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In pro per

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MANUEL CORRALES, JR., a California resident,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Case No.: 3:25-CV-00368-BJC-DDL

OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

Date: June 6, 2025
Judge: Hon. Benjamin J. Cheeks

NO ORAL ARGUMENT UNLESS ORDERED BY THE COURT

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Plaintiff MANUEL CORRALES, JR., ("Corrales") submits the following Memorandum and Authorities in Opposition to Defendants' Motion to Dismiss Plaintiff's First Amended Complaint ("FAC").

PLAINTIFF HAS A PENDING MOTION TO STAY THIS ACTION

The Plaintiff has a pending motion to stay this action pending resolution of a related state court action, which, if successful, would moot the prosecution of this Federal Tort Claim Act action. The Plaintiff asked defense counsel to stipulate to stay this action for purposes of judicial economy, but defense counsel flatly refused. The court should entertain that motion first, before delving into Defendant's unnecessary motion to dismiss.

I.
INTRODUCTION

Plaintiff, an attorney, claims he lost his vested right to earned fees and costs in representing the California Valley Miwok Tribe ("The Tribe" or "the Miwok Tribe"), a federally-recognized Indian Tribe, after the Assistant Secretary of Interior—Indian Affairs ("ASI") rendered two (2) final agency decisions retroactively nullifying the authority[1] of the Tribal leader, Silvia Burley ("Burley") and the then 1998 recognized Resolution establishing interim governing body, from which Burley derived her authority, who hired Plaintiff to represent, and initiate lawsuits for, the Tribe. He represented the Tribe for almost 13 years, and, under the Fee Agreement he entered into with Burley, he was to be paid for his legal services from accumulating funds earmarked for the Tribe on deposit with the California Gambling Control Commission ("the Commission"). The Commission is presently withholding those funds until the Tribe completes the process of reorganizing its governing body under the Indian Reorganization Act ("IRA"). Although Plaintiff claims a lien on those proceeds, the Defendants' retroactive actions have made it impossible for him to recover those earned fees and his advanced cost which were to be reimbursed by the Tribe on demand.

[1] Since the Bureau of Indian Affairs ("BIA") (or the Secretary of Interior) does not give or grant Indian Tribes with any authority to enter into third party contracts, but instead "approves" them – otherwise they are void, the ASI's actions are properly viewed as retroactively unrecognizing Burley's authority she obtained through a 1998 Resolution drafted and approved by the BIA.

Plaintiff alleges that the Defendants retroactively unrecognized Burley's authority, and disenrolled Burley[2], which in turn barred the recovery of Plaintiff's earned fees and costs, as punishment for Burley's ongoing refusal to organize the Tribe under the IRA as voted on in 1935 by the Tribe's lone resident of the Tribe's BIA purchased Rancheria, and for perpetuating an ongoing Tribal leadership dispute. Plaintiff claims the Defendant's actions constitutes a tort of negligence under the Federal Torts Claim Act ("FTCA") which proximately caused his loss of fees and cost. His claims against the government accrued on May 31, 2022, when the then ASI, Newman, reconsidered a 2015 ASI Decision retroactively unrecognizing Burley's authority, and reopened the issue causing Plaintiff damages. In addition, under new supreme court law redefining "accrual" of claims, Plaintiff was not injured until October 2023, when the dismissal of his claims in state court was affirmed on appeal, making the accrual of his claims on that date. His FTCA claims are therefore timely.

Presently, the Tribe's accumulated funds being withheld by the Commission exceed $25 million. Plaintiff's earned fees and costs exceed $5.8 million.

Under federal common law, Burley had the authority to initiate lawsuits for the Tribe by virtue of her BIA-designated "person of authority" status which logically extended to hiring lawyers for the Tribe. In addition, the BIA-drafted and approved Resolution in 1998 establishing the interim governing body of the Tribe contained a provision authorizing Burley, through that interim governing body, to hire lawyers for the Tribe. The interim governing body was to exist until a new IRA government was set up.

Accordingly, Plaintiff has Article III standing, because he suffered an injury in fact traceable to the Defendant's legally wrongful actions of retroactively unrecognizing Burley's authority to act under the 1998 Resolution to employ counsel for the Tribe which had the effect of voiding Plaintiff's Fee Agreement 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

[2] Burley's disenrollment was however cured by actions taken under a May 31, 2022 ASI Decision.

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.

III.

FACTUAL HISTORICAL BACKGROUND

The FAC alleges that in 1915, an Indian Agent from the BIA by the name of John Terrell took a census of 12 band of Indians living in the Sheep Ranch area of Calaveras County, California, near an old mining town. (FAC, para 42). The following year, Mr. Terrell purchased a 0.92-acre plot of land for this small band of Indians he called the Sheep Ranch Indians, which, as land in trust with the federal government, became a reservation or "rancheria" for these Indian in which to reside. BIA policy dictated that anyone who physically resided on the "rancheria" had the authority to act for the Tribe, including those Sheep Ranch Indians who lived away from the "rancheria." (FAC, para 45).

