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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MANUEL CORRALES, JR.,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No.: 25-cv-368-BJC-DDL

DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

Date: June 6, 2025
Judge: Hon. Benjamin J. Cheeks

NO ORAL ARGUMENT UNLESS ORDERED BY THE COURT

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Defendant moves to dismiss Plaintiff's first amended complaint pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 8. This motion is based on the following Memorandum of Points and Authorities, as well as all pleadings and filings in this action, and upon any such other matters or argument that the Court may permit.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through his first amended complaint (FAC), Plaintiff attempts to assert two claims under the Federal Torts Claim Act (FTCA). However, these claims are fatally defective because Plaintiff fails to establish subject matter jurisdiction and a waiver of sovereign immunity. The Court lacks subject matter jurisdiction because the claims are statutorily time-barred and Plaintiff lacks standing. Moreover, the FTCA does not waive sovereign immunity for claims arising out of interference with contract rights. *See* 28 U.S.C. § 2680(h). Given the jurisdictional flaws, Plaintiff's claims should be dismissed with prejudice. Moreover, the FAC fails to comply with Rule 8.

II. FACTUAL BACKGROUND

Plaintiff entered into an agreement to provide legal services in December 2007. FAC ¶ 12, ECF No. 5. The agreement was signed by Silvia Burley, a purported representative of the California Valley Miwok Tribe (the Tribe). FAC ¶ 12. The Tribe's history is long and complex, and primarily hinges on a long-running leadership dispute between two factions—the Burley faction and the Dixie faction. The Tribe's leadership and membership disputes have resulted in many proceedings in federal and state courts, and federal and state administrative agencies. *See, e.g.*, *Cal. Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197 (D.D.C. 2006) [*Miwok I*]; *Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008) [*Miwok II*]; *Cal. Valley Miwok Tribe v. Jewell*, 5 F. Supp. 3d 86 (D.D.C. 2013) [*Miwok III*]; *Cal. Valley Miwok Tribe v. Zinke*, No. 2:16-01345 WBS CKD, 2017 WL 2379945 (E.D. Cal. June 1, 2017) [*Miwok IV*]; *Cal. Valley Miwok Tribe v. Zinke*, 745 F. App'x 46 (9th Cir. 2018) [*Miwok V*].

A thorough background is, once again, provided to offer sufficient context to Plaintiff's allegations concerning the Washburn Decision and Newland Decision. As the underlying agency actions referenced throughout the FAC have been the subject of much litigation, courts have provided thorough summaries and are quoted herein.

A. *Early History of the Tribe*

> In 1915, John Terrel of the Office of Indian Affairs conducted a census of "Sheepranch Indians" in Calaveras County, California. At the time of the census, there were thirteen Sheepranch Indians. In 1916, the United States acquired a 0.92 acre parcel of land, known as "Sheep Ranch Rancheria," for these Indians.
>
> In 1934, Congress passed the Indian Reorganization Act ("IRA"), which required the BIA to hold elections where a tribe would decide whether to accept provisions of the IRA, including provisions permitting tribes to organize and adopt a constitution. 25 U.S.C. §§ 5123, 5125. The BIA found that there was only one eligible adult Miwok Indian, Jeff Davis, living on the rancheria in 1935. He voted in favor of adopting the IRA but the Tribe never pursued formal organization.
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> Amended in 1964, the California Rancheria Act authorized the termination of federal recognition of California Rancherias by distributing each rancheria's assets to the Indians residing on the rancheria. At that time, Mabel Dixie was the sole Miwok resident on the land. She voted to accept the land distribution plan and terminate the trust relationship between the federal government and the Tribe. The BIA failed, however, to take the necessary steps to complete the termination of the rancheria.
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> Mabel Dixie died in 1971 and an Administrative Law Judge ordered the distribution of her estate. Her common law husband and four sons, including Yakima Dixie [(Dixie)], received an undivided interest in the land. By 1994, [] Dixie represented that he was the only living descendant of Mabel and recognized Tribe member. . . .
>
> In 1998, [Silvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace (the Burley faction)] received Dixie's permission to enroll in the Tribe. In September 1998, the BIA met with Dixie and Burley in order to discuss formal organization of the Tribe. The BIA noted that it believed that the original tribal membership was limited to the heirs of Mabel Dixie because of the land distribution during probate. The Tribe's membership then expanded with the addition of the Burley faction.
>
> In November 1998, the BIA drafted, and Dixie and Burley signed, Resolution #GC-98-01 ("1998 Resolution"). The 1998 Resolution listed Dixie and the four member Burley faction as Tribe members. It also established "a General Council to serve as the governing body of the Tribe." In 1999, Burley submitted Dixie's resignation as tribal chair to the BIA, but Dixie claims he did not resign. The BIA affirmed the General Council's authority as the governing body of the Tribe in February 2000 and continued to recognize the General Council and Burley's leadership through 2005.

Miwok IV, 2017 WL 2379945, at *1-2 (internal record citations and footnotes omitted).

> On July, 20, 1999, BIA and the Tribe entered into a "self-determination contract" that provided annual funding for the development and organization of the Tribe for the benefit of future tribal members, and on September 30, 1999, the Tribe became a "contracting Tribe" pursuant to the Indian Self Determination Act, PL 93-638. The parties refer to the annually renewing contract as the Tribe's "P.L. 638 Contract."
>
> Shortly thereafter, the leadership dispute that had been brewing between [Dixie] and Burley came to a head. Over the course of the next couple of years, both [Dixie] and Burley laid claim to the role of "Chairperson" of the Tribe and attempted to organize the Tribe pursuant to the IRA by submitting multiple competing constitutions that purportedly had been adopted by the tribal membership. . . .
>
> Then, on February 11, 2004, Burley submitted to the BIA what she alleged was the Tribe's newly adopted constitution—not for the BIA's review—but only for the BIA's records. The BIA interpreted this as Burley's "attempt to demonstrate that [the Tribe] is an 'organized' tribe" under the newly enacted Section 476(h) of the IRA, which allows that "each Indian tribe shall retain inherent sovereign power to adopt governing documents under procedures other than those specified in this section." [] On March 26, 2004, the BIA notified Burley that it rejected her attempt to "organize" under the IRA pursuant to Section 476(h) (hereinafter, the "March 2004 Decision"). . . .
>
> Thereafter, the BIA "acknowledge[d][] Burley as the authorized representative of the [Tribe] with whom government-to-government business is conducted. However, the BIA [did] not view the Tribe to be an organized tribe and, therefore, decline[d] to recognize [] Burley as a 'tribal chairperson' in the traditional sense as one who exercises authority over an organized Indian tribe."
>
> In a letter dated February 11, 2005 (hereinafter, the "February 2005 Decision"), the BIA notified [Dixie] that his appeal from June 2003 had been "rendered moot" by the March 2004 Decision. In the February 2005 Decision, the BIA reiterated that it did not recognize Burley as the tribal Chairperson, but rather, a "person of authority" within the Tribe." It further stated that "[u]ntil such time as the Tribe has organized, the Federal government can recognize no one, including [Dixie or Burley], as the tribal Chairman." The BIA concluded by stating that it "does not recognize any tribal government" for the Tribe "[i]n light of the BIA's [March 2004 Decision] that the Tribe is not an organized tribe." This is the first time since November 5, 1998 (when the BIA first acknowledged the Tribe's General Council) that the BIA claimed that it did not recognize a duly constituted government for the Tribe.
>
> On July 19, 2005, the BIA, acting on the February 2005 Decision, suspended the Tribe's P.L. 638 Contract. [*Miwok I*, 424 F. Supp. 2d at 201]. Further, on August 4, 2005, the California Gambling Control Commission notified the Tribe that it would withhold distributions from the California Revenue Sharing Trust Fund until the tribal leadership was

