IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE CHEROKEE NATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No: 1:19-cv-02154-TNM
	)	
DEPARTMENT OF THE INTERIOR,	)	Judge Trevor N. McFadden
et al.,	)	
	)	
Federal Defendants.	)	
	)	

FEDERAL DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS

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The Cherokee Nation ("Plaintiff") claims that Federal Defendants have failed to provide a historical accounting of its trust funds and non-monetary trust resources, as assertedly required by various treaties and applicable law. ECF No. 1, Complaint ("Compl."), ¶¶ 131-67. Additionally, Plaintiff claims that Federal Defendants have failed to properly manage Plaintiff's trust funds and non-monetary trust resources. *Id.* at ¶¶ 143-67. Plaintiff attempts to invoke this Court's jurisdiction under various statutes, including the Administrative Procedure Act ("APA"), and requests declaratory and injunctive relief, including "as full and complete accounting as possible of the Nation's funds, assets[,] and natural resources to the earliest possible date"; certain administrative actions regarding Plaintiff's trust funds; "appropriate" management of Plaintiff's non-monetary trust resources; and restoration of any "Plaintiff Trust Funds for which the United States cannot account." *Id.* at ¶¶ 90-91, 155-67.

Plaintiff's claims are legally baseless. Federal Defendants have not expressly or unequivocally waived their sovereign immunity to Plaintiff's claims and, to the extent that Plaintiff invokes the APA, Plaintiff still has not met the requirements for jurisdiction.

Additionally, this Court lacks jurisdiction over Plaintiff's claims regarding the restoration of any trust funds and programmatic administrative actions. *Id.* at ¶ 167. Further, significant portions of Plaintiff's claims have been extinguished by the Indian Claims Commission Act ("ICCA") and barred by the six-year statute of limitations. Accordingly, Federal Defendants respectfully request that their motion to dismiss be granted under Rules 12(b)(1) and (b)(6) of the Federal Rules of Civil Procedure.

I. RELEVANT FACTUAL AND LITIGATION BACKGROUND

Plaintiff is a federally recognized tribe and one of the Five Civilized Tribes that has trust or restricted lands in northeastern Oklahoma. Compl. ¶¶ 6-8. Plaintiff cites some 24 treaties that it executed with the United States, during the period from November 28, 1785, to April 27, 1868.

Id. at ¶¶ 18-38, 40, 42, 47. Plaintiff alleges[1] that these treaties provided for, among other things, the cession of certain lands, the investment of certain funds, and the payment of investment interest, relating to Plaintiff. *Id*. at ¶¶ 19, 45. Additionally, Plaintiff cites numerous Acts of Congress and Presidential proclamations regarding the management of Plaintiff's trust funds, including the ICCA, 60 Stat. 1049, and the American Indian Trust Fund Management Reform Act of 1994 ("Trust Fund Management Reform Act"), 108 Stat. 4239. *Id*. at ¶¶ 49-87. Further, Plaintiff alleges that it has been party to numerous lawsuits, before and after the passage of the ICCA. *Id*. at ¶¶ 88-89.

In 2016, Plaintiff filed a complaint in the Western District of Oklahoma that is nearly identical to the complaint in this case. *Compare* Compl. *with* Exhibit 1 (Complaint filed in *Plaintiff v. Dep't of the Interior et al.*, 5:16-cv-01354-PRW). Plaintiff voluntarily dismissed the case on May 21, 2019, the same date that the court issued an order directing the parties to simultaneously brief the issue of whether Federal Defendants' then pending motion to dismiss should be converted to a motion for summary judgment. *See* 5:16-cv-1354 (W.D. Okla.) ECF No. 87 (Court's May 21, 2019 Order); *see also* 5:16-cv-1354 (W.D Okla.) ECF No. 88 (Plaintiff's May 21, 2019 voluntary dismissal).

Two months after its unexplained voluntary dismissal, Plaintiff filed their nearly identical complaint in this court. *See* Compl. In its present Complaint, Plaintiff makes numerous broad and vague allegations that the Departments of the Interior and the Treasury ("Interior" and "Treasury," respectively) have failed to provide the "full and complete" historical trust

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[1] For purposes of this Rule 12 motion, Plaintiff's factual allegations are assumed to be true, unless there is evidence to the contrary. *See, e.g., North v. Smarsh, Inc.,* 265 F. Supp. 3d 71, 76 (D.D.C. 2017), *aff'd,* No. 17-7120, 2017 WL 6553385 (D.C. Cir. Dec. 6, 2017); *Bazarian Int'l Fin. Assocs., L.L.C. v. Desarrollos Aerohotelco, C.A.*, 168 F. Supp. 3d 1, 8 (D.D.C. 2016); *Sabre Int'l Sec. v. Torres Advanced Enter. Sols., LLC,* 60 F. Supp. 3d 21, 27 (D.D.C. 2014).

accounting allegedly required by various treaties and federal statutes, including 25 U.S.C. §§ 162a, 4011, and 4044. *Id*. at ¶¶ 127-41. As relief, Plaintiff requests that this Court "compel the United States to provide an accounting for all elements of the Trust Funds that are held or have been held by the United States *qua* trustee for the Nation." *Id*. at ⁋ 137. Additionally, Plaintiff requests this Court to mandate the restoration of any Plaintiff trust funds "for which [Federal Defendants] cannot account," "adequate" systems and controls for the accounting of Plaintiff's trust funds, receipts, and disbursements, a determination of cash balances and a daily balance of Plaintiff's accounts, periodic reconciliations and reports of the performance of Plaintiff's accounts, "appropriate" management of Plaintiff's natural resources, and the institution of written policies and procedures for trust management, as well as "adequate" staffing for trust fund management and the accounting of Plaintiff's accounts. *Id*. at ¶ 167.

