THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM C. TUTTLE 3400 H.C. Route 20 Blythe, CA 92225-9713 Plaintiff, v. KENNETH SALAZAR Secretary U.S. Department of the Interior 1849 C Street, N.W. Washington, D.C. 20240 KEVIN WASHBURN Assistant Secretary/ Indian Affairs U.S. Department of the Interior 1849 C Street, N.W. Washington, D.C. 20240 UNITED STATES DEPARTMENT OF THE INTERIOR 1849 C Street, N.W. Washington, D.C. 20240 Defendants.	)	Civil Action No. _____ **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

NATURE OF THE ACTION

1. Pursuant to 28 U.S.C. §§ 2201 and 2202, plaintiff William C. Tuttle ("Plaintiff") seeks declaratory and injunctive relief against the United States Department of the Interior ("Department"), its Secretary Kenneth Salazar ("Secretary"), and its Assistant Secretary for Indian Affairs, Kevin Washburn ("Assistant Secretary"). Plaintiff challenges the decision of the Department's Interior Board of Indian Appeals ("IBIA") dated December 18, 2012, denying his appeal challenging the decision of the Acting Western Regional Director ("Regional Director") of the Bureau of Indian Affairs ("BIA")

to affirm a decision to cancel a business lease between Plaintiff and the Colorado River Indian Tribes ("CRIT"). Specifically, the Regional Director affirmed the cancellation decision rendered by the BIA's Colorado River Agency Superintendent concerning Business Lease B-509-CR ("Lease").

PARTIES

2. Plaintiff William C. Tuttle is the lessee under the Lease, and resides on the property – which is situated within the State of California – that is the subject of the Lease.

3. Sued in his official capacity, Kenneth Salazar is Secretary of the United States Department of the Interior and is responsible for all decisions and operations of the Department, including those of the BIA and IBIA.

4. Sued in his official capacity, Kevin Washburn is Assistant Secretary for Indian Affairs, United States Department of the Interior and is responsible for all decisions and operations of the BIA.

5. The United States Department of the Interior is an executive department of the government of the United States of America, and the BIA is under its jurisdiction.

JURISDICTION

6. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 2201 because this action presents questions arising under federal law. The United States has consented to this action under 5 U.S.C. §§ 701-706.

VENUE

7. Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because the defendants reside and may be found here.

STATEMENT OF THE CASE

8. On January 27, 1949, Plaintiff purchased the property ("the Property") and received a deed granting fee simple title to William Tuttle, which deed was recorded March 9, 1949 in Book 1057, Page 425 of the County of Riverside, State of California. The Property consists of 98.24 acres on the Colorado River riverfront.

9. On March 30, 2007, Real Estate Title Specialist Steven Andrews with offices in Arcadia, California, completed a Chain of Title determination and transmitted the same to Riverside County Assessor's Office, stating that the Plaintiff's property was owned in fee simple title and suffered no title deficiencies.

10. In his report described at Paragraph 9, Title Specialist Andrews reported and demonstrated through official documents that Plaintiff's title to the land traced directly to a federal transfer of title to the land from federal public domain status to the State of California for public school use by School Land Clearance No. 3024, dated January 30, 1888.

11. On April 8, 1977, the United States District Court for the Central District of California entered a Stipulated Judgment that the United States was the owner of certain lands – including Plaintiff's land – and that the land was held "in trust" for CRIT by the United States. The Stipulated Judgment was rendered in a quiet title action styled *United States v. Brigham Young University, William C. Tuttle, and Robert E. Tuttle*, No. CV 72-3058-DWW.

12. In declaring Plaintiff's land to be Indian trust land through a quiet title lawsuit rather than a land condemnation lawsuit, the Stipulated Judgment did not award

Plaintiff money damages in compensation for the value of his land being taken by the Stipulated Judgment and implementing orders.

13. Notwithstanding the fact that Plaintiff's fee simple title to the Property traced directly from the January 30, 1888, title transfer by School Land Clearance No. 3024 described at Paragraph 10, Plaintiff was forced in 1977 to (a) agree to the Stipulated Judgment and (b) surrender his land title under (c) both legal and financial pressure from the United States government.

