is not proper, however, if the "agency action is committed to agency discretion by law." 5 U.S.C. §701(a)(2). The APA creates a "strong presumption that Congress intends judicial review of administrative action." Bowen v. Mich. Acad. Of Family Physicians (1986) 476 U.S. 667, 670.

In conducting arbitrary and capricious review of a challenged action, the court is obligated to defer to the agency, if it "has considered the relevant factors and articulated a 'rational connection between the facts found and the choice made.'" Nat.'l Ass'n of Clean Air Agencies v. EPA (D.C. Cir. 2007) 489 F.3d 1221, 1228. This is not to say, however, that courts are expected to "rubber stamp" agency decisions. Natural Res. Def. Council, Inc. v. Daley (D.C. Cir. 2000). Courts need not defer to "conclusory or

unsupported suppositions." United Techs. Corp. v. U.S. Dep't of Def. (D.C. Cir. 2010) 601 F.3d 557, 562. The Court's job is "to evaluate the rationality of [the agency's] decision." Mississippi v. EPA (D.C. Cir. 2013) 744 F.3d 1334, 1348.

Under the APA, the District Court has jurisdiction to review more than just affirmative agency action. "Agency action" in the statute "includes the whole or 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); see 5 U.S.C. §701(b)(2) (referring to section 551 for the definition of "agency action"); Aguayo v. Jewell (9th Cir. 2016) 827 F.3d 1213, 1223. The BIA's denial of relief and its "failure to act" constitutes a "final agency action" subject to judicial review, if it cannot be appealed to a superior authority with the Department of Interior. Fort Berthold Land and Livestock Assoc. v. Anderson (D.N.D. 2005) 361 F.Supp.2d 1045, 1049; see also Coosewoon v. Meridian Oil Co. (10th Cir. 1994) 25 F.3d 920, 924 ("Under Department of Interior regulations, if an agency decision is subject to appeal within the agency, a party must appeal the decision to the highest authority within the agency before judicial review is available"); 25 C.F.R. §2.6(c) ("Decisions made by the Assistant Secretary—Indian Affairs shall be final for the Department and effective immediately unless the Assistant Secretary—Indian Affairs provides otherwise in the decision").

Agency action may be deemed "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" when: (1) the agency has failed to provide a reasoned explanation, (2) the record belies the agency's conclusion, (3) the agency's rationale is "so implausible that it could not be ascribed to a difference in view or the product of agency expertise," or (4) **the agency has inexplicably acted inconsistently with its prior decisions**. See Organized Vill. Of Kake v. U.S. Dep't of Agric. (9th Cir. 2015) 795 F.3d 956, 966; see also CVMT v. Jewell, 5 F.Supp.3d at 96.

2. The BIA's refusal to clarify Burley's authority in 2007 was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Defendants argue that this court lacks subject matter jurisdiction over Plaintiff's Complaint, because Plaintiff seeks "mandamus" relief for an order compelling the BIA to "provide a letter" and "clarify" Burley's "tribal authority to enter into a contract for legal services with Plaintiff in December 2007," which they assert is a "non-discretionary duty"

which cannot be compelled under the APA. (Def. PAs, page 7, lines 3-7). Defendants make the same argument with respect to its Rule 12(b)(6) motion to dismiss for failure to state a claim. This contention is without merit, and misconstrues Plaintiff's claims for relief.

Plaintiff's claims are grounded on the BIA's violation of the APA, which arose from its 2010 decision, pursuant to 25 U.S.C. §81, to take no action on Plaintiff's request for approval of his Fee Agreement with the Miwok Tribe signed by Burley whom the BIA had previously designated as a "person of authority" for the Tribe. They are also grounded on the BIA's congressionally delegated broad duty and power "to manage all Indian affairs, and all **matters** arising out of Indian relations." 25 U.S.C. §2; CVMT v. Jewell (D.C.C. 2013) 5 F.Supp.3d 86, 97. Thus, this broad power to oversee "all matters arising out of Indian relations" necessarily includes the "matter" or event of the execution of Plaintiff's Fee Agreement by Burley whom the BIA had designated as a "person of authority" within the Tribe. For example, prior to 25 U.S.C. §81's 2000 amendment, the BIA had the "power to cancel contracts between a tribe and its attorney for cause by appropriate administrative action." The [BIA's] approval of the contract "[was] no bar to such cancellation for cause." Udall v. Littell (D.C. Cir. 1966) 366 F.2d 668, 674; see also CVMT v. U.S. (D.C. Cir. 2008) 515 F.3d 1262, 1267 (holding that 25 U.S.C §2 "extensive grant of authority gives the Secretary broad power to carry out the federal government's unique responsibilities with respect to Indians"). There is no reason to conclude that the BIA lost management oversight over legal contracts between lawyers and federally-recognized Indian tribes, after the 2000 amendment of 25 U.S.C. §81. It still retains trust authority over the affairs of Indian tribes in general, including the affairs under the unique facts presented here.

