

1/18/2005

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

BIODIVERSITY CONSERVATION ALLIANCE,  
Center for Biological Diversity, Forest Guardians,  
Center for Native Ecosystems, Utah Environmental  
Congress, and Jeremy Nichols

Plaintiffs,

v.

GALE NORTON, Secretary of the Interior; and  
STEVEN WILLIAMS, Director, U.S. Fish and Wildlife  
Service

Defendants.

Civil No. 04-2026 (GK)

**ANSWER TO FIRST AMENDED COMPLAINT  
FOR INJUNCTIVE AND DECLARATORY RELIEF**

On behalf of Defendants Gale Norton, in her official capacity, as Secretary of Interior and Steven Williams, in his official capacity, as the Director of the U.S. Fish and Wildlife Service, the United States hereby answers the First Amended Complaint and sets forth its affirmative defenses in this matter.

**INTRODUCTION**

1. The allegations set forth in Paragraph 1 are a characterization of Plaintiffs' Complaint to which no response is required. To the extent a response may be required, these allegations are denied.

**PARTIES**

2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2, and on that basis deny them.
3. Defendants deny the allegation of "inaction" set forth in Paragraph 3. Defendants are

without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 3, and on that basis deny them.

4. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4, and on that basis deny them.
5. Defendants deny the allegation of “inaction” set forth in Paragraph 5. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 5, and on that basis deny them.
6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6, and on that basis deny them.
7. Defendants deny the allegation of “inaction” set forth in Paragraph 7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 7, and on that basis deny them.
8. Defendants deny the allegation of “inaction” set forth in the last sentence of Paragraph 8. As to the remaining allegations set forth in Paragraph 8, defendants are without knowledge or information sufficient to form a belief as to their truth, and on that basis deny them.
9. Defendants deny the allegation of “inaction” set forth in the last sentence of Paragraph 9. As to the remaining allegations set forth in Paragraph 9, defendants are without knowledge or information sufficient to form a belief as to their truth, and on that basis deny them.
10. Defendants deny the allegation of “inaction” set forth in the last sentence of Paragraph 10. Defendants are without knowledge or information sufficient to form a belief as to the

truth of the allegation that Plaintiff Jeremy Nichols resides in Laramie, Wyoming, as well the remaining allegations set forth in Paragraph 10, and on that basis deny them.

11. Defendants admit that Gale Norton is Secretary of the Interior. The remaining allegations set forth in the first sentence of Paragraph 11 consist of Plaintiffs' characterization of the ESA, a statute that speaks for itself and provides the best evidence of its contents; any allegation contrary to its plain meaning is denied. Defendants admit the allegations in the second sentence of Paragraph 11.
12. Defendants admit that Steven Williams is Director of the United States Fish and Wildlife Service, which is a part of the Department of the Interior. The remaining allegations set forth in the first sentence of Paragraph 12 consist of Plaintiffs' characterization of the nature of the case and require no response. Defendants admit the allegations in the second sentence of Paragraph 12.

#### **JURISDICTION AND VENUE**

13. The first and third sentences in Paragraph 13 are characterizations of Plaintiffs' Complaint to which no response is required. To the extent a response is required, Defendants deny the allegations. The allegations set forth in the second and last sentences of Paragraph 13 are conclusions of law to which no responses are required. To the extent a response is required, Defendants deny the allegations.
14. The allegations set forth in Paragraph 14 are conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.
15. Defendants admit that Defendants Gale Norton and Steven Williams officially reside in the District of Columbia. Defendants deny the allegations set forth in the first sentence

of Paragraph 15. The allegations set forth in the third sentence of Paragraph 15 are conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

