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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KAWAIISU TRIBE OF TEJON, and DAVID LAUGHING HORSE ROBINSON, an individual and Chairman, Kawaiisu Tribe of Tejon,

Plaintiffs,

vs.

KEN SALAZAR, in his official capacity as Secretary of the United States Department of the Interior; TEJON RANCH CORPORATION, a Delaware corporation; TEJON MOUNTAIN VILLAGE, LLC, a Delaware company; COUNTY OF KERN, CALIFORNIA; TEJON RANCHCORP, a California corporation, and DOES 2 through 100, inclusive,

Defendants.

Case No.: 1:09-cv-01977 BAM

PLAINTIFFS' THIRD AMENDED COMPLAINT FOR:

(1) UNLAWFUL POSSESSION, etc.

(2) EQUITABLE ENFORCEMENT OF TREATY

(3) VIOLATION OF NAGPRA;

(4) DEPRIVATION OF PROPERTY IN VIOLATION OF THE 5th AMENDMENT;

(5) BREACH OF FIDUCIARY DUTY;

(6) NON-STATUTORY REVIEW; and

(7) DENIAL OF EQUAL PROTECTION IN VIOLATION OF THE 5th AMENDMENT.

DEMAND FOR JURY TRIAL

Plaintiffs KAWAIISU TRIBE OF TEJON and DAVID LAUGHING HORSE ROBINSON allege as follows:

I. INTRODUCTION

1. Plaintiffs bring this lawsuit to vindicate their rights to land and to protect the graves of their ancestors and other cultural items on this land, that the United States guaranteed their right to occupy and use pursuant to the 1849 Treaty with the Utahs and by establishing the Tejon Indian Reservation in 1853. The Plaintiffs also bring this lawsuit to address the United States' failure to include the Kawaiisu Tribe on the list of tribal entities entitled to receive services from the Federal Government and the United States' breach of the duties owed to the Kawaiisu to protect their land, including the human remains of their ancestors and other cultural items on their land.

II. PARTIES

2. Plaintiff THE KAWAIISU TRIBE OF TEJON ("Tribe" or "Kawaiisu") is an Indian Tribe which resides in and around the County of Kern, California and has resided in or around what is today the County of Kern, the State of California since time immemorial as more fully described below. The Tribe is recognized by the State of California and its citizens are located in Kern County, California. The Tribe and its citizens descend from signatories to of the 1849 Treaty with the Utahs and the Utah Tribes of Indians that are recognized by the government of the United States in that Treaty. In addition, the Tribe descends from those Indians for whom the 1853 Tejon/Sebastian Indian Reservation was created. The citizens of the Tribe are not now nor have they ever been "Mission Indians." The Tribe is not currently on the list of "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs" maintained by the Bureau of Indian Affairs pursuant to 25 C.F.R. § 83, *et seq.* However, the Tribe ***is*** a federally recognized tribe by virtue of, *inter alia*, descending from signatories to of the 1849 Treaty with the Utahs and the Utah Tribes of Indians, although the Federal Government has failed to treat it as such.

3. Plaintiff DAVID LAUGHING HORSE ROBINSON ("Robinson"), is an individual residing in Kern County, California and is the duly elected Chairman of THE KAWAIISU TRIBE OF TEJON.

4. Defendant KEN SALAZAR ("Salazar") is the Secretary of the United States Department of the Interior and is named herein in his official capacity. Salazar will also be referred to herein as "Department" or "Interior." Plaintiffs are informed and believe and thereon allege, pursuant to 25 U.S.C. § 2, Interior has been delegated "the management of all Indian affairs and of all matters arising out of Indian relations" on behalf of the United States. Plaintiffs are informed and believe and thereon allege, Interior, through its Bureau of Indian Affairs ("BIA"), is the agency charged with a trust responsibility over the welfare of federally recognized Native Americans.

5. Defendant COUNTY OF KERN, CALIFORNIA ("County"), is the Project Lead Agency for State Clearing House Project #2005101018 called Tejon Mountain Village.

6. Defendant TEJON MOUNTAIN VILLAGE, LLC ("TMV"), is a Delaware limited liability company, with its principal place of business in the County of Kern, California. TMV is a privately held corporation seeking to develop real property in Kern County, CA. Plaintiffs are informed and believe and thereon allege that TMV is in possession of, assert an interest in, or claim a title of record to certain lands in Kern County, California, which are a portion of the reservation, and aboriginal lands of the Tribe, as appears more fully elsewhere in this complaint, adversely to the Tribe.

7. Defendant TEJON RANCH CORPORATION ("TRC"), is a Delaware corporation with its principal place of business in Kern County, California. Plaintiffs are informed and believe and thereon allege that TRC is the parent corporation of TMV. Plaintiffs are informed and believe and thereon allege that TRC is in possession of, assert an interest in, or claim a title of record to certain lands in Kern County, California, which are a portion of the reservation, and aboriginal lands of the Tribe, as appears more fully elsewhere in this complaint, adversely to the Tribe.

8. Defendant TEJON RANCHCORP ("TR"), is a California corporation with its principal place of business in Kern County, California. Plaintiffs are informed and believe and thereon allege that TR is the parent corporation of TRC. Plaintiffs are informed and believe and thereon allege that TR is in possession of, assert an interest in, or claim a title of record to certain lands in Kern County, California, which are a portion of the reservation, and aboriginal lands of the Tribe, as appears more fully elsewhere in this complaint, adversely to the Tribe.

9. Defendants TMV, TRC and TR are collectively referred to herein as the "Tejon Defendants."

10. The true names and capacities, whether individual, partner, associate, corporate or otherwise, of Defendants identified as DOES 2 through 100, inclusive, are unknown to Plaintiffs who therefore sue them by such fictitious names. Plaintiffs are informed and believe and, on that basis, allege that each of the Defendants sued herein as a DOE Defendant was, and is, in some manner legally responsible for the events herein mentioned. Plaintiffs will seek leave of Court to amend this Complaint if, and at such time as their true names and capacities are ascertained.

11. Plaintiffs are informed and believe and, on that basis, allege that at all times herein mentioned, Defendants, and each of them, were the agents, employees, servants, and representatives of each of the remaining Defendants, and in doing or failing to do the acts herein alleged, were acting in the course and scope of their authority as agents, employees, servants and representatives, and acted or failed to act, with the permission, consent and ratification of each of the remaining Defendants.

III. JURISDICTION AND VENUE

12. Venue properly lies in the Eastern District of California because a substantial part of the events which give rise to Plaintiff's claims occurred within the district. The real property at issue, in Kern County, California, also lies within the district. 28 U.S.C. § 1391 (b)(2).

13. Jurisdiction over this action is conferred by 28 U.S.C. §§ 1331, 1337 and 25 U.S.C. § 3013. The amount in controversy exceeds $100,000 exclusive of interest and costs.

14. Plaintiffs claim for relief arises under, *inter alia*, the federal restriction against the extinguishment of title to the land of Indian Tribes or of the right of occupancy of the said Indian Tribes, except by action of the United States, under Article 1, Section 8 of the Constitution of the United States, the Indian Non-Intercourse Act, 25 U.S.C. § 177, and under common law.

IV. BACKGROUND AND FACTS

A. The Kawaiisu Tribe And Its Leadership

15. The Tribe presently consists of a community of approximately 500 enrolled citizens. The citizens of the Tribe are Native American and are all related by blood or adoption. The citizens of the Tribe, except in the case of adoption, all are descendants of the leaders of the Kawaiisu Tribe that signed the Treaty with the Utahs in 1849 or other Kawaiisu who were part of the Tribe in 1849. The citizens of the Tribe, except in the case of adoption, are descendants of the Kawaiisu Tribe that lived on the Sebastian Military Reserve/Tejon Indian Reservation, which was established by Edward F. Beale on behalf of the United States in or about September of 1853. The citizens of the Kawaiisu are also descendants of the tribe of Native American encountered by Father Garces in or about 1776 and discussed in his diary and noted in his diseno maps as: Cobaji, Cobajaef, Cobajais, Covaji, Quabajai, Nochi, Nochis and Noches Colteches.

16. In 2002, the citizenship of the Tribe adopted a Constitution to govern the Tribe. Pursuant to the Constitution, the Tribe is governed by the Kawaiisu Tribal Council made up of five members: Chairman, Vice-chairman, Secretary, Treasurer and Member at Large, all of whom are elected by the popular vote of the citizens of the Tribe. The current Chairman, Plaintiff Robinson, was first elected as Chairman by the citizenship of the Tribe in 2002 and has served in that position ever since, having been reelected most recently by the citizens of the Tribe in 2011. The other four members of the Tribal Council were also elected by the popular vote of the citizens of the Tribe in 2011. The Tribal Council made all decisions for the Tribe except for decisions that they put to the vote of the citizenship, usually through the family representative, the "Elder." The decisions of the Tribal Council are made based on a vote of the majority of its members. Prior to the filing of the Initial Complaint in this action, the Kawaiisu Tribal Council approved Plaintiff Robinson filing this suit on behalf of the Tribe. In 2011, the

Kawaiisu Tribal Council and the citizens of the Tribe, through their family representatives, voted to re-approve Robinson's prosecution of this lawsuit on behalf of the Tribe.

17. Prior to the adoption of the Constitution and election of the Tribal Counsel in 2002, and since time immemorial, the Kawaiisu had been governed non-gender specific, natural yet formal government that is made up of the villages with a Head Person and Council who were chosen by the citizens of each individual village under a formal family Elder basis. They had the authority to settle all disputes within the village and to determine what resources are to be used and by whom. The next is the Head Person over all villages, which is chosen by the Head Person and Council of all the villages. Their responsibility is to settle differences between villages and to lead in any talks (*abiqui*) with the affiliated Tribes who spoke similar languages (i.e. the Confederated Tribes of Utahs), and with other outside Tribes.

18. Plaintiffs are informed and believe and thereon allege, in and before 1847, Acaguate Nochi was the head chief of the Kawaiisu. Plaintiffs are informed and believe and thereon allege, Acaguate Nochi and other leaders of the Kawaiisu signed the Treaty with the Utahs in 1849 as described below. Plaintiffs are informed and believe and thereon allege, Acaguate Nochi remained the head chief of the Kawaiisu until he was killed in 1863 along with more than 30 other Kawaiisu in what is today known as the Kernville Indian Massacre, Whiskey Flats Indian Massacre or the Tillie Creek Crossing Massacre.

19. Plaintiffs are informed and believe and thereon allege, Acaguate Nochi was married to Neva-Vine. Plaintiffs are informed and believe and thereon allege, Acaguate Nochi and Neva-Vine had one child, "Charley." Neva-Vine was also known as Mary Buckskin or Mary Butterbredt. Charley was later known as Charley Butterbredt. Mary's mother Siva-Vine was also married to a Nochi and after he was killed at Tejon Reservation she remarried Thomas Buckskin, but all of her children took the name Butterbredt.

20. Plaintiffs are informed and believe and thereon allege, the first California Legislature passed An Act for the Government and Protection of Indians on April 22, 1850, four months before California became the 31st state in the Union, on September 9, 1850. Plaintiffs are informed and believe and thereon allege, this California law provided for "apprenticing" or

indenturing Kawaiisu Indian children and adults to Whites, and also punished "vagrant" Indians by "hiring" them out to the highest bidder at a public auction if the Indian could not provide sufficient bond or bail. Plaintiffs are informed and believe and thereon allege that it became the custom of certain disreputable persons to steal away young Kawaiisu Indian boys and girls, and carry them off and sell them to white folks for whatever they could get and in order to do this, they would in many cases to kill the parents.

21. Plaintiffs are informed and believe and thereon allege, in April 1850, the California Legislature enacted two laws: An Act concerning Volunteer or Independent Companies, and An Act Concerning the Organization of the Militia. Plaintiffs are informed and believe and thereon allege, Article VII of the first California Constitution gave the Governor the power "to call for the militia, to execute the laws of the State, to suppress insurrections, and repel invasions." Plaintiffs are informed and believe and thereon allege, during the period of 1850 to 1864, the governors of California called out the militia on "Expeditions against the Indians" on a number of occasions and that Volunteer groups also engaged in such expeditions during that period.

22. Plaintiffs are informed and believe and thereon allege, for purposes of signing the 1851 Treaty D on behalf of the Kawaiisu, Acaguate Nochi transferred his authority and designated Francisco Pol-ti as the representative of the Kawaiisu. Plaintiffs are informed and believe and thereon allege, Francisco signed Treaty D in numerous places on behalf of the Kawaiisu, representing the heads of various Kawaiisu villages. Plaintiffs are informed and believe and thereon allege, Francisco was designated by Acaguate Nochi to sign on behalf of the Kawaiisu to hide the true leader because the California Militia and California Volunteers were rounding up Indians as slaves or indentured servants and killing who they thought were the leaders of the tribes. Plaintiffs are informed and believe and thereon allege, Francisco was made chief shortly after Francisco's entire family was killed in New Cuyama by strychnine laced Meat given to them by Alexis Godey.

23. Plaintiffs are informed and believe and thereon allege, Francisco married a Kawaiisu named Pauline Franco. Plaintiffs are informed and believe and thereon allege, Pauline and Francisco had a daughter named Paulina Pol-ti (Apoletea). Plaintiffs are informed and believe and thereon allege, Francisco was elected as the head chief in 1863 following the death of Acaguate Nochi. Plaintiffs are informed and believe and thereon allege, Francisco was elected head chief because Acaguate Nochi's son Charley was too young to become head chief in 1863.

24. Plaintiffs are informed and believe and thereon allege, Neva-Vine aka Mary, the wife of Acaguate Nochi, had a son by the name "Charley." Plaintiffs are informed and believe and thereon allege, Neva-Vine's husband was killed on April 19, 1863 in the Whiskey Flats Indian Massacre. While at the same time Neva-Vine's mother, Siva Vine, and her step-father, Thomas, survived. Plaintiffs are informed and believe and thereon allege, Siva-Vine's first husband, Nochichigue, was also a representative of the Kawaiisu that signed the 1849 Treaty.

25. Plaintiffs are informed and believe and thereon allege, Neva-Vine remarried Fredrick Butterbredt, often misspelled as "Butterbread." Plaintiffs are informed and believe and thereon allege, Fredrick Butterbredt was a German emigrant, who traveled to California sometime before 1860, to become a gold miner. Plaintiffs are informed and believe and thereon allege, Fredrick found Neva-Vine aka Mary huddled with her small child, Charley, near the site of the Whiskey Flats Indian Massacre. Plaintiffs are informed and believe and thereon allege, Francisco was head chief until 1880 when Acaguate Nochi's son, Charley, at that time know as Charley Butterbredt, was elected head chief.

26. Plaintiffs are informed and believe and thereon allege, Fredrick and Mary had ten children who they raised along with Mary's son, Charley. Plaintiffs are informed and believe and thereon allege, one of the ten children was Fred Butterbredt Jr. Plaintiffs are informed and believe and thereon allege, Charley Butterbredt, Indian Roll number 2617, listing him as a Paiute, was elected head chief when he came of age in 1880 and remained the head chief until 1939. Plaintiffs are informed and believe and thereon allege, Fred Butterbredt Jr. was elected head chief in 1939, following his half-brother, Charley Butterbredt, and remained the head chief

until 1943. Plaintiffs are informed and believe and thereon allege, Fred Butterbredt Jr., Indian Roll Number 2612, listed as a Paiute Indian, married Paulina Pol-ti aka Pauline Butterbredt, Indian Roll Number 2613, listed as a Paiute Indian, and they had ten children, one of whom was Stella Butterbredt aka Stella Butterbredt Robinson Metz and one of whom was Fred Butterbredt III, Indian Roll Number 2616, listed as a Paiute Indian. Stella Butterbredt Robinson Metz was elected in 1943 as head chief and served in that position until 1979. Stella had Indian Roll Number 21529, listing her as a Paiute Indian.

27. Stella Butterbredt married Robert Robinson. Stella Butterbredt Robinson Metz and Robert Robinson had a child named Clyde Lee Robinson. Fred Butterbredt III got married and had children, one of whom what Claude Butterbredt, Indian Roll Number 4612, listing him as a Paiute Indian.

28. Clyde Lee Robinson was elected head chief in 1979 and served in that position until 1992. Clyde Lee Robinson had Indian Roll Number 074317, listing him as a Paiute Indian. Clyde Lee Robinson married Rose Marie White and they had children, one of whom was Cathy Robinson aka Cathy Paradise, Indian Roll Number 02981, listing her as a Paiute Indian, and one of whom was Plaintiff David Laughing Horse Robinson, Indian Roll Number 53872, listing him as a Paiute Indian.

29. Cathy Paradise was elected as the head chief in 1992 and served in that position until 1993. She was referred to as the Chairperson of the Tribe. In 1992 the Kawaiisu citizens adopted by-laws.

30. In 1993, the Kawaiisu elected, Claude Butterbredt, Indian Roll Number 4612, and Clyde Lee Robinson as Co-Chairpersons and they served together until 1997. Following Clyde Lee Robinson's death in 1997, Claude Butterbredt continued as the Chair of the Kawaiisu until 2002.

31. In 2002, the citizens of the Kawaiisu adopted a Constitution and elected Plaintiff Robinson as the Chairperson of the Tribe. In 2011, the Kawaiisu citizens re-elected Plaintiff Robinson as the Chairperson of the Tribe.

B. The Kawaiisu Tribe and Culture

32. Plaintiffs are informed and believe and thereon allege, the KAWAIISU TRIBE OF TEJON is one of the ancient Great Basin Shoshone Paiute Tribes whose pre-European territory extended from Utah to the Pacific Ocean. They have inhabited this area from time immemorial. Since time immemorial, the Kawaiisu have been bound together by family, language, territory, trade and ceremonial practices. At various times throughout history, the Kawaiisu People have been called any one or more the following names: Nochi, Cobaji, Cobajais, Covaji, Kahwissah, Kawiasuh, Kawishm, Kowasah, Kubakhye, Newooah, Noches Colteches, Tahichapahanna, Tahichp. A true and correct copy of the relevant pages of Volume 1 of the Handbook of American Indians North of Mexico, Bureau of American Ethnology, Bulletin 30 (1907), is attached hereto as Exhibit 1.

33. Plaintiffs are informed and believe and thereon allege, the name *Kawaiisu* is taken from the linguistic stock of the Yokuts, Native Americans of the San Joaquin Valley to the north of the Kawaiisu.

34. Plaintiffs are informed and believe and thereon allege, documentation of the Tribe's presence in this area dates back to the Spanish colonial period and the first mention of the Kawaiisu is found in the 1776 diary of Francisco Garces. At the time, his party was crossing the Tehachapis and encountered Kawaiisu women and children. A true and correct copy of the relevant pages from A Record of Travels in Arizona and California, 1775 + 1776, Fr. Francisco Garces, ed. John Galvin (1967), is attached hereto as Exhibit 2.

35. Plaintiffs are informed and believe and thereon allege, documentation of the Tribe's presence in this area is recorded in Father Garces' Diseno Map of 1777, a true and correct copy of which is attached hereto as Exhibit 3. The maps note the presence of the Tribe using several of its designations including: Cobaji, Cobajais, Cobajaef, Covaji, Quabajai, Noches Colteches, Nochi, and Nochis.

36. The Kawaiisu have a creation story that explains their origins in southeastern California. The Kawaiisu lack migration stories of their origins which, Plaintiffs are informed and believe, most Native American tribes have. Plaintiffs are informed and believe, that the

Kawaiisu lack of a migration story indicates they have lived there since time immemorial.

37. The Kawaiisu's Creation story is as follows:

a. In the beginning there was Creator (*Pogmatog*) and Grandmother Moon (*Hibichi Muaz*). These women (*momo-o*) were the biggest talkers (*abiqui*) and would talk for many, many years without stopping. They always had a lot to say for all things came from their talks. They loved each other so much that there has been no greater love that has ever existed.

b. During one of these talks Grandmother Moon was becoming very distressed about how they would talk about so many things but nothing was ever put to the test. "Can these things that they talk about become real?" she asked the Creator. The Creator asked back, "Of course all things we talk about are real, what do you mean?" Grandmother Moon responds and suggests to the Creator that there is nothing to look at, so that we can expand our talks about why things are as they are. "What do you suggest Grandmother Moon?" asked the Creator. Grandmother Moon says we need something to look at right in front of us, something big, bright and beautiful. We need something like a big bright star that is warm to the touch and cool to the eye. We will call her Mother Earth (*Momo-o Tibi*). "You would do this for me Creator?" asked Grandmother Moon. With no response the Creator reached out her arms and scooped up thousands of stars in a single movement and brought them all together into one star and called her Mother Earth. Grandmother Moon was amazed and said, "Exactly (*yuk-a-suk-a-vi*) what I was thinking it should look like" and this made the Creator very happy that her friend Grandmother Moon was pleased.

c. They discussed about and admired Mother Earth for many years. As they talked they became curious about what Mother Earth was thinking, but Mother Earth could not talk. If she could talk what would she say? Would she say she was lonely because she had nobody to talk to or would she say that she could not see what she was missing? Even worse, would she have wishes of her own that she could not explain? This whole thing about Mother Earth set Grandmother Moon to thinking. She thought and

thought for a long, long time until all at once she jumped up with a crazy (*keenon*) joy and said she needs her own friends to talk to. "What do you mean by that?" said the Creator. Grandmother Moon proceeds to explain it all to the Creator and as she does the Creator looks out at Mother Earth with a great enthusiasm and cups her hands together and then opens them and all of Grandmother Moon's ideas are revealed. The Creator blows very gently upon these ideas into the direction of Mother Earth to where they rest and come alive. There are too many to speak of but they include: mountains (*kee-vi*), oceans (*dari-di po?o*), rivers (*?awa-ti po?o*), springs (*po?o*), trees (*sii-ga-di*), coyotes (*sina?a-vi*), deer (*tihiya*), bears (*Pogwiti*), bugs (*hayi?mika-zi*), and so on. Grandmother Moon as before was amazed and said, "Exactly (*yuk-a-suk-a-vi*) what I was thinking it should be like," and also as before, this made the Creator very happy that her friend Grandmother Moon was pleased.

d. Then something wonderful happened as nothing ever before. Mother Earth started to glow a happy glow and then she began to rotate as if she was looking at herself for the first time. This made The Creator and Grandmother Moon excited and they jumped up and down with joy. Grandmother Moon quickly said she wanted to see something that would be a protector of all items and an entity that Mother Earth could talk to. So the Creator laid her kind and loving hands upon Mother Earth in a place she called Mu (*Koso*). When she lifted her hands a people appeared and the Creator called them the people of Mu. The Creator loved this so much that she commanded that the Mu women shall bleed every full moon in honor of Grandmother Moon's idea for their creation. Then she gave the Mu a law to live by forever and ever and commanded: "The Mu are to never exclude and to always include, except one can exclude themselves." This is how the Kawaiisu understand that they came to this land on Mother Earth.

38. Plaintiffs are informed and believe and thereon allege, the Denial Ceremony was the beginning of how the Kawaiisu started to organize themselves as a Tribal nation. The Denial Ceremony was where the leaders of the Kawaiisu would send out one girl and one boy at about the age of 16 into the unknown surrounding areas. The process of this was to send them out for

one year and they were denied the right to be seen by any other person of the main Kawaiisu village for a year. They were to take nothing with them, which forced them to survive on their own. In some instances they would not come back and they were called the Lost Ones. When others were sent out on the Denial Ceremony and would find the Lost Ones, they would come back to the main Kawaiisu village after their year was over and there would be a big good time. They would tell of all their experiences and of the Lost Ones they came across. They would go to visit the Lost Ones and sometimes stay and form a new village. This is how the Kawaiisu populated Mother Earth with all of their villages.

39. The Kawaiisu formed a non-gender specific, natural, yet formal, government that is made up of the villages with a head person and council who were chosen by the citizens of each individual village on a formal family elder basis. In other words, all of the citizens of a family are represented by a person recognized as the "elder" of the family who speaks and takes action on behalf of the family as a whole. The head person and the council have the authority to and would settle all disputes within the village, determine what resources are to be used and by whom, determine when celebrations and other gatherings are to occur, decide when to hunt and who will participate, decide when and whom are to take part in ceremonies, such as the Denial Ceremony or other rites of passage of Kawaiisu boys and girls. The next level up is the head person, or chief, over all villages, who is chosen by the head person and council of all the villages. Their responsibility is to settle differences between villages and to lead in any talks (*abiqui*) with the affiliated Tribes, who spoke similar languages, that formed the Confederated Tribes of Utahs, as well as with other outside tribes. Although it has evolved over time, from time immemorial to this day, the Kawaiisu have maintained a form of this government, with a council and head person elected by the elders who represent their entire family.

40. Plaintiffs are informed and believe and thereon allege, the Kawaiisu were created by *Pogmatog* on the land and territories they now live upon under the law of the people given to the Kawaiisu by *Pogmatog*. Plaintiffs are informed and believe and thereon allege, *Pogmatog* said the Kawaiisu will know only one law and we shall obey it at all times or they will be sent away without anything. This Law is: The Kawaiisu can only include, they can never exclude,

except to exclude yourself. This is the Kawaiisu Law and it is extensive for all to follow. If there is a person that is not welcome to the house of a Kawaiisu then you are guilty and shall be sent away by the Tribe's leadership. If there is a ceremony that you exclude someone from attending then you are guilty and you shall be sent away by the Tribe's leadership. If you violate another without their permission then you are guilty and you will be sent away by the Tribe's leadership. If you are chosen to lead the Tribe or a tribal village then you must participate or you will be guilty and must leave and never be seen again. If you exclude yourself from participating in the Tribe then you must leave and go away, but can ask to come back and participate. This is the Law and all Kawaiisu live by the law. The leadership of the Tribe has enforced the Law since time immemorial and continues to do so to this day.

41. The Kawaiisu have a unique language, which they have spoken since time immemorial, although they now also speak English. The citizens of the Tribe continue to speak the Kawaiisu language and have taught the language to their children as the Tribe has done since time immemorial. One of the ways that the Kawaiisu has kept their language alive is through a game they play that challenges the participants to catch mistakes in the pronunciation of Kawaiisu words.

42. The Kawaiisu have a traditional Native American form of "religion," which they have had since time immemorial. It is different from Judeo-Christian religions in that the Kawaiisu's religion is a sense of being and spirituality, believing that all living and non-living things are interconnected, that is inextricably intertwined with every aspect their everyday lives. Religion for the Kawaiisu is central to everything about living and dying, their beliefs and practices form a integral and seamless part of their very being. The Kawaiisu's way of life is so integrally tied to their religion that it cannot be separated. The Kawaiisu believe that the earth is their mother and she cradles the Kawaiisu, their graves and ancestors. The Kawaiisu understand themselves, their ancestors, the graves of their ancestors and their religion to be one and the same. The Kawaiisu's religion is closely connected to the land in which they dwell and the supernatural. The Kawaiisu religious practices mostly address the following areas of supernatural concern: an omnipresent, invisible universal force, pertaining to the birth, puberty, and death,

spirits, visions, the shaman and communal ceremony. The Kawaiisu believe that there is no separation between the spiritual and physical (or material) world, and souls or spirits exist, not only in humans, but also in all other animals, plants, rocks, natural phenomena such as thunder, geographic features such as mountains or rivers, or other entities of the natural environment. The Kawaiisu religion has a emphasis on personal spirituality and its inter-connectivity with one's own daily life and a deep connection between the natural and spiritual worlds. The Kawaiisu religion is experiential and personal and not institutionalized. The Kawaiisu religion are better explained as more of a process or journey than a religion. It is a relationship experienced between Creator and created. For the Kawaiisu, religion is never separated from one's daily life, unlike Western cultures where religion is experienced privately and gradually integrated into one's public life. For the Kawaiisu to live and breathe is to worship. For the Kawaiisu, a relationship with the Creator is experienced as a relationship with all of creation which is ever present and does not require an institution or building. All of creation has life. Rocks, trees, mountains, and everything that is visible lives and is part of creation and therefore has life which must be respected. Spirituality of the Kawaiisu makes no distinction between these realms; the unborn, living and dead, visible and invisible, past and present, and heaven and earth. The Kawaiisu do not see their spiritual beliefs and practices as a "religion," in the Western sense, but rather see their whole culture and social structure as infused with spirituality, an integral part of their lives and culture.

43. Plaintiffs are informed and believe and thereon allege, from time immemorial until in or about 1853, the Kawaiisu lived in permanent winter villages of approximately 60 to 100 people. Plaintiffs are informed and believe and thereon allege, during the summer months the young and elderly would stay in the villages and the more able bodied adults would divided into smaller groups to hunt animals and harvest native plants, for food and raw materials, during which time they tended to live in temporary camps. Plaintiffs are informed and believe and thereon allege, each Kawaiisu village kept calendars as a means to maintain history and events such as: weather cycles, celestial cycles, planting cycles, climate changes, mental stability, generations, earthquake cycles and seasonal harvesting. The Calendar Keepers were picked at

birth and they were taught all the things that the calendar is used for and how to read it, which is a very honored and respected position. Beginning in 1853, the Kawaiisu moved from their villages to the Tejon reservation.

