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6 THE MISHEWAL WAPPO TRIBE OF ALEXANDER VALLEY

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8 In The United States District Court  
9 For The Northern District of California

10  
11 The Mishewal Wappo Tribe of  
Alexander Valley,  
12 P.O. Box 1794  
Middletown, CA 95461  
13

) Case No.

) Hon.

**C09 02502**

**JW**

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

14 Plaintiffs

15 v.

(DEMAND FOR JURY TRIAL)

**RS**

16 KEN SALAZAR,  
17 in his official capacity as  
Secretary of the Interior,  
18 U.S. Department of the Interior  
1849 C Street, NW  
19 Washington, DC 20240-0002; and  
DOES 1-50, inclusive  
20

21 Defendants

22  
23  
24 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

25 1. This action is brought by the Mishewal Wappo Tribe of  
26 Alexander Valley (the "Tribe" or "Plaintiff") to compel  
27 agency action unlawfully withheld and unreasonably delayed.  
28 Specifically, the Tribe seeks a court order directing

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1 Secretary of the Interior Ken Salazar (the "Secretary"),  
2 inter alia, to publish a list of federal recognized tribes  
3 as required by section 104 (a) of the Federally Recognized  
4 Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108  
5 Stat. 4791 (codified at 25 U.S.C. § 479 a-1 (a)), with such  
6 list to include the Tribe's name; Mishewal Wappo Tribe of  
7 Alexander Valley. Further, the Tribe requests a court  
8 order directing the Secretary to take into trust such lands  
9 owned and designated by the Tribe located within the  
10 Mishewal Wappo Tribe of Alexander Valley historically  
11 aboriginal territory ("Designated Lands"), with such lands  
12 to be considered "Indian country" as defined in 18 U.S.C. §  
13 1151 and "restored lands" as defined by 25. U.S.C. §  
14 2719(b)(1)(B)(iii). And, finally, the Tribe seeks a court  
15 order declaring that the Tribe is eligible for the  
16 protection, services and benefits of the federal government  
17 available to Indian tribes by virtue of their status as  
18 tribes.

19 **JURISDICTION AND VENUE**

- 20 2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 in  
21 that this action arises under the Constitution and laws of  
22 the United States.
- 23 3. This Court also has jurisdiction over this action pursuant  
24 to 28 U.S.C. § 1361 in that the Tribe seeks to compel  
25 officers and employees of the United States and its  
26 agencies to perform duties owed to the Tribe.
- 27 4. Venue lies in this District pursuant to 28 U.S.C. § 1391  
28 (e) because the Secretary resides in this district and a

1 substantial part of the events or omissions giving rise to  
2 the Tribe's claims occurred in this District.

3 **PARTIES**

4 5. Plaintiff is an American Indian Tribe consisting of Indian  
5 members and their descendants, and/or their Indian  
6 successors in interest, for whose benefit the United States  
7 acquired and created the Mishewal Wappo Tribe of Alexander  
8 Valley, a parcel of land located in Sonoma County,  
9 California. The Tribe was formally recognized as an Indian  
10 Tribe by the United States from at least 1851 until 1959,  
11 when it was purportedly terminated under the Act of August  
12 18, 1958, Pub. L. No. 85-671, 72 Stat. 619, ("California  
13 Rancheria Act"). Since the time of its purported  
14 termination, the Tribe has been continuously identified as  
15 an American Indian Tribe and has maintained its existence  
16 as a distinct community from historical times to present.  
17 The Tribe has also maintained autonomous political  
18 influence and authority over members of the group from  
19 historical times to present.

20 6. Defendant Ken Salazar is the Secretary of the Department of  
21 Interior. The Secretary is an officer or employee of the  
22 United States and has a direct statutory duty to carry out  
23 the provisions of the Federally Recognized Indian Tribe  
24 List Act of 1994 ("Tribe List Act"). The Secretary is sued  
25 in his official capacity only.

26 **STATEMENT OF FACTS**

27 *Establishment of the Mishewal Wappo Tribe of Alexander Valley*

28 7. The Bureau of Indian Affairs ("BIA") is a sub-agency within

1 the United States Department of Interior.

2 8. The BIA acquired two tracts of land equaling .54 acres in  
3 Sonoma County, California, for the benefit of the Tribe in  
4 1908 and 1913.

5 9. This parcel of land, from its purchase was held in trust by  
6 the United States for the benefit of the Tribe and its  
7 members.

8 10. Although the Tribe never adopted a formal Constitution, the  
9 Tribal membership did vote in 1935 to become a Tribe  
10 organized under the provisions in the Indian Reorganization  
11 Act of 1934 ("IRA"), ch. 576, 48 Stat. 984.

12 *The California Rancheria Act*

13 11. On August 18, 1958, Congress enacted the California  
14 Rancheria Act, authorizing-but not requiring-the Secretary  
15 of the Interior to terminate the trust status of the lands  
16 and the status as Indian of the people of 41 specifically  
17 enumerated California Rancherias, including the Mishewal  
18 Wappo Tribe of Alexander Valley, under certain specific and  
19 mandatory conditions.

20 12. Under the California Rancheria Act, termination was to be  
21 the result of a process in which the Rancheria Indians of  
22 California could decide to accept termination in exchange  
23 for free title of Rancheria assets, and the provision of  
24 certain improvements and services aimed at providing the  
25 soon-to-be-terminated Indians with adequate infrastructure  
26 to subsist without treatment as Indians by the federal  
27 government.

