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7 **IN THE HUALAPAI TRIBAL COURT**

8 **PEACH SPRINGS, ARIZONA**

9 WD AT THE CANYON, LLC, an Arizona
10 limited liability company, JAMES R. BROWN,
11 a married man,

12 Plaintiffs,

13 v.

14 HWAL'BAY BA:J ENTERPRISES, INC.,
15 d/b/a GRAND CANYON RESORT
16 CORPORATION, a tribally chartered
17 corporation of, and owned by, the Hualapai
18 Indian Tribe; CARRIE IMUS, DANIEL
19 ALVARADO, NEIL GOODELL, DERRICK
20 PENNEY, CAMILLE NIGHTHORSE,
21 MICHAEL VAUGHN, WILFRED
22 WHATONAME, SR. each individuals and
23 members or former members of the Grand
24 Canyon Resort Corporation's board of
25 directors; and JENNIFER TURNER, an
26 individual and chief executive officer of Grand
27 Canyon Resort Corporation,

28 Defendants.

Case No. 2014-cv-005

**PLAINTIFFS' OPPOSITION TO
MOTION TO DISMISS**

Assigned to: Judge Rachel Johnson

23 Plaintiffs WD at the Canyon, LLC and James R. Brown (collectively, "Plaintiffs"), by and
24 through undersigned counsel, hereby submit their Opposition to Respondents' Motion to Dismiss
25 for Lack of Subject Matter Jurisdiction ("Opposition"). The following Memorandum of Points
26 and Authorities, along with the pleadings and papers on file with the Clerk, and such other
27 matters of which the Court can properly take notice, all of which Plaintiffs incorporate herein by
28 this reference, support this Opposition.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Sovereign immunity is not license to commit fraud with impunity. Defendants wield
4 sovereign immunity as a clumsy broadsword, erratically thrashing at any and all who question
5 their pattern and practice of malfeasance. Not only did the Tribe waive its immunity, but the
6 shield of sovereign immunity does not protect the fraudulent, illegal, and unconstitutional acts of
7 any Defendant, including the individually-named Defendants (the “Individual Defendants”).

8 This Court should deny Defendants’ Motion to Dismiss because the Hualapai Tribe (the
9 “Tribe”) expressly waived sovereign immunity on multiple occasions. First, the Tribe waived its
10 sovereign immunity as to business entities incorporated under Section 17 of the Indian
11 Reorganization Act (“IRA”), such as GCRC. The Tribe confirmed the Section 17 waiver by
12 sworn testimony before the United States Senate in 1998. Next, the Tribe waived sovereign
13 immunity by adopting the Hualapai Constitution (the “Constitution”), which contains a waiver of
14 sovereign immunity as to illegal acts and acts that unconstitutionally deprive a person or entity’s
15 due process or civil rights. The Tribe confirmed the Constitutional waiver by sworn testimony
16 before the United States Senate in 2008. Finally, the Hualapai Tribal Council (the “Council”) and
17 the GCRC Board of Directors (the “Board”) expressly waived sovereign immunity during a
18 meeting with the Plaintiffs in 2010. The Council and Board confirmed the waiver of sovereign
19 immunity in the Amended and Restated Development and Management Agreement (the
20 “Amended Agreement”). The Tribe’s numerous waivers subject GCRC to the jurisdiction of this
21 Court.

22 Defendants oppose jurisdictional discovery and an evidentiary hearing because they do
23 not want the truth to see the light of day. However, “[s]unlight is said to be the best of
24 disinfectants; electric light the most efficient policeman.”¹ Jurisdictional discovery and an
25 evidentiary hearing are necessary and warranted. Defendants’ trepidation that this case be tried
26 on the merits is palpable. Defendants assert Plaintiffs’ allegations, supported by documentary
27 evidence and testimony made under oath, to be “outlandish.” However, Defendants do so without

28 ¹ U.S. Supreme Court Justice Louis Brandeis, Other People’s Money—and How Bankers Use It, (1914).

1 any substantiation. Rather, Defendants rely upon nothing more than public relations talking
2 points, which represent the sum corpus of their defense in this litigation. For that reason,
3 Defendants refuse to allow current and former GCRC representatives to testify under oath and
4 oppose jurisdictional discovery and an evidentiary hearing in relation to the Motion to Dismiss.
5 An evidentiary hearing is, however, warranted. Plaintiffs must be afforded an opportunity to
6 conduct jurisdictional discovery to prove: (1) the Council and Board expressly waived tribal
7 sovereign immunity; and (2) the Individual Defendants engaged in unprotected fraud, conspiracy,
8 and/or illegal acts which subject them to the personal jurisdiction of this Court. Refusing to
9 permit necessary jurisdictional discovery and an evidentiary hearing will prejudice Plaintiffs'
10 constitutional right to bring forth its legitimate claims.

11 Defendants will lose this case on the merits, likely during the dispositive motion stage of
12 litigation. Simply, Defendants' entire defense is premised upon their claim that tribal sovereign
13 immunity grants them absolute power to commit any illegal, unconstitutional, or fraudulent acts
14 and shields them from suit in any court, including in their own Tribal Court. Brazen abuse of the
15 doctrine of tribal sovereign immunity, like that perpetrated by Defendants, will ultimately lead to
16 its complete abolishment.²

17 **II. APPLICABLE FACTS**

18 **A. Indian Reorganization Act of 1934**

19 The Tribe availed itself of the ability to incorporate tribal enterprises under federal law
20 pursuant to the IRA. Congress added Section 17 of the IRA due to congressional concern that
21 non-Indians would not do business with tribal governments that are immune from suit. See
22 Hearings on H.R. 7902, 73d Cong., 2d Sess. 90-100 (1934); S. Rep. No. 1080, 73d Cong., 2d

23 ² "There are reasons to doubt the wisdom of perpetuating [tribal immunity]...[T]ribal immunity extends beyond
24 what is needed to safeguard tribal self-governance. This is evident when tribes take part in the Nation's commerce."
25 Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc., 523 U.S. 751, 758 (1998); see also Id. at 766
26 (Stevens, J., dissenting) (tribal sovereign immunity is unjust and "governments, like individuals, should pay their
27 debts and should be held accountable for their unlawful, injurious conduct."); Okla. Tax Comm'n v. Citizen Band
28 Potawatomi Indian Tribe of Okla., 498 U.S. 505, 512 (1991) (Stevens, J., concurring) (tribal sovereign immunity is
founded upon an "anachronistic fiction."); Newman v. State, 490 P.2d 1079, 1082 (Okla. 1971) (Hodges, C.J.,
dissenting) (regarding sovereign immunity, "[w]e have no king and no claim of divinity for our government has been
asserted. Yesterday's excuses are not today's answers."); Erwin Chemerinsky, Against Sovereign Immunity, 53
STAN. L. REV. 1201, 1223 (2001) ("[s]overeign immunity is an anachronistic relic and the entire doctrine should be
eliminated from American law.").

1 Sess. (1934). The incorporation process included the development of a corporate charter, and the
2 Tribe amended and ratified its corporate charter (the "Charter") on October 22, 1955. See
3 attached Exhibit 1. The Charter expressly included a sue and be sued clause (the "Sue and Be
4 Sued Clause"), that stated the following:

5 The Tribe, subject to any restrictions contained in the [U.S.] Constitution and the
6 laws of the United States...shall have the following corporate powers ...To sue
7 and be sued in courts of competent jurisdiction within the United States; but the
8 grant or exercise of such power to sue and be sued shall not be deemed a consent
9 by the said Tribe or by the United States to the levy of any judgment, lien or
attachment upon the property of the Tribe other than income or chattels especially
pledged or assigned.

