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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' REPLY IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT

Date:	October 8, 2026
Time:	1:30 PM
Place:	Courtroom 6, 7th Floor
Judge:	Hon. Kirk E. Sherriff

REPLY IN SUPPORT OF NOMINAL DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT

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INTRODUCTION

In a last-ditch effort to avoid dismissal of its unsound claims, Plaintiff Picayune Rancheria of the Chukchansi Indians ("Picayune") argues that the Indian Gaming Regulatory Act ("IGRA") neither says what it means nor means what it says. But its desperate arguments do not withstand even minimal scrutiny. The law is clear. Congress gave the Secretary of the Interior responsibility for determining whether the North Fork Rancheria of Mono Indians ("North Fork") qualified for gaming eligibility pursuant to IGRA's "two-part determination" process, and neither the statute nor its implementing regulations required the Chair of the National Indian Gaming Commission ("NIGC") to second-guess that determination when approving North Fork's casino management contract (Part I, *infra*). Nor did Congress create any cause of action for Picayune to "enforce" Class III gaming procedures issued to North Fork by the Secretary (Part II, *infra*). Picayune has failed to state any claim on which relief can be based, and its First Amended Complaint must be dismissed.

ARGUMENT

I. Picayune's First Cause of Action Must Be Dismissed for Failure to State a Claim.

Picayune's first cause of action alleges the NIGC Chair violated the APA by approving North Fork's management contract without first reevaluating the Madera Parcel's gaming eligibility. First Amended Complaint (ECF 28) ("FAC") at ¶¶ 62-74. The tribe has failed to state an APA claim on which relief can be granted.

Nominal Defendants' moving papers explained that nothing in IGRA required the Chair to revisit the Secretary's two-part determination. Nominal Defs.' Mot. to Dismiss (ECF 35-1) ("Motion") at 9. The statute explicitly states the Chair's review and approval of a Class III management contract "shall be governed by" six statutory subsections. 25 U.S.C. § 2710(d)(9). And none of the six specified subsections requires the Chair to revisit or reconsider an existing gaming eligibility determination issued by the Secretary. *See id.* § 2711(b)-(d), (f)-(h).[1]

[1] 25 U.S.C. § 2711(b) says the Chair may approve a management contract only if he determines it provides for accounting controls, physical access to gaming operations, minimum payments to the tribe, a ceiling on the tribe's repayment of costs, a limited term (five or, in some circumstances, seven years), and a termination clause. 25 U.S.C. § 2711(c) addresses appropriate fees. Section 2711(d) establishes time limits on the Chair's decision-making. 25

NIGC's regulations do not require the Chair to revisit or reevaluate a secretarial gaming eligibility determination either. 25 C.F.R Part 531, titled "Content of Management Contracts," identifies "required" contract provisions and "prohibited" contract provisions, but does not require a gaming eligibility determination. *See* 25 C.F.R. §§ 531.1, 531.2. Nor does 25 C.F.R. Part 533, titled "Approval of Management Contracts," require the Chair to revisit a previously issued gaming eligibility determination. *See* 25 C.F.R. §§ 533.1-533.6.

Picayune suggests 25 C.F.R. § 531.1(a) can be read to require the Chair to reevaluate gaming eligibility. Pl.'s Opp'n to Motion (ECF 35) ("Opp'n") at 10. But the regulation's plain language says otherwise. On its face, § 531.1 is a list of terms that must be included in a management contract, not a list of issues that must be independently investigated by NIGC or a series of discretionary decision-making criteria for the Chair to weigh. And no plausible reading can transform § 531.1(a) into a broad mandate to reopen the gaming eligibility determination process. Rather, that subsection simply requires the Chair to ensure each management contract includes a provision stating that gaming will be conducted pursuant to IGRA. *See* 25 C.F.R. § 531.1(a) (management agreement must "provide that all gaming . . . will be conducted in accordance with [IGRA]"); *see also* Management Contract Requirements and Procedures Under the Indian Gaming Regulatory Act, 58 Fed. Reg. 5,818, 5,820 (Jan. 22, 1993) (purpose of § 531.1(a) is to provide the reader with notice of IGRA); *Bruce H. Lien Co. v. Three Affiliated Tribes*, 93 F.3d 1412, 1417-18 (8th Cir. 1996) (§ 531.1 addresses "presence of . . . essential contract terms").

