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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

GRAND CANYON SKYWALK DEVELOPMENT, LLC, a Nevada limited liability company, Plaintiff, vs. THE HUALAPAI INDIAN TRIBE OF THE HUALAPAI INDIAN RESERVATION, ARIZONA; BARNEY ROCKY IMUS, SHERRY COUNTS, PHILBERT WATAHOMIGIE, RONALD QUASALA, SR., RUDOLPH CLARKE, HILDA COONEY, JEAN PAGILAWA, each individuals and members of the Hualapai Tribal Council, Defendants.	No. 3:13-cv-08054-DGC

MOTION TO DISQUALIFY GREENBERG TRAURIG AS COUNSEL FOR GCSD AND FOR RELATED ORDERS PROTECTING THE TRIBE'S CONFIDENTIAL INFORMATION

(Oral Argument Requested)

For more than two years, Greenberg Traurig, LLP ("GT"), acting as counsel for Grand Canyon Skywalk Development, LLC ("GCSD"), has committed what can fairly be described as gross violations of the Arizona Rules of Professional Conduct. Although we don't yet know the full extent of the misconduct, we do know that GT has communicated *ex parte* with Council members for the Hualapai Tribe, even going so far as to obtain a sworn declaration from a Council member for submission to the Court. And we know that GT has obtained at least two confidential memoranda submitted to the Tribe by the Tribe's counsel, Gallagher & Kennedy – memoranda clearly marked "ATTORNEY-CLIENT COMMUNICATION/ATTORNEY WORK PRODUCT/PRIVILEGED & CONFIDENTIAL" – and not only read these memoranda, but unabashedly submitted them as well to the Court, most recently just a couple of weeks ago. These are not trivial violations of the ERs. To the contrary, they are among the most serious kinds of unethical conduct. And given the disregard GT has shown for its ethical obligations, this could be just the proverbial tip of the iceberg.

In the past, the Tribe has taken incremental steps to address this problem, sending GT letters, filing motions to strike, and so forth. Nothing has worked; GT has shrugged aside our demands and this Court found it unnecessary to consider an earlier motion we filed because of its disposition of other issues. Now GT has done it again, filing the two confidential, privileged memoranda with the Court in response to our motion to dismiss. With respect, we believe that GT's conduct is so plainly unethical, and has so substantially infected these proceedings, that it can no longer be tolerated or deemed moot. Although we recognize there is a motion to dismiss pending, we ask the Court to address this motion first and rule that GT can no longer represent GCSD in this case or any other related proceedings. We also ask that the Court issue related orders to protect the Tribe's confidential and privileged information.[1]

This motion is supported by the following memorandum, to which we have

[1] As with the motion to dismiss, defendants specially appear to request disqualification of GT without waiving sovereign immunity or other defenses.

attached a Declaration of Paul Charlton describing the events in question (Exhibit A), and a Declaration of J. Scott Rhodes, one of the leading experts in our community on the ethical obligations of lawyers (Exhibit B).

MEMORANDUM

I.

Background To This Motion

A. *GCSD I*

The Court is familiar with the history of litigation between the parties, which stem from a December 2003 Development and Management Agreement between GCSD and 'Sa' Nyu Wa, Inc. ("SNW") regarding the Grand Canyon Skywalk. Exh. A ¶ 4. SNW is a tribally chartered corporation wholly owned by the Tribe. Exh. A ¶ 3. At the time of the Skywalk Agreement, Louise Benson was the Chairman of the Hualapai Tribal Council. *Id.* ¶ 4.

In September 2009, Gallagher & Kennedy represented both the Tribe and SNW in efforts to resolve disagreements with GCSD over the Skywalk. Exh. A ¶¶ 6-7. On December 6, 2010, at a negotiating session in Las Vegas (where Mr. Jin and GCSD were based), the two sides reached agreement on all remaining issues, and Mr. Jin indicated that he would sign the final versions of two documents memorializing the parties' agreements. *Id.* ¶ 10. Within a few weeks, however, G&K learned that Jin did not intend to sign the agreements after all, and that GT had entered the picture as counsel for Jin and GCSD. *Id.* ¶ 11.

