

Hon. Brian McDonald
Defendants' Motion for Summary Judgment
Noted for Hearing: Friday, August 14, 2020
With Oral Argument 10:00 AM

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

GALANDA BROADMAN, PLLC, a
Washington professional limited liability
company,

Plaintiff,

v.

KILPATRICK TOWNSEND &
STOCKTON LLP, a foreign limited
liability company; ROB ROY EDWARD
STUART SMITH, an individual; and
RACHEL SAIMONS, an individual,

Defendants.

No. 19-2-16870-6 SEA

DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT

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I. INTRODUCTION AND RELIEF REQUESTED

Plaintiff Galanda Broadman, PLLC (“GB”), a Seattle law firm, filed this lawsuit against Defendants Rob Roy Edward Stuart Smith, Rachel Saimons, and Kilpatrick Townsend & Stockton LLP (collectively “KTS”) because Gabriel Galanda, one of GB’s founding lawyers, does not like that Mr. Smith, a non-Native American lawyer, represents Native American tribes. Mr. Smith is the Managing Partner of KTS’s Seattle office and the co-team leader of the firm’s Native American Practice Group. Ms. Saimons is one of his colleagues who focuses her practice on Native American affairs and labor and employment-related matters.

Through this meritless lawsuit, GB seeks to punish KTS—one of its “rivals” in Mr. Galanda’s own words—for the Nisqually Indian Tribe’s (the “Tribe”) decision to terminate GB as one of the Tribe’s outside counsel. There is no legal basis for GB’s claim against KTS based on the decision of a third-party client (here, the Tribe) to end its attorney-client relationship with GB, a decision that the Rules of Professional Conduct make clear is the client’s choice to make at any time and for any reason.

In this lawsuit for tortious interference and violation of the Washington Consumer Protection Act (“CPA”), GB claims that KTS is responsible for the Tribe’s decision to terminate GB because, during the course of a special prosecution investigation the Tribe hired KTS to perform relating to the termination of the Tribe’s former legal director Leona Colegrove (a personal and professional acquaintance of Mr. Galanda’s), KTS allegedly made false statements about GB to the Tribe. Specifically, GB bases its Complaint on the following three statements: (1) written statements KTS made in a privileged and confidential report provided to the Tribe outlining the findings of its investigation; (2) privileged and confidential statements Mr. Smith and Ms. Saimons made to the Tribe during a presentation of their investigation findings made *after* the Tribe had

1 already terminated GB; and (3) a statement referencing GB in a footnote in the bar
2 complaint the Tribe filed against Ms. Colegrove *after* KTS's investigation.

3 There are numerous fatal flaws with GB's claims. First, GB lacks admissible
4 evidence to support its claims. The first two challenged statements are privileged and
5 confidential, and the Tribe has not waived its attorney-client privilege. Dkt. 6. Thus, GB
6 lacks admissible evidence of what KTS said to the Tribe about the substance of its
7 investigation or KTS's recommendations. The third statement, a reference to GB in the
8 bar complaint against Ms. Colegrove, is likewise not actionable because (without waiver
9 of the privilege) there is no evidence of who drafted it and it is a statement of the Tribe,
10 not KTS. Second, there is no evidence of damages or causation. In particular, the second
11 or third statements could not have caused the Tribe's termination of GB given that they
12 occurred after GB's termination. In addition, by pursuing this frivolous lawsuit, GB
13 ignores the critical fact that under Washington law and the terms of GB's contract with the
14 Tribe, the Tribe was permitted to fire GB at any time for any reason. Third, as to the final
15 statement (even if GB could prove KTS made the statement, or that it caused damage),
16 GB cannot show that KTS or the Tribe lacked a reasonable basis to make the statement.

17 Separate and apart from the fact that GB lacks admissible evidence to meet its
18 burden of proof on nearly all elements of its claims, even if GB could make out a prima
19 facie case of either claim, GB's claims would still fail because they are an improper
20 collateral attack on the Tribe's decision to terminate GB. This Court has no jurisdiction
21 over these claims as they relate entirely to the Tribe's self-governance and sovereignty.

22 Because GB cannot establish multiple elements of either claim and because this
23 Court has no jurisdiction, KTS respectfully requests that the court grant its motion for
24 summary judgment and dismiss GB's meritless lawsuit with prejudice.
25
26

II. FACTS

A. The Tribe Hires GB as Outside Counsel Because of the Legal Director's Long-Standing Personal and Professional Relationship with Mr. Galanda

On May 19, 2015, Leona Colegrove was hired as the Tribe's Legal Director. **Ex. A** at 1.¹ Because of her long-standing personal and professional relationship with Gabriel Galanda, Ms. Colegrove brought GB on board to perform some outside counsel work for the Tribe. **Ex. B** at 36:23–37:20; *id.* at 14:10–14. In fact, before Ms. Colegrove was even formally hired as the legal director, she was already recruiting GB to perform outside counsel work for the Tribe. **Ex. C** (Ms. Colegrove email to Mr. Galanda on May 5, 2015 asking Mr. Galanda to work for the Tribe and Mr. Galanda responding: "Thanks as always for looking out for me."). Mr. Galanda and Ms. Colegrove met during law school, worked together at Williams Kastner in the early 2000s, and have maintained a personal and professional relationship over the past ten years. **Ex. B** at 14:10–19:12 (testimony about the nature and extent of their relationship). They "have each other's backs" and Mr. Galanda tries to "look out for what's in [Ms. Colegrove's] best interest when given the opportunity." *Id.* at 19:2–12; **Ex. C**.

GB entered into a contract for professional services with the Tribe on June 25, 2015. **Ex. D**. The contract was limited in duration and scope and was terminable with or without cause upon 30 days' notice by either party. *Id.* ¶¶ 4, 5, 9. It also capped GB's fees and there was no guarantee GB would be entitled to a specified amount of money or work. *Id.* ¶ 6; **Ex. B** at 39:11–40:13.

The Tribe renewed its contract with GB in 2016 and 2017. **Exs. E; Ex. F**. Like the 2015 contract, the 2016 and 2017 contracts were limited in duration, scope, and value, and provided that either party could terminate the contract for any reason. *Id.* The contracts also made clear that information and documents generated by GB in connection

¹ Exhibits A–W cited herein are attached to the Declaration of Leslie E. Barron.

