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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
7

8 PAUL GRONDAL, a Washington) NO. 09-CV-00018-JLQ
9 resident; and THE MILL BAY)
10 MEMBERS ASSOCIATION, INC., a) MEMORANDUM IN SUPPORT OF
11 Washington Non-Profit Corporation,) MOTION FOR TEMPORARY
12) RESTRAINING ORDER

12 Plaintiffs,)

13 vs.)
14)

15 UNITED STATES OF AMERICA;)
16 UNITED STATES DEPARTMENT OF)
17 THE INTERIOR; THE BUREAU OF)
18 INDIAN AFFAIRS, and FRANCIS)
19 ABRAHAM, CATHERINE GARRISON,)
20 MAUREEN MARCELLAY, MIKE)
21 PALMER, JAMES ABRAHAM, NAOMI)
22 DICK, ANNIE WAPATO, ENID)
23 MARCHAND, GARY REYES, PAUL)
24 WAPATO, JR., LYNN BENSON,)
25 DARLENE HYLAND, RANDY)
26 MARCELLAY, FRANCIS REYES,)
LYDIA W. ARMEECHER, MARY JO)
GARRISON, MARLENE MARCELLAY,)
LUCINDA O'DELL, MOSE SAM,)
SHERMAN T. WAPATO, SANDRA)
COVINGTON, GABRIEL)

1 MARCELLAY, LINDA MILLS, LINDA)
2 SAINT, JEFF M. CONDON, DENA)
3 JACKSON, MIKE MARCELLAY,)
4 VIVIAN PIERRE, SONIA)
5 VANWOERKON, WAPATO)
6 HERITAGE, LLC, LEONARD)
7 WAPATO, JR, DERRICK D. ZUNIE, II,)
8 DEBORAH L. BACKWELL, JUDY)
9 ZUNIE, JAQUELINE WHITE PLUME,)
10 DENISE N. ZUNIE and)
11 CONFEDERATED TRIBES OF THE)
12 COLVILLE RESERVATION, Allottees of)
13 MA-8 (known as Moses Allotment 8),)
14)
15 Defendants.)

16 **STATEMENT OF FACTS**

17 Plaintiffs Paul Grondal and the Mill Bay Members Association (hereinafter the
18 “Association”) have contractual rights and a property interest in the right to use and
19 occupy a portion of Moses Allotment Number 8 (hereinafter “MA-8”) known as Mill
20 Bay Recreational Vehicle Resort (hereinafter “Mill Bay Resort”). The facts of this
21 case are more specifically stated in the Plaintiff’s Complaint and the Affidavit of Paul
22 Grondal in Support of the Motion for a Temporary Restraining Order filed
23 simultaneously with this Motion. Plaintiffs incorporate Mr. Grondal’s affidavit herein
24 by reference.
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1 In short summary, the pertinent facts are as follows:

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3 The Bureau of Indian Affairs (the "BIA"), as an agency of the United States of
4 America (the "United States") is responsible for the management and control of Indian
5 allotment lands. Beginning in the early 1980's, William Evans, Jr. (hereinafter
6 "Evans") who was one of the beneficial landowners and descendent to the original
7 allottee of MA-8, suggested to his fellow allottees that they utilize MA-8 as a camping
8 resort. The majority of the landowners agreed to lease the land to Evans so that he
9 could develop and run this resort.
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13 The BIA assisted Evans in drafting the lease agreement and receiving signed
14 consent to lease forms from the majority of the allottees. Subsequently, Evans entered
15 into a lease agreement with the BIA (the "Master Lease"). The purpose of the lease
16 was to develop a recreational vehicle ("RV") camping resort and offer 50-year
17 campground memberships under the Washington State Campgrounds Act, Revised
18 Code of Washington 19.105 *et seq.*
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22 The term of the Master Lease was for 25 years with an option to renew upon the
23 same terms for another 25 years. Pursuant to the terms of the Master Lease, in early
24 1985, Evans sent notice of that he had exercised his option to renew and that receipt of
25 the letter by the Superintendent would be deemed acceptance of this renewal.
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1 Thereafter, the BIA approved and signed multiple documents relating to the Master
2 Lease and camping memberships which stated that the term expired in 2034.
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4 The BIA approved the camping membership agreements which included a
5 provision that Washington State law was to apply to the memberships in order to
6 protect the members under the Washington State Campgrounds Act. In 1989, Evans
7 submitted a plan to revise the Mill Bay Resort plan. The BIA approved these
8 modifications and specifically approved incorporation of the "Expanded Membership
9 Agreements" into the Master Lease. Expanded Membership Agreements included a
10 provision for exclusive use of a specific lot in the Mill Bay Resort until the year 2034.
11 Plaintiffs have a valid and binding contract which provides them the exclusive right to
12 occupy and use the Mill Bay Resort.
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17 Upon information and belief, the BIA, through its agents, was asked to devise a
18 way to eject Plaintiffs and their Lessors (successors in Evans interest in the Master
19 Lease), Wapato Heritage, LLC, from MA-8 in order for the Colville Tribes to
20 negotiate a new master lease in its name as lessor.
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23 At the end of 2007, despite over 20 years of affirming the renewal had been
24 exercised, the BIA made the assertion that the Master Lease had not been properly
25 renewed and would expire. The BIA asserts that the Plaintiffs' rights to Mill Bay
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1 expire in 2009 pursuant to the expiration of the Master Lease.