28 13. The process for termination under the California Rancheria

1 Act required the Secretary of the Interior, after  
2 consultation with the Indians of the Rancheria to be  
3 terminated, to prepare a Distribution Plan detailing the  
4 measures that would be undertaken to successfully achieve  
5 the requirements of the Act.

6 14. Before the distribution of Rancheria assets could be  
7 finalized and termination completed, section 3 of the  
8 California Rancheria Act specifically required the  
9 Secretary of the Interior to take certain actions to  
10 prepare the Rancheria for termination before conveying  
11 individual deeds to Distributees. The Secretary of the  
12 Interior was to, inter alia:

13 A. Survey Rancheria boundaries to ensure marketable title  
14 to individual parcels (California Rancheria Act  
15 §3(a));

16 B. Bring Indian Bureau roads serving the Rancheria up to  
17 comparable standards for similar county-maintained  
18 roads (id. §3(b)); and

19 C. Install or rehabilitate irrigation and domestic water  
20 systems as the Secretary of the Interior and  
21 Rancheria residents agreed upon (id §3(c)).

22 15. Section 8 of the California Rancheria Act instructed the  
23 Secretary of the Interior that before he could convey  
24 property pursuant to the Act, he was to "protect the rights  
25 of individual Indians who are minors, non compos mentis, or  
26 in the opinion of the Secretary in need of assistance in  
27 conducting their affairs, by causing the appointment of  
28 guardians for such Indians in courts of competent

1 jurisdiction, or by such other means as he may deem  
2 adequate, without application from such Indians...."

3 16. Section 9 of the California Rancheria Act instructed the  
4 Secretary of the Interior to implement education and  
5 vocational training programs for the benefit of the  
6 Rancheria Indians before the distribution of Rancheria  
7 assets could be finalized and termination completed.

8 17. The provision set forth in sections 3, 8 and 9 of the  
9 California Rancheria Act were conditions precedent to  
10 lawful distribution of Rancheria assets and termination of  
11 the individual status of Rancheria Indians.

12 *The Mishewal Wappo Tribe of Alexander Valley Distribution Plan*

13 18. Soon after the enactment of the California Rancheria Act,  
14 The Secretary of the Interior, acting through his  
15 subordinates in the BIA, prepared a proposed Distribution  
16 Plan for the Mishewal Wappo Tribe of Alexander Valley.  
17 Under the provision of that plan the Rancheria was to be  
18 divided into 3 lots.

19 19. The Distribution Plan further stipulated that when all the  
20 requirements in the plan were met by the federal government  
21 and the Tribe was satisfied with such efforts, the Tribe  
22 would then have its constitution and bylaws revoked and  
23 termination would be finalized.

24 20. The Proposed Mishewal Wappo Tribe of Alexander Valley  
25 Distribution Plan was accepted by the Secretary of the  
26 Interior on July 6, 1959.

27 21. Induced by the promises of improvements set forth in the  
28 California Rancheria Act and the proposed Distribution

1 Plan, those residents of the Rancheria erroneously  
2 identified as the Mishewal Wappo Tribe of Alexander Valley  
3 members voted to accept the Distribution Plan, which was  
4 finalized on September 25, 1959.

5 *Failure to Execute the Mishewal Wappo Tribe of Alexander Valley*

6 *Distribution Plan:*

7 *County Road Standards and Subdivision Requirements*

8 22. The Distribution Plan for the Mishewal Wappo Tribe of  
9 Alexander Valley called for division of the Rancheria land  
10 into three lots.

11 23. Under California statutes in effect at the time, this  
12 division constituted the creation of a "subdivision,"  
13 triggering specific requirements for water supply and  
14 access roads.

15 24. Section 3(b) of the California Rancheria Act specifically  
16 instructed the Secretary of the Interior to complete any  
17 construction or improvement needed to bring roads serving  
18 the Rancheria up to "adequate standards comparable to  
19 standards for similar roads of the State or subdivision  
20 thereof."

21 25. Specifically, the BIA sought to avoid, *inter alia*,  
22 potential costs associated with additional road  
23 construction, adding additional wells, a pressure tank and  
24 fire hydrants.

25 26. The only Rancheria road was gravel and became impassable in  
26 the winter months, making transportation to and from the  
27 Rancheria very difficult and living on the Rancheria very  
28 burdensome. As a seasonal migrant working community, the

1 resident members of the Rancheria were unable to travel to  
2 seek out work in the winter months due to road conditions.  
3 27. If the Distribution Plan purposed by the Secretary of the  
4 interior had met the requirements of the California  
5 Rancheria act and conformed to the requirements of Sonoma  
6 County, the deficient road conditions and associated  
7 problems would have been eliminated.

8 *Failure to Execute the Mishewal Wappo Tribe of Alexander Valley*

9 *Distribution Plan:*

10 *Water and Sanitation Systems*

11 28. In order for Sonoma County, California to assume  
12 responsibility of the domestic water system on the  
13 Rancheria, the BIA was required to make certain  
14 improvements to the Rancheria's water system, including the  
15 installation of fire hydrants and water mains.

