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2 Dale M. Foreman, WSBA #6507 The Honorable Rosanna M. Peterson
3 Tyler D. Hotchkiss, WSBA #40604
4 Foreman, Hotchkiss, Bauscher & Zimmerman, PLLC
5 124 N. Wenatchee Ave., Suite A
6 Wenatchee, WA 98801
7 (509) 662-9602

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 PAUL GRONDAL, et al.,
11
12 Plaintiffs,
13 v.
14 UNITED STATES OF AMERICA;
15 et al.,
16 Defendants.

Case No. 2:09-cv-0018-RMP

**DECLARATION OF TYLER D.
HOTCHKISS IN SUPPORT OF
MOTION TO EXTEND
DEADLINE RE: ECF NO. 411**

17 Pursuant to 28 U.S.C. § 1746, I, Tyler D. Hotchkiss, state and declare
18 under penalty of perjury as follows:
19

- 20 1. I am an attorney for plaintiff in this matter and I make this declaration
21 based upon my personal knowledge.
22
23 2. I am a partner in the firm of Foreman, Hotchkiss, Bauscher &
24 Zimmerman, PLLC (the "Firm");
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29 **DECLARATION OF TYLER D.
HOTCHKISS IN SUPPORT OF
30 MOTION TO EXTEND DEADLINE
RE: ECF NO. 411- 1**

FOREMAN, HOTCHKISS, BAUSCHER & ZIMMERMAN, PLLC
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3. On March 23, 2020, due to COVID-19, the Firm required all staff to work from home. Attorneys likewise were directed to work from home to the extent possible;
4. On March 25, 2020, Governor Jay Inslee’s “Stay Home -- Stay Healthy Order” went into effect “prohibiting all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind...and all non-essential business in Washington State from conducting business...” Find attached as Exhibit “A” a copy of the “Stay Home – Stay Healthy Order”
5. The Firm’s limitations on staff and attorneys and the Stay Home – Stay Healthy Order have made operations at the Firm much more time consuming and difficult. Briefing, client communication and generally, the practice of law, is much more difficult working from home and working without staff present. Staff is unavailable to organize, summarize and obtain relevant documents. Additionally, organizing, drafting and reviewing materials from home is inefficient and time-consuming.

DECLARATION OF TYLER D.
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ECF NO. 411 - 2

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6. Two additional factors have made complying with the Court’s March 26, 2020, ECF No. 411, 14 day supplemental briefing deadline more difficult: (1) Daniel Appel left the Firm for a position with the Chelan County PUD on February 21, 2020; and, (2) Dale Foreman is now semi-retired.

7. Along with Mr. Johnston, Daniel Appel, was the attorney who had been most intimately involved with the facts and law of this matter. Mr. Appel drafted the summary judgment response and other related briefing. His movement into the public sector is not only a loss for the Firm, but a substantial loss of factual and legal knowledge for Wapato Heritage in this case. I will need time to learn relevant facts, history and law to assist Wapato Heritage.

8. Additionally, Dale Foreman is now semi-retired and spends significant portions of the year in Mexico, where he owns real property, and in Paris, France where he visits for an extended stay at least once a year. Dale Foreman most recently came back to the office after an extended stay in Mexico on March 31, 2020.

DECLARATION OF TYLER D.
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ECF NO. 411 - 3

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9. Along with Nate Arnold, I will be tasked with drafting the supplemental materials on behalf of Wapato Heritage in this matter. Of course, in order to do this I will need to understand, not only 11 years of history in this case, but previous cases involving the parties pertinent to this matter, along with the legislative history at issue. With other work that has not decreased during the COVID-19 emergency, this will be difficult to do while maintaining responsibilities owed to other clients.

10. Understanding Mr. Arnold’s difficulties, as will be explained in a separate declaration, it will be extremely difficult for Wapato Heritage to comply with this Court’s April 9, 2020 deadline related to supplemental briefing.

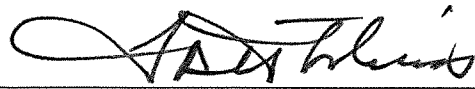
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 1st day of April, 2020.

