IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WINNEMUCCA INDIAN COLONY, and WILLIS EVANS, Chairman,	)	
Plaintiffs,	)	No. 13-874 L
v.	)	Judge Nancy B. Firestone
UNITED STATES OF AMERICA,	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF UNITED STATES' MOTION TO DISMISS

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INTRODUCTION

This case arises from a long-standing internal membership and leadership dispute over political control of the Winnemucca Indian Colony. Plaintiffs seek $108 million in damages and equitable and declaratory relief for what they see as a failure by the U.S. Bureau of Indian Affairs to take sides and recognize a Colony government during the internal dispute. The Court of Federal Claims lacks jurisdiction over the Complaint for no fewer than three reasons. First, 28 U.S.C. § 1500 requires that Counts One, Two, and Three be dismissed because a district court case based upon the same operative facts was pending at the time Plaintiffs filed this action and remains pending. Second, this case is premised on the proposition that the Bureau of Indian Affairs has a fiduciary obligation to recognize a tribal government. But Plaintiffs have failed to identify a specific and money-mandating statutory or regulatory duty, as would be required to establish this Court's jurisdiction to award money damages under the Indian Tucker Act. Third, the Court of Federal Claims lacks jurisdiction over the forms of equitable and declaratory relief Plaintiffs seek. The Complaint should be dismissed.

FACTUAL & PROCEDURAL BACKGROUND

The Winnemucca Indian Colony is a federally-recognized Indian Tribe. Compl. ¶ 3 (ECF No. 1). The leadership dispute that gives rise to this case has been at the heart of numerous judicial and administrative proceedings.

I. The Intra-Tribal Dispute and Pending District Court Litigation

A. The Wasson and Bills Factions

The leadership saga began in February 2000. At that time, the Winnemucca Indian Colony's governing body, or Council, consisted of five members, including Chairman Glenn Wasson and Vice-Chair William Bills. *See Wasson v. W. Reg'l Director ("Wasson IV")*, 42

IBIA 141, 142 (Jan. 24, 2006). Glenn Wasson was murdered on February 22, 2000. *Id.* at 142. The Superintendent for the U.S. Bureau of Indian Affairs (BIA) therefore recognized Mr. Bills as the Council's chair. *Id.* The Council then split into two factions—the "Bills group" and the "Wasson group." *Id.*

Over the course of the next year, both factions met separately to appoint their own Council chair, and both succeeded in having different tribal judges overturn the other group's appointment. *See id.* at 143. Both groups attempted to form a new council through their own elections, with different outcomes in each. *See id.* at 144. The leadership dispute appears to have manifested itself in a battle over who is entitled to control the Colony's economic assets, including two income-producing smoke shops on Colony lands. *See Winnemucca Indian Colony v. United States ex rel. Dep't of the Interior ("Winnemucca VII"),* No. 11-cv-622, 2013 WL 1792295, at *2 (D. Nev. Apr. 25, 2013); *Winnemucca Indian Colony v. United States ex rel. Dep't of the Interior ("Winnemucca IV"),* No. 11-cv-622, 2012 WL 2789611, at *5 (D. Nev. July 9, 2012); Compl. ¶¶ 28, 68–74, 77, 86. Tangential to the leadership dispute is what at least one faction sees as an issue of tribal membership. *See* Compl. ¶¶ 27, 29, 37, 73, 86. Tribal membership is important as it governs not only who may be eligible for tribal leadership positions, but also who can vote in tribal elections. *See* Compl. ¶ 23.

To complicate matters further, the intra-tribal factions at some point reorganized. Mr. Bills apparently joined the Wasson group or disappeared altogether, leaving the Bills group to other individuals. *See Wasson v. W. Reg'l Director ("Wasson V"),* 50 IBIA 342, 345 n.3 (Nov. 19, 2009). The remaining individuals in the Bills group came to be known as the Ayer group. *Wasson v. Acting W. Reg'l Director ("Wasson VI"),* 52 IBIA 353, 354 (Dec. 17, 2010).

B. Unsuccessful Attempts at Resolution

The Wasson group and Bills group each maintained that those elected in their respective elections represented the Colony's proper governing body. Eventually, the Inter-Tribal Court of Appeals provided an appeal venue. The Inter-Tribal Court remanded the question of Council membership to a temporary trial judge (Judge Haberfield) that the competing groups had mutually selected. *See Wasson IV*, 42 IBIA at 144–45. In May 2002, Judge Haberfield determined that there was no properly seated Council, ordered elections, and declared that his court would maintain jurisdiction over the Colony in the interim. *Id.* at 145.

Displeased with Judge Haberfield's decision, the leadership factions used mediation before the United States Court of Appeals for the Ninth Circuit to agree to an appeal mechanism. *See id.* at 145–46.[1] The groups formed what was called the "Minnesota Panel," composed of three tribal judges. In August 2002, the Minnesota Panel reversed and vacated Judge Haberfield's decision. *Id.* at 146. The Panel determined that the Council consisted of Sharon Wasson, Thomas Wasson, Elverine Castro, and William Bills (plus one vacancy), and that this Council should govern until successors could be duly elected. *Id.*; *see Wasson v. Bills*, No. cv-1003 (Aug. 16, 2002) ("Minnesota Panel Decision," attached as Ex. 1). The Panel ordered that an election occur, in accordance with several procedural requirements, by April 2003. *See Wasson IV*, 42 IBIA at 146.

[1] The groups were before the Ninth Circuit via an appeal of a 2001 District of Nevada denial of a request for a preliminary injunction brought by some members of the Wasson group against the Department of the Interior and Mr. Bills. *Wasson IV*, 42 IBIA at 145–46. The district court eventually dismissed the case for lack of jurisdiction and failure to state a claim. *See Magiera v. Norton*, Order, No. 01-cv-0467 (D. Nev. Nov. 12, 2002, ECF No. 63), *aff'd*, 108 F. App'x 542, No. 02-17364 (9th Cir. Sept. 2, 2004). In 2000, Bank of America had also brought a district court interpleader action for a declaration as to who properly had control over the Colony's accounts, which resulted in cross-claims between the Wasson and Bills groups as to the proper Council. *See Bank of Am. v. Bills*, No. 00-cv-450 (D. Nev.)

