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UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

CONFEDERATED TRIBES OF THE CHEHALIS
RESERVATION
420 Howanut Road
P.O. Box 536
Oakville, WA 98568

TULALIP TRIBES
6406 Marine Drive
Tulalip, WA 98271

HOULTON BAND OF MALISEET INDIANS
88 Bell Road
Littleton, ME 04730

AKIAK NATIVE COMMUNITY
P.O. Box 52127
Akiak, AK 99552

ASA'CARSA MIUT TRIBE
P.O. Box 32249
Mountain Village, AK 99632

ALEUT COMMUNITY OF ST. PAUL ISLAND
2050 Venia Minor Road
P.O. Box 86
St. Paul Island, AK 99660

Plaintiffs,

Case No.: 1:20-cv-1002

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

1 v.

2 STEVEN MNUCHIN, SECRETARY, UNITED
3 STATES DEPARTMENT OF THE TREASURY
4 1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

5 Defendant.

6 Plaintiffs Confederated Tribes of the Chehalis Reservation (“Chehalis”), Tulalip Tribes
7 (“Tulalip”), Houlton Band of Maliseet Indians (“Houlton Band”), Akiak Native Community
8 (“Akiak”), Asa’carsarmiut Tribe (“Asa’carsarmiut”) and Aleut Community of St. Paul Island
9 (“ACSPI”), federally recognized Indian Tribal governments that provide essential governmental
10 services to their citizens, by and through counsel, state and allege as follows:

11 **INTRODUCTION**

12 1. Congress enacted the Coronavirus Aid, Relief, and Economic Security Act
13 (“CARES Act”), H.R. 748, 116th Cong. (2020), which President Trump signed into law on
14 March 27, 2020, to respond to the devastating impacts of the COVID-19 pandemic. Title V of
15 the CARES Act, Section 5001, amends the Social Security Act by creating the Coronavirus
16 Relief Fund (“Section 601”) and appropriating \$150,000,000,000 for fiscal year 2020 “payments
17 to States, Tribal governments, and units of local government.” Section 601(a)(1). Title V
18 mandates that the Secretary of the United States Department of the Treasury “shall reserve . . .
19 \$8,000,000,000 of such amount for making payments to Tribal governments.” Section
20 601(a)(2)(B).

21 2. There are 574 federally recognized Tribal governments that maintain a
22 government-to-government relationship with the United States. These include Indian tribes and
23 nations in the lower-48 states, such as Chehalis, Tulalip, and the Houlton Band, as well as native
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1 villages in Alaska, such as Akiak, Asa’carsarmiut and ACSPI. Defendant Steven Mnuchin,
2 Secretary of the U.S. Department of the Treasury (“Defendant” or “Secretary”), threatens to defy
3 Congress’s mandate by diverting Title V relief funds away from these sovereign Tribal
4 governments to more than 230 for-profit corporations incorporated under the laws of the State of
5 Alaska and their shareholders. These “state-chartered and state-regulated private business
6 corporations,” *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 534 (1998),
7 which conduct business worldwide through dozens of subsidiaries, are not “Tribal governments”
8 and are not eligible to receive Title V funds under the plain language of the CARES Act.

9 3. The Secretary’s designation and treatment of these private corporations as Tribal
10 governments reduces the funds available for allocation and distribution to Plaintiffs, who are in
11 dire need of the funds to support the necessary and increased expenditures caused by the
12 COVID-19 pandemic. The Secretary is required to disburse all \$8,000,000,000 by April 26,
13 2020, and Plaintiffs’ injury is imminent. Plaintiffs accordingly request that the Court
14 preliminarily and permanently enjoin Defendant to allocate and disburse all \$8,000,000,000
15 reserved by Congress to federally recognized Tribal governments, exclusive of Alaska Native
16 regional corporations and village corporations (“ANCs”), according to a reasonable formula
17 consistent with the CARES Act.

18 **JURISDICTION AND VENUE**

19 4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and
20 1362. Chehalis, Tulalip, the Houlton Band, Akiak, Asa’carsarmiut and ACSPI maintain
21 government-to-government relations with the United States and have governing bodies duly
22 recognized by the Secretary of the U.S. Department of the Interior. Plaintiffs assert claims
23 arising under the Constitution and laws of the United States, including the Administrative
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1 Procedures Act, 5 U.S.C. §§ 701-706. The allegations of the Complaint give rise to an actual
2 controversy within the meaning of 28 U.S.C. § 2201.

3 5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e) because the
4 Defendant, the Secretary of the U.S. Department of the Treasury, is an officer of the United
5 States and because a substantial part of the actions or omissions giving rise to the claims
6 occurred in this District, a substantial part of the property that is the subject of the action is
7 situated in this District, and the Defendant maintains his principal place of business in this
8 District.

9 **PLAINTIFFS**

10 6. Plaintiff Confederated Tribes of the Chehalis Reservation is a federally
11 recognized Indian tribal government whose governing body is recognized by the Secretary of the
12 Interior. *See* Indian Entities Recognized by and Eligible To Receive Services From the United
13 States Bureau of Indian Affairs, 85 Fed. Reg. 5462-01, 5463 (Jan. 30, 2020). Chehalis exercises
14 sovereign powers of self-governance and jurisdiction over the Chehalis Reservation, which was
15 set aside by Executive Order in 1864 at the confluence of the Chehalis and Black Rivers and is
16 located within the exterior boundaries of the State of Washington. Chehalis brings this action on
17 its own behalf and on behalf of its members.

