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7 Attorney for Defendants,  
8 TERRENCE OLLIFF and DIANNE L. OLLIFF,  
9 Individually and as Trustees of the Olliff Family Trust

10 **UNITED STATES DISTRICT COURT**  
11 **EASTERN DISTRICT OF CALIFORNIA**  
12 **(Sacramento Division)**

13 GRINDSTONE INDIAN RANCHERIA )  
14 and ONE HUNDRED PLUS MEN, )  
15 WOMEN AMD CHILDREN LIVING ON )  
16 GRINDSTONE INDIAN RESERVATION, )  
17 )  
18 Plaintiff, )

Case No. 2:17-CV-02292-JAM-EFB

**AMENDED  
ANSWER AND COUNTERCLAIM**

19 vs. )

**REQUEST FOR JURY TRIAL**

20 TERRENCE OLLIFF, individual and as a )  
21 beneficiary/trustee of the Olliff family Trust;) )  
22 DIANNE L. OLLIFF, individually and as a )  
23 beneficiary/trustee of the Olliff family Trust;) )  
24 DOES 1-10, )  
25 )  
26 Defendants. )

27 Defendants TERRENCE OLLIFF and DIANNE L OLLIFF, individually and as Trustees  
28 of the Olliff Family Trust, answer the FIRST AMENDED COMPLAINT (“Complaint”) filed  
herein by Plaintiff GRINDSTONE INDIAN RANCHERIA as follows:

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**ANSWER**

1  
2           1. In answer to paragraph 1 of the Complaint, Defendants admit that Plaintiff  
3 GRINDSTONE INDIAN RANCHERIA is a real party in interest as a Federally Recognized  
4 Indian Tribe listed on the Federal Register. However, Defendant lacks sufficient information or  
5 belief as to identity of the alleged “tribal membership” that Plaintiff seeks to bring the purported  
6 claims as a class and on that basis denies said allegations.  
7

8           2. In answer to paragraph 2 of the Complaint, Defendants deny that this Court has  
9 subject matter jurisdiction under 25 U.S.C. § 345, 18 U.S.C. § 1151, 28 U.S.C. § 1362, 28 U.S.C.  
10 § 2201, or 28 U.S.C. § 367(a), because the strip of land in question is, and has been the private  
11 property belonging to Defendant for almost four decades and before Plaintiff purchased the  
12 appurtenant parcels and: (a) is not an allotment or any parcel of land to which Plaintiff may  
13 claim to be lawfully entitled by virtue of any Act of Congress as provided for under 25 U.S.C. §  
14 345; (b) is not “Indian country” as that term is defined by 18 U.S.C. § 1151; (c) does not involve  
15 a controversy arising under the Constitution, laws, or treaties of the United States; (d) does not  
16 involve a controversy within the jurisdiction of this Court required by 28 U.S.C. § 2201; and (e)  
17 this Court therefore lacks original jurisdiction as required by 28 U.S.C. § 367(a).  
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19

20           3. In answer to paragraph 3 of the Complaint, Defendants deny that this Court is the  
21 proper venue for matter pursuant to 28 U.S.C. § 1391(b)(2) for lack of jurisdiction as set forth in  
22 the answer to the allegations of Paragraph 2 of the Complaint as set forth above and further  
23 assert that the proper venue for the matter is the Glenn County Superior Court where the property  
24 is located and Defendants reside.  
25

26           4. In answer to paragraph 4 of the Complaint, Defendants admit that Plaintiff  
27 GRINDSTONE INDIAN RANCHERIA is a real party in interest as a Federally Recognized  
28

1 Indian Tribe listed on the Federal Register. However, Defendant lacks sufficient information or  
2 belief as to identity of the alleged “tribal membership” that Plaintiff seeks to bring the purported  
3 claims as a class and on that basis denies said allegations.  
4

5 5. In answer to paragraphs 5 and 6 of the Complaint:

6 (a) Defendants admit that TERENCE OLLIFF and DIANNE L OLLIFF, as  
7 Trustees of the Olliff Family Trust, own the real property commonly referred to as 3580 County  
8 Road 305, Orland, CA 95963, Glenn County, California, consisting of approximately 15 acres of  
9 agricultural land and a family residence more particularly described as:  
10

11 “The East 396 Feet of the South 20 acres of the Northwest quarter and  
12 the east 396 feet of the North half of the Southwest quarter of Section 15,  
Township 21 North, Range 6 West, M.D.B. & M.”

13 APN: 025-090-019-000 and 025-090-016-000 (the “Olliff Parcel”)

14 (b) Defendants assert that they acquired title to the Olliff Parcel in 1977.

15 (c) Defendants are informed and believe and thereon allege that the Bureau of  
16 Indian Affairs owns the 80 acre parcel to the Southeast corner of the Olliff Parcel commonly  
17 referred to as 3600 County Road 305, Elk Creek, CA 95939, Glenn County Assessor Number  
18 025-090-099-000 (referred to herein as the “Indian Reservation Parcel”). Defendants are  
19 informed and believe and thereon allege that the Bureau of Indian Affairs established the Indian  
20 Reservation Parcel in or about 1909.  
21

22 (d) Defendants are informed and believe and thereon allege that Plaintiff  
23 purchased and/or was provided title to approximately 20.03 acres of land appurtenant and to the  
24 east of the Olliff Parcel in or about 1993 commonly referred to as Glenn County Assessor Parcel  
25 Number 025-090-026-000 (referred to herein as the “Rancheria Parcel”). The Rancheria Parcel  
26  
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1 is where Plaintiff has developed the housing for its Tribe. Defendants admit that the Rancheria  
2 Parcel is adjacent to the Olliff Parcel at issue in this litigation.

