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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Cindy Alegre, an individual,)	Case No. 16-cv-2442-AJB-KSC
Frank Alegre, an individual,	)	Related to Case No. 17-cv-0938 ¹
Michael Alegre, an individual,	)	and Case No. 17-cv-1149-AJB-KSC
Yolanda Alegre, an individual,	)	SECOND AMENDED
Christopher Alvarado, an individual,	)	COMPLAINT FOR:
Eric Alvarado, an individual,	)	VIOLATION OF CIVIL RIGHTS;
Jacob Alvarado, an individual,	)	VIOLATION OF
Julian Alvarado, an individual,	)	ADMINISTRATIVE
Matthew Alvarado, an individual,	)	PROCEDURES ACT;
Nick Alvarado, an individual,	)	BREACH OF FIDUCIARY DUTY;
Robert Alvarado, an individual,	)	FRAUD - MISREPRESENTATION;
Tammy Alvarado, an individual,	)	DECLARATORY RELIEF, OR IN
Tiani Alvarado, an individual,	)	THE ALTERNATIVE,
Tony Alvarado, an individual,	)	MANDAMUS;
Vincent Alvarado, an individual,	)	UNCONSTITUTIONAL
Kristy Maria Anaya, an individual,	)	DIMINUTION OF TRIBAL
Peggy Avila, an individual,	)	PATENTED LAND

¹On August 15, 2017, this Court ordered the above three cases consolidated, dismissed case 17-cv-0938 in its entirety, dissolved the Temporary Restraining Order, and Ordered Plaintiffs to file a consolidated complaint in the lead case, Case No. 16-cv-2442 with Case No. 17-cv-1149.

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Peggy Avila, an individual,)
Carlos Blanco, an individual,)
Ernesto Blanco, an individual,)
Juan Blanco, an individual,)
Ray Blanco, an individual,)
Remedios Blanco, an individual,)
Sylvia Blanco, an individual,)
Theresa Blanco-Murillo, an individual)
Valerie Boyle, an individual,)
Melvin Cannon, an individual,)
David Cardenas, an individual,)
Anthony Chaloux, an individual,)
Melissa Chaloux, an individual,)
Nathan Chaloux, an individual,)
Shonta Chaloux, an individual,)
Amanda Chavez, an individual,)
April Chavez, an individual,)
David Chavez, an individual,)
Lisa Chavez, an individual,)
Jeremy Clay, an individual,)
Jessica Clay, an individual,)
Julian Clay, an individual,)
Bruce Roy Clay, an individual,)
Andrea Contreras, an individual,)
Andrew Contreras, an individual,)
Charles Contreras, an individual,)
Demitron Contreras, an individual,)
Johnny Contreras, an individual,)
Jonah Contreras, an individual,)
Michael Contreras, an individual,)
Paul Contreras IV, an individual,)
Ricardo Contreras, an individual,)
Rita Contreras, an individual,)
Rochelle Contreras, an individual,)
Roseanne Contreras, an individual,)
Rudy Contreras, Jr, an individual,)

PATENTED LAND

CONSPIRACY TO INTERFERE
WITH CIVIL RIGHTS
TITLE 42 U.S.C. §1985(3); 1986

DAMAGES

- 1 Samuel Contreras, an individual)
- 2 Evelyn Cunningham, an individual,)
- 3 Erik Delgado, an individual,)
- 4 Johnny Ruben Delgado, an individual,))
- 5 Rose Delgado, an individual,)
- 6 Felicia Durkin, an individual,)
- 7 Shianne Elam, an individual,)
- 8 Wyatt Elam, an individual,)
- 9 Sara M. Escarcega, an individual,)
- 10 Libby Flores, an individual,)
- 11 Richard Flores, an individual,)
- 12 Ruben Gonzalez, Jr., an individual,)
- 13 Mary Herrera, an individual,)
- 14 John Hughes, an individual,)
- 15 Bernadette Johnson, an individual,)
- 16 Jason Lavigne, an individual,)
- 17 Juan Lucero, an individual,)
- 18 Virgil Lucero, an individual,)
- 19 Amber Majel, an individual,)
- 20 Angelina Martinez, an individual,)
- 21 Hilario Martinez, an individual,)
- 22 Linda Martinez-Vanderverf,)
- 23 an individual,)
- 24 Paul Martinez, an individual,)
- 25 Ruben Martinez, an individual,)
- 26 Valerie Martinez, an individual,)
- 27 Sarah Mendoza, an individual,)
- 28 Jamie Miller, an individual,)
- Jeffrey Miller, an individual,)
- Daniel Morales, Jr., an individual,)
- Desiree Morales, an individual,)
- Joseph Morales, an individual,)
- Louie Morales, an individual,)
- Melissa Morales, an individual,)
- Theresa Morales, an individual,)
- Frederick Murillo III, an individual,)

- 1 Joseph Murillo, an individual,)
- 2 Kim Murillo, an individual,)
- 3 Paul Vernon Murillo, an individual,)
- 4 Thomas Murillo, an individual,)
- 5 Beatrice Ochoa, an individual,)
- 6 Robert Ochoa, an individual,)
- 7 Theresa Ochoa-Reynoso, an individual))
- 8 Yolanda Ochoa, an individual,)
- 9 Lena Ortega, an individual,)
- 10 Lavon Palmer, an individual,)
- 11 Andre Peart, an individual,)
- 12 Celeste Peart, an individual,)
- 13 Chas Peart, an individual,)
- 14 Denise Peart, an individual,)
- 15 Evette Peart, an individual,)
- 16 Jamie Peart, an individual,)
- 17 Jon Renee Peart, an individual,)
- 18 Priscilla Peart, an individual,)
- 19 Rita Peart, an individual,)
- 20 Sarah Peart, an individual,)
- 21 Tisha Peart, an individual,)
- 22 Tonya Peart, an individual,)
- 23 Anita Perez, an individual,)
- 24 Dominique Perez, an individual,)
- 25 Jermaine Perez, an individual,)
- 26 Orthius Perez, an individual,)
- 27 Lisa Quiroz, an individual,)
- 28 James Gabriel Vallez, an individual,)
- 29 Linda Dunning Vallez, an individual,)
- 30 Keith Vasquez, an individual,)
- 31 Adrean Villalobos, an individual,)
- 32 Bridgette Villalobos, an individual,)
- 33 Catherine Villalobos-Cameron, an)
- 34 individual,)
- 35 Corrine Villalobos-Biggs, an)
- 36 individual,)

