

ORIGINAL

FILED

DEC 5 2012

U.S. COURT OF  
FEDERAL CLAIMS

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

SHINNECOCK INDIAN NATION,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

NO. 12-836-L

COMPLAINT

1. This is a civil action seeking damages for violations of the rights of the Shinnecock Indian Nation (the "Plaintiff" or the "Nation") in relation to the unlawful taking of certain lands of the Nation and Shinnecock tribal members and unlawful denial of any and all means of redress in relation to such unlawful taking.

2. Defendant has acted, and continues to do so, to deny any and all means of redress in relation to such unlawful taking, in further and continuing violation of the U.S. Constitution and laws, including federal common law and customary international law.

3. Defendant is under a legal obligation to Plaintiff with respect to the subject matter of this complaint that has arisen as a result of, *inter alia*, the United States having imposed a restraint on alienation on all lands and interests in lands owned or held by any Indian tribe, including those of the Plaintiff.

4. Defendant also is under a legal obligation to Plaintiff with respect to the subject matter of this complaint that has arisen as a result of the development of

binding customary international law, in which development Defendant assisted and supported.

5. Defendant has violated these legal obligations to Plaintiff through Defendants' courts having denied any and all judicial means of effective redress for the unlawful taking of lands from Plaintiff and its members. Defendants' courts have barred any and all judicial means of effective redress, not based on the merits of Plaintiff's claims, but rather through the imposition of newly-formed and invidiously discriminatory rules that apply only to "Indian" claims and that are contrary not only to prior judicial decisions in similar claims by non-Indians, but also contrary to relevant legislation of the U.S. Congress and the relevant policies of the Executive Branch of the U.S. government.

#### **JURISDICTION**

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1505, as hereinafter more fully appears.

7. This action is brought in favor of an Indian tribe and identifiable group of American Indians residing within the territorial boundaries of the United States.

8. This action arises under the Constitution, laws or treaties of the United States, or Executive Orders of the President, including but not necessarily limited to: the Indian Commerce Clause of the United States Constitution, U.S. Const. art. 1, § 8, cl. 3; the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, § 2; the Fifth Amendment to the United States Constitution, U.S. Const. amend. V; the Indian Non-Intercourse Act, Rev. Stat. § 2116, 25 U.S.C. § 177; customary international law; and the federal common law.

### **PARTIES**

9. Plaintiff the Shinnecock Indian Nation is a federally-recognized Indian tribe, with its principal offices at Church Street, Shinnecock Indian Reservation, P. O. Box 5006, Southampton, New York 11969-5006.

10. Defendant the United States of America is organized and existing under the Constitution of the United States, and is a state within the meaning of international law.

### **DESCRIPTION OF THE LANDS INVOLVED**

11. The aboriginal territory of the Nation includes each and every part of what is now known as the Town of Southampton in Suffolk County in the State of New York. The Nation exclusively occupied, used and owned all lands within its aboriginal territory since time immemorial.

12. As more fully appears below, centuries ago the Nation reserved to itself in perpetuity certain lands within its aboriginal territory.

13. The Shinnecock Reserved Lands comprise approximately 5,258 acres of land located in the Town of Southampton in Suffolk County in the State of New York, described as follows:

...ALL that certain Tract of land & premises commonly known as "Shinecock Hills" and "Sebonac Neck" including Ram Island, situated in said Town of Southampton, County of Suffolk & lying North of a certain line commencing at the head of the Creek and running along the Indian Ditch where the fence now stands to the Stephen Post Meadow so called, thence along the old Ditch on the South side of said meadow to Old Fort Pond where the water fence formerly stood with all & singular the hereditaments & appurtenances to the same belonging or in anywise appertaining.

14. The Shinnecock Canal, also called Canoe Place, is the approximate location of the western boundary of the Shinnecock Reserved Lands. The

eastern boundary of the Shinnecock Reserved Lands runs approximately from the head of Heady Creek at the intersection of East Gate Road and the Montauk Highway, at its southern end, to Bullhead Bay, at its northern end, all within the boundaries of the Town of Southampton.

