

Gabriel S. Galanda, WSBA #30331
Anthony S. Broadman, WSBA #39508
Galanda Broadman PLLC
11320 Roosevelt Way NE
P.O. Box 15146
Seattle, WA 98115
(206) 691-3631

Honorable Rosanna Malouf Peterson

Julio Carranza, WSBA #38211
Joe Sexton, WSBA #38063
Yakama Nation Office of Legal Counsel
401 Fort Road/P.O. Box 151
Toppenish, WA 98948
(509) 865-7268

Attorneys for the Confederated Tribes
and Bands of the Yakama Nation

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CONFEDERATED TRIBES AND
BANDS OF THE YAKAMA NATION,
a federally-recognized Indian tribal
government and as *parens patriae* on
behalf of the Enrolled Members of the
Confederated Tribes and Bands of the
Yakama Nation;

Plaintiffs,

v.

ERIC H. HOLDER, JR., Attorney
General of the United States; UNITED
STATES DEPARTMENT OF JUSTICE;
ROBERT S. MUELLER III, Director of
the Federal Bureau of Investigation;
FEDERAL BUREAU OF

NO. CV-11-3028-RMP

SECOND AMENDED
COMPLAINT FOR
DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF AND
MANDAMUS

1 INVESTIGATION; UNITED STATES
 2 OF AMERICA; UNITED STATES
 3 MARSHALS SERVICE; STACIA
 4 HYLTON, Director of the United States
 5 Marshals Service; BUREAU OF
 6 ALCOHOL, TOBACCO, FIREARMS
 7 AND EXPLOSIVES; KENNETH E.
 8 MELSON, Director of Bureau of
 9 Alcohol, Tobacco, Firearms and
 10 Explosives; TIMOTHY F. GEITHNER,
 11 Secretary of the Department of Treasury;
 12 UNITED STATES DEPARTMENT OF
 13 TREASURY; DOUGLAS H.
 14 SHULMAN, Commissioner of the
 15 Internal Revenue Service; INTERNAL
 16 REVENUE SERVICE; JOHN J.
 17 MANFREDI, Administrator of the
 18 Alcohol and Tobacco Tax and Trade
 19 Bureau; ALCOHOL AND TOBACCO
 20 TAX AND TRADE BUREAU;
 21 COUNTY OF YAKIMA, a Washington
 22 State county; COUNTY OF BENTON, a
 23 Washington State county, a/k/a Tri-Cities
 24 Regional SWAT Team; CITY OF
 25 RICHLAND, a Washington State
 26 municipality, a/k/a Tri-Cities Regional
 27 SWAT Team; CITY OF PASCO, a
 Washington State municipality, a/k/a Tri-
 Cities Regional SWAT Team; CITY OF
 KENNEWICK, a Washington State
 municipality, a/k/a Tri-Cities Regional
 SWAT Team; COUNTY OF
 MARSHALL, a Mississippi county;
 CITY OF TULEPO, a Mississippi
 municipality; COUNTY OF ROANOKE,
 a Virginia municipality; CITY OF
 MARTINSVILLE, a Virginia
 municipality; CITY OF VINTON, a
 Virginia municipality,
 Defendants.

1 Plaintiffs the Confederated Tribes and Bands of the Yakama Nation,
2 signatory to the 1855 Treaty With The Yakama, 12 Stat. 951 (“Yakama Nation” or
3 “Nation”), alleges as follows:

4 **I. INTRODUCTION**

5 1. The Nation, as a federally-recognized Indian tribal government and
6 also as *parens patriae* on behalf of the enrolled members of the Confederated
7 Tribes and Bands of the Yakama Nation, seeks a declaratory judgment that the
8 various Federal Defendants’ recent, ongoing, and imminent future entry onto the
9 Yakama Nation for non-emergency purposes – without notification to or
10 consultation with the Nation – violates the Treaty With The Yakama, 12 Stat. 951;
11 federal consultation laws; and Federal Defendants’ own regulations.
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14 2. Early in the morning of February 16, 2011, Federal Defendants, acting
15 through scores of federal agents, armed with assault rifles, and with local police
16 officers from Virginia and Mississippi and Yakima and Benton County in tow,
17 invaded Yakama Nation Reservation trust lands – without having provided any
18 prior notice to the sovereign on whose land they were intruding.
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21 3. Federal Defendants purposefully concealed the raid from Yakama
22 tribal authorities. Federal Defendants invited city and county police from three
23 states, as well as employees of three non-Indian, private contractors, to also enter
24 upon Yakama tribal lands – without obtaining permission from Yakama Nation
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1 authorities. Federal Defendants violated the Treaty With The Yakama – a peace
2 Treaty – and other federal laws, by doing so.

3 4. Enabled by Federal Defendants, a Yakima County Deputy Sheriff,
4 who had no jurisdiction whatsoever to enter upon Yakama Reservation trust lands,
5 refused to allow Yakama Nation law enforcement officers to enter the Nation's
6 own lands for the purpose of helping keep the peace during the raid. This too
7 violated the Treaty With The Yakama and other federal laws.
8

9 5. Federal Defendants implicitly admitted their obligation to notify or
10 consult or coordinate with the Nation by text-messaging an employee of the Nation
11 and warning him about the invasion. But they failed to do so until after the
12 incursion had commenced – indeed until after scores of federal agents and
13 county/city police officers had travelled from across the United States and
14 descended onto the Yakama Indian Reservation. Text messaging an employee is
15 not the government-to-government notification, consultation and coordination
16 required under federal law.
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18 6. Not until it was too late did Federal Defendants attempt to satisfy their
19 legal obligations. Even then, such attempts were wholly inadequate under the
20 Treaty and applicable federal laws. No exigent circumstances prevented
21 notification or coordination with Tribal authorities for the purpose of keeping the
22 peace and maintaining law and order on the Yakama Reservation.
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1 7. Absent notification to the Nation, or an emergency that might prevent
2 advance notification, Federal Defendants' invasion violated the Treaty With The
3 Yakama and other federal laws. Federal Defendants have refused to agree to
4 provide notification to the Nation under these circumstances going forward. Quite
5 simply, a sovereign does not invade the lands of another sovereign without
6 providing notice, and without consulting or coordinating with and obtaining
7 permission from that sovereign – especially when the two sovereigns have signed
8 and ratified a Treaty and peace accord with one another.
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11 8. The county and city police officers had no jurisdiction, authority, or
12 other right to intrude upon Yakama Reservation trust lands. County and city police
13 officers from other states have no authority whatsoever to enter and occupy
14 Yakama Reservation trust lands; and, neither Public Law 280 nor any other federal
15 law provides authority to Washington county or city actors on trust lands under
16 these circumstances.
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19 9. Upon information and belief the county and city police officers had no
20 federal commissions, had no permission from the Yakama Nation, and were
21 therefore patently violating federal law by coming onto Yakama Reservation trust
22 lands. Because the Yakama Nation's trustee, the United States, has refused to
23 provide any documentation regarding these county and city police officers, and
24 their activities on Yakama Reservation trust lands, the Yakama Nation is left to
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1 speculate, upon information and belief, which county and city police officers
2 attended the intrusion and what they were doing there.

3 10. Because the Nation's Treaty rights, territorial sovereignty and
4 members can be secure only with a declaration of rights, and injunctive relief as
5 prayed for herein, the Nation respectfully requests an injunction preventing future
6 illegal invasions and requiring notification, coordination and/or consultation for
7 entries onto the Nation's land; along with a writ of mandamus ordering Federal
8 Defendants to comply with Treaty, trust, and legal obligations by (1) notifying the
9 Nation and the local Bureau of Indian Affairs ("BIA") Superintendent of any entry
10 onto Reservation property so that Tribal and federal officer safety can be ensured
11 by Yakama Tribal Police and (2) immediately carrying out their obligations to
12 develop and implement meaningful consultation and coordination policies with the
13 Nation.
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18 **II. JURISDICTION**

19 11. The District Court has jurisdiction over this action pursuant to 28
20 U.S.C. § 1331 and § 1362. The Nation, a federally-recognized Indian tribal
21 government, asserts claims arising under the 1855 Treaty With the Yakama, 12
22 Stat. 951; the U.S. Constitution; and other laws of the United States, including
23 Federal Defendants' own regulations, and federal common law.
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12. This Court has jurisdiction under federal law, including under the following: (a) 28 U.S.C. §§ 1331 and 1362, this being an action by a federally-recognized Indian tribal government, asserting claims arising under the 1855 Treaty With the Yakama, 12 Stat. 951; the U.S. Constitution; and other laws of the United States; (b) 28 U.S.C. § 1361, in that the Nation seeks 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, in that the Nation seeks a declaratory judgment and other proper relief, and (d) 5 U.S.C. § 702, in that the Nation seeks relief for other than money damages against agencies of the United States and its officers in their official capacities.