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2 David Villalobos, an individual,)
3 Jelena Villalobos-Bryan, an)
4 individual,)
5 Jesus Villalobos, an individual,)
6 Joseph Villalobos, an individual,)
7 Paul Villalobos, an individual,)
8 Peter Villalobos, an individual,)
9 Shaun Villalobos, an individual,)
10 Tonya Villalobos, an individual,)
11 Gerard Villalpando, an individual,)
12 Rachel Zwicker, an individual,)
13 Ruby Zwicker, an individual,)
14 Virgil Zwicker, an individual,)
15 Christina Alvarado, an individual,)
16 Patsy Alvarado, an individual,)
17 Lisa Belardes, an individual,)
18 Paul Contreras, an individual,)
19 Rudolph Contreras, an individual,)
20 Josie Delgado, an individual,)
21 Lajeane Miller, an individual,)
22 Dolores Perez, an individual,)
23 Huumaay Quisquis, an individual,)
24 James Quisquis, an individual,)
25 Elsie Rohas, an individual,)
26 Amelia Martinez Contreras)
27 Villalobos, aka Melia Duenas,)
28 an individual,)
29 Jose Villalobos, an individual,)
30 Mary Villalobos, an individual,)
31 Josie Villalpando, an individual,)
32 Gloria Zwicker, an individual,)
33 and ROE Plaintiffs 1-400, inclusive.)
34)
35 Plaintiffs,)
36 v.)
37)

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2 UNITED STATES OF AMERICA;)
3 DEPARTMENT OF INTERIOR;)
4 BUREAU OF INDIAN AFFAIRS;)
5 RYAN ZINKE,² Secretary of the)
6 Department of Interior, United States)
7 of America, in his official capacity;)
8 MICHAEL BLACK,³ Acting)
9 Assistant Secretary of the Department)
10 of Interior - Indian Affairs, in his)
11 official capacity; WELDON)
12 LOUDERMILK,⁴ Director Bureau)
13 of Indian Affairs, in his official)
14 capacity; AMY DUTSCHKE,)
15 Pacific Regional Director,)
16 Department of Interior - Indian Affairs,)
17 as an individual and in her official)
18 capacity; JAVIN MOORE,)
19 Superintendent of the Department)
20 of Interior - Indian Affairs, Southern)
21 California Agency, as an individual)
22 and in his official capacity, and)
23 DOE Defendants 1 through 200,)
24 inclusive,)
25)
26)
27)
28)

Defendants.)

²Substituted for SALLY JEWELL.

³Substituted for LAWRENCE ROBERTS.

⁴Substituted for MICHAEL BLACK

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G ELEVENTH CLAIM FOR RELIEF
CONSPIRACY TO INTERFERE WITH CIVIL
RIGHTS PURSUANT TO TITLE 42 U.S.C.
SECTION 1985(3); 1986

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PRAYER FOR RELIEF

JURY TRIAL DEMANDED

I

JURISDICTION AND VENUE

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1. This Court has jurisdiction over the civil rights claims pursuant to Title 42 U.S.C. §1985 and 42 U.S.C. §1981. This Court has subject matter jurisdiction pursuant to Title 28 U.S.C. § 1331 (Federal Question), as a civil action arising under the Constitution and laws of the United States; Title 28 U.S.C. §1343(a)(1)-(a)(2) (Civil Rights); Title 28 U.S.C. §1361 gives this Court jurisdiction to compel an officer or employee of the United States or any agency thereof to perform a duty owed to Plaintiffs.

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2. This Court has supplemental jurisdiction over the claims arising under common law, pursuant to 28 U.S.C. §1367, because these claims arise from the same nucleus of operative facts alleged in this Complaint, and are so related to the federal claims over which this Court has original jurisdiction that they form part of the same case or controversy.

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3. This Court has jurisdiction to challenge agency action under the Administrative Procedures Act (APA), Title 5 U.S.C. §§500-596; 701, 702, 704 because “final agency action for which there is no other adequate remedy in a court [is] subject to judicial review.”

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2 4. This action is timely filed because Plaintiffs did not receive notice of
3 the BIA's adverse action until October 1, 2014, which is the date the response to
4 Plaintiffs' FOIA request was received. As such, the six year statute of limitations
5 for civil suits against the United States has not run. In addition the violations
6 alleged herein are continuing violations. [See, Title 28, U.S.C. §2401(a)].
7

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9 5. Declaratory Judgment and/or Mandamus is sought pursuant to Title
10 28 U.S.C. §§2201- 02. Plaintiffs have completely exhausted their administrative
11 remedies and are not required to pursue any additional administrative remedies
12 before seeking judicial declaratory relief or mandate.
13

14 6. Damages are being sought for Defendant's violations of Plaintiffs'
15 civil rights that have caused them to suffer damages and under the Federal Torts
16 Claim Act pursuant to Title 28, U.S.C. §1346(b). Damages are allowed by law
17 because there are analogous California State Statutes regarding Plaintiffs' claims
18 for Breach of Fiduciary Duty and Fraud and Misrepresentation. Furthermore, or in
19 the alternative, Plaintiffs bring their claims for Breach of Fiduciary Duty and
20 Fraud and Misrepresentation under their claims for Violation of Civil Rights.
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24 7. Damages are being sought under the Civil Rights Act 28 U.S.C.
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2 §1331, §1334 et. seq. This Court has jurisdiction to award monetary relief
3 pursuant to 28 U.S.C. §1500.
4

5 8. Plaintiffs are the beneficiaries of their ancestors' 4/4 blood of San
6 Pasqual Indian. [Jose Juan Martinez, Guadalupe (Alto) Martinez, and Modesta
7 (Martinez) Contreras]. As beneficiaries of their ancestor's blood line they have
8 suffered harm as a direct result of the Defendants' actions, inactions, illegal
9 actions, and violations of statutory mandates. Therefore, Plaintiffs have standing
10 to bring the following causes of action.
11
12

13 9. Venue in this Court under Title 28 U.S.C. §139e(3) is proper in that
14 the action is against the Defendant officials acting in their official capacity under
15 color of legal authority of an agency of the United States maintaining a presence in
16 this jurisdiction. No real property is involved in this action.
17

18 10. Venue is proper in this Court because all but seven Plaintiffs live in
19 in San Diego County . For those who do not live in San Diego County Diversity
20 Venue is proper. Venue is proper in this District pursuant to 28 U.S.C. §1291(e)
21 because Defendants are Federal agencies: the United States Department of the
22 Interior, Bureau of Indian Affairs. A substantial part of the events and omissions
23 giving rise to this action occurred in this District. And, the location of the Native
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2 American Indian Reservation that is the subject matter of the action is located in
3 this district. The San Pasqual Band of Mission Indians is a Federally recognized
4 reservation and is geographically located in the County of San Diego, State of
5 California.
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8 **II**
9 **THE PARTIES**
10 **Plaintiffs**

11 11. Plaintiffs refer to and reallege Paragraphs 1 through 10, inclusive, of
12 this Complaint and incorporate the same by reference as though fully set forth at
13 length herein.