44. From time immemorial until the present day, the Kawaiisu have had their own form of marriage and marriage ceremony. For the Kawaiisu, a marriage begins when a woman and man have sexual intercourse. Then the couple has a gathering of all of the Tribe that can come and the couple provides everything (food, water, smudges, gift baskets and wood for the fires, etc.). After everyone is full, the songs and dance of the families begin, the man's side is on the south and the woman's side is on the north and then they dance and sing as the sides move to the center until both sides are indistinguishable and then the man and the women is accepted by Tribe as a couple. A divorce begins the same way, when a couple has intercourse outside the first marriage, then that marriage begins and the couple has the Tribe come to a gathering and they provide everything for the citizens of the Tribe who gather, so that the couple is acknowledged as a couple by the Tribal community, like the first marriage.

45. The birth of a Kawaiisu child is a happy occasion and is a time for the Tribe to gather and to have a celebration, which they do to this day. Kawaiisu children are "owned" by belong to the community and they are not considered human or adults until they reach the age of five years old, so all Kawaiisu boys are all called *Du-ci* and Kawaiisu girls are called *Naa-ci* until they reach five years of age, this has been the Kawaiisu tradition since time immemorial. At this point, they are considered to be adults and can make their own way, but are not yet considered to be equals to Kawaiisu adults, but they are entered into the rituals and ceremony stage of their rites of passage, this has been the Kawaiisu tradition since time immemorial. These men and women, Kawaiisu boys and girls over the age of 5, are treated as equals in this respect because the Kawaiisu are a matriarchal nation. Their first name is considered minor and is given by the Elders that will be overseeing this part of their rites of passage which consist of a series of ceremonies, which includes the Ant Ceremony, the Denial Ceremony, the Sun Rising Ceremony, the Moon Cycle Ceremony and the Datura Ceremony. The Ant Ceremony is when an Ant that only exists on the mountain now called Butterbredt Mountain, is wrapped in *Pigi-vi*

bread and then swallowed. An Elder sits with person while they are in the sleep that it causes that lasts for three days. This first ceremony is done so that the person can make a friend in the Spirit world (*inni*), which is required for the subsequent ceremonies. The Denial Ceremony is when they are sent off as one man and one woman together for as long as a year and nobody is to see them until their journey is over. The Tribe then has a celebration for them on their return. In the Sun Rise Ceremony, the Kawaiisu going through their rites of passage must wake up before anyone and have all the fires going and food ready for everyone and they must do this every day until all of the other ceremonies are complete. The Moon Cycle Ceremony requires the Kawaiisu to learn the movements of the moon and the stars, and ceremony lasts for 10 years. The last ceremony in the series is the Datura Ceremony and it is the most difficult. For this ceremony, the root of the female datura is cut into small discs and boiled in about 5 quarts of water to make a tea. This tea is bitter and the body wants to reject it. The Elders accompany the Kawaiisu person going through the ceremony and hold the nose of the participant until they drink down all the tea, then the participant throws it up. The tea puts the person to sleep for about half a day and when they wake up they are in a dream state where they can see everything and nothing can see them. This lasts about two weeks and when done they will have special powers that are different than anyone else's. For instance, one power the person might receive is that they can see through mountains or that someone else cannot see their shadow. At this point a name is given to the person that matches their personality. A new name is given to the man when they marry a woman by taking their wife's name.

46. The Death or Burial Ceremony, which has been practiced since time immemorial, is one of the Kawaiisu's most powerful events and it is done right after the death of a Kawaiisu. When a Kawaiisu dies everything must stop and nobody in the immediate family can eat for two days and they cannot meat until the next solstice. After three days, the Kawaiisu verify that the person is dead. From time immemorial until about the 1500s, the Kawaiisu wrapped the body of their dead in a tule mat and buried the body with their head to the east and face up and then heaped over with rocks to keep animals from digging them up. From 1500s to about the 1600s, during the time of death, the bodies were either thrown into caverns or caves or cremated due to

the high death rate. The Kawaiisu custom today is cremation after three days to verify that the person is dead. The Kawaiisu perform certain rituals when a Kawaiisu member dies, including singing the person's death song, and this has been the case since time immemorial. All personal items are interred with the corpse. In addition, members of the family engage in mourning rituals and leave their faces unwashed for at least two weeks after the death and no meat can be eaten until the following solstice. A spouse will cut their hair during the mourning ceremony.

47. From time immemorial until the present date, the leadership of the Kawaiisu will call the citizens of the Tribe to a mourning ceremony, usually commemorating the death of several persons, during which the Kawaiisu citizens perform their traditional dances and songs. The ceremony is ended with a feast that marks the termination of the mourning period. From time immemorial until the present day, the name of the recent dead is not mentioned, but a word derived from the word spirit (*inipi*) is substituted. From time immemorial until the present day, burial places are avoided except for mourning ceremonies. From time immemorial until the present day, the Kawaiisu believe that the deceased's spirit might seek to linger around familiar places because someone has kept one or more of their personal items and will come back if one or more of those items are taken from the grave. The Kawaiisu believe that the trail to the spirit world is westward across the ocean.

48. These Kawaiisu have other ceremonies that they have engaged in regularly and continuously since time immemorial. The Summer Solstice ceremony is done by three groups of Kawaiisu in three places: one group at Coso, one group at Kelso Valley, and one group at Cane Break. The Summer Solstice is a scientific ceremony where the measurement of the sun's cycle is recorded for time and natural deviations. This is a three day ceremony that is done completely out of direct contact with the sun. The Winter Solstice ceremony is the same as for the Summer Solstice except that it is done with four groups in four different places: one group at Rosemond, one group at Coso Horse Canyon, one group at San Emidgio, one group at Jawbone Canyon. The Equinox ceremony is done in conjunction with the lunar Calendars. These Calendars are kept as to measure the speed and angle of the earth's rotation and distance from the moon. Also to keep time for the period of time between when different events happen, the Venus cycle is

used for every 40 years of time. These forms of writing have been taught to every Kawaiisu generation as the writing of English is taught in the schools today. One thing that has stopped in the last 50 years or so is the Kawaiisu's taking this information to the place south of Mexico City, called Chia-pa.

49. There Kawaiisu also have other ceremonies that they practice today and have done so for many years, in some cases since time immemorial. The Ant Ceremony is a very important ceremony for the Kawaiisu that is not just used for the rites of passage but also for ones that are long distances away. For this version of the ceremony, the ants are gathered and kept alive and either carried with ones on a long journey or mailed to ones far away. The ants are wrapped in *Pigi-vi* bread and are ingested. The Kawaiisu that is far away can then come and tell the other citizens of the Tribe what is happening along their journey or in the far away place. The ceremony is also used to communicate with the Kawaiisu's ancestors and their old acquaintances such as the ones in Utah and Chia-pa. In or about 1870, the Kawaiisu Elders created a new Ceremony as an alternative to the Ant Ceremony that could be done without the Ant being used; it is called the Ghost Dance. The Ghost Dance (*Muguwaa-ti*) as it is known as today, lasts for three days dancing and singing without repeating the same song until all the dancers pass out from exhaustion and they usually wakeup in two days. The Pinyon (*Tuba-ti*) Ceremony is done and has been done since time immemorial in the stands of where the Kawaiisu gather pinyons. Before it became illegal, it centered on the Kawaiisu setting fires in the fall, just before going to the lower elevations for the winter. Once the practice became banned by law and from then until today, the Kawaiisu sing their Pinyon songs in these locations to ask for forgiveness from the Creator for not setting the fires. From time immemorial until the present day, the Kawaiisu practice the Woman's (*Momo-o Mua-zi*) Ceremony. The ceremony is held when the Kawaiisu women bleeds on the full Moon, then all things must stop and she is honored for giving to our creation, by honoring Grandmother Moon. The Kawaiisu also have a ceremony that is done when a coyote crosses your path in the daytime, which they have been doing since time immemorial. The Kawaiisu believe that if they don't do this ceremony they will see death within a day's time. The Coyote (Sino-vi) Ceremony consists of getting all

available Tribal people together as soon as possible, but they cannot cross the path of the coyote to do so. Then, a sage smudge is lit and the smoke must pass through all that are there. Then the turtle, the Mountain Sheep, the Horse, and the Lizard are called to make an appearance and until they do the Kawaiisu participating in the ceremony have to stay where you are. When they appear, the participants ask them to remove all the bad *inni* (spirits) that are there so that the participants can be safe. When this is done another smudge is lit and the smoke of the Ancestors has spoken and all things are back to normal.

50. The Round House is the Kawaiisu's house of worship for some ceremonies. It is as small or as big as needed. A small one would be about fifteen feet in diameter and a big one is about 100 feet in diameter. There is a fire built in the middle and the smoke goes out an opening in the center of the roof. In the Round House, the Kawaiisu are divided into groups. The dancers dance counter clockwise around the fire while the singers are the participants. An earth drum, flutes, sword fish sticks, rattles, clap sticks and many other traditional instruments are played. Some of the ceremonies practiced in the Round House are the Bear Dance, the Sun Dance, and Spring Dance. These are celebration and gathering events that make up the everyday life of the Kawaiisu.

51. In addition to some of the ceremonies discussed above, the Kawaiisu also have many rituals and customs that are done by the Kawaiisu throughout their daily life and have been done since time immemorial. These rituals include when the Kawaiisu gather medicine or food, they always leave some of them, such as beads or an arrow. These rituals serve as a protective measure or to insure the success of a venture and are an integral element in ceremonies and celebrations. It is also used as an offering to the plant, animal or rock gatherings, because the Kawaiisu believe that one can't take without giving something back. Kawaiisu great each other by saying: "*Pogmatog Magot*" (Creator Knows), which means we should not talk about ourselves because the Creator already knows our lives and what we are going through. When the Kawaiisu meet with other Nations they say "Ho," or "Mu" depending on who they are which means that the Kawaiisu are in a peaceful way. The Kawaiisu also have many tribal gatherings to collect medicines, foods and other things when they come in season, such as chia, mushrooms,

pinyons, Joshua tree, juniper berries, manzanita berries, deer hunting, onions, garlic, potatoes, etc. and there are songs for each specific plant and animal that the Kawaiisu sing.

52. The world of the supernatural is very real to the Kawaiisu and has been since time immemorial. The best known and most commonly experienced supernatural event is the *inipi* (spirit). Every human being and every animal has its own spirit (*inipi*), which is identifiable and indestructible. The spirit can wander off when one is asleep and continues to exist when one is dead. When a person is doomed to die, his spirit may act as though they are already dead and thus betray their forthcoming demise to avoid death and remain with the living. A spirit is visible on occasion but is not easily recognized to whom it belongs and sometimes requires a trained eye. It may mingle with people as an ordinary human being but is apt to reveal itself by superhuman behavior such as suddenly flying off or by being impervious to bullets. As a ghost, it might return to old haunts and, in one way or another, attack those who mistreated it in life, or it may be playful and mischievous. Sometimes an *inipi* (spirit) carries out the evil designs of another who controlled it or mistreated it. When heard approaching at night, it can be frightened off by the blowing of tobacco powder, ashes, the smoke of dried wild celery root or of the blue sage, but usually by saying your own name aloud.

53. The Kawaiisu believe that dreams are as a source of information, as conveying power or as bearing messages. Despite the dangers inherent in them, the Kawaiisu seek dreams in the hope that the revelation might be of benefit to the dreamer and for their community. Various rituals, including the eating of the tobacco lime mixture and taking a quest for visions in the mountains at night resulted in “dreams” that the Kawaiisu believe are to be taken literally and might call for direct and immediate action.

54. The Kawaiisu Elders have an extensive knowledge of religion, oral history and stories that are and have been passed down from generation to generation since time immemorial. The time setting for Kawaiisu stories is usually the old days or the future and the characters almost invariably consist of animals who usually speak Kawaiisu. Occasionally a man or woman appears in the tale, but the central character is usually Coyote, a trickster who is both cunning and foolish, and who regularly manages to end up being exposed as trouble. Many

of the plots are repetitive: Coyote sees someone doing something; he boasts that he can do it too; he tries, fails and dies.

55. From time immemorial until in or about the early 1980s, the Kawaiisu exchanged commodities with other tribes. The Tribe traded intellectual knowledge, medicine, obsidian, salt, bows, beads, steatite pipes, steatite bowls, baskets and food items with the Southern Valley Mariposans, the Yolumni, the Sonorans, and tribes as far south as the Aztec. From time immemorial until in or about the early 1900s, the Kawaiisu also engaged in intertribal game drives with the Shoshone. Plaintiffs are informed and believe and thereon allege, once a year in or about July the Kawaiisu would join the Yosemite Tribes, for an antelope drive in territories north of Bakersfield.

56. An ethnobotanical survey prepared by Zigmond in 1981 lists 233 plant species to which utility was attributed to the Kawaiisu. Of these, 112 provide food and beverage, 94 medicine, 87 miscellaneous products and services, while 27 had supernatural and mythological connotations. The Kawaiisu regard many plants as therapeutic and an expert in their utilization is called a *matasuk^{w}igadi* (one who has medicine). The Kawaiisu believe that in the beginning of time four primary medicines were given to man: jimsonweed, tobacco, nettle, and red ants. The Kawaiisu still use their knowledge of plants and traditional medical procedures.

57. From time immemorial to present the Kawaiisu are and have been pinyon eaters of four different species of Pinyons that are gathered in four different geographical areas, Piute Mountain, Chimney Peak, Los Padres and Scodie Mountain. The following 20 floral genera, comprising at least 36 species, are among the important sources of vegetal foods for the Kawaiisu, from time immemorial until present: watercress, creosote, fiddleneck, manzanita, mariposa, sand cress, tickseed, tansy mustard, juniper, peppergrass, wild celery and wild parsley, box thorn, melie grass, stickweed, ricegrass, Indian carrot, pine and pinyon, oak, chia, prince's plume, speargrass, onions, garlic, wild potatoes, wild rhubarb, willow, tule shoots, wild rice, yerba mansa, yucca and Joshua tree. From time immemorial to present, deer meat is and has been the favorite animal food of the Kawaiisu, but a large number of faunal species inc1uding large and small game, rabbits, quail, pheasant, turkey, mountain lion, black bear, rodents, and

insects are eaten. Some, like the chuckwalla and tortoise, can be obtained only in the desert. From time immemorial until the present day, Kawaiisu do not eat skunk, grizzly bear, buzzard, bat, roadrunner, eagle, cottontail rabbit, coyote or crow.

58. From time immemorial through the present day, animals and birds are hunted by the Kawaiisu with the bow and arrow, slingshot and atalatl. After the first kill a ceremony is performed with the use of wild chrysanthemum and a "brotherhood" is established between man and animal if sand from the tracks of the latter were mixed in the food of the former. The person whose arrow brings the animal down is allotted the hide and blood of the animal, all of the meat is evenly apportioned among the others who participated in the hunt.

59. From time immemorial until in or about the early 1920s, the Kawaiisu would build and live in their traditional forms of housing. The winter house (*tomokahni*) is built partially underground, with a circular base in the form of a turtle shell with a smoke hole to the south and the entry door to the north. The framework is made of bent willow wrapped with panels that sandwich thickly packed rabbit-brush in such a fashion that form shingles. Then another set of panels are made thickly packed with tule and wrapped around the previous panels in the same fashion which makes the house waterproof. The interlining of cedar bark and tule reed mats are made to cover the floor as a mattress, and sometimes the tule mats serve as a door. The occupants slept with their feet to the west so that if they die in their sleep they can find their way to the ancestors. In the summer the women worked in an open, flat-roofed shade house (*havakahni*). A sweathouse (*tivikahni*) located near water, was covered with adobe. Circular brush enclosures served as windbreaks for temporary encampments and particularly large ones as celebration areas for festive occasions. Small granaries, built two feet or more above the ground, were used to store acorns, nuts, and seeds. Beginning in or about the 1920's, the Kawaiisu modernized and began living in more modern lodging, such as houses made of lumber, although many Kawaiisu remain very impoverished, without running water or electricity. The Kawaiisu still build traditional gathering lodges and camping lodges to this day. Other traditional structures are constructed during gatherings and celebrations to pass the knowledge of building these traditional structures to the younger generations.

60. From time immemorial until the present date, the Kawaiisu women and men engage in the art of basketry. Baskets made by Kawaiisu men are cone shaped gathering baskets and fishing baskets made of willow. Baskets made by Kawaiisu women baskets are more intricate and combine many plant materials like: Joshua tree root, devils claw, split willow, red bud and feathers. The women's baskets employ two basic weaves, twined and coiled, but developed a unique variant of the coiled basket for which nothing similar is found in the world. In the distinctive Kawaiisu coiled basket, designated by the word *wiikadi* (wrapped around), the normal coil basket has over 1000 stitches per square inch and is water tight. The method used in Kawaiisu women's baskets involves coiling where stitches are interrupted by occasionally wrapping the coils around the foundation without anchoring them to the previous row. From time immemorial until present, basketry has been and is a necessity as it is the main method of carrying and storing food, water and resources and family history. In more modern time, the Kawaiisu women make baskets during tribal gatherings and to sell while teaching Kawaiisu kids the art of basketry to pass the Tribe's knowledge and culture to the younger generations.

61. From time immemorial until the present day, the Kawaiisu make clothing out of the hides and skins of animals. Since time immemorial until the present day, before the tanning of skins begins one must decide to keep the hair or to slip it which requires two different beginning processes. For instance, to keep the hair you must salt the hide on the flesh side and fold it flesh to flesh and roll it with the open end downhill for two days. To slip the hair, salt and ashes must be applied to the hair side overnight and then scraped. Then the tanning involves the soaking of rawhide in a solution of lime or ashes and once the hide has the same color all the way thru it is removed and washed thoroughly and worked over a post until it is dry. Deer brains are rubbed into the flesh side of the hide to guarantee its softness and to waterproof it. This traditional method of making clothing was how the Kawaiisu made all of their clothing until in or about 1890. Since then, the Kawaiisu elders teach Kawaiisu kids the art of tanning and making clothing to pass the Tribe's knowledge and culture to the younger generations.

62. From time immemorial until the present day, many of the Kawaiisu grow and use tobacco. From time immemorial until the present day, the Kawaiisu prune the tobacco plant three times before its mature leaves are plucked. The leaves are then dried, pounded and cured with lime for chewing tobacco or uprooted and hung upside down in the shade for smoking tobacco. Since time immemorial, both men and women smoke and chew. Pipes are made out of steatite, which is found in local deposits. In more modern times, the pipe has given way to cigarettes.

63. From time immemorial until the present day, Kawaiisu men and women use, chew and sometimes eat a tobacco and lime mixture, which the Kawaiisu believe has medicinal and magical implications. Taken internally, it tends to cause vomiting and to induce a state of drowsiness or sleep to allow the user to have visions or dreams, as it does today. Applied externally, the mixture is used to relieve pain, stopped bleeding and itching. From time immemorial until the present day, the Kawaiisu also blow the mixture into the air or put it on a stone and toss it into the night to drive away bothersome supernatural beings or spirits. The Kawaiisu also use the mixture as an effective cure for asthma and also for deworming.

C. First Contact With The Kawaiisu

64. Plaintiffs are informed and believe and thereon allege, in or about 1774, the Tribe first had contact with the Spanish when a man named Pedro Fages came to the Kawaiisu territory. Plaintiffs are informed and believe and thereon allege, Pedro Fages stayed with the Tribe for a while and in his diary he explained the Kawaiisu system of government to be like this: One headman is over all of the villages and separate headmen are over each village forming a uniform government or council.

65. Plaintiffs are informed and believe and thereon allege, in or about 1776 to 1777 Father Francisco Garces and Father Pedro Font came to visit the Kawaiisu. Plaintiffs are informed and believe and thereon allege, Garces and Font made peace with the leaders of the Kawaiisu, the Nochi, and asked the Tribe to not attack their people when they pass through the Tribe's territory and Garces and Font promised that their people would not attack the Tribe's people when they came through the Tribe's territory. Plaintiffs are informed and believe and

thereon allege, the Tribe helped Garces and Font get across the Kern River (as they called it: Rio San Felipe, and as the Kawaiisu called it: *Paa Muuaz Kweanaaka*. Plaintiffs are informed and believe and thereon allege, Garces and Font each made maps of the Kawaiisu Territory that they knew about in 1777. A map showing what Plaintiffs are informed and believe was the Kawaiisu Villages in or about 1777 that formed the outside edge of their territory, is attached hereto as Exhibit 4.

66. Plaintiffs are informed and believe and thereon allege, following contact with the Spanish, the Kawaiisu began to condense their territory. Plaintiffs are informed and believe and thereon allege, in or about 1847, the Kawaiisu Tribe lived and their territory consisted of the following: Forks of the Kern then west across the San Joaquin Valley to the Cuyama Valley, then east to the Tejon Pass and across the Antelope Valley and the Mojave Desert to the west side of Death Valley back west across Panamint Valley and Coso to Walker Pass across Lake Isabella Valley back to the Forks of the Kern. This area includes Tehachapi Valley, Kelso Valley, Southern Sierra Nevada Mountains, Panamint Mountains and all the land known today as the Tejon Ranch.

67. Plaintiffs are informed and believe and thereon allege, in or about 1847 a man named Darwin French came to the Tribe and met with its leaders near the Tejon pass. Plaintiffs are informed and believe and thereon allege, French told the Nochi that he wanted to live in that location and the Nochi agreed to allow him to do so. Plaintiffs are informed and believe and thereon allege, this was the first time any outsider came and lived in one of the Tribe's villages. Plaintiffs are informed and believe and thereon allege, the Tribe liked French because he was honest. Plaintiffs are informed and believe and thereon allege, French built an adobe house and stayed until in or about 1851 and then moved on. Plaintiffs are informed and believe and thereon allege, French appears on the 1850 census as living on Tejon in his house and was the owner. Plaintiffs are informed and believe and thereon allege, French was a doctor and a poet that had many great stories to tell and talked about how he fought at San Pasqual. Plaintiffs are informed and believe and thereon allege, French warned the Tribe about the Americans that were coming and said to be very careful and to trust them.

D. The Kawaiisu Tribe Documented

68. Plaintiffs are informed and believe and thereon allege, the United States identified the Kawaiisu, as a Tribe, in the 59th Congress. Plaintiffs are informed and believe and thereon allege, in 1873, the Smithsonian Institution, Bureau of American Ethnology, identified a host of errors in identifying the aborigines within US territories, and sought to create a publication for scientific students. Plaintiffs are informed and believe and thereon allege, early work by James Mooney, compiled a "list of tribes, with their synonymy, classified chiefly on a geographic basis."

69. Plaintiffs are informed and believe and thereon allege, in 1879 the Bureau of American Ethnology was organized with Henry W. Henshaw tasked to record a tribal synonymy. Plaintiffs are informed and believe and thereon allege, Mr. Henshaw narrowed the scientific study to "a linguistic classification of the Indian tribes, a work long contemplated by Major J. W. Powell."

70. Plaintiffs are informed and believe and thereon allege, by 1885 all known tribes had been grouped by linguistic stock and in 1893, when Mr. Henshaw became ill, the work was relinquished to Frederick Webb Hodge.

71. Plaintiffs are informed and believe and thereon allege, in 1902, Mr. Hodge was directed to edit the final work that is now known as: Handbook of American Indians North of Mexico, Bureau of American Ethnology, Bulletin 30 (1907). Plaintiffs are informed and believe and thereon allege, the Handbook was entered into the record of the 59th Congress. See Ex. 1, p. 2; *See* 59th Congress, 1st Session, House of Representatives Doc. No. 926. In Part 2 of the Handbook, page 556, the Kawaiisu are listed as a tribe in the Shoshonean linguistic family, Plateau Shoshoneans, and grouped with five other tribes: "Chemehuevi, Kawaiisu, Paiute, Panamint, Ute, and some of the Bannock." A true and correct copy of the relevant pages from Part 2 of the Handbook of American Indians North of Mexico, is attached hereto as Exhibit 5.

72. Plaintiffs are informed and believe and thereon allege, in this classification the Kawaiisu are defined as a historic tribe with an ancient territory equal to the Ute. At the same time they are identified as a unique tribe, having evolved their own special language and customs

to set them apart from the other five tribes they are listed with. This uniqueness has been acknowledged and studied by academics to this day.

73. Plaintiffs are informed and believe and thereon allege, in 1935, Julian H. Steward visited the Kawaiisu, documenting their territory, culture and vocabulary in his 1938 publication: Basin-Plateau Aboriginal Sociopolitical Groups, Bulletin 120, Bureau of American Ethnology, GPO Washington, 1938. A true and correct copy of the relevant pages is attached hereto as Exhibit 6.

74. Plaintiffs are informed and believe and thereon allege, in 1936, Maurice Zigmond continued the linguistic study of the Kawaiisu Tribe, beginning a 50 years study that resulted in the 1991 publication of their language: Kawaiisu, A Grammar and Dictionary with Texts, Linguistics Volume 119, Maurice L. Zigmond, Curtis G. Booth, and Pamela Munro, University of California Press, 1991.

75. Plaintiffs are informed and believe and thereon allege, the Handbook of American Indians North of Mexico, 59th Congress, 1st Session, H. R. Doc. NO. 926, is a primary U.S. Government document. Enclosed at the end of the Handbook, Part 1, is an 1891 map of the Linguistic Families of American Indians North of Mexico by J. W. Powell. A true and correct copy of which is attached hereto as Exhibit 7. Plaintiffs are informed and believe and thereon allege, J. W. Powell was the Director of the Bureau of Ethnology. Plaintiffs are informed and believe and thereon allege, his publication called, Indian Linguistic Families, explains his 1891 map and gives a primer on linguistic classification, which states in relevant part: “The terms ‘family’ and ‘stock’ are here applied interchangeably to a group of languages that are supposed to be cognate.” “Languages are said to be cognate when such relations between them are found that they are supposed to have descended from a common ancestral speech. The evidence of cognation is derived exclusively from the vocabulary.” “Each of the colors or patterns upon the map represents a distinct linguistic family, the total number of families contained in the whole area (U.S.) being fifty-eight. It is believed that the families of languages represented upon the map can not have sprung from a common source; they are as distinct from one another in their vocabularies and apparently in their origin as from the Aryan or the Scythian families.” “The

map undertakes to show the habitat of the linguistic families only, and this is for but a single period in their history, viz, at the time when the tribes composing them first became known to the European, or when they first appear on recorded history." "In the first place, the linguistic map, based as it is upon the earliest evidence obtainable, itself offers conclusive proof, not only that the Indian tribes were in the main sedentary at the time history first records their position, but that they had been sedentary for a very long period."

76. Plaintiffs are informed and believe and thereon allege, the Shoshonean territory viewed on the 1891 map is described on page 555 of the Handbook, Part 2 (Ex. 5), Shoshonean Family, in relevant part: "…central Colorado, with a strip of N. New Mexico; E. New Mexico and the whole of N. W. Texas were Shoshonean." "All of Utah, a section of N. Arizona, and the whole of Nevada . . . were held by Shoshonean tribes. Of California a small strip in the N.E. part, E. of the Sierras, and a wide section along the E. border S. of about lat. 38 (degrees), were also Shoshonean." "Toward the broken southern flanks of the Sierras, Shoshonean territory extended across the state in a wide band, reaching N. to Tejon cr., while along the Pacific the Shoshoni occupied the coast between lat. 33 (degrees) and 34 (degrees)." "To the W. of the Rocky mts., in Idaho, w. Utah, Arizona, Nevada, California, and Oregon, the Shoshoneans were of a different character. The country occupied by many of them is barren in the extreme, largely destitute of big game . . ." "Rabbits and small game generally, fish, roots, and seeds formed the chief support of these tribes . . ." "It was chiefly to these tribes individually and collectively that the opprobrious name of 'Diggers' was applied. These are the Tribes, also, which were called by the settlers and by many writers, Paiute."

77. Plaintiffs are informed and believe and thereon allege, Paiute is further defined in the Handbook, Part 2 (Ex. 5), on page 186: "In common usage it has been applied at one time or another to most of the Shoshonean Tribes of W. Utah, n. Arizona, s. Idaho, E. Oregon, Nevada, and E. and S. California. The generally accepted idea is that the term originated from the word pah, 'water,' and Ute, hence 'water Ute'; or from pai, 'true,' and Ute – 'true Ute'."

78. Plaintiffs are informed and believe and thereon allege, the importance of these affiliated definitions in the Handbook is that Kawaiisu Tribe of Tejon citizenship have been issued Paiute roll numbers and Paiute and Shoshone trust allotments by the Department of Interior, and, James Calhoun, the Indian Agent who supervised the December 30, 1849 Treaty at Abiqui, corresponded about the Pah Utahs at Abiqui.

79. Plaintiffs are informed and believe and thereon allege, the Handbook's documentation of the tribal synonymy of Shoshonean, Paiute, Diggers, 'water Ute,' 'true Ute' and Ute, is reiterated in Part 2 (Ex. 5), on page 874, under the Ute description: "An important Shoshonean division, related linguistically to the Paiute, Chemehuevi, Kawaiisu and Bannock." On page 876 other names are given for Ute such as: Digger Ute, No-o-chi, Notch, Utahs, Utaws, and Youtas among others.