It remains unclear whether the election occurred as the Minnesota Panel directed. Mr. Bills subsequently disappeared and the Wasson group—which was effectively left in control of the Minnesota Panel-determined Council—purported to fill the now-two vacant Council seats. *See Wasson IV*, 42 IBIA at 146–47. The Wasson group began asking BIA to recognize it as the Colony's proper Council. *See id.* at 147. In October 2002, the BIA Western Regional Director determined he could not recognize the Wasson group as the Council. *Id.*

The Wasson group made several subsequent requests for BIA to recognize it as the proper Council. *See id.* at 148. In August 2003 and March 2004, the Regional Director declined to enter a contract with the Wasson group (purportedly acting on the Colony's behalf), finding that the group had not demonstrated itself to be the Colony's legitimate governing body.[2] *See id.* at 148–49. The Regional Director concluded that the question of which group was legally the Colony's Council "should be determined by tribal processes . . . ." *Id.* at 149. The Department of the Interior's Board of Indian Appeals upheld the Regional Director's decision. *Id.* at 153.

Meanwhile, in September 2004, the Inter-Tribal Court determined that none of the Council elections since February 2000 had been valid and, differing from the Minnesota Panel, that the members of the Council were Thomas Wasson, Elverine Castro, and William Bills. *Wasson IV*, 42 IBIA at 149–50. The Wasson group sued the Inter-Tribal Court judges in federal district court, which resulted in a December 2004 settlement. *Id.* at 150; *see Wasson v. Inter-Tribal Court of Appeals*, No. 04-cv-573 (D. Nev. Mar. 11, 2005, ECF No. 33). The settlement—which was between the Wasson group and the Inter-Tribal Court, not the Bills or Ayer group—provided procedures for determining Tribal membership and stated that the Minnesota Panel-

[2] The Regional Director also denied the contract request on the grounds that the application did not meet statutory and regulatory requirements. *See Wasson IV*, 42 IBIA at 149 (citing 25 U.S.C. § 450 and 25 C.F.R. § 900.8).

determined Council would be reinstated and serve until a valid Tribal election. *Wasson IV*, 42 IBIA at 150.

The Wasson group then requested in December 2004 that BIA recognize the Council set forth in the settlement stipulation as the legitimate government. *Id.* at 151. The Regional Director concluded that it was not clear that the tribal courts had determined the Wasson group to be the proper Colony Council, or that members added to the Council after February 2000 were legitimate members. *Id.* at 151–52. The Interior Board of Indian Appeals affirmed the Regional Director's decision, concluding, in part, that the Wasson group "had not exhausted tribal remedies for determining the identity of the legitimate Council . . . ." *Id.* at 153–56.

In May 2005, the Bills group was also seeking a default judgment with the Inter-Tribal Court based upon the Wasson group's alleged failure to submit tribal membership rolls, as the Inter-Tribal Court had ordered. *Id.* at 152. The motion also sought an order recognizing the Bills group as the Colony's Council. *Id.*

Thus, as of January 2006, there were three ongoing or identified tribal processes for determining the legitimate Council: (1) the settlement stipulation between the Wasson group and the Inter-Tribal Court; (2) the procedures set forth in the Inter-Tribal Court's September 2004 decision; and (3) the procedures established by the Minnesota Panel. *See Wasson IV*, 42 IBIA at 155–56. The Bills group had challenged the Minnesota Panel ruling on several fronts before the Inter-Tribal Court. *See Wasson V*, 50 IBIA at 346. In May 2007, the Inter-Tribal Court dismissed the matter before it for lack of jurisdiction. *Id.* at 349. The district court in the *Bank of America* litigation therefore concluded that the Minnesota Panel's decision was controlling. *See Bank of Am. v. Bills*, 2008 WL 682399, at *5–6, *aff'd sub nom., Bank of Am. v. Swanson*, 400 F. App'x 159 (9th Cir. 2010). The Ninth Circuit's October 2010 decision affirming the

Bank of America district court clarified that the courts recognized the Minnesota Panel decision as the final outcome from the various tribal processes.

In the interim, however, the Wasson group had continued its requests for BIA to recognize it as the Council. BIA identified steps the Colony should take to determine a Council that BIA could recognize. *See Wasson V*, 50 IBIA at 347–48. The Wasson group purported to have fulfilled those steps and therefore requested that BIA recognize the Council that the Wasson group-identified tribal membership had elected in October 2006. *Id.* at 348–50. In December 2009—prior to the Ninth Circuit decision in the *Bank of America* appeal—the Regional Director issued a decision declining to recognize the purportedly-elected Council as duly elected Colony leadership. *See Wasson VI*, 52 IBIA at 353. The Interior Board of Indian Appeals remanded that decision to the Regional Director in December 2010 to provide a better explanation for his conclusions.[3] *Id.* at 359–60.

C. The Nevada District Court Appoints a Tribal Representative

Before BIA had the chance to issue a decision on remand from the Board, the Wasson group—represented by the same counsel as Plaintiffs in this lawsuit—filed suit in the United States District Court for the District of Nevada. *See* Compl. for Inj. & Decl. Relief ("Nev. Compl."), *Winnemucca Indian Colony v. United States ex. rel Dep't of the Interior*, No. 11-cv-622 (D. Nev. Aug. 29, 2011, ECF No. 1) (attached as Ex. 2). That suit remains pending. The Wasson group asks the district court for, among other things, a declaratory judgment that they are the Colony's chosen government. *See* Am. Compl. for Inj. and Decl. Relief ("Nev. Am. Compl.") 15–16, *Winnemucca Indian Colony v. United States ex. rel Dep't of the Interior*, No.

[3] Contrary to Plaintiffs' allegation (Compl. ¶ 66), the Interior Board of Indian Appeals has not ordered BIA to recognize a Colony government. *See Wasson VI*, 52 IBIA at 359 (noting in remand order that it may be possible for Regional Director to respond to Wasson group's request "without having to decide whether [the Wasson group] should be considered, on an interim basis or otherwise, as representing the Tribe as landowner.").

