

**Docket No. 13-56066**

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*In the*  
**UNITED STATES COURT OF APPEALS**  
*for the*  
**NINTH CIRCUIT**

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U.S. COURT OF APPEALS

**JAN 22 2014**

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In the Matter of: **VINCENT TORRES, Debtor.**

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FILED \_\_\_\_\_  
DOCKETED \_\_\_\_\_ DATE \_\_\_\_\_ INITIAL \_\_\_\_\_

**VINCENT TORRES,**  
*Appellant,*

v.

**THE SANTA YNEZ BAND OF CHUMASH INDIANS**  
*Appellee.*

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Appeal from a decision of the United States District Court,  
Central District of California, the Honorable Michael W. Fitzgerald  
Case No. 2:12-cv-04513-MWF

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**APPELLANT'S REPLY BRIEF**

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Vincent Torres  
In Propria Persona  
1835 Laurel Ave.  
Solvang, CA 9343  
Tel. 805-714-6535

Appellant Debtor In Pro Per

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I. REPLY TO APPELLEE'S STATEMENT OF FACTS [A. through G.]

Appellees' attempt to re-hash and relitigate on this appeal all issues resolved in the earlier trial, what they describe the "concerns" about Torres' work are matters already conclusively disposed of as baseless. In an extremely lengthy court trial before the state court, the honorable Zel Canter Judge presiding, Appellees made all of these same assertions as excuses for the pattern of harassment they engaged in to evade paying Appellant the monies still owed him for work he had already performed. In addition these excuses were, in reality, fabricated to support the improper ouster of the previous tribal government that had hired Appellant Torres and to support the coup engineered by the Armenta clan, the largest family faction, in order to install Chairman Vincent Armenta.

This ten year campaign against Appellant was pursued by the tribal chairman Vince Armenta, and continued even though a vote of the tribal council 73 to 3 was conducted after the trial in Superior Court directing the tribal government and chairman Armenta to settle the matter and pay Appellant the money owed without further litigation and obstruction. Despite this vote Appellees prosecuted an appeal and refused to withdraw their baseless proof of claim.

A review of the assertions made by Appellees in paragraph heading B, described as what those “concerns” were, is instructive.

The trial court found no fault in the street lighting project nor its fixed price costs and that bolts securing the light pole base were in conformity with industry standards and commonplace including the bases of the light poles on the sidewalk outside the courthouse where the trial was pending.

2. Torres hired and paid the Wallace Company more than the \$94,720 referenced by Appellees and Appellants Cross-Appealed for additional fees and charges he paid but that Cross-Appeal was not allowed because his cross-appeal had been filed one day late.

3. Appellees made these same claims that they had to pay someone else to repair work defectively done by Appellant or to complete unfinished work of his, at the trial and the trial court found them to be totally without merit or support in the evidence. No one was paid anything to correct or complete Appellant’s work.<sup>1</sup>

4. Appellants made these same claims in their proof of claim and also, at trial of the State Contract and the trial court found them to be totally without merit or support in the evidence and that Appellees so-called “expert witness” lacked credibility and likely engaged in paid advocacy.

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<sup>1</sup> That assertion was the stated bases of the \$3,000,000 claim Appellees filed in Bankruptcy.

Appellees assert the “tribe” had concerns about the quality of Appellant’s work when there was no such tribal concern of the prior tribal government at the time appellant did the vast amount of work he did. Appellant was doing the work and the many projects that he was hired to do. These so-called concerns arose only in conjunction with the coup undertaken to seize control of the tribe by the Armenta clan using Appellant’s work as an excuse to take over the tribal government which was subsequently done in November and December 1999. The items 1 to 6 listed under Paragraph C by Appellees as “concerns” raised by Appellees were found to be without merit or support in the evidence or were trivial and insignificant in view of the scope of these large projects.

As set out above the “construction expert” hired by the tribe was found to lack credibility and the trial court found his testimony uncredible and that it appeared to be no more than a paid advocacy in light of all the facts and evidence submitted.

Appellees submitted no quotes, bills, invoices or alternative prices at trial with respect to Appellant’s work except one small part of the lighting contract which was actually a fixed price contract in any case and the court found nothing improper or excessive in the amounts charged by Appellants

and paid by the former tribal government before it was ousted in the November-December 1989 coup.

