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The Agua Caliente Tribe of

6 *Cupeño Indians of the Pala Reservation*

7
8 **UNITED STATES DISTRICT COURT**

9 **EASTERN DISTRICT OF CALIFORNIA**

10 THE AGUA CALIENTE TRIBE OF
11 CUPENO INDIANS OF THE PALA
RESERVATION (a federally-recognized
but unlisted Indian Tribe)

12 Plaintiff,

13 vs.

14 KEVIN K. WASHBURN, Assistant
15 Secretary of Indian Affairs, United
States Department of the Interior (in his
16 official capacity); and DOE Defendants
1 through 10, inclusive,

17 Defendants.
18

Case No.:

**COMPLAINT FOR INJUNCTIVE
RELIEF, 5 USC § 702 *et. seq.***

1 **JURISDICTION AND VENUE**

2 1. This case seeks to compel an officer or employee of the United States
3 agency to perform a duty owed to the plaintiff. This case presents controlling
4 questions of federal law regarding Defendant's duty.

5 2. For the foregoing reasons, this Court has jurisdiction under 28 U.S.C.
6 Sections 1331 and 1361.

7 3. Venue is proper in the Eastern District of California under 28 U.S.C.
8 section 1391(e) because Defendant is an officer of the United States acting in his
9 official capacity and under color of legal authority and agency of the United States
10 and because a substantial part of the events or omissions giving rise to the claim
11 occurred in the Eastern District.

12 **THE PARTIES**

13 4. Plaintiff The Agua Caliente Tribe of Cupeño Indians of the Pala
14 Reservation is an historic California Indian tribe which has had a government-to-
15 government trust relationship with the United States uninterrupted since 1852.

16 5. Defendant Kevin Washburn, Assistant Secretary of Indian Affairs,
17 United States Department of the Interior ("Washburn") is sued in his official
18 capacity.

19 6. The true names and capacities, whether individual, corporate, associate,
20 or otherwise of Respondents named DOES 1 through 10, inclusive, are unknown to

1 Plaintiffs, who therefore identify such Defendants by such fictitious names. Plaintiffs
2 are informed and believe, and on that basis allege, that Defendants DOES 1 through
3 10 inclusive, are government employees acting in the scope of delegated authority,
4 the scope of which is unknown to Plaintiffs at this time. Plaintiffs are informed and
5 believe that Each of the Defendants herein is, in some manner, responsible for the
6 acts and/or omissions as herein alleged. Plaintiffs will seek leave of this Court to
7 amend this Complaint to show their true names and capacities once they are
8 discovered.

9 **STATEMENT OF FACTS**

10 **A. Historical Summary of the Agua Caliente Tribe of Cupeño Indians of the**
11 **Pala Reservation, and the Pala Band of Luiseno Mission Indians of the**
12 **Pala Reservation, California.**

13 7. The Agua Caliente Tribe of Cupeño Indians of the Pala Reservation (the
14 “Agua Caliente Cupeño” or the “Cupeño”) is an Indian Tribe comprised of
15 Descendants of the Indians from the village of *kúpa* at Warner Springs. “Agua
16 Caliente” is Spanish for “Hot Water” and refers to Warner’s Hot Springs.

17 8. The Smithsonian Handbook of North American Indians, Volume 8,
18 notes that the Agua Caliente Cupeño settled in the vicinity of Warner Springs at the
19 village of *kúpa* where they resided since before European contact, and that the Agua
20 Caliente Cupeño’s distinct social organization began as early as A.D. 1000-1200.

9. The word “Cupeño” is of Spanish derivation, adopting the native place-

1 name *kúpa* and appending Spanish -eño to mean a person who lives at or comes from
2 *kúpa*.

3 10. Cupeño is a distinct language within the Cupan subgroup of the Takic
4 family of Uto-Aztecan. In their own tongue the Cupeño were called the
5 “kupangaxwish” (people who sleep in the water).

6 11. A 285-page book of Cupeño Culture and Mythology with a Cupeño
7 Language Dictionary entitled Mulu’wetam: The First People was published by Malki
8 Museum Press in 1973 and reprinted in 2005.

9 12. The Pala Band of Luiseno Mission Indians of the Pala Reservation,
10 California (the “Pala Luiseno”) are the descendants of a band of Luiseño Indians who
11 historically inhabited the Pala Valley.

12 13. The term “Luiseño” derives from the mission named San Luis Rey and
13 has been used in Southern California to refer to those Takic-speaking people
14 associated with Mission San Luis Rey.

15 14. The Luiseño Indians are a culturally and linguistically distinct tribe from
16 the Cupeño.

17 15. Malki Museum Press published a Luiseño Language text entitled An
18 Introduction to the Luiseño Language in 1971.

19 16. The Luiseño’s territory encompassed an area from roughly Agua
20 Hedionda on the coast, east to Lake Henshaw, north into present day Riverside

1 County, and west through San Juan Capistrano to the coast.

2 17. The Present day Pala Reservation is centrally-located in the Luiseño's
3 traditional territory.

4 18. Also within that traditional territory are the reservations of the Pauma
5 Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; the
6 Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California;
7 the Soboba Band of Luiseno Indians, California; the La Jolla Band of Luiseno
8 Indians, California; and the Rincon Band of Luiseno Mission Indians of the Rincon
9 Reservation, California.

10 19. The Luiseño shared boundaries with other tribes, including the
11 Gabrieliño and Serrano to the west and northwest, the Cahuilla from the deserts to the
12 east, and the Ipai to the south.

13 20. To the southeast, the Luiseño shared a boundary with the Cupeño.

14 21. After the American takeover of California, the United States formed a
15 government-to-government relationship with both the Agua Caliente Cupeño and the
16 Pala Luiseño when each group separately signed the January 5, 1852 Temecula
17 Treaty with the United States.

18 22. Thereafter in 1875, the United States granted a reservation to each group
19 for each group's "permanent use and occupancy." Specifically, by an executive order
20 of President Ulysses S. Grant, dated December 27, 1875, the United States granted

1 the Agua Caliente Cupeño 960 acres at Warner Springs (Township 10S, Range 3E)—
2 where the Agua Caliente Cupeño had already been residing for centuries.

3 23. By the same executive Order, the United States granted the Pala Luiseño
4 a tract of approximately 320 acres, located in the Pala Valley approximately 27 miles
5 to the west of Warner Springs (Township 9S, Range 2W).

6 24. The 1875 grant in the Pala Valley is referred to in BIA records, and
7 among the Indians of the Pala Valley, as “Old Pala.”

8 25. Only five years after President Grant set aside the Agua Caliente
9 reservation at Warner Springs, President Rutherford B. Hayes revoked the reservation
10 by an executive order dated January 17, 1880, which stated, “It is hereby ordered that
11 so much of the order of December 27, 1875, as relates to the Agua Caliente Indian
12 Reservation in California be, and is hereby canceled.”

13 26. Notwithstanding that January 17, 1880 Executive Order, the Agua
14 Caliente Cupeño continued to occupy their traditional homelands at Warner Springs
15 as they had since the time immemorial.

