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10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**

12 **Case No. 3:14-cv-247-RCJ-VPC**

13 **TIMOTHY AARON JOHN, TRAVIS**  
14 **RAY JOHN, TIFFANY LYNNAE JOHN,**  
15 **and TYRONE FRED JOHN**  
16 **SHIRLEY L. PALMER, LESLIE L.**  
17 **PALMER, JALEEN M. FLOWERS,**  
18 **and JESSE WADE PALMER,**

19 **First Amended Complaint**  
20 **(as of right before answer)**

21 **Plaintiffs,**

22 **v.**

23 **THE SECRETARY OF THE INTERIOR,**  
24 **through its Acting Assistant Secretary,**  
25 **BUREAU OF INDIAN AFFAIRS, its**  
26 **officers, servants, agents, employees,**  
27 **representatives, and attorneys,**

28 **Defendants.**

29 COMES NOW, Plaintiffs, TIMOTHY AARON JOHN, TRAVIS RAY JOHN,  
30 TIFFANY LYNNAE JOHN, TYRONE FRED JOHN, SHIRLEY L. PALMER, LESLIE  
31 L. PALMER, JALEEN M. FLOWERS, and JESSE WADE PALMER, Western  
32 Shoshone Indians, by and through their counsel, Reno Law Group LLC, and allege  
33 the following for their claims for relief against the Defendants:  
34

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**STATEMENT OF THE CASE**

1  
2 This action is initiated to prohibit the United States through the Department  
3 of the Interior, Bureau of Indian Affairs, from denying that these plaintiffs are 25%  
4 blood quantum Western Shoshone entitled to all rights as tribal members. This  
5 action is based upon the fact that the decision and the decision-making process of  
6 the Bureau of Indian Affairs was arbitrary and capricious, unreasonable and in  
7 violation of the Bureau's adopted policy and directives and in clear error as the  
8 latter decisions contradict the earlier decisions by the Bureau. The acts of the  
9 Assistant Secretary deprived the Plaintiffs of their due process rights and equal  
10 protection rights under the Constitution of the United States. This action is further  
11 brought to obtain a declaratory judgment that the United States is required to  
12 recognize that the plaintiffs herein are 25% blood quantum Western Shoshone  
13 based upon the best evidence available.  
14  
15

16 This action is amended to include the failure of the Bureau of Indian Affairs,  
17 a federal agency, to respond to a request for information and documentation that  
18 was the basis of the government's decision. The BIA has violated the law in its  
19 refusal to respond and its refusal to disclose the documentation and information to  
20 the Plaintiffs and their agents.  
21

**JURISDICTION**

- 22  
23  
24 1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
25 § § 1331 and 1346 and the 5<sup>th</sup> Amendment to the United States Constitution  
26 and 5 U.S.C. § 701 et seq. and 5 U.S.C. § 177 et seq. and pursuant to 5 U.S.C. §  
27 552 et seq.  
28 2. The venue of this action is properly placed in the District of Nevada pursuant to  
28 U.S.C. § 1391(b)(2) because the information and impact of these incidents

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1 took place in Fallon and Carson City, State of Nevada and whatever acts  
2 occurred in Phoenix, Arizona, and Washington D.C. only had effect in the  
3 State of Nevada.

4 **PARTIES**

- 5 3. The Plaintiffs are Western Shoshone Indians who are descended from their  
6 grandparents, Fred Hicks Sr, and Leona Mina Dyer.
- 7 4. Plaintiff Timothy Aaron John, aged 34, lives in Reno, Nevada and works as  
8 an electrician in the Reno/Tahoe area.
- 9 5. Plaintiff Travis Ray John, aged 32, is enrolled in school to complete a Sports  
10 Therapy degree in Orem, Utah. He has been an athlete for many years but  
11 now suffers from seizure disorder and has, through this disorder, become  
12 interested in Sports Therapy.
- 13 6. Tiffany Lynnae John, aged 25, is a mother of four children under the age of  
14 eight and lives on the Fallon Paiute-Shoshone Reservation. She provides  
15 child care services on the reservation.
- 16 7. Tyrone Fred John, aged 27, is employed by Humboldt Human Development  
17 Services to transport the handicapped and assist individuals with  
18 independent living in the Fallon, Nevada, area.
- 19 8. Jessie Wade Palmer, aged 37, has his own contracting company in  
20 Nespelem, Washington, and he presently lives on the Coleville Reservation.
- 21 9. Jalene Palmer Flowers, aged 36, is married with two young boys and is  
22 working for the Coleville Tribal Support Enforcement Program.
- 23 10. Leslie Palmer, aged 27, has three small children and works for the Coleville  
24 Tribal TANF program.
- 25 11. Shirley Palmer, aged 21, has one child and works for the Coleville Tribal K-12  
26  
27  
28

1 program.