Contrary to Appellees' assertion that it waited to complete an investigation by an "expert" to base claims against Appellant, Ghia Castro the FAMCO pipe representative's testimony at trial evidenced hostile animus by Chairman Armenta within a month or two of Appellant's improper termination and the ouster of the tribal government.

As set out in Appellant's opening brief Appellees continually made the claim now made again and set out on page 6 of their brief, that is:

".....and for the work which the tribe had to pay for to remediate Torres' defective work and to complete the work Torres should have completed."

Through written interrogatories and the evasive deposition of tribal Chairman Armenta and during the 8-week trial in State Court, Appellant's repeatedly sought any evidence that Appellees had to pay anyone, anything, to repair or replace any work done by Appellant or to finish work allegedly left undone by Appellants while he was working on the various tribal projects. [and there was not one iota of such evidence.]<sup>2</sup> Despite these numerous pre-trial efforts, the repeated claims made during the trial,

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<sup>2</sup> This is something that clearly would have been known by Appellees before they filed the baseless \$3,000,000 claim in Bankruptcy based on these alleged payments.

Appellees could not produce any evidence they paid anyone to repair or correct work done by Appellant or to complete any work that Appellees claimed had been left uncompleted while Appellant was working on these various projects. A review of both the discovery responses [as set out in Appellant's brief] and deposition testimony clearly revealed no evidence that Appellees had paid anyone or hired anyone to correct or finish Appellant's work.

Immediately after Chairman Armenta's evasive deposition testimony, Appellant renewed his objection to the \$3,000,000 claim previously filed in Appellant's bankruptcy action and asked the court for an adversary hearing to adjudicate the unsubstantiated \$3,000,000 claim.

Rather than face an adversary hearing in Bankruptcy Court, Appellees then moved the court for an order lifting the stay of the State Court action and the claims made in that complaint and thus avoid an adversary hearing on the unsupported \$3,000,000 proof of claim in Bankruptcy.

At that hearing on the stay the court lifted the stay of the State Court action and advised Appellants if they recovered anything against the Debtor



as a result of that trial (Appellant) they must return to bankruptcy court and submit a proof of claim.<sup>3</sup>

At that hearing to lift the State Court stay Appellant (Debtor) asked the court to allow his counterclaim for unpaid invoices to be allowed to be tried at the same time the state court case was tried and the State court, acting on behalf of the Bankruptcy court could determine the validity (if any) of the \$3,000,000 claim filed by the Armenta regime in Appellant's Chapter 11 Bankruptcy case. The Bankruptcy Court agreed and ordered these matters determined at the same time in State Court.

#### E. THE TRIBE'S STATE COURT CLAIM

The tribe's state court action was tried in an 8-week trial in which the court ordered a non-suit within the first week as to the tribe's groundless assertion of fraud, conversion, overcharging and other charges, and the claims asserting negligence and breach of contract were subsequently found to lack merit and the court entered a judgment against the tribe and in Appellant's favor and also entered a judgment in favor of Appellant on his

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<sup>3</sup> Appellees later tried to claim the order requiring them to return to Bankruptcy court and submit a claim if they were awarded anything by the state Court required that the Debtor (Appellant) had to return to Bankruptcy Court in order to collect the unpaid invoices he was owed. Appellants also filed a motion and asserted unsuccessfully that Debtor (appellant) and his counsel should be held in contempt for executing their judgment. Both those Motions of Appellants were denied out of hand but Appellant had to incur even more legal fees opposing them.

counterclaim/ cross-complaint for all the unpaid invoices from 6 years earlier that Appellant could prove up at the belated time of trial.

The court could not sustain Appellant's claims for all the payments that were made for labor forces which Appellant no longer had adequate business records for. As a result the court awarded Appellant \$309,000 in unpaid invoices with legal interest from when they should have been paid over five (5) years earlier back in 1999.

Appellant Torres did not seek sanctions in the State court because the State court was not empowered by the Bankruptcy court to determine the improper nature of the filing of the unsupported claim in bankruptcy and the long and ongoing pattern and campaign of harassment of Appellant costing him hundreds of thousands of dollars in attorneys fees alone including the much earlier federal lawsuit to ban Appellant from tribal land.

