IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SANTEE SIOUX NATION,

Plaintiff,

v.

ROSELYN TSO, in her official capacity as Director of the Indian Health Service;

INDIAN HEALTH SERVICE;

XAVIER BECERRA, in his official capacity as Secretary of Health and Human Services;

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; and

UNITED STATES OF AMERICA,

Defendants.

No. 8:23-cv-530

REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT IN PART

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INTRODUCTION

Defendants' opening brief demonstrated that the Santee Sioux Nation is time-barred from challenging the validity of a debt it owes to the United States arising from the Tribe's mistake of repeatedly charging the Indian Health Service ("IHS") for certain depreciation costs of a wellness center constructed by the Tribe. *See generally* Defs.' Br. in Supp. of Mot. to Dismiss Pl.'s Compl. in Part, ECF No. 31 ("Defs.' Br.").

The Tribe opposes Defendant's motion to dismiss in part on the grounds that IHS did not properly deliver a claim made pursuant to the Contract Disputes Act ("CDA"), 41 U.S.C. § 7101 *et seq*., to the Tribe, and that the Tribe is entitled to equitable tolling of the CDA's twelve-month deadline for appealing the agency's claim to federal court. *See generally* Pl.'s Opp'n to Defs.' Mot. to Dismiss Pl.'s Compl. in Part, ECF No. 32 ("Pl.'s Opp'n"). The Tribe also contends that its claims are subject to the six-year statute of limitations that governs claims brought under the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq*., set out in 28 U.S.C. § 2401. *See id*. Finally, the Tribe contends that this Court should not dismiss its Second, Third, and Fourth Claims for Relief because they are not CDA Claims. For the reasons set out below, none of the Tribe's contentions have merit. The Tribe's time to challenge the CDA claim itself or the validity of the debt it owes to the United States has long since run out. This Court should thus dismiss the First, Fifth, and Sixth Claims for Relief of the Tribe's Complaint. And this Court should dismiss the Second, Third, and Fourth Claims in part to the extent they challenge IHS's CDA Claim or the validity of the debt owed to the United States.

ARGUMENT

I. PLAINTIFF CANNOT CHALLENGE THE VALIDITY OF THE DEBT ASSESSED AGAINST IT BECAUSE PLAINTIFF RECEIVED AND ADMITS IT RECEIVED A CONTRACT DISPUTES ACT CLAIM MORE THAN TWELVE MONTHS BEFORE IT FILED SUIT

This Court lacks subject matter jurisdiction to hear the Tribe's challenge to the debt assessed against it by the United States because the time for the Tribe to challenge the validity of the CDA Claim has run and the debt is now established.

The CDA allows a contractor to appeal the final decision of an agency contracting officer by proceeding in federal court "within [twelve] months from the date of receipt of a contracting officer's decision." 41 U.S.C. § 7104(b)(3); *see also* 25 U.S.C. § 5331(a) (vesting United States district courts with original jurisdiction concurrent with the Court of Federal Claims over CDA claims arising under the Indian Self Determination and Education Assistance Act ("ISDEAA"), 25 U.S.C. § 5301 *et seq*.). Absent a timely appeal, a contracting officer's decision on a claim "is final and conclusive and is not subject to review by any forum, tribunal, or Federal Government agency." 41 U.S.C. § 7103(g).

Defendants' opening brief established that IHS sent the CDA Claim by Certified Mail on June 23, 2017, as evidenced by the U.S. Postal Service ("USPS") Certified Mail Return Receipt. *See* Defs.' Br. at 18–19. That was all that was required under the CDA. Defendants' opening brief additionally established that regardless of whether the Tribe actually received the CDA Claim in 2017, Plaintiff still waited more than twelve months after its lawyers received a copy of the CDA Claim before commencing this lawsuit. *See id*. at 19–20. Defendants thus established that the Tribe's challenge to the CDA Claim is time-barred, and that, as a result, the Tribe's debt to the United States has become established. *See id*. at 2–22.

