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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAUL GRONDAL, a Washington
resident; MILL BAY MEMBERS
ASSOCIATION, INC., a
Washington non-profit corporation,

Plaintiffs – Appellees,

vs.

UNITED STATES OF AMERICA;
U.S. DEPARTMENT OF THE
INTERIOR; BUREAU OF INDIAN
AFFAIRS; CONFEDERATED
TRIBES OF THE COLVILLE
RESERVATION,

Defendants – Appellees

NO. 20-35357

PLAINTIFFS PAUL GRONDAL
AND MILL BAY MEMBERS
ASSOCIATION’S STATEMENT IN
SUPPORT OF MOTION OF
APPELLANTS WAPATO
HERITAGE, LLC AND GARY
REYES FOR STAY PENDING
INTERLOCUTORY APPEAL

PLAINTIFFS’ STATEMENT IN SUPPORT
OF MOTION FOR STAY PENDING
INTERLOCUTORY APPEAL

JEFFERS, DANIELSON, SONN & AYLWARD, P.S.
Attorneys at Law
(509) 662-3685 / FAX (509) 662-2452
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688

1 **I. INTRODUCTION**

2 Plaintiffs/Appellees Paul Grondal and the Mill Bay Members Association,
3 Inc. (collectively, “Plaintiffs”) are presently facing a motion in the District Court
4 that seeks to displace them from their homes before summer 2020 and in the
5 middle of a global pandemic. The Members are predominantly elderly individuals
6 and families. Some of them use the disputed property as their residence and
7 presently have few options in terms of where else to go. Meanwhile, the
8 interlocutory appeal presently pending before this Court will not be resolved until
9 after September 3, 2020—long after the Government seeks to eject the Plaintiffs.
10 Should this Court determine the Defendant Allottees were entitled to independent
11 representation, the Government’s Motion for Ejectment (as well as Plaintiffs’
12 Motions for Default and Summary judgment against the Defendant Allottees
13 presently pending before the District Court) will need to be re-litigated—and by
14 that point in time, the Members may have already been ejected from their homes.

15 To prevent this irreparable harm to the Plaintiffs and the waste of the
16 resources of the parties and the court necessitated by the re-litigation of critical
17 issues, Plaintiffs hereby submit this statement in support of
18 Defendants/Appellants Wapato Heritage, LLC and Gary Reyes’ (collectively,
19 “Appellants”) Motion for a Stay Pending Interlocutory Appeal (Dkt. Entry 5).

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PLAINTIFFS’ STATEMENT IN SUPPORT
OF MOTION FOR STAY PENDING
INTERLOCUTORY APPEAL

Page 1

JEFFERS, DANIELSON, SONN & AYLWARD, P.S.
Attorneys at Law
(509) 662-3685 / FAX (509) 662-2452
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688

1 While Plaintiffs do not join the appeal of the District Court’s ruling concerning
2 the government’s duty to supply independent legal counsel to the individual
3 Allottee Defendants (ECF No. 411), Plaintiffs do support Appellants’ request for
4 a stay, as the appeal seeks to resolve matters that will have significant implications
5 on the District Court proceedings.
6

7
8 Pursuant to Fed. R. App. P. 26.1(a), Plaintiff Mill Bay Members
9 Association, Inc. hereby certifies that it has no parent corporation and no publicly
10 held corporation owns 10% or more of its stock.
11

12 **II. ABSENT APPELLANTS’ REQUESTED STAY, PLAINTIFFS**
13 **WILL SUFFER IRREPARABLE HARM**

14 Three dispositive motions are pending before the District Court: (1)
15 Plaintiffs’ Motion for Default Judgment Against Certain Allottee Defendants
16 (ECF No. 433); (2) Plaintiffs’ Motion for Summary Judgment Against Certain
17 Individual Allottees (ECF No. 439); and (3) Federal Defendants’¹ Motion for
18 Summary Judgment Re Ejectment (ECF No. 231).
19

20 Plaintiffs’ motions (ECF Nos. 433 & 439) seek judgments against the same
21 unrepresented individuals whom the District Court ruled need not be represented
22 in this litigation, which ruling is now the subject of the present appeal. Federal
23
24

25 _____
26 ¹ “Federal Defendants” refers to Defendants United States of America, United
27 States Department of the Interior, and Bureau of Indian Affairs.

