

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

RECEIVED

SEP 01 2010

SANDY LAKE BAND OF MISSISSIPPI  
CHIPPEWA,

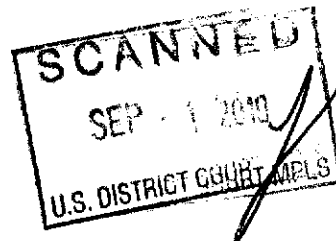
Plaintiff,

v.

UNITED STATES OF AMERICA; KEN SALAZAR,  
as Secretary of the Interior; LARRY ECHO HAWK,  
as the Assistant Secretary for Indian Affairs;  
GEORGE SKIBINE, as Acting Deputy Assistant  
Secretary for Policy and Economic Development,  
Indian Affairs; and DIANE ROSEN, Regional  
Director, Midwest Regional Office, Bureau of Indian  
Affairs,

Defendants.

Case No. CLERK  
U.S. DISTRICT COURT  
MINNEAPOLIS, MINNESOTA  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
MONEY DAMAGES



INTRODUCTION

1. This is an action for declaratory and injunctive relief and many damages brought by the Sandy Lake Band of Mississippi Chippewa Indians ("Sandy Lake" or "Tribe") against the Secretary of the United States Department of the Interior ("Secretary") and officers and employees of the Bureau of Indian Affairs ("BIA"). The Tribe seeks an order from this Court, pursuant to 5 U.S.C. §§ 702, 704, and 706 of the Administrative Procedures Act, declaring that: (1) the Tribe has never been lawfully terminated by the Congress of the United States; (2) a government-to-government relationship exists between the Tribe and the United States; (3) the Tribe is an "Indian tribe" within the meaning of 25 U.S.C. § 477 and, therefore, is entitled to an election called and conducted by the Secretary to organize a tribal government for the Tribe,

pursuant to 25 U.S.C. § 476; (4) the federal defendants, and each of them, acted arbitrarily and capriciously in direct violation of 25 U.S.C. § 476 and the United States' solemn trust obligation owed to the Tribe by failing or refusing to call and conduct an election, as requested by the Tribe, pursuant to 25 U.S.C. § 476, and (5) the defendants breached the United States trust duty owed to the Tribe by failing to recognize the Tribe as the successor in interest to ten (10) treaties entered into between the Tribe and the United States. The Tribe also seeks injunctive relief from this Court ordering the defendants to: (1) restore BIA benefits and services to the Tribe, and (2) call an election pursuant to 25 U.S.C. § 476 to allow the members of the Tribe to vote on the constitution submitted by the Tribe to the Secretary for approval. Finally, the Tribe seeks money damages against the United States resulting from the defendants' violation of the Tribe's ten (10) treaties and the defendants' failure to preserve and protect the Tribe's hunting, fishing, and gathering rights, guaranteed to the Tribe under the treaties.

### JURISDICTION

2. This Court has jurisdiction over the Tribe's claims as set forth in this complaint based upon: (1) Article VI, cl. 2 of the Constitution of the United States, in that the Tribe asserts that the defendants' actions are inconsistent with the Constitution, laws, and treaties of the United States; (b) the Fifth Amendment of the United States Constitution in that the Tribe asserts that the defendants' actions constitute arbitrary and unreasonable discriminatory action; (c) 28 U.S.C. § 1331, in that the Tribe's claims arise under the Constitution, laws, and treaties of the United States; (d) 28 U.S.C. § 1337, in that this action arises out of Acts of Congress regulating commerce with Indian tribes, pursuant to Article I, Section 8, cl. 3 of the United States Constitution; (e) 28 U.S.C. § 1361, in that the Tribe seeks to compel officers and employees of the United States and its agencies to perform duties owed to the Tribe under federal law, and (4)

28 U.S.C. § 1362, in that the Tribe is a federally recognized Indian tribe that has never been lawfully terminated by an Act of Congress and its claims arise under the Constitution, laws, and treaties of the United States.

### VENUE

3. Venue is proper in the District of Minnesota pursuant to 28 U.S.C. § 1391, as the Tribe resides and its claims arose in said District and the defendants are subject to suit in said District.

### PARTIES

4. Plaintiff, Sandy Lake Band of Mississippi Chippewa, is a federally recognized Indian tribe that has never been lawfully terminated by an Act of Congress.

5. Defendant, United States of America, is a quasi-sovereign governmental entity exercising powers of self-government pursuant to a written Constitution. Defendant, Ken Salazar, is the Secretary of the United States Department of the Interior. Defendant, Larry Echo Hawk, is the Assistant Secretary for Indian Affairs. Defendant, George Skibine, is the Acting Deputy Assistant Secretary for Policy and Economic Development, Indian Affairs, within the United States Department of the Interior. Diane Rosen is the Regional Director for the Midwest Regional Office of the Bureau of Indian Affairs. All of the individual defendants are officers or employees of the United States Department of the Interior, and have direct or delegated statutory duties or responsibilities for: (a) carrying out the government-to-government relationship with Indian tribes and specifically the government-to-government relationship between the United States and the Tribe; (b) carrying out the provisions of the Indian Reorganization Act of 1934 ("IRA"), 48 Stats. 984, and specifically 25 U.S.C. § 476, and the regulations promulgated thereunder; (c) carrying out the provisions of the Federally Recognized List Act of 1994, 108

Stat. 4791, and (d) for fulfilling the trust obligations and treaty responsibilities of the United States to the Tribe.

### GENERAL ALLEGATIONS

6. The United States first recognized the Tribe, as a quasi-sovereign governmental entity, when it negotiated and concluded the Treaty of Prairie du Chien with the Tribe on August 19, 1825, 7 Stats. 272 ("1825 Treaty"). The purpose of the treaty was to end wars between various tribes and bands of Indians by establishing boundaries for the territories of each of the signatory tribes, including Sandy Lake. A copy of the Treaty of Prairie du Chien with the Sioux in the Territory of Michigan dated August 19, 1825, is hereby incorporated by this reference and attached hereto as **Exhibit 1**.