In an effort to avoid this result, the Tribe advances a number of new contentions, but none changes the conclusion that the Tribe's challenge is untimely.

A. IHS Delivered the CDA Claim to Plaintiff

The Tribe first contends that IHS did not properly deliver the CDA Claim to the Tribe because Deb Castillo was not authorized to sign the USPS Receipt on behalf of the Tribe. *See* Pl.'s Opp'n at 20–21. The Tribe's contention does not withstand scrutiny. In fact, Ms. Castillo routinely signed for deliveries for the Tribe, with its full knowledge and tacit consent, and was thus authorized to do so. Although Ms. Castillo was a federal employee, she worked in the David Frazier Memorial Building, a tribally-owned and operated building located on the Santee Sioux Reservation at 425 Frazier Avenue North, Niobrara, NE 68760, known as the Tribal Building. *See* Decl. of Deb Castillo ¶¶ 2-3, attached as Ex. 1. Ms. Castillo explains that the Tribe maintained internal mailboxes in the Tribal Building for numerous other tribal offices, including the tribal headquarters building located at 108 Spirit Lake Avenue West, Niobrara, NE 68760 (the address to which the CDA Claim was mailed). *Id.* ¶ 4. Ms. Castillo also explains that long-time USPS mail carriers Herbie Knudsen, Becky Koehn, and Brian Stark routinely delivered mail addressed to those other tribal offices to the internal mailboxes located in the Tribal Building where she worked. *Id.* Ms. Castillo further explains that whenever a delivery required a signature, Mr. Knudsen, Ms. Koehn, or Mr. Stark would routinely ask her to sign for those deliveries and that she would do so, after which Mr. Knudsen, Ms. Koehn, or Mr. Stark would routinely place each signed-for delivery in the appropriate internal mailbox in the Tribal Building. *Id.* ¶ 5. Ms. Castillo additionally explains that, to her knowledge, the Tribe never objected to her signing for deliveries. *Id.* Thus, contrary to the Tribe's contention, at least for purposes of signing for deliveries, Ms. Castillo was an authorized representative of the Tribe.

Cf. Centennial Molding, LLC v. Tote-A-Lube, No. 8:05-cv-175, 2005 WL 2076509, at *3 (D. Neb. Aug. 26, 2005) ("The Defendant chose to leave Benson in charge of its office with access to mail received at its post office box and, at a minimum, with implied authority to accept certified mail.").

In any event, the question of Ms. Castillo's authority is beside the point, as the Tribe presents no evidence to call into question Defendants' showing that the CDA Claim was in fact delivered—which of course is the very purpose of the Certified Mail requirement. Ms. Castillo explains that, on June 23, 2017, when Mr. Knudsen, Ms. Koehn, or Mr. Stark delivered the CDA Claim to the Tribal Building, one of them asked her to sign for the delivery, which she did, and Ms. Castillo recognizes her signature on the USPS Return Receipt attached to Defendants' opening brief. *Id*. ¶ 6. *See* USPS Return Receipt, attached as Ex. 1A to Decl. of Daniel Davis, ECF No. 31-1. Under USPS policy, that was enough. *See* USPS, FAQ, Authorizing Someone Else to Accept Your Delivery, https://perma.cc/SP3P-C4EG (Q: "Is the Letter Carrier Required to Verify an Authorized Agent?" A: "The carrier is not required to verify that the person accepting the package at the home or business is truly the 'authorized agent.' By being inside the home or business it is assumed they are associated with the person the item is for."). IHS has thus produced sufficient evidence that the Tribe actually received the CDA Claim, 41 U.S.C. § 7103(d); 48 C.F.R. § 33.211(b); *Borough of Alpine v. United States*, 923 F.2d 170, 172 (Fed. Cir. 1991) ("By linking the limitations period to receipt by the contractor, the CDA eliminates disputes about … the internal mail procedures of various contractors."), and IHS need not prove that the Tribe had actual notice of the decision. *Borough of Alpine*, 923 F.2d at 172.

