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11 TULE LAKE COMMITTEE

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14 SACRAMENTO DIVISION

15 TULE LAKE COMMITTEE,

16 Plaintiff,

17 vs.

18 CITY OF TULELAKE, CITY COUNCIL OF THE
19 CITY OF TULELAKE, and MODOC TRIBE OF
OKLAHOMA,

20 Defendants.

Case No.

**VERIFIED COMPLAINT FOR
TEMPORARY RESTRAINING ORDER
AND INJUNCTIVE RELIEF (42 U.S.C. §
1983, RALPH M. BROWN ACT)**

21
22 **INTRODUCTION**

23 The Tule Lake Committee brings this equitable action to protect the historic integrity of the site
24 of the World War II Tule Lake Segregation Center, a unique and irreplaceable historic resource of state
25 and national significance and a reminder of injustice relevant to that time and this one. This action
26 challenges the decision to sell 358 acres of the historic site, by defendant City of Tulelake, through its
27 City Council, to defendant Modoc Tribe of Oklahoma, an entity connected by federal court judgments to
28 repeated criminal frauds and frauds on courts, and an entity in active disregard of state and federal laws.

JURISDICTION; VENUE

1
2 1. Subject matter jurisdiction is granted to This Honorable Court by 28 U.S.C. § 1331
3 because of federal questions; 28 U.S.C. § 1343 because of civil rights claims; and 28 U.S.C. § 1367
4 because of other claims forming part of the same case or controversy.

5 2. Under 28 U.S.C. § 1391, venue lies in the Eastern District of California because the
6 historic property that is the subject of the action is situated in Modoc County, California, and because a
7 substantial part of the events and omissions giving rise to the claim occurred in Siskiyou County,
8 California.

9 **PARTIES**

10 3. Plaintiff, the Tule Lake Committee, was incorporated as a California non-profit public
11 benefit corporation in 1981 to represent the survivors and descendants of those incarcerated at Tule Lake
12 during World War II. The Committee’s purposes are (a) to educate the general public about the forced
13 and unconstitutional imprisonment of over 120,000 men, women, and children of Japanese ancestry into
14 ten concentration camps in the United States in the 1940s; (b) to recognize the unique role of the Tule
15 Lake concentration camp, which became a segregation center housing inmates incarcerated in all ten
16 camps who resisted their false imprisonment and were stigmatized as “disloyal”; and (c) to preserve the
17 history and experiences of the inmates of the Tule Lake Segregation Center and their struggles to cope
18 with their isolation under harsh conditions. Tule Lake Committee supporters include citizens with a deep
19 connection to the historic importance of the Tule Lake Segregation Center. The Tule Lake Committee
20 brings this complaint on behalf of those supporters and others similarly situated, who are too numerous to
21 be named and brought before this Court as plaintiffs.

22 4. Plaintiff has standing as the representative of survivors of the Tule Lake concentration
23 camp and descendants of persons incarcerated there. Plaintiff also has standing as an offeror to purchase
24 the historic property for \$40,000 cash.

25 5. Defendant City of Tulelake (“City”), located in Siskiyou County, California, owns the fee
26 interest in 358 acres of historic concentration camp property under a 1951 patent by the Department of
27 the Interior premised on the use of the historic property as an airport. Defendant City Council of the City
28 of Tulelake (“City Council”) has decided to sell the City’s fee interest in the historic property to the

1 Modoc Tribe of Oklahoma.

2 6. Defendant Modoc Tribe of Oklahoma (“Tribe”) is an Indian tribe headquartered in the
3 town of Miami, in northeast Oklahoma. Through commercial entities of the Tribe’s creation, the Tribe
4 makes a business of renting its sovereign status and sovereign immunity to aid persons who engage in
5 commercial activities including predatory and fraudulent payday lending schemes condemned by the
6 District of Nevada and the Southern District of New York.

7 7. Nonparty County of Modoc (“County”) possesses and sponsors the airport under a lease
8 granted by the City of Tulelake.

9 8. Nonparty Macy’s Flying Service and its owner, Nick Macy, operate the airport by
10 agreements with the County, and operate a cropdusting business quartered at the airport.