10 The Tribe did not limit or restrict the Sue and Be Sued Clause with respect to tort or
11 contract actions, and Assistant Secretary of the Interior, Orme Lewis, approved the Charter with
12 the general waiver of sovereign immunity. The Tribe has not further amended the Charter and the
13 Charter has not been revoked or surrendered.³

14 **B. Hualapai Constitution**

15 The Tribe ratified the Constitution on February 14, 1991, and the Constitution provides
16 the following protections for any person or entity within the Hualapai jurisdiction:

17 ARTICLE IX – BILL OF RIGHTS

18 The Hualapai Tribe, in exercising its powers of self-government shall not:

- 19 ...
20 (c) take any private property for a public use without just compensation;
21 (d) deny to any person within its jurisdiction the equal protection of its laws
or deprive any person of liberty or property without due process of law.

22 ARTICLE XVI – SOVEREIGN IMMUNITY

23 Section 1: Tribe and Employees Immune from Suit.

- 24 (a) The Hualapai Tribe hereby declares that, in exercising self-determination
25 and sovereignty to its fullest extent, the Tribe is immune from suit except
26 to the extent that the Tribal Council expressly waives sovereign immunity,
or as provided by this constitution. No tribal employee or Tribal Council
member acting within the scope of his duties or authority is subject to suit.

27 ³ The Charter provides in Section 9, "This charter shall not be revoked or surrendered except by act of Congress, but
28 amendments may be proposed by resolution of the Tribal Council, which, if approved by the Secretary of the Interior,
to be effective, shall be ratified by a majority of adult members living on the reservation at an election in which at
least thirty percent of the eligible voters vote."

1 The above-referenced sections of the Constitution have not been amended.

2 **C. Hualapai Law and Order Code**

3 The Hualapai Law and Order Code provides additional protections to non-Tribal members
4 like the Plaintiffs, including the following sections:

5 SECTION 1.4(B)

6 The jurisdiction and governmental authority of the Hualapai Indian Tribe applies
7 to . . . All persons, property and activities occurring within the geographical areas
8 [of the Tribe] to the extent not prohibited by federal or Tribal law.

9 SECTION 2.2

10 The Tribal Court shall have general civil jurisdiction over all actions arising under
11 Tribal law, including the Constitution, this Code, any ordinance or resolution
12 adopted by the Hualapai Indian Tribe, and the Tribal Common law; over all
13 general civil claims which arise within the Tribal jurisdiction; and over all
14 transitory claims in which the defendants may be served within Tribal
15 jurisdiction.

16 **D. 1998 U.S. Senate Testimony: Confirmation of Express Waiver in Charter**

17 The Tribe acknowledged the express waiver contained in the Sue and Be Sued Clause in
18 the Charter when it submitted sworn testimony in response to proposed Senate Bill 1691, known
19 as the American Indian Equal Justice Act (the "AIEJA"). The AIEJA proposed, in part, the
20 elimination of sovereign immunity for tribal commercial enterprises, which would allow non-
21 Tribal business partners to bring suit in state or federal courts. In essence, the AIEJA would put
22 Tribal Nations in the same legal position as other sovereigns such as the United States,⁴ foreign
23 countries,⁵ and each individual State by closing the loophole that ostensibly granted immunity to
24 tribal commercial enterprises where other state and federal commercial enterprises have none. In
25 short, Congress attempted to do exactly what the U.S. Supreme Court urged it to do in prior
26 rulings: eliminate tribal sovereign immunity for tribal commercial enterprises. See, e.g. Kiowa,
27 523 U.S. at 759. (U.S. Supreme Court begrudgingly upheld tribal sovereign immunity, not
28 because it makes sense, but because tribal immunity raises "competing policy concerns" and is a
matter for Congress to "weigh and accommodate.").

⁴ See, e.g., 28 U.S.C. §§ 1346(b), 2671-80 (1988).

⁵ Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-11 (1988).

1 The Tribe opposed only the state and federal court venue and jurisdiction provision in the
2 AIEJA, arguing that said provisions were unnecessary due to the Tribe's prior waiver and
3 submission to jurisdiction in the Hualapai Tribal Court. The Tribe's sworn Senate testimony,
4 attached to the Amended Complaint as Exhibit A, included:

5 In the contractual context, the Tribe has established tribal corporations that have
6 the full authority to make contracts [*sic*] the charters vest authority in the
7 corporation to sue and be sued. The corporation boards can waive any further
8 vestings of tribal sovereign immunity on corporate assets. Under these limited
9 waivers of immunity, the tribal corporation is authorized to pledge the assets of
10 the corporation to satisfy any claims made against it. See Exhibit A at page 543.

11 [T]he Constitution of the Hualapai Indian Tribe vests the tribal court with
12 jurisdiction over all cases and controversies that arise within the jurisdiction of the
13 Tribe. Therefore, any contractual or tort disputes that cannot be resolved through
14 arbitration or insurance settlement can be heard in the Tribal Court. Cases that
15 cannot be resolved in the trial court can be appealed to the Southwest Intertribal
16 Court of Appeals, based in Albuquerque, New Mexico. Id. at page 544.

17 Based on the current judicial system of the Hualapai Tribe, there is no need for
18 congressional action to abrogate tribal sovereign immunity for tort and contract
19 actions that may be brought against the Tribe or its businesses. Id.

20 **E. 2008 U.S. Senate Testimony: Confirmation of Express Waiver in Constitution**

21 The Tribe confirmed a waiver of sovereign immunity contained in the Constitution when
22 it submitted Senate Testimony in opposition to the Tribal Law and Order Act of 2008 and
23 acknowledged that sovereign immunity does not shield illegal or unconstitutional acts. The
24 Hualapai Judiciary, through Chief Judge Joseph Flies-Away, submitted the following testimony,
25 attached to the Amended Complaint as Exhibit B, before the Committee on Indian Affairs on July
26 22, 2008:

27 What may be at issue as tribal courts continue to develop and revise their
28 constitutions, are conflicts between rights as articulated in their constitutions and
tribal government (and their subordinate entities) claims to sovereign immunity?
[*sic*] If a tribal government does not afford due process to a person under their
jurisdiction, and or change the law on an individual after the matter was brought
to Court, when the Constitution articulates various rights, does sovereign
immunity completely shield the Tribe from what might be illegal or
unconstitutional conduct? See Exhibit B at page 6.

F. Express Waiver by Hualapai Tribal Council/GCRC Board of Directors

1 In March of 2010, the Council, acting as the Board, requested a meeting with Plaintiffs to
2 discuss entering into a new agreement. There is no dispute that the Council and Board had
3 authority to waive tribal sovereign immunity. See Constitution, Article XVI. Robert Bravo,
4 GCRC's CEO, and the Council and Board expressly informed Plaintiffs that GCRC would not
5 claim sovereign immunity in the event of a dispute arising from the Amended Agreement. See
6 ¶8, Affidavit of Robert Bravo, attached to the Amended Complaint as Exhibit F. No Council or
7 Board member objected to the express waiver of sovereign immunity and submission of all
8 disputes to the jurisdiction of the Hualapai Tribal Court.

