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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

LEROY NOT AFRAID and GINGER
GOES AHEAD,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
and LOUISE ZOKAN-DELOS REYES, in
her official and individual capacity; and
JO-ELLEN CREE, in her official and
individual capacity,

Defendants.

Case No. CV-19-100-BLG-SPW-TJC

**AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

INTRODUCTION TO COMPLAINT

COME NOW, Plaintiffs Leroy Not Afraid (“Not Afraid”) and Ginger Goes Ahead (“Goes Ahead”), and bring this action against Defendants the United States of America, Louise Zokan-Delos Reyes, and Jo-Ellen Cree, pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671 et seq. (“FTCA”), the Fifth Amendment to the United States Constitution, the Indian Self Determination and Education Assistance Act, 25 U.S.C. §§ 5301 et seq. (“ISDEAA”), and other applicable law.

NATURE OF THE CASE

1. The Tribal Court is the Judicial Branch of the Crow Tribe of Indians, a federally recognized

tribal government. The Tribal Court receives funding through federal contracts provided pursuant to Public Law 93-638, and specifically pursuant to contract number A12AV00409 (“Contract”). The Department of the Interior (“DOI”) Bureau of Indian Affairs (“BIA”) reviews compliance with the terms of the Contract on an annual basis.

2. On December 5 and 6, 2017, Defendants Louise Zokan-Delos Reyes and Jo-Ellen Cree (“Reviewers”), along with Joen White, Acting Administrative Officer for Crow Agency, conducted the annual review of the Tribal Court’s compliance with the Contract for Fiscal Year 2017 (“FY-2017”). Following the review, on January 8, 2018, Defendants issued an Awarding Officials Technical Representative Report (“AOTR”) to the Tribal Court, along with a cover letter signed by Darryl LaCounte, the BIA Regional Director, and a corrective action plan (“CAP”).
3. The conduct of the Defendants during the review that led to the AOTR report and CAP, and the Defendants’ actions subsequent to the AOTR report and CAP resulted in the unlawful termination of Plaintiffs from their respective positions as Chief Judge and Court Administrator of the Tribal Court.

PARTIES

4. Plaintiff Not Afraid previously served as the Chief Judge of the Crow Tribe of Indians. The Chief Judge is the highest ranking official in the Tribal Court. Not Afraid is an enrolled member of the Crow Tribe, and resides on the Crow Indian Reservation.
5. Plaintiff Goes Ahead previously served as the Court Administrator for the Tribal Court. She is an enrolled member of the Crow Tribe, and resides on the Crow Indian Reservation.
6. Defendant United States of America is a governmental entity organized under the provisions of the Constitution of the United States.
7. Louise Zokan-Delos Reyes is the Department of Interior, Rocky Mountain Region Indian

Services Officer. She is an officer and employee of the United States and is sued in her official and individual capacity.

8. Defendant Jo-Ellen Cree is the Department of Interior, Rocky Mountain Region Tribal Operations Officer. She is an officer and employee of the United States and is sued in her official and individual capacity. Defendants Reyes and Cree are referred to as the “Individual Defendants.”

JURISDICTION AND VENUE

9. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331.
10. To the extent exhaustion of administrative remedies is required, Plaintiffs have complied with this requirement. Plaintiffs filed an administrative claim with the Superintendent of the BIA in October 2018, and an amended claim in January 2019. The BIA did not respond.
11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 in that a substantial part of the events or omissions giving rise to the claim have occurred in this District.

GENERAL ALLEGATIONS

12. The Crow Tribe of Indians has been an independent and self-governing Indian tribe since time immemorial. Present-day members of the Crow Tribe descend from Indians who signed the 1825 Crow Friendship Treaty and the 1851 and 1868 Fort Laramie Treaties with the United States, which recognized the sovereignty of, and set aside lands for the Crow Tribe in present-day Montana. The Judicial Branch is one of three independent and coequal branches of the Crow Tribe, as set forth in the 2001 Constitution of the Crow Tribe of Indians. Crow Tribe Const. Art. I and X.
13. The ISDEAA requires the Secretary of the Interior to enter into contracts with each federally recognized Tribe (or qualifying tribal organization) that seeks to provide Indian

service programs formerly provided by the federal agency. These contracts are commonly referred to as “638” or “self-determination” contracts. Self-determination contract proposals may be declined by the Secretary of the Interior only for specific reasons which the Secretary” shall have the burden of proof to establish by clearly demonstrating the validity of the grounds for declining the contract proposal.” 25 U.S.C. §5321(e)(1).

14. Congress enacted the ISDEAA in response to its finding that “the prolonged Federal domination of Indian service programs” has worked to prevent the “realization of self-government,” and that “the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.” 25 U.S.C. § 5301(a)(1) and (2).
15. Pursuant to the ISDEAA and P.L. 93-638, the Crow Tribe and the DOI entered into the Contract, which became effective on October 1, 2011. A copy of the Contract is attached hereto as Exhibit A.
16. The Contract provides the Judicial Branch with federal funding with which to fund the Tribal Court system and related programs.
17. Pursuant to 25 U.S.C. § 5305 of the ISDEAA, reviewers must conduct an audit of the Crow Tribe’s compliance with its terms for each fiscal year.
18. On December 5th and 6th of 2017, the Reviewers came to the Crow Agency, Montana, to conduct a review (“the Review”) of compliance with the Contract for FY-2017, which began on October 1, 2016 and ended on September 31, 2017. The review process consisted primarily of interviews with Plaintiffs and some review of Plaintiffs’ records.
19. Upon concluding the Review, the Reviewers completed the AOTR report and CAP, and signed and dated it January 8, 2018.
20. That same day, on January 8, 2018, the Defendants had Regional Director LaCounte to

submit the AOTR report and CAP, along with a cover letter, to Chairman Alvin “A.J.” Not Afraid (“Chairman”), the head of the Crow Tribe’s Executive Branch, with a copy to the Not Afraid in his capacity as Chief Judge. A copy of the cover letter, CAP, and AOTR report is attached hereto as Exhibit B.

