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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

10 Keith Goss,

11 Plaintiff,

12 v.

13 United States of America, Tuba City
14 Regional Health Care Corporation, an
15 Arizona corporation and self-governed
16 under the Indian Self-Determination and
17 Education Assistance Act Lynette
18 Bonar, in her individual capacity acting
19 under color of law, and Jane/John Does,
20 all acting in her or his individual
21 capacity under color of law,

22 Defendants.

) Case No:

) **VERIFIED COMPLAINT**

) **(Jury demand when applicable)**

23 Plaintiff Keith Goss, by and through undersigned counsel, hereby files his

24 Complaint as follows:

25 PARTIES

26 1. Keith Goss, a now married man, single at the time of the events set forth
herein, was at all relevant times a resident of Coconino County and now a resident
of Maricopa County, Arizona.

1 2. Defendant United States of America is responsible under the Federal Tort
2 Claims Act (“FTCA”), 28 U.S.C. §§ 2671-2680, for the negligent acts by the
3 employees of Defendant Tuba City Regional Health Care Corporation if said entity
4 falls under the FTCA.
5

6 3. Defendant Tuba City Regional Health Care Corporation (“TCRHCC”) is an
7 entity that is registered as and acted at all relevant times as an Arizona corporation.
8 It operated under self- governed under P.L. 93–638, Approved January 4, 1975 (88
9 Stat. 2203), the Indian Self-Determination and Education Assistance Act. It
10 became a private corporation in September 2002 when it became a 638 contract
11 care facility giving complete administrative and fiscal control to local hospital
12 governing board. Under federal law, there is no immunity and the hospital can be
13 liable for the wrongful actions as set forth herein.
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17 4. Defendant Lynette Bonar is an individual who worked for Tuba City
18 Regional Health Care Center. She was the supervisor of Plaintiff as well as
19 another individual named Jayson Watabe. She is liable for any intentional acts as
20 well as violations of state and federal law as set forth herein. In certain instances,
21 she was acting under the color of law and in her individual capacity.
22
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24 5. Plaintiff filed a claim under the Federal Tort Claim Act against Defendant
25 TCRHCC and the claim was denied. Defendant United States generally assumes
26

1 responsibility under said federal law for and is responsible for the negligent acts of
2 its employees that were acting in the scope of their employment.

3
4 6. Jane/John Does are unknown individuals who were working for Defendant
5 TCRHCC and acting in their individual capacity under the color of law.

6
7 7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 2671-
8 2680, 28 U.S.C. § 1346(b)(1), 42 U.S.C. §1983, *Bivens v. Six Unknown Fed.*
9 *Narcotics Agents*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971), U.S.
10 Constitutional law, and Arizona state law as the actions occurred through the
11 conduct of non-Navajo Nation members and as against Plaintiff, a non Navajo
12 Nation Member.

13
14 8. A jury trial is demanded where permitted by law.

15
16 GENERAL ALLEGATIONS

17 9. Keith Goss is a podiatrist who worked for Tuba City Regional Health Care
18 Corporation.

19
20 10. Defendant Lynette Bonar and other individuals were employees at
21 TCRHCC. However, at the time of these allegations, with the exception of Jayson
22 Watabe relating to illegal recording, Defendant Bonar and others were acting in
23 their individual capacity under the color of law.
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1 11 Dr. Keith Goss was hired to work as a podiatrist at the TCRHCC. TCRHCC
2 was self- governed under P.L. 93–638, Approved January 4, 1975 (88 Stat. 2203),
3 the Indian Self-Determination and Education Assistance Act. It became a private
4 corporation in September 2002 when it became a 638 contract care facility giving
5 complete administrative and fiscal control to local hospital governing board which
6 was supposed to provide the highest level of self-determination where health care
7 is concerned for its own native population.
8
9

10 12. However, what transpired was a culture of largely non-Indian employees
11 paying themselves large amounts of money, neglecting the care of tribal members,
12 contracting with outside providers and retaliating against Plaintiff for reporting
13 what was happening.
14

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16 13. Dr. Goss believed that the care from TCRHCC overall that was given to the
17 tribal members was inadequate and he made lawful attempts to bring these
18 problems to the tribal leaders.
19

20 14. As a result of his efforts, he was met with retaliation and a constant hostile
21 working environment ending with an “investigation” that appeared to have a
22 predetermined outcome.
23