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As set out in the request for judicial notice filed concurrently herein, Appellant did sue the Armenta tribal government for malicious prosecution. The tribe had moved to quash the summons and complaint in that case on the grounds they could not be sued for their misdeeds and malicious prosecution because of Indian sovereign immunity despite the successful termination of the tribe's frivolous unsupported prior legal actions against Appellant in District Court. Consequently Appellant never had any trial on

the merits in that case but rather it was dismissed based on a claim of Appellant's "Tribal Sovereign Immunity." [See Decision of the California court of Appeals in Appellant's Request for Judicial Notice [unpublished opinion] and to which this court can take judicial notice. Contrary to Appellees' false statements on page 10 of their brief here that Appellant did not pursue such an action for malicious prosecution.<sup>4</sup>

After the 8-week trial in state court the tribe filed an appeal of the state court judgment and the Armenta government prosecuted that appeal even though the tribal council overwhelmingly voted to settle the case and pay Appellant the money he had been owed since 1999 as set out in the State court judgment causing further delay.

Even after that appeal was final and the State court judgment was affirmed Appellees failed and refused to withdraw their \$3,000,000 claim and Appellant, through his core counsel in bankruptcy Mr. Namba, had to move the court to formally deny that claim causing further delay.

## **II. DISCUSSION**

As set out in Appellant's opening brief Appellee's filing of an unsupported and baseless claim was part of a long pattern of harassment

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<sup>4</sup> At the Bankruptcy hearing and later on the appeal hearing in front of Judge Fitzgerald, Appellees falsely asserted Appellant could have sued the Appellees for malicious prosecution as an alternative to seeking sanctions.

engineered by the tribal chairman and members of his family who used Appellant and his contracting work as the excuse to seize control of the tribal government. When Appellant refused to walk away from his outstanding invoices in January through March 2000 Appellees commenced a campaign to “beat down” Appellant and demean him and disparage his work to justify his firing and to appear to be saving the tribe money, gaining favor and support for the coup that had been perpetrated.

As set out in Appellant’s opening brief there followed a long pattern of abuse including a federal lawsuit to ban Appellant, who the tribe falsely claimed in a federal lawsuit in a single allegation, the false claim Appellant was “illegally living” on tribal land when they knew exactly where he lived. They next sued Appellant in State Court amending that complaint 3 times to expand the false allegations made against him, and including the false claims they had to pay “others” to correct defective work or complete work Appellant had not finished. No amount of money was alleged as purported damages in that complaint. When appellant was forced to seek relief under Chapter 11 of the Bankruptcy Act, Appellants filed a false and baseless claim for three million dollars [\$3,000,000.00] making the claim they had to pay others to correct or complete Appellant’s work. When required by pre-hearing discovery, including the Chairman’s evasive deposition, Appellants

refused to substantiate that claim which was entirely based on the assertion and claim they had to pay others because of Appellant.

Appellees then engaged in a long series of obstructionism, challenging the ruling of the Bankruptcy court in assigning both the \$3,000,000 claim and Appellant's counter-claim to the State Court.

Even after an 8-week trial finding all the State Court actions to be without any evidentiary support and also finding no support for the \$3,000,000 claim Appellees persisted. They still refused to pay the money that Appellees had owed Appellant for unpaid invoices going back over 5 years.

Appellees chairman and the tribe appealed that State Court decision and tried to hold Appellant and his counsel in contempt for lawfully exercising the right to collect that money judgment. Then, as set out above, even though the vast majority of the tribal council in a vote of 73 to 3 to settle the case, Appellees instead not only appealed the State Court action, but refused to withdraw the \$3,000,000 claim in bankruptcy requiring Appellant to later make motions to deny it when the State Court Appeal was concluded at the case remitted.

Appellant then made a Motion for sanctions to recover, at the least, the over \$700,000 in attorneys fees expended to defend himself against Appellees' false and unsupported claims.<sup>5</sup>

As set out in appellant's opening brief this court's decision in Krystal Energy v. Navajo Tribe [9<sup>th</sup> Circ. 2005] 357 F.3d 1055 made it clear the filing of a \$3,000,000 proof of claim by Appellees in bankruptcy constituted a waiver of any Indian tribal immunity from lawsuit. That immunity extends to all matters arising out of the events or transaction upon which Appellees' claim was based, including all available counter-claims.

