Cheryl A. Williams (Cal. Bar No. 193532)
Kevin M. Cochrane (Cal. Bar No. 255266)
caw@williamscochrane.com
kmc@williamscochrane.com
WILLIAMS & COCHRANE, LLP
125 S. Highway 101
Solana Beach, CA 92075
Telephone: (619) 793-4809

Attorneys for Plaintiff
WILLIAMS & COCHRANE, LLP

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

WILLIAMS & COCHRANE, LLP;

Plaintiff,

vs.

ROBERT ROSETTE; **ROSETTE & ASSOCIATES, PC**; **ROSETTE, LLP**; **QUECHAN TRIBE OF THE FORT YUMA INDIAN RESERVATION**, *a federally-recognized Indian tribe*; *and* **DOES 1 THROUGH 100**;

Defendants.

Case No.: 17-CV-01436 GPC DEB

WILLIAMS & COCHRANE'S POINTS & AUTHORITIES IN SUPPORT OF MOTIONS FOR SUMMARY JUDGMENT UNDER FEDERAL RULE OF CIVIL PROCEDURE 56 AGAINST QUECHAN TRIBE OF FORT YUMA INDIAN RESERVATION ON FIRST AND SECOND CLAIMS FOR RELIEF IN FOURTH AMENDED COMPLAINT [DKT. NO. 220], AND COUNTERCLAIMS IN THE QUECHAN TRIBE'S ANSWER TO PLAINTIFF'S FOURTH AMENDED COMPLAINT AND COUNTERCLAIMS [DKT. NO. 231]

Date: December 4, 2020
Time: 1:30 p.m.
Dept: 2D
Judge: The Honorable Gonzalo P. Curiel

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INTRODUCTION

By this motion, Williams & Cochrane, LLP ("Williams & Cochrane" or "Firm") moves for summary judgment on its First and Second Claims for Relief in the Fourth Amended Complaint alleging the Quechan Tribe of the Fort Yuma Indian Reservation ("Quechan" or "Tribe") breached the express and implied terms of the Attorney-Client Fee Agreement between the parties so it could get out of its payment obligations under the contract. *See* Dkt. No. 220. Along with this, Williams & Cochrane also moves for summary judgment on the assorted counterclaims raised by Quechan in its Answer to Plaintiff's Fourth Amended Complaint and Counterclaims, which have been substantially narrowed on account of counsel for Quechan's representations to Magistrate Judge Berg during an April 16, 2020 hearing when trying to justify why they refused to produce much of anything – including everything it deemed to be privileged – during the discovery process. *See* Dkt. Nos. 231, 287.

The origin of this federal case lies in *another* federal case known as *Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation v. California,* Civ. Case No. 09-01955 CAB MDD (S.D. Cal. 2016). In this prior case, the attorneys of Williams & Cochrane spent the better part of the teens getting a federally-recognized Indian tribe out of an amended gaming compact with the State of California under the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701 *et seq*., an agreement that arose from material misrepresentations by the State of California and ended up requiring exponentially more in revenue sharing payments by the tribe. *See*, *e.g.*, *Pauma Band of Luiseno Mission Indians of Pauma & Yuima Reservation v. California,* 813 F.3d 1155 (9th Cir. 2015). After winding its way through the United States Court of Appeals for the Ninth Circuit and the Supreme Court of the United States, the case culminated with Pauma being restored to its prior position and the State of California doing the unimaginable and cutting a $36.3 million check as a result. Right after the press reported on the State of California approving the legislation to authorize this payment, another tribe with an amended gaming compact requiring significant revenue sharing payments contacted Williams & Coch-

rane and asked for help. Though more than eight years had passed since Pauma filed suit, this new tribe – Quechan – believed the *Pauma* decision gave it grounds for getting out of its own compact, a rather convenient assumption since it had unilaterally discontinued making revenue sharing payments to the State of California months earlier. The failure to remit these revenue sharing payments was not something that would go unnoticed by the State of California, as the amended compact between Quechan and the State of California required a base revenue sharing payment of 10% of net win, which typically translated to between $4.5 and $5 million in payments each year. *See*, *e.g.*, Declaration of Cheryl A. Williams ("Williams Decl."), Exs. 20, § 4.3.3(a)(i); 25. In fact, the State of California had even negotiated assurances that these revenue sharing payments would be made and made in a timely fashion by including increasingly punitive terms for late payments, which started out by explaining a single quarterly payment that was overdue for more than sixty (60) days would automatically result in the Tribe having to "cease operating all Gaming Devices until full payment [was] made." Williams Decl., Ex. 20, § 4.3.3(f). More delay in payment just meant more time the gaming facility had to be shuttered. William Decl., Ex. 20, § 4.3.3(f).

Thus, the picture painted at the initial meeting was of an immense and intractable dispute, one that posed almost limitless liability for Williams & Cochrane if it was unable to find a suitable fix for a Tribe that was intent on not paying the State what it owed. Nevertheless, Williams & Cochrane agreed to take on the work and the parties began negotiating the term of a hybrid Attorney-Client Fee Agreement that reflected the realities of the situation and the goals of Quechan. Williams Decl., Exs. 16-17. The ultimate fee structure of the Attorney-Client Fee Agreement incorporated two components, each of which Quechan specifically requested. Williams Decl., Ex. 69 The first of these components was a "flat fee of $50,000 per month" that would "not depend on the amount of work performed or the results obtained." Williams Decl., Ex. 17, § 4. To go with this, the second component was a contingency fee that provided Williams & Cochrane with a certain percentage of any "net recovery" realized by Quechan either through litigation or negoti-

ations. Williams Decl., Ex. 17, § 5. Since Quechan wanted the dispute handled through negotiations in an "expeditious manner," the contingency fee provisions of the Attorney-Client Fee Agreement actually rewarded Williams & Cochrane if it resolved the matter through negotiations "before the filing of a lawsuit or within 12 months thereof" by providing it with "fifteen percent (15%) of the net recovery." Williams Decl., Ex. 17, § 5.

After hammering out the terms of the fee agreement, Williams & Cochrane got down to work and sent the State of California a request to renegotiate an amended compact the State technically (at least according to the terms of the compact) had no obligation to renegotiate. Williams Decl., Ex. 19, § 12. Yet, within a matter of days, the compact negotiator appointed by then Governor Edmund G. Brown, Jr. who had just suffered the sting of crippling defeat in the *Pauma* case sent a letter in response indicating that the State "agrees to enter into negotiations for a new tribal state gaming compact between the State of California and the Quechan Tribe of the Fort Yuma Indian Reservation." Williams Decl., Ex. 21. A couple of months later, the State then made good on its promise by sending Quechan a draft compact that eliminated virtually all revenue sharing fees, excising the 10%-of-net-win payment requirement and thereby "reduc[ing] the Quechan Tribe's existing payment obligations by approximate $4 million annually." Williams Decl., Exs. 22, 24-25.