18 7. Plaintiff Tulalip Tribes is a federally recognized Indian tribal government
19 organized pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. § 5123, whose
20 governing body is recognized by the Secretary of the Interior. *See* Indian Entities Recognized by
21 and Eligible To Receive Services From the United States Bureau of Indian Affairs, 85 Fed. Reg.
22 5462-01, 5465 (Jan. 30, 2020). Tulalip exercises sovereign powers of self-governance and
23 jurisdiction over the Tulalip Reservation, which was reserved in the 1855 Treaty of Point Elliot
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1 and is located within the exterior boundaries of the State of Washington. Tulalip brings this
2 action on its own behalf and on behalf of its members.

3 8. Plaintiff Houlton Band of Maliseet Indians is a federally recognized Indian tribal
4 government whose governing body is recognized by the Secretary of the Interior. *See* Indian
5 Entities Recognized by and Eligible To Receive Services From the United States Bureau of
6 Indian Affairs, 85 Fed. Reg. 5462-01, 5463 (Jan. 30, 2020). The Houlton Band exercises
7 sovereign powers of self-governance and jurisdiction over its trust lands located within the
8 exterior boundaries of the State of Maine, lands which were purchased and taken into trust for
9 the benefit of the Band following enactment of the Maine Indian Claims Settlement Act of 1980.
10 The Houlton Band brings this action on its own behalf and on behalf of its members.

11 9. Plaintiff Akiak Native Community is a federally recognized Indian tribal
12 government located along the Kuskokwim River in Alaska whose governing body is recognized
13 by the Secretary of the Interior. *See* Indian Entities Recognized by and Eligible To Receive
14 Services From the United States Bureau of Indian Affairs, 85 Fed. Reg. 5462-01, 5466 (Jan. 30,
15 2020). Akiak brings this action on its own behalf and on behalf of its members.

16 10. Plaintiff Asa'carsarmiut Tribe is a federally recognized Indian tribal government
17 located along the Yukon River in Alaska whose governing body is recognized by the Secretary
18 of the Interior. *See* Indian Entities Recognized by and Eligible To Receive Services From the
19 United States Bureau of Indian Affairs, 85 Fed. Reg. 5462-01, 5466 (Jan. 30, 2020).
20 Asa'carsarmiut brings this action on its own behalf and on behalf of its members.

21 11. Plaintiff Aleut Community of St. Paul Island is a federally recognized Indian
22 tribal government located on St. Paul Island in the Bering Sea in Alaska whose governing body
23 is recognized by the Secretary of the Interior. *See* Indian Entities Recognized by and Eligible To
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1 Receive Services From the United States Bureau of Indian Affairs, 85 Fed. Reg. 5462-01, 5467
2 (Jan. 30, 2020). ACSPI brings this action on its own behalf and on behalf of its members.

3 **DEFENDANT**

4 12. Defendant Steven Mnuchin, the Secretary of the U.S. Department of the Treasury
5 (“Treasury”), is charged by Congress with allocating and distributing relief funds to Tribal
6 governments under Title V of the CARES Act and is sued in his official capacity. Defendant’s
7 actions violate the plain language of the Act and threaten Plaintiffs with imminent irreparable
8 injury, as set forth below.

9 **THE CORONAVIRUS AND COVID-19 PANDEMIC**

10 13. In December 2019, a new coronavirus known as SARS-CoV-2 was detected in
11 Wuhan, Hubei Province, People’s Republic of China, causing outbreaks of the coronavirus
12 disease COVID-19. On March 11, 2020, the World Health Organization declared that the
13 COVID-19 outbreak can be characterized as a pandemic, stating its deep concern over both the
14 alarming levels of spread and severity, and the alarming levels of inaction as the rates of
15 infection continued to rise across the world.¹

16 14. On March 13, 2020, President Trump issued a Proclamation on Declaring a
17 National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak,
18 recognizing the preventative and proactive measures taken by all levels of government to slow
19 the spread of the virus and treat those affected.²

21 ¹ Tedros Adhanom Ghebreyesus, *WHO Director-General’s opening remarks at the media briefing on*
22 *COVID-19*, World Health Org. (Mar. 11, 2020), [https://www.who.int/dg/speeches/detail/who-director-](https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020)
23 [general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020](https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020).

24 ² Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-
25 19) Outbreak, The White House (Mar. 13, 2020), [https://www.whitehouse.gov/presidential-](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/)
[actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/)
[outbreak/](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/).

1 15. According to the Centers for Disease Control and Prevention (CDC), as of April
2 15, 2020, the United States has experienced 632,548 confirmed cases of COVID-19, and
3 suffered 31,071 deaths.³ The CDC reports that “[t]he federal government is working closely
4 with state, local, tribal, and territorial partners, as well as public health partners, to respond to
5 this situation.”⁴

6 16. COVID-19 is causing devastating harm in Indian country. By way of just a few
7 examples, as of April 15, 2020, the Navajo Nation alone has reported 921 cases and 38 deaths
8 related to COVID-19.⁵ The Pueblo of Zuni has reported 33 cases.⁶ And the Cherokee Nation
9 has reported 28 cases with one fatality as of April 9.⁷ Native Americans suffer from
10 disproportionately high rates of diabetes, cancer, heart disease, asthma, which subject them to
11 greater risk of fatal complications from COVID-19.

12 **THE IMPACT OF COVID-19 ON PLAINTIFFS’ GOVERNMENTS AND CITIZENS**

13 17. In creating the Title V Tribal government stabilization fund, numerous members
14 of Congress spoke directly to the tremendous hardships that COVID-19 has inflicted on federally
15 recognized Tribal governments. These governments have needed to engage in robust public
16 health activities and to provide enhanced health care and other essential public services in
17 response to the pandemic. Simultaneously, the revenues from tribally-owned businesses that

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19 ³ Ctrs. for Disease Control and Prevention, *Cases in U.S.*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited Apr. 16, 2020).

