UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS
PACIFIC REGIONAL OFFICE
2800 COTTAGE WAY
SACRAMENTO, CA 95825

Ronald D. Allen Jr., Kelly L. Peterman, Charles Allen Jr., Nikki Harris, Mikki Graber, Vikki Oxley, Shawn Thomas Rogers, Jeanne Durso, Daniel Durso, Robert J. Morris, Misty Morris, Ray Morris, Monique Early, Melissa Hunter and Mary Montoya, Appellants,	)	**APPEAL OF FEBRUARY 1, 2012 DECISION OF EXECUTIVE COMMITTEE OF PALA BAND OF MISSION INDIANS TO DISENROLL APPELLANTS**
-vs-	)	
EXECUTIVE COMMITTEE, Pala Band of Mission Indians, Appellees.	)	**February 27 , 2012**

I. INTRODUCTION

Appellants above named are all unquestionably direct descendants of Margarita Brittain[1], Pala Allottee 25, a full blood Cupa Indian. A photograph of Margarita Brittain is included in this Appeal. Her case is well-documented.

The most convincing evidence proving the Executive Committee is wrong in its February 1, 2012 disenrollment of above-named Appellants is the "Pala Allotment Roll Approved by the Secretary of Interior November 3, 1913". This historic and uncontroverted document unquestionably describes Margarita Brittain as "4/4" degree Indian blood. *See* Exhibit 1.

The Pala Allotment Roll serves as the original "base roll" of the Tribe. The Secretary approved the roll and the Tribe does not have the legal

[1] Various spellings have been used over the years. For the sake of consistency, "Brittain" will be used throughout this document even where spelled differently in official historical correspondence.

authority to make any changes to the historical documents that create the Tribe and identify its original members who lived on allotments given to Cupa Indians alive and living on the land at that time. Margarita Britten can't be removed from this government approved roll that was used to establish the Tribe.

By letter, dated October 24, 2011, Kilma S. Lattin, Secretary, Pala Band of Mission Indians ("Tribe") stated to Appellants:

> The enrollment committee needs to update enrollment files. There are gaps in the information we have on file, and particular questions arose over the blood quantum of Margarita Brittain. However, the enrollment committee has been working to correct these issues and verify information but we need your help.
>
> We are requesting any and all information that you have to support your enrollment with the Tribe. Already numerous individuals have submitted such paperwork, and we thank you for your submissions. Please encourage your family to do the same. If you have submitted the information, you do not need to re-submit.

Robert H. Smith, Chairman, notified Appellants, effective February 1, 2012, the Executive Committee voted to disenroll them from the Tribe:

> Your rights to tribal benefits are hereby terminated. Your health benefits will be terminated effective March 1, 2012.

It is a point of extreme significance that neither Smith nor the Executive Committee cites, in the letter, any reasoning, any evidence or other basis for the abrupt disenrollment. There is no articulation or argument by the Tribe about "best evidence" upon which its decision was made or any effort to weigh and balance any evidence whatsoever.

Prior to their disenrollments, Appellants submitted relevant documentation supporting their proper enrollment in the Tribe. *See* Exhibit 2.[2] In fact, Appellants included in their submissions to the Tribe a variety of relevant documents, including 2 Department of Interior, Bureau of Indian

[2] Exhibit 2 is a compilation of numerous documents common to all Appellant named above that were submitted by them pursuant to the October 24, 2011 Kilma Lattin letter. The Tribe ignored their submissions.

Affairs (BIA), Final Decisions issued on May 17, 1989 and September 11, 1989 conclusively determining Margarita Brittian to be "full blood". It is truly a mystery why the Chairman and Executive Committee utterly failed to even mention these extremely significant 1989 Final Decisions in the October 24, 2011 or February 3, 2012 letters.

For the sake of efficiency and not repeating documents or arguments previously filed in other disenrollment appeals, Appellants incorporate and stand on the arguments made by 8 members summarily disenrolled on June 1, 2011 to the extent they are discussed in this appeal. The extensive list of Exhibits filed with these June 28, 2011 appeals are also duly incorporated herein.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Executive Committee's February 1 attack on Appellants' sacred status as enrolled members of the Tribe must be framed within the background of exhaustive analysis undertaken by Ronald M. Jaeger, Director, Sacramento Area Office, BIA, in his letter, dated January 17, 1986.

The historical record in this matter proves that Superintendent Tom W. Dowell's July 29, 1985 recommendation was *rejected* on appeal after the Area Director and Office of Assistant Secretary - Indian Affairs engaged in thorough and careful review of historic documents relevant to the blood quantum of Margarita Brittain.

