

THE HONORABLE KAREN L. STROMBOM

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

UNITED STATES OF AMERICA *et al*,

Plaintiffs,

v.

STATE OF WASHINGTON *et al*,

Defendants.

NO. C70-9213

Subproceeding 89-03-10 (Squaxin Island Tribe v. C. Scott Grout and Gold Coast Oyster LLC)

MEMORANDUM IN SUPPORT OF SQUAXIN ISLAND TRIBE'S PETITION FOR ORDER TO SHOW CAUSE WHY C. SCOTT GROUT AND GOLD COAST SHOULD NOT BE HELD IN CIVIL CONTEMPT AND SUBJECT TO RELATED RELIEF

Date noted: November 6, 2015

**I. INTRODUCTION**

Petitioner Squaxin Island Tribe ("Tribe"), by its attorneys, hereby submits this Memorandum of Law, with the declarations of Sharon Haensly, Eric Sparkman and Rana Brown, and exhibits, in support of its petition for an order to show cause why C. Scott Grout, in both his personal capacity and his corporate capacity as a member of Gold Coast Oyster LLC, and Gold Coast Oyster LLC (collectively, "Gold Coast" unless otherwise stated) should not be held in civil contempt for violating the Consent Decree and Settlement Agreement ("Consent Decree") entered by this Court on November 18, 2013, and subject to related relief. (Dkt. No. 12.)

MEMORANDUM IN SUPPORT OF SQUAXIN ISLAND TRIBE'S PETITION FOR ORDER TO SHOW CAUSE WHY C. SCOTT GROUT AND GOLD COAST SHOULD NOT BE HELD IN CIVIL CONTEMPT - 1  
(No.C70-9213, Subproc. 89-3-10)

SQUAXIN ISLAND LEGAL DEPARTMENT  
3711 SE OLD OLYMPIC HWY  
SHELTON, WASHINGTON 98584  
360.432.1771

The Tribe respectfully seeks an order that: (1) finds C. Scott Grout, in his personal capacity and corporate capacity as a member of Gold Coast Oyster LLC, and Gold Coast Oyster LLC, in contempt for interfering with and not accommodating a Tribal survey by (a) demanding certain preconditions, and (b) creating unsafe conditions for the survey; (2) amends the Consent Decree to protect the safety of Tribal staff and harvesters during their future exercise of the Treaty shellfishing right; (3) awards the Tribe attorneys' fees and court costs relating to C. Scott Grout's and Gold Coast's violation of the Consent Decree and this contempt proceeding; (4) allows the Tribe to seek discovery as against C. Scott Grout and Gold Coast as related to two commercial-sized harvests that occurred at the Midles parcel, first before the Tribal survey and again before the Tribal harvest; (5) requires that Gold Coast, as prerequisite to cultivating or harvesting, sign a harvest plan for the Midles tidelands; and (6) grants any such other relief as the Court deems just and proper.

## II. FACTUAL BACKGROUND

### A. Tribe's Request for Dispute Resolution in this Subproceeding

In 2013, the Tribe filed a Request for Dispute Resolution against Gold Coast. (Dkt. No. 1.) The Tribe sought declaratory and injunctive relief pursuant to the Shellfish Implementation Plan ("SIP") in order to: (1) redress Gold Coast's refusal to execute harvest plans to allow the Tribe to access and harvest its Treaty share of Manila clams on certain Hammersley Inlet tidelands near Shelton, Washington; (2) redress Gold Coast's refusal to execute a harvest plan to allow the Tribe to access and harvest its Treaty share of Manila clams on certain Oakland Bay tidelands, and recoup past Treaty shares of which Gold Coast had deprived the Tribe; and (3) ensure that Gold Coast would conduct future commercial shellfish activities within the Tribe's

usual and accustomed fishing areas (“U&A”) in compliance with federal and state law. *Id.* The case settled, as described in the following section.

