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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

BLUE LAKE RANCHERIA, a federally recognized Indian Tribe, et al.,

Plaintiffs,

vs.

MARTY MORGENSTERN, individually and in his capacity as Secretary of the California Labor and Workforce Development Agency, et al.,

Defendants.

UNITED STATES,

Intervenor.

CASE NO. 2:11-cv-01124-JAM-JFM

Judge: **Hon. John A. Mendez**
Courtroom: **6**
Date: **April 8, 2015**
Time: **9:30 a.m.**

Complaint Filed: **April 26, 2011**
Date of Trial: **May 23, 2016**

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN FURTHER SUPPORT OF PLAINTIFF BLUE LAKE RANCHERIA'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF CLAIMS

The result in this case will turn on whether there was an express, limited waiver of sovereign immunity in favor of Defendants. No such waiver exists. Defendants suggest otherwise, but with no plausible basis. When Plaintiffs' counsel first informed Defendants that they intended to file a motion for summary judgment, Defendants' counsel responded that discovery was needed on the issue of whether Plaintiffs Blue Lake Rancheria Economic Development Corporation ("EDCo") and Mainstay Business Solutions ("Mainstay") were arms of Blue Lake Rancheria (the "Tribe"). Because "arm of the Tribe" is a legitimate issue, only the Tribe filed this motion.

In the absence of an express waiver of sovereign immunity, Defendants have ineffectively attempted to identify other disputes of fact and law to avoid summary judgment, all of which are red herrings. In addition, Defendants have belatedly asked this court to allow them to commence discovery almost four years after this case was filed. The red herrings include (1) whether off-reservation property is protected by sovereign immunity, (2) whether Defendant's encumbrance of tribal property is barred by 25 U.S.C. § 476(e), (3) whether the doctrine of unclean hands defeats sovereign immunity and (4) whether a triable issue of fact exists regarding irreparable injury.

I. No genuine dispute exists as to whether the Tribe waived its sovereign immunity.

Federal law requires an Indian tribe to make an unequivocal, express waiver of sovereign immunity in order to effectuate a legal waiver. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). The undisputed fact is that the Tribe made no such waiver. Defendants have submitted with their Opposition no evidence to the contrary.

Defendants' request pursuant to Federal Rule of Civil Procedure ("FRCP") 56(d) to take additional discovery on the issue of express waiver should be denied. First, a party requesting a continuance of a motion for summary judgment in order to conduct discovery "must identify by affidavit the specific facts that further discovery would reveal, and explain why those facts would preclude summary judgment." *Tatum v. City and County of San Francisco,* 441 F.3d 1090, 1100 (9th Cir. 2006). Although, the declaration of Defendants' counsel alleges facts which "likely exist and will be demonstrated if discovery is allows [sic]," these do not include the purported fact that the Tribe granted an express waiver of sovereign immunity. *See* Declaration of Jill Bowers ("Bowers Decl."), ¶ 4. The declaration lists only discovery related to Defendant's theory of waiver

"through the Tribe's voluntary election of reimbursable financing of its unemployment insurance costs." *See* Bowers Decl., ¶ 4(a). However, the Tribe's conduct in connection to that program is irrelevant to the issue of waiver of sovereign immunity. Tribal sovereign immunity cannot be impliedly waived by conduct (*Santa Clara Pueblo,* 436 U.S. at 58) and Congress has not abrogated sovereign immunity for tribal participants in the Federal Unemployment Tax Act (26 U.S.C. § 3301 *et seq.*; *see also Michigan v. Bay Mills Indian Community* ("*Bay Mills*"), 134 S.Ct. 2024, 2031 (2014) (Congressional abrogation must be express and unequivocal)). Defendants should therefore be denied additional time to take discovery regarding a potential express waiver of sovereign immunity by the Tribe, because they have not requested discovery which would yield evidence of an express waiver.

Second, "[t]the party seeking additional time for discovery under Rule 56(f) must, among other things, articulate a plausible basis for a belief that specific discoverable facts exist which, if adduced, will give rise to genuine issues of material fact." *F.T.C. v. J.K. Publications, Inc.*, 99 F. Supp. 2d 1176, 1199 (C.D. Cal. 2000). Since Defendants have not identified an express waiver of sovereign immunity as a subject for further discovery, they have also failed to provide any plausible basis for belief that such a waiver actually occurred. *See* Bowers Decl., ¶ 4.