Picayune also fails to account for 25 C.F.R Part 533. Under 25 C.F.R. § 533.6, the Chair "may" disapprove a management contract that fails to satisfy § 531.1(a), but he is not *required* to do so. In other words, even if (as Picayune would have it) § 531.1(a) called for reevaluation of a Secretarial gaming eligibility determination, the Chair's failure to reevaluate *would not render management contract approval illegal*. 25 C.F.R. § 533.6.

U.S.C. § 2711(f) gives the Chair authority to modify or void non-compliant agreements. 25 U.S.C. § 2711(g) prohibits conveyance of interests in tribal land. 25 U.S.C. § 2711(h) allows the Chair to exercise authority regarding encumbrance of tribal lands pursuant to 25 U.S.C. § 81. Gaming eligibility is nowhere mentioned.

Picayune suggests *AT&T Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899 (9th Cir. 2002), nonetheless requires the NIGC Chair to independently reevaluate gaming eligibility before approving a management contract. Opp'n at 11-12. But *AT&T* cannot bear the weight Picayune has forced on it.

First, *AT&T* was not a challenge to a management contract approval. *AT&T*, 295 F.3d at 910 n.12. It did not review the Chair's decisionmaking. *Id.* And it arose from unusual circumstances in which the Secretary had made no prior determination of gaming eligibility, leaving the NIGC to address the issue in the first instance. *Id.* at 901-02. Here, in contrast, IGRA expressly required the Secretary to make the gaming eligibility determination and gave no similar role to the NIGC. *See* 25 U.S.C. § 2719(b)(1)(A).[2]

Second, and relatedly, nothing in *AT&T* suggests the Chair is required to reevaluate a gaming eligibility determination previously issued by the Secretary. Indeed, Nominal Defendants are aware of no case – in this Circuit or any other – interpreting *AT&T* to impose such a requirement. To the contrary, subsequent Ninth Circuit decisions read *AT&T* narrowly. *See, e.g.*, *California v. Iipay Nation of Santa Ysabel*, 898 F.3d 960, 966 n.9 (9th Cir. 2018) (explaining that *AT&T* "held [the plaintiff] did not have standing to bring the suit because the legality of its contract with the tribe was subject to the NIGC's approval and that approval . . . had to be challenged [separately] under the APA"). And Circuit law does not require NIGC to reevaluate gaming eligibility for previously authorized casino projects. *See, e.g.*, *North Cnty.*

[2] Contrary to Picayune's suggestion (Opp'n at 12), Nominal Defendants have not proposed a "novel" bifurcation of IGRA procedures. Since its enactment, IGRA has set forth multiple pathways for establishing gaming eligibility. *See* 25 U.S.C. § 2719. Its implementing regulations establish different procedures for each one. *See* 25 C.F.R. Part 292. By statute and by regulation, some gaming eligibility determinations are made by the Secretary, others by the NIGC, and still others can be made by either one. *See, e.g.*, 25 U.S.C. § 2719(b)(1)(A) (two-part determination); 25 C.F.R. § 292.3 (other types of gaming eligibility determination). Nor should it be surprising that the NIGC lacks a significant role in the two-part determination process. The NIGC Chair must normally approve or disapprove a management contract within 180 days (25 C.F.R. § 533.4(a)), not enough time for the extensive proceedings required for a two-part determination (25 C.F.R. § 292.13-292.24).

Cmty. All. v. Salazar, 573 F.3d 738, 747 (9th Cir. 2009) (NIGC not required to make new gaming eligibility determination when issuing license for previously authorized gaming facility).[3]

Third, Picayune ignores a post-*AT&T* rulemaking in which NIGC (which was not a party to that case) explained 25 C.F.R. § 531.1 simply "require[s] specific provisions in a management contract . . . before the Chairman can approve it." *See* Amendments to Various National Indian Gaming Commission Regulations, 74 Fed. Reg. 36,926, 36,927 (July 27, 2009). The agency's interpretation of its own management agreement regulations is entitled to deference. *Kisor v. Wilkie*, 588 U.S. 558, 566-579 (2019). So even if § 531.1(a) were ambiguous after *AT&T*, the agency's interpretation – not Picayune's – must control. *Id*. Picayune has not alleged any basis for overcoming that deference. Opp'n at 9-13.