13. The Nation as *parens patriae*, an organization of its members satisfying the requirements of 28 U.S.C. § 2412(d)(2)(B)(ii), seeks an award of costs and fees, including attorney’s fees, pursuant to the Equal Access to Justice Act. 28 U.S.C. § 2412.

14. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), and (e) because a substantial part of the actions or omissions giving rise to the claims occurred in this District. The Yakama Indian Reservation is located geographically within the State of Washington.

III. PLAINTIFFS

1 15. The Confederated Tribes and Bands of the Yakama Nation does not
2 waive, alter, or otherwise diminish its sovereign immunity, whether expressed or
3 implied, by virtue of this lawsuit; nor does the Nation waive, alter, or otherwise
4 diminish the rights, privileges, remedies or services guaranteed by the Treaty of
5 1855. The Nation does not consent to suit as to any claim, equitable recoupment,
6 or cause of action of the United States or of any other person or entity in this or
7 any other Court.
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10 16. The Confederated Tribes and Bands of the Yakama Nation is a
11 federally recognized Indian tribal government as signatory to the 1855 Treaty With
12 The Yakama, 12 Stat. 951. The Yakama Nation complains as a tribal government
13 and also as *parens patriae* for the enrolled members of the Confederated Tribes
14 and Bands of the Yakama Nation.
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17 17. The Yakama People have resided in and around the current Yakama
18 Indian Reservation since time immemorial. Under Article I of the Treaty of 1855,
19 the Yakama Nation ceded over 10 millions of acres of its aboriginal lands to the
20 United States, comprising approximately one quarter of the state of Washington.
21

22 18. As a matter of sovereignty, and its interests as a sovereign, the
23 Yakama Nation will protect its Treaty from violations by the United States, its
24 agency, and agents; the Nation will protect its members' Treaty rights; the Nation
25 will protect and enforce Treaty boundaries and rights guaranteed in 1855 to it by
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1 the United States; the Nation will protect, enforce, and assert those rights
2 guaranteed to it as a matter of inherent sovereignty, including those recognized
3 through applicable federal laws.

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5 19. On April 22, 2011, Plaintiffs filed Standard Form 95 with Defendant
6 United States Department of Justice pursuant to the Federal Torts Claims Act
7 (FTCA), alleging, *inter alia*, claims for trespass and outrage. Plaintiffs reserve the
8 right, with leave of the Court, to further amend this complaint to include various
9 tort causes of action against Federal Defendants following the exhaustion of FTCA
10 administrative remedies.
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13 20. Since February 17, 2011, the Yakama Nation has sought
14 documentation regarding what transpired on its Reservation trust lands on
15 February 16. Federal Defendants have thus far refused to provide any
16 documentation whatsoever concerning the raid, with which the Nation can
17 independently ascertain what happened. That, despite the Nation having made, in
18 order of supremacy, government-to-government information requests, discovery
19 requests, and Freedom of Information Act requests to Federal Defendants.
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21 Accordingly, Plaintiffs further reserve the right to seek leave to again amend this
22 complaint with new claims or allegations.
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25 IV. DEFENDANTS

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1 21. Defendant Eric H. Holder, Jr., is the Attorney General of the United
2 States of America and is sued in his official capacity.

3 22. Defendant United States Department of Justice is an agency of the
4 United States of America. Defendants Holder and the United States Department of
5 Justice are referred to hereafter as "DOJ."

6 23. Defendant Robert S. Mueller, III, is the Director of the Federal Bureau
7 of Investigation, and is sued in his official capacity.
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9 24. Defendant Federal Bureau of Investigation is an instrumentality of the
10 DOJ. Defendants Mueller and the Federal Bureau of Investigation are referred to
11 herein as "FBI."
12

13 25. Defendant Stacia Hylton is the Director of the United States Marshals
14 Service, and is sued in her official capacity
15

16 26. Defendant United States Marshals Service is an instrumentality of the
17 DOJ. Defendants Hylton and the United States Marshals Service are referred to
18 herein as "the U.S. Marshals."
19

20 27. Defendant Kenneth E. Melson is the Director of the Bureau of
21 Alcohol, Tobacco, Firearms and Explosives, and is sued in his official capacity.
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23 28. Defendant Bureau of Alcohol, Tobacco, Firearms and Explosives is
24 an instrumentality of the DOJ. Defendants Melson and Bureau of Alcohol,
25 Tobacco, Firearms and Explosives are referred to hereafter as "ATF."
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1 29. Defendant Timothy F. Geithner is the Secretary of the United States
2 Department of Treasury. Defendants Geithner and the United States Department
3 of Justice are referred to hereafter as "Treasury."

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5 30. Defendant Douglas H. Shulman is the Commissioner of the Internal
6 Revenue Service.

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8 31. Defendant Internal Revenue Service is an instrumentality of the
9 Treasury. Defendants Shulman and the Internal Revenue Service are referred to
10 hereafter as "IRS."

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12 32. Defendant John J. Manfreda is the Administrator for the Alcohol and
13 Tobacco Tax and Trade Bureau.

14 33. Defendant Alcohol and Tobacco Tax and Trade Bureau is an
15 instrumentality of the Treasury. Defendants Manfreda and the Alcohol and
16 Tobacco Tax and Trade Bureau are referred to hereafter as "TTB."

17
18 34. Defendants United States of America, acting through the DOJ, FBI,
19 U.S. Marshals and ATF, as well as Treasury, IRS and TTB (collectively hereafter
20 "United States"), have violated the Treaty With The Yakama and other federal
21 laws by entering upon trust lands on the Yakama Indian Reservation absent, *inter*
22 *alia*, Tribal permission.
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25 35. The foregoing Defendants ("Federal Defendants"), sued in their
26 official capacity are agents or agencies of the federal government, that can be
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1 named as defendants and against whom mandamus, a declaratory judgment, and
2 injunctive relief may be entered, pursuant to 28 U.S.C. §§ 1346(a)(2), 1361, 2201,
3 and 2202 and Fed. R. Civ. P. 57 and 65(a).

4
5 36. Defendant County of Yakima, inclusive of its Sheriff's Office, is a
6 county government organized under the laws of the state of Washington, with no
7 authority to enter trust lands on the Yakama Indian Reservation absent Tribal
8 permission.
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10 37. Defendant County of Benton, inclusive of its Sheriff's Office and also
11 known as the Tri-Cities Regional SWAT Team, is a county government organized
12 under the laws of the state of Washington, with no authority to enter trust lands on
13 the Yakama Indian Reservation absent Tribal permission.
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15 38. Defendant City of Richland, inclusive of its Police Department also
16 known as the Tri-Cities Regional SWAT Team, and is a city government organized
17 under the laws of the state of Washington, with no authority to enter trust lands on
18 the Yakama Indian Reservation absent Tribal permission.
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21 39. Defendant City of Pasco, inclusive of its Police Department also
22 known as the Tri-Cities Regional SWAT Team, is a city government organized
23 under the laws of the state of Washington, with no authority to enter trust lands on
24 the Yakama Indian Reservation absent Tribal permission.
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1 40. Defendant City of Kennewick, inclusive of its Police Department also
2 known as the Tri-Cities Regional SWAT Team, is a city government organized
3 under the laws of the state of Washington, with no authority to enter trust lands on
4 the Yakama Indian Reservation absent Tribal permission.
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6 41. Defendant County of Marshall, inclusive of its Sheriff's Office, is a
7 county government organized under the laws of the state of Mississippi, with no
8 authority to enter trust lands on the Yakama Indian Reservation absent Tribal
9 permission.
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11 42. Defendant City of Tulepo, inclusive of its Police Department, is a
12 municipal government organized under the laws of the state of Mississippi, with no
13 authority to enter trust lands on the Yakama Indian Reservation absent Tribal
14 permission.
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16 43. Defendant City of Roanoke, inclusive of its Police Department, is a
17 municipal government organized under the laws of the state of Virginia, with no
18 authority to enter trust lands on the Yakama Indian Reservation absent Tribal
19 permission.
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21 44. Defendant City of Martinsville, inclusive of its Police Department, is
22 a municipal government organized under the laws of the state of Virginia, with no
23 authority to enter trust lands on the Yakama Indian Reservation absent Tribal
24 permission.
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1 45. Defendant City of Vinton, inclusive of its Police Department, is a
2 municipal government organized under the laws of the state of Virginia, with no
3 authority to enter trust lands on the Yakama Indian Reservation absent Tribal
4 permission.
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6 46. The above-named counties and cities are hereafter referred to as
7 “county/city police officers.”
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9 **V. ALLEGATIONS COMMON TO ALL CLAIMS**