11 **FACTUAL ALLEGATIONS**

12 9. Tule Lake was one of ten American concentration camps created during World War II to
13 imprison innocent citizens and immigrants for no reason except their Japanese ancestry. In 1943, a
14 misconceived and ineptly administered “loyalty” questionnaire caused more than 12,000 individuals to
15 dissent from their mistreatment. For their dissent, they were governmentally classified as “disloyal” and
16 were sent to Tule Lake, which became a maximum-security prison, the largest of the concentration
17 camps at over 18,000 souls. Tule Lake was the last of the ten to close, in March 1946.

18 10. With the war’s end, Japanese Americans sought acceptance in a country that had been
19 racially hostile. Those who had dissented were still stigmatized as “disloyal” within the Japanese
20 American community. They were purged from the Japanese American narrative.

21 11. In 1951 the federal government, ignoring the concentration camp’s historic significance,
22 disposed of 358 acres of it to the City to use as an airport. In the Tule Lake basin, an area proudly
23 claimed in the 1940s to be “White man’s country,” the Bureau of Reclamation granted homesteads to
24 veterans, but not veterans of color.

25 12. In the 1950s and 1960s, the African American civil rights movement challenged legal
26 racism in the nation’s institutions including schools, employment, public accommodations, housing
27 loans, and voting. The movement encouraged Japanese Americans to challenge the injustice of their
28 wartime incarceration. These challenges culminated in the Civil Liberties Act of 1988, where Congress

1 found that the incarceration resulted not from military necessity but from racism, wartime hysteria, and
2 failure of political leadership. With the Civil Liberties Act came individual Presidential apologies, token
3 redress payments, and a promise to educate the nation about the wrongful incarceration.

4 13. The government’s findings and apologies helped transform Japanese Americans from a
5 state of shame and guilt at being imprisoned, to one of hope and healing. The places of incarceration are
6 now sacred sites and places for personal and national remembrance. Governmental efforts to preserve
7 Japanese American incarceration sites manifest a genuine national remorse at having stripped an
8 unpopular racial minority of the rights, freedoms, and dignity that Americans cherish, and a desire to
9 educate the nation on the history.

10 14. Survivors and descendants of the incarceration seek healing through pilgrimages to the
11 incarceration sites. Pilgrimages to Tule Lake began as solitary visits, with individuals seeking solace at
12 the place that had caused them deep psychic wounds. Organized pilgrimages to Tule Lake now occur
13 every two years, as 4-day events that accommodate hundreds of pilgrims who come to honor the memory
14 of those who were imprisoned and those who died there.

15 15. More than 331 persons died in the Tule Lake camp—some by suicide or murder, many
16 from poor medical care, and others from depression and stress. Many were babies, and many were
17 elderly and infirm.

18 16. The trauma experienced at Tule Lake makes this historic site hallowed ground to Japanese
19 Americans. Tule Lake’s preservation is part of the healing made possible when the government
20 acknowledged what President Reagan described as a “great wrong.”

21 17. The State of California designated the Tule Lake concentration camp as a State Historic
22 Landmark in 1975. In 2006, a 37-acre portion of the site was designed as the Tule Lake Segregation
23 Center National Historic Landmark. Landmark status is the highest level of recognition our nation grants
24 to a historic place. The National Park Service undertook management of the 37-acre portion. In
25 December 2008, President Bush created the WWII Valor in the Pacific National Monument, and
26 included the Tule Lake Unit.

27 18. The Committee raised money to assist the Park Service’s efforts to preserve the site and
28 tell the story. To date, the Committee has raised over \$850,000 to help the Park Service. The Committee

1 also does advocacy to protect the site from incompatible activities that threaten to destroy the historic
2 fabric.

3 19. In derogation of the emotional, historical and spiritual meaning the land has to Japanese
4 Americans and the site's significance in American history, certain persons bulldozed the concentration
5 camp's cemetery for postwar construction projects. The cemetery remains were used to fill ditches on
6 the airport site.

7 20. The County, as the airport's sponsor, has taken steps to expand the airport. In January
8 2010 the County submitted two consultant reports to the FAA, claiming that the concentration camp
9 lands occupied by the airport were not eligible for listing on the National Register of Historic Places. The
10 State Historic Preservation Officer (SHPO) wrote to the County to disagree. The FAA and the SHPO
11 concurred that the airport was part of a historic site that was eligible for listing on the National Register
12 of Historic Places.