1 Defendants' motion (ECF No. 231) seeks a ruling that the disputed property
2 remains classified as trust property, followed by ejectment of the Plaintiffs
3 therefrom. All three motions are set to be heard on May 29, 2020. ECF No. 453.

4
5 The District Court has made clear that it intends to rule on all three motions
6 *before* summer 2020:
7

8 [T]he Court acknowledges that Defendants have requested a
9 quick resolution of this case. Specifically, the Government
10 and the Confederated Tribes of the Colville Reservation have
11 explained that they will suffer harm if a decision in this case
12 is delayed into the summer months. *See* ECF Nos. 420 at 2
13 and 421 at 1-2. Because Plaintiffs contend that any default
14 judgment against the non-appearing allottee Defendants
15 should influence this Court's ruling on the pending motion for
summary judgment re ejectment, the Court finds that good
cause exists to hear the motions for default judgment on a
shortened briefing schedule.

16 ECF 437 at p. 5; *see also* ECF 446.

17 In contrast, this Court's adjudication of this appeal will not occur until after
18 September 3, 2020. Dkt. Entry 1-1.
19

20 Thus, should a stay not issue, and should this Court ultimately determine
21 that representation of the Allottee Defendants was required, this will nullify all
22 District Court orders entered without such representation. In such case, the
23 pending dispositive motions will require re-litigation once independent counsel
24 for the Allottee Defendants are appointed. Thus, adjudication of those motions
25
26

1 now, prior to resolution of the appeal, would waste the resources of the court and
2 litigants in contravention of Federal Rule of Civil Procedure 1 (proclaiming the
3 Federal Rules of Civil Procedure “should be construed, administered, and
4 employed by the court and the parties to secure the just, speedy, and inexpensive
5 determination of every action and proceeding.”).

6
7
8 But perhaps most concerning to Plaintiffs is where they will go in the
9 meantime. Absent a stay, the District Court may grant Federal Defendants’
10 motion for summary judgment and eject Plaintiffs from the disputed property
11 during summer 2020—a ruling that, absent representation for the individual
12 Defendant Allottees, may in fact be invalid and in need of a “do-over” at some
13 later, uncertain date. However, this is not a matter that Plaintiffs can lightly
14 stomach as a tentative and non-final ruling.

15
16
17 To be sure, the Plaintiff Mill Bay Members consist of approximately 180
18 members who are predominantly elderly individuals and families. Declaration of
19 Franklin Smith at ¶ 3. While the Members are mostly a recreational camping
20 resort club, some of the members use the RV Park on MA-8 as their residence.
21 *Id.* at ¶ 4. Should they be ejected from this land, these members may have very
22 few options of where else to go at the present time. *Id.* Others will lose the right
23 to use and enjoy properties that have been in their families for years. *Id.*

1 The Mill Bay resort has been an ongoing part of the community for more
2 than 35 years. *Id.* at ¶ 5. In reliance on the government’s promises that they had
3 the right to remain on this property through 2034, the Members have invested
4 *hundreds of thousands of dollars* into improving their family properties in
5 virtually every infrastructure imaginable—water, electricity, fiber optics, and
6 construction, as just a few examples. *Id.* Should they be ejected, the members
7 will lose every one of these investments. *Id.*

8 To make matters worse, we are in the middle of a *global pandemic*, the
9 likes of which the world has not seen for over 100 years, and which is very
10 unlikely to have concluded by summer 2020. Put simply, ejection will deprive
11 vulnerable individuals of their homes in the middle of a pandemic that has the
12 most fateful implications for the elderly—the very individuals who stand to be
13 displaced by the Federal Defendants’ motion. To take such a drastic remedy
14 without absolute certainty of its finality would seem to be the definition of
15 irreparable harm. *See also Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
16 1127, 1135 (9th Cir. 2011) (denial of use and enjoyment of property constitutes
17 irreparable harm); *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th
18 Cir. 2014) (“Irreparable harm is traditionally defined as harm for which there is
19 no adequate legal remedy”); *Rent-A-Ctr., Inc. v. Canyon Television &*

