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7  
8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF ARIZONA**

10 Center for Biological Diversity; Sierra  
Club; and Grand Canyon Wildlands  
11 Council,

12 Plaintiffs,

13 v.

14 United States Forest Service,

15 Defendant,

16 and

17 The National Rifle Association of  
America; Safari Club International; and  
18 National Shooting Sports Foundation,  
Inc.,

19 Intervenor-Defendants.  
20

No. CV-12-8176-PCT-SMM

**NATIONAL SHOOTING SPORTS  
FOUNDATION'S REPLY  
MEMORANDUM IN SUPPORT OF  
MOTION FOR JUDGMENT ON THE  
PLEADINGS**

**(Oral Argument Requested)**

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1 Intervenor-Defendant National Shooting Sports Foundation, Inc., (“NSSF”) hereby  
2 submits its reply in support of its motion for judgment on the pleadings pursuant to Rule  
3 12(c), Fed.R.Civ.P.

4 **I. INTRODUCTION.**

5 Plaintiffs have brought a citizen suit under Section 7002(a)(1)(B) of the Resource  
6 Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972(a)(1)(B), in which they  
7 claim that recreational hunters using lead ammunition within the Kaibab National Forest  
8 are disposing of solid waste, which presents “an imminent and substantial endangerment  
9 to health or the environment.” Plaintiffs also claim that the United States Forest Service is  
10 liable as a “contributor” because it hasn’t banned the use of lead ammunition within the  
11 national forest. *See, e.g.*, Compl. ¶ 3 (alleging the Forest Service “has failed to take action  
12 to stop the disposal of lead in the form of spent ammunition on Forest Service land”); ¶ 45  
13 (alleging the Forest Service “is contributing to the past or present disposal of solid or  
14 hazardous waste . . . by failing to use its broad authority to stop the disposal of lead in the  
15 form of spent ammunition within the Kaibab National Forest”). According to Plaintiffs,  
16 whenever a hunter fires at an animal, he is discarding his round, making it solid waste.  
17 *See* Plfs.’ Resp. at 17-18.

18 Frankly, this is nonsensical. There is no evidence that Congress intended RCRA to  
19 apply to hunting deer in a national forest. The Ninth Circuit recently explained that  
20 “Congress enacted RCRA in an effort to ‘solv[e] the problems associated with the 3 – 4  
21 billion tons of discarded materials generated each year, and the problems resulting from  
22 the anticipated 8% annual increase in the volume of such waste.’” *Ctr. for Cmty. Action v.*  
23 *BNSF Ry. Co.*, 764 F.3d 1019, 1026 (9th Cir. 2014) (quoting H.R. Rep. No. 94-1491, at 2  
24 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6238, 6239). The materials subject to regulation  
25 are “the waste byproducts of the nation’s manufacturing processes” and “the products  
26 themselves once they have served their intended purposes and are no longer wanted by the

1 consumer.” *Conn. Coastal Fishermen’s Ass’n v. Remington Arms Co., Inc.*, 989 F.2d  
2 1305, 1314 (2d Cir. 1993) (quoting H.R. Rep. No. 94-1491, at 4 (1976), *reprinted in* 1976  
3 U.S.C.C.A.N. 6238, 6240). By shooting at a deer, a hunter is not discarding waste, but is  
4 using the ammunition for its intended and expected purpose. The fact that the hunter does  
5 not intend to retrieve his spent rounds—assuming he could even find them—does not  
6 convert the rounds into a RCRA solid waste, regardless of whether the rounds hit an  
7 animal, become lodged in a tree trunk, or fall to the ground. Therefore, as a matter of law,  
8 Plaintiffs’ claim must be dismissed.

9 Plaintiffs also mischaracterize the import of the experimental population rule for  
10 the California condor. *See Establishment of a Nonessential Experimental Population of*  
11 *California Condors in Northern Arizona*, 61 Fed. Reg. 54044 (Oct. 16, 1996) (codified at  
12 50 C.F.R. § 17.84(j)) (“Condor Rule”). When it issued the Condor Rule and authorized  
13 condors to be introduced into northern Arizona, the U.S. Fish and Wildlife Service  
14 specifically evaluated the impact of lead ammunition on condors and found that this threat  
15 was acceptable and no restrictions needed to be placed on hunting. *Id.* at 54050, 54052,  
16 54054-55. If the federal agency responsible for managing the condor population has  
17 concluded that this threat is acceptable, Plaintiffs cannot establish substantial  
18 endangerment under RCRA Section 7002(a)(1)(B) and their claim fails.