14 12. Plaintiffs are categorized for identification in this actions as:

15 **Group A** – Adult individuals identified on the Tribe’s Membership
16 Roll, but not Federally Recognized by the Bureau of Indian Affairs as members of
17 the San Pasqual Band of Mission Indians. Members of Group A qualify for
18 enrollment with the Tribe, but their applications for Enrollment, although
19 approved by the Tribal Enrollment Committee, the Tribal Business Committee,
20 and the Tribal General Council, have not been processed or approved by the
21 Defendants - Bureau of Indian Affairs.
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25 **Group B** – Adult individuals identified on the Tribe’s Membership
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2 Roll who are Federally Recognized as Members of the San Pasqual Band of
3 Mission Indians.

4 13. The list of Group A Plaintiffs is as follows: CINDY ALEGRE-
5 GALVEZ (Tribal Enrollment Number [TEN] 584); FRANK ALEGRE, (586);
6 MICHAEL ALEGERE (565), YOLANDA ALEGRE (585); CHRISTOPHER
7 ALVARADO (433); ERIC ALVARADO (442); JACOB ALVARADO (434);
8 JULIAN ALVARADO (436); MATTHEW ALVARADO (435); NICK
9 ALVARADO (432); ROBERT ALVARADO (444); TAMMY ALVARADO
10 (430); TIANI ALVARADO (431); TONY ALVARADO (441); VINCENT
11 ALVARADO (443); KRISTY MARIA ANAYA (539); PEGGY AVILA (580);
12 CARLOS BLANCO (621); ERNEST BLANCO (572); JUAN BLANCO (603);
13 RAY BLANCO (437); REMEDIOS BLANCO (*)⁵; SYLVIA BLANCO (*);
14 THERESA BLANCO-MURILLO (*); VALERIE BOYLE (508); MELVIN
15 CANNON (587); DAVID CARDENAS (568); ANTHONY CHALOUX (454);
16 MELISSA CHALOUX (456); NATHAN CHALOUX (458); SHONTA
17 CHALOUX (453); APRIL CHAVEZ (447); AMANDA CHAVEZ (448); DAVID
18 CHAVEZ (576); LISA CHAVEZ (440); BRUCE ROY CLAY (567); JEREMY
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26 ⁵ *Indicates those persons without a TRIBAL ENROLLMENT NUMBER (TEN)
27 because they were inadvertently left off the enrollment list.

1
2 CLAY (564); JESSICA CLAY (569); JULIAN CLAY (566); ANDREA
3 CONTRERAS (*); ANDREW CONTRERAS (466); CHARLES CONTRERAS
4 (474); DEMITRO CONTRERAS (555); JOHNNY CONTRERAS (465); JONAH
5 CONTRERAS (464); MICHAEL CONTRERAS (577); PAUL CONTRERAS, IV
6 (470); RICARDO CONTRERAS (467); RITA CONTRERAS (469); ROCHELLE
7 CONTRERAS (472); ROSEANNE CONTRERAS (471); RUDY CONTRERAS,
8
9 JR (473); SAMUEL CONTRERAS (462); EVELYN CUNNINGHAM (479);
10
11 ERIK DELGADO (477); JOHNNY RUBEN DELGADO (476); ROSE
12
13 DELGADO (475); FELICIA DURKIN (455); SHIANNE ELAM (548); WYATT
14
15 ELAM (549); SARA M. ESCARCEGA (494); LIBBY FLORES (533);
16
17 RICHARD FLORES (535); RUBEN GONZALEZ, JR. (538); MARY HERRERA
18
19 (620); JOHN HUGHES (526); BERNADETTE JOHNSON (545); JASON
20
21 LAVIGNE (542); JUAN LUCERO (504); VIRGIL LUCERO (505); AMBER
22
23 MAJEL (632); ANGELINA MARTINEZ (490); HILARIO MARTINEZ (488);
24
25 LINDA MARTINEZ-VANDERVEF (*); PAUL MARTINEZ (489); RUBEN
26
27 MARTINEZ (491); VALERIE MARTINEZ (521); SARAH MENDOZA (494);
28
29 JAMIE MILLER (547); JEFFREY MILLER (546); DANIEL MORALES, JR
30
31 (544); DESIREE MORALES (553); FREDERICK MURILLO, III (*); JOSEPH

1 MURILLO (487); KIM MURILLO (486); PAUL VERNON MURILLO (489);
2 THOMAS MURILLO (485); BEATRICE OCHOA (622); ROBERT OCHOA
3 (483); THERESA OCHOA-REYNOSO (528); YOLANDA OCHOA (558); LENA
4 ORTEGA (439); LAVON PALMER (*); ANDRE PEART (*); CELESTE PEART
5 (640); CHAS PEART (519); DENISE PEART (520); EVETTE PEART (513);
6 JAMIE PEART (514); JON RENEE PEART (516); PRISCILLA PEART (*);
7 RITA PEART (639); SARAH PEART (518); TISHA PEART (515); TONYA
8 PEART (517); ANITA PEREZ (501); DOMINIQUE PEREZ (500); JERMAINE
9 PEREZ (502); ORTHIUS PEREZ (503); LISA QUIROZ (581); JAMES GABRIL
10 VALLEZ (559); LINDA DUNNING VALLEZ (560); KEITH VASQUEZ (527);
11 ANDREAN VILLALOBOS (623); BRIDGETTE VILLALOBOS (523);
12 CATHERINE VILLALOBOS-CAMERON (528); CORRINE VILLALOBOS-
13 BIGGS (529); DAVID VILLALOBOS (525); JELENA VILLALOBOS-BRYAN
14 (*); JESUS VILLALOBOS (524); JOSEPH VILLALOBOS (531); PAUL
15 VILLALOBOS (624); PETER VILLALOBOS (571); SHAUN VILLALOBOS
16 (614); TONYA VILLALOBOS (575); GERARD VILLALPANDO (507);
17 RACHEL ZWICKER (583); RUBY ZWICKER (582); VIRGIL ZWICKER (570).