The first half of 2017 would then focus on Williams & Cochrane going above and beyond the requirements of the Attorney-Client Fee Agreement by negotiating other material concessions – like additional slot machines and casinos – so Quechan would have everything it needed for the twenty-eight year life of the successor agreement. After the conclusion of the final negotiation session on June 14, 2017, one of the partners of Williams & Cochrane named Cheryl A. Williams contacted the point persons for Quechan to relay what had transpired at the meeting and the process for winding up the negotiations over the sixteen or so days that remained in the month of June. William Decl., Exs. 37, 38. As to that, Ms. Williams spoke with the CEO of Quechan's gaming facility Charles Montague late in the afternoon of June 14, 2017. Williams Decl., Ex. 37. She then spoke

with the Vice President of Quechan Virgil Smith shortly after 1:38 p.m. on the following afternoon. Williams Decl., Exs. 37-39. Vice President Smith would memorialize this conversation in one of the precious few e-mails Quechan produced during discovery, telling his colleagues on the Quechan Tribal Council mere hours later that:

> I received a call from Cheryl Williams from Williams and Cochrane and this is what she stated: They met with the Governor's office yesterday and it went well and they have agreed, in principle to Having a third facility with machines and Option to use an additional 400 machines, this would include some fees. With those two items incorporated it will take an additional week or two to get the compact in place. This puts us at the end of June or possibly the first week of July.

Williams Decl., Ex. 39.

And yet, according to the declarations filed by the Defendants during the anti-SLAPP portion of this case, both the President of Quechan Keeny Escalanti and a Councilmember named Mark William ("Willie") White II were meeting with Robert Rosette in person *the very next morning*. Williams Decl., Exs. 12-13. As it happens, Mr. Rosette was advertising on both his firm's website and in its marketing materials at the time that he had "successfully litigated a case saving the Pauma Band of Luiseno Mission Indians over $100 Million in Compact payments allegedly owed to the State of California against then Governor Schwarzenegger." Williams Decl., Exs. 14, ¶ 6; 15. His responsibility for "successfully litigat[ing]" the *Pauma* case was an admitted subject of conversation at this meeting, as both President Escalanti and Councilmember White testified in lockstep that they discussed Mr. Rosette' experience in California compacting, of which the only thing worthy of note in *any* of the firm's marketing materials is the *Pauma* case. *See, e.g.,* Williams Decl., Ex. 12, ¶ 11. After that, they then inquired "whether Mr. Rosette may be interested in assisting in Quechan's California [compact] negotiations" – the very negotiations they had been informed the day prior would be finished in two weeks' time. Williams Decl., Ex. 12, ¶ 11. Thus, this assistance had less to do with the negotiations and more to do with getting rid of Williams & Cochrane before the compact was ready for signature. And with that, just four days before the anticipated completion date of the ne-

gotiations, President Escalanti sent Williams & Cochrane a letter terminating its services "effectively immediately upon receipt of this letter" and requesting that the Firm turn over the final draft compact to one "Robert A. Rosette." Williams Decl., Ex. 41. Despite making this request, President Escalanti also made it clear that the Tribe would not pay "any contingency fee of 'reasonable fee for the legal services provided in lieu thereof,'" and gave this position teeth by "strongly advising" the Firm "against pressing your luck further out of concern for the reputation of your firm in Indian Country and in the State of California." Williams Decl., Ex. 41.

If it is not already apparent, this June 26, 2017 termination letter had nothing to do with Williams & Cochrane's performance. The compact Quechan ultimately executed just a few months later is a virtual carbon copy of the final draft Williams & Cochrane negotiated, aside from the State rolling back certain concessions after Mr. Rosette's last minute intrusion into the matter. And yet, President Escalanti would appear before the United States Senate Committee on Indian Affairs during the fall of 2017 and testify that Quechan was "pleased with the terms of our new compact," and that those involved had "worked tirelessly to finalize our new compact" so it could be executed during the 2017 legislative session. Williams Decl., Ex. 46. The other individual present at the June 16th meeting with Mr. Rosette – Councilmember White – still parroted the words of President Escalanti, as he bragged about the accomplishments of the Tribal Council on his Facebook page by stating in part that they had "negotiat[ed] an incredible compact." Williams Decl., Ex. 47. So, if not delinquent performance, what then could have caused Quechan to terminate Williams & Cochrane just days before the conclusion of the compact negotiations? Again, this decision was motivated purely by a desire to avoid its contractual obligations, and this much is made unequivocally clear by Councilmember White's e-mail communications with *another* attorney earlier in the spring. Apparently, Councilmember White had been planning this opportunistic breach for some time; he had reached out to an attorney named Wilson Pipestem two months earlier to inquire whether he could get Quechan out of the Attorney-Client Fee Agreement by claiming the Tribe was "under

duress at the time of signing this agreement," presumably due to *its own decision* to cease paying revenue sharing payments to the State months before Williams & Cochrane even arrived on the scene. Williams Decl., Ex. 49. Mr. Pipestem would then propose investigating "whether the law and facts present opportunities for negotiation of fees paid to the firm." Williams Decl., P1221. Of course, renegotiation was *not* what President Escalanti and Councilmember White were looking for; they just wanted someone familiar with the intricacies of revenue sharing disputes like the one in which they were involved to swoop in at the last moment, get the final draft of the compact, and make Williams & Cochrane disappear. And thus enters Mr. Rosette. And thus comes definitive proof of both the breach and the bad faith breach of the Attorney-Client Fee Agreement.

LEGAL STANDARD

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*, 809 F.2d 626, 630 (9th Cir. 1987). "When the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). This situation arises when the evidence is "so one-sided" – like where the non-movant's offerings are "merely colorable" or "not significantly probative" – that the moving party must prevail as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-52 (1986).

