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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES ACRES,

Plaintiff,

v.

BLUE LAKE RANCHERIA
TRIBAL COURT, the court of a
federally recognized tribe; LESTER
J. MARSTON, in his official capacity
as chief judge of the Blue Lake
Rancheria Tribal Court; ANITA
HUFF, in her official capacity as
clerk of the Blue Lake Rancheria
Tribal Court; and BLUE LAKE
CASINO AND HOTEL, a tribally
owned entity of the federally
recognized tribe, the Blue Lake
Rancheria,

Defendants.

CASE NO. 16-cv-0598-H-BLM

**ORDER TRANSFERRING
CASE TO THE UNITED STATES
DISTRICT COURT FOR THE
NORTHERN DISTRICT OF
CALIFORNIA**

On April 6, 2016, Defendant Blue Lake Casino and Hotel (“BLC&H”) moved to dismiss Plaintiff’s complaint for lack of subject matter jurisdiction, lack of personal jurisdiction, failure to exhaust tribal court remedies, and improper venue. (Doc. No. 9.) On April 6, 2016, Defendants Blue Lake Rancheria Tribal Court, Lester J. Marston, and Anita Huff joined the motion. (Doc. No. 10.) On April 26, 2016, Plaintiff opposed the motion. (Doc. No. 11.) On April 29, 2016, the Court submitted the motion on the filings under Civil Local Rule 7.1(d)(1). (Doc. No. 14.) On May 2, 2016, BLC&H replied. (Doc. No. 15.) On May 4, 2016, the Tribal Court, Marston, and Huff joined BLC&H’s reply. (Doc. No. 16.) For the reasons set forth below, the Court transfers

1 this case to the United States District Court for the Northern District of California and
2 denies Defendants’ motion to dismiss without prejudice as to a renewed motion filed
3 after the case is transferred.

4 **BACKGROUND**

5 On March 9, 2016, Plaintiff James Acres filed this case seeking declaratory and
6 injunctive relief related to pending litigation (“the tribal court action”) in Blue Lake
7 Rancheria Tribal Court. (Doc. No. 1, “Compl.”). Plaintiff is the president of Acres
8 Bonusing, Inc. (“ABI”). (Id. ¶ 4 & n.1.) Defendant Blue Lake Rancheria Tribal Court
9 is the tribal court of the Blue Lake Rancheria, a federally recognized tribe located in
10 Humboldt County, California. (Id. ¶ 5.) Defendant Lester J. Marston is chief judge of
11 the tribal court, Anita Huff is clerk of the tribal court, and BLC&H is a tribally owned
12 entity of the Blue Lake Rancheria. (Id. ¶¶ 6–8.) In the tribal court action, BLC&H
13 asserts a tort claim against Plaintiff for fraudulent inducement and claims against ABI
14 for breach of contract, bad faith, unjust enrichment, and money had and received.
15 (Id. ¶¶ 9–11 & pp. 50–56.) Plaintiff asks this Court to declare that the tribal court lacks
16 jurisdiction over him and to enjoin Defendants from taking action against him in the
17 tribal court. (Id. at 3.)

18 **DISCUSSION**

19 The general venue provision, 28 U.S.C. § 1391, provides that a civil action may
20 be brought in

21 (1) a judicial district where any defendant resides, if all defendants are
22 residents of the State in which the district is located; (2) a judicial district
23 in which a substantial part of the events or omissions giving rise to the
24 claim occurred, or a substantial part of the property that is the subject of
25 the action is situated; or (3) if there is no district in which an action may
otherwise be brought as provided in this section, any judicial district in
which any defendant is subject to the court’s personal jurisdiction with
respect to such action.

26 Id. § 1391(b)(1)–(3).

27 Defendants argue that venue is not proper in this district because they do not
28 reside in this district, they are not subject to personal jurisdiction here, and all of the

1 events giving rise to Plaintiff's claims occurred elsewhere. (Doc. No. 9-1 at 20–23;
2 Doc. No. 10.) Plaintiff does not dispute that Defendants do not reside here and are not
3 subject to personal jurisdiction here. However, he contends that venue is proper in
4 this district under § 1391(b)(2) because Defendants served him with the tribal court
5 complaint here and his assets here might be sought to satisfy a judgment in the tribal
6 court action. (Doc. No. 11 at 26–28.)

