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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

TABLE MOUNTAIN RANCHERIA ASSOCIATION, et al., and PLAINTIFF GLORIA WALKER represented by Ms. Walker's heirs or successors, THOMAS WALKER; MICHAEL ALARCON, SR.; MICHAEL ALARCON, JR.; DAVID ALARCON, SR; TRACY GARZA LOPEZ; SIRILDA TUTTLE; CARL BRANTLEY; VICTORIA BRANTLEY; MORGON BRANTLEY; KIMBERLY BONG; HAROLD JOHN BONG V; RANDALL NELSON TUTTLE, JR.; KERRI MORRELL, JANINE RENEE ALARCON, AND ETHAN BONG,

Movants,

v.

JAMES WATT, et al.

Defendants.

Case No.: C-80-4595-MHP

MOVANTS' REPLY BRIEF IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE UNDER F.R.C.P. RULE 60(b)(6) AND ENFORCE THIS COURT'S JUDGMENT

Date: June 4, 2025
Time: 2:00 pm
Ctrm: 2, 17th Floor
Judge: Hon. William H. Orrick

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I. INTRODUCTION: STATEMENT OF ISSUES AND RELEVANT FACTS

Movants, members of the historic Table Mountain Band of Indians, move this Court for prospective relief, directing Defendant officials of the Department of the Interior and Bureau of Indian Affairs ("BIA" or the "Government") to conduct relations with the historic tribe, known as the Table Mountain Band of Indians, in accordance with the Stipulated Judgment, as among other things, Defendants are required to "list the Table Mountain Band of Indians as an Indian tribal entity pursuant to 25 C.F.R. Part 83.6(b)" [1983] (*see also* Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108 Stat. 4791, 25 U.S.C §§ 5130-5131). *See* Stip. J. at Para. 4. To date, Defendants have failed to do so.

The Government's *argumentum ad populum* interpretation of the California Rancheria Act's purpose and directives is an impediment to objective interpretation of the Stipulated Judgment in this matter and contributes to the failure to properly implement the Stipulated Judgment. By ignoring the plain meaning, or, alternatively, accepting the long-purported interpretation of the Rancheria Act as having "terminated" "Indian tribes," the Government glosses over and ignores bedrock legal principles and Supreme Court precedent necessary to lawfully conduct relations with Indian tribes and specifically the Table Mountain Band of Indians in this matter. In doing so, the Government perpetuates the mistakes made by government officials for decades. As a result, the Government neglects fundamental principles of Indian affairs establishing that it must conduct relations only with the historical tribe known as the Table Mountain Band of Indians, and violates the Stipulated Judgment's directive, included in accordance with those fundamental principles, to list the Table Mountain Band of Indians.

The Table Mountain Band of Indians' pre-California Rancheria Act status was that of a "recognized Indian tribe now under Federal jurisdiction," cohesive and organized traditionally under procedures other than those specified in section 16 of the Indian Reorganization Act. In fact, BIA knew of and conducted relations with the Band, doing business as the Table Mountain Rancheria Association

("the Association"). The Association, a plaintiff to this suit, represented the Indian tribal entity in this lawsuit whose members included Indians whose individual Indian status was not terminated under the California Rancheria Act, as well as represented those determined to be "Distributees" under the Act.

The listing of the Table Mountain Band of Indians was incidental to the restoration of the Indian status to the "Distributees" and the resolution of land issues vis-à-vis the Distributees. The so-called "termination" of the Band was a legal fiction and inaccurate interpretation and implementation of the California Rancheria Act.

Defendants' pre-California Rancheria Act, pre-1958, recognition of the Table Mountain Band of Indians did not fulfill the federal government's duties under the Stipulated Judgment with respect to the Table Mountain Band of Indians as an Indian tribal entity. The pre-"distribution" status of the *individual* Indians *and* residents of the lands subject to conveyance were individual Indians who were members of the Table Mountain Band of Indians. However, a group of individual Indians who were not "Distributees" under the Act, were members of the Band. As described in detail in Movants' motion, after 1958, but prior to this lawsuit, Defendants were engaging the Table Mountain Band of Indians as an Indian tribal entity.

