

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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ONEIDA INDIAN NATION  
1 Territory Road  
Oneida, NY 13421,

Plaintiff,

v.

Civil Action No.: 5:17-cv-1035 (GTS/ATB)

MELVIN L. PHILLIPS, SR.,  
individually and as trustee,  
4675 Marble Road  
Oneida, NY 13421

and

MELVIN L. PHILLIPS, SR./ORCHARD  
PARTY TRUST  
c/o Trustee Melvin L. Phillips  
4675 Marble Road  
Oneida, NY 13421,

Defendants.  
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**DEFENDANTS MELVIN L. PHILLIPS, SR. AND MELVIN L. PHILLIPS,  
SR./ORCHARD PARTY TRUST'S ANSWER AND COUNTERCLAIMS TO THE  
COMPLAINT**

Defendants Melvin L. Phillips, Sr. and Melvin L. Phillips, Sr./Orchard Party Trust (collectively "Orchard Party Trust") answer Plaintiff Oneida Indian Nation's ("OIN") Complaint as follows. Any allegations or averments not specifically admitted herein are denied.

1. The Orchard Party Trust admits that OIN is suing to quiet title to 19.6 acres of land. The Orchard Party Trust states that Melvin L. Phillips, Sr. is a full-blooded Oneida Indian residing in the Town of Vernon and a direct descendant of the Oneida Indians identified as the Orchard Party in Article 13 of the United States Treaty with the New York Indians, of January 15, 1838, 7 Stat. 550 (also known as the Treaty of Buffalo Creek and attached as Answer Exhibit 1). Members of the Orchard Party Oneida, including Phillips' ancestors, chose not to remove to

lands in the west pursuant to the Treaty of Buffalo Creek but instead made “satisfactory arrangements” for the Orchard Party Oneida lands with the State of New York by the Treaty of June 25, 1842, pursuant to the authority of the Buffalo Creek Treaty. The Orchard Party Trust further states that Mr. Phillips is the official spokesman for the descendants of the Orchard Party of Oneida Indians and their duly appointed representative to the Grand Council of the Iroquois Confederacy. The Orchard Party further states that as an Orchard Party Oneida descendant and spokesman, Mr. Phillips is trustee for the Melvin L. Phillips, Sr./Orchard Party Trust and possessed of the lands of the Orchard Party Oneida held in that trust, including the land subject to this suit. The Orchard Party Trust denies the remaining allegations contained in paragraph 1 of the Complaint.

2. The Orchard Party Trust states that the 19.6 acres at issue in this case have been held, used and occupied collectively by generations of Orchard Party Oneida descendants, whose continuity of ownership, possession, use and occupancy are documented and culminate in the deed at issue in this case. The Orchard Party Trust further states that Melvin L. Phillips, Sr., acting in his leadership capacity as the spokesman for the Orchard Party/Marble Hill (aka Orchard Hill) Oneida and as an Orchard Party Oneida descendent and member presently occupying Orchard Party Oneida land, acted to conserve the Orchard Party Oneida lands for the use and enjoyment of current and future members of the Orchard Party Oneida by placing the land at issue in this case into a trust. The Orchard Party Trust denies the remaining allegations in paragraph 2.

3. The Orchard Party Trust states that the 19.6 acres at issue in this case have been held, used and occupied collectively by generations of Orchard Party Oneida descendants, whose continuity of ownership, possession, use and occupancy are documented and culminate in the

deed at issue in this case. The Orchard Party Trust further states that Melvin L. Phillips, Sr., acting in his leadership capacity as the spokesman for the Orchard Party/Marble Hill (aka Orchard Hill) Oneida and as an Orchard Party Oneida descendent and member presently occupying Orchard Party Oneida land, acted to conserve the Orchard Party Oneida lands for the use and enjoyment of current and future members of the Orchard Party Oneida by placing the land at issue in this case into a trust. The Orchard Party Trust denies the remaining allegations in paragraph 3 of the Complaint.