20 ⁴ Ctrs. for Disease Control and Prevention, *Situation Summary*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html> (last updated Apr. 7, 2020).

21 ⁵ Press Release, Office of the President and Vice President, The Navajo Nation, *83 New Cases of COVID-19 and Five More Deaths Reported* (Apr. 15, 2020), <https://tinyurl.com/y744pcpg>.

22 ⁶ Press Release, Pueblo of Zuni, *Public Notice to the Zuni Community* (Apr. 15, 2020), <http://www.ashiwi.org/COVID19/DailyPSAUpdate4-15-20.pdf>.

23 ⁷ Chris Polansky, *Following First Death, Cherokee Nation Braces for Increase in Coronavirus Cases*,
24 Pub. Radio Tulsa (Apr. 9, 2020), <https://www.publicradiotulsa.org/post/following-first-death-cherokee-nation-braces-increase-coronavirus-cases>.

1 would normally support those governmental activities have evaporated overnight because Tribal
2 governments have closed those businesses to help fight the virus and protect their communities,
3 especially their elders and other high risk populations.

4 Chehalis

5 18. The Chehalis Reservation comprises 5,420 acres of trust and fee lands located in
6 southwest Washington State. Chehalis has 979 members.

7 19. Chehalis provides government services throughout the Chehalis Reservation,
8 including, inter alia, public safety and police services; jail services; a civil and criminal court
9 system; critical infrastructure, such as water treatment plants; maintenance services for
10 government and community facilities; a health clinic; behavioral health and social services;
11 natural resource protection and enforcement; planning and licensing; elder care programs; Early
12 Head Start and Head Start programs; and community programs for youth and adults.

13 20. Chehalis business enterprises on the Chehalis Reservation include a casino, two
14 hotels, the Great Wolf Lodge (an indoor water park), fast food franchises, and three gas stations
15 with convenience stores.

16 21. In response to the COVID-19 crisis, Chehalis has declared a State of Emergency
17 and issued a shelter in place order. Chehalis has placed non-essential employees on
18 administrative leave and closed all of its enterprises, except the gas stations. The closure of these
19 enterprises has nearly eliminated Chehalis's tax base and other revenue streams, which fund
20 essential government services and employee salaries.

21 22. Chehalis has incurred substantial additional expenses to address the COVID-19
22 crisis. Chehalis created an Incident Operation Center, which is tasked with providing assistance
23 to Reservation residents and maintaining basic services such as, inter alia, clinic operations,
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1 meals for elders and children who normally eat at school, garbage and sanitation services,
2 policing, and other basic services. The emergency services provided by Chehalis during the
3 State of Emergency are unbudgeted expenses.

4 23. As of April 16, 2020, Chehalis's emergency efforts have prevented any COVID-
5 19 cases on the Chehalis Reservation.

6 Tulalip

7 24. The Tulalip Indian Reservation comprises 22,000 acres of trust and fee lands
8 located north of Everett in Snohomish County, Washington. Tulalip has 4,977 members, with
9 2,700 of those members residing on the Reservation. The Reservation has approximately 15,000
10 residents in total, of which approximately 12,000 are non-Indians.

11 25. Tulalip provides government services throughout the Tulalip Indian Reservation,
12 including public safety and police services; a fire department; jail services through a contract
13 with Snohomish County; a civil and criminal court system; critical infrastructure, such as water
14 treatment plants; maintenance services for government and community facilities; a health clinic
15 and various treatment programs; behavioral health and social services; natural resource
16 protection and enforcement; planning and licensing; elder support programs; child care services;
17 early childhood and other educational programs; child welfare services; tribal employment
18 programs; housing services; emergency management; a domestic violence safe house; and
19 licensing, permitting, and other regulatory services.

20 26. Tulalip business enterprises on the Reservation include the Tulalip Resort Casino
21 and Resort Hotel, Tulalip Amphitheatre, Quil Ceda Creek Casino, Tulalip Bingo, Tulalip
22 Broadband, Salish Networks, the Tulalip Liquor & Smoke Shop, and two gas stations with
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1 associated convenience stores. Tulalip also engages in extensive commercial leasing on the
2 Reservation, including to national retailers such as Seattle Premium Outlets (Simon Property
3 Group), Walmart, Home Depot, Cabela's, and numerous restaurants.

4 27. Snohomish County had the first confirmed case of COVID-19 in the United
5 States, just miles down Interstate-5 from the Tulalip Reservation. In response to the COVID-19
6 crisis, Tulalip issued a Stay at Home Emergency Order, closed its government offices, and
7 closed all of its enterprises, except Salish Networks and the gas stations. The closure of these
8 enterprises has almost entirely eliminated Tulalip's tax base and other revenue streams, which
9 fund essential government services and employee salaries.

10 28. Tulalip has incurred substantial additional expenses to address the COVID-19
11 crisis. Tulalip has mobilized its emergency management team, increased COVID-19 testing
12 capabilities, procured additional personal protective equipment (PPE), repurposed its health
13 clinic for acute care, established a telemedicine service, converted tribal community buildings for
14 quarantine of exposed individuals, purchased an additional ambulance, and increased spending
15 on services like tribal elder checks and food distribution programs. The emergency services
16 provided by Tulalip during the COVID-19 crisis are unbudgeted expenses.

17 29. On March 17, 2020, Tulalip had its first positive case of coronavirus. As of April
18 16, 2020, Tulalip has had ten confirmed COVID-19 cases, eight of whom have recovered.
19 Tulalip has suffered one COVID-19-related death thus far.