The Association submitted, and the BIA accepted, the Band's request to approve an Indian Reorganization Act constitution. The BIA placed it in "abeyance" due to the pending litigation in this matter. The Stipulated Judgment does not refer to the Band's pending submission of a constitution for statutory approval. Significantly, however, given the language of Paragraph 4 and the Stipulated Judgment scheme, agency officials knew the Band's constitution had been submitted and was held in abeyance. The requirement that the Secretary simply "list the Table Mountain Band of Indians as an Indian Tribal entity" would have allowed the Government to take up the 1981 Constitution for purposes of reorganization and conducting relations. Such a reading is consistent with the requirement to conduct relations with the Indian tribal entities in *Tillie Hardwick*, while also highlighting the distinctions

between this case and *Tillie Hardwick.* For instance, in Paragraph 4 of the Stipulated Judgment in *Tille Hardwick,* the District Court ordered the Secretary to restore the "Tribes, Bands, Communities, or groups" of the listed rancherias to their former status. Juxtaposed with Paragraph 4 in this matter, *Tillie Hardwick*'s command to restore the former status of the "Tribe, Band, Community or group" is meaningfully distinct from the "Table Mountain Band of Indians." In other words, the Government agreed in the terms of the Stipulated Judgment here to *list* the "Table Mountain Band of Indians" because they knew who they were and doing so was consistent with the Solicitor's opinion in 1975, *see* Memorandum from Attorney, Division of Indian Affairs, Pamela Sayad to Director, Office of Trust Responsibilities, Martin Seneca (Feb. 1978) (Motion at Exhibit 9) and the Secretary's dealings with the Band, including the pending review of the Band's proposed IRA constitution and other dealings. *See, e.g.,* Memorandum from William E. Finale, Area Director, Sacramento Office, to Ronald Jaeger, Superintendent, Central California Agency (Dec. 18, 1980) (Motion at Exhibit 21); Memorandum from Director, Office of Indian Services, to Sacramento Area Director (Oct. 27, 1982) (Motion at Exhibit 5); Letter from Harold Brafford, Acting Superintendent, to Beverly Martinez, Secretary Treasurer, Table Mountain Rancheria (Dec. 15, 1982) (Motion at Exhibit 3).

The Stipulated Judgment therefore required the Defendants to restore and recognize the pre-distribution Table Mountain Band of Indians, not the theretofore non-existent Table Mountain Rancheria, and in doing so to ensure that its initial government was "organized by individuals who properly have the right to do so." *Cloverdale Rancheria of Pomo Indians v. Jewell*, 593 Fed. Appx. 606, 609 (9th Cir. 2014) (quoting *Alan-Wilson v. Sacramento Area Director*, 30 IBIA 241, 252 (1997).

As discussed in Movant's Motion, the BIA's efforts to reorganize the Table Mountain Band of Indians through the participation of Distributees, dependents, and their lineal descendants, as it was created for restoration of Indian tribal entities in the *Tillie Hardwick* matter, *see* discussion, *infra*, was ill-suited and legally unnecessary. In the end, the Government abandoned all efforts to implement the

Stipulated Judgment's Paragraph 4, acquiescing to a group associated with the Distributees who operate under the Band's 1981 constitution that was never approved by the United States, despite the United States acknowledging the request under the Indian Reorganization Act and holding it in abeyance.

Movants have sufficiently raised significant issues related to the extraordinary circumstances to sustain this Court's jurisdiction and (with additional briefing as necessary) the Court should Order the United States to explain how their regulatory process of restoring relations with the Band complied with the Stipulated Judgment, when the Government's processes led to the failure to recognize and organize the Band at all.

Finally, although the BIA's recognition of the Table Mountain *Rancheria* was unauthorized, Movants do not seek to nullify the actions taken by the Table Mountain Rancheria over the past four decades. Movants also do not seek to gain or confirm membership in, or control of, the Table Mountain Rancheria. They wish to secure the long-overdue restoration and recognition of the Table Mountain Band of Indians. To the extent the separate organization of the Table Mountain Rancheria may now impair the recognition of the Table Mountain Band of Indians in strict compliance with the Stipulated Judgment, Movants request that the judgment be appropriately amended to provide for recognizing the Table Mountain Band of Indians.

