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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

PAUL GRONDAL, a Washington resident; and the MILL BAY MEMBERS ASSOCIATION, INC., a Washington Non-Profit Corporation,

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-JLQ

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT RE EJECTMENT

INTRODUCTION

The United States renews its motion for summary judgment seeking an order ejecting Plaintiffs from MA-8 which they have unlawfully occupied since February 2009. The United States submits that there is no genuine dispute as to any material fact and summary judgment is appropriate. The government demonstrates below that the contingencies the Court noted in its Memorandum Opinion and Order of January 12, 2010, (ECF No. 144) have been satisfied. Federal Defendants contend this motion is now ripe for consideration. This summary judgment motion addresses only

ejectment. Federal Defendants will seek to pursue their claim for trespass damages at a later time.

ARGUMENT

1. Summary Judgment Standard

Summary judgment is appropriate when "there is no genuine issue as to any material fact and [where] the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment bears the initial burden of showing that there is an absence of any issues of material fact. *Celotex v. Catrett*, 477 U.S. 317, 324 (1986). If the moving party meets this burden, the non-moving party may not rest upon its pleadings, but must come forward with specific facts by use of affidavits, depositions, admissions, or answers to interrogatories showing there is a genuine issue for trial as to the elements essential to the non-moving party's case. Fed. R. Civ. P. 56(e); *Celotex*, 477 U.S. at 324; *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 256 (1986). The non-movant cannot avoid summary judgment by resting on bare assertions, general denials, conclusive allegations or mere suspicion. *See*, Fed. R. Civ. P. 56(e); *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 886-88 (1990) (non-moving party must offer specific facts contradicting the acts averred by the movant that indicate that there is a genuine issue for trial); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp*., 475 U.S. 574, 586, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986) (When the moving party has carried out its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts).

2. United States' Representation of Interests of Indian Landowners

The United States brings this counterclaim for ejectment in its role as trustee for the Indian beneficial owners of MA-8. The Supreme Court has recognized a variety

of federal common law causes of action to protect Indian lands from trespass, including actions for ejectment and damages. *United States v. Pend Oreille Pub. Util. Dist. No. 1*, 28 F.3d 1544, 1549 n.8 (9th Cir. 1994), *cert. denied*, 514 U.S. 1015 (1995) *(*citing *Marsh v. Brooks*, 49 U.S. (8 How.) 223, 232, 12 L. Ed. 1056 (1850) (action for ejectment); *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226 at 233-36 (1985) (action for damages); *United States v. Southern Pacific Transp. Co.*, 543 F.2d 676, 682-84 (9th Cir. 1976) (action for damages)).

The United States may bring this ejectment action without the beneficial Indian owners being parties to the action. *Heckman v. United States*, 224 U.S. 413 (1912). *Heckman* involved an action by the United States against grantees to cancel conveyance of restricted Indian land made without the approval of the Secretary of the Interior. As the Supreme Court explained in response to Heckman's argument that the absence of the Indian beneficial owners as parties barred the action,

> [this] argument necessarily proceeds upon the assumption that the representation of these Indians by the United States is of an incomplete or inadequate character; that although the United States, by virtue of the guardianship it has retained, is prosecuting this suit for the purpose of enforcing the restrictions Congress has imposed, and of thus securing possession to the Indians, their presence as parties to the suit is essential to their protection. This position is wholly untenable.

Heckman, 224 U.S. at 444. Continuing, the Court explained that

> [w]hen the United States instituted this suit, it undertook to represent, and did represent, the Indian grantors whose conveyances it sought to cancel. It was not necessary to make these grantors parties, for the Government was in court on their behalf. Their presence as parties could not add to, or detract from, the effect of the proceedings to determine the violation of the restrictions and the consequent invalidity of the conveyances.

Heckman, 224 U.S. at 445.

But in filing this action as a trustee protecting the Indian beneficial landowners' rights to unencumbered occupation and use of MA-8, the United States is not representing each landowner personally. Rather, it is representing all of them collectively to protect their interests in MA-8 because of Congress's action to create this allotment and declare that it would be held in trust by the United States. *See*, *e.g.* *United States v. Mitchell*, 445 U.S. 535, 544 (1980) (holding land "in trust" creates duty to prevent unlawful alienation and taxation of the trust land). Consequently, as we argue below, there should be no obstacle to dismissing the Indian beneficial landowners as unnecessary to the prosecution of—or defense against—the United States' motion.