24 15. Dr. Goss originally had a contract and management refused to modify it to
25 be consistent with other employees. Dr. Goss worked countless overtime for the
26

1 tribal members to provide quality care. Instead of being rewarded, others were
2 paid overtime for doing minimal work and providing lower quality care.
3

4 16. Dr. Goss had knowledge of pay-offs between employees and third parties to
5 send contracts their way, to do things contrary to the best interests of the patients
6 simply to bring in more money, and the hospital's funds declined as the
7 management and their chosen workers profited.
8

9 17. After reports surfaced that the problems of care and corruption within the
10 hospital, Dr. Goss was placed on leave despite no prior disciplinary actions. He
11 was told he wasn't under investigation yet it was clear that was precisely what was
12 transpiring based on the witnesses sought, unlawful recordings made and
13 allegations made to the public.
14
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16 18. TCRHCC hired an outside attorney to "investigate" claims against the
17 "hospital" yet it was Plaintiff who was placed on leave. The attorney wanted to
18 interview Dr. Goss under the guise that the investigation was about the hospital yet
19 it was clear that was not the underlying purpose as the hospital stated in an August
20 6, 2017 letter- that the attorney was conducting an independent review related to
21 complaints against the hospital and "statements made by Dr. Goss RELATIVE TO
22 HIS EMPLOYMENT and conditions at the hospital."
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1 19. The attorney, Scott Bennett also advised that there were “threats” by Dr.
2 Goss which clearly showed they were going to his employment matter.
3

4 20. The hospital’s claim that the administrative leave was “non-adverse and
5 non-disciplinary” was not true given the other statements made.
6

7 21. Dr. Goss asserts that he was driven out of his job due to the TCRHCC’s
8 negligent supervision over the employees as well as the negligence of the
9 individuals who used their positions to retaliate against him for reporting the
10 corruption and negligence within the hospital.
11

12 22. Dr. Goss was forced to resign due to this false administrative leave and the
13 claims that the investigation was into the hospital yet clearly it was an attempt to
14 establish his whistleblowing efforts. He has lost numerous opportunities due to this
15 constructive discharge.
16

17
18 23. At the time of his employment, Dr. Goss was in a relationship with a
19 member of the Navajo Nation. They have since married.
20

21 24. Dr. Goss regularly stood up for the rights of the members of the Navajo
22 Nation and his free speech to address the concerns about their treatment was
23 violated.
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1 25. Plaintiff suffered damages through the emotional distress, loss of reputation
2 and loss of his earning capacity as well as the actions of the Defendants
3 contributed to the forced resignation given the hostile environment and false
4 accusations.
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7 COUNT ONE
8 NEGLIGENCE/NEGLIGENT SUPERVISION
9 (USA and/or Tuba City Regional Hospital)

10 26. Plaintiff incorporates paragraphs 1 through 25 as if full set forth herein.

11 27. Defendants oversaw the employment of Plaintiff in his role as a medical
12 provider at TCRHCC and owed him a duty to make certain other employees did
13 not treat him wrongfully.
14

15 28. Defendant Bonar and others acted to spread false information about Plaintiff,
16 required him to work lengthy hours, retaliated against him when he complained
17 about what he believed were violations of the law, and placed him on leave
18 resulting in a constructive discharge.
19

20 29. Defendants USA and/or TCRHCC were negligent on that they breached the
21 duty to Plaintiff to treat him fairly by failing to properly oversee the conduct of
22 Bonar and others, a breach which caused damage to Plaintiff.
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COUNT TWO

CONSTRUCTIVE DISCHARGE

(Defendant Tuba City Regional Hospital)

30. Plaintiff incorporates paragraphs 1 through 29 as if full set forth herein.

31. Plaintiff was hired as a medical provider and given an employment contract, the terms of which were changed throughout his employment.

