

MORGAN, LEWIS & BOCKIUS LLP
Bryan M. Killian, Bar No. 989803
1111 Pennsylvania Ave. NW
Washington, D.C. 20004-2541
Telephone: +1.202.739.3000
Facsimile: +1.202.739.3001
bryan.killian@morganlewis.com

MORGAN, LEWIS & BOCKIUS LLP
Colin C. West (*pro hac vice forthcoming*)
colin.west@morganlewis.com
Ella Foley Gannon (*pro hac vice forthcoming*)
ella.gannon@morganlewis.com
Thomas F. Gede (*pro hac vice forthcoming*)
tom.gede@morganlewis.com
Louis Y. Lee (*pro hac vice forthcoming*)
louis.lee@morganlewis.com
One Market, Spear Street Tower
San Francisco, CA 94105-1596
Telephone: +1.415.442.1000
Facsimile: +1.415.442.1001

Attorneys for Plaintiffs
California Valley Miwok Tribe, Marie Diane Aranda, Joshua
Fontanilla, Yolanda Fontanilla, Michael Mendibles, Bronson
Mendibles, Jasmine Mendibles, Leon Mendibles, Christopher
Russell, and Rosalie Russell

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

CALIFORNIA VALLEY MIWOK TRIBE
2000 Allston Way, #401
Berkeley, California 94701

MARIE DIANE ARANDA
2000 Allston Way, #401
Berkeley, California 94701

JOSHUA FONTANILLA
2000 Allston Way, #401
Berkeley, California 94701

YOLANDA FONTANILLA
2000 Allston Way, #401
Berkeley, California 94701

MICHAEL MENDIBLES
2000 Allston Way, #401
Berkeley, California 94701

Case No. 22-cv-1740

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 BRONSON MENDIBLES
2000 Allston Way, #401
2 Berkeley, California 94701

3 JASMINE MENDIBLES
2000 Allston Way, #401
4 Berkeley, California 94701

5 LEON MENDIBLES
2000 Allston Way, #401
6 Berkeley, California 94701

7 CHRISTOPHER RUSSELL
2000 Allston Way, #401
8 Berkeley, California 94701

9 ROSALIE RUSSELL
2000 Allston Way, #401
10 Berkeley, California 94701

11 Plaintiffs,

12 v.

13 DEB HAALAND, U.S. Secretary of the
Interior
14 Department of the Interior
1849 C Street, N.W.
15 Washington, DC 20240

16 BRYAN NEWLAND, Assistant Secretary for
Indian Affairs
17 Department of the Interior
1849 C Street, N.W.
18 MS-4660-MIB
19 Washington, DC 20240

20 AMY DUTSCHKE, Regional Director, Bureau
of Indian Affairs
21 Pacific Regional Office – Bureau of Indian
Affairs
2800 Cottage Way, Room W-2820
22 Sacramento, CA 95825

23 HARLEY LONG, Superintendent, Central
California Agency, Bureau of Indian Affairs
24 650 Capitol Mall, Suite 8-500
25 Sacramento, CA 95814

26 Defendants.

27 Plaintiffs California Valley Miwok Tribe, Marie Diane Aranda, Joshua Fontanilla,
28 Yolanda Fontanilla, Michael Mendibles, Bronson Mendibles, Jasmine Mendibles, Leon

Mendibles, Christopher Russell, and Rosalie Russell, (“Plaintiffs”) allege as follows:

I. INTRODUCTION

1. This case arises from unlawful agency decision by Assistant Secretary of the Interior – Indian Affairs Bryan Newland (“AS-IA Newland”), which decision (“Newland Decision”)¹ wrongfully changed the groups of individuals eligible to participate in the organization of the California Valley Miwok Tribe (“CVMT” or “Tribe”), just when the CVMT thought it finally had a clear path to resolving longstanding membership disputes and formally organizing.

2. The CVMT is an Indian tribe that has been federally recognized since 1915 but has been unsuccessful—despite numerous attempts—in organizing under the Indian Reorganization Act of 1934 (“IRA”). As noted, those efforts have been stifled by a long history of leadership and membership disputes, including numerous litigations.

3. Because of the Tribe’s failure to organize under the IRA, the Tribe—including Plaintiffs—have been deprived of potential economic development, tribal welfare programs, and collecting revenue and income designated for their use, among other things.