9 **G. 2010 Tribal Council Confirmation of Express Waiver of Sovereign Immunity**

10 On April 15, 2010, Plaintiffs attended a Tribal Council meeting in which the Council
11 again reviewed the Amended Agreement with Plaintiffs. The Council once again assured
12 Plaintiffs that GCRC would honor the Amended Agreement and would not claim sovereign
13 immunity as a defense to any action under the Amended Agreement brought in the Hualapai
14 Tribal Court. Yet again, no Council or Board member objected to the express waiver and
15 submission of all disputes to the jurisdiction of the Hualapai Tribal Court.

16 **H. 2010 Amended Agreement Supports Waiver of Sovereign Immunity**

17 The terms of the Amended Agreement support the express waiver of tribal sovereign
18 immunity and submission of all disputes to the jurisdiction of the Hualapai Tribal Court. Indeed,
19 the terms of the Amended Agreement only make sense if read in conjunction with the Council
20 and Board's acknowledgement of the express waiver of sovereign immunity:

21 Article 9.2 Condemnation

22 If . . . the Project [Hualapai Ranch] shall be taken or condemned in any eminent
23 domain, condemnation, compulsory acquisition or like proceeding by any
24 competent authority ("Taking"), . . . Manager [WD at the Canyon, LLC] shall be
entitled to seek compensation with respect to its rights under this Agreement in
connection with any such Taking . . .

25 Article 11.2 Remedies

26 Upon the occurrence of an event of Default by a party, the non-defaulting [party]
27 may pursue any or all of the following: . . . (c) Pursue any other right or remedy
28 which the non-defaulting party may have at law or in equity.

1 Article 15.1 Indemnity

2 Each party to this Agreement agrees to indemnify the other party and such other
3 party's Related Parties and hold each of them harmless for, from and against all
4 Claims attributable, directly or indirectly, to the breach by such indemnifying
5 party of any obligation hereunder or in connection with the transactions
6 contemplated hereby; provided, however, that nothing in this Section 15.1 shall
7 constitute a waiver of sovereign immunity⁶

6 Article 15.4 Venue; No Waiver of Sovereign Immunity

7 The venue and jurisdiction for (a) any litigation under this Agreement, and (b) all
8 other civil or criminal matters arising out of the services provided hereunder will
9 be the Hualapai Tribe, Peach Springs, Arizona.

9 Article 15.11 Attorneys' Fees

10 In the event of any action or proceeding brought by either party against the other
11 under this Agreement, the prevailing party will be entitled to recover attorneys'
12 fees in such amount as the arbitrator or arbitration panel may judge reasonable.

12 Article 15.13 Remedies Not Exclusive

13 The various rights and remedies herein contained and reserved to each of the
14 parties, except as herein otherwise expressly provided, are not exclusive or any
15 other right or remedy of such party, but are cumulative and in addition to every
16 other remedy now or hereafter existing at law, in equity or by statute.

16 **I. Defendants Breach Agreement and Engage in Fraudulent, Unconstitutional Acts**

17 Beginning in September of 2011 and continuing through February 1, 2013, GCRC
18 representatives, in conjunction with Hualapai tribal members, including the Individual
19 Defendants, conspired to fraudulently, illegally, and unconstitutionally deprive Plaintiffs of their
20 management rights under the Amended Agreement. See ¶¶ 70-192, Amended Complaint.

21 **J. Plaintiffs Cannot Obtain Testimonial Evidence Without Jurisdictional Discovery**

22 Despite efforts to properly obtain testimonial evidence in support of the facts asserted
23 herein, Plaintiffs, to date, have been unable to do so. On February 6, 2014 counsel sent notice to
24 GCRC counsel of their intent to depose the following individuals during the week of February 24:

- 25 1. Jennifer Turner, GCRC CEO;
- 26 2. Rory Magente, GCRC Director of Construction;
- 27 3. Jacki "Dugan" Ulmer, former GCRC CFO;

28 ⁶ This provision is, at best, nonsensical and ambiguous. As set forth herein, throughout the Amended Agreement the
Manager is granted multiple remedies and the right to seek redress in the Hualapai Tribal Court. To rely on what
amounts to a drafter's error as a basis of their defense, Defendants magnify the fallacy of their position.

4. Robert Bravo, Tribal Council member and former GCRC CEO; and
5. Wanda Easter, Finance Director.

GCRC's counsel objected to these depositions until after this Court ruled on GCRC's Motion to Dismiss. Accordingly, jurisdictional discovery and an evidentiary hearing is both necessary and appropriate in this case as such testimony will substantiate Plaintiffs' claims. Plaintiffs have a good faith basis for deposing these named individuals as well as all of the Individual Defendants.

III. LEGAL ARGUMENTS

A. The Hualapai Tribe Expressly Waived Sovereign Immunity

1. *The Hualapai Charter Under Section 17 of the Indian Reorganization Act Expressly Waives Immunity for Business Entities like GCRC*

The Charter's Sue and Be Sued Clause is an unambiguous, express waiver of sovereign immunity with respect to GCRC. See Parker Drilling Co. v. Metlakatla Indian Community, 451 F.Supp. 1127, 1137 (D. Alaska 1978) ("The [Tribal] Corporation could have restricted the extent of its sue and be sued clause to prohibit tort [or contract] liability It chose not to do so and the Secretary of the Interior was empowered to approve such a general waiver of sovereign immunity . . ."). Because the Tribe did not limit or restrict the Sue and Be Sued Clause with respect to tort or contract actions in the Charter, and because the Assistant Secretary of the Interior approved the Charter with the general waiver of sovereign immunity, this case is on all fours with the holding in Parker Drilling, *supra*.

Even though Tribal Nations which incorporate under Section 17 of the IRA⁷ have the *ability* to limit, in their corporate charter, those instances when business entities can "be sued," they must do so expressly and clearly. Failing to do so prevents tribal corporations from relying on sovereign immunity to deprive a third party – like Plaintiffs in this case – from seeking judicial remedies to protect their investments or recover damages for tortious misconduct or breach of contract. Indeed, the Tribe, like many other tribal nations, adopted the charter proposed by the Secretary of the Interior, and courts around the country have analyzed and consistently held that

⁷ The Tribal organization under the IRA is bifurcated, with the governmental aspects treated under Section 16 and the business or corporate aspects treated under Section 17. The instant case involves only the business or corporate aspects of the Hualapai Tribe under Section 17.

