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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS,

Plaintiff,

v.

THE CHAIR OF THE NATIONAL INDIAN GAMING COMMISSION, et al.,

Defendants.

Case No. 1:26-cv-04343-KES-SAB

NOMINAL DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT

Date:	October 5, 2026
Time:	1:30 PM
Place:	Courtroom 6, 7th Floor
Judge:	Hon. Kirk E. Sherriff

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NOMINAL DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT

TABLE OF CONTENTS

INTRODUCTION 1

LEGAL AND FACTUAL BACKGROUND 2

I. The Indian Gaming Regulatory Act 2

A. Gaming Eligibility 3

B. Compacts and Secretarial Procedures 3

C. Management Contracts 4

II. The North Fork Project 5

III. Prior Federal Litigation 6

IV. Prior State Court Litigation 7

V. The Present Litigation 7

STANDARD OF REVIEW 8

ARGUMENT 8

I. Count One Must Be Dismissed for Failure to State a Claim. 9

II. Count Two Must Be Dismissed for Failure to State a Claim. 12

A. IGRA Does Not Authorize Picayune to Assert Claims for Violation of Secretarial Procedures. 12

B. Count Two Is Time-Barred. 17

1. Picayune's Claim Is Subject to California's Four-Year Statute of Limitations for Analogous Claims. 18

2. Any Cause of Action Accrued Outside the Limitations Period. 19

CONCLUSION 21

TABLE OF AUTHORITIES

CASES

ABF Capital Corp. v. Osley,
414 F.3d 1061 (9th Cir. 2005) 21

Angeles Chem. Co. v. Spencer & Jones,
51 Cal. Rptr. 2d 594 (Ct. App. 1996) 19

Bainbridge v. Cnty. of Riverside,
334 P.2d 625 (Cal. Dist. Ct. App. 1959).....19

Balistreri v. Pacifica Police Dep't,
901 F.2d 696 (9th Cir. 1990) 8

Big Lagoon Rancheria v. California,
789 F.3d 947 (9th Cir. 2015) 20

Blue Lake Rancheria v. Kalshi, Inc.,
No. 25-cv-06162-JSC, 2025 U.S. Dist. LEXIS 221764 (N.D. Cal. Nov. 10, 2025) 15, 16, 17

Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. California,
618 F.3d 1066 (9th Cir. 2010) 18

Cavalli v. Macaire,
324 P.2d 336 (Cal. Dist. Ct. App. 1958).....19

Club One Casino, Inc. v. Bernhardt,
959 F.3d 1142 (9th Cir. 2020) 5

Hishon v. King & Spalding,
467 U.S. 69 (1984).....8

Jablon v. Dean Witter & Co.,
614 F.2d 677 (9th Cir. 1980) 8

Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin,
599 U.S. 382 (2023).....17

Michigan v. Bay Mills Indian Cmty.,
572 U.S. 782 (2014).....13

Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.,
463 U.S. 29 (1983).....11

North Star Steel Co. v. Thomas,
515 U.S. 29 (1995).....18

North Fork Rancheria of Mono Indians v. California,
No. 1:15-cv-00419-AWI-SAB, 2015 U.S. Dist. LEXIS 154729
(E.D. Cal. Nov. 13, 2015) 5

North Star Int'l v. Ariz. Corp. Comm'n,
720 F.2d 578 (9th Cir. 1983) 8

Pakootas v. Teck Cominco Metals, Ltd.,
830 F.3d 975 (9th Cir. 2016) 16

Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation v. California,
813 F.3d 1155 (9th Cir. 2015) 18

Picayune Rancheria of Chukchansi Indians v. North Fork Rancheria of Mono Indians,
340 Cal. Rptr. 3d 219 (Ct. App. 2025) 7

Picayune Rancheria of Chukchansi Indians v. U.S. Dept. of Interior,
No. 1:16-CV-0950-AWI-EPG, 2017 U.S. Dist. LEXIS 132757 (E.D. Cal. Aug. 18, 2017) 6

Poarch Band of Creek Indians v. Alabama,
776 F. Supp. 550 (S.D. Ala. 1991)....14

Rich v. Shrader,
823 F.3d 1205 (9th Cir. 2016) 19

Saloojas, Inc. v. Aetna Health of Cal., Inc.,
80 F. 4th 1011 (9th Cir. 2023) 8

SAS Inst. v. Iancu,
584 U.S. 357 (2018)....14, 15

Stand Up for Cal.! v. State of Cal.,
278 Cal. Rptr. 3d 627 (Ct. App. 2021) 7

Stand Up for Cal.! v. U.S. Dep't of Interior,
204 F. Supp. 3d 212 (D.D.C. 2016)....6

Stand Up for Cal.! v. United States DOI,
879 F.3d 1177 (D.C. Cir. 2018)....5, 6

Stand Up for Cal.! v. United States DOI,
959 F.3d 1154 (9th Cir. 2020) .... *passim*

Stockbridge-Munsee Cmty. v. Wisconsin,
922 F.3d 818 (7th Cir. 2019) 19

Tribeca Companies, LLC v. First American Title Ins. Co.,
192 Cal. Rptr. 3d 354 (Ct. App. 2015) 19

United Auburn Indian Cmty. of Auburn Rancheria v. Newsom,
472 P.3d 1064 (Cal. 2020)....7

United States v. Ritchie,
342 F.3d 903 (9th Cir. 2003) 18

Whitman v. Am. Trucking Ass'ns Inc.,
531 U.S. 457 (2001)....11

Wind Dancer Prod. Grp. v. Walt Disney Pictures,
215 Cal. Rptr. 3d 835 (Ct. App. 2017) 19

