

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STAND UP FOR CALIFORNIA!, PATTY JOHNSON,
JOE TEIXEIRA, and LYNN WHEAT,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF INTERIOR,
RYAN ZINKE, in his official capacity as Secretary
of the Interior, BUREAU OF INDIAN AFFAIRS, and
MICHAEL BLACK, in his official capacity as Acting
Assistant Secretary-Indian Affairs,

Defendants,

WILTON RANCHERIA, CALIFORNIA,

Intervenor-Defendant.

Civil Action No. 1:17-cv-00058-RDM

FEDERAL DEFENDANTS' ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

Defendants United States Department of the Interior (“Interior” or “Department”); Ryan Zinke, in his official capacity as Secretary of the Interior; the Bureau of Indian Affairs (“BIA”); and Michael Black, in his official capacity as Acting Assistant Secretary – Indian Affairs (collectively, “Federal Defendants”), through undersigned counsel, hereby answer the allegations in Plaintiffs’ Amended Complaint. Federal Defendants deny any and all allegations in Plaintiffs’ Amended Complaint, whether express or implied, that are not specifically admitted, denied, or qualified herein. The numbered paragraphs of this Answer correspond to the numbered paragraphs and sections of the Amended Complaint.

NATURE OF ACTION

1. The first sentence of Paragraph 1 is a characterization of Plaintiffs' case to which no response is required. As to the allegations of the second sentence, purporting to characterize the beliefs of the "Elk Grove community," they are too vague for Federal Defendants to either admit or deny and are therefore denied. The allegations of the third sentence purport to characterize the contents of unspecified Federal Register notices and the Environmental Impact Statement ("EIS"), which documents speak for themselves and are their own best evidence. To the extent a response is required to the allegations of the third sentence, Federal Defendants deny any allegations inconsistent with the plain language, meaning, or context of the documents cited. As to the allegations of the fourth sentence, Federal Defendants admit that, on June 30, 2016, the Wilton Rancheria ("Tribe") submitted a revised fee-to-trust application, requesting that the Secretary instead acquire an approximately 36-acre site in the City of Elk Grove, California ("Elk Grove Site"), which was identified as Alternative F in the DEIS; otherwise, denied. As to the allegations of the fifth sentence, Federal Defendants admit that BIA issued a Notice of (Gaming) Land Acquisition Application on November 17, 2016. Federal Defendants further admit that BIA received inquiries from the public, including Stand Up, about the Tribe's revised fee-to-trust application; otherwise, denied. As to the allegations of the sixth sentence, Federal Defendants admit that on December 14, 2016 a Notice was published in the *Federal Register* advising the public that a Final EIS had been prepared and was available for public review; otherwise denied.

2. The allegations of the first sentence of Paragraph 2 describe Plaintiffs' impressions of the administrative process to which no response is required. Federal Defendants admit that Plaintiffs submitted multiple comments and letters to Interior regarding the Wilton Rancheria

trust application, which letters speak for themselves and are their own best evidence. As to the allegations of the third sentence, Federal Defendants admit that the Department denied Plaintiffs' requests to delay taking land into trust; otherwise, denied. The remaining allegations in Paragraph 2 consist of characterizations of the Emergency Motion for Temporary Restraining Order filed in this Court, which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the Emergency Motion for Temporary Restraining Order, Federal Defendants deny the allegations.

3. Federal Defendants admit the allegations in Paragraph 3. As to the allegations of the footnote, Federal Defendants lack sufficient knowledge either to admit or deny, and therefore deny.

