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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
BILLINGS DIVISION

THE NORTHERN CHEYENNE TRIBE, Plaintiff, v. THE UNITED STATES OF AMERICA, et al., Defendants.	No. CV 24-52-BLG-SPW-TJC **BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION AND SUMMARY

This is a dispute between the Northern Cheyenne Tribe ("Tribe") and the Defendant Federal agencies and officials ("Defendants") regarding Defendants' unlawful declination of a self-determination contract proposal. The Tribe submitted a proposal to Defendants to contract from Defendants law enforcement Telecommunications and Program Management functions under the Indian Self-Determination and Education Assistance Act ("ISDEAA"), 25 U.S.C. §§ 5321, 5324, 5325, and 5331. Defendants declined part of the proposal for reasons not allowed under the ISDEAA, failed to support their declination reasons as required by law, and failed to negotiate in good faith under the ISDEAA. The Tribe is entitled to summary judgment as a matter of law for the reasons described herein.

STATUTORY AND REGULATORY BACKGROUND

The purpose of the ISDEAA is to reduce Federal domination of Indian programs and promote tribal self-determination and self-reliance. *See* 25 U.S.C. § 5302(b); *Cherokee Nation of Okla. v. Leavitt*, 543 U.S. 631, 639 (2005). The Secretary of the Interior ("Secretary") is directed, upon the request of any Indian tribe, to enter into a self-determination contract to plan, conduct and administer programs or portions thereof for the benefit of Indians because of their status as Indians, without regard to the agency or office of the Department of the Interior ("DOI") within which the program or service is performed. 25 U.S.C. § 5321(a)(1).

The Secretary is required, at all times, to negotiate self-determination contracts in good faith to maximize the policy of tribal self-determination and carry out the ISDEAA in a manner that maximizes the policy of tribal self-determination. 25 U.S.C. § 5321(f). In addition, the Secretary shall make best efforts to remove any obstacles which might hinder Indian tribes, including obstacles that hinder tribal autonomy and flexibility in administering such programs. 25 C.F.R. § 900.3(b)(1).

The amount of funds provided under the terms of a self-determination contract shall not be less than the Secretary would have otherwise provided for the operation of the programs or contracted portions thereof for the period covered by the contract, without regard to any organizational level within DOI at which the program, including supportive administrative functions that are otherwise contractable, is operated. 25 U.S.C. § 5325(a). This is also known as the "Secretarial amount." *See S. Ute Indian Tribe v. Sebelius*, 657 F.3d 1071, 1074 (10th Cir. 2011). Once a tribe submits a proposal for a self-determination contract, the Secretary shall, within 90 days after receipt of the proposal, approve the proposal and award the contract, unless the Secretary provides written notification to the applicant tribe that contains a specific finding that clearly demonstrates, or is supported by a controlling legal authority, that one of five declination criteria apply. 25 U.S.C. § 5321(a)(2). The Secretary may only decline a contract proposal for the reasons listed in 25 U.S.C. § 5321(a)(2). 25 C.F.R. § 900.24. Furthermore, the Secretary may not decline to contract with an Indian tribe or tribal organization based on any objection that will be overcome by the contract. 25 C.F.R. § 900.23.

If the Secretary declines a contract proposal, the Secretary is required to state any objections in writing to the applicant tribe and assist the tribe to overcome the stated objections. 25 U.S.C. § 5321(b). The Secretary must also provide the tribe with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under such rules and regulations as the Secretary may promulgate. *Id.* The tribe may, in lieu of filing such appeal, exercise the option to initiate an action in a federal district court and proceed directly to such court under 25 U.S.C. § 5331(a). *Id.*

In district court, an applicant tribe may seek appropriate relief including money damages; injunctive relief against any action by an officer of the United States or any agency thereof that is contrary to the ISDEAA or its implementing regulations; or mandamus to compel an officer or employee of the United States, or any agency thereof, to perform a duty provided under the ISDEAA or its implementing regulations, 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. 25 U.S.C. § 5331(a).

