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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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

Plaintiff,

vs.

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-JAD-GWF

RESPONSE TO MOTION TO DISMISS THIRD-PARTY COMPLAINT

(ORAL ARGUMENT REQUESTED)

[FILED UNDER SEAL]

DAVID JOHN CIESLAK, an individual; NICHOLAS PETER "CHIP" SCUTARI, an individual; SCUTARI & CIESLAK PUBLIC RELATIONS, INC., an Arizona corporation,

Counter-Claimants,

vs.

DY TRUST DATED JUNE 3, 2013, a Nevada Trust, THEODORE (TED) R. QUASULA, an individual,

Counter-Defendants.

DAVID JOHN CIESLAK, an individual; NICHOLAS PETER "CHIP" SCUTARI, an individual; SCUTARI & CIESLAK PUBLIC RELATIONS, INC., an Arizona corporation,

Third-Party Plaintiffs,

vs.

THE HUALAPAI TRIBE,

Third-Party Defendants.

Defendants David John Cieslak ("Cieslak"), Nicholas Peter "Chip" Scutari ("Scutari"), and Scutari & Cieslak Public Relations Firm, Inc. ("S&C") (collectively the "Third-Party Plaintiffs"), by and through their counsel Morris Polich & Purdy LLP, hereby submit their response to the Hualapai Tribe's Motion to Dismiss (collectively "the Tribe" and/or "Third-Party Defendants") [DOC 96].

This Opposition is made and based upon the pleadings and papers on file herein, the following Points and Authorities, any attached exhibit(s)[1], and any oral argument that may be entertained by this Honorable Court at the hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In March 2011, the Tribe's law firm Gallagher & Kennedy ("G&K") approached Third-Party Plaintiffs and solicited their public relations services on behalf of the Tribe. However the idea to hire a public relations firm emanated from the attorneys at G&K. More specifically, in a G&K Memorandum dated February 11, 2011 counsel stated:

> "We also recommend that the Tribe retain someone with substantial experience in governmental public relations. GCSD and its attorneys will almost certainly attempt to have the Tribe's exercise of its powers of eminent domain portrayed to the public as an exercise of raw 'power' by the Tribe, with the Tribe taking for itself all future revenue

[1] Attached hereto as Exhibit A is the Affidavit of Nicholas M. Wieczorek, Esq. in Support of Defendants' Response to Hualapai Tribe's Motion to Dismiss.

> associated with the Skywalk, after it was designed and constructed by GCSD. The Tribe will want to be able to present itself as the more reasonable party in the eyes of the public at large.
>
> Again, there are public-relations firms with which we are familiar and could seek to have the Tribe retain for this purpose." Exhibit B.

This Memorandum proves that the idea to hire the public relations firm and the purpose for such hiring was to protect the name of the Tribe and make the Tribe look "more reasonable" in the eyes of the public. G&K specifically singled out one particular public relations firm. G&K approached this public relations firm and pitched the idea of S&C serving as the Hualapai Tribe's public relations firm. As sophisticated negotiators, G&K "vetted" Third-Party Plaintiffs, and counseled and advised the Tribal Council Board to enter into the Communications and Public Relations Agreement ("Agreement"). While the Agreement was a standard format Agreement initially drafted by S&C, G&K served as the gate keeper to the Hualapai Tribe. Discovery to date shows that G&K reviewed the Agreement prior to advising the Hualapai Tribe to engage S&C. Exhibit C.

Moreover, in an email communication between Defendant Cieslak and G&K attorney Paul Charlton, Mr. Cieslak specifically stated that the Public Relations Firm proposed a 12-month contract with a 30-day out clause so that the Agreement could be revised at any point if things slowed down or stopped. Exhibit C; *See* Bates number SandC 000036. This proposal was accepted and became a final term to the Agreement. Such email communication serves as evidence that the Agreement was open to negotiation. G&K's long-standing relationship with the Tribe indicates that it was informed on contractual provisions sufficient to waive Tribal sovereign immunity. At minimum, one would expect a conversation during negotiation regarding tribal sovereign immunity. No such conversation occurred. The Tribe is sophisticated and there is no evidence indicating that the Tribe found itself on the "short end of an adhesion contract stick."[2] The Tribe and its attorneys were able to propose, negotiate and *agree to* the terms of the contract.

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[2] *See C&L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 532 U.S. 411, 423 (2001) stating that when private parties contract, including when a Native American Tribe is a party, the common-law rule of contract interpretation is applicable. While courts usually construe ambiguous language against the interest of the party that drafted it, courts highly consider the contracting power of each party and whether the non-contracting party found itself on the "short end of an adhesion contract stick."

Ultimately, both parties agreed that S&C, with advice of counsel, would provide crisis management consultation, direct communications with newspaper editorial board members and key reporters and provide "ghostwritten" guest columns and op-eds. This Agreement included mutual indemnity, choice-of-law and procedural court action provisions.[3] Such provisions effectively waived the Tribe's sovereign immunity. The Tribe renewed this Agreement again in March 2012 without renegotiating any term other than monetary rates.

On April 8, 2013 the instant lawsuit was filed against Third-Party Plaintiffs and the Hualapai Tribal Council for defamation, business disparagement and civil conspiracy [DOC. 1]. After numerous motions were filed by the Hualapai Tribe to delay the case under the theory of sovereign immunity, before the court could hear the Tribe's motion on this issue, the Tribe settled with Plaintiffs and refused to involve Third-Party Plaintiffs [DOC 20] (Tribal Council's Motion to Dismiss and/or Stay).

Third-Party Plaintiffs then served their Third-Party Complaint on the Hualapai Tribe on February 9, 2015. Exhibit D. The Third-Party Complaint alleges equitable indemnification, contribution, and express contractual indemnity claims against the Tribe pursuant to the Agreement [DOC 70]. The Tribe filed its Motion to Dismiss on March 2, 2015 [DOC 96].

The Tribe erroneously relies on a two-prong theory: sovereign immunity and failure to exhaust Tribal Court remedies. These arguments do not afford the Tribe any protection from joinder in this matter for the following reasons.

II. PROPER SUBJECT MATTER JURISDICTION EXISTS BECAUSE THE TRIBE EXPRESSLY WAIVED ITS SOVEREIGN IMMUNITY PURSUANT TO THE AGREEMENT

The Supreme Court has stated that a tribe's waiver of immunity "is implicit rather than explicit *only if* a waiver of sovereign immunity, to be deemed explicit, must use the words 'sovereign immunity.'" No such case exists here. *C&L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 532 U.S. 411, 420, 121 S.Ct. 1589, 1595 (2001) (quoting *Sokaogon Gaming Enterprise Corp. v. Tushie-Montgomery Associates, Inc.*, 86 F.3d 656, 660 (7th

[3] Such provisions are discussed in turn *infra* Section II.

