

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

PUEBLO of ZUNI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. CIV 01-1046 WJ/WPL
	)	
UNITED STATES of AMERICA;	)	
MICHAEL O. LEAVITT, Secretary of the	)	
United States Department of Health and	)	
Human Services; and CHARLES W. GRIM,	)	
Director of the Indian Health Service,	)	
United States Department of Health and	)	
Human Services,	)	
	)	
Defendants.	)	

**AMENDED ANSWER**

Defendants, by and through undersigned counsel, answer Plaintiff’s First Amended Complaint (hereinafter “Complaint”), filed on December 13, 2001, as follows:

**FIRST DEFENSE**<sup>1</sup>

The Court lacks subject matter jurisdiction over some of Plaintiff’s claims.

**SECOND DEFENSE**

Plaintiff has failed to exhaust its administrative remedies.

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<sup>1</sup> Defendants assert the defenses herein in response to the claims raised by Plaintiff, the Pueblo of Zuni. Many, if not all, of these defenses also would apply to the claims of putative class members, and Defendants do not waive the right to raise any of these defenses, and any others that become available, against any class member should the Court certify a class.

**THIRD DEFENSE**

Some of Plaintiff's claims are barred by the statute of limitations.

**FOURTH DEFENSE**

Some of Plaintiff's claims are barred by laches.

**FIFTH DEFENSE**

Some of Plaintiff's claims are barred by release.

**SIXTH DEFENSE**

Some of Plaintiff's claims are barred by waiver.

**SEVENTH DEFENSE**

Some of Plaintiff's claims are barred by estoppel.

**EIGHTH DEFENSE**

The Court lacks subject matter jurisdiction over Defendants United States and the Director of the Indian Health Service because there is no applicable waiver of sovereign immunity.

**NINTH DEFENSE**

Plaintiff lacks standing to raise the class claims identified in the Complaint.

**TENTH DEFENSE**

The Complaint fails to state a claim upon which relief may be granted. In answer to the individually numbered paragraphs of the Complaint, Defendants state as follows:

1. The first sentence contains Plaintiff's characterization of this action to which no response is required, but insofar as one is deemed required, denied. The second and third

sentences contain conclusions of law to which no response is required, but insofar as a response is deemed required, denied, except that the Court is respectfully referred to the Indian Self-Determination and Education Assistance Act (“ISDA”), 25 U.S.C. §§ 450 et seq., for an accurate and complete statement of its contents. The fourth, fifth, and sixth sentences contain Plaintiff’s characterization of this action and conclusions of law to which no response is required, but insofar as one is deemed required, denied.

2. This paragraph contains allegations regarding the jurisdiction of the Court to which no response is required, but insofar as one is deemed required, denied.

3. This paragraph contains allegations regarding the venue of the Court to which no response is required, but insofar as one is deemed required, denied.

4. The first sentence is admitted. The second sentence is denied, except to admit that Plaintiff has operated tribal health programs under various ISDA contracts and annual funding agreements entered into with the Secretary of HHS, as authorized by 25 U.S.C. § 450f, by and through the Albuquerque Area office of the United States Department of Health and Human Service’s Indian Health Service (“IHS”).

5. The first sentence contains Plaintiff’s characterization of this action to which no response is required, but insofar as one is deemed required, denied. The second sentence is denied, except to admit that Michael O. Leavitt has replaced Tommy Thompson as Secretary of HHS and thus substitutes for him in this action pursuant to Federal Rule of Civil Procedure 25(d). The third sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied. The fourth sentence is denied, except to admit that

Charles W. Grim has replaced Michael Trujillo as Director of IHS and thus substitutes for him in this action pursuant to Federal Rule of Civil Procedure 25(d). The fifth sentence is admitted. To the extent that the sixth sentence contains Plaintiff's characterization of this action, no response is required, but insofar as one is deemed required, denied. The remainder of this sentence is denied.

6. The first, second, third, and fourth sentences contain Plaintiff's characterization and description of the ISDA, to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the ISDA for an accurate and complete statement of its contents. The fifth sentence is denied, except to admit that each year the Secretary of HHS, by and through IHS's Area offices and the Office of Tribal Self-Governance, enters into hundreds of funding agreements. The sixth sentence contains Plaintiff's characterization of the ISDA to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the ISDA for an accurate and complete statement of its contents.