80. Plaintiffs are informed and believe and thereon allege, the appearance of No-o-chi and Notch as their own name, within the list of alternate names for Ute, gives depth to the classification of the Kawaiisu Tribe as documented by Father Francisco Garces. When Father Garces traveled the territory in 1775 and 1776 he called the Kawaiisu: Noches Colteches, clearly identifying the same tribal synonymy identified in the Handbook of American Indians 135 years later. Fr. Garces placed it on his maps as Nochi. *See* Ex. 3. He also placed the Kawaiisu on his maps as Cobaji. As J. W. Powell stated: "Languages are said to be cognate when such relations between them are found that they are supposed to have descended from a common ancestral speech."

81. Plaintiffs are informed and believe and thereon allege, the Handbook of American Indians defines that the Kawaiisu are a historic Tribe that share a common ancestral synonymy within a large ancient territory where other Shoshonean speakers live: Chemehuevi, Paiute, Panamint, Ute, and some of the Bannock. Plaintiffs are informed and believe and thereon allege, the kinship extends to climate, topography, food preferences and Confederated protection of tribal territory from outsiders.

82. Plaintiffs are informed and believe and thereon allege, Abiqui, New Mexico, where the December 30, 1849 Treaty with the Confederated Utahs was signed, falls within the Shoshonean territory defined in the 1891 J. W. Powell map, the 1776 Father Garces maps and the California Treaty "D" map. A true and correct copy of the California Treaty "D" map 286, from *Schedule of Indian Land Cessions, Eighteenth Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution 1896-1897,* 56th CONG, 1ST SESS. HOUSE DOCUMENT 736 at 782-783 (1899), is attached hereto as Exhibit 8.

83. Plaintiffs are informed and believe and thereon allege, after the publication of the Handbook of American Indians, Julian H. Steward traveled to visit the Kawaiisu in 1935. Three years later he published (Ex. 6): Basin-Plateau Aboriginal Sociopolitical Groups, Bureau of American Ethnology, Bulletin 120, GPO Washington (1938). He wrote about Kawaiisu food, political structure, communal harvesting, dwelling construction and medicine plants. He wrote about the Tribe's rules on descendancy and selecting marriage partners to avoid incest. He mapped Kawaiisu Territory as including: Funeral Mountains and Black Range (p. 92), Death Valley (pp. 76, 85, 92), Furnace Creek (p. 92), Ballarat, Panamint Valley and Argus Mountains (pp.71, 84), Coso Mountains (p. 84), Trona (p. 84) Tejon and Tehachapi (p. 71). He offers an additional name for the tribe that extends their territory from Death Valley to the Pacific Coast: "The Muguniiwii were unquestionably Kawaiisu, as the vocabulary corresponds with Kroeber's Kawaiisu vocabulary from the region of Tejon and Tehachapi." Point Mugu on the Pacific Ocean is named from the Kawaiisu word "mugu."

84. Many other academics visited the Kawaiisu and documented their language: Kroeber (1907,1909), Sapir (1909,1930), Gifford (1917), Zigmond (1936-41), Steward (1935), Klein (1959, 1988), Munro (1974,1976), Booth(1974,1979), Zigmond (1970, 1974, 1977, 1979, 1986, 1988). Their visits were compiled into the publication: Kawaiisu, A Grammar and Dictionary with Texts, Linguistics Volume 119, Maurice L. Zigmond, Curtis G. Booth, and Pamela Munro, University of California Press (1991), a true and correct copy of the cover of which is attached hereto as Exhibit 9.

85. Zigmond also published observations of other aspects of Kawaiisu religion and culture: Geography (1938), Plant Name Categories (1971), Supernatural Aspects of Ethnobiology (1972), Basketry (1978), Mythology (1980) and Ethnobotany (1981).

86. In 1996, Archaeologist David Whitley documented evidence of the ancient antiquity and territory of the Kawaiisu in his book: A Guide to Rock Art Sites, Southern California and Southern Nevada. A true and correct copy of the relevant pages of Whitley's book is attached hereto as Exhibit 10. The sites he attributes to historic Kawaiisu territory are: Black Canyon (pp. 59-63) and Inscription Canyon (pp. 63-66) Petroglyphs, near Barstow, CA, dating from 1000 to a few thousand years old, Squaw Spring (pp. 53-56) and Steam Well Petroglyphs (pp. 56-58) in San Bernardino County, CA, from less than 1000 to at least 2000 years old, Coso Range Petroglyphs (pp. 49-52) at China Lake Naval Weapons Center, from 1,500 to 19,000 years old and the Tomo-Kahni Pictograph in Tehachapi, CA, Kern County (pp. 162-164). A map of the Kern County area showing the location of some of the identified Kawaiisu rock art is attached hereto as Exhibit 11.

87. The territory defined by Julian Steward and David Whitley mimic the territory outlined by Father Francisco Garces in his diaries and maps. "Noche territory extends beyond San Luis Obispo and on the East to the Cobajis. Cobaji territory extends on the East to the Chemegue and on the West to the Noches." On the Trail of a Spanish Pioneer, the Diary and Itinerary of Francisco Garces, Elliott Coues Translation (1900), Vol. II, p. 445. A true and correct copy of the relevant pages of the Elliott Coues Translation of Garces' Diary is attached hereto as Exhibit 12.

88. The John Galvin Translation of the Garces Diary (Ex. 2) reinforces the territory of the Kawaiisu in 1776: April 27, "the Noche Nation…35degrees 9", April 30, "Noche Nation…Sierra de San Marcos." Ex. 2, p. 47. May 5, "Colteche Noches . . . near the Santiago River." *Id*. at 54. May 12, "The Jamajabs call these people Cobaji. I suppose they are the same as the Colteche Noches whom I have already mentioned." *Id*. at 58. "Noche, on San Luis Obispo and on the land of the Cobaji. Cobaji at the west, on the land of the Noches, at the east, on the land of the Chemegues." *Id*. at 90. "…the big river the Noches told me about, which drains into

the Tulares together with the San Felipe or very near it." *Id*. at 97.

E. The Treaty With The Utahs

89. Plaintiffs are informed and believe and thereon allege, before California was admitted to the Union, the Tribe's ancestors were signatories to the Treaty Between the United States of America and the Utah Indians, known as the Treaty with the Utahs ("Treaty"), signed December 30, 1849, and ratified by the Senate on September 9, 1850 (9 Stat. 984). A true and correct copy of the Treaty with the Utahs is attached hereto as Exhibit 13.

90. Plaintiffs are informed and believe and thereon allege, at the opening of President Taylor's administration, on or about March 29, 1849, James S. Calhoun received the appointment of United States Indian Agent at Santa Fe in the New Mexico territory, the territory acquired from Mexico under the Treaty of Gauadalupe Hidalgo, which included all of what is now California, Nevada and Utah and part of what is now Arizona and New Mexico.

91. Plaintiffs are informed and believe and thereon allege, on or about April 7, 1849, William Medill, the Commissioner of Indian Affairs, delivered the Commission to Calhoun enclosed with a letter that explained in relevant part:

> So little is known here of the condition and situation of the Indians in that region that no specific instructions, relative to them can be given at present; and the Department relies on you to furnish it with such statistical and other information as will give a just and full understanding of every particular relating to them, embracing the names of the tribes, their location, the distance between the tribes, the probable extent of territory owned or claimed by each respectively, and the tenure by which they hold or claim it; their manners and habits, their disposition and feelings towards the United States, Mexico and whites generally and towards each other, whether hostile or otherwise; whether the several tribes speak different languages, and when different, the apparent analogies between them, and also what laws and regulations, for their government, are necessary, and how far the law regulating trade and intercourse with the Indian tribes, a copy of which I enclose, will, if extended over that country, properly apply to the Indians there

and to the trade and intercourse with them and what modification if any, will be required to produce the greatest degree of efficiency.

92. Plaintiffs are informed and believe and thereon allege, on August 15, 1849 Calhoun wrote to Medill, advising that "the Utah Indians promised to come in for the purpose of sueing for peace, they have disappointed us."

93. Plaintiffs are informed and believe and thereon allege, on October 14, 1849, Calhoun wrote to Medill, explaining in relevant part:

> it is advisable to reduce the number of tribes, in any general classification which may be made by authority of the Government of the United States—for there are a number of fragments of tribes, being the product of amalgamations, who are not entitled to the consideration of distinct tribes, and they should be compelled to an association with one or the other of the amalgamating parties, and located and considered accordingly—Without alluding to the Indians of the Arkansas, I would reduce all the roving tribes of New Mexico, to four, the Comanches—Apaches—Navajoes, and Utahs.

94. Plaintiffs are informed and believe and thereon allege, on December 3, 1849, Calhoun prepared a communication to the Utah Chiefs, which states:

> Dr C. W. Bowman visits the Utahs by my permission, charged to say, if they are honestly disposed to submit, fully, and unconditionally, to the Constituted Authorities of the United States, and the Chiefs will assemble at Abiquin, on or before the 20th day of the present month, a firm and lasting treaty of peace and intercourse may be entered into, by and with the consent of the Supreme Authority of New Mexico.
>
> The Chiefs must come clothed with plenary powers to the end that every vexed question may be settled.

Plaintiffs are informed and believe and thereon allege that the letter to the Chiefs was enclosed in a letter of January 1, 1850, to Orlando Brown, then Commissioner of Indian Affairs. A true and correct copy of the January 1, 1850 letter along with its enclosures is attached hereto as Exhibit 14.

95. Plaintiffs are informed and believe and thereon allege, "Abiquin" as referred to by Calhoun is located in what is now the northern part of the State of New Mexico at or about the town today called "Abiquiu," approximately 100 miles north-east from Albuquerque.

96. Plaintiffs are informed and believe and thereon allege, that the Utah Tribe of Indians as Calhoun referred was actually the Confederated Tribes of Utahs, which is not just one tribe, but many tribes that joined efforts to protect themselves and their territory from other invading tribes. The Kawaiisu's representatives were all called Nochi, which means "badger."

97. Plaintiffs are informed and believe and thereon allege, the leaders of the Confederated Tribes of Utahs met in Abiquin, or as the Kawaiisu know the location: "Abaqui," which in Kawaiisu means "the place where we talk," every Winter Solstice since time immemorial, and sometime additional times during the year if called upon to appear. Plaintiffs are informed and believe and thereon allege, in good weather the trip would take about 10 days. Plaintiffs are informed and believe and thereon allege, the Kawaiisu representatives would always leave earlier than necessary because the weather was unpredictable in the desert and they did not want to be late.

98. Plaintiffs are informed and believe and thereon allege, in or about December of 1849, the leaders of Kawaiisu, including Acaguate Nochi, Cobaxanor, Nochichigue and Panachi. were on their way to Abiquin and when they reached the Colorado River they were met by runners from the Confederated Tribes of Utahs who told the Kawaiisu representatives to hurry.

99. Plaintiffs are informed and believe and thereon allege, on December 20, 1849, Calhoun sent a letter to the Prefect of Abiquin, which states:

> It is my intention to be in Abiquin - on the 28th day of this month, for the purpose of meeting such chiefs of the Utah tribe, as may be in attendance at that time. ***I hope the Chiefs will exert themselves to secure the presence of every Chief that can possibly reach there***, for when a treaty is formed, it must be a lasting one, having the full sanction of the tribe.

Plaintiffs are informed and believe and thereon allege, this letter was also enclosed in the January 1, 1850 to Orlando Brown. *See* Ex. 14.

100. Plaintiffs are informed and believe and thereon allege, upon arriving at Abiqui, the Kawaiisu representatives were told that a new people wanted to meet with the Confederated Tribes of Utahs.

101. Plaintiffs are informed and believe and thereon allege, on December 30, 1849, the representatives of the Kawaiisu along with the representatives of all of the other Confederated Nations of Utahs met with Calhoun and other representatives of the United States to make peace. Plaintiffs are informed and believe and thereon allege, Calhoun made peace with the leaders of the Utah tribes and had the leaders of the tribes make a paint mark on paper with some markings. Plaintiffs are informed and believe and thereon allege, the representatives of the United States told those making their marks on behalf of the Confederated Nations of Utahs that this Treaty of Peace ensured "humane treatment" of them and their tribes by the United States and its people and required the same "humane treatment" to be shown by the tribes to the people of the United States. Plaintiffs are informed and believe and thereon allege, the representatives of the United States told tribal leaders that under the Treaty of Peace, the United States would protect and defend the tribes and their people from troublemakers. Plaintiffs are informed and believe and thereon allege, the representatives of the United States told tribal leaders that in entering into the Treaty of Peace, they were not giving up their ancestral territories. Plaintiffs are informed and believe and thereon allege, in the January 1, 1850 letter, to Orlando Brown, Calhoun explained that "[a]ccompanying this note you will receive the record of a Treaty which I concluded with the Utah tribe of Indians, at Abiquin, on the 30th day of the last month." *See* Ex. 14. A true and correct copy of the copy of the original treaty accompanying the January 1, 1850 letter is attached hereto as Exhibit 15. Plaintiffs are informed and believe and thereon allege, the letter further explained in relevant part: "these Indians, since last September, have frequently manifested a disposition to enter into treaty stipulations with the United States . . . . On the 3d of December last, the Prefect of Abiquin informed Governor Munroe, through the Secretary of State, of this territory, that several Utah Chiefs desired a conference in relation to a treaty of peace—The Governor was so obliging as to advise with me, and after consultation, I sent to said Chiefs the enclosed communication marked A. Subsequently, ascertaining a

sufficient number of Chiefs could not assemble by the time mentioned in document A, I sent a runner with a communication to the Prefect of Abiquin, marked B, also enclosed."

102. Plaintiffs are informed and believe and thereon allege, the letter further explained that on the night of December 29, "a Chief came in, and begged me to be patient, and that on the 31st of December every Utah *official* should come to me, that they had removed from their encampment near Abiquin and were not at that time, within twenty miles of that place." Plaintiffs are informed and believe and thereon allege, the chief also advised Calhoun that "there were between twenty five and thirty Chiefs in camp, and the Principal Chief of the tribe would lead them over, and that said Chiefs had full power to represent them."

103. Plaintiffs are informed and believe and thereon allege, Calhoun noted that the Chiefs "*reluctantly agreed* to the 7th article . . . and enquired what they would do, *to sustain life*, if so restricted and Confined."

104. The Treaty states as follows, in relevant part:

> The following articles have been duly considered and solemnly adopted by the undersigned – that is to say, James S. Calhoun, Indian Agent, residing at Santa Fe, acting as commissioner on the part of the United State. of America, and Quixiachigiate, Nanito, Nincocunachi, Abaganixe, Ramahi, Subleta, Rupallachi, Saguasoxego, Paguisachi, Cobaxanor, Amuche, Puigniachi, Panachi, Sichuga, Uvicaxinape, Cuchuticay, Nachitope, Pueguate, Guano Juas, Pacachi, Saguanchi, Acaguate nochi, Puibuquiacte, Quixache tuate, Saxiabe, Pichiute, Nochichigue, Uvive, principal and subordinate chiefs, representing the Utah tribe of Indians.
>
> I. The Utah tribe of Indians do hereby acknowledge and declare, they are lawfully and exclusively under the jurisdiction of the government of said States: and to its power and authority they now unconditionally submit.

II. From and after the signing of this treaty, hostilities between the contracting parties' shall cease, and perpetual peace and amity shall exist, the said tribe hereby binding themselves most solemnly never to associate with, or give countenance or aid to, any tribe or band of Indians, or other persons or powers, who may be, at any time, at enmity with the people or government of said States; and that they will, in all future time, treat honestly and humanely every citizen of the United States, and all persons and powers at peace with the said States, and all cases of aggression against said Utahs shall be referred to the aforesaid government for adjustment and settlement.

. . .

IV. The contracting parties agree that the laws now in force, and such others as may be passed, regulating the trade and intercourse, and for the preservation of peace with the various tribes of Indians under the protection and guardianship of the government of the United States, shall be as binding and obligatory upon the said Utahs as if said laws had been enacted for their sole benefit and protection. And that said laws may be duly executed, and for all other useful purposes, the territory occupied by the Utahs is hereby annexed to New Mexico as now organized, or as it may be organized, or until the government of the United States shall otherwise order.

V. The people of the United States, and all others in amity with the United States, shall have free passage through the territory of said Utahs, under such rules and regulations as may be adopted by authority of said States.

. . .

VII. Relying confidently upon the justice and liberality of the United States, and anxious to remove every possible cause that might disturb their peace and quiet, it is agreed by the Utahs that the aforesaid government shall, at its earliest convenience, designate, settle, and adjust their territorial boundaries, and pass and execute such laws, in their territory, as the government of said States may deem conducive to the happiness and prosperity of said Indians. And the said Utahs, further, bind themselves not to depart

> from their accustomed homes or localities unless specially permitted by an agent of the aforesaid government; and so soon as their boundaries are distinctly defined, the said Utahs are further bound to confine themselves to said limits, under such rules as the said government may prescribe, and to build up pueblos, or to settle in such other manner as will enable them most successfully to cultivate the soil, and pursue such other industrial pursuits as will best promote their happiness and prosperity: and they now, deliberately and considerately, pledge their existence, as a distinct tribe, to abstain, for all time to come, from all depredations; to cease the roving and rambling habits which have hitherto marked them as a people; to confine themselves strictly to the limits which may be assigned them; and to support themselves by their own industry, aided and directed as it may be by the wisdom, justice, and humanity of the American people.
>
> X. This treaty shall be binding upon the contracting parties from and after the signing of the same, subject, in the first place, to the approval of the civil and military governor of New Mexico, and to such other modifications, amendments, and orders as may be adopted by the government of the United States.

Ex. 13.

105. Plaintiffs are informed and believe and thereon allege, the group of chiefs who signed the Treaty did not represent a single "tribe" of Indians, but actually each represented a tribe or band of Indians, which together made up the Confederated Tribes of Utahs, which included the Kawaiisu, that Calhoun considered the "Utah tribe."

106. The initial paragraph of the Treaty states that it is made between United States of America through its agent and, among others, Acaguate Nochi, Cobaxanor, Nochichigue and Panachi, the "principal and subordinate chiefs, representing the Utah tribe of Indians." Plaintiffs are informed and believe and thereon allege, the Tribe and its citizens are descendents of, among others, Acaguate Nochi, Cobaxanor, Nochichigue and Panachi, signatories to the Treaty with the Utahs. "Nochi" in Kawaiisu means "badger." "Tejon" in Spanish means "badger." "Cobaji" in Kawaiisu means "people with body hair." As translated into English, Acaguate nochi is the

signor from Twin Oaks/Sand Canyon Badgers, Cobaxanor is the signor from the people with body hair near Cantil, Nochichigue means the badger with white bird's tail and Panachi means water badger.

107. Plaintiffs are informed and believe and thereon allege, following the signing of the 1849 Treaty, the Kawaiisu leaders Acaguate Nochi, Cobaxanor, Nochichigue and Panachi met with the leaders of the other tribes of the Confederated Tribes of Utahs. Plaintiffs are informed and believe and thereon allege, following the meeting, the Kawaiisu leaders returned to their territory in California near the Nochi pass, or as known in Spanish, the Tejon pass. Plaintiffs are informed and believe and thereon allege, after the 1849 meeting, the Kawaiisu met only once more with the Confederation in 1850 to verify that the Treaty was in effect and then lost physical contact with the other tribes in the Confederated Tribes of Utahs due to the restriction in Article 7 in the Treaty that precluded the Kawaiisu from leaving their territory without permission of the United States.

108. Plaintiffs are informed and believe and thereon allege, various communications written by Calhoun to Washington as well as communications written by other government officials show that the United States understood the designation of the "Utah tribe" as being a large umbrella that contained numerous groups of Indians, including the Paiutes:

a. Plaintiffs are informed and believe and thereon allege, on or about January 29, 1850, Calhoun appointed General Cyrus Choice as agent for the New Mexico territory, as the Indian Agent for the Utah tribe of Indians. Plaintiffs are informed and believe and thereon allege, in his January 29, 1850 instructions to Choice, Calhoun explained in relevant part: "As correct an estimate as can be obtained of the aggregate number of the tribe is desired, distinguishing the Pah Utahs from the others."

b. Plaintiffs are informed and believe and thereon allege, in his February 4, 1850 letter to Brown, Calhoun discussed the "Apaches, Navajoes, Utahs, or any one of their various Bands . . .," and "the Apaches, Comanches, Navajoes, and Utahs, with their straggling Bands, known by other names . . ."

c. Plaintiffs are informed and believe and thereon allege, in a March 30, 1850 letter to Brown, Calhoun "submit[ed] [his] views in relation to the wild Indians, the Apaches, Comanches, Navajos and Utahs. These Indians, including their various independent Bands . . ."

d. Plaintiffs are informed and believe and thereon allege, in an April 24, 1850 letter to Calhoun, Brown states in relevant part: "With respect to Agents and Sub Agents, I understand you to recommend four of the former—one for each of the four principal tribes—Comanches, Apaches, Navajoes, and Utas—including all their amalgamated offshoots, which you suggest should be compelled to join and live with one or the other of the principal tribes, according to circumstances."

e. Plaintiffs are informed and believe and thereon allege, in a February 27, 1850 letter from Brown to Hugh N. Smith, the delegate elect of the New Mexico territory, Brown states in relevant part: "Col Calhoun, our Indian Agent at Santa Fe, is of the opinion that all the roving tribes of New Mexico—those that have no fixed and permanent place of residence—may be regarded as consisting of the Comanches, Apaches, Navajoes, and Utahs, and that all others—excluding those found in the vicinity of the head waters of the Arkansas River—are but offshoots from these, who have become more or less intermixed and amalgamated together."

f. Plaintiffs are informed and believe and thereon allege, in a May 19, 1852 letter from John Greiner, then Acting Superintendent of Indian Affairs for the New Mexico Territory, to L. Lea, then Commissioner of Indian Affairs, Greiner noted, in relevant part, that "[t]he Payutahs are a Band of Utahs [and] speak the Utah language . . ."

109. Plaintiffs are informed and believe and thereon allege, communications written by Calhoun to the Washington demonstrate that the United States understood the designation of the territory of the "Utah tribe" as stretching all the way from Utah to California and that all of the groups of Indians within the area had some sort of affiliation:

a. Plaintiffs are informed and believe and thereon allege, in a December 28, 1849 correspondence to Calhoun, the Commissioner of Indian Affairs Brown, advised Calhoun, in relevant part: "Enclosed is a section of a map of New Mexico, embracing, it is supposed, the portion of territory occupied by the Indians, or the greater part of it, on which I will thank you to designate, as accurately as may be in your power, the locations of the several tribes and the extent of country severally claimed by them; and return it to this office by the first opportunity."

b. Plaintiffs are informed and believe and thereon allege, Calhoun responded to Brown's December 28, 1849 correspondence in a letter March 29, 1850. Plaintiffs are informed and believe and thereon allege, in that letter, Calhoun discussed the Pueblo Indians as well as "[t]he four great tribes, the Apaches, Comanches, Navajos and Utahs . . ." Plaintiffs are informed and believe and thereon allege, Calhoun further states, in relevant part, "I have seized several occasions to convey to you my opinions in reference to the Apaches, Comanches, Navajos & Utahs, four great tribes, who occupy, or claim, immense regions of Country belonging to the United States . . ." Plaintiffs are informed and believe and thereon allege, with regard to the territory of the Utah, Calhoun further states in relevant part: "***All west of the Rio del Norte***, not included in either of the counties of this territory, as organized, nor included in the Navajo country, ***to the very foot of the Sierra Nevada***, ***and between the Navajo country and the Great Salt Lake, north***, ***is called the Utah country***." (emphasis added). Plaintiffs are informed and believe and thereon allege, Calhoun also "remark[ed]" on "the Pah Utahs, who inhabit the country East of the Sierra Nevada, [and who] are Utahs proper . . ." Plaintiffs are informed and believe and thereon allege, regarding the "Pah Utah" or Paiutes, Calhoun commented that "[t]hese people never approach the confines of civilization unless they are called upon by their more adventurous and warlike brethren."

F. Treaty D

110. Plaintiffs are informed and believe and thereon allege, on June 7, 1851, Indian Commissioner George Barbour, Captain E. D. Keyes, and a military escort arrived in the territory of the Kawaiisu, where they established Camp Persifer F. Smith at the old adobe house built by Dr. E. D. French.

111. Plaintiffs are informed and believe and thereon allege, negotiations of a treaty opened on June 10, 1851. Plaintiffs are informed and believe and thereon allege, twelve leaders, representing nearly six hundred Indians speaking several languages and residing in eleven villages or village clusters, participated in the council.

112. Plaintiffs are informed and believe and thereon allege, on June 10, 1851, the headmen of the Tribe, including Francisco, signed another treaty at Camp Persifer F. Smith at the Texan (Tejon) Pass with U.S. Commissioner George W. Barbour. A true and correct copy of what Plaintiffs are informed and believe is the text of the treaty is attached hereto as Exhibit 16. In this treaty, known as Treaty D, the Tribe agreed to cede large portions of its land in return for a defined reservation along with other goods and supplies for subsistence. *Schedule of Indian Land Cessions, Eighteenth Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution 1896-1897,* 56th CONG, 1ST SESS. HOUSE DOCUMENT 736 at 782-783 (1899) (Ex. 8). Plaintiffs are informed and believe and thereon allege, the Tribe relied upon this as if it were in force.

113. Plaintiffs are informed and believe and thereon allege, the president submitted the treaties and documents to the Senate on June 7, 1852. Plaintiffs are informed and believe and thereon allege, meeting in secret session, the Senate rejected Treaty D. Plaintiffs are informed and believe and thereon allege, the Senate imposed an injunction of secrecy over Treaty D and all related proceedings that was not lifted until January 18, 1905. 39 Cong. Rec. 1021 (1905) ("The injunction of secrecy was removed January 18, 1905, from the eighteen treaties with Indian tribes in California, sent to the Senate by President Fillmore June 7, 1852.") A true and correct copy of the relevant page of the Congressional Record is attached hereto as Exhibit 17.

Plaintiffs are informed and believe and thereon allege, there was no notice of Treaty D's non-ratification until after January 18, 1905.

G. Sebastian Military Reserve/Tejon Indian Reservation and Beyond

114. Plaintiffs are informed and believe and thereon allege, in November 1851, William Gwin, senator from California, introduced "A Bill to Provide for the Appointment of a Superintendent of Indian Affairs in California." Plaintiffs are informed and believe and thereon allege, Congress, on March 3, 1852, passed Gwin's bill intact.

115. Plaintiffs are informed and believe and thereon allege, the following day, President Fillmore nominated Beale as superintendent of Indian affairs in California.

116. Plaintiffs are informed and believe and thereon allege, on March 11, 1852, the Secretary of the Interior sent Beale's commission to the Commissioner of Indian Affairs, who was to deliver it to Beale with the necessary instructions.

117. Plaintiffs are informed and believe and thereon allege, in mid-September 1852, a few days after arriving in San Francisco, Beale wrote to General E. A. Hitchcock, Commander of the Pacific Division of the United States Army, requesting information that would help him in executing his duties as superintendent. Plaintiffs are informed and believe and thereon allege, Hitchcock replied that he would furnish him with all information at his disposa1.

118. Plaintiffs are informed and believe and thereon allege, on October 29, 1852, Beale informed Commissioner of Indian Affairs Luke Lea that he had greatly benefited from Hitchcock's knowledge of Indian affairs. Plaintiffs are informed and believe and thereon allege, in that letter, Beale presented his plan in outline:

> In the first place, I propose a system of "military posts" to be established on reservations, for the convenience and protection of the Indians; these reservations to be regarded as military reservations or government reservations. The Indians to be invited to assemble within these reserves.
>
> A system of discipline and instruction to be adopted by the agent who is to live at the post.

Each reservation to contain a military establishment, the number of troops being in proportion to the population of the tribes there assembled.

The expenses of the troops to be borne by the surplus produce of Indian labor.

The reservations to be made with a view to a change in location, when increase of white population may make it necessary.

A change of present Indian laws to be made, so as to suit the condition of this State and the proposed policy.

119. Plaintiffs are informed and believe and thereon allege, included with his letter was a note from Hitchcock in which the general hinted at his role in formulating policy: "The plan for the protection of the Indians in California, sketched by the superintendent of Indian affairs above, has been the subject of some conversation between that functionary and myself, and I am decidedly of the opinion, so far as Mr. Beale has developed his plan, that it is better than any hitherto proposed, and well calculated to meet the actual condition of things in this country. It is, perhaps, the only one calculated to prevent the extermination of the Indians, and I therefore entirely concur in it, and would recommend its adoption."

120. Plaintiffs are informed and believe and thereon allege, Hitchcock also supported Beale in a letter to the secretary of war: "By the plan proposed, a small portion of land is to be set apart within which there is to be a military post, and some provision made for the subsistence of the Indians, to be supplied as far as possible from their labor. Within this reserve the Indians are to be protected, but not beyond it." Plaintiffs are informed and believe and thereon allege, Hitchcock also advised that the superintendent should be given considerable latitude in implementing the plan, and he and the military commander should work in concert and that as long as he retained his command, Hitchcock hoped that Beale remained superintendent.

121. Plaintiffs are informed and believe and thereon allege, Beale persuaded B. D. Wilson, a resident of Los Angeles County, to serve as agent of the Indians of California. Plaintiffs are informed and believe and thereon allege, President Millard Fillmore made the appointment on September 1, 1851. Plaintiffs are informed and believe and thereon allege, Wilson replaced O. M. Wozencraft, who was dismissed the same month.

