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7 Attorney for Plaintiff

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF MONTANA**
10 **GREAT FALLS DIVISION**

11 BRANDY AZURE,) CV-23-81-GF-BMM-JTJ
12)
13 Plaintiff,) **COMPLAINT**
14 vs.)
15)
16 UNITED STATES OF AMERICA, JONAH)
17 RIEDIGER, JIM SUMMERS, and DOES 1-)
18 10,)
19 Defendants.)
20

21 Plaintiff alleges as follows:

- 22 1. This is an action for deprivation of civil rights under color of law, and for
23 assault and battery, negligence, and other wrongful acts. This action arises
24 out of both federal and state law for damages resulting from the unlawful
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1 conduct of Defendants.

2 2. This Court has jurisdiction over this cause of action pursuant to the Federal
3 Tort Claims Act, 28 U.S.C. 2671, *et seq.*, because the claim arises from
4 conduct of federal government agents and Plaintiff has exhausted
5 administrative remedies.
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8 3. This Court has exclusive jurisdiction over tort claims brought against the
9 United States pursuant to 28 U.S.C. § 1346(b).
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11 4. This Court also has subject matter jurisdiction over claims specified in this
12 Complaint pursuant to 42 USC §1983, 28 USC §1331, 28 USC §1343, and 42
13 USC §1988. Plaintiff also seeks redress for violations of protections
14 afforded under the Montana Constitution.
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17 5. Jurisdiction for state law claims against Defendants pursuant to the law of
18 the State of Montana is conferred upon this Court pursuant to 28 U.S.C.
19 §1367.
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22 6. Plaintiff Brandy Azure is an enrolled tribal member on the Fort Peck Indian
23 Reservation, a citizen of the State of Montana, and a resident of Roosevelt
24 County, Montana.
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26 7. Based on information and belief, Defendants Jonah Riediger and Jim
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1 Summers are residents of Roosevelt County and citizens of the State of
2 Montana.

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4 8. Defendants Does 1-10 are individuals whose true identities and capacities
5 are as yet unknown to Plaintiff and her counsel, despite diligent inquiry and
6 investigation, and who acted herein as described more particularly below in
7 connection with the breaches of duties and/or violations of law alleged
8 here and who in some manner or form not currently discovered or known
9 to Plaintiff may have contributed to or be responsible for the injuries
10 alleged here. The true names and capacities of the Doe Defendants will be
11 substituted as they become known.
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15 9. Brandy Azure filed Federal Tort Claim Act claims on May 23, 2023. The
16 government has not acted on the claims, therefore Plaintiff's claims are
17 now ripe for adjudication.
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20 10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(e) and 1402(b)
21 and LR 3.2 because the incidents giving rise to this lawsuit occurred in
22 Roosevelt County, Montana.
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25 11. On or about 3:47 pm on Saturday April 8, 2023, Fred Lester called Brandy
26 Azure's daughter Avery Azure while Avery was at Brandy Azure's house and
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1 told her he was being arrested. Fred had been driving Brandy Azure's car, a
2 2012 Chevrolet Traverse Utility AWD, and Fred told Avery the car keys were
3 in his pocket and the car was locked and parked on an abandoned driveway
4 off of Bluff Drive where he had been arrested.
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7 12. Avery went to where Brandy's vehicle was parked and approached two
8 police officers who were by the vehicle. The officers told her they were
9 seizing the vehicle and it was going to be impounded, towed, and searched,
10 and that Avery could not take the car. Avery left and went back to Brandy's
11 house and told Brandy the police were seizing and impounding Brandy's
12 car.
13

14
15 13. Brandy called the jail several times on Saturday to see if she could get the
16 keys to her vehicle and retrieve her personal property from the vehicle or
17 retrieve her vehicle from police custody. The jail staff variously told Brandy
18 the jail staff could not release the vehicle or did not have the keys.
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22 14. The police did not impound or tow Brandy's car.

23 15. Brandy called the jail several more times on Sunday, but jail staff told her
24 that her keys were not at the jail.
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26 16. Brandy eventually determined that the police had not towed and
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1 impounded her car.

2 17. While Brandy Azure's car sat where Fred Lester had been arrested, Brandy's
3 car got vandalized and many of Brandy's personal belongings got stolen
4 from the car.
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6 18. Brandy Azure's car sat where Fred Lester had been arrested until late
7 Sunday night, April 9, 2023, when Brandy had her car towed.
8

9 19. Vandals had rendered Brandy's car inoperable, so Brandy had to pay to get
10 her car towed, which required taking the drive line off the vehicle.
11

12 20. On Monday morning, September 10, 2021, Brandy called the jail again and
13 was told that the jail did not have keys to her vehicle.
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15 21. Brandy called the jail again on Monday and eventually spoke with
16 Mercedes LNU, who, based upon information and belief, works in the jail
17 office. Brandy explained to Mercedes that she was trying to locate the keys
18 to her car. Mercedes told Brandy she would look for the keys.
19

20 22. Mercedes shortly called back and told Brandy she had found the keys; they
21 had been in Fred Lester's property.
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23 23. The police left Brandy's vehicle unattended, refused to give Brandy the
24 keys, and allowed the car to be vandalized and have her personal property,
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1 including her house keys, stolen from it.

