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The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ROBERT REGINALD COMENOUT SR., EDWARD AMOS COMENOUT III, and THE ESTATE OF EDWARD AMOS COMENOUT JR., BY SPECIAL ADMINISTRATOR ROBERT E. KOVACEVICH, Plaintiffs, v. RICKY JOSEPH, individually and as Acting Superintendent of Indian Affairs, and THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS PUGET SOUND AGENCY, a bureau of the UNITED STATES, Defendants.	No. 2:15-cv-01389-RAJ PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO DISMISS

Plaintiffs, through their attorneys, respond to Defendants' Motion to

Dismiss filed November 3, 2015, as follows.

STANDARD OF REVIEW

A complaint must allege sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal,* 556 U.S. 662, 663, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). *Harris v. County of Orange,* 682 F.3d 1126, 1131 (9th Cir. 2012), citing *Ashcroft v. Iqbal,* 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). A complaint must be liberally construed in favor of the Plaintiff. *Jenkins v. McKeithen,* 395 U.S. 411, 421, 89 S.Ct. 1843, 23 L.Ed.2d 404 (1969); *National Council of La Raza v. Cegavske,* 800 F.3d 1032, 1039 (9th Cir. 2015).

The case is ripe for adjudication.

The letter of Ricky Joseph (Exhibit A to the Complaint) is a final order as it states that the BIA has determined. ". . .you are in trespass on Public Domain Tract 130-1027. . .you must immediately cease your use and occupancy of the Property. . .Accordingly, you must vacate the premises." Defendant, at page 2 of his motion, argues that Plaintiffs should wait for an eviction notice. The letter makes no mention of further review.

Like *Southern California Aerial Advertisers' Association v. F.A.A.,* 881 F.2d 672 (9th Cir. 1989), when the order has immediate effect. "Holwegen's letter possesses the requisite finality" and "carried an expectation of immediate compliance." *Id.* at 676. The court reviewed the agency action as a final order. It was invalid as it was not issued in accordance with the

Administrative Procedure Act. Here, the letter also stated: "In no event should you interpret the 20-say (sic) deadline to vacate the property as a grace period." Defendant asserts that Comenout has suffered no ill effects. Comenout, Doc. #1, page 14, alleges summarily eviction. His declaration, filed with this response, notes at page 2, that he is 83 years old and confined to a wheelchair. He lives on the property that has runways that allow wheelchair access. Obviously, evicting an 83-year-old wheelchair bound individual is injury. Hardship to Comenout, a vulnerable adult under state law, Wash.Rev.Code § 74.34.020(17)(a); 74.34.067(3) includes Indian representatives. Defendant is exploiting Robert R. Comenout Sr. by seeking abandonment, Wash.Rev.Code 74.34.110(1). This alone proves hardship. See *Levin v. City and County of San Francisco,* 71 F.Supp.3d 1072, 1079 (D.C. Cal. 2014); *Abbott Laboratories v. Gardner,* 387 U.S. 136, 149, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967), abrogated on other grounds. Defendant cites *Chandler v. State Farm Mutual Auto Insurance Co.,* 598 F.3d 1115 (9th Cir. 2010). *Chandler* does not apply because no recovery is possible until a third party suit, not yet commenced, gives a recovery. It is factually distinguishable. *Air California v. U.S. Department of Transportation,* 654 F.2d 616 (9th Cir. 1981). The letter did not impose an obligation. *Id.* at 621. Here the letter told Comenout to immediately vacate and granted no grace period. Plaintiffs alleged trespass and that no administrative remedies were available.

Doc. #1, page 28, page 12, page 14. No due process rights, including notice and right to be heard, were offered. Doc. #1, page 15.

