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8 UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

11 BLUE STONE STRATEGY GROUP,
12 LLC, a Delaware limited liability
13 company,

14 Plaintiff,

15 vs.

16 NIKISHNA POLEQUAPTEWA, an
17 individual,

18 Defendant.

Case No. SACV14-1888 CJC (DFMx)

**DEFENDANT NIKISHNA
POLEQUAPTEWA’S
COUNTERCLAIMS AGAINST
BLUE STONE STRATEGY
GROUP, LLC**

DEMAND FOR JURY TRIAL

[Assigned to Hon. Cormac J. Carney]

Complaint filed: November 26, 2014
Response date: March 12, 2015

21 NIKISHNA POLEQUAPTEWA, an
22 individual,

23 Counterclaimant,

24 vs.

25 BLUE STONE STRATEGY GROUP,
26 LLC, a Delaware limited liability
27 company,

28 Counter-defendant.

1 Counterclaimant NIKISHNA POLEQUAPTEWA (“Polequaptewa”) asserts
2 the following counterclaims against counter-defendant BLUE STONE
3 STRATEGY GROUP, LLC (“Blue Stone”):

4 **I. INTRODUCTION**

5 1. Polequaptewa’s counterclaims against Blue Stone for breach of
6 contract, breach of the covenant of good faith and fair dealing, invasion of privacy,
7 and conversion arise out of his employment relationship with Blue Stone, upon
8 which the complaint in this action is based. Polequaptewa’s employment
9 relationship with Blue Stone began in April 2014 and deteriorated in November
10 2014 when, among other things, Blue Stone and its agents: pressured
11 Polequaptewa into abruptly relocating his family to Florida, hacked into his
12 personal email and Apple ID accounts (upon information and belief), and
13 inexplicably exercised dominion and control over his personal property, which, as
14 of the date of this counterclaim, has not been returned.

15 **II. THE PARTIES**

16 2. Polequaptewa is an individual residing in Garden Grove, California.

17 3. Blue Stone is a Delaware limited liability company with a principal
18 place of business in Irvine, California.

19 **III. JURISDICTION AND VENUE**

20 4. This Court has personal jurisdiction over counter-defendant Blue
21 Stone because Blue Stone has a principal place of business within Orange County,
22 California, which is located within this Court’s jurisdiction. Moreover, Blue Stone
23 has consented to this Court’s jurisdiction by commencing its action against
24 Polequaptewa in this Court.

25 5. Venue is proper because a majority of the events, omissions, and
26 damages giving rise to Polequaptewa’s counterclaims occurred in this district. In
27 any event, Blue Stone chose this Court in its action against Polequaptewa, and thus
28 cannot object to Polequaptewa’s counterclaims on venue grounds.

1 6. This Court has subject matter jurisdiction over Polequaptewa’s
2 counterclaims because they fall within the Court’s supplemental jurisdiction under
3 28 U.S.C. § 1367(a). Polequaptewa’s counterclaims are compulsory because,
4 among other reasons, they bear a logical relationship to Blue Stone’s claims
5 against Polequaptewa; both arise out of the employment relationship.

6 **IV. BACKGROUND ALLEGATIONS**

7 **A. April 2014: The Employment Agreement**

8 7. In April 2014, Polequaptewa and Blue Stone entered into a written
9 employment agreement (the “Employment Agreement”), where Blue Stone hired
10 Polequaptewa as a full-time employee, specifically a “senior strategist.”

11 8. Although the Employment Agreement said that Blue Stone would
12 provide Polequaptewa with a laptop computer, Blue Stone never did;
13 Polequaptewa used his personal laptop computer throughout his tenure with Blue
14 Stone.

15 9. The Employment Agreement (paragraph 19) provides that: “This
16 Employment Agreement may be modified or amended, if the amendment is made
17 in writing and is signed by both parties.”

18 10. The Employment Agreement does not, expressly or impliedly, require
19 Polequaptewa to relocate or engage in extended travel to complete his job duties as
20 a senior strategist.

21 **B. October to November 2014: The disintegration of Polequaptewa’s**
22 **employment relationship with Blue Stone as a result of Blue**
23 **Stone’s subversive and retaliatory conduct**

24 11. Polequaptewa’s employment relationship with Blue Stone began to
25 deteriorate in October and November 2014.

26 12. In October 2014, Blue Stone began to develop a project in Florida (the
27 “Florida project”). Polequaptewa’s supervisor, Bill Moon (“Moon”), listed
28 Polequaptewa as a lead strategist on the Florida project.

