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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NICOLAS VILLA, JR., and the
HISTORIC IONE BAND OF MIWOK
INDIANS TRIBE,

Plaintiffs,

v.

SALLY JEWELL, in her capacity as the
Secretary of the DEPARTMENT of the
INTERIOR, the DEPARTMENT of the
INTERIOR, the BUREAU of INDIAN
AFFAIRS, AMY DUTCHSKE, in her
capacity as the Pacific Regional Director of
the BUREAU OF INDIAN AFFAIRS, and
JOHN DOE and MARY ROE, unknown
BUREAU OF INDIAN AFFAIRS
employees in their official capacities,

Defendants.

No. 2:16-CV-00503-KJM-KJN

ORDER

This matter is before the court on defendants' motion to dismiss. ECF No. 16. Plaintiffs oppose defendants' motion. ECF No. 19. The court heard arguments on September 23, 2016; Mark Kallenback appeared on behalf of plaintiffs, and Victoria Boesch appeared on behalf of defendants. ECF No. 25. For the following reasons, the court GRANTS defendants' motion.

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1 I. BACKGROUND

2 A. Factual Allegations

3 Nicholas Villa, Jr. is the tribal leader of the Historic Ione Band of Miwok Indians
4 Tribe (the “Tribe”). Second Am. Compl. (“SAC”) ¶ 3, ECF No. 14. The Department of the
5 Interior is a Cabinet-level agency that manages America’s natural and cultural resources through
6 a number of government agencies, including the Bureau of Indian Affairs (“BIA”). *Id.* ¶ 5. The
7 BIA provides services to federally recognized American Indian Tribes directly and through
8 contracts, grants and compacts. *Id.* ¶ 8. The Tribe is a federally recognized tribe located in Ione,
9 California. *Id.* ¶¶ 17, 31–32, 37–38.

10 The Tribe maintains a membership roll composed of descendants of the Tribe
11 based upon historic membership lists. *Id.* ¶ 46. In the 1990s there was an internal power struggle
12 within the Tribe concerning the Tribe’s leadership and membership rolls. *See generally id.* In
13 1994, in accordance with its new constitution and membership ordinance, plaintiff Villa was the
14 leader of the thirty-two member Tribe. *Id.* ¶¶ 47–48. However, some Tribe members contested
15 Villa’s leadership. *Id.* ¶ 49. Mediation between the Tribe members, including Villa, failed in
16 1995. *Id.* ¶ 51. Thereafter, the BIA established Enrollment and Election Committees, *id.* ¶ 60,
17 and in 1996 held the election of an Interim Tribal Council. *Id.* ¶ 62. Many of the individuals the
18 BIA allowed to vote for the Interim Tribal Council were not members and had no affiliation with
19 the Tribe, *see id.* ¶ 63, and the majority of the Tribe’s genuine members were excluded from the
20 membership rolls, *id.* ¶ 57.

21 B. Procedural Background

22 Plaintiffs filed their first complaint in this case on March 9, 2016. ECF No. 1.
23 They filed their first amended complaint on July 1, 2016, ECF No. 12, and their second amended
24 complaint on August 1, 2016. In their second amended complaint, plaintiffs plead three claims:
25 (1) Declaratory Judgment; (2) Injunctive Relief; and (3) Voting Rights. SAC at 25–28. Within
26 these “claims,” plaintiffs allege violations of the Indian Reorganization Act (“IRA”), 25 U.S.C.
27 § 476(f), (g), and (h). *Id.*

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1 On August 5, 2016, defendants filed a motion to dismiss arguing, among other
2 reasons, lack of subject-matter jurisdiction, failure to join a party, and the applicable statute of
3 limitations bars plaintiffs' claims. Defs.' Mot., ECF No. 16. Plaintiffs oppose defendants'
4 motion, Pls.' Opp'n, ECF No. 19, and defendants replied, Defs.' Reply, ECF No. 23.

5 II. ANALYSIS

6 A. Rule 12(b)(1): Subject Matter Jurisdiction

7 Defendants' motion relies in part on Federal Rule of Civil Procedure 12(b)(1),
8 contending plaintiffs' complaint "fails to allege facts sufficient to establish subject matter
9 jurisdiction." Defs.' Mot. at 4. Plaintiffs respond by arguing only that their second amended
10 complaint "sets out in significant detail the factual bases . . . that implores [sic] the Court to
11 declare that the Historic Ione Band of Miwok Indians is a federally recognized Indian Tribe
12 Defendants' argument that [p]laintiffs' [complaint] fails to allege facts sufficient to establish
13 subject matter jurisdiction [] must be rejected given the extensive facts pled." Pls.' Opp'n at 12.

14 It is black-letter law that "[f]ederal courts are courts of limited subject matter
15 jurisdiction." *Kelly v. Wengler*, 822 F.3d 1085, 1094 (9th Cir. 2016). As the Supreme Court has
16 explained, "[federal courts] possess only that power authorized by Constitution and statute, which
17 is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited
18 jurisdiction, and the burden of establishing the contrary rests upon the party asserting
19 jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

20 Plaintiffs' first two claims are for declaratory judgment and injunctive relief. Pls.'
21 Opp'n at 25–27. However, as defendants correctly observe, *see* Defs.' Mot. at 4, claims for
22 declaratory and injunctive relief are not properly styled as claims but rather are requests for
23 specific remedies. *See, e.g., Countrywide Home Loans, Inc., v. Mortgage Guar. Ins. Corp.*,
24 642 F.3d 849, 853 (9th Cir. 2011) (observing that Declaratory Judgment Act "in no way modifies
25 the district court's jurisdiction, which must properly exist independent of the Declaratory
26 Judgment Act"); *see also Birdman v. Office of the Governor*, 677 F.3d 167, 172 (3d Cir. 2012)
27 (injunction is remedy, not cause of action); *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092,

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1 1098 (11th Cir. 2004) (same). Plaintiffs’ first two claims do not confer upon this court subject
2 matter jurisdiction.