Area Director Jaeger's January 17, 1986 decision is directed to the "Assistant Secretary - Indian Affairs" describing the appeal of "Jacqueline Boisclair, Cheryl Majel, Anthony Freeman, Luanne Moro, Barbara, Letricia, Michael and Phillip Inglett, and Leah, Kyah and Lucas Lattimer":

> A review of the records in this office reflect attempts have been made to decide the true blood degree of Indian blood for Margarita Brittain, Pala Allottee # 25. These attempts have included changing her blood quantum to 4/4 Cupeno or Cupa Indian blood.
>
> . . . .
>
> It is the recommendation of this office that the degree for Margarita Brittain, great-great grandmother of the individuals listed above, be changed to reflect 4/4 degree Pala Indian. This change may have far reaching effects

> which we will discuss further; however, our reasons and justifications for making, the change, we believe, are well founded:"
>
> . . . .
>
> It appears the above listed applications which reflect the fractions of blood degree were tampered with.
>
> . . . .
>
> It is apparent from our research that certain previous administrative actions taken by the Southern California Agency to resolve this matter have been either misinterpreted or ignored by those persons who signed the petition of December 18, 1985. It is hoped a final decision from the Central office would be consistent with the Bureau's prior attempts at correcting the rolls of the Tribe *so that their current enrollment will be truly reflective of the base roll of 1913 which is the official record of the Tribe*. (Emphasis added.)
>
> In conclusion, this office recommends that the Secretary authorize the bureau to officially record the blood degree of Margarita Brittain as 4/4 degree Cupeno as the official roll of the Pala Band of Mission Indians.

In support of Area Director Jaeger's 1986 conclusion is a February 27, 1962 letter to Juliana Calac, Chairman, Pala Enrollment Committee from the BIA, Riverside Area Field Office:

> In regards to the recent conversation about certain Pala Indians, we wish to report the following:
>
> <u>Margarita Brittain, Allottee #25</u>
>
> A record made by Mr. LW Green, Special Allotting Agent, on December 5, 1910, shows that Margarita was a full blood Cupa Indian.

It is clear that under the federal and tribal laws applicable in 1989 that the Assistant Secretary - Indian Affairs had complete authority to make final decisions on appeals filed by ". . . a person whose application has been rejected . . .". As argued below, Appellants believe that erroneous approval of

the 1994 Constitution by the BIA keeps the authority to make final decision on tribal enrollment in the hands of the Department of the Interior.

Equally, it is clear that the Secretary of the Pala Band knew, on September 15, 1989, that the Office of the Assistant Secretary - Indian Affairs, *the highest federal authority in the Bureau of Indian Affairs,* rejected the July 29, 1985 Dowell recommendation that is erroneously held by the Executive Committee as controlling in this dispute over two (2) decades later. In light of subsequent proper federal authority reversing and condemning it, Chairman Smith and the Executive Committee's use of the July 29, 1985 Dowell "recommendation" is nothing more than a "false pretense."

The history of decision making leading up to today proves that the Final Decisions of the Assistant Secretary - Indian Affairs corrected both typographical and pen and ink errors in Margarita Brittain's Cupa Indian blood quantum to *her true documented 4/4th blood quantum as reflected on the 1913 Pala Allotment Roll:*

> *Margarita Brittain was shown as a full blood and her children as half bloods on that roll but there were subsequent pen or ink corrections that changed their degree of blood to half-blood and one quarter blood, respectively. The corrections were not noted in any way.* (Emphasis added.)

There is no record that, after September 15, 1989, the Tribe or Executive Committee filed an action under the federal Administrative Procedures Act, 5 U.S.C § 701 - 708, to seek reversal of the Margarita Brittain full blood decision issued by the Assistant Secretary - Indian Affairs. In effect, this failure on the part of the Tribe/Executive Committee to file a federal civil action in the United States District Court over the 1989 Final Decisions requires the legal doctrine of *res judicata* to be applied here.

Taking no further efforts after 1989, a period of 22 years, to object to the full blood Final Decisions, the Executive Committee clearly accepted the clarification of Margarita Brittain's Cupa blood quantum until June 1, 2011. *From June 1, 2011 to now, the Executive Committee has made absolutely no effort to produce any argument or evidence supporting its wholly unsupported and blatantly erroneous position that Margarita Brittian is less than full blood!*

Superintendent Virgil Townsend, BIA, Southern California Agency told James Brittain (aka "Jr.") on April 19, 1994:

> On May 17, 1989, the Assistant Secretary of Indian Affairs, Washington, D.C., determined that Margarita Brittain possessed 4/4 degree Indian blood and directed our office to correct the blood degree for her descendants. This action was a result of enrollment appeals by certain descendants.
> . . . .
> Our Tribal Enrollment Specialist has completed extensive research to identify all descendants of Margarita Brittain and determine the correct blood degrees involving five generations.
> . . . .
> Our staff met with the Pala Business Committee on March 2, 1994, and provided them with our findings and supporting documentation including tree charts. We advised them that the correct blood degree also be noted on their membership roll.

Townsend's letter recognizes the May 17, 1989 Asbra Final Decision and that Southern California Agency staff met with the Pala Business Committee on the Margarita Brittain blood degree correction.

Attached to this appeal is the affidavit of Elsie Lucero. Lucero's statements and conclusions in her affidavit are based on her extensive experience and full and complete review of all relevant historical records at issue in this appeal. Unless rebutted by the Tribe, her conclusions must stand as irrefutable support for this appeal. Ms. Lucero was the "Tribal Enrollment Specialist" described above who also personally met with the Pala Business Committee on March 2, 1994. Her affidavit is self-explanatory and will be discussed at relevant points below.[3]

It is extremely important to note at the outset of this appeal timelines pertinent to understanding the layers of enactments around which this enrollment dispute turns. A full iteration of the actual timeline of the adoption of the Articles of Association to the present day Constitution under