FACTUAL ISSUES

The declaration of Stephanie Lynch, Doc. #6, page 3, admits that the letter of Ricky Joseph, dated August 12, 2015, was not sent to Plaintiff Edward A. Comenout III, who is a 14.1% owner of the land, or to the Estate of Edward A. Comenout Jr. At page 2, the declaration states that Plaintiff Robert Reginald Comenout Sr., combined with the ownership of Edward A. Comenout III, is over 20%. Robert R. Comenout Sr. inherited .33% from the Estate of Duane James Harris so the combined ownership is greater at this time. One non-Indian, Martina Ann Garrison, is also listed as owning 6.6%, even though she only has a life estate with no rights of survivorship. See page 3 of the Complaint, Doc. #1. The declaration of Stephanie Lynch does not address the allegation that the Spokane County Probate, for purpose of vote, is the 100% owner of the buildings, Complaint, Doc. #1, pages 5-8. The buildings were not probated by the BIA. Doc. #1, page 4. *Confederated Tribes of Chehalis Reservation v. Thurston County Bd. Of Equalization,* 724 F.3d 1153 (9th Cir. 2013), a case on off reservation Indian trust land purchased in 2002, discusses the issue of physical structures on off reservation Indian land purchased pursuant to 25 U.S.C. § 465, the same statute involved in this case. The issue of whether the permanent improvements were within the state statute, Wash.Rev.Code § 84.04.080, and

therefore it is not rights to land within federal jurisdiction, was rejected. The Court stated: "Therefore, it is irrelevant whether permanent improvements constitute personal property under Washington law," citing the Federal Supremacy provision, U.S. Const. art. VI, cl. 2. The *Chehalis* case applies. Therefore, the buildings on the Comenout land are property or rights to property defined under 25 U.S.C. § 465. Since the Bureau of Indian Affair's probate did not probate the buildings, they are still governed by federal law.

The Complaint, Doc. #1, pages 17-18, alleges that Robert Reginald Comenout Sr. manages and protects the property. Right to possession and defense by Robert Reginald Comenout Sr. against all attackers, including the state of Washington, is alleged. Robert Reginald Comenout Sr. is physically disabled and needs to stay on the property as it accommodates disabled persons. He is the ruling elder, Doc. #1, page 19. Conspiracy by the Defendant is alleged (Doc. #1, page 21). Violations of constitutional rights by Defendant, well beyond any federal authority, is alleged, Doc. #1, page 22. The BIA has not policed the property, Doc. #1, page 23, and did not protect the civil rights of Plaintiffs, page 27.

The Declaration of Robert R. Comenout Sr. attached, at page 6 and Appendix F, points out the BIA and Quinault Nation's concern on the issue of right to control the buildings on the land. Whether the BIA can affect the rights of the Comenouts as limited by *Babbitt v. Youpee,* 519 U.S. 234, 117 S.Ct. 727, 136 L.Ed.2d 696 (1996), also has to be determined.

Plaintiff Robert R. Comenout Sr.'s declaration, page 3, points out that he has an increase in ownership and other allottees side with him. He declares that he has the exclusive right as elder to use all the property. The Indian custom of rule by the oldest living male heir has not been determined, pages 2 and 4. Comenout is also the conservator of the property to prevent vandalism (page 3). He attached the letter of Judy Joseph to Edward A. Comenout Jr., Appendix C. Comenout declares (page 5) that prior Commissioner Felshaw said that they can operate the same as if the land was on an Indian reservation. This is clearly what the federal law, 18 U.S.C. § 1151(c), states. Judy Joseph, Appendix C, page 6, unequivocally states that the BIA cannot force activity among owners. This proves arbitrary and capricious activity by Defendant. The BIA letter from acting superintendent, Don Chambellan (page 6), raised the concern of the BIA on who controls the buildings and proves legitimate controversy.

See Exhibit A to the Complaint, Doc. #1. This assumption is in direct conflict with the common law of joint tenancy.

The Complaint, Doc. #1, pages 4-8, alleges that the estate of Edward A. Comenout Jr., probated by the BIA, did not include permanent structures. The Spokane County probate is the 100% owner of the buildings, No. 10-4-01216-0. Spokane County, Washington, has exclusive jurisdiction as the Estate is an insolvent probate and has not been distributed. The other owners cannot have any control of the structures.

At page 26, the Plaintiffs allege that four governments and the administrative agencies disagree on jurisdiction; hence declaratory and injunctive relief is sought, Doc. #1, Pages 28, 30, as well as civil rights damages, pages 29, 30.

