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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

REPLY TO OPPOSITION TO  
PLAINTIFFS' SECOND MOTION FOR  
PRELIMINARY INJUNCTION

Plaintiffs Koniag Inc. (Koniag) and Michael O'Connell (O'Connell) reply to Defendant Mullins' opposition to Plaintiffs' second motion for preliminary injunction (Opposition).<sup>1</sup>

In the Opposition, Defendant Mullins states that O'Connell's "argument that he does not have any nixes [sic] to the Tribal Court is false" because O'Connell made "contact" with the Tribal Court.<sup>2</sup> The referenced "contact" is apparently O'Connell's April 5, 2012 letter to Defendants requesting an extension of time to respond to the Tribal Court's initial show cause

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<sup>1</sup> Docket 22.

<sup>2</sup> Docket 22 at 3.

order and the Native Village of Karluk's original complaint for declaratory judgment.<sup>3</sup> As discussed in Plaintiffs' memorandum in support of the second motion for preliminary injunction, and as the Tenth Circuit held in *Crowe & Dunlevy, P.C. v. Stidham*<sup>4</sup> and *MacArthur v. San Juan County*,<sup>5</sup> mere "contact" by a non-member attorney with a tribal court cannot establish tribal court jurisdiction.<sup>6</sup>

The Tribal Court also lacks any jurisdiction because the Native Village of Karluk reservation was revoked by ANCSA. And, secondarily, the Tribal Court lacks jurisdiction because *Montana v. United States*<sup>7</sup> and other consistent Supreme Court jurisprudence makes tribal court jurisdiction over non-members, like Koniag and O'Connell, presumptively invalid.<sup>8</sup> No exception to this rule applies here.<sup>9</sup>

For the above reasons and for reasons set forth in Plaintiffs' memoranda in support of the motions for preliminary injunction,<sup>10</sup> Plaintiffs' requests for preliminary and permanent injunctive relief should be granted.

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<sup>3</sup> Docket 8-3; *see also* Docket 18 at 6-7.

<sup>4</sup> 640 F.3d 1140 (10th Cir. 2011).

<sup>5</sup> 309 F.3d 1216 (10th Cir. 2002).

<sup>6</sup> Docket 18 at 13-14.

<sup>7</sup> 450 U.S. 544, (1981)

<sup>8</sup> *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 659 (2001).

<sup>9</sup> *See* Docket 6 at 16-20.

<sup>10</sup> Docket 6 and Docket 18.

DATED: May 3, 2012

STOEL RIVES LLP

By: /s/ James E. Torgerson  
JAMES E. TORGERSON  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 3, 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 via U.S. First

Class Mail as follows:

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