

BEFORE THE INDIAN CLAIMS COMMISSION

ERNEST RISLING, PETER MASTEN, MARY G.	)	
DORNBACH, as the representatives of	)	
and on the relation of the Indians of	)	
California,	)	
	)	
	)	
Plaintiffs	)	
	)	
vs.	)	Docket No. 37
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
	)	
Defendant.	)	

Thurman Arnold, with whom was Reginald E. Foster, Walter M. Gleason, A. Brooks Berlin, Paul A. Porter and L. A. Nikoloric, Attorneys for plaintiffs.

Ralph A. Barney, with whom was A. Devitt Vanech, Assistant Attorney General, Attorneys for the defendant.

MAY 6 1949

OPINION OF THE COMMISSION

PER CURIAM: The original petition was filed herein by the Council of California Indians, Inc., a non-profit California corporation, as the representative of the Indians of California v. The United States of America. To that petition the defendant directed a motion to dismiss on the following grounds:

1. The "Indians of California" referred to in the petition herein is not such an identifiable group of Indians as is contemplated by Section 10 of the Act of August 13, 1946.

2. The "Council of California Indians, Inc." is not an "identifiable group" of Indians as that term is used in the Act of August 13, 1946.

After the filing of the motion by the defendant the plaintiff, named in the original petition, on January 27, 1949, by motion asked leave to amend

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its petition by adding thereto the names of four individual Indians of California. This motion was granted by order entered on the 28th day of January, 1949, however, no amended petition was filed until March 24, 1949, two days after the argument on the defendant's motion to dismiss, above referred to.

Since the motion to dismiss raised questions which apply to both the original and the amended petition, it was agreed, in open hearing, by the parties, at the time of the oral arguments, March 21 and 22, 1949, that the Commission should consider the motion as being directed to the amended petition. This we shall do in so far as the motion raises the question as to the legal capacity of the plaintiffs named in the amended petition to assert the claim set forth in the amended petition. There were other questions of law argued by the defendant but the amended petition seems to have eliminated those, so they will not be considered.

After considering the motion, briefs and oral arguments of the counsel for the parties, we have reached the conclusion, as we did in the case, *Indians of California v. United States*, Docket No. 31, this day decided, that the motion of the defendant raises an important issue of fact which should only be determined when raised by an appropriate pleading and after a full hearing upon the issue of fact so raised.

From the above it follows that the motion of the defendant must be overruled.

May 6, 1949