4. On December 30, 2015, former Assistant Secretary – Indian Affairs Kevin Washburn (“AS-IA Washburn”) made a determination (“Washburn Determination”)² that finally resolved the Tribe’s membership disputes by enumerating three groups of individuals eligible to participate in the Tribe’s organizational process (“Eligible Groups”).

5. The Washburn Determination verified that the Eligible Groups consist of the same and only individuals who had already been federally recognized as the Tribe for a century: first in 1915, when the Bureau of Indian Affairs (“BIA”), through special agent John Terrell, prepared a census of Indians living in Sheep Ranch, California (“1915 Census”); then in 1916, when the United States purchased land in Sheep Ranch (“Rancheria”) for those Indians identified in the 1915 Census; the 1935 vote of the Tribe to adopt the IRA; and then through other events such as a

¹ A true and correct copy of the Newland Decision is attached hereto as **Exhibit A**.

² A true and correct copy of the Washburn Determination is attached hereto as **Exhibit B**.

1 1967 distribution of Rancheria assets and a 2007 BIA Notice identifying Indians eligible to vote
2 in the organizing of a formal government structure.

3 6. In defining the Eligible Groups, AS-IA Washburn concluded the “Tribe’s
4 membership is properly drawn from the Mewuk Indians for whom the Rancheria was acquired
5 and their descendants.” Plaintiffs are all members of one of the Eligible Groups, as they are
6 descendants of Rose Davis, one of the Indians for whom the Sheep Ranch Rancheria was
7 acquired.

8 7. The Washburn Determination was in turn challenged by a group of individuals
9 outside the Eligible Groups and upheld by federal courts in the Eastern District of California and
10 the Ninth Circuit Court of Appeals. *See California Valley Miwok Tribe v. Zinke*, Civ. No. 2:16-
11 01345 WBS CKD, 2017 WL 2379945 (E.D. Cal. June 1, 2017), *aff’d*, 745 F. App’x 46 (9th Cir.
12 2018).

13 8. Plaintiffs, after enduring further disputes in 2019—where the BIA invalidated an
14 attempted Secretarial Election by individuals not in the Eligible Groups—thought they at last
15 were on their way to gaining long-deprived status and benefits under the IRA.

16 9. Plaintiffs contacted the BIA throughout most of 2020 and 2021 to facilitate the
17 Tribe’s organization efforts, including a Secretarial Election. Finally, in December 2021, the BIA
18 issued a public notice stating it would assist “with organization of a formal government structure
19 by individuals who are eligible to participate in such a process, *consistent with the December 30,*
20 *2015 decision by the Assistant Secretary – Indian Affairs* [i.e., Washburn Determination].”³
21 (emphasis added).

22 10. But on March 28, 2022, the BIA unexpectedly informed Plaintiffs that AS-IA
23 Newland ordered a “pause” in organizing that Secretarial Election.

24 11. On May 31, 2022, AS-IA Newland issued the Newland Decision. The Newland
25 Decision, without any justification, added an inappropriate Eligible Group to the three Eligible
26 Groups already enumerated six-and-a-half years prior in the Washburn Determination. This new
27

28 ³<https://www.bia.gov/sites/default/files/dup/assets/bia/pacreg/cca/Dec%202021%20Notice%20for%20Eligible%20Individuals.pdf>

1 Eligible Group ushers in individuals descended from those listed in an unrelated 1929 census of
 2 Calaveras County Indians (“1929 Census”), most of whom have no logical connection to the
 3 “Indians for whom the Rancheria was acquired and their descendants.”

4 12. As discussed in more detail below, the Newland Decision wrongly assumes AS-IA
 5 Washburn meant to include the descendants of one John Jeff within the family of the named
 6 Eligible Group member Jeff Davis, as that was for some time the mistaken belief of the BIA.
 7 However, AS-IA Washburn never discussed or mentioned John Jeff, nor did he ever posit that
 8 John Jeff is the son of Jeff Davis. Thus, AS-IA Newland’s decision rests on an assumption about
 9 *AS-IA Washburn’s intent and unstated assumptions* when preparing the Washburn Determination.
 10 Compounding his error concerning Washburn’s intentions, AS-IA Newland attempts to remedy
 11 the asserted Washburn “mistake” by creating a completely new Eligible Group consisting of *all*
 12 *descendants* of the 1929 Census, which Census included far more individuals than John Jeff. AS-
 13 IA Washburn fully understood the 1929 Census went far beyond the Sheep Ranch Rancheria, and
 14 accordingly, his decision explicitly distinguished the 1929 Census individuals from the Eligible
 15 Groups.