4. Federal Defendants deny the allegations in the first sentence of Paragraph 4. As to the allegations of the second sentence of Paragraph 4, Federal Defendants admit that, after the hearing on January 13, in a conversation between counsel, Federal Defendants' counsel explained that 5 U.S.C. § 705 permits a stay of agency action and Plaintiffs could request a stay pursuant to that provision and admit that Plaintiffs, by and through counsel, sent a § 705 request to the Department on January 17, 2017, requesting that the Department postpone the effective date of any decision to acquire land in trust on behalf of the Tribe. As to the allegations of the third sentence of Paragraph 4, Federal Defendants admit that as of January 19, 2017, Plaintiffs' request was still pending; the remaining allegations of the third sentence characterize email communications between counsel that same day, which communications speak for themselves and are their own best evidence. Federal Defendants deny the allegations of the fourth sentence of Paragraph 4. As to the allegations of the fifth sentence

of Paragraph 4, admitted that, on February 10, 2017, the Department sent a letter to the Plaintiffs, through counsel, in response to the § 705 request, that the letter denied the Plaintiffs' request for a stay, and that counsel for the Federal Defendants also informed Plaintiffs that their request for a meeting was denied; otherwise, denied. As to the allegations of the sixth sentence of Paragraph 4, Federal Defendants admit that BIA formally recorded acceptance of title in trust to the Elk Grove Site on February 10, 2017; otherwise, denied. Federal Defendants deny the allegations of the seventh sentence of Paragraph 4.

5. As to the allegations of the first sentence of Paragraph 5, Federal Defendants admit that counsel for the Federal Defendants received an email from counsel for Plaintiffs on February 15, 2017, requesting the authority pursuant to which title was acquired. The remaining allegations of the first sentence state a legal conclusion to which no response is required; to the extent a response is required, denied. As to the allegations of the second sentence of Paragraph 5, admitted that Federal Defendants did not respond before February 21 when Plaintiffs filed a purported administrative appeal from the January 19, 2017 decision to acquire in trust the Elk Grove Site for the Tribe (the "Decision"). As to the allegations of the third sentence of Paragraph 5, Federal Defendants admit that, on February 24, 2017, the Interior Board of Indian Appeals ("IBIA") issued a pre-docketing notice and order, which speaks for itself and is its own best evidence of its contents. Federal Defendants admit the allegations of the fourth sentence of Paragraph 5. As to the allegations of the fifth sentence of Paragraph 5, Federal Defendants admit that, on March 7, 2017, Michael Black, exercising the authority of Assistant Secretary – Indian Affairs, assumed jurisdiction over the appeal pursuant to 25 C.F.R. § 2.20(c) and 43 C.F.R. § 4.332(b). As to the allegations of the sixth sentence of Paragraph 5, Federal Defendants admit that, on July 13, 2017, Mr. Black issued

an Order Dismissing Administrative Appeal, which speaks for itself and is its own best evidence. To the extent Plaintiffs' characterizations are incomplete or inconsistent with the Order Dismissing Administrative Appeal, Federal Defendants deny the allegations and deny any remaining allegations of the sixth sentence of Paragraph 5.

6. The first sentence of Paragraph 6 consists of characterizations of the Oral Argument in *Carcieri v. Salazar*, 555 U.S. 379 (2009) (No. 07-526), which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the *Carcieri v. Salazar* Oral Argument, Federal Defendants deny the allegations. The second sentence of Paragraph 6 consists of legal conclusions to which no response is required; to the extent a response is required, Federal Defendants deny the allegations. The third sentence of Paragraph 6 states legal conclusions to which no response is required and quotes from and characterizes *Edmond v. United States*, 520 U.S. 651 (1997), which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with *Edmond v. United States*, Federal Defendants deny the allegations. The remainder of Paragraph 6 consists of legal arguments and conclusions, as well as subjective characterizations, which require no response. To the extent a response is required, Federal Defendants deny the allegations.

7. Paragraph 7 consists of characterizations of the relief Plaintiffs seek and legal argument and conclusions that require no response. To the extent a response is required, Federal Defendants deny the allegations.

THE PARTIES

8. The first sentence of Paragraph 8 is Plaintiffs' characterization of themselves, to which no response is required. Federal Defendants deny the allegations in the second sentence of Paragraph 8.

9. The first sentence of Paragraph 9 is Plaintiffs' characterization of themselves, to which no response is required. Federal Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of the remaining sentences of Paragraph 9 and, on that basis, denies those allegations.

