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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

GRAND CANYON SKYWALK DEVELOPMENT, LLC, a Nevada limited liability company; DAVID JIN, an individual; THEODORE (TED) R. QUASULA, an individual;

Plaintiffs,

vs.

RUBY STEELE, CANDIDA HUNTER, WAYLONG HONGA, CHARLES VAUGHN, SR., SHERRY COUNTS, WILFRED WHATONAME, SR., each individuals and members of the Hualapai Tribal Council; PATRICIA CESSPOOCH, an individual and member of the Hualapai Tribe; DAVID JOHN CIESLAK, an individual; NICHOLAS PETER "CHIP" SCUTARI, an individual; SCUTARI & CIESLAK PUBLIC RELATIONS, INC., an Arizona corporation.

Defendants.

Case No.: 2:13-cv-00596-RCJ-GWF

**DEFENDANTS DAVID JOHN CIESLAK, NICHOLAS PETER "CHIP" SCUTARI AND SCUTARI & CIESLAK PUBLIC RELATIONS, INC.'S MOTION TO DISMISS FOR IMPROPER VENUE PURSUANT TO FRCP 12(b)(3) OR, IN THE ALTERNATIVE, FOR DISMISSAL OF PLAINTIFFS' COMPLAINT**

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**DEFENDANTS DAVID JOHN CIESLAK, NICHOLAS PETER "CHIP" SCUTARI AND SCUTARI & CIESLAK PUBLIC RELATIONS, INC.'S MOTION TO DISMISS FOR IMPROPER VENUE PURSUANT TO FRCP 12(b)(3) OR, IN THE ALTERNATIVE, FOR DISMISSAL OF PLAINTIFFS' COMPLAINT**

Defendants DAVID JOHN CIESLAK, NICHOLAS PETER "CHIP" SCUTARI and CIESLAK PUBLIC RELATIONS, INC., by and through their counsel of record the law firm of MORRIS POLICH & PURDY LLP, pursuant to Federal Rule of Civil Procedure 12(b)(3), hereby request dismissal of this action because this Court is the improper venue for this dispute.

Alternatively, Defendants move for dismissal of the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) on the grounds the Complaint fails to assert cognizable claims against these Defendants.

This Motion is made and based upon the pleadings and papers on file herein, the following Memorandum of Points and Authorities, and any oral argument that may be entertained by this Honorable Court at the hearing on this matter.

DATED this 21 day of May 2013.

**MORRIS POLICH & PURDY LLP**

By: _____

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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. OPENING SUMMARY OF ARGUMENT

Plaintiffs have brought this action against multiple parties, including but not limited to various members of the Hualapai Tribe, David John Cieslak, Nicholas Peter "Chip" Scutari, and Scutari & Cieslak Public Relations, Inc. (hereinafter David John Cieslak, Nicholas Peter "Chip" Scutari, and Scutari & Cieslak Public Relations, Inc., collectively "Scutari & Cieslak") alleging claims of Defamation, Business Disparagement, and Civil Conspiracy. Plaintiffs have claimed injury to their reputations and business goodwill, allegedly stemming from all defendants working in unison to run a "smear" campaign of Plaintiffs and their involvement in the construction and maintenance of the Grand Canyon Skywalk located in Arizona.

Plaintiffs have not pled any facts showing comments and/or statements made by Defendants that would remotely constitute defamation. They further have not provided any evidence that they have suffered any damage to their reputations and/or business goodwill. Thehe more pressing issue, however, is that this filing by Plaintiffs in the United States District Court for the District of Nevada is the improper venue.

Under Nevada law, Courts give deference to tribal courts to hear and address issues involving tribal members and/or issues involving tribal land. Further, case law has deemed that Indian tribes cannot be sued in diversity because they are not citizens of any state. As the Grand Canyon Skywalk sits on Hualapai tribal land, and the allegations Plaintiffs have made are made against dealings with Hualapai Tribe members and Defendants, this Court is the improper venue. In the alternative, if it is found that this Court can maintain venue, Plaintiffs' Complaint should be dismissed based on the fact that the statements made by Defendants regarding the Grand Canyon Skywalk do not rise to the level of defamation and the comments made are protected by the Anti-SLAPP statutes. Accordingly, this Court should enter an order dismissing the entirety of Plaintiffs Complaint against all Defendants.

