IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KIALEGEE TRIBAL TOWN 100 Kialegee Drive Wetumka, Oklahoma 74883, Plaintiff, v. **RYAN K. ZINKE**, Secretary United States Department of the Interior 1849 C Street, N.W. Washington, DC 20240 **JOHN TAHSUDA III,** Acting Assistant Secretary for Indian Affairs United States Department of the Interior 1849 C Street, N.W. Washington, DC 20240 **UNITED STATES DEPARTMENT OF THE INTERIOR** 1849 C Street, N.W. Washington, DC 20240 Defendants.	)	Civil Action No. 1:17-cv-01670 (CKK)

Plaintiff's Amended Complaint for Declaratory and Injunctive Relief

Introduction

1. Pursuant to Federal Rule of Civil Procedure 15, Plaintiff Kialegee Tribal Town (hereinafter referred to as "Kialegee") hereby files its Amended Complaint for Declaratory and Injunctive Relief.

2. The controversy at hand concerns only treaty rights. Defendants claim that: Kialegee is not a part of the "Whole Creek Nation of Indians," as defined in Article 4 of the Creek Treaty of February 14, 1833, (7 Stat. 417), that Kialegee is not a beneficiary of Article 4 of said treaty when it refers to "the property of the whole Muskogee or Creek Nation as well as those residing upon the land" and that does not exercise jurisdiction over its lands. Defendants' position is based entirely on the argument that treaties entered into between the United States of America and the "Whole Creek Nation of Indians" gave jurisdiction over lands only to Muskogee Creeks and not the "Whole Creek Nation of Indians." Defendants even consider the lands allotted to Kialegee members also to be solely under the jurisdiction of the Muskogee Creeks. As a result, the only and simple question to be determined is whether Kialegee, who are part of the historic Creek Nation, are included under the treaties signed by the historic Creek Nation. Plaintiff respectfully submits that history, law and logic overwhelmingly answer in the affirmative.

Parties

3. Kialegee is an Indian Tribe that is federally-recognized pursuant to the provisions of the Oklahoma Indian Welfare Act of June 26, 1936, 49 Stat. 1967 ("OIWA"). Plaintiff Kialegee submits that it, as a federally-recognized Indian Tribe and member of the historic Creek nation, has jurisdiction over all lands within the Creek Reservation as land owned in common with two other federally-recognized Creek Tribal Towns and the federally-recognized Muskogee

Creek Nation ("MCN"), in accordance with treaties entered between Kialegee and the United States and as read in context with the Indian Canon of Construction.

4. Sued in his official capacity, Ryan K. Zinke is Secretary of the United States Department of the Interior.

5. Sued in his official capacity, John Tahsuda is Acting Assistant Secretary for Indian Affairs, United States Department of the Interior. The United States Department of the Interior is an executive department of the government of the United States of America.

Jurisdiction

6. This Court has jurisdiction under 28 U.S.C. §1331 (federal question jurisdiction) and 28 U.S.C. §1362 (actions brought by tribes) because this action is brought by a federally-recognized Indian Tribe with a governing body recognized by the Secretary of the Interior and presents a question arising under federal law (whether Kialegee is included in the treaties). Jurisdiction is also established based on 25 U.S.C. § 5123, which provides a cause of action against the government of the United States for promulgating any regulation or making any decision or determination pursuant to the Act of June 18, 1934 (25 U.S.C. 461 et seq., 48 Stat. 984) as amended, **or any other Act of Congress**, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.

Venue

7. Venue is proper in this district under 28 U.S.C. §1391(e)(1) because the Defendants reside and may be found here.

Statement of Facts

The Story of The Creek Nation and Kialegee Tribal Town.

8. The story of the Creeks and that of the Kialegee are one in the same. Originally, Muskogee (sometimes spelled Mvskoke) cultural groups (understood as organized groups of matrilineal clans) occupied a significant portion of southeastern North America. This area superimposed over today's drawn political boundaries includes areas of Alabama, Georgia, Florida, and South Carolina.[1] About half the confederacy spoke the Muskogee language, which thus constituted the ruling language and gave name to the confederacy.

9. At the end of the seventeenth century, the Creek speaking people existed as a confederacy of more than seventy tribal towns. These towns were known as tálwas.[2] Kialegee Tribal Town began as one of the Creek tálwas.

10. Tradition holds that tálwas gathered in a town square, around a sacred fire from which villagers would take coals back to their homes to rekindle their own hearth fires. This ritual occurred at the end of the Green Corn Ceremony or "Busk" from the word "poskitá" or "to fast." This occurred upon the ripening of corn, and was considered a purification ritual.

11. According to oral tradition, the Kialegee are a daughter town of Tuckabatche (located along rivers in what is now Alabama). The towns of Abika, Coosa, Coweta, and Tuckabutche are considered the four "mother" towns of the Creek Confederacy as passed down in Creek oral histories.[3]

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[1] *See* Barbara Alice Mann, "A Man of Misery": Chitto Harjo and the Senate Select Committee on Oklahoma Statehood, in NATIVE AMERICAN SPEAKERS OF THE EASTERN WOODLANDS: SELECTED SPEECHES AND CRITICAL ANALYSES 197, 197 (Barbara Alice Mann ed., 2001).

[2] Spelled sometimes as tvlwv, tálwas, etulwa, or etawla.

[3] Theodore and Blue Clark. "Creek (Mvskoke)." Oklahoma Historical Society's Encyclopedia of Oklahoma History and Culture, *available at* http://www.okhistory.org/publications/enc/entry.php?entry=cr006 (accessed October 17, 2017).

12. Oral histories also hold that Kialegee established two additional towns within the Muscogee-speaking "core" of the Creek Confederacy, Auchenauhatche and Hutchachuppe.[4] Other accounts place Kialegee as descendants of the Tuckabatchee on the Tallapoosa River in Alabama. Historian Stephen Dow Beckham has noted that Tuckabatchee "spun off Kialegee, which in turn, was the progenitor of Auchenauhatche and Hitchachuppe." In light of either view, it is well-established that Kialegee is an identifiable Creek tribe.

13. As a result, Kialegee Tribal Town is long-recognized as being historically Creek and as a successor to the Creek Nation. *See*, *e.g.,* Department of the Interior, Bureau of Indian Affairs, Notice "Indian Tribal Entities that Have a Government-to-Government Relationship with the United States," specifically listing "**Kialegee Tribal Town of Creek Indians, Oklahoma**." 44 Fed. Reg. 7235 (Jan. 31, 1979); *see also* Department of the Interior, Bureau of Indian Affairs, Notice, "Indian Entities Recognized and Eligible To Receive Services From The United States Bureau of Indian Affairs," providing a "current list of tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes" and including "**Kialegee Tribal Town of the Creek Indian Nation of Oklahoma**" 60 Fed. Reg. 9250, 9252 (Feb. 16, 1995), *see also* Department of The Interior, National Park Service, C.F.R. Vol. 82 No. 105, dated April 3, 2017 (Listing the **"[t]en present-day Indian tribes [that] include Creek descendants" including "Kialegee Tribal Town"**).

