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11 Attorneys for Plaintiffs

12 **UNITED STATES DISTRICT COURT**

13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 Cindy Alegre, an individual,)
15 Frank Alegre, an individual,)
16 Michael Alegre, an individual,)
17 Yolanda Alegre, an individual,)
18 Christopher Alvarado, an individual,)
19 Eric Alvarado, an individual,)
20 Jacob Alvarado, an individual,)
21 Julian Alvarado, an individual,)
22 Matthew Alvarado, an individual,)
23 Nick Alvarado, an individual,)
24 Robert Alvarado, an individual,)
25 Tammy Alvarado, an individual,)
26 Tiani Alvarado, an individual,)
27 Tony Alvarado, an individual,)
28 Vincent Alvarado, an individual,)
Kristy Anaya, an individual,)
Peggy Avila, an individual,)
Carlos Blanco, an individual,)
Ernesto Blanco, an individual,)
Juan Blanco, an individual,)
Ray Blanco, an individual,)
Sylvia Blanco, an individual,)
Remedios Blanco, an individual,)

Case No. 17-cv-00938-AJB-KSC
[Companion Case to
16-CV-2442-AJB-KSC]

PLAINTIFFS' REQUEST FOR
TEMPORARY RESTRAINING
ORDER TO MAINTAIN STATUS
QUO - RULE 65, FEDERAL
RULES CIVIL PROCEDURE

NOTICE GIVEN

- 1
- 2 Theresa Blanco-Murillo, an individual)
- 3 Valerie Boyle, an individual,)
- 4 Melvin Cannon, an individual,)
- 5 David Cardenas, an individual,)
- 6 Anthony Chaloux, an individual,)
- 7 Melissa Chaloux, an individual,)
- 8 Nathan Chaloux, an individual,)
- 9 Shonta Chaloux, an individual,)
- 10 April Chavez, an individual,)
- 11 Amanda Chavez, an individual,)
- 12 David Chavez, an individual,)
- 13 Lisa Chavez, an individual,)
- 14 Jeremy Clay, an individual,)
- 15 Jessica Clay, an individual,)
- 16 Julian Clay, an individual,)
- 17 Bruce Roy Clay, an individual,)
- 18 Andrea Contreras, an individual,)
- 19 Charles Contreras, an individual,)
- 20 Demetrion Contreras, an individual,)
- 21 Jonah Contreras, an individual,)
- 22 Johnny Contreras, an individual,)
- 23 Michael Contreras, an individual,)
- 24 Paul Contreras IV, an individual,)
- 25 Rita Contreras, an individual,)
- 26 Rochelle Contreras, an individual,)
- 27 Roseanne Contreras, an individual,)
- 28 Rudy Contreras, Jr, an individual,)
- Samuel Contreras, an individual,)
- Evelyn Cunningham, an individual,)
- Erik Delgado, an individual,)
- Johnny Ruben Delgado, an individual,)
- Rose Delgado, an individual,)
- Felicia Durkin, an individual,)
- Shianne Elam, an individual,)
- Wyatt Elam, an individual,)
- Sarah Escarcega, an individual,)

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- 2 Libby Flores, an individual,)
- 3 Richard Flores, an individual,)
- 4 Ruben Gonzalez, Jr., an individual,)
- 5 Mary Herrera, an individual,)
- 6 John Hughes, an individual,)
- 7 Bernadette Johnson, an individual,)
- 8 Jason Lavigne, an individual,)
- 9 Juan Lucero, an individual,)
- 10 Virgil Lucero, an individual,)
- 11 Amber Majel, an individual,)
- 12 Angelina Martinez, an individual,)
- 13 Hilario Martinez, an individual,)
- 14 Linda Martinez-Vanderverf,)
- 15 an individual,)
- 16 Paul Martinez, an individual,)
- 17 Ruben Martinez, an individual,)
- 18 Valerie Martinez, an individual,)
- 19 Sarah Mendoza, an individual,)
- 20 Jamie Miller, an individual,)
- 21 Jeffrey Miller, an individual,)
- 22 Daniel Morales, Jr., an individual,)
- 23 Desiree Morales, an individual,)
- 24 Joseph Morales, an individual,)
- 25 Louie Morales, an individual,)
- 26 Melissa Morales, an individual,)
- 27 Frederick Murillo III, an individual,)
- 28 Joseph Murillo, an individual,)
- Kim Murillo, an individual,)
- Paul V. Murillo, an individual,)
- Thomas Murillo, an individual,)
- Beatrice Ochoa, an individual,)
- Robert Ochoa, an individual,)
- Theresa Ochoa, an individual,)
- Yolanda Ochoa, an individual,)
- Lena Ortega, an individual,)
- Lavon Palmer, an individual,)

