

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

**THE VILLAGE OF PENDER,  
NEBRASKA, et al.,**

**Plaintiffs,**

**and**

**STATE OF NEBRASKA,**

**Applicant for Intervention,**

**v.**

**MITCH PARKER, in his official  
capacity as Chairman of the Omaha  
Tribal Council, et al.,**

**Defendants.**

**Case No. 4:07CV3101**

**BRIEF IN SUPPORT OF  
MOTION OF STATE OF NEBRASKA FOR  
LEAVE TO INTERVENE AS PLAINTIFF**

**INTRODUCTION**

Plaintiffs, the Village of Pender, Nebraska, et al., filed this action seeking relief declaring that a substantial geographic area west of the now-abandoned right-of-way of the Sioux City and Nebraska Railroad Company, including Pender, a village as defined in NEB. REV. STAT. § 17-201 (Reissue 2012), a political subdivision within the State of Nebraska, and the County Seat of Thurston County, is not within the boundaries of the Omaha Indian Reservation and that Defendants, certain officials of the Omaha Tribe of Nebraska, a federally recognized Indian Tribe, be permanently enjoined from exercising certain aspects of tribal jurisdiction within Pender. Plaintiffs' Second Amended Complaint (hereinafter "Filing 55") at 9.

On October 4, 2007, this Court stayed this action to allow Plaintiffs to exhaust such remedies as they may have in the Omaha Tribal Court. Filing 53 at 4. The Court based its order on the assumption that "the tribal court will act rapidly to resolve the disputed issues once they

are presented to the tribal court.” *Id.* at 2 n.1. Over four years later, the tribal court issued its opinion. *The Village of Pender, Nebraska, et al. v. Morris, et al.*, CV. No. 08-2 (Omaha Tribal Ct. Feb. 4, 2013) (memorandum opinion and order denying Plaintiffs’ motion for summary judgment and granting Defendants’ motion for summary judgment on a finding that Pender is within the boundaries of the Omaha Indian Reservation) (hereinafter the “Tribal Ct. Op.”).

The tribal court erred in determining Pender, Nebraska and its surrounding areas west of the now-abandoned right-of-way of the Sioux City and Nebraska Railroad Company are within the boundaries of the Omaha Indian Reservation. Such a determination, if upheld, would pose immediate and material harm to the area’s residents and to the State’s authority over the region. Already, the federal government and the Omaha Tribe itself have manifested their intent to begin exercising certain jurisdiction within Pender as though it is part of the reservation. Such a disruption of Pender’s lawful status as *not* part of the reservation would severely damage the State’s legal interest in the village and its ability to enforce the laws and protect the health, security, and welfare of its residents. Accordingly, the State now moves to intervene in this action as Plaintiff to protect its interests and those of its citizens in the Village of Pender and surrounding areas.

The State has conferred with counsel for all existing parties. Plaintiffs have indicated they do not object to the State’s motion to intervene.

#### Note Regarding References to the Geographic Area at Issue in this Action

Though the Plaintiffs in this action are various sellers of alcoholic beverages within Pender and the Village of Pender itself, the geographic area at issue extends well beyond the Village’s municipal boundaries. Indeed, it includes approximately 50,157 acres – more than 78 square miles – west of the now-abandoned right-of-way of the Sioux City and Nebraska

Railroad Company. Tribal Ct. Op. at 8. To be clear, the State's interest in this matter pertains to the entirety of the geographic area implicated by the Tribal Court's opinion, not just Pender. However, for the sake of clarity, references to the full expanse of territory in question have been abbreviated in this brief. Toward that end, all references to "Pender" in the context of whether it is within or without the boundaries of the Omaha Indian Reservation should be construed to refer to the approximately 50,157 acres lying west of the now-abandoned right-of-way of the Sioux City and Nebraska Railroad Company and which the Omaha Tribe now claims was not diminished by Congress.