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## II. FACTUAL AND PROCEDURAL BACKGROUND

This lawsuit arises from Plaintiffs Grand Canyon Skywalk Development, LLC., David Jin, and Theodore (Ted) R. Quasula ("Plaintiffs"), agreements and involvement in the construction, operation, and maintenance of the tourist attraction known as the Grand Canyon Skywalk with the Hualapai Indian Tribe. The Grand Canyon Skywalk is located on the Hualapai Indian Reservation in Arizona.

In or about December 2003, Plaintiff Jin (who is a businessman and owner and operator of the tour company Oriental Tour and Travel) entered into an agreement with the Hualapai tribe (the Tribe) to construct and operate a glass viewing platform (the Skywalk) and related facilities extending over the edge of the Grand Canyon. As part of this agreement between Plaintiff Jin and the Tribe, Jin agreed to finance, develop, and operate the Skywalk project and the parties entered into a revenue-sharing agreement. As a result of this agreement between the parties, Plaintiff Jin formed Grand Canyon Skywalk Development ("GCSD") and the Tribe formed Sa Nyu Wa, Inc. ("SNW"), a tribally-chartered corporation. After the development of the Skywalk the parties agreed GCSD would manage its operation. In or about 2004, modifications were made to the 2003 Skywalk Agreement, substantially expanding the Skywalk in length. These changes allegedly required re-engineering of the project, significantly delayed the opening, and went beyond the monies GCSD had planned for the construction of the Skywalk.

The Skywalk opened to the public in or about March 2007. Despite the immediate success of the Skywalk, disputes soon developed between Plaintiffs and the Tribe with respect to not only withholdings of revenues and management fees but also with respect to which party was obligated and/or responsible for the continued development of certain portions of the Skywalk project, namely the visitor's center and the maintenance of utilities and power. Between this time and the filing of this lawsuit it is alleged that the visitor's center stands incomplete and roads remain unconstructed.

To help bring attention to this matter, the Tribe retained and hired Scutari & Cieslak, based out of Phoenix Arizona, to help increase awareness about the current status of the Grand Canyon Skywalk. Through this relationship, Scutari & Cieslak profiled the Grand Canyon Skywalk and

brought media attention to this dispute between Plaintiffs and the Hualapai tribe.

As a result of these issues between the parties, Plaintiffs allege that beginning in 2011 all defendants conspired to disseminate false information regarding Plaintiffs and their responsibilities with respect to these unfinished projects.

It appears that in or about July 2012 arbitration was conducted between the same Plaintiffs in this matter against the SNW for the non-payment of revenue to Plaintiffs for the years 2008 through 2011. This arbitration panel awarded Plaintiffs $24,975,469.00. This Arbitration Award was upheld by the United States District Court for the District of Arizona on or about February 11, 2013.

During the pendency of the Arbitration, GCSD filed a lawsuit against SNW in the United States District Court for the District of Arizona seeking a declaratory judgment that the Hualapai Tribe lacked the authority to condemn the Nevada corporation's intangible property rights in a revenue-sharing contract with the tribally chartered corporation and for injunctive relief. The Court in that matter denied GCSD's request, stayed the proceedings, and required GCSD to exhaust all possible tribal court remedies before proceeding to federal court. This decision was issued on April 26, 2013.

Plaintiffs filed the current action in the United States District Court for the District of Nevada on or about April 8, 2013, during the pendency of its litigation in the United States District Court for the District of Arizona. That suit alleges causes of action for defamation, business disparagement, and civil conspiracy for events directly related to and also alleged in the August 2012 arbitration hearing and lawsuit filed in Arizona.

The Hualapai Tribal Nation is federally recognized. Many of its members live on the Hualapai Indian Reservation in northwestern Arizona. The SNW is a tribally chartered corporation owned by the Hualapai Indian Tribe, and own the Skywalk, which lies on tribal land.

