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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TABLE MOUNTAIN RANCHERIA ASSOCIATION, et al. Plaintiffs, v. DOUG BURGUM, et al., Defendants.	Case No. 3:80-cv-4595-LB FEDERAL DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE UNDER F.R.C.P. RULE 60(b)(6) AND ENFORCE THIS COURT'S JUDGMENT

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I. INTRODUCTION

This case is one of several brought (and closed) decades ago after the California Rancheria Act resulted in the termination of many California Indian reservations known as "rancherias." Under the Rancheria Act, the Bureau of Indian Affairs ("BIA") distributed rancheria assets to individuals living on the rancheria property and ended federal supervision and services based on Indian status. This case was brought in 1980 by distributees of the purportedly terminated Table Mountain Rancheria, a small Indian reservation located in Fresno County, California. *See* Ex. A, Class Action Compl. for Decl. & Inj. Relief and Damages (10) Other Civil Rights Contract, No. C 80-4595 (N.D. Cal. Dec. 24, 1980). The plaintiffs were the Table Mountain Rancheria Association and the distributees of the Table Mountain Rancheria assets, along with their dependent family members. *Id.* ¶¶ 2–6. In 1983, the Court entered a stipulated judgment that settled the parties' claims. The Stipulated Judgment restored the Indian status of the distributees, listed the Table Mountain Rancheria on the list of federally recognized tribes, and provided for Rancheria land to be taken back into trust and considered "Indian country." Ex. B, Stip. for Entry of Judgment ("Stip. J.").[1] Under the Stipulated Judgment, the Court retained jurisdiction for one year after the date of entry of judgment, until June 16, 1984.

Now, more than forty years later, Movants allege that the BIA failed to implement the terms of the 1983 Stipulated Judgment. Pls.' Mem. in Supp. of Pls.' Mot. for Order to Show Cause under F.R.C.P. Rule 60(b)(6) and Enforce this Court's Judgment ("Motion"), ECF No. 2-1.[2] Movants are not original Plaintiffs in this action. They assert that they are direct lineal descendants of Gloria Walker, who in turn was a descendant of a member of the Table Mountain Band of Indians recorded in the 1916 census. Mot. 7. They do not purport to be distributees or descendants of distributees of the Table Mountain Rancheria. *Id.* at 7, 9. According to Movants,

[1] Movants attached the Stipulated Judgment as Ex. 4, ECF No. 2-1 at ECF Header page 107–11. Defendants attach a different copy of the Stipulated Judgment here because Movants' copy has the plaintiffs' names redacted and is missing page 4.

[2] We understand from the Clerk's Office that, because of the age of the case, the Court's docket and files no longer exist given the Court's disposition schedule in the normal course of business.

BIA has a duty to conduct government-to-government relations only with the historic tribal entity as it existed prior to termination, which included Gloria Walker. Movants contend, however, that the BIA "insisted" that the Table Mountain Rancheria restrict its membership to distributees and their dependent family members. *Id.* at 13–14. Therefore, Movants contend that they have been injured due to the BIA's alleged failure to organize the Table Mountain Rancheria in a way that ensures the Movants' participation in the Rancheria's government.

This Court should deny the Motion for several reasons. *First*, the Motion is untimely, having been brought decades after the Stipulated Judgment and the organization of the Table Mountain Rancheria. *Second*, the Stipulated Judgment does not provide this Court with continuing jurisdiction over the Motion. Movants were not parties to this case, and the BIA carried out the Stipulated Judgment's terms decades ago, none of which have anything to do with tribal organization or membership. *Third*, this Court does not have jurisdiction to enforce the Stipulated Judgment. Neither Rule 60(b)(6) of the Federal Rules of Civil Procedure nor the Administrative Procedure Act ("APA") provides this Court with jurisdiction over the motion. And *fourth,* Plaintiffs lack standing because they do not allege injuries caused by BIA or remediable by an order from this Court. Nothing in the Stipulated Judgment requires the relief Movants seek.

Federal Defendants therefore respectfully request that the Court deny the Motion.

II. BACKGROUND

A. The Rancheria system and the California Rancheria Act

Between 1906 and 1926, Congress passed a series of appropriations acts that provided funds to purchase small tracts of land in central and northern California for landless Indians of those areas, called "rancherias." *See, e.g.,* Act of June 21, 1906, Pub. L. No. 59-258, 34 Stat. 325. Additional lands were set aside by Executive Order. Approximately 82 rancherias were eventually established throughout California. "[T]he various California rancherias were not created for the use of particular Indian tribes, and their establishment was not tethered to the

federal recognition of any tribe." *Mishewal Wappo Tribe of Alexander Valley v. Jewell*, 84 F. Supp. 3d 930, 940 n.12 (N.D. Cal. 2015), *aff'd sub nom. Mishewal Wappo Tribe of Alexander Valley v. Zinke*, 688 F. App'x 480 (9th Cir. 2017).

In 1916, the United States purchased a parcel of land in Fresno County, California, which became the Table Mountain Rancheria. *Alvarado v. Table Mountain Rancheria*, 509 F.3d 1008, 1011 (9th Cir. 2007). The United States held the land in trust for the Table Mountain Band of Indians. The Rancheria "was considered an Indian Reservation and 'Indian Country' within the meaning of 18 U.S.C. § 1151," and "Rancheria residents were recognized as Indians for purposes of federal law." *Id.* at 1011–12.

