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Hualapai Indian Reservation

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

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

Plaintiffs,

vs.

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

Defendants.

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

Third-Party Plaintiffs,

vs.

HUALAPAI TRIBE,

Third-Party Defendant.

No. MC-\_\_\_\_\_

Case No. 2:13-cv-00596-JAD-GWF  
(Case pending in United States District  
Court, District of Nevada)

**MOTION TO QUASH  
DEFENDANTS/THIRD-PARTY  
PLAINTIFFS’ SUBPOENA TO  
PRODUCE DOCUMENTS,  
INFORMATION, OR OBJECTS**

**(Oral argument requested)**

Pursuant to Rule 45(d)(3), F.R.C.P., Gallagher & Kennedy, P.A. (“G&K”), on its own behalf and on behalf of The Hualapai Indian Tribe of the Hualapai Indian Reservation (“Tribe”), both of which make a special limited appearance solely for the purpose of this Motion, move to quash the Subpoena to Produce Documents, Information, or Objects dated February 12, 2015 (“Subpoena”), attached as **Exhibit 1** hereto.

### **NON-WAIVER OF SOVEREIGN IMMUNITY**

This special limited appearance of the Tribe and G&K is solely for purposes of moving to quash the Subpoena on grounds of sovereign immunity and privilege. Neither this Motion nor any preceding or subsequent appearance, pleading, document, writing, objection or conduct, shall constitute a waiver of any rights, protections or immunities, including, without limitation, sovereign immunity, defenses, set-offs, recoupments, or other matters to which the Tribe and G&K may be entitled under the Hualapai Constitution, the United States Constitution, or federal law. Based upon the foregoing, and in accordance with cases such as *Oklahoma Tax Comm’n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991), and its progeny, submission of this Motion is not a waiver of sovereign immunity, which is expressly reserved. Furthermore, any alleged waiver of sovereign immunity arising out of this Motion or any other participation in this proceeding, which is not conceded, may not be implied to extend beyond the express terms of the issues herein pursuant to cases such as *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), and its progeny.

#### **I. INTRODUCTION.**

In this action, Plaintiffs are suing Scutari & Cieslak and its principals (“S&C”) for defamation. The roots of this case start in 2003, when Grand Canyon Skywalk Development, LLC (“GCSD”) entered into an agreement with a Tribal corporation, ‘Sa’ Nyu Wa, Inc. (“SNW”), to manage an attraction owned by the Tribe known as the Grand Canyon Skywalk. In 2010, disputes arose between SNW and GCSD over management of the Skywalk. G&K represented SNW in negotiations with GCSD to resolve the disputes. When negotiations broke down, G&K and the Tribe anticipated that GCSD would sue the

1 Tribe and/or SNW and, given the high-profile nature of the Skywalk, that the litigation  
2 would generate significant public attention. Therefore, in March 2011, at G&K's  
3 suggestion the Tribe retained S&C to provide advice about media relations and to  
4 coordinate communications with the media about the dispute with GCSD.

5 As anticipated, GCSD began a litigation campaign shortly thereafter. On March  
6 30, 2011, GCSD sued the members of the Tribal Council and others in this court to  
7 prevent the Tribe from exercising its power of eminent domain to condemn GCSD's  
8 interest in the Skywalk management agreement. *Grand Canyon Skywalk Dev., LLC v.*  
9 *Vaughn, et al.*, 3:11-cv-08048-DGC ("*GCSD I*"). G&K represented the Defendants in  
10 *GCSD I*. On June 23, 2011, Judge Campbell dismissed *GCSD I* to allow GCSD to pursue  
11 its remedies in Hualapai Tribal Court.

12 On February 8, 2012, the Tribe filed an action in Tribal Court to condemn GCSD's  
13 interest in the Skywalk management agreement ("Condemnation Action"). The Tribe  
14 does not have a legal department, so G&K represented the Tribe in the Condemnation  
15 Action. Rather than defend the Condemnation Action in Tribal Court, on February 16,  
16 2012, GCSD filed a new Complaint and a Motion for Temporary Restraining Order in this  
17 court to enjoin SNW, Tribal Council members, and Tribal Court judges from continuing  
18 the eminent domain proceedings. *Grand Canyon Skywalk Dev., LLC v. 'Sa' Nyu Wa, et*  
19 *al.*, 3:12-cv-08030-DGC ("*GCSD II*"). On March 26, 2012, Judge Campbell stayed  
20 *GCSD II* to again allow GCSD to exhaust Tribal Court remedies. The ruling was affirmed  
21 in *Grand Canyon Skywalk Dev., LLC v. 'Sa' Nyu Wa Inc.*, 715 F.3d 1196 (9th Cir. 2013),  
22 *cert. denied sub nom. Grand Canyon Skywalk Dev., LLC v. Grand Canyon Resort Corp.*,  
23 134 S. Ct. 825 (2013). G&K represented the Tribe in *GCSD II*.