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26 14. Group A Plaintiffs are: A) All residents of San Diego County, except

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2 for seven of the Plaintiffs who live in other jurisdictions which would trigger
3 diversity jurisdiction of the Court; B) All direct lineal descendants of Jose Juan
4 Martinez and Guadalupe Martinez who were part of the original historical San
5 Pasqual Band of Mission Indians who were carried on the State of California
6 Census in 1852; C) All direct lineal descendants of Modesta (Martinez) Contreras
7 who is the daughter of Jose Juan and Guadalupe Martine; D) All enrolled members
8 of the BAND, but are not federally recognized by the BIA as members of the San
9 Pasqual Band of Mission Indians.
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13 15. At all times mentioned in this complaint Group A Plaintiffs, as direct
14 descendants of Jose Juan, Guadalupe and Modesta (Martinez) Contreras, meet the
15 necessary blood criteria for enrollment in the San Pasqual Mission Band of
16 Indians pursuant to Title 25 C.F.R. §48.5, having no less than 1/8 degree of San
17 Pasqual blood and are therefore entitled to be federally recognized as members of
18 the San Pasqual Band of Mission Indians.
19
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21 16. List of Group B Plaintiffs is as follows: CHRISTINE ALVARADO
22 (26); PATSY ALARADO (131); LISA BELARDS (24); PAUL COTRERAS (51);
23 JOHNNY ONTRERAS (245); RUDOLPH CONTRERAS (52); JOSE DELGADO
24 (28); LEJEAN MILLER (273); DOLORES PEREZ (46); HUUMAAY QUISQUIS
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2 (290); JAMES QUIJISQUIS (180); ELSIE ROHAS (130); AMELIA MARTINEZ
3 CONTRERAS VILLALOBOS, AKA MELIA DUENAS (219); DELLA
4 VILLALOBOS OCHOA (146); JOSIE VILLALOBOS (2); MARY
5 VILLALOBOS VARELA (104); JOSIE VILLALPANDO (44); GLORIA
6 ZWICKER (213).
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9 17. All members of Group B Plaintiffs are residents of San Diego County
10 and are federally recognized enrolled members of the San Pasqual Band of
11 Mission Indians.
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13 18. ROE Plaintiffs are persons unknown who are entitled to be federally
14 recognized as a San Pasqual Indian and/or who are federally recognized members
15 of the BAND who have suffered harm as a result of the BIA's actions or inactions.
16

17 **Defendants**

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19 19. Defendant RYAN ZINKE (hereinafter "ZINKE") is presently the
20 Secretary of the Department of Interior. He is responsible for the supervision of
21 the various federal agencies and bureau within the Department of Interior,
22 including the Bureau of Indian Affairs. He is an officer or employee of the United
23 States and has a direct statutory duty to carry out the provisions under Title 25
24 C.F.R. §48.2(a). During the time period alleged in this complaint ZINKE was
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1
2 preceded by: Sally Jewell (2013-2017); Ken Salazar (2009-2013); Dirk
3 Kempthorne (2006-2009), and Gale A. Norton (2001-2006) Defendant ZINKE is
4 being sued in his official capacity but Plaintiffs reserve the right to sue ZINKE,
5 Jewell, Salazar, Kempthorne and Norton as individuals depending on what is
6 presented to Plaintiffs in discovery.
7

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9 20. Defendant MICHAEL BLACK (hereinafter "BLACK") is presently
10 the Acting Assistant Secretary - Indian Affairs. He was preceded in this position
11 by: Lawrence Roberts (2016-2017); Kevin Washburn (2012-2016); Donald
12 Laverdure (4/22/2012 - 10/2012); Larry Echo Hawk (2009-2012); George Skibine
13 (5/2008-5/2009); Carl Artman (3/2007-5/2008); James Cason (2/2005-3/2007);
14 Dave Anderson (2004-2005). Plaintiffs believe and thereon allege that Defendant
15 ZINKE [and his predecessors] delegated the duty to oversee and review the
16 TRIBE'S tribal membership issues to Defendant BLACK [and his predecessors].
17 Defendant BLACK is being sued in his official capacity but Plaintiffs reserve the
18 right to sue him, Roberts, Washburn, Laverdure, Echo Hawk, Skibine, Artman,
19 Cason, and Anderson as individuals depending on what is presented to Plaintiffs
20 in discovery. Plaintiffs believe and therefore allege that during the time pled in
21 this Complaint James Cason (2/2005-3/2007) as Assistant Secretary - Indian
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2 Affairs delegated to Michael D. Olson [acting for the Principle Deputy Assistant
3 Secretary of Indian Affairs] the duty to review and adjudicate Plaintiffs enrollment
4 applications. [See April 7, 2006 letter].
5

6 21. WELDON LOUDERMILK is presently the Director of the Bureau of
7 Indian Affairs within the Department of State. Defendant LOUDERMILK is
8 responsible for the day-to-day operations of the BIA. LOUDERMILK was
9 preceded by Michael Black [4/25/2010 - 2016], W. Patrick Ragodale [2005-2010]
10 who served in the position as Director of the Bureau of Indian Affairs at all times
11 mentioned in this Complaint. LAUDERMILK is being sued in his official
12 capacity, but Plaintiffs reserve the right to sue him, Black and Ragodale as
13 individuals depending on what is presented to Plaintiffs in discovery.
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17 22. AMY DUTSCHKE is presently the Pacific Regional Director
18 (Sacramento), Department of Interior-Indian Affairs. DUTSCHKE was acting
19 Director in 2006 and has been the named Director since 2010. DUTSCHKE is an
20 enrolled member of the Ione Band of Miwok Indians in California and has been
21 serving as the Office's Deputy Regional Director for **Trust Services** since June of
22 2000. As the Deputy Regional Director, DUTSCHKE was responsible fore the
23 day-to-day management of the BIA's trust programs including real estate series,
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2 natural resource management, water rights, range management, land titles and
3 records, probate, fire management, forestry and endangered species. She
4 represented the Interior Department for the San Luis Rey Water Settlement. There
5 is no indication that she was delegated the duties that she performed related to
6 adjudication of (or lack thereof) Plaintiffs' applications or adjudication of Modesta
7 (Martinez) Contreras' blood quantum. On information and belief Plaintiffs
8
9 believe that DUTSCHKE has an undisclosed familial relationship with Allen E.
10 Lawson, Jr., who is the present Tribal Chairman and the grandson of an
11 illegitimate son [Theophilus Addison McKinnon, III who changed his name at the
12 age of 18 to Alan Ernest Lawson (after his step-father)] of Helen Trask and
13 Theophilus A. McKinnon, II. Both DUTSCHKE and Allen Lawson, Jr's mother
14 are Miwok Indians originating from Northern California. On information and
15 belief, Plaintiffs allege that it was DUTSCHKE who unilaterally decided to deny
16 the Enrollment Committee's request to **CORRECT** Modesta Martinez's blood
17 level from $\frac{3}{4}$ to $\frac{4}{4}$ and confirm the enrollment of descendant Plaintiffs. It was
18 DUTSCHKE who unilaterally failed to give Plaintiffs the required statutory notice
19 of her actions. It was DUTSCHKE who unilaterally returned Group A Plaintiffs'
20 applications to the illegal Enrollment Committee without adjudicating Group A
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1
2 Plaintiffs' applications in violation of 25 U.S.C. §§48.8 and 48.9 DUTSHCKE is
3 being sued in her official capacity and as an individual.

