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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

KPMG LLP, a Delaware Limited  
Liability Partnership,  
Plaintiff,

v.

KURT KANAM, individually and as  
Tribal Attorney for the Native Village  
of Karluk, and ORBIE MULLINS,  
individually and as Village of Karluk  
Tribal Court Judge for the Karluk Tribal  
Court for the Native Village of Karluk,  
Defendants.

Case No.: 3:15-CV- 00219-SLG

MEMORANDUM OF LAW IN  
SUPPORT OF KPMG LLP'S MOTION  
FOR SUMMARY JUDGMENT  
(RULE 56)

KPMG LLP'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
(Rule 56)

*KPMG LLP v. Kanam, et al.*, 3:15-cv-00129-SLG

## **TABLE OF CONTENTS**

	<b>Page</b>
I. INTRODUCTION .....	1
II. FACTUAL BACKGROUND .....	2
A. The Action against “KPMG Corp.” in Karluk Tribal Court .....	2
B. The Instant Litigation .....	3
III. ARGUMENT .....	6
A. The Karluk Tribal Court Lacks Jurisdiction over KPMG .....	7
B. The Court Should Grant Summary Judgment on KPMG’s Claim for Permanent Injunctive Relief .....	9
C. Declaratory Relief Is Warranted .....	12
IV. CONCLUSION .....	12

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Alaska v. Native Vill. Of Venetie Tribal Gov't</i> , 522 U.S. 520 (1998).....	7
<i>DePinto v. Provident Sec. Life Ins. Co.</i> , 374 F.2d 50 (9th Cir. 1967) .....	6
<i>Douglas Dynamics, LLC v. Buyers Prod. Co.</i> , 717 F.3d 1336 (Fed. Cir. 2013).....	11
<i>eBay Inc. v. MercExchange, L.L.C.</i> , 547 U.S. 388 (2006).....	9
<i>Ex Parte Young</i> , 209 U.S. 123 (1908).....	9
<i>Janus Capital Grp., Inc. et al. v. First Derivative Traders</i> , 131 S. Ct. 2296 (2011).....	3
<i>Koniag, Inc. and O’Connell v. Kanam, et al.</i> , 3:12-cv-00077-SLG (D. Alaska) .....	7, 8, 10
<i>Kurt Kanam Pilchuck Nation v. All active parties of U.S. v. Washington</i> , No. 3:12-mc-05019 (W.D. Wash.) .....	9
<i>Martins v. United States Citizenship &amp; Immigration Servs.</i> , 962 F. Supp. 2d 1106 (N.D. Cal. 2013) .....	10
<i>Maryland Cas. Co. v. Pac. Coal &amp; Oil. Co.</i> , 312 U.S. 270 (1941).....	12
<i>Montana v. United States</i> , 450 U.S. 544 (1981).....	7, 8
<i>Ollier v Sweetwater Union High Sch. Dist.</i> , 768 F.3d 843 (9th Cir. 2014) .....	6
<i>Plains Commerce Bank v. Long Family Land &amp; Cattle Co.</i> , 554 U.S. 316 (2008).....	8
<i>Santa Clara Pueblo v. Martinez</i> , 436 U.S. 49 (1978).....	9

<i>Unit Corp. v. TMI Ministries</i> , 5:14-cv-00070R, (W.D. Okla.) .....	9
<i>Williams v. Alioto</i> , 625 F. 2d 845 (9th Cir. 1980) .....	6, 12
<b>Rules &amp; Statutes</b>	
18 U.S.C. § 1151 .....	7
28 U.S.C. § 1291 .....	10
28 U.S.C. § 1331 .....	10
28 U.S.C. § 1362 .....	10
28 U.S.C. § 1441 .....	5
43 U.S.C. § 1618(a) .....	8
Alaska Native Claims Settlement Act (ANSCA) .....	1, 7
Alaska Stat. § 45.55.010 .....	3
Federal Rule of Civil Procedure 12(b)(6) .....	1
Federal Rule of Civil Procedure 56(a) .....	6

Plaintiff KPMG LLP (“KPMG”) submits this memorandum of law in support of its Motion for Summary Judgment on its claims for permanent injunctive relief and declaratory judgment.<sup>1</sup>

## **I. INTRODUCTION**

Plaintiff KPMG, a Delaware limited liability partnership that provides audit, tax and advisory services, filed the instant action on July 30, 2015, against Defendants Kurt Kanam and Orbie Mullins (collectively, “Defendants”), seeking to enjoin Defendants from continuing to purport to exercise the jurisdiction of the Karluk Tribal Court over KPMG in violation of federal common law. KPMG now seeks summary judgment on its claim for injunctive relief prohibiting Defendants from continuing to violate federal common law and its claim for declaratory judgment.