FEDERAL STATUTES AND REGULATIONS

25 U.S.C § 2719 3

25 U.S.C. § 2702(1) 3

25 U.S.C. § 2702(2) 3

25 U.S.C. § 2703 3

25 U.S.C. § 2710 ..... *passim*

25 U.S.C. § 2711 .....4, 9

25 U.S.C. § 2719 .....3, 8

25 C.F.R. § 531.1 .....4, 9

25 C.F.R. § 531.2 4

25 C.F.R. § 533.3 .....4, 9

25 C.F.R. § 533.6 4

OTHER AUTHORITIES

Cal. Code Civ. Proc. § 337(a) 18

78 Fed. Reg. 62,649 (Oct. 22, 2013) 5

RULES

Fed. R. Civ. P. 12 13

INTRODUCTION

In 2011, after a comprehensive six-year review process, the United States Department of the Interior ("DOI") issued a favorable gaming eligibility determination to the North Fork Rancheria of Mono Indians ("North Fork") for development of a casino and hotel (the "Project") on a 305-acre property in Madera County, California (the "Madera Parcel"). The following year, the Governor of California concurred in DOI's determination, and DOI decided to take the Madera Parcel into trust for the tribe. In 2013, DOI finalized its acquisition of the Madera Parcel in trust for North Fork to develop the Project. Now, after more than a decade – and multiple unsuccessful federal lawsuits – the Picayune Rancheria of the Chukchansi Indians ("Picayune") has filed an eleventh-hour complaint recycling previously rejected arguments in a last-ditch effort to prevent North Fork's Project from opening to the public.

Picayune styles its action as (1) an Administrative Procedure Act ("APA") challenge to federal approval of a contract for management of gaming operations ("Count One") and (2) a claim arising under the Indian Gaming Regulatory Act ("IGRA") for violation of the federally promulgated procedures that govern North Fork's gaming on the Madera Parcel ("Count Two"). But a closer look at the first amended complaint ("FAC") gives up the game: Picayune's real target is DOI's 2012 approval of the Project – agency action that has been upheld in several rounds of federal litigation, *including multiple cases brought by Picayune*.

The FAC is notable for its failure to disclose that Picayune has already challenged the Madera Parcel's gaming eligibility in federal court – twice. And it lost – twice. This third bite at the apple is based on the theory that a recent California state court decision rendered DOI's 2012 decision invalid from the start. But creative pleading is not enough to state a federal claim for relief. And here, dismissal is warranted on multiple grounds.

In Count One, Picayune claims the Chair of the National Indian Gaming Commission ("NIGC") violated the APA by approving North Fork's management contract for the Project (the "Management Contract"). Picayune maintains that the Chair should not have approved the contract, because there is no valid gaming eligibility determination under the Indian Gaming

Regulatory Act ("IGRA") allowing gaming on the Madera Parcel. However, Picayune does not, and cannot, show that the Chair has an obligation to reconsider (or revoke) the Secretary of the Interior's underlying determinations when the Chair is deciding whether to approve a management contract. Picayune's claim that the Johnson Act bars gaming on the Madera Parcel merely repackages the same flawed theory.

In Count Two, Picayune invokes a statutory provision that allows a tribe to sue to enjoin a class III gaming activity conducted in violation of a tribal-state gaming compact. *See* 25 U.S.C. § 2710(d)(7)(A)(ii). But there is no tribal-state compact in effect here. Instead, Picayune claims North Fork and the Nominal Defendants plan to conduct class III gaming activity in violation of procedures prescribed by the Secretary (the "North Fork Secretarial Procedures" or "Procedures"). IGRA is crystal clear: Only the Secretary may enforce such procedures. *See id.* § 2710(d)(7)(A)(iii). Picayune has thus failed to state a claim upon which relief can be granted.

Moreover, even if Count Two stated a claim (which it does not), it should be dismissed as time-barred. Picayune's theory is that the Governor of California's concurrence in DOI's 2011 gaming eligibility determination was flawed, rendering gaming at the Madera Parcel unlawful. That claim accrued as far back as 2016, when it was perfectly clear that North Fork would develop the Project at the Madera Parcel pursuant to the North Fork Secretarial Procedures. Indeed, Picayune even challenged the North Fork Secretarial Procedures on the same theory of invalidity in 2017. Though Picayune did not then allege a violation of the Procedures, it had all the facts necessary to do so. Because the claim accrued nearly a decade ago, it is now time-barred.

For these reasons, and as explained below, the Court should dismiss the First Amended Complaint.

LEGAL AND FACTUAL BACKGROUND

I. The Indian Gaming Regulatory Act

IGRA provides a statutory basis for Indian tribes to engage in gaming "as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25

U.S.C. § 2702(1). The purposes of the Act also include "regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players." *Id.* § 2702(2). Three aspects of IGRA are particularly relevant here.

A. Gaming Eligibility

First, IGRA generally prohibits gaming on land put into trust for a tribe after the statute's October 17, 1988, enactment (*id.* § 2719(a)), subject to certain exceptions. One of the broadest exceptions is commonly referred to as a "two-part determination." *Id.* § 2719(b)(1)(A). Under this exception, lands acquired in trust after October 17, 1988, are eligible for gaming if the Secretary makes a determination that gaming would be in the "best interests of the Indian tribe and its members" and would not be "detrimental to the surrounding community." *Id.* The Governor of the state within which the land is located must concur with the Secretary's determination. *Id.*

B. Compacts and Secretarial Procedures

Second, IGRA divides gaming into three "classes." *Id.* §§ 2703(6)-(8), 2710. Class III gaming, which includes so-called "Las Vegas-style" casino games, generally must be conducted "in conformance with a Tribal-State compact." *Id.* § 2710(d)(1)(C). When a tribe requests to negotiate a compact, the relevant state has an obligation to "negotiate in good faith." *Id.* § 2710(d)(3)(A). If the state does not, the tribe may avail itself of IGRA's detailed remedial process, beginning with a lawsuit filed in federal court. *Id.* § 2710(d)(7)(A)(i), (d)(7)(B). If the reviewing court finds that the state failed to negotiate in good faith, the court must order the state and tribe to conclude a compact within 60 days. *Id.* § 2710(d)(7)(B)(iii). If those efforts are unsuccessful, the court must then appoint a mediator, who must select one of the two proposed compacts. *Id.* § 2710(d)(7)(B)(iv). If the state does not consent to the compact selected by the mediator, the Secretary "shall prescribe" procedures which will govern class III gaming. *Id.* § 2710(d)(7)(B)(vii).

In general, the Johnson Act prohibits transportation, possession, or use of gambling devices within Indian country. 15 U.S.C. § 1175(a). IGRA, however, explicitly exempts "gaming conducted under a Tribal-State compact" from the Johnson Act prohibition. 25 U.S.C. § 2710(d)(6). This exemption includes gaming conducted in accordance with secretarial procedures. *Stand Up for Cal!*, 959 F.3d 1154, 1159 (9th Cir. 2020).

