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In Pro Per

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES ACRES,

Plaintiff,

v.

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

Defendants.

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

**Continued Opposition to MTD at Dkt.
No. 8**

**Feb 22, 2017 at 2pm
Courtroom 2, 17th Floor, SF Div.
Judge: Hon. William H. Orrick**

ISSUE PRESENTED

Use of the inherent powers is especially warranted when fraud is practiced on the Court.

Here, Blue Lake and its agents practice fraud and perjury on this Court to conceal the mockery of due process under law they perform in their tribal court. The record shows I am not Blue Lake's first victim. Their obduracy portends I won't be the last.

What should this Court do?

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FACTUAL NARRATIVE

In 1983 the Blue Lake Rancheria became a federally recognized tribe in *Tillie Hardwick v. United States*. *Dkt. No. 1-3*. Blue Lake was represented in *Tillie Hardwick* by attorneys David Rapport and Lester Marston. *Id.*, p 3.¹ Rapport and Marston joined to become the Ukiah law firm Rapport & Marston, where both continue as attorneys for Blue Lake down through today. *Dkt. No. 18-4*, p 2, Rapport; *Dkt. No. 25-2*, p 2, Marston.

Marston and Blue Lake entered a judicial services contract in 2007. Judge Marston then organized Blue Lake's tribal court as its Chief Judge, and remains its Chief Judge today. *Exhibit 1*. Early actions in the tribal court saw Chief Judge Marston preside over eviction proceedings in which Rapport & Marston acted as "Attorneys for Plaintiff Blue Lake Rancheria of California." *Dkt. No. 1-4*, pp 11-13.

Since 2012, Judge Marston has also been paid by Blue Lake to lobby the California legislature to pass legislation sponsored by the tribe, including legislation to streamline the enforcement of tribal court money judgments in state courts. *Exhibit 2*, pp 3 – 207, keywords include "SB 406" and "tribal court legislation."

In addition to his work as judge and lobbyist, Judge Marston also continues his work as attorney for Blue Lake and its enterprises, even though, as Chief Judge, Marston presides over cases where Blue Lake and its enterprises are plaintiff against non-tribal parties.

One such Blue Lake enterprise is Mainstay Business Solutions. Rapport & Marston associated with the law firm Boutin Jones in representing Blue Lake's Mainstay business in the federal litigation *Blue Lake v. Morgenstern*. *Dkt. No. 18-4*. *Morgenstern* continues on appeal today as *Blue Lake v. Lanier*, USCA Case No. 15-16340 (9th Cir.).

Judge Marston presided in tribal court over cases where Mainstay sued non-tribal defendants (*Dkt. Nos. 18-6, 18-7*) while Rapport was representing Blue Lake in

¹ Where ECF documents are cited, the page numbers cited are those generated by the ECF system.

1 *Morgenstern/Lanier*. Judge Marston also personally contributed as an attorney for
2 Mainstay by reviewing at least one declaration in *Morgenstern/Lanier*. *Exhibit 2*, p 70.

3 Boutin Jones and Rapport & Marston share clients and commercial relations
4 beyond Blue Lake. For instance, in 2013 David Rapport referred a \$200,000 piece of
5 business with the city of Ukiah to Michael Chase of Boutin Jones, noting that he “worked
6 with [Boutin-Jones] on several pending cases in state and federal court.” *Exhibit 3*, p 2.

7 Another Blue Lake enterprise is the Blue Lake Casino & Hotel. In 2010, Blue
8 Lake entered the iSlot agreement with Acres Bonusing, Inc., under which Blue Lake was
9 the second casino to receive the experimental gaming platform. *Dkt. No. 1-1*, pp 10 – 17.

10 As the iSlot project progressed, Blue Lake sought to obtain distribution rights to
11 iSlot, and tasked Boutin Jones with drafting a proposed distribution agreement. *Exhibit 4*.
12 Ultimately, the iSlot project was not commercially successful, and several years later, in
13 2015, Blue Lake employed Boutin Jones as counsel against Acres Bonusing, Inc., and me
14 personally, in the tribal court action giving rise to the action before this Court today. *Dkt.*
15 *No. 1-1*, pp 2 – 8.

16 Boutin Jones aggressively construed the iSlot Agreement in drafting the underlying
17 complaint, alleging that I personally guaranteed Blue Lake would recoup its advance (*Id.*,
18 ¶¶ 34 -43), even though the agreement expressly stated the advance was refundable “if,
19 and only if” certain technical and regulatory milestones weren’t met (*Id.*, p 13).

20 On January 12th, 2016, Judge Marston reviewed the tribal complaint against me
21 (*Exhibit 2*, p 158), and under rule 5 of the tribal court, retained the case for himself (*See*
22 “*Related Case*” 3:16-cv-02622-WHO (*N.D. Cal.*, 2016) at *Dkt. No. 9-2*, p 7). At the time
23 Judge Marston retained the underlying tribal action, he was, in his capacity as attorney,
24 advising Blue Lake’s casino interest on gaming compact negotiations. *Exhibit 2*, pp 81 –
25 163; keyword is “compact,” final entry is a phone call from “KL” to Judge Marston. This
26 is the same Blue Lake interest that is plaintiff against me in the underlying tribal action.

27 Believing the underlying tribal action to be malicious, and the tribal court itself to
28 be partisan, I brought my first suit in this Court to enjoin tribal jurisdiction. *Related Case*

1 at *Dkt. No. 1*. On March 14th and again on March 29th of 2016, Judge Marston and
2 David Rapport conferred with one another over how to respond to the suit, and Judge
3 Marston “reviewed and revised” the resulting motion to dismiss on March 30th, (*Exhibit*
4 2., pp 166 – 168) which Boutin Jones then submitted (*Related Case at Dkt. No. 9-1*).

