

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

SANTEE SIOUX NATION  
108 Spirit Lake Ave. W  
Niobrara, NE 68760,

*Plaintiff,*

v.

ROSELYN TSO, in her official capacity as  
DIRECTOR OF THE INDIAN HEALTH SERVICE;

UNITED STATES INDIAN HEALTH SERVICE;

XAVIER BECERRA, in his official capacity as  
SECRETARY OF HEALTH AND HUMAN  
SERVICES;

UNITED STATES DEPARTMENT OF HEALTH  
AND HUMAN SERVICES;

UNITED STATES DEPARTMENT OF THE  
TREASURY, BUREAU OF THE FISCAL  
SERVICE;

TIMOTHY GRIBBEN, in his official capacity as  
COMMISSIONER BUREAU OF FISCAL  
SERVICE;

THE UNITED STATES OF AMERICA.

*Defendants.*

VERIFIED COMPLAINT FOR  
TEMPORARY RESTRAINING ORDER,  
PRELIMINARY AND PERMANENT  
INJUNCTION, DECLARATORY AND  
EQUITABLE RELIEF

Plaintiff for its Complaint against the above-named Defendants, states and alleges as follows:

**NATURE OF THE ACTION**

1. Plaintiff Santee Sioux Nation (“Tribe” or “Nation”) is a federally recognized Indian Tribe that contracts with the United States Health and Human Services (“HHS”), Indian Health Service (“IHS”) to provide health care services to the Tribe’s members and other Native Americans pursuant to the Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638, as amended) (“ISDEAA”). The Tribe seeks a

temporary restraining order, a preliminary and permanent injunction pursuant to Fed. R. Civ. P. 65, and Declaratory Relief pursuant to 28 U.S.C. § 2201 *et. seq.*, enjoining and prohibiting Defendants, collectively and individually, from any further federal funding offset, collection, diversion, or seizure of federal funding owed to the Tribe pursuant to the Tribe's self-determination contracts under the ISDEAA, or any other federal grants, funding, or payment; and for restoration of all funds already offset, collected, seized or diverted. In short, the Tribe asks the Court to halt the United States Department of the Treasury, Bureau of the Fiscal Service's (hereinafter "USDOT-BFS") seizure of federal funds owed to the Tribe, which was initiated at the direction of the IHS, to satisfy an alleged federal debt that the Tribe has paid in full through the performance of a Settlement Agreement with IHS, to order Defendants to immediately restore the Tribe's federal funds that Defendants have unlawfully seized and/or offset, and to enter an order of Restitution ordering defendants to restore the more than three million dollars that Defendants have over collected on the alleged debt to date.

2. Defendants have undertaken collection activities against the Tribe, seizing/offsetting millions of dollars in federal health care, social welfare and other funding owed to the Tribe pursuant to the United States' treaty and statutory obligations to the Tribe, without providing the Tribe with notice or an opportunity to be heard, alleging that the Tribe owes IHS a debt for overpayments to the Tribe (the "alleged debt") on prior IHS funding to the Tribe related to the Tribe's financing of a health care facility to service its members and the surrounding community. Defendants have unlawfully disregarded that the Tribe has already repaid (and, in fact, vastly overpaid) the alleged debt amount through the performance of a Settlement Agreement with IHS, and through the

Defendants' additional unilateral and unauthorized reductions in the Tribe's federal health care funding. Defendants' collection actions have caused, and will continue to cause, irreparable harm and hardship to the Tribe and its members.

3. In addition to failing to provide due process to the Tribe in over collecting on the alleged debt, HHS/IHS further failed to take action to terminate the debt and/or collection activity on the debt or to fulfill their obligation to the Tribe to attempt to resolve this dispute by agreement at the awarding official's level, which would have prevented the overcollection of federal funding to which the Tribe is otherwise entitled, as required by 25 C.F.R. § 900.217. This violates the obligation of the Secretary to protect and conserve trust resources of the Tribe by denying the Tribe access to its grant and program funding. 25 C.F.R. § 900.3(b)(4).

#### **PARTIES**

4. Plaintiff Santee Sioux Nation is a federally recognized Indian Tribe. 88 F.R. 2,112, 2,114 (Jan. 12, 2023). The Santee Sioux Reservation is located in Knox County, Nebraska. The Tribe is responsible for the health, safety, and welfare of its individual tribal members. The Tribe contracts with the HHS under the ISDEAA to provide various services to its tribal members pursuant to treaties and statutory obligations owed by the United States to the Tribe. The Tribe brings this action on its own behalf and on behalf of its members.
5. Defendant Roselyn Tso is Director of IHS, with offices located at 5600 Fishers Lane, Rockville, MD 20857. She is sued in her official capacity.
6. Defendant Indian Health Service is an agency within HHS, with offices located at 5600 Fishers Lane, Rockville, MD 20857.

7. United States Department of Health and Human Services is an executive agency of the United States, with offices located at 100 Independence Ave, S.W. Washington, DC 20201.
8. Defendant Xavier Becerra is Secretary of HHS, with offices located at 100 Independence Ave, S.W. Washington, DC 20201. He is sued in his official capacity.
9. Defendant United States Department of Treasury, Bureau of the Fiscal Service (USDOT-BFS), with offices located at P.O. Box 1686 Birmingham, AL 35201, is the entity tasked with the collection action that has resulted in the seizure and diversion of funds that were to be used by the Tribe for the benefit of its members. The USDOT-BFS operates a Treasury Offset Program (hereinafter “TOP”), which collects delinquent debts that persons and entities owe to federal agencies by withholding (“offsetting”) funds that were to be paid to that person or entity by a federal agency.
10. Defendant Timothy Gribben is Commissioner of the Bureau of Fiscal Services, with offices located at 3201 Pennsy Drive, Building E, Landover, MD 20785. He is sued in his official capacity.

#### **JURISDICTION AND VENUE**

11. This Court has jurisdiction over the subject matter of this action pursuant to: (a) 28 U.S.C. § 1331 (federal questions action), in that this is a civil action arising under the Constitution, laws, or treaties of the United States; (b) 28 U.S.C. § 1362 (federal question action brought by an Indian tribe), in that this is a civil action brought by an Indian tribe with a governing body duly recognized by the Secretary of the Interior and the matter in controversy arises under the Constitution, laws or treaties of the United States; (c) 25 U.S.C. § 5331(a) (action under ISDEAA), in that this is a civil action

against the Secretary of the Interior arising under the ISDEAA; and (d) 28 U.S.C. § 1361 (mandamus against federal official), in that this is an action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the Plaintiff.

