James M. Danielson
Jeffers, Danielson, Sonn & Aylward, P.S.
P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

PAUL GRONDAL, a Washington resident; and THE MILL BAY MEMBERS ASSOCIATION, INC., a Washington Non-Profit Corporation, Plaintiffs, vs. UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF THE INTERIOR; THE BUREAU OF INDIAN AFFAIRS, and FRANCIS ABRAHAM, CATHERINE GARRISON, MAUREEN MARCELLAY, MIKE PALMER, JAMES ABRAHAM, NAOMI DICK, ANNIE WAPATO, ENID MARCHAND, GARY REYES, PAUL WAPATO, JR., LYNN BENSON, DARLENE HYLAND, RANDY MARCELLAY, FRANCIS REYES, LYDIA W. ARMEECHER, MARY JO GARRISON, MARLENE MARCELLAY,	NO. COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

LUCINDA O'DELL, MOSE SAM, SHERMAN T. WAPATO, SANDRA COVINGTON, GABRIEL MARCELLAY, LINDA MILLS, LINDA SAINT, JEFF M. CONDON, DENA JACKSON, MIKE MARCELLAY, VIVIAN PIERRE, SONIA VANWOERKON, WAPATO HERITAGE, LLC, LEONARD WAPATO, JR, DERRICK D. ZUNIE, II, DEBORAH L. BACKWELL, JUDY ZUNIE, JAQUELINE WHITE PLUME, DENISE N. ZUNIE and CONFEDERATED TRIBES OF THE COLVILLE RESERVATION, Allottees of MA-8 (known as Moses Allotment 8),

Defendants.

COMPLAINT

Plaintiffs, Paul Grondal and the Mill Bay Members Association, by and through their attorneys of record, Jeffers Danielson Sonn & Aylward, P.S., respectfully submit this complaint for declaratory and injunctive relief against the Defendants, based upon the following:

NATURE OF THE ACTION

1. The Bureau of Indian Affairs (the "BIA"), as an agency of the United

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

States of America (the "United States") is responsible for the management and control of Indian allotment lands. The Superintendent of the BIA's Colville Indian Agency (the "Colville Agency"), acting as an agent of the United States oversees and manages federal allotment land held in trust for Indian allottees known as Moses Agreement Number Eight ("MA-8").

2. Beginning in the early 1980's, one of the allottees of MA-8, William Evans, Jr. ("Evans"), suggested to his fellow allottees that they utilize MA-8 as a camping resort in order to develop the land and generate revenue for the allottees, while protecting the integrity of the land. The majority of the landowners agreed to lease the land to Evans with in order for him to develop and run a recreational vehicle camp resort, later known as the Mill Bay Resort.

3. The BIA assisted Evans in drafting the lease agreement and receiving consent to lease from the majority of the allottees. Evans entered into a lease agreement with the BIA (the "Master Lease"). The purpose of the lease was to develop a recreational vehicle ("RV") camping resort and offer 50-year campground memberships under the Washington State Campgrounds Act, Revised Code of Washington 19.105 *et seq.* This resort would be closed to the public but allow

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

members the exclusive right to park their RVs at sites on the shores of Lake Chelan and enjoy park facilities such as swimming pools and picnic areas. The Master Lease expressed the intention that the purpose of the lease was to operate a camping resort, and included a provision basing ground rent on the number of memberships sold and used.

4. The term of the Master Lease was for 25 years with an option to renew upon the same terms for another 25 years. Such option would be deemed exercised upon Evans (as the Lessee) giving notice to the "Lessor" and Secretary of the Interior. For the purposes of the agreement, notice to the Superintendent of the Colville Agency was deemed notice to the Secretary. The agreement later provided that notices and demands shall be sent to the addresses recited in the document. The only addresses included in the document were that of Evans and the Colville Agency. Pursuant to the terms of the Master Lease, in early 1985, Evans sent notice of that he had exercised his option to renew and that receipt of the letter by the Superintendent would be deemed acceptance of this renewal. Upon information and belief, Evans also gave notice of this renewal to fellow allottees. Thereafter, the BIA approved and signed documents which included the 2034 expiration date of the Master Lease.

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

5. The BIA approved the camping membership agreements which included a provision that Washington State law was to apply to the memberships in order to protect the members under the Washington State Campgrounds Act. Evans advertised these camping memberships as approved by the BIA and made representations that these memberships would give Plaintiffs the right to use and occupy the Mill Bay Resort until 2034. Evans provided written representations of the right to use and occupy until 2034, including a public offering statement and membership agreements that were specifically approved by the BIA.

6. The original plan Evans envisioned included 750 RV sites that would occupy the entire parcel of MA-8 but changed the plan and decided to construct a golf course and limit the number of RV sites. In 1989, Evans submitted a plan to revise the RV Resort plan in order to provide members with "expanded memberships." The BIA approved these modifications and specifically approved incorporation of the "Expanded Membership Agreements" into the Master Lease. Expanded Membership Agreements included a provision for exclusive use of a specific lot in the Mill Bay Resort until the year 2034. Plaintiffs have a valid and binding contract which provides them the exclusive right to occupy and use the Mill Bay Resort.

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

7. At the time Evans initiated the Mill Bay Resort, MA-8 had been unoccupied and the shoreline was eroding into Lake Chelan. The Mill Bay Resort created an avenue for the allottees to receive a profit from the land they were not using and also to develop the land in a way that would preserve its integrity for future generations. As Lake Chelan became more developed, the land became much more valuable.