7. Subsequently, between 1825 and 1854, the United States negotiated and concluded five (5) treaties with the Tribe: (a) the Treaty with the Chippewa concluded at the Fond du Lac of Lake Superior on August 5, 1826, 7 Stats. 290 ("1826 Treaty"), a copy of which is hereby incorporated by this reference and attached hereto as **Exhibit 2**; (b) the Treaty with the Chippewa at St. Peters in the Territory of Wisconsin, dated July 29, 1837, 7 Stats. 536 ("1837 Treaty"), a copy of which is hereby incorporated by this reference and attached hereto as **Exhibit 3**; (c) the Treaty with the Chippewa of the Mississippi and Lake Superior concluded at La Pointe of Lake Superior in the territory of Wisconsin, dated October 4, 1842, 7 Stats. 590 ("1842 Treaty"), a copy of which is hereby incorporated by this reference and attached hereto as **Exhibit 4**; (d) the treaty with the Chippewa of the Mississippi and Lake Superior concluded at Fond du Lac of Lake Superior on August 2, 1847, 9 Stats. 904 ("1847 Treaty"), a copy of which is hereby incorporated by this reference and attached hereto as **Exhibit 5**, and (e) the Treaty with the Chippewa of Lake Superior and the Mississippi at La Pointe in the State of Wisconsin on

September 30, 1854, 10 Stats. 1109 ("1854 Treaty"), a copy of which is hereby incorporated by this reference and attached hereto as **Exhibit 6**. By negotiating and entering into each of the above referenced treaties, the United States acknowledged and affirmed that it maintained a government-to-government relationship with the Tribe.

8. Under the 1826 Treaty, the Tribe ratified the terms of the Treaty of 1825; established the procedure for fixing the boundary line between the territory of the Chippewa and the territory of the Winnebagos and Menomonies and denounced all connection with any foreign power, except the United States. Signers of the Treaty from Sandy Lake were Osaumemikee, Gitschee-Waymirteegoost, Paaschuninleel, Wauzhuskokok, Nitumogaubowee, and Wattap.

9. Under the 1837 Treaty, the Chippewa Nation, which included the Tribe, ceded to the United States that portion of its lands, as depicted in Minnesota 1, and Wisconsin 1 Area 242, Charles C. Royce, Bulletin of American Ethnology, Indian Land Cessions ("Royce") Maps, copies of which is hereby incorporated by this reference and attached hereto as **Exhibit 7**, and reserved to itself, the "privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded, . . . , during the pleasure of the President of the United States." Sandy Lake chiefs who signed the 1837 Treaty were Ka-nan-da-wa-win-zo or Le Brocheux; Qwe-we-shan-shis, the Bad Boy or Big Mouth, and Ke-che-wa-me-te-go or the Big Frenchman.

10. By entering into the Treaties of 1825, 1826, and 1837, the United States recognized the Sandy Lake Band of Mississippi Chippewa as a governmental entity with recognized title to the lands it occupied and ceded to the United States in the Treaty of 1837.

11. Under the 1842 Treaty, the Tribe, along with the other tribes that comprised "the Chippewa Indians of the Mississippi, ceded to the United States all that portion of its lands, as

depicted in Area 261, Wisconsin 1 and Michigan 1, Royce Maps, copies of which are hereby incorporated by this reference and attached hereto as **Exhibit 8**; and reserved to itself “the right of hunting on the ceded territory, and reserving to the Tribe, to be held in common with the other Mississippi Chippewa Bands, signatory to the Treaty, “all the unceded lands belonging to the aforesaid Indians.” Signers of the 1842 Treaty from the Sandy Lake Band included chiefs Kanon-do-ur-uin-zo, or Berry Picker, and Na-tum-e-gaw-bon, or First Standing Man.

12. By entering into the Treaty of 1842, the United States once again recognized the Sandy Lake Band of Mississippi Chippewa as a governmental entity, separate and part from the other Bands of Chippewa Indians and recognized the Sandy Lake Band as owning the lands they occupied and ceded to the United States in the Treaty of 1842.

13. Under the 1847 Treaty, the Tribe, along with the other “Chippewa Indians of the Mississippi” and Lake Superior, ceded to the United States all that portion of its lands, as depicted in Area 268, Minnesota 1, Royce Maps, a copy of which is hereby incorporated by this reference and attached hereto as **Exhibit 9**, in consideration for the payment of One Thousand Dollars for forty-six years, the establishment of schools, and the employment of blacksmiths for the benefit of the Tribe and other Chippewa Indians of the Mississippi. Signers of the 1847 Treaty for Sandy Lake were Gaw-nin-dum-wa-win-zo, first chief; Mis-uod-ase warrior; Na-tum-e-gaw-bow, second chief; I-ah-be-dua-we-bung, warrior; Nag-aun-cg-a-bon, second chief, Wan-je-ke-shig-uk, chief, and Kow-az-rum-ig-ish-kung, warrior.

14. Under the 1854 Treaty, the Chippewa of Lake Superior ceded to the United States all of those lands depicted in Areas 332 through 342, Minnesota 1, Michigan 2, Wisconsin 2, and Minnesota 2, Royce Maps, copies of which are hereby incorporated by this reference and attached hereto as **Exhibit 10**, which the Chippewa of Lake Superior owned in common with the

Chippewa of the Mississippi, including the Tribe. Sandy Lake was a separate signatory to the 1854 Treaty. The signatories to the treaty were identified by bands. By entering into the Treaty of 1854, the United States once again recognized Sandy Lake as a separate governmental entity with recognized title to the lands within Area 332. Signers of the 1854 Treaty for Sandy Lake were Caw-nawn-daw-waw-win-zo or Berry Hunter, first chief; Waw-bow-jieg or White Fisher, second chief; Que-we-zhan-cix, or the Bad Boy, second chief, and Me-squaw-dace, who was listed with the “head men” of the Mississippi Chippewa.

15. On February 22, 1855, the Chippewa of the Mississippi, including the Tribe, concluded a treaty with the United States at Washington, D.C. (“1855 Treaty”), 10 Stats. 1165, a copy of which is hereby incorporated by this reference and attached hereto as **Exhibit 11**.

16. Under the 1855 Treaty, the Chippewa of the Mississippi, including the Tribe, ceded to the United States all of their land within the territory of Minnesota, depicted in Areas 357, Minnesota 1 and Minnesota 2, Royce Maps, copies of which is hereby incorporated by this reference and attached hereto as **Exhibit 12**, in exchange for the creation of a reservation for each of the Bands of Chippewa of the Mississippi, including the Tribe. The reservation created for the Tribe is depicted in **Exhibit 13**, Area 455, Minnesota 1, Royce Maps.

