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9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 UPPER LAKE POMO ASSOCIATION,  
12 et al.,

13 Plaintiff,

14 v.

15 CECIL ANDRUS, et al.,

16 Defendants.

Case No. C-75-0181-PJH

**JESSICA JACKSON'S REPLY TO  
THE DEFENDANT'S  
OPPOSITION TO HOLD THE  
DEFENDANTS IN CONTEMPT**

Date: August 15, 2018

Time: 9:00 a.m.

Courtroom: 3, 3rd Floor

Judge: Honorable Phyllis J. Hamilton

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## INTRODUCTION

In a failed attempt to avoid their obligation to comply with this Court’s Order dated May 15, 1979 (“Order”), the United States and the individual federal defendants (collectively “Federal Officials”) essentially make six (6) arguments: (1) the Order does not compel the Federal Officials to accept Amerdine Jackson McCloud’s (“Ms. McCloud”) January 12, 1988 deed (“Deed”) conveying her interest in Parcel 5 (“Parcel 5”) on the Upper Lake Rancheria (“Reservation”) to the United States of America to be held in trust for her two daughters and reserving a life estate to herself because the Order only requires the Federal Officials to accept the Deed “whenever possible”; (2) it is not “possible” for the Federal Officials to accept the Deed in trust because Ms. McCloud died, her estate has never been probated, her heirs have never been determined, and her heirs need to be determined because only her heirs can request that Parcel 5 be restored to trust status; (3) this Court lacks jurisdiction to determine whether the Federal Officials have violated the Order because Parcel 5 is an asset of Ms. McCloud’s estate that is the subject of the exclusive jurisdiction of the California State Superior Court; (4) even if the Court were to find that the Federal Officials violated the Order, the United States’ and Federal Officials’ sovereign immunity prohibits the Court from awarding monetary sanctions against the Federal Officials to force the Federal Officials to comply with the Order; (5) the Federal Officials’ trust duty does not provide the basis for holding the Federal Officials in contempt of the Court’s Order; and (6) Jessica Jackson’s (“Ms. Jackson”) motion to hold the Federal Officials in contempt of the Order (“Motion”) is barred by the applicable statute of limitations and laches.

In this brief, Ms. Jackson will show: (1) while the Federal Officials’ trust duty does not determine conclusively whether the Federal Officials violated the Order, it does establish the standard of conduct against which the Federal Officials’ conduct in this case must be judged to determine whether the Federal Officials

1 complied with the Order; (2) given the Federal Officials’ conduct in this case—  
 2 including their repeated representations committing the United States to accept the  
 3 Deed restoring Parcel 5 to trust status—the Federal Officials violated the Order;  
 4 (3) Parcel 5 is not an asset of the estate of Ms. McCloud, the Superior Court of  
 5 California has determined that it lacks jurisdiction over Parcel 5, and the Superior  
 6 Court’s decision regarding its own jurisdiction is final and non-appealable; (4) with  
 7 the enactment of the Equal Access to Justice Act, Congress has waived the United  
 8 States’ and Federal Officials’ sovereign immunity, which allows the Court to  
 9 award monetary sanctions against the Federal Officials for violating the Order; and  
 10 (5) the Federal Officials’ continuing violation of the Order, as well as estoppel,  
 11 prevent the Federal Officials from asserting the statute of limitations or laches as a  
 12 bar to Ms. Jackson’s Motion.

13 For all of these reasons, Ms. Jackson’s Motion should be granted and the  
 14 Federal Officials should be ordered to accept the Deed in trust.

# I.

## **THE FEDERAL OFFICIALS’ FAILURE TO ACCEPT THE DEED IN TRUST AFTER REPEATED REPRESENTATIONS TO MS. JACKSON THAT THEY WOULD ACCEPT THE DEED AND RESTORE PARCEL 5 TO TRUST STATUS DOES NOT MEET THE HIGH FIDUCIARY TRUST STANDARD OF CONDUCT THEY WERE REQUIRED TO MEET IN CARRYING OUT THE COURT’S ORDER.**