24 GCSD also filed lawsuits to confirm an arbitration award against SNW, *Grand*  
25 *Canyon Skywalk Development LLC v. 'Sa' Nyu Wa, Inc.*, Case 3:12-cv-08183-DGC, and  
26 to refer the Condemnation Action to arbitration, *Grand Canyon Skywalk Development*  
27 *LLC v. The Hualapai Indian Tribe of Arizona*, Case 3:13-cv-08054-DGC. G&K  
28 represented SNW and the Tribe in these cases, which were assigned to Judge Campbell.

1 During this time, the litigation was generating publicity, with each side issuing  
2 press releases and making statements to the media about the parties' relative positions.  
3 Some of the statements about the dispute between the parties were made or developed by  
4 S&C, which was communicating with G&K in G&K's capacity as attorneys for the Tribe  
5 in the various lawsuits.

6 On April 8, 2013, GCSD and others filed an action in Nevada District Court  
7 against Tribal Council members and S&C. *Grand Canyon Skywalk Dev., LLC v. Steele, et*  
8 *al.*, 2:13-cv-00596-RCJ-GWF ("Defamation Action"). GCSD alleged that the defendants  
9 made defamatory statements about its lack of performance under the Skywalk  
10 management agreement to justify the Tribe's use of eminent domain to condemn GCSD's  
11 contractual interest in the Skywalk management agreement. The Tribal Council members  
12 have been dismissed.

13 On October 16, 2014, S&C filed a Third-Party Complaint in the Defamation  
14 Action against the Tribe for indemnity, alleging that its statements were approved by the  
15 Tribe and/or the Tribe's counsel. G&K, on behalf of the Tribe, has moved to dismiss the  
16 Third-Party Complaint on grounds that the Tribe has sovereign immunity and that S&C  
17 failed to exhaust its Tribal Court remedies.

18 On February 12, 2015, S&C served a subpoena *duces tecum* on G&K  
19 ("Subpoena") for production of the following categories of documents:

- 20 1. Any and all DOCUMENTS AND ELECTRONICALLY STORED  
21 INFORMATION and FILES, regarding YOUR representation and/or  
22 communication with DEFENDANTS either directed to or received from  
DEFENDANTS by GALLAGHER & KENNEDY LAW FIRM.
- 23 2. Any and all DOCUMENTS AND ELECTRONICALLY STORED  
24 INFORMATION and FILES regarding YOUR representation and/or  
communication with DEFENDANTS.
- 25 3. A copy of all data stored, retrieved, downloaded, restored, reconstructed,  
26 removed, deleted, salvaged, regenerated and/or achieved from YOUR  
27 computer devices or YOUR storage media regarding communication  
28 between YOU and DEFENDANTS.

- 1 4. All documents relating to any communications between DEFENDANTS  
2 and GALLAGHER AND KENNEDY LAW FIRM with respect to YOUR  
3 representation and/or communication with DEFENDANTS whether  
electronically stored or in the FILE.

4 Subpoena, attached as Exhibit 1, at 4.

5 The Subpoena defines “GALLAGHER & KENNEDY LAW FIRM’s (‘YOUR’)  
6 representation and/or communication” as follows:

7 “GALLAGHER & KENNEDY LAW FIRM’s (‘YOUR’) representation  
8 and/or communication” means Gallagher & Kennedy Law Firm’s  
9 representation of the Hualapai Tribe in addition to its co-representation of  
10 DEFENDANTS to date. Moreover, this definition includes Gallagher &  
Kennedy Law Firm’s representation of the Hualapai Tribe and  
11 DEFENDANTS in the underlying Arbitration Case No.  
76 517 Y 00191 11S1M (entitled *In Re Matter of the Arbitration of Grand*  
12 Canyon Skywalk Development, LLC and ‘Sa’ Nyu Wa, Inc.) as well as in  
the negotiations and contract entered into by the Hualapai Tribe with  
13 DEFENDANTS on March 1, 2011 and then on March 5, 2012.