Fourth, to the extent *AT&T* was ever relevant to the circumstances presented here, it has now been superseded by Circuit precedent emphasizing that the APA cannot be used to impose requirements beyond those explicitly specified in statute or regulation. In *Lands Council v. McNair*, 537 F.3d 981 (9th Cir. 2008), the Circuit, sitting *en banc*, explained the proper standard for reviewing agency action under the APA. Among other things, *Lands Council* explicitly cautioned against "imposing procedural requirements not explicitly enumerated in the pertinent statutes." *Id*. at 993 (cleaned up). This Court should decline Picayune's invitation to impose such requirements here. As explained above, neither IGRA nor the NIGC's implementing regulations includes any "specifically enumerated" requirement forcing the Chair to reconsider the Secretary's earlier gaming eligibility determination. *Id*.; *see also FCC v. Prometheus Radio Project*, 592 U.S. 414, 427 (2021) ("The APA imposes no general obligation on agencies to conduct or commission their own [] studies."); *San Luis & Delta-Mendota Water Auth. v. Jewell*,

[3] Post-*AT&T* authority from elsewhere further confirms the Chair's obligation to ensure the presence of required management contract terms is not a mandate to undertake a from-scratch gaming eligibility determination. *See, e.g.*, *Colorado River Indian Tribes v. Nat'l Indian Gaming Comm'n*, 383 F. Supp. 2d 123, 134 (D.D.C. 2005) ("most" management contract review concerns "language that must appear in the . . . contract" and "there is, of course, a clear distinction between the power to approve the terms of a ordinance [sic] or contract . . . and the power to police compliance with the terms . . . and there is reason to believe that Congress did not intend to give the NIGC the latter power for Class III gaming"), *aff'd*, 466 F.3d 134 (D.C. Cir. 2006).

747 F.3d 581, 635-36 (9th Cir. 2014) (no obligation to undertake analysis not specified in agency regulations); *North Cnty. Cmty. All.*, 573 F.3d at 747 (no obligation to conduct new gaming eligibility determination in the absence of "anything in the text of IGRA, or in the regulations . . . so requiring").

The FAC's vague references to the Johnson Act cannot save Picayune's APA claim from dismissal. *See* FAC ¶¶ 35, 38, 73-74. Picayune has identified no authority for the proposition that it can "enforce" the Johnson Act through an APA action. *Id.*; *see also* Opp'n at 9-13. In fact, its opposition to dismissal of the APA claim says nothing about the Johnson Act whatsoever. Opp'n at 9-13.

Finally, Picayune's opposition brief reveals a fatal timing problem. In opposing dismissal of its IGRA claim, Picayune contends the state-law validity of the Governor's concurrence was not "resolved by the California courts" until April 2026. *Id.* at 20. But the Chair approved North Fork's management agreement in January 2024. *See* FAC ¶¶ 5, 31-32. Picayune fails to allege any plausible basis for requiring the Chair to address events that did not occur until years later. *Id.* ¶¶ 62-74; Opp'n at 9-13. Nor does any such basis exist. After all, APA review is limited to the record that was before the Chair *at the time of his decision*. *See, e.g.*, *San Luis & Delta-Mendota Water Auth. v. Locke*, 776 F.3d 971, 992 (9th Cir. 2014).

For each of these reasons, Picayune's APA claim must be dismissed.

II. Picayune's Second Cause of Action Must Be Dismissed for Failure to State a Claim.

Picayune's second cause of action purports to "enforce" North Fork's secretarial procedures. FAC ¶¶ 75-89. But Congress did not give Picayune the right to bring such a claim. As explained in the Nominal Defendants' moving papers, the plain language of IGRA authorizes only the Secretary to bring claims to enforce violations of secretarial procedures. Mot. at 12-17. And even if Picayune could enforce the North Fork Secretarial Procedures (which it cannot), the claim would be time-barred here. *Id*. at 17-21.

A. IGRA Does Not Authorize Picayune to "Enforce" North Fork's Secretarial Procedures.

Picayune seeks to enjoin North Fork from gaming on North Fork's own sovereign lands, pursuant to North Fork's own secretarial procedures. FAC ¶¶ 75-89. The claim is foreclosed by the plain language of IGRA, the structure of the statute, and fundamental principles of tribal sovereign immunity.