13 21. In 2014, the County proposed a multi-year, \$3.5 million airport improvement plan that
14 included construction of a massive 3-mile-long, 8-foot-high fence, topped with barbed wire, which would
15 close off most of the concentration camp land where Japanese Americans had lived and died.

16 22. The County also sought to extend its 40-year 1974 lease to 2044. No environmental
17 impact report, or EIR, had ever been done for any of the airport's construction projects. The Committee
18 protested the lease extension and the multi-year construction plan as needing an EIR before decision.
19 There was no effort at an EIR, and the Committee filed a CEQA mandamus action in Superior Court that
20 named the City as the airport's owner and lessor and the County as the lessee and initiator of the
21 construction plan, and sought an EIR.

22 23. The County withdrew language in the lease extension to cease referring to the
23 construction plan. The County, however, still failed to address its multi-year construction plan and the
24 CEQA concerns it raised. The failure prompted a second CEQA mandamus action, based on the new
25 lease extension and the construction plan, seeking an EIR.

26 24. The Committee is currently engaged in settlement discussions with the County for the
27 CEQA actions. The City and Nick Macy, who operates the crop dusting business based at the airport,
28 have not discussed settlement.

1 25. In late 2017, the City considered selling the Tulelake airport. In November 7, 2017, the
2 City discussed hiring Michael Colantuono to represent the City in negotiations with the Modoc of
3 Oklahoma and Macy's Flying Service.

4 26. On January 26, 2018, the Committee wrote to the City Council and Mayor Hank Ebinger
5 stating its desire to be considered as the airport's purchaser. The Committee's inquiry received no
6 response.

7 27. A month later, on February 28, 2018, the Committee re-emailed its letter expressing its
8 desire to purchase the airport. The Committee again requested that its inquiry be acknowledged. The
9 City, through Michael Colantuono, replied, "Your email is received. No decisions have been made." No
10 further communications were received from the City or its representatives responding to the Committee's
11 inquiry about purchasing the airport.

12 28. The Committee was alarmed to learn on July 12, 2018, from an unofficial source, that the
13 City had proposed Ordinance No. 2018-16-01 on July 3, 2018, to authorize the sale of the Tulelake
14 airport land to the Modoc Tribe of Oklahoma for the low figure of \$17,500. The Committee sent a letter
15 on July 13 to Mayor Ebinger and the City Council expressing its interest in purchasing the airport and
16 offered to purchase the airport for \$40,000. The Committee's offer was reported in a news article the
17 following day in the local Klamath Falls newspaper, the Herald and News. The Committee received no
18 acknowledgement or response from the City.

19 29. The Committee's CEQA attorney spoke with the City's sale negotiator, Mr. Colantuono,
20 on July 13. The Committee's CEQA attorney emailed a letter on July 26, 2018, that offered, in addition
21 to \$40,000, all of the terms Mr. Colantuono had suggested, including the offer to dismiss the City from
22 the CEQA actions, and to waive costs of suit. Neither the Committee nor its attorney received
23 acknowledgement of the letter.

24 30. The Committee telephoned and sent the City a request form on July 25 asking to be placed
25 on the July 31 Agenda to present and discuss its offer to purchase the airport. However, the Committee's
26 request to be included on the 4:15 PM Agenda was described as "not ... appropriate" by the City Hall
27 Administrator, Jenny Coelho, who explained that the City would not discuss the airport sale before the
28 5:30 meeting. Her emailed response to the Committee is quoted below with emphasis added:

1 “It will **not be necessary or appropriate to separately agendize your proposal** for that
2 sale. You will have opportunity to speak in the hearing. If you have a proposal to present,
3 you may wish to submit it in writing to our attorney, Mr. Colanuono, in advance of the
4 meeting to ensure the Council and its legal counsel are able to review it fully.

5 “**There will be a special meeting at 4:15 pm** before the regular meeting at 5:30 pm for
6 which the possible sale is noticed. If so, **that meeting will be limited to a closed session.**
7 While public comment before the closed session will of course be welcome **no public**
8 **discussion of the airport sale by the City Council will be appropriate** earlier than the
9 time of which the City has given published notice of 5:30 pm.”

