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10  
11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**  
13

14	Cindy Alegre, an individual,	)	Case No. 16-cv-2442-AJB-KSC
15	Frank Alegre, an individual,	)	Consolidated with
16	Michael Alegre, an individual,	)	Case No. 17-cv-1149-AJB-KSC
17	Yolanda Alegre, an individual,	)	<b>THIRD AMENDED</b>
18	Christopher Alvarado, an individual,	)	<b>COMPLAINT FOR:</b>
19	Eric Alvarado, an individual,	)	
20	Jacob Alvarado, an individual,	)	VIOLATION OF
21	Julian Alvarado, an individual,	)	ADMINISTRATIVE
22	Matthew Alvarado, an individual,	)	PROCEDURES ACT;
23	Nick Alvarado, an individual,	)	DECLARATORY RELIEF, OR IN
24	Robert Alvarado, an individual,	)	THE ALTERNATIVE,
25	Tammy Alvarado, an individual,	)	MANDAMUS;
26	Tiani Alvarado, an individual,	)	VIOLATION OF CIVIL RIGHTS:
27	Tony Alvarado, an individual,	)	ILLEGAL DELEGATION OF
28	Vincent Alvarado, an individual,	)	AUTHORITY;
	Kristy Maria Anaya, an individual,	)	DUE PROCESS;
	Peggy Avila, an individual,	)	EQUAL PROTECTION;
	Carlos Blanco, an individual,	)	

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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, )  
Samuel Contreras, an individual )  
Evelyn Cunningham, an individual, )  
Erik Delgado, an individual, )

DENIAL OF TRIBAL  
RIGHTS;  
DIMINUTION OF TRIBAL  
LANDS;  
BREACH OF STATUTORY  
DUTY;  
CONSPIRACY TO  
INTERFERE WITH  
CIVIL RIGHTS.

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



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



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

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Department of Interior, United States )  
of America, in his official capacity; )  
MICHAEL BLACK,<sup>2</sup> Acting )  
Assistant Secretary of the Department )  
of Interior - Indian Affairs, in his )  
official capacity; WELDON )  
LOUDERMILK,<sup>3</sup> Director Bureau )  
of Indian Affairs, in his official )  
capacity; AMY DUTSCHKE, )  
Pacific Regional Director, )  
Department of Interior - Indian Affairs, )  
as an individual and in her official )  
capacity; JAVIN MOORE, )  
Superintendent of the Department )  
of Interior - Indian Affairs, Southern )  
California Agency, as an individual )  
and in his official capacity, and )  
DOE Defendants 1 through 200, )  
inclusive, )  
 )  
 )  
Defendants. )  
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THIRD AMENDED COMPLAINT**

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<sup>2</sup>Substituted for LAWRENCE ROBERTS.  
<sup>3</sup>Substituted for MICHAEL BLACK

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I NINTH CLAIM FOR RELIEF: 40  
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JURY TRIAL DEMANDED 49

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I

**JURISDICTION AND VENUE**

1  
2  
3 1. This Court has original jurisdiction (subject matter jurisdiction)  
4 pursuant to Title 28 U.S.C. § 1331 (Federal Question), as a civil action arising  
5 under the Constitution, laws, or treaties of the United States;

6 2. This Court has jurisdiction to challenge agency action under the  
7 Administrative Procedures Act (APA), Title 5 U.S.C. §§500-596, 701, 702, 703,  
8 704, 705, 706.

9 3. Title 28 U.S.C. §1361 gives this Court jurisdiction to compel an  
10 officer or employee of the United States or any agency thereof to perform a duty  
11 owed to Plaintiffs.

12 4. This Court has jurisdiction to issue a Declaratory Judgment and/or  
13 Mandamus pursuant to Title 28 U.S.C. §§2201- 02. Plaintiffs have completely  
14 exhausted their administrative remedies and are not required to pursue any  
15 additional administrative remedies before seeking judicial declaratory relief or  
16 mandate.

17 5. This Court has jurisdiction pursuant to *Bivens v. Six Unknown Named*  
18 *Agents of the Federal Bureau of Narcotics*, 403 U.S.388 (1971) to order an award  
19 of damages against individually named defendants. In the alternative, Plaintiffs  
20 bring their Federal Question claims for violation of Civil Rights under 42 U.S.C.  
21 §1981.

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





1 II

2 **THE PARTIES**

3 **Plaintiffs**

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

7 13. Plaintiffs are categorized for identification in this actions as:

8 **Group A** – Adult individuals identified on the Tribe’s Membership  
9 Roll, but not Federally Recognized by the Bureau of Indian Affairs as members of  
10 the San Pasqual Band of Mission Indians. Members of Group A qualify for  
11 enrollment with the Tribe, but their applications for Enrollment, although  
12 approved by the Tribal Enrollment Committee, the Tribal Business Committee,  
13 and the Tribal General Council, have not been processed or approved by the  
14 Defendants - Bureau of Indian Affairs.

15 **Group B** – Adult individuals identified on the Tribe’s Membership  
16 Roll who are Federally Recognized as Members of the San Pasqual Band of  
17 Mission Indians.

18 14. The list of Group A Plaintiffs is as follows: CINDY ALEGRE-  
19 GALVEZ (Tribal Enrollment Number [TEN] 584); FRANK ALEGRE, (586);  
20 MICHAEL ALEGERE (565), YOLANDA ALEGRE (585); CHRISTOPHER  
21 ALVARADO (433); ERIC ALVARADO (442); JACOB ALVARADO (434);  
22 JULIAN ALVARADO (436); MATTHEW ALVARADO (435); NICK  
23 ALVARADO (432); ROBERT ALVARADO (444); TAMMY ALVARADO  
24 (430); TIANI ALVARADO (431); TONY ALVARADO (441); VINCENT  
25 ALVARADO (443); KRISTY MARIA ANAYA (539); PEGGY AVILA (580);  
26 CARLOS BLANCO (621); ERNEST BLANCO (572); JUAN BLANCO (603);



1 RAY BLANCO (437); REMEDIOS BLANCO (\*)<sup>1</sup>; SYLVIA BLANCO (\*);  
2 THERESA BLANCO-MURILLO (\*); VALERIE BOYLE (508); MELVIN  
3 CANNON (587); DAVID CARDENAS (568); ANTHONY CHALOUX (454);  
4 MELISSA CHALOUX (456); NATHAN CHALOUX (458); SHONTA  
5 CHALOUX (453); APRIL CHAVEZ (447); AMANDA CHAVEZ (448); DAVID  
6 CHAVEZ (576); LISA CHAVEZ (440); BRUCE ROY CLAY (567); JEREMY  
7 CLAY (564); JESSICA CLAY (569); JULIAN CLAY (566); ANDREA  
8 CONTRERAS (\*); ANDREW CONTRERAS (466); CHARLES CONTRERAS  
9 (474); DEMITRO CONTRERAS (555); JOHNNY CONTRERAS (465); JONAH  
10 CONTRERAS (464); MICHAEL CONTRERAS (577); PAUL CONTRERAS, IV  
11 (470); RICARDO CONTRERAS (467); RITA CONTRERAS (469); ROCHELLE  
12 CONTRERAS (472); ROSEANNE CONTRERAS (471); RUDY CONTRERAS,  
13 JR (473); SAMUEL CONTRERAS (462); EVELYN CUNNINGHAM (479);  
14 ERIK DELGADO (477); JOHNNY RUBEN DELGADO (476); ROSE  
15 DELGADO (475); FELICIA DURKIN (455); SHIANNE ELAM (548); WYATT  
16 ELAM (549); SARA M. ESCARCEGA (494); LIBBY FLORES (533);  
17 RICHARD FLORES (535); RUBEN GONZALEZ, JR. (538); MARY HERRERA  
18 (620); JOHN HUGHES (526); BERNADETTE JOHNSON (545); JASON  
19 LAVIGNE (542); JUAN LUCERO (504); VIRGIL LUCERO (505); AMBER  
20 MAJEL (632); ANGELINA MARTINEZ (490); HILARIO MARTINEZ (488);  
21 LINDA MARTINEZ-VANDERVEF (\*); PAUL MARTINEZ (489); RUBEN  
22 MARTINEZ (491); VALERIE MARTINEZ (521); SARAH MENDOZA (494);  
23 JAMIE MILLER (547); JEFFREY MILLER (546); DANIEL MORALES, JR  
24 (544); DESIREE MORALES (553); FREDERICK MURILLO, III (\*); JOSEPH  
25 MURILLO (487); KIM MURILLO (486); PAUL VERNON MURILLO (489);

26 <sup>1</sup> \*Indicates those persons without a TRIBAL ENROLLMENT NUMBER (TEN)  
27 because they were inadvertently left off the enrollment list.



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

17 15. Group A Plaintiffs are: A) All residents of San Diego County, except  
18 for seven of the Plaintiffs who live in other jurisdictions which would trigger  
19 diversity jurisdiction of the Court; B) All direct lineal descendants of Jose Juan  
20 Martinez and Guadalupe Martinez who were part of the original historical San  
21 Pasqual Band of Mission Indians who were carried on the State of California  
22 Census in 1852; C) All direct lineal descendants of Modesta (Martinez) Contreras  
23 who is the daughter of Jose Juan and Guadalupe Martine; D) All enrolled members  
24 of the BAND, but are not federally recognized by the BIA as members of the San  
25 Pasqual Band of Mission Indians.

26 16. At all times mentioned in this complaint Group A Plaintiffs, as direct  
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1 descendants of Jose Juan, Guadalupe and Modesta (Martinez) Contreras, meet the  
2 necessary blood criteria for enrollment in the San Pasqual Mission Band of  
3 Indians pursuant to Title 25 C.F.R. §48.5, having no less than 1/8 degree of San  
4 Pasqual blood and are therefore entitled to be federally recognized as members of  
5 the San Pasqual Band of Mission Indians.

6 17. List of Group B Plaintiffs is as follows: CHRISTINE ALVARADO  
7 (26); PATSY ALARADO (131); LISA BELARDS (24); PAUL CONTRERAS  
8 (51); JOHNNY CONTRERAS (245); RUDOLPH CONTRERAS (52); JOSE  
9 DELGADO (28); LEJEAN MILLER (273); DOLORES PEREZ (46);  
10 HUUMAAY QUISQUIS (290); JAMES QUJISQUIS (180); ELSIE ROJAS (130);  
11 AMELIA MARTINEZ CONTRERAS VILLALOBOS, AKA MELIA DUENAS  
12 (219); DELLA VILLALOBOS OCHOA (146); JOSIE VILLALOBOS (2); MARY  
13 VILLALOBOS VARELA (104); JOSIE VILLALPANDO (44); GLORIA  
14 ZWICKER (213).