21 The Court entered the Order based upon the fact that the Federal Officials  
 22 violated the California Rancheria Act, P.L. 85-671, 72 Stat. 619 (“Rancheria Act”  
 23 or “Act”), by conveying subdivided parcels of the Reservation to individual  
 24 Indians of the Reservation prior to installing the water and sanitation facilities  
 25 mandated by the Act. In doing so, the Federal Officials breached their fiduciary  
 26 obligation owed to the Indians of the Reservation created by the Act:  
 27  
 28

1 It is clear, and undisputed, that the United States did not herein fulfill  
 2 its fiduciary duties to the Indian people of the Rancheria, duties that  
 3 must be exercised with “great care,” *United States v. Mason*, 412 U.S.  
 4 391, 398, . . . , in accordance with “moral obligations of the highest  
 5 responsibility and trust,” that must be measured “by the most exacting  
 6 fiduciary standards.” *Seminole Nation v. United States*, 316 U.S. 287,  
 7 297 . . .

8 *Smith v. United States*, 515 F. Supp. 56, 60 (N.D. Calif. 1978).

9 Contrary to defendant’s argument, this is not a case in which the  
 10 court, on its own, imposes a trust relationship without clear direction  
 11 from Congress. Instead, Congress created and maintained a trust  
 12 involving Indian property – and then provided for its termination . . . –  
 13 without ever indicating, by word or by intimation, that the trustee’s  
 14 normal duty of monetary liability for breach of trust was to be  
 15 abrogated.

16 *Duncan v. United States*, 667 F.2d 36, 44 (Ct. Cl. 1961).

17 The Order in this case was entered to void the termination, restore the Indian  
 18 owned property on the Reservation to trust status, and restore the fiduciary  
 19 relationship between the United States and the Indians of the Reservation. In  
 20 implementing the Order, the Federal Officials are carrying out the “trust duties”  
 21 owed to the Indians of the Reservation, including Ms. McCloud and Ms. Jackson,  
 22 which were imposed by the Act and restored by the Order. As such, the Federal  
 23 Officials’ conduct in implementing the Order must be judged by the highest  
 24 fiduciary standards. *Smith v. United States*, 515 F. Supp. at 60.

25 Clearly, when the Court examines the Federal Officials’ conduct of delay  
 26 and repeated representations made to Ms. Jackson advising her that they would  
 27 process her request, accept the Deed, and restore Parcel 5 to trust status in this  
 28 case, their conduct falls far short of conduct “exercised with great care” in  
 accordance with “moral obligations of the highest responsibility and trust.” *Id.*

## II.

**GIVEN THE CONDUCT OF THE FEDERAL OFFICIALS IN THIS CASE, THE FEDERAL OFFICIALS HAD A MANDATORY DUTY TO ACCEPT THE DEED AND RESTORE PARCEL 5 TO TRUST STATUS.**

Paragraph 8 of the Order is clear and unambiguous. It provides:

The Secretary of the Interior is **under a continuing obligation to restore to trust status** lands of the Upper Lake Rancheria and fee interests in trust or former trust allotments issued **persons listed in the plan for distribution of assets of the Upper Lake Rancheria** by reason of the purported termination of such Rancheria, **whenever possible.**

Declaration of David J. Rapport in Support of Jessica Jackson’s Motion to Hold the Defendants in Contempt of the Order Granting Plaintiffs’ Motion for Partial Summary Judgment (“Rapport Declaration”), p. 1, ¶ 2, Exhibit A, Paragraph 8(f) of the Order. (emphasis added).

Paragraph 8(f)(6) of the Order states:

It is intent of this Judgment that **maximum flexibility** be allowed in working out the administrative details of trust restoration, and the parties are specifically allowed to **enter into one or more agreements** for the purpose of specifying the terms and conditions on which trust restoration is to be effected . . .

*Id.* Exhibit A, Paragraph 8(f)(6) of the Order. (emphasis added).

The Order is clear—it imposes a continuing, mandatory duty on the Federal Officials to restore Indian owned property on the Reservation if the following conditions are met: (1) if the request is made by an Indian listed in the Distribution Plan for the Reservation; (2) the land to be restored to trust status is located on the Reservation; and (3) the trust restoration is “possible.” *Id.*

Here, Ms. McCloud and Ms. Jackson’s request to restore Parcel 5 meets all of the conditions of Paragraph 8(f) of the Order, thereby giving rise to the Federal Officials’ “continuing obligation” to restore Parcel 5 to trust status.



