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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 JAMES ACRES,
14
15 Plaintiff,
16 v.
17 BLUE LAKE RANCHERIA TRIBAL
18 COURT, *et al.*,
19 Defendants.

Case No.: 3:16-cv-05391-WHO

**Plaintiff's Response to Defendant's
Motion to Reconsider at Dkt. No. 33**

Judge: Hon. William H. Orrick

20 **Issue Presented**

21 *On December 8th, this Court ordered limited discovery and briefing to afford Judge*
22 *Marston the opportunity to address allegations that he concealed the fact that he*
23 *sometimes acts as Blue Lake's attorney, in addition to being its judge.*

24 *On December 30th, Blue Lake requested permission to file a motion to reconsider the*
25 *discovery order, because Judge Marston and Blue Lake now admit that Judge Marston*
26 *sometimes acts as Blue Lake's attorney.*

27 *Should this Court reconsider its discovery order?*
28

Factual Narrative

In January of 2016, Blue Lake Rancheria served me with notice that it was suing me in its tribal court, with defendant Judge Marston presiding. Believing the underlying tribal action to be malicious, and the tribe and its court to be corrupt, I brought suit in this Court to obtain a declaratory judgment that Blue Lake lacks jurisdiction over me.

Defendants moved to dismiss my action, claiming my failure to exhaust tribal remedies rendered the action premature. I resisted, alleging that Judge Marston defrauded me in tribal court by concealing the fact that he is Blue Lake's attorney, in addition to being its judge. The fraud was material, since it is Blue Lake itself that sues me in Blue Lake tribal court. A material fraud is a form of bad faith, and that bad faith conduct ripened my claim for immediate federal review. *Grand Canyon Skywalk Dev., LLC v. 'sa' Nyu Wa Inc.*, 715 F.3d 1196, 1201 (9th Cir. 2013).

Judge Marston declared to this Court on November 8th at *Dkt. No. 22* that his only relationship with Blue Lake was being "Chief Judge of [its] Tribal Court" (*Id.*, ¶ 3, lines 8-9), that he was "not [Blue Lake's] attorney" (*Id.*, ¶ 13, line 11) and that he was only compensated by Blue Lake for services "provided under [his] judicial services contract" (*Id.*, ¶ 3, lines 10-11.)

On November 11th, I provided this Court with a contradictory declaration made by Judge Marston in *Blue Lake v. Shiimoto*. In the *Shiimoto* declaration, Judge Marston declared that he was in fact "the attorney for Blue Lake Rancheria" (*Dkt. No. 25-2*, ¶ 1), and that he was seeking to recoup attorney's fees for his work as such (*Id.*, ¶ 5, lines 23-26).

On December 7th, this Court expressed its concern that neither Judge Marston nor Blue Lake had addressed the *Shiimoto* declaration directly. And so on December 8th, this Court issued a discovery order and briefing schedule to afford Judge Marston the opportunity to do so. *Dkt. No. 30*.

1 On December 29th, an unsigned and unstamped order by Judge Marston was
 2 emailed to some of the parties in the underlying tribal action from
 3 “bluelakerancheriatribalcourt@gmail.com.” *Dkt. No. 33*, p7, p28.¹ The order denied any
 4 wrongdoing by Judge Marston (*Id.*, pp 8-28), admitted that Judge Marston identified
 5 himself as Blue Lake’s attorney in *Shiomoto* (*Id.*, p 27, lines 7-8), and recused Judge
 6 Marston from the underlying tribal action (*Id.*, p 28, lines 6-9). But the order also left all
 7 of Judge Marston’s prior orders in place, and established that Judge Marston would
 8 personally assign an associate judge to preside in his stead. (*Id.*, p 28, lines 6-9.)

9 On December 30th, Blue Lake Rancheria asked this Court to consider
 10 reconsidering its discovery order based upon Judge Marston’s Gmailed recusal order. *Id.*
 11 pp 1-4.

13 **Argument**

14 Nothing in Judge Marston’s recusal order addresses the core issue of the bad faith
 15 exception. If Judge Marston defrauded me in the tribal court by concealing the fact that
 16 he is Blue Lake’s attorney, then he conducted the proceedings there in bad faith. That
 17 bad faith conduct ripened my claim for federal review under 28 U.S.C. § 1331.

18 Judge Marston’s unrepentant admission that he concealed some facts, coming
 19 several months and a federal lawsuit later, does not unripen my suit.

20 This is especially so since I continue to be subjected to the orders of Judge
 21 Marston. His denial of my motion to dismiss in the tribal court remains in place. He is
 22 personally appointing a successor judge to preside in tribal court. He continues to
 23 actively conduct affairs in the tribal proceeding. *Dkt. No. 33*, p 28, lines 6-9.

24 The only thing that has changed is that it appears both Judge Marston and Blue
 25 Lake now openly admit that Marston acts as Blue Lake’s attorney in *Shiomoto*,
 26 concurrent with his presiding over Blue Lake and me in the underlying tribal action.

28 ¹ All page number references are to the ECF generated page numbers atop each page.

1 Normally, we would need to hesitate before accepting an unsigned and unstamped
 2 judicial order issued from an unverified Gmail account. But in this case, the relevant fact
 3 from Judge Marston's order is his admission that he acts as Blue Lake's attorney in
 4 *Shiomoto*. Blue Lake is, and always has been, aware of whether or not Judge Marston
 5 sometimes acts as its attorney. It is Blue Lake that submits Judge Marston's Gmail
 6 recusal order into evidence, and their certification vouches for its authenticity.

7 All doubt is removed. Judge Marston is Blue Lake's attorney in *Shiomoto*. By
 8 concealing that fact, he defrauded me in tribal court, and perjured himself in this Court.

10 Conclusion

11 Judge Marston's recusal order is an allocution without remorse. He admits in
 12 passing that he concealed from me, and this Court, that he sometimes acts as Blue Lake's
 13 attorney. But only after describing at length how only fools could mind the deceit.

14 I stand ready to continue with discovery and briefing under this Court's December
 15 8th order. Indeed, a deposition has been noticed for January 23rd at 1:30pm in San
 16 Rafael.

17 And yet, perhaps the Court might reconsider its December 8th order after all,
 18 armed now as it is with the facts to find beyond a reasonable doubt that Judge Marston
 19 conducted the underlying tribal proceeding in bad faith, and to find as well that he lied in
 20 his declaration to this Court.

21 With such findings in hand, we could proceed to addressing the question of
 22 whether or not the tribal court in fact has jurisdiction over me. And I hope that, with such
 23 findings in hand, this Court could also enjoin the tribal action from proceeding until this
 24 present action is resolved.

25
 26 Submitted December 31st, 2016

27 By: /s/ James Acres
 28 James Acres
In Pro Per