15 18. All members of Group B Plaintiffs are residents of San Diego Couty  
16 and are federally recognized enrolled members of the San Pasqual Band of  
17 Mission Indians.

18 19. ROE Plaintiffs are persons unknown who are entitled to be federally  
19 recognized as a San Pasqual Indian and/or who are federally recognized members  
20 of the BAND who have suffered harm as a result of the BIA's actions or inactions.

### 21 **Defendants**

22 20. Defendant RYAN ZINKE (hereinafter ZINKE") is presently the  
23 Secretary of the Department of Interior, as defined in 25 C.F.R. 48.2(a). He is  
24 responsible for the supervision of the various federal agencies and bureau within  
25 the Department of Interior, including the Bureau of Indian Affairs. He is an  
26 officer or employee of the United States and has a direct statutory duty to carry out  
27



1 the provisions under Title 25 C.F.R. §48.2(a). During the time period alleged in  
2 this complaint ZINKE was preceded by: Sally Jewell (2013-2017); Ken Salazar  
3 (2009-2013); Dirk Kempthorne (2006-2009), and Gale A. Norton (2001-2006)  
4 Defendant ZINKE is being sued in his official capacity but Plaintiffs reserve the  
5 right to sue ZINKE, Jewell, Salazar, Kempthorne and Norton as individuals  
6 depending on what is presented to Plaintiffs in discovery.

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

23 22. WELDON LOUDERMILK is presently the Director of the Bureau of  
24 Indian Affairs within the Department of State, as defined in 25 C.F.R. §48.2(b).  
25 Defendant LOUDERMILK is responsible for the day-to-day operations of the  
26 BIA. LOUDERMILK was preceded by Michael Black [4/25/2010 - 2016], and W.  
27 Patrick Ragodale [2005-2010] who served in the position as Director of the



1 Bureau of Indian Affairs at all times mentioned in this Compliant.

2 LAUDERMILK is being sued in his official capacity, but Plaintiffs reserve the  
3 right to sue him, Black and Ragodale as individuals depending on what is  
4 presented to Plaintiffs in discovery.

5 23. AMY DUTSCHKE is presently the Pacific Regional Director  
6 (Sacramento), Department of Interior-Indian Affairs, as defined in 25 C.F.R.  
7 §48.2(c). DUTSCHKE was acting Director in 2006 and has been the named  
8 Director since 2010. DUTSCHKE is an enrolled member of the Ione Band of  
9 Miwok Indians in California and has been serving as the Office's Deputy Regional  
10 Director for **Trust Services** since June of 2000. As the Deputy Regional Director,  
11 DUTSCHKE was responsible for the day-to-day management of the BIA's trust  
12 programs. On information and belief, Plaintiffs allege that it was DUTSCHKE  
13 who, among others, denied the Enrollment Committee's request to **CORRECT**  
14 Modesta Martinez's blood from  $\frac{3}{4}$  to  $\frac{4}{4}$ , and confirm the enrollment and Federal  
15 recognition of Group A Plaintiffs. It was DUTSCHKE who, among others, failed  
16 to give Group A Plaintiffs the required statutory notice of her actions. It was  
17 DUTSCHKE who sent the paperwork for Group A Plaintiffs' applications to  
18 Washington, D.C. without adjudicating their applications on April 7, 2006. On  
19 April 21, 2006 Fletcher (MOORE) returned Group A Plaintiffs' applications to the  
20 unconstitutional and illegal Enrollment Committee without adjudicating Group A  
21 Plaintiffs' applications in violation of 25 U.S.C. §48.8. There is no indication that  
22 DUTSCHKE was delegated the duties she performed related to adjudication of [or  
23 lack thereof] Plaintiffs' applications or adjudication of Modesta (Martinez)  
24 Contreras' blood quantum. DUTSHCKE is being sued in her official capacity and  
25 as an individual.

26 24. JAVIN MOORE, is presently the Superintendent of the Department  
27 of Interior – Indian Affairs, Southern California Agency - Riverside, as defined in

1 25 C.F.R. §48.2(d).. Defendant MOORE is responsible for the day-to-day  
2 operations of the BIA, Southern California Agency. He was preceded in this  
3 position by: Robert Eben (2013-2016), James Fletcher (2005 - unknown time), and  
4 others presently unknown to Plaintiffs, who served in this position at all times  
5 mentioned in this complaint. MOORE is being sued in his official capacity. He is  
6 also being sued in his individual capacity. On information and belief, Group A  
7 Plaintiffs allege that the Secretary of Interior was required to delegate the authority  
8 or duty to approve or disapprove Group A Plaintiffs applications pursuant to Title  
9 25 U.S.C. § 48, and has not done so.

10 25. DOE Defendants, 1 through 200, inclusive, are government  
11 employees who are agents acting in the scope of delegated authority; the scope of  
12 which is unknown to Plaintiffs at this time. Each of the Defendants herein is  
13 responsible for the acts and/or omissions [of the other Defendants] as herein  
14 alleged.

15 26. The named Defendants have the statutory authority, and it is within  
16 their power, to adjudicate Plaintiffs applications, and review the erroneous  
17 enrollments of non-San Pasqual individuals. Yet, they refuse to act pursuant to  
18 statutory mandates and fulfill their fiduciary duty to the Plaintiffs.

### 19 III

#### 20 SUBSTANTIVE ALLEGATIONS - GROUP A PLAINTIFFS

21 27. Group A Plaintiffs refer to and reallege paragraphs 1 through 26,  
22 inclusive, of this complaint and incorporates the same by reference as though fully  
23 set forth at length herein.

24 28. Group A Plaintiffs are the direct descendants of Jose Juan Martinez  
25 (“Jose Juan”), Guadalupe Martinez (“Guadalupe”), and their daughter Modesta  
26 Martinez Contreras (“Modesta”). [Collectively referred to as the “Martinez  
27 Ancestors”]. Each of Group A Plaintiffs’ Martinez Ancestors are full blood San



1 Pasqual Indians and are historic members of the San Pasqual Band of Mission  
2 Indians. [“BAND”]

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

9 30. The Enrollment Committee’s determination was predicated on a  
10 finding that Plaintiffs’ ancestor Modesta’s blood degree should be increased from  
11  $\frac{3}{4}$  to  $\frac{4}{4}$  based on all historical documents. The Enrollment Committee took its  
12 determination to the Tribe’s General Council which unanimously agreed with the  
13 Enrollment Committee on April 10, 2005.

14 31. On September 12, 2005, the Tribe’s Business Committee, exercising  
15 its rights under *Santa Clara Pueblo v. Martinez* (1978) 426 U.S.49, wrote to  
16 James Fletcher (“Fletcher”), [predecessor to Defendant MOORE] Superintendent  
17 of the Southern California Agency, stating it concurred with the Enrollment  
18 Committee and General Council. Under 25 CFR §48 and the Tribal Constitution,  
19 Group A Plaintiffs should be enrolled. Under 25 CFR §61.11(b) the Defendants  
20 were required to accept the Tribal recommendations, unless the recommendation  
21 was clearly erroneous. There is no record of any finding by the Defendants’ that  
22 the Tribal recommendation to enroll Group A Plaintiffs is “clearly erroneous”.  
23 [Exhibit 1, Exhibit 2]

24 32. Ten days later, on September 22, 2005, the Enrollment Committee  
25 submitted a letter to Fletcher [MOORE], requesting that the BIA correct  
26 Modesta’s blood degree from  $\frac{3}{4}$  to  $\frac{4}{4}$  degree San Pasqual blood. This letter  
27 along with Plaintiffs’ applications was hand delivered to Fletcher.

1           33. Although the Defendants were required by statute to respond to this  
2 letter dated September 22, 2005 within thirty days, the Defendants did not respond  
3 to this letter until December 8, 2005. In its response James Fletcher (Supervisor-  
4 Riverside) stated “the preponderance of the evidence does not sufficiently  
5 demonstrate that Modesta [] is full blood.” Fletcher’s finding did not meet the  
6 statutory requirement of a “clearly erroneous” decision.

7           34. James Fletcher’s [MOORE] December 8, 2005, letter was only sent to  
8 the Pacific Regional Director, Amy Dutschke. (“DUTSCHKE”). It was not sent to  
9 Plaintiffs.

10           35. On January 31, 2006, DUTSCHKE summarily concurred with  
11 Fletcher [Riverside] that Modesta was not full blood San Pasqual Indian.  
12 DUTSCHKE did not allow the Plaintiffs to submit their evidence in support of  
13 their position in violation of 25 C.F.R. § 48.9.

14           36. On April 7, 2006, Defendant DUTSCHKE, claiming that she received  
15 documents from “all parties”, acted outside of her appointed authority, as Pacific  
16 Regional Director - Indian Affairs, and denied the BAND’s request to increase  
17 Modesta’s blood degree and enroll Group A Plaintiffs.

18           37. Without written notice to Plaintiffs’ as required, Acting Assistant  
19 Deputy Secretary of Indian Affairs Michael Olson stated that the April 7, 2006  
20 decision was final for the BIA.

21           38. Between April 7, 2006, and the present time neither DUTSCHKE, nor  
22 any of the other Defendants, provided Plaintiffs with written notice of any of these  
23 determinations as required by 25 C.F.R. §48.9.

24           39. Title 25 C.F.R. §48.8 **mandates**: The Director **shall** review the  
25 reports and recommendations of the Enrollment Committee and **shall determine**  
26 the applicants who are eligible for enrollment in accordance with the provisions of  
27 §48.5. The Director **shall** transmit for review to the Commissioner and for **final**



1 **determination** by the Secretary, the reports and recommendations of the  
2 Enrollment committee relating to applicants who have been determined by the  
3 Director to be eligible for enrollment against the report and recommendations of  
4 the Enrollment committee relative to applicants who have been determined by the  
5 Director not to be eligible for enrollment against the reports and recommendations  
6 of the Enrollment committee, with a statement of the reasons for this  
7 determination. [Emphasis added]. Title 25 C.F.R. §48.9 **mandates**: “If the  
8 director determines an applicant is not eligible for enrollment in accordance with  
9 the provisions of §48.5 he **shall** notify the applicant in writing of his determination  
10 and the reasons therefor.” The same mandate is stated within §48.10 as it applied  
11 to the Assistant Secretary of Indian Affairs. [Emphasis added].

12 40. DUTSCHKE, in violation of the statutory requirements set out in 25  
13 C.F.R. §48, returned Group A Plaintiffs’ unadjudicated applications to Fletcher,  
14 BIA Superintendent Riverside.