15. The Shinnecock Reserved Lands provided the Nation and Shinnecock tribal members with critical economic uses including: agricultural, horticultural, whaling, timber, fishing, hunting, and wampum manufacturing; with sacred burial grounds; with religious, cultural and ceremonial uses; and with residential sites and trade routes.

16. In 1859, the right, title and interest of the Nation to a substantial portion of the Shinnecock Reserved Lands was purportedly conveyed and released to the Trustees of the Proprietors of the Common and Undivided Lands of the Town of Southampton (a/k/a the Trustees of the Proprietors of the Common and Undivided Lands and Marshes (or Meadows), in the Town of Southampton) (the "Trustees of the Proprietors"), a corporate entity organized and existing under the laws of the State of New York, by an "indenture" recorded in the Office of the Suffolk County Clerk at Liber 103, page 257 (the "1859 Indenture"), purportedly authorized by Chapter 46 of the New York Laws of 1859 (the "1859 State Law").

17. These lands (the "Stolen Lands") comprise approximately 4,422 acres of land, and are all that portion of the Shinnecock Reserved Lands except approximately 837 acres of land commonly known as the Shinnecock Neck portion of the Shinnecock Indian Reservation, as more fully appears below.

## **GENERAL ALLEGATIONS**

### **Shinnecock Indian Nation and Relations with European Colonists**

18. The Shinnecock Indian people are among the original inhabitants, occupants and residents of Long Island. The Nation and the Shinnecock People, for many years prior to, and at the time of, first European contact, were known among the other Native American nations and peoples of eastern North America as the guardians and residents of the area of Long Island now known as the Town of Southampton. Their economy primarily was comprised of agriculture, horticulture, timber, whaling, hunting and fishing, wampum manufacture and trade.

19. The first English colonists (the "English settlers") that settled in the area of Long Island now known as the Town of Southampton arrived on or about June 12, 1640.

20. Shortly thereafter, during or about December 1640, the Nation permitted the English settlers to inhabit and make use of certain lands within the Nation's aboriginal territory, in common with the Nation. These lands were east of the Shinnecock Reserved Lands. The Nation, however, reserved to itself ownership of and paramount rights to the Shinnecock Reserved Lands, yet permitted and authorized the English settlers to make certain uses of the Shinnecock reserved lands, such as travel across the lands and the grazing of the settlers' cattle, to the extent that such use did not interfere with the Nation's paramount rights to the lands. This transaction (the "1640 transaction") was memorialized by the English settlers in an indenture executed on or about December 13, 1640 (the "1640 written indenture").

21. On or about December 28, 1649, after disputes arose between the English settlers and the Nation concerning the meaning of the 1640 transaction, the

English settlers (purporting to act as “the Town of Southampton,”) and the Nation entered into an agreement to clarify the respective rights of the parties with respect to the Shinnecock Reserved Lands. This agreement was memorialized by an indenture executed on or about December 28, 1649 (the “1649 written agreement”).

22. On or about August 16, 1703, the Trustees of the Freeholders, on behalf of themselves and the Town of Southampton, entered into several written documents with the Nation. One of the written documents was a lease (the “1703 Lease”) that recognized and confirmed the Nation’s rights to the Shinnecock Reserved Lands for 1000 years.