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3 **ARGUMENT**

4 Under Federal Rule of Civil Procedure 65(b), the court may grant a temporary
5 restraining order without notice to the adverse party only when: (1) “Specific facts in
6 an affidavit or verified complaint clearly show that immediate and irreparable injury,
7 loss, or damage will result to the movant before the adverse party can be heard in
8 opposition; and” (2) the movant’s attorney provides a certified writing explaining
9 efforts made to provide notice to the adverse party and why notice should not be
10 required. F.R.C.P. 65(b). The Court should grant a temporary restraining order
11 because Plaintiffs meet these requirements.
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16 **1. Plaintiffs Will Suffer Immediate and Irreparable Injury, Loss, or Damage
17 Without an Immediate Temporary Restraining Order.**

18 Plaintiffs seek declaratory judgment and injunctive relief regarding the
19 enforcement of their contractual and property rights to use and occupy MA-8.
20 Defendants have threatened immediate action regarding these rights, including a
21 statement that Plaintiffs may be found in trespass if they remain on the land after
22 February 2, 2009. Plaintiffs have invested hundreds of thousands of dollars and made
23 numerous capital improvements in reliance of Defendants’ repeated affirmation of
24 Plaintiffs’ right to remain on the land until 2034. If Defendants are permitted to
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1 exclude Plaintiffs from the Mill Bay Resort or otherwise interfere with their rights to
2 occupy and use the Mill Bay Resort, the Plaintiffs will suffer immediate and
3 irreparable harm. Furthermore, any potential action Defendants take to repossess the
4 property could result in permanent damage to the property of the Mill Bay Resort.
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7 Defendants Bureau of Indian Affairs approved the application of Washington
8 State law to the Mill Bay Resort and the Plaintiffs rights to the use of that resort.
9 Specifically, the membership agreements approved by the BIA included a provision
10 that the Washington Camping Resort Act applied to the Mill Bay Resort. The
11 Washington Camping Resort Act allows the Plaintiffs a right to a temporary
12 restraining order without posting bond in order to protect the interest or assets of a
13 member's common-interest association. RCW 19.105.470.
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17 **2. Plaintiffs' Attorney Has Certified in Writing the Efforts Made to Provide**
18 **Notice to Defendants.**

19 Plaintiffs' Attorney has made efforts to provide notice to the Defendants and
20 such efforts have been certified in the Declaration of James Danielson and are
21 incorporated herein by reference.
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23
24 **CONCLUSION**

25 Plaintiffs have relied upon the Defendants affirmation of their rights to use and
26 occupy the portion of MA-8 known as the Mill Bay Resort for over 20 years. Plaintiffs

1 have invested in this property in reliance of Defendants actions and statements. If
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3 Defendants are not enjoined from entering the Mill Bay Resort, Plaintiffs will suffer
4 irreparable harm and immediate injury to these improvements and the property.
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6 Defendant's presence jeopardize the health, safety and welfare of Plaintiffs and their
7 property interests in the Mill Bay Resort.

8 DATED this 26th day of January , 2009.

9
10 s/JAMES M. DANIELON
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CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/JAMES M. DANIELON
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