14. Other federally-recognized Muskogee groups include the Alabama-Quassarte Tribal Town, Kialegee Tribal Town, and Thlopthlocco Tribal Town of Oklahoma, the Coushatta

[4] Moore, John H., "Kialegee Tribal Town." OKLAHOMA HISTORICAL SOCIETY'S ENCYCLOPEDIA OF OKLAHOMA HISTORY AND CULTURE, *available at* http://www.okhistory.org/publications/enc/entry.php?entry=KI001 (accessed Oct. 17, 2017).

Tribe of Louisiana, the Alabama-Coushatta Tribe of Texas, and the Poarch Band of Creeks in Alabama.

15. Cultural anthropologist Morris E. Opler, at the request of the United States Department of the Interior, explained that:[5]

> It is essential to realize that the Creeks were not and, strictly speaking, are not now, a tribe. The Creek Nation is a confederacy of tribes, and as a political phenomenon this confederacy stands the most important and advanced of its kind in aboriginal America with the possible exception of the Iroquois Confederacy. .

16. The Bureau of Indian Affairs has endorsed the same:

> The Creek Nation was a confederacy - an alliance of separate and independent tribes that gradually became, over a long period, a single political organization. Through most of its history, however, the Confederacy was a dynamic institution, constantly changing in size as tribes, for whatever reason, entered the alliance or left it. The evidence suggests that many more groups joined than withdrew. . . .

BIA Office of Federal Acknowledgement memorandum recommending federal recognition of Poarch Band of Creek Indians, at p. 67 (Dec. 29, 1983).

17. Indeed, the focal point of all Creek cultural and sociopolitical existence was the town:

> The leading men of the town assembled everyday in council … Here they made decisions involving war and peace, planting and hunting, disputes between citizens, the maintenance of order, the punishment of offenders, the care of the public building grounds, the ceremonials and amusements. . . .

Angie Debo, The Road to Disappearance; A History of the Creek Indins, 12 (1941).

18. As the society and political structure of the Creek Confederacy matured, so too did that of the newly-formed United States of America. Soon after the ratification of the United States Constitution in 1788, the United States entered into a treaty with the Creeks on June 29, 1796 (the "1796 Treaty") a copy of which is attached hereto as Exhibit "A." This Treaty was

[5] Morris E. Opler, REPORT ON THE HISTORY AND CONTEMPORARY STATE OF ASPECTS OF CREEK SOCIAL ORGANIZATION AND GOVERNMENT (1937).

entered into by "the United States and the said Creek Nation" The signatories to the 1796 Treaty **specifically include the Kialegee,** which clearly defines the Kialegee as part of the Creek Nation under said Treaty:

TREATY WITH THE CREEKS. 1796.

Hitchetaws.
Talmasee Matla.

Tuckabatchees.
Tustincke Hajo.
Okolissa,
Coweta Matla,
Coosa Mico,
Fusatchee Mico,
Pio Hatkee,
Foosatchee Mico,
Neathlaco,
Tuchabatchee Howla,
Spoko Hajo.

Kialeegees.
Chuckchack Nincha,
Opoyo Matla,
Lachlee Matla.

Big Tallasees.
Chowostia Hajo,
Neathloco Opyo,
Neathloco,
Chowlactley Mico,
Tocoso Hajo,
Hoochee Matla,
Howlacta,
Tustinica Mico,
Opoy Fraico.

Big Talassee.
Houlacta,
Elcatee Hajo,
Chosolop Hajo,
Coosa Hajo.

Tuchabatchees.
Chohajo.

Coosi's.
Tushegee Tustinagee,
Talmasa Watalica.

Euphalees.
Tothes Hago.

Otasees.
Opio Tustinagee,
Yafkee Matle Hajo,
Oboyethlee Tustinagee,
Tustinagee Hajo,
Hillibee Tustinagee Hajo
Effa Tuskeena,
Emathlee Loco,
Tustenagee Mico,
Yaha Tustinagee,
Cunctastee Justinagee.

Ottasees.
Coosa Tustanagee,
Neamatle Matla.

Wecokee's.
Tusticnika Hajo.

Tuchabatchee's.
Neamatoochee.

Cussita's.
Talewa Othleopoya,
Talmasse Matla,
Niah Weathla,
Emathlee-laco,
Ottessee Matla,
Muclassee Matla,
Eufallee Matla.

Tuckabatchees.
Cunipee Howla.

Cowetas.
Hospotak Tustinagee.

Natchees.
Spoko Hodjo.

Uchee's.
Tustinagee Chatee.

Usuchees.
Spokoca Tustinagee,
Othley poey Tustinagee,
Tuskeeneah.

19. The foregoing reference alone puts to rest any and all arguments made or that could be made against Kialegee's existence as part of the Creek Nation. The Kialegee are undisputedly Creek. Yet, for the sake of absolute certainty on this point, history counsels that the rest of the story be told.

20. Unfortunately, the Treaty of 1796 was overridden by United States' desire to acquire new lands. Only a few years later, the institutionalized process of relocating or destroying all Native Americans in order to acquire and profit from their land was instituted. The Kialegee were no exception to this program.

21. In March 1814 at Horseshoe Bend in Alabama, then-General Andrew Jackson led a force that killed more than 1,000 Creeks. The Red Stick War, as it is called, officially ended in August 1814 with the Treaty of Fort Jackson. In this agreement, all Creeks were forced to cede more than 22 million acres of land in the Southeast United States.

22. A full copy of the Treaty of Fort Jackson, whose terms were published as "Treaty With The Creeks, 1814" and compiled by Charles J. Kappler, LLM, Clerk to the Senate Committee on in Indian Affairs, in "Indian Affairs. Laws and Treaties, Vol. II," is attached hereto and labelled as Exhibit "B." The Treaty of Fort Jackson, by and between the United States and the Creek Indians, includes the following two signatories:

> Yoholo Micco, of Kialijee, his x mark, [L. S.]
> Socoskee Emautla, of Kialijee, his x mark, [L. S.]