3. The Undisputed Facts Demonstrate That Plaintiffs Have No Right to Occupy MA-8 and Are Therefore Trespassing Upon the Indian Trust Land.

Federal Defendants rely on and refer the Court to their initial Statement of Material Facts, ECF No. 73, and to its Supplemental Statement of Material Facts, filed herewith.

A legal claim for ejectment consists of the following elements: (1) plaintiffs are out of possession; (2) the defendants are in possession, allegedly wrongfully; and (3) plaintiffs claim damages because of the allegedly wrongful possession. *Oneida Indian Nation of N.Y. v. County of Oneida*, 414 U.S. 661, 665, 683, 94 S.Ct. 771 (1974) (citing *Taylor v. Anderson*, 234 U.S. 74, 34 S.Ct. 724 (1914)). As noted above, Federal Defendants are not pursuing their claim for damages in this motion.

A. MA-8 Is Indian Land

When this action was filed, Plaintiffs and the Federal Defendants were in agreement that MA-8 was held by the United States for the benefit of the Indian

landowners. *Cf.* Complaint, ECF No. 1, ¶ 33 ("The United States holds title to MA-8 for the use and benefit of individual Indian allottees") *with* Federal Defendants' Answer, ECF No. 42, ¶ 33) ("Federal Defendants admit that the United States holds MA-8 in trust for the Tribe and certain individual Indians"). It now appears that Plaintiffs may have changed their position about whether MA-8 is Indian trust land. *See* Plaintiffs' Response to Defendant Colville Tribes' Motion to Dismiss, ECF No. 223 at 6 ("above history raise[s] a serious question as to the nature of the property and its qualification as trust land").

The Court should apply judicial estoppel to prevent Plaintiffs from now taking the position that MA-8 is not trust land. Under the doctrine of judicial estoppel, a party taking a position in litigation precludes that party from later assuming an inconsistent position on the same issues. *Helfand v. Gerson*, 105 F.3d 530, 534 (9th Cir. 1997). "It is an equitable doctrine intended to protect the integrity of the judicial process by preventing a litigant from playing fast and loose with the courts." *Id*. (citation and quotations omitted). Privity and detrimental reliance are not required because the doctrine protects the integrity of the judicial system, not the litigants. *Burnes v. Pemco Aeorplex, Inc*., 291 F.3d 1282, 1286 (11th Cir. 2002). Plaintiffs' change in position would remove the United States from the litigation (if the land is not trust land), undercutting the very premise of Plaintiffs' complaint. As this Court has noted, such a changed position is also inconsistent with characterizations that formed the basis for rulings in this Court, in Cause No. 08-CV-177-RHW before Judge Whaley, and before the Ninth Circuit court of Appeals. ECF No. 227 at 4. The consequences that follow from this new position should lead the Court to apply judicial estoppel and not allow Plaintiffs to change position as to the land's status some three years after filing the complaint.

If the Court declines to apply judicial estoppel, the issue of the status of MA-8 involves no dispute as to material facts—only a dispute about the correct legal interpretation of statutes and undisputed actions taken by the President and other executive officers. It is appropriate for resolution by summary judgment.

Although the court has twice been presented with citations to statutes, regulations, and executive action that prove that MA-8 remains in trust status, we lay out for the Court's benefit in one place Federal Defendants' legal argument. As noted by Plaintiffs at ECF No. 223 at 5, the Supreme Court in *Starr v. Long Jim*, 227 U.S. 613 (1913) generally describes the origin of the Moses allotments such as MA-8. In furtherance of an agreement between the Moses Band and the United States, ratified by the Act of July 4, 1884, 23 Stat. 79 (*Kelley Dec.*, Exhibit 1), Congress enacted legislation providing for the issuance of patents to Indians of the Band.[1] Act of March 8, 1906, 34 Stat. 55; *Kelley Dec.*, Exhibit 2. The 1906 Act stated that the patents were to declare that the land allotted would be held in trust status for ten years from the date of the Act. *Id.* The two patents issued to Wapato John so state. *Wulff Dec.*, Exhibit 4. As discussed below, significantly, section 2 of the 1906 Act also provided that the Indian allottee could sell the allotted land, *except for 80 acres*, under the rules and regulations of the Secretary of the Interior.

