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NIKISHNA POLEQUAPTEWA

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

BLUE STONE STRATEGY GROUP,
LLC, a Delaware limited liability
company,

Plaintiff,

vs.

NIKISHNA POLEQUAPTEWA, an
individual,

Defendant.

Case No. SACV14-1888 CJC (DFMx)

**DEFENDANT NIKISHNA
POLEQUAPTEWA'S FIRST
AMENDED COUNTERCLAIMS
FOR:**

- (1) BREACH OF CONTRACT**
- (2) BREACH OF THE
COVENANT OF GOOD
FAITH AND FAIR
DEALING**
- (3) INVASION OF PRIVACY**
- (4) CONVERSION**
- (5) RETALIATION**
- (6) ASSAULT**
- (7) BATTERY**

DEMAND FOR JURY TRIAL

[Assigned to Hon. Cormac J. Carney]

Complaint filed: November 26, 2014
Counterclaim filed: March 12, 2015
Answer to counterclaim filed: April 2,
2015

1 NIKISHNA POLEQUAPTEWA, an
2 individual,

3 Counterclaimant,

4 vs.

5
6 BLUE STONE STRATEGY GROUP,
7 LLC, a Delaware limited liability
8 company; ELDAD YACOBI, an
9 individual; and JOHN MOOERS, an
10 individual,

11 Counter-defendants.

12 Pursuant to FRCP 15(a)(1)(B), counterclaimant NIKISHNA
13 POLEQUAPTEWA (“Polequaptewa”) asserts the following counterclaims against
14 counter-defendant BLUE STONE STRATEGY GROUP, LLC (“Blue Stone”),
15 counter-defendant ELDAD YACOBI (“Yacobi”), and counter-defendant JOHN
16 MOOERS (“Mooers”):

17 **I. INTRODUCTION**

18 1. Polequaptewa’s counterclaims for breach of contract, breach of the
19 covenant of good faith and fair dealing, invasion of privacy, conversion,
20 retaliation, assault, and battery all arise out of his employment relationship with
21 Blue Stone, upon which the complaint in this action is based. Polequaptewa’s
22 employment relationship with Blue Stone began in April 2014 and deteriorated in
23 November 2014 when, among other things, Blue Stone and its agents: pressured
24 Polequaptewa into abruptly relocating his family to Florida; hacked into his
25 personal email and Apple ID accounts (upon information and belief); inexplicably
26 exercised dominion and control over his personal property, which, as of the date of
27 this first amended counterclaim, has not been returned; and took adverse
28 employment action against him for submitting whistleblower complaints about IT
security concerns and financial malfeasance. To make matters worse, when

1 Polequaptewa attempted to retrieve his personal property after he was forced to
2 resign, Mooers, in the presence of numerous other Blue Stone representatives and
3 affiliates (including Yacobi, who, without Polequaptewa's permission, took a
4 video of the incident on his phone) threatened and violently grabbed
5 Polequaptewa.

6 **II. THE PARTIES**

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

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

10 4. Yacobi is an individual who, upon information and belief, resides in
11 Orange County, California.

12 5. Mooers is an individual and the CEO of Blue Stone who, upon
13 information and belief, resides in Orange County, California.

14 **III. JURISDICTION AND VENUE**

15 6. This Court has personal jurisdiction over counter-defendant Blue
16 Stone because Blue Stone has a principal place of business within Orange County,
17 California, which is located within this Court's jurisdiction. Moreover, Blue Stone
18 has consented to this Court's jurisdiction by commencing its action against
19 Polequaptewa in this Court. This Court has personal jurisdiction over counter-
20 defendant Mooers because, upon information and belief, Mooers resides in Orange
21 County, California, which is located within this Court's jurisdiction.

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

26 8. This Court has subject matter jurisdiction over Polequaptewa's
27 counterclaims because they fall within the Court's supplemental jurisdiction under
28 28 U.S.C. § 1367(a). Polequaptewa's counterclaims are compulsory because,

1 among other reasons, they bear a logical relationship to Blue Stone's claims
2 against Polequaptewa; both arise out of the employment relationship.

3 **IV. BACKGROUND ALLEGATIONS**

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

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

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

12 11. The Employment Agreement (paragraph 19) provides that: "This
13 Employment Agreement may be modified or amended, if the amendment is made
14 in writing and is signed by both parties."