## **ARGUMENT**

### **I. THE STATE IS ENTITLED TO INTERVENTION AS A MATTER OF RIGHT**

A party is entitled to intervene as a matter of right under Fed. R. Civ. P. 24(a)(2) if: (1) the application to intervene is timely; (2) the applicant has a recognized interest in the subject matter of the litigation; (3) the interest might be impaired as a result of the litigation; and (4) the interest will not be adequately protected by the existing parties. *Chiglo v. City of Preston*, 104 F.3d 185, 187 (8th Cir. 1997). In addition, a prospective intervenor must establish Article III standing. *Coffey v. Comm'r of Internal Revenue*, 663 F.3d 947, 950 (8th Cir. 2011). The Eighth Circuit has stated that "Rule 24 is construed liberally" and courts should "resolve all doubts in favor of the proposed intervenors." *United States v. Union Electric Co.*, 64 F.3d 1152, 1158 (8th Cir. 1995)

The State satisfies all three of the intervention criteria and thus may intervene as a matter of right.

#### **A. The State's Application to Intervene is Timely.**

Timeliness of a motion to intervene is determined by considering all the circumstances of the case and is committed to the discretion of the trial court. *Union Electric Co.*, 64 F.3d at

1158-59. Four factors are relevant to the timeliness determination of a motion to intervene (though no single factor is dispositive): (1) how far the litigation had progressed at the time of the motion for intervention, (2) the prospective intervenor's prior knowledge of the pending action, (3) the reason for the delay in seeking intervention, and (4) the likelihood of prejudice to the parties. *United States v. Ritchie Special Credit Invs., Ltd.*, 620 F.3d 824, 832 (8th Cir. 2010). Prejudice is determined by evaluating "whether existing parties may be prejudiced by the delay in moving to intervene, not whether the intervention itself will cause the nature, duration, or disposition of the lawsuit to change." *Union Electric Co.*, 64 F.3d at 1159.

Here, the timeliness of the State's motion to intervene should be evaluated in the context of the chronology of *this* Court's consideration of this matter. Despite several years having passed since the October 4, 2007 stay, relatively little in the way of substantive litigation in federal court has occurred. At the time the Court issued the stay, the case had progressed only to the point at which the parties had filed briefs on Plaintiffs' initial motion to dismiss. The Court denied the motion to dismiss, granted Plaintiffs' then-pending motion to amend their complaint, and ordered Plaintiffs to immediately file their Second Amended Complaint, which became the operative complaint for this matter. Filing 53 at 2. Indeed, given the federal court stay which followed thereafter, Defendants have yet to even file an answer to the Second Amended Complaint. In sum, despite appearances, this litigation is substantively quite young.

The facts of the instant case are directly analogous to those of *Mille Lacs Band of Chippewa Indians v. Minnesota*, a case in which the Eighth Circuit, reviewing for abuse of discretion, reversed a denial by the United States District Court for the District of Minnesota of a motion to intervene on grounds that it was untimely. *Mille Lacs Band of Chippewa Indians v. Minnesota*, 989 F.2d 994 (8th Cir. 1993). The Chippewa Indians and the State of Minnesota had been litigating

the status of land subject to an 1837 treaty whereby the Chippewa ceded the territory in question to the United States, provided the Chippewa would retain hunting and fishing privileges therein. *Id.* at 996.

The *Mille Lacs* litigation was triggered by the Minnesota Department of Natural Resources' application of state hunting and fishing regulations to the members of the Chippewa on the 1837 tract. *Id.* Some eighteen months after the suit had been commenced (and, notably, nine months after the district court's deadline for filing motions to add parties), certain landowners residing on the disputed tract moved to intervene on the basis that developments in the litigation gave them reason to believe the ultimate outcome of the litigation could be that the Chippewa's hunting and fishing privileges extended to the landowners' privately-held property. *Id.* at 999. At that point, given the apparent posture of the litigants, no current party could adequately represent the landowners' obvious interest in the litigation. *See id.*

Though the Eighth Circuit questioned whether the intervenor-landowners' awareness of the litigation's bearing on their interest could have been realized and acted upon sooner, the court nevertheless noted the underlying litigation had "scarcely progressed" and that "the legal proceedings were still at a preliminary stage." *Id.* (settlement negotiations had taken place but the litigation itself remained in its infancy on the district court's docket and had not yet reached discovery). The court even noted that "had intervention promptly been allowed, [the landowners' motion] probably would not have delayed a trial in the case." *Id.*

Such is the case here. The State's motion to intervene comes at an early stage of this Court's consideration, will in no way disturb the Court's briefing schedule for a final resolution, and, as discussed below, does not prejudice the existing parties in the least.