3 (e) Defendants allege that at the time Plaintiff obtained title to the Rancheria  
4 Parcel, Plaintiff did so with knowledge of recorded public survey by George Pride, License 3747,  
5 dated June 26, 1974, clearly showing the corner markers of the Olliff Parcel (the “Pride Survey”).  
6

7 (f) Defendants admit that in 2011, the Bureau of Land Management (“BLM”)  
8 conducted a survey of the of the 80 acre Indian Reservation Parcel and the 20 acre Rancheria  
9 Parcel which was noticed for filing in the Federal Register on October 19, 2011 and subsequently  
10 filed in the Bureau of Land Management California State Office, Sacramento (the “BLM  
11 Survey”). Defendants allege that the BLM Survey shows location of the Olliff Parcel East  
12 property line in the same location as the 1974 Pride Survey, save and except, noting a small  
13 overlapping conflict of the Indian Reservation Parcel in its North West corner onto the South  
14 East corner of the Olliff Parcel containing approximately 40’ x 26’ square feet (referred to herein  
15 as the “Corner Conflict Area”). Defendants are informed and believe and thereon allege that the  
16 corner conflict was determined by the BLM Survey to be that the historical cedar post corner  
17 marker for the North West corner of the Indian Reservation Parcel was originally established by  
18 T.L. Knock, “LS 6”, in his 1893 survey filed May 8, 1893, in Book 1 of Maps and Surveys, Page  
19 39, Glenn County Recorder’s Office, and is different in that it lays with the South East corner of  
20 the Olliff Parcel as set in 1974 by the Pride Survey establishing the corner marker position by  
21 more contemporary existent section control and the then current rules for subdividing sections.  
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25 Defendants admit that Defendants did not object to the survey of the Corner Conflict  
26 Area and such possession is that of Plaintiff as part of the 80 acre Indian Reservation Parcel.  
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1 (g) Defendants are informed and believe and thereon allege that Plaintiff  
2 contends that the North West corner marker of the 80 acre Indian Reservation Parcel which is  
3 approximately 40 feet into the South East corner of the Olliff Parcel should be adjudicated to  
4 extend and run due north approximately 1,082 feet along the eastern boundary of the 20 acre  
5 Rancheria Parcel appurtenant to the Olliff Parcel to give Plaintiff approximately 43,500 square  
6 feet of the Olliff Parcel (the approximately 43,500 square feet is referred to herein as the  
7 “Disputed Area”).  
8

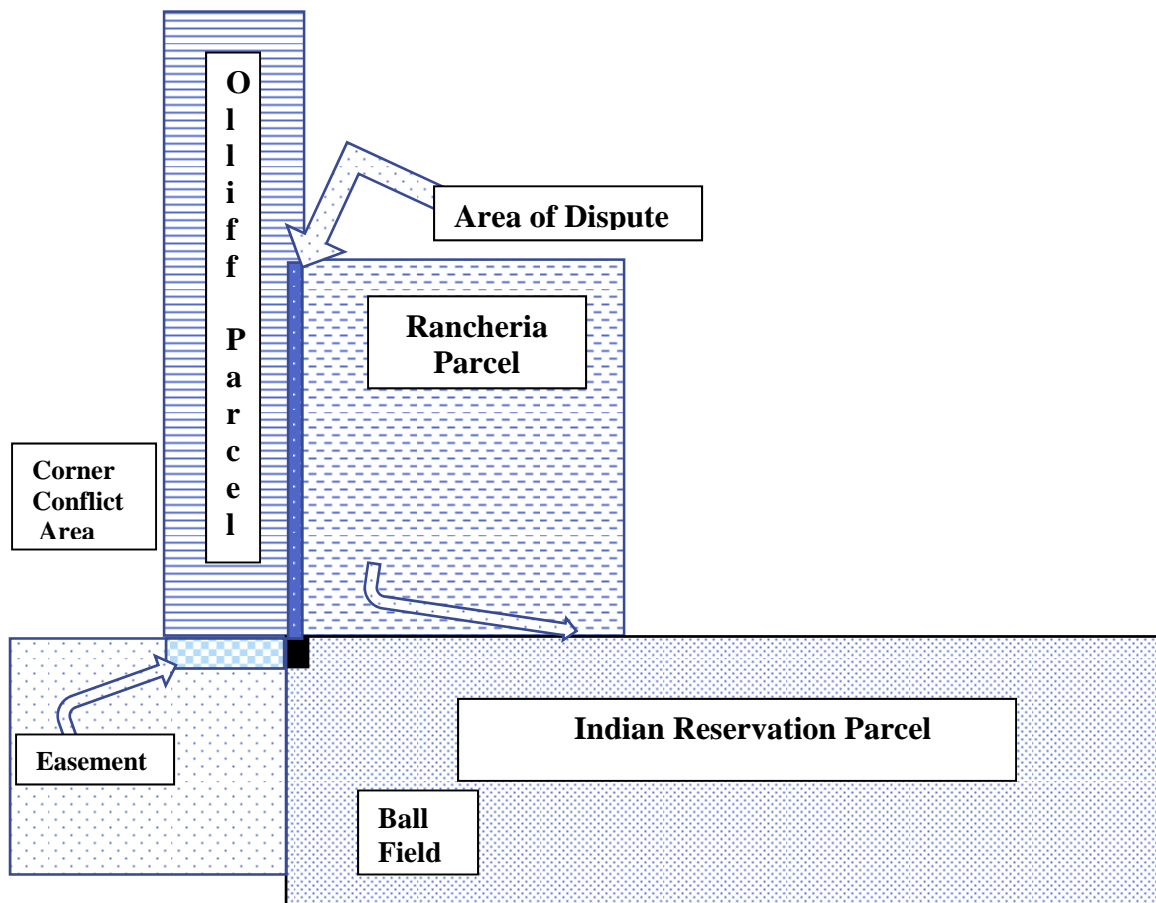
9 (h) Defendants allege and contend that the Disputed Area is and has been for  
10 over 40 years, the property of Defendants, and that the BLM Survey did not and does not show  
11 the Disputed Area as being property of Plaintiff.  
12