16 13. Plaintiffs now challenge the Newland Decision because it violates the
 17 Administrative Procedures Act (“APA”) in at least two ways. First, the decision is arbitrary,
 18 capricious, and irrational, because it represents an unwarranted departure from the Washburn
 19 Determination and the original set-aside of the Sheep Ranch Rancheria by the United States
 20 government, with no legal or factual basis. Second, the Newland Decision unlawfully and
 21 unreasonably further delays the Tribe’s organizational process.

22 14. The Newland Decision is a final agency decision, and unless this Court intervenes,
 23 the BIA will proceed with a Secretarial Election pursuant to the Newland Decision.

24 15. Accordingly, Plaintiffs’ only possible option for relief is to urge this Court to
 25 vacate the Newland Decision, enjoin the BIA from proceeding under the Newland Decision, and
 26 order the BIA resume organization of the Tribe only if consistent with the criteria set forth in the
 27 Washburn Determination.

1 **II. THE PARTIES**

2 16. Plaintiff California Valley Miwok Tribe is a federally recognized Indian tribe
3 situated in Sheep Ranch, California, in Calaveras County.

4 17. Plaintiffs Michael Mendibles, Marie Diane Aranda, Joshua Fontanilla, Yolanda
5 Fontanilla, Bronson Mendibles, Jasmine Mendibles, Leon Mendibles, Christopher Russell, and
6 Rosalie Russell are members of one of the Eligible Groups of the Tribe, as defined in the 2015
7 Washburn Determination.

8 18. Defendants in this case are members of the U.S. Department of the Interior and
9 BIA who are obligated by law to oversee matters relating to Indian tribes, including Secretarial
10 Elections. “Congress has delegated to the Secretary of the Interior broad authority over ‘public
11 business relating to . . . Indians.’” 43 U.S.C. § 1457.

12 19. Defendant Deb Haaland is the U.S. Secretary of the Interior. Secretary Haaland is
13 responsible for the supervision of the various federal agencies and bureaus within the
14 Department, including the BIA. Secretary Haaland is an officer or employee of the United States
15 and has a direct statutory duty to carry out the provisions of the IRA and other relevant laws.
16 Secretary Haaland is sued in her official capacity only.

17 20. Defendant Bryan Newland is the Assistant Secretary of Interior—Indian Affairs.
18 AS-IA Newland is an officer or employee of the United States and has a direct statutory duty to
19 carry out the provisions of the IRA and other relevant laws. AS-IA Newland issued the final
20 agency action being challenged here. Newland is sued in his official capacity only.

21 21. Defendant Amy Dutschke, Regional Director, Pacific Region of the BIA, is
22 responsible for overseeing Secretarial Elections pursuant to 25 C.F.R. § 81. The order from AS-
23 IA Newland to “pause” the Secretarial Election was addressed to Ms. Dutschke. Ms. Dutschke is
24 sued in her official capacity only.

25 22. Defendant Harley Long, Superintendent, Central California Agency, BIA, is
26 responsible for overseeing Secretarial Elections pursuant to 25 C.F.R. § 81. Mr. Long is sued in
27 his official capacity only.

1 **III. JURISDICTION AND VENUE**

2 23. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because
3 the asserted claims arise under the Constitution and laws of the United States.

4 24. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1361 in
5 that Plaintiffs seeks to compel officers and employees of the United States and its agencies to
6 perform duties owed to Plaintiffs.

7 25. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1362
8 because the Tribe is an Indian tribe duly recognized by the Secretary of the Interior, and the
9 matter in controversy arises under the Constitution, laws or treaties of the United States.

10 26. Venue is proper in this Court under 28 U.S.C. § 1391(e) because the Secretary of
11 the Interior, the Assistant Secretary - Indian Affairs, and the BIA are located in this district.

