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11 Attorneys for Plaintiffs

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

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,	)	FOURTH AMENDED
18	Christopher Alvarado, an individual,	)	COMPLAINT FOR:
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,	)	DAMAGES FOR VIOLATION
27	Tony Alvarado, an individual,	)	OF CIVIL RIGHTS:
28	Vincent Alvarado, an individual,	)	FIFTH AMENDMENT-
	Kristy Maria Anaya, an individual,)	EQUAL PROTECTION.
	Peggy Avila, an individual,)	
	Carlos Blanco, an individual,)	

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- 2 Ernesto Blanco, an individual,)
- 3 Juan Blanco, an individual,)
- 4 Ray Blanco, an individual,)
- 5 Remedios Blanco, an individual,)
- 6 Sylvia Blanco, an individual,)
- 7 Theresa Blanco-Murillo, an individual)
- 8 Valerie Boyle, an individual,)
- 9 Melvin Cannon, an individual,)
- 10 David Cardenas, an individual,)
- 11 Anthony Chaloux, an individual,)
- 12 Melissa Chaloux, an individual,)
- 13 Nathan Chaloux, an individual,)
- 14 Shonta Chaloux, an individual,)
- 15 Amanda Chavez, an individual,)
- 16 April Chavez, an individual,)
- 17 David Chavez, an individual,)
- 18 Lisa Chavez, an individual,)
- 19 Jeremy Clay, an individual,)
- 20 Jessica Clay, an individual,)
- 21 Julian Clay, an individual,)
- 22 Bruce Roy Clay, an individual,)
- 23 Andrea Contreras, an individual,)
- 24 Andrew Contreras, an individual,)
- 25 Charles Contreras, an individual,)
- 26 Demitron Contreras, an individual,)
- 27 Johnny Contreras, an individual,)
- 28 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,)

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

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

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,)
29 Gloria Zwicker, an individual,)
30 and ROE Plaintiffs 1-400, inclusive.)
31)
32 Plaintiffs,)
33 v.)
34)
35 UNITED STATES OF AMERICA;)
36 DEPARTMENT OF INTERIOR;)

v

1
2 MICHAEL BLACK,¹ Acting)
Assistant Secretary of the Department)
3 of Interior - Indian Affairs, in his)
4 official capacity; WELDON)
LOUDERMILK,² Director Bureau)
5 of Indian Affairs, in his official)
6 capacity; AMY DUTSCHKE,)
7 Pacific Regional Director,)
Department of Interior, Indian Affairs)
8 - in her official capacity;)
9 JAVIN MOORE, Superintendent of)
the Department of Interior -)
10 Indian Affairs, Southern California)
11 Agency, in his official capacity, and)
DOE Defendants 1 through 200,)
12 inclusive,)
13)
14 Defendants.)
15)

16 **TABLE OF CONTENTS TO**
17 **FOURTH AMENDED COMPLAINT**

18 I JURISDICTION AND VENUE 1
19 II THE PARTIES 3
20 III SUBSTANTIVE ALLEGATIONS GROUP A PLAINTIFFS 9
21 RE: VIOLATION OF APA; DUE PROCESS
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24
25 ¹Substituted for LAWRENCE ROBERTS.

26 ²Substituted for MICHAEL BLACK

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IV SUBSTANTIVE ALLEGATIONS GROUP A PLAINTIFFS 15

AND GROUP B PLAINTIFFS

RE: FIFTH AMENDMENT EQUAL PROTECTION

V CLAIMS FOR RELIEF 19

A FIRST CLAIM FOR RELIEF: 19
VIOLATION OF ADMINISTRATIVE
PROCEDURES ACT - (Group A Plaintiffs
Against USA, DOI, DUTSCHKE, MOORE,
ZINK, BLACK, LOUDERMILK,
in their official capacity)

B SECOND CLAIM FOR RELIEF: 24
DECLARATORY RELIEF, OR, IN THE
ALTERNATIVE, MANDAMUS
(Group A Plaintiffs against all Defendants
in their official capacity)

C THIRD CLAIM FOR RELIEF: 28
VIOLATION OF CIVIL RIGHTS
VIOLATION OF EQUAL PROTECTION
(Group A Plaintiffs against all Defendants,
in their official capacity;
Group B Plaintiffs against all Defendants in
their official capacity).

PRAYER FOR RELIEF 39

JURY TRIAL DEMANDED 41

PROOF OF ELECTRONIC SERVICE

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. Plaintiffs bring their Federal Question claims for violation of Civil
18 Rights under 28 U.S.C. §1343 and the Fifth Amendment to the United States
19 Constitution.

