

Michael J. Walleri (ABA #7906060)
GAZEWOOD & WEINER, PC
1008 16th Ave., Suite 200
Fairbanks, AK 99701
tel: (907) 452-5196
fax: (907) 456-7058
walleri@gci.net

Attorneys for Defendant Newtok Village

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ALASKA LOGISTICS, LLC - Petitioners, vs. NEWTOK VILLAGE, d/b/a NEWTOK VILLAGE COUNCIL and GOLDSTREAM ENGINEERING, INC. - Defendants.	CASE NO. 3:18-cv-00108 (SEG) MEMORANDUM IN SUPPORT OF MOTION TO STRIKE: COUNTERCLAIMS TO COUNTERCLAIMS (Fed. R. Civ. P. 7 & 12(f))
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Defendant Newtok Village (Tribe) requests the Court to strike Plaintiff's pleading filed on July 13, 2018 entitled PLAINTIFF'S AMENDED ANSWER TO NEWTOK'S COUNTERCLAIMS AND PLAINTIFF'S COUNTERCLAIMS TO COUNTERCLAIMS. (emphasis added) pursuant to Fed. R. Civ. P. 7 and 12(b). (Doc. 25)

Fed R. Civ. P. 7. The Court should strike the pleading because it is not allowed under Rule 7 and represents an improper process requiring leave of Court to amend Plaintiff's prior pleadings.

Essentially, the Federal Civil Rules do not contemplate any pleading that might be styled as a “counterclaim to a counterclaim”. Rather, Rule 7 contemplates only pleadings styled as a complaint, answer (to complaint, counterclaim designated as a counterclaim, cross claim or third party complaint), third party complaint, or reply (if requested by Court). There is no such pleading as a “counterclaim to

a counterclaim” allowed under the Rules. Styling a pleading as such, however, may trigger a need to have the Defendant(s) respond with an answer or suffer the consequences of allowing the new asserted claims to go unchallenged. In essence, adding a “counterclaim to a counterclaim” amounts to amending the original complaint.

Federal Civil Rules contain a specific process to amend parties' pleadings, which normally includes filing a motion and seeking leave of Court. (Fed. R. Civ. P. 15(a)(1)(B)). That process was not used here; rather “counterclaims to counterclaims” was filed pursuant to Fed. R. Civ. P. 15(a)(1)(A), which allows amendment of a pleading without leave of Court if filed within 21 days of the original filing. *Id.* In this case, Plaintiff's Complaint was filed beyond the 21 day window for amendment without leave. In substance, Plaintiff seeks to circumvent the process contained in Fed. R. Civ. P. 15(a)(1)(B), which requires leave of Court to amend its Complaint, and should be stricken.

Fed. R. Civ. P. 15(f). On the other hand, the Court should strike the pleading because it is largely redundant as to Plaintiff's original complaint. “The court may strike from a pleading any ... redundant, immaterial, impertinent, or scandalous matter. Civ. R. Civ. P. 15(f) It is not clear to what extent, if any, the factual allegations or claims contained in the “counterclaims to counterclaims” differ from the original complaint. In this regard, the filing is clearly redundant and immaterial. Of course, this is the purpose requiring a party to file a motion to amend pleadings, as it requires the moving party to explain why the amendment is needed. The absence of this safeguard merely waste the Court's and opposing counsel's time trying to figure out what differences exist between the original complaint and the “counterclaim to counterclaim”.

Costs. Undersigned Counsel advised opposing Counsel as to the inappropriate use of the

“counterclaim to counterclaim” devise and requested opposing Counsel to withdraw the pleading. (See Exhibit 1, attached) Opposing Counsel declined the request with condescension, and without explanation. *Id.* The “counterclaim to a counterclaim” is a frivolous filing under Federal Civil Rules.¹ As a result, the Tribe was put to the cost and time to 1) review the frivolous filing, 2) discuss between counsel withdrawal of the filing, and 3) file this motion. The Tribe requests the Court to order attorney fees in favor of the Tribe upon subsequent motion with supporting time sheets.

Date: July 23, 2018

s// Michael J. Walleri

Michael J. Walleri (ABA #7906060)
GAZEWOOD & WEINER, PC
1008 16th Ave., Suite 200
Fairbanks, AK 99701
tel: (907) 452-5196
fax: (907) 456-7058
walleri@gci.net
Attorney for Newtok Village d/b/a
Newtok Village Council

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the ECF system this 23rd day of July, 2018, on:

Dustin C. Hamilton
LeGros Buchanan & Paul
4025 Delridge Way SW, Suite 500
Seattle, WA 98106

Chris Bataille
Flanigan & Bataille
1007 W. 3rd Avenue, Suite 206
Anchorage, Alaska 99501

S// Michael J. Walleri

GAZEWOOD & WEINER, PC

¹ One might argue that a “counterclaim to a counterclaim” is a proper procedure in certain Common Law jurisdictions. The practice in the US differs in this regard.