Finally, a party requesting additional time for discovery must be diligent in conducting discovery prior to a summary judgment motion. *Rivera-Torres v. Rey-Hernandez*, 502 F.3d 7, 10-11 (1st Cir. 2007); *In re Imperial Credit Indus., Inc. Sec. Litig.*, 252 F. Supp. 2d 1005, 1016 (C.D. Cal. 2003). Counsel for Plaintiffs advised counsel for the Defendants as early as September 24, 2014 that Plaintiffs intended to file a motion for summary judgment in the near term. Declaration of Michael E. Chase in Support of Reply Memorandum of Points and Authorities in Further Support of Plaintiff Blue Lake Rancheria's Motion for Summary Judgment/Adjudication ("Chase Decl."), ¶ 3, Exhibit A. On October 1, 2015, the Plaintiffs' counsel asked Defendant's counsel to identify the specific facts for which Defendants needed to take discovery prior to the Tribe filing that motion. *Id.* at ¶ 3, Exhibit A. In response, Defendants' counsel specifically identified only

facts related to the arm of the tribe doctrine[1]. *Id.* at ¶ 4, Exhibit B. Because of Defendants' stated need for arm of the tribe discovery, only the Tribe filed this motion. *Id.* at ¶ 4. To date, Defendants have not propounded any discovery requests or noticed any depositions in this action. *Id.* at ¶ 5. Plaintiffs' motion to amend its Complaint served only to join one state official defendant and did not relate in any way to the substance of the action. That motion does not excuse Defendants' failure to propound discovery.

Since Defendants have provided no basis for believing an express waiver actually occurred, and have not been diligent in conducting additional discovery, their request for additional time to take discovery should be denied.

II. No genuine dispute exists as to whether the Tribe will suffer irreparable injury.

Defendants arguments related to whether the Tribe has and will suffer irreparable injury are a smokescreen. The fact is that Defendants filed Notices of State Tax liens, each in excess of $16.4 million dollars, which encumbered the real and personal property of the Tribe. *See* Tribe's UMF, ¶ 15, 16. The liens injured the Tribe by violating its tribal sovereign immunity, as would any collection activity involving the Tribe's property, such as levies on the Tribe's bank accounts. Though the recording of notices of lien is intangible, this is a real harm that is recognized by the courts. *See Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.,* 944 F.2d 597, 603 (9th Cir. 1991); *Winnebago Tribe of Nebraska v. Stovall* ("*Winnebago I*"), 216 F.Supp.2d 1226, 1233 (D. Kan. 2002); *Prairie Band of Potawatomi Indians v. Pierce* ("*Potawatomi*"), 253 F.3d 1234, 1250-51 (10th Cir. 2010). The harm from liens as well as the harm from bank levies is irreparable because, (1) the damages from the liens is difficult, if not impossible, to monetize and, (2) the Tribe cannot recover compensatory damages from the EDD for levied funds due to EDD's own sovereign immunity. *Winnebago I,* 216 F.Supp.2d 1226; *Potawatomi*, 253 F.3d at 1251.

Whether the Tribe is ultimately responsible for the approximate $16.4 million in liability, or whether it can pursue Mainstay's clients for reimbursement, is irrelevant. The court in *Fort Mojave* did not hold otherwise. *See Fort Mojave Tribe v. San Bernardino County*, 543 F.2d 1253

[1] The "arm of the tribe" doctrine is one which determines whether tribe-affiliated entities, such as Defendants EDCo and Mainstay, are protected by the tribe's sovereign immunity.

(9th Cir. 1976). In that case, the court held that the County could impose a possessory interest tax on *non-Indian* lessees of Indian land. *Id.* at 1255. The undisputed fact here is that the Defendants seek to directly encumber and levy upon the Tribe's property.