32. Arizona law states all employment relationships are contractual and TCRHCC is not immune from employment laws due to the fact that it employed a significant number of non-tribal members, had contracts with numerous non-tribal entities, the evidence will show the actions were for profits of individuals and not mainly for the benefit of the tribal members and TCRHCC was registered as an Arizona corporation. *See Fla. Paralegic Ass'n, Inc. v. Miccosukee Tribe of Indians of Fla.*, 166 F.3d 1126, 1129 (11th Cir.1999); *Coeur d'Alene; Reich v. Mashantucket Sand & Gravel*, 95 F.3d 174, 181 (2d Cir.1996) *Occupational Safety & Health Review Comm'n*, 935 F.2d at 184 (tribal employer is subject to OSHA interstate commerce"); *Donovan v. Coeur d'Alene Tribal Farms*, 751 F.2d 1113, 1115 (9th Cir. 1985).

33. Defendant TCRHCC in part through Defendant Bonar, made the work conditions such that Plaintiff was forced to quit his employment. These actions included making false allegations about Plaintiff internally and externally, having

1 an employee illegally record a private conversation, placing Plaintiff on leave
2 without naming any reasons and under the guise that it was an investigation into
3 the hospital, trying to force him to participate in interviews which were designed
4 not to gather information but make accusations, and retaliation for reporting illegal
5 conduct. Under A.R.S. §23-1502, the conduct caused a reasonable employee to
6 feel compelled to resign.
7

8
9 34. Plaintiff was damaged by these actions.

10 COUNT THREE

11 Intentional Infliction of Emotional Distress

12 (Lynette Bonar and Tuba City Regional Hospital)

13 35. Plaintiff incorporates paragraphs 1 through 34 as if full set forth herein.

14
15 36. The conduct of Defendants Bonar and TCRHCC conduct was extreme and
16 outrageous which included but was not limited to making false allegations about
17 Plaintiff internally and externally, having an employee illegally record a private
18 conversation, placing Plaintiff on leave without naming any reasons and under the
19 guise that it was an investigation into the hospital, trying to force him to participate
20 in interviews which were designed not to gather information but make accusations,
21 and retaliation for reporting illegal conduct.
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1 37. The Defendants either intended to cause emotional distress or recklessly
2 disregarded the near certainty that such distress would result from their conduct,
3 and their actions caused the plaintiff to suffer severe emotional distress
4

5 38. Plaintiff was damaged by the conduct. Defendant Bonar would not allow
6 Plaintiff hire surgeons into open positions in his department, stating there was no
7 money for it, even though other hiring occurring within the hospital. Plaintiff
8 oversaw the busiest surgical department with 7,000 clinic patients that year and
9 performed over 600 surgeries, while on 24/7 call for the year without any overtime
10 pay or compensatory time. The three other surgical departments had five to six
11 doctors and multiple PA's and NP's, and received overtime pay and compensatory
12 time
13
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16 COUNT FOIR

17 Breach of Covenant of Good Faith and Fair dealing

18 39. Plaintiff incorporates paragraphs 1 through 33 as if full set forth herein.

19 40. Plaintiff's employment contract contains a covenant of good faith and fair
20 dealing.
21

22 41. When the Defendants failed to give him raises as they did others, began
23 spreading false information about him, retaliated against him and placed him on
24 leave, they violated the good faith and fair dealing provision of his contract.
25
26

1 42. Plaintiff was damaged by said conduct. Defendant Bonar would not allow
2 Plaintiff hire surgeons into open positions in his department, stating there was no
3 money for it, even though other hiring occurring within the hospital. Plaintiff
4 oversaw the busiest surgical department with 7,000 clinic patients that year and
5 performed over 600 surgeries, while on 24/7 call for the year without any overtime
6 pay or compensatory time. The three other surgical departments had five to six
7 doctors and multiple PA's and NP's, and received overtime pay and compensatory
8 time.
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12 COUNT FIVE

13 Bivens claim

14 (Lynette Bonar)

15 43. Plaintiff incorporates paragraphs 1 through 37 as if full set forth herein.