16 27. The August 31, 1893 Report of the Mission Tule River Agency lists the
17 Agua Caliente Cupeño as numbering 150 individuals, and includes the following
18 narrative description of the Agua Caliente Cupeño:

19 This tribe comprise 150 people. They have a reservation set aside for
20 them by Government, and they have lived for 50 or more years at the
Agua Caliente Warm Springs, on the Warner Ranch, under that

1 reservation. At the present time there is a suit pending between the ranch
2 owners and the Indians, which will remove them from their important
3 possessions, the Hot Springs, if they lose the case. The springs are well
4 known to possess the finest medicinal properties of any springs in the
5 State, and are by that reason very valuable. These people are a quiet,
inoffensive lot, who now need the help and support of the Government
in this, their hard trial, for their just rights. Their houses are of a good
class, and these people are industrious and self supporting.

6 28. The same August 31, 1893 Report also includes an entry regarding the
7 Pala Luiseño describing the Pala reservation and the Pala Luiseño as numbering 53
8 individuals and providing the following narrative description:

9 This reservation I find contains only 160 acres of land, 54 acres of which
10 are worthless. Thirteen allotments have been made by Mr. Carrere, the
11 allotting agent, which have proved satisfactory in every sense. There is
12 much of this land suited to fruit-culture, which should be encouraged.
13 There being a shortage of land on this reservation for allotment to the
14 number of population, the allotting agent has allotted to those residing
thereon such lands as they have farmed and cared for, the remaining
Indians who have not been provided for under this allotment will be or
have been provided for by allotment on the Potrero and Rincon
reservations. They have a fair class of houses, are industrious and law-
abiding people.

15 **B. The Cupeño Removal**

16 29. As noted in the August 31, 1893 report, in the summer of 1892, the
17 owner of Warner's Ranch filed a lawsuit against the residents of the village of *kúpa* at
18 Warner Springs (i.e. the Agua Caliente Cupeño). The lawsuit sought to evict the
19 Cupeño from their ancestral homelands at Warner Springs.

20 30. On May 13, 1901, in *Barker v. Harvey*, 181 U.S. 481, the United States

1 Supreme Court ruled that the Agua Caliente Cupeño had no right of occupancy at
2 Warner Springs.

3 31. The 1901 annual report of the Commissioner of Indian Affairs Agent for
4 the Mission Agency refers to that decision as, “The most noteworthy and unfortunate
5 event that has occurred during the year, or perhaps ever occurred in this agency....”

6 32. On May 27, 1902, Congress passed, and Theodore Roosevelt signed, 32
7 Stat. 257 which provides as follows:

8 For the support and civilization of the Mission Indians in California,
9 one hundred thousand dollars, to be immediately available: *Provided*,
10 That out of said sum the Secretary of the Interior be, and he is hereby,
11 authorized to purchase a suitable tract of land in southern California
12 and to locate thereon such Mission Indians heretofore residing or
belonging to the Rancho San Jose del Valle, or Warners Ranch, in San
Diego County, California, and such other Mission Indians as may not
be provided with suitable lands elsewhere, as the Secretary of the
Interior may see fit to locate thereon.

13 33. Thus, in 1903, pursuant to 32 Stat. 257 (1902), the Agua Caliente
14 Cupeño were forcibly removed from their homelands at Warner Springs and they
15 were relocated to lands adjacent to Old Pala. Old Pala and the lands purchased
16 pursuant to 32 Stat. 257 are collectively referred to hereinafter as the “Pala
17 Reservations.”

18 34. Census records from the time of the Cupeño removal plainly show that
19 the United States recognized the Agua Caliente Cupeño as a tribe, and that the Pala
20 Luiseño (who were already residing at Old Pala) were recognized as belonging to

1 another tribe.

2 35. During the ensuing decades, the Agua Caliente Cupeño and the Pala
3 Luiseño each continued to reside on, and benefit from, the lands respectively set aside
4 for them by Congress, and, whether individually or in tandem, the Indians of each
5 group have received benefits and services consistent with each group's federally-
6 recognized status continuously to the present.

7 **C. The Tribes and Indians of the Reservations at Pala Reject Organization**
8 **under the Indian Reorganization Act.**

9 36. In 1934, a Secretarial Election was held among the Indians at the Pala
10 Reservations (including the Agua Caliente Cupeño and the Pala Luiseño) to accept or
11 reject governance under the Indian Reorganization Act (the "IRA").

12 37. The Indians of the Pala Reservations voted overwhelmingly to reject
13 organization under the IRA. There were only 7 votes in favor of IRA with 66 votes
14 against.

15 38. Plaintiff is informed and believes, and on that basis alleges, that the
16 Indians of the Pala Reservations voted to reject organization under the IRA because
17 they strongly opposed organizing their distinct tribes into a single tribe.

18 39. In the following decades, the Agua Caliente Cupeño and the Pala
19 Luiseño continued to govern themselves through various forms of government. At
20 times, there was simply a reservation spokesperson, at others there was a business

1 committee, a Captain or Chairperson. However, the historical record shows that the
2 Cupeño and Luiseño Indians at Pala continued to take separate actions as separate
3 groups.

4 **D. The Creation of the Pala Band of Mission Indians.**

5 40. In 1959 the Agua Caliente Cupeño, the Pala Luiseño, and other Indians
6 on the reservation lands in the Pala Valley adopted Articles of Association to form an
7 entity called the Pala Band of Mission Indians (hereinafter the “PBMI”).

8 41. The Bureau of Indian Affairs (the “BIA”) approved the Articles of
9 Association in 1961.

10 42. The PBMI was not formed with the intent to create a new tribe—nor
11 could it have been, since the only opportunity for the Indians at the Pala Reservations
12 to organize as a single tribe was under the IRA—which, as noted above, the Indians
13 of the Pala Reservations resoundingly rejected.

14 43. The PBMI had the scope of its membership dictated to it by the BIA—
15 which has a fiduciary duty as the trustee of the Pala Reservations to ensure that the
16 assets of the Pala Reservations are equitably distributed only to those entitled as
17 beneficiaries.

18 44. The PBMI Articles of Association gave the BIA approval authority over
19 any amendment to the Articles of Association, and, in the years following adoption of
20 the Articles of Association, the PBMI amended the Articles of Association subject to

1 BIA approval.

2 45. Amendment No. 1 to the Articles of Association provides that the
3 PBMI's membership roll, once completed, "shall ... be submitted to the Secretary of
4 the interior for his approval."

5 46. Plaintiff is informed and believes that, recognizing its fiduciary duty to
6 protect the rights of all of the individual Indians who had a lawful interest in the Pala
7 Reservations, the BIA insisted that the Indians of the Pala Reservations define PBMI
8 membership according to descent from individual Indian allottees who had an interest
9 in the Pala Reservations during the allotment era.

10 47. Accordingly, PBMI Membership is defined by lineal and blood quantum
11 descent from an Indian individual whose name appears on allotment rolls that were
12 approved by the Secretary of the Interior in 1895 and 1913.