4. The Orchard Party Trust states that the 19.6 acres at issue in this case have been held, used and occupied collectively by generations of Orchard Party Oneida descendants, whose continuity of ownership, possession, use and occupancy are documented and culminate in the deed at issue in this case. The Orchard Party Trust further states that Melvin L. Phillips, Sr., acting in his leadership capacity as the spokesman for the Orchard Party/Marble Hill (aka Orchard Hill) Oneida and as an Orchard Party Oneida descendent and member presently occupying Orchard Party Oneida land, acted to conserve the Orchard Party Oneida lands for the use and enjoyment of current and future members of the Orchard Party Oneida by placing the land at issue in this case into a trust. The Orchard Party Trust denies the remaining allegations in paragraph 4 of the Complaint.

#### **Jurisdiction and Venue**

5. Paragraph 5 of the Complaint contains conclusions of law, no response is required. To the extent that a response is deemed required to the remaining allegations of paragraph 5 of the Complaint, the Orchard Party Trust denies the remaining allegations of paragraph 5 of the Complaint.

6. The Orchard Party Trust admits Melvin L. Phillips, Sr. and Melvin L. Phillips, Sr./Orchard Party Trust reside in this district and are New York residents. The Orchard Party

Trust admits the property that is the subject of this action is situated in this district. The remaining allegations in paragraph 6 of the Complaint contain conclusions of law, to which no response is required. To the extent that a response is deemed required to the remaining allegations of paragraph 6 of the Complaint, the Orchard Party Trust denies the allegations.

### **Parties**

7. Paragraph 7 of the Complaint contains conclusions of law, to which no response is required. To the extent that a response is deemed required to the allegations of paragraph 7 of the Complaint, the Orchard Party Trust denies the allegations..

8. The Orchard Party Trust states that Melvin L. Phillips, Sr. is a full-blooded Oneida Indian residing in the Town of Vernon and a direct descendant of the Oneida Indians identified as the Orchard Party in Article 13 of the United States Treaty with the New York Indians, of January 15, 1838, 7 Stat. 550 ( also known as the Treaty of Buffalo Creek and attached as Answer Exhibit 1). The Orchard Party Trust further states that Mr. Phillips is the official spokesman for the descendants of the Orchard Party of Oneida Indians and their duly appointed representative to the Grand Council of the Iroquois Confederacy. The Orchard Party Trust further states that as an Orchard Party Oneida descendant and spokesman, Mr. Phillips is trustee for the Melvin L. Philips, Sr./Orchard Party Trust and possessed of the lands of the Orchard Party Oneida held in that trust, including the land subject to this suit. The Orchard Party Trust admits that Mr. Phillips is sued individually and as the trustee of the Melvin L. Phillips, Sr./Orchard Party Trust, which also is a defendant. The Orchard Party Trust denies the remaining allegations of paragraph 8 of the Complaint.

### **Facts**

#### **A. The 19.6 Acres of Land the Nation Seeks to Protect**

9. The Orchard Party Trust admits that members and ancestors of the Orchard Party Oneida used, occupied, and possessed the land at issue in this case since time immemorial. The Orchard Party Trust denies the remaining allegations in paragraph 9 of the Complaint.

10. Paragraph 10 of the Complaint contains conclusions of law, to which no response is required. To the extent that a response is deemed required, the Orchard Party Trust denies the allegations in paragraph 10 of the Complaint.

11. The Orchard Party Trust admits that members and ancestors of the Orchard Party Oneida used, occupied, and possessed the land at issue in this case since time immemorial. The Orchard Party Trust denies the remaining allegations in paragraph 11 of the Complaint.

12. The Orchard Party Trust admits that the State never obtained the 19.6 acres at issue in this case. The Orchard Party Trust denies that OIN ever possessed the 19.6 acres, which had always been in possession of members of the Orchard Party Oneida. Therefore, the land was never OIN's to convey. The Orchard Party Trust denies the remaining allegations in paragraph 12 of the Complaint.

13. The Orchard Party Trust denies that OIN ever possessed the 19.6 acres at issue in this case, which had always been in possession of members of the Orchard Party Oneida. The Orchard Party Trust denies the remaining allegations of paragraph 13 of the Complaint.

