

The Honorable Justin L. Quackenbush

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10 **UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

11 PAUL GRONDAL, a Washington
12 resident and THE MILL BAY
MEMBERS ASSOCIATION, INC.,
13 a Washington Non-Profit
Corporation,

14 Plaintiffs,

15 v.

16 UNITED STATES OF AMERICA;
UNITED STATES DEPARTMENT
17 OF THE INTERIOR; THE
BUREAU OF INDIAN AFFAIRS; et
18 al.,

19 Defendants.
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Case No. 2:09-cv-0018-JLQ

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22 } **WAPATO HERITAGE, LLC'S**
23 } **RESPONSE TO COURT'S ORDER**
24 } **DATED JUNE 27, 2018 (ECF NO.**
25 } **353)**

21 Wapato Heritage, LLC, files this document in response to the Court's order
22 dated June 27, 2018, ECF No. 353, regarding the 2004 settlement of the action in
23 Chelan County Superior Court regarding MA-8. To provide the Court additional
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1 context for the settlement and its relation to the parties, Wapato Heritage discusses
2 some events that are predicated on the binding effect of the settlement.

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4 A. History of Rent Paid Pursuant to the 2004 Settlement.

5 Pursuant to the Court's previous order, ECF No. 345, Wapato Heritage
6 submitted documentation from its manager, Jeff Webb, that detailed the rental
7 payments received by Wapato Heritage and rents paid to the Bureau of Indian
8 Affairs ("BIA"). *See* ECF No. 346-2 to 346-11. In specific answer to the Court's
9 question regarding receipt of the funds by the landowners, following the 2004
10 settlement, Wapato Heritage voluntarily paid to the landowners an amount equal to
11 approximately 50% of the rent received from the Mill Bay Members for 2004 and
12 2005, even though it was not required to pay anything other than rent under the
13 terms of the Master Lease. ECF No. 346-8. As noted in Mr. Webb's letter, thereafter
14 Wapato Heritage's IIM account was frozen by the BIA due to litigation between
15 various heirs of William W. Evans, which litigation was ultimately settled, as further
16 described below. ECF No. 346-2.

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21 Thereafter, Wapato Heritage paid 7.5% of the Mill Bay rents to the BIA each
22 year until the BIA refused to accept any rent in 2009. *See* ECF No. 346-3 at 38, 57-
23 58, 73-74, 90-91. The checks were mailed to the BIA, who had the fiduciary
24 obligation to forward them to the landowners. ECF No. 346-2. Wapato Heritage had
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1 planned to pay the remaining 50% of the settlement funds (which, again, were
2 simply rent received at that time) following approval of a new lease it was
3 attempting to obtain from the landowners. When some of the landowners demanded
4 the full payment, to which they had no legal right, Wapato Heritage agreed to pay
5 those sums at that time. ECF No. 346-8.

7 After the ruling by Judge Whaley in *Wapato Heritage, LLC v. United States*,
8 No. CV-08-177-RHW, the BIA, despite its fiduciary status vis-à-vis the landowners,
9 no longer accepted any rental payments from Wapato Heritage under the Master
10 Lease. ECF No. 346-7. Wapato Heritage has continued to receive and accept rental
11 payments from the Mill Bay Members and retain them in a reserve account, applying
12 them to the overpayment of rent detailed in the Sells Audit. ECF No. 346-9. Even
13 so, due to the voluntary payments by Wapato Heritage following the 2004
14 settlement, the rents already paid to the landowners are greater than the rents they
15 would be entitled to under the Master Lease if paid through this year. *See* Decl. of
16 Jeff Webb.

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21 B. Participation of BIA and Colville Tribes in 2004 Settlement.

22 In a previous declaration, Mr. Webb has stated what occurred at the mediation
23 that led to the settlement. *See* ECF No. 91. Further, counsel for Wapato Heritage
24 inquired with the Chelan County Superior Court, and there are no transcripts or
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1 records of the state court proceedings related to the 2004 settlement, only two for
2 hearings that occurred years later. A comprehensive annotated history of the 2004
3 lawsuit, its procedure, sequence, and the involvement of the BIA, CTEC and the
4 Colville Tribes is set forth in ECF No. 88 ¶¶ 121-87, upon which Wapato Heritage
5 relies in this response.
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8 C. Relevance of RCW Chapter 11.96A.