8. Upon information and belief, since 2001, the Plaintiffs have faced numerous attempts to deprive them of their right to use and occupy the land due to the desire to develop and make a higher profit from the land. Upon information and belief, the most recent attempt to deprive them of this right and eject them from this property results from a combined effort between the Colville Confederated Tribes (the "Colville Tribes") and the Bureau of Indian Affairs. Upon information and belief, the BIA, through its agents, was asked to devise a way to eject Plaintiffs and their Lessors (successors in Evans interest in the Master Lease), Wapato Heritage, LLC, from MA-8 in order for the Colville Tribes to negotiate a new master lease in its name as lessor.

9. At the end of 2007, despite over 20 years of affirming the renewal had been exercised, the BIA made the assertion that the Master Lease had not been

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

properly renewed and would expire. The BIA failed to provide Wapato Heritage with any reason as to why this renewal was invalid and failed to provide Wapato Heritage with information as to how it could properly exercise the renewal option prior to the deadline of February 2, 2008. The BIA asserts that the Plaintiffs' rights to Mill Bay expire in 2009 pursuant to the expiration of the Master Lease.

PARTIES

10. Plaintiff Paul Grondal is a resident of King County in Washington State.

11. Plaintiff Mill Bay Members Association, Inc. (the "Association") is a Washington Non-Profit Corporation.

12. "Plaintiffs" hereinafter refers to all above named plaintiffs collectively, where appropriate.

13. Defendants Department of the Interior ("DOI") and Bureau of Indian Affairs are agencies of Defendant United States of America (the "United States") as defined in 5 U.S.C. § 551(1).

14. Defendants Allottees are beneficial owners of an undivided interest in an Indian allotment known as MA-8. Defendant Wapato Heritage, LLC's interest is that of a life estate in said undivided beneficial ownership interest.

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

15. "Defendants" hereinafter refers to all above named defendants collectively, where appropriate.

JURISDICTION AND VENUE

16. Plaintiffs reallege the preceding paragraphs and incorporate herein by reference.

17. This action arises from a contractual dispute regarding rights and interests in the Indian allotment known as Moses Allotment Number 8 ("MA-8"), the action or inaction of the Defendants regarding those rights, and the Due Process Clause of the Fifth Amendment to the Constitution of the United States (the "Fifth Amendment").

18. MA-8 is a restricted Indian allotment as defined by the General Allotment Act, Title 25 U.S.C. § 331 *et seq.* and 25 CFR 162 *et seq.*

19. MA-8 is located on the shores of Lake Chelan in Chelan County, Washington, within the Eastern District of Washington.

20. MA-8 is located outside of the boundaries of the Colville Confederated Tribes' Reservation.

21. The Administrative Procedures Act, Title 5 U.S.C. §§ 701 *et seq.*, permits this court to review the final agency action of the Northwest Regional Director of the

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

Bureau of Indian Affairs which affects Plaintiffs' property rights and interests in MA-8.

22. This court may declare the rights and legal relations of the Plaintiffs pursuant to Title 28 U.S.C. § 2201.

23. The venue of this District is proper pursuant to 28 U.S.C. § 1391(b)(2).

24. The jurisdiction of these claims is proper under 28 U.S.C. § 1331 and 1343(a), 5 U.S.C. §701 *et seq*, 28 U.S.C. § 1361, and 28 U.S.C. §1367.

WAIVER OF SOVEREIGN IMMUNITY

25. Plaintiffs reallege the preceding paragraphs and incorporate herein by reference.

26. Defendants have waived sovereign immunity pursuant to 5 U.S.C. § 702 and the Fifth Amendment.

FACTUAL BACKGROUND

27. Plaintiffs reallege the preceding paragraphs and incorporate herein by reference.

28. The Wapato Family were members of the Moses Band of Indians, a federally recognized Indian tribe whose recognized status was later terminated by the

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

United States government.

29. The General Allotment (Dawes) Act of 1887, 25 U.S.C. § 331 *et seq.*, authorized the President of the United States to allot land to individual Indians.

30. Upon termination of the Moses Band, the United States required John Wapato and his family to choose between accepting an allotment for each family member on Lake Chelan or "removal" to the Colville Reservation.

31. The Wapato family chose to accept allotments instead of moving to the Colville Reservation.

32. In 1907, the United States granted MA-8 on Lake Chelan as an allotment to John Wapato.

33. The United States holds title to MA-8 for the use and benefit of individual Indian allottees.

34. Allottees hold a permanent possessory interest in their allotment.

35. All MA-8 allottees (the "Allottees") except for the Colville Confederated Tribes are descendants of the original allottee, John Wapato, a deceased member of the Colville Confederated Tribes (the "Colville Tribes") in Washington State.

36. Upon the death of John Wapato, his interest in MA-8 was passed in

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

undivided interest to his heirs.

37. Undivided interest in MA-8 continues to pass in this manner.

38. The Colville Tribes acquired undivided interest upon the death of certain heirs of John Wapato when those heirs died intestate and without heirs who were enrolled tribal members.

39. The Colville Tribes is also an Allottee with beneficial interest.

40. Currently, 35 Colville tribal members possess undivided interest in MA-8.

41. MA-8 is controlled, managed, and administered by the DOI through the BIA and its agents.

42. In 1984, William W. Evans, Jr. ("Evans"), as a descendant of John Wapato, possessed a 5.4% undivided interest in MA-8 as an allottee.

43. Evans shared this interest in MA-8 with 40 other allottees.

44. In 1981, Evans approached the other MA-8 Allottees with a proposal to lease MA-8 in order to open a Recreational Vehicle Camping Resort.