C. Management Contracts

Third, IGRA authorizes tribes to contract with non-tribal entities for the management of class III gaming operations, subject to review and approval by the NIGC Chair. *Id.* § 2710(d)(9). Congress established detailed requirements governing the Chair's review and approval of management contracts. The Chair may approve a management contract if he determines it contains certain provisions, identified by statute, that protect the contracting tribe. *See id.* § 2711. For example, the management contract must provide the tribe with a right to verify daily gross revenues and income from the gaming activity and must provide for a minimum guaranteed payment to the tribe. *Id.* § 2711(b)(2), (3).

IGRA's implementing regulations further specify the scope of the Chair's review. In particular, 25 C.F.R. Part 531 governs the contents of management contracts and directs the Chair to ensure that the contract contains specific provisions intended to further the above-referenced statutory purposes (*i.e.*, promoting economic development for the contracting tribe, preventing corruption, ensuring the compacting tribe is the primary beneficiary of the gaming operation) and does not contain any prohibited provisions. 25 C.F.R. §§ 531.1, 531.2. The Chair must also confirm that required supporting documentation has been provided. *Id.* §§ 533.3, 533.6(a). Although the regulations provide that a management contract must include a statement that "gaming covered by the contract will be conducted in accordance with [IGRA]," *id.* § 531.1(a), nothing in IGRA or its implementing regulations requires the Chair to reopen or reevaluate earlier predicate DOI determinations, including determinations regarding gaming eligibility of the relevant site.

II. The North Fork Project[1]

In 2005, North Fork submitted a fee-to-trust application to DOI seeking to have the Madera Parcel taken into trust for the development of the Project. *Stand Up for Cal.!*, 959 F.3d at 1157. North Fork also requested that the Secretary authorize gaming on the Madera Parcel pursuant to IGRA's two-part determination process. *Stand Up for Cal.! v. United States DOI*, 879 F.3d 1177, 1180 (D.C. Cir. 2018). In 2011, the Secretary issued a favorable two-part determination, finding that the project would be in the best interest of North Fork and its members and would not be detrimental to the surrounding community. *Club One Casino, Inc. v. Bernhardt*, 959 F.3d 1142, 1145 (9th Cir. 2020). The Governor of California subsequently concurred in the secretarial determination and signed a compact with North Fork to allow class III gaming on the Madera Parcel ("2012 Compact") in August 2012. *Id*. In February 2013, the Secretary took the Madera Parcel into trust for North Fork. *Id.*

Following the fee-to-trust acquisition, the California Legislature ratified the 2012 Compact. *Id.* On October 22, 2013, the Secretary published notice in the Federal Register that the 2012 Compact would take effect. 78 Fed. Reg. 62,649 (Oct. 22, 2013). However, a referendum on the Legislature's action ("Proposition 48") was placed on the November 2014 general election ballot, and California voters rejected ratification of the 2012 Compact. *Club One Casino, Inc.*, 959 F.3d at 1145.

In the wake of Proposition 48, the Governor's office refused North Fork's request to negotiate in good faith regarding a new tribal-state compact. *North Fork Rancheria of Mono Indians v. California*, No. 1:15-cv-00419-AWI-SAB, 2015 U.S. Dist. LEXIS 154729, at *23 (E.D. Cal. Nov. 13, 2015). North Fork then filed suit in this court, invoking the remedial process described above. *Id.* at *10; *see* 25 U.S.C. § 2710(d)(7)(A)(i). That process culminated, on July 29, 2016, with the Secretary's issuance of the North Fork Secretarial Procedures to govern class

[1] Picayune has pursued litigation related to the Madera Parcel against multiple parties, in multiple jurisdictions, for well over ten years. In the course of that litigation, the parties and courts have often laid out the factual and procedural history in considerable detail. Rather than recite that lengthy background here, Nominal Defendants set forth only background information necessary to their arguments for dismissal of the complaint.

III gaming at the Madera Parcel. *Stand Up for Cal.!*, 959 F.3d at 1157. In short, by 2016 it was clear that North Fork would develop the Project pursuant to the Secretarial Procedures.

As permitted by IGRA, North Fork then entered into the Management Contract for the Project's class III gaming operations in November 2023. FAC ¶ 56. On January 5, 2024, the Chair of the NIGC approved the Management Contract. *Id.* ¶ 5.

III. Prior Federal Litigation

In December 2012, Picayune brought a federal challenge to DOI's approval of North Fork's project, including the Secretary's determination that the Madera Parcel was eligible for gaming under IGRA. *Picayune Rancheria of Chukchansi Indians v. United States*, No. 12-cv-02071 (D.D.C., filed Dec. 31, 2012) (subsequently consolidated with similar challenge filed by advocacy organization Stand Up for California!). Among other things, Picayune claimed the Governor's concurrence in the two-part determination was invalid, rendering gaming unlawful. *See Stand Up for Cal.! v. U.S. Dep't of Interior*, 204 F. Supp. 3d 212, 247 n.16 (D.D.C. 2016). But Picayune failed to substantiate that claim in its summary judgment briefing, and the district court deemed it abandoned. *Id.* Stand Up for California! made similar arguments, which were also rejected. *See id.* at 248-54. Ultimately, the district court denied Picayune's challenge in full, finding in favor of DOI. *Id.* at 323. The D.C. Circuit affirmed the district court's opinion, upholding the Secretary's gaming eligibility determination. *Stand Up for Cal.!*, 879 F.3d 1177, *cert. denied*, 586 U.S. 1107 (denying Stand Up for California!'s petition for certiorari). Picayune did not petition for Supreme Court review.

In July 2016, Picayune filed a second – and similar – federal challenge, asking this court for a declaration that the Madera Parcel was ineligible for gaming under IGRA and attacking the North Fork Secretarial Procedures. *Picayune Rancheria of Chukchansi Indians v. U.S. Dep't of Interior*, No. 1:16-CV-0950-AWI-EPG, 2017 U.S. Dist. LEXIS 132757 (E.D. Cal. Aug. 18, 2017). Again, Picayune's theory was that the Governor's concurrence in the two-part determination was invalid. *Id.* As in the D.C. Circuit, these claims were resolved in favor of North Fork and the federal government. *Id.* at *35. Picayune did not appeal.