10 31. The 4:15 PM Agenda contained an item 5: “Conference with Real Property Negotiator(s)
11 for the possible transfer of the Tulelake Airport.” The negotiating parties were listed as “Modoc Tribe of
12 Oklahoma; Tule Lake Committee; County of Modoc.” The administrator’s communication chilled the
13 Committee from participating in this closed meeting where the City Council was to discuss the “terms
14 and price” of the airport sale.

15 32. The public meeting to consider the proposed Ordinance for sale to the Tribe took place at
16 5:30 PM on July 31, 2018. The Mayor announced a 3-minute time limit for speakers.

17 33. Mr. Colantuono, as negotiator for the City, gave what he called “in effect a staff report.”
18 He outlined some terms of the City’s fee ownership, except that he never mentioned the site’s historic
19 importance. Instead, he minimized the site as a “piece of dirt under an airport.” He outlined the Tribe’s
20 \$17,500 offer, characterized it as “the terms that’ve been negotiated with the Tribe,” and compared the
21 terms offered by the Committee and by the County. He defended the low dollar amount as being enough
22 to pay his own fee to “close this deal,” and said that if the City made “a nickel on that transaction” the
23 amount would go “back into the airport” since “anything we make off of Uncle Sam’s investment has to
24 be used for airport use.”

25 34. A rough transcription of the negotiator’s remarks is:

26 Good evening everyone. Michael Colantuono, I’m a local government lawyer, and the
27 town has hired me to assist with this transaction, and so I’m giving what’s in effect a staff
28 report on this item. The town owns the land under the airport, because at the end of World
War II the federal government gave it to the town conditioned that it used for an airport.
And the title that the town holds provides that if it ever stops being an airport, the land
goes back to Uncle Sam. The County of Modoc is the sponsor of the airport, that’s a status
under the FAA’s rules, you need a Mother May I from the FAA to be a sponsor, and they
are also the grant recipient with respect to the airport, which means they signed a contract
by which they get to spend money from the FAA grant funds. You fly, you see that little
\$3 charge on your airline ticket. That money goes into a fund to maintain airports. That

1 fund generates grants for all airports including airports like this one. So the County's a
2 grant recipient. That's also a regulatory category with some obligations to Uncle Sam. The
3 town is neither of those things. They just own the dirt. They have leased the dirt to the
4 County of Modoc; the County of Modoc is the airport sponsor, is the grant recipient, and
5 it has subleased the field to a fixed base operator, FBO, Macy's Flying Services, which
6 provides the economic activity that's actually using the airport. The airport is now on a
7 lease that has another 24 years to go. Nobody can disturb that lease; the County's rights
8 are good for another 24 years. Macy's has a sublease under that agreement. Nobody can
9 disturb those rights. Those rights remain as well. The question is whether the town
10 continues in this role of being the nominal owner of the piece of dirt under an airport that
11 so far has gotten them sued a couple of times. So the transaction is proposed to sell that
12 land to the Modoc Tribe of Oklahoma for \$17,500. And people wonder, why that price,
13 why so little, what's that about. That's basically my fees; it's covering the cost to close
14 this deal so that the city can get out from under the burden of owning that land at no cost.
15 If we made as a community a nickel on that transaction we'd be required to put the money
16 back into the airport. We got the land from Uncle Sam for use as an airport, anything we
17 make off of Uncle Sam's investment has to be used for airport use. So there's no way for
18 the town to sell it for more and to make more money for the community's general fund.
19 One of the conditions of this sale if the town approves it, it's up to the City Council, is
20 that the Modoc Tribe has to get the FAA's consent to the transaction, or has to prove to
21 the city attorney's satisfaction that that's not required. That clause that says the City
22 Attorney might decide it's not required is really about if the FAA refuses to exercise their
23 jurisdiction, if they say you're not a grant sponsor, you're not an airport sponsor, you're
24 not a grant recipient, and we don't have any relationship with you, and we're not going to
25 do a Mother May I for you. Then we're not going to get a Mother May I from them and
26 the transaction can conclude. But unless they say that, we need their approval for the
27 transaction and if we don't get it, the deal doesn't close on the terms that are in front of
28 the Council for tonight. It has to be used as an airport, under this deal and the underlying
fee, and if that cease to happen Uncle Sam gets the land back and will have to figure out
what to use with it, and importantly to the community, another aspect of the agreement is
that if the Modoc Tribe takes the land they have to defend and pay the lawyers for any
lawsuits that the City might be involved in with respect to the airport going forward. After
we released the agenda showing this transaction, we received two other offers, one from
the Tule Lake Committee, which is essentially the same the same terms as the tribe with
two differences, one is it's \$40,000, the other says no promise to indemnify but there is a
promise to dismiss us from the existing lawsuit, which you might view as effectively the
same thing. And we have an oral offer that's not been reduced to writing, from the County
of Modoc, to match the terms that've been negotiated with the Tribe. We met in closed
session earlier this evening, I provided a little bit of legal advice to the City Council about
all three of those proposals, no action was taken because any action will be taken in open
session after the Council hears from the public tonight. And with that, Mr. Mayor, Council
members, that's all I have for you unless you have questions for me.