21. In his cover letter, LaCounte advised that the Tribal Court is not in compliance with the Contract, and that the Tribal Court is therefore required to implement the CAP. The cover letter asserted that the Tribal Court is out of compliance with Crow Tribal Management Systems, and out of compliance with Crow Tribe Personnel Policies and Procedures. The letter outlines six (6) specific alleged deficiencies in the Tribal Court’s performance of the Contract, to wit:

1. that the Tribal Court hired employees without conducting background checks;
2. that payroll was issued to employees from a bank account not monitored by Tribal Finance, a tribal agency under the Executive Branch;
3. that a severance payment was issued to an elected official upon departure from her post;
4. that nepotism policies were violated by hiring an ex-elected official to another position;
5. that the Crow Law and Order Code for staff salaries was not being followed; and
6. that a hostile work environment was created for a new elected official and federal employees by a standing order regulating access to court files.
- 7.

22. Each of the foregoing alleged deficiencies was based on false accusations levelled against the Judicial Branch following a woefully inadequate review process which failed to seek or consider documentary evidence and controlling law, both of which stand in direct contradiction to the Reviewers’ findings.

23. The Review was conducted in a manner designed not to uncover the truth, but rather to usurp the Judicial Branch’s autonomy and authority.

24. On the basis of the largely fabricated and unverified factual findings of the AOTR report, Defendants issued the CAP. The AOTR report improperly and inappropriately interpreted Crow Tribal law and addressed matters arising after the end of FY-2017.
25. The Review was conducted on the heels of fresh judicial elections and in the midst of ongoing turmoil between the different branches of the Crow Tribe government. During the election process the named Individual Defendants demonstrated ill will towards Plaintiff Not Afraid.
26. In January of 2016, during a hearing, Not Afraid discovered that BIA social workers had removed a child from the child's parents and placed the child with a grandmother. After the placement, Not Afraid discovered that the placement had broken down and that the social workers had not done any investigation to determine the safety or well-being of the child.
27. After this hearing, Not Afraid issued a show cause order as to why the BIA social workers should not be held in contempt. In February of 2016, the BIA, through the solicitor's office, wrote a letter to Not Afraid informing him that he had no authority over the BIA social workers because they are federal employees.
28. In May of 2017 Not Afraid sent a letter to Congressman Ryan Zinke to report a violation of the Tribe's jail capacity rules. In retaliation for reporting the violations, the BIA Regional Office designated the Crow Tribal Court "high risk."
29. In January of 2018, shortly before the Review, the Legislative Branch voted on the Tribal Justice Improvement Act of 2017 ("TJIA").
30. The TJIA, had it passed, would have achieved many of the ends demanded in the CAP. Specifically, the TJIA would have addressed the lack of a public defender, contract employees being paid out of Tribal Court fines and fees, the educational requirements of

judicial candidates, the amount of the Chief Judge's salary, the permissibility of the Chief Judge holding a position as Big Horn County Justice of the Peace, the Chief Judge's authority to issue standing orders, the creation of a Judicial Branch bank account, and the allowability of severance pay to outgoing elected officials.

31. The TJIA would also have had the effect of giving the Legislative Branch managerial control over the Tribal Court via creation of a "judicial board" appointed by the Tribal Legislature.
32. After passage by the Legislative Branch, the Chairman vetoed the law because it violated Crow Constitution's separation of powers. This occurred shortly before the Review. Following the veto, a vote to override the veto was scheduled to take place in the legislature on January 16, 2018.
33. Eight (8) days before the scheduled override vote, on January 8, 2018, the Defendants issued the AOTR report and CAP.
34. Based upon information and belief, and the circumstances present, Defendants issued the AOTR report and CAP with knowledge that the override vote was scheduled to take place the following week. This was done in an effort to persuade the Crow tribal legislators to vote in favor of the override so as to wrest administrative autonomy from the Judicial Branch.
35. The AOTR report and CAP are not the products of an impartial review of the Judicial Branch's compliance with the Contract. Both are an attempt to intervene in internal Crow politics in order to tilt the balance of power towards the Executive and Legislative branches by stripping the Judicial Branch of its autonomy.
36. The termination of Plaintiffs was the direct result of the aforementioned machinations.
37. In response to the AOTR report, on February 2, 2018, Not Afraid sent a rebuttal to the

Chairman with instructions for the Chairman to forward the letter to the BIA. Not Afraid disputed the factual findings contained within the AOTR report and the measures demanded in the CAP. Not Afraid's rebuttal included numerous attachments, including controlling provisions of Crow law which demonstrated the falsity of the AOTR report findings. It was represented in the rebuttal that those attachments were presented to, but disregarded by, the Reviewers during the review process. A copy of the Not Afraid's rebuttal is attached hereto as Exhibit C.

