

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CLIFFORD M. LEWIS, et al.,
Plaintiffs,

v.
KEN SALAZAR, et al.,
Defendants.

1:10-cv-01281-OWW-DLB
MEMORANDUM DECISION REGARDING
DEFENDANTS MOTIONS TO DISMISS
(Docs. 21, 23)

I. INTRODUCTION.

Plaintiffs bring this action against the Ken Salazar, the Secretary of the Interior of the United States of America ("the Secretary"), and various private individuals ("Individual Defendants"). Plaintiffs filed a first amended complaint ("FAC") on August 17, 2010. (Doc. 12).

On November 19, 2010, the Secretary filed a motion to dismiss Plaintiffs' FACt. (Doc. 21). Individual Defendants filed a motion to dismiss on November 22, 2010. (Doc. 23).

Plaintiffs filed opposition to Individual Defendants' motion to dismiss on December 31, 2010. (Doc. 25). Plaintiffs filed opposition to the Secretary's motion to dismiss on January 5, 2010. (Doc. 26). The Secretary filed a reply on February 11, 2011. (Doc. 29). Individual Defendants also filed a reply on February

1 11, 2011. (Doc. 31).

2 **II. FACTUAL BACKGROUND.**

3 In or about 1916, the United States purchased a parcel of land
4 in Fresno County, California and thereafter held the land in trust
5 for the Table Mountain Band of Indians. The land became known as
6 the Table Mountain Rancheria ("Rancheria"). The Rancheria was
7 considered an Indian Reservation and "Indian Country." Rancheria
8 residents were recognized as Indians for the purposes of federal
9 law.

10 **The California Rancheria Termination Act**

11 In 1958, Congress passed the California Rancheria Termination
12 Act ("CTRA"). The CTRA called for the distribution of all
13 rancheria lands and assets to individual tribe members and called
14 for a plan "for distributing to individual Indians the assets of
15 the reservation or Rancheria, including the assigned and the
16 unassigned lands, or for selling such assets and distributing the
17 proceeds of sale, or conveying such assets to a corporation or
18 other legal entity organized or designed by the group, or for
19 conveying such assets to the group, as tenants in common." The
20 CTRA called for the government to give notice to all residents of
21 the Rancheria who were recognized and designated as Indians under
22 the 1916 Act before the land could be distributed. In addition, a
23 government was required to do a survey of land on the Rancheria.
24 The government was then required to improve or construct all roads
25 serving the Rancheria, to install or rehabilitate irrigation,
26 sanitation, and domestic water systems, and to exchange land held
27 in trust for the Rancheria.

28 All Indians who received a portion of the assets were

1 ineligible to receive any more federal services rendered to them
2 based on their status as Indians. All Indians who did not receive
3 a portion of the assets were still eligible to receive federal
4 services rendered to them based on their status as Indians.

5 Very few of the Indians were given actual, written or
6 constructive notice of CRTA and those few who received notice, were
7 given land offered by the government. The few Indians that were
8 given land are the Individual Defendants named in this action:
9 Clarence Jones, Lester Burrough, E.B. Barnes, Lewis Barnes, William
10 Walker, Aaron Jones, Carolyn Walker and Twila Burrough. Any land
11 not conveyed to the named Defendant Indians was to be earmarked and
12 conveyed to a legal entity formed solely to receive the remaining
13 parcels for the benefit of those Indians who did not receive any
14 land under the initial distribution.

15 **1983 Settlement Agreement**

16 On or about March 28, 1983, the United States District Court
17 for the Northern District of California [in an action entitled
18 *Table Mountain Rancheria Association et al. v. James Watt et al.*
19 Case No. C-80-4595 MHP] entered a stipulated judgment which
20 re-instated the plaintiffs who had not participated in the 1958
21 distribution as Indians under the laws of the United States prior
22 to the 1958 CRTA and who were entitled to the benefits which they
23 enjoyed prior to 1958 ("Watt Judgment"). The district court
24 ordered the Secretary of the Interior to prepare and provide to
25 Plaintiffs a list of federal services, benefits, and programs and
26 the eligibility criteria which were available to Indians because of
27 their status as Indians between May 2, 1973 and June 25, 1975. The
28 Secretary did not comply.

1 Plaintiffs contend the Secretary's failure to comply with the
2 Watt Judgment has caused Plaintiffs to expend great sums of their
3 own funds to gain access to services, benefits and programs which
4 the Secretary failed to provide to them. In many cases, because of
5 the lack of funds, many Distributees were deprived of an education,
6 adequate housing, prompt and adequate medical services. Plaintiffs
7 were and are still being deprived of the federal services,
8 benefits, and programs including but not limited to education,
9 medical care and services, vocational training and services,
10 housing services, repatriation of "remains," observation of rituals
11 and income from the land.

