JS-6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE SOVEREIGN NATCHEZ NATION, et al.,

Plaintiffs,

v.

RIVERSIDE COUNTY DEPARTMENT OF SOCIAL SERVICES-CHILDREN PROTECTIVE SERVICES, et al.,

Defendants.

Case No. 2:22-cv-01586-HDV (AGRx)

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT [DKT. NO. 79]

I. INTRODUCTION

This action arises out of a dependency case in the Superior Court of Riverside County involving two children who were adopted in 2014 after parental rights were terminated. The Sovereign Natchez Nation ("Natchez Nation"), together with birth parents Amanda Turner and Ian Ebow, filed this action asserting that Defendant Riverside County Department of Social Services-Children Protective Services ("Riverside CPS") violated the Indian Child Welfare Act ("ICWA"). More specifically, Plaintiffs contend that Riverside CPS failed to investigate fully the children's Native American ancestry and failed to provide proper notice to a tribe and Native American family members who stood ready to adopt the children.

Defendants Riverside CPS and Margaret Rose Lanam (the children's adoptive mother) bring this Motion for Summary Judgment (the "Motion") seeking dismissal of all claims [Dkt. No. 79]. Defendants' principal arguments are that: (1) the children are not "Indian" as defined under ICWA because the Natchez Nation is not a federally recognized tribe; and (2) Riverside CPS complied with all relevant ICWA requirements prior to the adoption by Defendant Lanam in 2014.

The Indian Child Welfare Act, passed in 1978, is unquestionably a historic and critically necessary piece of civil rights legislation. Courts at every level must be ever vigilant to ensure its provisions are followed to the letter. But here the Plaintiffs' biological children are simply not "Indian child[ren]" because under applicable federal regulations the Natchez Nation is not—and was not at the time of the termination of parental rights—a federally recognized tribe. For that reason, and as more fully discussed below, the Court concludes that no genuine disputes of material fact exist as to these issues, and finds that no relevant violation of ICWA has occurred.[1]

The Motion is granted in its entirety.[2]

[1] Plaintiffs' other tort claims are time-barred. *See* Section IV(c)–(e), *infra*.

[2] This ruling diverts from the tentative ruling provided at the *ex parte* application hearing on November 20, 2023 [Dkt. No. 112].

II. BACKGROUND

On February 29, 2012, Amanda Turner and Ian Ebow's biological child, IE, was taken into protective custody by Riverside CPS. Statement of Uncontroverted Facts ("SUF") ¶ 8 [Dkt. No. 79-1]. Riverside CPS's decision was precipitated by concerns that the mother felt like hurting herself. SUF ¶ 7. On March 1, 2012, a dependency court held a detention hearing and appointed separate counsel to represent each of the biological parents. SUF ¶ 10. The dependency court ordered the parents to complete and submit a notification of Indian status form. *Id.* At the hearing, the court detained the children from the parents after considering alternatives, finding no relatives that were able, assessed, and willing to care for the children. *Id.* The mother initially signed a form declaring that she had no knowledge of her having Indian ancestry. *See* Declaration of Letesha Brager, Social Worker ("Brager Decl.") ¶ 7 [Exhibit O, Dkt. No. 80-1].

On April 4, 2012, a contested jurisdictional hearing was held, and the dependency court sustained the allegations against the parents and determined detention from the parents was necessary and that their current placement was appropriate. SUF ¶¶ 13, 14. The court held a review hearing on October 3, 2012, where some paternal family members were present, terminating reunification services for the biological parents and continuing to detain IE. SUF ¶ 15.

In October 2012, Ms. Turner gave birth to NE, who was then taken into protective custody. SUF ¶ 19. The court at a detention hearing on October 17, 2013 upheld the removal of NE from her parents. *Id.* The children were placed with the foster mother, Margaret Lanam. SUF ¶ 20. Family members allegedly told Riverside CPS and the court on multiple occasions that Ms. Lanam's representation (that she was an extended family member) was false. SUF ¶ 21. The court held a review hearing on December 11, 2012, finding that removal of NE was appropriate and that reunification services would not be provided to the parents. SUF ¶¶ 23, 24. The court also found that ICWA might apply. *Id.* A hearing was held on April 10, 2013 to select the most appropriate permanent plan for NE, and the dependency court found that Riverside CPS had complied with the case plan. SUF ¶ 25. Plaintiff parents and other family members told the court and the Riverside CPS that the minors were Indian. SUF ¶ 26. Social Worker Brager indicated in her July 22, 2013 status report to the court that ICWA could potentially apply, and she issued notices to many tribes.