10. Federal Defendants admit the allegations in the first sentence of Paragraph 10. Federal Defendants clarify that Interior is charged with responsibility for managing and administering tribal trust and restricted fee lands, and for managing and administering certain federal programs related to Indian Tribes.

11. Federal Defendants admit the allegations in Paragraph 11.

12. Federal Defendants admit that the BIA is part of the United States Department of the Interior, but clarify that BIA is responsible for overseeing and managing some Interior programs, activities, and operations relating to Indian lands and affairs.

13. Federal Defendants admit the allegations of the first and fourth sentences of Paragraph 13. The second and third sentences of Paragraph 13 consist of characterizations of Order No. 3345, which speaks for itself and is the best evidence of its contents, as well as legal conclusions that require no response. To the extent the characterizations are incomplete or inconsistent with Order No. 3345, Federal Defendants deny the allegations. Federal Defendants admit the last sentence of Paragraph 13.

14. Federal Defendants admit the allegations in Paragraph 14.

15. Federal Defendants admit the allegations in Paragraph 15.

JURISDICTION AND VENUE

16. The allegations of Paragraph 16 consist of legal conclusions and characterizations of Plaintiffs' Amended Complaint and require no response. To the extent a response is required, Federal Defendants admit that the Amended Complaint purports to bring a federal question under 28 U.S.C. § 1331. Federal Defendants deny that either the Administrative Procedure Act, 5 U.S.C. §§ 702, 706 et seq., or the Declaratory Judgment Act, 28 U.S.C. §§ 2201 – 2202, creates subject matter jurisdiction.

17. Federal Defendants admit the allegations of Paragraph 17.

18. Federal Defendants admit the allegations of Paragraph 18.

19. The first sentence of Paragraph 19 consists of legal conclusions and characterizations of Plaintiffs' Amended Complaint that require no response. To the extent a response is required, Federal Defendants deny the allegations. The Federal Defendants admit that the January 19, 2017 Decision to acquire in trust the Elk Grove Site for the Tribe is a final, reviewable, agency action.

STATUTORY FRAMEWORK

20. Paragraph 20 consists of characterizations of the California Rancheria Termination Act of 1958, Public Law 85-671 (72 Stat. 619), which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the California Rancheria Termination Act of 1958, Federal Defendants deny the allegations.

21. The first two sentences of Paragraph 21 consist of characterizations of the Indian Reorganization Act of 1934 ("IRA"), which speaks for itself and is the best evidence of its

contents. To the extent the characterizations are incomplete or inconsistent with the IRA, Federal Defendants deny the allegations. The remainder of Paragraph 21 consists of characterizations of *Carcieri v. Salazar*, 555 U.S. 379 (2009), which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with *Carcieri v. Salazar*, Federal Defendants deny the allegations.

22. The first sentence of Paragraph 22 is admitted. The remaining allegations of Paragraph 22 consists of characterizations of the Department's regulations at 25 C.F.R. § 151.12, which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with 25 C.F.R. § 151.12, Federal Defendants deny the allegations.

23. Paragraph 23 consists of characterizations of the Federal Vacancies Reform Act, 5 U.S.C. §§ 3345-3349d, which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the Federal Vacancies Reform Act, Federal Defendants deny the allegations.

24. Paragraph 24 consists of characterizations of the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § 2701 *et seq.* ("IGRA"), which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with IGRA, Federal Defendants deny the allegations.

25. Paragraph 25 consists of characterizations of the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* ("NEPA"), and its implementing regulations at 40 C.F.R. Parts 1500-1508, which speak for themselves and are the best evidence of their contents. To the extent the characterizations are incomplete or inconsistent with NEPA and its implementing regulations, Federal Defendants deny the allegations.

STATEMENT OF FACTS

26. Federal Defendants admit that the Department purchased land to establish the Wilton Rancheria. Otherwise, Federal Defendants deny the allegations set forth in Paragraph 26.

