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11 Attorneys for Defendants

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION
15

16 NISENAN MAIDU TRIBE OF THE)
NEVADA CITY RANCHERIA,)
17)
Plaintiff,)
18)
v.)
19)
KEN SALAZAR, et al.,)
20)
Defendants.)
21

No. 5:10-cv-00270-JW

**DEFENDANTS’ ANSWER
TO COMPLAINT FOR BREACH
OF THE RANCHERIA ACT,
BREACH OF FIDUCIARY
OBLIGATION, DECLARATORY
AND INJUNCTIVE RELIEF**

22 Defendants hereby submit their Answer to the Complaint for Breach of the Rancheria
23 Act, Breach of Fiduciary Obligation, Declaratory and Injunctive Relief (“Complaint”) filed by
24 Plaintiff on January 20, 2010. Defendants specifically deny each and every allegation of the
25 Complaint not otherwise expressly admitted, qualified, or denied by this Answer. The numbered
26 paragraphs in this Answer correspond to the numbered paragraphs in Plaintiff’s Complaint. Any
27 references in this Answer to the Plaintiff as “Tribe” are not an admission that Plaintiff is, in fact,
28

1 a tribe. Instead, “Tribe” is used as a matter of convenience and mirrors the usage in Plaintiff’s
2 Complaint.

3 **NATURE OF THE ACTION**

4 1. This paragraph constitutes Plaintiff’s characterization of its action to which no
5 response is required. To the extent a response is required, Defendants deny each and every
6 allegation contained therein.

7 2. This paragraph constitutes legal conclusions, to which no response is required.
8

9 3. Defendants deny the first sentence. The second and third sentences constitute
10 legal conclusions, to which no response is required. To the extent a response is required,
11 Defendants deny each and every allegation contained therein.

12 4. This paragraph constitutes Plaintiff’s characterization of its action to which no
13 response is required. To the extent a response is required, Defendants deny each and every
14 allegation contained therein.

15 5. This paragraph constitutes Plaintiff’s characterization of its action to which no
16 response is required. To the extent a response is required, Defendants deny each and every
17 allegation contained therein.
18

19 **JURISDICTION**

20 6. The first, fourth, and fifth sentences constitute legal conclusions, to which no
21 response is required. The second and third sentences are Plaintiff’s characterization of its action,
22 to which no response is required. To the extent a response is required, Defendants deny each
23 and every allegation contained therein.
24
25
26
27

1 **VENUE**

2 7. This paragraph constitutes legal conclusions, to which no response is required.
3 To the extent a response is required, Defendants deny each and every allegation contained
4 therein.
5

6 **PARTIES**

7 8. Defendants are without information or belief as to the truth or falsity of the
8 allegations contained in this paragraph and, therefore, the allegations are denied.
9

10 9. Defendants admit that Ken Salazar is the Secretary of the United States
11 Department of the Interior and is an officer or employee of the United States. The remainder of
12 paragraph 9 constitutes legal conclusions, to which no response is required.

13 10. Defendants admit paragraph 10.

14 11. Defendants are without information or belief as to the truth or falsity of the
15 allegations contained in this paragraph and, therefore, the allegations are denied.
16

17 12. Defendants are without information or belief as to the truth or falsity of the
18 allegations contained in this paragraph and, therefore, the allegations are denied.
19

20 **FACTUAL ALLEGATIONS**

21 **A. Historical Background of the Nevada City Rancheria**

22 13. Defendants deny the allegations in this paragraph.
23

24 14. Defendants are without knowledge or information as to the truth or falsity of the
25 allegations contained in this paragraph and, therefore, the allegations are denied.

26 15. Defendants are without knowledge or information as to the truth or falsity of the
27

1 allegations contained in this paragraph and, therefore, the allegations are denied.

2 16. Defendants admit the first sentence to the extent President Wilson issued an
3 Executive Order on May 6, 1913 covering the property originally reserved in the 1850's by
4 white settlers. The second sentence quotes the Executive Order. Defendants aver the Executive
5 Order speaks for itself and is the best evidence of its contents.

6
7 17. Defendants deny the allegations in this paragraph.