23. Scholars have documented in clear terms that Kialegee people have historically been referred to as those of Kialijee, or the Kialijee Creek, which was part of Creek Confederacy as it existed in Alabama prior to removal. *See* Hurt, Douglas, "The Shaping of a Creek (Muskogee) Homeland in Indian Territory, 1828-1907," Ph.D Dissertation submitted to the graduate faculty of the University of Oklahoma Graduate College, 2000, at p. 204 (Referring to the Kialegee as "a part of the historical Creek Confederacy and the contemporary Nation"); *see also id*. at 352 (collecting authority showing that Kialegee was part of the Creek Confederacy):

Town: Kialegee
County: McIntosh
Variant: Kialegee, Kialiche, Kialege, Kayaleychi, Kailaidshi
History: Upper, red town…Alabama: Upper town of Kialijee, Kealedji, or Kiolege on Kialijee Creek…daughter town of Tuckabatche
Sources: Cate, box 6, folder 9; Foreman, box 48, binder R6; Gatschet, "Towns and Villages of the Creek Confederacy," 387; Opler, "The Creek Tribal Towns of Oklahoma in 1937," 107; Swanton, "The Social Significance of the Creek Confederacy," 6; Waselkov and Braund, *William Bartram*, 108; Yahola, "Untitled," 7.

24. This is another reference to the Kialegee on the relevant treaties that clearly supports that the Kialegee are undisputedly Creek and a part of the "whole Creek Nation."

25. After the signing of the Treaty of Fort Jackson in 1814, the Creek people were then further subjected to a series of land trades, most of which were the product of deceit or outright fraud. All of these were part and parcel of the United States' policy to remove Native Americans from their traditional homelands.

26. The policy of forcibly relocating Native peoples became formal law on May 28, 1830, when then-President Jackson signed into law a bill from the Twenty-First Congress titled the "Indian Removal Act."

27. The United States now-codified push for removal produced the Treaty of 1832, in which the Creeks ceded their eastern homelands to the United States in exchange for lands in Indian Territory. 7 Stat. 366 (1832). Among the rights granted to the Creeks by the Removal Treaty of March 24, 1832 was the right to perpetual self-government of their new lands.

28. The Treaty of 1832 required a census of all Creek tálwas. Treaty of 1836, Art. II. (A census of these persons shall be taken under the direction of the President and the selections shall be made so as to include the improvements of each person within his selection, if the same can be so made, and if not, then all the persons belonging to the same town … ."). The census was carried out by Thomas J. Abbott and Benjamin S. Parsons during 1832 through 1833. The census, now known as the "Parsons and Abbott Roll," identified 166 households of Kialegee

alone. The Parsons and Abbott Roll is seen as an authoritative and comprehensive list of Creek towns prior to removal.

29. In 1836, General Winfield Scott took command of the Georgia and Alabama militias and forcibly rounded up Creeks and sent them to Indian Territory. This forcible removal of the Creeks and other tribes, one of the darkest chapters of American history, would come to be known as the "Trail of Tears." The 166 Kialegee families identified in the Parsons and Abbott Roll were among those who trekked to Indian Country of present-day Oklahoma.

30. Yet, more sad history, when in 1837 some 4,000 Creeks were moved to concentration camps in Mobile, Alabama. When Creeks returned from fighting on behalf of the United States, they found their families in these camps. Soon all the Indians from the camps would be loaded onto ships and sent to the Indian territory, without regard to whom they supported.

31. The United States' policy of removal ultimately resulted in the forcible relocation of the Creek, Cherokee, Seminole, Choctaw and Chickasaw tribes to what is presently the state of Oklahoma. All Creeks, along with the other four "Civilized"[6] Tribes, and many other tribes, bore this horrendous saga of wholesale removal and extermination. The Creek experience in this saga was collective, i.e., all Creeks were impacted by removal that was addressed by the treaties regarding said removal. Moreover, because Kialegee was a signatory to the 1796 Treaty, Kialegee's place as a Creek treaty tribe was established well before the removal period of the nineteenth century.

[6] The term "Five Civilized Tribes" was used by the United States during the mid-nineteenth century to refer to the Cherokee, Choctaw, Chickasaw, Creek, and Seminole nations. The usage of the term "Civilized" in this context is one of disrespect; in this context "civilized" meant a qualification to exist for entire races based solely on their willingness to adopt norms and values unilaterally imposed on them by non-native peoples.

32. Following removal to Indian Country, the Creek people persisted in survival, including through the tálwas. Creek tálwas continued their traditional ways within the Creek Reservation. The United States attempted to suppress the traditional Creek style of government, but the tálwas remained in place.

33. During the Civil War, the Creeks again suffered dearly. It is estimated that more than one third of all Creeks perished. George Cutler, President Lincoln's designated Creek Agent, wrote: "Numbers of families had become separated during the fight with the rebels, of whom many were captured and taken back … many of them were on foot" and "without shoes, and very thinly clad, and, having lost nearly all their bedding on the battle-field, their suffering was immense and beyond description." Thus war, weather and disease ravaged the Creek Reservation during and after the Civil War.

34. On June 14, 1866, a treaty was signed between the Creeks and the United States. The Treaty of 1866 was forced upon the Creeks on the pretext that some Creeks engaged in anti-Union actions during the Civil War. Due to this perceived infraction, the Creeks were forced to cede a western portion of their reservation:

> [T]he Creeks hereby cede and convey to the United States, to be sold to and used as homes for such other civilized Indians as the United States may choose to settle thereon, the west half of their entire domain, to be divided by a line running north and south; the eastern half of said Creek lands, being retained by them, shall, except as herein otherwise stipulated, be forever set apart as a home for said Creek Nation; and in consideration of said cession of the west half of their lands, estimated to contain three millions two hundred and fifty thousand five hundred and sixty acres, the United States agree to pay the sum of thirty (30) cents per acre.
>
> Treaty of 1866, Art. III.

35. The Treaty of 1866 mandated another census of all Creeks and creation of a General Council. Treaty of 1866, Art. X. The General Council was to include a representative

from each tálwa. When the census was taken, the results showed a 24% decline of the total number of Creeks *since 1859*.

36. On October 12, 1867, the Creeks adopted a constitution and a code of laws for the "Muskogee Nation" (referencing the shared Muskogee language and culture of the Creeks – not the present Muskogee Nation). The constitution provided for executive, legislative, and judicial branches, and legislative power was lodged in a National Council, a bi-cameral body in which specifically acknowledged and provided for the tálwas.

37. In 1889, the Bureau of Indian Affairs enumerated 146 members of Kialegee, and in 1895 listed 219.

38. Still eager to formally strip the Creeks of all lands, the United States forced the Creeks to participate in an allotment program via the Curtis Act which became effective in 1898. Under this program, all land was taken from the entire Creek people, and allotments were given to tribe members of no more than 160 acres per tract. Kialegee were among those who received allotments. The allotment process scattered many members of different tálwas (as was intended by the United States), but Kialegee community and culture persisted. In fact, even today, Kialegees own various allotments. *See* Exhibit "C."