> established.[1] On October 26, 2005, the BIA returned a tribal resolution to Burley without having taken the action requested in the resolution, asserting that there was no "government-to-government" relationship with the Tribe. [*Miwok I*], 424 F. Supp. 2d at 201.

Miwok III, 5 F. Supp. 3d at 91-94 (internal record citations and footnotes omitted).

B. *Background Concerning Miwok I and Miwok II*

Beginning in 2005, Burley participated in multiple federal lawsuits and administrative proceedings seeking to have BIA recognize her leadership of and authority in the Tribe. In 2005, Burley, purportedly on behalf of the Tribe, filed a challenge to BIA's denial of her proposed constitution. *Miwok I*, 424 F. Supp. 2d at 201. The complaint alleged that, "at least since June 25, 1999, the BIA has recognized its government, its documents, and its chairperson, Silvia Burley, and that the BIA is now trying to reverse that position." *Id.* The court dismissed, finding BIA had an obligation to ensure governing documents "have been 'ratified by a majority vote of adult members'" and that the Tribe "failed to take necessary steps to protect the interests of its potential members." *Id.* at 202-03. The D.C. Circuit affirmed; specifically, because the proposed constitution "was not ratified by anything close to a majority of the tribe," the Circuit held that the Burley faction's "antimajoritarian gambit deserves no stamp of approval from the Secretary." *Miwok II*, 515 F.3d at 1267-68.

C. *Background Concerning Miwok III*

While *Miwok II* was pending,

> the BIA continued to encourage both [Dixie] and Burley to "organize a formal governmental structure that is representative of all Miwok Indians who can establish a basis for their interest in the Tribe and is acceptable to the clear majority of those Indians." To that end, officials with the BIA met with [Dixie] and Burley "to offer assistance in [their] organizational efforts for the Tribe." However, by November 2006, the BIA concluded that "the ongoing leadership dispute [was] at an impasse and the likelihood of th[e] impasse changing soon [is] remote."

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[1] As a non-gaming tribe in California, the Tribe is entitled to annual payments, drawn from the licensing fees paid by gaming tribes to the California Gambling Control Commission (the Commission) and deposited into a Revenue Sharing Trust Fund (RSTF or Trust). A California court of appeal approved the Commission's decision to withhold the RSTF money from the Tribe. *See Corrales v. California Gambling Control Commission*, 93 Cal. App. 5th 286, 291 (2023).

> Accordingly, the BIA, in a November 6, 2006 decision (hereinafter, the "November 2006 Decision"), resolved to "publish a notice of a general council meeting of the Tribe to be sponsored by the BIA in the newspapers within the Miwok region." The purpose of the notice was to "initiate the reorganization process" by inviting "the members of the Tribe and potential members to the meeting" to discuss "the issues and needs confronting the Tribe." . . .
>
> Burley appealed the November 2006 Decision to the Regional Director of the BIA. On April 2, 2007, the Regional Director affirmed the November 2006 Decision (hereinafter, the "April 2007 Decision"). The April 2007 Decision noted that the purpose of calling the general council meeting was to identify the "putative" group of individuals who believe they have the right to participate in the organization of the Tribe, and "until the Tribe has identified the 'putative' group, the Tribe will not have a solid foundation upon which to build a stable government."
>
> Burley appealed the April 2007 Decision to the Interior Board of Indian Appeals ("IBIA"). The IBIA affirmed, in part, the April 2007 Decision on January 28, 2010. However, the IBIA also determined that the April 2007 Decision involved an enrollment dispute, and therefore, referred that portion of the April 2007 Decision to the Assistant Secretary of the BIA for review because the IBIA does not have jurisdiction to review enrollment disputes. . . .
>
> On August 31, 2011, the Assistant Secretary issued his [] decision (hereinafter, the "August 2011 Decision"). The August 2011 Decision reached the following conclusions: (1) the Tribe is a federally recognized tribe; (2) the BIA cannot force the Tribe to organize under the IRA and will cease all efforts to do so absent a request from the Tribe; (3) the BIA cannot compel the Tribe to expand its membership and will cease all efforts to do so absent a request from the Tribe; (4) as of the date of the Decision, the Tribe's entire citizenship consists solely of [Dixie], Burley, Burley's two daughters, and Burley's granddaughter; and (5) the November 1998 Resolution established a General Council comprised of all of the adult citizens of the Tribe, with whom BIA may conduct government-to-government relations. The Assistant Secretary acknowledged that the August 2011 Decision "mark[ed] a 180-degree change of course from the positions defended by [BIA] in administrative and judicial proceedings over the past seven years." Therefore, the Assistant Secretary stayed implementation of the August 2011 Decision pending resolution of [*Miwok III*].

Miwok III, 5 F. Supp. 3d at 94-96 (internal record citations and footnotes omitted).

Dixie, purportedly on behalf of the Tribe, challenged the August 2011 Decision in *Miwok III*. The *Miwok III* court focused on the August 2011 Decision's determination regarding the Tribe's citizenship and the recognition of the General Council as the Tribe's government. *Id.* at 96. The August 2011 Decision was held to be arbitrary and capricious because the Assistant Secretary provided no explanation for his

determination that the Tribe comprised of only five members and the General Council was the recognized tribal government. *Id.* at 97-100. While the record was full of contrary evidence, the Assistant Secretary "ma[de] no effort to address any of this evidence in the record." *Id.* at 98. The August 2011 Decision was remanded to the Assistant Secretary to reconsider the number of tribal members and validity of the General Council. *Id.* at 100-01. In doing so, the Court admonished Interior that organization must include a larger "tribal community," a "loosely knit community of Indians in Calaveras County" that had a potential membership of over 250. *Id.* at 98.

D. *Background Concerning Washburn Decision, Miwok IV, and Miwok V*

In direct response to the *Miwok III* remand, Assistant Secretary Washburn issued a decision in December 2015 (Washburn Decision). FAC at 135-42. Based on the administrative record and previous federal court decisions, the Washburn Decision concluded "that the Tribe's membership is more than five people, and that the 1998 General Council does not consist of valid representatives of the Tribe." FAC at 141.