45. After a majority of Allottees expressed interest in leasing MA-8, Evans provided the Allottees with a proposed lease agreement to consider for BIA approval.

46. This proposed lease agreement was for a 25 year term, with an option to

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

renew for an additional 25 years which would be automatically exercised upon signing the initial lease.

47. In January 1982, Evans sent a letter to Sharon Redthunder at the BIA's Colville Indian Agency formally requesting to enter into a lease for MA-8.

48. Upon information and belief, in July 1982, each Allottee was provided with a Consent to Lease form, which the majority of Allottees signed.

49. This consent form included a provision that the Allottee agrees that "if a satisfactory lease is not agreed upon within 90 days from July 20, 1982 Superintendent may, if necessary, exercise his authority to lease the land pursuant to the Act of July 8, 1940 (54 Stat. 745; 25 USC 380) Dept. of the Interior, Bureau of Indian Affairs."

50. As stated on the 1982 consent forms, at the time George Davis signed the lease, the Title 25 § 162.2 of the Code of Federal Regulations provided:

> (a) The Secretary may grant leases on individually owned land on behalf of…(4) the heirs or devisees to individually owned land who have not been able to agree upon a lease during the three-month period immediately following the date on which a lease may be entered into; provided, that the land is not in use by any of the heirs or devisees; and (5) Indians who have given the Secretary written authority to

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

execute leases on their behalf.

51. In a letter dated January 30, 1984, the Acting Area Director of the BIA Portland Area Office, Wilford G. Bowker, sent a letter regarding "Mill Bay Recreational Vehicle Park lease on Colville Allotment MA-8." This letter authorized George Davis, Superintendent of the Colville Agency, to "approve any lease, assignments, and modifications regarding the lease which may arise during its term."

52. On February 2, 1984, Evans entered into Business Lease 82-21 to lease MA-8 as "Lessee" (the "Master Lease").

53. The Master Lease was entered into "by and between the Lessors, whose names and addressees (sic), and/or guardians of the Lessors, are listed in Exhibit 'A' attached hereto and by this reference incorporated herein, hereinafter collectively referred to as 'Lessor'."

54. The second sentence of the lease stated that "Execution of this lease by the Lessor may be accomplished by the signing of counterpart duplicate copies."

55. No exhibits were ever attached to the Master Lease.

56. Evans signed the Master Lease as "Lessee" and George Davis, signed as "Lessor" on behalf of Secretary of the Interior and pursuant to his authority under 25

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

U.S.C. § 380 to enter into this lease binding the Allottees.

57. The Master Lease defined "Secretary" as the "Secretary of the Interior or his authorized representative, delegate, or successor. For the purposes of this lease the Superintendent of the Colville Agency of the Bureau of Indian Affairs is the authorized representative of the Secretary."

58. In February 1984, George Davis ("Davis") was the Superintendent of the Colville Agency.

59. In accordance with 25 CFR § 162.2, Davis had actual authority to bind and did bind the Allottees to the Master Lease agreement.

60. At the time the Lease was signed, George Davis had actual and apparent authority to enter into the Lease and sign on behalf of the Allottees under 25 CFR 162.2(a)(4) and (5) because he had obtained signed consent to lease forms from the majority of the Allottees and the 90 day period on those consent forms had run as of the date he signed the Lease.

61. At all times after George Davis signed the Master Lease on behalf of the Allottees, representatives of the BIA signed as the "Lessor" anytime the "Lessor" was required to provide information, sign lease modifications, or otherwise provide

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

"Lessor's" signature.

62. Paragraph 3 of the Master Lease stated that the term of the lease was for 25 years from February 2, 1984 with an option to renew for an additional 25 years.

63. Paragraph 3 further provided that Lessee was to give "Lessor and the Secretary" written notice of his intent to exercise this renewal option at least 12 months prior to the expiration of the original term.

64. The Master Lease did not require approval of this renewal by either the Secretary or the Allottees, rather the Lease would automatically renew upon written notice.

65. Paragraph 29 of the Lease explained "Payments and Notices" stating:

> All notices, payments and demands shall be sent to either party at the address herein recited or to such place as the parties may hereafter designate in writing. Notices and demands shall be served be [sic] certified mail, return receipt requested. The service of any such notice shall be deemed complete within ten (10) days after mailing in any post office within the United States. Copies of all notices and demands shall be sent to the Secretary in care of the office of the Bureau of Indian Affairs, P.O. Box 111, Nespelem, Washington 99155. All notices to Lessor shall be sent to the landowners. The Secretary shall furnish Lessee with the current names and addresses of the Lessor upon the request of Lessee.

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

66. Evans's address and the BIA Colville Agency's address were the only addresses cited in the Lease and no other addresses were attached to the Lease.

67. Upon information and belief, no record exists that any notices or demands prior to 2007 were ever provided by either party and/or the Secretary by certified mail, nor was such service ever requested.

68. Under the Master Lease, modifications and subleases were not valid until approved by the Secretary or the Superintendent of the Colville Agency (as the Secretary's agent).

69. On June 11, 1984, George Davis approved a sublease (the "1984 Sublease") of MA-8 between Evans (as Sublessor) and Sublessee Mar-Lu, Ltd. ("Mar-Lu").

70. Evans signed the 1984 Sublease (the "Mar-Lu Sublease") on behalf of Mar-Lu as President of Chief Evans, Inc., General Partner of Mar-Lu.

71. George Davis approved the Mar-Lu Sublease which stated it was an "amendment to lease."

72. Evans was the only Allottee to sign this agreement.

73. On January 30, 1985, Evans sent a letter to George Davis at the Colville

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

Agency's address as stated on the Master Lease, informing him that he was exercising his option to renew the Master Lease for another 25 year term. This would extend the Master Lease to February 1, 2034.

