

Ronald H. Blumberg, Esq. (CSB No. 130557)
e-mail: rhb@blumberglawgroup.com
Jennifer R. True, Esq. (CSB No. 306428)
e-mail: jrt@blumberglawgroup.com
BLUMBERG LAW GROUP LLP
137 North Acacia Avenue
Solana Beach, California 92075
Phone 858.509.0600
Fax 858.509.0699

Attorneys for Plaintiff, James Acres

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

James Acres, an individual;

Plaintiff,

v.

Lester Marston, an individual; Arla Ramsey, an individual; Thomas Frank, an individual; Anita Huff, an individual; Rapport and Marston, an association of attorneys; David Rapport, an individual; Ashley Burrell, an individual; Cooper Demarse, an individual; Darcy Vaugh; an individual; Kostan Lathouris, an individual; Boutin Jones, Inc., a California corporation; Michael Chase, an individual; Daniel Stouder, an individual; Amy O'Neil, an individual; Janssen Malloy LLP, an association of attorneys; Megan Yarnall, an individual; Amelia Burroughs, an individual, and DOES 1-20, inclusive,

Defendants

Case No.:

**VERIFIED COMPLAINT FOR DAMAGES
BASED ON:**

- 1) **WRONGFUL USE OF CIVIL PROCEEDINGS**
- 2) **AIDING AND ABETTING WRONGFUL USE OF CIVIL PROCEEDINGS**
- 3) **CONSPIRACY TO COMMIT WRONGFUL USE OF CIVIL PROCEEDINGS**
- 4) **BREACH OF FIDUCIARY DUTY**
- 5) **AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**
- 6) **CONSTRUCTIVE FRAUD**
- 7) **AIDING AND ABETTING CONSTRUCTIVE FRAUD**

[UNLIMITED CIVIL – AMOUNT
DEMANDED EXCEEDS \$25,000.00]

JURY TRIAL DEMANDED

COMES NOW Plaintiff, JAMES ACRES (“Mr. Acres”), and for causes of action complains against Defendants, LESTER MARSTON, ARLA RAMSEY, THOMAS FRANK, ANITA HUFF, RAPPORT AND MARSTON, DAVID RAPPORT, ASHLEY BURRELL, COOPER DEMARSE, DARCY VAUGH, KOSTAN LATHOURIS, BOUTIN JONES, INC., MICHAEL CHASE, DANIEL

FILED
Superior Court Of California,
Sacramento
07/13/2018
awoodward
By _____, Deputy
Case Number:
34-2018-00236829

BY FAX

STOUDER, AMY O'NEIL, JANSSEN MALLOY LLP, MEGAN YARNALL, AMELIA
BURROUGHS, DOES 1-20 (collectively, "Defendants"), and each of them, as follows:

INTRODUCTION

1. From January of 2016 through July of 2017, Blue Lake and its confederates sued Mr. Acres within Blue Lake's tribal court.¹ Blue Lake and its confederates sought a ruinous judgment, within a court they controlled, before a judge they suborned, on a claim for fraudulent inducement. Mr. Acres brought two federal lawsuits to enjoin Blue Lake and its confederates from pursuing their meritless suit within their tribal court. As a consequence of that federal litigation, Blue Lake's suborned Chief Judge Marston was replaced with the Honorable Justice James Lambden (Ret.) ("Justice Lamden"), from the California Court of Appeal. Mr. Acres filed a motion to dismiss the tribal action which, *sua sponte*, Justice Lambden transformed into a motion for summary judgment. Justice Lambden found "reasonable minds could come to only one conclusion," and dismissed the case against Mr. Acres on the merits and with prejudice.

JURISDICTION, VENUE, RIPENESS AND PARTY ALLEGATIONS

2. Jurisdiction is proper within a Superior Court for the State of California because: i) Substantial acts of despicable conduct described in this Complaint were undertaken by defendants in portions of California lying outside the Blue Lake Rancheria; ii) Defendants swore statements invoking the laws of the State of California while undertaking significant acts of despicable conduct described in this Complaint, and; iii) All the harm this Complaint seeks to redress was aimed at and suffered by a Californian in California.

3. Venue is proper in the Superior Court for the County of Sacramento as several of the Defendants are resident here.

4. Several claims for relief relate to the civil proceeding *Blue Lake v. Acres*. A true copy of the summons and complaint in *Blue Lake v. Acres* is attached as Exhibit 1. In July 2017 Justice Lambden issued an Order granting Mr. Acres summary judgment and dismissing him from *Blue Lake v.*

¹ *Blue Lake Casino & Hotel v. Acres Bonusing Inc., and James Acres*. Blue Lake Tribal Court Case No. C-15-1215JRL. Hereinafter referred to as "*Blue Lake v. Acres*."

1 *Acres* (“Justice Lambden’s Order”). A true copy of Justice Lambden’s Order is attached as Exhibit 2.
2 In August of 2017, Justice Lambden issued a judgment of dismissal dismissing *Blue Lake v. Acres* in its
3 entirety. Exhibit 3 is a true copy of the judgment of dismissal in *Blue Lake v. Acres*. Blue Lake tribal
4 law requires any notice of appeal to be filed within thirty days, and no notice of appeal was ever filed or
5 served on Mr. Acres. Mr. Acres’ claims for wrongful use of civil proceedings are therefore ripe, and the
6 statute of limitations has not expired.

7 5. Several claims for relief relate to a breach of fiduciary duty by Judge Marston towards
8 Mr. Acres. Allegations of fact underpinning these claims describe conduct of a non-judicial nature
9 extending until at least January of 2017. A claim for breach of fiduciary duty is therefore still within the
10 statute of limitations.

11 6. Mr. Acres is, at and all relevant times was, resident in San Diego County, California. Mr.
12 Acres has never entered into any sort of business relationship with Blue Lake. Mr. Acres is, and at all
13 times relevant was, an employee of Acres Bonusing, Inc., as well as its owner.

14 7. Acres Bonusing, Inc. (ABI), was co-defendant with Mr. Acres in *Blue Lake v. Acres*. In
15 August of 2017, Blue Lake voluntarily dismissed all claims against ABI. ABI is a Nevada Corporation
16 and is, and at all times relevant was, qualified to do business in the State of California. ABI is not
17 presently a party to this litigation, and is identified here purely for convenient definition.

18 8. The Blue Lake Rancheria (“Blue Lake”) is a federally recognized Indian Tribe in
19 Humboldt County, California, and is organized under the Constitution of the Blue Lake Rancheria. Blue
20 Lake comprises approximately sixty members and approximately ninety acres of land. In each of 2015,
21 2016, and 2017 Blue Lake received over \$10,000.00 in federal grants.² Blue Lake is not currently named
22 as a Defendant to this action, and is identified here merely for convenience.³

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25 ² Because of these grants, significant acts of conduct by defendants described in this complaint were illegal as a matter of law
under 18 USC § 666.

26 ³ The Supreme Court has never addressed whether tribal sovereign immunity protects tribes from liability for off-reservation
27 tortious conduct against non-Indian individuals. The petition for certiorari in *Poarch Creek v. Wilkes*, USSC Case No. 17-
1175, addresses this question directly. Should the Supreme Court resolve this question Mr. Acres may amend his complaint
28 and name Blue Lake or its entities as defendants.

9. Under Blue Lake’s constitution, the Blue Lake Business Council is the executive political arm of Blue Lake. The Blue Lake Business Council is not currently named as a Defendant to this action, and is identified here merely for convenience.

10. The Tribal Court of the Blue Lake Rancheria (“Blue Lake Tribal Court”) was established by the Blue Lake Business Council through its enactment of Ordinance No. 07-01, and under “its inherent sovereign authority to establish and operate its own judicial system.” The Blue Lake Tribal Court is not currently named as a Defendant to this action, and is identified here merely for convenience.

11. The Blue Lake Casino & Hotel (“Blue Lake Casino”) is an economic enterprise owned and operated by Blue Lake. According to a gaming ordinance enacted by the Blue Lake Business Council, profits from gaming at the casino are deposited directly in Blue Lake’s general treasury. Blue Lake Casino was the plaintiff of the wrongful civil proceeding against Mr. Acres in Blue Lake Tribal Court. Blue Lake Casino is not currently named as a Defendant to this action, and is identified here merely for convenience.

12. Defendant, Arla Ramsey (“Ms. Ramsey”⁴) was the CEO of Blue Lake Casino during *Blue Lake v. Acres*. Ms. Ramsey also served as Blue Lake’s Tribal Administrator, as a judge of Blue Lake’s Tribal Court, and as the vice-chair of Blue Lake Business Council. In her role as Tribal Administrator, Ms. Ramsey was responsible for the day to day business affairs of the Tribal Government, and supervised the work of Clerk Huff. On information and belief, Ms. Ramsey is a resident of Humboldt County, California, and is named as a defendant in her individual capacity.

13. Defendant, Thomas Frank (“Mr. Frank”) has sworn statements describing his employment in various executive roles for Blue Lake over the past 15 years, including as a Blue Lake Casino executive (until 2009) and as Director of Business Development for Blue Lake Rancheria (from 2010 until at least 2015). On information and belief, Mr. Frank is a resident of Humboldt County, California and is named as a defendant in his individual capacity.

⁴ Mr. Acres is unaware whether Ms. Ramsey should be properly addressed as “Judge Ramsey,” “Administrator Ramsey,” or “Vice-Chair Ramsey.” Since Ms. Ramsey’s roles as tribal government official, casino executive, as well as her two distinct roles as tribal court official (Judge and Administrator) are all incorporated within the complaint, Mr. Acres has chosen to identify her as Ms. Ramsey, so as not to unduly emphasize any one role over another.

14. Defendant, Anita Huff (“Clerk Huff”) was the Clerk of the Blue Lake Tribal Court during *Blue Lake v. Acres*. According to Clerk Huff’s LinkedIn page, while acting as Clerk, Clerk Huff was also employed by Blue Lake in various other roles, some of which, like “Grants and Contracts Manager,” included generating grant income for Blue Lake within her responsibilities. On information and belief, Clerk Huff is a resident of Humboldt County, California. Clerk Huff is named as a defendant in her individual capacity.

15. According to Blue Lake Tribal Court documents, Defendant, Lester John Marston (“Judge Marston”) has been the Chief Judge of Blue Lake Tribal Court since at least 2002, and was the original presiding judge *Blue Lake v. Acres*. Judge Marston is also a named attorney at Rapport and Marston, and has represented Blue Lake and its interests as an attorney since at least 1983. During the autumn of 2014, Judge Marston wrote a demand letter to the California DMV on Rapport and Marston letterhead in his capacity as Chief Judge of Blue Lake Tribal Court. In January 2015, Judge Marston wrote a memo to a lobbyist on Rapport and Marston letterhead in his capacity as Blue Lake’s “Tribal Attorney.” Judge Marston is a member of the California State Bar, No. 81030. On information and belief, Judge Marston is a resident of Mendocino County, California, and is named as a defendant in his individual capacity. While Judge Marston enjoys absolute judicial immunity from suit for any conduct that was essentially judicial in nature, Judge Marston is not immune from suit for conduct that was not essentially judicial in nature.

16. Defendant, Rapport and Marston (“Rapport and Marston”) is an association of attorneys located in Mendocino County, California. Rapport and Marston appears to hold itself out as a law firm in state and federal court, shares work between attorneys, allows attorneys to sign court filings for each other, and bills work by multiple attorneys on a single invoice. However, Rapport and Marston does not appear to be registered with the State Bar Association as a law firm, or as an entity with the California Secretary of State, and Mr. Rapport and Judge Marston deny Rapport and Marston is a firm at all. Mr. Acres will amend this complaint to name Rapport and Marston in the proper capacity once that capacity is discovered.

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17. Defendant, David Rapport (“Mr. Rapport”) is the other named attorney at Rapport and Marston. Mr. Rapport has provided attorney services to Blue Lake and its interests alongside Judge Marston since at least 1983. Mr. Rapport is a member of the California State Bar, No. 54384. On information and belief, Mr. Rapport is a resident of Mendocino County, California. Mr. Rapport is named as a defendant in his individual capacity.

18. Defendant, Ashley Rose Burrell (“Ms. Burrell”) is an associate judge of the Blue Lake Tribal Court, and an attorney associated with Rapport and Marston. Ms. Burrell is a member of the California State Bar, No. 289255. On information and belief, Ms. Burrell is a resident of Mendocino County, California. Ms. Burrell is named as a defendant in her individual capacity.

19. Defendant, Cooper Monroe DeMarse (“Mr. DeMarse”) is an associate judge of the Blue Lake Tribal Court, and an attorney associated with Rapport and Marston. Mr. DeMarse is a member of the Arizona State Bar. On information and belief, Mr. DeMarse is a resident of the State of Arizona. Mr. DeMarse is named as a defendant in his individual capacity.

