

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LUCAS CALIXTO, *et al.*,

Plaintiffs,

vs.

DEPARTMENT OF THE ARMY, *et al.*,

Defendants.

Civil Action No. 18-1551 (ESH)

**ANSWER TO SECOND AMENDED CLASS ACTION COMPLAINT
AND AFFIRMATIVE DEFENSES**

Defendants the Department of the Army and the Secretary of the Army Dr. Mark T. Esper (collectively, “Defendants”), by and through counsel, hereby answer the allegations in the corresponding enumerated paragraphs in the Second Amended Class Action Complaint (“Complaint”) (ECF No. 61) as follows:

1. This paragraph is a characterization of this lawsuit to which a response is not required. To the extent this paragraph contains allegations of fact, denied.
2. This paragraph consists of characterizations of this lawsuit and legal conclusions to which responses are not required. To the extent this paragraph contains allegations of fact, denied.
3. Defendants lack information or information sufficient to admit or deny the allegations in this paragraph. Plaintiffs’ allegation that they “met *these* enlistment conditions” is vague in that it fails to identify the specific enlistment conditions to which they refer. To the extent this paragraph contains factual allegations, denied.
4. Defendants admit that in September 2016, the Department of Defense instituted

additional background checks for MAVNIs. Defendants admit that two related lawsuits (*Nio v. DHS* and *Kirwa v. DOD*) are pending in the United States District Court for the District of Columbia. The remainder of the allegations in this paragraph are characterizations and legal conclusions to which responses are not required. To the extent this paragraph contains allegations of fact, denied.

5 to 8. These paragraphs consist of characterizations of Plaintiffs' lawsuit and legal conclusions to which responses are not required. To the extent these paragraphs contain allegations of fact, denied.

9 to 13. Denied.

14 to 16. These paragraphs consist of characterizations of Plaintiffs' lawsuit and legal conclusions to which responses are not required. To the extent these paragraphs contain allegations of fact, denied.

17. This paragraph is a characterization of the Court's August 13, 2018 order to which a response is not required. Defendants refer to the referenced order for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

18 to 23. These paragraphs consist of characterizations of the Army's October 26, 2018 policy memorandum to which responses are not required. Defendants refer to the referenced memorandum for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

24 to 26. These paragraphs consist of characterizations and legal conclusions to which responses are not required. To the extent these paragraphs contain allegations of fact, denied.

27. Defendants deny that the Court has subject matter jurisdiction over this action.

28. Defendants do not challenge venue in this district.

29. Defendants lack knowledge or information sufficient to admit or deny where Plaintiff Calixto resides. The second sentence of this paragraph is denied.

30. Defendants lack knowledge or information sufficient to admit or deny where Plaintiff Djohi resides. The second sentence of this paragraph is denied.

31. Defendants lack knowledge or information sufficient to admit or deny where Plaintiff Li resides. The second sentence of this paragraph is denied.

32. Defendants lack knowledge or information sufficient to admit or deny where Plaintiff Wanjing Li resides. The second sentence of this paragraph is denied because Plaintiff Wanjing Li was never discharged from the U.S. Army Reserve (“USAR”).

33. Defendants lack knowledge or information sufficient to admit or deny where Plaintiff Fang Lu resides. The second sentence of this paragraph is denied because Plaintiff Fang Lu was never discharged from the USAR.

34. Defendants lack knowledge or information sufficient to admit or deny where Plaintiff Qu resides. The second sentence of this paragraph is denied because Plaintiff Qu was never discharged from the USAR.

35. Defendants lack knowledge or information sufficient to admit or deny where Plaintiff Udeigwe resides. The second sentence of this paragraph is denied because Plaintiff Udeigwe was never discharged from the USAR.

36. Defendants lack knowledge or information sufficient to admit or deny where Plaintiff Sambe resides. The second sentence of this paragraph is denied because Plaintiff Sambe was never discharged from the USAR.