13 (i) Defendants are informed and believe and thereon allege that in or about 2014,  
14 Plaintiff purchased the parcel to the south of the Olliff Parcel and west of the Indian Reservation  
15 Parcel commonly referred to as APN 025-090-008-000 (hereinafter referred to as the “Ball  
16 Filed”), for use as a baseball field. Since 1977, Defendants driveway access has been to the west  
17 off of County Road 305 through a portion of the Ball Field in the “Easement” area depicted  
18 below consisting of approximately 26 feet x 350 feet (the “Easement”) with Defendants’ fence  
19 line in the Ball Filed parcel approximately 26 feet.  
20

21 (j) For a period of five before any use by Plaintiff of the Disputed Area or  
22 Easement, and within five years prior to the filing of this action, Defendants have openly and  
23 notoriously with use of fences and occupation continuously and exclusively used and possessed  
24 same and claim they have established a prescriptive easement to the Easement area and that  
25 Plaintiff’s acquisition of the Ball Field parcel is subject to the rights of Defendants in an to same.  
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28

1 (k) Defendants contend and allege that Defendants title is based on Defendants'  
2 actual, open, notorious, exclusive, hostile, and adverse possession of the Olliff Parcel including  
3 the Disputed Area and Easement for five years preceding the commencement of this action,  
4 together with Defendants' payment of all taxes assessed against said real property for the same  
5 five years. Defendants are not aware of anyone else claiming and interest in and to the Disputed  
6 Area or Easement other than Plaintiff.  
7

8 A summary of the parcels and areas described above are depicted below, not for the  
9 purpose of survey or to be scale, but for visual example only, as follows:  
10



1           6. In answer to paragraph 6 of the Complaint, Defendants lack sufficient information or  
2 belief to either admit or deny same and on that basis deny same.

3           7. In answer to paragraph 7 of the Complaint, Defendants admits that Plaintiff occupies  
4 approximately 120 acres of land located in the Elk Creek, Glenn County, California area and that  
5 it has members including men, women and children who reside upon same and denies the  
6 balance of said allegations upon a lack of information or belief.

7           8. In answer to paragraph 8 of the Complaint, Defendants admit that the BLM Survey  
8 was made in 2011 and published in the Federal Register and Defendant did not object as set forth  
9 in paragraph 5(f) above. Defendants deny the balance of allegations not specifically admitted  
10 herein and alleges that the BLM Survey is construed or interpreted in the manner Plaintiff  
11 contends as set forth in paragraphs 5(g) above but should be construed and interpreted in the  
12 manner alleged by Defendants in Paragraph 5(h) above.

13           9. In answer to paragraph 9 of the Complaint, Defendants deny the allegations, save and  
14 except, Defendants admit that Defendant TERENCE OLLIFF has yelled at occupants of the  
15 adjoining parcel to get off the Olliff Parcel including the Disputed Area, of which Defendants  
16 claims they are the rightful owner, and have moved fences placed in said area to the property line  
17 claimed by Defendants, and have done all things to occupy same including the use of path of  
18 travel on said property. Defendants allege that the Disputed Area is that belonging to  
19 Defendants and not Plaintiff as more specifically set forth above.

20           10. In answer to paragraph 10 of the Complaint, Defendants deny the allegations, save  
21 and except, Defendants admit that they filed a lawsuit in 2014 with the assistance of legal  
22 counsel in the Glenn County Superior Court against Steven Corkill for trespassing on the Olliff  
23

1 Parcel including the Disputed Area, which was voluntarily dismissed “without prejudice” to save  
2 the costs of litigation as hostilities subsided.

3           11. In answer to paragraph 11 of the Complaint, Defendants admit that Defendants  
4 have told agents of Plaintiff, whether they be Ronald Kirk, or others unknown to Defendants, to  
5 get off the Olliff Parcel including the Disputed Area, all of which Defendants claim they have a  
6 superior right to over that of Plaintiff and that Defendants are the rightful owner.  
7

8           12. In answer to paragraph 12 of the Complaint, Defendants admit that Plaintiff has the  
9 right of occupation to the Indian Reservation Parcel, including the Corner Conflict Area, and the  
10 Rancheria Parcel. Defendants deny that Plaintiff has any right, title or interest in or to the Olliff  
11 Parcel or the Disputed Area within same, all of which Defendants claim they have a superior  
12 right to title and possession.  
13

14           13. In answer to paragraph 13 of the Complaint, Defendants admit that Defendants  
15 own the Olliff Parcel, including the Disputed Area but excluding the Corner Conflict Area, and  
16 that the Olliff Parcel is appurtenant to the Rancheria Parcel occupied by Plaintiff. Defendants  
17 deny any further or other allegations not specifically admitted herein.  
18

19           14. In answer to paragraph 14 of the Complaint, Defendants admits that Defendants  
20 own the Olliff Parcel, including the Disputed Area but excluding the Corner Conflict Area, and  
21 that the Olliff Parcel is appurtenant to the Rancheria Parcel occupied by Plaintiff. Defendants  
22 deny any further or other allegations not specifically admitted herein. Defendants further deny  
23 that the BLM Survey established a property line within the Disputed Area of the Olliff Parcel as  
24 described in paragraph 5 above.  
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1           15. In answer to paragraph 15 of the Complaint, Defendants lacks sufficient  
2 information or belief to answer the allegations set forth therein and on that basis deny said  
3 allegation.  
4