122. Plaintiffs are informed and believe and thereon allege, Beale and Wilson exchanged notes on November 22, 1852. Plaintiffs are informed and believe and thereon allege, Beale wanted to know which part of the state was in most need of protection and what means could be employed to shield the Los Angeles district from Indian incursions. Plaintiffs are informed and believe and thereon allege, that day Beale passed on to Commissioner Lea information and opinions probably originating with Wilson: "Los Angeles county is the cattle market of the State. If an Indian war were to cut off our communication with that single county (which could be easily done, as the cattle are driven directly through the Indian country) for one week, beef would rise to fifty cents a pound in the market of San Francisco, and in six months there would be scarcely any at twice that price." The Indians of Los Angeles County would not ignite the war, because many of them were "Christianos" who worked on the ranchos and thus were dependent on the whites. Rather, it would be started by those "who owe no such allegiance, and whose only source of food for years, during the winter season, has been robbed from the fertile vegas of Los Angeles.... It is these tribes from whom we are to expect trouble, and against whose depredations we must guard." Through the Tejon Pass, rancheros drove their cattle to northern markets and Indian stock-raiders descended on the ranchos. The pass was the key to Los Angeles.

123. Plaintiffs are informed and believe and thereon allege, to achieve a modified version of the Spanish mission system, Beale asked B. D. Wilson at the November meeting to prepare a report on how to subjugate the Indians of California. Plaintiffs are informed and believe and thereon allege, Wilson turned over the task to Benjamin Hayes, a judge of the southern district of California, which included Los Angeles and San Diego Counties.

124. Plaintiffs are informed and believe and thereon allege, Hayes organized his sixty-nine-page report, "The Indians of Southern California," into two roughly equal parts. Plaintiffs are informed and believe and thereon allege, the first part summarized the ethnographic and historical backgrounds of the Indians of Southern California. Plaintiffs are informed and believe and thereon allege, in the second section Hayes called for the establishment of an Indian territory in the interior of California, extending from the Mexican border some 360 miles north to the

Four Creeks. Plaintiffs are informed and believe and thereon allege, Hayes recommended that "this Territory be subdivided into the requisite number of Indian Reserves, distinguished by the names of the nations; the lands to be reserved from sale or private entry, or occupation by others than the Indians, until Congress shall otherwise order, with their consent."

125. Plaintiffs are informed and believe and thereon allege, in early December 1852 Beale departed San Francisco for Los Angeles, where, he was to pick up the Hayes report. Plaintiffs are informed and believe and thereon allege, along the way, he intended to hold conferences with as many groups as possible.

126. Plaintiffs are informed and believe and thereon allege, a council was to be held at Tejon, because Indians residing south of the Tehachapi Mountains sent a large delegation to the area in early January 1853.

127. Plaintiffs are informed and believe and thereon allege, in or about early 1853, a man named E. F. Beale came and told the Kawaiisu he was going to take their land at Nochi for their protection. Plaintiffs are informed and believe and thereon allege, Beale came to realize that the leaders of the Kawaiisu that signed the 1849 Treaty were there, so Beale had as many of leaders of the Kawaiisu as he could find killed. Plaintiffs are informed and believe and thereon allege, the Kawaiisu told Beale that he could not take their land because of the of the 1849 Treaty, but Beale said it did not matter because he was going to do it anyway and if we resisted he would have the Kawaiisu killed. Plaintiffs are informed and believe and thereon allege, so the Kawaiisu did what he said, and they started to grow food and livestock that Beale claimed for himself because everything was his property including the Kawaiisu. Plaintiffs are informed and believe and thereon allege, what Beale did not know is that he missed some of the Nochi and they continued to govern the Kawaiisu.

128. Plaintiffs are informed and believe and thereon allege, in late February 1853 Beale submitted his own report to Commissioner of Indian Affairs Luke Lea. Plaintiffs are informed and believe and thereon allege, on March 3, 1853, Lea sent it to Secretary of the Interior Alexander H. H. Stuart, who forwarded it to William King Sebastian, Chairman of the Senate Committee of Indian Affairs.

129. Plaintiffs are informed and believe and thereon allege, on the last page of the report, Beale made the following recommendations: Congress should appropriate five hundred thousand dollars for the immediate subsistence and support of the Indians; military reserves should be created where the Indians would support themselves by their own labor and where a few soldiers would be stationed; whites employed by the Indian Office should reside on the reserves or among the Indians; the three Indian agencies should be abolished; and six subagents should be appointed who would reside on the reserves and discharge various duties, such as assisting the Indians in the cultivation of their lands.

130. Plaintiffs are informed and believe and thereon allege, on March 3, 1853, Senator Sebastian offered an amendment to the annual Indian appropriation bill. Plaintiffs are informed and believe and thereon allege, the amendment authorized the president to create five military reservations in the state of California or in the territories of Utah and New Mexico and the $250,000 to be appropriated would cover the cost of subsisting the Indians and removing them to the reservations.

131. Plaintiffs are informed and believe and thereon allege, except for an amendment abolishing the three Indian agencies in California, the House of Representatives concurred with the Senate. Plaintiffs are informed and believe and thereon allege, the same day, March 3, 1853, the Senate accepted the House's amendment and the President signed the bill into law. A true and correct copy of the relevant pages of the Act of March 3, 1853, 10 Stat. 226, 238, is attached hereto as Exhibit 18.

132. Plaintiffs are informed and believe and thereon allege, on March 25, 1863, President Pierce wrote to Secretary of the Interior Robert McClelland and said the following:

> Sir: In the act of Congress approved the 3^{d} inst, entitled “an act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year, ending June thirtieth, one thousand eight hundred and fifty four” – there is the following paragraph.

> "That the President of the United States, if upon examination he shall approve of the plan hereinafter provided for the protection of the Indians, be, and be is hereby, authorized to make five military reservations from the public domain in the State of California, or the Territories of Utah and New Mexico, bordering on said State, for Indian purposes: *Provided*, That such reservations shall not contain more than twenty-five thousand acres in each: *And provided further*, That said reservations shall not be made upon any lands inhabited by citizens of California; and the sum of two hundred and fifty thousand dollars is hereby appropriated, out of any money in the treasury not otherwise appropriated, to defray the expense of subsisting the Indians in California and removing them to said reservations for protection: *Provided further*, If the foregoing plan shall be adopted by the President, the three Indian agencies in California shall be thereupon abolished."
>
> ***In the exercise of discretion vested in me by said act of Congress, I have examined and hereby approve the plan therein proposed for the protection of the Indians in California, and request that you will take the necessary steps for carrying the same into effect.***

(emphasis added). A true and correct copy of the March 25, 1863 letter from President Pierce to Robert McClelland is attached hereto as Exhibit 19.

133. Plaintiffs are informed and believe and thereon allege, on April 13, 1863, Secretary of the Interior Robert McClelland wrote to Beale a letter that stated in relevant part:

> Sir: The act making appropriations for the current and contingent expenses of the Indian department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, one thousand eight hundred and fifty-four, approved 3d March, 1853, contains a clause in the following words:
>
> "That the President of the United States, if upon examination he shall approve of the plan hereinafter provided for the protection of the Indians, be, and be is hereby, authorized to make five military reservations from the public domain in the State of California, or the

> Territories of Utah and New Mexico, bordering on said State, for Indian purposes: *Provided*, That such reservations shall not contain more than twenty-five thousand acres in each: *And provided further*, That said reservations shall not be made upon any lands inhabited by citizens of California; and the sum of two hundred and fifty thousand dollars is hereby appropriated, out of any money in the treasury not otherwise appropriated, to defray the expense of subsisting the Indians in California and removing them to said reservations for protection: *Provided further*, If the foregoing plan shall be adopted by the President, the three Indian agencies in California shall be thereupon abolished."
>
> ***The President of the United States has examined and approved the plan provided for in said act, and directs that you be charged with the duty of carrying it into effect.*** For this purpose you will repair to California without delay, and by the most expeditious route. ***The selections of the military reservations are to be made by you*** in conjunction with the military commandant in California, or such officer as may be detailed for that purpose, in which case they must be sanctioned by the commandant. It is likewise the President's desire that, in all other matters connected with the execution of this "plan," you will, as far as may be practicable, act in concert with the commanding officer of that military department.

(emphasis added). A true and correct copy of the April 13, 1863 letter is attached hereto as Exhibit 20. Plaintiffs are informed and believe and thereon allege, the letter further stated, in relevant part, "as soon as practicable after the reservations shall have been made, you will forward to the department plats and surveys thereof, with a full report of all your proceedings." Plaintiffs are informed and believe and thereon allege, McClelland further instructed Beale to notify "the agents in that State of the fact of their agencies having been abolished," as a result of the President's approval of the "plan" pursuant to the Act of March 3, 1853.

134. Plaintiffs are informed and believe and thereon allege, General E. A. Hitchcock, commander of the Pacific Division, ordered First Lieutenant Nathaniel H. McLean to Walker's Pass to apprise Beale of the army's role. Plaintiffs are informed and believe and thereon allege,

on June 15 McLean and twelve men departed from Fort Miller for the Kern River, where a note was left for Beale with local Indians. Plaintiffs are informed and believe and thereon allege, McLean also dispatched an Indian to Tejon with another message for Beale. Plaintiffs are informed and believe and thereon allege, he reached the head of Walker's Pass on the twenty-sixth. Plaintiffs are informed and believe and thereon allege, a few days later, before departing for Tejon, McLean left another note with some Indians. Plaintiffs are informed and believe and thereon allege, McLean advised Beale that the Tejon was an ideal location for a reservation.

135. Plaintiffs are informed and believe and thereon allege, in early 1853, Wilson had chosen Tejon as a site for a reservation and had contracted with T. S. Hereford in Los Angeles to provide the Indians with supplies. Plaintiffs are informed and believe and thereon allege, between February 23 and April 2, Hereford delivered $362.32 worth of blankets, hoes, shovels, axes, butcher knives, harnesses, flour, and sugar to the Indians located at the Tejon, including the Kawaiisu.

136. Plaintiffs are informed and believe and thereon allege, Beale informed Wilson his agency no longer existed but hired him as an assistant. Plaintiffs are informed and believe and thereon allege, at the end of August, 1853, Beale, Wilson, and eight men departed Los Angeles for Tejon.

137. Plaintiffs are informed and believe and thereon allege, arriving on September 2, 1853, they found the Kawaiisu, quietly engaged in farming but anxious to know the intentions of the Americans.

138. Plaintiffs are informed and believe and thereon allege, Beale dispatched Indian runners to villages between Tejon and the Four Creeks, announcing that a council was to be held at the Tejon Pass, where he would explain his plan.

139. Plaintiffs are informed and believe and thereon allege, on September 12, he spoke to over one thousand Indians, including the Kawaiisu, Wilson translating his words into Spanish. Plaintiffs are informed and believe and thereon allege, Beale told the Indians that if they would relocate to the reservations he intended to establish, the government would protect them from whites and provide them with seeds and provisions. Plaintiffs are informed and believe and

thereon allege, Beale pointed out to those who had come from beyond the area the differences between themselves and the Indians found at the Tejon, who had taken up farming.

140. Plaintiffs are informed and believe and thereon allege, Beale explained that for the time being the products of their labor would be held in a common stock and all labor performed would be based on the physical capability of each worker. The Indians would farm on plots of land assigned to each family, but they could continue to hunt and fish. As further suggested in the report, the Indians would be allowed to develop their own system of rewards and punishments. Plaintiffs are informed and believe and thereon allege, Beale promised the Indians he would never personally benefit from their labor and Wilson assured them that even though the government had failed them before, Beale's promises would be honored.

141. Plaintiffs are informed and believe and thereon allege, until convinced the reservation would be located somewhere in the vicinity of where the conference was being held, Indians residing beyond Tejon resisted Beale's plan.

142. Plaintiffs are informed and believe and thereon allege, on September 22, 1853, a San Francisco newspaper informed its readers that Beale had selected a site for two reservations near the Tejon Pass.

143. Plaintiffs are informed and believe and thereon allege, on September 30, 1863, Beale notified George W. Manypenny, then Commissioner of Indian Affairs, that based on the recommendations of the military in California and B. D. Wilson, he had selected a site near the Tejon Pass on which to found one of the reservations and that the land was free from whites. A true and correct copy of the September 30, 1863 letter is attached hereto as Exhibit 21.

144. Plaintiffs are informed and believe and thereon allege, Beale began formal operations on or about November 4, 1853. *See id.*; *see also* Henley's August 29, 1854 letter to Manypenny, attached hereto as Exhibit 22. Plaintiffs are informed and believe and thereon allege, on November 4, 1853, Beale arrived at Tejon from Los Angeles and established his headquarters near the village of Tinliw and occupied the adobe house that Dr. E. D. French had built there. Plaintiffs are informed and believe and thereon allege, following Beale to Tejon were ten wagons loaded with farming equipment. Plaintiffs are informed and believe and thereon

allege, a supply train consisting of twenty white men riding and driving fifty-three horses and mules, along with the delegation of Indians from Grass Valley, reached Tejon on the November 7, 1853.

145. Plaintiffs are informed and believe and thereon allege, Beale thereafter purchased work animals and equipment. Plaintiffs are informed and believe and thereon allege, Before arriving at Tejon, Beale had instructed B. D. Wilson to provide the reservation with cattle. Plaintiffs are informed and believe and thereon allege, Wilson told Beale in early November that he had contracted with T. B. Sanford to deliver 500 head of beer cattle, at $60 per head, noting that it was the best arrangement he could make. Plaintiffs are informed and believe and thereon allege, in December Sanford drove to the reservation 521 head of large beef cattle.

146. Plaintiffs are informed and believe and thereon allege, in October Wilson had made arrangements with businessmen Andrew Sublette and James Thompson to provide wheat to the Tejon Reservation. Plaintiffs are informed and believe and thereon allege, from December 1853 through April 1854, Sublette and Thompson delivered 102,700 pounds of wheat to the reservation. A true and correct copy of the September 20, 1853 letter from Wilson to Beale is attached hereto as Exhibit 23.

147. Plaintiffs are informed and believe and thereon allege, a mill Beale purchased in San Francisco ground the wheat into flour. Plaintiffs are informed and believe and thereon allege, Sublette and Thompson also supplied 109,109 pounds of barley. Plaintiffs are informed and believe and thereon allege, during the same period, the clerk at Tejon designated for planting 75,000 pounds of wheat and 30,000 pounds of barley. In addition, 27,700 pounds of wheat were distributed to the Indians for food, and 82,629 pounds of barley were fed to the mules.

148. Plaintiffs are informed and believe and thereon allege, although Beale intended to sell surplus products on the open market, as of late November 1853, the reservation was not yet self sufficient. Plaintiffs are informed and believe and thereon allege, Concerned about immigrants pausing on the reservation to buy food and equipment, Beale placed a notice in the *Los Angeles Star* announcing that henceforth no supplies could be purchased at the reservation and that provisions produced at Tejon were for government use and not for the traveling public.

149. Plaintiffs are informed and believe and thereon allege, Beale told Commissioner of Indian Affairs George W. Manypenny in December 1853 that the plan he had submitted to the last session of Congress was now in "full and successful operation" and that the reservation would soon be paying for itself. He estimated that the wheat fields would produce 35 bushels to the acre; thus, the 2,500 acres to be put under cultivation would yield 87.500 bushels. From 1 bushel, 50 pounds of coarse or superfine flour would result. If the 4,375,000 pounds of flour were sold at 10¢ per pound, the reservation would make a profit of $43,750 from its first crop. But that was only the beginning. During the following year, he would increase his acreage tenfold and plant tobacco, sugarcane, rice, corn, and all kinds of vegetables. The surplus products would be sold on the open market, "and the proceeds invested in such other matters, as the Indians may require, and which cannot as yet be supplied by their own labor."

150. Plaintiffs are informed and believe and thereon allege, as called for in "The Indians of Southern California," the report written by Benjamin Hayes, Beale formed a governing council over which he would preside. Comprised of six Indian leaders and Beale, it met on the first of each month to dispose of surplus produce, discuss the welfare of the Indian residents, punish lawbreakers, and settle disputes. Plaintiffs are informed and believe and thereon allege, each council member was responsible for providing a quota of laborers for such tasks as threshing wheat, hauling grain, and manufacturing adobes.

151. Plaintiffs are informed and believe and thereon allege, visiting the reservation in February, Captain P. Edward Connor was impressed with the Indians he saw plowing, sowing, digging ditches, and serving as vaqueros.

152. Plaintiffs are informed and believe and thereon allege, on February 8, 1854, Beale told Manypenny that he had divided the workers into different parties: "Those who plough and harrow, seventy-five in number, go to the field, after harnessing, in regular order; those who ditch have their work laid out-each one so much, according to the nature of the soil; and so on through every department of work which happens at the time to be necessary." A true and correct copy of the February 8, 1854 letter is attached hereto as Exhibit 24. Plaintiffs are informed and believe and thereon allege, Beale told Manypenny that he had punished only "a

few lazy ones with proper but not severe correction" was proof that discipline was maintained by "moral force," and such force would have failed "but for the confidence they feel in what I have told them, that all this work is to benefit themselves, and not the government." Plaintiffs are informed and believe and thereon allege, Beale told Manypenny that the Indian workers had completed an irrigation canal six feet wide by eight in depth, connecting two streams and running nine miles, the canal surrounded the common grain field and two thousand acres of wheat were up, and five hundred acres of barley were being planted.

153. Plaintiffs are informed and believe and thereon allege, in the immediate vicinity of each village, the Indians grew grains and vegetables. In the aggregate, they totaled 80 acres of wheat and 175 of corn. A crew from the common labor pool plowed the fields, but the Indians at each village tended and harvested the crops. Work of a more domestic nature was undertaken by women, girls, the elderly, and in one case the handicapped.

154. Plaintiffs are informed and believe and thereon allege, to keep the Indian workers in line, Beale hired Samuel Bishop at $250 per month as overseer of the reservation. Beale employed several other men as well as shepherd, vaquero, teamster, cattle majordomo, cook, assistant farmer, blacksmith, clerk and interpreter.

155. Plaintiffs are informed and believe and thereon allege, Beale wanted to have the Tejon reservation surveyed and contacted the United States surveyor general, and on February 1, 1854, Deputy Surveyor H. Storrs Washburn and four assistants arrived at the reservation. Plaintiffs are informed and believe and thereon allege, Washburn and his team surveyed a tract of land comprising 49,928 acres. Plaintiffs are informed and believe and thereon allege, because it comprised nearly fifty thousand acres, Beale intended to divide it into two contiguous administrative units. Plaintiffs are informed and believe and thereon allege, the official surveyed was published in 1858, a true and correct copy of which is attached hereto as Exhibit 25.

156. Plaintiffs are informed and believe and thereon allege, during 1854, the arrival of Indians from all over the Tulare Valley forced the headmen to incorporate into their villages individuals from diverse groups, and apparently the incorporation went smoothly.

157. Plaintiffs are informed and believe and thereon allege, in mid-1854 Captain Connor observed Indians arriving daily in small parties. Plaintiffs are informed and believe and thereon allege, upon arrival, Bishop immediately assigned them to work details.

158. Plaintiffs are informed and believe and thereon allege, assisting Indians in relocating to the reservation took time and money. Plaintiffs are informed and believe and thereon allege, Beale sent his employees and Indian teamsters on long journeys over difficult terrain to bring Indians to Tejon. Plaintiffs are informed and believe and thereon allege, Beale often hired individuals on an ad hoc basis to round up Indians, including in February, March, May and June of 1854.

159. Plaintiffs are informed and believe and thereon allege, by June the permanent residents of the reservation had cut a road, seven miles into Tejon Canyon and the labor force numbered approximately four hundred men, women, and boys.

160. Plaintiffs are informed and believe and thereon allege, the following month Connor wrote: "Matters go on handsomely at the Indian Reservation. The harvest is all gathered, and the threshing machine is doing its work of separation. It is, indeed, a most lovely and interesting sight to observe parties of Indians in their various occupations, working with the utmost cheerfulness and alacrity; some driving four & six mule teams, some feeding the threshing machine, and others attending the large crops of corn, potatoes and water-melons."

161. Plaintiffs are informed and believe and thereon allege, Indian labor was not limited to reservation projects. Indians spent considerable time cultivating their own crops. Plaintiffs are informed and believe and thereon allege, as of mid-June 1854, they had approximately four hundred acres under cultivation.

162. Plaintiffs are informed and believe and thereon allege, beef was the main food distributed to the Indians. During the winter months, it was cheaper to purchase cattle to butcher than to buy grain. Plaintiffs are informed and believe and thereon allege, how many Indians happened to be on the reservation on a given day determined the number of cattle butchered. Plaintiffs are informed and believe and thereon allege, a tally was conducted at the end of each month.

163. Plaintiffs are informed and believe and thereon allege, construction projects continued. Plaintiffs are informed and believe and thereon allege, in or about April 1854, Indians began work on a large adobe house for Beale and his family. Plaintiffs are informed and believe and thereon allege, Mrs. Beale joined her husband in June and apparently was pleased with the recently completed accommodations. Plaintiffs are informed and believe and thereon allege, to celebrate the occasion, on the night of June 23, 1854 Indians performed a dance in front of the house. Plaintiffs are informed and believe and thereon allege, observing the dance was Colonel Joseph K. F. Mansfield, who was on an inspection tour of western forts. Plaintiffs are informed and believe and thereon allege, in his report of July 1, 1854, to General John Wool, commander of the Pacific Division, Mansfield recommended that one company of dragoons be permanently stationed on the reservation, mainly to protect the rancheros of Los Angeles, Santa Barbara, and San Luis Obispo from Indian stock raiders. Plaintiffs are informed and believe and thereon allege, he considered the Tejon Pass the best spot for the post.

164. Plaintiffs are informed and believe and thereon allege, by this time Wool had ordered Major James L. Donaldson, the assistant quartermaster, to the reservation to construct quarters for one company of dragoons and one of infantry. The post was to be established near the Tejon Pass, at a spot selected by Beale and approved by Captain Thomas Jordan, commander of Fort Miller. Donaldson, however, concluded that the fort should be situated some twenty miles to the west, in the Canada de las Uvas (Grapevine Canyon). There, he reasoned, the soldiers would check Indian outbreaks on the reservation and prevent collisions between Indians and immigrants. Plaintiffs are informed and believe and thereon allege, inadvertently, Major Donaldson located Fort Tejon outside the reservation.

165. Plaintiffs are informed and believe and thereon allege, President Franklin Pierce dismissed Beale as Superintended of Indian Affairs in California on May 31, 1854. Plaintiffs are informed and believe and thereon allege, Thomas Henley was selected to replace Beale.

166. Plaintiffs are informed and believe and thereon allege, in July 1854, when informed about the dismissal of Edward F. Beale as superintendent of Indian affairs, some Indians on the reservation suspended work to gather in groups to discuss the situation.

167. Plaintiffs are informed and believe and thereon allege, recently appointed Superintendent of Indian Affairs Thomas Henley was unaware of the situation on the reservation until late July, when he called on Beale in Los Angeles. Plaintiffs are informed and believe and thereon allege, Beale promised to turn over all government books, money, and property forthwith. Plaintiffs are informed and believe and thereon allege, once Henley had posted a bond and took the oath of office, Beale and he departed for the reservation to meet with the Indians. A true and correct copy of Henley's August 28, 1854 letter to Manypenny is attached hereto as Exhibit 26.

168. Plaintiffs are informed and believe and thereon allege, before the council began, the Indians objected to Beale's interpreters. Plaintiffs are informed and believe and thereon allege, the Indians approved of Henley's choice, who had resided with them before the founding of the reservation. Plaintiffs are informed and believe and thereon allege, Beale addressed the Indians, reminding them that their lives had been improved on the reservation and wishing them continued advancement, that Henley was a good man, and they would like him.

169. Plaintiffs are informed and believe and thereon allege, Henley then spoke to the Indians. Plaintiffs are informed and believe and thereon allege, he said, for good conduct they would be rewarded; for breaking the law they would be punished and by continual industry they would procure the things they needed and thus enjoy happiness and contentment. Plaintiffs are informed and believe and thereon allege, he promised never to lie to them and expected the same courtesy in return. Plaintiffs are informed and believe and thereon allege, Henley advised the Indians that in two months he would return from the north with the supplies they needed and while he was gone they were to obey the white men left in charge. Plaintiffs are informed and believe and thereon allege, the Indians promised to obey his directions, but the tribal leaders insisted on retaining political authority over their followers, but agreed to provide laborers for reservation projects.

170. Plaintiffs are informed and believe and thereon allege, an accounting of the property at Tejon, conducted in August 1854, indicated that the new superintendent took charge of in addition to the 1,172 domestic animals, government property included fruit trees and vines;

barley, wheat, corn, and pumpkins in storage; houses for employees; and an assortment of practical items such as anvils, bedsteads, lamp wicks, nails, and wash basins.

171. Plaintiffs are informed and believe and thereon allege, surplus grain planted and harvested by the Indians and some of the animals they tended were also sold for profit. Plaintiffs are informed and believe and thereon allege, in or about July 1854, Henley sold to the quartermaster at Fort Tejon twenty thousand pounds of barley at thirteen cents per pound and ten mules at two hundred dollars per head and also intended to supply the post with flour and fresh beef at prices yet to be determined.

172. Plaintiffs are informed and believe and thereon allege, on August 11, 1854, Henley departed for San Francisco by way of the San Joaquin Valley convinced that the affairs of the reservation were in good order. Plaintiffs are informed and believe and thereon allege, on his journey, he visited many of the Indians residing between Tejon and the Fresno River and reported his findings in a letter to Manypenny.

173. Plaintiffs are informed and believe and thereon allege, Henley told Beale in mid-September, 1854, that he had "entire confidence in the practicability of the plan of subsisting the Indians, in California, on your reservations, by the proceeds of their own labor . . . . Your selection of a reservation at the Tejon, I regard as the very best that could have been made in the State. The progress which has already been made there I consider the best evidence of the success of the plan."

174. Plaintiffs are informed and believe and thereon allege, when Henley was brought in as the new boss of the Tejon reservation he made several changes. Plaintiffs are informed and believe and thereon allege, he first got rid of the Mission Indians that Beale called Chiefs, but in reality they were just his hired help that bossed the Kawaiisu around like slaves. Plaintiffs are informed and believe and thereon allege, Henley brought in his own bosses and called them the head of the Villages, but they were just different Mission Indians. Plaintiffs are informed and believe and thereon allege, Henley held the Kawaiisu as Beale did, as his indentured servants. Plaintiffs are informed and believe and thereon allege, also Henley like Beale, sold the Kawaiisu children to the highest bidder. Plaintiffs are informed and believe and thereon allege, when

Henley realized the Kawaiisu's leadership was still governing in secret he moved the Kawaiisu from their villages on the reservation to the Sinks of Tejon, at the foot of Tejon Creek, where he held the Kawaiisu as his indentured servants. Plaintiffs are informed and believe and thereon allege, the "prison" was watched over by his bosses that he called Chiefs and if anyone would escape they were reported by the appointed Chiefs and hunted down and killed. Plaintiffs are informed and believe and thereon allege, the Kawaiisu worked hard for Henley, but if they were too sick or too old to work, Henley would have them shot in the head and thrown into the "death hole," a mass grave, which is located at about ¼ mile northeast of the community of Grapevine.

175. Plaintiffs are informed and believe and thereon allege, J. Koss Browne, special treasury agent, who arrived at Fort Tejon in October 1854, also questioned the decision of locating Fort Tejon in the Canada de las Uvas. He said "Should the station remain in its present position it will probably be necessary to have a small detachment ordered to the reservation for the protection of the whites, in case of any sudden out-break among the Indians. The distance from the Fort to the Superintendent's Quarters on the reservation is twenty miles, I do not think the removal of the Military Station from the vicinity of Tejon Pass, was judicious in the first place."

176. Plaintiffs are informed and believe and thereon allege, on October 18, 1854, Henley sailed to San Pedro and continued on to the Tejon reservation.

177. Plaintiffs are informed and believe and thereon allege, aware that Beale had been removed, in part, because he invested too much money in one reservation, Henley intended to cut costs whenever possible. Plaintiffs are informed and believe and thereon allege, during Beale's tenure as superintendent, the merchants and cattlemen of Southern California had received top priority in supplying the reservation with provisions, equipment, and stock. Plaintiffs are informed and believe and thereon allege, Henley cut costs at Tejon and bought goods and supplies from San Francisco merchants who shipped them to San Pedro. Plaintiffs are informed and believe and thereon allege, when Henley took charge of the Tejon Reservation, the policy was to butcher for the Indian and white residents twenty-one beeves per week. Plaintiffs are informed and believe and thereon allege, Henley immediately reduced the distributions to one

beef per day and later to one every other day, providing just enough meat to support the employees and the Indians who labored. Plaintiffs are informed and believe and thereon allege, the meat was given to the headmen to distribute, a move which caused some dissatisfaction among the Indians. Plaintiffs are informed and believe and thereon allege, because of the demands of the Indian leaders, by January 1855 be had increased the allotment back to one beef per day.