5 The motion to dismiss claimed I had a “full and fair opportunity to challenge the
6 Tribal Court’s jurisdiction before the Tribal Court.” *Id.*, p 16, line 3. The claim was a lie
7 given that the tribal court’s presiding judge was also the plaintiff’s attorney. This Court
8 relied on that lie in dismissing my first action. *Order in Related Case at Dkt. No. 48*, p 5,
9 lines 14 – 16.

10 After losing my first federal suit for failing to exhaust tribal remedies, I returned to
11 tribal court, where I answered the underlying tribal complaint, moved for a judgment on
12 the pleadings, and moved to have Judge Marston disqualify himself. In a hearing on
13 September 9th, Judge Marston responded in part by stating that, since his only
14 relationship with Blue Lake was as its Chief Judge, there was no need for him to
15 disqualify himself from the underlying tribal action. *Dkt. No. 18-9*, p 7 lines 9 – 18.

16 Shortly after Judge Marston’s refusal to disqualify himself, I returned to this Court
17 with my second action to enjoin Blue Lake from exercising jurisdiction over me, on the
18 theory that Judge Marston’s concealment of his role as Blue Lake’s attorney constituted a
19 fraud, that fraud is a form of bad faith, and that such bad faith excused me from
20 exhausting tribal remedies. *Dkt. No. 1*, esp. ¶¶ 44 – 46.

21 Judge Marston and Boutin Jones again co-operated on Blue Lake’s behalf in a
22 motion to dismiss. *Dkt. Nos. 8, 10*. I opposed, providing additional evidence of Judge
23 Marston’s attorney-client relationship with Blue Lake. *Dkt. No. 18*. In rebuttal, Judge
24 Marston perjured himself before this Court in a four-page declaration containing at least
25 five willful lies. Blue Lake affirmed Judge Marston’s lies in its reply filed by Boutin
26 Jones. *Dkt. Nos. 22, 23*.

27 Judge Marston’s most outrageous lie was that he’s not Blue Lake’s attorney. *Dkt.*
28 *No. 22*, p 4 line 11. I provided this Court with Judge Marston’s declaration from *Blue*

1 *Lake v. Shiimoto* in which he named himself as Blue Lake’s attorney and described his
 2 efforts to be paid as such. *Dkt. No. 25-2*, ¶1, ¶5.

3 Caught, Judge Marston chose to remain silent.

4 Troubled, this Court ordered limited discovery to test the veracity of Judge
 5 Marston’s *Shiimoto* declaration. *Dkt. Nos. 30, 32*.

6 Unrepentant, Judge Marston issued a memorandum and order in the tribal court
 7 explaining that nothing about his attorney-client relationship with Blue Lake disqualified
 8 him as judge, and then recused himself anyway. Before withdrawing, Judge Marston
 9 stressed that his withdrawal left all his orders in place, and that he would personally name
 10 a new judge. *Dkt. No. 33*, p 28 lines 6 – 9.

11 Obdurate, Blue Lake argues that any bad faith which might once have existed is
 12 cured, and that I must be consigned to Blue Lake’s jurisprudence. *Dkt. No. 39*.

13
 14 Vexed, I seek relief.

15 16 **ARGUMENT**

17 18 **I. BAD FAITH BY JUDGE MARSTON EXCUSES EXHAUSTION OF TRIBAL REMEDIES**

19 “Non-Indians may bring a federal common law cause of action under 28 U.S.C. §
 20 1331 to challenge tribal court jurisdiction.” *Elliott v. White Mountain Apache Tribal*
 21 *Court*, 566 F.3d 842, 846 (9th Cir. 2009). Typically, non-Indians challenging tribal
 22 jurisdiction must first exhaust tribal remedies. *Id.*, at 846.

23
 24 An exception to the tribal exhaustion doctrine applies when “an assertion of tribal
 25 jurisdiction is motivated by a desire to harass or is conducted in bad faith.” *Id.*, at 847.

26 *Grand Canyon Skywalk Dev., LLC v. ‘sa’ Nyu Wa Inc.*, 715 F.3d 1196, 1201 (9th
 27 Cir. 2013) held that bad faith by a tribal court in the conduct of its proceedings excuses
 28 the need to exhaust tribal remedies.

1 Judge Marston conducted the underlying tribal proceedings in bad faith when,
 2 among other instances, he claimed while denying my motion to disqualify him as judge
 3 that he “was not an active participant in the affairs of any party to [the tribal] action.”
 4 *Dkt. 1-2*, p 8, lines 25 – 28.

5 Judge Marston’s claim was a lie, because, as Blue Lake’s attorney, he is an active
 6 participant in the affairs of Blue Lake, and Blue Lake is the plaintiff in the underlying
 7 tribal action.

8 Judge Marston deliberately concealed from me the material fact that he is Blue
 9 Lake’s attorney. If a judge “deliberately conceals material information from [litigants or
 10 the public] he is guilty of fraud.” *United States v. Holzer*, 816 F.2d 304, 307 (7th Cir.
 11 1987). Since fraud is a form of bad faith, Judge Marston conducted the underlying tribal
 12 proceeding in bad faith when he defrauded me by concealing the fact that he is Blue
 13 Lake’s attorney.

14 15 **II. JUDGE MARSTON’S RECUSAL DOES NOT RENDER MY COMPLAINT MOOT**

16 Blue Lake argues that Judge Marston’s recusal order renders my complaints of bad
 17 faith by the tribal court moot. *Dkt. 39*, p 6 lines 21 – 23.

18 The test for mootness is whether any effective relief may be granted, regardless of
 19 whether it is the relief originally requested. *West v. Secretary of the Department of Trans*,
 20 206 F.3d 920, 925 (9th Cir. 2000).

21 This Court can provide me with effective relief by finding that Blue Lake has no
 22 jurisdiction over me. *Elliott* at 846.

