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 & CIESLAK PUBLIC RELATIONS, INC.
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 11 **UNITED STATES DISTRICT COURT**
 12 **DISTRICT OF NEVADA**

13 GRAND CANYON SKYWALK
 DEVELOPMENT, LLC, a Nevada limited liability
 14 company; DY TRUST DATED JUNE 3, 2013, a
 Nevada Trust, THEODORE (TED) R. QUASULA,
 15 an individual;

16 Plaintiff,

17 vs.

18 DAVID JOHN CIESLAK, an individual;
 NICHOLAS PETER “CHIP” SCUTARI, an
 19 individual; SCUTARI & CIESLAK PUBLIC
 RELATIONS, INC., an Arizona corporation,
 20

21 Defendants.

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

**DEFENDANTS’ MOTION FOR LEAVE
 TO AMEND ANSWER AND ASSERT
 COUNTERCLAIMS**

22 Defendants David John Cieslak, Nicholas Peter “Chip” Scutari, and Scutari and Cieslak Public
 23 Relations, Inc. (hereinafter collectively referred to as “Defendants”), by and through their counsel of
 24 record Morris Polich & Purdy LLP, pursuant to Fed. R. Civ. Pro. 15, hereby move the Court to grant
 25 them leave to file an Amended Answer to add counterclaims consisting of abuse of process and
 26 intentional interference with prospective economic relations.

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1 This motion is made and based upon the pleadings and papers on file herein, the Points and
2 Authorities and exhibits attached hereto, as well as any oral argument entertained by this Court at the
3 hearing of this motion, if any.

4 DATED this 17 day of February, 2015.

5 MORRIS POLICH & PURDY LLP

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8 By: 

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15 Attorneys for Defendants DAVID JOHN
16 CIESLAK; NICHOLAS PETER "CHIP"
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF RELEVANT FACTS.

Defendants David John Cieslak, Nicholas Peter “Chip” Scutari, and Scutari and Cieslak Public Relations, Inc. (“Defendants”) filed their Answer to Complaint, Third-Party Complaint against the Hualapai Tribe (“Tribe”) and Demand for Jury Trial on October 16, 2014 [DOC 70]. Defendants effected service of process of the Third-Party Summons and Third-Party Complaint upon the Hualapai Tribe on February 9, 2015 [DOC 90].

On December 23, 2014 this Court granted both parties’ Stipulation and Order to Extend Discovery Plan and Scheduling Order [DOC 89]. The last day to file a motion to amend pleadings or to add parties is February 17, 2015.

Since November 2014, Defendants have had no business relationship or business dealings with the Hualapai Tribe in spite of the Tribe retaining a contractual relationship for public relations services with Defendants. Defendants do not foresee any future assignments. The Hualapai Tribe ceased to engage Defendants’ services as a direct result of this lawsuit being filed by Grand Canyon Skywalk Development, DY Trust Dated June 3, 2013, and Theodore (Ted) R. Quasula. Moreover, Defendants have lost significant business revenue and profits and damages to Defendants’ business reputation as a direct result of this lawsuit. In fact, Defendants lost a lucrative governmental business contract with the Hualapai Tribe as a direct result of this lawsuit.

II. LEGAL ARGUMENT.

A. DEFENDANTS’ MOTION REQUESTING LEAVE TO AMEND SHOULD BE GRANTED PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 15(A)(2).

The Defendants should be granted leave to amend their Answer to add Counterclaims to the lawsuit. Fed. R. Civ. Pro. 15(a)(2) provides:

... A party may amend his pleading once as a matter of course at any time before a responsive pleading is served... Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and *leave shall be freely given when justice so requires. (emphasis added.)*

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1 The standard for amending a pleading is that the court should “freely permit an amendment
2 when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the
3 evidence would prejudice that party’s action or defense on the merits.” *See* Fed. R. Civ. Pro. 15(b).
4 The granting or denial of an opportunity to amend a pleading is within the discretion of the trial court,
5 but there must be some justifying reason to refuse granting leave. The Supreme Court of the United
6 States stated that “Rule 15(a) declares that leave to amend ‘shall be freely given when justice so
7 requires’; this mandate is to be heeded.” *Foman v. Davis*, 371 U.S. 178, 83 S. Ct. 227, 230 (1962);
8 *Tracey L. Johnson, et al. v. City of Shelby, Mississippi*, No. 13–1318, 2014 WL 5798626, at *1 (S. Ct.
9 Nov. 10, 2014) (reaffirming this holding). The Court further stated that refusal to grant such leave
10 without any justifying reason is not an exercise of discretion but rather an abuse of discretion that is
11 “inconsistent with the spirit of the Federal Rules.” *Foman*, 371 U.S. at 182.