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- 2 Andre Peart, an individual,)
- 3 Celeste Peart, an individual,)
- 4 Chas Peart, an individual,)
- 5 Denise Peart, an individual,)
- 6 Evette Peart, an individual,)
- 7 Jamie Peart, an individual,)
- 8 Jon Renee Peart, an individual,)
- 9 Priscilla Peart, an individual,)
- 10 Rita Peart, an individual,)
- 11 Sarah Peart, an individual,)
- 12 Tisha Peart, an individual,)
- 13 Tonya Peart, an individual,)
- 14 Anita Perez, an individual,)
- 15 Dominique Perez, an individual,)
- 16 Jermaine Perez, an individual,)
- 17 Orthius Perez, an individual,)
- 18 Lisa Quiroz, an individual,)
- 19 James Gabriel Vallez, an individual,)
- 20 Linda Dunning Vallez, an individual,)
- 21 Keith Vasquez, an individual,)
- 22 Adrean Villalobos, an individual,)
- 23 Bridgette Villalobos, an individual,)
- 24 Cathi Villalobos-Cameron,)
- 25 an individual, Corrine)
- 26 Villalobos-Biggs, an individual,)
- 27 David Villalobos, an individual,)
- 28 Jelena Villalobos-Bryan, an individual)
- Jesus Villalobos, an individual,)
- Joseph Villalobos, an individual,)
- Paul Villalobos, an individual,)
- Peter Villalobos, an individual,)
- Shaun Villalobos, an individual,)
- Gerard Villalpando, an individual,)
- Rachael Zwicker, an individual,)
- Ruby Zwicker, an individual,)
- Virgil Zwicker, an individual,)

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ENROLLED MEMBERS:)
 Christina Alvarado, an individual,)
 Patsy Alvarado, an individual,)
 Lisa Belardes, an individual,)
 Paul Contreras III, an individual,)
 Johnny Contreras, an individual,)
 Rudolph Contreras, an individual,)
 Josie Delgado, an individual,)
 Lajeane Miller, an individual,)
 Dolores Perez, an individual,)
 Huumaay Quisquis, an individual,)
 James Quisquis, an individual,)
 Tellypuu Quisquis, an individual,)
 Elsie Rojas, an individual,)
 Amelia Martinez Contreras)
 Villalobos, aka Melia Duenes,)
 an individual, Della Villalobos)
 Ochoa, an individual,)
 Josie Villalobos, an individual,)
 Mary Villalobos Varela, an individual,))
 Josie Villalpando, an individual,)
 Gloria Zwicker, an individual,)
 and DOES 1 - 400, inclusive,)
)
 Plaintiffs,)
)
 v.)
)
 UNITED STATES OF AMERICA;)
 DEPARTMENT OF INTERIOR;)
 BUREAU OF INDIAN AFFAIRS;)
 RYAN ZINKE, Secretary of the)
 Department of Interior, United States)
 Of America; MICHAEL BLACK;)
 Acting Assistant Secretary of Indian)
 Affairs Department of Interior -)

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United States of America;)
WELDON LOUDERMILK,)
Director Bureau of Indian Affairs;)
AMY DUTSCHKE, Regional)
Director, Department of Interior -)
Indian Affairs, United States of)
America,in their official capacity,)
JAVIN MOORE, Superintendent of)
the Department of Interior Indian)
Affairs, Southern California)
Agency, all in their official capacity,)
and ROES 1 through 200, inclusive,)
)
Defendants.)
)
)

