

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PHILIP C. BELLFY, *pro per*; MONICA  
CADY, *pro per*; JAMES A. LEBLANC,  
*pro per*; DIEDRE J. MALLOY, *pro per*;  
NATHAN J. WRIGHT, *pro per*; John  
Does; and Mary Does,

Plaintiffs, *pro se* litigants

v

KEITH CREAGH,

Defendant.

No. 1:15-cv-00282

HON. PAUL L. MALONEY

MAG. HUGH W. BRENNEMAN

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**THE DIRECTOR OF THE MICHIGAN DEPARTMENT OF NATURAL  
RESOURCES' REPLY TO THE PLAINTIFFS' RESPONSE TO THE  
DIRECTOR'S 04/22/2015 MOTION TO DISMISS**

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Dated: April 24, 2015

## ARGUMENT

The Plaintiffs' response to the Director's motion to dismiss warrants two short points of clarification that may assist the Court.<sup>1</sup>

First, the Plaintiffs suggest that relief under Fed. R. Civ. P. 12(b)(6) is only available if a plaintiff has filed an actual complaint – which the Plaintiffs have not done here. In light of the mandate in Fed. R. Civ. P. 1 to interpret the federal rules in such a way as “to secure the just, speedy, and inexpensive determination of every action and proceeding,” the Plaintiffs' interpretation of Rule 12(b)(6) is unreasonable. There is no reason why the Director should be precluded from seeking relief under Rule 12(b)(6) until the Plaintiffs choose to file a complaint. The Plaintiffs have sought relief against the Director that, as a matter of law, cannot be granted based on any factual scenario “consistent” with the facts included in the Plaintiffs' March 17, 2015 and April 13, 2015 motions. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 563 (2007). It does not matter for the purposes of Rule 12(b)(6) that the Plaintiffs sought the relief in the form of a motion instead of a complaint.

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<sup>1</sup> The Plaintiffs' response is made up primarily of accusations that the Director and his counsel have acted in “bad faith.” Those accusations do not merit substantive response.

And second, there are a number of problems with the Plaintiffs' legal claims that preclude the relief they seek.<sup>2</sup> But in the interest of pursuing a "speedy" and "inexpensive" determination of these proceedings, Fed. R. Civ. P. 1, the Director chose to directly address the merits of the Plaintiffs' groundless lawsuit. This choice was reasonable in light of the standards governing requests for a preliminary injunction – which require an exploration of a claim's merits. However, the Plaintiffs' lack of standing is another way to dispose of this lawsuit. The individual Plaintiffs insist (Doc #22 Pg ID #370-371) that they have standing apart from their tribes<sup>3</sup> to assert an interest under the 1836 Treaty and 2007 Consent Decree, notwithstanding this Court's 1979 ruling that the rights the tribes reserved in the 1836 Treaty are the "communal property" of the tribes and do "not belong to individual tribal members." *United States v. State of Mich.*, 471 F. Supp. 192, 271 (W.D. Mich. 1979). But the Plaintiffs are incorrect. Regardless of whether the Plaintiffs truly are tribal members, and if so, whether they belong to tribes that are the political successors to the signatories of the 1836 Treaty, the individual

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<sup>2</sup> Among others, one other troublesome aspect of this case, as already noted by Judge Jonker in his denial of the Plaintiffs' initial request for a temporary restraining order (Doc #4 Pg ID #26), is the fact that the 2007 Consent Decree has dispute resolution procedures that may be invoked by the parties to the Decree (Section XXVII) – the signatory tribes and the State – but were not followed here. Indeed, the Court may take judicial notice of the fact that none of the Tribes who signed the Decree have invoked those procedures, intervened in this case, or advanced the legal claims asserted by the Plaintiffs here.

<sup>3</sup> For purposes of the motion to dismiss, and consistent with Fed. R. Civ. P. 12(b)(6), the Director has accepted at face value the Plaintiffs' claim to be members of federally-recognized Indian tribes, but takes no position on the question. Nor does the Director take a position on whether the tribes to which the Plaintiffs purport to belong are the political successors to the 1836 Treaty tribes or signatories to the 2007 Consent Decree.

Plaintiffs simply do not have standing to assert rights under the 1836 Treaty or 2007 Consent Decree that, as this Court has already held, only belong to a tribe communally, and not to any individual tribal member. *State of Mich*, 471 F. Supp. at 271.

### **CONCLUSION AND RELIEF REQUESTED**

Because the Plaintiffs fail to state a claim upon which this Court can grant relief, and because they lack standing, the Director requests that the Court dismiss the Plaintiff's case. The Director also requests any other relief the Court considers appropriate.

Respectfully submitted,

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LF: Bellfy, Philip v Creagh, Keith USDC/2015-0105484-A-L/DNR's Reply to Resp to DNR's Motion to Dismiss 2015-04-24