Finally, although the Tribe did and would again experience direct financial harm as a result of the EDD's encumbrance of the Tribe's land held in trust by the United States, the Tribe did not submit this as a type of "irreparable harm" in its moving papers. *See* Memorandum of Points and Authorities in Support of Motion for Summary Judgment/Adjudication, pp. 12-13. The *Mescalero* and *City of Sherrill, N.Y.* cases are therefore not presently relevant to the irreparable harm analysis.

III. Off-reservation property is protected by tribal sovereign immunity.

Federal tribal sovereign immunity prohibits the Defendants' encumbrance of the Tribe's property regardless of whether that property is located on or off the reservation. *See Bay Mills*, 134 S.Ct. at 2034-2035 ("the doctrine of tribal sovereign immunity – without any exceptions for commercial or off-reservation conduct – is settled law…") (quoting and affirming *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 754-755 (1998)). As a result, even when a state may impose taxes on Indian tribes' off-reservation activities, sovereign immunity protects tribes from the state's efforts to collect those taxes. *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 755 (1998).

Chemehuevi Indian Tribe v. Cal. St. Bd. of Equalization and *Maryland Cas. Co. v. Citizens Nat. Bank of West Hollywood* both aptly illustrate this principle. The district court in *Chemehuevi* enjoined the Board of Equalization from encumbering Tribe's funds through a "withhold notice" at Bank of America. *See Chemehuevi Indian Tribe v. Cal. St. Bd. of Equalization*, 492 F. Supp. 55, 56-57[2]. The court stated that even if it were to hold that the tax at issue were applicable to the tribe, sovereign immunity protected the funds from enforcement efforts. *Id.* at 60-61. The court in *Maryland* specifically reasoned that the tribe's funds at an off-reservation bank could not be garnished because the "sue or be sued" clause in the tribe's constitution did not waive its sovereign

[2] The Ninth Circuit opinion referred to by Defendants related to an appeal from a subsequent order of the district court. See *Chemehuevi Indian Tribe v. Cal. St. Bd. of Equalization*, 757 F.2d 1047. That later ruling was reversed in part by the U.S. Supreme Court. *See Cal. St. Bd. of Equalization v. Chemehuevi Indian Tribe,* 474 U.S. 9 (1985).

immunity to levy, lien, or attachment. *Maryland Cas. Co.*, 361 F.2d 517, 521 (5th Cir. 1966).

The cases cited by Defendants do not hold to the contrary. In both *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.* and *Washington v. Confederated Tribes of the Colville Indian Reservation* ("*Confederated Tribes*"), the court noted its approval of seizures from third-party wholesalers, not the tribe. *Okla. Tax Comm'n*, 498 U.S. at 514; *Washington*, 447 U.S. at 161-162. The court's suggestion was intended as a potential method for enforcing tax laws in light of the fact that sovereign immunity protected the tribe's property. *Okla. Tax Comm'n*, 498 U.S. at 514; *Washington*, 447 U.S. at 161-162.

In *Bay Mills*, the U.S. Supreme Court bolstered the distinction it drew in *Kiowa* between the applicability of taxes to an Indian Tribe, and the ability of the state to enforce that tax. *Bay Mills,* 134 S.Ct. at 2034-2035 (suggesting alternatives to suit against the tribe in order to enforce tax on off-reservation activity). Finally, *Mescalero* and *Wagnon* involved only the question of whether state taxes applied to Indian tribes, not whether those taxes could be enforced. *See Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 147, 157-158 (tribe not entitled to obtain refund of taxes already paid); *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95, 112-114.

IV. Defendants' encumbrance of tribal property is barred by 25 U.S.C. § 476(e).

Assuming arguendo that 25 U.S.C. section 476(e) did not provide an independent basis prohibiting encumbrance of tribal land, this motion should still be granted because of sovereign immunity. Nevertheless, section 476(e) does prohibit the encumbrance of tribal land.

Pursuant to section 476(e), the Tribe's land may not be encumbered without its consent. This right is distinct from, and supplemental to, the Tribe's protection from encumbrances based on its sovereign immunity. *See Fort Mojave Tribe, supra,* 543 F.2d at 1259. Defendants appear to conflate those two rights in their Opposition.

