IN THE UNITED STATES COURT OF FEDERAL CLAIMS

(Filed on July 20, 2016)

CHAKCHIUMA NATION,	)	No. 16-594 L
Plaintiff,	)	Hon. Judge Lydia Kay Griggsby
v.	)	
UNITED STATES,	)	
Defendant.	)	

UNITED STATES' MOTION TO DISMISS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

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I. Introduction

The United States respectfully moves, pursuant to Rules 7(b), 12(b)(1), 12(b)(6) of the Rules of the United States Court of Federal Claims ("RCFC"), to dismiss Plaintiff's Complaint for lack of subject-matter jurisdiction and failure to state a claim.[1] This case involves requests for declaratory and injunctive relief brought by a non-attorney on behalf a group alleged to be an Indian tribe. Because, in situations such as this one, non-attorneys cannot represent the interests of groups like the alleged tribe, this case cannot proceed. In any event, the Complaint would need to be dismissed for lack of subject-matter jurisdiction because the treaty-based claims should have been brought sixty-five years ago before the Indian Claims Commission ("ICC"), and they are also barred by the applicable statute of limitations. Further, the Complaint should be dismissed for failure to state a claim because the requested remedies are not available under this Court's jurisdictional grant in the Tucker Act.

II. Factual Background

On May 20, 2016, Sakima Iban Salih El Bey filed the Complaint (ECF No. 1) in the above-captioned action on behalf of a group Mr. El Bey calls the "Chakchiuma Nation." Compl. at 1. The Chakchiuma is not a federally-recognized Indian tribe.[2]

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[1] For Mr. El Bey's reference, the Rules of the Court of Federal Claims can be found at the following website: http://www.uscfc.uscourts.gov/rcfc.

[2] *See* Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs, 81 Fed. Reg. 26,826 (May 4, 2016). Beginning in 1994, Congress required the Secretary of the Interior to publish in the Federal Register "a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because

The Complaint alleges that the group is "a [Moorish-American Indian with modern connotation for today's 'African American'] tribe of the upper Yazoo River region of what is today the state of Mississippi." Compl. at 1 (alternation in original). The Complaint does not state that Mr. El Bey, the individual who filed the Complaint, is a licensed attorney.

It appears Mr. El Bey is seeking declaratory and injunctive relief on behalf of the Chakchiuma; the Complaint asks that an undefined financial benefit be given to the Chakchiuma because of alleged violations of an 1866 treaty that Mr. El Bey calls the "Treaty at Fort Smith." *See* Compl. at 1, 7, 8–10. The Complaint also appears to include a request for an order requiring the United States Department of the Interior to formally recognize the Chakchiuma. *See* Compl. at 7. In present parlance, this requested result is known as "acknowledgment." The administrative procedure through which an entity may be added to the list of federally-recognized tribes is called the "acknowledgment process." *See* Procedures for Establishing that an American Indian Group Exists as an Indian Tribe, 25 C.F.R. pt. 83.

The acknowledgment process is managed by the Department of the Interior, Office of Federal Acknowledgment ("OFA"). Successful completion of the acknowledgment process results in the establishment of a government-to-government relationship between the United States and the Indian tribe. The Department of the Interior does not consider the so-called "Chakchiuma Nation," or

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of their status as Indians." Federally Recognized Indian Tribe List Act, Pub. L. 103-454, 108 Stat. 4791, §§ 101–104 (Nov. 2, 1994) (codified at 25 U.S.C. §§ 479a, 479a-1 and note thereto). The Chakchiuma is not on this list.

"Chakchiuma Sektchi Nation" to be a petitioner for the federal acknowledgment process. *See* Ex. 1, at 2. Two incomplete (and, thus, not ready for review) acknowledgment petitions were previously submitted to the OFA on behalf of a group called the "Chakchiuma Sektchi Washitaw." *See* Exs. 2 and 3. It is unclear from the Complaint whether this is the same group that Mr. El Bey purports to represent, but the OFA addressed a response letter dated January 9, 2015 to "Mr. Sakima Iban Salih" at the same address used by Mr. El Bey in his Complaint. *See* Ex. 1, at 1.