The facts of *Mille Lacs* and the instant case stand in marked contrast to the facts of *Arrow v. Gambler's Supply*, where the Eighth Circuit upheld a district court's denial of a proposed intervenor's application on the basis that the intervenor's "monitoring" of the litigation before moving to intervene constituted excessive delay. *Arrow v. Gambler's Supply*, 55 F.3d 407, 409 (8th Cir. 1995). There, the litigation remained active in the federal district court throughout the applicant's two year delay. More critically, and of particular bearing on the court's prejudice analysis, was the fact that the parties had concluded settlement negotiations and achieved an agreement only one month before the scheduled trial date. *Id.* In other words, the litigation had progressed substantially far, a key prong of the *Union Electric Co.* analysis. *See* 64 F.3d at 1159. Thus, the parties would have been prejudiced due to the expense of reopening settlement negotiations and preparing for trial.

Here, this matter has not been actively litigated in federal court over the past four years. Even if a settlement were possible (it almost definitely is not), no negotiations have occurred. By the Court's recently issued schedule, litigation of this matter will likely occur primarily via briefs in the context of motions for summary judgment over the following six months. None of said briefing has occurred. The parties have not achieved any agreement which would be undone by the State's intervention and would endure no prejudice as a result.

Additionally, the reversal in posture of the United States Government with regard to whether Pender was diminished from the Omaha Indian Reservation necessitates the State's involvement as a litigant. Ultimately, this Court will very likely utilize the Supreme Court's *Solem* inquiry to analyze whether the reservation was diminished such that Pender and surrounding areas west of the railroad right-of-way are no longer Indian Country. *See Solem v. Bartlett*, 465 U.S. 463 (1984). Admittedly, the current legal position of the United States, though deeply flawed and

adopted relatively recently following an abrupt policy reversal, will carry some persuasive weight in terms of informing the Court of the circumstances. It would not be so important for the State to be positioned as an actual litigant to rebut the United States' erroneous claims if they materialized merely as federal agency opinions. However, now that the United States has recently put forth its Pender diminishment claims in the context of *this litigation*, it is appropriate for the State to be positioned as a litigant to rebut them. *See* Brief of United States of America as Amicus Curiae in Support of Defendants, *The Village of Pender, Nebraska, et al. v. Morris, et al.*, CV. No. 08-2 (Omaha Tribal Ct. Sept. 17, 2012).

Early in the proceedings of this case, the State recognized the importance of this issue and had limited involvement in the litigation. *See* Filing 8-2, Brief in Support of Pls.' Mot. Temp. Restraining Order, Ex. 10, CM/ECF pp. 8-9 (Aff. of Jodi Fenner, Assistant Attorney General, State of Nebraska, regarding earlier Attorney General opinions regarding Pender's status relative to the Omaha Indian Reservation). Because the State's conclusion was based, in part on analysis of the federal government, the State perceived a limited role was appropriate. But given the about-face in the United States' legal conclusion and the weight its position may carry in this matter, even if only as amicus curiae, it is vital the State have the opportunity to respond as a litigant.

For that matter, given the State's substantial interests in the outcome of this matter (as described in depth in part I(B), below), and in light of the fact that under the Court's briefing schedule, the State, as only amicus curiae, would not have the opportunity to respond to claims raised in the existing parties summary judgment briefs, *see* Filing 85 at 2, the State can only adequately litigate its interests in this matter as an intervening plaintiff.

Moreover, in the weeks since the issuance of the Tribal Court's opinion, the Omaha Tribe has demanded from the State of Nebraska a share of certain fuel tax collections made not only within Pender, but within the entire area in question west of the now-abandoned right-of-way of the Sioux City and Nebraska Railroad Company. *Affidavit of David A. Lopez*, Ex. 2 (Letter from Rodney Morris, Omaha Tribal Chairman, to Douglas A. Ewald, Tax Commissioner, Nebraska Department of Revenue (Feb. 12, 2013)). The Tribe's demand is premised on the erroneous conclusion that Congress "did not diminish the boundary of the [Omaha] Reservation" and that "the original boundary remains intact." *Id.*

The Tribe's tax demand bears the potential to foster litigation in its own right, yet its resolution turns on precisely the same question at the heart of this litigation: whether the area in question west of the now-abandoned right-of-way of the Sioux City and Nebraska Railroad Company is within the Omaha Reservation or not. Accordingly, the State's application is timely in light of this recent legal demand by the Omaha Tribe and the interest of judicial efficiency would be well-served by resolving the central issue of Pender's status in a single action.

