

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

LARIO OIL AND GAS COMPANY,	)	
	)	
Plaintiff,	)	
	)	Case No. 24-1801
v.	)	(Judge Schwartz)
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

**PLAINTIFF LARIO OIL AND GAS COMPANY’S RESPONSE IN OPPOSITION TO
DEFENDANT’S MOTION TO DISMISS**

Plaintiff Lario Oil and Gas Company (“Lario” or “Plaintiff”), by and through undersigned counsel, respectfully submits this Response in Opposition (“Response”) to the United States’ (“Defendant”) Motion to Dismiss Plaintiff’s Complaint (“Motion”).

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INTRODUCTION

In its Motion, Defendant argues that its cancellation of a portion of Federal Oil and Gas Lease NDM 102154 (the “Lease”) (attached as Exhibit 1)¹ does not constitute a breach of contract because the Lease was, according to Defendant, void *ab initio*. As such, Defendant contends, Lario has no claim or remedy despite Defendant’s failure to fulfill the promises it made in the Lease and despite the millions of dollars in damages that Lario has incurred as a result. Defendant’s argument is wrong for multiple reasons.

First, Defendant accepts, and thus concedes, that the Lease meets all fundamental requirements of a contract, which is to say, the Lease is presumptively valid and enforceable against the United States. Ignoring this, Defendant asserts that its erroneous leasing decision renders the Lease void *ab initio*. But Defendant’s argument fails in that Defendant has not alleged—and indeed cannot allege—fraud or wrongdoing in the formation of the Lease, which this Court’s case law requires before finding a lease void *ab initio*. In fact, in *Griffin & Griffin Exploration, LLC v. United States*, another judge on this Court squarely rejected the arguments the government now advances. 116 Fed. Cl. 163 (2014).

In an effort to sidestep *Griffin*, Defendant contends that the Lease must be held void *ab initio* to effectuate the purposes of the Indian Mineral Leasing Act (“IMLA”). This contention is unsupported by the pleaded facts of this case. Lario has not challenged the legality of Defendant’s decision to recognize some of the leased lands as lands belonging to the Mandan, Hidatsa, Arikara Nation (“MHA Nation”). Lario has faithfully abided by the terms of its new lease with the MHA Nation and will continue to do so. Declaring the Lease void *ab initio* for the purposes of Lario’s

¹ All Exhibits referenced in this Response were also included as Exhibits to Lario’s Complaint though, in some cases, the Exhibit numbers have changed.

claims will not achieve a more equitable outcome for the MHA Nation, nor will it more thoroughly effectuate the purpose of the IMLA. In fact, the only thing voiding the Lease will accomplish is shielding Defendant from the straightforward legal consequences of its unilateral breach of the Lease with Lario.

Finally, Defendant's argument that Lario is entitled to nothing more than a refund of the lease bonus and royalties it paid Defendant offends basic principles of contract law and this Court's caselaw. Lario had extensive reliance interests predicated upon Defendant's promised conveyance of a valid leasehold interest and the right to explore for, produce, and sell oil and gas found therein. *Griffin*, 116 Fed. Cl. at 177. Defendant breached its promise in both respects. Therefore, a simple refund has not, and cannot, make Lario whole.

STATEMENT OF THE ISSUES

1. Whether the Lease is a valid contract, even though it did not convey a valid leasehold, because it meets the elements of a contract and was not procured through fraud or wrongdoing.

2. Assuming that the Court decides that the Lease is valid for the purposes of Lario's claims, whether Lario is entitled to seek all available contract damages, including expectation damages and/or reliance damages, for Defendant's unilateral breach of the Lease.

STATEMENT OF THE CASE

1. The Lease covers minerals underlying lands located on the eastern shore of Lake Sakakawea, a large reservoir in central North Dakota impounded from the Missouri River by the Garrison Dam in 1953 (the "Leased Lands"). See Fig. 1 below (depicting the location of leases cancelled by the United States in 2020, including the Lease).