In 1934, the federal government passed the IRA, which allowed native Indian tribes to organize their governing structure under an IRA governing body and qualify for certain government benefits. In 1935, Jeff Davis, one of the original 12 band members

counted by Mr. Terrell was the sole member residing on the Sheep Rancheria. As a result, he was the sole member who had the authority to act for the Tribe. He did so by voting in favor of organizing the Tribe under the IRA[3]. (FAC, para 45). Due to BIA negligence, Jeff Davis' vote went nowhere, and the Tribe remained "unorganized" until 1998 when Yakima Dixie, the lone resident of the Sheep Rancheria at the time, voted to (1) enroll Burley and her family into the Tribe; and (2) together with Burley, and under the BIA's supervision, established a Resolution to have an interim governing body called the General Council, so as to manage the formal organization of the Tribe under the IRA, as voted on by Jeff Davis in 1935. (FAC, para 46). **It was to exist until the Tribe is reconstituted under the IRA**. The BIA accepted and recognized these actions, and moving forward the General Council functioned as the Tribe's interim governing body to manage the formal organization of the Tribe under the IRA. As acknowledged by the BIA, the Tribe was in a dwindling state, and the efforts to revive the Tribe by enrolling Burley and establishing the General Council was of great benefit to the Tribe's survival.

The Resolution establishing the General Council provided the Tribe with authority to hire lawyers for the Tribe. Dixie was the initial Tribal Chairman, but later resigned in 1999, with Burley replacing him. Dixie disputed his resignation but still gave Burley the authority to act as his "delegate" for the Tribe. The Tribal leadership dispute between Burley and Dixie continued over the years, until December 30, 2015, when ASI Kevin Washburn issued his final agency action decision retroactively unrecognizing Burley's authority to represent the Tribe, and retroactively unrecognizing the actions taken in 1998 establishing the General Council as the Tribe' interim governing body. His Decision also striped Burley and her family as Tribal members. The result of the 2015 Washburn Decision was that the Tribe was presently unorganized as it was before Dixie

[3] This BIA policy was further manifested with Yakima Dixie's mother in the mid-1960s, when the BIA approached her, as the sole adult member living on the rancheria, to vote for termination during federal government's termination era with Indian Tribes. The BIA rejected other member's requests to participate in the termination vote, because they did not reside on the rancheria. The termination process was not followed through due to BIA negligence, and the Tribe ended up never being terminated. This was the reason the BIA arranged for Dixie and Burley to establish the 1998 Resolution which gave them the authority to manage the reorganization of the Tribe, but also gave the General council established under the 1998 Resolution to employ counsel.

met Burley, with no one presently representing the Tribe[4]. However, prior to the 2015 Washburn Decision, Burley was functioning as the Tribe's Chairperson through the General Council, and later as the Tribe's "person of authority" or "spokesperson" for the Tribe. She exercised that authority to enter into third-party contracts with lawyers and federal contract funding with the BIA for the Tribe, including accepting RSTF money from the California Gambling Control Commission. She also arranged to have the name of the Tribe changed from the Sheep Ranch Indians to the California Valley Miwok Tribe, which the BIA accepted as the Tribe new official name – all under the authority of the 1998 Resolution.

ASI Washburn knew that Burley had hired Plaintiff to represent the Tribe more than a year before he rendered his Decision, because Plaintiff told him, and ASI Washburn knew that the General Council had the authority to hire lawyers for the Tribe. (FAC, para. 60-63, 66).

In May of 2022, the new ASI, Bryan Newland, prompted by questions about the genealogy of Jeff Davis, corrected the 2015 Washburn Decision to allow certain previously excluded individuals, including Burley, to once again become members of the Tribe and be entitled to participate in the organization of the new governing body. However, ASI Newland failed or otherwise refused to correct language in the 2015 Washburn Decision that retroactively unrecognized Burley's and the General Council's authority to make it prospective and instead reaffirmed the balance of the 2015 Decision. (FAC, para. 71-73, 84).

Under federal common law, Burley's BIA designated authority to act for the Tribe as its "person of authority," whether for federal funding contract purposes or in general, also gave her the authority to initiate lawsuits for the Tribe, even during the time of a Tribal leadership dispute. Cayuga Nation v. Tanner (2nd Cir. 2016) 824 F.3d 321, 330. As a result, Burley had the authority to retain Plaintiff for the Tribe to initiate lawsuits for the Tribe and sign a fee agreement to that effect. Separate and apart from this federal

[4] Recently, in December 2024, the Dixie Faction successfully reorganized the Tribe under the IRA with a new constitution and a new governing body and new Tribal leader. As a result, there is no longer a Tribal membership leadership dispute. The only issue now in this action is whether Burley prior to the 2015 Washburn Decision possessed the authority within the Tribe as the Tribe's "personal representative" functioning under the authority of the 1998 Resolution to employ Plaintiff under a Fee Agreement for the Tribe. The answer is yes.

common law rule, Dixie gave Burley the authority to act as a delegate for the Tribe after the 1999 Tribal leadership dispute arose between him and Burley, which he never withdrew. In addition, the formation of the General Council through the 1998 Resolution was accomplished through Dixie's authority, which the BIA used to save a dwindling Tribe and restart the process of organizing the Tribe under the IRA. Moreover, the 1998 Resolution establishing the General Council specifically stated that the General Council "shall exist" until the Tribe reorganizes under the IRA. Thus, because Burley had the authority on behalf of the Tribe to retain Plaintiff for his legal services, Plaintiff has Article III standing, because he lost his right to collect his fees as a result of the Defendant's negligence.