Where, in a case such as this, Appellees have abused the processes of three different courts in their efforts to punish appellant into submission and exhaustion, Appellant/Debtor should be entitled to recover sanctions including the attorneys fees incurred as a direct result of Appellees' false and baseless claims.

As set out in Chambers v. Nasco [(1991) 501 U.S. 32] over Appellees are liable for sanctions for engaging in the pattern of harassment and legal abuse directed toward Appellant and should not be able to evade their conduct by claiming legal immunity or that their improper actions occurred

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<sup>5</sup> Although Appellees assert there was no evidence submitted to support a claim for sanctions, one group of attorneys involved in the adversary \$3,000,000 claim and state court action applied for and received \$180,000 in interim fees and Appellant's special counsel was instructed not to submit his fee application of approximately \$200,000 until all contested matters were concluded. Appellant had to pay yet another attorney thousands of dollars to represent him in the earlier federal District Court suit.

outside of the Bankruptcy Court. Appellants attempt to recover by an action for malicious prosecution was thwarted by tribal immunity claims as set out in that State Court action and decision attached to Appellant's Request for Judicial Notice.

The trial court erred in not using the court's discretion and instead concluding that because many of the acts of harassment and abuse occurred in other courts that "nothing happened in her court." Clearly the Bankruptcy Court did not deny the existence of the pattern of harassment engaged in but only refused to exercise discretion claiming it did not happen in her court. This was error and Appellant has a right to have his claim for sanctions and attorneys fees and costs heard on the merits before the Bankruptcy Court. There is no other forum before which Appellant can seek justice and be made whole for the hundreds of thousands he has had to pay to defend himself against the several legal abuses and the ten year campaign of harassment against Appellant engineered by Appellees.

#### APPELLANT'S APPEAL WAS TIMELY

Appellant received a copy of the district Court's in chambers minute order of 27 March 2013 apparently made ten days after the hearing before the District Court (Judge Fitzgerald). That minute order indicated it was



entered on 16 May 2013 in accordance with Federal Rule of Civil Procedure rule 77b after which the 30 day period to file a Notice of appeal would commence. The district court did not serve Appellant with any Notice of Entry of Judgment or order.

A copy of that minute order Appellant received is part of Appellee's SUPPLEMENTAL EXCERPT OF RECORD VOL. 1 pages 16 to 24. That in chambers minute order bears a date of 27 march 2013. It bears no date of entry of judgment nor did the clerk send out a Notice of Entry of Order of entry of Judgment pursuant to rule 77b F.R.C.P.

A copy of the minute order was received by Appellant via his then trial counsel.

With this copy of the in chambers minute order of 27 March 2013 Appellant received a letter from his Bankruptcy Appellate Counsel Joseph Eisenberg of Jeffers, Mangels, Butler and Mitchel, indicating Judge Fitzgerald's order affirming the Bankruptcy court's order denying sanctions stating it had been entered on May 16, 2013. Pursuant to the legend appearing on the top of that Minute order which indicated it was entered on 5/16/13, pursuant to rule 77b F.R.C.P. and as verified by the letter received from Appellant's counsel Appellant filed his Notice of Appeal on 14 June 2013, which was timely. [See date of entry of the court's order appearing at



the top of the copy of that same minute order which is contained in Appellee's Supplemental Excerpt of the Record Volume 1 found at pages 3 to 10.]

THE PATTERN OF HARASSMENT OF APPELLANT AND ABUSES OF LEGAL PROCESS OCCURRED OVER 10 YEARS AND SANCTIONS ARE APPROPRIATE

The minute order of Judge Fitzgerald reiterates the conclusion that Appellant demonstrated no showing of bad faith before the Bankruptcy Court as his justification for affirming Judge Riblet's order denying sanctions. It is clear from the record there was abundant conduct amounting to bad faith.

The District Court recognized that the Bankruptcy Court erred by refusing to consider the various bad faith and frivolous actions of Appellees occurring outside of Bankruptcy Court.