12. This action arises under the Constitution, laws and treaties of the United States, as hereafter more fully appears, including but not limited to: the Commerce Clause, U.S. Const. Art. 1, § 8, cl. 3; the Indian Self-Determination and Education Assistance Act of 1975 (“ISDEAA”), 25 U.S.C. §§ 5301 *et. seq.*; the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551 *et seq.* and §§ 701-706; the Declaratory Judgments Act, 28 U.S.C. §§ 2201-2202; and the federal common law.
13. The United States has waived its sovereign immunity from suit in this action under 25 U.S.C. §§ 5331(a) and (d) (incorporating the Contract Disputes Act, 41 U.S.C. § 7104) for civil actions against the Secretary of the Interior arising under the ISDEAA for relief including money damages, injunctive relief, or mandamus.
14. The United States has waived its sovereign immunity from suit in this action under section 702 of the APA, 5 U.S.C. § 702. Section 702 waives sovereign immunity for all claims for relief other than monetary damages, including all forms of equitable relief, including specific equitable relief in the form of reimbursement to the Tribe of benefits and/or payments unlawfully withheld by Defendants, and including equitable relief from a Defendants’ action or failure to act.
15. The United States has waived its sovereign immunity pursuant to paragraphs 4 and 8 of the September 16, 2016 Settlement Agreement entered into between the Tribe and IHS which authorizes the parties to enforce the terms of the agreement.

16. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) and (e)(1) because the Plaintiff's Reservation is located within this judicial district, the Departments of Interior and Health and Human Services are agencies of the United States, and a substantial part of the events or omissions giving rise to the claims herein occurred and are still occurring within this judicial district.

### **BACKGROUND OF THE SANTEE SIOUX NATION**

17. The Santee Sioux Nation (formerly the Santee Sioux Tribe of Nebraska) is a federally-recognized Indian tribe, organized under Section 16 of the Indian Reorganization Act of 1934 and governed by its Constitution as approved, with amendments, by the Secretary of the Interior on August 30, 2002. The Tribe's Reservation is located in Knox County, Nebraska.
18. The land in Nebraska on which the Santee Sioux were relocated has always been ill-suited for farming, and what little arable land that existed on the Reservation was flooded by the federal government in order to provide hydroelectric power to surrounding non-Indian communities. The Santee Sioux Reservation is severely economically depressed, and has been designated by the federal government as a Historically Underutilized Business Zone, or "HUBZone." Small Business Administration, HUBZone Map, (July 2023) <https://maps.certify.sba.gov/hubzone/map>.
19. Title to the vast majority of the Santee Sioux Nation's land is held by the United States, and thus, unlike States, the Tribe has no tax base to provide a revenue source to fund its governmental programs and services. Disadvantage and poverty on the Santee Sioux Reservation are high. A third of Santee Sioux Nation families with children

under the age of five live in poverty. Historically, over 23% of individual Santee Sioux Nation Tribal members live in poverty throughout their adulthood. Unemployment rates on the reservation have consistently hovered at well over 70%. For many Santee Sioux Tribal members, the federally-funded assistance they receive from the Tribe is their only source of material well-being.

20. The Tribe relies almost exclusively on federally-funded grants and programs to provide life-sustaining social programs and services to its members. The Tribe also contracts with IHS and BIA under ISDEAA to provide treaty and statutory-mandated federal programs and services to its members. The Tribe contracts with IHS to provide health care to its members and other eligible community members. The IHS is an agency within the Department of Health and Human Services, and is responsible for providing federal health services to American Indians and Alaska Natives. Indian Health Service, About IHS, (last visited Nov. 20, 2023), <https://www.ihs.gov/aboutihs/>.

### **LEGAL BACKGROUND**

#### *The Indian Self-Determination and Education Assistance Act*

21. Each provision of the ISDEAA and of contracts or funding agreements entered thereunder “shall be liberally construed for the benefit of the Indian Tribe participating in self-determination, and any ambiguity shall be resolved in favor of the Indian Tribe.” 25 U.S.C. §5321(g).
22. The ISDEAA allows federally-recognized Indian tribes and tribal organizations to contract with the Secretary of HHS (and the Secretary of the Department of Interior, or “DOI”) to plan, conduct, and administer one or more individual programs, functions, services, or activities (“PFSAs”), or portions thereof, that the HHS (and DOI) would

otherwise provide for the Tribe or tribal organization because of their status as Indians.  
25 U.S.C. § 5321.

23. The ISDEAA mandates that the Secretary of HHS contract with the Tribe to provide direct program funding to carry out HHS's treaty and statutory obligations to provide health care services to the Tribe's members, referred to as the "secretarial amount," representing "the amount the Secretary would have expended had the government itself [continued to] run the program." *Arctic Slope Native Ass'n v. Sebelius*, 629 F.3d 1296, 1298-99 (Fed. Cir. 2010), *vacated on other grounds*, 133 S.Ct. 22 (2012); 25 U.S.C. § 5325(a)(1).
24. In addition to funding for the "secretarial amount," the ISDEAA requires HHS to fund contract support costs on awarded contracts. Contract support cost funding "shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which (1) normally are not carried on by the respective Secretary in his direct operation of the program; or (2) are provided by the Secretary in support of the contracted program from resources other than those under the contract." 25 U.S.C. § 5325(a)(2).
25. ISDEAA defines contract support costs more specifically as follows:  
  
"[t]he contract support costs that are eligible costs for the purposes of receiving funding under this subchapter shall include costs of reimbursing each tribal contractor for reasonable and allowable costs of –
  1. Direct program expenses for the operation of the Federal program that is the subject of the contract, and



2. Any additional administrative or other expenses related to the overhead incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract,

Except that such funding shall not duplicate any funding provided under subsection (a)(1) of this section.”

25 U.S.C. § 5325(a)(3)(A). Expenses in subparagraph (1) are generally referred to as “direct contract support costs” and are attributable directly to the contract at issue. Expenses in subparagraph (2) are generally referred to as “indirect contract support costs” which are costs “incurred for a common or joint purpose benefiting more than one contract objective . . . .” 25 U.S.C. § 5304(f).

