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17 **UNITED STATES DISTRICT COURT**
18 **EASTERN DISTRICT OF WASHINGTON**
19 **AT SPOKANE**

20 PAUL GRONDAL, a Washington)
21 resident and THE MILL BAY)
22 MEMBERS ASSOCIATION, INC.,)
23 a Washington Non-Profit)
24 Corporation,)
25 Plaintiffs,)
v.)
UNITED STATES OF AMERICA;)
UNITED STATES DEPARTMENT)

Case No. CV-09-0018-RMP
DECLARATION JEFFREY D. WEBB

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OF THE INTERIOR; THE)
BUREAU OF INDIAN AFFAIRS,)
and FRANCIS ABRAHAM,)
CATHERINE GARRISON,)
MAUREEN MARCELLAY, MIKE)
PALMER, JAMES ABRAHAM,)
NAOMI DICK, ANNIE WAPATO,)
ENID MARCHAND, GARY)
REYES, PAUL WAPATO, JR.,)
LYNN BENSON, DARLENE)
HYLAND, RANDY MARCELLAY,)
FRANCIS REYES, LYDIA W.)
ARMEECHER, MARY JO)
GARRISON, MARLENE)
MARCELLAY, LUCINDA)
O'DELL, MOSE SAM, SHERMAN)
T. WAPATO, SANDRA)
COVINGTON, GABRIEL)
MARCELLAY, LINDA MILLS,)
LINDA SAINT, JEFF M. CONDON,)
DENA JACKSON, MIKE)
MARCELLAY, VIVIAN PIERRE,)
SOMA VANWOERKON,)
WAPATO HERITAGE, LLC,)
LEONARD WAPATO, JR,)
DERRICK D. ZUNIE, II,)
DEBORAH L. BACKWELL, JUDY)
ZUNIE, JAQUELINE WHITE)
PLUME, DENISE N. ZUNIE and)
CONFEDERATED TRIBES OF)
THE COLVILLE RESERVATION,)
Allottees of MA-8 (known as Moses)
Allotment 8),)
Defendants.)

DECLARATION OF JEFFREY D. WEBB
09-cv-0018-PAGE 2

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1 **JEFFREY D. WEBB** declares as follows:

2 1. I am an adult citizen of the United States residing in the state of Washington, am
3 competent to testify to the matters set forth herein, and unless specifically indicated
4 otherwise herein, I testify of my personal knowledge.

5
6 2. I am the Manager of Wapato Heritage, LLC, a Washington limited liability
7 company, and I am the duly appointed and acting personal representative for the Estate
8 of William Wapato Evans, in Chelan County, Washington.

9
10 3. I have submitted testimony by declaration in this case on three prior occasions:
11 (i) in ECF-91, (ii) in ECF-315, p. 6:15 to 7:8, only (certification in ECF-317), and (iii)
12 in ECF-362. I will not duplicate the testimony provided therein.

13
14 4. In approximately 2003 Wapato Heritage began plans for a large development on
15 allotment MA-8. In that connection, Wapato Heritage pursued amendment to applicable
16 statutes to allow a 99-year lease on allotment MA-8. Congressional approval for a 99-
17 year lease was granted in 2006. In 2007, Wapato Heritage submitted a 99-year
18 replacement lease proposal to the BIA and to the other allottees holding interests in
19 MA-8. That proposal, upon projections reviewed by the BIA, would have provided far
20 greater income to Wapato Heritage, and to the individual Indian allottees, over the last
21 10 years than they received, and very substantial income in the future, had it been
22 approved.
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1 5. The Confederated Tribes of the Colville Reservation” (CCT”) opposed that 99-
2 year lease and development proposal, although it included a substantially improved
3 casino facility, because they openly told the BIA that CCT wanted to take over the
4 property and become its master lessee. The BIA adopted the position of CCT, and
5 continually raised what, in my opinion, were pretexts for delay, and did not engage in a
6 good faith review of the 99-year lease proposal.
7
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9 6. When Judge Whaley issued his opinion that the Master Lease had not been
10 properly renewed according to its precise terms, the BIA stopped making any payments
11 to Wapato Heritage in respect of the casino occupancy of MA-8 after February 9, 2009
12 for a period of time, until the court indicated it would intervene if some payments were
13 not made to Wapato Heritage as an allottee. Also, at that time, the BIA, purporting to
14 act for the landowners, entered into a five-year replacement lease for the casino. The
15 Wapato Heritage casino sublease called for a 6% royalty on defined categories of
16 revenue. The replacement lease called for a 4 ½% royalty on a materially smaller
17 category of revenues. The 6% lease was, in my opinion as a certified public accountant
18 and based on my long history with the MA-8 property, an arms-length, market rate,
19 lease. I have never been provided with, although I asked, any rational basis for the
20 significant reduction in rent, nor any documentation or appraisal which would justify
21 such a significant reduction. Paul Wapato and other individual Indian allottees
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1 complained of the rent reduction as well.