15 41. Fletcher [MOORE] returned Group A Plaintiffs’ unadjudicated  
16 applications to the unconstitutional and illegally formed Enrollment Committee.  
17 Thereafter, the non-San Pasqual blood persons who have been erroneously and  
18 illegally enrolled by the Defendants caused an illegal moratorium to be placed on  
19 enrollment decisions. The Defendants, by their inaction, have allowed this  
20 moratorium to prevent Group A Plaintiffs from having their applications  
21 adjudicated in violation of 25 C.F.R. §48.

22 42. Because the Defendants erroneously enrolled non-San Pasqual blood  
23 persons, the non-San Pasqual persons have been able to gerrymander the BAND’s  
24 government due to their powerful voting block and ability to “pay off” by way of  
25 lucrative positions in the tribal government and threaten those who would disagree  
26 with them.

27 43. As a direct result of the Defendants illegal and unconstitutional acts,

1 the non San Pasqual blood persons have been able to vote themselves into  
2 positions of power within the BAND, including dismissing the legally valid and  
3 constitutionally formed Enrollment Committee in 2006 and installing an illegal  
4 enrollment committee.

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

11 45. In January and April 2015, Plaintiffs filed their appeal with  
12 DUTSCHKE pursuant to 25 C.F.R. §2.8. Plaintiffs sought adjudication of their  
13 enrollment applications. On or about July 25, 2015, MOORE issued a letter  
14 stating that the BIA no longer had the original applications to adjudicate the  
15 enrollment, and the April 7, 2006 letter was 'Final' for the Department; exhausting  
16 Plaintiffs administrative remedies.[Exhibit 3, Exhibit 4].

17 46. On or about May 6, 2016, Plaintiffs, who are the Descendants of Jose  
18 Juan Martinez, his wife Guadalupe Martinez, and their daughter Modesta  
19 (Martinez) Contreras, met with Superintendent MOORE, Morris Smith who had  
20 been appointed Tribal Operations, and Tina Salinas, Assistant Tribal Operations.  
21 Morris Smith requested Group A Plaintiffs resubmit their enrollment documents to  
22 the Riverside for review, and told Group A Plaintiffs to "make it simple."

23 47. Plaintiffs supplied the documents as requested on May 23, 2016, but  
24 have not received any response from the Defendants regarding the submission of  
25 those enrollment documents. Plaintiffs have exhausted their administrative  
26 remedies. [Exhibit 5]

27 48. After Plaintiffs filed their original complaint in this case (16-cv-



1 2442), a declaration was submitted by MOORE, on or about May 23, 2016, with  
2 attached Exhibits that had been supplied by Group A Plaintiffs. These documents  
3 gave Defendants the ability to adjudicate their enrollment applications. Defendants  
4 still have not satisfied the statutory mandates.

5  
6 **IV**  
**SUBSTANTIVE ALLEGATIONS - GROUP B PLAINTIFFS**

7 49. Group B Plaintiffs refer to and reallege paragraphs 1 through 26,  
8 inclusive, of this complaint and incorporates the same by reference as though fully  
9 set forth at length herein.

10 50. The true San Pasqual Indians negotiated and wanted assurances in  
11 the proposed enrollment regulations that in order to be enrolled in the San Pasqual  
12 Tribe, one must possess no less than 1/8 **blood of the San Pasqual Band**. The  
13 BIA agreed, and published on July 29, 1959, in the Federal Register, Proposed  
14 Rule Making, Department of the Interior, Bureau of Indian Affairs, 25 CFR Part  
15 48, Enrollment of the San Pasqual Band of Mission Indians In California. This  
16 was the enrollment statute that the true San Pasqual Indians had negotiated and  
17 agreed upon. [Exhibit 6]

18 51. The Defendants [and/or their predecessors] failed to disclose that the  
19 Defendants were working behind the scenes to allow non-San Pasqual blood  
20 persons the ability to become enrolled, despite the fact the Defendants [and/or  
21 their predecessors] had specifically advised the true San Pasqual Indians the  
22 enrollment statute would prevent the non-San Pasqual blood persons to be  
23 enrolled. In fact, in a memo dated October 6, 1959, Leonard Hill received a letter  
24 from the Chief, Branch of Tribal Operations, which stated: "We have adapted the  
25 suggested language contained in your teletype to the proposed San Pasqual  
26 regulations and a draft of the revision of Section 48.5 of the proposed regulations  
27 is enclosed for your consideration. Will you please let us know whether the

1 revision meets with your approval.”

2 52. Without the knowledge of the true San Pasqual Indians, the BIA  
3 changed the approved enrollment statute that had been published in July 1959. An  
4 internal memo dated November 20, 1959, states: “[w]e suggest that the attached  
5 correspondence **not** be made available to the San Pasqual enrollment committee in  
6 view of the fact that they may not understand why additional corrections to the  
7 regulations would be recommended subsequent to their acceptance of the  
8 regulation as published in the Federal Register on July 29, 1959.” [Emphasis  
9 added]. [Exhibit 7]

10 53. Without the knowledge and consent of the San Pasqual Indians, the  
11 BIA changed the proposed rule and deceived the San Pasqual Indians regarding  
12 the requirements for enrollment in their tribe. Without the knowledge or consent  
13 of the San Pasqual Indians, the Defendants added 25 CFR §48.5(f). Excluding  
14 Group B Plaintiffs from reviewing the revision to 25 C.F.R. 48.5(f) defrauded  
15 Group B Plaintiffs and breached the fiduciary duty owed by the Defendants to the  
16 San Pasqual Indians. [Exhibit 1]

17 **V**  
18 **CLAIMS FOR RELIEF**

19 **FIRST CLAIM FOR RELIEF**  
20 **VIOLATION OF ADMINISTRATIVE**  
21 **PROCEDURES ACT**

22 **(By Group A Plaintiffs against DUTSCHKE, MOORE,**  
23 **ZINKE, BLACK, and LOUDERMILK, in their official capacities.**

24 54. Group A Plaintiffs refer to and reallege Paragraphs 1 through 26, and  
25 27 - 48, inclusive, of this Complaint, and incorporate the same by reference as  
26 though fully set forth herein.

27 55. Group A Plaintiffs’ claims of jurisdiction are rooted in federal  
28 question jurisdiction: Title 28 U.S.C., §1331. This general federal jurisdiction is



1 applicable to all of Group A Plaintiffs' causes of actions alleged herein.

2 56. Group A Plaintiffs' statutory claims for this cause of action arise out  
3 of Title 25 U.S.C. §48 [§§48.5,7,8,9,10] and Title 25 C.F.R. §48 [§§48.5,7,8,9,10]  
4 and §61.11(b).

5 57. Group A Plaintiffs' causes of action for violation of Title 25 U.S.C.  
6 §48 [§§48.5,7,8,9,10] and Title 25 C.F.R. §48 [§§48.5,7,8,9,10] and §61.11(b) are  
7 reviewable under the Administrative Procedures Act - 5 USC 702, 704, 706,  
8 706(1); 5 USC 551(13) and 5 USC 555(b).

9 58. Title 5 USC 702 grants a waiver of Sovereign Immunity so this Court  
10 can review the agency action at issue in this case. Jurisdiction to review agency  
11 action is conferred by 28 U.S.C. 1331. The APA is not an independent grant of  
12 jurisdiction but a waiver of sovereign immunity, *Califano v. Sanders*, 430 U.S.  
13 88, 105-107 (1977). Group A Plaintiffs' claims arise from Defendants' violation of  
14 the mandates of 25 USC 48, 25 CFR 48, 25 CFR 61.11(b).

15 59. Group A Plaintiffs allege Defendants' actions as alleged herein were  
16 arbitrary and capricious within the meaning of the due process clause in the Fifth  
17 Amendment to the U.S. Constitution. Title 5, U.S.C. §§ 702, 704 and 706

18 60. Section 702 of the APA allows judicial review of Agency action by  
19 a "person suffering legal wrong because of agency action [or inaction], or  
20 adversely affected or aggrieved by agency action [or inaction] within the meaning  
21 of a relevant statute." Section 702 waives the Government's sovereign immunity.

22 61. Group A Plaintiffs' federal recognition and tribal membership are  
23 within the zone of interest to be protected or regulated by statute. (25 U.S.C. §§ 2,  
24 48).

25 62. Group A Plaintiffs allege that "Agency action" in the statute  
26 "includes the whole or part of an agency rule, order, license, sanction, relief, or  
27 the equivalent or denial thereof, or failure, to act." 5 U.S.C. §551 (13); see 5

1 U.S.C. § 701(b)(2). Defendants DUTSCHKE and MOORE’S “denial of relief to  
2 Plaintiffs and their failure to act on Group A Plaintiffs’ behalf, is a final agency  
3 action that is subject to judicial review.” An Agency’s failure to act constitutes  
4 action [Title 5 U.S.C. §551(13)].

5 63. The APA provides that a court must hold unlawful and set aside  
6 agency action and findings that are “arbitrary, capricious, an abuse of discretion,  
7 or otherwise not in accordance with law.” [(Title 5, U.S.C. § 706(2)(A)].

8 64. The APA provides that a court shall “compel agency action  
9 unlawfully withheld or unreasonably delayed.” [(Title 5, U.S.C. § 706(1)]. Group  
10 A Plaintiffs have been waiting for over 12 years for their applications to be  
11 adjudicated.

12 65. “[F]inal agency action for which there is no other adequate remedy  
13 in a court [is] subject to judicial review.” (Title 5 U.S.C. §704).

14 66. Group A Plaintiffs allege there is no requirement for “finality for  
15 waiver of immunity” because Group A Plaintiffs’ causes of actions arie completely  
16 apart from the general provisions of the APA.

17 67. Group A Plaintiffs have been trying, without any success, to get  
18 DUTCHKE and MOORE and the other named Defendants to comport with the  
19 Administrative Procedures Act and adjudicate their applications pursuant to the  
20 mandatory requirements of 25 CFR §48. The only course of action they have left  
21 is to seek a remedy through this litigation.

22 68. Group A Plaintiffs challenge the policies and practices that  
23 DUTSCHKE and MOORE, and the other named Defendants have adopted and  
24 applied in this case, including but not limited to: 1) Violation of Title 5, U.S.C.,  
25 §552; 2) Violation of Title 5, U.S.C.§ 557; 3) Violation of Title 5, U.S.C.,  
26 §555(e); 4) Violation of Equal Protection; and 5) Violation of Due Process. These  
27 policies and practices as applied to Group A Plaintiffs conflict with the U..S.