First, as this Court already recognized in granting KPMG’s Motion for Temporary Restraining Order and Preliminary Injunction, Defendants’ actions violate federal common law because the Karluk Tribal Court lacks jurisdiction over KPMG. Defendants have offered no evidence or other grounds for departing from the Court’s earlier orders. The Karluk Reservation was extinguished by the federal Alaska Native Claims Settlement Act (ANCSA), and the Village of Karluk Tribal Court thus lacks territorial jurisdiction. The undisputed facts establish that KPMG is not a member of the Village of Karluk and has not consented to jurisdiction or entered

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<sup>1</sup> To the extent that the Court deems Defendants’ Motion for Dismissal that was filed in Karluk Tribal Court, with a Karluk Tribal Court caption, and seeking an order from the Karluk Tribal Court (Dkt No. 30-1) to be a Motion to Dismiss filed in this Court, that motion should be denied because it fails to raise any legally cognizable argument as to why KPMG’s complaint in this action should be dismissed, and for the same reasons that KPMG’s Motion for Summary Judgment should be granted. Moreover, pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court should disregard any assertions made in Defendants’ Motion for Dismissal and Affidavit in Support to the extent they allege facts outside of the scope of KPMG’s Complaint.

into any consensual relationship that would allow the Karluk Tribal Court to exercise jurisdiction over non-member KPMG. The undisputed facts further establish that KPMG faces irreparable injury for which it lacks any remedy at law. Should Defendants continue to litigate their action against KPMG in the Karluk Tribal Court and secure an adverse judgment, KPMG will suffer irreparable harm to its reputation and business, and a violation of its constitutional due process rights. Defendants, on the other hand, face no hardship if enjoined because they can never proceed against KPMG in Karluk Tribal Court in any alleged dispute arising from the facts of the Karluk Tribal Complaint. An order enjoining Defendants' actions will further the significant public interest in maintaining a system of well-functioning tribal courts in which tribal members and the general public can have trust and confidence, as well as affirm the public's confidence and reliance on clear Supreme Court precedent on this issue.

Second, KPMG is entitled to summary judgment on its claim for declaratory judgment. Defendants' actions have created a real and substantial controversy between the parties, which an order declaring that the Karluk Tribal Court lacks jurisdiction over KPMG, in conjunction with the entry of a permanent injunction, would resolve.

Accordingly, KPMG respectfully requests that the Court grant KPMG's Motion for Summary Judgment.

## **II. FACTUAL BACKGROUND**

### **A. The Action against "KPMG Corp." in Karluk Tribal Court.**

On July 3, 2015, Defendant Kurt Kanam (Kanam), purporting to act on behalf of the People of the United States, the Karluk Tribal Council and the Karluk Native Corporation, filed a complaint against "KPMG Corp." ("Tribal Court Complaint") in the Karluk Tribal Court for the

Native Village of Karluk (“Karluk Tribal Court”).<sup>2</sup> In the Tribal Court Complaint, Kanam purports to seek entry of a judgment against KPMG Corp. for over \$10 million to be paid to the People of the United States.<sup>3</sup> The sole substantive allegation regarding KPMG in the Tribal Complaint asserts that: “KPMG falsely claimed that Koniag Inc [*sic*] acquired lands in a merger in the Koniag Inc [*sic*] annual financial statement. Attachment F (Annual financial report page 9).”<sup>4</sup> Based on this one allegation, a representation that notably was not even made by KPMG, the Tribal Court Complaint asserts, *inter alia*, that “KPMG is liable to the people of the United States the over \$10,000,000 paid to Koniag Inc [*sic*] in the July 31, 2002 Master agreement for certain lands and resources between Koniag Inc [*sic*] and the State of Alaska.”<sup>5</sup> Defendant Judge Orbie Mullins (Mullins), Village of Karluk Tribal Judge, issued an Order to Show Cause directing KPMG Corp. to show cause “within 10 days and by 7-30-15” why the Tribal Court should not grant the relief sought in the Tribal Court Complaint.<sup>6</sup>

**B. The Instant Litigation.**

In response to the Karluk Tribal Court Action, KPMG filed this action on July 30, 2015, seeking injunctive relief ordering Defendants to cease violating federal common law through their efforts to assert the jurisdiction of the Karluk Tribal Court over KPMG and a declaratory

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<sup>2</sup> Dkt. No. 6-2 (Declaration of George E. Greer in Support of Plaintiff KPMG LLP’s Motion for Temporary Restraining Order and Preliminary Injunction (“Greer Decl.”), Ex. B. (Tribal Court Complaint)).