15 12. The Employment Agreement does not, expressly or impliedly, require
16 Polequaptewa to relocate or engage in extended travel to complete his job duties as
17 a senior strategist.

18 **B. October to November 2014: The disintegration of Polequaptewa's** 19 **employment relationship with Blue Stone as a result of Blue** 20 **Stone's subversive and retaliatory conduct**

21 13. Polequaptewa's employment relationship with Blue Stone began to
22 deteriorate in October and November 2014.

23 14. In October 2014, Blue Stone began to develop a project in Florida (the
24 "Florida project"). Polequaptewa's supervisor, Bill Moon ("Moon"), listed
25 Polequaptewa as a lead strategist on the Florida project.

26 15. Polequaptewa told Moon that he could not work on the Florida project
27 for several significant reasons. For one, the Florida project required travel to
28 Florida for six days a week for six months. Polequaptewa believed that he would

1 effectively have to move his wife, who works full time in Irvine, and three young
2 children to Florida so that he could work on the Florida project. Polequaptewa
3 attempted to accommodate Blue Stone by offering to work three to four days in
4 Florida, but Moon told Polequaptewa that “this is the consulting world; we work
5 all the time.”

6 16. Polequaptewa nonetheless believed he would be off the Florida
7 project after voicing his objections.

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

19 18. In November 2014, after submitting his internal complaints,
20 Polequaptewa was demoted from a senior strategist to a strategist.

21 19. On or around November 10, 2014, Polequaptewa saw his name on a
22 travel logistics email for the Florida project.

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

28 21. Polequaptewa arrived in Florida on or around November 18, 2014.

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

5 22. Polequaptewa felt that Blue Stone deceived him, ignored his concerns,
6 and retaliated against him. Polequaptewa attempted to discuss his concerns about
7 the Florida project with Blue Stone's office manager, Moon, and Mooers.

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

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

15 24. On the evening of November 18, 2014, after Polequaptewa resigned
16 from Blue Stone, upon information and belief, Moon had the hotel staff call the
17 police and tell them that Polequaptewa might kill himself. Upon information and
18 belief, Moon lied to the hotel staff and said that Polequaptewa had been fired from
19 Blue Stone, which played a significant role in the hotel staff agreeing to call the
20 police.

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

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

26 27. 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 invoked his Fourth Amendment rights and asked to be left alone.

1 Nonetheless, the police officer clearly stated that Polequaptewa would be arrested
2 if he did not comply. Polequaptewa did not want his daughters to see him get
3 arrested. As a result, Polequaptewa cooperated with the police officer because he
4 felt he had no other choice, and was not detained in any form.

5 **D. Polequaptewa's personal email accounts and Apple ID account**
6 **are hacked into shortly after Polequaptewa provides Blue Stone**
7 **access to his linked Blue Stone email account**

8 28. On or around November 14, 2014, Moon and Mooers requested that
9 Polequaptewa transfer all company network and IT-related administrative
10 passwords and privileges over to Mooers' longtime friend, Eldad Yacobi
11 ("Yacobi"). Polequaptewa complied with the request, and did not give his
12 passwords and privileges to anyone else.

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

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

23 31. Once Polequaptewa regained access to his personal email accounts
24 and Apple ID account, he began receiving consistent phone text and voice message
25 attempts to hack back into his accounts. The cyber attacks attempting to gain
26 access to Polequaptewa's email accounts even extended to his bank account.

27 32. Polequaptewa traced the IP address of the intruder to Southern
28 California, and was in Florida at the time of the cyber attacks. Moreover,

1 Polequaptewa's Apple ID phone number was changed from his cell phone number
2 to the Blue Stone main office number. Therefore, upon information and belief,
3 Blue Stone caused and/or contributed to the cyber attacks.

4 **E. November 19, 2014 to the present: Blue Stone does not allow**
5 **Polequaptewa to retrieve his personal property, and Mooers**
6 **threatens and violently grabs Polequaptewa when he returns to**
7 **Blue Stone to retrieve his personal property**

8 33. On or around November 19, 2014, Polequaptewa decided to go to
9 Blue Stone's Irvine office to obtain his personal property. Polequaptewa entered
10 his former office to begin retrieving his personal property. Polequaptewa's former
11 office is small and visible to the hallway by way of a glass window.