1 Constitution, the governing regulations, and the Administrative Procedure Act  
2 (APA) [5 U.S.C.§552 et.seq.].

3 69. The Defendants, by failing to provide Group A Plaintiffs with legally  
4 mandated notice of their decisions and allow Group A Plaintiffs any opportunity to  
5 challenge their arbitrary and capricious determinations, the Defendants violated  
6 Group A Plaintiffs' rights under the Due Process Clause of the Fifth Amendment,  
7 Equal Protection Clause, and the APA, 25 C.F.R. §§48.6 through 48.10 and §  
8 61.11.

9 70. By failing to correct DUTSCHKE's arbitrary, capricious, and  
10 erroneous determinations and actions stated above, MOORE violated Group A  
11 Plaintiffs' rights under the Due Process Clause of the Fifth Amendment, the Equal  
12 Protection Clause, and the APA, 25 C.F.R. §§48.6 through 48.10 and § 61.11.

13 71. By failing to correct DUTSCHKE's arbitrary, capricious, and  
14 erroneous determinations and actions stated above, the other named Defendants  
15 violated Group A Plaintiffs' rights under the Due Process Clause of the Fifth  
16 Amendment, the Equal Protection Clause, and the APA, 25 C.F.R. §§48.6 through  
17 48.10 and § 61.11.

18 72. DUTSCHKE and MOORE, and the other above named Defendants,  
19 circumvented the requirements of the APA as cited above, because they failed to  
20 personally notice each Group A Plaintiff of their decision regarding their ancestor  
21 Modesta (Martinez) Contreras as required by 25 C.F.R. §48.8 and §48.9. They  
22 further circumvented the requirements of the APA when they failed to follow  
23 statutory mandates as stated in 25 U.S.C. §§48.1-48.15. The other named  
24 Defendants, by failing to supervise DUTSCHKE and MOORE and require them to  
25 follow statutory mandates, violated the requirements of the APA.

26 73. Because DUTSCHKE and MOORE, and the other named Defendants,  
27 failed to follow the requirements of the APA and §48 of The Code of Federal



1 Regulations, DUTSCHKE and MOORE have caused Group A Plaintiffs to suffer  
2 legal wrong. The challenged agency action adversely affected and/or aggrieved  
3 their constitutional rights of due process, notice and opportunity to be heard and  
4 equal protection of the law within the meaning of 25 CFR § 48. Their actions have  
5 severely damaged Plaintiffs.

6 74. Review by this Court of the Defendants' actions is proper because the  
7 Defendants' actions are committed to the Defendants as a matter of law pursuant  
8 to the San Pasqual Constitution that incorporates 25 U.S.C. §48. [Exhibit 2]

9 75. Title 25 U.S.C. §2 the enabling statute that gives the Assistant Secretary  
10 of Indian Affairs (under the direction of ZINKE as Secretary of the Interior) the  
11 "management of all Indian affairs and of all matters arising out of Indian  
12 relations." The Defendants have breached that statutory duty and in doing so have  
13 violated the requirements of the APA, either intentionally, negligently, or by  
14 failure to act.

15 76. Defendants' failure to provide all Group A Plaintiffs with legally  
16 mandated notice or an opportunity to be heard is arbitrary and capricious, an abuse  
17 of discretion, and otherwise not in accordance with the law. As such, it violates  
18 the Administrative Procedure Act, 5 U.S.C. §§ 552, 554, 555, and 701, et seq.

19 77. Defendants' acts, whether intentional or negligent, have caused  
20 Plaintiffs to suffer substantial legal damages for the last twelve (12) years.

21 78. Defendants' actions and/or failure to act have denied Group A  
22 Plaintiffs their rights to Due Process and opportunity to be heard, and Equal  
23 Protection in violation of their Constitutional Rights and in violation of their Civil  
24 Rights. As a direct consequence of DUTSCHKE's Administrative Decision, 133  
25 individuals have been robbed of their heritage, their inherent right to vote on tribal  
26 matters, their right to federal housing and education, their right to share in the  
27 Casino profits, and all other benefits due them as Native American citizens.

1           79. Group A Plaintiffs are entitled to have their applications properly  
2 adjudicated by the Defendants and be federally recognized as members of the  
3 BAND.

4                                   **SECOND CLAIM FOR RELIEF**  
5                                   **VIOLATION OF ADMINISTRATIVE**  
6                                   **PROCEDURES ACT**  
7                                   **(By Group B Plaintiffs against ZINKE, BLACK,**  
8                                   **and LOUDERMILK, in their official capacities as**  
9                                   **successors to their Predecessors)**

10           80. Group B Plaintiffs refer to and reallege Paragraphs 1 through 26, 49 -  
11 53, inclusive, of this Complaint, and incorporate the same by reference as though  
12 fully set forth herein.

13           81. Group B Plaintiffs' claims of jurisdiction are rooted in federal  
14 question jurisdiction: Title 28 U.S.C., §1331. This general federal jurisdiction is  
15 applicable to all of Group B Plaintiffs' causes of actions alleged herein.

16           82. Group B Plaintiffs' statutory claims for this cause of action arise out  
17 of Title 25 U.S.C. §48 and Title 25 C.F.R. §48. Group B Plaintiffs' statutory  
18 claims for this cause of action also arise out of Title 5 U.S.C. § 553(b) which  
19 governs informal rule making.

20           83. Group B Plaintiffs' causes of action for violation of Title 25 U.S.C.  
21 §48 and 5 U.S.C. §553(b) are reviewable under the Administrative Procedures Act  
22 - 5 USC 702, 704, 706, 706(1); 5 USC 551(13) and 5 USC 555(b).

23           84. Title 5 U.S.C. §702 grants a waiver of Sovereign Immunity so this  
24 Court can review the agency action at issue in this case. Jurisdiction to review  
25 agency action is conferred by 28 U.S.C. 1331. Since the APA is not an  
26 independent grant of jurisdiction but a waiver of sovereign immunity, *Califano v.*  
27 *Sanders*, 430 U.S. 88, 105-107 (1977), the Plaintiffs claims arise from Defendants'  
28 violation of the mandates of 5 U.S.C. §553(b), 25 U.S.C. §48, 25 C.F.R. §§48, 25  
C.F.R. §61.11(b).



1           85. Group B Plaintiffs allege Defendants' actions violated 5 U.S.C.  
2 §553(b) based on the facts alleged in paragraphs 49 through 53. Defendants'  
3 actions were arbitrary and capricious within the meaning of the due process clause  
4 in the Fifth Amendment to the U.S. Constitution and the Equal Protection clause.  
5 Title 5, U.S.C. §§ 702, 704 and 706

6           86. Section 702 of the APA allows judicial review of Agency action by  
7 a "person suffering legal wrong because of agency action [or inaction], or  
8 adversely affected or aggrieved by agency action [or inaction] within the meaning  
9 of a relevant statute." Section 702 waives the Government's sovereign immunity.

10           87. Group B Plaintiffs allege that "Agency action" in the statute  
11 "includes the whole or part of an agency rule, order, license, sanction, relief, or  
12 the equivalent or denial thereof, or failure, to act." 5 U.S.C. §551 (13); see 5  
13 U.S.C. § 701(b)(2).

14           88. The APA provides that a court must hold unlawful and set aside  
15 agency action and findings that are "arbitrary, capricious, an abuse of discretion,  
16 or otherwise not in accordance with law." [(Title 5, U.S.C. § 706(2)(A)].

17           89. An agency's "failure to act" constitutes agency action. " [(Title 5  
18 U.S.C. §551(13)]. The APA therefore provides that a court shall "compel agency  
19 action unlawfully withheld or unreasonably delayed." [(Title 5, U.S.C. § 706(1)].

20           90. "[F]inal agency action for which there is no other adequate remedy  
21 in a court [is] subject to judicial review." (Title 5 U.S.C. §704).

22           91. Group B Plaintiffs are within the zone of interest to be protected  
23 or regulated by statute. Therefore they have the standing to challenge the policies  
24 and practices that the named Defendants have adopted and applied in this case,  
25 including but not limited to: 1) Violation of Title 5, U.S.C., §551(13), 552; 2)  
26 Violation of Title 5, U.S.C. § 557; 3) Violation of Title 5, U.S.C., §555(e); 4)  
27 Violation of Equal Protection; and 5) Violation of Due Process. These policies and



1 practices as applied to Group B Plaintiffs conflict with the U.S. Constitution, the  
2 governing regulations, and the Administrative Procedure Act (APA) [5  
3 U.S.C. §552 et seq.].

4 92. By failing to provide Group B Plaintiffs with legally sufficient notice  
5 of the changes in 25 CFR §48.5 Defendants violated Group B Plaintiffs' rights  
6 under the Due Process Clause of the Fifth Amendment, Equal Protection Clause,  
7 the APA, 25 C.F.R. §§48, and 5 U.S.C. §551, et. Seq.

8 93. Because Defendants failed to follow the requirements of the APA,  
9 §48 of The Code of Federal Regulations, and 5 U.S.C. §551 et seq, Group B  
10 Plaintiffs have suffered legal wrong. The challenged agency action adversely  
11 affected and/or aggrieved their constitutional rights of due process, notice and  
12 opportunity to be heard and equal protection of the law within the statutory  
13 meanings. meaning of 25 CFR § 48.

14 94. The Defendants violated their own procedures and statutes set out  
15 in 5 U.S.C. §551 when they purposefully kept Group B Plaintiffs in the dark  
16 concerning §48.5 that was published in the CFR without section (f) in 1959 and  
17 the final section 48.5 with section (f) that was passed into law in 1960. [Exhibit 1,  
18 Exhibit 6]

19 95. The BIA's enabling statute gives the Assistant Secretary  
20 of Indian Affairs (under the direction of ZINKE as Secretary of the Interior) the  
21 "management of all Indian affairs and of all matters arising out of Indian  
22 relations." 25 U.S.C. §2. The Defendants have breached that statutory duty and in  
23 doing so have violated the requirements of the APA, either intentionally,  
24 negligently, or by failure to act.

25 96. Defendants' failure [whether intentional, negligent, or willful] to  
26 provide all Plaintiffs with legally sufficient notice or an opportunity to be heard is  
27 arbitrary and capricious, an abuse of discretion, and otherwise not in accordance

1 with the law. As such, it violates the Administrative Procedure Act, 5 U.S.C. §§  
2 552, 554, 555, and 701, et seq.

3 97. Defendants' actions and/or failure to act have denied Group B  
4 Plaintiffs their rights to Due Process and opportunity to be heard, and Equal  
5 Protection in violation of their Constitutional Rights and in violation of their Civil  
6 Rights causing them to suffer legal damages.

7 **THIRD CLAIM FOR RELIEF**  
8 **DECLARATORY RELIEF**  
9 **OR, IN THE ALTERNATIVE, MANDAMUS**  
10 **(Group A Plaintiffs against All Defendants**  
11 **in Their Official Capacity)**

11 98. Group A Plaintiffs refer to and reallege Paragraphs 1 through 26, 27 -  
12 48, and 54-79, inclusive, of this Complaint, and incorporate the same by reference  
13 as though fully set forth herein.