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REQUEST FOR
TEMPORARY RESTRAINING ORDER**

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- A. PLAINTIFFS REQUEST THIS COURT ISSUE A TEMPORARY RESTRAINING ORDER ENJOINING THE DEFENDANTS FROM APPROVING ANY ACTIONS TAKEN BY THE SAN PASQUAL ENROLLMENT COMMITTEE UNTIL PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION IS HEARD BY THIS COURT. 40

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1
2 **EX PARTE REQUEST FOR**
3 **TEMPORARY RESTRAINING ORDER**

4 Plaintiffs, by and through their attorneys of record Alexandra R. McIntosh,
5 Esq. and Carolyn Chapman, Esq., hereby move this Honorable Court for an
6 Order granting an immediate Temporary Restraining Order against Defendants
7 pursuant to Rule 65, Fed.R.Civ.Pro. The purpose of this ex parte request is to
8 maintain the status quo in this case and Plaintiffs' companion case No. 16-cv-
9 2442-AJB-KSC.
10
11

12 This ex parte request is based upon the notice of motion, motion, statement
13 of facts, memorandum of points and authorities, the declarations of Alexandra R.
14 McIntosh, Esq. and James Quisquis, and other federally recognized enrolled San
15 Pasqual tribal members, the files and records in the above-captioned matter,
16 Plaintiffs' Amended Complaint with exhibits in case no. 16-cv-2442-AJB-KSC
17 (See Plaintiffs' Request for Judicial Notice filed separately). Plaintiffs filed their
18 Complaint for Injunction with exhibits in this matter on May 8, 2017. They filed
19 their Notice of Motion, Motion, and Points and Authorities in support of their
20 Motion for Preliminary Injunction on May , 2017. Plaintiffs filed their related
21 Complaint, September 28, 2017, and their Amended Complaint for Declaratory
22 Relief, Violation of Civil Rights, Breach of Fiduciary Duty, Violation of the
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2 Administrative Procedures Act, Fraud, and Diminution of Federally Patent Land
3 against these same Defendants in case numbered 16-cv-2442 on April 11, 2017.

4 Because Defendants have requested a sixty day extension to respond to that
5 complaint and because Plaintiffs have filed a Complaint for Injunction it is
6 necessary to request this Temporary Restraining Order to keep the status quo. If a
7 Temporary Restraining Order is not issued Plaintiffs will suffer irreparable harm
8 because they will be denied their civil rights, right to due process and equal
9 protection of the law, and they will be denied all of the right that accrue to
10 federally recognized tribal membership.
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14 This is a private matter between the Plaintiffs and the DOI-BIA. The public
15 is not involved and will not be harmed if this court grants Plaintiffs Request for
16 TRO and/or Preliminary Injunction.
17

18 **I**

19
20 **LEGAL AUTHORITY**

21 Rule 65, Federal Rule of Civil Procedure, governs preliminary injunctions
22 and temporary restraining orders. In this case, Plaintiffs have given opposing
23 counsel notice of their ex parte request for a temporary restraining order. If a TRO
24 with notice is extended beyond 20 days, it is treated as a preliminary injunction.
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2 *United Airlines, Inc. v. U.S. Bank, N.A.*, 406 F.3d 918 (7th Cir. 2005). A TRO is an
3 equitable remedy that is issued in exceptional and emergency circumstances when
4 necessary to preserve the status quo until the court has an opportunity to rule on a
5 motion for a preliminary injunction after an evidentiary hearing. See, e.g., *Coca-*
6 *Cola v. Alma-Leo U.S.A., Inc.*, 719 F. Supp. 725, 726-27 (N.D. Ill. 1989).
7