16 29. However, the Distribution Plan to be carried out by the  
17 Secretary of interior called for no improvements noting  
18 that there was an existing well, pressure pump and storage  
19 tank. There was no water quality testing, no determination  
20 of well volume, measurements of water pressure or  
21 consideration of whether the water system was adequate for  
22 future residences or agriculture.

23 30. The water system on the Rancheria served as both domestic  
24 and irrigation purposes, despite the fact that a 1952 BIA  
25 study that found such water systems inadequate for these  
26 purposes.

27 31. The BIA failed to install sanitation equipment of any kind  
28 on the Rancheria's water system, thereby automatically

1 making the existing water system inadequate and below the  
2 minimum requirements of California Rancheria Act in its  
3 original form and as amended, as well as under applicable  
4 Sonoma County standards following purported termination.

5 32. Living with a substandard water system and no sanitation  
6 facilities whatsoever made life very difficult and  
7 unbearable to those living in the Rancheria. In fact,  
8 without the aforementioned improvements, the poor  
9 conditions of Rancheria life that the California Rancheria  
10 Act was intended to address, were ignored.

11 *Failure to Execute the Mishewal Wappo Tribe of Alexander Valley*

12 *Distribution Plan:*

13 *Provision of Educational and Vocational Training*

14 33. Section 9 of the California Rancheria Act states:  
15 Prior to the termination of the Federal trust relationship  
16 in accordance with this Act, the Secretary of the Interior  
17 is authorized to undertake, within the limits of available  
18 appropriation, a special program of education and training  
19 designed to help the Indians to earn a livelihood, to  
20 conduct their own affairs, and to assume their  
21 responsibilities as citizens without special services  
22 because of their status as Indians. Such programs may  
23 include language training, orientation in non-Indian  
24 community customs and living standards, vocational training  
25 and related subjects, transportation to the place of  
26 training or instruction.

27 34. The Secretary of the Interior failed to fully inform all  
28 the Tribe's members about the availability of federally

1 funded education and training.

2 35. As a result, many of the Tribe's members were without  
3 educational or vocational training because of the economic  
4 status of residents of the Rancheria and lack of access to  
5 comparable educational or training programs.

6 36. The lack of educational and vocational training added to  
7 the ongoing economic hardship and substandard living  
8 conditions the Tribe's members had to endure on the  
9 Mishewal Wappo Tribe of Alexander Valley Rancheria.

10 *Purported Termination of the Mishewal Wappo Tribe of Alexander*  
11 *Valley*

12 37. Despite the failure to create an adequate Distribution Plan  
13 in accordance with minimum standards as detailed above, the  
14 BIA declared the Rancheria infrastructure satisfactory and  
15 sought to complete the termination process.

16 38. Further, the inadequate Notice provided to the members of  
17 the Tribe by the BIA resulted in a lack of presence at the  
18 meeting to vote for the Distribution Plan. Failure to  
19 properly notify members coupled with a failure to ensure  
20 those present at said meeting resulted in 2/3 of the  
21 Tribe's land being distributed to non-Indians who resided  
22 on the Rancheria by virtue of a previous relationship with  
23 a member that had moved away.

24 39. The BIA issued its Completion Statement for termination of  
25 the Mishewal Wappo Tribe of Alexander Valley and finalized  
26 the Distribution Plan on September 25, 1959.

27 40. The Secretary of the Department of Interior published a  
28 formal Termination of Federal Supervision proclamation in

1 the Federal Register. See 26 Fed. Reg. 146, 6875-6876  
2 (August 1, 1961)

3 *Duties of the Secretary of the Interior*

4 41. At all times pertinent hereto, the majority of Tribe's  
5 membership had received minimal formal education and were  
6 unsophisticated and inexperienced in handling even simple  
7 business or legal affairs. Section 8 of the California  
8 Rancheria Act as noted above, provided that the Tribe's  
9 members should receive assistance in negotiating the terms  
10 of the termination, including the Distribution Plan.

11 42. At the time of the Secretary's approval of the Mishewal  
12 Wappo Tribe of Alexander Valley Distribution Plan, the  
13 Tribe was not represented by counsel and was given no  
14 impartial advice as to the following:

15 A. Its legal rights under the California Rancheria Act,  
16 generally; and

17 B. Its right to improvements to roads, water systems and  
18 sanitation systems; and

19 C. Its right to educational or vocational training; and

20 D. Its right to insist upon provision of such services  
21 and facilities under section 3 and 9 of the  
22 California Rancheria Act.

23 43. Beginning at least with the establishment of the Rancheria  
24 in 1908, a trust relationship existed between the United  
25 States and the Tribe and its membership.

26 44. Under that trust relationship, the conduct of the United  
27 States in its dealings with the Tribe and its members is  
28 held to heightened standards of care that governs the

1 actions of a private trustee toward a private beneficiary.

2 45. The United States, acting through the Secretary of  
3 Interior, "has charged itself with moral obligations of the  
4 highest responsibility and trust. Its conduct, as disclosed  
5 in the acts of those who represent in dealings with the  
6 Indians, should therefore be judged by the most exacting  
7 fiduciary standards". *Seminole Nation V. United States*, 316  
8 U.S. 286,297(1942).