SUF ¶ 27; *see also* Bragar Decl. ¶ 25. At a hearing on August 6, 2013, the court found that "good notice" was made pursuant to ICWA. SUF ¶ 27.

A WIC 366.26 hearing was held on August 26, 2013. Ms. Turner indicated that she may have Indian ancestry and asked the court to follow up. SUC ¶ 28. At the subsequent October 3, 2013 WIC 366.26 hearing, Ms. Turner disclosed that ICWA may apply to the maternal side of the family, and the court continued the hearing because there was reason to believe that the children could be of Indian ancestry and notice was required. Exhibit T9 [Dkt. No. 96-11]. At the following December 10, 2013 WIC 366.26 hearing, the court ordered additional ICWA notices be sent, continuing the hearing to February 24, 2014. Exhibit T10 [Dkt. No. 96-11]. The minutes from the hearing explicitly directed the Department "to contact Mothers [sic] biological grandmother regarding ICWA." *Id.* However, Riverside CPS has not proffered evidence that they contacted Amanda Turner's biological grandmother, Susan Elizabeth Turner.

At the February 24, 2014 hearing, the court found that Riverside County had complied with ICWA, terminated the parental rights of the biological parents, and ordered that the children be adopted by Defendant Lanam. Exhibit U [Dkt. No. 96-12]; Exhibit F [Dkt. No. 96-6]. The court held a hearing on ICWA notices on May 27, 2014, finding "good notice pursuant to ICWA" for both children and finding that "ICWA does not apply to the child(ren)." Exhibits T13–14 [Dkt. No. 96-11]. Social Worker Brager sent ICWA-030 notices on December 7, 2012, January 30, 2013, July 30, 2013, December 4, 2013, and May 21, 2014. SUF ¶ 39; *see also* Brager Decl. ¶ 25. The Bureau of Indian Affairs responded to the notices regarding potential Indian ancestry on November 27, 2012, June 27, 2013, December 10, 2013, and April 22, 2014. SUF ¶¶ 40, 50.

The following recognized tribes were given notice of the juvenile proceedings relating to IE and NE and sent ICWA-030 notices: Cherokee Nation of Oklahoma, Eastern Band of Cherokee Indians, United Keetoowah Band of Cherokee Indians, Morongo Band of Mission Indians, Morongo Band of Cahuilla Mission Indian, Cheyenne-Arapho Tribe of Oklahoma, Northern Cheyenne Tribe, Choctaw Nation of Oklahoma, Jena Band of Choctaw Indian, Mission Band of Choctaw Indians, and Chickasaw Nation of Oklahoma. SUF ¶¶ 42, 49. None of the tribal responses identified IE or NE as eligible for membership with their tribe. SUF ¶¶ 42, 51. The Sovereign Natchez Nation was neither

identified (by anyone) nor served with an ICWA notice.

Plaintiffs Amanda Turner, Ian Ebow, and the Natchez Nation's ("Plaintiffs'") claim is that the children were members of (or eligible for membership in) a federally-recognized tribe, that the County was required to give notice to such tribe, and that the Court consequently erred in failing to give proper notice under ICWA. SUF ¶ 37, Complaint ¶¶ 74–82 [Dkt. No. 1]. Plaintiffs filed this action on March 9, 2022, alleging claims of ICWA violations, fraud, civil rights, Section 1983, intentional infliction of emotional distress, and injunctive relief. *See* Complaint [Dkt. No. 1]. Defendants Riverside CPS and Margaret Rose Lanam's ("Defendants'") Motion for Summary Judgment and joint brief ("Motion") was filed on June 16, 2023 [Dkt. No. 79]. The Court heard oral argument on October 26, 2023 and took the matter under submission [Dkt. No. 106].

III. LEGAL STANDARD

Summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *accord Wash. Mut. Inc. v. United States*, 636 F.3d 1207, 1216 (9th Cir. 2011). Material facts are those that may affect the outcome of the case. *Nat'l Ass'n of Optometrists & Opticians v. Harris*, 682 F.3d 1144, 1147 (9th Cir. 2012) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Liberty Lobby*, 477 U.S. at 248.