178. Plaintiffs are informed and believe and thereon allege, at the end of 1854, 970 acres were under cultivation: 20 in corn, 202 in barley, and 748 in wheat. Plaintiffs are informed and believe and thereon allege, as soon as the rains, which were late, commenced, the Indians intended to plow and sow an additional five hundred acres in wheat. Plaintiffs are informed and believe and thereon allege, Henley thought the crops would be sufficient to support all those relocating to the reservation the following year.

179. Plaintiffs are informed and believe and thereon allege, on February 7, 1855, President Pierce sent a message to Congress that stated: "I communicate to Congress, herewith, a letter and accompanying papers from the Secretary of the Interior, dated the 5th instant, on the subject of the colonization of the Indians in the State of California, and recommend that the appropriation therein asked for may be made." A true and correct copy of Pierce's February 7, 1855 and accompanying letter from Henley are attached hereto as Exhibit 26. Plaintiffs are informed and believe and thereon allege, the transmitted documents included a letter from Thomas Henley, Superintendent of Indian Affairs of California to George Manypenny, Commissioner of Indian Affairs, providing "a supplemental estimate" "for the current expenses of the Indian department within this superintendency, for the year commencing 1st July, 1855," in which he notes the existence of the Tejon reservation.

180. Plaintiffs are informed and believe and thereon allege, Henley visited the reservation again in late March or early April 1855, informing Manypenny that the recent rains had produced healthy crops and that fifteen hundred acres of wheat and barley had been sown on the reservation that had been harvested and was in storage. A small mill driven by mules

produced chopped wheat which made very good and substantial food, with which the Indians were very well satisfied.

181. Plaintiffs are informed and believe and thereon allege, Henley assigned a new subagent to the reservation. Plaintiffs are informed and believe and thereon allege, previously, he had replaced William Lauius, the first subagent with John Jones of Los Angeles. On July 1, 1855, he replaced Jones with Alonzo Ridley.

182. Plaintiffs are informed and believe and thereon allege, Ridley managed the reservation's business affairs and its personnel: W. Martin, clerk and commissary, controlled all goods and rations; George Henley, miller, distributed allotments of flour, grain, and meat; Charles Weides managed the Indians in the fields; F. E. Warren and A. Frier, teamsters, ran the reaping and threshing machines and hauled the grain to storage; John Grice, millwright, oversaw all the carpentry and assisted the blacksmith, John Laham, in repairing wagons and tools; and Robert Wilson, majordomo, managed all the animals. Plaintiffs are informed and believe and thereon allege, other employees included James McKenzie, miller, Charles Chade, harness maker, John Gotea, gardener, and David McKenzie and Page Tucker, overseers of Indian labor.

183. Plaintiffs are informed and believe and thereon allege, the Indians had moved into adobe houses they had begun building in the fall, and the women manufactured clothing at little expense except for the wholesale cost of the cloth. Henley emphasized that he provided no clothing except shirts to the men who refused to labor.

184. Plaintiffs are informed and believe and thereon allege, on March 20, 1855, the state legislators passed concurrent resolutions in support of the Sebastian Military Reserve. The resolutions called on California's senators and representatives in Congress to introduce legislation to prevent the removal of the reservation and to pressure the executive department for the same end. Plaintiffs are informed and believe and thereon allege, the governor of California was to transmit copies of the resolution to congressional representatives and to the Secretary of the Interior. Plaintiffs are informed and believe and thereon allege, on or about March 12, 1858, the Senate received the Resolution of the Legislature of the State of California and referred the Resolution to the Committee on Indian Affairs and ordered it to be printed in the official records

of the Senate. A true and correct copy of the March 20, 1855 Joint Resolution as received and ordered printed by the Senate on March 12, 1858, 1. 35 Cong. 1st Sess., Misc. Doc. No. 197 (1858), is attached hereto as Exhibit 28.

185. Plaintiffs are informed and believe and thereon allege, in or about November 1855, B. D. Wilson notified United States Senator John B. Weller about concerns in Southern California over the possible removal of Tejon. Weller assured him in mid-January 1856 that his committee on Indian affairs had no intention of recommending the reservation be abandoned. Tejon had successfully concentrated Indians at one area and had brought peace and security to the citizens of the region. Because of the importance of that reservation to the protection of the citizens of Los Angeles, San Bernardino, and San Diego Counties, he could never consent to its removal.

186. Plaintiffs are informed and believe and thereon allege, Henley instructed Ridley to divide the Indian labor force into three divisions and to build an adobe house immediately for the Indian leader of each division. Plaintiffs are informed and believe and thereon allege, the work report for September 24 through October 1, 1855, reflected the division of labor.

187. Plaintiffs are informed and believe and thereon allege, in early August, 1855, General John Wool, commander of the Pacific Division, ordered Lieutenant Colonel Benjamin L. Beall (pronounced “ball”), commander of Fort Tejon, to report on the condition of the reservation. Plaintiffs are informed and believe and thereon allege, Beall met Samuel Bishop at the mouth of the Canada de las Uvas and proceeded to Bishop’s adobe. Plaintiffs are informed and believe and thereon allege, Bishop sent for Robert Wilson and the Indian vaqueros. Plaintiffs are informed and believe and thereon allege, they were to tell no one of their destination and were to arrive in the middle of the night. Plaintiffs are informed and believe and thereon allege, from them Colonel Beall obtained information regarding the number of Indians in residence, the quantity of grain produced, and the size of the herds. Plaintiffs are informed and believe and thereon allege, the following day, Beall called on Ridley, informing him of his intention to inspect the reservation. Plaintiffs are informed and believe and thereon allege, because Ridley recognized only the authority of the superintendent of Indian affairs, he offered

Beall no more privileges than those granted any visitor. Plaintiffs are informed and believe and thereon allege, Beall departed without visiting the Indian villages, the fields, the gardens, the mill, and the granary, the latter only two-hundred yards from Ridley's quarters.

188. Plaintiffs are informed and believe and thereon allege, Henley told Manypenny in October 1855, that Colonel Beall was "hostile to the Reservation System and has done everything in his power to produce unfavorable impressions in regard to the Tejon ever since his arrival there as commander of the post."

189. Plaintiffs are informed and believe and thereon allege, in or about November 1855, John Grice, the millwright, wrote to Manypenny and said that Henley was attempting "to elevate the mental and moral condition of the Redman here; but everything is thrown in his way by some of the friends of Lieut Beale that they think will retard the prosperity of the place. The Indians are conciled to the reverse of what Colonel Henley tells them. They are told, so they say, not to obey Col. Henley nor his Sub Agent. They are told not to work, that the government is bound to support them. They are told to do as they please, the soldiers shall not be used against them. They are told this so they say by Col. Beall and Alax. Godey."

190. Plaintiffs are informed and believe and thereon allege, a few months later, Henley, in a letter to the governor of California, was just as explicit: "From the time of Mr. Beale retiring from office to the present moment, several of his late employees have lounged about in the vicinity of the Tejon Reservation using most untiring efforts to disaffect the minds of the Indians, and induce them to leave the Reserve, and abandon the protection of the Government."

191. Plaintiffs are informed and believe and thereon allege, in mid-1856, Henley replaced Alonzo Ridley with J. R. Vineyard as subagent for the Tejon Reservation.

192. Plaintiffs are informed and believe and thereon allege, as of July 1856, 693 Indians resided on the reservation: 256 male and 191 female adults, 133 male and 113 female children. Plaintiffs are informed and believe and thereon allege, they were governed by 10 headmen, each of whom provided a specific number of workers for reservation projects. Plaintiffs are informed and believe and thereon allege, those engaged in agriculture tended to a vineyard, 600 fruit trees, and 475 acres of wheat, 200 of barley, 156 of corn, 21 of melons, 6 of

potatoes, 4.5 of beans, 2 of peas, and 1.5 of onions, peanuts, tomatoes, and cabbage. A true and correct copy of Vineyard's July 1856 report to Henley is attached hereto as Exhibit 29.

193. Plaintiffs are informed and believe and thereon allege, Henley instructed Vineyard to send those Indians who could be trusted into the mountains to collect wild foods. During the second half of August, several parties entered the mountains to gather pinyon nuts and other wild food. They returned a month later with a large supply of pinyon nuts.

194. Plaintiffs are informed and believe and thereon allege, Most of the able-bodied remained to work on reservation projects. Plaintiffs are informed and believe and thereon allege, in September and October 1856, Indians constructed four adobe houses. Plaintiffs are informed and believe and thereon allege, in his annual report, Henley noted that on the reservation there were eight adobe structures. A true and correct copy of Henley's September 4, 1856 report to Manypenny is attached hereto as Exhibit 30. The six houses occupied by the Indian leaders measured twenty by forty feet, the one occupied by Vineyard was twenty by sixty feet, and the two-story storehouse measured twenty-five by one hundred feet. Six hundred acres of wheat and 115 of barley had been planted in the common fields, but on January 30 the rains ceased. Three hundred and fifty acres of wheat were ruined, and as of June the balance was expected to yield only about three bushels per acre. Seventy acres of barley also had failed, and there was little hope that the remainder of the crop would produce over five bushels per acre. In better condition were the four acres of potatoes and six of corn and the garden, occupying sixteen acres, was expected to produce about ten bushels of onions, fifteen bushels of peas had been gathered and the peach, pear, apricot, pomegranate, and fig trees showed promise.

195. Plaintiffs are informed and believe and thereon allege, although the drought was in its third year in the Tulare Valley, as of June 1857, the Indians, by careful management, had kept their own small fields productive. A true and correct copy of Vineyard's August 15, 1857 report to Henley is attached hereto as Exhibit 31. Plaintiffs are informed and believe and thereon allege, because the common fields failed to produce sufficient amounts of food, Henley, as he had a year before, told Vineyard to encourage the Indians to collect as much wild food as possible:

> Mules and teams should be furnished to pack & haul them from the mountains, and white men should be sent with the Indians to superintend the collecting and transporting them to the quarters. Every facility should be afforded for the saving of this article of food, as it seems to be almost your only alternative from starvation; for it must be borne in mind that there is no appropriation which can be used to any extent for the purchase of provisions on Reservations already established, and if that were even the case it would be impossible to buy provisions for the Tejon as there is no grain in that region of the state for sale, and the transportation from these places too expensive.
>
> There seems therefore to be no alternative but to subsist the Indians upon the natural resources of the Country upon which they have lived before the assistance of the government had been extended to them.

196. Plaintiffs are informed and believe and thereon allege, provided with animals, axes, knives, clothing, blankets, and ammunition, in late September 1857, several parties departed for the mountains to gather pinyon nuts and other wild foods. Plaintiffs are informed and believe and thereon allege, the following month another party set off for Kern and Buena Vista Lakes to fish and hunt waterfowl.

197. Plaintiffs are informed and believe and thereon allege, a shortage of food was not the only problem facing the reservation. Plaintiffs are informed and believe and thereon allege, the granary and some chimneys had been damaged by a recent earthquake, and one of the goat barns needed a new roof. Many of the wagons were old and dilapidated. The threshing machine, deemed beyond repair by the blacksmith, had broken down before the recent harvest, so the grain had to be trampled. The twenty-four horses belonging to the reservation had been overworked, and several were no longer fit for service. The thirty-three mules were in better condition but were thin, there being insufficient grain to feed them.

198. Plaintiffs are informed and believe and thereon allege, the Commissioner of Indian Affair's Annual report of November 30, 1857, was reprinted in the Appendix to the Congressional Globe, and it reported in relevant part: "***Five reservations in all have been***

established, viz: ***Sebastian or Tejon***, Klamath, Nome Lakee, Mendocino, and Fresno Farm, on which about eleven thousand two hundred thirty-nine Indians have been colonized, and are in the course of being successfully trained to habits of industry." (emphasis added). A true and correct copy of the relevant pages from the Appendix of the Congressional Globe are attached hereto as Exhibit 32.

199. Plaintiffs are informed and believe and thereon allege, a large number of Indians, in mid-February 1858, refused to work or obey the orders of Vineyard and the other employees. Plaintiffs are informed and believe and thereon allege, some of the Indians possessed weapons and demonstrated considerable hostility. Plaintiffs are informed and believe and thereon allege, shortly, twenty-five dragoons from Fort Tejon arrived and encircled the striking Indians. Plaintiffs are informed and believe and thereon allege the *Los Angeles Star* reported "On seeing this display, not liking the looks of carbines, sabres and pistols, the Indians backed down, laid down their arms, and the ringleaders were taken out and received from twenty to one hundred lashes, according to quality, and were then let off on promise of good behavior."

200. Plaintiffs are informed and believe and thereon allege, in August 1858, Vineyard sent a mixed message to Henley. A true and correct copy of Vineyard's August 20, 1858 report to Henley is attached hereto as Exhibit 33. The 650 Indians residing on the reservation, he insisted, were happy and contented. Nearly every adult male owned at least one horse, and several families had "milch cows, poultry, and other things mar tend to make a good living and a comfortable home." The health of the Indians was generally good, "most of the suffering arising from improper associations and excesses." They continued to gather acorns, pinyon nuts, seeds, and roots to supplement their diet. To the parties gathering wild foods, he provided tools and animals. The Indian women now made their own cloches, so he no longer provided them with readymade attire.

201. Plaintiffs are informed and believe and thereon allege, the condition of the reservation was reflected in an inventory compiled in mid-June 1859. Stock consisted of fifteen horses, thirty-one mules, seven oxen, and fifty fowls. Crops on hand totaled 9,200 pounds of barley and 12,000 pounds of wheat. Horse collars, harnesses, and bridles were labeled as "much

worn." Of the fifteen houses (fourteen constructed of adobe), only the frame house was listed to be in good order.

202. Plaintiffs are informed and believe and thereon allege, owing to the reduction in the number of employees working at Tejon, in August 1859, Vineyard asked J. Y. McDuffie, the Superintendent of Indian Affairs who replaced Henley, to station a detachment of troops on the reservation. A true and correct copy of Vineyard's August 12, 1859 report to Henley is attached hereto as Exhibit 34. Plaintiffs are informed and believe and thereon allege, Vineyard also requested that Tejon be resurveyed, pointing out that it had never been surveyed since being reduced from fifty thousand to twenty-five thousand acres.

203. Plaintiffs are informed and believe and thereon allege, in 1860, the United States Census was taken at the Sinks of Tejon, which is on the surveyed Tejon Reservation. Plaintiffs are informed and believe and thereon allege, many of the Kawaiisu families are listed on the 1860 census, for example: Pol-ti, Neva, Charley, Siva, and Acaguate Nochi.

204. Plaintiffs are informed and believe and thereon allege, beginning in or about 1860 and continuing until in or about 1863, the Kawaiisu leaders, still in the form of their traditional government, organized several escapes for citizens of the Tribe, including the elders and the sick, from the Tejon reservation. Plaintiffs are informed and believe and thereon allege, those of the Kawaiisu that escaped lived in groups in the surrounding mountains as they had done before living at the reservation. Plaintiffs are informed and believe and thereon allege, many of the Kawaiisu stayed at Tejon Indian Reservation because it offered some protection but not much due to that they were killed if not obedient or could not work. Plaintiffs are informed and believe and thereon allege, the Kawaiisu outside the Reservation were constantly staying in touch and sending them the Tribal Government decisions on what to do next or if a dangerous situation was inevitable and they needed to leave.

205. Plaintiffs are informed and believe and thereon allege, in or about June 1861, the army transferred most of the troops from Fort Tejon to Camp Fitzgerald near Los Angeles. Left behind to guard government property were Lieutenant M. T. Carr and two enlisted men.

Immediately, Indians in considerable numbers entered the grounds to gather up what items the soldiers had discarded, and Carr had some difficulty in persuading them to leave.

206. Plaintiffs are informed and believe and thereon allege, a few days later, two or three Indians who had had too much to drink attempted to lasso a white man in his buggy and later tried to break into a woman's house. She fired her pistol out a window and the Indians fled. The incidents convinced Carr that an outbreak was imminent, and on June 21 he telegraphed Camp Fitzgerald, requesting reinforcements. Major James H. Carleton quickly ordered a detachment of eleven dragoons to Fort Tejon. A month later Lieutenant B. F. Davis visited the fort to ascertain whether the Indians were hostile. Davis placed the blame for the disturbances squarely on the local whites. The soldiers returned to Los Angeles by way of the Tejon Reservation, where they met the recently appointed supervisor, Theodore Boschulte, who confirmed Davis' position that the Indians posed no threat.

207. Plaintiffs are informed and believe and thereon allege, Superintending Agent John P. H. Wentworth, who had succeeded Augustus D. Rightmire, had hired Boschulte on June 5, 1861.

208. Plaintiffs are informed and believe and thereon allege, the following month Wentworth informed Commissioner of Indian Affairs William P. Dole that Tejon suffered from mismanagement but with an investment of fifteen hundred to two thousand dollars to purchase animals and equipment, it could be turned around and made self-sufficient.

209. Plaintiffs are informed and believe and thereon allege, Wentworth visited Tejon in November, 1861, where he found no grain, agricultural implements, or materials of any kind. The buildings, moreover, were in a state of decay. Plaintiffs are informed and believe and thereon allege, Boschulte told him that those in the previous administration had either neglected or willfully destroyed most of the crops on the reservation. Plaintiffs are informed and believe and thereon allege, the Indians, in want of provisions, were in a wretched and destitute condition. Plaintiffs are informed and believe and thereon allege, it would cost one thousand dollars to put the mill in order, and a jack, mares, cattle, and sheep were needed. Plaintiffs are informed and believe and thereon allege, in Los Angeles, Wentworth purchased a few plows and

ten thousand pounds of wheat seed and sent them to the reservation and he intended to plant three hundred acres in grain.

210. Plaintiffs are informed and believe and thereon allege, at the Tejon reservation, Wentworth observed 250 acres of wheat and barley growing in the common fields. The crops were in excellent shape, he told Dole, "the grain yielding extraordinarily even for California, averaging from thirty to forty bushels per acre." The buildings, however, were in need of repair, having been damaged by the rains of the past winter, and the wagons and agricultural implements were exposed to the elements. Plaintiffs are informed and believe and thereon allege, relying on statistics compiled by Theodore Boschulte, Wentworth claimed that 1,370 Indians belonged to the reservation, although only 489, which had coalesced into to three groups, were in residence.

211. Plaintiffs are informed and believe and thereon allege, by mid-February 1863 the wheat and barley, planted in 450 acres, were up. Plaintiffs are informed and believe and thereon allege, a grain thresher, purchased in San Francisco and shipped to Los Angeles, arrived in May. Plaintiffs are informed and believe and thereon allege, two months later the Indians harvested 250 acres of crops in their own fields and 500 in the common fields. Plaintiffs are informed and believe and thereon allege, because of grasshoppers and the lingering drought, however, only four thousand bushels of wheat, two thousand of barley, and thirty tons of hay survived. Plaintiffs are informed and believe and thereon allege, most of the vegetables failed, as well.

212. Plaintiffs are informed and believe and thereon allege, on April 19, 1863 there was a massacre of the Kawaiisu that were off of the Tejon Reservation. Plaintiffs are informed and believe and thereon allege, the appointed headmen of the Tejon reservation found out where some of the escaped Kawaiisu were hiding and sent one of the headmen to tell the Kawaiisu that the government wanted to make a peace treaty with them and they were to come down to the Tilley Creek Crossing and surrender their guns to the Catholic Priest and camp there until the white man came to talk. Plaintiffs are informed and believe and thereon allege, the Kawaiisu followed the instructions and at about 3:00 am on April 19, 1863, they heard horses running down the river, so about 6 of the Kawaiisu men ran to the top of a hill close by so they could see

what was happening, but it was too late and soldiers, a detachment of the California Volunteers made up of approximately 20 men, were already coming into the camp. Plaintiffs are informed and believe and thereon allege, when the soldiers arrived they herded the Kawaiisu into a group and asked an Indian that was with them to pick out his friends and he did. Plaintiffs are informed and believe and thereon allege, the solders began to kill the Kawaiisu at random. Plaintiffs are informed and believe and thereon allege, Kawaiisu men tried to fight the soldiers so that some of the women, children, and old people could go hide in the tules. Plaintiffs are informed and believe and thereon allege, Acaguate Nochi, who signed the 1849 Treaty, fought with a stick in his mouth because one arm was cut off at the shoulder and the other at the elbow in the fight. Plaintiffs are informed and believe and thereon allege, Acaguate Nochi and more than 30 other citizens of the Kawaiisu were sabered to death and left to rot.

213. Plaintiffs are informed and believe and thereon allege, approximately two weeks latter two young German immigrants Lemire and Butterbredt, came upon this site in their pursuit for gold and asked the Kawaiisu that had survived where they could find some gold and surviving Kawaiisu said they would show them if they would help bury the dead. Plaintiffs are informed and believe and thereon allege, Lemire and Butterbredt agreed, and after the dead were buried, the Kawaiisu survivors went with the Germans to Kelso and stayed and took the name Butterbredt.

214. Plaintiffs are informed and believe and thereon allege, in or about 1863, a war between whites and Indians broke out on the Eastern side of the Sierra Nevada near Owens Valley. Plaintiffs are informed and believe and thereon allege, in early April the citizens petitioned Lieutenant Colonel William Jones, commander of Camp Babbitt near Visalia for protection. Plaintiffs are informed and believe and thereon allege, Jones was an officer in the California Volunteers. Plaintiffs are informed and believe and thereon allege, Jones ordered Captain Moses A. McLaughlin with two detachments to the Owens Valley to round up the Indians. Plaintiffs are informed and believe and thereon allege, on July 22, 1863, the California Volunteers deposited at the Tejon Reservation some 850 Indians they had rounded up on the Owens River.

215. Plaintiffs are informed and believe and thereon allege, at the end of April, 1863, Wentworth had transferred Boschulte to the Colorado River District and placed Alexander Godey in charge of the reservation at a salary of eighteen hundred dollars per year. Plaintiffs are informed and believe and thereon allege, Godey had already been working for Beale and answered to Beale. Plaintiffs are informed and believe and thereon allege, from this point forward, Beale had possession and complete control of the Tejon Reservation and the Indians living there.

216. Plaintiffs are informed and believe and thereon allege, Godey was a very evil mean. Plaintiffs are informed and believe and thereon allege, one of the Kawaiisu women were giving birth and someone let it slip that her name was Nochi and Godey found out. Plaintiffs are informed and believe and thereon allege, right after the Kawaiisu woman gave birth, Godey crushed her head in and took the baby for himself and called him Nochi so that he could own the name. Plaintiffs are informed and believe and thereon allege, this baby latter took the name William Skinner and moved to Kelso Canyon where he took on a leadership role for the Tribe while at the same time maintaining his Ranch at Tejon Reservation.

217. Plaintiffs are informed and believe and thereon allege, between 1863 and 1866, Beale took possession of the approximately 270,000 acres that now comprises Tejon Ranch, which included the land covered by the original Tejon/Sebastian Reservation, and all of which was within the Tribe's historical land to which the Tribe had a rights pursuant to the 1849 Treaty with the Utah,

218. Plaintiffs are informed and believe and thereon allege, in or about October 1863, the approximately 1,100 Owens Valley Indians were forcibly removed to Fort Tejon at Beale's insistence. Plaintiffs are informed and believe and thereon allege, approximately 250 of them escaped before arriving at Fort Tejon. Plaintiffs are informed and believe and thereon allege, Captain John C. Schmidt of the California Volunteers took command of Fort Tejon in January 1864, and found that approximately 380 of the Owens Valley Indians were being held a short distance from the fort in a state of near starvation. Plaintiffs are informed and believe and thereon allege, in or about July 1864, a military detachment escorted approximately 200 of the

Indians from Fort Tejon to the Tule River Reservation. Plaintiffs are informed and believe and thereon allege, approximately 380 Indians were left at the Tejon Reservation, primarily citizens of the Kawaiisu Tribe. Plaintiffs are informed and believe and thereon allege, in or about mid-September 1864, the California Volunteers stationed at Fort Tejon abandoned the Fort and moved to quarters near Los Angeles. Plaintiffs are informed and believe and thereon allege, many citizens of the Kawaiisu had been indentured to work on Beale's Ranch pursuant to California's 1850 An Act for the Government and Protection of Indians.

219. Plaintiffs are informed and believe and thereon allege, on April 8, 1864, Congress enacted *An Act To Provide For The Better Organization Of Indian Affairs In California* ("1864 Act"). 13 STAT 39 (1864). A true and correct copy of the Act of April 8, 1864 is attached hereto as Exhibit 35. Section Two of the 1864 Act provides in relevant part:

> That there shall be set apart by the President, and at his discretion, not exceeding four tracts of land. Within the limits of said state, to be retained by the United States for the purposes of Indian reservations . . . . That said tracts to be set apart as aforesaid may, or may not, as in the discretion of the President may he deemed for the best interests of the Indians to be provided for, include any of the Indian reservations heretofore set apart in said state, and that in case any such reservation is so included, the same may be enlarged to such an extent as in the opinion of the President may be necessary, in order to its complete adaptation to the purposes for which it is intended.

220. Section 3 of the 1864 Act provides in relevant part:

> That the several Indian reservations in California which shall not be retained for the purposes of Indian reservations under the provisions of the preceding section of this act, shall, by the commissioner of the general land-office, under the direction of the Secretary of the Interior, be surveyed into lots or parcels of suitable size, and as far as practicable in conformity to the surveys of the public lands, which said lots shall, under his direction, be appraised by disinterested persons at their cash value, and shall thereupon, after due advertisement, as now provided by law in case of other public lands, be offered for sale at public outcry, and thence afterward shall be held subject to sale at private entry,

according to such regulations as the Secretary of the Interior may prescribe: *Provided*, That no lot shall be disposed of at less than the appraised value, nor at less than one dollar and twenty-five cents per acre: *And provided, further*, That said sale shall be conducted by the register and receiver of the land-office in the district in which such reservation or reservations may be situated, in accordance with the instructions of the department regulating the sale of public lands.

221. Plaintiffs are informed and believe and thereon allege, in discussing the proposed bill (Senate Bill No. 80), Congress expressly recognized the continued existence of the Tejon Indian Reservation in 1864. Plaintiffs are informed and believe and thereon allege, that Congress noted that there were then existing five Indian reservations in California, four in the northern superintendence and: "In the southern superintendency there is but one which is denominated as a reserve, and that is the reserve at Tejon." Cong. Globe, Senate, 38th Cong., 1st Sess., at 1209 (1864), a true and correct copy of which is attached as Exhibit 36

222. Plaintiffs are informed and believe and thereon allege, the 1864 Act did not terminate the Tejon Reservation because the Act lacked the "unequivocal language of termination" with respect to the Tejon Reservation that is required for an Indian reservation to be properly terminated. *See United States v. Webb*, 219 F.3d 1127, 1133 (9th Cir. 2000).

223. Plaintiffs are informed and believe and thereon allege, no steps were taken to sell the reservation, or parts thereof, no land was "offered for sale at public outcry" under the 1864 Act, as required in the event that the Tejon Reservation was not retained as an Indian reservation.

224. Plaintiffs are informed and believe and thereon allege, the Tejon Defendants did not acquire the Tejon Ranch land pursuant to the 1864 Act.

225. Plaintiffs are informed and believe and thereon allege, the President did not take immediate action, upon the passage of the 1864 Act, to recognize reservations in California, nor did Congress expressly terminate any.

226. Plaintiffs are informed and believe and thereon allege, the Indian reservations existing in California prior to the enactment of the 1864 Act continued as Indian reservations until, at a minimum, the President formally selected four Indian reservations, which Plaintiffs are

informed and believe and thereon allege did not occur until 1891. *See Mattz v. Arnett*, 412 U.S. 481, 490, 493-94 (1973).

227. Plaintiffs are informed and believe and thereon allege, even if the Tejon Reservation was terminated for Indian purposes, at some point, pursuant to the 1864 Act, the United States retained possession of the lands for the purpose of disposing of them as directed by Section Three of the Act.

228. Plaintiffs are informed and believe and thereon allege, the Tejon Defendants are currently in possession of the approximately 270,000 acres that now comprises Tejon Ranch and that they claim to have acquired the rights to the land from Beale. Plaintiffs are informed and believe and thereon allege, to the extent that any rights descending from Beale has deprived the Tribe of lands which the Tribe historically occupied or lands reserved pursuant to 1849 Treaty with the Utah and the 1853 Tejon Reservation, such deprivation was not approved by any action of Congress and was therefore unlawful under the common law and the Non-Intercourse Act. Only Congress can terminate a reservation or diminish its boundaries for "once a block of land is set aside for an Indian reservation . . . no matter what happens to the title of the individual plots, the entire block retains its reservation status until Congress explicitly indicates otherwise." *Solem v. Bartlett* 465 U.S. 463, 470 (1984).

229. Plaintiffs are informed and believe that no acts of termination have ever been affirmed with respect to the 1853 reservation as established by Beale or incorporating any of the names used to identify the Tribe. *See* Ex. 1 (Cobajais, Cobaji, Covaji, Kahwisfsah, Kawaiisu, Kawitasuh, Kawishm, Kowasah, Kubakhye, Newoorah, Noches Colteches, Tahichapahanna, and Tahichpt). In 1994, the Department of the Interior confirmed that the Kawaiisu had not been terminated. A true and correct copy of the Department's 1994 letter is attached hereto as Exhibit 37.