17. By entering into the Treaty of 1855 and creating a separate reservation for the Sandy Lake Band of Mississippi Chippewa, Congress expressly recognized the Tribe as a separate governmental entity with the authority to exercise governmental control over its members on the reservation created under the 1855 Treaty.

18. On May 7, 1864, the United States concluded the “Treaty with the Chippewa of the Mississippi and the Pillager and Lake Winnibigoshish Bands” at Washington, D.C., 12 Stats. 1249 (“1864 Treaty”). A copy of the 1864 Treaty is hereby incorporated by this reference and

attached hereto as **Exhibit 14**.

19. Under the 1864 Treaty, the Tribe ceded to the United States its reservation at Sandy Lake, created under the 1855 Treaty, in exchange for a section of land being granted to Chief Mis-quah-dace at Sandy Lake and exempting the Tribe, and its members, from removal to the White Earth Reservation created for the Chippewa under the "Treaty with the Chippewa of the Mississippi and the Pillager and Lake Winnibigoshish," dated March 11, 1863, 12 Stats. 1249, a copy of which is hereby incorporated by this reference and attached hereto as **Exhibit 15**. The 1864 Treaty also provided for the payment of large annuities to the individual Bands, including Sandy Lake, in consideration for the cession of the six original reservations.

20. On March 19, 1867, the United States concluded the "Treaty with the Chippewa of the Mississippi" at Washington, D.C., 16 Stats. 719 ("1867 Treaty"), a copy of which is hereby incorporated by this reference and attached hereto as **Exhibit 16**. Under the 1867 Treaty (Area 507, Minnesota 2, Royce Maps), the Chippewa of the Mississippi, including the Tribe, ceded to the United States all of their lands in the State of Minnesota, "secured to them by the second article" of the May 7, 1864 Treaty, "excepting and reserving therefrom the tract" of land depicted in Area 509, Minnesota 2, Royce Maps, a copy of which is hereby incorporated by this reference and attached hereto as **Exhibit 17**.

21. Pursuant to the Treaties of 1837, 1842, 1847, 1854, 1855, 1863, 1864, and 1867, the Tribe ceded millions of acres of land to the United States of America in exchange for certain guarantees from the United States, including, but not limited to: (1) that certain portions of its former aboriginal territory would be reserved to it for its members' use and occupancy; (2) the payment of annuities; (3) the construction of roads; (4) the provision of farmers, blacksmiths, mechanics, and other personnel for the Tribe's benefit; (5) services to assist its members to



improve their lives; (6) the provision of schools, and (7) the right to hunt and fish on the territories ceded by the Tribe to the United States. In all, the United States entered into ten (10) treaties with the Tribe.

22. In order to fulfill the obligations of the United States under the Treaties of 1837, 1842, 1847, 1854, 1855, 1863, 1864, and 1867, the Congress of the United States enacted numerous statutes between 1856 and 1874, for the benefit of the Chippewas of the Mississippi. A typical example of such a statute is the Act of July 5, 1862, ("1862 Act"), a copy of which is hereby incorporated by this reference and attached hereto as **Exhibit 18**. Under the 1862 Act, Congress appropriated money to be used to pay for annuities for the services of two carpenters; the purchase of goods; the support of schools; the purchase of provisions and tobacco; the hiring of two smiths and assistants; and the purchase of iron and steel for the Chippewas of the Mississippi and, in particular, the Sandy Lake Band.

23. In 1873, the President issued an Executive Orders creating the White Oak Point Reservation on the Mississippi River for the "Sandy Lake and Rabbit Lake Bands" of Mississippi Chippewa for the express purpose of removing the Indians to that reservation. A copy of the Executive Order creating the White Oak Point Reservation is hereby incorporated by this reference and attached hereto as **Exhibit 19**. Despite the attempted removal of Sandy Lake Indians to White Oak Point in 1867, the Sandy Lake Band retained a continuous community at Sandy Lake to the present time.

24. In 1889, Congress passed "An Act for the Benefit and Civilization of the Chippewa Indians of Minnesota," 25 Stat. 642 ("Nelson Act"), and directed the appointment of a commission to go and meet with the Chippewa Indians in Minnesota with a view toward their signing and consenting to a cession of all their reservations and their removal to the White Earth

Reservation. In furtherance of the authority and direction contained in the Nelson Act, three commissioners were appointed by the President on February 26, 1889, as therein authorized and directed, namely, Henry M. Rice of Minnesota, Martin Marty of Dakota, and Joseph B. Whiting of Wisconsin, to negotiate with said Indians. This Commission was to hold meetings, gather a census and gain the vote of all the Chippewa Indians in Minnesota, and prepare a report to the President, which, if he found satisfactory, was then to be transmitted to the Congress as a final act under the law. The Commission was appointed and it has become known as the "Rice Commission." The Commission met with the various bands of the Chippewa throughout Minnesota and in particular attempted to meet with the Tribe. The Commission did meet with certain members of the Sandy Lake Tribe that were residing at White Oak Point, however, those members of the Tribe who were still residing in the traditional area around Sandy Lake informed the Commission that they would not meet with them because, as the Commission reported, they were busily engaged in ricing and other gathering activities. Subsequently, on September 19, 1889, at Kimberly, Minnesota, ten miles south of the 1855 Sandy Lake Treaty Reservation, or 90 miles south of White Oak Point Reservation, the Commission met with the Sandy Lake Band as previously requested and discussed the Nelson Act. It was the position of the Sandy Lake Band to take up allotments on their former 1855 Reservation. At that time the Chippewas continued to regard their primary allegiance as being that of their Band and when roll calls were conducted for purposes of voting on the presentations of the Rice Commission those people who were members of other bands when the roll call was being conducted were not allowed to vote. Likewise, as an example, on the roll call of the Fond du Lac Band, individuals who were present from Sandy Lake were refused the right to vote on Fond du Lac Band issues because they were Sandy Lake members.

25. In 1889, in fulfilling its duties under the Act, the Commission conducted a census among the Chippewas of the Mississippi for the purpose of determining which Indians were enrolled with each band of the Mississippi Chippewa. The Commission conducted and prepared a tribal roll for the Tribe, separate and distinct from the tribal roll that the Commission prepared for the other Bands of the Mississippi Chippewa, including but not limited to the Mille Lacs Band. A copy of the Tribe's tribal roll prepared by the Rice Commission is hereby incorporated by this reference and attached hereto as **Exhibit 20**.