12 34. As Polequaptewa was retrieving his personal property, Mooers
13 entered and began yelling at Polequaptewa. Polequaptewa calmly told Mooers that
14 he was here to retrieve his personal property. Mooers screamed at Polequaptewa
15 and said that he was going to call the police. Polequaptewa responded that he
16 already spoke to the Irvine police department before he came, and they said that
17 there was no problem with him coming to Blue Stone to retrieve his personal
18 property. Mooers began getting in Polequaptewa's face, raising his arms in a
19 threatening manner, and blocking Polequaptewa's exit from the office.

20 35. Because of Mooers' screaming, other Blue Stone employees,
21 affiliates, and even neighboring office tenants began to congregate on the scene.
22 The owner of Blue Stone even witnessed the scene.

23 36. Yacobi began recording Polequaptewa with his camera phone from
24 behind the glass to Polequaptewa's office. Polequaptewa did not consent to the
25 recording. Polequaptewa was aware that he was being recorded and felt threatened,
26 cornered, and trapped, though he remained calm on the outside.

27 37. Meanwhile, Mooers continued to threaten Polequaptewa. When
28 Polequaptewa maintained his position that he was just there to retrieve his personal

1 property, Mooers violently grabbed Polequaptewa's arm without Polequaptewa's
2 consent. Polequaptewa was injured and highly offended by Mooers' physical
3 contact with him.

4 38. Seeing no other option, Polequaptewa told Mooers and the onlookers
5 that he would come back to retrieve his personal property another time.

6 39. 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 40. 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 41. 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 amended counterclaim, has not received his remaining personal property. It is still
20 in Blue Stone's possession, custody, and control.

21 42. Polequaptewa's personal property that wrongfully remains in Blue
22 Stone's possession, custody, and control includes, but is not limited to:

- 23 • 2 Customized Professional-Grade Computers;
- 24 • 2 High-Capacity Storage Devices;
- 25 • 10 Specialized Cables, Adapters and Surge Protectors;
- 26 • 1 Industry-Standard Video Editing Software;
- 27 • 4 High-Resolution Licensed Design Packages;
- 28 • 1 Microsoft Office Suite;

- 1 Developer Licensed Toolkit;
- 1 Professional Photo Editing Software;
- 1 Pendleton Blanket Wall Display Kit.

43. On March 18, 2015, Polequaptewa received a right to sue letter against Blue Stone and Mooers from the California Department of Fair Employment and Housing (DFEH Matter Number: 510526-151168).

44. Polequaptewa was issued an immediate right to sue notice; DFEH closed his complaint and took no further action.

45. On April 19, 2015, Polequaptewa's undersigned counsel served the right to sue letter on counsel for Blue Stone and recommended that counsel for Blue Stone bring the right to sue letter to Mooers' attention as well.

FIRST COUNTERCLAIM

(For breach of contract, against Blue Stone)

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

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

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

49. Blue Stone pressured and deceived Polequaptewa into abruptly relocating to Florida six days a week for six months, but such a relocation was not an express or implied term of the Employment Agreement. Blue Stone failed to amend the Employment Agreement in writing, pursuant to paragraph 19, in order to allow for the term of Polequaptewa's relocation to Florida.

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

SECOND COUNTERCLAIM

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

51. Polequaptewa re-alleges and incorporates by reference each allegation in paragraphs 1 to 50.

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

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

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

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

THIRD COUNTERCLAIM

(For invasion of privacy, against Blue Stone and Yacobi)

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

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

58. Blue Stone intentionally intruded in Polequaptewa's hotel room when Moon misrepresented to the hotel staff and police that Polequaptewa might try to kill himself.

59. Blue Stone's intrusion is highly offensive to a reasonable person

1 because of the nature of the misrepresentation, and how it was done in front of
2 Polequaptewa's wife and young children. Moreover, the motivation for the call
3 was specious—Blue Stone knew that it never provided Polequaptewa with a
4 laptop, and that Polequaptewa used his personal laptop. But Moon attempted to
5 have the police seize Polequaptewa's personal laptop anyway.

6 60. Blue Stone's conduct was a substantial factor in causing
7 Polequaptewa's harm. As a result of Blue Stone's intrusion into Polequaptewa's
8 private affairs, Polequaptewa's right to privacy was damaged.

9 61. Polequaptewa had a reasonable expectation of privacy in his personal
10 email accounts and Apple ID account.