1 *Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991) (irreparable harm also
2 includes intangible injuries).
3

4 Finally, a stay before the District Court rules on the pending dispositive
5 motions would also increase the likelihood of settlement, by placing a pause on a
6 runaway train that has travelled down a track at rapid speeds without the benefit
7 of meaningful settlement conversations. *See* ECF 403 at p. 1; ECF 315 at pp. 8-
8 10 (discussing the difficulties in conducting settlement negotiations given the
9 confusing state of these individuals' representation, or lack thereof). Should this
10 Court adjudicate the appeal in Appellants' favor, settlement negotiations, now
11 made fruitful by independent representation finally supplied to the Allottee
12 Defendants, may in fact eliminate the need for *any* ruling by the District Court on
13 the pending dispositive motions by virtue of finally facilitating meaningful
14 settlement conversations.
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19 III. CONCLUSION

20 For all of the foregoing reasons, Plaintiffs will suffer irreparable harm
21 absent the issuance of a stay of the District Court proceedings while this Court
22 adjudicates the pending appeal. In the interests of eliminating the risk of
23 inconsistent judgments, avoiding the need for re-litigation of critical motions, and
24

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27 PLAINTIFFS' STATEMENT IN SUPPORT
OF MOTION FOR STAY PENDING
INTERLOCUTORY APPEAL

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JEFFERS, DANIELSON, SONN & AYLWARD, P.S.
Attorneys at Law
(509) 662-3685 / FAX (509) 662-2452
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688

1 furthering the interest of the Federal Rules of Civil Procedure, a stay should issue
2 as soon as possible.
3

4 DATED this 13th day of May, 2020.

5
6 By s/SALLY W. HARMELING

Sally W. Harmeling, WSBA No. 49457

7 Robert R. Siderius, WSBA No. 15551

8 Joseph Q. Ridgeway, WSBA No. 53438

9 JEFFERS, DANIELSON, SONN & AYLWARD,
P.S.

10 2600 Chester Kimm Road

11 P.O. Box 1688

12 Wenatchee, WA 98807-1688

13 Telephone: 509-662-3685

14 Fax: 509-662-2452

15 Email: SallyH@jdsalaw.com

16 Email: BobS@jdsalaw.com

17 Email: JosephR@jdsalaw.com

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27 PLAINIFFS' STATEMENT IN SUPPORT
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INTERLOCUTORY APPEAL

Page 7

JEFFERS, DANIELSON, SONN & AYLWARD, P.S.
Attorneys at Law
(509) 662-3685 / FAX (509) 662-2452
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit, 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.

Joesph P. Derrig
Usawae-jderrigecf@usdoj.gov

Nathan J. Arnold
nathan@caoteam.com

Tyler Hotckiss
tyler@fhbzlaw.com

Sally W. Harmeling
sallyh@jdsalaw.com

Dale Melvin Foreman
dale@fahzlaw.com

Robert R. Siderius
Bobs@jdsalaw.com

Franklin L Smith
Frank@Flyonsmith.com

R Bruce Johnston
bruce@rbrucejohnston.com

Brian Gruber
bgruber@ziontzchestnut.com

Matthew A. Mensik
mam@witherspoonkelley.com

Brian W. Chestnut
bchestnut@ziontzchestnut.com

Manish Borde
mborde@bordelaw.com

Pamela J. DeRusha
Receives Notice via U.S. Mail

Emanuel Jacobowitz –
Manny@CAJlawyers.com

1 I certify that I served the foregoing document on this date by hand delivery, mail,
2 third party commercial carrier for delivery within 3 calendar days, or, having
3
4 obtained prior consent, by email to the following unregistered case participants.