In 1934, Congress enacted the Indian Reorganization Act, 25 U.S.C. §§ 5101–44 (formerly 25 U.S.C. §§ 461–494a), which sought to "encourage Indians to revitalize their self-government." *Cal. Valley Miwok Tribe v. Salazar*, 967 F. Supp. 2d 84, 91 (D.D.C. 2013). Section 19 of the IRA included a new statutory definition of "[T]ribe" to include "the Indians residing on one Reservation." 25 U.S.C. § 5129. Pursuant to that new statute, the Indians on the California Rancherias were tribes eligible to organize under the IRA. The IRA allowed any Indian tribe "to organize for its common welfare" and "adopt an appropriate constitution and bylaws," ratified by a majority vote of the adult members of the tribe. *Id.* § 5123(a); *Kahawaiolaa v. Norton*, 386 F.3d 1271, 1273 (9th Cir. 2004). However, the Indians of the Table Mountain Rancheria voted on June 8, 1935, to reject the Indian Reorganization Act. *See* Ex. 1 to Mot., Theodore H. Haas, *Ten Years of Government under the I.R.A.* at ECF Header page 54, ECF No. 2-1. As such, they were not organized under the IRA and did not have a constitution or other ruling document.

In 1958, Congress enacted the California Rancheria Act. Act of Aug. 18, 1958 ("Rancheria Act"), Pub. L. No. 85-671, 72 Stat. 619, amended by the Act of Aug. 11, 1964, Pub. L. No. 88-419, 78 Stat. 390. The Act was aimed at terminating the federal trusteeship over 41 California rancherias, including the Table Mountain Rancheria, and established a procedure for the distribution of the land and other assets to eligible Indians in fee simple. *See generally*,

Rancheria Act. Under the Rancheria Act, BIA promised to "continue to provide essential benefits, such as irrigation and educational programs to Rancheria residents, if, in return, the [Table Mountain Rancheria] voluntarily relinquished its trust status, and the [Rancheria] residents forfeited their Indian status." *Alvarado*, 509 F.3d at 1012. After termination, the lands would become subject to all state and federal taxes and the distributees and their dependents would lose their special federal status as Indians. *Id.*

The BIA approved a plan for the distribution of the assets of the Table Mountain Rancheria pursuant to the Rancheria Act in 1959. *See* Ex. C, BIA, *A Plan for the Distribution of the Assets of the Table Mountain Rancheria* (1959). The 1959 Distribution Plan divided the Rancheria into parcels, most of which were to be conveyed to individual Rancheria residents. The remaining parcels were earmarked for the Rancheria water system and were to be conveyed to a legal entity formed solely to receive the remaining parcels. Sometime after July 31, 1959, the proposed plan was approved. As a result, the Rancheria assets were distributed to the individual Rancheria residents, the Rancheria lost its trust status, and its residents lost their Indian status.

B. The Stipulated Judgment in *Table Mountain Rancheria Association v. Watt*

In 1980, the distributees of the Table Mountain Rancheria filed a class action, *Table Mountain Rancheria Association v. Watt*, No. C-80-4595, seeking restoration of the Rancheria as a federally recognized Tribe and restoration of their own Indian status. *Alvarado*, 509 F.3d at 1013. "The *Watt* complaint sought rescission of the distribution plan and a declaration 'that the purported termination of the [plaintiffs'] Indian status" and the trust status of the Table Mountain Rancheria is void "and that plaintiff distributees [and dependents] have been and remain eligible to participate in all *federal programs and benefits provided to Indians because of their status as Indians.*'" *Id.* (alterations in original).

On March 28, 1983, the parties entered into a stipulated judgment. *See* Stip. J. The Stipulated Judgment certified two classes, one of the distributees and their successors in interest

who had lost their status as Indians under the laws of the United States due to the distribution of the Rancheria assets, and a second of the distributees' dependent family members. The Stipulated Judgment required the Secretary of the Interior to restore "[t]he status of the named individual plaintiffs and class members as Indians under the laws of the United States." Stip. J. ¶ 3. It also required the Secretary to list the Table Mountain Band of Indians as an Indian Tribal entity pursuant to 25 C.F.R. Part 83.6(b) (1983). Stip. J. ¶ 4. In addition, under the Stipulated Judgment, the Rancheria was restored as "Indian country within the meaning of 18 U.S.C. § 1151" and former rancheria land could be transferred back to federal trust status. Stip. J. ¶¶ 5–7. After the Stipulated Judgment, BIA published a Federal Register notice recognizing the Table Mountain Band as an "Indian tribal entity" on December 14, 1983. Indian Tribal Entities Recognized and Eligible to Receive Services from the U.S. BIA, 48 Fed. Reg. 56,862-02, 56,866 (Dec. 23, 1983). The BIA also circulated copies of the judgment to all families and their counsel. Ex. 17 to Mot. at ECF Header page 217–18, ECF No. 2-1.

C. Organization of the Table Mountain Rancheria

In 1980, the Tribe adopted a constitution and bylaws which it submitted to the BIA for review and Secretarial approval in 1981. Ex. 3 to Mot. at ECF Header page 100, ECF No. 2-1. While the Tribe voted against the Indian Reorganization Act in 1935, and thus the Secretary was not required to approve the constitution under the IRA, the 1981 Constitution required Secretarial approval by its own terms. Article III of the 1981 Constitution provided that tribal membership include "[a]ll persons of California Indian descent who reside at the Table Mountain Rancheria" or resided there for at least one year prior to the adoption of the Constitution, and "[a]ll lineal descendants" possessing "at least one-quarter (1/4) degree California Indian blood[.]" Ex. 2 to Mot. at ECF Header page 86–87, ECF No. 2-1. The BIA held the 1981 Constitution in abeyance until 1985, pending resolution of the *Table Mountain v. Watt* litigation, the Tribe's recognition status, and reservation boundaries. Ex. 3 to Mot. at ECF Header page 102, ECF No. 2-1.

