**IN THE UNITED STATES
COURT OF FEDERAL CLAIMS**

THOMAS EUGENE SMITH, *et al.*, Plaintiffs, v. UNITED STATES, Defendant.	Civil Action No. 25-1718L

**THE UNITED STATES' MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

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Introduction

As part of the Treaty of Prairie du Chien of July 15, 1830 ("1830 Treaty"), 7 Stat. 328 (1830), a tract of land was set aside for the Sioux Bands' "half-breeds." Plaintiffs refer to that land as "the Lake Pepin Reservation" and assert that they are descendants of the half-breed Sioux described in the 1830 Treaty and later statutes. The land set aside for the Sioux Bands' half-breeds was sold to private owners long ago. Traditionally, the United States does not have a government-to-government relationship with the alleged descendants from the Lake Pepin Reservation, nor does it treat them as a federally recognized tribe. Nor does the United States hold the alleged Lake Pepin Reservation in trust—there is no present-day "reservation."

Plaintiffs' Complaint contains seven counts alleging that the United States (1) issued invalid land patents in long-ago disposing of the Lake Pepin Reservation; (2) breached its obligations to put the proceeds from the land sales into trust; (3) illegally converted the proceeds from land sales; (4) failed to disclose title encumbrances and clear Indian title; (5) took Plaintiffs' lands without just compensation; and (6) failed to treat Plaintiffs or the alleged Lake Pepin Reservation as federally recognized tribes and deprived Plaintiffs of federal benefits. Plaintiff's seventh count seeks equitable relief, asking the Court to, among other things, order the United States to conduct an accounting, restore the legal status of these entities, and publish a census. The Complaint contains numerous deficiencies and should be dismissed in its entirety for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted.

First, Plaintiffs' claims are barred by the statute of limitations. With one exception, all Plaintiffs' claims accrued in the mid-1800s. Plaintiffs' other claim (Count VI) is also outside the statute of limitations because it accrued by 1979, at the latest. The Indian Claims Commission Act (ICCA) also extinguished all Plaintiffs' claims except Count VI. Second, Plaintiffs lack standing because they have not pled a cognizable property interest in the land at issue. Third, Plaintiffs' claims fail for multiple, independent jurisdictional reasons. Plaintiffs' challenge to land title is not cognizable here. Their breach-of-trust claim requires a "specific" fiduciary obligation imposed by statute or regulation, which is a threshold that Plaintiffs cannot meet under controlling precedent. And Plaintiffs' tort claims and requests for equitable relief fall beyond this Court's Tucker Act jurisdiction. Fourth, Plaintiffs' takings claim (Count V) should be dismissed because Plaintiffs have not adequately alleged that they held an enforceable property interest against the United States at the time of the alleged taking. As a result, the Court should dismiss the Complaint in its entirety.

Background

I. The Lake Pepin Reservation

Plaintiffs allege that Article IX of the 1830 Treaty established the Lake Pepin Reservation. Compl. ¶ 1; Ex. 1.[1] Under the 1830 Treaty, the Sioux Bands in Council solicited permission from the United States for the Sioux to bestow upon "the half breeds of their Nation" a tract of land. *Id.*; Compl. ¶ 56. The tract was for mixed-heritage individuals from the four following bands of Sioux (Dakota) Indians: Mdewakanton, Wahpekute, Sisseton, and Wahpeton. Art. IX, 7 Stat. 330. The tract of land was

[1] For purposes of this Rule 12 motion, the United States cites the Complaint for applicable background. If the Court denies this motion and the case proceeds, the United States reserves the right to challenge the validity of any of Plaintiffs' allegations.

originally comprised of 320,000 acres on the western side of Lake Pepin and the Mississippi River. Art. IX, 7 Stat. 330; Compl. ¶ 73. It is principally in the area now known as Wabasha County, Minnesota. *Id.* ¶ 51. In the Treaty, the United States agreed with the Sioux Bands that the half-breeds would hold the title in the same manner as other Indian tribes with their reservations. Art. IX, 7 Stat. 330.

In July 1854, the United States passed an Act ("1854 Act"), 10 Stat. 304, Compl., Ex. 2, "to have the lands within the said reserve surveyed and exposed to public sale . . . ." 10 Stat. 304, § 3. *See* Compl. ¶¶ 142, 144. This Act authorized the issuance of documents, referred to as scrips,[2] for land to the "half-breeds or mixed-bloods of the Dacotah or Sioux nation of Indians" in exchange for "a full and complete relinquishment by them to the United States of all their right, title, and interest . . . ." 10 Stat. 304, § 1; Compl. ¶ 144. The Act stated that "scrips may be located upon any of the lands within said reservation not now occupied by actual and bona fide settlers of the half-breeds or mixed-bloods, or other such persons as have gone into said Territory by authority of law, or upon any other unoccupied lands subject to preemption or private sale, or upon any other unsurveyed lands, not reserved by the Government, upon which they have respectively made improvements . . . ." 10 Stat. 304, § 1. It also provided that no transfer or conveyance of scrips shall be valid. *Id.* In addition, the Act authorized it "to be ascertained the number and names of the half-breeds or mixed bloods who are entitled to participate in the benefits of the said grant or reservation as aforesaid, before the issue of the certificates or scrip provided for in the preceding section." 10 Stat. 304, § 2; Compl. ¶ 142.

[2] A "scrip" was a certificate issued by the United States to an individual or entity to be used to claim or acquire public lands. *Id.* ¶ 144.

Four years later, through the Act of May 19, 1858 ("1858 Act"), 11 Stat. 292 (1858), Compl., Ex. 3, Congress amended the 1854 Act. At that time, as with much of the Midwest, white settlement was increasing. The amended Act provided that the settlements of white settlers in the area were valid and did not conflict with the half-breed settlements. 11 Stat. 292, § 1. The 1858 Act stated that "settlements heretofore made thereon are declared valid so far as they do not conflict with settlements made by half-breeds, and that the settlers shall have the benefit of the preemption laws of the United States, any location of half-breed scrip thereon, after the date of the settlement, notwithstanding." *Id.*

Despite the 1854 Act's prohibition on transfer of scrips, Plaintiffs allege transfers occurred. Compl. ¶ 383. Plaintiffs attach an exhibit to the Complaint, Ex. 28, which they allege "shows the known land sales within the Lake Pepin Reservation to settlers." Compl. ¶ 380. The sales listed on Ex. 28 occurred between 1857 and 1947. *Id.*, Ex. 28 at 80-142. Plaintiffs also attach alleged copies of land patents,[3] which were issued in the 1800s. *Id.*, Ex. 17; Ex. 28 at 143-52. Plaintiffs "estimate that initially 60% of the land patents were to whites and 40% Sioux scrip patents [were] to Sioux half-breed lineal descendants." *Id.* ¶ 382. But Plaintiffs allege that "the 40% Sioux scrip patents dwindled to nothing as whites obtained this property too until the Sioux half-breed lineal descendants were completely dispossessed of the Lake Pepin Reservation." *Id.* ¶ 383. Plaintiffs allege that the "Lake Pepin Reservation existed under the 1830 Treaty and then later, sometime after the 1854 and 1858 Laws, was administratively dispossessed."

