UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PAUL GRONDAL, et al., Plaintiffs,	Case No. 2:09-cv-00018-RMP
vs.	May 29, 2020 Telephonic Hearing
UNITED STATES OF AMERICA, et al., Defendants.	Motion Hearing Pages 1 - 96

BEFORE THE HONORABLE ROSANNA MALOUF PETERSON
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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For Defendant Gary Reyes:	MANISH BORDE Attorney at Law 600 Stewart St., Ste. 400 Seattle, Washington 98101
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(Court convened on May 29, 2020, at 1:27 p.m.)

THE COURTROOM DEPUTY: The matter now before the Court is *Paul Grondal, et al., versus United States of America*, Case No. 2:09-cv-0018-RMP; time set for motions hearing.

Appearing for the plaintiffs is Sally W. Harmeling. Appearing for Defendant United States of America is Joseph W. Derrig. Appearing for Defendant Wapato Heritage, LLC, are Tyler D. Hotchkiss, Dale M. Foreman, Nathan J. Arnold, and Emanuel F. Jacobowitz. Appearing for the Confederated Tribes of the Colville Reservation is Brian W. Chestnut. Appearing for Defendant Gary Reyes is Manish Borde. And appearing pro se are Darlene Marcellay-Hyland, Marlene Marcellay; and Theresa Thinelk, on behalf of her father, Defendant Francis Reyes.

THE COURT: Good afternoon, Counsel. This is Judge Peterson. Unfortunately, because of the COVID crisis, this hearing has to be held electronically. Let's set a few ground rules. If you are not speaking, it would be very helpful if you could mute your microphones so that there will be no sound coming in, background noise. So if it's someone's turn to speak, we can be very mindful of the fact that they need some time to unmute their mikes.

We have several motions today. We have the defendant's motion for summary judgment, ECF No. 231; the plaintiffs' motion for default, ECF 433; the plaintiffs' motion for summary judgment, ECF 439; and actually, the defendant's motion is

probably more rightfully referred to as an ejectment.

I am mindful that there are several pro se parties, and I would like to hear first from the pro se parties as to how they would like to be heard today and on what topics or if they would -- they just want to address the Court.

So Ms. Darlene Marcellay-Hyland, how would you like to proceed today?

MS. MARCELLEY-HYLAND: Well, I would like to listen to the arguments first and maybe do a rebuttal if I need to.

THE COURT: Okay. And I heard you say that your sister is with you; is that correct?

MS. MARCELLEY-HYLAND: Yes.

THE COURT: And does -- I'm sorry. What was her name?

MS. MARCELLEY-HYLAND: Marlene Marcellay.

THE COURT: Okay. And is that how you want to proceed as well?

MS. MARCELLAY: Yes.

THE COURT: Okay. Ms. Thinelk, how would you like to proceed?

MS. THINELK: Thank you, Your Honor. I would like to also hear the arguments put forth by the different parties in their motions. Since my father -- we had received these rather late, and we hadn't been able to review the motions. It would be good, I think, prior to me responding on behalf of my father to hear what the parties had to say as far as their motions. We

plan to address also the issue specifically on default on behalf of my father, who has been pro se for some time; so that was one of the issues we wanted to address as well.

THE COURT: Okay. That sounds very good.

Let me ask Counsel at this point. Certainly the lowest number motion, I believe, is the government's motion.

Mr. Derrig, have you discussed with Counsel at all how you plan to proceed today?

MR. DERRIG: Yes, Your Honor. Joseph Derrig on behalf of the United States. I have spoke with the tribe's counsel. I think I intend to lead off, and then I probably will not take the allotted amount of time and reserve the remainder for the tribe's counsel and any necessary rebuttal.

THE COURT: Okay. Ms. Harmeling -- and Mr. Derrig, let me ask you. Am I correct in assuming that you're planning to group all of the arguments or all of the motions together? Is that correct?

MR. DERRIG: Yes, Your Honor. I think there's some common issues that have to be decided that ultimately will resolve the -- all three motions.

THE COURT: Okay. Ms. Harmeling, is that agreeable with you if the government goes first or would you like to begin? What is your plan?

MS. HARMELING: Yes, Your Honor. Good afternoon. I think my preference would be -- obviously, subject to your

Court's approval, my preference would be that plaintiffs have an opportunity to go first. I think our motions for default and for summary judgment are highly relevant to whether -- you know, whether we get very far on this ejectment motion brought by the federal government in the first place. So that would be plaintiffs' preference, Your Honor.

THE COURT: Okay. Mr. Chestnut, what are your thoughts on how we're proceeding?

MR. CHESTNUT: I think -- this is Brian Chestnut. Thank you, Your Honor. I would like to support what the United States said, which is to proceed with at least the motion for ejectment first given that it came first in time, and we think that is the overriding issue.

THE COURT: Okay. And who will be speaking for Defendant Wapato?

MR. ARNOLD: Your Honor, this is Nathan J. Arnold, and I will be speaking on behalf of Wapato.

THE COURT: Okay. And what are your thoughts on procedure?

MR. ARNOLD: Your Honor, I would agree with Ms. Harmeling that the -- there are some threshold issues in the defendant's -- I'm sorry, excuse me -- the plaintiffs' motions. It would be proper for the plaintiff to go first, in any event, but, of course, subject to the Court's pleasure and whether or not we take these all in one block or if we separate the motions

out one by one.

THE COURT: Is there any reason to separate them out? Because I was anticipating that they would all be in one block.

MR. ARNOLD: Whatever the Court would prefer is our preference, Your Honor.

THE COURT: Okay. Thank you.

And Mr. Borde, I think I just haven't heard from you. Any -- how would you like to proceed today?

MR. BORDE: Your Honor, I'll -- I'll defer to the Court and the other parties. At the end of the day, Mr. Reyes does not seek ejectment of the plaintiffs -- plaintiffs. An agreement's been reached with the plaintiffs that the plaintiffs will not be seeking any judgment against my client. I'm basically, accordingly, then, withdrawing my opposition to plaintiffs' motion. I've got some further thoughts on the validity of the transfer of Mr. Reyes's title to the tribe after having a further opportunity to review the record. But, I mean, in terms of order, Your Honor, I defer to the Court and defer to the other parties.

THE COURT: All right. Okay. Thank you very much, Counsel. Was there anybody I forgot who was a speaking entity today? I hear nobody responding.

I have reviewed extensive pleadings in this matter, and because it's going to be hard to ask questions or have interaction in this format, there are a couple of issues that I

will tell you jumped out at me that I would -- I was hoping that the parties would address, but certainly you're free to address whatever other issues you wanted as well. And I am going to have the argument all in a block argument.

And Mr. Derrig, you will begin.

But some of the questions that jumped out are why are the plaintiffs applying state law to this situation? And they -- also the plaintiffs have some other areas that I would like to understand some of the reason that they have taken a position or not addressed judicial estoppel regarding whether or not the land is -- the MA-8 land is actually trust land. And the plaintiffs have cited no responses to requests for admission as evidence to support their summary judgment, and I'm interested in whether they actually have other evidence. And I think that probably gives you some idea of the beginning parameters of exactly where we're going with this.

So Mr. Derrig, go ahead and begin.

MR. DERRIG: Yes. Thank you, Your Honor. Mr. Derrig on behalf of -- or Joseph Derrig on behalf of the United States. The threshold issue in this case -- and I think everyone's acknowledged it, particularly in the prior status conference -- is that MA-8 is trust land. Everything flows from that decision. If it's trust land, that's where we get applying federal law rather than state law. That's the ultimate dispositive issue.

And I'll understand -- you know, Mill Bay and Wapato Heritage are claiming that it fell out of trust or something of that nature. However, it is still in trust, and it hasn't been removed from trust. And according to the *French* and *Starr* case, which the Ninth Circuit upheld, no matter what species of tenancy they claim to have or lack thereof, they cannot challenge the trust status of MA-8 now, particularly when all lease documents, camping membership documents, prior admissions, prior litigation, everyone acknowledged that it was trust land and is trust land. So I think that's, you know, the dispositive -- once that's decided, the rest of the decisions, I think, flow pretty -- pretty easily.

And even if they could challenge the trust status, which I don't think they're -- they should be allowed to, the bottom line is, you know, it's been treated as trust land for a hundred years. Congress has reaffirmed it is trust land, and that's been thoroughly briefed. I won't go into additional details on that unless the Court as any specific questions it would like me to address before moving on.

THE COURT: No. Please just go ahead and go forward.

MR. DERRIG: Yes, Your Honor. Since the land is trust, federal law does control an ejectment action. That's long been held by the Ninth Circuit. *United States versus Pend Oreille Public Utility District* is directly on-point on that issue. A legal claim for ejectment, essentially, is that

plaintiffs don't have a right of possession. We are out of possession, and damages have been -- damages have occurred. So we have here no right of possession by Mill Bay.

Plaintiffs have previously admitted the membership agreements gave them only rights through Wapato Heritage, whose rights in turn flew from the -- the master lease. The master lease once was the lawful basis for their occupation of MA-8. That expired in February of 2009. Now, it's hornbook law that -- or again, regardless of the sublease, license, easement, or whatever Mill Bay or Wapato Heritage want to call the camping memberships, they can have no greater rights against the lessor than were given by the master head lease.

So in this case, those rights have expired, and there's certainly no adjustments in that result when all those documents, the sublease and then the camping memberships that Mr. -- or Wapato Heritage sold under that sublease; and even the 2004 settlement agreement between Wapato Heritage and Mill Bay, you know, all say that they're subject to the master lease. So applying the master lease here in its expiration is -- is certainly not unfair in any event, and the master lease itself said that no part of the premises could be leased for a period extending beyond the life of the lease.

Mill Bay simply cannot invoke equitable estoppel to create an irrevocable license or something of that nature. That's prohibited by the written terms in the master lease, which was

agreed to and repeated in every prior document stemming therefrom.

So we get to then the estoppel defense that's being raised. That estoppel defense that's been raised against the government when the government acts in its trust capacity is simply not subject to that defense. That is binding Ninth Circuit case law. While there's a lot of aspersions and other sorts of things to try to have estoppel applied against the United States when it's acting in its trust capacity, there's not a single case that has been cited that applies to that in the Ninth Circuit.

Now, Mill Bay does cite a Second Circuit case, *Cayuga Indian Nation of New York versus George Pataki*, that some equitable defenses can be applied against the United States. That Second Circuit case relies on *City of Sherrill*, and the Second Circuit found that they thought -- or they read that case to interpret or indicate that the Supreme Court's holding was not narrowly limited to the facts of that case, which was a tribe seeking to revive sovereign immunity which was abandoned for 200 years, but rather that equitable defenses could apply more broadly to Indian land claims.

The problem is nowhere in that *City of Sherrill* case does the Supreme Court suggest that its holding should apply to cases in which the United States holds land in trust for Indians. So again, that's why the trust decision is so important from the

outset. I think this is probably well-discussed in the dissent in that case, the *Cayuga* case. But in any event, obviously, that Second Circuit case is not binding and is irreconcilable with controlling authority in this circuit.

And that -- that authority remains unaffected by the City of *Sherrill's* decision by the Supreme Court. Indeed, in just 2017, the Ninth Circuit rejected a similar argument by the state of Washington, which, obviously, is well after the *Sherrill* decision. So equitable estoppel cannot be applied against the government in its motion for ejectment here.

And even if it could -- it certainly can't, but even if it could, the equities are not in favor of Mill Bay or Wapato Heritage. And this, again, was previously litigated, but the main point here is when the master lease -- when it was discovered the master lease had not been properly renewed in, I think, 2007, the government did notify Wapato Heritage that it had to take the steps necessary under the master lease to extend the master lease; and those steps were not complicated or difficult, but they, for whatever reason, chose not to do it.

And similarly, Mill Bay, in its agreement with Wapato Heritage, was supposed to receive notice from Wapato Heritage of any issues or problems with the lease. Again, I mean, there's nothing in the record that shows that Wapato Heritage made that -- you know, told Mill Bay about that. So there's not some kind of, you know, conspiracy or whatever else Mill Bay wants to

label it as. It is simply that they were notified and -- or at least Wapato Heritage was notified and didn't take the proper action to renew the master lease, and that is why we are here, not because of something the government did or did not do.

Now, that doesn't mean that, you know, if equity isn't a remedy for Mill Bay that it's not without a remedy. Mill Bay certainly can pursue its remedy against Wapato Heritage, but it should not be able to hold the individual allottees or the United States responsible for their mistakes in the settlement agreement or in failure to renew master lease.

So since estoppel doesn't apply to the government, Mill Bay's taken a creative approach of trying to estop the individual allottees directly through these two motions, a motion for default and a motion for summary judgment based on some RFA's, or a request for admissions. While Mill Bay claims these motions against the allottees have nothing do to with the U.S., Mill Bay admits the sole purpose of those two motions is to try to create a defense to the U.S.'s ejectment action, which it otherwise doesn't have.