1 with its work for the Tribe “are the sole property of the tribe and may not be used in any
2 reports, publications or other documents public or private.” **Ex. F** ¶ 12. Ms. Colegrove
3 facilitated the agreements and oversaw GB’s work for the Tribe. **Ex. B** at 36:23–37:20;
4 **Ex. E** at 3–4.

5 From 2015 until GB was terminated in 2018, GB worked on approximately eight
6 small matters for the Tribe for which it was paid a total of \$340,515.24. **Ex. G**; **Ex. B** at
7 40:20–42:13; **Ex. H**. In addition, on March 1, 2018, the Tribe and GB entered into a
8 contingency fee agreement with Robins Kaplan LLP pursuant to which GB would
9 represent the Tribe in Multi-District Litigation in the Northern District of Ohio against
10 manufacturers and distributors of opioids (the “MDL Litigation”). **Ex. I**. Under the
11 agreement, which was also facilitated by Ms. Colegrove, GB would receive five percent
12 of Robin Kaplan LLP’s 20 percent recovery if they prevailed. *Id.*

13 **B. The Tribe Fires Ms. Colegrove and Hires KTS to Perform a Special**
14 **Prosecution Investigation**

15 Over time, the Tribe became concerned about Ms. Colegrove’s actions and
16 relationship with Mr. Galanda. **Ex. A** at 2. Among other things, the Tribal Council was
17 concerned that Ms. Colegrove appeared to be funneling work to GB without first getting
18 proper approval from the Council. **Ex. J** at 15 (“I wouldn’t be surprised if [Gabe] and his
19 firm has [*sic*] already seen it, just like previous matters in which I found out he and his
20 firm were working on before we approved them.”).² The Tribal Council was also
21 concerned that GB was performing work that should have been kept in-house. *Id.* at 11
22 (“we are compensating [GB] for items that could be achieved otherwise while we are
23 paying substantially the legal director.”). As a result, on March 22, 2018, the Tribal

24
25 ² The documents in **Ex. J** are not privileged because the Tribe voluntarily provided them
26 to the WSBA in connection with the WSBA’s investigation of the complaint against Ms.
Colegrove. *See Ex. K* (Ms. Saimons provided the additional documents on the Tribe’s behalf).
Notably, KTS’s written report regarding its special prosecution investigation was not one of the
documents voluntarily provided.

1 Council voted to terminate Ms. Colegrove. **Ex. A** at 2. After Ms. Colegrove's
2 termination, her successors reached out to GB to figure out what matters it had for the
3 Tribe. **Ex. L** at 1.

4 On June 6, 2018, the Tribe issued a Request for Proposal ("RFP") for a Special
5 Prosecutor to "[c]onduct a comprehensive investigation in to [sic] employee conduct and
6 make legal recommendations to the Tribal Council based on its findings." **Ex. M**. The
7 RFP's scope of services contemplated "fil[ing] criminal or civil charges based on the
8 direction of the Tribal Council" if necessary. *Id.* The RFP further provided that the
9 "Native American preference in contracting policy will be used to select the winning bid"
10 and that a "conflicts check will be conducted before the project is awarded." *Id.* KTS
11 submitted a comprehensive response to the RFP on June 29, 2018 explaining why KTS
12 had the qualifications and expertise to perform the investigation. **Ex. N**. Thereafter, the
13 Tribe awarded the contract to KTS. **Ex. O**.

14 After KTS was hired, it learned the investigation related to circumstances
15 surrounding Ms. Colegrove's departure. **Ex. P** at 70:10-19; *id.* at 71:25-72:12. Over the
16 following months, KTS performed an investigation of Ms. Colegrove, recovered tribal
17 property still in Ms. Colegrove's possession, facilitated the Tribe's payment of Ms.
18 Colegrove's final paycheck, and made legal recommendations to the Tribe. Dkt. 24 ¶ 2;
19 **Ex. Q**. KTS completed its initial investigation and issued a privileged report to the Tribal
20 Council with its findings on November 13, 2018. Declaration of Rob Roy Edward Stuart
21 Smith ("Smith Decl.") ¶ 2. Mr. Smith and Ms. Saimons then gave an oral presentation to
22 the Tribal Council in executive session about their investigation on December 13, 2018.
23 **Ex. P** at 113:1-18.

24 Mr. Galanda was not present for any communications between KTS and the Tribe
25 regarding KTS's investigation. **Ex. B** at 87:11-15. The work KTS performed, the results
26 of its investigation, and the recommendations it made to the Tribe are all privileged and

1 confidential. Dkt. 33. Indeed, KTS's report was expressly and prominently labeled
2 "CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED DOCUMENT." Dkt. 24
3 ¶¶ 3, 6.

4 In addition to the special prosecution investigation, KTS has represented the Tribe
5 on two small, discreet matters since 2018. **Ex. P** at 14:14–15:22; **Ex. R**. The fees from
6 that work have been minimal. *Id.* KTS has not represented the Tribe on any matter that
7 used to be assigned to GB. **Ex. P** at 97:25–98:7; **Ex. B** at 70:13–16.

8 **C. The Tribe Terminates its Relationship with GB**

9 On December 7, 2018, before KTS discussed the results of its investigation with
10 the Tribe in executive session, the Tribe sent a letter to GB giving GB 30 days' notice it
11 was terminating their relationship as it was permitted to do under the contract and
12 Washington law making clear a client always has the right to terminate its counsel at any
13 time for any reason.³ **Ex. S**. Mr. Galanda received that letter on December 12, 2018. *Id.*
14 Mr. Galanda was not present for any discussions between the Tribal Council or
15 councilmembers regarding the Tribe's decision to terminate GB's contract and was not
16 present at any Tribal Council meetings from December 2018 through the present. **Ex. B**
17 at 64:20–65:3. After the Tribe terminated GB, GB never asked the Tribe to reconsider its
18 decision and never made any effort to get additional work from the Tribe. *Id.* at 70:17–23.

19 Prior to its termination, GB filed a Notice of Attorney's Lien in the MDL
20 Litigation. **Ex. T**. Through that lien, GB and the Tribe believe GB has preserved its right
21 to recover five percent of Robins Kaplan's recovery in the MDL Litigation, if any. *Id.*;
22 **Ex. U**.