III. Standard of Review

A. Motion to Dismiss for Lack of Subject-Matter Jurisdiction

Before a court may proceed to the merits of a case it must have jurisdiction over the matter. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 88–89 (1998). Courts are presumed to lack subject matter jurisdiction unless it is affirmatively indicated by the record, and it is the plaintiff's responsibility to allege facts sufficient to establish jurisdiction. *Renne v. Geary*, 501 U.S. 312, 316 (1991); *DaimlerChrysler Corp. v. United States*, 442 F.3d 1313, 1318 (Fed. Cir. 2006). Any factual ambiguities in the complaint are to be drawn in the plaintiff's favor. *See Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995). If the defendant or the court questions jurisdiction, however, the plaintiff cannot rely solely on factual allegations in the complaint and must bring forth relevant adequate proof to establish jurisdiction. *See McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936). The plaintiff "bears the burden of establishing subject matter

jurisdiction by a preponderance of the evidence." *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 2010) (citations omitted); *accord M. Maropakis Carpentry, Inc. v. United States*, 609 F.3d 1323, 1327 (Fed. Cir. 2010). Whether a court has subject matter jurisdiction over a case is a question of law. *Toxgon Corp. v. BNFL, Inc.*, 312 F.3d 1379, 1381 (Fed. Cir. 2002). If the Court concludes that it lacks subject matter jurisdiction over a claim, RCFC 12(h)(3) requires that the claim be dismissed.

Pleadings from pro se plaintiffs are viewed under "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972). The relaxed standard, however, does not eliminate a pro se litigant's burden to establish subject matter jurisdiction where jurisdiction has been challenged. *See Henke*, 60 F.3d at 799.

B. Motion to Dismiss for Failure to State a Claim

The United States may assert by motion that plaintiffs' complaint fails to state a claim upon which relief can be granted. *See* RCFC 12(b)(6). "The purpose of [Rule 12(b)(6)] is to allow the court to eliminate actions that are fatally flawed in their legal premises and destined to fail . . . ." *Advanced Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc.*, 988 F.2d 1157, 1160 (Fed. Cir. 1993) (citation omitted). "A dismissal for failure to state a claim . . . is a decision on the merits which focuses on whether the complaint contains allegations that, if proven, are sufficient to entitle a party to relief." *Gould, Inc. v. United States*, 67 F.3d 925, 929 (Fed. Cir. 1995) (citation omitted).

In resolving a Rule 12(b)(6) motion, the Court should assess whether plaintiffs' complaint adequately states a claim for relief under the implicated statute and regulations and whether plaintiffs have made "allegations plausibly suggesting (not merely consistent with)" entitlement to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (rephrasing *Twombly* standard as requiring "a claim to relief that is plausible on its face"); *accord Cambridge v. United States*, 558 F.3d 1331, 1335 (Fed. Cir. 2009). Although plaintiffs' factual allegations need not be "detailed," they "must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Twombly*, 550 U.S. at 555 (citations omitted). Plaintiffs "must provide 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Totes-Isotoner Corp. v. United States*, 594 F.3d 1346, 1354 (Fed. Cir. 2010) (quoting *Twombly*, 550 U.S. at 555).

The Court thus "accept[s] as true all factual allegations in the complaint, and . . . indulge[s] all reasonable inferences in favor of the non-movant" to evaluate whether plaintiffs have stated a claim upon which relief can be granted. *Chapman Law Firm Co. v. Greenleaf Const. Co.*, 490 F.3d 934, 938 (Fed. Cir. 2007) (quoting *Sommers Oil Co. v. United States*, 241 F.3d 1375, 1378 (Fed. Cir. 2001)). "At the same time, a court is 'not bound to accept as true a legal conclusion couched as a

factual allegation.'" *Acceptance Ins. Cos. v. United States*, 583 F.3d 849, 853 (Fed. Cir. 2009) (quoting *Twombly*, 550 U.S. at 555).

IV. Argument

The Complaint should be dismissed for at least three independent reasons. First, under RCFC 83.1(a)(3), Mr. El Bey (a non-attorney, pro se litigant) cannot represent the Chakchiuma or its interests, and has not alleged any claim to relief on his own behalf. Second, any claim by the Chakchiuma for a violation of the 1866 Treaty would have accrued prior to 1946 and is therefore barred by the Indian Claims Commission Act and the applicable six-year statute of limitations. Third, the Complaint requests declaratory and injunctive relief that is not within this Court's remedial powers.

A. Mr. El Bey Cannot Represent the Chakchiuma and Has Not Alleged Facts Sufficient to Show Standing to Sue in His Own Right.