<sup>3</sup> *Id.* at 10.

<sup>4</sup> *Id.* at 7.

<sup>5</sup> *Id.* at 8. Because KPMG did not make the alleged misstatement in question, Karluk would not have any legally cognizable claim for “securities fraud” against KPMG under Alaska state or federal law. *See, e.g., Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S. Ct. 2296 (2011) (holding liability for securities fraud under Section 10b may only attach to “maker” of alleged misstatement); Alaska Stat. § 45.55.010 (prohibiting persons from “mak[ing] an untrue statement of a material fact...”).

<sup>6</sup> *Id.* at 11.

judgment.<sup>7</sup> KPMG concurrently filed a Motion for Temporary Restraining Order and Preliminary Injunction.<sup>8</sup> Defendant Kanam was personally served with the Summons, Complaint, the Motion for Temporary Restraining Order and Preliminary Injunction, and supporting documents on August 3, 2015.<sup>9</sup> Defendant Mullins was personally served with the same documents on August 5, 2015.<sup>10</sup>

On August 6, 2015, the Court entered a temporary restraining order and scheduled a hearing on the Motion for Preliminary Injunction for August 14, 2015.<sup>11</sup> That order was served on Defendants via USPS First Class Mail, Federal Express, and e-mail on August 6, 2015.<sup>12</sup>

Prior to the preliminary injunction hearing, and in violation of the temporary restraining order issued by this Court, Defendants served on KPMG a Notice of Removal, a Motion for Dismissal, an Order to Show Cause, a [Proposed] Order of Dismissal and an Order Granting Special and Limited Appearance Pro Hac Vice for James E. Torgerson, all of which were filed in the Karluk Tribal Court.<sup>13</sup> The Notice of Removal purports to remove this action from the United States District Court to the “Native village [sic] of Karluk Tribal Court.”<sup>14</sup> The Motion for Dismissal requests that the Karluk Tribal Court dismiss the purportedly removed action on the grounds that “Koniag Inc s [sic] December 10, 1980 merger of NU-Nachk pit and Karluk Native Corp into Koniag Inc. contains securities fraud” and “KPMG has certified a financial

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<sup>7</sup> Dkt. No. 1 (Complaint).

<sup>8</sup> Dkt. No. 3 (KPMG LLP’s Motion for Temporary Restraining Order and Preliminary Injunction).

<sup>9</sup> Dkt. No. 9 (Affidavit of Service on Defendant Kanam).

<sup>10</sup> Dkt. No. 18 (Affidavit of Service on Defendant Mullins).

<sup>11</sup> Dkt. No. 21 (Temporary Restraining Order).

<sup>12</sup> Dkt. No. 24 (Proof of Service for Temporary Restraining Order).

<sup>13</sup> Dkt. No. 27-1 (Supplemental Declaration of Charles J. Ha in Support of Plaintiff KPMG’s Motion for Temporary Restraining Order and Preliminary Injunction, Ex. A).

<sup>14</sup> *Id.* at 2.



statement that Koniag's 19080 [*sic*] merger is valid when all parties admit that it contains securities fraud."<sup>15</sup> In response to the Motion for Dismissal, the Karluk Tribal Court issued an Order to Show Cause, dated August 9, 2015, ordering that KPMG LLP appear before the Karluk Tribal Court "within 30 days, by September 10, 2015," to show why the Motion for Dismissal should not be granted.<sup>16</sup>