Starting with the text, Congress created a limited number of direct claims under IGRA. *See* 25 U.S.C. 2710(d)(7)(A). Relevant here, § 2710(d)(7)(A)(ii) grants jurisdiction over "any cause of action *initiated by a State or Indian tribe* to enjoin a class III gaming activity located on Indian lands and conducted in violation of any *Tribal-State compact* that is in effect." 25 U.S.C. § 2710(d)(7)(A)(ii) (emphasis added). Meanwhile, § 2710(d)(7)(A)(iii) authorizes "any cause of action *initiated by the Secretary* to enforce *[secretarial] procedures*." *Id.* § 2710(d)(7)(A)(iii) (emphasis added). This makes sense. Class III compacts are jointly administered by states and tribes, while secretarial procedures are (as the name indicates) overseen by the Secretary.

That should end the matter. "Private rights of action to enforce federal law must be created by Congress," not by the courts. *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). When deciding whether a statute authorizes a private cause of action "[s]tatutory intent . . . is determinative." *Id.* "Without it, a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute." *Id.* at 286-87. And where, as here, Congress expressly provides a remedy, "courts must be especially reluctant to provide additional remedies." *Karahalios v. Nat'l Fed'n of Fed. Emps.*, 489 U.S. 527, 533 (1989); *see also Hein v. Capitan Grande Band of Diegueno Mission Indians*, 201 F.3d 1256, 1260 (9th Cir. 2000) ("Where a statute creates a comprehensive regulatory scheme and provides for particular remedies, courts should not expand the coverage of the statute."). Absent "strong indicia of contrary congressional intent," a court must conclude that "Congress provided precisely the remedy it considered appropriate." *Karahalios*, 489 U.S. at

533. Picayune fails to overcome – or even to address – these "elemental canon[s] of statutory construction." *Id.* (cleaned up).

IGRA's structure further supports the plain-text reading. Secretarial procedures issue only at the end of the statute's remedial process – that is, after a tribe requests negotiations, a state declines to bargain with the tribe in good faith, a mediator selects between the parties' best-and-final proposals, and the state refuses to consent to the mediator's choice. 25 U.S.C. § 2710(d)(7)(B)(iii)-(vii). The statute is designed to incentivize states to work with tribes to negotiate a compact. *Id.* And states are given multiple opportunities along the way to continue negotiations and maintain a measure of joint regulatory authority. *Id.* Only when a state refuses to consent to the mediator's selection does the Secretary step in and prescribe procedures. *Id.* § 2710(d)(7)(B)(vii). In such cases, IGRA displaces the state from acting as a regulator or enforcer, and re-allocates that role to the Secretary. *Id.*

Picayune contends tribal compacts and secretarial procedures are functionally equivalent for all purposes. *See* Opp'n at 13-18. So it reads § 2710(d)(7)(A)(ii) as authorizing both states and tribes to enjoin gaming that violates either compacts or secretarial procedures. In Picayune's view, § 2710(d)(7)(A)(iii) is just additional authority allowing the Secretary to enforce secretarial procedures. *Id.* at 17. This interpretation makes little sense. If tribal-state compacts and secretarial procedures were functional equivalents for all statutory purposes, there would be no need for two separate enforcement provisions.

In an effort to shore up its position, Picayune speculates § 2710(d)(7)(A)(iii) might be necessary because the Secretary is not a party to tribal-state compacts and thus requires a separate enforcement authorization. *Id.* But that just substitutes one interpretive defect for another. After all, Picayune itself is not a party to compacts (or procedures) entered by other tribes. So it, too, would require "separate authorization."

Further, Picayune's suggested construction would undermine the logic and structure of IGRA's remedial scheme. As explained above, the statutory scheme is designed to incentivize states to negotiate compacts with tribes and penalize states that do not. But Picayune's

interpretation would allow states to "enforce" both compacts and secretarial procedures. Why allow uncooperative states to "enforce" secretarial procedures? After all, procedures are established only when a state refuses to negotiate in good faith. 25 U.S.C. § 2710(d)(7)(B)(iii)-(vii). Picayune never answers the question. Opp'n at 13-18.

