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 16 Intervenors National Rifle Association
 of America and Safari Club International

17 **IN THE UNITED STATES DISTRICT COURT**
 18 **FOR THE DISTRICT OF ARIZONA**
 19 **PRESCOTT DIVISION**

20 Center for Biological Diversity, et al.,
 21 Plaintiffs,
 22 vs.
 23 United States Forest Service,
 24 Defendant,
 25 National Rifle Association of America
 26 and Safari Club International,
 27 Proposed Defendant-
 28 Intervenors.

CASE NO. 3:12-cv-08176-PCT-SMM
**[PROPOSED] ANSWER OF THE
 NATIONAL RIFLE ASSOCIATION
 OF AMERICA AND SAFARI CLUB
 INTERNATIONAL TO PLAINTIFFS’
 COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF**

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2 The National Rifle Association of America and Safari Club International,
3 (collectively “NRA and SCI”) by and through counsel and pursuant to the Federal
4 Rules of Civil Procedure and the local rules of this Court, respectfully submit this
5 answer, upon information and belief, to the individually numbered paragraphs in
6 Center for Biological Diversity et al.’s (collectively “Plaintiffs”) Complaint for
7 Declaratory and Injunctive Relief (“Complaint”) as follows:
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9
10 NRA and SCI answer each paragraph of the Complaint without waiving
11 and expressly reserving all rights that they may have to seek relief by appropriate
12 motions.
13

14 **NATURE OF THE CASE**

- 15 1. To the extent that Paragraph 1 sets forth factual allegations, NRA and SCI
16 lack sufficient knowledge or information to form a belief as to the truth
17 and/or accuracy of the statements included in Paragraph 1 and consequently
18 deny those statements. To the extent that any further response is required,
19 NRA and SCI deny the allegations of Paragraph 1.
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21 2. To the extent that Paragraph 2 sets forth conclusions of law, no response is
22 required. To the extent a response is required, the statutory provisions
23 referenced in Paragraph 2 speak for themselves and are the best evidence of
24 their content. To the extent that Paragraph 2 sets forth factual allegations,
25 NRA and SCI lack sufficient knowledge or information to form a belief as
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1 to the truth and/or accuracy of the statements included in Paragraph 2 and
2 consequently deny those statements. To the extent that any further
3 response is required, NRA and SCI deny the allegations of Paragraph 2.
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5 3. To the extent Paragraph 3 contends “[s]pent ammunition disposed of on
6 Forest Service land presents an ‘imminent and substantial endangerment to
7 health or the environment’ [and that the alleged] endangerment is ongoing
8 as of the date of this complaint[,]” those contentions are expressly denied.
9 To the extent that Paragraph 3 sets forth other factual allegations, NRA and
10 SCI lack sufficient knowledge or information to form a belief as to the truth
11 and/or accuracy of the statements included in Paragraph 3 and consequently
12 deny those statements. To the extent that any further response is required,
13 NRA and SCI deny the allegations of Paragraph 3.
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17 4. To the extent that Paragraph 4 is a prayer for relief, no response is required.
18 To the extent that any response is required, NRA and SCI deny there is a
19 right to the relief prayed for. To the extent that Paragraph 4 sets forth
20 factual allegations, NRA and SCI lack sufficient knowledge or information
21 to form a belief as to the truth and/or accuracy of the statements included in
22 Paragraph 4 and consequently deny those statements. To the extent that
23 any further response is required, NRA and SCI deny the allegations of
24 Paragraph 4.
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JURISDICTION AND VENUE

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- 5. To the extent that Paragraph 5 sets forth conclusions of law, no further response is required. To the extent that a response is required, the statutory provisions referred to in Paragraph 5 speak for themselves and are the best evidence of their own content. To the extent that any further response is required, NRA and SCI deny the allegations of Paragraph 5.

- 6. To the extent that Paragraph 6 sets forth conclusions of law, no further response is required. To the extent that a response is required, the statutory provisions referred to in Paragraph 6 speak for themselves and are the best evidence of their own content. To the extent that Paragraph 6 sets forth factual allegations, NRA and SCI lack sufficient knowledge or information to form a belief as to the truth and/or accuracy of the statements included in Paragraph 6 and consequently deny those statements. To the extent that any further response is required, NRA and SCI deny the allegations of Paragraph 6.