11-cv-622 (D. Nev. Jan. 27, 2012, ECF No. 56) (attached as Ex. 3). The District of Nevada (Judge Robert C. Jones) ordered BIA to recognize Thomas Wasson as the Colony Council representative until the conclusion of the district court action. *See Winnemucca Indian Colony v. United States ex. rel. Dept' of the Interior ("Winnemucca V")*, No. 11-cv-622, 2012 WL 4472144, at *3 (D. Nev. Sept. 25, 2012).[4] The court also ordered Mr. Wasson to appoint a membership committee, receive membership applications under conditions identified by the court, and hold an election when all membership appeals are exhausted. *Id.* William Bills—who had in the interim resurfaced—and the Ayer group have separately intervened in the District of Nevada action. *See Winnemucca VII*, 2013 WL 1792295, at *3–4 (discussing election procedures and order for Mr. Wasson to show cause as to why he should not be held in contempt). Plaintiffs alleged that the ordered election occurred in June 2013 (*see* Compl. ¶ 84), but the Ayer group disputes the election results. *See* Status Report for Status Conference,

[4] Judge Jones had previously addressed:

> the necessity for Wasson, Bills, and the other Indian parties to resolve this dispute amicably, if not by direct agreement, then through submission of the following issues to a mutually agreeable tribal forum such as the Inter–Tribal Court of Appeals of Nevada: (1) final determination of tribal membership rolls; (2) supervision of a neutrally administered general election; and (3) a declaration of the resulting tribal leadership. If Wasson and Bills cannot agree even to submit their disputes to a neutral tribal tribunal, this Court, left with a choice between direct intervention and the irreparable political dissolution of the Colony, will intervene directly in these matters. Still, the Court can only do so much. Ultimately, the parties must learn to tolerate one another . . . .

Winnemucca Indian Colony v. United States ex. rel. Dep't of the Interior ("Winnemucca III"), No. 11-cv-622, 2012 WL 78198 *9 (D. Nev. Jan. 10, 2012). Contrary to Plaintiffs' assertion (Compl. ¶ 82), Judge Jones did not recognize the Wasson group's proffered council or any other individuals as the duly-elected Colony government. *See* Order, *Winnemucca Indian Colony v. United States ex. rel. Dep't of the Interior ("Winnemucca VIII")*, No. 11-cv-622 (D. Nev. Feb. 10, 2014, ECF No. 204) (attached as Ex. 4).

Winnemucca Indian Colony v. U.S. ex rel. Dep't of the Interior, No. 11-cv-622 (D. Nev. Feb. 6, 2014, ECF No. 203) (attached as Ex. 5).

II. The Court of Federal Claims Suit

On November 4, 2013, Willis Evans filed suit in the Court of Federal Claims in the name of the Winnemucca Indian Colony and himself, as its purported Chairman (collectively, "Plaintiffs").[5] Plaintiffs assert jurisdiction under 28 U.S.C. § 1505. Compl. ¶ 1. Plaintiffs state four claims for relief against the United States: (1) breach of trust, *id.* ¶¶ 88–95; (2) breach of fiduciary duty, *id.* ¶¶ 96–101; (3) a demand for an accounting, *id.* ¶¶ 102–104; and (4) declaratory relief, *id.* ¶¶ 105–107. As remedies, the Colony seeks $108 million in damages; a declaratory judgment entitling Plaintiffs to "fair and reasonable compensation for past, present and future use of the Colony's water, land and property rights"; and "[a]n accounting for all distributions, annuities and other monies, including interest thereon, which are due to the Plaintiffs." Compl. 19 (Prayer for Relief). The United States now moves to dismiss the Complaint for lack of jurisdiction.

III. Standard of Review

Jurisdiction has to be established before a court may proceed to the merits of a case. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 88–89 (1998). The determination of whether this Court has subject matter jurisdiction to hear Plaintiffs' claims is a question of law. *Toxgon Corp. v. BNFL, Inc.*, 312 F.3d 1379, 1381 (Fed. Cir. 2002). Courts are presumed to lack

[5] Plaintiffs' counsel brought the District of Nevada case on behalf of Thomas Wasson, who claims to be the Colony Chairman, and also (purportedly) on behalf of the Colony. *See* Nev. Am. Compl. at 2. Plaintiffs' counsel brought the Court of Federal Claims case on behalf Willis Evans, who also claims to be the Colony Chairman, and (purportedly) on behalf of the Colony. *See* Compl. ¶¶ 3, 4. Thus, the two cases are brought on behalf of different chairmen, both claiming to lead the Colony, and both represented by the same counsel. On February 27, 2014, Plaintiffs' counsel informed counsel for the United States that Mr. Evans has very recently passed away.

subject matter jurisdiction unless it is affirmatively indicated by the record; therefore, it is Plaintiffs' responsibility to allege facts sufficient to establish the Court's subject matter jurisdiction. *Renne v. Geary*, 501 U.S. 312, 316 (1991); *DaimlerChrysler Corp. v. United States*, 442 F.3d 1313, 1318 (Fed. Cir. 2006) ("[I]t is settled that a party invoking federal court jurisdiction must, in the initial pleading, allege sufficient facts to establish the court's jurisdiction.") (citations omitted)).

Once the Court's subject matter jurisdiction is put into question under Rule 12(b)(1) to the Rules of the Court of Federal Claims (RCFC), the Court accepts as true the undisputed factual allegations in the complaint and draws all reasonable inferences in a plaintiff's favor. *Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995). A plaintiff, however, bears the burden of proving by a preponderance of the evidence facts sufficient to establish that the Court possesses subject matter jurisdiction. *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936); *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988); *accord M. Maropakis Carpentry, Inc. v. United States*, 609 F.3d 1323, 1327 (Fed. Cir. 2010).

The Court may also look to evidence outside of the pleadings and inquire into jurisdictional facts to determine the existence of subject matter jurisdiction. *Land v. Dollar*, 330 U.S. 731, 735 n.4 (1947); *Reynolds*, 846 F.2d at 747. In doing so, the Court may examine relevant evidence to decide any factual disputes regarding jurisdiction. *See Moyer v. United States*, 190 F.3d 1314, 1318 (Fed. Cir. 1999). If the defendant or the Court questions jurisdiction, then a plaintiff cannot rely solely on factual allegations in the complaint but must bring forth relevant adequate proof to establish jurisdiction. *See McNutt*, 298 U.S. at 189. If the Court concludes that it lacks subject matter jurisdiction over a claim, RCFC 12(h)(3) requires that the claim be dismissed.