Movants incorporate facts and argument contained in their Motion before this Court and, additionally, request the Court's Judicial Notice of historic documents accompanying the Motions in Exhibits, related to the facts and circumstances, which are supported by declaration, and, further request such records are granted judicial notice.

II. ARGUMENT

Movants challenge the Defendants' failure to list and conduct relations with the Band in accordance with Paragraph 4 of the Stipulated Judgment. Moreover, Movants are challenging the

process by which the government chose, or rather failed to determine, the Indian tribal entity that was the Table Mountain Band of Indians it was required to list and instead chose to conduct relations with an unlawful group. In all, the Government has ignored Paragraph 4 of the Stipulated Judgment's mandate and its implicit legal and constitutional mandates to recognize the group that the United States previously conducted relations with, the Table Mountain Band of Indians.

This Court has jurisdiction over this matter as described in Movants' Motion and as described further below.

A. **Defendants' recognition of the "Table Mountain Rancheria," rather than the Table Mountain Band of Indians, is based on Defendants' incorrect view of the pre-distribution status Tribe, and fails to carry out the terms of the Stipulated Judgment.**

The Government has a legal and constitutional duty to conduct relations with a historically *bona fida* Indian tribal entity known as the Table Mountain Band of Indians as required by the Stipulated Judgment. The Government's failure to do so is reviewable by this Court because the Stipulated Judgment incorporates these fundamental, constitutional mandates of Indian affairs in Paragraph 4's directive that the "Table Mountain Band of Indians" shall be listed in the Federal Register's list of tribes eligible for services from the federal government. Stip. J. at Para. 4.

The Stipulated Judgment's Federal Register listing-directive means that the United States will conduct relations with the *only bona fida* Indian tribal entity with which the United States has *ever* conducted relations *vis-à-vis* the Table Mountain Band of Indians, prior to 1958 (and with which it was conducting relations just prior to the lawsuit). While the provisions related to the restoration of *individual* Indian status and Rancheria lands focus on the ill-fated implementation of the California Rancheria Act, these provisions do not connote membership in the Indian tribal entity. *See, e.g.*, Stip. J. at ¶¶ 3, 5, 7; Motion at Exhibit 4. And at the same time, the Paragraph's 4 directive related to listing the Indian tribal entity, also, does not control membership nor prescribe it but implies that the United States

must be satisfied it is conducting relations with the Indian tribal entity known to the United States as the "Table Mountain Band of Indians."

In fact, the Stipulated Judgment's provisions unwinding the termination of the individual "Indian status" of Distributees and provisions related to lands associated with Distributees' relationship to the Rancheria, instructs that the parties, in crafting the Stipulated Judgment, targeted the impacts of the Government's attempt to implement the California Rancheria Act. Stated another way, restoring the "Indian status" of *individuals* found on the Rancheria and dealing with the land that comprised the Rancheria—while *not* similarly dealing with the tribe—reflects that the Rancheria Act, in fact, never terminated the Indian political entity and that the Stipulated Judgment was restoring tribal relations as incidental to restoring some of its Indians to Indian status. *Lone Wolf v. Hitchcock*, 187 U.S. 553, 566, 568 (1903) (Congress possesses plenary authority over Indian relations and only Congress can terminate Indian tribal entities' relations with the United States and must do so expressly). Nothing in the Rancheria Act expressly terminates the Indian tribal entities. Hence, the plain language of the Stipulated Judgment acknowledges these important principles. In practical terms, the Stipulated Judgment restores Indian status of individuals that lost it due to the application of the California Rancheria Act, and in doing so, these individuals were restored to the same Indian status of those members of the Band that never lost their status because those members were not residents of the Rancheria.