On August 13, 2015, Defendants provided a copy of the "removal" and related Karluk Tribal Court papers to the Court, and the Clerk of the Court docketed the Motion for Dismissal that Defendants filed in Karluk Tribal Court as a Motion to Dismiss filed in this Action, even though the motion papers were clearly directed to the Karluk Tribal Court, and do not assert any cognizable legal grounds for dismissal of this action.<sup>17</sup> KPMG filed a Response to the Notice of Removal with this Court on August 19, 2015, contending that Defendants' requested relief of "removal" of KPMG's federal action from this Court to the Karluk Tribal Court was not cognizable under 28 U.S.C. § 1441. The Clerk's office docketed KPMG's response as an Opposition to Defendants' Motion to Dismiss.<sup>18</sup>

Choosing to proceed in the Karluk Tribal Court in violation of the Court's Temporary Restraining Order as opposed to defending this action in this forum, Defendants did not appear at the August 14, 2015 hearing on KPMG's Motion for Preliminary Injunction.<sup>19</sup> On the same date, after the conclusion of the hearing, the Court issued a preliminary injunction.<sup>20</sup> Defendants have

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<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.* at 8.

<sup>17</sup> See Dkt. No. 30 (Karluk Tribal Court Notice of Removal, Motion to Dismiss, Order to Show Cause, Order of Admission).

<sup>18</sup> Dkt. No. 31 (Response to Notice of Removal).

<sup>19</sup> Dkt. No. 28 (Minute Order re Preliminary Injunction Hearing).

<sup>20</sup> *Id.*, Dkt. No. 29 (Preliminary Injunction).

not answered or filed a response to the complaint that address any of KPMG's claims in this Action.

On September 8, 2015, KPMG received a Notice of Appeal, Appellant Brief and related papers via First Class Mail.<sup>21</sup> Because Defendants' Notice of Appeal is filed with respect to the Court's interlocutory Order Granting Plaintiff KPMG LLP's Motion for Preliminary Injunction, dated August 14, 2015, the Court retains jurisdiction over this action while Defendants' appeal is pending.<sup>22</sup>

### III. ARGUMENT<sup>23</sup>

A party is entitled to summary judgment, pursuant to Federal Rule of Civil Procedure 56(a), when the moving party demonstrates that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.<sup>24</sup> Here, the Court should grant KPMG's Motion for Summary Judgment on its claims for permanent injunctive relief and declaratory relief because there are no material disputes of fact and: (1) the Karluk Tribal Court lacks jurisdiction over KPMG as a matter of law, (2) KPMG has satisfied the conditions for entry

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<sup>21</sup> Dkt. No. 32 (Notice of Appeal).

<sup>22</sup> See, e.g., *Williams v. Alioto*, 625 F.2d 845 (9th Cir. 1980) (holding district court retains jurisdiction pending appeal of interlocutory order granting preliminary injunction); *DePinto v. Provident Sec. Life Ins. Co.*, 374 F.2d 50, 51 n. 2 (9th Cir. 1967) ("An appeal from an interlocutory order . . . does not divest the trial court of jurisdiction to continue with other phases of the case.").

<sup>23</sup> The facts and legal authorities supporting KPMG's Motion for Summary Judgment are largely the same as those set forth in KPMG LLP's Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction, and will not be repeated in their entirety here to avoid burdening the Court. KPMG, however, incorporates by reference the papers supporting its Motion for Temporary Restraining Order and Preliminary Injunction. See Dkt. Nos. 4 (KPMG LLP's Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction), 5 (Declaration of Elizabeth M. Stuart in Support of Plaintiff KPMG LLP's Motion for Temporary Restraining Order and Preliminary Injunction) ("Stuart Decl."), 6 (Greer Decl.).

<sup>24</sup> *Ollier v Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 854 (9th Cir. 2014).

of a permanent injunction; and (3) declaratory relief would resolve an immediate and substantial controversy between the parties.

**A. The Karluk Tribal Court Lacks Jurisdiction over KPMG.**

As this Court has already found in granting KPMG's Motion for a Temporary Restraining Order and for Preliminary Injunctive Relief, the Karluk Tribal Court lacks jurisdiction over KPMG.<sup>25</sup>

First, the Karluk Tribal Court lacks territorial jurisdiction. The Karluk Reservation was extinguished by the ANCSA and there is no dependent Indian community constituting "Indian country" as defined in 18 U.S.C. § 1151 over which Karluk exercises territorial sovereignty over nonmembers.<sup>26</sup> This Court reached the same conclusion in *Koniag, Inc. v. Kanam*, a related action that was also filed in this Court.<sup>27</sup>

Second, the Karluk Tribal Court lacks jurisdiction over KPMG because KPMG is not a member of the Village of Karluk and has not consented to the jurisdiction of the Karluk Tribal Court.<sup>28</sup> In *Montana v. United States*, the Supreme Court held that the assertion of tribal jurisdiction over nonmembers is "presumptively invalid" with two limited exceptions.<sup>29</sup> These exceptions, however, only confer jurisdiction over nonmembers with respect to activities conducted on an Indian tribe's reservation. Because Congress divested Karluk of "Indian

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<sup>25</sup> Dkt. Nos. 21 at 2, 29 at 2.