Defendants have notably failed to cite any legal authority which contravenes the 9th Circuit's recognition in *Fort Mojave Tribe* that section 476(e) is a source of substantive rights. Their only citation is to *Confederated Tribes and Bands of the Yakima Nation v. Yakima County*, 903 F.2d 1207 (9th Cir. 1990). That case did not involve section 476(e). Its statement in dicta that the provisions of the Indian Reorganization Act "do not deal with whether fee land may be taxed"

is inapposite. *Id.* at 1214. As the Supreme Court explained in *Kiowa*, a state's right to tax a tribe is analytically distinct from its right to enforce that tax. *See Kiowa*, *supra,* 523 U.S. at 755. Although section 476(e) does not provide Indian tribes the right to be free from taxation, it does confer the right to "prevent the sale, disposition, lease, *or encumbrance* of tribal lands, interests in lands, or other tribal assets without the consent of the tribe." 25 U.S.C. § 476(e).

The purported "requirement" in 26 U.S.C. section 3309 that states permit tribes to participate in their reimbursable program provides no justification for disregarding the Tribe's sovereign immunity rights or its rights pursuant to 25 U.S.C. § 476(e). Congressional abrogation of sovereign immunity rights must be done through express terms within the statute. *Bay Mills,* 134 S.Ct. at 2031. Defendants do not dispute that Section 3309 contains no such terms. This court, therefore, may not disregard the Tribe's sovereign immunity because the Defendants believe that not doing so would be "unjust." *See Ute Distribution,* 149 F.3d at 1267 (sovereign immunity "is not a requirement that may be flexibly applied or even disregarded based on the parties or the specific facts involved.") *Williams v. Lee* does not give this court the authority to determine, based on policy concerns, when sovereign immunity should or should not apply. *Williams v.* Lee, 358 U.S. 217 (1959). *Williams* specifically concerned only whether individual members of an Indian tribe (who do not have sovereign immunity) may be tried in state court. *Id.* at 219-220.

Section 3309 does not, in any event, necessitate unfair risk to states in their dealings with tribes. Pursuant to that statute, the state can require tribes to execute an express waiver of sovereign immunity as a condition of participating in the Reimbursable Program. *See* 26 U.S.C. § 3309 ("State law may require a tribe to post a payment bond *or take other reasonable measure to assure the making of payments*…").

Defendants next argue that *Okla. Tax Comm'n* does not support Defendants' position that sovereign immunity prohibits the encumbrance of tribal property. Defendant's distinction between the mandated tax obligation in *Okla. Tax Comm'n* and the allegedly voluntarily-assumed obligation here is irrelevant. The fact that the Tribe voluntarily opted into the Reimbursable Program does not impact its sovereign immunity, because there can be no implied waiver. *See Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 58 (1978).

Defendants proceed to suggest that section 476(e) does not protect the Tribe because "the EDD's lien cannot harm the Tribe's interest in its statutorily protected trust land…and attaches only to the two parcels of land owned by the Tribe in fee…." Opposition at p. 17 ln. 1-4. As an initial matter, the Tribe seeks declaratory and injunctive relief prohibiting the Defendants from all collections activity which would encumber the Tribe's property, not just liens. Such activities include, for example, serving notices of levy on the Tribe's bank accounts, which the EDD previously did in connection with Mainstay's accounts. *See* Complaint, ¶ 28. Further, the cases cited by Defendants' do not limit the protections of section 476(e) to tribal property held in trust. *Mescalero* involved the analysis of 25 U.S.C. § 465 which expressly exempts from taxation only trust property. *Mescalero, supra*, 411 U.S. at 156-158. In contrast, section 476(e) contains no such limitation and instead refers broadly to "tribal lands, interest in lands, or other tribal assets…." 25 U.S.C. § 476(e). Section 476(e) therefore protects all tribal property from encumbrance regardless of whether that property was "acquired for the purpose of carrying on a business enterprise." *Bay Mills*, meanwhile, does not mention section 476(e) at all, and addresses only the tribe's claim of sovereign immunity. *Michigan v. Bay Mills Indian Community*, 134 S.Ct. 2024, 2034-2035 (2014).