IV.

ARGUMENT

A. PLAINTIFF'S CLAIMS ARE NOT TIME BARRED

Plaintiff's claims are not barred by the statute of limitations. The Defendant conceded this much in its opposition to the FAC in the APA case in light of Corner Post, Inc. v. Board of Governors of Federal Reserve System (2024) 603 U.S.799 [5]. The Supreme Court in Corner Post, supra, redefined the term "accrual" for statute of limitations purposes, and held that a cause of action does not accrue until the Plaintiff is injured by the Defendants wrongful conduct, not when the wrongful conduct occurs, i.e., not until the Plaintiff can file suit and obtain relief. 603 U.S. at 804. Plaintiff sued to collect his fees in State Court, but because of the 2015 Washburn Decision, he was prevented from doing so. He appealed the adverse ruling in State Court which affirmed the State Court adverse ruling in October 2023. Thus, under Corner Post, supra, Plaintiff suffered his injuries in October 2023, which triggered his FTCA claims. He filed his FTCA claim in March 2024, well within the two-year FTCA statute of limitations.

In addition, Plaintiff suffered further injuries for the loss of his fees and costs when on May 31, 2022, ASI Newland modified and corrected Washburn's Decision to include descendants of the 1929 Census as members of the Tribe which included Burley, and to change the term "reorganize" under the Washburn Decision to "organize"

[5] While Corner Post, supra, involved a wrongful agency action and the applicable six year statute of limitations, the new definition of "accrual" is the same and applies.

to support Burley's retroactive loss of recognized authority. ASI Newland's Decision let stand, indeed reaffirmed, the language in the Washburn Decision that retroactively unrecognized Burley's authority and thus continued to bar Plaintiff from recovering his fees and costs. These wrongful actions caused Plaintiff to suffer an injury in fact again on May 31, 2022, well within the two-year statute of limitations.

Also, based upon the **re-opening doctrine**, the 2-year statute of limitations also accrued on May 31, 2022, when ASI Newland modified and corrected and then reaffirmed the 2015 Washburn Decision. By reaffirming the balance 2015 Washburn Decision, after correcting the portion related to genealogical roots affecting Burley's membership in the Tribe, ASI Newland implicitly **reconsidered** the balance of the 2015 Washburn Decision, because it is assumed that he read it before **reaffirming** it.[6] Indeed, this was the case in SLPR, LLC V. U.S. Army Corps of Engineers (S.D.Cal. 2011) 2011 WL 1648732, cited by this Court in its prior Order dated December 19, 2024 (ECF No. 29, page 18, line 15-17). There, the District Court, Judge Anello, rejected the government's statute of limitation's defense based on the "re-opening doctrine." Ibid. at pages 4-6. The government in SPLR, supra, issued final agency decisions in 1995 and 1999 addressing concerns over erosion of Plaintiff's homes as a result of certain dredging activities being conducted in Coronado Bay to accommodate homeporting of new military ships. The government issued a supplemental final agency decision in 2008, reaffirming its prior 1995 and 1999 decisions. The District Court ruled the plaintiffs' claims challenging the 1995 and 1999 decisions were not time-barred, because the government implicitly "re-opened" the shoreline erosion issue in the 1995 decision. Ibid. at page *6. It stated:

> Courts have consistently held that the statute of limitations does not bar review of agency actions that reopen a previously decided issue when the agency reaches the same decision at a subsequent proceeding. (citations). Agency

[6] Moreover, ASI Newland did more than just correct the genealogy portion of the 2015 Washburn Decision. He reconsidered Washburn's use of the term "reorganization," stating: "with the benefit of hindsight, the Washburn Decision should have used the term organization to clearly denote the fact that the Tribe's status as not having organized." (Ex. "9" to FAC, fn.3). This change was done to support the BIA's wrongful actions in retroactively nullifying Burley's authority derived from the General Council. The Tribe was clearly "organized" in the sense that the General Council was the Tribe's interim governing body and was to "exist until a constitution is formally adopted by the Tribe and approved by the Secretary of the Interior." (Ex. "12" to FAC, 1998 Resolution, last paragraph).

> reconsideration may be either explicit or implicit. (citation). The agency's stated purpose is not determinative because the court may infer from the entire record that the agency implicitly reopened a previously decided issue (citations) … If the agency explicitly or implicitly reconsiders an issue, the time period to challenge it "would start afresh." (citation). (Emphasis added).