27. Federal Defendants admit that the Tribe voted to organize under Section 16 of the IRA and that the Tribe's governing documents were approved in 1936. Otherwise, Federal Defendants deny the allegations set forth in Paragraph 27.

28. Federal Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in the first sentence of Paragraph 28 and, on that basis, deny those allegations. The second sentence of Paragraph 28 consists of characterizations of the California Rancheria Termination Act of 1958, Public Law 85-671 (72 Stat. 619), which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the California Rancheria Termination Act of 1958, Federal Defendants deny the allegations.

29. With regard to the allegations of Paragraph 29, Federal Defendants admit that the assets of the Tribe were distributed to specifically named Indians listed in a distribution plan approved by the Commissioner of Indian Affairs and that, on September 22, 1964, the Secretary published a notice of termination of federal supervision over the Indians living on the Rancheria; otherwise, denied.

30. Paragraph 30 consists of characterizations of the Complaint and Stipulated Judgment in *Wilton Miwok Rancheria v. Salazar*, No. 5:07-cv-02681-JF (N.D. Cal), which speak for themselves and are the best evidence of their contents. To the extent the characterizations are incomplete or inconsistent with *Wilton Miwok Rancheria v. Salazar*, Federal Defendants deny the allegations.

31. Federal Defendants admit that, on December 4, 2013, the BIA published a Notice of Intent to Prepare an Environmental Impact Statement, regarding the Tribe's fee-to-trust application, in the *Federal Register*. The remainder of Paragraph 31 consists of characterizations of the Notice of Intent to Prepare an Environmental Impact Statement, 78 Fed. Reg. 72928-01 (Dec. 4, 2013), which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the Notice of Intent to Prepare an Environmental Impact Statement, Federal Defendants deny the allegations.

32. Federal Defendants admit that BIA conducted a public scoping meeting on December 19, 2013 in Galt to provide project information and to solicit public input on the EIS scope and alternatives. Federal Defendants admit that the BIA extended an invitation to the City of Galt to participate in the EIS process as a Cooperating Agency.

33. Federal Defendants admit that BIA issued an EIS Scoping Report in February 2014, and that the proposed action was identified as involving an approximately 282-acre parcel near Galt, California. The remaining allegations in Paragraph 33 consist of characterizations of the Scoping Report, which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the Scoping Report, Federal Defendants deny the allegations.

34. Federal Defendants admit that BIA published the Notice of Availability of the DEIS in the *Federal Register* on December 29, 2015.

35. Federal Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 35 and, on that basis, deny those allegations.

36. Paragraph 36 consists of characterizations of the Development Agreement between the City of Elk Grove and Elk Grove Town Center, LP, approved by the City of Elk Grove by Ordinance No. 29-2014, adopted on October 22, 2014, which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the Development Agreement, Federal Defendants deny the allegations. Paragraph 36 also states legal conclusions to which no response is required; to the extent a response is required, denied.

37. Federal Defendants admit that BIA received a comment letter, dated September 27, 2016, from Plaintiffs Joe Teixeira, Lynn Wheat, and Stand Up for California!, which letter speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the comment letter, Federal Defendants deny the allegations. Federal Defendants deny the allegations of the second sentence of Paragraph 37.

38. As to the allegations of the first sentence of Paragraph 38, Federal Defendants admit that BIA issued a Notice of (Gaming) Land Acquisition Application on November 17, 2016 for the Elk Grove Site. As to the allegations of the second sentence of Paragraph 38, Federal Defendants admit that BIA published a notice of the Final EIS in the *Federal Register* on December 14, 2016. As to the allegations of the second sentence characterizing the contents of the Notice of Availability, the notice speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the Notice, Federal Defendants deny the allegations. As to the allegations of the third sentence of Paragraph 38, Federal Defendants admit that the U.S. Environmental Protection Agency issued a Notice of Availability for the Final EIS in the *Federal Register* on December 16, 2016.