II. RELEVANT STATUTORY FRAMEWORK

A. The Indian Claims Commission Act

From approximately 1846-1868, Indian tribes sought compensation for land cessions from the United States during a time known as the "treaty-making period," when Indian tribes negotiated approximately 370 treaties and negotiated away nearly two billion acres of North America, "leaving themselves 140 million acres at the end of that period in 1868." U.S. Indian Claims Commission Final Report 1-2, H.R. Rep. 93-393, at 1 (Jan. 3, 1980). In 1881, Congress began enacting special bills to give tribes access to the Court of Claims.)*Id.* In a series of acts after World War I, Congress removed many of the barriers preventing Indian tribes from litigating their claims and, among other things, waived sovereign immunity and allowed tribes to bring claims against the United States. These acts led to an "explosion of claims to redress old injustices.")*Id.* at 3. Between 1924 and 1927, tribes and individuals filed 37 cases in the Court of Claims, and by 1946, almost 200 claims were pending before the court.)*Id.* While most of

the claims were dismissed on procedural grounds, there was a need and urgency for a new procedure to address the numerous Indian "breach of trust" claims. "The result of the almost unanimous dissatisfaction [with the prior process for addressing the claims] was the establishment of a special commission to handle exclusively Indian cases under a broad new jurisdiction and with the firmly expressed goal of finality.")*Id.* The ICCA, passed on August 13, 1946, created an independent tribunal—the Indian Claims Commission ("ICC")—and endowed it with broad jurisdiction to adjudicate claims by tribes or groups of Indians against the United States, arising under the Constitution, laws, treaties, and Executive Orders; under law and equity, including those sounding in tort; and on grounds of fraud, duress, unconscionable consideration, and mutual or unilateral mistake. ICCA § 2, Pub. L. No. 79-726, 60 Stat. 1050. The ICCA stated in pertinent part:

> SEC. 12. The Commission shall receive claims for a period of five years after the date of approval of this Act and no claim existing before such date but not presented within such period may thereafter be submitted to any court or administrative agency for consideration, nor will such claim thereafter be entertained by the Congress.

ICCA § 12, Pub. L. No. 79-726, 60 Stat. 1052.

By August 13, 1951, "[a]lmost all the 176 known tribes or bands filed one or more claims on old grievances." U.S. Indian Claims Commission Final Report 1-2, H.R. Rep. 93-393, at 5, 7-8, 12 (Jan. 3, 1980)). The tribal claims consisted of 370 petitions (including those involving Plaintiff), which the ICC divided into 617 dockets (including the 12 dockets (Nos. 2, 3, 5, 24, 41-43, 173, 173-A, 190, 271, and 297) involving Plaintiff). The claims primarily involved allegations that Plaintiffs' lands were undervalued upon transfer to the United States by treaty.)*Id*. at 6. In those instances in which tribes requested accountings, the United States provided accountings regarding "any funds belonging to Indians, how they came into being, how they were expended, and what balances were held in the United States Treasury.")*Id*. at 8. The

accounting work that started in 1946 was completed in 1971. *Id.* at 18. Congress extended the work of the ICC five times.)*Id.* at 12, 17. Upon concluding its operation on January 1, 1978, the ICC stated, "The last question that needs an answer is did the Indians gain 'their day in court?' The answer is yes.")*Id.* at 21.

B. 25 U.S.C. §§ 162a, 4011, and 4044

Under 25 U.S.C. § 162a, the Secretary of the Interior has the discretion to withdraw tribal trust funds from the Treasury and invest them under certain conditions. 25 U.S.C. § 162a(a)-(c). Additionally, the Secretary has to provide "adequate systems for accounting for and reporting trust fund balances," to determine "accurate cash balances," and to provide "periodic, timely reconciliations to assure the accuracy of accounts." 25 U.S.C. § 162a(d)(1), (4), (5).

Under Section 4011 of the Trust Fund Management Reform Act, the Secretary of the Interior has the responsibility to account for the Indian trust funds on a prospective basis, which includes the obligation to account "for the daily and annual balance of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian which are deposited or invested pursuant to section 162a of this title," to be provided in the form of a "statement of performance [also known as "a periodic statement of performance"] to each Indian tribe and individual with respect to whom funds are deposited or invested pursuant to section 162a of this title." 25 U.S.C. § 4011(a)-(b). The periodic statement of performance for each period is required to contain "(1) the source, type, and status of the funds; (2) the beginning balance; (3) the gains and losses; (4) receipts and disbursements; and (5) the ending balance." *Id.* Additionally, the Secretary has to conduct an annual audit "of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian which are deposited or invested pursuant to section 162a of this title." 25 U.S.C. § 4011(c).

Section 4044 of the Trust Fund Management Reform Act, which applies only to tribes, requires the Secretary of the Interior to provide "trust reconciliation reports" to Congress, by a date certain, which identify "for each tribal trust fund account for which the Secretary is responsible a balance reconciled as of September 30, 1995, and which include

> (1) a description of the Secretary's methodology in reconciling trust fund accounts;
>
> (2) an "attestation by each account holder that –
>
> (A) the Secretary has provided the account holder with as full and complete accounting as possible of the account holder's funds to the earliest possible date, and that the account holder accepts the balance as reconciled by the Secretary; or
>
> (B) the account holder disputes the balance of the account holder's account as reconciled by the Secretary and statement explaining why the account holder disputes the Secretary's reconciled balance; and
>
> (3) a statement by the Secretary with regard to each account balance disputed by the account holder outlining efforts the Secretary will undertake to resolve the dispute.

25 U.S.C. § 4044.

III. APPLICABLE STANDARD OF REVIEW

A motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") requires this Court's determination that Plaintiff has met its burden of showing that the Court has jurisdiction over Plaintiff's claims. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). That is because "[f]ederal courts are courts of limited jurisdiction" and must have a statutory basis for their jurisdiction. *Janko v. Gates,* 741 F.3d 136, 139 (D.C. Cir. 2014); *Rodriguez v. Penrod,* 857 F.3d 902, 905-06 (D.C. Cir. 2017). This court must presume no jurisdiction exists[,] absent a sufficient showing by the party invoking federal jurisdiction that jurisdiction exists. *Khadr v. United States*, 529 F.3d 1112, 1115 (D.C. Cir. 2008). That showing must satisfy the standard of "by a preponderance of the evidence." *Harris v. Bowser,* 369 F.

Supp. 3d 93, 98-99 (D.D.C. 2019). Federal courts are vested with only the jurisdiction that is authorized by the Constitution and statute. *See Bauer v. Marmara,* 774 F.3d 1026, 1032 (D.C. Cir. 2014) (quoting *Bender v. Williamsport Area Sch. Dist.,* 475 U.S. 534, 541 (1986)). "It is firmly established in our cases that the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction, *i.e.,* the courts' statutory or constitutional *power* to adjudicate the case." *Steel Co. v. Citizens for a Better Env't.,* 523 U.S. 83, 89 (1998)).