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## III. LEGAL ARGUMENT

This Motion requests that this Court recognize the Hualapai Tribe and its members as a federally recognized Indian Tribe. Its members are not citizens of any state and accordingly are not subject to diversity jurisdiction. Dismissal of this matter pursuant to Federal Rule of Civil Procedure 12(b)(3) is warranted as any court in Nevada is an improper venue for this dispute. As this litigation involves tribal members, the proper venue for this litigation is Tribal Court. Giving deference and following suit with the order most recently issued by the United States District Court for the District of Arizona (also involving Plaintiffs and the Hualapai tribe), this case should be remanded to Tribal Court as the proper venue for this litigation. In the alternative, if this Court is found to be an appropriate venue for this litigation, Plaintiffs' Complaint should be dismissed as the statements and comments made by Scutari & Cieslak in working with the Tribe to bring awareness to the public/state of the Grand Canyon Skywalk do not rise to a level of defamation and are protected by the Anti-Strategic Lawsuit Against Public Participation (Anti-SLAPP) legislation.

### A. VENUE IN NEVADA IS IMPROPER AS DEFENDANTS ARE INDIAN TRIBE MEMBERS AND AS SUCH NOT CITIZENS OF ANY STATE AND THEREFORE NOT SUBJECT TO DIVERSITY JURISDICTION.

In their Complaint, Plaintiffs allege this Court is the proper venue for this litigation under diversity jurisdiction. Plaintiffs state the following:

"2. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because each of the defendants are residents of Arizona, and each of the Plaintiffs are residents of Nevada, creating complete diversity. Plaintiffs seek damages in excess of $75,000.00" …"

"6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(2). "

See Plaintiffs' Complaint, p. 2:8-10; 18.

This action should be dismissed for improper venue because various named defendants are members of the Hualapai Indian Tribe, a federally recognized sovereign nation. It is well established "that Federally recognized Indian tribes enjoy sovereign immunity from suit[s] because they are 'domestic dependent nations' that exercise inherent sovereign authority over their members

and territories." *Big Horn County Elect. Co-op., Inc. v. Adams,* 219 F.3d 944, 954 (9th Cir. 2000). As a result, tribes are not citizens of states and, accordingly, are not subject to diversity jurisdiction. *Auto-Owners Ins. Co. v. Tribal Court of Spirit Lake Indian Reservation,* 495 F.3d 1017, 1020 (8th Cir. 2007) ("[A]n Indian tribe is not a citizen of any state and cannot sue or be sued in federal court under diversity jurisdiction."). The exception carved out to this rule is congressional or tribal consent to suit. Otherwise, state and federal courts have no jurisdiction over Indian tribes. And although it may stand that Scutari & Cieslak in this matter are citizens of Arizona and not members of the Tribe, Plaintiffs allegations against them stem out of and relate directly to Plaintiffs dealings with the Tribe. As such, the allegations against these Defendants should be prosecuted at one time and in the same court for judicial efficiency and to save time and money for the parties involved and this Court.

**B. TRIBAL COURT IS THE PROPER VENUE AS THIS LITIGATION INVOLVES TRIBAL MEMBERS, TRIBAL COUNCIL, AND THE GRAND CANYON SKYWALK WHICH SITS ON TRIBAL LAND.**

As stated above, Indian tribes enjoy sovereign immunity from suit[s] because they are domestic dependent nations that exercise inherent sovereign authority over their members and territories. Civil jurisdiction over the activities of non-Indians on reservation lands is an important part of tribal sovereignty that presumptively lies with the tribal courts unless affirmatively limited by a specific treaty provision or by federal statute. *Iowa Mutual Ins. Co. v. La Plante,* 480 U.S. 9, 18, 107 S.Ct. 971, 977-78, 94 L.Ed.2d 10 (1987). The Supreme Court and the Eighth Circuit have repeatedly emphasized that tribal courts play a "vital role" in tribal self-governance, and that "because a federal court's exercise of jurisdiction over matters relating to reservation affairs can impair the authority of tribal courts, as a matter of comity, the examination of tribal sovereignty and jurisdiction should be conducted in the first instance by the tribal court itself." *Duncan Energy Co. v. Three Affiliated Tribes,* 27 F.3d 1294, 1299 (8th Cir.1994) (citing *National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 856, 105 S.Ct. 2447, 2453-54, 85 L.Ed.2d 818 (1985)).