1 the Sue and Be Sued Clause contains a waiver of sovereign immunity. See Fontenelle v. Omaha
2 Tribe of Neb., 430 F.2d 143 (8th Cir. 1970) (sue and be sued clause in Tribe’s Corporate Charter
3 [identical to the Hualapai clause] constituted waiver of sovereign immunity as to tribal
4 corporation); Maryland Cas. Co. v. Citizens Nat. Bank of West Hollywood, 361 F.2d 517, 521
5 (5th Cir. 1966), *cert. denied*, 385 U.S. 918 (1966) (identical sue and be sued clause [as in
6 Hualapai Charter] found to be a waiver of sovereign immunity that excluded only the levy of any
7 judgment, lien or attachment upon the property of the tribe); Enterprise Elec. Co. v. Blackfeet
8 Tribe of Indians, 353 F.Supp. 991, 992 (D. Montana 1973) (identical sue and be sued clause [as in
9 Hualapai Charter] found to be waiver of sovereign immunity); see also Rosebud Sioux Tribe v. A
10 & P Steel, Inc., 874 F.2d 550 (8th Cir. 1989) (“[o]ne method in which express waiver [of
11 sovereign immunity] may be made is by virtue of a provision allowing the tribe “to sue or be
12 sued,” found in the tribe’s corporate charter.”); Martinez v. Southern Ute Tribe, 150 Colo. 504,
13 374 P.2d 691 (1962) (construing “sue and be sued” clause as rendering tribe amenable to suit);
14 Veeder v. Omaha Tribe of Neb., 864 F.Supp. 889 (N.D. Iowa 1994) (“The court concludes that,
15 by virtue of the sue or be sued clause in its charter, the corporate entity of the Tribe has waived
16 sovereign immunity....”); Brunette v. Dann, 417 F.Supp. 1382, 1385 (D. Idaho 1976) (sue or be
17 sued clause in tribal charter waived immunity and granted jurisdiction); Kenai Oil and Gas, Inc.
18 v. Dept. of Interior, 522 F.Supp. 521, 528 (D. Utah 1981) (“the [tribe’s] corporate charter
19 contained a ‘sue and be sued’ clause. The effect of this would be to waive any immunity to
20 which the [tribal] corporation might otherwise have been entitled.”); compare Sanchez v. Santa
21 Ana Golf Club, Inc., 104 P.3d 548 (N.M. Ct. App. 2004) (no waiver where different sue or be
22 sued clause was only activated if it met other requirements *within the charter*); Memphis
23 Biofuels, LLC v. Chickasaw Nation Industries, Inc., 585 F.3d 917 (6th Cir. 2009) (acknowledged
24 “broad” sue and be sued clauses waive sovereign immunity, but distinguished the clause at hand
25 [different from Hualapai clause] because the *charter* specifically required board approval to
26 waive sovereign immunity to “be sued.”).

27 GCRC’s only argument regarding the Tribe’s incorporation under Section 17 of the IRA is
28 that the Constitution superseded the Charter. Contrary to Defendants’ unsupported allegation, by

1 its very terms the Charter cannot be revoked or surrendered except by act of Congress. See fn. 5,
2 supra. In addition, the Preamble of Constitution contains no reference to the Charter and
3 explicitly states, “[t]his constitution shall supersede the Amended Constitution and Bylaws of the
4 Hualapai Tribe.” The Charter is not the same thing as the Amended Constitution and Bylaws of
5 the Hualapai Tribe. See Atkinson v. Haldane, 569 P.2d 151 (“The purpose of adopting a charter
6 is different than that of adopting a constitution, the charter being oriented more toward business
7 than toward governmental organization.”). As such, the Charter still controls transactions like the
8 one at issue.

9 Finally, the waiver for business entities like GCRC specifically aligns with the purpose of
10 tribal sovereign immunity and the IRA. See Atkinson v. Haldane, 569 P.2d 151, 175 (Alaska
11 1977) (allowing waiver of immunity for Section 17 tribal corporations, while reserving sovereign
12 immunity for the Section 16 governing entity functions to keep tribal property “safe from a
13 judgment execution which could destroy the tribe’s livelihood, in recognition of the special status
14 of the Indian Tribe.”); Dixon v. Picopa Const. Co., 160 Ariz. 251, 259, 772 P.2d 1104, 1111
15 (1989) (“Extending immunity to [a tribal corporation] would not further the federal policy
16 seeking to protect tribal assets. Insurance protects the corporate liability, and the corporate
17 charter exonerates the [Tribe] from corporate liability.”).

18 2. *Sworn Testimony of the Hualapai Tribe Confirms the Express Waiver Under*
19 *Section 17 of the Indian Reorganization Act*

20 The Tribe’s sworn testimony to the United States Senate confirms its intent to sue and be
21 sued via its Charter, thereby expressly waiving sovereign immunity for tribal commercial
22 enterprises like GCRC. GCRC cannot switch its position arbitrarily to suit its whims and cannot
23 make bold allegations without factual or legal support. See Quinn v. Syracuse Model
24 Neighborhood Corp., 613 F.2d 438, 445 (2d Cir.1980) (mere conclusory allegations or denials in
25 legal memoranda or oral argument are not evidence); Auerbach v. Bennett, 47 N.Y.2d 619, 419
26 N.Y.S.2d 920, 927, 393 N.E.2d 994, 1000 (1979) (epithets such as “bad faith,” “sham,”
27 “outlandish accusations” and the like are not “evidence.”). Tellingly, Defendants assert false
28 accusations of “reckless mischaracterization” in a feeble attempt to distract the Court from the

1 actual sworn testimony given by the tribal leaders. Such gamesmanship cannot change the
2 following express testimony provided by the Tribe to the U.S. Senate:

3 In the contractual context, the Tribe has established tribal corporations that have
4 the full authority to make contracts [*sic*] the charters vest authority in the
5 corporation to sue and be sued. The corporation boards can waive any further
6 vestings of tribal sovereign immunity on corporate assets. Under these limited
7 waivers of immunity, the tribal corporation is authorized to pledge the assets of
8 the corporation to satisfy any claims made against it.

9 Contrary to GCRC's current attempt to engage in revisionist history, this language is clear: a
10 limited waiver⁸ of sovereign immunity already exists due to the nature of the Sue and Be Sued
11 Clause in the corporate charter, and the corporation board can additionally waive any *further*
12 *vestings* of sovereign immunity (*i.e.*, the preservation of immunity in the Charter relating to the
13 "levy of any judgment, lien or attachment upon the property of the Tribe").

14 The aforementioned interpretation is consistent and validated by the conclusion of the
15 Tribe's sworn testimony when it asserted:

16 Based on the current judicial system of the Hualapai Tribe, there is no need for
17 congressional action to abrogate tribal sovereign immunity for tort and contract
18 actions that may be brought against the Tribe or its businesses.

19 In other words, Congress need not abolish tribal sovereign immunity for tort and contract
20 actions and provide a venue in the state or federal courts because the Hualapai Tribe, through the
21 Sue and Be Sued Clause in the Charter, already waived tribal sovereign immunity with respect to
22 tort and contract actions against tribal businesses, and any dispute may be heard in the Tribal
23 Court. Accord Parker, 451 F.Supp. at 1137 ("The [Tribal] Corporation could have restricted the
24 extent of its sue and be sued clause to prohibit tort [or contract] liability It chose not to do
25 so.). The Tribe's Senate testimony in the context of the jurisprudence (*i.e.*, case law cited above
26 regarding sue and be sued clauses in corporate charters) and factual record before the Senate
27 subcommittee cannot be interpreted any other way. Any argue to the contrary is an underhanded
28 attempt to redefine the rules of the game in an effort to deprive Plaintiffs' of constitutional due
process.

⁸ Limited only by the restriction in the Charter relating to the levy of any judgment, lien or attachment upon the property of the Tribe. This case does not involve any of those claims. See generally, Amended Complaint.

1 The Tribe confirmed the express waiver of GCRC's tribal sovereign immunity with
2 respect to tort and contract actions like the instant case. As such, the Tribe acknowledged via its
3 testimony to the United States Senate that parties, like Plaintiffs, not only should be but are
4 expressly permitted to bring suit in this Tribal Court.