**B. The Consent Decree**

The Tribe and Gold Coast signed the Consent Decree, which this Court entered on November 18, 2013. (Tribe’s Ex. 6: Consent Decree) Among other things, it requires Gold Coast: (1) to “accommodate and not interfere with the Tribe’s opportunity to inspect” tidelands; and (2) not to commercially harvest shellfish on tidelands within the Tribe’s U&A (“Agreement Tidelands”<sup>1</sup>) unless Gold Coast and the Tribe entered a harvest plan, or the tidelands lacked a natural shellfish bed per agreement by the Tribe or court determination, or the Tribe waived its Treaty right to harvest. *Id.* at ¶ 7, ¶ 9.

**C. Efforts to Seek Resolution Without Judicial Assistance**

The Court retains jurisdiction in order to enforce the Consent Decree, provided that the parties first comply with the following procedures:

If a dispute arises under this Agreement, the Party will notify the other Party of the dispute in writing. Unless the Parties agree otherwise, they will meet within five (5) days and seek to resolve the dispute. If the Parties are unable to resolve the dispute, one or both Parties may request the assistance of this Court in resolving the dispute. (Tribe’s Ex. 6 at ¶ 12.)

The Tribe and Gold Coast have tried to informally resolve the disputes described herein.<sup>2</sup> (Tribe’s Exs. 12, 15, 16.) When that failed, the Tribe by letter dated July 2, 2015, formally notified Gold Coast’s counsel of the disputes. (Tribe’s Ex. 35.) Subsequent discussions,

<sup>1</sup> “Agreement Tidelands” are all tidelands in southern Puget Sound that are below the Tacoma Narrows. *Id.* at ¶ 2.

<sup>2</sup> Gold Coast’s attorney consented to C. Scott Grout, the managing member of the LLC, directly communicating with the Tribe’s attorney Sharon Haensly. (Tribe’s Ex. 14).

however, failed to resolve the disputes. Declaration of Sharon Haensly at ¶ 2 (Oct. 20, 2016).

The Tribe now seeks the Court's assistance.

**D. Conduct in Contempt of the Consent Decree**

**1. Gold Coast has Interfered With and Failed to Accommodate the Tribe's Right to Access to Tidelands and to Survey by Demanding Unreasonable Preconditions.**

Tidelands owned by Dwight and Lisa Midles ("Midles tidelands") are located in Totten Inlet between Olympia and Shelton. (Tribe's Ex. 2: DOH certification.) These are "Agreement Tidelands" within the Tribe's exclusive U&A. (Tribe's Ex. 6 at ¶ 2; *United States v. Washington*, 384 F.Supp. 312, 378 (D.Wash. 1974)). Gold Coast notified the Tribe under SIP Section 6.3 of its intent to cultivate the Midles tidelands.<sup>3</sup> (Tribe's Ex. 18.) The Tribe then timely notified Gold Coast of its intent to conduct a shellfish population survey on February 6, 2015, to determine whether "minimum density" of 0.14 pounds per square foot of Manila clams<sup>4</sup> was met. (Tribe's Ex. 20.)

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<sup>3</sup> Gold Coast also violated paragraph 5 of the Consent Decree by failing to inform the Tribe about its April 2011 license agreement with the Midles', which afforded Gold Coast the "exclusive right to use the tidelands to harvest commercial quantities of marketable shellfish" and to keep a portion of the oysters and clams sold. (Tribe's Ex. 1.) Paragraph 5 required that Gold Coast submit to the Tribe "a list of all tidelands . . . within the [Tribe's usual and accustomed area] that are currently under Gold Coast's control through contract or otherwise for purposes of conducting commercial shellfishing activities." (Tribe's Ex. 6, emphasis added.) Gold Coast should have provided this information on November 30, which was 15 days after the Consent Decree was entered. *Id.*

Instead, after some prodding, Gold Coast on January 27, 2014, finally provided a list of such tidelands under his company's "control." (Tribe's Ex. 7.) His list, however, excluded the Midles tidelands. *See id.* The Tribe did not learn of Gold Coast's control of the Midles tidelands until mid-November of 2014. (Tribe's Ex. 8.) It was not Gold Coast, but the Washington Department of Health that alerted the Tribe to Gold Coast's seeking to have the Midles beach certified for commercial shellfish harvesting. (Tribe's Ex. 8.) (The area was previously closed to commercial shellfish harvesting due to pollution problems, Tribe's Ex. 11.) The Tribe then sent a letter to Mr. Midles and Gold Coast asserting its rights, and seeking the information required under Section 6.3 of the SIP. (Tribe's Ex. 9.)