23 This Court can also provide me with effective relief by finding that “the very
 24 temple of justice has been defiled” by the fraud practiced by Blue Lake and its agents on
 25 this Court in both my federal actions, and by “making [me] whole” for the injuries
 26 they’ve caused me thereby. *Chambers v. Nasco, Inc.*, 501 U.S. 32, 46 (1991).

1 **III. JUDGE MARSTON’S RECUSAL DOES NOT “UNRIPEN” MY 28 U.S.C. § 1331 CLAIM**

2 Blue Lake brought a 12(b) motion to dismiss, arguing that my action is not yet ripe
3 since I have yet to exhaust tribal remedies. *Dkt. 8*. I opposed, arguing that Judge
4 Marston’s bad faith conduct of the tribal proceedings removes the need to exhaust tribal
5 remedies. *Dkt. 18*. Blue Lake now argues that Judge Marston’s recusal removes any bad
6 faith that might’ve existed, and therefore exhaustion of tribal remedies is again required.
7 *Dkt. 39*.

8 Below I argue that since bad faith existed at the time my action was filed, my
9 action cannot be “unripened” by subsequent acts purporting to cure the bad faith. I also
10 show that Judge Marston’s bad faith has not been cured anyway.

11 **A: Ripeness depends on state of affairs when the action is brought**

12 “[T]he jurisdiction of [a federal] Court depends upon the state of things at the time
13 of the action brought, and ... after vesting, it cannot be ousted by subsequent events.”
14 *Mollan v. Torrance*, 22 U.S. 537, 539 (U.S. 1824). “This time-of-filing rule is hornbook
15 law.” *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 570 (U.S. 2004).
16

17 It’s true these holdings regard determining whether federal jurisdiction over a
18 controversy exists at all, rather than determining whether a controversy over which
19 undoubted federal jurisdiction exists is ripe for review. Nonetheless, the authority is
20 persuasive, and the “time-of-filing” rule applies to the futility exception to the tribal
21 exhaustion doctrine. *Johnson v. Gila River Indian Community*, 174 F.3d 1032, 1036 (9th
22 Cir. 1999) approvingly invokes an 8th Cir. holding that a litigant “need not exhaust tribal
23 remedies when no functioning court existed at the time the original complaint was filed in
24 district court.”

25 To find otherwise in the context of the bad faith exception exposes us to the
26 prospect of non-members ping-ponging back and forth between tribal and federal courts
27 as bad faith conduct waxes and wanes, with no clear answer as to when the federal court
28 would be empowered to cry “enough!” and intervene.

B: Judge Marston’s recusal order left his prior orders in place

On quitting the tribal action, Judge Marston took care to leave his prior orders in place. *Dkt. 33*, p 28, line 9. This includes Judge Marston’s denial of my motion for judgment on the pleadings, and his discovery and briefing orders. *Dkt. 1-4*, pp 17-18. Judge Marston also personally chose a new presiding judge. *Dkt. 39-4*.

We are not rid of Judge Marston’s bad faith conduct since his orders continue to determine the course of the tribal proceeding. Blue Lake deposes me in the tribal action on February 10th. And significant briefing is due February 17th.

C: Judge Marston’s appointment order is an objective violation of due process

Blue Lake argues that Judge Marston’s recusal and appointment of Justice James Lambden (California Court of Appeal (Ret.)) cures any bad faith that might’ve existed in the tribal court. *Dkt. No. 39*, p 6 lines 21 – 23.

However, in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (U.S. 2009) the Supreme Court held that it was an objective violation of due process when “a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case ... when the case was pending or imminent.” *Id.*, at 884.

In *Caperton*, the disproportionate influence came by way of outsized campaign contributions in a 2004 election to the West Virginia Supreme Court of Appeals by a litigant who believed his appeal might come before the judge whose campaign he supported.

Here, Judge Marston personally chose a new judge to preside over pending litigation in which Blue Lake’s casino interest is plaintiff. Since Judge Marston has an attorney client relationship with Blue Lake’s casino interest (*Exhibit 2*, pp 81 – 163, keyword “compact”), and since attorneys owe their clients “the duty of undivided loyalty” (*Unified Sewerage Agency v. Jelco, Inc.*, 646 F.2d 1339, 1345 (9th Cir. 1981), Judge Marston can be said to have a “personal stake” in the underlying tribal action.

Judge Marston's personal appointment of a new presiding judge in the underlying action is, *a fortiori*, an objective violation of due process under *Caperton*. A tribal court cannot cure its own bad faith through an objective violation of due process.

D: Judge Marston's appointment order has no basis in tribal law

Judge Marston's appointment order traces his authority to personally name a new presiding judge from Section 11.1.1.040 of Blue Lake's tribal court ordinance. *Dkt. No. 39-4*, p 2 line 26. Section 11.1.1.040 (F) of the tribal court ordinance reads as follows:

“[11.1.1.040] F. Acting Judges.

In the event that there is no qualified Judge or there are an insufficient number of Judges available to hear a particular case, the Chief Judge shall appoint the Acting Judge or Acting Judges selected by random drawing from the Temporary Judge list, with the full powers of a regularly-appointed Tribal Judge to hear and dispose of the case. The qualifications for Temporary Judges must meet the minimum qualification of Associate Judges. Such appointment shall be only for the period of time necessary to dispose of the case in question.”

-Related Case, Dkt. No. 9-5, p 41.

And so, the tribal court ordinance provides that when “there is no qualified [j]udge,” the Chief Judge will randomly select an acting judge from the list of temporary judges. Since Judge Marston has found that “there is no basis for concluding that any of the Associate Judges has a conflict of interest” (*Dkt. No. 39-4*, p 2 lines 20 – 21) that must mean that all Associate Judges are qualified to preside under tribal law. So there is no basis in tribal law for Judge Marston's special appointment of Justice Lambden.