39. The allegations of the first sentence of Paragraph 39 characterize the Notice of Availability which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the Notice, Federal Defendants deny the allegations. As to the allegations of the second sentence of Paragraph 39, Federal Defendants admit that no supplemental EIS was prepared and that no additional notices or requests for public comment, beyond those required by NEPA and other applicable law, were made, and that no public news reports were circulated. The remaining allegations of Paragraph 39 consist of legal conclusions and arguments that require no response. To the extent a response is required, Federal Defendants deny the allegations.

40. Federal Defendants admit that then-Principal Deputy Secretary – Indian Affairs (“PDAS”), Lawrence Roberts, and Solicitor, Hilary Tompkins, received a letter dated December 29, 2016 from the Plaintiffs, through counsel, requesting delay of the acquisition of the Elk Grove Site in trust. Federal Defendants admit further that Plaintiffs reiterated their request to Lawrence Roberts, Hilary Tompkins, and Regional Director Amy Dutschke through a January 6, 2017 email. Admitted that Federal Defendants declined to commit to self-stay any potential agency action relating to the Wilton Rancheria fee-to-trust application. Federal Defendants admit that the Department received comments from the Plaintiffs on the trust application and the EIS. The remaining allegations are characterizations of the comments submitted by the Plaintiffs, which speak for themselves and are the best evidence of their contents. To the extent the characterizations are incomplete or inconsistent with the comments submitted by the Plaintiffs, Federal Defendants deny the allegations.

41. Federal Defendants admit the allegations in Paragraph 41.

42. Federal Defendants admit the allegations in Paragraph 42.

43. Federal Defendants admit that they did not insist Plaintiffs pursue a preliminary injunction when their counsel indicated they would prefer not to and admit that Plaintiffs submitted a request for a stay, pursuant to 5 U.S.C. § 705, on January 17, 2017.

44. The allegations of Paragraph 44 quote from and characterize a Joint Status Report filed with the Court on January 17, 2017 (not January 18, 2017), which status report speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the Joint Status Report, Federal Defendants deny the allegations.

45. Federal Defendants admit that on January 19, 2017, then-PDAS, Lawrence Roberts, issued the Decision to approve the Tribe's application and acquire the Elk Grove Site in trust. The remainder of Paragraph 45 consists of legal conclusions and arguments that require no response. To the extent a response is required, Federal Defendants deny the allegations.

46. Federal Defendants admit that on January 19, 2017, then-PDAS, Lawrence Roberts, issued the Decision to approve the Tribe's application and acquire the Elk Grove Site in trust. Federal Defendants admit further that from January 1, 2016 through July 29, 2016, Mr. Roberts served as Acting Assistant Secretary – Indian Affairs. The remainder of Paragraph 46 consists of legal conclusions and arguments that require no response. To the extent a response is required, Federal Defendants deny the allegations.

47. Federal Defendants admit that counsel for the Federal Defendants received an email from Plaintiffs' counsel on January 19, 2017, requesting a copy of the Decision and confirmation of the status of title; otherwise, denied.

48. Federal Defendants admit that counsel for the Federal Defendants provided a signed copy of the Decision, without attachments, to Plaintiffs' counsel via email on January 19,

2017, and indicated Plaintiffs would be notified when the Decision and all attachments were available online, with such notification occurring on January 20. Federal Defendants admit that Plaintiffs' counsel was informed that the Elk Grove Site would not formally go into trust until the Department responded to Plaintiffs' § 705 stay request at a future date. Otherwise, Federal Defendants deny the allegations set forth in Paragraph 48.

49. Federal Defendants admit the allegations in Paragraph 49.

50. Federal Defendants admit the allegations in Paragraph 50.

51. Federal Defendants admit the allegations in Paragraph 51.

52. Federal Defendants admit the allegations in Paragraph 52.

53. Paragraph 53 consists of characterizations of the Westcor Land Title Insurance Company chain of title guarantee, which speaks for itself and is the best evidence of its contents. To the extent that the characterizations are incomplete or inconsistent with the chain of title guarantee, Federal Defendants deny the allegations.