<sup>26</sup> *Alaska v. Native Vill. Of Venetie Tribal Gov't*, 522 U.S. 520, 523-24 (1998).

<sup>27</sup> Case No. 3:12-cv-00077-SLG, (D. Ala.) Dkt. No. 31 (Decision and Order Granting Preliminary Injunction, July 3, 2012).

<sup>28</sup> Dkt. Nos. 21 at 2, 29 at 2. Indeed, none of the materials that Defendants filed with this Court or the Karluk Tribal Court related to this matter allege or even suggest that KPMG is a member of the Karluk tribe. *See* Dkt. Nos. 30, 32.

<sup>29</sup> 450 U.S. 544 (1981).

country” by revoking the Karluk Reservation,<sup>30</sup> the *Montana* exceptions cannot apply to this action.<sup>31</sup>

Third, even if Karluk did still possess a reservation (which it does not), the *Montana* exceptions would still not apply. KPMG has not entered into any agreement or arrangement to provide services to Karluk or the Karluk Tribal Council that could potentially be interpreted as constituting a consensual relationship with Karluk through commercial dealing, contracts, leases or otherwise.<sup>32</sup> Moreover, KPMG is solely alleged to have made a single statement in Koniag’s 2012 Annual Report regarding the Karluk merger,<sup>33</sup> which cannot conceivably be viewed as menacing the “political integrity, the economic security, or the health or welfare of the [Karluk] tribe.”<sup>34</sup>

Thus, the undisputed facts demonstrate that the Karluk Tribal Court lacks jurisdiction over KPMG, and that Defendants’ efforts to exercise such jurisdiction violate federal common law.<sup>35</sup>

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<sup>30</sup> 43 U.S.C. § 1618(a).

<sup>31</sup> “[T]hese *Montana* exceptions confer jurisdiction over non-Indians only with respect to activities on the Indian tribe’s reservation, including land within reservation borders that has been sold in fee simple to non-Indian owners [non-Indian lands].” *Koniag, Inc. v. Kanam, et al.*, 3:12-cv-00077-SLG (D. Ala. July 3, 2012), Dkt. No. 31 at 9.

<sup>32</sup> Dkt. No. 5 (Stuart Decl., ¶ 3). Again, none of the materials that Defendants filed here or in the Karluk Tribal Court related to this matter allege or even suggest that KPMG entered into any agreement or arrangement to provide services to Karluk or any other consensual relationship. *See* Dkt. Nos. 30, 32.

<sup>33</sup> Dkt. No. 6-2 (Greer Decl., Ex. B. at 7); *see also* Dkt. Nos. 30, 32.

<sup>34</sup> *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 341 (2008) (“The conduct must do more than injure the tribe, it must ‘imperil the subsistence’ of the tribal community.”).

<sup>35</sup> Courts have reached a similar result in other actions involving Defendants, who are frequent litigants in the Karluk Tribal Court and federal court. For example, in addition to the *Koniag* matter described above, the District Court for the Western District of Oklahoma similarly enjoined Defendants from exercising the jurisdiction of a tribal court for the “Kikiallus Nation” (which is not a federally recognized tribe), in an attempt to secure the transfer various oil and gas (continued . . .)