Finally Defendants' request for additional time to take discovery on the issue of whether the Tribe acquired its lands "for the purpose of carrying on a business enterprise" should be denied, as that issue is irrelevant to this Motion.

V. The doctrine of unclean hands cannot defeat a claim of sovereign immunity.

The defense of unclean hands is unavailable against the Tribe's claims to enforce tribal sovereign immunity. First, the affirmative defense of unclean hands and other equitable defenses "may not be asserted against sovereigns who act to protect the public welfare." *U.S. v. Iron Mountain Mines, Inc.*, 812 F.Supp.1528 (E.D. Cal. 1992); *see also Chesapeake & Delaware Canal Co. v. U.S.*, 250 U.S. 123, 125 (1919) ("It is settled beyond controversy that the United States when asserting 'sovereign' or governmental rights is not subject to either statutes of limitations or to laches."); *see also Native American Distributing v. Seneca-Cayuga Tobacco Company*, 546 F.3d 1288, 1295 (10th Cir. 2008) (applying law on federal sovereign immunity in rejecting application of equitable estoppel doctrine against tribe). In *Ironside Mountain Mines*, the United States brought a

Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") claim against mine owners to recover the costs of environmental clean-up. *Id.* at 1533-1534. The mine owners asserted the defense of unclean hands. *Id.* at 1546. The district court granted the United States' motion to strike the mine owners' unclean hands defense both as improper against a CERCLA claim and for the independent reason that the defense was unavailable against a sovereign acting in the public interest. *Id.* Here, the Tribe has brought claims against Defendants for declaratory and injunctive relief in order to protect its tribal sovereign immunity. Because the Tribe has brought this suit as a sovereign seeking to ensure the Tribe's welfare by protecting tribal property from encumbrance, unclean hands is not available as a defense.

Second, the defense of unclean hands is state-law based defense that is superseded by the federal policy of protecting Indian tribes and their right to lands. *Canadian St. Regis Band of Mohawk Indians ex rel. Francis v. New York*, 278 F. Supp. 2d 313, 341-342 (N.D.N.Y. 2003); *Oneida Indian Nation of New York v. New York*, 194 F.Supp.2d 104, 126 (N.D. NY 2002); *see also U.S. v. Washington*, 157 F.3d 630, 649 (9th Cir. 1998) (equitable defenses may not be invoked to defeat Indian treaty rights). The Tribe seeks here to vindicate its rights under the federal law and policy which holds that the Tribe has sovereign immunity protecting its lands from encumbrance. That sovereign immunity cannot be waived without an express waiver, despite any inequitable conduct. *Santa Clara Pueblo, supra,* 436 U.S. at 58; *Ute Distribution, supra*, 149 F.3d at 1267.

Third, "misrepresentations of [a tribe's] officials or employees cannot affect its immunity from suit." *Native American Distributing*, 546 F.3d at 1295 (rejecting plaintiffs' claim that defendant tribal corporation should be equitably estopped from asserting its immunity). Agents of a sovereign have no power through their actions to waive a tribe's immunity in the absence of an express waiver of sovereign immunity. *Id; see also Lopez v. Ponkilla,* 829 F.Supp.2d 1093, 1096 (W.D. Okla. 2010) (holding that estoppel could not trump sovereign immunity where tribe's general counsel had entered into settlement negotiations with plaintiff). Thus, any interaction between the EDD and tribal agents cannot support a defense of unclean hands.

Fourth, sovereign immunity "is not a requirement that may be flexibly applied or even disregarded based on the parties or the specific facts involved." *Ute Distribution,* 149 F.3d at

1267; *Pan Am. Co. v. Sycuan Band of Mission Indians*, 884 F.2d 416, 419 (9th Cir. 1989); *see also Big Valley Band of Pomo Indians v. Superior Court*, 133 Cal. App. 4th 1185, 1195-96 (2005) ("Regardless of the equities, a court is not empowered to deprive an Indian tribe of its sovereign immunity.") (citing *People of State of Cal. ex rel. California Dept. of Fish and Game v. Quechan Tribe Of Indians* ("*Quechan*"), 595 F.2d 1153, 1155 (9th Cir. 1979)). A court therefore must recognize a tribe's sovereign immunity even when doing so effectively permits unfair or illegal activity, or if the case entails unique facts. *Native American Distributing,* 546 F.3d at 1295; *Florida v. Seminole Tribe of Florida*, 181 F.3d 1237, 1243 (11th Cir. 1999) (enforcing sovereign immunity despite "the State's concern… that this holding will effectively nullify its rights under IGRA by leaving it with no forum in which it can prevent the Tribe from violating IGRA with impunity."); *Makah Indian Tribe v. Verity*, 910 F.2d 555, 560 (9th Cir. 1990) ("Sovereign immunity may leave a party with no forum for its claims.").