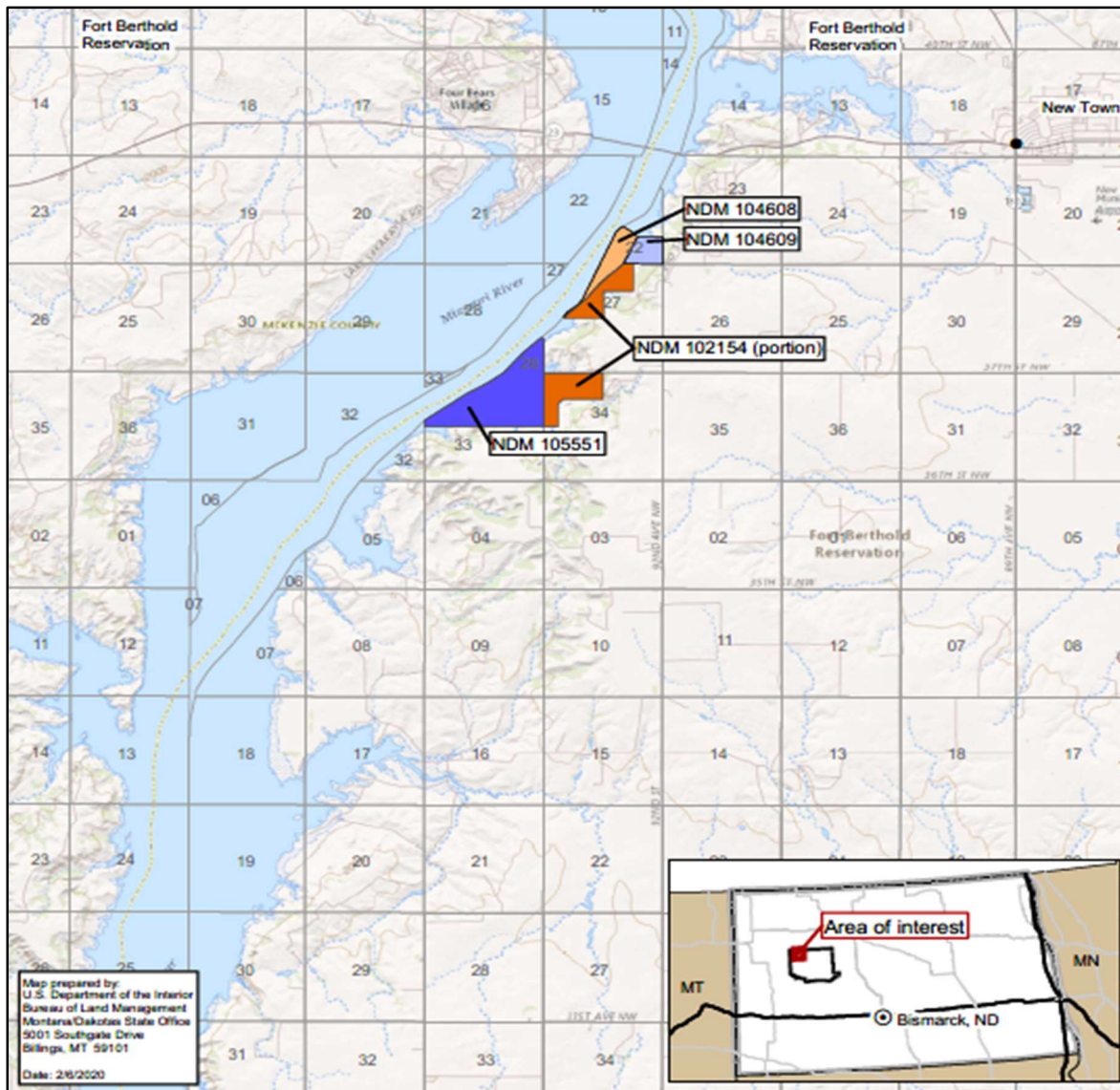
2. On September 27, 2010, Marathon Oil Company ("Marathon") submitted to BLM a communitization agreement covering the Leased Lands along with other lands. On November

1, 2010, the BLM approved the communitization agreement and assigned it the number NDM-101124 (“Communitization Agreement”). The Communitization Agreement had the effect of attributing operations on, and production from, one communitized tract to all communitized tracts, including the Leased Lands. The Communitization Agreement covered ten tracts, totaling approximately 1280 acres (“Communitized Area”), and it specified that Marathon would serve as the operator for production of oil and gas from the communitized tracts. (Ex. 2, November 1, 2010 Communitization Agreement NDM-101124 at 20).

3. In July 2011, the Bureau of Land Management (“BLM”) held a competitive oil and gas lease sale, at which it auctioned the Lease in accordance with the terms and procedures of the Mineral Leasing Act (“MLA”). BLM is required to provide the public with at least 45 days notice of BLM’s intent to offer a given lease parcel for sale. *See* 30 U.S.C. § 226(f). BLM purported to offer the Lease for sale on behalf of the United States, as the lessor and owner of the leased oil and gas.