Even if Judge Marston concedes that all of the Associate Judges have a conflict of interest, his appointment of Justice Lambden is still unsupported in tribal law. This is because an Acting Judge should be randomly selected from a list of at least three Temporary Judges, and not specifically named by the Chief Judge. *Related Case, Dkt. No. 9-5*, pp 37 – 38, Tribal Court Ordinance 11.1.1.040 C (1) (c), and *Id.*, p 41.

Blue Lake might argue that, since I believe all existing Associate Judges in the tribal court are biased, I can't complain that Judge Marston didn't select one of them to preside over me.

I certainly agree that none of the Associate Judges named in *Dkt. No. 18-5* are able to preside impartially over me. I would object as vigorously to any of them as I object to Judge Marston.²

But my objection to those specific judges springs from my fundamental aversion to the jurisdiction of a bad faith court untethered from fact, reason, and even its own law.

Judge Marston's appointment order has no foundation in tribal law. It is an *ultra vires* act by a bad faith judge, and as such cannot cure his prior bad faith.

E: Blue Lake is complicit in Judge Marston's bad faith

At its broadest scope, Blue Lake's motion to dismiss now rests on the argument that, even if Judge Marston acted in bad faith, the wrong lies with Judge Marston alone, and it is unfair to punish Blue Lake for something over which it has no control. *Dkt. No. 32*, p 18, lines 8 – 13.

At its broadest scope, my argument is that Judge Marston is Blue Lake's attorney, and that concealing the fact from me was an act of bad faith.

If resolving our dispute requires this Court to find the balance of equities between Blue Lake and me, then I must prevail.

Blue Lake has always known that Judge Marston is their attorney. At no point during the underlying tribal action, or either of my federal actions, has Blue Lake owned up to this. As recently as January 24th, Blue Lake and its agents continued to paper over this central fact. *Dkt. No. 39*, p 6 footnote 1.

² It's unclear if the judges discussed in *Dkt. Nos. 18-5* and *Dkt 39-4* are full Associate Judges, or are just names on the Temporary Judge list eligible to become Acting Judges. Resolving this uncertainty is unnecessary for my argument, and I suspect Judge Marston's lost sight of the distinction anyway.

1 For a plaintiff to conceal from opposing litigants, and reviewing courts, that their
 2 presiding judge is also their attorney of three-decades tenure is outrageous bad faith,
 3 shocking to the conscience.

4 Blue Lake does not deserve equitable consideration.

6 **IV. THIS COURT MAY USE ITS INHERENT POWERS TO CRAFT APPROPRIATE REMEDIES**

7 The Court may use its inherent powers to sanction parties and their lawyers for bad
 8 faith conduct in litigation.³ *Fink v. Gomez*, 239 F.3d 989, 991 – 992 (9th Cir. 2001). The
 9 Court may use the inherent power to “punish conduct both within [its] confines and
 10 beyond, regardless of whether that conduct interfered with trial.” *F.J. Hanshaw Enters.,*
 11 *Inc. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1136 (9th Cir. 2001).

12 “[W]ielding of [the] inherent power is particularly appropriate when the offending
 13 parties have practiced a fraud upon the court.” *Chambers* at 42. Fraud on the court
 14 occurs when there is “an unconscionable plan or scheme which is designed to improperly
 15 influence the court in its decision.” *Pumphrey v. K.W. Thompson Tool Co*, 62 F.3d 1128,
 16 1131 (9th Cir. 1995).

17 This Court’s finding of a colorable claim to tribal jurisdiction over me does not
 18 preclude recourse to the inherent powers. *Fink* at 992. Sanctions may be awarded for
 19 bad faith conduct both objective and subjective. *Fink* at 991, 993-994.

20 With notice, hearing, and a finding of bad faith (*Hanshaw* at 1143), federal courts
 21 may grant terminating sanctions (*TeleVideo Systems Inc., v. Heinenthal*, 826 F.2d 915,
 22 916 (9th Cir. 1987), injunctive relief (*Carr v. Tillery*, 591 F.3d 909, 920-921 (7th Cir.
 23 2010), and remedial compensatory monetary sanctions (*Int’l Union, United Mine*
 24 *Workers of Am. v. Bagwell*, 512 U.S. 821, 829 (1994)), all as civil sanctions.

27 ³ While unpublished, the memorandum of judgment in *Ingenuity13 v. Doe*, Case No. 13-55859 at
 28 *Dkt. No. 56-1* (9th Cir. June 10th, 2016) provides a concise and recent overview of circuit law regarding
 the use of the inherent powers by a district court to address a fraud practiced upon it.

A: Blue Lake and its agents conspire in fraud before this Court

From their first motion to dismiss, Blue Lake and its agents represented that I enjoy a “full and fair opportunity to challenge the Tribal Court’s jurisdiction before the Tribal Court.” *In the Related Case, Dkt. No. 9-1*, p 16 line 4, *Dkt. No. 15*, p 9 line 18, *Dkt. No. 32*, p 19 line 21, *Dkt. No. 41*, p 15 line 20.

Blue Lake’s representation is a lie because Judge Marston has been Blue Lake’s attorney the whole time. No reasonable person would believe that a “full and fair opportunity” exists for a defendant in a court where the judge is secretly working as the plaintiff’s attorney.

This Court relied on Blue Lake’s oft-repeated false representation in dismissing my first action. *Related Case, Dkt. No. 48*, p 5 line 15. Had Blue Lake and its agents honestly represented the relationship between Judge Marston and Blue Lake, this Court may well have found litigation in tribal court before Blue Lake’s “presiding attorney” to be futile.

Even if tribal exhaustion couldn’t have been excused, Blue Lake’s honest admission that their attorney presided as judge in the tribal court against me might’ve rendered any judgements from the tribal court unenforceable. And that, perhaps, might’ve relieved me of any need to defend within the tribal court.