2 12. The Secretary of the Interior acted through the Assistant Secretary of the  
3 Bureau of Indian Affairs who reviewed the decision of the Director of the  
4 Western Regional Office of the Bureau of Indian Affairs.

5 13. The Director of the Western Regional Office of the Bureau of Indian Affairs  
6 made an initial decision that recognized the proof of the blood quantum of  
7 these Plaintiffs.  
8

9  
10 **STATEMENT OF FACTS**

11 14. On October 1, 1863, the United States and the Western Shoshone Nation  
12 entered into a treaty identified as the Treaty with the Western Shoshone of  
13 1863, 18 Stat. 689, Ratified June 26, 1866, Proclaimed October 21, 1869  
14 (hereafter, the "Treaty of Ruby Valley" or "Treaty").  
15

16 15. The only amendment to the Treaty is that the Senate filled in the blank in  
17 Article 8 with the word 'five' to set the dollar amount of provisions and  
18 clothing that were to be paid to the Western Shoshone. The amounts filled  
19 in were never paid to the Western Shoshone.  
20

21 16. The Western Shoshone Claims Distribution Act of July 7, 2004, Pub. L. 108-  
22 270, 118 Stat. 805 and Title 25 of the Code of Federal Regulations, Part 61  
23 also referred to as Docket 326-K as passed by the United States Congress,  
24 was intended to resolve the failure of the United States to pay the Western  
25 Shoshone the amounts due under the Treaty of Ruby Valley.  
26

27 17. The Bureau of Indian Affairs, Phoenix Regional Office prepared the Rolls of  
28 Indians as directed by Section 61.4(k) which defined who would be eligible to  
receive distributions.

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1 18. The Bureau of Indian Affairs adopted guidelines of what historical data  
2 would be used to determine the Rolls of Indians and also prepared  
3 informational hand-outs to be given to members of the Western Shoshone  
4 Nation.

5 19. The persons who were 25% Western Shoshone by blood quantum were  
6 eligible to be on the Roll of Indians for the Western Shoshone Settlement  
7 distribution.  
8

9 20. The Plaintiffs herein submitted documentation on more than one occasion to  
10 prove that they are 25% Western Shoshone by blood quantum and eligible to  
11 be on the Roll of Indians.

12 21. Although Census earlier than 1940 were contradictory in listing the great  
13 grandparents of these Plaintiffs as Paiute or Shoshone, such contradictions  
14 were not unusual. The Indian officials who were white around the turn of  
15 the century did not differentiate between Paiute and Shoshone accurately.  
16

17 22. Often persons in a Census were lumped together without regard to their true  
18 ancestry.  
19

20 23. By the 1940 Census Frank Dyer and Hattie Dyer were listed as Full Blood  
21 Shoshone as were their children, **Dorothy**, Agnes, Johnson, George, Lillie,  
22 Marie, and Mike.

23 24. In the 1940 Census Albert Hicks was listed as Full Shoshone and his wife,  
24 Lorraine, as Full Paiute, which made their children, Theodore, Albert Jr.,  
25 Thelma, Lillie, **Fred**, Floyd, Donald and Richard 1/2 Shoshone and 1/2 Paiute.  
26

27 25. Further the Bureau of Indian Affairs, Western Nevada Agency certified on  
28 September 9, 1999, that Hattie Dyer was on the Fallon Census Role of 1940

1 as no. 87 and was Full Blood Shoshone.

2 26. On November 3, 2010, the Regional Office of the BIA in Phoenix, Arizona,  
3 made a preliminary determination that Hattie Dyer was  $\frac{1}{2}$  Shoshone by  
4 blood quantum.

5 27. On November 15, 2010, the Plaintiffs responded with more information  
6 regarding their ancestry and the proof that their great-grandmother Hattie  
7 Dyer was Full Blood Shoshone. The information submitted included the  
8 Indian Census rolls for Albert Hicks, Jr. and Hattie Dyer.

9 28. The records were certified by both the BIA and the Fallon Paiute Shoshone  
10 Tribe clearly demonstrating the family tree and its Shoshone Blood line,  
11 Fred Hicks Sr. as  $\frac{1}{2}$  Western Shoshone and Leona Mina Dyer as  $\frac{1}{2}$  Western  
12 Shoshone which made these grandparents, common to all these Plaintiffs  
13 passing on Western Shoshone lineage sufficient to make these Plaintiffs  $\frac{1}{4}$   
14 Shoshone blood quantum.  
15

16 29. On June 21, 2012, the Washington D.C. office of the BIA confirmed the  
17 decision of the Phoenix Regional Office reaffirming that Hattie Dyer was  
18 only  $\frac{1}{2}$  Shoshone by blood quantum  
19

20 30. On October 22, 2013, Leona Hicks, the granddaughter of Hattie Dyer, wrote  
21 a letter to the Western Nevada Agency of the BIA and requested an answer  
22 as to why her blood quantum had been altered without notice to her and  
23 requesting all the documentation of the change of blood quantum of her  
24 grandmother.  
25

26 31. On December 9, 2013, the Superintendent of the Western Nevada Agency  
27 responded by an unsigned letter to this request and by failing to make the  
28 documentation requested available and stating that the Tribe held the

1 enrollment records. The BIA did not produce the records of Hattie Dyer as  
2 requested.