26. From 1889 until 1914, members of the Rice Commission and officials of the Indian Office of the United States continued to recognize the Tribe and meet with and provide services to the members of the Tribe residing on the Sandy Lake Reservation, ceded by the Tribe to the United States by the Treaties of 1864 and 1867. Also, the Indian Office provided services to Sandy Lake Indians residing on the White Oak Point Reservation created in 1873 by Executive Order.

27. In addition, during this time period, the Office of Indian Affairs continued to persuade members of the Tribe, who lived on their former reservation, to take up residency on the White Earth Reservation. Any tribal member willing to move to the White Earth Reservation was given an allotment of land on the White Earth Reservation and was automatically enrolled by the BIA, without the knowledge or consent of the Indian, as being from the White Earth Reservation. Despite the fact that some of the tribal members removed to the White Earth Reservation, many refused to move and remained on the lands of their former ceded reservation. See, for example, correspondence of the Office of Indian Affairs from September 24, 1897, to January 18, 1908, which are herein incorporated by this reference and attached hereto collectively as **Exhibit 21**.

28. On January 6, 1915, James A. Howarth, Jr., Deputy Superintendent of Forests,

conducted an examination of “certain Indian claims on the north shore of Sandy Lake at Aitkin County, Minn., Sections 29, 32, T 50 N, R 23 W, 4 PM.” Mr. Howarth’s report concluded that Charles Manitou, a Sandy Lake Indian, asserted a claim to the property on behalf of himself and six other Indian families. As a result, the Secretary of the Interior recommended to the President that land be withdrawn for the use of the Sandy Lake Indians who were residing on the property.

29. On March 4, 1915, President Woodrow Wilson issued Executive Order No. 2144 (“Executive Order No. 2144”) in fulfillment of the terms of the 1864 Treaty guaranteeing to “the [T]ribe residing on the Sandy Lake reservation” the right to remain on its formerly ceded reservation lands until the President so directs. The Executive Order created the Sandy Lake Reservation (“Sandy Lake Reservation”) for the Indians “now living thereon,” which were the members of the Tribe, and for such other Indians as the President may choose. A copy of Executive Order No. 2144 is hereby incorporated by this reference and attached hereto as **Exhibit 22.**

30. Executive Order No. 2144 reaffirmed the Tribe’s right to occupy its former reservation lands under the 1864 Treaty and set aside Lots 2 and 3 of Section 32, Township 50 North, Range 23 West, Fourth Principal Meridian as a new reservation for the Tribe.

31. From 1915 to 1965, the United States, through the Bureau of Indian Affairs, continued to recognize and provide services to the Tribe at its new Sandy Lake Reservation. The BIA, for example, established and operated an “Agency Office” at the Reservation called the “Sandy Lake Sub Agency of the Northern Superintendency” for the purpose of carrying out the United States’ government-to-government relationship with the Tribe.

32. On June 1, 1934, Congress passed the Indian Reorganization Act, 25 U.S.C. § 461, et seq. (“IRA”). The purpose of the IRA was to encourage and facilitate the economic

development of Indian reservations by Indian tribes, foster Indian self-determination and strengthen tribal self-government by encouraging Indians to organize tribal governments under a written constitution.

33. Section 16 of the IRA (25 U.S.C. § 476) authorizes tribes to organize a tribal government by adopting a written constitution which becomes effective when ratified by a majority vote of the adult members of a tribe at a special election called by the Secretary for that purpose. The IRA also provided that it would not be applicable to any reservation wherein a majority of all of the Indians entitled to vote, voted against its application.

34. The IRA originally provided that elections on the applicability of the IRA to a particular reservation or tribe had to be called by the Secretary within one year after its approval. The IRA was amended on June 15, 1935, extending this period for another year. The amendment to the IRA also provided that a majority of those voting in an election in which not less than 30 percent of those entitled to vote actually voted, would not be sufficient to prevent the provisions of the IRA from applying to the tribe voting on the measure.

35. Between October 27, 1934, and November 17, 1934, the Secretary conducted elections on the Indian reservations in Minnesota for the purpose of allowing the tribes and Indians residing on each of those reservations to vote on whether they wanted the provisions of the IRA to apply to them and their respective reservations. There were two announcements for this election: one for the White Earth, Leech Lake, Grand Portage, and Boise Fort Reservations, and a second announcement for Fond du Lac and Red Lake Reservations. The BIA set up no polling places on the Sandy Lake Reservation, but established polling places on the other six reservations. No announcement was ever published and no balloting was ever held for the purpose of allowing the Tribe's members, as members of the Tribe, to vote on the Indian

Reorganization Act as required by law.

36. Throughout this time and certainly from the time of the issuance of the 1915 Executive Order through the present, there have been members of the Sandy Lake Band residing on the Executive Order Reservation as well as in the vicinity of the traditional Sandy Lake Reservation who held themselves out and conducted themselves as an Indian community with an Indian government.

37. The Secretary never conducted an IRA election among the Indians residing on the Sandy Lake Reservation, even though, under the provisions of the IRA, the Secretary had an obligation to do so.

38. The Tribe, through its members residing on the Sandy Lake Reservation, never voted to exclude itself from the provisions of the IRA. The provisions of the IRA, therefore, apply to the Tribe, including but not limited to 25 U.S.C. § 476 and 25 U.S.C. § 479.

39. After the passage of the IRA, the Secretary promulgated regulations for the calling and conducting of constitutional elections under 25 U.S.C. § 476. Those regulations are codified in Title 25 of the Code of Federal Regulations, Part 81, including but not limited to 25 C.F.R. § 81.5(a), which, along with 25 U.S.C. § 476, places a mandatory, non-discretionary duty upon the Secretary, or his authorized representative, to call and conduct an election for an Indian tribe, as defined under 25 U.S.C. § 479, upon receipt of a request to do so from an Indian tribe.

40. On July 20, 1936, a majority of the tribes and bands of Chippewa Indians residing on various Indian reservation in Minnesota organized a single tribal government under a written Constitution ("Constitution of the Minnesota Chippewa Tribe") that was approved by the Secretary on July 24, 1936, pursuant to 25 U.S.C. § 476 of the IRA. The Tribe did not participate in the election to approve, nor did it organize a tribal government under, the

Constitution of the Minnesota Chippewa Tribe.