7. The first sentence contains Plaintiff's characterization and description of the ISDA and its requirements to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the ISDA for an accurate and complete statement of its contents. The second sentence is admitted.

8. The first sentence is denied, except to admit that for the majority of ISDA contracts, the "Secretarial amount" does not reflect the full cost of administering the contracted IHS programs. The second and third sentences are denied, except to admit that, for the majority

of ISDA contracts in which the “Secretarial amount” does not reflect the full cost of administering the contracted IHS programs, this is partly so because many of the administrative resources drawn upon by IHS in support of its operations are located in different departments or agencies of the federal government. Some of the different departments or agencies are the Office of Personnel Management, the Merit Systems Protection Board, the General Services Administration, the General Accounting Office, the various Inspectors General, the Treasury Department, and various other DHHS agencies. The fourth sentence is denied, except to admit that, for the majority of ISDA contracts in which the “Secretarial amount” does not reflect the full cost of administering the contracted IHS programs, this is partly so because applicable law or prudent management impose upon tribes or tribal organizations administering ISDA contracts certain requirements not borne by IHS in its administration of its own operations (such as the duty to complete annual audits under the Single Agency Audit Act and the need to carry certain forms of insurance).

9. To the extent that this paragraph contains Plaintiff’s description of Senate Report 100-274, no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the Report for an accurate and complete statement of its contents. The remainder of this paragraph is denied.

10. To the extent that the first sentence incorporates allegations from ¶¶ 8-9 of the Complaint, Defendants’ responses to these paragraphs are incorporated herein. The remainder of the first sentence is denied. In response to the second sentence, Defendants are without sufficient knowledge to form a belief as to how all contracting tribes pay for unfunded administrative

functions, if any.

11. The first sentence is denied, except to admit that most of the administrative costs incurred by tribes beyond the amount described in 25 U.S.C. § 450j-1(a)(1), if any, are considered indirect costs as defined by the ISDA and the United States Office of Management and Budget (“OMB”). The second sentence contains a conclusion of law to which no response is required, but insofar as one is deemed required, denied. The third sentence is denied, except to admit that Congress amended the ISDA in 1988, and to refer the Court to the ISDA for an accurate and complete statement of its contents. The fourth and fifth sentences contain Plaintiff’s characterization and description of a Senate Report to which no response is required, but insofar as one is required, denied, except to refer the Court to the Report for an accurate and complete statement of its contents. The sixth sentence contains Plaintiff’s characterization and description of the 1988 amendments to the ISDA to which no response is required, but insofar as one is deemed required, denied, except to refer the Court to the amendments for an accurate and complete statement of their contents.

12. To the extent that the first sentence incorporates allegations from ¶¶ 8-11 of the Complaint, Defendants’ responses to these paragraphs are incorporated herein. The remainder of this paragraph contains Plaintiff’s characterization and description of various provisions of the ISDA as well as conclusions of law, to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the ISDA for an accurate and complete statement of its contents.

13. This paragraph contains Plaintiff’s characterization and description of the ISDA

to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the ISDA for an accurate and complete statement of its contents.

14. The first sentence contains Plaintiff's characterization and description of the ISDA to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the ISDA for an accurate and complete statement of its contents. The second sentence is denied, except to admit that IHS has issued various circulars that provide guidance to IHS officials on the distribution of contract support costs under individual ISDA contracts and annual funding agreements, including ISDM 92-2, IHS Circular 96-04, IHS Circular 2000-01, IHS Circular 2001-05, and IHS Circular 2004-03.

15. The first sentence contains Plaintiff's characterization and description of the ISDA to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the ISDA for an accurate and complete statement of its contents. The second sentence is admitted. The third sentence is denied.

16. This paragraph contains Plaintiff's characterization and description of the ISDA to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the ISDA for an accurate and complete statement of its contents.