In March 1985, the BIA recommended that the Tribe change the 1981 Constitution's Article III membership section to include only those on the 1959 Distribution List and their dependents. *Id*. The Deputy Assistant Secretary for Indians Affairs' ("AS-IA") letter explained the recommendation, stating the Article III membership clause "is too nebulous and the rancheria may have problems later defining who met the criteria for being considered a basic member. A specific roll of the tribal members should always be designated as the base roll." *Id*. The BIA provided the Tribe with authorization to hold a Secretarial Election over the 1981 Constitution, *id.* at ECF Header page 103–04, but the authorization expired before an election was held. Ex. 13 to Mot. at ECF Header page 193, ECF No. 2-1. The BIA provided a second authorization, *id*, but the BIA did not receive further notice of an election.

On May 16, 1992, the Tribe amended its 1981 Constitution to change the Article III membership provision. Ex. 15 to Mot. at ECF Header page 198–99, ECF No. 2-1. In place of the previous membership clause, membership was now granted to a list of named individuals, and their lineal descendants with at least one quarter California Indian blood. *Id.*

On October 1, 1998, BIA Sacramento Area Director Jaeger acknowledged that the BIA recognized and respected the Tribe's right to use the 1981 Constitution, as amended, in a letter to counsel for the Table Mountain Rancheria Tribal Council. Ex. D, BIA, U.S. Dep't of Interior, *Letter from BIA Area Director to Howard Dickstein* (1998). In his letter announcing the decision, he provided a procedure to appeal the decision. *Id.* In 2000, the Rancheria sent a revised Table Mountain Constitution to the BIA, Ex. 16 to Mot. at ECF Header page 203, ECF No. 2-1, which revised the membership provision to include "[a]ll persons of California Indian descent who were listed as distributees or dependent members of distributees" in the 1959 Distribution Plan. *Id*. at ECF Header page 204.

D. Other Table Mountain Rancheria litigation

Other litigants in the Ninth Circuit have challenged their lack of membership under this the membership provision the Rancheria added in 2000. In 2003, a group of individuals

challenged the Secretary of the Interior, the Deputy Commissioner of the BIA, and the Chairman of the National Indian Gaming Commission in *Lewis v. Norton* for "unlawfully fail[ing] to order the Table Mountain Rancheria to recognize all qualified individuals as members of the tribe." *Alvarado v. Table Mountain Rancheria*, No. C 05-00093 MHP, 2005 WL 1806368, at *2 (July 28, 2005), *aff'd,* 509 F.3d 1008 (9th Cir. 2007); *see also Lewis v. Norton*, 424 F.3d 959, 960–61 (9th Cir. 2005). The court dismissed the case, holding that plaintiffs disputed "intratribal matters" for which the court had no subject matter jurisdiction. *Alvarado*, 2005 WL 1806368, at *2 (internal citation omitted). The court reiterated that "a tribe is immune from federal court jurisdiction in disputes regarding challenges to membership in the tribe[,]" and has the essential "right to define its own membership for tribal purposes." *Lewis*, 424 F.3d at 961 (citing *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 n.32 (1978)).

In 2005, another group of plaintiffs sued the Table Mountain Tribal Council for admission to the Table Mountain Rancheria, which the U.S. District Court for the Northern District of California dismissed for lack of jurisdiction. *Alvarado*, 509 F.3d at 1011. The plaintiffs appealed, arguing the district court had jurisdiction over the case, in part, "by virtue of its ancillary authority to enforce the *Watt* settlement agreement[.]" *Id.* The Ninth Circuit upheld the dismissal, finding, first, that the plaintiffs had not alleged a violation of the *Watt* settlement because the settlement did not establish tribal membership "either expressly or by implication." *Id.* at 1018. And second, the Ninth Circuit found that the court did not retain ancillary jurisdiction because "the *Watt* settlement only extended jurisdiction 'for a period of one year from entry of judgment[.]'" *Id.* "The *Watt* judgment was entered on June 16, 1983. Therefore, whatever ancillary jurisdiction the district court had expired on June 16, 1984." *Id*.

E. The Current Motion

Now, Movants who purport to be descendants of Indians listed on the 1916 census as part of the Table Mountain Band of Indians move to enforce the Stipulated Judgment more than 40 years after it was entered by the Court. Movants claim the BIA "must be compelled to show

cause for their failure to carry out the organizing of the Table Mountain Band of Indians, including with [Movants'] participation." Mot. 6. Movants allege violations of the Stipulated Judgment and the Administrative Procedure Act, claiming the BIA's "failure to insist on the [Movants'] participation in the formation of the Band's governance system" constituted an action "unlawfully withheld or unreasonably delayed." Mot. 22.

III. ARGUMENT

This Court should deny the Motion to Enforce. The Motion is untimely, both under the six-year statute of limitations governing claims against the United States and under the limited jurisdiction provided by the Stipulated Judgment. The Stipulated Judgment retained jurisdiction for a period of one year, a period that expired more than forty years ago. In addition, the Court lacks jurisdiction under the Stipulated Judgment to hear the Motion to Enforce because Movants were not part of the plaintiff classes in the *Watt* litigation and therefore lack standing to enforce the Stipulated Judgment. In addition, the Stipulated Judgment did not address tribal membership or organization. Thus, the Stipulated Judgment does not contain the provisions Movants seek to "enforce" here and the Court cannot provide the relief the Movants seek under the guise of enforcing the Stipulated Judgment.