23 ³ RPC 1.16(a)(3) (client can discharge lawyer); *id.*, cmt. 4 ("A client has a right to
24 discharge a lawyer at any time, with or without cause."); *Karstetter v. King County Corrections*
25 *Guild*, 193 Wn.2d 672, 677–78, 444 P.3d 1185 (2019) (RPC 1.16 "robustly protects a client's right
26 to terminate an attorney at any time, for any reason"); *Belli v. Shaw*, 98 Wn.2d 569, 577, 657 P.2d
315 (1983) ("under a contract between an attorney and client, a client may discharge his attorney
at any time with or without cause."). Note, in this regard, that the RPC would have permitted the
Tribe to terminate without regard for the 30-day notice provision.

1 **D. The Tribe Files a Bar Complaint against Ms. Colegrove**

2 On December 19, 2018, after the Tribe had already terminated GB, the Tribe filed
3 a bar complaint against Ms. Colegrove. **Ex. A.** KTS assisted, in part, with the drafting of
4 the complaint. Smith Decl. ¶ 3.

5 In the complaint, the Tribe alleged that Ms. Colegrove violated her ethical duties
6 by obtaining over \$22,000 in tribal funds as severance pay without the Tribe’s consent by
7 submitting a falsified severance agreement to the Tribe’s finance department. *See*
8 *generally Ex. A.* The complaint includes a quote from Ms. Colegrove that the severance
9 agreement was “originally drafted by outside counsel, Galanda Broadman.” *Id.* at 5. This
10 quote accurately states what Ms. Colegrove said in a written memorandum to the Tribe
11 that was also provided to the Bar Association in full. *Id.* at Attachment 21. In a footnote,
12 the bar complaint also notes that it was not a “best practice” for GB to draft the severance
13 agreement given the fact that Ms. Colegrove had a long-standing relationship with Mr.
14 Galanda and GB was working for the Tribe. *Id.* at 5, n 3.

15 Mr. Galanda assisted Ms. Colegrove in responding to the complaint made by his
16 own former client (the Tribe) about her actions when he was still outside counsel to the
17 Tribe. **Ex. V** (Ms. Colegrove: “Bar Complaint Dismissed Thanks for your support and
18 advice” Mr. Galanda: “Nice! Anytime.”). Mr. Galanda believed the grievance “should not
19 have been filed,” “was pleased that it was dismissed,” and “remain[s] unhappy that [he]
20 was implicated in the grievance.” **Ex. B** at 85:8–25. The Tribe never filed a bar
21 complaint against GB or Mr. Galanda or followed up to investigate anything that was said
22 about GB in connection with the complaint against Ms. Colegrove. *Id.* at 84:14–22.

23 **E. GB Files a Meritless Lawsuit against KTS and Insists on Using the Tribe’s**
24 **Privileged Documents without a Privilege Waiver**

25 On June 7, 2019, the Tribe sent a letter to GB’s counsel stating it was in receipt of
26 GB’s draft complaint against KTS and demanding the return of all privileged and
confidential documents, including but not limited to reports and communications KTS

1 provided to the Tribe in connection with its special prosecutor investigation. **Ex. U.** The
2 Tribe expressed concern that the lawsuit was improper: “I am also very concerned about
3 what appears to be a collateral attack by Galanda Broadman ... on the Tribe’s WSBA
4 grievance against former legal director Leona Colegrove.” *Id.* The Tribe went on:

5 I would also like to take this opportunity to correct several fundamental
6 misunderstandings that are apparent from your draft complaint. First, there
7 is no connection between Kilpatrick Townsend’s work for the Nisqually
8 Tribe and the Tribal Council’s unanimous decision on December 5, 2018,
9 to terminate its contract with Galanda Broadman due to concerns about the
quality of advice and representation provided in both ongoing litigation and
prior matters. As you are aware, that contract was terminable at will by
either party upon 30 days [sic] notice.

10 *Id.* (emphasis in original).

11 In addition, the Tribe pointed out that far from being damaged, the fact that GB
12 filed a lien in the MDL Litigation meant that GB will “reap the benefit of any settlement
13 obtained on the Tribe’s behalf without having to meaningfully participate in the
14 proceedings which are now being handled by the Tribe’s in-house attorneys.” *Id.* Finally,
15 the Tribe pointed out that KTS’s oral presentation of its findings was not actionable by
16 GB:

17 Finally, your Draft Complaint makes reference to an oral presentation by
18 Rob Roy Smith and Rachel Saimons to the Tribal Council in December,
19 2018 in which you claim defamatory statements were made. Putting aside
20 the question of how you or your clients obtained privileged documents and
21 detailed information regarding a privileged discussion that took place
during an Executive Session of the Tribal Council, I fail to see how
privileged, non-published statements that were in no way defamatory could
be actionable by your client.

22 *Id.* Mr. Galanda acknowledged receiving the letter on or around June 7, 2019. **Ex. B** at
23 64:7–19.

24 Notwithstanding the letter from the Tribe making clear KTS had no connection to
25 GB’s termination, GB filed this lawsuit on June 26, 2019. In short, GB claimed it was
26 damaged by statements KTS made to the Tribe about GB in connection with its special

1 prosecutor investigation, including statements in a written report, statements in the oral
2 presentation (that occurred *after* the Tribe decided to terminate GB), and statements in the
3 bar complaint the **Tribe** (not KTS) filed against Ms. Colegrove (also *after* the Tribe
4 decided to terminate GB). Dkt. 1. In his deposition, Mr. Galanda admitted that he has not
5 talked to anyone at KTS about his allegations (**Ex. B** at 69: 4–9), and all information GB
6 has about what KTS did or said on which GB bases its complaint is secondhand (*id.* at
7 69:10–15). He further admitted that he is not aware of any matters on which GB was
8 working that KTS took over. *Id.* at 70:5–16.

9 After GB sued KTS it became clear the Tribe would need to decide whether to
10 waive privilege over its documents and communications relevant to this case, as that
11 decision would impact the scope of discovery and course of the litigation. Dkt. 25 ¶ 3.
12 Given the parties’ impasse over that issue, on April 15, 2020, KTS filed a Motion for
13 Protective order seeking to prevent GB’s improper use of the Tribe’s privileged
14 documents and communications in this litigation, including the report KTS provided to the
15 Tribe after its investigation and the information KTS provided in its oral presentation.
16 Dkt. 23. On May 7, 2020, this Court issued an order granting KTS’s motion in part and
17 finding that the report KTS provided to the Tribe “was a confidential attorney-client
18 communication between the Tribe and Kilpatrick” and that the “Tribal Council has not
19 waived the attorney-client privilege” with respect to the special prosecution investigation.
20 Dkt. 33 at 4–5.