8 18. Defendants are without knowledge or information as to truth or falsity of the first
9 sentence and, therefore, the allegations are denied. As to the first part of the second sentence,
10 Defendants admit that there were several Indian Service reports of Indians living on the land
11 covered by the Executive Order. Defendants are without knowledge or information as to the
12 truth or falsity of the remainder of the second sentence and, therefore, the allegations are denied.

13
14 19. This paragraph constitutes Plaintiff's characterization of the Indian
15 Reorganization Act (IRA), 25 U.S.C. § 461 *et seq.*, including section 18 of the IRA, 25 U.S.C. §
16 478. Defendants aver the IRA speaks for itself and is the best evidence of its contents.

17 20. Defendants deny the allegations in Paragraph 20.

18
19 21. Defendants deny the allegations in the first sentence. Defendants are without
20 knowledge or information as to the truth or falsity of the factual allegations contained in the
21 second sentence and, therefore, the allegations are denied.

22 **B. Federal Termination Policy and the Rancheria Act**

23 22. As to the first sentence, Defendants admit that the United States pursued a policy
24 of termination in the 1950's, but deny it was in response to pressure from non-Indians.
25 Defendants admit the second and third sentences. The fourth sentence quotes House Concurrent
26 Resolution 108. Defendants aver the Resolution speaks for itself and is the best evidence of its

1 contents. As to the fifth sentence, Defendants admit that the United States pursued a termination
2 policy through specific legislative enactments. Defendants are without knowledge or
3 information as to the truth or falsity of the sixth sentence and, therefore, the allegations are
4 denied. Defendants deny any remaining allegations in paragraph 22.

5 23. Defendants admit the first sentence. The second and third sentences characterize
6 the California Rancheria Act. Defendants aver the Act speaks for itself and is the best evidence
7 of its contents.

8
9 24. This paragraph characterizes the California Rancheria Act. Defendants aver the
10 Act speaks for itself and is the best evidence of its contents.

11 25. This paragraph characterizes the California Rancheria Act. Defendants aver the
12 Act speaks for itself and is the best evidence of its contents.

13
14 26. This paragraph characterizes the California Rancheria Act. Defendants aver the
15 Act speaks for itself and is the best evidence of its contents.

16 27. This paragraph characterizes the California Rancheria Act. Defendants aver the
17 Act speaks for itself and is the best evidence of its contents.

18 28. This paragraph characterizes the California Rancheria Act. Defendants aver the
19 Act speaks for itself and is the best evidence of its contents.

20
21 29. This paragraph characterizes and quotes the California Rancheria Act.
22 Defendants aver the Act speaks for itself and is the best evidence of its contents.

23 30. Defendants admit the first sentence. The second sentence quotes the amendments
24 to the California Rancheria Act. Defendants aver the amendments speak for themselves and are
25 the best evidence of their contents.

1 31. This paragraph quotes the amendments to the California Rancheria Act.
2 Defendants aver the amendments speak for themselves and are the best evidence of their
3 contents.

4 **C. Ultra Vires Termination of Plaintiff Nevada City Rancheria**

5 32. Defendants deny paragraph 32.

6 33. Defendants admit the first sentence. Defendant are without knowledge or
7 information as to the truth or falsity of the allegations of the second sentence and, therefore, the
8 allegations are denied. Defendants are without knowledge or information as to truth or falsity of
9 the allegations in the third sentence and, therefore, the allegations are denied. As to the fourth
10 sentence, Defendants admit that the Johnsons agreed to the distribution plan and that the
11 Johnsons were elderly. Defendants are without knowledge or information as to the truth or
12 falsity of the allegations in the fifth, sixth, and seventh sentences and, therefore, deny those
13 allegations. Defendants deny the allegations in the eighth sentence. Defendants deny all
14 remaining allegations in paragraph 33.

15 34. Defendants deny the allegations in this paragraph.

16 35. Defendants are without knowledge or information as to truth or falsity of the
17 allegations in the first sentence and, therefore, the allegations are denied. The second sentence is
18 a conclusion of law to which no response is required. To the extent a response is required,
19 Defendants deny each and every allegation contained therein.