Moreover, IHS also sent the CDA Claim to Tribal Chairman Roger Trudell by email. *See* Email from Connie Valandra, Supervisory Contract Specialist, IHS to Hon. Roger Trudell re:

Transmittal of the Santee Sioux Nation's FY2015 Overpayment CDA-CSC Final Decision Ltr. (June 19, 2017), attached as Ex. A to the Decl. of Steven Carnes, attached as Ex. 2. IHS used the same email address for Mr. Trudell that it routinely used and continues to use for email correspondence to and from Mr. Trudell. *See* Decl. of Daniel Davis ¶ 4, attached as Ex. 3. It is also the same email address used by the Tribe's "Contracted Chief Financial Officer" in a document attached to the Tribe's Complaint. *See* Email fr. Jerry Noonan, Contracted CFO for Santee Sioux Nation, to Doreen Dawkins, HHS PSC (Sept. 14, 2022), at 2-3 of 3 ("Noonan-Dawkins Emails"), ECF No. 1-11. Thus, the Tribe's assertion that it did not receive the CDA Claim does not withstand scrutiny.

In sum, IHS took adequate steps to deliver the CDA Claim to the Tribe to satisfy the requirements of the CDA, and the Tribe's attempts to establish that it did not receive the CDA Claim do not change that conclusion.

B. The Tribe Admits That Its Lawyers Received the CDA Claim More than Twelve Months Before Filing Suit

Even if Ms. Castillo's authority to sign for deliveries was in doubt, and even if it was not clear that the CDA claim had in fact been delivered to the Tribe's mailbox, and even if IHS had not also emailed the CDA Claim to Tribal Chairman Roger Trudell, this Court would still lack jurisdiction over the Tribe's challenge to the CDA claim because the Tribe admits that it waited more than twelve months after its lawyers received yet another copy of the CDA Claim on October 7, 2022, before commencing this lawsuit on November 29, 2023, *see generally* Compl. *Compare* Pl.'s Opp'n at 21 (admitting that the Tribe received IHS's CDA Claim on October 7, 2022) *with Renda Marine, Inc. v. United States*, 71 Fed. Cl. 782, 792 (2006) ("The plain language of the CDA clearly confers finality and unreviewability on a [contracting officer]'s decision that is not properly appealed within the statutory period provided.").

II. PLAINTIFF FAILS TO DEMONSTRATE THAT IT IS ENTITLED TO EQUITABLE TOLLING OF THE CONTRACT DISPUTES ACT'S TWELVE-MONTH APPEAL DEADLINE

Contrary to the Tribe's new assertion, *see* Pl.'s Opp'n at 22–27, the Tribe fails to demonstrate that it is entitled to equitable tolling of the CDA's twelve-month limit for appealing decisions of the contracting officer to federal court. As a preliminary matter, the Federal Circuit has held that the CDA's twelve-month limit on appealing claims in federal court is jurisdictional, which, if adopted by this Court, would preclude the availability of equitable tolling. *Brisbin v. United States*, 629 F. App'x 1000, 1004 (Fed. Cir. 2015); *Inter-Coastal Xpress, Inc. v. United States*, 296 F.3d 1357, 1365 (Fed. Cir. 2002); *Cosmic Constr. Co. v. United States*, 697 F.2d 1389, 1390 (Fed. Cir. 1982). Contrary to the Tribe's contention, *see* Pl.'s Opp'n at 24, moreover, nothing about the ISDEAA's grant of original jurisdiction to federal courts changes that result, as the ISDEAA expressly applies the CDA and its terms to ISDEAA contracts. 25 U.S.C. § 5331(a) ("The United States district courts shall have original jurisdiction over any civil action or claim against the appropriate Secretary arising under this chapter and, subject to the provisions of subsection (d) of this section"); *id.* § 5331(d) (expressly providing that the CDA "shall apply to self-determination contracts"). More critically, nowhere in the Tribe's Complaint does the Tribe actually allege that it is entitled to equitable tolling, much less allege any facts suggesting that it could satisfy the strict prerequisites of such relief, *compare generally* Compl. *with Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (a plaintiff must plead "enough facts to state a claim [for] relief that is plausible on its face"), and it is well settled that the Tribe cannot amend its Complaint to now assert an equitable tolling claim by filing a brief in opposition to Defendants' motion to dismiss, *Morgan Distrib. Co. v. Unidynamic Corp.*, 868 F.2d 992, 995 (8th Cir. 1989). That is the end of the Tribe's newfound equitable tolling claim.