To be sure, recent Ninth Circuit decisions have treated compacts and procedures as functional equivalents for certain purposes. But they did so in circumstances meaningfully different from those presented here. In *Stand Up for California! v. U.S. Department of the Interior*, 959 F.3d 1154 (9th Cir. 2020), the Ninth Circuit considered whether IGRA's Johnson Act exemption for gaming "conducted under a Tribal-State compact," 25 U.S.C. § 2710(d)(6), also extended to gaming conducted under secretarial procedures. *Id.* at 1159. Applying the plain text would have created "a host of inconsistencies, nullities, and internal contradictions within IGRA" – among other things, by outlawing gaming that IGRA clearly intended to authorize. *Id.* at 1159. To avoid that absurdity, the court turned to presumptions of statutory harmony and the presumption of consistent usage. *Id.* at 1159-61. But these presumptions "readily yield[] to context." *Utility Air Regul. Grp. v. EPA*, 573 U.S. 302, 320 (2014); *see also Environmental Def. v. Duke Energy Corp.*, 549 U.S. 561, 575-76 (2007) ("[c]ontext counts"). *Stand Up!* had nothing to do with § 2710(d)(7)(A)(ii) or (iii); accordingly, the panel had nothing to say about those provisions. *Stand Up!*, 959 F.3d at 1159. And here, reading § 2710(d)(7)(A)(ii) and (iii) according to their plain text causes no comparable absurdity.[4]

More recently, in *Blue Lake Rancheria v. Kalshi, Inc.*, No. 25-7504, 2026 U.S. App. LEXIS 28327 (9th Cir. Sept. 16, 2026), a group of tribes filed suit against commercial prediction market platforms, alleging the defendants were offering unlawful class III gaming on the plaintiffs' tribal lands. The panel held § 2710(d)(7)(A)(ii) authorized plaintiff tribes to enjoin the companies from offering gaming activity that violated their secretarial procedures. *Id.* at

[4] Picayune accuses Nominal Defendants of reading *Stand Up!* in a "heads I win, tails you lose" manner. Opp'n at 15. That is a red herring. There is nothing inconsistent about arguing that the case bars Picayune from claiming a Johnson Act violation simply because gaming is governed by secretarial procedures – the exact argument the *Stand Up!* court considered and rejected – while simultaneously maintaining that *Stand Up!* does not reach other, separate questions presented in this case.

*22-24. The court's reasoning centered on the need to protect the tribes' sovereignty over their *own* land. A contrary result "would reward a state that refuses to negotiate with a tribe" by circumscribing that tribe's ability to enjoin Class III gaming on their lands. *Id.* at *23 & n.4. Here, though, the sovereignty interests cut the other way. Picayune is not a tribe seeking to regulate gaming on its own lands or protect against encroachment by outside economic competitors. Rather, it *is* the outside economic competitor. And it seeks to infringe upon North Fork's sovereignty by preventing North Fork from gaming on its own lands pursuant to its own secretarial procedures. FAC ¶¶ 28, 46.

This factual distinction carries important legal implications. There was no tribal defendant involved in *Blue Lake*, so the Ninth Circuit had no need or occasion to confront competing tribal sovereignty interests. Nor did the *Blue Lake* panel consider whether IGRA permits one gaming tribe to "enforce" another gaming tribe's secretarial procedures. So *Blue Lake* does not control here. But the principle on which its holding is based – *i.e.*, protection of tribal sovereignty against interference by outside commercial competitors – weighs heavily against Picayune.

Tribal sovereign immunity establishes an independent bar to Picayune's IGRA claim – one not mentioned in *Stand Up!* or *Blue Lake*. Tribes possess immunity from unconsented suit, which Congress may abrogate only with clear statutory text. *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 790 (2014). Although "magic words" are not necessarily required (Opp'n at 18), clarity is essential. Congress must "unequivocally express" its intent to "subject a tribe to litigation." *Bay Mills*, 572 U.S. at 794. Courts do not infer abrogation from a statute's purpose, structure, or the practical consequences of one reading over another. *Id*. at 793-94.

Here, Picayune's interpretation of IGRA depends on the premise that one statutory term is "functionally equivalent" to an entirely different statutory term. Opp'n at 13-18. That is precisely the opposite of the unequivocal clarity required to abrogate North Fork's sovereign immunity. *Bay Mills*, 572 U.S. at 794. To the extent § 2710(d)(7)(A)(ii) and (iii) express a clear intent, it is that states and tribes may enforce their compacts but only the Secretary may enforce secretarial procedures. For this reason, too, Picayune's IGRA claim must be dismissed.