230. Plaintiffs are informed and believe and thereon allege, the presence of the reservation was known and acknowledged in an 1877 maps of the Kern area, a true and correct copy of which is attached hereto as Exhibit 38.

231. Plaintiffs are informed and believe and thereon allege, from in or about 1863 until in or about 1880, Beale held Kawaiisu as his property and would rent them out to do labor for government and private contractors, to build dams and canals in order to dry up the southern San Joaquin Valley.

232. Plaintiffs are informed and believe and thereon allege, in or about 1880, the leadership of the Tribe informed all of the Kawaiisu citizens to take out Indian Allotments under the authority of the 1849 Treaty. Plaintiffs are informed and believe and thereon allege, on June 15, 1880, Congress authorized the issuance of allotments for lands in an agreement with the Utes of Colorado, some of the Tribes that were part of the Confederated Tribes of the Utahs. 21 Stat. 199. A true and correct copy of the law is attached hereto as Exhibit 39. Plaintiffs are informed and believe and thereon allege, Under this Act's authority, beginning in or about 1893 and continuing until in or about 1964, approximately 70 allotments were issued to citizens of the Tribe. A true and correct copy of a sample of the allotments and related Bureau of Land Management documents are attached hereto as Exhibit 40. The location of most of the allotments are depicted on Exhibit 41. Plaintiffs are informed and believe and thereon allege, the Department of the Interior established two Indian schools adjacent to the allotments. Plaintiffs are informed and believe and thereon allege, the allotments were issued to citizens of the Kawaiisu Tribe pursuant to 21 Stat. 199, and the United States identified the citizens of Tribe who received the allotments as Paiute or Shoshone Indians, descending from the signatories of the Confederated Tribes of Utahs that signed the 1849 Treaty. Plaintiffs are informed and believe and thereon allege, the allotments gave the Kawaiisu the ability to live off of the Tejon Reservation, but still many were held there against their will. Plaintiffs are informed and believe and thereon allege, most of the Kawaiisu moved to the allotments, which for the most part replaced the part that the villages played in the Kawaiisu government.

233. Plaintiffs are informed and believe and thereon allege, the Tribe's core community area, since the reservation period, was established by the Department of Interior when they issued the allotments, and it is still the same today. *See* Ex. 41.

234. Absent specific language indicating intent to abolish a reservation, the issuance of allotments pursuant to various allotment acts is consistent with continued reservation status. *Mattz v. Arnett* 412 U.S. 481, 497 (1973), *see also Bueginig v. Hoopa Valley Tribe* 266 F.3d 1201, 1220-1222 (9th Cir. 2001) (finding that the federal government retained jurisdiction to protect the cultural and natural resources of the reservation despite the fact that land owned by non-Indians as a result of the allotment policy would be affected by such regulation). Plaintiffs are informed and believe and thereon allege, the issuance of the allotments to citizens of the Tribe demonstrates continued reservation status.

235. Plaintiffs are informed and believe and thereon allege, between 1915 and 1945, multiple communications between California Indian agents and Washington, D.C., detail the presence of the Tribe on the Tejon Reservation and the importance of provisioning for their continued needs and sustenance.

236. Plaintiffs are informed and believe and thereon allege, in or about 1917, the Indian Irrigation Service of the Department of the Interior prepared a map showing irrigation projects near where the Kawaiisu citizens were living and had several ancient villages on the Tejon reservation, a true and correct copy of which is attached hereto as Exhibit 42.

237. Plaintiffs are informed and believe and thereon allege, in or about 1920 the Department of the Interior paid for and built an Indian School on the Tejon Reservation for the benefit of the Kawaiisu children and other Indian children living there and who attended the school until in or about 1948. Plaintiffs are informed and believe and thereon allege, the Department of the Interior funded the Indian School until it closed in or about 1948.

238. Plaintiffs are informed and believe and thereon allege, in the 1920s two other Indian Schools, Kelso Valley Indian School and Kelso Canyon Indian School, were established by the Department of the Interior for the benefit of, among others, the Kawaiisu children living in the area. Plaintiffs are informed and believe that Kawaiisu children also attended these schools until they were closed in or about the late 1940s.

239. Plaintiffs are informed and believe and thereon allege, the United States completed censuses on the Tejon reservation in 1910 and 1914 and these tabulated 47 and 74

Indian residents, respectively. Plaintiffs are informed and believe and thereon allege, these numbers included citizens of the Kawaiisu.

240. The Tribe's citizens have been recognized by the State of California and Interior multiple times over the past century. Their names appear on the rolls of California Indians compiled in 1916, 1917, 1918, 1920, and 1928 amongst others.

241. Plaintiffs are informed and believe and thereon allege, the Bureau of Indian Affairs compiled Indian Census Rolls between 1885 and 1940. Plaintiffs are informed and believe and thereon allege, the Act of July 4, 1884, (23 Stat. 76, 98) required each Indian agent "in his annual report, to submit a census of the Indians at his agency or upon the reservation under his charge." Plaintiffs are informed and believe and thereon allege, the Commissioner of Indian Affairs sent a directive in 1885 (Circular 148) reiterating the requirement and adding further instructions: "Superintendents in charge of Indian reservations should submit annually, a census of all Indians under their charge." Plaintiffs are informed and believe and thereon allege, the Commissioner of Indian Affairs instructed the agents to use the form he had prepared for gathering the information and the form showed columns for Number (consecutive), Indian Name, English Name, Relationship, Sex, and Age. Plaintiffs are informed and believe and thereon allege, citizens of the Tribe are recorded on the Indian Census Rolls compiled at the Tejon Reservation in or about 1860 (Exhibit 43), 1870, 1880 (Exhibit 44), 1890, 1900 (Exhibit 45), 1910, 1920 (Exhibit 46), and in 1928 (Exhibit 47).

242. Plaintiffs are informed and believe and thereon allege, a census was completed in October 1934, by Richard Van Valkenburgh and Malcolm Farmer during their brief ethnological work on the Tejon reservation. Plaintiffs are informed and believe and thereon allege, that citizens of the Kawaiisu, referred to as "Paiute Mountain," was recorded among the 45 Native American residents.

243. Plaintiffs are informed and believe and thereon allege, some citizens of the Kawaiisu continued to live on the Tejon reservation until in or about the 1950s, although the Tejon Defendants' severely restricted their access to the land and resources. Plaintiffs are informed and believe and thereon allege, on November 10, 1934, Albert Girado died on the

Skinner Ranch at Tejon Reservation. Plaintiffs are informed and believe and thereon allege, he was the son of Setimo Girado who has a Kawaiisu Indian Allotment at the foot of the Paiute Mountains close to Tejon Reservation. Plaintiffs are informed and believe and thereon allege, Setimo mother has an adjoining Kawaiisu Indian Allotment, Number 541490. Plaintiffs are informed and believe and thereon allege he was buried at the Tejon Reservation at the Skinner Ranch. Plaintiffs are informed and believe and thereon allege, he had lived there his entire life, since February 16, 1918, along with his family, as reflected in his funeral record, a true and correct copy of which is attached hereto as Exhibit 48.

244. In June of 1949, the California Indian Agency at Sacramento reported to the Commissioner on Indian Affairs on the Indian population demographics and land status throughout the state. The Agency reported that there were 3,384 acres of Indian trust land in Kern County as of April 1, 1949. Population data for Kern County indicated that there were 454 Indians in Kern County on the Special Roll approved in May of 1933. By the time of the Agency's Census Roll of January 1, 1945, this number had dropped to 62. PROGRAM FOR THE TERMINATION OF INDIAN BUREAU ACTIVITIES IN THE STATE OF CALIFORNIA, *prepared by* California Indian Agency, Sacramento California at 11 (June 1949) (Exhibit 49). While Plaintiffs dispute that this data represents an accurate reflection of the Indian trust acreage or population in Kern County at the time, it is evidence that Interior recognized that Indian lands and peoples existed.

245. Plaintiffs are informed and believe and thereon allege, in or about 1952, an earthquake destroyed almost all of the adobe homes of the Native American community living on the Tejon Reservation. Plaintiffs are informed and believe and thereon allege, the remaining Kawaiisu citizens living there were not allowed to rebuild their homes and were forced off the land by the Tejon Defendants.

246. Plaintiffs are informed and believe and thereon allege, in or about 1962, the Department of Agriculture, United States Forest Service (USFS) and the Department of the Interior, Bureau of Land Management (BLM) contacted the Kawaiisu Council to obtain information from them regarding Indian sites and cultural sites where the agencies were planning

to log timber. Plaintiffs are informed and believe and thereon allege, the Kawaiisu Council gave these agencies a comprehensive map of the sites in the areas to be logged.

247. Plaintiffs are informed and believe and thereon allege, in or about 1965, the Department of Agriculture (USFS) contacted the Kawaiisu Council to come to a meeting with them. Plaintiffs are informed and believe and thereon allege, the Council went to the meeting and they were briefed on the 50-year plan that was to totally clear-cut the Sierra Nevada Mountain Range and to then replant new trees that would be harvestable in 20 years. Plaintiffs are informed and believe and thereon allege, the Council rejected this plan because they knew that it would take a thousand years for the trees to grow back. Plaintiffs are informed and believe and thereon allege, the Council proposed that the USFS clear out a 100 acre area and plant the trees to see how long it would take them to grow and they agreed to do this. Plaintiffs are informed and believe and thereon allege, in 1966 the USFS planted the clear area with new trees and within two years most had died and now in 2012 they have only grown to be 7-8 foot tall. Plaintiffs are informed and believe and thereon allege, the 50-year plan was never implemented and the forest was saved. Plaintiffs are informed and believe and thereon allege, the USFS has contacted the Kawaiisu Council every year following this event up until the present for information on all issues relating to the forests.

248. Plaintiffs are informed and believe and thereon allege, in 1990 the Kawaiisu Council was notified by the Congressional Committee to be present for proceedings related to the Native American Graves Protection and Repatriation Act (NAGPRA), and to help formulate the regulations for the enforcement of this new law. Plaintiff Robinson was sent by the Council to represent the Kawaiisu Tribe.

249. Plaintiffs are informed and believe and thereon allege, in 1990 the Kawaiisu Council was notified by the Smithsonian Committee to be present for proceedings relating to the National Museum of the American Indian Act (NMAIA). Plaintiff Robinson was sent by the Council to represent the Kawaiisu Tribe. Plaintiffs are informed and believe and thereon allege, numerous federal agencies have contacted the Tribe to consult regarding various issues from in or about 1990 to the present. (Exhibit 50).

H. Beale's Claimed Mexican Land Grants And Patents Are Invalid

250. Plaintiffs are informed and believe and thereon allege, on March 3, 1851, Congress passed: "An Act to ascertain and settle the private Land Claims in the State of California." 9 Stat. 631. The Act states: "That for the purpose of ascertaining and settling private land claims in the State of California, a commission shall be, and is hereby, constituted, which shall consist of three commissioners, to be appointed by the President of the United States, by and with the advice and consent of the Senate, which commission shall continue for three years from the date of this act, unless sooner discontinued by the President of the United States."

251. Section 8 of the Act states: "each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government, shall present the same to the said commissioners when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claims; and it shall be the duty of the commissioners, when the case is ready for hearing, to proceed promptly to examine the same upon such evidence, and upon the evidence produced in behalf of the United States, and to decide upon the validity of the said claim, and, within thirty days after such decision is rendered, to certify the same, with the reasons on which it is founded, to the district attorney of the United States in and for the district in which such decision shall be rendered."

252. Section 11 of the Act states: "the commissioners herein-provided for, and the District and Supreme Courts, in deciding on the validity of any claim brought before them under the provisions of this act, shall be governed by the treaty of Guadalupe Hidalgo, the law of nations, the laws, usages, and customs of the government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States, so far as they are applicable."

253. Section 13 of the Act states in relevant part: "That all lands, the claims to which have been finally rejected [by the commissioners or the courts] and all lands the claims to which shall not have been presented to the said commissioners within two years after the date of this act, shall be deemed, held, and considered as part of the public domain of the United States; and

for all claims finally confirmed by the said commissioners, or by the said District or Supreme Court, a patent shall issue to the claimant upon his presenting to the general land office an authentic certificate of such confirmation, and a plat or survey of the said land, duly certified and approved by the surveyor-general of California, whose duty it shall be to cause all private claims which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same; and in the location of the said claims. . .”

254. Section 13 of the Act states further, in relevant part: “*Provided, always*, That if the title of the claimant to such lands shall be contested by any other person it shall and may be lawful for such person to present a petition to the district Judge of the United States for the district in which the lands are situated, plainly and distinctly setting forth his title thereto, and praying the said judge to hear and determine the same, a copy of which petition shall be served upon the adverse party thirty days before the time appointed for hearing the same.”

255. Section 15 of the Act states: “the final decrees rendered by the said commissioners, or by the District or Supreme Court of the United States, or any patent to be issued under this act, shall be conclusive between the United States and the said claimants only, and shall not affect the interests of third persons.”

256. Section 16 of the Act states: “it shall be the duty of the commissioners herein provided to ascertain and report to the Secretary of the Interior the tenure by which the mission lands are held, and those held by civilized Indians, and those who are engaged in agriculture or labor of any kind, and also those which are occupied and cultivated by Pueblos or Rancheros Indians.”

257. Plaintiffs are informed and believe and thereon allege, the Tejon Defendants claim title to approximately 270,000 acres of land located in and around Kern County, California, commonly known as Tejon Ranch, based on four alleged Mexican land grants, for Rancho La Liebre, Rancho los Alamos y Agua Caliente, Rancho El Tejon and Rancho Castac, that Beale allegedly acquired from others between in or about 1855 through 1866, that were confirmed pursuant to the 1851 Act and patented, and that the Tejon Defendants allegedly ultimately acquired from Beale.

258. Plaintiffs are informed and believe and thereon allege, a claim for Rancho El Tejon was submitted to the Land Commission pursuant to the Act of 1851. Plaintiffs are informed and believe and thereon allege, the claim for Rancho El Tejon was ultimately confirmed and a patent was issued on May 9, 1863 to Aguirre and Del Valle for 97,616.78 acres. Plaintiffs are informed and believe and thereon allege, in or about 1863, Beale acquired the rights to a Mexican land grant for Rancho El Tejon from José Antonio Aguirre and Ygnacio del Valle.

259. Plaintiffs are informed and believe and thereon allege, a claim for Rancho La Liebre was submitted to the Land Commission pursuant to the Act of 1851. Plaintiffs are informed and believe and thereon allege, the claim for Rancho La Liebre was ultimately confirmed and a patent was issued on June 21, 1875 to J. M. Flores for 48,799.59 acres. Plaintiffs are informed and believe and thereon allege, in or about 1855, Beale acquired the Mexican land grant to Rancho La Liebre.

260. Plaintiffs are informed and believe and thereon allege, a claim for Rancho los Alamos y Agua Caliente was submitted to the Land Commission pursuant to the Act of 1851. Plaintiffs are informed and believe and thereon allege, the claim for Rancho los Alamos y Agua Caliente was ultimately confirmed and a patent was issued on November 9, 1866 to A. Olevara and others for 26,626.23 acres. Plaintiffs are informed and believe and thereon allege, in or about 1865, Beale acquired a Mexican land grant for Rancho los Alamos y Agua Caliente.

261. Plaintiffs are informed and believe and thereon allege, a claim for Rancho Castac was submitted to the Land Commission pursuant to the Act of 1851. Plaintiffs are informed and believe and thereon allege, the claim for Rancho Castac was ultimately confirmed and a patent was issued on November 27, 1866 to J. M. Covarrubias for 22,178.28 acres. Plaintiffs are informed and believe and thereon allege, in or about 1866 Beale acquired the Mexican land grant for Rancho de Castac.

262. Plaintiffs are informed and believe and thereon allege, their claim to the Tejon Ranch and to the Tejon Reservation are superior and are unaffected by the land grants and patents claimed to have been obtained by Beale and ultimately by the Tejon Defendants because:

a. Plaintiffs were not required to submit their claim to the Tejon Ranch land to the land commissioners because Plaintiffs' rights were conferred by the United States pursuant to the 1849 Treaty, which came into existence upon the United States Senate's ratification of the 1849 Treaty on September 9, 1850, and not based on any right or title derived from the Spanish or Mexican government.

b. In the alternative, Plaintiffs presented their claim within the meaning of the 1851 Act, or at least substantially complied, by presenting their claim to the United States government upon negotiating and entering into Treaty D because the signing date occurred within the two year limit proscribe in Sec. 13 . Treaty D was signed on June 10, 1851 at Camp Persifer F. Smith at the Texan (Tejon) Pass with U.S. Commissioner George W. Barbour where the Tribe asserted its right to land as agreed to under the Treaty with the Utahs and agreed to quit claim it to the United States in exchange for a defined reservation. *See* Ex. 16.

c. In the alternative, Plaintiffs presented their claim within the meaning of the 1851 Act, or at least substantially complied, by presenting their claim to the United States government with the negotiation of Treaty D, because according the terms of the ratified 1849 Treaty, the US Government was to represent the Tribe in all disputes.

d. Plaintiffs were not required to submit their claim to the Tejon Reservation land to the land commissioners because Plaintiffs' rights were conferred by the United States in establishing the Tejon Reservation in 1853, and not based on any right or title derived from the Spanish or Mexican government.

e. Plaintiffs are informed and believe that the Land Commission and or the Secretary of Interior did not comply with the provision of Section 16 where Plaintiffs' Indian lands were to be reported on and their tenure assessed before affirming a new patent. Plaintiffs are informed and believe that Section 11 of the Act was not complied with where it states: "the commissioners … shall be governed by the … the law of nations… and the decisions of the Supreme Court of the United States..." because preceding the Commission hearings on the "Beale" patents, six Supreme Court cases had decided that

the Indians right of occupancy is "as sacred as the fee simple of the whites" and these cases should have weighed in the favor of Plaintiffs' claim. *Fletcher v. Peck*, 6 Cranch 87, 142-143 (1810), *Johnson v. McIntosh*, 8 Wheat. 543 (1823), *Cherokee Nation v. Georgia*, 5 Pet. 1, 17 (1831), *Worcester v. Georgia*, 6 Pet. 515, 561 (1832), Clark v. Smith, 13 Pet. 195, 201 (1839), *Lattimer v. Poteet*, 14 Pet. 4 (1840).

f. Plaintiffs are informed and believe that Section 14 prevented Tribes from losing their villages with this law.

g. Plaintiffs are informed and believe that they are "third persons" within the meaning of Section 15 of the Act by virtue of their rights under the 1849 Treaty and the establishment of the Tejon Reservation in 1853.

h. Plaintiffs contest the Tejon Defendants' title to Tejon Ranch and the Tejon Reservation and have presented the instant lawsuit setting forth their title thereto as provided in the final portion of Section 13 of the Act.

263. In addition, Plaintiffs are informed and believe and thereon allege, each of the four identified alleged Mexican land grants and the patents issued thereon are and were invalid because the land comprised land to which the United States had granted Plaintiffs the permanent right of occupancy pursuant to the 1849 Treaty and the establishment of the Tejon Reservation in 1853.

264. Plaintiffs are informed and believe and thereon allege, each of the four identified alleged Mexican land grants and the patents issued thereon are and were invalid for the following reasons:

265. Plaintiffs are informed and believe and thereon allege, in or about April, 1861, Beale was appointed by President Abraham Lincoln as Surveyor General of California and Nevada and held this position until he was removed by Lincoln on February 17, 1864 after Lincoln noted that Beale "tends to become master of all he surveys."

266. Plaintiffs are informed and believe and thereon allege, Beale was the Surveyor General responsible for surveying each of the four land grants and had an agreement in place

with the claimants whereby he would acquire their rights to the land and this circumstance would be a conflict with his employment and prejudiced the rights of Plaintiff.

267. Plaintiffs are informed and believe and thereon allege, the land grant for El Tejon and the patent issued thereon was invalid for numerous reasons:

268. Plaintiffs are informed and believe and thereon allege, the purported Mexican land grant (i.e. the map) that Del Valle and Aguirre claimed to hold title to the land was a forgery. (Exhibit 51). Plaintiffs are informed and believe and thereon allege, the document was not a Mexican land grant, but rather, was a document fabricated from an old Spanish map. Plaintiffs are informed and believe and thereon allege, Ygnacio del Valle's father Antonio had the job of going thru Mission documents after secularization. Plaintiffs are informed and believe and thereon allege, Antonio gathered his own copies of Mission maps. Plaintiffs are informed and believe and thereon allege, when Antonio died without a will in 1841, his son Ygnacio acquired these maps. Plaintiffs are informed and believe and thereon allege, Antonio del Valle had received a Spanish land grant for a mission rancho in or about 1839 called Rancho San Francisco. (Exhibit 52). Plaintiffs are informed and believe and thereon allege, the grant to Antonio del Valle for Rancho San Francisco was confirmed and a patent issued to Jacoba Feliz and others on February 12, 1875 for 48,611.88 acres. Plaintiffs are informed and believe and thereon allege, evidence that the El Tejon map was really a Spanish map is evidenced by the similarity in drawing style and the "NSEW" markers, which appear to be virtually identical on the two maps.

269. Plaintiffs are informed and believe and thereon allege, ranchos attributed to Micheltoreno have his stamp on it, such as on the map for Rancho Camulos. (Exhibit 53). Plaintiffs are informed and believe and thereon allege, the map for El Tejon does not contain Micheltoreno's stamp. Plaintiffs are informed and believe and thereon allege, the map identified land near Los Angeles and Pasadena and not land located near the Tejon pass in what is today Kern County. Plaintiffs are informed and believe and thereon allege, Beale, acting in the official capacity of Surveyor General fraudulently changed the physical geographical location of the El Tejon grant, which was originally between the Los Angeles river and Arroyo Seco canyon and

instead to the place he claimed in the San Joaquin valley. Plaintiffs are informed and believe and thereon allege, the legend on the map identifies "LMNO" as "Rio de la Porsinnarla [sic]." Plaintiffs are informed and believe and thereon allege, that is the name of the Los Angeles river, El Rio de Porciúncula. Plaintiffs are informed and believe and thereon allege, in 1769, Gaspar de Portolà during his 1769 expedition of Alta California named what is today know as the Los Angeles river as *El Río de Nuestra Señora La Reina de Los Ángeles de Porciúncula,* so translated: The River of Our Lady Queen of the Angels of Porciuncula. Plaintiffs are informed and believe and thereon allege, it was referred to as the Porciuncula River. The legend on the map identified "J" as "Arroyo Seco." Plaintiffs are informed and believe and thereon allege, Arroyo Seco is found in Los Angeles to the east of the Los Angeles River that was named by Gaspar de Portola in or about 1770. The legend on the map identifies "I" as "arroyo canada de los encinos." Plaintiffs are informed and believe and thereon allege, this refers to the what is now Encinos state historical park south of the LA River.

270. Plaintiffs are informed and believe and thereon allege, the El Tejon grant and subsequently issued patent are also invalid because they did not comply with Mexican law regarding confirming a rancho. Plaintiffs are informed and believe and thereon allege, under Mexican law, in order to confirm a rancho, the person had to build a house on the property and had to live on the property. Plaintiffs are informed and believe and thereon allege, Del Valle and Aguirre did not build a house on the property and they never lived on the property. Plaintiffs are informed and believe and thereon allege, in 1847, Dr. Erasmus Darwin French built the first adobe house on the reservation lands and was running cattle on the property. Plaintiffs are informed and believe and thereon allege, that Dr. French's house was occupied by the military and they called it Camp Persifer Smith until about 1852. It was at this site that the June 10, 1851 Treaty was signed.

271. Plaintiffs are informed and believe and thereon allege, the El Tejon grant and subsequently issued patent are also invalid because they did not comply with Mexican law regarding size and shape. Plaintiffs are informed and believe and thereon allege, Article 5 of the Act of the Mexican government of January 4, 1823, states: "The measurement of land shall be

the following: establishing the vara at three geometrical feet; a straight line of five thousand varas shall be a league; a square, each of whose sides shall be one league, shall be called a sitio; and this shall be the unit of counting one, two, or more sitios; five sitios shall compose one hacienda." Plaintiffs are informed and believe and thereon allege, the Mexican Colonization Law of 1824 and the government regulations adopted pursuant to said law in 1828 governed the issuance of grants in California during Mexican rule. Section 12 states of the 1824: "It shall not be permitted to unite in one hand as property more than one league square of five thousand varas of irrigable land, four in superficies of farming land not irrigable (de temporal,) and six in superficies for stock raising (de abrevadero.)" Plaintiffs are informed and believe and thereon allege, Section 12 of the law of 1824 prohibited the issuance of any grants that were more than 11 *sitios* (11 square leagues). *See Ames v. Irvine Co.*, 246 Cal. App. 2d 832, 833 (Cal. App. 4th Dist. 1966) ("Under the law of Mexico controlling such grants, the maximum size thereof was limited to 11 square leagues."). Plaintiffs are informed and believe and thereon allege, the El Tejon land grant was for 18 *sitios* (18 square leagues) and it did not comply with Article 5 of the 1823 Act; 18 sitios is 7 more sitios than allowed by law.

272. Plaintiffs are informed and believe and thereon allege, the land grant for Rancho Castac and the patent issued thereon was invalid because it was part of Rancho San Francisco and not a separate rancho. Plaintiffs are informed and believe and thereon allege, the map of Rancho San Francisco includes Canada de Castac. *See* Ex. 52.

273. Plaintiffs are informed and believe and thereon allege, the land grant for Rancho los Alamos y Agua Caliente and the patent issued thereon was invalid because it was part of Rancho San Francisco and not a separate rancho. Plaintiffs are informed and believe and thereon allege, the map of Rancho San Francisco includes Canada de Los Alamos. *See* Ex. 52.

274. Plaintiffs are informed and believe and thereon allege, the land grant for Rancho La Liebre and the patent issued thereon was invalid because the grant was fraudulently obtained. Plaintiffs are informed and believe and thereon allege, the grant was allegedly issued by Governor Pio Pico on April 21, 1846, but it was actually back dated by Pico and it was granted while California was under American control and no longer a part of Mexico.

I. The Kawaiisu Have No Pending Petition For Acknowledgment

275. Plaintiffs have no petition for federal acknowledgment pending with the Bureau of Indian Affairs. The Bureau of Indian Affairs maintains a list of petitioners by state, which it posts on its website (http://www.bia.gov/idc/groups/xofa/documents/text/idc013623.pdf). The Kawaiisu are not identified on the list as a petitioner.

276. The Kawaiisu Tribe is a different organization than the Kern Valley Indian Community (KVIC). Although the KVIC was founded by Plaintiff Robinson's father and other citizens of the Kawaiisu tribe, Plaintiffs are informed and believe and thereon allege, the KVIC was and is an organization that was open to all Indians in the Kern Valley and was soon joined by members of various other Indian tribes. Plaintiffs are informed and believe and thereon allege, some citizens of the Kawaiisu Tribe are also members of the KVIC or have been members of the KVIC at different points in time.

277. Plaintiffs are informed and believe and thereon allege, as the Department of the Interior advised the Court in its Motion to Dismiss the First Amended Complaint, the KVIC had withdrawn their petition for acknowledgment. Plaintiffs are informed and believe and thereon allege, "on September 29, 2006, the then-Chairman of the Kern Valley Indian Community wrote to R. Lee Fleming, the Director of OFA, and asked that the letter, together with an accompanying resolution be accepted as the group's request to withdraw its February 27, 1979 letter of intent to file a petition for federal acknowledgment." Salazar's Motion to Dismiss (Docket No. 81-1), at 10:23-26.

278. Plaintiffs were previously under the belief that the Kawaiisu should be able to pursue the KVIC's petition because the members who signed the Letter of Intent on behalf of the KVIC were all citizens of the Kawaiisu tribe. Plaintiffs now understand and accept the Office of Federal Acknowledgement's determination that Petition #47 was submitted by and on behalf of the KVIC and that the Kawaiisu is a different group and may not seek to have that petition reinstated or otherwise "transact" on behalf of the KVIC or with respect to that petition.

279. The March 25, 2010, letter from the Office of Federal Acknowledgment (OFA), states that Plaintiffs lack authority to transact on behalf of the petitioning party, the Kern Valley

Indian Community (KVIC), as to KVIC's petition for Federal acknowledgment. A true and correct copy of March 25, 2010 letter is attached hereto as Exhibit 54. The letter points out that the petition at issue was submitted on behalf of and in the name of KVIC, not the Kawaiisu, and that the KVIC and the Kawaiisu are different organizations with different leadership. *Id*. at p. 55 ("Our records do not show that Petitioner #47 [the KVIC], and the group you represent, the Kawaiisu, are the same.").

280. Based on the fact that KVIC and the Kawaiisu are different groups with different governing bodies, the OFA determined that Plaintiffs could not take action concerning KVIC's petition. *See Id*. ("Based on these differing governing bodies, it appears that you lack authority to transact for Petitioner #47, concerning its petition for Federal acknowledgment.").

281. The Kawaiisu do not contend that they are the KVIC or that they are the proper leadership of the KVIC. Plaintiffs have accepted the OFA's determination that it is not the same group as the KVIC and cannot take action on KVIC's petition.