38. On February 28, 2018, the Chairman sent a letter to Regional Director LaCounte, which largely concurred with the AOTR report findings, and discounted the facts presented in the Not Afraid's rebuttal. The letter assured the BIA that the Crow Tribe Executive Branch was intent on bringing the Judicial Branch into compliance with the Contract. A copy of the Chairman's response is attached hereto as Exhibit D.
39. The Contract provides "[t]he Contractor shall administer programs under this agreement in accordance with its own laws and policies which are incorporated herein by reference." See Exhibit B. With respect to funding of the Tribal Court, "[s]ervices shall be provided in accordance with ... [the] 2005 Crow Tribal Law & Order Code." *Id.*
40. The Reviewers' negligent interpretation of applicable law resulted in injury to the Plaintiffs
41. LaCounte chastised the Tribal Court for asserting that it is an independent branch of government not bound by the Crow Tribal Management Systems governing the Executive and Legislative branches of the Crow Tribe.
42. The AOTR report similarly asserts "[t]he Chief Judge and TCA broadly interpret the Separation of Powers and Constitution to meet the court's needs" and that "[t]his issue needs to be addressed by the Tribe since accountability is a significant problem."

43. The CAP states as its first finding that “[s]eparation of Powers [is] used to justify lack of compliance with Crow Tribal Management systems.” As corrective action, the Defendants demanded that Plaintiffs “[p]rovide tribal clarification to the court and the BIA on the Separation of Powers” and “[c]larify compliance with” Tribal Management Systems.”
44. The Defendants’ position is contrary to the Crow Constitution and the laws of the Crow Tribe. The Judicial Branch is a separate branch of the Crow Tribe, and there is no constitutional or legal basis for concluding that the Executive or Legislative branches have managerial authority over the Judicial Branch. The Crow Constitution “establishes three branches of government, the Executive, Legislative and Judicial Branches, which shall exercise a separation of powers. “The Judicial Branch shall be a separate and distinct branch of government from the Legislative and Executive Branches of Crow Tribal Government.” Crow Const. Art. I and X.
45. The vast majority of the alleged deficiencies noted in the AOTR report are based on the Defendants’ false assertion that the Judicial Branch is bound by the personnel policies adopted by the Executive and Legislative branches, namely, the Crow Tribal Management Systems for Financial Management and Personnel.
46. The Judicial Branch is not only authorized, but required to promulgate its own personnel manual, which it has done. Specifically, Crow Law and Order Code (CLOC) § 3-3-305(2) mandates that the Judicial Branch “[d]raft personnel policies and procedures,” separate and apart from those adopted by other branches of government. In accordance with the statute, a former Chief Judge of the Crow Tribal Court drafted the Judicial Branch Personnel Manual (CJBM) on November 3, 2005.
47. In the AOTR report, Defendants disregard the existence of the CJBM altogether, and insist that the Judicial Branch is bound by the Crow Tribal Management Systems. This is a direct

contravention of Crow tribal law.

48. On December 29, 2016, the Crow Legislature passed a law entitled “Approval of an Interim Budget for the operation of the Crow Tribal Government and expenditure of Tribal Revenue for the Second Quarter of fiscal year 2017” (“Budget Act”). The bill was signed into law the same date by the Chairman. Section 4 of the Budget Act bestows the Judicial Branch with discretion to manage its own finances as follows:

Judicial Branch Fiscal Authority - The Judicial Branch at the discretion of the Chief Judge shall have control over spending their own funds, including setting salaries, budget modifications and making purchases. All bonds, fees and fines derived from the Judicial Branch operations shall remain with the Judicial Branch and shall become part of the Judicial Branch budget.

The Budget Act was reaffirmed in the Fiscal Year 2018 budget dated November 17, 2017, which provides, in relevant part:

Section 8. Judicial Branch Fiscal Authority. The Judicial Branch shall have control over their internal budgeting process, complete federal reporting in cooperation with the Executive Branch, purchasing and making expenditures as authorized by their budget. All bonds, fees, fines and other revenues derived from Judicial Branch operations shall remain within the Judicial Branch’s own bank account. Revenue from fines, fees and bonds/bail shall be placed in a special account for anticipated judicial branch budget amendment of the 2018 Budget Act. Bonds/bail shall remain in the special account unless they are to be ordered back to the issuer. In the event Bonds/bail are forfeited, they shall also remain in the special account until they are ready to submit for budget amendment. Any budget appropriations not expended by the end of Fiscal Year 2018, shall be carried over to the FY 2019.

49. Based on the foregoing, the Reviewers had no good faith basis for maintaining that the Judicial Branch was bound by Crow Tribal Management Systems adopted by the Executive and Legislative branches. Therefore, the conclusion that the Judicial Branch was noncompliant with the Contract for breaches of Tribal Management Systems is not based in fact.

ALLEGATIONS OF FINANCIAL MISMANAGEMENT

50. The Defendants allege that the Tribal Court’s financial management policies and

procedures, particularly its use of a First Interstate Bank account ('FIB Account') for fines, fees, and bond monies, are noncompliant. Specifically, the Defendants assert in their Report that the Tribal Court's financial policies and procedures violate 25 U.S.C. 5325(m)(1), the terms of the Contract, CLOC § 3-6-602(3), and the Crow Tribe's Fiscal Management Act of 2007. The AOTR report maintains that Tribal Finance is required to assume responsibility for the program income generated by the Tribal Court. *See* Ex. B.