20 36. As to the first, third, and fourth sentences, Defendants are without knowledge or
21 information as to truth or falsity of the allegations and, therefore, deny the allegations. As to the
22 second sentence, Defendants admit that Frank and Quila Jones sought an assignment on the
23 Rancheria and deny all remaining allegations in this sentence. Defendants deny any remaining
24 allegations in this paragraph.
25
26
27

1 37. The first sentence constitutes a legal conclusion to which no response is required.
2 To the extent a response is required, Defendants deny each and every allegation therein. As to
3 the second sentence, Defendants admit the BIA engaged in substantial outreach on and off
4 Rancherias to ensure that any termination took place with due process protections in place. The
5 third sentence quotes Progress Report No. 4 – Public Law 85-671 (September 26, 1958).
6 Defendants aver the Report speaks for itself and is the best evidence of its contents.

7 38. Defendants deny the allegations in the first and second sentences. Defendants are
8 without knowledge or information as to the truth or falsity of the third sentence and, therefore,
9 the allegations are denied. Defendants deny the allegations in the fourth sentence.
10

11 39. Defendants deny the allegations in the first sentence. As to the second sentence,
12 Defendants admit that the BIA did not have to pay the cost of providing infrastructure and that a
13 press clipping at the time indicated Mr. Johnson did not want to leave the Rancheria. As to the
14 third sentence, Defendants admit that the distribution plan included only Peter and Margaret
15 Johnson as distributees. As to the fourth sentence, Defendants admit that the BIA did not incur
16 costs of providing educational and vocational training or construction of roads and sanitation and
17 water systems. Defendants deny all remaining allegations in this paragraph.

18 40. Defendants deny this paragraph.

19 41. This paragraph quotes the opinion in *Seminole Nation v. United States*, 316 U.S.
20 286, 297 (1942). Defendants aver the opinion speaks for itself and is the best evidence of its
21 contents.
22

23 42. This paragraph constitutes Plaintiff's characterization of the California Rancheria
24 Act. Defendants aver the Act speaks for itself and is the best evidence of its contents.
25

26 43. This paragraph constitutes legal conclusions, to which no response is required.
27

1 44. The first sentence constitutes a legal conclusion, to which no response is required.
2 To the extent a response is required, Defendants deny each and every allegation therein.
3 Defendants are without knowledge or information as to the truth or falsity of the remainder of
4 this paragraph and, therefore, the allegations are denied.

5 45. This paragraph constitutes legal conclusions, to which no response is required.

6 46. This paragraph constitutes legal conclusions, to which no response is required.

7 47. This paragraph constitutes legal conclusions, to which no response is required.

8 48. This paragraph constitutes legal conclusions, to which no response is required.
9

10 49. Defendants deny the allegations in this paragraph.

11 50. This paragraph quotes 29 Fed. Reg. 13, 146 (Sept. 22, 1964). Defendants aver the
12 Notice speaks for itself and is the best evidence of its contents.
13
14

15 51. Defendants admit that the land was sold for the benefit of Peter Johnson.
16 Defendants admit the allegations in subparagraph (2). Subparagraphs (3), (4), and (5) constitute
17 legal conclusions, to which no response is required. Defendants deny the allegations in
18 subparagraphs (6) and (7).

19 52. Defendants are without knowledge or information as to the truth or falsity of this
20 paragraph and, therefore, the allegations are denied.
21

22 **D. The Hardwick Litigation**

23 53. The paragraph constitutes Plaintiff's characterization of the *Hardwick* litigation.
24 Defendants aver the pleadings and stipulation in that case speak for themselves and are the best
25 evidence of their contents.
26
27

1 54. Defendants deny the allegations in this paragraph.

2 55. This paragraph characterizes the complaint in the *Hardwick* litigation.
3 Defendants aver the complaint speaks for itself and is the best evidence of its contents.
4

5 56. This paragraph characterizes the complaint in the *Hardwick* litigation.
6 Defendants aver the complaint speaks for itself and is the best evidence of its contents.

7 57. Defendants admit the first sentence. The second and third sentences characterize
8 the amendment to the complaint. Defendants aver the amended complaint speaks for itself and is
9 the best evidence of its contents.

