

## **I. (a) PLAINTIFFS**

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)**

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## DEFENDANTS

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

<input type="radio"/> 1 U.S. Government Plaintiff	<input type="radio"/> 3 Federal Question (U.S. Government Not a Party)
<input checked="" type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)

	PTF	DFT		PTF	DFT
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4
Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5
Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

## 410 Antitrust

- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Medical Malpractice
- ☐ 365 Product Liability
- ☐ 367 Health Care/Pharmaceutical  
Personal Injury Product Liability
- ☐ 368 Asbestos Product Liability

## ☐ 151 Medicare Act

☐ 861 HIA (1395ff)  
☐ 862 Black Lung (923)  
☐ 863 DIWC/DIWW (405(g))  
☐ 864 SSID Title XVI  
☐ 865 RSI (405(g))

☐ 891 Agricultural Acts  
☐ 893 Environmental Matters  
☒ 890 Other Statutory Actions (If Administrative Agency is Involved)

**Any nature of suit from any category may be selected for this category of case assignment.**

**\*(If Antitrust, then A governs)\***

**F. *Pro Se General Civil***

☐ 210 Land Condemnation  
☐ 220 Foreclosure  
☐ 230 Rent, Lease & Ejectment  
☐ 240 Torts to Land  
☐ 245 Tort Product Liability  
☐ 290 All Other Real Property

☐ 370 Other Fraud  
☐ 371 Truth in Lending  
☐ 380 Other Personal Property  
Damage  
☐ 385 Property Damage  
Product Liability

☐ 422 Appeal 27 USC 158

☐ 423 Withdrawal 28 USC 157

- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Conditions
- ☐ 560 Civil Detainee – Conditions of Confinement

Report, Rights
<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 840 Trademark

☐ 870 Taxes (US plaintiff or defendant)

☐ 871 IRS-Third Party 26 USC 7609

☐ 625 Drug Related Seizure of  
Property 21 USC 881  
☐ 690 Other

- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 430 Banks & Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

☐ 480 Consumer Credit

☐ 490 Cable/Satellite TV

☐ 850 Securities/Commodities/

☐ 896 Arbitration

☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision

### 950 Constitutionality of State Statutes

☐ 890 Other Statutory Actions  
(if not administrative agency  
review or Privacy Act)

<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
☒ 1 Original Proceeding  
 ☐ 2 Removed from State Court  
 ☐ 3 Remanded from Appellate Court  
 ☐ 4 Reinstated or Reopened  
 ☐ 5 Transferred from another district (specify)  
 ☐ 6 Multi-district Litigation  
 ☐ 7 Appeal to District Judge from Mag. Judge  
 ☐ 8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 25 USC 450m-1; defendants' violations of Indian Self-Determination and Education Assistance Act contract

<b>VII. REQUESTED IN COMPLAINT</b>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$15,619,176 JURY DEMAND:	Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
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<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	If yes, please complete related case form
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DATE: 03/21/2017	SIGNATURE OF ATTORNEY OF RECORD: /s/ Philip Baker-Shenk
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**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.



\$17,055,477 for operations of the Navajo Nation Judicial Branch. This was essentially the same amount that the Nation had previously sought for CY 2014 and CY 2015 (\$17,055,517),<sup>1</sup> and which had been approved by operation of law because of Defendants' failure to decline the Nation's CY 2014 proposal within the 90-day review period established by law. Nonetheless, Defendants partially declined the Nation's proposed AFA for CY 2016 for all funding in excess of \$1,436,301. Because Defendants' action violates the ISDEAA and applicable regulations, the Nation is entitled to declaratory and injunctive relief and damages, plus interest pursuant to section 110(a) of the ISDEAA, 25 U.S.C. § 5331(a).

### **PARTIES**

2. The Nation is a federally recognized Indian Tribe whose reservation is approximately the size of West Virginia and is located in the states of Arizona, New Mexico and Utah. The seat of the Nation's government is located in Window Rock, Arizona.

3. The Department of the Interior ("Department") is an executive department within the United States government. The Bureau of Indian Affairs ("BIA") is a bureau within the Department. The Department's headquarters is located in Washington, D.C.

4. The Secretary has overall responsibility for administering the Department and overseeing its constituent bureaus and programs, including the BIA, and contracting with Indian tribes under the ISDEAA. The Secretary's office is located in Washington, D.C.

### **JURISDICTION AND VENUE**

5. This is a civil action arising under the ISDEAA, 25 U.S.C. § 5331(a), and this Court has subject matter jurisdiction under 28 U.S.C. § 1331.

6. Venue in the District of Columbia is proper under 28 U.S.C. § 1391(b) and (e).

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<sup>1</sup> Because of a typographical error, the proposal for CY 2016 was \$40 less than the proposed AFAs for CY 2014 and CY 2015.

## **FACTS**

7. Contract No. A12AV00698 (the “Contract”) was issued by the Department to the Nation and signed by the Nation and the Department (the “Parties”) in 2012 for a five-year term from January 1, 2012 through December 31, 2016.

### **The 2014 AFA**

8. In its proposed AFA for the Contract for CY 2014, the Nation proposed a substantial increase in funding to administer and perform certain portions of the Judicial – Tribal Courts program, seeking a total of \$17,055,517.

9. This proposed AFA was hand-delivered to the BIA on October 4, 2013.

10. Under the ISDEAA, the Secretary has 90 days after receipt of a contract proposal within which to decline or award it. 25 U.S.C. § 5321(a)(2); 25 C.F.R. § 900.16-.18.