B: Rapport & Marston and Boutin Jones conspire as agents of Blue Lake

Judge Marston, in his capacity as attorney, is a named partner at the firm of Rapport & Marston. The firms Rapport & Marston and Boutin Jones often share business. David Rapport, in his capacity as City Attorney for Ukiah, referred \$200,000 of city business to Michael Chase at Boutin Jones, noting that they’d worked together on multiple occasions. *Exhibit 3*, p 2. The two firms work together as Blue Lake’s attorneys in *Blue Lake v. Morgenstern* (now styled *Blue Lake v. Lanier* on appeal), which can be

1 summarized as a twenty-million dollar employment-tax dispute between Blue Lake and
2 the State of California, and is currently on appeal before the Ninth Circuit.⁴

3 In my present action, and my prior related case, Blue Lake is ostensibly
4 represented by Boutin Jones alone. However, Judge Marston's billing records, along
5 with meta-data embedded within the filings themselves, show that many of the papers
6 filed by Boutin Jones were authored by a person associated with Rapport & Marston.

7 Blue Lake's first motion to dismiss in the related case was filed on April 6th, 2016.
8 *Related Case, Dkt. No. 9.*

9 Judge Marston's billing records show that on the preceding March 14th he
10 conferred "with David Rapport regarding how he is going to respond to the lawsuit filed
11 against the [tribal] court," that Judge Marston and Mr. Rapport conferred again on March
12 29th, and that on March 30th Judge Marston reviewed and revised the resulting "brief [to
13 be] filed in support of the Tribe's motion to dismiss in the Acres federal court case."
14 *Exhibit 2, pp 166 – 168.*

15 The brief was filed by Boutin Jones in the *Related Case at Dkt. No. 9-1* on April
16 6th, about a week after Judge Marston revised it.

17 This Court's ECF system preserves meta-data tags in PDF filings. One of those
18 tags is the "Author" tag. You can read the meta-data tags of an ECF filed PDF by
19 downloading it to your local computer, and then viewing the file's properties.⁵

20 My eFiled documents, for instance Dkt. No. 25, name "James Acres" as the author.
21 *Exhibit 5, p 3.* Orders issuing from this Court, for instance Dkt. No. 38, name "U.S.
22 District Court" as the author. *Id.*, p 4.

23
24
25
26 ⁴ The holding below seems to be that while Blue Lake might owe the money, tribal sovereign immunity
27 prevents California from collecting it. *Blue Lake v. Morgenstern*, 2:11-cv-01124-JAM-KJM (Cal. E.D.),
28 *Dkt. No. 98*, p 8 lines 5 – 15.

⁵ Be sure to download the file. If you save or print the document from your browser to your desktop as a
PDF, then you create a new file, of which you might be the author.

Documents filed by Boutin Jones and Rapport & Marston throughout the two actions have had various meta-data authors. The meta-data author for the Boutin Jones filed Dkt. No. 9-1 in the Related Case was “Jodi Taylor.” *Exhibit 5*, p 5. Jodi Taylor “authored” several other PDFs submitted to this Court’s ECF system by Boutin Jones, most recently the present motion for reconsideration at Dkt. No. 39. *Id.*, p 6.

Rapport & Marston filed several documents with this Court also naming Jodi Taylor as meta-data author. For instance, Dkt. No. 22 and Dkt. No. 24 both name Jodi Taylor as meta-data author. *Id.*, p 7.

Jodi Taylor is meta-data author of documents filed by both firms in both actions. Here is a table of “meta-data authorship,” for both firms, in both actions:

<i>Acres v. Blue Lake I</i>			<i>Acres v. Blue Lake II</i>		
Dkt. No.	Filing Firm	Author	Dkt. No.	Filing Firm	Author
9-0, 9-1 Motion	Boutin Jones	Jodi Taylor	8-0 - 8-5 Motion	Boutin Jones	mkelly
9-2 - 9-5 Exhibits	Boutin Jones	none	10 Joinder	Rapport & Marston	Jodi Taylor
10 Joinder	Rapport & Marston	none	22 Declaration	Rapport & Marston	Jodi Taylor
10-1 Cert. of Service	Rapport & Marston	Brissa	23 Reply	Boutin Jones	mkelly
12 Admin Motion	Boutin Jones	mkelly	24 Joinder	Rapport & Marston	Jodi Taylor
15 Reply	Boutin Jones	mkelly	33 Motion	Boutin Jones	none
16 Joinder	Rapport & Marston	none	37 Appearance	Boutin Jones	Jodi Taylor
25 Admin Motion	Boutin Jones	none	39 Motion	Boutin Jones	Jodi Taylor
32-0 - 32-8 Motion	Boutin Jones	none	39-1 - 39-5 Exhibit	Boutin Jones	mkelly
33 Joinder	Rapport & Marston	Jodi Taylor			
34 PO to Motion	Boutin Jones	Jodi Taylor			
41 Reply	Boutin Jones	Jodi Taylor			
42 Joinder	Rapport & Marston	Jodi Taylor			

On December 28th, Judge Marston conferred again with Mr. Rapport, this time “regarding the production of [Mr. Rapport’s] billing records for the Acres case.” *Exhibit 2*, p 217. Later that day, Judge Marston turned to “Preparation of the order recusing myself in the Acres case” (*Id.*, p 218), which he finished the next day, and then “email[ed] to [Clerk] Huff for ... service” (*Id.*, p 218). As we’ve seen, Clerk Huff then sent Judge Marston’s recusal order out as an unsigned Word document from her Gmail address. *Dkt. Nos. 33, 34.*

1 Word documents also contain meta-data. The meta-data author for the Word
2 document version of Judge Marston's recusal order is Jodi Taylor. *Exhibit 5*, p 8.