54. Federal Defendants admit the allegations of Paragraph 54.

55. Federal Defendants admit the allegations contained in the first two sentences of Paragraph 55. The allegations of the final two sentences of Paragraph 55 are denied.

56. Federal Defendants admit that counsel for the Federal Defendants received an email on February 15, 2017 requesting the authority pursuant to which title was acquired. The second and third sentences of Paragraph 56 consist of characterizations of the February 15, 2017 email, which speaks for itself and is the best evidence of its contents. To the extent that the characterizations are incomplete or inconsistent with the February 15, 2017 email, Federal Defendants deny the allegations. Federal Defendants admit the last sentence of Paragraph 56.

57. The first sentence of Paragraph 57 consists of legal arguments that require no response. To the extent a response is required, Federal Defendants deny the allegations. As to the allegations of the second sentence of Paragraph 57, Federal Defendants admit that Plaintiffs filed a Notice of Appeal, a Petition for Preliminary Relief, and a Statement of Reasons with the IBIA on February 21, 2017. The remaining allegations in Paragraph 57 consist of characterizations of Plaintiffs' motive for proceeding with their course of action; Federal Defendants lack sufficient information to either admit or deny, and therefore they are denied.

58. Paragraph 58 consists of characterizations of the IBIA February 24, 2017 Pre-Docketing Notice and Order for Briefing on Jurisdiction, which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the Pre-Docketing Notice and Order for Briefing on Jurisdiction, Federal Defendants deny the allegations.

59. The first sentence of Paragraph 59 consists of characterizations of the March 7, 2017 Assumption of Jurisdiction filed with the IBIA as well as two Department regulations, which all speak for themselves and are the best evidence of their contents. To the extent the characterizations are incomplete or inconsistent with the cited regulations or the Assumption of Jurisdiction, Federal Defendants deny the allegations. Federal Defendants admit that the IBIA issued a Notice of Assumption of Jurisdiction Over the Appeal by the Assistant Secretary – Indian Affairs and Order Vacating Board's Order for Briefing on Jurisdiction on March 8, 2017, and transferred the appeal to Michael Black.

60. Federal Defendants admit that Plaintiffs filed an Objection to Michael Black's Assumption of Jurisdiction and Request for Reconsideration with the IBIA on March 15,

2017. Federal Defendants admit further that the Board provided a copy of the filing to the Office of the Assistant Secretary – Indian Affairs, which was received on March 23, 2017.

61. The first sentence of Paragraph 61 consists of characterizations of a March 30, 2017 letter to Secretary of the Interior, Ryan Zinke, from the Plaintiffs through counsel, which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the March 30, 2017 letter, Federal Defendants deny the allegations. As to the allegations of the second sentence of Paragraph 61, Federal Defendants admit that the Secretary did not respond to the letter. As to the allegations of the third sentence of Paragraph 61, Federal Defendants admit that Michael Black did not issue a briefing schedule. As to the allegations of the fourth sentence of Paragraph 61, Federal Defendants admit that Mr. Black did not issue a decision until July 13, 2017, more than 60 days after the March 7, 2017 Assumption of Jurisdiction. The remaining allegations in Paragraph 61 consist of characterizations of 25 C.F.R. § 2.20(e), which speaks for itself and is the best evidence of its contents as well as legal conclusions to which no response is required. To the extent the characterizations are incomplete or inconsistent with 25 C.F.R. § 2.20(e), or to the extent any response to Plaintiffs' legal conclusions is required, Federal Defendants deny the allegations.

62. Federal Defendants admit that an Order Dismissing Administrative Appeal, signed by Michael Black as "Acting Assistant Secretary – Indian Affairs," was issued on July 13, 2017. The remaining allegations in Paragraph 62 consist of characterizations of the Order Dismissing Administrative Appeal, which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the Order Dismissing Administrative Appeal, Federal Defendants deny the allegations.