- 7. To the extent that Paragraph 7 sets forth conclusions of law, no further response is required. To the extent that a response is required, the statutory provisions referred to in Paragraph 7 speak for themselves and are the best evidence of their own content. To the extent that Paragraph 7 sets forth factual allegations, NRA and SCI lack sufficient knowledge or information to form a belief as to the truth and/or accuracy of the statements included in

1 Paragraph 7 and consequently deny those statements. To the extent that
2 any further response is required, NRA and SCI deny the allegations of
3 Paragraph 7.
4

5 **PARTIES**

6 8. NRA and SCI admit that the Forest Service is a federal agency within the
7 United States Department of Agriculture. As to the rest of the factual
8 allegations set forth in Paragraph 8, NRA and SCI lack sufficient
9 knowledge or information to form a belief as to the truth and/or accuracy of
10 the statements included in Paragraph 8 and consequently deny those
11 statements. To the extent that any further response is required, NRA and
12 SCI deny the allegations of Paragraph 8.
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14 9. NRA and SCI respond to the subparts of paragraph 9 as follows:
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- 16 a. **Center for Biological Diversity.** NRA and SCI lack sufficient
17 knowledge or information to form a belief as to the truth and/or
18 accuracy of the statements included in Paragraph 9(a) and consequently
19 deny those statements.
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21 b. **Sierra Club.** NRA and SCI lack sufficient knowledge or information to
22 form a belief as to the truth and/or accuracy of the statements included
23 in Paragraph 9(b) and consequently deny those statements.
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25 c. **Grand Canyon Wildlands Council.** NRA and SCI lack sufficient
26 knowledge or information to form a belief as to the truth and/or
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1 accuracy of the statements included in Paragraph 9(c) and consequently
2 deny those statements.

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4 10. NRA and SCI lack sufficient knowledge or information to form a belief as
5 to the truth and/or accuracy of the statements included in Paragraph 10 and
6 consequently deny those statements.

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8 11. NRA and SCI lack sufficient knowledge or information to form a belief as
9 to the truth and/or accuracy of the statements included in Paragraph 11 and
10 consequently deny those statements.

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12 12. NRA and SCI lack sufficient knowledge or information to form a belief as
13 to the truth and/or accuracy of the statements included in Paragraph 12 and
14 consequently deny those statements.

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16 13. To the extent Paragraph 13 contends “Forest Service’s action and inaction
17 with respect to the use of lead ammunition . . . may present an imminent
18 and substantial endangerment to health or the environment[,]” that
19 contention is expressly denied. NRA and SCI lack sufficient knowledge or
20 information to form a belief as to the truth and/or accuracy of any other
21 statements included in Paragraph 13 and consequently deny those
22 statements. To the extent Paragraph 13 sets forth conclusions of law, no
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25 further response is required.

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1 14. NRA and SCI lack sufficient knowledge or information to form a belief as
2 to the truth and/or accuracy of the statements included in Paragraph 14 and
3 consequently deny those statements.
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5 15. NRA and SCI lack sufficient knowledge or information to form a belief as
6 to the truth and/or accuracy of the statements included in Paragraph 15 and
7 consequently deny those statements.
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9 16. NRA and SCI lack sufficient knowledge or information to form a belief as
10 to the truth and/or accuracy of the statements included in Paragraph 16 and
11 consequently deny those statements. To the extent Paragraph 16 sets forth
12 conclusions of law, no further response is required.
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14 **LEGAL BACKGROUND**