ARGUMENT ON WILLIAMS & COCHRANE'S CLAIMS

I. QUECHAN'S REFUSAL TO PRODUCE VIRTUALLY ANY RESPONSIVE EVIDENCE DURING DISCOVERY SHOULD WEIGH AGAINST IT IN BOTH DISPROVING WILLIAMS & COCHRANE'S CLAIMS AND PROVING ITS OWN COUNTERCLAIMS

One of the big complicating factors in this case has been the refusal of the Defendants to participate in the discovery process. The hallmark of this is the respective privilege logs produced by the Defendants that contend that some thousand-plus documents –

including those predating the start of the formal relationship between Mr. Rosette and Quechan – are somehow protected from disclosure. Williams Decl., Exs. 5-6. But, look closer at the dates on these privilege logs. The one for Quechan begins on May 23, 2017 – or little more than a month before the termination of the Attorney-Client Fee Agreement. Williams Decl., Ex. 6. In other words, not a single thing from the initial appearance of Williams & Cochrane at Quechan in September 2016 to May 22, 2017 is protected by privilege. For Quechan, that should mean that a significant number of internal documents responsive to the issues in the case exist for that eight month period. And yet, at the end of the discovery process, all Williams & Cochrane had was ***six substantive e-mails*** from the various members of the Quechan Tribal Council that were sent to people other than Cheryl A. Williams or Kevin M. Cochrane during this time period. Williams Decl., ¶ 71. The familiar refrain up to this point is that Indians are just not adept at sending things over this forty-year-old technology known as the Internet, despite the fact that the ones in this case have Facebook pages, an online group devoted to discussing Tribal issues, and have provided proof that they transmit summary e-mails (using personalized fonts) almost immediately after receiving information. Williams Decl., Exs. 39, 47, 66. Ascertaining the contents of the e-mail accounts for Tribal Councilmembers from 2016-17 was a hotly-contested issue during discovery, and the best Williams & Cochrane could glean after much motion practice is that those with personalized e-mail accounts (*i.e.*, everyone but the President and Vice President) have their accounts deactivated upon leaving office, and the President and Vice President are not subject to this policy but the custodian of their accounts was nevertheless unwilling to engage on the issue of whether e-mails or tranches of e-mails from those accounts have been deleted. *See* Dkt. No. 297, pp. 2-15. At some point during this summary judgment process, Quechan will tell the Court that Williams & Cochrane lacks proof of X, and when this happens the Court should remember that the other documents that prove this point even further – to the extent they still exist – remain in the possession of the Defendants, whether privileged or not.

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II. QUECHAN BREACHED THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING IN THE ATTORNEY-CLIENT FEE AGREEMENT BY MEETING WITH MR. ROSETTE TO TERMINATE WILLIAMS & COCHRANE THE VERY MORNING AFTER LEARNING THE NEGOTIATIONS WOULD CONCLUDE IN TWO WEEKS' TIME

Contracting is not only the backbone of our economic system but a reflection of the best of human behavior – when disparate parties who may not otherwise have occasion to interact come together of their own volition and create a bargain through compromise that tries to maximize utility for each and for society at large as well. *See* Restatement (Second) of Contracts § 72 cmt. b (1981) ("Bargains are widely believed to be beneficial to the community in the provision of opportunities for freedom of individual action and exercise of judgment and as a means by which productive energy and product are apportioned in the economy. The enforcement of bargains rests in part on the common belief that enforcement enhances the utility."). This focus on optimization means that breaches may happen, but courts have quickly and efficiently dealt with those situations for hundreds of years "by attempting to put that party in as good a position as it would have been in had the contract been performed." 3 E. Allan Farnsworth, *Farnsworth on Contracts* § 12.1 (3d ed. 1990). A serious problem arises though when this rational *optimization* is instead replaced by oft-irrational *opportunism*. The threat of such egregious behavior has given rise to the implied covenant of good faith and fair dealing, a "term implied in every written contract… that [presupposes] neither party will try to take opportunistic advantage of the other." *Jordan v. Duff & Phelps, Inc.,* 815 F.2d 429, 438 (7th Cir. 1987). In the words of Judge Easterbrook in turn touting the words of Judge Posner, this implied covenant is once again necessary because "[t]he fundamental function of contract law (and recognized as such at least since Hobbes's day) is to deter people from behaving opportunistically towards their contacting parties, in order to encourage the optimal timing of economic activity and to make costly self-protective measures [like protracted federal lawsuits] unnecessary." *Id.* (citing Richard A. Posner, *Economic Analysis of Law* 81 (3d ed. 1986)). The doctrine has become especially important in the at-will

employment context, according to Judge Easterbrook, where the very nature of the relationship "creates occasions for opportunism," like "a firm… fir[ing] an employee the day before his pension vests, or a salesman the day before a large commission becomes payable." *Id.* Absent this covenant, contingent payment or benefit arrangements would be sent to the dustbin of history because the standard response from an employer would reflect the hypothetical drawn up by Judge Easterbrook: "Dear Mr. Jordan: There will be a lucrative merger tomorrow. You have been a wonderful employee, but in order to keep the proceeds of the merger for ourselves, we are letting you go, effective this instant. Here is the $23,000 for your shares" as currently valued. *Id.* at 439.

Neither this specific example nor the general principle is lost on the State of California, which had adopted the Restatement Second of Contracts authored by Professor Farnsworth to hold that "*[e]very contract* imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." *Carma Dev. (Cal.), Inc. v. Marathon Dev. Cal., Inc.,* 2 Cal. 4th 342, 371 (1992) (quoting Restatement (Second) of Contracts § 205 (1981)). "The covenant," according to the California Supreme Court, "has both a subjective and an objective aspect – subjective good faith and objective fair dealing. A party violates the covenant if it subjectively lacks belief in the validity of its act or if its conduct is objectively unreasonable." *Hammon Planting Corp. v. Wooten,* 2017 U.S. Dist. Lexis 156784, *18 (N.D. Cal. 2017) (quoting *Carma Dev. (Cal.), Inc.,* 2 Cal. 4th at 373). Right in line with Judge Easterbrook's reasoning in *Duff & Phelps*, the California Supreme Court has further stated that "[t]he covenant of good faith finds particular application in situations where one party is invested with a discretionary power affecting the rights of another." *Id.* (quoting *Carma Dev. (Cal.), Inc.,* 2 Cal. 4th at 372). In such situations, that power must be exercised in good faith, which means the covenant "forbears either party from doing anything which will injure the right of the other to receive the benefits of the agreement." *Id.* (quoting *Foley v. U.S. Pacing Co.,* 262 Cal. App. 2d 499, 505 (2d Dist. 1968)).