12 27. Judicial review of this agency action, the Newland Decision, is authorized by the
13 APA, 5 U.S.C. §§ 702, 704 and 706. The Newland Decision is final agency action under the
14 APA and 25 C.F.R. § 2.6(c).

15 28. The requested declaratory and injunctive relief is authorized by 28 U.S.C. §§
16 2201-2202.

17 29. An actual case and controversy has arisen and now exists between the parties with
18 regard to Defendants' violations of the statutes and regulations cited herein.

19 **IV. FACTUAL BACKGROUND**

20 **Early History of the Tribe**

21 30. The CVMT arises from the above-referenced 1915 Census of the Sheep Ranch
22 Indians, prepared by John Terrell, an agent working for the BIA (then known as the Office of
23 Indian Affairs). Terrell located and recorded the "group of Indians known at the time as the
24 'Sheepranch Indians.'" In 1916, the federal government purchased an approximately one-acre lot
25 in the town of Sheep Ranch, CA, for the benefit of the same Indians identified in the 1915
26 Census. This land became known as the "Sheep Ranch Rancheria."

27 31. While federal recognition is a fundamental acknowledgement of the
28

1 sovereignty of a tribal entity, it does not speak to the tribe's organization. If a tribe voluntarily
 2 accepts the application of the IRA, a tribe may organize and adopt a constitution, subject to the
 3 supervision of the BIA. 25 U.S.C. § 5123.

4 32. In 1935, the then-sole resident of the Sheep Ranch Rancheria, Jeff Davis, who was
 5 also listed in the 1915 Terrell Census, voted in favor of the applicability of the IRA. The IRA
 6 allows Indian tribes to among other things, adopt a constitution, form a tribal government, and
 7 elect tribal officials, subject to substantive and procedural requirements in the IRA. Tribes
 8 organized under the IRA are eligible for certain federal benefits and services.

9 33. However, as discussed, although the Tribe has been federally recognized since
 10 1915, it has not been organized due in large part to a history of leadership and membership
 11 disputes. The Tribe has also been unable to complete a federally recognized Secretarial Election.

12 34. A Secretarial Election is a federally supervised election in which members of
 13 federally recognized Indian tribes vote on adopting or amending tribal constitutions. Section 16
 14 of the IRA authorizes Secretarial elections.

15 35. Under the IRA, the Secretary of the Department of the Interior has a duty to ensure
 16 the Department recognizes only a legitimate tribal government that reflects the participation of a
 17 majority of a tribe's membership.

18 36. The IRA requires the Secretary of the Department of the Interior to call and hold
 19 Secretarial Elections on the receipt of a tribal request, to undertake pre-election review of the
 20 proposed constitution or amendments, to ensure that only eligible members of the Tribe vote, and
 21 to consider the results of the election and ratify them.

22 **The Tribe's Leadership Disputes and Inability to Organize**

23 37. Litigation surrounding the membership of the Tribe has been going on since at
 24 least 1998 and has been discussed at length in various federal court decisions.⁴

25 _____
 26 ⁴ See *California Valley Miwok Tribe v. United States*, 434 F. Supp. 2d 197, 201 (D.D.C. 2006)
 27 (“CVMT I”); *California Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008)
 28 (“CVMT II”); *California Valley Miwok Tribe v. Jewell*, 5 F. Supp. 3d 86 (D.D.C. 2013) (“CVMT
 III”); *California Valley Miwok Tribe v. Zinke*, Civ. No. 2:16-01345 WBS CKD, 2017 WL
 2379945 (E.D.Cal. June 1, 2017), *aff'd*, 745 F. App'x 46 (9th Cir. 2018); see also *In Re:*
\$323,647.60 In Funds Belonging to the California Valley Miwok Tribe (Mem. Opn. No. 18 CV
 01194 JAP/KBM (D.N.M. Feb. 19, 2019); *California Valley Miwok Tribe v. California Gambling*

1 38. For example, a significant leadership dispute arose when Silvia Burley met with
 2 Yakima Dixie, who represented himself as “the only descendant and recognized member of the
 3 Sheep Ranch Rancheria.” Contending that she was a descendant of Jeff Davis, she claimed tribal
 4 membership and, later, to have a position of leadership in the CVMT, which claim later was
 5 disputed.⁵

6 39. This dispute led to further litigation, and in 2011, then Assistant Secretary- Indian
 7 Affairs Larry Echo Hawk issued a decision (“Echo Hawk Decision”) purporting to resolve the
 8 dispute.