15 **A. Citizen Suits under the Resource Conservation and Recovery Act**
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17 17. To the extent that Paragraph 17 sets forth conclusions of law, no further
18 response is required. To the extent that a response is required, the statutory
19 provisions referred to in Paragraph 17 speak for themselves and are the best
20 evidence of their own content. To the extent that any further response is
21 required, NRA and SCI deny the allegations of Paragraph 17.
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23 18. To the extent that Paragraph 18 sets forth conclusions of law, no further
24 response is required. To the extent that any further response is required,
25 NRA and SCI deny the allegations of Paragraph 18.
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1 19. To the extent that Paragraph 19 sets forth conclusions of law, no further
2 response is required. To the extent that a response is required, the statutory
3 provisions referred to in Paragraph 19 speak for themselves and are the best
4 evidence of their own content. To the extent that any further response is
5 required, NRA and SCI deny the allegations of Paragraph 19.
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8 20. To the extent that Paragraph 20 sets forth conclusions of law, no further
9 response is required. To the extent that a response is required, the statutory
10 provisions referred to in Paragraph 20 speak for themselves and are the best
11 evidence of their own content. To the extent that any further response is
12 required, NRA and SCI deny the allegations of Paragraph 20.
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14 **B. Forest Service Authority to Regulate Activities on Forest Service Land**
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16 21. To the extent that Paragraph 21 sets forth conclusions of law, no further
17 response is required. To the extent that a response is required, the
18 provisions referred to in Paragraph 21 speak for themselves and are the best
19 evidence of their own content. To the extent that any further response is
20 required, NRA and SCI deny the allegations of Paragraph 21.
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22 22. To the extent that Paragraph 22 sets forth conclusions of law, no further
23 response is required. To the extent that a response is required, the statutory
24 provisions referred to in Paragraph 22 speak for themselves and are the best
25 evidence of their own content. To the extent that any further response is
26 required, NRA and SCI deny the allegations of Paragraph 22.
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1 23. To the extent that Paragraph 23 sets forth conclusions of law, no further
2 response is required. To the extent that a response is required, the
3 regulatory provisions referred to in Paragraph 23 speak for themselves and
4 are the best evidence of their own content. To the extent that any further
5 response is required, NRA and SCI deny the allegations of Paragraph 23.
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8 24. To the extent that Paragraph 24 sets forth factual allegations, NRA and SCI
9 lack sufficient knowledge or information to form a belief as to the truth
10 and/or accuracy of the statements included in Paragraph 24 and
11 consequently deny those statements. To the extent that Paragraph 24 sets
12 forth conclusions of law, no further response is required. To the extent that
13 a response is required, the regulatory provisions referred to in Paragraph 24
14 speak for themselves and are the best evidence of their own content. To the
15 extent that any further response is required, NRA and SCI deny the
16 allegations of Paragraph 24.
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20 **FACTS**

21 25. NRA and SCI lack sufficient knowledge and/or information at this time to
22 form a belief as to the truth and/or accuracy of the statements contained in
23 Paragraph 25. To the extent that any further response is required, NRA and
24 SCI deny the allegations of Paragraph 25.
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26 26. NRA and SCI lack sufficient knowledge and/or information at this time to
27 form a belief as to the truth and/or accuracy of the statements contained in
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1 Paragraph 26. To the extent that any further response is required, NRA and
2 SCI deny the allegations of Paragraph 26.

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4 27. NRA and SCI lack sufficient knowledge and/or information at this time to
5 form a belief as to the truth and/or accuracy of the statements contained in
6 Paragraph 27. To the extent that any further response is required, NRA and
7 SCI deny the allegations of Paragraph 27.

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9 28. NRA and SCI lack sufficient knowledge and/or information at this time to
10 form a belief as to the truth and/or accuracy of the statements contained in
11 Paragraph 28. To the extent that any further response is required, NRA and
12 SCI deny the allegations of Paragraph 28.

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14 29. NRA and SCI lack sufficient knowledge and/or information at this time to
15 form a belief as to the truth and/or accuracy of the statements contained in
16 Paragraph 29. To the extent that any further response is required, NRA and
17 SCI deny the allegations of Paragraph 29.

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19 30. NRA and SCI lack sufficient knowledge and/or information at this time to
20 form a belief as to the truth and/or accuracy of the statements contained in
21 Paragraph 30. To the extent that any further response is required, NRA and
22 SCI deny the allegations of Paragraph 30.