## **FACTS**

### **Regulatory Structure**

16. Paragraph 16 purports to characterize a provision of the ESA, a statute that speaks for itself and provides the best evidence of its contents; any allegation contrary to its plain meaning is denied.
17. Paragraph 17 purports to characterize a provision of the ESA, a statute that speaks for itself and provides the best evidence of its contents; any allegation contrary to its plain meaning is denied.
18. Paragraph 18 purports to characterize a provision of the ESA, a statute that speaks for itself and provides the best evidence of its contents; any allegation contrary to its plain meaning is denied.
19. Paragraph 19 purports to characterize a provision of the ESA, a statute that speaks for itself and provides the best evidence of its contents; any allegation contrary to its plain meaning is denied.
20. Paragraph 20 purports to characterize provisions of the ESA, a statute that speaks for itself and provides the best evidence of its contents; any allegation contrary to its plain meaning is denied.
21. The allegations set forth in the first two sentences Paragraph 21 purport to characterize provisions of the ESA, a statute that speaks for itself and provides the best evidence of its

contents; any allegation contrary to its plain meaning is denied. Defendants deny the allegations set forth in the last sentence of Paragraph 21. See Am. Lands Alliance v. Norton, No. 00-2339 (D.D.C. May 13, 2003), vacating in part Am. Lands Alliance v. Norton, 242 F. Supp. 2d 1 (D.D.C. 2003).

22. Defendants deny the allegations set forth in Paragraph 22.
23. Paragraph 23 purports to characterize a provision of the ESA and provisions of the U.S. Fish and Wildlife regulations, all of which speak for themselves and provide the best evidence of their contents; any allegation contrary to their plain meaning is denied.
24. Paragraph 24 purports to characterize Am. Lands Alliance v. Norton, 242 F. Supp. 2d 1 (D.D.C. 2003), vacated in part by Am. Lands Alliance v. Norton, No. 00-2339 (D.D.C. May 13, 2003), a decision that speaks for itself and is the best evidence of its contents; any allegation contrary to its plain meaning is denied.
25. Defendants deny the allegations set forth in Paragraph 25.

#### **The Dakota Skipper Listing Petition**

26. Defendants admit the allegations set forth in the first and second sentences of Paragraph 26. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in the remaining sentences of Paragraph 26, and on that basis deny them.
27. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 27, and on that basis deny them.
28. Defendants admit that Dakota skippers historically were found throughout the tallgrass and mixed grass prairie in Illinois, Iowa, Minnesota, the Dakotas, Manitoba,

Saskatchewan, and possibly eastern Montana. Defendants admit the Dakota skipper is found in western Minnesota, the eastern half of North Dakota, and northeastern South Dakota, but deny the allegation that the species is “primarily found only” in these regions. Defendants admit the allegations set forth in the last sentence of Paragraph 28. Defendants deny any remaining allegations set forth in Paragraph 28.

29. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 29, and on that basis deny them.
30. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 30, and on that basis deny them.
31. Defendants admit that habitat degradation causes tallgrass and mixed grass prairies to support fewer native plant species. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 31, and on that basis deny them.
32. Defendants admit that the U.S. Fish and Wildlife Service has designated the Dakota skipper as a candidate species and has reviewed its status. Defendants admit that the U.S. Fish and Wildlife Service reviews the status of all candidate species, including the Dakota skipper, in a publication called a Candidate Notice of Review. Defendants deny the remaining allegations set forth in the second sentence of Paragraph 32. Defendants aver that the May 4, 2004, Candidate Notice of Review, 69 Fed. Reg. 24,876, speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain meaning and content.
33. Defendants admit that Plaintiffs Biodiversity Conservation Alliance, Center for

Biological Diversity, and Jeremy Nichols submitted a petition to list the Dakota skipper as endangered or threatened on May 6, 2003, and that the U.S. Fish and Wildlife Service received the petition on May 12, 2003.

34. In response to the allegations set forth in the first sentence of Paragraph 34, Defendants admit that the U.S. Fish and Wildlife Service acknowledged receipt of that petition in a letter to the Plaintiffs dated July 29, 2003. The second sentence of Paragraph 34 purports to characterize the July 29, 2003 letter, a document that speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain meaning and contents.
35. The first sentence of Paragraph 35 purports to characterize Am. Lands Alliance v. Norton, 242 F. Supp. 2d 1 (D.D.C. 2003), vacated in part by Am. Lands Alliance v. Norton, No. 00-2339 (D.D.C. May 13, 2003), a decision that speaks for itself and is the best evidence of its contents; any allegation contrary to its plain meaning is denied. Defendants deny the allegations set forth in the second sentence of Paragraph 35.
36. Defendants admit the allegation set forth in the first sentence of Paragraph 36 that Plaintiffs Biodiversity Conservation Alliance, Center for Biological Diversity, Center for Native Ecosystems, and Jeremy Nichols sent the U.S. Fish and Wildlife Service a letter dated August 14, 2003, informing them of Plaintiffs' intent to sue regarding a finding on the Dakota skipper listing petition. To the extent the remaining allegations set forth in the first sentence of Paragraph 36 require a response, Defendants deny the allegations. Defendants admit the allegations set forth in the second sentence of Paragraph 36.