21 **III. ISSUE PRESENTED**

22 1. Should the Court grant summary judgment dismissing Plaintiff’s
23 intentional interference claims against Defendants because the Tribe terminated GB
24 because of concerns about the quality of its legal work and there is no admissible evidence
25 KTS interfered, much less improperly and intentionally interfered, with GB’s contractual
26 relationship with the Tribe?

2. Should the Court grant summary judgment dismissing Plaintiff's CPA claim against Defendants because there is no evidence KTS committed any unfair or deceptive acts or practices, the statements which GB challenges all relate to non-entrepreneurial aspects of the legal practice, which are not actionable under the CPA, this is not a matter of public interest, GB has not suffered damage, and there is no proximate cause between KTS's legal work for the Tribe and the Tribe's decision to terminate its contract with GB?

3. Should the Court grant summary judgment dismissing Plaintiff's lawsuit because this Court has no jurisdiction under the doctrine of sovereign immunity?

IV. EVIDENCE RELIED UPON

Defendant relies upon the Declaration of Leslie E. Barron and Exhibits A–W attached thereto; the Declaration of Rob Roy Edward Stuart Smith; and the records on file herein.

V. AUTHORITY AND ARGUMENT

A. Summary Judgment Standard

Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989); *Atherton Condo. Apartment-Owners Ass'n Bd. Of Directors v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990); CR 56(c). A defendant seeking to obtain summary judgment meets its burden by showing that there is an absence of evidence to support the plaintiff's case. *Young*, 112 Wn.2d at 225. "If the plaintiff fails to make out a prima facie case on the essential elements of his claim, summary judgment for the defendant is appropriate because a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Moore v. Commercial Aircraft Interiors, LLC*, 168 Wn. App. 502, 508, 278 P.2d 197 (2012).

1 If the movant satisfies its burden, the non-moving party may resist summary
2 judgment by presenting evidence that demonstrates that material facts are in dispute.
3 *Atherton*, 115 Wn.2d at 516, 799 P.2d at 257. “A material fact is one upon which the
4 outcome of the litigation depends in whole or in part.” *Boguch v. Landover Corp.*, 153
5 Wn. App. 595, 608, 224 P.3d 795 (2009). Facts and reasonable inferences from facts
6 must be reviewed in the light most favorable to the nonmoving party, however, “bare
7 assertions that an issue of material fact exists will not defeat summary judgment in the
8 absence of actual evidence.” *Libera v. City of Port Angeles*, 178 Wn. App. 669, 676, 316
9 P.3d 1064 (2013). “Summary judgment is appropriate if reasonable minds could reach but
10 one conclusion from all the evidence.” *Id.*

11 **B. Plaintiff’s Intentional Interference Claim Fails**

12 To prevail on its claim for intentional interference, GB must prove each of the
13 following five elements: “(1) the existence of a valid contractual relationship or business
14 expectancy; (2) that defendants had knowledge of that relationship; (3) an intentional
15 interference inducing or causing a breach or termination of the relationship or expectancy;
16 (4) that defendants interfered for an improper purpose or used improper means; and (5)
17 resultant damage.” *Moore*, 168 Wn. App. at 508–09; *see also Cornish Coll. of the Arts v.*
18 *1000 Virginia Ltd. P’ship*, 158 Wn. App. 203, 225, 242 P.3d 1 (2010). “A complete
19 failure or proof concerning any element necessarily renders all other facts immaterial.”
20 *Janaszak v. State*, 173 Wn. App. 703, 727, 297 P.2d 723 (2013). Here, GB cannot prove
21 the third, fourth, and fifth essential elements—each of which alone is a sufficient reason to
22 grant summary judgment.

23 **1. KTS Did Not Interfere, Much Less Intentionally Interfere, with GB’s**
24 **Contract with the Tribe**

25 To satisfy the intentional interference element, GB must show not only that KTS
26 interfered with GB’s contract, but also that the interference was intentional. *Moore*, 168
Wn. App. at 508–09. GB cannot show either. KTS was hired by the Tribe in June 2018

1 to perform a limited special prosecution investigation. KTS performed that investigation
2 and presented its findings to the Tribe. *Supra* § II.B. Because the Tribe has not waived
3 privilege, the substance of that investigation and the recommendations and advice KTS
4 gave the Tribe are not admissible. Dkt. 33. That includes the substance of the report in
5 which KTS allegedly defamed GB and the statements KTS made to the Tribal Council in
6 executive session during the oral presentation of its findings. *Id.* The fact that evidence
7 regarding the substance of KTS's investigation is privileged and not admissible forecloses
8 GB's interference claim.

9 Indeed, Mr. Galanda conceded during his deposition that he has no firsthand
10 knowledge of what KTS told the Tribe about GB, that he was not at any of the Tribal
11 Council meetings where the Tribe discussed terminating GB or made the decision to
12 terminate GB, and he has never spoken directly to KTS about the results of the
13 investigation or the statements KTS purportedly made to the Tribe about the investigation
14 or GB. **Ex. B** at 64:20–65:3, 66:25–67:5, 69:4–9.

15 Moreover, any insinuation that KTS intentionally interfered is belied by the
16 Tribe's written statement that KTS's investigation had nothing to do with the Tribe's
17 decision to terminate GB's contract and that GB was terminated because the Tribe had
18 concerns about the quality of its legal advice. **Ex. U**; *see also* **Ex. J** at 10–13, 15–17.
19 Notably, the Tribe's concerns about GB were documented well before KTS was hired to
20 perform its investigation. *Id.* at 15–17 (the Tribe raised concerns about GB in February
21 2017).

22 Further, GB's claim that KTS intentionally interfered by making false and
23 defamatory statements about GB during the oral presentation Mr. Smith and Ms. Saimons
24 gave to the Tribe in December 2018 likewise fails for lack of admissible evidence. Any
25 statements made between the Tribal Council in executive session (the client) and KTS
26 personnel (the lawyer) are privileged and not admissible. Moreover, the alleged statements

1 occurred after the Tribe had notified GB that its services were terminated and thus could
2 not have interfered with whatever contractual rights to represent the Tribe GB claims.