The Burley faction, represented by Plaintiff, challenged the Washburn Decision in *Miwok IV*. Specifically, the Burley faction argued that the Decision's conclusions (*to wit*, membership in the Tribe is not limited to five people, eligibility to participate in the Tribe's organization is based on lineal decent from census base rolls, and the United States does not recognize a tribal government for the Tribe) were arbitrary and capricious. *Miwok IV*, 2017 WL 2379945, at *4.[2] The court denied the requested relief and found that the Washburn Decision was not arbitrary and capricious. *Id.* at *8. The Ninth Circuit, reviewing de novo, affirmed and held that the Washburn Decision "was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, and therefore did not violate the APA." *Miwok V*, 745 F. App'x at 47.

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[2] The Burley faction, represented by Plaintiff, also sought a preliminary injunction as to the 2015 Washburn Decision, which was denied. *See also Cal. Valley Miwok Tribe v. Jewel*, No. 2:16-01345 WBS CKD, 2016 WL 6217057 (E.D. Cal. Oct. 24, 2016).

E. *Background Concerning Newland Decision*

On May 31, 2022, Assistant Secretary Newland issued a decision regarding the Tribe (Newland Decision). FAC at 145-49. The Newland Decision recognized that in the early 2000s, a leadership dispute between the Dixie and Burley factions resulted in the March 2004 Decision, wherein it was concluded that: "(1) there was no evidence that the Tribe had ever formally organized; (2) the greater Tribal community must be provided an opportunity to participate in any such organization; and (3) Mr. Dixie and Burley Family collectively were not representative of the greater community." FAC at 145. The Newland Decision further acknowledged that the March 2004 Decision gave rise to multiple challenges and decisions, including the Washburn Decision. *Id.*

The focus of the Newland Decision is on correcting the fact that the Washburn Decision "relied on factually inaccurate genealogy," and "[a]s a result, many individuals whom AS-IA Washburn sought to include as part of the greater Tribal community and as eligible to participate in the Tribe's organization were barred from participation." FAC at 146. Accordingly, in his decision, Newland provided:

> I hereby revise the Washburn Decision to include the descendants of the Miwok Indians listed on the Indian Census Roll for Calaveras County, dated June 30, 1929 (the "1929 Census") among the 'Eligible Groups' able to take part in the initial organization of the Tribe . . . . Except for this single revision, I reiterate and endorse the Washburn Decision in full as an authoritative statement of the Department's position regarding the Tribe's legal status and eligibility for initial organization."

FAC at 146. Recently, the Newland Decision was upheld as reasonable under the APA. *Cal. Valley Miwok Tribe v. Haaland*, No. 22-cv-1740 (JMC), 2024 WL 3756397, at *13-14 (D.D.C. Aug. 12, 2024) ("If anything, the BIA's lawful commitment to 'ensuring that the will of tribal members is not thwarted by rogue leaders' shines through in the Newland Decision and the administrative record supporting it.") (quoting *Miwok II*, 515 F.3d at 1267), *appeal docketed*, No. 24-5231 (D.C. Cir. 2024).

F. *Background Related Specifically to Plaintiff*

On December 13, 2007, Plaintiff entered into an agreement (2007 Fee Agreement) with Burley to represent her in recovering the Trust funds, which were

withheld because there was no recognizable tribal government or leadership. FAC ¶ 12; *id.* at 69-73. Plaintiff alleges he would be paid an hourly fee plus a percentage of the funds held by the Commission for the Tribe in the RSTF. *See* FAC ¶ 12. On March 10, 2009, Plaintiff entered into an amended agreement (2009 Fee Agreement)[3] with Burley to represent her in recovering the Trust funds and recovering the P.L. 638 Contract funds. FAC at 67-68. After he entered into the 2009 Fee Agreement, Plaintiff sought BIA approval of that Agreement. *See* FAC ¶¶ 13, 41. BIA responded to Plaintiff in 2010, declining to take action and pointed to a 2000 amendment to 25 U.S.C. § 81 (114 Stat. 46) removing the requirement for BIA to approve federally recognized tribes' contracts with attorneys. FAC ¶ 41; *id.* at 74. Plaintiff's services under the Fee Agreements were terminated in May 2020. FAC ¶ 14.

In 2019, Plaintiff initiated state court proceedings against the Commission, seeking "a court order establishing that the attorney fees that he was allegedly owed based on his Fee Agreements with Burley should be paid to him directly from the Tribe's RSTF money before that money was released to the Tribe." *Corrales*, 93 Cal. App. 5th at 295; *see* FAC ¶ 15. His action was dismissed for lack of jurisdiction "because [the court] could not decide [Plaintiff's] claims without deciding the purely intratribal issue of whether Burley was, in fact, a member and leader of the Tribe when she entered into the Fee Agreement with Corrales in 2007." *Id.* at 302. The state court of appeal affirmed. *Id.* at 295.

In light of the results of his state court litigation concerning the Fee Agreements, Plaintiff wrote a letter to the BIA on June 24, 2023, requesting that BIA provide Plaintiff "a short letter clarifying that at the time Burley executed the Fee Agreement with [Plaintiff, her] authority included signing the subject Fee Agreement for legal services that included litigation on behalf of the Tribe." FAC at 61-63. On September 27, 2023, Defendants responded and declined his request. FAC at 110. Subsequently, on October

[3] The 2007 Fee Agreement and 2009 Fee Agreement are herein referred to collectively as Fee Agreements.

23, 2024, Plaintiff initiated proceedings under the Administrative Procedure Act (APA) in an attempt to find a way for the federal government to state that Burley had sufficient tribal authority in December 2007 to enter into a contract with Plaintiff on behalf of the Tribe. *See Corrales v. Dutschke, et al.*, No. 23-cv-1876-BJC-DDL (S.D. Cal.). Based on the same factual allegations, Plaintiff now brings this action under the FTCA. *See* FAC.

III. ARGUMENT

Plaintiff's FAC asserts two causes of action under the FTCA: (1) negligence, and (2) negligent interference with prospective economic relations. For multiple independent reasons, Plaintiff's claims lack subject matter jurisdiction. Given that the jurisdictional flaws are incurable, the Court should dismiss Plaintiff's claims with prejudice.

The United States is immune from suit unless it consents. *See generally United States v. Dalm*, 494 U.S. 596, 608 (1990) ("Under settled principles of sovereign immunity, the United States, as sovereign, is immune from suit save as it consents to be sued . . . and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit.") (internal quotations omitted). Thus, the United States may be sued only to the extent that Congress has expressly waived the United States' sovereign immunity. *Lehman v. Nakshian*, 453 U.S. 156, 160 (1981); *see also United States v. Mitchell*, 445 U.S. 535, 538 (1980) ("A waiver of sovereign immunity cannot be implied but must be unequivocally expressed.") (internal quotations omitted). Furthermore, "[a] waiver of the Government's sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign." *Quarty v. United States*, 170 F.3d 961, 972 (9th Cir. 1999). Absent an unambiguous waiver of sovereign immunity, federal courts have no subject matter jurisdiction in cases against the United States. *United States v. Mitchell*, 463 U.S. 206, 212 (1983). The party who sues the United States bears the burden of pointing to an unequivocal waiver of sovereign immunity. *Holloman v. Watt*, 708 F.2d 1399, 1401 (9th Cir. 1983).