10 **A. 1855 Treaty With The Yakama, 12 Stat. 951**

11 47. The Confederated Tribes and Bands of the Yakama Nation is a
12 federally-recognized Indian tribal government, whose Reservation was established
13 by the 1855 Treaty With The Yakama, 12 Stat. 951, Article II. The Yakama
14 Nation currently occupies, regulates and self-governs approximately 1.3 million
15 acres of lands within the Yakama Indian Reservation.
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18 48. In 1855 the Yakamas signed a Treaty ceding about 10 million acres –
19 90 percent of their aboriginal land – in exchange for the reservation of certain
20 rights guaranteed by the United States in the Treaty With The Yakama.
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22 49. The Yakama Nation understandably assigns a special significance to
23 each part of the Treaty at the time of signing and continues to view the Treaty as a
24 sacred document today.
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1 50. The Yakama Nation possesses all the powers of any sovereign state;
2 the legislative power of Defendant United States cannot affect the internal
3 sovereignty of the Yakama Nation unless expressly stated otherwise by an act of
4 Congress.
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6 51. The Yakama Nation reserved and retains the full powers of internal
7 sovereignty, including all those rights not specifically conveyed.
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9 52. The Yakama Nation need not show that Defendant United States
10 granted it the consultation right, but only that such right was reserved and
11 guaranteed.
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13 53. Defendant United States promised that the Nation's Reservation
14 would "be set apart and, so far as necessary, surveyed and marked out, for the
15 exclusive use and benefit of said confederated tribes and bands of Indians, as an
16 Indian reservation; nor shall any white man, excepting those in the employment of
17 the Indian Department, be permitted to reside upon the said reservation without
18 permission of the tribe and the superintendent and agent." 12 Stat. 951, Art. II.
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21 54. The Treaty further guaranteed the Yakamas that United States citizens
22 would not "enter upon" the lands "included in the reservation above named [in
23 Article II]." *Id.* In other words, the United States guaranteed Yakama Indians the
24 right of quiet enjoyment to Yakama Reservation lands.
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1 55. The United States promised the Yakamas peace. At the conclusion of
2 weeks of Treaty negotiations, General Joel Palmer promised that the Yakamas
3 would live on their reserved Reservation lands in peace: “From this time we expect
4 that you will always be at peace. We not only want you to be at peace with all
5 whites but we want you to be at peace with yourself.” Treaty Minutes, 81.
6

7 56. In 1855, “the white man and the Indians could not longer live together
8 in peace”; “their customs and mode of life was different [and] they did not
9 understand each other.” Treaty Minutes, 21, 32. As such, and due to the fear of
10 continued bloodshed between the “white man” and “red man,” the Yakama
11 Reservation was reserved, for the Yakamas’ exclusive use and quiet enjoyment.
12 *Id.*, 20, 28. General Palmer explained that “although we may live near together
13 there should be a line of distinction drawn so that the Indians may know where his
14 land is and the white man where his land is.” *Id.*, 30. Accordingly, the United
15 States and Yakamas negotiated “a home where there are no white men living.” *Id.*,
16 33. The line of distinction was set forth in Article II of the Treaty of 1855.
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21 57. As to that large tract of land now known as the Yakama Reservation,
22 General Palmer promised that “no white man could go [their] without [Tribal]
23 consent. . . . I repeat again no white man could go there unless the red man
24 consented to it.” Treaty Minutes, 21. He stated the same thing again: “Those
25 tracts the white man cannot enter without the consent of the red man.” *Id.*, 22. On
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1 those lands, the Yakamas were promised that they could “live in peace.” *Id.*, 21,
2 29.

3 58. The Nation, unlike other tribes, has the express and specialized right
4 to withhold permission for entry upon the reservation. The Nation’s Treaty
5 includes the express limitation, “excepting those in the employment of the Indian
6 Department.” 12 Stat. 951, Art. II.
7

8 59. The Treaty does not reference any other department of the federal
9 government or type of federal office, but importantly does mention one department
10 of the federal government: the Indian Department, which today is known as the
11 BIA. *Id.*
12

13 60. The United States promised the Yakamas that they could rely on all of
14 the Treaty’s provisions being carried out strictly.
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16 61. The United States and Governor Isaac Stevens, negotiating on behalf
17 of the United States, considered the Yakamas to be of great importance as they
18 occupied strategically important territory between Walla Walla and the Puget
19 Sound.
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21 62. The Yakama Treaty exclusion right, which is not generalized but
22 express, was explained to the Yakamas as follows:
23

24 Looking Glass: Will the agent be there that long to keep the whites from
25 pushing into our country?
26

1 Gen. Palmer said: Certainly.

2 Looking Glass: Will you mark the piece of country that I have marked and
3 say the agent shall keep the whites out?

4 Gen. Palmer: No one will be permitted to go there but the agent and the
5 persons employed, without your consent.

6 Treaty Minutes, 99.

7 63. Article VIII of the Treaty With The Yakama provides: "The aforesaid
8 confederated tribes and bands of Indians acknowledge their dependence upon the
9 Government of the United States, and promise to be friendly with all citizens
10 thereof, and pledge themselves to commit no depredations upon the property of
11 such citizens. And should any one or more of them violate this pledge, and the fact
12 be satisfactorily proved before the agent, the property taken shall be returned, or in
13 default thereof, or if injured or destroyed, compensation may be made by the
14 Government out of the annuities. Nor will they make war upon any other tribe,
15 except in self-defense, but will submit all matters of difference between them and
16 other Indians to the Government of the United States or its agent for decision, and
17 abide thereby. And if any of the said Indians commit depredations on any other
18 Indians within the Territory of Washington or Oregon, the same rule shall prevail
19 as that provided in this article in case of depredations against citizens. And the said
20 confederated tribes and bands of Indians agree not to shelter or conceal offenders
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1 against the laws of the United States, but to deliver them up to the authorities for
2 trial.”

3 64. This clause was explained as requiring that when Yakamas “do
4 wrong” it is the duty of the Yakama “chiefs to punish the offender”; that “wrongs”
5 are to be submitted to “the chief or his council or to the agent.” And it is they who
6 will make a “decision.” Treaty Minutes, 106-107.
7

8 65. As is clear from the Treaty Minutes, the Nation retained – expressly –
9 the right to at least be involved in law enforcement activities on its lands. It is the
10 duty of the Nation itself to punish an offender, and it is to the ‘chiefs’ that the
11 federal government looked to for both making decisions regarding law
12 enforcement and punishing offenders.
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16 **B. February 16, 2011 Invasion By the FBI, DOJ and County**

17 66. On February 15, 2011, at 10:25 a.m., the FBI obtained a warrant from
18 the District Court, *ex parte*, to search a premises located on the Yakama Indian
19 Reservation, specifically Yakama Nation tribal trust lands at 2000 Fort Simcoe
20 Road, within the Yakama Reservation town of White Swan.
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22 67. Several of the agents who invaded the Nation are based in Mississippi
23 and Virginia, meaning that the invasion was planned for weeks if not months ahead
24 of its occurrence. The Nation is aware of no emergency or exigent circumstances
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1 that brought the United States, county/city police officers and private contractors to
2 its Reservation.