74. The Colville Agency marked this letter as received on March 18, 1985.

75. Evans also sent this letter to other Allottees in January 1985.

76. Upon execution of the Master Lease, Evans began plans for the Mill Bay Resort for which he would sell specific lots to RV campers who wanted a long term lease to lots on Lake Chelan.

77. Mar-Lu, managed by Evans, began selling memberships in 1984.

78. Evans later dissolved Mar-Lu and continued selling camping memberships in Mill Bay Resort through Chief Evans, Inc.

79. In 1989, Evans decided to change the RV camp resort concept and reduce the number of RV sites originally planned in order to construct and run a golf course on MA-8.

80. Additionally, Evans wanted to provide campers with "Expanded Memberships" so that members could pay more for an exclusive right to a specific RV site until 2034.

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

81. Evans submitted these modifications, including the "Expanded Membership Agreement," for approval by the BIA.

82. On July 7, 1989, Sharon Redthunder, then Real Property Officer at the Colville Agency, sent Evans' attorney, Jack Doty, a letter stating that the Superintendent reviewed the modification in accordance with the "Expanded Membership Sale Agreement" and granted permission to incorporate it into the Lease. George Davis was copied on this letter.

83. On July 30, 1990, the Master Lease again was modified. Attached to the modification was a "Master Plan History" and "Modification Requests." The modification was only signed by Evans and the Superintendent of the Colville Agency. The modification also discussed the marketing of "Expanded Memberships" which, it stated, had previously been approved by the Superintendent.

84. Around 1991, Evans began selling "expanded memberships" to Mill Bay Members and new buyers.

85. Evans and his sales staff advertised these camping memberships to the public providing verbal and written assurances that that the expanded membership was good for 50 years until 2034 and had been approved by the BIA.

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

86. One such document provided to potential buyers of the camping "memberships" was a prospectus filed under oath with the State of Washington under the Washington State Campground Act. This prospectus included recitals regarding the nature of the membership and the fact that the membership agreements were co-extensive with the 50 year lease term until 2034.

87. In 1991 many members purchased an "expanded membership" to Mill Bay RV Park for $25,000 which entitled the member to a specific piece of property for the promised duration of the Master Lease of 2034.

88. The "Expanded Membership" was sold with the representation that it had been approved by the BIA (presumably based upon Sharon Redthunder's 1989 letter) and under the protection of the Washington State Campground Act.

89. Paragraph 13 of the Mill Bay Resort Expanded Membership Sale Agreement (the "Expanded Membership Agreement") states that the duration of the membership is:

> coextensive with the fifty (50) year term commencing February 2, 1984, of Seller's lease for the Mill By property, which lease was entered into between the United States Department of the Interior, Bureau of Indian Affairs, and William W. Evans, Jr., on February 2, 1984, and

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

subsequently assigned by William W. Evans, Jr., to Seller.

90. Both the original Membership Sale Agreement and Expanded Membership Sale Agreement include a provision stating: "This contract shall be interpreted and enforced in accordance with the laws of the State of Washington."

91. Generally, under 25 C.F.R. § 1.4(a), general application of State law to Indian trust land is prohibited. However, under 25 C.F.R. § 1.4(b), the Secretary may make state law applicable to Indian trust land:

> The Secretary of the Interior or his authorized representative may in specific cases or in specific geographic areas adopt or make applicable to Indian lands all or any part of such laws, ordinance, codes, resolutions, rules or other regulations referred to in paragraph (a) of this section as he shall determine to be in the best interest of the Indian owner or owners in achieving the highest and best use of such property.

92. When Evans established the Mill Bay Resort, he was aware of the need to provide potential camping members with an enforceable contract under a stable regulatory scheme. The Washington Camping Resorts Act and other Washington law provided consumers with the necessary assurances to protect their long-term investment in the Mill Bay Resort.

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

93. By approving the membership contracts and incorporating them into the Master Lease as a modification, the BIA adopted the provisions of the agreements allowing state law to apply to the Mill Bay Resort and extending the members' rights.

94. In all, from 1984 to 1994, over 183 consumers purchased camp memberships paying anywhere between $5,995 to $25,000 for the membership alone.

95. All of the membership contracts were to last 50 years until the year 2034, and the BIA had approved the 50-year term.

96. Under the membership agreements, members have the right to sell their memberships at an increased price than that originally paid. Evans and his successors in interest retained a percentage of these sales/assignments.

97. Upon information and belief, new members have paid up to three times that of the original price in order to purchase a camping membership valid until 2034.

98. Consumers paid millions of dollars in reliance of the validity of these memberships and the 2034 expiration date that was approved by the BIA.

99. Members continue to pay for improvements, including quarterly dues for operating costs pursuant to their original sales agreements.

100. Upon selling the majority of the memberships, Evans wanted to modify

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

his original campground concept even further by subleasing a portion of MA-8 for construction and operation of a casino.

101. On August 6, 1993, Evans (on behalf of Chief Evans, Inc., successor in interest to Mar-Lu) entered into another sublease (the "CTEC Sublease") with Colville Tribal Enterprise Corporation ("CTEC").

102. Part 1 of the CTEC Sublease provided:

> The term of this sublease shall be the time remaining on the twenty-five (25) year term as established in Master Lease No. 82-21 and shall begin on _____, 1993, and the additional term of twenty-five (25) years exercised by Evans in the letter to the Superintendent on January 30, 1985. CTEC's act of entering into this sublease by subscribing its name hereto shall be deemed as the exercise of its option to extend this sublease for the additional twenty-five (25) year term. The initial approval of this sublease by the Secretary ***shall be deemed to be an acceptance by the Secretary of such extension***. *[Emphasis added]*

103. This sublease, signed as approved by the BIA for the Secretary, further modified the Master Lease and acknowledged the validity of the renewal.