ARGUMENT

At the time Plaintiffs filed suit in the Court of Federal Claims, the Winnemucca Indian Colony had a case pending before the United States District Court for the District of Nevada. That case—like Counts One, Two, and Three in the present action—involves operative facts related to the tribal leadership dispute and BIA's alleged failure to recognize a tribal government. Counts One, Two, and Three should therefore be dismissed under 28 U.S.C. § 1500.

Even ignoring the pending district court litigation, however, the Court would still lack jurisdiction over all four claims in the Complaint. Plaintiffs' claim for damages in Counts One and Two is premised on the proposition that BIA has money-mandating fiduciary duties—rather than just a political role—in recognizing a tribal government. But Plaintiffs have not and cannot identify a specific statutory or regulatory provision that would trigger this Court's Tucker Act jurisdiction. Counts Three and Four seek equitable relief in the form of an accounting and a declaratory judgment. But the Court of Federal Claims does not have jurisdiction over the forms of relief Plaintiffs seek. The Complaint should be dismissed in its entirety.

I. The Pending District Court Litigation Means 28 U.S.C. § 1500 Bars Jurisdiction in the Court of Federal Claims for Counts One, Two, and Three

Counts One, Two, and Three should be dismissed because, at the time Plaintiffs filed their Complaint, they were pursuing—and continue to pursue—claims in the District of Nevada that originate from the same operative facts.

> The United States Court of Federal Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States.

28 U.S.C. § 1500. The Supreme Court recently reinforced the breadth of Section 1500's jurisdictional bar, concluding that it "effects a significant jurisdictional limitation." *United States v. Tohono O'Odham Nation*, 131 S. Ct. 1723, 1729 (2011). The statute "bars jurisdiction in the CFC not only if the plaintiff sues on an identical claim elsewhere—a suit 'for' the same claim—but also if the plaintiff's other action is related although not identical—a suit 'in respect to' the same claim." *Id.* at 1728.

"To determine whether § 1500 applies, a court must make two inquiries: (1) whether there is an earlier-filed 'suit or process' pending in another court, and, if so, (2) whether the claims asserted in the earlier-filed case are 'for or in respect to' the same claim(s) asserted in the later-filed Court of Federal Claims action." *Brandt v. United States*, 710 F.3d 1369, 1374 (Fed. Cir. 2013) (citation omitted). At a minimum, "the question of whether another claim is pending 'is determined at the time at which the suit in the Court of Federal Claims is filed.'" *Pellegrini v. United States*, 103 Fed. Cl. 47, 51 (2012) (citation omitted).[6] The word "pending" has been defined as "'remaining undecided' or 'awaiting decision.'" *Id.* (quoting *Black's Law Dictionary* 1248 (9th ed. 2009)). "Two suits are for or in respect to the same claim, precluding jurisdiction in the CFC, if they are based on substantially the same operative facts, regardless of the relief sought in each suit." *Tohono*, 131 S. Ct. at 1731. The legal theories asserted "are irrelevant to whether claims arise from substantially the same operative facts." *Trusted Integration, Inc. v. United States*, 659 F.3d 1159, 1166 (Fed. Cir. 2011) (citing *Keene Corp. v. United States*, 508 U.S. 200, 212 (1993)).

[6] The United States believes, in light of *Tohono*, that § 1500 also bars Court of Federal Claims jurisdiction over an action for or in respect to claims that are filed in another court after the Court of Federal Claims case is filed. *See Brandt*, 710 F.3d at 1380–82 (Prost, J., concurring). The facts of this case, however, do not present that issue.

The same counsel representing Plaintiffs in this case filed suit on behalf of the Winnemucca Indian Colony in the District of Nevada on August 30, 2011. *See* Nev. Compl. (attached as Ex. 2). The plaintiffs amended their District of Nevada complaint on January 27, 2012. *See* Nev. Am. Compl. (attached as Ex. 3). There is no doubt that the District of Nevada suit was pending when Plaintiffs filed suit in this Court on November 04, 2013. *See* Compl. (Nov. 4, 2013, ECF No. 1). Indeed, the District of Nevada action remains pending as of the date of this motion. *See* Ex. 5.

Thus, the only question here is whether the Court of Federal Claims and the district court cases are "for or in respect to" the same claim; whether the claims are based upon the same operative facts. *See Tohono*, 131 S. Ct. at 1731. Answering that question requires a claim-by-claim analysis. *See Resource Investments, Inc. v. United States*, 114 Fed. Cl. 639, 648–49 (2014). That analysis demonstrates that Counts One, Two, and Three in Plaintiffs' Court of Federal Claims Complaint are based upon the same operative facts as Plaintiffs' claims in the District of Nevada.

Counts One, Two, and Three in Plaintiffs' Court of Federal Claims complaint focus on BIA's alleged failure to recognize a tribal government. In Counts One and Two, Plaintiffs allege that "Defendant, by it [*sic*] arbitrary, capricious, and unreasonable failure for twelve years to properly recognize a Council of the Winnemucca Indian Colony violated Defendant's trust responsibilities under federal law." Compl. ¶¶ 92, 97. Plaintiffs assert that, as a result of the alleged failure, "the Colony and its members have suffered and continue to suffer substantial damage and harm." *Id.* ¶¶ 93 (Count One), 98 (Count Two). Plaintiffs claim that the alleged failure has resulted in "non-members" occupying Colony lands (i.e., a smoke shop), which in turn as resulted in financial harm. *See id.* ¶¶ 73, 86, 94(b), 94(c)(iv). Count Three—which seeks

an accounting—arises from similar grounds: "Defendant breached its fiduciary duties and duty of trust by arbitrarily, capriciously and unreasonably failing to properly recognize the Colony tribal government within a reasonable time . . . ." *Id.* ¶ 103. The operative facts thus include, among other things, who, if anyone, would have constituted the Colony's legitimate leadership; the procedures, circumstances, and legitimacy of their election; whether the individuals allegedly occupying Colony lands are tribal members or had authorization from duly-elected tribal leadership to occupy the lands; and when and under what circumstances BIA took (or did not take) action with respect to requests to recognize a government or remove from Colony lands those whom Plaintiffs deem to be "non-members."