37. Defendants lack knowledge or information sufficient to admit or deny where Plaintiff Xing Lu resides. The second sentence of this paragraph is denied. Defendants further

aver that Plaintiff Lu was contracted in the Delayed Entry Program (“DEP”), but had not taken the oath of enlistment.

38. Defendants lack knowledge or information sufficient to admit or deny where Plaintiff Yisheng Dai resides. The second sentence of this paragraph is admitted in that Plaintiff Dai was discharged from the Delayed Training Program (“DTP”).

39. Defendants lack knowledge or information sufficient to admit or deny where Plaintiff Izudike resides. The second sentence of this paragraph is denied because Plaintiff Izudike was never discharged from the USAR.

40 to 42. Admitted.

43. Defendants admit that the MAVNI program is a DOD recruiting program under which certain non-U.S. citizens with critical language and/or medical skills that are “vital to the national interest” can enlist and serve in the United States Armed Forces. Defendants deny that the DOD “encouraged” soldiers to enlist in the MAVNI program. The last sentence of this paragraph is denied.

44. This paragraph is a characterization of the referenced September 30, 2016 memorandum to which a response is not required. Defendants refer to the referenced memorandum for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

45 to 47. Denied.

48. Admitted.

49. Denied that “[u]pon enlistment, the Army found [Plaintiff] Calixto suitable for military service.” Defendants lack knowledge or information sufficient to admit or deny the remainder of the allegations in this paragraph.

50. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

51. This paragraph is a characterization of the order that discharged Plaintiff Calixto from the USAR to which a response is not required. Defendants refer to the referenced order for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

52. Denied.

53. Defendants admit that Plaintiff Calixto submitted a request, but lack knowledge or information regarding the grounds for his request. The remaining allegations in this paragraph are denied.

54. This paragraph is a characterization of a filing in this case (Dkt. 15) to which a response is not required. Defendants refer to the referenced filing for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

55. Defendants admit that they revoked Plaintiff Calixto's discharge order and that the "Army will comply with applicable law and regulations governing administrative separation of soldiers...in determining whether Plaintiff should be separated." This paragraph is otherwise a characterization of a filing in this matter (Dkt. 17-1). Defendants refer to the referenced filing for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

56. Denied.

57. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

58. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

59. Defendants lack knowledge or information sufficient to admit or deny the allegations in the first sentence of this paragraph. This paragraph is otherwise a characterization of a referenced order to which a response is not required. Defendants refer to the referenced order for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

60. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

61. This paragraph contains characterizations and legal conclusions to which responses are not required. To the extent this paragraph contains allegations of fact, denied.

62. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

63. This paragraph is a characterization of a filing in this matter (Dkt. 22-1) to which a response is not required. Defendants respectfully refer to the filing for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

64. Admitted.

65 to 68. Defendants lack knowledge or information sufficient to admit or deny the allegations in these paragraphs.

69. Defendants lack knowledge or information sufficient to admit or deny the allegations in the first and second sentences of this paragraph. The allegations in the remainder of this paragraph are a characterization of a discharge order to which a response is not required.

Defendants refer to the referenced order for a complete and accurate statement of its contents.

To the extent this paragraph contains allegations of fact, denied.

70. This paragraph contains characterizations and legal conclusions to which a response is not required. To the extent this paragraph contains allegations of fact, denied.

71. This paragraph is a characterization of a filing in a related case to which a response is not required. Defendants refer to the referenced filing for a complete and accurate statement of its contents. Defendants admit that SPC Wanjing Li was not separated from the military.

72. This paragraph is a characterization of a filing in this matter (Dkt. 22-1) to which a response is not required. Defendants refer to the referenced filing for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

73. Defendants admit that SPC Wanjing Li is subject to the procedures set forth in the October 26, 2018 policy memorandum because she received an unfavorable MSSD. The remainder of the allegations in this paragraph are denied.

74. This paragraph contains characterizations and legal conclusions to which a response is not required. To the extent this paragraph contains allegations of fact, denied.

75. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

76. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph. The third sentence of this paragraph contains legal conclusions to which a response is not required. To the extent a response is required, denied.

77. This paragraph is a characterization of reporting in a related case to which a response is not required. Defendants refer to the referenced reports for a complete and accurate statement of their contents. Defendants lack knowledge or information sufficient to admit or deny the

allegation regarding DHS's reporting in the related case. To the extent this paragraph contains allegations of fact, denied.

78. Defendants admit to stating that Plaintiff Li was discharged for refusing to cooperate during the required Counterintelligence ("CI") security interview. Defendants lack knowledge or information sufficient to admit or deny the allegations in the second and third sentences of this paragraph. To the extent this paragraph contains any other allegations of fact, denied.

79. Defendants lack knowledge or information sufficient to admit or deny the allegations in the first sentence of this paragraph. The second and third sentences of this paragraph contain characterizations of an order to which a response is not required. Defendants refer to the referenced order for a complete and accurate statement of its contents. To the extent the second and third sentences contain allegations of fact, denied. The last two sentences of this paragraph are denied.

80. Defendants admit that Plaintiff Zeyuan Li is not subject to the procedures of the October 26, 2018 policy memorandum.

81. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

82. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

83. This paragraph contains characterizations and legal conclusions to which a response is not required. To the extent this paragraph contains allegations of fact, denied.

84. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

85. Defendants lack knowledge or information sufficient to admit or deny the allegations in the first and second sentences of this paragraph. The remainder of the paragraph is a characterization of an order to which a response is not required. Defendants refer to the referenced order for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

86. This paragraph contains characterizations and legal conclusions to which a response is not required. To the extent this paragraph contains allegations of fact, denied.

87. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph. The last sentence of this paragraph is a characterization of a filing in a related case to which a response is not required. Defendants refer to the referenced filing for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

88. This paragraph is a characterization of a filing in this case (Dkt. 22-1) to which a response is not required. Defendants refer to the referenced filing for a complete and accurate statement of its contents. To the extent this paragraph contains factual allegations, denied.

89. This paragraph contains characterizations and legal conclusions to which a response is not required. To the extent this paragraph contains allegations of fact, denied.

90. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

91. Defendants lack knowledge or information sufficient to admit or deny the allegations in the first and second sentences of this paragraph. The remainder of this paragraph is a characterization of an order to which a response is not required. Defendants refer to the

referenced order for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

92. Defendants lack knowledge or information sufficient to admit or deny the allegations in the first and second sentences of this paragraph.

93. This paragraph contains characterizations and legal conclusions to which a response is not required. To the extent this paragraph contains allegations of fact, denied.

94. The paragraph is a characterization of a filing in this case (Dkt. 22-1) to which a response is not required. Defendants refer to the referenced filing for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

95. The allegations in this paragraph are characterizations of reporting in a related case to which a response is not required. Defendants refer the Court to the referenced report for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

96. This paragraph contains characterizations and legal conclusions to which no response is required. To the extent this paragraph contains allegations of fact, denied.

97. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

98. Defendants lack knowledge or information sufficient to admit or deny the allegations in the first and second sentences of this paragraph. The remainder of this paragraph is a characterization of an order to which a response is not required. Defendants refer to the referenced order for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

99 to 101. Defendants lack knowledge or information sufficient to admit or deny the allegations in these paragraphs.

102. This paragraph contains characterizations and legal conclusions to which a response is not required. To the extent this paragraph contains allegations of fact, denied.

103. This paragraph is a characterization of a filing in this case (Dkt. 22-1) to which a response is not required. Defendants refer to the referenced filing for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

104. This paragraph contains characterizations and legal conclusions to which a response is not required. To the extent this paragraph contains allegations of fact, denied.

105. Defendants lack knowledge or information sufficient to admit or deny the allegations in the first three sentences of this paragraph. The remainder of the allegations in this paragraph are characterizations of an order to which a response is not required. Defendants refer to the referenced order for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

106. This paragraph contains characterizations and legal conclusions to which a response is not required. To the extent this paragraph contains allegations of fact, denied.