3 **2. KTS Did Not Interfere with an Improper Purpose or By Improper**
4 **Means**

5 Even assuming GB could get past the intentional interference element (it cannot),
6 GB's claim still fails because there is no evidence KTS interfered with an improper
7 purpose or by improper means. *Libera*, 178 Wn. App. at 676; *Koch v. Mutual of*
8 *Enumclaw Ins. Co.*, 108 Wn. App. 500, 506, 31 P.3d 698 (2001). "This requires
9 demonstrating not only that [KTS] interfered, but that [KTS] had a duty to not interfere."
10 *Libera*, 178 Wn. App. at 676 (citing *Pleas v. City of Seattle*, 112 Wn.2d 794, 803–04, 774
11 P.2d 1158 (1989)). "The existence of a statute, a regulation, a recognized common law, or
12 an established standard of trade or profession can establish such a duty." *Id.* So too can
13 evidence that statements were "dishonest or offered in bad faith." *Koch*, 108 Wn. App. at
14 506 (citing Restatement (Second) of Torts § 772). However, summary judgment is proper
15 where a plaintiff's allegations of bad faith and dishonesty "rest on nothing more than
16 speculation and conjecture." *Koch*, 108 Wn. App. at 509.

17 Here summary judgment is proper because GB's claims about KTS's intentions
18 and motives are pure "speculation and conjecture." *Id.* GB cannot prove this element
19 with respect to the written and oral statements KTS allegedly made to the Tribe for the
20 same reason it cannot prove intentional interference: information about the substance of
21 KTS's investigation and statements it made to the Tribe are privileged, confidential, and
22 not admissible. Likewise, GB cannot prove the statements about GB in the bar complaint
23 were improper because there is no admissible evidence about who drafted them, they were
24 statements by the Tribe, and they were based on Ms. Colegrove's own written statement
25 that GB drafted the severance agreement for her—the agreement that the Tribal Council
26 believed was not authorized. GB's inability to point to any evidence in support of its
contention that KTS improperly interfered is fatal to its claim. *Cornish College of the*

1 *Arts*, 158 Wn. App. at 225–26; *Elcon Constr., Inc. v. Eastern Wash. Univ.*, 174 Wn.2d
2 157, 169, 273 P.3d 965 (2012) (affirming summary dismissal where the plaintiff failed to
3 meet its burden of showing an improper purpose by offering conclusory statements and
4 speculation).

5 A cursory review of the admissible and available evidence makes clear there is no
6 basis to infer that KTS acted with any improper motive. *Snohomish Cnty. v. Rugg*, 115
7 Wn. App. 218, 229, 61 P.3d 1184 (2002) (“[u]nreasonable inferences that would
8 contradict those raised by evidence of undisputed accuracy need not be so drawn” even on
9 summary judgment). To the contrary, given the Tribe’s letter to GB stating KTS had
10 nothing to do with GB’s termination and emails demonstrating the Tribe was unhappy
11 with GB’s work before it engaged KTS, the only reasonable inference that can be drawn is
12 that, to the extent KTS even interfered with GB’s relationship with the Tribe, it did not do
13 so with any improper motive.

14 GB’s conclusory statements that KTS had an improper motive are also belied by
15 the fact that KTS did not take over any of the work GB was doing for the Tribe—a fact
16 which Mr. Galanda himself admitted. **Ex. B** at 70:13–16. Presumably, if KTS’s motive
17 were to harm GB by stealing its client, it would have stepped into GB’s shoes. The fact
18 that KTS did not do so and has only represented the Tribe in two other non-related and
19 rather small engagements since GB was terminated speaks volumes. So too does the fact
20 that KTS is not representing the Tribe in the MDL Litigation. **Ex. U**.

21 **3. KTS’s Actions Were Not the Proximate Cause of GB’s Termination**

22 Even if KTS improperly interfered with GB’s contract (it did not), GB’s claim
23 would still fail because there is no proximate causation. *Pleas*, 112 Wn.2d at 807. When
24 analyzing proximate cause, “[e]ssentially the question is whether the defendant should be
25 held liable for the damages that are in fact caused by its actions.” *Id.*
26

1 First, there is no proximate cause between the statements Mr. Smith and Ms.
2 Saimons made on December 13, 2018 during their oral presentation to the Tribe and the
3 Tribe's decision to terminate GB because the Tribe terminated GB a week *before* KTS's
4 presentation. *Compare* **Ex. W** at Interrogatories 7–8 (oral presentation occurred on
5 December 13, 2018) *with* **Ex. S** (termination letter to GB on December 7, 2018). Given
6 the timing, it is demonstrably false that any statements KTS purportedly made in the
7 presentation led to the Tribe's decision to terminate GB or constituted intentional
8 interference. The same is true with respect to the bar complaint. The Tribe did not file
9 the complaint against Ms. Colegrove until December 18, 2018, and there is no admissible
10 evidence that it was drafted or discussed before GB's termination. **Ex. A.**

11 Second, because the Tribe has not waived privilege, there is simply no evidence
12 that anything KTS purportedly said in the report or oral presentation to the Tribe or bar
13 complaint proximately caused the Tribe's decision to terminate its contract with GB or
14 caused the termination of GB's participation in the MDL Litigation. Compl. ¶ 34.

15 GB's conclusory allegations of proximate causation are nothing more than
16 speculation and do not preclude a grant of summary judgment. *Elcon Const., Inc.*, 174
17 Wn.2d at 169 (“Conclusory statements and speculation will not preclude a grant of
18 summary judgment.”). Further, buying GB's theory requires this Court to ignore
19 documentary evidence stating exactly why the Tribe stopped using GB's legal services.
20 Again, it is clear from the Tribe's own statements that GB was fired because the Tribe had
21 “concerns about the quality of advice and representation [GB] provided in both ongoing
22 litigation and prior matters” and “there is no connection between [KTS's] work for the
23 Nisqually Tribe and the Tribal Council's unanimous decision on December 5, 2018 to
24 terminate its contract with [GB].” **Ex. U.**

1 **4. GB Has Not Suffered Damages**

2 GB's claim for tortious interference fails for the additional reason that GB cannot
3 prove damages. To make out a prima facie case, a plaintiff must show "resultant
4 damage." *Cornish College of the Arts*, 158 Wn. App. at 225.