3 32. On January 8, 2014, Leona Hicks submitted a second letter to Athena  
4 Brown, Superintendent of the Western Nevada Agency of the BIA requesting  
5 from BIA information/ records concerning change of Indian Blood Degree  
6 from Shoshone Indian to Paiute Indian for Hattie Dyer.  
7

8 33. On April 25, 2014, Leona Hicks daughter and mother of some of the  
9 Plaintiffs herein, again submitted a letter to the Superintendent of the  
10 Western Nevada Agency requesting the records of probate of Hattie Dyer,  
11 their blood ancestor, for purposes of claiming and ascertaining Shoshone  
12 blood quantum.  
13

14 34. The BIA has failed and refused to respond to the requests in any way.

15 35. The documents requested are records held by the agency and were used by  
16 the agency to make a decision which affects the Plaintiffs herein.  
17

18 36. The Plaintiffs prepared Fallon Paiute Shoshone Records which were  
19 submitted to the BIA and those Records confirm that Hattie Dyer is Full  
20 Blood Shoshone.

21 37. The Bureau of Indian Affairs failed and refused to provide the information  
22 necessary for the Plaintiffs to understand the reason they had now been  
23 rejected as 25% Western Shoshone other than the mistaken determination of  
24 the blood quantum of Hattie Dyer.  
25

26 38. Thus, having exhausted their administrative remedies, the Plaintiffs filed  
27 this complaint regarding the denial of their due process and violation of their  
28 equal protection rights under the Constitution and laws of the United States  
of America for loss of their claim to 25% blood quantum of Western

1 Shoshone blood and a claim against the BIA for failure to respond to a valid  
2 records request for records held by the agency and used for agency decision.  
3

4 **First Claim for Relief**

5 **(Deprivation of Due Process of a fundamental right)**

6  
7 39. The Plaintiffs incorporate every paragraph of this complaint as if fully and  
8 expressly set out herein.

9 40. The Plaintiffs have a fundamental right in their heritage as Western  
10 Shoshone Indians.

11 41. The Plaintiffs have 25% blood quantum of Western Shoshone blood.

12 42. The Plaintiffs have been unreasonably deprived of their fundamental right to  
13 be recognized as 25% Western Shoshone by the arbitrary and intentional  
14 acts of the Assistant Secretary of the Interior, Bureau of Indian Affairs, his  
15 agents and employees.  
16

17 43. The Assistant Secretary was not justified in depriving these Plaintiffs of their  
18 right to be recognized as 25% Western Shoshone by blood quantum and  
19 obtain the benefits accruing therefrom.  
20

21 44. The Assistant Secretary was acting in his official capacity when he deprived  
22 the Plaintiffs of their rights as Western Shoshone.

23 45. The Assistant Secretary was acting in his official capacity rejecting the proof  
24 of the Plaintiffs of their Western Shoshone heritage and blood quantum and  
25 substituting in correct in formation was not a compelling government  
26 objective.  
27

28 46. The Assistant Secretary failed and refused to accept the evidence provided  
that substantially proved the blood quantum of the Plaintiffs.



1 47. The Assistant Secretary failed and refused to follow the regulations, policies  
2 and the law governing the decision making of the Plaintiffs' blood quantum  
3 determination.

4 48. The Plaintiffs were required to retain counsel and expend court costs to  
5 prosecute this matter.  
6

7 **Second Claim for Relief**

8 **(Denial of Equal Protection under the law)**

9 49. The Plaintiffs incorporate every paragraph of this complaint as if fully and  
10 expressly set out herein.

11 50. The Plaintiffs submitted substantial proof that their great grandmother,  
12 Hattie Dyer was Full Blood Shoshone.  
13

14 51. The Plaintiffs have been treated differently and that different treatment  
15 deprived them of their rights as Western Shoshone and the rights of their  
16 descendants who will require a certain blood quantum to be members of a  
17 Tribe of Indians that accept and require Western Shoshone blood quantum.  
18

19 52. The Assistant Secretary deliberately and intentionally deprived the Plaintiffs  
20 of their rights when others in virtually identical positions were not deprived  
21 of their rights.