2011 WL 1648732 at *5. Here, ASI Newland **implicitly reconsidered** the balance of the 2015 Washburn Decision bearing on Burley's authority when he reconsidered its language and corrected it. As a result, he reopened the issue of Burley's authority as set forth in the 2015 Decision, starting the time period for Plaintiff to challenge it "afresh" as of May 31, 2022, making Plaintiff's claim within the 2-year statute of limitations.

Finally, on September 27, 2023, Defendant Amy Dutschke, the BIA Regional Director, acting on behalf of the ASI and the Department of Interior, denied Plaintiff's request for modification or correction of the 2015 Washburn Decision, so as not to bar him from recovering his fees and costs. (Ex. "4" to FAC). Plaintiff requested Defendants clarify that Burley, based on her "person of authority" status, had the recognized authority to hire Plaintiff to represent the Tribe and initiate lawsuits for the Tribe consistent with federal common law and the case of Cayuga Nation v. Tanner (2nd Cir. 2016) 824 F.3d 321, which held that a person the BIA recognizes as a "person of authority" for the Tribe on an interim basis for federal contract purposes, during a tribal leadership dispute, also has the authority to initiate lawsuits for the Tribe. (Ex. "1" to FAC, letter from Corrales to ASI Newland, dated June 24, 2023). The Defendant refused to do so. As a result, the Defendants, by virtue of the September 27, 2023, Dutschke letter, caused Plaintiff to lose his right to recover his fees and costs. It was a final agency action, because Dutschke was acting on behalf of the ASI and Department of Interior in responding to Plaintiff's request for relief.

B. PLAINTIFF'S CLAIMS ARE NOT BARRED BY THE INTERFERENCE WITH CONTRACT RIGHTS EXCEPTION

Defendant argues Plaintiff's claims are barred by the interference with contract rights exception under 28 U.S.C. §2680(h). Under the unique facts alleged in the FAC, the interference with contract rights exception does not apply to bar these claims.

When the duty of care is distinct from not interfering with contract rights, there is no defense immunity under the interference with contract rights exception. Sowell v.

U.S. (5th Cir. 1988); Love v. U.S. (9th Cir. 1989) 915 F.2d 1242, 1247-48. Here, Plaintiff does not solely allege that the government interfered with his contract with the Tribe. He independently and separately and distinctly alleges that the government wrongfully retroactively unrecognized Burley's authority which in turn caused him to lose his fees under the Fee Agreement with the Tribe. The duty the federal government had to use due care in resolving the Tribal leadership dispute through the Washburn and Newland Decisions so as not to harm Plaintiff is distinct from any duty it may have had not to interfere with the existing or past contractual relationship between Plaintiff and Burley. Under California law, the federal government is liable in tort for Plaintiff's damages foreseeably caused by its negligence. J'Aire Corp. v. Gregory (1979) 24 Cal.3d 799. Here, it was foreseeable, given the long ongoing relationship the BIA had with Burley and the Tribe, and the government's knowledge that Plaintiff was the Tribe's lawyer under Burley's leadership, that the government's negligence in drafting the two ASI Decisions attempting to resolve the ongoing leadership dispute would cause Plaintiff to lose his fees contractually provided for under the Fee Agreement entered into with the Tribe under Burley's leadership. The fact that the measure of damages—loss of attorney's fees—from the federal government's negligence in attempting to resolve the leadership dispute through ASI Decisions is the same as it would have been for interfering with the contract rights does not merge the duties. Sowell, supra at 1135.

Similarly, in Mundy v. U.S. (9th Cir. 1993) 983 F.2d 950, the Court of Appeals held that the interference with contract exception did not apply to bar Plaintiff's claim that the government negligently processed his security clearance resulting in him being terminated from Northrop Corporation ("Northrop"), a large government contractor. It concluded that "even though the damages sought by [the Plaintiff] are similar to those obtainable on an interference claim, the tortious wrong alleged in the complaint is the failure to process a security clearance with due care, not an interference with contract." 983 F.2d at 953.

In Sowell, supra, the Army negligently processed Private Sowell's application for a life insurance policy, resulting in it never being sent to the life insurance company. Private Sowell later died. His widow filed a FTCA action against the government alleging the Army "negligently misplaced" the insurance application form which caused

him to lose insurance coverage. The government moved to dismiss, arguing that the claim against the government was barred by the "interference with contract rights exception." The District Court denied the motion, and the Court of Appeals affirmed. Citing Block v. Neal (1983) 460 U.S. 289, the Court held "the duty the Army owed to use due care in processing Sowell's processing forms was distinct from any duty the Army may have had not to interfere with existing or contractual relationships between Sowell and [the insurance company]." 835 F.2d at 1135. The Court then explained:

> The fact that the measure of damages—from the Army's failure to fulfill its duty to process the forms correctly is the same as it would have been for interfering with contract rights does not merge the duties.

835 F.2d at 1135.

In Neal, supra, the Supreme Court held that the misrepresentation exception did not bar a claim that federal officials had negligently supervised construction of a house. The Supreme Court noted that any misrepresentation made by government officials as to the condition of the house upon completion was not essential to the claim that construction had been negligently supervised. Ibid. It explained that the duty to use due care in supervising a construction project was a duty distinct from the duty to use due care to correctly communicate information to the plaintiff about the resulting condition of the house. Ibid.