1 First, Ms. McCloud was an Indian “listed” in the Plan for Distribution of the  
2 assets of the Upper Lake Rancheria. *Id.* p. 2, ¶ 7. Second, Parcel 5 was a parcel of  
3 property located within the Reservation that was conveyed to her as part of the  
4 termination of the Reservation. *Id.* Finally, given the facts of this case, it was  
5 clearly “possible” for the Federal Officials to accept the Deed and restore Parcel 5  
6 to trust status. There can be no better evidence of this fact than the Federal  
7 Officials’ own statements that they would do just that: accept the Deed and restore  
8 Parcel 5 to trust status.

9 On January 25, 1988, Virginia Carpenter, Realty Officer for the Central  
10 California Agency of the Bureau of Indian Affairs (“BIA”) told Ms. McCloud’s  
11 attorney, David J. Rapport, that the BIA would process Ms. McCloud’s request and  
12 take Parcel 5 into trust for Ms. McCloud as set forth in the Deed. *Id.*, p. 3, ¶ 12.

13 On June 16, 2008, Troy Burdick told Ms. Jackson’s attorney, Lester J.  
14 Marston, that the BIA would complete the work on Amerdine Jackson’s fee-to-  
15 trust request and accept title to Ms. Jackson’s Parcel 5 on the Upper Lake  
16 Rancheria by no later than July 30, 2008. Declaration of Jessica Jackson in Support  
17 of Jessica Jackson’s Motion to Hold the Defendants in Contempt of the Order  
18 Granting Plaintiffs’ Motion for Partial Summary Judgment (“Jackson  
19 Declaration”), p. 5, ¶ 14.

20 On August 13, 2010, Superintendent Burdick wrote Ms. Jackson a letter  
21 stating that the BIA was working on the “Fee-to-Trust application” for her  
22 deceased mother and that the BIA would be preparing the “deeds within the next  
23 week or two” for Ms. Jackson and her sister, Gwen Loss, to sign taking Parcel 5  
24 into trust for the two of them. *Id.*, p. 6, ¶ 18.

25 Finally, on November 4, 2010, Kimberly Yearyean, Realty Officer for the  
26 BIA, sent Ms. Jackson’s attorney, Lester J. Marston, an email stating that Ms.  
27 McCloud’s request was being processed by the BIA as a “mandatory fee-to-trust  
28 acquisition.” *Id.*, p. 7, ¶ 22.



1 Clearly, if the trust restoration wasn't "possible," the Federal Officials and  
2 BIA employees, acting under the authority of the Federal Officials, would not have  
3 stated that it was not only "possible," but that it was being done. *Id.*, pp. 5-7.  
4 Moreover, pursuant to Paragraph 8(f)(6) of the Order, Ms. Jackson and the Federal  
5 Officials "entered into one or more agreements for the purpose of specifying the  
6 terms and condition on which [the] trust restoration [of Parcel 5 was] to be effected  
7 . . . ."

8 Ms. Jackson agreed to pay, and did pay, the property taxes on Parcel 5.  
9 Jackson Declaration, p. 5, ¶ 16. Then Ms. Jackson agreed to pay, and did pay, for a  
10 preliminary title report for Parcel 5 showing there were no encumbrances on the  
11 Parcel that would prevent the Federal Officials from accepting title to the Parcel in  
12 the name of the United States in trust for Ms. Jackson and her sister, Ms. Loss. *Id.*,  
13 p. 5, ¶ 15. Then the Federal Officials and Ms. Jackson agreed that, because the  
14 Federal Officials were accepting title to Parcel 5 under the "continuing obligation"  
15 imposed upon them by the Order, the trust acquisition was a mandatory acquisition  
16 by the United States not subject to the National Environmental Quality Act. *Id.*, p.  
17 7, ¶ 20. Finally, the parties agreed that neither Ms. McCloud's nor Gwen Loss'  
18 estates needed to be probated in order for the Federal Officials to accept the Deed  
19 and restore Parcel 5 to trust status since, with the death of Ms. McCloud,  
20 acceptance of the Deed would immediately vest beneficial title to the Parcel in Ms.  
21 Jackson and her sister Gwen Loss. *Id.*, p. 6, ¶ 19. Upon the acceptance of the Deed,  
22 Ms. Loss' estate could be probated by the Office of Hearings and Appeals for the  
23 Department of the Interior, which could determine Ms. Loss' heirs entitled to  
24 inherit her trust interests in Parcel 5. *Id.*, pp. 6-7, ¶ 19.