13 48. Membership in the PBMI has never been based on proof of blood degree
14 of any Indian *Tribe*, but rather, it has always been based on lineal descent and blood
15 degree from an Indian *allottee* on the 1895 and 1913 rolls.

16 49. This is because the PBMI was formed among Indians of several different
17 tribes and bands, the most prominent of which are the Agua Caliente Cupeño and the
18 Pala Luiseno.

19 50. The words "Luiseño" and "Cupeño" do not appear anywhere in the
20 Articles of Association, nor does the name of any other tribe.

1 51. The Articles of association do not ever refer to the PBMI as a “tribe.” On
2 the contrary, the PBMI is only referred to as a “Band.”

3 52. Plaintiff is informed and believes, and on that basis alleges, that the
4 choice of the term “Band” was deliberate.

5 By a “tribe” is meant a body of Indians of the same or a similar race,
6 united in a community under one leadership or government, and
7 inhabiting a particular though sometimes ill-defined territory. A “band,”
8 on the other hand, is a company of Indians not necessarily, though often,
9 of the same race or tribe, but united under the same leadership in a
common design; *the word implies an inferior and less permanent
organization than that of a tribe*, though it must be of sufficient strength
to be capable of initiating hostile proceedings.

10 14 R.C.L. 147 citing *Montoya v. United States*, 180 U.S. 261 (1901) (emphasis
11 added.)

12 53. The Articles of Association do not provide for the termination of the
13 Agua Caliente Cupeño or any other tribe.

14 54. When the PBMI was formed and thereafter, the United States did not
15 ever advise the Agua Caliente Cupeño that forming an association with the other
16 Indians of the Pala Reservations would terminate the Agua Caliente Cupeño Tribe.

17 **E. The BIA Erroneously Lists Only the Pala Luiseño and Not the Agua**
18 **Caliente Cupeño on the List of Federally Recognized Indian Tribes.**

19 55. When the BIA developed its first list of recognized tribal entities in
20 1979, the BIA disregarded the Agua Caliente Cupeño (or Agua Caliente No. 1, Cupa

1 Tribe as they had been referred to in BIA records).

2 56. In that 1979 list, the BIA listed only the “Pala Band of *Luiseno* Mission
3 Indians, Pala Reservation, California” (emphasis added.)

4 57. As set forth above, the Agua Caliente Cupeño are a distinct tribe from
5 the Pala Luiseno.

6 58. The BIA’s failure to include the Agua Caliente Cupeño on the list in
7 1979 was administrative error.

8 59. Plaintiff is informed and believes, and on that basis alleges, that, viewing
9 California as a state that has numerous non-historic rancherias that were established
10 without regard to tribal affiliation, the BIA simply overlooked the fact that an historic
11 non-Luiseño tribe (the Agua Caliente Cupeño) resides at the Pala Reservations. The
12 Pala Reservations are, after all, located in the middle of traditionally Luiseño
13 territory.

14 60. The BIA’s failure to include the Agua Caliente Cupeño on the List of
15 Federally-Recognized Tribes in 1994, and thereafter, was, and is, administrative
16 error.

17 61. By stark contrast to both the Agua Caliente Cupeño and the Pala Luiseno
18 (which have each enjoyed government-to-government relationships with the United
19 States for more than 160 years) the PBMI did not even exist until 54 years ago.

20 62. Plaintiff is informed and believes, and on that basis alleges, that no

1 Congressional Act, Executive Order, or Secretarial Order has ever declared the
2 United States' recognition of the PBMI as a tribe.

3 **F. Notwithstanding the BIA's Efforts to Re-characterize the Agua Caliente**
4 **Cupeño Simplistically as "Pala Indians," the Agua Caliente Cupeño's**
5 **Distinct Cultural Identity Persists.**

6 63. From the time the United States forcibly removed the Agua Caliente
7 Cupeño from their ancestral homelands at Warner Springs until today, the Cupeño
8 have retained their tribal identity and maintained their unique affinity and reverence
9 for their ancestral homelands at Warner Springs.

10 64. As a child, Agua Caliente Cupeño Chairman William Pink accompanied
11 his grandfather to Warner Springs three or four times each year. They would sit
12 together on the porch of the old store, and Chairman Pink's Grandfather would chat
13 and exchange stories with other Cupeño elders.

14 65. Chairman Pink, in turn, takes his own grandchildren to Warner Springs
15 to teach them about their ancestors and their Cupeño heritage.

16 66. On multiple occasions, the Agua Caliente Cupeño have held celebrations
17 at Warner Springs. Those events provide an opportunity for all the descendants of the
18 Warner Springs Indians to learn about and celebrate their Cupeño heritage. During
19 one such festival, the old houses of their ancestors (which still stand and are in use by
20 the current owners of the property) were marked with family names associated with
the original Cupeño residents.

1 67. At such events, the Cupeño make and share traditional foods, participate
2 in traditional arts and crafts such as basket weaving, and spend a great deal of time in
3 the hot springs—just as their ancestors did.

4 68. The Pala Luiseno and other non-Cupeño members of the PBMI
5 generally do not attend those festivals, as it is only the Cupeño who have an ancestral
6 connection to Warner Springs.

7 69. Despite associating through the PBMI, the Agua Caliente Cupeño and
8 the Pala Luiseno participate independently in various cultural and community
9 activities.

10 70. In late October or early November each year, the Indians of the Pala
11 Valley gather acorns to make wewish--a traditional staple food of Southern California
12 Indians.

13 71. The Agua Caliente Cupeño and Pala Luiseno gather acorns separately--
14 the Cupeño gathering together on the east side of Palomar Mountain State Park, while
15 the Pala Luiseno and other Luiseño Indians gather together at the west.

16 72. Despite associating through the PBMI, the Agua Caliente Cupeño and
17 the Pala Luiseno have maintained independent political interests and identities.
18 During PBMI General Council meetings, the Agua Caliente Cupeño sit together and
19 caucus together on issues affecting the Agua Caliente Cupeño.

20 73. Moreover, when issues arise that do not involve the Agua Caliente

1 Cupeño, such as decisions relating to Archaeological excavation or preservation in
2 the Pala Valley, the Agua Caliente Cupeño abstain from voting—having, themselves,
3 no long-standing cultural ties to the Pala Valley.

4 74. Even as the BIA has erroneously failed to include the the Agua Caliente
5 Cupeño on the List, the United States has continued to publicly exhibit its awareness
6 that the Agua Caliente Cupeño is a distinct tribe from the Pala Luiseno.

7 75. For instance, in Volume 73, number 197 of the Federal Register (Oct. 9,
8 2008) the Department of the Interior correctly identified the Agua Caliente Cupeño as
9 distinct from the Pala Luiseno--referring to each respectively as “The Cupeno Nation
10 of the Pala Reservation, California” and the “Pala Band of Luiseño Mission Indians
11 of the Pala Reservation.”

12 76. The Agua Caliente Cupeño, through its participation in the PBMI has
13 maintained its government-to-government relationship with the United States, and
14 has continuously occupied the land purchased for the Agua Caliente Cupeño’s benefit
15 and has enjoyed the benefits and services accruing from the Agua Caliente Cupeño’s
16 federally-recognized status without interruption until the present.