63. Federal Defendants deny the allegations in Paragraph 63.

COUNT I

64. Federal Defendants incorporate by reference their response to Paragraphs 1 through 63 as if fully set forth herein.

65. Paragraph 65 consists of characterizations of 25 C.F.R. § 151.12, which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with 25 C.F.R. § 151.12, Federal Defendants deny the allegations.

66. Paragraph 66 consists of characterizations of 25 C.F.R. § 151.12, which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with 25 C.F.R. § 151.12, Federal Defendants deny the allegations.

67. Paragraph 67 consists of characterizations of the Federal Vacancies Reform Act, 5 U.S.C. §§ 3345-3349d, which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the Federal Vacancies Reform Act, Federal Defendants deny the allegations.

68. Federal Defendants admit the allegations in Paragraph 68.

69. Federal Defendants admit the allegations of the first sentence of Paragraph 69, except Federal Defendants deny that Lawrence Roberts was not acting pursuant to the delegated authority of the Office of the Assistant Secretary – Indian Affairs. The remaining allegations of Paragraph 69 consist of legal conclusions and arguments that require no response. To the extent a response is required, Federal Defendants deny the allegations.

70. Paragraph 70 consists of legal conclusions and arguments that require no response. To the extent a response is required, Federal Defendants deny the allegations.

71. Paragraph 71 consists of legal conclusions and arguments that require no response. To the extent a response is required, Federal Defendants deny the allegations.

72. Paragraph 72 consists of characterizations of the Federal Vacancies Reform Act, 5 U.S.C. § 3348(d), which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the Federal Vacancies Reform Act, Federal Defendants deny the allegations.

73. Paragraph 73 consists of legal conclusions and arguments that require no response. To the extent a response is required, Federal Defendants deny the allegations.

COUNT II

74. Federal Defendants incorporate by reference their responses to Paragraph 1 through 73 as if fully set forth herein.

75. Paragraph 75 consists of characterizations of the Federal Vacancies Reform Act, which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the Federal Vacancies Reform Act, Federal Defendants deny the allegations.

76. Paragraph 76 consists of characterizations of the Federal Vacancies Reform Act, 5 U.S.C. § 3348(b), (c), which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the Federal Vacancies Reform Act, Federal Defendants deny the allegations.

77. Paragraph 77 consists of characterizations of the Federal Vacancies Reform Act, 5 U.S.C. § 3348(d), which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the Federal Vacancies Reform Act, Federal Defendants deny the allegations.

78. Paragraph 78 consists of characterizations of 25 C.F.R. § 151.12, which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with 25 C.F.R. § 151.12, Federal Defendants deny the allegations.

79. Paragraph 79 consists of characterizations of 25 C.F.R. § 2.4, which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with 25 C.F.R. § 2.4, Federal Defendants deny the allegations.

80. Federal Defendants admit the allegations of the first and second sentences of Paragraph 80. As to the allegations of the third sentence of Paragraph 80, Federal Defendants admit that, effective January 20, 2017, the non-exclusive functions and duties of the Assistant Secretary – Indian Affairs have been delegated to Michael Black.

81. Federal Defendants admit the allegations in Paragraph 81.

82. Paragraph 82 consists of legal conclusions and arguments that require no response. To the extent a response is required, Federal Defendants deny the allegations.

83. Paragraph 83 consists of legal conclusions and arguments that require no response. To the extent a response is required, Federal Defendants deny the allegations.

COUNT III

84. Federal Defendants incorporate by reference their responses to Paragraph 1 through 83 as if fully set forth herein.

85. Paragraph 85 consists of characterizations of 25 C.F.R. § 151.10, which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with 25 C.F.R. § 151.10, Federal Defendants deny the allegations.

86. The first sentence of Paragraph 86 consists of characterizations of the IRA, 25 U.S.C. § 5108, which speaks for itself and is the best evidence of its contents. To the extent the

characterizations are incomplete or inconsistent with the IRA, Federal Defendants deny the allegations. The second sentence of Paragraph 86 consists of characterizations of *Carcieri v. Salazar*, 555 U.S. 379 (2009), and 25 U.S.C. § 5129, which speak for themselves and are the best evidence of their contents. To the extent the characterizations are incomplete or inconsistent with *Carcieri v. Salazar* and 25 U.S.C. § 5129, Federal Defendants deny the allegations.