5           16. In answer to Paragraph 16 of the Complaint, Defendants deny the allegations, save  
6 and except, Defendants admits that: (a) Defendants maintain a fence along the property line of  
7 the Olliff Parcel to the east of the Disputed Area, of which Defendants claim they have a superior  
8 right to possession and title over that of Plaintiff; (b) Defendants have used water from Stony  
9 Creek which runs adjacent to the west side of the Olliff Parcel but has not done so for some time  
10 now. Defendants lack sufficient information or belief as to the extent of water rights claimed by  
11 Plaintiff to water flowing in Stony Creek but denies the water flowing through Stony Creek is  
12 exclusive to Plaintiff.  
13

14           17. In answer to Paragraph 17 of the Complaint, Defendants deny the allegations, save  
15 and except, as admitted to the limited extent by way similar allegations addressed in the  
16 Defendants' answer in paragraph 5 above incorporated herein as though fully set forth.  
17

18           18. In answer to Paragraph 18 of the Complaint, Defendants deny the allegations and  
19 assert that Defendants have a superior right to possession and title to the Olliff Parcel including  
20 the Disputed Area but excluding the Corner Conflict Area as set forth in Defendants' answer in  
21 paragraph 5 above incorporated herein as though fully set forth.  
22

23           19. In answer to Paragraph 19 of the Complaint, Defendants deny the allegations and  
24 assert that Defendants have a superior right to possession and title to the Olliff Parcel including  
25 the Disputed Area but excluding the Corner Conflict Area as set forth in Defendants' answer in  
26 paragraph 5 above incorporated herein as though fully set forth.  
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1           20. In answer to Paragraph 20 of the Complaint, Defendants deny the allegations and  
2 assert that Defendants have a superior right to possession and title to the Olliff Parcel including  
3 the Disputed Area as set forth in Defendants' answer in paragraph 5 above incorporated herein as  
4 though fully set forth. Defendants admit that they have used water from Stony Creek which runs  
5 adjacent to the west side of the Olliff Parcel but has not done so for some time now. Defendants  
6 lack sufficient information or belief as to the extent of water rights claimed by Plaintiff to water  
7 flowing in Stony Creek but denies the water flowing through Stony Creek is exclusive to  
8 Plaintiff.  
9

10           21. In answer to Paragraph 21 of the Complaint, Defendants incorporate the answers set  
11 forth in paragraphs 1 through 20 above, including subparagraphs, as fully set forth herein.  
12

13           22. In answer to Paragraph 22 of the Complaint, Defendants deny the allegations and  
14 assert that Defendants have a superior right to possession and title to the Olliff Parcel including  
15 the Disputed Area but excluding the Corner Conflict Area as set forth in Defendants' answer in  
16 paragraph 5 above incorporated herein as though fully set forth.  
17

18           23. In answer to Paragraph 23 of the Complaint, Defendants deny the allegations and  
19 assert that Defendants have a superior right to possession and title to the Olliff Parcel including  
20 the Disputed Area but excluding the Corner Conflict Area as set forth in Defendants' answer in  
21 paragraph 5 above incorporated herein as though fully set forth.  
22

23           24. In answer to Paragraph 24 of the Complaint, Defendants incorporate the answers set  
24 forth in paragraphs 1 through 23 above, including subparagraphs, as fully set forth herein.

25           25. In answer to Paragraph 25 of the Complaint, Defendants deny the allegations and  
26 assert that Defendants have a superior right to possession and title to the Olliff Parcel including  
27

1 the Disputed Area but excluding the Corner Conflict Area as set forth in Defendants' answer in  
2 paragraph 5 above incorporated herein as though fully set forth.

3  
4 26. In answer to Paragraph 26 of the Complaint, Defendants deny the allegations and  
5 assert that Defendants have a superior right to possession and title to the Olliff Parcel including  
6 the Disputed Area but excluding the Corner Conflict Area as set forth in Defendants' answer in  
7 paragraph 5 above incorporated herein as though fully set forth.

8  
9 27. In answer to Paragraph 27 of the Complaint, Defendants deny the allegations and  
10 assert that Defendants Trust have a superior right to possession and title to the Olliff Parcel  
11 including the Disputed Area but excluding the Corner Conflict Area as set forth in Defendants'  
12 answer in paragraph 5 above incorporated herein as though fully set forth.

13  
14 28. In answer to Paragraph 28 of the Complaint, Defendants incorporate the answers set  
15 forth in paragraphs 1 through 27 above, including subparagraphs, as fully set forth herein.

16  
17 29. In answer to Paragraph 29 of the Complaint, Defendants admit that Defendants are  
18 residents of Glenn County and lacks sufficient information or belief to either admit or deny the  
19 balance and remaining allegations and deny them based upon same.

20  
21 30. In answer to Paragraph 30 of the Complaint, Defendants lacks sufficient information  
22 or belief to either admit or deny the allegations and on that basis deny same.

23  
24 31. In answer to Paragraph 31 of the Complaint, Defendants deny the allegations as to  
25 Defendants and lacks sufficient information or belief to either admit or deny the allegations as to  
26 any purported DOE defendant and on that basis denies same.

27  
28 32. In answer to Paragraph 32 of the Complaint, Defendants deny the allegations.

33. In answer to Paragraph 33 of the Complaint, Defendants incorporate the answers set  
forth in paragraphs 1 through 32 above, including subparagraphs, as fully set forth herein.

1 34. In answer to Paragraph 34 of the Complaint, Defendants deny the allegations.

2 35. In answer to Paragraph 35 of the Complaint, Defendants deny the allegations.

3 36. In answer to Paragraph 36 of the Complaint, Defendants incorporate the answers set  
4 forth in paragraphs 1 through 35 above, including subparagraphs, as fully set forth herein.