Those operative facts are precisely those at issue in the District of Nevada. The first claim in the original district court complaint—which was filed on August 29, 2011—sought an injunction seeking to prohibit BIA interference with action by those whom Plaintiffs viewed as the duly elected leadership. *See* Nev. Compl. ¶¶ 23–33. The second claim seeks declaratory relief recognizing the Wasson group as the tribal government. *See id.* ¶¶ 35–44. The Nevada plaintiffs amended their district court complaint on January 27, 2012, to challenge BIA's interim designation of William Bills as chairman, claiming Thomas Wasson was correctly the chairman. *See* Nev. Am. Compl. ¶¶ 34–57. The amended complaint asks the district court to determine whether BIA breached its trust responsibilities in allowing "non-members" to occupy Colony lands at the exclusion of members. *Id.* 16, ¶ 4 (Prayer for Relief). Thus, the claims in the district court—like Counts One, Two, and Three in the Court of Federal Claims Complaint—revolve around factual questions of who, if anyone, would have constituted the Colony's legitimate leadership; the procedures, circumstances, and legitimacy of their election; whether the individuals allegedly occupying Colony lands are tribal members or had authorization from duly-

elected tribal leadership to occupy the lands; and when and under what circumstances BIA took (or did not take) action with respect to requests to recognize a government or remove from Colony lands those whom Plaintiffs deem to be "non-members."

Section 1500 applies because the two suits arise out of the same events. *See Cent. Pines Land Co. v. United States*, 697 F.3d 1360, 1364–65 (Fed. Cir. 2012); *Omaha Tribe of Neb. v. United States*, 102 Fed. Cl. 377, 388 (2011). Indeed, the factual underpinnings in the respective complaints are nearly identical, if not verbatim. *See* Attachment 1 to Decl. of Kristofor R. Swanson (chart comparing complaint paragraphs, attached as Ex. 6). Because the operative facts for Counts One, Two, and Three are substantially the same as those presented by the claims that were pending in the District of Nevada when this suit was filed, § 1500 requires that Counts One, Two, and Three be dismissed.

II. Counts One and Two Should Also Be Dismissed Because Plaintiffs Have Not Identified a Money-Mandating Duty

Even ignoring § 1500, Counts One and Two, which seek money damages, would still require dismissal. This Court's jurisdiction over such claims requires a specific statutory or regulatory duty that can fairly be interpreted as mandating monetary compensation for any violation of that specific statutory or regulatory duty. Count One claims that the alleged failure to recognize a Colony government "violated Defendant's trust responsibilities under federal law." Compl. ¶ 92. Count Two repeats some of Count One (*see id.* ¶¶ 97, 98) and claims that the alleged failure "also violated [Defendants'] fiduciary responsibilities under federal law." *Id.* ¶ 99. Plaintiffs then list ways in which they believe the alleged trust violation to have harmed the Colony. *See id.* ¶¶ 94, 100. But Plaintiffs have not identified <u>any</u> specific statutory or regulatory duty to recognize a tribal government, let alone one that could be interpreted as money-mandating.

A. Jurisdiction Under the Indian Tucker Act Requires the Identification of an Applicable and Money-Mandating Constitutional, Statutory, or Regulatory Duty that the Plaintiff Claims the Government Has Violated

"It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction." *United States v. Mitchell ("Mitchell II")*, 463 U.S. 206, 212 (1983). A waiver of sovereign immunity must be "'unequivocally expressed' in statutory text." *FAA v. Cooper*, 132 S. Ct. 1441, 1448 (2012) (citations omitted). The scope of any such waiver must be "strictly construed . . . in favor of the sovereign," *Lane v. Peña*, 518 U.S. 187, 192 (1996), and "not 'enlarge[d] . . . beyond what the language requires.'" *U.S. Dep't of Energy v. Ohio*, 503 U.S. 607, 615 (1992) (citation omitted). The waiver's terms also "define [the] court's jurisdiction to entertain the suit." *United States v. Sherwood*, 312 U.S. 584, 586 (1941).

Plaintiffs assert that jurisdiction exists under 28 U.S.C. § 1505, which is often referred to as the "Indian Tucker Act."[7] *See* Compl. ¶ 1. The Indian Tucker Act provides essentially the same access to relief as the Tucker Act, 28 U.S.C. § 1491(a)(1).[8] *United States v. Mitchell* ("*Mitchell I*"), 445 U.S. 535, 540 (1980). The Indian Tucker Act is a waiver of sovereign immunity, but that waiver is "[l]imited." *United States v. Navajo Nation ("Navajo II")*, 556 U.S. 287, 289 (2009). The Tucker Act and Indian Tucker Act do not create substantive rights

[7] The Indian Tucker Act grants the Court of Federal Claims jurisdiction over "any claim against the United States accruing after August 13, 1946, in favor of any tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska whenever such claim is one arising under the Constitution, laws or treaties of the United States, or Executive orders of the President, or is one which otherwise would be cognizable in the Court of Federal Claims if the claimant were not an Indian tribe, band or group." 28 U.S.C. § 1505.

[8] The relevant portion of the Tucker Act grants the Court of Federal Claims "jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. § 1491(a)(1).

enforceable against the United States for money damages. *Navajo II*, 556 U.S. at 290; *Mitchell II*, 463 U.S. at 216. Instead, those rights must be found in some other Constitutional, statutory, or regulatory provision. *See id.* But "[n]ot every claim invoking the Constitution, a federal statute, or a regulation is cognizable . . . ." *Mitchell II*, 463 U.S. at 216. Instead, to properly fit under the Tucker Act's waiver, the right in question must also be one that "'can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.'" *Id.* at 216–17 (quoting *United States v. Testan*, 424 U.S. 392, 400 (1976)); *see Hopi Tribe v. United States*, 113 Fed. Cl. 43, 47–49 (2013).

