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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

KONIAG, INC., an Alaska corporation, and
MICHAEL P. O'CONNELL, an individual

Plaintiffs,

v.

KURT KANAM, individually and as Tribal
Attorney for the Native Village of Karluk, and
ORBIE MULLINS, individually and as Village
of Karluk Tribal Court Judge for the Karluk
Tribal Court for the Native Village of Karluk,

Defendants.

Case No.: 3:12-cv-00077-SLG

FIRST AMENDED VERIFIED
COMPLAINT

I. NATURE OF THE CASE

1. Koniag, Inc. (Koniag) and Michael P. O'Connell (O'Connell) (Koniag and O'Connell, collectively, "Plaintiffs") bring this action for injunctive and other prospective relief. Plaintiffs seek to enjoin Kurt Kanam, individually and as Tribal Attorney for the Native Village of Karluk (Kanam), and the Honorable Orbie Mullins, individually and as Village of Karluk Tribal Court Judge for The Karluk Tribal Court For the Native Village of Karluk (Judge Mullins) (together with Kanam, "Defendants"), and those affiliated with or acting in concert with either of them, from continuing to violate federal law by unlawfully exercising, or purporting to

FIRST AMENDED VERIFIED COMPLAINT

Koniag, Inc., et al. v. Kanam, et al., 3:12-cv-00077-SLG

Page 1 of 13

Case 3:12-cv-00077-SLG Document 13 Filed 04/11/12 Page 1 of 13

exercise, jurisdiction in the Karluk Tribal Court over Koniag or O'Connell. Specifically, Plaintiffs seek to enjoin such purported jurisdiction regarding two Karluk Tribal Court cases:

- *The Native Village of Karluk v. Koniag Corporation* Cause No. 3-19-12-1 (*Karluk v. Koniag*); and
- *The Native Village of Karluk v. Michael P. O'Connell, Alaska Bar Association, California Bar Association, Washington Bar Association, Utah Bar Association, Idaho Bar Association, Minnesota Bar Association, Oregon Bar Association*, Cause No. 4-09-12-1 (*Karluk v. O'Connell*).

These cases will be referred to collectively as the "Tribal Court Cases."

2. Without immediate and permanent injunctive relief, Defendants' illegal conduct will subject Plaintiffs to the jurisdiction of the Karluk Tribal Court in violation of federal law and subject Plaintiffs to irreparable injury and harm and immeasurable and unspecified monetary damages.

II. THE PARTIES

3. Koniag is an Alaska corporation with its principal place of business on Kodiak Island, Alaska.

4. On information and belief, the "Koniag Corporation" named as a defendant in *Karluk v. Koniag* is Koniag, Inc., the Plaintiff in this action.

5. Koniag is an Alaska Native Regional Corporation established pursuant to section 7 of the Alaska Native Claims Settlement Act of 1971 (ANCSA), 43 U.S.C. § 1606(d).

6. Koniag is not a member of the Native Village of Karluk.

7. O'Connell is an individual domiciled in Washington State.

8. O'Connell is not a member of the Native Village of Karluk.

FIRST AMENDED VERIFIED COMPLAINT

Koniag, Inc., et al. v. Kanam, et al., 3:12-cv-00077-SLG

Page 2 of 13

Case 3:12-cv-00077-SLG Document 13 Filed 04/11/12 Page 2 of 13

9. The Native Village of Karluk is not a Koniag shareholder.

10. The Native Village of Karluk is not a regional or village corporation under section 8 of ANCSA, 43 U.S.C. § 1607(a).

11. The Native Village of Karluk is a federally recognized Indian tribe.

12. The Native Village of Karluk is located on Kodiak Island, Alaska.

13. The Karluk Tribal Court for the Native Village of Karluk is an instrumentality and agency of the Native Village of Karluk.

14. The United States does not hold land in trust for the Native Village of Karluk.

15. The Native Village of Karluk does not currently have a reservation recognized as such by the United States.

16. Kurt Kanam is an individual and, in his official capacity, Tribal Attorney for the Native Village of Karluk.

17. Orbie Mullins is an individual and, in his official capacity, Village of Karluk Tribal Court Judge, for The Karluk Tribal Court for the Native Village of Karluk.

III. JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because among other matters Plaintiffs' cause of action is based on questions of federal law, including federal common law of tribal jurisdiction over non-members and ANCSA.