104. In April 1996, certain Allottees called the Colville Agency inquiring about their lease payments. Harvey George, Jr. Realty Specialist at the Colville Agency sent a letter to these individual Allottees in response to their phone calls. This

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

letter, dated June 4, 1996, explained the Lease payment schedule as well as stating the term of the Lease is to expire February 1, 2034.

105. In 2001, Mill Bay Members received a letter from Chief Evans, Inc. stating the park was closing at the end of 2001 and all membership contracts would be cancelled at that time.

106. In order to better understand their rights under the various agreements with Evans and the Master Lease, Mill Bay Resort Members submitted several Freedom of Information Act ("FOIA") requests for documents in the Mill Bay/Evans Lease file at the Colville Agency to which the BIA failed to timely respond.

107. When the BIA finally provided documents regarding the Mill Bay Resort and Master Lease, it excluded much of the documentation for various reasons. Upon information and belief, the Association has been unable to obtain the necessary documents regarding the Master Lease and the Mill Bay Resort.

108. In response to Chief Evans, Inc. letter stating the decision to close the park, Mill Bay Members Association (the "Association") petitioned the Washington State Attorney General, beginning an investigation into the assets and affairs of the Mill Bay Resort and Chief Evans, Inc.

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

109. The Washington State Attorney General's Office served interrogatories on Chief Evans, Inc., who in turn commenced a lawsuit against both the Mill Bay Members and the Washington State Attorney General in Colville Tribal Court seeking court approval to close the park.

110. The Colville Tribal Court subsequently dismissed the suit for lack of jurisdiction.

111. Paul Grondal and Mill Bay Resort Members filed a Complaint in Chelan County Superior Court against Chief Evans, Inc., William Evans, Jamie Jones, Kenneth and Leslie Evans, and John Jones (the "Chief Evans Defendants") seeking to enjoin them from cancelling the memberships and closing the park.

112. This Complaint alleged breach of contract, fraud and misrepresentation, violation of the Camping Resort Act, violation of Washington's Consumer Protection Act, interference with contractual relationships, seeking appointment of a Receiver and injunctive relief.

113. Upon information and belief, the Chief Evans Defendants petitioned the BIA to intervene in the action or file an amicus brief on behalf of the individual Allottees but the BIA refused to provide any assistance in the action.

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

114. In March 2003, Defendants in that action sought removal to the Eastern District of Washington but on April 18, 2003 Judge Wm. Fremming Nielson ruled the federal district court lacked subject matter jurisdiction over the claims.

115. On June 26, 2003, Judge John Bridges in Chelan County Superior Court issued an order finding that the State of Washington retained jurisdiction over the dispute of the parties. In this order, Judge Bridges stated:

> The Master Lease was executed by George Davis, Superintendent of the Colville Indian Agency on behalf of the Department of the Interior, Bureau of Indian Affairs.

116. The Supreme Court of Washington denied the Defendants' petition for direct review of Judge Bridges order on November 18, 2003.

117. Evans died on September 11, 2003 and further court action ensued regarding this action and the probate of his estate.

118. On April 5, 2004, Paul Grondal and the Mill Bay Resort Members filed suit in Chelan County Superior Court seeking damages on a contingent creditor's claim against Evans' estate.

119. During these proceedings, the Mill Bay Resort Members formed and incorporated the Mill Bay Members Association, a Washington non-profit corporation.

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

120. Subsequently, the Personal Representative of Evans' Estate invoked the right to mediation of the dispute under Washington's Trust and Estate Dispute Resolution Act, RCW 11.96A *et seq.*

121. A two-day mediation occurred in Seattle on August 8, 2004 and September 9, 2004.

122. BIA officials were present at that mediation, including Sharon Redthunder and Superintendent Nicholson.

123. The parties entered into a Settlement Agreement on September 15, 2004 pursuant to the mediation to settle the creditor's claims and lawsuits filed by Paul Grondal and Mill Bay Members.

124. Mary Wynne, attorney for Evans' heir Sandra Evans, filed a Letter of Objection to the Settlement with the mediator and a Motion to Disallow the Agreement with the BIA.

125. Upon information and belief, the BIA failed to respond and/or refused to object to the Settlement Agreement.

126. Jeffrey Webb filed a motion seeking approval of the Settlement Agreement on October 14, 2004.

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

127. Notice of the Settlement Agreement and motion seeking judicial approval was served on all interested parties to the pending litigation and all beneficiaries of Evans' estate.

128. Notice of the Order required anyone with objections or comments to the Settlement Agreement to notify the Court and provide their contact information with a written statement of their desire to appear at the Settlement Approval Hearing scheduled on November 23, 2004.

129. Judge Bridges approved the Settlement Agreement on November 23, 2004 after considering objections and comments.

130. On November 24, 2004 all interested parties were served with notice of Judge Bridges approval of the Settlement Agreement.

131. The BIA, Colville Tribes, and CTEC were considered interested parties and received notice of the Settlement Agreement.

132. The Settlement Agreement sent to the BIA stated:

> All parties acknowledge that the Mill Bay Members have a right to use the property commonly known as the Park pursuant to the Prior Documents and this Agreement through December 31, 2034…

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

133. Upon information and belief, the BIA was at all times apprised of the litigation and provided with notice of the pending actions of the parties.