3 The billing records combined with the meta-data from Judge Marston's Word
4 document recusal order provide clear and convincing evidence that "Jodi Taylor" is a
5 personality associated with Rapport & Marston.

6 The billing records combined with the meta-data from the ECF filings provide
7 clear and convincing evidence that Boutin Jones received some of their filings as drafts
8 from Rapport & Marston "authored" by Jodi Taylor.

9 Taken all together, it is unreasonable to believe that Boutin Jones was not aware of
10 the true nature of the relationship between Judge Marston, his firm, and Blue Lake.

11 Boutin Jones knew that it was a lie when it represented on Blue Lake's behalf that
12 I enjoyed a "full and fair opportunity to challenge the Tribal Court's jurisdiction before
13 the Tribal Court."

14 Blue Lake, along with its agents at Rapport & Marston and Boutin Jones, all
15 willfully conspire in fraud and perjury before this Court.

16
17 **C: Judge Marston's November 8 declaration is unconscionable perjury**

18 On November 8th, 2016 Judge Marston filed the personal declaration at *Dkt. No.*
19 22. The declaration was filed "under penalty of perjury" (*Id.*, p 4 line 20) and according
20 to Judge Marston's own personal knowledge (*Id.*, ¶ 1). The purpose of the declaration
21 was to correct "for this Court's record the numerous misrepresentations" allegedly made
22 by me in my opposition to the tribe's motion to dismiss regarding Judge Marston's
23 "working relationship with [Blue Lake]." *Id.*, ¶ 2.

24 Judge Marston did not correct this Court's record. Judge Marston willfully lied to
25 this Court.

26 Judge Marston lied to this Court to conceal his active participation in Blue Lake's
27 affairs, and his bad faith conduct of the underlying tribal proceeding, so that this Court
28 would return me to tribal court where Judge Marston might administer me his justice.

1 These are the very issues the present action is being fought over, so all of Judge
2 Marston's lies are material.

3 Judge Marston lied when he declared that he does not "act on behalf of [Blue
4 Lake] in any capacity other than as the Chief Judge of the Tribal Court." *Id.*, ¶ 3. Judge
5 Marston is Blue Lake's attorney in *Blue Lake v. Shiimoto*. *Dkt. No. 25-2*. *Shiimoto* could
6 not have been far from mind when Judge Marston gave his lie, since his billing records
7 reveal that he reviewed Blue Lake's discovery responses in *Shiimoto* on November 4th,
8 just four days before making his false declaration to this Court. *Exhibit 2*, p 213.

9 Judge Marston lied again when he declared that he does "not represent, nor [is he]
10 paid by, the Tribe or Blue Lake Casino & Hotel with respect to renegotiating tribal-state
11 gaming compacts." *Dkt. No. 22*, ¶ 4. The billing records show that on December 9th
12 2015, Judge Marston reviewed and revised a "litigation memo" to Blue Lake regarding
13 whether Blue Lake should sue California for bad faith in compact renewal negotiations.
14 *Exhibit 2*, p 154. On February 18th of 2016, two days after he rejected my initial papers
15 in the underlying tribal action (*Id.* p 162), Judge Marston conferred with "KL" about Blue
16 Lake's compact renewal negotiations (*Id.*, p 163). The billing records show Judge
17 Marston working on Blue Lake compact negotiations since at least March 31st, 2015 (*Id.*,
18 p 81), and posts by Judge Marston on Facebook suggest that he considers representing
19 tribes in compact negotiations as part of his personal "warrior's song." *Dkt. 18-8*, p 9.⁶

20 Judge Marston lied again when he said that he was "not involved in the
21 representation of any party in the case *Blue Lake Rancheria et. al. v. Marty Morgenstern*
22 *et. al.*" *Dkt. No. 22*, ¶ 5. The billing records show that on February 10th, 2015, Judge
23 Marston reviewed "the declaration of Huff in the Morgenstern case." *Exhibit 2*, p 70.
24 And, indeed, Ms. Huff filed a declaration in that case and on that day, not as tribal court
25 clerk, but in her concurrent role as "Grants and Contracts Manager" for Blue Lake. *Blue*
26 *Lake v. Morgenstern*, 2:11-cv-01124-JAM-KJM (Cal. E.D.), *Dkt. No. 82-3*, p 1 ¶1.

27
28 ⁶ The gaming compact is for Blue Lake's casino, and it is Blue Lake's casino that sues me in tribal court.

1 Judge Marston lied again when he declared that he had “no relationship with
2 Boutin Jones or any of its attorneys.” As is shown above, Judge Marston has co-operated
3 in filings with Boutin Jones in this action, in my prior action, and in *Morgernstern*.

4 The final lie of Judge Marston I recount today is his compound lie that he “is not
5 [Blue Lake]’s attorney, do[es] not represent [Blue Lake], and [has] no financial interest in
6 [Blue Lake] other than [his] judicial services contract.” *Dkt. No. 22*, ¶ 13. Judge
7 Marston’s billing records stretch over two hundred pages spanning the past four years.⁷ In
8 addition to what’s noted above, the billing records memorialize everything from Judge
9 Marston helping Blue Lake purchase a fire truck (*Exhibit 2*, p 9), to bringing land into
10 trust for Blue Lake (*Id.*, pp 120 – 122), to lobbying the State of California on behalf of
11 Blue Lake sponsored legislation to streamline state court enforcement of civil money
12 judgments from tribal courts (*Id.*, pp 3 – 207).

13 Judge Marston represents Blue Lake both as attorney and lobbyist, and unless the
14 redactions to his billing records conceal nullities, he is compensated for services other
15 than those enumerated in his judicial contract. *Exhibit 1*, pp 3 – 4, items (a) – (l).⁸

17 **D: Blue Lake Tribal Court is an Enterprise of judicial fraud and extortion**

18 Judge Marston’s billing records show that Rapport & Marston serves Blue Lake as
19 attorneys, judge’s chambers, and lobbyists. This combination of services has proven
20 effective in generating settlement money for Blue Lake.