9 46. Under the California Rancheria Act, and as a trustee of the  
10 Indians subject thereto, the Secretary of the Interior was  
11 obligated to enter into whatever agreement or agreements  
12 with Indians of a given Rancheria electing to terminate  
13 thereunder as might be necessary to ensure that upon  
14 distribution of the Rancheria assets, the Rancheria's water  
15 supply, water distribution, sanitation and other facilities  
16 would be adequate to meet the reasonable present and  
17 foreseeable needs of all the people of the Rancheria.

18 47. Under the California Rancheria Act, and as a trustee of the  
19 Indians subject thereto, the Secretary of the Interior was  
20 obligated to enter into whatever agreement or agreements  
21 with Indians as a given Rancheria electing to terminate  
22 there under as might be necessary to ensure that upon  
23 distribution of the Rancheria assets the Tribe's membership  
24 would be prepared to receive and capably manage such assets  
25 and facilities.

26 48. Prior to seeking approval of the Distribution Plan by  
27 members of a given Rancheria, the Secretary of the Interior  
28 was obligated to provide tribal members such accurate and

1 adequate information, advice and assistance as reasonably  
2 required by them in order that the members of the Rancheria  
3 could understand their individual rights and the  
4 obligations of the United States under the California  
5 Rancheria Act.

6 49. The Secretary of the Interior was also obligated to provide  
7 tribal members such accurate and adequate information as to  
8 the relative advantages and disadvantages of accepting  
9 termination, the options available to them under the  
10 California Rancheria Act, and the legal consequences of  
11 exercising those options.

12 *Effects of the Tribe's Purported Termination*

13 50. As a result of the Tribe's purported termination, the Tribe  
14 and its membership have been greatly damaged, including but  
15 not limited to the following losses:

16 A. The Tribe has been prevented from participating in  
17 government programs specifically intended for  
18 American Indian Tribal Governments; and,

19 B. The Tribe's ability to govern itself and exercise its  
20 sovereignty and domination had been compromised;  
21 and,

22 C. The Tribe members' land became taxable under the laws  
23 of the state of California but for the wrongful  
24 termination of the Tribe; and,

25 D. The Tribe's members, few if any of whom received any  
26 training in financial management contemplated by the  
27 Act, were unable to pay said property taxes and were  
28 forced to sell their land at a fraction of its true

- 1 value to avoid foreclosure sales; and,  
2 E. The Tribe members' trust and land became an available  
3 asset subject to creditor process; and,  
4 F. The Tribe's members lost their land to satisfy  
5 creditor's claims; and,  
6 G. The Tribe's members were denied access to BIA programs  
7 and grants and had to go without training or higher  
8 education opportunities; and,  
9 H. The Tribe's members residing on the Mishewal Wappo  
10 Tribe of Alexander Valley Rancheria, following the  
11 wrongful termination of their status as Indians,  
12 were forced to comply with local building and  
13 sanitary codes due to their land being removed from  
14 federally held status, resulting in expensive  
15 alterations, license fees, inspections,  
16 condemnations, etc; and,  
17 I. Without the benefit of adequate water, sanitation  
18 facilities, irrigation systems, or housing, as  
19 contemplated by the California Rancheria Act, the  
20 Tribe's members were forced to live under injurious  
21 and unsanitary conditions, suffering damage to their  
22 physical and mental health.  
23 J. These living conditions also prevented the Tribe from  
24 developing any self-sustaining, economic  
25 developments of any kind.

26 **Subsequent Litigation Invalidating Terminations under the**  
27 **California Rancheria Act**

28 51. The Secretary of the Interior's failure to legally

1 implement the California Rancheria Act was the basis of  
2 substantial subsequent litigation over the course of two  
3 decades that in each and every case resulted in the  
4 reinstatement of formal federal recognition of the tribes  
5 terminated under the Act. In fact, the majority of those so  
6 terminated were restored via litigation.

7 52. For example, *Knight V Kleppe*, Civ. No. C-74-005 WTS(N.D.  
8 Cal.1976), was a class action brought on behalf of the  
9 dependent members of the terminated Rancherias who sought  
10 to reverse their termination. A final declaratory judgment  
11 and permanent injunction was entered in that case by the  
12 U.S. District Court for the Northern District of California  
13 on February 20,1976. Among other things, the Court  
14 permanently enjoined the Secretary of the Interior from  
15 treating any person listed in a California termination roll  
16 or a "dependent member" of a distributee's immediate family  
17 as a terminated Indian.

18 53. In *Duncan V. Andrus*, 517 F. Supp. 1(N.D. Cal. 1977), the  
19 District Court specifically held that the Secretary of the  
20 Interior's termination of the Robinson Rancheria was  
21 unlawful. The court reached that conclusion after  
22 determining that the Secretary had failed to provide  
23 adequate water facilities before conveying tribal land to  
24 individual distributees and because tribal members had not  
25 been represented by counsel in negotiating and approving  
26 the Distribution Plan. See *id.* at 6; see also, 42 Fed. Reg.  
27 33,099(June 29, 1977) (announcing restoration of Robinsons  
28 Rancheria in accordance with court order). During that

1 litigation, the Secretary conceded that the termination was  
2 unlawful because of his failure to comply with the  
3 requirements of the California Rancheria Act. See *Duncan*,  
4 517 F. Supp.56 at 4.