41. On July 8, 1940, the United States, pursuant to the provisions of the IRA, 25 U.S.C. § 465, purchased a 147-acre parcel of land for the Tribe. However, title to the land was taken in the name of the United States in trust for the Minnesota Chippewa Tribe. The Tribe's Chairman and other tribal officials, working in conjunction with the BIA officials of the Consolidated Chippewa Agency, approved specific home sites or land assignments on the new trust land ("New Sandy Lake Reservation") for members of the Tribe. The New Sandy Lake Reservation is located in Aitkin County, approximately 2 miles from the 1915 Executive Order Sandy Lake Indian Reservation.

42. From July 8, 1940, until May 29, 1980, the Tribe maintained its tribal government as a separate and distinct Indian tribe. During this time, officials of the BIA continued to recognize and provide services to the Tribe and its members as a separate and distinct Indian tribe.

43. On May 29, 1980, Elmer T. Nitzschke, Field Solicitor for the United States Department of the Interior, Office of the Field Solicitor, rendered an opinion in response to a request from the BIA on the issue of "which Indian entity has jurisdiction over the [1915 Executive Order No. 2144 Sandy Lake] reservation." In his opinion, Solicitor Nitzschke concluded that the Business Committee for the Mille Lacs exercised jurisdiction over the Sandy Lake Indian Reservation. In reaching this conclusion, Solicitor Nitzschke erroneously concluded, without citing to any authority to support his position, that: "the Chippewas residing at Sandy Lake have been considered Chippewas of the Mississippi and part of the group known as the Mille Lacs Band. . . . We reach this conclusion because the Mille Lacs Band is the political successor of the historic Sandy Lake Band." A copy of Elmer T. Nitzschke's May 29, 1980,

legal opinion is hereby incorporated by this reference and attached hereto as **Exhibit 23**.

44. The Tribe and the Mille Lacs are, in fact, separate and distinct tribes or bands of the Chippewa of the Mississippi. The Tribe is the historic and political successor of the Sandy Lake Band of the Chippewa of the Mississippi that executed the 1825, 1826, 1837, 1842, 1847, 1854, 1855, 1863, 1864, and 1867 treaties with the United States and for whom President Woodrow Wilson initially established the 1915 Execution Order Sandy Lake Reservation.

45. From May 29, 1980, to the present, the Secretary has failed or refused to: (1) recognize the Tribe as a separate tribal governmental entity; (2) provide the Tribe or its members with BIA benefits or services; (3) list the Tribe as a federally recognized Indian tribe on the list of federally recognized Indian tribes published by the Secretary in the Federal Register, pursuant to 25 U.S.C. § 479 a-1, and (4) failed or refused to recognize the Tribe as the successor in interest to Treaties of 1837, 1842, 1847, 1854, 1855, 1863, 1864, and 1867.

46. On July 10, 2007, the Tribe submitted a letter to Eugene R. Verdin, Superintendent of the Minnesota Agency of the Bureau of Indian Affairs ("BIA"), requesting that the Superintendent call and conduct an election for the Tribe to vote on a constitution to organize a tribal government under the provisions of the IRA.

47. On or about July 27, 2007, Superintendent Verdin denied the Tribe's request, based upon a letter dated August 1, 2006, from then Associate Solicitor of Indian Affairs, Carl Artman. A copy of the July 27, 2007, Letter from Eugene Verdin, Superintendent, to Monroe Skinaway is attached hereto as **Exhibit 24**.

48. On August 8, 2007, the Tribe appealed Superintendent Verdin's July 27, 2007, decision to Terrence L. Verdin, Midwest Regional Director for the BIA. In a letter dated August 28, 2007, to Monroe Skinaway, Regional Director Verdin denied the Tribe's appeal on the



grounds that the Superintendent's decision was not an appealable decision. In support of his position, Director Verdin stated that the "Superintendent's response was not a decision but a reiteration of the Department's position regarding the Sandy Lake Band," which was set forth in "the August 1, 2006, letter from Associate Solicitor for Indian Affairs and the 1980 opinion by the Twin Cities Office of the Field Solicitor." Although the Director specifically stated that the Superintendent's decision was not "a new decision by the Department," the Regional Director specifically held that the Tribe was not a "tribe" as "defined at 25 C.F.R. 81.1(w)" and, therefore, was ineligible for an IRA election. A copy of the August 28, 2007, letter from Regional Director, Terrence L. Verdin, to Monroe Skinaway, is attached hereto as **Exhibit 25**.

49. On September 25, 2007, the Tribe, filed a timely appeal of Regional Director Verdin's August 28, 2007, decision to the Interior Board of Indian Appeals, Office of Hearings and Appeals ("IBIA").

50. On November 7, 2007, the Regional Director, through the Office of the Field Solicitor, Twin Cities Minnesota, filed a motion to dismiss the Tribe's appeal on the grounds that: (1) in a letter dated September 25, 2007, the Assistant Secretary for Indian Affairs responded to the Tribe's July 10, 2007, letter requesting an IRA election (a copy of the Assistant Secretary's September 25, 2007, letter to Monroe Skinaway is attached hereto as **Exhibit 26**); (2) the September 25, 2007, letter from the Assistant Secretary reiterated the Department's previous position; (3) the Assistant Secretary's position, as set forth in his September 25, 2007, letter was a final decision for the Department of the Interior; and (4) the Interior Board of Indian Appeals, therefore, lacked jurisdiction over the Tribe's appeal.

51. On March 21, 2008, the IBIA entered an Order dismissing the Tribe's appeal on the grounds that the Assistant Secretary for Indian Affairs' letter dated September 25, 2007: (1)

constituted a denial of the Tribe's request for an IRA election; (2) was a final Department of the Interior decision on the issue; and (3) was not, therefore, reviewable by the IBIA. A copy of the IBIA's March 27, 2008 "Order Dismissing Appeal" is hereby incorporated by this reference and attached hereto as **Exhibit 27**.

52. With the issuance of the IBIA's March 21, 2008, Order dismissing the Tribe's appeal, the Tribe has exhausted all of its administrative remedies available to it, making the Tribe's claims set forth in this Complaint ripe for decision by this Court.

**FIRST CLAIM**  
**[Violation of the Federally Recognized List Act of 1994]**

53. The Tribe realleges each of the allegations set for in Paragraphs 1-52 above, and by this reference incorporates each such allegation herein as if set forth here in full.