4
5 23. JAVIN MOORE, is presently the Superintendent of the Department
6 of Interior – Indian Affairs, Southern California Agency - Riverside. Defendant
7 MOORE is responsible for the day-to-day operations of the BIA, Southern
8 California Agency. He was preceded in this position by: Robert Eben (2013-
9 2016), James Fletcher (2005 - unknown time), and others presently unknown to
10 Plaintiffs, who served in this position at all times mentioned in this complaint.
11
12 MOORE is being sued in his official capacity and as an individual. Plaintiffs
13 reserve the right to sue his predecessors as individuals depending on what is
14 presented to Plaintiffs in discovery. On information and belief, Group A Plaintiffs
15 allege that the Secretary of Interior was required to delegate the authority or duty
16 to approve or disapprove Group A Plaintiffs applications pursuant to Title 25
17 U.S.C. § 48.

18
19
20
21 24. DOE Defendants, 1 through 200, inclusive, are government
22 employees who are agents acting in the scope of delegated authority; the scope of
23 which is unknown to Plaintiffs at this time. Each of the Defendants herein is
24 responsible for the acts and/or omissions [of the other Defendants] as herein
25
26

1
2 alleged.

3 25. The named Defendants have the statutory authority, and it is within
4 their power, to adjudicate Plaintiffs applications, and review the erroneous
5 enrollments of non-San Pasqual individuals, including the Trask Descendants.
6 Yet, they refuse to act pursuant to statutory mandates and fulfill their fiduciary
7 duty to the Plaintiffs.
8
9

10 **III**

11 **HISTORICAL BACKGROUND ALLEGATIONS**

12
13 26. Plaintiffs refer to and reallege paragraphs 1 through 25, inclusive, of
14 this complaint and incorporates the same by reference as though fully set forth at
15 length herein.
16

17 27. Group A Plaintiffs are the direct descendants of Jose Juan Martinez
18 (“Jose Juan”), Guadalupe Martinez (“Guadalupe”), and their daughter Modesta
19 Martinez Contreras (“Modesta”). [Collectively referred to as the “Martinez
20 Ancestors”].
21

22
23 28. Each of Group A Plaintiffs’ Martinez Ancestors are full blood San
24 Pasqual Indian and are historic members of the San Pasqual Band of Mission
25 Indians. [“BAND”]
26

1
2 29. Plaintiffs' dispute with Defendants dates back to the late 1800s and
3 early 1900s.

4
5 30. After the BAND was driven from its aboriginal land, which was
6 originally located in the fertile area where the San Diego Wild Animal Park now
7 exists, in 1910 the United States government designated land in another township
8 for the BAND because the Government was unwilling to dispossess the white
9 homesteaders from the San Pasqual aboriginal land.
10

11 31. The newly designated land was filled with rocks and had little or no
12 water. In spite of these harsh conditions, the land was still valuable. Squatters
13 remained problematic, particularly with the tremendous influx of new settlers at
14 that time
15
16

17 32. In order to deal with the issue of squatters, on April 1, 1910, Amos
18 Frank, who was the Indian Superintendent of the Mesa Grande School, hired a
19 white man named Frank Trask as a "police private and Judge" to preserve the San
20 Pasqual reserve.
21

22 33. In the early 1860s Roswell Trask, who was a white man and the father
23 of Frank Trask, relocated from Ohio to the San Pasqual Valley. Roswell Trask's
24 first wife, Mattiana Martha Warner Trask, who was a 1/2 Mexican and 1/2 White
25
26

1
2 Woman. She is the mother of Frank Trask. This would make Frank Trask's blood
3 line $\frac{3}{4}$ Caucasian and $\frac{1}{4}$ Mexican: Frank Trask has no San Pasqual Blood.

4
5 34. Frank Trask's second marriage was to Lenora LaChappa, a $\frac{1}{4}$ blood
6 Mesa Grande Indian woman. They had two daughters [Florence Trask Wolf and
7 Helen Trask Lawson] whose blood line would be $\frac{3}{4}$ Caucasian, $\frac{1}{8}$ Mexican, and
8 $\frac{1}{8}$ Mesa Grande Indian. Frank Trask's Descendants have no San Pasqual blood.
9

10 35. The present Trask Descendants clearly have some Mesa Grande
11 Indian blood, but they do not have any San Pasqual Indian blood.
12

13 36. Amos Frank relocated Frank Trask and his family [wife and two
14 daughters] onto the San Pasqual reserve in 1910 in order to protect the reserve
15 from squatters.
16

17 37. Frank Trask's employment as caretaker of the San Pasqual reserve
18 ended within a year [1911]. Although his employment with the BIA ended, he and
19 his family remained on the land as squatters for the next 40 years. They prevented
20 members of the BAND from moving onto and from coming onto the reservation.
21
22

23 38. In the 1950s, the BAND started to formally organize itself. The
24 BAND worked with anthropologist Dr. Florence Shipek to assemble the
25 documentation necessary to establish BAND membership. Dr. Shipek worked
26

1
2 with the BAND's Enrollment Committee, which was comprised mainly of
3 members who were unquestionably of San Pasqual descent. [Exhibit 1] This
4 Enrollment Committee also included members who were not of San Pasqual
5 descent, including Florence Wolf Trask, the daughter of Frank and Lenora Trask.
6

7 39. In 1955 Leonard Hill (who was Pacific Regional Director at the time)
8 testified before the California Legislature that the BIA knew the Trasks were white
9 and non San Pasqual Indians and were living on the Trust Patented San Pasqual
10 land, but the BIA has continually refused to do anything about this situation
11 depriving all Plaintiffs of their tribal heritage and rights. [Exhibit 2]
12

13
14 40. On July 29, 1959, the BIA published the Proposed Rule governing
15 Enrollment of the San Pasqual Band of Mission Indians in California at 25 C.F.R.
16 §48, Code of Federal Regulations. [Exhibit 3] The BAND approved this specific
17 proposed rule into its Constitution in 1971. [Exhibit 4]
18
19

20 41. 25 C.F.R. §48 requires that persons seeking enrollment in the BAND
21 must possess no less than 1/8 San Pasqual blood. Following the approval of the
22 proposed regulation, and unbeknownst to the BAND, the rule that was ultimately
23 codified and published at 25 C.F.R. §48 on March 2, 1960, differed in a significant
24 respect from that which the BAND approved. [Exhibit 5] The added section,
25
26