The Secretary shall have the burden of proof to clearly demonstrate the validity of the grounds for declining the contract proposal. 25 U.S.C. § 5321(e)(1);

Seminole Tribe of Fla. v. Azar, 376 F. Supp. 3d 100, 107-08 (D.D.C. 2019) ("Congress passed the [ISDEAA] with the intent to circumscribe as tightly as possible the discretion of the Secretary."). The ISDEAA is to be liberally construed for the benefit of the tribe participating in self-determination, and all ambiguity shall be resolved in favor of the tribe. 25 U.S.C. § 5321(g).

FACTUAL BACKGROUND[1]

Plaintiff is a federally recognized Indian tribe governing and occupying the Northern Cheyenne Reservation in southeastern Montana. *See* Jt. St. of Stip. Facts (Doc. No. 30) ¶¶ 1, 3. Defendant Bureau of Indian Affairs, through its Office of Justice Services ("BIA-OJS"), provides some law enforcement services to the Tribe on a direct-service basis. Doc. No. 1-6 at 2; Doc. No. 28 at 3 (Defs.' Prelim. Pretrial St.). In 2022, the Tribe contracted with BIA-OJS to assume the Criminal Investigation function for the Tribe's Reservation. Doc. No. 30 ¶ 18.

On July 25, 2022, the Tribe submitted a self-determination contract proposal to BIA-OJS for law enforcement Telecommunications and Program Management functions under the Indian Self-Determination and Education Assistance Act. Doc. No. 30 ¶ 25; Doc. No. 1-5 ("contract proposal"). BIA-OJS confirmed that it received the Tribe's contract proposal submission on July 27, 2022. Doc. No. 1-6 at 1. The

[1] A separate Statement of Undisputed Facts has been filed herewith pursuant to L.R. 56.1.

Telecommunications component of the contract proposal sought to assume operation of the law enforcement dispatch/call center. Doc. No. 1-5 at 15-16. The Program Management part of the contract proposal sought to assume any and all positions within the law enforcement Program Management function on the Reservation, including any law enforcement assistants and supervisory positions, Doc. No. 1-7 at 6, and included an annual budget of $360,333.66, Doc. No. 1-5 at 29. The requested budget amount was based on a November 30, 2021 letter from BIA-OJS to the Tribe stating that the Program Management "Secretarial amount" for FY 2021 was $319,562 and that the FY 2022 actual funding amount could not be provided due to DOI operating under a Congressional continuing resolution for FY 2022 "with limited funding available." Doc. No. 1-4 at 2. The Tribe intended to use the Program Management funding to pay the salary of a supervisory criminal investigator and an office manager for the Tribe's Criminal Investigation Services, thus freeing up some funding within the Criminal Investigation function to hire a third investigator. Doc. No. 1 ¶ 42; Doc. No. 1-5 at 16. The supervisor and office manager would be shared by the Dispatch center and Criminal Investigations. *Id.*

On October 6, 2022, BIA-OJS told the Tribe that the Tribe could not use Program Management funding to fund a Supervisory Criminal Investigator position because that position is not funded with Program Management dollars, and the Tribe had already contracted and received all funding the Tribe is entitled to receive for

Criminal Investigations operations. Doc. No. 1-8 at 3-4. At the same time, BIA-OJS asserted that the portion of Program Management funding available to support dispatch operations "may be available to the Tribe" in its proposal to contract dispatch operations. *Id.* at 3. Thus, the Tribe requested BIA-OJS's Northern Cheyenne law enforcement budget for FY 2022 demonstrating how Program Management funding is allocated between all law enforcement functions at Northern Cheyenne. Doc. No. 1-7 at 6. The Tribe never received a direct response to that request; it later learned that the FY 2022 budget for Program Management was set at $325,829. *See* Doc. No. 1-9 at 2.

On December 16, 2022, BIA-OJS stated that only $72,525.51 was allocated to the Program Management function and that amount "is not available to the Tribe under the ISDEAA, as it funds the BIA OJS administrative support staff person for the remaining BIA OJS Northern Cheyenne law enforcement programs that the BIA-OJS provides the Tribe through direct service[.]" *Id.* at 3. On August 21, 2023, BIA-OJS formally declined the Tribe's proposal to contract the Program Management function. Doc. No. 1-12 at 3. The declination reasons were that: under 25 U.S.C. § 5321(a)(2)(A), "the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory"; under § 5321(a)(2)(D), "the amount of funds proposed under the contract is in excess of the applicable funding level for the contract"; and under § 5321(a)(2)(E), "the