<sup>4</sup> Under the Shellfish Minimum Density consent decree, a "natural bed" of Manila clams that is subject to Tribal Treaty harvest must meet or exceed the minimum commercial density of 0.14 pounds of Manila clams per square foot. *United States v. Washington*, No. C70-9213, Subproceeding 89-3: Consent Decree and Settlement Agreement re Manila Clams, Native Littleneck Clams, and Pacific Oysters (Dkt. No. 18848) (Order approving is Dkt. No. 18859).

Prior to the survey, Gold Coast began demanding that the following conditions be placed upon the Tribe's access to and survey of the Midles tidelands:

- Prohibiting Tribal vessels from touching the tidelands such that Tribal staff must disembark from vessels that are still floating in the water.
- Allowing upland access only if Tribal staff signed declarations that they are not "criminals, sex offenders, wanted by any courts from wants or warrants" and "are here in the United States lawfully."
- If the Tribe chose upland access, then requiring that the Tribe's biologist sign a non-disclosure agreement or, alternatively, allowing Mr. Grout to lead him blindfolded down to the beach.
- Requiring that the Tribe provide a list of "magical" equipment, such as divining rods and drums. (The Tribe does not conduct shellfish surveys with such equipment.)
- Requiring that negotiated penalties be in place before the Tribal survey could occur.
- Requiring that Tribal surveyors provide flu immunization records.
- Allowing Gold Coast to inspect Tribal vessels used to transport its surveyors.

(Tribe's Exs. 12, 14-17, 19).

The Tribe expended time corresponding with Mr. Grout in an effort to address Gold Coast's concerns and avoid conflict when Tribal staff accessed the tidelands.<sup>5</sup> *Id.* The Tribe reminded him of his and Gold Coast's obligation under the Consent Decree to "accommodate and

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<sup>5</sup> Other unreasonable demands by Mr. Grout include: (1) surveying 100% of the beach as opposed to the clam band; (2) providing him the allergen profiles of the Tribal surveyors; (3) promising to adhere to a "TSA clause" that prohibits bringing items to the beach that could not be packed in airline carry-on luggage; (4) allowing him to inspect Tribal vessels; (5) having Tribal Council sign a formal document agreeing to all of Mr. Grout's conditions; and (6) to only conduct an inspection that did not involve disturbing the ground, perhaps followed by a later survey where clams could be dug. (Tribe's Exs. 16, 17, 21, 29.) Mr. Grout then promised to "effectively blanket the [Midles] tidelands with pacific oyster seed" such that he would make no "guarantees to the future of the clam bed." (Tribe's Ex. 32.)

The Tribe did agree to some of Gold Coast's conditions including not making loud noises, listing the survey equipment that it would bring to the beach, the surveyors' not using narcotics, and liability language. (Tribe's Ex. 15.)

not interfere with” the Tribe’s opportunity to inspect the tidelands. (Tribe’s Ex. 12.) Ultimately, as described in the section below, the Tribe chose to proceed with its survey pursuant to the Shellfish Implementation Plan.<sup>6</sup> (Tribe’s Ex. 20.)

**2. Interfering With and Failing to Accommodate the Tribe’s Right to Survey the Tidelands by Creating Unsafe Conditions.**

The Tribe, prior to its February 6, 2015, survey of the Midles tidelands, had concerns about the safety of its staff biologists when meeting with Mr. Grout. The erratic nature of many of Mr. Grout’s prior communications gave rise to such concerns. (Tribe’s Exs. 12, 14-17, 19, 23.) The Tribe was also aware of Mr. Grout’s history of intimidating and harassing Washington Department of Fish & Wildlife (“WDFW”) officers. (Tribe’s Ex. 5.) Accordingly, the Tribe arranged for Squaxin law enforcement officers to accompany shellfish biologists Eric Sparkman and Rana Brown to the Midles survey. (Tribe’s Ex. 20.)