8
9 The Seventh circuit has defined “status quo” as the “last uncontested status
10 which preceded the pending controversy”. *Westinghouse Elec. Corp. v. Free*
11 *Sewing Mach. Co.*, 256 F.2d 806, 808 (7th Cir. 1958) (granting in part, denying in
12 part). [See also, *Illusions Too Reality, LLC v. City of Harvey*, 2003 U.S. Dist.
13 LEXIS 1530, at *11 (N.D. Ill. Feb. 4, 2003 [defining purpose of TRO and granting
14 TRO].
15
16

17 Plaintiffs recognize that this Court will not decide controverted facts or the
18 merits in the context of a motion for a TRO. *Jacob v. C & M Vieo, Inc.*, 248 Ill.
19 App. 3d 654, 664, 618 N.E. 2d 1267, 1274-75 (5th Dist. 1993); *Choudhry v.*
20 *Jenkins*, 559 F.2d 1085, 1088 (7th Cir. 1977). But, in this case, Plaintiffs have
21 provided authenticated documentation with their Verified Complaint for
22 Injunction to support their claims.
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2 Attached to this Request for Temporary Restraining Order is the Declaration
3 of Alexandra R. McIntosh which details the steps taken to attempt to notify the
4 attorney for the Defendants in this case of the requested ex parte motion. [See,
5 F.R.Civ.P 65(b)]. Because the Defendants are not located in the County of San
6 Diego, but rather in Washington, D.C. , Sacramento, and Riverside, California,
7 Plaintiffs attorneys have noticed their anticipated counsel of record which would
8 be the U.S. Attorney's office for the Southern District of California. Since
9 Plaintiffs have give opposing party notice of this ex parte motion the rules
10 concerning TRO with notice apply. Where a TRO is entered with notice but
11 without an evidentiary hearing, the TRO should be for a limited duration until an
12 evidentiary hearing can be held. *Coca-Cola Co. v. Alma-Leo U.S.A., Inc.*, 719 F.
13 Supp. 725, 726-27 (N.D. Ill 1989).

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18 Federal Courts generally apply a two-step analysis for issuing a TRO or
19 preliminary injunction. First, federal courts determine if there is (1) a likelihood
20 of success on the merits; (2) a threat of irreparable harm; and (3) an inadequate
21 remedy at law. If those conditions are satisfied, the court must then (4) balance
22 the hardships, and (5) consider the impact on public interest. *Cavel Int'l. v.*
23 *Madigan*, 500 F.3d 544, 547 (7th Cir. 2007) (applying "sliding scale" analysis);

1
2 *Promatek Indus.v. Equitrac Corp.*, 300 F.3d 808, 811 (7th Cir. 2002) (affirming
3 grant of preliminary injunction). The standards for a TRO and a preliminary
4 injunction are identical. *Illusions Too Reality, LLC v. City of Harvey*, 2003 U.S.
5 Dist. LEXIS 1530, at *11 (N.D. Ill. Feb. 4, 2003)(granting TRO). Plaintiffs have
6 a great likelihood of success on the merits, are subject to irreparable harm, and
7 have an inadequate remedy at law in this matter. As to the hardships, the
8 Defendants will suffer no hardships, but the Plaintiffs will suffer extreme
9 hardships outlined below. The public interest will not be impacted by the granting
10 of a TRO in Plaintiffs’ favor.
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14 **II**

15 **STATEMENT OF FACTS**

16 **A. INTRODUCTION**

17 Plaintiffs recognize that “The standards for pleading injunctive relief are
18 much more rigorous than for a complaint seeking other equitable relief.” Hon.
19 Richard A. Siebel, *Injunctions*, CHANCERY AND SPECIAL REMEDIES,
20 §16.30 (2004). Plaintiffs Complaint for Injunction and Motion for Preliminary
21 Injunction satisfy this standard because the factual basis is supported by
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2 documents and evidence that has been filed with this Court. [Please take notice of
3 Plaintiffs' Request for Judicial Notice filed with their Complaint for Injunction].