25 Thus, all of the conditions necessary to accept the Deed and restore Parcel 5  
26 to trust status under the Order had been met and the Federal Officials' willful  
27 failure to accept the Deed and restore Parcel 5 to trust status constitutes a direct  
28 violation of the Order.

### III.

#### **PARCEL 5 IS NOT AN ASSET OF MS. MCCLOUD'S ESTATE SUBJECT TO THE JURISDICTION OF THE SUPERIOR COURT OF LAKE COUNTY.**

The Federal Officials argue that this Court lacks jurisdiction to determine whether they have violated the Court's Order and, if so, direct them to fulfill their "continuing obligations" under the Order to accept the Deed and restore Parcel 5 to trust status. They claim that the Court is deprived of jurisdiction because the Superior Court of California for Lake County ("Superior Court") has jurisdiction over Parcel 5 as part of the inventory of the assets of the estate of Ms. McCloud. In support of their position, the Federal Officials rely on two cases: (1) *Marshall v. Marshall*, 547 U.S. 293, 311-12 (2006) ("*Marshall*"); and (2) *Waterman v. Canal-Louisiana Bank and Trust Co.*, 215 U.S. 33, 45-46 (1909) ("*Waterman*"). The Federal Officials' argument fails for a number of reasons.

First, by executing the Deed, Ms. McCloud conveyed title to Parcel 5 to the United States to be held in trust for her two daughters, Ms. Jackson and Ms. Loss, reserving a life estate to herself. Rapport Declaration, p. 3, ¶ 11, Exhibit C. Upon Ms. McCloud's death, beneficial title to Parcel 5 vested in Ms. McCloud's two daughters. Thus, Parcel 5 never became an asset of Ms. McCloud's estate and it is not, therefore, subject to the Superior Court's probate jurisdiction.

Second, 25 U.S.C. § 1360(b) ("P.L. 280") prohibits state courts from adjudicating any right, title, or interest in trust property. Based upon P.L. 280, the Superior Court issued an order excluding Parcel 5 from the assets of Ms. McCloud's estate. Declaration of Michael T. Pyle and Request for Judicial Notice in Support of Opposition to Jessica Jackson's Motion to Hold Certain Federal Officials in Contempt, ("Pyle Declaration"), p. 2, ¶ 4, Exhibit 3 ("Probate Order"). Parcel 5, therefore, is not an asset of the estate under the jurisdiction, possession, or control of the Superior Court. *Id.*

1 Third, the *Marshall* and *Waterman* cases do not stand for the proposition for  
 2 which the Federal Officials cite them. Neither *Marshall* or *Waterman* prohibit this  
 3 Court from exercising jurisdiction over this matter or preclude this Court from  
 4 ruling on Ms. Jackson's Motion. *Marshall* and *Waterman* stand for the proposition  
 5 that a federal court, which would otherwise have jurisdiction over a case, may not  
 6 exercise its jurisdiction if a state probate court is already exercising "in rem"  
 7 jurisdiction over the property that is the subject of the federal court action:

8 This Court therefore comprehends *Markham's* "interference" language  
 9 as essentially a reiteration of the general principle that, when one  
 10 court is exercising *in rem* jurisdiction over a *res*, a second court will  
 11 not assume *in rem* jurisdiction over the same *res* . . . . Thus, the  
 12 probate exception reserves to state probate courts the probate or  
 13 annulment of a will and the administration of a decedent's estate; it  
 14 also precludes federal courts from disposing of property that is **in the**  
 15 **custody of a state probate court**. But it does not bar federal courts  
 16 from adjudicating matters outside those confines and otherwise within  
 17 federal jurisdiction.

18 *Marshall*, 547 U.S. at 298 (emphasis added).

19 The Superior Court expressly excluded Parcel 5 from the assets of Ms.  
 20 McCloud's estate. Parcel 5 is not, therefore, "in the custody of a state probate  
 21 court" and neither the holding in *Waterman* or *Marshall* precludes this Court from  
 22 exercising jurisdiction over Ms. Jackson's Motion.

