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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA,**

MISSION CREEK BAND OF
MISSION INDIANS, an Indian Tribe;
TONY LOPEZ III, in his capacity as
Tribal Chairman and in his individual
capacity as heir/legatee/successor to
distributees Lena P. Chaparosa, Alfred B.
England, Jean N. England, Susan M.
England, Peter J. Grand, Eileen
Kitchen, John J. Kitchen, Wallace J.
Newman, Wallace J. Newman, Jr., and
Mercedes N. Stone Newman; DESIREE
SALINAS, in her individual capacity as
heir/legatee/successor to distributees
Lena P. Chaparosa, Alfred B.
England, Jean N. England, Susan M.
England, Peter J. Grand, Eileen
Kitchen, John J. Kitchen, Wallace J.
Newman, Wallace J. Newman, Jr., and
Mercedes N. Stone Newman; CARLOS
SALINAS, in his individual capacity as
heir/legatee/successor to distributees
Lena P. Chaparosa, Alfred B.
England, Jean N. England, Susan M.
England, Peter J. Grand, Eileen
Kitchen, John J. Kitchen, Wallace J.
Newman, Wallace J. Newman, Jr., and
Mercedes N. Stone Newman; and
GABRIELA LYLES, in her individual
capacity as heir/legatee/successor to
distributees Lena P. Chaparosa, Alfred B.
England, Jean N. England, Susan M.
England, Peter J. Grand, Eileen
Kitchen, John J. Kitchen, Wallace J.
Newman, Wallace J. Newman, Jr., and
Mercedes N. Stone Newman,

Plaintiffs,

v.

CASE NO.:

**COMPLAINT FOR BREACH OF
FIDUCIARY DUTY, BREACH OF
THE ADMINISTRATIVE
PROCEDURE ACT, AND FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

(DEMAND FOR JURY TRIAL)

1 SALLY JEWELL, in her official capacity
 2 as Secretary of the Interior;
 3 LAWRENCE S. ROBERTS, in his
 4 official capacity as Acting Assistant
 5 Secretary for Indian Affairs of the United
 6 States Department of Interior; AMY
 7 DUTSCHKE, in her official capacity as
 8 Regional Director, Pacific Regional
 9 Office, Bureau of Indian Affairs of the
 10 United States Department of Interior;
 11 DOES 1 through 10,

12 Defendants.

13 Plaintiffs, MISSION CREEK BAND OF MISSION INDIANS, DESIREE
 14 SALINAS, CARLOS SALINAS, and GABRIELA LYLES, by and through their attorneys
 15 of record, Maddox, Isaacson & Cisneros, LLP, and for claims against Defendants, and
 16 each of them, allege as follows:

17 1. MISSION CREEK BAND OF MISSION INDIANS, individual Tribal
 18 members of the MISSION CREEK BAND OF MISSION INDIANS and its members
 19 (collectively, "MISSION CREEK") and individual Plaintiffs DESIREE SALINAS,
 20 CARLOS SALINAS, and GABRIELA LYLES (DESIREE SALINAS, CARLOS
 21 SALINAS, and GABRIELA LYLES, collectively, "INDIVIDUAL PLAINTIFFS";
 22 MISSION CREEK AND INDIVIDUAL PLAINTIFFS, collectively, "PLAINTIFFS"),
 23 bring this action to compel agency action unlawfully withheld and unreasonably delayed.
 24 PLAINTIFFS seek a court order directing the Secretary of the Interior SALLY JEWEL
 25 (the "Secretary") to publish a list of federally recognized tribes as required by section
 26 104(a) of the Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454,
 27 108 Stat. 4791 (codified at 25 U.S.C. SECTION 479 a-1 (a)), with such list to include by
 28 name MISSION CREEK BAND OF MISSION INDIANS.

29 2. PLAINTIFFS further request a court order directing the Secretary to take
 30 into trust such lands designated by MISSION CREEK within what was historically known
 31 as the Mission Creek Reservation, with such lands to be considered "Indian country" as

1 defined in 18 U.S.C. § 1151.

2 3. PLAINTIFFS further request a court order declaring MISSION CREEK is
3 eligible for the protection, services and benefits of the federal government available to
4 Indian Tribes by virtue of MISSION CREEK'S status as an Indian Tribe.

5 JURISDICTION

6 4. This Court has jurisdiction under: (a) 28 U.S.C. § 1331 in that this action
7 arises under the Constitution and laws of the United States; (b) 28 U.S.C. § 1361 in that
8 PLAINTIFFS seek to compel officers and employees of the United States and its agencies
9 to perform duties owed to PLAINTIFFS; and 28 U.S.C. § 1362 in that this is an action
10 brought by an Indian Tribe or band based on claims arising under the Constitution and
11 laws of the United States, including U.S. Const. Art. II, § 8, cl. 3 (Indian Commerce
12 Clause), and federal common law.

13 5. Jurisdiction to review agency action is also invoked pursuant to the
14 Administrative Procedures Act ("APA"), 5 U.S.C. §§ 702-703.

15 6. Declaratory relief is sought pursuant to 28 §§ U.S.C. 2201-2202.