In light of the fact that this matter has not substantively progressed in federal court, the complete absence of prejudice the State's intervention would pose to the parties, and the vital interests the State has in the subject matter (and which the State alone can adequately litigate), the State's application to intervene is timely.

**B. The State Has a Legally Cognizable Interest in the Subject Matter of the Litigation.**

An applicant for intervention "must have a recognized interest in the subject matter of the litigation." *Mille Lacs Band*, 989 F.2d at 997. "[I]ntervention requires that the intervenor have an interest in the proceedings that is 'direct, substantial, and legally protectable.'" *Union Electric Co.*, 64 F.3d at 1161.



Here, it is difficult to imagine a more legally cognizable interest in the subject matter of pending litigation than the State has in this action. The outcome of this litigation could determine whether approximately 78 square miles of territory, including Pender, a Nebraska village, the county seat of Thurston County, Nebraska, home to a population that is more than 95% non-Tribal, and which has, for more than one hundred twenty-five years, been subject solely to the jurisdiction to the constitution, laws, and regulations of the State of Nebraska, will be found to fall within the boundaries of the Omaha Indian Reservation and subject to the myriad jurisdictional consequences which would flow therefrom.

Examples of the ramifications of the outcome of this matter are already becoming clear. An obvious initial example is the impact a holding that Pender is within the reservation would have on the parties to the instant litigation. The impetus for this case was Defendants' attempt to enforce certain aspects of the Omaha Tribal Code against Plaintiffs on the grounds that Pender is within the reservation. *See* Filing 55, ¶ 35. The Tribe and the federal government have recently manifested their intent to assert other forms of jurisdiction on the same grounds. The United States Department of Justice has informed the State that it believes the Omaha Reservation has *not* been diminished with regard to Pender and that it will enforce federal criminal laws within Pender accordingly. *Affidavit of David A. Lopez*, Ex. 1 (Letter from Deborah R. Gilg, United States Attorney for the District of Nebraska, to David Heineman, Governor of Nebraska (Oct. 9, 2012)) (identical letters were sent to Jon Bruning, Attorney General of Nebraska, and Colonel David A. Sankey, Superintendent, Nebraska State Patrol).

More recently, the Omaha Tribe has adopted the tribal court's opinion that Pender is within the reservation and used it as the basis to "demand[ ] that the Nebraska Department of Revenue forward the tribal share of the fuel tax revenue attributable to retailers located [in

Pender] from March 1, 2007 to the present . . . . Additionally the Omaha Tribe demands that the Department of Revenue continue to include any such retailers in future fuel tax calculations . . . .” *Affidavit of David A. Lopez*, Ex. 2..

This is to say nothing of the massive jurisdictional confusion which would ensue if Pender were deemed to be within the reservation’s boundaries; it is merely the first assertion of jurisdiction. Pender residents would face immediate uncertainty over whose jurisdiction they fall under: that of the state, to which they are long-accustomed, or tribal and federal agencies.

All of these examples represent issues for which the State would be able to demonstrate a clear interest as an original party were they to be litigated separately. Given that *this* litigation bears the potential to resolve the central issue underpinning all three (and countless others yet to materialize), the State’s interest in this matter is clear.

Given the vital interest the State has in retaining the authority to enforce its laws within Pender for the public health, safety, and welfare of its residents, and given that the adjudication of Pender’s status as being within or without the Omaha Indian Reservation would substantially affect such authority, it is clear the State has a legally cognizable interest in the subject matter of this litigation.

### **C. The State’s Interest May be Impaired by the Disposition of this Action.**

Rule 24(a)(2) requires only that “disposition of the action may as a practical matter impair or impede the applicant’s ability to protect [its] interest . . . .” The applicant ““need not show that, but for its intervention, its interest *would be* impaired by the operation of res judicata, collateral estoppel, or stare decisis, but rather that its interest *may be* so impaired.”” *Union Electric Co.*, 64 F.3d at 1161 (quoting *Kansas Pub. Emples. Retirement Sys. v. Reimer & Koger Assocs.*, 60 F.3d 1304, 1308 (8th Cir. 1995)) (emphasis added).