**B. June 25, 1842 Treaty with the State of New York**

14. The Orchard Party Trust admits that, pursuant to the Treaty of Buffalo Creek, the State of New York and members of the Orchard Party Oneida entered into a treaty on June 25, 1842 regarding Orchard Party Oneida land, more specifically Lots 1, 2, 3, and 4 as depicted in Exhibit B of the Complaint. The Orchard Party Trust denies the remaining allegations of paragraph 14 of the Complaint.

15. The Orchard Party Trust admits on information and belief that the State of New York surveyed Orchard Party Oneida lands Lots 1, 2, 3, and 4. The survey map referred to in paragraph 15 of the Complaint speaks for itself and to the extent that the allegations raised in paragraph 15 do not comport with the language and depictions of the survey map, they are denied.

16. The Orchard Party Trust admits the 19.6 acres that are the subject of this action are wholly within Lot 3 and were never conveyed as part of the June 25, 1842 treaty. Rather, the treaty confirmed that the land would be “so reserved for such of the Orchard Party as intending to remain in the State is to be had, held, enjoyed and occupied by them collectively in the same manner and with the same right, title and interest therein as appertained to them, the party so remaining before the execution of this treaty.” Complaint, Ex. A, Art. 4. The Orchard Party Trust denies the remaining allegations of paragraph 16 of the Complaint.

17. The Orchard Party Trust admits that Exhibit C purports to be a Bureau of Land Management map, purportedly filed in Oneida land claim litigation. The Orchard Party Trust admits the 19.6 acres that are the subject of this action were never conveyed as part of the June 25, 1842 treaty. Rather, the treaty confirmed that the land would be “so reserved for such of the Orchard Party as intending to remain in the State is to be had, held, enjoyed and occupied by them collectively in the same manner and with the same right, title and interest therein as appertained to them, the party so remaining before the execution of this treaty.” Complaint, Ex. A, Art. 4. The Orchard Party Trust denies the remaining allegations of paragraph 17 of the Complaint.

18. The Orchard Party Trust admits that there was a 2013 settlement between the State of New York, Madison County, Oneida County, and OIN. The Orchard Party Trust denies

that the 2013 settlement agreement had any effect on Orchard Party Oneida members' ownership of land in Lot 3 or that the settlement agreement conveyed or purported to convey any land. The remaining allegations of paragraph 18 of the Complaint contain conclusions of law, to which no response is required. To the extent that a response is deemed required, the Orchard Party Trust denies the remaining allegations in paragraph 18 of the Complaint.

**C. The Nation's Members Living in the Vicinity of the 19.6 Acres on Marble Hill**

19. The Orchard Party Trust admits the land in the vicinity of the 19.6 acres has been known to belong to and be occupied by the Orchard Party / Marble Hill (Orchard Hill) Oneida. The Orchard Party Trust admits that members or ancestors of the Orchard Party Oneida have lived in the area since time immemorial. The Orchard Party Trust denies the remaining allegations in paragraph 19 of the Complaint.

20. The Orchard Party Trust admits that the 32 acres of land was the subject of separate Christian Party treaties and has no relevance to the 19.6 acres subject to the Orchard Party treaty. The Orchard Party Trust denies the remaining allegations of paragraph 20.

21. The Orchard Party trust admits that New York State had separate treaties with the Christian Parties and with the Orchard Party Oneida. The Orchard Party Trust denies that OIN was party to or acceded to any rights under the Orchard Party treaty. The Orchard Party Trust denies the remaining allegations in paragraph 21 of the Complaint.

22. On information and belief, the Orchard Party Trust admits that certain beneficiaries of the Orchard Party Trust may be members of OIN and as such may receive certain services and benefits from OIN and may participate in OIN government. The Orchard Party Trust denies the provision of services or receipt of benefits from OIN or participation in OIN's government is relevant to Orchard Party Oneida members' ownership of the 19.6 acres. As to the remaining allegations in paragraph 22 of the Complaint, the Orchard Party Trust lacks

knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

23. On information and belief, the Orchard Party Trust admits that certain beneficiaries of the Orchard Party Trust may be members of OIN. The Orchard Party Trust denies that membership in OIN is relevant to Orchard Party Oneida members' ownership of the 19.6 acres. The Orchard Party Trust denies the remaining allegations of paragraph 23 of the Complaint.