5 3. *The Hualapai Constitution Expressly Waives Sovereign Immunity with Respect to*
6 *Illegal Acts and Due Process Rights*

7 The Hualapai Constitution expressly acknowledges that it contains a waiver of sovereign
8 immunity within its text. See Article XVI, Section 1(a). ("the Tribe is immune from suit except
9 to the extent that the Tribal Council expressly waives sovereign immunity, **or as provided by**
10 **this constitution.**"). (emphasis added). Only two exceptions apply to allow a lawsuit against the
11 Tribe: (1) by express waiver of the Tribal Council (the "Express Waiver Exception"); or (2) by
12 the waiver contained in this constitution (the "Constitutional Exception). While this Court
13 previously addressed the Express Waiver Exception in Article XVI, Sections 1 and 2⁹ in
14 Hwal'Bay Ba:J Enterprises, Inc. v. Beattie, No. 2008-AP-007 (Hualapai 04/02/2009), the Court
15 did not specifically address the Constitutional Exception.

16 This Court did, however, address the Constitutional Exception, including answering which
17 sections of the Constitution waive the Tribe's sovereign immunity under the Constitutional
18 Exception and to what extent, in Bravo v. Ingram, et al., No. 2013-AP-0008, Decision and Order,
19 p. 6 (Hualapai App. Ct. 12/17/13) when it noted:

20 This Court also notes . . . that it has serious doubts about the Tribal Court's
21 second grounds for dismissal, i.e. that the provisions in Section 12 of the GCRC's
22 Employee Manual divest the Tribal Court of jurisdiction over employment
23 disputes Under that reading, the scope of GCRC's Employee Manual could
24 potentially shield GCRC employees or directors from suit regarding any and all
violations of law in the workplace, no matter how egregious (e.g. sexual
harassment or assaults, other forms of illegal discrimination, physical assaults,
wrongful death, or the like). Furthermore, the due process guarantees contained

25 ⁹ A clear and plain reading of Section 2 reveals qualifications/additional requirements placed upon the Express
26 Waiver Exception, and Section 2 does not address the Constitutional Exception whatsoever. Section 2 states,
27 "[e]xpress waivers of sovereign immunity shall require the approval of at least thirty (30) percent of the total number
28 of eligible voters of the Tribe voting in a special election if the waiver may: (1) expose the Tribe to liability in excess
of \$250,000 dollars, or its equivalent, or (2) expose more than one-hundred (100) acres of land to possible
foreclosure or encumbrance." Section 2, Article XVI, Constitution. (emphasis added). Naturally, as the Tribal
Council is the only governing body with authority to expressly waive sovereign immunity, Section 2 applies and
qualifies only the Express Waiver Exception.

1 in Article IX(d) of the Hualapai Constitution and the Indian Civil Rights Act of
2 1968, 25 U.S.C. § 1302(8), as well as various provisions of the Hualapai Law and
3 Order Code, including Sections 1.4(B), 2.2, and 4.1 may contemplate that
4 aggrieved parties should have recourse through a day in court . . . Such recourse
may constitute a fundamental right which a Tribal corporation may not be able to
abrogate or waive . . .

5 The Bill of Rights in the Constitution expressly waives tribal sovereign immunity for the Tribe's
6 violations of fundamental due process and civil rights¹⁰ and illegal acts.¹¹ Defendants took
7 Plaintiffs' property rights without just compensation (a complete "Taking" under the Amended
8 Agreement), and now seek to deprive Plaintiffs of due process of law. In addition to the fact that
9 the Sue and Be Sued Clause waived GCRC's sovereign immunity, no immunity exists due to
10 Defendants' illegal acts and violations of Plaintiffs' fundamental due process and civil rights.
11 The Constitutional Exception expressly removes these acts from the Tribe's immunity.

12 While Defendants attempt to distinguish the "regulatory jurisdiction of the Tribe" set forth
13 in the Constitution and Law and Order Code and the "more limited adjudicatory jurisdiction of
14 the Hualapai Courts," they cite no authority to support this distinction. No such authority exists
15 because such a distinction is nonsensical and patently absurd. Indeed, if Defendant's flawed
16 reasoning were true, then the Hualapai Court would have no jurisdiction to adjudicate any
17 violation of the Constitution or the Law and Order Code. Compare Hualapai Law and Order
18 Code, Section 2.2 ("The Tribal Court shall have general civil jurisdiction over all actions arising
19 under Tribal law, including the Constitution, this Code, any ordinance or resolution adopted by
20 the Hualapai Indian Tribe, and the Tribal Common Law; over all general civil claims which arise
21 within the Tribal jurisdiction; and over all transitory claims in which the defendants may be
22 served within Tribal Jurisdiction."). The Tribe also submitted sworn testimony to the United
23 States Senate expressly contradicting the assertions that Defendants, for convenience reasons,
24 now claim apply. See Exhibit A, Amended Complaint. ("[T]he Constitution of the Hualapai
25 Indian Tribe vests the tribal court with jurisdiction over all cases and controversies that arise

26 ¹⁰ "The Hualapai Tribe, in exercising its powers of self-government shall not . . . deny any person within its
27 jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law."
Article IX(d).

28 ¹¹ "The Hualapai Tribe, in exercising its powers of self-government shall not . . . take any private property for a
public [Tribal] use without just compensation." Article IX(c).

1 within the jurisdiction of the Tribe.”). This Court has jurisdiction to hear all of Plaintiffs’ claims.

2 4. *Sworn Testimony of the Hualapai Tribe Confirms the Express Waiver in the*
3 *Hualapai Constitution*

4 The Tribe’s sworn testimony to the United States Senate confirms the express waiver of
5 sovereign immunity encompassed by the Constitutional Exception in the Hualapai Constitution.
6 The Chief Judge of the Hualapai Tribal Court, speaking on behalf of the Tribe, testified that
7 immunity did not shield any person or entity for illegal acts or unconstitutional violations of due
8 process:

9 What may be at issue as tribal courts continue to develop and revise their
10 constitutions, are conflicts between rights as articulated in their constitutions and
11 tribal government (and their subordinate entities) claims to sovereign immunity?
12 [*sic*] If a tribal government does not afford due process to a person under their
13 jurisdiction, and or change the law on an individual after the matter was brought
14 to Court, when the Constitution articulates various rights, does sovereign
15 immunity completely shield the Tribe from what might be illegal or
16 unconstitutional conduct? See Exhibit B at page 6.

17 Again, this language can only be interpreted in one way: claiming sovereign immunity for
18 illegal or unconstitutional conduct conflicts with rights as articulated in the Constitution. While
19 Chief Judge Flies-Away posed his testimony as a rhetorical question, he suggests that these two
20 concepts, (1) fundamental due process rights granted to any person or entity within Tribal
21 jurisdiction, and (2) a claim that sovereign immunity shields the tribal government (and their
22 subordinate entities) for violations of fundamental due process rights, are mutually exclusive. In
23 other words, the Constitution expressly waives sovereign immunity for illegal acts and
24 unconstitutional violations of due process and civil rights.

25 5. *The Tribal Council and GCRC Board Expressly Waived Sovereign Immunity*

26 Not only did the Council and Board expressly waive sovereign immunity during a meeting
27 with Plaintiffs in 2010, but the express waiver and submission to the jurisdiction of the Hualapai
28 Tribal Court is memorialized in the Amended Agreement. Black letter law dictates that to the
extent possible, **all** provisions in a contract should be found meaningful. Tucker v. Byler, 27
Ariz.App. 704, 558 P.2d 732, 735 (Ariz.App.1976). By attaching meaning to all provisions in the
Amended Agreement, only one conclusion can be reached – the Tribe expressly agreed to a
waiver of sovereign immunity allowing jurisdiction for all disputes to the Hualapai Tribal Court.