5 54. Likewise, in *Smith v. United States*, 515 F. Supp. 56 (N.D.  
6 Cal. 1978), the Secretary of the Interior conceded - and  
7 the District Court found - that the termination of the  
8 Hopland Rancheria had been unlawful and that, as a result,  
9 the tribe would not be treated as terminated because of the  
10 Secretary's failure to provide adequate water facilities  
11 before conveying Rancheria land to individual distributees.  
12 See *id.* at 59.

13 55. In *Upper Lake Pomo Association V. Watt*, No. C-75-0181  
14 (N.D.Cal.), the District Court entered an order on May 15,  
15 1979, restoring the Upper Lake Rancheria because the  
16 Secretary of the Interior had breached his obligations  
17 under the California Rancheria Act by failing to provide  
18 adequate water facilities before conveying Rancheria land  
19 to individual distributees.

20 56. In *Table Bluff Band of Indians V. Andrus*, 532 F.Supp.25  
21 (N.D.Cal.1981), the Secretary of the Interior again  
22 conceded and the District Court likewise found that the  
23 Table Bluff Rancheria had been unlawfully terminated  
24 because the Secretary failed to fulfill his duties under  
25 section 3(c) of the California Rancheria Act. See *id.* at  
26 259.

27 57. In *Tillie Hardwick v. United States*, No. C-79-1710-SW  
28 (N.D.Cal.), individuals from 34 of the terminated

1 Rancherias commenced similar litigation. In an order  
2 entered on December 22, 1983, the District Court restored  
3 17 of the plaintiff Rancherias previously terminated under  
4 provisions of California Rancheria Act. See also 49 Fed.  
5 Reg. 24,084 (June 11, 1984) (announcing restoration of 17  
6 Rancherias pursuant to court order). Specifically, the  
7 following Rancherias were restored as a result of the  
8 Court's December 22, 1983 order: (1) Big Valley, (2) Blue  
9 Lake, (3) Buena Vista, (4) Chicken Ranch (5) Cloverdale,  
10 (6) Elk Valley (7) Greenville, (8) Mooretown, (9) North  
11 Fork, (10) Picayune, (11) Pinoleville, (12) Potter Valley,  
12 (13) Quartz Valley, (14) Redding, (15) Redwood Valley, (16)  
13 Rohnerville and (17) Smith River.

14 58. Claims asserted on behalf of the remaining plaintiff  
15 Rancherias, which included the Mishewal Wappo Tribe of  
16 Alexander Valley, were dismissed without prejudice subject  
17 to their being refiled in another action. In dismissing  
18 these claims without prejudice, the District Court in  
19 *Tillie Hardwick* ordered that the Secretary of the Interior  
20 could not assert any laches defense in any such subsequent  
21 action.

22 59. Finally, in *Scotts Valley Band of Pomo Indians of the Sugar*  
23 *Bowl Rancheria v. United States*, No. C-86-3660-WWS  
24 (N.D.Cal.), the district court approved settlements in  
25 which the Secretary of the Interior conceded that the  
26 termination of four additional Rancherias had been  
27 unlawful. See also 57 Fed. Reg. 5214 (Feb. 12, 1992)  
28 (announcing restoration of the Guidiville Band of Pomo

1 Indians, the Scotts Valley Band of Pomo Indians and the  
2 Lytton Indian Community of California in accordance with  
3 the court-approved settlement); 57 Fed. Reg. 19,133(May 4,  
4 1992) (announcing Chico Rancheria restoration in accordance  
5 with the court-approved settlement).

6 60. Following Scotts Valley, 23 of the 41 Rancherias listed in  
7 the original California Rancheria Act had been restored via  
8 court order.

9 **Tribe List Act**

10 61. In 1994, Congress enacted the Tribe List Act in response to  
11 a "growing and disturbing trend" on the part of the BIA to  
12 "capriciously and improperly withdraw federal recognition  
13 from a native group or leader." H.R. Rep. No 103-781, at  
14 3(1994), as reprinted in 1994 U.S.C.C.A.N.  
15 3768,3769(footnotes omitted).

16 62. The Tribe List Act requires the Secretary to "publish in  
17 the Federal Register a list of all Indians tribes which the  
18 Secretary recognizes to be eligible for the special  
19 programs and services provided by the United States to  
20 Indians because of their status as Indians." Tribe List Act  
21 § 104 (a) (codified at 25 U.S.C. § 479a-1(a))

22 63. In enacting the Tribe List Act, Congress made several  
23 "findings" For example, Congress found that the "list  
24 published by the Secretary should be accurate, regularly  
25 updated, and regularly published, since it is used by the  
26 various departments and agencies of the United States to  
27 determine the eligibility of certain groups to receive  
28 services from the United States." Tribe List Act §

1 103(7) (codified at 25 U.S.C. § 479a note). Congress also  
2 found that the "list of federally recognized tribes which  
3 the Secretary publishes should reflect all of the federally  
4 recognized Indian tribes in the United States which are  
5 eligible for the special programs and services provided by  
6 the United States to Indians because of their status as  
7 Indians." Tribe List Act §103(8) (codified at 25 U.S.C.  
8 §479a note).

9 64. The Tribe List Act commands the Secretary to publish the  
10 list of tribes every year on or before January 30. Tribe  
11 List Act §104(b) (codified at 25 U.S.C. §479a-1(b)).

