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

PAUL GRONDAL, a Washington
resident, *et. al.*

Plaintiffs,

v.

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

Defendants.

CASE NO. CV-09-0018-RMP

**JOINT RESPONSE TO
FEDERAL DEFENDANTS'
MOTION TO DISMISS
REMAINING CLAIM AGAINST
WAPATO HERITAGE, LLC
UNDER FEDERAL RULE 41(a)(2)**

Hearing: January 28, 2021
Without Oral Argument

JOINT RESPONSE TO FEDERAL
DEFENDANTS' MOTION TO DISMISS
REMAINING CLAIM AGAINST WAPATO
HERITAGE, LLC UNDER FEDERAL
RULE 41(a)2-1

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I. RESPONSE

Neither Wapato Heritage, LLC (“Wapato Heritage”) nor Plaintiffs, Paul Grondal and the Mill Bay Members Association, Inc. (“Plaintiffs” or “Mill Bay”), object to the Federal Defendants’ request to dismiss their sole remaining claim against Wapato Heritage with prejudice. ECF No. 646 at 1: 17-19. Such a dismissal with prejudice, however, does not result in Wapato Heritage being entirely dismissed from this action; Wapato Heritage has standing to remain in the case and fully participate in a damages determination related to Mill Bay’s trespass by virtue of its status as an allottee and because Plaintiffs have threatened Wapato Heritage with litigation related to the Court’s decision on damages.

In order to have standing, a party must have suffered an injury in fact, meaning an actual or imminent concrete and particularized invasion of a legally protected interest; such injury must be causally connected to the complained of conduct; and it must be likely that the injury can be redressed by a favorable decision of the court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

Wapato Heritage is an allottee, possessing a life estate in Evans’ MA-8 allotment interest of 23.8%. As an allottee, Wapato Heritage has a beneficial interest in the

1 judgment for Mill Bay's trespass and is entitled to a portion of that judgment. Wapato
2 Heritage has been injured by Mill Bay's conduct. That injury can and will be redressed
3 by this Court in the form of a damages determination. As an allottee, Wapato Heritage
4 has standing to participate in the trial, as it had standing to participate in the other
5 decisions before this Court. In addition, as the Court is aware, Wapato Heritage
6 disagrees with and has objected to the Federal Defendants' handling of this lawsuit and
7 the claims herein. The facts demand that Wapato Heritage be able to participate in the
8 trial as a counter-balance to the Federal Defendants' handling of the matter.
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11 Additionally, Wapato Heritage has standing pursuant to a vested interest in the
12 impending judgment. Mill Bay has threatened Wapato Heritage with litigation related
13 to any judgment that Mill Bay receives against it. Declaration of Tyler D. Hotchkiss in
14 Support of Joint Response to Federal Defendants' Motion to Dismiss Remaining Claim
15 Against Wapato Heritage, LLC Under Federal Rule 41(a)2 at "(2)." Although Wapato
16 Heritage denies any liability, if it is not allowed to participate in the damages portion of
17 this trial, then there is no question that another court will have to re-litigate these issues.
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21 Neither Wapato Heritage nor Mill Bay object to the voluntary dismissal with
22 prejudice of Federal Defendants' claim against Wapato Heritage. Nor do they object to
23 simplifying the trial, but the dismissal of this claim against Wapato Heritage does not
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25

JOINT RESPONSE TO FEDERAL
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1 deprive Wapato Heritage of standing in this case and their ability to fully participate in
2 the damages issue at trial.

3 **DATED** this 26th day of January 2021.

4 **CLOUTIER ARNOLD JACOBOWITZ, PLLC**

5
6 /s/

7 Nathan J. Arnold, WSBA No. 45356

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16 /s/ Tyler D. Hotchkiss

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s/Sally W. Harmeling

Sally W. Harmeling, WSBA No. 49457

JOINT RESPONSE TO FEDERAL
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JOINT RESPONSE TO FEDERAL
DEFENDANTS' MOTION TO DISMISS
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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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JOINT RESPONSE TO FEDERAL
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Notice of this filing is being sent this date via United States Postal Service First Class Mail to the parties below at the addresses indicated below.

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DATED this 26th day of January 2021.

/s/ Nancy Focht
Nancy Focht

JOINT RESPONSE TO FEDERAL
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RULE 41(a)2-9

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