Further, neither Rule 60(b)(6) nor the APA provide this Court with jurisdiction. This is not a motion to be relieved from judgment under Rule 60(b)(6), as Movants seek to enforce the judgment, nor did Movants file within a "reasonable time" or demonstrate "extraordinary circumstances" as required by Rule 60(b)(6). And Movants have not alleged a discrete, mandatory statutory duty that BIA failed to perform, as required for jurisdiction under the "failure to act" provision of the APA. Finally, Movants lack standing as their alleged injury was not caused by BIA action, nor is it remediable by this Court.

A. The Motion to Enforce is untimely.

The Motion should be denied because any claim Movants may have arising from federal action is time-barred by the six-year statute of limitations governing claims against the United

States. 28 U.S.C. § 2401(a). And to the extent that Movants argue that the Stipulated Judgment retained jurisdiction over this case, they are mistaken. The Court retained jurisdiction "for a period of one year," Stip. J. ¶ 14. Thus, "whatever ancillary jurisdiction the district court had expired on June 16, 1984." *Alvarado*, 509 F.3d at 1018. Setting aside the fact that Movants are not party to the Stipulated Judgment, Movants bring this motion more than 40 years after the judgment was entered and nearly 20 years after the most recent federal action taken in 1998. Thus, the Court's jurisdiction over the judgment has expired, and the statute of limitations on any claim Movants have against BIA expired, at the very latest, in October 2004. Therefore, Movants' motion should be denied.

Challenges to federal action, such as that on which Movants based their motion here, "shall be barred unless the complaint is filed within six years after the right of action first accrues" unless another statute provides otherwise. 28 U.S.C. § 2401(a). As a general rule, "Indian Tribes are not exempt from statutes of limitations governing actions against the United States." *Sisseton-Wahpeton Sioux Tribe v. United States*, 895 F.2d 588, 592 (9th Cir. 1990). The Ninth Circuit has dismissed California Tribes' attempts to bring claims related to restoration rights as time-barred under 28 U.S.C. § 2401(a). *See Nisenan Tribe of the Nev. City Rancheria v. Jewell*, 650 F. App'x 497, 498 (9th Cir. 2016); *Mishewal Wappo Tribe of Alexander Valley v. Zinke*, 688 F. App'x 480, 480 (9th Cir. 2017).

"A right of action 'accrues' when the [party] has a 'complete and present cause of action,'" thus having "the right to 'file suit and obtain relief.'" *Corner Post, Inc. v. Bd. of Governors of Fed. Reserve Sys.*, 603 U.S. 799, 809 (2024) (citation omitted). And while the statute of limitations period "is not strictly jurisdictional," the running of the statute of limitations period justifies the dismissal of a case where the party "knew or should have known" of the accrual of a claim. *Cal. Valley Miwok Tribe v. United States*, 197 F. App'x 678, 679 (9th Cir. 2006) (citation omitted).

Movants' attempt to challenge BIA action is barred because Movants knew, or reasonably should have known, of any injury from BIA's purported failure to restore relations with what Plaintiffs view as the historic tribe by, at the very latest, 1998. The Court entered the Stipulated Judgment in March 1983, which limited the class "entitled to elect to restore any [former trust land to] federal trust status" to those named in the 1959 Distribution Plan and their descendants. Stip. J. ¶ 6. The BIA took efforts to notify interested parties by circulating the judgment to the families and Table Mountain Rancheria landowners, Ex. 17 to Mot. at ECF Header page 217–18, ECF No. 2-1, and posting it in the Federal Register. Indian Tribal Entities, 48 Fed. Reg. 56,862-02, 56,865. But even assuming that Movants were not provided adequate notice of the Stipulated Judgment and the accrual of any related claim, the Rancheria later revised its constitution's general membership provision in 1992 to a list of named individuals and their dependent families. Ex. 15 to Mot. at ECF Header page 198–99, ECF No. 2-1. This change excluded Gloria Walker and her dependents and should have put Movants on notice as early as 1992 that they were not included in the Tribe's membership.

Finally, at the very latest, any claim Movants had accrued in 1998 when the BIA Area Director recognized the Tribe's use of its 1981 constitution as amended and included appeal rights in his decision. Ex. D, BIA, U.S. Dep't of Interior, *Letter from BIA Area Director to Howard Dickstein* (1998). This was the most recent agency action taken by the BIA that could have started the statute of limitations running. Thus, to the extent there is any argument that the limitations period had not previously run, there can be no doubt that Movants should have filed their Motion—at the very latest—by October 2004. Instead, they filed in September 2024, nearly 20 years too late.

Movants also do not assert the APA statute of limitations was ever tolled, providing no evidence that they pursued their rights diligently or that extraordinary circumstances stood in their way. *See Kwai Fun Wong v. Beebe,* 732 F.3d 1030, 1052 (9th Cir. 2013), *aff'd and remanded sub nom. United States v. Wong*, 575 U.S. 402 (2015). And to the extent Movants argue their

"injuries are on-going and irreparable" because BIA's actions "resulted in a governance system that exacerbates" and "perpetuates" Movants' injuries (Mot. 17), this argument is meritless. Even assuming that it was unlawful for the BIA to recognize the Tribe's constitution excluding Gloria Walker and her descendants, which it was not, "[a] lingering effect of an unlawful act is not itself an unlawful act." *Felter v. Kempthorne*, 473 F.3d 1255, 1260 (D.C. Cir. 2007) (alteration in original) (citation omitted); *see also Alaska Cmty. Action on Toxics v. U.S. EPA*, 943 F. Supp. 2d 96, 105 (D.D.C. 2013) (finding agency actions that "have 'simply implemented' the decision made and spelled out long ago" do not restart the limitations period). Any claim Movants had with respect to BIA action accrued at the time of the *first* injury. 28 U.S.C. § 2401(a); *see also Corner Post*, 603 U.S. at 804. Therefore, Movants' motion should be denied.