B. Picayune's IGRA Claim Is Time-Barred.

Nominal Defendants' moving papers explained that even if Picayune could state a 25 U.S.C. § 2710(d)(7)(A) cause of action to enjoin gaming under the North Fork's secretarial procedures, the claim would be barred by California's four-year statute of limitations. Mot. at 17-21. The procedures were issued in 2016, but Picayune chose not to pursue its claim until 2026.

Picayune's response does not explain why its claims are timely so much as it pretends the tribe pled a different case. Seeking to avoid the time bar, Picayune disingenuously claims to be *enforcing* North Fork's procedures. Opp'n at 2; Pl.'s Opp'n to North Fork Mot. to Dismiss FAC (ECF 46) at 2. The suggestion is simply not plausible. Picayune has not alleged that any particular gaming activity or condition runs afoul of IGRA or the secretarial procedures. Rather it has alleged that no gaming whatsoever can ever take place. *See, e.g.*, FAC ¶ 85. That is nullification, not enforcement. After all, the very purpose of the Procedures is to allow North Fork to engage in Class III gaming. Secretarial Procedures for the North Fork Rancheria of Mono Indians §§ 3.1, 4.2;[5] *see also* 25 U.S.C. § 2710(d)(7)(B)(vii) (secretarial procedures address conduct of Class III gaming).

Picayune does not seriously dispute that the stated basis for its claim dates back to 2016. Opp'n at 6, 18-21 Nor could it. Picayune's own arguments in earlier litigation confirm as much. *See* Mot. at 20. Again, the analysis might be different if Picayune were seeking to enjoin a subset of gaming activities the details of which were not yet apparent a decade ago. Instead, the FAC re-packages the substance of Picayune's 2016 claims in an effort to get a second bite at the apple. Under these circumstances, there is no plausible basis for Picayune to avoid the statute of limitations.

Nor is there any basis for Picayune's "equitable tolling" claim. Opp'n at 20. Statutes of limitation reflect important public interest and policy principles. *Addison v. State*, 578 P.2d 941, 942-43, 945 (Cal. 1978). In general, defendants should not be required to litigate stale claims.

[5] As noted previously (Mot. at 18 n.4), the secretarial procedures are available at https://www.bia.gov/sites/default/files/dup/assets/public/oig/pdf/idc2-040007.pdf.

ABF Capital Corp. v. Osley, 414 F.3d 1061, 1066 (9th Cir. 2005). Therefore, courts apply equitable tolling only "as necessary to ensure fundamental practicality and fairness." *McDonald v. Antelope Valley Cmty. Coll. Dist.*, 194 P.3d 1026, 1031 (Cal. 2008) (quoting *Lantzy v. Centex Homes*, 73 P.3d 517 (Cal. 2003)). Statutes of limitation should be tolled "only occasionally and in special situations." *Saint Francis Mem'l Hosp. v. State Dep't of Public Health*, 467 P.3d 1033, 1040 (Cal. 2020) (cleaned up). And "[t]he party invoking equitable tolling bears the burden of proving its requirements." *Feliz v. County of Orange*, 308 Cal. Rptr 3d 731, 741 (Ct. App. 2023) (citing *In re Marriage of Zimmerman*, 109 Cal. Rptr. 3d 96 (Ct. App. 2010)).

Picayune has not come close to meeting that burden here. *See* Opp'n at 20. There is nothing fair or equitable about giving Picayune a chance to re-litigate a new version of the same claims it litigated (and lost) a decade ago. And Picayune's suggestion that it "could not have brought [] an action before April 2026 because . . . the validity of the Governor's concurrence had yet to be resolved" (*id.* at 20) cannot be reconciled with its argument that the NIGC Chair erred by failing to address the same issue in 2024. *Supra* at 4-5. Picayune pretends its hands were tied until 2026, while faulting the Chair's actions two years earlier. Rewarding such gamesmanship and delay would manifestly prejudice Nominal Defendants (and North Fork), whose development has proceeded openly for years in reliance on judicially-upheld federal authorizations. Nom. Defs. Opp'n to Pls.' Mot. for Prelim. Inj. & Stay (ECF 39) at 14-15. The second cause of action is time-barred.

CONCLUSION

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

DATED: September 24, 2026

Respectfully submitted,

By: */s/ Caitlin McCusker*
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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2026, I electronically filed the foregoing document and accompanying materials with the Clerk of Court for the U.S. District Court for the Eastern District of California using the CM/ECF system, which sent notification of such filing to all counsel of record in this case.

/s/ Caitlin McCusker
Caitlin McCusker