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10 Attorneys for Plaintiff Quechan Indian Tribe

11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE DISTRICT OF ARIZONA**

13 QUECHAN TRIBE OF THE FORT  
14 YUMA INDIAN RESERVATION, a  
15 federally recognized Indian Tribe, on its  
16 own behalf and as *Parens Patriae* on  
17 behalf of its members

18 Plaintiff,

19 v.

20 UNITED STATES OF AMERICA;  
21 Department of Health and Human  
22 Services; Kathleen Sebelius, Secretary of  
23 Health and Human Services; Indian Health  
24 Service; Dr. Yvette Roubideaux, Director,  
25 Indian Health Service; Dorothy Dupree,  
26 Acting Director, Indian Health Service  
Phoenix Area Office; Fort Yuma Service  
Unit; Roger Dahozy, Chief Executive  
Officer, Fort Yuma Service Unit

Defendants

Civil Action No.

COMPLAINT OF QUECHAN INDIAN  
TRIBE FOR DECLARATORY AND  
INJUNCTIVE RELIEF

## I. INTRODUCTION

1. Plaintiff Quechan Indian Tribe (“Tribe”), in its own capacity and as *parens patriae* on behalf of its members, seeks a declaratory judgment that the United States of America, acting through the Department of Health and Human Services, Indian Health Service (“IHS”), and the IHS Fort Yuma Service Unit (“United States”) is in breach of its statutory obligation and special trust responsibility to provide the Tribe and its members within the Fort Yuma Indian Reservation (“Reservation”) with health care facilities and services that meet generally accepted, appropriate, and best available standards of care.

2. The United States is in breach of its statutory and trust obligations under the Indian Health Care Improvement Act, 25 U.S.C. §§ 1601, *et seq.*, as amended by Public Law 111-148, § 10221 (March 23, 2010) and other federal statutory and common law, in the provision of facilities, operation, maintenance, staffing, and health care procedures at the Indian Health Service, Fort Yuma Service Unit, serving the Tribe and its members within the Reservation.

3. Based on the United States’ violations of its statutory and trust obligations, the Tribe seeks injunctive relief that prospectively orders all health care facilities, services, maintenance, operations, procedures, staffing, and training at the Fort Yuma Service Unit to meet or exceed generally accepted, appropriate, and best available standards of care.

## II. JURISDICTION

4. This Court has jurisdiction under the following statutes: (a) 28 U.S.C. §§ 1331 and 1362, this being an action by an Indian tribe with a government body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, and treaties of the United States; (b) 28 U.S.C. § 1361, this being an action seeking mandamus to compel federal officers, federal employees, and federal agencies to perform a duty owed to the Tribe; (c) 28 U.S.C. §§ 2201 and 2202,

1 in that this action includes a request for declaratory judgment and such further necessary  
2 or proper relief, and (d) 5 U.S.C. § 702, this being an action seeking relief for other than  
3 money damages against agencies of the United States and its officers.

4 5. The Tribe seeks an award of costs and fees, including attorneys' fees,  
5 pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

### 6 **III. VENUE**

7 6. Venue in this Court, the United States District Court for the District of  
8 Arizona, is proper under 28 U.S.C. § 1391(e) because Defendants reside in this District  
9 and a substantial part of the events or omissions giving rise to the federal claims herein  
10 occurred within the District of Arizona. The Fort Yuma Indian Reservation is  
11 geographically located in the States of Arizona and California.

### 12 **IV. PARTIES**

13 7. The Quechan Indian Tribe is a federally recognized Indian tribe with a  
14 governing body recognized by the Secretary of the Interior. 75 Fed. Reg. 60810,  
15 October 1, 2010. The lands and resources of the Fort Yuma Indian Reservation were  
16 reserved to the Tribe through aboriginal law and by Executive Order of January 9, 1884,  
17 as modified by Executive Order of December 19, 1900, and confirmed by Secretarial  
18 Order of February 6, 1981. The Tribe sues in its own capacity and in its capacity as  
19 *parens patriae* on behalf of all of its enrolled members.

20 8. The Tribe has a sovereign interest in ensuring that its members have  
21 access to health care facilities and services that are kept in good and safe repair, that  
22 operate in accordance with appropriate standards of care, and that do not endanger the  
23 health or safety of tribal members.

24 9. By filing this action, the Tribe does not waive its sovereign immunity and  
25 does not consent to suit as to any claim, demand, offset, or cause of action of the United  
26 States or of any other person or entity in this or any other Court.