5 GB does not identify any specific economic or non-economic injury. Instead, it
6 makes the conclusory statement that it has suffered "significant economic and non-
7 economic injuries, including damage to its reputation within the Tribe." Compl. ¶¶ 20,
8 28, 35. But there is no actual evidence of any harm. GB was paid for all the work it did
9 for the Tribe. **Ex. B** at 41:9–42:4; **Ex. H**; **Ex. G**. In addition, GB may be entitled to five
10 percent of any recovery in the MDL Litigation despite not doing any of the work because
11 of the fee lien it filed. **Ex. T**; **Ex. B** at 51:5–16; **Ex. U**.

12 Further, because GB was never promised any particular amount of work or fees
13 from the Tribe, there was no expectation of continued work. **Ex. F** ¶ 9 (contract
14 terminable at any time for any reason); *id.* ¶ 6 (contract limited to specified amount of fees
15 and no guarantee of earning all fees). Mr. Galanda argues that GB's contract was
16 "perpetual" but there is no evidence of that and Mr. Galanda admits that is not what the
17 contract actually states. **Ex. B** at 29:7–25 ("Q. And so it's your view that the tribe was
18 required to retain you as counsel forever? A. No."). Instead, the contract had to be
19 renewed each year and was limited to a specific dollar amount. **Ex. F** ¶¶ 5–6. Over the
20 three years during which GB had contracts with the Tribe, it was paid in full for the
21 engagements covered by those contracts in accordance with their terms and GB's invoices
22 for work performed prior to the termination notice. **Ex. G**; **Ex. H**; **Ex. B** at 40:20–42:13.

23 Because GB had no right to any further work or fees from the Tribe, any fees it
24 would have earned had it continued working for the Tribe are entirely speculative. It
25 would be improper to look to the past amount of fees as a measure of damages because
26 there was, again, no guarantee GB would have received a similar amount of work from the

1 Tribe moving forward, or that there would have been comparable matters to handle, or
2 that the Tribe would ever have kept using GB as often as one of its outside counsel after
3 the Tribe terminated Ms. Colegrove, GB's advocate among the Tribe's in-house legal
4 staff.

5 To the extent GB did suffer an injury, it was the result of its own actions or
6 inactions, not the result of anything KTS did or did not do. GB made no effort to restore
7 relations with the Tribe after Ms. Colegrove's termination or get additional work from the
8 Tribe after its own termination or ask the Tribe to reconsider. **Ex. B** at 70:17–23. Instead,
9 it sued KTS and ignored the Tribe's demands that GB not disclose or use the Tribe's
10 privileged communications in this suit. **Ex. U**.

11 **C. Plaintiff's Consumer Protection Act Claim Fails**

12 To establish a CPA claim under RCW 19.86.020, GB must prove each of the
13 following elements: "(1) an unfair or deceptive act or practice; (2) occurring in the
14 conduct of trade or commerce; (3) affecting the public interest; (4) injury in business or
15 property; and (5) a causal link between the unfair or deceptive act and the injury." *Koch*,
16 108 Wn. App. at 509; *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105
17 Wn.2d 778, 780, 719 P.2d 531 (1986). GB's claim fails because GB cannot establish
18 multiple elements of the claim.

19 **1. There is No Evidence of an Unfair or Deceptive Act or Practice**

20 GB's CPA claim fails as a matter of law because there is no evidence of an unfair
21 or deceptive act or practice. "[F]or conduct to be an unfair or deceptive practice under the
22 CPA, it must have the capacity to deceive a *substantial portion of the public*." *Segal Co.*
23 *(Eastern States), Inc. v. Amazon.Com*, 280 F.Supp.2d 1229, 1232 (W.D. Wash. 2003)
24 (citing *Sing v. John L. Scott, Inc.*, 134 Wn.2d 24, 30, 948 P.2d. 816 (1997)). Whether an
25 act or practice is unfair or deceptive is a question of law when the facts are undisputed.
26 *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 47, 204 P.3d 885 (2009) (citing

1 *Leingang v. Pierce County Med. Bureau, Inc.*, 131 Wn.2d 133, 150, 930 P.2d 288 (1997)).
2 Washington courts have found acts or practices to deceive a substantial portion of the
3 public where the actor misrepresented something of material importance or where there
4 was a representation, omission, or practice that was likely to mislead a reasonable
5 consumer. *Young v. Toyota Motor Sales, U.S.A.*, 9 Wn. App. 2d 26, 33, 442 P.3d 5 (2019)
6 (citing cases).

7 Here, there is no evidence of any unfair or deceptive act or practice. GB identifies
8 two purported unfair or deceptive acts in its Complaint: (1) that KTS “issued a report to
9 the Tribe which included irrelevant, false and misleading claims that [GB] had engaged in
10 unethical conduct in connection with the departure of Ms. Colegrove as the Tribe’s Legal
11 Director”; and (2) that in December 2018 Mr. Smith and Ms. Saimons delivered an oral
12 presentation to the Tribe wherein they continued to defame [GB] with allegations of
13 unethical conduct and recommending that the Tribe file an ethics complaint with the
14 WSBA against [GB].” GB readily admits that both alleged statements were made as part
15 of KTS’s legal investigation for the Tribe. Compl. ¶¶ 31–32. Neither of the allegations
16 satisfy the first element of the CPA.

17 First, there is no admissible evidence supporting GB’s claim that KTS made any
18 such statements about GB to the Tribe, much less evidence that the purported statements
19 were false, misleading, or defamatory. In light of this Court’s prior order, GB cannot put
20 KTS’s report in evidence and cannot attempt to introduce evidence of what KTS said in its
21 presentation to the Tribe. Dkt. 33. All of KTS’s communications to the Tribe relating to
22 the investigation, including any recommendations KTS made, are privileged and
23 confidential.

24 Second, even if there was admissible evidence of what KTS said to the Tribal
25 Council and even if those statements were false, they could not form the basis for a CPA
26 claim because they were privileged and provided in response to the Tribe’s request for

1 advice. *McNamara v. Koehler*, 5 Wn. App. 2d 708, 720, 429 P.3d 6 (2018) (privileged
2 statements do not constitute unfair or deceptive acts). Further, any statements KTS made
3 about GB to the Tribe in the course of its investigation (again, even assuming they were
4 false) are not defamatory because they were privileged and not published. *Id.*; *Twelker v.*
5 *Shannon & Wilson, Inc.*, 88 Wn.2d 473, 477, 564 P.2d 1131 (1977) (“statements made in
6 judicial or Quasi-judicial proceedings and having some relation thereto are absolutely
7 privileged against a suit for defamation.”). Instead, they were only provided to the Tribal
8 Council and were not meant to be disseminated. Dkt. 33.