35. No other information was presented about any criteria the City would use to guide its
decision over which offer, if any, to accept. The Mayor and City Council said nothing by way of
deliberation, and with an exception noted below, they asked nothing. In particular, they failed to discuss

1 the comparative merits of the offers.

2 36. The Committee made its three-minute presentation. The Mayor and City Council had no
3 questions to the Committee and no comments concerning its offer.

4 37. On information and belief, the County had reached out to the City to discuss purchase by
5 the County, but the City had not discussed the matter with the County. At the meeting, although
6 representatives from the County attended, they made no presentation. The Mayor and City Council failed
7 to ask them any questions, and failed to discuss the merits of the County's offer to match the Tribe's
8 offer. The City Council voted unanimously for the pre-drawn Ordinance naming the Tribe.

9 38. The City's only questioning to any of the three parties seeking to purchase the airport was
10 directed to the Tribe. Mayor Hank Ebinger asked if the Tribe could enlighten everyone on what sort of
11 businesses the Tribe would bring into the area. Blake Follis, the Tribe's chief's grandson and
12 spokesman, replied, "it's anything to support aviation." He added, "The whole thing here, again, an
13 airport the FAA requires you to have aviation-supportive businesses, so, that's indeed the type of
14 enterprises that we look to help put in to the Tulalake Municipal Airport down there."

15 39. The Committee believes that adding airport enterprises (such as those alluded to in the
16 preceding paragraph) should be studied with care, because, among other reasons, they could damage the
17 historic resources.

18 40. In previous communications, tribal representative Blake Follis had dismissed the Japanese
19 American community's historic preservation concerns. He had minimized the wartime incarceration as a
20 time when "Japanese Americans had it much better than we did."

21 41. Blake Follis had complained in writing against the Park Service that "the Tribe receives
22 no payment, and has never received a payment, from the Monument or the National Park Service for
23 their actions in appropriating our history for financial gain."

24 42. The City's secretive closed meetings, its non-responses to the Committee's inquiries and
25 offers, its negotiations exclusively with the Tribe, its refusal to allow the Committee to have an agenda
26 item to discuss its purchase offer, and its Ordinance that designated the Tribe as the purchaser, suggest
27 that the vote on July 31 was a mere formality for an already-made decision. The City gave the Committee
28 scant notice and no meaningful opportunity to be heard.

1 43. The Tribe has been making, on information and belief, millions of dollars by peddling its
2 sovereignty for use in various “rent a tribe” schemes. The Tribe’s websites market its sovereign
3 immunity as a way to escape the “burdens of regulations that can impede progress and economic
4 development.” Entities such as www.EagleTG.com, a company that “helps” users avoid cumbersome
5 government regulations by using the tribe’s sovereign status, markets itself as one of the Tribe’s
6 businesses. About SBA programs, the Tribe promises a “significantly accelerated procurement timeline,
7 without the disruptions and delays resulting from complex evaluations and resulting protests”;
8 “Elimination of pre-award schedule risk due to the non-protestable nature of Native American sole
9 source procurements”; and a “virtually unlimited sole source ceiling,” i.e., no-bid federal contracts in
10 significantly larger amounts.