20. Defendant, Darcy Catherine Vaughn (“Ms. Vaughn”) is an associate judge of the Blue Lake Tribal Court, and an attorney associated with Rapport and Marston. Ms. Vaughn is a member of the California State Bar, No. 269907. On information and belief, Ms. Vaughn is a resident of Mendocino County, California. Ms. Vaughn is named as a defendant in her individual capacity.

21. Defendant, Kostan Lathouris (“Mr. Lathouris”) is an attorney associated with Rapport and Marston. Mr. Lathouris is a member of the Nevada State Bar Association, No. 13905. On information and belief, Mr. Lathouris is a resident of the State of Nevada. Mr. Lathouris is named as a defendant in his individual capacity.

22. Defendant, Boutin Jones, Inc. (“Boutin Jones”) is a law firm located in Sacramento, California. Boutin Jones attorneys filed the complaint in *Blue Lake v. Acres* and prosecuted the case for over a year. Boutin Jones also represented Blue Lake Casino in both related federal actions initiated by Mr. Acres to enjoin *Blue Lake v. Acres*. Boutin Jones also represents Blue Lake in *Blue Lake v. Lanier*⁵,

⁵ *Blue Lake v. Lanier*, (2:11-cv-01124-JAM-JFM, E.D. Cal., 2015).

an approximately twenty-million dollar employment tax dispute currently on appeal before the Ninth Circuit.⁶ Boutin Jones represents Blue Lake in the *Lanier* litigation alongside Rapport and Marston. Boutin Jones is registered as a law corporation with the State of California, with the Secretary of State File Number C1946487, and is named as a defendant in that capacity.

23. Defendant, Michael Chase (“Mr. Chase”) is Vice-President and a shareholder attorney at Boutin Jones. Mr. Chase personally appeared on behalf of Blue Lake Casino in *Acres v. Blue Lake I* and *Acres v. Blue Lake II*. When appearing in *Acres v. Blue Lake II*, Mr. Chase stated he had personal knowledge of the internal affairs of Rapport and Marston. Alongside Mr. Rapport, Mr. Chase is a named attorney for Blue Lake in *Blue Lake v. Lanier*. Mr. Chase is a member of the California State Bar, No. 214506. On information and belief, Mr. Chase is a resident of Sacramento County, California. Mr. Chase is named defendant in his individual capacity.

24. Defendant, Dan Stouder (“Mr. Stouder”) is Vice-President and a shareholder attorney at Boutin Jones. Mr. Stouder was an attorney of record representing Blue Lake Casino in *Blue Lake v. Acres*, and *Acres v. Blue Lake I and II*, and personally appeared in federal court on Blue Lake Casino’s behalf in *Acres v. Blue Lake II*. Mr. Stouder is a member of the California State Bar, No. 226753. On information and belief, Mr. Stouder is a resident of Sacramento County, California. Mr. Stouder is named defendant in his individual capacity.

25. Defendant, Amy O’Neill (“Ms. O’Neill”) was an attorney at Boutin Jones. Ms. O’Neill was an attorney of record representing Blue Lake Casino in *Blue Lake v. Acres*, and personally appeared in Blue Lake Tribal Court on Blue Lake Casino’s behalf. Ms. O’Neill was also an attorney of record for Blue Lake Casino in *Acres v. Blue Lake I* and *Acres v. Blue Lake II*. Ms. O’Neill is a member of the California State Bar, No. 294458. On information and belief, Ms. O’Neill is a resident of Sacramento County, California. Ms. O’Neill is named defendant in her individual capacity.

26. Defendant, Janssen Malloy LLP (“Janssen Malloy”) is a law firm located in Humboldt County, California. In February of 2017, Janssen Malloy replaced Boutin Jones as attorneys for Blue Lake Casino in *Blue Lake v. Acres* and *Acres v. Blue Lake II*. While Janssen Malloy holds itself out as

⁶ *Blue Lake v. Lanier*, USCA Case No. 15-16340 (9th Cir.).

an LLP, it does not appear to be registered with the California Secretary of State. Mr. Acres is unsure under what capacity to name Janssen Malloy as a defendant, and will amend this complaint when the true nature of Janssen Malloy's corporate status is discovered.

27. Defendant, Megan Yarnall ("Ms. Yarnall") is a partner at Janssen Malloy. She was an attorney of record for Blue Lake Casino in both *Blue Lake v. Acres* and in *Acres v. Blue Lake II*, and Ms. Yarnall personally appeared on Blue Lake Casino's behalf in both actions. Ms. Yarnall is a member of the California State Bar, No. 275319. On information and belief, Ms. Yarnall is a resident of Humboldt County, California. Ms. Yarnall is named defendant in her individual capacity.

28. Defendant, Amelia Burroughs ("Ms. Burroughs") is an attorney at Janssen Malloy. She was an attorney of record for Blue Lake Casino in *Blue Lake v. Acres*. Ms. Burroughs is described as a partner of Janssen Malloy on Janssen Malloy's website. Ms. Burroughs is a member of the California State Bar, No. 221490. On information and belief, Ms. Burroughs is a resident of Humboldt County, California. Ms. Burroughs is named defendant in her individual capacity.

29. At present, Mr. Acres is unaware of the true names and capacities, whether corporate or otherwise, of the Defendants sued herein as DOES 1 through 20. Therefore, the Defendants are sued by fictitious names, pursuant to the provisions of § 474 of the Code of Civil Procedure. Mr. Acres will request leave of Court to amend the complaint when the true names of such fictitiously named Defendants are ascertained. Mr. Acres is informed and believes and thereon alleges the Defendant DOES 1 through 20, inclusive, are directly and proximately responsible in some manner for the acts and damages complained of herein.

30. Justice Lambden is retired from the California Court of Appeal. Justice Lambden now works as a private judge for ADR Services in San Francisco. Justice Lambden replaced Judge Marston as the presiding judge in *Blue Lake v. Acres*. Justice Lambden is not named as a defendant, and is identified only for convenience.

31. Jodi Taylor is the meta-data author of several court filings made by Judge Marston, Mr. Stouder, and Ms. O'Neill. Mr. Acres is informed and believes Jodi Taylor is or was an individual associated with Rapport and Marston. Mr. Acres is further informed and believes Jodi Taylor installed

Microsoft Word on a computer used by Judge Marston to prepare court filings. Jodi Taylor is not currently named as a defendant, and is identified only for convenience.

32. The general fact allegations below make references to Judge Marston's "Billing Records" (the "Billing Records"). In December of 2016 the Honorable William H. Orrick of the United States District Court for Northern California ordered Judge Marston to provide Mr. Acres with Judge Marston's Billing Records to Blue Lake. Judge Marston provided the Billing Records to Mr. Acres in January of 2017. The Billing Records are in the form of monthly invoices. Each invoice is from "Lester J. Marston" at "Rapport and Marston" and are invoiced to "Blue Lake Rancheria ... Attn: Anita Huff," and bear the legend "In Reference To: INVOICE FOR LEGAL SERVICES." The Billing Records begin on January 1, 2012 and end on December 31, 2016. Each entry in the Billing Records contained a date on which a piece of work was performed, initials identifying which attorney performed the work, and a short description of the work performed. To save space in the allegations below, the capitalized past tense verb "Billed" is sometimes used as an explicit reference to the Billing Records.

GENERAL FACT ALLEGATIONS

COMMON TO ALL CAUSES OF ACTION

33. On January 12, 2016, the Billing Records show Judge Marston reviewed the complaint in *Blue Lake v. Acres*. The complaint was signed by Mr. Stouder and Ms. O'Neill. Under Blue Lake Tribal Court Rule⁷ 5, the administrative decision of whether to preside over the case himself, or to assign the case to another judge, fell to Judge Marston.

34. At the time, Judge Marston had been serving for over a year as attorney of record for Blue Lake and Ms. Ramsey in the state court lawsuit *Blue Lake v. Shiimoto*.⁸ Ms. Ramsey's son, Jason Ramos, a senior official at Blue Lake's casino regulatory agency, had recently married. Ms. Ramsey officiated at her son's Blue Lake Tribal Court wedding in her role as Blue Lake Tribal Court Judge. When the California DMV refused to issue Ms. Ramsey's new daughter-in-law, Jennifer Ramos, a

⁷ Formally known as the "Rules of Pleading, Practice and Procedure for the Blue Lake Rancheria Tribal Court" and shortened here as "Blue Lake Tribal Court Rules."

⁸ *Blue Lake Rancheria et al., v. J. Shiimoto et al.* (Super. Ct. Humboldt County, Case No. CV140799).

1 driver's license based on her tribal court marriage by Ms. Ramsey, Judge Marston sued the DMV in
2 state court on behalf of Blue Lake, Ms. Ramsey, and Ms. Ramos.

3 35. According to the Billing Records, from March 2015 through February 2016 Judge
4 Marston was also Billing Blue Lake for legal advice on gaming compact renegotiations with the state of
5 California. Blue Lake's gaming compact was set to expire at the end of the decade, and without a new
6 compact, Blue Lake Casino would be unable to continue to offer "Las Vegas style" gaming. In August
7 2015, Judge Marston wrote on his personal Facebook page that helping tribes negotiate compacts was
8 part of a "warrior's song," and "a continuation of the struggle" that gives life meaning.

9 36. At the same time Judge Marston represented Ms. Ramsey as her attorney in *Blue Lake v.*
10 *Shiomoto*, he presided over *Blue Lake v. Acres*. Ms. Ramsey was the CEO of Blue Lake Casino, the
11 plaintiff in *Blue Lake v. Acres*.

12 37. Ms. Yarnall stated at a *Blue Lake v. Acres* hearing that Blue Lake's "main business" is
13 Blue Lake Casino. Under Blue Lake's Tribal Gaming Ordinance, all of Blue Lake Casino's gaming
14 profits are deposited into Blue Lake's general treasury.

15 38. Under judicial conduct rules established by Judge Marston,⁹ a Blue Lake Tribal Court
16 judge should not preside over a case if:

- 17 a. "The judge has any bias or prejudice concerning a party;"
- 18 b. "Any party to a proceeding before the court, except the Business Council of the Tribe
19 as part of a judicial services contract, has been a source of income to the judge within
20 the preceding twelve months, other than the tribe paying the judge for work as a
21 judge;" or
- 22 c. "The Judge knows or has reason to know that he ... has a financial interest ... or has
23 any other interest that could be substantially affected by the proceedings."

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27 ⁹ The "Rules of Judicial Conduct Governing the Conduct of Judges of the Tribal Court of the Blue Lake Rancheria," which, by
28 Order of Judge Marston dated April 1, 2007, govern the conduct of all judges in all proceedings.

39. Instead of assigning *Blue Lake v. Acres* to another judge, Judge Marston retained it for himself. The Billing Records show that on January 13, 2016, Judge Marston emailed Clerk Huff to acknowledge his receipt of various filings in *Blue Lake v. Acres*.

40. Clerk Huff issued a summons to serve on Mr. Acres. Blue Lake Tribal Court Rule 15 requires defendants be given thirty days to respond to a summons. The summons issued by Clerk Huff, and which Mr. Stouder and Ms. O'Neill caused to be served on Mr. Acres, demanded an answer within five days, under pain of default.

41. In February 2016, Mr. Acres spoke to Clerk Huff on the phone and asked her why the summons served on him required answer within five-days, instead of thirty days as required by tribal court rules. Clerk Huff responded she had no explanation. Later, in federal court, Clerk Huff swore under penalty of perjury she had inadvertently issued the summons form used for unlawful detainers. Clerk Huff attached the Blue Lake Tribal Court Rules to her declaration as an exhibit, and those rules do not provide for the issuance of a five-day summons for any reason whatsoever.

42. The claim against Mr. Acres was for fraudulent inducement, and alleged Mr. Acres personally promised Blue Lake Casino representatives an advanced deposit paid by Blue Lake Casino to ABI would be repaid to Blue Lake Casino via a "royalty repayment scheme."

43. Justice Lambden's Order noted the Agreement between ABI and Blue Lake Casino was attached to the *Blue Lake v. Acres* complaint, and noted the Agreement did not contain the "royalty repayment scheme" alleged by the complaint.

44. Claims alleging fraudulent statements must be pled with specificity.

45. *Blue Lake v. Acres*' fraud claim against Mr. Acres was not pled with specificity, and provided no particulars about to whom he made the alleged statements, when they were made, or whether they were oral or written.

46. Justice Lambden's Order noted the allegations in *Blue Lake v. Acres* regarding the alleged fraudulent statement by Mr. Acres were conclusory, as was all the evidence submitted by Blue Lake Casino to support the allegations.

