

# EXHIBIT A

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF WASHINGTON

10 PAUL GRONDAL, et al,

NO. 09-CV-00018-RMP

11 Plaintiffs,

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

12 vs.

13 UNITED STATES OF AMERICA, et al;

14 Defendants.  
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20 PLAINTIFFS' SUR-REPLY IN SUPPORT OF  
MOTION TO STAY EXECUTION OF  
JUDGMENT

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1 In Sur-Response to Plaintiffs’ (“Mill Bay”) Motion to Stay Execution of the  
2 Judgment, Federal Defendants and the Confederated Tribes of the Colville Reservation  
3 (“CTCR”) argue for the very first time: (1) Mill Bay is a “Lessee or sublessee” under the  
4 Master Lease and therefore subject to restrictions applicable to such parties under the  
5 Master Lease, including the provisions of the Master Lease concerning placement of  
6 improvements on MA-8 (ECF 537 at p. 6; ECF 539 at p. 3 n. 2); (2) any improvements  
7 made to the land by Mill Bay are property of the Lessor under the Master Lease and thus  
8 must be left in place upon Mill Bay’s ejectment (ECF 537 at p. 4); (3) the Master Lease  
9 bars a claim against the Lessor or the U.S. brought by “the Lessee or sublessees” (ECF 537  
10 at p. 6); and (4) Defendants’ plan for development of the property is to leave it unoccupied  
11 for some uncertain period of time, and then to reopen it as an RV Park (ECF 537 at p. 4:  
12 “Indeed, the most parsimonious and immediately available use of MA-8 by the allottees  
13 would be the same as its current use – an RV park – for which the existing infrastructure  
14 is suited.”).

15 To be clear, Mill Bay is *not* the Lessee under the Master Lease; Bill Evans is the  
16 Lessee, while the allotment landowners are the Lessors. *E.g.*, ECF 144 at pp. 5, 21.  
17 Moreover, Mill Bay previously claimed it was a subtenant or sublessee under the Master  
18 Lease and thereby sought the protection of Section 8 of the Master Lease, which reads:

19 8. Status of Subleases on Conclusion of Lease:

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1 Termination of thie [*sic*] Lease, by cancellation or otherwise, shall not  
2 serve to cancel subleases or subtenancies, but shall operate as an  
3 assignment to Lessor of any and all such subleases or subtenancies and  
4 shall continue to honor those obligations of Lessee under the terms of any  
5 sublease argument that do not require any new or additional performance  
6 not already provided or previously performed by Lessee. . . .

7 ECF 90 at 32. However, the Court rejected this argument on the basis that the camping  
8 club membership agreements *did not create a sub-lease or sub-tenancy under the*  
9 *Master Lease*. ECF 144 at pp. 28-30.

10 Thus, because the *benefits* of the Master Lease (extension of a property interest via  
11 subtenancy) were found inapplicable to Mill Bay, the *burdens* of the Master Lease  
12 (obligations regarding permanent improvements) are likewise inapplicable to Mill Bay. To  
13 the extent Defendants argue and proceed otherwise, Plaintiffs intend to seek leave to amend  
14 their Complaint or otherwise add new claims including: (1) for declaratory judgment  
15 against all Defendants that those provisions are inapplicable, or if they are applicable then  
16 seeking for this Court to revisit its conclusion that Mill Bay is not a subtenant/sublessee  
17 and Section 8 of the Master Lease is inapplicable to Mill Bay; (2) that Federal Defendants  
18 are perpetrating an unlawful taking without just compensation in violation of the Fifth  
19 Amendment to the United States Constitution (*Horne v. Dep't of Agric.*, 576 U.S. 350, 357  
20 (2015) (recognizing Fifth Amendment takings claim against Federal Government for  
appropriation of personal property)); and (3) a claim for damages against the Allottee

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1 landowner Defendants for common law conversion of property (*Nelson v. Swanson*, 31  
2 P.2d 521, 522 (1934) (landlord liable for conversion when he took tenant's personal  
3 property in the course of an eviction)).

4 Finally, Defendants' admission that their future intended use of the property is *as an*  
5 *RV Park* highlights the absurdity of their position. Indeed, it now seems clear Defendants'  
6 great master plan all along has been to wrongfully take possession of the hundreds of  
7 thousands of dollars-worth of improvements made by Plaintiffs to MA-8 (which Plaintiffs  
8 made with the expectation of using them through 2034), eject them from the property  
9 prematurely, and then to lease out their formerly-occupied space with valuable  
10 improvements already in place *to someone else*, presumably for a marked-up rental rate  
11 made possible only by the expensive improvements already made to the property *by*  
12 *Plaintiffs*. As Defendants have no right to keep these improvements, maintenance of the  
13 status quo along with Plaintiffs' proposed annual bond amount would not harm Defendants,  
14 particularly when Plaintiffs have offered to make reasonable accommodations for any  
15 cultural activities and future development planning the Tribe and its members must  
16 reasonably conduct during the pendency of the stay. ECF 526 at pp. 7-8.

17 For all of these reasons, and those in Plaintiffs' Motion and Reply briefing, a stay of  
18 execution of the judgment pending resolution of the appeal should issue.

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

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> 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.

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

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