The faulty premise for Wapato and Mill Bay's argument that the United States cannot eject Mill Bay without a -- the faulty premise of this argument is that they're saying that we can't eject them without a majority approval of the allottees. That is not the law nor is that what the regulations require. The United States is required to take action to protect trust land

unless a majority of the allottees notified in writing that they are in good faith negotiations for a new lease.

That has not happened. It is not in the record. Mill Bay is simply conflating regulations that apply to obtaining new leases with regulations governing when the government must take steps to eject.

It is true that for a new lease, a majority approval is required. I mean, this, again, is, you know, part and parcel of what the prior litigation was about, the 99-year lease and that there wasn't approval for that. There is no negotiation for a new lease going on. That's a dead issue.

I think it's also worth noting that, you know, Mill Bay and Wapato Heritage acknowledge a new lease requires a majority approval from the allottees, but they didn't obtain that approval when they entered into a settlement agreement between themselves in 2004. You know, if this -- if they were so concerned about the allottees and the regulations that require a majority of allottee approval for a new lease and they're arguing that the settlement agreement modified the master lease, well, certainly they should've gotten the approval of the allottees at that time in 2014. They failed to do so.

So since the master lease is expired and there's no new lease and there's no negotiations for a new lease, the government must eject Mill Bay, and that's what we're doing here. We're bringing this action. It's not the allottees,

although they support -- or some of the allottees support the action. It's the United States bringing the action under its trust responsibilities and the governing regulations. Mill Bay cannot create some kind of license, lease, or interest in MA-8 that doesn't comply with those regulations, and the regulations require ejectment.

And just briefly, the case law that Mill Bay relies upon doesn't change any of that. The *Kizer* case is obviously distinguishable and did not even reach the issue that they're saying it indicated. It simply does not stand for the proposition nor is it -- nor is it binding that the United States, when it moves to eject, that you can sidestep well-cited law that estoppel does not apply to the government by trying to estop allottees individually.

Similarly, the -- and again, Washington case law doesn't apply, but even the cases they're citing for the proposition that estoppel could be applied, they don't say that. If you read them closely, they neither discuss claims or defenses raised and definitely don't hold that estoppel could be applied as an affirmative claim; so I don't think that holds any water.

And just a couple of points briefly with respect to the particular motions. The default motions should be denied. Mill Bay claims that the *Eitel* factors need not even be addressed and cites an order issued by this Court claiming, you know, it's okay to do that without discussing those factors and the Court

doesn't even need to apply those factors. Well, the order it cites not only cites *Eitel*; it takes several pages in discussing those factors, and we discussed those factors here. Default judgment is not appropriate.

A couple points on the summary judgment just to address some allegations on the record there. The service was not proper. Rule 5 requires service of discovery papers on all parties. Serving through ECF well after the expiration of the 30 days is not complying with the spirit or intent of that rule, and failing to comply with those rules should not have those request for admissions deemed admitted for that reason alone.

At bottom, again, the trust status is the issue. That's decisive of the case. The whole purpose of trust land is to protect it from unauthorized alienation like there is here, and trust land is entitled to special protections and the regulations that must be followed. We can't do an end-run around those protections since the land is held in trust. And I'll reserve the rest of my time for rebuttal, Your Honor.

THE COURT: All right. Thank you.

Mr. Chestnut?

MR. CHESTNUT: Thank you, Your Honor. This is Brian Chestnut, attorney for the Confederated Tribes of the Colville Reservation. The tribe is appreciative that we're finally resolving whether plaintiffs should be ejected from MA-8. The lease was entered into in 1984. It was -- the term was 25 years

if not renewed. The lease was not renewed, as Mr. Derrig points out, despite notice to the lessee of that opportunity by the U.S. In 2011, the Ninth Circuit affirmed that the lease was not renewed and has been terminated. A year later, this motion for ejectment was filed by the U.S.

And so for the last eleven years since 2009 when the lease expired, the tribe's and other allottees' property has been wrongfully encumbered. And the tribe is appreciative of the United States, its trustee, for complying with its fiduciary duties that goes to the tribe to protect its ownership in the property. Just like any other landowner, the tribe wishes to be able to enjoy the fruits of that land. We're asking that the Court grant the motion for ejectment, ECF 231, and deny the other two motions today; I think it's ECF 433 and 439.

On the motion for ejectment, specifically, the United States -- well, first of all, we agree that it's trust land and that the United States has an obligation to eject. As a trustee, there's a fiduciary relationship that puts forth obligations on the U.S. of the highest responsibility to administer the trust with the greatest skill and care. Those obligations include, among other duties, ensuring that the tribal trust property is protected. And as with any trustee, the U.S. is charged with allowing the beneficial owners the full opportunities of land ownership; so obviously, if there's a trespasser on the property, as the federal regulations explain

is the case today, ejectment is appropriate.

The Supreme Court has recognized common law constative action like this to protect Indian lands from trespass, and -- and then we have the *Wapato Heritage* Ninth Circuit decision. So under these circumstances, ejectment should be ordered, and ejectment does not hinge on anything about allottee consent; so the United States doesn't need to go back to the allottees and ask what they think. Even though there's been a lot of focus on that in the briefing, the ownership percentage just doesn't matter.

Under the applicable federal regulations, 25 CFR 162.023 and 162.471, plaintiffs' use of the land without a lease subjects them to ejectment. As I said, allottee consent is not required under those regulations. So given this legal context, it makes no sense to estop the government from proceeding with ejectment based on a few allottees' actions or inaction. Indeed, Indian owners need -- need not even be parties to a suit -- to a suit like this under the *Heckman* case that both -- both sides have cited.

Nevertheless, the Colville tribe, as majority owner, does support ejectment, and so do the beneficial owners who have submitted letters recently, some of whom are on the phone, I believe. So for all these reasons, we -- we request that the -- the Court order the ejectment.

Onto the motion for default judgment and summary judgment,

you know, as stated above, the regulations don't require consent to eject, but -- so for a variety of reasons, these motions are not very relevant, but what we put forth in our brief was an explanation of how under the facts and the law it really doesn't matter whether a handful of allottees are estopped or -- or they are subject to these judgments. We -- the tribe is a 56 percent majority owner. I think that the two motions taken together target at the very most 23 percent of the landownership, and that includes the Mr. Condon percentage.

The law is that the tribe has the controlling interest if there was any issues about what people wanted here under the current situations and that minority owners don't have authority by themselves to take action of legal consequence with respect to the land, and this is consistent with the master lease. So even if the minority interests were -- you know, there was judgment against them or they were estopped or something, that has no bearing on the ejectment motions and no effect on this case.

As to the specific motion for a default judgment, those -- default judgments are disfavored as a matter of law. Ten of the targeted allottees do not own any part of MA-8 at this time; so this part of the -- this segment or their -- this motion targets 21.3 percent of ownership. And, you know, when the motion was filed, I think the plaintiffs indicated that they were taking the position that anyone that had submitted even a letter would

not be subject to the default judgment, and now Mr. Condon has done that. He's 13 percent of the 21 percent; so under that logic, he should not be included in the motion.

You know, it's reasonable for the allottees to not have much participation, if any, in this case. Often, they have a very small percentage at play here. Their interests, it seems across the board, are aligned with the steps the United States are taking here and the position that the tribe is taking here, and -- and that's another reason why they wouldn't want -- need to be involved.

And then they have their trustee. You know, they're the beneficiaries of the trust. So the trustee is out there fighting for them. And so given the amount of stake, it just makes no -- the amount of stakes for them, it makes no sense to get involved, hire attorneys, and play a significant role in this.

On the motion for default judgment, three of the targeted allottees no longer own any part of MA-8. So the current owners, by my count, is -- if you add them up that are targeted by the motion for summary judgment are 1.8 percent.

Plaintiffs argue that the delay in bringing this action was for the need to resolve the dispute concerning allottee representation first. I don't know why that is a need. It's not -- obviously, they aren't looking out for the allottees' interest now. I don't know why they would've before. And

there's no rule that plaintiffs need to wait for parties to have attorneys before they engage in a motion for summary judgment like this under the rule. So we would -- we don't think that it's fair to enter judgment against any of the allottees for either summary judgment or default judgment, and I'll stop there and save any other time for rebuttal. Thank you.

THE COURT: All right. Thank you. And I do plan to allow both parties to have rebuttal; so plaintiffs will give -- get a rebuttal opportunity as well.

Ms. Harmeling, are you or Mr. Arnold going to go first?

MS. HARMELING: Your Honor, this is Ms. Harmeling, and I will go first.

THE COURT: All right. Please proceed.

MS. HARMELING: If it please the Court, I have a statement of facts that I think is relevant to our argument on all three of the motions that I'd like to start off with, and these facts are all documented in the record before the Court, mostly at ECF 89, 294 and 443.

In the 1980s, the BIA partnered with William Evans, Junior, a member of the Colville tribe who owned an interest in MA-8 to sell the camping club memberships to Washington state residents under a master lease that provided for Washington state law to govern and for use on off-reservation land where Washington state law governs. Both the original membership sale agreement and expanded membership sale agreement stated this contract

shall be interpreted and enforced in accordance with the laws of the state of Washington.

Now, the BIA represented to the public and to the state of Washington that the membership lasted through 2034. The BIA authorized the sale and participated in the marketing of the memberships as lasting through 2034, and that included a joint press release with Evans that was released to the members of -- or the residents of the state of Washington. BIA officials have testified under oath in this action that they believed the master lease had been modified in accordance with the extended membership sale agreement, which lasted through 2034. They testified that they represented to both Washington state residents and the state of Washington that the lease would last through 2034.

They testified that they had authority to make those representations. They testified that they knew Evans would sell the membership agreements and expected buyers to rely on the representation that it would last -- that those -- that those memberships would last through 2034. They also testified that they knew the public would rely on their representations that the master lease extended through 2034.

The BIA also notified the state of Washington in writing that the lease would not expire until 2034. This was in the form of a lease information affidavit that was signed by the BIA and submitted to the Washington State Department of Licensing

and Regulation stating that the master lease expired on February 2nd, 2034. BIA officials further testified under oath in this action that they approved the lease modifications incorporating the expanded membership sale agreement on behalf of the allottees.

Now, I do think it's important for the record to note that when the memberships were initially marketed and sold, the Mill Bay members were not an association, Your Honor. They were mere individuals interested in camping on Lake Chelan. Between 1984 and 1994, over 183 Washington state consumers purchased camp memberships. The memberships were sold at prices ranging from $5,995 to $25,000, although some members paid much more to buy the interest of the other members.

Washington residents spent millions of dollars purchasing the memberships. At ECF 89, Paul Grondal testified that he and his wife purchased their membership in 1991 for $25,000. At ECF 92, Doug Chantry testified that he and his wife, Joann, purchased the membership in April 2006 for $18,500 so their family would have a place to gather each summer through 2034. In 2008, they purchased another expanded camping membership for $110,000.

At ECF 93, Ron Johnson attests that he and his wife purchased an expanded membership in January 2005 for $75,000. At ECF 94, Michael Majack testified in late 2004, he was a full-time pastor raising six children. He borrowed money

against his house to purchase a membership for $11,500. He continued to pay down that loan for years.

At ECF 95, Frank Vertrees attests that he and his family purchased an expanded membership in 1995; and in 2005, they purchased a waterfront expanded membership for $96,000.

Now, upon purchasing memberships, the members also invested substantial sums in improving the RV park, and many of these improvements were permanent improvements that would be difficult to remove. At ECF 92, the Chantrys attest they purchased a new travel trailer to go along with their fifth wheel so their children and grandchildren would have a place to stay when visiting.

At ECF 93, the Johnsons attest they spent over $34,000 on a brand new 34-foot fifth wheel. They then added a 12-foot-by-70-foot custom pattern block driveway and made other landscaping improvements amounting to thousands of dollars and months of intense labor. In March 2008, they spent over $40,000 on a new boat specific to the weather patterns and environmental conditions of Lake Chelan.

At ECF 95, the Vertrees attest they spent more than $30,000 in lot improvements, including a concrete driveway and all-weather deck and landscaping. They bought a second fifth-wheel trailer for $35,000. They invested their retirement funds in this property and passed up other affordable recreational property options.

At ECF 89, Paul Grondal itemizes hundreds of thousands of dollars spent and volunteer hours invested by the members in reliance on the promise that they could stay through 2034. And these declarations also attest that many families made improvements specific to having their children and grandchildren come and visit them at the RV park through 2034.

Now, despite these representations, Your Honor, in late 2000, Keith Evans, Incorporated, which was Bill Evans' company, sent a letter to the Mill Bay resort members stating the park would be closing at the end of 2001 and all membership contracts would be canceled. On November 21st, 2002, the Mill Bay resort members filed a lawsuit against Keith Evans, Incorporated, in Chelan County Superior Court in front of Judge Bridges.