24. The Orchard Party Trust states that Melvin L. Phillips, Sr. is a full-blooded Oneida Indian residing in the Town of Vernon and a direct descendant of the Oneida Indians identified as the Orchard Party in Article 13 of the United States Treaty with the New York Indians, of January 15, 1838, 7 Stat. 550 (also known as the Treaty of Buffalo Creek and attached as Answer Exhibit 1). The Orchard Party Trust further states that Mr. Phillips is the official spokesman for the descendants of the Orchard Party of Oneida Indians and their duly appointed representative to the Grand Council of the Iroquois Confederacy. The Orchard Party Trust further states that as an Orchard Party Oneida descendant and spokesman, Mr. Phillips is trustee for the Melvin L. Philips, Sr./Orchard Party Trust and possessed of the lands of the Orchard Party Oneida held in that trust, including the land subject to this suit. The Orchard Party Trust denies the remaining allegations of paragraph 24 of the Complaint.

**D. Prior Rejections of Phillips' Erroneous Claim to Head a Separate Marble Hill Oneida Tribe**

25. The Orchard Party Trust states that Melvin L. Phillips is a full-blooded Oneida Indian residing in the Town of Vernon and a direct descendant of the Oneida Indians identified as the Orchard Party in Article 13 of the United States Treaty with the New York Indians, of January 15, 1838, 7 Stat. 550 (also known as the Treaty of Buffalo Creek and attached as Answer



Exhibit 1). The Orchard Party Trust further states that Mr. Phillips is the official spokesman for the descendants of the Orchard Party/Marble Hill (aka Orchard Hill) Oneida and their duly appointed representative to the Grand Council of the Iroquois Confederacy. The Orchard Party Trust further states that as an Orchard Party Oneida descendant and spokesman, Mr. Phillips is trustee for the Melvin L. Philips, Sr./Orchard Party Trust and possessed of the lands of the Orchard Party Oneida held in that trust, including the land subject to this suit. The Orchard Party Trust denies the remaining allegations of paragraph 25 of the Complaint.

26. To the extent that paragraph 26 of the Complaint contains conclusions of law, no response is required. To the extent that a response is deemed required, the Orchard Party Trust denies the allegations of paragraph 26 of the Complaint.

27. To the extent that paragraph 27 of the Complaint contains conclusions of law, no response is required. To the extent that a response is deemed required, the Orchard Party Trust denies the allegations of paragraph 27 of the Complaint.

28. To the extent that paragraph 28 of the Complaint contains conclusions of law, no response is required. To the extent that a response is deemed required, the Orchard Party Trust denies the allegations of paragraph 28 of the Complaint.

**E. Phillips' Trust and Recorded Quitclaim Deed**

29. As to paragraph 29 of the Complaint, the trust instrument referred to in Paragraph 29 speaks for itself and to the extent that the allegations raised in paragraph 29 comport with the language of the trust instrument, they are admitted. To the extent that they do not comport with the language of the trust instrument, they are denied.

30. As to paragraph 30 of the Complaint, the trust instrument referred to in paragraph 30 speaks for itself and to the extent that the allegations raised in paragraph 30 comport with the

language of the trust instrument, they are admitted. To the extent that they do not comport with the language of the trust instrument, they are denied.

31. As to paragraph 31 of the Complaint, the trust instrument referred to in paragraph 31 speaks for itself and to the extent that the allegations raised in paragraph 31 comport with the language of the trust instrument, they are admitted. To the extent that they do not comport with the language of the trust instrument, they are denied.

32. The Orchard Party Trust admits that Mr. Phillips asserts in the papers filed with the deed that the 19.6 acres “compris[e] tribal lands belonging to the Oneida Nation/Orchard Hill Party and the grantor, Melvin L. Phillips,” that he represents the interests of Orchard Party Oneida members, and that the lands are “currently owned, occupied, titled to, possessed by, and under the stewardship of Melvin L. Phillips, Sr.” The Orchard Party Trust denies the remaining allegations in paragraph 32 of the Complaint.