[3] The Affidavit contains an inadvertent error at p. 6. "Exhibit 14" should read in part ". . .show Margarita Brittain, 4/4 Degree of Indian Blood and identified seven children, Casilda, Miguela, Maria, Santiago, Esperanza, Juana and Martha."

which the Tribe currently operates is as follows:

> 1961 - Tribe adopts first governing document of the Tribe. This document is known as the "Articles of Association".
>
> 1972 - The Tribe acts to amend the Articles of Association and to incorporate previous unrecorded amendments.
>
> 1972 through 1994 - Tribe passes several amendments to the Articles of Association with the most significant being the change in terms of the Executive Committee from 1 year terms to two year terms. These amendments were passed/ratified at duly called General Elections by ballot vote.
>
> 1994 - Tribe votes to change the name of the Articles of Association to read "Constitution". A General Election was held but the vote failed to garnish the necessary 50% of the eligible voters of the General Council needed for ratification. The Executive Committee acted improperly to qualify the election and record the vote as in favor of ratification.
>
> 1997 - A revised Constitution was voted on at a duly called General Council Meeting. The vote was 27 in favor and 0 opposed. This vote was recorded by the Executive Committee as a qualifying vote/election as ratifying the revisions to the Constitution.

In any event, whether governed by the Articles of Association or the Constitution, Appellants contend that the vote of 1997 to accept the revisions to the Constitution was done so outside the procedures provided for amending the Constitution in both the Articles of Association and the Constitution.

Each revision in the Constitution should have been noted and a ballot prepared for a General Election whereby each eligible voter would be provided the opportunity to accept or reject each revision. These revisions should have been treated properly as "Amendments" and voted on as amendments, not just mere revisions. This did not occur so the revisions should and must be stricken from the governing documents of the Tribe.

The multiple layers of actions by the Tribe's Executive Committee offer a potentially confusing scenario difficult to visualize and understand. It is this confusing scenario that the Executive Committee has used to invoke its mass February 1, 2012 disenrollments of 154 direct descendants of Margarita Brittain.[4]

Again, we cannot forget that the Tribe has *never* provided the Office of the Regional Director with any opposing brief or position in the matter of those disenrolled on June 1, 2011 as to why any of the descendants of Margarita Brittain, including Appellants, should be justifiably disenrolled.

III. DISCUSSION

A. The Regional Director is Duty Bound by the 1989 Final Decisions where there is no new evidence.

A careful review of the entire record proves that the Executive Committee has offered no new evidence to support their February 1 decision in what is an obvious effort to violate Appellants' guaranteed Indian Civil Rights.

First, the main allegation in the June 1 letter sent to the 8 original disenrollees is that applicants, other than those in this appeal, somehow failed to include the 1928 rolls of Juana Regetti and the descendants of Martha Regetti and, therefore, omitted essential information that would have resulted in their being denied enrollment with the Tribe. This is a bogus ground for disenrollment of Appellants since the Smith controlled Executive Committee has not even established its basis for its February 1 actions. It is clear that if the 1928 applications are even relevant and this is the only specific grounds for disenrollment of the 154 members then Appellants have all been wrongfully disenrolled.

Next, Appellants collectively argue that the use of the 1928 Roll in any way to determine tribal membership is a flagrant violation of the Tribes Articles of Association and the Tribe's subsequent Constitution *provided that it was validly approved by the majority of the General Council in a properly*

[4] Rumors that only those Brittain descendants politically out of favor with the Robert Smith regime have been disenrolled and not other direct descendants he favors is bolstered by a lack of a list of 154 disenrollees to verify or discount these anecdotal comments.

conducted ballot vote.

The Appellants' position is that when the Tribe adopted its Base Roll and the authority to develop regulations/ordinances governing its membership, the Articles of Association created a very solid "framework" within which any enrollment ordinance would have to fit within or else that ordinance would violate the Tribes Articles of Association and subsequent Constitution.

The operation of this framework is very simple. In effect, you are considered a member of the Tribe if your name appears on the 1913 Allotment Roll and then, in succession, you are a member if you are a descendant of a person listed on the 1913 Roll and possess at least 1/16 degree of Cupeno or Pala Blood. Use of a five (5) generation chart to visualize the process that this regulatory and constitutional framework has imposed has always been a qualification on the applicant for enrollment.

The 1913 Pala Allotment Roll establishes a "baseline" standard of blood degree for every individual listed therein. Margarita Brittain is on that 1913 Allotment Roll. Exhibit 1. In effect, no other documents or records can be used in determining an applicant's degree of Cupa Indian blood. An "expert" in Southern California Agency tribal enrollment matters, Elsie Lucero, states as much. Enacting a requirement other than this simple basic baseline rule would be a clear violation of the Tribe's Articles of Association and subsequent Constitution *provided it was validly approved*.

Secondly, the Enrollment Ordinance would be limited as to which documents are acceptable in reviewing and determining lineal descent, such as birth certificates, death certificates, adoption records, church/baptismal records, and sworn affidavits. It is a very simple and straightforward procedure firmly restricted through the framework of the Tribe's Articles of Association and subsequent Constitution and strictly confined to parameters set out in the 1913 Pala Allotment Roll. Any information gained from the 1928 California Indian Census Roll is beyond the standards established by tribal law.