19. Venue is appropriate in this court pursuant to 28 U.S.C. § 1391.

IV. GENERAL ALLEGATIONS

20. According to the date stamp on the documents received by Koniag pertaining to *Karluk v. Koniag*, that case was filed in the Karluk Tribal Court on March 19, 2012. Koniag was

served on March 27, 2012. The documents served on Koniag include a Complaint, Order to Show Cause, Proposed Declaratory Judgment, Summons and related documents. Dkt. 9-1.

21. According to the date stamp on the documents received by O'Connell pertaining to *Karluk v. O'Connell*, that case apparently was filed on April 9, 2012. O'Connell was served on April 10, 2012. The documents served on O'Connell include a Complaint, Order to Show Cause, Proposed Declaratory Judgment, Summons and related documents. These documents are included as Exhibit A to the Second Declaration of John Evans (2d Evans Decl.) filed contemporaneously herewith. These documents received from Defendants by Koniag and O'Connell are referred to collectively as the "Tribal Court Documents."

22. The Tribal Court Documents purport to invoke the jurisdiction of "The Karluk Tribal Court For the Native Village of Karluk" (Karluk Tribal Court).

23. The Tribal Court Documents indicate the Karluk Tribal Court is located in Toledo, Washington.

24. Prior to receipt of the Tribal Court Documents in *Karluk v. Koniag*, Plaintiffs did not know of the existence of the Karluk Tribal Court.

25. On information and belief, the Karluk Tribal Court is an official instrumentality of the Native Village of Karluk.

26. Defendants' respective actions resulting in the Tribal Court Documents have been done on behalf of the Native Village of Karluk.

27. The Tribal Court Documents include two documents titled "Order to Show Cause" signed by Judge Mullins (the Show Cause Orders). The first, dated March 19, 2012, purports to "order" Koniag to "show cause within 20 days [which would be April 8] and by April 20, 2012 date [sic] why this court should not grant Plaintiff's requested relief." Dkt. 9-1 at 3.

FIRST AMENDED VERIFIED COMPLAINT

Koniag, Inc., et al. v. Kanam, et al., 3:12-cv-00077-SLG

Page 4 of 13

Case 3:12-cv-00077-SLG Document 13 Filed 04/11/12 Page 4 of 13

The second, dated April 9, 2012, purports to “order” O’Connell to “show cause within 20 days [which would be April 29] and by May 7, 2012 date [sic] why this court should not grant Plaintiff’s requested relief.” 2d Evans Decl., Ex. A.

28. Plaintiffs have attempted to contact the Defendants to determine how the Defendants calculate “within 20 days.” Plaintiffs have had no success in that effort.

29. The respective complaints and “Proposed Declaratory Judgments” included in the Tribal Court Documents set forth in general terms the relief requested against the Plaintiffs.

30. The relief sought against Koniag includes unspecified “awards” related to generally alleged “fraudulent” conduct. According to the Tribal Court Documents, such “fraudulent” conduct relates to the prior merger of Koniag and the ANCSA village corporation for Karluk, and the “return” to the Village of Karluk of its former reservation terminated by ANCSA. Dkt. 9-1 at 4-5, 9.

31. The relief sought against O’Connell includes an apparent finding of criminal liability under 18 U.S.C. § 1503. 2d Evans Decl., Ex. A. 18 U.S.C. § 1503 imposes criminal sanctions for threats or acts of intimidation against judicial officers. According to the Tribal Court Documents, the “criminal” actions alleged relate to O’Connell’s April 5, 2012 letter to Defendants requesting a continuance in *Karluk v. Koniag* and, in the alternative, notifying Defendants of Koniag’s intent to file for injunctive relief in this Court. Dkt. 8-3.

32. The only bases for Karluk Tribal Court jurisdiction asserted in the Tribal Court Documents are (i) the “declaratory Judgments Act,”; and (ii) the “Administrative Procedures Act”. Dkt. 9-1 at 9; *see also* 2d Evans Decl., Ex. A. The Tribal Court Documents do not explain how the Karluk Tribal Court would have jurisdiction or authority to (a) “de-merge” two ANCSA

corporations, (b) undo ANCSA's termination of the prior Karluk reservation, or (c) adjudicate criminal liability under federal law.

33. The requested relief in *Karluk v. Koniag* also would direct the federal district court to "register the Declaratory Order of this court under the Uniform Foreign Judgments Act." Dkt. 9-1 at 5.