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21 Houlton Band

22 30. The Houlton Band has 1,835 tribal citizens and 1,444 acres of trust and fee lands
23 located in Aroostook County in northeastern Maine.
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1 31. As of March 16, 2020, the Tribal Chief declared a Public Health Emergency on
2 behalf of the Houlton Band of Maliseet Indians, which included a work-from-home order. Since
3 that time, the Houlton Band has been working to build its staff's capacity to effectively and
4 efficiently work from home. On March 16, 2020, the Band also closed two of its businesses, a
5 campground and a roller-skating rink, which frequently host parties and weddings. The Band
6 does not have any large businesses (and has no gaming enterprise) that produce substantial
7 revenue.

8 32. The Houlton Band is located in a rural area, where its citizens already experience
9 significant health disparities. As a result of COVID-19, the Band has opened an emergency food
10 pantry to assist with food security needs, and has been helping to support citizens who have lost
11 their jobs. While experiencing revenue losses, the Band has also had to incur overtime costs for
12 essential and Emergency Operation Center staff. The COVID-19 pandemic has imposed
13 substantial financial needs and hardships on the Houlton Band.

14 Akiak

15 33. The Akiak Native Community has 535 enrolled tribal members and 29.16 acres of
16 fee lands located in Akiak, Alaska. Akiak is located along the Kuskokwim River and is only
17 accessible by air and water. On March 26, 2020, the Akiak Council declared a Public Health
18 Emergency on behalf of tribal members, which included the closure of Akiak's small gaming
19 operation and recreational activities. This Public Health Emergency also closed the community
20 to non-essential travel.

21 34. The closest hospital with physicians, respiratory relief, and testing supplies is in
22 Bethel, Alaska, which is approximately 30 air miles and 60 land miles away. It is only
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1 accessible by air at this time. While the community of Akiak has a local health clinic, the tribal
2 community has gone for days at a time without any health care services due to the unavailability
3 of the one trained health aide.

4 35. As a result of the COVID-19 pandemic, Akiak has started a food bank to provide
5 for families in need, has distributed cleaning supplies, is providing water and sewer service to
6 those with disconnected service due to non-payment, and has identified sites to quarantine
7 families. Akiak depends on its small gaming operation for community funding, and its closure
8 has created financial hardship for tribal government.

9 Asa'carsarmiut

10 36. The COVID-19 pandemic has increased the significant challenges facing the
11 Asa'carsarmiut Tribe. The Tribe must address the needs of its homeless families as well as of
12 the many intergenerational families who live in overcrowded substandard housing, lacking water
13 and sewer services. These conditions create a danger to the entire community, and the Tribe is
14 unable to obtain necessary sanitary products because there is no airline service currently. Prior
15 to the pandemic, the Tribe was working to construct a new tribal government office building, but
16 those efforts have been halted, and the current building does not support proper social distancing
17 work areas and is very difficult to sanitize. While the Tribe has a small gaming office, it has
18 been closed due to COVID-19 and the Tribe is unable to raise critical funds to meet its needs.

19 ACSPI

20 37. The Aleut Community of Saint Paul Island is an isolated fishing community
21 located in the middle of the Bering Sea. ACSPI has a total of 1,554 tribal members, with 95% of
22 St. Paul's population being ACSPI tribal members. The ACSPI, including its representative
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1 sovereign governing body the Tribal Government of St. Paul, its tribal businesses, and its tribal
2 fishermen represent approximately two-thirds of St. Paul’s local economy and jobs. The ACSPI
3 employs between 80-100 year-round staff. Tribal fishermen employ an additional 75 residents.

4 38. In the past four weeks, due to COVID-19 the community has lost its only
5 passenger airline to bankruptcy, leaving ACSPI isolated and without any means of reaching the
6 800-mile distant Alaska mainland for necessary health care and other critical needs. While the
7 fishing market has collapsed, ACSPI has devoted almost every available Tribal government
8 resource to responding to the pandemic threat. The financial impacts on ACSPI and its tribal
9 members are immense, as it seeks to charter planes, establish quarantine facilities, and deal with
10 the sudden and severe economic dislocations from the COVID-19 pandemic. On April 2, 2020,
11 the President of the Tribal Government declared a COVID-19 Public Health Disaster.

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13 **CONGRESS APPROPRIATED CORONAVIRUS RELIEF FUNDS FOR TRIBAL
GOVERNMENTS, WHICH DO NOT INCLUDE ALASKA NATIVE CORPORATIONS**

14 39. Title V of the CARES Act, Section 5001, amends the Social Security Act by
15 creating the Coronavirus Relief Fund (“Section 601”) and appropriating \$150,000,000,000 for
16 fiscal year 2020 “payments to States, Tribal governments, and units of local government.”
17 Section 601(a)(1). Title V mandates that the Secretary of the U.S. Department of the Treasury
18 “shall reserve . . . \$8,000,000,000 of such amount for making payments to Tribal governments.”
19 Section 601(a)(2)(B). The Secretary is required to disburse these stabilization funds to Tribal
20 governments “not later than 30 days after the date of enactment of this section,” Section
21 601(b)(1), that is by April 26, 2020.

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23 40. States, Tribal governments, and units of local government must use Title V funds
24 “to cover only those costs of the State, Tribal government, or unit of local government that— (1)

1 are necessary expenditures incurred due to the public health emergency with respect to the
2 Coronavirus Disease 2019 (COVID-19); (2) were not accounted for in the budget most recently
3 approved as of the date of enactment of this section for the State or government; and (3) were
4 incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.”