107. This paragraph is a characterization of a filing in a related case to which a response is not required. Defendants refer to the referenced filing for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

108. This paragraph is a characterization of a filing in this case (Dkt. 22-1) to which a response is not required. Defendants refer to the referenced filing for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

109. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

110. This paragraph contains characterizations and legal conclusions to which a response is not required. Defendants lack knowledge or information sufficient to admit or deny the allegation in the third sentence of this paragraph. To the extent this paragraph contains allegations of fact, denied.

111. Defendants lack knowledge or information sufficient to admit or deny the allegations in the first three sentences of this paragraph. The remainder of the paragraph is a characterization of an order to which a response is not required. Defendants refer to the referenced order for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

112. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

113. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

114. Admitted.

115. Defendants admit that Plaintiff Yisheng Dai enlisted in the U.S. Army through the MAVNI program. Defendants lack knowledge or information sufficient to admit or deny the remainder of the allegations in this paragraph.

116. Defendants admit that Plaintiff Yisheng Dai is a class member in *Nio v. DHS*.

117. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

118. Defendants lack knowledge or information sufficient to admit or deny the allegations in the first sentence of this paragraph. The remainder of the paragraph is a characterization of an order to which a response is not required. Defendants refer to the referenced order for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

119 to 122. Defendants lack knowledge or information sufficient to admit or deny the allegations in these paragraphs.

123. This paragraph is a characterization of a report filed in this case to which a response is not required. Defendants refer to the referenced report for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

124. Defendants admit that Plaintiff Yisheng Dai is not subject to the procedures in the October 26, 2018 policy memorandum. To the extent this paragraph contains any other factual allegations, denied.

125. Defendants admit that Plaintiff Bright Izudike enlisted in the U.S. Army through the MAVNI program. Defendants lack knowledge or information sufficient to admit or deny the allegation in the second sentence of this paragraph. Defendants admit that Plaintiff Bright Izudike is a class member in *Nio v. DHS*.

126. Defendants lack knowledge or information sufficient to admit or deny the allegations in the first sentence of this paragraph. The remainder of this paragraph is a characterization of an order to which a response is not required. Defendants refer to the referenced order for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

127. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

128. This paragraph contains characterizations and legal conclusions to which a response is not required. To the extent this paragraph contains allegations of fact, denied.

129. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

130. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

131. This paragraph is a characterization of a report filed in a related case to which a response is not required. Defendants refer to the referenced report for a complete and accurate statement of its contents. To the extent this paragraph contains factual allegations, denied.

132. This paragraph is a characterization of a report filed in a related case to which a response is not required. Defendants refer to the referenced report for a complete and accurate statement of its contents. To the extent this paragraph contains factual allegations, denied.

133. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

134. Defendants admit that Plaintiff Izudike is not subject to the procedures in the October 26, 2018 policy memorandum. Plaintiff Izudike remains in the USAR, has recently been issued a favorable MSSD, and will receive orders to ship to basic training. Defendants lack knowledge or information sufficient to admit or deny the allegations related to DFAS.

135. Denied.

136. This paragraph contains legal conclusions to which a response is not required. To the extent this paragraph contains allegations of fact, denied.

137. Denied.

138. This paragraph consists of characterizations of orders to which a response is not required. Defendants refer to the referenced orders for a complete and accurate statement of their contents. To the extent this paragraph contains allegations of fact, denied.

139 to 142. These paragraphs consist of characterizations of Army Regulation (“AR”) 135-178 to which responses are not required. Defendants refer to AR 135-178 for a complete and accurate statement of its contents. Plaintiffs’ allegations that the referenced provisions of AR 135-178 apply to Plaintiffs or to any of the issues in this case are denied. To the extent these paragraphs contain any allegations of fact, denied.