134. Not only did the BIA participate in the mediation, but it was also served with a Motion to Disallow the Agreement as well as a copy of the final Settlement Agreement and never objected to the terms of the Settlement Agreement at any time prior to or after Judge Bridges entered his Order.

135. Upon information and belief, the BIA and Allottees were fully aware of the Chelan County litigation and at all times knew Evans had exercised his option to renew the Master Lease.

136. On July 14, 2004, Superintendent Nicholson signed a Lease Information Affidavit which was submitted to the Washington State Department of Licensing and Regulation. This affidavit stated that the MA-8 Lease expires February 2, 2034 and that the landlord for this land was the "Bureau of Indian Affairs." Superintendent Nicholson signed this affidavit as "Signature of Landlord."

137. On November 9, 2005, Indian Probate Judge Stancampiano issued his Order Approving Settlement Agreement which settled Evans' Estate. This settlement granted the Colville Tribes all of Evans' trust interest in MA-8 subject to a life estate

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

belonging to Wapato Heritage, LLC ("Wapato Heritage"). The life estate is measured by the last surviving great-grandchild of Evans.

138. Evans' grandsons are currently members of Wapato Heritage.

139. Wapato Heritage possesses a life estate in Evans' MA-8 allotment interest, which currently consists of an approximately twenty three percent undivided interest in MA-8.

140. Beginning in 2005, Wapato Heritage began negotiating a Replacement Lease with the MA-8 Allottees.

141. Upon information and belief, these negotiations included meetings arranged by the BIA in order for Wapato Heritage to provide information about the suggested Replacement Lease.

142. Upon information and belief, these meetings and other communications regarding the Replacement Lease included statements that the Master Lease had been renewed until 2034.

143. Upon information and belief, as a result of these negotiations and other previous documentation provided to the Allottees, all of the Allottees received actual notice that the Master Lease had been renewed prior to January 2007.

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

144. By June 2006, a majority of the Allottees had approved the Replacement Lease.

145. Wapato Heritage submitted the Replacement Lease for approval in June 2006 but the BIA failed to respond to this request and did not approve or deny the Replacement Lease.

146. In a letter dated July 17, 2006, Marlene Marcellay, an MA-8 Allottee sent a letter to Superintendent Raymond Fry voicing her concerns about the new lease proposal and requesting the BIA to provide information and take action on the issues to an attached document.

147. Ms. Marcellay's letter questioned whether the BIA had fully acted within the Allottees best interests and requested proof that the lease had been validly entered into and the BIA appropriately supervised Lease compliance.

148. On October 26, 2007, the Chairman of the Colville Tribes sent a letter to BIA's council requesting the "current legal status of the 25-year extension."

149. Despite the BIA's repeated acknowledgements in documentation and even under oath that the Master Lease expired in 2034, on November 30, 2007, Superintendent Fry, on behalf of the BIA, informed Wapato Heritage of the BIA's

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

position that Evans had not validly exercised the option to renew the Master Lease. This letter failed to provide any explanation as to why the renewal was invalid or how Wapato Heritage could cure this alleged deficiency.

150. On December 18, 2007, Wapato Heritage responded to the letter stating that the option to renew had been exercised and the BIA had repeatedly and consistently acknowledged the renewal as valid.

151. The BIA failed to provide reasons explaining why the option to renew had not been validly exercised. The BIA further failed to provide information as to how this could be remedied in order to properly renew the Master Lease prior to the necessary date of February 2, 2008.

152. Prior to February 2, 2008, the BIA never provided Plaintiffs with notice that the Master Lease would expire in 2009.

153. The Business Council of the Colville Tribes passed a resolution supporting the United States position that the Master Lease had not been effectively renewed and that the Colville Tribes was seeking to be the new Master Lease holder upon expiration of the current lease.

154. The BIA issued another decision on the Master Lease renewal on August

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

7, 2008 which Wapato Heritage, as Lessees under the Master Lease, appealed to the BIA Northwest Regional Director in Portland, Oregon.

155. The Northwest Regional Director affirmed the BIA's position on October 31, 2008.

156. On June 6, 2008, Wapato Heritage filed suit in the United States District Court for the Eastern District of Washington seeking injunctive relief and declaratory judgment.

157. A hearing was held for that case, *Wapato Heritage, LLC v. United States of America, et al.*, on November 17, 2008 regarding Wapato Heritage's motions for partial summary judgment for claims for injunctive relief, deprivation of property in violation of Fifth Amendment Due Process Clause, arbitrary and capricious agency action, and declaratory judgment that the option to renew was validly exercised.

158. Subsequently, the Court denied Wapato Heritage partial summary judgment regarding all issues and dismissed the claim for declaratory judgment.

159. The *Wapato Heritage, LLC* case is currently pending appeal.

160. Paragraph 8 of the Master Lease, titled "Status of Subleases on Conclusion of Lease" states:

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

> Termination of thie [sic] Lease, by cancellation or otherwise, shall not serve to cancel subleases or subtenancies, but shall operate as an assignment to Lessor of any and all such subleases or subtenancies and shall continue to honor those obligations of Lessee under the terms of any sublease agreement that do no [sic] require any new or additional performance not already provided or previously performed by Lessee…

161. Upon discovering the BIA's position regarding the Master Lease renewal, the Association sent a letter to the Superintendent of the Colville Agency and the Regional Solicitor's Officer for the Pacific Northwest Region of the DOI asserting that Paragraph 8 allows the Association, as subtenants, to use and occupy the land until 2034, in accordance with the Membership Agreements and the Settlement Agreement.