39. In his 1937 report, Morris Opler noted: "[i]t was thought that the allotting of the Creek Indians would destroy their town organization but this did not in fact occur as the members of the town took allotments in the same locality and continued their social and political organization." Opler further wrote:

> But it is clear only that Congress has recognized the Creek Nation alone for the purpose of having one central, responsible agency with which to deal. It is not clear that Congress intended to deny the existence of the Creek towns as effective organizations. **Their existence is recognized and perpetuated in the constitution and laws of the Creek Nation, a fact of which Congress must be assumed to have had knowledge and to which it has given sanction in its**

> **continued dealing with the government of the Nation so constituted as a confederacy of towns**.

Opler Report at 5 (emphasis added). Here, the Defendants are denying the existence of the Kialegee Tribal Town, more ugly history that this Complaint seeks to remedy.

40. In 1937, Acting Solicitor of the United States Department of Interior Frederic L. Kirgis, wrote a legal memorandum about recognition of certain tribes under the OIWA:[7]

> A question has been raised by the Oklahoma Regional Coordinator in charge of organization as to whether the Keetoowah Society of Oklahoma Cherokees can be considered a band for the purposes of organization under the Oklahoma Indian Welfare Act.
>
> …
>
> **The Creek Tribal Towns, in so far as they have retained a recognized existence, were determined to be capable of consideration as bands because they possessed the indispensable political character of such bodies. Not only were they the functioning political subdivisions of the Creek Confederacy or Nation but they were the original independent units of government of the Creek Indians**. This essential character is not possessed by the Keetoowah Society nor any of its factions. It is neither historically nor actually a governing unit of the Cherokee Nation, but a society of citizens within the Nation with common beliefs and aspirations.
>
> While I have come to the conclusion that the Keetoowah Society of Cherokee Indians cannot be considered a band for organization purposes, groups of its members might form a basis for cooperative associations under section 4 of the Oklahoma act. However, this may not satisfy the groups' wishes as any such association could not be limited to members of the society, since associations

[7] Under the Oklahoma Indian Welfare Act of 1936 (the "OIWA"):

> Any recognized tribe or band of Indians residing in Oklahoma shall have the right to organize for its common welfare and to adopt a constitution and bylaws, under such rules and regulations as the Secretary of the Interior may prescribe. The Secretary of the Interior may issue to any such organized group a charter of incorporation, which shall become operative when ratified by a majority vote of the adult members of the organization voting: Provided, however, That such election shall be void unless the total vote cast be at least 30 per centum of those entitled to vote. Such charter may convey to the incorporated group, in addition to any powers which may properly be vested in a body corporate under the laws of the State of Oklahoma, the right to participate in the revolving credit fund and to enjoy any other rights or privileges secured to an organized Indian tribe under the Act of June 18, 1934.

> formed under that section must be open to all Indians residing within the district in which the association is formed. Another solution which might be considered as an administrative matter is the possibility of a society or organized faction or group borrowing as a unit from a tribal, cooperative or credit organization for such group enterprise as it could successfully carry on. I see no legal objection to such an arrangement.

Memorandum from Frederic L. Kirgis to the Commissioner on Indian Affairs, July 29, 1937.

41. Based in part on the memorandum from Kirgis and the well-documented history of Kialegee, Kialegee was federally recognized as a tribe in 1936. Kialegee has a constitution approved by the Assistant Secretary of the Interior on April 14, 1941, and ratified by the members of the town on June 12, 1941. Kialegee also has a corporate charter approved by the Assistant Secretary on July 23, 1942, and ratified by town members on September 17, 1942.

42. The approved charter also contains numerous explicit findings concerning Kialegee's powers, one of which is "[t]o protect all rights guaranteed to the Kialegee Tribal Town by treaty." Kialegee Corporate Charter at p. 5.

43. As approved and recognized by the United States Department of Interior:

> Any rights and powers heretofore vested in the Kialegee Tribal Town, not expressly referred to in the Constitution, By-laws or Charter of the said Tribal Town, shall not be abridged, but may be exercised by the people of the Kialegee Tribal Town, through the adoption of appropriate additions and amendments to the Constitution, By-laws or Charter of the said Tribal Town. **No property rights or claims of the Kialegee Tribal Town existing prior to the ratification of this Charter shall be in any way impaired by anything contained in this Charter. The Tribal Town ownership of unallotted lands, whether or not occupied by any particular individuals, is hereby expressly recognized**.

Kialegee Corporate Charter at p.6. (emphasis added).

The Treaties Between the Creek Nation and the United States.

44. Between 1790 and 1866, the Creek Confederacy, as a collection of tálwas, entered into several treaties with the United States of America (collectively, the "Treaties"). The Treaties reserved lands to the tálwas and their larger use and subsistence areas held in common

with other Creeks. The Treaties referred collectively to a "Creek Nation," the "Creek Tribe," and "the Creeks," but did not identify the Treaties as being made with a General Council of a National Council. These Treaties include:

(a) The Creek Treaty of August 7, 1790, (7 Stat. 35) promised in Article 5: "The United States solemnly guarantee to the **Creek Nation**, all their lands within the limits of the United States to the westward and southward of the boundary described in the preceding article" (emphasis added).

(b) The Creek Treaty of August 9, 1814, (7 Stat. 120) promised in Article 2: "The United States will guarantee to the **Creek nation**, the integrity of all their territory eastwardly and northwardly of the said line to be run and described as mentioned in the first article" (emphasis added).

(c) The Creek Treaty of January 8, 1821, (7 Stat. 215) promised in Article 2: "that the title and possession of the following tracts of land shall continue in the **Creek nation** so long as the present occupants shall remain in the personal possession thereof . . ." (emphasis added).

(e) The Creek treaty of March 24, 1832, (7 Stat. 366) **stated** in Article 14: "The Creek country west of the Mississippi shall be solemnly guarantied [sic] **to the Creek Indians**, nor shall any State or Territory ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves, so far as may be compatible with the general jurisdiction which Congress may think proper to exercise over them . . . as soon as the boundaries of the Creek country West of the Mississippi are ascertained, [Congress shall] cause a patent or grant to be executed to the Creek tribe"

(emphasis added).

(f) The Creek Treaty of February 14, 1833, (7 Stat. 417) Preamble, promised: ". . . to establish boundary lines which will secure a country and permanent home to **the whole Creek nation of Indians** . . . ." These words made clear that the Creek Reservation in Eastern Oklahoma was to be the "permanent home to **the whole Creek nation.**" (emphasis added).