The fact that a federal statute effectively requires the EDD to enter into a business relationship with the Tribe does not make the unclean hands defense available to Defendants. Defendants cite no authority for that proposition.

Even if, *arguendo*, unclean hands were an available defense here, Defendants have failed to submit any evidence that the *Tribe* committed wrongdoing. The Tribe's non-payment of the EDD assessment cannot constitute unclean hands. Although Defendants misleadingly refer to prior tax assessment disagreements between the EDD and Mainstay, the dispute between the EDD and Mainstay which gave rise to EDD's collections actions began in mid-2008. UMF, ¶ 14; *see also* DMF No. 33 (Mainstay failed to pay its billings beginning in 2009). By mid-2008, approximately one and one-half years had passed since Mainstay had been converted into a division of EDCo, a distinct entity from the Tribe. *See* DMF No. 19. Moreover, the UCC-1 filing statements about which Defendants complain were, regardless of their accuracy, not filed by the Tribe, but by Mainstay's creditor. *See* DMF No. 36, RJN, Ex. A and Ex. 2, and Ex. D.

Defendants should not be granted additional time to take discovery on the issue of unclean hands. Even if that defense were proper, Defendants have not met the requirements of FRCP 56(d). When asked, Defendants failed to identify unclean hands as a subject for which they needed

to take discovery prior to the Tribe's motion for summary judgment. Defendants have also failed to articulate any plausible basis for believing that specific facts exist which would support its theory of unclean hands. *See J.K. Publications, Inc.*, *supra*, 99 F. Supp. 2d at 1199.

VI. Equitable concerns related to the Tribe's conduct cannot defeat sovereign immunity.

Defendants urge the court to deny summary judgment due to a dispute of fact regarding the Tribe's allegedly inequitable conduct. However, as explained above, such alleged conduct is immaterial. "Sovereign immunity involves a right which courts have no choice, in the absence of a waiver, but to recognize. *Quechan*, *supra*, 595 F.2d at 1155. This rule holds true regardless of the equitable considerations which arise from the facts. *Ute Distribution, supra*, 149 F.3d at 1267; *Pan Am. Co. v. Sycuan Band of Mission Indians*, *supra*, 884 F.2d at 419; *Big Valley Band of Pomo Indians*, *supra*, 133 Cal. App. 4th at 1195-96 (2005).

Defendants argue that the purposes of sovereign immunity are not served by "permitting the Tribe to thus evade its voluntarily assumed UI reimbursement liability," and cites *Confederated Tribe* and *Otoe-Missouria Tribe v. N.Y. State Dept. of Financial Services* in support. Neither case stands for the proposition that a tribe's purportedly improper use of its sovereign status justifies disregarding tribal sovereign immunity. *Confederated Tribes*, *supra*, 447 U.S. 134; *Otoe-Missouria Tribe v. N.Y. State Dept. of Financial Services*, 769 F.3d 105 (2d Cir. 2014).

Defendants should not be granted additional time to take discovery on the issue of the Tribe's allegedly inequitable conduct. Even if the issue were relevant to this Motion, Defendants have not met the requirements of FRCP 56(d). When asked, Defendants failed to identify the issue as one for which they needed to take discovery prior to the Tribe's motion for summary judgment. Defendants have also failed to articulate any plausible basis for believing that the necessary evidence exists. *See J.K. Publications, Inc.*, *supra*, 99 F. Supp. 2d at 1199.

Dated: April 1, 2015

BOUTIN JONES INC.

By: /s/ Michael E. Chase
Robert R. Rubin
Michael E. Chase
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