

1 Sally W. Harmeling, WSBA No. 49457  
 Robert R. Siderius, WSBA No. 15551  
 2 Joseph Q. Ridgeway, WSBA No. 53438  
 Jacob M. Knutson, WSBA No. 54616  
 3 JEFFERS, DANIELSON, SONN & AYLWARD, P.S.  
 2600 Chester Kimm Road  
 4 P.O. Box 1688  
 Wenatchee, WA 98807-1688  
 5 Email: SallyH@jdsalaw.com  
 Email: BobS@jdsalaw.com  
 6 Email: JosephR@jdsalaw.com  
 Email: JacobK@jdsalaw.com  
 7 (509) 662-3685 / (509) 662-2452

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF WASHINGTON

10 PAUL GRONDAL, et al,

11 Plaintiffs,

12 vs.

13 UNITED STATES OF AMERICA, et al;

14 Defendants.  
15

NO. 09-CV-00018-RMP

PLAINTIFFS’ MOTION FOR LEAVE  
TO FILE SUR-REPLY IN SUPPORT OF  
MOTION TO STAY EXECUTION OF  
JUDGMENT

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

16  
17 On August 7, 2020, this Court ordered Defendants to file a surresponse to Plaintiffs’  
18 reply in support of their Motion to Stay Execution of Judgment Pending Appeal. ECF No.  
19 531. In their respective surresponses, Federal Defendants and the Confederated Tribes of

20 the Colville Reservation (“CTCR”) argue for the first time that, under the Master Lease,  
PLAINTIFFS’ MOTION FOR LEAVE TO FILE  
SUR-REPLY IN SUPPORT OF MOTION TO  
STAY EXECUTION OF JUDGMENT  
4972934

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

1 any improvements made to MA-8 by Plaintiffs are property of the Lessor and thus must  
2 remain on MA-8 upon the ejectment of Plaintiffs such that CTCR may continue to operate  
3 MA-8 as an RV park. *See* ECF No. 537 at p. 4, ECF No. 539 at p. 3 n. 2. CTCR also argues,  
4 for the first time, that the Master Lease bars a claim against the Lessor or the U.S. brought  
5 by “the Lessee or sublessees.” ECF 537 at p. 6. Plaintiffs respectfully request that the Court  
6 grant them leave to file a surreply to address the new issues improperly raised by Federal  
7 Defendants and CTCR in their surresponses.

8 “A surreply is generally available only where the moving party raises new arguments  
9 for the first time in the reply.” *Smith v. BNSF Ry. Co.*, 2:18-CV-00179-SMJ, 2020 WL  
10 2297789, at \*1 (E.D. Wash. Jan. 15, 2020). This Court has allowed surreplies where their  
11 filing would not prejudice the opposing party. *See Roberts v. Uttecht*, CV-10-85-LRS, 2010  
12 WL 3516909, at \*4 (E.D. Wash. Sept. 3, 2010).

13 While this case does not present the typical instance for the granting of leave to file  
14 a surreply as Federal Defendants and CTCR are not the moving parties that addressed new  
15 issues in their reply brief, Federal Defendants and CTCR did make new arguments in their  
16 respective surresponses, warranting a surreply. *See Smith*, 2020 WL 2297789, at \*1.  
17 Additionally, Federal Defendants and CTCR cannot demonstrate prejudice stemming from  
18 the filing of a surreply that responds to new arguments *they* made. Rather, it is Plaintiffs  
19 that would be prejudiced, as “absent the Court granting leave for [Plaintiffs] to file a sur-

20  
PLAINTIFFS’ MOTION FOR LEAVE TO FILE  
SUR-REPLY IN SUPPORT OF MOTION TO  
STAY EXECUTION OF JUDGMENT  
4972934

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

1 reply brief, [Plaintiffs are] essentially deprived of the opportunity to address these new  
2 arguments.” *Perez-Farias v. Glob. Horizons, Inc.*, CV-05-3061-RHW, 2009 WL  
3 10690337, at \*1 (E.D. Wash. Nov. 12, 2009).

4 As “[i]t is simply a matter of fairness,” the Court should grant Plaintiffs leave to file  
5 the attached surreply in response to new issues and arguments raised in Federal  
6 Defendants’ and CTCR’s surresponses, *Id.*

7 DATED this 18<sup>th</sup> day of August, 2020.

8 By s/SALLY W. HARMELING

Sally W. Harmeling, WSBA No. 49457

9 Robert R. Siderius, WSBA No. 15551

Joseph Q. Ridgeway, WSBA No. 53438

10 Jacob M. Knutson, WSBA No. 54616

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

11 2600 Chester Kimm Road

P.O. Box 1688

12 Wenatchee, WA 98807-1688

Telephone: 509-662-3685

13 Fax: 509-662-2452

Email: SallyH@jdsalaw.com

14 Email: BobS@jdsalaw.com

Email: JosephR@jdsalaw.com

15 Email: JacobK@jdsalaw.com

16  
17  
18  
19  
20  
PLAINTIFFS’ MOTION FOR LEAVE TO FILE  
SUR-REPLY IN SUPPORT OF MOTION TO  
STAY EXECUTION OF JUDGMENT

4972934

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of August, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. Notice of this filing will be sent to the parties listed below by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system.