Thirdly, the June 1 Lattin letter to the original 8 disenrollees leading up to the filing of this appeal raises serious issues dealing with the integrity of the evidence alleged to be the source of the records that led to the

disenrollments. The recent disenrollment letter from Robert Smith to the 154 members is utterly devoid of any reference to the key Exhibits filed in this matter with the Tribe by any of the Appellants that, once and for all, put this matter to rest in 1989 and overruled 1985 Dowell recommendation letter.

In the balance, the Regional Director must examine the obviously shoddy record keeping that failed to produce the 1989 Asbra and Mills Final Decisions or, more significantly, the June 7, 1989 letter wherein Superintendent Dowell concedes that his earlier July 29, 1985 recommendation was deemed unacceptable. It is nothing short of unconscionable for the Executive Committee to pull out a long discarded letter and hold it up as evidence upon which to base the Appellants' disenrollments.

In other words, it is clear that the Executive Committee disregarded the entire record that led to Walter Mills 1989 Final Decision. Hence, there is absolutely no integrity to the chain of evidence in these serious circumstances when the Executive Committee pulls out only one letter which was overturned by the Director, Pacific Area Office, Sacramento, CA and the Assistant Secretary - Indian Affairs, Washington, D.C. Therefore, the Regional Director has to agree that whatever the Executive Committee alleges to disenroll is not based on credible or substantive evidence. Appellants have seen nothing in terms of specific evidence or charges that the Executive Committee claims the Regetti 1928 information provides.

B. Defective Tribal Actions Require Recognition of 1989 Final BIA Decisions.

Appellants' argument in this matter of their disenrollment is that the entire process is haphazard, faulty and wholly based on glaring errors, including misstatement of facts and law. Consequently, the Regional Director is duty bound to agree with Appellants that these recent actions initiated by the Executive Committee to purportedly disenroll them cannot supersede the "bedrock" 1989 Asbra and Mills Final Decisions.

There is nothing in the letters submitted by the Executive Committee to any Appellant here that sustains its allegation that anyone failed to provide information in their enrollment applications that would have led to any applicants being determined as ineligible for enrollment with the Pala Tribe. In fact, the October 24, 2011 letter from Mr. Lattin to Appellants

merely states:

> The enrollment committee needs to update enrollment files. There are gaps in the information we have on file, and particular questions arose over the blood quantum of Margarita Brittain.

A competent, fair and properly initiated disenrollment proceeding would state, in detail, the precise "particular questions" regarding the blood quantum of Margarita Brittain. It is painfully evident that Robert Smith and the remaining members of the Executive Committee do not even know what the "particular questions" are to even put them in writing!

Then, Appellants were notified by letter, dated February 3, 2012, that they were "no longer a member of the Pala Band of Mission Indians." There is no specific rationale cited by Robert Smith explaining the basis underlying the Executive Committee's February 1 disenrollment decision.

Appellants fully expect the Executive Committee to file its opposition to their appeal with the Regional Director, including its reasoning for taking this extremely devastating action against their tribal membership. If the Executive Committee does not bother to appear in this appeal and file its position supporting its disenrollment of Appellants, then the entire matter is arbitrary, capricious and morally reprehensible.

The Executive Committee's latest "paper genocide" against the "154" stands in stark contrast to past documented tribal actions that recognized the 1989 BIA Final Decisions. A letter dated November 15, 1995 addressed to Barbara Gonzales, Vice-Chairman of the Agua Caliente Band of Cahuilla Indians and signed by Chairman Robert Smith states:

> After researching our Tribal Enrollment Records, we show Cayetan & Casilda Welmas each possess ½ degree Indian blood as stated in the Pala Allotment Roll of November 3, 1913. Jose, Refina and Miguel Welmas also possess ½ degree of Indian Blood." Casilda Welmas is the sister of Juana Regetti and Martha Regetti, and Juana, Martha and Casilda are the daughters of Margarita Brittain and so stated in the Pala Allotment Roll of November 3,

1913.

Without citing all the details in the record here, there is no doubt that extensive research was conducted by the BIA, including Ms. Lucero, 27 years ago that resulted in a full blood determination of Margarita Brittain.

The BIA compared the 1913 Allotment Roll housed with the Southern California Agency to the original 1913 Allotment Roll housed in Washington, D.C, and found that the penned changes on the Southern California Agency document were not evident on the original document located in Washington, D.C. This and other directly relevant evidence caused the BIA to discard the infamous Dowell recommendation and restore Margarita Brittain's blood degree to 4/4 in 1989. At this time, the BIA officially began to recognize that those persons formally bearing 1/32 degree of Indian blood were now considered to have 1/16 degree of Indian blood and eligible for enrollment with the Pala Tribe. This fact cannot be disputed by the Executive Committee.

An April 19, 1994 letter signed by Superintendent Virgil Townsend proves that BIA staff, with Ms. Lucero present, met with the Pala Business Committee on March 2, 1994. Robert Smith was Tribal Chairman at this time. He was present during this meeting and thoroughly briefed by the BIA as to the findings and status of the Margarita Brittain case/appeal and the final decision and necessary implementations resulting from that Final Decision.

Robert Smith's claim that he was unaware of the information regarding the Margarita Brittain case/appeal is not supported by the administrative record in this matter. This April 1994 letter alone should convince the Regional Director to vacate the Executive Committee's February 1, 2012 actions.