11 44. In a 214-page report in November 2017, the Public Justice Foundation examined online
12 payday lenders related to Native American tribes and operating in California, as an unregulated and
13 largely unexamined billion-dollar industry that harms consumers, many of whom are poor and minority.
14 The report identified the Tribe and several internet payday loan businesses. One, www.500FastCash.com,
15 markets itself as owned by the Tribe, and claims that State laws do not apply to its loan agreements:

16 “Federally recognized Indian Tribes are sovereign and possess sovereign immunity and
17 are not subject to state law absent congressional authorization. Our loan applications and
18 loan agreements state that the laws of your state of residence and/or the state where you
19 apply for a short term loan will not apply to any agreement you enter into with us.”

19 45. The report points out that such tribal enterprises, by abusing tribal sovereign immunity,
20 threaten the viability of tribal sovereign immunity and ultimately of tribal self-governance. As an
21 example of States scrutinizing assertions of tribal sovereign immunity, the California Supreme Court has
22 assigned those asserting tribal sovereign immunity the burden of proving factually that they are “arms of
23 the tribe,” in *People ex rel. Owen v. Miami Nation Enterprises*, 2 Cal. 5th 222 (2016).

24 46. The Tribe’s abuse of its sovereign status has drawn the attention of the Federal Trade
25 Commission, the IRS, the FBI, at least one United States Attorney, and U.S. District Courts in Las Vegas
26 and Manhattan.

27 47. In 2015, the FTC obtained a judgment in the District of Nevada that restrained the Tribe’s
28 Red Cedar Services entity (doing business as 500FastCash) in its payday loan activity, extinguished

1 consumer debts, stopped debt collection, and fined the tribe \$2.2 million.

2 48. The \$2.2 million fine in 2015 did not stop the Tribe's fraudulent activities.

3 49. This year, some two and one-half years after the FTC judgment, the U.S. Attorney's office
4 for the Southern District of New York, in connection with the criminal payday loan fraud prosecution of
5 Scott Tucker, obtained a civil forfeiture of another \$2 million against the same Red Cedar tribal entity. In
6 the forfeiture and cooperation agreement, the Red Cedar entity admitted that it was controlled by the
7 Tribe. It also admitted that a representative of the Tribe submitted affidavits for state court litigation
8 about the payday lending business, and that the Tribe's affidavits were false. The U.S. Attorney's
9 Office's news release about the forfeitures reflected that the Tribe allowed Tucker to claim tribal
10 sovereign immunity and to set up bank accounts to launder billions of dollars, and that the Tribe received
11 payments that typically were one percent of the payday loan revenues.

12 50. Even though the Tribe has paid penalties totaling \$4.2 million dollars to date, the Tribe
13 continues to publicize its involvement in the internet payday loan business.

14 51. Based on the Tribe's previous statements about the World War II history, abusive
15 business model, and extralegal behavior, one might expect the tribe to push the legal envelope, using its
16 tribal sovereignty to try to avoid regulation by the environmental and historic preservation laws that have
17 protected the historic Tule Lake concentration camp site.

18 52. The City maintained a narrow focus on selling the historic site to the Tribe only. This
19 focus was despite considerable negative reporting and a cascade of information about the \$4.2 million
20 dollars in penalties that the Tribe paid for its involvement in fraud, money laundering and perjury.

21 53. One wonders that a small and self-described "dying community" such as Tulelake might
22 re-gift an irreplaceable historic property to a Tribe that takes pride in promoting activity at and beyond
23 the fringes of legality. Although the Mayor and City Council had two other and quite sensible options,
24 they seemingly went out of their way to avoid fair examination of those alternatives. The question that
25 arises in reasonable minds is: "Why?"

26 **FIRST CAUSE OF ACTION: 42 U.S.C. § 1983**

27 54. The factual allegations in paragraphs 9 through 53 are here adopted by reference.

28 55. The City and the City Council have a mandatory duty to comply with Cal. Const. Art.

1 XVI § 6, which forbids gifts of public funds or property by providing: “The Legislature shall have no
2 power ... to authorize the giving or lending, of the credit of the State, or of any ... city ... of any public
3 money or thing of value to any individual, municipal or other corporation whatever; ...”

4 56. The historic site of the Tule Lake concentration camp is a thing of value within the
5 meaning of Cal. Const. Art. XVI § 6. Unlike an airport, a historic site is irreplaceable.

6 57. The Committee has a legal and equitable interest in the historic site, both as a bona fide
7 (and the high) bidder and as a representative of those who were falsely imprisoned there, lived there,
8 descended from there, wish to learn the history, or otherwise deserve the opportunity to visit the historic
9 site.