[3] A "land patent" is a federal conveyance document that is created on the initial transfer land ownership, i.e., title, from the United States to an individual. *Silver State Land LLC v. United States*, 148 Fed. Cl. 217, 223, n.4 (2020).

Id. ¶ 384. In short, in the 1850s, the land in question was a mixture of non-Indian fee patents and scrips held by Sioux "half-breeds." *Id.* ¶ 382-83. But through non-federal land transactions, those in the latter group slowly lost their land interests. *Id.*

Neither the alleged Lake Pepin Reservation[4] nor the purported Sioux half-breed descendants appear on the list of tribes recognized by the federal government. *Id.* ¶ 578; Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 89 Fed. Reg. 944 (Jan. 8, 2024). According to Plaintiffs, neither entity appeared on Interior's unofficial lists that predated the publishing of the annual lists. Compl. ¶¶ 574-75. Ultimately, Plaintiffs allege that the Lake Pepin Reservation and the descendants were wrongfully omitted from the lists. *Id.* ¶ 578.

II. The Complaint

Plaintiffs describe themselves as "Sioux half-breed lineal descendants who are beneficiaries under the 1830 Treaty, the 1854 Act and 1858 Act regarding the Lake Pepin Reservation." *Id.* ¶ 3. Plaintiffs attach an exhibit to their Complaint, Ex. 12, which they allege is "the United States 1855 Sioux half-breed descendant roll." *Id.* ¶ 13. Plaintiffs fail to identify any specific ancestor or relative connecting them to the roll; they simply assert lineal descent from persons on it. *Id.* Plaintiffs seek to represent an alleged putative class of similarly situated individuals. *Id.* ¶ 17.

Plaintiffs' seven-count Complaint asserts the following claims: (Count I) land patents within the alleged Lake Pepin Reservation are invalid, *id.* ¶¶ 467-86; (Count II) breach of trustee obligations, *id.* ¶¶ 487-500; (Count III) breach of fiduciary duty and illegal conversion of land sale proceeds, *id.* ¶¶ 501-17; (Count IV) breach of fiduciary

[4] The Complaint seems to refer to the Lake Pepin Reservation both as a non-monetary trust asset and a tribal entity that should be federally recognized. *See*, *e.g.*, *id.* ¶¶ 1, 578.

duty based on an alleged failure to disclose encumbrances on land certificates and other government-issued documents to clear Indian title, *id.* ¶¶ 518-35; (Count V) an alleged unlawful dispossession of the alleged Lake Pepin Reservation without just compensation, in violation of the Takings Clause, *id.* ¶¶ 536-67; (Count VI) breach of purported money-mandating duties under the State and Local Fiscal Assistance Act of 1972 ("Revenue Sharing Act"), Pub. L. 92-512, 86 Stat. 931, *id.* ¶¶ 568-81; and (Count VII) a wide range of equitable relief, *id.* ¶¶ 582-95. Along with equitable relief, Plaintiffs also seek damages. *Id.* at 116-17.

Legal Standards

All of Plaintiffs' claims should be dismissed for lack of subject matter jurisdiction. "It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction." *United States v. Navajo Nation* ("*Navajo I*"), 537 U.S. 488, 502 (2003) (quoting *United States v. Mitchell* ("*Mitchell II*") 463 U.S. 206, 212 (1983)). Jurisdiction must be established before courts may proceed to the merits of a case. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 88-89 (1998). Courts are presumed to lack subject-matter jurisdiction unless the record affirmatively indicates it; therefore, it is Plaintiffs' responsibility to allege facts sufficient to establish the court's subject-matter jurisdiction. *Renne v. Geary*, 501 U.S. 312, 316 (1991). The Court may look to evidence outside the pleadings and inquire into jurisdictional facts to determine the existence of subject matter jurisdiction. *Reynolds v. Army and Air Force Exch. Serv.*, 846 F.2d 746, 747 (Fed. Cir. 1988). Plaintiffs cannot rely solely on factual allegations in the Complaint but must bring forth relevant adequate proof to establish jurisdiction. *See McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189

(1936).

Plaintiffs' Count V takings claim should also be dismissed under RCFC 12(b)(6) for failure to state a claim upon which relief can be granted. To state a claim, Plaintiffs must allege facts showing that they are entitled to relief. RCFC 8(a); *Huntington Promotional & Supply, LLC v. United States*, 114 Fed. Cl. 760, 766 (2014). Plaintiffs' obligation to provide supporting factual allegations requires more than labels and conclusions; a formulaic recitation of a cause of action is not sufficient. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007).

Argument

I. All Plaintiffs' claims are barred by the statute of limitations.

Plaintiffs' claims are barred by the jurisdictional six-year statute of limitations in 28 U.S.C. § 2501. As noted above, the key facts and events that underpin Counts I-V and VII occurred in the mid-1800s. The facts relevant to Count VI occurred by 1979 at the latest. Plaintiffs do not dispute these dates, nor do they establish that the accrual date of any claims should be suspended. Because the statute of limitations imposed by § 2501(a) expired long ago, the claims against the United States must be dismissed.

Congress has barred "[e]very claim of which the United States Court of Federal Claims has jurisdiction … [unless] filed within six years after such claim first accrues." 28 U.S.C. § 2501. This statute of limitations is jurisdictional. *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 134 (2008). When a waiver of sovereign immunity contains a statute of limitations, the provision amounts to a condition on the waiver of sovereign immunity. *United States v. Mottaz*, 476 U.S. 834, 841 (1986). This condition on the waiver must be strictly observed. *Block v. N. Dakota*, 461 U.S. 273, 274 (1983). Plaintiffs' claims accrued "when all the events which fix the government's alleged liability have occurred and [Plaintiffs were] or should have been aware of their existence." *San Carlos Apache Tribe v. U.S.*, 639 F.3d 1346, 1350 (Fed. Cir. 2011). Plaintiffs do "not have to possess actual knowledge of all of the relevant facts in order for the cause of action to accrue." *Fallini v. United States*, 56 F.3d 1378, 1380 (Fed. Cir. 1995). A breach of trust claim accrues when "the trustee 'repudiates' the trust and the beneficiary has knowledge of that repudiation." *Shoshone Indian Tribe of the Wind River Reservation v. United States*, 364 F.3d 1339, 1348 (Fed. Cir. 2004). "A trustee may repudiate the trust by express words or by taking actions inconsistent with his responsibilities as trustee." *Id.*

A. Plaintiffs' claims accrued more than six years ago.

1. Count I: Government-issued patents are invalid

According to the Complaint, the United States failed to protect Plaintiffs' interests in the alleged Lake Pepin Reservation, issued invalid land patents, and mishandled the proceeds or title-related interests associated with those transactions. Those events occurred generations ago. For example, Plaintiffs' challenge to the validity of the patents issued by the United States (Count I) accrued when the patents were issued in the mid-1800s. Compl. ¶¶ 142 (the patents were issued under the 1854 and 1858 Acts); 210-12 (discussing the government-issued patents); Ex. 17 (alleged copies of land patents issued in the 1800s); Compl. ¶ 380, Ex. 28 at 143-52 (alleged copies of land patents from the 1850s-80s).