That litigation, as you know, was quite involved. In the middle of it, Evans died in 2003. Also during that litigation, the Mill Bay resort members, who were still just individual campers, formed and incorporated as the Mill Bay Members Association, a Washington nonprofit corporation, which are the -- one of the plaintiffs in this action, Your Honor. Also during that litigation, the personal representative of Evans' estate invoked the right to mediation of the dispute under Washington's Trust and Estate Dispute Resolution Act.

That mediation, as you know, lasted two days. Individuals present included representatives of the BIA, the Colville tribe, the allottees, Evans' estate, and the Mill Bay members. The BIA

representative testified under oath that they believed they were attending the mediation on behalf of the allottees.

The mediation resulted in a settlement agreement executed on September 15th, 2004, in which the Mill Bay members agreed to pay initial settlement funds of $48,000 directly to the landowners through the BIA as well as escalating rents in exchange for their right to occupy the RV park through 2034. The settlement agreement was reviewed and approved by all in attendance at the mediation. Those in attendance at the mediation were informed that the BIA and the allottees would be reviewing and would need to approve the settlement agreement.

Notice of the settlement agreement and motion seeking judicial approval were served on all interested parties to the litigation, including the BIA, and required anyone with objections or comments to notify the court by November 23rd, 2004. The BIA did not object. The BIA did not respond. After considering only objections and comments by Sandra Evans, who was Bill Evans' daughter, Judge Bridges approved the settlement agreement on November 23rd, 2004.

Now, notes from a -- from a landowners meeting -- the -- of a meeting of the allottees on November 23rd, 2004, show that they were informed the members would pay the settlement money within 30 days of that date. None of the landowners object to receiving that money. In fact, after receipt of the first payment -- the settlement payments were made in -- in two

separate payments to the landowners. After receipt of the first payment, the landowners demanded payment of the second half during a landowner meeting.

The Mill Bay members' settlement payments were made to the allottees, as I mentioned, in two parts. In February and April 2005, checks were cashed. The BIA officials acknowledged receipt of the settlement money, and they passed the money on to the landowners because the BIA would not release the allottees' address to Wapato -- or addresses to Wapato Heritage or to the plaintiffs.

BIA representatives have testified under oath in this action that they understood the implications of the 2004 settlement agreement on the landowners that the lease lasted through 2034. They testified in this action that the BIA, in its normal process, would have analyzed whether the 2004 settlement agreement was in the best interest of the landowners. They testified in this action that they believed the members' payments of the settlement money did affect the welfare of the landowners.

The landowners -- the landowners were additionally informed of the 2034 expiration date. Between 2003 and 2007, BIA officials were present at meetings where landowners were informed that the master lease had been extended through 2034. BIA officials testified under oath that they informed the landowners and others that the master lease extended to 2034,

and sign-in sheets from landowner meetings and names on letters sent to them show landowners constituting a majority interest in MA-8 received actual notice that the master lease expired in 2034.

Of course, following the 2004 settlement agreement, the Mill Bay members continued to act in reliance on the representations that they had a right to use and occupy the park through 2034. Some members waited until after the litigation had settled to purchase their membership. That's ECF 93 and 94. Investments in the RV property continued. Members paid the annual rent required by the settlement agreement, and it wasn't until late 2007 that the BIA took a position for the first time that the master lease had not been properly renewed.

So, Your Honor, it's with those facts in mind that the plaintiffs argue their motion for default judgment against certain allottee defendants. Now, it is plaintiffs' position that our briefing in the record is very complete. However, I do want to highlight some of the key points.

We're seeking default judgment against 19 landowners who failed to answer or otherwise respond to the complaint. All procedural requirements have been satisfied. The 19 individuals were personally served with a summons and complaint or waived service. The plaintiffs notified the 19 individuals of their intent to seek default judgments.

The Clerk entered an order of default against the 19

individuals as well as some others on October 2nd, 2009. None of those 19 individuals have answered or -- or otherwise responded to the complaint. None of the 19 individuals are infants or incompetent persons, and the Servicemembers Civil Relief Act does not apply.

Now, I do recognize, Your Honor, that three allottees who are the subject of this motion have filed statements recently that -- J. Condon, C. Garrison, S. Vanwoerkon. I'm sorry; I don't have their first names. However, those statements, Your Honor, as mentioned in plaintiffs' briefing, are boilerplate statements. They do not address the actual matters on which the complaint is based, and they are largely just stating their support for the government and the tribe and their distaste for the plaintiffs and Wapato Heritage. This doesn't address the arguments underlying plaintiffs' estoppel claim against the allottees.

As cited in multiple cases in our briefing, Your Honor, a party's mere appearance or a letter submission without any actual defense on the merits does not preclude entry of a default judgment. Also relevant, Your Honor, is that all three of these individuals state that they made a deliberate decision not to participate because they believed the BIA was representing them in this case. The case *EEOC versus Global Horizons* cited in our briefing addresses where a party makes a deliberate decision not to defend, the grant -- granting default

judgment is appropriate.

I do recognize, Your Honor, that the U.S. and the tribe oppose the motion for default judgment. However, the U.S. and the tribe do not represent the allottees, and they have been clear in that matter. These three allottees say that the U.S. represents them. Again, the U.S. does not, and its statement that it represents their interest does not give it the right to oppose a motion for default judgment, particularly when those allottees have not filed any responsive pleading in this matter.

I also think it's relevant, Your Honor, that Gary Reyes, who is now the only allottee in this action who is actually represented by independent counsel, is now well-educated on his actual rights and interest in this action. He says he does not support ejectment, and he also appears poised to sue the U.S. and the tribe over fraudulent conveyance for purchasing up his interest in MA-8 without having an appraisal performed, and those documents are also in the record.

The tribe challenges the timing of the motion for default judgment. I do believe our briefing on this point is pretty clear that the issue of whether the allottees needed to be represented -- and we were arguing that they did -- have been looming for quite some time. If you look at the orders of Judge Quackenbush in -- in the record, it's clear that he is saying, you know, he wanted to address those issues before moving to these other matters, and that was the position that the

plaintiff had also taken; so that was the reason for the delay.

Notably, the tribe and the government don't cite any authority that would preclude us from bringing a motion for default judgment at this point in the proceedings. Their cases regarding timing on motions to set aside default judgments really aren't relevant to this situation, and it is important to recognize that as soon as the representation issue was resolved by this Court, we immediately moved for default judgment.

The significance of the default judgment -- default judgments requested is -- is fairly clear. Our complaint asserts an equitable estoppel claim against the allottees. The U.S. spent pages of its briefing arguing that we have not asserted that claim, but they made that same argument in 2010, the same exact argument, and Judge Quackenbush rejected it outright, and that's at ECF 197 at 2.

Judge Quackenbush was very clear that we -- the plaintiffs have asserted an affirmative claim for relief for equitable estoppel against the allottees and that we also have a separate, distinct, equitable defense of equitable estoppel against the government motion for ejectment. The complaint was never amended so it doesn't matter at what time Judge Quackenbush made that -- issued that order. It's clear there is a claim asserted and that the allottees had notice of it.

Equitable -- equitable estoppel is a viable affirmative claim under Washington law. While it's true that the government

cites some cases saying the opposite, it's far more important that the Washington Supreme Court in -- in relatively recent cases have acknowledged the validity of equitable estoppel under Washington law. For example, in *Beggs versus City of Pasco*, equitable estoppel was used affirmatively, and that was the Supreme Court -- Washington Supreme Court en banc.

In *Washington Education Association*, also cited in our brief, the Washington Supreme Court en banc analyzed equitable estoppel on the merits as an affirmative claim with no suggestion of invalidity under Washington law.

In *DigiDeal Corporation*, also cited in our briefing, the Eastern District of Washington refused to find equitable estoppel failed as a cause of action, "given the Washington Supreme Court's apparent recognition of equitable estoppel as a cause of action." And in the *Foltz* case cited in our brief, a Washington court of appeals denied summary judgment and permitted equitable estoppel -- an affirmative claim for equitable estoppel to proceed to trial.

Moreover, even those cases that hold equitable estoppel is not a valid affirmative claim acknowledged the defensive utility -- the broad defensive utility in response to another party's position or claim, and -- and that analysis is put forth in our briefing. To be clear, Your Honor, the plaintiffs only asserted -- were only forced to assert equitable estoppel as an affirmative claim because the U.S. began taking steps to eject

them. The plaintiffs are not seeking to compel the allottees to do anything. They are seeking to have a defensive application that they may not deny the Mill Bay members the right to remain through 2034.

Equitable estoppel is also a viable claim against Indian land allottees. Notably, the United States and the tribe cite no cases holding equitable estoppel is an invalid claim against Indian allottees. The cases that they point to in their briefing are all specific to estoppel as applied against the government, which is a separate, more nuanced issue. On the question of whether equitable estoppel is viable against Indian land allottees, the only case in the record that is on-point is *Kizer versus PTP, Incorporated*.

Now, in *Kizer*, an Indian allottee, who was Kizer, entered into a 99-year lease with a commercial developer. The BIA approved the lease. Thirteen years later, the BIA and the tribe tried to undo the lease, and Kizer sued the developer, PTP, to have the lease declared invalid.

Since -- the Court found that since the developer had invested significant sums in reliance on the lease, equitable estoppel specifically may apply. But since the contract in this instance was contrary to federal law, a separate issue, the Court had no authority to enforce it. However, the decision does suggest that equitable estoppel would have otherwise been valid. That case is on-point to this particular issue.

The Court has asked why plaintiffs are applying Washington state law, and that is also highlighted in our briefing as well as the -- as Wapato Heritage's reply briefing that was recently submitted. However, I will go through that.

There are three judges that have separately held that state law applies to the claims asserted herein. That's at ECF 423-1. That's the decision of Judge Bridges. At ECF 423-2, that's Judge Nielsen's decision to remand that Chelan County -- that Chelan County litigation when the defendant sought to remove it to federal court. Judge Nielsen remanded it to the Chelan County Superior Court, saying that state law -- the claims were solely grounded in state law. And at ECF 144 at Pages 33 through 34, Judge Quackenbush also acknowledged this.

Now, some of the reasoning is that the master lease expressly states that it is governed by Washington state law. In addition, the membership sales agreement, both the original agreement and the expanded membership sales agreement, expressly state that they are governed by Washington state law.

Moreover, as Judge Bridges goes through in depth in his order, this is off-reservation property. Therefore, Public Law 280 says that Washington law applies. And Judge Bridges held that by selling campground memberships to Washington residents, the BIA and Evans subjected the beneficial owners thereof to Washington law.

So the reason for the government's applying federal law,

based on this history, are quite unclear to the plaintiff. It seems like it has already been decided by multiple judges in this action that federal law does not govern this dispute. State law applies. And so that, Your Honor, is why we are arguing the claims under state law.

In the motion for default, all of the elements for equitable estoppel are satisfied given the claims and the allegations in plaintiffs' complaint that have been admitted. The first element, the allottees made admissions, statements, or acts inconsistent with our later claims. The complaint set forth that these allottees were aware of the Chelan County litigation before Judge Bridges, and they accepted the increased payments under the 2004 settlement agreement in acquiescence to plaintiffs' tenancy of MA-8 through 2034. The complaint also alleges and it's admitted by these defendants that they knew Evans had exercised his option to renew through 2034. They received actual notice of his renewal, and they never rejected renewal.

The second element of reliance is also admitted. The complaint asserts that these allottees admit consumers paid significant sums in reliance on the validity of the memberships and the 2034 expiration date represented by the BIA and accepted by allottees -- the allottees.

And the injury element is also admitted here. The complaint asserts that plaintiffs will be injured by the

allottees denying plaintiffs the right to remain through 2034. So by failing to answer the complaint and being in default, all of our elements to establish equitable estoppel are satisfied.

The government says that the motion should be denied because we failed to discuss the *Eitel* factors. We have cited several cases in our briefing where *Eitel* was not addressed in the moving papers and the Court still granted default judgment. It is discretionary whether or not to consider the *Eitel* factors; but even if not, we've addressed them all, as is articulated in my reply -- in plaintiffs' reply briefing.

First, the complaint pleads a meritorious cause of action against the allottees. Default judgment may be granted for less than all the defendants, which is discussed in great depth in our reply brief. That's pursuant to FRCP 54(b). The Court has discretion to enter default judgment against less than all the defendants, particularly in an instance such as this where plaintiffs have not asserted joint and several liability here, nor could we. The *Reinhart* case that -- that we cite says tenants in common cannot bind each other via their actions. They can only bind themselves. So the allottees' actions individually bound themselves.

If the allottees are estopped, the U.S. could still argue ejectment should proceed nonetheless, and cases distinguish the -- the underlying case that -- that their claim is based on, which is *Frow*, where divergent outcomes can be reconciled, which

is exactly our situation.

In addition, this case is highly complex, as I'm sure you recognize, Your Honor. There's more than 35 parties, multiple causes of action asserted affirmatively, cross and counter, and the allottees failed to participate for than eleven years. So that *Eitel* factor is addressed.