4. The Lease consisted of two tracts totaling 236.23 acres, and its initial lease term was for 10 years. (Ex. 1, August 10, 2011 Offer to Lease and Lease for Oil and Gas NDM-102154 at pg. 1). Lario was the high bidder for the Lease.

5. The Lease required a lease bonus, a one-time payment to Defendant as consideration for signing the Lease. The Lease also required Lario to pay the first-year’s rentals in advance, i.e., payments designed to keep the Lease active even in the absence of drilling operations. Lario paid approximately \$1.9 million in lease bonuses and first-year’s rentals to the United States.



**Figure 1 – Sakakawea Lease Area
(highlighting subject tracts, including Lario’s Lease - NDM 102154)**

6. On August 10, 2011, the United States issued the Lease to Lario with an effective date of September 1, 2011. *Id.*

7. The Lease granted Lario the “exclusive right to drill for, mine, extract, remove and dispose of all the oil and gas (except helium)” in the Leased Lands. The Lease further required royalty payments to the United States on all production “removed or sold” from the Leased Lands at a standard rate of 12.5%. *Id.* at 2.

8. After it acquired the Lease, Lario expended significant resources to facilitate development of the leased oil and gas resources. For example, Lario invested nearly \$13 million to establish production at and fund ongoing operations of the nine wells that penetrate the Leased Lands.

9. In addition to the one well drilled prior to the effective date of Lario's Lease, Marathon subsequently drilled and completed an additional eleven wells accessing the Lands covered by the Communitization Agreement, with nine of the wells in total directly accessing Lario's Leased Lands. Lario participated financially in each of these wells.

10. More than nine years after issuing the Lease and after Lario had expended millions of dollars in developing the Lease, on September 4, 2020, Director of the State Office John H. Mehlhoff wrote to Lario to inform Lario "of an error made by the Bureau of Land Management [] regarding mineral leasing within the Fort Berthold Indian Reservation." (Ex. 3, Letter from BLM State Director John Mehlhoff to Lario at unpaginated 1 (Sept. 4, 2020)). The letter explained that the BLM had concluded that four oil and gas leases—including Lario's Lease and three Marathon leases—had erroneously been issued as covering minerals owned by the United States, when the United States now believed the minerals to be owned by the MHA Nation. *Id.* To resolve this issue, Director Mehlhoff stated that the BLM proposed "entering into an interim agreement with the MHA Nation," and asserted that if "[Lario] want[s] to hold an [Indian] trust lease, [Lario] and the MHA Nation would need to come to an agreement on lease terms." *Id.*

11. On September 18, 2020, Lario replied to Director Mehlhoff's September 4 letter by email, seeking additional information and inquiring about next steps. (Ex. 4, Email from Lario's Lori Blundell to Director Mehlhoff (Sept. 18, 2020)).

12. In response, on September 25, 2020, Director Mehlhoff wrote to Lario warning that the BLM would cancel the Lease no later than November 1, 2020, “and [would] require all wells to be shut in unless Lario reaches an agreement with the MHA Nation concerning ongoing production before November 1, 2020.” (Ex. 5, Letter from BLM State Director John Mehlhoff to Lario at 1 (Sep. 25, 2020)).

13. Beyond increased royalty rates, BLM’s decision put Lario at a significant bargaining and timing disadvantage, particularly because the MHA Nation refused to negotiate with Lario until the Nation had completed negotiations with the operator Marathon and insisted that Lario would have to agree to whatever terms the Nation negotiated with Marathon. These circumstances made it impossible for Lario to meet the BLM’s November 1, 2020 deadline.

14. On November 3, 2020, Director Mehlhoff informed Lario that the United States was cancelling the Lease with respect to approximately 168 of the original 236 acres covered by the Lease (the “Decision”). (See Ex. 6, Letter from BLM State Director John Mehlhoff to Lario at 1 (Nov. 3, 2020)). The Director stated that the cancellation was effective as of the date of issuance of the Lease. The Director granted Lario an additional 30 days, until December 1, 2020, to enter into a lease with the MHA Nation before requiring the wells to be shut in. *Id.* The letter further stated that Lario would be paid a refund of a proportionate amount of the bonus bid, rental payments, and royalties based on the acreage cancelled. *Id.*

15. Meanwhile, the MHA Nation continued to engage in negotiations only with Marathon.

16. The Decision stated that it was a final agency decision appealable to the Interior Board of Land Appeals (“IBLA”). On December 1, 2020, Lario filed a Notice of Appeal of the Decision with the IBLA.