DECLARATION OF TYLER D.
HOTCHKISS IN SUPPORT OF
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ECF NO. 411 - 4

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Tyler D. Hotchkiss

DECLARATION OF TYLER D.
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ECF NO. 411 - 5

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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
- R. Bruce Johnston: bruce@rbrucejohnston.com
- Dana Cleveland: dana.cleveland@colvilletribes.com
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- Brian Gruber: brgruger@ziontchestnut.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:

- | | | |
|--------------------|--------------------|-----------------------|
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| Nespelem, WA 99155 | Nespelem, WA 99155 | Newman Lake, WA 99025 |
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DECLARATION OF TYLER D. HOTCHKISS IN SUPPORT OF MOTION TO EXTEND DEADLINE RE: ECF NO. 411 - 6

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Travis E. Dick & Hannah Dick Guardian of Travis E. Dick P.O. Box 198 Nespelem, WA 99155	Maureen M. Marcellay 501 SE 123rd Ave., Apt. U150 Vancouver, WA 98683-4008	Jacqueline L. Wapato P.O. Box 611 Lapwai, ID 83540-0611
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Enid T. (Pierre)
Marchand
P.O. Box 101
Nespelem, WA 99155-0101

DATED this 1st day of April, 2020.

/s/ Tyler D. Hotchkiss
Tyler D. Hotchkiss, WSBA #40604

DECLARATION OF TYLER D.
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JAY INSLEE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

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**PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATION 20-05**

20-25

STAY HOME – STAY HEALTHY

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued amendatory Proclamations 20-06, 20-07, 20-08, 20-09, 20-10, 20-11, 20-12, 20-13, 20-14, 20-15, 20-16, 20-17, 20-18, 20-19, 20-20, 20-21, 20-22, 20-23, and 20-24, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, has broadly spread throughout Washington State, significantly increasing the threat of serious associated health risks statewide; and

WHEREAS, there are currently at least 2,221 cases of COVID-19 in Washington State and, tragically, 110 deaths of Washingtonians associated with COVID-19; and

WHEREAS, models predict that many hospitals in Washington State will reach capacity or become overwhelmed with COVID-19 patients within the next several weeks unless we substantially slow down the spread of COVID-19 throughout the state; and

WHEREAS, hospitalizations for COVID-19 like illnesses are significantly elevated in all adults, and a sharply increasing trend in COVID-19 like illness hospitalizations has been observed for the past three (3) weeks; and

WHEREAS, the worldwide COVID-19 pandemic and its progression in Washington State continues to threaten the life and health of our people as well as the economy of Washington State, and remains a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim: that a State of Emergency continues to exist in all counties of Washington State; that Proclamation 20-05 and all amendments thereto remain in effect as otherwise amended; and that Proclamations 20-05, 20-07, 20-11, 20-13, and 20-14 are amended and superseded by this Proclamation to impose a Stay Home – Stay Healthy Order throughout Washington State by prohibiting all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business, within the limitations provided herein.

I again direct that the plans and procedures of the Washington State Comprehensive Emergency Management Plan be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the Washington State Comprehensive Emergency Management Plan and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

FURTHERMORE, based on the above situation and under the provisions of RCW 43.06.220(1)(h), to help preserve and maintain life, health, property or the public peace, and to implement the Stay Home—Stay Healthy Order described above, I hereby impose the following necessary restrictions on participation by all people in Washington State by prohibiting each of the following activities by all people and businesses throughout

Washington State, which prohibitions shall remain in effect until midnight on April 6, 2020, unless extended beyond that date:

1. **All people in Washington State shall immediately cease leaving their home or place of residence except: (1) to conduct or participate in essential activities, and/or (2) for employment in essential business services.** This prohibition shall remain in effect until midnight on April 6, 2020, unless extended beyond that date.