143 to 144. These paragraphs consist of characterizations of AR 380-67 to which responses are not required. Defendants refer to AR 380-67 for a complete and accurate statement of its contents. Plaintiffs’ allegations that the referenced provisions of AR 380-67 apply to Plaintiffs or to any of the issues in this case are denied. To the extent these paragraphs contain any allegations of fact, denied.

145 to 146. These paragraphs consists of characterizations of AR 135-178 to which responses are not required. Defendants refer to AR 135-178 for a complete and accurate statement of its contents. Plaintiffs’ allegations that the referenced provisions of AR 135-178 apply to Plaintiffs or to any of the issues in this case are denied. To the extent these paragraphs contain any allegations of fact, denied.

147. Admitted that due process rights and procedures for soldiers facing potential discharge are set forth in AR 635-200. To the extent Plaintiffs allege that the provisions of AR 635-200 apply to Plaintiffs or to any of the issues in this case, that allegation is denied. To the extent this paragraph contains allegations of fact, denied.

148. This paragraph consists of legal conclusions to which a response is not required. To the extent this paragraph contains allegations of fact, denied.

149. Denied.

150 to 154. The allegations in these paragraphs are characterizations of DOD Instruction (“DODI”) and DOD Manual (“DODM”) 5200.02 to which responses are not required.

Defendants refer to DODI and DODM 5200.02 for complete and accurate statements of their contents. To the extent Plaintiffs allege that the referenced provisions of DODI or DODM 5200.02 apply to Plaintiffs or to any of the issues in this case, those allegations are denied. To the extent these paragraphs contain allegations of fact, denied.

155. This paragraph is a characterization of DODI 1332.14 to which a response is not required. Defendants refer to DODI 1332.14 for a complete and accurate statement of its contents. To the extent Plaintiffs allege that DODI 1332.14 applies to Plaintiffs or to any of the issues in this case, that allegation is denied. To the extent this paragraph contains allegations of fact, denied.

156 to 158. These paragraphs consist of legal conclusions to which responses are not required. To the extent these paragraphs contains allegations of fact, denied.

159. The allegations in this paragraph consist of Plaintiffs’ recitation of procedural aspects of this case to which a response is not required. To the extent a response is required, Defendants refer to the docket filings in this case for a complete and accurate statement of the procedural history of this case. To the extent this paragraph contains allegations of fact, denied.

160. Denied.

161 to 163. The allegations in these paragraphs are characterizations of an email Plaintiffs allegedly have in their possession to which a response is not required. Defendants refer

to the referenced email for a complete and accurate statement of its contents. To the extent Plaintiffs allege that the email is in any way related to Plaintiffs or any of Plaintiffs' claims in this case, or is evidence of retaliation, those allegations are denied. To the extent these paragraphs contain allegations of fact, denied.

164. The first sentence of this paragraph is denied. Defendants lack knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

165 to 169. Defendants lack knowledge or information sufficient to admit or deny the allegations in these paragraphs. To the extent these paragraphs contain allegations of fact regarding alleged retaliation against Plaintiffs or other MAVNI recruits, those allegations are denied.

170 to 172. These paragraphs contain Plaintiffs' characterization of this lawsuit and legal conclusions to which responses are not required. To the extent these paragraphs contain allegations of fact, denied.

173 to 175. Denied.

176. This paragraph is a characterization of a filing in this case (Dkt. 28) to which a response is not required. Defendants refer to the referenced filing for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

177. This paragraph is a characterization of a filing in this case (Dkt. 48) to which a response is not required. Defendants refer to the referenced filing for a complete and accurate statement of its contents. To the extent this paragraph contains allegations of fact, denied.

178. This paragraph is a characterizations of reports filed in related cases to which responses are not required. Defendants refer to the referenced reports for complete and accurate statements of their contents. To the extent this paragraph contains allegations of fact, denied.

179. The allegations in the first sentence of this paragraph are characterizations of reports filed in a related case to which responses are not required. Defendants refer to the referenced reports for complete and accurate statements of their contents. The second sentence of this paragraph is denied. To the extent this paragraph contains any other allegations of fact, denied.