16 7. The United States has waived its and Defendants' sovereign immunity to the
17 claims herein by virtue of, without limitation, the APA, and the United States' fiduciary and
18 trustee obligations owed to MISSION CREEK and its members. Defendants have acted
19 beyond their statutory authority by allowing subordinate officers to violate the laws and
20 Constitution of the United States and thus have no sovereign immunity.

21 VENUE

22 8. Venue is appropriate in this district under 28 U.S.C. § 1391, as a substantial
23 part of the events or omissions giving rise to the claim occurred in this district, and a
24 substantial part of property that is the subject of the action is situated in this district.

25 PARTIES

26 9. MISSION CREEK is an Indian Tribe consisting of Indian members, and
27 descendants and their Indian successors in interest, which the United States recognized as
28

1 the MISSION CREEK BAND OF MISSION INDIANS. MISSION CREEK has always
 2 been continuously identified as an Indian Tribe and maintained its existence as a distinct
 3 Indian community, and has always and continuously maintained autonomous political
 4 influence and authority over its members.

5 10. INDIVIDUAL PLAINTIFF TONY LOPEZ III is the Tribal Chairman of
 6 MISSION CREEK and is the heir/legatee/successor of Lena P. Chaparosa, Alfred B.
 7 England, Jean N. England, Susan M. England, Peter J. Grand, Eileen Kitchen, John J.
 8 Kitchen, Wallace J. Newman, Wallace J. Newman, Jr., and Mercedes N. Stone Newman.

9 11. INDIVIDUAL PLAINTIFF DESIREE SALINAS is an individual and a
 10 member of MISSION CREEK, is currently twenty-years old, and is the
 11 heir/legatee/successor of Lena P. Chaparosa, Alfred B. England, Jean N. England, Susan
 12 M. England, Peter J. Grand, Eileen Kitchen, John J. Kitchen, Wallace J. Newman, Wallace
 13 J. Newman, Jr., and Mercedes N. Stone Newman.

14 12. INDIVIDUAL PLAINTIFF CARLOS SALINAS is an individual and a
 15 member of MISSION CREEK, is currently nineteen years old, and is the
 16 heir/legatee/successor of Lena P. Chaparosa, Alfred B. England, Jean N. England, Susan
 17 M. England, Peter J. Grand, Eileen Kitchen, John J. Kitchen, Wallace J. Newman, Wallace
 18 J. Newman, Jr., and Mercedes N. Stone Newman.

19 13. INDIVIDUAL PLAINTIFF GABRIELA LYLES is an individual and a
 20 member of MISSION CREEK, is currently nineteen years old, and is the
 21 heir/legatee/successor of Lena P. Chaparosa, Alfred B. England, Jean N. England, Susan
 22 M. England, Peter J. Grand, Eileen Kitchen, John J. Kitchen, Wallace J. Newman, Wallace
 23 J. Newman, Jr., and Mercedes N. Stone Newman.

24 14. Defendant SALLY JEWELL is the Secretary of the United States
 25 Department of Interior ("Secretary"), having a mandatory statutory duty to carry out the
 26 provisions of the Federally Recognized Indian Tribe List Act of 1994 ("Tribe List Act").
 27 The Secretary is an officer or employee of the United States and is sued in her official
 28

1 capacity only.

2 15. Defendant LAWRENCE S. ROBERTS is the Acting Assistant Secretary for
3 Indian Affairs of the United States Department of Interior and is an officer or employee
4 of the United States and is sued in his official capacity only. The Bureau of Indian Affairs
5 is a subagency within the United States Department of Interior.

6 16. Defendant AMY DUTSCHKE is the Regional Director, Pacific Regional
7 Office, Bureau of Indian Affairs of the United States Department of Interior.

8 17. DOE Defendants 1-10 are officers or employees of the United States and
9 have direct or delegated statutory duties in carrying out the provisions of the Tribe List Act
10 and for fulfilling the trust responsibilities of the United States toward Indian people,
11 including PLAINTIFFS.

12 18. PLAINTIFFS are ignorant of the true names and capacities of Defendants
13 sued herein as DOES 1 through 10, inclusive, and therefore sue these Defendants by these
14 fictitious names. PLAINTIFFS will amend or seek leave of this Court to amend this
15 Complaint when those names and capacities are ascertained.

16 **FACTUAL ALLEGATIONS**

17 19. Congress enacted the Tribe List Act in 1994 in response to a “disturbing
18 tendency” by the BIA to “capriciously and improperly withdraw[] federal recognition from
19 a native group or leader.” H.R. Rep. No. 103-781, at 3 (1994), as reprinted in 1994
20 U.S.C.C.A.N. 3768, 3769.

21 **A. Historical Background of MISSION CREEK**

22 20. MISSION CREEK has existed since time immemorial.

23 21. MISSION CREEK is comprised of descendants of the Chemehuevi and is
24 from the southernmost branch of the Southern Paiute people, who have occupied the
25 Mojave Desert since 1500 AD.