9 40. In 2013, the Echo Hawk Decision was challenged in the District Court for the
 10 District of Columbia, which reversed and remanded the issue of membership in the Tribe to the
 11 BIA. *See CVMT III*. Following the remand order in *CVMT III*, AS-IA Washburn issued the
 12 Washburn Determination on December 30, 2015.

13 41. Because of these disputes and failures to organize, Plaintiffs have suffered
 14 immense harm and been deprived of economic support and other federal benefit programs.

15 42. As one crucial example, under the California tribal-state Class III gaming
 16 compacts (“Compacts”), the California Gambling Control Commission (“Commission”) is
 17 required to collect certain monies paid by gaming tribes, deposit those monies into a Revenue
 18 Sharing Trust Fund (“RSTF”), and make quarterly payments of those funds according to the
 19 Compacts’ specified distribution plans. Cal. Gov. Code, §§ 12012.75, 12012.90.

20 43. The Compacts and the California Government Code provide that quarterly RSTF
 21 payments shall be made to eligible recipient Indian tribes. The CVMT is a federally recognized
 22 Indian tribe and thus qualifies under the Compacts and the Government Code to receive RSTF
 23 payments.

24 44. The Commission administers the RSTF in a limited trustee capacity, for the
 25 purpose of depositing and disbursing the funds on a quarterly basis to eligible tribes. Aside from
 26 its duty to administer the RSTF, the Commission has no discretion with respect to the use or

27 *Control Commission*, Case No. 37-2019-00019079 (San Diego Sup. Ct.).

28 ⁵ *See supra* note 1.

1 disbursement of the RSTF monies. The Commission has no authority to make determinations
 2 regarding the merits of intra-tribal leadership disputes. When uncertainty exists as to an eligible
 3 tribe's authorized leadership, the Commission defers to the BIA.

4 45. In 2005, in the midst of the Burley leadership dispute, the BIA deemed the Tribe
 5 unorganized and lacking a tribal chairperson, and thus the BIA did not recognize any tribal
 6 government.

7 46. In that same year, the BIA suspended government-to-government dealings with the
 8 Tribe, including Public Law 93-638 (P.L. 93-638) contract funding disbursement. P.L. 93-638
 9 contracts arise under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §
 10 450 et seq., and are an important means of federal financial assistance to Indian tribes. The BIA
 11 has not since resumed government-to-government dealings with the Tribe.

12 47. In August 2005, after the BIA ceased governmental dealings with the Tribe, the
 13 Commission suspended its disbursement of quarterly RSTF payments to the Tribe, pending the
 14 BIA's recognition of authorized tribal leadership with whom to conduct government-to-
 15 government business.

16 48. To date, the total of RSTF payments withheld from the Tribe exceeds \$20 million.

17 **The Washburn Determination**

18 49. When AS-IA Washburn issued the Washburn Determination in 2015, this marked
 19 a significant milestone that finally defined the proper membership of the Tribe and put the Tribe
 20 on the path to formal organization under the IRA.

21 50. The Washburn Determination first declared that the Burley faction and the 1998
 22 general council it had formed were not valid, as well as the 2013 constitution that had been
 23 adopted.

24 51. The Washburn Determination then provided a factual analysis and determination
 25 of the membership of the Tribe, ultimately finding "for purposes of reorganization, the Tribe's
 26 membership is properly drawn from the Mewuk Indians for whom the Rancheria was acquired
 27 and their descendants."
 28

1 52. The Washburn Determination went on make the following conclusion regarding
2 the “Eligible Groups” of proper membership in the Tribe:

3 The history of the Rancheria, supported by the administrative
4 record, demonstrates that this group consists of: (1) the individuals
5 listed on the 1915 Terrell Census and their descendants; (2) the
6 descendants of Rancheria resident Jeff Davis (who was the only
7 person on the 1935 IRA voters list for the Rancheria); and (3) the
8 heirs of Mabel Dixie (the sole Indian resident of the Rancheria
eligible to vote on its termination in 1967) as identified by OHA in
1971 and their descendants (Dixie Heirs) (all three groups
collectively identified herein as the Eligible Groups).