So, the question may become whether the California Supreme Court really meant

"*every* contract" when it said "every contract" contains this implied covenant. While the California courts may not have squarely addressed applying the implied covenant in the context of attorney-client fee agreements, a federal court sitting in a state that also relies on the Restatement to determine the contours of the implied covenant has. *See Bank of China v. Chan,* 937 F.2d 780, 789 (2d Cir. 1991) (citing Restatement § 205 to resolve issues under New York contract law). As to that, the Southern District of New York presided over a case in which a law firm executed an agreement to represent a client in a wrongful discharge and discrimination dispute against First Union National Bank, pursuant to which the firm would receive a retainer upfront and then a contingent fee on the backend equivalent to "thirty-three and one-third (33 1/3%) percent of all sums recovered." *Dweck Law Firm, LLP v. Mann,* 340 F. Supp. 2d 353, 356 (S.D.N.Y. 2004). The law firm performed the work required by the contract and presented the client with two settlement offers from First Union to resolve the different categories of claims, one for $1,035,000 and the other for $1,350,000. *Id*. However, the client refused to execute the settlement agreements for either sum after allegedly telling the lead attorney for the law firm that "she would [only] accept the settlement proposals if [the law firm] substantially reduced or eliminated the [contingency] fee." *Id.* at 361. This position frustrated the settlements, and the attorney ultimately brought suit for damages on a theory of breach of the implied covenant of good faith and fair dealing. *Id.* at 360. Much like Quechan, the client's main line of defense was to argue that it "had an absolute right to terminate [her] attorneys." *Id.* at 360. The Southern District of New York, however, was quick to point out that the client was not appreciating the distinction between terminating an attorney (which a client can do) and terminating an attorney to "abuse the attorney" by depriving it of fees it worked hard to earn under the contract (which a client cannot do):

> If, on the other hand, the client believes the settlement offer is satisfactory, but refuses it because she does not want to forfeit any of the recovery to her attorney, her actions may constitute bad faith. Nonetheless, she would not lose her absolute right to terminate the attorney, and the termination itself would not give rise to a cause of action. However, the client's bad faith

> conduct during the course of the representation may be actionable. Allowing the attorney to protect himself in this way is not 'incompatible' with the client's right to terminate the attorney-client relationship; a client may terminate her attorney. However, the fact that a client has an absolute right to terminate her attorney at any time does not give her free reign to abuse the attorney, or act in bad faith in her dealings with the attorney, during the course of the representation.

Id. at 360-61.

The discussion above would make Judges Easterbrook and Posner proud, but it also perfectly aligns with how courts sitting in California have dealt with contractual breaches affecting contingently paid employees, typically in situations where they negotiate a contract and then get unceremoniously fired right before the commission is supposed to be paid. A perfect example from this commission line of cases is *McCollum v. Xcare.net,* 212 F. Supp. 2d 1142 (N.D. Cal. 2002), which involved the defendant hiring the plaintiff to be its sales manager for the Western Region pursuant to a contract that provided for a base salary and "sales commissions over and above [that] in accordance with" the company's compensation plan. *Id.* at 1144. Within months of starting work, the plaintiff had negotiated a new contract with an existing client known as FHS that "would have resulted in approximately $10 million in revenue to the [d]efendant." *Id.* The deal was set to be consummated on October 12, 2000, at which point the defendant would have to pay a commission to the plaintiff in the amount of "$570,130 for her work on that contract." *Id.* at 1145. And yet, the week before the contract was to be signed, a senior vice president for the defendant circulated an email just like the one Quechan sent to Williams & Cochrane that explained the plaintiff would be let go at the end of the business day on October 11th (*i.e.*, the day before the contract execution date), she was "not to make any contact with FHS or any associated business of FHS," and her termination was because her "performance had not met expectations." *Id.* at 1144. The district court rejected the defendant's attempt to get rid of the case, citing the implied covenant and explaining that it could be violated "if termination of an at-will employee was a mere pre-

text to cheat the worker out of another contract benefit to which the employee was clearly entitled." *Id.* at 1153 (citing *Guz v. Bechtel Nat'l, Inc.,* 24 Cal. 4th 317, 353 (2000)). This decision seems to reflect the standard thinking of courts in the commission line of cases. *See, e.g., Wood v. IGATE Techs., Inc.,* 2015 U.S. Dist. Lexis 189105, *9 (N.D. Cal. 2015); *Fin. Tech. Partners L.P. v. FNX, Ltd.,* 2007 U.S. Dist. Lexis 48355, *11-*12 (N.D. Cal. 2007).

The breach in this case is no different than those described above. After learning of the *Pauma* judgment and concluding it provided Quechan with a way to turn its overdue revenue sharing payments into an entirely new compact, the original Tribal Council contacted Williams & Cochrane and subsequently executed an Attorney-Client Fee Agreement designed to "reduc[e] [the Tribe's] payments under its tribal/State compact," which utilized a hybrid fee structure. Williams Decl., Exs. 16; 17, §§ 4-5. The main component of the fee structure within this agreement that is supposed to be governed by California law *and* general principles of federal law like those in the Restatement is a contingency fee that, "[i]f the matter is resolved before the filing of a lawsuit or within 12 months thereof," would provide the firm with "fifteen percent (15%) of the net recovery." Williams Decl., Ex. 17, § 5. Amongst other things, this term "net recovery" includes "any credit, offset, or other reduction in future compact payments to the State in a successor compact (whether new or amended) as a result of the excess payments under Client's tribal/State compact amended in 2006." Williams Decl., Ex. 17, § 5. With the fee agreement in place, Williams & Cochrane got down to work and convinced the State of California to offer Quechan a compact that wiped out all revenue sharing aside from what was necessary to offset the State's costs of regulating Indian gaming, a payment reduction the State later admitted would save the Tribe at least "$4 million annually." Williams Decl., Exs. 24-25.

After nearly nine months of work tailoring this compact to Quechan's needs, Cheryl Williams would contact the two point persons for Quechan shortly after the conclusion of the final negotiation session on June 14, 2017 to inform them of the final steps in the

negotiation over the next two weeks. Williams Decl., Exs. 37-39. The conversation with Vice President Smith occurred shortly after 1:38 p.m. on June 15th, which he confirmed in a stylized e-mail to the rest of the Tribal Council just hours later:

> [Williams & Cochrane] met with the Governor's office yesterday and it went well and they have agreed, in principle to Having a third facility with machines and Option to use an additional 400 machines, this would include some fees. With those two items incorporated it will take an additional week or two to get the compact in place. This puts us at the end of June or possibly the first week of July.