14. In conjunction with the Stipulated Judgment described at Paragraph 11, Plaintiff was compelled to enter into the Lease, which was a fixed-term 50-year lease with CRIT pursuant to which Plaintiff agreed to pay rent to CRIT, after making the first rental payment to the BIA, on the following fixed-rate basis: (a) years 1-5: $491.20 annually; (b) years 6-20: $982.40 annually; and (c) years 21-50: $1,473.60 annually. The Lease provided for rental adjustments under certain conditions, none of which have ever arisen.

15. The Lease provisions constituted the sole consideration to Plaintiff in exchange for his surrendering fee simple title to the Property in settlement of the quiet title litigation described at Paragraph 11.

16. The Lease's 50-year term was fixed by the document itself and contained no provision for any termination – with or without cause – prior to the expiration of the 50 year leasehold term, unless the Secretary has satisfied the prerequisite imposed by ARTICLE 17(B) of the Lease Addendum.

17. The Secretary has not satisfied the ARTICLE 17(B) prerequisite described at Paragraph 16 and, accordingly, the condition precedent for Lease termination has never been met.

18. Lease Section V is entitled "PAYMENTS OF RENTS" and provides only that the Lessee's failure to make payments in strict accord with Section V "shall not be construed to relieve the Lessee from his obligation to make timely rental payments."

19. Lease Section VI is entitled "PUBLIC LIABILITY INSURANCE" and it provides no penalty for the Lessee's delay or even failure in delivering the described evidence of insurance to the Secretary.

20. The Lease and its Addendum were approved on behalf of the Secretary in ostensible accordance with federal law and regulation on March 31, 1977.

21. In 1986, Plaintiff entered into a Lease Modification requiring Plaintiff to pay to CRIT a sum equal to three (3) percent of gross receipts of all business activities conducted on the Property. The Lease Modification also required Plaintiff to submit statements of receipts in order to calculate the percentage payment. The Lease Modification specifically provided that it did not "change any of the terms, conditions or stipulations of Lease No. B-509-CR except as specifically set forth herein."

22. The Lease Modification contained no new provision for any termination – with or without cause – prior to the expiration of the 50 year leasehold term.

23. In addition to the Lease payments described at Paragraph 14, the Lease Modification amended Lease Section IV – RENTALS to impose rent payments of three (3) percent of the gross receipts of all business conducted on the leased property, without amending or modifying the Lease provision concerning lessee's failure to make payment

described at Paragraph 18. This additional rent payment was imposed despite the absence of the changed conditions permitting lease adjustments described at Paragraph 14.

24. The Lease Modification added a new Lease Section IX entitled "ANNUAL ACCOUNTING," without amending or modifying the Lease provision concerning lessee's failure to make payment described at Paragraph 18.

25. The Lease Modification was approved on behalf of the Secretary on June 10, 1986 in accordance with federal law and regulation.

26. The Lease Modification described at Paragraph 21 was agreed to by Plaintiff as the result of legal and financial pressure from the Department and CRIT.

27. CRIT is a recognized Indian tribe located in Arizona and its enrolled membership consists primarily of residents of Arizona, and not California.

28. Through a timely appeal to the IBIA, Plaintiff challenged the validity of the 1986 Lease Modification, which resulted in an IBIA decision that (a) the Lease Modification was valid, but (b) Plaintiff had been overcharged for, and had paid, certain interest charges.

29. As part of the IBIA ruling described at Paragraph 28, the Acting Regional Director calculated the overcharges paid by Plaintiff to be $10,504.79.

30. On September 30, 2009, BIA and CRIT jointly issued a Default Notice to Plaintiff declaring a failure to pay rent of $4,420.80. Following negotiations, BIA and CRIT agreed to credit the overpayment of interest against the rent and waive the alleged default based on unpaid rent. BIA and CRIT refused to waive three other alleged technical violations of the Lease.

31. The first violation described at Paragraph 30 alleged that Plaintiff had failed to pay the annual percentage rent based on gross receipts since 1991 in violation of the Lease Modification.

32. The second violation described at Paragraph 30 alleged that Plaintiff had failed to submit statements of receipts to BIA and CRIT so that they could calculate the percentage rent.