IV. Prior State Court Litigation

Picayune has also pursued state-court claims that the Governor's 2012 concurrence was invalid. The trial court stayed that case in 2017, pending rulings in two related cases. *See Picayune Rancheria of Chukchansi Indians v. North Fork Rancheria of Mono Indians*, 340 Cal. Rptr. 3d 219, 228 (Ct. App. 2025). First the California Supreme Court held in 2020 that "[current] California law permits the Governor's concurrence in the Secretary's [two-part] determination to allow class III gaming on Indian land taken into trust for an Indian tribe after IGRA was enacted," but the Governor's concurrence power is not "indefeasible." *United Auburn Indian Cmty. of Auburn Rancheria v. Newsom*, 472 P.3d 1064, 1080 (Cal. 2020). Subsequently, the California Court of Appeal held that although Proposition 48 explicitly applied only to the 2012 compact – and did not mention concurrence – it impliedly revoked the Governor's concurrence as well. *Stand Up for Cal.! v. State of Cal.*, 278 Cal. Rptr. 3d 627, 630 (Ct. App. 2021). Following these decisions, the stay in Picayune's state-court challenge was lifted in September 2021. *Picayune Rancheria of Chukchansi Indians*, 340 Cal. Rptr. 3d at 228. Then, in December 2025, the California Court of Appeal held that the Governor's 2012 concurrence was "void ab initio" as a matter of state law. *Id.* at 236. The Court of Appeal expressly declined to decide what effect its holding would have under federal law. *Id.* at 231.

V. The Present Litigation

Picayune initiated the present action on June 4, 2026. ECF 1 (Complaint). The original complaint alleged two causes of action: a violation of the APA based on the Chair's approval of the Management Contract and a claim arising under IGRA for violation of the North Fork Secretarial Procedures. Nominal Defendants moved to dismiss the original complaint on August 7, 2026 (ECF 21), and North Fork moved to dismiss the original complaint five days later (ECF 26). On August 20, 2026, Picayune filed its FAC. ECF 28. On August 21, 2026, the Court denied the pending motions to dismiss as moot in light of the superseding filing of the FAC. Aug. 21, 2026 Minute Order. But because the FAC does not cure the fatal defects in the original complaint, Nominal Defendants again move to dismiss.

STANDARD OF REVIEW

The purpose of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) is to assess the legal sufficiency of the complaint. *North Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). When deciding if a complaint states a claim on which relief may be granted, the court takes as true the allegations in the complaint and construes the allegations in the light most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). However, legal conclusions cast in the form of factual allegations need not be accepted as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009).

"Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). For example, dismissal is warranted where a plaintiff lacks a private right of action under federal law. *Saloojas, Inc. v. Aetna Health of Cal., Inc.*, 80 F. 4th 1011, 1016 (9th Cir. 2023). Dismissal may also be warranted based on a statute of limitations defense "if the running of the statute is apparent on the face of the complaint." *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980).

ARGUMENT

At bottom, Picayune is attempting to relitigate DOI decision-making from more than a decade ago. The FAC makes this plain: Picayune asks the Court to enter a "judicial declaration to the effect that in the absence of a valid Governor's concurrence, the Madera Parcel does not qualify for IGRA's two-part determination exception" under 25 U.S.C. § 2719(b)(1). FAC, Prayer for Relief ¶ 3. Picayune's previous challenges to the Madera Parcel's gaming eligibility were unsuccessful, and this latest effort should likewise be rejected. *Supra* at 6-7. Notwithstanding those prior rulings, Picayune takes one more go at it here.

Count One, challenging the NIGC Chair's approval of the Management Contract, does not provide any path to relief. Nothing in IGRA, its implementing regulations, or the Johnson Act requires the Chair to reconsider (or override) an earlier gaming eligibility determination during the management contract approval process, especially not where the earlier determination

was upheld on judicial review. Thus, the Chair's alleged failure to do so here does not and cannot violate the APA.

Count Two, a request for an injunction based on IGRA itself, likewise provides Picayune no ground for relief. There is no IGRA cause of action for a tribe to assert violations of secretarial procedures. Moreover, even if there were a cause of action, Picayune's claim would nevertheless be time-barred.

Accordingly, the Court should dismiss Picayune's FAC, with prejudice.

I. Count One Must Be Dismissed for Failure to State a Claim.

Count One alleges that the NIGC Chair violated the APA by approving the Management Contract without first evaluating the Madera Parcel's gaming eligibility. FAC ¶ 72. But Picayune does not, and cannot, show that reconsideration of gaming eligibility is a prerequisite for management contract approval. Count One therefore does not state a claim on which relief may be granted, and it should be dismissed.

IGRA allows a tribe to enter into a management contract for the operation of class III gaming activity. 25 U.S.C. § 2710(d)(9). Management contracts must be approved by the Chair of the NIGC. *Id.* The statute and regulations explain what the Chair must consider when determining whether to approve a management contract. *Id.* (identifying certain subsections of 25 U.S.C. § 2711 that govern the Chair's decision-making); *id.* § 2711(b) (listing six minimum requirements for management contract to receive Chair approval); 25 C.F.R. §§ 531.1, 533.3 (establishing additional requirements). Nothing in the statute or the regulations requires the Chair to revisit the Secretary's underlying determination that the relevant property is eligible for gaming.

Picayune attempts to manufacture such a requirement by citing 25 C.F.R. § 531.1(a). FAC ¶ 71. But that provision does not mandate that the Chair conduct or review any gaming eligibility analysis. Rather, it simply requires the Chair to verify that the management contract includes a statement that gaming "will be conducted in accordance with [IGRA]" and with "governing tribal ordinance(s)." 25 C.F.R. § 531.1(a).

The broader statutory scheme confirms that no such reconsideration is appropriate, or even permitted. Where, as here, the relevant land is not in trust at the time the tribe requests a two-part determination, IGRA specifically directs the Secretary to determine whether land is gaming-eligible. 25 U.S.C. § 2719(b)(1)(A). If the state and tribe cannot agree to a compact to govern gaming activity, as was the case here, IGRA then requires the Secretary to establish procedures to do so. 25 U.S.C. § 2710(d)(7)(B)(vii). It makes no sense that the statute would demand or even allow the Chair to reconsider (much less override) these previously made determinations.