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47. In *Blue Lake v. Acres*, Blue Lake Casino demanded from Mr. Acres \$249,250.00, plus interest, costs, fees, punitive damages, and exemplary damages. At trial, any jury would be composed entirely of Blue Lake residents.

48. *Blue Lake v. Acres* centered around a 2010 “iSlot Agreement” between ABI and Blue Lake Casino. The iSlot Agreement was signed in July of 2010 and under it, Blue Lake Casino purchased iSlot, a novel iPad based gaming platform, from ABI, for \$250,000.00. Beginning in October of 2010, Blue Lake Casino used iSlot to serve 56 Las Vegas style slot machine games to its patrons. In 2011, Blue Lake Casino increased this to 88 Las Vegas style slot machine games.

49. Mr. Acres was not a party to the iSlot Agreement. In fact, an Addendum to the iSlot Agreement, which was attached to the complaint in *Blue Lake v. Acres*, specifically disavowed any sort of personal guarantee to Blue Lake Casino by Mr. Acres.

50. In early 2013, Blue Lake Casino indicated to ABI iSlot had been “in mothballs” for some time because of personnel changes. Blue Lake Casino indicated it wished to make iSlot available to its patrons again, and asked for technical support from ABI to accomplish this. Even though the iSlot Agreement expired in October of 2012, and no new agreement had been concluded between the parties, ABI agreed to provide Blue Lake Casino with the requested support. Blue Lake Casino did not avail itself of ABI’s offer to provide iSlot support, and ABI heard nothing more from any Blue Lake entity about iSlot, or anything else, for several years.

51. On August 17, 2015 Mr. Stouder sent a letter to ABI demanding ABI pay \$320,678.90 to Blue Lake Casino in order to avoid “further legal action” regarding iSlot (“the Letter”). Mr. Stouder indicated Mr. Frank was copied on the Letter.

52. Upon receiving the Letter, Mr. Acres promptly phoned Mr. Stouder and asked him if he had read the iSlot Agreement. Mr. Stouder replied he had “a copy of the Agreement right in front of [him].”

53. Mr. Acres then drew Mr. Stouder’s attention to the portion of the iSlot Agreement stating the \$250,000.00 advanced deposit would be refunded “if, and only if” iSlot was not made available to

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Blue Lake Casino by October 1, 2010. Mr. Stouder opined “if, and only if” was a construction that “contains a lot of ambiguity.”

54. Justice Lambden’s Order found the “if, and only if” construction was an “express and strict limitation on the circumstances under which the deposit can be recovered.”

55. Blue Lake Casino and ABI exchanged correspondence through their attorneys for the remainder of 2015. At no point did Blue Lake Casino indicate it was considering taking legal action against Mr. Acres, or indicate it believed Mr. Acres had engaged in fraudulent conduct. Instead, Mr. Stouder expressly stated Blue Lake Casino was not considering legal action against Mr. Acres. Mr. Stouder also noted ABI, and not Mr. Acres, was the party to the iSlot Agreement.

56. Justice Lambden’s Order stated Blue Lake Casino had “attempted to conjure a personal warranty” by Mr. Acres to supplement its action against ABI.

57. On January 17, 2016 at around eight in the morning, Mr. Acres was served at his home with the complaint and five-day summons in *Blue Lake v. Acres*. Curious, Mr. Acres’ children asked who had come to the door so early on a Sunday morning. On learning of the suit filed by Blue Lake Casino in Blue Lake Tribal Court, Mr. Acres’ children were instantly reduced to tears, and Mr. Acres’ eight-year old daughter cried out, “but if it’s their court that means you’ll lose for sure!” Blue Lake Casino’s service of its five-day summons began eighteen months of consuming and severe emotional stress for Mr. Acres and his entire family.

58. Civil money judgments from tribal courts are presumptively enforceable in California Superior courts under the Tribal Court Civil Money Judgment Act (the “TCMJA”) which was enacted in January of 2015. Mr. Acres quickly learned Blue Lake sponsored the legislation which led to the TCMJA’s enactment. Indeed, Judge Marston, in his role as Blue Lake lobbyist, worked throughout 2013 and 2014 to secure passage of the TCMJA. The TCMJA as originally passed contained a sunset provision. While presiding over *Blue Lake v. Acres*, Judge Marston Billed Blue Lake for work to secure legislative action to remove the sunset provision and make the TCMJA permanent. In this way, Judge Marston simultaneously Billed Blue Lake for presiding over *Blue Lake v. Acres*, and for working

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1 to ease Blue Lake's burden in collecting any judgment against Mr. Acres which might arise from *Blue*
2 *Lake v. Acres*.

3 59. In 2012, Mr. Acres suffered a heart attack, a fact of which Blue Lake Casino personnel
4 were aware. As a result, Mr. Acres suffers from chronic chest pain when faced with extreme stress. The
5 stress of needing to answer Blue Lake Casino's five-day summons, for what Justice Lambden found to
6 be a meritless personal fraud claim, within Blue Lake's own tribal court, and on pain of a default
7 judgment enforceable under legislation Blue Lake itself sponsored, caused Mr. Acres to experience
8 extreme chest pain indistinguishable from the pain caused by a heart attack, and necessitated an
9 emergency room visit. Mr. Acres subsequently consulted with his cardiologist, who informed Mr. Acres
10 no effective pain medication could be prescribed which would not also interfere with Mr. Acres' ability
11 to work at his job or conduct his defense against Blue Lake's lawsuit. Mr. Acres continued to suffer
12 bouts of intense chest pain throughout the tribal court litigation.

13 60. Mr. Acres stated in his opposition to Blue Lake Casino's first motion to dismiss *Acres v.*
14 *Blue Lake I*¹⁰ that he believed Blue Lake Casino's tribal court action against him to be wrongful, and
15 that it was causing him to suffer chest pain so intense as to require emergency medical attention. Blue
16 Lake Casino acknowledged in its reply briefing its awareness Mr. Acres "suffered pain and went to the
17 hospital ... after being served with the complaint in the Tribal Court Action." Nevertheless, defendants
18 persisted in pursuing the *Blue Lake v. Acres* claim against Mr. Acres.

19 61. On January 22, 2016 Mr. Acres made a pro-se special appearance challenging Blue Lake
20 Tribal Court jurisdiction over him, and the ability of the Blue Lake Tribal Court to provide him due
21 process, before the expiration of the five-day summons. Mr. Acres noted in an email accompanying the
22 filing that the submission was made without benefit of counsel because of the arbitrary five-day
23 summons.

24 62. On January 25, 2016, Clerk Huff used her discretion to reject Mr. Acres' filing for failing
25 to substantially conform Blue Lake Tribal Court Rule 12 dealing with the "form, size, and duplication of
26 papers."

27 ¹⁰ *Acres v. Blue Lake et al.* (3:16-cv-02622-WHO, N.D. Cal., 2016).
28

63. The five-day period having expired, Mr. Acres feared a default would be issued against him. On January 26, 2016 Mr. Acres fixed the most grievous error he could find by adding his phone number to his signature block and resubmitted his pro se special appearance. In an email accompanying the submission, Mr. Acres pointed out Blue Lake Tribal Court Rules only required rejection of papers which failed to “substantially conform,” and that Clerk Huff’s issuance of a five-day summons was a substantial non-conformance with Blue Lake Tribal Court Rule 15 requiring defendants be given thirty-days to respond to complaints against them. Mr. Acres also pointed out he was making a good-faith effort to comply with the summons and make a timely submission, despite the summons’ variance from Rule 15.

64. Concurrent with her work as Clerk of the Blue Lake Tribal Court, Clerk Huff was also employed by Blue Lake as its Director of Emergency Services, its Grants and Contracts Manager, as well as having some responsibilities related to tribal realty. In some of this work, Clerk Huff reported directly to Blue Lake Casino CEO Ms. Ramsey.

65. Judge Marston responded to Mr. Acres’ good-faith efforts on February 16, 2016 with a tribal court order threatening to sanction Mr. Acres should he continue to “flout tribal court rules” (the “Flouting Order”). According to the Billing Records, Ms. Vaughn drafted the Flouting Order for Judge Marston on February 11-12, 2016. Also according to the Billing Records, in October and November of 2015, Ms. Vaughn assisted Judge Marston in representing Blue Lake and Ms. Ramsey in *Blue Lake v. Shiimoto*.

66. In February 2016, in addition to Billing Blue Lake for the Flouting Order, Judge Marston also Billed Blue Lake for non-judicial work, including:

- a. Work as a lobbyist to secure the legislative reauthorization of the TCMJA;
- b. Work as attorney representing Blue Lake and Ms. Ramsey in *Blue Lake v. Shiimoto*;
and
- c. Work as an attorney advising Blue Lake on prospective litigation related to casino gaming compact renegotiations with the State of California.

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67. The Flouting Order also required Mr. Acres to file an answer or other responsive pleading in *Blue Lake v. Acres* within thirty days, and pursuant to Blue Lake Tribal Court Rule 30. Rule 30 is entitled “Dismissal of Actions” and deals with dismissals through plaintiff stipulation or failure to prosecute.

68. Not understanding how he could file an answer or responsive pleading pursuant to a rule regarding plaintiff dismissals, and threatened with sanctions should he fail to do so properly, on March 9, 2016, Mr. Acres filed *Acres v. Blue Lake I* in federal court, seeking protection from Blue Lake Tribal Court.¹¹

69. On March 14, 2016, Judge Marston Billed for a “Conference with David Rapport regarding how he is going to respond to the lawsuit filed against the court.”

70. Rapport and Marston have a long history of working together and on Blue Lake’s behalf, including, but by no means limited to, when:

- a. In 1983 when Mr. Rapport and Judge Marston gained federal recognition for Blue Lake as an Indian Tribe as its attorneys in *Tillie Hardwick v. United States* (C 79-1710SW, N.D. Cal. 1983);
 - b. In 2008 when Judge Marston and Mr. Rapport worked with Blue Lake on a tribal ordinance;
 - c. In 2009 and 2010 when Judge Marston presided over unlawful detainer actions in Blue Lake Tribal Court in which Mr. Rapport represented Blue Lake as plaintiff;
 - d. In 2011 when Mr. Rapport represented Judge Marston and Blue Lake Tribal Court in two separate federal actions in which the United Contractors Insurance Company and Admiral Insurance Company sought to escape Blue Lake Tribal Court jurisdiction¹²;
- and

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¹¹ *Acres v. Blue Lake et al.* (3:16-cv-02622-WHO, N.D. Cal., 2016).

¹² *United Contractors v. Blue Lake Tribal Court, et al.*, (CV-11-10161-JHK-SH, C.D. Cal., 2012) and *Admiral Insurance v. Blue Lake Tribal Court, et al.*, (5:12-cv-01266-LHK, N.D. Cal., 2012).

e. In 2013 when Judge Marston Billed Blue Lake for a “Conference with Rapport about whether the Tribal Court would have ancillary jurisdiction to impose sanctions on Admiral Insurance company if it failed to appear for oral argument.”

71. On March 29, 2016 Judge Marston Billed Blue Lake for a “conference with Rapport regarding the status of the filing of the Tribe’s brief in federal court.”

72. On March 30, 2016 Judge Marston Billed Blue Lake to “Review and revise the brief [to be] filed in support of the Tribe’s motion to dismiss in the Acres federal court case.”

73. On April 6, 2016, about a week after Judge Marston reviewed and revised Blue Lake Casino’s motion to dismiss *Acres v. Blue Lake I* in consultation with Mr. Rapport, the motion was filed in federal court by Mr. Stouder and Ms. O’Neill, Blue Lake Casino’s attorneys at the firm Boutin Jones.

74. The law firms of Rapport and Marston and Boutin Jones have a significant history of collaboration:

a. Since June of 2011, Boutin Jones and Rapport and Marston have been associated as counsel for Blue Lake in *Blue Lake v. Lanier*,¹³ a dispute between Blue Lake and the State of California involving approximately twenty-million dollars and currently on appeal before the Ninth Circuit;¹⁴

b. In 2013, and according to publicly available documents, Mr. Rapport referred approximately \$200,000.00 of billing with the City of Ukiah to Boutin Jones, noting he had worked with Boutin Jones on “several cases pending in state and federal court.”

c. In December of 2016 Mr. Chase appeared for Blue Lake at an *Acres v. Blue Lake* hearing and claimed to have personal knowledge about “the whole Rapport and Marston thing.”

75. Mr. Acres is informed and believes Mr. Chase and Mr. Rapport worked together to coordinate the despicable conduct of their respective firms towards Mr. Acres.

¹³ *Blue Lake v. Lanier*, (2:11-cv-01124-JAM-JFM, E.D. Cal., 2015).

¹⁴ *Blue Lake v. Lanier*, USCA Case No. 15-16340 (9th Cir.).