In addition, Burley used her BIA-designated position as a "person of authority" within the Tribe to submit a **budget** to the BIA for approval of 638 federal contract funding, and that budget included funding for legal services. Under 25 U.S.C. §5329 and §5330, when read together, the BIA has a mandatory duty to monitor the performance of its 638 self-determination contracts with federally-recognized Indian tribes to ensure compliance. See Brown v. Haaland (D.Nev. 2022) 604 F.Supp.3d 1059, 1082-1083 (concluding that 25 U.S.C. §5329-5330, when read together, confer a

mandatory duty on the BIA to monitor 638 self-determination contracts with Indian tribes, and a mandatory duty to investigate complaints that the tribe is violating rights of non-party signatories); see also Martin v. Billings Area Director, BIA (1991) 19 IBIA 279, 1991 WL 279613 (noting that the BIA may have a duty to act and investigate a non-Indian sub-contractor's complaint that the tribe improperly terminated his subcontract). In fact, Burley used 638 federal contact funds to initially pay Plaintiff's fees under the Fee Agreement, which, were part of the proposed budget the BIA approved for the Tribe's 638 federal contact funding.

For example, 25 U.S.C §5325 permits each tribe obtaining 638 federal contract funding from the BIA to use the funds for tribal operating expenses, including "**professional services**, other than services provided in connection with judicial proceedings by or against the United States." 25 U.S.C. §5325(k)(7). These services include legal services, i.e., hiring legal counsel like Burley did with Plaintiff in 2007. The recipient tribe is required to maintain records consisting of quarterly financial statements, which the BIA shall have access to for purposes of auditing and examining. 25 U.S.C. §5305(a)(1), (2)(b). The BIA provides these 638 federal contract funds pursuant to 25 U.S.C. §5325. Accordingly, the BIA had a mandatory duty to audit and examine the fees the Miwok Tribe paid to Plaintiff, and therefore knew or should have known that he was being paid under a Fee Agreement signed by Burley as the BIA-designated "person of authority" within the Tribe. It, therefore, had a duty to clarify whether the fees Burley was paying him under the Fee Agreement she signed were fees authorized by her as the Tribe's "person of authority." It cannot approve of those fees under its mandatory audit of the Tribe's 638 contract funding expenses, and then later, when Plaintiff seeks recovery of his fees after he is relieved as counsel, refuse to clarify whether Burley was authorized to contract with him for those approved fees.

As stated, at the time the BIA told Plaintiff he did not need BIA approval of his Fee Agreement with the Miwok Tribe, it had previously designated Burley as the "person of authority" for the Tribe, thus leading Plaintiff reasonably to believe that Burley had the authority to sign the Fee Agreement for the Tribe, despite the then pending Tribal leadership dispute which the BIA knew about. 25 U.S.C. §81 provides in essence that the BIA is not required to approve a Fee Agreement between a lawyer and an

Indian tribe, which it defines as a federally-recognized Indian tribe pursuant to 25 U.S.C. §5304. However, a federally-recognized Indian tribe, according to 25 U.S.C. §5304, is a tribe that is eligible to receive 638 federal contract funding, and at the time Plaintiff entered into his Fee Agreement with Burley on behalf of the Miwok Tribe, the Tribe was receiving 638 federal contact funding through Burley, who had contracted for those funds as the "person of authority" within the Tribe. Thus, when Plaintiff recently sought clarification from the BIA as to the scope of Burley's authority in 2007, the BIA had a duty to state whether that authority included entering into contracts with attorneys, including Plaintiff. Its refusal and failure to do so was a breach of that duty, causing unnecessary litigation between Plaintiff and the Tribe, and barring Plaintiff from recovering his earned fees on jurisdictional grounds because of a pending leadership dispute.

If the BIA refuses to clarify the scope of Burley's authority in 2007, then the Complaint asks this Court to do so itself.

B. THE COMPLAINT STATES A VALID CAUSE OF ACTION AGAINST THE BIA

For the same reasons stated above, the Defendants' motion to dismiss under Rule 12(b)(6) for failure to state a claim should be denied. Accepting the factual allegations pled as true, the Complaint states a plausible cause of action against the BIA under the APA. The unique factual allegations pled show:

1. The BIA designated Burley as a "person of authority" within the Tribe in 2004, and never withdrew that designation until Assistant Secretary of Interior—Indian Affairs Kevin Washburn issued his Decision of December 31, 2015.

2. Burley used that authority to enter into 638 federal contract funding with the BIA, which included budgeted funds to Plaintiff for rendering legal services for the Tribe.