14 99. Jurisdiction for Group A Plaintiffs' Claim for Declaratory Relief, or  
15 in the alternative, Mandamus, is rooted in federal question jurisdiction: Title 28  
16 U.S.C. § 1331.

17 100. This Court has jurisdiction under 28 U.S.C. §1361 to compel an  
18 officer or employee of the United States or any agency thereof to perform a duty  
19 owed to Plaintiffs.

20 101. Jurisdiction is rooted in 28 U.S.C. §1331. This Court has jurisdiction  
21 under the Administrative Procedures Act - 5 U.S.C. §§701, 702, 703, 704, 705,  
22 706, and 5 U.S.C. §§ 551(13) and 555(b). Specifically, §706(1) applies when an  
23 agency has ignored a specific legislative command, as in this case.

24 102. Group A Plaintiffs, and each of them, allege that the actions of the  
25 Defendants, and each of them, that are described in this Third Amended  
26 Complaint were arbitrary and capricious, not supported by substantial evidence in  
27 wanton disregard of the rights of each of the Plaintiffs and therefore an abuse of  
28



1 discretion.

2 103. The Defendants have not acted within a reasonable time. It has been  
3 almost 13 years since Group A Plaintiffs submitted their applications.

4 104. Group A Plaintiffs request declaratory relief pursuant to Title 28,  
5 U.S.C., §§2201-02, which waives sovereign immunity, in as much as their rights  
6 and Native American ancestry are affected and an actual controversy exists in that  
7 Group A Plaintiffs contend their **inherited** property and tribal rights were stripped  
8 from them in an arbitrary and capricious manner in violation of 25 U.S.C. §48, the  
9 APA, the U.S. Constitution, and the constitutional guarantees of the Constitution  
10 of the San Pasqual Band of Mission Indians, without full procedural due process,  
11 and in violation of the guarantees of equal protection.

12 105. Group A Plaintiffs request declaratory relief pursuant to the APA  
13 which provides that a court must hold unlawful and set aside agency action and  
14 findings that are “arbitrary, capricious, an abuse of discretion, or otherwise not in  
15 accordance with law.” [Title 5 U.S.C. § 706(2)(A)].

16 106. Group A Plaintiffs request this Court issue an Order and/or Mandate:  
17 (a) directing the Defendants to adjudicate, within thirty (30) days, Group A  
18 Plaintiffs’ enrollment applications for federal recognition as members of the San  
19 Pasqual Band of Mission Indians pursuant to 25 C.F.R. §48, et. seq. using the  
20 evidence Plaintiffs have produced to this Court and any other evidence the  
21 Plaintiffs have available to them; and (b) to Defendants DUTSCHKE and  
22 MOORE, and the other named Defendants directing them to properly review  
23 Plaintiffs’ applications for federal recognition in the San Pasqual Band of Mission  
24 Indians and to consider all of Plaintiffs’ evidence.

25 107. Group A Plaintiffs request this Court: a) order that the Defendants be  
26 directed under 25 C.F.R. §61.11(b) that the original recommendations of the  
27 constitutionally valid Enrollment Committee, the San Pasqual General Council,



1 and the San Pasqual Business Committee shall be accepted by the Defendants  
2 unless there is a clear determination that the original recommendation was “clearly  
3 erroneous”; and/or b) Mandate that Group A Plaintiffs be Federally recognized  
4 added to the San Pasqual Federal rolls, within 30 days under §48.

5 108. Although Group A Plaintiffs’ ancestor Jose Juan was a documented  
6 full blood historical San Pasqual Indian, the Defendants either, intentionally,  
7 purposefully, negligently, or fraudulently, have failed to examine any documents  
8 except for the 1928 California Indian Application, in which each and every family  
9 member’s applications are wrong. The Defendants know that the 1928  
10 applications are wrong, are unvetted and are unreliable. The result is that Jose  
11 Juan Martinez’s descendants, Group A Plaintiffs, are allegedly now considered by  
12 the Defendants not to satisfy the San Pasqual enrollment criteria. [i.e. 1/8 degree  
13 San Pasqual blood]

14 109. Group A Plaintiffs have suffered and will continue to suffer  
15 irreparable harm unless this Court grants declaratory relief in the form of a  
16 determination [order] that Jose Juan Martinez is a full blood San Pasqual Indian.  
17 (His wife Guadalupe is already recognized as a full blood San Pasqual Indian) and  
18 their daughter Modesta (Martinez) Contreras is a full blood San Pasqual Indian.  
19 Such recognition will allow Group A Plaintiffs to claim their rightful inheritance  
20 and birthrights in the San Pasqual Band of Mission Indians.

21 110. An actual controversy exists by and between Group A Plaintiffs and  
22 Defendants concerning the blood degree of Modesta (Martinez) Contreras who is  
23 full blood San Pasqual Indian and an historical member of the San Pasqual Band;  
24 she was the daughter of Jose Juan and Guadalupe. Each of the Plaintiffs descend  
25 from Modesta. A declaratory judgment issued by this Court will terminate the  
26 controversy

27 111. All of the census records available clearly document the fact that

1 Modesta (Martinez) Contreras was a full blood San Pasqual Indian.

2 112. The genealogy of Jose Juan, Guadalupe, and Modesta (Martinez)  
3 Contreras clearly proves that they all were full blood San Pasqual Indians.

4 113. Had Defendants done any research, other than looking at the  
5 unreliable, incorrect and unvetted 1928 California Indian Applications, they would  
6 have discovered Modesta (Martinez) Contreras was listed as 4/4 blood of San  
7 Pasqual Indian on numerous Census records; including the only BIA census to  
8 provide stated blood degree. Had Defendants DUTSCHKE and/or MOORE  
9 denied Plaintiffs' applications and provided the mandated notice, Group A  
10 Plaintiffs would have been allowed to appeal that decision and submit their  
11 evidence to the Assistant Secretary in Washington, D.C. wherein the Defendants  
12 would have concluded that Jose Juan, Guadalupe and Modesta were all full blood  
13 San Pasqual Indians, and Group A Plaintiffs enrollment would have been  
14 completed; the same applies to the Acting Deputy Assistant Secretary under  
15 §48.10..

16 114. Defendants' failure to follow the statutory mandates concerning  
17 Plaintiffs' enrollment applications have prevented Group A Plaintiffs from  
18 presenting their evidence in support of their application. Group A Plaintiffs will  
19 continue to suffer legal damages until they are Federally Recognized San Pasqual  
20 Indians and their names are added to the BAND'S roll; which this court can  
21 mandate.

22 115. Group A Plaintiffs have suffered and will continue to suffer  
23 irreparable harm unless this Court grants declaratory relief in the form of a  
24 determination that Jose Juan Martinez is a full blood San Pasqual Indian, his wife  
25 Guadalupe Martinez is a full blood San Pasqual Indian, their daughter Modesta  
26 (Martinez) Contreras is a full blood San Pasqual Indian, and that all of Group A  
27 Plaintiffs have at least 1/8 San Pasqual Indian blood to be Federally recognized



1 and enrolled in the San Pasqual BAND within thirty (30) days. Such recognition  
2 will allow Group A Plaintiffs to claim their rightful birthrights in the San Pasqual  
3 Mission Band of Indians.

4 116. In the alternative, Group A Plaintiffs request this Court issue a  
5 Mandamus to the Defendants ordering the Pacific Regional Director to issue  
6 notice under 25 C.F.R. §48.9, and the Assistant Secretary [BLACK] to adjudicate  
7 Group A Plaintiffs' applications for federal recognition as members of the San  
8 Pasqual Mission Band of Indians within thirty (30) days.

9 117. Group A Plaintiffs request this Mandamus also contain an order  
10 that the Defendants are to adjudicate their applications in light of the evidence  
11 produced to this Court, and any other evidence the Plaintiffs have available to  
12 produce to the BIA, within 30 days.

13 118. Plaintiffs further request should this court order a Mandamus  
14 directing the Defendants pursuant to 25 C.F.R. §61.11(b) that the original  
15 recommendations of the constitutionally valid Enrollment Committee, and San  
16 Pasqual General Council, shall be accepted by the Defendants [BIA] unless there  
17 is a clear determination that the original recommendation was "clearly erroneous."  
18 and within 30 days.

19 **FOURTH CLAIM FOR RELIEF**  
20 **VIOLATION OF CIVIL RIGHTS**  
21 **UNCONSTITUTIONAL DELEGATION, OR NO**  
22 **DELEGATION OF DUTY, AUTHORITY, OR POWER**  
23 **(Group A Plaintiffs against DUTSCHKE, MOORE,**  
**ZINKE, BLACK, AND LAUDERMILK, in their official capacity;**  
**Group B Plaintiffs against all Defendants, in their official capacity)**

24 119. Plaintiffs refer to and reallege Paragraphs 1 through 26, 27 - 48, 54-  
25 79, and 98-118, inclusive, of this Complaint, and incorporate the same by  
26 reference as though fully set forth herein.  
27





1 **FIFTH CLAIM FOR RELIEF**  
2 **VIOLATION OF CIVIL RIGHTS: DUE PROCESS**  
3 **(Group A Plaintiffs Against Amy DUTSCHKE and Javin MOORE**  
4 **in their official capacities and as individuals;**  
5 **Group A Plaintiffs Against all Defendants**  
6 **in their official capacity)**

7 126. Plaintiffs refer to and reallege Paragraphs 1 through 26, 27 - 48, 54 -  
8 79, 98 - 118, 119 - 125, inclusive, of this Complaint, and incorporate the same by  
9 reference as though fully set forth at length herein.

10 127. Group A Plaintiffs bring this cause of action against DUTSCHKE and  
11 MOORE as individuals pursuant to *Bivens v. Six Unknown Named Agents of the*  
12 *Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Group A Plaintiffs bring this  
13 action against the defendants in their official capacity pursuant to Title 28 U.S.C.  
14 §1331 and 28 U.S.C. §1367 for constitutional violations.

15 128. Group A Plaintiffs allege that Defendants' violations of statutory  
16 mandates which have resulted in denying Group A Plaintiffs Due Process and  
17 Equal Protection of the law under the U.S. Constitution rises to a Constitutional  
18 violation, in violation of Group A Plaintiffs' civil rights, giving cause for an action  
19 for damages under *Bivens*.

20 129. Under §48.5(b) and (d), Group A Plaintiffs, as Jose Juan descendants,  
21 satisfied their burden of proof to establish they were no less than 1/8 degree blood  
22 of the San Pasqual Band to be enrolled in their tribe.