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25 31. NRA and SCI lack sufficient knowledge and/or information at this time to
26 form a belief as to the truth and/or accuracy of the statements contained in
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1 Paragraph 31. To the extent that any further response is required, NRA and
2 SCI deny the allegations of Paragraph 31.

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4 32. To the extent Paragraph 32 refers to publications in the Federal Register,
5 the publications speak for themselves and are the best evidence of their own
6 content. To the extent that Paragraph 32 sets forth factual allegations, NRA
7 and SCI lack sufficient knowledge or information to form a belief as to the
8 truth and/or accuracy of the statements included in Paragraph 32 and
9 consequently deny those statements.
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12 33. NRA and SCI lack sufficient knowledge and/or information at this time to
13 form a belief as to the truth and/or accuracy of the statements contained in
14 Paragraph 33. To the extent that any further response is required, NRA and
15 SCI deny the allegations of Paragraph 33.
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17 34. NRA and SCI lack sufficient knowledge and/or information at this time to
18 form a belief as to the truth and/or accuracy of the statements contained in
19 Paragraph 34. To the extent that any further response is required, NRA and
20 SCI deny the allegations of Paragraph 34.
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22 35. NRA and SCI lack sufficient knowledge and/or information at this time to
23 form a belief as to the truth and/or accuracy of the statements contained in
24 Paragraph 35. To the extent that any further response is required, NRA and
25 SCI deny the allegations of Paragraph 35.
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1 36. NRA and SCI lack sufficient knowledge and/or information at this time to
2 form a belief as to the truth and/or accuracy of the statements contained in
3 Paragraph 36. To the extent that any further response is required, NRA and
4 SCI deny the allegations of Paragraph 36.
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6 37. NRA and SCI lack sufficient knowledge and/or information at this time to
7 form a belief as to the truth and/or accuracy of the statements contained in
8 Paragraph 37. To the extent that any further response is required, NRA and
9 SCI deny the allegations of Paragraph 37.
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11 38. NRA and SCI lack sufficient knowledge and/or information at this time to
12 form a belief as to the truth and/or accuracy of the statements contained in
13 Paragraph 38. To the extent that any further response is required, NRA and
14 SCI deny the allegations of Paragraph 38.
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16 39. To the extent that Paragraph 39 sets forth factual allegations, NRA and SCI
17 lack sufficient knowledge or information to form a belief as to the truth
18 and/or accuracy of the statements included in Paragraph 39 and
19 consequently deny those statements. To the extent Paragraph 39 refers to
20 the "SCRT 2012 Report" the report speaks for itself, and is the best
21 evidence of its own content. To the extent that any further response is
22 required, NRA and SCI deny the allegations of Paragraph 39.
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24 40. NRA and SCI lack sufficient knowledge and/or information at this time to
25 form a belief as to the truth and/or accuracy of the statements contained in
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1 Paragraph 40. To the extent Paragraph 40 refers to documents, the
2 documents speak for themselves, and are the best evidence of their own
3 content. To the extent that any further response is required, NRA and SCI
4 deny the allegations of Paragraph 40.
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6 41. NRA and SCI lack sufficient knowledge and/or information at this time to
7 form a belief as to the truth and/or accuracy of the statements contained in
8 Paragraph 41. To the extent that any further response is required, NRA and
9 SCI deny the allegations of Paragraph 41.
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11 42. To the extent that Paragraph 42 sets forth factual allegations, NRA and SCI
12 lack sufficient knowledge or information to form a belief as to the truth
13 and/or accuracy of the statements included in Paragraph 42 and
14 consequently deny those statements. To the extent Paragraph 42 refers to
15 the 2012 “SCRT study,” the study speaks for itself, and is the best evidence
16 of its own content. To the extent that any further response is required,
17 NRA and SCI deny the allegations of Paragraph 42.
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21 **FIRST CLAIM FOR RELIEF:**

22 43. NRA and SCI re-allege and incorporate all their responses from all the
23 proceeding paragraphs.
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25 44. To the extent that Paragraph 44 sets forth conclusions of law, no further
26 response is required. To the extent that a response is required, the statutory
27 provisions referred to in Paragraph 44 speak for themselves and are the best
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1 evidence of their own content. To the extent that any further response is
2 required, NRA and SCI deny the allegations of Paragraph 44.