14 *Id.*

15 Reading these provisions together, S&C has subpoenaed G&K for communications  
16 with S&C concerning G&K’s representation of the Tribe in connection with the litigation  
17 against GCSD.<sup>1</sup> The Subpoena calls for production on March 13, 2015 in Phoenix. G&K  
18 timely objected to the Subpoena. As explained below, as the Tribe’s counsel, G&K has  
19 sovereign immunity from legal process in a federal civil lawsuit, which includes service of  
20 a subpoena requesting documents prepared in connection with the representation.

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23  
24 <sup>1</sup> G&K has never represented S&C, and communications between G&K and the Tribe clearly  
25 are privileged. Plaintiffs and S&C have indicated in the Defamation Action that they intend  
26 to take “numerous percipient witness depositions,” most of which “will be conducted in  
27 Arizona.” [Stipulation and Order to Extend Discovery Plan and Scheduling Order Dates and  
28 Deadlines, Doc. 89 at 7]. To the extent the parties intend to depose G&K attorneys or Tribal  
Council members, sovereign immunity also extends to subpoenas for depositions of Tribal  
counsel and Tribal Council members. By filing this motion, G&K and the Tribe reserve all  
objections and privileges they may have to any discovery directed against them.

1 **II. THE SUBPOENA SHOULD BE QUASHED BECAUSE G&K, AS TRIBAL**  
 2 **COUNSEL, HAS SOVEREIGN IMMUNITY.**

3 **A. The Tribe And The Tribe's Counsel Have Sovereign Immunity From**  
 4 **Legal Process, Including Service Of Subpoenas.**

5 The Tribe is a governmental body protected from legal process by sovereign  
 6 immunity. *Santa Clara Pueblo*, 436 U.S. at 58. Article XVI, Section 1, of the  
 7 Constitution of the Hualapai Indian Tribe (the "Hualapai Constitution") guarantees that  
 8 "the Tribe is immune from suit except to the extent that the Tribal Council expressly  
 9 waives sovereign immunity." Sovereign immunity applies even to the Tribe's commercial  
 10 activities that take place off Tribal lands and even when a contract with a Tribal entity  
 11 ostensibly gives the non-tribal party enforceable rights and remedies. *Kiowa Tribe of*  
 12 *Okla. v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 756 (1998); *Michigan v. Bay*  
*Mills Indian Cmty.*, 134 S. Ct. 2024 (2014).

13 The Tribe's sovereign immunity includes immunity from service of a subpoena for  
 14 production of documents in civil litigation. *United States v. James*, 980 F.2d 1314, 1319-  
 15 1320 (9th Cir. 1992) (because non-party tribe had immunity from service of subpoena for  
 16 production of documents district court was correct in quashing it); *Alltel Commc'ns, LLC*  
 17 *v. DeJordy*, 675 F.3d 1100, 1102 (8th Cir. 2012) (third-party subpoena in private civil  
 18 litigation is a "suit" for purposes of a tribe's common law sovereign immunity); *Bonnet v.*  
 19 *Harvest (U.S.) Holdings, Inc.*, 741 F.3d 1155, 1160 (10th Cir. 2014) (a subpoena *duces*  
 20 *tecum* served on the Tribe is a "suit" against the Tribe, triggering sovereign immunity).

21 In addition, the Tribe's sovereign immunity "extends to Tribal council members  
 22 and officers acting when acting in their official capacity and within the scope of their  
 23 authority." *Cook v. AVI Casino Enterprises, Inc.*, 548 F.3d 718, 727 (9th Cir. 2008), *cert.*  
 24 *denied*, 556 U.S. 1221 (2009), quoting *Linneen v. Gila River Indian Community*, 276 F.3d  
 25 489, 492 (9th Cir. 2002). G&K, as the Tribe's outside counsel, is within the class of  
 26 Tribal officers protected by immunity, whether it is framed as sovereign immunity or  
 27 executive immunity. *See Davis v. Littell*, 398 F.2d 83, 85 (9th Cir. 1968) (finding non-  
 28 member attorney protected by immunity from defamation action: "that a tribe finds it



1 necessary to look beyond its own membership for capable legal officers, and to contract  
 2 for their services, should certainly not deprive it of the advantages of the rule of privilege  
 3 otherwise available to it”).