12 The Watt Judgment provided that any land transferred as a
13 result of the 1958 CRTA would continue to be owned by the buyers of
14 1958. However, there was land remaining which was not transferred
15 in the 1958 CRTA and was to be held in trust by the Secretary of
16 the Interior for the benefits of the distributees, their heirs,
17 assigns, executors, administrators, or successors. This land is
18 described specifically in the Watt Judgment and during the past
19 twenty-seven years that land has increased in value and has
20 produced great revenues and income. None of the revenues or income
21 have been distributed to the Plaintiffs, their heirs, assigns,
22 executors, administrators, or successors. Plaintiffs allege that
23 Individual Defendants failed to represent the members as required
24 under the Watt Judgment, and that they have a fiduciary
25 relationship and a fiduciary duty to account for the revenues and
26 distribute the income to the Plaintiffs, their heirs, assigns,
27 executors, administrators and successors.

28

1 **III. LEGAL STANDARD.**

2 Dismissal under Rule 12(b)(6) is appropriate where the
3 complaint lacks sufficient facts to support a cognizable legal
4 theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699
5 (9th Cir.1990). To sufficiently state a claim to relief and
6 survive a 12(b)(6) motion, the pleading "does not need detailed
7 factual allegations" but the "[f]actual allegations must be enough
8 to raise a right to relief above the speculative level." *Bell Atl.*
9 *Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d
10 929 (2007). Mere "labels and conclusions" or a "formulaic
11 recitation of the elements of a cause of action will not do." *Id.*
12 Rather, there must be "enough facts to state a claim to relief that
13 is plausible on its face." *Id.* at 570. In other words, the
14 "complaint must contain sufficient factual matter, accepted as
15 true, to state a claim to relief that is plausible on its face."
16 *Ashcroft v. Iqbal*, --- U.S. ----, ----, 129 S.Ct. 1937, 1949, 173
17 L.Ed.2d 868 (2009) (internal quotation marks omitted).

18 The Ninth Circuit has summarized the governing standard, in
19 light of *Twombly* and *Iqbal*, as follows: "In sum, for a complaint to
20 survive a motion to dismiss, the nonconclusory factual content, and
21 reasonable inferences from that content, must be plausibly
22 suggestive of a claim entitling the plaintiff to relief." *Moss v.*
23 *U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.2009) (internal
24 quotation marks omitted). Apart from factual insufficiency, a
25 complaint is also subject to dismissal under Rule 12(b)(6) where it
26 lacks a cognizable legal theory, *Balistreri*, 901 F.2d at 699, or
27 where the allegations on their face "show that relief is barred"
28 for some legal reason, *Jones v. Bock*, 549 U.S. 199, 215, 127 S.Ct.

1 910, 166 L.Ed.2d 798 (2007).

2 In deciding whether to grant a motion to dismiss, the court
3 must accept as true all "well-pleaded factual allegations" in the
4 pleading under attack. *Iqbal*, 129 S.Ct. at 1950. A court is not,
5 however, "required to accept as true allegations that are merely
6 conclusory, unwarranted deductions of fact, or unreasonable
7 inferences." *Spewell v. Golden State Warriors*, 266 F.3d 979, 988
8 (9th Cir.2001). "When ruling on a Rule 12(b)(6) motion to dismiss,
9 if a district court considers evidence outside the pleadings, it
10 must normally convert the 12(b)(6) motion into a Rule 56 motion for
11 summary judgment, and it must give the nonmoving party an
12 opportunity to respond." *United States v. Ritchie*, 342 F.3d 903,
13 907 (9th Cir. 2003). "A court may, however, consider certain
14 materials-documents attached to the complaint, documents
15 incorporated by reference in the complaint, or matters of judicial
16 notice-without converting the motion to dismiss into a motion for
17 summary judgment." *Id.* at 908.

18 **IV. Discussion.**

19 **A. First Cause of Action**

20 Plaintiffs' first cause of action is advanced only against the
21 Secretary. Plaintiffs assert violations of their Fifth and
22 Fourteenth Amendment rights. As an initial matter, the FAC fails
23 to allege facts sufficient to establish that violation of the Watt
24 Judgment is tantamount to a constitutional violation. Further,
25 there is no apparent jurisdictional basis for Plaintiff's claim.