17 **G. The PBMI Constitution**

18 77. In 1994, PBMI Chairman Robert Smith promoted the adoption of a
19 Constitution for the PBMI, and conducted an election to adopt it.

20 78. The election to adopt the Constitution did not garnish the necessary

1 majority vote of the approximate 635 voting PBMI General Council members
2 required under the Articles of Association provision 11 for adoption of any change.

3 79. Nevertheless, Chairman Smith submitted the constitution to the BIA for
4 review and approval, and, on April 18, 1995, the BIA acknowledged receipt of the
5 Constitution through Acting Superintendent Arlene J. Lacy, who wrote,

6 The newly adopted Constitution is *subject to Bureau approval* and will
7 require formal review. Until Bureau approval of the new document is
8 given the basis of review will be conducted in conformance with the
9 present Articles of Association Section 11. Amendment. The new
constitution is considered to be an amendment to the present Articles of
Association. *Please be advised that until the Constitution receives
Bureau approval the present Articles of Association remain in effect.*

10 (emphasis added.)

11 80. On multiple occasions thereafter, the BIA recommended in writing that
12 the PBMI make changes to the Constitution and stated that if the PBMI accepted the
13 recommendations, and submitted resolutions showing that the PBMI General Council
14 had adopted the recommended changes, then the BIA would approve the PBMI
15 Constitution.

16 81. One change that the BIA recommended was that “In adhering to the
17 governmental principal of checks and balances between the General Council and the
18 Executive Committee, it is recommended that the General Council not delegate the
19 enactment of Ordinances to the Executive Committee.”

20 82. Chairman Smith did not make the changes that the BIA recommended.

1 83. Chairman Smith did not present the BIA with any resolution or evidence
2 showing that the BIA's recommended changes had been presented for consideration
3 by the PBMI General Council.

4 84. Nevertheless, the BIA approved the PBMI Constitution on July 25,
5 2000.

6 85. By approving the PBMI Constitution without any of the BIA's
7 recommended changes, and without any evidence that the BIA's recommended
8 changes were even presented to the PBMI General Council for a vote, the BIA
9 abdicated and failed in its trust responsibility to the Indians of the PBMI—including
10 the Agua Caliente Cupeño.

11 86. By approving the PBMI Constitution in July 2000, the BIA approved the
12 creation of the Constitutional entity of the PBMI.

13 87. The PBMI Constitution, unlike the Articles of Association, refers to the
14 PBMI as a "Tribe."

15 88. The BIA's approval of the PBMI Constitution did not transform the
16 PBMI into a federally-recognized tribe.

17 89. The BIA's approval of the PBMI Constitution did not terminate the
18 Agua Caliente Cupeño.

19 90. Unlike the PBMI Articles of Association, the PBMI Constitution does
20 not grant the BIA any approval authority with respect to the PBMI's membership

1 roll.

2 91. Article II, Section 5 of the PBMI Constitution provides that the PBMI
3 Executive Committee “may from time to time amend/and/or replace its existing
4 Enrollment Ordinance with an Ordinance governing adoption, loss of membership,
5 disenrollment, and future membership, provided that such ordinances are in
6 compliance with the Constitution.”

7 92. The PBMI Constitution, like the Articles of Association defines
8 membership based on lineal descent and blood quantum of individual Indian allottees
9 on the 1895 and 1913 rolls.

10 93. The words “Luiseño” and “Cupeño” do not appear anywhere in the
11 PBMI Constitution, nor does the name of any other tribe.

12 94. Article III, Section 2(C) of the PBMI Constitution provides that the
13 General Council can delegate to the Executive Committee the power to unilaterally
14 enact ordinances—a provision that, as noted above, the BIA had explicitly
15 recommended against.

16 95. In July 2009, under the authority provided by Section 5, Article II of the
17 PBMI Constitution, the PBMI Executive Committee revised the PBMI Enrollment
18 Ordinance to give themselves exclusive power to re-evaluate approved enrollment
19 applications.

20 96. Under the authority provided by Article III, Section 2(C), the Executive

1 Committee then unilaterally enacted that new Enrollment Ordinance. (the “2009
2 Enrollment Ordinance.”)

3 97. With respect to membership decisions, the 2009 Enrollment Ordinance
4 only permits the BIA’s Pacific Regional Director to make a recommendation to the
5 Executive Committee as to whether it should uphold or change a membership
6 decision that the Executive Committee has made.

7 98. Beginning in 2011, the PBMI Executive Committee exercised its new
8 self-appointed authority under the PBMI Constitution to disenroll more than 160
9 Cupeño individuals from the PBMI.

10 99. The PBMI Executive Committee purported to justify that disenrollment
11 by unilaterally revising the Cupeño blood quantum of allottee Margarita Britten
12 (1856-1925).

13 100. The BIA has long considered Ms. Britten’s 100% Cupeño blood
14 quantum to have been conclusively established with BIA records. The BIA made that
15 final determination in a written decision in 1989.

16 101. Commencing in June 2011, the unlawfully-disenrolled Cupeño Britten
17 descendants made multiple appeals to the BIA.

18 102. Those appeals culminated in a June 12, 2013 decision of Defendant
19 Kevin Washburn.

20 103. In his decision, Defendant Washburn found that the determination of the

1 extent of the BIA's authority over the dispute turned on whether the PBMI Articles of
2 Association were still in effect, or whether the PBMI Constitution had supplanted the
3 Articles.

4 104. Defendant Washburn concluded that the PBMI Constitution is the
5 governing document of the PBMI.

6 105. Based on that determination Defendant Washburn determined that the
7 2009 Enrollment Ordinance (which the PBMI Executive Committee used to disenroll
8 the Cupeño Britten descendants) controls and that, therefore, the BIA could do
9 nothing more than recommend the re-enrollment of the Cupeño Britten
10 Descendants—which the BIA had done.

11 106. In September 2013, Mr. Pink sought reconsideration of Defendant
12 Washburn's June 12, 2013 decision.

13 107. Mr. Pink argued, among other argumnets, that the BIA could not
14 lawfully conclude that a *non-Cupeño* body (the PBMI Executive Committee) had
15 authority to determine an individual's *Cupeño* blood quantum or otherwise
16 disenfranchise a *Cupeño* from his or her tribal rights and heritage by a purported
17 disenrollment, for, to do so violated the Cupeño's sovereign right to determine their
18 own membership--a right that the United States Supreme Court determined was
19 central to a tribe's existence as an independent political community in *Santa Clara*
20 *Pueblo v. Martinez*, 436 U.S. 49 (1978).

1 108. On February 24, 2015, Defendant Washburn declined Mr. Pink's request
2 to reconsider his June 12, 2013 decision, and affirmed his conclusion that the PBMI
3 Constitution is the PBMI's controlling document.

4 109. Defendant Washburn did not address Mr. Pink's argument that only the
5 Agua Caliente Cupeño have the right to determine their own membership.