17. The first sentence is denied, except to admit that from fiscal year 1993 to the present, IHS has issued, inter alia, a successive sets of Circulars that provide guidance to IHS officials on the distribution of contract support costs under individual ISDA contracts and annual funding agreements, and these Circulars are known as ISDM 92-2, IHS Circular 96-04, IHS Circular 2000-01, IHS Circular 2001-05, and IHS Circular 2004-03. The second sentence

contains Plaintiff's characterization and description of IHS Circular 2001-05, to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the Circular for an accurate and complete statement of its contents.

18. The first sentence is denied, except to admit that 25 U.S.C. § 450j-1 defines contract support costs for purposes of the ISDA and divides CSC into three categories: direct CSC, indirect CSC, and startup costs. The second sentence is denied except to admit that, as of the date of the President's Budget Request Fiscal Year 1997, Indian Health Service Justification of Estimates for Appropriations Committees (at page IHS-119), indirect costs, on average, comprised approximately 80% of all contract support costs.

19. The first sentence is denied, except to admit that most, but not all, tribes and tribal organizations carrying out ISDA contracts negotiate indirect cost rates, and that the U.S. Department of Interior's ("DOI") Office of Inspector General ("OIG") was the cognizant agency for many, but not all, tribes and tribal organizations with negotiated rates. The second sentence is denied, except to admit that for contracting tribes with negotiated rates, most of these negotiations follow the criteria set forth in OMB Circular A-87. The third sentence is denied, except to admit that IHS often, but not always, determines an ISDA contractor's indirect contract support cost need by application of the contractor's indirect cost rate to its direct cost base minus any necessary adjustments to account for duplicated costs.

20. The first sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied. The second sentence contains Plaintiff's characterization and description of Ramah Navajo Chapter v. Lujan, 112 F.3d 1455 (10th Cir.

1997), to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the case for an accurate and complete statement of its contents. The third sentence is denied.

21. The first and second sentences are denied, except to admit that the ISDA, 25 U.S.C. §§ 450b, 450j-1(a)(3)(A)(i), defines direct contract support costs as “costs that can be identified specifically with a particular contract objective,” which include “direct program expenses for the operation of the Federal program that is the subject of the [ISDA] contract.” The third sentence is denied, except to admit that the Circulars identified in Defendants’ response to ¶ 17 provide guidance to IHS officials on the distribution of direct contract support costs under individual ISDA contracts and annual funding agreements.

22. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied. To the extent that this paragraph incorporates allegations from ¶ 20, Defendants’ response to ¶ 20 is incorporated herein.

23. This paragraph is denied, except to admit that during the 1990s, IHS took the position that Congress had not appropriated sufficient funding for IHS to pay each ISDA contractor’s full contract support cost requests and that neither the ISDA nor any contractor’s individual contract required that IHS do so. IHS also took the position that by distributing the full amount of funding for contract support costs recommended or appropriated by Congress for that purpose, it had fulfilled its statutory obligations without harming other, non-contracting tribes.

24. This paragraph contains conclusions of law to which no response is required, but

insofar as one is deemed required, denied.

25. The first and second sentences contain conclusions of law to which no response is required, but insofar as one is deemed required, denied. The third sentence is admitted. The fourth sentence is denied. The fifth, sixth, and seventh sentences contain Plaintiff's characterization of various congressional committee reports and conclusions of law to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the various congressional committee reports for an accurate and complete statement of their contents.

26. This paragraph contains conclusions of law and Plaintiff's characterization of Principles of Federal Appropriations Law, to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to Principles of Federal Appropriations Law for an accurate and complete statement of its contents.

27. The first sentence is denied. The second sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

28. The first sentence contains Plaintiff's description of the ISDA to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the ISDA for an accurate and complete statement of its contents. The second sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

29. The first sentence is denied, except to admit that at the close of each of fiscal years 1993-1997, IHS reported unobligated balances and obligated but unliquidated balances in

the Indian Health Services accounts for that year. The second sentence is denied, except to admit that, as of September 30, 1996, IHS reported unobligated balances and obligated but unliquidated balances in the fiscal year 1993, 1994, 1995, and 1996 Indian Health Services accounts. The third sentence is denied, except to admit that during fiscal year 1997, IHS employees shared a draft document, for discussion purposes only, entitled “Procedures for Allocating Prior Year Unobligated Balances to Satisfy CSC Shortfalls” with a joint federal-tribal contract support cost workgroup. The fourth sentence is denied, except to admit that this document outlined procedures by which, in the view of those employees, such balances could be distributed. The fifth sentence is admitted.