1 While Defendants reserved any further vesting of immunity as to suits in state or federal courts,
2 they unequivocally waived immunity as to the Tribal Court. Defendants attempt after-the-fact to
3 re-characterize the parties' intent. However, Defendants' interpretation of the Amended
4 Agreement does not make sense and disregards and/or denies the meaning of entire sections.
5 Specifically, the Amended Agreement provides that Plaintiffs are entitled to: (a) seek
6 compensation for any property taking;¹² (b) pursue GCRC for any right or remedy it may have at
7 law or equity;¹³ (c) seek indemnification from GCRC;¹⁴ (d) litigate all civil or criminal matters in
8 the Hualapai Tribal Court;¹⁵ (e) seek attorneys' fees from GCRC;¹⁶ and (f) seek any other right or
9 remedy now or hereafter existing at law, in equity, or by statute.¹⁷ The only meaningful
10 interpretation of the Amended Agreement allows Plaintiffs to do exactly what they contracted for
11 in the above-referenced sections.

12 Furthermore, both Arizona courts¹⁸ and the U.S. Supreme Court¹⁹ agree with the
13 reasoning in Native Village of Eyak v. GC Contractors, 658 P.2d 756 (Alaska 1983) wherein it
14 stated:

15 [W]e believe it is clear that any dispute arising from a contract cannot be resolved
16 by arbitration, as specified in the contract, if one of the parties intends to assert
17 the defense of sovereign immunity. The arbitration clause ... would be
18 meaningless if it did not constitute a waiver of whatever immunity [the tribe]
19 possessed. Furthermore, under similar circumstances the Ninth Circuit Court of
20 Appeals has held that **a clause in a contract stating that the federal courts
21 would resolve any disputes arising from the contract constituted an express
22 waiver of a tribe's sovereign immunity. United States v. Oregon, 657 F.2d
23 1009, 1016 (9th Cir. 1981). There is little substantive difference between an
24 agreement that any dispute arising from a contract shall be resolved by the
25 federal courts and an agreement that any dispute shall be resolved by
26 arbitration; both appear to be clear indications that sovereign immunity has
27 been waived.**

23 ¹² Article 9.2

24 ¹³ Article 11.2

25 ¹⁴ Article 15.1

26 ¹⁵ Article 15.4

27 ¹⁶ Article 15.11

28 ¹⁷ Article 15.13

¹⁸ Val/Del, Inc. v. Superior Court In & For Pima Cnty., 145 Ariz. 558, 564-65, 703 P.2d 502, 508-09 (Ct. App. 1985).

¹⁹ C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 532 U.S. 411, 422 (2001).

1 658 P.2d at 760–61.

2 The Amended Agreement expressly provides that the Hualapai Tribal Court will resolve
3 *any* dispute arising from the Amended Agreement. There is absolutely no difference between an
4 agreement that any dispute arising from a contract shall be resolved by the *federal courts* and an
5 agreement that any dispute arising from a contract shall be resolved by the *tribal courts*. Both
6 demonstrate clear indications that sovereign immunity has been waived. *Id.*; see also Bank of
7 Okla. v. Muscogee (Creek) Nation, 972 F.2d 1166 (10th Cir. 1992) (where an agreement provided
8 a venue in tribal court to bring an action to declare the rights and duties under the contract, tribe
9 unequivocally waived immunity in the tribal court); Leigh v. Blackfoot Indian Tribe of Blackfoot
10 Indian Reservation, Fed. Sec. L. Rep. (CCH) ¶ 95, 436 (D. Mass 1990) (where the agreement
11 provided a venue for parties to pursue their rights, tribe expressly waived sovereign immunity as
12 to that venue). This Court has jurisdiction to hear all of Plaintiffs’ claims.

13 6. *GCRC is Not a Subordinate Economic Organization of the Tribe*

14 In addition to the express waivers of sovereign immunity pursuant to Section 17 of the
15 IRA and the Constitutional Exception, GCRC, as an independent corporation, is not shielded by
16 the Tribe’s sovereign immunity. “Tribal sovereign immunity does not apply to individual
17 Indians, but only to Indian Tribes and their subordinate economic organizations.” Dixon, 160
18 Ariz. at 258, 772 P.2d at 1111 (citing to Puyallup Tribe, Inc. v. Department of Game, 433 U.S.
19 165, 172 (1977)). The Arizona Supreme Court, in Dixon, held that a tribal corporation was not a
20 subordinate economic organization where (a) the tribal corporation had a board of directors
21 separate from the tribal government; (b) the board exercised full managerial control over the
22 corporation; (c) the tribal government did not manage the corporation, but they were truly distinct
23 entities; (d) the limited liability clause in the corporation’s charter insulated the tribal
24 government’s assets from the corporation’s debts; (e) the corporation purchased liability
25 insurance, which is evidence that the tribal government expected its corporation to be liable for
26 torts; (f) the creation of the corporation was solely for business purposes; (g) the corporation did
27 not carry out any tribal government functions; (h) the corporation was a for-profit corporation that
28 did not limit itself to tribal projects; and (i) the corporate status of the tribal corporation weighed

1 heavily against a finding of a subordinate economic organization. Id.

2 As in Dixon, the Tribe created an artificial individual, a corporation, and charged it with
3 the power to act to the same extent as natural persons might or could do. While Defendants allege
4 that GCRC is a wholly-owned economic enterprise of the Tribe, no extrinsic evidence supports
5 that claim. Indeed, nothing exists to show that GCRC “was intended to act or did act as an
6 extension of *tribal government*.” Id. (emphasis added). GCRC, as an “artificial individual is not,
7 therefore, a subordinate economic organization and is not entitled to assert the tribal immunity
8 defense.” Id.

9 Defendants’ citation to Hwal’Bay Ba:J Enterprises, Inc. v. Beattie, No. 2008-AP-007
10 (Hualapai 04/02/2009) is unavailing, as the Court failed to examine critical criteria used to
11 establish “subordinate economic organizations” of tribal government. See Dixon, supra. Simply
12 stating in a Plan of Operation that GCRC is entitled to the Tribe’s sovereign immunity is not
13 sufficient to prove that GCRC actually satisfies the well-defined and difficult hurdle of a
14 “subordinate economic organization” of tribal government. Id. Instead, the facts on the record
15 prove that GCRC meets all of the Dixon criteria *against* a finding that GCRC is a subordinate
16 economic organization entitled to the Tribe’s sovereign immunity.

17 **B. Sovereign Immunity Does Not Extend to the Individual Defendants**

18 Tribal immunity only extends to individual tribal officials acting “within the scope of their
19 duties or authority.” Hwal’Bay Ba:J Enterprises, Inc. v. Beattie, No. 2008-AP-007, ¶29
20 (Hualapai 04/02/2009); Hardin v. White Mountain Apache Tribe, 779 F.2d 476, 479 (9th Cir.
21 1985). Committing fraudulent, unconstitutional, and illegal acts is not within the scope of any
22 tribal representative’s duties, even if the official believes that committing fraud or engaging in
23 unconstitutional or illegal acts is in the best interest of the Tribe or tribal corporation. See
24 Midwest Growers Co-op. Corp. v. Kirkemo, 533 F.2d 455 (1976) (doctrine of sovereign
25 immunity did not bar suit against defendants since they are alleged to have acted illegally).