2. Count II, III, IV: Breach of trust, tort, and fiduciary duty

The United States' purported breaches of trust (Counts II, III, IV)[5] accrued, at the

[5] As explained below, Count III sounds in tort.

latest, when the United States allegedly conveyed the land at issue, issued the patents or other documents, allegedly illegally converted proceeds from the sales, and failed to safeguard title. Breach of trust claims accrue at the time of the government's action, not when the full extent of damages are known. *San Carlos Apache Tribe*, 639 F.3d at 1350; *Navajo Nation v. United States*, 631 F.3d 1268, 1277 (Fed. Cir. 2011) (same). None of these claims identify, much less challenge, any action within six years of the Complaint's filing. Plaintiffs allege the land sales within the alleged Lake Pepin Reservation occurred between 1857 and 1947. Compl. ¶ 380, Ex. 28 at 80-142 (listing dates of land sales). In addition, Plaintiffs' claims stem from land patents from the mid-1800s. Ex. 28 at 143-52; Compl. ¶¶ 307, 309, 530 (alleging that the United States failed to print Indian title encumbrances on the land patents). And Plaintiffs allege that the United States has caused the loss of sale proceeds and interest starting in 1857. Compl. ¶ 465; *id.* ¶¶ 364, 381, 494, 503. Thus, these claims too exceed the statute of limitations by many years.

3. Count V: Fifth Amendment taking

Plaintiffs' takings claim (Count V) is also far outside the statute of limitations. Plaintiffs' takings claim centers on the United States' alleged failure to protect the alleged Lake Pepin Reservation. *See, e.g.*, Compl. ¶¶ 315-16, 320, 323. To the extent that Plaintiffs tie their claim to any government action that could have affected or "taken" their alleged reservation lands without just compensation, it is the issuance of the land patents in the mid-1800s and the land sales that started at the same time. *Id.* ¶¶ 563, 549-50. Thus, Plaintiffs' takings claim accrued long ago. *See Voisin v. United States*, 80 Fed. Cl. 164, 170-71 (2008) (government's issuance of land patents for plaintiffs' land and subsequent sale of land under legislation represented the accrual of takings claim).

4. Count VI: Breach of money-mandating duties of the

Revenue Sharing Act

Plaintiffs' Count VI arises from Interior's alleged failure to include the descendants of the half-breed Sioux associated with the alleged Lake Pepin Reservation and the Reservation on the list of federally recognized tribes. *Id.* ¶ 577-78.[6] Thus, according to Plaintiffs, causing the loss of federal benefits under the Revenue Sharing Act. *Id*. Interior began publishing lists of recognized tribes in the Federal Register in 1979. 25 C.F.R. § 54.6(a), (b) (1978). None of those lists ever included these alleged tribal entities. *See*, *e.g.*, Indian Tribal Entities That Have a Government-to-Government Relationship with the United States, 44 Fed. Reg. 7235 (Feb. 6, 1979); Compl. ¶¶ 574-75 (alleging that neither entity appeared on Interior's unofficial lists that predated the 1979 list); *id.* ¶ 578 (alleging that these entities were wrongfully omitted from the list of federally recognized tribes). The Complaint also makes clear that Plaintiffs knew "the Sioux half-breed lineal descendants never received the federal benefits under the Revenue Sharing Act that Sioux half-breed lineal descendants were entitled to." *Id.* ¶ 578. Accordingly, Count VI also accrued outside the limitations period.

5. Count VII: Claims for equitable relief

Plaintiffs' Count VII fares no better, as it merely repackages the same alleged historical injuries and seeks equitable relief derived from the underlying claims. *See*, *e.g.*, Compl. ¶ 584 (requesting an accounting of, among other things, the land sale proceeds), *id.* ¶ 587 (requesting that the legal status of the reservation be restored); *id.* ¶¶ 588-89 (requesting that the land patents be corrected). Because the events giving rise

[6] Under the Federally Recognized Indian Tribe List Act of 1994, Interior publishes in the Federal Register a list of all federally recognized Indian tribes entitled to receive benefits and services from Interior. *See* 25 U.S.C. § 5131.

to those claims occurred nearly 150 years ago, Plaintiffs' Count VII is also untimely.[7]

B. Plaintiffs cannot evade the statute of limitations.

Plaintiffs try to preserve their long-stale claims, arguing that the statute of limitations has not run because the United States allegedly misrepresented the 1830 Treaty and certain laws, Compl. ¶¶ 418-19, 434-35, and concealed facts, *id.* ¶ 436-45, 451, 453-57. But the statute of limitations in § 2501 is not subject to equitable tolling. *San Carlos Apache Tribe*, 639 F.3d at 1349-50. The accrual suspension rule is "strictly and narrowly applied," and the accrual date of a cause of action will be suspended in only two circumstances: "[the plaintiff] must either show that defendant has concealed its acts with the result that plaintiff was unaware of their existence or it must show that its injury was 'inherently unknowable'" at the time the cause of action accrued. *Martinez v. United States*, 333 F.3d 1295, 1319 (Fed. Cir. 2003) (citation modified); *Menominee Tribe of Indians v. United States*, 726 F.2d 718, 721 (Fed. Cir. 1984) (facts of alleged forest mismanagement not inherently unknowable where facts were available if tribe launched an inquiry through their agents). Neither circumstance is present here.

As for the 1830 Treaty and 1854 and 1858 Acts, "it is fundamental jurisprudence that the [treaty and laws'] *objective* meaning and effect were fixed when [they were] adopted." *Catawba Indian Tribe of S.C. v. United States*, 982 F.2d 1564, 1570 (Fed. Cir. 1993). As the Federal Circuit explained in *Catawba*, "[w]hether the harm was caused"

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[7] In addition to the Complaint and exhibits, other documents suggest that Plaintiffs' claims accrued more than six years before filing this action. For example, Plaintiffs' counsel filed a separate action repeatedly referencing the Lake Pepin Reservation in February 2019. Compl. ¶¶ 19, 32-33, 35-36, 74, 80, 88, 90, 92, 104-05, 107, 124, 182-83, 230, 239, Dkt. No. 1, *Mdewakanton Band of Sioux in Minnesota, v. Bernhardt*, No. 19-cv-402 (Feb. 15, 2019).

by the Treaty and laws, themselves, "or by Government misrepresentations about what the effect" of the Treaty and laws might be, "the damage was done when [they] became effective . . . ." *Id.* at 157 (internal quotations omitted). Thus, any suit based on the 1830 Treaty and these laws must have been filed by 1864 at the latest.