A. Failure to Satisfy Statute of Limitations

As Plaintiff's claims accrued well over two years ago, they are barred by the FTCA's statute of limitations. The FTCA requires claims to be submitted within two years of a claim's accrual. *See* 28 U.S.C. § 2401(b) ("A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues"). "As a general rule, a claim accrues 'when a plaintiff knows or has reason to know of the injury which is the basis of his action." *Hensley v. United States*, 531 F.3d 1052, 1056 (9th Cir. 2008) (citations and quotations omitted); *Winter v. United States*, 244 F.3d 1088, 1090 (9th Cir. 2001). Moreover, "the cause of action accrues even though the full extent of the injury is not then known or predictable . . . Were it otherwise, the statute would begin to run only after a plaintiff became satisfied that he had been harmed enough, placing the supposed statute of repose in the sole hands of the party seeking relief." *Wallace v. Kato*, 549 U.S. 384, 391 (2007) (citations omitted); *Ashley v. United States*, 413 F.2d 490, 493 (9th Cir. 1969) ("[O]ne who knows that an injurious tort has been committed against him by the Government may [not] delay the filing of his suit until the time, however long, when he becomes knowledgeable as to the precise extent of the damage resulting from the tort[.]").

Plaintiff's FTCA claims are based on alleged injuries resulting from the issuance of the 2015 Washburn Decision. *See* FAC ¶ 5 ("Plaintiff seeks a tort remedy against the U.S. government . . . for causing him to lose his earned attorney's fees when the ASI rendered its 2015 Decision, and again on May 31, 2022."). Specifically, Plaintiff alleges that the Washburn Decision "retroactively nullif[ied] Burley's authority," which in turn "retroactively nullified and destroyed Plaintiff's property rights (earned attorney's fees)." *Id.*; *see, e.g.*, FAC ¶ 38 (the Washburn Decision "retroactively nullified Burley's authority to act"). This Court has acknowledged, in a separate action based on the same factual allegations, that Plaintiff was allegedly injured when the Washburn Decision was issued in 2015 and accrual occurred in 2015. *See Corrales v. Dutschke*, No. 23-cv-

1876 JLS (DDL), 2024 WL 5274484, at *9 n.4 (S.D. Cal. Dec. 19, 2024). Notably, Plaintiff does not allege that he was unaware of the Washburn Decision or its alleged effects when it was issued. As Plaintiff brought his action over two years from when his claims accrued, his claims are time-barred. *See* 28 U.S.C. § 2401(b).

Plaintiff attempts to side-step the statute of limitations by relying on the Newland Decision and claiming his "FTCA causes of action accrued on May 31, 2022, when ASI Bryan Newland modified, corrected and then reaffirmed the 2015 Washburn Decision." FAC ¶ 5. This attempt fails. Notably, AS-IA Newland did not reconsider AS-IA Washburn's rulings regarding Burley's status and explicitly stated, "[e]xcept as otherwise inconsistent with the inclusion of this [1929 Census] group as an Eligible Group, I endorse and reaffirm the Washburn decision in its entirety." FAC at 141. Apart from summarily stating that the Newland Decision "affirmed" the Washburn Decision and asserting conclusory allegations of harm, Plaintiff appears to rely on the Newland Decision only to show that the alleged harm from the Washburn Decision accrued in 2022. Plaintiff plainly alleges that "Washburn nullified Burley's designation as a 'person of authority' for the Tribe and nullified the authority she had in 2007 as the authorized representative for the Tribe to enter into the Fee Agreement with Plaintiff." FAC ¶ 20 (emphasis omitted). Reliance on the Newland Decision also appears to be based on Plaintiff's conclusion that the Newland Decision could have, but did not, redress the harm he allegedly suffered by the Washburn Decision. *See* FAC ¶ 38 (alleging the Washburn Decision "retroactively nullified Burley's authority to act" and the Newland Decision "did not correct the language of Washburn's Decision retroactively nullifying Burley's authority to act") (emphasis omitted); FAC ¶ 57 (alleging "Newland could have clarified and modified this language . . . [but i]nstead he reaffirmed"); FAC ¶ 59 (alleging that "because the other parts of the 2015 Washburn Decision were reaffirmed pertaining to Burley never having the authority to act for the Tribe under the General Council, Plaintiff's rights under the Fee Agreement were still retroactively nullified and of no effect"). Further, it is immaterial for statute of limitation

purposes that the Newland Decision allegedly could have, but did not, address Plaintiff's alleged injury that resulted from the Washburn Decision. *See Wallace*, 549 U.S. at 391 ("Were it otherwise, the statute would begin to run only after a plaintiff became satisfied that he had been harmed enough, placing the supposed statute of repose in the sole hands of the party seeking relief."); *see also Knox v. Davis*, 260 F.3d 1009, 1013 (9th Cir. 2001) ("[T]his court has repeatedly held that a 'mere continuing *impact* from past violations is not actionable.'") (citation omitted).

Plaintiff clearly had notice of his alleged injury and its alleged source when the 2015 Washburn Decision was issued. Even assuming accrual did not occur in 2015, Plaintiff was more than aware of his alleged injury when he commenced suit against the Commission in 2019, and certainly had notice of his alleged injury upon the termination of his Fee Agreements in 2020. *See* FAC ¶¶ 2, 14-15; *Corrales v. California Gambling Control Com.*, 93 Cal. App. 5th 286, 295 (2023) ("On April 12, 2019, Corrales initiated this lawsuit by filing a complaint against the Commission, seeking declaratory and injunctive relief. He sought a court order establishing that the attorney fees that he was allegedly owed based on his Fee Agreement with Burley should be paid to him directly from the Tribe's RSTF money before that money was released to the Tribe."). Plaintiff, a licensed attorney, chose to wait and then use the state court process rather than present a federal tort claim. *See* FAC ¶¶ 2, 14-15. He did not present a claim to the federal government regarding any agency's allegedly tortious conduct until 2024, well over two years after his alleged injury occurred. *See* FAC ¶ 119. It is presumed that Plaintiff could seek legal advice to determine the appropriate venue or venues to redress his harm and take timely steps to preserve any potential claim. *See Hensley*, 531 F.3d at 1056 (a plaintiff who is "'armed with the facts about the harm done to him, can protect himself by seeking advice in the medical and legal community'") (quoting *United States v. Kubrick*, 444 U.S. 111, 123 (1979)).[4]

[4] Plaintiff's assertion that his claim accrued in October 2023 fails for the same reasons. *See* FAC ¶ 128. Plaintiff argues his claim accrued when his petition for review was denied in *Corrales*, 93 Cal. App. 5th 286, because that "was the date he had the right to

Accordingly, as Plaintiff's claim accrued with the issuance of the 2015 Washburn Decision, his tort claims are statutorily barred and must be dismissed with prejudice.