Fed. R. Civ. P. 12(b)(6) requires Plaintiff to plead facts that support its claims for relief. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"). In order to survive a motion to dismiss, "[a] plaintiff must nudge [his] claims across the line from conceivable to plausible." *Abbas v. Foreign Policy Grp., LLC,* 783 F.3d 1328, 1338 (D.C. Cir. 2015) (citing *Twombly,* 550 U.S. at 570). Thus, Plaintiff's obligation in this case is to provide more than conclusory statements and labels; rather, Plaintiff is required to provide the grounds of entitlement for relief. *See Twombly*, 550 U.S. at 555-56 (stating "a formulaic recitation of the elements of a cause of action will not do"; "the pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action").

IV. ARGUMENT

A. Federal Defendants Have Not Waived Their Sovereign Immunity to the Claims Asserted by Plaintiff in Counts I, II, and III.

Plaintiff alleges that this Court has jurisdiction to hear its claims in Counts I, II, and III of the Complaint, under statutes including the Act of March 3, 1919, 40 Stat. 1316, the Act of March 19, 1924, 43 Stat. 27, and the Act of April 25, 1932, 47 Stat. 137; 28 U.S.C. §§ 1331, 1361, 1362, 2201, and 2202; and a series of appropriations acts. Compl. ¶¶ 79, 81, 83, 90-91.

Plaintiff's allegations lack merit. The cited statutes and appropriations acts do not expressly and unequivocally waive Federal Defendants' sovereign immunity for Plaintiff's attempted claims, and therefore they cannot serve as a basis for jurisdiction. Absent such a clear and definitive waiver of sovereign immunity, the government is immune from suit. *See United States v. Testan,* 424 U.S. 392, 399 (1976) ("It long has been established [ ] that the United States, as sovereign, is immune from suit save as it consents to be sued . . . ." (internal quotation marks omitted); *Morris v. U.S. Sentencing Comm'n* 696 F. App'x. 515, 516 (D.C. Cir. 2017) (citing *Lane v. Pena*, 518 U.S. 187, 192 (1996), *aff'd,* 696 F. App'x 515 (D.C. Cir. 2017); *Miller v. District of Columbia,* 319 F. Supp. 3d 308, 313 (D.D. C. 2018); *Boling v. U. S. Parole Comm'n,* 290 F. Supp. 3d 37, 46 (D.D.C. 2017), *aff'd,* No. 17-5285, 2018 WL 6721354 (D.C. Cir. Dec. 19, 2018), *cert. denied sub nom. Boling v. U.S. Parole Comm'n*, No. 19-5021, 2019 WL 4922865 (U.S. Oct. 7, 2019). S*ee also Luftig v. McNamara,* 252 F. Supp. 819, 821 (D.D.C. 1966) (noting that sovereign immunity also extends to requests for injunctive relief), *aff'd,* 373 F.2d 664 (D.C. Cir. 1967).

The concept of sovereign immunity means that the United States cannot be sued without its consent. *See United States v. Sherwood,* 312 U.S. 584, 586 (1941); *United States v. Mitchell,* 445 U.S. 535, 538 (1980); *Anderson v. Carter,* 802 F.3d 4, 8 (D.C. Cir. 2015); *Kalodner v. Abraham,* 310 F.3d 767, 769 (D.C. Cir. 2002). A party seeking to assert a valid waiver of sovereign immunity may not rely on a general jurisdictional statute alone, but instead must "'assert a claim against the government under such a statute and must also point to a specific waiver of immunity in order to establish jurisdiction.'" *See Mackinac Tribe v. Jewell*, 87 F. Supp. 3d 127, 136 (D.D.C. 2015), *aff'd,* 829 F.3d 754 (D.C. Cir. 2016). *See also Floyd v. District of Columbia*, 129 F.3d 152, 155 (D.C. Cir. 1997) (to proceed in federal court on a claim against the United States, a plaintiff must identify a waiver of sovereign immunity, a grant of subject matter jurisdiction, and a cause of action).

In this case, Plaintiff does not and cannot point to any express waivers of Federal Defendants' sovereign immunity. The statutes cited by Plaintiff—the Act of March 3, 1919; the Act of March 19, 1924; and the Act of April 25, 1932—provide no such waiver. Rather, the March 1919 act conferred jurisdiction upon the Court of Claims for the determination of interest owed to Plaintiff under a May 18, 1905 judgment. The March 1924 act conferred jurisdiction upon the Court of Claims for any legal or equitable remedy that Plaintiff lodged against the United States for a period of five years from the passage of the act. And, the April 1932 act conferred jurisdiction upon the Court of Claims for any legal or equitable remedy that Plaintiff lodged against the United States, notwithstanding any applicable statute of limitations, for a period of six months from the passage of the act. Rather than waive the United States' sovereign immunity, those acts instead explicitly bar Plaintiff's late claims. Without the requisite waiver, Plaintiff cannot bring or maintain this case against Federal Defendants.

Plaintiff also incorrectly alleges that this Court has jurisdiction under 28 U.S.C. §§ 1331, 1361, 1362, 2201, and 2202. Compl. ¶ 90. These provisions are general jurisdictional statutes and simply confer jurisdiction upon federal courts to adjudicate civil claims so long as no other jurisdictional bar prohibits such claims. The statutes, in and of themselves, make no mention of sovereign immunity, let alone furnish the express waiver that Plaintiff requires to bring and maintain this case. *Indus. Workers of World v. Clark,* 385 F. 2d 687, 693 n. 10 (D.C. Cir. 1967) ("General grants of judicial jurisdiction are not usually construed as consent to suit"); *Hamilton v. Richardson,* No. 97-5165 1997 WL 699867, *1 (D.C. Cir. Oct. 30, 1997).