FIRST CLAIM FOR RELIEF

CLAIM FOR UNLAWFUL POSSESSION UNDER COMMON LAW, VIOLATION OF NON-INTERCOURSE ACT, TRESPASS, ACCOUNTING

By Plaintiffs Against Defendants Tejon Ranch Corporation, Tejon Mountain Village, Tejon RanchCorp and Does 2 through 50

COUNT ONE

282. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 281 above as though fully set forth at length.

283. Plaintiffs are informed and believe and thereon allege, Tejon Defendants and DOES 2 through 50 (collectively referred to in this claim for relief as "Defendants") are in exclusive possession of and claim title to approximately 270,000 acres of land located in and around Kern County, California, commonly known as Tejon Ranch ("Tejon Ranch"). Plaintiffs are informed and believe and thereon allege, pursuant to the 1849 Treaty, Plaintiffs have title and/or the right of possession and use of the Tejon Ranch. Plaintiffs are informed and believe

and thereon allege, Tejon Defendants' possession of the Tejon Ranch is in violation of Plaintiffs' rights under the Treaty with the Utah, the Non-Intercourse Act, and common law.

284. Plaintiffs are informed and believe and thereon allege, at all relevant times, Defendants have and are trespassing on Plaintiffs' land, the Tejon Ranch.

285. Plaintiffs are informed and believe and thereon allege, at all relevant times, except as otherwise stated herein, Defendants have excluded Plaintiffs from the Tejon Ranch. Defendants have kept Plaintiffs out of possession of the Tejon Ranch, all to Plaintiffs' damage, in violation of the 1849 Treaty, the federal restriction against extinguishment of Indian title, except by official action of the United States, Article 1, § 8 of the Constitution of the United States, the Non-Intercourse Act (25 U.S.C. § 177) and in violation of common law.

286. The Non-Intercourse Act, 25 U.S.C. § 177, states in relevant part: "No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution." Plaintiffs are informed and believe and thereon allege, under the Non-Intercourse Acts, the restraint on alienation can be released only by treaty or convention, which are made by the President with the advice and consent of the Senate. Plaintiffs are informed and believe that no treaty or convention has ever been made by the President with the advice and consent of the Senate to lift the restraint on alienation of Plaintiffs' right to the Tejon Ranch, their ancestral land guaranteed to them under the 1849 Treaty.

287. As a result of Defendants' unlawful possession of the Tejon Ranch, Plaintiffs have been denied the access to the land, including being able to visit the graves of their ancestors and other important cultural and religious locations. Additionally, Plaintiffs' religion is uniquely tied to their graves and cultural sites and not being able to visit them denies them the ability to practice their religion.

288. As a further result of Defendants' unlawful possession of the Tejon Ranch, Plaintiffs have been denied the use and enjoyment of any rental income and profits rightfully due to it from said land for the entire period of its dispossession.

289. As a further result of Defendants' unlawful possession of the Tejon Ranch, Plaintiffs have been denied the use and enjoyment of the fair market value of the land for the entire period of its dispossession.

290. As a further result of the Defendants' unlawful possession of the Tejon Ranch, Plaintiffs have been denied the use and enjoyment of the fair market value of the natural resources from the land for the entire period of its dispossession.

291. Plaintiffs are informed and believe and thereon allege for the entire period of its dispossession, Defendants have utilized the Tejon Ranch for agricultural production, the recovery of natural resources, including oil, the sale of various easements, licenses and other uses of the land and have been unjustly enriched thereby.

292. Accordingly, Plaintiffs are entitled to the relief specified below.

COUNT TWO

293. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 281 above as though fully set forth at length.

294. Plaintiffs are informed and believe and thereon allege, Tejon Defendants and DOES 2 through 50 (collectively referred to in this claim for relief as "Defendants") are in exclusive possession of and claim title to the Tejon Reservation, which is at least 25,000 acres of land as shown on the 1858 Survey of the Tejon/Sebastian Reservation within the Tejon Ranch ("Tejon Reservation"). The Tejon Reservation is at or about,[1] all that portion of the following described land lying, within the County of Kern, State of California, described as follows:

> Beginning at the South 1/4 Corner of Projected Section 36 Township 32 South, Range 29 East, Mount Diablo Base and Meridian, thence South 68 degrees East a distance of 29,568.00 feet, thence North 80 degrees East a distance of 10,032.00 feet, thence South 45 degrees East a distance of 16,368.00 feet, thence West 0 degrees a distance of 15,180.00 feet, thence South 45 degrees West a distance of 56,750.00 feet, thence West 0 degrees a distance of 31,020.00 feet, thence North

[1] This legal description is Plaintiffs' best estimate based on the 1858 Survey Map of the reservation. The true point of beginning for this parcel of land has never been established or described of record and will likely not be able to be determined without obtaining the surveyor's field notes, which Plaintiffs are informed and believe are in the possession of the United States. Plaintiffs reserve the right to amend or otherwise alter this legal description.

60 degrees West a distance of 13,200.00 feet, thence North 57 degrees East a distance of 61,182.00 feet to the Point of Beginning.

(Exhibit 55).[2]

295. Plaintiffs are informed and believe and thereon allege, have title and/or the right of possession and use of the Tejon Reservation by virtue of its establishment in 1853 for their benefit pursuant to Act of March 3, 1853 enacted by Congress. Plaintiffs are informed and believe and thereon allege, Tejon Defendants' possession of the Tejon Reservation is in violation of Plaintiffs rights under the Non-Intercourse Act and common law.

296. Plaintiffs are informed and believe and thereon allege, at all relevant times, Defendants have and are trespassing on Plaintiffs' land.

297. Plaintiffs are informed and believe and thereon allege, at all relevant times, except as otherwise stated herein, Defendants have excluded Plaintiffs from the Tejon Reservation. Defendants have kept Plaintiffs out of possession of the said land, all to Plaintiffs' damage, in violation of the federal restriction against termination of an Indian reservation except by explicit act of Congress, Article 1, § 8 of the Constitution of the United States, the Non-Intercourse Act (25 U.S.C. § 177) and in violation of common law.

298. The Non-Intercourse Act, 25 U.S.C. § 177, states in relevant part: "No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution." Plaintiffs are informed and believe and thereon allege, under the Non-Intercourse Acts, the restraint on alienation can be released only by treaty or convention, which are made by the President with the advice and consent of the Senate. Plaintiffs are informed and believe that no treaty or convention has ever been made by the President with the advice and consent of the Senate to lift the restraint on alienation of Plaintiffs' right to the Tejon Reservation.

[2] Exhibit 55 is more current map showing the estimated boundaries of the 1858 Tejon/Sebastian Reservation. Exhibit 55 was prepared with the estimates from the approximate legal description. Plaintiffs reserve the right to amend or otherwise alter this map.

299. As a result of Defendants' unlawful possession, Plaintiffs have been denied the access to the Tejon Reservation, including being able to visit the graves of their ancestors and other important cultural and religious locations. Additionally, Plaintiffs' religion is uniquely tied to their graves and cultural sites and not being able to visit them denies them the ability to practice their religion.

300. As a further result of Defendants' unlawful possession, Plaintiffs have been denied the use and enjoyment of any rental income and profits rightfully due to it from said the Tejon Reservation land for the entire period of its dispossession.

301. As a further result of Defendants' unlawful possession, Plaintiffs have been denied the use and enjoyment of the fair market value of the Tejon Reservation land for the entire period of its dispossession.

302. As a further result of the Defendants' unlawful possession, Plaintiffs has been denied the use and enjoyment of the fair market value of the natural resources from the Tejon Reservation land for the entire period of its dispossession.

303. Plaintiffs are informed and believe and thereon allege for the entire period of its dispossession, Defendants have utilized the Tejon Reservation land for agricultural production, the recovery of natural resources, including oil, the sale of various easements, licenses and other uses of the land and have been unjustly enriched thereby.

304. Accordingly, Plaintiffs are entitled to the relief specified below.

SECOND CLAIM FOR RELIEF

CLAIM FOR EQUITABLE ENFORCEMENT OF TREATY

By Plaintiffs Against Defendants County of Kern and Does 51 through 60

305. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 291 above as though fully set forth at length.

306. "[T]reaties constitute the 'supreme law of the land,' and they have occasionally been found to provide rights of action for equitable relief against non-contracting parties," which "ensures compliance with a treaty; that is, it forces state governmental entities and their officers

to conform their conduct to federal law." *Skokomish Indian Tribe v. United States*, 401 F.3d 979, 985 (9th Cir. Wash. 2005) (internal citations omitted).

307. Between 2001-2009, Tejon Defendants submitted development proposals to the County to construct Tejon Mountain Village, "an approximate 28,253 development . . . with a mix of residential, commercial, and recreational uses," which "include up to 3,450 residences . . . up to 160,000 square feet of commercial development . . . various hotel, spa, and resort facilities, with up to 750 lodging units at up to 7 locations" as well as "a number of recreational and educational facilities, including a nature center, farmers market, day camps, equestrian facilities, sporting clays course, parks, play lawns, trails, swimming, boating, docks on the lake, up to four 18-hole golf courses, and riding and hiking trails." (the "Project").

308. The entire Project falls within the land to which Plaintiffs claim as tribal land pursuant to the 1849 Treaty.

309. Within the proposed project development area, there are over 50 pre-historic village sites, numerous graves, and other sacred sites directly related to the Tribe.

310. In both written and oral testimony and statements made to the County, tribal citizens have stated that both refusal of access and outright destruction have taken place with respect to these sites.

311. The Environmental Impact Report ("EIR") shows a wanton disregard for the existence of cultural resources and sites that are sacred to the Tribe. Not only does the approved EIR allow for their destruction, but it also regards Tejon Defendants as being the "owner of the remains" and any associated archeological materials.

312. The County filed its Notice of Determination for the Tejon Mountain Village project and approved the Project on October 13, 2009.

313. On October 13, 2009, the County amended the General Plan and other zoning restrictions to allow the Tejon Mountain Village project to proceed.

314. Plaintiffs are informed and believe and thereon allege, the Tejon Defendants have sought or are seeking various permits from the County in order to proceed with the development and construction of the Tejon Mountain Village.

315. Plaintiffs are informed and believe and thereon allege, the Tejon Mountain Village project falls within the land that the Tribe was afforded the right of possession and use pursuant to the Treaty with the Utahs.

316. Plaintiffs are informed and believe and thereon allege, the development and construction of the Tejon Mountain Village project will interfere with the Kawaiisu's possession and use of the land that the Tribe was guaranteed by the United States pursuant to the Treaty with the Utahs.

317. Plaintiffs are informed and believe and thereon allege, the County has authorized the Tejon Defendants to exclude the Tribe and its citizens from the Tejon Ranch land that the Tribe was guaranteed the right to possession and use by the Treaty with the Utahs.

318. Plaintiffs are thus entitled to the relief requested below.

THIRD CLAIM FOR RELIEF

VIOLATIONS OF NAGPRA, 25 U.S.C. § 3001, *et seq*.

By Plaintiffs Against Defendants Tejon Ranch Corporation, Tejon Mountain Village, Tejon RanchCorp and Does 45 Through 60

319. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 304 above as though fully set forth at length.

320. Plaintiffs are informed and believe and thereon allege that between 2001 and the October 5, 2009, County Supervisor's hearing, Tejon Defendants and DOES 45 through 60 (collectively referred to in this claim for relief as "Defendants"), damaged or destroyed seven or more Native American cemeteries, graves, sacred sites and/or artifacts in connection with the development of the TMV Project. In each of these instances, Defendants knew or had reason to know that they had discovered Native American cultural items within the meaning of NAGPRA.

321. Plaintiffs are informed and believe and thereon allege that this damage or destruction occurred both on the Tejon/Sebastian Reservation property and within the Tejon Mountain Village Development footprint, that is within land that the Kawaiisu have the right of

possession and use pursuant to the Treaty with the Utahs, and the land is thus, "tribal land" and/or "federal land," within the meaning of NAGPRA.

322. Plaintiffs are informed and believe and thereon allege that this damage and desecration was caused by both heavy equipment used by Defendants as well agriculture activity, such as Defendants' horse and cattle grazing.

323. At no time was Tribe or Robinson notified by Defendants that they had discovered Native American cultural items.

324. Plaintiffs are informed and believe and thereon allege that in or about 2001 Defendants excavated or otherwise discovered a Native American cultural item in the form of a stone containing mortar hole and gave it as a retirement gift to an employee of the fire department to place at his home on Panorama drive.

325. Plaintiffs are informed and believe and thereon allege that in or about 2001 multiple Native American remains were unearthed as a result of Defendants conducting seismic trenching near Castaic Lake.

326. Plaintiffs are informed and believe and thereon allege that in or about 2002, a cemetery near Tejon Creek was torn up by cows and horse. Plaintiffs are informed and believe and thereon allege that the entire cemetery and the cultural items therein were damaged or destroyed as bones and bone fragments were scattered about.

327. Plaintiffs are informed and believe and thereon allege that in or about 2004, Defendants flooded and dug up cemeteries in connection with road construction in the vicinity of Castaic lake.

328. Plaintiffs are informed and believe and thereon allege that in or about 2005, Defendants bulldozed multiple cemeteries and graves cites near Bear Trap Canyon and thereby damaged or destroyed cultural items.

329. Plaintiffs are informed and believe and thereon allege that in or about 2009, Defendants unearthed cultural patrimony in the form of grinding rocks near the TRC headquarters in or about Lebec, California.

330. Plaintiffs are informed and believe and thereon allege that at some time between 2001 and the Oct. 5, 2009, a Native American cemetery within the Tejon/Sebastian Reservation was "torn to bits" by Defendants.

331. Plaintiffs are informed and believe and thereon allege that Defendants knew, or has reason to know, that in each of the above described instances Defendants discovered Native American cultural items on Federal or tribal lands.

332. Plaintiffs are informed and believe and thereon allege that Defendants failed to notify, in any manner, Plaintiffs, who are the appropriate Indian tribe with respect to the lands where the discoveries were made.

333. Plaintiffs are informed and believe and thereon allege that the Tribe and Robinson were known by Defendants or readily ascertainable by Defendants at the time that the discoveries were made. (Exhibit 56).

334. Plaintiffs are informed and believe and thereon allege that at all times since 2000, Plaintiffs have been on the list of tribal contacts maintained by the Native American Heritage Commission for all projects in the Kern County area. Plaintiffs are further informed and believe and thereon allege that at all times since 2002 they have been on the Most Likely Descendents list maintained by the Native American Heritage Commission for all discoveries made in the Kern County area. (Exhibit 57).

335. Plaintiffs are informed and believe and thereon allege that Defendants made the discovery in connection with an activity in connection with the development of Tejon Mountain Village and other areas within the land allegedly owned by the Tejon Defendants, including (but not limited to) evaluation of the site for future construction and in preparation for construction.

336. Plaintiffs are informed and believe and thereon allege that Defendants failed to cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice to Plaintiffs.

337. Plaintiffs are informed and believe and thereon allege that Defendants resumed the activity that resulted in the discovery prior to having received the required certification from Plaintiffs that notification has been received and the expiration of 30 days.

338. Plaintiffs are thus entitled to the relief requested below.

FORTH CLAIM FOR RELIEF

DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS IN VIOLATION OF THE 5th AMENDMENT TO THE UNITED STATES CONSTITUTION

By Plaintiffs Against Defendants Salazar and Does 91 through 100

COUNT ONE

339. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 281 above as though fully set forth at length.

340. The Initial Complaint was filed in this case on November 10, 2009. Paragraph 2 of the Initial Complaint states, in relevant part: "The Kawaiisu Tribe of Tejon is a Tribe that has been recognized by the United States since before 1934 and has been omitted from the Federal Register list of entities recognized and eligible to receive services from the United States Bureau of Indian Affairs [due to an administrative oversight by The Department of Interior]. This will require the Assistant Secretary Indian Affairs to reaffirm the formal recognition of the Kawaiisu Tribe of Tejon."

341. Plaintiffs are informed and believe and thereon allege, upon the filing of the Initial Complaint in this case, on November 10, 2009, the Department of the Interior was put on notice that the Kawaiisu had been wrongfully omitted from the list of tribal entities with whom the United States has a government-to-government relationship and that are entitled to receive services from the federal government. After being put on notice of the omission of the Kawaiisu from the list of acknowledged tribal entitles, Defendant Salazar failed to add the Kawaiisu to the list published in the Federal Register on October 1, 2010, at 75 FR 60810 or in the supplement to the list published on October 27, 2010, at 75 FR 66124, or on any subsequently published list.[3]

[3] Plaintiffs are informed and believe and thereon allege, the Department has not published a list since the supplement to the 2010 list was published on October 27, 2010, at 75 FR 66124, despite being required to do so "annually on or before every January 30" pursuant to 25 U.S.C. § 479a-1(b).

342. As previously alleged, the Kawaiisu's leaders signed the 1849 Treaty with the United States and the Kawaiisu are thus entitled to its benefits and protections.

343. Article 4 of the 1849 Treaty states: "The contracting parties agree that the laws now in force, and such others as may be passed, regulating the trade and intercourse, and for the preservation of peace with the various tribes of Indians under the protection and guardianship of the Government of the United States, shall be as binding and obligatory upon the said Utahs as if said laws had been enacted for their sole benefit and protection."

344. Pursuant to Article 4, the Kawaiisu have a property right in receiving services from the United States as do all other Indian groups included on the list of "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs," and thus to be included on said list.

345. The 5th Amendment to the United States Constitution provides in relevant part, "No person shall . . . be deprived of life, liberty, or property, without due process of law." The Department has violated the Kawaiisu's rights and deprived them of property without due process of law within the meaning of the 5th Amendment to the United States Constitution by, after being put on notice of the Kawaiisu's claim, failing to include the Kawaiisu on the list of acknowledged tribal entities and by failing to provide them with services that tribal entities that are included on the list are eligible to receive.

346. Plaintiffs are informed and believe and thereon allege, they should not be required to exhaust administrative remedies because of the unreasonable and indefinite timeframe for administrative action by the Department of the Interior. *See McCarthy v. Madigan*, 503 U.S. 140, 146 (1992) ("requiring resort to the administrative remedy may occasion undue prejudice to subsequent assertion of a court action. Such prejudice may result, for example, from an unreasonable or indefinite timeframe for administrative action."). Plaintiffs are informed and believe and thereon allege, that there is an indefinite timeframe for the Department of Interior to process and decide petitions for federal acknowledgment or other requests and there are no regulations that impose any time limits. *Coit Independence Joint Venture v. Federal Sav. & Loan Ins. Corp.*, 489 U.S. 561, 587 (1989) ("Because the Bank Board's regulations do not place

a reasonable time limit on FSLIC's consideration of claims, Coit cannot be required to exhaust those procedures"). Plaintiffs are informed and believe and thereon allege, the average time for the Department of the Interior to currently process and decide even fully documented petitions for acknowledgment is more than 10 years. *See Walker v. Southern R. Co.*, 385 U.S. 196, 198, 17 L. Ed. 2d 294, 87 S. Ct. 365 (1966) (possible delay of 10 years in administrative proceedings makes exhaustion unnecessary).

347. Plaintiffs are informed and believe and thereon allege, the Department of the Interior's procedures and practice, are and are widely regarding as an ineffectual system. Plaintiffs are informed and believe and thereon allege, in November of 2009, the United States Senate Committee on Indian Affairs held an Oversight Hearing on "fixing" the Federal Acknowledgement Process. Plaintiffs are informed and believe and thereon allege, the Senators took testimony from and questioned Mr. George Skibine, Acting Principal Deputy Assistant Secretary for Indian Affairs, and Mr. R. Lee Fleming, Director, Office of Federal Acknowledgement, concerning numerous shortcomings of the administrative process: most notably, the unreasonable length of time OFA takes to make a determination on a petition. Noting that the administrative process at the Department of Interior is "broken." Fixing the Federal Acknowledgement Process: Oversight Hearing Before Senate Committee on Indian Affairs, 111th Cong. (November 4, 2009) (Exhibit 58) (The Government Printing Office has published an approved transcript of this hearing, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_senate_hearings&docid=f:56575.pdf., A webcast is available at http://www.senate.gov/fplayers/CommPlayer/commFlashPlayer.cfm?fn=indian110409&st=110).

348. Plaintiffs are informed and believe and thereon allege, Senator Byron Dorgan, Committee Chairman, opened the hearing with the following remarks, in relevant part:

> We are going to call the hearing to order. This is a hearing of the Indian Affairs Committee. It is an oversight hearing on the Fixing of the Federal Acknowledgement Process. The very title implies that the process is broken, so our title says this is about fixing it.

Today we are going to talk about the Federal acknowledgement process . . . . that has been established and funded at the Interior Department, and that is where the acknowledgement process should exist and be adjudicated.

. . .

But I believe that the administrative process at the Department of the Interior is broken. Both of our tribal witnesses today have been in this process for some 30 years, that is three decades. People will be born and people will die in the middle of that process without ever getting answers.

The Little Shell Band of Chippewa Indians in Montana first submitted their letter of intent in 1978. Their petition was deemed complete by the Federal acknowledgement in 1995. A final decision was issued last week, which I believe was denying that petition.

The Muscogee Nation of Florida submitted their letter of intent in 1978. The petition was submitted in 1995, deemed complete, 18 years later, in 2003. And the Office of Federal Acknowledgement, however, has not started a review of the petition, which means they too will have to wait perhaps another decade before receiving a final determination.

Regardless of the merits of these petitions, and that is not my point of raising them. The current process, in my judgment, is taking too long. I understand the frustration of petitioning groups. They spend decades gathering and documenting to complete their petitions, only to learn that it will take the Department decades more just to review the documentation.

. . .

> Let me just say finally that this process, I have this summary[4] in front of me that says there are, in the current workload, 15 petitions, 7 I believe are active status. That perhaps is now six from last week's decision. Nine are petitions in ready status. And I understand, although this is a hard number to get from the Interior, there are about 80 partially documented petitions.
>
> In any event, as I have indicated, even petitions that have been ready and complete on nearly a decade ago are now just getting into the process of being part of the current workload. I just think this is not a system that works. I am not talking about the yeses or the noes that come from the Department. I am talking about the fact that when people get together and file a petition, they should not expect it will take three decades for their Government to respond to them. That is just not satisfactory to me, and I think it is not satisfactory to the Committee.
>
> Let me call on the Vice Chairman, Senator Barrasso.

Transcript at 1-3.

349. Plaintiffs are informed and believe and thereon allege, the Vice Chairman, Senator Barrasso then made the following remarks, in relevant part:

> Thank you very much, Mr. Chairman. I agree completely with you. It is not satisfactory to me as a member of the Committee.
>
> . . .
>
> [M]any tribal groups feel, appropriately, that the petition process is too costly and too protracted. Since 1978, only 47 petitions have been fully processed and resolved by the Department. Several tribal groups have been in the queue for over 30 years. The Department has told the Committee on the past that the delays are often the result of petitioners not adequately documenting their petitions. But we have heard petitioners say

[4] Plaintiffs are informed and believe and thereon allege, Senator Dorgan was referring to a document titled "Status Summary of Acknowledgment Cases" "as of September 22, 2008" prepared by R. Lee Fleming, Director of the Office of Federal Acknowledgment. (Exhibit 59).

that the OFA keeps moving the goalpost back, requiring more and more documentation, Mr. Chairman.

The fact is, the current administrative petition process does not impose strict deadlines. It is, practically speaking, open-ended, and some would say, never-ending.

Mr. Chairman, I think this tells a story: Currently, nine group are on the OFA's ready and waiting list, that is, waiting to be considered by the OFA. One of these nine tribes has been in the ready and waiting status for almost 14 years. Three others have been there for 12 or 13 years.

Transcript at 3.

350. Plaintiffs are informed and believe and thereon allege, Senator John Tester asked Mr. George Skibine the length of time a newly petitioning group might have to wait to receive a final determination. Mr. Skibine could give no answer: "Sen. Tester: Q: Do you have any figure in mind? No? Mr Skibine: A: Not really." Transcript at 12.

351. Plaintiffs are informed and believe and thereon allege, that there has been no substantial change with the Federal Acknowledgment process since the November 4, 2009 Senate Hearing as evidenced by the "STATUS SUMMARY OF ACKNOWLEDGMENT CASES," "as of April 29, 2011," the most recent information released by the Department of the Interior (http://www.bia.gov/idc/groups/xofa/documents/text/idc013624.pdf). (Exhibit 60).

352. Based on the most recent Status Summary, Plaintiffs are informed and believe and thereon allege:

a. since the November 9, 2009 hearing, the Office of Federal Acknowledgment has only completed the process on 3 petitions[5] for acknowledgment,

[5] Plaintiffs are informed and believe and thereon allege, for one petition the Department made a decision as to two petitioners.

bringing the total number of petitions for acknowledgment that have been fully processed and resolved by the Department since 1978 to 09;[6]

b. four petitions for acknowledgment are in "Ready" status, that is waiting for the BIA to begin to process their fully documented petition, and have been in this status since January 29, 2003, June 9, 2003, September 15, 2003 and March 29, 2007, respectively;

c. there are currently 9 petitions in the department's active workload and thus by definition, the department has not made a final decision on these petitions. Of the 9 petitions in the department's active workload, 5 have been in the Ready status since May 29, 1997, October 6, 1997, January 16, 1998, February 28, 1996, July 30, 1996, respectively without a decision. For the other four petitions in the active workload, for three of the petitions no "Ready" date is listed and two of these petitions are stayed "to resume after states of emergency lapse" in Louisiana and the fourth is similarly stayed, but lists a ready date of April 4, 1989.

353. Plaintiffs are informed and believe and thereon allege, further evidence that the process remains broken is that 25 U.S.C. § 479a-1 requires the Department to "publish in the Federal Register a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians, *id*. at (a), which since 1994 "shall be published . . . annually on or before every January 30 thereafter, *id*. at (b). Despite the statutory command, Plaintiffs are informed and believe and thereon allege, the Department has not published the list since it did so in the Federal Register on October 1, 2010, at 75 FR 60810 and a supplement to the list published on October 27, 2010, at 75 FR 66124.

[6] Plaintiffs are informed and believe and thereon allege, although Senator Barrasso referenced that 47 petitions have been fully processed and resolved by the Department since 1978, that was based on a similar Status Summary sheet prepared by the Department referred to by Senator Dorgan, which did not include the decision that the Department made the week before the November 2009 hearing regarding the Little Shell Band of Chippewa Indians in Montana. Plaintiffs are also informed and believe and thereon allege, Senator Barrasso inadvertently included three petitions that were not fully processed and resolved by the Department, but rather, were resolved by other means.

354. Plaintiffs are informed and believe and thereon allege, they should not be required to exhaust administrative remedies because the delegation of the authority to the Department of the Interior to decide which Indian entities should be acknowledged and thus, afforded services from the Bureau of Indian Affairs and the rights and benefits of a government-to-government relationship with the United States violates the non-delegation doctrine. *See NSA Telecomms. Records Litig. v. AT&T Corp.*, 2011 U.S. App. LEXIS 25949, *19-20 (9th Cir. Cal. Dec. 29, 2011). "[W]hen Congress confers decisionmaking authority upon agencies Congress must lay down by legislative act an intelligible principle to which the person or body authorized to act is directed to conform." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001) (emphasis and internal quotation marks omitted). Plaintiffs are informed and believe and thereon allege, in enacting 25 U.S.C. §§ 2, 9 and thereby delegating authority to the Department of the Interior to decide if a group should be acknowledged as a Indian tribe Congress imposed no standard or intelligible principle for the Department to make that decision and there is thus an "absence of standards for the guidance of the Administrator's action, so that it would be impossible in a proper proceeding to ascertain whether the will of Congress has been obeyed . . ." *Yakus v. United States*, 321 U.S. 414, 426, 64 S. Ct. 660, 88 L. Ed. 834 (1944).

355. Plaintiffs are informed and believe and thereon allege, they should also not be required to exhaust administrative remedies because Plaintiffs suffer irreparable harm if unable to secure immediate judicial consideration of their claim. Plaintiffs are informed and believe and thereon allege, the Tejon Ranch land is relatively pristine and largely undeveloped. Plaintiffs are informed and believe and thereon allege, the Tejon Defendants are in the process of obtaining permits from the Kern County to develop the massive Tejon Mountain Village project. Plaintiffs are informed and believe and thereon allege, the development of the Tejon Mountain Village project will result in the disturbance and destruction of Native American graves of Plaintiffs' ancestors and other cultural items without complying with NAGPRA. Plaintiffs are informed and believe and thereon allege, the Tejon Defendants intend to bury or remove various cultural items belonging to the Tribe such as various rock formations, including a sun dial and have adopted a plan to deal with the discovery of human remains in a manner that does not comply

with NAGPRA or even state law. Plaintiffs are informed and believe and thereon allege, in the minimal development of the Tejon Ranch property that has occurred to date, the Tejon Defendants have disturbed and destroyed the graves and human remains of Plaintiffs' ancestors as well as other cultural items, as previously alleged. Plaintiffs are informed and believe and thereon allege, the disturbance and damage to graves and cultural items that will be caused by the Tejon Defendants' development of the land cannot be undone. Plaintiffs are informed and believe and thereon allege, the delay will result in the continued denial of the Plaintiffs' right to occupy and use the land, including the right to visit the graves of their ancestors and other important religious locations, which the Tejon Defendants currently refuse to permit.