4 As a consequence of its immunity, G&K is shielded from legal process for the  
 5 actions it took in communicating with S&C as representatives of the Tribe. In *Catskill*  
 6 *Dev. LLC v. Park Place Entertainment Corp.*, 206 F.R.D. 78 (S.D.N.Y. 2002), subpoenas  
 7 for production of documents and depositions were issued to two outside attorneys for the  
 8 St. Regis Mohawk Tribe, neither of whom were tribal members. Citing numerous cases  
 9 for the “general proposition” that “a tribe’s attorney, when acting within the scope of his  
 10 authority, is cloaked in the immunity of the tribe just as a tribal official is cloaked in that  
 11 immunity,” the court concluded that it was appropriate to quash the subpoenas to the non-  
 12 Indian attorneys. 206 F.R.D. at 91-92 (“The tribal sovereign immunity enjoyed by outside  
 13 counsel acting in their representative capacity cloaks Walker and Waterman from the  
 14 enforcement of these subpoenas as originally served”). *See also Great Western Casinos,*  
 15 *Inc. v. Morongo Band of Mission Indians*, 88 Cal. Rptr. 2d 828, 839 (App. 1999) (“The  
 16 non-Indian law firm and general counsel are similarly immune from suit for actions taken  
 17 or opinions given in rendering legal services to the tribe”).

18 **B. Because G&K’s Communications Were In Its Capacity As The Tribe’s**  
 19 **Representatives, G&K Has Sovereign Immunity For Actions Taken On**  
 20 **The Tribe’s Behalf.**

21 G&K was the Tribe’s counsel in all court cases involving GCSD, and the Tribe  
 22 retained S&C at G&K’s suggestion to handle public relations needs arising from the  
 23 litigation with GCSD. G&K’s communications with S&C were as representatives of the  
 24 Tribe in connection with GCSD’s lawsuits against the Tribe and SNW. Because the  
 25 communications were on the Tribe’s behalf and in the course of representing the Tribe,  
 26 G&K, like the outside counsel in *Catskill*, is cloaked with the sovereign immunity of the  
 27 Tribe and cannot be compelled to respond to the Subpoena.

28 ///

///

1 **III. CONCLUSION.**

2 For the foregoing reasons, the Subpoena should be quashed. A Proposed Order  
3 accompanies this Motion.

4 RESPECTFULLY submitted this 11th day of March, 2015.

5 GALLAGHER & KENNEDY, P.A.

6  
7 By: /s/ Jeffrey D. Gross

8 Jeffrey D. Gross  
9 Christopher W. Thompson  
10 2575 East Camelback Road  
11 Phoenix, Arizona 85016-9225  
12 Attorneys for The Hualapai Indian Tribe  
13 of the Hualapai Indian Reservation  
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**CERTIFICATE OF SERVICE**

I certify that on this 11th day of March, 2015, a true and correct copy of the *Motion to Quash Defendants/Third-Party Plaintiffs' Subpoena to Produce Documents, Information, or Objects* was mailed by regular U.S. Mail to:

Nicholas M. Wierczorek, Esq.  
Morris Polich & Purdy LLP  
500 South Rancho Drive, Suite 17  
Las Vegas, NV 89106-4847  
*Attorneys for Defendants/Third-Party Plaintiffs*  
*David John Cieslak, et al.*

Mark G. Tratos, Esq.  
Greenberg Traurig, LLP  
3773 Howard Hughes Parkway, Suite 400 North  
Las Vegas, NV 89169  
*Attorneys for Plaintiffs*

Thomas G. Ryan, Esq.  
Lewis Roca Rothgerber LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169  
*Counsel for Third-Party Defendant*  
*The Hualapai Indian Tribe of the Hualapai Indian Reservation*

/s/ Candice J. Cromer  
an employee of Gallagher & Kennedy, P.A.

# Exhibit 1

# Exhibit 1

AO 88B (Rev. 01/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises

UNITED STATES DISTRICT COURT

for the  
District of Arizona

Grand Canyon Skywalk Development LLC et. al

*Plaintiff*

v.

David John Cieslak et. al

*Defendant*

Civil Action No. 2:13-CV-596-JAD-GWF

(If the action is pending in another district, state where:

District of Nevada

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES

To: Custodian of Records and/or Dean C. Short, II, Esq. of Gallagher & Kennedy  
2575 East Camelback Road, Suite 1100, Phoenix, Arizona 85016

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

Please see Exhibit A

Place: Scutari & Cieslak Public Relations  
4144 N. 44th St., Suite A-2 Phoenix, Ariz. 85018  
Telephone: (602) 677-5422

Date and Time:  
03/13/2015 10:00 A.M.