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4 45. To the extent that Paragraph 45 sets forth conclusions of law, no further
5 response is required. To the extent Paragraph 45 contends “[t]he Forest
6 Service . . . has contributed and is contributing to the past or present
7 disposal of solid or hazardous waste, which may present an imminent and
8 substantial endangerment to health or the environment[,]” that contention is
9 expressly denied. To the extent that a further response is required, the
10 statutory provisions referred to in Paragraph 45 speak for themselves and
11 are the best evidence of their own content. To the extent that any further
12 response is required, NRA and SCI deny the allegations of Paragraph 45.

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15 46. To the extent Paragraph 46 contends “[t]he Forest Service . . . has
16 contributed and is contributing to the past or present disposal of solid or
17 hazardous waste, which may present an imminent and substantial
18 endangerment to health or the environment[,]” that contention is expressly
19 denied. To the extent that Paragraph 46 sets forth further factual
20 allegations, NRA and SCI lack sufficient knowledge or information to form
21 a belief as to the truth and/or accuracy of the statements included in
22 Paragraph 46 and consequently deny those statements. To the extent that
23 Paragraph 46 sets forth conclusions of law, no further response is required.
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1 To the extent that any further response is required, NRA and SCI deny the
2 allegations of Paragraph 46.

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4 **REQUEST FOR RELIEF**

5 47. To the extent that Paragraph 47 is a prayer for relief, no response is
6 required. To the extent that any response is required, NRA and SCI deny
7 there is a right to the relief prayed for. To the extent that Paragraph 47 sets
8 forth factual allegations, NRA and SCI lack sufficient knowledge or
9 information to form a belief as to the truth and/or accuracy of the
10 statements included in Paragraph 47 and consequently deny those
11 statements. To the extent that any further response is required, NRA and
12 SCI deny the allegations of Paragraph 47.

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15 48. Any allegations not expressly admitted or responded to herein are hereby
16 denied.

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18 **NRA and SCI'S PRAYER**

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20 NRA and SCI requests that this Court:

- 21 1. Deny Plaintiffs the relief they seek;
- 22 2. Award NRA and SCI and the United States Forest Service their costs
23 and attorney fees to the extent provided for by law under 42 U.S.C. §
24 6972(e) or otherwise; and
- 25 3. Grant NRA and SCI such other relief as the Court deems just and
26 proper.
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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim for Relief)

As a separate and distinct affirmative defense to the Complaint and to each claim for relief contained therein, NRA and SCI are informed and believe, and on that basis allege, that the Court should dismiss some or all of Plaintiffs' claims for failure to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(50 C.F.R. § 17.84)

As a separate and distinct affirmative defense to the Complaint and to each relevant claim for relief contained therein, NRA and SCI are informed and believe, and on that basis allege, that any claims based on the alleged impact of lead ammunition use on California condors are prohibited by or would frustrate the intent of 50 C.F.R. section 17.84(j)(2)(i).

THIRD AFFIRMATIVE DEFENSE

(Failure to Join Indispensable Parties)

As a separate and distinct affirmative defense to the Complaint and to each relevant claim for relief contained therein, NRA and SCI are informed and believe, and on that basis allege, that the Court should dismiss some or all of Plaintiffs' claims for failure to join an indispensable party.

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Respectfully submitted this 14th day of April, 2016.

MICHEL & ASSOCIATES, P.C.

/s/ C.D. Michel
C.D. Michel, Attorneys for Proposed
Defendant-Intervenor National Rifle
Association of America

**SAFARI CLUB
INTERNATIONAL**

/s/ Douglas S. Burdin
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Anna M. Seidman
Safari Club International
Attorneys for Proposed Defendant-
Intervenor Safari Club International

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 2016, I electronically transmitted the [Proposed] Answer of the National Rifle Association of America and Safari Club International to Plaintiffs' Complaint For Declaratory And Injunctive Relief to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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