9 53. All Plaintiffs are descendants of Rose Davis, the founding matriarch of the
10 federally recognized CVMT, through Lena Hodge Shelton, also listed on the 1915 Census.
11 Plaintiffs are therefore in the first of the Eligible Groups enumerated in the Washburn
12 Determination. Lena Shelton is the only one of the individuals in the 1915 Census with any
13 living descendants.

14 54. The Washburn Determination also addressed the status of the individuals
15 identified in the 1929 Census.

16 55. The Washburn Determination noted that the individuals named on the 1915 Terrell
17 Census had relatives in other Calaveras County communities. The BIA’s 1929 Census counted
18 147 Indians, finding them to be “mostly Miwok, but also some Tuolumne” and “children of
19 mixed Miwok/Tuolumne, and mixed Indian/non-Indian ancestry.” Importantly, the 1929 Census
20 does not even name a tribe – the space provided for designating a tribe is left blank, signifying
21 that the census taker was not enumerating the Indians for the Sheep Ranch Rancheria, but, as the
22 census document itself notes, for all Indians of Calaveras County: Miwok, Tuolumne, mixed-
23 race, and whites married into Indian families in the county.

24 56. AS-IA Washburn explicitly excluded the individuals in the 1929 Census—and
25 their descendants—from the Eligible Groups. Per the Washburn Determination, it is the Eligible
26 Groups themselves who are responsible for determining if people in the 1929 Census may
27 participate in the Tribe’s organization: “Whether the descendants of the Miwoks identified in the
28

1 1929 Census shall be included in the organization of the CVMT is an internal tribal *decision that*
 2 *shall be made by the individuals who make up the Eligible Groups.*” (emphasis added).

3 57. As noted, the Washburn Determination was subsequently upheld against legal
 4 challenges in a federal district court in 2017 and was affirmed in the Ninth Circuit Court of
 5 Appeals in 2018.

6 **The Newland Decision Abruptly Halts the Tribe’s Organization Efforts**

7 58. After the Washburn Determination was upheld, the next significant development
 8 was the holding of a Secretarial Election on April 15, 2019.

9 59. However, that Secretarial Election was also improper and later invalidated by the
 10 BIA Regional Director. In invalidating the Secretarial Election, the Regional Director explained
 11 “[m]ost of the people who petitioned for, and took part in, the Secretarial Election are
 12 descendants of John Jeff” whom the BIA assumed was the son of Jeff Davis. This was also the
 13 conclusion urged by Plaintiffs in a lawsuit against the Regional Director, supported by an
 14 exhaustive genealogical study from a leading ethno-historian. The Regional Director relied on
 15 the finding of the Office of Federal Acknowledgment (OFA) that John Jeff was not the son of Jeff
 16 Davis, and therefore within no Eligible Group. Accordingly, the Tribe was again left without
 17 recognized tribal leadership and unorganized.

18 60. Throughout most of 2020 and 2021, Plaintiffs and their representatives called,
 19 wrote, and petitioned the BIA, urging that it proceed with the Secretarial Election, consistent with
 20 the findings of the Washburn Determination, Regional Director, and the OFA.

21 61. On December 1, 2021, the BIA issued a notice at last, stating that it planned to
 22 proceed with organizing the Tribe. The notice stated the BIA “plans to assist the California
 23 Valley Miwok Tribe, aka Sheep Ranch Rancheria (Tribe) with organization of a formal
 24 government structure by individuals who are eligible to participate in such a process, consistent
 25 with the December 30, 2015 decision by the Assistant Secretary – Indian Affairs [i.e., Washburn
 26 Determination].” The notice further advised that any eligible individuals submit a “Certificate of
 27 Degree of Indian Blood (CDIB) form along with supporting documentation” to the BIA.

1 62. The BIA’s December 1, 2021 public notice further confirmed that “For the
2 purposes of determining eligibility, the Office of Federal Acknowledgement has determined that
3 John/Johnny Jeff is not the son of Jeff Davis.”

4 63. In response to the BIA’s December 1, 2021 notice, Plaintiffs submitted the
5 required documentation by the BIA’s deadline.