**B. The Court Should Grant Summary Judgment on KPMG's Claim for Permanent Injunctive Relief.**

A permanent injunction may issue where a plaintiff establishes: (1) irreparable injury; (2) inadequate remedies available at law; (3) the balance of hardships weighs in its favor; and (4) the public interest would not be disserved by a permanent injunction.<sup>36</sup> Here, KPMG has established each of these elements and a permanent injunction should be entered.<sup>37</sup>

First, there is no material factual dispute that KPMG will face irreparable harm in the absence of a permanent injunction. Defendants' filings in the Karluk Tribal Court, particularly the Orders to Show Cause issued on July 3, 2015 and August 9, 2015, strongly indicate that the Karluk Tribal Court will likely enter judgment against KPMG in the absence of injunctive relief. As a public accounting firm, KPMG's reputation is critical to its business, and an adverse judgment (even though invalid), would irreparably damage that reputation.<sup>38</sup> An adverse judgment entered against it by the Karluk Tribal Court could well impose a significant burden on KPMG with respect to its existing and potential relationships (business or otherwise) with the

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(. . . continued)

leases. Order and Permanent Injunction, *Unit Corp. v. TMI Ministries*, 5:14-cv-00070-R (W.D. Okla. June 13, 2014), Dkt. No. 25 (Order and Permanent Injunction).

As another example, Defendants have attempted to use the Karluk Tribal Court to declare various rights of the Pilchuck Nation (also not a federally recognized tribe) including that Kurt Kanam (formerly known as Kurt Weinreich), who was adopted in 2008 by a descendant of an aboriginal chief of the Pilchuck Tribe, was granted "complete control of the Pilchuck government, and its members." *Kurt Kanam Pilchuck Nation v. All active parties of U.S. v. Washington*, No. 3:12-mc-05019 (W.D. Wash. Apr. 16, 2012), Dkt. No. 1.

<sup>36</sup> *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

<sup>37</sup> *Ex Parte Young*, 209 U.S. 123 (1908), authorizes suits for prospective injunctive relief against persons who are fulfilling public roles in both their official and individual capacities, to enjoin the actions of such persons that would violate federal law. While "Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers," "an officer of [an Indian tribe] ... is not protected by the tribe's immunity from suit." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58-59 (1978) (referencing *Ex Parte Young*).

<sup>38</sup> Dkt. No. 5 (Stuart Decl., ¶ 4).

State of Alaska, state and local governmental agencies, Alaska Native Corporations and other public and private clients.<sup>39</sup> Moreover, the Tribal Court's continuing unlawful attempts to assert jurisdiction over KPMG would violate KPMG's due process rights,<sup>40</sup> and independently cause irreparable harm.<sup>41</sup>

Second, KPMG has inadequate remedies at law. It could not appeal a judgment entered by the Karluk Tribal Court to a federal or state court, despite the fact that such a judgment would be the result of an unlawful exercise of jurisdiction.<sup>42</sup> Moreover, KPMG could not be adequately compensated by a monetary judgment for the harm that it would suffer to its reputation in the likely event of an adverse judgment entered by the Karluk Tribal Court.<sup>43</sup>

Third, the balance of hardships tips strongly in KPMG's favor.<sup>44</sup> While KPMG faces irreparable harm to its reputation and constitutional rights in the absence of injunctive relief, Defendants face nothing more than the inability to continue with their unlawful efforts to assert

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<sup>39</sup> *Id.*

<sup>40</sup> At the preliminary injunction hearing, the Court raised the question of whether KPMG could appear in the Karluk Tribal Court now that it has issued an order granting James Torgerson, one of KPMG's attorneys, the ability to make a special and limited pro hac vice appearance. First, that order may have permitted Mr. Torgerson to practice in the Karluk Tribal Court on a special, limited basis (assuming he met certain conditions), but it did not allow KPMG to make a special, limited appearance for the purpose of contesting jurisdiction. Second, based on Judge Mullins' prior rulings, even a special limited appearance appears to be construed by the Karluk Tribal Court as consent to jurisdiction. *Koniag, Inc. v. Kanam*, Dkt. No. 31 at 3, n. 15. Making such an appearance would force KPMG to surrender its due process rights, which in itself would constitute irreparable injury. *Martins v. United States Citizenship & Immigration Servs.*, 962 F. Supp. 2d 1106, 1125-26 (N.D. Cal. 2013) ("[I]t is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury.") (internal quotations omitted) (citing *Ortega Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)).

<sup>41</sup> *Id.* (holding deprivation of due process rights constitutes irreparable injury).

<sup>42</sup> Federal district courts have original, but not appellate jurisdiction, over actions brought by federally recognized tribes raising a federal question. *See* 28 U.S.C. §§ 1331 and 1362. Likewise, federal courts of appeals do not have appellate jurisdiction over tribal court actions. *Compare* 28 U.S.C. § 1291.