54. By entering into ten treaties ("Treaties") with the Tribe, enacting legislation to appropriate money to fulfill the United States' obligations owed to the Tribe under the Treaties, and creating reservations for the Tribe, the Congress of the United States recognized the Tribe as a quail-sovereign governmental entity with which it maintained a government to government relationship.

55. The Congress of the United States has never enacted legislation terminating the Tribe's status as a federally recognized Indian tribe.

56. As a federally recognized Indian tribe, the Tribe was vested with the inherent sovereign power to determine its own form of government and to receive all services provided by the BIA to Indian tribes, including the Tribe, because of their status as federally recognized Indian tribes, including but not limited to, the right to organize a tribal government under a written constitution approved by the members of the Tribe pursuant to an election called and

conducted by the Secretary under the provisions of the IRA, 25 U.S.C. § 476.

57. By: (1) failing to recognize the Tribe and (2) refusing to call an IRA election for the Tribe, after receiving a request to do so, the defendants, and each of them, has effectively terminated the Tribe's government to government relationship with the United States, without authorization from Congress, in direct violation of Congress' findings set forth in the Federally Recognized Indian Tribe List Act of 1994, Section 103 of Pub. L. 103-454, 108 Stat. 4791, see also, 25 U.S.C. § 479a-1, which provides that: "a tribe which has been recognized [by Act of Congress] may not be terminated except by an Act of Congress."

58. An actual and substantial controversy exists between the Tribe and the defendants, in that the Tribe contends that it is a federally recognized Indian Tribe that has never been lawfully terminated by an Act of Congress, and/or an Indian tribe within the meaning of 25 U.S.C. § 479, eligible to organize a tribal government pursuant to an election called and conducted under the provisions of the IRA, specifically 25 U.S.C. § 476, while the defendants contend that the Tribe is not a federally recognized tribe and/or a tribe eligible to organize under 25 U.S.C. § 476 of the IRA.

WHEREFORE, the Tribe prays as hereinafter set forth.

**SECOND CLAIM**  
**[Violation of the IRA]**

59. The Tribe realleges each of the allegations set forth in Paragraphs 1 - 58 above, and by this reference incorporates each such allegations herein as if set forth here in full.

60. Section 16 of the IRA, codified in 25 U.S.C. § 476, places a mandatory, nondiscretionary duty on the Secretary or his authorized representatives to call and conduct a special election with 180 days after receiving a request to do so from any "Indian tribe." These

special elections are administered and conducted on behalf of the Secretary in Minnesota by Defendant Virden, the Regional Director of the Midwest Regional Office of the BIA, under regulations promulgated by the Secretary and codified in 25 C.F.R. § 81.1, et seq.

61. Title 25 of the United States Code § 479 of the IRA defines an “Indian tribe” as any one of the following: (1) “any Indian tribe; or (2) the Indians residing on one reservation.”

62. The IRA, specifically, 25 U.S.C. § 479, defines “Indian” as any one or all of the following: (1) all persons of Indian descent who are members of any recognized Indian tribe under Federal jurisdiction “on June 18, 1934,” who were residing within the present boundaries of any Indian reservation; (2) “all persons who are descendants of such members,” and (3) all other persons of one-half or more Indian blood.

63. The Tribe was federally recognized on June 18, 1934, and, therefore, is an “Indian tribe” within the meaning of 25 U.S.C. § 479.

64. In addition, members of the Tribe resided on the Sandy Lake Indian Reservation and/or the 1915 Executive Order Reservation on June 18, 1935, and they and their descendants, therefore, are “Indians residing on one reservation” within the meaning of 25 U.S.C. § 479.

65. A majority of the current members of the Tribe, that requested the Secretary to call an IRA election for the Tribe, possess a one-half (1/2) or more Indian blood quantum, and as such, constitute “the Indians residing on one reservation” within the meaning of 25 U.S.C. § 479.

66. The Tribe, therefore, is an “Indian tribe,” as defined by 25 U.S.C. § 479, and is an “Indian tribe” within the meaning of 25 U.S.C. § 476.

67. As heretofore alleged, the Tribe submitted a written constitution to the Secretary with a request that he call and conduct a special IRA election pursuant to 25 U.S.C. § 476 on the Tribe’s Sandy Lake Indian Reservation. In spite of the Tribe’s request, the defendants, and each

of them, have failed or refused to recognize the Tribe as an "Indian tribe" as defined by 25 U.S.C. § 476 and failed or refused to call and conduct an IRA election for the Tribe in direct violation of 25 U.S.C. § 476.

68. Unless the defendants are permanently restrained and enjoined from denying BIA services and benefits to the Tribe, including recognizing the Tribe's existing tribal government, conducting an IRA election on the Tribe's Sandy Lake Indian Reservation within 180 days after being requested to do so, the Tribe will suffer severe and irreparable harm, for which the Tribe has no plain or adequate remedy at law, in that the Tribe will be unable to organize a tribal government under the IRA, perform tribal governmental functions and services for the benefits for its members or be able to receive BIA benefits or services.

69. An actual controversy exists between the Tribe and the defendants in that the Tribe contends that the failure of the defendants to call a special IRA election for the Tribe, among its members, on its Sandy Lake Indian Reservation, constitutes a direct violation of 25 U.S.C. § 476 and the regulations promulgated thereunder, while defendants claim their actions are lawful.

WHEREFORE, the Tribe prays as hereinafter set forth.

**THIRD CLAIM**  
**[Violation of the Administrative Procedures Act]**

70. Plaintiff realleges each of the allegations set forth in Paragraphs 1-69 above, and, by this reference, incorporates each such allegation herein as if set forth here in full.

71. As heretofore alleged, the defendants have a statutory obligation to authorize, call and conduct a special IRA election upon receiving a request for such an election from an Indian tribe, as defined by 25 U.S.C. § 479. Notwithstanding this statutory obligation, the Secretary will not call a special IRA election for the Tribe, even though the Tribe is an Indian tribe within the

meaning of 25 U.S.C. §§ 476 and 479 and even though the Tribe has requested that the Secretary do so.

72. The failure of the Secretary to call a special IRA election for the Tribe, to recognize the Tribe's existing tribal government, to provide BIA benefits and services to the Tribe until the Tribe goes through the federal acknowledgment process set forth in 25 C.F.R. Part 83, constitutes arbitrary and capricious action inconsistent with 25 U.S.C. § 476, 25 C.F.R. Part 81, and the Administrative Procedure Act, 5 U.S.C. § 706.