33. The Orchard Party Trust denies the allegations in paragraph 33 of the Complaint.

### **Claim**

34. The Orchard Party Trust denies all allegations in paragraph 34 of the Complaint.

35. The Orchard Party Trust denies all allegations in paragraph 35 of the Complaint.

36. The Orchard Party Trust denies all allegations in paragraph 36 of the Complaint.

37. The Orchard Party Trust denies all allegations in paragraph 37 of the Complaint.

38. The Orchard Party Trust denies all allegations in paragraph 38 of the Complaint.

39. The Orchard Party Trust denies all allegations in paragraph 39 of the Complaint.

### **Prayer for Relief**

The Orchard Party Trust denies the allegations of paragraphs a–d of OIN’s Prayer for Relief and denies that OIN is entitled to any of the relief it requests.

### **Affirmative Defenses**

The Orchard Party Trust hereby asserts the following defenses without undertaking or otherwise shifting any applicable burdens of proof. The Orchard Party Trust reserves the right to assert additional defenses, as warranted by facts revealed through investigation and discovery.

40. OIN's claims are barred by the Eleventh Amendment to the United States Constitution.

41. OIN has failed to join the United States, the State of New York, Oneida County, the Town of Vernon, and other necessary individuals who are all indispensable parties to this litigation.

42. OIN's claims are barred by the statute of limitations.

43. OIN's claims are barred by collateral estoppel.

44. OIN's claims are barred by res judicata.

45. OIN's claims are barred by release.

46. OIN's claims are barred by accord and satisfaction.

47. OIN's claims are barred by Congressional act.

48. OIN's claims are barred by laches.

49. OIN's claims are barred by impossibility.

50. OIN has failed to present a justiciable dispute.

51. OIN has abandoned any rights it may have to Orchard Party Trust lands.

52. OIN has failed to state a claim upon which relief can be granted.

53. OIN's claims are barred by the doctrine of acquiescence and estoppel.

### **Counterclaims**

#### **Jurisdiction**

54. Subject matter jurisdiction is established by 28 U.S.C. § 1367.

#### **Parties**

55. Melvin L. Phillips, Sr. is a full-blooded Oneida Indian, descended from members of the Orchard Party of the Oneida, who have resided on and possessed lands now located in the State of New York since time immemorial. Mr. Phillips is a leader of the Orchard Party Oneida, a successor-in-interest to the historic Oneida Indian Nation (distinct from the Plaintiff in this proceeding). Mr. Phillips' leadership role as spokesman for the Orchard Party Oneida is recognized by the Haudenosaunee—the Grand Council of Chiefs of the Five Nations Iroquois Confederacy.

56. Melvin L. Phillips, Sr./Orchard Party Trust is the trust created by Melvin L. Phillips, Sr. to protect the historic lands of the Orchard Party Oneida and reserve them for current and future members of the Orchard Party Oneida. Mr. Phillips also acts as trustee.

57. The Plaintiff in this case is OIN, which “is a federally recognized Indian Tribe and a direct descendent of the Oneida Indian Nation . . . .” *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197, 203 (2005). As *City of Sherrill* recognizes, OIN is one of the successors-in-interest to the historic Oneida Indian Nation, as is the Orchard Party Oneida.

## **The Lands**

### **1. Time Immemorial and Early Treaties**

58. Since time immemorial, Indians of the historic Oneida Indian Nation have lived on land located in what is now the State of New York.

59. In the 18<sup>th</sup> and 19<sup>th</sup> centuries, the Oneidas entered into treaties with the State of New York that significantly diminished the area of Oneida lands in the State. The Treaty of Fort Schuyler, in 1788, resulted in the shrinking of Oneida lands from around six million acres to closer to 300,000 acres. *City of Sherrill*, 544 U.S. at 203 (2005).

60. The Treaty of Canandaigua in 1794 resulted in the federal government's recognition of an Oneida reservation comprising the approximately 300,000 acres of land in the State of New York retained by the Oneidas in the Treaty of Fort Schuyler. *City of Sherrill*, 44 U.S. at 203–05. The property at issue in this case was part of the original Oneida reservation.