26 22. MISSION CREEK sustained itself by trapping and hunting the many species
27 of large and small animals available in the area and gathering and storing plant products.
28

A considerable number of pottery vessels have been found in the area testifying to the long presence of MISSION CREEK. Mortars, pestles, manos, metates, and hammerstones for purposes of pounding and grinding food were made from quartz manzonite and other rocks that were plentiful in most parts of the area. Flaked stone tools, including fire drills, awls, arrow-straighteners, flint knives, scrapers, horn and bone were also used.

23. MISSION CREEK also has a rich ceremonial history, being the first Indian Tribe in the area to have a Tribal ceremonial hut. MISSION CREEK hosted other tribes during the winter and summer solstices in the hut, healing the damage done to tribal leaders and their clan.

24. Tribal members lived in circular domes that had a central fire pit and which were clustered in small settlements. These settlements and communities were placed near springs or other water sources, and as near as possible to additional resources.

B. The United States long ago recognized and entered into a trust relationship with MISSION CREEK.

25. The Mission Indian Relief Act of January 12, 1891, codified at 26 Stat. 712, rightfully recognized the bands of Mission Indians in Southern California, including the Mission Creek band of Mission Indians. The Mission Indian Relief Act required the Secretary of the Interior to appoint commissioners “to arrange a just and satisfactory settlement of the Mission Indians residing in the State of California, upon reservations which shall be secured to them as hereinafter provided.” The Indian Appropriations Act of March 1, 1907, codified at 34 Stat. 1015, amended the Mission Indian Relief Act “to select, set apart, and cause to be patented to the Mission Indians such tracts of the public lands of the United States, in the State of California, as he shall find upon investigation to have been in the occupation, and possession of the several lands or villages of Mission Indians”

26. By Executive Order of May 15, 1876, Sections 12, 13 and 14, T. 2 S., R. 3 E., San Bernardino Base and Meridian, were ‘withdrawn from sale and set apart’ as a reservation ‘for the permanent use and occupancy’ of the Mission (Creek) Band of Mission

Indians. By Departmental Order of May 6, 1908, S ½ Section 1 and E ½ Section 2, T. 2 S., R. 3 E., S.B.M., were withdrawn and set aside for the same Band. MISSION CREEK is named in many other appropriation acts that set aside reservation property for MISSION CREEK. These include, but are not limited to, Executive Order(s) on the following dates: December 27, 1875; May 3, 1877, August 25, 1877, September 29, 1877, January 17, 1880, March 2, 1881, March 9, 1881, June 27, 1882, July 24, 1882, February 5, 1883, and June 19, 1883.

27. Trust Patent No. 790636 dated January 18, 1921, was then issued to MISSION CREEK pursuant to the Act of January 12, 1891, “for the Sections twelve, thirteen and fourteen, the south half of Section one and the east half of Section two in Township two south of Range three east of the San Bernardino Meridian, California, containing two thousand five hundred sixty and six-hundred twenty-five thousandths [2,560.625] acres.”

28. In addition, MISSION CREEK occupied a smaller portion of ancestral lands in San Diego County.

29. A number of allotments were made to individual members of MISSION CREEK in 1928. MISSION CREEK believes the number of these allotments was sixteen (16) or seventeen (17). Five of these allotments were transferred to fee simple patent status in 1953. An additional fee simple patent was issued to an individual Tribal member on April 28, 1966.

C. MISSION CREEK has long operated as an autonomous Indian nation.

30. Prior to admission of California and continuing to present day, MISSION CREEK has operated as an autonomous Indian nation maintaining government-to-government relations with the United States, California, and the local entities and other Indian Tribes, and maintained historical political influence over its members.

31. MISSION CREEK completed its Constitution on December 13, 1959. On January 4, 1960, Assistant Secretary of the Department of the Interior, Roger Ernst, based

1 on the recommendation of Commissioner Glenn L. Emmons, formally acknowledged the
2 tribal government. The Secretary of the Interior approved the Tribal Constitution on
3 February 4, 1960. Amendment(s) were later approved and acknowledged on January 17,
4 1961, by Assistant Secretary of the Department of the Interior, George W. Abbott. The
5 Mission Creek Band of Mission Indians Constitution was amended in 2011, and once again
6 on July 20, 2014.

7 **D. A water study commissioned by the BIA advances corporate interests**
8 **in the Mission Creek water supply.**

9 32. Beginning in 1957, Wallace J. Newman, who was then President of MISSION
10 CREEK, began seeking an expansion of reservation land, out of a concern about the
11 diminished water supply there.

12 33. Instead of surveying the possibility of providing water to MISSION CREEK,
13 the Department of the Interior pursued an exploration of diverting further water from the
14 reservation for corporate use. In 1962, under an agreement with the BIA, the Morongo
15 Corp. of Pasadena, California, was allowed to investigate the peat deposit of the Mission
16 Creek Indian reservation. Under pressure from such corporate interests, the BIA asked
17 that a United States Geological Survey be undertaken to determine, among other matters,
18 the quality of the water at the Mission Creek reservation and its capacity for exploitation
19 by Morongo Corp.

20 34. Accordingly, on July 1, 1964, the United States Department of the Interior
21 issued a report entitled "Reconnaissance of the Geology and Water Resources of the
22 Mission Creek Indian Reservation, Riverside County, California" (hereinafter "Water
23 Report"). The Department of the Interior prepared the Water Study in cooperation with
24 the Bureau of Indian Affairs.