At page 7 of the minute order Judge Fitzgerald states:

Preliminarily, Mr. Torres is correct that, because of the broad nature of a federal court's power to impose sanctions, a court can sanction a party for conduct that takes place in another courtroom in a related litigation – as long as the party receives a proper hearing. *See, e.g., Western Sys., Inc. v. Ulloa*, 958 F.2d 864, 873 (9<sup>th</sup> Cir. 1992) (rejecting argument that the district court impermissibly imposed

sanctions for conduct that did not occur in the district court, specifically the filing of two lawsuits in Guam Superior Court).

Here, when determining whether to impose sanctions, the Bankruptcy Court seemed to reject Mr. Torres's argument that the Bankruptcy Court could impose sanctions based on the Tribe's conduct in the Superior Court and District Court during this protracted litigation battle. (R. at 1564-67). Assuming that the Bankruptcy Court did not believe it had the authority to sanction such conduct, as a legal matter, this was incorrect.

Nevertheless, as a *factual* matter, the Bankruptcy Court relied on the Superior court's statement of decision, in which the Superior Court found that the Tribe's motive in pursuing the Claim was proper and fell well short of bad faith. Specifically, the Superior Court stated:

The court does not find his [Tribe chairman Vince Armenta] credibility impeached. The new tribal chairman may have suspected Defendant [Mr. Torres] of taking advantage of the Tribe. His motive-behind-the-motive was to protect his people.

(R. at 0614).

*Therefore, it is irrelevant that the Bankruptcy Court arguably reasoned that it did not have the authority to impose sanctions for the Tribe's conduct in Superior Court and District Court.*

Regardless, the Bankruptcy Court declined to exercise its inherent sanctioning power because the Bankruptcy Court concluded that the factual record did not support a finding of bad faith. This court agrees. [Emphasis added here by Appellants use of italics.]

The error here is the Bankruptcy Court refused to consider the pattern of harassment and abuse by Appellants occurring and appearing from Appellees' conduct in other courts. This is not irrelevant as stated by Judge Fitzgerald. Because of that refusal, the Bankruptcy Court concluded there

was insufficient evidence before the court amounting to bad faith. Because of that refusal by the Bankruptcy Judge below, Judge Fitzgerald found there was no evidence in the record of bad faith clearly disregarding the law as set out in Chambers v. Nasco [501 U.S. 32 111 S.Ct. 1991]. See also Rainbow Magazine, Inc. 77 F.3d 278 [9<sup>th</sup> Circ. 1996] and In Re: Balboa Improvements, Ltd. 99 B.R. 466 [9<sup>th</sup> Circ. B.A.P. 1989] and also In Re: Webre, 88 B.R. 242 [9<sup>th</sup> Circ. B.A.P. 1986] and also In Re: Marsch, 36 F.3d 825 [9<sup>th</sup> Circ. 1994].

The baseless and frivolous \$3,000,000 claim was referred to State Court only to be considered on its merits of the issues raised in the State Court complaint concerning construction issues because Appellees had attached the State Court complaint to that claim as if it was the proof of their claim. The State Court determined there was no merit to the claim nor any merit in the various causes of action alleged against Appellant. The State Court was not charged by the Bankruptcy Court with any duty to determine whether Appellee's motives in filing that claim were made in bad faith and the State Court did not consider those issues. The only consideration of motive was the State Court's finding that the tribal chairman's motives on the pending claim for breach of contract was not something available to

impeach his testimony in the State Court trial on the merits of the construction case.

For example at no time was the State Court even presented with the frivolous filing of the earlier action in the federal District Court based solely on a false and frivolous claim that Appellant was unlawfully “residing on the reservation” and all the other various motions made by Appellees once the case in the Bankruptcy Court had commenced in State Court after it was referred to State Court to determine the merits of the construction matters. That is those Motions by Appellees made in bankruptcy after the State Court judgment was entered. Appellees even moved the Bankruptcy Court at the outset to undermine its own order that the State Court was authorized to hear Appellant’s counter-claim for damages and later made their frivolous motion when the trial court awarded Appellant damages for the long overdue invoices. Appellees improperly sought an order of contempt against Appellant and his counsel in an effort to continue to prevent appellant from collecting the money due him for over 5 years. They also appealed the State Court judgment and refused to withdraw the \$3,000,000 bankruptcy claim even after the state Court ruled it was baseless, that State Court judgment was ultimately affirmed on appeal, thus requiring Appellant to make motions in the Bankruptcy Court to have that claim formally rejected and denied.