It is entirely possible that the aforementioned legal doctrines would preclude the State from obtaining relief in separate litigation, depending on the Court's holding in this case. As described in part I(B) of this brief, there have been several manifestations by the Omaha Tribe and the federal government to assert jurisdiction within Pender on the basis that it is part of the Omaha Reservation.

For example, as described above, the Tribe is now prematurely demanding from the State fuel tax receipts which could total \$3 million over ten years. Were the State to remain excluded from being a party to this litigation and attempt to litigate the Tribe's claim subsequent to an adverse ruling from the Court in *this* matter, the legal doctrines discussed in *Union Electric Co.* would very likely work to frustrate the State's ability to contest future jurisdictional disputes by the Tribe in separate litigation.

The fundamental underlying question for each of the above-referenced issues (each of which represents a potential independent controversy) is whether, in fact, Pender *is* within the reservation. Accordingly, this Court's determination of the question may be binding upon subsequent litigation which hinges on the same basic issue. It necessarily follows that the State's interest may be impaired by the disposition of this action.

**D. The State's Interests May Not Be Adequately Represented by the Existing Parties.**

The State's burden in showing potential inadequate representation of its interest in this action is "minimal." *Kansas Pub. Emples. Retirement Sys.*, 60 F.3d at 1308. An applicant for intervention need only show that representation "*may be*" inadequate. *Id.* (emphasis added); See also *Mille Lacs Band*, 989 F.2d at 999. The adequacy of representation is determined by comparing the interests of the proposed intervenor with the interests of the current parties to the action. *Sierra Club v. Robertson*, 960 F.2d 83, 86 (8th Cir. 1992). Doubts regarding the

propriety of permitting intervention should be resolved in favor of allowing it, because this serves the judicial system's interest in resolving all related controversies in a single action. *Id.* Moreover, the doctrine of *parens patriae* posits that, when a government entity is a party and the case concerns a matter of sovereign interest, the government is presumed to adequately represent the interests of the public. *Curry v. Regents of the Univ. of Minnesota*, 167 F.3d 420, 423 (8th Cir. 1999).

Though the issue raised by Plaintiffs at the heart of this case, i.e., whether Pender is within the boundaries of the Omaha Reservation, is the same one for which the State seeks a resolution, the remedy which one or the other might ultimately pursue or be willing to accept could differ. This case stems from the Tribe's attempt to require Plaintiffs, all but one of which are sellers of alcoholic beverages within Pender, to pay for Tribal liquor licenses and submit to a ten percent sales tax on the sale of liquor, pursuant to the Omaha Tribal Code. *See* Filing 55, ¶¶ 34-35. Thus, a possible remedy which deems the reservation to have been diminished with regard to Pender but nevertheless determines the above-referenced Plaintiffs are *not* subject to the Tribe's alcoholic beverage control regulations may be satisfactory to said Plaintiffs but not at all to the State.

Plaintiff, the Village of Pender, though itself a governmental entity, is not adequately situated to represent the full range and scope of the interests possessed by the State of Nebraska, which include engaging in litigation to protect the integrity of Nebraska's sovereignty throughout its territory. Indeed, as noted in the clarifying paragraph in the Introduction section of this brief, the geographic area at issue in this matter is not only the Village of Pender but includes approximately 50,157 acres west of the now-abandoned right-of-way of the Sioux City and Nebraska Railroad Company. *No* existing Plaintiff is situated to adequately represent the

State's myriad jurisdictional interests within that portion of the 50,157 acres outside Pender's municipal boundaries. Only the State is so situated.

An immediate example of this is the one already referenced in sections I(B) and I(C) of this brief. The Omaha Tribe has demanded a share of motor fuels tax collections from the Nebraska Department of Revenue. That is a direct interest of the State which may hinge on a resolution of the substantive issue at the heart of *this* litigation. No current party is situated in any way to represent that interest. Only the State is so situated.

Even if the Court determines that the interests of Plaintiff the Village of Pender and the State of Nebraska are concurrent and identical, the State is nevertheless statutorily empowered to represent its interests in this matter. NEB. REV. STAT. §§ 84-202 ("The Department of Justice shall have the general control and supervision of all actions and legal proceedings in which the State of Nebraska may be a party or may be interested . . . ."); 84-203 ("The Attorney General is authorized to appear for the state and prosecute and defend, in any court or before any officer, board or tribunal, any cause or matter, civil or criminal, in which the state may be a party or interested."); 84-206.01 ("The Attorney General shall commence, prosecute, or defend all actions relating to Nebraska's boundary line which affect the rights and interests of Nebraska landowners whose land is being taxed by Nebraska political subdivisions. . . . The Attorney General shall also take any other action that is required in his or her judgment to protect all rights and interests of such landowners.").