25 35. By the time of the Water Report, water had been diverted from Mission
26 Creek and delivered by buried pipeline to an alluviated area so the water could be used for
27 irrigation and domestic purposes. Runoff began to decrease during drought, and the
28 surface water became inadequate to the meet the needs of MISSION CREEK. Because

1 of the lack of a dependable water supply, the Tribal reservation could not sustain its
2 members by the time the Water Report was issued.

3 36. The authors of the Water Report never consulted with Tribal members about
4 the Morongo Corp.'s corporate interests or the existence of the Water Report. Thus the
5 authors of the Water Report also failed to consult with any Tribal members to determine
6 whether the development of water resources on the Tribal land could be implemented for
7 the benefit of MISSION CREEK.

8 37. The Water Report failed to acknowledge that though the Mission Creek
9 reservation had become uninhabitable for permanent residency by Tribal members, Tribal
10 members returned to the land for ceremonial reasons and to pay tribute to their ancestors.

11 38. The Water Report found that "the development of a dependable water supply
12 on the Mission Creek Indian Reservation depends upon recovering ground water." The
13 Water Report further called for a drilling test to determine, among other qualities, the
14 water-bearing characteristics of the subsurface materials on the land.

15 **E. MISSION CREEK and the Rancheria Act**

16 39. The Rancheria Act, P.L. 85-671, 72 Stat. 619, as amended by the Act of
17 August 1, 1964, P.L. 88-419, 78 Stat. 390 ("Rancheria Act"), called for a "distribut[ion] .
18 . . of the lands, including minerals, water rights, and improvements . . . and other assets"
19 of rancherias and reservations located in the State of California.

20 40. Following implementation of the Rancheria Act, representatives of the BIA
21 visited MISSION CREEK for the purposes of disposing of the property pursuant to the
22 Rancheria Act. The representatives spoke with then-President Wallace J. Newman. Mr.
23 Newman was not represented by legal counsel. At the time, Mr. Newman was sixty-five (65)
24 years old.

25 41. Mr. Newman believed that due to the diversion of water from the Mission
26 Creek reservation that had occurred, the reservation was not fit for permanent habitation.

1 The BIA representatives failed to inform Mr. Newman of the corporate interests in ore
2 and lime at the reservation.

3 42. Because Mr. Newman believed water sources for the land were poor and did
4 not know of any potential economic value of the land, Mr. Newman believed that
5 accepting the terms of the Rancheria Act would benefit MISSION CREEK.

6 43. Though by 1966 the reservation was not a permanent habitat for MISSION
7 CREEK, the reservation was in regular use; MISSION CREEK kept their horses there and
8 returned for ceremonial purposes.

9 44. On February 16, 1966, the BIA drew up A Plan for the Distribution of the
10 Assets of Mission Creek Reservation According to the Provisions of Public Law 85-671,
11 as Amended by Public Law 88-419 ("Distribution Plan").

12 45. The Distribution Plan was purportedly a plan for the sale of land held in trust
13 and did not address any plans for distribution of the fifty (50) acres held by Tribal
14 members in fee simple patent. Indeed, neither under the Rancheria Act nor 25 U.S.C. §
15 349 would Defendants have had any authority to effect a sale of land held in fee simple
16 patent status by any Tribal members.

17 46. On April 21, 1966, the Secretary of the Interior approved the Distribution
18 Plan.

19 47. On September 20, 1966, the Department of the Interior indicated that
20 consents to sell were outstanding with respect to allotments 6, 7, and 8. These allotments
21 were associated with ten (10) tribal members. Because MISSION CREEK was not an
22 Indian Tribe organized under Indian Reorganization Act of 1934 ("IRA"), the Department
23 of the Interior was faced with the lack of authority to sell without consent of all tribal
24 members. On September 27, 1966, the Department of the Interior improperly invoked
25 a 1910 Act as a basis for taking the land without consent.

26 48. In a November 3, 1966, Memorandum, the Department of the Interior stated
27 that two of the four living heirs of Mission Creek allotments MC-7 and MC-8 had
28

1 corresponded with the Area Realty Officer of the Sacramento Area Office, “specifically
2 stating that they did not wish to have the allotments sold at this time.” The letter further
3 stated that regarding allotment MC-6, response was lacking from two of three heirs. The
4 letter said:

5 In regard to allotment MC-6, the heir to an undivided 12/16 interest has
6 consented to the sale, but we have had no response from the other two
7 heirs, each holding an undivided 1/16 interest. (An undivided 1/8 interest
8 was fee patented to a non-Indian April 28, 1966). These two heirs are
9 both elderly, although they are considered to be competent. Lupy Lugo is
10 in his 80’s and Rosanda Lugo is in her 70’s. We are still attempting to
11 secure a reply from them.

12 49. Despite this clear objection, and despite the express requirements of Section
13 2 of the Rancheria Act requiring specific procedural protections afforded to individual
14 tribal members who felt they may be “unfairly treated” by such a distribution, the
15 Department of the Interior did not act to protect these two elderly allotment holders from
16 termination and sale of their land.