Thus, an Indian tribe asserting a non-contract claim for monetary damages under the Tucker Act and Indian Tucker Act must clear "two hurdles" to invoke the waiver of sovereign immunity and Court of Federal Claims jurisdiction. *Navajo II*, 556 U.S. at 290. "First, the tribe 'must identify a substantive source of law that establishes specific fiduciary or other duties, and allege that the Government has failed faithfully to perform those duties.'" *Id.* (quoting *United States v. Navajo Nation ("Navajo I")*, 537 U.S. 488, 506 (2003)). That "threshold" showing must be based on "specific rights-creating or duty-imposing statutory or regulatory prescriptions" that establish "specific fiduciary or other duties" that the government allegedly has failed to fulfill. *Navajo I*, 537 U.S. at 506; *see United States v. Jicarilla Apache Nation*, 131 S. Ct. 2313, 2325 (2011) (noting that the government's duties vis-a-vis Indian tribes are defined by specific trust-creating statutes or regulations, not common-law trust principles).

Second, that source of substantive law must be one that "'can fairly be interpreted as mandating compensation for damages sustained as a result of a breach of the duties the governing law imposes.'" *Navajo II*, 556 U.S. at 290–91 (quoting *Navajo I*, 537 U.S. at 506). This second showing reflects the understanding that not all provisions conferring substantive

rights mandate the award of money damages for a violation of those rights, and that the limited waivers of sovereign immunity in the Tucker Act and Indian Tucker Act extend only to claims that the government has violated provisions that themselves require payment of a damages remedy. *Testan*, 424 U.S. at 400–01 (citing *Eastport S.S. Corp. v. United States*, 372 F.2d 1002, 1009 (1967)); *see Navajo I*, 537 U.S. at 503, 506; *Mitchell II*, 463 U.S. at 216–18; *accord Army & Air Force Exch. Serv. v. Sheehan*, 456 U.S. 728, 739–41 (1982) (Tucker Act "jurisdiction . . . cannot be premised on the asserted violation of regulations that do not specifically authorize awards of money damages.").

B. No Money-Mandating Duty Exists with Respect to the Department of the Interior's Recognition of Tribal Governments

Counts One and Two require dismissal because Plaintiffs have failed to clear the two hurdles the Supreme Court has identified for Tucker Act jurisdiction. *See Navajo II*, 556 U.S. at 290–91. In fact, Counts One and Two are devoid of any citations to specific statutory or regulatory duties at all, much less any money-mandating duties. Plaintiffs' Complaint is based upon what they perceive to be a BIA failure to recognize a legitimate tribal government for the Colony. *See* Compl. ¶¶ 37–67, 78–85, 92, 94(a), 97. Plaintiffs claim that, as a result of the alleged failure, the Colony and its members have suffered substantial damage and harm. *See id.* ¶¶ 93, 98. To implicate the Tucker Act's waiver of sovereign immunity and establish Court of Federal Claims jurisdiction for those claims, however, Plaintiffs must identify a BIA duty to recognize a tribal government that: (1) is grounded in a specific statutory or regulatory provision; and (2) can fairly be interpreted as requiring monetary compensation. *See Navajo II*, 556 U.S. at 290–91. Plaintiffs have not and cannot point to a single statute or regulation that creates a Department of the Interior or BIA duty to recognize a tribal government. The Complaint has therefore failed the first step in *Navajo II*'s two-hurdle standard, and should be dismissed.

Further, there is no specific statutory or regulatory obligation for BIA to recognize a tribal government. "[N]o statute or regulation imposes on BIA a free-standing obligation to intervene in a tribal dispute solely for the tribe's sake—i.e., to save a tribe from its own disfunctionality . . . ." *Cayuga Indian Nation of N.Y. v. E. Reg'l Director*, 58 IBIA 171, 179 (Jan. 16, 2014). Thus, there is no specific provision from which Plaintiffs could even a build an argument for a duty that is money-mandating.[9] *Cf. Mitchell II*, 463 U.S. at 218 (requiring a determination as to "whether the statute or regulations at issue can be interpreted as requiring compensation"). Broader principles of tribal sovereignty illustrate the point. "[O]ne of the fundamental aspects of tribal existence is the right to self-government." *Wheeler*, 811 F.2d at 551. "[W]hen a dispute is an intertribal matter, the Federal Government should not interfere." *Id*. And "when a tribal forum exists for resolving a tribal election dispute, the [Federal Government] must respect the tribe's right to self-government and, thus, has no authority to interfere." *Id.* at 553. When it comes to recognizing tribal governments, BIA is acting in more of a political, rather than fiduciary, role. *Accord id.* at 553 (contrasting with *Mitchell II* by noting "our case involves no corpus, and no statute or regulation requires Department

[9] Although BIA has no money-mandating duty to recognize a tribal government, it does have authority to do so. *Accord Udall v. Littell*, 366 F.3d 668, 672 (D.C. Cir. 1996) ("In charging the Secretary with broad responsibility for the welfare of Indian tribes, Congress must be assumed to have given him reasonable powers to discharge it effectively."). The BIA exercises that authority when needed to implement certain aspects of the United States government-to-government trust relationship with Indian tribes. *See Wheeler v. Dep't of the Interior*, 811 F.2d 549, 552 (10th Cir.1987) ("since the Department is sometimes required to interact with tribal governments, it may need to determine which tribal government to recognize").

involvement."). There is no money-mandating statutory or regulatory duty to recognize a tribal government.[10]

C. Plaintiffs' Passing References to the Indian Non-Intercourse Act and Public Law 93-638 Do Not Save the Complaint; Neither Creates a Money-Mandating Duty

Counts One and Two make passing reference to two statutes: the Indian Non-Intercourse Act (25 U.S.C. § 177) and Public Law 93-638. *See* Compl. ¶¶ 99, 100(b). But neither creates money-mandating duties.

1. The Indian Non-Intercourse Act Does Not Create Money-Mandating Duties.

The Indian Non-Intercourse Act reads:

> No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution. Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of $1,000. The agent of any State who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner of the United States appointed to hold the same, may, however, propose to, and adjust with, the Indians the compensation to be made for their claim to lands within such State, which shall be extinguished by treaty.