4
5 The Plaintiffs, both Federally recognized enrolled San Pasqual Indians and
6 non-Federally recognized enrolled San Pasqual Indians, allege in their Verified
7 Complaint for Injunction that they have been denied their civil rights as a result of
8 Defendants' actions or inactions. Plaintiffs' Complaint for Injunction is a
9
10 companion case to Plaintiffs' Complaint for Declaratory Relief, Violation of Civil
11 Rights, Breach of Fiduciary Duty, Diminution of Patented Land, and Damages in
12
13 Case numbered 16-CV-2442-AJB-KSC¹ which was filed by the legal descendants
14 of Jose Juan Martinez and Guadalupe Martinez who are full blood San Pasqual
15
16 Indians.

17 Plaintiffs in Case numbered 16-CV-2442-AJB-KS were enrolled in the
18
19 BAND by the BAND's Enrollment Committee, and General Council, but
20
21 Defendants failed to follow statutory mandates and review the actions of the
22
23 Enrollment Committee. Furthermore, Defendants failed to give notice to Plaintiffs
24
25 of their actions and/or inactions.

26 ¹See Plaintiffs request for this Court to take Judicial Notice of *Alegre et.al.v. U.S.,*
27 *DOI, BIA, Zenke*, Case 16-cv-2442-AJB-KSC. [Filed separately].

1
2 The detailed facts are fully stated in Case numbered 16-CV-2442-AJB-KSC
3 and will only be briefly summarized for the purposes of this Exparte Request for
4 Temporary Restraining Order. Said facts, exhibits, and Declarations are
5 incorporated as if fully set forth herein. Furthermore, the Federally recognized
6 enrolled Plaintiffs who belong to the San Pasqual Mission Band of Indians, and
7 who have joined in filing the Complaint for Injunction, will be filing their own
8 Complaint for declaratory relief and damages against the Defendants within the
9 next fourteen days.
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13 The basis for the companion case numbered 16-CV-2442-AJB-KSC
14 involves an erroneous, illegal, unconstitutional, and fraudulent determination of
15 enrollment by blood degree in the San Pasqual Band of Mission Indians [BAND]
16 for Plaintiffs' ancestors Jose Juan Martinez and Guadalupe Martinez and their
17 daughter Modesta (Martinez) Contreras by the United States Department of the
18 Interior, Bureau of Indian Affairs [DOI-BIA] on April 7, 2006. (Exhibit 1).
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21 Based on false and faulty documentation, the DOI-BIA determined that
22 Modesta (Martinez) Contreras was not a full blood San Pasqual Indian. The
23 determination that Jose Juan and Guadalupe Martinez and their daughter Modesta
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2 (Martinez) Conteras were not full blood San Pasqual Indians was sanctioned by
3 the Department of Interior.

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5 As a result of this erroneous, illegal, unconstitutional, and fraudulent
6 determination Plaintiffs have been denied their Federal Indian Recognition under
7 the Indian Reorganization Act of June 18, 1934 [Wheeler-Howard Act][25 U.S.C.:
8 Indians] and all subsequent benefits including, but not limited to: land, income,
9 housing, education, participation in tribal government, judgment monies, to name
10 a few benefits that they have been barred from receiving.

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13 Prior to the adverse determination by the DOI-BIA, in concurrence with the
14 San Pasqual Enrollment Committee and the General Council, on September 12,
15 2005, the San Pasqual Business Committee submitted Plaintiffs' approved
16 applications for enrollment into the San Pasqual Band of Mission Indians to James
17 Fletcher, superintendent, Bureau of Indian Affairs, Southern California Agency in
18 Riverside. (Exhibit 2).