17 50. In addition, the federal government failed to follow Section 3(c) of the
18 Rancheria Act requiring construction, installation, extension of provision of sanitation and
19 irrigation facilities – which, if followed, would have made the Mission Creek reservation
20 habitable.

21 51. In addition, the federal government failed to follow Section 9 of the
22 Rancheria Act requiring education and training of affected Indians before any termination
23 of the federal trust relationship.

24 52. On July 1, 1970, then Assistant Secretary of the Interior Harrison Loesch
25 published in the Federal Register a Notice (“Termination Notice”) entitled:

26 **MISSION CREEK RESERVATION IN CALIFORNIA**
27 **Notice of Termination of Federal Supervision Over Property**
28 **and Individual Members Thereof,**

1 providing that:

2 Notice is hereby given that the Indians named below and the dependent
3 members of their immediate families named below who are not members of
4 any other tribe or band of Indians are no longer entitled to any of the
5 services performed by the United States for Indians because of their status
6 as Indians; that all statutes of the United States which affect Indians because
7 of their status as Indians shall be inapplicable to them, and the laws of the
8 several States shall apply to them in the same manner as they apply to other
9 citizens within their jurisdiction. Title to the land on the Mission Creek
10 Reservation has passed from the U.S. Government under distribution plan
11 dated May 6, 1966.

12 53. The Termination Notice listed fifteen (15) members of MISSION CREEK,
13 namely, distributees Lena P. Chaparosa, Alfred B. England, Jean N. England, Susan M.
14 England, Peter J. Grand, Eileen Kitchen, John J. Kitchen, Wallace J. Newman, Wallace
15 J. Newman, Jr., and Mercedes N. Stone Newman, Gloria P. Martin, Henry Maxey, Jr.,
16 Madeline Maxey, Maryanne Maxey, and Neela K. Maxey.

17 54. As a result of the unlawful and purported termination of MISSION CREEK
18 under the Rancheria Act, on April 28, 1969, a patent was issued to the Crocker Land
19 Company for 2,505.98 acres of land which comprised a part of the Mission Creek
20 Reservation.

21 55. Upon information and belief, Crocker Land Company transferred the same
22 2,505.98 acres to the DC Land Company.

23 56. On March 24, 1977, the DC Land Company transferred a portion of the same
24 2,505.98 acres to the Nature Conservancy.

25 57. On March 25, 1998, the Nature Conservancy transferred a portion of the
26 same 2,505.98 acres to the Wildlands Conservancy.

58. On November 20, 1998, the Wildlands Conservancy transferred a portion of the same 2,505.98 acres to the United States.

59. Upon information and belief, the water from the Mission Creek reservation continues to be diverted for non-Tribal use.

60. Though landless, MISSION CREEK is well-known in the area, has strong relationships with other Indian Tribes both in the area and nationwide, and is recognized in the local community as a long-standing, autonomous entity.

61. MISSION CREEK currently has 252 enrolled members including a governing council of five. The Chairman of MISSION CREEK is Tony Lopez III.

F. The Tribe List Act

62. The Tribe List Act requires the Secretary to “publish in the Federal Register a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” Tribe List Act § 104 (a) (codified at 25 U.S.C. § 479a-1(a)).

63. In enacting the Tribe List Act, Congress found, inter alia, that:

(3) Indian tribes presently may be recognized by Act of Congress; by the administrative procedures set forth in part 83 of the Code of Federal Regulations denominated “Procedures for Establishing that an American Indian Group Exists as an Indian Tribe;” or by a decision of a United States court;

....

(5) Congress has expressly repudiated the policy of terminating recognized Indian tribes, and has actively sought to restore recognition to tribes that previously have been terminated;

(6) The Secretary of the Interior is charged with the responsibility of keeping a list of all federally recognized tribes;

(7) the list published by the Secretary should be accurate, regularly

updated, and regularly published, since it is used by the various departments and agencies of the United States to determine the eligibility of certain groups to receive services from the United States; and

(8) the list of federally recognized tribes which the Secretary publishes should reflect all of the federally recognized Indian tribes in the United States which are eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Tribe List Act § 103 (8) (codified at 25 U.S.C. § 479a-1(a)) (emphasis added).

64. Insofar as the administrative procedures set forth in part 83 of the Code of Federal Regulations states that the Department of Interior will not acknowledge an Indian Tribe that has been subject to congressional legislation terminating the government-to-government relationship, the regulation is unreasonable and inconsistent with the law, which provides that the policy of terminating Indian tribes has been repudiated. *See Ga. v. United States*, 411 U.S. 526, 536, 93 S. Ct. 1702, 1708 (1973); *International R. Co. v. Davidson*, 257 U.S. 506, 514, 42 S. Ct. 179, 182 (1922).