Squaxin Island Police Department officers Ben Blankenship and Tracy Rollins staged a Tribal vessel approximately 500 yards from the Midles tidelands, and remained in view of and in radio contact with the biologists on the beach. (Tribe’s Ex. 23.) Mr. Grout and another individual accompanying him followed the biologists during the survey, as they are allowed to do under the SIP. *Id.* Tribal biologist Rana Brown summoned Officer Blankenship onshore, however, when Mr. Grout became overly aggressive towards them in his demeanor and comments, with escalating behavior. *Id.*

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<sup>6</sup> Mr. Grout’s unreasonable and burdensome demands continued after the survey. Among other things, he began demanding that the Tribe not remove from the beach clams dug during the survey, and return them to the beach. (Tribe’s Exs. 28, 29, 32.) The Tribe, however, takes clams back to its Natural Resources Department in order to later identify the species, weigh and measure each one, and enter the results into its survey computer program. Sparkman Ex. at ¶ 2. The same practice is followed by the State and Tribe when developing their management plans. *Id.* Moreover, sampling during Tribal surveys results in small to negligible amounts of the total biomass present. *Id.* For example, the Midles beach survey produced four pounds of Manila clams out of a biomass of 754 pounds: i.e., ½ of 1% of the standing biomass. *Id.*

When Squaxin Police Officer Blankenship, a 27-year veteran of the Washington State Patrol, came onto the Midles tidelands, he became an additional focus of Mr. Grout's aggressive, escalating demeanor and vulgar, racist comments. *Id.*; *see also* Tribe's Ex. 22: cell phone video. Officer Blankenship identified himself as a Squaxin law enforcement officer. (Tribe's Ex. 23.) Mr. Grout moved within inches of Officer Blankenship's face, stating "I can get this close" after Officer Blankenship directed him not to touch him. *Id.* At one point, Mr. Grout's Go Pro camera came into contact with Mr. Blankenship's hat. *Id.* Mr. Grout yelled obscenities and racial slurs at Officer Blankenship, calling him a "pig" and "skinjun," saying that "we've got a situation here where we've got pigs on the beach," making war cry noises and motions, and repeatedly telling him to "get off the f\*\*ing property." *Id.* Mr. Grout also threw the biologist's clam fork and metal sampling frame into Puget Sound, later retrieving them. *Id.*

Eventually a WDFW officer and Thurston County Sheriff were summoned. *Id.* Before they arrived, one of the Squaxin officers Rollins asked Mr. Grout a question, to which he replied, "perhaps he had a penis tied around his waist, or maybe he was scratching his penis head." *Id.* Officer Blankenship continually tried to diffuse the situation, and his weapon never left his holster. *Id.* Eventually WDFW enforcement officers arrived on the scene, and remained on the beach until the Tribal survey was completed. *Id.*

On March 3, 2015, Tribal biologist Eric Sparkman encountered Mr. Grout at a conference. Sparkman Dec. at ¶ 3. As the conference was concluding, Mr. Sparkman asked Mr. Grout whether he had received the harvest plans. *Id.* Mr. Sparkman had emailed and mailed him two harvest plans (*see* further explanation below) and the results of the Tribe's survey of the Midles parcel the week before but not heard back. *Id.*



Mr. Grout became immediately agitated and defensive, and began ranting about the Tribe's February 6 survey. *Id.* at ¶ 4. This demeanor escalated when he brought up the incident involving Squaxin Police Officer Blankenship (discussed in the section above). *Id.* Mr. Grout referred to Officer Blankenship as "Blankenshit" and kept referring to him as a Squaxin "pig" or "skin-jin." *Id.* He continued ranting about how Blankenship was not allowed on the beach and that he said no "pigs" were supposed to come that day. *Id.*

Mr. Sparkman said that he would not go to a beach under Mr. Grout's control without a Squaxin Police Department officer for his own safety. *Id.* at ¶ 6. Mr. Grout responded that if Officer Blankenship came out to the beach "he wouldn't be leaving the beach." *Id.* Mr. Sparkman said that that sounded like a threat, to which Mr. Grout responded that "it was just a statement not a threat." *Id.* Mr. Grout also said something about him bringing a gun to the beach next time or bringing someone with a gun along but not on the beach. *Id.*

Mr. Grout has also demanded that Tribal law enforcement officers who accompany Tribal staff and harvesters to the beach not carry firearms. (Tribe's Ex. 16.)