<sup>43</sup> *Douglas Dynamics, LLC v. Buyers Prods. Co.*, 717 F.3d 1336, 1345 (Fed. Cir. 2013).

<sup>44</sup> Dkt. Nos. 21 at 3-4, 29 at 3-4.



jurisdiction over KPMG. Moreover, Defendants, can choose to assert their claims<sup>45</sup> against KPMG in another forum of competent jurisdiction and therefore would still have an opportunity to have their claims heard.<sup>46</sup>

Finally, public policy considerations of upholding federal law and the integrity of the judicial process strongly support the entry of permanent injunctive relief. As the Court has recognized, the general public has an interest in being protected from unlawful assertion of tribal jurisdiction over nonconsenting non-tribal members.<sup>47</sup> The ongoing actions of Defendants are also a detriment to the well-functioning tribal court system, in which tribal members and the general public otherwise have trust and confidence. Moreover, the entry of such an order will avoid creating confusion regarding otherwise well-settled Supreme Court precedent regarding the jurisdiction of tribal courts.

Accordingly, the Court should enter a permanent injunction: (a) enjoining Defendants from exercising the Karluk Tribal Court's jurisdiction over KPMG in the Tribal Court Case, (b) enjoining Defendants from enforcing or attempting to enforce any "order" entered by the Karluk Tribal Court against KPMG, and (c) directing Defendants to dismiss with prejudice the action pending in Karluk Tribal Court styled: *The People of the United States Kurt Kanam ex rel The Karluk Tribal Council the Karluk Native Corporation v. KPMG Corp.*, Cause No. 07-03-15-1.<sup>48</sup>

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<sup>45</sup> KPMG does not concede that Defendants' allegations, even if true and brought in an appropriate forum, plead a cognizable claim under federal or state law.

<sup>46</sup> Dkt. No. 4 at 17.

<sup>47</sup> Dkt. Nos. 21 at 4, 29 at 4. None of the Defendants' materials set forth any allegations or facts that establish that any public policy that would weigh against injunctive relief. *See* Dkt. Nos. 30, 32.

<sup>48</sup> As noted above, the Court retains jurisdiction to enter such an order notwithstanding Defendants' interlocutory appeal from the Court's Order Granting Plaintiff KPMG LLP's Motion for Preliminary Injunction. *See, e.g., Williams*, 625 F. 2d 845 (holding district court retains jurisdiction pending appeal of interlocutory order granting preliminary injunction);

**C. Declaratory Relief Is Warranted.**

For the avoidance of any doubt regarding the legal rights of the parties, the Court should also enter a declaratory judgment declaring that the Karluk Tribal Court lacks jurisdiction over KPMG in connection with the allegations contained in the Karluk Tribal Complaint.

It is well-settled that a declaratory judgment may be entered where there is a substantial controversy, real and immediate, between two parties having adverse legal interests.<sup>49</sup> Here, a real and immediate, substantial controversy between KPMG and Defendants clearly exists. Defendants seek to have the Karluk Tribal Court exercise jurisdiction over KPMG, as evidenced by the Tribal Court Complaint, the invalid removal, and the orders to show cause.<sup>50</sup> KPMG contends that Defendants' attempts to exercise such jurisdiction are a violation of federal common law. An order declaring that the Karluk Tribal Court lacks jurisdiction over KPMG, together with the entry of a permanent injunction, would resolve the parties' dispute.

**IV. CONCLUSION**

For the foregoing reasons, KPMG respectfully requests that the Court grant KPMG's Motion for Summary Judgment and deny Defendants' Motion to Dismiss.

DATED: September 17, 2015

By: /s/ James E. Torgerson  
JAMES E. TORGERSON  
(BAR NO. 8509120)

Attorney for Plaintiff

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<sup>49</sup> *Maryland Cas. Co. v. Pac. Coal & Oil. Co.*, 312 U.S. 270, 273 (1941).

<sup>50</sup> See Dkt. Nos. 6-2, 30, 30-1, 30-2.



### **CERTIFICATE OF SERVICE**

I hereby certify that on September 17, 2015, I filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States District Court – District of Alaska by using the CM/ECF system. I further certify that Defendants were served same date via U.S. First Class Mail as follows:

Mr. Kurt Kanam  
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Honorable Orbie Mullins  
Village of Karluk Tribal Judge  
Native Village of Karluk  
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/s/ James E. Torgerson  
James E. Torgerson

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