9 The statement in a footnote to the bar complaint that Mr. Galanda drafted the
10 severance agreement Ms. Colegrove presented to the Tribe likewise does not constitute an
11 unfair or deceptive act or practice as GB argues. **Ex. A** at 5, n 3. Mr. Galanda claims this
12 statement was false and had KTS interviewed him or Ms. Colegrove they would have
13 realized that. Compl. ¶ 19. But the evidence does not support Mr. Galanda’s position.
14 First, GB cannot present admissible evidence that KTS drafted this statement. Second,
15 regardless of who drafted it, it is neither unfair nor deceptive because both KTS and the
16 Tribe had a reasonable basis for making the statement. Indeed, in a memorandum that
17 Ms. Colegrove herself drafted to the Nisqually Finance Department on April 16, 2018,
18 which was submitted as an attachment to the bar complaint, Ms. Colegrove stated
19 “Attached you will find an executed severance agreement originally drafted by outside
20 counsel, Galanda Broadman ...” **Ex. A** at Attachment 21. GB’s CPA claim fails because
21 there is no unfair or deceptive act or practice.

22 **2. Non-Entrepreneurial Aspects of Law Do Not Constitute Trade or** 23 **Commerce within the Meaning of the CPA**

24 Even if GB could establish an unfair or deceptive act or practice (it cannot), its
25 claim still fails as a matter of law because the acts about which GB is complaining did not
26 occur in the conduct of trade or commerce within the meaning of the CPA. Although
RCW 19.86.010(2) broadly defines “trade” and “commerce” to include “the sale of assets

1 or services, and any commerce directly or indirectly affecting the people of the state of
2 Washington,” Washington law is clear that trade and commerce for CPA purposes does
3 *not* include claims challenging the “actual performance of a lawyer’s legal advice and
4 services.” *Short v. Demopolis*, 103 Wn.2d 52, 61, 691 P.2d 163 (1984) (emphasis added).

5 Only “certain *entrepreneurial* aspects of the practice of law may fall within the
6 ‘trade or commerce’ definition of the CPA.” *Id.* at 60 (emphasis added). Entrepreneurial
7 aspects of law include things such as “how the price of legal services is determined, billed,
8 and collected.” *Id.* at 61. These entrepreneurial or “business aspects of the legal
9 profession,” as distinguished from the actual performance of a lawyer’s legal advice and
10 services, are “legitimate concerns of the public which are properly subject to the CPA.”
11 *Id.* In contrast, claims that are “directed to the competence of and strategy employed by
12 ... lawyers ... amount to allegations of negligence or malpractice and are exempt from the
13 CPA.” *Id.* at 61–62; *see also Ramos v. Arnold*, 141 Wn. App. 11, 20, 169 P.3d 482 (2007)
14 (“Claims directed at the competence of and strategies employed by a professional amount
15 to allegations of negligence and are exempt from the Consumer Protection Act.”).⁴

16 Here, there is no question that the allegedly deceptive and unfair acts and practices
17 about which GB complains (to the extent GB could prove they happened), fall squarely
18 within the non-entrepreneurial aspects of the practice of law which are not subject to CPA
19 claims. GB is complaining that KTS committed unfair acts or practices “as part of their
20 investigation of Ms. Colegrove” and “by recommending the Tribe pursue an ethics
21 complaint” against GB. Compl. ¶¶ 31–32; **Ex. B** at 88:4–17 (Mr. Galanda arguing KTS
22 performed a “sham investigation” by not interviewing the proper people). These
23 complaints relate entirely to the substance of advice KTS gave to the Tribe and the
24 manner in which KTS performed its investigation. Under *Short*, there is no question these

25 ⁴ Given that GB is not KTS’s client, GB lacks standing to bring a malpractice claim based
26 on KTS’s work for the Tribe. *Parks v. Fink*, 173 Wn. App. 366, 377, 293 P.3d 1275 (2013) (“only
an attorney’s client may bring an action for attorney malpractice.”).

1 claims, which are directed at the competence and strategies KTS employed, are exempt
2 from the CPA.

3 **3. No Act or Practice Affected the Public Interest**

4 GB's CPA claim fails for the additional reason that there was no act or practice
5 that affected the public interest. "In a private action, a plaintiff can establish that the
6 lawsuit would serve the public interest by showing a likelihood that other plaintiffs have
7 been or will be injured in the same fashion." *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn.2d
8 820, 835, 355 P.3d 1100 (2015). "[T]here must be shown a real and substantial potential
9 for repetition, as opposed to a hypothetical possibility of an isolated unfair or deceptive
10 act's being repeated." *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 604–05, 200 P.3d 695
11 (2009) (citing *Eastlake Constr. Co. v. Hess*, 102 Wn.2d 30, 52, 686 P.2d 465 (1984)). In a
12 private dispute, such as here, courts evaluate the following factors, none of which is
13 dispositive. *Michael*, 165 Wn.2d at 605. "The factors are: (1) whether the alleged acts
14 were committed in the course of defendant's business; (2) whether the defendant
15 advertised to the public in general; (3) whether the defendant actively solicited this
16 particular plaintiff, indicating potential solicitation of others; (4) whether the plaintiff and
17 defendant have unequal bargaining positions." *Id.*

18 GB's claim fails on this element as well because there is no evidence that this
19 lawsuit has any impact on the public interest. It is a private dispute and, given the strange
20 fact pattern, it is not likely to be repeated. Moreover, given that no unfair or deceptive
21 acts occurred, there is no risk that it would happen again. Further, there is no evidence of
22 unequal bargaining power between GB and KTS or the Tribe for that matter. Assuming a
23 sovereign tribe is incapable of evaluating the performance of its own counsel, even if GB
24 could show (it cannot) that KTS attempted to take over work from GB by maligning GB,
25 is disrespectful and paternalistic. The evidence here is that this lawsuit is nothing more
26 than a retaliation effort by Mr. Galanda to punish Mr. Smith and KTS because he dislikes

1 that Mr. Smith, as a non-Native American, works for Tribes and is upset the Nisqually
2 Tribe selected KTS through the Tribe's RFP to act as special prosecutor to investigate his
3 friend, Ms. Colegrove.