5 Section 601(d).

6 41. The portion of the \$8,000,000,000 paid “to a Tribal government shall be the
7 amount the Secretary shall determine, in consultation with the Secretary of the Interior and
8 Indian Tribes, that is based on increased expenditures of each such Tribal government (or a
9 tribally-owned entity of such Tribal government) relative to aggregate expenditures in fiscal year
10 2019 by the Tribal government (or tribally-owned entity) and determined in such manner as the
11 Secretary determines appropriate to ensure that all amounts available under subsection (a)(2)(B)
12 for fiscal year 2020 are distributed to Tribal governments.” Section 601(c)(7).

13 42. Congress defined the three types of governments to whom the Secretary may pay
14 relief funds. “The term ‘State’ means the 50 States, the District of Columbia, the
15 Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of
16 the Northern Mariana Islands, and American Samoa.” Section 601(g)(4). “The term ‘unit of
17 local government’ means a county, municipality, town, township, village, parish, borough, or
18 other unit of general government below the State level with a population that exceeds 500,000.”
19 Section 601(g)(2).

20 43. Under Title V, “[t]he term ‘Tribal government’ means the *recognized governing*
21 *body* of an Indian Tribe.” Section 601(g)(5) (emphasis added). Title V further provides that
22 “[t]he term ‘Indian Tribe’ has the meaning given that term in section 4(e) of the Indian Self-
23 Determination and Education Assistance Act (25 U.S.C. 5304(e)).” Section 601(g)(1).

1 44. The Indian Self-Determination and Education Assistance Act (ISDEAA) defines
2 “Indian tribe” as “any Indian tribe, band, nation, or other organized group or community,
3 including any Alaska Native village or regional or village corporation as defined in or
4 established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. §
5 1601 et seq.], *which is recognized as eligible for the special programs and services provided by*
6 *the United States to Indians because of their status as Indians.*” 25 U.S.C. § 5304(e) (emphasis
7 added). This definition includes “any Alaska Native village or regional or village corporation”
8 *but only if it* “is recognized as eligible for the special programs and services provided by the
9 United States to Indians because of their status as Indians.” *Id.*

10 45. In the Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454
11 (108 Stat. 4791, 4792) (“Tribe List Act”), Congress required the Secretary of the U.S.
12 Department of the Interior (“Interior”) to prepare a list of exactly those entities: “The Secretary
13 [of the Interior] shall publish in the Federal Register a list of all Indian tribes which the Secretary
14 *recognizes to be eligible for the special programs and services provided by the United States to*
15 *Indians because of their status as Indians.*” 25 U.S.C. § 5131(a) (emphasis added).

16 46. As it does each year, on January 30, 2020, acting pursuant to the Tribe List Act,
17 Interior published its list of 574 “Indian Entities Recognized by and Eligible To Receive Services
18 From the United States Bureau of Indian Affairs.” 85 Fed. Reg. 5462-01 (Jan. 30, 2020) (“This
19 notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103-454;
20 108 Stat. 4791, 4792) . . .”). These *recognized* entities include “Indian Tribal Entities Within
21 The Contiguous 48 States Recognized by and Eligible To Receive Services From the United
22 States Bureau of Indian Affairs” as well as “Native Entities Within the State of Alaska
23 Recognized by and Eligible To Receive Services From the United States Bureau of Indian
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1 Affairs.” *Id.* at 5462, 5466 (noting “We have continued the practice of listing the Alaska Native
2 entities separately for the purpose of facilitating identification of them.”).

3 47. While this list of 574 federally recognized Indian tribes includes more than 200
4 Alaska Native villages, including Akiak, Asa’carsarmiut and ACSPI – who, like Chehalis,
5 Tulalip and the Houlton Band, maintain a government-to-government relationship with the
6 United States – *it does not include* any Alaskan Native regional or village *corporations*
7 (“ANCs”). Because ANCs are not “recognized as eligible for the special programs and services
8 provided by the United States to Indians because of their status as Indians,” they are not “Indian
9 Tribes” for purposes of Title V of the CARES Act. And because ANCs are not “Indian Tribes,”
10 they are not “Tribal governments,” which Title V defines as “the recognized governing body of
11 an Indian Tribe.” Section 601(g)(5).

12 48. ANCs thus are not eligible to receive any Coronavirus Relief Fund payments
13 under Title V of the CARES Act. The statutory language is unambiguous, and the Secretary must
14 carry out the intent of Congress by disbursing relief funds to federally recognized Tribal
15 governments, exclusive of ANCs. The Secretary does not have discretion to disregard
16 Congress’s mandate by designating and treating ANCs as “Tribal governments.”

17 49. This makes perfect sense. ANCs are not governments, they are for-profit
18 corporations incorporated under the laws of the State of Alaska, created pursuant to the Alaska
19 Native Claims Settlement Act (ANCSA). *See* 43 U.S.C. § 1602(g), (j) (defining Alaska Native
20 regional corporations and village corporations). These private corporations, like other
21 corporations, are owned by their shareholders, including non-Indian shareholders. And ANCs,
22 like other corporations, have access to funding opportunities under other sections of the CARES
23 Act, whereas Tribal governments are not eligible for all of those funding sources. Congress is
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1 clear that Title V relief funds are to supplement “government” budgets, not corporate coffers.
2 Section 601(d)(2).