9 The Court is correct to note that the 2004 settlement was approved by the
10 Chelan County Superior Court and bound, among others, the “beneficiaries to the
11 Estate of William W. Evans, Jr pursuant to RCW 11.96A.230-240.” RCW
12 11.96A.230(2) provides that a filed agreement “is equivalent to a final court order
13 binding on all persons interested in the estate or trust.” The Confederated Tribes of
14 the Colville Nation (“Colville Tribes”) is such a beneficiary and is bound by the
15 2004 settlement. The Colville Tribes had full and complete notice of all Chelan
16 County Superior Court proceedings. ECF No. 88 ¶¶ 171-77.
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19 It should be mentioned that when Wapato Heritage’s predecessor in interest,
20 Chief Evans, Inc., attempted to bring the issues which were subsequently the subject
21 of the settlement before the Colville Tribal Court, the action was dismissed by that
22 court for lack of jurisdiction. ECF No. 88 ¶¶ 133-34.
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1 The last will of William Evans provides that his interests in MA-8 and MA-10
2 were, following various life estate bequests, bequeathed to his great-grandchildren
3 and the Colville Tribes. Decl. of Bruce Johnston, Ex. A (¶ 5.1.2). Following the
4 estate litigation among the heirs, the parties entered a settlement in 2005 (“2005
5 settlement”), which changed this scheme. ECF No. 88 ¶ 186; ECF No. 90-12 at 573-
6 614. As detailed below, Mary Wynne, the attorney for Evans’s daughter,¹ Sandra
7 Evans, duped her client and the great-grandchildren out of their inheritance and
8 orchestrated leaving the full remainder interests in the Moses Allotments to the
9 Colville Tribes. ECF No. 90-12 at 597. In other words, because of Mary Wynne’s
10 duplicity, the great-grandchildren lost property worth potentially tens of millions of
11 dollars, and the Colville Tribes gained this property at no cost, contrary to the terms
12 of Mr. Evans’s will, under which, to get the property, the Colville Tribe would be
13 required to purchase the interests at their fair market value.
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18 It cannot be disputed that the Colville Tribes are a beneficiary of William
19 Evans’s estate, whether one considers the will or the 2005 settlement. Further, the
20 2005 settlement was approved both by the state court in the probate proceeding, *see*
21 ECF No. 90-11 at 533-47, and the federal probate court, *see* Decl. of Johnston, Ex.
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¹ Mary Wynne was also employed by the Colville Tribes as a Tribal Judge. Decl. of
24 Johnston, Ex. B-D.
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1 E. Both the Colville Tribes and the BIA had notice of these proceedings, did not
2 object to them, and accepted the results thereof. And, after accepting the results of
3 the approved 2004 Settlement, the BIA, the Colville Tribes and the landowners
4 accepted its benefits. ECF No. 88 ¶¶ 178-84. The 2005 settlement references the
5 Master Lease and Mr. Evans's rights under it, these assets formed a material part of
6 the 2005 settlement, *see* ECF No. 90-12 at 577-78, which adjusted the interests of
7 the beneficiaries in the various estate assets, balancing the rights of the heirs
8 according to the estate's perceived interests in the assets. The 2004 settlement was
9 integral to defining the estate's rights in the Moses Allotments and affected the later
10 settlement negotiations in the estate litigation.
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14 The 2004 settlement was considered by Judge Stancampiano in the Federal
15 Probate, and he decided it was fair and equitable. ECF No. 88 ¶ 186. Again, the
16 Colville Tribes and the BIA had notice of all these proceedings and accepted their
17 results and benefits without objection. As but one example, in a letter dated
18 February 15, 2005 to the landowners of MA-8, Mr. Nicholson as a representative of
19 the BIA stated:
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22 Find enclosed one half of the payment [the landowners] will be
23 receiving on the RV Park settlement monies. This was the
24 agreement Wapato Heritage LLC, and the RV Members came to
25 on the RV Park Litigation. The RV Members will pay \$48,000.00
now, and \$25,000.000 per year *through 2034*.

1 ECF No. 346-8 at 222 (emphasis added).

2 As a beneficiary of Mr. Evans's estate, the Tribes are bound under RCW
3 11.96A.230 to the terms of the 2004 settlement, which includes recognition of the
4 Mill Bay Members' right to remain on MA-8 until 2034.
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6 D. The Fraud of Mary Wynne.