3 68. During the week of February 7, 2011, Federal Defendants advised a
4 private contractor, Silver Collector Car Auctions (“Silver Auctions”), of its
5 impending raid of Yakama tribal trust lands. By February 11, Silver Auctions
6 requested its subcontractor, Better All Auto Sales (“Better All”), to be available
7 with Better All automobile hauling trailers on February 16. Silver Auctions
8 confirmed those arrangements with Better All on February 14.

9 69. By no later than February 15, 2011, Federal Defendants notified
10 Yakima County of the impending invasion of the Yakama Reservation. Upon
11 information and belief, Federal Defendants asked Yakima County to not disclose
12 word of the raid to the Yakama Nation at any time before 6 a.m. on February 16.

13 70. On February 16, 2011, at 5:12 a.m., Yakama County Deputy Sheriff
14 Alan Klise (“Klise”), a former Yakama Nation police officer, spoke with the
15 Yakama County Sheriff’s Office Dispatcher (“Dispatch”);

16 Dispatch: Morning.

17 Klise: Hey, um, I’m gonna be heading up to White Swan to help the FBI out
18 with a search warrant. . . . I’ve been on the phone with the FBI for the last 10
19 minutes here. . . .

20 Dispatch: Ok, so you’re on your way to White Swan for what?

21 Klise: Yah, I’ll uh, serve a search warrant for the FBI; I’ll catch Jessie while
22 I’m out there.

1 71. At 5:36 a.m., Klise and Dispatch spoke again:

2 Klise: It's Klise.

3 Dispatch: Hi.

4 Klise: How are you?

5 Dispatch: Ok, how are you?

6 Klise: Good, hey, I'm gonna be [inaudible], but don't put it in yet though,
7 ok?

8 Dispatch: Don't put it in the computer?

9 Klise: Not until 6.

10 Dispatch: Ok, uhh, ahh, ok [inaudible].

11 Klise: Is that cool?

12 Dispatch: Ok?

13 Klise: Or would you rather have me call you back?

14 Dispatch: Umm, I suppose I could write it down on a sticky note.

15 Klise: Ahh, cause it's a pretty high profile, and who knows these days.

16 Dispatch: Ok, what's the address?

17 Klise: It's gonna be 2000, uhh, Fort Simcoe Road . . .

18 72. At approximately 6 a.m., FBI Agent Jen Terami text-messed Kelly
19 Rosenow, Yakama Nation Public Safety Commissioner, stating: "Kelly-it's Jen
20 FBI. About to do a large search on the reservation and wanted you to hear about it
21 from us 1st. Call me asap for details 509-xxx-xxxx."
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1 73. Upon information and belief, FBI Special Agent Matthew A.
2 Bullwinkel led the United States' and county/local police officers' invasion onto
3 the Reservation, which commenced at approximately 6 a.m. on February 16, 2011.
4 The county/city police officers' entry upon Yakama tribal trust lands, *per se*
5 violates Article II of the Yakama Treaty of 1855 and other federal laws.
6

7 74. Mr. Rosenow immediately called Ms. Terami several times, but she
8 did not answer. By 6:20 a.m. Mr. Rosenow and Ms. Terami spoke, but by that
9 time, the FBI had already executed the warrant upon invasion of the Yakama
10 Indian Reservation.
11

12 75. Not long thereafter, Yakama Nation Tribal Councilman Rick
13 Watlamet and Yakama Tribal police officer Dustin Whitefoot arrived to 2000 Fort
14 Simcoe Road. Councilman Watlamet spoke with Deputy Klise, FBI Special Agent
15 Bullwinkel and four other armed federal agents or county/city police officers
16 armed with automatic weapons. Councilman Watlamet asked to see some
17 paperwork that authorized the officers to be on Yakama Reservation tribal trust
18 lands. He was briefly allowed to see the search warrant.
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22 76. Councilman Watlamet asked the officers if they had obtained the
23 Yakama Nation's permission to enter upon Reservation trust lands. FBI Special
24 Agent Bullwinkel indicated they notified the Yakama Nation of the raid,
25 apparently referring to the 6 a.m. text message. Councilman Watlamet restated his
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1 question, asking the officers if they had consulted with the Yakama Nation Tribal
2 Council prior to the raid, citing them to Presidential Executive Order 13175. The
3 officers indicated they knew nothing of that Executive Order. Councilman
4 Watlamet asked if the Assistant U.S. Attorney for the Eastern District of
5 Washington, Michael Ormsby, knew about the raid. Agent Bullwinkel indicated
6 that Mr. Ormsby had been pre-notified of the raid.
7
8

9 77. Councilman Watlamet advised the officers that absent Tribal
10 permission, they were trespassing on Yakama Reservation trust lands. FBI Special
11 Agent Bullwinkel rejoined that the FBI's jurisdiction extends everywhere.
12 Councilman Watlamet asked the officers why they did not notify the Tribal Police.
13 The officers did not explain why. Deputy Klise indicated he had previously asked
14 the federal and other county/city police officers the same question, explaining to
15 Councilman Watlamet that he was a former Yakama Tribal police officer.
16
17

18 78. Shortly thereafter, Yakama Nation Police Chief Ken Hoptowit and
19 Sergeant James Alexander attempted to aid Federal Defendants' execution of the
20 search warrant by helping maintain the peace between Federal Defendants' agents
21 and those enrolled Yakama members and others who were present during the raid,
22 as well as other Yakama members who the officers feared might arrive to confront
23 the agents. Upon their arrival at 2000 Fort Simcoe Road, Mr. Rosenow and
24 Lieutenant Shike encountered Klise and several of Federal Defendants' agents at a
25
26
27

1 locked gate along a Yakama Reservation tribal road approximately one-quarter of a
2 mile away from Fort Simcoe Road.

3 79. Klise refused to allow Officers Hoptowit or Alexander to proceed past
4 the gate and onto the Yakama Nation Reservation trust lands at issue – despite the
5 fact that it is the *Yakama Nation* – not Federal Defendants, and certainly not
6 Yakima County – that enjoys a reserved and guaranteed Treaty right to withhold
7 permission for entry upon Yakama Reservation trust lands. 12 Stat. 951, Art. II.
8 Officers Hoptowit or Alexander left peacefully but Officer Alexander remained in
9 the White Swan area for fear of violence erupting between the federal agents, and
10 Yakama members, White Swan residents or others.

11 80. At 9:11 a.m., Klise and County Dispatch spoke once again:

12 Klise: This's Klise.

13 Dispatch: Hey, are you still out there helping the FBI with the search
14 warrant?

15 Klise: I am.

16 Dispatch: Ok, and it is the FBI, huh?

17 Klise: Ya. Who else would it be?

18 Dispatch: I don't know. I was kind of wondering why Tribal wasn't out
19 there, but...

20 Klise: Well, yah, that's what Tribal's wondering too.

21 Dispatch: Hum, Ok, Do you know how much longer, err...

1 Klise: I'll probably be clearing out of here pretty soon.

2 Dispatch: Ok.

3 81. At 9:14 a.m., at Sergeant Alexander's behest, the Yakama Nation
4 Tribal Police Department ("Tribal Police") called the Yakima County Sheriff's
5 Office to make sure Klise was safe.
6

7 Dispatch: Sheriff's office.

8 Tribal Police: Hi, this is tribal.
9

10 Dispatch: Hi.

11 Tribal Police: Hi, umm, my sergeant wanted me to call you guys in regards
12 to, uhh, 107.

13 Dispatch: Uhh, huh.

14 Tribal Police: And you guys are doing status checks on him?
15

16 Dispatch: Yes.

17 Tribal Police: Ok, uh, we just wanted to make sure he was ok.
18

19 Dispatch: I think. [To somebody else within Dispatch.] You did talk with
20 107, right? Yes, she just talked with him and he is fine.