26. While direct contract support costs are generally identified in the tribe’s or tribal organization’s contract proposal as submitted to and negotiated with the agency (25 C.F.R. § 900.8(h)(2)), the amount of indirect contract support costs payable is established through an indirect contract support cost rate negotiated between the contracting Tribe and the federal agency which, for Indian tribal governments, is the United States Department of Interior, Interior Business Center (“IBC”). *Id.* at 900.8(h)(3). *See also* Indian Health Manual, 6-3.1 (G)(6); 2 C.F.R. 200, Appx. V(F)(1).  
*Federal Debt Collection*
27. The head of a federal agency may collect a debt owed to the agency through administrative offset only after giving the debtor notice and due process. 31 U.S.C. §3716(a). The IHS Manual also explicitly requires due process in communicating with debtors.
28. Indian Health Manual Part 9, Chapter 4 – Debt Management, Section 3, Subsection B

– Due Process, reads as follows:

Due process must be given to the debtor for the outstanding debt to be legally enforceable. For a debtor to be given due process, notice must be given that a debt is owed and the debtor must be given the opportunity to dispute. The IHS has the opportunity to extend the administrative process to give more time to a debtor if needed.

29. “Notice informs the debtor of . . . the amount and type of debt; and . . . actions the Agency might take to collect debt . . . .” Indian Health Manual Part 9, Chapter 4 – Debt Management, Section 3, Subsection C – Notice.

30. Indian Health Manual Part 9, Chapter 4 – Debt Management, Section 3, Subsection D

– Opportunity, states the following:

The debtor must have the opportunity to pursue the following options: (1) inspect and copy IHS records related to the debt; (2) to request a review with in [sic] the IHS to the determination of indebtedness; and (3) to make a written repayment agreement to repay the debt.

31. Finally, Indian Health Manual Part 9, Chapter 4 – Debt Management, Section 3, Subsection L – Communicating with Debtors, speaks to the adequacy of minimum notice and opportunity requirements sufficient to give due process in the following terms:

Contact with the debtor is essential because contact provides the debtor with notification of the existence of the debt and the amount if the debtor is otherwise unaware of such elements. It also provides the debtor with the opportunity to repay the debt in full or to work out a satisfactory arrangement with the IHS. . . .

It also provides written evidence of the due process in compliance with demand letters advising the debtor of the intent to use certain debt collection tools. This allows the debtor to exercise any rights to avoid the use of the debt collection tools. Although Federal agencies are not subject to the Fair Debt Collection Practices Act (FDCPA), the regulations provide valuable guidance in communicating with debtors. The following FDCPA rules of debt collection shall be followed by IHS employees. . . .

(2) Do not contact the debtor directly if you know the debtor is represented by an attorney.

32. Government contractors deemed non-responsible due to nonpayment of debt may be suspended and/or disqualified from eligibility for further government contracts. *See*, 2 C.F.R. §§ 180.800(c)(3), 180.700(b), The effect of such action is, in part, to prohibit federal agencies from entering into any transaction with such contractor. *See, e.g.* 2 C.F.R. § 180.400(b).
33. HHS payments under ISDEAA, and United States Department of Agriculture payments made by the Farm Service Agency, are two payments exempt from administrative offset by action of the Secretary of the Treasury under 31 U.S.C. § 3716(c)(3)(B). *See* Treasury Offset Program, Payments Exempt from Offset by Disbursing Officials, (last visited Nov. 14, 2023) <https://fiscal.treasury.gov/files/debt-management/dmexmpt.pdf>.
34. The Secretary of Health and Human Services or his designee has certain obligations related to suspension or termination of a debt or termination of collection activity on a debt. *See* 45 C.F.R. § 30.2 (defining “Secretary” as “the Secretary of Health and Human Services, or the Secretary’s designee.”)
35. If the Secretary “believes suspension or termination of any debt in excess of \$100,000 may be appropriate . . . [he] shall refer the debt” to the Department of Justice, specifying “the reasons for the Secretary’s recommendation.” 45 C.F.R. § 30.28 (b)(2).
36. “If, prior to referral to Justice, the Secretary determines that a debt is plainly erroneous or clearly without merit, the Secretary may terminate collection activity regardless of the amount involved without obtaining Justice concurrence.” *Id.*

### **FACTUAL BACKGROUND**

#### **A. IHS and the Tribe Enter into Agreement to Settle Alleged Debt Resulting from IHS Misguidance**

37. Approximately fifteen years ago, the Tribe explored the possibility of constructing a Health and Wellness Center on the Santee Sioux Reservation in order to provide health care services to its members and other eligible communities. At the time, the nearest IHS health care facility was located approximately 51 miles from the Santee Reservation. The Tribe worked with IHS throughout the process of planning, designing, constructing, equipping, leasing, and operating a tribally owned health care facility (“Facility”) to serve one primary shared goal: to better serve the health care needs of American Indians in the area.
38. Around this time, the health status of the Santee Sioux members and American Indians residing in the Santee Sioux Service Area<sup>1</sup> was typical of an economically depressed and medically underserved area.
39. Leading causes of death among American Indians were diseases of the heart, malignant neoplasm, unintentional injuries, and diabetes. Indian Health Service, Disparities Fact Sheet, (October 2019), <https://www.ihs.gov/newsroom/factsheets/disparities/>.
40. Many causes of death and morbidity conditions were deemed preventable but for the lack of nearby health-care facilities, and the health care facilities located closest in proximity to the Santee Reservation were under-funded and under-staffed. Lack of adequate resources, especially access to medical personnel and clinicians, contributed to the poor health of patients. Mary Smith, *Native Americans: A Crisis in Health Equity*, ABA Journal, Vol 43, No. 3, (last visited November 21, 2023), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home)

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<sup>1</sup> The Santee Sioux Service Area encompasses the communities of Santee, Center, Creighton, Bloomfield, Niobrara, and Verdigre, Nebraska.

[/the-state-of-healthcare-in-the-united-states/native-american-crisis-in-health-equity/](#).