In addition, at issue is plaintiffs' property interest of significant value. And finally, default not due to excusable neglect. Rather, many allottees deliberately did not defend. So the *Eitel* factors predominantly favor plaintiff in this action, and default judgment should be granted.

I want to turn to plaintiffs' motion for summary judgment, Your Honor. As we've indicated in our briefing, summary judgment may arise from unanswered requests for admission, and our motion for summary judgment says that eight allottees failed to answer the request for admissions. As has been mentioned by Mr. Reyes' counsel, we're no longer seeking summary judgment against Gary Reyes because he doesn't oppose plaintiffs' right to remain on MA-8 through 2034. He also doesn't support ejectment.

It's our position that the RFA's were timely served on October 1st, 2012. Although they cite a discovery order, as we have briefed, that discovery order only had a limitation specific to federal defendants' motion for summary judgment regarding ejectment. Discovery regarding anything else, there

was no deadline on. Even if they weren't timely served, the allottees never objected or sought a protective order, and we've cited multiple cases that say they can't -- they can't get out of the RFA -- answering the RFA's if they fail to object or seek a protective order.

The U.S. and the tribe cannot object on the allottees' behalf. Again, they don't represent them. And we cited several cases, including *Mangan versus Broderick*, saying that FRCP 36 places the burden on the party to whom the RFA's are directed to take some affirmative action, either by response or objection; and if they do nothing, then that party bears the consequence of those RFA's standing admitted.

In addition, the U.S. was served via the ECF system. Even if that was 30 days later than they should have been served, the U.S. and the tribe have not articulated any prejudice from that. The U.S. has acknowledged the RFA's in the record and have never objected. Those RFA's have been referenced repeatedly throughout this court record, and they've never been objected to until now. The objections are waived.

Importantly, the allottee defendants have never responded to the RFA's, and that is the same point about the seven statements that were recently filed. They don't address the matters on which the RFA's are based, which are things specific to their knowledge of the 2004 mediation and settlement agreement and their acceptance of settlement monies and -- and

increased rents in exchange for allowing the Mill Bay members to be there through 2034. We've cited cases that say failure to respond to an RFA deems it admitted and conclusively established. And if those RFA's are admitted, then all elements of equitable estoppel are satisfied vis-à-vis these specific allottees.

First of all, they made admissions, statements, or acts inconsistent with their later claims. RFA 2 says that they allowed Evans to sell camping club memberships stating the master lease extended through 2034. RFA's 3 and 4 say they received actual notice of Evans' attempt to extend the master lease and knew Evans believed the master lease had been extended.

RFA 5 says they granted the BIA authority to act on their behalf as to all matters concerning the master lease and RV park memberships. RFA 6 says that they approved the CTEC sublease, which had a provision affirming the validity of Evans' 1985 master lease renewal letter. RFA's 7 through 9 said they had notice of the 2004 settlement agreement and accepted rent therefrom in consideration of permitting the Mill Bay members to remain on the property through 2034.

The remaining factors for equitable estoppel are undisputed in the record. Reliant -- plaintiffs have invested substantial sums in reliance on the allottees' acts or omissions described above. That's undisputed in the record. And the fact that

plaintiffs would be injured if the allottees' prior representations are withdrawn, that's also undisputed in the record. The Mill Bay members spent millions of dollars on memberships, park improvements, and escalated rents. It will all be lost if the plaintiffs are able to walk back on their prior representations, and the Mill Bay members will be denied their promised use and enjoyment of the property.

Your Honor, you mentioned that the RFA's are not referenced as evidence. I do believe they are referenced throughout our -- our motion as evidence, and I also believe that they're referenced in the undisputed statement of material facts that was submitted therewith.

I wanted to move to the ejectment motion. We do agree that a threshold issue is whether MA-8 is held in fee or trust status. Our position, as the plaintiffs, is that the U.S. lacks standing to argue that the land is held in trust because it did not poll the allottees on this issue. Only holders of a minority interest have so indicated, and only if the land is actually classified as trust property does this even implicate the United States. So from plaintiffs' perspective, the United States has a conflict of interest in arguing and lacks standing to argue that MA-8 should or should not be classified as trust land.

Wapato Heritage is going to argue the rest of the trust versus fee issue so I'm going to move to the rest of my argument

and join in the arguments that they will make later on, Your Honor.

It is plaintiffs' position that plaintiffs' estoppel defense precludes ejectment. As we've argued in our brief, the U.S. is trying to have it both ways. Either it had the authority and has the authority to act on behalf of the allottees, and in that case, the BIA's representation regarding the 2034 expiration date bound the allottees; or the U.S. does not have authority to act on behalf of the allottees, and that would mean that they have no authority to eject the plaintiffs on behalf of the allottees. So from our perspective, it's one way or the other. They can't have both.

Now, critically, the MSJ regarding ejectment must be denied due to questions of fact that preclude summary judgment here, and I'm going to list just a handful that I came up with. It's the U.S. acting at the direction of a majority of its trustees and arguing MA-8 is held in trust. Is it acting at their direction in seeking to eject the plaintiffs?

What express authority did the landowners provide to the BIA in representing them as to the transactions with the plaintiff? What did the landowners know about the Chelan County Superior Court litigation? Did the BIA attend the 2004 mediation on behalf of the landowners? What did the landowners know about the BIA's presence there? Did the landowners receive notice of the 2004 settlement agreement? Did they approve it?

Did the landowners understand they were receiving settlement funds and escalating rent payments in exchange for the plaintiffs' presence on the property through 2034? What was each landowner's intent when they accepted rents from RV park membership sales? What was their intent when they accepted the 2004 settlement agreement money? Did the U.S. act with affirmative misconduct such that they may be estopped even if it was acting in a sovereign capacity?

Has the U.S. engaged in acts that would be sufficient to hold it as estopped as a matter of law? Have the allottees engaged in acts that would be sufficient to hold they are estopped as a matter of law? How did the Colville tribe acquire its present ownership rights in MA-8? These are just a handful of -- of genuine issues of material fact that would preclude summary judgment on ejectment, Your Honor; so for that reason, we don't think that this matter can be resolved on -- on a summary judgment and would all need to move to trial.

Now, Your Honor, you've asked why we don't address judicial estoppel. I assume that was in reference to Judge Whaley's ruling. That's addressed in our supplemental brief in response to the motion for summary -- the federal defendants' motion for summary judgment. Judge Whaley's conclusion that the master lease was not properly renewed does not preclude the plaintiffs from arguing that they had a valid license to occupy the property through 2034.

Judge Quackenbush said this at ECF 144 at Pages 21 through 23. Instead, a license was established by the BIA representations that the lease lasted through 2034, the BIA's authority to act on behalf of the allottees, notice to the allottees of the 2034 end date, the 2004 mediation and settlement agreement permitting them to stay, and the settlement payments from the plaintiff cashed by the allottees, along with escalated rent. Plaintiffs have invested significant funds in reliance, and all of this makes that an irrevocable license, as argued at ECF 295.

Now, Judge Quackenbush suggested that the allottee defaults and admissions could establish that the master lease, even though not properly renewed, nonetheless ran through 2034 due to estoppel. That's ECF 177 at Pages 8 through 10, and plaintiffs argue this ECF 295. It's our position that the motion for summary judgment should be denied for two separate reasons, the first being that the allottees are estopped to deny the plaintiffs' right to occupy and use MA-8 through 2034, and that has already largely been argued.

We have asserted a claim for estoppel against the allottees. The default judgments and admitted RFA's establish the claim, and those cover -- Wapato Heritage and Gary Reyes, that covers 62 percent of the ownership interest. But even if those motions are not granted, Your Honor, that denial is not dispositive as to this motion, and these questions are still

preserved for trial as to all the allottees.

We've asserted a claim for estoppel against 100 percent of the ownership interest of MA-8. It's our position that the allottees have knowledge of the 2004 mediation and settlement agreement and accepted settlement payments and escalating rent payments. Plaintiffs made all the -- all the required payments to the allottees, and Wapato Heritage has acknowledged that all rents have been paid. I've already explained that equitable estoppel is a viable claim against the allottees, and it's a viable affirmative claim under Washington state law. For that reason, the government should be estopped because the allottees cannot direct them to move forward.

It's our position that the federal defendants are estopped to deny plaintiffs' right to occupy and use MA-8 through 2034, the first reason being, as I just mentioned, they lack majority allottee approval to eject the plaintiff. The BIA has never properly consulted with the allottees. In ECF 144, Judge Quackenbush explained he was highly concerned that the BIA did not consult with the allottees before seeking to eject the plaintiffs.

Judge Quackenbush explained Judge Whaley's decision in that same order. He explained Judge Whaley determined that the BIA was not a party to the master lease. Accordingly, the BIA had no independent contractual right to enforce the terms of the master lease. He explained 25 CFR 162.619 requires that in the

event the tenant does not cure a lease violation, the BIA must consult with the landowners as appropriate and determine what remedy should be invoked, including, for example, whether to provide the tenant with additional time to cure.

Regulations make clear that the entire purpose of the authority and remedies provided to the BIA for lease violations is to ensure that the landowners' property and financial interests are protected, and Judge Quackenbush denied the federal defendants' first motion for summary judgment regarding ejectment because there was no evidence that the BIA had consulted with the allottees before seeking to eject.

Now, thereafter that motion, the U.S. claimed that it did consult with the allottees by having Debra Wulff, superintendent for the Colville agency of the BIA, send out that two-page check-a-box mailer to a limited group of allottees. However, we have argued that her testimony is inadmissible hearsay evidence that may not be considered on summary judgment. That means that this Court has no admissible evidence on which to base a ruling that the U.S. is actually acting at the direction of the allottees.

Even if not, we have argued that the allottees, as a whole, are estopped to deny plaintiffs' presence on MA-8 through 2034 so they could not even express that opinion to Debra Wulff that they wanted her to eject the plaintiff, and we've also challenged the percentages identified in those documents.

In addition, the claim that the allottees want to eject the plaintiff now doesn't address that they -- they are estopped now because of their prior representations and omissions. The tribe claims that it now owns the majority interest and that it can direct the U.S. to eject the plaintiff, but that's -- number one, that is a -- that first is irrelevant because plaintiffs' estoppel claim is also directed towards the tribe, who is an allottee.

The tribe's representative, Sharon Red Thunder, was present at the 2004 mediation. The tribe had knowledge of the 2004 settlement agreement and never objected. The tribe accepted settlement money from the plaintiff following the 2004 settlement. So we -- we have an argument that they're estopped, even if they do own the majority interest.

Nevertheless, plaintiffs have cited case law to show that they have an equitable servitude that runs with the land. So even if the tribe is the majority interest owner now, they weren't during the relevant period of time, which was back when that settlement agreement was signed and those settlement monies were cashed.

In any event, we have said that they are not a majority interest holder. They are trying to claim the benefit of Wapato Heritage's almost 25 percent interest, and we've cited regulation and case law to say that that's not the way that it works. Wapato Heritage gets to speak for itself. And

13.6 percent of the BIA's claimed interest is void in ab initio for failure to purchase those interests with appraisals.

In addition, the U.S.'s prior inconsistent acts preclude ejectment. We do have cases that we have cited that say -- and this is the Ninth Circuit position. When the U.S. is acting in its proprietary capacity, it can be estopped. And it's acting as a proprietary -- in its proprietary capacity when it is involved with a commercial contract, as it is here.

Separately, the Ninth Circuit has said even in its sovereign capacity, it can be estopped if there was affirmative misconduct, and the *Wharton* case that we cite on this point is -- is very much similar to this case. In that case, government officials approved an application to reclaim public land, and the plaintiff lived on the land in reliance in that application for 50 years. The plaintiff's wife wrote to the Bureau of Land Management requesting to prove land was received -- or excuse me, requesting to prove land was reclaimed.

The BLM said that she was -- said that that individual, the plaintiff, was trespassing but would be notified of a further application to file to gain title. The BLM said the same thing the following year, and ten years passed. At that point in time, the BLM reclassified the land and sought to eject the plaintiff.

Estoppel was -- was applied against the government, even though they were acting in a sovereign capacity, and the -- the

standards that they applied were to say that the BLM gave the plaintiff erroneous advice and officers of the BLM made misrepresentations to the plaintiff. That is exactly what has happened here, Your Honor. The case *U.S. versus Georgia Pacific* also applies.

Now, although the government is claiming to be acting as a trustee, it's our position that that's a red herring. The *Cayuga Band* case says that even where the government is acting to -- to vindicate -- vindicate rights of its trustor, if it's acting to vindicate private rights that are proprietary in nature, it can still be estopped. It can still be -- yeah, equitable defenses can still apply.

Therefore, Your Honor, we do believe for all of those reasons that the motion for ejectment should be denied. Thank you.

THE COURT: Mr. Arnold, your comments?