As was common for many trust allotments, (Cohen's Handbook of Federal Indian Law § 16.03[4][b][ii] (2005 ed.)) (*Kelley Dec.*, Exhibit 3), the original

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[1] Wapato Heritage LLC has asserted, without citation, that Federal Defendants have contended that MA-8 was created under the General Allotment Act. ECF No. 225 at 12. This is inaccurate. Federal Defendants have never asserted that MA-8 was issued pursuant to the General Allotment Act. *See* ECF No. 42 at ¶¶ 18, 30-31.

ten-year trust period was extended repeatedly by executive order. The first extension occurred on December 23, 1914. Pursuant to authority in section 5 of the Act of February 8, 1887 (24 Stat. 388) and the Act of June 21, 1906 (34 Stat. 325), the President extended the ten-year period of trust on Wapato John's allotment for a further period of ten years to March 8, 1926. Executive Order 2109 *in* Charles J. Kappler, Indian Affairs Laws and Treaties, Vol. IV 1050-1051 (1929) attached as *Kelley Dec.*, Exhibit 4. Plaintiffs[3] have implied that this Executive Order was without authority because MA-8 was not issued pursuant to the Act of February 8, 1887 (commonly known as the General Allotment Act). ECF No. 223 at 6-7. This argument lacks any merit. In 1906 Congress had granted the President the authority to "continue such restrictions on alienation for such period as he may deem best" with respect to all allotments—not just those issued under the General Allotment Act. Act of June 21, 1906, 34 Stat. 325, *codified at* 25 U.S.C. § 391; *see also* Joint Resolution 31 of June 19, 1902, 32 Stat. 744 (all allotments to Indians "shall be subject to all the restrictions and carry all the privileges incident to allotments made under the [General Allotment Act] and other general Acts amendatory thereof or supplemental thereto") *Kelley Dec.*, Exhibit 5; *United States v. Jackson*, 280 U.S. 183, 197 (1930) (Act of June 21, 1906, 34 Stat. 325, authorized President to extend trust restrictions on non-General Allotment Act allotments). Thus, in 1914 and thereafter, the President had full authority to extend the trust period of MA-8.

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[3] Wapato Heritage LLC agrees with Federal Defendants that this executive order was effective to extend the trust restrictions for an additional ten years. ECF No. 225 at 6.

Plaintiffs and Wapato Heritage LLC argue that the Act of May 20, 1924, 43 Stat. 133 (submitted by the Colville Tribe at ECF No. 226-2), lifted all restrictions on alienation and caused MA-8 to lose its trust status. ECF No. 223 at 7; ECF No. 225 at 15-16. Both parties are in error. The 1924 Act gives no indication that it was intended to remove or lift the trust status from these allotments. Nor does it mention that the land should thereafter be considered to be in fee status, or that the Secretary was directed to issue fee patents to the beneficial owners. All Plaintiffs and Wapato Heritage LLC can point to in support of their argument is the statute's reference to the allottee's authority to sell the entire allotment. But, recall that the 1906 statute directing the issuance of the patents authorized the sale of all but 80 acres of the allotment. The 1924 statute merely removed that acreage limitation—it did not change the trust status of the allotment by its mere enactment.

This interpretation of the statute is further supported by the fact that in the case of MA-8 the operative language relates to Wapato John's heirs,[4] and the 1924 Act authorized his heirs to sell the land "in accordance with the provisions of [the Act of June 25, 1910, 36 Stat. 855)." The Act of June 25, 1910, related solely to allotments "before the expiration of the trust period and before the issuance of a fee simple patent." *Kelley Dec.*, Exhibit 6. It would make no sense for Congress to authorize sales "in accordance with" a statute relating to allotments still in trust status if it intended the 1924 Act to automatically release such allotments from trust status. The only reasonable interpretation is that the restriction against a sale of the entire allotment was now lifted.

This interpretation of the effect of the 1924 Act is additionally supported by action taken by the President two years later. On February 10, 1926, the President

[4] Wapato John had died in September 1911. *Wulff Dec.*, Exhibit 5.

again extended the trust period for the Moses allotments except for a single one made in the name of another Indian. Executive Order 4382; *see also* 1926 Report of the Commissioner of Indian Affairs at 9, attached *Kelley Dec.*, Exhibits 7 & 8. The President would not have taken this action if the 1924 Act ended the trust period of these allotments. The position taken by Plaintiffs and Wapato Heritage LLC are entirely without merit. The 1924 Act did not affect the trust status of MA-8.