B. Plaintiff's Claims Are Barred by the Contract Rights Exception

The FTCA waives sovereign immunity with respect to certain tort liability "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." *Chadd v. United States*, 794 F.3d 1104, 108 (9th Cir. 2015) (quoting 28 U.SC. § 1346(b)(1)). Nonetheless, the FTCA "do[es] not waive the sovereign immunity of the United States in all respects" because "Congress was careful to except . . . several important classes of tort claims." *Id.* (quoting *United States v. S.A. Empresa de Viacao Aerea Rio Grandense*, 467 U.S. 797, 808 (1984)). One such exception is the contract rights exception, which bars "[a]ny claim arising out of . . . interference with contract rights." 28 U.S.C. § 2680(h).[5] "This exception includes both intentional and negligent interference with contract rights" and covers "actions for the interference with prospective economic advantages." *Safari Aviation, Inc. v. United States*, No. 07-00078 ACK-KSC, 2008 WL 1960145, at *10 (D. Haw. May 2, 2008) (holding that alleged acts or omissions by the FAA that resulted in reducing or eliminating anticipated profit from a third-party was barred by the contract rights exception).

While Plaintiff brings his tort claims in a verbose manner, they are fairly straightforward. Plaintiff entered into a contract (the Fee Agreements) with a third-party, Burley—the purported Tribe leader. Based on the services Plaintiff rendered under the contract, his contract entitled him to reimbursement of costs he advanced and

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apply to this Court for relief." FAC ¶ 128. However, the fact that Plaintiff chose to pursue litigation against the Commission, does not change the analysis for when his injury occurred and when his claim accrued for purposes of the statute of limitations.

[5] Section 2680(h), which covers claims arising from various types of conduct, as a whole is frequently referred to as the intentional tort exception. The portion of § 2680(h) that relates to claims arising out of "interference with contract rights" is often referred to as the contract rights exception. *See Gov't App Sols., Inc. v. United States*, No. 2:22-cv-01627-DAD-AC, 2024 WL 664451, at *5-6 (E.D. Cal. Feb. 16, 2024); *Brandon Mill Manager, LLC v. United States*, No. 20-cv-1279 (APM), 2021 WL 3722711, at *6-7 (D.D.C. Aug. 23, 2021).

fees he earned at an hourly rate. Plaintiff alleges that the Washburn Decision interfered, and the Newland Decision did not correct such interference, with Plaintiff's contract with Burley and his ability to collect his costs[6] and fees[7] under the contract. Thus, Plaintiff alleges that governmental conduct interfered with his rights under a contract with a third party. These claims, regardless of the labels or characterizations utilized by Plaintiff, are explicitly barred by the contract rights exception to the FTCA. *See* 28 U.S.C. § 2680(h); *Numrich v. U.S. Postal Serv.,* 54 Fed. App'x 472 (9th Cir. 2003) (holding that the interference with contract rights exception applied to a government contract that affected plaintiff's contract with a third party).

To the extent Plaintiff is seeking to recover the fees and costs of his existing rights under the Fee Agreements, fees and costs that he allegedly cannot claim due to the government's interference, Plaintiff's claims are plainly barred by § 2680(h). *See Numrich v. U.S. Postal Serv.*, No. 01-cv-00532-ST, 2001 WL 34043386, at *3 (D. Or. Sept. 10, 2001) (dismissing plaintiff's negligence claim as barred by the contract rights exception because "the alleged underlying conduct consist[ed] of actions taken by [the government] . . . which reduced the profit [the plaintiff] anticipated receiving as a result of his contract with" a third party); *Gov't App Sols., Inc. v. United States*, No. 2:22-cv-01627-DAD-AC, 2024 WL 664451, at *5-6 (E.D. Cal. Feb. 16, 2024) (dismissing plaintiff's negligence claim to recover amount spent but not reimbursed, due allegedly to the government's interference, as "plainly barred by § 2680(h)"); *Wells v. Fed. Aviation Admin.*, No. 22-cv-00187-JMK, 2023 WL 8446391, at *6 (D. Alaska Sept. 12, 2023) (dismissing the plaintiff's claim for negligent interference with economic

[6] Plaintiff asserts a loss of advanced costs; specifically, "his costs he advanced to the Tribe under the Fee Agreement," which allegedly amount to over $50,000. FAC ¶¶ 66-68. Allegedly "Plaintiff lost the ability to collect these costs when Washburn rendered his 2015 Decision retroactively nullifying Burley's authority as the 'person of authority' within the Tribe under the General Council, and when ASI Newland later failed to correct the language in Washburn's Decision on May 31, 2022." FAC ¶ 69.

[7] Plaintiff also asserts a loss of earned attorney's fees; specifically, "the loss of the ability to collect and recover his fees earned for almost 13 years of working for the Tribe under the subject Fee Agreement," which allegedly amount to over $5.8 million. FAC ¶¶ 73, 93.

advantage where the plaintiffs, who were commercial pilots, had alleged that the government's investigation of the plaintiffs' plane crash had "interfere[d] with plaintiff's existing employment contracts").

Further, to the extent Plaintiff alleges claims for interference with prospective economic advantage, or claims arising from such interference, his claims are also barred by § 2680(h). The FTCA does not waive sovereign immunity as to claims of "interference with present or future contractual relations." *Eloyan v. Pilkerton*, No. 2:19-cv-09565-CBM-MRWx, 2022 WL 3596620, at *5 (C.D. Cal. July 14, 2022) (acknowledging that "several courts in the Ninth Circuit have held that 28 U.S.C. § 2680(h) bars claims for interference with prospective economic advantage" and citing cases); *see Art Metal-U.S.A., Inc. v. United States*, 753 F.2d 1151, 1155 (D.C. Cir. 1985) ("To hold that interference with prospective advantage does not arise out of interference with contract rights under section 2680(h) would subject the government to liability if its employees interfered with the plaintiff's mere expectation of entering a contract, but not if they interfered with a contract already in existence. Such a result would be illogical and contrary to the 'words and reason of the exception.'") (quoting *Kosak v. United States*, 465 U.S. 848, 854 (1984)). "Consequently, '[t]he majority of courts that have considered whether interference with prospective economic advantage may be pursued under the FTCA have concluded such a claim is barred by the contract rights exception.'" *Gov't App Sols.*, 2024 WL 664451, at *6 (quoting *Wells*, 2023 WL 8446391, at *5); *see also Numrich*, 2001 WL 3403386, at *7 (stating that courts have "universally" held that claims for interference with prospective economic advantage are barred by the contract rights exception); *Art Metal-U.S.A.*, 753 F.2d at 1155 ("[N]early every court that has addressed this issue" has held that "claims for interference with prospective advantage are barred as claims arising out of interference with contract rights"); *Dupree v. United States*, 264 F.2d 140, 143 (3d Cir. 1959) ("[T]he tort of interference with prospective or potential advantage is simply an extension of tort liability for interference with existing contractual relations."); *Moessmer v. United*

States, 760 F.2d 236, 237 (8th Cir. 1985) (finding Plaintiff's "claim for interference with prospective economic advantage is the equivalent of a claim for interference with contract rights, and thus falls within the section 2680(h) exemption."); *Saratoga Sav. & Loan Ass'n v. Fed. Home Loan Bank of San Francisco*, 724 F. Supp. 683, 689 (N.D. Cal. 1989) ("The gist of their claim is interference with prospective economic advantage which is barred under the FTCA as a claim 'arising out of . . . interference with contract rights.'") (quoting 28 U.S.C. § 2680(h)).

