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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

PAUL GRONDAL, et al, Plaintiffs, vs. UNITED STATES OF AMERICA; et al, Defendants.	NO. 09-CV-00018-RMP PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT AGAINST CERTAIN ALLOTTEE DEFENDANTS 05/14/2020 Without Oral Argument

I. INTRODUCTION & RELIEF REQUESTED

Under Fed. R. Civ. P. 55(b) and LCivR 55(b), Plaintiffs Paul Grondal and the Mill Bay Members Association, Inc., move the Court for default judgment against the following Defendants: (1) Francis Abraham; (2) Lydia Armeecher; (3) Deborah L. Backwell; (4) Jeff

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M. Condon; (5) Naomi Dick; (6) Catherine Garrison; (7) Mary Jo Garrison; (8) Dena Jackson; (9) Enid Marchand Wippel; (10) Linda Mills; (11) Lucinda O'Dell; (12) Vivian Pierre; (13) Jacqueline W. White; (14) Mose Sam; (15) Sonia Vanwoerkon; (16) Annie Wapato; (17) Leonard Wapato, Jr.; (18) Denise N. Zunie; and (19) Derrick Zunie, Jr. (collectively, the "**Defaulting Allottees**").

The Complaint named as Defendants 35 individuals who are beneficial owners of an undivided interest in MA-8 ("**Individual Allottees**"). ECF No. 1. On October 2, 2009, the Clerk of Court entered an order of default against 27 of them for failure to answer plead, or otherwise defend against this action. ECF Nos. 102–104, 114–116, 135. The 19 Defaulting Allottees identified in this motions were individuals named in the order of default who have filed no answer, letter, declaration, pleading, or motion in this action. Plaintiffs ask the Court to enter default judgments in their favor against the Defaulting Allottees.[1]

II. FACTUAL BACKGROUND

A. The Defaulting Allottees Have Failed to Respond to the Complaint or

[1]Plaintiffs reserve the right to seek attorneys' fees at a later date. Plaintiffs further reserve the right to seek monetary damages, to the extent necessary, under a different claim, theory, cause of action, or in a different action at a later date as well.

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Participate in this Case.

Plaintiffs filed their Complaint on January 21, 2009, seeking declaratory and injunctive relief over their right to use and occupy the Mill Bay Resort campground—a portion of developed land within MA-8. ECF. No. 1; *see also* ECF No. 329 at pp. 17–18. The Complaint named the Federal Government ("**Federal Defendants**") and 37 landowners of MA-8 as Defendants. ECF No. 1. The Individual Allottees comprised 35 of the 37 total landowners of MA-8 as of the date that Plaintiffs filed their Complaint.[2] The other "[t]wo…Defendant MA-8 landowners are not individuals: the Colville Tribe has acquired an approximate 18% ownership interest in MA-8; and Wapato Heritage has a life estate ownership interest in MA-8 (approximately 23.8%), measured by the last surviving great-grandchild of Evans." ECF No. 329 at p. 20.

Many of the 35 Individual Allottees are in default. On October 2, 2009, the Clerk of Court entered an order of default against 27 of the Individual Allottees for failure to answer plead, or otherwise defend against this action. ECF Nos. 102–104, 114–116, 135. Only

[2] Some of the Individual Allottees have died since Plaintiffs filed their Complaint. For example, Plaintiffs obtained a waiver of service on the Estate of Sherman T. Wapato (ECF No. 100), though the Estate has neither answered nor otherwise participated in this case.

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four of the Individual Allottees—Sandra Covington, Maureen Marcellay, Marlene Marcelly, and Darlene Hyland—filed pro se Answers before the Clerk of Court entered the order of default. *Compare* ECF Nos. 125, 134 *with* ECF No. 135. Paul Wapato, Jr., filed a letter regarding Plaintiffs' Motion for Entry of Default before entry of the Order. ECF No. 99.