This specific holding giving deference to Tribal Courts to hear and adjudicate claims involving their members and activities on their land was re-iterated in the recent case of *Grand Canyon Skywalk Development, LLC. v. "Sa'Nyu Wa Inc*, ___ F.3d ___, 2013 WL 1777060 (C.A.9 (Ariz.)), 2013.

In that decision, the Ninth Circuit Court of Appeals stated that "Federal law has long recognized a respect for comity and deference to the tribal court as the appropriate court of first impression to determine its jurisdiction." *Id.* at p. 6. See also, *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 856-57, 105 S.Ct. 2447, 85 L.Ed.2d 818 (1985); *Iowa Mut. Ins. Co. v. LaPlante,* 480 U.S. 9, 15-16, 107 S.Ct. 971, 94 L.Ed.2d 10 (1987); *Burlington N. R.R. Co. v. Crow Tribal Council,* 940 F.2d 1239, 1244 – 47 (9th Cir.1991). As support for this premise, the Arizona Supreme Court cite[d]: (1) Congress's commitment to "a policy of supporting tribal self-government and self-determination;" (2) a policy that allows "the forum whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal bases for the challenge;" and (3) judicial economy, which will best be served "by allowing a full record to be developed in the Tribal Court." *Grand Canyon Skywalk, supra*, at p.6.

The Court opined that it has interpreted *National Farmers* as determining that tribal court exhaustion is not a jurisdictional bar, but rather a prerequisite to a federal court's exercise of its jurisdiction. "Therefore, under *National Farmers,* the federal courts should not even make a ruling on tribal court jurisdiction ... until tribal remedies are exhausted." *Id.* at p. 7, citing *Stock West, Inc. v. Confederated Tribes of the Colville Reservation,* 873 F.2d 1221, 1228 (9th Cir.1989).

The Court further stated the exhaustion requirement applies in both diversity and federal question cases. Whether proceedings are actually pending in tribal court is not relevant to determining whether exhaustion will be required. *Crawford v. Genuine Parts Co.,* 947 F.2d 1405, 1407 (9th Cir.1991), *cert. denied,* 502 U.S. 1096, 112 S.Ct. 1174, 117 L.Ed.2d 419 (1992).

As Plaintiff GCSD should now be well aware, from its most recent filing with the United State District Court for the District of Arizona, federal court is not the proper venue for this current litigation. Plaintiffs have not first tried to adjudicate these claims in Tribal Court nor have they attempted to exhaust all possible Tribal Court remedies. As ordered in *Grand Canyon Skywalk*

*Development, LLC. v. Sa' Nyu Wa Inc.* this case should be dismissed for improper venue and Plaintiffs should be required to exhaust all tribal court remedies prior to proceeding with this action in federal court.

### C. AS THE SUBJECT MATTER OF THIS LITIGATION SURROUNDS THE GRAND CANYON SKYWALK LOCATED ON TRIBAL LAND AND INVOLVES TRIBAL MEMBERS AND DEFENDANTS, ANY ALLEGATIONS AGAINST CIESLAK, SCUTARI AND SCUTARI & CIESLAK PUBLIC RELATIONS, INC. SHOULD BE LITIGATED IN TRIBAL COURT.

Scutari & Cieslak anticipate Plaintiffs may attempt to argue that these three Defendants, specifically, are not members of the Hualapai Indian tribe and as such Plaintiffs claims against them should be adjudicated in federal court and/or that somehow by way of these three Defendants federal court is the proper venue for this case. Although this is true, Plaintiffs allegations against Scutari & Cieslak directly relate to the Grand Canyon Skywalk, the tribal members also named as defendants in the litigation, and are a result of the 2003 and 2004 agreements entered into by the parties, the terms and revenue splitting of which have been previously determined by the tribal arbitration. See Exhibit "A", American Arbitration Association Award. As was previously mentioned above, Plaintiffs have filed two other suits against the Hualapai Tribe and/or its members: the first in Tribal Court, and the second in the United States District Court for the District of Arizona. Plaintiffs appear to be venue shopping. The sole basis for each of Plaintiffs lawsuits arise from the 2003 and 2004 agreements between the parties and the subsequent outcomes and responsibilities. As such, these lawsuits should be heard by one Court, the proper court being Tribal Court.