6 110. The BIA has maintained that the PBMI Constitution is the governing
7 document of the PBMI in the federal lawsuit, *Aguayo v. Jewell*, currently pending
8 before the United States Court of Appeals for the Ninth Circuit. In their July 9, 2015
9 Opposition Brief in that appeal, Defendants argued at length that the statute of
10 limitations barred any challenge to the PBMI Constitution and that the PBMI
11 Constitution was, in any case, adopted in compliance with PBMI law.

12 111. Thus, since 2012, to wash the United States' hands of any responsibility
13 toward the disenfranchised Cupeño Britten Descendants, Defendant Washburn has
14 maintained the position that the PBMI Constitution governs the PBMI.

15 112. On or about March 3, 2014, BIA Pacific Regional Director, Amy
16 Dutschke, issued a Notice of Decision purporting to grant an application to have land
17 taken into trust.

18 113. In that Notice of Decision, Director Dutschke observed that the PBMI
19 "is organized under its 'Articles of Association' that were adopted on August 15,
20 1959 and approved by the Assistant Secretary on November 6, 1960, as amended

1 July 3, 1961, November 27, 1973, March 11, 1974 and October 2, 1980.”

2 114. Nowhere in her March 3, 2014 letter did Director Dutschke ever refer to
3 the PBMI Constitution—despite the fact that the BIA (through Defendant Washburn)
4 has publicly and repeatedly maintained that the *PBMI Constitution* (and *not* the
5 Articles of Association) is the governing document of the PBMI.

6 115. Indeed the BIA has staked its defense on that very position in *Aguayo v.*
7 *Jewell*—a case in which Director Dutschke herself is named as a defendant.

8 116. Plaintiff is informed and believes that the BIA cites either the PBMI
9 Constitution or the Articles of Association to control as the occasion suits the BIA.

10 **H. The BIA’s Recent Actions further Cloud the Distinction Between the Agua**
11 **Caliente Cupeño, the Pala Luiseno, and the PBMI.**

12 117. Director Dutschke’s March 3, 2014, Notice of Decision also exhibits
13 how the BIA has recently started to blur the distinction between the PBMI and the
14 Pala Luiseno.

15 118. In that Notice of Decision, Director Dutschke purports to grant an
16 application purportedly on the part of the *Pala Luiseno* to have land taken into trust
17 for the benefit of the *Pala Luiseno*.

18 119. Significantly, the Notice of Decision is addressed to “Honorable Robert
19 Smith Chairman, Pala Band of *Luiseno* Mission Indians” (emphasis added.)

20 120. Plaintiff is informed and believes, and on that basis alleges, that

1 Defendants have never been presented with any resolution or other evidence showing
2 that Mr. Smith has ever been elected or appointed as chairman of the Pala Luiseno.

3 121. Plaintiff is aware of no prior correspondence from the BIA which has
4 been addressed to Chairman Smith in the purported capacity of chairman of the Pala
5 Band of Luiseno Mission Indians.

6 122. Plaintiff is informed and believes, and on that basis alleges, that no such
7 correspondence exists.

8 123. Plaintiff is informed and believes, and on that basis alleges, that Director
9 Dutschke, is fully aware of the separate tribes residing on the Pala Reservations and
10 forming the PBMI.

11 124. Indeed, Director Dutschke's March 3, 2014 Notice of Decision makes
12 specific reference to the objection of the Pechanga Band of Luiseno Mission Indians
13 that the BIA approval of the subject fee to trust application would authorize taking
14 land into trust by a reservation (the Pala Reservations) which includes non-Luiseño
15 peoples. Her notice also includes the "Pala Band's" response that it shares the
16 Pechanga Band's concerns because "members of the Tribe are also of Luiseño
17 ancestry."

18 125. The BIA addressing Mr. Smith as the chairman of the Pala Luiseno
19 culminates a recent evolution in the BIA's Tribal Leaders Directory.

20 126. As set forth above, every publication of the Federally-Recognized Tribes

1 List since its first publication in 1994 has accurately identified the Pala Luiseno as a
2 federally-recognized tribe.

3 127. At the same time, in every publication of the BIA's Tribal Leaders
4 Directory until 2011, Robert Smith has been correctly identified as the chairman of
5 the "Pala Band of Mission Indians"—i.e., the PBMI.

6 128. However, commencing on March 31, 2011 the BIA's Tribal Leaders
7 Directory began listing Robert Smith as the Chairman of the "Pala Band of *Luiseno*
8 Mission Indians" (emphasis added).

9 129. As set forth above, the Pala Luiseno and the PBMI *are not* one and the
10 same.

11 130. Then, beginning on September 19, 2013, the BIA again changed the
12 Tribal Leaders directory and began listing Robert Smith as the chairman of the "Pala
13 Band of Luiseno Mission Indians *of the Pala Reservation, California*" (emphasis
14 added). That is the exact name that is listed in the Federal Register.

15 131. The BIA's identification of Chairman Smith as the Chairman of the Pala
16 Luiseno is erroneous.

17 **I. The Agua Caliente Cupeño Adopt a Constitution**

18 132. The PBMI Executive Committee's unilateral, unlawful, and malicious
19 revision of history to disenfranchise 160 Cupeño from their tribal rights clearly
20 demonstrated to the Agua Caliente Cupeño that the PBMI no longer serves the

1 interests of the Agua Caliente Cupeño Tribe.

2 133. The PBMI never had authority to disenfranchise any Agua Caliente
3 Cupeño Indian from his or rights and benefits accruing from the Lands set aside for
4 the Agua Caliente Cupeño's benefit at the direction of Congress.

5 134. Only the Agua Caliente Cupeño have the right to define their
6 membership.

7 135. Accordingly, on August 23, 2014, the Agua Caliente Cupeño Indians
8 resolved to disassociate from the Pala Luiseno and withdraw from participation in the
9 PBMI.

10 136. On August 23, 2014, the Agua Caliente Cupeño Indians resolved to
11 change the Cupeño's official name from "Agua Caliente No. 1, Cupa Tribe" to "The
12 Agua Caliente Tribe of Cupeño Indians of the Pala Reservation."

13 137. On December 20, 2014, in a ceremony held at Warner Springs, the Agua
14 Caliente Cupeño adopted a Constitution.

15 138. On or about December 22, 2014, the Agua Caliente Cupeño, through
16 their Attorney Andrew W. Twietmeyer, sent written notice to Assistant Secretary
17 Washburn of the Agua Caliente Cupeño's withdrawal from the PBMI.

18 139. In that letter, the Agua Caliente Cupeño also requested that the BIA
19 correct the List to include the Agua Caliente Cupeño.

20 140. On January 16, 2015, Mr. Twietmeyer submitted a request to schedule a

1 phone call with Assistant Secretary Washburn to follow up on the December 22,
2 2014 letter.

3 141. On February 5, 2015, Mr. Twietmeyer received an email response from
4 the Office of Defendant Washburn. The email stated, that the Office of the Assistant
5 Secretary was referring the Tribe's request to the Office of Federal Acknowledgment
6 ("OFA") and directed Attorney Twietmeyer to contact OFA Director Lee Fleming.