C. The Law Controlling the Disenrollments of the Tribal Members is the 1961 Articles of Association and not the 1997 Constitution or Enrollment Ordinances enacted pursuant to that Invalidly Approved Document.

Appellants argue that there is a good faith basis to challenge the validity of the Constitution purportedly approved by the General Council of

the Pala Band of Mission Indians on November 19, 1997 and subsequently noted as approved by the Superintendent, Southern California Agency, on December 23, 1997. Numerous documents have been placed in the administrative record to support this argument on August 8, 2011 in a supplement to the appeal filed by the Original 8 Disenrollees. Those documents are duly incorporated herein.

The Tribe's Gaming Ordinance was approved by Montie Deer, National Indian Gaming Commission in April of 2000. The Tribal Resolution submitted with the request for approval cites the Tribe's "Articles of Association" as the governing document of the Tribe.

It is nothing short of bizarre that close to 2 years after the alleged approval of the "Revised Constitution" by the delegated representative of the Secretary of the Interior that Resolution 99-39 "Tribal Gaming Authority Ordinance, enacted on February 14, 2000 states:

> WHEREAS, the Tribe is governed by Articles of Association approved by the Commissioner of Indian Affairs which establish a General Council and an Executive Committee; and
>
> WHEREAS, pursuant to Article 3 of the Tribe's Articles of Association, the General Council is the governing body of the Tribe; and
>
> . . . .
>
> This is to certify the above Pala Gaming Authority Ordinance, Resolution 99-39 was adopted by the General Council at a duly called meeting of that Body held on October 20, 1999, at which a quorum was present by a vote of 19 in favor, 0 opposed.

A careful reading of Resolution 99-39 fails to show any reference to Resolution 97-36 that indicates that ". . . the above resolution was passed at a duly call meeting of the Pala Band of Mission Indians General Council held on the 19 day of November, 1997, by a vote of 27 "For", 0 "Against" with a quorum present said resolution not having been rescinded or amended in any way."

It is very clear that the Executive Committee knew that the Constitution was not adopted and that is why they referred back to the Articles of Association so as not to cause a delay in gaming operations.

Further, there is reason to believe that the election to adopt the Revised Constitution of the Pala Band was never held as required by Article IX - Amendments and Effective Date, Section 1. - Effective Date:

> This Constitution shall become effective immediately after its approval by a majority vote of the voters voting in a duly-called election at which this Constitution is approved by the Bureau of Indian Affairs.

It is the Appellants' position that a "duly-called election" means an election duly-noticed where all General Council members were noticed and allowed to vote. There is nothing in the record proving that more than 27 tribal members had the opportunity to vote on approving or disapproving the Constitution.

Unless there is evidence in the record or other independent proof that a duly-called election was held where all members (not only 27) were notified that an election would be held to approve the Constitution in 1997, then there is good reason to doubt the validity and approval of the Constitution. It must be emphasized that the vote in 1994 was a General Election but it lacked the necessary majority of General Council members to qualify it as a ratification of the Constitution. In short, it appears that there was not an adoption of the Constitution by a General Council duly noticed ballot vote. Therefore, an improperly called General Election to approve the Revised Constitution would not serve the requirement as stated in Article IX.

If the Constitution is not in effect then the Articles of Association and the original Ordinance No. 1 serve as the governing documents of the Tribe and all enactments of the Executive Committee that were/are authorized/enacted by the Committee are not in effect to include subsequently enacted versions of the Enrollment Ordinance. The language in Section 5, "Appeals", of the Original Ordinance No. 1 reads: "The decision of the Secretary on an appeal shall be final and conclusive and the appellant and the Executive Committee shall be given written notice of the decision."

As a consequence of these series of invalid and unlawful actions, the

Regional Director holds the authority under the strong language of Section 5 above to issue a final decision (not "recommendation") in this appeal under the language found in Original Ordinance No. 1.

D. The Executive Committee of the Tribe Acted Beyond the Scope of its Constitutional Authority and Contrary to its own Ordinance if it ruled that Margarita Brittain was not a Full Blood Indian.[5]

The governing body of the Tribe is the General Council. The main purpose of the Executive Committee is to execute the directives and wishes of the General Council. In this case, the General Council properly determined on February 22, 1984 that Margarita Brittain was a full blood Indian:

> Margaret Hilton had presented to the Executive Council, a correction of Indian blood degree for Margarita Britten.
>
> . . . .
>
> Polly Pink (Britten) state from the 1913 Census, the blood degree for her Grandmother, Margarita Britten was changed from Full-blood, to one-half. it was penciled in, and the Bureau corrected, and recognized it. All we are trying to do is correct it!!
>
> After a lengthy discussion as to what was correct or incorrect, Theresa Griffith made a Motion: to approve the change of blood degree for children of Margarita Britten: Second by Mary Ownby. 29 in favor, 25 opposed, 2 abstentions .... Motion carried ….

Notwithstanding valid General Council action in 1984, the Executive Committee, in what appears to be no more than an act of petty reprisal fueled by personal animosity, somehow determined that Mrs. Brittain was not a full blood Indian. The fact that the Executive Committee has not offered up one shred or iota of evidence since June 1, 2011 to justify its mass disenrollments validates this position.

[5] As it stands at the moment, there is no "ruling" in existence because the Executive Committee has cited no basis at all for its February 1, 2012 decision to disenroll that is somehow directed toward the Cupa blood degree of Margarita Brittain.