45. The Treaty with the Creeks signed on February 14, 1833, was the first of several negotiated by the Stokes Commission. The purpose of the Stokes Commission was to define the boundary between the Creek and Cherokee Nations in the Indian Territory and to affirm the sovereignty of the Creeks within their reservation.

46. In interpreting treaties, courts must look to the plain language of the treaty itself, as well as the contemporaneous understanding of the parties. The interpretation and implementation of a treaty in the years following its passage is also relevant. Here, these factors point to a single conclusion – that the Treaty of 1833 that established the Creek reservation applies to all Creek Indians. Prior Creek treaties had promised that if they ceded their lands, they would be guaranteed a permanent home or reservation. The phrases and concepts stated in the 1833 treaty were used in earlier treaties with the Creeks and were part of their understanding. Through the Treaties, the leaders of the tálwas gained the assurances that their reservation was permanent, was to be held in common, and their lands and rights would be protected. The plain language of the Treaty indicates that the Creek Reservation is the property of all Creek Indians and as such all must be accorded the same rights, privileges, and benefits of ownership. The Treaty of 1833 states:

> Preamble: . . . to establish boundary lines which will secure a country and permanent home to the whole Creek nation of Indians . . . .

> Article 3: The United States will grant a patent, in fee simple, to the Creek Nation of Indians for the land assigned said nation by this treaty or convention, whenever the same shall be ratified by the President and Senate of the United States-and the right thus guaranteed by the United States shall be continued to said tribe of Indians, so long as they shall exist as a nation, and continue to occupy the country hereby assigned to them.
>
> Article 4: It is hereby mutually understood and agreed between the parties to this treaty, that the land assigned to the Muskogee Indians, by the second article thereof, shall be taken and considered the property of the whole Muskogee or Creek nation, as well of those now residing upon the land….

47. The 1833 treaty (i) defined a precise Creek Reservation within set boundaries; (ii) guaranteed the reservation as a "permanent home to the whole Creek nation of Indians;" (iii) promised "a patent in fee simple, to the Creek nation of Indians for the lands assigned to said nation," and (iv) affirmed that the permanent reservation was "in lieu of and considered to be the country provided or intended to be provided by the treaty …on the 24th day of January, 1826 under which they removed to this country."

48. By its express terms, the Treaty of 1833 establishes that the land assigned to the Creek Indians "shall be taken and considered the property of the whole Muscogee or Creek Nation, as well as those now residing upon the land." "Whole" is an expansive word that means "the entire thing; the entire or total assemblage of parts."[8] Thus the plain meaning of this Treaty language is that the reservation belongs to all Creek Indians without exclusion. No legal basis suggests Kialegee's treaty rights have been surrendered. Accordingly, the Creek Reservation established by treaty is also the reservation of the Kialegee and as such Kialegee may exercise jurisdiction over lands belonging to the Tribe and its members located within the Creek Reservation boundaries. *United States v. Mazurie*, 419 U.S. 544, 557 (1975) supports the conclusion that a tribe would have jurisdiction over land that it occupies as well as land that was

[8] Webster, Noah, AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828 ed.).

allotted to, and is still owned in trust or restricted fee by its members. *Mazurie* also supports the conclusion that the tribe's jurisdiction would not extend to the trust or restricted allotments of members of the other tribe with an interest in the reservation. *See generally id*.; *see also* Cohen's Handbook of Federal Indian Law Section 4.01[2][e], at 220 (Nell Jessup Newton ed., 2012 ("[t]ribal jurisdiction based in membership finds support in *United States v. Mazurie*[.]").

The Treaties Are Not Exclusive to the Muskogee.

49. Defendants' position turns on one argument: that the treaties entered into by the Creeks do not pertain to Kialegee and that the Kialegee have no "treaty rights." More ugly history indeed. Solely on this false premise, Defendants conclude that Plaintiff therefore does not properly exercise "jurisdiction" over its own lands, resulting in the Kialegee not being able to succeed economically, living below poverty with no healthcare or education.

50. The concept of jurisdiction is relevant to the ability of the Kialegee to even have a tribal court, regulate liquor and tobacco sales and gaming. In an attempt to further eliminate another Indian tribe, it is Defendants' position that the treaties render Plaintiff without jurisdiction.

51. There is no authority that supports that only the Muskogee can exercise jurisdiction over treaty lands. No treaty or court opinion has ever held that the Muskogee exercise exclusive jurisdiction over the lands attained by the Creek Nation at the conclusion of its tragic saga of bait-and-switch with the government of the United States. History makes clear that the Creek Nation, as a whole, paid dearly for the relatively small carve-out it ultimately received. Yet the Defendants' position is that the Muskogee Tribe alone exercises jurisdiction over the entirety of those lands that were explicitly reserved for the **"whole Creek Nation."**

This simply cannot be. The Treaties are black-letter law, and their text indicating that title is transferred to the whole Creek Nation is clear.

52. The Treaties make clear that the jurisdiction over the lands of the former Creek Reservation is shared. These treaty rights have neither been abrogated nor modified by any subsequent treaty or act of Congress.

53. The controlling canon of construction solidifies this point. Specifically, the Indian Canon of Construction very clearly establishes (a) that treaties and statutes applicable in this case are meant to be understood ***as the Indian signatories understood them at the time***, and (b) that said treaties and statutes should be construed liberally in favor of all Indians and ***never to their prejudice***. This special canon is stringently observed and upheld, and with good reason. As Chief Justice John Marshall took specific care to mention in *Worcester v. Georgia*, 31 U.S. 515, 582 (1832): "The language used in treaties with the Indians should never be construed to their prejudice." Justice Harlan F. Stone did the same in *Carpenter v. Shaw*, 280 U.S. 363, 367(1930) where he wrote that "[s]uch provisions [of agreements between Indians and the government] are to be liberally construed. Doubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith."

54. The text of the controlling treaties and the clear guidance on their interpretation demonstrate that (1) the treaties were signed on behalf of the entire Creek Nation and (2) the Creeks understood the lands to be owned in common. It is established that the Creeks viewed the ownership of their lands as being in common, and this view is supported by numerous sources including contemporaneous, firsthand accounts. For example, Robert L. Owen, an

Indian Agent for the United States who would go on to become one of Oklahoma's first senators, wrote that:

> The most striking feature in the governments of the Indian nations of this agency, when contrasted with that of their white neighbors, is that the title to their entire domain is in the nation as a practically unqualified fee, and the individual has only the right to use and to occupy.

Report of Robert Owen to the Commissioner of Indian Affairs, September 20, 1886.