Similarly, the "series of appropriations acts" cited by Plaintiff do not set forth the express or unequivocal waiver of sovereign immunity necessary for Plaintiff's claims to proceed. Plaintiff alleges that, through a "series of appropriations acts," spanning from 1991 through 2005 and two appropriations acts in 2007 and in 2009, Congress waived the United States' sovereign

immunity to suit. Compl. ¶ 91. Plaintiff's allegations are baseless and should be rejected. "[T]he existence of consent is a prerequisite for jurisdiction." *United States v. Mitchell*, 463 U.S. 206, 212 (1983). Waivers of sovereign immunity must be "unequivocally expressed." *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33 (1992). "A waiver of sovereign immunity cannot be implied." *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 95 (1990). Plaintiff relies language which states that "notwithstanding any other provision of law, the statute of limitations shall not commence to run on any claim concerning losses to or mismanagement of trust funds, until [the beneficiary] has been provided with the accounting of such funds from which the beneficiary can determine whether there has been a loss." Pub. L. No. 102-154, 105 Stat. 990, 1004 (1991).[2] In 1993, Congress added "including any claim in litigation pending on the date of this Act." *See* Pub. L. No. 103-138, 107 Stat. 1379, 1391 (1993). Congress omitted the provisions entirely beginning in fiscal year 2015, and for all years thereafter. *See* Pub. L. No. 114-113, 129 Stat. 2242, Div. G. Title I. Contrary to Plaintiff's assertion, the language contained in the appropriations rider does not unequivocally and expressly waive Federal Defendant's sovereign immunity.

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[2] The provisions contained in subsequent appropriations acts contain language that are nearly identical or substantially similar to the initial 1991 appropriations language. Plaintiff cites appropriations acts spanning from 1991 through 2009, but the language in each act is nearly identical or substantially similar to the initial 1991 appropriations language. Compl. 29, n.3 (citing Pub. L. No. 102-154, 105 Stat. 990 (1991); Pub. L. 102-381, 106 Stat. 1374 (1992); Pub. L. No. 103-138, 107 Stat. 1379 (1993); Pub. L. No. 103-332, 108 Stat. 2499 (1994); Pub. L. No. 104-134, 110 Stat. 1321 (1996); Pub. L. No. 104-208, 110 Stat. 3009 (1996); Pub. L. No. 105-83, 111 Stat. 1543 (1997); Pub. L. No. 105-277, 112 Stat. 2681 (1998); Pub. L. No. 106-113, 113 Stat. 1501 (1999); Pub. L. No. 106-291, 114 Stat. 922 (2000); Pub. L. No. 107-63, 115 Stat. 414 (2001); Pub. L. No. 108-7, 117 Stat. 11 (2003); Pub. L. No. 108-108, 117 Stat. 1241 (2003); Pub. L. No. 108-447, 118 Stat. 2809 (2004); Pub. L. No. 109-54, 119 Stat. 499 (2005); Pub. L. No. 110-161, 121 Stat. 1844 (2007); Pub. L. No. 111-88, 123 Stat. 904 (2009)).

The Tenth Circuit addressed this exact issue in *Flute v. United States*, 808 F.3d 1234 (10th Cir. 2015), which addressed the same provisions cited by Plaintiff here. The court stated, "contrary to Plaintiffs' position, the 2009 [Appropriations] Act—standing alone—does not waive [Federal] Defendants'' sovereign immunity." *Id.* at 1240. In *Flute*, the plaintiffs alleged, as a jurisdictional basis for their accounting claim, that the Interior Department appropriations acts had waived the United States' sovereign immunity. *Id.* The district court dismissed for lack of subject matter jurisdiction and the Tenth Circuit affirmed, holding that the text of the 2009 appropriations act did not address sovereign immunity, and thus, could not represent an express or unequivocal waiver of the United States' sovereign immunity. *Id*. (citing *United States v. Murdock Mach.*, 81 F.3d 922, 930 (10th Cir. 1996)). Indeed, nothing in the text of the statute makes any mention of sovereign immunity. The cited appropriations acts between 1991 and 2009 do not create an independent basis for the waiver of sovereign immunity, and on this basis, Plaintiff's allegation should be rejected.[3] Given Plaintiff's inability to rely on the general jurisdictional statutes and the Interior Department appropriations acts and because Plaintiff has not otherwise demonstrated that the United States has clearly and definitively waived its sovereign immunity, this Court should grant Federal Defendants' motion to dismiss.

B. Plaintiff's Invocation of APA Jurisdiction is Fatally Flawed.

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[3] Assuming *arguendo* that the 1991-2009 Interior Department appropriations acts could somehow waive Federal Defendants' sovereign immunity to Plaintiff's trust accounting claims, as Plaintiff alleges, such waivers would be unavailing for Plaintiff. The 1991-2009 appropriations acts do not and cannot apply as substantive law some ten to twenty-eight years after their passage. *See, e.g., Bldg. & Const. Trades Dep't., AFL-CIO v. Martin,* 961 F.2d 269, 273-74 (D.C. Cir. 1992) ("While appropriation acts are "Acts of Congress" which can substantively change existing law, there is a very strong presumption that they do not, *see Tenn. Valley Auth. v. Hill,* 437 U.S. 153 (1978), and that when they do, the change is only intended for one fiscal year."). Starting in fiscal year 2015, the Interior Department appropriations act omitted the language relied upon by Plaintiff, yet Plaintiff did not bring this case until July 19, 2019. Thus, Plaintiff cannot claim any alleged benefits of such unfounded statutory construction.

1. Plaintiff does not meet the requirement under Section 702 that a cause of action be founded "within the meaning of a relevant statute."

In Count III, Plaintiff alleges that, under Section 702 of the APA, this Court has jurisdiction over its trust accounting claims "[b]ecause the United States breached any and each of these duties set out herein as well as other obligations specifically set forth in treaties, other statutes, regulations, and orders." Compl. ¶ 165. Even though Plaintiff does not set forth any specific relevant statutes to support the alleged duties, *id.* at ¶¶ 156-165, Plaintiff essentially has pled a claim under Section 702 of the APA that is, in part, without statutory basis, by framing its trust accounting claims in Count III as applying to "these duties *as well as* other obligations" found in treaties, statutes, regulations, or orders. Similarly, Plaintiff's claims based on "regulations and orders" lack statutory foundation. Thus, Plaintiff fails to show that its interests are within the zone protected by the APA.