26 In addition, “the general bar against official-capacity claims, however, does not mean that
27 tribal officials are immunized from individual-capacity suits *arising out of* actions they took in
28

1 their official capacities.” Native American Distributing v. Seneca-Cayuga Tobacco Co., 546 F.3d
2 1288, 1296 (10th Cir. 2008) (emphasis in original). Where the suit seeks money damages from
3 the tribal officer “in his official capacity for unconstitutional or wrongful conduct fairly
4 attributable to the officer himself, sovereign immunity does not bar suit so long as the relief is
5 sought not from the [sovereign’s] treasury, but from the officer personally.” Id. at 1297.

6 Plaintiffs’ claims are against the Individual Defendants in their individual capacity, seek
7 damages directly from the Individual Defendants, and allege fraudulent, unconstitutional and
8 illegal acts in violation of Tribal law. As such, the Individual Defendants are not protected by the
9 doctrine of tribal sovereign immunity. Accordingly, this Court must, as a matter of law, deny the
10 Motion as applied to the Individual Defendants.

11 **C. An Evidentiary Hearing is Justified**

12 *1. Legal Standard*

13 When a court determines whether it has jurisdiction to hear a matter, it may “review any
14 evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of
15 jurisdiction.” McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988). The court may hold
16 an evidentiary hearing, and, during the hearing, the court determines the credibility of witness
17 testimony, weighs the evidence, and finds the relevant jurisdictional facts. Breakthrough
18 Management Group, Inc. v. Chukchansi Gold Casino and Resort, 629 F.3d 1173 (10th Cir. 2010).
19 An evidentiary hearing is warranted where a party will be prejudiced by its inability to conduct
20 jurisdictional discovery. Id. at 1189. (“We have held that a refusal to grant jurisdictional
21 discovery constitutes an abuse of discretion if the denial results in prejudice to a litigant.”).
22 “Prejudice is present where pertinent facts bearing on the question of jurisdiction are controverted
23 . . . or where a more satisfactory showing of facts is necessary.” Id. (internal citations omitted).

24 *2. Testimonial Evidence is Necessary and Warranted*

25 While the Tribe clearly waived sovereign immunity pursuant to Section 17 of the IRA and
26 the Constitution, factual disputes exist regarding GCRC’s waiver of sovereign immunity that can
27 only be resolved with testimonial evidence. Plaintiffs will be prejudiced if they do not have the
28 opportunity to conduct jurisdictional discovery. To date, Defendants refuse to allow the

1 depositions of current and former GCRC representatives despite Plaintiffs' notice and reasonable
2 request to depose. Should this Court allow jurisdictional discovery followed by an evidentiary
3 hearing, Plaintiffs have a good faith belief that evidence of waiver, fraud, and unconstitutional
4 and illegal acts will be unveiled, resolving factual disputes regarding this Court's jurisdiction.

5 Defendants also claim that Plaintiffs allege "a virtual parade of outlandish accusations of
6 fraud, going so far as to accuse Respondents' former CEO of racism, 'on information and
7 belief.'" Plaintiffs wish to point out that the fraud in this case is indeed outlandish, and that
8 testimonial evidence will with 100% certainty confirm that GCRC's former CEO verbally
9 espoused derogatory, anti-Caucasian statements on more than one occasion. Indeed, the
10 allegation was made 'on information and belief,' solely for the fact that Plaintiff Jim Brown did
11 not hear it firsthand, but testimony will reveal the blatant fraud, conspiracy, and unconstitutional
12 and illegal acts of certain current and former GCRC representatives.

13 3. *Plaintiffs Have a Right to Depose Individual Defendants*

14 Because Plaintiffs have demonstrated the need for testimonial evidence, this Court should
15 order jurisdictional discovery pursuant to Federal Rule of Civil Procedure 26(d)(1).

16 **IV. CONCLUSION**

17 For all the reasons set forth above, Plaintiffs respectfully pray for the following:

18 A. That the Court deny the Respondents' Motion to Dismiss For Lack of Subject
19 Matter Jurisdiction;

20 B. That the Court issue an Order directing all parties to participate in jurisdictional
21 discovery, specifically including the taking of depositions;

22 C. That the Court issue an Order directing Defendant GCRC to make available all
23 books of account and other records relating to or reflecting the operation of the Hualapai Ranch to
24 Plaintiffs and its representatives and its auditors or accountants, upon reasonable notice for
25 examination, audit, inspection, copying and transcription;

26 D. That the Court issue an Order directing all parties to participate in an evidentiary
27 hearing at a date and time later determined by the Court to resolve factual disputes regarding this
28

1 Court's jurisdiction;

2 E. That the Court award Plaintiff its taxable costs and attorney's fees incurred to
3 oppose Respondents' Motion to Dismiss pursuant to A.R.S. §§ 12-341 and 12-341.01 and the
4 applicable Agreements; and

5 F. That the Court award any further relief it deems just and proper.

6 RESPECTFULLY SUBMITTED this 27th day of May, 2014.

7 FARHANG & MEDCOFF

8
9 By 
10 Ali J. Farhang
11 *Attorney for Plaintiffs*

12 ORIGINAL of the foregoing sent for filing
13 via Federal Express this 27th day of May, 2014 to:

14 Clerk of the Court
15 Hualapai Judicial Court
16 960 Rodeo Drive
17 Peach Springs, Arizona 86434

18 COPY of the foregoing sent via E-mail and
19 First-Class U.S. Mail this 27th day of May, 2014 to:

20 Rachel Frazier Johnson
21 RACHEL FRAZIER JOHNSON LAW
22 40 N. Central Ave, Suite 1400
23 Phoenix, Arizona 85004
24 *Judge Pro Tem*

25 COPY of the foregoing served via First-Class U.S. Mail
26 this 27th day of May, 2014 to:

27 Verrin T. Kewenvoyouma, Esq.
28 Jason M. Croxton, Esq.
KEWENVOYOUMA LAW, PLLC
700 E. Baseline Road, Suite C1
Tempe, Arizona 85283
Attorneys for Defendant



Exhibit 1

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

+

AMENDED
CORPORATE CHARTER

OF THE

HUALAPAI TRIBE OF THE
HUALAPAI RESERVATION,
ARIZONA.

+

RATIFIED OCTOBER 22, 1955



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1957

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AMENDED
CORPORATE CHARTER

OF THE

HUALAPAI TRIBE OF THE HUALAPAI
RESERVATION, ARIZONA

Whereas, the Hualapai Tribal Council as expressed in its Resolution No. 18-55 which was adopted on April 4, 1955, deems it desirable to propose certain amendments to the Corporate Charter of the Hualapai Tribe of the Hualapai Reservation, Arizona, which was issued to the Tribe by Assistant Secretary of the Interior Oscar L. Chapman on April 24, 1943, by virtue of the authority conferred upon him by the act of June 18, 1934 (48 Stat. 984), and which was subsequently ratified by the qualified members of the Tribe on June 5, 1943, by a vote of 87 for, and 10 against, in an election in which over thirty percent of the tribal members entitled to vote cast their ballots.

Now, therefore, I, ORME LEWIS, Assistant Secretary of the Interior, by virtue of the authority conferred upon me by the said act of June 18, 1934, *supra*, and in accordance with Section 8 of the Corporate Charter which was ratified by the Hualapai Tribe on June 5, 1943, do hereby present the following amended Corporate Charter which I have approved for ratification by a majority vote of the adult members living on the Hualapai Reservation at an election in which at least thirty percent of the eligible voters vote. This amended Corporate Charter shall be effective from and after such time as it shall be ratified by the Tribe as herein provided.