2 24. On or about 2:50 pm on Monday Brandy went to the Tribal Law
3 Enforcement building with Avery and asked to speak with someone about
4 her car.
5

6 25. Jonah Riediger came to talk to Avery and Brandy. Riediger had been one of
7 the officers whom Avery had spoken with where Brandy's car had been
8 parked off of Bluff Drive where Fred Lester had been arrested.
9

10 26. Knowing that Jonah Riediger had a reputation for violating civil rights,
11 Brandy started to record their interaction with her phone.
12

13 27. Brandy started to explain the situation, but Riediger cut her off and said the
14 police did not seize Brandy's car and bore no responsibility for any
15 vandalism that may have occurred.
16

17 28. Because she was getting no satisfaction from Riediger, Brandy asked who
18 she could speak to about her car other than Riediger.
19

20 29. Riediger told Brandy that he would talk to the other officers, and refused to
21 provide the names of the other officers who had been involved in Fred
22 Lester's arrest and the decision to leave Brandy's car parked on an
23 abandoned driveway off of Bluff Drive.
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1 30. Officer Jim Summers then came out of his office, which was near where
2 Brandy and Riediger were talking, and told Brandy and Avery that they had
3 to leave because Brandy was recording without permission.
4

5 31. Riediger then said, "Oh, you're recording me," and forcefully jerked
6 Brandy's phone out of her hand and said he was seizing the phone.
7

8 32. Summers told Brandy and Avery they had to ask permission to record.
9 Avery stated there was no sign posted stating that citizens could not
10 record, and the police had no right to take Brandy's phone.
11

12 33. Both officers were angry, and threatened to arrest Brandy for recording
13 their interaction.
14

15 34. Brandy told Jim Summers she was at the Law Enforcement building for help
16 and answers about her vehicle. Summers took Brandy's phone number and
17 said he would get video footage from the incident and find out which
18 officer told Avery that the car was going to be seized and impounded and
19 that she could not take the car.
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22 35. Summers then told Riediger to return Brandy's phone to her, but first
23 required that Brandy delete the video of their interaction.
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26 36. Brandy and Avery left the Law Enforcement building.
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1 37. Summers never followed up with Brandy with information about which
2 officers had told Avery that she could not take the car.

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4 38. On or about Tuesday, April 11, 2023, Brandy went to the Tribal Chairman
5 and told him the situation about her vehicle and the unprofessional
6 treatment she received from Summers and Riediger.
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8 39. The Tribal Chairman advised Brandy to write a complaint and give it to him
9 and he would send it to BIA Internal Affairs.
10

11 40. Since the police said they were impounding the vehicle and then would not
12 give Brandy the keys to Brandy's car, the police are responsible for the
13 vandalism and loss of personal property.
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15 41. Brandy was supposed to be in Billings Tuesday morning, April 11, 2023, for
16 work, but because her car was undrivable, she had to report in as
17 unavailable to work. As a result, Brandy lost that contract period of work as
18 a contract nurse.
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22 **COUNT 1**
23 **42 USC § 1983**
24 **INDIVIDUAL LIABILITY**

25 42. Plaintiff hereby incorporates all prior paragraphs.
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- 1 43. At all times in which they interacted with Brandy Azure on or about
2 September 8, 9, 10, and 11, 2023, Summers and Riediger acted under color
3 of law, statutes, ordinances, rules, regulations, customs, policies, practices,
4 and/or usages of Ft Peck and the United States
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- 7 44. At all times in which they interacted with Brandy Azure on or about
8 September 8, 9, 10, and 11, 2023, Summers and Riediger acted within the
9 course and scope of their employment.
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- 11 45. Summers and Riediger, while acting under color of law, deprived Brandy
12 Azure of her civil rights under the Fourth Amendment and the Fourteenth
13 Amendment.
14
- 15 46. The acts and omissions of Summer and Riediger, while carried out under
16 color of law, have no justification or excuse in law, and instead constitute a
17 gross abuse of governmental authority and power, shock the conscience,
18 are fundamentally unfair, arbitrary and oppressive, and unrelated to any
19 activity in which governmental officers may appropriately and legally
20 undertake in the course of protecting persons or property, or ensuring civil
21 order. The above acts and omissions were consciously chosen from among
22 various alternatives.
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1 47. Riediger assaulted Brandy Azure in violation of rights guaranteed to Brandy
2 Azure under the United States Constitution.

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4 48. This unnecessary and unwarranted use of force was an unlawful and
5 excessive use of force, in violation of Brandy Azure's rights.