30. The first sentence is admitted.

(a). The first sentence in this subparagraph is admitted. The second sentence in this subparagraph is an example, not an allegation of fact, but insofar as a response is deemed required, admitted.

(b) The first sentence in this subparagraph is admitted. The second and third sentences in this subparagraph are examples, not allegations of fact, but insofar as responses are deemed required, admitted.

31. The first and second sentences contain conclusions of law to which no response is required, but insofar as one is deemed required, denied.

(a) The first sentence of this subparagraph is admitted. The second sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied. To the extent that the second sentence incorporates allegations from ¶ 20, Defendants’

response to ¶ 20 is incorporated herein.

(b) The first and second sentences of this subparagraph contain Plaintiff's description of appropriation acts and conclusions of law to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the cited appropriation acts for an accurate and complete statement of their contents. The third and fourth sentences are admitted. The fifth, sixth, and seventh sentences are denied, except to admit that ISDM 92-2 and IHS Circular 96-04 outline generally how the Indian Self-Determination ("ISD") Fund was distributed during fiscal years 1993-1997. The eighth and ninth sentences are denied, except to admit that some contracting tribes requesting funding for contract support costs for new and expanded contracts did not receive the requested funding in the year in which the request was made. The tenth sentence contains a conclusion of law to which no response is required, but insofar as one is deemed required, denied. To the extent that the tenth sentence incorporates allegations from ¶ 20, Defendants' response to ¶ 20 is incorporated herein.

32. The first sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied. Because of the lack of specificity in the second sentence, Defendants are without sufficient knowledge to admit or deny this allegation.

33. The first sentence contains Plaintiff's characterization of a House Appropriation Committee Report to which no response is required, but insofar as a response is required, denied, except that the Court is respectfully referred to the cited Report for an accurate and complete statement of its contents. The second sentence is denied, except to admit that IHS did not use the "queue" policy, outlined in ISDM 92-2 and IHS Circular 96-04, for fiscal year 1999, and adopted

a new policy for fiscal year 2000 after tribal consultation.

34. This paragraph contains Plaintiff's characterization and description of the contents of various reports to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the actual reports for an accurate and complete statement of their contents.

35. The first sentence is denied, except to admit that IHS has prepared a document, called a "shortfall report," in draft form in each year since at least 1993. The second, third, and fourth sentences are denied, except to admit that these draft shortfall reports generally included, inter alia, summaries of ISDA contractors' direct and indirect contract support cost estimated need as well as the amount of funding IHS has distributed for contract support costs.

36. The first and second sentences are denied, except to admit that the data used to prepare the shortfall reports described in ¶ 35 is compiled by IHS's Area offices, the Office of Tribal Self-Governance, the Office of Tribal Programs, and the Office of Finance and Accounting (formerly called the Division of Financial Management). The third sentence contains Plaintiff's characterization and description of the ISDA to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the ISDA for an accurate and complete statement of its contents. The fourth sentence is denied, except to admit that the "shortfall reports," described in ¶ 35, generally include, inter alia, summaries of ISDA contractors' direct and indirect contract support cost estimated need as well as the amount of funding IHS has distributed for contract support costs. The fifth sentence is denied, except to admit that some of the "shortfall reports," described in ¶ 35, in draft form or

otherwise, are accompanied by appendices that include tribe-specific information.

37. The first sentence is denied, except to admit that, as a general matter, IHS allocated funding for CSC shortly after enactment of each year's (1993-1997) annual Indian Health Services appropriation. Defendants lack sufficient information to admit or deny the second sentence because the allegation is vague and unclear, but insofar as a response is deemed required, denied.

38. The first sentence is admitted. The second sentence contains a conclusion of law to which no response is required, but insofar as one is deemed required, denied. To the extent that the second sentence incorporates allegations from ¶ 20, Defendants' response to ¶ 20 is incorporated herein.

39. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

40. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

41. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

42. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

43. The first and second sentences contain Plaintiff's characterization of the relief it seeks in this action to which no response is required, but insofar as one is deemed required, denied. The third, fourth, fifth, and sixth sentences contains conclusions of law to which no

response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the ISDA and 31 U.S.C. § 1304 for an accurate and complete statement of their contents.

44. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

45. Admitted.

46. Admitted.

47. Denied, except to admit that the Pueblo of Zuni employs 486 employees, including 36 employees at the Division of Health.

48. The first, second, and third sentences are admitted. The fourth sentence is denied.

49. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

50. The first sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied. The second sentence is denied, except to admit that IHS awarded Plaintiff in excess of \$932,773 in indirect contract support costs for its multiple ISDA contracts in effect during fiscal years 1993-1998.

51. The first sentence is denied, except to admit that Plaintiff submitted some CDA claims related to some of its ISDA contracts in effect during fiscal years 1993-1998. The second sentence contains Plaintiff's characterization of its CDA claims, to which no response is required, but insofar as one is deemed required, denied. The third sentence is admitted. The fourth sentence contains conclusions of law to which no response is required, but insofar as one

is deemed required, denied, except that the Court is respectfully referred to the CDA for an accurate and complete statement of its contents. The fifth sentence is admitted. To the extent that the sixth sentence alleges that the contracting officer has not issued a decision to date on the submitted claims, admitted. The remainder of the sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the CDA for an accurate and complete statement of its contents. The seventh sentence contains a conclusion of law to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the CDA for an accurate and complete statement of its contents.

52. This paragraph contains Plaintiff's characterization of its action to which no response is required, but insofar as one is deemed required, denied.

53. This paragraph contains Plaintiff's characterization of its action to which no response is required, but insofar as one is deemed required, denied.

54. Denied, except to admit that the document titled Indian Health Service Contract Support Cost Data, often called the "fiscal year 1999 shortfall report," identified 329 tribes with ISDA contracts for the administration of various IHS hospitals, clinics, and health care programs.

55. To the extent that the first sentence incorporates allegations from ¶ 20, Defendants' response to ¶ 20 is incorporated herein. The remainder of the sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied. The second sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the

document titled Indian Health Service Contract Support Cost Data, often called the “fiscal year 1999 shortfall report,” for an accurate and complete statement of its contents.

56. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

57. The first sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied. The second and third sentences are denied. The fourth sentence contains Plaintiff’s characterization of its action to which no response is required, but insofar as one is deemed required, denied. The fifth sentence contains a conclusion of law to which no response is required, but insofar as one is deemed required, denied.

58. The first, second, and third sentences contain Plaintiff’s characterization of its action and conclusions of law to which no response is required, but insofar as one is deemed required, denied. To the extent that the fourth sentence contains Plaintiff’s characterization and description of Ramah v. Babbitt, 50 F. Supp. 2d 1091 (D.N.M. 1999), no response is required, but insofar as one is deemed required, denied, except that the Court is respectfully referred to the case for an accurate and complete statement of its contents. The remainder of the fourth sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied. The fifth sentence contains a conclusion of law to which no response is required, but insofar as one is deemed required, denied.

59. The first and second sentences contains conclusions of law to which no response is required, but insofar as one is deemed required, denied. To the extent that the third sentence alleges that Plaintiff’s counsel represented Indian tribes in the listed actions, admitted. The

remainder of the third sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied. The fourth sentence is admitted. The fifth sentence contains Plaintiff's characterization of various litigation filed by its attorneys, to which no response is required, but insofar as one is deemed required, denied. The sixth sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

60. The first sentence contains a conclusion of law to which no response is required, but insofar as one is deemed required, denied. The second and third sentences contain Plaintiff's characterization of its action to which no response is required, but insofar as one is deemed required, denied. The fourth sentence is denied, except to admit that one of Defendants' defenses to various litigation seeking additional indirect contract support cost funding has been that Congress failed to appropriate sufficient funding for this purpose and that such insufficiency relieves Defendants of any liability. The fifth and sixth sentences contain conclusions of law to which no response is required, but insofar as one is deemed required, denied.