22 53. The Assistant Secretary deprived the Plaintiffs of their rights intentionally  
23 and unreasonably.  
24

25 54. The Plaintiffs were required to expend costs and attorneys' fees to prosecute  
26 this claim.  
27  
28

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**Third Claim for Relief**

**(Violation of the Administrative Procedure Act)**

1  
2  
3 55. The Plaintiffs incorporate every paragraph of this complaint as if fully and  
4 expressly set out herein.

5  
6 56. The Assistant Secretary of the Interior failed and refused to consider the  
7 proof and evidence submitted by the Plaintiffs

8 57. The Assistant Secretary of the Interior failed and refused to consider the  
9 evidence submitted based on the arbitrary and capricious and unreasonable  
10 finding

11 58. The Assistant Secretary of the Interior failed and refused to consider the  
12 evidence of the Full Blood Shoshone status of Hattie Dyer.

13  
14 59. The Assistant Secretary of the Interior failed and refused to consider the  
15 evidence submitted by the Plaintiffs, but instead relied unknown  
16 documentation that Hattie Dyer was only 1/2 Shoshone by blood quantum.

17  
18 60. The Assistant Secretary of the Interior failed and refused to provide the basis  
19 of his decision rejecting the Plaintiffs' blood quantum as 25% in order for the  
20 Plaintiffs to submit further evidence and information or in order for the  
21 Plaintiffs to explain the relevance of their proof.

22  
23 61. The Plaintiffs were required to expend costs and attorneys' fees to prosecute  
24 this claim.

**Fourth Claim for Relief**

**(Violation of the Freedom of Information Act, 5 U.S.C. § 552 et  
25  
26  
27 seq.)**

28 62. The Plaintiffs incorporate every paragraph of this complaint as if fully and  
expressly set out herein.

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1 63. The Plaintiffs have requested the information on the blood quantum of their  
2 biological grandmother, Hattie Dyer, on three separate occasions.

3 64. The documentation and information regarding the blood quantum of Hattie  
4 Dyer is held by the agency.

5 65. The documentation and information regarding the blood quantum of Hattie  
6 Dyer was used by the agency to determine the blood quantum of the  
7 Plaintiffs.  
8

9 66. The agency has no exemption for retaining this documentation and  
10 information and failing to provide this documentation and information to  
11 the Plaintiffs through their grandmother and mother, their agents.

12 67. The agency is in violation of the law by failing to respond to the request and  
13 failing to provide a reason for its failure and refusal to disclose the existence  
14 or non-existence of the documents and information.  
15

16 68. The Plaintiffs were required to retain counsel and expend costs to prosecute  
17 this claim for relief.

18 WHEREFORE, THE PLAINTIFFS SEEK RELIEF FROM THIS COURT AS  
19 FOLLOWS:  
20

- 21 1. A declaratory judgment that the Assistant Secretary of the Interior,  
22 Bureau of Indian Affairs, deprived the Plaintiffs of their protected due  
23 process under the Constitution of the United States;  
24  
25 2. A declaratory judgment that the Assistant Secretary of the Interior,  
26 Bureau of Indian Affairs, deprived the Plaintiffs of their protected rights  
27 of equal protection under the Constitution of the United States;  
28  
3. A declaratory judgment that the Assistant Secretary of the Interior's  
decision that the Plaintiffs were not possessed of 25% blood quantum of

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- 1 Western Shoshone blood is arbitrary, capricious and unreasonably, not  
2 based upon the adopted policy of the Bureau of Indian Affairs;  
3 4. A declaratory judgment that the Bureau of Indian Affairs is an agency  
4 within the meaning of 5 U.S.C. § 552 et seq.  
5  
6 5. A declaratory judgment that the Bureau of Indian Affairs violated the  
7 Freedom of Information Act by not responding to the request for  
8 documents and information regarding the blood quantum of Hattie Dyer;  
9  
10 6. An injunction that requires the agency to provide the documentation and  
11 information on Hattie Dyer;  
12  
13 7. An Order enjoining the Assistant Secretary of the Interior from rejecting  
14 the evidence and proof that the Plaintiffs are 25% Western Shoshone by  
15 blood quantum;  
16  
17 8. An Order awarding costs and attorneys' fees to the Plaintiffs for  
18 prosecuting this action;  
19  
20 9. Such further and other relief as the Court deems just under the  
21 circumstances of these facts and requests for relief.

22 Dated this 22nd day of October, 2014.

23 \_\_\_\_\_  
24 //s// Treva J. Hearne  
25 Treva J. Hearne  
26 RENO LAW GROUP  
27 595 Humboldt St., Ste. 11  
28 Reno, Nevada 89509  
775-329-5800  
Attorney for Plaintiffs

**Certificate of Service**

I hereby certify that on today' date the **First Amended Complaint as of right** was electronically transmitted to the Clerk of the Court using the CM/ECF System which will send notification of such filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

DATED: 10/22/14

/s/Treva J. Hearne

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