21 Tribal Police: Ohh, Ok.

22 Dispatch: So...

23 Tribal Police: Alright.
24

25 Dispatch: He's out, umm, I can't remember where, uhh, Fort Simcoe Road
26 yah, so, but he's fine.

27 Tribal Police: Ok.

1 Dispatch: Thank you.

2 82. At approximately 9:30 a.m., Mr. Rosenow and Yakama Nation
3
4 Lieutenant James Shike also arrived at 2000 Fort Simcoe Road in an attempt to
5 help maintain the peace. Upon their arrival at 2000 Fort Simcoe Road, Mr.
6 Rosenow and Lieutenant Shike also encountered Klise and several of Federal
7 Defendants' agents at a locked gate along a Yakama Reservation tribal road
8 approximately one-quarter of a mile away from Fort Simcoe Road.
9

10 83. Klise also refused to allow Mr. Rosenow and Lieutenant Shike to
11 proceed past the gate. Yakama County Deputy Sheriff Alan Klise's presence at the
12 gate along a Yakama Reservation tribal road, situated on Yakama tribal trust lands,
13 approximately one-quarter of a mile away from Fort Simcoe Road, per se violates
14 the Treaty With The Yakama and other federal laws. As a former Yakama Nation
15 police officer, Klise knew or should of known that the Yakima County Sheriff's
16 Office had no jurisdiction under which he could enter upon or remain the
17 Reservation trust lands at 2000 Fort Simcoe Road. He also knew or should have
18 known that he had no authority to deny Tribal police officers access to those lands.
19

20 84. Not wanting to cause an altercation with the various armed federal
21 agents, Mr. Rosenow and Lieutenant Shike did not press their request for
22 permission to access 2000 Fort Simcoe Road. They left peacefully.
23
24
25
26
27

1 85. At or around 10 a.m., federal agents called Better All and Action
2 Towing and requested their presence on the Yakama Reservation that afternoon,
3 for the purpose of hauling several cars away to Spokane.
4

5 86. At approximately 2 or 2:30 p.m., two Better All and three Action
6 Towing employees met federal agents at a gas station on the Yakama Reservation,
7 and lead them to 2000 Fort Simcoe Road. Federal Defendants invited those five
8 employees of those two non-Indian, private contractors to enter upon Yakama
9 Reservation trust lands – without any notice to, consultation or coordination with,
10 or permission from the Yakama Nation.
11

12 87. When a Better All employee arrived to 2000 Fort Simcoe Road, he
13 noticed the legion of federal agents and county/local police officers who were
14 present, and armed with “a lot of guns,” and feared for his and his fellow Better All
15 employee’s safety. He saw two employees of Silver Auctions there as well.
16
17

18 88. That afternoon, Councilman Watlamet returned to 2000 Fort Simcoe
19 Road. He again spoke with FBI Special Agent Bullwinkel, advising him that
20 officers needed Yakama Nation permission to be on Yakama Reservation trust
21 lands, and that they were trespassing. Councilman Watlamet heard ATF Resident
22 Agent Defendant Boyd Goodpaster state twice that he knew the raid was “wrong.”
23
24

25 89. Critically, the Nation was not notified, consulted, or conferred with
26 before Federal Defendants and county/city police officers came on to the Yakama
27

1 Indian Reservation. Nor did the FBI notify the BIA Superintendent for the
2 Yakama Agency, Guy Robbins, before entering upon Yakama Reservation trust
3 lands.

4
5 90. Neither the FBI, ATF, U.S. Marshals nor DOJ, nor the IRS, TTB nor
6 Treasury, nor any of their agents, are “in the employment of the Indian
7 Department.” 12 Stat. 951, Art. II.
8

9 91. The Yakima, Benton and Marshall County Sheriff’s Offices, and
10 Tulepo, Roanoke, Martinsville and Vinton Police Departments, though, were
11 notified of the impending federal invasion of Yakama Reservation trust lands and
12 the county/city police officers assisted the United States with execution of the
13 warrant by entering upon the Yakama Indian Reservation – even though the county
14 and city governments lack any authority to enter the Reservation for such purpose
15 without Tribal permission.
16
17

18 92. Employees for three non-Indian private contractors, Silver Auctions,
19 Better All and Action Towing, entered upon Yakama Reservation trust lands
20 without Yakama Nation permission.
21

22 **C. Yakama Nation’s Attempted Government-to-Government Consultation**
23 **with and Information Requests to Federal Defendants.**

24 93. Tribal Council Chairman Harry Smiskin spoke with Michael Ormsby,
25 U.S. Attorney for the Eastern District of Washington, and FBI Special
26 Agent Frank M. Harrill on February 16, 2011, expressing the Yakama
27

1 Nation's concern that it was not pre-notified, or consulted or
2 coordinated with, in regard to the FBI's invasion of Yakama lands.

3 94. Chairman Smiskin also wrote FBI Special Agent Harrill on February
4 16, 2011, and emailed the DOJ Office of Tribal Justice, the U.S. Attorney
5 General's Office, the Department of Interior Assistant Secretary of Indian Affairs
6 Larry Echo-Hawk and Mr. Harrill on February 17, again expressing the Yakama
7 Nation's concern that it was not pre-notified or consulted or coordinated with in
8 regard to the raid.
9

10
11 95. On a government-to-government basis, Chairman Smiskin requested
12 that the FBI "share any information that you are permitted to release regarding the
13 investigation that occurred and was concluded yesterday on the Yakama Nation
14 Reservation."
15

16
17 96. Through conversations on February 17, 2011, between Chairman
18 Smiskin and Agent Harrill, it was learned that the FBI was researching its
19 consultation obligation, but that Agent Harrill was not aware of any obligation to
20 pre-notify, consult, or otherwise contact the Yakama Nation ahead of such entry.
21

22 97. Chairman Smiskin reiterated Yakama's objection to federal agents'
23 entry on the Nation's lands without notification, and stated that the Nation would
24 never harbor criminals, but that it must and always will protect the Treaty With
25 The Yakama.
26
27

1 98. Chairman Smiskin explicitly sought assurances that the FBI would not
2 reenter the Reservation without first notifying the Nation, which were refused.

3 99. On several occasions since February 17, 2011, the Yakama Nation has
4 requested information from the FBI and United States on a government-to-
5 government basis, regarding what transpired on Yakama Reservation trust lands on
6 February 16, at the hands of Federal Defendants. The FBI and United States have
7 refused to engage in government-to-government information sharing with the
8 United States, as required by federal law. The FBI has refused to share such
9 information with the Yakama Nation without evaluating whether disclosure of the
10 requested information is in the public interest.
11
12
13

14 100. On April 28, 2011, Federal Defendants returned to the Yakama
15 Reservation to serve subpoenas relating to the proceedings for which the February
16 15, 2011 search warrant was issued – once again without notifying, or consulting
17 or coordinating with, Tribal authorities.
18

19 VI. CAUSES OF ACTION

20 First Cause of Action: Breach of Treaty With The Yakama of 1855

21 101. Plaintiffs hereby incorporate all prior allegations by reference.
22

23 102. The Treaty With The Yakama is “the supreme Law of the Land; and
24 the Judges in every State shall be bound thereby, any Thing in the Constitution or
25 Laws of any State to the Contrary notwithstanding.” U.S. Const., Art. VI, cl. 2.
26
27

1 103. Federal Defendants' acts and/or omissions violated and will
2 imminently interfere with and violate rights guaranteed the Nation pursuant to the
3 Yakama Treaty With The Yakama, 12 Stat. 951. In particular, Federal Defendants
4 have violated and will imminently interfere with and violate the Nation's rights to
5 a Reservation "set apart and, so far as necessary, surveyed and marked out, for the
6 exclusive use and benefit of said confederated tribes and bands of Indians, as an
7 Indian reservation; nor shall any white man, excepting those in the employment of
8 the Indian Department, be permitted to reside upon the said reservation without
9 permission of the tribe and the superintendent and agent." 12 Stat. 951, Art. II.
10
11

12
13 104. The Treaty With The Yakama requires, at least, notification regarding
14 entry, consultation, coordination, and respect for physical Reservation boundaries.
15

16 105. The Treaty With The Yakama requires, at least, notification regarding
17 entry and consultation and coordination with both the "superintendent and agent."
18

19 106. Federal Defendants invaded the Nation without notifying, consulting
20 or coordinating with the Nation.
21

22 107. Federal Defendants invaded the Nation without notifying, consulting
23 or coordinating with the "superintendent and agent."
24

25 108. Federal Defendants aided and abetted the patently illegal intrusion by
26 city/county police officers, and non-Indian private contractors, on Yakama
27 Reservation trust lands.