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7 49. Each of the foregoing acts and/or omissions in this Count directly and
8 proximately caused or contributed to Brandy Azure's constitutional
9 deprivations, injuries, and damages. Brandy Azure suffered and will
10 continue to suffer great mental and physical pain, suffering, anguish, fright,
11 nervousness, anxiety, shock, humiliation, indignity, harm to reputation, and
12 apprehension, which have caused Brandy Azure to sustain damages in a
13 sum to be determined at trial.
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17 **COUNT 2**
18 **MONTANA CONSTITUTIONAL RIGHTS**
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20 50. Plaintiff hereby incorporates all previous paragraphs.

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22 51. Pursuant to the Montana Constitution, *see Dorwart v. Caraway*, 58 P.3d
23 128 (Mont. 2002), Brandy Azure has the fundamental, inalienable, and self-
24 executing rights to individual privacy; to be secure in her person, papers,
25 home, and effects from unreasonable searches and seizures; and not to be
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1 deprived of life, liberty, or property without due process of law.

2 52. Defendants' acts and omission related to the incident involving Brandy
3 Azure on September 8 through 11, 2023, violated Brandy Azure's
4 constitutional rights.
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6 53. Brandy Azure has the right to seek recourse against those who violate her
7 constitutional rights.
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9 54. Each of the foregoing acts and/or omissions in this Count directly and
10 proximately caused or contributed to Brandy Azure's constitutional
11 deprivations, injuries, and damages, and Brandy Azure is entitled to
12 compensatory damages and attorneys' fees for Defendants' violations of
13 her state constitutional rights.
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17 **COUNT 3**
18 **NEGLIGENCE**
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20 55. Plaintiff hereby incorporates all previous paragraphs.
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22 56. At all times pertinent to this Complaint, Defendants were subject to a duty
23 of care under state law in the exercise of the police function to protect
24 Brandy Azure's constitutional, statutory, and common law rights. The
25 conduct of Defendants as set forth in this Complaint does not comply with
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1 the standard of care, and included negligent use of excessive force;
2 negligent enactment, enforcement, and violation of law enforcement
3 policies and procedures; negligent violation of Brandy Azure's
4 constitutional, statutory, and common law rights; and negligent
5 performance of official duties.
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8 57. As a direct and proximate result of Defendants' negligence, Brandy Azure
9 suffered injuries.
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11 **COUNT 4**
12 **ASSAULT AND BATTERY**
13

14 58. Plaintiff hereby incorporates all previous paragraphs.
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16 59. Riediger intentionally made harmful or offensive contact with Brandy
17 Azure. His use of force exceeded any necessary force.
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19 60. Riediger's intentional acts constituted assault and battery upon Brandy
20 Azure, and directly and proximately caused injuries to Brandy Azure.
21

22 **COUNT 5**
23 **INFLECTION OF EMOTIONAL DISTRESS**
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25 61. Plaintiff hereby incorporates all previous paragraphs.
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27 62. Defendants' negligent or intentional acts and omissions described here
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1 caused Brandy Azure to suffer serious or severe emotional distress that no
2 reasonable person would be expected to endure.

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4 63. Any normal person in Brandy Azure's situation would have experienced
5 severe emotional distress as Brandy Azure has.

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7 64. As a direct and proximate result of Defendants' conduct, Brandy Azure
8 suffered, and continue to suffer, serious and severe emotional distress that
9 was a reasonably foreseeable consequence of Defendants' negligent or
10 intentional acts and omissions, entitling Brandy Azure to damages.
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14 **COMPENSATORY DAMAGES**

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16 65. As a direct result of Defendants' unlawful conduct, Brandy Azure suffered
17 violations of her constitutional, statutory, and common law rights as set
18 forth above.
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20 66. As a direct and proximate result of Defendants' unlawful conduct, Brandy
21 Azure suffered physical and emotional pain and injuries.
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23 67. As a direct and proximate result of Defendants' unlawful conduct, Brandy
24 Azure suffered economic damages.
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26 **ATTORNEYS' FEES**
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68. Pursuant to 42 USC § 1988, the Court may allow an award of attorneys' fees to Plaintiff if she prevails on claims asserted under 42 USC § 1983.

69. Plaintiff is entitled to recover reasonable attorneys' fees for violations of state constitutional rights under Montana's private attorney general doctrine.

RELIEF

WHEREFORE, Plaintiff respectfully requests this Court to grant the following relief:

1. For damages in a reasonable amount to compensate Plaintiff fully for deprivation of her constitutional rights;
2. For damages in a reasonable amount to compensate Plaintiff fully for all of her injuries and damages;
3. For declaratory and injunctive relief;
4. For attorneys' fees pursuant to 42 USC § 1988;
5. For reimbursement of costs and expenses of suit; and
6. For such further relief as the Court deems fair and just.

DATED this 30th day of November, 2023.

/s/ Timothy M. Bechtold
BECHTOLD LAW FIRM, PLLC