### The Gunnison's Prairie Dog Listing Petition

37. Defendants admit the allegations set forth in the first sentence of Paragraph 37. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 37, and on that basis deny them.
38. Defendants admit the allegations set forth in the first sentence of Paragraph 38. Defendants also admit that Gunnison's Prairie Dogs serve as prey for other animals and that their burrow networks create refugia for mammals, birds, herptiles, and insects. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in the last sentence of Paragraph 38, and on that basis deny them.
39. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of Paragraph 39, and on that basis deny them. Defendants admit that wildlife species are associated, to varying degrees, with prairie dogs and their colonies. Defendants are without knowledge to admit or deny that the number of wildlife species are associated, to varying degrees, with prairie dogs and their colonies is 140. Defendants deny any remaining allegations in Paragraph 39.
40. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 40, and on that basis deny them.
41. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 41, and on that basis deny them.
42. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 42, and on that basis deny them.

43. Defendants admit that recreational shooting of Gunnison's Prairie Dogs occurs throughout their range. Defendants also admit the allegations set forth in the sixth sentence of Paragraph 43. Defendants deny the remaining allegations set forth in Paragraph 43.
44. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 44, and on that basis deny them.
45. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 45, and on that basis deny them.
46. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 46, and on that basis deny them.
47. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 47, and on that basis deny them.
48. Defendants respond to the allegations set forth in Paragraph 48 by averring that the Regional Director in Denver received a copy of Plaintiffs Forest Guardians, Center for Biological Diversity and Center for Native Ecosystems petition to list the Gunnison's Prairie Dog as endangered or threatened on February 25, 2004.
49. Defendants admit the allegation set forth in the first sentence of Paragraph 49 that Plaintiffs Forest Guardians and Center for Native Ecosystems sent the U.S. Fish and Wildlife Service a letter dated July 29, 2004, informing them of Plaintiffs' intent to sue regarding a finding on the Gunnison's Prairie Dog listing petition. To the extent the remaining allegations set forth in the first sentence of Paragraph 49 require a response, Defendants deny the allegations. Defendants admit the allegations set forth in the second

sentence of Paragraph 49. Defendants admit that the U.S. Fish and Wildlife Service sent Dr. Nicole Rosmarino of Forest Guardians a letter, which speaks for itself and provides the best evidence of its contents; any allegation in the last sentence of Paragraph 49 that is inconsistent with the letter is denied.

**The Black Hills Mountainsnail Listing Petition**

50. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first two sentences of Paragraph 50, and on that basis deny them. Defendants deny the allegations set forth in the last two sentences of Paragraph 50.
51. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 51, and on that basis deny them.
52. Defendants admit the allegations set forth in the last sentence of Paragraph 52. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 52, and on that basis deny them.
53. Defendants admit the allegations set forth in the second and fourth sentences of Paragraph 53. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 53, and on that basis deny them.
54. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 54, and on that basis deny them.
55. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 55, and on that basis deny them.

56. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 56, and on that basis deny them.
57. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 57, and on that basis deny them.
58. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 58, and on that basis deny them.
59. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 59, and on that basis deny them.
60. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 60, and on that basis deny them.
61. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 61, and on that basis deny them.
62. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 62, and on that basis deny them.
63. Defendants admit the allegations set forth in Paragraph 63.
64. Defendants admit the allegation set forth in the first sentence of Paragraph 64 that Plaintiffs Biodiversity Conservation Alliance, Center for Biological Diversity, Center for Native Ecosystems, and Jeremy Nichols sent the U.S. Fish and Wildlife Service a letter dated January 13, 2003, informing them of Plaintiffs' intent to sue regarding a finding on the Black Hills mountainsnail listing petition. To the extent the remaining allegations set forth in the first sentence of Paragraph 64 require a response, Defendants deny the allegations. Defendants admit the allegations set forth in the second sentence of

Paragraph 64.