11 62. Blue Stone intentionally intruded in Polequaptewa's personal email
12 accounts and Apple ID account by locking Polequaptewa out of his Blue Stone
13 email account, and then, upon information and belief, hacking into his personal
14 email accounts and Apple ID account.

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

23 64. Blue Stone's conduct was a substantial factor in causing
24 Polequaptewa's harm. As a result of Blue Stone's additional intrusion into
25 Polequaptewa's private affairs, Polequaptewa's right to privacy was damaged.

26 65. Polequaptewa had a reasonable expectation of privacy in retrieving
27 his personal belongings without being recorded on a camera phone.

28 66. Yacobi intentionally intruded in Polequaptewa's attempt to retrieve

1 his personal belongings from Blue Stone—Yacobi recorded with his camera
 2 phone, without Polequaptewa's consent, the scene of Polequaptewa attempting to
 3 retrieve his personal belongings from Blue Stone.

4 67. Yacobi's intrusion would be highly offensive to a reasonable person
 5 because of the setting in which the intrusion occurred, and Yacobi's alleged
 6 motives. Yacobi heard Mooers screaming and threatening Polequaptewa, and was
 7 fully aware of the circumstances surrounding Polequaptewa's resignation from
 8 Blue Stone. Yacobi, upon information and belief, was motivated to capture
 9 Polequaptewa in an unflattering light, which could allow Blue Stone to use the
 10 video evidence out of context.

11 68. Yacobi's conduct was a substantial factor in causing Polequaptewa's
 12 harm. As a result of Yacobi's intrusion into Polequaptewa's private affairs,
 13 Polequaptewa's right to privacy was damaged.

14 69. In committing the above acts, Blue Stone and Yacobi acted with
 15 oppression, fraud, and/or malice. Blue Stone and Yacobi acted with intent to cause
 16 injury, and acted with a willful and knowing disregard of the rights and safety of
 17 Polequaptewa. Blue Stone and Yacobi's conduct was despicable, and subjected
 18 Polequaptewa to cruel and unjust hardship in knowing disregard of his rights. Blue
 19 Stone and Yacobi intentionally misrepresented and/or concealed a material fact
 20 with the intent to harm Polequaptewa. Blue Stone's officers, directors, and
 21 managing agents authorized and/or ratified Moon and other employees' wrongful
 22 acts against Polequaptewa. As a result, Polequaptewa is entitled to an award of
 23 punitive damages.

24 **FOURTH COUNTERCLAIM**

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

26 70. Polequaptewa re-alleges and incorporates by reference each allegation
 27 in paragraphs 1 to 69.

28 71. Blue Stone continues to exercise wrongful dominion and control over

Polequaptewa's personal property described in paragraph 42, *supra*. Blue Stone is not only exercising wrongful dominion and control over the personal property itself, but also the intellectual property contained in the computer equipment and external hard drives, including: data, templates, models, proposals, and approximately \$150,000.00 worth of contracts.

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

73. In committing the above acts, Blue Stone acted with oppression, fraud, and/or malice. Blue Stone acted with intent to cause injury, and acted with a willful and knowing disregard of the rights and safety of Polequaptewa. Blue Stone's conduct was despicable, and subjected Polequaptewa to cruel and unjust hardship in knowing disregard of his rights. Blue Stone intentionally misrepresented and/or concealed a material fact with the intent to harm Polequaptewa. Blue Stone's officers, directors, and managing agents authorized and/or ratified employees' wrongful acts against Polequaptewa. As a result, Polequaptewa is entitled to an award of punitive damages.

FIFTH COUNTERCLAIM

(For retaliation [Cal. Gov. Code § 12940(h)], against Blue Stone and Mooers)

74. Polequaptewa re-alleges and incorporates by reference each allegation in paragraphs 1 to 73.

75. Polequaptewa exhausted his administrative remedies before filing the present civil action.

76. Polequaptewa claims that Blue Stone and Mooers retaliated against him for submitting internal whistleblower complaints relating to IT security concerns and financial malfeasance by Blue Stone corporate officers.

77. After Polequaptewa submitted these internal whistleblower complaints, he was demoted. Further, he was placed on the Florida project despite

1 his legitimate concerns, which were ultimately ignored. Because Polequaptewa
 2 could not abruptly relocate his wife and three young children to Florida, Blue
 3 Stone effectively forced his hand, and he felt he had no choice but to resign.