41. For all these reasons, and due to the lack of existing health care service providers in the area, the Tribe and IHS made a determination of need for the Facility, and IHS certified that the Facility “is consistent with the applicable IHS Area Health Facilities Master Plan and that the Aberdeen Area IHS supports and recommends the proposed project.” Joint Venture Construction Program Agreement Between the Santee Sioux Nation & Indian Health Service, VI(A)-(B). (A copy of the Joint Venture Construction Program Agreement is attached as Exhibit A).
42. Around 2008, the Tribe was concerned with its ability to carry the debt proposed in the construction of the Facility. (Decl. of John H. Banks, Managing Director, D.A. Davidson & Co. (Dec. 30, 2015) attached as Exhibit B at ¶ 12). It raised those concerns with IHS officials at both the area and central office level. *Id.* In response, IHS advised the Tribe to include depreciation in calculating its ISDEAA indirect contract support cost payments, in order to help fund the bond issuance used to finance construction of the Facility. IHS assured the Tribe that such indirect contract support cost payments would be available over the life of the Joint Venture Construction Program Agreement (“JVCPA”) entered into between the Tribe and IHS to finance the planning and construction of the Facility. *Id.* at ¶ 8-10. Further, throughout the bond placement process, the Tribe was repeatedly assured by IHS that that Facility revenue (which included depreciation payments from IHS) would be sufficient to repay the debt. *Id.* at ¶ 12. Based on the explicit directions and repeated assurances by IHS, the Tribe placed bonds for sale with investors. *Id.* at ¶ 6-17. These bonds would not have been placed, and investors would not have purchased them, had the Tribe and its investors known

that IHS would renege on its advice a mere five years into the project, and to claim, long after multi-million-dollar commitments had been made by the Tribe, that the use of depreciation payments to finance construction of the Facility would be disallowed. *Id.* at ¶ 17.

43. The Santee Sioux Nation finished construction and the grand opening of the Facility was held in 2011.
44. On September 25, 2012, the Santee Sioux Nation submitted to IHS a Contract Disputes Act claim for unpaid contract supports costs for fiscal years 2006-2011. (A copy of the September 25, 2012 Contracts Disputes Act Claim is attached as Exhibit C). On November 6, 2014, the Tribe submitted its FYs 2012-13 claims. Central to the Tribe's claims was unpaid contract support costs owed by IHS for depreciation used by the Tribe, pursuant to the advice of IHS, to market and sell the Facility construction bonds. (*Id.* at p. 2 of 5).
45. For four years, from 2012 through 2016, the Tribe, represented by legal counsel, negotiated a settlement with IHS on the Tribe's depreciation claims. This included many emails and paper correspondence, telephone calls and meetings with IHS and its legal counsel.
46. On May 18, 2016, IHS issued a final agency action denying the Tribe's claims. (A copy of the May 18, 2016 denial is attached as Exhibit D). The 2016 final agency action was addressed to Roger Trudell, Chairman of the Santee Sioux Nation, and copied to the attorneys for both IHS and the Tribe who were engaged in the settlement negotiations for the previous four years. *Id.*
47. The Tribe appealed the 2016 final agency action to the Civilian Board of Contract

Appeals on August 2, 2016. (A copy of the August 2, 2016 appeal is attached as Exhibit E). After filing her notice of appearance on behalf of HHS, legal counsel for IHS and the Tribe submitted a joint motion to stay proceedings pending settlement, negotiated the final terms, and the Tribe and IHS entered into a settlement agreement signed and dated by IHS on September 26, 2016 (“Settlement Agreement”). (A copy of the Settlement Agreement is attached as Exhibit F).

48. The primary issue, from filing of the Tribe’s shortfall claims and throughout settlement negotiations to settlement, was dealing with the inclusion of depreciation in the Tribe’s indirect cost pool to help fund construction of the Tribe’s clinic under the JVCPA. *See, e.g.,* Ex. B, Ex. C at p. 2, Ex. D at p. 6-7, Ex. F pg. 1 and ¶7.

49. As part of the Settlement Agreement, IHS and the Tribe agreed to the following:

4. Each Party releases and discharges the other Party . . . from any and all claims, legal and equitable, arising from or related to any payment, overpayment, nonpayment, or underpayment of contract support costs by HHS or IHS in fiscal years 2006 through 2014, including but not limited to all claims for contract support costs, JVCP costs, damages, attorneys’ fees, interest, expenses, and costs. ***The Parties agree that this paragraph does not otherwise preclude either Party from seeking to enforce the terms of this Agreement.*** Ex. F at ¶ 4.

...

7. Going forward, the Parties agree that the ISDEAA does not authorize the payment of contract support costs for the JVCP costs in the Contractor’s IDC pool and that the Contractor is responsible to pay these costs under the JVCP agreement. Accordingly, starting with the Contractor’s negotiation with [IBC] of its next indirect cost rate, the Contractor agrees to not include the JVCP costs in its indirect cost pool. The Contractor further agrees to negotiate a separate agreement with IHS for the repayment of any overpayment of contract support costs under its FY 2015 and FY 2016 ISDEAA agreements that resulted from the inclusion of JVCP costs in the Contractor’s indirect cost pool. ***This repayment agreement shall identify the repayment amount negotiated by the Parties and provide for repayment over not less than four (4) fiscal years. Both Parties are equally responsible for ensuring that the requirements of this paragraph are met.***

Ex. F at ¶ 7 (emphasis added).

**B. The Tribe Negotiates Reduced Indirect Cost Reimbursements as Performance of the Settlement Agreement.**

50. To repay the indirect cost amounts previously paid to the Tribe for depreciation on the Facility, in fulfillment of the Settlement Agreement, the Santee Sioux Nation, beginning at the end of 2016 and continuing into 2017, negotiated and received reduced indirect cost rates on its ISDEAA funding, resulting in shortfalls of indirect cost reimbursements pursuant to audited financial statements for the four fiscal years 2015-2018. Attached Decl. of Jerry Noonan at ¶ 6.
51. Removing these funds from the Tribe's Indirect Cost Pool resulted in an effective repayment by the Tribe to IHS in fiscal years 2015-2018 in the amount of \$2,357,787.00. *Id.*

**C. IHS Violates the Settlement Agreement Through Modification 33**

52. On November 16, 2016, less than one month after entering into the Settlement Agreement, which made both parties equally responsible for negotiating repayment of any overpayment over not less than four years, IHS claims that it sent the Tribe a letter regarding the Tribe's FY 2015 ISDEAA agreement, stating that, due to an administrative oversight, the Tribe was "overpaid by \$3,244,061 on indirect CSC funding" due to "depreciation in Nation's indirect cost (IDC) pool that is related to the separate joint venture agreement" and demanding that the Tribe "remit a check payable to the 'Indian Health Service' in the amount of \$3,244,061 by January 15, 2017 . . . ." (A copy of the November 16, 2016 letter from Bearheels to Trudell is attached as Exhibit G).
53. The IHS's November 16, 2016, demand was never received by the Tribe (attached Decl. of Roger Trudell at ¶ 4), and the Tribe's attorneys responsible for negotiating the