MR. ARNOLD: Thank you, Your Honor, and may it please the Court. I'd like to point out as a threshold matter that under this Court's local rules, 56(C), the parties are required to provide a statement of facts which is non-argumentative and essentially a bullet list with cites to the record. That has not been done by the plaintiff or the tribe -- the federal plaintiff, if you will -- to rebut our statement of facts entered at 443.

They simply say this is irrelevant with boilerplate

objections, as such, without a citation into the record or any evidence to controvert our positions. Of course, as the nonmoving party, we are also entitled to have the facts taken in the light most favorable to us, but I would suggest to the Court that the fact that they have ignored that local rule bears against summary judgment being granted in their favor.

Similarly on an evidentiary point, Your Honor, the recently-submitted form letters to the Court are not admissible evidence. They were late for this hearing, as matter of the rules, and we have also not had a chance to cross-examine that testimony. We believe it should be disregarded by the Court, particularly on a Rule 56 hearing. If those individuals come and testify and are subject to cross-examination at a trial, that is, of course, a different story.

Your Honor, with regard to one of your initial questions about the request for admission, what other evidence does the RV park have, I think Ms. Harmeling did an excellent job of walking through this, but the essential evidence is the conduct here regarding estoppel.

It's undisputed that the BIA took funds, and they then distributed those funds to the allottees. Those funds were then cashed by the allottees, and that evidence can be found by the Court at ECF 91, and that evidence has not been rebutted. So the allottees benefitted, but now they want to change their position to the detriment of the RV park and to those objecting

allottees, which include my client, who holds a significant interest here.

Now, the government took a position early on in their argument that the only issue the Court needs to decide is whether or not this is trust or fee land, and I would submit to the Court that that's not the case. The government can -- the allottees can still be estopped even if this is trust land; and certainly the Court can elect not to grant summary judgment with the heightened standards of Rule 56, regardless of whether the allottees were estopped as estuary of a trust relationship or they are estopped as owners of the land in fee simple. So that position by the government is simply incorrect.

Now, Your Honor, with regard to the issue of trust versus fee property, this has been discussed at significant length throughout these proceedings over the many years, but the facts -- the historical facts here that this property was... (audio gap) the General Allotment Act, and it proceeded from a different line of legislation. There's no provision whatsoever in the Moses agreement or legislating approving it, which was signed by President Hayes for a patent to be issued at all.

We then have the *Long Jim* cases where in 1912, Supreme Court holds that there's no way for an issue -- a patent to issue to Long Jim but that he's entitled to the property to the exclusion of the white settlers who were seeking to homestead.

Then in 1906, we have special legislation that did allow

for the issuance of patents for the Moses -- and Long Jim does receive that patent. We then have the history with the Wapato Irrigation Company, which has been very helpful from the *Lord* case in the Washington State Supreme Court, but it -- the -- and this has been examined in depth by this Court.

The upshot of it, Your Honor, is that this is not -- this is not something that flows from the General Allotment Act; and when the trust period expired, the subsequent acts of Congress and executive orders that were signed referred to reservation land. Now, this is -- the land we're talking about here is 100 miles away from the Colville Reservation. It is not part of the Columbia Reservation. The Moses agreement itself originated from the severe misfortune of those people and the extinguishment of that reservation.

Now, Your Honor, the government relies on a series of acts that go specifically only to reservations. As I stated, this is not. They specifically focus on an act of President Wilson. Now, President Wilson was -- signed an executive order that he did not have authority to sign because the statute under which he executed that order said that there could be an extension of the restrictions on alienation. That legislation did not say that there could be an extension of the trust period.

And we should remember that the deed itself and the statute that created the Moses allotments says that the government shall issue a fee patent when the trust period expires. In other

words, it is mandatory. So even if President Wilson merely did what he could do -- in other words, we read into his executive order what he had authority to, which I would argue is incorrect cannon of construction. But in that case, the 1924 act removed any restriction on alienation at the legislative level; and in either event, a fee patent should issue.

Now, we have an important -- important issue. And as this was argued before to Judge Quackenbush, it's sort of like a conveyor belt. And once the land falls off the conveyor belt and is no longer in trust, it requires the fee simple owners to then go to the government and ask that it be put back in trust. The government merely trying through legislation, executive order, administrative authority or otherwise to claw this land back into trust is a taking, which is in violation of the U.S. Constitution.

Your Honor, there are significant issues of historical facts here as to whether or not this is trust or a fee land. There are significant issues as to the conduct of the BIA, not just the BIA today or in the last ten or twelve years but the BIA going back to the conduct that we see in the *Lord* case. Now, these are factual issues that need to be weighed by a jury and have -- have that finder of fact come to a conclusion.

Your Honor, you asked specifically about judicial estoppel as to -- you know, essentially, an argument has been made and I think I understood Your -- Your Honor's question. There's been

an understanding by the parties over the years that this was trust land, and the government has seized on that and suggested that because everyone believed it for some period of time, it must be so. And I would point out to the Court, with great deference to His Honor, Judge Quackenbush, who really is a giant in this field, that these are questions that are so complex and with such deep historical roots that even Judge Quackenbush in these proceedings reversed himself as to whether the General Allotment Act applied to this land.

I'll also point out to the Court that judicial estoppel not only requires taking a specific position, but it requires prevailing on that position after a fair and full opportunity to litigate such a position. In this case, Wapato Heritage has never benefitted from a position that this is trust land; quite the opposite.

If it were fee land, we would be in significant better position and, we would contend, so would the rest of the allottees; and that has additional -- additionally been testified to by Mr. Webb, who is qualified as a CPA to make those statements. And at minimum, it is a question of fact, again, to put before a jury. But, Your Honor, the -- the linchpin here is that we've not had the chance to fully litigate that issue, and more importantly, we have never benefitted by any determination. So we are not judicially estopped.

There's also no such thing, at least that I'm aware of --

and I could be wrong -- of legislative estoppel where we have lobbied for a 99-year lease to the legislature. That was in fact not done by attorneys. It was done by lay people, Mr. Bill Evans himself and Mr. Webb. Estoppel should not lie there.

I think it is also important for this Court to note that the government has argued that principles of equitable estoppel do not apply to it, but it wants to use it as a sword itself, and not just against anyone, but it wants to use equitable estoppel as a sword against the estuary of its own trust relationship.

So not only would this be unfair in a vacuum for them to say that we are not amenable to this acting in this commercial capacity, but we can use it to our own benefit; we're going to use it against our own estuary of this trust relationship, and we're essentially going to ask the Court to estop in the name of equity our own one-time beneficiary from being able to own the land that there is a historical argument that they may own. In other words, we're going to estop them from their own rights that we had an obligation to protect and have full disclosure and full transparency.

So I believe that the language of the Ninth Circuit in *U.S. versus Georgia Pacific Company* is very on-point here where they talk about in certain circumstances, morals and justice indicate that the government is not entitled to immunity from equitable estoppel, and we would suggest that this is such a case where

the facts of equitable estoppel should be put before a jury, and equitable estoppel is -- itself is categorically a factual question and not something that should be determined on Rule 56.

Now, Your Honor, another -- another important point that raises another issue of fact as to this trust or fee issue is there have been fee patent issues. There are fee patents that have been issued to six of the allottees. There's a question of fact as to why that was possible, what were the circumstances under which -- which it occurred, and another reason why Rule 56 is not appropriate here.

Your Honor, I'll also echo Ms. Harmeling. Judge Quackenbush denied the federal defendants' first ejectment action because of a question of whether or not they consulted with the allottees. Now, there remain questions of fact about whether or not that consultation has taken place, under what circumstances it took place, whether or not it was sufficient, whether or not it was biased, and those are all questions of fact that then go to what is the fiduciary relationship here between the government and the allottees?

And I will point out that the tribe itself is not in some special position here vis-à-vis the other allottees, which include my clients. They are -- this is not reservation land. We are far away from the Colville Reservation. It is the same as if the tribe went out and purchased land with a series of other fractionated owners underneath Sprague Avenue or Fourth

Avenue in Seattle or anywhere else.

I think it's important for the Court to recognize that while the government said that damages have occurred, that is not something that has been briefed or argued. In fact, they explicitly reserved that issue in their brief at ECF 232 Page 2. "Federal defendants will seek to pursue their claims for trespass damage at a later time."

Now, there's a very interesting question here, Your Honor, about this fiduciary relationship. The government says that they're required to protect the trust land asset. The tribe has echoed it. And if this is trust land, for the sake of argument, we agree, but the question is do they have to follow the will of the majority? And the government and the tribe say they do not. Of course, it's an ironic argument for the tribe to make because why are they here, then, if what they say doesn't matter?

And if the -- if it doesn't matter what the landowner allottees want or desire with the land, then it must be the highest economic use of the land, and the government has yet to put forth what its plan is for this land.

It's particularly ironic, Your Honor, because my client, as 24 percent some-odd owner of this land -- if the government can come to us and say, "We have this plan that we're going to execute as soon as we eject the RV park, and you're going to get -- hypothetically, you're going to receive triple the rents that you're receiving today," well, then maybe I'm aligned with the

government, but reality is they just have not done that. We don't know what the plan is after the government receives -- or removes, rather, one of these two revenue streams from this property.

So, Your Honor, it's clear -- and this -- this is not a new -- we're not putting the government on the spot here, either, Your Honor. With the length of this litigation, they have had ample time to tell us what is going to replace the RV park. And if it's something that the tribe is intending to do, then so be it, but there is no plan. That should be put to the allottees to make a decision instead of the government's arbitrary and capricious decision to merely remove someone who -- someone who is occupying the land, providing revenue to the allottees -- which includes the tribe, includes the unrepresented allottees, includes my clients -- with no plan to do anything else.

The only inference that we can draw from this is that the government has decided to favor one allottee over the other, which would be the tribe, in its scheme to remove from the land non-Indian individuals. That is, frankly, discriminatory and flies in the face of the 14th Amendment. And -- but more importantly, it is a breach of the government's fiduciary duty to the allottees, including the tribe, including my clients, to not have some plan here as opposed to just letting the land lay fallow; and that has never been explained in this case, and that

should be put to a trier of fact to explain how and why the BIA has conducted itself the way that it has.

Similarly, if the BIA was given notice by Bill Evans in his letter of 1985 -- and this was at a time that Bill Evans was the estuary of this trust relationship. So here we see the BIA early on picking and choosing who they want to carry their fiduciary out to. And where was disclosure then by the government to either Bill Evans or now later Sandra Evans, who is a beneficiary of Wapato Heritage, who is an enrolled member of the Colville tribe, and who is a estuary of this trust relationship as well, that there was an issue with the notification?

I'll also point out that the BIA in 2005 refused to give the Wapato -- Wapato Heritage and its successor entities the addresses of the landowner allottees so that we could make settlement payments; so we would have no reason to believe in 2007 that they would give us notice. This so-called invitation to give notice is, in our view, disingenuous, and that is not how the equities weigh in favor of the government as opposed to the RV park or opposed to those objecting allottees.

And in any event, as I stated earlier, Your Honor, a jury should weigh these equities. A jury should look at the facts, and equitable estoppel is categorically a factual inquiry.

Now, the tribe indicated that they are entitled to enjoy the fruits of the land as if this was simply their land, and

that's not the case. They are an allottee just like any other. They don't simply have the option of picking and choosing what is to be done with this land in a vacuum as if they own it in fee. In fact, if that was the case, then my clients, as 24 percent interest holders, could decide by their own fiat what to pick and choose to do with the land, and I've got a feeling they might invite some of their friends to come camp who happen to be owners of Mill Bay.

So we have a government and a tribe that is trying to have things two different ways. Either ownership percentages don't matter, and then the government is required to have the highest economic use of the land, but they failed to do so; or ownership percentages do matter, and the tribe should be estopped with full knowledge of the -- of the settlement in 2004, having received funds, benefitted, and now trying to change their position. And, Your Honor, that is essentially what the gravamen of this particular motion and what a trial should be is.

If the federal defendants -- and I do group in the tribe there because they clearly appear to be aligned, despite conflict of interest. Did those parties, along with the allottees, have notice and take funds and take a benefit and are now trying to change their position to the detriment of not just the RV park but their fellow allottees, including my clients and the other objecting allottees? Thank you, Your Honor.

THE COURT: Thank you. We are going to take a ten-minute break. Please do not disconnect. Just keep your lines connected. And at the -- after the ten-minute break, we are going to begin rebuttal.

So I don't know whether the pro se parties, Ms. Marcellay or both Ms. Marcellays and Ms. Thinelk, would like to speak then as well as Mr. Borde; or if you want to wait until the conclusion of all of the rebuttal, in which case we will begin again with Mr. Derrig, move to Mr. Chestnut, then go to Ms. Harmeling and finally Mr. Arnold. You can think about that during the ten minutes, and then we will resume.

Court is in recess.

(Whereupon a recess was taken.)

THE COURTROOM DEPUTY: Court resumes.

THE COURT: So this is Judge Peterson. Ms. Marcellay, do you want to speak now or at the conclusion of all of the attorneys?