"The APA provides the standard of review for agency orders, but it is not a jurisdiction-conferring statute" to review agency action. *NetCoalition v. SEC,* 715 F. 3d 342, 347 (D.C. Cir. 2013) (quoting *Trudeau v. FTC,* 56 F.3d 178, 183 (D.C. Cir. 2006)*; Nurriddin v. Acosta,* 327 F. Supp. 3d 147, 160 (D.D.C 2018)). Under Section 702 of the APA, "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action *within the meaning of a relevant statute*, is entitled to judicial review thereof." 5 U.S.C. § 702 (emphasis added). A party bringing a claim under this provision and asserting that it is "adversely affected or aggrieved by agency action within the meaning of a relevant statute" has to demonstrate that its interest in the litigation falls "arguably within the zone of interests to be protected or regulated by the statute . . . in question." *Nat'l Credit Union Admin. v. First Nat'l Bank & Tr. Co.*, 522 U.S. 479, 488 (1998) (quoting *Ass'n of Data Processing Serv. Orgs. v. Camp*, 397 U.S. 150, 153 (1970)); *see also Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 883 (1990) (stating "we

have said that to be 'adversely affected or aggrieved . . . within the meaning' of a statute, the plaintiff must establish that the injury he complains of (his aggrievement, or the adverse effect *upon him*) falls within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the legal basis for his complaint" (parentheses and emphasis in the original)). In making a "zone of interest" determination, a court determines "the scope of private remedy" created by Congress and the "class of persons" who may maintain a claim under a statue using traditional tools of statutory interpretation. *Lexmark Int'l Inc. v. Static Control Components Inc.*, 572 U.S. 118, 126-27 (2014) (discussing *Associated Gen. Contractors of Cal., Inc. v. Carpenters*, 459 U.S. 519, 529 (1983)).

In Count III, Plaintiff fails to meet the requirements for invoking jurisdiction under Section 702 of the APA regarding alleged breaches of "any and each of these duties set out herein as well as other obligations specifically set forth in treaties, other statutes, regulations, and orders." By employing the phrase "as well as," Plaintiff asserts that the duties listed in Count III are separate and apart from statutory and other obligations. Further, by not citing any pertinent statutory basis for its claims or the "duties set out herein" in Count III, Plaintiff makes it impossible for Federal Defendants or this Court to conduct the statutory review and interpretation necessary to determine whether Plaintiff is within the zone of interest of the relevant statute. Plaintiff's mere assertion in Count III that there are statutory obligations does not provide an adequate basis for Federal Defendants or the Court to evaluate Plaintiff's statutory basis, if any. Plaintiff's approach is legally insufficient. *See* Fed. R. Civ. P. 8(a)(1) (requiring a "short and plain statement" of the jurisdictional grounds).

As to Plaintiff's claims in Count III based on "regulations and orders," Plaintiff may maintain an action based on regulations and executive orders, so long as Plaintiff demonstrates that it is within the zone of interest protected by such regulations or executive orders and that any

regulations or executive orders so invoked must be "within the scope of authority delegated by Congress" by statute that provides Plaintiff a zone of interest. *Fin. Planning Ass'n. v. SEC.,* 482 F.3d 481, 487, 492 (D.C. Cir. 2007). Plaintiff's claims fail if they fall outside the meaning of a relevant statute. *Am. Fed'n. of Gov't Emps., AFL–CIO v. Rumsfeld*, 321 F.3d 139, 144-45 (D.C. Cir. 2003) (noting that a challenge could not be brought "based on certain agency instructions, directions, and regulations because they did not fall within the meaning of a relevant statute").

2. Plaintiff does not meet the requirement under Section 702 that a cause of action be founded on "final agency action."

In Counts II and III, Plaintiff sets out a litany of trust accounting and other administrative actions regarding the provision of information and management of its trust funds and non-monetary trust resources that Federal Defendants allegedly fail to provide. Compl. ¶¶ 139-67. Plaintiff essentially mounts a programmatic challenge to the Interior Department's trust management system. Plaintiff's challenge is impermissible and should be rejected.

As noted above, Section 702 of the APA provides a waiver of sovereign immunity for claims in which a plaintiff has suffered "a legal wrong because of agency action." *Trudeau,* 456 at 187; *see also Kialegee Tribal Town v. Zinke,* 330 F. Supp. 3d 255, 265 (D.D.C. 2018). To obtain judicial review under this provision, a plaintiff must (1) identify some final "agency action" to be reviewed, and (2) show that it has suffered a "legal wrong" or been "adversely affected or aggrieved" by the action at issue. *See Lujan*, 497 U.S. at 882–83. The term "agency action" is defined as "includ[ing] the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). Section 702's "agency action" requirement precludes "'broad programmatic attacks' on an agency's administration of a program." *Norton v. S. Utah Wilderness All.("SUWA"),* 542 U.S. 55, 64 (2004); *Ramirez v. U.S. Immigration & Customs Enf't,* 310 F. Supp. 3d 7, 21 (D.D.C. 2018).

The Supreme Court's decision in *Lujan* "announced a prohibition on programmatic challenges" of the sort that Plaintiff presents herein, *i.e.*, challenges that seek "wholesale improvement" of an agency's programs by court decree, rather than through Congress or the agency itself where such changes are normally made. As dictated by the Supreme Court, there must be "final agency action" in order for a reviewing court to conclude that there was a waiver of sovereign immunity pursuant to Section 702 of the APA. *Lujan*, 497 U.S. at 882 ("When, as here, review is sought not pursuant to specific authorization in the substantive statute, but only under the general review provisions of the APA, the 'agency action' in question must be 'final agency action.'"). In other words, the APA requires Plaintiff to challenge agency action on a "case-by-case" basis, *id.* at 894, rather than pursuing "wholesale improvement of [an agency] program by court decree," *id.* at 891 (emphasis omitted).

In Counts II and III, Plaintiff fails to identify any specific final agency action for legal challenge. Rather, Plaintiff asserts a general wholesale challenge to the Secretary of the Interior's system of administering and discharging Interior's trust accounting and trust management duties and responsibilities. Plaintiff broadly alleges that Federal Defendants have not met a host of supposed obligations, including providing adequate controls over receipts and disbursements; providing periodic, timely reconciliations; determining accurate cash balances; preparing and supplying periodic statements of account performance; establishing consistent, written policies and procedures for trust fund management and accounting for Plaintiff's accounts; providing adequate staffing, supervision, and training for trust fund management and accounting for Plaintiff's accounts; and managing Plaintiff's natural resources. Compl. ¶¶ 156-65. In other words, Plaintiff makes a blanket challenge to the day-to-day programmatic operations of the funds and natural resources that Interior holds in trust for hundreds of federally recognized tribes (including but not limited to Plaintiff) and hundreds of thousands of Indian

individuals. Plaintiff's approach effectively requires this Court to review the legal adequacy of each and every one of the Secretary's policies, procedures, guidance, or trust management decisions under his responsibility for some undefined time period. Such an approach is expressly prohibited by *Lujan*. Plaintiff's claims should be dismissed.