61. The first sentence contains a conclusion of law to which no response is required, but insofar as one is deemed required, denied. The second sentence contains Plaintiff's characterization of its action to which no response is required, but insofar as one is deemed required, denied. The third, fourth, and fifth sentences are denied. The sixth sentence contains a conclusion of law to which no response is required, but insofar as one is deemed required, denied.

62. This paragraph contains conclusions of law to which no response is required, but

insofar as one is deemed required, denied.

63. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

64. Denied.

65. This paragraph contains Plaintiff's characterization of claims asserted by Plaintiff or that would be asserted by putative class members to which no response is required, but insofar as one is deemed required, denied.

66. Defendants incorporate their responses to ¶¶ 1-65.

67. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

68. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

69. Defendants incorporate their responses to ¶¶ 1-68.

70. The first sentence is denied, except to admit that Plaintiff entered into multiple ISDA contracts with the Secretary of HHS, by and through IHS's Albuquerque Area office, between fiscal years 1993 and 1998. The second sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

71. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

72. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

73. The first sentence is denied, except to admit that Plaintiff and members of the putative class have provided services to American Indians and Alaska Natives under ISDA contracts that would otherwise have been provided by IHS. The second, third, and fourth sentences contain conclusions of law to which no response is required, but insofar as one is deemed required, denied.

74. Defendants incorporate their responses to ¶¶ 1-73.

75. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

76. Defendants incorporate their responses to ¶¶ 1-75.

77. The first sentence is denied except to admit that Plaintiff entered into multiple ISDA contracts with the Secretary of HHS, by and through IHS's Albuquerque Area office, between fiscal years 1993 and 1998. The second sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

78. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

79. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

80. The first sentence is denied, except to admit that Plaintiff and members of the putative class have provided services to American Indians and Alaska Natives under ISDA contracts that would otherwise have been provided by IHS. The second, third, and fourth sentences contain conclusions of law to which no response is required, but insofar as one is

deemed required, denied.

81. Defendants incorporate their responses to ¶¶ 1-80.

82. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

83. Defendants incorporate their responses to ¶¶ 1-82.

84. The first sentence is denied except to admit that Plaintiff entered into multiple ISDA contracts with the Secretary of HHS, by and through IHS's Albuquerque Area office, between fiscal years 1993 and 1998. The second sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

85. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

86. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

87. The first sentence is denied, except to admit that Plaintiff and members of the putative class have provided services to American Indians and Alaska Natives under ISDA contracts that would otherwise have been provided by IHS. The second, third, and fourth sentences contain conclusions of law to which no response is required, but insofar as one is deemed required, denied.

88. Defendants incorporate their responses to ¶¶ 1-87.

89. This paragraph contains Plaintiff's description of § 314 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for fiscal year 1999 to which no

response is required, but insofar as one is deemed required, denied, except the Court is respectfully referred to the Act for an accurate and complete statement of its contents.

90. To the extent that this paragraph characterizes defenses or legal arguments that Defendants may raise at some later date, no response is required, but to the extent that one is deemed required, admitted.

91. This paragraph contains Plaintiff's characterization of its action to which no response is required, but insofar as one is deemed required, denied.

92. This paragraph contains conclusions of law to which no response is required, but insofar as one is deemed required, denied.

The remainder of the Complaint sets forth Plaintiff's prayer for relief to which no response is required, but insofar as a response is deemed required, Defendants deny that Plaintiff is entitled to the relief requested.

Defendants hereby deny all allegations of fact in the Complaint that are not expressly admitted above.

Wherefore, having fully answered, Defendants respectfully request that the Court enter judgment dismissing the Complaint with prejudice.

Respectfully submitted,

PETER D. KEISLER  
Assistant Attorney General

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/s/Rachel J. Hines

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Counsel for Defendants

Dated: February 22, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2006, I sent, via electronic mail, a copy of Defendants'

Amended Answer, addressed to:

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/s/Rachel J. Hines

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RACHEL J. HINES