Picayune cites *AT&T Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899 (9th Cir. 2002), to suggest that management contract approval requires plenary review of prior agency decisions, including determinations that Picayune already tried, and failed, to overturn in court. FAC ¶ 42. That case cannot bear such weight.

In *AT&T*, the Ninth Circuit read 25 C.F.R. § 531.1(a) to require the Chair to consider IGRA compliance before approving a management contract. But there (unlike here), no underlying secretarial determination regarding gaming eligibility had been made. Indeed, *AT&T* arose under a different statutory and regulatory framework. There, the tribe was proposing a particular type of gaming – a telephonic lottery – on pre-1988 trust lands. *See AT&T Corp.*, 295 F.3d at 901 (the challenged activity "occurs entirely on the Reservation."); *see also Idaho v. United States*, 533 U.S. 262, 271 (2001) (Coeur d'Alene's Reservation was ratified by Congress in 1891). When land is acquired into trust matters greatly under IGRA and its implementing regulations. Section 2719's general prohibition against gaming on land applies only to lands acquired in trust after October 17, 1988. 25 U.S.C. § 2719(a); 25 C.F.R. Part 292 ("Gaming on Trust Lands Acquired after October 17, 1988"). Thus, for lands acquired after that date – like the Madera Parcel – the statute directs *the Secretary* to determine whether the land is eligible for gaming under IGRA. 25 U.S.C. § 2719(b)(1)(A) (directing "the Secretary" to make the required determination and requiring concurrence in "the Secretary's determination"); 25 C.F.R. Part 292 Subpart C ("Secretarial Determination and Governor's Concurrence" (emphasis added)); *id.* § 292.14 ("A tribe must file its application for a Secretarial Determination with the

Regional Director of the [Bureau of Indian Affairs] Regional Office . . . .”). By contrast, for lands acquired before that date, as in *AT&T*, there is no statutory role for the Secretary or DOI, and whether a proposed form of gaming is appropriate under IGRA is a question for the NIGC, which it confronts when considering whether to approve a management contract or a tribal ordinance.

Thus, the NIGC approval at issue in *AT&T* was the first federal decision point regarding whether the anticipated gaming activity complied with IGRA. 295 F.3d at 902 (“The federally approved compact itself did not specify that off-Reservation telephone purchase would be permitted.”). That approval did not require the Chair to revisit any prior federal determinations, as the statutory and regulatory scheme did not provide for one. In the present case, by contrast, the Secretary had to determine whether the land was gaming eligible. The Secretary did so and later prescribed procedures to govern that gaming. Both actions were upheld by federal courts. The situation in *AT&T* thus differs markedly from the facts here. And in fact, the Ninth Circuit emphasized that “[u]nless and until” final agency actions, like the Secretary’s eligibility determination and the prescription of the Procedures, are “overturned by means of a proper challenge and appeal,” they are law. *Id.* at 909.

As a matter of law, Picayune cannot create an obligation for the Chair that the statute and regulations do not impose. *See Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (agency acts arbitrarily and capriciously by relying on “factors which Congress has not intended it to consider”); *see also Whitman v. Am. Trucking Ass’ns Inc.*, 531 U.S. 457, 465-66 (2001) (rejecting agency’s consideration of costs when statutory language did not permit such consideration). Picayune does not and cannot establish that the Chair must undertake an independent and plenary review of the Secretary’s prior eligibility determination as part of the Chair’s approval of a management contract, and Picayune therefore fails to state a claim that the Chair acted in violation of the APA.

Picayune additionally asserts that the Chair violated the APA because the Management Contract approval is contrary to the Johnson Act. This line of attack does not identify an

independent defect in the Chair's approval; it merely restates the same flawed theory that the Project is not authorized by IGRA. Picayune's theory appears to be as follows: The Johnson Act generally prohibits the transport, possession, or use of any gambling device in Indian country (FAC ¶ 73); IGRA provides an exemption to this bar but only insofar as it authorizes gaming (*id.*); and therefore, because the Madera Parcel is not eligible for gaming under IGRA, it also does not fall within IGRA's Johnson Act exemption (FAC ¶ 74). This circular argument fails for the same reasons discussed at length above. The Chair was not required under IGRA, the Johnson Act, or otherwise, to disregard or reconsider the Secretary's earlier eligibility determination when considering approval of the Management Contract.[2] The Johnson Act allegations do nothing to cure Count One's defects.

II. Count Two Must Be Dismissed for Failure to State a Claim.

Count Two purports to "enforce" the North Fork Secretarial Procedures. But Congress quite clearly declined to give third-party tribes the right to enforce secretarial procedures.[3] The plain language of IGRA authorizes only the Secretary to bring claims to enforce violations of secretarial procedures. And even if Picayune could enforce the North Fork Secretarial Procedures (which it cannot), its claims would be time-barred.

A. IGRA Does Not Authorize Picayune to Assert Claims for Violation of Secretarial Procedures.

Count Two must be dismissed because IGRA does not provide Picayune with a cause of action to assert its claim.

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[2] To the extent that Picayune suggests gaming on the Madera Parcel violates the Johnson Act because it is governed by secretarial procedures, rather than a tribal-state compact, the Ninth Circuit has already considered and rejected that argument in the context of this very Project. *Stand Up for California! v. U.S. Dep't of Interior*, 959 F.3d at 1158-61.

[3] Though one of the headings in the FAC indicates that Picayune asserts Count Two only against North Fork (FAC at p. 17), it also includes other allegations against Nominal Defendants suggesting otherwise. *See* FAC ¶ 89 (alleging under its Second Cause of Action header that "[a]n actual case or controversy exists between Picayune and North Fork *and Red Rock*" (emphasis added)); *see also, e.g., id.* ¶¶ 28 (alleging injury from Red Rock's conduct), 34 (alleging Red Rock intends to engage in unlawful gaming), 55-56 (alleging Red Rock continued pursuit of gaming activities), 60 (same).