10 58. This paragraph characterizes the stipulated settlement in the *Hardwick* litigation.
11 Defendants aver the settlement speaks for itself and is the best evidence of its contents.
12

13 59. This paragraph characterizes the opinions in *Smith v. United States*, 515 F. Supp.
14 56 (N.D. Cal. 1975), *Knight v. Kleppe*, Civ. No. C-74-005 WTS (N.D. Cal. 1976), *Duncan v.*
15 *Andrus*, 517 F. Supp. 1 (N.D. Cal. 1977), and *Duncan v. United States*, 667 F.2d 36 (Ct.Cl.
16 1981). Defendants aver the opinions speak for themselves and are the best evidence of their
17 contents.

18 60. This paragraph quotes from and characterizes the stipulated judgment in the
19 *Hardwick* litigation. Defendants aver the settlement speaks for itself and is the best evidence of
20 its contents.
21

22 61. Defendants admit the first sentence. The second sentence characterizes the
23 stipulated judgment in the *Hardwick* litigation. Defendants aver the settlement speaks for itself
24 and is the best evidence of its contents.
25
26
27

1 **E. Nevada City Rancheria Was Erroneously Omitted From the *Hardwick* Restoration**
2 **Judgment**

3 62. Defendants deny the allegations in this paragraph.

4 63. This paragraph constitutes a legal conclusion to which no response is necessary.
5 To the extent a response is necessary, Defendants deny each and every allegation contained
6 therein.

7 **F. The Tribe List Act**

8 64. Defendants admit the first sentence. The second sentence quotes from H.R. Rep.
9 No. 103-781, at 3 (1994). Defendants aver the Report speaks for itself and is the best evidence
10 of its contents.
11

12 65. This paragraph quotes from the Tribe List Act. Defendants aver the Act speaks
13 for itself and is the best evidence of its contents.

14 66. This paragraph characterizes the Tribe List Act. Defendants aver the Act speaks
15 for itself and is the best evidence of its contents.
16

17 67. This paragraph characterizes the Tribe List Act. Defendants aver the Act speaks
18 for itself and is the best evidence of its contents.

19 68. This paragraph contains legal conclusions, to which no response is required. To
20 the extent a response is required, Defendants deny each and every allegation contained therein.
21

22 69. Defendants admit the first sentence. The second sentence constitutes a legal
23 conclusion to which no response is required. To the extent a response is required, Defendants
24 deny each and every allegation contained therein.
25
26
27

1 **G. Nevada City Has Been Working For Many Years to Restore Its Federal Recognition**

2 70. Defendants are without knowledge or information about the truth or falsity of the
3 allegations contained in this paragraph and, therefore, the allegations are denied.

4
5 71. Defendants are without knowledge or information about the truth or falsity of the
6 allegations contained in this paragraph and, therefore, the allegations are denied.

7 72. Defendants are without knowledge or information as to the truth or falsity of the
8 allegations in this paragraph and, therefore, the allegations are denied.

9
10 73. This paragraph constitutes legal conclusions, to which no response is required.

11 74. Defendants admit the Tribe has not been listed as a Federally recognized Tribe.
12 Defendants deny the remainder of the paragraph.

13 **FIRST CLAIM FOR RELIEF**

14
15 75. Defendants incorporate by reference the responses in the preceding paragraphs of
16 this Answer as though fully set forth herein.

17 76. This paragraph characterizes Section 2(a) of the Rancheria Act. Defendants aver
18 the Act speaks for itself and is the best evidence of its contents.

19
20 77. This paragraph constitutes a legal conclusion, to which no response is required.
21 To the extent a response is required, Defendants deny each and every allegation contained
22 therein.

23 **SECOND CLAIM FOR RELIEF**

24
25 78. Defendants incorporate by reference the responses in the preceding paragraphs of
26 this Answer as though fully set forth herein.

1 79. This paragraph characterizes Section 8 of the Rancheria Act. Defendants aver the
2 Act speaks for itself and is the best evidence of its contents.

3 80. This paragraph constitutes a legal conclusion, to which no response is required.
4 To the extent a response is required, Defendants deny each and every allegation contained
5 therein.

6
7 **THIRD CLAIM FOR RELIEF**

8 81. Defendants incorporate by reference the responses in the preceding paragraphs of
9 this Answer as though fully set forth herein.