23 Finally, this Court clearly has the jurisdiction and authority to determine  
 24 whether the Federal Officials have violated the Court's Order:

25 The moment the courts of the United States were called into existence and  
 26 invested with jurisdiction over any subject, they became possessed of their  
 27 power [i.e., the contempt power].

28 *Ex parte Robinson*, 86 U.S. (19 Wall) 505, 510 (1873).

Moreover, the power to punish acts of contempt has been recognized as inherent in the federal courts. *Chambers v. NASCO Inc.*, 501 U.S. 32 (1991); *accord, Roadway Express Inc. v. Pipsa*, 447 U.S. 752, 764 (1980).

This Court ordered the Federal Officials to continue to restore Indian owned land on the Reservation where it was possible to do so. The Federal Officials had, and continue to have, the means and the ability to do so in this case. This Court has jurisdiction to hold them in contempt for violating the Order.

#### IV.

#### **THE UNITED STATES' AND FEDERAL OFFICIALS' SOVEREIGN IMMUNITY DOES NOT BAR THE COURT FROM IMPOSING MONETARY SANCTIONS IN THE FORM OF ATTORNEY'S FEES AGAINST THE DEFENDANTS.**

The Federal Officials assert that the United States' and Federal Officials' sovereign immunity bars this Court from imposing monetary sanctions in the form of attorney fees against them. The Court can give short shift to this argument.

The Equal Access to Justice Act, 28 U.S.C. § 2412, *et seq.*, ("EAJA"), authorizes the federal courts to "award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded . . . to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action." 28 U.S.C § 2412(b). The EAJA is an express waiver of the United States' and Federal Officials' sovereign immunity. *Ruckelshaus v. Sierra Club*, 463 U.S. 680 (1983).

If the Court grants the Motion, then Ms. Jackson will be a prevailing party in the action. Additionally, the position of the Federal Officials, by their nature of having been found to have violated the Court's Order, would not be "substantially justified" within the meaning of the EAJA, which authorizes an award of attorney fees.

1 If the Court grants the Motion, Ms. Jackson, at that time, will have to  
 2 comply with the procedural provisions of the EAJA, which include a 30-day filing  
 3 deadline for requesting fees. At that time, the Court can consider whether, under  
 4 the EAJA, Ms. Jackson is eligible for attorney fees and the amount of fees that  
 5 should be awarded.

## 6 V.

### 7 **MS. JACKSON'S MOTION IS NOT BARRED BY THE** 8 **STATUTE OF LIMITATIONS OR LACHES.**

9 The Federal Officials argue that Ms. Jackson's Motion is time-barred by 28  
 10 U.S.C. § 2401(a) or the doctrine of laches.<sup>1</sup> In making this argument, the Federal  
 11 Officials ignore the fact that they made repeated representations to Ms. Jackson  
 12 advising her that they would restore Parcel 5 to trust status. In addition, the Federal  
 13 Officials, during the same period of time that they were making these  
 14 representations to Ms. Jackson, were negotiating and entering into agreements with  
 15 her to effectuate the trust restoration of Parcel 5.

16 In reliance on the Federal Officials' representations, Ms. Jackson materially  
 17 changed her position to her detriment: she paid the back property taxes on Parcel 5,  
 18 she paid to have a title company issue a preliminary title report for Parcel 5, she  
 19 paid to have a realtor conduct an appraisal of Parcel 5, and she paid her attorney to  
 20 write letters and prepare legal memoranda—all for the purpose of assisting the  
 21

22 <sup>1</sup> The Federal Officials also argue that Ms. Jackson's Motion is barred because  
 23 Ms. McCloud failed to take an administrative appeal, pursuant to 25 C.F.R. Part 2,  
 24 from the Regional Director's decision denying her request to restore Parcel 5 to  
 25 trust status. As the tennis player John McEnroe has stated on many occasions:  
 26 "You cannot be serious!" *You Cannot Be Serious*, Jon McEnroe, G.P. Putman's Sons (2002).  
 27 The Regional Director's December 1, 1994 decision had nothing to do with the  
 28 restoration of Parcel 5 to trust status. Declaration of Troy Burdick in Support of  
 Opposition to Jessica Jackson's Motion to Hold Certain Federal Officials in  
 Contempt, p. 2, ¶ 7, Exhibit 1. Instead, it was a decision denying Ms. McCloud's  
 request that the BIA pay the delinquent property taxes on the Parcel. As such, the  
 Decision is irrelevant to the Motion before the Court requesting that the Court hold  
 the Federal Officials in contempt of the Order for failing to restore Parcel 5 to trust  
 status.