162. While expiration of the Master Lease may serve to terminate the Master Lease, it does not cancel the subtenancies expressly approved by the Secretary.

163. The United States attorney at the Regional Solicitor's Portland Office and the Superintendent of the Colville Agency responded to these letters asserting that the BIA's position is that the Association's tenancy expires when the Master Lease allegedly expires on February 2, 2009.

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

CLAIMS FOR RELIEF

Estoppel

164. Plaintiffs reallege the preceding paragraphs and incorporate herein by reference.

165. The BIA was authorized to bind the Allottees to the Master Lease and any modification or plans related to that lease.

166. The BIA was authorized to bind the United States in regards to the leasing of MA-8 as land owned by the United States in trust for the benefit of the Allottees.

167. The BIA agents who negotiated, executed, modified, and otherwise managed the Master Lease acted within the scope of their authority when they acknowledged the validity of renewal and modified the terms of the Master Lease through their subsequent actions and omissions.

168. The BIA was the sole signatory and supervisor of the Master Lease for over 20 years, never seeking the MA-8 Allottees' input regarding the management of MA-8 and at all times representing to third parties, including the State of Washington and Plaintiffs, that the BIA was the Lessor for all purposes under the Master Lease.

169. The BIA repeatedly acknowledged that the Master Lease and Plaintiffs'

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

tenancy extended until 2034.

170. Plaintiffs relied on these statements, actions and omissions by investing in camping memberships, rents, improvements to the property, and in entering into the Settlement Agreement with Chief Evans, Inc.

171. The BIA now claims the Master Lease and Plaintiff's tenancy expires on February 2, 2009, contradicting its statements and actions for the past 20 years.

172. Permitting the BIA to repudiate its actions and statements of the last 20 years will cause actual and serious injury to Plaintiffs.

Waiver and Acquiescence

173. Plaintiffs reallege the preceding paragraphs and incorporate herein by reference.

174. The BIA had authority and did execute the Master Lease signing as "Lessor."

175. The BIA, as Trustee to the Allottees, had the duty to enforce the Allottees' contractual and legal rights.

176. By consistently asserting the option to renew had been validly exercised and signing documents affirming the extended term, the BIA waived any objections to

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

the validity of the notice to exercise the option to renew the Master Lease.

177. By approving the Extended Membership Agreements and by failing to object to the Settlement Agreement both of which extended the Association's right to use a portion of MA-8 until 2034, the BIA waived any objections to extending the term of the camping memberships.

178. The same BIA agents with authority to execute and modify the Master Lease had authority to approve use of MA-8 as Trustee for the Allottees and did approve such use by acquiescing to or waiving any objections to the Settlement Agreement allowing the Association continued use of the RV Resort until 2034.

179. The BIA and Allottees accepted the increased payments as scheduled under the Settlement Agreement, further acquiescing to Judge Bridges' order regarding the Association's tenancy of MA-8 until 2034.

180. The BIA cannot now claim defect in performance without first providing notice of the defect, the nature of the defect and allowing the right to cure the defect.

Modification

181. Plaintiffs reallege the preceding paragraphs and incorporate herein by reference.

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

182. The Superintendent of the Colville Agency, George Davis, had actual authority to bind the Allottees in the Master Lease and enter into any subsequent modifications of the Master Lease.

183. Accordingly, Mr. Davis had actual authority to accept Evans' exercise of the option to renew even if such notice failed to perfectly abide by the provisions of the Master Lease.

184. The BIA had authority to approve the Mill Bay Resort Membership Agreements for an additional term until 2034.

185. The BIA approved the Membership Agreements as well as acquiesced in the Settlement Agreement thus extending the term of the Association's tenancy to 2034.

Agency Action Was Arbitrary, Capricious, an Abuse of Discretion, and Not in Accordance With Law

186. Plaintiffs reallege the preceding paragraphs and incorporate herein by reference.

187. The BIA owes a Trust duty to all Allottees of MA-8.

188. The BIA has based its most recent decisions upon the requests of only a

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

few Allottees and has not sought input from the majority of Allottees regarding the status of the notice to renew or their desire to find the renewal invalid.

189. Further, upon information and belief, the Colville Tribes are the Allottee whose interests the BIA has based its decisions upon and consulted with regarding the current leasing of MA-8.

190. Upon information and belief, the Colville Tribes is currently attempting to become the Lessee of a new Master Lease.

191. Upon information and belief, the purpose of invalidating the Master Lease was to provide the Colville Tribes with more control over the leased property and allow for the Colville Tribes to receive a greater financial benefit.

192. While the BIA has a fiduciary duty to the Colville Tribes, it has an equal duty to the other MA-8 Allottees and must consider their interests and desires prior to any actions on the leased land.

193. There is an inherent conflict of interest between the Colville Tribes as an Allottee and as a potential Lessee.

194. In order to represent the interests of all MA-8 Allottees, the BIA must take all Allottees interests into consideration and not rely on the requests and position

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

of Allottees who represent less than a majority of the MA-8 allotment interest.

195. Upon information and belief, the BIA's actions are an attempt to enable the Colville Tribes to obtain additional money from land upon which a valid lease already exists.

196. The BIA has consistently taken the position that it executes, controls and manages leasing, subleasing, and use of MA-8.

197. The BIA's current position that it did not have authority to accept notice on behalf of the Allottees, modify the terms of the Master Lease, modify terms of any Subleases to MA-8, or otherwise burden and encumber the Allottees' rights to MA-8 constitutes arbitrary and capricious agency action, is an abuse of discretion and otherwise not in accordance with the law.