1. Further evidence of repudiation of the Federal Indian termination policy

65. Further evidence confirms that the United States government has repudiated the Federal Indian termination policy. Ironically, one week after the Termination Notice was published, on July 8, 1970, President Richard Nixon stated, in a Special Message to the Congress on Indian Affairs, that the termination policy was wrong:

This policy of forced termination is wrong, in my judgment, for a number of reasons. First, the premises on which it rests are wrong. Termination implies that the Federal government has taken on a trusteeship responsibility for Indian communities as an act of generosity

1 toward a disadvantaged people and that it can therefore discontinue this
2 responsibility on a unilateral basis whenever it sees fit. But the unique
3 status of Indian tribes does not rest on any premise such as this. The
4 special relationship between Indians and the Federal government is the
5 result instead of solemn obligations which have been entered into by the
6 United States Government. Down through the years, through written
7 treaties and through formal and informal agreements, our government has
8 made specific commitments to the Indian people. For their part, the
9 Indians have often surrendered claims to vast tracts of land and have
10 accepted life on government reservations. In exchange, the government
11 has agreed to provide community services such as health, education and
12 public safety, services which would presumably allow Indian communities
13 to enjoy a standard of living comparable to that of other Americans.

14 This goal, of course, has never been achieved. But the special
15 relationship between the Indian tribes and the Federal government which
16 arises from these agreements continues to carry immense moral and legal
17 force. To terminate this relationship would be no more appropriate than
18 to terminate the citizenship rights of any other American.

19 The second reason for rejecting forced termination is that the
20 practical results have been clearly harmful in the few instances in which
21 termination actually has been tried. The removal of Federal trusteeship
22 responsibility has produced considerable disorientation among the
23 affected Indians and has left them unable to relate to a myriad of Federal,
24 State and local assistance efforts. Their economic and social condition has
25 often been worse after termination than it was before.

26 The third argument I would make against forced termination
27 concerns the effect it has had upon the overwhelming majority of tribes
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1 which still enjoy a special relationship with the Federal government. The
2 very threat that this relationship may someday be ended has created a
3 great deal of apprehension among Indian groups and this apprehension,
4 in turn, has had a blighting effect on tribal progress.

5
6 66. Marvin Franklin, former Assistant to the Secretary of Indian Affairs, testified
7 on June 28, 1973, before the Indian Affairs Subcommittee of the House Committee on
8 Interior and Insular Affairs in support of a return of federal recognition to the Menominee
9 Indians of Wisconsin. Mr. Franklin stated:

10 Today the Department of the Interior has taken an important step
11 to implement the policy of Indian self-determination which the President
12 set forth in his July 8, 1970, Indian Message to Congress. This position is
13 a concrete reversal of the policy of terminating Indian tribes –
14 discontinuing the Federal trusteeship for Indian land and ending special
15 Federal services to Indian people – which dominated much of the 1950's
16 and part of the 1960's.

17

18 The philosophy of termination has, in my judgment, long since
19 been discredited. Its underlying premise – that Indians should relinquish
20 their unique identities – is one which President Nixon rejected in his
21 campaign for the Presidency. On September 27, 1968, he stated: “We
22 must recognize that American society can allow many different cultures
23 to flourish in harmony and we must provide an opportunity for those
24 Indians wishing to do so to lead a useful and prosperous life in an Indian
25 environment.”

26 67. These broad statements indicate that the Indian Self-Determination and
27 Education Assistance Act, which was passed in 1975, was a rejection of the termination
28

1 policy.

2 68. On January 24, 1983, President Ronald Reagan issued an American Indian
3 policy statement that supported explicit repudiation of the termination policy.

4 **2. The Secretary's failure to list MISSION CREEK on the list of**
5 **federally recognized Indian Tribes.**

6 69. The Tribe List Act requires the Secretary to publish the list of federally
7 recognized Indian Tribes every year on or before January 30. Tribe List Act § 104 (b)
(codified at 25 U.S.C. § 479a-1(b)).

8 70. The list of tribes was last published in accordance with the Tribe List Act on
9 January 29, 2016, but the Secretary omitted Mission Creek as a federally recognized Indian
10 Tribe.

11 71. The Secretary's omission of Mission Creek was in error.

12 72. On December 30, 2015, MISSION CREEK sent a letter to Defendant AMY
13 DUTSCHKE, requesting a meeting to discuss the process by which MISSION CREEK'S
14 federal recognition could be confirmed.

15 73. On February 2, 2016, Chairman Tony Lopez followed up by calling
16 Defendant AMY DUTSCHKE, but she was unavailable.

17 74. On February 8, 2016, Chairman Tony Lopez again followed up by calling
18 Defendant AMY DUTSCHKE, but she was unavailable.

19 75. The refusal by Defendant Amy Dutschke and all Defendants to respond to
20 MISSION CREEK'S request was an *ultra vires* attempt to repudiate Defendants' fiduciary
21 duties to Plaintiffs.

22 **G. Chain of title to land once held in trust for Mission Creek**

23 76. Upon information and belief, records regarding the true acreage of the
24 Mission Creek Reservation and transference of title from the individual allottees and
25 MISSION CREEK to Crocker Land and/or other entities are incomplete.

26 77. Trust Patent No. 790636 dated January 18, 1921, granted 2,560.625 acres of
27 land to MISSION CREEK.
28

78. However, the 1966 Distribution Plan calculates the size of MISSION CREEK'S land as 2,555.98 acres, a difference of 4.645 acres from Trust Patent No. 790636.