10 58. Cal. Const. Art. XVI § 6 creates in the Committee an expectation and interest cognizable
11 as a liberty interest under the Due Process clause of U.S. Const. Amend. XIV.

12 59. The decision to sell the historic site for \$17,500 failed to consider the historic site as
13 anything but a “piece of dirt” underlying the airport. In effect, it gave away the historic site for free.

14 60. In making its decision, the City Council disregarded the Committee’s legal, equitable, and
15 Due Process interest in the historic site.

16 61. By transferring away the historic site for no consideration or grossly inadequate
17 consideration, by acting in secret in derogation of California law, by pre-deciding the recipient, and by
18 ignoring or deliberately frustrating the Committee’s interest, the City and the City Council deprived the
19 Committee of its liberty interest without due process.

20 62. The City and the City Council, which made the subject sale decision, are “persons” within
21 the meaning of Section 1983. They acted under color of state law.

22 63. The right to due process of law established by U.S. Const. Amend. XIV is a right,
23 privilege, or immunity secured by the Constitution and laws within the meaning of Section 1983.

24 64. This is a suit in equity within the meaning of Section 1983.

25 65. Because the sale decision violated plaintiff’s Constitutional rights, plaintiff is entitled to
26 relief under Cal. Const. Art. XVI § 6 and 42 U.S.C. § 1983.

27 **SECOND CAUSE OF ACTION: 42 U.S.C. § 1983**

28 66. The factual allegations in paragraphs 9 through 53 are here adopted by reference.

1 67. The City Council and its members, who made the subject sale decision, are “persons”
2 within the meaning of Section 1983. They acted under color of state law. The members acted in their
3 official capacities as officers of the City of Tulelake, and are sued in their official capacities only.

4 68. Plaintiff is a “citizen of the United States” and a “person” eligible for the protection of
5 Section 1983.

6 69. The right to equal protection of the laws established by U.S. Const. Amend. XIV is a
7 right, privilege, or immunity secured by the Constitution and laws within the meaning of Section 1983.

8 70. This is a suit in equity within the meaning of Section 1983.

9 71. For failure to consider plaintiff’s bid for ownership of the historic property on its merits,
10 the subject sale decision was arbitrary, capricious, and irrational.

11 72. For failure to give adequate consideration to the Tribe’s admitted and adjudicated
12 participation in frauds upon numerous citizens nationwide, false testimony, frauds upon courts, and
13 unsuitability for business relationships, the subject sale decision was arbitrary, capricious, and irrational.

14 73. For secrecy, failure to include plaintiff in the sale negotiations, and favoritism toward the
15 eventual successful bidder, the subject sale decision was arbitrary, capricious, and irrational.

16 74. As a cash offeror, as a supporter of the airport’s continued existence, as a good steward of
17 the historic resource, and for other reasons, plaintiff is at least similarly situated to any other offeror to
18 purchase the historic property.

19 75. The sale decision violated plaintiff’s right to equal protection of the laws.

20 76. Because the sale decision violated plaintiff’s Constitutional rights, plaintiff is entitled to
21 relief under Section 1983.

22 **THIRD CAUSE OF ACTION: 42 U.S.C. § 1983**

23 77. The factual allegations in paragraphs 9 through 53 are here adopted by reference.

24 78. The City Council and its members, who made the subject sale decision, are “persons”
25 within the meaning of Section 1983. They acted under color of state law. The members acted in their
26 official capacities as officers of the City of Tulelake, and are sued in their official capacities only.

27 79. Plaintiff is a “citizen of the United States” and a “person” eligible for the protection of
28 Section 1983.

1 80. The right to petition the government for redress of grievances established by U.S. Const.
2 Amend. I is a right, privilege, or immunity secured by the Constitution and laws within the meaning of
3 Section 1983.

4 81. This is a suit in equity within the meaning of Section 1983.

5 82. The City Council failed to deliberate on the relative merits of the purchase offers before
6 it.

7 83. The Committee has been the subject of hostility and public vituperation in the Tulelake
8 area for its initiation of the two CEQA mandamus actions mentioned above.

9 84. The City Council's refusal to deliberate on the merits, to the detriment of the Committee's
10 purchase offer, was a product of punitive animus related to the Committee's two mandamus actions.