180. This paragraph contains legal conclusions to which a response is not required. To the extent this paragraph contains allegations of fact, denied.

181. This paragraph is a characterization of Plaintiffs' lawsuit to which a response is not required. To the extent this paragraph contains allegations of fact, denied.

182 to 186. These paragraphs contain legal arguments and conclusions to which responses are not required. To the extent these paragraphs contain allegations of fact, denied.

187. This paragraph is Plaintiffs' incorporation by reference of the preceding paragraphs in the Complaint, which Defendants have fully answered above.

188. This paragraph is a characterization of 28 U.S.C. § 2201 to which a response is not required. Defendants refer to 28 U.S.C. § 2201 for a complete and accurate statement of its contents.

189. This paragraph contains legal arguments and conclusions to which a response is not required. To the extent this paragraph contains allegations of fact, denied.

190. This paragraph is Plaintiffs' incorporation by reference of the preceding paragraphs in the Complaint, which Defendants have fully answered above.

191 to 192. These paragraphs contain legal arguments and conclusions to which responses are not required. To the extent these paragraphs contain allegations of fact, denied.

193. This paragraph is a request for injunctive relief to which a response is not required. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the injunctive relief requested or to any other form of injunctive relief.

194. This paragraph is Plaintiffs' incorporation by reference of the preceding paragraphs in the Complaint, which Defendants have fully answered above.

195. This paragraph is a characterization of 5 U.S.C. § 706(2) to which a response is not required. Defendants refer to 5 U.S.C. § 706(2) for a complete and accurate statement of its contents.

196. This paragraph contains legal arguments and conclusions to which a response is not required. To the extent this paragraph contains allegations of fact, denied.

197. This paragraph is a request for relief to which a response is not required. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the relief requested.

198. This paragraph is Plaintiffs' incorporation by reference of the preceding paragraphs in the Complaint, which Defendants have fully answered above.

199 to 201. These paragraphs contain legal arguments and conclusions to which responses are not required. To the extent these paragraphs contain allegations of fact, denied.

202. This paragraph is a request for relief to which a response is not required. To extent a response is required, Defendants deny that Plaintiffs are entitled to the relief requested.

203. This paragraph is Plaintiffs' incorporation by reference of the preceding paragraphs in the Complaint, which Defendants have fully answered above.

204 to 206. These paragraphs contain legal arguments and conclusions to which responses are not required. To the extent these paragraphs contain allegations of fact, denied.

207. This paragraph is a request for relief to which a response is not required. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the relief requested.

208. This paragraph is Plaintiffs' incorporation by reference of the preceding paragraphs in the Complaint, which Defendants have fully answered above.

209 to 212. These paragraphs contain legal arguments and conclusions to which responses are not required. To the extent these paragraphs contain allegations of fact, denied.

213. This paragraph is a request for relief to which a response is not required. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the relief requested.

The remainder of the Complaint is Plaintiffs' prayer for relief to which a response is not required. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the relief requested or to any relief whatsoever.

Defendants deny each and every allegation in the Complaint that has not been expressly admitted in this Answer.

AFFIRMATIVE DEFENSES

Without waiving, limiting, modifying, or amending the foregoing, Defendants assert the following affirmative defenses, in the alternative where appropriate, and to the extent that discovery and the evidence so indicate:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state claims upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction over this action because there is no statutory waiver of sovereign immunity for the Court to adjudicate Plaintiffs' claims or those of the purported class.

THIRD AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction over some or all of Plaintiffs' claims and those of the purported class because the claims are not ripe for adjudication.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs seek remedies and relief that are not justiciable.

Dated: May 1, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 1st day of May, 2019, I served upon counsel for Plaintiff the foregoing Answer to the Second Amended Class Action Complaint by filing said document using the Court's Electronic Case Filing system.

Dated: May 1, 2019

Respectfully submitted,

/s/ Roberto C. Martens, Jr.
ROBERTO C. MARTENS, JR.
Special Assistant United States Attorney