

1 Dale M. Foreman, WSBA #6507 The Honorable Rosanna Malouf Peterson
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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 PAUL GRONDAL, et al.,)
11) Case No. 2:09-cv-0018-RMP
12 Plaintiffs,)
13 v.)
14 UNITED STATES OF AMERICA; et) **JOINT MOTION TO EXTEND**
15 al.,) **DEADLINE RE: ECF NO. 411**
16 Defendants.)
17) **05/1/2020**
18) **Without Oral Argument**
19)
20)

21 **I. MOTION AND BACKGROUND**

22 Defendant, Wapato Heritage, LLC (“Wapato Heritage”), and all Plaintiffs
23 (Wapato Heritage and Plaintiffs are referred to herein as the “Moving Parties”)
24 move this Court to extend the April 9, 2020 supplemental briefing deadline (the
25 “Deadline”) set forth in its March 26, 2020 order, ECF No. 411, to May 9, 2020.

26 **JOINT MOTION TO EXTEND FOREMAN, HOTCHKISS, BAUSCHER**
27 **DEADLINE RE: ECF NO. 411 -1 & ZIMMERMAN, PLLC**
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1 Pursuant to LCivR 7(b)(2), Wapato Heritage recites the position of the
2 opposition as follows: The United States has repeatedly expressed its concerns
3 about the prejudice that stems from the continued delay of this matter, and feels
4 pushing a decision into the summer – given the increase in RVs moving to the
5 property – will exacerbate that prejudice. Prior to the judicial reassignment, the
6 United States regularly inquired per LCivR 7(i) as to the status of this matter and
7 was repeatedly told the Court was aware of the pending motion and was
8 working on it. On June 27, 2018, Court order the parties as follows: “If there are
9 disputed facts, the parties shall identify those facts with specificity and present
10 any additional evidence in support of their position.” ECF No. 353 at p. 3.
11 Notably, no party identified any disputed *facts* with respect to the pending
12 motion for ejectment. See ECF No. 356, 357, 358, 360, 363. Following the
13 judicial reassignment of this matter, WHL represented during the status
14 conference that it had “additional material.” In order to forestall further delay,
15 the United States contemporaneously requested WHL provide those “additional
16 materials.” To date, these “additional materials” still have not been provided. In
17 light of the apparent lack of any new relevant “additional materials” or facts, the
18 Court’s 14 day deadline is more than sufficient for the parties to simply provide

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1 any new, relevant legal precedent not previously briefed. Consistent with
2 seeking to further its collective trust interests, the United States does not believe
3 it can agree to further delay. Nevertheless, United States understands the Covid-
4 19 pandemic has created unique circumstances, which may warrant a *short*
5 continuance, and respectfully requests that if a short continuance is granted that
6 the court also order WHL to produce any “additional materials” upon which it
7 intends to rely the day after any such extension may be granted in order to avoid
8 future delays.
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12 The Confederated Tribes of the Colville Reservation concurs with the
13 United States’ position. As repeatedly stated to this Court (e.g., ECF No. 399 at
14 4-6), the Colville Tribes are acutely concerned that additional delay in resolving
15 the pending motion for ejectment could lead to further prejudice to the Tribes’
16 real property interests to possess, control, protect and enjoy the land, especially
17 now with the approaching busy Lake Chelan recreational season.
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20 This motion is filed in conjunction with a motion to expedite hearing on
21 this motion under LCivR 7(i)(2)(C).
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1 **II. ARGUMENT**

2 a. Federal Rules of Civil Procedure Allow this Court to Extend the Deadline
3
4 Upon Good Cause Shown.

5 Federal Rule of Civil Procedure 6(b)(1)(A) gives the Court broad
6 discretion to extend briefing deadlines upon good cause shown. “This rule, like
7 all the Federal Rules of Civil Procedure, ‘[is] to be liberally construed to
8 effectuate the general purpose of seeing that cases are tried on the merits.’”
9 *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258-59 (9th Cir. 2010)
10 (quoting *Rodgers v. Watt*, 722 F.2d 456, 459 (9th Cir.1983) (alteration in
11 original)). “Consequently, requests for extensions of time made before the
12 applicable deadline has passed should ‘normally . . . be granted in the absence of
13 bad faith on the part of the party seeking relief or prejudice to the adverse
14 party.’” *Id.* (quoting 4B Charles Alan Wright & Arthur R. Miller, *Federal*
15 *Practice and Procedure* § 1165 (3d ed. 2004) (alteration in original)). Further,
16 “[g]ood cause’ is a non-rigorous standard that has been construed broadly
17 across procedural and statutory contexts.” *Id.*

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22 b. Attorneys for Wapato Heritage are Poorly Positioned to Provide
23
24 Additional Briefing Within 14 Days.