87. Federal Defendants deny the allegations in Paragraph 87.

88. Paragraph 88 consists of characterizations of the California Rancheria Termination Act of 1958, Public Law 85-671 (72 Stat. 619), which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the California Rancheria Termination Act of 1958, Federal Defendants deny the allegations.

89. Federal Defendants deny the allegations in Paragraph 89.

90. Federal Defendants deny the allegations in Paragraph 90.

91. Paragraph 91 consists of legal conclusions and arguments that require no response. To the extent a response is required, Federal Defendants deny the allegations.

COUNT IV

92. Federal Defendants incorporate by reference their responses to Paragraph 1 through 91 as if fully set forth herein.

93. Paragraph 93 consists of characterizations of 25 C.F.R. Part 151, which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with 25 C.F.R. Part 151, Federal Defendants deny the allegations.

94. Paragraph 94 consists of characterizations of IGRA, §§ 2703(4), 2710, which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with IGRA, Federal Defendants deny the allegations.

95. The allegations in Paragraph 95 consist of legal conclusions and arguments that require no response. To the extent a response is required, Federal Defendants deny the allegations.

96. The allegations in the first sentence of Paragraph 96 consist of legal conclusions and arguments that require no response. To the extent a response is required, Federal Defendants deny the allegations. The remaining allegations in Paragraph 96 consists of characterizations of IGRA, § 2719(b)(1)(B)(iii), and 25 C.F.R. § 292.7, which speak for themselves and are the best evidence of their contents. To the extent the characterizations are incomplete or inconsistent with IGRA and 25 C.F.R. § 292.7, Federal Defendants deny the allegations.

97. Federal Defendants deny the allegations in Paragraph 97.

98. Paragraph 98 consists of legal conclusions and arguments that require no response. To the extent a response is required, Federal Defendants deny the allegations.

99. Paragraph 99 consists of legal conclusions and characterizations of the California Rancheria Termination Act of 1958, Public Law 85-671 (72 Stat. 619), which speaks for itself and is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the California Rancheria Termination Act of 1958, Federal Defendants deny the allegations and to the extent Plaintiffs' legal conclusions require a response, denied.

100. Paragraph 100 consists of legal conclusions and arguments that require no response. To the extent a response is required, Federal Defendants deny the allegations.

101. Paragraph 101 consists of legal conclusions and arguments that require no response.

To the extent a response is required, Federal Defendants deny the allegations.

COUNT V

102. Federal Defendants incorporate by reference their responses to Paragraph 1 through 101 as if fully set forth herein.

103. Federal Defendants deny the allegations in Paragraph 103.

104. Paragraph 104 consists of legal conclusions and arguments that require no response.

To the extent a response is required, Federal Defendants deny the allegations.

RESPONSE TO PRAYER

Paragraphs a-i constitute Plaintiffs' prayer for relief that requires no response. To the extent a response is required, Federal Defendants deny that Plaintiffs are entitled to the requested relief or any relief whatsoever.

AFFIRMATIVE DEFENSES

1. Plaintiffs, for some or all of their claims, have failed to state a claim for which relief may be granted.
2. To the extent Plaintiffs raise any issues or claims in this action that were not previously presented, those issues or claims are barred by reason of failure to exhaust administrative remedies.
3. To the extent Plaintiffs present to the Court any issue, contention, or claim that is now contrary to any position taken by Plaintiffs in the administrative proceedings, Plaintiffs have waived the right to present any such issue, contention, or claim.

4. Federal Defendants reserve the right to assert additional defenses, including affirmative defenses that may be revealed subsequent to this filing.

WHEREFORE, Federal Defendants request that the Court dismiss Plaintiffs' Amended Complaint, enter judgment in favor of Federal Defendants, and grant such other relief as may be appropriate.

DATED: September 29, 2017

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