**The Uinta Mountainsnail Listing Petition**

65. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 65, and on that basis deny them.
66. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 66, and on that basis deny them.
67. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 67, and on that basis deny them.
68. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 68, and on that basis deny them.
69. Defendants admit that Plaintiff Utah Environmental Congress submitted a petition to list the Uinta mountainsnail as endangered or threatened on August 21, 2001, and that Defendants received this petition on August 29, 2001.
70. Defendants admit that Plaintiffs Biodiversity Conservatoin Alliance, Center for Native Ecosystems, and Utah Environmental Congress sent the U.S. Fish and Wildlife Service a letter dated July 13, 2004, informing them of Plaintiffs' intent to sue regarding a finding on the Uinta mountainsnail listing petition. To the extent the remaining allegations set forth in the first sentence of Paragraph 70 require a response, Defendants deny the allegations. Defendants admit the allegations set forth in the second sentence of Paragraph 70.

## CLAIMS

### Claims as to the Dakota Skipper Listing Petition

#### First Claim for Relief (ESA Section 4(b)(3)(A))

71. Defendants' responses to each and every allegation set forth in Paragraphs 1 through 70 are incorporated herein by reference and thus provide the response to Plaintiffs' Paragraph 71.
72. Defendants admit the allegations set forth in the first sentence of Paragraph 72. Defendants deny the second sentence of Paragraph 72, because as a candidate species, the Dakota skipper is "warranted but precluded" from being listed under the ESA by work on higher priority species.
73. The allegations set forth in Paragraph 73 are conclusions of law to which no response is required. To the extent a response may be required, these allegations are denied.

#### (Alternative) Second Claim for Relief (APA Unreasonable Delay)

74. Defendants' responses to each and every allegation set forth in Paragraphs 1 through 73 are incorporated herein by reference and thus provide the response to Plaintiffs' Paragraph 74.
75. Paragraph 75 purports to characterize a provision of the ESA, a statute that speaks for itself and provides the best evidence of its contents; any allegation contrary to its plain meaning is denied.
76. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 76, and on that basis deny them.

77. The allegations set forth in Paragraph 77 are conclusions of law to which no response is required. To the extent a response may be required, these allegations are denied.

**(Alternative) Third Claim for Relief (ESA Section 4(b)(3)(B)(iii))**

78. Defendants' responses to each and every allegation set forth in Paragraphs 1 through 77 are incorporated herein by reference and thus provide the response to Plaintiffs' Paragraph 78.

79. The allegations set forth in Paragraph 79 are conclusions of law to which no response is required. To the extent a response may be required, these allegations are denied.

**(Alternative) Fourth Claim for Relief (APA Arbitrary and Capricious)**

80. Defendants' responses to each and every allegation set forth in Paragraphs 1 through 79 are incorporated herein by reference and thus provide the response to Plaintiffs' Paragraph 80.

81. The allegations set forth in Paragraph 81 are conclusions of law to which no response is required. To the extent a response may be required, these allegations are denied.

**Claims as to the Gunnison's Prairie Dog Listing Petition**

**Fifth Claim for Relief (ESA Section 4(b)(3)(A))**

82. Defendants' responses to each and every allegation set forth in Paragraphs 1 through 81 are incorporated herein by reference and thus provide the response to Plaintiffs' Paragraph 82.

83. Defendants admit that it has not been practicable to make a 90-day finding on the Gunnison's Prairie Dog listing petition.

84. Defendants deny the allegations set forth in Paragraph 84.

85. Defendants are without knowledge or information sufficient to form a belief as to whether the FWS will issue a substantial information finding on the Gunnison's Prairie Dog within a year of receiving Plaintiffs' petition, and on that basis deny them. Defendants deny the remaining allegations set forth in Paragraph 85.
86. The allegations set forth in Paragraph 86 are conclusions of law to which no response is required. To the extent a response may be required, these allegations are denied.

**(Alternative) Sixth Claim for Relief (APA Unreasonable Delay)**

87. Defendants' responses to each and every allegation set forth in Paragraphs 1 through 86 are incorporated herein by reference and thus provide the response to Plaintiffs' Paragraph 87.
88. Paragraph 88 purports to characterize a provision of the ESA, a statute that speaks for itself and provides the best evidence of its contents; any allegation contrary to its plain meaning is denied.
89. Plaintiffs deny the allegations set forth in Paragraph 89.
90. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 90, and on that basis deny them.
91. The allegations set forth in Paragraph 91 are conclusions of law to which no response is required. To the extent a response may be required, these allegations are denied.