1 13. Polequaptewa told Moon that he could not work on the Florida project
2 for several significant reasons. For one, the Florida project required travel to
3 Florida for six days a week for six months. Polequaptewa believed that he would
4 effectively have to move his wife, who works full time in Irvine, and three young
5 children to Florida so that he could work on the Florida project. Polequaptewa
6 attempted to accommodate Blue Stone by offering to work three to four days in
7 Florida, but Moon told Polequaptewa that “this is the consulting world; we work
8 all the time.”

9 14. Polequaptewa nonetheless believed he would be off the Florida
10 project after voicing his objections.

11 15. In November 2014, Polequaptewa submitted two internal
12 whistleblower complaints in writing to Blue Stone corporate officers. The
13 complaints related to IT security concerns and financial malfeasance by Blue Stone
14 corporate officers. Specifically, Polequaptewa complained about how Blue Stone
15 corporate officers improperly paid tribal leaders—Ernest Stevens, Jr. (Chairman of
16 the National Indian Gaming Association), Brian Patterson (President of the United
17 South & Eastern Tribes), Tim Keller (New Mexico State Senator), Brian
18 Cladoosby (President of the National Congress of American Indians), and Henry
19 Cagey (Elected Tribal Counsel Member, Lummi Nation), among others—to
20 convince their constituents to get contracts for Blue Stone.

21 16. In November 2014, after submitting his internal complaints,
22 Polequaptewa was demoted from a senior strategist to a strategist.

23 17. On or around November 10, 2014, Polequaptewa saw his name on a
24 travel logistics email for the Florida project.

25 18. Polequaptewa spoke with Moon once again after seeing the travel
26 logistics email. Moon told Polequaptewa that he had to go for the first week just to
27 get the project launched. Polequaptewa agreed to go for a week, but believed that
28 he would be returning home to Orange County after helping to launch the Florida

1 project.

2 19. Polequaptewa arrived in Florida on or around November 18, 2014.
3 When Polequaptewa arrived in Florida, he received an orientation-meeting outline.
4 The outline listed Polequaptewa as one of the two Blue Stone employees who
5 would be required to be in Florida from Sunday to Friday each week for six
6 months.

7 20. Polequaptewa felt that Blue Stone deceived him, ignored his concerns,
8 and retaliated against him. Polequaptewa attempted to discuss his concerns about
9 the Florida project with Blue Stone's office manager, Moon, and Blue Stone CEO,
10 John Mooers ("Mooers").

11 21. Everyone at Blue Stone that Polequaptewa attempted to contact
12 ignored him and avoided his request for resolution. Polequaptewa felt trapped into
13 spending six days a week in Florida for six months. Consequently, Polequaptewa
14 felt that he had no choice but to resign from Blue Stone.

15 **C. Evening of November 18, 2014: Moon falsely tells the police that**
16 **Polequaptewa might kill himself in order to gain access to**
17 **Polequaptewa's hotel room**

18 22. On the evening of November 18, 2014, after Polequaptewa resigned
19 from Blue Stone, upon information and belief, Moon called the police and told
20 them that Polequaptewa might kill himself.

21 23. The police arrived at Polequaptewa's hotel room in response to
22 Moon's call. Polequaptewa's wife and young children were in the hotel room.

23 24. Moon attempted to get the police officer to seize Polequaptewa's
24 personal laptop, and alleged that it belonged to Blue Stone. Polequaptewa asserted
25 that the laptop belonged to him.

26 25. The police officer advised Polequaptewa to turn over the laptop to
27 show that he had nothing to hide, but to take pictures of it and lock the device.
28 Polequaptewa cooperated because he felt he had no other choice, and was not

1 detained in any form.

2 **D. Polequaptewa’s personal email accounts and Apple ID account**
3 **are hacked into shortly after Polequaptewa provides Blue Stone**
4 **access to his linked Blue Stone email account**

5 26. On or around November 14, 2014, Moon and Mooers requested that
6 Polequaptewa transfer all company network and IT-related administrative
7 passwords and privileges over to Mooers’ longtime friend, Eldad Yacobi.
8 Polequaptewa complied with the request, and did not give his passwords and
9 privileges to anyone else.

10 27. The following Tuesday, November 18, 2014, Polequaptewa was
11 locked out of his Blue Stone email account, which was the recovery account for
12 two of his personal email accounts. Polequaptewa has not given his passwords to
13 his two personal email accounts to anyone else, but they can be accessed via his
14 Blue Stone email account.

15 28. Within an hour, Polequaptewa discovered that his personal email
16 accounts were hacked through his Blue Stone email account. His two personal
17 email accounts were then used to hack his Apple ID account, which Polequaptewa
18 was locked out of as well. Polequaptewa has not given his password to his Apple
19 ID account to anyone else, but it can be accessed via his personal email accounts.