- Settlement Agreement related to depreciation were not copied on it and did not receive it. Attached Decl. of Patricia Marks at ¶ 4; Decl. of Ben Fenner at ¶ 4.
54. On the same date, IHS unilaterally issued Modification 33, decreasing the Tribe's total ISDEAA contract amount "in the amount of \$3,244,061 from \$27,812,322.00 to \$24,568,261.00 . . ." (A copy of Modification 33 is attached as Exhibit H). This is the precise amount that IHS had demanded that the Tribe pay "by check" to the IHS in its November 16, 2016 demand letter.
55. The amount in Modification 33 was not negotiated between the parties. By issuing Modification 33, IHS violated the Settlement Agreement by unilaterally collecting, through reducing ISDEAA contract payments, the amount of the debt allegedly owed by the Tribe. However, the IHS ignored the reduced indirect contract support cost rates that were being negotiated to reimburse IHS, rates which were finalized around March, 2017, and which reduced the Tribe's indirect contract support cost reimbursement by \$2,357,787.00. Noonan Decl. at ¶ 6. The result was that IHS had collected over \$2 Million more than the Tribe allegedly owed IHS.
56. The amount in Modification 33 was not negotiated between the parties or scheduled for repayment over not less than four fiscal years, in violation of the Settlement Agreement.
57. Without advice of counsel, and unaware of the November 16, 2016 demand from IHS, the Tribe signed Modification 33 on December 8, 2016, after the Tribal Clinic's fiscal September 30, 2016 year end. It would thus reduce the Tribe's ISDEAA contract amounts in the following fiscal years (FY 2017 and 2018) by the amount of Modification 33. Noonan Decl. at ¶ 6.

58. Pursuant to the Tribe's audited direct operating expenses for the for years ending September 30, 2017 and September 30, 2018, a reduction in the Tribe's IHS contract in the amount of Modification 33 in fact occurred. Noonan Decl. at ¶ 5. **Thus, in addition to the \$2,357,787.00 that was effectively paid by the Tribe in the form of reduced indirect cost reimbursements from FY 2015-2018, the Tribe effectively paid IHS an additional \$3,244,061.00 in the form of a reduced contract amounts in FY 2017 and FY 2018. This resulted in an effective overpayment of the alleged debt owed to IHS in the amount of \$1,819,632.00.** Noonan Decl. at ¶ 7.

#### **D. 2017 – IHS Contract Disputes Act Claim**

59. On June 19, 2017, IHS allegedly asserted a claim under the Contract Disputes Act, 41 U.S.C. §§ 7101 *et seq.*, demanding immediate payment of *an additional \$3,782,216.00* (“2017 Claim”). (A copy of the 2017 claim letter from C. Diaz to R. Trudell is attached Exhibit I). Like its November 16, 2016 letter (*supra*), the June 19, 2017 CDA claim letter was never received by the Tribe and the Tribe was unaware of the alleged debt or its amount (Trudell Decl. at ¶ 4, 5). After all, IHS had already collected \$3,244,061.00 from the Tribe in Modification 33, and in fact collected \$1,819,632.00 more than what was owed through reduced indirect cost rates resulting in shortfalls in the Tribe's indirect contract support costs reimbursements from IHS for FY 2015-2018. Also, the Tribe's attorneys responsible for negotiating the Settlement Agreement were not copied on the 2017 Claim and did not receive it (Marks Decl. at ¶ 4; Fenner Decl. at ¶ 4). Yet the two IHS attorneys responsible for negotiating the Settlement Agreement were cc'd on the 2017 Claim. *Id.* No one from HHS or IHS, including its legal counsel, ever reached out to the Tribe or its legal counsel to notify or discuss this incredibly massive

- (and illegitimate) claim – a claim that had already been vastly overpaid by the Tribe.
60. In fact, the Tribe’s attorneys did not receive notice of the 2017 claim until October 3, 2022. Fenner Decl. at ¶ 6; Marks Decl. at ¶ 6.
61. Despite overpayment by the Tribe, IHS has not terminated the debt or ceased collection activities on the debt.

**E. 2022 – IHS Orders USDOT-BFS to Offset the Tribe's ISDEAA Contract Payments**

62. By letter dated September 14, 2022, HHS issued a final demand for payment of principle (\$3,782,216.00) and interest (\$1,967,788.00) for a total demand of \$5,750,004.00. (A copy of the September 14, 2022, letter from the HHS debt collection center to the Santee Sioux Nation is attached as Exhibit J). The final demand letter was mailed to the Santee Sioux Nation, 108 Spirit Lake Ave, Niobrara, NE 68760 and stated that the Tribe must repay the total due in full within 15 days. *Id.*
63. That same day, the Tribe emailed HHS regarding the alleged and unfounded overpayment. (A copy of the September 14, 2022 email from the Tribe to HHS is attached as Exhibit K). In its email correspondence, the Tribe attached a copy of the Settlement Agreement and explained how the Tribe “fulfilled its obligations under the terms of this agreement by accepting a reduced Indirect Cost rate . . . .” *Id.* HHS responded saying they would forward the email to Indian Health Service to make the determination. *Id.*
64. Despite overpayment by the Tribe, and notification by the Tribe to IHS in 2022 of reimbursement through reduced indirect cost rates, IHS failed to terminate the debt or collection activities on the debt.
65. On October 6, 2022, the Tribe’s attorneys communicated via email to one of the HHS