1           10. Defendants are the United States of America, acting through the  
2 Department of Health and Human Services, the Indian Health Service, and the IHS Fort  
3 Yuma Service Unit, under the supervision and direction of Kathleen Sebelius, Secretary  
4 of Health and Human Services; Dr. Yvette Roubideaux, Indian Health Service Director;  
5 Dorothy Dupree, Indian Health Service Phoenix Area Office Acting Director; and  
6 Roger Dahozy, Fort Yuma Service Unit Chief Executive Officer (collectively, the  
7 “United States”).

8           11. The Defendant United States has a special trust responsibility and legal  
9 obligation to provide federal health services to maintain and improve the health of  
10 Indians pursuant to federal laws including, but not limited to, the Indian Health Care  
11 Improvement Act, 25 U.S.C. §§ 1601, *et seq.*, as amended by Public Law 111-148,  
12 § 10221 (March 23, 2010). Defendant has violated its duty by providing sub-standard  
13 and unsafe health facilities and by operating health facilities in the Fort Yuma Service  
14 Unit in a manner that fails to meet appropriate standards of care and puts the Tribe’s  
15 members at risk of harm.

16           **V. ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

17           **A. The United States Has A Statutory and Fiduciary Trust Obligation to**  
18           **Provide Health Care Services to Members of the Quechan Indian Tribe.**

19           12. The United States, its departments and agencies, stand as a fiduciary and  
20 a trustee to the Tribe and its members.

21           13. Since the mid-19th century, the United States has affirmatively  
22 undertaken the duty and responsibility to provide health services to Indian people.

23           14. The United States has affirmatively undertaken the duty and responsibility  
24 to provide health services to members of the Quechan Tribe on the Fort Yuma Indian  
25 Reservation through the Fort Yuma Service Unit of the Indian Health Service.  
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1           15. Defendant United States operates, manages, and controls the buildings,  
2 facilities, and services of the Fort Yuma Service Unit located on the Fort Yuma Indian  
3 Reservation.

4           16. Both Congress and the President of the United States have recognized and  
5 confirmed the United States fiduciary trust obligation to establish and provide health  
6 care for the Tribe and its members.

7           17. In the Snyder Act of 1921, 25 U.S.C. § 13, Congress directed the Bureau  
8 of Indian Affairs to direct, supervise, and expend moneys as Congress may from time to  
9 time appropriate, for the benefit, care, and assistance of the Indians throughout the  
10 United States for the relief of distress and conservation of health.

11           18. In the Transfer Act of 1954, 42 U.S.C. § 2001 *et seq.*, Congress  
12 transferred federal responsibility for Indian health services to the United States Public  
13 Health Service, which subsequently established the Indian Health Service.

14           19. In 1976, Congress declared that the “most basic human right must be the  
15 right to enjoy decent health,” and that “any effort to fulfill Federal responsibilities to  
16 the Indian people must begin with the provision of health services.” H.R. Rep.  
17 No. 94-1026(I) at 13 (1976).

18           20. In the Indian Health Care Improvement Act of 1976, Congress found that:  
19 “Federal health services to maintain and improve the health of the Indians are consonant  
20 with and required by the Federal Government’s historical and unique legal relationship  
21 with, and resulting responsibility to, the American Indian people.” 25 U.S.C. § 1601(a)  
22 (1976).

23           21. On March 23, 2010, President Obama signed the Patient Protection and  
24 Affordable Care Act, Public Law 111-148, which amended and permanently  
25 reauthorized the Indian Health Care Improvement Act (“IHCA”). In signing the bill,  
26 President Obama declared: “Our responsibility to provide health services to American  
27 Indians and Alaska Natives derives from the nation-to-nation relationship between the  
28

1 federal and tribal governments.” *Statement by the President on the Reauthorization of*  
2 *the Indian Health Care Improvement Act*, March 23, 2010.

3 22. The 2010 amended IHCIA provides: “A major national goal of the United  
4 States is to provide the resources, processes, and structure that will enable Indian tribes  
5 and tribal members to obtain the quantity and quality of health care services and  
6 opportunities that will eradicate the health disparities between Indians and the general  
7 population of the United States.” 25 U.S.C. § 1601(2) (2010).

8 23. The 2010 amended IHCIA provides: “Congress declares that it is the  
9 policy of this Nation, in fulfillment of its special trust responsibilities and legal  
10 obligations to Indians – (1) to ensure the highest possible health status for Indians and  
11 urban Indians and to provide all resources necessary to effect that policy.” 25 U.S.C.  
12 § 1602 (2010).

13 24. The 2010 amended IHCIA authorizes the Secretary of Health and Human  
14 Services to expend funds appropriated under the authority of this section for the  
15 purposes of (1) eliminating the deficiencies in health status and health resources of all  
16 Indian tribes . . . (3) meeting the health needs of Indians in an efficient and equitable  
17 manner . . . and (5) augmenting the ability of the Service to meet the following health  
18 service responsibilities with respect to those Indian tribes with the highest levels of  
19 health status deficiencies and resource deficiencies. 25 U.S.C. § 1621(a) (2010).

