

Glen Hallman (SBN 005888)
Paul K. Charlton (SBN 012449)
Jeffrey D. Gross (SBN 011510)
Christopher W. Thompson (SBN 026384)
GALLAGHER & KENNEDY, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Telephone: (602) 530-8000
Facsimile: (602) 530-8500
E-mail: gh@gknet.com
E-mail: paul.charlton@gknet.com
E-mail: jeff.gross@gknet.com
E-mail: chris.thompson@gknet.com
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

GRAND CANYON SKYWALK
DEVELOPMENT, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

‘SA’ NYU WA, a tribally-chartered
corporation established under the laws of the
Hualapai Indian Tribe; GRAND CANYON
RESORT CORPORATION, a tribally-
chartered corporation established under the
laws of the Hualapai Indian Tribe; LOUISE
BENSON, RICHARD WALEMA, SR.,
WYNONA SINYELLA, RUBY STEELE,
SHERI YELLOWHAWK, CANDIDA
HUNTER, BARNEY ROCKY IMUS,
WAYLON HONGA, CHARLES VAUGHN,
SR., each individuals and members of the
Hualapai Tribal Council; WANDA EASTER
and JACI DUGAN, each individuals and
Hualapai Indian Tribe employees and HON.
JOLENE COONEY and HON. DUANE
YELLOWHAWK, each individuals and
judges of the Hualapai Tribal Court,

Defendants.

No. 3:12-cv-08030-DGC

(Case to be Transferred
No. 12-cv-08183-FJM)

**MOTION FOR JUDICIAL
TRANSFER PURSUANT TO
LOCAL RULE 42.1**

1 Defendant ‘Sa’ Nyu Wa, Inc., a Hualapai Indian tribally-chartered corporation
 2 (“SNW”), moves to transfer the newly-filed action No. 12-cv-08183-FJM (“Arbitration
 3 Action”) to Judge David G. Campbell, the Judge in two earlier-filed actions: *Grand*
 4 *Canyon Skywalk Development, LLC. v. Vaughn*, No. 3:11-cv-08048-DGC (“*GCSD I*”)
 5 and *Grand Canyon Skywalk Development, LLC v. ‘Sa’ Nyu Wa, Inc., et al.*, No. 3:12-cv-
 6 08030-DGC (“*GCSD II*”) (together, the “Prior Actions”). SNW is the Respondent in the
 7 instant Arbitration Action currently assigned to Judge Frederick J. Martone, and also is a
 8 Defendant in *GCSD II*, which currently is pending on stay before Judge David G.
 9 Campbell. Petitioner in the instant Arbitration Action Grand Canyon Skywalk
 10 Development, LLC (“GCSD”) is the Plaintiff in both Prior Actions.

11 The request for transfer is predominately based upon judicial economy in avoiding
 12 substantial duplication of labor by this Court and the parties in light of the common
 13 factual and legal background of the Arbitration Action and the Prior Actions as is
 14 summarized below:

15 GCSD’s recently-filed Application for Confirmation of Arbitration Award
 16 (“Application for Award”) concerns an arbitration dispute initiated by GCSD under the
 17 terms of the Development and Management Agreement, December 31, 2003, as amended
 18 (“2003 Agreement”), between SNW and GCSD. *See Exhibit 1* to GCSD’s Application
 19 for Award. In 2011, GCSD unilaterally initiated arbitration against SNW. SNW
 20 objected to the arbitration because it is protected against arbitration suits by sovereign
 21 immunity under the terms of the 2003 Agreement unless GCSD obtains an order from the
 22 Federal District Court of Arizona – GCSD never did. SNW’s sovereign immunity from
 23 arbitration without a federal court order was previously affirmed by a Hualapai Tribal
 24 Court Order. *See Exhibit 3* to GCSD’s Application for Award. Despite the clear
 25 wording of the 2003 Agreement and the Hualapai Tribal Court’s Order affirming SNW’s
 26 immunity from arbitration, the AAA arbitrator refused to acknowledge SNW’s sovereign
 27 immunity defenses and proceeded with arbitration under SNW’s continuing objections.
 28

1 Several months after the commencement of the unauthorized arbitration, the
 2 Hualapai Nation (“Tribe”) filed a Declaration of Taking that condemned GCSD’s rights
 3 in the 2003 Agreement, including GCSD’s contractual rights to arbitrate. Thereafter, the
 4 Tribe (a successor-in-interest to GCSD’s rights in the contract, including the right to
 5 arbitrate) requested termination of the arbitration. However, both GCSD and the AAA
 6 refused to acknowledge the Tribe’s valid ownership of all of GCSD’s rights under the
 7 2003 Agreement and proceeded with arbitration (again over SNW and the Tribe’s
 8 continuing objections) to a reach a final arbitration award in the absence of any
 9 participation by SNW. *See Exhibit 9* to GCSD’s Application for Award. GCSD now
 10 attempts to have this Court confirm an arbitration award that is defective because, *inter*
 11 *alia*, the arbitration was without proper jurisdictional authority, and GCSD had no
 12 contractual right to proceed with arbitration after its interest in the 2003 Agreement was
 13 condemned by the Hualapai Tribe.

14 SNW’s responsive motion to GCSD’s Application for Award will assert
 15 jurisdictional questions and contractual interpretation questions under the 2003
 16 Agreement involving tribal sovereign immunity, as well as defenses related exclusively
 17 to the Hualapai Tribe’s condemnation of GCSD’s contractual interests in the 2003
 18 Agreement. Quite simply, resolution of whether GCSD’s Application for Award should
 19 be granted, dismissed, or vacated involves the substantive matters that have been
 20 considered in *GCSD II*, which is currently stayed before Judge Campbell.