But even if the CDA allowed equitable tolling and the Tribe had alleged the necessary facts in its Complaint, the Tribe still fails to establish that it is actually entitled to equitable tolling here. Courts only extend equitable relief sparingly. *Irwin v. Dep't of Veterans Affs.*, 498 U.S. 89, 96 (1990). They allow equitable tolling in situations where a plaintiff has actively pursued its judicial remedies by filing a defective pleading during the statutory period, or where a plaintiff has been induced or tricked by his adversary's misconduct into allowing a deadline to pass. *Id*. Courts are much less forgiving in receiving late filings where the plaintiff has failed to exercise due diligence in preserving its legal rights. *Id*.; *see also Menominee Indian Tribe of Wisc. v. United States*, 577 U.S. 250, 255–59 (2016) (holding that the tribe failed to establish that it was entitled to equitable tolling under 41 U.S.C. § 7103(a)(4)(A)). In short, equitable tolling is available only "where the circumstances that caused a litigant's delay are both extraordinary *and* beyond its control." *Menominee Indian Tribe of Wisc.*, 577 U.S. at 257.

In this case, the Tribe now contends that it "ha[s] been diligently pursuing its rights" after the Tribe's lawyers received the CDA Claim. Pl.'s Opp'n at 25. However, the Tribe's actions do not align with its contention. The Tribe alleges that its lawyers received the claim on October 3, 2022, Compl. ¶ 60, but the Tribe still did not file suit until more than twelve months after it became aware of the CDA Claim, *see generally* Compl. The Tribe does not even contend, much less demonstrate, that it was induced or tricked by its adversary's misconduct into allowing a deadline to pass. *Compare* Pl.'s Opp'n at 25–26 *with Irwin*, 498 U.S. 96. Rather, it argues that on August 8, 2023, the Tribe's Chief Financial Officer ("CFO") received a "[c]ase [r]econstruction [s]ummary" from the Department of Health and Human Services ("HHS"). Pl.'s

Opp'n at 25; *see also* 2d Decl. Jerry Noonan ¶¶ 8–11, ECF No. 32-2.[1] After receiving the summary, the Tribe's CFO appears to have mistakenly misread the summary as "confirming that the Tribe has overpaid the debt alleged in the 2017 CDA Claim." Pl.'s Opp'n at 25. As a result, the Tribe mistakenly "believed that the debt had been paid off," and it mistakenly believed "that it did not have standing to challenge the 2017 CDA [C]laim." *Id*. at 25–26; Noonan Decl. ¶ 11.[2]

Contrary to the Tribe's contentions, *see* Pl.'s Opp'n at 26, the Tribe's misapprehensions about the status of its debt were not obstacles outside of its control. That the Tribe is responsible for its mistaken conclusions about the case reconstruction summary is self-evident from its own statements and a cursory review of the summary. *Compare* Noonan Decl. ¶ 11; Case Reconstruction Summary at 58–61 of 64, attached as Ex. 1D to 2d Noonan Decl., *with*

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[1] Although it is unnecessary for purposes of resolving Defendants' motion to dismiss, Defendants provide the following explanation for background purposes: HHS's Program Support Center ("PSC") sent the case reconstruction summary report to the Tribe at the request of the Tribe. Decl. of Mary Mitchell ¶ 4, attached as Ex. 4. The report "shows the amounts owed for a debt as calculated by [PSC's] Debt management Collection System ("DMCS")." *Id.* "It includes interest accruals and payments received' but 'is independent of any systems used by the U.S. Department of [the] Treasury and [IHS] regarding the debt." *Id.*