Program Management proposal is beyond the scope of the ISDEAA[.]" *Id.* 3-4 (underscore normalized). BIA-OJS explained that there is no funding in the BIA-OJS Program Management line item that funds a Criminal Investigator or Supervisory Criminal Investigator; that the Tribe already received a share of the Program Management funding for administrative support functions; and that the remaining Program Management function retained by BIA-OJS is required to provide administrative support for BIA-OJS direct services. *Id.* at 4. Furthermore, BIA-OJS stated that the Tribe cannot contract the remaining administrative support position because "the BIA L[aw] E[nforcement] A[ssistant] function for BIA law enforcement is specific to Federal Employees." *Id.* The BIA-OJS Law Enforcement Assistant position was vacant until September 22, 2024. Decl. of Brady, Exhibit A at 4 (United States Response to Request for Admission No. 3).

On September 19, 2023, the Tribe sent BIA-OJS a letter requesting an informal conference under 25 C.F.R. § 900.154. *See* Doc. No. 1-13 at 1. An informal conference is meant to give DOI and the Tribe an opportunity to resolve any declination issues without a formal hearing. 25 C.F.R. § 900.153. The informal conference was held October 18, 2023, and resulted in the DOI affirming the declination decision that is the basis of this case. Doc. No. 1-13 at 3.

ARGUMENT

As a matter of law, the Tribe is entitled to a declaratory judgment that Defendants violated the ISDEAA by unlawfully declining the Tribe's contract proposal and failing to negotiate in good faith, that the Tribe's contract approval should be approved under the ISDEAA, and that the Secretarial amount for the contract is at least $325,829 annually.

A. Summary Judgment Standard.

The Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Assertions that a fact cannot be genuinely disputed must be supported by citation to documents, stipulations, admissions, interrogatory answers or other materials. *Id.* 56(c). When the moving party does not have the burden of proof on an issue at trial, it "can prevail merely by pointing out that there is an absence of evidence to support the nonmoving party's case." *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). "If the moving party meets its initial burden, the non-moving party must set forth, by affidavit or as otherwise provided in Rule 56, 'specific facts showing that there is a genuine issue for trial.'" *Id.* (quoting *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 248 (1986)). The dispute must be "over facts that might affect the outcome of the suit under the governing law" to preclude the entry of summary judgment. *Anderson*, 477 U.S. at

248. Summary judgment is warranted where the documentary evidence produced by the parties permits only one conclusion. *Id.* at 250-51.

B. Defendants Violated the ISDEAA by Declining the Tribe's Proposal for Reasons Not Allowed by Law.

Judicial review of ISDEAA claims is *de novo*. *See, e.g., N. Arapaho Tribe v. LaCounte*, No. CV-16-11-BLG-BMM, 2017 WL 2728408, at *2 (D. Mont. June 23, 2017). Defendants bear the burden of proof to clearly demonstrate, or support with controlling legal authority, the validity of the grounds for declining the contract proposal. 25 U.S.C. § 5321(a)(2), (e)(1). None of BIA-OJS's proffered declination reasons meets that standard.

First, BIA's declination letter, Doc. No. 1-12, cites 25 U.S.C. § 5321(a)(2)(A) ("the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory") as a declination reason in its introductory paragraph, but no further explanation of this declination reason is provided in the letter. Thus, to the extent BIA relied upon § 5321(a)(2)(A) for the declination, it failed to support that declination reason with "a specific finding that clearly demonstrates, or that is supported by a controlling legal authority[,]" as required by 25 U.S.C. § 5321(a)(2). On that basis alone, the declination reason is insufficient. *Cheyenne River Sioux Tribe v. Kempthorne*, 496 F. Supp. 2d 1059, 1068 (D.S.D. 2007) ("Simply reciting the declination criteria is absolutely insufficient.

The law requires a detailed explanation of the Secretary's rationale for his decision and a disclosure of the facts or documents on which he relied for his decision.")