Cir. 1996)) (*emphasis added).* An explicit wavier of sovereign immunity need not contain the phrase "we waive our sovereign immunity" or words to that effect. There are no "magic words" required to waive sovereign immunity. *J.L. Ward Assoc., Inc. v. Great Plains Tribal Chairmen's Health Bd.*, 842 F.Supp.2d 1163, 1179 (S.D. S.D., 2012).

The Tribe falsely conveys to this court that in order for waiver of a tribe's immunity to be effective, it must be *explicitly* stated. No court has held that explicit waiver means an overt statement waiving sovereign immunity.

The Tribe cites numerous federal cases yet incorrectly argues that because these federal courts have found certain contractual provisions ineffective to waive sovereign immunity, this holds true in the instant case. The Tribe fails to acknowledge federal court precedent and forms of contractual mechanism which do waive the tribe's immunity. (*See Sokaogon Gaming Enterprises Corp., supra*, 86 F.3d at 659 (parsing the two delineations of federal court case law surrounding effective waiver of sovereign immunity).

The first marker to identify immunity waiver is illustrated in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 59-60, 98 S.Ct. 1670 (1978), where the court held that Congress must make a clear statement waiving tribal sovereign immunity to ensure that Congress did not curtail tribal rights. *Sokaogon Gaming Enterprises Corp.*, 86 F.3d at 659; (*See Santa Clara Pueblo*, 436 U.S. 49 (1978); *see Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024 (2014) [wherein the court analyzes whether Congress curtailed tribal rights under the Indian Gaming Regulatory Act]).

The Tribe concludes that it did not waive its sovereign immunity because the Agreement did not explicitly recite such a waiver. However, this argument fails because the Tribe analyzed its arguments under the wrong case law. The first marker stemming from the *Santa Clara Pueblo* line of cases deals with *Congress' right* to abrogate tribal sovereign immunity. The Court stated that there must be a clear indication of legislative intent abrogating tribal sovereign immunity. In this sense, the waiver must be express, as in, expressly announced by Congress that it intends to abrogate and waive tribal sovereign immunity either for a limited or specific purpose.

This lawsuit is not about federal law abrogating a tribe's sovereign immunity. This case centers on an Agreement between the Hualapai Tribe and Third-Party Plaintiffs and whether the

contracted provisions are sufficient to expressly waive the Tribe's sovereign immunity. This is a case about *a contract entered into between two private contracting parties*. There is no government action. The Tribe's proffered arguments are not pertinent to the issues now before the Court.

The second marker of case law addresses sovereign immunity and its juxtaposition with contractual provisions sufficient to expressly waive a tribe's sovereign immunity. *Sokaogon Gaming Enterprises Corp.*, 86 F.3d at 659. Under this line of cases, no court has held that there must be an express statement indicating that a tribe does or does not waive its immunity.

In *Sokaogon Gaming Enterprises Corp.*, *supra*, the court stated that it "doubts whether there really is a requirement that a tribe's waiver of its sovereign immunity be explicit, *especially since the harder it is for a tribe to waive its sovereign immunity the harder it is for it to make advantageous business transactions*." *Id.* at 659-660 (*emphasis added*). Even when a contract between a Native American Tribe and a non-Indian contains other perspicuous statements short of "the tribe will not assert the defense of sovereign immunity if sued for breach of contract," courts – contrary to the Tribe's assertions – have found a tribe to have *expressly* waived sovereign immunity through contractually created provisions.

The Tribe erroneously states "the Ninth Circuit and numerous federal courts have repeatedly refused to find waivers of sovereign immunity despite the presence of dispute resolution mechanisms, private remedies, or choice-of-law provisions in tribal contracts." [4] Yet, the Tribe cites no case law wherein any court determined that a choice-of-law provision within a contract failed to effectuate waiver of sovereign immunity.

Circuit courts are split regarding whether contractual mechanisms are perspicuous enough to expressly waive sovereign immunity. Rather the Tribe incorrectly cites *Pan American Co. v. Sycuan Band of Mission Indians*, 884 F.2d 416 (9th Cir. 1989). While the court in *Pan American*, found an arbitration clause in a contract not a waiver of the tribe's sovereign immunity, the Supreme Court *resolved this issue* in *C&L Enterprises, Inc., supra,* 532 U.S. at 417.

[4] *See* Motion to Dismiss Third-Party Complaint p. 5:26.

In *C&L Enterprises, Inc.*, the Court found a choice-of-law provision coupled with arbitration sufficient to expressly waive a tribe's sovereign immunity. *Id.* at 423. The court reasoned that the clause memorializing the tribe's commitment to adhere to the contractual provisions mandating that the laws of Oklahoma apply and that a court of competent jurisdiction could enforce any arbitration award and waived immunity. *Id.* at 419. The court concluded that "in sum, the [t]ribe agreed, by express contract, to adhere to certain dispute resolution procedures." *Id.*

In *C&L Enterprises, Inc.*, the Court resolved the Circuit Court split and held that the tribe *waived, with requisite clarity*, its sovereign immunity when it agreed to adhere to certain dispute resolution procedures. *Id.* With finality, the Supreme Court confirmed that the contract's choice-of-law provision (choosing the law of the place where the project and construction was located) and arbitration clause evidenced the parties' intent to consent to the laws of that state. *Id.* at 417. These contracting mechanisms were sufficient to **expressly** waive the tribe's sovereign immunity.

While courts have found attorneys' fee provisions, consent to service of process, and liquidated damages provisions standing alone are insufficient to waive sovereign immunity, these contracting mechanisms are far short of the choice-of-law provision here and what the Supreme Court ruled as qualifying mechanisms expressly waiving a tribe's sovereign immunity.

This case is a prime example of contractual language sufficient to constitute a valid and express waiver of this right. Similar to the facts in *C&L Enterprises Inc.*, the Agreement at issue includes a choice-of-law provision reciting that Arizona state law shall govern the Agreement. The parties contracted to such a provision and chose the law of the place where the Skywalk and Project was located. More notably, the parties chose Arizona law because both parties were located in Arizona and the contract included Public Relations work regarding other Tribal affairs.

While the Agreement does not include an arbitration clause, the parties did contract to a *mutual indemnification* provision and to the following additional provision:

> "In the event of any proceeding **against** HUALAPAI by any regulatory agency or in the event of any **court action** or self-regulatory action challenging any work prepared by SandC, we shall assist in the preparation of the defense of such action or proceeding and cooperate with HUALAPAI and your attorney. HUALAPAI will reimburse SandC all

> reasonable out-of-pocket costs we may incur in connection with any such action or proceeding, unless the defense of such action is our responsibility pursuant to (1) above…**The laws of the state of Arizona shall govern this agreement**." **(emphasis added).**

This language is unambiguous. It expresses the parameters of the parties' relationship in the event of court action. Therefore, rather than an arbitration clause negating both parties' right to court remedies, this clause declares that both parties agree that if and when court action is commenced regarding "work prepared by SandC" then that court action will be governed by Arizona law. With such explicit contractual language, these provisions could never have "hoodwinked an unsophisticated negotiator into giving up the tribe's immunity from suit without realizing what he was in fact doing." *Sokaogon Gaming Enterprises Corp., supra,* 86 F.3d at 660. Rather, skilled tribal negotiators, with the advice of legal counsel, contracted with S&C.