2 7. The Wapato Heritage sublease for the casino also called for an increase in the
3 lease rate to 7% should the casino be expanded beyond the specified size. The casino
4 was subsequently expanded, but based on the receipts of income by Wapato Heritage,
5 the rental rate has remained at 4 ½% of the reduced category of revenues since February
6 9, 2009. CCT has expanded its operations on MA-8 to include a gas station. No
7 reasonable rent is received from that enterprise by Wapato Heritage or the individual
8 Indian allottees.
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12 8. Given the somewhat unique character of the MA-8 property, it is my opinion
13 based upon my experience and training that the appropriate way to value the MA-8
14 property is primarily through the use of an income approach. Obviously, the below
15 market income would unreasonably skew (downward) an appraisal of the property,
16 unless it fully considered the realizable income from highest and best use.
17

18
19 9. Also in my opinion the highest and best use of the MA-8 property was the
20 extensive and detailed four-phase development proposal prepared by Wapato Heritage
21 with the advice and involvement of proven contractors and professionals. As the
22 Manager of an Owner of over 23% of MA-8, it is my opinion that the fair market value
23 of the property exceeds \$40,000,000 and that as of 2010, exceeded \$35,000,000.
24
25

10. I received ECF-347 indicating the purchases of interest in MA-8 by CCT from

1 individual Indian allottees. I was shocked that the low purchase prices which appeared
2 to be based on an aggregate value of less than half of the reasonable fair market value
3 of MA-8. I have not been provided with any appraisal justifying those prices, nor has
4 one been provided to the court pursuant to the Order, ECF-345, requiring production of
5 documents “applying to any such sale.” From February 9, 2009 to this date, I have never
6 been contacted by, nor have I spoken to, anyone identifying themselves as an appraiser of
7 MA-8.
8

9
10 11. It has been the position of Wapato Heritage, that while the company is adverse
11 in many ways to the individual Indian landowners, that it has been completely unfair to
12 them not to have independent, competent counsel, because the positions taken by the
13 BIA have been so obviously adverse to the individual Indian landowners. When
14 contacted by the individual landowner defendants, I have recommended they get
15 lawyers. Among other things, my lawyers and I would like to be able to fully and
16 completely communicate our knowledge and position to the individual Indian
17 landowners, but we cannot do so if they are not adequately represented.
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21 22. It is my opinion that the sales of interests in MA-8 by individual Indian allottees
22 to CCT were at vastly below-market and inadequate prices, and that such sales would
23 not have occurred in the presence of competent, independent representation. As a
24 certified public accountant with knowledge of the property, it’s income, attributes and
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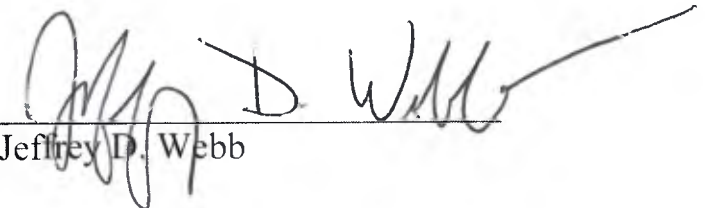
1 potential, I would never have advised a client to sell an interest in MA-8 at the prices
2 indicated on ECF-347.

3
4 13. It is further my opinion that landowners of MA-8 would be far better off, and
5 have greater value, if the MA-8 were declared, as I believe it should be, not to be trust
6 land. To make an informed decision on that question, one way or the other, and to make
7 their position fairly known to the court, the individual Indian landowners should be
8 afforded competent, independent legal representation.

9
10 14. I have known Mr. Gary Reyes for many years. After he sold his interest in MA-
11 8, he indicated to me he thought the price was unfairly low. He approved a letter
12 yesterday by email, asking that I submit it to the court. It is attached as Exhibit 1 to this
13 declaration.

14
15 15. As stated in the Answer and Cross-Claims of Wapato Heritage, ECF-170, at ¶
16 251 at p. 24, I did not become aware of the Sells Audit until long after it was prepared;
17 I learned of it in July 2007 in response to a Freedom of Information Act request sent in
18 June 2007.

19
20 SIGNED this 14th day of January, 2020, at Chelan, Washington, under penalty
21 of perjury under the laws of the state of Washington.

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24 
25 Jeffrey D. Webb

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused the foregoing document to be electronically filed with the Clerk of the above entitled Court using the CM/ECF system, which will send notification of such filing to all registered recipients of that system as of the date hereof.

Notice of this filing will be sent to the parties listed below by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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4 Notice of this filing is being sent this date via United States Postal Service First
5 Class Mail to the parties below at the addresses indicated below.

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DATED this 14th day of January, 2020.

 /s/ R. Bruce Johnston
R. Bruce Johnston, WSBA #4646

January 14, 2020

I wanted an independent lawyer for myself and the other MA-8 Landowners in the Grondal vs United States et al. case

While my request was not provided, I was approached by the tribe and the BIA and offered \$574,000 for my MA-8 ownership interest in 2013

My payment was not what I expected. I don't think any of the land owners got what was coming to them

I assumed that I was being told everything important about this

I have since come to the conclusion that I should have had professional assistance

I am a defendant in Grondal vs United States et al case along with all other MA-8 landowners

I need counsel to advise me here, just like I needed counsel when the tribe and BIA approached me to sell

Regards

Gary Reyes

Former Landowner MA-8

From: Gary Reyes <Reyesranch4@outlook.com>
Date: January 13, 2020 at 6:49:41 PM PST
To: "Jeffrey D. Webb, CPA" <jeffrey.webb@frontier.com>
Subject: RE: Court Documents Received

Jeff,

I received and approve the letter and documents you emailed me. However, my printer is unable to make a copy. Therefore, I hereby authorize and approve your continued efforts in our case.

Sincerely,
Gary R. Reyes