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

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

5 8. This Court has jurisdiction to award monetary relief pursuant to 28
6 U.S.C. §1500.

7 9. Venue in this Court under Title 28 U.S.C. §1391(e)(1) is proper in
8 that the action is against Defendants who are Federal agencies: the United States,
9 the Department of the Interior-Bureau of Indian Affairs, and the Defendant
10 officials acting in their official capacity under color of legal authority of an agency
11 of the United States maintaining a presence in this jurisdiction. No real property is
12 involved in this action.

13 10. Venue is proper in this Court because all but seven Plaintiffs live in
14 in San Diego County. For those who do not live in San Diego County Diversity
15 Venue is proper. Venue is proper in this District pursuant to 28 U.S.C. §1391
16 because a substantial part of the events and omissions giving rise to this action
17 occurred in this District. And, the location of the Native American Indian
18 Reservation that is the subject matter of the action is located in this district. The
19 San Pasqual Band of Mission Indians is a Federally recognized reservation and is
20 geographically located in the County of San Diego, State of California.

21 11. Plaintiffs are the beneficiaries of their ancestors' 4/4 blood of San
22 Pasqual Indian. [Jose Juan Martinez, Guadalupe (Alto) Martinez, and Modesta
23 (Martinez) Contreras]. As beneficiaries of their ancestor's blood line they have
24 suffered harm as a direct result of the Defendants' actions, inactions, illegal
25 actions, violations of statutory mandates, and violations of the Fifth Amendment.
26 Therefore, Plaintiffs have standing to bring the following causes of action.

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II

THE PARTIES

Plaintiffs

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

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

Group A – Adult individuals identified on the Tribe’s Membership Roll, but not Federally Recognized by the Bureau of Indian Affairs as members of the San Pasqual Band of Mission Indians. Members of Group A qualify for enrollment with the Tribe, but their applications for Enrollment, although approved by the Tribal Enrollment Committee, the Tribal Business Committee, and the Tribal General Council, have not been processed or approved by the Defendants [The United States, The Department of Interior - Bureau of Indian Affairs, Black, Loudermilk, Dutschke, and Moore].

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

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

1 CARLOS BLANCO (621); ERNEST BLANCO (572); JUAN BLANCO (603);
2 RAY BLANCO (437); REMEDIOS BLANCO (*)¹; SYLVIA BLANCO (*);
3 THERESA BLANCO-MURILLO (*); VALERIE BOYLE (508); MELVIN
4 CANNON (587); DAVID CARDENAS (568); ANTHONY CHALOUX (454);
5 MELISSA CHALOUX (456); NATHAN CHALOUX (458); SHONTA
6 CHALOUX (453); APRIL CHAVEZ (447); AMANDA CHAVEZ (448); DAVID
7 CHAVEZ (576); LISA CHAVEZ (440); BRUCE ROY CLAY (567); JEREMY
8 CLAY (564); JESSICA CLAY (569); JULIAN CLAY (566); ANDREA
9 CONTRERAS (*); ANDREW CONTRERAS (466); CHARLES CONTRERAS
10 (474); DEMITRO CONTRERAS (555); JOHNNY CONTRERAS (465); JONAH
11 CONTRERAS (464); MICHAEL CONTRERAS (577); PAUL CONTRERAS, IV
12 (470); RICARDO CONTRERAS (467); RITA CONTRERAS (469); ROCHELLE
13 CONTRERAS (472); ROSEANNE CONTRERAS (471); RUDY CONTRERAS,
14 JR (473); SAMUEL CONTRERAS (462); EVELYN CUNNINGHAM (479);
15 ERIK DELGADO (477); JOHNNY RUBEN DELGADO (476); ROSE
16 DELGADO (475); FELICIA DURKIN (455); SHIANNE ELAM (548); WYATT
17 ELAM (549); SARA M. ESCARCEGA (494); LIBBY FLORES (533);
18 RICHARD FLORES (535); RUBEN GONZALEZ, JR. (538); MARY HERRERA
19 (620); JOHN HUGHES (526); BERNADETTE JOHNSON (545); JASON
20 LAVIGNE (542); JUAN LUCERO (504); VIRGIL LUCERO (505); AMBER
21 MAJEL (632); ANGELINA MARTINEZ (490); HILARIO MARTINEZ (488);
22 LINDA MARTINEZ-VANDERVEF (*); PAUL MARTINEZ (489); RUBEN
23 MARTINEZ (491); VALERIE MARTINEZ (521); SARAH MENDOZA (494);
24 JAMIE MILLER (547); JEFFREY MILLER (546); DANIEL MORALES, JR
25 (544); DESIREE MORALES (553); FREDERICK MURILLO, III (*); JOSEPH