B. The Stipulated Judgment does not give this Court jurisdiction over the Motion.

"The fact that *Watt* was a federal lawsuit does not establish jurisdiction over an action to enforce the terms of its settlement." *Alvarado*, 509 F.3d at 1017 (citing *O'Connor v. Colvin,* 70 F.3d 530, 532 (9th Cir. 1995)). A court may have ancillary jurisdiction to enforce a settlement agreement "when the dismissal order incorporates the settlement terms, or the court has retained jurisdiction over the settlement contract." *Id.* Here, Movants were not parties to the Stipulated Judgment and thus cannot enforce it. Further, nothing in the Stipulated Judgment provides the Court with continuing or ancillary jurisdiction to the present day.

1. Movants are not part of the certified class and lack standing to enforce the Stipulated Judgment.

Under the Stipulated Judgment, the Court retained jurisdiction for a period of one year from entry of judgment, "or for such longer time as may be shown to be necessary on a motion duly noticed *by any party* within one year from entry of judgment." Stip. J. ¶ 14 (emphasis added). Movants were not parties to this litigation. They do not purport to be members of either class certified by the Stipulated Judgment, as they do not allege they were distributees of the Table Mountain Rancheria or dependent family members of distributees. Mot. 9 (listing

distributees); Stip. J. ¶¶ 1–2 (certifying classes). Instead, Movants purport to be direct lineal descendants from Gloria Walker with at least one-fourth degree California Indian blood. Mot. 7. Neither Gloria Walker nor her parents, Jessy Walker and Mamie Dick, are listed as distributees of the Table Mountain Rancheria or as plaintiffs in the *Watt* action. *See* Mot. 7, 9; Ex. C (Distribution Plan). According to the Motion, Gloria Walker lived with her father on a land assignment near the Rancheria at the time of distribution. As the Rancheria assets went to individual rancheria residents, neither Ms. Walker nor her father would have been distributees of the Rancheria assets. Mot. 7, 9; Ex. C at 2 ("The Indians listed herein are recognized as the only persons of the rancheria who hold formal or informal assignments and are entitled to share in the distribution of the assets."); *Alvarado*, 509 F.3d at 1012. As such, Movants are not part of the certified classes and not a party to this case.

Movants characterize Gloria Walker as a plaintiff because she was a part of the Table Mountain Rancheria Association at some point. Mot. 10, 15. But Movants have offered no proof of this, and do not even allege, much less prove, that Ms. Walker has a right to enforce the provisions of the Stipulated Judgment on behalf of the Table Mountain Rancheria Association. *E.g.*, *Cayuga Nation v. Tanner*, 824 F.3d 321, 328 (2d Cir. 2016) (stating that court only has jurisdiction if those who filed were authorized to do so under tribal law). Nor have they demonstrated that the Table Mountain Rancheria Association was a distributee of the Rancheria assets and therefore a member of the plaintiff class. Absent such proof, Movants lack standing to enforce the judgment. Stip. J. ¶ 14.

Thus, even setting aside that the motion was not noticed within a year of the judgment, the Court does not have jurisdiction here because this is not a motion brought by a party to the Stipulated Judgment. And Movants have not shown any other basis by which they could enforce the Stipulated Judgment to which they are not a party. For that reason, Movants lack standing and the Court lacks jurisdiction over Movants' Motion.

2. The Stipulated Judgment does not provide for continuing and ancillary jurisdiction.

Movants incorrectly assert that paragraph 2 of the Stipulated Judgment gives the Court continuing and ancillary jurisdiction. ECF No. 2 at 2. Paragraph 2 certifies that "Plaintiffs" represent the class of all "dependent members of the families of distributees of the Table Mountain Rancheria." Stip. J. ¶ 2. This provides no continuing jurisdiction for the Court but simply denominates three representatives of the original class of distributees and their dependent members. Movants also do not assert that they were a part of the class certified by this paragraph. And any jurisdiction the Court retained under the Stipulated Judgment ended in 1984. *See* Stip. J. ¶ 14; *Alvarado*, 509 F.3d at 1018 ("Therefore, whatever ancillary jurisdiction the district court had expired on June 16, 1984.").

3. The Stipulated Judgment does not impose the duties Movants allege.

The Stipulated Judgment also does not provide this Court with jurisdiction because the Stipulated Judgment does not impose the duties Movants allege. Thus, the relief Movants seek is beyond the scope of the Stipulated Judgment. *See Alvarado*, 509 F.3d at 1017–18 (affirming district court's conclusion that it lacked jurisdiction to enforce the *Watt* judgment because the relief sought was beyond the scope of the *Watt* judgment). Movants argue that the Stipulated Judgment combined with the List Act and other "historical legal precedent and constitutionally derived mandates of the United States" requires the United States only "to conduct relations with Indian tribal entities that pre-date the United States." Mot. 23. "In other words, [in Movant's view,] the United States must be legally satisfied that it is conducting relations with *the same* Indian tribal entity that previously or last conducted government-to-government relations." *Id.* at 24. But the Stipulated Judgment does not address the relationship between the Table Mountain Rancheria and the United States or the organization of the Table Mountain Rancheria. Nor does it contain any provisions that require the Table Mountain Rancheria to include Movants as members, or require BIA to ensure that the Rancheria did so. *See* Stip. J. at ECF Header page 107–11.