One Joint Tenant cannot bind the other.

The Defendant assumes that the vote of allottees determines expulsion of Plaintiff Robert R. Comenout Sr. and that the BIA can enforce the vote of the majority. The common law of joint tenancy does not allow one cotenant to bind the other.

The Common Law of Joint Tenancy does not authorize a majority vote; cotenants cannot evict another cotenant.

20 Am.Jr.2d Co-Tenancy and Joint Ownership § 95, page 231, states:

> Since there is, merely by reason of the existence of a cotenancy, no agency relationship between the cotenants, one cotenant cannot ordinarily bind cotenants by contracts with third persons or transfer or dispose of the interest of another cotenant in such a manner as to be binding, unless duly authorized to do so, or unless his or her act is thereafter ratified by the other cotenants.
> . . .
> A single cotenant generally cannot encumber the property by his or her own sole act. Thus, a mortgage or trust deed executed by less than all of the cotenants and purporting to bind the entire estate is a mere nullity insofar as the non assenting cotenants are concerned, unless they authorized such action or thereafter ratified it.

20 Am.Jur.2d, *Co-Tenancy and Joint Ownership,* § 100, pages 230-1 state:

> In order to make a binding lease of the entire common property, all of the co-owners must act, either jointly or severally, one cotenant has no power to lease the entire estate, or any specific

portion of the estate, unless he or she is duly authorized to do so by the other cotenants.

> ✦ **Observation:** There is an important distinction in form between the estate of joint tenants and the estate of tenants in common. If all the joint tenants unite in the execution of a lease, it is regarded in law as only one lease made by one lessor, whereas a lease executed by several tenants in common is regarded as several leases of their respective and separate shares.

If one of the co-owners should purport to make an unauthorized lease of this kind, it is in no way binding upon the interests of the other owners. Such an unauthorized lease:

- is without force
- is invalid as to the cotenants of the lessor
- is voidable by the cotenants
- the cotenants may regard the lessee as a mere trespasser, so far as his or her claim to the entire property is concerned, if they have not ratified the first co-owner's act.

Comenout has a right to use all the property; he accommodates other owners.

Comenout's title is good against anyone but the United States. Comenout, a joint tenant, has a right to use all the property. *In re Foreclosure of Liens*, 922 P.2d 73, 77 (Wash. 1996). "The rule is that each tenant in common is entitled to the use, benefit, and possession of the entire property, the only limitation on his right being that he must so exercise his right as not to interfere with the equal rights of his co-tenant." *De La Pole v. Lindley*, 230 P. 144 (Wash. 1924). The lease on the property only addressed the convenience store, not occupancy of the living quarters. The action of the

other allottees cannot bind Comenout. He is entitled to use all the property in common. He has equitably allowed joint use by other owners.

Comenout's declaration attaches a letter, (Appendix C), from Judy Joseph that clearly states that a minority owner has a right of occupancy. The deed attached to the declaration (Appendix B) and the statement in 1926, by the BIA official, certifies that the property was to be occupied as a home. *Harlow v. Fitzgerald,* 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982), as updated by *Demuth v. County of Los Angeles,* 798 F.3d 837, 839 (9th Cir. 2015), allow a 1983 action. *Pistor v. Garcia,* 791 F.3d 1104 (9th Cir. 2015) and *Maxwell v. County of San Diego,* 708 F.3d 1075 (9th Cir. 2013) also apply. Defendant has acted beyond his authority. Doc. #1, pages 12, 18, 21, 22, and 29.

If lands of an allottee are condemned for any public purpose, compensation must be paid. 25 U.S.C. § 357. It is unlawful for any person to induce an allottee to convey an interest in the allotment. 25 U.S.C. § 202. An Indian not residing on a reservation can own an allotment. 25 U.S.C. § 334. Taking of property by a government without formal condemnation proceedings is prohibited. *U.S. v. Clarke,* 445 U.S. 253, 259, 100 S.Ct. 1127, 63 L.Ed.2d 373 (1980).