20 25. The 2010 amended IHCIA requires the IHS Director to ensure that all  
21 agency directors, managers, and chief executive officers have appropriate and adequate  
22 training, experience, skill levels, knowledge, abilities, and education (including  
23 continuing training requirements) to competently fulfill the duties of the positions and  
24 the mission of the Service. 25 U.S.C. § 1661(c)(2) (2010).

25 26. Having undertaken the responsibility and control over health facilities on  
26 the Fort Yuma Indian Reservation, the United States has the legal, fiduciary, and trust  
27 obligation to preserve and maintain those facilities in good and safe repair.  
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1           27. Having undertaken the responsibility to provide health services and health  
2 care facilities to the Tribe and its members, the United States has a legal, fiduciary, and  
3 trust obligation to provide those services and facilities in a competent and safe manner  
4 that meets generally accepted standards of care and to do no harm to tribal members that  
5 receive health services from the Fort Yuma Service Unit.

6       **B. The United States Has Breached Its Legal, Fiduciary, and Trust Obligations**  
7       **in the Operation, Maintenance, Staffing, Training, Facilities, and Health**  
8       **Care Procedures at the Fort Yuma Indian Health Service Unit Serving the**  
9       **Tribe and its Members within the Fort Yuma Indian Reservation.**

10          28. The United States operates and maintains the Fort Yuma Service Unit in  
11 a manner that inflicts harm and endangers members of the Quechan Indian Tribe.

12          29. The Fort Yuma Service Unit's physical facilities are the oldest in the IHS  
13 system, are in a condition of disrepair and deterioration, and create unsafe and  
14 unhealthy conditions for tribal members.

15          30. The United States has acknowledged the deficiencies of the Fort Yuma  
16 Service Unit and the need to repair and replace the facilities provided to the Tribe.

17          31. The United States operates and maintains the Fort Yuma Service Unit and  
18 provides medical and health-related services and facilities to members of the Tribe in a  
19 manner that fails to meet generally accepted, appropriate, and best available standards  
20 of care.

21          32. The United States fails to operate and maintain the Fort Yuma Service  
22 Unit facilities in a clean, safe, and sanitary condition.

23          33. The United States fails to adequately staff, train, and supervise personnel  
24 at the Fort Yuma Service Unit that are charged with providing medical services to  
25 members of the Quechan Indian Tribe.

26          34. As one recent example of the health practices that endanger members of  
27 the Quechan Tribe, IHS recently informed the Tribal Council of an "exposure event"  
28 that occurred between October 2008 and June 2009, in which a failure to clean and

1 sterilize medical instruments in the Wound Care Clinic in the Fort Yuma Service Unit  
2 resulted in the potential transmission and spread of blood-borne pathogens and viruses  
3 to tribal members.

4 35. IHS estimates that at least 111 tribal members were treated at the Wound  
5 Care Center at the Fort Yuma Facility from October 2008 to June 2009, and IHS  
6 estimates that 44 tribal members have been exposed to a number of blood-borne  
7 pathogens and viruses, including HIV, Hepatitis B and Hepatitis C.

8 36. IHS failed to inform the Tribal Council or tribal members until nearly  
9 15 months after IHS initially learned of the exposure and nearly two years after the IHS'  
10 estimation of the date the exposure began.

11 37. The "exposure event" described above is one representative example of  
12 the systemic failure of the Fort Yuma Service Unit to provide health care facilities and  
13 services to tribal members in a manner that meets appropriate standards of care.

14 38. The publicity in the community relating to the "exposure event" has  
15 caused tribal members to be ostracized and resulted in a breach of privacy.

16 39. Due to this exposure incident, the general poor condition of the Fort  
17 Yuma Service Unit facilities, and the United States' failure to provide health services in  
18 a competent and safe manner, tribal members may choose to forego receiving necessary  
19 health care due to the fear of receiving treatment at the Fort Yuma Service Unit.

## 20 VI. CAUSES OF ACTION

### 21 A. FIRST CAUSE OF ACTION: BREACH OF STATUTORY AND 22 COMMON LAW TRUST DUTIES

23 40. The Tribe incorporates by reference all preceding paragraphs.

24 41. The United States has breached and continues to breach its statutory and  
25 common law trust obligation to provide health services and health care facilities to the  
26 Tribe and its members at a level that satisfies generally accepted, appropriate, and best  
27 available standards of care.



1           42.     The United States has breached and continues to breach its statutory and  
2 common law trust obligation to provide health services and health care facilities that are  
3 adequate to maintain and improve the health of the Tribe's members.