1 109. Federal Defendants cannot identify an emergency to which they were
2 responding.

3 110. Federal Defendants were aware that they would enter upon the
4 Reservation for days if not weeks before they entered upon the Reservation.
5

6 111. Federal Defendants have no rational reason for not complying with
7 their notification obligation; indeed, Federal Defendants actually pre-notified
8 private car haulers of the intrusion and warned a non-elected-official employee of
9 the Nation before entering onto the Reservation – by text message.
10

11 112. Federal Defendants have refused to agree to notify the Nation in the
12 future, despite express requests for such an agreement.
13

14 113. Federal agents in 1855 explained to the Yakamas that the Treaty
15 installed Yakama “Chiefs” as the primary arbiters of law enforcement regarding
16 Yakamas on the Reservation.
17

18 114. Under the Treaty, “wrongs” are to be submitted to “the chief or his
19 council or to the agent.” And it is they who will make a “decision.” At the very
20 least, the Treaty contemplates Tribal involvement when any of “your people do
21 wrong.”
22

23 115. Under the doctrine of *pacta sunt servanda*, Federal Defendants were
24 required to conduct themselves in good faith toward the Nation by virtue of the
25 Treaty With The Yakama.
26
27

1 116. This obligation of good faith is the baseline standard of conduct for
2 Federal Defendants, who also owe the Nation a duty of good faith pursuant to their
3 trust responsibility.

4 117. By planning the operation for days if not weeks ahead of the invasion
5 without notification to the Nation, aiding patently illegal city/county police officer
6 entry, and otherwise entering the Nation's lands without notification, Federal
7 Defendants have violated their Treaty and trust obligations of good faith.
8

9 118. In failing to notify the Nation, or otherwise consult or coordinate
10 regarding entry, Federal Defendants violated the Treaty requirements regarding
11 entry based on the Nation's exclusion powers and the No-Depredations clause.
12

13 119. Federal Defendants acted arbitrarily and were and are "otherwise not
14 in accordance with law," particularly common law, in violation of the
15 Administrative Procedure Act, including 5 U.S.C. § 706(2)(a).
16

17
18 **Second Cause of Action: Breach of Fiduciary Duty**

19 120. Plaintiffs hereby incorporate all prior allegations by reference.
20

21 121. The Treaty With The Yakama is "the supreme Law of the Land; and
22 the Judges in every State shall be bound thereby, any Thing in the Constitution or
23 Laws of any State to the Contrary notwithstanding." U.S. Const., Art. VI, cl. 2.
24
25
26
27

1 122. Under Article VIII of the Treaty With The Yakama, the Yakama
2 Treaty Signers “acknowledge[d] their dependence upon the government of the
3 United States[.]” 12 Stat. 951.
4

5 123. Pursuant to Article VIII, Federal Defendants owe a fiduciary duty to
6 the Nation.
7

8 124. “[T]he United States has a trust responsibility to Indian tribes, which
9 guides and limits the Federal Government in dealings with Indian tribes.” 1995
10 DOJ Policy on Indian Sovereignty and Government-to-Government Relations with
11 Indian Tribes, II.
12

13 125. Pursuant to the United States’ trust obligations to the Yakama Nation,
14 Federal Defendants were required to consult or collaborate with the Yakama
15 Nation prior to taking any action that affected the Treaty or Treaty lands or
16 territory.
17

18 126. Pursuant to the United States’ trust obligations to the Yakama Nation,
19 Federal Defendants were required to not breach the Treaty with the Yakama.
20

21 127. Federal Defendants did not consult or collaborate with the Yakama
22 Nation, in violation of their Trust obligation to do so, as found in the Treaty With
23 The Yakama, Presidential Order 13175, and several federal and agency-specific
24 regulations.
25
26
27

1 128. Federal Defendants did not convey information to the BIA regarding
2 their entry on the Yakama Indian Reservation, as required under the Treaty With
3 The Yakama, thereby breaching their trust obligations to the Yakama Nation.
4

5 129. Federal Defendants actively concealed their entry, the entry of
6 county/city police officers, and the entry of private car haulers from the Yakama
7 Nation, breaching their basic duties of honesty and good faith to the Yakama
8 Nation.
9

10 130. By breaching the Treaty With The Yakama and failing to consult or
11 share information with the Yakama Nation, Federal Defendants have breached, are
12 breaching, and will imminently breach their fiduciary duty to the Yakama Nation.
13

14 **Third Cause of Action: Violation of Executive Order 13175**

15 131. Plaintiffs hereby incorporate all prior allegations by reference.

16 132. By failing to consult or collaborate with the Yakama Nation, Federal
17 Defendants' acts and/or omissions violate and will imminently violate United
18 States Presidential Executive Order 13175.
19

20 133. Among other obligations in Executive Order 13175, federal agencies
21 must honor tribal treaty rights in implementing any policy that has tribal
22 implications. Sec. 3(a).
23

24 134. Federal agencies must respect Indian sovereignty. *Id.*
25
26
27

1 135. By entering the Reservation in violation of the Treaty and failing to
2 treat the Nation as a sovereign, the Federal Defendants violated Executive Order
3 13175, as well as the Federal Defendants' own policies and procedures.
4

5 136. Executive Order 13175 creates a right enforceable at equity. Sec. 10.

6 **Fourth Cause of Action: Violation of Tribal Law and Order Act and DOJ and**
7 **Treasury Consultation Regulations and Directives**

8 137. Plaintiffs hereby incorporate all prior allegations by reference.

9 138. The Tribal Law and Order Act (TLOA), requires the DOJ Office of
10 Tribal Justice (OTJ) to: "[c]oordinate with each component of the Department to
11 ensure that each component of the Department has an accountable process to
12 ensure meaningful and timely consultation with Tribal leaders in the development
13 of regulatory policies and other actions that affect the trust responsibility of the
14 United States to Indian Tribes, any Tribal treaty provision, the status of Indian
15 Tribes as sovereign governments, or any other Tribal interest." 28 CFR §
16 0.134(c)(7).
17
18
19

20 139. There was no "meaningful and timely consultation" with the Nation's
21 leaders regarding the invasion of the Reservation – a trust issue, a Treaty issue, and
22 a sovereignty issue. That despite Michael Ormsby, U.S. Attorney for the Eastern
23 District of Washington, and other employees and agents of Federal Defendants
24 knowing of the raid before it occurred.
25
26
27

1 140. OTJ is obligated to “[e]nsure that the Department and its components
2 work with Indian Tribes on a government-to-government basis.” 28 CFR §
3 0.134(c)(4).
4

5 141. OTJ was required to “[e]nsure that the consultation process of each
6 component of the Department is consistent with Executive Order 13175 and with
7 the Department's consultation policy.” 28 CFR § 0.134(c)(8).
8

9 142. The DOJ, through its OTJ, did none of these things, even though its
10 own internal regulations required it to.

11 143. DOJ’s own internal policies require it to “engage with tribal nations
12 on a government-to-government basis.” 2010 Department Of Justice Plan To
13 Develop A Tribal Consultation and Coordination Policy Implementing Executive
14 Order 13175, 1. DOJ has failed to follow its own published policies.
15
16

17 144. By failing to consult or to coordinate with the Yakama Nation before
18 entering its Reservation, Federal Defendants’ acts and/or omissions violated and
19 will imminently violate DOJ and FBI regulations, including but not limited to the
20 following:
21

22 145. The 1995 DOJ Policy on Indian Sovereignty and Government-to-
23 Government Relations with Indian Tribes requires the FBI to “consult with tribal
24 leaders in its decisions that relate to or affect the sovereignty, rights, resources or
25
26
27

1 lands of Indian tribes. [The FBI] will conduct such consultation in light of its
2 mission.”