As set forth herein, the Executive Committee does not have the legal or traditional authority to overrule a valid General Council action. Even, however, if we assume, *arguendo*, that the Executive Committee has such authority (it does not), in making this determination, the Executive Committee failed to abide by the Constitution as well as its own ordinance on enrollment. The Executive Committee cannot presume to assume a power of the Tribe which it never had nor can it use standards that did not exist in 1989. If the Executive Committee assumes it has power to disenroll, its actions exceed its lawful authority as defined under past and currently existing Tribal law.

In somehow finding that Mrs. Brittain was not a full blood Indian, the Executive Committee acted improperly and beyond the scope of its authority. Even if we assume that the current Constitution of the Pala Tribe is valid, the document expressly provides that the General Council, not the Executive Committee, is the main governing body of the Tribe. According to the Constitution:

> ARTICLE III – GENERAL COUNCIL
>
> Section 1 GOVERNING BODY
>
> The governing body of the Pala Band shall be the General Council, which shall consist of all members of the Pala Band who are eighteen years of age and older.
>
> Section 2 POWERS OF THE GENERAL COUNCIL
>
> Subject to any limitations by applicable law, the General Council shall exercise all powers allowed by law and not otherwise restricted by this Constitution, including but not limited to the following powers. . .

Indeed, the express language of the Constitution is consistent with and reinforces Pala's customs and traditions, as well as the Articles of Association. The General Council has any and all governmental powers, not specifically prohibited by the Constitution or by other applicable law. As such, under the Constitution, the General Council's powers are presumed. The General Council has always been the main governing body of Pala.

Further, the role and powers of the Executive Committee are limited. It does not have the authority to reverse the General Council's 1984 determination regarding Ms. Brittain's full blood status. Unlike the General Council, the role of the Executive Committee is limited. The main purpose of the Executive Committee is to execute the directives and wishes of the General Council. Indeed, according to the Constitution:

> Section 11. POWERS AND DUTIES OF THE EXECUTIVE COMMITTEE
>
> The Executive Committee shall have the following powers and duties, but shall not commit the Pala Band to any contract or lease, or other business agreement unless empowered by a duly enacted ordinance or resolution of the General Council:
>
> A. Cause the effectuation of all ordinances, resolutions or other enactments of the General Council. . .

In short, the Executive Committee is bound by the actions of the General Council. To put this in the proper perspective, the Executive Committee not only lacks the authority to undo General Council action taken in 1984, the Executive Committee has a constitutional duty to follow and implement the directives of the General Council from back then. Moreover, the Executive Committee has only those powers granted to it by the Constitution or the enactments of the General Council.

In these circumstances, the General Council, at a duly called meeting, acting in its judicial capacity, passed a resolution on February 22, 1984 finding that Mrs. Brittain was a full blood Indian and ordered corresponding records to be changed to reflect that finding. The minutes of this event reflect full public presentation of the issue before the General Council, discussion, deliberation and vote to recognize the full blood status of Ms. Brittain. It is beyond dispute that the General Council, as the main governing body for the Tribe, had the authority to make such a finding and to pass this resolution in 1984.

Notwithstanding the foregoing, in an ultimate act of hubris, the Executive Committee has presumed it has the authority to disregard the Constitution on which it relies and to defy a powerful directive from the

General Council. As noted above, the Constitution, if valid, has not empowered the Executive Committee to overturn decisions made by the General Council in 1984. Rather, the Executive Committee is duty bound to follow and implement this directive from the General Council. Even assuming there was an ordinance that allowed the Executive Committee to revisit enrollment issues at its whim, the Executive Committee would still be bound by the General Council's 1984 enactment and finding of fact supporting Margarita Brittain's full blood Cupa status as described in the BIA's 1989 Final Decisions.

The Executive Committee forgets about its duty to adhere to Article VII – Savings Clause of the Constitution:

> All enactments of the Tribe adopted before the effective date of this constitution shall continue to be in effect to the extent that they are consistent with this constitution.

In the face of a complete lack of any evidence to disturb the 1984 General Council vote affirming Margarita Brittain's full blood quantum, the Executive Committee egregiously violates the plain meaning of the "saving clause" provision cited above.

E. The Executive Committee Acted Beyond the Scope of its Constitutional Authority by Passing an Enrollment Ordinance that Grants it Powers Beyond Those Granted by the Constitution.

The Constitution provides, at Article II – Membership, limited and specific powers to the Executive Committee to keep the membership roll current:

> Section 2. MEMBERSHIP ROLL
>
> The Executive Committee shall keep the membership roll current annually by striking therefrom the names of persons who have relinquished in writing their membership in the Band and of deceased members upon receipt of a death certificate or other evidence of death, and by adding the names of children born to members who meet the requirements.

There is nothing in this grant of authority that allows the Executive Committee to pass an ordinance empowering itself to remove any person from the rolls due to an alleged misrepresentation or omission. Such power is reserved to the General Council by the Constitution. It is a principle of Constitutional Law that the original intent and plain meaning of the words in the Constitution prevail over subsequent enactments should those enactments run contrary to the Constitution, the "Law of the Land."

It is noteworthy to view the words in Article II – Membership, Section 4, "Loss of Membership", in the Constitution:

> Procedures for disenrollment, if any, will be established in an Ordinance or as part of the Enrollment Ordinance. Such procedures shall provide that the member receives due process and equal protection as required by the Indian Civil Rights Act.