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21 Ten days later on September 22, 2005 the San Pasqual Enrollment
22 Committee submitted a letter to James Fletcher, superintendent, Bureau of Indian
23 Affairs, Southern California Agency in Riverside requesting that the Bureau
24 process a correction of Blood Degree for Modesta (Martinez) Contreras – Roll #49
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2 from ¾ to 4/4 degree San Pasqual Blood. The letter indicated that the General
3 Counsel of the San Pasqual Band of Mission Indians ratified and approved the
4 correction and the appropriate calculation of Blood Degree of the Plaintiff
5 descendants who had filed applications for enrollment in the San Pasqual Band,
6 and to enroll the descendants. The letter further stated: “[T]he San Pasqual Band
7 of Mission Indians Business Committee has concurred (letter dated September 12,
8 2005) that these applications meet the enrollment criteria as outlined in 25 CFR
9 Part 48 and 76.”² The letter specifically asked that the Director provide appropriate
10 notification of the correction, and for enrollment. (Exhibit 3).
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14 Although the Bureau had 30 days to respond with a decision, it was not until
15 December 8, 2005, that the Bureau (through the Superintendent, Southern
16 California Agency) determined that “the preponderance of the evidence does not
17 sufficiently demonstrate that Modesta (Martinez) Contreras is fullblood.” This
18 determination is contrary to the determination by the San Pasqual Band Of
19 Mission Indians Enrollment Committee and was based on an “anonymous letter”
20 with attached false and incorrect documentation concerning Jose Juan Martinez
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25 ² According to BIA and SOL opinion, the regulation at 25 CFR 48 [restated at 25 CFR 76] “no
26 longer exists because there is no longer any federal requirement ‘to bring current the membership
27 roll . . . to serve as the basis for the distribution of judgment funds.’”
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2 and his daughter Guadalupe (Martinez) Contreras. (Exhibit 4). The Bureau only
3 sent this letter to the Regional Director, Pacific Region, Attention: Branch of
4 Tribal Operations. The Plaintiffs were never sent a copy of this denial letter. As a
5 result, Plaintiffs have not been able to appeal this decision: They have been denied
6 their constitutional right of due process of law including their right to be heard.
7
8 These actions by the Bureau and Regional director were in violation of the statutes
9 and regulations governing the relationship between the Indian tribes and the
10 Department of Interior, Bureau of Indian Affairs.
11
12

13 The Plaintiffs, the Enrollment Committee, the General Council and the
14 Business Committee, were never sent a copy of this erroneous denial letter.
15
16 Unbeknown to Plaintiffs, on or about January 31, 2006, Defendant DUTSCHKE,
17 Pacific Regional Director, made a determination, based on unvetted, unreliable,
18 faulty and incorrect data, that Modesta (Martinez) Contreras, who is the daughter
19 of Jose Juan was not a full blood San Pasqual Indian. 25 C.F.R. §48.9 mandates,
20 “If the Director determines that an applicant is not eligible for enrollment [which
21 could only be because of blood degree] in accordance with the provisions of §48.5
22 he **shall** notify the applicant in writing of his determination and the reasons
23 therefor. Such applicant **shall** then have thirty (30) days from the date of the
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2 mailing of the notice to him to file with the Director an appeal from the rejection
3 of his application, together with any supporting evidence not previously furnished.

4 The Director shall forward to the Commissioner that appeal, supporting data, and
5 his recommendation thereon, and the report and recommendation of the
6 Enrollment Committee on the application.” (emphasis added). (Exhibit 5).
7

8 Plaintiffs allege that the Director failed to review their applications, failed to
9 notify Plaintiffs of her determination, and failed to give Plaintiffs their appellate
10 rights, all in violation of 25 CFR §§48.8 and 48.9. (Exhibit 6).
11
12

13 Between April 10, 2005 and the present, at no time whatsoever has
14 Defendant DUTSCHKE, Pacific Regional Director, given written notice to the
15 Plaintiffs that she determined, albeit erroneously, that Plaintiffs’ direct lineal
16 ancestor Modesta (Martinez) Contreras was not a full blood San Pasqual Indian.
17 As a result, Plaintiffs were denied their right to appeal said erroneous
18 determination under 25 CFR §48.9.
19
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21 In violation of 25 CFR §48.9, Defendant DUTSCHKE failed to notify
22 Plaintiffs of her determination and the reasons therefore. Without notice and in
23 violation of the Plaintiff Jose Juan descendants’ due process rights, Defendant
24 DUTSCHKE forwarded her erroneous determination to Washington D.C. failing
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2 to provide to the Jose Juan descendants her determination and their right to appeal
3 within thirty (30) days as required under 25 CFR §48.9. Because the San Pasqual
4 Constitution incorporated 25 CFR §48, it is Tribal law.
5