73. Unless the defendants are permanently restrained and enjoined from denying the Tribe and its members BIA benefits and services, recognizing the Tribe's tribal government and calling and conducting a special IRA election for the Tribe under 25 U.S.C. § 476, the Tribe will suffer severe and irreparable injury for which the Tribe has no plain, speedy or adequate remedy at law, in that the federal statutes, regulations, and policies enacted, promulgated, and developed to strengthen tribal governments, including but not limited to, the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 479a-1, the IRA, 25 U.S.C. § 476 and the regulations promulgated thereunder, 25 C.F.R. Part 81 will be violated, the Tribe will be unable to provide benefits and services to its members and the efforts of the Tribe to exercise its powers of self-government will be thwarted.

74. An actual controversy exists between the Tribe and the defendants in that the Tribe contends that the defendants' actions are arbitrary, capricious, discriminatory, and in direct violation of federal law, while the defendants contend that their actions are not arbitrary, capricious, discriminatory, or contrary to the law.

WHEREFORE, the Tribe prays as hereinafter set forth.

**FOURTH CLAIM**  
**[Violation of the Fifth Amendment]**

75. The Tribe realleges each of the allegations set forth in Paragraphs 1-74 above, and, by this reference, incorporates each such allegation herein as if set forth here in full.

76. As heretofore alleged, the Tribe is vested with the inherent sovereign power to determine its own form of government. In the alternative, the Tribe has the right, under the IRA, 25 U.S.C. § 476, to organize a constitutional form of government, subject only to those conditions set forth in the IRA and the regulations promulgated thereunder. Under the IRA, the defendants have a duty to assist the Tribe in the preparation of its IRA constitution, to conduct an IRA election within 180 days after receiving a request to do so from the Tribe, and to approve the Tribe's constitution, if ratified by a majority vote of the adult members of the Tribe at the IRA election conducted by the Secretary under the provisions of 25 U.S.C. § 476 and the regulations promulgated thereunder.

77. By failing to recognize the Tribe's governing body, refusing to call an IRA election for the Tribe after receiving a request to do so, and denying the Tribe and its members BIA benefits and services, the defendants have acted arbitrarily and have unreasonably discriminated against the Tribe in direct violation of the Fifth Amendment to the United States Constitution.

78. Unless the defendants are permanently restrained and enjoined from recognizing the Tribe's existing government, denying the Tribe and its members BIA benefits and services, and refusing to authorize an IRA election on the Tribe's Reservation, the Tribe will suffer severe and irreparable injury for which the Tribe has no plain, speedy, or adequate remedy at law, in that the Tribe's governmental status will be rendered unstable and unpredictable, the Tribe's ability to engage in its governmental functions will be impaired, including but not limited to the ability to

contract with the BIA to provide housing and other basic services to its members, the Tribe's economic, cultural, and political development efforts will fail, and any prospects for the economic, political, and cultural advancement of the Tribe, its Reservation, and its members will be destroyed.

79. An actual controversy exists between the Tribe and the defendants, in that the Tribe contends that the defendants' actions, as set forth above, are arbitrary, capricious, and unreasonably discriminatory in direct violation of the Fifth Amendment to the United States Constitution, while the defendants contend that their actions do not constitute such a violation.

WHEREFORE, plaintiff prays as hereinafter set forth.

**FIFTH CLAIM**  
**[Breach of Trust, List Act, and IRA]**

80. The Tribe realleges each of the allegations set forth in Paragraphs 1-79 above, and, by this reference, incorporates each such allegations herein as if set forth here in full.

81. In addition to the express statutory allegation owed to the Tribe under the Federally Recognized Indian Tribe List Act of 1994, the IRA, and the regulations promulgated under the IRA, defendants have a fiduciary obligation, measured by the most exacting fiduciary standards, in the nature of a continuing trust obligation to assist the Tribe in reorganization its tribal government and to conduct a government-to-government relationship with its existing tribal government.

82. The failure of the defendants to recognize the Tribe's existing tribal government, to contract directly with the Tribe to provide BIA benefits and services to the Tribe, to conduct a special IRA election for the benefit of the Tribe under 25 U.S.C. § 476, and to review and approve the Tribe's constitution under the IRA and the regulations promulgated thereunder, constitutes a direct breach of the United States solemn trust obligation owed to the Tribe and its



members.

83. An actual controversy exists between the Tribe and the defendants in that the Tribe contends that the defendants owe the Tribe a continuing trust duty which the defendants have breached by failing to recognize the Tribe's existing tribal government, by refusing to provide the Tribe and its members with BIA benefits and services to the extent that the defendants make these services and benefits available to other federally recognized Indian tribes and by refusing to call and conduct an IRA election for the Tribe to organize a tribal government under the provisions of the IRA, while the defendants contend that they owe no such fiduciary or trust duty to the Tribe.

**SIXTH CLAIM**  
**[Breach of Trust, Treaty Rights]**

84. The Tribe realleges each of the allegations set forth in Paragraphs 1-83 above and, by this reference, incorporated each such allegation herein as if set forth here in full.

85. The defendants have a fiduciary obligation, measured by the most exacting fiduciary standards, in the nature of a continuing trust obligation to fulfill the United States' obligations owed to the Tribe under the Treaties of 1825, 1826, 1837, 1842, 1847, 1854, 1855, 1863, 1864, and 1867 (collectively referred to hereinafter as the "Treaties"), which guaranteed to the Tribe and its members the right to hunt, fish, and gather on the territories ceded by the Tribe to the United States under the Treaties.

86. The failure of the defendants to recognize the Tribe as the historical successor to the Sandy Lake Band, signatory Tribe to the Treaties of 1825, 1826, 1837, 1842, 1847, 1854, 1855, 1863, 1864, and 1867, constitutes a direct breach of the United States' solemn trust obligation owed to the Tribe and its members.

87. An actual controversy exists between the Tribe and the defendants in that the

Tribe contends that it is the historical successor to the Sandy Lake Band that signed and entered into the Treaties of 1825, 1826, 1837, 1842, 1847, 1854, 1855, 1863, 1864, and 1867 with the United States, which reserved hunting, fishing, and gathering rights on the lands ceded by the Treaties, while the defendants contend the Tribe is not the successor to the Treaties and possesses no such rights under the Treaties.