## 19 **II. ARGUMENT.**

### 20 **A. Under the Gun Club Cases, Spent Ammunition Is Not Discarded** 21 **Material and Does Not Become a Solid Waste Following Its Use.**

22 To prevail on their claim, Plaintiffs must establish that hunting constitutes the  
23 disposal of solid waste. No court has addressed such a claim. The closest analogy are the  
24 cases involving recreational shooting at gun clubs and ranges where, in contrast to this  
25 case, large amounts of spent ammunition are allowed to accumulate in a specific location.  
26 In those cases, the courts have held that more is required than the presence of spent

1 ammunition to support a claim under RCRA Section 7002(a)(1)(B).

2 Plaintiffs, on the other hand, dismiss the holdings of the gun club cases, asserting  
3 that “spent ammunition left in the environment has served its purpose and is no longer  
4 wanted by the consumer (hunter).” Pls’ Cons. Resp. 17; *see also id.* at 18 (“the hunter no  
5 longer wants the spent lead ammunition . . . . Regardless of the success of the hunt, the  
6 ammunition served its purpose once it came to rest in the environment.”). If that was the  
7 rule, then the analysis used in the gun club cases, as well as in *Water Keeper Alliance v.*  
8 *U.S. Dept. of Defense*, 152 F. Supp. 2d 163 (D.P.R. 2001), would be erroneous:  
9 Ammunition would become a solid waste within the meaning of RCRA Section  
10 7002(a)(1)(B) as soon as it is fired, whether at a deer, a target in a shooting range, or  
11 during a military exercise. No court has accepted that argument.

12 In *Connecticut Coastal*, the court held that Section 7002(a)(1)(B) applied because  
13 some 2,400 tons of lead shot and 11 million pounds of clay targets had been allowed to  
14 accumulate for 70 years at a shooting range adjacent to Long Island Sound. 989 F.2d at  
15 1308, 1316. The court acknowledged that spent lead shot must be discarded to become  
16 solid waste and, after finding RCRA to be ambiguous with respect to the meaning of  
17 “discarded material,” accepted EPA’s interpretation that under the facts presented, the  
18 materials were “discarded *because they have been left to accumulate long after they have*  
19 *served their intended purpose.*” *Id.* at 1314, 1316 (emphasis supplied; internal quotation  
20 marks omitted). Under Plaintiffs’ argument, in contrast, the ammunition would be solid  
21 waste as soon as it was fired because it is no longer wanted by the consumer.

22 In *Water Keeper*, which is discussed in NSSF’s Motion at pages 10-12, the court  
23 rejected the same argument that Plaintiffs make here, i.e., that “as soon as ordnance is  
24 fired and makes contact with the land it is ‘discarded material.’” 152 F. Supp. 2d at 166.  
25 The court held that munitions do not become discarded, and therefore are not solid waste,  
26 when they are used for their intended purpose, even if they are not recovered. *Id.* at 166-

1 69. Following *Connecticut Coastal and No Spray Coalition, Inc. v. City of New York*,  
2 2000 WL 1401458 (S.D.N.Y. 2000), the court explained that “munitions must  
3 ‘accumulate’ for an unspecified amount of time before they can be considered discarded  
4 material and thus solid waste.” *Id.* at 167.

5 Plaintiffs attempt to distinguish *Water Keeper* on the basis that the court relied on  
6 EPA’s Military Munitions Rule, 62 Fed. Reg. 6622 (Feb. 12, 1997). Plfs.’ Resp. 20. That  
7 is a misstatement, however. The *Water Keeper* court acknowledged that the Military  
8 Munitions Rule relies on EPA’s *regulatory* definition of solid waste while the plaintiffs’  
9 claim was brought under RCRA Section 7002(a)(1)(B), which relies on the statutory  
10 definition. 152 F. Supp. 2d at 167-68. The court found instead that the Military  
11 Munitions Rule is instructive in determining when spent munitions may be treated as solid  
12 waste under Section 7002(a)(1)(B) because the regulatory and statutory definitions of  
13 solid waste both rely on the term “discarded material.” *Id.* at 168. The Ninth Circuit, in  
14 *Safe Air For Everyone v. Meyer*, 373 F.3d 1035 (9th Cir. 2004), similarly relied on cases  
15 from other circuits that involved EPA’s regulatory definition of solid waste, even though  
16 the plaintiffs’ claim was brought under Section 7002(a)(1)(B), because “these cases  
17 necessarily address whether [the material was] within RCRA’s statutory definition of  
18 ‘solid waste’ as ‘discarded material,’ the same definition at issue here.” *Id.* at 1046, n.14.  
19 Furthermore, the court in *Water Keeper* relied on other authorities, including *Connecticut*  
20 *Coastal and No Spray Coalition*, as stated above.