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

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

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

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1 16. At all times mentioned in this complaint Group A Plaintiffs, as direct
2 descendants of Jose Juan, Guadalupe and Modesta (Martinez) Contreras, meet the
3 necessary blood criteria for enrollment in the San Pasqual Mission Band of
4 Indians pursuant to Title 25 C.F.R. §48.5, having no less than 1/8 degree of San
5 Pasqual blood and are therefore entitled to be federally recognized as members of
6 the San Pasqual Band of Mission Indians. Group A Plaintiffs have been held to a
7 higher standard of membership to be federally recognized than those who were
8 given membership under 25 C.F.R. §48.5(f), which is incorporated into the San
9 Pasqual Constitution, in violation of the Fifth Amendment guarantee to equal
10 protection of the law.

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

20 18. All members of Group B Plaintiffs are residents of San Diego Couty
21 and are federally recognized enrolled members of the San Pasqual Band of
22 Mission Indians. Group B Plaintiffs have been held to a higher standard of
23 membership to be federally recognized than those who were given membership
24 under 25 C.F.R. §48.5(f), which is incorporated into the San Pasqual Constitution,
25 in violation of the Fifth Amendment guarantee to equal protection of the law. As a
26 result of this discrimination, Group B Plaintiffs have been denied their full
27

1 benefits of membership including, but not limited to, monthly income.

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

5 **Defendants**

6 20. Defendant UNITED STATES OF AMERICA, is a governmental
7 entity established pursuant to the United States Constitution and the laws of the
8 United States. Defendant DEPARTMENT OF THE INTERIOR (hereinafter
9 "DOI"), as defined in 25 C.F.R. 48.2(a), is responsible for the supervision of the
10 various federal agencies and bureaus within the Department of Interior, including
11 the Bureau of Indian Affairs. The DOI has a direct statutory duty to carry out the
12 provisions under Title 25 C.F.R. §48 including 48.2(a).

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

26 22. Defendant WELDON LOUDERMILK (hereinafter
27 "LAUDERMILK" is presently the Director of the Bureau of Indian Affairs within

1 the Department of State, as defined in 25 C.F.R. §48.2(b). Defendant
2 LOUDERMILK is responsible for the day-to-day operations of the BIA.
3 LOUDERMILK was preceded by Michael Black [4/25/2010 - 2016], and W.
4 Patrick Ragodale [2005-2010] who served in the position as Director of the
5 Bureau of Indian Affairs at all times mentioned in this Compliant.
6 LAUDERMILK is being sued in his official capacity.

7 23. Defendant AMY DUTSCHKE (hereinafter “DUTSCHKE”) is
8 presently the Pacific Regional Director (Sacramento), Department of Interior-
9 Indian Affairs, as defined in 25 C.F.R. §48.2(c). DUTSCHKE was acting Director
10 in 2006 and has been the named Director since 2010. DUTSCHKE is an enrolled
11 member of the Ione Band of Miwok Indians in California and has been serving as
12 the Office’s Deputy Regional Director for **Trust Services** since June of 2000. As
13 the Deputy Regional Director, DUTSCHKE was responsible for the day-to-day
14 management of the BIA’s trust programs. On information and belief, Plaintiffs
15 allege that it was DUTSCHKE who, among others, denied the Enrollment
16 Committee’s request to **CORRECT** Modesta Martinez’s blood from $\frac{3}{4}$ to $\frac{4}{4}$. She
17 also denied the Enrollment Committee’s request to confirm Group A Plaintiffs’
18 enrollment and Federal recognition. It was DUTSCHKE who, among others,
19 failed to give Group A Plaintiffs the required statutory notice of her actions. It was
20 DUTSCHKE who on April 7, 2006, sent the paperwork for Group A Plaintiffs’
21 applications to Washington, D.C. without adjudicating their applications. On April
22 21, 2006 Fletcher (MOORE) returned Group A Plaintiffs’ applications to the
23 unconstitutional and illegal Enrollment Committee without adjudicating Group A
24 Plaintiffs’ applications in violation of 25 U.S.C. §48.8. DUTSHCKE is being sued
25 in her official capacity.