The Court should dismiss any claim brought on behalf of the Chakchiuma because Mr. El Bey does not appear to be a licensed attorney and therefore cannot represent the group's interests in this Court. *See Fast Horse v. United States*, 101 Fed. Cl. 544, 547–48 (2011). "[C]ourts have uniformly held that 28 U.S.C. § 1654, providing that 'parties may plead and conduct their own cases personally or by counsel,' does not allow corporations, partnerships, or associations to appear in federal court otherwise than through a licensed attorney." *Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202 (1993). That principle is captured by RCFC 83.1, which prohibits non-attorneys from representing anyone

other than themselves and immediate family members. *See* RCFC 83.1(a)(3). The Complaint gives no indication that Mr. El Bey is a licensed attorney. Indeed, a review of the Court's ECF/CMS docket for the case indicates that the Clerk's Office is treating the matter as a pro se case. In signing the Complaint, Mr. El Bey claims to be the "Consul General" for the Chakchiuma Nation. Compl. at 10. But the claimed leadership position does not create an exception to RCFC 83.1. *See Pacetti v. United States*, 50 Fed. Cl. 239, 244–45 (2001) (plaintiff's role as corporate officer did not afford him third-party standing on behalf of corporation); *Michael v. United States*, No. 14-757 L, 2014 WL 5395877, at *2 (Fed. Cl. Oct. 23, 2014) (analyzing RCFC 83.1 on similar facts).

Because Mr. El Bey cannot represent the Chakchiuma Nation, the Complaint must plead facts sufficient to demonstrate a claim by Mr. El Bey, including with respect standing. "The Court of Federal Claims, though an Article I court, . . . applies the same standing requirements enforced by other federal courts created under Article III." *Weeks Marine, Inc. v. United States*, 575 F.3d 1352, 1359 (Fed. Cir. 2009) (quotation and citation omitted); *see Rogers v. United States*, 95 Fed. Cl. 513, 515–16 (2010). The party attempting to invoke federal court jurisdiction bears the burden to establish standing. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). To do so at the pleadings stage, the party must allege facts showing that: (1) he or she has suffered a concrete and particularized injury in fact that is actual or imminent; (2) the injury is fairly traceable to the defendant and "not . . . th[e] result [of] the independent action of some third party not before the court"; and

(3) the injury is likely to be redressed by a favorable decision from the court. *Id.* at 560–61 (citations omitted).

Mr. El Bey fails to properly plead standing because he does not allege that he himself has suffered any actual or imminent injury-in-fact. Mr. El Bey does not claim to have ever held an interest in the financial benefits allegedly due the Chakchiuma. *See* Compl. at 10. Further, Mr. El Bey cannot bring suit based upon alleged injuries to the group. *See Saladino v. United States*, 62 Fed. Cl. 782, 793 (2004) (noting that, even for third-party standing, the litigant must still have suffered an injury-in-fact).[3] The Court should therefore dismiss the Complaint for lack of subject-matter jurisdiction.

B. Any Treaty-Based Claims Are Barred by the Indian Claims Commission Act and 25 U.S.C. § 2501.

1. Indian Claims Commission Act

Even assuming Mr. El Bey could bring a claim on behalf of the Chakchiuma, the Complaint's alleged treaty-based claims would be barred by the Indian Claims Commission Act ("ICCA"). The ICCA presented a one-time exclusive avenue for review, and the time limit within which to bring those claims expired 65 years ago.

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[3] The Complaint makes two passing references to the *Cobell* litigation, which we assume are asking for this court to award the Chakchiuma a portion of that settlement. *See* Compl. at 7, 10. Even assuming such relief were in this Court's jurisdiction—which it is not—*Cobell* involved (and settled) accounting and trust mismanagement claims for an opt-out class of individual Indians, not tribes or tribal groups. *See, e.g., Two Shields v. United States*, 119 Fed. Cl. 762, 769–73 (2015) (summarizing case, settlement, and class). The *Cobell* settlement is not relevant to the claims Mr. El Bey attempts to be bring on behalf of the Chakchiuma.

The United States is immune from suit unless it consents to be sued. *United States v. Sherwood*, 312 U.S. 584, 586 (1941). Only Congress may grant that consent—which is in effect a waiver of sovereign immunity—and it must be "unequivocally expressed" in statutory text. *United States v. Idaho, ex rel. Dir., Idaho Dep't of Water Res.*, 508 U.S. 1, 6 (1993); *Dep't of the Army v. Blue Fox, Inc.*, 525 U.S. 255, 261 (1999). "[T]he Government's consent to be sued must be construed strictly in favor of the sovereign, and not enlarge[d] . . . beyond what the language requires." *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 34 (1992) (internal citations and quotations omitted).

The ICCA was enacted in 1946 and established the ICC to "hear and determine . . . claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States." 60 Stat. 1049. The ICCA granted wide-ranging and exclusive jurisdiction to the ICC for "(1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive orders of the President; (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit." ICCA § 2, 60 Stat. at 1050.