On January 27, 2011, the nine members of the Tribal Council held a confidential executive session at G&K's offices to discuss what to do in light of this unexpected development, and to obtain G&K's advice regarding options and strategies in that regard. *Id.* ¶ 13. At the Council's request, G&K also provided each member with two legal memoranda. *Id.* ¶ 14. These memoranda, dated February 8 and February 11, 2011, discussed confidential legal advice and strategy for the Council to consider given the

changed circumstances. *Id*. ¶ 15. Each page of each memorandum bore the same clear legend:

ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
PRIVILEGED & CONFIDENTIAL

Id. ¶ 14.

Approximately six weeks later, on March 30, 2011, GT filed a Complaint in this Court for declaratory and injunctive relief ("*GCSD I*"), asking the Court to enjoin the Tribal Council from enacting an eminent domain ordinance. Exh. A ¶ 18-19. The Complaint relied upon a March 24, 2011 Declaration from Mr. Jin, in which he referred to his continuing "good relations with a number of the important members of the tribe" at "various levels of the tribal government," and how they had been "helpful" to him. *Id.* ¶ 20. Mr. Jin stated that he had "learned" confidential information that could only have come from reading G&K's legal memoranda and/or speaking with one or more Tribal Council members about the privileged discussions with G&K. *Id.* ¶¶ 21-22.

G&K wrote GT and demanded that it "cease and desist from any further use of the confidential and privileged information" it had received. *Id.* ¶ 30. GT's reply was nothing more than a brief, dismissive email saying that G&K's letter was "offensive and unprofessional" and "we will not honor it with a response." *Id.* ¶ 34.

The Tribe inferred that GT and Jin most likely received the privileged information from one or more members of the Tribal Council. The Tribe therefore required all Council members to sign nondisclosure agreements regarding the Tribe's handling of disputes and litigation, including its legal strategies, and not to use or disclose any such information "without the prior consent of the Tribe." Exh. A ¶¶ 24-25. Among the Council members who signed the nondisclosure agreement was Ms. Sheri Yellowhawk, who had been present at the meeting with G&K, and who received copies of the two privileged memoranda. *Id.* ¶¶ 16, 24.

The next month, this Court granted the Tribe's motion to dismiss GCSD's Complaint. *Id.* ¶ 28.

B. *GCSD II*

On February 8, 2012, the Tribe initiated a condemnation action in the Hualapai Tribal Court to acquire GCSD's interest in the Skywalk. Exh. A ¶ 37. On February 16, GT filed a second Complaint in this Court, *GCSD II*, seeking, among other things, to enjoin the Tribe's condemnation action, and to require that the condemnation action proceed in federal court. *Id.* ¶ 38. During a February 24, 2012 TRO hearing, GT suddenly announced that it wished to call Louise Benson – then the Tribe's Chairwoman, and one of G&K's primary client representatives – to testify against the Tribe. *Id.* ¶ 39. GT told the Court that they had just met her outside the courtroom, but when the Court asked for a proffer of what testimony she might give, GT gave a detailed recitation of what they expected to elicit. *Id.*

The Court declined to let Ms. Benson testify, but asked for supplemental briefing relating to the requested TRO. *Id.* On March 1, 2012, GT filed a supplemental brief arguing, among other things, that the Tribe had acted in bad faith. With that brief, GT filed a lengthy affidavit signed by Chairwoman Benson. *Id.* ¶ 42 and Ex. 16. Ms. Benson had apparently met with GCSD representatives in Las Vegas on February 29, and signed the affidavit at that time (at which point, in a quid pro quo, GT voluntarily dismissed her from the litigation). *Id.* ¶ 43. Ms. Benson's affidavit disclosed confidential information, including privileged conversations she had with G&K. *Id.* GT also attached to the same brief a declaration from a GCSD employee, Mr. Quasula, to which were attached (among other things) the February 8 and 11, 2011 privileged memoranda from G&K we described above. *Id.* ¶ 44.

In advance of filing its response, GT did not give any advance notice that it had interviewed Ms. Benson *ex parte*, let alone that it had obtained sworn testimony from her that it intended to submit to the Court. *Id.* ¶¶ 41-42. It did, however, give G&K "notice" about the memoranda. We put "notice" in quotes because what GT did was send a letter to G&K at 5:26 p.m. on March 1, 2012, disclosing (as a "courtesy") that it had received these documents, that they had come from a Council member, and GT was taking the

position that the privilege had been waived. *Id.* ¶ 41. This argument is irrelevant to GT's ethical obligations, as we will explain below, but in any event, GT didn't even bother to wait for G&K to respond. Instead, just 17 minutes later, GT filed the memoranda with its response. *Id.* ¶ 42.

