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Receipt number AUSFCC-8000216

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

MONTI PAVATEA GILHAM,

Plaintiff,

v.

THE UNITED STATES,

Defendant,

No. 22-728 L

Judge \_\_\_\_\_

**COMPLAINT**

Plaintiff Monti Pavatea Gilham (“Monti”) by and through her counsel, Browning, Kaleczyc, Berry & Hoven, P.C., for her Complaint alleges as follows:

**NATURE OF CLAIM**

1. Monti is an enrolled member of the Blackfeet Indian Tribe and a prior participant in the Conservation Reserve Program (“CRP”). Monti hereby seeks financial damages from the Defendant for failing to uphold its statutory trust responsibilities to assist Monti in fulfilling the CRP contracts it co-signed with her. She also seeks damages from Defendant for the Bureau of Indian Affairs failing to provide her any assistance when those CRP contracts were terminated due to Monti’s

physical and mental health conditions arising from domestic violence. For her Complaint, Plaintiff states the following:

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action under 28 U.S.C. § 1491 as it is a claim for monetary damages against the United States. Further, venue is proper in this Court. U.S. Court of Federal Claims has specific jurisdiction over trust disputes involving the Blackfeet tribe and its tribal members.

3. A tribe or tribal member must clear two hurdles before invoking jurisdiction under the Tucker Act. *United States v. Navajo Nation (Navajo II)*, 556 U.S. 287, 290 (2009). First, a tribe or tribal member 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.” *Id.* Second, the court must “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] impose[s].’” *Id.*

4. In the present case, the substantive source of law is the contractual obligations the United States owes tribal members when representatives of the Bureau of Indian Affairs (BIA) co-sign Conservation Reserve Program (CRP) contracts with tribal members like Plaintiff. Second, a premature termination of those contracts results from the United States failure to provide any reasonable

assistance to the tribal member(s) maintaining those CRP contract(s) mandates compensation for damages sustained as a result of that breach of duty.

### **PARTIES**

5. Plaintiff, Monti Gilham, is a citizen of Montana and an enrolled member of the Blackfeet Tribe. She currently resides in Belgrade, Montana, but previously resided on tribal lands within the Blackfeet Indian Reservation at the time of the events referenced in this Complaint. Plaintiff brings this complaint in her individual capacity.

6. The United States of America is subject to suit under 28 U.S.C. § 1491 for the actions of the United States Department of the Interior (“DOI”) and the Bureau of Indian Affairs (“BIA”), and is responsible for lawfully upholding its trust responsibilities to the Blackfeet Tribe and its tribal people pursuant to its treaty obligations and federal law.

### **FACTUAL AND PROCEDURAL BACKGROUND**

7. Monti is an enrolled member of the Blackfeet Indian Tribe. Her family have been farmers and ranchers for many generations on Cut Bank Creek in Montana. After her father passed away, duties and responsibilities fell back to her and her mother for taking over the family’s farming and ranching operation.

8. Monti initially took over her family acres in the CRP program for Indian trust land located on the Blackfeet Reservation on or about September 27,

2007. These acres were enrolled with the Glacier County FSA for Farm No. 5403, Tract Nos. 123450 and 123448. Monti then dutifully maintained her family's CRP acres in the program for more than seven (7) years without serious incident, thus providing the agency with significant program benefits prior to her contracts being terminated in the fall of 2015.

9. Representatives of the Bureau of Indian Affairs, on behalf of the United States, also co-signed Monti's CRP contracts in the United States' official role as trustee of the Blackfeet Tribe and its tribal members.

10. In 2013, Monti's husband became seriously addicted to methamphetamine and abandoned her family to live on the street. This left Monti as a single mother of four minor children. During that time of abandonment, her own employment as a teacher at the Blackfeet Community College suffered and she was asked to resign from her position in 2014. During this difficult period she became involved in a relationship with a local firefighter. When this new boyfriend would drink alcohol, he would become extremely paranoid and violent to Monti, limiting Monti's ability to communicate with family, friends, and the FSA. For example, during one incident, Monti's boyfriend threw her from a moving car and then attempted to drive over her. In order to escape this abusive relationship, Monti decided to leave the farm and return to school in Missoula, Montana.

11. In 2015, Monti was accepted into the School of Business Master's program with a full scholarship and moved to Missoula with her children. While things started out well for her in school, her abusive boyfriend soon followed her to Missoula and forcibly moved in with Monti and her children. During the school year, this resulted in numerous physically violent incidents, including Halloween night of 2015 when her boyfriend brutally beat and strangled her because was angry with her spending time with her friends. This resulted in the police being called and his arrest. True and correct copies of these police records were provided to the Agency as exhibits at the hearing. From this incident, Monti had severe injuries including; a massive hematoma on her forehead and her eyes were completely closed for over 3 weeks due to the bruising and swelling. Her neck had strangulation marks and she suffered whiplash in her neck which continues to cause her pain to this day. These injuries and the emotional trauma of the attack resulted in Monti withdrawing from school for medical reasons to recover. True and correct copies of these medical records were also provided at the hearing.

12. In the summer and fall of 2015, the FSA was also attempting to contact Monti related to maintenance that needed to be done on her CRP contracts. Monti did not receive these letters because they were sent to her old farm address and no one was there to sign for them. She had also not remembered to send her new mailing contact information to FSA when she fled town to live in Missoula as she

was more concerned with escaping an abusive relationship at that time and was not thinking properly about her need to keep FSA informed. She did eventually receive an email from one of the employees in the Glacier County office stating she needed to take care of this maintenance and that it was time sensitive. However, between being trapped in a physically abusive relationship and the emotional trauma of her attacks; she couldn't possibly react or respond.

