

BOUTIN JONES INC.
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES ACRES,
Plaintiff,

v.

BLUE LAKE RANCHERIA TRIBAL
COURT, *et al.*,

Defendants.

Case No. 3:16-CV-00598-H-BLM
**NOTICE OF MOTION AND
MOTION TO DISMISS**
[Fed. R. Civ. Proc. 12(b)(1)-12(b)(3)]

Date: May 9, 2016
Time: 10:30 a.m.
Courtroom: 15A
Judge: Hon. Marilyn L. Huff

TO PLAINTIFF JAMES ACRES, IN PRO PER:

PLEASE TAKE NOTICE that, on Monday, May 9, 2016, at 10:30 a.m., or as soon thereafter as the matter may be heard in the courtroom of the Honorable Marilyn L. Huff, Judge of the United States District Court for the Southern District of California, Courtroom 15A, located at 333 West Broadway, Suite 1510, San Diego, CA 92101. Defendant Blue Lake Casino & Hotel (“BLC&H”), which is wholly owned and operated by the Blue Lake Rancheria (“Tribe”), a federally recognized Indian tribe, shall make a special appearance for the purpose of moving the Court, pursuant to Fed. R. Civ. Proc. 12(b)(1), for an order dismissing Plaintiff’s complaint in its entirety for lack of subject matter jurisdiction, pursuant to Fed. R. Civ. Proc. 12(b)(2) for an order

1 dismissing Plaintiff's complaint in its entirety for lack of personal jurisdiction, and
2 pursuant to Fed. R. Civ. Proc. 12(b)(3) for an order dismissing Plaintiff's complaint in
3 its entirety for improper venue.

4 The motion is made on the following grounds: (1) BLC&H is wholly owned and
5 operated by the Tribe and, therefore, it enjoys sovereign immunity from unconsented
6 suit absent congressional abrogation or waiver of that immunity; (2) no such abrogation
7 or waiver has occurred with regard to this case; (3) the Tribal Court is a governmental
8 subdivision of the Tribe and is similarly cloaked in the same immunity enjoyed by the
9 Tribe and BLC&H; (4) the Tribe's sovereign immunity extends to Lester J. Marston, as
10 Chief Judge of the Tribal Court, and Anita Huff, as Clerk of the Tribal Court, who, at all
11 times relevant to this action, have acted in their official capacities and within the scope
12 of their authority; (5) Acres has failed to exhaust his Tribal Court remedies and an
13 exception to the exhaustion rule does not apply; and (6) the United States District Court
14 for the Southern District of California is an improper venue for this action, as no part of
15 the events or omissions giving rise to Acres' claims occurred in this District.

16 This motion is based on all pleadings and papers already on file herein, the
17 memorandum of points and authorities filed in support of this motion, the declarations
18 of Thomas Frank, Robert Pollard, Anita Huff, and Yasmin Frank filed in support of this
19 motion, and such other pleadings, papers, argument, or evidence that may be introduced
20 prior to or at the hearing on this motion.

21
22 Dated: April 6, 2016

BOUTIN JONES, INC.

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25 By: s/ Daniel S. Stouder
Daniel S. Stouder
Amy L. O'Neill

26 Attorneys for Blue Lake Casino & Hotel
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CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2016, a copy of this **NOTICE OF MOTION AND MOTION TO DISMISS** was served on all interested parties through the Court’s electronic filing system.

/s/ Amy L. O’Neill
Amy L. O’Neill

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2016, a copy of this **NOTICE OF MOTION AND MOTION TO DISMISS** was served by First Class U.S. Mail on Plaintiff as follows:

James Acres 344 Sylvia Encinitas, CA 92024 james@kosumi.com In Pro Per	Acres Bonusing, Inc. 1106 2nd #123 Encinitas, CA 92024 james@acresbonusing.com
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/s/ Amy L. O’Neill
Amy L. O’Neill