17. In a December 9, 2020 letter to Lario, Director Mehlhoff extended the deadline to enter into a lease agreement with the MHA Nation to January 4, 2021. (Ex. 7, Letter from BLM State Director John Mehlhoff to Lario at 1 (Dec. 9, 2020)). (The Director repeatedly extended this deadline until the parties eventually reached an agreement in October 2023.)

18. On March 24, 2021, the MHA Nation finally presented a lease offer to Lario. It was an exact copy of the lease text that had been negotiated with and agreed to by Marathon. Thereafter, the parties exchanged multiple offers and counteroffers until June 1, 2021 when, despite Lario's efforts to continue discussions, the MHA Nation cut off communication with Lario.

19. On June 5, 2022, after months of failed attempts to communicate with the MHA Nation, Lario transmitted a revised lease and settlement proposal. Lario did not receive a response to this offer until February 1, 2023, when the MHA Nation finally sent Lario a draft Indian Minerals Development Agreement ("IMDA").

20. Lario and the MHA Nation negotiated the terms of the IMDA until they reached a comprehensive agreement on October 10, 2023, and forwarded it to the Bureau of Indian Affairs ("BIA") for approval that same day.

21. The BIA officially approved the IMDA on April 5, 2024, and Lario paid the full consideration for the IMDA to the BIA on April 30, 2024. The IMDA became effective May 1, 2024.

22. In agreeing the IMDA, Lario made substantial concessions including agreeing to a higher lease bonus, a significantly higher royalty rate, and a lump sum settlement payment to cover royalties from past production from the Leased Lands.

23. Lario's damages resulting from the United States' breach are discrete, quantifiable, and based on the express terms of Lario's Lease with the United States and the IMDA with the MHA Nation.

24. The United States' breach cannot be disputed, nor can Lario's resulting damages, which were a direct result of the breach and a foreseeable consequence given the circumstances.

25. In addition, by granting the oil and gas Lease, and pursuant to the provisions thereof, the United States promised that Lario would have the right to explore for, produce, and sell oil and gas produced from the Lease minerals. To its detriment, Lario relied upon these granting clauses, investing millions of dollars towards developing the Leased Lands, only to have the United States invalidate these efforts with its unilateral breach.

LEGAL STANDARD

In ruling on a motion to dismiss, the court is "obligated to assume all factual allegations to be true and to draw all reasonable inferences in plaintiff's favor." *Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995); *see also Sommers Oil Co. v. United States*, 241 F.3d 1375, 1378 (Fed. Cir. 2001) (citations omitted) ("When reviewing a dismissal for failure to state a claim upon which relief can be granted under . . . Rule 12(b)(6) . . . [the court] must accept as true all the factual allegations in the complaint, and . . . indulge all reasonable inferences in favor of the non-movant."). Dismissal for failure to state a claim "is proper only when a plaintiff 'can prove no set of facts in support of his claim which would entitle him to' relief." *Adams v. United States*, 391 F.3d 1212, 1218 (Fed. Cir. 2004); *see also Clean Team Janitorial Serv., Inc. v. United States*, 171 Fed. Cl. 1, 8 (2024). To survive a motion to dismiss, a complaint need only contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Bd. of Supervisors v. United States*, 84 F.4th 1359, 1364 (Fed. Cir. 2023) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). A claim has "facial plausibility when the plaintiff pleads factual content

that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *CODA Dev. s.r.o v. Goodyear Tire & Rubber Co.*, 916 F.3d 1350, 1357 (Fed. Cir. 2019).

ARGUMENT

I. LARIO PROPERLY ASSERTS A BREACH OF CONTRACT CLAIM BECAUSE THE LEASE IS VALID.

Defendant attempts to shirk the consequences of its erroneous leasing decision by arguing that Lario has not satisfied one of the elements of a breach of contract claim—a valid contract between the parties. *See e.g., Oliva v. United States*, 961 F.3d 1359, 1362 (Fed. Cir. 2020) (describing four elements to a breach of contract claim). Specifically, Defendant asserts that the Lease was void *ab initio* because it was issued pursuant to the Mineral Leasing Act (“MLA”) rather than the IMLA. This argument fails for multiple reasons. First, Defendant ignores that, although the Lease did not convey a valid leasehold interest, the Lease is still a valid contractual instrument between the government and Lario for the purposes of Lario’s contract claim. Second, Defendant does not even attempt to apply, and in any event cannot meet, this Court’s clear standard for holding government contracts void *ab initio*, which explicitly requires allegations of fraud or wrongdoing. Finally, contrary to Defendant’s assertions, the Court does not need to hold the Lease void *ab initio* to “effectuate the public policy embodied in . . . the IMLA.” Motion at 15. In fact, voiding the Lease would not effectuate anything other than insulating Defendant from the legal consequences of its breach.