For the same reasons, the government's negligence in preparing the two ASI Decisions retroactively unrecognizing Burley's authority is distinct from any interference with the Fee Agreement. In other words, the duty the government had to use due care in drafting the two ASI Decisions is distinct from any duty the government had not to interfere with a contractual relationship between Plaintiff and the Tribe under Burley's leadership. As a result, the interference with contract rights exception does not apply to bar Plaintiff's claims

C. PLAINTIFF HAS STANDING

1. Article III Standing.

The FAC sufficiently alleges Article III standing consistent with the case of Cayuga Nation v. Tanner (2d Cir. 2016) 824 F.3d 321, the only federal Court of Appeals case addressing the issue of a disputed Tribal leader's authority to initiate lawsuits for

the Tribe by virtue of him having been designated as a person of authority by the BIA to enter into 638 federal contracts on an interim basis.

Defendant contends that the BIA did not give Burley any authority to enter into the subject Fee Agreement with Plaintiff, and Plaintiff's alleged injury was purportedly "self-inflicted, because Plaintiff knew that Burley's authority was disputed. (Def. Memo PAs, pages 18, 22). These contentions are without merit, largely because they misunderstand the source of Burley's authority and the BIA's lack of power to "give" Burley any authority to act for the Tribe. The BIA only "approves" (not gives authority for Indian tribes to enter into) third-party contracts, but in 2000 it no longer approved legal contracts with Indian Tribes. The BIA only recognizes authority within Indian tribes. It does not give that authority. Here, Burley was the "person of authority within the Tribe." That authority came from the 1998 Resolution which the BIA recognized until 2015.

The requirements of standing are generally separated into two categories: (1) the constitutional requirements of Article III[7] and (2) the prudential requirements by the judiciary. See generally Center for Auto Safety v. National Hwy. Traffic Safety Admin. (D.C.Cir. 1996) 793 F.2d 1322, 1328-38. To establish Article III standing, a plaintiff must show (1) an "injury in fact," (2) that is "fairly traceable" or causally connected to the conduct complained of, and (3) that the injury will "likely be redressed by a favorable judicial decision." Iten v. County of Los Angeles (9th Cir. 2023) 81 F.4th 979, 984 (citing Lujan v. Defs. Of Wildlife (1992) 504 U.S. 555, 560). The "injury in fact" is the first and foremost of standing's three elements. Iten, supra (citing Spokeo, Inc. v. Robins (2016) 578 U.S. 330, 338). To this end, an injury in fact must be both "concrete and particularized" and "actual or imminent," as opposed to "conjectural or hypothetical." Lujan, supra at 560. A "particularized" injury must be personal, not a "generalized grievance." Southcentral Found. V. Alaska Native Tribal health Consortium (9th Cir. 2020) 983 F.3d 411, 417. For purposes of being "concrete," the injury in fact "must actually exist," but "concrete is not necessarily synonymous with 'tangible,'" since "intangible injuries can nevertheless be concrete." Spokeo, supra at 340. 25 USC §702.

[7] Article III requires an actual "Case or Controversy" for standing. U.S. Const. art. III, §2 cl. 1. In Valley Forge Christian College v. Americans United for Separation of Church and State, Inc. (1982) 454 U.S. 464, the Supreme Court stated that "at an irreducible minimum" this equates to an "[1] actual or threatened injury as a result of the putatively illegal conduct of the defendant …[2] fairly … traceable to the challenged action and … [3] likely … redressable by a favorable decision." 454 U.S. at 472.

Since this is not a claim under the Administrative Procedures Act ("APA"), prudential standing does not apply.

a. The BIA had no power to give Burley any authority—That authority came from Dixie which the BIA used to establish the 1998 Resolution and General Council from which Burley derived her authority.

The Defendants argue that Plaintiff cannot provide any "concrete facts" showing that "Burley had any authority on behalf of the Tribe to enter into the Fee Agreement" with him, or that "the BIA provided Burley with the necessary authority to enter into the Fee Agreement." (Def. Memo PAs, pages 18-19). Without these specific, concrete facts, as Defendants contend, Plaintiff lacks the requisite Article III standing. This contention is without merit.

First of all, the Defendants' contention is factually inaccurate. The BIA cannot and did not "give" Burley any authority. Under 25 U.S.C. §81, the BIA (Secretary of Interior) only approves contracts Indian tribes enter into with third-party non-Indians. It does not authorize Tribes to enter into them. If no approval is obtained from the Secretary, then the contract is void and cannot be enforced. 25 C.F.R. §84.007.

There is, however, an exception under 25 U.S.C. §81 for Secretarial approval of contracts with Indian tribes where the contract is for legal service provided to the Indian tribe. 25 U.S.C. §81(f)(1) provides:

> "Nothing in this section shall be construed to require the Secretary to approve a contract for legal services by an attorney."