After the Clerk of Court entered the order of default, several of the Individual Allottees filed pro se Answers, including: James Abraham (ECF No. 138); Lynn Benson (ECF No. 139); Darlene Hyland (ECF No. 134); Marlene Marcellay (ECF No. 134); Maureen Marcellay (ECF No. 134); Randolph Marcellay (ECF No. 142); and Linda Saint (ECF No. 141). Some of the other Individual Allottees, while not filing an Answer, have still participated in the case:

- Mr. Joseph Finely entered a notice of appearance on behalf of Francis Reyes, Gary Reyes, and Paul Wapato, Jr., and filed briefing on their behalf. ECF Nos. 194–195.
- Michael Palmer (who was named in the order of default) has filed a pro se declaration. ECF No. 319.
- Judy Zunie (who was not named in the order of default) has filed a pro se declaration, but no Answer. ECF No. 311.
- Mr. Timothy Lawlor filed a notice of appearance on behalf of Gabrielle Marcellay—

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along with several other Individual Allottees (ECF No. 341)—though she has not answered the Complaint.

Plaintiffs do not seek a default judgment against any of the Allottees who have answered or otherwise participated in this case since the Clerk of Court entered an order of default.[3] The Defaulting Allottees identified in this motion are 19 individuals, however, were both included in the order of default and have not participated in this case in any way. They have filed no answer, letter, declaration, pleading, or motion. Nor has any attorney filed any such documents on their behalf. All the Defaulting Allottees were either personally served with Plaintiff's Summons and Complaint or waived service. ECF No. 104 at pp. 2–3.

Because of the issues regarding representation of the Individual Allottees first noted by Judge Quackenbush in January 2010 (ECF No. 144 at pp. 2–3) and later expanded on in subsequent orders (ECF Nos. 178–180, 329), Plaintiffs felt they could not file this

[3] Plaintiffs reserve the right to seek entries of default, where appropriate, against any Individual Allottees not included in ECF No. 135 at a later date. Plaintiffs also reserve the right to seek default judgments against any Individual Allottees against whom a default has been entered that are not included in this motion.

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motion until those issues were first resolved. Now that the Court's recent order has resolved those issues (ECF No. 411), however, Plaintiffs' motion is ripe for consideration.

B. Resolving Plaintiffs' Claim For Declaratory Judgment Against the MA-8 Landowners Depends on the Acts and Omissions of the Individual Allottees.

Contrary to the Federal Defendants oft-argued position,[4] the acts and omissions of the Individual Allottees—including both those in default and those who are not—are relevant to the disposition of this case.

Plaintiffs have the following affirmative claim for relief: a request for "a declaratory judgment that the ***MA-8 landowners*** are 'equitably, collaterally, or otherwise estopped from denying the Plaintiffs their right to use the Mill Bay Resort until February 2, 2034.'" ECF No. 227 at p. 3 (emphasis added) (citing ECF No. 1 at p. 43, Prayer for Relief, ¶ 2; ECF No. 197 at p. 2). This claim is "distinct from the Plaintiffs equitable *defense* to the Government's counterclaim for trespass and/or ejectment, which also remains pending." ECF No. 197 at p. 2 (emphasis in original). The Ninth Circuit has already held that the MA-8 landowners, not the BIA, were the "Lessor" under the Master Lease. *Wapato Heritage, L.L.C. v. United States*, 637 F.3d 1033, 1037 (9th Cir. 2011). And Judge Whaley found in the case below that "The BIA had no authority to *unilaterally* modify the terms

[4] *See, e.g.*, ECF No. 267 at pp. 8–9 (citing ECF No. 262 at p. 13); ECF No. 306 at p. 8.

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of the Master Lease or ratify any deficiency in compliance with the terms of the lease." ECF No. 144 at p. 21 (emphasis added).

So unless *neither* Federal Defendants who administered the Master Lease *nor* the MA-8 landowners (the true Lessors) ***ever*** had the power create binding obligations (through modification, estoppel, or otherwise),[5] the acts and omissions of the MA-8 landowners remain very much relevant to the disposition of this case.

III. AUTHORITY

A. Plaintiffs Satisfied Federal Rule of Civil Procedure 55 and Local Civil Rule 55 and Entry of Default Judgment is Appropriate.

Under LCivR 55, "Obtaining a default judgment is a two-step process: (1) a party must first file a motion for entry of default and obtain a Clerk's Order of Default, and (2) a party must then file a motion for default judgment."