34. Koniag's business and other transactions with the Native Village of Karluk do not have a nexus to matters described in the Tribal Court Documents. Other than with respect to the Tribal Court Cases, O'Connell has never had any dealings with the Native Village of Karluk.

35. Plaintiffs have had no consensual relationship with Kurt Kanam, Orbie Mullins or the Native Village of Karluk "of the qualifying kind," *Strate v. A-1 Contractors*, 520 U.S. 438, 457 (1997), that establishes a nexus to matters described in the Tribal Court Documents.

36. Plaintiffs have not taken any action that authorizes the exercise of Native Village of Karluk Tribal Court jurisdiction under federal law, including *Montana v. United States*, 450 U.S. 544 (1981).

37. Plaintiffs have not consented to jurisdiction in the Tribal Court for the Native Village of Karluk as to matters described in the Original Complaints for Declaratory Judgment executed by Kurt Kanam, Defendant Kanam's Proposed Declaratory Judgment or Orders to Show Cause executed by Defendant Orbie Mullins.

38. Defendants' assertion of jurisdiction over Plaintiffs is "presumptively invalid." *Atkinson Trading Co, Inc. v. Shirley*, 532 U.S. 645, 659 (2001) (where the party subject to that presumption "fail[s] to establish" the basis for tribal court jurisdiction over a non-member, "the presumption ripens into a holding").

39. The “Old Karluk Reservation” referenced in affidavits that are part of the Tribal Court Documents in *Karluk v. Koniag*, Dkt. 9-1 at 11-24, was located on Kodiak Island, Alaska, but was extinguished by Congress by enactment of 43 U.S.C. § 1618(a) of ANCSA.

40. The Native Village of Karluk does not exercise territorial jurisdiction over any federally recognized Indian reservation or Indian trust allotment that is relevant to the Tribal Court Documents.

41. Under the decision of the United States Supreme Court in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527 (1998), where an Indian reservation and Indian allotments held in trust are not at issue, tribal “Indian country” jurisdiction “depends on whether [land] falls within the ‘dependent Indian communities’ prong of” 18 U.S.C. § 1151. To qualify as “dependent Indian communities,” lands must “satisfy two requirements—first, they must have been set aside by the Federal Government for the use of the Indians as Indian land; second, they must be under federal superintendence.” *Id.*, 522 U.S. at 527.

42. The Native Village of Karluk does not exercise territorial jurisdiction over any “dependent Indian communit[y]” that is relevant to the Tribal Court Documents.

43. Kanam signed, as Karluk Tribal Attorney, the Original Complaint for Declaratory Judgment and Affidavit in Support, in each of *Karluk v. Koniag* and *Karluk v. O’Connell*. Judge Mullins, as Village of Karluk Tribal Judge, signed the Show Cause Orders. These actions, and others taken by Defendants in furtherance of the purported exercise of jurisdiction by the Native Village of Karluk in the Karluk Tribal Court over Plaintiffs, violate federal law.

V. CAUSES OF ACTION

First Cause of Action

Violation of Federal Common Law of Tribal Court Jurisdiction

44. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 43.

45. Defendants, acting for and on behalf of the Native Village of Karluk, are engaged in a course of conduct that is intended to, that has, and that threatens to continue to assert civil jurisdiction of the Karluk Tribal Court for the Native Village of Karluk over Plaintiffs.

46. Federal common law provides that Plaintiffs can sue the Defendants in both their individual and official capacities in circumstances such as those here. *Ex Parte Young*, 209 U.S. 123 (1908).

47. Federal common law provides that imposition of tribal jurisdiction over non-members is presumptively invalid.

48. Federal law places the burden of proving such jurisdiction on those asserting tribal jurisdiction over non-members.

49. Federal common law provides that when those asserting tribal jurisdiction over non-members fail to establish a basis for the exercise of such jurisdiction, the presumption against such jurisdiction ripens into a holding.

50. Plaintiffs do not bear the burden of proving they are exempt from jurisdiction of the Karluk Tribal Court for the Native Village of Karluk.

51. Plaintiffs have not consented to suit in the Karluk Tribal Court for the Native Village of Karluk as to matters described in the Tribal Court Documents.

52. There is no basis under federal common law for assertion by Kanam, Judge Mullins or the Native Village of Karluk of jurisdiction by the Karluk Tribal Court for the Native Village of Karluk over Plaintiffs as to matters described in the Tribal Court Documents.