3. The BIA had a mandatory duty to audit and examine records Burley kept for funds received under 638 federal contract funding, including funds spent to pay Plaintiff's legal services. It also had a congressionally mandated duty to manage all matters arising out of the affairs of Indians.

4. In 2007 Burley executed Plaintiff's Fee Agreement for the Tribe while she was still the BIA-designated "person of authority" within the Tribe, and when she was receiving 638 federal funding for the Tribe.

5. Burley paid Plaintiff for his services for the first few months of his retention from 638 federal contract funds awarded to her for the Tribe, pursuant to the budget she submitted for BIA approval.

6. In 2009, Plaintiff submitted his Fee Agreement Burley signed for the Tribe to the BIA for approval. However, the BIA took no action on the request, and told Plaintiff he did not need BIA approval, since the law had changed. Plaintiff was led to believe that his Fee Agreement was valid, based on the BIA's response, and, as a result, he engaged in almost 13 years of work for the Tribe under Burley's authority.

7. At the time Plaintiff sought BIA approval for his Fee Agreement, the Tribe was involved in Tribal leadership dispute, which the BIA knew or should have known about when it reviewed Plaintiff request for approval of his Fee Agreement, and when it audited Burley's records.

8. On May 22, 2020, Plaintiff's legal services for the Tribe were terminated.

9. When Plaintiff sought recovery of his fees in the Superior Court, the Superior Court dismissed the action for lack of subject matter jurisdiction, concluding that in order to resolve Plaintiff's claims for his fees, the Court would first have to decide whether Burley had the authority to sign the Fee Agreement for the Tribe, which would force the Court to decide a Tribal leadership dispute over which it had no jurisdiction, since the leadership dispute has yet to resolve.

10. Plaintiff then requested the BIA clarify that in 2007 when Burley entered into the Fee Agreement with Plaintiff, she had the authority to do so, based upon her BIA-designated status as a "person of authority" within the Tribe. Plaintiff sought clarification of the scope of that authority. The BIA refused to do so, stating that it "would not assist Plaintiff in the recovery of his fees." Plaintiff did not ask the BIA to assist him in the recovery of his fees, and the BIA's response was evasive and arbitrary and capricious.

Based on these allegations, which are accepted as true for purposes of the motion to dismiss, Plaintiff has stated a plausible cause of action that the BIA's action

and inactions were "arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A).

C. THE CLAIM FOR DECLARATORY RELIEF IS PROPER

1. Legal Standard.

"In a case of actual controversy within its jurisdiction …any court of the United States … may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. §2201(a). Pursuant to FRCP 57, "the existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate." The party seeking declaratory relief must show: (1) an actual controversy (2) regarding a matter within federal court subject matter jurisdiction. Calderon v. Ashmus (1998) 523 U.S. 740, 745.

The Declaratory Judgment Act (28 U.S.C. §2201) creates a federal remedy. It is not an independent basis for federal jurisdiction. Thus, before declaratory relief can be granted, federal subject matter jurisdiction requirements must be satisfied. Skelly Oiul Co. v. Phillips Petroleum Co. (1950) 339 U.S. 667, 671. The Act also only authorizes declaratory relief in "a case of actual controversy." 28 U.S.C. §2201. This phrase refers to cases or controversies that are justiciable under Article III of the U.S. Constitution. Aetna Life Ins. Co. v. Haworth (1937) 300 U.S. 227, 239-240.

2. Since the Court has jurisdiction over Plaintiff's APA claims, declaratory relief is proper.

The Defendant argue that Plaintiff seeks declaratory relief as an "independent cause of action to obtain affirmative relief," which the Declaratory Judgment Act does not permit, thereby warranting dismissal. (Def. PAs, page 12-13). This contention is without merit. Plaintiff has invoked jurisdiction under the APA for a final agency action/inaction.

Under §10(a) of the APA, "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*." Darby v. Cisneros (1993) 509 U.S. 137, 146; 5 U.S.C. §702. Moreover, federal district courts have subject matter jurisdiction under 28 U.S.C. §1331 to review, pursuant to the APA, decisions by the BIA. Runs After v. United States (8th Cir. 1983) 766 F.2d 347, 351 (citing Goodface v.

Grassrope (8th Cir. 1983) 708 F.2d 335, 338. "Although the APA may not be used as an independent grant of subject matter jurisdiction to review agency actions, the Supreme Court stated in Califano v. Sanders (1997) 430 U.S. 99, 105, that 28 U.S.C. §1331 confers general jurisdiction on federal courts to review agency actions 'subject only to preclusion-of-review statutes.'" Fort Berthold Land and Livestock Assoc. v. Anderson, supra at 1049. Under 25 C.F.R. §2.6—the regulation governing appeals from BIA decisions—judicial review of BIA decisions is precluded unless the decision is "final." A BIA decision is not final if it may be appealed to a superior authority within the Department of the Interior. Anderson, supra.