3. Plaintiff does not meet the requirements of Section 706.

Just as it fails to invoke properly this Court's jurisdiction under Section 702 of the APA, Plaintiff cannot show that the Court has jurisdiction under Sections 706(1) and (2), over Plaintiff's broad claims in Counts II and III that the United States has failed to satisfy a host of trust accounting and trust management obligations, without specifying the discrete mandatory agency action that Federal Defendants are required to take. Compl. ¶¶ 156-167. Plaintiff states only that "[t]he United States, through its agencies and subbureaus has acted arbitrarily, and capriciously, and such action constitutes final agency action and the withholding of agency action that is required." *Id.* at ¶ 166. As explained above, Plaintiff cannot identify a statute that identifies a discrete, non-discretionary, mandatory accounting duty, and further it cannot demonstrate that Federal Defendants have failed to carry out that duty. Thus Plaintiff's claims should be dismissed. "[A] claim under § 706(1) can proceed only where a plaintiff asserts that an agency failed to take a *discrete* agency action that it is *required to take*." *SUWA,* 542 U.S. at 64 (emphasis in original). Section 706(1) "empowers a court only to compel an agency to perform a ministerial or non-discretionary act." *Id.* (quoting Attorney General's Manual on the Administrative Procedures Act 108 (1947)) (internal quotations omitted). Section 706 does not permit Plaintiff to challenge agency processes that are not "agency action." *See Lujan*, 497 U.S. at 873 ("Absent an explicit congressional authorization to correct the administrative process on a systemic level, agency action is not ordinarily considered 'ripe' for judicial review under the APA until the scope of the controversy has been reduced to manageable proportions, and its

factual components fleshed out, by concrete action that harms or threatens to harm the complainant.").

In *SUWA*, an environmental group—Southern Utah Wilderness Alliance—sued the Bureau of Land Management ("BLM") for failing to comply with a directive in the Federal Land Policy and Management Act ("FLPMA") to manage certain public lands "in a manner so as not to impair the suitability of such areas for preservation as wilderness" (non-impairment mandate). *SUWA*, 542 U.S at 59 (quoting 43 U.S.C. § 1782(c)). SUWA alleged, in part, that BLM violated FLPMA's non-impairment mandate by allowing off-road vehicles to degrade lands classified as wilderness study areas which were awaiting formal wilderness designations by Congress. *Id*. at 59. SUWA sought relief under Section 706(1) of the APA, claiming that BLM violated the non-impairment mandate and that the court should "compel agency action unlawfully withheld or unreasonably delayed." *SUWA*, 542 U.S at 59-61. The Tenth Circuit reversed the district court's dismissal of the case and held that the APA permitted the relief requested by SUWA. *S. Utah Wilderness All. v. Norton*, 301 F.3d 1217 (10th Cir. 2002), *rev'd*, 542 U.S. 55 (2002).

Upon certiorari, the Supreme Court unanimously rejected the Tenth Circuit's APA application for two principal reasons. Both reasons apply fully to Plaintiff's claims in this case. First, the Court examined Section 702 of the APA, which limits judicial review to suits challenging "agency action" as defined in Section 551(13) of that statute. *Id*. at 62. The Court emphasized that the specific categories of "agency action" given in Section 551(13) of FLPMA all "involve circumscribed, discrete agency actions." *Id*. SUWA had alleged that it challenged BLM's "agency action" as defined in the APA for failing to manage wilderness study areas in compliance with FLPMA's non-impairment mandate. The Court found, however, that SUWA challenged not an "agency action" but rather the continuing, day-to-day administration of wilderness study area by BLM. The Court concluded that the APA does not allow challenges to

such ongoing management activities because day-to-day management is not a "discrete agency action," as the APA defines it.

Id. at 67.

Second, the Supreme Court held that Section 706(1) of the APA did not permit judicial relief for SUWA's non-impairment claim. *Id*. at 64. Under Section 706(1), courts can compel only "*discrete* agency action that [an agency] is *required to take*." *Id*. (emphasis in original). Put differently, "the only agency action that can be compelled under the APA is action legally *required*." *Id*. at 63. (emphasis in original). Because nothing in FLPMA's non-impairment mandate specified any particular "legally required" action, the district court had no power under the APA to compel agency action. *Id*. at 65-66. The Supreme Court noted that, although FLPMA's non-impairment mandate "is mandatory as to the object to be achieved . . . it leaves BLM with a great deal of discretion is deciding how to achieve it." *Id*. at 66.

SUWA is directly applicable to this case. Like SUWA, Plaintiff asserts only broad and vague claims about Federal Defendants' alleged failures regarding an expansive array of administrative actions, without tethering any of its claims to discrete, mandatory, and non-discretionary duties delineated by specific statutes imposing a legal obligation for action by Federal Defendants. Plaintiff's approach should be rejected. The import of *SUWA* is that where a plaintiff is unable to demonstrate that the agency is legally required to perform an action, the plaintiff cannot obtain judicial review under the APA for broad challenges to the agency's programmatic processes that do not amount to specific final agency actions (as defined by the APA). *Long Term Care Pharmacy All. v. Leavitt*, 530 F. Supp. 2d 173, 185-87 (D.D.C. 2008).

Similarly, Plaintiff cannot assert a single final agency action for which it can obtain judicial review under Section 706(2) of the APA. As the Supreme Court stated in *Lujan*, "the person claiming a right to sue must identify some 'agency action' that affects him in the specified

fashion; it is judicial review 'thereof' to which he is entitled." 497 U.S. at 882. Here, instead of alleging a specific agency action, Plaintiff claims that judicial review is appropriate for as-yet-unspecified agency actions, and as such, Plaintiff has not met its burden to invoke judicial review under the APA. The APA's final agency action requirement bars Plaintiff from using its accounting claim as a hook for obtaining judicial review of, and a remedy for, any or all wrongs it may perceive in the United States' past actions of administering trust assets. *See Fund for Animals, Inc. v. BLM*, 460 F.3d 13, 20 (D.C. Cir. 2006) (rejecting a suit regarding a comprehensive agency plan because (1) that overarching agency decision was "the sum of many individual actions, including some yet to be taken," and (2) the plaintiff did not appropriately target individual agency action as the APA requires).

C. Plaintiff's Claims for Trust Funds Restoration and Other Types of Monetary Relief in Counts II and III are Impermissible.