The moving party bears the initial burden of establishing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). To carry its burden of production, the moving party must either: (1) produce evidence negating an essential element of the nonmoving party's claim or defense; or (2) show that there is an absence of evidence to support the nonmoving party's case. *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). Once the moving party has met its initial burden, Rule 56(c) requires the nonmoving party to "go beyond the pleadings and by [his or] her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Id.* at 324 (quoting Fed. R. Civ. P. 56(c), (e)); *see also Norse v. City of Santa Cruz*, 629 F.3d 966, 973 (9th Cir. 2010) ("Rule 56 requires the parties to set out facts they will be able to

prove at trial."). "In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence." *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). "Rather, it draws all inferences in the light most favorable to the nonmoving party." *Id.*

IV. DISCUSSION

A. The ICWA Statutory Framework

ICWA reflects a congressional goal to protect Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal standards a state court must follow before removing an Indian child from his or her family. 25 U.S.C. § 1902. "In 1978, Congress enacted the Indian Child Welfare Act (ICWA) out of concern that 'an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies.'" *Haaland v. Brackeen*, 599 U.S. 255, 265 (2023) (citing 25 U.S.C. § 1901(4)). "Congress found that many of these children were being 'placed in non-Indian foster and adoptive homes and institutions,' and that the States had contributed to the problem by 'fail[ing] to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families." *Id.* (citing 28 U.S.C. §§ 1901(4), (5)). "The Act thus aims to keep Indian children connected to Indian families." *Id.*

"The purpose of ICWA was to rectify state agency and court actions that resulted in the removal of Indian children from their Indian communities and heritage." *Doe v. Mann*, 415 F.3d 1038, 1047 (9th Cir. 2005). To enforce these protections, 25 U.S.C. "§ 1914 provides the federal courts authority to invalidate a state court foster care placement or termination of parental rights if it is in violation of §§ 1911, 1912, or 1913" of ICWA. *Id.*; *see also* 25 U.S.C. § 1914 ("any parent or Indian custodian from whose custody such child was removed … may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title"). Section 1914 contains no express time limits, and ICWA lacks any generally applicable statute of limitations.[3] *See In re Adoption of Erin*

[3] ICWA does impose a minimum limitations period of two years, unless otherwise permitted under State law, for actions challenging the voluntary relinquishment of parental rights based on fraud or

G., 140 P.3d 886, 889 (Alaska 2006).

Plaintiffs allege that Defendants violated ICWA, *see* 25 U.S.C. § 1911–13, by failing to provide the Natchez Nation with "adequate and proper notice to the Tribe." Complaint ¶ 81. Under 25 U.S.C. § 1912(a), "where the court knows or has reason to know that an Indian child is involved," "the party seeking the … termination of parental rights to an Indian child shall notify the parent … and the Indian child's tribe … of the pending proceedings and of their right of intervention." Thus, this action is properly before the Court even though the adoption proceedings officially ended in 2014.[4] Nor is Plaintiffs' ICWA claim barred by *res judicata* from the dependency proceedings because "lack of adequate notice deprived the potentially implicated tribes of the opportunity to protect their interest in the children in either litigation." *In re A.G.*, 204 Cal. App. 4th 1390, 1400 (2012), *as modified* (Apr. 20, 2012); *see also In re Isaiah W.*, 373 P.3d 444, 446 (Cal. 2016) ("Because ICWA imposes on the juvenile court a continuing duty to inquire whether the child is an Indian child, we hold that the parent may a challenge a finding of ICWA's inapplicability in an appeal from the subsequent order, even if she did not raise such a challenge in an appeal from the initial order.").

"The minimum standards established by ICWA include the requirement of notice to Indian tribes in any involuntary proceeding in state court to place a child in foster care or to terminate parental rights 'where the court knows or has reason to know that an Indian child is involved.'" *In re Isaiah W.*, 373 P.3d at 447 (Cal. 2016) (citing 25 U.S.C. § 1912(a)). ICWA's notice requirement serves to "facilitate a determination of whether the child is an Indian child under ICWA" and "ensure[] that an Indian tribe is aware of its right to intervene in or, where appropriate, exercise

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duress. *See* 25 U.S.C. § 1913(d). Plaintiffs do not move under § 1913(d), so this does not apply.