1
2 codified at 25 C.F.R. §48.5(f), read in pertinent part as follows:

3 A person who meets the requirements of paragraphs (a), (b), or (c) of
4 this section, but whose name has been carried on the census roll of
5 another reservation shall be declared ineligible for the enrollment
6 unless he can establish that he has been affiliated with the San
7 Pasqual Band for a continuous period of at least one year immediately
8 prior to January 1, 1959, evidenced by residence on the reservation or
9 through active participation in tribal affairs such as attendance at
10 tribal meetings, and being permitted to vote on matters relating to the
11 San Pasqual Reservation.
12
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14
15

16 42. In a letter dated November 20, 1959, to Orlando Garcia, Field
17 Representative-Riverside Field Office [Attention John Pappen] from T. Broeck
18 Williamson, (Supervisor Programs Officer - Sacramento Area Office - Tribal
19 Programs) which stated, in pertinent part: “We suggest that the attached
20 correspondence not be made available to the San Pasqual Enrollment Committee .
21 . .”. In violation of Group B Plaintiffs civil rights, the defendants conspired to
22 keep this change in the proposed rule a secret from the BAND until it was codified
23 into law. The Defendants’ acted in conspiracy to enroll the Trask Descendants by
24
25
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2 writing 48(f) in such a way that the Trask Descendants, who have no San Pasqual
3 blood, would qualify for enrollment under 48(f). [Exhibit 6]

4
5 43. In 1959, the Defendants created a base roll that included the Trask
6 Descendants. In 1966 the Defendants added to the 1959 Base Roll, that was
7 approved by Robert Bennett acting on behalf of the Defendants-Department of
8 Interior. The true San Pasqual Indians, through their Enrollment Committee,
9 objected to the inclusion of the Trask Descendants. The BIA ignored and have
10 never responded to their objections.
11
12

13 44. On June 7, 1965, E.E. Hyden, Associate Solicitor of Indian Affairs,
14 sent a letter to Leonard M. Hill, Area Director, Bureau of Indian Affairs
15 [Sacramento] stating: "The question is then raised as to how the children of Mrs.
16 [Helen Trask] Ward and Mrs. [Florence Trask] Wolfe [Trask Descendants] could
17 qualify for enrollment under Part 48.5(b) when the Indian blood they possess may
18 not be of the San Pasqual Band. In this connection, it is our conclusion that a
19 construction may be placed on the language of the regulations governing the
20 preparation of the membership roll of the San Pasqual Band to hold that persons of
21 Indian blood who were recognized as Band members when the basic roll of June
22 10, 1910, was compiled, may be considered to be of the blood of the San Pasqual
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26

1
2 Band. Further, the respective amounts of Indian blood of tribes other than San
3 Pasqual possessed by such persons as of 1910 may be included in the computation
4 of the total amount of their San Pasqual Indian blood and that of their descendants.
5
6 With this interpretation, the children of Mrs. Ward and Mrs. Wolfe could qualify
7 for enrollment, provided the Indian blood they derived from their respective
8 mothers totaled at least 1/8 degree.” This “construction of the language”
9 interpretation is in violation of 25 C.F.R. § 48 and the San Pasqual Constitution.
10 Furthermore, interpreting Section 48.1 definition of “blood of the Band” in this
11 manner is beyond the authority of the Solicitor, the Secretary, and the Area
12 Director. It is simply unconstitutional. [Exhibit 7]
13
14
15

16 45. In 1966, Leonard Hill, Pacific Regional Director in California
17 unilaterally, without the Tribe’s consent, prepared and Robert Bennett as
18 Commissioner [now Assistant Secretary, DOI] unilaterally approved the Tribal
19 Membership Roll of the BAND, without the BAND’s approval. This Roll included
20 several non-San Pasqual people [including the Trask Descendants] due to Section
21 48.5(f) and based on a E.E. Hayden’s⁶ secretarial construction of the phrase “blood
22 of the Band,” as used in the C.F.R. to mean “total Indian blood of a person named
23
24
25

26 ⁶E.E. Hayden signed his memo as Associate Solicitor of Indian Affairs. He was the
27 Deputy Solicitor for the U.S. Department of the Interior.
28

1
2 on the basic membership Roll dated June 30, 1910. [Exhibit 9, 10]

3 46. By unilaterally defining the term “blood of the Band” to mean any
4 person with the blood of any Indian could be enrolled in the San Pasqual Band of
5 Mission Indians, Secretary Bennett exceeded his authority.
6

7 47. The BAND objected to the use of the 1910 census because it included
8 Frank, Lenora and the Trask children, even though Lenora and her parents were
9 listed on multiple census rolls from the 1880's until 1909 for the Mesa Grande
10 Tribe. These erroneous interpretations and actions by the BIA resulted in the
11 erroneous admission of Trask Descendants to the BAND.
12
13

14 48. In 1971 the BAND created their Tribal Constitution which
15 incorporated 25 C.F.R. §48. The BIA approved the BAND’s Constitution on
16 January 14, 1971. [Exhibit 4]
17

18 49. In 1950, several bands of Indians filed suit against the United States
19 relating to certain land and water rights. This came to be known as the Claims 80-
20 A Docket. The United States settled and paid monies into a trust to be distributed
21 by the BIA. To distribute this money, 25 C.F.R. §76 was published for the sole
22 purpose of bringing the 1966 roll current and BIA distributing the money held in
23
24
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26

1
2 trust. After the next generation of Trask Descendants were enrolled in 1994, the
3 BIA distributed the 80-A Docket money.

4
5 50. On March 3, 1994, wrongfully alleging that the BAND did not have
6 an Enrollment Committee, Riverside Tribal Operations Officer Frances Muncy
7 (“Muncy”) took **unilateral** action to make the Band’s membership roll current.
8
9 Muncy unilaterally provided this wave of enrollees notice and an opportunity to
10 submit documentation supporting their enrollment in the BAND. These non-San
11 Pasqual persons were subsequently enrolled in the BAND, and the money was
12 disbursed. At the same time, the Trask Descendants’ blood degree was also
13 erroneously increased by Muncy.⁷
14

15
16 IV

17 SUBSTANTIVE ALLEGATIONS

18 51. Plaintiffs refer to and reallege paragraphs 1 through 50, inclusive, of
19 this complaint and incorporates the same by reference as though fully set forth at
20 length herein.
21

22
23 ⁷At this time Frances Muncy, the Tribal Operations Officer between 1965 and
24 2015 [50 years], erroneously enrolled the Alto Descendants whom the BIA
25 disenrolled. *Alto v. Jewell*, no. 11-cv-2276-BAS (BLM), 2015 WL 5734093, at
26 *23 (S. D. Cal. Sept. 30, 2015 (granting summary judgment and affirming
27 Assistant Secretary’s decision to disenroll the Alto Descendants), aff’d, 661
28 F.App’x 502 (9th Cir. 2016). She was supervised by the Superintendent - Riverside.