G&K sent another letter to GT. *Id.* ¶ 46. It also promptly moved to strike the confidential materials, and sought an order that GCSD be "prohibited from contacting any other current or former representatives of the Hualapai Tribal Council or employees of SNW." *Id.* Before GCSD responded to that motion, however, this Court denied GCSD's TRO, directed that GCSD exhaust its remedies in Tribal Court, and stayed the case. *Id.* ¶ 49. As to the Tribe's motion to strike, the Court treated it as moot, finding that the information in the offending exhibits did "not affect the outcome of this decision." *Id.* ¶ 50. Meanwhile, in response to G&K's letter, GT again shrugged it aside, and accused *G&K* of having acted improperly and unethically. *Id.* ¶ 46

C. GCSD III

We are now back in this Court for yet another lawsuit filed by GT on behalf of GCSD. We have moved to dismiss the Complaint. *Id.* ¶ 51. In response, GT once again submitted to the Court the confidential and privileged memoranda from G&K to the Tribe. *Id.* From our perspective, this is the straw that breaks the camel's back. We are not dealing with isolated "mistakes." To the contrary, GT has demonstrated a pattern of deliberately disregarding its ethical obligations, and defendants cannot wait any longer for judicial involvement. This is a grave matter, and defendants do not file this motion lightly, but in our view this is an extraordinarily egregious situation. And our view is shared by one of the leading experts in the professional and ethical obligations of lawyers practicing in Arizona, Scott Rhodes, as the Court will see when it reads his Declaration (Exhibit B). GT violated ERs 4.2 and 4.4, there is no question but that it did so deliberately, and it is time that GT be disqualified from further representing GCSD in this or any other related litigation between the parties. We also ask the Court to issue orders designed to protect the Tribe's confidential information on a forward-looking basis.

II.

The Controlling Law

"The district court has responsibility for regulating the conduct of attorneys appearing before it," which "includes deciding motions to disqualify counsel." *Kaiser v. AT&T*, 2002 WL 1362054, at *5 (D. Ariz. Apr. 5, 2002); *cf. In re Snyder*, 472 U.S. 634, 645 n. 6 (1985) (noting that federal courts have inherent authority to discipline attorneys who appear before them for conduct inconsistent with ethical standards). The District of Arizona has adopted the Arizona Rules of Professional Conduct ("ethical rules" or "ER") as its ethical standards, LR Civ 83.2(e), and "applies [those] rules when evaluating motions to disqualify counsel." *Roosevelt Irr. Dist. v. Salt River Project Agr. Imp. & Power Dist.*, 810 F. Supp. 2d 929, 944 (D. Ariz. 2011). When a court finds that ethical violations have occurred, the "[p]otential sanctions typically include exclusion of evidence, disqualification, dismissal, and imposition of costs and fees." *Kaiser*, *8. Of course, disqualification is an extreme sanction, and requires "careful consideration of the nature and extent of the ethics violation," *Kaiser*,*5 (internal quotation marks and citation omitted), but "close or doubtful cases should be resolved in favor of disqualification" in order to "preserve the integrity of the judicial system." *Richards v. Holsum Bakery, Inc.*, 2009 WL 3740725, at *6 (D. Ariz. Jan. 25, 2010).

Here, GT has repeatedly made use of privileged information that GT improperly solicited and/or improperly retained. Although warnings are unnecessary, GT was in fact given fair warning, both by letter and through an earlier motion to strike. Undeterred, GT is back at it again, using such information in aid of its case and thumbing its nose at the applicable ethical rules. Disqualification is not only an appropriate sanction, but it is the only remedy that will address the prejudice to the Tribe under these circumstances. We address each of GT's ethical violations in turn.

A. ER 4.2

ER 4.2 governs a lawyer's duties with respect to communication with persons represented by counsel. It states:

> In representing a client, *a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented* by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so. (emphasis added).

As the comments note, this prohibition extends to organizations:

> In the case of an organization, *this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility* on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization… (emphasis added).

See also State Bar of Arizona Op. 87-25 (December 30, 1987) (it is unethical for an attorney to contact and interview a named but unserved defendant in litigation instituted by the attorney because an adversarial relationship exists); Op. 89-05 (May 17, 1989) (*ex parte* contact even with a former employee of an entity is improper if employee communication may be imputed to employer or where topics of communication are protected under attorney client privilege).