11 85. The City Council's actions violated U.S. Const. Amend. I.

12 86. Because the sale decision violated plaintiff's Constitutional rights, plaintiff is entitled to
13 relief under Section 1983.

14 **FOURTH CAUSE OF ACTION: RALPH M. BROWN ACT**

15 87. The factual allegations in paragraphs 9 through 53 are here adopted by reference.

16 88. November 7, 2017, the City Council held a regular meeting that went from open session
17 to closed session at 6:04 PM, and returned to open session at 8:44 PM. The closed session's stated
18 purpose was "conference with real property negotiators" about a "possible transfer of the Tulelake
19 Airport, conditions, terms and price," citing Cal. Gov. C. § 54956.8.

20 89. The cited provision allows the agency "to grant authority to its negotiator regarding the
21 price and terms of payment."

22 90. Discussion of "conditions" of transfer violated the cited provision of the Brown Act.

23 91. Discussion of "terms" of transfer exceeded "terms of payment." The discussion violated
24 the Brown Act.

25 92. On July 31, 2018, the City Council held a series of meetings beginning at 4:15 PM, citing
26 Cal. Gov. C. § 54956.8.

27 93. The subject was "the possible transfer of the Tulelake Airport."

28 94. The topics of "Terms and Price" exceeded the authorization in Section 54956.8 "to grant

1 authority to its negotiator regarding the price and *terms of payment*” (emphasis added).

2 95. According to the City Hall Administrator, the 4:15 series of meetings was closed to the
3 public.

4 96. Meeting in closed session without a prior open session violated the Brown Act.

5 97. Similarly, between November 7, 2017, and July 31, 2018, the City Council kept its
6 dealings secret, violating the letter and spirit of the Brown Act.

7 98. Plaintiff is entitled to relief under the Brown Act.

8 **REMEDIAL ALLEGATIONS**

9 99. The City Council’s Ordinance adopted July 31, 2018, deciding to sell or give the historic
10 property to the Tribe, by its terms takes effect 30 days afterward. By counsel’s calculation, the effective
11 date is August 30, 2018.

12 100. Plaintiff’s harm is severe and irreparable if the sale becomes final. The historic resource is
13 unique, nationally and internationally important, and fragile. The Tribe has the ability and, by inference,
14 the inclination to destroy the historic resource if it comes into an ownership position. The Tribe’s
15 representative trivializes the history of America’s concentration camps (“Japanese Americans had it
16 much better than we did”). The Tribe’s representative falsely projects a profit motive onto the National
17 Park Service (“appropriating our history for financial gain”). Instead of raising money to serve the Park
18 Service’s educational mission and supplement the Park Service’s severely constrained budget, the Tribe’s
19 representative demands financial reparations from the Park Service.

20 101. The Tribe gives evidence of extending its contempt for regulation to include the California
21 and federal environmental laws that protect the historic concentration camp site.

22 102. Remedies at law are inadequate because no damage remedy could replace or preserve the
23 historic property.

24 103. The City will suffer no harm by not transferring the historic site to the Tribe. The
25 Committee and the American public will suffer irreparable and permanent harm by transfer of the
26 vulnerable and irreplaceable historic site to a perjuring and fraudfeasing entity with an expressed
27 contempt for the law and for the historic resource.

WHEREFORE, plaintiff prays for the following:

1. For a Temporary Restraining Order preserving the status quo by deferring the effective date of the City’s decision to sell from August 30, 2018, until a Preliminary Injunction motion can be heard and decided.
2. For a Preliminary Injunction enjoining any sale to the Tribe.
3. For a final judgment nullifying the sale and enjoining any sale to the Tribe.
4. For costs, expenses, and a reasonable attorney’s fee.

Dated: August 21, 2018

Respectfully Submitted,

/s/ Mark E. Merin

By: _____

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Attorneys for Plaintiff
 TULE LAKE COMMITTEE

VERIFICATION

I, Barbara Takei, as member of the board of directors of the Tule Lake Committee, verify that the facts contained within this Verified Complaint are true and accurate, except those facts asserted on information and belief, and as to those facts, I believe them to be true.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this verification was executed on this 21st day of August, 2018, at Sacramento, California.

/s/ Barbara Takei

Barbara Takei