Williams Decl., Ex. 39. Now possessing this information on wrapping up the compact negotiation, what does Quechan do with it? According to the anti-SLAPP declarations filed earlier in this case, it has its President Keeny Escalanti and a Councilmember named Willie White meet with Mr. Rosette the very next morning. Williams Decl., Exs. 12-13. Out of this encounter comes a termination letter signed by President Escalanti that Quechan transmitted just four days before the end of the month (*i.e.*, the anticipated completion date), which demands the compact materials, informs Williams & Cochrane "[t]he Tribe will not pay any contingency fee or 'reasonable fee for the legal services provided in lieu' thereof," and threatens to ruin "the reputation of your firm in Indian Country and in the State of California" if the Firm does not simply walk away from the situation. Williams Decl., Ex. 41.

It should go without saying that last-minute terminations like this in *any* negotiations are highly unusual, let alone those involving hundreds of millions of dollars. One of the expert witnesses for Williams & Cochrane in this matter is George Forman, an Indian law attorney who has been in the field for 50 years and is one of three responsible for the landmark tribal victory in *California v. Cabazon Band of Mission Indians,* 480 U.S. 202 (1987). Mr. Forman has been negotiating compacts in California since the advent of compacting, representing the Sycuan tribe in 1990, a host of tribes in negotiations with Pete Wilson in 1992, even more tribes in negotiations with Gray Davis in 1999, several tribes in amendment negotiations with Arnold Schwarzenegger between 2004 and 2006, and a

multitude of tribes in negotiations with Jerry Brown/Gavin Newsom in recent years. Williams Decl., Ex. 2, pp. 3-6. Despite possessing more experience in compact negotiations that any other attorney *ever*, Mr. Forman testified that "changes in legal counsel at such a late stage of negotiations would be highly unusual and not recommended." Williams Decl., Ex. 2, p. 11. Of course the reason such a move is ill-advised is because a state like California may try to take advantage of the firm switch by clawing back on "whatever concessions had been obtained." Williams Decl., Ex. 2, p. 11. These are beliefs shared by attorneys and tribal representatives alike. A second expert for Williams & Cochrane is Anthony Miranda, a Pechanga tribal member who served as the Chair of the largest tribal gaming advocacy group in the State of California for much of the aughts. Williams Decl., Ex. 4, p. 2. According to Mr. Miranda, "a change in counsel deep into the negotiations, such as after the parties are close to a deal or during the last months of the legislative session in which the tribe hopes to have a compact executed, is extremely rare. Compact negotiations involve tens if not hundreds of millions of dollars, and most tribal leaders are keenly aware of this fact and would therefore avoid a late change in counsel, which would provide the State with an advantage in dealing with a new attorney who was not present at any of the prior negotiation sessions." Williams Decl., Ex. 4, pp. 8-9.

Yet, the stance taken by Quechan is that the late termination was motivated strictly be deficient performance. How can this be, though, when all the material terms in the executed compact are one and the same as those in the final draft negotiated by Williams & Cochrane – from the number of casino, to the number of slot machines, to the term of the agreement? Williams Decl., Exs. 40, 45. When commenting upon the final compact, the same representatives of Quechan who were in the meeting with Mr. Rosette on the morning of June 16th publicly admitted that the Tribe was "pleased with the terms of its new compact" if not convinced the agreement was outright "incredible." Williams Decl., Exs. 46-47. For proof that this decision was *not* motivated by deficient performance, look no further than the June 28, 2017 e-mail from the Rosette Defendants to California State Senator Ben Hueso. What this e-mail shows is that on the day after Quechan transmitted

the June 26, 2017 termination letter, an associate at Rosette, LLP was working the phones trying to "set a brief meeting with Senator Hueso" for the very next day "to discuss the legislative process for getting [Quechan's] compact ratified." Williams Decl., Ex. 44. In other words, the Rosette Defendants believed the negotiations were done and had already turned their attention to lobbying the California legislature to approve the agreement (e-ven though they are not registered to do so). The situation in this case is no different than if President Escalanti simply refused to sign the compact when Williams & Cochrane hand delivered it, and it presents a clear case of a breach of the implied covenant that should result in an interest-adjusted judgment awarding the full contingency fee and all monthly flat fees from June 1, 2017 till the date the compact took effect on January 22, 2018. *See* 82 Fed. Reg. 3015 (Jan. 22, 2018); *Guidiville Rancheria of Cal. v. United States,* 704 F. App'x 655, 658 (9th Cir. 2017) (discussing the "doctrine of prevention" being one type of breach of the implied covenant).

III. QUECHAN COMMITTED MATERIAL BREACHES OF THE ATTORNEY-CLIENT FEE AGREEMENT THAT SHOULD RESULT IN FEES MODELED AFTER AT LEAST WHAT THE TRIBE'S COUNSEL WILMERHALE AND ITS COLLEAGUES WERE PAID IN THE *TOHONO O'ODHAM* SUIT

The factual background of this case is replete with material breaches of the At-torney-Client Fee Agreement by Quechan that warrant relief – and substantial relief – for Williams & Cochrane and should foreclose any such thing for the Tribe. "The elements of a breach of contract claim are (1) the existence of a valid contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff." *Abbit v. ING USA Annuity & Life Ins. Co.,* 252 F. Supp. 3d 999, 1008 (S.D. Cal. 2017) (citing *Reichert v. Gen. Ins. Co. of Am.,* 68 Cal. 2d 822, 830 (1968)). "A material breach of one aspect of a contract generally constitutes a material breach of the whole contract." *Brown v. Grimes,* 192 Cal. App. 4th 265, 278 (2d Dist. 2011) (citing 23 Richard A. Lord, *Williston on Contracts* § 63:3 (4th ed. 2000)).

Of the recurrent contractual breaches, two in particular deserve attention. The first relates to the monthly flat fee provided for in Section 4 of the Attorney-Client Fee Agree-

ment that details how Quechan was supposed to "pay a flat fee of $50,000 per month for Firm's services under this Agreement," and that the "fee [was] fixed and [did] not depend on the amount of work performed or the results obtained." Williams Decl., Ex. 17, § 4. A crystal clear obligation nevertheless turned into a source of considerable consternation, as Quechan failed to actually pay these fees for much of the life of the representation. In fact, as Quechan admitted in its responses to Williams & Cochrane's first set of requests for admission, the Tribe did not remit checks to cover the flat fees for the months of February, March, April, and May 2017 until the second week of June 2017 – or until it had arranged to terminate the Firm at the last minute with the assistance of Mr. Rosette. Williams Decl., Ex. 56. What's more, the termination letter ultimately carrying out this plan that Williams & Cochrane received on June 27, 2017 explained "[t]he Tribe will consider all of its obligations to the Firm satisfied upon payment of a pro-rated fee for your services as of the date of this letter pursuant to Section 4 of the Agreement." Williams Decl., Ex. 41. And yet, more than three years have elapsed since this termination letter came about and Quechan has *still* not made any payment for the month of June 2017, another fact the Tribe admitted in response to Williams & Cochrane's requests for admission. Williams Decl., Ex. 56. Thus, this first of the two noteworthy material breaches of the Attorney-Client Fee Agreement should entitle Williams & Cochrane to damages in a base amount of $45,000, which reflects a prorated sum to cover the first 27 of the 30 days in June 2017.