A trilogy of cases before the U.S. Supreme Court early in the nation's history establishes several fundamental principles: *Johnson v. McIntosh*, 21 U.S. 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832) (known as the *Marshall Trilogy* which establishes the legal status of Indian tribes and their relationship with both state and federal governments including their pre-dating the United States under principles of international law, their status as domestic dependent nations, and the jurisdictional delimitations *vis-à-vis* the constitutional underpinnings of the tri-partite relationship). The fundamental principles instruct that the Constitution contemplates tribal

nations that pre-exist the United States, that historically conducted relations with the United States, and that continue to do so. Congress acknowledges that the Constitution requires that the United States conduct relations with *only* Indian nations, tribes, and bands that pre-date the United States. Moreover, legislative history in the U.S. Congress on S. 1654, Technical Corrections Act of 1994, amending the Indian Reorganization Act, reinforces the constitutional requirement that the United States only conduct relations with Indian tribal entities that pre-date the United States. Senator McCain on the Senate floor stated, "neither the Congress nor the Secretary can create an Indian tribe where none previously existed." CONGRESSIONAL RECORD, 140 Cong. Rec. S6144-03, S6146 (1994). Sen. McCain then admonishes, "[t]he recognition of an Indian tribe by the Federal Government is just that-the recognition that there is a sovereign entity with governmental authority which predates the U.S. Constitution and with which the Federal Government has established formal relations." *Id*.

In this context, there is a juxtaposition in the Stipulated Judgment's focus on the difference between those impacts by the attempted implementation of the Act and those upon the Indian tribal entity designating itself as the Table Mountain Rancheria Association—Plaintiff in this matter. These principles are reinforced by the law and regulations at the time of the Stipulated Judgment and continuing today. For example, procedures promulgated in 1978 establishing a process to determine tribal recognition outside termination and this lawsuit required an Indian group to establish its existence by showing the "earliest documented contact between the aboriginal tribe" and "citizens or officials of the United States, colonial or territorial governments." 43 Fed. Reg. 39,361 (Aug. 24, 1978).

It is, therefore, a logical conclusion that Paragraph 4 acknowledges that Defendants knew who the Table Mountain Band of Indians were, and in fact, the historic record bears witness to this. *See*, *e.g.*, Motion at Exhibits 3 & 21 (showing BIA treating group as Indian tribal entity submitting constitution for review and agency providing deficiencies); *see also* Motion at Exhibit 22 (listing noting that BIA was listing the Band in the Federal Register). The Government points to the 1998 Letter, Area Director

Jaeger to Howard Dickstein, (Doc 19 at Exhibit D) Opp. at 6, to argue that the 1981 Constitution is in place and that Movants can no longer challenge the issues, which the Government characterizes as internal membership matters reserved to the tribe. *Id*. The Government can conveniently reach such a conclusion based on a misreading of the California Rancheria Act that the Act effected the "termination of tribes." The Government's position is ultimately that, so long as they recognized a government following the Stipulated Judgment, this satisfied its duty. The historical record shows that the United States drove a narrative that Distributees alone had the right to organize the Indian tribal entity, which improperly applied a process that did not fit and was not necessary under *this* Stipulated Judgment. See, e.g. Motion at Exhibits 6 (Zunie Report), 12, 16. In doing so, the Government has unlawfully recognized a group called the "Table Mountain Rancheria."

B. This Court has Authority in these Extraordinary Circumstances Over this Motion because The Stipulated Judgment requires the Secretary to recognize only the Table Mountain Band of Indians.

a. Given the Government's Constitutional Duties this Court has Jurisdiction.

Movants' assertion of a federal controversy does not rest solely on the claims or resolution of the Stipulated Judgement in this matter. Rather, it rests on the not insubstantial claim that federal law now protects, and has continuously protected from the time of the formation of the United States, the domestic dependent nature of Indian political entities that pre-dated the United States and ensures the federal government conducts relations only with such entities, rather than substituting an entity of the government's choosing.

Like the underlying legal order of the United States, the rules of tribal relations cannot be displaced by the terms of a contract, or in this case by the terms of the Stipulated Judgment. As explained elsewhere, the United States is bound by its Constitution to conduct trade and commerce with Indians and in doing so must conduct relations with only those "Indians." The Supreme Court's precedent shows F.R.C.P. Rule 60(b)(6) is controlling. As explained in Movant's Motion, *Kokkonen v*

Guardian Life Ins. Co., 511 U.S. 375 (1994) notes that a party may reopen a dismissed suit under 60(b)(6), if, for instance, another party breached the agreement. *See Kokkonen* at 378.