76. Blue Lake Casino's April 2016 Motion to Dismiss was electronically filed by Boutin Jones as a PDF. PDFs sometimes contain additional information called meta-data. This meta-data can reveal details about how, when, and by whom the PDF was created. According to the meta-data encoded in Blue Lake Casino's April 2016 motion to dismiss, the motion was "Authored" by "Jodi Taylor."¹⁵

77. Throughout *Acres v. Blue Lake*, many PDF filings were made by Boutin Jones and Judge Marston. Jodi Taylor is named as the meta-data Author of various filings by both Boutin Jones and Judge Marston. Later, in *Blue Lake v. Acres*, Clerk Huff distributed a Microsoft Word version of an order by Judge Marston. The meta-data in that document also named Jodi Taylor as its author.

78. Mr. Acres is informed and believes many of the documents filed by Boutin Jones in both *Acres v. Blue Lake* actions were initially drafted by an attorney associated with Rapport and Marston, and on a computer on which Microsoft Word was installed by Jodi Taylor.

79. *Acres v. Blue Lake I* continued through July of 2016. Throughout the action, Blue Lake Casino argued Mr. Acres enjoyed a "full and fair opportunity" to be heard within the tribal court. Judge Marston joined in all these arguments, even though he continued to represent Blue Lake and Ms. Ramsey as their attorney in the *Shiomoto* action, and he continued to advise Blue Lake Casino on its affairs.

80. During April and May of 2016, Judge Marston tasked Mr. Lathouris with drafting a memorandum of decision as to whether Blue Lake Tribal Court could exercise jurisdiction over Mr. Acres. Judge Marston supervised Mr. Lathouris in this work. In February of 2016, Mr. Lathouris aided Judge Marston both in *Blue Lake v. Shiomoto*, and in advising Blue Lake on whether or not it should sue the State of California for bad faith gaming compact negotiations.

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¹⁵ See ¶ 31 above. Mr. Acres is informed and believes Jodi Taylor is or was a person associated with Rapport and Marston, and Mr. Acres is further informed and believes that Jodi Taylor installed Microsoft Word on a computer used by Judge Marston to draft court filings.

81. On August 30, 2016, Judge Marston Billed Blue Lake for work on four separate matters:
- a. Reviewing discovery filings by Jean Shiimoto and her co-defendants in the state court *Blue Lake v. Shiimoto* litigation, in which Judge Marston was Blue Lake and Ms. Ramsey's attorney; and,
 - b. Reviewing a draft of an order written by Ms. Burrell in *Blue Lake v. Acres*, in which Judge Marston presided over Blue Lake Casino's action against Mr. Acres; and,
 - c. Preparing an email to request the Executive Director of California Indian Legal Services aid Judge Marston in lobbying for the renewal of the TCMJA; and,
 - d. Reviewing and preparing a response to an email from Jack Norton, Human Resources Manager of Blue Lake Casino, regarding an employment dispute with an employee at the casino.

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	him in contempt.		
8/29/2016 AB	Legal Research re: violation of tribal, state or federal rules to identify Acres's particular violation of law when he left offensive voicemail for Clerk.		
AB	Legal Research state and tribal decisions holding defendant in contempt for the purpose of drafting opinion resulting from Acres offensive conduct.		
8/30/2016 LJM	Review of the answers to interrogatories filed by Ann Gieger, Mary Galvan and Jean Shiimoto in the DMV license case.		
LJM	Review of the order denying request to appear by telephone in the Acres case on the motion to strike answer and for judgment on the pleadings.		
LJM	Preparation of an email to the Executive Director of CILS requesting CILS's contact list to send the letter and survey to attorneys that practice in Tribal Court to complete the survey in support of SB 406.		
LJM	Review of the email from Norton regarding religious discrimination and preparation of an email in response.		

Figure 1: Excerpt from September 2016 Invoice from Rapport and Marston to Blue Lake, "LJM" is the billing code for defendant "Lester John Marston."

82. Judge Marston's Billing Records show Judge Marston continued to Bill Blue Lake for

work in all four matters for the remainder of 2016, and that he shared this work with Ms. Burrell, Ms. Vaughn, Mr. DeMarse, and Mr. Lathouris.

83. On September 9, 2016 Judge Marston presided over a *Blue Lake v. Acres* hearing on Mr. Acres' motion to disqualify Judge Marston, and Mr. Acres' motion for judgment on the pleadings (the "September 9 Hearing"). The circumstances under which the September 9 Hearing took place caused Mr. Acres to feel nervous and physically threatened because:

- a. The September 9 Hearing was held in a windowless conference room of Blue Lake Casino's hotel, which is attached to the casino;
- b. Of the seven individuals present at the September 9 Hearing, six were employed by Blue Lake, and three of them carried firearms;
- c. Mr. Acres was vigorously searched by an armed Blue Lake employee before being allowed to enter the hotel conference room, whereas all of Blue Lake's employees were allowed to enter the hotel conference room unmolested;
- d. Two of Blue Lake's armed employees maintained positions blocking the only two exits from the hotel conference room throughout the September 9 Hearing, and it was unclear to Mr. Acres whether he was free to leave the September 9 Hearing;
- e. A third armed Blue Lake employee maintained a position directly behind Mr. Acres for most of the September 9 Hearing; and
- f. Before entering the hotel conference room, Judge Marston engaged in a loud discussion on Blue Lake's ability to detain non-Indians with one of Blue Lake's armed employees.

84. Ms. O'Neill appeared on behalf of Blue Lake at the September 9 Hearing, and Mr. Acres appeared on behalf of himself. After Mr. Acres and Ms. O'Neill were seated, but before the hearing began, Clerk Huff gave Mr. Acres and Ms. O'Neill copies of Judge Marston's tentative ruling on Mr. Acres' motion to disqualify Judge Marston, which, according to the Billing Records, Ms. Burrell drafted. Around the same time, Clerk Huff also gave Mr. Acres a copy of Blue Lake's Code of Judicial Conduct. Also before the hearing began, Judge Marston placed a call on his cell phone and was

connected by Rapport and Marston's office manager with Ms. Burrell, who then Billed Blue Lake to take notes for Judge Marston.

85. Were Judge Marston to find he was disqualified, there were at least two separate lists of possible tribal court replacement judges. Both lists were styled "Tribal Court of the Blue Lake Rancheria General Order No. 5," and both were signed by Judge Marston. According to the Billing Records, Ms. Burrell drafted both orders.

86. The first "General Order No. 5" was dated July 18, 2016, and was available on the tribal court portion of Blue Lake's website for a week or two, after which time it disappeared. The first General Order No. 5 named Ms. Burrell, Ms. Vaughn, and Mr. DeMarse as judges "to be called upon to hear cases in the event of disqualification of a judge."

87. The second "General Order No. 5" was dated August 29, 2016. It was not available on Blue Lake's tribal court website, and was given to Mr. Acres by Clerk Huff on September 9, 2016. The second "General Order No. 5" made no mention of the first General Order No. 5, and named four individuals "to be called upon to hear cases in the event of disqualification of a judge." These individuals were Mr. Anthony Cohen, Mr. David Dehnert, Ms. Burrell, and Ms. Vaughn.

88. Mr. Cohen and Mr. Dehnert are attorneys licensed to practice in California, however they do not appear to be associates at Rapport and Marston. Mr. Acres subsequently telephoned both Mr. Cohen and Mr. Dehnert, and both denied any knowledge of their being named to the Blue Lake Tribal Court as Associate Judges.

89. Immediately after being told of the second General Order No. 5 by Mr. Acres, Mr. Cohen emailed Clerk Huff stating he was never informed of his appointment as a Blue Lake Tribal Court Judge, and that he would not serve as a Blue Lake Tribal Court Judge.

90. When Mr. Acres asked Clerk Huff to explain the difference between the two General Orders No. 5, Clerk Huff responded that the first General Order No. 5 contained "typographical errors."

91. At the September 9 Hearing Judge Marston declined to disqualify himself from presiding over Blue Lake Casino's case against Mr. Acres. In both his written opinion, and orally during argument, Judge Marston stated since he had no relationship with Blue Lake other than being a judge

1 hearing cases, there was no need for him to disqualify himself. Judge Marston further stated nothing
2 under tribal law, or federal law, required his disqualification.

3 92. Ms. O'Neill echoed she saw "no valid reasons" Judge Marston should disqualify himself.

4 93. At the moment Ms. O'Neill stated there were "no valid reasons" Judge Marston should
5 recuse himself, her firm, Boutin Jones, was representing Blue Lake in *Blue Lake v. Lanier* alongside
6 Rapport and Marston, and had done so continuously for more than five years.

7 94. After declining to disqualify himself, Judge Marston then continued to hear argument on
8 Mr. Acres's Motion for Judgment on the Pleadings, which Judge Marston declined to grant.

9 95. An hour or so before the September 9 Hearing began, Mr. Acres and Judge Marston
10 chanced to meet face to face in Blue Lake's tribal government building. Mr. Acres stretched out his
11 arm, offering to shake Judge Marston's hand. Judge Marston refused the gesture and walked away.
12 After the September 9 Hearing, but before the participants left the conference room in which the hearing
13 was held, and by way of explaining the refused handshake, Judge Marston stressed he would not have
14 any communication whatsoever with either Mr. Acres or Ms. O'Neill unless both parties were present.

15 96. After Judge Marston made his September 9, 2016 statement explaining he would refuse
16 to engage in ex-parte communication with litigants outside of court:

- 17 a. Judge Marston continued to represent Blue Lake and Ms. Ramsey in the *Shiomoto*
18 action as their attorney of record;
- 19 b. Rapport and Marston continued to represent Blue Lake together with Boutin Jones in
20 the *Lanier* action, in which Judge Marston Billed for the preparation of documents,
21 and;
- 22 c. Judge Marston and Ms. O'Neill continued to submit filings in *Acres v. Blue Lake II*¹⁶
23 of which the meta-data author was Jodi Tayler.

24 97. On November 8, 2016 Judge Marston submitted a sworn declaration in *Acres v. Blue*
25 *Lake II* (the "November 8 Declaration"). Judge Marston swore he was submitting the November 8
26 Declaration in order to "correct for [the federal court's] record numerous misrepresentations made by

27 ¹⁶ *Acres v. Blue Lake et al.*, (3:16-cv-02622-WHO, N.D. Cal., 2017).
28

[Mr. Acres] ... regarding [Judge Marston's] working relationship with [Blue Lake], which directly attack[ed Judge Marston's] personal integrity."

98. Judge Marston also swore in the November 8, 2016 federal declaration, among other things:

- a. "I do not act on behalf of [Blue Lake] in any capacity other than as the Chief Judge of the Tribal Court;" and,
- b. [Blue Lake] does not compensate me, directly or indirectly, for any services other than the services I provide under my judicial services contract;" and
- c. "I am not [Blue Lake's] attorney [and] do not represent [Blue Lake]."

99. Court records and the Billing Records reveal, however, among other things:

- a. Judge Marston was Blue Lake's attorney in *Blue Lake v. Shiimoto* from at least December 3, 2014 until May 24, 2017; and,
- b. Judge Marston Billed Blue Lake for his work as its attorney in the *Shiimoto* matter; including when,
- c. Judge Marston performed his "Final proofing of the answers to requests for admission served on [Blue Lake] by the State in [*Blue Lake v. Shiimoto*]," a mere eleven days before making his November 8 federal declaration denying his attorney-client relationship with Blue Lake.

100. Shortly after Judge Marston swore the November 8 Declaration, Mr. Acres learned of Judge Marston's work as Blue Lake's attorney in *Blue Lake v. Shiimoto* and informed the federal court.

101. In early December 2016 Judge Orrick, presiding over *Acres v. Blue Lake II*, ordered Judge Marston to provide Mr. Acres with the Billing Records, and then to sit for a deposition by Mr. Acres.

102. On December 28, 2016, Judge Marston Billed for a "Phone Conference with David Rapport regarding the production of his records in the Acres case." The very next entry in the Billing

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Records show Judge Marston beginning work on his *sua sponte* “Recusal Order.”¹⁷ The next day the Billing Records show Ms. Burrell proofed the Recusal Order. Clerk Huff emailed the Recusal Order to Mr. Acres as an unsigned and unstamped Microsoft Word document from bluelakerancheriatribalcourt@gmail.com.

103. Microsoft Word documents also contain meta data. The meta data Author of the Recusal Order was Jodi Taylor.

104. On January 3, 2017 Mr. Rapport informed Mr. Acres he would not be producing his own billing records to Blue Lake as his legal practice was separate from Judge Marston’s, and they did not share income or clients. Mr. Rapport further explained he had a separate legal obligation to defend the attorney-client privilege on Blue Lake’s behalf. Mr. Rapport informed Mr. Acres of all this via a letter on “Rapport and Marston” letterhead. The letterhead prominently displayed the names “David J. Rapport,” “Lester J. Marston,” and “Darcy Vaughn.”

