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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

TENREC, INC., et al.

Plaintiffs,

v.

**UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES, et al.,**

Defendants.

Case No. 3:16-cv-00995-SI

**DEFENDANTS' ANSWER
TO PLAINTIFFS' SECOND
AMENDED COMPLAINT**

Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, United States Citizenship and Immigration Services (“USCIS”) and USCIS Director León Rodriguez, in his official capacity (collectively, “Defendants”), by their undersigned attorneys, respond to the allegations contained in the numbered paragraphs of the Plaintiffs’ Second Amended Complaint (ECF No. 29) (hereinafter, “Plaintiffs’ Complaint” or “the Complaint”) as follows:

JURISDICTION

1–2. Paragraphs 1 through 2 are statements of jurisdiction and require no response. If the Court requires a response, Defendants deny that the Court has subject matter jurisdiction over Plaintiffs’ Complaint.

VENUE

3. Paragraph 3 consists of a legal conclusion relating to venue, which requires no response. If the Court requires a response, Defendants lack knowledge or information sufficient to form a belief as to the allegations relating to Plaintiffs Tenrec, Inc. or Walker Macy, LLC’s principal place of business. Nor do Defendants have any knowledge of Plaintiff Xiaoyang Zhu’s place of residence and, on this basis, deny. Defendants note that no information regarding Plaintiff Sergii Sinienok or his residence is included in Paragraph 3 (it is, however, included in Paragraph 5). Regardless, Defendants lack knowledge or information sufficient to form a belief as to the allegations relating to Plaintiff Sergii Sinienok’s place of residence and, on this basis, also deny.

PARTIES

4–7. Defendants lack knowledge or information sufficient to form a belief as to the allegations in Paragraphs 4 through 7 and, on this basis, deny.

8. Defendants deny Paragraph 8, as there is no such thing as “the Immigration and Naturalization Act.”

9. Defendants admit Paragraph 9.

STATUTORY BACKGROUND

10. Paragraph 10 characterizes 8 U.S.C. § 1101(a)(H)(i)(B). That statute speaks for itself and requires no response. If the Court requires a response, Defendants deny Plaintiffs’ characterization.

11. Paragraph 11 quotes from 8 U.S.C. § 1184(i)(1). That statute speaks for itself and requires no response. If the Court requires a response, Defendants admit that the statute contains the quoted language defining a “specialty occupation.”

12. Paragraph 12 characterizes 8 U.S.C. § 1182(n) and 20 C.F.R. §§ 214.2(h)(4)(i)(B)(1); 655.705. That statute and those regulations speak for themselves and require no response. If the Court requires a response, Defendants deny Plaintiffs’ characterization.

13. Paragraph 13 characterizes 8 U.S.C. § 1184(c)(1) and 8 C.F.R. § 214.2(h)(2)(i). That statute and that regulation speak for themselves and require no response. If the Court requires a response, Defendants deny Plaintiffs’ characterization.

14. Defendants admit that “[t]he H-1B category is subject to annual quota limits.” The remainder of Paragraph 14 characterizes 8 U.S.C. § 1184(g)(5)(C). That statute speaks for itself and requires no response. If the Court requires a response, Defendants deny Plaintiffs’ characterization.

15. Paragraph 15 quotes from 8 U.S.C. § 1184(g)(3). That statute speaks for itself and requires no response. If the Court requires a response, Defendants admit that 8 U.S.C. § 1184(g)(3) contains the quoted language (along with other language).

16. Paragraph 16 characterizes 8 C.F.R. § 214.2(h)(9)(i)(B). That regulation speaks for itself and requires no response. If the Court requires a response, Defendants deny Plaintiffs’ characterization.

17. Paragraph 17 characterizes 8 C.F.R. § 214.2(h)(8)(ii)(B). That regulation speaks for itself and requires no response. If the Court requires a response, Defendants deny Plaintiffs’ characterization.

18. Paragraph 18 characterizes 8 C.F.R. §§ 214.2(h)(8)(ii)(B); 103.2(a)(7)(iii). Those regulations speak for themselves and require no response. If the Court requires a response, Defendants deny Plaintiffs’ characterization.

19. Paragraph 19 characterizes 8 C.F.R. §§ 214.2(f)(5)(vi)(A); 274a.12(b)(6)(v). Those regulations speak for themselves and require no response. If the Court requires a response, Defendants deny Plaintiffs’ characterization.

20. Paragraph 20 characterizes 8 C.F.R. § 214.2(f)(10)(ii)(D). That regulation speaks for itself and requires no response. If the Court requires a response, Defendants deny Plaintiffs' characterization.

FACTS

21–24. Defendants admit that H-1B petitions were received in early April from 2013–2016, as the first sentences of Paragraphs 21 through 24 indicate. Defendants deny the remaining approximations and characterizations within Paragraphs 21 through 24. Defendants specifically deny the allegations in these Paragraphs that Defendants ever “failed” to do anything they were legally obligated to undertake or perform.

25. Defendants admit that USCIS has conducted a random selection process for the H-1B Cap “[o]ver the past four years.” Nevertheless, Defendants deny Plaintiffs' approximations and the remainder of Paragraph 25, specifically Plaintiffs' implicit legal conclusion that USCIS is not following the language of 8 U.S.C. § 1184(g)(3).