20 29. Once Polequaptewa regained access to his personal email accounts
21 and Apple ID account, he began receiving consistent phone text and voice message
22 attempts to hack back into his accounts. The cyber attacks attempting to gain
23 access to Polequaptewa’s email accounts even extended to his bank account.

24 30. Polequaptewa traced the IP address of the intruder to Southern
25 California, and was in Florida at the time of the cyber attacks. Upon information
26 and belief, Blue Stone caused and/or contributed to the cyber attacks.

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1 **E. November 19, 2014 to the present: Blue Stone does not allow**
2 **Polequaptewa to retrieve his personal property**

3 31. On or around November 19, 2014, Polequaptewa went to Blue Stone's
4 Irvine office to obtain his personal property, but was asked to leave and was
5 refused access to it.

6 32. On or around November 21, 2014, Polequaptewa made a written
7 request for his personal property to Mooers, among others. Polequaptewa also
8 included his proof of purchase of his personal laptop with the serial number
9 identification.

10 33. On or around November 24, 2014, Polequaptewa received an email
11 from Matthew Berliner, an attorney, on behalf of Blue Stone. Mr. Berliner advised
12 that Blue Stone would pack up Polequaptewa's personal property and ship it to his
13 home address in Garden Grove, but that they would be turning over
14 Polequaptewa's laptop to the authorities. Polequaptewa was surprised that Blue
15 Stone (and not the Florida police) was in possession of his personal laptop.

16 34. Polequaptewa did not receive all of his personal property.
17 Polequaptewa made another request for his remaining personal property on or
18 around February 2, 2015 once he retained counsel, but, as of the date of this
19 counterclaim, has not received his remaining personal property. It is still in Blue
20 Stone's possession, custody, and control.

21 35. Polequaptewa's personal property that wrongfully remains in Blue
22 Stone's possession, custody, and control includes:

- 23 • 1 Mac Mini (\$649.00);
- 24 • 1 Smartstor external RAID drive (\$699.00);
- 25 • 1 custom Macbook Pro Retina laptop (\$3018.00)
- 26 • 1 iPro lens (\$189.00);
- 27 • 2 64 GB SDXC cards (\$299.90);
- 28 • 1 Firewire adapter (\$29.00);

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- 1 Firewire 800/400 cable (\$19.95);
- 1 Apple HDMI to HDMI cable (\$19.00);
- 1 Thunderbolt to Firewire adapter (\$29.00);
- 1 Blue Mikey portable digital microphone (\$99.99);
- 1 200+ HD video elements (\$80.95);
- 1 Animated shoulder sets (\$99.99);
- 1 Apple motion collection volume 01 (\$249.95);
- 1 CS5 design premium MAC (\$349.00);
- 1 CS5.5 design premium (\$353.00);
- 1 Microsoft Office MAC (\$49.96);
- 1 Motion designer’s toolkit volume 01 (\$39.00);
- 1 OfficeReady 4.0 Platinum (\$74.95);
- 1 Parallels desktop 5 (\$39.99);
- 1 Parallels desktop 7 for Mac upgrade (\$49.99);
- 1 Simplexity vol. 3 motion templates (\$99.99);
- 1 Unlimited license for formidable pro data manager (\$117.00);
- 1 Wirecast-Like Broadcast Chromakey software (\$404.10);
- 1 Art display wall kit (curtain rod) (\$25.00).

FIRST COUNTERCLAIM

(For breach of contract, against Blue Stone)

36. Polequaptewa re-alleges and incorporates by reference each allegation in paragraphs 1 to 35.

37. Polequaptewa and Blue Stone entered into a valid contract by executing the Employment Agreement in or around April 2014.

38. Polequaptewa performed all of the significant duties that the Employment Agreement required of him, or was excused from doing so.

39. Blue Stone pressured and deceived Polequaptewa into abruptly relocating to Florida six days a week for six months, but such a relocation was not

1 an express or implied term of the Employment Agreement. Blue Stone failed to
2 amend the Employment Agreement in writing, pursuant to paragraph 19, in order
3 to allow for the term of Polequaptewa's relocation to Florida.

4 40. Polequaptewa was damaged by Blue Stone's breach of the
5 Employment Agreement in that, among other things, he had no choice but to resign
6 his position at Blue Stone, and Blue Stone continues to improperly retain his
7 personal property.

8 **SECOND COUNTERCLAIM**

9 **(For breach of the covenant of good faith and fair dealing, against Blue Stone)**

10 41. Polequaptewa re-alleges and incorporates by reference each allegation
11 in paragraphs 1 to 40.

12 42. Polequaptewa and Blue Stone entered into a valid contract by
13 executing the Employment Agreement in or around April 2014.

14 43. Polequaptewa performed all of the significant duties that the
15 Employment Agreement required of him, or was excused from doing so.