Moreover, the contract rights exception bars Plaintiff's claims regardless of the label he attaches to the claims. "The FTCA bars claims for interference with prospective economic gain or advantage, 'no matter what words are used to describe such a tort.'" *Mangano v. United States*, No. 05-cv-02836-PJH, 2005 WL 8162006, at *9 (N.D. Cal. Oct. 28, 2005) (quoting *Numrich*, 2001 WL 34043386, at *6) (dismissing the plaintiff's "claim that the actions of the [government] tarnished his standing in the medical and research community and resulted in a loss of employment opportunities" because it was "essentially a claim of interference with prospective economic advantage"); *see also Snow-Erlin v. United States*, 470 F.3d 804, 808 (9th Cir. 2006) ("[t]his circuit looks beyond the labels used to determine whether a proposed claim is barred [under § 2680(h)]"); *Mt. Homes, Inc. v. United States,* 912 F.2d 352, 356 (9th Cir. 1990) (holding that court looks beyond plaintiff's characterization to the underlying conduct in determining whether section 2680(h) applies). As Plaintiff's tort claims are based on alleged governmental interference with Plaintiff's economic relationship with third parties, his claims are barred. *See Brandon Mill Manager, LLC v. United States*, No. 20-cv-1279 (APM), 2021 WL 3722711, at *6-7 (D.D.C. Aug. 23, 2021) ("'[A] litigant cannot circumvent the [FTCA] by the simple expedient of drafting in terms of negligence a complaint that in reality is a claim as to which the United States remains immunized.'") (quoting *Johnson v. United States*, 547 F.2d 688, 691 (D.C. Cir. 1976)); *Wells*, 2023 WL 8446391, at *6 ("It would be illogical to interpret the exception as shielding the government from liability for interference with plaintiffs' existing

employment contracts but not potential future employment contracts."); *Powerturbine, Inc. v. United States*, No. 3:14-cv-0435-CAB-BLM, 2014 WL 12160753, at *13 (S.D Cal. Dec. 15, 2014) (finding the plaintiffs' negligence claims that were based on a duty not to interfere with economic relationships with third parties to be barred by § 2680(h)).

Accordingly, Plaintiff's claims should be dismissed with prejudice under 28 U.S.C. § 2680(h).

C. Plaintiff Lacks Standing[8]

The Constitution limits federal judicial power to designated "cases" and "controversies." U.S. Const., Art. III, § 2; *SEC v. Medical Committee for Human Rights*, 404 U.S. 403, 407 (1972) (holding federal courts may only entertain matters that present a "case" or "controversy" within the meaning of Article III). Standing is thus a jurisdictional prerequisite to bringing this suit. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). To satisfy Article III's standing requirements, a plaintiff "must show:"

> (1) it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Friends of the Earth, Inc. v. Laidlaw Envt'l Servs., Inc., 528 U.S. 167, 180-81 (2000); *Lujan*, 504 U.S. at 560-61. A plaintiff bears the burden of establishing these elements by a preponderance of the evidence. *Id.*

Plaintiff alleges that in 2015 "Washburn nullified Burley's designation as a 'person of authority' for the Tribe and nullified the authority she had in 2007 as the authorized representative for the Tribe to enter into the Fee Agreement with Plaintiff." FAC ¶ 20. "Th[e] alleged nullification of Plaintiff's contractual rights is the proper place to locate his injury-in-fact." *Corrales v. Dutschke*, No. 23-cv-1876 JLS (DDL), 2024 WL 5274484, at *6 (S.D. Cal. Dec. 19, 2024). However, Plaintiff provides only

[8] This argument is also being asserted by defendants in *Corrales v. Dutschke, et al.*, No. 23-cv-1876-BJC-DDL (S.D. Cal.), ECF No. 31.

conclusory explanations for how his alleged injury is connected to the Washburn Decision. Plaintiff conflates any purported authority given to Burley through a designation as a "person of authority" and any purported authority given to Burley through the Tribe's General Council. *See, e.g.*, FAC ¶ 53. However, "simply because the BIA entered into contracts with Burley does not equate to Burley being the General Council's designated representative to enter into third party contracts." *Corrales*, 2024 WL 5274484, at *7. Plaintiff cannot support his allegation that Burley had authority on behalf of the Tribe to enter into the Fee Agreements because the Tribe was in the middle of a well-documented tribal leadership dispute and Plaintiff was retained by Burley to represent her in resolving that dispute.

Moreover, Plaintiff cannot support his assertion that BIA provided Burley the necessary authority to enter into the Fee Agreements. Courts have held that BIA's recognition of a tribal representative is not dispositive of whether the representative has the authority to bind a tribe by contract. *See Atty's Process and Investigation Servs., Inc. v. Sac & Fox Tribe of Miss. in Iowa*, 609 F.3d 927, 943 (8th Cir. 2010) (rejecting argument that BIA's recognition of a tribal faction established the validity of a third-party contract entered into by that faction); *see also Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1263 (D.C. Cir. 2008) (It is "a bedrock principle of federal Indian law that every tribe is capable of managing its own affairs and governing itself."). "The BIA, of course, regularly recognizes a tribe's undisputed leadership without limitations through its course of dealing with the tribe. When there is a conflict over tribal leadership, however, the BIA is precluded from issuing a recognition decision *except* where a federal purpose requires recognition. For that reason, such decisions will typically carry some kind of limiting language." *Cayuga Nation v. Tanner*, 824 F.3d 321, 329 (2d Cir. 2016). "[T]he BIA has the authority to make recognition decisions regarding tribal leadership, but only when the situation has deteriorated to the point that recognition of some government was essential for *Federal* purposes. Thus, the BIA has both the authority and responsibility to interpret tribal law when necessary to carry out

the government-to-government relationship with the tribe." *Id.* at 328 (internal citations and quotations omitted; emphasis in original). Consequently, "the BIA possessed no authority to designate Burley as a tribal agent for the purposes of entering into a Fee Agreement with Corrales—a third party—on behalf of the Tribe." *Corrales v. California Gambling Control Com*., 93 Cal. App. 5th 286, 306 (2023).