3 146. Although the policy disclaims that it is “not intended to create any
4 right enforceable in any cause of action,” it is an agency regulation with which
5 such agency must comply.
6

7 147. President Obama’s Memorandum on Tribal Consultation of 2009
8 required the DOJ to submit to the Director of the Office of Management and
9 Budget (OMB), by February 5, 2009, “a detailed plan of actions the agency will
10 take to implement the policies and directives of Executive Order 13175.”
11

12 148. On January 27, 2010, DOJ issued a “plan of actions for developing a
13 consultation and coordination policy (hereinafter, ‘consultation policy’)[.]” In
14 other words, the DOJ issued a plan to create a tribal consultation policy rather than
15 a consultation policy.
16
17

18 149. Still, DOJ promised to develop the required tribal consultation and
19 coordination policy; it has not yet done so. As a result of this failure to timely
20 develop the required consultation and coordination policy, DOJ has harmed,
21 injured and severely prejudiced the Nation.
22

23 150. The Attorney General’s Guidelines For Domestic FBI Operations
24 allow information to be disseminated to tribal governments and agencies, in
25 advance of any FBI agent’s entry upon the Reservation. Guidelines, VI(B)(1)(b).
26
27

1 The Guidelines require the FBI to share and disseminate information as required
2 by “treaties” and “Executive Orders.” *Id.* VI(B)(2);

3 151. The failure of the FBI to share and disseminate information as
4 allowed by internal regulations and required under the Treaty With The Yakama
5 has harmed the Nation, violated its sovereignty, and violated the Treaty.
6

7 152. A DOJ-BIA Memorandum of Understanding requires the DOJ to
8 notify the BIA when it “receives information indicating a violation of law falling
9 within the investigative jurisdiction of the other agency,” MOU Between BIA and
10 FBI, IV(6).
11

12 153. The failure of the DOJ to convey information indicating a violation of
13 law falling within the investigative jurisdiction of the BIA has harmed the Nation,
14 violated its sovereignty, and violated the Treaty With The Yakama.
15

16 154. The DOJ Memorandum For USAOs with Districts Containing Indian
17 Country, requires every U.S. Attorney’s Office (USAO) with Indian Country in its
18 district to foster “consistent and effective communication” with tribes; engage in
19 annual consultation with the tribes in their district; and develop an operational plan
20 addressing public safety in Indian Country. USAO operational plans should
21 contain “a plan to develop and foster an ongoing government-to-government
22 relationship [and] a plan to improve communications with each tribe.” David W.
23
24
25
26
27

1 Ogden Memorandum for US Attorneys with Districts Containing Indian Country
2 of January 11, 2010.

3 155. The failure of the DOJ, acting through its USAO in the Eastern
4 District of Washington, to undertake each of these directives has harmed the
5 Nation. The DOJ has not consistently or effectively communicated with the
6 Nation, engaged in meaningful annual consultation with the Nation, developed an
7 operational plan addressing public safety in consultation with the Nation;
8 developed or fostered an ongoing government-to-government relationship with the
9 Nation, nor planned to or actually improved communications with the Nation.
10 Rather, the DOJ has entered the Nation's Reservation without one scintilla of
11 respect for the Treaty With The Yakama.
12

13 156. In August 2010, "Treasury's progress report on a department-wide
14 review of its tribal consultation policies, required by a Presidential Memorandum
15 issued on November 5, 2009, was submitted on time to the Office of Management
16 and Budget (OMB)." Like DOJ, Treasury has issued a program report rather than
17 a tribal consultation policy. As a result of this failure to timely develop such a
18 consultation policy, Treasury has harmed, injured and severely prejudiced the
19 Nation.
20

21 157. IRS Protocol IRM 4.86.1.2 "provides the steps to be considered when
22 scheduling a visit to a tribal entity":
23
24
25
26
27

1 (1) Contacts with tribes should be diplomatic in tone and should express the
2 Service's desire to meet with the leaders of the tribe to discuss, on a
3 government-to-government basis, tax issues of mutual interest and concern.
4 The approach should be 'Our government would appreciate the assistance
5 and cooperation of your government'. Generally, based on history, the
6 Federal government is viewed by tribal entities with mistrust and suspicion.
7 An understanding of the history and culture of the tribe, along with its
8 political organization, will assist in establishing effective 'government-to-
9 government' relationships.
10
11

12 (2) The following steps should be considered when scheduling a visit to a
13 tribal entity:
14

15 a. Contact the responsible tribal official(s), via phone or mail, and set
16 an appointment for a convenient time to meet. Inform the tribal
17 official(s) of the purpose of the appointment (education/outreach
18 endeavor, compliance review, or examination). The IRS employee
19 should express a willingness to repeat this information to the tribal
20 council or other tribal representatives if requested.
21
22

23 Note: To determine the responsible tribal official for various types of
24 contacts, refer to the Disclosure and Privacy portion of this manual
25 section. See IRM 4.86.1.6.
26
27

1 b. The initial meeting may be with the tribal official(s) or a designee
2 of the tribal official(s). This meeting should include an introduction
3 and a discussion of the issues and information needed to complete the
4 work assignment. Personal contact is essential to obtain an
5 understanding of tribal perspectives and concerns. As necessary,
6 additional appointments should be scheduled with the designated
7 tribal official to complete the educational/outreach endeavor,
8 compliance review, or examination.
9

10
11 c. In situations when multiple IRS employees will be participating in a
12 work assignment, their activities should be closely coordinated with
13 the tribal official(s) or designee.
14

15 d. If another Federal agency is currently working with the tribe on
16 matters which closely relate to tax administration, immediately
17 determine the scope of the other agency's involvement and elevate
18 that information to IRS management. Interagency cooperation may
19 resolve conflicts and avoid misunderstandings.
20
21

22 158. The failure of the IRS to contact or consult with Yakama tribal
23 officials before its agents visited the Yakama Reservation, as required under the
24 Treaty With The Yakama and the agency's own Protocol IRM 4.86.1.2, has
25 harmed the Nation, violated its sovereignty, and violated the Treaty.
26
27

1 159. Through each of these actions, DOJ and Treasury created a justified
2 expectation that the Nation would receive a meaningful opportunity for
3 consultation and coordination. No notification, consultation or coordination was
4 even attempted, in violation of the foregoing regulations, the Administrative
5 Procedure Act, federal Indian common law, and the Treaty With The Yakama.
6

7
8 **Fifth Cause of Action: Violation of Administrative Procedure Act**

9 160. Plaintiffs hereby incorporate all prior allegations by reference.

10 161. The Nation and its members have been injured and continue to be
11 injured by Federal Defendants' illegal agency actions, including, but not limited to,
12 Federal Defendants': entry upon Yakama Reservation trust lands; decision to invite
13 county/local police officers and three private contractors onto Yakama Reservation
14 trust lands; decisions to enter Yakama Reservation trust lands without consultation,
15 coordination or notification; decisions to conceal from the Yakama Nation Federal
16 Defendants' impending entry upon Yakama Reservation trust lands; illegal future
17 entry of Yakama Reservation trust land; decisions to refuse to consult or provide
18 notification in connection with such illegal future entry of Yakama Reservation
19 trust lands; refusal to consult or coordinate regarding Federal Defendants' entry
20 upon Yakama Reservation trust lands; refusal to notify Yakama Nation officials
21 prior to Federal Defendants' entry upon Yakama Reservation trust lands; refusal to
22 consult regarding a procedure for notification, consultation and coordination
23
24
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1 regarding Federal Defendants' entry upon Yakama Reservation trust lands; refusal
2 to share information with the Yakama Nation about Federal Defendants' entry
3 upon Yakama Reservation trust lands; violation of Yakama sovereignty; violation
4 of Treaty rights; and violation of other federal law protections.
5

6 162. Federal agency action taken without fully complying with a tribal
7 consultation policy adopted by the agency is subject to judicial review under the
8 APA.
9

10 163. An agency must comply with its own internal policies even if those
11 are more rigorous than procedures required by the APA.
12

13 164. Where a federal agency has established a policy requiring prior
14 consultation or coordination with a tribe, and therefore created a justified
15 expectation that the tribe will receive a meaningful opportunity to express its views
16 before policy or decisions are made, that opportunity must be given.
17

18 165. Federal Defendants failed to fully comply with their tribal
19 consultation and/or coordination policy and federal consultation policy in general.
20

21 166. Federal Defendants' actions, as outlined in this complaint, are illegal,
22 arbitrary, and capricious, and abuses of discretion, and agency actions for purposes
23 the Administrative Procedures Act, 5 U.S.C. § 702.
24

25 **Sixth Cause of Action: Declaratory Judgment**

26 167. Plaintiffs hereby incorporate all prior allegations by reference.
27

1 168. The foregoing and following allegations entitle the Nation to a
2 declaratory judgment pursuant to 28 U.S.C. § 2201 and 2202.