25 U.S.C. § 177.

The Act has three purposes: (1) to prevent the unfair disposition of Indian lands by requiring the United States' consent to transactions; (2) to enable the United States to vacate any disposition that violates the Act; and (3) to prevent unrest due to encroachment by settlers. *See*

[10] Given the long litigation history and temporal scope of the allegations in Plaintiffs' complaint, there are likely additional jurisdictional or other problems, including the six-year statute of limitations (28 U.S.C. § 2501), the doctrine of collateral estoppel, or a failure to exhaust administrative remedies. The fact that Plaintiffs have failed to identify the specific statutory or regulatory duty that they claim to have been breached prevents a full assessment of those defects at this time.

Fed. Power Comm'n v. Tuscarora Indian Nation, 362 U.S. 99, 119 (1960); *Mohegan Tribe v. Connecticut*, 638 F.2d 612, 621–22 (2d Cir. 1980). The Act "bars conveyances by Indians to non-Indians unless made or ratified by Congress." *Seneca Nation of Indians v. New York*, 382 F.3d 245, 248 (2d Cir. 2004); *see Catawba Indian Tribe of S.C. v. United States*, 982 F.2d 1564, 1566 (Fed. Cir. 1993).

But the Indian Non-Intercourse Act "does not 'invoke a rights-creating source of substantive law that can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained' . . . ." *Shinnecock Indian Nation v. United States*, 112 Fed. Cl. 369, 379–81 (2013) (quoting *Navajo I*, 537 U.S. at 503)). While the Act prohibits and voids conduct by others, it does not set forth specific mandatory fiduciary duties with respect to the United States. Indeed, the Supreme Court has observed that the Act "is not applicable to the sovereign United States." *Tuscarora*, 362 U.S. at 120. The Act does include a monetary penalty, but states that "[e]very person who, not being employed under the authority of the United States, attempts to [purchase lands held by Indians] is liable to a penalty of $1,000." 25 U.S.C. § 177 (emphasis added). Thus, the Act contemplates the payment of money from others, but not from the United States. The Act does not set forth a specific duty making the United States liable in money damages for land transactions that were conducted without the United States' consent.

Moreover, to the extent Plaintiffs are arguing that the Non-Intercourse Act requires the United States to bring an enforcement action against those who allegedly conveyed an interest in Colony lands, the claim would fail to state a claim for relief because any enforcement action by the United States is distinctly discretionary. *See Creek Nation v. United States*, 318 U.S. 629, 639 (1943) ("It must be remembered that the Secretary was traditionally given wide discretion in

the handling of Indian affairs and that discretion would seldom be more necessary than in determining when to institute legal proceedings."); *Heckman v. United States*, 224 U.S. 413, 446 (1912) ("In what cases the United States will undertake to represent Indian owners of restricted lands in suits of this sort is left, under acts of Congress to the discretion of the Executive Department."). Where government action is discretionary by law and no statute eliminates that discretion, there is no money-mandating provision. *See Hirschmann v. United States*, 11 Cl. Ct. 338, 341 (1986) (citing *Testan*, 424 U.S. at 406–07); *see also Shoshone-Bannock Tribes v. Reno*, 56 F.3d 1476, 1482 (D.C. Cir. 1995) (recognizing in the context of enforcement discretion that "an Indian tribe cannot force the government to take a specific action unless a treaty, statute or agreement imposes, expressly or by implication, that duty").

2. Public Law 93-638 Does Not Create Money-Mandating Duties.

Public Law 93-638 is the 1975 Indian Self-Determination and Education Assistance Act (ISDA). *See* Pub. L. No. 93-638, 88 Stat. 2203 (Jan. 4, 1975) (codified as amended at 25 U.S.C. §§ 450–458ddd-2 (2010)). Before enactment of the ISDA, most programs benefitting Indian tribes were operated by the federal government. *Thompson v. Cherokee Nation of Okla.*, 334 F.3d 1075, 1079 (Fed. Cir. 2003), *aff'd sub. nom. Cherokee Nation of Okla. v. Leavitt*, 543 U.S. 631 (2005). With the ISDA, Congress intended to further tribal self determination by permitting the "orderly transition from Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services." 25 U.S.C. § 450a(b); *see also Babbitt v. Oglala Sioux Tribal Pub. Safety Dep't*, 194 F.3d 1374, 1376 (Fed. Cir. 1999) ("The ISDA's stated purpose is to allow Native American tribes to operate their own federal programs directly.").

Under the ISDA, the Secretaries of the Interior or Health and Human Services enter into contracts with Indian tribes "to permit the tribes to administer various programs that the Secretary would otherwise administer." *Cherokee Nation of Okla. v. Thompson*, 311 F.3d 1054, 1055 (10th Cir. 2002). The Act requires the relevant Secretary, "upon the request of any Indian tribe by tribal resolution," to enter into "a self-determination contract or contracts with a tribal organization to plan, conduct, and administer programs or portions thereof" which the Secretary previously administered for the benefit of Indians pursuant to her statutory authority. 25 U.S.C. § 450f(a)(1).

But the ISDA itself does not create money-mandating duties. *See Samish Indian Nation v. United States*, 419 F.3d 1355, 1365–68 (Fed. Cir. 2005). A federally-recognized tribe is eligible for ISDA contracts, not automatically entitled to them. There is no requirement that the Secretary award a contract simply upon request—a tribe must submit a proposal by tribal resolution for a self-determination contract in compliance with the governing regulations, 25 C.F.R. § 900.8, and the Secretary may deny such a request if, *inter alia*, she finds that the services to be rendered under the contract would not be satisfactory. *See* 25 U.S.C. § 450f(a)(2); 25 C.F.R. § 900.22. More broadly, the ISDA's characteristics mirror those in the Indian Mineral Leasing Act, which the Court in *Navajo I* found not to create money-mandating duties. *See Navajo I*, 537 U.S. at 506–08. There is no "trust language" in the ISDA. *See id.* at 508. Rather than "give the Federal Government full responsibility to manage Indian resources . . . for the benefit of Indians," *id.* at 507, the ISDA "aims to enhance tribal self-determination by giving Tribes" control over tribal services. *Id.* at 508.

