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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;  
US DEPARTMENT OF INTERIOR;  
BUREAU OF INDIAN AFFAIRS, et.  
al.,

Defendants.

NO. CV-09-0018-JLQ

**ORDER GRANTING PLAINTIFFS’  
MOTION TO EXPEDITE AND  
MOTION TO MODIFY THE  
BRIEFING SCHEDULE**

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**BEFORE THE COURT** is Plaintiffs’ Motion to Expedite (ECF No. 243). Plaintiffs request the court expedite the hearing on 1) Plaintiffs’ Motion to Modify the Briefing Schedule on the United States’ Motion for Summary Judgment (ECF No. 245); and 2) Plaintiffs’ Motion for Continuance to Enable Depositions and Discovery (ECF No. 246).

Under the present schedule, Plaintiffs’ response to the United States’ Motion For Summary Judgment is due April 23, 2012, the date requested by Plaintiffs and granted by the court in an earlier Order Granting Plaintiffs’ Motion for Extension of Time (ECF No. 242). Plaintiffs’ Motion to Modify the Briefing Schedule now asks the court to defer all summary

1 judgment briefing deadlines until after the court has ruled upon their Motion for Continuance  
2 to Enable Depositions and Discovery filed pursuant to Federal Rule of Civil Procedure 56(d)  
3 ( ECF No. 246).

4 Plaintiffs also ask the court to expedite the hearing on the Rule 56(d) Motion, so that the  
5 parties “may move forward with this matter.” According to counsel for Plaintiffs’ declaration,  
6 the United States and Plaintiffs do not agree on the extent of discovery necessary at this time.  
7 Plaintiffs ask the court to set their Rule 56(d) Motion for hearing on April 30, 2012, and order  
8 briefing upon an expedited schedule agreed upon by Plaintiffs and the United States.

9 Federal Rule of Civil Procedure 56(d) provides an opportunity for a party responding to  
10 a summary judgment motion to alert the district court that the party lacks “facts essential to  
11 justify its opposition” and to request additional time or discovery. Ordinarily, it is this court’s  
12 practice to consider Rule 56(d) motions at the same time the court considers the merits of the  
13 summary judgment motion. Rule 56(d) provides a party with an *alternative* argument by  
14 which to oppose entry of judgment, but that party must still ordinarily offer any substantive  
15 opposition (or admit there is none to offer).

16 However, in considering whether to expedite consideration of the Rule 56(d) Motion, the  
17 court notes the procedural history of the case. For almost two years, (from May 24, 2010 to  
18 March 29, 2012), formal discovery in this case has been stayed. On March 22, 2012, the  
19 United States filed its summary judgment motion seeking judgment in its favor on its  
20 ejection counterclaim against the Plaintiffs. Part of that Motion contends the Plaintiffs lack  
21 evidence to prove their equitable estoppel claim and defense. Plaintiffs state in their Rule  
22 56(d) Motion that they have not yet conducted any formal discovery in this case and have not  
23 even received initial disclosures from Defendants. Plaintiffs also point out that no  
24 Scheduling Order is in place. Until this date, the parties had jointly recommended that “prior  
25 to moving forward with discovery,” and “prior to establishing a revised discovery schedule”  
26 “certain dispositive motions are necessary for the Court to decide.” *See* ECF No. 209 at 3.  
Plaintiffs’ Rule 56(d) Motion was filed promptly, and generally, Rule 56(d) is “applied with

1 a spirit of liberality” to prevent injustice to the party facing summary judgment. *Buchanan*  
2 *v. Stanships, Inc.*, 744 F.2d 1070, 1074 (5th Cir. 1984). The United States is apparently in  
3 agreement with the Plaintiffs’ proposed expedited schedule on the Rule 56(d) Motion.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. Plaintiffs’ Motion to Expedite (**ECF No. 243**) and Motion to Modify Briefing Schedule  
6 for the United States Motion for Summary Judgment (**ECF No. 245**) are **GRANTED**.

7 2. All briefing deadlines on the United States’ Motion for Summary Judgment are *stayed*,  
8 pending resolution of the Plaintiffs’ Motion to Continue Pursuant to Fed.R.Civ.P. 56(d). The  
9 court will establish new deadlines in a separate order at a later date.

10 3. Any response to Plaintiffs’ Rule 56(d) Motion (ECF No. 246) shall be filed on or  
11 before **April 20, 2012**. Plaintiffs shall Reply on or before **April 25, 2012**.

12 4. The Clerk of the Court shall set Plaintiffs’ Rule 56(d) Motion for Continuance (ECF  
13 No. 246) for hearing on Monday, **April 30, 2012**, without oral argument.

14 **IT IS SO ORDERED.**

15 The Clerk of the Court shall enter this ORDER and provide copies to counsel and all pro  
16 se parties.

17 Dated this 17<sup>th</sup> day of April, 2012.

18 s/ Justin L. Quackenbush  
19 JUSTIN L. QUACKENBUSH  
20 SENIOR UNITED STATES DISTRICT JUDGE  
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