51. The Defendants' accusations are based on misinterpretations of applicable law, reliance on laws that are no longer in effect, and show a disregard of the controlling law that explicitly authorizes the Tribal Court to maintain the FIB Account.

52. Pursuant to the terms of the Contract and the ISDEAA, the Contract is governed by Crow tribal laws. *See* 25 U.S.C. §5329; 25 CFR §920.42 & Ex. B.

53. The Budget Act is the controlling law with respect to the Judicial Branch's discretion and authority over financial management policies and procedures. The Budget Act explicitly authorizes the Tribal Court's maintenance and management of the FIB Account.

54. The Reviewers' conclusion that the Tribal Court's maintenance and management of the FIB Account was not allowed was made in reckless disregard of the Budget Act and in breach of the Defendants' obligations to administer the Contract in good faith.

55. The Reviewers' accusation that the FIB Account funds were improperly co-mingled similarly stems from a reckless disregard for the truth. As the Reviewers were aware, the Tribal Court in fact avoids the co-mingling of funds by maintaining separate accounting records for "fines and fees," and for "bonds."

56. Based on conversations with the Tribal Finance Officer, the Reviewers accused the Tribal Court of concealing the existence of the FIB Account from the Tribal Finance Officer.

This accusation has no basis in fact. The Court Administrator communicated on a regular

basis with BIA AOTR, Crow Tribal Finance, the Crow Tribal Chairman, and the Chief Judge via email providing current ongoing expenditures, deposits and bond exonerations in regards to the Judicial Branch Account throughout the entire FY-2017.

57. Crow Tribal Finance was notified of the details of the FIB Account by virtue of a November 16, 2016 Memorandum from then Chief Judge Not Afraid to the Court Administrator, the Tribal Finance Department, and the Clerk of Court. In the Memorandum, Not Afraid authorized the deposit of “fees and fines” into the FIB Account and authorized the money to be used for jury duty payments. Not Afraid instructed the Court Administrator to establish a contingency plan in the event the Tribal Court is unable to meet its financial obligations. The FIB Account was necessary to facilitate bond exoneration, as the previous exoneration process was administered through Crow Tribal Finance and took six (6) to eight (8) weeks to complete.
58. Pursuant to Crow tribal law, the Court Administrator is to use the fines and fees for training of court staff, purchasing supplies, and other matters related to the proper administration of the Tribal Court.
59. The Reviewers never sought to review the Court Administrator’s correspondence with Tribal Finance or the November 2016 Memorandum, and took no steps to attempt to verify the Tribal Financial Officer’s alleged statement that he was unaware of the FIB Account. A cursory review of the relevant correspondence by the Reviewers would have revealed that the Tribal Finance Officer was apprised of not only the existence of the FIB Account, but also of the details of the financial activity taking place in that account. See Ex B.
60. The Reviewers asserted financial impropriety on the basis of the appearance of “contract loans” to temporary personnel, an Associate Judge, and vendor payments from the FIB account.

61. A good faith review by the Reviewers of the relevant documents and interviews with relevant personnel would have revealed that Contract loans were provided to tribal court staff only in the event that Crow Tribal Finance payroll checks bounced or vendor payments were not done in a timely manner. See Ex. B. Each employee and vendor subsequently reimbursed the Tribal Court upon receipt of good paychecks. Each contract loan was documented, signed by the Court Administrator and the Clerk of Court, and authorized by the Chief Judge as authorized by the Budget Act. The Contract loan entries were not improper personal loans, but rather the Tribal Court duly honoring its financial obligations towards its employees and vendors. The Contract loan procedure was part of a measured contingency plan developed in response to the dire financial circumstances of the Crow Tribal Finance Department in FY-2017.

THE ALLEGED PURCHASE OF THE 2016 CHEVY TAHOE

62. The AOTR report accuses the Judicial Branch of having purchased a 2016 Chevrolet Tahoe V8 (“Tahoe”) with 638 funds totaling \$44,804.00, and allowing the Tahoe to go “missing.” Ex. B. On the basis of this finding, the CAP demands that the Judicial Branch locate the vehicle and provide purchase documentation.

63. This factual finding is untrue and would have been revealed by an investigation conducted in good faith.

64. The Tahoe was never purchased. Although a payment voucher was created for the purchase of the vehicle, no check was ever created, much less delivered to a car dealer and deposited.

65. The voucher should have been formally withdrawn, which was not done due to an administrative oversight. Nonetheless, a review of the FIB Account records instantly reveals that no check in the amount of \$44,804.00 was ever drawn on for the purchase of a

Tahoe.

66. Consistent with the Reviewers' other actions during the Review, the Reviewers simply observed that a voucher had been created and that there was no corresponding Tahoe in the Judicial Branch's possession or control. Rather than seek to verify whether \$44,804.00 in 638 funds were applied to the purchase of a vehicle, the Reviewers concluded that this was the case without further inquiry and accused the Judicial Branch of egregious corruption. This uninformed conclusion was in line with the Reviewers' preconceived narrative, but not supported by any facts.
67. The Court Administrator provided BIA AOTR with an internal list of equipment purchased under the Contract, which was tagged and itemized. See Ex. B. The Defendants' conclusion that the Judicial Branch violated procurement laws is demonstrably false.