3 50. There are more than 230 separate ANCs, including 12 regional corporations and
4 approximately 225 village corporations.⁸ The 12 regional corporations alone have over 138,000
5 shareholders,⁹ and own scores of corporate subsidiaries, operating in all 50 states and countries
6 across the globe.¹⁰ Their business holdings include everything from construction to pipeline
7 maintenance to real estate management to telecommunications to government and military
8 contracting to environmental remediation to facilities maintenance to catering and camp services
9 to venture capital and financial management to aerospace engineering.¹¹

10 51. Nor do ANCs have “recognized governing bodies.” A “recognized governing
11 body” pertains to a political body that serves the interests of “citizens,” the “body politic,” not
12 corporate shareholders. ANCs are not governments, they do not govern, and they do not provide
13 government services. Instead, ANCs have corporate boards of directors and are owned by
14 private individuals. *See* 43 U.S.C. § 1606(f) (providing that the management of regional
15 corporations “shall be vested in a board of directors”). Because ANCs do not have “recognized
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17 ⁸ Res. Dev. Council, *Alaska Native Corporations*, <https://www.akrdc.org/alaska-native-corporations> (last
18 visited Apr. 15, 2020). A 13th Regional Corporation was also formed for non-resident Alaska Natives,
19 but the current status of the 13th Regional Corporation is unclear. *See, e.g.*, ANCSA Reg’l Ass’n, *About*
20 *the Alaska Native Claims Settlement Act*, <https://ancsaregional.com/about-ancsa/> (last visited Apr. 15,
2020) (noting that the 13th Regional Corporation was involuntarily dissolved by the State of Alaska in
21 2013).

⁹ ANCSA Reg’l Ass’n, *Economic Impacts*, <https://ancsaregional.com/economic-impacts/> (last visited
21 Apr. 15, 2020).

¹⁰ Res. Dev. Council, *Alaska Native Corporations*, <https://www.akrdc.org/alaska-native-corporations>
22 (last visited Apr. 15, 2020); NANA Reg’l Corp. Inc., *Overview* (May 17, 2017),
23 [https://www.nana.com/regional/shareholder-relations/Shareholder-
Preference/files/2017_NRC_One_Sheet_OVR_0256_1024_Part1.pdf](https://www.nana.com/regional/shareholder-relations/Shareholder-Preference/files/2017_NRC_One_Sheet_OVR_0256_1024_Part1.pdf).

¹¹ *See* Res. Dev. Council, *Alaska Native Corporations*, <https://www.akrdc.org/alaska-native-corporations>
24 (last visited Apr. 15, 2020); Alaska Bus., *The 2019 Top 49ers*, [https://digital.akbizmag.com/issue/october-
2019/the-2019-top-49ers/](https://digital.akbizmag.com/issue/october-2019/the-2019-top-49ers/) (last visited Apr. 15, 2020).

1 governing bodies,” they do not qualify as “Tribal governments” under Title V and are not
2 eligible for relief funds.

3 52. Even if such boards could be characterized as “governing bodies,” which they
4 cannot, these boards are not “recognized.” “Recognition” is an Indian law term of art that refers
5 to entities with a government-to-government relationship with the United States, which ANCs
6 simply do not have. While the Secretary of the Interior recognizes Tribal governments, they do
7 not recognize as authoritative the so-called governing bodies of ANCs. *See, e.g.*, Indian Entities
8 Recognized by and Eligible To Receive Services From the United States Bureau of Indian
9 Affairs, 85 Fed. Reg. 5462-01, 5462 (Jan. 30, 2020) (Interior stating that “The listed Indian
10 entities are acknowledged to have the immunities and privileges available to federally recognized
11 Indian Tribes by virtue of their government-to-government relationship with the United States as
12 well as the responsibilities, powers, limitations, and obligations of such Tribes.”). ANCs openly
13 represent in their own public-facing materials that they do not maintain a government-to-
14 government relationship with the United States.¹²

15 **DEFENDANT’S DESIGNATION OF ALASKA NATIVE CORPORATIONS AS TRIBAL**
16 **GOVERNMENTS VIOLATES THE CARES ACT**

17 53. Congress mandated that the Secretary only allocate and distribute Title V relief
18 funds to federally recognized Tribal governments. Nevertheless, Defendant has determined to
19 treat ANCs as “Tribal governments” for purposes of making these payments. Defendant’s action
20 is in violation of the CARES Act.

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23 ¹² *See, e.g.*, ANCSA Reg’l Ass’n, *Overview of Entities Operating in the Twelve Regions*,
24 <https://ancsaregional.com/overview-of-entities/> (last visited Apr. 15, 2020) (stating that both regional
25 corporations and village corporations “do not possess a government-to-government relationship with the
federal government”).

1 54. In order to determine the amounts that would be paid to each Tribal government
2 under Title V, and as a condition of funding, Defendant requested certain data from Tribal
3 governments on or about Monday, April 13, 2020, publishing a Certification for Requested
4 Tribal Data (“Certification”) form on the Treasury website.¹³

5 55. The Certification form is clear that Defendant has determined to treat ANCs as
6 Tribal governments for purposes of allocating and disbursing Title V Coronavirus Relief Funds.
7 The Certification asks each funding applicant to state its “**Population:** Total number of *Indian*
8 *Tribe* Citizens/Members/Shareholders, as of January 1, 2020” (italics added) and includes a Note
9 defining “Indian Tribe” as “any Indian tribe, band, nation, or other organized group or
10 community, including any Alaska Native village or regional or village corporation as defined in
11 or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C.
12 1601 et seq.), which is recognized as eligible for the special programs and services provided by
13 the United States to Indians because of their status as Indians.”