Hence, Movants satisfy the requirement of raising a dispute or controversy respecting the validity, construction, or effect of a federal law upon the determination of which the result depends. *Shulthis v. McDougal*, 225 U.S. 561, 569 (1912); *Gold-Washing & Water Co. v. Keyes*, 96 U.S. 199, 203 (1878). The Court's jurisdiction over this matter accomplishes justice. *See Kokkonen v Guardian Life Ins. Co.*, 511 U.S. 375, 378 (1994). While the Motion involves a claim for failure to comply with the Stipulated Judgment, federal law and the U.S. Constitution provide a basis for federal-court jurisdiction over the dispute about the Government's compliance with the Judgment. *See Kokkonen v Guardian Life Ins. Co.*, 511 U.S. at 381.

Because there is a Constitutional duty in question, and that duty impacts the interpretation of the Government's effectiveness of implementing the Stipulated Judgment, this Court possesses ancillary jurisdiction "to vindicate its authority and effectuate is decrees." *Peacock v. Thomas*, 516 U.S. 349, 356 (1996).

b. Movants have standing as beneficiaries of the Stipulated Judgment to enforce the Stipulated Judgment, therefore further meet the standing requirements.

In addition to meeting the prudential and constitutional standing requirements as presented in their Motion, Movants are also authorized to enforce the Stipulated Judgment under Rule 71 of the Federal Rules of Civil Procedure. Rule 71 provides, "[w]hen an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party." Fed. R. Civ. P. 71. The *sole* criterion for a nonparty to invoke the federal court's jurisdiction to render such orders "as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued" is that the nonparty be "a person or entity 'in whose favor' an order has been entered." *California Dept. of Social Servs. v. Leavitt*, 444 F.Supp.2d 1088, 1095 (E.D. Cal. 2006), rev'd

in part on other grounds, 523 F.3d 1025 (9th Cir. 2008); *see also Westlake North Property Owners Ass'n v. City of Thousand Oaks*, 915 F.2d 1301, 1304 (9th Cir. 1990).

As described in the Motion, Movants argue they represent Parties in this matter, even if they are non-parties beneficiaries. Movants are direct lineal descendants of Gloria Walker and Marilyn Tuttle Branley, a member of the Plaintiff Association, a participant in forming the 1981 constitution requested to be approved by the Government, *see, e.g.*, Motion at Exhibit 18 at 1 (addressed to Ms. Brantley) and Movants are persons in whose favor the Stipulated Judgment was entered.

This follows from the motivating purpose and objectives of the Stipulated Judgment, as well as the expectations of the parties. *Cf. Goonewardene v. ADP, LLC*, 6 Cal.5th 817, 830 (2019). (holding third party beneficiary inquiry under contract law requires determination of "(1) whether the third party would in fact benefit from the contract, …(2) whether a motivating purpose of the contracting parties was to provide a benefit to the third party, and (3) whether permitting a third party to bring its own breach of contract action against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties"); *Restatement (Second) of Contracts* § 302, Intended and Incidental Beneficiaries (1981) (stating under contract law, "a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and … the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance."). The Stipulated Judgment required the Secretary to list the Table Mountain Band of Indians of which the Movants are members.

The Stipulated Judgment's retention of jurisdiction for a limited time-period to resolve disputes "among the parties in the course of implementing the judgment," Doc. 19 at Exhibit B, ¶ 14, does not prevent nonparty beneficiaries from invoking the court's jurisdiction to enforce the part of the judgment intended to benefit them. Under Rule 71, the fact that the judgment "grants relief for a nonparty" means "the procedure for enforcing the order is the same as for a party." *See Brennan v. Nassau County*, 352

F.3d 60, 64-65 (2d Cir. 2003). The reference to "the parties" in the Stipulated Judgment therefore must be construed to include nonparties in whose favor the judgment granted relief, and the procedure for such nonparties to resolve disputes about implementing the judgment is the same procedure contemplated in the Stipulated Judgment.