A. The Lease Is a Valid Contract Even if It Did Not Convey a Valid Leasehold.

As a threshold matter, Defendant does not argue—nor could it—that the Lease is void for failure to satisfy the basic requirements of a contract. A contract between the United States and a private party, like all contracts, requires (1) mutual assent, (2) consideration, (3) lack of ambiguity in the offer and acceptance, and (4) actual authority to bind the government in contract on the part

of the government official whose conduct is relied upon. *See e.g., Suess v. United States*, 535 F.3d 1348, 1359 (Fed. Cir. 2008). The first and third requirements are connected in that the manifestation of mutual assent “ordinarily takes the form of an offer or proposal by one party followed by an acceptance by the other party.” *Anderson v. United States*, 344 F.3d 1343, 1353 (Fed. Cir. 2003).

Here, the Lease satisfies each of these elements. With respect to the first and third elements—the parties’ mutual assent and the lack of ambiguity in the offer and acceptance—are apparent from the leasing procedures and the Lease itself. Following a minimum 45-day notice period in which BLM advised the public of its intent to lease the oil and gas covered by the Lease on Defendant’s behalf, BLM offered the Lease for sale at a public auction. Then, after Lario was the high bidder, the parties signed a standard BLM Offer to Lease and Lease for Oil and Gas. Ex. 1, Lease for Oil and Gas at 1. Therein, the Lease provides unambiguous offer and acceptance where it explicitly states that “[Defendant] offers to lease all or any of the [Leased Lands],” and that “[Lario’s] signature to this offer constitutes acceptance of this lease.” *Id.* With respect to the second element, the Lease is supported by significant consideration, including a stipulated royalty rate of 12.5% and a \$1.9 million lease bonus. With respect to the last element, Defendant does not suggest that the BLM officials Lario dealt with, including Chief of the Fluids Adjudication Section at the BLM Montana State Office and signatory Teri Bakken, lacked the authority to bind the government.

Finally, and perhaps most telling, the United States agrees that all aspects of the Lease other than the portion covering the MHA Nation minerals are enforceable and continue to bind the parties. The fact that the Lease remains partly in effect reinforces that it is a valid contract and not void *ab initio*.

For these reasons, the Lease is a presumptively valid contract, enforceable against the United States, and Defendant fails to demonstrate otherwise.

B. The Lease Is Not Void *ab initio*.

In an effort to evade its legal obligations under the Lease, Defendant argues that the cancelled portion of the Lease must be considered void *ab initio*. *See* Motion at 2, 12, 14, 19. In Defendant’s estimation, the Lease was void *ab initio* because it was issued in error, allegedly in violation of the IMLA. This is incorrect. Defendant’s argument misapplies the standard for a contract to be void *ab initio*.

It is well established that, as a general rule, for a government contract to be considered “void *ab initio*” it must be “tainted by fraud or wrongdoing.” *Godley v. United States*, 5 F.3d 1473, 1476 (Fed. Cir. 1993). On the other hand, “[a] contract without the taint of fraud or wrongdoing [] *does not* fall within this rule.” *Id.* (emphasis added); *Kellogg Brown & Root Servs. v. United States*, 728 F.3d 1348, 1371 (Fed. Cir. 2013); *Oracle Am., Inc. v. United States*, 975 F.3d 1279, 1296 (Fed. Cir. 2020); *Griffin*, 116 Fed. Cl. at 173-74. Further, where the United States seeks to nullify a contract as void *ab initio*, it must demonstrate a causal link between the act of fraud or wrongdoing and the provisions of the contract. *Godley*, 5 F.3d at 1476. To that end, this relief has generally been limited to situations where the United States can “prove that the [private party] (a) obtained the contract by (b) knowingly (c) making a false statement.” *Long Island Sav. Bank, FSB v. United States*, 503 F.3d 1234, 1246 (Fed. Cir. 2007) (finding a contract void *ab initio* where the CEO of a bank falsely certified that the bank was not in violation of applicable law in order to secure a government contract); *J.E.T.S., Inc. v. United States*, 838 F.2d 1196, 1201 (Fed. Cir. 1988) (finding contract void *ab initio* where private party fraudulently certified that it was a small business in order to secure a government contract).