53. The Defendants' actions asserting jurisdiction of the Karluk Tribal Court for the Native Village of Karluk over Plaintiffs violate Plaintiffs' federal common law rights to be free of such jurisdiction.

54. No right of appeal and no writ of mandamus or writ of prohibition is available to Plaintiffs to any court of the State of Alaska or to any federal court to control the unlawful exercise of jurisdiction by the Karluk Tribal Court for the Native Village of Karluk as to matters described in the Tribal Court Documents.

VI. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

1. Entry of temporary, preliminary and permanent prospective injunctive relief prohibiting Defendants, their agents, servants, employees and all others acting in active concert and participation with Defendants from directly retaining, exercising or threatening to retain or exercise jurisdiction of or by the Karluk Tribal Court for the Native Village of Karluk over Plaintiffs as to matters described in the Tribal Court Documents;

2. Entry of preliminary and permanent prospective mandatory injunctive relief, if and to the extent necessary, requiring Defendants, their agents, servants, employees and all others acting in active concert and participation with Defendants, to dismiss with prejudice Karluk Tribal Court Cases, not later than ten (10) days after this Court's order requiring such action; and

3. Such other and further relief as the Court deems just and equitable.

DATED: April 11, 2012

STOEL RIVES LLP

By: /s/ James E. Torgerson
JAMES E. TORGERSON
(BAR NO. 8509120)
JOHN R. EVANS (BAR NO. 1005035)

Attorneys for Plaintiffs

FIRST AMENDED VERIFIED COMPLAINT

Koniag, Inc., et al. v. Kanam, et al., 3:12-cv-00077-SLG

Page 10 of 13

Case 3:12-cv-00077-SLG Document 13 Filed 04/11/12 Page 10 of 13

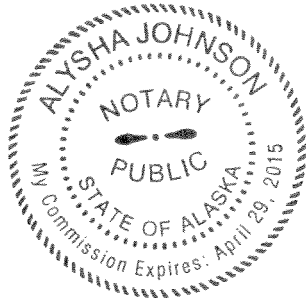
VERIFICATION

I, Debra Lukin, having been duly sworn depose and state that I have read the foregoing First Amended Verified Complaint for Injunctive Relief, and that the information stated therein is factual and true, and those factual matters that are stated upon information and belief are believed to be true.

[Signature]
Name

SUBSCRIBED AND SWORN to or affirmed this 11 day of April, 2012, in April, 2012.

[Signature]
Notary Public in and for the State of Alaska
My Commission expires April 29, 2015



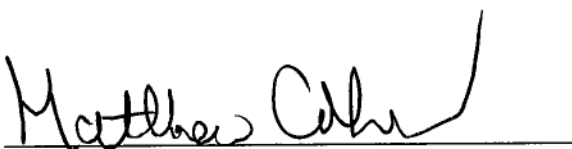
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VERIFICATION

I, Michael P. O'Connell, having been duly sworn depose and state that I have read the foregoing First Amended Verified Complaint for Injunctive Relief, and that the information stated therein is factual and true, and those factual matters that are stated upon information and belief are believed to be true.


Michael P. O'Connell

SUBSCRIBED AND SWORN to or affirmed this 11th day of April, 2012, in Seattle, Washington.


Notary Public in and for the State of WA
My Commission expires: 12/11/12



FIRST AMENDED VERIFIED COMPLAINT

Koniag, Inc., et al. v. Kanam, et al., 3:12-cv-00077-SLG

Page 12 of 13

Case 3:12-cv-00077-SLG Document 13 Filed 04/11/12 Page 12 of 13

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2012, I filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States District Court – District of Alaska by using the CM/ECF system. I further certify that Defendants were served same date electronically and via U.S.P.S. Certified Priority Mail as follows:

Mr. Kurt Kanam
Tribal Attorney
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Honorable Orbie Mullins
Village of Karluk Tribal Judge
Native Village of Karluk
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Toledo, WA 98591
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/s/ James E. Torgerson
James E. Torgerson

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FIRST AMENDED VERIFIED COMPLAINT

Koniag, Inc., et al. v. Kanam, et al., 3:12-cv-00077-SLG

Page 13 of 13

Case 3:12-cv-00077-SLG Document 13 Filed 04/11/12 Page 13 of 13