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6 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
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8 PAUL GRONDAL, a Washington  
resident; and THE MILL BAY  
9 MEMBERS ASSOCIATION, INC., a  
Washington Non-Profit Corporation,  
10

11 Plaintiffs,

12 vs.

13 UNITED STATES OF AMERICA, et al.,

14 Defendants.  
15

No. 09-CV-00018-RMP

**FEDERAL DEFENDANTS' REPLY  
IN SUPPORT OF MOTION TO  
DISMISS REMAINING CLAIM  
AGAINST WAPATO HERITAGE,  
LLC UNDER FEDERAL RULE  
41(a)(2)**

Noted Without Oral Argument

January 28, 2021

16 Lacking in authority, WHL and Mill Bay assert an inaccurate version of  
17 reality reminiscent of M.C. Escher's *Relativity*. First, Wapato Heritage, LLC  
18 (WHL) is not an "allottee." Indeed, its own Answer and Cross-Claim Complaint  
19 differentiates WHL— as a limited liability company simply holding an  
20 approximately 24% (life estate) interest in MA-8—and *the actual allottees*. ECF No.  
21 170 at 16-17. Wapato's assertion that it is an allottee, to which the BIA would have  
22 fiduciary duties, has been repeatedly rejected. *See e.g.*, ECF No. 644 at 5; *Wapato*  
23 *Heritage, L.L.C. v. United States*, 423 Fed. Appx. 709, 711 (9th Cir. 2011). An  
24 allottee is an individual person not a state charted limited liability corporation. *See*  
25 30 USC § 1702(2) (defining "Indian allottee" as "any Indian for whom land . . . is  
26 held in trust by the United States . . ."). WHL is not, and has never been, an  
27 "allottee."

FEDERAL DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS REMAINING  
CLAIM AGAINST WAPATO HERITAGE, LLC - 1

1 Second, WHL's claim that it has been harmed by Mill Bay's conduct ignores  
2 the history of this case. WHL has consistently been aligned with Mill Bay and  
3 supporting its trespass to protect its, *and its representatives*, own self-interest.  
4 WHL has taken this position at the expense of the allottees, and apparently wants  
5 to further harm allottees by challenging Federal Defendants' damages claim  
6 brought *on the allottees' behalf* against Mill Bay. Throughout this litigation WHL  
7 has been profiting from payments from Mill Bay at the expense of the allottees  
8 while at the same time forestalling malpractice claims. ECF No. 349 at 8 (Grondal  
9 declaration stating that Mill Bay paid Wapato Heritage); ECF No. 349-1 at 21  
10 (payment ledger). Any 'harm' to WHL was caused by its own decisions, including  
11 its decision not to renew the Master Lease despite sufficient time to do so.

12 Third, WHL's assertion that allowing its participation in the sole remaining  
13 claim by Federal Defendants against Mill Bay would avoid future litigation  
14 between WHL and Mill Bay is misplaced. There is no damages claim in this case  
15 between WHL and Mill Bay that the Court can redress. WHL and Mill Bay made  
16 their decision long ago not assert such a claim between each other. Moreover, any  
17 such purported breach of contract claims between them regarding WHL's inability  
18 to fulfill its contractual obligations to Mill Bay would have to be subject to binding  
19 arbitration pursuant to the 2004 settlement agreement to which neither the allottees  
20 nor the BIA were a party. ECF No. 346-1 ("all disputes [must] be resolved through  
21 arbitration").

22 Fourth, the assertion that WHL has any desire to avoid future litigation is  
23 belied by both its threats of future lawsuits in the Court of Federal Claims as well  
24 as well as its conduct in this litigation. Nearly every action taken by WHL has been  
25 to prolong litigation. Allowing their continued involvement in this case despite  
26 being dismissed as a party would only serve WHL's desire to *prolong* litigation for  
27 its own self-interest, not the allottees'.

1 Finally, once dismissed from this case WHL does not have any further rights  
 2 as a party. As explained in *Blazek v. Capital Recovery Associates, Inc.*, 222 F.R.D.  
 3 360, 361 (E.D.Wisc. 2004), non-parties who were originally parties—for example, a  
 4 defaulting defendant—are nonetheless still treated as a non-party. This is because  
 5 such a nonparty: “loses many of the rights of a party, such as the right to receive  
 6 notice of future proceedings [and] the right to present evidence on issues . . .” *Id.*  
 7 at 361; *see also Jules Jordan Video, Inc. v. 144942 Canada Inc.*, 617 F.3d 1146,  
 8 1158–59 (9th Cir. 2010) (adopting the reasoning of *Blazek*); *U.S. Philips Corp. v.*  
 9 *Windmere Corp.*, 971 F.2d 728, 730 (Fed. Cir. 1992) (in a similarly complicated  
 10 procedural history the court held: “Any financial or commercial interest  
 11 [dismissed-party] might have . . . does not confer standing as a party”); *United*  
 12 *States v. Dist. Council of New York City*, 2007 WL 3196136, at \*1 (S.D.N.Y. Oct.  
 13 26, 2007) (denying dismissed parties motion for lack of standing to make it).  
 14 *Patriot Rail Corp. v. Sierra R.R. Co.*, 2016 U.S. Dist. LEXIS 22054, at \*12 (E.D.  
 15 Cal. Feb. 22, 2016) (noting the lack of any authority allowing non-party to conduct  
 16 discovery); *Taddeo v. Am. Invsco Corp.*, 2016 U.S. Dist. LEXIS 17697, \*6, 2016  
 17 WL 593522 (D. Nev., Feb. 11, 2016) (prevailing defendant in a multi-defendant  
 18 case is treated as a non-party for discovery purposes).

19 At bottom, a party must demonstrate standing “for each claim he seeks to  
 20 press” and for “each form of relief sought.” *DaimlerChrysler Corp. v. Cuno*, 547  
 21 U.S. 332, 352, (2006). WHL should not be allowed to continue to run up fees in  
 22 costs in this case through burdensome discovery, or otherwise, when it is no longer  
 23 a party entitled to seek any relief (and any speculative future litigation between  
 24 Mill Bay and WHL cannot be redressed by this Court). *See also, Mayfield v.*  
 25 *United States*, 599 F.3d 964, 972 (9th Cir. 2010) (“Having bargained away all  
 26 other forms of relief” plaintiff lacked standing because no relief sought could be  
 27 redressed by the court); *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016), *as*

1 *revised* (May 24, 2016) (“A ‘concrete’ injury must be ‘de facto’; that is, it must  
2 actually exist.”). Having no remaining claims, WHL has no right to further  
3 participation.

4 RESPECTFULLY SUBMITTED on this 27th day of January, 2021.

5 William D. Hyslop  
6 United States Attorney

7 /s/ Joseph P. Derrig  
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*Certificate of Service*

I hereby certify that on January 27, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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