This case was originally brought to rescind the distribution plan for the Table Mountain Rancheria assets, to restore the plaintiffs' Indian status, and to restore the Rancheria status as Indian land held in trust by the United States. *See Alvarado*, 509 F.3d at 1013; Ex. A, Class Action Compl. for Decl. & Inj. Relief & Damages (10) Other Civil Rights Contract, No. C 80-4595 (N.D. Cal. Dec. 24, 1980). Accordingly, the provisions of the Stipulated Judgment focused on those factors. The Stipulated Judgment restored the status of individual plaintiffs and class members as Indians under the laws of the United States. Stip. J. ¶ 3. It required the BIA to list the Table Mountain Band on its published list of federally recognized tribes. *Id.* ¶ 4. It also provided for the Rancheria land to be considered "Indian country within the meaning of 18 U.S.C. § 1151" and for former Rancheria land to be taken back into trust. *Id.* ¶¶ 5–8. Plaintiffs do not argue that the BIA violated any of these provisions. Instead, Movants complain that BIA failed to conduct government-to-government relations only with the historic tribal entity as it existed prior to termination and failed to ensure that the Tribe included Gloria Walker. But the Stipulated Judgment did not include any provisions about the BIA's relationship to the historic tribal entity or tribal membership. The Motion, therefore, is not actually one seeking to enforce the judgment.

Alvarado supports this finding. There, the Ninth Circuit affirmed the district court's finding that it lacked jurisdiction over the appellants' claims because they did not allege violations of the *Watt* settlement. *Alvarado*, 509 F.3d at 1017–18. The appellants argued that they were wrongfully excluded from membership in the Table Mountain Rancheria. The court held, however, that appellants' exclusion "does not constitute a violation of the *Watt* settlement because the *Watt* settlement did not establish membership in the [Table Mountain Rancheria] either expressly or by implication." *Id.* at 1018. The *Watt* settlement confirmed the status of the named plaintiffs and class members as Indians under the laws of the United States, but that was not "equivalent to acquiring membership in a tribe." *Id.* Like in *Alvarado*, the Movants do not allege violations of the Stipulated Judgment because it does not guarantee tribal membership.

Because Movants cannot point to a provision of the Stipulated Judgment that BIA violated, the Court lacks jurisdiction to enforce the Stipulated Judgment.

C. Rule 60(b)(6) does not provide jurisdiction here.

Movants also assert that Rule 60(b)(6) provides this Court with jurisdiction to issue an order to show cause or to enforce the judgment here. *See* Mot. 17–21. Rule 60(b)(6) provides that a district court may relieve a party "from a final judgment, order, or proceeding for . . . any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). Only "'extraordinary circumstances' justify relief under [Rule 60(b)(6)]." *Keeling v. Sheet Metal Workers Int'l Ass'n, Local Union 162,* 937 F.2d 408, 410 (9th Cir. 1991) (citation omitted). Here, Movants do not seek relief from judgment, nor have they demonstrated that they brought their motion within a reasonable time or that extraordinary circumstances exist.

First, Movants here do not seek to be relieved from the final judgment. Instead, they seek to enforce the judgment (to which they are not a party) on the basis that BIA did not comply with the Stipulated Judgment. See Mot. 18 ("Here, Plaintiffs are specifically alleging a violation of the Entry of Stipulated Judgment and seek and [sic] Order to Show Cause to enforce the Stipulated Judgment."). Courts have occasionally allowed vacation of an order dismissing a case when the defendant breached the settlement agreement that led to the dismissal. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 378 (1994) (citing cases); *Keeling*, 937 F.2d at 410 ("Repudiation of a settlement agreement that terminated litigation pending before a court constitutes an extraordinary circumstance . . . ."). But Movants here seek not to vacate any order, but to have the Court enforce the Stipulated Judgment. Rule 60(b)(6) does not provide any basis to do so.

Second, Movants have not shown that they brought this motion "within a reasonable time," particularly given that they could have sought the relief they seek long ago. A motion under Rule 60(b)(6) must be brought "within a reasonable time." *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005) (citation omitted). What constitutes a "reasonable time" is a fact-intensive

inquiry. *See Hall v. Haws*, 861 F.3d 977, 987–88 (9th Cir. 2017) (citing *Phelps v. Alameida*, 569 F.3d 1120, 1133 (9th Cir. 2009)). "In determining whether the Rule 60(b)(6) motion was filed within a reasonable time, the court may consider whether the government was prejudiced by the delay and whether the movant had a good reason for failing to take action sooner." *Yeshiwas v. U.S. Citizenship & Immigr. Servs.*, No. C 12-1719 PJH, 2014 WL 31455, at *1 (N.D. Cal. Jan. 3, 2014) (citing *In re Pac. Far E. Lines, Inc.*, 889 F.2d 242, 249 (9th Cir. 1989)).

Movants argue that they brought this motion within a "reasonable time," but fail to explain why their delay was reasonable. Instead, they simply explain that "what is reasonable depends on the circumstances[,]" and allude to changes in the United States' "policy and practice related to participation in restoration of terminated tribal governments when initially organizing a tribe." Mot. 21. This is insufficient. Even assuming that all of the Movants' allegations are true, the facts remain that the Stipulated Judgment was entered in 1983. Most of the events referred to in their motion occurred in the 1980s. In their Statement of Facts, they do not mention *any* fact occurring after 2000. They offer no facts or argument showing why it would be reasonable to wait *at least* twenty-four years to file their motion. Further, the government is prejudiced by the delay, given that records and evidence are harder to find and people with knowledge of the situation are no longer working with the BIA. The Court's own files for this case no longer exist, demonstrating how long the case has been dormant. Under the circumstances here, Movants did not bring their motion within a reasonable time for purposes of Rule 60(b)(6).

