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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Kent Terry, et al.,

10 Plaintiffs,

11 v.

12 William Newell, et al.,

13 Defendants.

No. CV-12-02659-PHX-DGC

**ORDER**

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15 The United States has moved to substitute itself as a defendant with respect to the  
16 cross-claim of Defendants Lone Wolf Trading Company, LLC and Andrew L. Howard  
17 (“Cross-Claimants”) against Defendants Emory Hurley, William Newell, David Voth,  
18 Hope McAllister, Tonya English, William McMahon, and George Gillett (“Cross-  
19 Defendants”). Doc. 61. For the reasons set forth below, the Court will grant the United  
20 States’ motion.

21 Cross-Claimants allege that their cross-claim arises out of the “same transaction or  
22 set of occurrences” as described in Plaintiffs’ complaint (doc. 48, ¶ 54), and that “[b]ut  
23 for [Cross-Defendants’] actions in soliciting and encouraging the assistance of [Cross-  
24 Claimants] in making the sales of weapons, Cross-Claimants would not have made” the  
25 sales that are the subject of the Plaintiffs’ complaint (*id.*, ¶ 67).

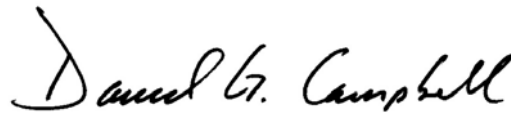
26 The Federal Employees Liability Reform and Tort Compensation Act (“Westfall  
27 Act”) provides that a claim against the United States under the Federal Tort Claims Act is  
28 the exclusive remedy for persons seeking to recover damages for any “negligent or

1 wrongful act or omission of any employee of the Government while acting within the  
2 scope of his office or employment.” 28 U.S.C. § 2679(b)(1). All other “civil action[s] or  
3 proceeding[s] . . . against the employee or the employee’s estate [are] precluded without  
4 regard to when the act or omission occurred.” *Id.* Under the Westfall Act, “federal  
5 employees receive absolute immunity from suit for their negligent or wrongful act[s] or  
6 omission[s] while acting within the scope of [their] office or employment.” *Jackson v.*  
7 *Tate*, 648 F.3d 729, 735 (9th Cir. 2011) (internal quotations omitted). The Westfall Act  
8 grants the Attorney General authority to certify that a federal employee was acting within  
9 the scope of his or her employment at the time in question. If the Attorney General  
10 makes such a certification, the United States must be substituted as the defendant. *Id.* at  
11 735. The Attorney General has delegated authority to certify scope of employment to  
12 any Director of the Torts Branch, Civil Division. *See* 28 C.F.R. § 15.4(a).

13 A Director of the Torts Branch, Civil Division, has certified that the actions taken  
14 by Cross-Defendants were within the scope of their employment. The Court concludes,  
15 therefore, that the United States must be substituted in place of Cross-Defendants with  
16 respect to the cross-claim filed by Cross-Claimants.

17 **IT IS ORDERED** that the United States’ motion for substitution (Doc. 61) is  
18 **granted.**

19 Dated this 15th day of November, 2013.

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24 David G. Campbell  
25 United States District Judge  
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