105. Notwithstanding Mr. Rapport’s assertion on Rapport and Marston letterhead that Rapport and Marston shared neither clients nor income, the Billing Records describe multiple consultations between Judge Marston and Mr. Rapport. This includes an entry on June 15, 2016, when Judge Marston Billed Blue Lake for a “Phone Conference with Brad Johnson regarding a breach of warranty case and transfer of Brad’s issue to David Rapport for a response.” According to LinkedIn, on June 15, 2016, Brad Johnson was the CFO of Blue Lake Casino.

106. From around 2015 onwards, the California Nations Indian Gaming Association formed a Compact Tribes Steering Committee (the “CTSC”), many tribes had gaming compacts expiring in 2019 and they formed the CTSC to co-ordinate their compact re-negotiation efforts with the state. Federal law required California to renegotiate Blue Lake’s gaming compact in good faith. Judge Marston and Mr. Lathouris advised Blue Lake on compact negotiations and the possibility of suing California for renegotiating Blue Lake’s gaming compact in bad faith. Mr. Acres is informed and believes Mr.

¹⁷ Judge Marston’s Recusal Order was issued in *Blue Lake v. Acres* on December 29, 2016. In the Recusal Order, Judge Marston admitted he was Blue Lake’s attorney in *Blue Lake v. Shiimoto*, but denied any wrong doing, and after lengthy discussion again found nothing in tribal or federal law disqualified him from presiding over *Blue Lake v. Acres*. Judge Marston recused himself on the grounds a possible appearance of bias might affect the public’s confidence in Blue Lake Tribal Court.

Rapport represented Blue Lake at CTSC meetings.

107. On January 10, 2017, Judge Marston appointed Justice Lambden to preside over *Blue Lake v. Acres*. Mr. Acres is informed and believes Justice Lambden's appointment to *Blue Lake v. Acres* was brokered by the California Judicial Council's Tribal-Court State-Court Forum.

108. In early February 2017, Mr. Acres filed documents in *Acres v. Blue Lake II* showing Judge Marston, Ms. O'Neill, and Mr. Stouder had all filed documents in both *Acres v. Blue Lake I and II* for which Jodi Taylor was the meta-data author.

109. In mid-February 2017, Ms. O'Neill, Mr. Stouder and Boutin Jones all withdrew from *Acres v. Blue Lake II* and *Blue Lake v. Acres*. Ms. Ramsey, in her capacity as Blue Lake Casino CEO, signed a consent order appointing Ms. Burroughs, Ms. Yarnall and the firm Janssen Malloy as Blue Lake Casino's attorneys of record.

110. In late February 2017, Judge Orrick held with the recusal of Judge Marston and the appointment of Justice Lambden, a finding of bad faith against Blue Lake Tribal Court could not be supported, and dismissed *Acres v. Blue Lake II*.

111. On July 18, 2017 Justice Lambden dismissed Mr. Acres from *Blue Lake v. Acres* on summary judgment. Along the way, Ms. Burroughs, Ms. Yarnall and Janssen Malloy LLP vigorously prosecuted *Blue Lake v. Acres*.

112. While prosecuting *Blue Lake v. Acres*, attorneys from Boutin Jones and Janssen Malloy prepared and filed many documents with the tribal court. These documents contained proofs of service, which contained sworn averments under penalty of perjury of the laws of the State of California. All attorneys from both firms also prominently displayed their California State Bar numbers on tribal court filings.

113. While prosecuting *Blue Lake v. Acres*, attorneys from Boutin Jones and Janssen Malloy prepared and filed several declarations with the tribal court. These declarations, including declarations made by Ms. O'Neill and Ms. Yarnall, were made under penalty of perjury under the laws of the State of California.

114. Justice Lambden's Order noted papers filed by Janssen Malloy, Ms. Burroughs, and Ms.

Yarnall on Blue Lake's behalf "misstate[d] the evidence" in an "attempt[] to find direct evidence" to establish the scienter element of the *Blue Lake v. Acres* claim against Mr. Acres.

115. Justice Lambden presided over two hearings in *Blue Lake v. Acres*. Both hearings took place in conference rooms in Oakland, California. No portion of Oakland is within the Blue Lake Rancheria. Mr. Acres is informed and believes Ms. Yarnall drove approximately 1,000 miles on California State highways to attend *Blue Lake v. Acres* hearings.

116. Mr. Acres is informed and believes Judge Marston's primary residence and place of business is in Ukiah, California. No portion of Ukiah is within the Blue Lake Rancheria. Mr. Acres is informed and believes Judge Marston drove approximately 350 miles on California State highways to attend a *Blue Lake v. Acres* hearing.

117. Mr. Acres is informed and believes Ms. O'Neill's primary residence and place of business is in Sacramento, California. No portion of Sacramento is within the Blue Lake Rancheria. Mr. Acres is informed and believes Ms. O'Neill drove approximately 600 miles on California State highways to attend a *Blue Lake v. Acres* hearing.

118. A few weeks after Mr. Acres was dismissed from the case, ABI demanded Blue Lake Casino provide a bill of particulars to support its common counts against ABI. The next day, Ms. Yarnall communicated Blue Lake's intention to dismiss its claims against ABI. *Blue Lake v. Acres* was then dismissed in its entirety.

119. During *Blue Lake v. Acres*, Mr. Frank verified Blue Lake Casino's discovery responses to Mr. Acres, and made several sworn declarations. Some of Mr. Frank's verifications and declarations in *Blue Lake v. Acres* were made "under penalty of perjury under the laws of the State of California." Frank's discovery responses and declarations were caused to be served on Mr. Acres by Blue Lake Casino's attorneys with proofs of service that included declarations "under penalty of perjury under the laws of the State of California."

120. During *Blue Lake v. Acres*, most of the orders issued by Blue Lake Tribal Court were served on the parties by Clerk Huff. Most of these Blue Lake Tribal Court orders contained proofs of service that included declarations under penalty of perjury under the laws of the State of California.

121. From August 2015 through December 2016, the Billing Records show at least 229 entries from Judge Marston to Blue Lake for “Legal Services.” This includes at least forty-eight entries in which Judge Marston performed work as an attorney for Blue Lake Casino or its CEO Ms. Ramsey. On at least five occasions, Judge Marston Billed Blue Lake for work as Ms. Ramsey’s or Blue Lake Casino’s attorney on the same day he Billed Blue Lake for his work as presiding judge in *Blue Lake v. Acres*.

122. From August 2015 through December 2016, the Billing Records show at least 86 entries from Ms. Burrell to Blue Lake for “Legal Services.” This includes at least five entries in which Ms. Burrell Billed for work providing Blue Lake Casino with legal advice on employment disputes, at least eight entries in which Ms. Burrell performed work as an attorney representing Blue Lake or Ms. Ramsey, and at least 32 in which Ms. Burrell Billed for work assisting Judge Marston in presiding over *Blue Lake v. Acres*. On at least two occasions, Ms. Burrell Billed for work as Blue Lake Casino’s attorney on the same day she Billed for work assisting Judge Marston in presiding over *Blue Lake v. Acres*.

123. From August 2015 through December 2016, the Billing Records show at least 56 entries from Ms. Vaughn to Blue Lake for “Legal Services.” This includes at least nineteen entries in which Ms. Vaughn performed work as an attorney for Blue Lake and Ms. Ramsey in *Blue Lake v. Shiimoto*, and at least three in which Ms. Vaughn Billed for work assisting Judge Marston in presiding over *Blue Lake v. Acres*. Ms. Vaughn Billed for work as Blue Lake and Ms. Ramsey’s attorney in *Blue Lake v. Shiimoto* less than three months before she Billed for work assisting Judge Marston in presiding over *Blue Lake v. Acres*.

124. From August 2015 through December 2016, the Billing Records show at least three dozen entries from Mr. Lathouris to Blue Lake for “Legal Services.” Of these, approximately two dozen entries were related to helping Judge Marston or Ms. Burrell with work related *Blue Lake v. Acres*. The balance of the entries included work on *Blue Lake v. Shiimoto*, advising Blue Lake on gaming compact litigation, research on the legality of arming tribal employees, and on enforcing tribal court domestic violence restraining orders outside the reservation. Mr. Lathouris performed his work advising Blue

Lake on *Shiomoto* and gaming compact litigation around two months before he began his work in *Blue Lake v. Acres*.

125. From August 2015 through December 2016, the Billing Records show at least 36 entries from Mr. DeMarse to Blue Lake for “Legal Services.” Mr. DeMarse assisted Judge Marston both in presiding over *Blue Lake v. Acres*, and in defending against *Acres v. Blue Lake II*. The Billing Records show Mr. DeMarse assisted Judge Marston in preparing Judge Marston’s November 8, 2016 declaration, in which Judge Marston denied he performed work for Blue Lake as an attorney. In September and October of 2016, Mr. DeMarse Billed Blue Lake on at least ten occasions for assisting Judge Marston in providing Blue Lake, Blue Lake Casino, or Ms. Ramsey with services as an attorney.

126. While Blue Lake Casino prosecuted *Blue Lake v. Acres*, a Blue Lake entity¹⁸ also prosecuted the case *Blue Lake v. Wright Construction, et al.*, also in Blue Lake Tribal Court. In *Blue Lake v. Wright*, a Blue Lake entity sued several companies involved with the construction of Blue Lake Casino’s hotel, and Mr. Acres is informed and believes Blue Lake extracted at least \$1,000,000.00 in settlement payments from defendants in *Blue Lake v. Wright*. Judge Marston presided over *Blue Lake v. Wright*, and Ms. Burrell, Ms. Vaughn, and Mr. DeMarse all assisted Judge Marston in presiding over *Blue Lake v. Wright*.

127. During the time Blue Lake Casino was preparing to file *Blue Lake v. Acres*, Blue Lake Casino’s CEO Ms. Ramsey was seeking an “order to enjoin civil harassment” in the Blue Lake Tribal Court case *Ramsey v. McKay*. Judge Marston presided over *Ramsey v. McKay*.

128. On November 6, 2015, Judge Marston presided over a tribal court hearing on Ms. Ramsey’s petition to enjoin civil harassment in *Ramsey v. McKay*. Later that day, Judge Marston, in his role as Ms. Ramsey’s attorney, “reviewed and revised” a declaration by Ms. Ramsey to be submitted in the *Blue Lake v. Shiomoto* state court action. Later that day, in his role as Blue Lake attorney, Judge Marston performed a “final review” of a memo to Ms. Ramsey and other members of the tribal leadership regarding settlement of *Blue Lake v. Shiomoto*. In a single day Judge Marston

¹⁸ Mr. Acres has not been able to ascertain whether Blue Lake, Blue Lake Casino, or some third Blue Lake entity was the plaintiff in the *Blue Lake v. Wright* action.

presided over Ms. Ramsey as judge in one family law matter and then acted as her attorney in another family law matter.

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11/6/2015	LJM Court Appearance to hold the hearing on the petition to enjoin civil harrasment in Ramsey v. MacKay.		
	LJM Review and revise the declaration of Ramsey regarding the couple that wants to get married in Tribal Court and the final review of the memo to the Council regarding settlement of the case.		

Fig 2: Highlighted Excerpt from Marston's Billing Records to Blue Like, arranged to remove page break,

129. The conduct of each of the defendants described in the General Allegations above was part of a pattern of despicable behavior, rife with malice, oppression and fraud in which Blue Lake, its entities, and agents, wrongfully each used civil proceedings in Blue Lake Tribal Court for their own individual benefit. The Billing Records show this pattern of despicable conduct was continuous from at least January 2013 until at least December 2016. The Billing Records also show Mr. Acres was not the only victim of the defendants' despicable conduct.

130. Throughout the pendency of *Blue Lake v. Acres*, Mr. Acres continued to ask defendants to recognize their conduct towards him was wrongful, and to cease the conduct.

FIRST CAUSE OF ACTION

AS AGAINST MS. RAMSEY, MR. FRANK, BOUTIN JONES,

MR. STROUDER, MS. O'NEILL, JANSSEN MALLOY LLP, MS. BURROUGHS,

AND MS. YARNELL ("THE WRONGFUL USE DEFENDANTS")

(Wrongful Use of Civil Proceedings)

131. Plaintiff realleges and incorporates herein by reference as though here fully set forth each and every allegation contained in paragraphs 2 through 32 of the Jurisdiction, Venue, Ripeness and Party Allegations and paragraphs 33 through 130 of the General Fact Allegations, above. Where any such allegation in the Jurisdiction, Venue, Ripeness and Party Allegations General Allegations, the

General Fact Allegations and this First Cause of Action conflict, Plaintiff realleges such conflicting allegation in the alternative.