6 64. Unexpectedly, on March 28, 2022, Plaintiffs learned from the BIA’s Mr. Long that
7 AS-IA Newland placed the Secretarial election on “pause,” pending a review of “additional
8 historical and genealogical facts.”

9 65. Plaintiffs, through their counsel, submitted a letter to AS-IA Newland’s office on
10 April 4, 2022, asking for information regarding the supposed justification for the “pause” and the
11 supposed additional historical and genealogical facts. In addition, Plaintiffs’ counsel submitted a
12 request for a meeting with AS-IA Newland through AS-IA Newland’s meeting request portal.
13 Plaintiffs’ counsel has not received a response to their letter or their meeting request.

14 66. On May 31, 2022, AS-IA Newland issued the Newland Decision. The Newland
15 decision adds a *new Eligible Group*, namely the descendants of *all* individuals from the 1929
16 Census. AS-IA Newland notes his reconsideration of the Washburn Determination was prompted
17 after he “received arguments from the descendants of John Jeff that disqualification of this group
18 based on newly corrected genealogical information was contrary to the plain intent of the
19 Washburn Decision.”

20 67. The Newland Decision wrongly asserts that when AS-IA Washburn prepared the
21 list of Eligible Groups, AS-IA Washburn intended to include the descendants of John Jeff because
22 AS-IA Washburn wanted to include descendants of Jeff Davis. As a result, the Newland Decision
23 somehow concludes that descendants of all individuals from the 1929 Census must be added as a
24 new Eligible Group to effectuate AS-IA Washburn’s supposed intent:

25 By revising the Washburn Decision to include the descendants of
26 individuals on the 1929 Census as an eligible group, the
27 Department again recognizes the greater Tribal community eligible
28 to organize the Tribe based on the Eligible Groups’ previous efforts
to organize.

1 68. The reasoning of the Newland Decision is flawed and rests on incorrect
2 assumptions. For example, the Newland Decision is arbitrary in assuming AS-IA Washburn
3 “mistakenly” assumed descendants of John Jeff should have been included in an Eligible Group
4 as descendants of Jeff Davis. The Washburn Determination **made no reference to John Jeff**.

5 69. The Newland Decision also wrongly assumes that AS-IA Washburn assumed there
6 was a “greater Tribal community” that included descendants of Jeff Davis, not even knowing if
7 Jeff Davis in fact had any descendants. AS-IA Washburn never said or indicated he believed Jeff
8 Davis had descendants.

9 70. In addition, including the descendants of the 1929 Census in the Eligible Groups
10 flies in the face of the articulated intent in the Washburn Determination. As noted, the Washburn
11 Determination specifically identified descendants of those named in the 1929 Census, and it
12 distinguished them from members of the Eligible Groups. *Supra* ¶ 56. Further, the 1929 Census
13 included far more individuals than John Jeff, most of whom were not the original Indians for
14 whom the Sheep Ranch Rancheria was recognized. To add to the Eligible Groups all descendants
15 of the 1929 Census, not just John Jeff and his descendants, is grossly over-inclusive and contrary
16 to the federal recognition of the Sheep Ranch Rancheria and the Indians for whom it was
17 intended.

18 71. AS-IA Newland conflates the descendants of the 1929 Census with descendants of
19 John Jeff. As stated in the Washburn Determination, the 1929 Census reflects multiple Miwok
20 and Tuolumne Indians in Calaveras County that may or may not have any connection (by
21 marriage or otherwise) with the Sheep Ranch Rancheria. Even assuming descendants of John Jeff
22 could be among them, AS-IA Newland erroneously assumes that because AS-IA Washburn
23 intended to include John Jeff’s descendants in the Eligible Groups (which is again, incorrect), *all*
24 1929 Census descendants must now form a new Eligible Group.

25 72. Moreover, AS-IA Washburn’s fundamental conclusion was that the Eligible
26 Groups should contain the original Indians “for whom the Rancheria was acquired and their
27 descendants.” Neither the descendants of John Jeff, nor those in the 1929 Census, are among
28 those Indians.

73. In sum, neither the Washburn Determination, nor the court decisions leading up to and following it, suggests that AS-IA Washburn intended or understood that (1) John Jeff’s descendants, (2) those in the 1929 Census and their descendants; and/or (3) some greater number of Miwoks in Calaveras County communities, should be part of the Eligible Groups, let alone form a new Eligible Group.