[4] Section 1914 is an exception to the *Rooker-Feldman* doctrine that typically bars federal courts from exercising subject-matter jurisdiction over an action in "which a party losing in state court" seeks "what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Johnson v. De Grandy*, 512 U.S. 997, 1005–06 (1994). *See Doe v. Mann*, 415 F.3d at 1045 (finding that the *Rooker–Feldman* doctrine does not apply to Section 1914 cases). The Court interprets the ICWA laws as applied at the time of the final dependency hearing in 2014.

jurisdiction over a child custody proceeding involving an Indian child." *Id.* at 447–48. "Congress was concerned not solely about the interests of Indian children and families, but also about the impact on the tribes themselves of the large numbers of Indian children adopted by non-Indians." *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 49 (1989).

B. The ICWA Claim

i. The Natchez Nation

Whether ICWA applies to this case turns on the following question: Are the children IE and NE "Indian child[ren]" as defined by ICWA? 25 U.S.C. § 1903(4). For purposes of ICWA, an "Indian child" is a child who is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. *Id.* "[B]eing an Indian child requires that the child be either a member of a tribe or a biological child of a member." *In re Austin J.*, 47 Cal. App. 5th 870, 888 (2020). Here, Plaintiffs argue that the order terminating parental rights must be reversed because the Natchez Nation is an "Indian tribe" as applied under ICWA and was not provided notice of the underlying dependency court proceedings. *See* Motion at 11–24.[5]

Plaintiffs' argument falls for two reasons. First and most critically, plaintiffs proffer no facts establishing that either the biological parents or the children were members (or even eligible for membership) of *any* tribe, *regardless of federal recognition*, at the time of the adoption proceedings. Plaintiffs provide no evidence or even allegations that the children or parents were members or were eligible for membership into the Natchez Nation at the time of the proceedings. While extended family members are alleged to have been tribal members, neither the children nor parents were alleged to have been members at the time. "Put plainly, in order for the ICWA to apply either plaintiff's children must already be members of an Indian tribe or plaintiff must be a member of an Indian tribe." *Hawkings v. Sacramento Cnty. Dep't of Child & Fam. Adult Servs.*, No. 220CV0156DADDBPS, 2023 WL 316569, at *3 (E.D. Cal. Jan. 19, 2023), *report and recommendation adopted*, No. 220CV0156KJMDBPS, 2023 WL 5956845 (E.D. Cal. Sept. 13,

[5] The parties do not contest the fact that notice to the Natchez Nation was not provided. SUF 41, 49.

2023); *see also Esquivel v. Fresno Cnty. Department of Social Services*, Case No. 1:22-cv-0001 EPG, 2022 WL 17343869, at *7 (E.D. Cal. Nov. 30, 2022) ("Plaintiff's father's potential eligibility for tribal membership does not render the minors at issue Indian children within the meaning of ICWA, because the parent must be 'a member of an Indian tribe' – not merely eligible for membership."). Thus, even if the Natchez Nation was a recognized federal tribe for purposes of child adoptions, ICWA would not have applied because the parents and children were not alleged to be members of the Natchez Nation.

Second, even if Plaintiffs established tribal membership with the Natchez Nation at the time of the relevant proceedings, summary judgment is appropriate because facts are not sufficient to establish that the Natchez Nation is an Indian tribe that qualifies under ICWA. The term "Indian tribe" means "any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary [of the Interior] because of their status as Indians.…" 25 U.S.C. § 1903(8). The Secretary of the Interior publishes an annual list of tribes, which courts use to determine ICWA eligibility. *See*, *e.g.*, *Vesey-El v. Buenrostro*, No. 21-9464-VBF (E), 2022 WL 2168063, at *6 (C.D. Cal. Apr. 18, 2022) ("Thus, the ICWA applies to an 'Indian child' only if the tribe appears on the annual list issued by the Secretary of the Interior."); *In re J.T.*, 154 Cal. App. 4th 986, 992 (2007) ("The Department of the Interior publishes a list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs in the Federal Register, and the California Department of Social Services, Children and Family Services Division, publishes a list of tribes entitled to ICWA notice on its website.") (citation omitted); *In re J.L.C.*, No. 2D JUV. B288581, 2018 WL 3867186, at *1 (Cal. Ct. App. Aug. 15, 2018) ("The question of whether a tribe is federally recognized and subject to ICWA notice is determined by the Department of Interior, which periodically publishes a list of federally recognized tribes in the Federal Register."); *In re C.H.*, 79 P.3d 822, 826 (Mont. 2003) ("ICWA does not apply to tribes which have not yet been federally recognized. Although other bands of Chippewa are recognized, the Little Shell Band is not currently recognized by the Secretary of the Interior as eligible to receive services. 67 Fed. Reg. 46,328 (July 12, 2002).").