The Washburn Decision cannot be the cause of Plaintiff's alleged nullification of an expected interest because it had no impact on Burley's purported status as a "person of authority" and no impact on the Fee Agreements. Plaintiff is unable to point to anything to support his conclusion that the Washburn Decision nullified his ability to collect his fees, because at the time that he entered into the agreement with Burley there was a tribal leadership dispute, BIA did not recognize a tribal government or leader, and any status it provided Burley as a person of authority was for P.L. 638 Contracts.[9] Plaintiff is not able to connect the dots necessary to establish standing because the alleged injury is a result of his own making. Plaintiff was aware of the leadership dispute, Burley's lack of tribal recognition, and the limited nature of the "person of authority" designation when he entered into the Fee Agreements with Burley. Events that occurred around the time Plaintiff entered into the Fee Agreements in 2007 and 2009 make this clear and demonstrate the futility in Plaintiff being able to establish standing:[10]

- March 26, 2004: BIA issued a letter to Burley, in response to her attempts at organizing the Tribe, notifying her that the Tribe had no government or leader and that they would recognize her as a "person of authority" solely for federal contract purposes.[11]

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[9] Such contracts are entered into pursuant to the Indian Self-Determination Act and Education Assistance (ISDA), which are government-to-government contracts that contemplate services like education, health care, or law enforcement. *See Salazar v. Ramah Navajo Chapter*, 567 U.S. 182, 185 (2012).

[10] Under factual jurisdictional attacks, "a court may look beyond the complaint to matters of public record without having to convert the [12(b)(1)] motion into one for summary judgment." *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). "It also need not presume the truthfulness of the plaintiffs' allegations." *Id.*

[11] FAC at 78 ("On March 26, 2004, the BIA informed Ms. Burley that the Tribe remained unorganized and had no government. Because the Tribe had no government, it could not have a governmental leader. The BIA would not recognize Ms. Burley as

- February 11, 2005: BIA issued a letter to Dixie, stating that Burley was recognized as a "person of authority" for limited purposes and that no tribal leader or government was recognized.[12]
- August 4, 2005: the Commission suspended disbursements of the Trust funds to the Tribe because no tribal government or leader was recognizable.[13]
- March 31, 2006: *Miwok I* was issued, and found the Tribe lacked a recognizable governing body and upheld BIA's decision not to recognize Burley's purported leadership.[14]
- November 6, 2006: BIA issued a letter to Burley and Dixie, stating the Tribe had no recognizable government, leader, or membership.[15]
- January 29, 2007: BIA sent a letter to Burley, regarding P.L. 638 Contract disbursements, and stated that while Burley was recognized as a "person of authority" for P.L. 638 Contracts, the Tribe had no recognizable government.[16]
- April 2, 2007: BIA issued a letter, in response to an appeal Burley made of the November 2006 letter, stating there was no recognizable tribal government.[17]

Chairman, that is, the governmental leader of the Tribe. Instead the BIA would deal with her as a 'spokesperson" or "person of authority" for the Tribe for the purposes of awarding Federal contracts."); FAC at 80 (The BIA "has a responsibility to develop and maintain a government-to-government relationship with each of the 54 federally recognized tribes . . . . To that end, the BIA has recognized you as a person of authority within the [Tribe]).

[12] FAC at 86-87 ("In that [March 2004] letter, the BIA made clear that the Federal government did not recognize Ms. Burley as the tribal Chairperson. Rather, the BIA would recognize her as a 'person of authority' within [the Tribe]. Until such time as the Tribe has organized, the Federal government can recognize no one, including [Dixie], as the tribal Chairman. . . . The BIA does not recognize any tribal government.").

[13] *See Miwok III*, 5 F. Supp. 3d at 94; *California Valley Miwok Tribe v. California Gambling Control Commission*, 231 Cal. App. 4th 885, 890 (2014) (The Commission "suspended its disbursement of the RSTF funds to the Tribe pending [the] BIA's recognition of an authorized . . . Tribe leader or leadership group with which to conduct its government[-]to[-]government business.").

[14] *Cal. Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197 (D.D.C. 2006).

[15] *See Miwok III*, 5 F. Supp. 3d at 94 ("[T]he BIA concluded that 'the ongoing leadership dispute [was] at an impasse and the likelihood of th[e] impasse changing soon [is] remote."); *Cal. Valley Miwok Tribe v. Dep't of Interior*, CBCA 817-ISDA, 2007 WL 4468411 (Sept. 27, 2007) ("In Interior's view, the Tribe needed to determine its membership, establish a form of government, and then resolve the Tribe's leadership issues.").

[16] *Cal. Valley Miwok Tribe v. Dep't of Interior*, CBCA 817-ISDA, 2007 WL 4468411 (Sept. 27, 2007) ("although Interior recognized Ms. Burley as a 'person of authority' within the Tribe, the Tribe lacked a governing body which was recognized by Interior").

[17] *Cal. Valley Miwok Tribe v. Dep't of Interior*, CBCA 817-ISDA, 2007 WL 4468411 (Sept. 27, 2007) ("Interior did not recognize the Tribe's government and this created a threat to a government-to-government relationship between the United States and the Tribe.").

- June 19, 2007: BIA issued a letter to Dixie stating that Burley was recognized as a "person of authority" only for P.L. 638 Contract purposes and no tribal leader or government was recognizable.[18]
- September 27, 2007: the U.S. Civilian Board of Contract Appeals issued a decision, in response to Burley's appeal of the April 2007 letter, wherein it repeatedly reiterated the tribal leadership and membership disputes, and Interior's position that it recognized Burley as a person of authority only for P.L. 638 Contract funding and that Interior did not recognize a Tribal leader or government.[19]
- December 13, 2007: Plaintiff entered into the 2007 Fee Agreement with Burley to represent her in recovering the Trust funds, which were withheld because there was no recognizable tribal government or leadership.[20]
- December 14, 2007: BIA issued a letter to Burley informing her that the Tribe's P.L. 638 Contract would not be renewed for FY 2008, citing *Miwok I*, because "[t]he Department of the Interior does not recognize that the California Valley Miwok Tribe has a governing body."[21]
- February 15, 2008: *Miwok II* was issued, affirming *Miwok I* and finding reasonable the Department's position to refuse to recognize Burley's purported leadership of the Tribe when it "does not enjoy sufficient support from [the] tribe's membership."[22]
- June 10, 2008: the Interior Board of Indian Appeals issued a decision dismissing Burley's appeal of the December 2007 letter and noting the P.L. 93-638 Contract proposal was returned because "BIA does not recognize any current governing body for the Tribe, in effect concluding that Burley had not shown that the Tribe had authorized her to submit the ISDA contract proposal."[23]
- December 12, 2008: BIA issued a letter stating the Tribe had no recognizable government, leader, or membership.[24]

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[18] "Interior recognized Ms. Burley as a "person of authority' only so far as the ISDA contract was concerned. Interior did not, however, recognize the actions Ms. Burley took pursuant to the contract to organize the Tribe to be representative of the will of the larger tribal community." *Cal. Valley Miwok Tribe v. Dep't of Interior*, CBCA 817-ISDA, 2007 WL 4468411 (Sept. 27, 2007) ("Interior did not recognize a tribal governing body or governmental leader.").