No words in this provision grants to the Executive Committee the unilateral right/authority to initiate disenrollments.

A facial examination of Section 5, "Membership Ordinances", reveals:

> The Executive Committee may from time to time amend and/or replace its existing Enrollment Ordinance governing adoption, loss of membership, disenrollment, and future membership, provided that such ordinances are in compliance with this Constitution.

It is difficult to imagine that a reading of these plain words in Section 5 could lead to a *carte blanche* grant of authority to be placed in the hands of the Executive Committee in light of the tension created by the two other provisions, one exclusionary and one omitting any reference to the Executive Committee, Section 2 and Section 4, respectively.[6] This is specifically the situation where the Savings Clause of the Constitution brings within its sweep the 1984 General Council proclamation affirming Margarita Brittain's full blood Cupa Indian status.

[6] Did tribal members who voted to approve the Constitution intend the Executive Committee to have such dangerous power/authority in their hands to unilaterally determine the standards of tribal membership?

It must be emphasized that the original Enrollment Ordinance was passed by the General Council. Even if the Executive Committee was granted the ability to make recommended changes to amend the original Ordinance, the proposed Ordinance would still have to go back to the General Council for "adoption" so that it could then be "enacted" by the Executive Committee pursuant to Article V., Executive Committee Powers and Duties of the Executive Committee, Sec. 11. H and I, respectively.

Clearly, there is a process for enactment of tribal laws and pursuant to tribal custom and tradition: that process is for the Executive Committee to propose Ordinances to the General Council, especially those that have been previously approved by the General Council, so that the Supreme Governing Body can move for "adoption" to ensure that the Executive Committee may "enact" it's proposed Ordinance.

One historical point supporting Appellants' position on the Executive Committee exceeding its lawful authority in overriding the previously federally-approved Articles of Association and Ordinance No.1 is the fact that Resolution 97-36 notes:

> WHEREAS, on November 22, 1994 the Pala General Council in the General Election of the Tribe voted to revise the Pala Tribal Articles of Association into the Pala Tribe Constitution.

It can be safely argued that the November 22, 1994 General Council vote only approved a change in title and name and nothing else in the underlying Articles changed.

We have never seen any evidence of a ballot vote by the General Council adopting the "new" Enrollment Ordinance No. 1 which allegedly eliminates the original Ordinance under which Appellants were enrolled. Likewise, there is no evidence of a General Council ballot vote authorizing the Executive Committee to enact a wholly new ordinance that is the proximate cause for actions taken on February 1, 2012 against tribal members enrolled before that date.

As previously stated, quite to the contrary, the General Council specifically took action in 1984 in favor of Margarita Brittain and her direct descendants. Which comes first, the chicken or the egg? In this case, the General Council must "adopt" a proposed ordinance for the Executive

Committee to "enact" it since the original Ordinance on Enrollment was without provisions to amend it. So in order to implement the amended constitution, the General Council would have had to act and, based on information and belief, this was not done. Consequently, the BIA still has the right to make final decisions to protect the rights of tribal members approved and certified by the BIA at the highest Agency levels in 1989.

Because the Executive Committee has take an extreme departure from the true meaning and intent of the Constitution and Ordinance governing this matter, it could also be interpreted that pursuant to Powers of the General Council, Article III, Sec. 2 J, "The General council will authorize the Executive Committee to remove members or non-members from the Reservation by taking the appropriate legal or other action of authorizing the Executive Committee to do so." The literal language of this section is to ensure that the General Council oversees extreme actions/measures taken against any member of the Tribe to remove them in anyway. Disenrollment without Due Process is obviously first step toward removing tribal members from everything pertaining to their allotments, customary use of the reservation and benefits offered to tribal members. This especially in light of the glaring fact that Margarita Brittain was an original allottee on the reservation.

Furthermore, even assuming the Executive Committee had this authority, the Constitution specifically states that any Enrollment Ordinance must provide a person Due Process as provided by the Indian Civil Rights Act.[7] As written, the Enrollment Ordinance does not provide any opportunity to submit evidence, respond to allegations, or request a hearing.

F. <u>The Enrollment Committee Violated Its Own Ordinance When It Took Action Against Appellants</u>.

Even if there weren't a host of constitutional issues present, it is also clear that the Executive Committee violated its own Enrollment Ordinance by taking action against Appellants. This argument assumes the validity of the Constitution and subsequent actions taken to enact ordinances. The Enrollment Ordinance states that:

[7] Section VII, Savings Clause, is intended to provide a safeguard against abuses of tribal members' already adjudicated and accrued rights, including the right to maintain their tribal membership from attacks without cause, as here.

> BE IT FURTHER RESOLVED, the Executive Committee of the Pala Band, by adoption of this ordinance, does not intend to alter or change the membership status of individuals who have already been approved and who are currently listed on the membership roll of the Pala Band of Mission Indians, nor does it intend to change the membership status of those persons whose membership applications have previously been disapproved.

Thus, the Ordinance provides that the general role of the Executive Committee is to process enrollment applications moving forward and not to move backwards in history to remove people from the rolls.