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

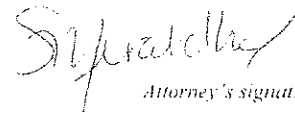
The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 2/12/2015

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR



Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* David John Cieslak, Peter "Chip" Scutari, Scutari & Cieslak Public Relations Inc., who issues or requests this subpoena, are: Morris Polich & Purdy LLP, Nicholas M. Wieczorek; 500 South Rancho Drive #17 Las Vegas, NV 89106  
Telephone: (702) 862-8300 E-mail: NWieczorek@mpplaw.com

AO 88B (Rev. 01/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises (Page 2)

Civil Action No. 2:13-CV-596-JAD-GWF

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)*  
was received by me on *(date)*

☐ I personally served the subpoena on the individual at *(place)*  
on *(date)*; or

☐ I left the subpoena at the individual's residence or usual place of abode with *(name)*  
a person of suitable age and discretion who resides there,  
on *(date)*, and mailed a copy to the individual's last known address; or

☐ I served the subpoena to *(name of individual)*, who is  
designated by law to accept service of process on behalf of *(name of organization)*  
on *(date)*; or

☐ I returned the subpoena unexecuted because; or

☐ other *(specify)*

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$

My fees are \$ for travel and \$ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date:

*Server's signature*

*Printed name and title*

*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction -- which may include lost earnings and reasonable attorney's fees -- on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises -- or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person -- except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

**EXHIBIT A**  
**TO SUBPOENA DUCES TECUM**

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In accordance with Federal Rules of Civil Procedure Rules 26 and 34, Defendants, by and through their counsel Morris Polich & Purdy LLP, hereby request production to Nicholas M. Wieczorek as specified below. Documents produced in response to this Subpoena Duces Tecum must adhere with the Definitions and Instructions as set forth below and conditions of Rule 34 of the Federal Rules of Civil Procedure. You have thirty days of service to comply with the specific production, unless alternative mutually agreed upon terms are reached.

The documents and things to be produced and being sought are described as follows:

**DEFINITIONS AND INSTRUCTIONS**

1. "Plaintiffs" refers to 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, including but not limited to, any parent and subsidiary companies, predecessors-in-interest, affiliated entities, members, agents, employees, servants, representatives, accountants, investigators, and attorneys of theirs.
2. "Defendants" means and includes DAVID JOHN CIESLAK, an individual; NICHOLAS PETER "CHIP" SCUTARI, an individual; SCUTARI & CIESLAK PUBLIC RELATIONS, INC., an Arizona Corporation, and each person and/or entity acting on its behalf, including, but not limited to, its parent and subsidiary companies, predecessors-in-interest, successors-in-interest, affiliated entities, officers, directors, partners, associates, shareholders, agents, employees, servants, representatives, accountants, investigators, and attorneys.

3. “You” or “Your” means the Responding Party—Gallagher & Kennedy Law Firm—and any person acting on that party’s behalf, including but not limited to, agents, attorneys, accountants, investigators, trustee, partners, and/or representatives.
4. AND/OR. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
5. “Document” or “Documents” mean each and every original or copy of words or information generated by printing, typing, longhand, electronic recording, or other process, regardless of the form thereof, and includes any kind of "writing" as defined by the Federal Rules of Evidence. Such documents include, but are not limited to, published materials, reports, correspondence, emails, records, memoranda, notices, notes, marginal notations, messages, teletype printouts, statements, books, studies, minutes, diagrams, drawings, maps, surveys, plans, charts, graphs, data, computer files, computer tapes, computer diskettes, computer printouts, computer hard drives, appointment books, telephone message tapes, telephone message slips, drafts, checks, money orders, invoices, billings, evaluations, photographs, audio tapes, and videotapes.
6. As used herein, the term "Document" and/or "Documents" includes, without limiting the generality of its meaning, all originals or copies where originals are unavailable, and non-identical copies (whether different from originals by reason of notation made on such copies or otherwise) of all written, recorded or graphic matter, however produced or reproduced, whether in hard copy or electronic format, whether or not now in existence, or correspondence, telegrams, notes or sound recordings of any type of conversation, meeting or conference, electronic mail or e-mail, minutes of meetings, memoranda, interoffice communications, studies, analyses, reports, spreadsheets, summaries and results of investigations and tests, reviews, contracts, agreements, working papers, tax returns, statistical records, ledgers, books of account, vouchers, bank checks, bank statements, invoices, receipts, computer data (including embedded data and metadata), stenographers' notebooks, journals, manuals, directives, bulletins, desk calendars,



appointment books, diaries, maps, charts, photographs, videos, plats, drawings, diagrams, or other graphic representations, logs, investigators' reports or papers similar to any of the foregoing, however denominated.