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

1 as defined in 25 C.F.R. §48.2(d).. Defendant MOORE (hereinafter “MOORE”) is
2 responsible for the day-to-day operations of the BIA, Southern California Agency.
3 He was preceded in this position by: Robert Eben (2013-2016), James Fletcher
4 (2005 - unknown time), and others presently unknown to Plaintiffs, who served in
5 this position at all times mentioned in this complaint. MOORE is being sued in
6 his official capacity.

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

12 26. The named Defendants have the statutory authority, and it is within
13 their power, to adjudicate Plaintiffs applications, and review the erroneous
14 enrollments of non-San Pasqual individuals. Yet, they refuse to act pursuant to
15 statutory mandates as specified in the Administrative Procedures Act [APA] and
16 the Fifth Amendment to the United States Constitution.

17 III

18 SUBSTANTIVE ALLEGATIONS - GROUP A PLAINTIFFS

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

22 28. Group A Plaintiffs are the direct descendants of Jose Juan Martinez
23 (“Jose Juan”), Guadalupe Martinez (“Guadalupe”), and their daughter Modesta
24 Martinez Contreras (“Modesta”). [Collectively referred to as the “Martinez
25 Ancestors”]. Each of Group A Plaintiffs’ Martinez Ancestors are full blood San
26 Pasqual Indians and are historic members of the San Pasqual Band of Mission
27 Indians. [“BAND”]. Group A Plaintiffs are also entitled to enrollment and federal

1 recognition under CFR § § 48.5 - 48.10] which are incorporated into the Band's
2 Tribal Law.

3 29. Pursuant to Title 25, C.F.R. §48 [Exhibit 1], which is incorporated
4 into the BAND's constitution [Exhibit 2], in 2005, Plaintiffs submitted their
5 applications for enrollment to the Constitutionally valid elected Enrollment
6 Committee. [Exhibit 3: Declaration of James Quisquis ¶¶ 17, 18 (incorporated
7 herein)]. After considering historical documents in its possession, as well as newly
8 discovered documents such as the 1955 San Pasqual Census (the only census to
9 state blood degrees of the San Pasqual Indians), the Enrollment Committee
10 unanimously voted that Group A Plaintiffs had sustained their burden of proof
11 establishing they were qualified for enrollment. [Exhibit 3: Declaration of James
12 Quisquis ¶¶12, 13, 26 (incorporated herein)].

13 30. The Enrollment Committee's determination was predicated on a
14 finding that Plaintiffs' ancestor Modesta's blood degree should be increased from
15 $\frac{3}{4}$ to $\frac{4}{4}$ based on all historical documents; because both of her parents were full
16 blood San Pasqual Indians, based upon the totality of the documentary evidence.
17 The Enrollment Committee took its determination to the Tribe's General Council
18 which unanimously agreed with the Enrollment Committee on April 10, 2005,
19 exercising its rights under *Santa Clara Pueblo v. Martinez* (1978) 426 U.S.49, .
20 [Exhibit 3, Id. J. Quisquis Declaration].

21 31. On September 12, 2005, the Tribe's Business Committee, carrying
22 out the mandates of the General Council, wrote to James Fletcher ("Fletcher"),
23 [predecessor to Defendant MOORE] Superintendent of the Southern California
24 Agency, stating it concurred with the Enrollment Committee and General Council.
25 [Exhibit 4] Under 25 CFR §48 and the Tribal Constitution, Group A Plaintiffs
26 were eligible to be enrolled and Federally recognized San Pasqual Indians. Under
27 25 CFR §61.11(b) the Defendants were required to accept the Tribal

1 recommendations, unless the recommendation was “clearly erroneous”. There is
2 no record of any finding by the Defendants that the Tribal recommendation to
3 enroll Group A Plaintiffs is “**clearly erroneous**”. [Exhibit 3, Declaration of James
4 Quisquis, ¶¶13, 18 (incorporated herein)].

5 32. Ten days later, on September 22, 2005, the Enrollment Committee
6 submitted a letter to Fletcher [MOORE], requesting that the BIA correct
7 Modesta’s blood degree from 3/4 to 4/4 degree San Pasqual blood. [25 C.F.R.
8 48.14(c).] This letter along with Group A Plaintiffs’ applications was hand
9 delivered to Fletcher. [Exhibit 3, Declaration of James Quisquis, ¶24 (incorporated
10 herein)].