3 Plaintiffs’ third claim alleges defendants violated the IRA “when they encouraged,
4 promoted and permitted non-tribal parties to become members of the Mock Tribe under the guise
5 of a federally recognized Tribe.” SAC ¶ 105 (citing 25 U.S.C. § 476 (f) (g) and (h)). Defendants
6 argue violations of the IRA “do not create any private right of action.” Defs.’ Mot. at 5. By way
7 of response, plaintiffs say they “have not pled 25 U.S.C. § 476 (f), (g), and (h) as a private cause
8 of action.” Pls.’ Opp’n at 13:17. They suggest they instead simply “ask the Court to order the
9 BIA to be law abiding and not to violate 25 U.S.C. § 476(f), (g) and (h).” *Id.* at 13:18-20. In the
10 Second Amended Complaint, in the pleadings making up this third claim, plaintiffs request an
11 order enjoining those who are not legal members of the Tribe from voting. SAC ¶ 106.
12 Plaintiff’s pleadings and argument place their third claim in the realm of a request for injunctive
13 relief, which, as explained above, does not serve as a ground for exercise of jurisdiction.

14 Plaintiffs request leave to amend their second amended complaint to “identify
15 28 U.S.C. § 1361 as a basis for this Court’s jurisdiction.” Pls.’ Opp’n at 12. Section 1361
16 confers on district courts “original jurisdiction of any action in the nature of mandamus to compel
17 an officer or employee of the United States or any agency thereof to perform a duty owed to the
18 plaintiff.” However, as with the law providing for declaratory and injunctive relief, the
19 mandamus “statute does not provide an independent ground for jurisdiction.” *Starbuck v. City &*
20 *Cty. of San Francisco*, 556 F.2d 450, 459 n.18 (9th Cir. 1977); *see also White v. Adm’r of Gen.*
21 *Servs. Admin. of U. S.*, 343 F.2d 444, 447 (9th Cir. 1965) (observing that mandamus statute “does
22 not create new liabilities or new causes of action against the United States Government or its
23 officials”).

24 The court therefore finds plaintiffs have not pled a claim allowing this court’s
25 exercise of subject matter jurisdiction, and amendment would be futile.

26 B. Statute of Limitations

27 Even if the court had jurisdiction otherwise, the applicable statute of limitations
28 has long run.

1 The disputes giving rise to this case date back to the 1990s. *See, e.g.*, SAC ¶¶ 51,
2 54, 92–94, 105. The disputes culminated in the election of what plaintiffs term the “Mock Tribe”
3 in 1996. *See id.* ¶¶ 61–86. Defendants contend that, as a result of the age of the disputes, “the
4 applicable statute of limitations bars any claims regarding the Tribe’s 1996 election and
5 membership decisions.” Defs.’ Mot. at 9. Plaintiffs respond that “[d]isputes concerning the
6 Mock Tribe’s 1996 election and tribal membership decisions do not pertain to the subject matter
7 of the instant litigation and are not at issue [T]he issue before the Court is the matter of the
8 federal government’s recognition of the Tribe.” Pls.’ Opp’n at 18. Plaintiffs’ response is
9 undermined by the whole of their complaint, which focuses virtually entirely on alleged
10 violations that occurred in the 1990s. *See generally* SAC.

11 “Indian Tribes are not exempt from statutes of limitations governing actions
12 against the United States.” *Sisseton-Wahpeton Sioux Tribe v. United States*, 895 F.2d 588, 592
13 (9th Cir. 1990). The applicable statute of limitations regarding the BIA’s conduct is six years
14 based on 28 U.S.C. § 2401,¹ and the statute began to accrue at the time the agency’s actions
15 became final. *Aguayo v. Jewell*, 827 F.3d 1213, 1217 (9th Cir. 2016) (applying six year statute of
16 limitations to an Administrative Procedure Act action against the BIA). Because the BIA’s
17 actions became final more than six years ago, plaintiffs’ challenge is also time-barred. *See id.*
18 Amendment of the complaint also would be futile for this reason. *See Rivas v. Napolitano*,
19 714 F.3d 1108, 1113 (9th Cir. 2013) (dismissal for lack of subject matter jurisdiction “is proper
20 only ‘where it appears beyond doubt that the plaintiff can prove no set of facts in support of his
21 claim which would entitle him to relief.’” (quoting *Roberts v. Corrothers*, 812 F.2d 1173, 1177
22 (9th Cir. 1987))).

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26 ¹ 28 U.S.C. § 2401(a) provides, in pertinent part: “[E]very civil action commenced against
27 the United States shall be barred unless the complaint is filed within six years after the right of
28 action first accrues.”

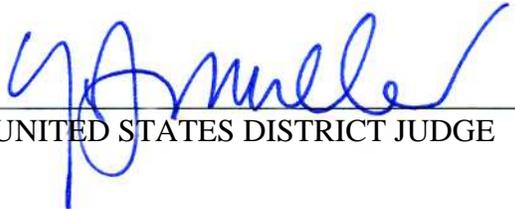
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III. CONCLUSION

Because plaintiffs have not shown this court has subject-matter jurisdiction, and amendment of the complaint would be futile, defendants' motion to dismiss is GRANTED. This action is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

DATED: March 22, 2017.


UNITED STATES DISTRICT JUDGE