21 Given the above, transfer is warranted under United States District Court Rules for
 22 the District of Arizona, Local Rule 42.1(a) and (d), which rules provides:

23 **Related Cases.** Any party may file a motion to transfer the case or cases
 24 involved to a single Judge whenever two or more cases are pending before
 25 different Judges and any party believes that such cases: (1) arise from
 26 substantially the same transaction or event; (2) involve substantially the
 27 same parties or property; (3) involve the same patent, trademark, or
 28 copyright; (4) call for determination of substantially the same questions of
 law; or (5) for any other reason would entail substantial duplication of labor
 if heard by different Judges.

....

1 **Assignment.** In determining the Judge to whom the case or cases will be
 2 assigned pursuant to subparagraphs (a) or (b) above, the following factors
 3 may be considered: (1) whether substantive matters have been considered
 4 in a case; (2) which Judge has the most familiarity with the issues involved
 5 in the cases; (3) whether a case is reasonably viewed as the lead or principal
 6 case; or (4) any other factor serving the interest of judicial economy.

7 The Arbitration Action and the Prior Actions qualify as related cases for which
 8 transfer is appropriate to Judge David G. Campbell pursuant to several of the criteria
 9 identified in Local Rule 42.1(a), any one of which is sufficient per the language of the
 10 Rule. *Parra v. Bashas' Inc.*, 2009 WL 1024615 at *4 (D. Ariz. April 15, 2009) (“by its
 11 terms, LR42.1(a)(1) does not require that each of its subsections be shown before a
 12 transfer is proper thereunder.”).

13 1. The instant Arbitration Action and the Prior Actions “arise from
 14 substantially the same transaction or event.” The actions relate to and arise out of the
 15 dispute involving the ownership, development, and management of the Grand Canyon
 16 Skywalk tourist attraction on the Hualapai Indian Reservation, as well as interpretations
 17 of the rights and liabilities of SNW and GCSD under the 2003 Agreement. Both the
 18 Arbitration Action and the Prior Actions involve challenges to the effect of and force of
 19 the 2003 Agreement between SNW and GCSD following the Tribe’s Declaration of
 20 Taking of GCSD’s rights in the 2003 Agreement, as well as challenges to the
 21 interpretation and existence of sovereign immunity waivers contained in the 2003
 22 Agreement.

23 2. The Arbitration Action involves substantive matters that have been
 24 addressed and considered in the Prior Actions during the extensive briefing and oral
 25 argument before Judge Campbell. Such matters include the interpretation and meaning
 26 of the 2003 Agreement, the interpretation and effect of the prior Hualapai Tribal Court
 27 Order regarding the 2003 Agreement, the effect of the Tribe’s condemnation of GCSD’s
 28 interest in the 2003 Agreement including GCSD’s right to arbitrate after condemnation,

1 as well as numerous other details and facts necessary to explain the complex relationship
2 between GCSD, SNW, and the Tribe as it relates to the instant Arbitration Action.

3 3. The Arbitration Action and the Prior Actions involve “substantially the
4 same parties or property.” The “property” in dispute includes ownership and
5 development rights to the Hualapai Skywalk tourist attraction and the parties’ rights and
6 obligations under the 2003 Agreement. There is also substantial overlap and
7 commonality between the parties to each action as SNW is a Defendant in the instant
8 Arbitration Action, as well as in the Prior Actions. SNW is also a tribally-chartered
9 corporation by the Tribe. This fact featured heavily in GCSD’s arbitration action against
10 SNW, and is also a dominate factor in the arguments and legal disputes involved in the
11 *GCSD II* action, as GCSD alleges that SNW and the Tribe should not be treated as
12 distinct entities, and/or have conspired in bad faith against GCSD.

13 4. Although neither action is technically a patent, trademark, or copyright
14 action, the Arbitration Action and the Prior Actions involve the development and
15 determination of rights of ownership to the Hualapai Skywalk involving related
16 intellectual property rights.

17 5. While there is no complete overlap, both “cases call for determination of
18 substantially [similar] questions of law.” These include, for example, the (in)validity of
19 the 2003 Agreement, GCSD and SNW’s respective rights in the 2003 Agreement,
20 questions of sovereign immunity under federal and tribal law, who does or should control
21 development and management of the Hualapai Skywalk tourist attraction, and
22 interpretation of Hualapai Tribal Court Orders previously reviewed in the Prior Actions
23 by Judge Campbell. Specifically, and without limitation, the arbitration award cannot be
24 enforced because GCSD failed to obtain a federal court order compelling SNW to
25 arbitrate as required by the 2003 Agreement and Judge Wilber’s Order in the Hualapai
26 Tribal Court. Moreover, the *GCSD II* action concerns questions of law bearing directly
27 upon ownership of rights under the 2003 Agreement, including whether the Tribe
28 condemned the rights to arbitration involved in the Arbitration Action.

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of September, 2012, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Pamela M. Overton / Tracy L. Weiss
GREENBERG TRAURIG, LLP
2375 East Camelback Road, Suite 700
Phoenix, AZ 85016
e-mails: overtonp@gtlaw.com, weisst@gtlaw.com

Mark G. Tratos
GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, NV 89169
e-mail: tratosm@gtlaw.com

Troy A. Eid / Robert S. Thompson IV
GREENBERG TRAURIG, LLP
1200 17th Street, Suite 2400
Denver, CO 80202
e-mails: eidt@gtlaw, thompsonro@gtlaw.com

Attorneys for Plaintiff

By: /s/ Candice J. Cromer