1
2 52. In 2005, Plaintiffs submitted their applications for enrollment to the
3 Constitutionally valid elected Enrollment Committee. After considering historical
4 documents in its possession, as well as newly discovered documents such as the
5 1955 San Pasqual Census (the only BIA census to have stated blood degree of the
6 San Pasqual Indians), the Enrollment Committee unanimously voted that Plaintiffs
7 had sustained their burden of proof establishing they were qualified for
8 enrollment.
9
10

11 53. The Enrollment Committee's determination was predicated on a
12 finding that Plaintiffs' ancestor Modesta's blood degree should be increased from
13 $\frac{3}{4}$ to $\frac{4}{4}$. The Enrollment Committee took its determination to the Tribe's General
14 Council which agreed with the Enrollment Committee on April 10, 2005.⁸
15
16

17 54. On September 12, 2005, the Tribe's Business Committee wrote to
18 James Fletcher ("Fletcher"), Superintendent of the Southern California Agency,
19 stating it concurred with the Enrollment Committee and General Council and the
20 enrollment of the Group A Plaintiffs.
21
22

23 55. Ten days later, on September 22, 2005, the Enrollment Committee

24 ⁸While the BIA has final authority over membership decisions in the BAND, the General Council
25 of the BAND exercised its right to define its own membership under *Santa Clara Pueblo v.*
26 *Martinez (1978) 426 U.S. 49*, which was then submitted to the BIA for final determination under
27 25 CFR §48. Under 25 CFR §61.11(b) the recommendations shall be accepted by the BIA unless
28 there is a determination that the recommendation was clearly erroneous.

1
2 submitted a letter to Fletcher, requesting that the BIA correct Modesta's blood
3 degree from 3/4 to 4/4 degree San Pasqual blood and enroll the Group A Plaintiffs.

4
5 This letter along with Plaintiffs' applications was hand delivered to Fletcher.

6 56. The BIA had thirty days by statute to respond to this letter dated
7 September 22, 2005. The BIA did not respond to this letter until December 8,
8 2005. In its response James Fletcher (Supervisor-Riverside) stated "the
9 preponderance of the evidence does not sufficiently demonstrate that Modesta [] is
10 full blood." [Exhibit 11]

11
12
13 57. James Fletcher's December 8, 2005, letter was only sent to the Pacific
14 Regional Director, Amy Dutschke. ("DUTSCHKE"). It was not sent to Plaintiffs.

15
16 58. On January 31, 2006, DUTSCHKE concurred with Fletcher
17 [Riverside] that Modesta was not full blood San Pasqual Indian. [Exhibit 12]

18
19 59. On April 7, 2006, Defendant DUTSCHKE, claiming that she received
20 documents from "all" parties", which was not truthful, acted outside of her
21 appointed authority, as Pacific Regional Director - Indian Affairs, and denied the
22 BAND's request to increase Modesta's blood degree and to enroll the Plaintiffs.

23
24 60. Acting Assistant Deputy Secretary of Indian Affairs Michael Olson
25 stated that the April 7, 2006 decision was final for the BIA. [Exhibit 13] In
26

1
2 violation of 25 C.F.R. §48.10, Group A Plaintiffs were not give notice of the April
3 7, 2006 erroneous determination.

4
5 61. Between April 7, 2006, and the present time neither DUTSCHKE, nor
6 any of the other Defendants, provided Plaintiffs with written notice of any of these
7 determinations as required by 25 C.F.R. §48.9.⁹

8
9 62. DUTSCHKE, and the Superintendent, in violation of the statutory
10 requirements set out in 25 C.F.R. §48 returned Plaintiffs' applications to the new
11 illegally formed Enrollment Committee unadjudicated.

12
13 63. After DUTSCHKE, and the Superintendent, returned Plaintiffs'
14

15
16 ⁹Title 25 C.F.R. §48.8 **mandates**: The Director **shall** review the reports and
17 recommendations of the Enrollment Committee and **shall determine** the
18 applicants who are eligible for enrollment in accordance with the provisions of
19 §48.5. The Director **shall** transmit for review to the Commissioner and for **final**
20 **determination** by the Secretary, the reports and recommendations of the
21 Enrollment committee relating to applicants who have been determined by the
22 Director to be eligible for enrollment against the report and recommendations of
23 the Enrollment committee relative to applicants who have been determined by the
24 Director not to be eligible for enrollment against the reports and recommendations
25 of the Enrollment committee, with a statement of the reasons for the
26 determination. [Emphasis added].

27
28 Title 25 C.F.R. §48.9 **mandates**: "If the director determines an applicant is
not eligible for enrollment in accordance with the provisions of §48.5 he **shall**
notify the applicant in writing of his determination and the reasons therefor."
[Emphasis added].

1
2 unadjudicated applications to the illegally formed Enrollment Committee, the
3 Trask Descendants caused an illegal moratorium to be placed on enrollment
4 decisions. The Defendants, by their inaction, have allowed this moratorium to
5 prevent Plaintiffs from having their applications adjudicated.¹⁰
6

7 64. Because the BIA erroneously enrolled the Trask Descendants and
8 other non-San Pasqual persons, the non-San Pasqual persons have been able to
9 gerrymander the BAND's government due to their powerful voting block and
10 ability to "pay off" by way of lucrative positions in the tribal government and
11 threaten those who would disagree with them.
12
13

14 65. As a direct result of the BIA's illegal and unconstitutional acts, the
15 Trask Descendants have been able to vote themselves into positions of power
16 within the BAND, including dismissing the legally formed Enrollment Committee
17 in 2006 and installing an illegal enrollment committee.
18
19

20 _____
21 ¹⁰This action is timely filed because Plaintiffs did not receive notice of the BIA's erroneous
22 adverse action until October 1, 2014, which is the date the response to Plaintiffs' FOIA request
23 was received and the April 7, 2006 letter was discovered. As such the six year statute of
24 limitations for civil suits against the United States has not run; in fact it is subject to equitable
25 tolling under *United States v. June* 134 S. Ct. 2873 (2014); and *United States v. Kwai Fun Wong*
26 135 S. Ct. 1625; 575 U.S. _____ (2015). In addition, the violations alleged herein are
27 continuing violations [See, Title 28, U.S.C. §2401(a)]. Further, the Band instituted an
28 unconstitutional moratorium when the non-San Pasqual Alto family were disenrolled. Plaintiffs'
have been rebuffed or ignored by the BIA for years because of the illegal and unconstitutional
moratorium the BIA have encouraged and condoned. Therefore, any statute of limitations has
been tolled.