12 65. The Secretary is currently in breach of the annual  
13 publication requirement, having last caused a list to be  
14 published on November 25, 2005. See 70 Fed. Reg. 71,794.

15 66. The Secretary has delegated responsibility for publishing  
16 the list to the Assistant Secretary for Indian Affairs. See  
17 *id.* However, as the officer of the United States  
18 specifically named in the Tribe List Act, the Secretary  
19 retains ultimate responsibility for assuring compliance  
20 with the Tribe List Act.

21 ***Basis for Belief that the Secretary Currently Recognizes the***  
22 ***Tribe***

23 67. Upon information and belief, which is likely to have  
24 evidentiary support after a reasonable opportunity for  
25 further investigation or discovery, the Secretary currently  
26 recognizes that the Tribe's purported termination was  
27 unlawful and that the Tribe satisfies all requirements for  
28 being eligible to participate in the special programs and

1 services provided by the United States to Indians because  
2 of their status as Indians.

3 68. For example, in testimony before the House Resources  
4 Committee on May 16, 2000, then-Assistant Secretary for  
5 Indian Affairs, Kevin Gover, repeated a finding made by  
6 advisory group chartered by Congress, which in 1997 had  
7 recommended that the Tribe be immediately restored. See  
8 Testimony of Kevin Gover, Assistant Secretary for Indians  
9 Affairs, Department of the Interior, Hearing before the  
10 House Resources Committee on H.R. 946, the Graton Rancheria  
11 Restoration Act, available at  
12 <http://www.doi.gov/ocl/2000/hr946.htm>. Specifically, Mr.  
13 Gover quoted the recommendation of the Advisory Council on  
14 California Indian Policy, which had been created by  
15 Congress a few years earlier. See *id* ; see also Advisory  
16 Council on California Indian Policy Act of 1992, Pub .L.  
17 No. 102-416, § 4(a), 106 Stat. 2131,2132 (codified at 25  
18 U.S.C. § 651 note). At the time he made this statement, Mr.  
19 Gover was the official to whom the Secretary of the  
20 Interior had delegated responsibility for publishing the  
21 list required by the Tribe List Act. See 65 Fed. Reg.  
22 13,298,13,299 (Mar.13,2000) (listing recognized tribes and  
23 bearing Mr. Gover's signature).

24 69. Recent statements by agency personnel provide further  
25 evidence that the Secretary currently recognizes that the  
26 Tribe should be eligible to participate in special programs  
27 and services provided by the United States to Indians  
28 because of their status as Indians. For example, in a

1 February 6, 2009 memorandum written by Dale Risling, Acting  
2 Regional Director for the California Pacific Region of the  
3 Bureau of Indian Affairs, Mr. Risling concludes:

4 [T]he Bureau of Indian Affairs, Pacific Region,  
5 supports the Tribe's efforts for restoration,  
6 either through legislation or administrative  
7 action.

8 70. Earlier statements by agency personnel only serve to  
9 further support the conclusion that the Secretary currently  
10 recognizes that the Tribe's purported termination was  
11 unlawful and that the Tribe satisfies all requirements for  
12 being eligible to participate in the special programs and  
13 services provided by the United States to the Indians  
14 because of their status as Indians. For example, in a 1987  
15 memorandum to the Assistant Secretary for Indian Affairs,  
16 BIA Area Director Maurice W. Babby recommended that a  
17 "proposal[to settle claims belonging to those tribes not  
18 part of the Tillie Hardwick settlement] receive favorable  
19 consideration as to the following [R]ancherias:...  
20 Alexander Valley."

21 71. Through his agencies, the Secretary continues to recognize  
22 the Tribe as recently as May 6, 2009 when the Bureau of  
23 Land Management contacted the Tribe requesting comments,  
24 questions or concerns regarding the potential leasing of  
25 federal subsurface mineral estates beneath privately held  
26 lands within the historically aboriginal territory of the  
27 unlawfully terminated Tribe. Federal statutes and  
28 regulations as well as a Presidential Executive Order

1 require such consultation with federally recognized Tribes.

2 72. Although not direct federal action, the Tribe is also  
3 included in court cases in California in Indian Child  
4 Welfare Cases involving its members. The federal statute's  
5 enforcement is overseen by the Bureau of Indian Affairs.

6 73. In 1999, the California Regional Office initiated a plan  
7 under the leadership of Dale Risling to research, gather  
8 and prepare Tribal information for the purposes of  
9 providing supportive data for a "legislative initiative" to  
10 restore the remaining 11 unlawfully terminated Tribes,  
11 including Alexander Valley

12 74. At no time since the enactment of the Tribe List Act has  
13 the Tribe been listed as a federally recognized tribe even  
14 though the Secretary, as noted above, has conceded on  
15 numerous occasions that the termination of the Tribe's  
16 recognition under federal law-purportedly accomplished by  
17 the California Rancheria Act-was unlawful.

18 **FIRST CAUSE OF ACTION**

19 ***(Breach of Fiduciary Duty)***

20 75. The Tribe re-alleges paragraphs 1 through 74, and  
21 incorporates those paragraphs herein as if set forth in  
22 full.