Plaintiffs also argue that the United States concealed facts related to the land sales, patents, and other government-issued documents, as well as the status of the alleged Lake Pepin Reservation and the purported Sioux half-breed descendants. *See, e.g.*, Compl. ¶ 437. But if Plaintiffs' ancestors' interests in the alleged Lake Pepin Reservation were sold or incorrectly represented on government-issued documents, this should have spurred them to "seek advice, launch an inquiry, and discover . . . the facts underlying their current claim." *Menominee Tribe*, 726 F.2d at 721. Plaintiffs have not shown that the United States actively concealed information such that Plaintiffs "could not have discovered the basis of [their] claim[s]," or that the facts forming their claim were inherently unknowable. *Hopland Band of Pomo Indians v. United States,* 855 F.2d 1573, 1577 (Fed. Cir. 1988). To the contrary, Plaintiffs have attached alleged records of land sales and copies of land patents to their Complaint—showing that such facts were clearly discoverable. *See, e.g.*, Compl., Exs. 17, 28 at 143-52. Where activities are open and notorious the claimant is "on inquiry as to its possible injury." *Coastal Petroleum Corp. v. U.S.*, 228 Ct. Cl. 864, 867 (1981).

Plaintiffs concede that the purported Sioux half-breed descendants associated with the alleged Lake Pepin Reservation have never appeared on the list of federally recognized tribes. Compl. ¶¶ 574-75, 578. Nor has the Reservation, itself. *Id.* Since 1979, lists of federally recognized tribes have been regularly published in the Federal Register, which provided sufficient notice to make Plaintiffs aware of their claim. *See* 44 U.S.C.

§ 1507 (publication in the Federal Register of a document required by Congress to be published provides sufficient notice of its contents). The Complaint also makes clear that it has been plain for many decades that the United States does not treat the alleged Lake Pepin Reservation as Indian Country under 18 U.S. Code § 1511. *See*, *e.g.*, Compl. ¶¶ 16, 295, 300, 317, 383, 404 (alleging that the descendants have been completely dispossessed of the reservation); *id.* ¶¶ 382-83 (alleging that the land patents were issued to white settlers or ended up in their possession).

Nor does the continuing claim doctrine (Compl. ¶¶ 417, 425-26) salvage Plaintiffs' claims. The "continuing claim" doctrine does not preserve an otherwise time-barred challenge to an alleged wrong simply because an injury is still being felt from the alleged breach. Instead, the doctrine "operates to save parties who have pled a series of distinct events—each of which gives rise to a separate cause of action—as a single continuing event." *Ariadne Fin. Servs. Pty. v. United States*, 133 F.3d 874, 879 (Fed. Cir. 1998). The continuing claim doctrine does not apply here because Plaintiffs' claims are not "inherently susceptible to being broken down into a series of independent and distinct events or wrongs." *Brown Park Estates-Fairfield Dev. Co. v. U.S.*, 127 F.3d 1449, 1456 (Fed. Cir. 1997). Rather, the alleged harms here all relate back to the alleged failures to protect Plaintiffs' alleged interests in the Lake Pepin Reservation in the mid-1800s. The continuing claim doctrine does not apply where, as here, "a single governmental action causes a series of deleterious effects, even if those effects may extend long after the initial government breach." *Boling v. U.S.*, 220 F.3d 1365, 1373 (Fed. Cir. 2000). Indeed, the Federal Circuit has made clear that to determine when the statute of limitations begins to run, "the proper focus must be upon the time of the defendant's acts, not upon the time at which the *consequences* of the acts become most painful."

Navajo, 631 F.3d at 1277 (citation modified) (quoting *Del. State Coll. v. Ricks,* 449 U.S. 250, 258 (1980)).

Plaintiffs also rely on Interior Department appropriations acts provisions for tolling of its claims. Compl. ¶¶ 427-28. Plaintiffs' reliance on these provisions is misplaced. Through prior appropriations acts for Interior, Congress provided that "the statute of limitations shall not commence to run on any claim . . . concerning losses to or mismanagement of trust funds, until the affected tribe or individual Indian has been furnished with an accounting of such funds from which the beneficiary can determine whether there has been a loss." *See, e.g.*, Pub. L. No. 111-88, 123 Stat. 2904, 2922 (2009). The tolling provisions in these appropriations acts ended in 2014. *See Wyandot Nation of Kansas v. United States*, 124 Fed. Cl. 601, 605-06 (2016) (acknowledging cessation of appropriations act riders after 2014), *aff'd*, 858 F.3d 1392 (Fed. Cir. 2017). Thus, there is no tolling provision currently in place—and hasn't been for more than a decade—on which Plaintiffs can rely. Further, the tolling provisions covered only losses to trust funds rather than to non-monetary trust assets. *Shoshone Indian Tribe of the Wind River Reservation*, 364 F.3d at 1348-49. In addition, the Complaint makes clear that neither land nor funds is held in trust for Plaintiffs. *See, e.g.*, Compl. ¶¶ 142, 210-12, 380, Ex. 17, Ex. 28 at 143-52. Where, as here, the asset at issue is not held in trust or treated as a trust asset, revenues from that asset cannot be considered "trust funds." *Wolfchild v. United States*, 731 F.3d 1280, 1291 (Fed. Cir. 2013).

What is more, the Complaint repeatedly alleges that the United States breached its trust obligations, starting in the mid-1800s. The tolling provisions do not apply when plaintiffs are already on notice of their claims. *Wolfchild*, 731 F.3d at 1291; *Winnemucca Indian Colony v. United States*, 167 Fed. Cl. 396, 417 (2023) (finding that the limitations period was not tolled when it was clear the United States had repudiated its trust relationship). Thus, Plaintiffs cannot avail themselves of any tolling relief formerly offered by these provisions. Relatedly, Plaintiffs suggest that the statute of limitations cannot commence until the United States completes a census under the 1854 law or provides a complete accounting of the alleged Lake Pepin Reservation. Compl. ¶¶ 458-59. This does not save Plaintiffs' claims. "[A] plaintiff does not have to possess actual knowledge of all the relevant facts in order for the cause of action to accrue." *Rosales v. United States*, 89 Fed. Cl. 565, 578 (2009). The test is whether the claimant "knew or should have known" that an injury had occurred. *Id.* at 578-79. As described above, the Complaint establishes that Plaintiffs' ancestors (and Plaintiffs themselves) either knew or should have known of their alleged injuries years ago. *Supra* pp. 8-15. Plaintiffs cannot put off filing a lawsuit "until the full extent of the damage is known." *Boling*, 220 F.3d at 1371; *Winnemucca Indian Colony*, 167 Fed. Cl. at 416-17 (finding the United States did not need to provide an accounting for the statute of limitations to commence); *Chemehuevi Indian Tribe v. United States*, 150 Fed. Cl. 181, 202-04 (2020), *aff'd in part, vacated in part*, 104 F.4th 1314 (Fed. Cir. 2024) (finding a claim accrues whenever there is notice of a loss—not the precise quantum of the loss). Plaintiffs did not file suit within the six-year statute of limitations in § 2501(a) and their claims are time-barred.