11 33. Although the Defendants were required by statute to respond to this
12 letter dated September 22, 2005 within thirty days, the Defendants did not respond
13 to this letter until December 8, 2005. In its response James Fletcher [MOORE]
14 (Supervisor-Riverside) stated “the preponderance of the evidence does not
15 sufficiently demonstrate that Modesa is full blood.” Fletcher’s finding did not
16 meet the statutory requirement of a “**clearly erroneous**” decision.

17 34. James Fletcher’s [MOORE] December 8, 2005, letter was only sent to
18 the Pacific Regional Director, Amy Dutschke. (“DUTSCHKE”). It was not sent to
19 Group A Plaintiffs. [Exhibit 5, Declaration of Plaintiffs ¶¶9, 10, 11 (incorporated
20 herein)].

21 35. On January 31, 2006, DUTSCHKE summarily concurred with
22 Fletcher [Riverside] that Modesta was not full blood San Pasqual Indian.
23 DUTSCHKE did not give notice to the Plaintiffs and did not allow the Plaintiffs to
24 submit their significant evidence in support of their position in violation of 25
25 C.F.R. § 48.9. The notice mandate was followed when Group A Plaintiffs’
26 twenty-two (22) cousins filed their applications, as well as subsequent cousins of
27 other blood lines. In fact, the Defendants allowed other descendants to submit
28

1 their documents to support their enrollment. This statutory requirement was not
2 offered to Group A Plaintiffs in violation of the Fifth Amendment Equal
3 Protection clause of the U.S. Constitution. [Exhibit 5, ¶8; Exhibit 6: Declaration of
4 Ann Chehahtah Quisquis, ¶¶7, 9, 10, 12, (incorporated herein)].

5 36. On April 7, 2006, Defendant DUTSCHKE, claiming that she received
6 documents from “all parties”, made a misrepresentation because the Plaintiffs’
7 were not given notice to provide documents, acted outside of her appointed
8 authority, as Pacific Regional Director - Indian Affairs, and denied the BAND’s
9 request to increase Modesta’s blood degree and enroll Group A Plaintiffs.

10 37. Acting Assistant Deputy Secretary of Indian Affairs Michael Olson
11 stated that the April 7, 2006 decision was final for the BIA.

12 38. Between April 7, 2006, and the present time neither DUTSCHKE, nor
13 any of the other Defendants, provided Plaintiffs with written notice of any of these
14 determinations as required by 25 C.F.R. §48.9. Thus denying Group A Plaintiffs
15 their Fifth Amendment rights. [See Exhibits 3, 4, 5].

16 39. Title 25 C.F.R. §48.8 **mandates**: The Director **shall** review the
17 reports and recommendations of the Enrollment Committee and **shall determine**
18 the applicants who are eligible for enrollment in accordance with the provisions of
19 §48.5. The Director **shall** transmit for review to the Commissioner and for **final**
20 **determination** by the Secretary, the reports and recommendations of the
21 Enrollment committee relating to applicants who have been determined by the
22 Director to be eligible for enrollment against the report and recommendations of
23 the Enrollment committee relative to applicants who have been determined by the
24 Director not to be eligible for enrollment against the reports and recommendations
25 of the Enrollment committee, with a statement of the reasons for this
26 determination. [Emphasis added]. (Exhibit 1 - 25 C.F.R. §48 (1960); Exhibit 2 -
27 San Pasqual Constitution). Title 25 C.F.R. §48.9 **mandates**: “If the director
28

1 determines an applicant is not eligible for enrollment in accordance with the
2 provisions of §48.5 he **shall** notify the applicant in writing of his determination
3 and the reasons therefor.” [Emphasis added]. Further, 25 C.F.R. §48.10 mandates
4 that the [Commissioner] shall provide notice to the appellants and the appellants
5 shall have thirty (30) days in which to appeal. In addition to DUTSCHKE,
6 Michael Olsen failed to provide notice to Plaintiffs’ of his April 7, 2006 letter.

7 40. DUTSCHKE, in violation of the statutory requirements set out in 25
8 C.F.R. §48, returned Group A Plaintiffs’ unadjudicated applications to the new
9 illegally formed Enrollment Committee.

10 41. Without written notice to Group A Plaintiffs, Fletcher [MOORE]
11 returned Group A Plaintiffs’ unadjudicated applications to the unconstitutional
12 and illegally formed Enrollment Committee. Thereafter, the non-San Pasqual
13 blood persons who have been erroneously and illegally enrolled by the Defendants
14 under 25 C.F.R. §48.5(f) [which is unconstitutional] caused an illegal moratorium
15 to be placed on enrollment decisions. The Defendants, by their inaction, have
16 allowed this moratorium to prevent Group A Plaintiffs from having their
17 applications adjudicated in violation of 25 C.F.R. §48.