Here, the facts allege that the Department of Interior itself delegated to Amy Dutschke, the Regional Director of the BIA in Sacramento, to respond to Plaintiff's request for clarification of Burley's status of a "person of authority" within the Tribe on behalf of the Department of Interior. Ms. Dutschke declined Plaintiff's request on behalf of the Department of the Interior. Accordingly, Ms. Dutschke's decision was final for purposes of judicial review, and declaratory relief is proper. See also 25 C.F.R. §2.6 (c) (decisions made by the Assistant Secretary—Indian Affairs shall be final for the Department of Interior and effective immediately unless the Assistant Secretary—Indian Affairs provides otherwise in the decision).

D. THE COMPLAINT DOES NOT SEEK A RESOLUTION OF A PENDING TRIBAL LEADERSHIP DISPUTE

The Defendants argue that the Complaint seeks a resolution of a Tribal leadership dispute over which this Court lacks subject matter jurisdiction. (Def. PAs, page 13). This contention lacks merit and misconstrues the relief sought.

A determination of whether factually the designation the BIA gave Burley in 2004 as a "person of authority" within the Tribe included the authority to hire lawyers, including Plaintiff, does not require a resolution of a Tribal leadership dispute. The BIA made that designation, not the Tribe, and triable issues of fact exist on what the BIA meant by that designation, its scope, and whether, based on the actions of the BIA, that designation necessarily included Burley having the authority to sign Plaintiff's Fee Agreement for the Tribe. Moreover, the Tribe is not a party to this action. While the Tribal leadership dispute is still pending, the Complaint does not ask the Court to

resolve a pending Tribal leadership dispute, nor one that existed in 2004. Rather, the Complaint seeks a resolution of what the BIA meant or intended in 2004 when it designated Burley as a "person of authority" for the Tribe. The BIA refuses to clarify the scope of that designation, which has caused harm to Plaintiff in seeking to recover his fees. Triable issues of fact, as set forth above, show that the designation included having authority to retain Plaintiff to provide legal services for the Tribe.

Under the circumstances in this case, this Court can defer to the BIA's 2004 "recognition decision" that Burley was a "person of authority" within the Tribe, together with other facts, to conclude that she also had the authority to sign Plaintiff's Fee Agreement in 2007, without resolving any questions of Tribal law or without deciding a Tribal leadership dispute. Cayuga Nation v. Tanner 2nd Cir. 2016) 824 F.3d 321, 330. More specifically, the issue is what was the factual scope of that designation, which cannot be resolved on a Rule 12(b)(6) motion to dismiss. Allison v. California Adult Authority (9th Cir. 1969) 419 F.2d 822, 823 ("In considering a 12(b)(6) motion, we do not inquire whether the plaintiffs will ultimately prevail, only whether they are entitled to offer evidence to support their claims").

Accordingly, there is no basis to conclude that the Complaint seeks a resolution of an internal Tribal leadership dispute, present or past.

IV.

CONCLUSION

For the foregoing reasons, the Defendants' motion to dismiss should be denied.

DATED: January 9, 2024

s/ Manuel Corrales, Jr.
Manuel Corrales, Jr., Esq.
In Pro Per

Corrales v. Dutschke, et al.
Case No. 3:23-cv-01876-JLS-DDL

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, the undersigned, whose address is 17140 Bernardo Center Drive, Suite 358, San Diego, California 92128, certify:

That I am, and at all times hereinafter mentioned was, more than 18 years of age and not a party to this action;

That on January 9, 2024, I served the within: **OPPOSITION TO DEFENDANTS' MOTION TO DISMISS** on all interested parties in said action: **SEE ATTACHED SERVICE LIST**

[ ] (VIA U.S. MAIL or ~~UPS OVERNIGHT~~) I placed [ ] the original [] a true copy thereof enclosed in a sealed envelope(s) addressed as stated on the attached mailing list and placing such envelope(s) with first class postage fees, thereon fully prepaid, in the United States Mail at San Diego on this date following ordinary business practices.

[ ] (BY CERTIFIED MAIL) I placed [ ] the original [ ] a true copy thereof enclosed in a sealed envelope(s) addressed as stated on the attached mailing list and placing such envelope(s), certified mail, return receipt requested postage thereon fully prepaid, in the United States Mail at San Diego on this date following ordinary business practices.

[X] (BY ELECTRONIC TRANSMISSION) I transmitted a true copy thereof via electronic transmission on all interested parties to the action for immediate delivery to SEE ATTACHED SERVICE LIST.

[ ] (PERSONAL SERVICE) Personally served/Delivered to the addressed stated on the attached mailing list via DLS Attorney Service.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated: January 9, 2024

/s/ Carianne Steinman
Carianne Steinman

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