356. Plaintiffs are informed and believe and thereon allege, they should not be required to exhaust administrative remedies because there is no procedure in place to challenge the Department of Interior's failure to list the tribe already acknowledged, only a procedure to obtain acknowledgement in the first instance. *See Mishewal Wappo Tribe of Alexander Valley v. Salazar*, 2011 U.S. Dist. LEXIS 122828, *24 (N.D. Cal. Oct. 24, 2011) ("The Counties have similarly confused this lawsuit with one requesting initial recognition in claiming a failure to exhaust administrative remedies. As the Counties cited only procedures applicable to the process for initial recognition, it is unclear what procedures they believe were not exhausted. If no procedures exist, exhaustion is not an issue. This argument fails for that reason.").

357. Plaintiffs are thus entitled to the relief requested below.

COUNT TWO

358. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 338 above as though fully set forth at length.

359. On or about May 1, 2011, Plaintiffs sent a written request to the United States to intervene in this action to provide assistance to Plaintiffs in pursing their claims against Defendants Tejon Mountain Village, Tejon Ranch Corporation and the County of Kern asserted herein. (Exhibit 61). The United States failed to do so and, in fact, never responded to the request.

360. As previously alleged, the Kawaiisu's leaders signed the 1849 Treaty with the United States and the Kawaiisu are thus entitled to its benefits and protections. Article 2 of the Treaty of 1849 provides, in relevant part: "all cases of aggression against said Utahs shall be referred to the aforesaid government for adjustment and settlement."

361. Pursuant to Article 4, the Kawaiisu have a property right in receiving the protection of the United States and its assistance in dealing with the Tejon Defendants and the County of Kern.

362. The 5th Amendment to the United States Constitution provides in relevant part, "No person shall . . . be deprived of life, liberty, or property, without due process of law." The Department has violated the Kawaiisu's rights and deprived them of property without due process of law within the meaning of the 5th Amendment to the United States Constitution by, after being put on notice of the Kawaiisu's claim, failing to ensure that the Kawaiisu are treated humanely and taking action to protect the Kawaiisu from the actions of the Tejon Defendants whereby they have disturbed and destroyed the graves of the Kawaiisu's ancestors and other cultural items and claim that they own them and the County of Kern who has agreed with the Tejon Defendants and approved the Tejon Defendants doing same.

363. Plaintiffs are informed and believe and thereon allege, any attempt to obtain the Department of the Interior's assistance, including representation, would necessarily fail because pursuant to the Department of the Interior's regulations only tribes acknowledged by the Department (and hence included on the list) are entitled to benefits or services. *See* 25 C.F.R. § 83.2 ("Acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits of the Federal government available to Indian tribes by virtue of their status as tribes.").

364. Plaintiffs also should not be required to exhaust administrative remedies for the reasons stated in paragraphs 346 through 356, which are incorporated by this reference.

365. Plaintiffs are thus entitled to the relief requested below.

COUNT THREE

366. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 281 above as though fully set forth at length.

367. On February 9, 2012, Plaintiffs sent a written request to the Department, requesting, *inter alia*, that it confirm that the Kawaiisu are an Indian tribe that was omitted from the list of "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs" due to administrative error or oversight, that the Department affirm the Federal relationship between the United States and Kawaiisu and place the Kawaiisu on the list of acknowledged tribes. (Exhibit 62). The Department of the Interior has failed to do so.

368. Article 4 of the 1849 Treaty states: "The contracting parties agree that the laws now in force, and such others as may be passed, regulating the trade and intercourse, and for the preservation of peace with the various tribes of Indians under the protection and guardianship of the Government of the United States, shall be as binding and obligatory upon the said Utahs as if said laws had been enacted for their sole benefit and protection."

369. Pursuant to Article 4, the Kawaiisu have a property right in receiving services from the United States as do all other Indian groups included on the list of "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs," and thus to be included on said list.

370. The 5th Amendment to the United States Constitution provides in relevant part, "No person shall . . . be deprived of life, liberty, or property, without due process of law." The Department has violated the Kawaiisu's rights and deprived them of property without due process of law within the meaning of the 5th Amendment to the United States Constitution by, after receiving the Kawaiisu's February 9, 2012 request, failing to include the Kawaiisu on the list of acknowledged tribal entities and by failing to provide them with services that tribal entities that are included on the list are eligible to receive.

371. Plaintiffs also should not be required to exhaust administrative remedies for the reasons stated in paragraphs 346 through 356, which are incorporated by this reference.

372. Plaintiffs are thus entitled to the relief requested below.

FIFTH CLAIM FOR RELIEF

BREACH OF FIDUCIARY DUTY

By Plaintiffs Against Defendants Salazar and Does 91 through 100

373. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 338 above as though fully set forth at length.

374. Section 4 of the Treaty of 1849 provides, in relevant part, that: "[t]he contracting parties agree that the laws now in force, and such others as may be passed, regulating the trade and intercourse, and for the preservation of peace with the various tribes of Indians under the protection and guardianship of the government of the United States, shall be as binding and obligatory upon the said Utahs as if said laws had been enacted for their sole benefit and protection." One of the laws in force and effect was the Non-Intercourse Act.

375. Plaintiffs are informed and believe and thereon allege, "the Nonintercourse Act imposes upon the federal government a fiduciary's role with respect to protection of the lands of a tribe covered by the Act." *Passamaquoddy Tribe v. Morton*, 528 F.2d 370, 379 (1st Cir. 1975).

376. Section 2 of the Treaty of 1849 provides, in relevant part: "all cases of aggression against said Utahs shall be referred to the aforesaid government for adjustment and settlement." Plaintiffs are informed and believe and thereon allege, this Section of the Treaty was explained to their representatives by Calhoun and they understood it to mean that the United States had an affirmative obligation to protect and defend them and ensure that they receive "humane treatment" from all people under the jurisdiction of the United States. The Tribe understood this provision to require the United States to protect their culture and way of life, including the graves of their ancestors and other cultural items from being disturbed, destroyed or dug up and sold for research.

377. Plaintiffs are informed and believe and thereon allege, the Tejon Defendants have disturbed and destroyed the human remains of Plaintiffs' ancestors and other cultural items as alleged above. Plaintiffs are informed and believe and thereon allege, the Tejon Defendants will disturb and destroy the human remains of Plaintiffs' ancestors and other cultural items if they are allowed to develop the Tejon Ranch property, including the Tejon Mountain Village Project.

Plaintiffs are informed and believe and thereon allege, the Tejon Defendants claim to own the remains of Plaintiffs' ancestors buried on the Tejon Ranch land as well as all of the other cultural items that belong to Plaintiffs and their ancestors. Plaintiffs are informed and believe and thereon allege, the Tejon Defendants have and/or intend to sell remains and other cultural items for research. Plaintiffs are informed and believe and thereon allege, County of Kern has agreed that the Tejon Defendants own the remains of Plaintiffs' ancestors buried on the Tejon Ranch land as well as all of the other cultural items that belong to Plaintiffs and their ancestors. Plaintiffs are informed and believe and thereon allege, the County of Kern has authorized the Tejon Defendants to dig up and sell the remains and other cultural items for research.

378. The forgoing actions are not consistent with the "humane treatment" that the United States promised to Kawaiisu in the 1849 Treaty. In addition, as alleged above, Plaintiffs' religion is uniquely tied to their graves and cultural sites and not being able to visit them denies the practice of their religion which is not "humane treatment."

379. Plaintiffs have reported the forgoing "cases of aggression" to the United States "for adjustment and settlement," but the Department of the Interior refuses to take any action to rectify the aggression by the Tejon Defendants and the County of Kern. By failing to take any action to address the situation and ensure that Plaintiffs are treated humanely, including protecting the graves of their ancestors and other cultural items, the Department of the Interior has breached its fiduciary duty owed to Plaintiffs.

380. Plaintiffs also should not be required to exhaust administrative remedies for the reasons stated in paragraphs 346 through 356 and 363, which are incorporated by this reference.

381. Plaintiffs are thus entitled to the relief requested below.

SIXTH CLAIM FOR RELIEF

DENIAL OF EQUAL PROTECTION IN VIOLATION OF THE 5th AMENDMENT TO THE UNITED STATES CONSTITUTION

By Plaintiffs Against Defendants Salazar and Does 91 through 100

382. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 338 above as though fully set forth at length.

383. Plaintiffs are informed and believe and thereon allege, the Due Process Clause of the 5th Amendment to the United States Constitution contains an equal protection component that requires the Federal Government to provide equal protection under the laws to all people.

384. Plaintiffs are informed and believe and thereon allege, in 1994 Congress was concerned about disparate treatment of Indian tribes and passed an amendment of the Indian Reorganization Act to emphasize its existing policy, and to ensure that all federally recognized tribes receive equal treatment by the federal government. On May 31, 1994, Congress passed "an Act to make certain technical corrections," codified at 108 Stat. 707. In relevant part, Congress amended Section 16 of the Act of June 18, 1934 (25 U.S.C. § 476) by adding at the end new subsections (f) and (g).

385. 25 U.S.C. § 476(f) provides: Departments or agencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to the Act of June 18, 1934 (25 U.S.C. 461 et seq., 48 Stat. 984) as amended, or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.

386. 25 U.S.C. § 476(g) provides: Any regulation or administrative decision or determination of a department or agency of the United States that is in existence or effect on the date of enactment of this Act [enacted May 31, 1994] and that classifies, enhances, or diminishes the privileges and immunities available to a federally recognized Indian tribe relative to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes shall have no force or effect.

387. Plaintiffs are informed and believe and thereon allege, on or about June 14, 2009, a women by the name of Kathryn Montes Morgan on behalf of a purported group calling itself the "Tejon Indian Tribe" sent a letter to the Department of the Interior "requesting 'confirmation' that the [group] is a federally recognized Indian tribe."

388. Plaintiffs are informed and believe and thereon allege, at no time prior to making their request had the Tejon Indian Tribe ever been included on the list maintained and published by the Department of federally recognized tribes.

389. Plaintiffs are informed and believe and thereon allege, the Department of Interior, responded to the request in a letter dated January 6, 2012 (Exhibit 63). Plaintiffs are informed and believe and thereon allege, the Department determined that "[u]nder limited circumstances, Indian tribes omitted from a list of Indian Tribal Entities because of an administrative error can be placed on the current list without going through the Federal acknowledgment process at 25 CFR Part 83," that the Department's "authority to make this determination is not limited by the regulations at 25 CFR Part 83," and that "pursuant to 25 CFR Part 1.2, a waiver of the regulations at 25 CFR Part 83 is permissible" to consider the request. Plaintiffs are informed and believe and thereon allege, the Department determined that due to administrative error the group had been omitted, for a long time, from the list of federally recognized tribes. As a result, Plaintiffs are informed and believe and thereon allege, the Department made a decision to "affirm the Federal relationship between the United States and the Tejon Indian Tribe," and add the group to "the list of 'Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs.'"

390. Plaintiffs are informed and believe and thereon allege, the Department has been on notice since November 10, 2009, when the Initial Complaint was filed in this case the Kawaiisu had been omitted from the list of federally acknowledged Indian tribes due to an administrative oversight, as alleged in Paragraph 2 of the Initial Complaint.

391. On February 9, 2012, Plaintiffs sent a written request to the Department, requesting, *inter alia*, that the Department confirm that the Kawaiisu are an Indian tribe that was omitted from the list of "Indian Entities Recognized and Eligible to Receive Services from the

United States Bureau of Indian Affairs " due to administrative error or oversight, that the Department affirm the Federal relationship between the United States and Kawaiisu and place the Kawaiisu on the list. *See* Ex. 62. The Department has failed to do so.

392. Plaintiffs are informed and believe and thereon allege, the Kawaiisu and the so called Tejon Tribe of Indians are similarly situated in that like the Kawaiisu, the Tejon Indian Tribe group claims to be a modern day embodiment of a tribe of Native Americans that lived on the Tejon Indian Reservation in or about 1853 and thereafter. Moreover, Plaintiffs allege that because they are signatories to the 1849 treaty and the Tejon Indian Group are not a treaty tribe the Plaintiffs have been further overlooked and damaged as an historic and acknowledged tribe.

393. All further information regarding the Tejon Indian Tribe and what the Department considered in makings its decisions as reflected in the January 6, 2012 letter are uniquely within the hand of the Department and are unavailable to Plaintiffs despite reasonable efforts to obtain the information.

394. On January 12, 2012, Plaintiffs submitted a request to the Department under the Freedom of Information Act requesting, *inter alia*: all records that "relate" to the decision made regarding the Tejon Indian Tribe, all records "that were considered" in connection with the decision, all records that were transmitted from, and all communications between, the group to the Department, and vice versa, between January 1, 2009 and the date of Plaintiffs' FOIA request. As of the date of the filing of this third amended complaint, March 19, 2012, the Department has not produced any records to Plaintiffs.

395. Plaintiffs are informed and believe and thereon allege, the Department has violated Plaintiffs' rights under equal protection component of the Due Process Clause of the 5th Amendment to the United States Constitution and 25 U.S.C. §§ 476(f) and (g), by acknowledging the group calling itself the Tejon Indian Tribe, as reflected in the January 6, 2012 letter, and by failing to do the same for the Kawaiisu.

396. Plaintiffs also should not be required to exhaust administrative remedies for the reasons stated in paragraphs 346 through 356, which are incorporated by this reference.

397. Plaintiffs are thus entitled to the relief requested below.

SEVENTH CLAIM FOR RELIEF

NON-STATUTORY REVIEW

By Plaintiffs Against Salazar and Does 91 through 100

COUNT ONE

398. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 281 above as though fully set forth at length.

399. Plaintiffs are informed and believe and thereon allege, by ratification of the 1849 Treaty, Congress recognized the Kawaiisu as an Indian tribe with a government-to-government relationship with the United States.

400. On November 2, 1994, Congress enacted the Federally Recognized Indian Tribe List Act of 1994, 103 P.L. 454, 103; 108 Stat. 4791 (1994).

401. Section 103 of the 1994 List Act provides in relevant part:

Congress finds that--

> (1) the Constitution, as interpreted by Federal case law, invests Congress with plenary authority over Indian Affairs;
>
> (2) ancillary to that authority, the United States has a trust responsibility to recognized Indian tribes, maintains a government-to-government relationship with those tribes, and recognizes the sovereignty of those tribes;
>
> (3) ***Indian tribes presently may be recognized by Act of Congress***; by the administrative procedures set forth in part 83 of the Code of Federal Regulations denominated "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe;" or by a decision of a United States court;
>
> (4) ***a tribe which has been recognized in one of these manners may not be terminated except by an Act of Congress***;
>
> (5) Congress has expressly repudiated the policy of terminating recognized Indian tribes, and has actively sought to restore recognition to tribes that previously have been terminated;
>
> (6) the Secretary of the Interior is charged with the responsibility of keeping a list of all federally recognized tribes;
>
> (7) the list published by the Secretary should be accurate, regularly updated, and regularly published, since it is used by the various departments and agencies of the United States to determine the eligibility of certain groups to receive services from the United States; and
>
> (8) ***the list of federally recognized tribes which the Secretary publishes should reflect all of the federally recognized Indian tribes in the United States*** which

> are eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

25 U.S.C. § 479a (note) (emphasis added).

402. Section 104 of the List Act, which is codified as 25 U.S.C. § 479a-1(a), provides: "The Secretary shall publish in the Federal Register a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

403. Plaintiffs are informed and believe and thereon allege, the term "recognizes" as used in Section 104 is facially ambiguous and is informed by Congress' findings in Section 103. Plaintiffs are informed and believe and thereon allege, Section 104 requires the Secretary to recognize, and thus include on the list, all tribes of which the Secretary is aware that have been recognized by Congress, by the Department's administrative procedures or by a decision of a United States court unless Congress has terminated said tribe.

404. The Initial Complaint was filed in this case on November 10, 2009. Paragraph 2 of the Initial Complaint states, in relevant part: "The Kawaiisu Tribe of Tejon is a Tribe that has been recognized by the United States since before 1934 and has been omitted from the Federal Register list of entities recognized and eligible to receive services from the United States Bureau of Indian Affairs [due to an administrative oversight by The Department of Interior]. This will require the Assistant Secretary Indian Affairs to reaffirm the formal recognition of the Kawaiisu Tribe of Tejon."

405. Plaintiffs are informed and believe and thereon allege, upon the filing of the Initial Complaint in this case, on November 10, 2009, the Department of the Interior was put on notice that the Kawaiisu had been wrongfully omitted from the list of tribal entities with whom the United States has a government-to-government relationship and that are entitled to receive services from the federal government. After being put on notice of the omission of the Kawaiisu from the list of acknowledged tribal entitles, Defendant Salazar failed to add the Kawaiisu to the list published in the Federal Register on October 1, 2010, at 75 FR 60810 or in the supplement to the list published on October 27, 2010, at 75 FR 66124.

406. Plaintiffs are informed and believe and thereon allege, by failing to add the Kawaiisu to the list of federally acknowledged tribes after being put on notice of the Kawaiisu's claims and after receiving the Kawaiisu's written request, the Department has violated the Tribe's rights under the 1994 List Act and 25 U.S.C. § 479a-1.

407. Plaintiffs also should not be required to exhaust administrative remedies for the reasons stated in paragraphs 346 through 356, which are incorporated by this reference.

408. Plaintiffs are thus entitled to the relief requested below.

COUNT TWO

409. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 338 above as though fully set forth at length.

410. The Non-Intercourse Act, 25 U.S.C. § 177, states in relevant part: "No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution."

411. Plaintiffs are informed and believe and thereon allege, "the Nonintercourse Act imposes upon the federal government a fiduciary's role with respect to protection of the lands of a tribe covered by the Act." *Passamaquoddy Tribe v. Morton*, 528 F.2d 370, 379 (1st Cir. 1975).

412. Plaintiffs are informed and believe and thereon allege, upon the filing of the Initial Complaint in this case, on November 10, 2009, the Department of the Interior was put on notice that human remains of the Kawaiisu's ancestors and other cultural items were being disturbed and destroyed by the Tejon Defendants on land that the Kawaiisu claimed belonged to them pursuant to the 1849 Treaty with the Utahs and the creation of the Tejon Indian Reservation in 1853.

413. Plaintiffs are informed and believe and thereon allege, upon the filing of the Initial Complaint in this case, on November 10, 2009, the Department of the Interior was put on notice that human remains of the Kawaiisu's ancestors and other cultural items were being disturbed and destroyed by the Tejon Defendants on land that the Kawaiisu claimed belonged to

them based on the Tejon Indian Reservation that was established in 1853. Specifically, paragraph 13 alerted the Department of the Tejon Defendants' "plans to destroy over 40 pre-historic village sites as part of this development and additional Sacred Sites and burials," on the Tejon/Sebastian Indian Reservation, as approved by the County of Kern. Paragraph 14 put the Department on notice that it had failed to "protect the Tribe from the unlawful taking of their Reservation . . ."

414. Plaintiffs are informed and believe and thereon allege, at least since the filing of the Second Amended Complaint, the Department has been on notice that the Kawaiisu are being denied the access and use of lands that they claim pursuant to the 1849 Treaty with the Utahs and that the graves of their ancestors and other cultural items have been disturbed and destroyed by the Tejon Defendants, with the approval of the County of Kern.

415. On or about May 1, 2011, Plaintiffs sent a written request to the United States to intervene in this action to provide assistance to Plaintiffs in pursing their claims against Defendants Tejon Mountain Village, Tejon Ranch Corporation and the County of Kern asserted herein. *See* Ex. 61.

416. Plaintiffs are informed and believe and thereon allege, pursuant to 25 U.S.C. § 2, the Department of the Interior has been delegated on behalf of the United States the "the management of all Indian affairs and of all matters arising out of Indian relations."

417. Plaintiffs are informed and believe and thereon allege, the Department has failed to respond to Plaintiffs' request, to provide Plaintiffs with any assistance or to even investigate the matter.

418. Plaintiffs are informed and believe and thereon allege, by failing to respond to Plaintiffs' request, by failing to provide Plaintiffs with any assistance, and by failing to investigate the matter, the Department has violated the duty it has to protect the Kawaiisu under the Non-Intercourse Act.

419. Plaintiffs are informed and believe and thereon allege, any attempt to obtain the Department of the Interior's assistance, including representation, would necessarily fail because pursuant to the Department of the Interior's regulations only tribes acknowledged by the

Department (and hence included on the list) are entitled to benefits or services. *See* 25 C.F.R. § 83.2 ("Acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits of the Federal government available to Indian tribes by virtue of their status as tribes.").

420. Plaintiffs also should not be required to exhaust administrative remedies for the reasons stated in paragraphs 346 through 356, which are incorporated by this reference.

421. Plaintiffs are thus entitled to the relief requested below.

COUNT THREE

422. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 281 above as though fully set forth at length.

423. Plaintiffs are informed and believe and thereon allege, in 1994 Congress was concerned about disparate treatment of Indian tribes and passed an amendment of the Indian Reorganization Act to emphasize its existing policy, and to ensure that all federally recognized tribes receive equal treatment by the federal government. On May 31, 1994, Congress passed "an Act to make certain technical corrections," codified at 108 Stat. 707. In relevant part, Congress amended Section 16 of the Act of June 18, 1934 (25 U.S.C. § 476) by adding at the end new subsections (f) and (g).

424. 25 U.S.C. § 476(f) provides: Departments or agencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to the Act of June 18, 1934 (25 U.S.C. 461 et seq., 48 Stat. 984) as amended, or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.

425. 25 U.S.C. § 476(g) provides: Any regulation or administrative decision or determination of a department or agency of the United States that is in existence or effect on the date of enactment of this Act [enacted May 31, 1994] and that classifies, enhances, or diminishes the privileges and immunities available to a federally recognized Indian tribe relative to the

privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes shall have no force or effect.

426. Plaintiffs are informed and believe and thereon allege, on or about June 14, 2009, a women by the name of Kathryn Montes Morgan on behalf of a purported group calling itself the "Tejon Indian Tribe" sent a letter to the Department of the Interior "requesting 'confirmation' that the [group] is a federally recognized Indian tribe."

427. Plaintiffs are informed and believe and thereon allege, at no time prior to making their request had the Tejon Indian Tribe ever been included on the list maintained and published by the Department of federally recognized tribes.

428. Plaintiffs are informed and believe and thereon allege, the Department of Interior, responded to the request in a letter dated January 6, 2012. *See* Ex. 63. Plaintiffs are informed and believe and thereon allege, the Department determined that "[u]nder limited circumstances, Indian tribes omitted from a list of Indian Tribal Entities because of an administrative error can be placed on the current list without going through the Federal acknowledgment process at 25 CFR Part 83," that the Department's "authority to make this determination is not limited by the regulations at 25 CFR Part 83," and that "pursuant to 25 CFR Part 1.2, a waiver of the regulations at 25 CFR Part 83 is permissible" to consider the request. Plaintiffs are informed and believe and thereon allege, the Department determined that due to administrative error the group had been omitted, for a long time, from the list of federally recognized tribes. As a result, Plaintiffs are informed and believe and thereon allege, the Department made a decision to "affirm the Federal relationship between the United States and the Tejon Indian Tribe," and add the group to "the list of 'Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs.'"

429. Plaintiffs are informed and believe and thereon allege, the Department has been on notice since November 10, 2009, when the Initial Complaint was filed in this case the Kawaiisu had been omitted from the list of federally acknowledged Indian tribes due to and administrate oversight, as alleged in Paragraph 2 of the Initial Complaint.

430. On February 9, 2012, Plaintiffs sent a written request to the Department, requesting, *inter alia*, that the Department confirm that the Kawaiisu are an Indian tribe that was omitted from the list of "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs " due to administrative error or oversight, that the Department affirm the Federal relationship between the United States and Kawaiisu and place the Kawaiisu on the list. *See* Ex. 62. The Department has failed to do so.

431. Plaintiffs are informed and believe and thereon allege, the Kawaiisu and the so called Tejon Tribe of Indians are similarly situated in that like the Kawaiisu, the Tejon Indian Tribe group claims to be modern day embodiment of a tribe of Native Americans that lived on the Tejon Indian Reservation in or about 1853 and thereafter.

432. All further information regarding the Tejon Indian Tribe and what the Department considered in makings its decisions as reflected in the January 6, 2012 letter are uniquely within the hand of the Department and are unable to Plaintiffs despite reasonable efforts to obtain the information.

433. On January 12, 2012, Plaintiffs submitted a request to the Department under the Freedom of Information Act requesting, *inter alia*: all records that "relate" to the decision made regarding the Tejon Indian Tribe, all records "that were considered" in connection with the decision, all records that were transmitted from, and all communications between, the group to the Department, and vice versa, between January 1, 2009 and the date of Plaintiffs' FOIA request. As of the date of the filing of this third amended complaint, March 19, 2012, the Department has not produced any records to Plaintiffs.

434. Plaintiffs are informed and believe and thereon allege, the Department has violated Plaintiffs' rights under 25 U.S.C. § 476(f) and (g) by acknowledging the group calling itself the Tejon Indian Tribe, as reflected in the January 6, 2012 letter, and by failing to do the same for the Kawaiisu.

435. Plaintiffs also should not be required to exhaust administrative remedies for the reasons stated in paragraphs 346 through 356, which are incorporated by this reference.

436. Plaintiffs are thus entitled to the relief requested below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

On the First Claim for Relief:

On the First Count:

1. For a judicial declaration and decree stating that pursuant to the 1849 Treaty, the Tribe is the owner of and has the legal and equitable title and/or the right of possession and use of the land referred to as Tejon Ranch;

2. For a preliminary and permanent injunction restoring the Tribe to immediate possession of the Tejon Ranch, barring Defendants from the Tejon Ranch without Plaintiffs' permission, and barring Defendants from interfering with Plaintiffs' possession, use and enjoyment of the Tejon Ranch;

3. For an accounting of all rents, issues and profits;

4. For damages in an amount to be determined at trial;

On the Second Count:

1. For a judicial declaration and decree stating that the Tribe is the owner of and has the legal and equitable title and/or the right of possession and use of at least 25,000 acres that constitute the Tejon Reservation.

2. For a preliminary and permanent injunction restoring the Tribe to immediate possession of the Tejon Reservation, barring Defendants from the Tejon Reservation without Plaintiffs' permission, and barring Defendants from interfering with Plaintiffs' possession, use and enjoyment of the Tejon Reservation.

3. For an accounting of all rents, issues and profits;

4. For damages in an amount to be determined at trial;

On the Second Claim for Relief:

1. For a judicial declaration and decree stating that pursuant to the 1849 Treaty, the Tribe is the owner of and have the legal and equitable title and/or the right of possession and use of the land referred to as Tejon Ranch.

2. For a judicial declaration and decree stating the actions taken by the County in approving the TMV Project and in taking other actions to facilitate same to be in violation of the Plaintiffs' rights under the Treaty with the Utahs.

3. For a preliminary and permanent injunction requiring the County to void, vacate, and set aside their approval of the TMV Project;

4. For a preliminary and permanent injunction requiring the County to void, vacate, and set aside all amendments made and other actions taken by the County at the October 13, 2009 Board of Supervisor's Meeting with regards to the TMV Project;

5. For a preliminary and permanent injunction requiring the County to suspend all activities pursuant to or relating to implementation of the TMV Project;

6. For a preliminary and permanent injunction prohibiting the County from issuing any permits to the Tejon Defendants for the development of the TMV Project, and

7. For a preliminary and permanent injunction prohibiting the County from approving any development on Tejon Ranch or issuing any permits to the Tejon Defendants for the development of any of Tejon Ranch.

On the Third Claim for Relief:

1. For a judicial declaration and decree stating that pursuant to the 1849 Treaty with the Utahs, the land referred to as Tejon Ranch is "tribal land" within the meaning of NAGPRA.

2. For a judicial declaration and decree stating that the land surveyed for the 1853 Tejon/Sebastian Reservation is "tribal land" or "federal land" within the meaning of NAGPRA.

3. For a preliminary and permanent injunction stopping the TMV project until adequate procedures are in place to ensure compliance with NAGPRA;

4. For a preliminary and permanent injunction prohibiting the Tejon Defendants from developing any of the Tejon Ranch until adequate procedures are in place to ensure compliance with NAGPRA;

5. For such other orders as may be necessary to enforce the provisions of NAGPRA and to remedy the Tejon Defendants' past violations.

On the Fourth Claim for Relief:

On all Counts:

1. For declaratory and injunctive relief.

On the Fifth and Sixth Claims for Relief:

1. For declaratory and injunctive relief.

On the Seventh Claim for Relief:

On all Counts:

On All Claims for Relief:

1. Costs of suit;

2. Attorney's fees as allowed by law, and;

3. Such other relief as the court may deem just and proper.

WOLF GROUP L.A.

Dated: March 19, 2012

By: /s/ Evan W. Granowitz
Evan W. Granowitz
Attorneys for Plaintiffs KAWAIISU TRIBE OF TEJON, and DAVID LAUGHING HORSE ROBINSON

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury for all claims on which they have such a right.

WOLF GROUP L.A.

Dated: March 19, 2012

By: /s/ Evan W. Granowitz
Evan W. Granowitz
Attorneys for Plaintiffs KAWAIISU TRIBE OF TEJON, and DAVID LAUGHING HORSE ROBINSON