6 Title 25 CFR §48.10 provides, “When upon review the Commissioner
7 [Assistant Secretary] is satisfied that the appellant meets the provisions of §48.5
8 he **shall** so notify the appellant in writing [emphasis added], and the Director is
9 authorized to enter his name on the roll. If the Commissioner determines that an
10 appellant is not eligible for enrollment in accordance with the provisions of §48.5
11 [based on blood degree] . . . the applicant **shall** be notified in writing of his
12 decision and the reasons therefor. The appellant shall then have thirty (30) days
13 from the date of mailing of the notice to file an appeal with the Secretary.” In
14 violation of 25 CFR §48.10, the Defendant Acting Assistant Secretary failed to
15 notify Plaintiffs of his erroneous determination regarding enrollment along with
16 the reasons for that determination. Rather, without notice and in violation of their
17 due process rights, the Defendant Acting Assistant Secretary forwarded his
18 determination to the BAND, claiming it was ‘final for the department.’
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24 Between April 10, 2005 and the present at no time whatsoever has the
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2 Defendant Assistant Secretary given written notice to the Plaintiffs that he
3 erroneously determined that Plaintiffs' direct lineal ancestor Modesta (Martinez)
4 Contreras was not a full blood San Pasqual Indian. Therefore, the applicants were
5 not eligible for enrollment; denying them their right to appeal within thirty (30)
6 days. As a result, Plaintiffs have not been able to appeal this decision: They have
7 been denied their constitutional right of due process of law including their right to
8 be heard. These actions by the Bureau and Regional director were in violation of
9 the statutes and regulations governing the relationship between the Indian tribes
10 and the Department of Interior, Bureau of Indian Affairs. The Agency
11 superintendent is to make a determination, then forward the determination to the
12 area director who checks for additional information. Pursuant to 25 U.S.C. §§48.8
13 and 48.9 the area director is required to review the evidence and applications and
14 submits his recommendation to the US DOI - BIA, with a notice of determination
15 to Plaintiffs; who are given the right to appeal within thirty (30) days. And under
16 25 CFR §48.10, if the Commissioner determines that an appellant is not eligible
17 for enrollment in accordance with the provisions of §48.5 [based on blood degree]
18 . . . the applicant **shall** be notified in writing of his decision and the reasons
19 therefor. The appellant shall then have thirty (30) days from the date of mailing of
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2 the notice to file an appeal with the Secretary.” These procedures were not
3 followed in violation of the Administrative Procedures Act [APA].

4
5 Clearly, the Agency superintendent is to make a determination, then forward
6 the determination to the area director who checks for additional information.

7 Pursuant to 25 U.S.C. §§48.8 and 48.9 the area director is required to review the
8 evidence and applications and submits his recommendation to the US DOI - BIA.

9
10 These procedures were not followed in violation of the Administrative Procedures
11 Act [APA].

12
13 On or about October 1, 2014, Plaintiffs filed a FOIA request. Sometime
14 between December 8, 2014 and January 1, 2015, in response to Plaintiffs’ FOIA
15 request, the letter of denial dated April 7, 2006, was produced to Plaintiffs.
16
17 (Exhibits 7, 8).

18
19 Because Plaintiffs never received the letter of denial dated April 7, 2006,
20 they have been denied the ability to appeal said denial and submit their own
21 evidence to the Bureau to demonstrate they possess the requisite blood degree for
22 enrollment and are the true San Pasqual descendants.