132. Mr. Acres claims the Wrongful Use Defendants wrongfully brought or maintained a lawsuit against Mr. Acres.

133. The Wrongful Use Defendants were each materially involved in bringing or continuing *Blue Lake v. Acres*, which included a claim of fraudulent inducement against Mr. Acres. Mr. Acres was a defendant in *Blue Lake v. Acres* for over a year and a half.

134. The sole *Blue Lake v. Acres* claim against Mr. Acres was decided on the merits, and in Mr. Acres' favor, by Justice Lambden's Order. Justice Lambden's Order noted, among other things, that while "fraud in the context of contracts usually presents triable issues of fact," the *Blue Lake v. Acres* claim against Mr. Acres is "a case where the exception proves the rule."

135. The Wrongful Use Defendants could not have reasonably believed there were reasonable grounds to bring or maintain *Blue Lake v. Acres* against Mr. Acres, because, among other reasons, the claim against Mr. Acres required Blue Lake Casino to prove its allegation that Mr. Acres represented the advance deposit paid by Blue Lake to ABI was to be repaid by way of an alleged "royalty repayment scheme." Among other findings, Justice Lambden's Order found Blue Lake "could not have reasonably believed there was a "scheme" that was inconsistent with the *express* language of the Agreement [between Blue Lake and ABI]."

136. The Wrongful Use Defendants brought or continued the *Blue Lake v. Acres* claim against Mr. Acres for reasons other than succeeding on the merits of the claim. One of these reasons was noted in Justice Lambden Order's, which found Blue Lake "attempted to conjure a personal warranty by [Mr.] Acres to supplement its other causes of action against ABI."

137. Mr. Acres was harmed, because, among other reasons:

- a. Mr. Acres was forced to expend significant time and energy in defending against Blue Lake's claim, which substantially diminished the time and energy Mr. Acres could devote to his work and family; and

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- b. The stress of defending himself against Blue Lake Casino's claim within Blue Lake Tribal Court inflicted significant emotional distress on Mr. Acres and his family which continued on a daily basis throughout the Blue Lake Tribal Court action; and,
- c. The stress of defending himself against Blue Lake Casino's claim within Blue Lake Tribal Court caused Mr. Acres to suffer bouts of severe physical pain which recurred throughout Blue Lake Casino's tribal court action.

138. The Wrongful Use Defendants substantially contributed to Mr. Acres' harm because each engaged in conduct wrongfully bringing or maintaining *Blue Lake v. Acres* against Mr. Acres.

139. The harm inflicted on Mr. Acres by the Wrongful Use Defendants' conduct was easily foreseeable. While *Blue Lake v. Acres* was underway, Mr. Acres did not conceal that the Wrongful Use Defendants were causing him harm. Indeed, Mr. Acres communicated to the Wrongful Use Defendants on multiple occasions that they were in fact causing him harm, and Mr. Acres repeatedly asked the Wrongful Use Defendants to cease their tortious conduct towards him. The Wrongful Use Defendants were indifferent to the harm they caused Mr. Acres, and persisted in their wrongful conduct.

140. The Wrongful Use Defendants' conduct harmed Mr. Acres in an amount to be proven at trial, but in no event less than \$1,000,000.00. As a direct and proximate result of the aforementioned conduct of Defendants, Mr. Acres was injured in his health, strength, and activity, sustaining injuries to his body, and shock and injury to his nervous system and person, all of which said injuries have caused and continue to cause Mr. Acres great physical, mental, and emotional pain and suffering. Mr. Acres is informed and believes, and thereupon alleges, that by reason of his injuries, he will necessarily incur additional like expenses for an indefinite period of time in the future, according to proof.

141. As a further direct and proximate result of the aforementioned conduct of Defendants, Mr. Acres was compelled to and did employ the services of hospitals, physicians, nurses, therapists, and the like, to care for and to treat him, and did incur hospital, medical, and incidental expenses.

142. The Wrongful Use Defendants' conduct towards Mr. Acres was despicable, and rife with malice, oppression and fraud. Mr. Acres is entitled to an award of exemplary and punitive damages in an amount to be proven at trial.

143. This cause of action does not arise from an act in furtherance of any person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue. This cause of action encompasses conduct that was illegal as a matter of law. This cause of action is not subject to a Section 425.16 special motion to strike.

SECOND CAUSE OF ACTION

**AS AGAINST RAPPORT AND MARSTON, JUDGE MARSTON,
DAVID RAPPORT, CLERK HUFF, MS. BURRELL, MR. DEMARSE, MS. VAUGHN, MR.
LATHOURIS AND MR. CHASE (THE "WRONGFUL USE ABETTORS")**

(Aiding and Abetting Wrongful Use of Civil Proceedings)

144. Plaintiff realleges and incorporates herein by reference as though here fully set forth each and every allegation contained in paragraphs 2 through 32 of the Jurisdiction, Venue, Ripeness and Party Allegations, paragraphs 33 through 130 of the General Fact Allegations, and paragraphs 132 through 143 of the First Cause of Action, above. Where any such allegation in the Jurisdiction, Venue, Ripeness and Party Allegations General Allegations, the General Fact Allegations, the First Cause of Action, and this Second Cause of Action conflict, Plaintiff realleges such conflicting allegation in the alternative.

145. Mr. Acres claims the Wrongful Use Abettors aided and abetted the Wrongful Use Defendants in the tortious conduct described in the first cause of action.

146. The Wrongful Use Abettors each knew the Wrongful Use Defendants were wrongfully using civil proceedings against Mr. Acres because, among other reasons:

- a. The Wrongful Use Abettors were aware of the wrongful nature of the *Blue Lake v. Acres* claim against Mr. Acres;
- b. The Wrongful Use Abettors were aware Blue Lake was simultaneously employing Judge Marston as an attorney for Blue Lake, Blue Lake Casino, or Ms. Ramsey, in addition to employing Judge Marston as the presiding judge over *Blue Lake v. Acres*; and

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c. The Wrongful Use Abettors all assisted Judge Marston in managing or maintaining *Blue Lake v. Acres* against Mr. Acres.

147. The Wrongful Use Abettors all gave substantial assistance or encouragement to the Wrongful Use Defendants in the wrongful civil proceedings against Mr. Acres when, among other actions, they:

- a. Assisted Judge Marston, Blue Lake, and Blue Lake Casino in concealing the fact Judge Marston performed work as an attorney for Blue Lake, Ms. Ramsey, and Blue Lake Casino concurrent with Judge Marston's presiding over *Blue Lake v. Acres*; and when they,
- b. Assisted Judge Marston in managing and maintaining *Blue Lake v. Acres*.

148. Each of the Wrongful Use Abettors engaged in conduct that was a substantial factor in causing harm to Mr. Acres, among other reasons, because:

- a. The Wrongful Use Abettors assisted Judge Marston in managing or maintaining *Blue Lake v. Acres*;
- b. The Wrongful Use Abettors assisted Judge Marston, Blue Lake, and Blue Lake Casino in concealing the fact Judge Marston performed work as an attorney for Blue Lake, Ms. Ramsey, and Blue Lake Casino concurrent with Judge Marston's presiding over *Blue Lake v. Acres*;
- c. The Wrongful Use Abettors partook in the tortious confederacy arrayed against Mr. Acres, and the fact this confederacy included five judges, three law firms, nine attorneys, a sovereign nation, and its entire justice system caused Mr. Acres to suffer intense physical pain, detracted from the time Mr. Acres could devote to his work and family, and caused both Mr. Acres and his family severe emotional distress.

149. The Wrongful Use Abettors' conduct harmed Mr. Acres in an amount to be proven at trial, but in no event less than \$1,000,000.00.

150. The Wrongful Use Abettors' conduct towards Mr. Acres was despicable, and rife with malice, oppression and fraud. Mr. Acres is entitled to an award of exemplary and punitive damages in

1 an amount to be proven at trial.

2 151. This cause of action does not arise from an act in furtherance of any person's right of
3 petition or free speech under the United States Constitution or the California Constitution in connection
4 with a public issue. This cause of action encompasses conduct that was illegal as a matter of law. This
5 cause of action is not subject to a Section 425.16 special motion to strike.

6 **THIRD CAUSE OF ACTION**

7 **AS AGAINST RAPPORT AND MARSTON, JUDGE MARSTON,**
8 **DAVID RAPPORT, CLERK HUFF, MS. BURRELL, MS. DEMARSE,**
9 **MS. VAUGHN, MR. LATHOURIS, AND MR. CHASE**
10 **(THE "WRONGFUL USE CONSPIRATORS")**

11 (Conspiracy to Commit Wrongful Use of Civil Proceedings)

12 152. Plaintiff realleges and incorporates herein by reference as though here fully set forth
13 each and every allegation contained in paragraphs 2 through 32 of the Jurisdiction, Venue, Ripeness and
14 Party Allegations, paragraphs 33 through 130 of the General Fact Allegations, paragraphs 132 through
15 143 of the First Cause of Action, and paragraphs 145 through 148 of the Second Cause of Action, above.
16 Where any such allegation in the Jurisdiction, Venue, Ripeness and Party Allegations General
17 Allegations, the General Fact Allegations, the First Cause of Action, the Second Cause of Action and
18 this Third Cause of Action conflict, Plaintiff realleges such conflicting allegation in the alternative.

19 153. Mr. Acres claims the Wrongful Use Conspirators conspired with the Wrongful Use
20 Defendants to undertake the tortious conduct described in the first cause of action.

21 154. The Wrongful Use Conspirators each knew the Wrongful Use Defendants planned to
22 subject Mr. Acres to a wrongful use of civil proceedings because, among other reasons:

- 23 a. Each of the Wrongful Use Conspirators were aware of *Blue Lake v. Acres*;
- 24 b. Each of the Wrongful Use Conspirators was at all relevant times a sophisticated legal
- 25 actor;
- 26 c. Each of the Wrongful Use Conspirators had an opportunity to review the *Blue Lake v.*
- 27 *Acres* claim for relief against Mr. Acres that Justice Lambden's Order dismissed on
- 28

summary judgment; and

d. Each of the Wrongful Use Conspirators was aware Judge Marston was concealing from Mr. Acres the fact Judge Marston was employed as an attorney for Blue Lake, Blue Lake Casino, or Ms. Ramsey, while Judge Marston presided over *Blue Lake v. Acres*.

155. The Wrongful Conspiracy Defendants all intended Mr. Acres should be subjected to a wrongful use of civil proceedings. Each of the Wrongful Conspiracy Defendants co-operated with the Wrongful Use Defendants in bringing or maintaining *Blue Lake v. Acres* against Mr. Acres, or in helping Judge Marston to conceal the fact Judge Marston was Blue Lake's, Blue Lake Casino's, or Ms. Ramsey's attorney while Judge Marston presided over *Blue Lake v. Acres*.

156. The Wrongful Conspiracy Defendants' conduct harmed Mr. Acres in an amount to be proven at trial, but in no event less than \$1,000,000.00

157. The Wrongful Conspiracy Defendants' conduct towards Mr. Acres was despicable, and rife with malice, oppression and fraud. Mr. Acres is entitled to an award of exemplary and punitive damages in an amount to be proven at trial.

158. This cause of action does not arise from an act in furtherance of any person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue. This cause of action encompasses conduct that was illegal as a matter of law. This cause of action is not subject to a Section 425.16 special motion to strike.

FOURTH CAUSE OF ACTION

AS AGAINST JUDGE MARSTON

(Breach of Fiduciary Duty)

159. Plaintiff realleges and incorporates herein by reference as though here fully set forth each and every allegation contained in paragraphs 2 through 32 of the Jurisdiction, Venue, Ripeness and Party Allegations, paragraphs 33 through 130 of the General Fact Allegations, and paragraphs 137 through 143 of the First Cause of Action, above. Where any such allegation in the Jurisdiction, Venue, Ripeness and Party Allegations General Allegations, the General Fact Allegations, the First Cause of

1 Action and this Fourth Cause of Action conflict, Plaintiff realleges such conflicting allegation in the
2 alternative.

3 160. Mr. Acres claims Judge Marston breached his fiduciary duty to Mr. Acres.

4 161. Judges are fiduciaries to the general public, and to the litigants before them. *United States*
5 *v. Holzer*, 816 F.2d 304, 307 (7th Cir. 1987). Judge Marston assumed a fiduciary duty to Mr. Acres when
6 Judge Marston became the presiding judge in *Blue Lake v. Acres*. Among the fiduciary duties Judge
7 Marston owed Mr. Acres were the duties of utmost good faith, confidentiality, and disclosure.

