1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ADAM GORDON
United States Attorney
ERIN M. DIMBLEBY
Assistant U.S. Attorney
California Bar No. 323359
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Tel: (619) 546-6987
Fax: (619) 546-7751
Email: Erin.Dimbleby@usdoj.gov

Attorneys for Defendant

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 REPLY IN SUPPORT OF 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

A. Failure to Satisfy Statute of Limitations

Plaintiff's claims are barred by the FTCA's statute of limitations, under 28 U.S.C. § 2401(b), because they accrued well over two years ago. Plaintiff's 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 the Washburn Decision's alleged nullification of Plaintiff's contractual rights rooted in the Fee Agreements "is the proper place to locate his injury-in-fact." *Corrales v. Dutschke*, 760 F. Supp. 3d 1053, 1062 (S.D. Cal. 2024). Similarly, this Court acknowledged that Plaintiff was allegedly injured when the Washburn Decision was issued in 2015 and accrual occurred in 2015. *See id.* at 1065 n.4.

Notably, within his opposition, Plaintiff does not contest that he was allegedly injured in 2015 when the Washburn Decision was issued. Plaintiff instead argues that he also was allegedly injured on May 31, 2022 (when the Newland Decision was issued), on September 27, 2023 (when the BIA declined to provide a letter to Plaintiff), and in October 2023 (when he received an adverse ruling in a state court action). ECF No. 13 at 11-13. As explained in the United States' motion, 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.[1] *See*

[1] The FAC does not allege an injury or claim associated with a letter he sent to the BIA in June 2023 and a letter he received in response from the BIA in September 2023. To the extent Plaintiff is seeking to amend the FAC in his opposition, this is not permissible. *See Estate of Munoz v. United States*, No. 23-cv-1422-JES-SBC, 2024 WL 584430, at *3 (S.D. Cal. Feb. 13, 2024). However, this argument fails for the same reasons as those concerning Plaintiff's reliance on the Newland Decision. Plaintiff's assertions that he suffered further injuries is irrelevant to the fact that his injuries

1 *Wallace v. Kato*, 549 U.S. 384, 391 (2007) ("[T]he cause of action accrues even though
2 the full extent of the injury is not then known or predictable. . . . Were it otherwise, the
3 statute would begin to run only after a plaintiff became satisfied that he had been harmed
4 enough, placing the supposed statute of repose in the sole hands of the party seeking
5 relief.") (citations omitted); *Ashley v. United States*, 413 F.2d 490, 493 (9th Cir. 1969)
6 ("[O]ne who knows that an injurious tort has been committed against him by the
7 Government may [not] delay the filing of his suit until the time, however long, when he
8 becomes knowledgeable as to the precise extent of the damage resulting from the
9 tort[.]").

10 Plaintiff points to *Corner Post, Inc. v. Bd. of Governors of Fed. Reserve System*,
11 603 U.S. 799 (2024), to support his assertion that his injury and claim accrual occurred
12 in October 2023. ECF No. 13 at 11. However, in *Corner Post*, the Supreme Court was
13 strictly analyzing claims brought under the Administrative Procedure Act (APA)—not
14 the FTCA—and when accrual occurred for purposes of 28 U.S.C. § 2401(a)'s six-year
15 statute of limitations—not § 2401(b)'s two-year statute of limitations. *See Corner Post*,
16 603 U.S. 799. Regardless, the Supreme Court held, for purposes of § 2401(a), that
17 accrual occurs when a plaintiff is injured. *See id.* at 825 ("An APA claim does not accrue
18 for purposes of § 2401(a)'s 6-year statute of limitations until the plaintiff is injured by
19 final agency action.").

20 Plaintiff also seeks to rely on the "reopening doctrine," but provides zero
21 explanation or legal support for how such a doctrine is applicable to this case. ECF No.
22 13 at 12-13. The reopening doctrine has seen limited applicability and within those
23 limited instances as only been applied to claims brought under the APA—not claims
24 arising in tort brought under the FTCA. *See Corrales*, 760 F. Supp. 3d at 1066-67
25 (analyzing application of reopening doctrine); *see also Nat'l Ass'n of Reversionary*
26
27
28

accrued in 2015 when the Washburn Decision was issued. *See also Corrales v. Dutschke*, No. 23-cv-1876 JLS (DDL), 2024 WL 1023023, at *5-6 (S.D. Cal. Mar. 8, 2024) (finding the September 2023 letter from BIA to not be a final agency action).

Prop. Owners v. Surface Transp. Bd., 158 F.3d 135, 141 (D.C. Cir. 1998) (noting "when [a] later proceeding explicitly or implicitly shows that the agency actually reconsidered [a] rule, the matter has been reopened and the time period *for seeking judicial review* begins anew.") (emphasis added).

Accordingly, as explained herein and in the motion, as Plaintiff's claims 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 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). 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). While the FTCA provides a limited waiver of sovereign immunity as to certain torts, the contract rights exception to the FTAC bars "[a]ny claim arising out of . . . interference with contract rights." 28 U.S.C. § 2680(h). "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).