**Claims as to the Black Hills Mountainsnail Listing Petition**

**Seventh Claim for Relief (ESA Section 4(b)(3)(A))**

92. Defendants' responses to each and every allegation set forth in Paragraphs 1 through 91 are incorporated herein by reference and thus provide the response to Plaintiffs'

Paragraph 92.

93. Defendants admit the allegations set forth in the first sentence of Paragraph 93.

Defendants admit that it has not been practicable to make a 90-day finding on the Black Hills mountainsnail listing petition.

94. The allegations set forth in Paragraph 94 are conclusions of law to which no response is required. To the extent a response may be required, these allegations are denied.

**(Alternative) Eighth Claim for Relief (APA Unreasonable Delay)**

95. Defendants' responses to each and every allegation set forth in Paragraphs 1 through 94 are incorporated herein by reference and thus provide the response to Plaintiffs' Paragraph 95.

96. Paragraph 96 purports to characterize a provision of the ESA, a statute that speaks for itself and provides the best evidence of its contents; any allegation contrary to its plain meaning is denied.

97. Defendants are without knowledge of information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 97, and on that basis deny them.

98. The allegations set forth in Paragraph 98 are conclusions of law to which no response is required. To the extent a response may be required, these allegations are denied.

**Claims as to the Uinta Mountainsnail Listing Petition**

**Ninth Claim for Relief (ESA Section (4)(b)(3)(A))**

99. Defendants' responses to each and every allegation set forth in Paragraphs 1 through 98 are incorporated herein by reference and thus provide the response to Plaintiffs' Paragraph 99.

100. Defendants admit the allegations set forth in the first sentence of Paragraph 100.  
Defendants admit that it has not been practicable to make a 90-day finding on the Uinta mountainsnail listing petition.

101. The allegations set forth in Paragraph 101 are conclusions of law to which no response is required. To the extent a response may be required, these allegations are denied.

**(Alternative) Tenth Claim for Relief (APA Unreasonable Delay)**

102. Defendants' responses to each and every allegation set forth in Paragraphs 1 through 101 are incorporated herein by reference and thus provide the response to Plaintiffs' Paragraph 102.

103. Paragraph 103 purports to characterize a provision of the ESA, a statute that speaks for itself and provides the best evidence of its contents; any allegation contrary to its plain meaning is denied.

104. Defendants are without knowledge of information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 104, and on that basis deny them.

105. The allegations set forth in Paragraph 105 are conclusions of law to which no response is required. To the extent a response may be required, these allegations are denied.

**Pattern and Practice Claims**

**Eleventh Claim for Relief (ESA Section 4(b)(3)(A))**

106. Defendants' responses to each and every allegation set forth in Paragraphs 1 through 105 are incorporated herein by reference and thus provide the response to Plaintiffs' Paragraph 106.

107. Defendants admit the allegations set forth in the first sentence of Paragraph 107.

Defendants admit that it has not been practicable to make a 90-day finding on the Dakota skipper, Black Hills mountainsnail, and Uinta mountainsnail listing petitions.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the last sentence of Paragraph 107, and on that basis deny them.

108. Defendants deny the allegations set forth in Paragraph 108.

109. The allegations set forth in Paragraph 109 are conclusions of law to which no response is required. To the extent a response may be required, these allegations are denied.

**(Alternative) Twelfth Claim for Relief (APA Unreasonable Delay)**

110. Defendants' responses to each and every allegation set forth in Paragraphs 1 through 109 are incorporated herein by reference and thus provide the response to Plaintiffs' Paragraph 110.

111. Paragraph 111 purports to characterize a provision of the ESA, a statute that speaks for itself and provides the best evidence of its contents; any allegation contrary to its plain meaning is denied.

112. Defendants deny the allegations set forth in Paragraph 112.

113. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 113, and on that basis deny them.

114. The allegations set forth in Paragraph 114 are conclusions of law to which no response is required. To the extent a response may be required, these allegations are denied.

**PRAYER FOR RELIEF**