3 169. The Treaty With The Yakama is “the supreme Law of the Land; and
4 the Judges in every State shall be bound thereby, any Thing in the Constitution or
5 Laws of any State to the Contrary notwithstanding.” U.S. Const., Art. VI, cl. 2.

6 170. Federal Defendants have violated the Treaty With The Yakama, along
7 with its legal, trust, and statutory obligations to the Nation.
8

9 171. These violations entitle the Nation to a declaration that Federal
10 Defendants have violated the Treaty, federal laws, and regulations by failing to
11 notify the Nation of its entry upon the Yakama Indian Reservation.
12

13
14 **Seventh Cause of Action: Writ of Mandamus Under 28 U.S.C. § 1361**

15 172. Plaintiffs hereby incorporate all prior allegations by reference.

16 173. Federal Defendants have breached those obligations and duties
17 alleged in this Second Amended Complaint.
18

19 174. The Treaty With The Yakama, federal law, and Federal Defendants’
20 trust obligation to the Nation impose a non-discretionary obligation on Federal
21 Defendants to at least notify the Nation before entering onto the Yakama Indian
22 Reservation under these facts.
23
24
25
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1 175. Federal Defendants' actions have harmed, injured, and severely
2 prejudiced the Nation, directly harming the sovereignty of the Nation and the rights
3 of its members to a Reservation as described in the Treaty With The Yakama.
4

5 176. Accordingly, the Nation is entitled to a writ of mandamus pursuant to
6 28 U.S.C. § 1361 to compel Federal Defendants immediately to comply with their
7 obligations, both to provide notification and implement a legally adequate plan for
8 consultation and coordination.
9

10 **Eighth Cause of Action: Breach of the Treaty With The Yakama**
11 **(Against County/City Defendants)**

12 177. Plaintiffs hereby incorporate all prior allegations by reference.

13 178. The Treaty With The Yakama is "the supreme Law of the Land; and
14 the Judges in every State shall be bound thereby, any Thing in the Constitution or
15 Laws of any State to the Contrary notwithstanding." U.S. Const., Art. VI, cl. 2.
16

17 179. The Counties of Yakima and Benton entered the Yakama Indian
18 Reservation without permission from the Yakama Nation for purposes unrelated to
19 compulsory school attendance; public assistance; domestic relations; mental
20 illness; juvenile delinquency; adoption proceedings; dependent children; and
21 operation of motor vehicles upon the public streets, alleys, roads and highways.
22
23

24 180. Marshall County, Mississippi, and the cities of Richland, Pasco and
25 Kennewick, Washington, Tulepo, Mississippi and Roanoke, Martinsville and
26
27

1 Vinton, Virginia, entered the Yakama Indian Reservation without permission from
2 Yakama Nation.

3 181. The county/city police officers lack any authority to enter upon
4 Yakama Indian Reservation tribal trust lands for the purposes for which it entered
5 on February 16, 2011, absent Tribal permission.
6

7 182. The county/city police officers lack any authority to deny access to
8 Yakama Nation law enforcement authorities from Yakama Indian Reservation
9 tribal trust lands.
10

11 183. By entering upon Yakama Indian Reservation tribal trust lands
12 without the Nation's permission, and refusing to allow Yakama Nation law
13 enforcement authorities to enter upon the Nation's own land, the county/city police
14 officers violated the Treaty With The Yakama, acted ultra vires, and violated
15 federal law.
16
17

18 **VII. PRAYER FOR RELIEF & JURY DEMAND**

19 Plaintiffs respectfully request that this Court issue or order:
20

21 A. A declaratory judgment, pursuant to 28 U.S.C. § 2201, that Federal
22 Defendants have violated and are violating the Yakama Nation's Treaty, statutory,
23 legal, fiduciary, and trust obligations to the Nation by entering onto Yakama lands
24 without notification, consultation or coordination regarding the same.
25
26
27

1 B. An injunction, pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2202, and
2 the Court's equitable authority ordering Federal Defendants to comply with the
3 Yakama Nation's Treaty rights, and the United States' statutory, legal, fiduciary
4 and trust obligations, by notifying the Nation of any entry onto Reservation lands
5 and consulting or coordinating regarding the same.
6

7 C. A declaratory judgment and injunction against the county, declaring
8 that the Yakima, Benton and Marshall County, and the cities of Tulepo,
9 Mississippi and Roanoke, Martinsville and Vinton, Virginia, have each violated the
10 Yakama Nation's Treaty and federal law and prohibiting the county/state police
11 officers from future violations of the same.
12
13

14 D. A writ of mandamus, pursuant to 28 U.S.C. § 1361, directing Federal
15 Defendants to comply with their obligations under the Treaty, statute, law, and
16 federal trust obligations by (1) notifying the Yakama Nation of any entry onto
17 Reservation property so that Tribal and federal officer safety can be ensured by
18 Tribal Police and (2) immediately carrying out their obligations to develop and
19 implement meaningful consultation and coordination policies with the Nation.
20
21

22 E. Other appropriate injunctive or equitable relief necessary to provide
23 complete relief to the Yakama Nation and its members.
24

25 F. Costs and fees, including attorney's fees, under 28 U.S.C. § 2412.

26 Plaintiffs also demand a jury for any issues triable of right by a jury.
27

1 DATED this 2nd day of June 2011.

2 s/Gabriel S. Galanda
3 Gabriel S. Galanda, WSBA# 30331
4 Anthony S. Broadman, WSBA #39508
5 Attorneys for Confederated Tribes and Bands
6 of the Yakama Nation
7 GALANDA BROADMAN, PLLC
8 4024B NE 95th Street/P.O. Box 15146
9 Seattle, WA 98115
10 (206) 691-3631 Fax: (206) 299-7690
11 Email: gabe@galandabroadman.com
12 Email: anthony@galandabroadman.com

13 s/Julio Carranza
14 Julio Carranza, WSBA #38211
15 Joe Sexton, WSBA #38063
16 Yakama Nation Office of Legal Counsel
17 401 Fort Road/P.O. Box 151
18 Toppenish, WA 98948
19 (509) 865-7268
20 Email: julio@yakamanation-olc.org
21 Email: joe@yakamanation-olc.org
22
23
24
25
26
27

CERTIFICATE OF SERVICE

I, Gabriel S. Galanda, say:

1. I am now, and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of 18 years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

2. On June 2, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, pursuant to which the following will be served:

Pamela De Rusha
United States Attorney's Office
E-mail: Pamela.derusha@usdoj.gov

Maureen Rudolph
U.S. Department of Justice
Environmental & Natural Resources Division
maureen.rudolph@usdoj.gov

Kenneth Harper
Quinn Plant
Menke Jackson Beyer Ehlis & Harper, LLP
kharp@mjbe.com
qplant@mjbe.com

DATED this 2nd day of June 2011.

s/Gabriel S. Galanda
Gabriel S. Galanda
Attorneys for Confederated Tribes and
Bands of the Yakama Nation
GALANDA BROADMAN, PLLC
11320 Roosevelt Way NE
Seattle, WA 98125
(206) 691-3631
Fax: (206) 299-7690
Email: gabe@galandabroadman.com