14 56. The Certification also asks for “**Land Base:** Total number of land acres held by
15 the Indian Tribe and any tribally-owned entity (to include entities in which the Indian Tribe
16 maintains at least 51% ownership) as of January 1, 2020 (to include lands held in trust by the
17 United States, owned in restricted fee status, owned in fee, or selected pursuant to the Alaska
18 Native Claims Settlement Act).” Lands “selected pursuant to the Alaska Native Claims
19 Settlement Act” are ANC-owned lands. In *Alaska v. Native Village of Venetie Tribal*
20 *Government*, 522 U.S. 520 (1998), the Supreme Court explained that through ANCSA “Congress
21 authorized the transfer of . . . approximately 44 million acres of Alaska land to state-chartered
22 private business corporations,” *id.* at 524, “without any restraints on alienation or significant use

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24 ¹³ U.S. Dep’t of the Treasury, *Submission Required for Receipt of Coronavirus Relief Fund Payments*

1 restrictions, and with the goal of avoiding ‘any permanent racially defined institutions, rights,
2 privileges, or obligations,’” *id.* at 532-33 (citations omitted).¹⁴ ANC-owned lands are *not* Indian
3 country. *Id.*

4 57. The Treasury website provides that “Governments eligible for payments must
5 provide payment information and required supporting documentation through the electronic
6 [Certification] form accessible below. To ensure payments are made within the 30 day period
7 specified by the CARES Act, governments must submit completed payment materials not later
8 than 11:59 p.m. EDT on April 17, 2020. Eligible local and Tribal governments that do not
9 provide required information—and in the case of a local government, the required certification—
10 by 11:59 p.m. EDT on April 17, 2020, may not receive any payment from the Fund.”¹⁵

11 According to the website of the U.S. Department of the Interior, Indian Affairs, payments will be
12 paid no later than April 24, 2020, once the recipient has registered through the web portal.¹⁶

13 58. Defendant’s designation of ANCs as Tribal governments for purposes of
14 allocating and distributing Title V Coronavirus Relief Funds is a final agency action for purposes
15 of judicial review under 5 U.S.C. § 704.

16 **PLAINTIFFS HAVE STANDING TO PURSUE THIS ACTION**

17 59. Defendant’s action threatens Plaintiffs with imminent, irreparable injury. Each of
18 the Plaintiffs has submitted its Certification with all required information to the Secretary to
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20 (Apr. 13, 2020), <https://forms.treasury.gov/caresact/stateandlocal>.

21 ¹⁴ See also ANCSA Reg’l Ass’n, *Overview of Entities Operating in the Twelve Regions*,
22 <https://ancsaregional.com/overview-of-entities/> (last visited Apr. 15, 2020) (“Through ANCSA, Alaska
Native corporations hold title to roughly 44 million acres of land held in private corporate ownership.”).

23 ¹⁵ U.S. Dep’t of the Treasury, *The CARES Act Provides Assistance for State and Local Governments*,
<https://home.treasury.gov/policy-issues/cares/state-and-local-governments> (last visited Apr. 16, 2020).

24 ¹⁶ Indian Affairs, U.S. Dep’t of the Interior, *Indian Affairs to Assist Tribes Eligible to Receive Funding
from Treasury Under the Coronavirus Relief Fund* (Apr. 14, 2020), <https://www.bia.gov/as-ia/opa/online-press-release/indian-affairs-assist-tribes-eligible-receive-funding-treasury-under>.

1 receive funds under Title V. Defendant must distribute these funds by April 26, 2020.

2 60. Once Defendant allocates and distributes the defined, limited pool of Title V
3 Coronavirus Relief Funds to Tribal governments, inclusive of ANCs, Plaintiffs will lose any
4 access or ability to receive the portion of that limited pool illegally appropriated to the ANCs.
5 Plaintiffs are in dire need of these funds to cover the governmental costs resulting from the
6 increased and necessary expenditures associated with the COVID-19 pandemic. Plaintiffs' most
7 recent budgets did not account for the tremendous financial strain that the pandemic would place
8 on their governmental operations.

9 61. The Chehalis Tribe is providing a broad array of unbudgeted emergency services,
10 including, for example, daily operation of its Incident Operation Center, COVID-19 clinical
11 work, delivering meals to elders and children no longer able to attend school as a result of the
12 State of Washington's school closure, increased cleaning and sanitation supplies, accounting
13 services associated with tracking expenditures above normal budgeted activity, and planning for
14 reopening of tribal government. Chehalis has been forced to maintain all essential services for
15 its citizens despite a reservation-wide shelter-in-place State of Emergency order and the closure
16 of its tribal government and virtually all of its tribal enterprises.

17 62. The Tulalip Tribes likewise face daunting governmental challenges as a result of
18 the COVID-19 pandemic. Tulalip has appointed a new Tulalip Health Officer, passed a
19 Communicable Disease Ordinance and instituted isolation protocol, increased its COVID-19
20 testing capabilities so that tribal members can be tested at the Tulalip Health Clinic, transformed
21 the Clinic into an acute health care clinic, directed the Clinic to obtain additional PPE, and
22 purchased an additional ambulance for the Tulalip Fire District to meet emergency health needs.
23 Tulalip has also borne increased costs for food distribution programs for children, elders and
24 general welfare payments to assist tribal members in preparing to shelter-in-place by purchasing
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1 food and cleaning supplies, the payment of administrative leave and emergency leave for all
2 employees.

3 63. The Houlton Band, Akiak, Asa'carsarmiut and ACSPI have also incurred
4 unbudgeted expenses as they respond to the COVID-19 pandemic and protect the health and
5 safety of their citizens.

6 64. The increased and necessary expenditures by Plaintiffs and other federally
7 recognized Tribal governments resulting from the devastating impacts of the COVID-19
8 pandemic are exactly the costs that Congress intended the Coronavirus Relief Funds to cover.
9 Congress did not intend for these funds to be paid to private, for-profit corporations, who seek to
10 maximize financial return for their tens of thousands of individual shareholders.