The Tribe and its attorneys had ample opportunity to negotiate provisions of the contract. In fact, it was G&K which singled out SandC, specifically looking for a public relations firm to fit a particular Tribal need. With such immense power and knowledge around Tribal legal representation, the Tribe could never have found itself on the "short end of an adhesion contract stick." *C&L Enterprises, Inc.* 532 U.S. at 423.

At minimum, the contracting provisions serve as a limited wavier of sovereign immunity for all causes of action arising from SandC's work product in this case. Similar to the court's reasoning regarding the arbitration clause and choice-of-law provision in *C&L Enterprises, Inc.*, the mutual indemnity, choice-of-law and procedural court action provisions in this case serve as an unconditional waiver of the Tribe's sovereign immunity.

The Tribe, as a sophisticated negotiator with advice of counsel, admits that it entered into a "consensual contractual relationship" with Third-Party Plaintiffs. The Tribe agreed that all disputes arising from the Agreement would be resolved under Arizona law. The Tribe agreed to mutual indemnity provisions. The Tribe acknowledged court action regarding work prepared by SandC. By contracting to such provisions, the Tribe effectively waived its sovereign immunity because any dispute arising from this Agreement could not be resolved without adhering to these provisions. Simply, these provisions would be meaningless if they did not constitute a waiver of immunity the

Tribe possessed. The facts of this case are so analogous to the facts in *C&L Enterprises, Inc.* that it confirms the Hualapai Tribe was not "hoodwinked" into waiving its sovereign immunity.[5] In this capacity, the Tribe was a sophisticated negotiator and knew what it was contracting to. Therefore the Tribe's Motion to Dismiss must be denied.

III. THIS IS THE ONLY COURT WHICH MAINTAINS THE APPROPRIATE JURISDICTION TO RESOLVE THIS MATTER

The general rule is that in an action against a tribe, a party must exhaust tribal remedies before federal court can exercise its jurisdiction. *Nat'l Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 845, 845, 105 S.Ct. 2447, 2448 (1985).

However, the Supreme Court outlined four exceptions to this rule. If any one of the following exceptions apply, a defendant may immediately proceed to a proper federal court.

The exceptions are: (1) when it is "plain" that tribal court jurisdiction is lacking, so that the exhaustion requirement "would serve no purpose other than delay." *See supra* Section II; (2) when "exhaustion would be futile because of the lack of an adequate opportunity to challenge the [tribal] court's jurisdiction"; (3) when the tribal court action is "patently violative of express jurisdictional prohibitions"; and (4) when an assertion of tribal court jurisdiction is "motivated by a desire to harass or is conducted in bad faith." *Elliott v. White Mountain Apache Tribal Court*, 566 F.3d 842, 847 (9th Cir. 2009) (*citing Nevada v. Hicks*, 533 U.S. 353, 121 S.Ct. 2304, 2315 (2001)).

As prescribed by the Supreme Court in *Montana v. United States* there is *no tribal jurisdiction* over non-Indians for activities off the reservation in the absence of federal statute or treaty granting authority. *Williams-Willis v. Carmel Financial Corp.*, 139 F.Supp.2d 773, 778 (S.D. Miss. 2001) (*citing Montana v. United States*, 450 U.S. 544, 565, 101 S.Ct. 1245, 1258 (1981)) (*See Williams v. Lee*, 358 U.S. 217, 218-223 (1959) (holding that when a non-Indian is on tribal land, the

[5] The Tribe argues in its Motion to Dismiss Third-Party Complaint that there was ineffective service of process upon the Tribe because the Tribe did not waive its sovereign immunity. Third-Party Plaintiffs argue that the Tribe did effectively waive its sovereign immunity pursuant to the Agreement signed in March of 2011. Because the Tribe expressly waived its sovereign immunity, the service of process upon Sherry J. Counts' comported with the Federal Rules of Civil Procedure.

transaction at issue occurred on tribal land, and the plaintiffs were tribal members, tribal court had jurisdiction.)) There is no tribal court jurisdiction unless either of the *Montana* exceptions apply. Under the first exception a tribe may regulate, *through taxation, licensing or other means,* the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases or other arrangements. Under the second exception a tribe may exercise civil authority over the conduct of non-Indians on fee lands within its reservation when the conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. *Montana*, 450 at 565-566 (1981) (*emphasis added.)*

In this case, tribal court jurisdiction is lacking so that the exhaustion requirement would serve no purpose other than delay. There is no tribal jurisdiction because Third-Party Plaintiffs S&C, Scutari and Cieslak are non-Indians who entered into a private consensual contract for public relations services which not only took place off the reservation but in addition *all alleged defamatory* conduct asserted in the Complaint also occurred off of the tribal lands. This lawsuit is about defamation and money, not about the Tribe's ability to enforce a tax or license. The conduct alleged does not directly or indirectly effect the Tribe's political integrity, economic security or health or welfare of the tribe. The Tribe is attempting to circumvent federal jurisdiction by claiming that the *Montana* exceptions apply. The Tribe's arguments are fallacious.

A. The Tribe's Argument Under *Montana's* First Exception Fails Because the Tribe is Not Taxing or Licensing Third-Party Plaintiffs' Conduct.

The Tribe does not cite any case law for its assertion that the first *Montana* exception applies to the instant case. Rather, it makes a mere legal conclusion that because S&C entered into a consensual contractual relationship, they must first proceed to Tribal Court. This argument is erroneous.

The Court stated in *Morris v. Hitchcock*, 194 U.S. 384, 389, 24 S.Ct. 712, 712 (1904) that tribes, just like the United States, have the ability to prevent the intrusion of unauthorized persons onto their land (through the ability to grant licenses) and raise revenue (through the ability to tax all individuals whether tribal members or non-Indians.) (*See Buster v. Wright*, 135 F. 947, 949, 68

C.C.A. 505 (1905) (finding that tribes have the right to tax non-Indians for certain conduct occurring within the confines of its reservation because the tax is a mere condition of the exercise of this privilege; *See also*, *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 153, 100 S.Ct. 2069, 2081 (1980) (confirming that federal courts have acknowledged tribal power to tax non-Indians entering the reservation to engage in economic activity.))

The Tribe has the ability to tax S&C and even force S&C to obtain a license for a specific purpose. However, not only is this *not the issue at bar*, the Tribe has never taxed S&C nor required it to have a license. This case is not even about taxing and licensing.