MS. MARCELLEY: Your Honor, I'd like to speak at the conclusion.

THE COURT: Of all of the attorneys. Okay.

MS. MARCELLEY: Yes.

THE COURT: Ms. Thinelk, is that the same for you?

MS. THINELK: Yes, Your Honor.

THE COURT: Okay. And Mr. Borde, at the end of all of the other attorneys?

MR. BORDE: Yes, Your Honor. Thank you.

THE COURT: All right. Mr. Derrig, rebuttal? And one question that I would like you to address is Ms. Harmeling's -- and can you hear me okay? I'm picking up some feedback.

MR. DERRIG: I can hear you, but I'm also hearing some small feedback, too.

THE COURT: Okay. So if everyone can mute their phones -- microphones if they're not speaking, that would be very helpful.

So one of the issues that Ms. Harmeling raised is that Public Law 280 allows Washington state land law apply to allotted trust land. I'd like to hear your point on that.

And again, I need people to mute their microphones. We are getting feedback; so please, everyone mute their microphones.

Mr. Derrig, we'll give this a try. Go ahead.

MR. DERRIG: Yes, Your Honor. Joseph Derrig on behalf of the United States. First, I want to correct some of the record with -- the state law application, I think, was one of the Court's first questions.

Ms. Harmeling referenced the master lease as incorporating state law. During the argument, I again reviewed the master lease. There's no provision applying Washington state law. I mean, the master lease is formed under federal law. At best, there's a provision that says if the trust status is terminated that certain provisions under state law would apply, but that

obviously, did not occur during the term of the master lease and has not occurred in a hundred years; so I just want to be clear on that first.

Second, we have this accusation of some partnership, you know, commercial interest for the BIA. That also is nowhere in the statement of material facts. It's important to remember that the master lease was, you know, approved by BIA, but it was not marketing -- and frankly, the master lease was then subleased to Bill Evans and Marlue (phonetic spelling), which was then Wapato Heritage, and then the camping memberships, you know, came from that -- that sublease. Again, all these things flow only from the rights of the master lease, though.

And then to address the, you know, statements made in 2004-2005 by BIA employees, everyone was under the impression that the master lease had been renewed by Mr. Evans. When it was audited in 2017, it was identified that he had not properly renewed the master lease. Again, he was notified of that, or at least Wapato Heritage was notified of that, and they -- all they had to do is take the steps -- master lease to, you know, effect that renewal, and they just failed to do so.

And again, this same equity argument was made in the prior Wapato case, and it wasn't found there because they had sufficient time to renew the lease if they took the steps, and they were notified by the BAO -- BIA that they could do so. The BIA is simply, you know, following -- acting as trust capacity

and following the regulations here. There's no ulterior motive, commercial interest, or anything like that. We are required under the regulations, unless we receive notice from a majority of the allottees that there's another lease in good faith being negotiated, to eject a holdover or trespassing entity on trust land, and that's -- that's what we're doing here.

I'd also like to, again, correct the record with this -- there were some comments about Mr. Reyes and, you know, his sale of the property to the tribe and, you know, a lack of an appraisal. There was an appraisal. Mr. Reyes was represented by Mr. Finley contemporaneous to that sale. You know, if he's unhappy with his sale or he wants to file some claim, he can go do that in federal claims court. That is not at issue in this -- in this case.

And again, the percentages do not matter because what -- it would only matter if more than 50 percent are notifying the government that they're negotiating a new lease, and that has not and is not occurring; so I think that's a bit of a distraction, but I do want to make sure the record is clear on that.

With regard to the payment, I guess there's a lot of talk about a payment under the settlement agreement. This has been, again, addressed repeatedly, and I think at -- most recently maybe at ECF 357. Although there was a -- there was a payment following the settlement to the Indian landowners in 2005, the

record reflects that about $23,000 was paid by checks by Wapato Heritage made out to the beneficial landowners.

The context of this payment was also previously explained at 347 Page 9. The payment was for Wapato Heritage to some of the beneficial landowners to induce or entice them to sign a new 99-year lease. Each check included a note that read, "Attached is a check representing 50 percent of your 2004-2005 MA-8 RV park rental income." So there's no mention of settlement there. "The remaining balance will be mailed to you on the receipt of your vote on the proposed MA-8 development. Warmest regards, Wapato Heritage, LLC." So, I mean, in context, I think that payment needs to be understood in that -- in the particular circumstances there, and I think that's been well-briefed in the record there.

If the -- again, you know, the United States is bringing the motion for ejectment. If the motion is granted, the -- the motions against the allottees are moot or should be denied, and no judgment should be taken against them.

With respect to the Court's question about Public Law 280, I will say that I'm not well-versed in that, and perhaps the tribe may have some additional comments with respect to that. I'll try to -- if the Court would allow and wants a supplemental written response on that, I could file a letter response by the end of next week if the Court were to like that.

THE COURT: I -- I don't think we need that. Thank

you.

Mr. Chestnut, are you ready with rebuttal?

MR. CHESTNUT: Yes, Your Honor. This is Brian Chestnut. On the Public Law 280 question, my understanding is that it's -- and I wasn't -- I'm not totally prepared on that point, either, but my -- I don't think it should concern the Court. It's a federal law establishing a method where states assume jurisdiction over tribal -- or Indians in general, but I think it's for only criminal law enforcement. It's not something that would gather in our case, and it shouldn't have any effect on the real question, which is whether the land, MA-8, is held in trust.

The nature of whether the land is reservation or not is -- has not been fully briefed or -- and it doesn't seem very important to decide in this case because the question is really whether it's just trust land. If -- if there's a question about whether this is reservation land or Public Law 280, I think we would like the opportunity to provide some supplemental information about that, but we think the trust issue is -- is a question of law based on the historical record and can be decided by the Court based on the record before it; no issue of fact.

Let's see. We also support the idea that state law be applied. The -- the whole concept of trust land is the result of federal law, and we have a federal statutory and regulatory

regime that controls the United States' administration of trust land leasing and roles of allottees and -- and the non-role, frankly, of, like, stakeholders in most cases. The arguments put forth by our opponents were rejected by the Ninth Circuit based on our, basically, fact pattern in the *Wapato Heritage* case, which said that courts have limited circumstances in which state law may apply to the interpretation of a federal contract, such as when the United States is not a party or when the direct interests and obligations of the government are not in question, and here we have -- those exceptions don't apply because the U.S. is a party and the interests and obligations of the U.S. are at stake here.

As for the question of the 2004 settlement agreement, my understanding is that the Colville tribe and United States are not parties to that and, obviously, aren't bound by it. No matter whether they were at a meeting or whatever, I think everyone on the phone knows in order to bind a party to an obligation in some way, you know, you have to do something, get something from them, usually a signature on a document.

On the question of estoppel against the allottees, you know, our primary point is that we're talking about a very small percentage of the allottees; so it doesn't matter. But we would also point out that the equitable remedy of estoppel should not apply when there's federal rules that haven't been established to follow a lease -- to establish a lease, haven't been followed

to establish a lease. There's clear rules on how someone can obtain a lease, and the Ninth Circuit agrees; and in this case, the lease was not renewed, and there's no lease that exists.

The federal regulation requires consent and some sort of affirmative act for a lease rather than something like estoppel, which is a much more passive action and not true consent. So it's our position that the 1984 lease gave them -- gave them the rights, and there's no further rights beyond what's in the lease.

It's also important to consider that we're in the trustee-beneficiary relationship here; and under trust principles, the trustee acts on behalf of the beneficiaries. And generally speaking, estoppel does not apply to beneficiaries for matters handled by the trustee. As a matter of federal law, the U.S. Supreme Court in cases cited by, in some cases, both parties, the *Mitchell* and *White Mountain Apache* U.S. Supreme Court cases, after a trust is established, trust principles are applied to determine how the -- the assets should be administered by the United States, and -- and they cite to the Restatement of Trust for this principle along those lines.

And the Restatement of Trust 3rd Edition, Section 103, says that as a general rule, the beneficiary is not subject to personal liability to a third party for an obligation incurred by the trustee and the closed trust administration. So a beneficiary ordinarily is not personally liable on a contract

entered into, for example; or if some third party has a claim against the trustee based on the trustee's ownership of trust property or management thereof, the third party ordinarily is not entitled to enforce the claim against the beneficiary personally. So along those lines, it doesn't seem appropriate to apply estoppel principles to the more passive party here, the beneficiaries.

The *Kizer* case cited by plaintiffs is a situation where the estoppel was discussed but not actually applied. It's a case that's never been cited since it was issued by the district court, and it relies on general estoppel cases where it's dicta that the plaintiffs relied on in a non-Indian context. In other words, the cases that are cited by *Kizer* are not like this case.

Kizer had a single allottee involved, and here we have many allottees; so estoppel would have to be based on some larger group of actions, not -- not just a single allottee's action in this case. Plaintiffs only seek to apply this idea to a minority percentage of owners among many owners, and so we think it's a very different case.

I just have a couple more points here, Your Honor. When it comes to the percentages, Mr. Reyes is getting referred to as someone who's about to sue the United States and that his -- his transfer is to the tribe; his ownership transfer is void. As Mr. Derrig pointed out, he was represented at the time, at least in court, and there was an appraisal, apparently. But actually,

you know, we haven't seen any lawsuit, and it's been a number of years, and that's not a matter before the Court in this case. So we think it's a real red herring. You know, it's not at all clear that there's a claim there, and the fact that he hasn't sued, I think, shows that.

In order to bring a claim like that, you'd need to make a real -- you'd have to go to the Court of Federal Claims, not this Court, and you'd have to make a showing that you have jurisdiction. And under the Indian Tucker Act, there's real questions about whether there's a claim here based on the standards that apply there that require jurisdiction. There's also a question about whether there's a statute of limitations problem with that claim so we don't think the -- the idea that that transfer is void should be considered by this Court for all those reasons.

There's also a question about Wapato Heritage's percentage interest in this case, and they have a life estate; and in the briefing, they argue that the federal regulations are silent as to whether life estates are counted for consent. And -- and this is all potentially irrelevant because we don't think consent matters when -- when the U.S. just follows the regulations to eject a trespasser.

But if we do get into percentages and consent, they have no vote. They have a life estate. They're not tribal members. They're not Indian, in terms of the LLC is not. Wapato

Heritage, LLC, is not a tribal member or an Indian.

LLC's don't get trust land. They don't -- they're not the beneficiaries of trust land. And 25 -- 25 CFR 162.012 is not silent as to whether trust interests are counted. It refers to trust interests, and trust interests are defined in 25 CFR 162.003. And clearly, trust interests refer to tribal members who have a beneficial interest in trust land or a trust.

I think that concludes my remarks. Thank you, Your Honor.

THE COURT: Thank you.

Ms. Harmeling, rebuttal?

MS. HARMELING: Yes, Your Honor. I wanted to start by addressing their argument that state law does not apply. As I mentioned in my initial opening argument, three judges have found that this matter was grounded in state law.

To clarify, Your Honor, the master lease itself does not say Washington law applies, and I apologize; that was a misstatement. However, the argument I was trying to make is that the master lease was modified to incorporate both the original membership sales agreement and the expanded membership sales agreement, which both expressly stated that Washington state law applies. Therefore, by incorporating those documents, it's our argument -- and this is in the record repeatedly -- that the master lease is governed by Washington state law through those express statements in those documents that were incorporated.

Now, the argument about Public Law 280, Your Honor, was addressed. This is in Judge Bridges' decision, and he talks about it in great detail, but essentially, he argues that Washington has assumed -- he doesn't argue. He cites cases and regulations and RCW sections to show that Washington assumed full nonconsensual civil and criminal jurisdiction over all Indian country outside established Indian reservations. Allotted or trust lands are not excluded from full nonconsensual state jurisdiction unless they are within an established Indian reservation.

As is documented many times in this record, this particular property, MA-8, is not within an established Indian reservation. It is argued to be allotted or trust land. However, it is not within an established Indian reservation. Therefore, Public Law 280 would apply. Now, Judge Bridges goes on to cite cases from the Ninth Circuit that say in that circumstance where Washington -- where Washington has jurisdiction over that particular Indian country where Washington state law would apply in this circumstance.

Now, he specifically says that by the BIA and the government selling campground memberships to Washington residents, the BIA and Evans subjected the beneficial owners thereof to Washington law via the Campground Resorts Act. The Campground Resorts Act has both civil and criminal penalties, and it's for that reason that he identifies that Public Law 280

would apply. There's also Ninth Circuit law that we cited in the record to say that trust land can be subjected to state law by actions of the BIA and landowners.

At bottom, Your Honor, this land was being made available for camping resorts, which is highly regulated under Washington state law, and it's for that reason that Judge Quackenbush was the third judge in all of this to find that federal law does not apply to govern this entire dispute and that that was a gross overstatement by the government every time it keeps trying to say that. It was an overstatement then. It is an overstatement now.