Given Congress's resolve to address all historic Indian claims with finality, Congress also imposed a five-year window for any claim to be brought before the ICC. Section 12 of the ICCA provided that "no claim existing before [August 13, 1946] but not presented [to the ICC by August 13, 1951,] may thereafter be

submitted to any court or administrative agency for consideration, nor will such claim thereafter be entertained by Congress." ICCA § 12, 60 Stat. 1052; *Catawba Indian Tribe of So. Carolina v. United States*, 24 Cl. Ct. 24, 29 (1991); *White Mountain Apache Tribe v. Clark*, 604 F. Supp. 185, 187 (D. Ariz. 1984); *Navajo Tribe of Indians v. New Mexico*, 809 F.2d 1455, 1460–61 (10th Cir. 1987); *Oglala Sioux Tribe v. United States*, 650 F.2d 140, 143 (8th Cir. 1981); *see* 14 CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE & PROCEDURE § 3660 n.42 (4th ed. 2016) (collecting cases finding the ICCA to be a Tribe's exclusive remedy).

The ICCA's statute of repose applies to the alleged treaty-based claims in the Complaint here. The Complaint alleges that an 1866 Treaty required the United States to pay the Chakchiuma a sum of money. *See* Compl. at 9 (paragraph numbered 13). That claim for non-payment would have accrued the moment the Chakchiuma did not receive the payment it thought it was due; a moment that undoubtedly would have occurred before August 13, 1946. Because the Chakchiuma should have filed a case with the ICC prior to August 13, 1951, any claims that it may have had that accrued before 1946 are now barred from review by any court.

It is also unclear as to which treaty Mr. El Bey seeks to invoke. A treaty between the United States and the Chickasaw and Choctaw Nations (both of which the Complaint references) was enacted and ratified in 1866, but not at Fort Smith. *See* Treaty with the Choctaw & Chickasaw, 14 Stat. 769 (ratified in Washington,

DC, on April 28, 1866).[4] If Mr. El Bey is referring to that treaty, it only reinforces Defendant's ICCA argument—the Chickasaw and Choctaw Nations brought claims involving the 1866 treaty before the ICC. *See* 1 Ind. Cl. Comm. 291, 306–09 (July 14, 1950) (attached for the Court and Mr. El Bey's convenience at Ex. 4). If the Plaintiff believes it too had a claim under the Treaty, it should have done the same. It certainly cannot do so now.

2. 25 U.S.C. § 2501

Assuming Mr. El Bey had standing and the Complaint's treaty-based claims were not barred by the ICCA, the claims are nonetheless barred by the applicable six-year statute of limitations mandated by 28 U.S.C. § 2501. This preclusion is because the treaty-based claims would have accrued more than six years prior to the filing of the Complaint.

"Every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after the claim first accrues." 28 U.S.C. § 2501. "A claim first accrues when all the events have occurred that fix the alleged liability of the government and entitle the claimant to institute an action." *Ingrum v. United States*, 560 F.3d 1311, 1314 (Fed. Cir. 2009). The limitations period in Section 2501 is jurisdictional. *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 133–34 (2008).

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[4]According to the Annual Reports of the Commissioner of Indian Affairs for 1865 at pp. 312 – 353, an agreement was made in 1865 at Fort Smith, but the agreement was never ratified and approved by Congress.

Here, Mr. El Bey's claims appear to derive from a belief that the United States failed to implement requirements from the asserted 1866 treaty. Compl. at 1, 8 – 10. If the Chakchiuma were owed land or money from the unspecified treaty, the Nation certainly would have been aware by the mid to late 19th Century that it had not received the land or money it was allegedly entitled to. Therefore the treaty-based claims would have accrued more than 100 years ago, well outside the six-year statute of limitations, and are thus time-barred. The Complaint includes no factual allegations that could be interpreted in Plaintiff's favor to conclude that the treaty-based claims are timely.