- attorneys responsible for negotiating the Settlement Agreement, reiterating that the Tribe had fulfilled its obligations in negotiating and accepting a reduced indirect cost rate. (A copy of the October 6, 2022 email from the Tribe’s attorneys to the IHS attorneys is attached as Ex. L).
66. On October 7, 2022, IHS responded to the Tribe’s October 6, 2022 email, *attaching for the first time* to the Tribe’s attorneys a copy of the 2017 Claim. *Id.* IHS also attached a copy of Modification 33 to its reply email. *Id.*
67. The same day, the Tribe responded, saying that, leaving the negotiated reduced rate aside for the moment, Modification 33 “shows that the total amount of the [Tribe’s] contract in the subsequent fiscal year was reduced by \$3,244,061 from \$27,812,322 to \$24,568,261.” *Id.*
68. Despite overpayment by the Tribe, and notification by the Tribe to IHS of such overpayment through the reduction in the Tribe’s contract amount of \$3,244,061.00, IHS failed terminate the debt or collection activities on the debt.
69. In fact, on October 18, 2022, IHS responded, without any supporting documentation, stating that “IHS stands by its CDA claim for overpayment and the facts asserted therein.” *Id.*
70. By letter dated October 22, 2022, HHS issued a letter stating that the Tribe’s account has been referred to “our collection agency, Transworld Systems, Inc.”
71. Thereafter, IHS initiated two Treasury offsets of the Tribe’s ISDEAA contract payments, both in violation of 31 U.S.C. § 3716(c)(3)(B). *See* Treasury Offset Program, Payments Exempt from Offset by Disbursing Officials, (last visited Nov 15, 2023), <https://fiscal.treasury.gov/files/debt-management/dmexmpt.pdf>, \*4 (listing Tribal Law

93-638 Contract/Compacts as payments exempt from offset). **The total amount of these offsets exceeded \$11,663,229.00.**

72. The first unlawful offset of the Tribe's ISDEAA payments occurred on November 14, 2022 and totaled \$5,665,335.00. (A copy of the notice to the Tribe of the November 14, 2022 offset is attached as Ex. M). That same day, the Tribe's attorney notified the HHS program support center, advising them that payment on this debt is "incorrect, unlawful, and was applied in error." (A copy of the November 23, 2022 email from the Tribe's attorney to HHS is attached as Ex. N). Although those funds were reimbursed to the Tribe on or about March 23, 2023, the Tribe was unable to access funding needed to operate its health care programs for its tribal members for over four months, causing severe and irreparable injury to the Tribe and its members.
73. The second round of unlawful offsets of the Tribe's ISDEAA payments occurred on October 12, 2023 and totaled approximately \$5,930,155.72. Although those funds were partially reimbursed to the Tribe on or about October 27, 2023, the Tribe was unable to access funding needed to operate its health care programs for its tribal members for over two weeks, causing injury to the Tribe and its members.

**F. 2023 - IHS Instructs USDOT-BFS to Offset the Tribe's Grant and Program Funding.**

74. To date, the IHS has refused the Tribe's demands that IHS discontinue its collection actions, and has caused the USDOT-BFS to offset at least *an additional \$751,119.00* in federal funds from the Tribe. These funds are needed by the Tribe to provide necessary social services for its members.
75. The federal funds that were offset by the USDOT-BFS were intended for the Nation's Elderly Nutrition program, the Nation's Daycare program, its Emergency Medical

Services (EMS) program, its Temporary Assistance for Needy Families (TANF) program, its Headstart program, its Substance Abuse and Mental Health Services (SAMSHA) program, its Independent Living program, its Child Welfare Social Services program, its Behavior Health program, its Tribal Youth Suicide & Early Prevention program, its Community Health Services program, and its Daycare program. The total amounts of the offsets for these essential programs exceeds \$682,000.00 since October 1, 2023. None of these funds have been returned to the Tribe, despite numerous demands to do so.

76. In addition, defendants offset at least \$69,119.00 in federal FSA funding intended for the Tribe's agricultural program since June 9, 2023.
77. Without the above-referenced funds that were offset by USDOT-BFS (at the direction of IHS), the Tribe is unable to operate the federally-funded social service programs referenced above, and hundreds of tribal members, including impoverished families with children, have suffered, and will continue to suffer, immediate and irreparable injury. In addition, the offset funds are needed to pay the wages of dozens of tribal employees, whose families rely on such wages for essential needs, including food, housing, transportation and heating fuel. Moreover, as the result of the offsets of the Nation's FSA agricultural payments, the Nation is unable to pay its agricultural employees, feed its livestock, maintain its equipment, and, if such offsets continue, the Nation risks defaulting on loans used to purchase land utilized for crops and livestock.
78. HHS and IHS, through their legal counsel, has advised the Tribe's legal counsel that IHS will not notify the Department of Treasury to cease the unlawful offsets, Fenner Decl., at ¶ 7, and absent immediate injunctive relief, the Tribe and its members will

continue to suffer irreparable injury.

79. In offsetting the Tribe's federal funds, Defendants have prevented the Tribe from using those funds for their intended purposes, and the use of federal grant funds to pay a federal debt is a disallowed cost. *See, e.g.*, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Resources and Technology, Office of Grants, Grants Policy Statement at II-34, (January 1, 2007), <https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf>.
80. The Defendants' actions have brought the Tribe on the brink of insolvency, in violation of Defendants' trust duties to the Tribe.
81. A party may obtain equitable monetary relief under the Administrative Procedures Act where the judgment represents benefits or payments withheld as part of the agency determination [or inaction]. *See Prokop v. U.S. ex rel. U.S. Dep't of Agric.*, 91 F. Supp. 2d 1301, 1315 (D. Neb. 2000).

**FIRST CLAIM FOR RELIEF**  
**Violation of Administrative Procedure Act**  
**(FDCP Act Procedural Requirements)**

82. The Tribe realleges the preceding paragraphs and incorporates them by reference.
83. IHS has bound itself to certain provisions of the Fair Debt Collection Practice Act ("FDCPA"), including the section on communication with debtors. Indian Health Manual Part 9, Chapter 4 – Debt Management, Section 3, Subsection L ("The following FDCPA rules of debt collection shall be followed by IHS employees. . . . 2. Do not contact the debtor directly if you know the debtor is represented by an attorney.").
84. In attempting to serve the 2017 Claim on the Tribe, after already issuing Modification

- 33 reducing the Tribe's contract amount by \$3,244,061, IHS copied its own attorneys (Cribari and Jamison) who represented the agency during the four years of negotiating a settlement on the Tribe's CDA claims. The Tribe did not receive it, however. Neither did IHS provide copy any of the attorneys who represented the Tribe on the 2017 Claim, much less the two attorneys who represented the Tribe during the four years of filing, negotiation, and settlement of the Tribe's 2012 contract disputes act claim for unpaid contract support costs. IHS also did not copy the Tribe's attorneys on the 2022 offset notifying the Tribe that IHS was offsetting more than \$11 million in ISDEAA contract funds (in violation of 31 U.S.C. 716(c)(3)(B). *See* Treasury Offset Program, Payments Exempt from Offset by Disbursing Officials, (last visited Nov. 14, 2023) <https://fiscal.treasury.gov/files/debt-management/dmexmpt.pdf>).
85. The 2017 Claim contained a section captioned "Appeal Rights." That section stated that the 2017 Claim is a "final decision" and explained how to appeal and the process and deadlines for appealing.
86. By not serving the Tribe and not including the Tribe's attorneys on the 2017 Claim, the IHS failed to provide notice to the Tribe of the claim being brought against it and failed to provide the Tribe with notice of its appeal rights in violation of the FDCPA and the Indian Health Manual.
87. Defendants' actions made it impossible for the Tribe to file an appeal to the Civilian Board of Contract Appeals or federal court within the time specified in the CDA.
88. Defendants' actions were arbitrary, capricious, and abuse of discretion, and otherwise not in accordance with the law.
89. Defendants' actions were in excess of statutory jurisdiction, authority or limitations,



and short of statutory right.