The second material breach is *much* more significant and pertains to what Quechan would owe if it terminated Williams & Cochrane in good faith before the contingency fee definitively attached. Williams Decl., Ex. 17, § 11. According to Section 11 of the Attorney-Client Fee Agreement, such a situation would in turn "entitle" Williams & Cochrane to receive a reasonable fee from Quechan, the amount of which would be determined according to a list of factors that first and foremost look at "[t]he amount of the fee in proportion to the value of the services performed." Williams Decl., Ex. 17, § 11. This focus on the value received means it is important to compare where Quechan started versus

where it ended up. Quechan had an existing compact with the State of California, one pursuant to which it had knowingly "agree[d] to make a fair revenue contribution to the State." Williams Decl., Ex. 20. This fair payment then spontaneously became unfair to Quechan after ten years, who unilaterally ceased making revenue sharing payments to the State of California in the summer of 2017. Williams Decl., Ex. 16. It did this despite the fact that the Tribe's existing compact empowered the State to take severe remedial actions on account of late payments, from shuttering the gaming facility to holding the Tribe in material breach of its compact. Williams Decl., Ex. 20, §§ 4.3.3(e)-(f). And there was no easy out for Quechan because renegotiations turned upon obtaining the State's prior consent – and why would it consent to voluntarily forego revenue, especially to help a tribe that has a problem with keeping its word? Williams Decl., Ex. 19, § 12.

Then, like manna from heaven, news of the State of California paying the *Pauma* judgment broke and Quechan quickly reached out to the attorneys who in actuality "successfully litigated" this case to see if they could create a fix for a disastrous situation. Williams Decl., Ex. 16. In other words, it *used* the goodwill of Williams & Cochrane to turn a financially burdensome compact into a completely new agreement that wiped out virtually all revenue sharing, tripled its casinos, and then increased its number of slot machines by more than 50%. And then, it *abused* this goodwill by terminating Williams & Cochrane in the most embarrassing of ways, rather aptly because it once again did not want to pay *any* fees under a contract it voluntarily negotiated.

The legal work done in the matter being described is the epitome of professional perfection – where attorneys find a fix to a seemingly impossible situation quickly and without having to involve the Courts. A useful guide for valuing these services actually comes from the fees charged by Quechan's litigation counsel WilmerHale and its bevy of colleagues while less successfully representing a different tribe in a compact dispute with the surrounding state. As to that, the State of Arizona has a model compact kind of like the original one in the State of California that tries to create equity amongst the tribes, in this instance by limiting the number of casinos that can be located in or around the two

major metropolitan areas. *See Arizona v. Tohono O'odham Nation,* 944 F. Supp. 2d 748, 753 (D. Ariz. 2013). Yet, the compact negotiator for the State of Arizona – an Arizona attorney named Stephen M. Hart – ended up getting duped by the Tucson-based Tohono O'odham tribe, which knowingly failed to disclose during the negotiations that it had settled a federal land claim that would enable it to purchase property in the Phoenix metropolitan area and build a casino there. *Id.* at 754. This revelation in turn led to *years* of litigation, during which Tohono O'odham was represented by WilmerHale, a local law firm, *and* its in-house counsel. Williams Decl., Ex. 63, ¶¶ 12-15. When this five-plus year case concluded, the two outside law firms filed motions for attorney's fees to seek reimbursement for just *some* of the fees they charged, filings that were substantiated by their yearly contracts with the defendant tribe. Williams Decl., Ex. 62. What these contracts reveal is that each year Tohono O'odham would earmark up to $2.5 million for WilmerHale and $900,000 for its local counsel, and this was despite its own in-house attorneys contributing "many hundreds of hours [of work] annually" to the cause. *See* Williams Decl., Exs. 62; 63, ¶ 15. Thus, the upfront hourly fees charged to slowly resolve a singular compact dispute over the course of five-plus years likely totaled *well* in excess of $13.5 million. This goes to show that law firms who take on the arduous task of representing tribes in gaming matters against states get paid, they should get paid, and they should not get shortchanged simply because deceitful clients fire them when 99.99999999% of the work is done. Soon Quechan will argue what it voluntarily agreed to pay under the Attorney-Client Fee Agreement is way too much while quietly paying WilmerHale more than its total potential liability in this case for significantly less valuable services. A disingenuous argument like this does not dispel the two material breaches of the express terms of the Attorney-Client Fee Agreement, however, and those should result in a fallback interest-adjusted judgment awarding $45,000 for the breach of Section 4 and a sum equivalent to *at least* half of the contingency fee for the breach of Section 11.

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IV. A JUDGMENT IN FAVOR OF WILLIAMS & COCHRANE ON EITHER OF THE FOREGOING CONTRACT CLAIMS SHOULD BE ADJUSTED TO REFLECT PRE- AND POST-JUDGMENT INTEREST AND ANY OTHER REMEDIES REQUESTED BY QUECHAN IN ITS COUNTERCLAIMS

One of the fundamental principles in federal litigation involving an Indian tribe is that whatever a tribe asks for it exposes itself to in return. *See Guidiville Rancheria,* 704 F. App'x at 660 (explaining a tribe subjects itself to those remedial matters it "expressly requested the district court to resolve and put under its jurisdiction"). Earlier in this case, Quechan filed Counterclaims that seek a slew of remedies, from "damages, including but not limited to compensatory and punitive damages," to "restitution," to "disgorge[ment]," to "costs and expenses," to "pre-judgment and post-judgment interest." Dkt. No. 231, p. 49. Given this, Williams & Cochrane requests all the same with respect to the foregoing contract claims, and in particular asks the Court to award pre- and post-judgment interest at the 10% rate provided for in Section 3289 of the California Civil Code. *See* Cal. Civil Code § 3289.