21 There is no meaningful separation between the three different types of work, and
22 many members of the firm are seen to contribute.

25 ⁷ We do not know that the billing records have not been altered. The records are not auditable since,
26 with hours and fees redacted, nothing can be reconciled to test for consistency. There are gaps in
27 invoice numbers; entirely blank, but numbered, invoices; records of associate attorneys conferring with
28 Judge Marston without any corresponding entries on his part, and; Judge Marston’s Facebook postings
believe a deeper involvement in compact negotiations than is divulged in the billing records.

⁸ Blue Lake lashes out, “*Idem* item (m)!” I riposte, “*Ejusdem generis*,” and move on.

1 For instance, on February 4th of 2013, Judge Marston conferred “with Rapport⁹
 2 about whether the Tribal Court would have ancillary jurisdiction to impose sanctions on
 3 Admiral Insurance Company if it failed to appear for oral argument.” *Exhibit 2*, p 6.
 4 February 15th of 2013 saw Judge Marston make several phone calls in his role as lobbyist,
 5 with the final call to “Tito Smith re: lining up the legislators to support the [Blue Lake
 6 co-sponsored] bill [to streamline state court enforcement of tribal court civil money
 7 judgements].” *Id.*, p 7, and *Exhibit 6*, p 2, “co-sponsored by ... Blue Lake.”

8 Judge Marston is seen acting as Blue Lake’s attorney on August 10th of 2015 when
 9 he spoke with “[Rapport & Marston associate attorney Cooper Monroe] DeMarse
 10 regarding the carrying of fire arms by security guards on the Reservation.” *Exhibit 2*, p
 11 115.

12 I don’t know what capacity Judge Marston was acting in, when, on March 8th of
 13 2016, he reviewed the employment contract for Blue Lake’s new Chief of Police. I do
 14 know that on March 16th of 2016, the two of them discussed the establishment of a tribal
 15 police department. *Id.*, p 166 – 167. And from my own personal knowledge, I know that
 16 at my tribal court hearing on September 9th of 2016, before being allowed into the
 17 conference room in Blue Lake’s hotel which serves Blue Lake as court room, I was
 18 searched by three armed Blue Lake employees.¹⁰ *Dkt. No. 32*, p 8 from line 13.

19 I am not the only party subjected to Blue Lake’s extortionate tactics.

20 Judge Marston’s conference with Mr. Rapport on February 4th of 2013 regarded
 21 Blue Lake’s suit against Admiral Insurance in tribal court. *Exhibit 2*, p 6. That suit was
 22 the subject federal litigation here in the Northern District, before the Honorable Judge
 23

24 ⁹ *Contra* Michael Chase at *Dkt. No. 32*, p 7 lines 4 – 8 that Rapport & Marston is “not actually a firm.”

25 ¹⁰ Two of the three wore polo shirts with what appeared to be a sheriff’s badge embroidered on them.
 26 Until reading the billing records, I assumed they were private security guards. The third was addressed
 27 by Judge Marston as “Chief.” I would describe the search they performed as more vigorous, yet less
 28 thorough, than an enhanced TSA screening. They maintained positions blocking the exits from the
 conference room throughout the hearing, and it wasn’t clear to me if I would’ve been allowed to leave
 had I desired to do so before the hearing ended. For perspective, Blue Lake Rancheria comprises fewer
 than sixty souls residing on less than one-hundred acres of land. *Related Case, Dkt. No. 1*, p 32.

1 Lucy H. Koh, in *Admiral v. Blue Lake*, Case No. 5:12-cv-01266. In that case Admiral
 2 sued for relief from tribal court, and Mr. Rapport argued for Blue Lake and Judge
 3 Marston that Admiral needed to exhaust tribal remedies. *Admiral v. Blue Lake*, Dkt. No.
 4 26.¹¹

5 Judge Koh dismissed Admiral's suit, finding in part that since the tribal court was
 6 allowing Admiral to challenge tribal jurisdiction at a tribal court hearing, litigation in the
 7 tribal court was not futile. *Admiral v. Blue Lake*, Dkt. No. 32, p 5 lines 3 – 8.

8 The record does not show that either Mr. Rapport or Judge Marston ever disclosed
 9 to Judge Koh that Judge Marston was also Blue Lake's attorney. While Mr. Rapport did
 10 signify that he hailed from the firm "Rapport and Marston," and thus Judge Koh could
 11 easily infer that Rapport and Marston were law partners, there was nothing in the record
 12 before her indicating that Rapport & Marston represented Blue Lake in anything beyond
 13 Judge Marston's being judge of its tribal court.

14 Judge Koh may well have made a different finding about the futility of Admiral
 15 challenging Blue Lake's jurisdiction within Blue Lake's court had she understood that
 16 Judge Marston was also Blue Lake's attorney.

17 Judges are fiduciaries to the public. *Holzer* at 307. A judge's public must include
 18 fellow judges reviewing their work. Judge Marston therefore had a fiduciary
 19 responsibility to disclose his role as Blue Lake's attorney to Judge Koh once the *Admiral*
 20 *v. Blue Lake* litigation began. His failure to do so amounts to a fraud upon the court,
 21 albeit one of omission.

22 *United Contractors v. Blue Lake*, 2:11-cv-10161-JHK-SH (C.D. Cal. 2011) arose
 23 from the same underlying tribal action.¹² Blue Lake never appeared in *United*

24
 25
 26 ¹¹ The underlying tribal action in *Admiral* was complex. Mainstay, a Blue Lake enterprise, sued Woods
 27 Roofing, which in turn cross-complained against Admiral Insurance for not indemnifying it in tribal
 28 court. The ultimate flow of the settlement money was almost certainly from Admiral to Blue Lake.