23 76. The Secretary, acting on behalf of the United States, owes  
24 a fiduciary duty to the Tribe because the Tribe's purported  
25 termination was not lawfully effectuated in conformance  
26 with the requirements of the California Rancheria Act,  
27 thereby rendering the Tribe's purported termination void  
28 and of no legal effect.

- 1 77. The Secretary's fiduciary duty to the Tribe imposes upon  
2 the Secretary "moral obligations of the highest  
3 responsibility and trust," *Seminole Nation*, 316 U.S. at  
4 297, and his conduct must be judged "by the most exacting  
5 fiduciary standard." *Id.*
- 6 78. The Secretary's fiduciary duty is further evidenced by the  
7 numerous federal statutes in which Congress has made  
8 express finding regarding the existence of such a duty.  
9 See, e.g., Native American Housing and Self-Determination  
10 Act, 25 U.S.C. § 410(2)-(4) (finding that "there exists a  
11 unique relationship between the Government of the United  
12 States and the governments of the Indian tribes" the United  
13 States has" undertaken a unique trust responsibility to  
14 protect and support Indian tribes;" and "Congress...has  
15 assumed a trust responsibility for the protection and  
16 preservation of Indian tribes"); Indian Health Care  
17 Improvement Act, 25 U.S.C. §1601(a) (finding that "Federal  
18 health services to maintain and improve health of the  
19 Indians are consonant with and required by the Federal  
20 Government's historical and legal relationship with, and  
21 resulting responsibility to, the American Indian people");  
22 Indian Child Welfare Act, 25 U.S.C § 1901(2) (finding that  
23 "Congress, through statutes, treaties, and the protection  
24 and preservation of Indian tribes and their resources").
- 25 79. The Secretary first breached his fiduciary duty to the  
26 Tribe by failing to provide proper notice of the meeting to  
27 approve the Distribution Plan.
- 28 80. As a direct and proximate result of the Secretary's failure

1 to provide proper notice, the majority of members were  
2 denied the opportunity to vote for or against voluntary  
3 termination, making the reported vote a violation of due  
4 process.

5 81. The Secretary then breached his fiduciary duty by failing  
6 to ensure that those present at the aforementioned meeting  
7 were in fact members of the Tribe.

8 82. As a direct and proximate result of Secretary's failure to  
9 confirm membership, two-thirds of the Tribe's Rancheria was  
10 unlawfully distributed to non-members residing on the  
11 Rancheria, but not enrolled with the Tribe.

12 83. The Secretary has continually breached his fiduciary duty  
13 to the Tribe each year by failing to include the Tribe on  
14 the statutorily mandated list of federally recognized  
15 tribes, despite the fact that the Secretary currently  
16 recognized that the Tribe's purported termination was  
17 unlawful and that the Tribe otherwise met all the  
18 requirements for being eligible to participate in the  
19 special programs and services provided by the United States  
20 to Indians because of their status as Indians.

21 84. As a direct and proximate result of the Secretary's failure  
22 to include the Tribe on the statutorily mandated list of  
23 federally recognized tribes, the Tribe has been and  
24 continues to be ineligible for the "protection, services  
25 and benefits of the Federal government available to Indian  
26 tribes by virtue of their status as tribes" pursuant to 25  
27 C.F.R § 83.2

28 85. The Secretary has continually breached his fiduciary duty

1 to the Tribe each year by failing to include the Tribe in  
2 the various calculations in forming the Department of the  
3 Interior's annual budget submission to Congress for the  
4 Bureau of Indian Affairs and the Indian Health Service.  
5 86. As a direct and proximate result of the Secretary's failure  
6 to include the Tribe in budget calculations, there is no  
7 funding for services to the Tribe and the Tribe would not  
8 be entitled to its "tribal shares". Indian Self  
9 Determination and Education Assistance Act of 1975, Pub. L.  
10 No. 93-638.

11 WHEREFORE, the Tribe prays for relief as set forth below.

12 **SECOND CAUSE OF ACTION**

13 **(Agency Action Unlawful Withheld or Unreasonably Delayed)**

- 14 87. The Tribe re-alleges paragraphs 1 through 74, and  
15 incorporates those paragraphs herein as if set forth in  
16 full.
- 17 88. The Administrative Procedure Act ("APA") authorizes  
18 judicial review for those suffering legal wrong because of  
19 agency action. 5 U.S.C §702.
- 20 89. An agency's "failure to act" constitutes "agency action"  
21 *Id.* § 551(13). The APA therefore authorizes a reviewing  
22 court to "compel agency action unlawfully withheld or  
23 unreasonably delayed." *Id.* § 706(1).
- 24 90. The Secretary's failure to publish a list of federally  
25 recognized tribes that includes the Tribe's name  
26 constitutes "agency action".
- 27 91. Upon information and belief which is likely to have  
28 evidentiary support after a reasonable opportunity for

1 further investigation or discovery, the Secretary currently  
2 recognizes that the Tribe's purported termination was  
3 unlawful and that the Tribe satisfies all requirements for  
4 being eligible to participate in the special programs and  
5 services provided by the United States to Indians because  
6 of their status as Indians.