7 The Court agrees that venue is not proper in this district. Plaintiff's claims arise
8 from Defendants' filing and handling of the tribal court action in Humboldt County,
9 California. (Compl. ¶¶ 9–10, 25–70.) Service of the tribal court complaint in this
10 district does not constitute a substantial part of his claims. See United Tactical Sys.
11 LLC v. Real Action Paintball, Inc., 108 F. Supp. 3d 733, 753 (N.D. Cal. 2015) (“While
12 Real Action argues the service of process on Real Action in California gives rise to the
13 abuse of process and malicious prosecution claims, the act of serving process is
14 insufficient to constitute a ‘substantial part’ of Real Action’s claims.”). That Plaintiff’s
15 assets here might be sought to satisfy a judgment in the tribal court action does not
16 make them the subject of that action.

17 28 U.S.C. § 1406(a) provides: “The district court of a district in which is filed
18 a case laying venue in the wrong division or district shall dismiss, or if it be in the
19 interest of justice, transfer such case to any district or division in which it could have
20 been brought.” District courts have discretion to dismiss or transfer under § 1406(a).
21 See Bauman v. DaimlerChrysler Corp., 579 F.3d 1088, 1093 (9th Cir. 2009), reh’g
22 granted and opinion vacated on other grounds, 603 F.3d 1141 (9th Cir. 2010); King
23 v. Russell, 963 F.2d 1301, 1304 (9th Cir. 1992).

24 Exercising its discretion, the Court finds that transfer to the Northern District of
25 California is in the interest of justice. Plaintiff could have brought this case there.
26 Federal courts have subject-matter jurisdiction over claims by non-Indians that tribal
27 courts lack jurisdiction over them. See Plains Commerce Bank v. Long Family Land
28 & Cattle Co., 554 U.S. 316, 324 (2008); Evans v. Shoshone-Bannock Land Use Policy

1 Comm'n, 736 F.3d 1298, 1302 (9th Cir. 2013). While Defendants contend that this
2 Court lacks jurisdiction because they are entitled to tribal sovereign immunity, Plaintiff
3 has alleged a colorable theory that Marston and Hicks are not immune under Ex Parte
4 Young. See Salt River Project Agric. Improvement & Power Dist. v. Lee, 672 F.3d
5 1176, 1181–82 (9th Cir. 2012); Arizona Pub. Serv. Co. v. Aspaas, 77 F.3d 1128,
6 1133–34 (9th Cir. 1995). Tribal court exhaustion is “not a jurisdictional prerequisite.”
7 Evans, 736 F.3d at 1302. The declarations Defendants submitted reflect that they are
8 subject to personal jurisdiction in Humboldt County, California. (Doc. No. 9-2 ¶ 3;
9 Doc. No. 9-4 ¶ 2.) Humboldt County is located in the Northern District. See 28 U.S.C.
10 § 84(a). Venue is proper in the Northern District under 28 U.S.C. § 1391(b)(1) and (2)
11 because Defendants reside there and a substantial portion of the events giving rise to
12 Plaintiff’s claims occurred there.

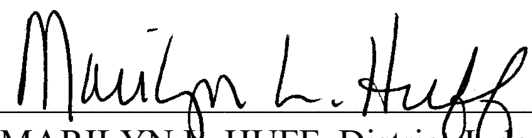
13 Accordingly, the Court transfers this case to the United States District Court
14 for the Northern District of California. In light of the pending transfer, the Court
15 denies Defendants’ motion to dismiss without prejudice as to a renewed motion filed
16 after the case is transferred. The Court denies Plaintiff’s requests for judicial notice
17 at this time because they are moot.

18 CONCLUSION

19 For the foregoing reasons, the Court transfers this case to the United States
20 District Court for the Northern District of California and denies Defendants’ motion
21 to dismiss without prejudice as to a renewed motion filed after the case is transferred.

22 **IT IS SO ORDERED.**

23 DATED: May 13, 2016

24 
25 MARILYN L. HUFF, District Judge
26 UNITED STATES DISTRICT COURT
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