8 162. Judge Marston breached his fiduciary duties to Mr. Acres on many occasions, including,
9 but not limited to, when:

- 10 a. Judge Marston declined to assign *Blue Lake v. Acres* to another judge even though, at
11 the time, Judge Marston was performing, and being compensated for non-judicial
12 work for Blue Lake, Blue Lake Casino, or Ms. Ramsey;
- 13 b. Judge Marston continued to perform work of a non-judicial nature for Blue Lake,
14 Blue Lake Casino, or Ms. Ramsey while presiding over *Blue Lake v. Acres*;
- 15 c. Judge Marston continued to be compensated for the non-judicial work he performed
16 for Blue Lake, Blue Lake Casino, or Ms. Ramsey;
- 17 d. Judge Marston failed to disclose to Mr. Acres he was performing work of a non-
18 judicial nature for Blue Lake, Blue Lake Casino, or Ms. Ramsey while presiding over
19 *Blue Lake v. Acres*;
- 20 e. Judge Marston failed to disclose to Mr. Acres he was being compensated for work of
21 a non-judicial nature for Blue Lake, Blue Lake Casino, or Ms. Ramsey while
22 presiding over *Blue Lake v. Acres*;
- 23 f. Judge Marston engaged in conduct which tended to conceal from Mr. Acres he was
24 performing work of a non-judicial nature for Blue Lake, Blue Lake Casino, or Ms.
25 Ramsey while presiding over *Blue Lake v. Acres*;
- 26 g. Judge Marston engaged in conduct which tended to conceal from Mr. Acres he was
27 being compensated for work of a non-judicial nature for Blue Lake, Blue Lake
28

Casino, or Ms. Ramsey while presiding over *Blue Lake v. Acres*;

- h. Judge Marston informed Blue Lake, Blue Lake Casino, or Ms. Ramsey he was performing work of a non-judicial nature for them, and informed them he was concealing this fact from Mr. Acres;
- i. Judge Marston had ex-parte communication regarding *Blue Lake v. Acres* with individuals Judge Marston knew to be attorneys doing work for Blue Lake, Blue Lake Casino, or Ms. Ramsey; and
- j. When Judge Marston allowed individuals he knew to be attorneys doing work for Blue Lake Casino to provide him with *ex-parte* memos and draft orders regarding *Blue Lake v. Acres*.

163. Mr. Acres was proximately damaged by Judge Marston's breach of fiduciary duty for many reasons, including:

- a. Judge Marston's failure to disclose his non-judicial relationship with Blue Lake, Blue Lake Casino, or Ms. Ramsey necessitated *Acres v. Blue Lake I* and *Acres v. Blue Lake II*;
- b. Judge Marston's failure to assign *Blue Lake v. Acres* to a different judge at the case's inception prolonged *Blue Lake v. Acres* by at least one year;
- c. The need to defend himself against a lawsuit before a judge who was not only his opposing litigant's attorney, but was also denying that fact, caused Mr. Acres to suffer severe emotional distress and intense physical pain;
- d. The work required to uncover the true nature of Judge Marston's relationship with Blue Lake, Blue Lake Casino, and Ms. Ramsey consumed many hours, and significantly reduced the amount of time Mr. Acres could devote to his family or his business pursuits;
- e. Being subject to a presiding judge who fails to disclose he is performing non-judicial work for an opposing litigant is in and of itself harmful;

///

f. Being subject to a presiding judge who conceals he is performing non-judicial work for an opposing litigant is in and of itself harmful; and

g. Mr. Acres is informed and believes that *Blue Lake v. Acres* would never have been brought against him but for Judge Marston's willingness to breach his fiduciary duty towards Mr. Acres on behalf of Blue Lake and Ms. Ramsey.

164. Judge Marston's breach of his fiduciary duty to Mr. Acres constituted constructive fraud.

165. Judge Marston's breach of his fiduciary duty to Mr. Acres harmed Mr. Acres in an amount to be proven at trial, but in no event less than \$1,000,000.00.

166. Judge Marston's conduct towards Mr. Acres was despicable, and rife with malice, oppression and fraud. Mr. Acres is entitled to an award of exemplary and punitive damages in an amount to be proven at trial.

167. In exchange for breaching his fiduciary duty to Mr. Acres, Judge Marston received compensation from Blue Lake, Blue Lake Casino, or Ms. Ramsey. Mr. Acres is entitled to a disgorgement of any such compensation, in an amount to be proven at trial, but in no event less than all compensation received by Judge Marston from Blue Lake, Blue Lake Casino, Ms. Ramsey, and any related entity, after August 1, 2015.

168. This cause of action does not arise from an act in furtherance of any person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue. This cause of action encompasses conduct that was illegal as a matter of law. This cause of action is not subject to a Section 425.16 special motion to strike.

FIFTH CAUSE OF ACTION

AS AGAINST JUDGE MARSTON, MS. RAMSEY, MR. FRANK,

CLERK HUFF, RAPPORT AND MARSTON, MR. RAPPORT,

MS. BURRELL, MR. DEMARSE, MS. VAUGHN, MR. LATHOURIS,

BOUTIN JONES, MR. CHASE, MR. STODER AND MS. O'NEILL

(Aiding and Abetting Breach of Fiduciary Duty)

169. Plaintiff realleges and incorporates herein by reference as though here fully set forth each

1 and every allegation contained in paragraphs 2 through 32 of the Jurisdiction, Venue, Ripeness and
2 Party Allegations, paragraphs 33 through 130 of the General Fact Allegations, paragraphs 137 through
3 143 of the First Cause of Action and paragraphs 160 through 164 of the Fourth Cause of Action, above.
4 Where any such allegation in the Jurisdiction, Venue, Ripeness and Party Allegations General
5 Allegations, the General Fact Allegations, the First Cause of Action, the Fourth Cause of Action and this
6 Fifth Cause of Action conflict, Plaintiff realleges such conflicting allegation in the alternative.

7 170. Mr. Acres claims the Marston Breach Abettors aided and abetted Judge Marston in
8 breaching his fiduciary duty to Mr. Acres.

9 171. The Marston Breach Abettors each knew Judge Marston was breaching his fiduciary
10 duties to Mr. Acres because each of the Marston Breach Abettors knew of a substantial portion of Judge
11 Marston's conduct described in the fourth cause of action.

12 172. The Marston Breach Abettors each engaged in conduct that was a substantial factor in
13 causing at least \$1,000,000.00 in harm to Mr. Acres because each Breach Abettor provided substantial
14 assistance or encouragement to Judge Marston when Judge Marston engaged in the conduct described in
15 the fourth cause of action.

16 173. The Marston Breach Abettors' conduct towards Mr. Acres was despicable, and rife with
17 malice, oppression and fraud. Mr. Acres is entitled to an award of exemplary and punitive damages in
18 an amount to be proven at trial.

19 174. While aiding Judge Marston in breaching his fiduciary duties to Mr. Acres, the Marston
20 Breach Abettors received compensation from Blue Lake, Blue Lake Casino, or Ms. Ramsey. Mr. Acres
21 is entitled to a disgorgement of any such compensation, in an amount to be proven at trial, but in no
22 event less than all compensation received by the Marston Breach Abettors from Blue Lake, Blue Lake
23 Casino, Ms. Ramsey, and any related entity, after August 1, 2015.

24 175. This cause of action does not arise from an act in furtherance of any person's right of
25 petition or free speech under the United States Constitution or the California Constitution in connection
26 with a public issue. This cause of action encompasses conduct that was illegal as a matter of law. This
27 cause of action is not subject to a Section 425.16 special motion to strike.
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SIXTH CAUSE OF ACTION
AS AGAINST JUDGE MARSTON

(Constructive Fraud)

176. Plaintiff realleges and incorporates herein by reference as though here fully set forth each and every allegation contained in paragraphs 2 through 32 of the Jurisdiction, Venue, Ripeness and Party Allegations, paragraphs 33 through 130 of the General Fact Allegations, paragraphs 137 through 143 of the First Cause of Action and paragraphs 160 through 164 of the Fourth Cause of Action, and paragraphs 170 through 172 of the Fifth Cause of Action, above. Where any such allegation in the Jurisdiction, Venue, Ripeness and Party Allegations General Allegations, the General Fact Allegations, the First Cause of Action, the Fourth Cause of Action and this Sixth Cause of Action conflict, Plaintiff realleges such conflicting allegation in the alternative.

177. At all relevant times Judge Marston and Mr. Acres were domiciled in the State of California, and conducted most of their affairs in portions of California outside the Blue Lake Rancheria.

178. A fiduciary relationship existed between Judge Marston and Mr. Acres upon which Mr. Acres justifiably relied to his detriment (“the Relationship”). The Relationship was created when Judge Marston became Mr. Acres’ presiding judge in *Blue Lake v. Acres*. Pursuant to the Relationship, and created thereby, Judge Marston owed Mr. Acres a fiduciary duty to disclose all material information Judge Marston knew or could reasonably obtain regarding his relationship with Blue Lake, Blue Lake Casino, Ms. Ramsey, and any related parties (“the Fiduciary Duty”).

179. Judge Marston accepted and benefitted financially from the Relationship and knew Mr. Acres’ would, as a litigant before him in a civil proceeding, rely on the Fiduciary Duty.

180. Judge Marston breached the Fiduciary Duty by failing to disclose the required material facts about the legal services he provided in the past and present to Blue Lake, Blue Lake Casino, Ms. Ramsey, and any related parties, all the while he was simultaneously presiding as the judge before him.

181. Judge Marston knew or should have known the above referenced material facts were unknown to Mr. Acres, and despite such knowledge failed to disclose such material and important facts.

182. As a direct and proximate result of Judge Marston's breach of the Fiduciary Duty, Mr. Acres was damaged in an amount to be proven at trial, but in no event less than \$1,000,000.00.

183. Judge Marston's conduct towards Mr. Acres was despicable, and rife with malice, oppression and fraud. Mr. Acres is entitled to an award of exemplary and punitive damages in an amount to be proven at trial.

184. While breaching the Fiduciary Duty, Judge Marston was unjustly enriched by receiving compensation from Blue Lake, Blue Lake Casino, or Ms. Ramsey. Mr. Acres is entitled to a disgorgement of any such compensation, in an amount to be proven at trial, but in no event less than all compensation received by Judge Marston from Blue Lake, Blue Lake Casino, Ms. Ramsey, and any related entity, after August 1, 2015.

185. This cause of action does not arise from an act in furtherance of any person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue. This cause of action encompasses conduct that was illegal as a matter of law. This cause of action is not subject to a Section 425.16 special motion to strike.

SEVENTH CAUSE OF ACTION

AS AGAINST MS. RAMSEY, MR. FRANK,

CLERK HUFF, RAPPORT AND MARSTON, MR. RAPPORT,

MS. BURRELL, MR. DEMARSE, MS. VAUGHN, MR. LATHOURIS,

BOUTIN JONES, MR. CHASE, MR. STODER AND MS. O'NEILL

(Aiding and Abetting Constructive Fraud)

186. Plaintiff realleges and incorporates herein by reference as though here fully set forth each and every allegation contained in paragraphs 2 through 32 of the Jurisdiction, Venue, Ripeness and Party Allegations, paragraphs 33 through 130 of the General Fact Allegations, paragraphs 160 through 164 of the Fourth Cause of Action, and paragraphs 177 through 181 of the Sixth Cause of Action, above. Where any such allegation in the Jurisdiction, Venue, Ripeness and Party Allegations, the General Fact Allegations, the Fourth Cause of Action, the Sixth Cause of Action and this Seventh Cause of Action conflict, Plaintiff realleges such conflicting allegation in the alternative.

187. At all relevant times Rapport and Marston, Mr. Rapport, Ms. Burrell, Ms. Vaughn, Boutin Jones, Mr. Chase, Mr. Stouder, Ms. O'Neill and Mr. Acres were domiciled in the State of California, and conducted most of their affairs in portions of California outside the Blue Lake Rancheria.

188. At all relevant times, Ms. Ramsey, Mr. Frank, Clerk Huff, Mr. DeMarse, and Mr. Lathouris conducted a substantial portion of their affairs within the State of California. (Rapport and Marston, Mr. Rapport, Ms. Burrell, Ms. Vaughn, Boutin Jones, Mr. Chase, Mr. Stouder, Ms. O'Neill, Ms. Ramsey, Mr. Frank, Clerk Huff, Mr. DeMarse, and Mr. Lathouris are collectively referred to as, "the Marston Fraud Abettors").

189. Mr. Acres alleges, on information and belief, the Marston Fraud Abettors aided and abetted Judge Marston in committing the constructive fraud against Mr. Acres as alleged herein.

190. The Marston Fraud Abettors each knew Judge Marston was acting in ways which constitute committing constructive fraud against Mr. Acres because each of the Marston Fraud Abettors knew of a substantial portion of Judge Marston's conduct as alleged herein.

191. The Marston Fraud Abettors each engaged in conduct that was a substantial factor in causing at least \$1,000,000.00 in harm to Mr. Acres because each Marston Fraud Abettor provided substantial assistance or encouragement to Judge Marston when Judge Marston engaged in the conduct described herein.