As alleged, Plaintiff sought approval of the Fee Agreement in 2009, but the Secretary took no action on the request. Instead, it informed Plaintiff that the law had changed, and that 25 U.S.C. §81 was amended to provide that the Secretary is no longer required to approve contracts with Indian tribes for legal services by an attorney. Plaintiff was therefore allowed to contract with the Tribe for legal services without Secretarial approval. Notably, the Secretary never told Plaintiff Burley had no authority to enter into the Fee Agreement for the Tribe.

The authority to enter into the Fee Agreement came from within the Tribe, not from the BIA or Secretary. The BIA was neither to approve the Fee Agreement or

"authorize" Burley to sign it on behalf of the Tribe. Her authority came from the 1998 Resolution, which the BIA recognized until the 2015 Washburn Decision.

The 1998 Resolution was put together under BIA oversight and drafted by the BIA for Dixie and Burley. After Dixie and Burley signed it, the BIA then recognized it as giving Burley and Dixie the authority to establish the General Council which was the Tribe interim governing body set up to manage the reorganization of the Tribe under the IRA. The 1998 Resolution contained a clause to, among other things "**employ legal counsel** …" (Ex. "12").

Burley's authority derived from the General Council which was established by the initial 1998 Resolution called Resolution #GC-98-01. The BIA recognized that Dixie held the authority to act for the Tribe in 1998, because he had been the only descendant of the original 12 Band members counted in 1915 living on the Rancheria for several years. The BIA used that recognized authority to arrange to have Dixie meet Burley and her family and have Dixie enroll them as members of the Tribe. The BIA then arranged to have Dixie and the adult members of the Burley family together sign the 1998 Resolution #GC-98-01, which the BIA drafted, to form the General Council as the new interim governing body to manage the reorganization of the Tribe under the IRA. Burley later used that authority as Tribal Chairperson to change the name of the Tribe on June 7, 2001. (Ex. "16" to FAC). When the BIA changed Burley's title from Chairperson to "person of authority" in 2004, it explained that because the Tribe had not yet been reorganized under the IRA, but was still functioning under the interim General Council, Burley could no longer be recognized as a "Chairperson," since, as the BIA explained, that title belonged to a Tribal leader of a Tribe organized under the IRA. In addition, when the BIA explained Burley would be recognized as a "person of authority," Burley's authority over the Tribe's operations did not change from the time the BIA recognized her as the Tribe's Chairperson. It stated:

> "Let me emphasize that being an organized vis-à-vis unorganized tribe ordinarily will not impact either your tribe's day-to-day operations but could impact your tribe's continued eligibility for certain grants and services from the United States."

(Ex. "4" to FAC, letter dated March 26, 2004, from BIA to Burly, page 1).

Based upon its lack of understanding of the source of Burley's authority, the Defendant then argues that although the BIA recognized Burley as a "person of authority," that did not mean she had the authority to enter into 3rd party contracts, including fee agreements with lawyers for the Tribe. (Def. Memo PAs, page 18). This contention is refuted by the provisions of the 1998 Resolution which gave the General Council, among other powers, the following powers: (1) the power to **establish bank accounts** and designate signers thereupon [para. (b)]; (2) **the power to employ legal counsel** for the purpose of assisting in the development of the Constitution and the policies and procedures [regarding personnel, **financial management**, procurement and property management] [para. (e)]; and (3) the **power to purchase real property** [para. (h)]. Each of the above-referenced powers requires that Burley, on behalf of the Tribe and through the General Council, enter into 3rd party agreements. To this end, the BIA recognized that Burley had this authority, especially since it had arranged for Dixie's authority to be transmuted into the General Council through the 1998 Resolution. (Ex. "11" to FAC).

After Dixie resigned, and claimed his resignation was forged (only to recant that claim years later), he gave Burley the additional authority, separate and apart from that derived from the 1998 Resolution, to act as the Tribe's "delegate" to represent the Tribe. CVMT v. Jewell (D.D.C. 2013) 5 F.Supp.3d 86, 91 ("The very next day, on April 21, [1999], the BIA received a letter from Yakima [Dixie] in which he states: 'I cannot and will not resign as chairman of the Sheep Ranch Indian Rancheria.' However, the letter further states that Yakima '**give[s] [Burley**] the **right to act as a delegate to represent the Sheepranch Indian Rancheria**.'"). Dixie's authority, which he possessed prior to the 1998 Resolution, was acknowledged and recognized by the BIA, and is uncontested. CVMT v. Haaland (D.D.C. 2024) 2024 WL 3756397, page *13 ("for over 40 years and until his death in 2017, Yakima Dixie, a descendant of John Jeff (and thus the 1929 Census), served as the Tribe's 'Chief and hereditary Spokesperson' and was recognized as such"). Dixie never withdrew this "delegate" authority to Burley before he died.