Another judge on this Court addressed a situation remarkably similar to this case in *Griffin*. There, plaintiff natural gas exploration company obtained two oil and gas leases totaling 160 acres at a BLM public auction. *Griffin*, 116 Fed. Cl. at 169. After the plaintiff drilled a well on one of the leases, BLM informed the plaintiff that it was cancelling both leases as improperly issued because the United States discovered that the Leased Lands were subject to another valid lease. *Id.* at 170. The plaintiff filed breach of contract and takings claims. Relying on a prior decision by the IBLA, the United States argued that the plaintiff could not sustain a breach of contract claim on the leases because they were void *ab initio*. *Id.* at 171-72. The Court disagreed. *Id.* at 173-74. Citing the rule of *Kellogg Brown, supra*, the Court found that the leases were not void *ab initio* because “the government [did] not argue[] that the lease contracts were procured through fraud or other wrongdoing.” *Id.* (further noting that “a finding of fraud or other wrongdoing is a necessary predicate to finding that the leases were void *ab initio* for purposes of government contract law.”). As such, the Court determined, the leases were “valid contract[s] for purposes of plaintiffs’ contract claim.” *Id.* at 174.

Griffin requires the same outcome here. Defendant concedes that it issued the Lease, in part, in error. (See Ex. 3, Sept. 4, 2020 Melhoff Letter at unpaginated 1). Defendant does not allege fraud or wrongdoing by Lario or any of Defendant’s agents and, as such, does not provide any basis for the Court to hold the Lease void *ab initio*. Defendant does not allege, for example, that Lario secured the Lease by wrongfully obfuscating the MHA Nation’s ownership of the Leased Lands through false statements. Instead, Defendant argues that the Court should hold the Lease void *ab initio* because the Defendant allegedly issued it in error and, particularly, in contravention of the IMLA. Motion to Dismiss at 14. Even if true, that alone is not enough to render the Lease

void *ab initio*. See *Griffin*, 116 Fed. Cl. at 169. As such, the Court should find that the Lease is a valid contract for the purposes of Lario's claims.

C. The IMLA and Its Underlying Purposes Do Not Demand that the Lease Be Deemed Void *ab initio*.

Defendant wrongly argues that the Lease must be held void *ab initio* to effectuate the public policy embodied by the IMLA. Defendant suggests that BLM's erroneous inclusion of minerals owned by the MHA Nation in the Lease somehow undermined the statutory purpose of the IMLA, which Defendant defines as maximization of tribal revenues from reservation lands and enhancement of tribal self-determination. Motion to Dismiss at 16. Defendant's analysis of both the statutory purpose of the IMLA and how it has been accounted for here are, however, incomplete and incorrect.

The fact that a contract "may be inconsistent with a statutory or regulatory requirement does not *ipso facto* render the contract void." *Seh Ahn Lee v. United States*, 895 F.3d 1363, 1372 (Fed. Cir. 2018) (holding that refusal to enforce the contracts at issue in the case would not be "consistent with and essential to effectuating" the public policy promoted by" the Federal Acquisition Regulation). Rather, "[i]nvalidation of the contract is *not* a necessary consequence when a statute or regulation has been contravened, but must be considered in light of the statutory or regulatory purpose, with recognition of the strong policy of supporting the integrity of contracts made by and with the United States." *Id.* (emphasis added) (citing *Am. Tel. & Tel. Co. v. United States*, 177 F.3d 1368, 1374 (Fed. Cir. 1999) (en banc)); see also *United Pac. Ins. Co. v. United States*, 68 Fed. Cl. 152, 159 (2005) (holding that invalidation of a contract was not warranted for violation of a statute designed to create flexibility in agency decisions, and in fact, "would be inconsistent with [the statute]"). If a statute "does not specifically provide for the invalidation of contracts which are made in violation of [its provisions]," the proper inquiry is "whether the

sanction of nonenforcement is consistent with and essential to effectuating the public policy embodied in [the statute].” *United States v. Mississippi Valley Generating Co.*, 364 U.S. 520, 563 (1961); *see also Peanut Wagon, Inc. v. United States*, 167 Fed. Cl. 577, 595 (2023); *Makowiec v. United States*, 137 Fed. Cl. 591, 596 (2018) (holding that subject contract was not void for violation of the Government Employees Training Act).