Here, Plaintiffs proffer no evidence that the Natchez Nation was recognized by the Secretary

as an Indian Tribe. Based on the current and previous lists promulgated by the Secretary of the Interior during all relevant phases of the adoption proceedings and current litigation, the Natchez Nation was not a federally recognized tribe. *See* 77 Fed. Reg. 1557 (Aug. 10, 2012) [Exhibit J, Dkt. No. 80-1]; 78 Fed. Reg. 87 (May 6, 2013) [Exhibit K, Dkt. No. 80-1]; 79 Fed. Reg. 19 (Jan. 29, 2014) [Exhibit L, Dkt. No. 80-1]; 80 Fed. Reg. 9 (Jan. 14, 2015) [Exhibit M, Dkt. No. 80-1]; *see also* 87 Fed. Reg. 4636, 4638 (Jan. 28, 2022). ICWA is not extended "to cover an allegation of membership in a tribe not recognized by the federal government." *In re K.P.*, 175 Cal. App. 4th 1, 6 (2009). And "[s]ince the ICWA applies only to federally recognized tribes (25 U.S.C. § 1903(8)), it does not apply" here. *Id.* at 5.

To address this deficiency, Plaintiffs argue that ICWA applies because the Natchez Nation is affiliated with the Muscogee (Creek) Nation, which ***is*** a federally recognized tribe. *See* Motion at 13–19. But Plaintiffs point to no case establishing (or even suggesting) that non-federally recognized tribes enjoy the same status under ICWA merely through their organizational affiliation with a larger confederate tribe. Absent congressional action or clear Ninth Circuit authority, the Court is not prepared to endorse unilaterally such a broad expansion of ICWA.[6]

Plaintiffs also argue that ICWA should be held to apply because various treaties between the United States and the Natchez Nation support independent federal recognition. *See* Motion at 13–19. But the Court declines to make such a finding here, as federal recognition is more appropriate for the executive branch to initially decide. Such determination "should be made in the first instance by the Department of the Interior since Congress has specifically authorized the Executive Branch to prescribe regulations concerning Indian affairs and relations." *James v. U.S. Dep't of Health & Hum. Servs.*, 824 F.2d 1132, 1137 (D.C. Cir. 1987); *see* 25 U.S.C. §§ 2, 9; *accord Agua Caliente Tribe of Cupeno Indians of Pala Rsrv. v. Sweeney*, 932 F.3d 1207, 1218–19 (9th Cir. 2019). "The purpose of the regulatory scheme set up by the Secretary of the Interior is to determine which Indian

[6] The Court notes that such a fact-specific rule would pose significant if not insurmountable logistical challenges to state courts applying ICWA in dependency cases around the country. Without the ability to rely on a definitive federally sanctioned list of tribes, it is difficult to see how ICWA notice could be fairly and efficiently implemented.

groups exist as tribes," which "would be frustrated if the Judicial Branch made initial determinations of whether groups have been recognized previously or whether conditions for recognition currently exist." *Id.* Plaintiffs have failed to put forth any evidence that they have exhausted the regulatory process for tribal recognition or that they seek recourse for dissatisfaction with the outcome of the administrative process. *Agua Caliente Tribe of Cupeno Indians of Pala Rsrv.*, 923 F.3d at 1219. Thus, the Court finds that ICWA does not apply, and Plaintiffs' ICWA claim fails.