C. The Complaint Does Not Seek a Remedy That is Available in the Court of Federal Claims

All other jurisdictional issues aside, the Complaint would still need to be dismissed because the remedies it seeks are not available in the Court of Federal Claims. To invoke this Court's jurisdiction under the Tucker Act, 28 U.S.C. § 1491, a plaintiff must identify a substantive Constitutional, statutory, or regulatory right to *money damages*. *See James v. Caldera*, 159 F.3d 573, 581 (Fed. Cir. 1998). Here, the Complaint requests declaratory and injunctive remedies entitling the Chakchiuma to unidentified financial benefits and compelling certain action from the U.S. Department of the Interior. *See* Compl. at 7, 10. Mr. El Bey's request for "financial benefits" is arguably monetary in nature. *See* Compl. at 10. But the fact that the subject of the desired injunction is money does not transform the remedy from an injunction into a request for money damages that could fall under the Court's Tucker Act jurisdiction. *See Bowen v. Massachusetts*, 487 U.S. 879, 893–94

(1988) ("The fact that a judicial remedy may require one party to pay money to another is not a sufficient reason to characterize the relief as 'money damages.'"). The requested injunction and declaratory relief are not within this Court's remedial powers.

With respect to declaratory relief, the Court of Federal Claims has never been afforded 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). The Tucker Act's jurisdictional grant does not provide for independent declaratory relief. *Brown v. United States*, 105 F.3d 621, 624 (Fed. Cir. 1997); *accord 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.").

The same is true for the injunctive relief that the Complaint seeks. An injunction is "a purely equitable remed[y]." *Hix v. United States*, 229 Ct. Cl. 546, 548 (1981). The Court of Federal Claims, however, "lacks the ability to award general equitable relief." *Republic of New Morocco v. United States*, 98 Fed. Cl. 463, 469 (2011) (citing *Bowen*, 487 U.S. at 905, and other cases). Instead, the Court's equitable powers rest in certain statutorily-defined circumstances. *See Suess v. United States*, 33 Fed. Cl. 89, 92 (1995). The Court has statutory authorization to award equitable relief in certain 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 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 under the Tucker Act, 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). None of those circumstances are present here. This case is not a contract, bid protest, or tax case, and the Complaint does not seek one of the remedies that Section 1491(a)(2) identifies as "incident of and collateral to" a money judgment. "Because plaintiff does not state any claim for monetary relief over which the court has jurisdiction, plaintiff's requests for declaratory and injunctive relief must [ ] be denied as outside the court's jurisdiction." *Maxwell,* 104 Fed. Cl. at 117 (citing *Treece v. United States*, 96 Fed. Cl. 226, 232 (2010)).[5]

[5] The Chakchiuma has also failed to exhaust administrative remedies for the request that the Court order the Department of the Interior to acknowledge the Nation as a federally-recognized tribe. *See* Compl. at 7. Federal recognition (or "acknowledgment") of Indian tribes is committed to the political branches. *See United States v. Sandoval*, 231 U.S. 28, 46 (1913). Thus, the Chakchiuma would not a have a judicial claim until if and when the Department of the Interior were to make a final decision on a complete petition for acknowledgment under 25 C.F.R. Part 83. *See James v. U.S. Dep't of Health & Human Servs.,* 824 F.2d 1132, 1137 (D.C. Cir. 1987) ("[E]xhaustion of available administrative remedies is generally a prerequisite to obtaining judicial relief.") (cited with approval *Mackinac Tribe v. Jewell*, 87 F. Supp. 3d 127, 143–45 (D.D.C. 2015); *United Tribe of Shawnee Indians v. United States,* 253 F.3d 543, 550 (10th Cir. 2001); *Shinnecock Indian Nation v. Kempthorne*, No. 06-CV-5013 (JFB)(ARL), 2008 WL 4455599, at *8–9 (E.D.N.Y. Sept. 30, 2008); *Robinson v. Salazar*, 885 F. Supp. 2d 1002, 1032–36 (E.D. Cal. 2012)). And even then, the claim would be in federal district court for review of final agency action under the Administrative Procedure Act rather than in this Court under the Tucker Act. *Miami Nation of Indians of Indiana v. U.S. Dep't of the Interior,* 255 F.3d 342 (7th Cir. 2001)

V. Conclusion

The Complaint should be dismissed. Mr. El Bey, as a non-attorney, cannot represent the interests of the Chakchiuma and has failed to plead an injury-in-fact sufficient to demonstrate his own standing to sue. The treaty-based claims in the Complaint accrued well before the closing of the ICCA's statute of repose in 1951, and well before six years prior to the filing of this suit, and are therefore time-barred under the ICCA and 28 U.S.C. § 2501. Therefore this Court lacks subject-matter jurisdiction. Finally, this Court should dismiss the Complaint for failure to state a claim under the Tucker Act because the Complaint does not seek money damages, and seeks equitable relief that is beyond the jurisdiction of this Court. For all of the foregoing reasons, the Complaint should be dismissed.

Respectfully submitted: July 20, 2016,

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CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2016, I caused a true and correct copy of the foregoing Motion to Dismiss to be sent to:

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