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**D. IN THE ALTERNATIVE, IF THE COURT FINDS THAT VENUE IS PROPER, THE STATEMENTS MADE BY SCUTARI & CIESLAK DO NOT RISE TO A LEVEL OF DEFAMATION AND AS SUCH PLAINTIFFS' COMPLAINT SHOULD BE DISMISSED.**

**a. Many Of The Statements Plaintiffs Allege As Being Defamatory Are In Fact Truth And/Or Opinion.**

Plaintiffs Complaint is ridden full of allegations against Defendants for defamatory statements made against them. The allegations specific to Scutari & Cieslak in the Complaint are paragraphs 70 – 78, 95 – 101, and 112 – 116.

In determining whether a statement is actionable as defamation under Nevada and other states' law, the court must ask whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact. So long as it is based on true and public information, evaluative opinion conveys the publisher's judgment as to quality of another's behavior, and as such, it is not a statement of fact for defamation purposes. *Lubin v. Kunin,* 117 Nev. 107, 17 P.3d 422 (2011).

In addressing each of Plaintiffs allegations against Scutari & Cieslak, specifically the paragraphs mentioned above, it can be seen that each statement is either a true statement or one of opinion. Nevada law has long established that a statement is not defamatory if it is absolutely true or substantially true. The doctrine of substantial truth provides that minor inaccuracies do not amount to falsity for purposes of a defamation claim unless the inaccuracies would have a different effect on the mind of the reader from that which the pleaded truth would have produced; specifically, the court must determine whether the gist of the story, or the portion of the story that carries the sting of the article, is true. *Pegasus v. Reno Newspapers, Inc.,* , 118 Nev. 706, 57 P.3d 82 (2002).

Further the courts have found that opinions are never defamatory as there are no such things as false ideas. In *State v. Eighth Judicial Dist. Court ex rel. County of Clark*, the court found that statements by one investigator with the Office of the Attorney General to law enforcement officials concerning the firing of a fellow investigator that "if I had conducted an investigation that was

crappy or half-assed, I would expect to be fired as well," amounted to a statement of opinion, and thus was not actionable as defamation. *State v. Eighth Judicial Dist. Court ex rel. County of Clark,* 118 Nev. 140, 42 P.3d 233 (2002).

Plaintiffs' Complaint alleges, among other things, the following:

> "70. On April 13, 2011, David Cieslak made false statements to local news reporter Anthony DeWitt of ABC15.com that:"
>
> a. "Jin signed a contract with the tribe and so far has not lived up to his promises."
>
> b. "Mr. Jin agreed to complete certain critical elements of the Skywalk – including water, sewer and electricity and the first floor of the Visitors Center. After four years, do you know what it looks like? An empty shell with exposed wiring that remains under construction."
>
> c. "The tribe is extremely disappointed in Jin's actions and failure to follow through on his contractual obligations."
>
> d. "We have spent years negotiating with Jin, but he refuses to make even basic concessions and complete the work he promised. Now he has filed not one, but two lawsuits....The tribe has simply had enough. Our people – and tourists from across the globe – deserve better." (*See "Tensions rise between developer and tribe at the Grand Canyon Skywalk"* attached hereto as **Exhibit 7**).

These statements made by Defendant Cieslak are not only statements which fall within his First Amendment rights of free speech but are also statements made to media about an issue of public concern which fall under a category protected by the Anti-SLAPP statutes enacted in Nevada to protect First Amendment rights. Each of these statements taken separately are nothing more than truthful reflections of the current state of the Grand Canyon Skywalk and/or statements of the Hualapai tribe's opinion of the current state of the Grand Canyon Skywalk. Statements 70(a) and (b) in complaint paragraphs are true statements concerning Plaintiffs obligations under the agreement between Plaintiffs and the Hualapai Tribe. As to statements 70(c) and (d), these are opinions given by Mr. Cieslak regarding how the Hualapai tribe feels about the current situation with Plaintiffs.