Therefore, the first *Montana* exception is wholly inapplicable to this case. While there is a consensual contractual relationship at the heart of this matter, the issue in this lawsuit is *defamation*, not taxation. Furthermore, the allegedly defamatory conduct occurred off the reservation.

B. The Tribe's Argument Under *Montana's* Second Exception Fails Because the Conduct Alleged Does Not Directly or Indirectly Affect the Political Integrity, Economic Security, or the Health/Welfare of the Tribe.

The Supreme Court in *Montana* stated that the "Indian tribes have lost any right of governing every person within their limits except themselves." *Montana*, 450 U.S. at 565.

The court in *Montana* stated that a tribe may regulate "conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." However, in order for this exception to apply, the conduct must do more than injure the tribe. The Court stated that it must "imperil the subsistence of the tribal community." *Plains Commerce Bank v. Long Family Land and Cattle Co.*, 554 U.S. 316, 128 S.Ct. 2709, 2726 (2008). The Court reasoned that the threshold requirement for such applicability is that tribal court power must be necessary to avert catastrophic consequences. *Id.* (*holding* "that the sale of formerly Indian-owned fee land to a third-party is quite possibly disappointing to the tribe but cannot fairly be called 'catastrophic' for tribal self-government.") *See Dolgencorp Inc., v. Mississippi Band of Choctaw Indians*, 846 F.Supp.2d 646 (S.D. Miss. 2011) (*stating* that the *Montana* exception "envisions situations where the conduct of the nonmember

poses a direct threat to tribal sovereignty" but also must imperil the subsistence of the tribal community in order to be considered a catastrophic consequence).

The Tribe correctly asserts that Third-Party Plaintiffs and the Tribe entered into a consensual contractual relationship and the subject matter of the Agreement provided for public relations services. The Tribe contends that it may regulate this conduct because the conduct has some direct effect on the economic security of the Tribe. The key admission is that the Tribe *entered into a consensual contractual relationship* knowing and assenting to each provision of the Agreement. This Agreement was not regarding the Grand Canyon Skywalk, the revenue producing asset the Tribe refers to in its Motion to Dismiss. *This Agreement encompasses public relations services for the Hualapai Tribe, in general*. Moreover, the conduct at issue are allegedly defamatory statements either published directly by Tribal members or authorized by Tribal members. This Agreement in no way affects the health, wealth or political integrity of the Tribe.

The Tribe improperly complains of some conduct that triggers Tribal Court jurisdiction. While the Tribe does not expand upon what it claims the conduct at issue is that allows it to force Third-Party Plaintiffs' to Tribal Court, it is evident that the conduct *is this instant lawsuit*. This lawsuit (while it may injure the Tribe) pales in comparison to the threshold requirement needed to destroy Federal Court jurisdiction and diversion to the Tribal Court.

The Tribe's contention that the Agreement has a direct effect on the economic security and welfare of the Tribe falls short of the hefty requirement that the Agreement be catastrophic for tribal self-governance. The Tribe knowingly entered into this Agreement for public relations services. This Agreement has no bearing on the economic welfare or political integrity of the Tribe. This Agreement is also not about the Skywalk, the revenue producing asset. This case is about allegedly defamatory statements expressly made or ratified by the Hualapai Tribe.

The Tribe cannot stand behind sovereign immunity. It agreed to participate under the laws of Arizona and yield to the federal court system. Therefore, there is no Tribal Court jurisdiction in this matter and the Tribe's Motion to Dismiss must be denied.

IV. CONCLUSION

The Tribe erroneously raises its shield of sovereign immunity. However, it is not strong enough to withstand the strength of federal court jurisdiction which has found express waivers of sovereign immunity short of the proclamation "the tribe has waived its sovereign immunity." In fact, the Tribe cannot point to any case law that holds this proclamation because such cases do not exist.

Contractual mechanisms can serve as an express waiver. The Tribe cannot rely on a right it knowingly forfeited. Accordingly, the Tribe's Motion must be denied.

DATED this 19 day of March 2015.

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 19 day of March 2015, I served a true and correct copy of the **RESPONSE TO MOTION TO DISMISS THIRD PARTY COMPLAINT** via the Court's CM/ECF to the parties and their counsel identified below:

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EXHIBIT A

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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

Plaintiffs,

vs.

DAVID JOHN CIESLAK, an individual; NICHOLAS PETER "CHIP" SCUTARI, an individual; SCUTARI & CIESLAK PUBLIC RELATIONS, INC., an Arizona corporation

Defendants.

DAVID JOHN CIESLAK, an individual; NICHOLAS PETER "CHIP" SCUTARI, an individual; SCUTARI & CIESLAK PUBLIC RELATIONS, INC., an Arizona corporation,

Counter-Plaintiffs,

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

AFFIDAVIT OF NICHOLAS M. WIECZOREK, ESQ. IN SUPPORT OF DEFENDANTS' RESPONSE TO HUALAPAI TRIBE'S MOTION TO DISMISS

vs.

DY TRUST DATED JUNE 3, 2013, a Nevada Trust, THEODORE (TED) R. QUASULA, an individual,

Counter-Defendants.

I, NICHOLAS M. WIECZOREK, declare as follows:

1. I am an attorney duly authorized to practice law before all courts of the State of Nevada, and I am an attorney with the law firm of Morris Polich & Purdy, LLP, attorney of record for Defendants/Counter-Plaintiffs DAVID JOHN CIESLAK; NICHOLAS PETER "CHIP" SCUTARI; SCUTARI & CIESLAK PUBLIC RELATIONS, INC. ("S&C"), collectively referred to as ("Defendants/Counter-Plaintiffs") in this matter. I am submitting my Affidavit attached hereto as **Exhibit A** and the attached exhibits in Defendants' Response to Hualapai Tribe's Motion to Dismiss attached hereto as **Exhibits B, C, and D.**

2. I am familiar with the files, pleadings and facts in this case, and, if called as a witness, I could and would competently testify to the following facts on the basis of my own personal knowledge.

3. This case involves a Communications and Public Relations Agreement ("Agreement") entered into by and between the Hualapai Tribe and Defendants on or about March 11, 2011. Defendants were solicited by Gallagher & Kennedy Law firm ("G&K"), who represent the Hualapai Tribe. Attached collectively hereto as **Exhibit B** is a true and correct copy of the G&K Memorandum dated February 11, 2011 establishing that G&K sought to hire Defendants on behalf of the Hualapai Tribe for public relations services.

4. Attached collectively hereto as **Exhibit C** is a true and correct copy of email communications with noted email attachments. This exhibit also includes a copy of the Agreement and various email communication establishing that G&K 1) served as the gate keeper to the Hualapai Tribe; 2) reviewed the Agreement; and 3) the Agreement was open for negotiations between the parties.