23 130. Group A Plaintiffs allege that DUTSCHKE violated the mandatory  
24 requirements of 25 C.F.R. §48.8 when she failed to review and make a decision  
25 [adjudicate] Plaintiffs applications to be federally recognized and added to the  
26 rolls to become members of the San Pasqual Band of Mission Indians and §48.9  
27 when she failed to notify Plaintiffs of her actions. MOORE, in his complacency  
28 allowed these statutory violations to continue to this day.



1 131. As direct descendants of Modesta (Martinez) Contreras  
2 DUTSCHKE's decision affected Group A Plaintiffs. Since Plaintiffs are  
3 beneficiaries of their ancestors lineage they are aggrieved parties and therefore  
4 have standing to bring these allegations in this Complaint and the right to have  
5 received notice from DUTSCHKE and/or MOORE..

6 132. DUTSCHKE violated 25 CFR §61.11 (b), "**The Director or**  
7 **Superintendent, when tribal recommendations or determinations are**  
8 **applicable, shall accept the recommendations or determinations of the Tribal**  
9 **Committee unless clearly erroneous.**" [Emphasis added]. When inquiry was  
10 made in Sacramento about the Plaintiffs' enrollment, BIA employee Shirley  
11 Lincoln advised, "Membership is the decision of the Band." [Exhibit 8]

12 133. Between January 31, 2006, and the present, at no time whatsoever has  
13 Defendant DUTSCHKE, Pacific Regional Director, given written notice to  
14 Group A Plaintiffs-Jose Juan descendants - that she determined their ancestor  
15 Modesta (Martinez) Contreras was not 4/4 blood of San Pasqual Indian.

16 134. DUTSCHKE's failure to give notice and failure to adjudicate  
17 Group A Plaintiffs' applications have denied Group A Plaintiffs their due  
18 process right to appeal within thirty (30) days. DUTSCHKE's actions have  
19 denied Plaintiffs their right to present evidence on their behalf; DUTSCHKE's  
20 actions violated Plaintiffs' civil rights in that she denied them their right to due  
21 process and a fair adjudication of their applications because she failed to give  
22 Group A Plaintiffs the statutorily mandated written notice of her actions.

23 135. As a direct consequence of the failure of Defendant DUTSCHKE's  
24 failure to give written notice and rights to appeal, Group A Plaintiffs [Jose Juan  
25 descendants] have been deprived of their Federal recognition; their inherent  
26 right to vote on tribal matters that affect them both directly and indirectly; their  
27 right to Federal housing grants and education; their right to per capita payments;



1 and all other benefits due them as Native Americans without due process of law.

2 136. The Defendants have a practice and habit of violating the  
3 mandatory statutory requirements regarding notice and opportunity to be heard  
4 that are clearly set out in 25 C.F.R. §§48.7, 48.9, 48.10. This practice and habit  
5 is evidence not only by their actions described herein and above, but also by the  
6 deceitful events surrounding the process involved in creating 25 C.F.R.  
7 §48.5(f), the San Pasqual enrollment statute. The Defendants' continuous  
8 actions have violated and continue to violate Group A Plaintiffs civil rights  
9 causing them to suffer damages.

10  
11 **SIXTH CLAIM FOR RELIEF**  
12 **VIOLATION OF CIVIL RIGHTS: DUE PROCESS**  
13 **(Group B Plaintiffs against All Defendants**  
**in Their Official Capacity)**

14 137. Plaintiffs refer to and reallege Paragraphs 1 through 26, 49 - 53; 80  
15 - 87, inclusive, of this Complaint, and incorporate the same by reference as  
16 though fully set forth herein.

17 138. This Court has general Federal jurisdiction pursuant to Title 28  
18 U.S.C. §1331 because this is a civil action arising under the Constitution, laws,  
19 or treaties of the United States, specifically 25 C.F.R. §48 and 5 U.S.C. §553(b),  
20 which governs informal rule making.

21 139. The Defendants' acts and failure to give statutory notice of the  
22 changes they made to 25 C.F.R. §48.5, as alleged above, were an intentional  
23 violation of law, denied Group B Plaintiffs due process of law, notice, and an  
24 opportunity to be heard resulting in a denial of Group B Plaintiffs'  
25 constitutional guarantees of due process and equal protection of the law.

26 140. As a result of Defendants' actions, Group B Plaintiffs have suffered  
27 both legal and economic damages.

1                                   **SEVENTH CLAIM FOR RELIEF**  
2                                   **VIOLATION OF CIVIL RIGHTS: EQUAL PROTECTION**  
3                                   **(Group A Plaintiffs Against DUTSCHKE and MOORE as individuals**  
4                                   **and in their official capacity and Group A Plaintiffs against**  
5                                   **all Defendants in their official capacity;**  
6                                   **Group B Plaintiffs against all Defendants)**

7                   141. Plaintiffs refer to and reallege Paragraphs 1 through 79, 80 - 97,  
8                   98-118, 119 - 140, inclusive, of this Complaint, and incorporate the same by  
9                   reference as though fully set forth at length herein.

10                  142. The equal protections guaranteed in the Fourteenth Amendment to  
11                  the United States Constitution were extended to Native American Indian Tribes  
12                  by the Indian Civil Rights Act. [ICRA] (25 U.S.C. §1302). The Defendants have  
13                  violated the equal protection rights awarded to Plaintiffs under both the U.S.  
14                  Constitution and the ICRA. This Court has general Federal jurisdiction  
15                  pursuant to Title 28 U.S.C. §1331 because this is a civil action arising under the  
16                  Constitution, laws, or treaties of the United States, specifically 25 C.F.R. §48  
17                  and the San Pasqual Constitution.

18                  143. Plaintiffs allege that the Defendants have deprived them full and  
19                  equal benefits of all laws and proceedings under 25 CFR §48 and the Tribal  
20                  Constitution by: A) Enrolling non-San Pasqual persons who do not have any  
21                  San Pasqual blood; B) Enrolling Group A Plaintiffs' cousins, but not them; C)  
22                  Taking away Group A and Group B Plaintiffs' property and rights in violation  
23                  of the constitutional guarantee to equal protection. D) Group A and Group B  
24                  Plaintiffs were targeted and discriminated against by Defendants, and each of  
25                  them.

26                  144. Group A Plaintiffs have been denied equal protection of the law  
27                  because Defendants, and each of them, have treated the Jose Juan descendant  
28                  Plaintiffs differently than 22 of their cousins, who were also enrolled in 2005, at  
29                  the same time as the Plaintiffs. Although there were a total of 179 Jose Juan



1 descendants enrolled by the Enrollment Committee in 2005, only 22 of those  
2 descendants were Federally Recognized by the Defendants.

3 145. Group A Plaintiffs have been denied equal protection of the law  
4 because Defendants, specifically DEUTSCHKE, failed to apply the proper  
5 enrollment statute (25 CFR §48) pursuant to the BAND's Constitution to the  
6 Jose Juan Descendant Plaintiffs. By failing to apply the same statutory  
7 requirements to all enrollees, the Defendants denied Group A Plaintiffs equal  
8 protections of the law.

9 146. Group A Plaintiffs allege the Defendants manipulated facts and  
10 documents in order to justify a concurrent change of the blood type and blood  
11 degree to justify the enrollment of these non-San Pasqual blood people.  
12 Defendants did this with undisputable knowledge that these non-San Pasqual  
13 blood persons possessed **NO** San Pasqual blood. These acts denied Group A  
14 Plaintiffs equal protection of the law. [Exhibit 9]

15 147. These Non-San Pasqual individuals were unilaterally enrolled in  
16 the BAND by Muncy, an employee of the Defendants, over the objections of the  
17 valid Enrollment Committee. The Defendants have ignored the Enrollment  
18 Committee's objections.

19 148. In order to enroll non-San Pasqual blood persons in the BAND,  
20 E.E. Hyden, Associate Solicitor, Indian Affairs - Department of Interior, sent a  
21 letter dated June 7, 1965, stating: "It is our conclusion that a **construction** may  
22 be placed on the language of the regulations [i.e. 25 C.F.R. §48.2(e)] governing  
23 the preparation of the membership roll of the San Pasqual Band to hold that  
24 persons of Indian blood (not San Pasqual blood, but just any Indian blood) who  
25 were recognized as Band members when the basic roll of June 30, 2010 was  
26 compiled, may be considered to be of the blood of the San Pasqual Band.

27 149. This interpretation of the statute exceeds the Solicitor's authority,  
28



1 violates the dictates of statutory construction, allows non-San Pasqual blood  
2 persons and non-Indians to be enrolled in the San Pasqual BAND, is  
3 unconstitutional, and violates both Group A and Group B Plaintiffs' civil rights  
4 and Equal Protection of the law.

5 150. Although the words "Blood of the Band" are not contained in the  
6 San Pasqual Constitution or 25 C.F.R. §48.2(e), the Defendants inserted the  
7 words "Blood of the Band" in all clauses relating to membership in the San  
8 Pasqual Band. When interpreting the statutory language as related to the Federal  
9 recognition of non-San Pasqual individuals, the Defendants erroneously and  
10 intentionally interpreted the words "Blood of the Band" to mean degree of **any**  
11 Indian blood rather than "Blood of the San Pasqual Band of Mission Indians."  
12 Said interpretation has denied Plaintiffs Equal Protection of the law and have  
13 caused Plaintiffs to suffer severe damages. [Exhibit 10, Exhibit 11].

14 151. This "construction of the language" interpretation of the statute and  
15 the BAND's Constitution by the Solicitor of the Department of the Interior is  
16 contrary to statutory language and exceeds the authority granted to him by the  
17 San Pasqual Constitution and 25 C.F.R. §48.2(e) because: a) The term "Band"  
18 means the San Pasqual Band of Mission Indians, [25 C.F.R. §48.5], not blood of  
19 the band of any Indians; b) 25 C.F.R. §48.5 (a), (b), and (c) identifies the  
20 persons to be enrolled: i) those who are alive on January 1, 1959; ii) Members  
21 whose names appear of the Band on the Census Roll, provided such descendants  
22 possess one-eighth or more degree of Indian blood of the Band [By statute (25  
23 CFR 48.2 (e)- Band means San Pasqual Band of Mission Indians]; iii) Indians  
24 not included in (a) or (b) who can prove they are 1/8 of more degree Indian  
25 blood of the San Pasqual Band of Mission Indians, i.e. "BAND"; And iv)  
26 Section 48.5(e) states: "If an Indian who applies for enrollment under the  
27 provisions of paragraphs (a), (b), or (c) of this section has received in his or own  
28

1 right an allotment or is enrolled as a member with some other tribe or band and  
2 has not relinquished such allotment or enrollment prior to January 1, 1950, such  
3 person shall not be enrolled.” None of the Plaintiffs have been or are enrolled in  
4 any other tribe because they are San Pasqual Indians. (Exhibit 1).