From the 1920's to the present day, various executive orders issued by either the President or officials of the Department of the Interior have extended the trust status of MA-8 and other allotments on a periodic basis. *See Kelley Dec.*, Exhibits 9-18 provided for the convenience of the Court. Most recently, Congress enacted legislation that comprehensively extended the trust period indefinitely for "all lands held in trust by the United States for Indians." 25 U.S.C. § 478-1. There is no doubt that MA-8 remains in trust status.

Finally, both Plaintiffs and Wapato Heritage LLC suggest that the issuance of fee patents for certain interests in MA-8 support their view that the entire allotment has lost its trust status. ECF No. 223 at 8; ECF No. 225 at 6. Again, they are wrong. The fee patents attached to Plaintiffs' Declaration of Kristin M. Ferrera, ECF No. 224, were issued because the heirs that inherited those interests were determined to be Canadian nationals for whom the United States does not hold land in trust. *Wulff Dec.*, Exhibit 6. As the Court recently noted in its Order Granting in Part and Denying in Part Confederated Tribes' Motion to Dismiss, ECF No. 227 at 2, the ownership of MA-8 has become significantly fractionated over time. When such undivided fractional interests are inherited by non-Indians or Canadian nationals the United States issues a fee patent to the heirs. 25 C.F.R. § 152.6; *Bailess v. Paukune*, 344 U. S. 171 (1952); *Estate of Mary Ann Snohomish*

Cladoosby, 94 I.D. 199, 203-204 (1987) attached as *Kelley Dec.*, Exhibit 19. However, the issuance of a fee patent with respect to an undivided fractional interest in the allotment does not remove the trust status of the remaining interests.

B. Plaintiffs Have No Right to Occupy MA-8

Plaintiffs are an individual and a Washington State non-profit corporation. ECF No. 1, ¶¶ 10-11. Neither Plaintiff has claimed any ownership interest in MA-8. According to 25 C.F.R. § 162.104(d) "any [nonowner] person or legal entity, including an independent legal entity owned and operated by a tribe, must obtain a lease under these regulations before taking possession [of Indian land]". Consequently, in order for Plaintiffs to lawfully occupy or possess Indian land such as MA-8 they must obtain a lease under 25 C.F.R. Part 162, the regulations governing the leasing of Indian land. It is conceded that at one time, the Master Lease (Lease No. 82-21) was the lawful source of Plaintiffs' right to occupy MA-8. However, the Master Lease terminated (*Wapato Heritage L.L.C. v. United States*, 637 F.3d 1033, 1040 (9th Cir. 2011)), and any rights Plaintiffs may have had to occupy MA-8 expired at the same time. Yet Plaintiffs continue to occupy and possess portions of MA-8 without a lease or other lawful authority. *Plaintiffs' Answer to Counterclaim*, ECF No. 43 at ¶ 5; *Wulff Dec*. at ¶ 4. Plaintiffs' occupancy of MA-8 prevents the Indian owners from using that portion of MA-8. Since February 2009, Plaintiffs have paid no rent or other compensation to the BIA on behalf of the Indian beneficial owners while occupying MA-8. *Wulff Dec*. at ¶ 4.

This Court has already ruled with respect to many arguments raised by Plaintiffs in defense to the Federal Defendants' initial motion. In all but one instance, the Court held Plaintiffs' arguments were without merit.

First, the Court held that paragraph 8 of the Master Lease did not provide any right for the Plaintiffs to occupy MA-8 until 2034. Memorandum Opinion (ECF No. 144) at 28-31. Plaintiffs' occupancy was not properly considered a subtenancy and paragraph 8 did not apply to the natural expiration of the Master Lease at the end of its 25-year term. Nor did the 2004 Settlement Agreement operate to modify the Master Lease and extend it to 2034. Memorandum Opinion (ECF No. 144) at 31-32. In fact, the 2004 Agreement provided that any of its terms found to be inconsistent with the Master Lease would be deemed revoked.