11. A BIA letter to the Nation, dated October 21, 2013, acknowledged the BIA’s receipt of the CY 2014 proposal but asserted that, because the government had been partially shut down from October 1, 2013, through October 16, 2013, the BIA had until “90 days after October 17, 2013 to approve, decline, or award the proposal,” and that this “90-day period will end on January 15, 2014.”

12. The Nation did not agree to any extension of the 90-day period. Given the date of actual receipt of the proposal by the BIA, the Secretary’s deadline to decline or award the Nation’s proposed 2014 AFA expired January 2, 2014.

13. The Secretary did not decline the Nation’s proposed 2014 AFA by the statutory deadline of January 2, 2014.

14. Accordingly, the Nation’s proposed 2014 AFA was deemed approved by

operation of law. 25 C.F.R. § 900.18; 25 U.S.C. § 5321(a)(2); *Seneca Nation v. Department of Health and Human Services*, 945 F. Supp. 2d 135, 144-45 (D.D.C. 2013), *app. dism'd*, No. 13-5219, 2013 WL 6818212 (D.C. Cir. Dec. 12, 2013).

15. On January 15, 2014, the BIA issued an untimely letter to the Nation purporting to partially decline the Nation's 2014 AFA to the extent that it exceeded approximately \$1.3 million, which was about the same amount funded in 2013.

16. On November 12, 2014, the Nation filed an action in this Court seeking declaratory and injunctive relief and money damages with respect to the CY 2014 Agreement, *Navajo Nation v. Department of the Interior, et al.*, No. 1:14-cv-01909.

17. On March 30, 2016, the Court issued a Memorandum Opinion and Order denying the Nation's motion for summary judgment and granting defendants' cross-motion for summary judgment.

18. The Nation timely appealed the Court's ruling to the U.S. Court of Appeals for the D.C. Circuit, No. 16-5117. That appeal is pending.

#### **The Nation's Law Suit Regarding the CY 2015 Agreement**

19. On January 5, 2016, the Nation filed an action in this Court seeking declaratory and injunctive relief and money damages with respect to the CY 2015 Agreement, *Navajo Nation v. Department of the Interior, et al.*, No. 1:16-cv-00011. That action is stayed pending the final resolution of the claims in *Navajo Nation v. Department of the Interior, et al.*, No. 14-cv-01909.

#### **The 2016 AFA**

20. Meanwhile, on January 7, 2016, the Nation submitted its proposed AFA for CY 2016 to the BIA, with a proposed budget of \$17,055,477. *See* Exhibit A.

21. By a letter of March 25, 2016, the BIA partially declined the Nation's proposed

AFA for CY 2016 for all funding above \$1,436,301. *See* Exhibit B.

**The Nation's Entitlement to Relief**

22. Pursuant to Section 106(b) of the ISDEAA, 25 U.S.C. § 5325(b), the amount of funding provided to an Indian tribe under a self-determination contract shall not be reduced by the Secretary in subsequent years except pursuant to— (A) a reduction in appropriations from the previous fiscal year for the program or function to be contracted; (B) a directive in the statement of the managers accompanying a conference report on an appropriation bill or continuing resolution; (C) a tribal authorization; (D) a change in the amount of pass-through funds needed under a contract; or (E) completion of a contracted project, activity, or program. None of these events has occurred since CY 2014.

23. Further, the ISDEAA regulations, at 25 C.F.R. § 900.32, provide that the Secretary may not decline an Indian tribe's proposed successor AFA, or portions thereof, if it is substantially the same as the prior AFA (except for funding increases included in appropriations acts or funding reductions as provided in section 106(b) of the Act [25 U.S.C. § 5325(b)]).

24. The BIA could not decline the Nation's proposed AFAs for CY 2015 and CY 2016 to the extent that they sought the \$17,055,517 approved by operation of law for CY 2014.

25. Defendants' partial declination of the Nation's proposed AFA for CY 2016 for all funding in excess of \$1,436,301 violated their obligations under the ISDEAA and its implementing regulations and constitutes a material breach of the Contract.

**FIRST CLAIM FOR RELIEF—DECLARATORY JUDGMENT**

26. The Nation re-alleges and incorporates by reference the allegations of paragraphs 1-25, above, as if fully set forth herein.

27. The Nation is entitled to a judgment declaring that the Nation's proposed AFA

for CY 2016 may not be declined to the extent that it seeks the amount approved for CY 2014 for substantially the same purpose and that the Nation is entitled to receive the \$17,055,477 that it proposed in its AFA for CY 2016.

### **SECOND CLAIM FOR RELIEF—INJUNCTION**

28. The Nation re-alleges and incorporates by reference the allegations of paragraphs 1-27, above, as if fully set forth herein.

29. Under 25 U.S.C. § 5331(a), this Court may order appropriate relief including money damages, injunctive relief against any action by an officer of the United States or any agency thereof contrary to the ISDEAA, or mandamus to compel a federal officer or employee to perform a duty imposed by the ISDEAA, “including immediate injunctive relief to reverse a declination finding under [25 U.S.C. §] 5321(a)(2) . . . or to compel the Secretary to award and fund an approved self-determination contract.”

30. The Nation is entitled to injunctive relief compelling the Secretary to award and fund the CY 2016 AFA in the amount of \$17,055,477.

### **THIRD CLAIM FOR RELIEF—BREACH OF CONTRACT**

31. The Nation re-alleges and incorporates by reference the allegations of paragraphs 1-30, above, as if fully set forth herein.

32. By partially declining the Nation’s proposed AFA for CY 2016 and paying only \$1,436,301, the Defendants breached the Contract.

33. The Nation is entitled to an award of damages in the amount of \$15,619,176 plus interest, plus reasonable fees and expenses, including attorneys’ fees, pursuant to 25 U.S.C. § 5331(a).