It is also important to note that the Tribe requested the case reconstruction summary during the time period when IHS had referred the debt to the U.S. Department of the Treasury but had mistakenly failed to indicate that the Tribe's debt could not be offset against future ISDEAA contract payments, and then repaid that offset to the Tribe. *See* Defs.' Br. at 9–10 (explaining why IHS refunded offsets erroneously made against Indian Self Determination Act contract payments to the Tribe in 2022). Critically, the August 3 case reconstruction summary "did not [yet] include any refunds that IHS had [previously] made to the Tribe," and PSC did not update the DMCS to reflect the refunds that IHS had previously issued to the Tribe until August 28 and September 5, 2023. Mitchell Decl. ¶ 5. In any event, "[a]t no time did PSC communicate to the Tribe that its debt was paid in full." *Id*. ¶ 6.

[2] Plaintiff admits that IHS reimbursed the Tribe for the first set of mistaken offsets on March 23, 2023. Compl. ¶ 72. Thus, at the time it received the case reconstruction summary, the Tribe should have been aware that the case reconstruction summary was not accurate or reliable.

Menominee Indian Tribe of Wisc., 577 U.S. at 257–58 (holding that the tribe's mistaken reliance on a putative class action "was not an obstacle beyond its control" but was instead no different from a "'garden variety claim of excusable neglect,'" and the tribe was therefore not entitled to equitable tolling) (quoting *Irwin*, 498 U.S.at 96). At most, the Tribe's misapprehensions were about the status of its debt, not its validity, and at most constitute "garden variety excusable neglect." *Menominee Indian Tribe of Wisc.*, 577 U.S. at 257–58. The Tribe thus failed to exercise diligence in preserving its legal rights. *Cf. id.* Accordingly, even if the Tribe could now invoke equitable tolling (which it arguably cannot) or had properly done so (which it certainly did not), it would still fail to establish that it is entitled to equitable tolling of the CDA's twelve-month appeal deadline.

III. THE TRIBE'S FAIR DEBT COLLECTION PRACTICE ACT ARGUMENT FAILS

Contrary to the Tribe's contention, *see* Pl.'s Opp'n at 27–29, the Tribe's First Claim for Relief, *see* Compl., ¶¶ 82–89, is time-barred. The CDA established a twelve-month time-period for appealing a contracting officer's decision, and Defendants' opening brief demonstrated that the Tribe's failure to timely appeal the CDA Claim renders the contracting officer's decision "final and conclusive and … not subject to review by any forum, tribunal, or Federal Government agency," 41 U.S.C. § 7103(g), including this Court. *See* Defs.' Br. at 16–20.

The Tribe responds by contending that its First Claim for Relief brings a claim under the APA and alleges that Defendants violated the Fair Debt Collection Practice Act ("FDCPA"), 15 U.S.C. § 1692 *et seq*., by failing to notify the Tribe's attorneys of the CDA Claim. *See* Pl.'s Opp'n at 27–29. The Tribe thus contends that its FDCPA claim is subject to the six-year statute of limitations for APA claims. *See id.* at 27 (citing 28 U.S.C. § 2401(a)). The Tribe's contentions are without merit.

First, the Tribe cannot use the six-year statute of limitations applicable to APA claims as an end-run around the CDA's twelve-month limit on appealing a contracting officer's decision. The APA allows suit against the government "when an [a]gency action [is] made reviewable by [a] statute and [there] is a final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704; *see also id.* § 702 ("Nothing herein … confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought."). However, it is well settled that the CDA provides the exclusive remedy for obtaining judicial review of a contracting officer's decision. 41 U.S.C. § 7101 *et seq*. Courts have characterized this remedial scheme as "the paradigm of a precisely drawn, detailed statute" that "purports to provide final and exclusive resolution of all disputes arising from government contracts" that fall within its ambit. *A & S Council Oil Co. v. Lader*, 56 F.3d 234, 241 (D.C. Cir. 1995) (citation omitted); *see also M.E.S., Inc. v. Snell*, 712 F.3d 666, 673 (2d Cir. 2013); *Evers v. Astrue*, 536 F.3d 651, 657 (7th Cir. 2008); *Campanella v. Com. Exch. Bank*, 137 F.3d 885, 891 (6th Cir. 1998). Under the APA, the CDA itself therefore provides an "adequate remedy," thus precluding the Tribe from seeking an end-run around the CDA's statutory deadlines by proceeding instead under the APA. *Am. Sci. & Eng'g., Inc. v. Califano*, 571 F.2d 58, 62–63 (1st Cir. 1978) ("review by the Court of Claims has consistently been held to provide an adequate remedy for an alleged breach of contract by a federal agency," so APA not available); *Al. Rural Fire Ins. Co. v. Naylor*, 530 F.2d 1221, 1225–26 (5th Cir. 1976).

