

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 15, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PAUL GRONDAL, a Washington
resident,

Plaintiff,

v.

MILL BAY MEMBERS
ASSOCIATION, INC., a Washington
non-profit corporation; UNITED
STATES OF AMERICA; UNITED
STATES DEPARTMENT OF
INTERIOR; BUREAU OF INDIAN
AFFAIRS; FRANCIS ABRAHAM;
CATHERINE GARRISON;
MAUREEN MARCELLAY, MIKE
PALMER, also known as Michael H.
Palmer; JAMES ABRAHAM;
NAOMI DICK; ANNIE WAPATO;
ENID MARCHAND; GARY REYES;
PAULWAPATO, JR.; LYNN
BENSON; DARLENE HYLAND;
RANDY MARCELLAY; FRANCIS
REYES; LYDIA W. ARMEECHER;
MARY JO GARRISON; MARLENE
MARCELLAY; LUCINA O'DELL;
MOSE SAM; SHERMAN T.
WAPATO; SANDRA COVINGTON;
GABRIEL MARCELLAY; LINDA
MILLS; LINDA SAINT; JEFF M.

NO: 2:09-CV-18-RMP

ORDER GRANTING IN PART
PLAINTIFFS' MOTION TO
EXPEDITE HEARING ON MOTION
FOR DEFAULT JUDGMENT

1 CONDON; DENA JACKSON; MIKE
2 MARCELLAY; VIVIAN PIERRE;
3 SONIA VANWOERKON; WAPATO
4 HERITAGE, LLC; LEONARD
5 WAPATO, JR.; DERRICK D.
6 ZUNIE, II; DEBORAH L.
7 BACKWELL; JUDY ZUNIE;
8 JAQUELINE WHITE PLUME;
9 DENISE N. ZUNIE;
10 CONFEDERATED TRIBES
11 COLVILLE RESERVATION; and
12 ALLOTTEES OF MA-8, also known
13 as Moses Allotment 8,
14 Defendants.

15 BEFORE THE COURT is Plaintiffs’ Motion to Expedite, ECF No. 435.

16 The Government and the Confederated Tribes of the Colville Reservation oppose
17 the Motion to Expedite, and Wapato Heritage, LLC supports the Motion. *Id.* at 4–
18 5. The Court has considered the Motion, the record, and is fully informed.

19 On April 14, 2020, Plaintiffs filed a motion for default judgment against
20 certain non-appearing Defendants. ECF No. 433. In conjunction with that motion,
21 Plaintiffs filed the instant Motion to Expedite, requesting that the Court hear their
motion for default judgment immediately, or as soon as possible. ECF No. 435.
Plaintiffs argue that an immediate hearing is necessary because the motion for
default judgment is relevant to the pending motion for summary judgment re
ejectment, for which the parties have a supplemental briefing deadline of April 17,
2020. *Id.* at 2. Plaintiffs maintain that the Court should expedite hearing on the
motion for default judgment so that the Court may “take the effect of the

1 Defaulting Allottees defaults into account before ruling on the Federal Defendants’
2 Motion for Summary Judgment.” *Id.* at 3. Plaintiffs essentially argue that the
3 Court should enter default judgment against the non-appearing allottee Defendants
4 now, then accept the allegations pleaded against those non-appearing Defendants
5 as true when deciding the motion for summary judgment re ejectment. *See id.* at
6 2–3 (citing *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–918 (9th Cir.
7 1987)).

8 The Court notes that there are several factors that make the pending motion
9 for default judgment more complex than a typical motion for default judgment.
10 These include the fact that other individual allottees have appeared to defend this
11 case, the fact that the Federal Government has appeared to defend this case in its
12 role as trustee, and the fact that the Clerk of this Court entered default against the
13 non-appearing Defendants over ten years ago, on October 9, 2009. *See* ECF No.
14 433 at 3. Additionally, in response to Plaintiffs’ Motion to Expedite, the
15 Government asserts that Plaintiffs are requesting default judgment against “former
16 and/or deceased individual allottees.” ECF No. 435 at 4.

17 While this Order should not be taken as an indication of how the Court will
18 rule on the pending motion for default judgment against certain non-appearing
19 allottee Defendants, the Court finds that the appearing Defendants must be given
20 an opportunity to fully brief this new issue, and the Plaintiffs must be given an
21 opportunity to reply. Unlike the motion for summary judgment re ejectment, the

1 issue of default judgment has not been briefed by the parties previously. Only
2 once this motion is fully briefed can the Court make an informed decision,
3 especially in light of the complex nature of this case. Because the Court already
4 has imposed a deadline of April 17, 2020, for the parties to submit supplemental
5 briefing on the pending motion for summary judgment re ejectment, the Court
6 finds that it is not prudent to demand the parties to submit briefing on a new,
7 potentially complex issue within that same timeframe.

8 Additionally, the Court cannot hear the motion immediately because
9 Plaintiffs have not confirmed that two of the nineteen non-appearing Defendants
10 are not subject to the Servicemembers Civil Relief Act. LCivR 55(b)(1). As
11 counsel for Plaintiffs states in her supporting declaration: “As of the time that this
12 motion as filed, my office has received verification reports that confirm that 17 of
13 the 19 Defaulting Allottees are not in active duty status based on the information
14 we provided and the information in the Department of Defense Manpower Data
15 Center. We anticipate that we will receive verification reports on the remaining
16 two Defaulting Allottees within 24 hours, and will file a supplemental declaration
17 as soon as we receive those reports, but we did not to [sic] delay filing the motion
18 regarding all 19 Defaulting Allottees due to this delay.” ECF No. 434 at 5–6. The
19 Court has not yet received a supplemental declaration on this issue. For the
20 foregoing reasons, the Court will not hear the motion for default judgment
21 immediately.

1 However, the Court acknowledges that Defendants have requested a quick
2 resolution of this case. Specifically, the Government and the Confederated Tribes
3 of the Colville Reservation have explained that they will suffer harm if a decision
4 in this case is delayed into the summer months. *See* ECF Nos. 420 at 2 and 421 at
5 1–2. Because Plaintiffs contend that any default judgment against the non-
6 appearing allottee Defendants should influence this Court’s ruling on the pending
7 motion for summary judgment re ejection, the Court finds that good cause exists
8 to hear the motion for default judgment on a shortened briefing schedule.

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. Plaintiffs’ Motion to Expedite, **ECF No. 435**, is **GRANTED IN PART**.

11 2. Any response to the motion for default judgment, ECF No. 433, shall be
12 filed no later than April 27, 2020, and any reply shall be filed by April
13 30, 2020. Hearing on the motion for default judgment, **ECF No. 433**, is
14 **SET for May 1, 2020**.

15 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
16 Order and provide copies to counsel.

17 **DATED** April 15, 2020.

18
19 *s/ Rosanna Malouf Peterson*
20 ROSANNA MALOUF PETERSON
21 United States District Judge