Plaintiffs have satisfied all the procedural requirements to obtain default judgments against the Defaulting Allottees. All the Defaulting Allottees were either personally served with Plaintiff's Summons and Complaint or waived service. ECF No. 104 at pp. 2–3. Plaintiffs properly notified the Defaulting Allottees of their intention to seek an entry of

[5] A result which would contradict the Master Lease itself (ECF No. 90-2, Ex. 1 at p. 50, ¶¶ 33, 35), black-letter principles of contract law, and basic notions of fairness.

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default under LCivR 55 (a). *Id.* at pp. 4–5. The Clerk of Court entered an order of default against 27 of the Individual Allottees, including the Defaulting Allottees, on October 2, 2009. ECF No. 135. None of the Defaulting Allottees have responded to the Complaint or otherwise participated in this case before or after the entry of that order. None of the Defaulting Allottees are infants or incompetent persons, and the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901-4043, does not apply.

Because Plaintiffs have complied with all the requirements of Fed. R. Civ. P. 55 and LCivR 55, entry of a default judgment against the Defaulting Allottees is appropriate.

B. Plaintiffs Can Prove their Claims for Equitable Relief Against the Defaulting Allottees.

On a motion for default judgment, once the Clerk of Court enters an order of default, courts treat the well-pleaded allegations of the complaint (except those concerning damages) as true. Fed. R. Civ. P. 8(b)(6); *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Here, the Defaulting Allottees have admitted to facts that entitle Plaintiffs to declaratory relief against them under the doctrine of equitable estoppel. "The elements of equitable estoppel are: (1) a party's admission, statement or act inconsistent with its later claim; (2) action by another party in reliance on the first party's act, statement or admission; and (3) injury that would result to the relying party from allowing the first party to

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contradict or repudiate the prior act, statement or admission." *Kramarevcky v. Dep't of Soc. & Health Servs.*, 122 Wash.2d 738, 743, 863 P.2d 535, 538 (1993) (citation and footnote omitted). Washington recognizes that equitable estoppel may flow from silence. *Sorenson v. Pyeatt*, 158 Wash.2d 523, 539, 146 P.3d 1172, 1179 (2006).

Inconsistent admission, statement, or act. As a result of their default, the Defaulting Allottees have each admitted that they:

- were aware of the Chelan County litigation before Judge Bridges and accepted increased payments under the 2004 Settlement Agreement in acquiescence to Plaintiffs tenancy of MA-8 through 2034 (ECF No. 1 at pp. 28, 36, ¶¶135, 179);
- knew William Evans, Jr. had exercised his option to renew through 2034, and that they received actual notice of this renewal (*id.* at pp. 28–29, ¶¶135, 140–43); *and*
- received actual written notices that the option to renew had been exercise prior to February 1, 2008, and have not rejected renewal (*id.* at pp. 41–42, ¶¶211, 217).

These admissions are not consistent with the position that the Plaintiffs' right to occupy MA-8 expired in 2009.

Reliance. The Defaulting Allottees have also admitted that "Consumers paid millions of dollars in reliance of the validity of these memberships and the 2034 expiration date that was approved by the BIA." ECF No. 1 at p. 21, ¶98; *see also id.* at p. 35, ¶170

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("Plaintiffs relied on these statements, actions and *omissions* by investing incamping memberships, rents, improvements to the property, and in entering into the Settlement Agreement with Chief Evans, Inc.") (emphasis added). The Defaulting Allottees therefore admit that Plaintiffs relied on their silence and omissions regarding the Master Lease and their right to occupy MA-8 until 2034.

Injury. Finally, the Defaulting Allottees admit that both taking a contrary position and allowing the BIA to take a contrary position—purportedly on their behalf—after their years of silence will result in injury to Plaintiffs. ECF No. 1 at p. 35, ¶172. As a result, all of the Defaulting Allottes have admitted to facts that establish all three elements of equitable estoppel against them.

IV. CONCLUSION

For all these reasons, Plaintiffs respectfully request that the Court enter default judgments against the Defaulting Allottees. A proposed order granting the requested relief accompanies this motion.

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DATED the 14th day of April, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. 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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