26 Plaintiffs concede that *Bivens v. Six Unknown Named Agents*,
27 403 U.S. 388 (1971) does not provide a jurisdictional basis for
28 their constitutional claims against the Secretary "because [the

1 Secretary] is being sued in his official capacity." (Doc. 26,
2 Opposition at 6). Plaintiffs' opposition does not identify any
3 alternative basis for jurisdiction over Plaintiffs' constitutional
4 claims against the Secretary, and nothing in the FAC indicates the
5 existence of a cognizable claim. In light of Plaintiffs'
6 concession that *Bivens* does not provide jurisdiction over their
7 claims, no logical basis for jurisdiction is ascertainable from the
8 FAC, or from Plaintiffs' opposition. The only other jurisdictional
9 grounds asserted in the FAC are the Indian Civil Rights act, 25
10 U.S.C. § 1301 et seq. ("ICRA"), and purported violations of the
11 Watt Judgment.¹ The ICRA cannot serve as the basis for federal
12 jurisdiction over Plaintiffs' action for damages against the
13 Secretary. See, e.g., *Boozer v. Wilder*, 381 F.3d 931, 935 n.2 (9th
14 Cir. 2004) (noting that a habeas petition is the only avenue for
15 relief from a violation of ICRA) (citing *Santa Clara Pueblo v.*
16 *Martinez*, 436 U.S. 49, 51-52, 67-70 (1978)); 25 U.S.C. § 1302 (ICRA
17 applies to "Indian tribe [] exercising powers of self government").
18 Nor does the Secretary's purported violation of the Watt Judgment
19 provide a basis for federal jurisdiction.²

20 Violation of the Watt Judgment does not provide an independent
21 basis for jurisdiction, as federal courts do not enjoy any inherent
22 jurisdiction to enforce a settlement agreement "simply because the
23 subject of that settlement was a federal lawsuit." *Alvarado v.*

24
25 ¹ In the section of the FAC entitled "jurisdiction," Plaintiffs invoke 28 U.S.C.
26 § 1343; 28 U.S.C. § 1357, and 28 U.S.C. § 1361. The facts alleged in the FAC and
the causes of action asserted do not give rise to jurisdiction under any of these
code sections.

27 ² The FAC does not allege any personal involvement by the Secretary. The legal
28 flaws inherent in Plaintiffs' claim make it unnecessary to discuss factual
pleading deficiencies.

1 *Table Mt. Rancheria*, 509 F.3d 1008, 1017 (9th Cir. 2007) (citing
2 *O'Connor v. Colvin*, 70 F.3d 530, 532 (9th Cir. 1995)).

3 Although district courts have ancillary jurisdiction to
4 vindicate their authority and effectuate their own decrees, such
5 jurisdiction is inapplicable here, as this court did not issue the
6 order Plaintiffs allege has been violated. *See, e.g., William*
7 *Keeton Enters. v. A All Am. Strip-O-Rama*, 74 F.3d 178, 182 (9th
8 Cir. 1996) (discussing power of court to enforce *its own* orders).
9 Further, in issuing the Watt Judgment, the district court expressly
10 limited its own jurisdiction to entertain claims for violation of
11 its order to a one-year period. As the Ninth Circuit noted in
12 affirming the dismissal of a case concerning the Watt Judgment:

13 The Watt settlement only extended jurisdiction "for a
14 period of one year from entry of judgment, or for such
15 longer time as may be shown to be necessary on a motion
16 duly noticed by any party within one year from entry of
17 judgment." The Watt judgment was entered on June 16,
18 1983. Therefore, whatever ancillary jurisdiction the
19 district court had expired on June 6, 1984.

20 *Alvarado*, 509 F.3d at 1018. *A fortiori*, if the court that issued
21 the Watt Judgment no longer has jurisdiction over Plaintiffs' claim
22 for breach, this court lacks jurisdiction.

23 As Plaintiffs's constitutional claims against the Secretary
24 are legally and factually deficient, it is unnecessary to address
25 the statute of limitations defense. Nonetheless, Plaintiffs' FAC
26 suggests that any cognizable claim based on a breach of the
27 settlement agreement is barred by the statute of limitations.
28 Plaintiffs' opposition is devoid of legal authority suggesting
otherwise. Plaintiffs FAC alleges they have suffered injury
resulting from the Secretary's purported breach "for the past 27

1 years." Plaintiffs' conclusory invocation of the continuing
2 violations doctrine based on "an ongoing pattern or practice" is of
3 no avail. Assuming *arguendo* Plaintiffs' theory has legal merit,
4 the FAC does not allege sufficient facts to support such a theory.

5 **B. Second Cause of Action**

6 Plaintiffs' second cause of action is asserted against the
7 Secretary and the Individual Defendants. The heading for the
8 second cause of action states that the claims asserted are: (1)
9 Violation of the Watt Judgment; (2) Breach of Fiduciary Duty; and
10 (3) Violation of the Fifth and Fourteenth Amendments.