[19] *Cal. Valley Miwok Tribe v. Dep't of Interior*, CBCA 817-ISDA, 2007 WL 4468411 (Sept. 27, 2007).

[20] FAC at 69-73.

[21] *Cal. Valley Miwok Tribe v. Kempthorne*, No. S-08-3164 FCD/EFB, 2009 WL 10868398, at *3 (E.D. Cal. Feb. 23, 2009); *see Cal. Valley Miwok Tribe v. Central California Agency Superintendent*, 47 IBIA 91, 2008 WL 2802984, at *91 (June 10, 2008).

[22] *Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1267 (D.C. Cir. 2008).

[23] *Cal. Valley Miwok Tribe v. Central Cal. Agency Superintendent*, 47 IBIA 91, 2008 WL 2802984, at *91 (June 10, 2008).

[24] FAC ¶ 79 ("When the BIA is faced with a situation such as this, when it cannot determine who the legitimate leader of the Tribe is, the BIA must first defer to the Tribe to resolve the dispute. The difficulty with CVMT is that because it has no government, it has no governmental forum for resolving the dispute. In similar situations, the BIA

- February 23, 2009: an Eastern District of California district court dismissed a claim brought by Burley, essentially appealing the December 2007 rejection of the P.L. 638 Contract. The court found that even if it assumed it had jurisdiction that Burley would lose because there was no governing body for the Tribe.[25]
- March 10, 2009: Plaintiff entered into the 2009 Fee Agreement with Burley to represent her in recovering the Trust funds and recovering the P.L. 93-638 Contract funds.[26]

Presumably, against this backdrop, Plaintiff chose to enter into the Fee Agreements, with their contingent terms, for his own economic self-interest. However, a "self-inflicted harm doesn't satisfy the basic requirements for standing." *Nat'l Fam. Plan. & Reprod. Health Ass'n v. Gonzales*, 468 F.3d 826, 831 (D.C. Cir. 2006); *Huron v. Berry*, 12 F. Supp. 3d 46, 52-53 (D.D.C. 2013) (holding family lacked standing to challenge government's approval of certain health insurance plans when family chose to enroll in plan that lacked needed medical coverage based on their "own economic self-interest"). Plaintiff is unable to connect his alleged injury to the 2015 Washburn Decision.

Similarly, Plaintiff's assertions concerning advanced costs also fail. "Pecuniary injury is clearly 'a sufficient basis for standing.'" *Cent. Ariz. Water Conservation Dist. v. Env't Prot. Agency*, 990 F.2d 1531, 1537 (9th Cir. 1993) (quoting *Fair v. Env't Prot. Agency*, 795 F.2d 851, 853-54 (9th Cir. 1986)). Plaintiff alleges that "Defendants' actions, as herein alleged, deprived Plaintiff of costs he advanced to the Tribe under the Fee Agreement, which are not subject to the Tribe's recovery of [the Trust] payments." FAC ¶ 66 (emphasis omitted). However, self-made injuries are insufficient to establish standing. *Gonzales*, 468 F.3d at 831. Plaintiff provides only conclusory explanations for how the Washburn Decision caused this alleged injury, of costs he chose to advance.

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would turn to a tribe's general counsel, that is, the collective membership of the tribe. But because CVMT has not even taken the initial step of determining its membership, a general meeting is not possible.") (internal citations omitted).

[25] *Cal. Valley Miwok Tribe v. Kempthorne*, No. S-08-3164 FCD/EFB, 2009 WL 10868398, at *7 (E.D. Cal. Feb. 23, 2009) ("Like *CVMT I* and *II*, the BIA's decision here turned on whether the Tribe had a recognizable governing body. The BIA's determination that the Tribe did not was affirmed by the courts in *CVMT I* and *II*. Based on those decisions, this court cannot find that plaintiff is likely to succeed on the merits of its claims in this case.").

[26] FAC at 67-68.

But "[c]ausation cannot exist when the injury alleged is self-inflicted." *Huron*, 12 F. Supp. 3d at 52.

Plaintiff has not shown how his injury is "concrete and particularized," "not conjectural or hypothetical," "is fairly traceable" to the Washburn Decision, and that "it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlow Env't Servs., Inc.*, 528 U.S. 167, 180-81 (2000). Accordingly, Plaintiff lacks Article III standing, and this case should be dismissed with prejudice.

D. Failure to Comply with Rule 8

Alternatively, apart from the jurisdictional issues of Plaintiff's FAC, Plaintiff's complaint fails to comply with Rule 8. Federal Rule of Civil Procedure 8 mandates that a complaint include "a short and plain statement of the claim," Fed. R. Civ. P. 8(a)(2), and that "[e]ach allegation must be simple, concise, and direct," Fed. R. Civ. P. 8(d)(1). A complaint that is so confusing that its "true substance, if any, is well disguised" may be dismissed for failure to satisfy Rule 8. *Hearns v. San Bernardino Police Dep't*, 530 F.3d 1124, 1131 (9th Cir. 2008) (internal quotation marks omitted) (quoting *Gillibeau v. City of Richmond*, 417 F.2d 426, 431 (9th Cir. 1969)); *see also McHenry v. Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996) ("Something labeled a complaint but written . . . prolix in evidentiary detail, yet without simplicity, conciseness and clarity as to whom plaintiffs are suing for what wrongs, fails to perform the essential functions of a complaint."). Additionally, where the allegations in a complaint are "argumentative, prolix, replete with redundancy, and largely irrelevant," the complaint fails to comply with Rule 8. *McHenry*, 84 F.3d at 1178–79 ("Prolix, confusing complaints . . . impose unfair burdens on litigants and judges.").

Plaintiff's FAC is fifty-nine pages long with 128 paragraphs, with an additional 185 pages of twenty-five separate attachments. Throughout the fifty-nine pages, the FAC contains multiple verbose and repetitive paragraphs that often span entire pages *See, e.g.* FAC ¶¶ 19, 20, 22, 26, 31, 50, 55, 57, 64, 65, 70, 71, 75, 76, 94. The FAC also

improperly includes legal argument sections. *See, e.g.*, FAC at 13 (Article III Standing), at 46 (Prudential Standing), at 55 (No Discretionary Function Exception). As such, the FAC is subject to dismissal pursuant to Rule 8. *See Alegre v. Jewell*, No. 16-cv-2442-AJB-KSC, 2017 WL 3525278, at *5-6 (S.D. Cal. Aug. 15, 2017) ("The Court itself is 'busy enough without having to penetrate a tome approaching the magnitude of *War and Peace* to discern [Plaintiffs'] claims and allegations.' The onus is properly placed on Plaintiffs' shoulders to succinctly set forth the basis for their claims.") (quoting *Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1059 (9th Cir. 2011)).

IV. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court grant its motion and dismiss this action with prejudice.

Dated: May 2, 2025

Respectfully Submitted,

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