55. The following year, 1887, Owen wrote again on Creek ownership, stating that "[t]he title of the land of the five nations is held in that nation itself, and each citizen has equal right to make a farm on the unoccupied domain or use the common pasturage." Report of Robert Owen to the Commissioner of Indian Affairs, 1887. In 1894, Dew Wisdom, another United States Indian Agent, located in Muscogee, wrote to the Commissioner of Indian Affairs that "[A]ll land in this agency is held in common, and only improvements segregated from the public domain are subject to individual ownership."

56. Kialegee has constructed a restaurant facility known as the Embers Grill – and also known as Red Creek Dance Hall and Restaurant – which is located on an Indian allotment within the Creek Reservation. The land happens to be located within the city limits of Broken Arrow, Oklahoma. The allotment is owned by Bim Stephen Bruner, who is an enrolled member of Kialegee.

57. Kialegee claims jurisdiction over the land on which it is constructing the Embers Grille, the Bruner allotment, as well as all lands within the Creek Reservation, in common with the other recognized Creek tribes in Oklahoma. This shared jurisdiction is guaranteed by various Creek Treaties with the United States read in context with the Indian Canon of Construction.

58. The land is located within the boundaries of the Creek Reservation set aside for, and occupied by, the Creek tribes constituting the former Creek Confederacy that was removed to Oklahoma by the United States pursuant to treaty provisions.

Defendants' Argument Is Legally Untenable.

59. The Department of the Interior has explicitly stated, in a formal letter to the Muskogee Area Director of the Okaulgee Agency that:

> Since the Bureau of Indian Affairs has recognized the towns [of Thlopthlocco, Kialegee and Alabama-Quassarte] as independent government units, the Okaulgee Agency has become a multi-tribal agency. **The rights that formerly accrued solely to the Creek Nation must now be shared with the towns' governing bodies**.

Department of Interior Letter to Muskogee Area Director, attached hereto as Exhibit "D." (emphasis added).

60. Further, and equally fatal, when the Poarch Band of Creek Indians (the "Poarch Creeks") began to conduct gaming operations in Montgomery, Alabama, the National Indian Gaming Commission ("NIGC") undertook the legal analysis of whether the Poarch Creek's lands qualified for purposes of the Indian Gaming Regulation Act ("IGRA"), 25 USC § 2701 which it detailed in a May 19, 2008 letter to the Poarch Creeks (the "Poarch Creek Letter"). The Poarch Creek Letter is illuminating. In it, the NIGC provided a legal analysis concluding that the Poarch Creek are historically Creek and thus had jurisdiction over the lands they inhabit:

> The United States recognized the Poarch Band of Creek Indians in June 1984. 49 Fed.Reg. 24083 (June 11, 1984). At the time, the Band had no land base. Shorthly after recognition, the Department of the Interior took into trust eight small parcels that together total some 229 ½ acres and proclaimed them to be reservation land. 50 Fed. Reg. 15502 (Apr. 18, 1985).
>
> These parcels serve basic tribal functions – a school house, powwow grounds, a tribal administration building, a gymnasium, a fire station, two small sites for tribal housing, and pasture lands for a tribal farm. Affidavit of Eddie Tullis, ¶ 8 (Mar. 25, 2004).

…

LEGAL ANALYSIS

I. Indian lands, generally.

IGRA permits gaming only on Indian lands, 25 U.S.C. §§ 2710(b)(1), (2); 2710(d)(1), (2), which defines as:

> (A) all lands within the limits of any Indian reservation; and
>
> (B) any lands title to which is either held in trust by United States for the benefilt of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703(4).

…

A. Governmental power

The Band also exercises governmental power over the Tallapoosa Site. This conclusion, however, is not as straightforward as simply noting that the United States holds the Site in trust for the Band. In order to exercise governmental power over its land, the Band, like any other government, must first have jurisdiction to do so.

…

For jurisdictional purposes, there is no distinction between reservation land and trust land. Again, in *Potawatomie,* the Supreme Court unambiguously held that trust land is "validly set apart" and thus qualifies *as a reservation* for jurisdictional purposes. *Potawatomie,* 498 U.S. at. 511 (emphasis added). *Accord, John,* 437 U.S. at 649.

…

Accordingly, the Band has jurisdiction to exercise governmental authority at the Tallapoosa Site.

1. Exercise of governmental authority

In order for the Tallapoosa Site to be "Indian lands" within the meaning of IGRA, the Band must also exercise present-day, governmental authority on the land. How exactly a tribe does this IGRA does not say, though there are many possible ways in many possible circumstances.

…

[T]he Band's police have governmental offices within the Band's gaming facility at the Site. Letter from William R. Perry, Esq., Sonosky, Chambers, Sachse, Endreson & Perry, to Katherine L. Zebell, Esq., NIGC (Nov. 2, 2004). The Band provides law enforcement on the Site 24 hours a day. The Band is in the process of providing other governmental services, including additional law enforcement, through an agreement between the Band and the Montgomery County sheriff. … Further still, the Band has adopted a Class II gaming ordinance applicable to the Site and has formed a gaming commission to regulate the Band's Class II gaming operations there.

…

Given the foregoing, then, the Band exercises governmental authority over the Tallapoosa Site[.]

A. The Band has been restored to federal recognition

To be an "Indian tribe that is restored to Federal recognition," a tribe must demonstrate a period of recognition by the United States, termination of that recognition, and reinstatement of recognition by the United States. *Grand Traverse III*, 369 F.3d at 967. The Band satisfies all three conditions.

Put somewhat differently, the historic Creek Nation has greatly changed in form from the first half of the 19th century to today. The historic Creek Nation, politically organized around tribal towns, now exists as the Poarch Band of Creek Indians in Alabama, the Muskogee (Creek) Nation in Oklahoma, and recognized tribal towns - tribes with multi-branch governments established through tribal constitutions. *See, e.g., Constitution of the Poarch Band of Creek Indians*, Art, IV (June 1, 1985); *Constitution of the Muskogee (Creek) Nation*, Arts. V – VII (Feb. 18, 2006). To suggest that the United States' recognition of the historic Creek Nation is not recognition of the Band - or the Muskogee (Creek) Nation for that matter – because the Band is not identical in form to the historic Creek Nation is inconsistent with federal Indian policy generally and with case law.

The federal government's long-standing policy is to encourage tribal self-government, and numerous statutes, including IGRA, embody this policy. ... Federal law has thus consistently recognized and protected this right of self-government. *See,e.g., Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 55-56. The right of self-government, of necessity, includes the ability of a tribe to make changes to the form and structure of its government, and this ability too is recognized in federal law. *See*, *e.g.,* 25 C.F.R. Parts 81 and 82 (procedures for Secretarial elections governing adoption, amendment or revocation of tribal constitutions, etc.).