**Joesph P. Derrig**  
**Usawae-jderrigecf@usdoj.gov**

**Nathan J. Arnold**  
**nathan@caoteam.com**

**Tyler Hotckiss**  
**tyler@fhbzlaw.com**

**Sally W. Harmeling**  
**sallyh@jdsalaw.com**

**Dale Melvin Foreman**  
**dale@fahzlaw.com**

**Robert R. Siderius**  
**Bobs@jdsalaw.com**

**Franklin L Smith**  
**Frank@Flyonsmith.com**

**R Bruce Johnston**  
**bruce@rbrucejohnston.com**

**Brian Gruber**  
**bgruber@ ziontzchestnut.com**

**Matthew A. Mensik**  
**mam@witherspoonkelley.com**

**Brian W. Chestnut**  
**bchestnut@ziontzchestnut.com**

**Manish Borde**  
**mborde@bordelaw.com**

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

**Emanuel Jacobowitz –**  
**Manny@CAJlawyers.com**

**PLAINTIFFS’ MOTION FOR LEAVE TO FILE  
SUR-REPLY IN SUPPORT OF MOTION TO  
STAY EXECUTION OF JUDGMENT**

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

1 I hereby certify that on the 18th day of August, 2020, Notice of this filing is  
2 being sent this date via United States Postal Service First Class Mail to the parties below  
3 at the addresses indicated below.

4  
5 **PRO SE PARTIES**

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

Annie Wapato  
1800 Jones Rd  
Wapato, WA 98951

7 Paul G. Wapato, Jr.  
2312 Forest Estates Drive  
Spokane, WA 99223

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

10 Judy Zunie  
P.O. Box 3341  
11 Omak, WA 98841

Jeffrey M Condon  
PO Box 3561  
Omak, WA 9884 1-3561

12 Deborah A. Backwell  
24375 SE Keegan RD  
13 Eagle Creek, OR 97022

Vivian Pierre  
PO Box 294  
Elmer City, WA 99124-0294

14 Catherine Garrison  
3434 S 114th St., Apt. 124  
15 Tukwila, WA 98168-4061

Sonia W (Wapato) Vanwoerkom  
810 19th St  
Lewiston, Id 83501-3172

16 Mary Jo Garrison  
PO Box 1922  
17 Seattle, WA 98111

Arthur Dick  
PO Box 288  
Nespelem, WA 99155-0288

18 Enid T. Wippel  
PO Box 101  
19 Nespelem, WA 99155

Hannah Rae Dick  
PO Box 198  
Nespelem, WA 99155-0198

20 **PLAINTIFFS' MOTION FOR LEAVE TO FILE  
SUR-REPLY IN SUPPORT OF MOTION TO  
STAY EXECUTION OF JUDGMENT**

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

1 Leonard Wapato Francis J Reyes  
P.O. Box 442 PO Box 215  
2 White Swan, WA 98952-0442 Elmer City, WA 99124-0215

3 Kathleen M Dick Dwane Dick  
PO Box 288 PO Box 463  
4 Nespelem, WA 99155-0288 Nespelem, WA 99155-0463

5 Lynn K. Benson James Abraham  
PO Box 746 2727 Virginia Avenue  
6 Omak, WA 98841-0746 Everett, WA 98201-3743

7 Randy Marcellay Gabe Marcellay  
P.O. Box 3287 PO Box 76  
8 Omak, WA 98841 Wellpinit, WA 99040-0076

9 Paul G Wapato Jr Travis E Dick and Hannah Dick  
Catherine L (Gufsa) Garrison Guardian of Travis E Dick  
10 3434 S 144th St Apt 124 PO Box 198  
Tukwila, WA 98168 -4061 Nespelem, WA 99155

11 Maureen M. Marcellay Jacqueline L Wapato  
12 7910 NE 61<sup>st</sup> Circle PO Box 611  
Vancouver, WA 98662-5992 Lapwai, Id 83540-0611

13  
14 Marlene Marcellay Darlene Marcellay-Hyland  
1300 SE 116<sup>th</sup> Ct. 16713 SE Fisher Drive  
Vancouver, WA 98683-5290 Vancouver, WA 98683

15  
16 Mike Marcellay Enid T (Pierre) Marchand  
PO Box 594 PO Box 101  
17 Brewster, WA 98812-0594 Nespelem, WA 99155-0101

18 Pamela Jean DeRusha Lydia A. Arneecheer  
US Attorney's Office – SPO P.O. Box 45  
19 920 W. Riverside, Suite 300 Wapato, WA 98951-0475  
PO Box 1494  
20 Spokane, WA 99210 – 1494

PLAINTIFFS' MOTION FOR LEAVE TO FILE  
SUR-REPLY IN SUPPORT OF MOTION TO  
STAY EXECUTION OF JUDGMENT

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

Stephen Wapato  
246 N. Franklin  
Wenatchee, WA 98801

Mike Palmer  
P.O. Box 466  
Nespelem, WA 99155

Linda Saint  
P.O. Box 3614  
Omak, WA 98841-3614

Sandra Covington  
P.O. Box 1152  
Omak, WA 98841

DATED at Wenatchee, Washington this 18th day of August, 2020.

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

PLAINTIFFS' MOTION FOR LEAVE TO FILE  
SUR-REPLY IN SUPPORT OF MOTION TO  
STAY EXECUTION OF JUDGMENT

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