5 37. In answer to Paragraph 37 of the Complaint, Defendants deny the allegations.

6 38. In answer to Paragraph 38 of the Complaint, Defendants incorporate the answers set  
7 forth in paragraphs 1 through 37 above, including subparagraphs, as fully set forth herein.

8 39. In answer to Paragraph 39 of the Complaint, Defendants admit that a controversy  
9 exists by and between Defendants and Plaintiff and assert that the Court lacks jurisdiction to as  
10 set forth in paragraph 2 above.

11 40. In answer to Paragraph 40 of the Complaint, Defendants admit that a controversy  
12 exists by and between Defendants and Plaintiff and assert that the Court lacks jurisdiction to as  
13 set forth in paragraph 2 above. To the extent the Court is inclined to assert jurisdiction over the  
14 matter, Defendants contend that the relief requested by Plaintiff be denied unto Plaintiff and a  
15 declaratory judgment be entered in favor of Defendants finding that the Defendants have a  
16 superior right to possession and title over that of Plaintiff in and to the Olliff Parcel including the  
17 Disputed Area.

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21 **AFFIRMATIVE DEFENSES**

22 41. **FIRST AFFIRMATIVE DEFENSE – Lack of Jurisdiction.** As a First  
23 Affirmative Defense to all Claims, Defendants assert that this Court lacks subject matter  
24 jurisdiction under 25 U.S.C. § 345, 18 U.S.C. § 1151, 28 U.S.C. § 1362, 28 U.S.C. § 2201, or 28  
25 U.S.C. § 367(a), because the strip of land in question is, and has been the private property  
26 belonging to Defendants for almost four decades and before Plaintiff purchased the appurtenant  
27

1 parcels and: (a) is not an allotment or any parcel of land to which Plaintiff may claim to be  
2 lawfully entitled by virtue of any Act of Congress as provided for under 25 U.S.C. § 345; (b) is  
3 not “Indian country” as that term is defined by 18 U.S.C. § 1151; (c) does not involve a  
4 controversy arising under the Constitution, laws, or treaties of the United States; (d) does not  
5 involve a controversy within its jurisdiction of this Court required by 28 U.S.C. § 2201; and (e)  
6 this Court therefore lacks original jurisdiction as required by 28 U.S.C. § 367(a).  
7

8 **42. SECOND AFFIRMATIVE DEFENSE – Failure to State a Claim for**

9 **Conversion.** As a Second Affirmative Defense to the Second Claim for Conversion, Plaintiff  
10 has failed to state a claim upon which relief can be granted because the property in question is  
11 real property and conversion is a tort which may be committed only in respect to personal  
12 property and not to real property [*Munger v. Moore* (1970) 11 Cal. App. 3d 1, 7]  
13

14 **43. THIRD AFFIRMATIVE DEFENSE – Constitutionally Protected Right to Free**

15 **Speech.** As a Fourth Affirmative Defense to the Sixth Cause of Action for Civil Harassment,  
16 Defendants assert that they have a right of free speech protected under the United States  
17 Constitution, Amendment 1.  
18

19 **44. FOURTH AFFIRMATIVE DEFENSE – Unclean Hands.** As a Fourth

20 Affirmative Defense to all Claims for Relief, Defendants assert that Plaintiff is guilty of unclean  
21 hands thus rendering the relief requested by Plaintiff inequitable in that: (a) Defendants have  
22 occupied the Olliff Parcel including the Disputed Area for four decades since 1977 openly and  
23 notoriously under claim of right and title hostile to any claim of Plaintiff; (b) Plaintiff obtained  
24 possession of the appurtenant Rancheria Parcel in or about 1984 with full knowledge that the  
25 1974 Pride Survey showed and established corner markers for the Olliff Parcel as asserted by  
26 Defendants contrary to the Plaintiff’s current claim of ownership; (c) From 1984 to 2013,  
27  
28

1 Plaintiff acquiesced to the use and occupation by Defendants on the Olliff Parcel including the  
2 Disputed Area without objection or contrary hostile use; (d) After 29 years of Plaintiff  
3 acquiescing to the use and occupation by Defendants on the Olliff Parcel including the Disputed  
4 Area, Plaintiff, without permission or consent of the Olliffs, or resort to a civil proceeding,  
5 intentionally embarked upon a course of conduct to interfere with the ownership and possession  
6 of the Olliffs on the Olliff Parcel and Disputed Area by tearing down Defendants' fences, placing  
7 dirt, boulders, equipment and workers on the land which invoked a response from Defendants to  
8 remove same to protect the land where the Olliffs reside, all causing severe emotional distress to  
9 the Olliffs.  
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11

12       45. **FIFTH AFFIRMATIVE DEFENSE – Laches.** As a Fifth Affirmative Defense to  
13 the First, Second, Third, and Seventh Claims for Relief, Defendants assert that Plaintiff  
14 unreasonably delayed in bringing this action which disrupts the status quo and results in  
15 prejudice to Defendants as follows: (a) Defendants have occupied the Olliff Parcel including  
16 the Disputed Area and Easement for four decades since 1977 openly and notoriously under claim  
17 of right and title hostile to any claim of Plaintiff; (b) Plaintiff obtained possession of the  
18 appurtenant Rancheria Parcel in or about 1984 with full knowledge that the 1974 Pride Survey  
19 showed and established corner markers for the Olliff Parcel as asserted by Defendants contrary  
20 to the Plaintiff's current claim of ownership; (c) From 1984 to 2013, Plaintiff acquiesced to the  
21 use and occupation by Defendants on the Olliff Parcel including the Disputed Area and Easment  
22 without objection or contrary hostile use; (d) After 29 years of Plaintiff acquiescing to the use  
23 and occupation by Defendants on the Olliff Parcel including the Disputed Area and Easment,  
24 Plaintiff, without permission or consent of the Olliffs, or resort to a civil proceeding,  
25 intentionally embarked upon a course of conduct to interfere with the ownership and possession  
26  
27  
28