Plaintiff avers that the contract rights exception does not bar his claims because he "does not solely allege that the government interfered with his contract with the Tribe." ECF No. 13 at 13-14. However, Plaintiff fails to explain, in nonconclusory terms, what other duty and claim would be actionable for his case. *See id.* at 14 ("The duty the federal government had to use due care in resolving the Tribal leadership dispute through the Washburn and Newland Decisions so as not to harm Plaintiff is distinct from any duty it may have had not to interfere with the existing or past

contractual relationship between Plaintiff and Burley.").[2] Plaintiff's alleged injuries are "wholly attributable" to his claims of contract interference and his allegations of contract interference are "essential" to his claims. *See Block v. Neal*, 460 U.S. 289, 297 (1983).

Plaintiff's reliance on *Sowell v. United States,* 835 F.2d 1133 (5th Cir. 1988), and *Mundy v. United States*, 983 F.2d 950 (9th Cir. 1993), is inapposite. In *Sowell*, "Sowell, an Army private, completed a form allowing the Army to deduct a life insurance premium from his paycheck and pay it to the insurance company. No premiums were ever paid. As a result, when Sowell died, the insurance company denied coverage to the anticipated beneficiary. The beneficiary sued the United States under the FTCA alleging it negligently misplaced the form." *Ecco Plains, LLC v. United States*, 728 F.3d 1190, 1200 (10th Cir. 2013). There, relying on Louisiana law, the court found the contract rights exception did not apply because of the existence of an independent and distinct alleged duty: "[T]he duty the Army owed to use due care in processing Sowell's allotment forms is distinct from any duty the Army may have had not to interfere with existing or potential contractual relationships between Sowell and [the insurance company]." *Sowell,* 835 F.2d at 1135. The court in *Mundy* similarly found the exception did not apply because "the tortious wrong alleged in [plaintiff's] complaint [was] the failure to process a security clearance with due care, not an interference with contract." *Mundy*, 983 F.2d at 953.

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.'"

---

[2] Even if Plaintiff successfully alleged the appropriate duty owed was to resolve a tribal leadership dispute, said duty would be a purely federal duty, and the only applicable duties owed by the United States under the FTCA are those that would apply to a private person in California. *See* 28 U.S.C. § 1346(b)(1) (applying to the "negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, 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.").

Mangano v. United States, No. 05-cv-02836-PJH, 2005 WL 8162006, at *9 (N.D. Cal. Oct. 28, 2005) (quoting *Numrich v. United States*, No. CV-01-532-ST, 2001 WL 34043386, at *6 (D. Or. Sept. 10, 2001) (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)]"). 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)).

Accordingly, as explained herein and in the motion, Plaintiff's claims should be dismissed with prejudice under 28 U.S.C. § 2680(h).

C. Plaintiff Lacks Article III Standing

Plaintiff acknowledges the "BIA cannot and did not 'give' Burley any authority." ECF No. 13 at 17; *id.* at 18 ("The issue is not whether the BIA could 'give Burley the authority' to enter into 3rd party contracts, including the subject Fee Agreement. It has no such authority."). Relying on *Cayuga Nation v. Tanner*, 824 F.3d 321 (2d Cir. 2016), Plaintiff argues the issue is that BIA's recognition of Burley as a "person of authority" allowed her the authority to initiate litigation on behalf of the Tribe, which Plaintiff argues "necessarily includes the authority to hire a lawyer to initiate those lawsuits and signing a Fee Agreement to that effect." ECF No. 13 at 22. *Cayuga Nation*, which is

factually and legally distinguishable, does not support Plaintiff's position.[3] Even assuming Burley had authority to initiate litigation on behalf of the Tribe because of a "person of authority" designation, initiating a lawsuit is not the same as entering into a contract for legal representation. Plaintiff acknowledges this distinction when he agrees BIA could not and did not give Burley the authority to enter into third party contracts.

The Washburn Decision cannot be the cause of Plaintiff's alleged nullification of an expected interest[4] because it had no impact on Burley's purported "person of authority" status and no impact on the Fee Agreements. At the time that he entered into the Agreements with Burley there was a long-standing tribal leadership dispute, BIA did not recognize a tribal government or leader, and any provided status as a "person of authority" was limited to P.L. 638 Contracts[5] and was extinguished. Plaintiff was aware of the leadership dispute, Burley's lack of recognition, the limited nature of the "person of authority" designation, and the extinguishment of the limited "person of authority" designation when he entered into the Fee Agreements with Burley. Plaintiff entered into the 2007 Agreement with Burley to represent her in recovering the Trust funds, which were withheld because there was no recognizable tribal government or leadership;[6] and he entered into the 2009 Agreement with Burley to represent her in recovering the Trust

---

[3] However, *Cayuga Nation* does support the recognition that "federal courts lack authority to resolve internal disputes about tribal law." 824 F.3d at 327. Resolution of Plaintiff's request that the Court find Burley had proper tribal authority to enter into the Fee Agreements would require the Court to resolve internal tribal issues. Plaintiff has provided no legal basis, cause of action, or jurisdictional basis for the Court to consider that request. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 n.32 ("A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community. Given the often vast gulf between tribal traditions and those with which federal courts are more intimately familiar, the judiciary should not rush to create causes of action that would intrude on these delicate matters.") (internal citation omitted).

