UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEATRICE TANNER-BROWN, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
DEBRA HAALAND,	)	
Secretary of the Interior, *et al.*,	)	Civil Action No. 1:21-cv-00565
	)	
Defendants.	)	
_____	)	

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO ALTER OR AMEND JULY 8, 2022 ORDER OF DISMISSAL

Plaintiffs' motion to alter or amend the Court's judgment in this case should be denied. On July 8, 2022, the Court dismissed Plaintiffs' Complaint for failure to allege sufficient facts to establish Article III standing. Order Granting Defs.' Mot. to Dismiss, ECF No. 20 ("Dismissal Order"); Memorandum Opinion Granting Defs.' Mot. to Dismiss, ECF No. 21. Plaintiffs subsequently filed a Motion to Alter or Amend, arguing that Plaintiffs are entitled to an accounting under general trust principles despite their failure to establish that they have suffered an injury-in-fact. Pls.' Mot. to Alter or Amend July 8, 2022 Order of Dismissal at 2, ECF No. 24 ("Motion to Alter"). Plaintiffs have failed to show that alteration or amendment of the Court's Dismissal Order is warranted, and their Motion to Alter should therefore be denied.

Plaintiffs have moved to alter or amend under Rule 59(e). ECF No. 24. "A Rule 59(e) motion 'is discretionary' and need not be granted unless the district court finds that there is an 'intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.'" *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996) (citation omitted); *Black v. Tomlinson*, 235 F.R.D. 532, 533 (D.D.C. 2006). Motions

under Rule 59(e) are "disfavored," and the moving party bears the burden of establishing "extraordinary circumstances" warranting relief from a final judgment. *Niedermeier v. Office of Baucus*, 153 F. Supp. 2d 23, 28 (D.D.C. 2001). Rule 59(e) "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (citation omitted).

Plaintiffs here contend that this Court's Dismissal Order must be altered or amended to prevent "manifest injustice." ECF No. 24 at 5. "'[M]anifest injustice' is an exceptionally narrow concept in the context of a Rule 59(e) motion," and the "[t]he standard of proving manifest injustice is a high one." *Slate v. Am. Broad. Cos., Inc.*, 12 F. Supp. 3d 30, 35-36 (D.D.C. 2013); *In re Mot. of Burlodge Ltd. For Reconsideration*, No. 08–525 (CKK/JMF), 2009 WL 2868756, at *7 (D.D.C. 2009). It requires a demonstration not only of "clear and certain prejudice to the moving party, but also a result that is fundamentally unfair in light of governing law." *Slate*, 12 F. Supp. 3d at 35-36*; see also Qwest Servs. Corp. v. FCC*, 509 F.3d 531, 540 (D.C. Cir. 2007) (explaining that manifest injustice exists where a ruling "upset[s] settled expectations"). "[M]anifest injustice does not exist where . . . a party could have easily avoided the outcome, but instead elected not to act until after a final order had been entered." *Ciralsky v. CIA*, 355 F.3d 661, 673 (D.C. Cir. 2004).

Plaintiffs have failed to meet their burden of showing that alteration or amendment of the Court's Dismissal Order is warranted because the legal arguments they made in their Motion to Alter were available to them prior to entry of judgment. Further, even if this Court were to entertain Plaintiffs' new arguments, they have no merit.

ARGUMENT

I. Plaintiffs Cannot Raise New Arguments That Could Have Been Raised Prior to Entry of Judgment

Plaintiffs argue that manifest injustice exists because, under "basic principles of trust law" "[a] beneficiary of a trust is entitled to an accounting, whether or not an injury is known in advance." ECF No. 24 at 2, 4. Plaintiffs had the opportunity to raise this argument in their Response to their Motion to Dismiss but did not do so. Instead, they insisted that an injury had occurred. *See* ECF No. 18 at 20 ("The Defendants' challenge to standing must thus fail, because Freedmen minors including George Curls suffered, and the Curls' estate and similar ones continue to suffer, an injury by Defendants that this Court now has the authority and obligation to redress); *id*. at 12 ("[George Curls] suffered injury in fact caused by the Defendants' nonfeasance and failures . . . ."). Because Plaintiffs could have presented the arguments raised in the Motion to Alter in their Response to the United States' Motion to Dismiss ("Response"), manifest injustice does not exist and Rule 59(e) does not grant them an opportunity to raise new arguments in response to the Court's Dismissal Order. *Ciralsky v. CIA*, 355 F.3d 661, 673 (D.C. Cir. 2004); *Exxon Shipping Co.*, 554 U.S. at 485 n.5.

II. No Manifest Injustice Exists Because Plaintiffs' Are Not Entitled to An Accounting Absent a Specific Statutory Provision Requiring the United States to Provide One, And The 1908 Act Does Not Include Such a Duty

In the Motion to Alter, Plaintiffs contend that they are entitled to an accounting under "[g]eneral trust law" because "a [trust] beneficiary has no means to determining whether the [trust corpus] has been mismanaged." ECF No. 24 at 3 (arguing that it is unfair to require a "beneficiary [to] have evidence that the trust res has been mismanaged" to show standing). Even if the Court were to entertain this argument at this time, it must be rejected for two reasons. First, the "relationship between the federal government and Native American tribes [does not]

resembl[e] a traditional trust relationship bearing all the usual attendant fiduciary responsibilities," so any "traditional trust principles" that may impose upon the fiduciary a duty to account are not applicable here. *Fletcher v. United State*s, 730 F.3d 1206, 1208 (10th Cir. 2013) (Gorsuch, J.). Second, Plaintiffs have failed to establish or allege facts showing that they would have been entitled to an accounting under the 1908 Act and—whether one calls its "standing" or something else—the Court did not err in dismissing the Complaint.