16 44. Jayson Watabe was an employee of Defendant Bonar and acted under her
17 direction and supervision. Upon information and belief, he convinced Plaintiff to
18 engage in a discussion about the problems Plaintiff perceived at the hospital and
19 taped that phone call.
20

21
22 45. Defendant Bonar became aware of this action before during or after the
23 illegal wiretap and used that information to initiate the disciplinary conduct against
24 Plaintiff.
25

26 46. Defendant's conduct was a violation of not only federal wiretap law,

1 18 U.S. Code § 2511, but also of Defendant’s First Amendment right to free
2 speech when he thought he was discussing problems with the facility privately
3 with another employee, even going so far as to go into a closet so that it would not
4 be public, as well as his Fourth Amendment Right to Privacy.
5

6 47. Defendant Bonar was acting under the color of law as an employee of
7 TCRHCC at the time of the conduct that violated Plaintiff’s constitutional rights. If
8 Defendant Bonar is considered a “federal employee” then this conduct is
9 prohibited under *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 91
10 S. Ct. 1999, 29 L. Ed. 2d 619 (1971).
11
12

13 COUNT SIX

14 Negligent Supervision as to Jayson Watabe’s actions (All)

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16 48. Plaintiff incorporates paragraphs 1 through 47 as if full set forth herein.
17

18 49. Defendant Watabe acquired the content of Plaintiff’s communications when
19 he recorded a conversation with Plaintiff when Plaintiff had every reason to
20 believe the conversation was private given that they went into a closet to talk thus
21 making the expectation reasonable.
22

23 50. Jayson Watabe violated 18 U.S. Code § 2511 when he conducted the illegal
24 wiretap and the Defendants were negligent in the supervision. The USA is liable if
25
26

1 Defendants Bonar and TCRHCC are considered federal actors otherwise Bonar
2 and TCRHCC are liable.

3
4 51. This interception was used by Defendants Bonar and TCRHCC in the
5 disciplinary action when they knew it was illegal.

6
7 52. The oral interception damaged Plaintiff when it was used in an
8 administrative proceeding by Bonar and TCRHCC, an entity of the federal
9 government for purposes of the self determination laws, or as private actors.

10
11 COUNT SEVEN

12 Violation of Whistle Blowing Laws (state)

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14 53. Plaintiff incorporates paragraphs 1 through 52 as if full set forth herein.

15
16 54 Defendants TCRHCC and Bonar acted intentionally in retaliating against
17 Plaintiff for reporting of the illegal activities at TCRHCC to the Navajo Nation
18 through the employment investigation and constructive discharge in violation of
19 A.R.S. § 23-1501 and § 41-1464.

20
21 55. Plaintiff was damaged by this conduct.

22
23 COUNT EIGHT

24 Violation of Whistle Blowing Laws (federal)

25
26 56. Plaintiff incorporates paragraphs 1 through 55 as if full set forth herein.

1 57. A “protected disclosure” under Federal whistleblower protection law
2 includes any disclosure of information that an employee, former employee, or
3 applicant for employment reasonably believes evidences a violation of any law,
4 rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority;
5 or substantial and specific danger to public health or safety.
6

7
8 58. Plaintiff reported the safety, mismanagement and violations of rights for the
9 patients to the Navajo Nation management.
10

11 59. He was retaliated against by Defendants TCRHCC and Bonar in violation of
12 the Whistleblower Protection Act and related acts.
13

14 60. Plaintiff was damaged by this violation.
15

16 PUNITIVE DAMAGES

17 (Bonar and TCRHCC)
18

19 61. Plaintiff incorporates paragraphs 1 through 60 as if full set forth herein.
20

21 62. The intentional actions of the Defendants showed an evil mind in that they
22 were targeting Plaintiff through a false investigation, spreading false information in
23 the community to promote the personal agendas, and retaliating against him for
24 reporting the illegal conduct.
25
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1 63. As further evidence of this conduct, reports were recently made by someone at
2 TCRHCC to law enforcement falsely claiming that Plaintiff was “threatening
3 someone.”
4

5 PRAYER FOR RELIEF
6

7 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:
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- 9 A. A trial by jury where applicable;
- 10 B. Lost and reduced wages;
- 11
- 12 C. Future lost earnings/loss of reputation;
- 13
- 14 D. Emotional distress;
- 15 E. For any and all general damages sustained by Plaintiff for the harm caused to
16 his reputation, mental health, physical health, financial situation, past and future, and
17 loss of ability to pursue his passions with the Navajo Nation;
- 18
- 19 F. For punitive and exemplary damages sustained by Plaintiff to the extent
20 permitted by law as a result of the defendants’ intentional acts to harm Plaintiff;
- 21
- 22 G. Costs and interest as provided by law;
- 23
- 24 H. For attorneys’ fees under 28 UCS § 2678 and any applicable law; and
- 25
- 26 I. For such other and further relief as the court deems just and proper.