Accordingly, Burley had the authority from both the 1998 Resolution establishing the General Council and from Dixie himself to enter into the Fee Agreement with Plaintiff, until the 2015 Washburn Decision, which stated:

> "Ms. Burley points to the 1998 Resolution as the basis for her leadership. At the time of its enactment, the 1998 Resolution undoubtedly seemed a reasonable, practical mechanism for **establishing a tribal body** to ***manage the process* of reorganizing the Tribe**. But the actual reorganization of the Tribe can be accomplished only via a process open to the whole tribal community … Accordingly, **I cannot recognize the actions taken to establish a tribal governing structure taken pursuant to the 1998 Resolution**. Ms. Burley and her family do not represent the CVMT."

(2015 Washburn Decision, Ex. "8" to FAC, page 5). Arguably, Washburn was stating that the interim governing body, i.e. the General Council, was temporary and was designed simply to manage the reorganization of the Tribe under the IRA as voted on by Jeff Davis in 1935. However, he went too far by unrecognizing Burley's authority, under both her position as Chairperson and "person of authority" retroactively. That had the effect of barring Plaintiff's rights under the Fee Agreement. Even Washburn acknowledges that the General Council through which Burley exercised her authority was an established "governing body" whose purpose was to "manage the process of reorganizing the Tribe."[8] Moreover, Washburn's use of the term "reorganizing the Tribe" assumes the Tribe was already organized, albeit as an interim governing body called the General Council. As an organized, albeit interim governing body, **the General Council was to "exist until a constitution is formally adopted by the Tribe and approved by the Secretary of Interior or his authorized representative."** (Ex. "12" to FAC, 1998 Resolution, last page, last "RESOLVED"). Thus, the General Council functioned as the Tribe's governing body while Burley was both the Tribal Chairperson and the "person of authority," up until the 2015 Washburn Decision retroactively unrecognizing its creation, retroactively unrecognizing Dixie's authority to establish it

[8] ASI Newland later changed that language to read "organizing the Tribe" to fit the BIA's new, unexplained position that the General Council was never validly established and, per Washburn, is retroactively nullified. (Ex. "9" to FAC, fn. 3). By doing so, ASI Newland "reopened" the issue and restarted the statute of limitations. SLPR, infra.

through the 1998 Resolution, and retroactively unrecognizing Dixie's actions enrolling Burley and her family into the Tribe.[9]

b. Binding federal precedent holds that Burley's status as a BIA-recognized "person of authority" gave her the authority to initiate lawsuits for the Tribe.

The Defendant ignores, and does not discuss in depth to any degree, the thrust of the Cayuga case which refutes its argument that Burley did not have the recognized authority to enter into the Fee Agreement with Plaintiff to represent the Tribe in litigation. (Memo Pas, page 12).[10]

The BIA's act of recognizing Burley as a "person of authority" allows the court to defer to that recognition decision and conclude, prior to the 2015 Washburn Decision, that Burley also had the authority to initiate lawsuits for the Tribe. The issue is not whether the BIA could "give Burley the authority" to enter into 3rd party contracts, including the subject Fee Agreement. It has no such authority. It only has "recognition" and approval authority. The subject Fee Agreement is not void, since no approval was required. Thus, the issue is whether the BIA's interim recognition of Burley as the "person of authority" within the Tribe, whether or not limited to entering into 638 federal contracts with the BIA, was sufficient to conclude that Burley also had the authority to initiate lawsuits for the Tribe. Cayuga, supra, says it does. The Court in Cayuga, supra, holds that the Court, without resolving any Tribal leadership dispute, may defer to the BIA's interim recognition of a disputed Tribal leader to act as the "person of authority" for the Tribe to conclude that that person also has the authority to initiate lawsuits for the Tribe. 824 F.3d at 330. Accordingly, pursuant to Cayuga, supra, this Court may also

[9] As alleged in the FAC, even Burley acknowledges that she had the authority to enter into the Fee Agreement with Plaintiff for the Tribe pursuant to the powers and authority of the 1998 Resolution and the General Council. (FAC, para. 78)

[10] The Defendants cite the case of Corrales v. The California Gambling Control Commission (2023) 93 CA5th 286, 307-308, where the Court of Appeal, in dicta, concluded that the BIA had no such authority. However, as explained, the BIA does not give any authority to Indian Tribes to enter into third-party contracts. It only approves them, except for attorney contracts. The Indian tribe possess the authority themselves from within their tribal organization to enter into these contracts. After doing so, with the exception of fee agreements with lawyers, the tribes submit those contracts for secretarial approval. As stated above, Burley's authority came from the General Council, which derived its authority from the 1998 Resolution, which was created through Dixie's authority as the sole resident of the Rancheria.

conclude that by virtue of her BIA-designated title of "person of authority," Burley also had the authority to initiate and conduct litigation on behalf of the Tribe.

Once the Court concludes that the BIA recognized Burley as a "person of authority" within the Tribe, a fact that is undisputed in the record, Cayuga, supra, holds that it can defer to the BIA's act of recognition to further conclude that Burley also had the authority to initiate lawsuits for the Tribe. It follows, therefore, that Burley's authority to initiate lawsuits for the Tribe necessarily includes the authority to hire a lawyer to initiate those lawsuits and signing a Fee Agreement to that effect, since she is not a lawyer.

c. The FAC "connects the dots" and shows that Plaintiff's injuries are "fairly traceable" to the 2015 Washburn Decision and the 2022 Newland Decision

(1). The 2105 Washburn Decision.