Paragraphs 71 – 73 speak to the statements made in an internal memorandum/statement compiled by Scutari & Cieslak as a retained public relations firm by the Tribe. In this memorandum Scutari & Cieslak reiterate the concerns of the Tribe. Plaintiffs allege that this memorandum was disseminated amongst the Tribe and constitutes defamation. Again, the Tribe hired Scutari& Cieslak to help bring attention to this issue and this specific document was internal work product for Scutari & Cieslak to pinpoint the issues brought up by the Tribe to it. The dissemination of this memorandum does not constitute defamation as it was given to Scutari & Cieslak's client for review. This publication of the memorandum was not an unprivileged publication to a third party. The Tribe retained Scutari & Cieslak.

**b. Many Of The Statements Made Which Plaintiffs Allege Are Defamatory Were Discovered Years Ago Which Brings Them Outside Of The Applicable Statute Of Limitations And For That Reason They Should Not Be Included In This Litigation.**

NRS 11.190(4)(c) states in pertinent part that:

"Actions may only be commenced as follows:

. . .

4. Within 2 years:

. . .

(c) An action for libel, slander, assault, battery, false imprisonment or seduction."

The general rule concerning statutes of limitation is that a cause of action accrues when the wrong occurs and a party sustains injuries for which relief could be sought. *Nelson v. A.H. Robbins Co.,* 515 F.Supp. 623, 625 (N.D.Cal.1981). An exception to the general rule has been recognized by this court and many others in the form of the so-called "discovery rule." Under the discovery rule, the statutory period of limitations is tolled until the injured party discovers or reasonably should have discovered facts supporting a cause of action. *See, e.g., Sorenson v. Pavlikowski,* 94 Nev. 440, 443-444, 581 P.2d 851, 853-854 (1978) (in legal malpractice action, cause of action accrues when plaintiff sustains damage and discovers, or should discover, his cause of action). *Peterson v. Bruen,* 106 Nev. 271, 792 P.2d 18 (1990).

Following this rule, the statute of limitations for Plaintiffs to file a lawsuit with respect to some of the alleged defamatory statements was two years from the date the defamatory statements were discovered. With respect to Plaintiffs' Complaint, it alleges:

> "66. A memorandum from Scutari & Cieslak Public Relations, Inc. from the February or March 2011 timeframe explains that:
>
> a. The Hualapai people are, "facing a significant public relations opportunity – and some considerable challenges – with their planned legal action against David Jin;"
>
> b. "About 10 years ago, Las Vegas businessman, David Jin, strolled into Peach Springs with a clever idea; build a glass-bottom walkway over the Hualapi's land along the Grand Canyon and create an internationally renowned tourist attraction;"
>
> c. "When something seems too good to be true, it usually is, sadly, the Hualapai people have learned that lesson the hard way – at the hands of David Jin;"
>
> d. Jin has failed to abide by his contractual obligations and keep even the most basic promises he made to the Hualapai. The Visitors Center is an empty shell – a ramshackle building that sits idle with exposed wiring hanging from the ceiling and holes in the floor. There are abysmal port-a-johns, not luxurious bathroom, as Jin promised for the thousands of tourists who visit from around the world. Worse yet there is no electricity, water or sewer utilities running to the attraction at all. It's an appalling breach of the contract's most critical terms, and tourists from around the world get a front-row view of the debacle every single day."
>
> e. The Hualapai have begged Mr. Jin to keep his promises and to complete the work. Instead, Jin and his various subsidiaries have behaved like Arizona's version of Leona Helmsley and Bernie Madoff, leaving uninhabitable buildings in his wake and ignoring the pleas of those who trusted him. The tribe has simply asked Jin to uphold his end of the bargain. Now, the Hualapai are forced to seek the court's assistance to protect what's left of their investment." (*See "Hualapai Nation: Skywalk and Beyond"*, Scutari Cieslak attached hereto as **Exhibit 5** (Emphasis in original.)

In Plaintiffs' Complaint, footnote 3, it is alleged that "The Memorandum was marked "Privileged and Confidential" by Scutari and Cieslak (not by counsel) but was publicly circulated by a member of the Hualapai Tribe in early 2011 such that the privilege was waived."