7 142. OFA implements Part 83 of Title 25 of the Code of Federal Regulations
8 (25 CFR Part 83), *Procedures for Establishing that an American Indian Group Exists*
9 *as an Indian Tribe*. The acknowledgment process is the BIA's administrative process
10 by which petitioning groups that meet the criteria are given Federal
11 "acknowledgment" as Indian tribes and by which they become eligible to receive
12 services provided to members of Indian tribes.

13 143. BIA policy, as expressed as late as April 2012, dictates that the
14 acknowledgment process under 25 CFR Part 83 does not apply to Indian tribes whose
15 government-to-government relationship was never severed. Rather, it applies to tribes
16 who have yet to establish such a government-to-government relationship with the
17 United States, when a previously existing government-to-government relationship
18 has lapsed or when the government-to-government relationship was terminated
19 through an administrative process.

20 144. Accordingly 25 CFR Part 83 procedures are inapplicable where a

1 federally-recognized tribe (i.e. a tribe whose government-to-government relationship
2 has never lapsed or been terminated) requests correction of the List.

3 145. On at least three occasions since 1994, the BIA has added a tribe's name
4 to the List without requiring the tribe to go through the 25 CFR Part 83 process.

5 146. In each of those instances, the BIA determined that the tribe's
6 government-to-government relationship had never lapsed or been terminated even
7 though the tribe had never been included on the List—accordingly the exclusion of
8 those tribes from the List was administrative error requiring correction.

9 147. Plaintiff is informed and believes, and on that basis alleges, that of
10 pivotal concern to the BIA's determination in all three circumstances was a history of
11 the United States *attempting* to purchase suitable land for each of those tribes, which,
12 the BIA concluded, showed the United States' acknowledgment of an ongoing trust
13 responsibility for each of the tribes.

14 148. Plaintiff is further informed and believes, and on that basis alleges that
15 the absence of any legislation explicitly terminating any of the three tribes was also
16 crucial to the BIA's decision in all three prior instances.

17 149. Plaintiff is informed and believes that in all three prior instances, the
18 BIA relied upon a concept of administrative error in which a misinterpretation of the
19 group's status, rather than an actual change in its status, resulted in the group being
20 left off the List.

1 150. Plaintiff is informed and believes, and on that basis alleges, that, in those
2 three prior instances, the BIA did not attempt to determine who were the members of
3 the requesting tribe, but, simply determined that the tribe's government-to-
4 government relationship has never lapsed or been terminated. The BIA properly left
5 to the tribes in question, any determination of who are the members of that tribe.

6 151. The last such correction of the List, which added the Tejon Indian Tribe,
7 was ordered on January 6, 2012 by Defendant Washburn's predecessor, Assistant
8 Secretary of Indian Affairs, Larry Echo Hawk.

9 152. Congress has never terminated the Agua Caliente Cupeño's government-
10 to-government relationship with the United States.

11 153. The Agua Caliente Cupeño's government-to-government relationship
12 with the United States has never lapsed, on the contrary (with the exception of those
13 160 Agua Caliente Cupeño who are currently suffering unlawful disenfranchisement
14 from their rights) the Agua Caliente Cupeño Indians have without interruption,
15 occupied land that was purchased at the direction of Congress for their benefit for
16 more than a century and have enjoyed, without interruption, the rights and benefits of
17 a government-to-government relationship that the Agua Caliente Cupeño formed
18 with the United States more than 160 years ago.

19 154. Plaintiff is informed and believes, and on that basis alleges, that none of
20 the three tribes whom the BIA has added to the List to correct administrative error

1 either exhibited or could exhibit such a strong history of uninterrupted government-
2 to-government relations with the United States.

3 155. On February 5, 2015, Attorney Twietmeyer called OFA Director
4 Fleming, left a message with his secretary, and followed up to Director Fleming with
5 an email. Mr. Twietmeyer attached a copy of the December 22, 2014 letter to his
6 email.

7 156. On February 6, 2015, Director Fleming promptly called Attorney
8 Twietmeyer back and thanked him for attaching the December 22, 2014 letter—
9 which Director Fleming said he had never seen before.

10 157. Director Fleming told Attorney Twietmeyer that, after he had reviewed
11 the December 22, 2014 letter, he had looked into the matter and had been advised that
12 a response is being formulated and that the BIA needed some time.

13 158. He told Attorney Twietmeyer that, at some point, Director Fleming may
14 be asked for his input on the Agua Caliente Cupeño's December 22, 2014 letter, and
15 that Director Fleming would probably advise that the Agua Caliente Cupeño's
16 request did not fall within the OFA, since (as Attorney Twietmeyer explained) the
17 Agua Caliente Cupeño were not seeking federal recognition, but rather, were seeking
18 to have the List corrected to reflect their federally-recognized status.

19 159. Director Fleming gave Attorney Twietmeyer his phone number and told
20 Attorney Twietmeyer that he could call Director Fleming back in a few weeks if

1 Attorney Twietmeyer had not received a response.

2 160. During the next few months, Attorney Twietmeyer made calls to
3 Director Fleming every few weeks. On April 8, 2015, Director Fleming told attorney
4 Twietmeyer that a coordinated response was being drafted by the office of the
5 Solicitor and the Office of Indian Services. He told Mr. Twietmeyer to call him back
6 in a few weeks if Mr. Twietmeyer had not received a response by then.

7 161. On April 24 Director Fleming told Mr. Twietmeyer that he had checked
8 with the Office of the Solicitor and that they were still preparing a response and that
9 the matter was being reviewed by Scott Keep, Assistant Solicitor, Branch of Tribal
10 Government & Alaska Division of Indian Affairs.

11 162. No response to the December 22, 2014 letter has ever been forthcoming.

12 **J. The PBMI Requests that the BIA Replace the Pala Luiseno on the List**
13 **with the PBMI.**

14 163. The evolution of the BIA's identification of Chairman Smith from
15 Chairman of the PBMI to Chairman of the Pala Luiseno between 2011 and 2013 (as
16 described in paragraphs 117 through 131 above) placed Chairman Smith in position
17 in September 2014 to request that the BIA publish the PBMI's name on the List in
18 place of the Pala Luiseno under the guise of a "name change."

19 164. Plaintiff is informed and believes, and on that basis alleges, that on or
20 about September 10, 2014, Chairman Smith sent BIA Chief of Tribal Government

1 Services, Laurel Iron Cloud, a PBMI resolution purporting to declare that the PBMI's
2 official name is "Pala Band of Mission Indians" and requesting that the BIA list the
3 PBMI as such (and in place of the Pala Luiseno) on all future publications of the List.

4 165. But, as set forth above, the PBMI is not the Pala Luiseno.

5 166. The Pala Luiseno are *Luisseño* Indians, whereas the *PBMI* is comprised
6 of *all* of the Indians of the Pala Reservations, including the Luisseño, the Cupeño, and
7 the descendants of other Indians who the Secretary of the Interior saw fit to locate at
8 the Pala Reservations in 1903 pursuant to 32 Stat. 257 (1902).