Third, Movants have not demonstrated that there are "extraordinary circumstances" justifying relief. In cases involving Rule 60(b)(6), "it is appropriate to consider the risk of injustice to the particular parties, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 848–49 (1988) (determining whether a district court judge's failure to disqualify himself under 28 U.S.C. § 455(a), required vacatur under Rule 60(b)(6)). "To justify relief under subsection (6), a party must show 'extraordinary

circumstances' suggesting that the party is faultless in the delay." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 393 (1993). The Ninth Circuit has held that Rule 60(b)(6) is only relevant "where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." *Garcia v. United States*, No. 20-55670, 2021 U.S. App. LEXIS 22369, at *3 (9th Cir. July 28, 2021) (quoting *United States v. Alpine Land & Reservoir Co*., 984 F.2d 1047, 1049 (9th Cir. 1993)) ("[R]elief normally will not be granted unless the moving party is able to show both injury and that circumstances beyond its control prevented timely action to protect its interests." (alteration in original) (quoting *Alpine Land,* 984 F.2d at 1049)); *Cmty. Dental Services v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 2002) (finding attorney gross negligence could warrant a default judgment to be set aside pursuant to Rule 60(b)(6), explaining that 60(b)(6) relief is appropriate when the movant establishes "extraordinary circumstances which prevented or rendered him unable to prosecute [his case]" (alteration in original)).

Movants have not demonstrated that extraordinary circumstances exist. They have not demonstrated that they were unable to file this motion earlier. Their only attempt to demonstrate explanation of extraordinary circumstances here is to assert that the case involves important issues. They assert that "the United States is mandated by both constitutional and statutory obligations to conduct relations with only those Indian tribal entity governments that pre-existed the United States" or "those Indian entities that the United States conducted relations with prior to 1958." Mot. 20. But this does not demonstrate extraordinary circumstances justifying reopening a case that has been closed for more than forty years.

Movants point to this Court assuming jurisdiction over a motion to enforce the judgment brought by the Buena Vista Rancheria. *See* Mot. 21 (citing *Hardwick v. United States*, No. 79-cv-01710-EMC, 2020 WL 6700466, at *1 (N.D. Cal. Nov. 13, 2020)). As an initial matter, that motion was a motion to enforce the judgment, not a Rule 60(b)(6) motion. It is thus irrelevant to the issue of whether the delay in bringing the case was "reasonable" under Rule 60(b)(6). But in

any event, that motion is easily distinguishable. There, the plaintiffs requested that the BIA take the Rancheria into trust pursuant to mandatory trust acquisition procedures under the 1983 *Hardwick* stipulated judgment. *Hardwick,* 2020 WL 6700466 at *1. They challenged BIA agency action taken in 2020 to deny the Buena Vista Rancheria's request to take land into trust. *Id.* at *3 (noting final agency decision). Movants here, by contrast, do not challenge any recent agency action. In addition, while the Stipulated Judgment here expressly retains jurisdiction for one year following the entry of the judgment, while the *Hardwick* stipulated judgment contains no such temporal limit on jurisdiction. And, here, Movants are not successors in interest to the *Watt* plaintiffs. The Buena Vista matter, therefore, does not demonstrate that this Court has jurisdiction under Rule 60(b)(6) to enforce the Stipulated Judgment.

In sum, Rule 60(b)(6) does not provide this Court with jurisdiction to consider Movants' motion.

D. This Court does not have jurisdiction under 5 U.S.C. § 706(1).

Nor does the Court have jurisdiction under the Administrative Procedure Act. Movants assert that 5 U.S.C. § 706(1) provides this Court with jurisdiction "to compel agency action unlawfully withheld or unreasonably delayed." Mot. 22. The APA, however, does not provide jurisdiction here because Movants have failed to identify a nondiscretionary duty that BIA failed to perform.

As an initial matter, if Movants are intending to seek relief under the APA, they would need to file a separate complaint containing a cause of action seeking that relief. As explained above, nothing about this long-closed case or the Stipulated Judgment permits Movants to file a *new* claim for a grievance they believe they have suffered since entry of the Stipulated Judgement.

In any event, that new claim would fail. Section 706(1) of the APA authorizes a court with jurisdiction to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). But 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 v. S. Utah Wilderness All. (SUWA)*, 542 U.S. 55, 64 (2004). Statutory goals that are "'mandatory as to the object to be achieved' but leave the agency with 'discretion in deciding how to achieve' those goals are insufficient to support a 'failure to act' claim because such discretionary actions are not 'demanded by law.'" *San Luis Unit Food Producers v. United States*, 709 F.3d 798, 803 (9th Cir. 2013) (quoting *SUWA*, 542 U.S. at 66).

"[F]or a claim of unreasonable delay to survive, the agency must have a statutory duty in the first place." *S.F. BayKeeper v. Whitman*, 297 F.3d 877, 885 (9th Cir. 2002). This is because an action brought under 5 U.S.C. § 706(1) is the equivalent of a claim for mandamus relief under 28 U.S.C. § 1361. *SUWA*, 542 U.S. at 63 ("APA carried forward the traditional practice . . . when judicial review was achieved through . . . mandamus."). Thus, the Court's "ability to 'compel agency action' is carefully circumscribed to situations where an agency has ignored a specific legislative command." *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 593 F.3d 923, 932 (9th Cir. 2010).