Again, the full extent of GT's communications (direct or indirect) with Tribal officials is as yet unknown. But it is undisputed that, GT's client, Mr. Jin, had an *ex parte* meeting or meetings with an unknown Tribal official (or officials) in roughly February or March of 2011, and learned confidential information about the Tribe's plans. GT then supported *GCSD I* with two declarations from Mr. Jin based on that confidential information.

As if this weren't enough, GT then had *ex parte* contacts directly with Ms. Benson, the Tribal Council Chairwoman, gathering further confidential information and going so far as to file an affidavit from her in support of the relief requested in *GCSD II*. The Tribal Council is similar to the board of directors of a corporation. It is a tribal entity, organized under provisions set forth in the Constitution, which has a duty to run the Hualapai Nation by managing "all tribal affairs and enterprises." Hualapai Const., art.

V. Ms. Benson was the Chairwoman of the Council. What GT did was akin to secretly meeting with the CEO of a company it was suing, without seeking any approval from the company's counsel to hold the meeting, or even disclosing it. How any attorney practicing in Arizona could possibly think this was consistent with his or her ethical duties is mystifying. *See generally* Exh. B.

Moreover, there is no question but that those *ex parte* meetings gave GT material, confidential information about the case. GT itself thought the information was important enough to its arguments to file the Jin declarations and the Benson affidavit.

Courts have repeatedly held that disqualification is the appropriate remedy for this kind of conduct. In *Kaiser*, for example, the court disqualified plaintiff's counsel because he had *ex parte* contacts with Mr. Laveaga, a former sales manager for the defendant, AT&T. The case was an employment dispute in which Mr. Kaiser, the plaintiff, claimed AT&T owed him additional wages for the time when he worked there. Laveaga was the former AT&T manager who would have approved or disapproved sales commissions to Kaiser.

The *Kaiser* court explained the policy for policing *ex parte* contacts between counsel for one party to a dispute and a former employee from the other party: "even if no confidential or privileged information is disclosed, the appearance of impropriety taints the integrity of the judicial system." *Kaiser*, *6. Hence, the "better approach" is to adopt a rule that "recognizes both ethical principles and human nature":

> If a former employee occupied a high ranking position such that his or her exposure to confidential or privileged information may be assumed, or occupied a position giving rise to a plaintiff's claims, then no *ex parte* contact should be permitted absent notice to the former employer.

Id. The court then employed a three-part balancing test to determine disqualification, in order to gauge the "severity of the ethical violation in the context of each case's specific circumstances." *Id.* *7. The court would look at (1) "the client's interest in being represented by counsel of its choice"; (2) the "opposing party's interest in a trial free from prejudice due to disclosures of confidential information"; and (3) "the public's

interest in the scrupulous administration of justice," which included a lawyer's duty to "maintain the integrity of the legal profession." *Id.* *7. The court held that although the first issue weighed against disqualification – as it typically would – the other two issues weighed heavily in favor of disqualification, and the court ordered such.

To the same effect is *Arnold v. Cargill Inc.*, 2004 WL 2203410 (D. Minn. Sept. 24, 2004). There, the plaintiff's counsel had contact with a man, Douglas, who had previously worked for the defendant, Cargill, and who had information that was privileged and confidential to Cargill, including "knowledge of Cargill's litigation theory." *Id.* *1. Douglas had also provided the plaintiff's counsel with some documents (though counsel denied that he had reviewed any privileged information). The court noted that it was "not assuaged by [counsel's] assertions" that no privileged and confidential information had been shared, and concluded that plaintiff's counsel, in meeting with Douglas and looking at documents he provided him, had violated both ER 4.2 and 4.4. *Id.* *8.

Moving on to the question of what remedy was appropriate, the court emphasized that "[d]isqualification is an ethical, not a legal matter, and it is in the public's interest, as well as the client's interest." *Arnold,* *5 (internal quotation marks and citation omitted). Moreover, disqualification is appropriate where an attorney's conduct "threatens to work a continuing taint on the litigation and trial." *Id.* The court acknowledged that as in this case, the "extent of the breach of confidentiality and privilege" was "unknown." But "the 'risk' that improperly obtained confidential and privileged information might be used against Cargill justifies disqualification here." *Id.* *13. This notwithstanding the plaintiff's general right to counsel of its choice. That consideration:

> must yield to the ethical considerations presented here, which implicate the integrity of the judicial process**.** *The preservation of the public trust both in the scrupulous administration of justice and in the integrity of the bar is paramount.* The integrity of these proceedings, the system and the profession have been damaged by [counsel's] conduct.