State Statutory and Case Law upholds State Jurisdiction

This case is ripe for adjudication as the key threshold issue is whether the state of Washington or the federal government has jurisdiction of the

allotment. The allotment is a public domain allotment and not on any Indian reservation. The complaint, Doc. #1, pages 23-5; page 10 alleges that the state of Washington contends that it has jurisdiction of the site, thereby ignoring 18 U.S.C. § 1151(c) and cases like *Magnan v. Trammell,* 719 F.3d 1159 (10th Cir. 2013). (Doc. #1, page 10.) Wash.Rev.Code § 64.20.030 provides that Indian allottees within the state can convey their land as though "all existing disabilities relating to alienation of their real estate" shall have the same effect as any other deed. Wash.Rev.Code § 64.20.030 conflicts with federal law, 25 U.S.C. § 349, that states to the effect that until the restrictions are removed the allotments are "subject to the jurisdiction of the United States." *State v. Jim,* 273 P.3d 434 (Wash. 2012), holds that if the land is allotted to an individual Indian, it is off reservation Indian land and is controlled by the State. This construction applies to *State v. Comenout,* 267 P.3d 355 (2011), a case on the Comenout site that was later dismissed by the State on its own ex parte motion. The case upholds state jurisdiction on the basis of retrocession of P.L. 280, *id.* at 357-8. The Comenouts do not agree with the case for many reasons, including lack of recognition that Public Law 280 did not affect state tax jurisdiction. However, the State has again charged Comenout with not collecting State cigarette taxes. Pierce County Superior Court No. 15-1-02318-9 (Doc. #1, pages 15-16, 23-4). *State v. Cooper,* 928 P.2d 406 (Wash. 1996), a case on crime allegedly committed by an Indian on an off reservation trust allotment holds that state jurisdiction

over the site "presents a question of state law." *Id.* at 778. *Tohono O'odham Nation v. City of Glendale,* ___ F.3d ___, 2015 WL 6774044 (9th Cir. 2015), holds the opposite and holds that purchase of land by a tribe outside of an Indian reservation, but in violation of state statutes, is controlled by the federal law of preemption. *Id.* at *8. The case applied obstacle preemption as the state law stood as an obstacle to the objectives of Congress. *Id.* at *5. Like the purpose of Comenout acquisition, the land in *Tohono* was to promote Indian economic self-sufficiency, *id.* at *2. Comenout seeks to operate a convenience store. The motives of the states and the federal government collide. The State wants state taxes, the federal government wants Indian self-sufficiency.

The overlap here has the effect of pulling Comenout apart in a tug between governments. Comenout is in the middle of a jurisdictional maze and justifiably seeks a declaratory judgment. Doc. #1, Pages 13; 26-28. Further, the question of complete control of the buildings on the premises by a state court probate has to be determined. Doc. #1, pages 4, 5, alleges that the BIA has no jurisdiction of the buildings. If it has no jurisdiction of the buildings, the state court probate of Edward A. Comenout Jr. has to make this determination.

The state of Washington claims jurisdiction of the allotment, hence, it can prosecute Comenout and take his money by forfeiture. Defendant claims jurisdiction to vote on what allottee is kicked off. These are core issues of

jurisdiction and are threshold legal issues. See *Miami Tribe Of Oklahoma v. U.S.*, 656 F.3d 1129, 1140 (10th Cir. 2011), especially when and what government has jurisdiction has to be determined. *Id.* at 1141.

The jurisdiction of buildings on the land and whether the BIA can evict the Comenouts are within 25 U.S.C. § 345. The Court has jurisdiction to decide the issues. *U.S. v. Milner,* 583 F.3d 1174, 1182-3 (9th Cir. 2009); *Nahno-Lopez v. Houser,* 625 F.3d 1279, 1282 (10th Cir. 2010). Federal jurisdiction also is present as the preemption analysis, 28 U.S.C. § 1331; 42 U.S.C. §§ 1981, 1983. *Evans v. McKay,* 869 F.2d 1341, 1345 (9th Cir. 1989).