1 of the Olliffs on the Olliff Parcel and Disputed Area by tearing down Defendants' fences, placing  
2 dirt, boulders, equipment and workers on the land which invoked a response from Defendant to  
3 remove same to protect the land where the Olliffs reside, all causing severe emotional distress to  
4 the Olliffs; (e) the boundary line of the Olliff Parcel appurtenant to the Rancheria Parcel is  
5 approximately 50 feet from the Olliffs' residence of 40 years. To adopt the position of Plaintiff  
6 to have the property line established on the east side of the Disputed Area, would place the  
7 Plaintiff and its occupants within feet of the Olliffs' residence creating a harsh and inequitable  
8 prejudice to the Olliffs.  
9

10  
11 **46. SIXTH AFFIRMATIVE DEFENSE – Statute of Limitations (CA CCP §**  
12 **338(b)).** As a Sixth Affirmative Defense to the First, Second, and Seventh Claims for Relief,  
13 Defendants assert that the purported trespass in the Disputed Area and Easement was permanent  
14 in nature with placement of a fence under color of ownership by Defendants and their  
15 predecessors in interest for over a decade and known to Plaintiff such that the trespass claims are  
16 time barred by the three-year statute of limitations set forth in California Code of Civil Procedure  
17 section 338(b).  
18

19 **47. SEVENTH AFFIRMATIVE DEFENSE – Statute of Limitations (CA CCP §**  
20 **338(c)).** As a Seventh Affirmative Defense to the Third Claim for Relief, Defendants assert that  
21 the conversion claim is time barred by the three-year statute of limitations set forth in California  
22 Code of Civil Procedure section 338(c).  
23

24 **48. EIGHTH AFFIRMATIVE DEFENSE – Statute of Limitations (CA CCP §**  
25 **335.1).** As an Eighth Affirmative Defense to the Fourth and Fifth Claims for Relief, Defendants  
26 assert that the emotional distress claims are time barred by the two-year statute of limitations set  
27 forth in California Code of Civil Procedure section 335.1.  
28

1           49. **EIGHTH AFFIRMATIVE DEFENSE – Lack of Standing – Failure to State a**  
2 **Claim.** As an Eighth Affirmative Defense to the Fourth and Fifth Claims for Relief, Defendants  
3 assert that the emotional distress, Defendants contend that Plaintiff has failed to state a claim for  
4 the relief requested as Plaintiff lacks standing to bring such tort claims on behalf of individual  
5 Tribe members as a parens patriae action.  
6

7           WHEREFORE Defendants seeks judgment as follows:

- 8           1. That Plaintiff’s complaint be dismissed;  
9           2. For an order that Plaintiff take nothing by way of the Complaint;  
10          3. For costs of suit incurred herein;  
11          4. For such other and further relief as the Court deems just and proper.  
12

13 DATED: March 23, 2018.

By: /s/ David R. Griffith, Esq.  
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18           Attorney for Defendants,  
19           TERRENCE OLLIFF and DIANNE L OLLIFF,  
20           individually and as Trustees of the Olliff Family  
21           Trust

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1 **COUNTERCLAIM**

2 Defendants TERRENCE OLLIFF and DIANNE L OLLIFF, individually and as Trustees  
3 of the Olliff Family Trust, assert the following counterclaim against Plaintiff GRINDSTONE  
4 INDIAN RANCHERIA as follows:  
5

6 **Parties**

7 1. Defendants TERRENCE OLLIFF and DIANNE L OLLIFF, are individuals residing  
8 in Glenn County, California, are husband and wife and Trustees of the Olliff Family Trust.

9 2. Defendants are informed and believe and thereon allege that Plaintiff  
10 GRINDSTONE INDIAN RANCHERIA is a ferally recognized Indian Tribe.  
11

12 **Background**

13 3. Defendants TERRENCE OLLIFF and DIANNE L OLLIFF, as Trustees of the Olliff  
14 Family Trust, own the real property commonly referred to as 3580 County Road 305, Orland,  
15 CA 95963, Glenn County, California, consisting of approximately 15 acres of agricultural land  
16 and a family residence more particularly described as:  
17

18 “The East 396 Feet of the South 20 acres of the Northwest quarter and  
19 the east 396 feet of the North half of the Southwest quarter of Section 15,  
20 Township 21 North, Range 6 West, M.D.B. & M.”

21 APN: 025-090-019-000 and 025-090-016-000 (the “Olliff Parcel”)

22 4. Defendants assert that they acquired title to the Olliff Parcel in 1977.

23 5. Defendants are informed and believe and thereon allege that the Bureau of Indian  
24 Affairs owns the 80 acre parcel to the Southeast corner of the Olliff Parcel commonly referred to  
25 as 3600 County Road 305, Elk Creek, CA 95939, Glenn County Assessor Number 025-090-099-  
26 000 (referred to herein as the “Indian Reservation Parcel”). Defendants are informed and  
27  
28

1 believe and thereon allege that the Bureau of Indian Affairs established the Indian Reservation  
2 Parcel in or about 1909.