**E. Gold Coast Likely Illegally Conducted or Arranged for Commercial-Sized Harvests before the Tribal Survey and Again Before the Tribal Harvest.**

Several months before the Tribal survey, Mr. Grout told the Tribe, "We **do not** intend to harvest any shellfish [on the Midles beach] as there are none." (Tribe's Ex. 10, emphasis in original.) Similarly, Mr. Grout's Section 6.3 notice stated that the Midles parcel did not meet minimum density for clams, and stated "No species present." (Tribe's Ex. 18.) The Tribe, however, found that the Midles beach had a significant Manila clam band. (Tribe's Exs. 23-26; Sparkman Dec. at ¶ 8.)



The Tribe had requested that Gold Coast and the Midles' refrain from commercial harvest or cultivation activities on the tidelands until after the Tribe's survey and, if warranted, execution of a harvest plan. (Tribe's Ex. 20.) When the Tribal biologists arrived on February 6, 2015 for the Midles tideland survey, however, they found clear evidence of extensive Manila clam harvesting having occurred in the heart of the clam bed sometime within the previous few days to week. (Tribe's Exs. 21, 23, 25, 26.) The evidence included clean, recently unearthed clam shells at the surface; soft ground; and the surface layer of sediment having been turned where digging had occurred. *Id.*; Sparkman Dec. at ¶ 8. Tribal biologists estimate that between 500 to over 1,200 pounds of Manila clams were harvested before the survey – which hugely exceeds the usual amount harvested for personal consumption. (Tribe's Exs. 23, 30; Sparkman Dec. at ¶ 8.) The pre-survey harvesting artificially depressed the Tribe's survey results such that the Manila clam density was 0.15 pounds per square foot, although that amount still exceeded the requisite density of 0.14 pounds per square foot for a Tribal harvest.<sup>7</sup> (Tribe's Exs. 24, 30.)

Mr. Grout denied having harvested and speculated that maybe the landowners had harvested for a "Superbowl party," but said that his confidentiality agreement with the landowners specified that they "couldn't talk to Indians." (Tribe's Ex. 23.)

The Tribe, lacking clear evidence that Mr. Grout had harvested or arranged for a harvest, sent Mr. Grout two harvest plans and asked him to sign one of them. (Tribe's Ex. 30.) The Tribal poundage in the first plan was based on the assumption that Mr. Grout had culpability for the pre-survey harvest, and the second that he did not. *Id.* Mr. Grout refused to sign either plan. (Tribe's Ex. 32.) Eventually, Mr. Midles cancelled his license agreement with Gold Coast in order to

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<sup>7</sup> The Tribe's letter to Mr. Midles incorrectly states 0.14 pounds per square foot. (Tribe's Ex. 34.)

allow the Tribal harvest to occur under SIP Section 7 (addressing tidelands that are not controlled by growers). (Tribe's Exs. 33, 34.)

The Tribe scheduled its harvest for June 24, 2015, targeting 602 pounds of Manila clams. (Tribe's Ex. 34.) The February 6, 2015 harvest had shown that there were 754 pounds of marketable Manila clams left on the beach. (Tribe's Ex. 24.) However, the two harvesters, each with a reputation as excellent diggers, were only able to harvest only 176 pounds after combing the entire beach. Sparkman Dec. at ¶ 9. Since the Tribe has never experienced such an extreme discrepancy between its survey results and the harvested amount in that short of a time frame, the evidence clearly indicates that a large harvest occurred sometime after the Tribal survey and before the Tribal harvest. *Id.*

In light of the location, timing and commercial nature of these harvests, and Scott Grout / Gold Coast's animosity towards the Tribe's exercise of its Treaty right, the Tribe believes it is highly likely that they conducted or arranged for the two harvests. *See* Sections II.D.1 and 2, above. The Tribe therefore seeks an order that subjects C. Scott Grout (in both his personal and corporate capacity) and Gold Coast to discovery to ferret out the truth. If they did conduct or arrange for one or both of the harvests, then they would have violated Paragraph 7 of the Consent Decree by interfering with the Tribe's survey (i.e., depressing the survey results), and paragraph 9 by harvesting without a harvest plan.