#### **Protections of Indian Lands by the United States**

23. On or about July 22, 1790, the first Congress of the United States under the Constitution of the United States enacted the original version of the Indian Non-Intercourse Act as the Act of July 22, 1790, c. 33, 1 Stat. 137. Section 4 of that original statute declared invalid any sale or other conveyance of lands by any nation or tribe of Indians, unless done at some public treaty held under the authority of the United States. Subsequent re-enactments of the Indian Non-Intercourse Act have maintained and expanded upon the requirement of Congressional approval for alienation of interests in land held by Indians. See the Act of March 1, 1793, 1 Stat. 329; the Act of July 22, 1796, 1 Stat. 469; the Act of March 3, 1799, 1 Stat. 743; the Act of March 30, 1802, c. 13, § 12, 2 Stat. 139; and the current and permanent version of the Non-Intercourse Act, the Act of June 30, 1834, c. 161, § 12, 4 Stat. 729, reenacted as Revised Statutes § 2116, and now codified at 25 U.S.C. § 177. Each subsequent version of the Indian Non-Intercourse Act repealed the preceding version of the Act,

except that section 29 of the Act of June 30, 1834 Act continued in effect east of the Mississippi River the provisions of the Act of March 30, 1802.

24. The Indian Non-Intercourse Act, 25 U.S.C. § 177, which is currently in effect and was in effect at the time of the 1859 State Law, provides that:

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. Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of \$1,000. The agent of any State who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner of the United States appointed to hold the same, may, however, propose to, and adjust with, the Indians the compensation to be made for their claim to lands within such State, which shall be extinguished by treaty.

25. The Indian Non-Intercourse Act imposes upon the United States a fiduciary obligation to protect against loss of Indian tribal lands in violation of federal law and policy. *See, e.g., Golden Hill Paugussett Tribe v. Weicker*, 39 F.3d 51 (2d Cir. 1994); *Joint Tribal Council of the Passamaquoddy Tribe v. Morton*, 528 F.2d 370 (1st Cir. 1975); *Shinnecock Indian Nation v. Kempthorne*, No. 06-CV-5013, Slip Op., 2008 WL 4455599 (E.D.N.Y. Sept. 30, 2008).

**Adoption of the United Nations Charter and International Human Rights  
Declarations and Conventions and Development of Customary International Law**

26. On or about June 26, 1945, the peoples of the United Nations, by and through their respective Governments, through representatives assembled in San Francisco, established the Charter of the United Nations. The United States was an original signatory to the United Nations Charter, which was duly ratified by the United States Senate, and which entered into force on October 24, 1945.



27. On or about December 10, 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights, GA Res. 3/217 (Dec. 10, 1948).

28. On or about December 16, 1966, the United Nations General Assembly adopted the International Covenant on Civil and Political Rights ("ICCPR"), G.A. Res. 2200, which entered into force on or about March 23, 1976.

29. The ICCPR was signed on behalf of the United States on or about October 5, 1977, and the United States Senate advised and consented to its ratification on or about September 8, 1992. 138 Cong. Rec. S4781-84 (April 2, 1992).

30. On or about September 13, 2007, the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples, GA Res. 61/295 (Sept. 13, 2007). *Inter alia*, Article 26 of the Declaration provides:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27 of the Declaration provides:

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or



used. Indigenous peoples shall have the right to participate in this process.

Article 28 of the Declaration provides:

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 40 of the Declaration provides:

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

31. On or about December 16, 2010, the United States formally announced its support for the United Nations Declaration on the Rights of Indigenous Peoples. See, e.g., *Statement by Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations*, <http://usun.state.gov/briefing/statements/2010/153009.htm>; *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples*, <http://usun.state.gov/documents/organization/153239.pdf>; and *Remarks by the President at the White House Tribal Nations Conference*, <http://www.whitehouse.gov/the-press-office/2010/12/16/remarks-president-white-house-tribal-nations-conference> (each last visited December 5, 2012).