74. As a result of the Newland Decision, Plaintiffs must now further delay—after already waiting decades—efforts to proceed with a Secretarial Election and tribal organization, suffering further economic harm and loss of tribal sovereignty.

75. Consequently, Plaintiffs have no choice but to seek relief from this Court to declare the Newland Decision unlawful, enjoin any action to implement the Newland Decision, and to order the BIA proceed with the Tribe’s organization consistent with the criteria in the Washburn Determination.

FIRST CAUSE OF ACTION

(Arbitrary and Capricious Agency Action in Violation of the APA)

76. Plaintiffs incorporate each of the allegations in the foregoing paragraphs.

77. The Assistant Secretary is subject to clear standards in decision-making, as delineated in the APA. The APA authorizes courts to “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

78. “A person suffering legal wrong because of agency action . . . is entitled to judicial review thereof.” 5 U.S.C. § 702. Plaintiffs are entitled to relief under the APA because Plaintiffs are members of a federally recognized tribe and are among the intended beneficiaries of the IRA.

79. Decisions by the Assistant Secretary – Indian Affairs constitute “final” agency actions subject to judicial review under the APA. 25 C.F.R. § 2.6(a). The Newland Decision further states “This decision is a final agency action and shall take effect 30 days after the date of issuance.”

80. The Newland Decision is arbitrary and capricious because the Department of the Interior has failed to provide a reasoned explanation for reversing the Washburn Determination

1 and further, the record belies the conclusions in the Newland Decision. In addition, an agency
 2 cannot reconsider a prior decision unless it does so within a reasonable time period and provides
 3 sufficient notice of its intent to reconsider its decision.

4 81. As a direct and proximate result of Defendants' actions, Plaintiffs will be
 5 irreparably injured. If the Secretarial Election and tribal organizational efforts proceed under the
 6 Newland Decision, the Tribe will be organized by, and its Constitution voted on, by a group of
 7 individuals who are not members of the Tribe. That will fundamentally harm the Tribe's
 8 sovereignty and legitimacy.

9 **SECOND CAUSE OF ACTION**

10 **(Agency Action Unlawfully Withheld and Unreasonably Delayed in Violation of the APA)**

11 82. Plaintiffs incorporate each of the allegations in the foregoing paragraphs.

12 83. The APA also requires federal agencies to conclude matters presented to them
 13 "[w]ith due regard to the parties or their representatives and within a reasonable time." 5 U.S.C.
 14 § 555(b). The APA provides that a court shall "compel agency action unlawfully withheld or
 15 unreasonably delayed." 5 U.S.C § 706(1).

16 84. An agency's "failure to act" constitutes "agency action." 5 U.S.C § 551(13).
 17 Defendants failure to proceed with the Tribe's organizational efforts, including Secretarial
 18 Election, constitutes "agency action unlawfully withheld or unreasonably delayed."

19 85. Defendants have unreasonably delayed by, among other things, failing to
 20 adjudicate the status of Plaintiffs and any other individuals who submitted genealogies and other
 21 documentation to the BIA in response to the BIA's December 1, 2021 public notice.

22 86. As a direct and proximate result of Defendants' failure to act, Plaintiffs have been
 23 and will continue to be denied their rightful opportunity to participate in the organization and
 24 governance of the Tribe and will suffer irreparable injury and financial loss.

25 87. As a direct and proximate result of the BIA's failure to act, Plaintiffs have been
 26 and will continue to be denied the benefits of Tribe membership and will suffer irreparable injury
 27 and financial loss.

Colin C. West (*pro hac vice forthcoming*)
Ella Foley Gannon (*pro hac vice forthcoming*)
Thomas F. Gede (*pro hac vice forthcoming*)
Louis Y. Lee (*pro hac vice forthcoming*)
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Street Tower
San Francisco, CA 94105-1596
Telephone: +1.415.442.1000
Facsimile: +1.415.442.1001
colin.west@morganlewis.com
ellan.gannon@morganlewis.com
tom.gede@morganlewis.com
louis.lee@morganlewis.com

Attorneys for Plaintiffs