5 **PRO SE PARTIES**

6 Francis Abraham
7 11103 E. Empire Avenue
8 Spokane Valley, WA 99206

Annie Wapato
1800 Jones Rd
Wapato, WA 98951-9

9 Paul G. Wapato, Jr.
10 10216 N Sundance Dr.
11 Spokane, WA 992085
12 Marlene Marcellay
13 7910 NE 61st Cir.
14 Vancouver, WA 98662-5992

Gary and Francis Reyes
PO Box 296
Newman Lake, WA 99025
Jeffrey M Condon
PO Box 3561
Omak, WA 9884 1-3561

14 Deborah A. Backwell
15 24375 SE Keegan RD
16 Eagle Creek, OR 97022
17 Catherine Garrison
18 3434 S 114th St., Apt. 124
19 Tukwila, WA 98168-4061

Vivian Pierre
PO Box 294
Elmer City, WA 99124-0294
Sonia W (Wapato) Vanwoerkom
810 19th St
Lewiston, Id 83501-3172

18 Mary Jo Garrison
19 PO Box 1922
20 Seattle, WA 98111
21 Enid T. Wippel
22 PO Box 101
23 Nespelem, WA 99155
24 Leonard Wapato
25 P.O. Box 442
26 White Swan, WA 98952-0442

Arthur Dick
PO Box 288
Nespelem, WA 99155-0288
Hannah Rae Dick
PO Box 198
Nespelem, WA 99155-0198
Francis J Reyes
PO Box 215
Elmer City, WA 99124-0215

25 Kathleen M Dick
26 PO Box 288
Nespelem, WA 99155-0288

Dwane Dick
PO Box 463
Nespelem, WA 99155-0463

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Lynn K. Benson
PO Box 746
Omak, WA 98841-0746
Randy Marcellay
P.O. Box 3287
Omak, WA 98841-3
Paul G Wapato Jr
Catherine L (Gufsa) Garrison
3434 S 144th St Apt 124
Tukwila, WA 98168 -4061
Maureen M. Marcellay
7910 NE 61st Circle
Vancouver, WA 98662-5992

James Abraham
2727 Virginia Avenue
Everett, WA 98201-3743
Gabe Marcellay
PO Box 76
Wellpinit, WA 99040-0076
Travis E Dick and Hannah Dick
Guardian of Travis E Dick
PO Box 198
Nespelem, WA 99155
Jacqueline L Wapato
PO Box 611
Lapwai, Id 83540-0611

Charissa Eichman
Colville Tribes Office of Reservation
Attorney
P.O Box 150
Nespelem, WA 99155

Darlene Marcellay-Hyland
16713 SE Fisher Drive
Vancouver, WA 98683

Mike Marcellay
PO Box 594
Brewster, WA 98812-0594
Pamela Jean DeRusha
US Attorney's Office – SPO
920 W. Riverside, Suite 300
PO Box 1494
Spokane, WA 99210 - 1494

Enid T (Pierre) Marchand
PO Box 101
Nespelem, WA 99155-0101

Lydia A. Arneecheer
P.O. Box 45
Wapato, WA 98951-0475

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DATED at Wenatchee, Washington this 13th day of May, 2020.

s/Sally W. Harmeling
SALLY W. HARMELING
WSBA No. 49457
Attorney for Plaintiffs
JEFFERS, DANIELSON, SONN & AYLWARD,
P.S.
2600 Chester Kimm Road
P.O. Box 1688
Wenatchee, WA 98807-1688
Telephone: 509-662-3685
Fax: 509-662-2452
Email: SallyH@jdsalaw.com

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LOCAL RULES CERTIFICATE

This Motion complies with Fed. R. App. P. 27 and does not exceed 5,200 words exclusive of the table of contents, if any; signatures; certificates of service; copies of decisions; accompanying affidavits; and exhibits. The total amount of applicable words is 1,318.

DATED this 13th day of May, 2020.

/S/ Sally W. Harmeling
Sally W. Harmeling, WSBA #49457