"The Government assumes Indian trust responsibility only to the extent it expressly accepts those responsibilities by statute." *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 177 (2011). So, "statutes and regulations," rather than traditional trust principles, both "'establish [the] fiduciary relationship *and* define the contours of the United States' fiduciary responsibilities.'" *Id.* (quoting *United States v. Mitchell* ("*Mitchell II*"), 463 U.S. 206, 224 (1983)) (emphasis added). If a court finds that a specific statute created a mandatory, enforceable trust duty, it may thereafter look to traditional trust principles to "help illuminate the meaning" of the relevant statute. *Id.* But those "background principles cannot be used to 'override' the language of statutes and regulations 'defin[ing] the Government's . . . obligation[s]' to a tribe." *Id.* (citing *Jicarilla*, 564 U.S. at 185). A court's "analysis must train on specific rights-creating or duty imposing statutory or regulatory prescriptions." *El Paso Natural Gas Co. v. United States*, 750 F.3d 863, 895 (D.C. Cir. 2014) (quoting *United States v. Navajo Nation* ("Navajo I"), 537 U.S. 488, 506 (2003)).

Therefore, a tribal plaintiff is only entitled to an accounting if they first identify a statutory provision specifically creating that right. *See Jicarilla*, 564 U.S. at 184 ("The United States . . . does not have the same common-law disclosure obligations as a private trustee."); *see also El Paso*, 750 F.3d at 892 (holding that a statutory provision only creates a fiduciary duty if it

imposes mandatory obligations on the United States). The question then here, is whether the 1908 Act expressly creates a specific statutory "duty to monitor and account for proceeds from oil, gas and related leases on restricted land allotments." ECF No. 18 at 3; *see* ECF No. 21 at 4 ("Plaintiffs' claim is premised on their argument that Section 6 imposed a specific fiduciary duty on the Secretary of the Interior to account for any royalties derived from leases on land allotted to minor Freedmen"). For the reasons outlined in the United States briefs, it does not. ECF No. 15 at 31-33; ECF No. 19 at 10-13. The 1908 Act did not create the duty to undertake that which Plaintiffs now claim to have been deprived.

To the extent Section 6 of the 1908 Act addressed responsibilities to minor Freedmen, it simply granted the Secretary of the Department of the Interior ("the Secretary") discretionary authority to appoint, as the Secretary deemed necessary, local representative to investigate the conduct of the minor Freedman's guardians. 35 Stat. 312, § 6; *see* ECF No. 19 at 10-11. If such an appointment was made, *and* one of the appointed local representatives were, in their discretion, of the opinion that mismanagement had occurred, the 1908 Act required the local representative to prepare a report for the Secretary. 35 Stat. 312, § 6; *see* ECF No. 19 at 10-11. If the local representative or a representative of the Secretary were of the opinion that mismanagement had occurred, they were required to report the matter to the probate court and pursue any "necessary remedy" to preserve the property and protect the interests of said minor Allottees. 35 Stat. 312, § 6; *see* ECF No. 19 at 10-11. In any event, the 1908 Act requires any reports to be made to be kept as public records. 35 Stat. 312, § 6; *see* ECF No. 19 at 10-11.

But critically, the 1908 Act does not require the appointed representatives or representatives of the Department of the Interior to provide reports *to the minor Freedman*. 35 Stat. 312, § 6; *see* ECF No. 19 at 10-11. Thus, even if a "report" documenting instances of abuse

can be construed as a duty to "account" for all oil and gas-related transactions on all minor Freedman's properties, as Plaintiffs contend, the accounting would not be owed to the Freedman. ECF No. 18 at 17.

Further, because "Plaintiffs have not [alleged] that Mr. Curls's leases were mismanaged," they have failed to show that this alleged duty to "account" was triggered in the first place. ECF No. 21 at 10-11; 35 Stat. 312, § 6 (providing that reports only needed to be prepared if the appointed representative or representatives of the Secretary were of the opinion that mismanagement had occurred). Thus, Plaintiffs have not alleged sufficient facts to show that they are entitled to the relief they seek under their own theory of liability, and their Complaint was properly dismissed. ECF No. 21 at 10-11; *see also Tanner-Brown v. Zinke*, 709 Fed. Appx. 17, 19 (D.C. Cir. 2017) ("Tanner-Brown's suit cannot go forward unless she first establishes her standing to seek the particular relief at issue under her stated legal theory.").

Conclusion

Plaintiffs have failed to show that extraordinary circumstances warranting Rule 59(e) reconsideration of this Court's Dismissal Order are present here, and Plaintiffs' request to alter or amend must be denied.

Respectfully submitted this 2nd day of September, 2022.

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