88. Unless the defendants are permanently restrained and enjoined from recognizing the Tribe as the successor in interest to the Treaties, the Tribe will suffer severe irreparable injury and harm for which it has no plain or adequate remedy at law, in that the Tribe and its members will be denied the right to hunt, fish, and gather on its former ceded lands in direct violation of the Treaties.

WHEREFORE, the Tribe prays as hereinafter set forth.

**SEVENTH CLAIM FOR RELIEF**  
**[Money Damages]**

89. The Tribe realleges each of the allegations set forth in Paragraphs 1-88 above and, by this reference, incorporated each such allegation herein as if set forth here in full.

90. Pursuant to the Treaties of 1825, 1826, 1837, 1842, 1847, 1854, 1855, 1863, 1864, and 1867, the United States guaranteed to the Tribe and its members the right to hunt, fish, and gather on the lands ceded to the United States under the Treaties, free of state regulations and control.

91. By refusing to recognize the Tribe as the successor in interest to the Sandy Lake Band of Mississippi Chippewa that entered into the Treaties with the United States, the defendants: (a) have deprived the Tribe and its members of the hunting, fishing, and gathering rights guaranteed to the Tribe and its members under the Treaties, and (b) have subjected the Tribe and its members, in the exercise of the Treaty rights, to the regulation and control of the

State of Minnesota.

92. As a direct and proximate result of the defendants' breach of the Treaties, the Tribe and its members have been denied the right to hunt, fish, and gather on the lands ceded by the Tribe under the Treaties.

93. As a direct and proximate result of the defendants' violations of the Treaties, the Tribe has suffered money damages in an amount to be proven at trial.

WHEREFORE, the Tribe prays as follows:

1. Declare that the defendants have arbitrarily and capriciously discriminated against the Tribe and its members by denying them BIA benefits and services, refusing to recognize its existing tribal government, failing to call and conduct an IRA election on its Sandy Lake Indian Reservation, and refusing to review and approve its constitution under 25 U.S.C. § 476 and 25 C.F.R. Part 81, in direct violation of the defendants' express statutory and trust obligations;

2. Declare that the defendants have arbitrarily subjected the Tribe to a discriminatory denial of equal BIA benefits and services, similar to those furnished other Indian tribes and Indians in other parts of the United States, in violation of the Fifth Amendment to the United States Constitution and the Administrative Procedure Act, 5 U.S.C. § 701, et seq.;

3. Declare that the defendants have arbitrarily and capriciously discriminated against the Tribe by refusing to recognize its existing tribal government, provide BIA benefits and services to the Tribe, failing to conduct an IRA election for the Tribe and its members on the Sandy Lake Indian Reservation, and failing to review and approve the Tribe's constitution under 25 U.S.C. § 476 and the regulations promulgated thereunder, in violation of the Fifth Amendment to the United States Constitution, the Administrative Procedure Act, 5 U.S.C. § 701, et seq., and the IRA, 25 U.S.C. § 476;

4. Preliminarily and permanently enjoin the defendants, and each of the officers,

agents, and employees working under their supervision and control, from refusing to provide all BIA benefits and services that the Tribe is eligible to receive and which are provided to all other Indian tribes in the United States because of their federally recognized status;

5. Preliminarily and permanently enjoin the defendants, and each of the officers, agents, and employees working under their supervision and control, from refusing to authorize, call, and conduct an IRA election for the Tribe, to allow the members of the Tribe to organize a tribal government under a written constitution, either as an Indian tribe or as a one half-blood Indian community, and to approve the Tribe's constitution pursuant to 25 U.S.C. § 476 of the IRA, provided that a majority of the eligible voters of the Tribe ratify the proposed constitution as required by 25 U.S.C. § 476;

6. Award money damages to the Tribe, according to proof;

7. Transfer to the United States Court of Federal Claims the Tribe's money damages claim if, after discovery in this case is completed, it is discovered that the amount in controversy exceeds the jurisdictional amount of this Court;

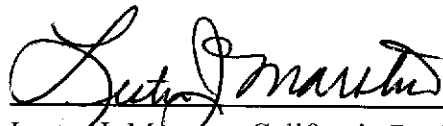
8. Award court costs and reasonable attorneys' fees to the Tribe under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and

9. Award such other relief as the Court may deem appropriate.

DATED: August 16, 2010

RAPPORT AND MARSTON

By:



Lester J. Marston, California Bar No. 081030  
405 West Perkins Street  
Ukiah, CA 95482  
Telephone: 707-462-6846  
Facsimile: 707-462-4235  
*Attorney for Plaintiff*  
*Sandy Lake Band of Mississippi Chippewa*

Law Offices Of

**RAPPORT AND MARSTON**

An Association of Sole Practitioners

405 W. Perkins Street  
P.O. Box 488  
Ukiah, California 95482  
e-mail: [marston1@pacbell.net](mailto:marston1@pacbell.net)

**RECEIVED**  
SEP 01 2010  
U.S. DISTRICT COURT  
CLERK  
MINNEAPOLIS, MINNESOTA  
Phone (707) 462-6846  
Facsimile (707) 462-4235

David J. Rapport  
Lester J. Marston  
Scott Johnson  
Mary Jane Sheppard

August 30, 2010

**VIA OVERNIGHT DELIVERY**

Clerk  
United States District Court  
District of Minnesota  
300 South Fourth Street  
Minneapolis, MN 55415

RE: *Sandy Lake Band of Mississippi Chippewa v. United States of America, et al.*  
Our File No. 07-1

Dear Clerk:

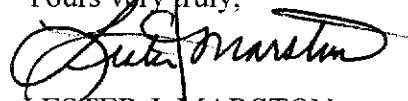
Enclosed please find: (1) the original and two copies of the Civil Case Cover Sheet; (2) original and six copies of the Complaint for Declaratory and Injunctive Relief and Money Damages; and (3) the original and six copies of the Summons in the above matter. Also enclosed is a check made payable to the United States District Court for \$350 for your filing fee.

You will note that I have left the original Complaint unbound so that the Clerk can scan the original, pursuant to my office's telephone conversation with your Clerk this afternoon.

Please file the Civil Case Cover Sheet and Complaint in the Court's records, issue the Summonses, and endorse-file and return the remaining copies to my office in the enclosed envelope.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me.

Yours very truly,

  
LESTER J. MARSTON  
Attorney at Law

LJM/cf  
Enclosures