THE SEVERANCE PAYMENT

68. Upon the conclusion of her term in office, Associate Judge Sheila Not Afraid was paid a 90-day severance. The severance benefits package check was dated December 12, 2017, months after the close of FY-2017. The payment was made in full compliance with all applicable laws and policies.
69. The AOTR report found that this severance payment violated the Contract and needed to be corrected by explaining and repaying the severance payment. The Defendants asserted the payment was not supported by the Tribal or Federal management systems, and cited 2 CFR § 200.431 in support of their assertion.
70. The severance to Sheila Not Afraid was paid out of the Crow Tribe's general fund, not 638 funds, and it did not involve the Tribal Court's performance under the Contract. Due to the fact that the payment was made approximately one week *following* the Review, there was no basis for the Reviewers to conclude that the payment was made from 638 funds rather

than the general funds.

71. As with the other conclusions reached supporting their predetermined agenda, the Reviewers simply presumed malfeasance with no regard as to the actual facts.
72. Even if the severance payment were made with 638 funds, the AOTR report's conclusions were made in utter disregard of the law. The AOTR report asserted that the severance pay was unlawful under 2 § CFR 200.431, and provided no further analysis. The regulation cited provides:

Costs of severance pay are allowable only to the extent that in each case, it is required by (a) law, (b) employer-employee agreement, (c) established policy that constitutes, in effect, an implied agreement on the non-Federal entity's part, or (d) circumstances of the particular employment. 2 CFR § 200.431 (i)(1).

73. The severance payment was authorized by the CJB (which is part of the employer-employee agreement) and Crow Legislative Resolution (L.R.) No. 15-12, each of which authorize payment of severance benefits packages to elected officials upon expiration of their terms. Further, 25 CFR § 900.234 provides that the BIA should not regulate “[i]nterests arising from membership in, or employment by, an Indian tribe.”
74. It has been the policy of the Crow Tribe to grant severance pay to elected officials upon expiration of their terms. The 90-day severance payment that Sheila Not Afraid received was the same amount granted to all outgoing elected officials. There was at a minimum an implied agreement based on established policy that authorized the severance payment.
75. The severance payment to Sheila Not Afraid was authorized by: (1) law, (2) the employer-employee agreement, (3) established policy, and (4) the circumstances of her employment. It was not precluded by 2 CFR § 200.431 and the AOTR report's conclusion to the contrary is demonstrably false.

ACCUSATIONS OF NEPOTISM

76. In the course of conducting interviews during the review process, the Reviewers allege that the Court Administrator advised that Sheila Not Afraid was “a good teacher and we might contract with her to provide a Clerks Bench Book Training.” On the basis of this alleged comment, the Reviewers found in their report that “[a]s stated prior, the TCA stated the previous Associate Judge Sheila (Plaintiff Not Afraid’s spouse) would be working in the Tribal Court again.” Ex. B. The cover letter added that the Judicial Branch is “[d]isregarding nepotism laws by re-hiring the ex-elected official to another position in the court.”

77. The Court Administrator did not make this statement.

78. Even assuming the statement was made, the Reviewers improperly treated this vague reference to possible future contract work as a certainty, presuming that the work of providing a Clerks Bench Book Training would involve payment from the Judicial Branch, and presuming that such an engagement would violate nepotism laws.

79. Sheila Not Afraid is not currently employed by the Judicial Branch and was not employed by the Judicial Branch at the time of the review. No offer of employment had been or has been extended to Sheila Not Afraid following the expiration of her term.

80. LaCounte’s assertion that the Judicial Branch disregarded nepotism laws by re-hiring Sheila Not Afraid is patently untrue and, based upon on information and belief, was knowingly false when made.

81. The Crow Tribal Court adheres to its internal hiring process according to the CJBM. The AOTR review provides no support for its erroneous conclusions that these policies were disregarded with respect to Sheila Not Afraid or with any other individual.

82. The Reviewers question the propriety of travel requests signed by the Vice-Chairman on the grounds that the Vice-Chairman is the Court Administrator’s husband.

83. Such action (signature by the Vice Chairman) occurred when the Chairman was unavailable, and was done under Tribal Finance direction and procedures. In the instances cited as nepotism, Crow Tribal Finance Security staff instructed the Court Administrator that the Travel Department requested that she acquire the signature of the Vice-Chairman, CEO, or Secretary of the Crow Tribe, in light of the Chairman's absence at the time. The Court Administrator complied with the request, which is why the CEO and Vice-Chairman signed certain travel requests during FY-2017.
84. The Reviewers assert that nepotism is commonplace in the Crow Tribe in general and the Judicial Branch in particular. This is done on the basis of pure speculation and bad faith investigation. The Reviewers presumed, without verifying, that the mere presence of familial relationships between various government officials demonstrates nepotism.
85. Contrary to the Reviewers' unverified presumptions, the officials referenced as being involved in nepotism are elected by the Crow Tribe's members.
86. Nothing in Crow tribal law prohibits the tribal membership from electing officials who happen to be family members, and once elected, nothing in Crow tribal law prohibits them from interacting with each other in the course of carrying out their respective functions.

TIMING OF PAYCHECKS

87. The Defendants accused the Tribal Court of noncompliance based upon the issuance of weekly paychecks, rather than bi-weekly.
88. In support of this accusation, the Defendants reference the personnel policies that have been adopted by the Executive and Legislative branches of the Crow government, and disregard that the Judicial Branch is a separate branch of government with authority to promulgate its own policies and manage its own finances.
89. Section 610 of the CJBM expressly bestows the office of the Chief Judge with discretion

over payroll matters such as those referenced in the AOTR report.