10 82. This paragraph characterizes Section 9 of the Rancheria Act. Defendants aver the
11 Act speaks for itself and is the best evidence of its contents.

12 83. This paragraph constitutes a legal conclusion, to which no response is required.
13 To the extent a response is required, Defendants deny each and every allegation contained
14 therein.

15
16 **FOURTH CLAIM FOR RELIEF**

17 84. Defendants incorporate by reference the responses in the preceding paragraphs of
18 this Answer as though fully set forth herein.

19 85. This paragraph characterizes the Rancheria Act. Defendants aver the Act speaks
20 for itself and is the best evidence of its contents.

21 86. This paragraph constitutes a legal conclusion, to which no response is required.
22 To the extent a response is required, Defendants deny each and every allegation contained
23 therein.
24
25

FIFTH CLAIM FOR RELIEF

1
2 87. Defendants incorporate by reference the responses in the preceding paragraphs of
3 this Answer as though fully set forth herein.
4

5 88. This paragraph constitutes a legal conclusion, to which no response is required.
6 To the extent a response is required, Defendants deny each and every allegation contained
7 therein.

8 89. This paragraph constitutes a legal conclusion, to which no response is required.
9 To the extent a response is required, Defendants deny each and every allegation contained
10 therein.

11 90. This paragraph constitutes a legal conclusion, to which no response is required.
12 To the extent a response is required, Defendants deny each and every allegation contained
13 therein.
14

15 91. This paragraph constitutes a legal conclusion, to which no response is required.
16 To the extent a response is required, Defendants deny each and every allegation contained
17 therein.

18 92. This paragraph constitutes a legal conclusion, to which no response is required.
19 To the extent a response is required, Defendants deny each and every allegation contained
20 therein.
21

SIXTH CLAIM FOR RELIEF

22
23 93. Defendants incorporate by reference the responses in the preceding paragraphs of
24 this Answer as though fully set forth herein.
25

26 94. This paragraph characterizes the Administrative Procedure Act (APA).
27

1 Defendants aver the APA speaks for itself and is the best evidence of its contents.

2 95. This paragraph characterizes the APA. Defendants aver the APA speaks for itself
3 and is the best evidence of its contents.

4 96. This paragraph constitutes a legal conclusion, to which no response is required.
5 To the extent a response is required, Defendants deny each and every allegation contained
6 therein.

7 97. Defendants deny the allegations in this paragraph.

8 98. This paragraph constitutes a legal conclusion, to which no response is required.
9 To the extent a response is required, Defendants deny each and every allegation contained
10 therein.
11

12 **PRAYER FOR RELIEF**

13
14 The remaining allegations in Plaintiff's Complaint constitute prayers for relief, to which
15 no response is required. To the extent a response is required, Defendants deny that Plaintiff is
16 entitled to the relief it has requested or to any relief whatsoever.
17

18 **DEFENSES**

- 19 1. The court lacks jurisdiction over some or all of Plaintiff's claims.
20
21 2. Some or all of Plaintiff's claims fail to state a claim on which relief can be
22 granted.
23
24 3. Some or all of Plaintiff's claims are barred by the applicable statute of limitations.
25
26 4. Some or all of Plaintiff's claims are barred by the doctrine of laches.
27
28 5. Plaintiff lacks standing to bring its claims against Defendants.

1 Dated: May 3, 2010

Respectfully submitted,

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Assistant Attorney General

3 /s/ Devon Lehman McCune
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12 Attorneys for Defendants

13 OF COUNSEL:
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Denver Field Office of the United States Department of Justice, Environment and Natural Resources Division, 1961 Stout Street, 8th Floor, Denver, Colorado, 80294, and is a person of such age and discretion to be competent to serve papers.

That on May 3, 2010, she served a copy of the attached **DEFENDANTS' ANSWER TO COMPLAINT FOR BREACH OF THE RANCHERIA ACT, BREACH OF FIDUCIARY OBLIGATION, DECLARATORY AND INJUNCTIVE RELIEF** on all parties via the CM/ECF Electronic Court Filing system listed below:

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/s/ Karmen Robinson
Karmen Robinson