21 Plaintiffs also criticize *Otay Land Company v. U.E. Limited, L.P.*, 440 F. Supp. 2d  
22 1152 (S.D. Cal. 2006), *vacated on other grounds*, 338 Fed. Appx. 689, 2009 WL 2179739  
23 (9th Cir. July 22, 2009), for relying on the Military Munitions Rule. Plfs.’ Resp. 20. In  
24 that case, the plaintiffs sued to recover costs and related relief associated with remediating  
25 property that had been used as a trap and skeet range, including injunctive relief under  
26 RCRA Section 7002(a)(1)(B). *Id.* at 1157, 1159-60. In granting the defendant’s summary

1 judgment on the plaintiffs' RCRA claim, the district court considered the Military  
2 Munitions Rule, concluding that "lead shot and target debris are not 'discarded' because at  
3 a shooting range they are used as intended. Because they are not 'discarded,' they do not  
4 come within the RCRA definition of 'solid waste.'" *Id.* at 1180.<sup>1</sup>

5 But the *Otay Land* court also discussed five prior court decisions addressing RCRA  
6 claims concerning shooting ranges and determined that the majority of the cases supported  
7 its conclusion. *Id.* at 1180-82 (discussing *Simsbury-Avon Preservation Society, LLC v.*  
8 *Metacon Gun Club*, 2005 WL 1413183 (D. Conn. June 14, 2005); *Water Keeper; Long*  
9 *Island Soundkeepers Fund, Inc. v. New York Athletic Club of the City of New York*, 1996  
10 WL 131863 (S.D.N.Y. March 22, 1996); *Conn. Coastal*; and *Potomac Riverkeeper, Inc. v.*  
11 *Nat'l Capital Skeet and Trap Club, Inc.*, 388 F. Supp. 2d 582 (D. Md. 2005)). Moreover,  
12 the court found the outlier, *Potomac Riverkeeper*, "unpersuasive" for several reasons,  
13 including its failure to consider *Simsbury-Avon*, *Water Keeper* and *Long Island*  
14 *Soundkeepers*, the Military Munitions Rule, and the EPA Region 2 guidance document  
15 referenced by Plaintiffs, Best Management Practices for Lead at Outdoor Shooting  
16 Ranges.<sup>2</sup> *Id.* at 181-82.<sup>3</sup> Although the Ninth Circuit vacated the judgment in *Otay Land*  
17 on jurisdictional grounds (ripeness), the district court's analysis was not criticized.

18 In the *Metacon Gun Club* case, the district court dismissed claims brought under  
19 RCRA Section 7002(a)(1)(A) and 7002(a)(1)(B). *See Simsbury-Avon Pres. Soc., LLC v.*

20 \_\_\_\_\_  
21 <sup>1</sup> The court noted that the distinction recognized in *Connecticut Coastal* between the  
22 EPA's regulatory definition of "solid waste" and that term's statutory definition had been  
criticized by other courts, including the Ninth Circuit. *Id.* at 1181, n.32 (citing *Safe Air*,  
373 F.3d at 1046, n.14, and *Water Keeper*, 152 F. Supp. 2d at 168).

23 <sup>2</sup> Available at [https://www3.epa.gov/region02/waste/leadshot/epa\\_bmp.pdf](https://www3.epa.gov/region02/waste/leadshot/epa_bmp.pdf).

24 <sup>3</sup> In *Potomac Riverkeeper*, the principal issue was whether the state agency that owned the  
25 shooting range had sovereign immunity. *See* 388 F. Supp. 2d at 588-89. The court did  
not squarely address whether the spent lead shot had accumulated for a sufficient time to  
become solid waste within the meaning of RCRA.