Here, viewed in light of the IMLA’s purpose, invalidation of the Lease is neither consistent with, nor essential to effectuating, the public policy embodied in the IMLA. As Defendant notes, among other things, the IMLA aims to (1) give Native Americans “a greater say in the use and disposition of the resources found on Indian lands,” and (2) provide tribes with a profitable source of revenue. *United States v. Navajo Nation*, 537 U.S. 488, 493-94 (2003). Contrary to Defendant’s assertions, these purposes can be effectuated if the Lease is valid for the purposes of Lario’s contract claims, and Lario has demonstrated precisely how. Lario has not challenged the legality of Defendant’s decision to recognize some of the Leased Lands as belonging to the MHA Nation. Nor has Lario categorically refused to negotiate with the MHA Nation. In fact, as soon as Defendant cancelled the Lease, Lario immediately pursued negotiating an IMDA directly with the MHA Nation. The IMDA was ultimately signed in October 2023, after nearly three-years of extensive negotiations, resulting in significant concessions by Lario, including an increased lease bonus, a lump sum settlement payment to cover royalties from past productions, and a royalty rate significantly higher than that provided in Lario’s Lease with Defendant. Thus, the MHA Nation had full say in the use and disposition of its resources and will benefit from a profitable source of revenue for the foreseeable future. Therefore, the goals of the IMLA have been effectuated, and the Court must instead consider “the strong policy of supporting the integrity of contracts made by

and with the United States.” *Seh Ahn Lee v. United States*, 895 F.3d at 1372. It is unclear what, if anything, invalidating the Lease would further accomplish.

In fact, invalidating the Lease likely would thwart the public policy promoted by the IMLA. In addition to the two aforementioned goals, with the IMLA Congress also sought to remove “impediments that had applied particularly to mineral leases on Indian land.” *Navajo Nation*, 537 U.S. at 511 n.16. Should the Lease be held invalid here, if situations such as this one arise again, a future lessee—knowing it would lack any remedy against the United States for breach of contract—would be incentivized to contest the United States’ substantive decision of recognizing tribal ownership of minerals, rather than accede to that decision as Lario has done. Such a challenge could realistically tie up the subject minerals in administrative process or litigation for an indefinite period of time, adding additional impediments to the leasing of Indian minerals. This result directly contravenes IMLA’s “impediment-removing objective” and should be avoided. *Id.*

Defendant’s reliance on *Prestex Inc. v. United States* and *Schoenbrod v. United States* to argue that the Lease should be invalidated is misplaced. 320 F.2d 367 (Ct. Cl. 1963); 410 F.2d 400 (Ct. Cl. 1969); Motion to Dismiss at 14. Both of these decisions from the 1960s preceded this Court’s—and the Federal Circuit’s—important and more relevant precedent from the ensuing six decades, including *American Telephone & Telegraph Co. v. United States*, 177 F.3d 1374 (Fed. Cir. 1999), and its progeny, such as *Seh Ahn Lee*. As discussed above, those cases demonstrate that contract invalidation is generally disfavored and requires an analysis of whether invalidation of the contract is necessary in light of a contravened statute’s purpose. *See e.g., Seh Ahn Lee*, 895 F.3d at 1372; *United Pac. Ins. Co.*, 68 Fed. Cl. at 157. Neither *Prestex* nor *Schoenbrod* engage in such an analysis.

Moreover, both *Prestex* and *Schoenbrod* are factually distinguishable. In *Prestex*, for example, the Court deemed a procurement contract for cloth for the United States Military Academy cadet uniforms invalid. *Prestex*, 320 F.2d at 367. Quite unlike the facts here, in *Prestex*, the government cancelled the contract with the plaintiff *before* the plaintiff performed under the contract, rejecting plaintiff's cloth upon receipt of a pre-production sample. *Id.* at 370. Similarly, in *Schoenbrod*, the government cancelled a contract for the processing of seal skins because in granting the contract it failed to consider relevant pricing factors.² *Id.* Again, the government cancelled the contract *before* the plaintiff performed. Here, however, Defendant waited over nine years to cancel the Lease with Lario, engendering extensive reliance interests and performance by Lario. Accordingly, the cases on which Defendant relies do not support its contention that the Lease is void *ab initio*.