Second, BIA's declination reason under 25 U.S.C. § 5321(a)(2)(D) ("the amount of funds proposed under the contract is in excess of the applicable funding level for the contract"), *see* Doc. No.1-12 at 4, is invalid because it fails to explain why BIA could not award the contract for $72,525 for a single administrative position. Even if BIA-OJS determined that the Tribe's proposed contract amount of $360,333.66 was in excess of the Secretarial amount, the Secretary is obligated under 25 U.S.C. § 5321(a)(4) to approve "any severable portion of a contract proposal" at "a level of funding authorized under section 5325(a)"—that is, for the Secretarial amount. To the extent that this declination reason relies on the alleged non-contractibility of the Program Management function, it is also invalid for the reasons stated below.

Third, BIA's position that the administrative support staff position cannot be contracted is not a lawful declination rationale under 25 U.S.C. § 5321(a)(2)(E) ("the program, function, service, or activity (or portion thereof) that is the subject of the proposal is beyond the scope of [ISDEAA] because the proposal includes activities that cannot lawfully be carried out by the contractor"). BIA-OJS stated that

> This is a function that cannot be transferred to another BIA OJS Agency nor can it be completed by the Tribe due to the BIA LEA function for BIA law enforcement is specific to Federal Employees. The funding for this function cannot be separated out as it would not provide enough

> funding for the requirements to be carried out on either the Tribal or BIA OJS side.

Doc. No. 1-12 at 4. Per the statute, this declination reason only applies if the "proposal includes activities that cannot <u>lawfully</u> be carried out by the contractor." 25 U.S.C. § 5321(a)(2)(E) (emphasis added). BIA-OJS cites no law prohibiting the Tribe from carrying out the Program Management function, which BIA-OJS claims is limited to employing a single Law Enforcement Assistant. Without any citation to "controlling legal authority," 25 U.S.C. § 5321(a)(1), this declination reason is invalid as a matter of law.

The ISDEAA has been broadly interpreted in favor of contractibility of programs. "It is the policy of the Secretary that the contractibility of programs under this Act should be encouraged. In this regard, Federal laws and regulations should be interpreted in a manner that will facilitate the inclusion of those programs or portions of those programs that are for the benefit of Indians[.]" 25 C.F.R. § 900.3(b)(8). Legislative history of the ISDEAA confirms that "tribes are eligible to contract for *any* program or function operated by [the] Secretary for the benefit of tribes, regardless of whether such specific programs or functions are operated locally." S. Rep. 100-274 at 25 (1987), *reprinted at* 1988 U.S.C.C.A.N. 2620, 2644, 1987 WL 61567 (emphasis added).

The ISDEAA provides that "The programs, functions, services, or activities that are contracted under [the ISDEAA] shall include administrative functions …

that support the delivery of services to Indians…. The administrative functions referred to … shall be contractable without regard to the organizational level within the Department that carries out such functions." 25 U.S.C. § 5321(a). Certain "inherent Federal function[s]" that may only be performed by federal employees are subject to exclusion from the scope of a self-determination contract. 25 U.S.C. §§ 5361(6), 5363(k). In an administrative decision by the Interior Board of Indian Appeals (IBIA), BIA failed to meet its burden to clearly demonstrate the validity of an ISDEAA declination decision based on an alleged "inherent Federal functions" when BIA did not provide any "*specific examples*" of functions that could only be performed by the position that the tribe sought to contract. *Paiute Indian Tribe of Utah v. S. Paiute Agency Supt.*, 46 IBIA 285, 287, 292-93, 2008 WL 1902819 at **1, **2, **5 (2008) (emphasis in original). If BIA-OJS believes that the Program Management program, and the Law Enforcement Assistant position, involves an "inherently federal function," BIA-OJS failed to justify that determination with citation to controlling legal authority or any specific finding in the declination letter. Because Defendants cannot rely on post-hoc justifications not stated in a declination letter, *see Pyramid Lake Paiute Tribe v. Burwell*, 70 F. Supp. 3d 534, 544 (D.D.C. 2014), they failed to adequately support this declination reason.