IGRA establishes different enforcement mechanisms for violations of tribal-state compacts and secretarial procedures. 25 U.S.C. § 2710(d)(7)(A)(ii), (iii). Under § 2710(d)(7)(A)(ii), Congress authorized causes of action "initiated by a State or Indian Tribe to enjoin class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact." Under § 2710(d)(7)(A)(iii), Congress authorized causes of action "initiated by the Secretary to enforce the procedures prescribed under § 2710(d)(7)(B)(vii)" – *i.e.*, secretarial procedures. Put simply, tribes and states can bring suit to enforce violations of tribal-state compacts, but only the Secretary can bring suit to enforce violations of secretarial procedures.

Picayune has sued under § 2710(d)(7)(A)(ii) – the provision allowing tribes and states to enforce compacts – but there is no tribal-state compact in effect between North Fork and California. Instead, class III gaming at the Project will be governed by the North Fork Secretarial Procedures. FAC ¶ 51. Again, IGRA's plain language confirms that only the Secretary can enforce those procedures. 25 U.S.C. § 2710(d)(7)(A)(iii). Accordingly, Picayune has failed to state a claim upon which relief can be granted. Dismissal is thus required. *See* Fed. R. Civ. P. 12(b)(6).

Clearly recognizing this fundamental flaw in Count Two, Picayune has included in its complaint legal argument asserting that tribal-state compacts and secretarial procedures are "functionally equivalent." *See e.g.*, FAC ¶¶ 20, 44, 77. That legal argument (which need not be accepted as true) fails for multiple reasons.

First, Picayune's reading is at odds with the plain text of the statute, which provides tribes a cause of action only to enjoin "gaming activity . . . conducted in violation of any Tribal-State compact." 25 U.S.C. § 2710(d)(7)(A)(ii). If Congress wanted to include claims related to secretarial procedures within this cause of action, it would have said so. It did not. And courts must honor the textual limits Congress placed on § 2710(d)(7)(A)(ii) rather than expanding remedies beyond what Congress intended. *See, e.g.*, *Michigan v. Bay Mills Indian Cmty.*, 572

U.S. 782, 791-95 (2014) (declining to read the statutory phrase "on Indian lands" out of § 2710(d)(7)(A)(ii)).

The plain meaning of § 2710(d)(7)(A)(ii) is made even clearer by the very next statutory subsection, § 2710(d)(7)(A)(iii). Where the former pertains to alleged violations of a "Tribal-State compact," the latter pertains to alleged violations of "procedures prescribed under § 2710(d)(7)(B)(vii)." The use of these two distinct terms, which refer to separate mechanisms for regulating gaming on tribal lands, in side-by-side statutory provisions, reflects conscious decision-making by Congress.

Second, Picayune's suggested construction ignores the balance Congress struck when designing the statute. *See SAS Inst. v. Iancu*, 584 U.S. 357, 364 (2018) ("Just as Congress' choice of words is presumed to be deliberate and deserving of judicial respect, so too are its structural choices." (citation modified)). Congress reserved enforcement of secretarial procedures to the Secretary, rather than allow states or Indian tribes to pursue claims of violation of those procedures. This decision comports with IGRA as a whole.

Under IGRA, states have the first opportunity to regulate class III gaming on lands located within their borders. IGRA contemplates that tribes and states will negotiate a compact; that tribes may seek judicial relief if a state fails to negotiate in good faith; and that if a state again withholds consent to a mediator proposal, the Secretary will prescribe procedures. *See supra* at 3-4. In other words, a state's decision to consent to a tribal-state compact (or not) dictates which regulatory scheme will govern class III gaming at the site. The Secretary has no authority to prescribe secretarial procedures prior to the state's failure to consent. Nor does the Secretary have any authority to bring an action concerning violations of tribal-state compacts. *Poarch Band of Creek Indians v. Alabama*, 776 F. Supp. 550, 555 (S.D. Ala. 1991). However, once the Secretary prescribes secretarial procedures, IGRA gives the Secretary (and only the Secretary) the right to pursue enforcement actions related to their violations. It makes sense that Congress assigned enforcement of compacts to the sovereigns that negotiated them, 25 U.S.C. § 2710(d)(7)(A)(ii), while assigning enforcement of federally-prescribed procedures to the

federal official who promulgated them (and not to the sovereign whose refusal to negotiate them resulted in the secretarial procedures in the first place), 25 U.S.C. § 2710(d)(7)(A)(iii).

Picayune's atextual interpretation, on the other hand, upsets IGRA's remedial design. Picayune's position would mean not only that tribes could sue for violations of secretarial procedures, but that states could as well. IGRA, however, is meant to incentivize states to engage in good faith negotiations of tribal-state compacts and displaces the regulatory authority of states that refuse to do so. Allowing an uncooperative state to nevertheless act as an enforcer of gaming activity contradicts this framework.

Nothing in IGRA suggests that Congress intended for tribal-state compacts and secretarial procedures to be interchangeable insofar as who gets to police suspected violations of them. Rather, the remedial scheme "fully explains why Congress adopted slightly different language" in subsections (ii) and (iii). *SAS Inst.*, 584 U.S. at 367-68.

Third, Picayune's justification for claiming "functional equivalence" between tribal-state compacts and secretarial procedures does not hold up in this context. Picayune relies on case law that arose in markedly different circumstances from those presented here. FAC ¶¶ 20, 44, 77 (citing *Blue Lake Rancheria v. Kalshi, Inc.*, No. 25-cv-06162-JSC, 2025 U.S. Dist. LEXIS 221764, at *5 (N.D. Cal. Nov. 10, 2025) and *Stand Up for Cal.!*, 959 F.3d at 1160). Their rationale carries little force accordingly.