5. Attached hereto as **Exhibit D** is a true and correct copy of service of process of the Third-Party Complaint on the Hualapai Tribe dated February 9, 2015.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing Affidavit of Nicholas M. Wieczorek, Esq. in Support of Defendants' Response to Hualapai Tribe's Motion to Dismiss is true and correct.

Executed on March 19, 2015 at Las Vegas, Nevada.

Nicholas M. Wieczorek

SUBSCRIBED and SWORN to and before me on this 19 day of March, 2015.

NOTARY PUBLIC

My Commission Expires: 10/4/16

DEBORAH JEAN SUROWIEC
Notary Public, State of Nevada
Appointment No. 92-0253-1
My Appt. Expires Oct 4, 2016

EXHIBIT B

GALLAGHER & KENNEDY
P.A.
LAW OFFICES

MEMORANDUM

TO: Hualapai Tribal Council

FROM: Glen Hallman, Paul Charlton and Terence W. Thompson

SUBJECT: Memorandum No. 4 - Exercise of Eminent Domain over Skywalk Agreement

DATE: February 11, 2011

BACKGROUND

The Tribal Council has proposed to exercise its power of eminent domain[1] with regard to the 2003 Development and Management Agreement between 'Sa' Nyu Wa, Inc. ("SNW") and Grand Canyon Skywalk Development, LLC ("GCSD") (the "Agreement"). More specifically, the Tribe proposes to condemn GCSD's interest in the Agreement.

This memorandum outlines the salient legal issues, analyzes strategic issues, and addresses financial considerations.

A. THE TRIBE'S RIGHT TO EXERCISE THE POWER OF EMINENT DOMAIN.

The power of eminent domain is inherent in any Sovereign entity, such as the Tribe. *E.g., In the Matter of Richard A. Hennessy, Jr. v. Dimmler*, 90 Misc.2d 523, 394 N.Y.S.2d 786 (N.Y. County Ct. 1977) (in a case dealing with a tribe's condemnation power, the court stated, "The power of eminent domain is an incident of sovereignty. . . .")

Article 9, Subsection (c) of the Constitution of the Hualapai Indian Tribe expressly states that the Tribe may "take any private property for a public use," but states that it may not do so "without just compensation."[2]

Also, there is an United States law which similarly recognizes the right of Indian tribes to exercise the power of eminent domain. 25 U.S.C. § 1302 provides, in pertinent part:

> No Indian tribe in exercising powers of self-government shall -

[1] A Sovereign's exercise of its inherent powers of eminent domain is often otherwise referred to as "condemnation" or "taking."

[2] Article 5, Subsection (i) also gives the Tribe the power "to purchase or accept any land or property for the Tribe." The disjunctive phrase "land or property" necessarily implies that "property" may be something other than "land," and GCSD's interest in the Agreement is a contract or property right.

> 5. Take any private property for a public use without just compensation. . . .[3]

The language in the Constitution of the Hualapai Indian Tribe and 25 U.S.C. § 1302 mirror the language of the Fifth Amendment of the United States Constitution: "private property (shall not) be taken for public use, without just compensation."

Thus we may reasonably expect both the Hualapai Tribal courts and the United States courts to apply established legal standards in addressing the Tribe's exercise of its powers of eminent domain.

In short, the Hualapai Constitution and other legal authority indicate that the Tribe may exercise the power of eminent domain.

B. THE RIGHT TO EXERCISE THE POWER OF EMINENT DOMAIN OVER THE AGREEMENT.

Normally, the exercise of eminent domain is to obtain land (also known as "real property"). Of course, the Tribe already owns the Skywalk, the Visitor Center and the underlying land. So, the true "property interest" at issue here is GCSD's interest in the Agreement, which is "intangible" property (that is, something which the human hand is not capable of perceiving through the sense of touch).

However, there is ample precedent for the exercise of eminent domain over contract rights such as GCSD's interest in the Agreement. Indeed, "many forms of corporate property are subject to the eminent domain power, including intangibles such as contracts, franchises, patents, trade routes, and other types of property as long as just compensation is paid for their acquisition." *Nichols on Eminent Domain*, Ch. 22, § G22.03[3] (Matthew Bender, 3rd Ed.). See also *Cincinnati v. Louisville*, 223 U.S. 390 (1912); *New Orleans Gaslight Co. v. Louisiana Light & MFG. Co.*, 115 U.S. 650 (1885); *West River Bridge v. Dix*, 47 U.S. 507 (1848). As stated in *M&C Council of Baltimore v. Baltimore Football Club*, 624 F.Supp. 278, 282 (D. Md. 1986), "it is now beyond dispute that intangible property is properly the subject of condemnation proceedings."

A particularly good example is *City of Oakland v. Oakland Raiders*, which upheld the right of the City of Oakland to exercise its eminent domain power to seize the Oakland Raiders' football franchise, which was essentially a contract between the Raiders and the NFL. 32 Cal.3d 60, 183 Cal.Rptr. 673, 646 P.2d 8335 (1982).

C. THE REQUIREMENT THAT A TAKING BE "FOR A PUBLIC USE."

A Sovereign's exercise of the power of eminent domain requires that the taking be "for a public use." The Agreement concerns the construction and management of the "Project," defined in Section 1.1 of the Agreement as follows:

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[3] 25 U.S.C. § 1301 defines "Indian tribe" as "any tribe, band or other group of Indians subject to the jurisdiction of the United States and recognizing as possessing powers of self-government . . . .

> "Project" means the Project Improvements, the Site, all Furniture and Equipment, the Inventories and all other items of real or personal property used in connection with the development, management and operation of the Project.

"Project Improvements" are, in turn, defined as:

> "Project Improvements" means the Glass Bridge and adjacent building providing security and structural support for the Glass Bridge and will also contain a gift shop, together with all related on and off site improvements and infrastructure.

As these terms are generically described as the "Skywalk," this memorandum will similarly refer to the "Skywalk." It is important to keep in mind that the Skywalk includes all of the related infrastructure, including without limitation the Visitor Center and the associated electricity, water, sewer and (possibly) roadway.

In the *City of Oakland* case, the franchise owner argued that the condemnation of the franchise was not for a "public use," but the California Supreme Court held that a "public use is a use which concerns the whole community or promotes the general interest in its relation to any legitimate object of government." 32 Cal.3d at 69, 183 Cal.Rptr. at 679, 646 P.2d at 841. The court went on to agree with the City's argument that "the factual circumstances surrounding the construction of the Oakland coliseum and the integration of the past use of the stadium with the life of the City of Oakland in general will readily demonstrate the "public" nature of the use contemplated here." 32 Cal.3d at 75, 183 Cal.Rptr. at 683, 646 P.2d at 844.

Under the Agreement, ownership of the Skywalk lies with the Tribe. Thus the Agreement concerns GCSD's construction and management of tribal property. Such being the case, and while no one can predict what a court will do as to any particular issue, a court can reasonably conclude that the exercise of eminent domain over GCSD's interest in the Agreement would be for a "public use." To paraphrase the City of Oakland decision, the "integration" of the Skywalk "with the life of the Haulapai Tribe demonstrates that the construction and operation of the Skywalk is a 'public use.'"