Fourth, BIA stated as an additional reason for its declination that "[t]he funding for this function cannot be separated out as it would not provide enough funding for the requirements to be carried out on either the Tribal or BIA OJS side." Doc. No.1-12 at 4. This is not a valid declination reason under 25 U.S.C. § 5321(a). "[T]he expense of operating a program cannot be a basis for denying a tribe's ISDEAA proposal." *Pyramid Lake Paiute Tribe*, 70 F. Supp. 3d at 545. And, this simply raises additional questions about whether BIA-OJS has been honest with the Tribe about the true "Secretarial amount" for Program Management. If $72,525.51 is insufficient for BIA-OJS to carry out the Program Management function, and BIA-OJS intends to supplement that amount with funds from other programs and sources, then the Tribe is entitled to contract all that BIA-OJS <u>actually spends</u> on the Program Management function. *See* 25 U.S.C. § 5325(a)(1).

C. Defendants Violated the ISDEAA by Failing to Negotiate in Good Faith.

Defendants are required to, in negotiation of self-determination contracts, "at all times negotiate in good faith to maximize implementation of the self-determination policy." 25 U.S.C. § 5321(f)(1). "[E]ach provision of [the ISDEAA] and each provision of a contract or funding agreement 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). Defendants do not receive any deference on interpretation of ambiguous provisions of the ISDEAA; instead, the statute must "be construed liberally in favor of Native Americans, with ambiguous provisions interpreted to their benefit." *Navajo Health*

Found.-Sage Mem'l Hosp., Inc. v. Burwell, 256 F. Supp. 3d 1186, 1223 (D.N.M. 2015) (quoting *EEOC v. Cherokee Nation*, 871 F.2d 937, 939 (1989)).

Defendants failed to negotiate with the Tribe in good faith and carry out the ISDEAA in a manner that maximizes the policy of tribal self-determination, because BIA-OJS intentionally defunded the Northern Cheyenne Program Management function after the Tribe submitted its contract proposal in 2022. At least one court has concluded that "the structure and purpose of the ISDEAA" compel the conclusion "that the applicable funding level for a contract proposal is to be determined from the date the agency receives the tribe's proposal." *Pyramid Lake Paiute Tribe*, 70 F. Supp. 3d at 543. Otherwise, the Secretary "could simply circumvent" the "carefully-constructed declination criteria in the ISDEAA" by cancelling (or defunding) a program "after receiving a self-governance proposal and then declining the proposal." *Id.* The ISDEAA restricts the Secretary's discretion to re-allocate funding once a tribal proposal to contract that funding has been received. *See Ramah Navajo Sch. Bd., Inc. v. Babbitt*, 87 F.3d 1338, 1344 (D.C. Cir. 1996) (Congress "clearly expressed . . . its intent to circumscribe as tightly as possible the discretion of the Secretary" in the ISDEAA.)

"In seeking to give effect to the provisions of the ISDEAA, as with any statute, the Court must treat the object and policy of that statute as its polestar." *Seneca Nation of Indians v. U.S. Dep't of Health & Hum. Servs.*, 945 F. Supp. 2d

135, 142 (D.D.C. 2013) (citation omitted). The "object and policy" of the ISDEAA is to "permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services." 25 U.S.C. § 5302(b). Defendants' action here illustrates the "Federal domination" that Congress sought to eliminate through the ISDEAA contracting process. Defendants violated this key congressional policy contained in the ISDEAA and its implementing regulations by unilaterally reallocating money from the Program Management function to other law enforcement functions on the Reservation, while taking the position that the Tribe could not do the same, and then refused to contract the remaining program and funds to the Tribe without lawful reason.

D. The Tribe is Entitled to an Approval Contract in the Amount of at Least $325,829 Annually, Retroactive to August 21, 2023.

The Tribe asks the Court to order Defendants to approve the Tribe's contract proposal and award the contract. "The ISDE[A]A's text and its legislative history demonstrate that the Court's sole remedy when a federal agency unlawfully declines contract proposal is to order the agency to fully fund the proposal." *Navajo Health Found.,* 256 F. Supp. 3d at 1237. "Federal courts and the [Interior] Board [of Indian Appeals] have held that, based on ISD[EA]A's clear language and its implementing regulations, when a tribe successfully challenges a declination or partial declination, the Secretary must award and fully fund the contract as proposed and without any further administrative proceedings at the agency." *Spirit Lake Tribe v. Acting Great Plains Reg'l Dir.*, 71 IBIA 97, 107, 2025 WL 2110707, at *8 (2025) (citing cases). The Court has authority to award mandamus and injunctive relief compelling the Secretary to award and fund an approved self-determination contract under 25 U.S.C. § 5331(a), and "the Tribe need not demonstrate the traditional equitable grounds for obtaining the relief it seeks" because the ISDEAA "specifically provides for both injunctive and mandamus relief to remedy violations" of the statute. *Pyramid Lake Paiute Tribe*, 70 F. Supp. 3d at 545.