12 In this case, the last day to file a motion to amend the pleadings or to add parties is February 17,
13 2015. Therefore, there is no undue prejudice or dilatory motive. Defendants are not only well within
14 the discovery timeline parameters but have valid causes of action to bring against Plaintiffs.

15 Further justice requires the pleadings be amended through Fed. R. Civ. Pro. 15(b) because of
16 additional information recently presented to Defendants.

17 Complaint amendment at this time is appropriate pursuant to the applicable procedural rules.
18 On March 1, 2012, Scutari & Cieslak Public Relations, Inc. and the Hualapai Tribe entered into a
19 public relations agreement which is at the heart of this litigation (See Communications and Public
20 Relations Agreement attached hereto as **Exhibit A**). Pursuant to that agreement, the Hualapai Tribe
21 utilized the services of Scutari & Cieslak Public Relations, Inc. on a continuous and predictable basis
22 between March 1, 2011 and April 8, 2013, or the filing date of this litigation. Plaintiff’s complaint
23 asserts causes of action for defamation against Scutari & Cieslak Public Relations, Inc., which also
24 implicated activities of the Hualapai Tribe and led to the Tribe and Plaintiffs to enter into a confidential
25 settlement agreement on or about April 7, 2014. The aftermath of the suit against Scutari & Cieslak
26 Public Relations, Inc., and the consequence of the confidential settlement agreement between the Tribe
27 and Plaintiffs, has been the complete cessation of further referrals to Scutari & Cieslak Public
28 Relations, Inc. by the Tribe.

1 The only reason Scutari & Cieslak Public Relations, Inc.’s work assignments from the Tribe
2 have been cancelled is the consequence of the filing of this lawsuit. Indeed, but for the allegations of
3 defamation and the service of process against Scutari & Cieslak Public Relations, Inc. by Plaintiffs in
4 this matter, Scutari & Cieslak Public Relations, Inc. would continue to enjoy a prosperous and mutually
5 beneficially relationship with the Hualapai Tribe. However, due to the posture into which Plaintiffs put
6 this case, the Tribe has decided to forego providing further work assignments to Scutari & Cieslak
7 Public Relations, Inc. There is no indication that those assignments will be reinvigorated even if this
8 litigation is resolved.

9 As a consequence, Scutari & Cieslak Public Relations, Inc. has lost tangible and significant
10 revenue as a result of its lost referrals from the Tribe. As shown in discovery, billings generated by
11 Scutari & Cieslak Public Relations, Inc. to the tribe during the time period of April 1, 2011 to
12 November 2014 averaged approximately \$10,980.00 per month. Furthermore, immediately prior to the
13 initiation of this lawsuit Scutari & Cieslak Public Relations, Inc. had negotiated and entered into a
14 governmental business contract with the Tribe which would have provided approximately \$87,300.00
15 in revenue in addition to the public relations services provided by the underlying agreement.

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1 It is entirely fair and appropriate that Scutari & Cieslak Public Relations, Inc. be allowed now
2 to amend its answer to assert counterclaims against Plaintiffs Grand Canyon Skywalk Development,
3 DY Trust Dated June 3, 2013, and Theodore (Ted) R. Quasula for their strategic lawsuit against Scutari
4 & Cieslak Public Relations, Inc. The complaint filing was done without justification or factual support,
5 which has led to the Defendants' damages. Especially in this case, where Plaintiffs' entire lawsuit is
6 premised upon alleged loss of revenue and damaged business reputation allegedly caused by Scutari &
7 Cieslak Public Relations, Inc.'s services for the Hualapai Tribe, it is only appropriate that Scutari &
8 Cieslak Public Relations, Inc. should be able to assert those same claims against the Plaintiffs to be
9 proven by proof at trial. A copy of the proposed Amended Answer with additional support is attached
10 as **Exhibit B**.

11 Therefore, Defendants respectfully request that this Court grant its motion to amend its answer.

12 DATED this 17 day of February, 2015.

13 MORRIS POLICH & PURDY LLP

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16 By: _____

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CERTIFICATE OF SERVICE

I certify that I am an employee of Morris Polich & Purdy LLP, and that on this 17 day of February, 2015, I served a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR LEAVE TO AMEND ANSWER AND ASSERT COUNTERCLAIMS** via the Court's CM/ECF to all registered parties and their counsel of record.


An Employee of MORRIS POLICH & PURDY LLP

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