In *Stand Up for California!* – a prior, unsuccessful challenge to the North Fork Secretarial Procedures – the Ninth Circuit did not hold that tribal-state compacts and secretarial procedures are functional equivalents in all circumstances. Rather, the court considered the specific question whether IGRA's express Johnson Act exemption for gaming conducted under a tribal-state compact also exempted gaming conducted pursuant to secretarial procedures. *See Stand Up for Cal.!*, 959 F.3d at 1158-62. The court recognized that the statute's plain text did not resolve that particular question. *Stand Up for Cal.!*, 959 F.3d at 1159. But based on "the broader context of the statute and our obligation to harmonize multiple statutes," the court concluded that the Johnson Act exemption applied to gaming conducted under secretarial procedures because to

decide otherwise would "lead[] to a host of inconsistencies, nullities, and internal contradictions within IGRA." *Id.* Specifically, the court took note of § 2710(d)(1)(C), which authorizes class III gaming on tribal land "only if such activities are . . . conducted in conformance with a Tribal-State compact." *Id.* If this provision did not also extend to secretarial procedures, the result would be that such procedures "would always, by definition, violate the very Act that creates those Procedures" – an obvious absurdity. *Id.* at 1160. The court extended that rationale to the Johnson Act exemption provision based on the presumption of consistent usage and because excluding secretarial procedures from exemption would similarly violate the overall purpose of IGRA. *Id.* at 1159-61. Very clearly, Congress meant to authorize class III gaming pursuant to secretarial procedures.

Interpreting § 2710(d)(7)(A)(ii) and (iii) to mean what they say does not require any harmonization of statutes or raise the inconsistency and absurdity concerns present in *Stand Up for California!*. Unlike the statutory provisions at issue in *Stand Up for California!*, § 2710(d)(7)(A)(ii) and (iii) *explicitly differentiate* between compacts and procedures. While an expansive reading of compacts in *Stand Up for California!* ensured that the court did not invalidate Congress's choice to provide for gaming pursuant to IGRA, here, such an overbroad reading would nullify Congress's deliberate choices as to who gets to enforce compliance with each of these separate mechanisms. And although the *Stand Up for California!* court invoked the presumption of consistent usage of a term throughout a statutory scheme, that presumption yields where, as here, the same term serves a different statutory purpose. *Pakootas v. Teck Cominco Metals, Ltd.*, 830 F.3d 975, 983-85 (9th Cir. 2016). Functional equivalence between statutory references to tribal-state compacts and secretarial procedures may make sense when determining whether gaming is lawful, but it makes no sense when determining who Congress authorized to sue for violations of those different governing mechanisms.

Nor does *Blue Lake* compel the countertextual result that Picayune presses. In *Blue Lake*, three tribes filed suit against national, internet-based "event contract" exchanges to enforce their sovereign rights. *Blue Lake Rancheria v. Kalshi, Inc.*, 2025 U.S. Dist. LEXIS 221764, at *2.

Plaintiffs claimed that offering these contracts for sporting events on plaintiffs' tribal land violated IGRA. *Id.* As a preliminary matter, the court found that it had jurisdiction over plaintiffs' IGRA claims by extending § 2710(d)(7)(A)(ii) to secretarial procedures. *Id.* at *13-14. It did so in a starkly different posture from the circumstances here. In *Blue Lake*, the plaintiff-tribes sought to vindicate their own sovereign interests by claiming that non-tribal actors were conducting unlawful gaming on their tribal land. The court understandably hesitated before construing IGRA to *reduce* tribal sovereignty. Here, however, Picayune is trying to restrict another tribe's sovereignty, by limiting gaming activity on that tribe's land, to give itself a competitive economic advantage. The Court should not adopt a countertextual reading of § 2710(d)(7)(A)(ii) in service of reducing North Fork's sovereignty or in treating Picayune as the "functional equivalent" of the Secretary. There is no basis to think that is what Congress intended. Relatedly, *Blue Lake* did not involve a tribal defendant. The court had no reason to consider how its interpretation accorded with tribal sovereign immunity principles, specifically, the "well-settled rule" that Congress must make its intent to abrogate sovereign immunity "unmistakably clear in the language of the statute." *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 387 (2023). Here, the Court must apply that principle. But § 2710(d)(7)(A)(ii) lacks any indication that Congress intended to waive tribal sovereignty in the way Picayune urges, much less an "unmistakably clear" one.

In sum, Picayune's Count Two fails to state a claim upon which relief can be granted. IGRA authorizes the Secretary, and only the Secretary, to bring an action based on violations of secretarial procedures.

B. Count Two Is Time-Barred.

Count Two is also time-barred. Picayune claims "any class III gaming on the Madera Parcel" violates the North Fork Secretarial Procedures issued in 2016. FAC ¶ 85. And, for more than a decade, it has taken the position that the Governor's concurrence is invalid. Yet Picayune waited until June 2026 – almost ten years after the North Fork Secretarial Procedures were issued – to bring its claim that class III gaming on the Madera Parcel will violate those Procedures.

1. Picayune's Claim Is Subject to California's Four-Year Statute of Limitations for Analogous Claims.

IGRA does not supply a statute of limitations for § 2710(d)(7)(A)(ii) claims. That is not unusual. Given "how often federal statutes fail to provide any limitations period for the causes of action they create," federal courts have a "longstanding" and "settled" practice of borrowing statutes of limitations from state law. *North Star Steel Co. v. Thomas*, 515 U.S. 29, 33-34 (1995). To do so, courts look to the statute "most closely analogous" to the federal statute lacking an express limitations period. *Id.* at 34.

Here, the closest state-law analog to Picayune's claim is found in California Code of Civil Procedure section 337(a), which pertains to breach of contract actions or other actions "upon any . . . obligation or liability founded upon an instrument in writing." Cal. Code Civ. Proc. § 337(a). Secretarial procedures are an instrument in writing establishing obligations and conditions for class III gaming. Indeed, the North Fork Secretarial Procedures identify "claims of breach of these Secretarial Procedures" as a type of dispute that might arise. *See* Secretarial Procedures for the North Fork Rancheria of Mono Indians § 13.1(e) (2016).[4]

Moreover, the crux of a § 2710(d)(7)(A)(ii) claim is that the defendant violated a tribal-state compact, much like a breach of contract claim.[5] Nominal Defendants disagree that tribal-state compacts and secretarial procedures are functionally equivalent in this context. But *if* the "functional equivalence" concept held any water, there would be no question that the four-year statute of limitations for a breach of contract action applies.

