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UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF CALIFORNIA

10 TIFFANY L. (HAYES) AGUAYO, et al.,

CASE NO. 12-cv-00551-WQH (KSC)

11 Plaintiffs,

DECLARATION OF
ELSIE LUCERO

12 v.

13 KEN SALAZAR, et al.,

14 Defendants.

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I, ELSIE LUCERO, am an adult over the age of eighteen, and I am competent to testify to all
19 of the following:

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1. I was employed by the Bureau of Indian Affairs (BIA) at the Southern California
Agency located in Riverside California. I worked as an enrollment specialist for nearly 21 years
before I retired from the BIA in 2005.

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2. I am a Native American of the Isleta Pueblo in New Mexico. The other lady who
worked with me in my department is of the Pauma Tribe in Southern California. Because I am from
out-of-state, I was given the enrollment specialist position to avoid any appearance of bias.

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1 3. During my term with BIA / Riverside, I advised the enrollment committees of some 30
2 Southern California tribes, including the Pala Band of Mission Indians. As a part of my job, I was
3 responsible for interpreting tribal documents and membership ordinances.

4 4. During my term with BIA / Riverside, I was responsible in updating the membership
5 rolls, i.e, upon review of all enrollment applications, my findings were submitted to the Pala Band of
6 Mission Indian Executive Committee. Upon their concurrence, I typed the membership rolls which
7 included the names, dates of birth, sex, address, Pala Indian Blood degree, total Indian blood
8 quantum. In the remarks section, I identified the Articles of Association, subsection, on the
9 qualification for membership with the Band. The Certifications of Approval were prepared for
10 signatures by the Pala Executive Committee and final approval of the federal membership roll by the
11 Superintendent of the Southern California Agency.

12 5. Based on my training and experience, the BIA has a fiduciary obligation to determine if
13 the Constitution was validly ratified by the general membership, and which membership ordinance
14 adopted by the Band is valid. If a membership "appeal" would have been filed with the Southern
15 California Agency, I would have been duty bound to determine the governing membership
16 ordinance.

17 6. I am familiar with the controversy concerning 162 descendants of Margarita (Saubel)
18 Owlinguish Britten. I clearly recall my investigation and advice concerning Margarita Britten's
19 blood quantum being 4/4 which means she is 100% Cupa Indian and that qualifies her and her
20 descendants down to 1/16 for tribal membership with the Pala Band of Mission Indians.

21 7. I also am aware that there is a final BIA agency decision that was issued in 1989 by the
22 Acting Assistant Secretary/BIA as to Margarita Britten's 4/4 Pala Indian blood quantum. I recall that
23 the Acting Assistant Secretary's decision was never appealed by the Pala Band of Mission Indians.
24 During the years that I worked for the Southern California Agency, additional Margarita Britten
25 descendants were added to the federally approved tribal roll as Pala Band tribal members.

26 8. I am also familiar with the controversy concerning whether the Pala Band of Mission
27 Indians formally adopted a "new" constitution transferring virtually most of the power from the
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1 Band's General Council to six individuals who comprise of the Band's "Executive Committee."

2 9. I have reviewed a Southern California Agency BIA internal Memorandum dated June 16,
3 1995 issued by Mr. Gil Stuart. That Memorandum states that both Articles of Association and a
4 Constitution were submitted but the Southern California Agency recommended withholding
5 approval. The Articles of Association were returned to the Band with recommendations for
6 consideration pertaining to the revised version. To my knowledge, the Pala Band of Mission Indians
7 never submitted further revised Articles of Association for the agency's approval.

8 10. I have reviewed the Revised 1997 Constitution. According to Article IX, in order for
9 the Constitution to become effective, a majority of the Pala Band tribal members, voting in a
10 duly-called election was required to ratify the Revised Constitution.

11 11. I have reviewed the Certificate of Approval dated July 2000 that was provided by
12 acting Regional Director Carmen Facio that states "approval" of the Band's Revised Constitution is
13 retroactive to November 12, 1997.