32. The relevant provisions of the Declaration express rules of international law including binding customary international law. Such rules are now the subject of the general and consistent practice of states followed by them from a sense of legal obligation. For example, in *Saramaka People v. Suriname*, 2007 Inter-Am. Ct. H.R. (ser. C) No. 172 (Nov. 28, 2007), the Inter-American Court quoted the Declaration for its determination on natural resources within ancestral territory. As another example, the Declaration has been recognized by the American state of Belize. Mayan indigenous peoples brought a claim in the courts of Belize to assert their collective and individual rights to traditionally owned lands and resources. *Cal v. Attorney Gen.*, [2007] Consol. Claims Nos. 171 & 172, ¶¶ 131-134 (Belize). The Supreme Court of Belize found in favor of the Mayan claims and acknowledged that, even though Declaration is not a binding document in and of itself, it was important that Belize voted in favor of the Declaration, which embodies “general principles of international law relating to indigenous peoples and their lands and resources.” *Id.* ¶ 132.

### **Taking of Shinnecock Reserved Lands**

33. On or about March 16, 1859, the State of New York enacted legislation, Chapter 46 of the New York Laws of 1859 (the “1859 State Law”), which consented to and purported to authorize the Trustees of the Shinnecock Tribe to convey, and the Trustees of the Proprietors to receive, the conveyance of all of the Nation’s “right, title and interest” in and to the Stolen Lands.

34. On or about April 21, 1859, with this purported authorization, approval and permission of the State of New York, the Trustees of the Proprietors, as grantees, on behalf of the Proprietors, purported to enter into an indenture (the “1859 Indenture”) with the Trustees of the Nation, as grantors, on behalf of the Nation, under

which the right, title and interest of the Nation to the Stolen Lands, purportedly was conveyed to the Trustees of the Proprietors. The Nation was not a party to the 1859 Indenture. The Nation never authorized the Trustees of the Nation to enter into the 1859 Indenture, nor ratified the actions of the Trustees of the Nation having done so. The 1859 State Law could not and did not lawfully authorize the Trustees of the Nation to enter into the 1859 Indenture. The 1859 Indenture stemmed from, and was the planned, intended and direct result of the fraud underlying the 1859 Fraudulent Memorial and the 1859 State Law.

**Denial of Means of Redress for the Unlawful Taking of Shinnecock Reserved Lands**

35. On or about July 25, 1859, Shinnecock tribal members, on behalf of themselves, and all other Shinnecock tribal members filed a lawsuit against the Trustees of the Proprietors and the Trustees of the Nation, challenging the 1859 Indenture, and alleging fraud in securing the Fraudulent Memorial and the 1859 State Law. The lawsuit was filed before the Supreme Court of the State of New York for Suffolk County. On information and belief, this lawsuit remained pending and/or one or more other similar lawsuits were brought and remained pending on or about December 29, 1884, and February 7, 1885. On information and belief, this lawsuit and/or one or more similar lawsuits were dismissed on the grounds that:

- (a) the Nation and/or the plaintiff Shinnecock tribal members were not natural persons; and/or
- (b) the Nation and/or the plaintiff Shinnecock tribal members were not citizens; and/or
- (c) the Nation could not prosecute such an action in its own name and/or;

- (d) the plaintiff Shinnecock tribal members could not prosecute such an action asserting the legal rights of the Nation.

36. From prior to and after the 1859 State law, continuously up to at least on or about December 23, 1987, Indian tribes in New York State were unable to prosecute lawsuits in their tribal names in the courts of the State of New York without the express consent of the New York State legislature.

37. On or about September 13, 1950, Congress enacted the Act of Sept. 13, 1950, c. 947, § 1, 64 Stat. 845, currently codified at 25 U.S.C. § 233. Section 233 provides in part:

The courts of the State of New York under the laws of such State shall have jurisdiction in civil actions and proceedings between Indians or between one or more Indians and any other person or persons to the same extent as the courts of the State shall have jurisdiction in other civil actions and proceedings, as now or hereafter defined by the laws of such State: . . . And provided further, That nothing herein contained shall be construed as authorizing the alienation from any Indian nation, tribe, or band of Indians of any lands within any Indian reservation in the State of New York: Provided further, That nothing herein contained shall be construed as conferring jurisdiction on the courts of the State of New York or making applicable the laws of the State of New York in civil actions involving Indian lands or claims with respect thereto which relate to transactions or events transpiring prior to September 13, 1952.