4           43.     The United States has breached and continues to breach its statutory and  
5 common law trust obligation to provide health services and health care facilities that  
6 ensure the highest possible health status for the Tribe's members.

7           44.     The United States has breached and continues to breach its statutory and  
8 common law trust obligation to preserve and maintain the facilities and buildings of the  
9 Fort Yuma Service Unit in good and safe repair.

10       **B.     SECOND CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY**

11           45.     The Tribe incorporates by reference all preceding paragraphs.

12           46.     The United States has affirmatively undertaken the obligation to provide  
13 the highest possible health services and health care facilities to the Tribe and its  
14 members and by doing so stands in the role of a fiduciary health care provider.

15           47.     The patient-physician relationship is a fiduciary relationship. In addition  
16 to the general trust relationship between the United States and Indian tribes, the United  
17 States stands as a fiduciary, guardian, and trustee to tribal patients that receive care at  
18 the Fort Yuma Service Unit.

19           48.     As a fiduciary health care provider, the United States has a legal  
20 obligation to provide care that meets generally accepted minimum standards of care and  
21 a legal obligation to do no harm to patients.

22           49.     The United States' systemic failure to provide health care and health care  
23 facilities at standards that meet generally accepted, appropriate, and best available  
24 standards of care violates and continues to violate the United States' fiduciary duty to  
25 the Tribe and its members.

26       **C.     THIRD CAUSE OF ACTION: AGENCY ACTIONS AND OMISSIONS IN**  
27               **VIOLATION OF ADMINISTRATIVE PROCEDURES ACT**

28           50.     The Tribe incorporates all preceding paragraphs.

1           51.    The Tribe and its members have been injured and continue to be injured  
2 by the United States' maintenance and operation of the Fort Yuma Service Unit in a  
3 manner that fails to meet generally accepted, appropriate, and best available standards  
4 of care.

5           52.    The failure of the United States to safely and competently maintain and  
6 operate the Fort Yuma Service Unit endangers the health and safety of tribal members.

7           53.    The failure of the United States to provide and allocate available funding  
8 to maintain and operate the Fort Yuma Service Unit at generally accepted, appropriate,  
9 and best available standards of care, despite acknowledging the poor condition of the  
10 facilities and services is arbitrary, capricious, an abuse of discretion, and unlawful.

11          54.    The conduct of the United States alleged herein constitutes agency action  
12 or failure to act in accordance with legal, statutory, and trust duties, and is actionable  
13 under the Administrative Procedures Act, 5 U.S.C. § 702.

14       **D.    FOURTH CAUSE OF ACTION: CONSTITUTIONAL VIOLATIONS**

15          55.    The Tribe incorporates all preceding paragraphs.

16          56.    The United States has affirmatively undertaken the responsibility to  
17 provide health care and services to the members of the Quechan Tribe.

18          57.    The United States administration of the Indian Health Service and its  
19 provision and operation of the Fort Yuma Service Unit in a manner that endangers and  
20 poses risk of harm to the members of the Tribe violates the Due Process and Equal  
21 Protection Clauses of the United States Constitution.

22       **E.    FIFTH CAUSE OF ACTION: DECLARATORY JUDGMENT**

23          58.    The Tribe incorporates all preceding paragraphs.

24          59.    The Tribe seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 and  
25 2202 that the United States has violated and is violating its statutory, legal, fiduciary,  
26 and trust obligations to the Tribe and its members by providing health facilities and  
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1 services that fail to meet generally accepted, appropriate, and best available standards of  
2 care.

3 **VII. RELIEF REQUESTED**

4 60. The Tribe requests that this Court grant the following relief:

5 A. A declaratory judgment, pursuant to 28 U.S.C. § 2201, that the  
6 United States has violated and is violating its statutory, legal, fiduciary, and trust duties  
7 to the Tribe and its members by operating health facilities and services at the Fort Yuma  
8 Service Unit that are in substandard and unsafe condition, and in a manner that fails to  
9 meet generally accepted, appropriate, and best available standards of care.

10 B. A writ of mandamus, pursuant to 28 U.S.C. § 1361, directing the  
11 United States to comply with its statutory, legal, fiduciary, and trust duties to the Tribe  
12 and its members to provide and operate health facilities and services that meet generally  
13 accepted, appropriate, and best available standards of care.

14 C. Other appropriate injunctive or equitable relief necessary to  
15 provide complete relief to the Tribe and its members.

16 D. Costs and fees, including attorneys' fees.

17 E. Such other relief as the Court may deem appropriate.

18 Dated this 22nd day of October, 2010.

19 MORISSET, SCHLOSSER & JOZWIAK

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