### III. LEGAL ARGUMENT

#### A. Standard for Civil Contempt

Federal courts have inherent power to enforce compliance with their lawful orders through actions for civil contempt, including consent decrees. *See Spallone v. United States*, 493 U.S.

265, 276 (1990); *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 378 (1992) (a consent decree reflects “an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees.”). The primary purposes of civil contempt are to coerce compliance with the court's order, and to compensate the complainant for losses sustained by the other party's disobedience. *American Airlines, Inc v. Allied Pilots Ass'n*, 228 F.3d 574, 585 (5th Cir. 2000), *cert. denied*, 531 U.S. 1191 (2001). Civil contempt is justified where there is a violation of a court order, regardless of the contemnor's intent. *Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir. 1983). The district court retains discretion to establish appropriate sanctions. *United States v. Bright*, 596 F.3d 683, 696 (9th Cir. 2010). The moving party must establish: (1) that the party violated the court order, (2) beyond substantial compliance, (3) not based on a good faith and reasonable interpretation of the order, (4) by clear and convincing evidence. *Id.* at 694.

For the reasons described below, Gold Coast should be held in civil contempt for having violated the Consent Decree.

**B. The Consent Decree Imposes Requirements on Gold Coast.**

Two provisions in the Consent Decree are at issue here. First, Paragraph 7 states, “Gold Coast shall comply with all requirements of the Shellfish Implementation Plan, including but not limited to the following: Whenever Gold Coast plans to enhance an existing natural bed or create a new artificial bed on Agreement Tidelands, Gold Coast . . . shall accommodate and not interfere with the Tribe's opportunity to inspect those tidelands so long as the Tribe provides fourteen (14) days' advanced notice to Gold Coast.” (Emphasis added.)

Second, Paragraph 9 of the Consent Decree prohibits Gold Coast from commercially harvesting on Agreement Tidelands until one of the following occurs: (1) Gold Coast and the Tribe have entered a harvest plan that provides for the implementation of the Tribe's treaty right to take up to 50% of the naturally-occurring shellfish on the tidelands; or (2) the Tribe agrees in writing or the United States District Court determines that the tidelands proposed and used for cultivation do not contain a natural shellfish bed; or (3) the Tribe indicates in writing that it does not intend to exercise its treaty right to take shellfish on the tidelands.

**C. Gold Coast Violated Paragraphs 7 and 9 of the Consent Decree.**

**1. Demands for Unreasonable Survey Conditions**

Gold Coast's demands for access and survey conditions described in Section II.D.1 violate paragraph 7 of the Consent Decree by interfering with, and not accommodating, the Tribe's access to and inspection of tidelands. *See* Tribe's Ex. 6 at ¶ 7. Gold Coast's demands rise to this level because they are, separately and collectively, burdensome, demeaning, unwarranted, and in some cases pose safety risks (e.g., blindfolding Tribal biologists and forcing staff and harvesters to disembark from vessels that are floating rather than beached). Gold Coast's demands unlawfully placed obstacles in the path of the Tribe's exercise of its Treaty rights. Gold Coast's continual demands also caused the Tribe to expend substantial time and effort communicating and negotiating before performing what should have been a routine survey. Additionally, the Tribe's rejection of many of Gold Coast's demands directly resulted in Mr. Grout's unlawful hostile behavior at the February 6 survey. (Tribe's Ex. 29.)

The Tribe fully expects Gold Coast to continue attempting to impose these and other unreasonable demands on future Tribal surveys and harvests. Gold Coast has now returned to the

Midles site to cultivate oysters, has declared in its Section 6.3 notice that minimum density is not

met (so that a harvest plan is not required), and intends to start cultivating on December 8.  
(Tribe's Ex. 32, 36.)