7 First, there can be no doubt that Mary Wynne regularly breached her duties as
8 an attorney to Sandra Evans regarding Ms. Evans' interests in the estate of her
9 father, William Evans, who died on September 11, 2003. In June 2013, the
10 Washington State Bar Association twice reprimanded Ms. Wynne for some of her
11 misconduct while representing Ms. Evans. Decl. of Johnston Exs. F-I.
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14 Ms. Wynne's other misconduct was detailed by the Hon. Edward F. Shea in a
15 hearing wherein the court prohibited Ms. Wynne from representing Ms. Evans. *Id.*
16 Ex. J. On several occasions the Court found Ms. Wynne had proceeded with an
17 "irreconcilable conflict of interest."
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19 When Ms. Evans obtained counsel who truly represented Ms. Evans, Sandra
20 Evans sued Ms. Wynne for approximately \$2.5 million. *Id.* Ex. K. Before trial, Ms.
21 Wynne and her husband, Daniel Gargan, dismissed their bankruptcy case to avoid
22 the trial. In apparent recognition of their serious issues, Ms. Wynne and Mr. Gargan
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1 have sought sanctuary on the Rosebud Reservation in South Dakota, where she
2 apparently became a tribal judge. *See* Decl. of Johnston, Ex. B.

3 Ms. Wynne was also found to have acted improperly in regard to the
4 malpractice action commenced against her by Ms. Evans in Chelan County. A
5 relatively complete description of that breach of duty by Ms. Wynne is set forth in
6 an Order of the Arizona District Court. *See id.*, Ex. L.
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9 While these defalcations were most serious, and substantially injured Ms.
10 Wynne's client, Sandra Evans, Ms. Wynne's most egregious breach of fiduciary
11 duty, and her duties as an attorney, was her conspiracy with Gene Nicholson of the
12 BIA, for no consideration, to pass the full value of William Wapato Evans legacy to
13 the Colville Tribes, rather than his heirs, as provided by his will. The document
14 identified as "Danielson 117" is a document produced by the BIA in response to a
15 FOIA request. *Id.* ¶ 15. Wynne met with Gene Nicholson and others, and Wynne,
16 without authority from her client, and contrary to her duties as Ms. Evans lawyer
17 bargained away the residuary interest of Mr. Evans (and Ms. Evans and Wapato
18 Heritage) in the entire MA-8 property. *Id.* This change in favor of the Colville Tribes
19 is also evidenced by comparing Mr. Evans's will with the 2005 settlement, approved
20 by both the federal and state probate courts. *Compare* Decl. of Bruce Johnston, Ex.
21 A (¶ 5.1.2) with ECF No. 90-12 at 577-78. As with her other conflicts of interest,
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1 Ms. Wynne ignored that she had been an employee of the Colville Tribes as a tribal
2 judge. In that connection, because Ms. Wynne was clearly not representing the
3 interests of Sandra Evans, it is a fair inference that she was representing the interests
4 of her longtime employer, the Colville Tribes. Accordingly, Ms. Wynne should be
5 seen as acting as an agent of the Colville Tribes. Interestingly, Ms. Wynne opposed
6 the 2004 settlement, and her opposition was overruled. ECF No. 88 ¶¶ 168, 173.
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9 Likewise, Mr. Gargan, the husband and business associate of Ms. Wynne
10 attended the 2004 mediation. ECF No. 89 at 8-9. He can also be seen as an agent, *de*
11 *facto* or *de jure*, of the Colville Tribes in regard to his attendance and participation in
12 the mediation.
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14 E. Status of MA-8 as Fee Land.

15 The parties have extensively briefed the issue of whether MA-8 is fee land;
16 Wapato Heritage continues to assert that it is. *See, e.g.*, ECF No. 315. Nothing
17 contained in this response or filed with it should be construed to contravene that
18 position. If MA-8 is fee land, then unquestionably the state court order binding the
19 beneficiaries to the 2004 settlement applies the Colville Tribes. But even if MA-8
20 remains trust land, the Colville Tribes and other beneficiaries are estopped from
21 seeking to eject the Mill Bay Members until 2034, for reasons well articulated by the
22 Members. *See, e.g.*, ECF No. 295.
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DATED this 18th day of July, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused the foregoing document, to be electronically filed with the Clerk of the above entitled Court using the CM/ECF system, which will send notification of such filing to the following:

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DATED this 18th day of July, 2018.

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