33 The third violation described at Paragraph 30 alleged that Plaintiff had failed to provide acceptable evidence of insurance for the property.

34. The Default Notice described at Paragraph 30 "allowed" Plaintiff 10 days to cure or dispute the alleged violations, or request additional time to cure.

35. On October 14, 2009, Plaintiff transmitted a letter to CRIT responding to the Default Notice by reporting estimated annual receipts of $11,000 and an estimated percentage rent amount of $5,600, and requested that the base rent and percentage rent be deducted from the overcharges described at Paragraph 29.

36. In the letter described at Paragraph 35, Plaintiff requested that the requirement of a formal statement from a CPA be waived due to the personal expense that such a statement would require.

37. Enclosed with the letter described at Paragraph 35, Plaintiff furnished new proof of insurance.

38. On March 2, 2010, the Superintendent of the BIA's Colorado River Agency issued a notice of Lease termination, stating that the Superintendent had determined that Plaintiff's efforts were insufficient to cure the alleged violations for the following reasons: (a) Plaintiff's estimate of receipts did not meet the reporting

requirements of the Lease Modification, (b) the amount of unpaid percentage rent could not be calculated and, thus, could not be deducted from the remaining interest overpayment on account with the BIA, and (c) the insurance policy submitted was insufficient.

39. In promulgating the Notice of Termination described at Paragraph 38, the Agency Superintendent did not comply with the Addendum ARTICLE 17(B) requirement described at Paragraph 16 and, accordingly, the Lease termination was *ultra vires*.

40. On March 11, 2010, Plaintiff notified the BIA of his intent to cure all violations and requested 45 days to do so.

41. On April 1, 2010, Plaintiff appealed the Superintendent's Lease termination to the Acting Regional Director.

42. On May 6, 2010, Plaintiff submitted a Statement of Reasons to the Acting Regional Director that included the following elements: (a) he would furnish proof of insurance in a form and substance acceptable to the Acting Regional Director; (b) advising that his accountant was then preparing and would soon produce an accounting statement of gross receipts; (c) his ability to adequately respond to the Default Notice had been substantially impaired by serious medical emergencies he had experienced; and (d) he was delivering a rental payment check to BIA in the amount of $4,800.

43. By letter dated May 17, 2010, the Acting Regional Director acknowledged receipt of the check described at Paragraph 42, and informed Plaintiff that she had deposited it into a BIA "Special Deposit Account." In addition, the Acting Regional

Director informed Plaintiff that she considered the Statement of Reasons submitted by Plaintiff insufficient to explain why Lease termination would be erroneous.

44. On May 25, 2010, Plaintiff submitted another Statement of Reasons to the Acting Regional Director reiterating the reasons for delay in curing the violations, including further explanation of his health emergencies and serious health issues, and characterizing the allegedly uncured violations as both *de minimus* and not a legitimate basis for Lease termination.

45. The Statement of Reasons described at Paragraph 44 was accompanied by a Compilation Report from Plaintiff's Certified Public Accountant for the years 1992-2009 estimating the percentage rent owed at $16,970.36 and a check for $5,408.10.

46. When coupled with the remaining credit for overpayment on account with the BIA, Plaintiff's unpaid rent was paid in full with delivery of the check described at Paragraph 45.

47. On July 19, 2010, the Acting Regional Director affirmed the Agency Superintendent's decision to terminate the Lease.

48. In the Termination decision described at Paragraph 47, the Acting Regional Director did not comply with the Addendum ARTICLE 17(B) requirement described at Paragraph 16 and, accordingly, the Lease termination was *ultra vires*.

49. On August 19, 2010, Plaintiff filed a Notice of Appeal in this matter with the IBIA seeking review of the Lease termination. Subsequent briefing followed in that matter in accordance with a schedule ordered by the IBIA.

50. On December 18, 2012, the IBIA rendered its Order affirming the Acting Western Regional Director's termination of the Lease on the grounds that Plaintiff was

not in compliance with the Lease, failed to timely cure or excuse his noncompliance, and failed to establish that the BIA's decision was unreasonable.

51. In the Order described at Paragraph 50, the IBIA cited no provision of the Lease or Lease Modification providing for termination or reconciling its decision with the BIA's failure to comply with the Addendum ARTICLE 17(B) requirement described at Paragraph 16.

