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9 United States of America and Donald  
H. Rumsfeld, Secretary of Defense

10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12 STEVE TRUNK and PHILIP K.  
PAULSON )

13 Plaintiffs, )

14 v. )

15 CITY OF SAN DIEGO, UNITED )  
16 STATES OF AMERICA, DONALD )  
17 H. RUMSFELD, Secretary of Defense )  
and DOES 1 through 100, Inclusive )

18 Defendants. )

19 MOUNT SOLEDAD MEMORIAL )  
20 ASSOCIATION, Real Parties in )  
interest )

21 JEWISH WAR VETERANS OF THE )  
22 UNITED STATES OF AMERICA, INC., )  
23 RICHARD A. SMITH, MINA SAGHEB, )  
and JUDITH M. COPELAND, )

24 Plaintiffs, )

25 v. )

26 DONALD H. RUMSFELD, Secretary of )  
27 Defense, in his official capacity, )

28 Defendant. )

Case No. 06CV1597 BTM (WMc)

**FEDERAL DEFENDANTS'  
ANSWER TO TRUNK AND  
PAULSON'S FIRST AMENDED  
COMPLAINT**

Case No. 06CV1728  
[Consolidated With Case No. 06CV1597  
BTM (WMc)]

1 Pursuant to Federal Rule of Civil Procedure 8(b), Defendants United States of America  
2 and Donald H. Rumsfeld, Secretary of Defense, (hereafter collectively "Federal Defendants"),  
3 answer the allegations in Plaintiffs' First Amended Complaint for Declaratory Relief and  
4 Injunctive Relief ("Complaint") as follows:

5 The numbered paragraphs in this Answer correspond to the paragraph numbers in  
6 Plaintiffs' Complaint:

7  
8 **I.**

9 **STATEMENT OF JURISDICTION**

10 1. The allegations set forth in paragraph 1 constitute conclusions of law to which no  
11 response is required. To the extent that a response is required, said allegations are denied.  
12 Federal Defendants aver that jurisdiction over the federal government and federal officials is not  
13 available under 42 U.S.C. §1983.

14 2. The allegations set forth in paragraph 2 constitute conclusions of law to which no  
15 response is required. To the extent that a response is required, said allegations are denied.

16 **II.**

17 **PARTIES AND VENUE**

18 3. Federal Defendants are without knowledge or information sufficient to form a  
19 belief as to the truth of the averments set forth in paragraph 3, and therefore deny the allegations  
20 therein.

21 4. Federal Defendants are without knowledge or information sufficient to form a  
22 belief as to the truth of the averments set forth in paragraph 4, and therefore deny the allegations  
23 therein.

24 5. Federal Defendants admit the allegations set forth in the first sentence of  
25 paragraph 5. The allegations set forth in the second sentence of paragraph 5 constitute  
26 conclusions of law to which no response is required. To the extent that a response is required,  
27 said allegations are denied.

28 6. The allegations set forth in paragraph 6 constitute conclusions of law to which no

1 response is required. To the extent that a response is required, said allegations are denied.

2 Federal Defendants aver that the United States of America is a sovereign nation.

3 7. Federal Defendants admit the allegations set forth in the first sentence of  
4 paragraph 7. The allegations set forth in the second sentence of paragraph 7 constitute Plaintiffs'  
5 characterizations of Preservation of Mt. Soledad Veterans Memorial Act, Pub. L. No. 109-272,  
6 120 Stat 770 (2006), which speaks for itself, is the best evidence of its contents, is a statement of  
7 law, and requires no response. To the extent that a response is required, said allegations are  
8 denied. The third sentence of paragraph 7 constitutes Plaintiffs' characterizations of their  
9 lawsuit and requires no response. To the extent that a response is required, said allegations are  
10 denied.

11 8. The allegations set forth in paragraph 8 constitute conclusions of law to which no  
12 response is required. To the extent that a response is required, said allegations are denied.

13 9. Federal Defendants deny the allegations set forth in the first sentence of  
14 paragraph 9. On information and belief, Federal Defendants aver that the Mt. Soledad Memorial  
15 Association, Inc. is a non-profit corporation doing business in the state of California. Federal  
16 Defendants are without knowledge or information sufficient to form a belief as to the truth of the  
17 averments set forth in the remaining sentences in paragraph 9, and therefore deny the allegations  
18 therein.

19 10. Federal Defendants are without knowledge or information sufficient to form a  
20 belief as to the truth of the averments set forth in paragraph 10, and therefore deny the  
21 allegations therein.