Id. *14 (emphasis added). *See also MMR/Wallace Power & Industrial, Inc. v. Thames Associates,* 764 F. Supp. 712, 727 (D. Conn. 1991) (disqualifying defense counsel because the firm had *ex parte* contacts with Mr. Willett, a former employee of the plaintiffs who

had confidential and privileged information, and the law presumes that confidences were shared; "the only way to remove such a taint is to sever the connection between [current defense counsel] and Mr. Willet.").

Precisely the same analysis applies here.

B. ER 4.4

Under ER 4.4**(**b), "A lawyer who receives a document and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender and preserve the status quo for a reasonable period of time in order to permit the sender to take protective measures." Arizona added this rule in 2003 to be explicit in restricting what lawyers can do on receiving apparently privileged material.[2] In a subsequent ethics opinion, the Arizona State Bar explained if an attorney receives possibly privileged documents from his client, who in turn received those documents from a third party, the attorney is required to: "(i) refrain from further examination of the material or from making any use of them, (ii) subject to client's consent, notify opposing counsel of their receipt, and (iii) if such notification is made, either abide by that counsel's instructions as to their disposition or seek a ruling from a court as to whether they may be kept or used." Ariz. Bar Ethics Op. No. 2001-04, at 5. This is commonly known as the "cease, notify and return" obligation. If a client insists that an attorney "review the documents or use the information in them," ER 1.16(a) requires that the lawyer withdraw. *Id.*

We have described above how GT has examined and sought to use legal memoranda from G&K to the Tribe which are, on their face, privileged and confidential. We mean "on their face" quite literally: they are labeled "ATTORNEY CLIENT COMMUNICATION," "ATTORNEY WORK PRODUCT," AND "PRIVILEGED AND CONFIDENTIAL." GT did not comply with ER 4.4 upon receiving these, but did precisely the opposite of what the Rule requires: it said nothing, reviewed the documents, decided that some snippets might be useful in making arguments to the Court, and

[2] In adopting this rule, Arizona went further than the ABA Model Rule, which requires only that lawyers "promptly notify the sender" upon receipt of such documents.

proceeded to file them in support of its position that the Tribe had acted in bad faith. And its "notification" of G&K, after business hours and just a few minutes before GT filed the memoranda, was a meaningless sham. GT's obligation was to refrain from examining the memoranda in the first instance, immediately notify G&K, and either abide by G&K's instructions or seek a ruling from the Court on the privilege issue (including any argument GT might make about "waiver"). *See generally* Exh. B.

As with ER 4.2, "[n]umerous jurisdictions have held that a failure by an attorney to abide by this rule [4.4] is grounds for disqualification." *Maldonado v. New Jersey*, 225 F.R.D. 120, 138 (D. N.J. 2004). In *Maldonado*, a probation officer filed a complaint with New Jersey Division on Civil Rights ("NJDCR") over alleged employment discrimination. Somehow (no one knew exactly how) a copy of a letter wound up in Maldonado's workplace mailbox. The letter had been written by two of the individual defendants in the NJDCR case to their former attorney, setting out their view of some of the facts in the case and giving information on the credibility of witnesses who had been interviewed. Maldonado turned the letter over to his attorney, and it eventually found its way into the NJDCR case file. After Maldonado later sued the state, a deputy attorney general figured out that Maldonado's attorney, Hodulik, had a copy of the letter, and demanded its return. Hodulik refused. He argued that the letter was part of the NJDCR file, was bates-stamped, and any privilege had been waived because someone "leaked" it to Maldonado. The state moved to disqualify Hodulik and his firm, and the court granted that motion.

The court engaged in a lengthy discussion concerning whether the privilege had been waived by the leak of the letter, but the more important factor was simply counsel's failure to follow the ethical rule to "cease, notify and return." Although the court acknowledged that the misconduct could not be attributed to Maldonado himself,

> there does exist sufficient grounds to disqualify counsel because they failed to timely notify opposing counsel of the letter, and the disclosure resulted in substantial prejudice to Defendant's case….