## CONCLUSION

It is undisputed that the Bankruptcy Court had authority to impose sanctions against Appellees at least in the amount of the attorneys fees Appellant incurred over 10 years in defending himself from frivolous and baseless legal actions in federal District Court, State court and a frivolous proof of claim in Bankruptcy Court including a number of false and frivolous motions made before the Bankruptcy Court.

The error that occurred in Judge Fitzgerald's decision on appeal to the District Court was his conclusion that there was no substantial evidence of bad faith found by the Bankruptcy Court. He failed to understand that these findings and conclusion of the Bankruptcy Court were reached because Judge Riblet failed and refused to exercise jurisdiction and to consider the various harassing actions occurring elsewhere and in **other courts** disregarding the dictates of Chambers v. Nasco 501 U.S. 32 supra.

Judge Fitzgerald's effort to affirm the trial court decision failed to understand there was no "bad faith" found by Judge Riblet because the Bankruptcy Court did not exercise the discretion it had to consider matters evidencing bad faith in other courts as well as hers and also by the false assertions of Appellant/Creditors counsel that Appellant had other forums

for relief instead of sanctions including a “malicious prosecution” action. Appellees knew appellant had sued for malicious prosecution and they succeeded in barring that suit without a trial on the merits by raising tribal sovereign immunity. Appellees also knew that the bankruptcy order lifting the stay of the State Court action was limited to determination of the construction related causes of action raised by Appellees in their complaint and the proof of claim, to the extent the proof of claim was based on that State Court complaint. Appellant’s counterclaim for unpaid invoices also arose out of the events, contracts and construction issues involved in the State Court Action.

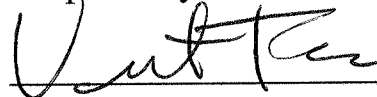
The State Court [Judge Canter] was not charged with determining the bad faith of Appellees or their motives in doing the things constituting a long pattern of harassment nor was Judge Canter asked to determine whether this long pattern of harassment and frivolous actions by Appellees constituted bad faith or warranted sanctions in the Bankruptcy Court. It was error and an abuse of discretion for the Bankruptcy Court to fail and refuse to consider this long pattern of improper behavior of Appellees simply because all of it did not occur in her court.

Appellant has suffered the costs and attorneys fees defending himself from these bad faith efforts of Appellee and his damages exceed the amount

of invoices improperly withheld for years as a part of that long pattern of harassment undertaken to beat him into exhaustion and abandon his efforts to collect money he was lawfully owed.

Clearly Appellant is entitled a full hearing on these issues in Bankruptcy Court including all the matters forming a part of this pattern of improper conduct including matters not occurring in the Bankruptcy Court and for which no other remedy exists to make Appellant whole.

Respectfully submitted



Vincent Torres

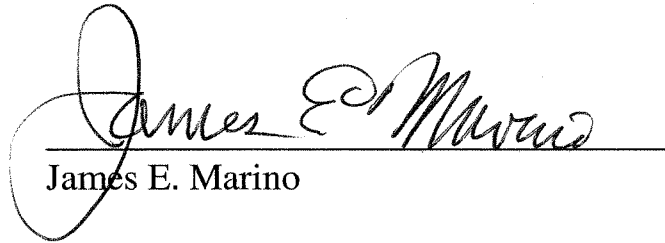
Appellant

CERTIFICATE OF SERVICE

Case Name: In Re: Vincent Torres, Appellant v. Santa Ynez Band of Chumash Indians, Appellee.

9<sup>th</sup> Cir. Case No.: 13-56066

I certify that a copy of the APPELLANT'S REPLY BRIEF and any attachments was served, by first class mail, on the persons listed below.

  
James E. Marino

<u>Name</u>	<u>Address</u>	<u>Date Served</u>
Melissa J. Fassett	Price, Postel & Parma, LLP 200 E. Carrillo St. Fourth Floor Santa Barbara, CA 93101	21 Jan. 2014