90. As Chief Judge, Not Afraid issued a memo authorizing the Court Administrator to receive weekly pay. Pursuant to Crow tribal law, the Chief Judge has discretionary authority to take such action.
91. The AOTR report specifically references payments to the Court Administrator in August, 2017, as evidence of financial mismanagement.
92. This assertion disregards the fact that these payments were made pursuant to Judicial Branch policies and were consistent with the Court Administrator's established salary which breaks down to \$1,304.00 per week. As noted in the AOTR report, the Judicial Branch payroll records show two (2) paychecks issued on August 3, 2017, each for \$1,304.00. Another paycheck was issued for the same amount on August 10. On August 15, 2017, another paycheck was issued to the Court Administrator in the amount of \$2,608.00. The Court administrator received five (5) weeks' worth of pay in the month of August 2017. There were five (5) weeks in the month of August 2017. The paycheck in the amount of two (2) weeks of pay issued on August 15, 2017 was made in this manner because the last payment period for August coincided with Crow Fair, during which Tribal Finance was closed. Each of these payments was authorized and collectively did not exceed the Court Administrator's established salary. The Defendants' conclusion that these payments were improper was made in reckless disregard for the facts and controlling law.

JUDGE SALARIES, QUALIFICATIONS, AND REQUIREMENTS

93. The AOTR Report took issue with the salary being paid to then Chief Judge Not Afraid. These accusations are again inconsistent with the facts and controlling law as the Crow Tribal Law Order Code determines the Chief Judge's base salary, not the total salary.

94. Not Afraid's salary was half paid from 638 funds and half paid from the Crow tribal general fund. This has been the established practice for sixteen (16) years. The CLOC sets a base salary without a cap. See CLOC 3-8403(1) & (3). The base salary for the Chief Judge is set at \$50,000. Not Afraid had received the base salary of \$50,000 for the past five (5) years which was then supplemented by P.L. 638 funds. This is in accordance with past practices of prior Chief Judges of the Crow Tribal Court.
95. In September of 2016, the Court Administrator and Tribal Court staff conducted a wage study which was approved by the Crow Tribal Chairman. The purpose of the study was to evaluate the competitiveness of Judicial Branch salaries. The study concluded that the Chief Judge's salary was below the national average for similar positions, and was between \$30,000 to \$50,000 below prevailing judicial salaries in the State of Montana. The Chief Judge started at \$39.00 hour. After the wage study was done, the Chief Judge's salary gradually was increased to \$48.00 an hour.
96. The Defendants' position, based upon a misinterpretation of Crow tribal law, is that the base salary provided in the CLOC constitutes the maximum allowable salary.
97. Plaintiff Not Afraid's salary at the time of the Review had been in place for at least five (5) years, and it had not been alleged to constitute noncompliance in any prior review.
98. The CAP demands that the Crow Tribe "[r]evisit Chief Judge's educational requirements or contract for legal consultation with confirmation by the legislature if needed." Ex. B.
99. The Crow Tribe, not Defendants, have authority to set the educational requirements for judicial positions, and have in fact done so through the legislative process.
100. CLOC 3-3-303(1) sets forth the Chief Judge's qualification requirements. In order to be placed on the ballot for the position of Chief Judge a candidate must meet the CLOC requirements.

101. Prior to 2009, the Crow Legislature required the Chief Judge to have a law degree. Since 2009, the qualifications no longer require the Chief Judge to have a law degree. These decisions were made by the Crow Tribe through the legislative process, and the Defendants have no authority to intervene in these internal processes and demand changes to Crow Tribal law as a precondition to providing 638 funding.
102. Not Afraid was adequately trained and had sufficient education and experience to adjudicate tribal legal matters. Not Afraid had 12 years of experience as a judge, six (6) years of experience as a Crow Tribal Legislator, as well as Judicial Certifications from the accredited National Judicial College in Reno, NV. Not Afraid was competent to fulfill his functions, and the Defendants had no authority to seek his removal by demanding changes to the educational requirements.
103. The Defendants have also demanded in the AOTR report/CAP that Not Afraid maintain a time card.
104. Not Afraid is an elected and salaried official. No elected and salaried official within the Crow Tribe maintains a time card.
105. The demand that the Judicial Branch implement time cards for an elected judge is another demand that was made for the first time in the FY-2017 AOTR report. Time cards have never been used by elected judges.
106. To demand time cards be implemented for judges is another example of the Defendants encroaching on tribal sovereignty by negligently asserting their authority into the business of Crow Tribe.
107. The Reviewers also accuse Not Afraid of being engaged in unethical conduct by virtue of having been elected as Justice of the Peace in Big Horn County.
108. This accusation is based upon a misinterpretation of Crow Tribal law, and improperly

encroaches on tribal sovereignty. Crow tribal law does not prohibit the Chief Judge of the Crow Nation from filling a judicial seat in Big Horn County, and the Defendants have no authority to dictate otherwise.