## **2. The Treaty of Buffalo Creek**

61. In the Treaty of Buffalo Creek, entered into in 1838, members of the Orchard Party Oneida and members of another group of Oneida Indians, the First Christian Party, made an agreement with the United States to, amongst other things, sell their lands in New York to the State of New York. Answer Ex. 1. Article 13 of the treaty contained a provision for the “Oneidas Residing in the State of New York” that authorized the Oneida parties to “make satisfactory arrangements with the Governor of the State of New York for the purchase of their lands at Oneida.”

## **3. The Treaties of 1842**

62. Following the Treaty of Buffalo Creek, in 1842, the First and now Second Christian Parties of the Oneida and the Orchard Party Oneida entered into separate treaties with the State of New York, selling significant portions of their remaining land.

63. The State of New York entered into a treaty with the First and Second Christian Parties of the Oneida Indians in May of 1842. *United States v. Boylan*, 265 F. 165, 167 (2d Cir. 1920). The First and Second Christian Parties agreed to sell a portion of their land to the State of New York. *Id.* at 167–68. None of the land included in the treaty is at issue in this case.

64. On June 25, 1842, the State of New York entered into a separate treaty with the Orchard Party Oneida. Complaint, Ex. A. The treaty effected the purchase of the majority of remaining Orchard Party Oneida lands, labeled as Lots 1, 2, and 4 on the survey map in Exhibit

B of the Complaint. The unpurchased Lot 3 was reserved for the Orchard Party Oneida identified in Document A of the treaty as the “Home party of the Orchard Indians” who decided to remain on their land in New York. According to the terms of the treaty, Orchard Party land in Lot 3 was “so reserved for such of the Orchard Party as intending to remain in the State is to be had, held, enjoyed and occupied by them collectively in the same manner and with the same right, title and interest therein as appertained to them, the party so remaining before the execution of this treaty.” Complaint, Ex. A, Art. 4. In recognition of the Orchard Party Oneida’s ownership of the lands under the deed, the State of New York and Oneida County exempt those lands from taxation.

#### **4. Post 1842**

65. Members of the Home party of the Orchard Indians, otherwise known as the Orchard Party Oneida, have used and occupied 19.6 acres of Lot 3 ever since the 1842 Treaty. Melvin Phillips is directly descended from those members of the Home Party of the Orchard Indians. He is the great, great grandson of Moses Day, who is listed on Document A of the 1842 treaty as an Orchard Party Oneida member intending to remain on Lot 3, and Susan Johnson, the sister to Orchard Party Oneida Chief William Johnson, who is also listed in Document A. Mr. Phillips and his direct ancestors have remained on the land of Lot 3 since the 1842 treaty, as summarized in the trust deed: “The members of the Home Party and their descendants, including the said Melvin L. Phillips, have fulfilled the intention of those identified in said Document A to remain on Lot No. 3 as members of the Home Party of the Orchard Indians; they have continuously used and occupied said Lot No. 3.” Complaint, Ex. E, Attach. p. 3.

66. This Court has previously determined that Orchard Party Oneida lands do not belong to OIN. In *Shenandoah v. U.S. Dept. of the Interior*, 1997 WL 214947 (N.D.N.Y. Apr.

14, 1997), *aff'd*, 159 F.3d 708 (2d Cir. 1998), this Court determined that Orchard Party Oneida Clanmother Thelma Buss, who was residing on Orchard Party Oneida lands located on Lot 2, directly adjacent to Lot 3, “does not reside on Oneida Nation territory” *Id.* at \*8 n.6 (citation omitted).

67. The Bureau of Indian Affairs (BIA) has also recognized that OIN’s lands do not extend to the Orchard Party Oneida land at issue. In a 2001 affidavit, the BIA Deputy Commissioner, M. Sharon Blackwell, described the “Oneida Nation of New York” as the “Indian tribe that remained on the New York Oneida Reservation, as surveyed by Nathan Burchard, following the Treaty of May 23, 1842, between the State of New York and the First and Second Christian Parties of the Oneida Indians.” Notably excluded from Deputy Commission Blackwell’s affidavit is any mention of the Orchard Party Oneida or its lands.

68. In 2005, OIN filed an application to put land OIN had reacquired into federal trust. The land at issue in this case was not included in OIN’s application. OIN has never attempted to put the land at issue in this case into federal trust, and, indeed, could not, as it has always been in possession of members of the Orchard Party Oneida.