38. After the 1859 State Law, over the course of successive decades, and continuing up to the present, the Nation and Shinnecock tribal members have been denied the ability to challenge the legality of, or otherwise obtaining just compensation or other legal redress for the taking of the Stolen Lands. This was done by, *inter alia*:

- (a) unlawfully denying the Nation access to the courts of New York without the consent of the New York legislature;
- (b) unlawfully interfering with the Nation's and Shinnecock tribal members' attempts to lawfully raise funds to in order to seek legal redress;

- (c) unlawfully interfering with the Nation's and Shinnecock tribal members' use of those portions of the Shinnecock reserved lands that the Nation retained after the 1859 State Law, and other lands retained by the Nation;
- (d) unlawfully interfering with Shinnecock tribal members' legal right and ability to vote for Trustees of the Nation and to hold office as Trustees of the Nation;
- (e) otherwise unlawfully interfering with Shinnecock tribal members' legal right and ability to freely exercise and fully enjoy their political and civil rights as members of the Nation;
- (f) otherwise unlawfully preventing the Nation and Shinnecock tribal members from challenging the legality of or otherwise obtaining just compensation or other redress for the loss of lands as a consequence of the 1859 State Law.

39. From prior to and after 1859 State Law, up until on or about January 21, 1974, the courts of the United States were closed to the Nation and its individual tribal members for claims of violations of the Indian Non-Intercourse Act, or otherwise challenging the legality of, or otherwise obtaining just compensation or other legal redress for the taking of the Stolen Lands.

40. The United States District Courts did not have jurisdiction over claims arising under the Constitution, laws and treaties of the United States until 1875. On or about October 10, 1927, in *Deere v. State of New York*, 22 F.2d 851 (2d Cir. 1927), and again on or about May 6, 1929, in *Deere v. St. Lawrence River Power Co.*, 32 F.2d 550 (2d Cir. 1929), the Second Circuit Court of Appeals upheld dismissal for lack of jurisdiction of a claim by a member of the St. Regis Tribe on behalf of himself

and other members of the St. Regis Tribe, seeking to enforce the Tribe's rights to certain lands unlawfully taken from the St. Regis Tribe.

41. On or about January 21, 1974, in *Oneida Indian Nation of New York v. County of Oneida*, 414 U.S. 661 (1974), the United States Supreme Court overturned a similar decision by the Second Circuit Court of Appeals upholding dismissal for lack of jurisdiction a claim by the Oneida Nation, seeking to enforce the Oneida Nation's rights to certain lands unlawfully taken from the Oneida Nation. The United States Supreme Court held that United States District Courts had jurisdiction under 28 U.S.C. §§ 1331 and 1362 over such claims.

42. On or about February 8, 1978, by letter to the Secretary of the United States Department of the Interior, the Shinnecock Nation formally in writing requested that the United States bring suit on behalf of the Nation seeking relief from the taking of the Stolen Lands. By letter dated September 4, 1979, from Interior Department Solicitor Leo M. Krulitz, the United States declined to bring such suit.

43. On or about December 30, 1982, Congress enacted the Indian Claims Limitation Act of 1982 (the "Claims Limitation Act"), Pub. L. 97-394, Title I, §§ 2-6, 96 Stat. 1976, 28 U.S.C. § 2415 Note.

44. The Nation's claim in relation to the Stolen Lands is listed on the Statute of Limitations Claims List published in the Federal Register by the Secretary of the Interior in accordance with section 3(a) of the Claims Limitation Act on March 31, 1983, at 48 Fed. Reg. 13698, 13920.

