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7  
8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF WASHINGTON

10 PAUL GRONDAL, et al,

11 Plaintiffs,

12 vs.

13 UNITED STATES OF AMERICA, et al,

14 Defendants.

NO. 09-CV-00018-RMP

MOTION FOR EXPEDITED HEARING  
ON PLAINTIFFS’ MOTION FOR  
DEFAULT JUDGMENT

Noted: Immediately (or as soon as  
possible at the Court’s discretion)  
Without Oral Argument

15 **I. MOTION & ARGUMENT**

16 Pursuant to LCR 7(i)(2)(C), Plaintiffs, Paul Grondal and the Mill Bay Members  
17 Association, Inc. (“Plaintiffs”), request expedited hearing of their Motion for Default  
18 Judgment, which is being filed contemporaneously with this motion. Plaintiffs respectfully  
19

20 MOTION FOR EXPEDITING HEARING ON  
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1 request that the Motion for Default Judgment be noted immediately or as soon as is possible  
2 at the Court's discretion.

3 Under the Court's most recent order setting the briefing schedule for further  
4 briefings related to the Federal Defendants' Motion for Summary Judgment Re Ejectment  
5 pending since 2012, the deadline to provide supplemental briefing is April 17, 2020 ("the  
6 Deadline"). ECF No. 431. But under the local civil rules, Plaintiffs' Motion for Default  
7 Judgment is noted for hearing thirty days after filing—May 14, 2020, well after the  
8 Deadline. Good cause exists for the Court to rule on Plaintiffs' Motion for Default  
9 Judgment before May 14 for at least three reasons:

10 *First*, a ruling on Plaintiffs' Motion for Default Judgment will help clarify factual  
11 issues the Court should consider in ruling on the Federal Defendants' Motion for Summary  
12 Judgment. Plaintiffs' Motion for Default Judgment seeks the entry of default judgments  
13 against 19 individual defendants who were beneficial landowners of MA-8 when Plaintiffs'  
14 filed their Complaint in 2009 ("**Defaulting Allottees**"). As detailed in that motion, the  
15 Clerk of Court entered an order of default against the Defaulting Allottees in 2009 (ECF  
16 No. 135), yet they have neither answered Plaintiffs' Complaint nor otherwise participated  
17 in this litigation. As a result, the well-pleaded allegations in Plaintiffs' Complaint (except  
18 those related to damages) are deemed true as to the Defaulting Allottees for purposes of a  
19 default judgment. Fed. R. Civ. P. 8(b)(6); *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915,

1 917-18 (9th Cir. 1987). By extension, considering these admissions will help the Court  
2 determine whether this case turns on any genuine disputes of material fact. Moreover, entry  
3 of the default judgments will show these allottees are unequivocally estopped to deny  
4 Plaintiffs’ the right to occupy the MA-8 property through 2034. By extension, so is the  
5 BIA. For this reason, it is highly relevant to the present briefing ordered by this Court due  
6 April 17.

7 *Second*, if the Court does *not* consider Plaintiffs’ Motion for Default Judgment on  
8 an expedited basis, it will work a significant hardship on Plaintiffs. The Defaulting  
9 Allottees’ failure to appear or participate—whether voluntary or involuntary—has  
10 deprived Plaintiffs of the ability to conduct discovery on their claim for equitable and  
11 declaratory relief against them. Without either trial testimony or the entry of default  
12 judgments, this failure to respond prejudices Plaintiffs’ ability to ever obtain effective  
13 relief. *See Elf-Man, LLC v. Albright*, No. 13-CV-0115-TOR, 2014 WL 4384028, at \*2  
14 (E.D. Wash. Sept. 3, 2014). Similarly, without entry of default judgments, the Defaulting  
15 Allottees have prejudiced Plaintiffs’ ability to fully respond on the merits to the Federal  
16 Defendants’ Motion for Summary Judgment Re Ejectment. Expedited consideration would  
17 relieve this hardship by allowing the Court to take the effect of the Defaulting Allottees  
18 defaults into account before ruling on the Federal Defendants’ Motion for Summary  
19 Judgment.

1 *Third*, compounding these difficulties, it would have been impracticable for  
2 Plaintiffs to move for default judgment before the Court entered its order on the  
3 representation of the individual allottees in March, 2020. ECF No. 411. If Plaintiffs had  
4 brought a motion for default judgment any earlier—while the representation issues  
5 identified in Judge Quackenbush’s earlier orders (ECF Nos. 144, 178–180, 329) remained  
6 unresolved—they would have risked having their motion denied as premature. Thus,  
7 Plaintiffs had little choice but to wait until the Court resolved the representation issue  
8 before bringing this motion.

9 For these reasons, Plaintiffs respectfully request that their Motion for Default  
10 Judgment be heard immediately or as soon as possible at the Court’s discretion per LCR  
11 7(i)(2)(C).

## 12 **II. OPPOSING PARTIES’ STATEMENTS OF POSITION**

13 Pursuant to LCivR 7(b)(2), Mill Bay recites the opposing parties’ positions as  
14 follows:

15 Wapato Heritage supports Plaintiffs’ request for an expedited hearing and indicated  
16 it will join in both motions.

17 The United States does not believe it can consent to an expedited hearing on a  
18 meritless motion directed largely at former and/or deceased individual allottees. There are  
19 several problems with Mill Bay’s motion for default judgment, which may take time to

1 address in detail; however, in order to avoid further delay, the United States is prepared to  
2 expeditiously provide the Court with Supreme Court and Ninth Circuit case law  
3 demonstrating Mill Bay's motion for default judgment lacks any merit.

4 The Confederated Tribes of the Colville Reservation do not consent to the Motion  
5 for Expedited Hearing on Plaintiffs' Motion for Default Judgment. Plaintiffs have had  
6 many years to bring the Motion for Default Judgment. Since Judge Peterson was assigned  
7 the case, the primary focus has been on addressing the merits of the United States' Motion  
8 for Summary Judgment re Ejectment. Currently, CTCR is working on how to respond to  
9 the supplemental briefing opportunity relative to the Motion for Summary Judgment by  
10 Friday's deadline. There are many problems with the underlying Motion for Default  
11 Judgment. CTCR is entitled to sufficient time to respond to the surprise Motion for Default  
12 Judgment.

13 Counsel for Plaintiffs sent letters to the last known mailing addresses for the allottees  
14 using the Master Service List, but do not anticipate hearing back given the allottees'  
15 unrepresented nature and historical lack of participation in this case.

1 DATED this 14th day of April, 2020.

2 By s/SALLY W. HARMELING

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> 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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1 DATED at Wenatchee, Washington this 14<sup>th</sup> day of April, 2020.

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