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1 Briefing on the pending summary judgment motion was completed in
2 2012. Since then, two lawyers for Wapato Heritage have gone into semi-
3 retirement, Dale Foreman and Bruce Johnston. Additionally, the lawyer who
4 wrote the summary judgment brief for Wapato Heritage, Daniel Appel, left
5 private practice for the public sector on February 21, 2020. Dale Foreman
6 returned to the office from an extended stay in Mexico on March 31, 2020.
7
8 Bruce Johnston suffered the loss of a long-time friend and client on March 30,
9 2020, leaving him mostly unavailable for the next two weeks. The two lawyers
10 left to educate this Court on additional case law and related history, Tyler D.
11 Hotchkiss and Nathan Arnold, appeared in this matter on April 1, 2020 and
12 September 20, 2019 respectively. Neither were involved in the summary
13 judgment briefing and neither have had the ability to fully review and
14 understand the extensive 11 year history of the matter by the Deadline.
15
16 Considering duties owed to other clients, it will take weeks to read and
17 understand the extensive file in this matter, including facts and law related
18 thereto, let alone research and provide additional briefing. Wapato Heritage,
19 LLC is not well positioned to meet the court's 14 day deadline.¹
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24 ¹This facts in this portion of the motion are supported by the Declarations of
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1 c. Attorneys for Plaintiffs are Poorly Positioned to Provide Additional
2 Briefing within 14 Days.
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4 As set forth in the Declaration of Sally W. Harmeling in Support of this
5 Motion, filed herewith, present counsel for Plaintiffs were not involved in this
6 action at all until 2019, which includes the 2012 briefing related to Federal
7 Defendants' Motion for Summary Judgment Re Ejectment. Plaintiffs' counsel
8 are still getting up to speed in this complex action that has more than an 11-year
9 history in active litigation and many years of related proceedings before that.
10 Attorneys for Plaintiffs also have on-going duties to other clients during this
11 time.
12
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14 Complicating matters, due to the COVID-19 pandemic and the related
15 Washington orders, Plaintiffs' counsel's law firm ("JDSA") is presently closed,
16 with staff and attorneys working almost exclusively remotely. Due to the age of
17 this litigation, many of JDSA's files and documents exist in hard copy only and
18 require attorney presence in the office to review. Moreover, the Mill Bay
19 Members Association has many vulnerable members who are over the age of 60
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24 Tyler D. Hotchkiss and Nathan J. Arnold.

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1 and are, therefore, unable to meet with Plaintiffs' counsel in person during this
2 time to help clarify the facts and interpret the documents.

3
4 In addition, due to school closures ordered by Governor Inslee, Plaintiffs'
5 lead counsel Sally Harmeling has greater childcare responsibilities at the present
6 time while still attempting to work from home, which is further restricting
7 Plaintiffs' counsel's ability to get up to speed and brief complex and substantive
8 legal issues in the window of time ordered. While Plaintiffs' counsel are now
9 drawing on the support from several additional attorneys to help perform the
10 necessary work, both of those attorneys are relatively junior and neither has any
11 significant history with this case – Joe Ridgeway entered an appearance in this
12 action in late October 2019 (ECF 377) and Jacob Knutsen was just introduced to
13 this case last week.
14
15
16

17 For all of these reasons, Plaintiffs' counsel are not well-positioned to
18 satisfy the Court's 14-day deadline.
19

20 Moreover, as set forth in the accompanying Declaration of Frank Smith,
21 filed herewith, Plaintiffs dispute the United States' allegation in the opening of
22 this Motion that there has been any "increase in RVs moving to the property."
23

24 As explained by Mr. Smith, who is a resident of the RV Park, the bulk of the

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1 RVs in the park are permanent and have been there for years, and any additional
2 RVs are temporary, weekend visitors. The brief continuance requested will not
3 exacerbate any prejudice to the Defendants caused by an increased presence of
4 RVs in the park. Likewise, the “busy recreational season” predicted by the
5 CTCR seems unlikely given the present “Stay Home – Stay Healthy Order”
6 entered by the Governor for an indefinite period of time.
7

9 d. Social Distancing and Governor Inslee’s “Stay Home – Stay Healthy
10 Order” Have Made All Legal Work Less Efficient.
11

12 Social distancing parameters have been enacted throughout the United
13 States and Washington State. Additionally, Governor Jay Inslee imposed a
14 “Stay Home – Stay Healthy Order” effective March 25, 2020. These conditions
15 have forced most attorneys and all of their staff to work from home and have
16 made the efficient practice of law difficult. They have also hindered the ability
17 of the attorneys for the Moving Parties to comply with the Court’s Deadline.
18

19 e. No Prejudice to the Parties would result from a 30 day Extension to the
20 Briefing Deadline.
21

22 The Moving Parties appreciate that this case has been pending since 2009
23 and respect the Court’s mandate for a prompt resolution to the matter. Justice,
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1 however, requires that this Court be fully informed and that the parties have the
2 ability to assist the Court in that process. Considering that this case has been
3 pending for 11 years, no obvious injustice would inure to the parties with the
4 provision of an additional 30 days.
5

6 By this Motion, the Moving Parties request relief only with respect to the
7 approaching Deadline so that they may have sufficient time to get up to speed
8 and make a well-reasoned and informed response. By doing so the moving
9 parties do not waive their ability to subsequently request oral argument and/or
10 for clarification of the March 26, 2020 Order, ECF No. 411.
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13 **IV. CONCLUSION**

14 For all of the foregoing reasons, Wapato Heritage and Plaintiffs jointly
15 request that the Court enter an Order granting its Motion to Extend Deadline
16 changing the Deadline from April 9, 2020 to May 9, 2020.
17

18 DATED this 1st day of April, 2020.
19

20 **FOREMAN, HOTCHKISS, BAUSCHER & ZIMMERMAN, PLLC**

21
22 /s/ Tyler D. Hotchkiss

23 Dale M. Foreman, WSBA # 6507

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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 the following:

- Franklin L. Smith: frank@flyonsmith.com
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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:

- Enid T. Wippel, Michael Palmer, Gary & Francis Reyes
Linda Saint, Mary Jo Garrison, Francis Abraham
Paul G. Wapato, Jr., Catherine L. Garrison, Judy Zunie

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6
7 DATED this 1st day of April, 2020.

8 /s/ Tyler D. Hotchkiss
9 Tyler D. Hotchkiss

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