Plaintiffs seem to be concerned that BIA's alleged failure to take sides in the intra-tribal dispute denied Plaintiffs the opportunity to seek financial support. *See* Compl. ¶¶ 100(a), 100(b).

But the ISDA does not increase funding for tribal services; it only awards to the tribe the funding that BIA would otherwise be spending on those tribal services. *See* 25 U.S.C. § 450j-1(a)(1). In any event, statutes providing for grants of public money, as opposed to those that provide for the administration of trust property or funds, do not give rise to money-mandating trust duties. In providing grants, the United States is not administering a trust corpus, but is disbursing federal funds. The Supreme Court has long distinguished between funds held in trust for Indian tribes "which belong to the Indians and [are] administered for them by the government" and "gratuitous appropriation[s] of public moneys" which "belong[ ] to the government." *Quick Bear v. Leupp*, 210 U.S. 50, 77–80 (1908); *see Sac & Fox Tribe of Indians of Okla. v. Apex Constr. Co.*, 757 F.2d 221, 222 (10th Cir. 1985); *Scholder v. United States*, 428 F.2d 1123, 1129 (9th Cir. 1970); *cf. Lincoln v. Vigil*, 508 U.S. 182, 193–94 (1993) (allocation of lump-sum appropriations under Snyder Act and Indian Health Care Improvement Act is dedicated to agency discretion and unreviewable).

Plaintiffs have not identified any statutory or regulatory duty requiring BIA to recognize a tribal government, let alone one that can fairly be interpreted as providing for monetary compensation in the case of breach. Counts One and Two should therefore be dismissed.

III. Counts Three and Four Should Also Be Dismissed Because the Court of Federal Claims Lacks Jurisdiction Over the Claims for Equitable or Declaratory Relief

In Counts Three and Four, Plaintiffs seek equitable (Count Three) and declaratory (Count Four) relief. Specifically, they seek equitable relief in the form of an accounting of "Tribal annuities, grant monies, distributions[,] . . . any other payments [and] interest thereon" and a "declaration that the Colony is entitled to . . . compensation for past, present, and future use of the Colony's water, land, and other property rights." Compl. ¶¶ 104, 107. The Court of Federal Claims, however, has never been afforded general equitable powers or authority over declaratory

judgments. *Nat'l Air Traffic Controllers Ass'n v. United States*, 160 F.3d 714, 716–17 (Fed. Cir. 1998) (per curiam); *Marathon Oil Co. v. United States*, 17 Cl. Ct. 116, 119 (1989). The Court therefore lacks jurisdiction over Counts Three and Four, and the claims should be dismissed.

The power of the Court of Federal Claims to award equitable relief is limited to certain statutorily-defined circumstances. *See Suess v. United States*, 33 Fed. Cl. 89, 92 (1995) ("[A]bsent statutory authorization, this court cannot grant equitable relief."). The Court has statutory authorization to award equitable relief in some tax cases, *see* 28 U.S.C. § 1507; in disputes under the Contract Disputes Act of 1978, *see* 28 U.S.C. § 1491(a)(2); and also as part of its bid protest jurisdiction, *see* 28 U.S.C. § 1491(b)(1)–(2).

Further, in cases where equitable relief is "incident of and collateral to" a money judgment, the Court may "issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records." 28 U.S.C. § 1491(a)(2); *see James v. Caldera*, 159 F.3d 573, 580 (Fed. Cir. 1998); *accord Pellegrini*, 103 Fed. Cl. at 54. Thus, were a plaintiff able to invoke the Court's Tucker Act jurisdiction—which Plaintiffs here have failed to do—and liability were to be established, the Court could then hear evidence to aid in judgment to assess damages, including ordering an accounting. *See Muscogee (Creek) Nation of Okla. v. United States*, 103 Fed. Cl. 210, 218 (2011); *N. Colorado Water Conservancy Dist. v. United States*, 88 Fed. Cl. 636, 665 (2009).

The instant case does not fit within any of the limited circumstances in which this Court has the power to order equitable relief. Plaintiffs do not invoke the Contract Disputes Act or the Court's bid protest jurisdiction, and this is not a tax case. Nor does Plaintiffs' request for relief fit within the categories allowed under 28 U.S.C. § 1491(a)(2) because liability has not been established. Instead, Plaintiffs seek a standalone accounting of tribal monies allegedly withheld

during the period where BIA did not recognize a Colony government. *See* Compl. ¶ 104. Such a free-standing general accounting claim before a determination of liability is premature and outside of this Court's jurisdiction. *W. Shoshone Nat'l Council v. United States*, 73 Fed. Cl. 59, 68–69 (2006); *Am. Indians Residing on Maricopa-Ak Chin Reservation v. United States*, 667 F.2d 980, 983 (1981) ("Unlike the Indian Claims Commission, this court has no equity jurisdiction to entertain a suit for an accounting except in aid of a judgment of liability against the Government"); *Klamath & Modoc Tribes v. United States*, 174 Ct. Cl. 483, 491 (1966) ("To require the Government *ab initio* to render a general accounting on the basis of unproved allegations and before its liability is determined would convert this proceeding from a suit for money damages to an independent equitable action for a general accounting.").

The Court similarly lacks jurisdiction over the declaratory relief Plaintiffs seek in Count Four. Plaintiffs rely on the Declaratory Judgment Act, 28 U.S.C. § 2201, as authority for this Court to grant declaratory relief. *See* Compl. ¶ 107. But Congress decided "not to make the Declaratory Judgment Act applicable to the Court of Federal Claims." *Nat'l Air Traffic*, 160 F.3d at 716–17; *see Tchakarski v. United States*, 69 Fed. Cl. 218, 221 (2005) ("[T]he [Declaratory Judgment] Act does not give jurisdiction to the United States Court of Federal Claims to grant a declaratory judgment."); *accord Halim v. United States*, 106 Fed. Cl. 677, 684–85 (Fed. Cl. 2012). There is no jurisdictional basis for Counts Three and Four, and the claims should therefore be dismissed.

CONCLUSION

The Court lacks jurisdiction over all four claims in the Complaint, and the Complaint should therefore be dismissed.

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