D. THE NEED TO MAKE "JUST COMPENSATION" TO GCSD.

Under both the Tribe's Constitution and 25 U.S.C. § 1302, the taking of any private property must be with "just compensation." This concept is quite similar to what is understood to be the Hualapai custom of "fair trade."

In any eminent domain action, the determination of "just compensation" is the primary issue in contention. Often, such a determination is quite complex, involving expert witness testimony and sophisticated financial analysis. Given the numerous issues in dispute between

the Tribe and GCSD under the Agreement, it can be expected that the valuation issues will be even more complex than the typical condemnation case. A detailed analysis of all of the matters in contention is beyond the scope of this memorandum, but are generally addressed in Section G below.

The bottom line is that GCSD can be expected to present the strongest case possible that its interests in the Agreement can only be taken with "just compensation" of $50 million or more. It is anticipated the Tribe, through expert witnesses, should be able to present a compelling argument that GCSD's "just compensation" (after various deductions or discounts) should be a fraction of that number, perhaps as low as one-fourth or one-fifth. As described in greater detail below, in our judgment a minimal or very, very low valuation would be unlikely to survive the scrutiny of judicial review.

E. JUDICIAL JURISDICTION.

United States courts considering the Indian Civil Rights Act (25 U.S.C. §§ 1301 *et. seq.*) have generally concluded that tribal and United States District courts have "concurrent jurisdiction" over eminent domain cases. United States District courts have, in turn, generally deferred exercise of their jurisdiction until the tribe and the adverse party have fully litigated all matters in dispute in the Tribal courts. Thus, as discussed below, the Tribe may initiate eminent domain proceedings in Tribal court but should expect GCSD's attorneys to seek redress in the United States courts (or, alternatively, in a state court if the federal court feels that this is not a federal case), either immediately or after completion of tribal judicial proceedings. *See, e.g., Seneca Constitutional Rights. Org. v. George*, 348 F.Supp. 51, 60 (W.D.N.Y 1972):

> Plaintiffs . . . claim that condemnation of their use interests would be a taking for nonpublic use and without just compensation. It is premature to raise these claims [in federal court] prior to the initiation of any condemnation proceedings. Only after such proceedings are held and their claims are raised and rejected therein may they seek relief in the federal courts.

Thus, U.S. Constitution Fifth Amendment standards should govern a Hualapai Tribal Court's condemnation proceedings, regardless of any countervailing Hualapai cultural norms or laws.

Also, it appears that, after the exhaustion of remedies in the United States District courts, either the Tribe or GCSD, or both, would then have the right to seek review of the District Court's judgment by the United States Court of Appeals, and potentially the United States Supreme Court. Thus, given the import of the Skywalk and the dollar amounts at issue, there is a substantial chance that eminent domain proceedings will entail several layers of judicial review.

We now turn to strategic considerations.

F. ADOPTION OF TRIBAL ORDINANCE REGARDING EMINENT DOMAIN.

To evidence that the Tribe is aware of and sensitive to "due process" and other rights, and to provide guidance for the tribal court, it is highly recommended that the Council enact an ordinance regarding eminent domain. Assuming the Council confirms that it wishes to proceed with this course of action, we will prepare such an ordinance for Council review.

G. RECOMMENDED COURSE OF ACTION IN TRIBAL COURT.

Given the prospect of federal court review of any tribal court ruling, while the Tribe could present a "bare bones" case in Tribal court and potentially obtain a minimal valuation of "just compensation," such would not be in the Tribe's long-term best interest. Simply, unless GCSD is indeed given a "fair trade" for its interests in the Agreement, the Tribe will leave itself very vulnerable to reversal of that determination in the United States courts, pursuant to the Indian Civil Rights Act (25 U.S.C. § 1302). Even if GCSD's attorneys are not successful in convincing a United States District court to exercise jurisdiction immediately and to interfere with the Tribal courts' condemnation proceeding, there is ample authority for United States District courts reversing Tribal court determinations on a number of issues.

In our judgment the Tribe would be best served by presenting a *compelling* case for its position on "just compensation" in the Tribal court, in order to make it as likely as possible that the Tribal Court's determination withstands review by the United States courts.

We believe the Tribe will need to retain at least three outside consultants in connection with any eminent domain proceeding.

First, the Tribe will need expert witness support for the valuation of "just compensation." This will entail a sophisticated financial expert, such as a certified public accountant, to conduct a detailed valuation of GCSD's interests under the Agreement. Because of the lengthy term of the Agreement, GCSD's valuation would likely be the "present value" of its interests as of the date of the initiation of the eminent domain proceeding. While the amount GCSD has invested in the design and construction of the Skywalk is in dispute, it is conceivable that GCSD will seek to put in evidence that the investment is in the range of at least $20 to $30 million and perhaps even $50 million or more. The Tribe will seek to argue that it has offsetting claims against GCSD and its affiliates, but the bottom line is that the Skywalk exists and has substantial economic value and that, therefore, GCSD's contract to manage the Skywalk also has substantial value.

We have experience with business valuation experts who have qualified as expert witnesses in numerous judicial proceedings, and who can undertake the sophisticated, detailed analysis of the value of GCSD's interest in the Agreement.

We also recommend that the Tribe retain someone with substantial experience in governmental public relations. GCSD and its attorneys will almost certainly attempt to have the Tribe's exercise of its powers of eminent domain portrayed to the public as an exercise of raw "power" by the Tribe, with the Tribe taking for itself all future revenue associated with the

Skywalk, after it was designed and constructed by GCSD. The Tribe will want to be able to present itself as the more reasonable party in the eyes of the public at large.

Again, there are public-relations firms with which we are familiar and could seek to have the Tribe retain for this purpose.

And third, the Tribe will need to make arrangements for a financing source for the amount ultimately determined to be "just compensation." Thus the Tribe will want a financial consultant to best explore the Tribe's available financing options.

H. COST CONSIDERATIONS.

Initiating eminent domain proceedings in Tribal court would entail minimal legal costs and fees, but obtaining the initial appraisal can be expected to cost several thousand dollars. Simply, like any other lawsuit, the litigation is commenced by the preparation and filing of a Complaint. In eminent domain proceedings, there is also generally a request for the right to "immediate possession", which, if granted by the court, would give the Tribe immediate control over the Skywalk.

Thereafter, however, it can be expected that GCSD will put up a strenuous fight. Assuming the Tribe is able to prevail on any objections to the condemnation power, public purpose, and immediate possession, the only remaining principal matter at issue in the proceeding would likely be the valuation of "just compensation." As discussed above, the Tribe will need a sophisticated, qualified expert witness to present its position, and we will need to coordinate with that expert witness to justify the lowest *defensible* value. This will entail more substantial cost, both for counsel and the expert, but given the potential multi-million range, the cost associated with the valuation process will be a very small fraction of that amount. Thus, in our judgment it would not be prudent for the Tribe to *not* invest the necessary resources to put together the strongest possible arguments for a valuation of $20 million or less.