II. The ICCA extinguished all Plaintiffs' claims except Count VI.

The ICCA divests this Court of jurisdiction over Plaintiffs' claims that accrued before August 13, 1946. The ICCA vested the Indian Claims Commission with exclusive jurisdiction over all legal, equitable, and moral claims of any "identifiable group of American Indians" against the United States that existed as of August 13, 1946. ICCA, Ch. 959, Pub. L. No. 725, § 2, 60 Stat. 1049, 1050 (1946) (repealed). The ICCA waived sovereign immunity and provided a cause of action to all Indian claims against the government that accrued before 1946, so long as they were filed within a five-year statute of limitations period. ICCA § 12, 25 U.S.C. § 70k (1976). It explicitly barred pre-1946 claims from future litigation by providing that "no claim existing before [August 13, 1946] but not presented within such period may thereafter be submitted to any court or administrative agency for consideration." ICCA § 12, 60 Stat. at 1052. Congress also attempted to ensure that the ICCA would dispose of all claims that existed in 1951 by providing that "payment of any claim" discharged "all claims and demands touching any of the matters involved in the controversy." ICCA § 22, 60 Stat. at 1055. As described above, *supra* pp. 8-15, Plaintiffs' Claims I-V and VII accrued before August 13, 1946, and thus should be dismissed on this additional basis.

III. Plaintiffs lack standing.

Plaintiffs have not pled a cognizable property interest in the alleged Lake Pepin Reservation and the related land patents or scrips. Instead, the Complaint relies on broad assertions concerning the former land, alleged tribal or communal land interests, and purported trust obligations owed to a collective group, without identifying any individualized ownership interest, specific trust beneficiary status, or personal statutory entitlement held by these Plaintiffs. To establish constitutional standing, Plaintiffs must prove that they possess a concrete property, trust, or statutory entitlement that was directly affected by the United States' conduct. Plaintiffs fail to meet this requirement.

Standing is a threshold jurisdictional issue. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 102–04 (1998). This Court applies the same standing requirements as Article III courts. *Weeks Marine, Inc. v. United States*, 575 F.3d 1352, 1359 (Fed. Cir.

2009). Plaintiffs must show that they suffered "an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (citation modified). To survive a motion to dismiss for lack of standing, the plaintiff must "clearly allege facts demonstrating each element" of standing. *Id.* at 338 (quoting *Warth v. Seldin*, 422 U.S. 490, 518 (1975)) (citation modified).

"To prove an invasion of a legally protected interest in the context of a breach of trust claim, 'the plaintiffs must show the existence of a trust relationship with the government.'" *Navajo Nation v. United States*, 171 Fed. Cl. 246, 258 (2024) (quoting *Fletcher v. United States*, 26 F.4th 1314, 1322 (Fed. Cir. 2022)). "Such a fiduciary relationship exists only when all necessary elements of a common-law trust are present: (1) trustee (the United States), (2) a beneficiary (Indians), and (3) a trust corpus (Indian lands or funds)." *Id.* (citations omitted). Similarly, "only persons with a valid property interest at the time of the taking are entitled to compensation." *Wyatt v. United States*, 271 F.3d 1090, 1096 (Fed. Cir. 2001).

Plaintiffs fall short of showing that they suffered an injury in fact because their allegations fail to establish they hold a property interest in the alleged Lake Pepin Reservation and the related land patents or scrips. Nor do they present any specific allegations, facts, or claims that show their beneficiary status in the land. Plaintiffs state that the alleged Lake Pepin Reservation consists of about 320,000 acres in southeastern Minnesota, Compl. ¶¶ 1, 73, but the Complaint lacks allegations that personally link Plaintiffs to the property or any specified ancestor or relative that had a connection to the property or held a scrip. Plaintiffs assert only that:

- "The above-referenced class representatives are Sioux half-breed lineal descendants who are beneficiaries under the 1830 Treaty, the 1854 Act and 1858 Act regarding the Lake Pepin Reservation." *Id.* ¶ 3.

- "The Sioux half-breed lineal descendants is an identifiable association or group of Indians residing within the territorial limits of the United States." *Id.* ¶ 5.

- Plaintiffs are "lineal descendants of persons on the United States 1855 Sioux half-breed descendant roll." *Id.* ¶ 13 (citing Ex. 12).

See also id. ¶¶ 86-88 (same).

At minimum, Plaintiffs fail to even specify the band of Sioux Indians they claim to be a member of, nor do they identify a specific Sioux half-breed member, of which they claim to be a descendant. Such "[t]hreadbare recitals" of injury-in-fact, "supported by mere conclusory statements, do not suffice" to survive a motion to dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Nor can Plaintiffs rest on "legal conclusion[s] couched as . . . factual allegation[s]." *Papasan v. Allain*, 478 U.S. 265, 286 (1986). *See*, *e.g.*, Compl. ¶ 506 (alleging only that the Sioux half-breed descendants are the beneficiary and the Lake Pepin Reservation is the trust corpus).

In fact, Plaintiffs attached 39 exhibits to the Complaint, totaling nearly 2,000 pages, but none of them show a link between the named Plaintiffs and the individuals listed on the document that Plaintiffs contend is a roll of Sioux Mixed Bloods, 1855-66 (Compl., Ex. 12). The standing analysis requires more than just conclusory allegations of descent. Absent a specific pleaded connection between the named Plaintiffs, the individuals on Ex. 12, and the alleged Lake Pepin Reservation, Plaintiffs have failed to satisfy the first prong of the standing analysis. Further, Plaintiffs have not shown that any interest in a scrip would have passed upon death, let alone that a specific scrip would have passed to any of the named Plaintiffs. Nor do they explain how, if a scrip was sold during a person's lifetime (even if invalidly), some future descendant maintains the right to compensation for that invalid transaction.

Plaintiffs "have not demonstrated that there has been an invasion of a legally protected interest because they have not established that they, as individuals, have a trust relationship with the United States." *Navajo Nation*, 171 Fed. Cl. at 258. "The final trust element, corpus, is missing from the instant case because [Plaintiffs] do not have a legally protected interest" in the alleged Lake Pepin Reservation and the land patents. *Id.* (finding that the individual plaintiffs lacked standing because they had no property interest in the lands at issue). Even if Plaintiffs alleged to be members of a tribe that is currently federally recognized (which they do not), "[t]he existence of the general Indian-government trust relationship does not create a property interest where one does not otherwise exist." *Begay v. United States*, 16 Cl. Ct. 107, 128 (1987), *aff'd*, 865 F.2d 230 (Fed. Cir. 1988). At bottom, Plaintiffs have not alleged that they suffered "an invasion of a legally protected interest." *Spokeo*, 578 U.S. at 338-39. Thus, their claims must be dismissed.

IV. The Court lacks jurisdiction for additional reasons.

Except for Plaintiffs' Count V takings claim—which is addressed further below—Plaintiffs' claims suffer from several other jurisdictional problems and should be dismissed.