5 152. The term “blood” is not capitalized. The statute is meant to be  
6 read as Indian blood of the San Pasqual Band of Mission Indians, not “Blood of  
7 the Band” which the Defendants erroneously interpreted to mean blood of **any**  
8 Indian band. This incorrect interpretation of the words “Blood of the Band” is  
9 unconstitutionally broad in violation of rules of statutory construction and the  
10 Equal Protection Clause of the U.S. Constitution. The Defendants, by applying  
11 their own definition of “blood of the Band” purposefully opened enrollment to  
12 non-San Pasqual blood individuals in violation of their statutory responsibility  
13 to Plaintiffs.

14 153. Strict statutory construction is required to be applied to this  
15 enrollment statute [25 C.F.R. §48] as it existed in 1959. As a result of the  
16 Defendants’ illegal, unconstitutional, intentional and/or negligent acts, Group A  
17 Plaintiffs have been excluded from their rightful inheritance and membership in  
18 the San Pasqual Band of Mission Indians in violation of the Equal Protection  
19 clause of the U.S. Constitution.

20 154. Group A Plaintiffs allege that the names of Jose Juan Martinez,  
21 Guadalupe Martinez, and their children including Modesta (Martinez) Contreras  
22 were listed as individuals on the 1909 and the 1910 Census. Therefore,  
23 pursuant to the Solicitor’s interpretation Group A Plaintiffs should have been  
24 federally recognized as members of the San Pasqual Band of Mission Indians.

25 155. As a result of the Defendants’ actions both Group A and Group B  
26 Plaintiffs have been denied equal protection of the law because they have been  
27 held to a different and higher standard for membership than other non-San



1 Pasqual persons. As a result, Group A and Group B Plaintiffs have suffered,  
2 and continue to suffer severe emotional and economic damages.

3 156. The Defendants' acts and omissions have deprived both Group A  
4 and Group B Plaintiffs equal protection of the laws of the United States as  
5 guaranteed by the Fourteenth Amendment of the United States Constitution and  
6 the Indian Civil Rights. As a result, all Plaintiffs have been injured and suffered  
7 damages.

8  
9 **EIGHTH CLAIM FOR RELIEF**  
10 **BREACH OF FIDUCIARY DUTY**  
11 **25 USC SECTION 2**  
12 **(By Group A and B Plaintiffs against all**  
13 **Defendants in their Official Capacity)**

14 157. Group B Plaintiffs refer to and reallege Paragraphs 1 through 156,  
15 inclusive, of this Complaint, and incorporate the same by reference as though  
16 fully set forth herein.

17 158. This Court has general Federal jurisdiction pursuant to Title 28  
18 U.S.C. §1331 because this is a civil action arising under the Constitution, laws,  
19 or treaties of the United States, specifically 25 U.S.C. §2 and the San Pasqual  
20 Constitution.

21 159. Group B Plaintiffs are informed and believe, and based thereon  
22 allege that Defendants, and each of them, in their official capacity, and on  
23 behalf of the Federal agencies for whom they are employed, have a fiduciary  
24 relationship with the San Pasqual Indians, and the individual Plaintiffs. This  
25 Fiduciary relationship has been set out by Sally Jewell, Secretary of the Interior,  
26 in Order No. 3335 dated August 20, 2014. [Exhibit 12]

27 160. Group B Plaintiffs allege that there exists a special relationship  
28 between Native American Indians and the federal government, a relationship  
often likened to a trust. An enforceable trust exists between Group B Plaintiffs



1 and the Defendants because the relationship “is . . . based upon a specific  
2 statute, treaty, or agreement which help define . . . The relevant [trust] duties.”  
3 [*Joint Tribal Council of Passomoquaddy Tribe v. Morton*, 528 F.2d 370, 379  
4 (1<sup>st</sup> Cir. 1975)].

5 161. Group B Plaintiffs allege that the existence of the trust is used to  
6 support the general rule of statutory construction whereby laws passed for the  
7 benefit of Indian peoples are broadly construed to protect their interests.

8 162. Group B Plaintiffs allege that courts use the existence of some  
9 generalized trust responsibility to impose obligations of procedural fairness on  
10 the United States when it is making decisions affecting Indians.

11 163. Group B Plaintiffs allege that the trust relationship between the  
12 United States and Indians can run both to tribes and to individual Indians.

13 164. Group B Plaintiffs allege that the federal trust responsibility to  
14 Indian tribes [and individuals] applies to all federal entities. Furthermore, the  
15 trust responsibility extends not just to the Interior Department, but attaches to  
16 the federal government as a whole. There need not be a specific statute or treaty  
17 creating the trust relationship. Rather, “a fiduciary relationship necessarily  
18 arises when the Government assumes . . . elaborate control over . . . property  
19 belonging to the Indians. At this point all the necessary elements of the  
20 common-law trust are present.”

21 165. Group B Plaintiffs allege that since a trust relationship exists  
22 between them and the United States, any and all agencies of the United States  
23 must comply with federal statutory law, regardless of whether the relationship is  
24 between a tribe or an individual Indian.

25 166. Group B Plaintiffs allege that the United States has the  
26 fundamental obligation to protect the Indian beneficiaries’ principal, the trust  
27 corpus: In this case the land that was patented to them.

1           167. Group B Plaintiffs allege that Congress has imposed upon the  
2 United States a duty to represent Indian tribes, including individual Indians.  
3 (See 25 U.S.C. §175). “In all States and Territories where there are reservations  
4 or allotted Indians the United States attorney shall represent them in all suits at  
5 law and in equity.”

6           168. Group B Plaintiffs allege that trust responsibility means that  
7 Federal agencies must consult with tribes before taking action which affects  
8 their property and rights. Thus the United States must observe procedural  
9 fairness when it is making decision affecting Indians. [See, *Morton v. Ruiz*, 415  
10 U.S. 199 (1974)].

11           169. The Defendants have a history of over 160 years of breaching their  
12 fiduciary duty to the San Pasqual Indians and Plaintiffs: a) when they failed to  
13 grant them their reserve in 1870; b) when they failed to protect them from white  
14 squatters; c) when they failed to preserve their aboriginal land from white  
15 squatters; d) when they allowed a white man to evict Jose Juan, Guadalupe and  
16 the San Pasqual Indians from their aboriginal land; e) when they failed to place  
17 the San Pasqual Indians on land that could sustain them; f) when they attempted  
18 to discourage Plaintiffs ancestors on their reserved land; g) when they obtained  
19 land that would limit the population of San Pasqual Indians to one or at most  
20 two families on the reservation; h) when they allowed non-San Pasqual Blood  
21 white Europeans to remain on the trust patented land, in spite of the fact that  
22 these non-San Pasqual blood persons refused to allow the San Pasqual Indians  
23 on their own land; i) when they acted without proper delegated authority and/or  
24 in excess of their delegated authority; and j) when they purposefully  
25 misrepresented facts to Group B Plaintiffs.

26           170. Defendants breached their fiduciary duty to Plaintiffs when they  
27 did not protect the land that was patented to the San Pasqual Indians pursuant to



1 Land Patent signed by President Taft. [Codified in Chapter 65 dated January 12,  
2 1891]. By allowing non San Pasqual blood persons and their descendants to  
3 squat on this patented land, the Defendants failed to protect the land for the use  
4 of the San Pasqual Indians. [See 25 U.S.C. §345 - Indians entitled to an  
5 allotment of land.] One cannot possess by adverse possession trust patented land  
6 of Federally recognized Indians or their tribe. That is essentially what the  
7 Defendants have allowed, under the guise of enrolling non-San Pasqual people  
8 in the BAND and allowing them to continue to occupy the San Pasqual land.

9 171. The Defendants breached their fiduciary duty to Group B Plaintiffs  
10 by promulgating Section 48.5(f) without allowing that paragraph to be  
11 available for public review and review by the Enrollment Committee and to  
12 make comments.

13 172. The Defendants breached their fiduciary duty to Group A Plaintiffs  
14 when they denied Plaintiffs due process of law and failed to follow the statutory  
15 requirements regarding notice, appeal, and a hearing when: a) DUTSCHKE  
16 failed to notify Group A Plaintiffs of her factually erroneous decision that  
17 Modesta (Martinez) Contreras was only 3/4 blood San Pasqual Indian; b)  
18 Defendants', as alleged above, returned Group A Plaintiffs' enrollment  
19 applications to the Enrollment Committee without reviewing them and  
20 adjudicating them as required by statute; and c) DUTSCHKE returned Group A  
21 Plaintiffs' enrollment applications Fletcher [Moore] who returned them to the  
22 illegal and Constitutionally invalid Enrollment Committee, and without  
23 notifying Plaintiffs of their actions.

24 173. Defendants' actions denied Group A Plaintiffs the right to appeal  
25 any decision, has delayed Group A Plaintiffs' federal recognition of their  
26 enrollment into the BAND for more than twelve (12) years.

27 174. The Defendants breached their fiduciary duty to Group A and  
28

1 Group B Plaintiffs when they exceeded their authority and unconstitutionally  
2 misconstrued and manufactured statutory language and construction in order to  
3 enroll non-San Pasqual blood persons as members of the San Pasqual Band of  
4 Mission Indians, and allowed them to occupy the trust patented land, to the  
5 detriment of Plaintiffs.

6 175. The Defendants breached their duty to Group A Plaintiffs because  
7 they have not treated Plaintiffs with honesty and fairness as required; nor have  
8 they treated the Plaintiffs in the same manner that they treated the non-San  
9 Pasqual people they wrongfully enrolled in the BAND.

10 176. Defendants have violated numerous statutes as stated in this  
11 Complaint. These statutory violations are a violation of the duty of trust  
12 imposed upon the Defendants by statute, case law and internal Orders and  
13 Memorandum. As such Defendants, by breaching their statutory duty of trust,  
14 have violated Group A Plaintiffs' civil rights.

15 177. As a direct and proximate result of the breach of fiduciary duty by  
16 Defendants, and each of them, each Group A Plaintiff has been damaged  
17 because their applications for membership that were approved by the BAND,  
18 still have not been adjudicated or recognized by the Defendants.

19 178. As a direct and proximate result of the breach of fiduciary duty by  
20 Defendants, and each of them, each Group A Plaintiff has suffered damages in  
21 an amount currently unknown, but according to proof at the time of trial.