Moreover, a District Court in this District noted in 2012, that when considering a motion "framed … as a request for enforcement of the judgment, … the Court is constrained to give [Movants] the benefit of the doubt." *Hardwick v. United States*, No. 5:79-CV-1710-JF, 2012 WL 6524600, *3 (N.D. Cal. Dec. 13, 2012). Since "an agency's failure to comply with a stipulated judgment does not give rise to a claim under the APA, and … 'the proper claim for relief would appear to be one for enforcement of' the stipulated judgment," the Court concluded it "has subject matter jurisdiction" over such a motion. *Id.* at *2, *3 (quoting *Cloverdale Rancheria of Pomo Indians of California v. Salazar*, No. 5:10-cv-605 JF/PVT, 2011 WL 1883196 (N.D. Cal. May 11, 2011); *see also Floyd v. Ortiz*, 300 F.3d 1223, 1226-27 (10th Cir. 2002) (finding nonparty's right to enforcement under Rule 71 where it appeared to be the movant's "only remedy" under the circumstances).

Here, Movants argue that the Government never properly listed nor is conducting relations with the Table Mountain Band of Indians as required by the Stipulated Judgment because they failed to organize and determine all individuals that comprised the Indian political entity including by resuming consideration of the Band's request for a Secretarial Election on the 1981 Constitution in accordance with the Indian Reorganization Act, Section 16. Instead, the Government conducted relations with an unlawfully organized group.

There is precedent for the Government to facilitate the restoration and reorganization of an Indian tribe that is currently recognized but was not lawfully organized. In the partly analogous case of the *Cloverdale Rancheria*, an Indian tribe subject to the *Tillie Hardwick v. United States* Stipulated Judgment, 3:79-cv-01710-EMC, [Stipulated Judgment], *see* Doc. 406-407, *filed* August 30, 2024

N.D.C.A. (case pending Motion for Order to Show Cause, arguing that Stipulated Judgment Paragraph 4 mandates governments duties vis-à-vis the Indian tribes, bands and communities related to that matter). In one instance when BIA, implementing the *Tillie Hardwick Stipulated Judgment,* the agency initially recognized a tribal government formed by Jeffery Alan-Wilson. *Alan-Wilson*, 30 IBIA at 246-47. More than three years later, the BIA concluded its recognition of Alan-Wilson's government and its "right to organize the Cloverdale Rancheria" had been "administratively in error." *Alan-Wilson*, 30 IBIA at 248. The BIA therefore withdrew its recognition of the Alan-Wilson government and conferred official recognition on a newly-elected government, effective immediately. *Alan-Wilson* at 248. The Interior Board of Indian Appeals affirmed these actions, based on the principle that because this case concerned "the creation of a tribal entity from a previously unorganized group, … BIA and this Board have a responsibility to ensure that the initial tribal government is organized by individuals who properly have the right to do so." *Alan-Wilson* at 252; *see also Alan-Wilson v. Acting Sacramento Area Director*, 33 IBIA 55 (1998) (affirming decision after remand). The imperative of correcting the BIA's error, in other words, overrode any asserted sovereign rights of the Cloverdale Tribe as organized and represented by individuals who had no authority to organize the Tribe or claim its sovereignty.

Doubtless, the Movants are beneficiaries of the Stipulated Judgment. The record shows that the Movants are direct lineal descendants of an individual Indian that submitted the 1981 Constitution requesting that the Band organize under the Indian Reorganization Act. For the reasons described above, and those reasons incorporated from the Movants' Motion, Movants meet this Court's standing requirements.

C. The Motion is Timely and Requires Review by this Court.

Movants' delay is reasonable, and the Government is not prejudiced by this Court's consideration of the Motion given the core constitutionally justiciable questions raised. As described in detail in Movants' Motion, the Court's exercise of jurisdiction is necessary under *extraordinary circumstances*

precisely because of the constitutional infirmity in the failure of the government to conduct relations with the historic Indian tribal entity known as the "Table Mountain Band of Indians" as prescribed by and agreed to by the United States in the Stipulated Judgment.

Movants have consistently formally and informally sought participation for the last 40 years to work within the Distributee-centered tribal government structure that BIA accepts as the Table Mountain Rancheria. Efforts were made "actively seeking to resolve the matter out of court" through internal tribal administrative and political processes. *Eat Right Foods Ltd. v. Whole Foods Market, Inc.*, 880 F.3d 1109, 1118 (9th Cir. 2018).