14 12. I have reviewed a letter dated February 24, 2012 from the Regional Pacific Office. The
15 only documentation that the Regional Office cites to in that letter stating the Revised Constitution is
16 valid is Resolution 97-36 passed at a General Council meeting on November 19, 1997, by a vote of
17 "27 For" "0 Against." In 1997, I recall that the Pala Band of Mission Indian had more members on
18 its federally approved membership roll, and, in my opinion, 27 votes was not a majority of voters.

19 13. In my years of experience with the BIA, "election" means tribal members are allowed
20 to vote in a noticed, balloted election. My interpretation of the word "election" in the Band's
21 Revised Constitution also comports with the plain language of Article IV of the Constitution -
22 Elections which states "election" means an established election ordinance, polling places, an election
23 committee, and absentee ballots.

24 14. It is my opinion that the Band's 1997 Constitution was never ratified by tribal members
25 voting in an election and is null and void.

26 15. I can say without hesitation, and to my knowledge, the Pala Band never submitted an
27 agenda, meeting minutes of an election committee which adopted the revised Constitution, and rules
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1 regarding how each voting member was to cast their votes, including absentee ballots for tribal
2 members who do not live on the reservation.

3 16. It is my professional opinion that these documents do not exist and NO Election was
4 held because the Regional Office would not be trying to justify their "approval" with a General
5 Council meeting vote on November 19, 1997, identifying a vote of "27 For" "0 Against" as set forth
6 in a letter dated February 24, 2012.

7 17. In my experience, the General Council's Resolution 97-36 would be interpreted as a
8 "vote" of approval to send the Revised Constitution to the Southern California agency director for
9 our review and comments.

10 18. I understand that the Band held an election for subsequent "amendments" to the 1997
11 Constitution. In my experience, the amendments would not cure the problem that the Revised
12 Constitution was never ratified by a duly held election of the entire band.

13 19. I have also reviewed the Executive Committee's "revised" membership ordinance no.
14 1 effective July 22, 2009. The revised ordinance states that the Executive Committee is authorized
15 to and hereby revises its Enrollment Ordinance in accordance with the provision of its Constitution
16 and changes made to that Constitution. In my experience, because the Pala Band's Constitution was
17 not ratified and is void, the revised membership ordinance is also void.

18 20. Further, even if the revised July 22, 2009 ordinance is valid, the ordinance cannot be
19 interpreted by the BIA against members who were already enrolled as of July 22, 2009. On page 2
20 of the Revised Ordinance No. 1 it states: "BE IT FURTHER RESOLVED, that the Executive
21 Committee of the Pala Band, by adoption of this revised Ordinance does not intend to alter or change
22 the membership status of individuals whose membership has already been approved and who are
23 currently listed on the membership roll of the Pala Band of Mission Indians." It is agency protocol
24 for the agency's final decision in 1989 to be recognized by the Pacific Regional Director as solid
25 precedence that must be honored as "final" under the federal Administrative Procedures Act.

26 21. In my opinion, and based on the documents I have described, the Band's Constitution
27 was never ratified, and in my opinion and based on my experience and training, the governing
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1 document is the Articles of Association and the original ordinance no. 1 enacted pursuant to the
2 Articles of Association. The original ordinance gave "final" and "conclusive" membership decisions
3 to the Secretary of the Interior under Section 5 of the Ordinance. Based on my experience, it is my
4 opinion, that the final decision by the Assistant Secretary in 1989 must be honored as "final"
5 between the government and the Band.

6 I declare under penalty of perjury under the laws of the State of California and the United
7 States, that the foregoing is true.

8 Dated: July 16, 2012.

Elsie Lucero

ELSIE LUCERO

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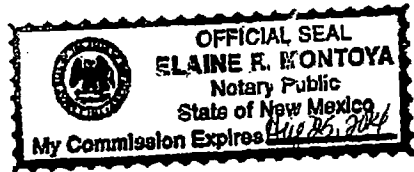
State of New Mexico
County of Bernalillo

Signed or attested before me on 16th day of July, 2012 by
Elsie Lucero *Elsie Lucero*

Elaine R. Montoya

Signature of notarial officer

My commission expires: August 25, 2014



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