As noted above, Plaintiff alleges in Counts II and III that it has "substantial interests in Trust Funds that are and have been held, and managed by the United States . . . [and that] [t]hese interests were obtained variously by treaty, other agreements, or by congressional action." Compl. ¶ 153. Plaintiff claims that Federal Defendants have failed to properly manage Plaintiff's monetary and non-monetary assets and to provide a "full and complete" trust accounting. Compl. ¶¶ 141, 144-62, 164. As a result, Plaintiff alleges that the inaction generally constitutes a breach of trust, and it requests as relief, among other things, the restoration of those of its trust funds for which the United States cannot account. *Id.* ¶¶ 153-54, 167. Plaintiff's claims, which presumably exceed $10,000, are properly asserted in the Court of Federal Claims. Thus the claims are outside this Court's jurisdiction and should be dismissed.

As recognized by the D.C. Circuit, "[t]he Court of Federal Claims' jurisdiction cannot be side-stepped by framing a monetary claim in equitable terms." *Bernard v. U.S. Dep't of Def.,*

362 F. Supp. 2d 272, 283 (D.D.C. 2005) (citing *Van Drasek v. Lehman,* 762 F.2d 1065, 1071, n. 11 (D.C. Cir. 1985)). *See also Wolfe v. Marsh,* 846 F.2d 782, 784 (D.C. Cir. 1988); *Kidwell v. Dep't. of Army, Bd. For Corr. of Military Rec.,* 56 F.3d 279, 284 (D.C. Cir. 1995); *Associated Mortg. Bankers Inc. v. Carson,* 281 F.Supp.3d 5, 9 (D.D.C. 2017). In this case, Plaintiff's claims for accounting and restoration of its trust funds are ultimately aimed at obtaining monetary relief, and, to the extent that they exceed $10,000, they are outside the jurisdiction of this Court and should be dismissed.

D. Portions of Plaintiff's Claims in Counts I, II, and III Are Extinguished by the ICCA or Barred by the Statute of Limitations.

Plaintiff fails to specify the temporal scope of its trust accounting claims in Counts I, II, and III of its Complaint. Compl. ¶¶ 131-67. To the extent that Plaintiff seeks a "full and complete" historical trust accounting relating to its trust funds and nonmonetary trust resources for periods pre-dating August 13, 1946, or July 19, 2013, the claims pre-dating August 13, 1946, are extinguished by operation of the ICCA, while the ones pre-dating July 19, 2013, are barred by the six-year statute of limitations. Thus this Court lacks jurisdiction to hear those claims and should dismiss them as a matter of law.

1. Portions of Plaintiff's claims are extinguished by Section 12 of the ICCA.

As noted above, before passage of the ICCA, Indian tribes did not have a formal method for resolving their claims against the United States and therefore had to obtain express congressional authorization to proceed against the government for the resolution of claims. *See Oglala Sioux Tribe of Pine Ridge Indian Reservation v. U.S. Corps of Eng'rs,* 570 F.3d 327, 331 (D.C. Cir. 2009); *see also* Cohen's Handbook of Federal Indian Law 443 (2005 ed.). The ICCA remedied this challenge by creating the ICC to "hear and determine all tribal claims against the United States that accrued before August 13, 1946." *Id.*; *see also* ICCA § 2, 60 Stat. 1050 (1946)

; *Cheyenne-Arapaho Tribes of Okla. v. United States,* 517 F. Supp. 2d 365, 369 (D.D.C. 2007), *aff'd sub nom. Cheyenne Arapaho Tribes of Okla. v. United States*, 558 F.3d 592 (D.C. Cir. 2009). In keeping with the principal objective of ensuring final resolution of all historical tribal claims pre-dating the passage of the ICCA and obviating the need for tribes to lobby Congress for piecemeal resolutions, "[t]he ICCA imposed a five year statute of limitations period 'on Indian claims in law and equity then existing and arising under the Constitution, federal law, and treaties between Indian tribes and the United States,'" and it "bars claims involving allotments or other property, claims involving title, claims to equitable relief, claims for damages, and related constitutional and procedural claims *that accrued before 1946 and were not brought by August 13, 1951*." *Oglala Sioux Tribe*, 570 F.3d at 331-32 (emphasis added); *see also* ICCA § 12. The ICC's jurisdiction was "broad enough so that no Tribe could come back to Congress ten years from now and say that it had a meritorious claim . . . ." 92 Cong. Rec. 5312 (1946).

Given the foregoing, it is clear that this Court has no jurisdiction over the portions of Plaintiff's claims that pre-date August 13, 1946. Thus, Plaintiff's allegations, such those in Count I of the Complaint that "[i]n 1893, the President of the United States, by proclamation[,] took the Nation's saline deposits and sold them notwithstanding the Aug. 7, 1882 Act[, which] provided that the leasing of 'said salines shall continue' subject to express, limited provisions which were not at issue" and that "[n]o accounting for those actions nor for the moneys received have ever been provided to the Cherokee Nation," Compl. ¶ 135, should be dismissed from this case.

2. Portions of Plaintiff's claims are barred by the six-year statute of limitations.

a. Plaintiff's claims regarding its trust account reconciliation report, if any, are barred.

The Trust Fund Management Reform Act resulted in part from a desire to provide historical reconciliations and prospective accounting obligations for Indian trust funds. *See* H.R. REP. 103-778 (1994) at 8-9 ("[The Act] sets out the Secretary of the Interior's responsibilities to American Indian trust fund account holders[.]"). Congress established in relevant part a deadline for the Interior Department to transmit reports reconciling tribal trust account balances as of September 30, 1995, for each of Plaintiff's trust fund accounts based upon "as full and complete accounting as possible." 25 U.S.C. § 4044. Following the transmission of the trust account reconciliation results, the Trust Reform Act mandated that Interior "prepar[e] and supply[] account holders with periodic statements of their account performance and with balances of their account which shall be available on a daily basis." 25 U.S.C. § 162a(d)(5); *see also* 25 U.S.C. § 4011(b).

In 2002 (and amended in 2005), Congress tolled the statute of limitations for potential claims arising from the tribal receipt of TRP results. *See* An Act to Encourage the Negotiated Settlement of Tribal Claims, Pub. L. No. 107-153, 116 Stat. 79 (2002) (codified at 25 U.S.C. § 4044 note). The legislation deferred the deadline for tribes to "dispute[] the balance of the account holder's account as reconciled [and/or] . . . dispute[] the Secretary's reconciled balance," 25 U.S.C. § 4044(2)(B). The result of the law is that the statute of limitations for such claims ran on December 31, 2006.[4] Therefore, any claims challenging the TRP results are time-barred and should be dismissed.

b. Plaintiff's claims pre-dating July 19, 2013 are time-barred.

