

Martin S. King, Esq.  
Jori Quinlan, Esq.  
WORDEN THANE P.C.  
321 West Broadway, Suite 300  
Missoula, Montana 59802  
Telephone: (406) 721-3400  
Fax: (406) 721-6985  
mking@wordenthane.com  
jquinlan@wordenthane.com  
Attorneys for Defendant Salish Kootenai College

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MONTANA, MISSOULA DIVISION

FAWN CAIN, TANYA ARCHER, and  
SANDI OVITT,

Relators and Plaintiffs,

-vs-

SALISH KOOTENAI COLLEGE, INC.,  
SALISH KOOTENAI COLLEGE  
FOUNDATION, ROBERT FOUTY,  
individually, JIM DURGLO, individually,  
RENE PEIRRE, individually, ELLEN  
SWANEY, individually, LINDEN PLANT,  
individually, TOME ACEVEDO,  
individually, ZANE KELLY, individually,  
ERNEST MORAN, individually, LUANA  
ROSS, individually, CARMEN TAYLOR,  
individually, ELAINE FRANK,  
individually, LISA LACKNER HARMON,  
individually, REBEKKAH HULEN,  
individually, DAWN BENSON,  
individually, and DOES 1-10,

Defendants.

CV 12-181-M-BMM

**BRIEF IN SUPPORT OF  
SALISH KOOTENAI  
COLLEGE'S MOTION TO  
CERTIFY ORDER  
DISMISSING COLLEGE AS  
FINAL JUDGMENT**

Defendant Salish Kootenai College ("College") submits this brief in support of its motion requesting that the Court certify its May 17, 2018 Order as a final judgment for purposes of appeal, pursuant to Fed. R. Civ. P. 54(b).

In 2014, this Court entered an order dismissing the College from this action because it is a sovereign tribal entity and therefore not a “person” subject to suit under the False Claims Act. (Doc. 39.) The Court then granted the parties’ joint motion to certify that order as final pursuant to Rule 54(b), allowing the Plaintiffs to appeal the dismissal of the College. (Doc. 48). On appeal, the Ninth Circuit remanded the dismissal of the College to allow the Plaintiffs to conduct additional jurisdictional discovery. (Doc. 78.) Following discovery and further briefing, this Court dismissed the College once more, again finding that the College is a sovereign tribal entity that is not subject to suit under the False Claims Act. (Doc. 108.)

The Court should direct entry of a final judgment in favor of the College for the same reasons that it certified its initial dismissal of the College as final under Rule 54(b). “A district court may sever a partial judgment for immediate appeal whenever it determines there is no just reason for delay.” *James v. Price Stern Sloan, Inc.*, 283 F.3d 1064, 1068 n. 6 (9th Cir. 2002). When determining whether there is a “just reason for delay” a court must “take into account judicial administrative interests as well as the equities involved” and “may consider factors such as ‘whether the claims under review were separable from the other remaining to be adjudicated.’” *Curtiss-Wright Corp. v. Gen. Electric Co.*, 446 U.S. 1, 8 (1980).

There is no just reason for delay here. The issue of whether the College shares in the Confederated Salish and Kootenai Tribes' sovereign status is entirely separate from the merits of this action. Thus, "no appellate court would have to decide the same issues more than once even if there were subsequent appeals." *Id.* Moreover, the Plaintiffs' First Amended Complaint asserts the same claims against multiple individuals as it asserted against the College. If appeal is not taken at this time, the result could be—if the order dismissing the College were later reversed—staggered litigation of nearly identical issues, at great cost and expense to the parties and District Court. On the other hand, if appeal is taken now, Plaintiffs may litigate their claims against whichever defendants have been adjudicated as the appropriate defendants by the Ninth Circuit Court of Appeals.

As this Court earlier held, Rule 54(b) certification is proper in cases like this that are complex, that involve factually and legally separate issues, and in which a ruling has completely extinguished a defendant's liability. (*See* doc. 48, citing *Continental Airlines, Inc. v. Goodyear Tire & Rubber Co.*, 819 F.2d 1519, 1525 (9th Cir. 1987).) Granting Rule 54(b) certification would serve the judicial administrative interest of preventing piecemeal appeals and prevent the parties and Court from having to litigate the merits of the action twice.

Accordingly, Plaintiffs request that the Court direct entry of final judgment in favor of the College.

DATED this 21<sup>st</sup> day of June 2018.

WORDEN THANE P.C.

/s/ Martin S. King  
Martin S. King

### **CERTIFICATE OF COMPLIANCE**

In accordance with U.S. District Court Local Rule 7.1(d)(2), the undersigned certifies that the word count of the above brief, as counted by the undersigned's word processing software and excluding the caption and certificate of compliance, is 544.

WORDEN THANE P.C.

/s/ Martin S. King  
Martin S. King