1 Federal Officials with the trust restoration. Jackson Declaration, pp. 5-7. As a  
2 result, Ms. Jackson's cause of action against the Federal Officials did not accrue  
3 until November of 2017, and the filing of her Motion was well within the six-year  
4 limitation period provided in 28 U.S.C. § 2401(a).

5 Additionally, as the Second Circuit has explained, "[t]he crucial time for  
6 accrual purposes is when the plaintiff becomes aware that he is suffering from a  
7 wrong for which damage may be recovered in a civil action." *Singleton v. City of*  
8 *New York*, 632 F.2d 185, 192 (2d. Cir. 1980). Similarly, the Supreme Court has  
9 noted "the standard rule that accrual occurs when the plaintiff has a complete and  
10 present cause of action, that is, when the plaintiff can file suit and obtain relief."  
11 *Wallace v. Kato*, 549 U.S. 384, 388 (2007).

12 Here, Ms. Jackson did not become aware of the fact that Parcel 5 was not in  
13 trust until she received a property tax bill from the County after her mother's death.  
14 Jackson Declaration, p. 4, ¶ 12. She immediately contacted the BIA and was  
15 advised that the property was not in trust. *Id.* She then made a request that the  
16 Federal Officials restore the property to trust status. *Id.* at p. 4, ¶ 13. The Federal  
17 Officials then advised her that they would grant her request and restore Parcel 5 to  
18 trust status. *Id.* at pp. 5-8. It wasn't until November of 2017 that the BIA advised  
19 Ms. Jackson's attorney that the Federal Officials were not going to accept the Deed  
20 restoring Parcel 5 to trust status. Thus, Ms. Jackson's cause of action against the  
21 Federal Officials accrued in November of 2017. *Id.* She filed her Motion on April  
22 17, 2018, well within the six year limitation period of 28 U.S.C. § 2401(a).

23 Furthermore, the "continuing violation" doctrine provides an exception to  
24 the normal "knew-or-should-have-known" rule for when a cause of action accrues,  
25 it tolls the statute of limitations, it bars the laches defense, and it estops the Federal  
26 Officials from asserting timeliness defenses. *See Gonzales v. Hasty*, 802 F.3d 212,  
27 220 (2nd Cir. 2015). "Courts have long distinguished continuing violations, which  
28 toll the applicable statutes of limitations, from repetitive discrete violations, which



1 constitute independently actionable individual causes of action.” *Nat’l Parks*  
2 *Conservation Ass’n v. TVA*, 480 F.3d 410, 417 (6th Cir. 2007). The doctrine  
3 applies to claims composed of a series of separate acts that collectively constitute  
4 one unlawful practice and to claims that by their nature accrue only after the  
5 plaintiff has been subjected to some threshold amount of mistreatment. *Gonzales v.*  
6 *Hasty*, 802 F.3d at 220. Accordingly, “where the continuing violation doctrine  
7 applies, the limitations period begins to run when the defendant has engaged in  
8 enough activity to make out an actionable . . . claim . . .” *Id.* (internal citations  
9 omitted).

10 Here, there is no doubt that the Federal Officials engaged in “a series of  
11 separate acts that collectively constitute one unlawful practice.” They repeatedly  
12 told Ms. Jackson that they would restore Parcel 5 to trust status and repeatedly  
13 entered into agreements with her to accomplish that goal. It wasn’t until November  
14 of 2017 when the BIA advised Ms. Jackson’s attorney that the Federal Officials  
15 would not restore Parcel 5 to trust status that Ms. Jackson’s “actionable claim”  
16 accrued against the Federal Officials for violation of the Order.