7. "Computer Devices" means any computer device, including but not limited to any computer, laptop, desktop, cellular phone, personal digital assistant, or "smart phone" used by GALLAGHER & KENNEDY LAW FIRM to communicate with DEFENDANTS.
8. "Documents and Electronically Stored Information". As used in this document, the term "Documents and Electronically Stored Information" means discoverable documents and data existing in electronic form consistent with Fed. R. Civ. P. 34(a), including by way of example and not by way of limitation (where relevant and not privileged) e-mail, calendars, word processing documents, spreadsheets, electronic slide presentations, databases, and other reasonably accessible electronically stored information relevant to the claims) or defense(s) of any party subject to discovery pursuant to Fed. R. Civ. P. 26(b)(1). Electronically Store Information includes, but is not limited to, data, emails, text messages and all other electronic files maintained by your firm or an agent providing such services to your firm, including all associated metadata, created by any computer device.
9. Documents that originally existed in electronic form that are produced in these proceedings shall be produced in electronic image form (described below) in the manner provided herein. Documents that originally existed in paper form may be produced in an electronic image form in the manner provided herein, produced in a paper form. Notwithstanding the foregoing provisions of this paragraph, the Producing Party reserves the right to request that an alternative format or method of production be used for certain documents and, in that event, the parties will meet and confer to discuss alternative production requirements, concerns, formats, methods and costs associated with same.
10. "FILE" and "FILES" means the complete file, folder, binder, or other filing system, and all documents contained therein as of the date of the deposition, and all documents not

physically in the file, folder, binder, or other filing system that are normally kept within the file, folder, binder, or other filing system in the normal course of business.

11. "GALLAGHER & KENNEDY LAW FIRM's ('YOUR') representation and/or communication" means Gallagher & Kennedy Law Firm's representation of the Hualapai Tribe in addition to its co-representation of DEFENDANTS to date. Moreover, this definition includes Gallagher & Kennedy Law Firm's representation of the Hualapai Tribe and DEFENDANTS in the underlying Arbitration Case No. 76 517 Y 00191 HSIIM (entitled *In Re Matter of the Arbitration of Grand Canyon Skywalk Development, LLC and 'Sa' Nyu Wa, Inc.*) as well as in the negotiations and contract entered into by the Hualapai Tribe with DEFENDANTS on March 1, 2011 and then on March 5, 2012.

**DOCUMENTS TO BE PRODUCED**

1. Any and all DOCUMENTS AND ELECTRONICALLY STORED INFORMATION and FILES, regarding YOUR representation and/or communication with DEFENDANTS either directed to or received from DEFENDANTS by GALLAGHER & KENNEDY LAW FIRM.
2. Any and all DOCUMENTS AND ELECTRONICALLY STORED INFORMATION and FILES regarding YOUR representation and/or communication with DEFENDANTS.
3. A copy of all data stored, retrieved, downloaded, restored, reconstructed, removed, deleted, salvaged, regenerated and/or achieved from YOUR computer devices or YOUR storage media regarding communication between YOU and DEFENDANTS.
4. All documents relating to any communications between DEFENDANTS and GALLAGHER AND KENNEDY LAW FIRM with respect to YOUR representation and/or communication with DEFENDANTS whether electronically stored or in the FILE.

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

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

Plaintiffs,

vs.

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

Defendants.

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

Third-Party Plaintiffs,

vs.

HUALAPAI TRIBE,

Third-Party Defendant.

No. MC-\_\_\_\_\_

Case No. 2:13-cv-00596-JAD-GWF  
(Case pending in United States District  
Court, District of Nevada)

**[PROPOSED] ORDER GRANTING  
MOTION TO QUASH  
DEFENDANTS/THIRD-PARTY  
PLAINTIFFS’ SUBPOENA TO  
PRODUCE DOCUMENTS,  
INFORMATION, OR OBJECTS**

1 The Court, having considered the Motion to Quash Defendants/Third-Party  
2 Plaintiffs' Subpoena to Produce Documents, Information, or Objects, and good cause  
3 appearing therefore:

4 **IT IS ORDERED** that the Motion to Quash Defendants/Third-Party Plaintiffs'  
5 Subpoena to Produce Documents, Information, or Objects is GRANTED.

6 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.  
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