Accordingly, the State's interests may not be adequately represented by the existing parties.

### **E. The State has Standing to Intervene.**

Article III standing is a prerequisite for intervention in a federal lawsuit. *Curry*, 167 F.3d at 422. Constitutional standing requires a showing of: (1) an injury in fact, which is an invasion of a legally protected interest that is concrete, particularized, and either actual and imminent; (2) causation; and (3) redressability. *Id.*

The standing inquiry overlaps the requirement that an applicant for intervention possess a legally protected interest in the subject of the action which may go unprotected absent intervention. As discussed in part I(B) of this brief, the State clearly possesses an interest in the subject of this action, as the determination of whether Pender is within the boundaries of the Omaha Reservation impacts the State's jurisdictional authority within Pender and its ability to provide for the health, safety, and welfare of its citizens there. It is both actual *and* immediate, as evidenced by the manifestations of an intent by both the tribe and federal government to further assert jurisdiction in Pender on the basis that it is within the reservation. Finally, a favorable decision by this Court that Pender is not within the boundaries of the Omaha Reservation would redress the State's claims.

Accordingly, the State has standing to intervene in this action.

## **II. THE STATE SHOULD BE ALLOWED TO PERMISSIVELY INTERVENE.**

Should the Court determine the State is not entitled to intervene as a matter of right, the State should be allowed to permissively intervene in the pending action. Fed. R. Civ. P. 24(b)(2) provides, in pertinent part:

Upon timely application anyone may be permitted to intervene in an action: . . .  
 (2) when an applicant's claim or defense and the main action have a question of law or fact in common . . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

The decision to grant or deny a motion for permissive intervention is wholly discretionary. *South Dakota v. United States Dep't of Interior*, 317 F.3d 783, 787 (8th Cir. 2003). The principal consideration in ruling on a Rule 24(b) motion is whether the proposed intervention would unduly delay or prejudice the adjudication of the parties' rights. *Id.*

The reasoning set forth in part I of the State's claim that it is entitled to intervene as a matter of right are equally applicable to the Court's consideration of a motion for permissive intervention. As noted in part I(A) of this brief, the State's motion to intervene is timely. Moreover, the State's claim as intervenor, i.e., that Pender is *not* within the boundaries of the Omaha Reservation, is the same as the central issue in this action.

Finally, the State's intervention would not unduly delay or prejudice the adjudication of the rights of the original parties. The State is prepared to participate in the remainder of this action in a manner identical to that which the Court appears to have envisioned case progression would in its February 19th Order, and pursuant to the same briefing schedule. The case remains at an early stage in federal court and the State's intervention will not delay or prejudice the interests of any existing party.

## CONCLUSION

For the foregoing reasons, the State of Nebraska respectfully requests the Court grant its Motion for Leave to Intervene as Plaintiff.

Submitted this 14th day of March, 2013.

STATE OF NEBRASKA, Applicant for Intervention.

By: JON BRUNING, NE #20351  
*Attorney General of Nebraska*

By: s/ David D. Cookson  
David D. Cookson, NE #18681  
*Chief Deputy Attorney General*

Katherine J. Spohn, NE #22979  
*Deputy Attorney General*

Ryan S. Post, NE #24714  
David A. Lopez, NE #24947  
*Assistant Attorneys General*

2115 State Capitol  
Lincoln, Nebraska 68509  
(402) 471-2682  
David.Cookson@nebraska.gov  
Katie.Spohn@nebraska.gov  
Ryan.Post@nebraska.gov  
Dave.Lopez@nebraska.gov

Attorneys for Applicant for Intervention.



**CERTIFICATE OF SERVICE**

I hereby certify that on March 14, 2013, I electronically filed the foregoing document with the Clerk of the United States District Court for the District of Nebraska, using the CM/ECF system, causing notice of such filing to be served upon all parties' counsel of record.

By: s/ David D. Cookson  
David D. Cookson