45. The Secretary of the Interior has never sent a report to the Nation rejecting the Nation's claim in relation to the Stolen Lands pursuant to section 5(b) of the Claims Limitation Act, has never published a notice in the Federal Register

identifying the Nation's claim in relation to the Stolen Lands covered in any report in accordance with section 5(c) of the Claims Limitation Act and has never submitted to Congress legislation to resolve the Nation's claim in relation to the Stolen Lands or a report setting out options for legislative resolution of the Nation's claim in relation to the Stolen Lands pursuant to section 6(a) of the Act.

46. On or about June 15, 2005, the Nation filed suit in the U.S. District Court for the Eastern District of New York, against each of the Defendants therein, including the State of New York, the County of Suffolk, the Trustees of the Proprietors, the Trustees of the Freeholders and other defendants, seeking to vindicate the Nation's rights in and to the Stolen Lands, alleging violations of the Indian Non-Intercourse Act, 25 U.S.C. § 177, and seeking ejectment of the defendants named therein, damages and other relief for taking of the Stolen Lands. *Shinnecock Indian Nation v. State of New York, et al.*, No. CV-05-2887 (TCP) (ARL) (E.D.N.Y.) (First Amended Complaint filed August 5, 2005).

47. On or about June 28, 2005, in *Cayuga Indian Nation v. Pataki*, 413 F.3d 266 (2d Cir. 2005), cert. denied, 547 U.S. 1128 (2006), the United States Court of Appeals for the Second Circuit reversed a judgment and post-judgment rulings upholding remedying the violation of the Cayuga Nation's rights to certain lands unlawfully taken from the Cayuga Nation, ruling that "equitable doctrines" barred "disruptive" Indian land claims seeking to remedy the violation of its rights in and to lands unlawfully taken long ago in violation of the Indian Non-Intercourse Act, 25 U.S.C. § 177.

48. By motions filed October 28 and 31, 2005, each of the defendants in *Shinnecock Indian Nation v. New York* moved to dismiss the Nation's First Amended



Complaint, arguing, *inter alia*, that the United States Courts are not open to an Indian tribe or nation for “possessory Indian land claims,” i.e., where an Indian tribe or nation seeks to remedy the violation of its rights in and to lands allegedly unlawfully taken long ago in violation of the Indian Non-Intercourse Act, 25 U.S.C. § 177.

49. By Memorandum and Order dated November 28, 2006, the U.S. District Court ruled that the United States Courts are not open to “ancient Indian land claims” such as presented by the Nation in its First Amended Complaint. *Shinnecock Indian Nation v. State of New York*, Slip Op., 2006 WL 3501099 (E.D.N.Y. Nov. 28, 2006). On or about December 5, 2006, the U.S. District Court entered judgment in favor of the Defendants and against the Nation.

50. On or about August 9, 2010, in *Oneida Indian Nation v. County of Oneida*, 617 F.3d 114 (2d Cir. 2010), cert. denied, 132 S.Ct. 452 (2011), the United States Court of Appeals for the Second Circuit ruled that the Oneida Nation’s “ancient Indian land claims” under the Non-Intercourse Act were disruptive *per se* and were barred under the *Cayuga* decision.

51. The Stolen Lands were not taken from the Nation and Shinnecock tribal members for a legitimate public purpose.

52. The Nation and Shinnecock tribal members never received just compensation for the Stolen Lands.

53. From and after the 1859 State Law, continuously including up to the present, Shinnecock tribal members have suffered and continue to suffer deprivation of the Stolen Land’s critical economic uses, including agricultural, horticultural, whaling, timber, fishing, hunting, and wampum manufacturing; sacred burial grounds; religious, cultural and ceremonial uses; and residential sites and trade routes, as a proximate

result of the 1859 State Law, and the other unlawful acts and omissions described herein.

54. From and after the 1859 State Law, continuously including up to the present, Shinnecock tribal members have suffered and continue to suffer harmful effects of discrimination as a proximate result of the 1859 State Law, and the other unlawful acts and omissions described herein.