Your Honor, our motion for default judgment should be granted. As I've discussed, 19 allottee defendants were properly served with the complaint. The complaint states a cause of action very clearly for equitable estoppel against these allottee defendants. I've gone through all of the allegations that -- that satisfy the elements of equitable estoppel, and none of that -- none of that is refuted that those elements do satisfy equitable estoppel.

We've addressed the *Eitel* factors to explain why this is a circumstance where it would be appropriate for the Court to enter default judgment against less than all defendants. There really is no basis on this point to deny default judgment.

Similarly on the motion for summary judgment, there is plenty of evidence in support of summary judgment against these

allottees on plaintiffs' equitable estoppel cause of action, as I went through in great detail in that statement of facts early on and would reference to where in the record those facts could be -- could be found. However, the RFA's that have gone unanswered provide even greater evidence.

As I discussed, the plaintiffs properly served the RFA's on the eight allottee defendants. They were timely served. The allottees never objected, never sought a protective order.

Although the U.S. and the tribe are trying to object on their behalf, as a matter of law, that has no relevance to whether or not those RFA's are deemed admitted. We cited case law from the Ninth Circuit to say that RFA's that are admitted -- deemed admitted are conclusively established, and these RFA's align with the behavior that the other facts in the record support, that these allottees allowed Evans to sell camping club memberships stating the master lease extended through 2034, that these allottees received actual notice of Evans' attempt to extend the master lease.

They knew that Evans believed the master lease had been extended. They granted the BIA authority to act on their behalf as to all matters concerning the master lease and the RV park memberships. They approved the CTEC sublease, which had a provision affirming the validity of Evans' 1985 master lease renewal letter. They had notice of the 2004 settlement agreement, and they accepted rents therefrom in consideration of

permitting the Mill Bay members to remain on the property through 2034. There's other evidence in the record that also shows that all of the allottees accepted those settlement payments and cashed them.

Now, we've cited cases in our brief to say equitable estoppel may flow from silence; so that's another example here. And furthermore, the elements of reliance and injury are just undisputed in the record. It is plain, as I've articulated, that the Mill Bay members invested millions of dollars in reliance on the representations that they were receiving from the BIA on behalf of the allottees that they would be allowed to remain on this property through 2034.

And in addition, the allottees had notice of the 2004 settlement agreement. They accepted the settlement payments. In fact, twelve of them demanded that the second round of settlement payments be made because they had been promised them.

So -- so there's no question that they had notice of what was going on, and they -- they acquiesced and participated in it. Therefore, it's not the plaintiffs that should be required to bear the burden of -- of any sort of argument that the government didn't properly communicate with its allottees. It's the government or the allottees that should have to bear that burden.

So for those reasons, we do believe that the motion for summary judgment -- plaintiffs' motion for summary judgment

should be granted.

THE COURT: Mr. Arnold --

MS. HARMELING: Now on the --

THE COURT: Oh, I'm sorry. I thought you were done. Please go ahead. I'm sorry.

MS. HARMELING: Oh, no. I'm sorry, Your Honor. I have -- I just wanted to address the motion for summary judgment regarding ejectment. Now, I wanted to be clear, Your Honor, that it's plaintiffs' position that the trust status of the land, although we join in Wapato Heritage's argument that it is not trust land anymore, we do believe that is a threshold issue. If it is found not to be trust land, then the vast majority of the rest of these arguments don't matter.

However, if it is found to be trust land, that doesn't preclude our estoppel defenses, as I have argued in this case. We still have arguments for estoppel against the allottees, and we still have case law supporting that. We still have arguments for estoppel against the government and case law supporting that. As I articulated in my -- in my opening argument, there is a whole host of factual questions that preclude the motion for summary judgment regarding ejectment here.

And Your Honor, it's important to note that under FRCP 56, all factual inferences go our way as the nonmoving party. So at bottom, this matter plainly should go to trial and have the plethora of fact questions resolved by the jury.

In addition, although the government and the tribe keep saying that plaintiffs are occupying the property with an expired lease, I've addressed that it's -- Judge Quackenbush expressly said it's not an expired lease; it is a license. And that Judge Whaley did not hold that the lease had expired. He held that it had not been properly renewed.

Now, the reason why that was important is that Judge Quackenbush articulated in the record that the plaintiff can -- may have an argument that the -- that the government and the tribe and the allottees are equitably estopped from denying that lease extension through 2034. That's why that matters.

Your Honor, I did just want to clarify one question, if I may. You asked early on about whether we could address judicial estoppel. Were you referring to Judge Whaley's decision? And I just wanted to make sure I had addressed your question adequately.

THE COURT: My question was -- was precisely about estoppel against the government and whether there was a basis, whether you could cite authority for being able to apply estoppel -- judicial estoppel against the government.

MS. HARMELING: I see. Thank you for clarifying, Your Honor. I just wanted to make sure I had addressed it appropriately. And in response to that, I do feel that we have cited plenty of authority in our briefing as well as those Ninth Circuit cases that I called out specifically during argument.

In particular, that *Wharton* case really aligns very well with the acts of the government where in that case, the government had granted the plaintiffs the right to remain on the property and -- and repeatedly had made representations that they could be there; and 50 years thereafter, the government tried to undo that and kick them off the property. It's very similar to our situation.

And Ninth Circuit said not only could they not do that, but that was -- it was affirmative misconduct for them to give the plaintiffs erroneous advice that they could stay there and then to make -- in addition, to make misrepresentations to them that they could stay there.

That's exactly what has happened here where the BIA officials approved the master lease to last through 2034. The BIA participated in the marketing and sale of the campground memberships to last through 2034. They represented the Washington state residents and to the state of Washington that memberships would last through 2034.

They testified under oath that those officials had authority to make those representations. They testified under oath that they knew the plaintiffs would rely on those representations and that the plaintiffs had a right to rely on those representations. They -- they gave notice to the allottees of the 2034 expiration date.

They attended the 2004 mediation on the allottees' behalf.

They received notice of and did not object to the 2004 settlement agreement providing for plaintiffs to pay the allottees rents to use MA-8 through 2034. They sent notice of the settlement and plaintiffs' payment to the allottees.

Now, Judge Quackenbush concluded under these circumstances, equitable estoppel may be appropriate against the government here. He says on -- at ECF 144, "One cannot consider this case without some sympathy for the predicament the plaintiffs find themselves in. They have invested substantial sums of money, relying primarily on the word of Bill Evans and his entities, that the master lease option to renew would be exercised and that Evans' leasehold interest would not expire until 2034." "One undisputable point in this case, evidenced by the written and oral communications going back more than 20 years, is that Bill Evans desired and intended to exercise the option and apparently believed that the 1985 letter to the Secretary would suffice."

"Additional facts making this case unique is that a non-party to the contract, the BIA, plays the lead role in its drafting, execution, approval, administration, and enforcement of the lease."

"In this case, upon receipt of Evans' 1985 letter explicitly purporting to exercise the option to renew, the BIA a) neglected to inform the Indian landowners, whose interest it is their duty to protect, of the letter; b) did not ensure that

their tenant, Evans, had complied with the requirements of the lease until over 20 years later, despite numerous inquiries; and then c) conducted its business without questioning and on the explicit assumption that the lease had been effectively renewed. In 2004, the BIA even made affirmative representations to the state of Washington that the lease did not expire until February 2nd, 2034."

"Although estoppel will rarely work against the government, the assertion of this defense against the defendant landowners and the BIA, acting on their behalf, in this trespass action presents a unique context which would merit further consideration by the Court." He reiterates that same finding at ECF 329 at Page 21 and at Page 38.

It's clear that Judge Quackenbush, knowing all of this information in this case, concluded that under the Ninth Circuit authority, it warranted further consideration. And Your Honor, given all of those questions of fact that -- that we've articulated, we think that a jury needs to resolve those questions of fact.

And my final point is just separately the allottees themselves are estopped. The BIA was acting on their behalf. The BIA attended the mediation on their behalf. The BIA gave them notice of the 2004 settlement agreement. The allottees received in cash both settlement payments and escalated rents, and that *Kizer* case says -- it suggests that allottees can be

estopped in a very similar circumstance.

And while I would prefer that it was expressed that this is -- that they were estopped in that case, it is the only case in the record that actually speaks to the question of whether an Indian allottee can be estopped, contrary to what the government says about all their cases regarding estoppel vis-à-vis the government, which is not answering the question of whether the allottees can be estopped.

So I will just ask Your Honor on whose behalf is the United States acting when it seeks to eject the plaintiffs? Even assuming that there is no express requirement for the U.S. to act with a majority of its allottees, it is plaintiffs' position that they are not acting with the support of any of their allottees. We have a claim that 100 percent of the allottees are estopped to deny the Mill Bay members the right to remain on that property through 2034. This is a claim that needs to be heard by the jury. Thank you, Your Honor.

THE COURT: Mr. Arnold.

MR. ARNOLD: Thank you, Your Honor. With regard to the question of state law, I believe it's at ECF 90-5 where we see that the original Moses allotment MA-8 trust patents -- assuming for the sake of argument here that they still apply -- and, of course, my client says they do not -- specifies that the land is to be held in trust, according to the laws in the state of Washington. Also, the campground agreements at issue chose

Washington state law, and those can be -- I'm sorry. I may have those mixed up, ECF 90-5 Exhibit 12 and ECF 90-6 Exhibit 30.

Now, Your Honor, the tribe's counsel -- and again, I don't need to remind the Court, but under a Rule 56 standard here, I think it's notable that the tribe's counsel just stated there's been an appraisal, apparently. Well, I don't mean to read too much into that "apparently", but we have that same confusion because we have not seen this appraisal, and here's another question of fact that goes to whether or not the government carried out their fiduciary duties.

Now similarly, there's also an issue of why did the BIA never inform Bill Evans of how to cure any issue here when Bill Evans was the estuary of this trust relationship. So from this -- particularly the tribe's "apparently" comment flows another major factual question, and that is who owns what percentage here?

Now, the 56 percent figure that's been quoted by the federal tribal parties ignores my client's 24 percent life estate, and they simply want to throw that into the wind. Well, that's contrary to the regulations at 25 CFR 162.004(b) as well as the case... (audio gap) the BIA where the Court held that the holders of the remainder interest cannot unilaterally enter into a lease for present use of allotment without the life tenant's consent. So we would argue that my clients do in fact have rights here. They aren't just simply silent to what goes on.

And more at large, Your Honor, is ownership does matter. It's very important. The BIA itself indicates that a majority has the decision to license certain use. Now, if a majority of the allottees at the time did in fact license the park's use, which is essentially over time out here and is also a factual question, and did they license that use through, for instance, their acquiescence, their affirmative acceptance of funds? Then a license exists, and the RV park's members are not trespassers.

So the government still has not answered the question of what is the plan here? How are they going to use this land to benefit all of the allottees, not just the tribe, but my clients, the other objecting allottees, and the other consenting allottees, for that matter? They can't have it both ways.

So the RV park members simply may not be trespassers, but -- and the regulation that they must be evicted -- or ejected, excuse me, does not necessarily come into play as a threshold matter. And even if they do, we haven't seen any indication from the government of what is better than letting the RV members remain and continue to have that income stream.

And Your Honor, I think it's also worth noting -- and this is more the RV park's issue than my client's issue, but since we're sitting here in equity, I think it is important to point out that for some of the RV members, this is their primary residents. Some are elderly, and we are in the middle of a pandemic where there will be irreparable harm if these folks --

even in the best of times, there would be irreparable harm, but here it is particularly acute. Those equities do not weigh in the favor of the moving party.

And Your Honor, there's been a little bit of confusion or maybe incompleteness about the acceptance of funds. The land -- allottee landowners did not just accept money once; they accepted money twice. Some allottees demanded the second payment. They received it. And when we do the math looking to ECF 90 -- excuse me, 91, Mr. Webb's declaration, we'll see that a majority of the allottees at the time received those funds and cashed the checks.

Your Honor, there are other factual questions around the breach potential or actual breaches of fiduciary duty by the government for their failure to issue a patent or at minimum disclose the historical facts to the allottees, which at least leads to an argument of whether or not a patent should've been issued.

Now -- and as I said, the government still has not said how they are going to hear their -- cure their issue of removing this income stream without another plan. And in any event, Your Honor, when we -- oh, and I should point out on the issue of notice, Your Honor, and your question -- and your question and comments just now about judicial estoppel. The BIA did not merely have notice in the Bridges case, but they were -- if we look at ECF 90-9 at 27, Paragraph 2, we see that the BIA

disputes to this fact, ignores their declaration; so there was in fact notice there, and there should be judicial estoppel where they at minimum chose not to participate.

In any event, Your Honor, we're on a 56 standard. We take the facts here in the light most favorable to the nonmoving parties. Now, that includes both the procedural facts, if we want to call them that, which are the failure to answer -- failure to file responsive pleadings, failure to answer RFA's, and also the -- and I'm sorry; this is inarticulate, but the nonprocedural -- the actual facts, which are the allottees accepted money. They did it twice. There's no question that the BIA and the tribe were aware of this.