Movants do not identify any statutory duty that BIA failed to perform. They cite the Federally Recognized Indian Tribe List Act, but that statute requires only that the BIA "publish in the Federal Register a list of all Indian tribes which the Secretary [of the Interior] recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians." 25 U.S.C. § 5131(a). The List Act does not address tribal organization or membership in any way. And the Secretary has not failed to publish the list as mandated by the Act. 89 Fed. Reg. 944 (Jan. 8, 2024).

Movants argue that "[f]ollowing the 1983 Stipulated Judgment the Secretary had a non-discretionary duty to identify the Band's government and with whom it would be conducting relations." Mot. 22. But they do not cite any statute that so requires. And no federal statute vests the Secretary with a generalized duty to control tribal membership or adjudicate tribal membership disputes. Thus, Movants have not established a valid failure to act claim. *See S.F.*

Baykeeper, 297 F.3d at 886 ("EPA does not presently have a statutory duty to act. Therefore, there can be no unreasonable delay . . . .").

This Court found similarly in another case where a group brought a § 706(1) claim against BIA seeking to compel BIA to recognize the group as the rightful government of the Cloverdale Rancheria. *Cloverdale Rancheria of Pomo Indians of Cal. v. Salazar*, No. 10-cv-1605 JF/PVT, 2011 WL 1883196, at *5 (N.D. Cal. May 17, 2011). The court held that it could only compel agency action "where an agency has ignored a specific *legislative* command." *Id.* at *5 (citing *Hells Canyon,* 593 F.3d at 932). "Plaintiffs provide no authority to support their contention that an agency's failure to comply with a Stipulated Judgment can give rise to an action *under the APA.*" *Id.* Likewise, in *Alvarado*, the court found that there was no jurisdiction over the plaintiffs' APA claim because they "did not provide any authority for the proposition that *any* federal agency was required to order the [Table Mountain Rancheria] to admit [plaintiffs] as members." 509 F.3d at 1020. This Court should similarly find that it does not have jurisdiction under the APA to address Movants' Motion.

E. Movants lack standing to enforce the Stipulated Judgment.

Movants' Motion should also be denied for the independent reason that they lack standing. Under the well-established standard, "a plaintiff must demonstrate (i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024) (citing *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009)); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–561 (1992)). "Without the causation requirement, courts would be 'virtually continuing monitors of the wisdom and soundness' of government action." *All. for Hippocratic Med.*, 602 U.S. at 383–84 (quoting *Allen v. Wright*, 468 U.S. 737, 760 (1984)). In addition, to show standing, a party must demonstrate that the requested judicial relief "*likely will redress*" the alleged injury. *Tucson v. City of Seattle*, 91 F.4th 1318, 1325 (9th Cir. 2024) (citation omitted).

Movants have not demonstrated that BIA's actions caused their injuries because BIA complied with the Stipulated Judgment, as discussed above. In addition, any injury Movants have suffered is due to tribal actions, not BIA actions. The Table Mountain Rancheria adopted a constitution that did not include Movants as members. Even if Movants could prove that the BIA's approach to restoring the Tribe caused Movants' claimed harm, the Table Mountain Rancheria could have disenrolled Movants at any time. The BIA does not have authority to dictate tribal membership. *Santa Clara Pueblo*, 436 U.S. at 72 n.32.

Movants' injuries are also not redressable by this Court. While Movants may be dissatisfied with the Table Mountain Rancheria's actions, they are internal tribal matters. It is well-established that Federal courts lack jurisdiction over Tribal membership. *Lewis v. Norton*, 424 F.3d 959, 963 (9th Cir. 2005). "The problem with Plaintiffs' claim is that any relief fashioned by the district court—either enforcement of the Settlement Agreement or an order directing the BIA to reconsider the enrollment of the disputed individuals—directly implicates the Band's sovereign right to determine its own membership and enrollment procedures." *Arviso v. Norton*, 129 F. App'x 391, 393 (9th Cir. 2005) (citing *Apodaca v. Silvas,* 19 F.3d 1015, 1016 (5th Cir. 1994)). "[T]he district court has no authority to determine the Band's membership criteria or enrollment procedures." *Id.* at 393–94 (citing *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." *Santa Clara Pueblo*, 436 U.S. at 72 n.32.

And although the IRA provides BIA with authority to assist tribes with tribal organization, including issues related to development of a tribal constitution by tribal members, by its terms, the IRA does not apply to tribes "wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application." 25 U.S.C. § 5125. The Table Mountain Rancheria voted against becoming an IRA tribe in 1935. Ex. 1 to Mot. ECF Header page at 54, ECF No. 2-1. Because the Tribe is not an IRA tribe, BIA lacks

authority under the IRA to organize the Tribe. *Aguayo v. Jewell*, 827 F.3d 1213, 1224–25 (9th Cir. 2016) ("[T]he fact remains that the Band is not an IRA tribe, and the IRA, including any procedural protections for the adoption of governing documents, does not apply."); *see also United States v. Anderso*n, 625 F.2d 910, 916 (9th Cir. 1980) (holding that even when tribes later adopt a tribal constitution, the IRA does not apply to them absent congressional relief). Thus, since the Court cannot grant Movants relief, they lack standing.

IV. CONCLUSION

In conclusion, the Court should deny the Motion. Movants' motion, brought more than forty years after this Court entered judgment, is untimely and should be dismissed. In addition, the Court lacks jurisdiction over the Motion because the Stipulated Judgment does not provide any retained or ancillary jurisdiction. Nor do Rule 60(b)(6) and the APA provide the Court with jurisdiction here. Movants also lack standing. As such, Federal Defendants respectfully request that this Court deny the Motion for Order to Show Cause.

Respectfully submitted this 31st day of March, 2025.

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