22 11. Federal Defendants deny the allegations set forth in paragraph 11.

23 12. Federal Defendants are without knowledge or information sufficient to form a  
24 belief as to the truth of the averments set forth in paragraph 12, and therefore deny the  
25 allegations therein. Further, to the extent that the allegations set forth in paragraph 12 constitute  
26 conclusions of law, no response is required. To the extent that a response is required, said  
27 allegations are denied.

28 13. Federal Defendants are without knowledge or information sufficient to form a

1 belief as to the truth of the averments set forth in paragraph 13, and therefore deny the  
2 allegations therein. Further, to the extent that the allegations set forth in paragraph 13 constitute  
3 conclusions of law, no response is required. To the extent that a response is required, said  
4 allegations are denied.

### 5 III.

#### 6 INTRODUCTION

7 14. The allegations set forth in paragraph 14 constitute Plaintiffs' characterizations of  
8 their lawsuit and require no response. To the extent that a response is required, said allegations  
9 are denied.

### 10 IV.

#### 11 STATEMENT OF FACTS

12 15. Federal Defendants are without knowledge or information sufficient to form a  
13 belief as to the truth of the averments set forth in paragraph 15, and therefore deny the  
14 allegations therein.

15 16. Federal Defendants admit the allegations set forth in paragraph 16.

16 17. Federal Defendants are without knowledge or information sufficient to form a  
17 belief as to the truth of the averments set forth in the first and second sentences of paragraph 17,  
18 and therefore deny the allegations therein. Federal Defendants deny the allegations set forth in  
19 the third sentence of paragraph 17.

20 18. Federal Defendants deny the allegations set forth in the first sentence of  
21 paragraph 18. Further, the allegations set forth in the second sentence of paragraph 18 appear to  
22 constitute Plaintiffs' characterizations of Consolidated Appropriations Act of 2005, Pub. L. No.  
23 108-447, § 116 , 118 Stat. 2809 (Dec. 8, 2004), which speaks for itself, is the best evidence of its  
24 contents, is a statement of law, and requires no response. To the extent that a response is  
25 required, said allegations are denied. Federal Defendants are without knowledge or information  
26 sufficient to form a belief as to the truth of the averments set forth in the third sentence of  
27 paragraph 18, and therefore deny the allegations therein. Federal Defendants deny the  
28 allegations set forth in the fourth and fifth sentences of paragraph 18.

1 19. Federal Defendants deny the allegations set forth in paragraph 19.

2 20. Federal Defendants deny the allegations set forth in paragraph 20. Federal  
3 Defendants aver that HR 5683 was signed into law by President Bush on August 14, 2006.

4 21. The allegations set forth in paragraph 21 concern the contents of judicial  
5 decisions which speak for themselves, are the best evidence of their contents, are statements of  
6 law and require no response. To the extent that a response is required, said allegations are  
7 denied.

8 22. The allegations set forth in paragraph 22 concern the contents of judicial  
9 decisions which speak for themselves, are the best evidence of their contents, are statements of  
10 law and require no response. To the extent that a response is required, said allegations are  
11 denied.

12 23. Federal Defendants are without knowledge or information sufficient to form a  
13 belief as to the truth of the averments set forth in the first sentence of paragraph 23, and therefore  
14 deny the allegations therein. Further, to the extent that the allegations set forth in the first  
15 sentence of paragraph 23 constitute conclusions of law, no response is required. To the extent  
16 that a response is required, said allegations are denied. The allegations set forth in the second  
17 sentence of paragraph 23 constitute conclusions of law to which no response is required. To the  
18 extent that a response is required, said allegations are denied.

19 24. Federal Defendants deny the allegations in the first, second and fourth sentences  
20 of paragraph 24. Federal Defendants are without knowledge or information sufficient to form a  
21 belief as to the truth of the averments set forth in the third sentence of paragraph 24, and  
22 therefore deny the allegations therein.

23 **V.**

24 **CLAIMS**

25 **FIRST CAUSE OF ACTION**

26 **VIOLATION OF THE ESTABLISHMENT CLAUSE (U.S. CONST., 1<sup>ST</sup> AMEND.) AND**  
27 **THE NO PREFERENCE AND NO AID CLAUSES OF THE CALIFORNIA**  
28 **CONSTITUTION (CAL. CONST. ARTICLE ONE AND ARTICLE SIXTEEN.)**

25. Federal Defendants re-assert and incorporate by reference their responses to

1 paragraphs 1 through 24 as though fully set forth herein.