## 2. Unsafe Conditions

Mr. Grout's threatening, intimidating and harassing behavior, both before and after the Midles survey, violates Section 7 of the Consent Decree by interfering with and not accommodating Tribal surveys. *See* Section II.D.2 above. Mr. Grout unlawfully created an unsafe work environment for Tribal biologists. He directed threatening and insulting racist and sexual comments at Tribal staff, aimed at discouraging the Tribe from completing the Midles survey and from lawfully accessing Gold Coast-controlled tidelands for future surveys and harvests. *Id.* He threw the Tribal biologists' survey tools into the water. *Id.* He was disrespectful and threatening towards Tribal law enforcement officers. *Id.* He demonstrated a fixation about guns, both at the beach at afterwards at the March 3 conference where he spoke to Mr. Sparkman. *Id.*

Tribal staff have a well-founded fear of personal harm from Mr. Grout. Sparkman Dec. at ¶ 5; *see* Tribe's Ex. 23. While Mr. Grout was not present for the Tribal harvest, his racist comments (as described in Section II.D.2) indicate that Tribal harvesters are also at risk. The Tribe fully expects Mr. Grout to display this confrontational behavior again unless the Court finds him in civil contempt, and modifies the Consent Decree to keep him a safe distance from Tribal staff and harvesters, and to specifically prohibit him from engaging in such behaviors in the future. Without these remedies, the Tribe greatly fears for the safety of its staff and harvesters.

Mr. Grout is no stranger to the court system, having a history of civil and criminal charges that include displaying a weapon. (Tribe's Exs. 3, 37.) In 2013, after WDFW cited and fined him

1 for harvesting shellfish without having a valid harvest site certification, Mr. Grout began  
 2 following one of the WDFW officers. (Tribe's Ex. 4, 5, 31.) The officer obtained a temporary  
 3 restraining order that directed Mr. Grout stay at least 500 feet away from the officer and his  
 4 family. *Id.*

5 Additionally, the Skokomish Indian Tribe's Request for Dispute in Subproceeding No. 89-  
 6 3-12 describes additional disturbing behaviors by Mr. Grout. (Tribe's Ex. 31, which also further  
 7 describes the situation leading to the WDFW officer's protective order – including Mr. Grout's  
 8 preoccupation with and ownership of firearms; and a protection order against Mr. Grout obtained  
 9 by the owner of a family farm near Hood Canal.)

10 For these reasons, the Tribe asks that the Consent Decree be modified to require Mr.  
 11 Grout, in his personal and corporate capacity: (1) to maintain a physical distance of at least 500  
 12 feet from Tribal staff and harvesters at all times, and not engage in any face-to-face contact with  
 13 them; (2) not to harass, threaten harm, or otherwise intimidate Tribal staff and members; (3) not  
 14 to bring any weapons, including firearms, to beaches at which Tribal staff or harvesters are  
 15 present; and (4) to communicate with Tribal staff only by email, mail, fax or telephone.

16 **D. Sanctions Should Be Imposed for Mr. Grout's and Gold Coast's Violations of the**  
 17 **Consent Decree.**

18 District courts have broad discretion in determining appropriate sanctions in civil  
 19 contempt proceedings. *American Airlines*, 228 F.3d at 585. Though not expressly authorized by  
 20 statute, the law is clear that the court's inherent authority to compel compliance with its orders  
 21 affords a court with "broad equitable power to order appropriate relief in civil contempt  
 22 proceedings." *SEC v. Hickey*, 322 F.3d 1123, 1128 (9th Cir.2003). Among those equitable  
 23 powers is the authority to "award[ ] fees and expenses in civil contempt," notwithstanding the

traditional “American Rule.” *Golden Pisces, Inc. v. Fred Wahl Marine Const., Inc.*, 495 F.3d 1078 (9th Cir.2007) (“federal courts have created a limited set of equitable exceptions to the American Rule and will award attorneys' fees even in the absence of an applicable statutory or contractual provision when, for example, the losing party acted in bad faith or willfully disobeyed a court order”).

For the reasons described in Sections III.C.1 and 2, Gold Coast has violated the Consent Decree. Indications are that Gold Coast will continue these behaviors in the future. Civil sanctions are necessary to force Gold Coast to cease these activities, to compensate the Tribe for its time and effort and any other losses<sup>8</sup> occurred due to breach of this Court's Order, and to deter similar actions in the future to protect the Tribe’s Treaty rights and the public interest in community safety. The Tribe thus requests that this Court order Gold Coast to reimburse the Tribe for its attorneys' fees and court costs related to Gold Coast’s violation of the Consent Decree and these contempt proceedings.