*Corporate
Existence
and Purpose*

1. In order to further the economic well-being and independence of the Hualapai Tribe and its members by giving to the Tribe certain corporate rights, powers, privileges and exemptions the aforesaid Tribe is hereby chartered as a body politic and corporate of the United States of America, under the corporate name, "Hualapai Tribe."

Duration

2. The Hualapai Tribe shall as a Federal corporation have indefinite duration.

Membership

3. The Hualapai Tribe shall be a membership corporation consisting of all members now or hereafter recognized as members of the Tribe, as provided

- for in Article III of the Constitution. No person, except as provided in Article III of the Constitution, shall become a member of the Corporation.
- Management* 4. The Tribal Council of the Hualapai Tribe, established in accordance with the said Constitution and Bylaws of the Tribe, shall exercise all the corporate powers hereinafter enumerated.
- Corporate Powers* 5. The Tribe, subject to any restrictions contained in the Constitution and the laws of the United States or in the Constitution and Bylaws of the said Tribe, shall have the following corporate powers in addition to all the powers already conferred or guaranteed by the Tribal Constitution and Bylaws.
- a. To adopt, use and alter a corporate seal.
 - b. To purchase, take by gift, bequest or otherwise, own, hold, manage, operate, grant or lease, and dispose of property of every description, real and personal, subject to the following limitations:
 - (1) No sale or mortgage may be made by the Tribe of any land, interest in land, including water power sites, water rights, oil, gas and other mineral rights now or hereafter held by the Tribe.
 - (2) No leases, permits (which terms shall not include land assignments to members of the Tribe) or timber sale contracts covering any land or interests in land now or hereafter held by the Tribe, within the boundaries of the Hualapai Reservation, shall be made by the Tribe for a longer term than is permitted by law.
 - (3) No action shall be taken by or in behalf of the Tribe which in any way operates to destroy or injure the tribal grazing lands, timber or natural resources of the Hualapai Reservation. All leases, permits and timber sale contracts relating to the use of tribal grazing and timber lands must conform to regulations of the Secretary of the Interior, authorized by Section 6 of the Act of June 18, 1934, with respect to range carrying capacity, sustained yield forestry management and other matters therein specified.

c. To borrow money from the Indian Credit Fund in accordance with the terms of Section 10 of the act of June 18, 1934 (48 Stat. 984), or from any other sources, and to use such funds directly for productive tribal enterprises or to loan money thus borrowed to individual members or associations of members of the Tribe, provided that the amount of indebtedness to which the Tribe may subject itself shall not exceed \$50,000, except with the express approval of the Secretary of the Interior or his authorized representative.

d. To engage in any business that will further the economic well-being of the members of the Tribe or to undertake any activity of any nature whatever, not inconsistent with law or with any provisions of this charter.

e. To make and perform contracts and agreements of every description, not inconsistent with law or the provisions of this charter, with any person, association, or corporation, with any municipality or any county, or with the United States or the State of Arizona, including agreements with the State of Arizona, for rendition of public services, provided that any contract involving payment of money or delivery of property by the corporation of a value in excess of \$50,000, in any one fiscal year, shall be subject to approval of the Secretary of the Interior or his duly authorized representative.

f. To pledge or assign chattels or future tribal income due or to become due to the Tribe provided that such agreements of pledge or assignment or extensions thereof other than agreement with the United States, shall not extend more than 10 years from the date of execution and shall not cover more than one-half the total net tribal income in any one fiscal year, and provided further that no agreement shall be made to borrow in excess of \$50,000, except with the express approval of the Secretary of the Interior or his authorized representative.

g. To deposit corporate funds, without limitation on the amount in any account, in any national or state bank whose deposits are insured by any agency of the Federal Government; Provided, that

funds advanced from the Indian credit fund or from funds of the Tribe held in trust in the United States Treasury shall be deposited with a bonded disbursing officer of the United States whenever the conditions prescribed by the Secretary of the Interior or his authorized representative in connection with such advance require that the advance be so deposited.

h. To sue and be sued in courts of competent jurisdiction within the United States; but the grant or exercise of such power to sue and be sued shall not be deemed a consent by the said Tribe or by the United States to the levy of any judgment, lien or attachment upon the property of the Tribe other than income or chattels especially pledged or assigned.

i. To exercise such further incidental powers not inconsistent with law as may be necessary to the conduct of corporate business.

*Corporate
Property*

6. No property rights of the Hualapai Tribe, as heretofore constituted, shall be in any way impaired by anything contained in this charter, and the tribal ownership of lands, whether or not assigned to the use of any particular individuals, is hereby expressly recognized. The individually-owned property of members of the Tribe shall not be subject to any corporate debts or liabilities.

*Corporate
Income*

7. The Tribe may use all profits of corporate enterprises or income, over and above sums necessary to defray corporate operations and over and above all sums which may be devoted to the establishment of a reserve fund, for public purposes of the Tribe, including the construction of public works, the cost of public enterprises, the expense of tribal government, the needs of charity and the making of loans to members of the Tribe, but no general distribution per capita of such profits or income shall be made other than any money that may be recovered on tribal claims against the Government.

*Corporate
Accounts*

8. The Tribe shall maintain accurate and complete accounts of the financial affairs of the Tribe and shall furnish an annual balance sheet and report of the financial affairs of the Tribe through the Tribal Council at a general meeting of the Tribe.

- Amendments* 9. This charter shall not be revoked or surrendered except by act of Congress, but amendments may be proposed by resolution of the Tribal Council, which, if approved by the Secretary of the Interior, to be effective, shall be ratified by a majority vote of the adult members living on the reservation at an election in which at least thirty percent of the eligible voters vote.
- Ratification* 10. This revised charter shall be effective from and after the date of its ratification by a majority vote of the adult members of the Hualapai Tribe, provided at least thirty percent of the eligible voters shall vote, such ratification to be formally certified by the administrative officer in charge of the Hualapai Reservation and the Chairman of the Hualapai Tribal Council.

APPROVAL

AMENDED CORPORATE CHARTER OF THE HUALAPAI TRIBE OF THE HUALAPAI RESERVATION, ARIZONA

The amended Corporate Charter of the Hualapai Tribe is herewith approved and submitted for ratification by the adult members of the Tribe living on the Hualapai Reservation in accordance with Section 8 of the Charter and pursuant to the authority vested in the Secretary of the Interior by the act of June 18, 1934 (48 Stat. 984).

Approval Recommended:

W. BARTON GREENWOOD

Acting Commissioner of Indian Affairs.

ORME LEWIS

Assistant Secretary of the Interior

WASHINGTON, D. C., *August 23, 1955*

CERTIFICATION OF RATIFICATION

Pursuant to Section 17 of the act of June 18, 1934 (48 Stat. 984), the foregoing amended Corporate Charter issued on August 23, 1955, by the Assistant Secretary of the Interior to the Hualapai Tribe of the State of Arizona, was duly submitted for ratification to the adult members of the Tribe and was on October 22, 1955; ratified by a vote of 83 for, and 19 against, in an election in which at least 30 percent of those entitled to vote cast their ballots.

RUPERT PARKER

President, Hualapai Tribal Council

MARJORIE QUERTA

Secretary, Hualapai Tribal Council

AUSTIN F. LADD

Administrative Officer in Charge, Hualapai Reservation

○