The Ninth Circuit has previously relied on California contract law to interpret tribal-state compacts. *See Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation v. California*, 813 F.3d 1155, 1163 (9th Cir. 2015) (citing *Cachil Dehe Band of Wintun Indians of*

[4] The North Fork Secretarial Procedures are available here: https://www.bia.gov/sites/default/files/dup/assets/public/oig/pdf/idc2-040007.pdf. Picayune did not attach the Procedures to its FAC, but they "form[] the basis of" Count Two, so the Court may consider them for purposes of resolving Nominal Defendants' motion to dismiss. *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

[5] As in the case of a contract, nothing in the North Fork Secretarial Procedures creates third-party rights. *See* Secretarial Procedures for the North Fork Rancheria of Mono Indians § 18.1 (expressly disclaiming rights of any third party to bring an action to enforce any of the terms of the Procedures).

the Colusa Indian Cmty v. California, 618 F.3d 1066, 1073 (9th Cir. 2010)). And the Seventh Circuit has also applied a state-law limitations period for breach-of-contract claims to a § 2710(d)(7)(A)(ii) claim. *See Stockbridge-Munsee Cmty. v. Wisconsin*, 922 F.3d 818, 824 (7th Cir. 2019).

2. Any Cause of Action Accrued Outside the Limitations Period.

"Under California law, a breach of a written contract must be brought within four years of the date of the alleged breach." *Rich v. Shrader*, 823 F.3d 1205, 1208 (9th Cir. 2016). "The claim accrues when the plaintiff discovers, or could have discovered through reasonable diligence, the injury and its cause." *Angeles Chem. Co. v. Spencer & Jones*, 51 Cal. Rptr. 2d 594, 597 (Ct. App. 1996). This occurs when "the last element essential to the cause of action" has been satisfied, *Wind Dancer Prod. Grp. v. Walt Disney Pictures*, 215 Cal. Rptr. 3d 835, 849 (Ct. App. 2017), and the owner of the cause of action "is entitled to bring and prosecute an action thereon." *Bainbridge v. Cnty. of Riverside*, 334 P.2d 625, 627 (Cal. Dist. Ct. App. 1959).[6] As relevant here, the elements of a breach of contract cause of action include: (1) existence of a contract; (2) breach of the contract by defendant doing something the contract prohibits; and (3) injury to the plaintiff caused by the breach. *Tribeca Companies, LLC v. First American Title Ins. Co.*, 192 Cal. Rptr. 3d 354, 371 (Ct. App. 2015).

Picayune does not point to any specific violation or conduct as forming the basis of its § 2710(d)(7)(A)(ii) claim. As explained above, *supra* at 8, its theory is that the Madera Parcel never should have been deemed eligible for gaming because the requisite concurrence was invalid as a matter of state law. In Picayune's view, "any class III gaming activity on the Madera Parcel would be in violation of the Secretarial Procedures" and thus unlawful. FAC ¶ 85. It seeks a declaration to this effect and asks the Court to enjoin any gaming activity at the Madera Parcel. *Id.*, Prayer for Relief ¶¶ 3-4.

[6] Likewise, the statute of limitations in an action for declaratory relief begins to run once "an actual controversy has accrued or occurred." *Cavalli v. Macaire*, 324 P.2d 336, 338 (Cal. Dist. Ct. App. 1958).

Under Picayune's theory, the factual basis for this claim has been available for nearly a decade. The North Fork Secretarial Procedures were issued in July 2016, satisfying the "existence of a contract" element of the breach of contract claim. *Id.* ¶ 51. The Project has been moving forward ever since, and Picayune has been well aware of that fact. *See, e.g.*, *id.* ¶¶ 6, 29, 55-56, 60. Picayune could have filed this claim years ago. It chose not to, instead pursuing other avenues for judicial relief. Although those efforts were unsuccessful on the merits, they show Picayune has long had awareness of the facts giving rise to its current claim.

For example, on August 16, 2016, Picayune amended its complaint in its lawsuit against DOI in this Court (originally filed July 1, 2016) to allege the North Fork Secretarial Procedures should be struck down because the Governor's concurrence was invalid. Picayune First Am. Compl. ¶¶ 1, 50, 77, Prayer for Relief ¶ 5, *Picayune Rancheria of Chukchansi Indians v. United States Department of the Interior*, No. 1:16-cv-00950-AWI-EPG (E.D. Cal. Aug. 16, 2016), ECF No. 5 ("E.D. Cal. FAC"). On January 20, 2017, Picayune filed for summary judgment in that case, arguing that a state-court decision rendered the Governor's concurrence invalid such that the Madera Parcel "does not, and cannot, qualify as lands eligible for the conduct of either class II or class III gaming under the IGRA." Picayune Mot. for Summ. J. at 14, *Picayune Rancheria of Chukchansi Indians v. U.S. Dep't of the Interior*, No. 1:16-cv-00950-AWI-EPG (E.D. Cal. Jan. 20, 2017), ECF No. 19 (relying on *Stand Up for Cal.! v. State of Cal.*, 211 Cal. Rptr. 3d 490 (Ct. App. 2016)). Notably, Picayune's position in that action cited Section 4.2 of the North Fork Secretarial Procedures as independently requiring that Class III gaming be conducted in accordance with IGRA – the same provision that Picayune now alleges has been breached. *Compare* E.D. Cal. FAC ¶ 50, *with* FAC ¶¶ 6, 51, 78.

In short, Picayune "discovered" the basis for Count Two nearly a decade before it filed this case – and, in the interim, it (unsuccessfully) litigated claims very similar to those it has now alleged. Count Two is therefore time-barred. And, more fundamentally, it should be dismissed as an improper collateral attack on prior DOI decision-making. *See Big Lagoon Rancheria v. California*, 789 F.3d 947, 953-54 (9th Cir. 2015) (en banc).

Picayune has been recycling the same arguments for years. While Picayune may argue that the validity of the Governor's concurrence was not fully settled until recently, *see* FAC ¶¶ 57-59, the possibility of a future, favorable court decision did not excuse Picayune failing to diligently prosecute a claim it knew to be available in 2016. After all, California statutes of limitation are designed to protect defendants from "being required to litigate stale claims." *ABF Capital Corp. v. Osley*, 414 F.3d 1061, 1066 (9th Cir. 2005). That fundamental principle supports dismissal here.

CONCLUSION

For the reasons set forth above, Picayune's FAC should be dismissed with prejudice.

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Respectfully submitted,

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