26

1 *Metacon Gun Club, Inc.*, 2006 WL 2223946 (D. Conn. Aug. 2, 2006) (dismissing Section  
2 7002(a)(1)(B) claim), *aff'd on other grounds, Cordiano v. Metacon Gun Club, Inc.*, 575  
3 F.3d 199, 209-15 (2d Cir. 2009); *Simsbury-Avon Pres. Soc., LLC v. Metacon Gun Club,*  
4 *Inc.*, 2005 WL 1413183 (June 15, 2005) (dismissing Section 7002(a)(1)(A) claim), *aff'd,*  
5 *Cordiano*, 575 F.3d at 207-09. The gun club had been operating an outdoor shooting  
6 range since 1980, during which time, according to the plaintiffs, thousands of pounds of  
7 lead had been deposited on the gun club's land and adjacent areas. *Simsbury-Avon*, 2005  
8 WL 1413183, at \*1. Following *Connecticut Coastal*, the district court held that spent lead  
9 ammunition at the range did not constitute a solid waste under the EPA's regulatory  
10 definition and dismissed the plaintiffs' 7002(a)(1)(A) claim:

11           At the time a target shooter fires a bullet, the shooter is not  
12           intending to "abandon" the bullet, but rather to use it to hit a  
13           target. He or she is putting the lead bullet to its intended use.  
14           At some point after the bullet is left on the ground or in the  
15           water it may become "discarded" and subject to RCRA's  
                remediation provisions, . . . which are implicated in Counts  
                One and Three of plaintiffs' Amended Complaint.

16 *Id.* at \*6 (citing *Conn. Coastal*, 989 F.2d at 1316) (citation omitted).

17           In a separate ruling, the district court granted the gun club's summary judgment  
18 motion and dismissed the plaintiffs' Section 7002(a)(1)(B) claim because there was no  
19 evidence that spent ammunition within the range had been discarded. *Simsbury-Avon*,  
20 2006 WL 2223946, at \*9-\*10. On appeal, the Second Circuit affirmed the district court  
21 on the alternative ground that there was insufficient evidence that the spent ammunition  
22 may present an imminent and substantial endangerment, but did not reject or criticize the  
23 district court's ruling. *Cordiano*, 575 F.3d at 209.

24           These cases establish that ammunition does not become discarded material after  
25 being discharged into the environment, even if the consumer does not intend to retrieve or  
26 recover the spent ammunition. Contrary to Plaintiffs' argument (Plfs.' Resp. 20), spent

1 ammunition normally accumulates at a gun club or shooting range, but does not become a  
2 RCRA solid waste by virtue of such accumulation because it is being used for its intended  
3 purpose. There must be clear evidence that it has been abandoned. *See Conn. Coastal*,  
4 989 F.2d at 1308 (2,400 tons of lead shot and 11 million pounds of clay targets had  
5 accumulated over 70 years); *Benjamin v. Douglas Ridge Rifle Club*, 673 F. Supp. 2d 1210,  
6 1222 (D. Ore 2009) (spent lead ammunition had accumulated for 54 years, which was  
7 long enough for the material to be considered solid waste, following *Connecticut*  
8 *Coastal*); *Potomac Riverkeeper*, 388 F. Supp. 2d at 584 (lead shot had accumulated at the  
9 shooting range for nearly 50 years).

10 **B. Hunting Does Not Result in the Disposal of Solid Waste Because**  
11 **the Hunter Is Using the Ammunition For Its Intended Purpose.**

12 In contrast to the gun club cases and *Water Keeper*, hunting within the Kaibab  
13 National Forest takes place over an extremely large and rugged area that contains some  
14 1.6 million acres of land. *See Compl.* ¶ 8. As a matter of law, discharging a firearm at an  
15 animal while hunting within this forest, e.g., shooting at a mule deer and missing, is not  
16 the disposal of solid waste. The round fired at the deer is being used for its intended  
17 purpose, and is not being discarded. Rather, the spent round (or, more likely, its pieces)  
18 will come to rest somewhere in the forest, with no expectation that the hunter can or will  
19 retrieve it. Again, this is the intended use of the ammunition. Unlike in the gun club  
20 cases, there is no accumulation of spent ammunition at a specific location, where spent  
21 ammunition can be managed and recovered. *Compare* Plfs.' Resp. 21-22 (contending that  
22 Plaintiffs have adequately alleged a specific disposal location—the *entire* Kaibab National  
23 Forest). Finally, there is no imminent and substantial endangerment. Plaintiffs have not  
24 alleged that spent rounds that are distributed over a 1.6-million-acre area harm wildlife, or  
25 that California condors eat spent rounds they happen to find. Condors (and other  
26 scavengers) feed on carrion, not on pieces of metal. *See Compl.* ¶ 35.