FINDINGS OUTSIDE OF FISCAL YEAR 2017

109. A newly elected Associate Judge took office on December 4, 2017, exactly (1) one day prior to the commencement of the FY-2017 Review.
110. The new Associate Judge had no involvement in any events pertaining to the FY-2017 activities of the Tribal Court, yet the AOTR Reviewers insisted on interviewing her. Plaintiffs felt that the Reviewers' demands to interview her were unreasonable.
111. In response to Plaintiffs' rejection of the Reviewers' demands as unreasonable and outside the permissible scope of review, the Reviewers again insinuated in the AOTR report that Plaintiffs' conduct evidenced malfeasance.
112. The Reviewers stated in the Report that Not Afraid created a hostile work environment by entering a Standing Order dated December 4, 2017, which regulated access to and assignment of court files. This was done without having talked to the newly elected judge.
113. The new judge bore no relation to and had no knowledge of Judicial Branch activities for FY-2017. The Standing Order was well within the Not Afraid's authority as Chief Judge, and did nothing other than set out each judges' court responsibilities and case management authority.
114. The AOTR report conclusion that this order created a "hostile work environment" is erroneous. A hostile work environment is defined under Title VII of the Civil Rights Act as a work environment that is hostile to certain employees on the basis of race, color, religion, sex, national origin or disability. The AOTR report provides no basis whatsoever for concluding that the Standing Order, or any other action taken by any employee or official

in the Tribal Court at any time, created a work environment that was hostile towards anyone based upon this definition.

115. Even if the term “hostile work environment” is construed broadly to include a work environment wherein the new judge was somehow threatened by the Standing Order, there is no basis in any facts uncovered in the course of the AOTR review process that would support this conclusion.

116. LaCounte’s cover letter again accused Not Afraid of creating “a hostile work environment for a newly elected official and federal employees by issuing standing orders preventing access to the court and court records.”

117. These allegations are untrue and unsupported by any facts uncovered during the Review. They were made without any good-faith basis, and constitute unlawful conduct by Defendants.

118. The AOTR report wrongfully and arbitrarily included in factual findings numerous alleged deficiencies that, by the Report’s own representations, occurred outside of FY-2017, and thus outside of the stated scope of the report.

TERMINATION

119. On or about August 6, 2018, the Bureau of Indian Affairs representatives met with A.J. Not Afraid and Duke Goes Ahead, Chairman and Vice-Chairman of the Crow Tribe, and instructed them to terminate Plaintiffs Not Afraid and Goes Ahead, threatening that if the terminations did not occur, the Crow Tribe would lose its Tribal Court 638 Contract

120. To this end, on September 7, 2018, Michelle Wilson, an Associate Judge on the Tribal court and at the direction of the Defendants, filed a Petition for Removal of Not Afraid (Petition) with the Judicial Ethics Board of the Crow Tribe. Associate Judge Wilson alleged that Not Afraid had a) created a hostile work environment, and b) misappropriated

federal funds (under the Contract). Associate Judge Wilson listed, as witnesses, the Reviewers, Lois Reyes and JoEllen Cree. A copy of the Petition is attached hereto as Exhibit E.

121. The hearing was held on October 15, 2018. Following the receipt of testimony and oral argument, the Ethics Board issued a written decision, in the form of Findings of Fact and Conclusions of Law and Recommendations of the Board (Ruling). A copy of the Ruling is attached hereto as Exhibit F.

122. The Board found that Associate Judge Wilson had not been subjected to a hostile work environment. Ruling, ¶ 39.

123. The Board found that Not Afraid had “authorized contract loans to Court employees, but identified no Crow tribal law or Crow tribal policy or procedure to support his authorization of contract loans.” The Board relied in part on the testimony of Plaintiff Goes Ahead (who filed the Administrative Claim with Not Afraid) that no official policy or procedure authorized the loans and “we shouldn’t have done it.” Ruling, ¶¶ 41-43.

124. Not Afraid authorized contract loans to employees to enable them to meet expenses when their official paychecks failed to clear.

125. The Board did not hear testimony from the parties responsible for issuing the bad checks. The Reviewers also did not interview these parties.

126. The Board commended Not Afraid “for his good faith actions in seeking to protect the financial security of his employees,” but concluded that his actions were not authorized and “caused the Crow Tribal Courts to be unable to balance their budget,” citing a discrepancy of \$0.36 that the Court actively was attempting to reconcile. Ruling, ¶¶ 40, 45-46.

127. The Crow Tribal Legislature accepted the recommendation in the Ruling, and terminated Not Afraid on the same day.

128. The allegations of the Petition corresponded with alleged deficiencies noted in the AOTR and CAP.
129. The AOTR and CAP provided a pretext for Associate Judge Wilson to file the Petition.
130. For reasons stated in the Administrative Claim, the Review that resulted in the AOTR and CAP was conducted in a negligent and/or retaliatory and unlawful manner.
131. The Review was conducted in a manner designed not to uncover the truth, but rather to usurp the Judicial Branch's autonomy, damage and harm Plaintiffs Not Afraid and Goes Ahead and undermine Crow tribal sovereignty.
132. Not Afraid's termination was directed by the BIA and BIA's issuance of the AOTR and CAP was the vehicle BIA used to accomplish it. It was the culmination of a series of unlawful actions beginning with the negligent, retaliatory and unlawful actions of the BIA Reviewers. It also represents further retaliation by the Individual Defendants.
133. After the termination of Not Afraid, the Crow government, with the blessing of the BIA, placed Michelle Wilson as Acting Chief Judge.
134. It is the belief of the Plaintiffs that the Defendants also filed a complaint against Not Afraid with Office of Inspector General asking that he be investigated.

CAUSES OF ACTION

COUNT I. BIVENS ACTION

135. Plaintiffs incorporate each paragraph contained in this Complaint as if fully set forth herein.
136. Plaintiffs are entitled to relief against the individual Defendants pursuant to *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971), because Defendants violated Plaintiff's rights under the United States Constitution.
137. Upon Plaintiffs raising the question of the BIA failing to protect Crow children and

prisoners, Defendants retaliated against them for this exercise of their First Amendment rights, causing economic harm, damage to reputation and emotional damages.