Ignoring this general directive in the Enrollment Ordinance, the Executive Committee would make an exception to the rule. The Enrollment Ordinance provides that the Executive Committee can disenroll a person only where such person has misrepresented or omitted information "that might have made him/her ineligible for enrollment." Consequently, the Executive Committee may only change the membership rolls where someone has intentionally misrepresented something in their application or omitted something from their application. This view is supported by statements made in the Elsie Lucero affidavit at Paragraph 12. It is important to note, the Enrollment Ordinance does not state the Executive Committee can remove someone from the rolls because of new information or an alleged mistake of fact. Rather, there must be some kind of intentional act by an applicant to trigger this exception. The Executive Committee does not have such evidence. Otherwise, it would have described those intentional acts by applicants in their letters to the Appellants.

Notwithstanding that, in this case, the General Council in 1984 and the BIA in 1989 already determined that Mrs. Brittain was eligible for enrollment because of her full blood Cupa status - the Executive Committee's claim that it has done a great amount of research on this issue effectively precludes any serious argument that Appellants intentionally mis-represented or omitted anything. *See* Lucero Affidavit, Paragraph 15. If the Executive Committee had to review several rolls and documents to come to its conclusions it cannot be reasonably argued that Appellants understood these issues and intentionally omitted them from the short form applications Pala has traditionally used. In essence, the Executive Committee has not and cannot show how the Appellants misrepresented or omitted anything from their enrollment application.

Interestingly, even accepting the skewed reading of the Enrollment Ordinance the Executive Committee has put forward by taking its baseless actions, the Executive Committee would still have acted outside of the scope of its authority. Section 6 of the Enrollment Ordinance states that should an application be reevaluated because of a misrepresentation or omission such "application shall be reevaluated in accordance with the procedures for processing an original application."

For original applications, the Enrollment Ordinance states that "the Executive Committee shall make a preliminary determination on the application" before sending it to the Bureau of Indian Affairs for "its review and recommendation based upon a review of its records." More importantly, the Enrollment Ordinance states that *"[a]fter a response is received from the Bureau of Indian Affairs* **. . .** the Executive Committee shall approve or disapprove the application for membership." Thus, a final determination can only be made after a response from the BIA has been received by the Enrollment Committee. If the Enrollment Ordinance was validly approved, the Executive Committee acted outside of its lawful authority in its February 1, 2012 disenrollment of Appellants.

In the instant case, there is no evidence that the Executive Committee made a preliminary determination, submitted this determination to the BIA anywhere after June 1, 2011 or received any kind of response regarding a preliminary determination. Assuming, for the sake of arguement, that the Executive Committee had the authority to act (it does not), the Executive Committee members still acted without lawful authority because the Executive Committee did not follow the Enrollment Ordinance (if validly approved) and thus, acted outside its proper legal role.

IV. CONCLUSION

The Regional Director cannot ignore the blatant disregard of a whole range of errors committed by the Executive Committee in these circumstances, including evidence proffered by Appellants at tribal level proving they descend from a full blood Cupa Indian listed on the 1913 Allotment Roll.

No evidence has been offered by the Executive Committee that qualifies as new evidence upon which to reexamine the 1989 BIA Final Decisions that

are the "Bedrock" in this dispute: a dispute built entirely on Robert Smith's false pretenses, hatred toward his own People and greed built on his uncontrolled ability to wield his Tribe's casino fortunes at his personal will.

Further, the Department of Interior is under a legal duty to use federal and tribal law that existed up and until the Mills Final Decision in 1989 and not anything recently enacted by the Executive Committee to place Appellants at a disadvantage. Those 1989 Final Decisions and the fact that Margarita Brittain was on the foundational Pala Allotment Role Approved by the Secretary of the Interior on November 3, 1913 stand as the truth of her full blood Cupa Indian heritage. With a record devoid of any new evidence to disturb the 1989 Final Decisions, this matter must be deemed by the Bureau of Indian Affairs as *res judicata* or, alternatively, moot for all purposes.

On the basis of this appeal, the resulting decision should rescind the action of disenrollment for all Appellants, and order full reinstatement to the aforementioned Appellants as members of the Pala Band of Mission Indians, with all rights and benefits restored without delay. As the Agency with authority of approval for Tribal Constitutions, the BIA should reverse the Agency's error in approving a Constitution without proper ratification from the majority of the tribe, and revert to the Articles of Association under which the Tribe operated prior to the approval of an unratified Constitution, until such time as a General Council vote on ratification can take place.

No Tribe can be allowed to sweep off the table well-reasoned and extensively researched federal agency decision-making rendered in 1989 and believe they are above the law and suffer no liability.

RESPECTFULLY SUBMITTED this 27th day of February, 2012.

LAW OFFICES OF DENNIS G. CHAPPABITTY

By_____

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Certificate of Service

I hereby certify that a true and accurate copy of the foregoing was personally delivered to the Regional Director this 27th day of February, 2012 to the physical address below:

Amy Dutschke (w/Exhibits and Elsie Lucero Affidavit)
Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

I hereby certify that a true and accurate copy of the foregoing was mailed by United States Postal Service First Class Mail this 27th day of February, 2012 to:

Teresa Villa, Secretary (w/o Exhibits and previously filed Elsie Lucero Affidavit)
Pala Band of Mission Indians
PMB 50, 35008 Pala Temecula Road
Pala, CA 92059

By: _____
Linda C. Amelia