Next, the Court rejected Plaintiffs' argument that state law provides an independent basis to bind the Indian landowners to the terms of the 2004 Agreement between Plaintiffs and Wapato Heritage. Memorandum Opinion (ECF No. 144) at 33-34. Also rejected was Plaintiffs' argument that collateral estoppel and res judicata barred Federal Defendants from denying they were bound by the 2004 Agreement. Memorandum Opinion (ECF No. 144) at 34-35. The Court found that the United States' relation to the settlement negotiations did not support a conclusion that BIA and the Indian landowners were in privity with, and bound by, the actions of Wapato Heritage. Finally, the Court rejected Plaintiffs' arguments related to waiver, laches, and accord and satisfaction. Memorandum Opinion (ECF No. 144) at 35-36.

The only defense not addressed in the Memorandum Opinion was a claim by Plaintiffs that equitable estoppel prohibits both the Federal Defendants and the Indian landowner defendants from denying Plaintiffs the right to occupy MA-8 until 2034. The Court declined to rule on that issue in light of its conclusion that the BIA had not shown it was timely to maintain its ejectment and trespass action. Memorandum Opinion (ECF No. 144) at 38.

C. Federal Defendants' Action to Eject Plaintiffs From MA-8 Is Timely

In the two years since this Court issued its Memorandum Opinion, much has occurred. First, Wapato Heritage's claims against the United States have been finally resolved and the Ninth Circuit has ruled that the Master Lease terminated in February 2009 at the end of its 25-year term. *Wapato Heritage L.L.C. v. United States*, 637 F.3d 1033, 1040 (9th Cir. 2011) ("we hold that Wapato's option to renew the Lease was not effectively exercised by Evans, or later by Wapato, and that the Lease terminated upon the last day of its 25-year term"). Second, Wapato Heritage has not taken action to address the inadequacies in its proposed 99-year replacement lease. Nor are Plaintiffs and the Indian landowners engaged in negotiations to obtain a lease. Finally, the BIA has consulted with the Indian landowners in accordance with the regulations and is taking this action with the full support of them. It is appropriate that the Court rule on Federal Defendants' renewed Motion for Summary Judgment, eject Plaintiffs from MA-8 and award trespass damages against Plaintiffs.

Wapato Heritage submitted its draft 99-year replacement lease in 2006. As summarized in a letter from the BIA to counsel for Wapato Heritage (*Wulff Dec.*, Exhibit 1), during 2006 and 2007, the BIA engaged in numerous communications with Wapato Heritage, its representatives, the development company it was working with, and the Indian landowners. Although BIA's concerns and doubts about the draft lease were clearly communicated to Wapato Heritage during that time, none of

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the concerns were addressed.[5] As a consequence, no later than March 2010 when a summary of these communications was provided to it, Wapato Heritage was on notice that the BIA deemed its proposal for a new 99-year replacement lease stale and would take no further action on it. BIA indicated that if Wapato Heritage was still interested in pursuing negotiations it was free to contact the Indian landowners. *Wulff Dec.*, Exhibit 1. Within a week, BIA provided the names and addresses of the landowners to Wapato Heritage's counsel. *Wulff Dec.*, Exhibit 2. Since March 2010, the BIA has been provided with no evidence that negotiations for a new lease are in progress. *Wulff Dec*. at ¶¶ 3, 4. There is no basis to delay consideration of this motion under 25 C.F.R. § 162.623 on the theory that negotiations are ongoing between Wapato Heritage and the Indian landowners.

Nor is negotiation going on between Plaintiffs and the Indian landowners at this time. *Wulff Dec.* at ¶ 3. In fact, when their input was requested, the Indian landowners overwhelming rejected that possible action. After the Ninth Circuit upheld the district court's ruling that the Master Lease had expired, the BIA consulted with the Indian landowners about what they wanted to do next. *Wulff Dec*., Exhibit 3. As set forth in the *Wulff Dec.* at ¶¶ 6-7, landowners holding just over 81% of the Indian trust interests indicated they wanted BIA to take action to eject Plaintiffs and seek trespass damages for their occupation of MA-8 since

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[5] Indeed, in *Wapato Heritage L.L.C. v. United States*, 423 Fed. Appx. 709, 711(9th Cir. 2011), the Ninth Circuit upheld the district court's ruling that BIA had not unlawfully withheld or unreasonably delayed action on the replacement lease and had, in fact, articulated rational reasons for not approving the replacement lease.