II. LARIO IS ENTITLED TO CONTRACT DAMAGES—THERE IS NO REMEDIAL SCHEME TO ADDRESS LARIO'S DAMAGES.

Defendant also erroneously argues that Lario is entitled to nothing more than a refund of its payments to Defendant because a “comprehensive scheme governing mineral leases” in the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §§ 1701–73, prescribes a refund as the only remedy for plaintiffs like Lario. This argument is wrong because no such scheme exists in FLPMA.

Defendant points to *BP Exploration & Production, Inc v. United States*, in which another judge on this Court found that a “remedial scheme” set forth in the Federal Oil and Gas Royalty Management Act, as amended, 30 U.S.C. §§ 1721, 1721a, 1724 (“FOGRMA”), precluded an award of additional royalty claimed under federal oil and gas leases. 142 Fed. Cl. 579, 599 (2019);

² Moreover, the *Schoenbrod* court explicitly found that the “illegality [was] clear” on the face of the contract in that case. Here, “invalidity [is] not clear and the contrary position [is] reasonable.” *Schoenbrod*, 410 F.2d 400 at 404.

see Motion at 19. Specifically, *BP Exploration* held that a remedial schedule that “delineates the type of relief [plaintiff] may seek and the process by which it may claim that relief” precluded an independent award of royalty. 142 Fed. Cl. at 599 (citing *United States v. Bormes* 568 U.S. 6, 6-7 (2012)). *BP Exploration* echoed a line of precedent holding that Tucker Act jurisdiction is preempted when a statute provides a “specific and comprehensive scheme for administrative and judicial review” of the claims sought. *See, e.g., St. Vincent’s Med. Ctr. v. United States*, 32 F.3d 548, 550 (Fed. Cir. 1994); *accord Alpine PCS, Inc. v. United States*, 878 F.3d 1086, 1092–93 (Fed. Cir. 2018); *Vereda, Ltda. v. United States*, 271 F.3d 1367, 1375 (Fed. Cir. 2001).

Defendant then analogizes FOGRMA’s statutory scheme at issue in *BP Exploration* to section 304 of FLPMA, 43 U.S.C. § 1734.³ But Defendant is mistaken in that this section does not provide a remedial scheme at all. Section 304 states that, where any person has made a payment that is “in excess of the amount required by applicable law,” the BLM “*may* cause a refund to be made.” 43 U.S.C. § 1734(c). (emphasis added) While granting authority for the agency to issue a refund, Section 304 does not specify any process for seeking such a refund, does not even require that a refund be given, and does not explicitly limit a claimant to a refund as its sole remedy. *See id.* And FLPMA does not provide any judicial process or define any parameters for judicial relief. *See Bormes*, 568 U.S. at 14 (looking to whether “a specific statutory scheme provides the accoutrements of a judicial action”); *Alpine PCS*, 878 F.3d at 1092–93 (examining whether a statute provides a “specific and comprehensive scheme for administrative *and* judicial review” (emphasis added)). As such, FLPMA does not bar Lario from seeking contract damages under the Tucker Act.

³ In referencing *BP Exploration* and FOGRMA, Defendant does not contend that FOGRMA precludes Lario from recovering contract damages, in addition to a refund of monies paid. *See* Motion at 19.

Moreover, the Court of Federal Claims has demonstrated that it understands this distinction. In *Griffin* for example, the Court recognized that where a plaintiff brings contract claims pursuant to the United States' breach of an oil and gas lease, they are not limited to restitution remedies. *Griffin*, 116 Fed. Cl. at 177. Instead, a plaintiff may also seek standard contractual damages including expectation damages and/or reliance damages. *Id.* at 177-78; *see also Hansen Bancorp, Inc. v. United States*, 367 F.3d 1297, 1308-09 (Fed. Cir. 2004). Therefore, Lario is entitled to seek contract damages outside of the amounts refunded by Defendant.

CONCLUSION

For the reasons discussed herein, the Court should deny Defendant's Motion to Dismiss.

Submitted this 21st day of March 2025.

/s/ Kathleen C. Schroder
 Kathleen C. Schroder
 Mark E. Champoux
 DAVIS GRAHAM & STUBBS LLP
 3400 Walnut St., Suite 700
 Denver, CO 80205
 Mark.Champoux@davisgraham.com
 Katie.Schroder@davisgraham.com
 Tele: (303) 892-9400

Attorneys for Lario Oil and Gas Company