138. The 2017 Review had errors in it that were egregious but were intentionally done to harm Plaintiffs.

139. The tortious conduct of Defendants was a material and substantial factor and proximate cause in the harm suffered by Plaintiffs.

140. The Individual Defendants acted with intent to cause Plaintiffs ultimately to lose their positions in Tribal Court. Plaintiffs had a property interest in continued employment, of which they were deprived by the actions of the Individual Defendants.

141. The actions of the Individual Defendants in connection with the proceedings that resulted in termination of Plaintiffs' employment also deprived Plaintiffs of procedural due process.

142. As a result of the wrongful acts of Defendants, the Plaintiffs have suffered damages in amount to be determined at trial

COUNT II: BREACH OF FIDUCIARY DUTY

143. Plaintiffs incorporate each paragraph contained in this Complaint as if fully set forth herein.

144. Defendants have a duty to the Tribe to ensure that the constitutional, civil, and treaty rights of tribal members employed pursuant to the Contract and funded by P.L. 93-638 are protected.

145. The actions of the Defendants violate the treaty and federally protected property and other rights of the Plaintiffs.

146. Defendants have breached their duty of trust to the Plaintiffs by engaging in the conduct detailed hereinabove.

147. Plaintiffs have suffered damages as a result in amount to be proven at trial.

COUNT III. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

148. Plaintiffs incorporate each paragraph contained in this Complaint as if fully set forth herein.

149. As a result of the actions of the Defendants, Plaintiffs have suffered severe or serious emotional distress, including sustained physical pain and mental anguish that has affected their lives daily. Plaintiffs will, in reasonable probability, continue to do so in the future by reason of the nature of their injuries.

150. The Plaintiffs' emotional distress was a reasonably foreseeable consequence of the Defendants' actions.

151. Plaintiffs are therefore entitled to damages in an amount to be determined at trial.

COUNT IV. CONSTRUCTIVE FRAUD

152. Plaintiffs incorporate each paragraph contained in this Complaint as if fully set forth herein.

153. Due to the relationship of the United States government and the Crow Tribe under the Contract there exists a relationship of trust and confidence between the Plaintiffs and Defendants.

154. The Defendants took advantage of the Plaintiffs' position of trust in order to benefit themselves.

155. As a result, the Plaintiffs were injured and have suffered damages in an amount to be determined at trial.

COUNT V: NEGLIGENCE

156. Plaintiffs incorporate each paragraph contained in this Complaint as if fully set forth herein.

157. Under the Federal Tort Claims Act the Defendants have a duty of care to the Plaintiffs.

158. The actions of the Individual Defendants described herein constitute a breach of that duty of care. Other employees of Defendant DOI also participated in and/or enabled breach of duty to the Plaintiffs.

159. Under the Federal Torts Claims Act, 28 U.S.C. § 2671, Defendants are liable for the above described actions of the Individual Defendants, as they were acting within the scope of their employment as DOI employees when carrying out the unlawful activities described herein.

160. The Defendants' breach of duty to Plaintiffs has caused harm to the Plaintiffs as described herein.

161. As a result of Defendants' negligence, Plaintiffs have incurred damages in an amount to be determined at trial.

COUNT VI. INTERFERENCE WITH CONTRACTUAL RELATIONS

162. Plaintiffs incorporate each paragraph contained in this Complaint as if fully set forth herein.

163. Plaintiffs, whose positions were funded in part through the Contract, were third-party beneficiaries of the Contract.

164. Defendants' actions as set forth above were intentional and willful, and were calculated to cause damage to Plaintiffs in their professional positions.

165. Defendants' actions were undertaken with the unlawful purpose of causing damage or loss, without right or justifiable cause on their part.

166. Plaintiffs suffered actual damages and loss as a result of Defendants' actions, entitling them to recover compensatory, emotional, and punitive damages.

COUNT VII. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

167. Plaintiffs incorporate each paragraph contained in this Complaint as if fully set forth herein.
168. Defendants' actions breached the covenant of good faith and fair dealing implied in the Contract, of which Plaintiffs were third-party beneficiaries.
169. Defendants' bad faith conduct is a tort under Montana law.
170. As a result of the Defendants' bad faith, Plaintiffs are entitled to damages in an amount to be determined at trial.

COUNT VIII. PUNITIVE DAMAGES

171. Plaintiffs incorporate each paragraph contained in this Complaint as if fully set forth herein.
172. The Defendants' conduct as set forth above constitutes actual fraud and/or actual malice.
173. Plaintiffs seek punitive damages for the Defendants' conduct, in an amount to be determined at trial.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

174. The Court orders the Defendants to pay the Plaintiffs an amount to be determined for loss of earnings and earning capacity they have suffered, and in reasonable probability will continue in the future;
175. The Court orders the Defendant to pay the Plaintiffs an amount to be determined for physical and mental pain and suffering and emotional distress they have suffered due to such injuries, which in reasonable probability will continue in the future;
176. That Plaintiff be awarded its costs, expenses and attorney fees incurred herein as

permitted by law; and

177. Punitive damages; and

178. For such other and further relief as the Court deems just and proper.

Dated this 1st day of October 2019.

Respectfully submitted,

/s/ Terryl T. Matt

Terryl Matt

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