Also, as discussed above, there is the potential for judicial proceedings in the United States District Court, the 9th Circuit Court of Appeals, and conceivably even the United States Supreme Court (or, alternatively, in a state court system). Thus it is impossible to estimate all future litigation expenses or the length of time that the matter will continue, and even then there can be no assurance of an ultimate outcome in favor of the Tribe. Like any other substantial litigation, the ultimate costs depend upon the parties' respective positions and the manner in which they litigate the issues. In addition to being represented by Mr. Parker, GCSD has now retained a second law firm, Greenburg Traurig, which is a very large, national law firm, who will be able to devote substantial resources (i.e., a team of attorneys and experts) to present its position that "just compensation" should be $50 million or more. For the Tribe to prevail in its contention that the dollar amount should be substantially less, the Tribe will need the strongest possible case as well.[4]

[4] Of course, as with any litigation, there is always the potential for a settlement, with GCSD and the Tribe compromising on an alternative means of resolving their differences or on an intermediate valuation, to finally resolve all matters in dispute. This, however, would require flexibility on the part of GCSD that has not heretofore demonstrated.

I. CONCLUSION.

While the law is unsettled in this area, it appears that the Tribe can effectively "buy-out" GCSD's interest in the Skywalk through the exercise of the power of eminent domain. Assuming the Tribe prevails in the exercise of its condemnation right, the Tribe will be legally obligated to provide GCSD "just compensation" therefor. There will be substantial costs associated with litigating both the Tribe's right to condemn GCSD's interests in the Agreement and the value of GCSD's interest, but those costs should be a small fraction of the total dollar amount at issue between the parties.

Such a course of action would be a substantial undertaking, but given the import of the Skywalk to the Tribe as a whole and the long patience displayed by the Tribal Council in trying to resolve issues by other means, it seems the Tribal Council would be fully justified in so proceeding.

EXHIBIT C

Dave Cieslak

From: Chip Scutari <chip@sandcpr.com>
Sent: Tuesday, March 01, 2011 8:35 AM
To: Charlton, Paul K.
Cc: Dave Cieslak; Chip Scutari
Subject: Great Seeing You: Have a Few Quick Questions!

Hi Paul:

Thanks so much for inviting us to your office yesterday. Dave and I can't wait to get started. We just have a few logistical/contract-related questions for you before we send over our contract.

Here are the questions:

- First, we were wondering how G&K deals with travel time (roughly 7 or 8 hours roundtrip) and hotel lodging? Specifically, do you charge your hourly rate during travel time to and from meetings at their place? And does the Tribe reimburse G&K for hotel stays? We assume so but wanted to make sure.
- We feel it would be best for us and the Tribe to agree on a monthly retainer that accurately reflects our scope of work. Of course, the amount could easily be tweaked down the road. Between us, we easily anticipate about 50-60 hours a month at the start of the project. At our normal hourly rate of $300 that can add up quite quickly. Our typical fee for a project of this magnitude (messaging/crisis communications/media training/communications strategy/pitching stories/travel time) would easily exceed $15,000 a month. But, like G&K, we will reduce our rates in hope of having a long-term client who has a phenomenal story to tell. We decided on a reduced monthly retainer of $12,500, whose details will be spelled out in our contract. Please let me know what you think.

Thanks again for thinking of us. We are excited to partner with G&K and the Tribe on this important endeavor. One last thing: As we noted, we're proposing a 12-month contract with a 30-day out clause so the contract could be revised at any point if things slow down or stop.

All my best,
Chip

Chip Scutari
Scutari and Cieslak Public Relations
602-677-5422
chip@SandCpr.com
http://scutariandcieslak.com

Dave Cieslak

From: Charlton, Paul K. <paul.charlton@gknet.com>
Sent: Tuesday, March 01, 2011 10:37 AM
To: Chip Scutari
Cc: Dave Cieslak; Thompson, Terence W.; Hallman, Glen
Subject: RE: Great Seeing You: Have a Few Quick Questions!

Hi Chip,

Yes, we do charge for our travel and submit our hotel charges as expenses billed to the client. $12.5/month seems reasonable to me but I do not know if you then charge for your travel.

Glen and Terry, your thoughts?

Paul

From: Chip Scutari [mailto:chip@sandcpr.com]
Sent: Tuesday, March 01, 2011 9:35 AM
To: Charlton, Paul K.
Cc: Dave Cieslak; Chip Scutari
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All my best,
Chip

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602-677-5422
chip@SandCpr.com
http://scutariandcieslak.com

Dave Cieslak

From: Chip Scutari <chip@sandcpr.com>
Sent: Tuesday, March 01, 2011 4:19 PM
To: Charlton, Paul K.
Cc: Dave Cieslak; Chip Scutari
Subject: PR Contract for Hualapai
Attachments: 02-28-11 HUALAPAI CONTRACT.doc

Hi Paul:

Happy Tuesday! Here is our PR contract. Please let us know what you think. We left out travel and lodging expenses.

Thanks again for thinking of us.

All our best,
Chip & Dave

Chip Scutari
Scutari and Cieslak Public Relations
602-677-5422
chip@SandCpr.com
http://scutariandcieslak.com

SCUTARI & CIESLAK PUBLIC RELATIONS

COMMUNICATIONS AND PUBLIC RELATIONS AGREEMENT

SCUTARI AND CIESLAK, INC. (hereinafter "SandC"), accepts this agreement and proudly begins a relationship with the Hualapai Tribal Nation (hereinafter "HUALAPAI"), this 1st day of March, 2011.

1. **Initial Scope of Services**: SandC agrees to provide the following services to HUALAPAI:

- Advice and counsel on public relations strategy, effective messaging and media relations
- Crisis management consultation
- Comprehensive, on-camera media training for tribal spokespeople (normally a separate $4,000 charge that will be included at no cost for the Hualapai Nation)
- Direct communications with newspaper editorial board members and key reporters/editors
- Coordination of timely media coverage (including press releases, potential press events and facility tours)
- "Ghostwritten" guest columns and op-eds

2. **Billing and Payment**: SandC will bill HUALAPAI monthly beginning March 1, 2011 through March 1, 2012. All billings are due and payable within 30 days of delivery of invoice. For our services, HUALAPAI agrees to a payment schedule of $12,500 per month. Any additional projects requested by HUALAPAI that fall outside the above scope of work will be billed separately from the retainer. The initial term of this agreement runs through March 1, 2012, at which time the parties will revisit the agreement.