Pursuant to NRS 11.190 (4)(c) Plaintiffs had two years to bring a lawsuit with respect to these alleged defamatory statements made in this internal memorandum drafted by Scutari &

Cieslak by March 2013. Plaintiffs Complaint was filed on or about April 8, 2013 and as such the allegations of defamating statements are past the statute of limitations and for the purposes of this litigation should be eliminated from this Complaint and against Defendants.

**E. THIS CASE FALLS UNDER THE ANTI-SLAPP STATUTE AND IN THE ALTERNATIVE SHOULD BE DISMISSED FOR THAT REASON.**

In the alternative if this Court finds that this is the proper venue for this litigation, this Court should dismiss this case on the basis of the Anti-SLAPP statute. The Anti-SLAPP statute was enacted in Nevada in 1993 to provide protection against those who brought suits in response to efforts by individuals or groups to participate in the democratic process by some person or entity claiming to have been wronged through that participation. In this case, Plaintiffs claim defendants have engaged in defaming them as a result of comments and opinions given with respect to Plaintiffs and their involvement in the construction and operation of the Grand Canyon Skywalk.

NRS 41.660 states in pertinent part:

1. If an action is brought against a person based upon a good faith communication in furtherance of the right to petition:

   (a) The person against whom the action is brought may file a special motion to dismiss

   ...

2. A special motion to dismiss must be filed within 60 days after service of the complaint, which period may be extended by the court for good cause shown.

3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:

   (a) Treat the motion as a motion for summary judgment."

In *John v. Douglas County School District*, 125 Nev. 746, 219 P.3d 1276 (2009) the Nevada Supreme Court pointed out that "the hallmark of a SLAPP lawsuit is that it is filed to obtain a financial advantage over one adversary by increasing litigation costs until the adversary's case is weakened or abandoned." 25 Nev. at 752.

The specific allegations against Scutari & Cieslak which fall under this category are paragraphs 74 – 78, 95 – 99, 101, and 112 – 116. Each of these statements were given in the form of an interview regarding the state of the Grand Canyon Skywalk to a media outlet. Each remark or comment made was a truthful statement or one of opinion regarding the state of the Grand Canyon Skywalk which is a public issue. Scutari & Cieslak did nothing more than bring attention to the ongoing problems the Tribe was facing with respect to the development and maintenance of the Grand Canyon Skywalk.

This case exemplifies the very litigation gambit which the Anti-SLAPP statute is intended to protect against. Scutari & Cieslak engaged in free speech with their client and in media, stating their opinions and truths regarding the current state of the Grand Canyon Skywalk and the problems the Tribe was facing with respect to construction and obligations of the parties involved. Plaintiffs have viewed these comments and opinions as defamatory, suing Scutari & Cieslak for the comments and opinions given.

As the comments and statements given by Defendants is protected speech under the First Amendment, and Defendants actions protected by the Anti-SLAPP statutes, Plaintiffs' Complaint should be dismissed.

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## IV. CONCLUSION

Based on the foregoing, Defendants respectfully request that this Court dismiss the matter pursuant to Federal Rule of Civil Procedure 12(b)(3) for improper venue, based upon the defendants' status as Indian Tribe members and the proper venue being Tribal Court. In the alternative, if this Court finds this is the proper venue for this litigation, Plaintiffs' Complaint should be dismissed as the comments/statements made by Defendants do not rise to the level of defamation and the speech engaged in by Defendants is protected by the Anti-SLAPP statutes.

DATED this 21 day of May 2013.

**MORRIS POLICH & PURDY LLP**

By: _____

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of Morris Polich & Purdy LLP, and that on this 21 day of May 2013, I served a true and correct copy of the foregoing "**DEFENDANTS DAVID JOHN CIESLAK, NICHOLAS PETER "CHIP" SCUTARI AND SCUTARI & CIESLAK PUBLIC RELATIONS, INC.'S MOTION TO DISMISS FOR IMPROPER VENUE PURSUANT TO FRCP 12(b)(3) OR, IN THE ALTERNATIVE, FOR DISMISSAL OF PLAINTIFFS' COMPLAINT** via the Court's CM/ECF to the parties and their counsel identified below:

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