23
24 **B. HISTORICAL BACKGROUND - FRANK TRASK, A WHITE**
25 **SETTLER, WAS HIRED TO PROTECT THE PATENTED LAND**
26 **AND PRESERVE IT FOR THE SAN PASQUAL INDIANS”.**

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2 While the San Pasqual Indians were the first California Indians to be
3 promised a reserve by the U.S. Government, in 1870, they were the last California
4 Indians to be granted a reserve in 1910. The reserve, however, was not on the San
5 Pasqual aboriginal land.
6

7 In the late 1860's and 1870's, white people from Ohio made their way to the
8 San Pasqual Valley, including a white family named Trask, along with Calvin
9 Washburn, and the Bevingtons. Bev. Gen. J.B. McIntosh, Superintendent Indian
10 Affairs, noted in 1870 that Rosewell Trask was a squatter on the Indian land.
11 Calvin Washburn was the white man that burned the Indians off of their aboriginal
12 land. Perry Bevington patented the San Pasqual Indian aboriginal land in his
13 name.
14
15
16

17 Rosewell Trask who was originally from Strongsville, Ohio relocated to the
18 San Pasqual Valley. He married a Mexican woman by the name of Mattiana
19 Martha Warner Trask. They had two children, Frank Trask and Henry Trask.³
20 Frank Trask's second marriage was to a half-blood Mesa Grande Indian woman
21 named Lenora LaChappa. They lived on the Mesa Grande Reservation from the
22
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25 ³This means that Frank Trask and his brother Henry Trask's lineage was 50%
26 white European and 50% Mexican. No San Pasqual Indian blood is in their
27 lineage.
28

1
2 time they were married until 1910, with their two daughter, Florence and Helen
3 Trask.⁴

4
5 The U.S. Government was unwilling to dispossess the white homesteaders
6 from the San Pasqual aboriginal land. Rather, the government acquired land in
7 another township for the San Pasqual Indians. The land obtained for them was
8 filled with rocks, had little or no water, and would only support one or two
9 families.
10

11
12 While not true, the government claimed the San Pasqual Indians refused to
13 relocate to the mis-located reserve. While the San Pasqual trust patented land was
14 poor quality and would only support one or two families, it was still valuable and
15 squatters remained problematic. As a result Amos Frank, the Indian
16 Superintendent of the Mesa Grande Agency, was given authority to hire a person
17 to act as a police private and judge to protect the land on behalf of the San Pasqual
18 Indians.
19
20

21 Under this authority, Amos Frank, hired Frank Trask as a government
22 employee, in the position of police private and Judge. Amos Frank relocated
23

24
25 _____
26 ⁴This means that Florence Trask and Helen Trask's lineage was 50% white
27 European and 50% Mesa Grande Indian. No San Pasqual Indian blood is in their
28 lineage.

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2 Frank Trask and his family from the Mesa Grande Reservation onto the San
3 Pasqual trust patented reservation in 1910 in order to preserve the reserve for the
4 San Pasqual Indians. (Exhibit 9)
5

6 In 1920 the Bureau placed a predominantly white settler named Frank Trask
7 on the Reservation as a caretaker. He worked as a caretaker for about a year.
8
9 When his “job” was finished, he continued to squat on the land. . In fact, between
10 1910 and 1955, the Trask family were squatters whom the Defendants [the Bureau
11 of Indian Affairs] allowed to remain on the San Pasqual trust patented land; and
12
13 they kept the true San Pasqual Indians from coming on to their own trust patented
14 land. Frank Trask’s descendants are now wrongfully enrolled as members of the
15 San Pasqual Band of Mission Indians, even though they do not have any San
16 Pasqual blood line. The BIA’s wrongful enrollment of Frank Trask and his
17 descendants have denied Plaintiffs equal protection of the law.
18
19

20 After Frank Trask’s death in 1920, his wife Lenora LaChappa Trask claimed
21 Frank Trask was a San Pasqual Indian, when in reality he was 50% white
22 European and 50% Mexican. But, the Bureau learned as early as December 1920
23 that Frank Trask was not a San Pasqual Indian. (Exhibits 10, 11). His second wife
24 Lenora LaChappa Trask was a Mesa Grande Indian and not a San Pasqual Indian.
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