Moreover, "[t]he fact that the [Tribe's] [C]omplaint was untimely filed … does not mean that that court could not offer a full and adequate remedy; it merely means that [the Tribe] did not file [its] complaint in time to take advantage of that remedy." *Martinez v. United States*, 333 F.3d 1295, 1320 (Fed. Cir. 2003); *see also Town of Sanford v. United States*, 140 F.3d 20, 23 (1st

Cir. 1998) ("A legal remedy is not inadequate for purposes of the APA because it is procedurally inconvenient for a given plaintiff, or because plaintiffs have inadvertently deprived themselves of the opportunity to pursue that remedy."); *Sable Commc'ns of Cal., Inc. v. FCC*, 827 F.2d 640, 642 (9th Cir. 1987) (holding that the remedy provided by [another statute] was adequate within the meaning of 5 U.S.C. § 704 when it was the plaintiff's "own inaction which foreclosed review under [that other statute]"). As a result, "Congress did not mean for the APA's review procedures to duplicate existing review mechanisms" available under the CDA. *Cent. Platte Nat. Res. Dist. v. U.S. Dep't of Agric.*, 643 F.3d 1142, 1149 (8th Cir. 2011) (citing *Walsh v. U.S. Dep't of Veterans Affs.*, 400 F.3d 535, 538 (7th Cir.2005)).

Second, even if the Tribe could take advantage of the six-year statute of limitations for APA claims, its claim would still be untimely based on its own theory of the case. The Tribe alleges that Defendants violated the FDCPA on June 19, 2017, when it sent the CDA Claim directly to the Tribe instead of the Tribe's attorneys. *See* Compl., First Claim for Relief, ¶¶ 84, 86. But under that theory, the Tribe's six-year statute of limitations would have run on June 19, 2023, more than five months *before* the Tribe filed this lawsuit on November 29, 2023. *See generally* Compl. So the Tribe's FDCPA claim would still be untimely. 28 U.S.C. § 2401(a).

Third, even if the Tribe's FDCPA claim were timely, Defendant's opening brief demonstrated that the FDCPA does not apply to Defendants because the Act by its own terms "does not apply to 'any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties.'" Defs.' Br. at 19 n.6 (quoting 15 U.S.C. § 1692a(6)(C)). The Tribe responds by claiming that the FDCPA still applies because IHS incorporated the Act into the Indian Health Manual. *See* Pl.'s Opp'n at 27–28. This theory also fails. At the time IHS sent the CDA Claim to the Tribe, it was

a contract dispute, subject to the CDA. *A & S Council Oil Co.*, 56 F.3d at 241. As a result, the CDA Claim was not a debt potentially subject to the FDCPA. Only after the contracting officer's decision became final and unappealable did it become a debt. 41 U.S.C. § 7104(g). Thus, the Tribe cannot show that the requirements of the FDCPA applied to the CDA Claim in June 2017.[3] The Tribe's FDCPA claim fails. This Court should thus dismiss the Tribe's First Claim for Relief.