**SECOND CLAIM FOR RELIEF**  
**Violation of the Administrative Procedure Act**  
**(Unlawful Overcollection)**

90. The Tribe realleges the preceding paragraphs and incorporates them by reference.
91. The 2017 Claim by Defendants against the Tribe in the amount of \$3,782,216.00 was for “‘depreciation’ in the Nation’s IDC pool.” This was the same debt as was alleged in IHS’s 2016 demand letter, *as paid through contract funding reductions in the amount \$3,244,061 through Modification 33*, based on “depreciation in the Nation’s indirect cost (IDC) pool.”
92. Defendants also collected – indeed over collected – the alleged debt owed via its indirect contract support cost rate reduction and corresponding shortfalls in indirect contract support cost reimbursements in the amount of \$2,357,787.00 from fiscal years 2015 through 2018 (not including offsetting at least \$751,119.00 of the Tribe’s critical health care, social welfare and agricultural program funding in 2023).
93. Despite collecting \$5,601,848.00 on an alleged debt in the amount of \$3,782,216.00, on September 14, 2022, the HHS issued the Tribe a final demand for *an additional \$5,750,004.52*, inclusive of interest, that did not legally accrue due to the fact that the debt had been timely paid – and, in fact, overpaid.
94. Defendants’ multiple collections from the Tribe on the same alleged debt has greatly injured the Tribe and its members, and further jeopardizes the existence of tribal programs and tribal members’ health and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.
95. Such actions are also in excess of statutory jurisdiction, authority or limitations, or short

of statutory right.

**THIRD CLAIM FOR RELIEF**  
**Violation of the Administrative Procedure Act**  
**(Failure to Implement the Settlement Agreement)**

96. The Tribe realleges the preceding paragraphs and incorporates them by reference.
97. Pursuant to the Settlement Agreement, IHS and the Tribe are equally responsible for ensuring that a separate agreement is negotiated for the repayment of any overpayment of contract support costs resulting from the inclusion of depreciation in the Tribe's indirect contract support cost pool and that any such agreement shall provide for repayment over not less than four fiscal years.
98. The Tribe performed its obligations under the Settlement Agreement by negotiating a reduced indirect contract support cost rate and thereby effectively repaying IHS \$2,357,787.00 over four fiscal years from 2015-2018. Noonan Decl., at ¶ 7.
99. IHS, however, failed its nondiscretionary duty to implement the Settlement Agreement by 1) ignoring the Tribe's effective payment of \$2,357,787.00 through reductions in its indirect cost payments over four fiscal years from 2015-2018; 2) unilaterally issuing Modification 33 to the Tribe's ISDEAA FY 2013-2016 contract funding agreement, thereby reducing the Tribe's FY 2017 and FY 2018 funding agreements by an additional \$3,244,061.00; and 3) continuing to direct USDOT-BFS to offset the Tribe's ISDEAA, grant and program funding, in the amount of \$751,119.00. In total, IHS has violated its duty to implement the Settlement Agreement by collecting a total of \$6,352,967.00 on a timely-paid debt of \$3,244,061.00, resulting in an overcollection of \$3,108,906.00. IHS has violated its nondiscretionary duty to implement the Settlement Agreement by directing USDOT-BFS to offset the Tribe's ISDEAA contract funding

- in a total amount of \$11,663,229.00. Although those offsets were eventually partially restored, the Tribe was deprived of these funds for a total of nearly five months, causing the Tribe substantial injury. IHS did not negotiate the repayment amount with the Tribe in violation of the Settlement Agreement.
100. IHS did not provide for repayment over not less than four fiscal years in violation of the Settlement Agreement.
  101. IHS's failure to implement the Settlement Agreement as required by paragraph seven constitutes a breach of the Settlement Agreement, has resulted in an overpayment by the Tribe to IHS in the amount of \$3,108,906.00, has greatly injured the Tribe and its members, and further jeopardizes the existence of tribal programs and tribal members' health and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.
  102. Such action is also unlawfully withheld or unreasonably delayed.

**FOURTH CLAIM FOR RELIEF**  
**Violation of the Administrative Procedure Act**  
**(Failure to Terminate the Debt or Collection Activity on the Debt)**

103. The Tribe realleges the preceding paragraphs and incorporates them by reference.
104. Pursuant to the Settlement Agreement, the Tribe negotiated a reduced indirect contract support cost rate, effectively repaying IHS \$2,357,787 over four fiscal years from 2015-2018.
105. IHS unilaterally issued Modification 33 to the Tribe's ISDEAA contract funding agreement in order to repay IHS for prior depreciation overpayments, thereby reducing the Tribe's FY 2013 – 2016 contract amount by \$3,244,061. This amount was collected by IHS through funding agreement reductions in FY 2017 and FY 2018. Noonan Decl.

- at ¶ 6.
106. In 2023, IHS directed USDOT-BFS to offset an additional \$751,119.00 from the Tribe's grant and program funding utilized for critical health care, social services and agricultural programs.
107. The Tribe repaid IHS the amount of \$6,352,967.00, an overpayment of \$3,108,906.00 on the amount alleged owed by the Tribe to IHS in its November 16, 2016 demand letter. IHS has refused the Tribe's demands to cease collecting on the debt that was repaid through reduced indirect contract support cost reimbursements, Modification 33 and treasury offsets.
108. Because of this overpayment, there was no debt for IHS to collect, and IHS has a duty to terminate and collection activity on the debt.
109. Because of this overpayment, any claim of indebtedness of the Tribe in relation to this matter is plainly erroneous or clearly without merit.
110. IHS' failure terminate collection activity on debt that is plainly erroneous or clearly without merit has greatly injured the Tribe and its members, and further jeopardizes the existence of tribal programs and tribal members' health and welfare, and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.
111. IHS' failure to terminate its collection activity is also agency action unlawfully withheld or unreasonably delayed.