We look at ECF No. 90-6 at Page 11. There's a letter from the assistant area director saying authority is hereby delegated for the approval of the recreational vehicle lease. There is -- there are multiple places throughout this record, and frankly, I think it is undisputed that they participated in the mediation. They were in the building. Where we draw these inferences in the favor of the nonmoving party, the ejectment motion should be denied, and these should proceed to trial. Thank you, Your Honor.

THE COURT: Mr. Borde.

MR. BORDE: Thank you, Your Honor. Manish Borde on behalf of Gary Reyes. Your Honor, after the Court's recess, the government argued that Mr. Reyes was represented by Joe Finley

and that there was an appraisal. First, Your Honor, while Mr. Finley was representing Mr. Reyes in the litigation, there's no evidence that Mr. Finley represented Mr. Reyes with respect to the -- the sale transaction to the tribe.

And secondly on the appraisal, Your Honor, Judge Quackenbush in February of 2016 at ECF 345 at 3 ordered the U.S. to file a copy of all documents in its possession applying to the sale of the landowner's -- any landowner's interest in MA-8 since the inception of the litigation. No such appraisal was filed. So I am -- I do not know what appraisal the government is referring to and referred to just after the Court's recess here.

The tribe argued just moments ago that, you know, the fact -- and a little jovially that the fact that Mr. Reyes hasn't sued yet probably means that there is no claim. A couple of points here, Your Honor. One is that today the parties have agreed that the threshold issue is whether this is trust land; so I'm not even sure, you know, if a claim for damages regarding the sale price accrues until we obtain a ruling or until that matter is disposed of.

But secondly, there's a court order requiring an appraisal, all documents, which I don't understand how that wouldn't include appraisal to be filed. That hasn't been done, and so, you know, how -- Mr. Reyes doesn't know what he doesn't know. I don't understand how he's supposed to formulate that he has a

basis for a claim when the evidence of what the value is of his property hasn't even been filed in compliance with a court order.

And the reason why this is all important, which goes to comments made by the tribe before the Court's recess, is that, you know, on the one hand, the tribe contends that percentages don't matter in terms of the government's motion for ejectment, but then Mr. Chestnut goes on to focus on the tribe having a 56 percent interest, vocalizing support for the government. And that's why, you know, the -- the validity of the transfers to the tribe are -- are material to what's going on here today, and that's because there's really a serious question as to whether 13.6 percent of that 56 percent held by the tribe is truly held by the tribe and therefore have implications on -- on, you know, direction being given to the government. And that's all I have, Your Honor.

THE COURT: All right. Ms. Darlene Marcellay-Hyland?

MS. MARCELLEY-HYLAND: First of all, I just want to talk about these payments to the allottees to -- when the 2004 settlement -- it had been mentioned that there were allottees at that settlement meeting. I don't know who was there. I don't -- I wasn't there. My sister that was sitting here was not there. And to tell you the truth, I was not even aware of the litigation that was going on up there around Chelan regarding the settlement.

When we -- when we received a small payment -- I believe the first one was like $48, if I remember correctly -- I asked my dad -- at that time, we had 50 percent of my mom's interest and she passed away. I asked him, "What is this for?" And he said, "Well, I think it's just the RV rental that they -- the rent that they owe us." And so that happened in 2004.

The next thing that happened is that the BIA Realty did these dog-and-pony shows around the Northwest to the allottee landowners to talk about a Wapato Heritage proposal for building home sites on MA-8 under -- under 99-year leases. They wanted it to be like MA-10. We went to that meeting, and I think they gave us, like, a three- or four-page synopsis of what they were proposing.

We said there's no way we're going to agree to this without seeing all the documents. Well, one of the BIA Realty staff member gave us a three-inch binder -- five-inch binder at that time, and -- and we reviewed it, and that's when we had opportunity to look at the MA-8 lease and discovered that we didn't think it was a valid lease for through 2034 because not all the landowners or allottees consented to it, and that's what started this whole process.

But in -- within my family, we all believed that MA-8 was trust property stemming from my grandfather, who had an apple orchard on MA-8, and he dealt with BIA Realty and the management of that land all these years. So we always believed that MA-8

was trust property.

So my family, the first time that we got involved in the -- looking at MA-8 -- MA-8 was when we were invited to the BIA Realty presentation throughout the Northwest regarding this building home sites on MA-8 for 99-year leases, and that's the first time that we were really involved with this issue because we hadn't received much documents from BIA regarding what was going on at BIA. I know my mom always was questioning what's Bill Evans doing down with that land?

So a lot of the land -- we actually had a meeting of landowners in the summer of 2014 in -- at this casino in Manson, and there was probably about 30 landowners that showed up, and it was very apparent to us that a lot of the landowners had no idea what was going on. They didn't understand the documents that were being sent to them. Many of them were elderly, and they put their trust in BIA to manage this property for them, but it was really apparent that they really didn't know what was going on.

And at that point, I wasn't really involved in it, either, because my mom never talked to us about MA-8 when she had that property. When she passed away, it was to my dad 50 percent and 50 percent divided up amongst us -- among the kids, and that's really when we started seeing some things going on down there that we didn't agree with. And so that's all I have to say is that we believe that that was -- MA-8 was trust

property and that in 2004 during the settlement agreement of the RV owners, I wasn't involved in those discussions.

When I received the check, it was my understanding that that was just rental payments from the RV owners. But 2006 is when we had the opportunity to see that MA-9 meeting and really look at it, and that's the first time we had seen a copy of that lease; and that when we saw that, we determined that it wasn't approved in accordance with approval by all the allottees.

I don't know if my sister wants to say anything. Marlene's sitting right here.

THE COURT: Just -- just a minute. I just need to make sure that I have your sister's name correct and that she is speaking directly into the phone because we're not quite hearing her. So --

MS. MARCELLAY: Okay.

THE COURT: -- could you please state your name again, please.

MS. MARCELLAY: Yes. My name is Marlene Marcellay. I'm a twin sister to Darlene.

THE COURT: Okay.

MS. MARCELLAY: At the time it was going on, I was living in California so I didn't know what was going on. I moved back up here to the Northwest in 2006; and at that time, we were notified of the -- of this meeting in Portland by Wapato Heritage and BIA about the 99-year lease, and that's all we knew

about it was a 99-year lease approval.

So we went to this meeting and found out that they wanted us to approve a 99-year lease plus they were going to build million-dollar homes on that property down there. Well, we weren't going to get any benefit from that. You know, it was going to go -- these million-dollar homes weren't going to be bought by us.

So I was sitting there they gave us, like -- gosh, like maybe less than a ten-page synopsis of what they want to do down there. And next to me was Mr. Joseph, who worked for BIA in Nespelem, and he had, like, a five-inch binder, and I said, "What is that?" And he said, "Oh, it's what we're talking about here." And I said, "Well, we don't have those documents," and he just handed me the binder. He just said, "Here, you can have it."

Well, me being a contracting officer, I went through all those documents and analyzed them back and forth and everything before I write -- I wrote a very extensive letter to the tribe and BIA in 2007 based on what I felt was wrong. And, you know, me being a BIA government contracting officer, I really had to go through that stuff to understand it so I know that the landowners didn't understand the majority of that stuff, and we weren't getting it in -- to the mail or anything. I know I didn't get anything on this.

So we went through all that, and at that point, we denied

the 99-year lease. But at that point, they realized that they had to renew their lease because we said it wasn't -- it wasn't through 2034. At that time, Wapato Heritage decided not to pursue it, and they just let it drop. So my -- right now, my feeling is that if the Mill Bay RV people have a problem, then it's with Wapato Heritage because they dropped the ball and didn't -- didn't try to renew that lease. That's all I have to say.

THE COURT: Thank you. Thank you very much. I appreciate that.

Ms. Thinelk?

MS. THINELK: If it pleases the Court, I'm appearing today on behalf of my father, Francis Reyes, who inherited the property from my grandmother, Modesta (phonetic spelling) Shadle, along with my Aunt Sandra Covington and my Uncle Gary Reyes. I would object to a default order against -- as to my father. He inherited this property after my grandmother passed away in 1995 and at that point in time became involved in the MA-8.

It's hard for me at this point to make any representations to the Court as to what he understood or what he didn't, having not talked to my father about this issue; and at this point, it is basically impossible for me to talk to my father, who is basically pretty much nonverbal except for a little bit of speech because of advanced stage dementia with Lewy Body, which

is a form of dementia that mirrors both Parkinson's and Alzheimer's. So at this point, he's not able at all to respond and -- to the RFA's about what he knew and what he didn't know or -- or anything.

I do want to go on record to say that my father -- one thing I do know is that he would object to the fact that the plaintiffs are trying to argue that this is non-trust property. At one point in time, at my urging, he and my uncle had hired an attorney to represent them in some of the litigation. This was years and years ago, and this has been going on so long and in so many different courts at so many different stages that I don't know which one it is.

But one responsive pleading that they were filing was talking about their position. His attorney was arguing that this was not trust property. And at that point in time, my -- my dad had me read the pleading because he had some questions, and after I had read it -- I'm an attorney with the Washington state bar and haven't practiced for about 20 years or so -- I had explained to him the position that his attorney was making.

And I explained to him -- I was like, "Dad, are you aware that this is -- that they're arguing that this is not trust property? And are you aware that this -- if this is not trust property, then the casino in which you're receiving dividends from through the master lease would -- would not be able to operate on non-trust property?" And he didn't realize that, and

so I had urged him at that time to not join in that pleading.

And I could not represent him because at that time I had -- I was working for the office of the reservation attorney for the Colville tribe; so I -- I was Switzerland at that point and was not involved on my dad's behalf, and I was not involved in any of the discussions in my office. We had essentially put up a brick wall so that I didn't know what was really going on.

But I did know that my dad, after I had explained to him the position his attorney was taking, was not in agreement with that position. And I will tell you that the benefits he is receiving from the casino at this point enables him to receive the care that he needs because of his advanced stage dementia, and so any type of default or any type of damages would severely hamper my father's ability to provide for his care, which is so desperately needed at this point.

And so I was contacted just yesterday about this hearing. My brother had received the documents yesterday, and I had received some text messages from my sister who had received the week before some of the documents from the post office.

In looking at the documents, they are addressed to two different addresses that no longer belong to my father; so I question whether or not he has been receiving adequate service of these papers because it -- the service noted in the court papers are -- is his previous home with his ex-wife, which he is no longer with. But I don't have access to PACER or the ECF

filing system to look up these documents to see where they've been served so I can't go on record and say, no, he didn't receive these documents.

And so -- but I would adamantly say that he believes that this is trust property, and I would ask the Court not to hold him in default because of his advanced stage dementia. He is basically incapable of answering any type of discovery requests or anything. So I would ask that the Court not hold him in default.

And I would reserve any of his interest in legal arguments at this point, having not seen the paperwork, having not reviewed the record in any of the cases. I can't -- I can't definitively make a point as to whether or not those things as stated by the attorneys are true in any way or -- or not. So I would reserve on my father's behalf any legal arguments that he may be -- he may be entitled to make. Thank you.

THE COURT: Thank you very much, Ms. Thinelk. I'm very sorry to hear about your father's health.

MS. THINELK: Thank you.

THE COURT: This concludes the hearing. I think we have heard from everybody. Is there anybody on the line who had planned to speak who we have not heard from?

MS. MARCELLAY-HYLAND: Your Honor?

THE COURT: Yes.

MS. MARCELLAY-HYLAND: Your Honor, this is Darlene

Marcellay-Hyland. I just wanted to add some comments about the mailing addresses. I was the one who sent out the last declaration that went out a couple weeks ago to all the landowners. Seven letters were returned to me as undeliverable, and I went onto an ID address search on the internet and was able to find all seven addresses; so we sent those declarations back out to the landowners, allottees. So I'm also questioning who received these documents. Did it get to all the landowners? I don't believe they did.

THE COURT: Thank you. I appreciate that clarification.

I am going to take these arguments under advisement, and I will be issuing written orders. Thank you very much. I hope you all stay well. Court is in recess. Good-bye.

(Court adjourned on May 29, 2020, at 4:08 p.m.)

C E R T I F I C A T E

I, ALLISON R. ANDERSON, do hereby certify:

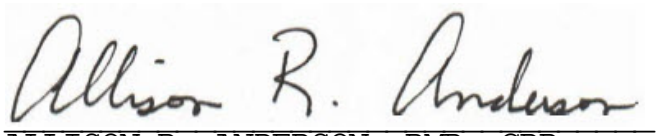
That I am an Official Court Reporter for the United States District Court for the Eastern District of Washington in Spokane, Washington;

That the foregoing proceedings were taken on the date and place as shown on the first page hereto; and

That the foregoing proceedings are a full, true, and accurate transcription of the requested proceedings, duly transcribed by me or under my direction.

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings;

DATED this 21st day of July, 2020.



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