¹² Again, Mainstay sued Woods Roofing, who cross complained against United Contractors for failing to
 indemnify in tribal court.

1 *Contractors*. But since Mr. Rapport cited the action during briefing in *Admiral v. Blue*
 2 *Lake* (Dkt. No. 26, p 4 line 5), one is clearly convinced that Judge Marston knew of the
 3 action, and that Judge Marston had a fiduciary duty to disclose that he was Blue Lake's
 4 attorney to the Honorable Judge John A. Kronstadt in the Central District.

5 Ultimately, the record shows that United Contractors acquiesced to a \$50,000
 6 settlement in the underlying tribal action. *United Contractors v. Blue Lake*, Dkt. No. 12,
 7 p 2. Admiral settled for an undisclosed sum. *Exhibit 7*.

8 The billings show that settlements have continued to be made in Blue Lake's tribal
 9 court. For instance, on July 31st of 2016, Judge Marston reviewed and revised "the good
 10 faith offer of settlement ... for O&M Industries . . . and Pacific Spray Foam." *Exhibit 2*,
 11 p 186. These appear to be part of a slew of settlements that culminated on September 22nd
 12 2016 in Judge Marston's "Memorandum of Decision and Order" in the global settlement
 13 of the "Wright Matter." *Id.*, p 201. Wright Hotel Development built Blue Lake's hotel,
 14 and the billing records show a long fought litigation against them in the tribal court. In a
 15 phone conversation with me in January of 2016, Bob Wright of Wright Hotel
 16 Development told me that his litigation insurer directed Wright Hotel Development to
 17 make a million-dollar payment to Blue Lake to settle the litigation. It wasn't clear to me
 18 from the conversation if the payment was exactly one million dollars, or if the "million-
 19 dollar payment" was the entire global settlement, or if it was just Wright Hotel
 20 Development's piece of it. It was clear that Mr. Wright believed the tribal action against
 21 his company was meritless, and that Mr. Wright was unaware that Judge Marston was
 22 also Blue Lake's attorney.¹³

23 Blue Lake generates significant revenue from its tribal court. Even if Blue Lake
 24 has valid claims against some of the defendants it hales into tribal court, those defendants
 25 still deserve due process.

27
 28 ¹³ I declare under the penalty of perjury that this is an accurate summary of a phone conversation I
 personally had with Mr. Wright in January of 2017. /s/ James Acres, February 6, 2017.

1 But no one gets due process in Blue Lake's tribal court. Instead of due process,
2 Blue Lake enjoys the secret thrill of knowing their judge is on their bench and in their
3 pocket. Blue Lake's tribal court victims enjoy only mounting legal expense on the way
4 to a disadvantageous settlement.

5 When an early federal review of Blue Lake's jurisdiction is sought, Blue Lake
6 practices fraud and perjury in federal court to ensure their victims are kept in tribal court.
7 And to guard against those who might make enforcement of tribal judgements onerous,
8 Judge Marston and Blue Lake worked to pass legislation to streamline state court
9 enforcement of tribal court judgements. *Exhibit 2*, pp 3 – 207, keywords "SB 406,"
10 "tribal court legislation." *See also Exhibit 6*.

11 Blue Lake's tribal court is not an institution of law. It is a criminal Enterprise,
12 operated by Blue Lake and its agents, for the purpose of obtaining money settlements for
13 Blue Lake, and through the use of judicial fraud and extortion.

14 **CONCLUSION**

15
16
17 Blue Lake and its agents practice fraud and perjury in this Court in order to confine
18 me within their bad faith tribal court and squeeze me for settlement money. I am not the
19 first victim of Blue Lake's scheme. Unless something changes, I will not be the last.

20 Blue Lake's fraudulent scheme takes careful account of federal Indian law and the
21 comity that federal courts extend to tribes. Blue Lake's victims struggle in tribal court,
22 creating a record of their resistance, which Blue Lake can then show to reviewing federal
23 courts as evidence that litigation in the tribal court is not futile. The victims then return
24 to tribal court, where their will to resist is exhausted long before Blue Lake runs out of
25 tribal remedies to proffer.

26 Blue Lake's scheme necessarily involves fraud upon the federal courts, since it is
27 predicated upon Blue Lake's willful concealment of the fact that litigation in the tribal
28 court is futile, not least since Judge Marston is secretly Blue Lake's attorney.

1 Since Blue Lake's tribal court Enterprise scheme includes defrauding the federal
2 court system through a judge's perjury, resort to the inherent powers is proper.

3 I ask this Court to use its inherent powers to declare that Blue Lake Rancheria has
4 no jurisdiction over me or the underlying tribal action C-15-1215LJM, and to enjoin any
5 further activities in that case. I also ask that this Court order Blue Lake and its agents
6 Judge Marston, Rapport & Marston, and Boutin Jones to show cause why monetary
7 sanctions should not be leveled against them, and awarded to me, for the harm caused to
8 me by their fraud.

9 I also ask this Court to require Judge Marston to notify all parties he has ever
10 presided over in tribal court, past and present, of the fact that he defrauded them by
11 concealing the fact that he was Blue Lake's attorney the whole time, and to provide this
12 Court with proof that such notice was made.

13 I've made many allegations against many parties in this brief, much of it based on
14 information being introduced into the record today, and no reply briefing is available to
15 defendants. This is similar to the state of things leading up to our last hearing, when Mr.
16 Chase lamented that Judge Marston had no opportunity to answer the *Shiomoto*
17 declaration.

18 The Court has noticed a hearing for February 22nd at 2pm. I hope that any parties
19 who wish to dispute what I've said today will appear before this Court then, and make
20 their reply.

21 Finally, I ask this Court to grant me any other relief it deems necessary or proper.

22
23 Submitted February 6th, 2017.

24
25 /s/ James Acres
26 James Acres
27 *In Pro Per*
28