18 42. Because the Defendants erroneously enrolled non-San Pasqual blood
19 persons under the unconstitutional 25 C.F.R. §48.5(f), the non-San Pasqual
20 persons have been able to gerrymander the BAND’s government due to their
21 powerful voting block and ability to “pay off” by way of lucrative positions in the
22 tribal government and threaten those who would disagree with them.

23 43. As a direct result of the Defendants illegal and unconstitutional acts,
24 the non San Pasqual blood persons have been able to vote themselves into
25 positions of power within the BAND, including dismissing the legally valid and
26 constitutionally formed Enrollment Committee in 2006 and installing an illegal
27 enrollment committee.

1 44. On October 1, 2014, and May 27, 2015, Plaintiffs received responses
2 to the two FOIA requests they had filed in order to ascertain the status of their
3 applications. It was only through their FOIA requests that Plaintiffs discovered
4 DUTSCHKE's negative determination and the April 7, 2006, letter. Having
5 enrolled and federally recognizing twenty-two of their cousins, in addition to
6 other's from the April 10, 2005 meeting, Defendants denied Group A Plaintiffs the
7 equal protection of the law as guaranteed by the Fifth Amendment.

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

15 46. On or about May 6, 2016, Plaintiffs, who are the Descendants of Jose
16 Juan Martinez, his wife Guadalupe Martinez, and their daughter Modesta
17 (Martinez) Contreras, met with Superintendent MOORE, Morris Smith who had
18 been appointed Tribal Operations, and Tina Salinas, Assistant Tribal Operations.
19 Morris Smith requested Group A Plaintiffs resubmit their §2.8 appeal and
20 documents to Riverside, and told Group A Plaintiffs to "make it simple."

21 47. Plaintiffs supplied the documents as requested on May 23, 2016, but
22 have not received any response from the Defendants regarding the submission of
23 those enrollment documents. Plaintiffs have exhausted their administrative
24 remedies. [Exhibit 8].

25 48. After Plaintiffs filed their original complaint in this case (16-cv-
26 2442), a declaration was submitted by MOORE, on or about May 23, 2016, with
27 attached Exhibits that had been supplied by Group A Plaintiffs. These documents
28

1 gave Defendants the ability to adjudicate their enrollment applications. Defendants
2 still have not satisfied the statutory mandates.

3 49. By failing to federally recognize and add to the San Pasqual rolls Group
4 A Plaintiffs pursuant to 25 C.F.R. §48.5, which is Tribal law, and instead enrolling
5 non San Pasqual blood individuals under §48 into the San Pasqual Tribe,
6 Defendants have denied Group A Plaintiffs their Fifth Amendment Rights to
7 Equal Protection of the Law because 25 C.F.R. §48(f) was used to enroll non San
8 Pasqual blood individuals into the Tribe. Since it was not applied to Group A
9 Plaintiffs, C.F.R. §48.5(f) created an entirely different set of blood requirements
10 [i.e. the person did not need to have any San Pasqual blood] that were lower than
11 the blood requirements being applied to Group A Plaintiffs [Plaintiffs have to have
12 1/8 San Pasqual Indian Blood] resulting in a denial of Group A Plaintiffs' equal
13 protection rights.

14
15 **IV**
SUBSTANTIVE ALLEGATIONS -
GROUP A AND GROUP B PLAINTIFFS
EQUAL PROTECTION
16

17 50. Group B Plaintiffs refer to and reallege paragraphs 1 through 26,41-
18 43, and 49 inclusive, of this complaint and incorporates the same by reference as
19 though fully set forth at length herein.

20 51. The true San Pasqual Indians negotiated and wanted assurances in
21 the proposed enrollment regulations that in order to be enrolled in the San Pasqual
22 Tribe, one must possess no less than 1/8 **blood of the San Pasqual Band**. The
23 BIA agreed, and published on July 29, 1959, in the Federal Register, Proposed
24 Rule Making, Department of the Interior, Bureau of Indian Affairs, 25 CFR Part
25 48, Enrollment of the San Pasqual Band of Mission Indians In California. This
26 was the enrollment statute that the true San Pasqual Indians had negotiated and
27 agreed upon. [Exhibit 9].