22 **NINTH CLAIM FOR RELIEF**  
23 **VIOLATION OF CIVIL RIGHTS**  
24 **DENIAL OF INHERITED TRIBAL PROPERTY RIGHTS**  
25 **(Group A Plaintiffs against all Defendants**  
26 **in their Official Capacity)**

27 179. Plaintiffs refer to and reallege Paragraphs 1 through 26, 27- 48, 54 -  
28 79, 98 - 136, 141 - 178 inclusive, of this Complaint, and incorporate the same by



1 reference as though fully set forth herein.

2 180. This Court has general Federal jurisdiction pursuant to Title 28  
3 U.S.C. §1331 because this is a civil action arising under the Constitution, laws, or  
4 treaties of the United States, specifically 25 C.F.R. §48 and the San Pasqual  
5 Constitution and 25 U.S.C. §2.

6 181. As a direct consequence of the failure of DUTSCHKE and other  
7 Defendants to Federally Recognize and confirm the enrollment of the Jose Juan  
8 descendant Group A Plaintiffs, they have been deprived of their Federal  
9 recognition; their inherent right to vote on tribal matters that affect them both  
10 directly and indirectly; their right to Federal housing grants and education  
11 scholarships and grants; their right to per capita payments; and all other benefits  
12 due them as Federally Recognized Native Americans. They have suffered this  
13 deprivation in violation of the Constitutional guarantees of equal protection and  
14 due process of law.

15 182. The Defendants, and each of them, have known that non-San  
16 Pasqual blood people have been living on the San Pasqual land and receiving  
17 benefits since 1910, while the true San Pasqual descendants have been denied  
18 their legal rights and Federal and Tribal benefits.

19 183. Defendants' actions in enrolling non-San Pasqual persons have  
20 denied Plaintiffs their property rights causing Group A Plaintiffs to suffer  
21 damages until they are federally recognized as members of the San Pasqual  
22 Mission Band of Indians.

23 ////

24  
25 ////

26  
27 ////





1 188. Plaintiffs refer to and reallege Paragraphs 1 through 187, inclusive,  
2 of this Complaint, and incorporate the same by reference as though fully set forth  
3 herein.

4 189. Plaintiffs bring this claim for Conspiracy to interfere with civil  
5 rights against DUTSCHKE and MOORE as individuals and Divers Unknown as  
6 individuals pursuant to *Bivens v. Six Unknown Named Agents of the Federal*  
7 *Bureau of Narcotics*, 403 U.S. 388 (1971).

8 190. There are no “special factors” to counsel this Court to hesitate to  
9 apply the *Bivens* action in this case because there is an absence of affirmative  
10 action by Congress to provide a substitute for recovering money damages for the  
11 Defendants’ constitutional violations.

12 191. Defendants DUTSCHKE and MOORE do not have any immunity to  
13 the allegations in this suit for violation of civil rights and conspiracy to violate  
14 civil rights because: 1) Their actions clearly violated “clearly established  
15 statutory or constitutional right of which a reasonable person would have  
16 known.” [25 C.F.R. §48]; and, b) The acts required in the statute are not  
17 discretionary, but are mandated by 25 C.F.R. §§48.8 and 48.9 as pled throughout  
18 this Complaint.

19 192. Defendants had full knowledge that their predecessors knew non-  
20 San Pasqual blood persons were occupying San Pasqual land and conspired to  
21 deny Plaintiffs their rightful inheritance as evidenced by the transcripts of the  
22 1955 State of California Legislative hearings regarding the California Indians.  
23 Leonard Hill, ( DUTSCHKE’s predecessor) as Pacific Regional Director of the  
24 BIA, Sacramento office testified, in part: “I don’t see . . . how the San Pasqual  
25 Band can be deprived of land patented to them by the Federal Government. . . .  
26 and, I would like to say there has never been an elected committee on the  
27 reservation, because there has only been this only family.”







1 Plaintiffs have been injured and have suffered damages and continue to suffer  
2 damages in an amount to be determined at trial.

3 206. In the alternative, Plaintiffs bring this claim against all Defendants  
4 in their official capacity under 42 U.S.C. §1981 because the Ninth Circuit has not  
5 held that 1981 claims against government employees are barred by sovereign  
6 immunity.

7  
8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, the Plaintiffs, and each of them pray judgment as follows:

10 **FIRST CLAIM FOR RELIEF - Violation of APA**

11 1. An order directing the Defendants, within thirty (30) days, to  
12 immediately adjudicate Group A Plaintiffs' applications for federal recognition  
13 as members of the San Pasqual Band of Mission Indians pursuant to 25 CFR  
14 §48, et. seq.

15 2. An Order directing the Defendants comport with 25 C.F.R.  
16 §61.11(b) that requires the Defendants to follow the original recommendations  
17 of the constitutionally valid Enrollment Committee, the San Pasqual General  
18 Council and the San Pasqual Business Committee in 2005..

19 **SECOND CLAIM FOR RELIEF - Violation of APA**

20 1. An order directing the Defendants to republish 25 C.F.R. 48.5  
21 in the form that was approved by the San Pasqual Council. [i.e. without section  
22 (f)].

23 **THIRD CLAIM FOR RELIEF - Declaratory relief, or in the alternative,  
Mandamus**

24 1. An order recognizing Jose Juan Martinez, Guadalupe Martinez, and  
25 Modesta (Martinez) Contreras as 4/4 blood San Pasqual Indian.

26 2. An order, or mandate, directing the Defendants to adjudicate, within  
27 thirty (30) days, Group A Plaintiffs' enrollment applications for federal



1 recognition as members of the San Pasqual Band of Mission Indians pursuant to  
2 25 CFR §48, et. seq. using the evidence Plaintiffs have produced to this Court  
3 and any other evidence the Plaintiffs have available to them.

4 3. An order directing the Defendants order the Pacific Regional  
5 Director [DUTSCHKE] to issue notice under 25 C.F.R. §48.9, and the Assistant  
6 Secretary (BLACK) to adjudicate Group A Plaintiffs' applications for federal  
7 recognition as members of the San Pasqual Band of Mission Indians within thirty  
8 (30) days, respectively.

9 4. An order directing the Defendants, pursuant to 25 C.F.R. §61.11(b),  
10 to affirm the original recommendations of the constitutionally valid Enrollment  
11 Committee, the San Pasqual General Council, and the San Pasqual Business  
12 Committee, unless there is a clear determination that the original  
13 recommendation was "clearly erroneous."

14 5. A Court order mandating that, pursuant to 25 C.F.R. §48.11, §48.12  
15 and §48.13, the Assistant Secretary order the Pacific Regional Director to enter  
16 Group A Plaintiffs' names on the federal rolls.

17 6. In the alternative, the Court order Defendants to federally recognize  
18 Group A Plaintiffs and add their names to the rolls of the San Pasqual Band of  
19 Mission Indians under §48.

20 **FOURTH CLAIM FOR RELIEF - Violation of Civil Rights:**  
21 **Unconstitutional Delegation, or no Delegation, of Duty, Authority, or**  
22 **Power.**

23 1. An Order by the Court that the acts of Defendants were not  
24 authorized by law and are therefore void and/or invalid and/or unenforceable.

25 2. An Order requiring all Defendants to produce the requisite  
26 documents delegating power/authority to them, the effective date of the  
27 delegation, the termination date of the delegation, and the exact powers

1 delegated.

2 3. Damages as allowed by law according to proof at trial.

3 **FIFTH CLAIM FOR RELIEF - Violation of Civil Rights: Due Process**

4 1. A finding by this Court that Defendants violated Group A Plaintiffs  
5 Due Process rights when Defendants, including Defendant DUTSCHKE, and  
6 Fletcher [Moore] failed to follow 25 CFR §48.8 and §48.9 and returned  
7 Plaintiffs' applications for federal recognition in the San Pasqual Band of  
8 Mission Indians to the illegally formed Enrollment Committee or the Tribal  
9 Council without adjudicating the applications.

10 2. A finding by this Court that Defendants, including Defendant  
11 DUTSCHKE, failed to give Group A Plaintiffs, who are the beneficiaries of their  
12 ancestors blood degree, notice that they denied the Tribe's request to increase  
13 Modesta (Martinez) Contreras' blood degree from 3/4 to 4/4.

14 3. An order or mandate directing the Defendants to adjudicate, within  
15 thirty (30) days, Group A Plaintiffs' applications for federal recognition as  
16 members of the San Pasqual Mission Band of Indians pursuant to 25 CFR §48,  
17 et. seq.

18 4. An Order directing the Defendants apply 25 C.F.R. §61.11(b) that  
19 the original recommendations of the constitutionally valid Enrollment  
20 Committee, and San Pasqual General Council, shall be accepted by the  
21 Defendants unless there is a clear determination that the original  
22 recommendation was "clearly erroneous."

23 5. Money damages as allowed by law and according to proof at trial.

24 **SIXTH CLAIM FOR RELIEF- Violation of Civil Rights: Due Process**

25 1. An order directing the Defendants to adjudicate Group A Plaintiffs'  
26 applications for federal recognition as members of the San Pasqual Mission Band  
27 of Indians pursuant to 25 CFR §48, et. seq.



1           2.     An Order directing the Defendants, pursuant to 25 C.F.R. §61.11(b),  
2 that the original recommendations of the constitutionally valid Enrollment  
3 Committee, and San Pasqual General Council, shall be accepted by the  
4 Defendants unless there is a clear determination that the original  
5 recommendation was “clearly erroneous.”

6           3.     Money damages as allowed by law and according to proof at trial.  
7

8 **SEVENTH CLAIM FOR RELIEF - Violation of Civil Rights: Equal**  
9 **Protection**

10           1.     An order directing the Defendants to re-publish 25 C.F.R. §48  
11 without 48.5(f).

12           2.     Money damages as allowed by law and according to proof at trial.

13 **EIGHTH CLAIM FOR RELIEF - Breach of Fiduciary Duty**

14           1.     Damages in an amount to be proven at trial.

15 **NINTH CLAIM FOR RELIEF - Violation of Civil Rights: Property Rights**

16           1.     Money damages as allowed by law and according to proof at trial.

17 **TENTH CLAIM FOR RELIEF - Violation of Civil Rights: Diminution of**  
18 **Tribal Rights**

19           1.     Money damages as allowed by law and according to proof at trial.

20 **ELEVENTH CLAIM FOR RELIEF - Conspiracy to Interfere with Civil**  
21 **Rights Pursuant to 42 U.S.C. § 1985(3)**

22           1.     Damages as allowed by law to be proven at the time of trial.

23           2.     Punitive damages as allowed by law against the individually named  
24 defendants.

25 **ALL CLAIMS FOR RELIEF**

26           1.     For attorney fees pursuant to the Equal Access to Justice Act, 28  
27 U.S.C. § 2412, and related statutes;

28           2.     For costs of suit herein; and