11 With respect to the Secretary, the second cause of action does
12 not state any cognizable claim based on the Constitution or the
13 Watt Judgment for reasons discussed above. With respect to
14 Plaintiffs' breach of fiduciary duty claim against the Secretary,
15 the FAC does not allege sufficient facts to establish the existence
16 of any actionable fiduciary relationship between the federal
17 government and Plaintiffs. See *Marceau v. Blackfeet Hous. Auth.*,
18 540 F.3d 916, 924 (9th Cir. 2008) ("a trust relationship alone is
19 not enough to imply a remedy in damages; 'a further source of law
20 [is] needed to provide focus for the trust relationship.'");
21 compare *United States v. Navajo Nation*, 537 U.S. 488, 505 (2003)
22 (distinguishing "bare trust," which did not impose a judicially
23 enforceable fiduciary duty on United States, from trusts created by
24 statutes that can "fairly be interpreted as mandating compensation
25 by the Federal Government for damages sustained") with *White*
26 *Mountain Apache Tribe*, 537 U.S. 465, 474 (2003) (holding that
27 actionable fiduciary relationship existed where statute went
28 "beyond a bare trust and permit[ed] a fair inference that the

1 Government [was] subject to duties as a trustee and liable in
2 damages for breach.").

3 As to the Individual Defendants, Plaintiffs' claim for breach
4 of the Watt Judgment does not state a claim because of the
5 jurisdictional defects identified above.

6 The nature of Plaintiffs' constitutional claims against the
7 Individual Defendants is unclear, but to the extent Plaintiffs'
8 seek to assert a *Bivens* claim, the FAC is deficient because, *inter*
9 *alia*, it does not allege facts sufficient to establish any action
10 under color of federal law. Nor does the complain allege any
11 action under the color of state or tribal law.

12 In opposition, Plaintiffs' argue that Individual Defendants
13 conduct amounted to a government taking within the meaning of the
14 Fifth Amendment because Individual Defendants acted in concert with
15 the Secretary to deprive Plaintiffs of their rights. The FAC does
16 not allege facts sufficient to support Plaintiffs' conclusory
17 conspiracy theory.

18 The vague, conclusory, and contradictory allegations regarding
19 the purported fiduciary duty owed by Individual Defendants to
20 Plaintiffs do not state any cognizable claim for relief. Paragraph
21 8 of the FAC alleges:

22 Any land not conveyed to [Individual Defendants] was to
23 be earmarked and conveyed to a legal entity formed solely
24 to receive the remaining parcels and solely for the
benefit of those Indians who did not receive any land or
benefits under the 1958 [CTRA] distribution

25 Paragraph 27 of the FAC suggests that the land referred to in
26 paragraph 8 has been held in trust by the Individual Defendants:

27 During the period 1983 to the present time, the lands of
28 the Table Mountain Rancheria not distributed in 1958 and

1 held in trust by Defendants, have increased in value,
2 produced revenue through grazing rights, water rights and
3 certain other rights connected to the land. Defendants
4 have distributed that revenue amongst themselves and have
5 not distributed any of the revenue to Plaintiffs.

6 Paragraph 18, alleges that:

7 land remaining which was not transferred in the 1958 CRTA
8 and was and continues to be held in trust by the
9 Secretary of the Interior for the benefits of the
10 Plaintiffs, their heirs, assigns, executors,
11 administrators, or successors.

12 (FAC at 10).

13 It is not clear from the face of the FAC which entity
14 Plaintiffs allege holds title to the lands in question. The
15 purported basis for any fiduciary duty is not clear from the face
16 of the FAC either. In opposition to Individual Defendant's motion
17 to dismiss, Plaintiffs clarify that "the general theory of the FAC
18 is that the [Individual Defendants], under the Watt Judgment, have
19 a fiduciary duty to the residents of Table Mountain and their heirs
20 and successors." (Doc. 25, Opposition at 4). However, the FAC does
21 not identify the operative language of the Watt Judgment Plaintiffs
22 alleges creates a fiduciary relationship.

23 As the FAC is unintelligible, it is unnecessary to address the
24 Individual Defendants statute of limitations defense or invocation
25 of tribal immunity.

26 **ORDER**

27 For the reasons stated, IT IS ORDERED:

- 28 1) Plaintiffs' first cause of action is DISMISSED, without
prejudice;
- 2) Plaintiffs' second cause of action is DISMISSED, without
prejudice;
- 3) Plaintiffs shall file and amended complaint within fifteen

1 days of electronic service of this decision; Defendants shall
2 file responsive pleading within twenty days of service of any
3 amended complaint; and

4 4) Defendants shall submit a form of order consistent with
5 this decision within five days of electronic service of this
6 decision.

7 IT IS SO ORDERED.

8 **Dated:** April 20, 2011

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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