1 Even if the hunter's shot hits the deer but the animal runs off into the forest, there  
2 is no disposal. *Compare* Compl. ¶ 28 (discussing mammals "shot" but not "retrieved").  
3 Assuming that the hunter knows that his round hit the animal (which may not be the case),  
4 he is not discarding the round because the deer escapes. A round lodged in a wounded  
5 deer is not solid waste. And the ammunition is being used for its intended purpose.

6 Finally, Plaintiffs allege that condors are poisoned by consuming the carcasses of  
7 field-dressed mammals, i.e., "gut piles," that hunters fail to remove. *See* Compl. ¶¶ 29,  
8 35, 41. Again, however, the spent round has not been discarded. Rather, the deer carcass  
9 has been discarded. However, Plaintiffs do not allege that "gut piles" left by hunters are  
10 RCRA solid waste. They instead allege that the use of lead ammunition to hunt deer  
11 constitutes the disposal of solid waste. *See* Compl. ¶¶ 3, 28, 29, 35, 45, 46. Moreover, the  
12 appropriate remedy is to require that the carcass be removed from the forest or buried so  
13 that condors aren't attracted to it. It is not necessary to ban the use of lead ammunition,  
14 which is the remedy Plaintiffs seek in this suit. *See* Compl. ¶¶ 1, 3, 45, 46.

15 In short, under RCRA, "solid waste" is "garbage, refuse, sludge from a waste  
16 treatment plant, water supply treatment plant, or air pollution control facility and other  
17 discarded material." 42 U.S.C. § 6903(27). A hunter does not "discard" ammunition by  
18 firing his weapon at a deer. He is using the ammunition for its intended purpose. The fact  
19 that the round is left somewhere in the Kaibab National Forest is the normal and expected  
20 use of the round in the context of recreational hunting. There is no accumulation of spent  
21 ammunition over an extended period of time and at a specific location, as in the gun club  
22 cases. Therefore, Plaintiffs' claim fails as a matter of law.

23 **C. The Findings Made in the Condor Rule Preclude an "Imminent**  
24 **and Substantial Endangerment" Finding.**

25 As discussed in NSSF's Motion, Plaintiffs also must allege and prove that the  
26 disposal of solid waste "may present an imminent and substantial endangerment to health

1 or the environment” to prevail on their claim. 42 U.S.C. § 6972(a)(1)(B). The basis for  
2 endangerment is the alleged lead poisoning of members of the “Southwest condor  
3 population” caused by hunting with lead ammunition in the Kaibab National Forest. *See*  
4 Compl. ¶¶ 25-40.

5 As explained in NSSF’s Motion at pages-16-17, the U.S. Fish and Wildlife Service  
6 (“FWS”) specifically considered hunting with lead ammunition in its experimental  
7 population rule for the California condor, and determined that while some condors would  
8 be poisoned by consuming “gut piles” containing lead fragments, this threat was  
9 acceptable and did not require that modifications or restrictions be imposed on hunting to  
10 protect the introduced condor population. *See* Condor Rule at 54052 (discussing “Issue 5:  
11 How will the operation of the California condor reintroduction project at the Vermillion  
12 Cliffs affect hunting in the area?”), 54054-55 (discussing “Issue 11: Lead poisoning could  
13 be a problem once young condors learn to find carrion on their own.”).<sup>4</sup> The FWS  
14 specifically recognized that “the Kaibab Plateau is heavily hunted and represents a threat  
15 to condors once they disperse from the release site and learn to locate food on their own,”  
16 but stated that it “does not intend to request modifications or restrictions to the current  
17 hunting regulations anywhere in the vicinity of the Vermilion Cliffs release site or in the  
18 experimental population area.” *Id.* at 54054-55. The FWS also stated that “sport hunting  
19 . . . should not be restricted due to the designation of nonessential experimental population  
20 of California condors.” *Id.* at 54050.