February 2009.[6] Accordingly, there is no reason to delay consideration of this motion on the basis that BIA has failed to consult with the Indian landowners. Consideration of Federal Defendants' action for ejectment is timely.

D. Plaintiffs Cannot Show that the Federal Defendants Are Equitably Estopped From Asserting Plaintiffs Have No Right to Occupy MA-8 Until 2034.

In response to Federal Defendants' initial Motion to Dismiss or for Summary Judgment, (ECF No. 109), Plaintiffs argued that the BIA was estopped to deny Plaintiffs' rights to occupy MA-8 until February 2, 2034. ECF No. 82 at 5. But as was set forth clearly in the Federal Defendants' Response to Plaintiffs' Third Motion for Summary Judgment, ECF No. 120, equitable estoppel does not lie against the government on the same terms as against another litigant and Plaintiffs have failed to meet the heightened test applicable to the United States. First, in cases where the United States acts in its capacity as a sovereign, including as a trustee for Indians, the affirmative defense of estoppel does not apply. *See State of New Mexico v. Aamodt*, 537 F.2d 1102, 1110 (9th Cir. 1976); *United States v. Ahtanum Irrigation District*, 236 F.2d 321, 334 (9th Cir. 1956) *cert. denied* 352 U.S. 988 (1957). Even affirmative statements and actions by federal officials adverse to the position of the government will not support a defense of estoppel against the United States. *United States v. California*, 332 U.S. 19 (1947). But even if such a claim could be made, Plaintiffs have not put forward any evidence that BIA made affirmative and deliberately misleading statements to them about the

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[6] Owners holding 2% indicated they wanted to engage in negotiations with Plaintiffs, and the remaining owners did not respond to the inquiry by the BIA. Wulff Dec. at ¶ 7.

term of the Master Lease prior to or at the time they entered into the camping memberships in the 1980s or 1990s or thereafter at the time of the 2004 Settlement Agreement. Nor have they demonstrated how they reasonably relied upon such action to their detriment.

E. Plaintiffs Have Alleged No Basis for a Claim Against the Indian Landowners and Those Non Federal Defendants Should Be Dismissed

Plaintiffs also have failed to put forward any evidence that the Indian landowners took action that could reasonably be found to cause Plaintiffs to believe they could continue to occupy MA-8 until 2034, notwithstanding the terms of the Master Lease. More importantly, however, even if Plaintiffs could somehow show that individual Indians took action that Plaintiffs relied upon to their detriment, such evidence does not relieve them from the legal conclusion that they have no rights to occupy MA-8. The fact that MA-8 is Indian trust land imbues it with greater protections. For example, even if an Indian landowner were to execute an explicit lease or deed granting someone the right to occupy his trust land, and accept payment for such lease or deed, such action is not a defense to the claim that the lease or deed was inconsistent with federal law and grants the holder no rights. *See e.g., Heckman v. United States*, 224 U.S. 413 (1912) (thousands of deeds executed by Indian landowners held invalid due to lack of government approval). Similarly, the equitable defense of laches is not effective as against a claim that a deed of Indian land was executed inconsistent with federal law. *Ewert v. Bluejacket*, 259 U.S. 129, 137 (1922). Execution of a deed and acceptance of payment for the land would normally set up an extreme example of action supporting a claim for equitable estoppel, but the courts have repeatedly denied any such defense to the

clear legal requirement that occupancy of Indian trust land is controlled by strict laws intended to protect the Indian owners from such actions.

For this reason Federal Defendants request that this Court dismiss the individual defendants from this action. Plaintiffs have never alleged that any of the landowners told them they thought the lease had been renewed, or that any of the landowners participated in the negotiations with Wapato Heritage LLC that resulted in the 2004 Agreement. Even the single payment associated with the 2004 Agreement forwarded by Wapato Heritage LLC to the landowners was not evidence of an extension of the lease to 2034. The Court rejected Plaintiffs' argument that receipt of such a payment ratified the 2004 Agreement. ECF No. 144 at 32, 36.

Consequently, Plaintiffs cannot hope to gain any relief against the landowners on this theory of equitable estoppel, and the Court should dismiss the individual Indian defendants.

CONCLUSION

For the reasons set forth above, Federal Defendants respectfully request the Court grant summary judgment in favor of Federal Defendants on their counterclaim for ejectment against Plaintiffs.

Dated this 22nd day of March, 2012.

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