A. Plaintiffs' Count I is a challenge to land title.

Count I should be dismissed because it is not within this Court's jurisdiction. Plaintiffs allege that the "government's patents within the Lake Pepin Reservation are invalid because the government cannot annul a previous land grant and cannot convey what it does not own." Compl. 98. Plaintiffs contend that: "It was the Sioux Nation that had 'Indian title' or aboriginal title to the land . . . ." *Id.* at ¶ 470. Thus, in Plaintiffs' view, "[t]he land patents the United States printed and issued were legally invalid because the government had no right to grant those patents in the first place . . . ." *Id.* at ¶ 482. Because Plaintiffs are attempting to use this case to challenge land title, cancel or reform the land patents, or seek declaratory relief concerning ownership of property, their cause of action is outside this Court's jurisdiction. *See*, *e.g.*, *id.* at 116 (seeking an order to correct all land patents to include title encumbrances); *id.* (seeking an order to incorporate all corrected land patents into the federal property recording system and ensure that they are Indian Country under 18 U.S. Code § 1511).

"This Court has the authority to issue money judgments only; it does not have the authority to decide questions of title to land." *Sioux Tribe of Indians v. United States*, 3 Cl. Ct. 536, 538 (1983). "The case law is replete with instances where it has been recognized that a cause of action seeking possession of property falls outside of the court's jurisdiction." *Dwen v. United States*, 62 Fed. Cl. 76, 80 (2004) (collecting cases). In Count I, Plaintiffs also state that they "seek damages against the United States . . . ." Compl. ¶ 486. But a "party's request for money damages in the alternative to equitable relief does not alone alter the equitable character of the relief requested." *Dwen*, 62 Fed. Cl. at 80. The Court lacks jurisdiction over any claims for title to land or to award equitable relief, *infra* pp. 27-28. Because Count I appears to fall into this category, it should be dismissed.[8]

[8] Plaintiffs' claims overlap in various ways. If Count I is read as a breach of fiduciary duties claim, then it fails for the same reasons Count IV ("Breach of fiduciary duty") does. Plaintiffs fail to plead a money-mandating duty that invokes this Court's jurisdiction. Plaintiffs contend the "U.S. government, as trustee, was supposed to protect and manage the Indian title, not facilitate its unlawful transfer to third parties."

B. Plaintiffs fail to identify a money-mandating statutory or regulatory trust duty for Counts II and IV.

Counts II and IV should be dismissed because Plaintiffs fail to identify a money-mandating duty that the United States owes to Plaintiffs, which is required to trigger the Court's jurisdiction under the Tucker Act or the Indian Tucker Act.

Plaintiffs assert that jurisdiction exists here under the Tucker Act, 28 U.S.C. § 1491 and the Indian Tucker Act, 28 U.S.C. § 1505. Compl. ¶ 2.[9] The Tucker Act does not create substantive rights enforceable against the United States for money damages. *United States v. Navajo Nation,* 556 U.S. 287, 290 (2009) ("*Navajo II*"). Besides invoking the two acts, a tribal plaintiff asserting that the United States has violated a trust duty "must identify a substantive source of law that establishes specific fiduciary or other duties and allege that the Government has failed faithfully to perform those duties." *Navajo I*, 537 U.S. at 490; *Navajo II*, 556 U.S. at 302. That is because "[t]he Federal Government owes judicially enforceable duties to a tribe 'only to the extent it expressly accepts those responsibilities.'" *Arizona v. Navajo Nation* ("*Navajo III*"), 599 U.S. 555, 564 (2023) (quoting *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 177 (2011)). "[A] statute or regulation that recites a general trust relationship between the United States and the Indian People is not enough to establish any particular trust duty." *Hopi Tribe v. United States*, 782 F.3d 662, 667 (Fed. Cir. 2015) (citation omitted). Thus, the analysis must train on "specific rights-creating or duty-imposing

Compl. ¶ 481. But Plaintiffs do not identify any trust duty to protect title in the 1830 Treaty or the 1854 and 1858 Acts.

[9] Because Plaintiffs are individuals, rather than a tribe, band, or other identifiable group of Indians, the Indian Tucker Act does not provide a basis for this Court's jurisdiction. 28 U.S.C. § 1505; *Whiting v. United States*, 99 Fed. Cl. 13, 16 (2011).

statutory or regulatory prescriptions." *Navajo II*, 556 U.S. at 301. Second, and only after a tribal plaintiff identifies a substantive source of law, "the court must then determine whether the relevant source of substantive law can fairly be interpreted as mandating compensation for damages sustained as a result of a breach of the duties the governing law imposes." *Id.* at 290-91 (quoting *Navajo I*, 537 U.S. at 506) (citation modified).

Plaintiffs allege that the United States breached its fiduciary duties by failing to: (1) put land sales proceeds in trust, Compl. ¶ 494; and (2) disclose the alleged 1830 Treaty and 1854 and 1858 Acts title encumbrances on land certificates and other government-issued documents to clear Indian title; *id.* ¶¶ 494, 496, 519, 523, 529-31.

The problem with Plaintiffs' first theory is that, of the four alleged sources of fiduciary obligations, not one creates a specific obligation to put land sale proceeds in trust. *Id.* ¶¶ 492-95. For example, the 1830 Treaty makes no reference to monies from land sales. 7 Stat. 330. Though the Treaty provides consideration to certain tribes for consenting to the agreement and additional payments for agricultural and educational purposes, *id.* Arts. IV and V, it provides no specific directive for payments to Sioux half-breeds, *id.* Art. IX. Additionally, neither the 1854 Act nor the 1858 Act reference payments of any kind. 10 Stat. 304; 11 Stat. 292. Plaintiffs also cite the general investment statutes, 25 U.S.C. §§ 161a and 162a. Compl. ¶ 495. But these laws apply only to trust funds, which the land sale proceeds were not. Further, these laws were not enacted until decades *after* the start of the land sales. *See* Act of Feb. 12, 1929, 45 Stat. 1164; June 24, 1938, c. 648, § 1, 52 Stat. 1037.

Plaintiffs' theory about correcting land patents also fails, because they identify no "'specific rights-creating or duty-imposing' language" demonstrating that "the Government has expressly accepted the obligations" Plaintiffs assert. *Navajo III*, 599

U.S. at 564 (quoting *Navajo I*, 537 U.S. at 506). Neither the 1830 Treaty nor the 1854 and 1858 Acts contain any specific duty for the United States "to clear Indian title by correcting the land patents," Compl. ¶ 496, or "to clear Indian title for the Sioux half-breed lineal descendants so that they can make the Lake Pepin Reservation their permanent home again," *id.* ¶ 531. The Treaty says nothing about future land sales or government issued documents, nor does it require the United States to take any affirmative steps to protect the descendants' title. Art. IX, 7 Stat. 330 ("The United States agree to suffer said half breeds to occupy said tract of country; they holding by the same title, and in the same manner that other Indian Titles are held."). The 1854 Act authorized the United States to issue "scrips" for land to the half-breed Sioux in exchange for "a full and complete relinquishment by them to the United States of all their right, title, and interest . . . ." 10 Stat. 304, § 1. The form of these documents was left up to "the Commissioner of the General Land-Office." *Id.* This sort of discretionary language cannot form the basis of a specific and enforceable duty. *Hopi Tribe v. United States*, 55 Fed. Cl. 81, 89 (2002). Similarly, the 1854 Act does not contain any directive to include encumbrances on any government-issued documents, 10 Stat. 30, nor did the 1858 Act, 11 Stat. 292. Plaintiffs cannot rewrite or expand the 1830 Treaty and 1854 and 1858 Acts "beyond their clear terms." *Navajo III*, 599 U.S. at 565. Absent specific rights creating duties, the Court cannot "infer duties not found in the text" of the 1830 Treaty and the laws. *Id.* at 566.