9 167. There is not one tribe at the Pala Reservations.

10 168. The Pala Luiseno are a federally-recognized tribe.

11 169. The Agua Caliente Cupeño are a federally-recognized tribe.

12 170. There is no tribe of "Mission Indians."

13 171. There is no tribe of "Pala Indians."

14 172. Erasing the name of the Pala Luiseno on the List and replacing it with
15 the name of the PBMI would operate as a direct assault on the sovereign identity of
16 the Agua Caliente Cupeño because it would erase the Pala Luiseno's distinct cultural
17 identity from the List, and, thereby, serve to erase the distinctions between the
18 Luiseno, the Cupeño, and all of the other Indians at the Pala Reservations.

19 173. Adding the name of the PBMI in place of the Pala Luiseno would
20 enshrine BIA approval of the PBMI's authority over the sovereign affairs and rights

1 of the Agua Caliente Cupeño Tribe.

2 174. Plaintiff is informed and believes that that is precisely Chairman Smith's
3 goal in seeking a purported name change—the elimination of distinct tribal heritages
4 on the Pala Reservation by bureaucratic sleight of hand.

5 175. Whether wittingly or not, the BIA has assisted, and Plaintiff is informed
6 and believes, unless enjoined Defendant Washburn will further assist, in the effective
7 termination of both the Pala Luiseno and the Agua Caliente Cupeño if Defendant
8 Washburn approves Chairman Smith's requested change to the List.

9 **K. The Agua Caliente Cupeño Tribe Reiterates Its Request that the BIA**
10 **Correct the List.**

11 176. On or about May 19, 2015, Chairman Pink learned of the PBMI's
12 request to replace the Pala Luiseno on the List under the guise of a "name change."

13 177. On June 16, 2015, Attorney Twietmeyer, sent a 20-page letter to Ms.
14 Iron Cloud copying (among several others) Defendant Washburn, OFA Director
15 Fleming, and Solicitor, Scott Keep.

16 178. Attorney Twietmeyer, provided a detailed account, with more than 220
17 pages of exhibits, evidencing the history of the Agua Caliente Cupeño, the Pala
18 Reservations, the BIA's haphazard and inconsistent treatment of the Agua Caliente
19 Cupeño, and the current state of political crisis at the Pala Reservations.

20 179. Attorney Twietmeyer informed that the above-described evolution of the

1 Tribal Leaders Directory, and Director Dutschke’s new habit of referring to Robert
2 Smith as the Chairman of the Pala Luiseno, had not gone unnoticed and that the
3 BIA’s misidentification of the distinct tribes at the Pala Reservations must stop, for it
4 has resulted in numerous troubling ambiguities that collectively present an existential
5 threat to the Agua Caliente Cupeño Tribe.

6 180. Mr. Twietmeyer further conveyed the Agua Caliente Cupeño’s demand
7 that the United States promptly confirm that the next publication of the List will be
8 corrected to include the Agua Caliente Cupeño.

9 181. On July 1, 2015 the BIA published new rules for Federal
10 Acknowledgement of American Indian tribes. The new rules, by their terms, still
11 apply to tribes who are seeking acknowledgment, and, therefore, are inapplicable on
12 their face to a tribe (such as the Agua Caliente Cupeño) whose government-to-
13 government relationship is active despite erroneous exclusion from the List.

14 182. On July 1, 2015, the BIA also published a “Policy Guidance” stating that
15 the BIA “has determined that it will no longer accept requests for acknowledgment
16 outside the 25 C.F.R. Part 83 process. Rather, the Department intends to rely on the
17 newly reformed Part 83 process as the sole administrative avenue for
18 acknowledgment as a tribe.”

19 183. The July 1, 2015 Policy Guidance does not state that the BIA will no
20 longer correct administrative errors by adding the name an erroneously un-Listed

1 tribe (such as the Agua Caliente Cupeño) whose government-to-government
2 relationship has never lapsed or been terminated.

3 184. On July 17, 2015, Mr. Twietmeyer called Solicitor Keep.

4 185. Solicitor Keep told Mr. Twietmeyer that he was reviewing the letter and
5 exhibits that Mr. Twietmeyer had sent on June 16. Solicitor Keep assured Mr.
6 Twietmeyer that the BIA would carefully review the Agua Caliente Cupeño's
7 Request and provide the Agua Caliente Cupeño with a reasoned decision. Mr.
8 Twietmeyer expressed his concern that the BIA had issued its recent Policy Guidance
9 in response to the Agua Caliente Cupeño's request, and that, to the extent the Bureau
10 would purport to require the Agua Caliente Cupeño to go through the Part 83 process,
11 the BIA would be missing the point—since, the Agua Caliente Cupeño are seeking a
12 correction of the List, and not re-affirmation as a previously-acknowledged tribe
13 whose government-to-government relationship has lapsed or been terminated.

14 186. Mr. Twietmeyer further observed that, even if the Agua Caliente
15 Cupeño's request could be characterized as a simple request for “re-affirmation” the
16 BIA could not adopt a new policy and apply it *ex post facto* to the Agua Caliente
17 Cupeño—whose request had already then been pending for seven months. Mr.
18 Twietmeyer told Solicitor Keep that if no response was received within the next two
19 weeks, he would call Mr. Keep back.

20 187. After no response was received, Mr. Twietmeyer called Solicitor Keep

1 again on July 28, 2015 to inform Mr. Keep that Mr. Twietmeyer would vacation for
2 the first two weeks of August, so Mr. Keep, effectively had an extra two weeks to
3 review and draft a response. Mr. Keep said that would be helpful and thanked Mr.
4 Twietmeyer for his call.

5 188. On August 3, 2015, Mr. Twietmeyer sent Solicitor Keep an email
6 updating him on what was happening at the Pala Reservations. Specifically, at the
7 July 8, 2015 General Council meeting, Chairman Smith had announced that
8 Chairman Pink and others are “trying to start a new tribe” and that the PBMI
9 Executive Committee has authority to disenroll anyone who enrolls in another tribe.
10 Mr. Twietmeyer reiterated that the voluminous records he sent to Mr. Keep and
11 others on June 16 clearly show that the Agua Caliente Cupeño are not a “new tribe.”
12 Mr. Twietmeyer conveyed the Agua Caliente Cupeño’s concern that the PBMI
13 Executive Committee was poised to disenfranchise more Agua Caliente Cupeño
14 based on the gross fiction that Agua Caliente Cupeño members had forfeit their
15 purported rights as purported Pala Indians by enrolling in the Agua Caliente Cupeño
16 Tribe. Mr. Twietmeyer closed expressing his hope that the Bureau will work with the
17 Agua Caliente Cupeño to correct the current misidentification of the sovereign tribes
18 at the Pala Reservations.