ARGUMENT ON QUECHAN'S COUNTERCLAIMS

I. COUNSEL FOR QUECHAN REPRESENTED THAT ALL THE COUNTERCLAIMS ARE LIMITED TO SEEKING RETROACTIVE RELIEF DUE TO WILLIAMS & COCHRANE SUPPOSEDLY TAKING TOO LONG IN THE COMPACT NEGOTIATIONS, AN ARGUMENT THE TRIBE IS INCAPABLE OF PROVING FOR LEGAL AND FACTUAL REASONS

One of the thornier issues in this case has been the ability of Quechan to pursue counterclaims that were immune to legal challenge by Williams & Cochrane. The reason allowing a defendant to pass through the pleading stage unchecked is anathema to civil litigation will soon become apparent, as Quechan interprets its counterclaims to cover all sorts of supposed professional failures that were never mentioned in the operative pleading nor adequately developed during the discovery period. In other words, these counterclaims have come to mean whatever Quechan wants them to mean. There is a real irony to this because the counterclaims actually mean nothing, and that is according to representations from Quechan's own counsel just a few months ago.

Again, a constant feature of the discovery period was the Defendants trying to create the appearance of participation without actually participating. Quechan was able to achieve this by simply reproducing Williams & Cochrane's own work product from the compact negotiations over and over again while storing everything else it was willing to admit existed on one of two privilege logs that totaled more than 110 pages in length. Williams Decl., Exs. 5-6. Seeing a defendant pursue counterclaims while nevertheless claiming that virtually all of the relevant materials were protected by privilege obviously gave Magistrate Judge Berg pause, as he specifically asked counsel for Quechan at the hearing on the claims of privilege how Williams & Cochrane was supposed to defend itself against the charges. Williams Decl., P0198. In response to this question, Mr. Vittor told Magistrate Judge Berg not to fear, as all of the assorted counterclaims – no matter how styled – simply boiled down to attempts to seek retroactive relief for Williams & Cochrane allegedly taking too long to complete the compact negotiations:

> The Court: And how about Williams & Cochrane's ability to counteract your damages claim?
> Mr. Vittor: So, our damages claim is based on the delay in progress of the negotiations between – between the retention of Williams & Cochrane and the termination of Williams & Cochrane, not the two months between the retention of Rosette and the signing of the compact. We are not –
> The Court: Okay.
> Mr. Vittor: We are not arguing – we are not arguing – we do not contend that the compact that – that – that the tribe was damaged because the compact was signed in August of 2017. We are contending that the tribe was damaged because it paid its attorney a considerable amount of money over the course of many months prior to terminating the attorney-client fee agreement with very little progress to show for it.

Williams Decl., P0198-0199.

In other words, all that the counterclaims mean is Quechan is seeking to disgorge some of the monthly flat fees under Section 4 of the Attorney-Client Fee Agreement on account of Williams & Cochrane supposedly taking too long to do the work, even though such fees were never billed nor paid in the first and final months of the representation, respectively. Williams Decl., Exs. 17, 41. Of course, an attorney is more than capable of

limiting the nature of its client's claims, as is shown by the *Brave Law Firm* case that is discussed more extensively in the complementary motion for summary judgment on the false advertising claim under the Lanham Act, 15 U.S.C. § 1051 *et seq*. *See*, *e.g.*, *Brave Law Firm, LLC v. Truck Accident Lawyers Grp*., *Inc*., 2020 U.S. Dist. 24201 (D. Kan. 2020). This case concerned a personal injury firm that claimed one of its competitors was falsely taking credit for a $9 million legal victory that actually belonged to someone else. *Id*. at *3. During the course of the litigation, the plaintiff attended a case management conference during which he "agreed to dismiss the lawsuit upon receipt of authenticated, admissible proof that the $9,000,000… settlement advertised by all of the Defendants occurred as advertised." *Id*. at *7. Soon thereafter the defendant filed declarations from all the other attorneys involved in the relevant matter who testified in unison that the defendant represented the client from start to settlement, which was enough for the Court as it interpreted the plaintiff's representation as a unilateral contract and accordingly dismissed the case. *Id*. at *7, *17.

Thus, little remains of the counterclaims and what does remain is fatally flawed. For starters, Mr. Vittor contends that the representation went on for "many months" with "very little progress to show for it." Yet, this claim goes against the express terms of the Attorney-Client Fee Agreement, which explicitly acknowledges that Quechan was paying the monthly flat fee irrespective of the "amount of work performed or the results obtained." Williams Decl., Ex. 17, § 4. Not to mention, this "many months" actually translates to between eight and nine months, a time period so succinct and satisfactory to Quechan that the Tribe actually agreed to reward Williams & Cochrane for resolving the matter within such time by providing it with a contingency fee equal to "fifteen percent (15%) of the net recovery." Williams Decl., Ex. 17, § 5. As for the contention that Quechan had paid a "considerable amount of money" during this time, that too is inaccurate because the Tribe admitted in response to Williams & Cochrane's requests for admission that it was not paying the monthly flat fee for vast majority of the representation, electing to remit some of what it owed in the days before terminating the Firm. Williams Decl., Ex.

56. What this means it that Quechan was in material breach of the Attorney-Client Fee Agreement throughout the life of the representation, which in turn absolved Williams & Cochrane from doing any work under the agreement. *See Zhou Jie Plant v. Merrifield Town Ctr. Ltd. P'Ship*, 711 F. Supp. 2d 576, 596 (E.D. Va. 2010) ("It is well established that the first material breach doctrine is a defense to breach of contract cases."); Restatement (Second) of Contracts § 237 (1981) (explaining a party's failure to render performance discharges the other's duty to perform). But, perform it did, and now Williams & Cochrane is facing cries of nonperformance that ring out from – and Quechan wants adjudged in – the darkness. For instance, one of the allegations in the complaint is that Williams & Cochrane faced unexpected difficulties in getting the State of California back to the bargaining table because of the widely-publicized and supremely-contentious Quechan Tribal Council election of 2016/17. Dkt. No. 220 ¶ 77. To help prove this point, Williams & Cochrane propounded requests for production on Quechan seeking documents related to this election in order to show the Tribe was all consumed with infighting for months on end, spending considerable time after that trying to compel at least a partial production of materials on this subject. Nevertheless, the position taken by counsel for Quechan was that the subordinate committee possessing the election materials was supposedly some independent body wholly divorced from the tribal entity that is subject to the Court's jurisdiction. Williams Decl., Ex. 65. In other words, Quechan would not produce any documents, just like it would not produce any documents on virtually every other issue. This in turn has created the present reality in which Quechan is advancing counterclaims contending Williams & Cochrane took too long to complete the negotiations when there is not a single shred of evidence showing anyone on the Tribal Council believed this during the course of the representation.