3           6. Defendants are informed and believe and thereon allege that Plaintiff purchased  
4 and/or was provided title to approximately 20.03 acres of land appurtenant and to the east of the  
5 Olliff Parcel in or about 1993 commonly referred to as Glenn County Assessor Parcel Number  
6 025-090-026-000 (referred to herein as the “Rancheria Parcel”). The Rancheria Parcel is where  
7 Plaintiff has developed the housing for its Tribe.  
8

9           7. Defendants allege that at the time Plaintiff obtained title to the Rancheria Parcel,  
10 Plaintiff did so with knowledge of recorded public survey by George Pride, License 3747, dated  
11 June 26, 1974, clearly showing the corner markers of the Olliff Parcel (the “Pride Survey”).  
12

13           8. Defendants admit that in 2011, the Bureau of Land Management (“BLM”)  
14 conducted a survey of the of the 80 acre Indian Reservation Parcel and the 20 acre Rancheria  
15 Parcel which was noticed for filing in the Federal Register on October 19, 2011 and subsequently  
16 filed in the Bureau of Land Management California State Office, Sacramento (the “BLM  
17 Survey”). Defendants allege that the BLM Survey shows location of the Olliff Parcel East  
18 property line in the same location as the 1974 Pride Survey, save and except, noting a small  
19 overlapping conflict of the Indian Reservation Parcel in its North West corner onto the South  
20 East corner of the Olliff Parcel containing approximately 40’ x 26’ square feet (referred to herein  
21 as the “Corner Conflict Area”). Defendants are informed and believe and thereon allege that the  
22 corner conflict was determined by the BLM Survey to be that the historical cedar post corner  
23 marker for the North West corner of the Indian Reservation Parcel was originally established by  
24 T.L. Knock, “LS 6”, in his 1893 survey filed May 8, 1893, in Book 1 of Maps and Surveys, Page  
25 39, Glenn County Recorder’s Office, and is different in that it lays with the South East corner of  
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28

1 the Olliff Parcel as set in 1974 by the Pride Survey establishing the corner marker position by  
2 more contemporary existent section control and the then current rules for subdividing sections.

3  
4 9. Defendants admit that Defendants did not object to the survey of the Corner Conflict  
5 Area and such possession is that of Plaintiff as part of the 80 acre Indian Reservation Parcel.

6  
7 10. Defendants are informed and believe and thereon allege that Plaintiff contends that  
8 the North West corner marker of the 80 acre Indian Reservation Parcel which is approximately  
9 40 feet into the South East corner of the Olliff Parcel should be adjudicated to extend and run  
10 due north approximately 1,082 feet along the eastern boundary of the 20 acre Rancheria Parcel  
11 appurtenant to the Olliff Parcel to give Plaintiff approximately 43,500 square feet of the Olliff  
12 Parcel (the approximately 43,500 square feet is referred to herein as the “Disputed Area”).

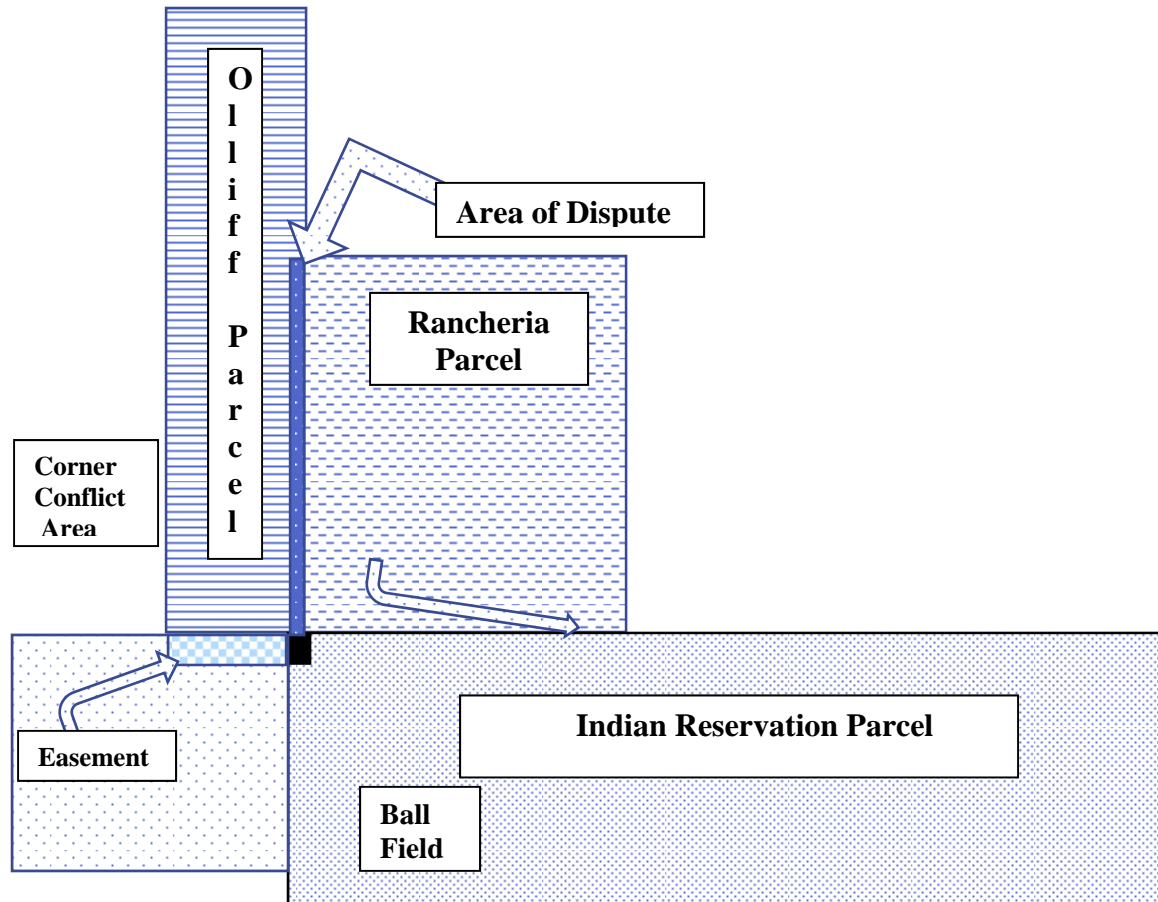
13  
14 11. Defendants allege and contend that the Disputed Area is and has been for over 40  
15 years, the property of Defendants, and that the BLM Survey did not and does not show the  
16 Disputed Area as being property of Plaintiff.