> Any self-governing entity will change in form and composition over time, and this is particularly true of the lndian tribes, who over the past centuries have also had such changes thrust upon them by federal law. Significantly, none of these changes in form or reorganizations are in any way inconsistent with federal recognition.
>
> **Reflecting federal policies, a congressionally created confederated or consolidated tribe can be comprised of different tribes presently occupying the same reservation**, such as the Wind River Tribes (Shoshone and Arapaho). Or tribes may confederate for political purposes, forming governmental entities such as the Minnesota Chippewa Tribes or the Central Council of the Tlingit & Haida Indian Tribes, which have received federal recognition, in addition to their constituent tribes. Under the Indian Reorganization Act of 1934, Indians living on any given reservation were allowed to organize into federally recognized tribes, whether or not they were linguistically, culturally, or politically united.... **Other federally recognized entities represent fragments of previously unified peoples. The great Sioux nation, for example, was divided by federal law into geographically separated and independently recognized tribes in order to weaken the Sioux militarily. Other groups, such as the Oneida, the Cherokee, and the Choctaw are recognized as multiple separate nations, because some members moved to new territories as part of the federal removal process in the nineteenth century** and others refused to leave ancestral homelands.
>
> *Cohen's Handbook of Federal Indian Law* ("Cohen"), § 302[2] at 137 (2005 ed.). **To suggest, then, that the recognition of the historic Creek Nation docs not also apply to the Band because of the change in form and composition over time is inconsistent with the fundamental policy of encouraging tribal self-government.**

Poarch Creek Letter, at pp. 1-12 (emphasis added). The Poarch Creek Letter is attached hereto as Exhibit "E."

61. The Sixth Circuit Court of Appeals positively answered the question of shared ownership between the Grand Traverse Band and the combined Ottawa and Chippewa nations in *Grand Traverse III*, where that Court made no distinction between today's Grand Traverse Band and the combined Ottawa and Chippewa nations, whom the United States aggregated solely for the purposes of negotiating the 1836 Treaty of Washington. 369 F.3d 960, 970-71, n.2 (6th Cir. 2004). The Grand Traverse Band was, as the Court acknowledged, a successor to the Ottawa and Chippewa as "a successor to a series of treaties with the United States in 1795, 1815, 1836 and 1855." *Id*. at 961.

62. As a federally-recognized Creek tribe, Kialegee is entitled to exercise all the rights guaranteed to and understood by Creek Indians by various treaties with the United States. These rights are supported by the Creek understanding of the nature of land ownership within the boundaries of all Creek tribal lands at the time the applicable treaties were negotiated and executed. At that time, the historic political organization of the Creek Confederacy consisted of tribal towns, each of which had an equal voice and role in the Creek Confederacy government, and all land was owned by each tribal entity in common with all the other tribal entities within the Creek Confederacy. This understanding is directly supported by the applicable canons of interpretation, as endorsed by the Supreme Court of the United States.

63. As the United States Court of Appeals District of Columbia Circuit so thoughtfully explained in *Harjo v. Andrus*:

> The Creek Nation, historically and traditionally, is actually a confederacy of autonomous tribal towns, or Tálwas, each with its own political organization and leadership. Membership in a town is a matter of birthright rather than residence, each Creek being, by birth, a member of his mother's town, or, if his mother is non-Indian, a member of his father's town. Originally, there were four "mother" towns, but the number was expanded by a transfer of town fires, until, by the time of the adoption of the 1867 Constitution, there were approximately forty-four Tálwas in existence. Tribal towns can also merge or dissolve, and there is at present some doubt as to the exact number of towns that are politically and socially active. See App. at 164. However, since membership is hereditary and towns may adopt new members, no Creek can ever actually be considered to be without tribal town affiliation, or the possibility of such affiliation.

581 F.2d 949, n.7 (D.C. Cir. 1978).

64. In other words, the historic, accepted and treaty-protected understanding of land ownership is that all land is owned by and between all Creeks in common. This understanding is relevant here, because it includes the principle that all Creek tribal entities share an undivided ownership and jurisdiction of all Creek lands. Yet Defendants disagree. Defendants contend that there is no multi-tribal jurisdiction over the former reservation lands and argue that the

federally-recognized Muskogee Creek Nation ("MCN") is the only recognized Creek tribe with any jurisdiction over those lands. This interpretation is wrong on many levels. At minimum, this contention would mean that Kialegee and the other two federally recognized Creek tribal towns in Oklahoma have no jurisdiction over any lands despite (a) treaty guarantees to the contrary and (b) allotment ownership of their enrolled members. Defendants' rendition of the issue is that jurisdiction is mutually exclusive. This argument, whether for political or economic reasons or for a miscomprehension of the law, is wrong.

65. The only purported authority that Defendants can argue is the Muskogee (Creek) Constitution, adopted in 1979, which states that "the political jurisdiction of The Muskogee (Creek) Nation shall be as it geographically appeared in 1900 which is based upon those Treaties entered into by the Muskogee (Creek) Nation and the United States of America[.]" This does nothing to change the fact that Kialegee are Creek and were part of the Treaties. Therefore, such exclusionary language has no effect because it is clear that the Muskogee were not representative of all Creek people and the conferral of treaty rights to the Creeks did not vest solely with the Muskogee.

66. The language also has no effect because any exclusionary application of this text is not supported by law. The United States District Court for the District of Columbia recently determined this with respect to the constitution of another tribe. In that case, *Cherokee Nation v. Nash, et al.*, 1:13-cv-01313-TFH (D.D.C. Aug. 30, 2017), the Cherokee Nation attempted to claim that Cherokee Freedmen, as members of the historic Cherokee nation, should not be fully recognized as presently-enrolled members, amending its constitution to make this point clear and relying on sovereignty to justify its decision. The United States District Court for the District of D.C. rejected this tactic. The opinion rendered in the *Cherokee Nation v. Nash* is very instructive

on this point: "Although the Cherokee Nation Constitution defines citizenship, Article 9 of the 1866 Treaty guarantees that the Cherokee Freedmen shall have the right to it for as long as native Cherokees have that right. The history, negotiations, and practical construction of the 1866 Treaty suggest no other result." *Cherokee Nation v. Nash, et al.*, 1:13-cv-01313-TFH (D.D.C. Aug. 30, 2017) (Order denying Cherokee Nation and Principal Chief Baker's Motion for Partial Summary Judgment).

67. This situation is the same. Kialegee, a federally-recognized tribe that is clearly part of the historic Creek Nation, is subject to yet more dark history as it is denied the protections of the Treaties. It also bears mentioning that the Cherokee Freedmen were joined in support for their argument by the United States Department of the Interior. *See Cherokee Nation v. Nash, et al.*, 1:13-cv-01313-TFH (DE 234) (The Department of the Interior's Motion for Summary Judgment, Memorandum of Points and Authorities In Support Thereof and Opposition to the Cherokee Nation and Principal Chief Baker's Motion for Partial Summary Judgment).