4 **4. GB Has Not Suffered Injury to Its Business or Property**

5 GB's CPA fails for the independent reason that GB did not suffer any injury to its
6 business or property. To satisfy this element, a plaintiff must prove that the alleged unfair
7 acts or practices "caused an injury in its business or property." *Ledcor Indus. (USA), Inc.*
8 *v. Mutual of Enumclaw Ins. Co.*, 150 Wn. App. 1, 12–13, 2016 P.3d 1255, 1262 (2009).

9 Here, as described above in section V.B.4, GB has not identified any injury.
10 Instead, Mr. Galanda has made clear this case is about his hurt ego and his dislike for Mr.
11 Smith. **Ex. B** at 74:15–75:3 (Mr. Galanda "upset" that his "name was implicated" in the
12 complaint against Ms. Colegrove); 102:12–19. GB has broadly complained that it was
13 damaged by the reference to it in the bar complaint against Ms. Colegrove (Compl. ¶ 19)
14 but when pressed on how he was damaged given that the Tribe never filed a separate
15 complaint against GB and the WSBA never followed up with GB or Mr. Galanda
16 regarding statements about GB in the complaint against Ms. Colegrove, he had no answer.
17 **Ex. B** at 84:14–22, 85:16–25.

18 Indeed, it appears the only "damage" at issue is the loss of potential revenue from
19 legal work for the Tribe. But it would be entirely speculative to presume that GB would
20 have received certain fees from the Tribe for ongoing work. Moreover, as a matter of law,
21 loss of revenue does not constitute damage because GB had no entitlement to ongoing
22 work. *Woody v. Stapp*, 146 Wn. App. 16, 24, 189 P.3d 807 (2008) ("Generally at-will
23 employees do not have a business expectancy in continued employment."). In *Woody*, the
24 court held that given the plaintiff's at-will status, there was no expectation of continued
25 employment and therefore no damages flowing from his discharge.
26

1 **5. There is No Proximate Causation**

2 “A CPA plaintiff may only recover for injury to his or her business or property that
3 was proximately caused by a defendant’s unfair or deceptive practices.” *Young*, 442 P.3d
4 at 12. Here, even if GB could identify an unfair act or practice that occurred in trade or
5 commerce, that affected the public interest, and caused GB damage (all things it cannot
6 prove), its claim would still fail because, as discussed above in section V.B.3, GB cannot
7 establish proximate causation. There is no admissible evidence that anything KTS said in
8 the report or presentation to the Tribe resulted in the Tribe’s termination of its agreement
9 with GB or the termination of GB’s participation in the MDL Litigation. The same is true
10 with respect to the statements referencing GB in the Tribe’s bar complaint against Ms.
11 Colegrove.

12 **D. This Court Lacks Jurisdiction Based on the Doctrine of Sovereign Immunity**

13 Even if GB could make out a prima facie case of either claim—something it
14 cannot do given the numerous factual and legal deficiencies—GB’s claims would still be
15 fatally flawed for the additional, independent reason that this Court has no jurisdiction to
16 hear them. Despite GB’s conclusory assertions that KTS is somehow responsible for the
17 Tribe’s decision to terminate GB as outside counsel, there is no question the allegations
18 underlying GB’s complaint all relate to actions taken by the Tribe and events that
19 occurred during meetings of the Tribal Council. Compl. ¶ 18 (“On December 7, 2018, the
20 Tribe terminated its Services Agreement with Galanda Broadman ...”); *id.* ¶ 19 (“On
21 December 19, 2018, the Tribe filed an ethics complaint with the WSBA against Ms.
22 Colegrove ...”); *id.* ¶ 27 (GB claims it was harmed because of the “Tribe’s termination of
23 its Service Agreement ... as well as the termination of [GB’s] participation in the MDL
24 Action.”); *id.* ¶ 34 (same).

25 Reviewing the allegations, it is clear that the basis of the lawsuit is GB’s
26 dissatisfaction with actions taken by the Tribe, not by KTS. Those actions include the

1 ***Tribe's decision*** to hire KTS as special prosecutor, the ***Tribe's decision*** to terminate Ms.
2 Colegrove as legal director, and the ***Tribe's decision*** to terminate GB as outside counsel
3 for the Tribe.

4 State courts have no jurisdiction over disputes where its involvement would
5 infringe on an Indian tribe's right of self-governance. *Wright v. Colville Tribal Enterprise*
6 *Corp.*, 159 Wn.2d 108, 112, 147 P.3d 1275 (2006). "Tribal sovereign immunity protects a
7 tribal corporation owed by a tribe and created under its own laws, absent express waiver
8" *Id.* "Federally recognized Indian Tribes are "separate sovereigns pre-existing the
9 Constitution. These tribes have common law sovereign immunity as a necessary corollary
10 to Indian sovereignty and self-governance." *Long v. Snoqualmie Gaming Comm'n*, 7 Wn.
11 App.2d 672, 680, 435 P.3d 339 (2019) (internal quotations omitted). "Such sovereign
12 immunity is meant to protect tribes as distinct, independent political communities and
13 allows them to retain their original natural rights in matters of local self-government."
14 *Outsource Servs. Mgmt., LLC v. Nooksack Business Corp.*, 172 Wn. App. 799, 810–11,
15 292 P.3d 147 (2013) (internal citations omitted). For that reason, "a state may not assert
16 authority in Indian country if that would infringe on the right of reservation Indians to
17 make their own laws and be ruled by them." *Id.* (internal citations omitted).

18 The doctrine of sovereign immunity bars the exercise of state court jurisdiction in
19 this case because it would infringe on the Nisqually Tribe's right of self-governance. The
20 presumption underlying GB's case is that the Tribal Council operated as KTS's pawn.
21 Not only is this an insulting, paternalistic view of the governing body of a federally
22 recognized Indian Tribe, it necessarily requires this Court to discredit and call into
23 question actions taken by the Tribe's governing body. GB is effectively arguing that this
24 Court should delve into the internal workings of the Tribe and replace its judgment about
25 whether GB should have been terminated with that of the sovereign tribe whose decision
26

1 it actually was. That is not in the province of state courts and this Court should decline
2 GB's invitation to infringe on its former client's right to self-governance.

3 **VI. CONCLUSION**

4 For the foregoing reasons, Defendants respectfully request that the Court grant
5 their Motion for Summary Judgment.

6 I certify that this Motion contains 8,394 words in compliance with the Local Civil
7 Rules.

8 DATED this 17th day of July, 2020.

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