17  
18 12. Defendants are informed and believe and thereon allege that in or about 2014,  
19 Plaintiff purchased the parcel to the south of the Olliff Parcel and west of the Indian Reservation  
20 Parcel commonly referred to as APN 025-090-008-000 (hereinafter referred to as the “Ball  
21 Filed”), for use as a baseball field. Since 1977, Defendants driveway access has been to the west  
22 off of County Road 305 through a portion of the Ball Field in the “Easement” area depicted  
23 below consisting of approximately 26 feet x 350 feet (the “Easement”) with Defendants’ fence  
24 line in the Ball Filed parcel approximately 26 feet.

25 ///

26 ///

1 13. A summary of the parcels and areas described above are depicted below, not for the  
2 purpose of survey or to be scale, but for visual example only, as follows:  
3



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18  
19  
20 **Counterclaim - Count 1**

21 **(Trespass)**

22 14. Plaintiffs incorporate by this reference paragraphs 1 through 13 above as though  
23 fully set forth herein.  
24

25 15. In or about 2013, Plaintiff, and its agents and Members with the direction, consent  
26 and control of Plaintiff, constructed a dirt embankment of approximately 245 feet long and 4 feet  
27 high with a sloped edge on the west side of the Rancheria Parcel next to the Olliff Parcel and  
28

1 residence having the sloop running west down into the Olliff Parcel toward the Olliff residence.  
2 Plaintiffs are informed and believe and thereon allege that the dirt embankment was designed,  
3 constructed, and placed in such a manner to intentionally interfere with and disrupt the quiet  
4 enjoyment and use of the Olliff Parcel by Defendants.  
5

6 16. From in or about 2013, and periodically each year thereafter, as a direct and  
7 proximate result the embankment constructed and placed by Plaintiff, storm water runs off of the  
8 Rancheria Parcel down the embankment onto the Olliff Parcel toward their residence along with  
9 eroding dirt and rocks which builds up an encroachment through the Defendants' fence line onto  
10 the Olliff Parcel.  
11

12 17. Within the last three years of the complaint being filed herein, Plaintiff  
13 GRINDSTONE INDIAN RANCHERIA has directed, acquiesced to, and/or failed to supervise  
14 and control some of its members and agents such that they have come onto the Olliff Parcel with  
15 vehicles and equipment, removed fences from the Olliff Parcel, and placed or created conditions  
16 to deposit dirt and boulders on the Olliff Parcel, without the permission or consent of Defendants.  
17

18 18. Within the last three years of the complaint being filed herein, Plaintiff  
19 GRINDSTONE INDIAN RANCHERIA directed, acquiesced to, and/or failed to supervise and  
20 control some of its members and agents such that they have yelled at Defendants and taking  
21 hostile action toward Defendants with physical presence, vehicles and equipment to deter and  
22 disrupt Defendants' use and quiet enjoyment of portions of the Olliff Parcel.  
23

24 19. As a proximate result of the Plaintiff's trespass and actions, directly and through its  
25 members and agents, Defendants have incurred general damages for diminution in value of the  
26 Olliff Property and costs of restoration and repair according to proof.  
27

1           20. As a further proximate result of the Plaintiff's wrongful conduct and trespass,  
2 Defendants have suffered and continue to suffer physical injury and/or emotional distress  
3 manifesting upset stomach, headaches, stress, fear, discomfort, and loss of sleep, such that  
4 Defendants seek general damages for emotional distress from Plaintiff in an amount according to  
5 proof.  
6

7           21. The action and conduct of Plaintiff GRINDSTONE INDIAN RANCHERIA directly  
8 and indirectly through some of its members and agents under the direction and control of  
9 Plaintiff were willful, malicious and oppressive such that Defendants seek an award of punitive  
10 damages in an amount according to proof.  
11

12           **WHEREFORE**, Defendants seek judgment against Plaintiff on this Counterclaim as set  
13 forth below:

14 **As to Counterclaim - Count 1 (Trespass):**

- 15           1. For general damages for property damage according to proof;
- 16           2. For general damages for mental distress according to proof;
- 17           3. For an award of punitive damages according to proof;
- 18           4. For a preliminary and permanent injunction enjoining Plaintiff and Counter  
19 Defendants ROES 1 through 10 from trespassing on the Olliff Parcel including the Disputed  
20 Area, directly or indirectly, by flow of storm water runoff, dirt, rock or boulders coming from the  
21 embankment on the Rancheria Parcel onto the Olliff Parcel.  
22
- 23           5. For an award of costs of suit incurred;
- 24           6. For such other and further relief as the Court deems just and proper.  
25

26 ///

27 ///

1 Respectfully Submitted,

2 DATED: March 23, 2017.

3 By: /s/ David R. Griffith, Esq.  
4 State Bar No. 70172  
5 Attorney for Defendants,  
6 TERRENCE OLLIFF and DIANNE L OLLIFF,  
7 individually and as Trustees of the Olliff Family  
8 Trust

9 **REQUEST FOR JURY TRIAL**

10 Defendants TERRENCE OLLIFF and DIANNE L OLLIFF, individually and as Trustees  
11 of the Olliff Family Trust, request Jury Trial in this matter.

12 DATED: March 23, 2017.

13 By: /s/ David R. Griffith, Esq.  
14 State Bar No. 70172  
15 Attorney for Defendants,  
16 TERRENCE OLLIFF and DIANNE L OLLIFF,  
17 individually and as Trustees of the Olliff Family  
18 Trust