55. After the 1859 State Law, at all times relevant hereto, continually up to and including the present, the Nation and Shinnecock tribal members have sought legal and other redress for the wrongs described herein.

56. From and after during or about 1900, continually up to and including the present, the Nation and Shinnecock tribal members have sought redress of the wrongs herein described from the United States.

#### **FIRST CLAIM FOR RELIEF**

##### **Violation of Trust Obligation to Protect Indian Tribal Land Indian Non-Intercourse Act and Federal Common Law**

57. Plaintiff repeats and re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1- 56.

58. The United States has legal obligations to Plaintiff to protect against loss of Indian tribal lands in violation of federal law and policy. These legal obligations arise under the Indian Non-Intercourse Act, which prohibits the transfer of Indian tribal lands without the consent of the United States.

59. These legal obligations include the obligations to Plaintiff to provide effective redress for the unlawful taking of the Shinnecock Stolen Lands.

60. The United States has violated these legal obligations because it has denied the Nation any and all means of redress for the taking of the Shinnecock Stolen Lands as alleged herein.

61. Defendant has violated these legal obligations to Plaintiff through Defendants' courts having denied any and all judicial means of effective redress for the unlawful taking of the Stolen Lands from Plaintiff and its members. Defendants' courts have barred any and all judicial means of effective redress, not based on the merits of Plaintiff's claims, but rather through the imposition of newly-formed and invidiously discriminatory rules that apply only to "Indian" claims. These new rules are contrary not only to prior judicial decisions in similar claims by non-Indians, but also contrary to relevant legislation of the U.S. Congress and the relevant policies of the Executive Branch of the U.S. government.

62. Plaintiff and its members have been injured and have suffered damages as a proximate result of such unlawful and wrongful acts and omissions of the Defendant alleged herein.

### **SECOND CLAIM FOR RELIEF**

#### **Violation of Obligation to Provide Effective Redress Customary International Law and Federal Common Law**

63. Plaintiff repeats and re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1- 62.

64. The United States has legal obligations to Plaintiff to provide effective redress for the unlawful taking of the Shinnecock Stolen Lands.

65. The United States has violated these legal obligations because it has denied the Nation any and all means of redress for the taking of the Shinnecock Stolen Lands as alleged herein.

66. Defendant has violated these legal obligations to Plaintiff through Defendants' courts having denied any and all judicial means of effective redress for the unlawful taking of the Stolen Lands from Plaintiff and its members. Defendants' courts have barred any and all judicial means of effective redress, not based on the merits of Plaintiff's claims, but rather through the imposition of newly-formed and invidiously discriminatory rules that apply only to "Indian" claims. These new rules are contrary not only to prior judicial decisions in similar claims by non-Indians, but also contrary to relevant legislation of the U.S. Congress and the relevant policies of the Executive Branch of the U.S. government.

67. Plaintiff and its members have been injured and have suffered damages as a proximate result of such unlawful and wrongful acts and omissions of the Defendant alleged herein.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff respectfully prays that this honorable Court grant the following relief:

1. Judgment against Defendant United States of America in the amount of One Billion One Hundred Five Million Dollars (\$1,105,000,000.00);
2. Costs of this action, including reasonable attorneys' fees;
3. Interest on damages awarded; and
4. Such other and further relief as this honorable Court deems just and proper.

Dated: December 5, 2012

Respectfully submitted,

FREDERICKS PEEBLES & MORGAN LLP  
John M. Peebles  
Steven J. Bloxham  
2020 L Street, Suite 250  
Sacramento, California 95811

By:   
Steven J. Bloxham, Esq.  
Attorneys for Plaintiff  
E-mail: [sbloxham@ndnlaw.com](mailto:sbloxham@ndnlaw.com)  
T: (916) 441-2700  
F: (916) 441-2067

*Of Counsel*  
Darcie L. Houck  
2020 L Street, Suite 250  
Sacramento, California 95811  
(916) 441-2700