Defendant's failure to award the contract to the Tribe resulted in irreparable injuries to the Tribe for which the Tribe is without remedy. Specifically, the Tribe should have been awarded the Program Management contract over two years ago. Due to Defendants' unlawful actions, the Tribe lost out on that funding and the increased law enforcement services that funding would have provided for the past two years. Thus, the Tribe asks the Court to order Defendants to reverse the August 21, 2023 declination and enter into a self-determination contract with the Tribe with an annual funding amount of at least $325,829 (which was the FY2022 Program Management budget amount at the time the Tribe submitted its contract proposal), subject to any alteration in the Tribe's proposal agreeable to the Tribe under 25 U.S.C. § 5321(a)(4).

The Secretarial amount may not be less than what the Secretary "would have otherwise provided" if the federal government still administered the programs covered by the contract. 25 U.S.C. § 5325(a)(1). "[T]he ISDEAA sets a floor, not a ceiling, on the amount of money that a Tribe can receive in a self-determination contract." *Navajo Nation v. United States Dep't of Interior*, 57 F.4th 285, 290 (D.C. Cir. 2023) (internal quotation omitted). Because the Secretarial amount is established at the time of the Tribe's contract proposal submission on July 27, 2022, *see supra* Section B and Doc. No. 1-6 at 2, the FY 2022 Secretarial amount is the appropriate contract amount. It is undisputed that Defendants told the Tribe that the FY 2022 Secretarial amount was $325,829. *See* ECF No. 1-9 at 2 (in FY 2022, the Program Management function "received an increase … which changed the total Law Enforcement Program Management funding from $319,562 to $325,829."). It was only after BIA-OJS received the Tribe's contract proposal that it reduced the Program Management Secretarial amount to $72,525.51. *Id.* at 2-3 (confirming that BIA-OJS reduced the Program Management funding on or around October 6, 2022).

The Tribe also seeks equitable relief that it may be entitled to receive under applicable law. Specifically, the Tribe seeks a retroactive award of funding which it would have received had the proposal been approved as required by August 21, 2023. The Court "has broad discretion to fashion an appropriate remedy in equity." *Pyramid Lake Paiute Tribe*, 70 F. Supp. 3d at 545. "[R]emedies for bad faith in the absence of agreement are found in the law of torts or restitution." Restatement (Second) of Contracts § 205 (1981). A "monetary award can be either legal or equitable in nature. The remedy will be considered equitable if it is an attempt to give the plaintiff what he is entitled to as opposed to a substitute for a consequential loss." *Dep't of Treasury-I.R.S. v. Fed. Lab. Rels. Auth.*, 521 F.3d 1148, 1155 n.4 (9th Cir. 2008) (internal citation omitted). "Monetary restitution is appropriately characterized as equitable when it is intended to restore to the plaintiff particular funds in the defendant's possession." *Bayer v. Neiman Marcus Grp., Inc.*, 861 F.3d 853, 866 (9th Cir. 2017) (alteration normalized, internal quotation omitted). A monetary award may be equitable "when it is merely incidental to or intertwined with injunctive relief." *Id.*

The Tribe is entitled to equitable restitution of Program Management contract funds that it should have received had Defendants approved the contract proposal in August 2023. This is not damages, but a form of equitable restitution that is appropriate in this case where the Tribe did not receive a contract because Defendants failed to negotiate in good faith and the Tribe is entitled to injunctive relief approving the Tribe's contract proposal.

CONCLUSION

For the foregoing reasons, the Tribe is entitled to summary judgment on its claims for relief as requested in its motion for summary judgment.

Dated this 29th day of September, 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The number of words in this brief is 4,391, excluding caption, table of contents and authorities, exhibit index, this certificate of compliance, and certificate of service, in compliance with L.R. 7.1(d)(2)(E).

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CERTIFICATE OF SERVICE

I certify that on September 29, 2025, I served a copy of the foregoing upon the parties as follows:

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