17 Finally, as shown above, the Federal Officials are in trust relationship with  
18 Ms. Jackson. In dealing with her they are required to “exercise great care” in  
19 fulfilling their “continuing” trust obligation under the Order. They made material  
20 representations to Ms. Jackson, representations that she relied upon and which  
21 caused her to materially change her position by entering into a series of agreements  
22 with the Federal Officials in order to effectuate the trust restoration of Parcel 5. To  
23 allow the Federal Officials to assert the limitations period or laches to bar Ms.  
24 Jackson’s Motion would be highly prejudicial to Ms. Jackson. It would divest her  
25 of her beneficial one-half ownership interest in Parcel 5, it would deprive her of the  
26 benefits of the Federal Officials’ “continuing” trust obligations under the Order,  
27 and it would deprive her of the benefits of the various agreements that she entered  
28 into in order to effectuate the trust restoration.



1 Based on (1) the fiduciary obligations the Federal Officials owed (and  
2 continue to owe) to Ms. Jackson under the Act and the Order, (2) the  
3 representations made by the Federal Officials to Ms. Jackson that they would  
4 restore Parcel 5 to trust status, (3) Ms. Jackson's reliance on those representations,  
5 (4) Ms. Jackson materially changing her position in reliance on those  
6 representations, (5) Ms. Jackson entering into agreements with the Federal  
7 Officials to effectuate the trust restoration, and (6) the extreme prejudice Ms.  
8 Jackson will suffer if the Federal Officials are allowed to assert the limitation  
9 period and laches as a bar to Ms. Jackson's Motion, the Federal Officials are  
10 estopped from asserting the time-bar defenses. *U.S. v. Georgia Pacific Co.*, 421  
11 F.2d 92 (9th Cir. 1970).

## 12 CONCLUSION

13 This case involves the actions of Federal Officials, acting in a fiduciary  
14 capacity, to carry out specific duties imposed upon them by Court Order. The  
15 Order was entered to remedy the illegal conduct of those same Federal Officials'—  
16 the illegal termination the Upper Lake Rancheria. The Order was clear: restore  
17 Indian owned property on the Reservation whenever possible. The restoration of  
18 Parcel 5 to trust status was "possible" in this case. The Federal Officials said it was  
19 "possible" by making numerous representations to Ms. Jackson that they were  
20 going to do just that. In reliance on those representations, Ms. Jackson entered into  
21 agreements with the Federal Officials and materially changed her position in order  
22 to effectuate the trust restoration. Given the Federal Officials' fiduciary  
23 responsibility and the representations they made to Ms. Jackson in this case, the  
24 Court should find that they have violated their "continuing obligation" under the  
25 Order to restore Parcel 5 to trust status.

26 For these reasons, and the reasons stated above, the Court should grant the  
27 Motion, order the Federal Officials to accept the Deed, and allow Ms. Jackson to  
28 file an application for fees and costs under the EAJA.

1 DATED: July 20, 2018

Respectfully Submitted

2 By: /s/Lester J. Marston

3 LESTER J. MARSTON

4 California State Bar No. 081030

RAPPORT & MARSTON

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6 Ukiah, California 95482

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**CERTIFICATE OF SERVICE**

I am a citizen of the United States of America, over the age of 18 years, and not a party to the above-entitled action. My business address is 405 West Perkins Street, Ukiah CA 95482.

On July 20, 2018, I electronically filed using the CM/ECF System on behalf of our client the following document in *Upper Lake Pomo Association, et al. v. Cecil Andrus, et al.*, Case No. C-75-0181-SW:

**JESSICA JACKSON'S REPLY TO THE DEFENDANT'S  
OPPOSITION TO HOLD THE DEFENDANTS IN CONTEMPT**

Which generated and transmitted a notice of electronic filing to CM/ECF registrants.

I further certify that on July 20, 2018, I caused to be served the same document by depositing a copy in the United States mail at Ukiah, California, in an envelope with first class postage fully paid and or certified, and addressed as follows:

Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue  
NW Washington, DC 20530-0001

Civil-Process Clerk  
United States Attorney's Office  
Northern District of California  
Federal Courthouse  
450 Golden Gate Avenue, 11th Floor  
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct; executed on July 20, 2018, at Ukiah, California.

/s/ Ericka Duncan

Ericka Duncan