25 U.S.C. § 2 states in full: "The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations." *Organized Village of Kake v. Egan,* 369 U.S. 60, 63, 82 S.Ct. 562, 7 L.Ed.2d 573 (1962), rejected regulations by the Secretary of Interior stating:

> The provisions now found in 25 U.S.C. §§ 2 and 9, 25 U.S.C.A. §§ 2, 9, referring to the President's power to prescribe regulations for effectuating statutes 'relating to Indian affairs,' to settle accounts of 'Indian affairs,' and concerning 'the management of all Indian affairs and of all matters arising out of Indian relations,' derive from statutes of 1832 and 1834, 4 Stat. 564 and 4 Stat. 735, 738. In keeping with the policy of almost total tribal self-government prevailing when these statutes were passed, see 369 U.S., pp. 71—72, 82 S.Ct., p. 569, infra, the Interior Department itself is of the opinion that the sole authority conferred by the first of these is that to implement specific laws, and by the second that over relations between the United States and the Indians—not a general power to make rules governing Indian conduct. United States Department of

> the Interior, Federal Indian Law (1958), pp. 54—55; Cohen, Handbook of Federal Indian Law (1945), p. 102. We agree that they do not support the fish-trap regulations.

The BIA cannot legislate or manage beyond Congressional delegation of authority.

Texas v. U.S., 497 F.3d 491 (5th Cir. 2007), also rejected the Department of Interior regulations concluding that the "Secretary lacks carte blanche" authority "untethered from the confines of preexisting statutorily defined rights." *Id.* at 510. The regulations sought by Defendant violate fifth amendment rights conferred on fractional owners of an allotment. *Babbitt v. Youpee,* 519 U.S. 234, 117 S.Ct. 727, 136 L.Ed.2d 696 (1996), as it diminishes the owner's right to use or enjoy the property. *Id.* at 245. This is an unconstitutional taking under the Fifth Amendment. *Id.* at 237. *U.S. v. Eberhardt,* 789 F.2d 1354 (9th Cir. 1986), held that Interior's fishing regulation of Indians violated the Administrative Rule Making Act, 5 U.S.C. § 553 (as they were not authorized). *Id.* at 1362. *Texas v. U.S.*, 497 F.3d 491, 501 (5th Cir. 2007). See *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). The application was to Indian gaming and tribal state compacts. The analysis is relevant here as the Defendant is attempting to apply voting rules and lease requirements that violate state common laws of joint ownership where no federal common law or federal statutes allow derogation from the common law. "Congress did not intend to delegate to the Secretary unbridled power to proscribe class regulations." *Id.* at 528.

Utility Air Regulatory Group v. E.P.A., ____ U.S. ____, 134 S.Ct. 2427, 189 L.Ed.2d 372 (2014) applies. The opinion written for the Court, by Justice Antonin Scalia, held that the agency regulation involved in the case was inconsistent with the structure of the statute and did not require the standard set forth in *Chevron*, *id.* at 2442. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). The regulation exceeded the *E.P.A.'s* regulatory authority, *id.* at 2449. The case followed *City of Arlington, Tex. v. F.C.C.*, ____U.S. ____, 133 S.Ct. 1863, 1868, ____ L.Ed.2d ____ (2013) also written by Justice Scalia.

Sierra Club v. U.S. E.P.A., 762 F.3d 971, 981 (9th Cir. 2014) follows *Utility Air*. The Court quoted from *Utility Air* and held that the *E.P.A.* could not rewrite unambiguous statutory terms in order to serve its own bureaucratic policy goals. *Id.* at 981.

Hernandez-Gonzalez v. Holder, 778 F.3d 793, 2015 WL 618776 (9th Cir. 2015) rejected the *Chevron* test on a crime defining moral turpitude based on an agency determination. The court did not follow the California statute defining moral turpitude when felonies are gang related.

In *Loving v. I.R.S.*, 742 F.3d 1013 (D.C. Cir. 2014) the Court held that the word "representatives" used in the tax code, 31 U.S.C. § 330, a statute regulating practice before the Department of Treasury, did not include preparers of tax returns. The statute was first enacted in 1884 and changed

in 1982 to "representatives of persons", but the amendment did not change the purpose. *Id* at 1020. The regulation was held invalid.