**WHEREFORE**, the Tribe respectfully requests that this Court:

1. Issue an order directing C. Scott Grout, in his personal and corporate capacity, and Gold Coast Oyster LLC to appear before the Court to show cause, if any they have, at such time and place as the Court shall direct, why they should not be held in civil contempt for failure to comply with the Consent Decree, and subject to the related relief described herein;

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<sup>8</sup> If discovery reveals Mr. Grout / Gold Coast harvested or arranged for the harvests on the Midles tidelands (described in Section II.E), the Tribe intends to seek recoupment for its lost harvest opportunity and investment of staff and harvester time.



2. Following the issuance of the Order to Show Cause and an appropriate hearing, enter a judgment of civil contempt against C. Scott Grout, in his personal and corporate capacity, and Gold Coast Oyster LLC for violations of the Consent Decree;

3. Make factual findings as are necessary to require C. Scott Grout, in his personal and corporate capacity, and Gold Coast Oyster LLC to comply with the Consent Decree, including to protect the future safety of Tribal staff and harvesters by ensuring that: (1) C. Scott Grout shall maintain a physical distance of at least 500 feet from Tribal staff and harvesters at all times, and not engage in any face-to-face contact with them; (2) C. Scott Grout shall not harass, threaten harm, or otherwise intimidate Tribal staff and members; (3) C. Scott Grout shall not bring any weapons, including firearms, to beaches at which Tribal staff or harvesters are present; and (4) all communication between C. Scott Grout and Tribal staff shall be by email, mail, fax or telephone.

4. Amend the Consent Decree to protect the safety of Tribal harvesters and staff by incorporating the text in paragraph 3 above;

5. Require Mr. Grout and Gold Coast employees to submit to discovery, including depositions, to determine whether they harvested or arranged for the harvests of Manila clams on the Midles tidelands;

6. Require Gold Coast to sign a harvest plan for the Midles tideland as a prerequisite to cultivating or harvesting there;

7. Award the Tribe its attorneys' fees and court costs relating to C. Scott Grout's and Gold Coast's violation of the Consent Decree and this contempt proceeding; and

8. Grant any such other relief as the Court deems just and proper.

DATED this 22<sup>nd</sup> day of October, 2015.

Respectfully submitted,

Attorneys for the Squaxin Island Tribe

/s/Sharon Haensly

Sharon Haensly, WSBA No. 18158

Kevin Lyon, WSBA No. 15076

3711 SE Old Olympic Hwy

Shelton, WA 98584

Phone: 360.432.1771

Fax: 360.432.3699

E-Mail: [shaensly@squaxin.us](mailto:shaensly@squaxin.us)

[klyon@squaxin.us](mailto:klyon@squaxin.us)

### CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2015, I electronically filed the following with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the persons required to be served in this subproceeding whose names appear on the Master Service List: (1) Petition for Order to Show Cause Why C. Scott Grout and Gold Coast Oyster LLC Should Not be Held in Civil Contempt and Subject to Related Relief; (2) Memorandum in Support thereof; (3) Declaration of Eric Sparkman (with exhibits); (4) Declaration of Rana Brown (with Exhibit 22); (5) Declaration of Sharon Haensly; and (6) Proposed Order. I also certify that on October 22, 2015, I also caused to be deposited to regular U.S. mail copies of the Squaxin Island Tribe's Exhibit 22 (a video on disk) addressed to the Clerk of the Court for filing, as well as to Judge Strombom and interested parties.

s/Sharon Haensly

Sharon Haensly

Squaxin Island Legal Department

MEMORANDUM IN SUPPORT OF SQUAXIN ISLAND  
TRIBE'S PETITION FOR ORDER TO SHOW CAUSE  
WHY C. SCOTT GROUT AND GOLD COAST  
SHOULD NOT BE HELD IN CIVIL CONTEMPT - 17  
(No.C70-9213, Subproc. 89-3-10)

SQUAXIN ISLAND LEGAL DEPARTMENT  
3711 SE OLD OLYMPIC HWY  
SHELTON, WASHINGTON 98584  
360.432.1771