3. **Cancellation of Agreement**: This agreement shall continue until March 1, 2012 (with provisions revisited at that time) or until terminated early by either party by giving thirty (30) days advance notice in writing to the other party. Notice will be deemed complete upon mailing or written notice to the addresses stated in this agreement. The rights and duties of the parties shall continue during such period of notice. SandC is entitled to its normal fees through the end of the 30-day notification period. After the expiration of the notification period, no rights or liabilities shall arise out of this relationship, regardless of any plans which may have been made for future services.

4. **Indemnification**:

a. SandC shall indemnify and hold HUALAPAI harmless with respect to any claims or actions against HUALAPAI, based upon material prepared by SandC, involving any claim for libel, slander, piracy, plagiarism, invasion of privacy or infringement of copyright, except where any such claim or action may arise out of material supplied by HUALAPAI to SandC and incorporated in material prepared by SandC.

b. HUALAPAI will indemnify and hold SandC harmless with respect to any claims or actions instituted by third parties which result from the use by SandC of material furnished by HUALAPAI or where material created by SandC is substantially changed by HUALAPAI. Information or data obtained by SandC from HUALAPAI to substantiate claims made in advertising shall be deemed to be "materials furnished by HUALAPAI."

c. In the event of any proceeding against HUALAPAI by any regulatory agency or in the event of any court action or self-regulatory action challenging any work prepared by SandC, we shall assist in the preparation of the defense of such action or proceeding and cooperate with HUALAPAI and your attorney. HUALAPAI will reimburse SandC all reasonable out-of-pocket costs we may incur in connection with any such action or proceeding, unless the defense of such action is our responsibility pursuant to (1) above.

5. **Entire Agreement:** The entire contract is embodied in this writing, and no other warranties or representations are given beyond those set forth in this written contract. This writing constitutes the final expression of the parties' agreement, and it is a complete and exclusive statement of the terms of that agreement. This agreement may only be amended by written instrument executed by both parties stating that it is an amendment hereto. The laws of the state of Arizona shall govern this agreement.

XXX, Hualapai Tribal Nation

Dave Cieslak, SandC

Scutari and Cieslak, Inc.
4144 N. 44th St., Suite A-2
Phoenix, AZ. 85018

Dave Cieslak

From: Hallman, Glen <GH@gknet.com>
Sent: Wednesday, March 09, 2011 1:27 PM
To: dave@sandcpr.com
Cc: Thompson, Terence W.
Subject: Retainer Letter
Attachments: Document.pdf

Is attached!

Thanks.

SCUTARI CIESLAK

COMMUNICATIONS AND PUBLIC RELATIONS AGREEMENT

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4. **Indemnification:**

a. SandC shall indemnify and hold HUALAPAI harmless with respect to any claims or actions against HUALAPAI, based upon material prepared by SandC, involving any claim for libel, slander, piracy, plagiarism, invasion of privacy or infringement of copyright, except where any such claim or action may arise out of material supplied by HUALAPAI to SandC and incorporated in material prepared by SandC.

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SCUTARI CIESLAK

c. In the event of any proceeding against HUALAPAI by any regulatory agency or in the event of any court action or self-regulatory action challenging any work prepared by SandC, we shall assist in the preparation of the defense of such action or proceeding and cooperate with HUALAPAI and your attorney. HUALAPAI will reimburse SandC all reasonable out-of-pocket costs we may incur in connection with any such action or proceeding, unless the defense of such action is our responsibility pursuant to (1) above.

5. **Entire Agreement:** The entire contract is embodied in this writing, and no other warranties or representations are given beyond those set forth in this written contract. This writing constitutes the final expression of the parties' agreement, and it is a complete and exclusive statement of the terms of that agreement. This agreement may only be amended by written instrument executed by both parties stating that it is an amendment hereto. The laws of the state of Arizona shall govern this agreement.

XXX, Hualapai Tribal Nation
3/8/2011

Dave Cieslak, SandC

Scutari and Cieslak, Inc.
4144 N. 44th St., Suite A-2
Phoenix, AZ. 85018

Dave Cieslak

From: Hallman, Glen <GH@gknet.com>
Sent: Wednesday, March 09, 2011 3:18 PM
To: Dave Cieslak
Cc: Thompson, Terence W.; Chip Scutari; Charlton, Paul K.; Haggard, Kim
Subject: RE: Retainer Letter

Send your invoices to the Tribe's CFO, Wanda Easter.

-----Original Message-----
From: Dave Cieslak [mailto:dave@sandcpr.com]
Sent: Wed 3/9/2011 3:54 PM
To: Hallman, Glen
Cc: Thompson, Terence W.; Chip Scutari; Charlton, Paul K.
Subject: RE: Retainer Letter

Thanks so much, Glen. Great talking with you guys earlier. I signed our part and attached a PDF to this e-mail...when/to whom should we send our first invoice?

We'll see you Friday morning at 10. Have a good night!

-Dave and Chip

Dave Cieslak
Scutari and Cieslak Public Relations
(480) 278-9990
dave@SandCpr.com
http://scutariandcieslak.com

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To: dave@sandcpr.com
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Thanks.

EXHIBIT D

Attorney or Party without Attorney:				For Court Use Only
NICHOLAS M. WIECZOREK NBN 6170 MORRIS, POLICH & PURDY, LLP 500 S. RANCHO DR. #17 LAS VEGAS, NV 89106 Telephone No: 702-862-8300 FAX No: 702-862-8400 Attorney for: Defendant		Ref. No. or File No.: 196978		
Insert name of Court, and Judicial District and Branch Court: UNITED STATES DISTRICT COURT, DISTRICT OF NEVADA Plaintiff: GRAND CANYON SKYWALK DEVELOPMENT, LLC Defendant: RUBY STEELE				
AFFIDAVIT OF SERVICE	Hearing Date:	Time:	Dept/Div:	Case Number: 2:13-CV-00596-JAD-GWF

1. *At the time of service I was at least 18 years of age and not a party to this action.*

2. I served copies of the SUMMONS ON A THIRD-PARTY COMPLAINT; ANSWER TO COMPLAINT, THIRD-PARTY COMPLAINT AGAINST HUALAPAI TRIBE, AND DEMAND FOR JURY TRIAL

3. *a. Party served:* HUALAPAI TRIBE
   b. Person served: CHAIRWOMAN SHERRY J. COUNTS

4. *Address where the party was served:* 941 HUALAPAI WAY
   PEACH SPRINGS, AZ 86434

5. *I served the party:*
   a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Mon., Feb. 09, 2015 (2) at: 8:50AM

7. Person Who Served Papers: *Fee for Service:*
   a. GREGORY JENSEN

First Legal
1511 West Beverly Blvd.
Los Angeles, CA 90026
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Fax (213) 250-1197
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8. I declare under penalty of perjury under the laws of the State of ARIZONA and under the laws of the United States Of America that the foregoing is true and correct.

Mon, Feb. 09, 2015