[4] "[I]t is BIA's alleged extinguishment of his expectancy interest in the attorney's fees, which is a contractual interest rooted in the Fee Agreement between Plaintiff and Burley. This alleged nullification of Plaintiff's contractual rights is the proper place to locate his injury-in-fact." *Corrales*, 760 F. Supp. 3d at 1062 (emphasis omitted).

[5] Such contracts, entered into pursuant to the Indian Self-Determination and Education Assistance Act, are government-to-government contracts and contemplate services like education and law enforcement. *See Corrales*, 2024 WL 1023023, at *4.

[6] *See* FAC at 69-73.

1 funds and P.L. 93-638 Contract funds, which were withheld because there was no
2 recognizable tribal government, leadership, or person of authority.[7]

3 As detailed in the timeline provided by Defendant, *see* ECF No. 12 at 26-29, the
4 events that occurred around the time Plaintiff entered into the Fee Agreements in 2007
5 and 2009 demonstrate Plaintiff's incapability of establishing standing. Moreover, it was
6 the 2011 Echo Hawk Decision that changed agency policy towards Burley, and
7 recognition of tribal leadership. The 2015 Washburn Decision returned agency policy
8 to its longstanding course. The 2011 Decision acknowledged that it "mark[ed] a 180-
9 degree change of course from positions defended by [BIA] in administrative and
10 judicial proceedings *over the past seven years*." *Cal. Valley Miwok Tribe*, 5 F. Supp. 3d
11 86, 96 (D.D.C. 2013) (modifications in original and emphasis added). The Washburn
12 Decision was issued in response to the 2011 Decision being found to be arbitrary and
13 capricious and an unexplained change in policy. FAC at 136, 141. Thus, the 2011
14 Decision was a change in agency policy and the Washburn Decision returned agency
15 policy to its longstanding course.

16 Plaintiff has not shown how his injury[8] is "concrete and particularized," "not
17 conjectural or hypothetical," "is fairly traceable" to the Washburn Decision, and that "it
18

19 [7] *See* FAC at 67-68. In December 2007, BIA issued a letter to Burley informing her the Tribe's P.L. 638 Contract would not be renewed for FY 2008, because "[DOI] does not
20 recognize that the [Tribe] has a governing body." *CVMT v. Kempthorne*, No. S-08-3164 FCD/EFB, 2009 WL 10868398, at *3 (E.D. Cal. Feb. 23, 2009); *see CVMT v. Cent.
21 Cal. Agency Superintendent*, 47 IBIA 91, 2008 WL 2802984, at *91 (June 10, 2008). In June 2008, the Interior Board of Indian Appeals issued a decision dismissing Burley's
22 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
23 effect concluding that Burley had not shown that the Tribe had authorized her to submit the ISDA contract proposal." 47 IBIA 91, 2008 WL 2802984, at *91 (June 10, 2008).
24 In February 2009, a district court dismissed a claim brought by Burley, through Plaintiff, essentially appealing the December 2007 rejection. The court found even if it assumed
25 it had jurisdiction that Burley would lose because there was no governing body for the Tribe. *CVMT*, 2009 WL 10868398, at *7 ("Like *CVMT I* and *II*, the BIA's decision here
26 turned on whether the Tribe had a recognizable governing body.").

[8] Plaintiff's reference to Justice Kavanaugh's mention of downstream effects in his
27 concurring opinion in *Corner Post*, 603 U.S. 799, is misplaced. *Corner Post* concerned accrual timing for the six-year statute of limitations under the APA, not Article III
28 standing. *See id.* Further, the nonbinding concurring opinion was written only to explain "the APA authorizes vacatur of agency rules." *Id.* at 826 (Kavanaugh, J., concurring).

is likely," as opposed to merely speculative, to be redressed by a favorable decision. *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). Accordingly, Plaintiff lacks Article III standing, and this case should be dismissed with prejudice.

D. Failure to Comply with Rule 8

Plaintiff cannot dispute that his FAC, which is fifty-nine pages long with 128 paragraphs, many of which are repetitive and span entire pages and include improper legal argument sections, with an additional 185 pages of twenty-five separate attachments, is not a "short and plain statement of the claim" that is "simple, concise, and direct." To the contrary, the FAC is cumbersome, confusing, and fails to satisfy the basic pleading requirements of Federal Rule of Civil Procedure 8 and would impose an unreasonably onerous burden on Defendant to admit or deny each allegation asserted by Plaintiff. As explained in the motion, *see* ECF No. 12 at 30-31, Plaintiff's FAC is subject to dismissal pursuant to Rule 8. *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.").

E. Conclusion

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

Dated: May 30, 2025

Respectfully Submitted,

ADAM GORDON
United States Attorney

s/Erin M. Dimbleby
ERIN M. DIMBLEBY
Assistant United States Attorney

Attorneys for Defendant