Doing this and accepting the legal fiction of the Table Mountain Rancheria was an effort to avoid lasting injury through the means the recognized Tribe provided. BIA's wholly hands-off stance to anything to do with membership undermined that effort, after BIA cast aside the legal mandate of the Stipulated Judgment to list the Table Mountain Band of Indians, rather than creating a new tribal Indian entity from the Distributees.

Thus, circumstances militate against untimeliness or laches. The government's laches defense also requires prejudice to the defendant. *Eat Right Foods* at 1119 ("Even where a defendant establishes that a plaintiff delayed unreasonably in filing suit, laches will not bar a claim unless that delay prejudiced the defendant.") In this analogous context, Movants' delay in bringing the instant motion, if any, does not prejudice the Defendants, and they have not argued that they are prejudiced.

Moreover, it is not prejudicial to the Government to require its compliance with its obligations. On the contrary, it is antithetical to constitutional order that the Government claims it may ignore its legal and constitutional obligations by hiding behind an untimeliness defense. Movants claim Defendants agreed to list the Table Mountain Band of Indians in accordance with a law that gives the public notice that those Indian tribes on the list are eligible for programs and services the United States provides Indian tribes. The question is squarely before this Court whether the United States had a constitutional and legal obligation to conduct relations only with the Indian tribal entity named in the Stipulated Judgment. Laches is an equitable defense, not a statute of limitations, and the burden of proof falls on the party asserting it. The Government fails to meet its burden to show the Motion is prejudicial or that the Government has met its constitutional duty to conduct relations with the historic Table

Mountain Band of Indians as agreed to in the Stipulated Judgment. The fact that the Government has never listed the "Table Mountain Band of Indians" in the Federal Register facially shows the United States has failed to implement the Stipulated Judgment. In this context, getting the constitutional norms correct for Indian affairs is vital and in the interest of public policy. Thus, the delay has not harmed the Government, which in any event could have taken steps to mitigate any harm by implementing the Stipulated Judgment but instead ignored Paragraph 4 or regarded it as superfluous.

Further, Movants do not seek to undo past actions but seek purely prospective injunctive relief to end ongoing harm. "[L]aches typically does not bar prospective injunctive relief." *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 959 (9th Cir. 2001). This is because "almost by definition, the plaintiff's past dilatoriness is unrelated to a defendant's ongoing behavior that threatens future harm." *Id.* at 959-60. Whatever past delay may have occurred, Defendants' ongoing rejection of responsibility to conduct relations with the Table Mountain Band of Indians in accordance with Paragraph 4 of the Stipulated Judgment, and in accordance with the principles of Indian affairs and Supreme Court precedent, is not a result of any such delay.

In addition, as an equitable remedy, "laches will not apply if the public has a strong interest in having the suit proceed." *Jarrow Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 840 (9th Cir. 2002). "There is an undoubted, compelling public interest in ensuring that valid judicial judgments are enforced." *JW Gaming Dev't, LLC v. James*, 544 F.Supp.3d 903, 922 (N.D. Cal. 2021). "[T]here is also a great public interest in protecting tribal sovereignty … and in fostering the development of tribal self-government." *Id.* These interests favor jurisdiction to hear the motion, given Movants' claim that Defendants have failed to do what the Court's judgment requires, and that this failure deprives a once-recognized Indian tribe, wrongfully treated as though it had been terminated in violation of federal law, of the right to regain its powers of self-government. For all these reasons, the Court has jurisdiction over the motion to enforce the Judgment.

III. CONCLUSION

Movants respectfully request that the Court grant their motion to enforce the Stipulated Judgment and order the Defendants to recognize the Table Mountain Band of Indians as the historical

tribal entity that the United States is required to conduct relations with as contemplated in Paragraph 4 of the Stipulated Judgment, with the same status as the Band possessed prior to distribution of assets under the California Rancheria Act; and moreover, Movants request that Table Mountain Band of Indians be placed on the BIA's list of recognized tribal entities, and that the BIA be ordered to assist with the organization of the of the Table Mountain Band of Indians as necessary to ensure it is returned to its pre-distribution status.

DATED: May 15, 2025

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