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21 **UNITED STATES DISTRICT COURT**
22 **EASTERN DISTRICT OF WASHINGTON**

23 PAUL GRONDAL, a Washington
24 resident and THE MILL BAY
25 MEMBERS ASSOCIATION, INC.,
a Washington Non-Profit
Corporation,

Plaintiffs,

v.

UNITED STATES OF AMERICA;
UNITED STATES DEPARTMENT
OF THE INTERIOR; THE
BUREAU OF INDIAN AFFAIRS,
and FRANCIS ABRAHAM,
CATHERINE GARRISON,
MAUREEN MARCELLAY, MIKE
PALMER, JAMES ABRAHAM,
NAOMI DICK, ANNIE WAPATO,
ENID MARCHAND, GARY
REYES, PAUL WAPATO, JR.,
LYNN BENSON, DARLENE
HYLAND, RANDY MARCELLAY,
FRANCIS REYES, LYDIA W.

CASE NO. CV-09-0018-RMP

**WAPATO HERITAGE'S
RESPONSE TO FEDERAL
DEFENDANTS' STATEMENTS
OF MATERIAL FACTS**

LR 56(c)(1)(B)

1 ARMEECHER, MARY JO)
 GARRISON, MARLENE)
 2 MARCELLAY, LUCINDA)
 O'DELL, MOSE SAM, SHERMAN)
 3 T. WAPATO, SANDRA)
 COVINGTON, GABRIEL)
 4 MARCELLAY, LINDA MILLS,)
 LINDA SAINT, JEFF M. CONDON,)
 5 DENA JACKSON, MIKE)
 MARCELLAY, VIVIAN PIERRE,)
 6 SOMA VANWOERKON,)
 WAPATO HERITAGE, LLC,)
 7 LEONARD WAPATO, JR,)
 DERRICK D. ZUNIE, II,)
 8 DEBORAH L. BACKWELL, JUDY)
 ZUNIE, JAQUELINE WHITE)
 9 PLUME, DENISE N. ZUNIE and)
 CONFEDERATED TRIBES OF)
 10 THE COLVILLE RESERVATION,)
 Allottees of MA-8 (known as Moses)
 11 Allotment 8),)
 Defendants.)

I. RESPONSE TO ECF NO. 234

The Federal Defendants filed a Statement of Material Facts following their Renewed Motion for Ejectment setting forth in 19 asserted undisputed facts. ECF No. 234. The Plaintiff filed a response thereto, indicating certain disputed facts and certain undisputed facts. ECF No. 294, disputing asserted facts numbered 1, 16, 17 and 19.

Wapato Heritage joins in the dispute of the alleged facts 1, 16, 17 and 19. The Plaintiff indicated as undisputed the remainder of the asserted facts. While Wapato Heritage does not dispute that the letters identified therein were sent, Wapato Heritage disputes the accuracy of the assumptions and statements in the letters identified and therefore disputes the substance of the allegations made in alleged facts 10, 11, 12, 14 and 15. Wapato Heritage further disputes that the letters are admissible as evidence under

1 the Federal Rules of Evidence.

2 **II. RESPONSE TO ECF NO. 307**

3 The Federal Defendants filed a Statement of Material Facts supplemental to ECF
4 No. 234 and asserting Supplemental Statement of Material Facts 20, 21, 22 and 23.

6 Wapato Heritage responds (in **Bold Type**) as follows:

7 Supplemental SMF 20. In 2006, Congress amended the Indian Long-Term Leasing
8 Act to add MA-8 to the list of Indian trust lands that could be leased by their owners for
9 99 years. Act of May 12, 2006, 120 Stat. 340. **UNDISPUTED.**

11 Supplemental SMF 21. In a letter from Assistant Commissioner to Mr. Wapato,
12 dated February 5, 1924 he references that H.R. 2878 (that became the 1924 statute)
13 introduced in Congress would allow owners to sell entire allotment “with approval of the
14 Department along the same plan followed in selling trust lands on the various Indian
15 reservations”. Declaration of Colleen Kelley, Exhibit B. **DISPUTED. The letter**
16 **referred to is illegible.**

19 Supplemental SMF 22. In a letter from Superintendent to Mr. Kingman, dated
20 August 16, 1924 the Superintendent notes that with passage of the 1924 statute all of MA-
21 8 could be sold “of course” subject to Departmental approval. Declaration of Colleen
22 Kelley, Exhibit B. **UNDISPUTED that the letter exists; DISPUTED that the Letter**
23 **has any probative value or is admissible under the Federal Rules of Evidence.**

1 Supplemental SMF 23. In the 1936 Annual Report of the Commissioner of Indian
2 Affairs to the Secretary, the Commissioner describes the 1935 statute as “extend[ing]
3 until December 31, 1936, the trust periods on *all Indian lands outside of Oklahoma* which
4 would otherwise have expired”. Declaration of Colleen Kelley, Exhibit C.
5 **UNDISPUTED that the said Annual Report is authentic. DISPUTED that the**
6 **quoted statement has any probative value or is admissible as evidence under the**
7 **Federal Rules of Evidence.**

10 III. SUMMARY OF RESPONSES

11 Wapato Heritage asserts (1) that the facts asserted in ECF No. 234 and ECF No.
12 307 are not sufficient to support a judgment of ejectment as a matter of law, even in the
13 absence of the disputes noted by the Plaintiff and above. In view of the disputes,
14 supported by evidence cited in ECF No. 294, and in the Amended and Restated Statement
15 of Undisputed Facts filed on behalf of Wapato Heritage and the Plaintiffs, today, material
16 facts are in dispute which prevent a summary judgment of ejectment.
17
18

19 Further, Wapato Heritage asserts that the facts set forth in the Amended and
20 Restated Statement of Undisputed Facts, as annotated in the record, prevent summary
21 judgment in favor of either the US Parties for the Confederated Colville Tribes.
22

23 IV. STATEMENT REGARDING COLVILLE TRIBES’ MOTION TO 24 DISMISS

25 While the motion of the Confederated Colville Tribes is styled as a Motion to

1 Dismiss, it has asserted and relies on external evidence. No Statement of Undisputed
2 Facts pursuant to LR 56(c)(1)(A) has been filed by the Confederated Colville Tribes.

3
4 RESPECTFULLY SUBMITTED this 17th day of April 2020.

5 **CLOUTIER ARNOLD JACOBOWITZ, PLLC**

6
7 /s/ R. Bruce Johnston

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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 all registered recipients of that system as of the date hereof.

Notice of this filing will be sent to the parties listed below by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system.

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1 Notice of this filing is being sent this date via United States Postal Service First
2 Class Mail to the parties below at the addresses indicated below.

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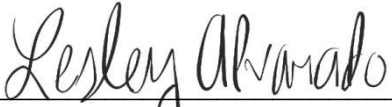
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DATED this 17th day of April 2020.



Lesley Alvarado