11 65. Two scenarios illustrate the injury caused by Defendant's designation of ANCs as
12 Tribal governments for purposes of allocating and distributing Title V Coronavirus Relief Funds.
13 Under the first scenario, if Defendant allocates the \$8,000,000,000 equally among all 574
14 federally recognized Tribal governments, each Tribal government would receive just under
15 \$14,000,000. If Defendant includes the 237 ANCs, however, an equal allocation among all 811
16 entities would reduce that amount to less than \$10,000,000, a difference of more than \$4,000,000
17 for each of the 574 federally recognized Tribal governments. Plaintiffs would thus lose
18 approximately 30% of their properly allocated share of Title V funds through the illegal
19 appropriation of those funds to ANCs.

20 66. Under the second scenario, Defendant may allocate the \$8,000,000,000
21 considering the population, land base, employees, and expenditures of each Tribal government.
22 The data requested by the Certification form indicates that the Secretary is considering this
23 approach. Under this approach, the ANCs will have an outsized impact. Together, the ANCs
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1 own approximately 44 million acres of land.¹⁷ These landholdings are equivalent to the total
2 trust land base of *all federally recognized Tribal governments* in the lower-48 states combined.¹⁸
3 The 12 regional ANCs alone have over 138,000 shareholders, employ more than 43,000 people
4 worldwide, and generated more than \$10.5 billion in revenues in 2018.¹⁹ Under any formula that
5 considers ANCs' corporate shareholders, land base, employees, and expenditures, the relief
6 funds available to federally recognized Tribal governments, including Chehalis, Tulalip, the
7 Houlton Band, Akiak, Asa'carsarmiut and ACSPI will be vastly reduced, given their more
8 modest population, land base, and economic size.

9 67. Under either scenario, because some ANCs are closely affiliated with federally
10 recognized Alaska Native villages, and many corporate shareholders are tribal members, some
11 entities in Alaska would effectively “double dip” (in some cases “triple dip”) from the limited
12 pool of funds, with the same community receiving duplicative funding – one allotted to the
13 corporation(s), and the other directly to the federally recognized Tribal government. On the
14 other hand, if the Secretary properly allocates and distributes Title V funds directly to federally
15 recognized Tribal governments only, Alaska Native villages may use their funds in partnership
16 with ANCs if they determine that is the most effective way to meet the needs of their
17 communities, consistent with the other requirements of the Act.

20 ¹⁷ Res. Dev. Council, *Alaska Native Corporations*, <https://www.akrdc.org/alaska-native-corporations>
21 (last visited Apr. 15, 2020).

22 ¹⁸ Office of the Special Tr. for American Indians, U.S. Dep't of the Interior, *OST Statistics and Facts*,
23 https://www.doi.gov/ost/about_us/Statistics-and-Facts (last visited Apr. 15, 2020) (“The Indian trust
consists of 55 million surface acres and 57 million acres of subsurface minerals estates held in trust by the
United States for American Indians, Indian tribes and Alaska Natives. Over 11 million acres belong to
individual Indians and nearly 44 million acres are held in trust for Indian tribes.”).

24 ¹⁹ See Res. Dev. Council, *Alaska Native Corporations*, <https://www.akrdc.org/alaska-native-corporations>
25 (last visited Apr. 15, 2020).

1 CARES Act and the APA, 5 U.S.C. §§ 701-706. Plaintiffs are entitled to an order declaring the
2 same.

3 74. By designating ANCs as Tribal governments for purposes of allocating and
4 distributing Title V Coronavirus Relief Funds, the Secretary has acted in a manner that is in
5 excess of statutory jurisdiction, authority, or limitations, or short of statutory right, in violation of
6 the CARES Act and the APA, 5 U.S.C. §§ 701-706. Plaintiffs are entitled to an order declaring
7 the same.

8 75. Plaintiffs are entitled to a preliminary and permanent injunction enjoining the
9 Secretary not to designate or otherwise treat ANCs as Tribal governments for purposes of
10 allocating and distributing Title V Coronavirus Relief Funds, and enjoining the Secretary to
11 allocate and disburse all \$8,000,000,000 reserved by Congress to federally recognized Tribal
12 governments, exclusive of ANCs, according to a reasonable formula consistent with the CARES
13 Act.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs respectfully request that this Court:

16 76. Enter a declaratory judgment pursuant to 28 U.S.C. § 2201 in favor of Plaintiffs
17 that Defendant's designation of Alaska Native regional corporations and village corporations as
18 Tribal governments for purposes of allocating and distributing Title V Coronavirus Relief Funds
19 is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law.

20 77. Enter a declaratory judgment pursuant to 28 U.S.C. § 2201 in favor of Plaintiffs
21 that Defendant's designation of Alaska Native regional corporations and village corporations as
22 Tribal governments for purposes of allocating and distributing Title V Coronavirus Relief Funds
23 is in excess of Defendant's statutory jurisdiction, authority, limitations, or short of statutory
24 right.

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CONFEDERATED TRIBES OF THE CHEHALIS
RESERVATION

/s/ Harold Chesnin
Harold Chesnin, WSBA # 398
Lead Counsel for the Tribe
420 Howanut Road
Oakville, WA 98568
Telephone: 360-529-7465
Email: hchesnin@chehalis-tribe.org

TULALIP TRIBES

/s/ Lisa Koop Gunn
Lisa Koop Gunn, WSBA # 37115
Tulalip Tribes, Office of the Reservation Attorney
6406 Marine Drive
Tulalip, WA 98271
Telephone: 360-716-4550
Email: lkoop@tulaliptribes-nsn.gov