IV. THIS COURT SHOULD DISMISS IN PART THE TRIBE'S SECOND, THIRD, AND FOURTH CLAIMS FOR RELIEF

Contrary to the Tribe's contention, *see* Pl.'s Opp'n at 29–30, parts of its Second, Third, and Fourth Claims for Relief challenging the validity of the debt owed by Tribe to the United States should be dismissed in part because the Tribe failed to timely appeal the contracting officer's decision.

The Tribe's Second Claim for Relief challenges Defendants' alleged "[u]nlawful [o]vercollection" of a debt owed by the Tribe to the United States, Compl., Second Claim for Relief, which the Tribe claims "did not legally accrue," Compl. ¶ 93. For the reasons set forth in Defendant's opening brief, this Court should dismiss this claim for relief to the extent it challenges the debt established by the final and unappealable decision of the contracting officer. The Tribe is correct, however, that Defendants' motion to dismiss does not seek resolution by

[3] Additionally, although this Court need not consider this to resolve Defendants' motion to dismiss, IHS was not aware that the Tribe was represented by counsel in the matter of the ISDEAA contract FY 2015 overpayment that led to the CDA Claim. Indeed, as the Tribe itself alleges, the negotiation and execution of Contract Modification No. 33 to the Tribe's FY 2015 Annual Funding Agreement did not involve the Tribe's counsel. *See, e.g.*, Compl. ¶ 57. So even if the FDCPA did apply to the CDA Claim, IHS still did not violate it.

this Court at this time of the question whether the Tribe has already repaid its debt. *See* Defs.' Br. at 2, 21–22.

Similarly, the Tribe's Third Claim for Relief challenges Defendants' alleged failure to implement the 2016 Settlement Agreement, *see* Compl., Third Claim for Relief, an agreement that the Tribe claims Defendants violated by allegedly failing to "negotiate the repayment amount with the Tribe," *id.* ¶ 99, by issuing Modification No. 33 to the Tribe's FY 2015 Annual Funding Agreement, *id.*, and by failing to provide for "repayment [of the debt] over not less than four fiscal years," *id.* ¶ 100. For the reasons set forth in Defendants' opening brief, this Court should dismiss this Claim for relief to the extent it challenges the debt established by the final and unappealable decision of the contracting officer. The Tribe is correct, however, that Defendants' motion to dismiss does not seek resolution by this Court at this time of the question whether the Tribe has already repaid its debt. *See* Defs.' Br. at 2, 21–22.

Finally, the Tribe's Fourth Claim for Relief challenges Defendants' alleged failure to terminate the debt owed by the Tribe to the United States. Compl., Fourth Claim for Relief. The Tribe again alleges that Defendants "unilaterally issued Modification 33 to the Tribe's ISDEAA contract funding agreement in order to repay IHS for prior depreciation overpayments," *id.* ¶ 105, and that "IHS has refused the Tribe's demands to cease collecting on the debt," *id.* ¶ 107. The Tribe additionally alleges that "there was no debt for IHS to collect, and IHS has a duty to terminate an[y] collection activity on the debt." *Id.* ¶ 108; *see also id.* ¶¶ 109–11. For the reasons set forth in Defendants' opening brief, this Court should dismiss this Claim for relief to the extent it challenges the debt established by the final and unappealable decision of the contracting officer. The Tribe is correct, however, that Defendants' motion to dismiss does not

seek resolution by this Court at this time of the question whether the Tribe has already repaid its debt. *See* Defs.' Br. at 2, 21–22.

CONCLUSION

For the foregoing reasons, this Court should dismiss Plaintiffs' Complaint in part because any challenge to IHS's CDA Claim or the validity of Plaintiff's debt owed to the United States is barred by the applicable statute of limitations.

Dated: May 22, 2024

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CERTIFICATE OF COMPLIANCE

Pursuant to NECivR 7.1(d)(3), I hereby certify this brief complies with the requirements of NECivR 7.1(d)(1). Relying on the word-count function of Microsoft Word for Office 365 MSO, this document contains 4,761 words. The word-count function was applied to all text, including the caption, headings, footnotes, quotations, signatures, and this certificate.

s/ James D. Todd, Jr.
JAMES D. TODD, JR.