225 F.R.D. at 130. The court went on to explain that because "an attorney may not do

indirectly that which is prohibited directly," the "cease, notify and return" rule also applies when a lawyer obtains apparently privileged material from his or her client. *Id*. at 138-139.

The court then applied a six-factor test to evaluate whether disqualification was the appropriate remedy, which included (1) whether the attorney knew or should have known the material was privileged; (2) how quickly the attorney notified the other side of the materials; (3) the extent to which the attorney reviewed and digested the privileged information; (4) the significance of the privileged information; (5) the extent to which the party seeking disqualification may be at fault for the disclosure; and (6) the extent to which the nonmoving party will suffer prejudice from the disqualification of his or her attorney. 225 F.R.D. at 139. Unlike the two memoranda here, the letter at issue was not stamped "privileged," but the court found it clearly contained confidential information. There, as here, the accused attorneys had never explicitly notified the other side that they possessed privileged materials, and made no attempt to return the materials. There, as here, it was obvious that counsel had digested the information, because they used it in the lawsuit. There, as here, the materials contained information relating to both the merits of the case, as well as potential defenses, thus resulting in substantial prejudice to the moving party, and "return of the documents will not mitigate the prejudice." And there, as here, there was no evidence that the moving party was at fault for the disclosure. The only argument against disqualification was that it would deprive Maldonado of his counsel of choice. The court found this insufficient, explaining that "when chosen counsel strains the limits of ethical conduct, that choice has to yield to the preservation of a fair and just litigation process." 225 F.R.D. at 141.

Not surprisingly, as in *Arnold*, Maldonado's lawyers argued strenuously that "no confidences were revealed or used." And as in *Arnold*, that argument gained no traction with the court. The offending letter created "a substantial taint on any future proceedings," and thus justified disqualification. *Cf. Richards v. Jain*, 168 F. Supp.2d 1195 (W.D. Wash. 2001) (disqualifying counsel after they received, and their paralegal

reviewed, in the normal course of production, a disk containing numerous emails, many of which were clearly marked "Attorney Client Privileged."); *In re Marketing Investors Corp.*, 80 S.W.3d 44 (Tex. App. 1998) (reversing trial court and ordering that defendant's attorney be disqualified, after he had received and reviewed documents from his client that the client had improperly taken from his former employer).

GT's violation of ER 4.4 is every bit as plain as its violation of ER 4.2. *See generally* Exh. B. While representing GCSD in legal disputes with the Tribe and SNW, and knowing that G&K represented those parties, GT somehow received at least two G&K memoranda prominently marked as privileged and confidential. GT's obligation under those circumstances was to refrain from reading the memoranda, promptly notify G&K, "preserve the status quo," and either abide G&K's instructions or seek a Court ruling. GT did the opposite: it read and digested the memoranda, and without any meaningful notice to G&K, let alone a ruling from the Court, it simply filed them as support for what it portrayed as one of its key arguments in the litigation. And now it has done so again, doubling down on its strategy of deliberately using privileged memoranda in support of its litigation positions. For this reason as well, disqualification is the appropriate remedy.

CONCLUSION AND RELIEF REQUESTED

The Court should disqualify GT from representing GCSD in this case, in *GCSD II* (which remains pending before this Court, though stayed), and in any other related future litigation between the parties in the District of Arizona. In addition, to help ameliorate the effect of GT's conduct, the Tribe asks the Court to do the following: (1) order GT to have no further communications with members of the Tribal Council or other Tribal members serving in a managerial capacity; (2) direct GT to turn over to the Tribe any and all copies of confidential or privileged documents and information in the possession, custody or control of GT or GCSD; (3) permit the Tribe to conduct discovery of both GT and GCSD to determine what improper *ex parte* communications they have previously had with members of the Tribal Council; (4) place under seal the two G&K memoranda described

above and the declarations containing or referring to confidential and privileged information; (5) bar GCSD from making any use, in this or any other case or proceeding, of the confidential and privileged materials and information it improperly acquired; and (6) bar GT from having any discussions with GCSD's new counsel about this or related cases and proceedings.

RESPECTFULLY submitted this 26th day of June, 2013.

GALLAGHER & KENNEDY, P.A.

By: /s/ Paul K. Charlton

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June, 2013, a copy of the foregoing document was filed electronically via the Court's CM/ECF system. Notice of filing will be served on all parties by operation of the Court's CM/ECF system, and parties may access this filing through the Courts' CM/ECF system.

/s/ Deborah Yanazzo