26–27. Defendants deny Paragraphs 26 through 27 for lack of knowledge or information sufficient to form a belief as to the allegations therein.

28. Paragraph 28 quotes and characterizes a Press Release issued by USCIS earlier this year. That document speaks for itself and requires no response. If the Court requires a response, Defendants admit.

29–30. Defendants admit Paragraphs 29 through 30.

31–32. Paragraphs 31 through 32 quote from internet news “alerts” issued by USCIS earlier this year. Those documents speak for themselves and require no response. If the Court requires a response, Defendants admit.

33. Defendants admit Paragraph 33.

34. Defendants deny Paragraph 34. Plaintiffs’ petitions were not “required” to be processed because those petitions were not randomly selected.

35. Defendants partially admit Paragraph 35. Defendants issued a notice to Plaintiff Tenrec, Inc., but no notice was ever sent to Plaintiff Sergii Sinienok.

36–38. Defendants deny Paragraphs 36 through 38 for lack of knowledge or information sufficient to form a belief as to the speculative allegations therein.

39. Defendants partially admit Paragraph 39. Defendants issued a notice to Plaintiff Walker Macy, LLC, but no notice was ever sent to Plaintiff Xiaoyang Zhu.

40–42. Defendants deny Paragraphs 40 through 42 for lack of knowledge or information sufficient to form a belief as to the speculative allegations therein.

CLASS ACTION ALLEGATIONS

43. Defendants admit that Plaintiffs are bringing a purported class action. Nevertheless, Defendants lack knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 43 and, on this basis, deny.

44. Paragraph 44 consists of legal conclusions that require no response. If the Court requires a response, Defendants deny.

45. Paragraphs 45 consists of a legal conclusion masked by factual characterizations and requires no response. If the Court requires a response Defendants deny.

46–50. Paragraphs 46 through 50 consist of legal conclusions that require no response. If the Court requires a response, Defendants deny.

51. Defendants deny Paragraph 51 for lack of knowledge or information sufficient to form a belief as to the speculative conclusions and assertions made therein.

CLAIMS FOR RELIEF

52. To the extent Paragraph 52 characterizes the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), that statute speaks for itself and requires no response. If the Court requires a response, Defendants admit.

53. Paragraph 53 consists entirely of legal characterizations and conclusions masquerading as factual statements, which require no response. If the Court requires a response, Defendants deny.

54. The first sentence of Paragraph 54 consists largely of a partial quotation from 8 U.S.C. § 1184(g)(3), which speaks for itself and requires no response. If the Court requires a response, Defendants admit that the quoted language is contained within that statute (along with other language). The remainder of Paragraph 54 consists of legal conclusions, which also require no response. If the Court requires a response, Defendants deny.

55–61. To the extent Paragraphs 55 through 61 quote statutes and regulations, or characterize the same to arrive at Plaintiffs’ legal conclusions, those statutes and regulations

speak for themselves and require no response. If the Court requires a response, Defendants deny Paragraphs 55 through 61.

62. Paragraph 62 consists entirely of a legal paraphrasing of 5 U.S.C. § 706(1), which speaks for itself and requires no response. If the Court requires a response, Defendants admit.

63. Paragraph 63 consists entirely of a legal conclusion, which requires no response. If the Court requires a response, Defendants deny.

64. Paragraph 64 quotes 8 C.F.R. § 103.2(a)(7). That regulation speaks for itself and requires no response. If the Court requires a response, Defendants admit that the quoted language is within 8 C.F.R. § 103.2(a)(7)(i).

65. Paragraph 65 consists entirely of a legal conclusion, which requires no response. If the Court requires a response, Defendants deny.

66. Paragraph 66 consists entirely of a legal conclusion, which requires no response. If the Court requires a response, Defendants deny.

GENERAL DENIAL

Defendants deny all allegations not specifically admitted.

AFFIRMATIVE DEFENSES

In further answer to Plaintiffs' Complaint and as separate affirmative defenses, Defendants state as follows:

1. The Court lacks subject matter jurisdiction over Plaintiffs' Complaint.

2. Plaintiffs' Complaint and each cause of action therein fails to state a claim upon which relief may be granted.

3. Plaintiffs have failed to exhaust their administrative remedies.

4. Plaintiffs have suffered no injury.

5. Plaintiffs' allegations concern or involve facts and events outside the administrative record.

6. Relief should be denied as an exercise of judicial discretion to withhold relief.

7. Although Defendants do not presently have specific facts in support of their remaining defenses, they hereby put Plaintiffs on notice that Defendants raise the following affirmative defenses, as set forth in Federal Rule of Civil Procedure 8, should Defendants become aware of facts that support those defenses, including but not limited to: estoppel, res judicata, waiver, statute of limitations, and fraud.

8. Defendants reserve the right to assert other defenses as this action proceeds up to and including the time of trial.

DEFENDANTS' PRAYER FOR RELIEF

WHEREFORE, Defendants, having fully answered the Plaintiffs' Complaint, respectfully pray for judgment denying each and every prayer for relief, dismissing the action, granting Defendants their costs, and granting such other and further relief as this Court deems just and proper.

Respectfully submitted this 14th day of October 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2016, I electronically filed the foregoing DEFENDANTS' ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT with the Clerk of the Court for the District of Oregon by using the CM/ECF system, in accordance with Local Rule 5-1. Notice of this filing will be sent out to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

By: /s/ Joshua S. Press
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