II. QUECHAN FAILED TO PRESENT EXPERT TESTIMONY TO SUPPORT ITS MALPRACTICE CLAIM

Another problem with the counterclaims is there is no expert testimony to prove the alleged malpractice. "In a legal malpractice action, expert testimony is required to es-

tablish the prevailing standard of skill and learning in the locality and the propriety of particular conduct by the practitioner in particular circumstances, as such standard and skill is not a matter of general knowledge." *Vaxiion Therapeutics, Inc. v. Foley & Lardner LLP,* 593 F. Supp. 2d 1153, 1165 (S.D. Cal. 2008) (citation omitted). In other words, the expert testimony must lay out both the standard of care and the attorney's performance in relation to that standard. *Apfront v. Poynter Law Grp.,* 2018 U.S. Dist. Lexis 224026, *14 (C.D. Cal. 2018). An adept depiction of a sufficient expert report is set forth in *SiRF Tech Inc. v. Orrick Herrington,* 2010 U.S. Dist. Lexis 62404, *39 (N.D. Cal. 2010), a case in which the plaintiff hired an Akin Gump patent litigator with 37 years of experience to testify on how Orrick breached its standard of care by omitting important defenses in a section 337 action before the International Trade Commission. *Id.* at *39. Within his report, the Akin Gump expert laid out how a competent attorney would conduct the litigative process before the ITC over many paragraphs and then detailed the very specific conduct by Orrick that allegedly fell below this standard. *Id.* at *39-*41.

Here, all the counterclaims presented by Quechan are really just malpractice claims despite any inapt titles or descriptors. *See Chastain v. Poynter Law Group,* 2020 U.S. App. Lexis 15801, *4 (9th Cir. 2020) (holding breach of fiduciary duty claims are really legal malpractice claims that require expert testimony). And yet, there is no expert testimony to show either the standard of care or how Williams & Cochrane fell below this standard. This is the case whether one views the underlying matter as compact negotiations generally or a revenue sharing dispute that was resolved through such negotiations. Quechan will certainly try to point to the report of its so-called expert Stephen Hart, but nothing therein details how Mr. Hart (or any experienced attorney) would conduct such negotiations and thus how Williams & Cochrane deviated from accepted norms. Williams Decl., Ex. 64. For instance, Mr. Hart does not even detail how he would compel the State of California to sit down in compact renegotiations with a debtor tribe in the first instance when it had no legal obligation to do so. Page after page of this brief could go toward tearing apart the Hart report and how it fails to address how the compact negotiations

should have transpired after this initial event, but the inadequacy of the report is evident from the fact that is does not mention either of the terms "standard of care" or "breach" a single time.

III. THE COURT SHOULD EXCLUDE THE EXPERT REPORT OF STEPHEN HART, AN ARIZONA ATTORNEY OPINING UPON CALIFORNIA COMPACT NEGOTIATIONS WHO FAILED TO DISCLOSE HIS PRIOR DEPOSITION TESTIMONY AND OTHER RELEVANT MATERIALS

The problems with the Hart report extend far beyond the failure to analyze the alleged malpractice. Under Federal Rule of Evidence 702, expert testimony is only permissible if it is reliable, and the proponent of such has the burden of proving to the trial court – acting as a "gatekeeper" – that the proposed testimony is admissible. *See Kwan Software Eng'g, Inc. v. Foray Techs., LLC,* 2014 U.S. Dist. Lexis 17376, *10-*12 (N.D. Cal. 2014) (collecting cases). Here, Quechan is using the testimony of an attorney who is not even licensed in the State of California to try and discuss legal work done in the State of California. Williams Decl., Ex. 57. The principal support for Mr. Hart's expert designation appears to be his involvement in the *Rincon* suit that held the State of California acted in bad faith by demanding certain concessions from an Indian tribe. *See Rincon Band of Luiseno Mission Indians of Rincon Reservation v. Schwarzenegger,* 602 F.3d 1019 (9th Cir. 2010). However, of the two firms representing Rincon, Mr. Hart did not even become the primary attorney for one of them until *after* the filing of summary judgment briefing, and his sole contribution at the myriad of personal appearances in the case was all of four words: "Scott Crowell [*i.e.*, his co-counsel] will speak." Williams Decl., Ex. 58. If he is pinning his expertise on tribal compact negotiation work, Mr. Hart only mentions two on his firm profile (*i.e.*, Navajo and Shingle Springs), but news articles written by him indicate those tribes ended up with compacts imposing annual revenue sharing fees of between 8.5% and 15% of net win. Williams Decl. Ex. 59. In other words, an attorney who seemingly finds a 15% revenue tax rate acceptable is trying to poohpooh the work of attorneys who obtained a revenue tax rate of less than 1%.

As a final matter, Mr. Hart has been less than forthcoming in his report. He claims

to be totally unaware of any circumstances in which a retainer would be "coupled with a 15% success-based contingency fee," but he failed to disclose that he lost a gaming law-suit in which his opposing counsel had a monthly retainer and a contingency fee of 10% of the gross recovery (which was subsequently increased to 20%). Williams Decl., Ex. 60. Oversights like this make transparency crucial, but Mr. Hart also claims that he has not testified in a deposition in the last four years, when in reality he was deposed in a fed-eral lawsuit concerning compact negotiations in the summer of 2016. Williams Decl., Ex. 61. Disclosing this would have then revealed that Mr. Hart has been deposed in like cases dating back to at least 2012. Williams Decl., Ex. 61. Williams & Cochrane has not been able to obtain complete transcripts for any of these depositions, and without them the Hart report is entirely unreliable.

CONCLUSION

For the foregoing reasons, Williams & Cochrane respectfully requests the Court to enter judgment in favor of the Firm on its contract claims against Quechan in the manner described herein.

RESPECTFULLY SUBMITTED this 17th day of September, 2020

WILLIAMS & COCHRANE, LLP

By: */s/ Kevin M. Cochrane*
Cheryl A. Williams
Kevin M. Cochrane
caw@williamscochrane.com
kmc@williamscochrane.com
WILLIAMS & COCHRANE, LLP
125 S. Highway 101
Solana Beach, CA 92075
Telephone: (619) 793-4809