Plaintiffs also allege that "the government owes trustee duties when statutes and regulations clearly give the Government full responsibility to manage Indian land and resources for the Indians' benefit." Compl. ¶ 488. But the United States does not hold the alleged Lake Pepin Reservation nor any proceeds from land sales in trust. As

Plaintiffs acknowledge, the land was sold to private owners when the land patents and scrips were issued in the mid-1800s. *See* Compl. ¶¶ 142, 210-12, 380, Ex. 17, Ex. 28 at 143-52. Plaintiffs also contend that the United States should have put the proceeds in trust for the "Sioux half-breed lineal descendants" but did not. *Id.* ¶ 324. In any event, Plaintiffs are wrong in implying that the United States' alleged authority and control over these lands, standing alone, creates money-mandating fiduciary obligations, particularly ones that would continue to this day. "The Federal Government's liability cannot be premised on control alone." *Navajo II*, 556 U.S. at 301.

Even if Plaintiffs could clear the first hurdle for Tucker Act jurisdiction, they fall at the second. Neither the Treaty nor the Acts contain an express provision for monetary relief. *See Navajo II*, 556 U.S. at 301-02. Importantly, they also lack the hallmarks of a statutory provision that contemplates monetary relief, such as a measure of damages. *Mitchell II* is illustrative. There, the Court a found statutory direction for the United States to follow—to manage the asset to generate proceeds—and therefore a measure of damages if that direction was not fulfilled. 463 U.S. at 226-27. The authorities cited by Plaintiffs, however, do not fit the bill. They do not create specific fiduciary duties with respect to land sales proceeds, disclosure of title encumbrances, or protecting title, nor can they fairly be read to permit monetary compensation for any breach of a general duty it does create.[10] Plaintiffs cited several sources as purportedly providing jurisdiction for their claims, but it is also Plaintiffs' burden to show a specific and money-mandating fiduciary duty. Because Plaintiffs have failed to identify a specific

[10] While 25 U.S.C. §§ 161a and 162a might pass this hurdle, as explained above, they are inapplicable here.

money-mandating duty in support of Counts II and IV, these claims should be dismissed.

C. Plaintiffs' Count III is a tort claim.

Because Count III sounds in tort, it should be dismissed. "It is well settled that the United States Court of Federal Claims lacks—and its predecessor the United States Claims Court lacked—jurisdiction to entertain tort claims." *Shearin v. United States*, 992 F.2d 1195, 1197 (Fed. Cir. 1993). The Tucker Act explicitly states that the Court of Federal Claims cannot hear tort claims. 28 U.S.C. § 1491(a)(1). While Plaintiffs seek to couch Count III as a claim for breach of fiduciary duty, they allege that Count III concerns "illegal conversion of land sale proceeds." Compl. 102. Plaintiffs allege that "the United States sold trust lands and retained the proceeds," and that "this constituted illegal conversion of trust property." *Id.* ¶ 503. This Court lacks jurisdiction to hear tort claims based on theft of property and land. *See Locklear v. United State*s, No. 18-1174C, 2019 WL 365770, at *4-5 (Jan. 29, 2019); *c.f. Williams v. United States*, No. 10-880L, 2011 WL 3891124, at *1, *4 (Fed. Cl. 2011) (holding that requests to return ancestral lands by Indian plaintiff were equitable and thus outside this Court's jurisdiction), *aff'd*, 482 F. App'x 590 (Fed. Cir. 2012). Thus, Count III should be dismissed for this additional reason.[11]

D. Plaintiffs fail identify money-mandating statutory or regulatory trust duty for Count VI.

Plaintiffs' allegations based on the breach of purported money-mandating duties under the Revenue Sharing Act, Compl. ¶¶ 570-71, 578-79, are no more compelling than

[11] If Count III can be read as a breach of trust claim, it should be dismissed the same as Count II. Plaintiffs have identified no fiduciary duties related to sales proceeds.

their arguments about Counts II and IV. The Federal Revenue Sharing program was created by the Revenue Sharing Act in 1972, Pub. L. No. 92-512, 86 Stat. 919, and was extended until Congressional appropriations for the program ceased in 1986.[12] Plaintiffs' theory is that the United States had a duty to treat the alleged descendants of the Lake Pepin Reservation (or the Reservation itself) as a federally recognized tribe. Compl. ¶ 577. Thus, entitling Plaintiffs to federal benefits under the Revenue Sharing Act. *Id.* But neither the 1830 Treaty, the 1854 and 1858 Acts, nor any other treaty, statute, or regulation imposed an obligation on the United States to recognize these entities. There was nothing in the Revenue Sharing Act that imposed a duty upon the United States to provide monetary benefits to tribal groups that are not recognized. Indeed, the Revenue Sharing Act—which ended 40 years ago—applied to federally recognized tribes only. 86 Stat. 919, § 108(b)(4)).

Contrary to Plaintiffs' assertion (Compl. ¶ 571), even if the Revenue Sharing Act could be interpreted as money-mandating, Plaintiffs' claims would not be justiciable by operation of the Anti-Deficiency Act, 31 U.S.C. § 1341. The Anti-Deficiency Act prevents this Court from granting relief to Plaintiffs because it bars the award of funds pursuant to a statute for which the appropriations have lapsed or have been capped, unless the aggrieved party files suit before the appropriation lapses. *City of Houston, Tex. v. Dep't of Hous. & Urban Dev.*, 24 F.3d 1421, 1426 (D.C. Cir. 1994). Courts have interpreted the Anti-Deficiency Act as prohibiting judicial awards of money over the amount appropriated if appropriations for a program are capped and the funds spent, the appropriation lapses, or if Congress rescinds the appropriation. *Star-Glo Associates, LP*

[12] *See Nat'l Ass'n of Counties v. Baker*, 842 F.2d 369, 375-76 (D.C. Cir. 1988).

v. United States, 414 F.3d 1349, 1355-57 (Fed. Cir. 2005). In these situations, a court lacks jurisdiction to hear a claim for money from a specific fund pursuant to a statute because the court is unable to grant the relief requested. *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992).

