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October 22, 2015

Mr. James Burckman
Director of Human Capital Management
Office of Human Capital Management
Indian Affairs
1849 C Street, NW
Washington, D.C. 20240

Re: Grievance for violation of the Privacy Act, Federal Information Security Management Act, OPM regulations, and other violation

Dear Mr. Burckman:

Pursuant to the Collective Bargaining Agreement (“CBA”) Article 25 Sections 2 and 9, this Union Grievance is filed on behalf of all bargaining unit employees at the Bureau of Indian Affairs, Bureau of Indian Education, and the Office of the Secretary/Office of the Special Trustee for American Indians (the “Agency”) represented by the Federation of Indian Service Employees (the “Union”) who were employed at the Agency as of the date or dates of the data security breach which is the subject of this Grievance.

The Union is available and requests an immediate grievance meeting. The Union is willing to waive the timeframes associated with this Grievance until the parties can mutually agree upon appropriate time frames after completing the process of gathering and providing information pursuant to the Union’s forthcoming 5 U.S.C. § 7114 Request for Information and after the requested Grievance Meeting. The Union reserves the right to revoke this extension of time to respond to the Grievance at any time in writing.

The Union alleges that the Agency violated the Privacy Act, 5 U.S.C. § 552a, *et seq.*, the Federal Information Security Management Act, 44 U.S.C. §§ 3541 *et seq.*, the Administrative Procedures Act, 5 U.S.C. § 701 *et seq.*, the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, OPM regulations, and the CBA, including but not limited to CBA Article 2 Section 1 (“In the administration of all matters covered by this agreement, the Parties are governed by Federal Law, Government-wide rules or regulations in effect upon the effective date of this Agreement, and Government-wide rules and regulations issued after the effective date of this Agreement that do not Conflict with this Agreement.”). The Agency has also acted with gross negligence in the manner in which it gathered, stored, and failed to secure its employees’ information. Further investigation may also reveal that Agency employees, or employees of the Agency’s partners or related agencies, willfully corroborated with criminals to facilitate the theft of employee information. The Agency violated the above provisions of law when it:

1. Gathered and maintained Personal Identifying Information (“PII”) about Bargaining Unit Employees (“BUEs”) without providing proper safeguards for the protection of that information;

2. Refused for years to correct known deficiencies and weaknesses in its systems, leaving BUE information at risk of theft and exploitation;

3. In approximately April 2015, lost, at a minimum, the following information pertaining to the BUEs:

- (i) Name,
- (ii) Date of Birth,
- (iii) Fingerprints,
- (iv) Work history, and
- (v) Social Security Number;

4. With respect particularly to those BUEs who are Native American (the overwhelming majority of BUEs), gathering and then losing the following additional information:

- (i) Birth Certificate,

- (ii) Parents' names, dates of birth, tribal enrollment numbers, and year of death if deceased,
- (iii) Grandparents and great grandparents' names, dates of birth, tribal enrollment numbers and dates of death if deceased,
- (iv) Parents' Birth or Death Certificate,
- (iii) Grandparents Birth or Death Certificate;

5. Failed to timely and fully inform BUEs of the date and extent to which their information was compromised.

The Agency is jointly responsible with all other agencies, offices, and bureaus who gathered, received, transmitted, or stored BUEs' information, for the protection of that information from theft, loss, and exploitation. Additionally, the Agency is jointly responsible, along with all other agencies, offices, and bureaus for violations resulting from the actions or inactions of contractors, who acted as their agents with respect to the BUEs' information.

As a result of the above-described violations, the information pertinent to all BUEs is in the hands of criminals. The BUEs therefore face a high likelihood of exposure to identity theft.

The Union requests the following relief:

1. The Agency will work with all of its relevant partners to immediately secure BUEs' information from further loss;
2. The Agency will compensate BUEs for their actual losses incurred as a result of the breach. Those losses include:
 - (i) Unauthorized charges,
 - (ii) Higher interest rates,
 - (iii) Fees charged by financial institutions, including overdraft fees and fees for dishonored checks,
 - (iv) Credit-monitoring costs,
 - (v) Present and future costs for time spend engaged in credit repair activities,
 - (vi) Present and future costs to replace compromised documents such as social security cards and numbers or and other identifying documents,
 - (vii) Present and future personal time incurred to address all of the above,

- (viii) Lost opportunity to control and use PII and other private information,
- (ix) Diminution in the value of BUEs' information,
- (x) Damages resulting from the theft and publication of BUEs' PII and other private information,
- (xi) Damages resulting from the publication and theft of BUEs' family members' PII and other private information,
- (xii) The ongoing risk of further loss or theft of BUEs' and their family members' PII and other private information,
- (xiii) Lost opportunity cost associated with time spent preventing and remedying identity theft and repairing credit and good name and standing, and
- (xiv) Embarrassment associated with the publication of BUEs' and family members' PII and other private information, and
- (xv) All other unanticipated costs and expenses that will arise because of the data breach and potential identity theft;

3. The Agency will pay interest on the above-described actual damages through the date of payment of the damages;

4. The Agency will provide assistance to BUEs to prevent and remedy identity theft;

5. The Agency will pay reasonable attorneys' fees, costs, and expenses.

Further information can be provided at the Grievance meeting and upon request.

The violations alleged in this Grievance are continuing and ongoing. Indeed, the Agency has not yet remedied the various circumstances that have compromised BUE data.

The Union appoints the following individuals to be the points of contact for, and agent of, the Union in all matters touching upon or related to this Grievance and the forthcoming request for information:

Jason J. Lewis
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jjl@morrisseylewis.com

Sincerely,

LAW OFFICE OF JASON J. LEWIS, LLC

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line that extends to the right and then curves upwards and back to the left, ending in a small loop.

Jason J. Lewis
Attorney for FISE