7 92. As a direct and proximate result of the Secretary's failure  
8 to include the Tribe on the statutorily mandated list of  
9 federally recognized tribes, the Tribe has been and  
10 continues to be ineligible for the "protection, services  
11 and benefits of the Federal government available to Indian  
12 tribes by the virtue of their status as tribes" pursuant to  
13 25 C.F.R. § 83.2

14 WHEREFORE, the Tribe prays for relief as set forth below.

15 **THIRD CAUSE OF ACTION**

16 **(Failure to Conclude a Matter Within a Reasonable Time)**

17 93. The Tribe re-alleges paragraphs 1 through 74, and  
18 incorporates those paragraphs herein as if set forth and  
19 full.

20 94. The APA provides that "within a reasonable time, each  
21 agency shall proceed to conclude a matter presented to it"  
22 5 U.S.C. § 552(b).

23 95. Upon information and belief which is likely to have  
24 evidentiary support after a reasonable opportunity for  
25 further investigation or discovery, the Secretary has  
26 recognized since at least 1987 that the Tribe's purported  
27 termination was unlawful and that the Tribe satisfies all  
28 requirements for being eligible to participate in the

1 special programs and services provided by the United States  
2 to Indians because of their status as Indians.

3 96. Despite the foregoing, the Secretary has failed to publish  
4 within a reasonable time a list of federally recognized  
5 tribes that includes the Tribe's name.

6 97. As a direct and proximate result of the Secretary's failure  
7 to include that the Tribe on the statutorily mandated list  
8 of federally recognized tribes, the Tribe has been and  
9 continues to be ineligible for the "protection, services  
10 and benefits of the Federal government available to Indian  
11 tribes by virtue of their status as tribes" pursuant to 25  
12 C.F.R. §83.2.

13 WHEREFORE, The Tribe prays for relief as set forth below.

14 **FOURTH CAUSE OF ACTION**

15 **(Arbitrary and Capricious Agency Action)**

16 98. The Tribe re-alleges paragraphs 1 through 74, and  
17 incorporates those paragraphs herein as if set forth in  
18 full.

19 99. The APA provides that a court must hold unlawful and set  
20 aside agency action that is "arbitrary, capricious, an  
21 abuse of discretion, or otherwise not in accordance with  
22 law." 5 U.S.C §706(2) (A).

23 100. The Secretary's failure to publish a list of federally  
24 recognized tribes that includes the Tribe's name  
25 constitutes "agency action."

26 101. Upon information and belief, which is likely to have  
27 evidentiary support after a reasonable opportunity for  
28 further investigation or discovery, the Secretary currently

1 recognizes that the Tribe's purported termination was  
2 unlawful and that the Tribe satisfies all requirements for  
3 being eligible to participate in special programs provided  
4 by the United States to Indians because of their status as  
5 Indians.

6 102. Therefore, the Secretary's failure to publish a list of  
7 federally recognized tribes that includes the Tribe's name  
8 is arbitrary, capricious, an abuse of discretion, and not  
9 in accordance with law.

10 103. As a direct and proximate result of the Secretary's failure  
11 to include the Tribe on the statutorily mandated list of  
12 federally recognized tribes, the Tribe has been and  
13 continues to be ineligible for the "protection, services  
14 and benefits of the Federal government available to Indian  
15 tribes by virtue of their status as tribes" pursuant to 25  
16 C.F.R. §83.2.

17 WHEREFORE, the Tribe prays for relief as set forth below.

18 PRAYER FOR RELIEF

19 WHEREFORE, the Tribe respectfully requests that this court enter  
20 an order:

21 A. Directing the Secretary to publish a list of recognized  
22 tribes in accordance with section 104(a) of the Tribe List  
23 Act, 25 U.S.C §479a-1(a), with such list to include the  
24 Tribe's name;

25 B. Declaring that the Tribe is eligible for the protection,  
26 services and benefits of the Federal government available  
27 to Indian tribes by virtue of their status as federally  
28 recognized tribes;

1 C. Directing the Secretary to immediately take into trust such  
2 lands owned and designated by the Tribe located within the  
3 historically aboriginal territory of the Mishewal Wappo  
4 Tribe of Alexander Valley ("Designated Lands"), with such  
5 lands to be considered as "Indian Country" as defined in 18  
6 U.S.C § 1151 and "restored lands" as defined by 25 U.S.C  
7 §2719(b)(1)(B)(iii);

8 D. Directing the Secretary, through the Bureau of Land  
9 Management and the Bureau of Indian Affairs, to identify  
10 and transfer to the Tribe, as trust lands with the land  
11 considerations as stated above, all public lands held by  
12 the Department of the Interior which are not currently in  
13 use and are available for transfer that are within the  
14 Tribe's historically aboriginal land.

15 E. Directing the Secretary to initiate and supervise the  
16 installation of utilities on the designated Lands, with  
17 such utilities to be installed at the federal government's  
18 sole cost and expense;

19 F. Provide funding for the Tribe to receive technical  
20 assistance in order to fully participate in federal  
21 programs, including health, housing, education, and tribal  
22 government administration.

23 G. Awarding the tribe attorneys fees and reasonable expenses  
24 incurred in connection with this action; and

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1 H. Granting such other relief as the court deems just and  
2 proper.

3  
4 Dated: June 2, 2009

Respectfully Submitted,

THE RYAN LAW FIRM

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8 Kelly P. Ryan  
9 Attorneys for Plaintiff  
10 The Mishewal Wappo Tribe of  
11 Alexander Valley

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