## **5. 2013 Settlement**

69. In 2013, OIN, the State of New York, and Madison and Oneida Counties entered into a comprehensive settlement of litigation over land that had previously been part of the historic Oneida Indian Nation reservation, some of which OIN had repurchased from non-Indian owners and some of which OIN had applied to put into federal trust. Complaint, Ex. D; see *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661 (1974); *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226 (1985); *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197 (2005) (examples of the litigation). The settlement was approved by this court in *New York v.*

*Jewell*, 2014 U.S. Dist. LEXIS 27042 (N.D.N.Y. Mar. 4, 2014). The Orchard Party Oneida was not a party to the settlement.

70. Included in the settlement's definitions section are provisions which incorrectly describe the "Marble Hill tract" as "land retained by the Oneida Nation as Lots 2 and 3 in the June 25, 1842 Orchard Party treaty," and as "Nation Land" possessed by OIN. Complaint, Ex. D, Sec. II.G, L. Rather, this land was retained by the Orchard Party Oneida. As part of the settlement, "Nation Land," while not subject to state taxes, is subject to a comprehensive taxation scheme on activities carried out on the land, to be implemented by OIN. *Id.* at Sec. V.A, E.

### **The Trust Deed**

71. Melvin L. Phillips, Sr. acting in his leadership capacity as the spokesman for the Orchard Party Oneida and as an Orchard Party Oneida descendent and member presently occupying Orchard Party Oneida land, acted to conserve the Orchard Party Oneida lands for the use and enjoyment of current and future members of the Orchard Party Oneida. To accomplish this goal, Mr. Phillips placed the land at issue in this case, as well as other parcels located in Lots 2 and 3, into a trust. OIN has made no claims in this case related to these latter parcels.

72. On September 1, 2015, Mr. Phillips executed a quitclaim deed, transferring the rights of those parcels to the Melvin L. Phillips, Sr. / Orchard Party Trust. Complaint, Ex. E. Under the trust instrument, Mr. Phillips is trustee "for the benefit of his lineal heirs and all current and future members of the Orchard Party." *Id.* at Ex. 12, p. 1. The trust fulfills the "intent of the ancestors of Melvin L. Phillips, Sr.," as well as "the members of the Orchard Party past, present and future" to reserve the lands in question to Mr. Phillip's "heirs and lineal



descendants” and “other members of the Orchard party who actually live on and occupy the said lands described herein.” *Id.* at p. 2–3.

### **Claims**

73. Melvin L. Phillips, Sr. / Orchard Party Trust, as a successor-in-interest to the historic Oneida Party Oneida, does possess and has a right to possess the 19.6 acres, and the other lands under the deed, a right arising from and protected against infringement by federal treaty, state treaty, statutory and common law, and by the Constitution.

74. The Orchard Party Oneida never alienated the 19.6 acres to any person or entity.

75. Melvin L. Phillips, Sr., as spokesman for the Orchard Party Oneida, conveyed the 19.6 acres to a trust.

76. Mr. Phillips’ execution and recording of the trust declaration, quitclaim deed and other documents in county land records was a lawful action to maintain possession and control of the 19.6 acres and other Orchard Party Oneida lands identified in the deed for the benefit of the Orchard Party Oneida.

### **Prayer for Relief**

WHEREFORE, the Orchard Party Trust prays for entry of judgment in its favor and against OIN:

- a. Declaring that OIN does not own nor has any property interest in the 19.6 acres;
- b. Declaring that the trust document, the quitclaim deed and all related documents filed by Melvin L. Phillips, Sr. on behalf of the Orchard Party Oneida in the Oneida County land records are valid so far as they concern the 19.6 acres;
- c. Enjoining OIN (i) not to claim the 19.6 acres for itself, (ii) not to assert that OIN owns or has a property interest in the 19.6 acres, and (iii) not to create or cause to

be created, or file or cause to be filed, in land records any document asserting that OIN owns or has a property interest in the 19.6 acres; and

- d. Granting such other relief as the Orchard Party Trust may be entitled to at law or in equity.

Respectfully submitted,

*/s/ Eric N. Whitney*

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Dated: January 12, 2018