ii. ICWA Notice

Plaintiffs also argue that regardless of this Court's "determination as to the status of the Natchez Nation," ICWA was still violated because the state court had "reason to know" that the children in question were Indian children. *See* Motion at 20–24. This allegation is not unfounded. Evidence was proffered at the December 10, 2013 WIC 366.26 hearing indicating that the children's maternal great-grandmother, Susan Elizabeth Turner, identified as Indian. *See* Exhibit T10 ("Department is to contact Mother's [sic] biological grandmother regarding ICWA."). And while her California address and contact information were gathered in a May 21, 2014 ICWA-030, *see* Exhibit P at JUV-001207 [Dkt. No. 96-9], it does not appear that Ms. Susan Turner was ever sent notice of the custody proceedings, *see* Exhibit P at JUV-001214–16 (detailing the names, addresses, and telephone numbers of those noticed, which did not include Susan Elizabeth Turner).[7] But while the May 21, 2014 ICWA-030 indicated her tribal affiliations as Morongo, Cheyenne, Choctaw, and Cherokee, it did ***not*** indicate that she was a "registered member of the Natchez Nation (Roll No. 1028)." Complaint ¶ 20. This unsent ICWA-030 was only filled out *after* parental rights were terminated in February 2014.[8] As a result, the Natchez Nation and Ms. Susan Turner were never

[7] The Court also asked Defendants' counsel at the October 26, 2023 summary judgment hearing about this apparent lack of notice, but counsel was unable to provide evidence on the record that such notice was effectuated on Susan Elizabeth Turner.

[8] Furthermore, the Court notes that Riverside CPS appears to have failed to notify Sally Linton, the maternal great aunt of minors IE and NE, about any court proceedings related to the minors, despite Ms. Linton being an enrolled member of the Morongo Tribe (which was noticed), having lived on the Morongo reservation, and being of Natchez, Cheyenne, and Chippewa descent. Declaration of Sally Linton ¶¶ 2–5, 8 [Exhibit C, Dkt. No. 1]. But this failure to notify does not change the Court's ruling given that notice was provided to the Morongo Tribe, SUF ¶¶ 42, 49, 51, and because 25

provided notice before parental rights were terminated.

However, "ICWA itself does not define 'reason to know,' nor did the implementing federal regulations in effect while this case was pending in the dependency court" from 2012 to 2014. *In re Breanna S.*, 8 Cal. App. 5th 636, 650, 214 Cal. Rptr. 3d 98, 108 (2017), *disapproved on other grounds by In re Caden C.*, 11 Cal. 5th 614, 486 P.3d 1096 (2021).[9] Thus, Plaintiffs arguments under the heightened 25 C.F.R. § 23.107 standards fail, as these obligations are not applied retroactively. Instead, the Court finds that the failure to notice Ms. Susan Turner is harmless error because "even if proper notice had been given, the child[ren] would not have been found to be … Indian child[ren]." *In re D.N.*, 218 Cal. App. 4th 1246, 1251 (2013), *as modified* (Aug. 14, 2013). Thus, any deficiencies in the ICWA inquiry do not change the Court's ICWA findings.[10]

C. Fraud, Deceit, and Misrepresentation Claim

Plaintiffs' second cause of action for fraud, deceit, and misrepresentation stems from allegations that Ms. Lanam provided false, fraudulent statements to Riverside CPS in presenting

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C.F.R. § 23.107, discussed here, does not apply to great aunts.

[9] New regulations to implement ICWA, adopted as of December 12, 2016, now identify circumstances in which a court has "reason to know" the child is an Indian child, including if "[a]ny participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child." 25 C.F.R. § 23.107(c)(2) (2016). The new regulations apply to any child custody proceeding initiated on or after December 12, 2016, even if the child has been involved in dependency proceedings prior to that date. A "child-custody proceeding" includes, as a separate proceeding, a termination of parental rights, a preadoptive placement or an adoptive placement. 25 U.S.C. § 1903(1); 25 C.F.R. § 23.2. If any one of those types of proceedings is initiated on or after December 12, 2016, the new regulations apply to that proceeding. However, ICWA itself did not define "reason to know," nor did the implementing federal regulations in effect while this case was decided. *See In re Breanna S.*, 8 Cal. App. 5th at 650 n.7.

[10] Plaintiffs only allege violations of federal ICWA statute and federal regulations, not any violations of California-specific regulations, which are more appropriate for California courts to interpret. The Court does acknowledge that recent legislation and caselaw do impose more stringent notice obligations. *See In re A.R.*, 77 Cal. App. 5th 197, 207 (2022) (describing that there is a duty to inquire about ancestry "in *every* case," because "[w]ithout it, the tribes effectively have no mechanism for ascertaining whether they have an interest in the care and well-being of any specific child. To ignore the obligation to conduct an ICWA inquiry in individual cases would undermine ICWA policy in general").

herself as a "fifth paternal cousin" to the children and that they were "placed with her because of said false information." Complaint ¶¶ 83, 87. Plaintiffs further allege that Social Worker Brager, and Darla De La Cruz, a county representative, failed to list tribes or untimely noticed tribes in ICWA notices in 2012 and 2013 to Bureau of Indian Affairs. Complaint ¶¶ 89, 90.