**FIFTH CLAIM FOR RELIEF**  
**Procedural Due Process**

112. The Tribe realleges the preceding paragraphs and incorporates them by reference.
113. Defendants' failure to provide the Tribe with notice of the 2017 Claim denied the Tribe

- its right to notification of the existence and the amount of the alleged debt.
114. Defendants' failure to provide the Tribe with notice of the 2017 Claim denied the Tribe the opportunity to object to or appeal this illegitimate claim, denied the Tribe its right to due process, and denied the Tribe its right to exercise its appeal rights.
  115. Defendants' failure to provide the Tribe with notice of the 2017 Claim, leading to the over recovery of federal funds otherwise owed to the Tribe, has had a devastating impact on the Tribe's health care clinic operations, social welfare programs, agricultural programs, and its general governmental operations.
  116. Procedural safeguards are essential to ensure that Defendants fund the Tribe's ISDEAA health care contracts at the full negotiated amount and provide notice the Tribe of any alleged overpayments prior to placing the Tribe simultaneously into collections and into the Treasury Offset Program.
  117. Defendants' actions in failing to provide adequate notice to the Tribe of its contract disputes act claim denied the Tribe its rights to a fair hearing to resolve issues of material fact prior to depriving the Tribe of a substantial property interest.
  118. Defendants failed to provide the Tribe with a record of evidence to support their allegations against the Tribe.
  119. Defendants' actions have deprived the Tribe of property interests without due process of law.

**SIXTH CLAIM FOR RELIEF**  
**Violation of 25 C.F.R. § 900.217**

120. The Tribe realleges the preceding paragraphs and incorporates them by reference.
121. 25 C.F.R. § 900.217 requires the Federal government to attempt to resolve all contract disputes by agreement at the awarding official's level instead of filing a claim under

- the Contract Disputes Act.
122. To attempt to resolve disputes at the awarding official's level, notice must be given by the Federal government to the contractor with whom the dispute exists. *See also* Indian Health Manual Part 9, Chapter 4 – Debt Management, Section 3, Subsection L – Communicating with Debtors.
  123. Here, the IHS' demand dated November 16, 2016 was not received by the Tribe and was not sent to the Tribe's attorneys.
  124. Additionally, IHS made no attempt to contact the Tribe's attorneys related to this matter from November 16, 2016, through June 19, 2017, the date of IHS's contract disputes act claim against the Tribe.
  125. This failure by the Federal government to attempt to resolve this dispute at the awarding official's level denied the Tribe the ability to exercise any rights it had to avoid the use of the Defendants' debt collection tools.
  126. This failure violates the obligation of the Secretary of HHS or his designee under 25 C.F.R. § 900.3(b)(4) to "continue to discharge the trust responsibilities to protect and conserve the trust resources of Indian tribes . . . and individual Indians" by denying the Tribe access to its grant and program funding, causing irreparable harm to the Tribe.
  127. This failure has caused harm to the Tribe through multiple unlawful offsets of the Tribe's ISDEAA contract funds and the continuing inability of the Tribe to access its grant funding necessary to operate its social services and agricultural programs.

WHEREFORE, the Tribe respectfully prays for relief against the Defendants as follows:

1. A declaratory judgment stating that the IHS violated the Administrative Procedures Act, the Indian Self-Determination and Education Assistance Act, the Fair Debt Collections Act

as incorporated in the IHS Manual, 31 U.S.C. § 3716, and the Settlement Agreement by overcollecting on an alleged debt already repaid and for which the Tribe received constitutionally and statutorily inadequate notice.

2. A declaratory judgment that the June 19, 2017 CDA Claim is null and void as the result of the prior full performance by the Tribe of the Settlement Agreement.
3. An injunction that temporarily, preliminarily and permanently enjoins the Defendants from any further collection actions against the Tribe related to the alleged debt resulting from the inclusion of depreciation for the Facility in the Tribe's indirect cost pool.
4. An order requiring the Defendants to restore federal funds already offset from the Tribe's federal funding (and not restored), so that the Tribe may use them for their intended purpose.
5. An Order compelling Defendants to terminate the alleged debt and terminate collection activity on the alleged debt.
6. For specific equitable relief against Defendants in the form of restitution for benefits and/or payments unlawfully withheld by Defendants, in the amount of at least Three Million One Hundred and Eight Thousand Nine Hundred and Six dollars (\$3,108,906.00), the amount that Defendants over-collected on the debt allegedly owed to IHS from the Tribe to date.
7. For the Tribe's costs and disbursements, without limitations, including attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412 and other applicable statutes, and as permitted by general principles of law and equity.
8. For such other and further relief as the Court determines to be just and proper under the circumstances.

Dated: November 29, 2023

SANTEE SIOUX NATION,  
Plaintiffs

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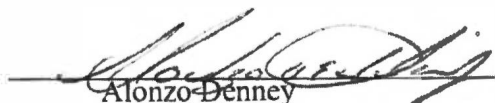


### VERIFICATION

I, Alonzo Denney, am an enrolled member of the Santee Sioux Nation ("Tribe"), formerly known as the Santee Sioux Tribe of Nebraska. I am a long-time resident of the Santee Sioux Nation, which is located in Knox County, Nebraska, and am the duly elected Chairman of the Santee Sioux Nation's Tribal Council, which is the governing body of the Santee Sioux Nation. I have held the position of Chairman of the Tribal Council for approximately 1 year. As Tribal Chairman and a Tribal Member, I am familiar with the Santee Sioux Nation's history, laws, operations and obligations, including the Tribe's finances. I hereby verify and declare under penalty of perjury under the laws of the United States that I have read the foregoing Verified Complaint for Emergency Temporary Restraining Order, Preliminary and Permanent Injunction and Declaratory Relief ("Verified Complaint"), and know the contents thereof, and that the matters contained in the Verified Complaint pertaining to the Santee Sioux Nation are true to my knowledge, except the matters stated therein on information and belief, and as to those matters, I believe the Verified Complaint to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 29, 2023, on the Santee Sioux Reservation.

  
Alonzo Denney