79. In addition, the 1969 patent to Crocker Land Company was for 2,505.98 acres, a difference of 54.645 acres from Trust Patent No. 70636 and 50 acres from the 1966 Distribution Plan.

80. PLAINTIFFS are unaware of the current ownership of the land that was unaccounted for in the 1966 Distribution Plan and in the patent to Crocker Land Company.

81. On December 10, 2014, PLAINTIFFS requested a title search of records related to land once owned by MISSION CREEK, but the records were unavailable at the local title company in San Bernardino/Riverside.

82. Furthermore, records of the relinquishment of interest by the individual allottees has not been available.

83. On January 12, 2015, MISSION CREEK contacted the County of Riverside for these records, but the records were unavailable.

84. On January 12, 2015, MISSION CREEK submitted FOIA requests to the Bureau of Land Management for fully executed deeds or related documents reflecting the transfer of ownership and relinquishment of interest held by each individual allottee and/or their heirs, for lands that were held in trust, or fee, described as:

San Bernardino Meridian, California.

T. 2 S, R. 3 E.,

Sec. 1, SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$; NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$;
S $\frac{1}{2}$;

Sec. 2, East $\frac{1}{2}$;

Sec. 12, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$; E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,
W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$;
NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$; N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$,
W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$; NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$;

SE ¼ SE ¼ NW ¼;

Sec. 13, All

Sec. 14, All

85. In the FOIA request, MISSION CREEK requested a complete history of the sale and transfer of ownership for the lands described above, to current date.

86. On March 18, 2015, the BLM responded that the information requested was not available.

87. On February 19, 2015, PLAINTIFFS made a similar FOIA request to the BIA, but the BIA did not have the records.

88. Having exhausted these steps, PLAINTIFFS continue to lack knowledge or information regarding the status of land comprising the Mission Creek reservation.

FIRST CAUSE OF ACTION (Breach of fiduciary duty)

89. PLAINTIFFS herein re-allege each and every allegation as contained above and hereby incorporate them by this reference as if fully set forth herein.

90. With respect to carrying out obligations to Indian Tribes, the Secretary has “moral obligations of the highest responsibility and trust,” and the Secretary’s conduct in the course of dealing with all Indian Tribes “should therefore be judged by the most exacting fiduciary standard.” *Seminole Nation v. United States*, 316 US 286, 297 (1942).

91. Numerous federal statutes further evidence the Secretary’s fiduciary duty to all Indian Tribes. *See, e.g.*, Native American Housing and Self-Determination Act, 25 U.S.C. § 4101(2)-(4) (finding that “there exists a unique relationship between the Government of the United States and the governments of Indian Tribes and a unique Federal responsibility to Indian people”; that the United States has “undertaken a unique trust responsibility to protect and support Indian tribes and Indian people”; and that “Congress . . . has assumed a trust responsibility for the protection and preservation of Indian tribes”); Indian Health Care Improvement Act, 25 U.S.C. § 1601(1) (“Federal health

1 services to maintain and improve the health of the Indians are consonant with and
2 required by the Federal Government's historical and unique legal relationship with, and
3 resulting responsibility to, the American Indian people."); Indian Child Welfare Act, 25
4 U.S.C. § 1901(2) ("Congress, through statutes, treaties, and the general course of dealing
5 with Indian tribes, has assumed the responsibility for the protection and preservation of
6 Indian tribes and their resources.")

7 92. The Secretary, acting on behalf of the United States, owes a fiduciary duty to
8 MISSION CREEK on account of MISSION CREEK'S status as an Indian Tribe.

9 93. The Secretary has continually breached her fiduciary duty to MISSION
10 CREEK by failing to include MISSION CREEK on the statutorily mandated list of
11 federally recognized Indian Tribes, despite Congress' express repudiation of the policy of
12 terminating recognized Indian Tribes, as referenced in the List Act.

13 94. Defendant AMY DUTSCHKE, and Defendants SALLY JEWELL AND
14 LAWRENCE S. ROBERTS, through their agent AMY DUTSCHKE, chose not to
15 respond to Plaintiffs' repeated requests for a meeting to discuss the process by which
16 MISSION CREEK's federal recognition could be confirmed.

17 95. Plaintiffs made said efforts through December 30, 2015, letter; a February 2,
18 2016, telephone message; and a February 8, 2016, telephone message.

19 96. The failure to respond by Defendant AMY DUTSCHKE, and Defendants
20 SALLY JEWELL AND LAWRENCE S. ROBERTS, through their agent AMY
21 DUTSCHKE, constituted application of Defendants' wrongful decision not to list
22 MISSION CREEK on the list of statutorily mandated list of federally recognized Indian
23 Tribes.

24 97. The failure to respond by Defendant AMY DUTSCHKE and the Secretary,
25 through her agent AMY DUTSCHKE, was made *ultra vires*, beyond the agency's power
26 and authority, and was a breach of Defendants' fiduciary duty.

27 98. As a direct and proximate result of the Secretary's failure to include
28

MISSION CREEK on the statutorily mandated list of federally recognized Indian Tribes, MISSION CREEK has been and continues to be ineligible for the protection, services and benefits of the federal government available to Indian Tribes by virtue of their status as Indian Tribes.