52. In lieu of pursuing the harsh remedy of termination under Lease Addendum ARTICLE 17(B), the Secretary also has discretion pursuant to Addendum ARTICLE 17(A) to pursue legal and equitable remedies for resolving alleged Lease violations as follows: "the Secretary may … Proceed by suit or otherwise to enforce collection or to enforce any other provision of this Lease."

53. In purporting to terminate the Lease, the Secretary, the Acting Regional Director and the Agency Superintendent all failed to comply with the requirements of either Addendum ARTICLE 17(A) or ARTICLE 17(B), a fatal flaw in the process they followed in a rush to terminate the Lease rather than respect the fact that the Lease is the only consideration Plaintiff received in return for forfeiture of his fee simple land title.

54. The Secretary and Assistant Secretary are the government officials responsible for enforcing IBIA Orders, and the relief sought herein properly can be ordered as to them and the Department.

COUNT I

(Declaratory Judgment – Lease Termination Void *Ab Initio*)

55. Plaintiff re-alleges and incorporates by reference Paragraphs 1-54 above.

56. The Regional Director's decision to terminate the Lease in violation of its

provisions was made without giving serious consideration to the facts alleged in this Complaint, including the following:

(a) Plaintiff was forced to surrender fee title to his land under legal and financial pressure from the United States government;

(b) The sole consideration Plaintiff received in return for the forced surrender of his legal fee simple title to 98.24 acres of Colorado River riverfront land was a fixed-term 50-year Lease with CRIT;

(c) Plaintiff's ability to comply with the requirements of the Default Notice described at Paragraph 30 was impaired by **(i)** the limited time provided for compliance, **(ii)** the financial requirements required in order to comply with certain elements stated in the Notice, **(iii)** Plaintiff's series of serious medical emergencies causing delays in his ability to timely respond to BIA demands in the Notice; and

(d) Plaintiff's ultimate good faith efforts to fully comply with the Notice, including making payment to the BIA of all sums due under the accounting formula imposed by the Lease and the Lease Modification described at Paragraph 21 and delivering new proof of insurance in response to the BIA's rejection of his original submission of proof of insurance.

57. The Regional Director's decision to terminate the Lease in violation of its provisions was arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, beyond the scope of her authority, and issued in a manner not in accordance with law.

58. The IBIA Order Affirming [Regional Director's] Decision to terminate the

Lease in violation of its provisions was arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, beyond the scope of the IBIA's authority, and issued in a manner not in accordance with law.

59. Because the IBIA has affirmed the Regional Director's Decision, the matter constitutes a final agency decision, and Plaintiff is entitled to a declaratory judgment that termination of the Lease was void *ab initio*.

COUNT II

(Mandatory Injunction – Reverse and Vacate Lease Termination)

60. Plaintiff re-alleges and incorporates by reference Paragraphs 1-54 and 56-58 above.

61. Because the IBIA has affirmed the Regional Director's Decision, the matter constitutes a final agency decision, and Plaintiff is entitled to a mandatory injunction directing the Defendants to reverse and vacate the Lease termination.

COUNT III

(Mandatory Injunction – Restoration of Lease)

62. Plaintiff re-alleges and incorporates by reference Paragraphs 1-54 and 56-58 above.

63. Because the IBIA has affirmed the Regional Director's Decision, the matter constitutes a final agency decision, and Plaintiff is entitled to a mandatory injunction directing the Defendants to restore the Lease retroactive to the date of its termination by the Agency Superintendent.

REQUESTED RELIEF

WHEREFORE, plaintiff respectfully requests that the Court enter an order as

follows:

A. Declaring that the termination of the Lease is void *ab initio*.

B. Mandatorily enjoining the Defendants to reverse and vacate the Lease termination.

C. Mandatorily enjoining the Defendants to restore the Lease retroactive to the date of its termination by the Agency Superintendent.

D. Awarding Plaintiff his costs, attorneys' fees and all other expenses of this litigation.

E. Awarding Plaintiff such other and further relief as the Court deems just and proper.

DATED this 21st day of March, 2013.

WILLIAM C. TUTTLE

By Counsel

/s/

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