13. During this time, Monti was still battling major anxiety attacks along with being very depressed. She was in and out of the emergency room and she would go days without getting out of bed, eating, taking care of her children, or even seeing people. Her brother and mother would come in and help take care of her and her children. She battled suicidal thoughts and struggled to sleep. The "boyfriend" who assaulted her was also continuing to try to get in contact with her and she withdrew from the world. Unfortunately, Monti's serious and traumatic life altering events prevented her from properly addressing the maintenance on her CRP acres at issue and the maintenance was not completed timely.

14. Due to the impact of domestic violence and the resulting depression which resulted in losing her CRP contracts, Monti requested and was awarded equitable relief from the United States Department of Agriculture' National Appeals Division on February 19, 2021. This allowed Monti to retain the CRP payments to which she was actually paid for prior to the CRP contracts being terminated, so that

she did not have to repay those funds back. In the present litigation, Monti is seeking payment from Defendants for those funds that she would have otherwise been paid pursuant to the CRP contracts but for the fact they were terminated prematurely.

15. Unfortunately, even during the years Monti fought to get relief from the USDA, the employees at the BIA routinely failed to provide her any assistance in her appeal and request for relief. This forced Monti to spend considerably more time, money, and resources in her fight. Employees at the BIA also routinely informed Monti that they owed her no duty to assist her with her CRP contracts even though the United States had co-signed each contract at issue as a trustee.

16. Defendant and the BIA neither acted promptly, nor in a spirit of cooperation with Plaintiff throughout her long battle over the loss of the CRP contracts the United States co-signed. Instead, employees within the BIA left Monti to fend for herself and multiplied her problems by creating confusion, extra process, and delay. As a result, the United States has violated its trust and fiduciary duties to Plaintiff under the CRP contracts it co-signed with her, and Defendant's conduct is the exact opposite of what its involvement in this matter should have been.

17. As a result of losing her CRP contracts, Monti is no longer involved in farming, but continues to partner with her mother in operating the ranching portion of their business. As such, she is not requesting her CRP contracts be restored at this time. She is simply seeking financial damages resulting from the early

termination of her CRP contracts and for the lost CRP income for those years that she was never paid for when she was awarded relief from NAD. She is also seeking the United States - and the BIA specifically - to acknowledge that they owe tribal members a trust and fiduciary duty to provide reasonable assistance to tribal members when requested for those CRP contracts the United States co-signs as trustee.

**FIRST CAUSE OF ACTION**

**(Violation of Defendant's Duties under the Administrative Procedure Act to Act Reasonably and Not Abuse their Discretion)**

18. Plaintiff hereby re-alleges and incorporates Paragraphs 1 through 17, supra.

19. The Administrative Procedure Act, 5 U.S.C. § 706(2)(A), empowers the Court to “hold unlawful” any agency action found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

20. As set forth above, the BIA's failure to carry out its basic contractual duties under the CRP contracts it co-signed with Monti – such as routine weed maintenance on the fields under contract – resulted in the early termination of Monti's CRP contracts after she was the victim of domestic violence.

21. Defendant's failure to act to assist Monti in maintaining the CRP contracts and to provide her reasonable assistance to obtain equitable relief after the

contracts were terminated prematurely was arbitrary, capricious, an abuse of discretion, and is not otherwise in accordance with the law.

22. Defendant's failure to take action has caused and will continue to cause substantial harm to Monti as the CRP contracts at issue were terminated prematurely and she was never paid for the years following that termination.

**SECOND CAUSE OF ACTION**  
**(Violation of Defendant's Trust and Fiduciary Duties Owed to Plaintiff Pursuant to the CRP Contracts Defendant Co-Signed)**

23. Plaintiff hereby re-alleges and incorporates paragraphs 1 through 22, supra.

24. The United States, through its BIA employees, knowingly co-signed each of the CRP contracts at issue with Monti pursuant to the trust responsibilities they owed her.

25. Thereafter a dispute arose between the USDA and Monti as result of her failure to provide routine maintenance on her CRP fields due to physical and mental health conditions stemming from domestic violence.

26. At the time the CRP contracts were terminated, the United States, through its BIA employees, had within its power to provide the routine maintenance on Monti's CRP fields to keep the CRP contracts in good standing, but chose not to provide that assistance.

27. The United States decision to do nothing to assist Monti to maintain the CRP contracts in good standing was a clear breach of the trust and fiduciary duties it owed Monti as an enrolled tribal member of the Blackfeet Tribe.

28. The United States violations of the trust and fiduciary duties it owed to Monti has caused and will continue to cause substantial harm to her.

**PRAYER FOR RELIEF**

THEREFORE, Plaintiff respectfully requests that the Court enter an Order:

- A. Enter judgment against the United States and in favor of Plaintiff;
- B. Award Plaintiff damages for those years of the CRP contract that she was never paid following the early termination of those contracts;
- C. Declaring that the United States failed to carry out its mandatory trustee duties it owed to Plaintiff pursuant to the CRP contracts it co-signed;
- D. Award Plaintiff her reasonable attorney fees, costs, and expenses of litigation as allowed by the Equal Access to Justice Act, 28 U.S.C. § 2412, et seq., and other applicable law; and
- E. Grant Plaintiff such further and additional relief as the Court deems just and proper.

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Respectfully submitted this 30<sup>th</sup> day of June, 2022.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By /s/ Judd M. Jensen

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