99. The Secretary has continually breached her fiduciary duty to MISSION CREEK each year by failing to include MISSION CREEK in the various calculations in forming the Department of the Interior's annual budget submission to Congress for the BIA and Indian Health Services ("IHS").

100. Based upon all of the allegations herein and PLAINTIFFS' reliance on the conduct of the Secretary as a fiduciary, MISSION CREEK was not reasonably aware that the Secretary would not follow through and restore MISSION CREEK as prayed for herein.

SECOND CAUSE OF ACTION (Agency action unlawfully withheld or unreasonably delayed)

101. PLAINTIFFS herein re-allege each and every allegation as contained above and hereby incorporate them by this reference as if fully set forth herein.

102. The Administrative Procedures Act ("APA"), 5 U.S.C. § 702, authorizes judicial review for "[a] person suffering legal wrong because of agency action"

103. An agency's "failure to act" constitutes "agency action." 5 U.S.C. § 551(13).

104. The APA therefore authorizes a court to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

105. The Secretary's failure to include MISSION CREEK in the list of federally recognized Indian Tribes constitutes "final agency action."

106. The Secretary's failure is unlawful where the List Act itself declares that "Congress has expressly repudiated the policy of terminating recognized Indian tribes."

107. As a direct and proximate result of the Secretary's failure to include MISSION CREEK on the statutorily mandated list of federally recognized Indian Tribes, MISSION CREEK has been and continues to be ineligible for the protection, services and

benefits of the federal government available to Indian Tribes by virtue of their status as Indian Tribes.

THIRD CAUSE OF ACTION (DECLARATORY RELIEF)

108. PLAINTIFFS herein re-allege each and every allegation as contained above and hereby incorporate them by this reference as if fully set forth herein.

109. As alleged herein, PLAINTIFFS continue to lack knowledge or information regarding the status of land comprising the Mission Creek reservation.

110. PLAINTIFFS desire a judicial declaration of ownership as to each parcel of land contained within the Mission Creek Reservation.

111. A judicial declaration is necessary and appropriate under these circumstances in order that PLAINTIFFS may ascertain their rights with respect to the land.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for relief as set forth below. PLAINTIFFS request:

(1) That this Court declare that:

(a) MISSION CREEK is entitled to a reservation totaling 2,560.625 acres;

(b) The deeds conveyed to the Individual distributees and the Crocker Land Company are voidable, and the Secretary of the Interior is under a duty to take former MISSION CREEK Reservation lands back into federal trust status;

(c) Termination Proclamations for the MISSION CREEK Reservation were unlawfully published, and the Secretary of the Interior is under an obligation to rescind them;

(d) The Constitution and By-laws of MISSION CREEK, adopted December 13, 1959, are restored, and the Amendment of July 20, 2014, is recognized;

(e) The Secretary of the Interior is under a duty to afford to MISSION CREEK all rights, privileges, and immunities ordinarily accorded to a federally recognized Indian Tribe;

(f) The lands comprising the MISSION CREEK Reservation were and still are "Indian Country" and that such land now or in the future to be acquired by MISSION CREEK are immune from local property taxation, assessment or other civil regulatory jurisdiction and shall be restored to the same status as before termination;

(g) The lands comprising the MISSION CREEK Reservation are not subject to the jurisdiction of Riverside County, and further that the lands would not be subject to county regulation and taxation;

(h) The Secretary of the Interior is under a duty to acquire and take land into trust for the benefit of MISSION CREEK pursuant to the Indian Reorganization Act, 25 U.S.C. § 465;

(i) The Secretary of the Interior is under a duty to take into trust a land base for the benefit of MISSION CREEK, with such land to considered "Indian country" as defined in 18 U.S.C. § 1151;


(2) That this Court issue a preliminary and permanent injunctive relief compelling Defendants to afford PLAINTIFFS all rights, privileges, and immunities ordinarily accorded to a federally recognized Indian Tribe;

(3) That this Court order Defendants to pay PLAINTIFFS their costs of suit and reasonable attorneys' fees;

(4) That this Court order further relief as the Court shall deem appropriate.

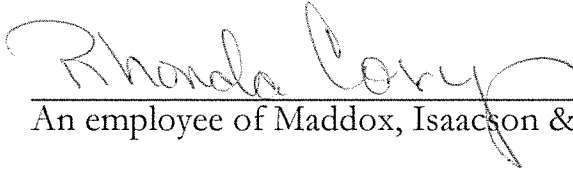
DATED this 28th day of March, 2016.

Respectfully submitted,
MADDOX, ISAACSON & CISNEROS, LLP

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 2016, I electronically transmitted the attached and foregoing **COMPLAINT FOR BREACH OF FIDUCIARY DUTY, BREACH OF THE ADMINISTRATIVE PROCEDURE ACT, AND FOR DECLARATORY AND INJUNCTIVE RELIEF**, to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:


An employee of Maddox, Isaacson & Cisneros, LLP

MADDOX, ISAACSON & CISNEROS, LLP
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