1
2 66. This illegal Enrollment Committee “buried” Plaintiffs’ applications
3 upon their return to the BAND and wrongfully advised the BIA that Plaintiffs did
4 not qualify for federal recognition in the BAND.
5

6 67. On October 1, 2014, and May 27, 2015, Plaintiffs received responses
7 to the two FOIA requests they had filed in order to ascertain the status of their
8 applications. It was only through their FOIA requests that Plaintiffs discovered
9 DUTSCHKE’s negative determination and the April 7, 2006, letter. It was also
10 through the FOIA requests that Plaintiffs learned that twenty-two of their cousins
11 were enrolled by the BAND and federally recognized in 2005.
12
13

14 68. In January and April 2015, Plaintiffs filed 25 C.F.R. §2.8 appeals
15 with DUTSCHKE, seeking adjudication of the Plaintiffs enrollment application.
16 On or about July 25, 2015, MOORE issued a letter stating that the BIA no longer
17 had the original applications to adjudicate the enrollment, and the April 7, 2006
18 letter was ‘Final’ for the Department; exhausting Plaintiffs administrative
19 remedies.
20
21

22
23 69. On or about May 6, 2016, Plaintiffs, who are the Descendants of Jose
24 Juan Martinez, his wife Guadalupe Martinez, and their daughter Modesta
25 (Martinez) Contreras, met with Superintendent MOORE, Morris Smith who had
26

1
2 been appointed Tribal Operations, and Tina Salinas, Assistant Tribal Operations.
3 Morris Smith requested Plaintiffs resubmit their enrollment documents to the
4 Riverside for review.
5

6 70. Plaintiffs supplied the documents as requested on May 23, 2016, but
7 have not received any response from the BIA to the submission of those
8 enrollment documents. Plaintiffs have exhausted their administrative remedies.
9

10 71. After Plaintiffs filed their original complaint in this case (16-cv-
11 2442), a declaration was submitted by MOORE, with attached Exhibits. The
12 exhibits demonstrate that the BIA has the names of each and every Plaintiff
13 enrolled by the San Pasqual Tribe on April 10, 2005 and has the ability to
14 adjudicate their enrollment. Additionally, an Exhibit was attached which was a
15 letter dated March 2017 to the San Pasqual Enrollment Committee advising them
16 they were mandated by statute to review each application and that they had thirty
17 (30) days in which to file with the Director those applications that they approved
18 or disapproved. Also, at the next General Council meeting that took place on the
19 reservation on April 9, 2017, the Trask Descendants moved to implement a new
20 moratorium on enrollment until a new enrollment ordinance could be put in place
21 by the Council.
22
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1
2 72. On information and belief Plaintiffs allege that any new ordinance
3 will remove federal government oversight of the enrollment process and will result
4 in the disenrollment and disenfranchisement of BAND members as has happened
5 to many members of other Tribes once the BIA no longer oversees the enrollment
6 process.
7

8
9 73. Plaintiffs allege that if this occurs, the Trask Descendants can take
10 action to deny Plaintiffs enrollment and/or disenroll those already enrolled in the
11 BAND. Should this occur, Plaintiffs will have no recourse with the U.S.
12 Government or any court. They will be left out in the cold while the descendants
13 of a white man, who are not San Pasqual Indians, reap the benefits and rewards
14 that are due to Plaintiffs as a result of their ancestor's heritage.
15
16

17 **IV**

18 **SOVEREIGN IMMUNITY IS INAPPLICABLE**

19
20 74. Plaintiffs refer to and reallege Paragraphs 1 through 73, inclusive, of
21 this Complaint, and incorporate the same by reference as though fully set forth at
22 length herein.
23

24 75. Plaintiffs are not challenging the actions of the San Pasqual
25 Enrollment Committee wherein the Enrollment Committee recommend enrollment
26

1
2 of Plaintiffs to the General Council and the General Council, at their April 10,
3 2005, meeting, unanimously approved the enrollment of Plaintiffs.

4
5 76. Plaintiffs are not challenging the Tribal Counsel's act of forwarding
6 Plaintiffs' applications and their letter supporting Plaintiffs' federal recognition in
7 the San Pasqual Mission Band of Indians to James Fletcher, Superintendent,
8 Bureau of Indian Affairs, Southern California Agency on or about September 12,
9 2005.
10

11
12 77. Plaintiffs are not challenging the letter sent on September 22, 2005,
13 by the San Pasqual Band of Mission Indians Enrollment Committee to U.S.
14 Department of Interior-Bureau of Indian Affairs, Southern California Agency,
15 James Fletcher - Superintendent wherein the Committee wrote: "**The San Pasqual**
16 **Band of Mission Indians Enrollment Committee has reviewed the attached**
17 **documentation and has determined that the evidence is substantial to**
18 **recommend to the General Council that the Blood Degree [of Modesta**
19 **(Martinez) Contreras] be corrected from 3/4 to 4/4 degree San Pasqual**
20 **Blood.**" [Emphasis added]. This was a correct recommendation.
21
22
23

24 78. Plaintiffs are not suing the Tribal Council, the Tribal Enrollment
25 Committee, The Tribal Business Committee, or any members of the Tribe because
26

1
2 they agree with the Enrollment Committee, the Business Committee and the
3 General Council's decision to enroll them.

4
5 79. Plaintiffs are specifically attacking Defendant DUTSCHKE's, and
6 other Defendants, "interlocutory" decision to return their applications to the
7 enrollment committee without adjudication of their applications as required by 25
8 CFR §48.8

9
10 80. Plaintiffs are specifically attacking Defendant DUTSCHKE's failure
11 to give them the mandated statutory notice of her acts: i.e. denying the Enrollment
12 Committee's request to correct Modesta (Martinez) Contreras' blood quantum
13 enroll Plaintiffs, and DUTSCHKE, and the other Defendants, returning their
14 applications to the illegal Enrollment Committee without adjudication in violation
15 of statutory mandate in violation of 25 CFR §§48.9 and 48.10.
16
17

18
19 81. Plaintiffs are seeking equitable and legal relief against the actions,
20 inactions, omissions, intentional, negligent, and/or fraudulent acts of the United
21 States government through the Department of Interior and the Bureau of Indian
22 Affairs. Therefore, Plaintiffs allege that sovereign immunity is not a bar to their
23 claims against the United States government.
24

25
26 82. Plaintiffs further allege that there are no other parties than those