Port Authority Trans-Hudson Corp. v. Secretary, U.S. Dept. of Labor, 776 F.3d 157 (3d Cir. 2015) rejected *Chevron* deference even though rule making authority was delegated to the agency. *Id* at 169 and 169 fn. 22. The statute interpreted was one containing the phrase "during the course of employment." 49 U.S.C. § 20109(c)(1),(2). *Id.* at 161. The Court held that Congress intended that it only apply to on-duty injuries and rejected application to off-duty injuries.

The Complaint, including declaratory judgment, states genuine claims for immediate relief. The motion to dismiss should be denied.

The *Goodwin* case, 60 IBIA 46, 2015 WL 1090164 (2015), quotes 25 C.F.R. § 162.104(a) (2011), stating that a 5% owner could pay fair rental. The BIA could help the landowners to negotiate a lease for fair market value. The landowner of the property has no right to vote on occupancy of the building for the reason that the Estate of Edward A. Comenout Jr. has 100% control of the building.

If the common law of joint tenancy applies, a vote of allottees is moot. If a majority vote is of allottees binds a minority owner, a court must determine whether the method is a legislative decision that only Congress can proscribe or whether administrative procedure is allowed to bind the allotment owners of this allotment. To make such a determination binding,

it is submitted that federal law, not state law, applies to the allotment owners. Plaintiffs assert that federal law controls as 18 U.S.C. § 1151(c) and 25 U.S.C. § 465 applies, but the common law of joint tenancy also applies. Plaintiffs' assertions, however, to this point, have obviously not been accepted by state courts. Plaintiffs seek a declaratory judgment on these issues and sub-issues that may arise. While Plaintiffs may have overlooked federal joint tenancy law, they have found none. Normally, State property law definitions are followed in applying federal law consequences. See, e.g., *C.I.R. v. Bosch's Estate,* 387 U.S. 456, 463, 87 S.Ct. 1776, 18 L.Ed.2d 886 (1967). "State law is conclusive as to their property rights in the federal tax case." (Internal quotations omitted.) The rights and remedies of both Plaintiffs and Defendants must be defined. Jurisdiction is established, hence, 28 U.S.C. §§ 2201, 2202 apply. The statute allows the court's direction at the early stage of a controversy. The issues have fomented for 40 or more years. A declaration of the law and the forum to enforce the rights make this court the appropriate forum. See *McNally v. American States Ins. Co.,* 339 F.2d 186, 188 (6th Cir. 1964). There is a justiciable controversy that needs an immediate decision. Declaratory judgment is warranted. *Maryland Cas. Co. v. Pacific Coal and Oil Co.,* 312 U.S. 270, 273, 61 S.Ct. 510, 85 L.Ed. 826 (1941). Declaratory relief is allowed where the effect of state courts and state jurisdiction are issues. See *Stewart v. Screen Gems-EMI Music, Inc.,* 81 F.Supp.3d 938 (N.D. Cal. 2015), where lease termination was ruled upon.

Horn & Hardart Co. v. National Rail Passenger Corp., 843 F.2d 546, 548 (D.C. Cir. 1988) applies. Defendants argument that final agency action has not yet taken place assumes, among other issues of law, that the federal court has jurisdiction of the owners of the allotment, the buildings on the allotment and the owners. State court litigation indicates complete disagreement of jurisdiction. The State contends it has jurisdiction of Comenout and the land. Until these issues are determined, the issue of whether Defendant has any authority, and, if so, has properly proceeded under purported administrative procedures and whether the procedures are within the scope of Congressional permission, is never reached.

Legal messes like this, unfortunately, wind up in court as no one wants to, or is unable to, sort out what law applies. Plaintiffs stand ready to point out why their Complaint is valid and the reasons they believe it is valid.

The court system was devised to give answers to actual issues. The case should proceed to trial and resolution. Defendants' motion should be denied.

DATED this 23rd day of November, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of November, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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DATED this 23rd day of November, 2015.

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