68. Defendants have repeatedly violated 25 U.S.C. §476(f) by blocking the Kialegee from jurisdiction on lands located within the Creek Reservation.

69. As stated *supra*, 25 USC §476 (f) mandates equal treatment of recognized tribes:

> Departments or agencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to the Act of June 18, 1934 (25 U.S.C. 461 *et seq.,* 48 Stat. 984) as amended, or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, **or diminishes the privileges** and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes. (bolding added for emphasis)

70. Section 476 (f) specifically prohibits the Defendants from finding that the Kialegee lacks jurisdiction while other tribes have jurisdiction. Kialegee, like the Muskogee Creek Nation, possess the authority to exercise jurisdiction over its tribal lands.

Kialegee's Rights Are Being Violated and Its People Marginalized.

71. Perhaps the only thing more tragic than the government-sponsored policy of elimination endured by Kialegee is the present reality that Kialegee is now being marginalized among its own brethren. The present denial of Kialegee's rights suggests that Kialegee's fight for survival during removal times may well have been for naught.

72. Despite its federally-recognized status and clear ability to self-govern, Kialegee has not acceded to the economic prosperity that its Creek brothers and sisters have so enjoyed.

73. Kialegee has struggled economically and socially; they have little no healthcare or education. This is in spite of its unquestioned status as an Indian Tribe. The position asserted against Kialegee happens to be based on the viewpoint that only the "Muskogee (Creek) Nation" has jurisdiction over lands in Oklahoma. There is no legal or factual basis for this argument. It is a backward reading of black-letter law and an attempt to reverse-engineer historical recognition that was meant for an entire people onto a subgroup that straightforwardly decided to claim this recognition only for itself. But, as explained herein, this fails under the law and has already been defeated before this Court.

74. Granted, the Muskogee Nation is powerful. Even the Chairman of the NIGC is of the Muskogee Creek Nation. Kialegee, on the other hand, has no great wealth of capital and comparatively no influence. Kialegee's people live a day-to-day struggle for existence. This struggle for survival occurs **despite** the many purported protections and guarantees conferred on Kialegee. Kialegee seeks to engage in economic development of lands located within the boundaries of the Creek Reservation as part of an effort to provide for its people. This Court is Kialegee's only chance.

75. It is a "paramount federal policy" to ensure that Indians do not suffer interference with their efforts to "develop ... strong self-government." *Pueblo of Pojoaque v. New* Mexico, 2015 WL 10818855, at *10 (D.N.M. Oct. 7, 2015), *aff'd sub nom. New Mexico v. Trujillo*, 813 F.3d 1308 (10th Cir. 2016). Plaintiff has chosen to pursue the enforcement of its economic rights as a sovereign, which Plaintiff respectfully submits goes to the very heart of "develop[ing] ... strong self-government."

76. Small in number – Kialegee boasts roughly 400 members – Kialegee resultantly lacks economic power and political influence wielded by larger Tribes. Because of this deficit, its right to pursue economic activities is faced by the harsh reality of being out-spent, out-maneuvered and out-influenced in what amounts to the monopolization by a few Creeks of a right conferred on all Creeks.

77. It is said, that during the time of removal, many of the talwás still maintained their sacred fire and brought it with them on their long journey. Kialegee has experienced tumult and terror for more than two centuries, yet it has survived to exist in the present day. Kialegee protected its sacred fire. But Kialegee has not yet escaped oppression and marginalization – it again faces the baseless denial of its rights. These rights were hard-fought and conferred unto Kialegee each time it put pen to paper with the United States.

78. Kialegee is now before this Court asking that the law reflect what has already been written in history: that Kialegee is entitled to full treaty-guaranteed rights as a successor to the historic Creek Nation, and as a result has jurisdiction over its lands.

COUNT I

(Declaratory Judgment-Successor in Interest/Land Owned in Common)

79. Plaintiff realleges and incorporates by reference paragraphs 1-78 above.

80. Plaintiff seeks a declaration that the Plaintiff is entitled to full treaty-guaranteed

rights as a successor to the historic Creek Confederacy, as allowing it the right jurisdiction over its lands.

81. Plaintiff's request is proper. A declaratory judgment is appropriate when it will "terminate the controversy" giving rise on undisputed or relatively undisputed facts. Advisory Committee Notes, Fed. R. Civ. P. 57. (emphasis added). The existence or non-existence of any right, duty, power, liability, privilege, disability, or immunity or of any fact upon which such legal relations depend, or of a status, may be declared. *Id*. The petitioner must have a practical interest in the declaration sought and all parties having an interest therein or adversely affected must be made parties or be cited. *Id*.

82. Plaintiff's requested relief directly concerns the existence of a right, duty, power and/or privilege (its treaty-protected status as a successor to the historic Creek Nation, and Plaintiff has a practical interest in the declaration sought.

COUNT II

(Injunction – Successor in Interest/Land owned in Common)

83. Plaintiff realleges and incorporates by reference paragraphs 1 through 78 above.

84. Kialegee is entitled to an injunction ordering the defendants to recognize that Plaintiff is entitled to full treaty-guaranteed rights as a successor to the historic Creek Nation, as allowing it the right jurisdiction over its lands.

REQUESTED RELIEF

WHEREFORE**,** Plaintiff respectfully requests that the Court enter an order as follows:

A. Declaring that Kialegee and its members are a part of the "Whole Creek Nation of Indians," as defined in Article 4 of the Creek Treaty of February 14, 1833, (7 Stat. 417),

B. Declaring that the Kialegee are a beneficiary of the treaty of 1833 when it refers to "the property of the whole Muskogee or Creek Nation as well as those residing upon the

land,"

C. Declaring that Kialegee has treaty-protected rights of shared jurisdiction within the Creek Reservation and ownership of the Creek Reservation exists in common with all other Creek tribes tracing to the Creek Confederacy within the State of Oklahoma,

D. Mandatorily enjoining the defendants to recognize the Kialegee's status as a tribe for which the Creek Reservation was established which enjoys all full treaty-guaranteed rights by the Creek treaties relevant to this litigation, and

E. Awarding plaintiff its costs, attorneys' fees, and all other expenses of this litigation.

Dated: October 25, 2017.

Respectfully submitted,

By: /s/ Dennis J. Whittlesey, Esq.

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I certify that on the 25th day of October 2017, a true and correct copy of the foregoing document was filed on this Court through the CM/ECF system, and served on all parties/attorneys of record via the Court's Electronic System.

/s/ Dennis J. Whittlesey, Esq
Dennis J. Whittlesey, Esq.