198. These actions have caused injury to the Plaintiffs.

Violation of the Fifth Amendment to the Constitution of the United States

199. Plaintiffs reallege the preceding paragraphs and incorporate herein by reference.

200. Plaintiffs have an exclusive right to use and occupy the portion of MA-8 known as the Mill Bay Resort.

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

201. Such an exclusive use to use and occupy land is a valid property right.

202. The BIA represents the United States as Trustee for Indian lands, negotiated the terms of the Master Lease as well as being the sole signatory for the Lessor, and acted as the approving authority for all plans and improvements of MA-8, thus, the BIA is an interested party to the Master Lease.

203. As an interested party, the BIA's determination cannot be a binding adjudication as to the validity of the renewal or termination of the Master Lease, subleases and other usage rights to MA-8 without violating Plaintiffs' Due Process rights.

204. The BIA is an interested party to the lease transactions as it is representing the Allottees in a fiduciary capacity as well as signing documents as "Lessor."

205. The Defendants' determination that the Plaintiffs' tenancy of MA-8 expires on February 2, 2009 deprives Plaintiffs of their property rights without due process of the law and in violation of the Fifth Amendment to the Constitution of the United States of America.

206. No adequate compensatory remedy exists that could provide Plaintiffs

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

with just compensation for the loss of their rights to use and occupy a portion of MA-8 through 2034.

Declaratory Judgment

207. Plaintiffs reallege the preceding paragraphs and incorporate herein by reference.

208. An actual controversy exists between Plaintiff and the Defendants regarding the term of the Master Lease expiring on February 2, 2034.

209. Pursuant to consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, First Session) and RCW 37.12.010, compliance with provisions of the Master Lease should be interpreted according to Washington State law.

210. Further, the Secretary approved application of Washington State law to the Mill Bay Membership Agreements and enforcement of those terms.

211. The MA-8 Allottees all received actual written notice that the option to renew had been exercised prior to the required date of February 1, 2008.

212. Under Washington State law, the option to renew the Master Lease has been validly exercised.

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

213. Even if this court finds that the option to renew was not validly exercised pursuant to the terms of the original Master Lease, the BIA had actual authority to sign on behalf of the Allottees and subsequently modify the terms of the lease, thus the BIA's actions and inactions constituted modification of this provision and/or waiver of perfect performance of this provision.

214. Similarly, the BIA had actual authority to extend the Association's tenancy of MA-8 until the end of 2034.

215. The rejection of the option to renew is effectively a termination of the Master Lease.

216. The Master Lease provides that any termination of the Master Lease shall not serve to cancel any subtenancies, therefore, expiration of the Master Lease does not terminate the Association's tenancy and rights to use Mill Bay Resort.

217. Even if Washington State law is not applied to interpret the terms of the lease and the court finds the BIA lacked authority to modify the terms of the lease and/or accept less than perfect performance, the majority of the Allottees have not rejected notice of the Master Lease renewal, thus if the BIA lacks authority to act on behalf of the Allottees, it cannot now reject the Master Lease renewal if the majority of

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

the Allottees have not rejected the renewal.

218. The BIA, as Trustee for the Allottees, had the opportunity to object to the Settlement Agreement allowing the Association's continued use of the RV Resort until 2034, and subsequently had the opportunity to be heard regarding this issue which was determined as settled by a court of law in November 2004.

219. That Settlement Agreement is binding upon all parties with interest in the portion of MA-8 known as Mill Bay Resort, including the Allottees.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for relief against the Defendants as follows:

1. For a stay to maintain the status quo regarding the Associations' use and rights to the Mill Bay Resort pending this litigation and the appeal of Wapato Heritage, *LLC v. United States*;

2. For a declaratory judgment, pursuant to 28 U.S.C. § 2201, that Defendants are equitably, collaterally, or otherwise estopped from denying the Plaintiffs their rights to use the Mill Bay Resort until February 2, 2034;

3. For a declaratory judgment, pursuant to 28 U.S.C. § 2201, that the Plaintiffs have a right to use and occupy the land known as the Mill Bay Resort until

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

February 2, 2034;

4. For a declaratory judgment that the Master Lease has been effectively renewed until February 2, 2034;

5. For a declaratory judgment that the BIA's actions invalidating the renewal of the Master Lease constitutes termination of the Master Lease;

6. For an order holding unlawful and setting aside the Defendants' determinations that the Master Lease was not properly renewed, pursuant to 5 U.S.C. §706;

7. For injunctive relief permanently enjoining Defendants from denying the validity of the renewal of the Master Lease;

8. For injunctive relief permanently enjoining Defendants from denying the Plaintiffs rights to use and occupy the land known as Mill Bay Resort until February 2, 2034;

9. For costs and reasonable attorneys' fees allowed by law, including, but not limited, to those provided by 28 U.S.C. § 2412, the Master Lease, and the Settlement Agreement approved by the Chelan County Superior Court on November 23, 2004;

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

10. For any other relief as the Court deems just and proper.

DATED this 21st day of January, 2009.

s/JAMES M. DANIELSON
WSBA No. 1629
Attorneys 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: jimd@jdsalaw.com

s/KRISTIN FERRERA
WSBA No. 40508
Attorneys 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: kristinf@jdsalaw.com

s/FRANKLIN L. SMITH
WSBA No. 14527
Attorneys for Plaintiffs
Hedrick Smith, PLLC
Mr. Franklin L. Smith
800 Fifth Avenue, Suite 4000
Seattle, WA 98104
Telephone: (206) 464-1911
Fax: (206) 464-1811
Email: frank@flyonsmith.com