The FAC sufficiently alleges Plaintiff suffered damage that were foreseeably caused by the government negligence. For example, the FAC alleges:

- Plaintiff's June 6, 2014, letter to Washburn.

Plaintiff sent a letter to ASI Washburn on June 6, 2014, while he was responding to the District Court's remand instructions to reconsider his predecessor's decision. He identified himself as the attorney for the Tribe under Burley's leadership, enclosing his appellate briefs in the California Court of Appeal on Burley's authority. (FAC, para. 60). He had also notified the BIA in September 2010, that he was the Tribe's attorney under Burley's leadership, and wished to discuss issues related to Burley's authority. (FAC, para. 64). Plaintiff had previously sent the ASI a copy of his Fee Agreement for approval, which the ASI took no action on, because the law no longer required Secretary approval of attorney fee agreements with Indian tribes. Thus, ASI Washburn knew that Burley had retained Plaintiff to represent the Tribe when he issued his 2015 Decision.

- Plaintiff was adversely impacted by the 2015 Washburn Decision, even though he is not mentioned in the Decision.

In Corner Post, supra, the Supreme noted that a person can have standing under the APA to challenge a final agency action, even though that person is not mentioned in

the agency decision or regulation. This standing requirement is the same in FTCA cases. In his concurring Opinion, Justice Kavanaugh explained that an unlawful agency action regulating or pertaining to others can be challenged by one who is adversely affected by that agency action "downstream." Corner Post, supra at 826-828. Here, the Court's previous ruling expressing concern that Plaintiff has not "connected the dots" to allege that his injury-in-fact is fairly traceable to the 2015 Washburn Decision" is no longer questionable. Per Corner Post, supra, Plaintiff need not be specifically mentioned nor be the subject of the 2015 Washburn Decision to have Article III standing. Plaintiff was adversely impacted by Washburn retroactively unrecognizing Burley's authority to represent the Tribe for all purposes. Washburn could easily have unrecognized Burley's authority prospectively, but, as alleged in the FAC, he chose instead to do so retroactively. The FAC alleges that Plaintiff was adversely affected downstream by Washburn's 2015 Decision, even though he is not mentioned in his Decision, consistent with Corner Post, supra. (FAC, para. 58, 83).

(2) The 2022 Newland Decision.

Plaintiff was also adversely impacted downstream by ASI Newland in his May 31, 2022, Decision correcting a portion of the 2015 Washburn Decision. The FAC alleges that ASI Newland corrected the portion of the 2015 Washburn Decision which placed Burley and others in a group of descendants of a 1929 Census, which effectively disenrolled Burley. In that category, she would have to re-apply for membership once the new governing body is formed under the IRA. When he corrected that portion of Washburn's Decision which re-enrolled Burley, he failed to correct the balance of the 2105 Washburn Decision to make it prospective instead of retroactive, thus reaffirming Washburn's wrongful actions toward Burley and Plaintiff. In addition, ASI Newland changed the wording in the 2015 Washburn Decision to state the Tribe is to be "organized" instead of "reorganized," since Washburn's statement that the Tribe is to be "reorganized" assumes the general Council was the Tribe's organized governing body, albeit on an interim basis.

D. PLAINTIFF'S INJURIES ARE NOT "SELF-INFLICTED"

Plaintiff's injuries are not "self-inflicted," as the Defendants contend. (Def. Memo PAs, page 22). Throughout the time he was representing the Tribe under Burley's

authority, the BIA gave no indication that it was going to retroactively unrecognize Burley's authority, or even disenroll Burley, which in turn would have voided Plaintiff's Fee Agreement with the Tribe and destroy his ability to recover his fees and costs. Moreover, despite suspending 638 federal contract funding with Burley off and on, the BIA stated that Burley's recognized status as a "person of authority" for the Tribe continued. (Ex. "7" to FAC, Decl. of Whipple, dated Sept. 21, 2005, para. 3 and 4: "On July 19, 2005, I sent a letter to Silvia Burley enclosing a modification of the '638' contract which 'suspends the current ['638'] contract in its entirety.' I explained my reasons for my action in this letter. Nothing in this letter should be read to indicate that BIA is taking the position that Ms. Burley is no longer 'a person of authority' within the Tribe").

E. PLAINTIFF DID NOT VIOLATE RULE 8

There is no violation of Rule 8 requiring a short and plain statement of the claim. The issues are complex and require a detailed summary of the history of the Tribe, as clearly shown by the Defendant's factual background in its motion papers.

VI.

CONCLUSION

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

DATED: May 20, 2025

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

Corrales v. U.S.A.
Case No. 3:25-CV-00368- BJC-DDL

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, the undersigned, whose address is 11939 Rancho Bernardo Road, Suite 170, 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 May 20, 2025, I served the within: **OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT** 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: May 20, 2025

/s/ Carianne Steinman
Carianne Steinman

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