2 26. Federal Defendants deny the allegations set forth in paragraph 26.

3 27. Federal Defendants deny the allegations set forth in the first and third sentences  
4 of paragraph 27. The allegations set forth in the second sentence of paragraph 27 concern the  
5 contents of judicial decisions which speak for themselves, are the best evidence of their contents,  
6 are statements of law and require no response. To the extent that a response is required, said  
7 allegations are denied.

8 28. Federal Defendants deny the allegations set forth in the first sentence of  
9 paragraph 28. Federal Defendants are without knowledge or information sufficient to form a  
10 belief as to the truth of the averments set forth in the remaining sentences of paragraph 28, and  
11 therefore deny the allegations therein.

12 29. Federal Defendants deny the allegations set forth in paragraph 29.

13 30. Federal Defendants deny the allegations set forth in paragraph 30.

14 **SECOND CAUSE OF ACTION**

15 **INJUNCTIVE AND DECLARATORY RELIEF**

16 31. Federal Defendants re-assert and incorporate by reference their responses to  
17 paragraphs 1 through 30 as though fully set forth herein.

18 32. Federal Defendants deny the allegations set forth in paragraph 32.

19 33. The allegations set forth in paragraph 33 constitute conclusions of law to which  
20 no response is required. To the extent that a response is required, said allegations are denied.

21 34. Federal Defendants deny the allegations set forth in paragraph 34. Federal  
22 Defendants aver that the land in question has been transferred to the federal government.

23 35. The allegations set forth in paragraph 35 are conclusions of law to which no  
24 response is required. To the extent that a response is required, said allegations are denied.

25 36. The allegations set forth in paragraph 36 constitute Plaintiffs' characterizations of  
26 their lawsuit to which no response is required. To the extent that a response is required, said  
27 allegations are denied.

28 37. Federal Defendants deny the allegations in the first sentence of paragraph 37. The

1 allegations in the second sentence of paragraph 37 constitute Plaintiffs' characterizations of their  
2 lawsuit to which no response is required. To the extent that a response is required, said  
3 allegations are denied.

4 38. Federal Defendants deny the allegations set forth in paragraph 38.

5 39. Federal Defendants deny the allegations set forth in paragraph 39.

6 The remaining allegations set forth under the heading "VI. REQUEST FOR RELIEF"  
7 contain Plaintiffs' requests for relief to which no response is required. To the extent that a  
8 response is necessary, Federal Defendants deny that Plaintiffs are entitled to the relief requested  
9 or any relief whatsoever.

10 Federal Defendants hereby deny each and every allegation in Plaintiffs' Complaint not  
11 previously admitted or otherwise responded to in this Answer.

12 Affirmative Defenses

- 13 1. The Court lacks subject matter jurisdiction over this lawsuit as it pertains to Federal  
14 Defendants under 42 U.S.C. § 1983.
- 15 2. Plaintiff lacks standing to challenge the constitutionality of Preservation of Mt. Soledad  
16 Veterans Memorial Act, Pub. L. No. 109-272, 120 Stat 770 (2006).

17

18 Dated: October 10, 2006

Respectfully Submitted,

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SUE ELLEN WOOLDRIDGE

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Assistant Attorney General

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RYAN D. NELSON

Deputy Assistant Attorney General

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s/ Kevin S. Webb

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Attorneys for Defendants

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United States of America and

Donald H. Rumsfeld, Secretary of

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Defense

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**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; and that I have served the following document:

**FEDERAL DEFENDANTS' ANSWER TO TRUNK AND PAULSON'S FIRST AMENDED COMPLAINT**

on individuals listed below in the manner indicated.

**Electronic Mail**

I served the following by electronic mail at the e-mail addresses listed below:

**James McElroy**  
jim@mcelroylaw.com; macpack77@hotmail.com

**George Schaefer**  
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**David Blair-Loy**  
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**United States Mail**

I served the following by placing a copy in a sealed envelope and placing it for collection and mailing with the United States Postal Service the same day, at my address shown above, following ordinary business practices, at the addresses listed below:

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Counsel for Mount Soledad Memorial Association, Inc.  
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**T. Jeremy Gunn**  
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**Peter D. Lepiscopo**  
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Executed: October 10, 2006 at Washington, D.C.

s/ Kevin S. Webb  
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