[4]Pub. L. No. 107-153 stated that the "deemed received" date was December 31, 1999, thus extending the six-year statute of limitations to December 31, 2005. On December 31, 2005, Pub. L. No. 109-158, 119 Stat. 1954 (2005), changed the "deemed received" date to December 31, 2000, thereby extending one last time the deadline for challenging the TRP results to December 31, 2006.

Plaintiff alleges that various appropriations act provisions extended the time by which Plaintiff could assert its claims regarding the adequacy of its periodic statements. Compl. ¶ 91 ("Congress . . . deferred accrual of potential claims until each Indian tribe receives a meaningful accounting."). Plaintiff's allegations are unfounded.

Plaintiff's claims were not tolled. With respect to the annual appropriations acts cited by Plaintiff as having this effect, Congress first adopted a provision in 1991, which stated that "notwithstanding any other provision of law, the statute of limitations shall not commence to run on any claim concerning losses to or mismanagement of trust funds, until [the beneficiary] has been provided with the accounting of such funds from which the beneficiary can determine whether there has been a loss." Pub. L. No. 102-154, 105 Stat. 990, 1004 (1991). In 1993, Congress added "including any claim in litigation pending on the date of this Act" from 1993 through 2015. *See* Pub. L. No. 103-138, 107 Stat. 1379, 1391 (1993). Beginning in fiscal year 2015, and for years thereafter, Congress omitted the provisions entirely. *See* Pub. L. No. 114-113, 129 Stat. 2242, Div. G. Title I.; *see also Wyandot Nation of Kansas v. United States*, 124 Fed. Cl. 601,604 (2016) (acknowledging cessation of Appropriations Act riders after fiscal year 2014). *See also Bldg. & Constr. Trades Dep't v. Martin,* 961 F. 2d 269, 273-74 (D.C. Cir. 1992) (a provision contained in an appropriations bill operates only in the applicable fiscal year, unless its language clearly indicates that it is intended to be permanent.).

Since Plaintiff's complaint was filed on July 19, 2019, and there is no relevant appropriations rider to toll its claims, its claims are barred by the applicable six-year statute of limitation set forth in 28 U.S.C. § 2401. Without a tolling provision, the statute of limitations for Plaintiff's claims ran from the date that they accrued. Here, those of Plaintiff's trust fund mismanagement claims that occurred more than six years prior to filing of the complaint are

untimely. Thus this Court lacks subject matter jurisdiction over any trust fund-related claims that occurred before July 19, 2013, and the Court should dismiss those claims.

E. Plaintiff's Claims for Non-Monetary Resource Accounting in Counts II and III are Unfounded.

Even though Plaintiff asserts non-monetary trust asset mismanagement claims in Counts II and III of the Complaint, Compl. ¶¶ 152, 154(9), 163, and 167(9), Plaintiff does not and cannot identify a specific statutory basis for its claims. Federal courts cannot provide relief without a specified cause of action. *See Alexander v. Sandoval,* 532 U.S. 275, 286 (2001) ("Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress."). Thus this Court should dismiss Plaintiff's claims. Because sections 4011 and 4044 of the Trust Fund Management Reform Act address only funds, it does not require Federal Defendants to provide a non-monetary trust asset accounting. There is no statutory basis for Plaintiff's claims regarding such an accounting. "Without an unambiguous provision by Congress that clearly outlines a federal trust responsibility, courts must appreciate that whatever fiduciary obligation otherwise exists, it is a limited one only." *Standing Rock Sioux v. U.S. Army Corps of Eng'rs,* 255 F. Supp. 3d 101, 144 (D.D.C. 2017) (citing *N. Slope Borough v. Andrus,* 642 F.2d 589, 612 (D.C. Cir. 1980)); *Bouknight v. District of Columbia*, 109 F. Supp. 3d 244, 248 (D.D.C. 2015) (discussing requirements for a private right of action). Indeed, Plaintiff does not and cannot identify a legal mechanism by which it can obtain an accounting of its non-monetary trust assets. Accordingly, its claims for such an accounting should be dismissed.

V. CONCLUSION

None of Plaintiff's claims and requests for relief have merit. Plaintiff has not asserted a valid waiver of Federal Defendant's sovereign immunity in order to proceed on its claims in Count I (Plaintiff's trust accounting claim pursuant to "treaty, other agreements, or by

congressional or administrative action [regarding] the Trust Funds held or managed by the United States, or which have otherwise been subject to the United States' trusteeship"), Count II (Plaintiff's trust accounting claim under 25 U.S.C. §§ 162 and 4011), and Count III (Plaintiff's claim under the APA). Assuming Plaintiff could properly demonstrate that jurisdiction is proper under a valid waiver of sovereign immunity, under the APA, Plaintiff has not pled or otherwise demonstrated a specific rights-conferring statute that would allow Plaintiff to proceed. Similarly, the Court cannot grant relief relating to Plaintiff's requests regarding the management of Plaintiff's trust accounts and non-monetary trust resources because such assertion equates to a programmatic challenge, which is not permissible to afford jurisdiction under § 706 of the APA.

This Court cannot grant relief regarding Plaintiff's request for restoration of any "Plaintiff Trust Funds for which the United States cannot account" because the request is essentially one for monetary damages potentially exceeding $10,000 which is outside of the Court's jurisdiction. Furthermore, Plaintiff's trust accounting claim relating to the period pre-dating August 13, 1946, has been extinguished by the ICCA, while Plaintiff's trust accounting claim relating to the period pre-dating July 19, 2013, is barred by the six-year statute of limitations, 28 U.S.C. § 2401. Finally, Plaintiff has not identified a statute which obligates Federal Defendants to provide an accounting for their non-monetary resources. For the foregoing reasons, this Court should grant Federal Defendants' motion and dismiss this case in the entirety.[5]

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[5] In the event that this Court determines not to grant Federal Defendants' motion, the Court should require Plaintiff, at a minimum, to specify valid specific legal bases, including express waivers of sovereign immunity, for its claims and the Court's jurisdiction. *See, e.g.*, *Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 570.

Respectfully submitted this 21st day of October, 2019.

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