To implement this mandate, I hereby order that all people in Washington State are immediately prohibited from leaving their home or place of residence except to conduct or participate in (1) essential activities, and/or (2) employment in providing essential business services:

- a. **Essential activities** permitted under this Proclamation are limited to the following:
 - 1) **Obtaining necessary supplies and services** for family or household members and pets, such as groceries, food and supplies for household consumption and use, supplies and equipment needed to work from home, and products necessary to maintain safety, sanitation and essential maintenance of the home or residence.
 - 2) **Engaging in activities essential for the health and safety** of family, household members and pets, including things such as seeking medical or behavioral health or emergency services and obtaining medical supplies or medication.
 - 3) **Caring for** a family member, friend, or pet in another household or residence, and to transport a family member, friend or their pet for essential health and safety activities, and to obtain necessary supplies and services.
 - 4) **Engaging in outdoor exercise activities**, such as walking, hiking, running or biking, but only if appropriate social distancing practices are used.
- b. **Employment in essential business services** means an essential employee performing work for an essential business as identified in the "[Essential Critical Infrastructure Workers](#)" list, or carrying out minimum basic operations (as defined in Section 3(d) of this Order) for a non-essential business.
- c. **This prohibition shall not apply to** individuals whose homes or residences are unsafe or become unsafe, such as victims of domestic violence. These individuals are permitted and urged to leave their homes or residences and stay at a safe alternate location.
- d. **This prohibition also shall not apply to** individuals experiencing homelessness, but they are urged to obtain shelter, and governmental and other entities are strongly encouraged to make such shelter available as soon as possible and to the maximum extent practicable.

- e. For purposes of this Proclamation, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.
2. **All people in Washington State shall immediately cease participating in all public and private gatherings and multi-person activities for social, spiritual and recreational purposes, regardless of the number of people involved, except as specifically identified herein.** Such activity includes, but is not limited to, community, civic, public, leisure, faith-based, or sporting events; parades; concerts; festivals; conventions; fundraisers; and similar activities. This prohibition also applies to planned wedding and funeral events. This prohibition shall remain in effect until midnight on April 6, 2020, unless extended beyond that date.

To implement this mandate, I hereby order that all people in Washington State are immediately prohibited from participating in public and private gatherings of any number of people for social, spiritual and recreational purposes. **This prohibition shall not apply to** activities and gatherings solely including those people who are part of a single household or residential living unit.

3. **Effective midnight on March 25, 2020, all non-essential businesses in Washington State shall cease operations except for performing basic minimum operations. All essential businesses are encouraged to remain open and maintain operations, but must establish and implement social distancing and sanitation measures established by the United States Department of Labor or the Washington State Department of Health Guidelines.** This prohibition shall remain in effect until midnight on April 8, 2020, unless extended beyond that date.

To implement this mandate, I hereby order that, effective midnight on March 25, 2020, all non-essential businesses in Washington State are prohibited from conducting all activities and operations except minimum basic operations.

- a. **Non-essential businesses** are strongly encouraged to immediately cease operations other than performance of basic minimum operations, but must do so no later than midnight on March 25, 2020.
- b. **Essential businesses** are prohibited from operating under this Proclamation unless they establish and implement social distancing and sanitation measures established by the United States Department of Labor's Guidance on Preparing Workplaces for COVID-19 at <https://www.osha.gov/Publications/OSHA3990.pdf> and the Washington State Department of Health Workplace and Employer Resources & Recommendations at <https://www.doh.wa.gov/Coronavirus/workplace>.
- c. **This prohibition does not apply to** businesses consisting exclusively of employees or contractors performing business activities at their home or residence, and who do not engage in in-person contact with clients.

- d. For purposes of this Proclamation, minimum basic operations are the minimum activities necessary to maintain the value of the business' inventory, preserve the condition of the business' physical plant and equipment, ensure security, process payroll and employee benefits, facilitate employees of the business being able to continue to work remotely from their residences, and related functions.

This Proclamation shall not be construed to prohibit working from home, operating a single owner business with no in-person, on-site public interaction, or restaurants and food services providing delivery or take-away services, so long as proper social distancing and sanitation measures are established and implemented.

No business pass or credentialing program applies to any activities or operations under this Proclamation.

Violators of this of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

Signed and sealed with the official seal of the state of Washington on this 23rd day of March, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/
Jay Inslee, Governor

BY THE GOVERNOR:

/s/
Secretary of State