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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 PAUL GRONDAL, a Washington
11 resident; and THE MILL BAY
12 MEMBERS ASSOCIATION, INC., a
13 Washington Non-Profit Corporation

14 Plaintiffs/Counter-Defendants,
15 vs.

16 UNITED STATES OF AMERICA; US
17 DEPARTMENT OF INTERIOR;
18 BUREAU OF INDIAN AFFAIRS,
19 WAPATO HERITAGE, LLC,
20 CONFEDERATED TRIBES OF THE
21 COLVILLE RESERVATION, FRANCIS
22 ABRAHAM, CATHERINE
23 GARRISON, et al., allottees of Moses
24 Allotment 8,

25 Defendants/Cross-Defendants/Cross-
26 Claimants/Counter-Defendants.

NO. 2:09-CV-00018-JLQ

**UNITED STATES' RESPONSE
TO ORDER DIRECTING
ADDITIONAL FILINGS (ECF No.
353)**

27 The Federal Defendant's respond to Court's Order (ECF No. 353), with each of
28 the questions posed by the Court answered in separately numbered paragraphs
repeating the questions posed, as follows:

1 **(1) The role and/or statements and/or participation of the Government, the**
2 **Colville Tribe and/or the Colville Tribe Enterprise Corporation in the**
3 **2004 mediation and/or court proceedings.**

4 The Federal defendants had no role and did not participate in the 2004
5 mediation other than certain BIA employees simply being there. *See* Mot. Hearing
6 Trans. 25:9-10 (“THE COURT: “Well, they were there as I read the record.”). Mr.
7 Nicholson, the Colville Indian Agency Superintendent at the time, testified that some
8 of Wapato’s heirs and Attorney Michael Arch asked him to attend the mediation. ECF
9 No. 296-1, Ex. 3 at p. 32 (Nicholson Dep. 22:9 – 24:13). Mr. Nicholson attended but
10 did not participate. *Id.* As Mr. Nicholson put it, “it would be like if you guys where in
11 here having this meeting and I was out in the lobby. That’s all the closer I got. I was in
12 the building. That was it.” *Id.* Mr. Nicholson was not even told what came of the
13 mediation at that time. *Id.* (Nicholson Dep. 24:8-13). Mr. Nicholson’s subordinates all
14 had a similar experience. *See e.g.*, ECF No. 296-1, Ex. 5 at p. 46 (Joseph Dep. 29:1-8
15 (in the lobby for about an hour)); Ex. 1 at p. 19 (Redthunder Dep. 74:2 – 76:19 (just
16 remembers being there but not involved)).

17 Similarly, Federal Defendants were not parties to any of the state court actions
18 nor does the record reflect Federal Defendant’s employees participating in any state
19 court proceedings. ECF No. 296-1, Ex. 3 at p. 30 (Nicholson Dep. 17:13-17). The
20 United States ordered the Court files and minutes for each of the three State court
21 cases. The minutes do not reflect participation by the Federal Defendants or any
22 employees thereof.

23 **(2) The amount of rent money paid by the Mill Bay Members pursuant to**
24 **the 2004 Settlement Agreement that was passed on to the individual**
25 **landowners, if any.**

26 ECF No. 346-5 at p. 1, Ex 1C appears to show all rent money paid by Mill Bay
27 Members *pursuant to* the 2004 Settlement Agreement remains in an account held by
28 Wapato Heritage, LLC. *See also* ECF No. 346-2 at p. 36 (Jeff Web stating, “From

1 December 14, 2004 to the present, Wapato received rent payments from Mill Bay
2 Members Association totaling \$370,379.00. As the BIA refused to accept Wapato’s
3 rent payments, the funds have been reserved).

4 Although not *pursuant to* the settlement agreement, Federal Defendants do not
5 deny that Wapato Heritage LLC paid the Indian landowners money in 2005. ECF 119
6 at p. 11. The record appears to reflect that \$23, 478.69 was paid by checks from
7 Wapato Heritage LLC made out to the beneficial landowners. ECF No. 91 at pp.7-8.
8 The context of this payment has been previously explained. ECF No. 347 at p. 9.
9 “[T]his payment by WHLLC to some of the beneficial landowners was simply meant
10 as an enticement to the beneficial landowners to sign a 99 year lease with WHLLC.”
11 *Id.* (citing briefings and Court Order at ECF 80 at p. 19; ECF 90-11; ECF No. 119 at
12 10-12, and ECF No. 144 at p.32). “Each check included a note that read: ‘The
13 attached check represents 50% of your 2004 & 2005 MA-8 R.V. Park Rental Income.
14 The remaining balance will be mailed upon receipt of your vote per the proposed MA-
15 8 development. Warmest personal regards, Wapato Heritage LLC.’”. ECF No. 119 at
16 p. 12. (citing Exh. 82 (Ct. Rec. 90-11 at 469, 472)). While the \$23,478.69 appears to
17 be close to 50% of the rents due under the Settlement Agreement for the years 2004
18 and 2005, “there was no agreement between or among any of the parties that . . . rent
19 would be paid in whole or in part to the Lessors, other than what the Master Lease
20 provided.” ECF No. 347 at p. 9. Furthermore, the United States has not found any
21 provision in the settlement related to this \$48,000. ECF No. 347 at p. 9, n. 1. In
22 context, the payment was an enticement to the beneficial landowners to sign a 99-year
23 lease with WHLLC rather than *pursuant to* the settlement agreement. ECF No. 347 at
24 p. 9.

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(3) Whether there exists any transcript or other record of the Chelan County mediation proceedings and/or hearings or proceedings before the Chelan County Superior Court.

The Federal Defendants ordered all records, including transcripts, for all three Chelan County cases, and contacted the mediator to determine whether he was in possession of any records. The mediator relayed that the only existing record he or his firm currently retains is the settlement agreement. The court records contain minutes but no transcript or audio recordings¹ for the November 23, 2004, hearing on a Motion For Approval of Class Action Settlement. Attached hereto as **Exhibit A** are the minutes from this proceeding.

(4) If there are disputed facts, the parties shall identify those facts with specificity and present any additional evidence in support of their position.

The United States does not believe there are any material disputes regarding the facts relevant to decide the legal issue regarding the trust status of MA-8 and consequently its motion for summary judgment on ejectment. *See* ECF Nos. 232, 234, 306 at p. 9-11, 307.

RESPECTFULLY SUBMITTED this 18th day of July, 2018.

JOSEPH H. HARRINGTON
United States Attorney

s/ Rudy J. Verschoor
s/ Joseph P. Derrig

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¹ The Chelan County Court Administrative Assistant informs us that they did not begin audio recording hearings until October of 2016.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on July 18, 2018, I caused to be delivered via the method listed below the document to which this Certificate of Service is attached (plus any exhibits and/or attachments) to the following:

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on July 18, 2018, I caused to be delivered via the method listed below the document to which this Certificate of Service is attached (plus any exhibits and/or attachments) to the following:

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and hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

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28 **UNITED STATES' RESPONSE TO ORDER DIRECTING ADDITIONAL FILINGS
(ECF No. 353) - 6**

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