19 189. On August 18, 2015, Mr. Twietmeyer again followed up with Mr. Keep
20 who said that he was still working on a response. Mr. Twietmeyer then observed that

1 the Agua Caliente Cupeño's request was already eight months old, and that, the
2 imminent publication of the 2016 List (in which the PBMI proposed to eliminate and
3 replace the Pala Luiseno) would force the Agua Caliente Cupeño to take action. Mr.
4 Twietmeyer suggested to Mr. Keep that scheduling a meeting might facilitate
5 resolving the matter. Mr. Twietmeyer suggested that Mr. Keep consider his
6 suggestion for a meeting and that Mr. Twietmeyer would again follow up with Mr.
7 Keep the following week.

8 190. On August 26, 2015, Solicitor Keep emailed Mr. Twietmeyer stating,
9 "At this time I think it is premature to try a meeting. I and the Bureau staff are still in
10 the process of trying to brief our senior policy and program officials in connection
11 with a draft response to your June 16, letter."

12 191. To date, no response to the June 16, 2015 letter has been forthcoming.

13 192. There are currently more than 160 Cupeño Indians who have are
14 wrongfully disenfranchised from their rights to benefit from the Pala Reservations in
15 2012.

16 193. Accordingly, every month that goes by, the PBMI exploits the current
17 state of BIA ambiguity to wrongfully deprive those Cupeño collectively of
18 approximately, \$1,600,000.00 in per capita distributions that the BIA has a fiduciary
19 duty to ensure are distributed to those very Agua Caliente Cupeño Indians.

20 194. Moreover, the PBMI Executive Committee is now taking actions to evict

1 and exclude Cupeño individuals from the Pala Reservations based on the baseless
2 contention that those individuals somehow pose a threat to the PBMI's welfare and
3 wellbeing because of those individuals' participation in the Agua Caliente Tribe of
4 Cupeño Indians.

5 195. The 2016 List is scheduled for publication not later than January 30,
6 2016.

7 196. It is urgent that the BIA respond to the Agua Caliente Cupeño's request
8 that the BIA correct the List.

9
FIRST CLAIM FOR RELIEF
10 **(Injunctive Relieve Pursuant to 5 U.S.C. § 702)**

11 197. Plaintiff re-alleges Paragraphs 1 through 196 above and incorporates
12 those paragraphs in their entirety herein.

13 198. Defendant Washburn has been delegated the authority to carry out the
14 duties of the Secretary of the Interior respecting Indian affairs.

15 199. Under 25 U.S.C. section 479a-1, Defendant Washburn has a statutory
16 duty to publish a list of all Indian tribes which Defendant Washburn recognizes to be
17 eligible for special programs and services provided by the United States to Indians
18 because of their status as Indians.

19 200. Pursuant to the express directions of Congress in delegating that duty
20 through the Federally Recognized Tribes List Act, the List of federally recognized

1 tribes which Defendant Washburn publishes should reflect all of the federally
2 recognized Indian tribes in the United States which are eligible for the special
3 programs and services provided by the United States to Indians because of their
4 status as Indians.

5 201. Implied in 25 U.S.C. section 479a-1 is Defendant Washburn's duty to
6 provide a reasoned response when a tribe that is currently unlisted but is,
7 nevertheless, occupying a reservation and receiving and benefiting from the programs
8 and services provided by the United States, requests that the List be corrected to
9 include that tribe's absent name.

10 202. The Agua Caliente Cupeño are such a tribe, and have requested since
11 December 2014 that Defendant Washburn add the Agua Caliente Cupeño's name to
12 the List.

13 203. Defendant Washburn has unreasonably withheld and delayed the
14 exercise of his statutory duties under 25 U.S.C. section 479a-1 by refusing to provide
15 any response to the Agua Caliente Cupeño's request for correction of the List.

16 204. Defendants' unlawful and unreasonable delay is perpetuating ambiguity
17 which has so clouded the reality of the distinct Tribes that reside at the Pala
18 Reservations, that the Agua Caliente Cupeño's very existence is now threatened.

19 205. Specifically, the BIA is now poised to enshrine the PBMI as a tribe on
20 the List in place of the Pala Luiseno, a distortion of fact that erases the distinction

1 between the Luiseño and Cupeño peoples who reside on the Pala Reservations and
2 would serve as the United States' official sanction of the PBMI as having sovereign
3 authority over the Agua Caliente Cupeño Tribe.

4 206. As a direct result of the ambiguity created by Defendants' failure to
5 include the Agua Caliente Cupeño on the List and Defendants refusal to respond to
6 the Agua Caliente Cupeño's request for a correction of that error, the Agua Caliente
7 Cupeño Tribe is adversely affected and aggrieved and is suffering a gross and
8 wrongful deprivation of its sovereign rights of self determination and self
9 government.

10 207. The Court should compel Defendants to respond to the Agua Caliente
11 Cupeño's request for correction of the List.

12 208. Plaintiffs have no other adequate remedy to compel Defendants to
13 respond to Plaintiff's request to correct the List.

14 **SECOND CLAIM FOR RELIEF**
15 **(Prohibitory Injunction Pursuant to 5 U.S.C. §§ 702 and 703 against All**
16 **Defendants)**

17 209. Plaintiff re-alleges Paragraphs 1 through 208 above and incorporates
18 those paragraphs in their entirety herein.

19 210. The Pala Band of Mission Indians was created in 1961.

20 211. The Majority of the individual members of the PBMI are not Luiseño
Indians.

1 212. The Pala Band of Luiseno Mission Indians of the Pala Reservation,
2 California formed a government-to-government relationship with the United States
3 more than a century before the creation of the Pala Band of Mission Indians.

4 213. The Pala Band of Luiseno Mission Indians of the Pala Reservation,
5 California is not the same entity as the Pala Band of Mission Indians.

6 214. Defendant Washburn cannot lawfully honor the request of the Pala Band
7 of Mission Indians to have the name of Pala Band of Luiseno Mission Indians of the
8 Pala Reservation, California removed from the list and replaced with the name of the
9 Pala Band of Mission Indians.

10 215. Removing the name of a Pala Band of Luiseno Mission Indians of the
11 Pala Reservation, California from the List would violate Defendant Washburn's
12 statutory duty under 25 U.S.C. section 479a-1.

13 216. Replacing the name of the Pala Luiseno with the name of the PBMI
14 would further cloud the distinct tribal entities and rights associated with the Pala
15 Reservations merely compounding and perpetuating the BIA's administrative error.

16 217. Plaintiff faces irreparable injury if Defendant Washburn is permitted to
17 strike the Pala Band of Luiseno Mission Indians of the Pala Reservation, California
18 from the List and replace it with the Pala Band of Mission Indians because to do so
19 would eliminate the distinct nature of the Luiseño people from Bureau records and, in
20 turn, eliminate the distinct nature of the Agua Caliente Cupeño Tribe.

1 3. That the Court grant Plaintiffs any and all other relief to which they may
2 justly be entitled.

3
4 Dated: November 9, 2015

THE LAW OFFICE OF
ANDREW W. TWIETMEYER

5
6 By: s/ Andrew W. Twietmeyer
7 *Attorney for Plaintiff*
8 *The Agua Caliente Tribe of Cupeño*
9 *Indians of the Pala Reservation*