But as Defendants point out, such claims are time barred. Motion at 24–25. "A federal court sitting in diversity must look to the forum state's choice of law rules to determine the controlling substantive law." *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1187 (9th Cir. 2001), *opinion amended on denial of reh'g,* 273 F.3d 1266 (9th Cir. 2001) (citation omitted). The applicable statute of limitation is from Cal. Civ. Proc. Code § 338(d), which provides three years for "[a]n action for relief on the ground of fraud or mistake." "The cause of action is [such] case is not deemed to have accrued until the discovery by the aggrieved party, of the facts constituting the fraud or mistake." *Id.* Here, the notices were served on the biological parents, so if they were blank or untimely, they would have known and had an opportunity to bring a claim at that time. While the latest events of the dependency court occurred in 2014, any such fraud claim is clearly many years past the deadline for the statute of limitations. Plaintiffs have not "designat[ed] specific facts showing that there is a genuine issue for trial." *Nissan Fire & Marine Ins. Co.*, 210 F.3d at 1102.

D. Civil Rights Claims

Plaintiffs also allege violations of civil rights under 42 U.S.C. § 1983 for violation of civil rights by denying the parents' right to custody of their children. *See* Complaint ¶ 92–99. Defendants also argue that a two-year statute of limitations applies here, citing to the personal injury action limitation from Cal. Civ. Proc. Code § 335.1. *See* Motion at 25–26 (*see also Mills v. City of Covina*, 921 F.3d 1161 (9th Cir. 2019) (applying this statute to Section 1983 claims). The Court disagrees that this shorter statute of limitations should apply, since Plaintiffs only seek equitable relief under 25 U.S.C. § 1914, not damages for constitutional tort injuries under 42 U.S.C. § 1983. Instead, the Court applies the four-year statute of limitations under Cal. Civ. Proc. Code § 1085, which authorizes mandamus actions "to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is

unlawfully precluded," and is subject to California's four-year general statute of limitations for civil actions, Cal. Civ. Proc. Code § 343. *See Belinda K. v. Baldovinos*, No. 10-CV-02507-LHK, 2012 WL 464003, at *11 (N.D. Cal. Feb. 13, 2012), *aff'd sub nom. J.H. ex rel. Kirk v. Baldovinosre*, 583 F. App'x 833 (9th Cir. 2014).[11] The dependency court terminated the case on May 27, 2014, SUF 36, and the Complaint was filed in 2022, so more than four years past since any relevant alleged Section 1983 occurred. Thus, these claims are barred.

E. Intentional Infliction of Emotion Distress Claim

Plaintiffs' claim for intentional infliction of emotional distress are similarly barred. Under California law, claims for intentional infliction of emotional distress claims have a two-year statute of limitations. Cal. Civ. Proc. Code § 335.1. The statute of limitations begins to run when the plaintiff suffers severe emotional distress because of outrageous conduct by the defendant. *Cantu v. Resolution Trust Corp.*, 4 Cal. App. 4th 857, 889 (1992).

Here, Plaintiffs allege that the emotional distress was caused when they were unable to see their children. *See* Complaint ¶ 101–103. Parental rights were terminated on February 24, 2014, *see* SUF 33, so the statute of limitations ran on February 24, 2016. The Complaint was filed on March 9, 2022, six years after the statute of limitations ran. Thus, this claim is also barred by the statute of limitations.

V. CONCLUSION

For the foregoing reasons, Defendants' Motion for Summary Judgment is granted in its entirety.

Dated: January 17, 2024

Hernán D. Vera
United States District Judge

[11] This case applied no statute of limitations, finding Cal. Wel. & Inst. Code §§ 385 most analogous, which provides that so long as the state court maintains jurisdiction over a dependent child, "[a]ny order made by the [dependency court] … may *at any time* be changed, modified, or set aside, as the judge deems proper." *See id.* at *11. But this is not applicable here as the dependency court no longer "continues to exercise jurisdiction over the child." *Id.* at *12.