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*Betsy [Signature]*

IN THE NOOKSACK TRIBAL COURT  
FOR THE NOOKSACK INDIAN TRIBE  
DEMING, WASHINGTON

Case No. 2013-CI-CL-003

**ROBERTS, ET. AL**  
Plaintiffs

**ORDER ACCEPTING PLAINTIFFS'  
FIRST AMENDED COMPLAINT FOR  
EQUITABLE RELIEF**

vs.

**ROBERT KELLY, ET. AL.**  
Defendants.

**THIS COURT** received a *First Amended Complaint for Equitable Relief* on August 21, 2013. The Court has reviewed the following and hereby accepts the *First Amended Complaint* as appropriately filed.

The Court has routinely used the Federal Rules of Civil Procedure when the Nooksack Tribal Code's Title 10 fails to provide appropriate rules. However, on August 30, 2013, when this and other motions were pending before this Court, the Nooksack Tribal Council passed revisions to Title 10. The Resolution was signed and certified on September 3, 2013. After reviewing those revisions, which were provided to the Court on September 3, 2013, the Court concludes that the amendments to Title 10 apply to this and all matters pending before the Court. Resolution 13-138 provides that "Title 10 shall be amended, retroactively to all matters now-pending before the Court and that . . . Title 10 . . . is hereby fully amended." Title 10 has been amended by the Nooksack Tribal Council and the Court is bound to follow the law of the Nooksack Indian Tribe.

With respect to the amendment of pleadings and complaints, Title 10, 10.05.035(b) states:

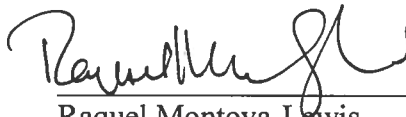
1 A party may amend the party's pleading once as a matter of course at any time before a  
2 responsive pleading, motion to dismiss, or motion for summary judgment is served.  
3 Otherwise, a party may amend the party's pleading only by leave of the court or by written  
4 consent of the adverse party, and leave shall be freely given when justice so requires; except  
5 that the court shall not grant leave to amend a complaint when there is a pending motion to  
6 dismiss or for summary judgment.

7 The original complaint in this matter was filed on August 13, 2013. The Plaintiffs filed a  
8 *First Amended Complaint for Prospective Equitable Relief* on August 21, 2013 at 2:34 p.m. The  
9 Defendants' filed a *Motion to Dismiss* on August 21, 2013 at 3:35 p.m.

10 The Plaintiffs *First Amended Complaint* was filed prior to the filing of the *Motion to Dismiss*.  
11 Under Title 10, any party may amend pleadings once before a responsive pleading, motion to  
12 dismiss or motion for summary judgment has been served. Therefore, the Plaintiffs' *First Amended*  
13 *Complaint* complies with Title 10, 10.05.035(b).

14 **IT IS SO ORDERED.**

15 **DATED** this 6th day of September, 2013.

16 

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18 Raquel Montoya-Lewis  
19 Chief Judge, Nooksack Tribal Court  
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SEP 6 2013

FILED BY

*Betty Johnson*

1 IN THE NOOKSACK TRIBAL COURT  
2 FOR THE NOOKSACK INDIAN TRIBE  
3 DEMING, WASHINGTON

Case No. 2013-CI-CL-003

4  
5 **ROBERTS, ET. AL**  
6 Plaintiffs

**ORDER DENYING PLAINTIFFS'  
MOTION TO AMEND**

7  
8 vs.

9 **ROBERT KELLY, ET. AL.**  
10 Defendants.

11 **THIS COURT** received a *Motion to Amend* and *Second Amended Complaint for Equitable*  
12 *Relief* on August 28, 2013. The Court has reviewed the following and hereby denies the *Motion to*  
13 *Amend*.

14 The Court has routinely used the Federal Rules of Civil Procedure when the Nooksack Tribal  
15 Code's Title 10 fails to provide appropriate rules. However, on August 30, 2013, when this and  
16 other motions were pending before this Court, the Nooksack Tribal Council passed revisions to Title  
17 10. The Resolution was signed and certified on September 3, 2013. After reviewing those revisions,  
18 which were provided to the Court on September 3, 2013, the Court concludes that the amendments  
19 to Title 10 apply to this and all matters pending before the Court. Resolution 13-138 provides that  
20 "Title 10 shall be amended, retroactively to all matters now-pending before the Court and that . . .  
21 Title 10 . . . is hereby fully amended." Title 10 has been amended by the Nooksack Tribal Council  
22 and the Court is bound to follow the law of the Nooksack Indian Tribe.

23 With respect to the amendment of pleadings and complaints, Title 10, 10.05.035(b) states:  
24

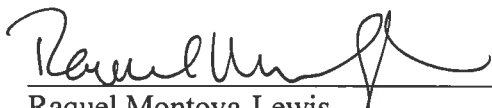
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5 that the court shall not grant leave to amend a complaint when there is a pending motion to  
6 dismiss or for summary judgment.

7 The original complaint in this matter was filed on August 13, 2013. The Plaintiffs filed a  
8 *First Amended Complaint for Prospective Equitable Relief* on August 21, 2013 at 2:34 p.m. The  
9 Defendants' filed a *Motion to Dismiss* on August 21, 2013 at 3:35 p.m. The Court has accepted the  
10 *First Amended Complaint*.

11 Under Title NTC 10.05.035(b), after an initial amendment to a pleading, the parties can  
12 amend with leave of the Court or consent of the adverse parties. When a *Motion to Dismiss* is  
13 pending, however, the Court "shall not" grant leave to amend. This Court has a *Motion to Dismiss*  
14 pending and, therefore, will not grant the *Motion to Amend*. Therefore, the *Motion to Amend* is  
15 denied.

16 **IT IS SO ORDERED.**

17 **DATED** this \_\_6th\_\_ day of \_\_September\_\_\_\_\_, 20\_\_13\_\_.

18 

19 Raquel Montoya-Lewis  
20 Chief Judge, Nooksack Tribal Court