4 78. Upon information and belief, Polequaptewa's internal whistleblower
 5 complaints were a motivating reason for Blue Stone and Mooers to demote him
 6 and effectively force him to resign.

7 79. Blue Stone and Mooers' retaliatory conduct was a substantial factor in
 8 causing harm to Polequaptewa. Polequaptewa was harmed by Blue Stone and
 9 Mooers' retaliatory conduct because, among other things, he was demoted and
 10 effectively forced to resign.

11 80. In committing the above acts, Blue Stone and Mooers acted with
 12 oppression, fraud, and/or malice. Blue Stone and Mooers acted with intent to cause
 13 injury, and acted with a willful and knowing disregard of the rights and safety of
 14 Polequaptewa. Blue Stone and Mooers' conduct was despicable, and subjected
 15 Polequaptewa to cruel and unjust hardship in knowing disregard of his rights. Blue
 16 Stone and Mooers intentionally misrepresented and/or concealed a material fact
 17 with the intent to harm Polequaptewa. Blue Stone's officers, directors, and
 18 managing agents authorized and/or ratified employees' wrongful acts against
 19 Polequaptewa. As a result, Polequaptewa is entitled to an award of punitive
 20 damages.

21 **SIXTH COUNTERCLAIM**

22 **(For assault, against Mooers)**

23 81. Polequaptewa re-alleges and incorporates by reference each allegation
 24 in paragraphs 1 to 80.

25 82. When Polequaptewa returned to Blue Stone to attempt to retrieve his
 26 personal property, Mooers got in Polequaptewa's face, raised his arms in a
 27 threatening manner, and blocked Polequaptewa's exit from the office, intending to
 28 cause harmful or offensive contact to Polequaptewa.

83. Polequaptewa reasonably believed that Mooers was about to touch him in a harmful or offensive manner.

84. Polequaptewa did not consent to Mooers' conduct.

85. Mooers' conduct was a substantial factor in causing Polequaptewa's harm. Polequaptewa was harmed and offended by Mooers' threatening and highly offensive conduct.

86. In committing the above acts, Mooers acted with oppression, fraud, and/or malice. Mooers acted with intent to cause injury, and acted with a willful and knowing disregard of the rights and safety of Polequaptewa. Mooers' conduct was despicable, and subjected Polequaptewa to cruel and unjust hardship in knowing disregard of his rights. As a result, Polequaptewa is entitled to an award of punitive damages.

SEVENTH COUNTERCLAIM

(For battery, against Mooers)

87. Polequaptewa re-alleges and incorporates by reference each allegation in paragraphs 1 to 86.

88. When Polequaptewa returned to Blue Stone to attempt to retrieve his personal property, Mooers touched Polequaptewa with the intent to harm or offend him.

89. Polequaptewa did not consent to the touching.

90. Polequaptewa was harmed and offended by Mooers' conduct.

91. A reasonable person in Polequaptewa's position would also have been offended by Mooers' violent grab.

92. In committing the above acts, Mooers acted with oppression, fraud, and/or malice. Mooers acted with intent to cause injury, and acted with a willful and knowing disregard of the rights and safety of Polequaptewa. Mooers' conduct was despicable, and subjected Polequaptewa to cruel and unjust hardship in knowing disregard of his rights. As a result, Polequaptewa is entitled to an award

1 of punitive damages.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Polequaptewa prays for judgment as follows:

- 4 1. For general and special damages in an amount to be established at
5 trial, and such penalties as are allowed by law;
- 6 2. For injunctive relief;
- 7 3. For return of the property described in paragraph 42, *supra*, and
8 damages for its detention;
- 9 4. For punitive damages;
- 10 5. For Polequaptewa's costs of suit incurred in the defense of this action,
11 including attorneys' fees with pre- and post-judgment interest; and
- 12 6. For such other relief as the Court deems proper.
- 13
- 14

15 Dated: April 23, 2015

Respectfully submitted,

16
17 KHOURI LAW FIRM

18
19 By: /s/ Andrew B. Goodman
20 MICHAEL J. KHOURI, ESQ.
21 ANDREW B. GOODMAN, ESQ.
22 Attorneys for defendant/counterclaimant
23 NIKISHNA POLEQUAPTEWA
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27
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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: April 23, 2015

Respectfully submitted,

KHOURI LAW FIRM

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