16 44. Blue Stone unfairly interfered with Polequaptewa's right to receive
17 the benefits of the Employment Agreement by pressuring and deceiving
18 Polequaptewa into abruptly relocating to Florida six days a week for six months,
19 when such a relocation was not an express or implied term of the Employment
20 Agreement.

21 45. Polequaptewa was damaged by Blue Stone's breach of the covenant
22 of good faith and fair dealing in that, among other things, he had no choice but to
23 resign his position at Blue Stone, and Blue Stone continues to improperly retain his
24 personal property.

25 **THIRD COUNTERCLAIM**

26 **(For invasion of privacy, against Blue Stone)**

27 46. Polequaptewa re-alleges and incorporates by reference each allegation
28 in paragraphs 1 to 45.

1 47. Polequaptewa had a reasonable expectation of privacy in being
2 undisturbed in his hotel room in Florida with his wife and children on the evening
3 of November 18, 2014.

4 48. Blue Stone intentionally intruded in Polequaptewa’s hotel room when
5 Moon misrepresented to the police that Polequaptewa might try to kill himself.

6 49. Blue Stone’s intrusion is highly offensive to a reasonable person
7 because of the nature of the misrepresentation, and how it was done in front of
8 Polequaptewa’s wife and young children. Moreover, the motivation for the call
9 was specious—Blue Stone knew that it never provided Polequaptewa with a
10 laptop, and that Polequaptewa used his personal laptop. But Moon attempted to
11 have the police seize Polequaptewa’s personal laptop anyway.

12 50. As a result of Blue Stone’s intrusion into Polequaptewa’s private
13 affairs, Polequaptewa’s right to privacy was damaged.

14 51. Polequaptewa had a reasonable expectation of privacy in his personal
15 email accounts and Apple ID account.

16 52. Blue Stone intentionally intruded in Polequaptewa’s personal email
17 accounts and Apple ID account by locking Polequaptewa out of his Blue Stone
18 email account, and then, upon information and belief, hacking into his personal
19 email accounts and Apple ID account.

20 53. Blue Stone’s intrusion into Polequaptewa’s personal email accounts
21 and Apple ID account was highly offensive to a reasonable person because no one
22 would want their sensitive information compromised. Further, the circumstances
23 under which the intrusion occurred—on the same day that Polequaptewa resigned
24 from Blue Stone, after Polequaptewa’s relationship with Blue Stone deteriorated
25 (e.g., by submitting internal complaints), and with the future event of Blue Stone
26 wrongfully repossessing Polequaptewa’s personal property—make the intrusion
27 highly offensive to a reasonable person.

28 54. As a result of Blue Stone’s additional intrusion into Polequaptewa’s

1 private affairs, Polequaptewa’s right to privacy was damaged.

2 **FOURTH COUNTERCLAIM**

3 **(For conversion, against Blue Stone)**

4 55. Polequaptewa re-alleges and incorporates by reference each allegation
5 in paragraphs 1 to 54.

6 56. Blue Stone continues to exercise wrongful dominion and control over
7 Polequaptewa’s personal property described in paragraph 35, *supra*. Blue Stone is
8 not only exercising wrongful dominion and control over the personal property
9 itself, but also the intellectual property contained in the computer equipment and
10 external hard drives, including: data, templates, models, proposals, and
11 approximately \$150,000.00 worth of contracts.

12 57. As a proximate result of Blue Stone’s wrongful exercise of dominion
13 and control over Polequaptewa’s property, Polequaptewa has been damaged well
14 in excess of the jurisdictional limit (in an amount to be proven at trial).

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PRAYER FOR RELIEF

WHEREFORE, Polequaptewa prays for judgment as follows:

1. For general and special damages in an amount to be established at trial, and such penalties as are allowed by law;
2. For injunctive relief;
3. For return of the property described in paragraph 35, *supra*, and damages for its detention;
4. For Polequaptewa’s costs of suit incurred in the defense of this action, including attorneys’ fees with pre- and post-judgment interest; and
5. For such other relief as the Court deems proper.

Dated: March 12, 2015

Respectfully submitted,

KHOURI LAW FIRM

By: /s/ Michael J. Khouri
 MICHAEL J. KHOURI, ESQ.
 ANDREW B. GOODMAN, ESQ.
 Attorneys for defendant/counterclaimant
 NIKISHNA POLEQUAPTEWA

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Polequaptewa
demands a trial by jury in the above-entitled matter.

Dated: March 12, 2015

Respectfully submitted,

KHOURI LAW FIRM

By: /s/ Michael J. Khouri
MICHAEL J. KHOURI, ESQ.
ANDREW B. GOODMAN, ESQ.
Attorneys for defendant/counterclaimant
NIKISHNA POLEQUAPTEWA