21 In response, Plaintiffs argue that the authority delegated to the FWS under the  
22 Section 10(j) of the Endangered Species Act, 16 U.S.C. § 1639(j), does not abrogate other  
23 federal environmental laws. Plfs.’ Resp. at 23. But this argument, and Plaintiffs’ other  
24 arguments concerning condor deaths, miss the point: The FWS is the federal agency

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25 <sup>4</sup> For the Court’s convenience, a complete copy of the Condor Rule is attached hereto.  
26

1 responsible for introducing and managing the experimental condor population. Prior to  
2 authorizing the release of condors, the FWS was required to consider “[t]he extent to  
3 which the introduced population may be affected by existing or anticipated Federal or  
4 State actions or private activities within or adjacent to the experimental population area.”  
5 50 C.F.R. § 17.81(b)(4). The FWS did so, identifying hunting with lead ammunition as  
6 existing activity that may adversely affect the experimental population, and determining  
7 that condor deaths resulting from lead poisoning are an acceptable threat. Condor Rule at  
8 54050, 54052, 54054-55. The FWS also determined that no management restrictions or  
9 protective measures were needed to address the impact of hunting. *Id.*; *see also* 50 C.F.R.  
10 § 17.81(c)(3) (authorizing experimental population rules to provide “[m]anagement  
11 restrictions, protective measures, or other special management concerns” for the  
12 introduced population).

13         Given the FWS’s authority to introduce and manage experimental populations and  
14 its findings in the Condor Rule, there is no legal basis for Plaintiffs’ claim that hunting  
15 with lead ammunition within the Kaibab National Forest—or anywhere else within the  
16 experimental population area—presents substantial endangerment. Plaintiffs may not  
17 second-guess the FWS’s findings or ask this Court to declare that hunting with lead  
18 ammunition presents substantial endangerment to the experimental condor population  
19 when the FWS has found otherwise in its rulemaking.

20         In addition, Plaintiffs argue that they have pled an imminent and substantial  
21 endangerment to wildlife *other* than condors. *See* Plfs.’ Resp. 23 (citing Compl. ¶¶ 27-32,  
22 35). However, these allegations are cursory at best and insufficient to avoid dismissal.  
23 Paragraph 27 mentions bald and golden eagles, northern goshawks, ferruginous hawks,  
24 vultures, and ravens, as well as condors. But the paragraph refers generally to predators  
25 and scavengers “that inhabit Forest Service land in Arizona,” rather than the Kaibab  
26 National Forest. Paragraph 28 through 32 are even vaguer and specifically mention only

1 one species—the California condor. Otherwise these paragraphs variously refer to “bird  
2 species” (¶ 28), “avian scavengers” (¶ 29), “a bird” (¶ 30), “wildlife” (¶ 31), “waterfowl”  
3 (¶ 32), and “wildlife species” (¶ 35). And none of these paragraphs refers to the Kaibab  
4 National Forest.<sup>5</sup> Thus, Plaintiffs do not specifically allege that scavengers other than  
5 California condors feed on mammals killed with lead ammunition *within the Kaibab*  
6 *National Forest* and are poisoned as a result.

7 In short, it is apparent that this case is about the impact of hunting with lead  
8 ammunition in the Kaibab National Forest on the California condor population, and not  
9 about other wildlife species. Otherwise, this lawsuit would not have focused exclusively  
10 on the Kaibab National Forest and, in particular, hunting on the Kaibab Plateau. *See*  
11 *Compl.* ¶¶ 33-42, 45-46.

12 **III. CONCLUSION AND RELIEF REQUESTED.**

13 For the foregoing reasons, NSSF respectfully requests that the Court enter a  
14 judgment dismissing Plaintiffs’ Complaint with prejudice pursuant to Rule  
15 12(c), Fed.R.Civ.P.

16 RESPECTFULLY SUBMITTED this 14th day of October, 2016.

17  
18 FENNEMORE CRAIG, P.C.

19  
20 By s/ Norman D. James  
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21 *Attorneys for National Shooting Sports*  
22 *Foundation, Inc.*

23 <sup>5</sup> NSSF asks the Court to take judicial notice that there are six national forests in Arizona  
24 which collectively contain over 11 million acres of land and that four of the six national  
25 forests are larger than the Kaibab National Forest. *See*, USDA Forest Service, Region 3,  
26 National Forests and Grasslands, [http://www.fs.usda.gov/detail/r3/about-region/overview/?cid=fsbdev3\\_021966](http://www.fs.usda.gov/detail/r3/about-region/overview/?cid=fsbdev3_021966), available at (last viewed Oct. 14, 2016).

**CERTIFICATE OF SERVICE**

I hereby certify that on October 14, 2016, I electronically transmitted the foregoing NATIONAL SHOOTING SPORTS FOUNDATION, INC.'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS to the Clerk's Office using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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