Only if a lawsuit is brought before an appropriation lapses may courts award funds. *City of Houston*, 24 F.3d at 1426. The Anti-Deficiency Act bars Plaintiffs from recovering the relief they seek because the appropriations to the Revenue Sharing Act lapsed in the 1980s. Because the funding lapsed long before Plaintiffs filed suit, Count VI is not justiciable. *See Samish Indian Nation v. United State*s, 568 U.S. 936, 937 (2012) (vacating judgment as to tribe's Revenue Sharing Act claim and remanding to dismiss claim as moot). Thus, Plaintiffs' general reference to the Revenue Sharing Act does not satisfy Plaintiffs' burden to establish jurisdiction.

E. Plaintiffs' Count VII is a request for equitable relief.

Plaintiffs seek an order requiring officials of the United States to take several specific actions to "restore the legal status of the Lake Pepin Reservation and their federally-recognized tribal status." Compl., ¶¶ 585, 587; 116-17.[13] Because the Court lacks jurisdiction to grant this type of equitable relief, Plaintiffs' Count VII and related claims for relief should be dismissed. The Court of Federal Claims lacks general jurisdiction to provide declaratory and injunctive relief. The Court "cannot grant nonmonetary equitable relief such as an injunction, a declaratory judgment, or specific performance." *First Hartford Corp. Pension Plan & Tr. v. United States*, 194 F.3d 1279, 1294 (Fed. Cir. 1999). Instead, this Court's ability to award equitable relief is limited to

[13] Although Plaintiffs request this relief, they also acknowledge this land has been privately owned for years. *Id.* ¶¶ 382-83. These are not federal lands.

those circumstances when such relief is "incident of and collateral to" a money judgment. 28 U.S.C. § 1491(a)(2).

Plaintiffs' Count VII does not fit within the categories allowed under § 1491(a)(2), nor do the related requests for relief. Plaintiffs ask the Court to order officials of the United States to: conduct, complete, and publish an accounting regarding the alleged Lake Pepin Reservation; restore the legal status of the Lake Pepin Reservation; alter and record Lake Pepin Reservation land patents; conduct, complete, and publish a census of the alleged beneficiary class members; and recognize the Sioux half-breed lineal descendants as a federally-recognized tribe. Compl., ¶¶ 582-595; 116-17. The Court "does not possess jurisdiction to award equitable relief to transfer land" or to order the government to undertake censuses and recognize tribes. *Locklear*, 2019 WL 365770, at *5; *Smalls v. United States*, 87 Fed. Cl. 300, 307-08 (2009) (the court lacked jurisdiction over plaintiff's claim for injunctive relief seeking an order that the government take specific action).

The Court also has no jurisdiction to entertain an accounting claim before a finding of liability. Count VII requests the Court to order a "complete accounting regarding Lake Pepin Reservation . . . ." Compl. ¶ 584. Such a free-standing general accounting claim before a determination of liability is premature and beyond this Court's jurisdiction. *Chemehuevi Indian Tribe*, 150 Fed. Cl. at 204; *W. Shoshone Nat. Council v. United States*, 73 Fed. Cl. 59, 68-69 (2006). If a plaintiff establishes liability against the United States, the Court may receive evidence in aid of judgment to assess damages, and in so doing, it may order a limited accounting "incident of and collateral to" a money judgment. 28 U.S.C. § 1491(a)(2); *see Muscogee (Creek) Nation of Okla. v. United States*, 103 Fed. Cl. 210, 218 (2011). But this sort of limited exercise is not what

Plaintiffs demand in the Complaint. *See* Compl. ¶ 584; *id.* at 116. Thus, Plaintiffs' free-standing claim for a complete accounting should also be dismissed.

V. Plaintiffs have not adequately alleged a Fifth Amendment taking.

Plaintiffs' Count V takings claim should also be dismissed because Plaintiffs have not adequately alleged the elements necessary to state a plausible claim for relief. When deciding whether a taking has occurred, courts conduct a two-part analysis. "[T]he Court must first determine whether the claimant has identified a cognizable Fifth Amendment property interest that is asserted to be the subject of the taking." *Russellville Legends, LLC v. United States*, 172 Fed. Cl. 455, 463-64 (2024) (citation modified). Second, if such "cognizable property interest exists," the Court must then determine "whether that property interest was taken." *See Aviation & Gen. Ins. v. United States*, 121 Fed. Cl. 357, 362 (2015) (quotations omitted). In Count V, Plaintiffs assert a Fifth Amendment takings claim, based on the alleged "[l]egally-unauthorized dispossession of Lake Pepin Reservation without just compensation . . . . " Compl. 106. However, Plaintiffs' takings claim suffers two flaws.

First, as detailed above, Plaintiffs have not established that they have a property interest in the alleged Lake Pepin Reservation and the land patents or scrips. *Supra* pp. 17-19. And the alleged dispossession of these lands occurred almost entirely before any of these Plaintiffs were even born. Compl., Ex. 28 at 80-142. There must "exist a valid property interest for all takings cases." *Wyatt*, 271 F.3d at 1097. If a plaintiff does not hold an enforceable property interest against the United States at the time of the alleged taking, the takings claim necessarily fails. *CRV Enterprises, Inc. v. U.S.*, 626 F.3d 1241, 1250 (Fed. Cir. 2010) (finding that plaintiffs could not raise a takings claim because they did not own a valid property interest at the time of the taking).

Second, the Plaintiffs' claim is based, in large part, on alleged government inaction, which is not legally cognizable under the Fifth Amendment. The land transactions in question were not federal land transactions. Instead, Plaintiffs allege that the "government failed to secure the Lake Pepin Reservation for the Sioux half-breed lineal descendants." Compl. ¶ 316. According to Plaintiffs, the United States "took no decisive action to halt" the non-beneficiary land transactions nor did it "prosecute the perpetrators" of faulty transactions. *Id.* ¶ 315. Plaintiffs also contend that the United States failed to record Indian title encumbrances on land patents or other government-issued documents. *Id.* ¶ 320. Indeed, throughout the Complaint, Plaintiffs focus on the United States' alleged failure to act.[14] But the Federal Circuit has held that the United States "cannot be liable on a takings theory for inaction." *St. Bernard Par. Gov't v. United States*, 887 F.3d 1354, 1357 (Fed. Cir. 2018). The Federal Circuit concluded that allegations about the government's "failure" to act is merely another way of alleging inaction. *Id.* at 1360-61. In doing so, the court explained that "[o]n a takings theory, the government cannot be liable for failure to act, but only for *affirmative* acts by the government." *Id.* (emphasis added). Thus, Plaintiffs cannot rely on allegations that the United States failed to protect the alleged Lake Pepin Reservation or their other government inaction theories as the basis of their takings claim. Count V should be dismissed for failure to state a claim.

Conclusion

For the reasons set forth above, the Complaint should be dismissed in its entirety.

[14] *See e.g.*, *id.* ¶¶ 15, 305, 323, 330, 339, 344, 560.

Respectfully submitted this 16th day of March, 2026.

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