192. The Marston Fraud Abettors' conduct towards Mr. Acres was despicable, and rife with malice, oppression and fraud. Mr. Acres is entitled to an award of exemplary and punitive damages in an amount to be proven at trial.

193. While aiding Judge Marston in breaching the Fiduciary Duty, the Marston Fraud Abettors received compensation from Blue Lake, Blue Lake Casino, or Ms. Ramsey. Mr. Acres is entitled to a disgorgement of any such compensation, in an amount to be proven at trial, but in no event less than all compensation received by the Marston Fraud Abettors from Blue Lake, Blue Lake Casino, Ms. Ramsey, and any related entity, after August 1, 2015.

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1 194. This cause of action does not arise from an act in furtherance of any person's right of
2 petition or free speech under the United States Constitution or the California Constitution in connection
3 with a public issue. This cause of action encompasses conduct that was illegal as a matter of law. This
4 cause of action is not subject to a Section 425.16 special motion to strike.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray for judgment against all defendants, as follows:

- 7 1. For general damages to be proven at trial, but no less than \$1,000,000.00 for Cause of
8 Action 1; \$1,000,000.00 for Causes of Action 2 and 3; \$1,000,000.00 for Causes of Action 4 and 6;
9 \$1,000,000.00 for Causes of Action 5 and 7 for a total of at least \$4,000,000.00;
- 10 2. For hospital, medical, and incidental expenses, according to proof;
- 11 3. For disgorgement of all compensation received by Defendants from Blue Lake, Blue
12 Lake Casino, Ms. Ramsey, and any related entity, after a date to be determined at trial, but in no event
13 later than August 1, 2015;
- 14 4. For punitive and exemplary damages in an amount to be proven at trial; and
- 15 5. For such other and further relief as the Court deems just and equitable.
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17 **BLUMBERG LAW GROUP LLP**

18 Dated: July 10, 2018

19 
20 Ronald H. Blumberg, Esq.
21 Attorneys for Plaintiff, James Acres
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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO:

I, James Acres, if called upon to testify as a witness, would and could competently do so of my own personal knowledge and do now declare as follows:

I am a party to this action. I have read the foregoing document, entitled **VERIFIED COMPLAINT FOR DAMAGES** and know its contents. The matters stated in it are true of my own knowledge, except for those stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed at Morgat, France.

Dated: 7/11/18



James Acres

Exhibit 3

Blue Lake v. Acres Judgment of Dismissal

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ENDORSED-FILED

AUG 31 2017

CLERK OF THE TRIBAL COURT
BLUE LAKE RANCHERIA

TRIBAL COURT OF THE TRIBE BLUE LAKE RANCHERIA

BLUE LAKE CASINO & HOTEL, a
tribally owned entity of Blue Lake
Rancheria, a federally recognized Indian
Tribe,

Plaintiff,

v.

ACRES BONUSING, INC., a Nevada
Corporation, and JAMES ACRES, an individual
Defendants.

Case No.: C-15-1215-JRL

JUDGMENT OF DISMISSAL

All parties to the action have either been dismissed from the action or have stipulated to the dismissal of the entire action under Rule 30(a)(1)(B) of the Court's Rules of Pleading and Practice. Accordingly, the case is dismissed.

Dated August 31, 2017:

James R. Lambden
Hon. James Lambden (Ret.)

1 **PROOF OF SERVICE**

2 I declare that: I am a resident of the County of Humboldt, in the State of California. I am over the age of eighteen
3 years and not a party to the within entitled cause; my business address is; 428 Chartin Road, P.O. Box 426, Blue
Lake, CA 95525.

4 On August 31, 2017, I served the attached JUDGMENT OF DISMISSAL, on the parties or attorneys for the parties
5 in said cause:

6 ☐ BY MAIL by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in
7 the United States Mail at Blue Lake, California, addressed as shown below;

8 ☐ BY HAND DELIVERY by causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand
9 to the addresses shown below;

10 ☐ BY FACSIMILE TRANSMISSION by transmitting a true copy thereof by facsimile transmission to the
interested parties to said action at the facsimile number(s) shown below.

11 ☐ BY OVERNIGHT DELIVERY using a commonly-known overnight delivery service with fees thereon fully
12 prepaid, in Blue Lake, California, addressed as shown below.

13 ☒ BY EMAIL by electronically transmitting a true copy to the email addresses listed below.

14 **PLANTIFF:**
15 **BLUE LAKE CASINO & HOTEL**
Megan A. Yarnell
16 **JANSSEN MALLOY LLP**
730 Fifth Street
17 P.O. Drawer 1288
Eureka, CA 95501
Email: myarnall@janssenlaw.com

CASE MANAGER:
Tyler Smith
100 First Street, 27th Floor
San Francisco, CA 94105
Email: tyler@adrservices.org

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19 **DEFENDANT:**
20 **ACRES BONUSING, INC.**
Ron Blumberg
21 Blumberg Law Group LLP
137 North Acacia Avenue
22 Solana Beach, CA 92075
Email: rhb@blumberglawgroup.com

23 I declare that under penalty of perjury under the laws of the Blue Lake Rancheria and the State of California that the
24 foregoing is true and correct, and that this declaration was executed on August 31, 2017, at Blue Lake, California.

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27 ANITA HUFF
28

Exhibit 2

Justice Lambden's Order

1
2 **IN THE TRIBAL COURT FOR THE TRIBE BLUE LAKE RANCHERIA**
3

4 BLUE LAKE CASINO & HOTEL, a tribally) Case No.: C-15-1215-JRL
5 owned entity of Blue Lake Rancheria, a)
6 federally recognized Indian Tribe,) ORDER REGARDING PARTIES'
7 Plaintiff,) FRCP § 12 (b) MOTIONS RE
8 v.) JURISDICTION AND JAMES ACRES
9 ACRES BONUSING, INC., a Nevada) MOTIONS TO STRIKE AND FOR
10 Corporation, and JAMES ACRES, an) DISMISSAL, DISQUALIFICATION AND
11 individual) VOIDANCE OF ORDERS
12 Defendants) ORDER RE SUMMARY JUDGMENT
13) Justice James Lambden
14) (California Court of Appeal, Ret.)
15

16 **PROCEDURAL HISTORY**

17 Justice James Lambden (hereinafter the "Presiding Judge") was appointed *pro tempore* as
18 an Associate Judge of the Tribal Court for the Tribe Blue Lake Rancheria (the "Tribal Court") on
19 January 10, 2017 following the recusal of Hon. Lester Marston, Chief Judge of the Tribal Court.

20 One year previously, Plaintiff Blue Lake Casino & Hotel ("BLCH") served its complaint
21 and the summons issued by the Tribal Court on Acres Bonusing, Inc. ("ABI") and on James
22 Acres individually. The complaint alleged four causes of action against ABI: breach of contract,
23 tortious breach of the implied covenant of good faith and fair dealing, unjust enrichment and
24 money had-and-received. The fifth cause of action for fraudulent inducement was the only count
25 alleged against James Acres, who has appeared *pro se* throughout these proceedings. James
Acres ("Acres") has styled all of his numerous motions and pleadings as "special appearances".

Pursuant to Judge Marston's order of February 16, 2016, both defendants filed answers to
the complaint. James Acres also filed a motion for judgment on the pleadings alleging that the
complaint was defective on its face and that the Tribal Court does not have jurisdiction. Judge
Marston denied the Acres motion for judgment on the pleadings and ordered the parties to
submit cross-motions on the question of jurisdiction. Discovery on the question of jurisdiction
was permitted in support of the cross-motions.

1 Judge Marston characterized these cross-motions as Federal Rule of Civil Procedure
2 (“FRCP”) Rule 12 (b) “Unenumerated” motions. T The somewhat abbreviated rules of
3 procedure employed by the Tribal Court incorporate the FRCP in many respects; and the parties
4 have cited the FRCP and federal authorities to support their motions. ABI elected to title its
5 jurisdiction motion as an “Un-Enumerated 12 (b) Motion to Dismiss”; BLCH styled its motion as
6 “...Regarding The Propriety of Jurisdiction of the Tribal Court”; and Acres described his
7 pleadings as “Motions to Dismiss and to Strike”. Acres also filed several other motions
8 discussed below.¹

9 Presiding Judge Lambden’s March 13, 2017 “Order Scheduling Briefing And Hearing Of
10 Counter Motions Regarding Jurisdiction” allowed time for the parties to conclude limited
11 discovery regarding jurisdiction and forum issues. The parties submitted briefing; and oral
12 argument was heard on June 2, 2017. Megan Yarnall, Esq. appeared on behalf of BLCH.
13 Defendant James Acres appeared *in propria persona*; and Ron Blumberg, Esq. appeared for
14 defendant ABI.

15 EVIDENCE SUBMITTED IN SUPPORT OF THE MOTION[S]

16 The affidavits and other evidence submitted by the parties establish the following
17 generally undisputed facts:

- 18 • The Tribe is a federally recognized tribe that operates a casino and hotel in Blue Lake,
19 California.
- 20 • The parties entered into a contract (the “Agreement”) between ABI and BLCH related to
21 the provision of certain components of the “iSlot” gaming system designed to operate on
22 hand held devices such as iPads (Acres’ declaration in support of motion to dismiss
23 “Acres ABI declaration”). A copy of the Agreement was attached and incorporated by
24 reference as part of BLCH's complaint.

25 ¹ In March of 2016, Acres filed a complaint for “preemptive and declaratory relief from
improper assertion of tribal jurisdiction” in the U.S. District Court for the Southern District of
California. That complaint was transferred to the U.S. District Court for the Northern District of
California and dismissed. In September of 2016 Acres filed another action in the Northern
District of California contesting tribal jurisdiction and alleging due-process violations arising
from conflicts of interest in Judge Marston’s relations with the Blue Lake Tribe; and that case
was dismissed after Judge Marston recused himself and Justice Lambden was appointed to serve
pro tempore. Acres has filed motions in this proceeding to “recognize the disqualification” of
Presiding Judge Lambden on the grounds that he was appointed by Judge Marston.

- 1 • Defendant James Acres began communicating with BLCH concerning the gaming system
2 in the spring of 2010; and negotiations ensued between Acres on behalf of ABI and
3 representatives of BLCH relating to the gaming system that resulted in execution of the
4 Agreement on or about July 7, 2010 (Acres ABI declaration paragraph 13).
- 5 • Acres was personally present on the Blue Lake Rancheria July 7, 2010 to discuss the
6 proposed business relationship between ABI and BLCH. (Acres contends that no meeting
7 took place on July 6, 2010 but does not deny that he arrived at the hotel the day before
8 the meeting on July 7, 2010).
- 9 • Acres met with tribal personnel and discussed the final terms of the Agreement in
10 BLCH's restaurant.
- 11 • Acres offered his personal speculation (based on his visits to other casinos) that the
12 BLCH restaurant might be located on land held in "fee simple" status.
- 13 • BLCH has offered uncontroverted evidence that the BLCH hotel and casino, including
14 the restaurant, is located on land held in trust.
- 15 • James Acres signed the agreement on behalf of ABI; and a representative of the tribe
16 signed the agreement on behalf of BLCH. The signature lines for both parties were dated
17 July 7, 2010.
- 18 • Acres submitted evidence that his signature on the agreement occurred off reservation
19 property; and BLCH has not shown that Acres signed the Agreement on BLCH property.
- 20 • On July 7, 2010 BLCH wired \$250,000.00 to ABI as provided in the Agreement.
- 21 • Although performance of the contract terms remains at the heart of the dispute, there is
22 no evidence that ABI failed to provide BLCH with the specified "server capable of
23 serving 56 gaming devices" in September of 2010, prior to the Agreement's deadline of
24 October 1, 2010.
- 25 • It is also undisputed that on approximately 12 different occasions between December
2010 and September of 2012 ABI shipped materials to BLCH at the Rancheria address.
The evidence also shows that those materials supported the iSlot system supplied by ABI.
Acres and other ABI personnel were provided accommodations at the casino hotel under
the terms of the Agreement and came to the casino on numerous occasions to facilitate
implementation of the iSlot system.

1 The Agreement between ABI and BLCH provides in pertinent part follows:

2 “In order to cover localization costs of the iSlot system, BLC&H shall pay ABI an advanced
3 deposit against royalties of \$250,000.” (Agreement, page 7).

4 “Once the iSlot System is installed one-half of each month's lease fee shall be applied
5 against the advance deposit until it is extinguished.” (Agreement, page 7).

6 “The deposit shall be refunded if, and only if, ABI does not make an iSlot System available
7 to BLC&H for installation by October 1, 2010 which:(i) has received GLI certification; (ii)
8 has approved by at least one tribal gaming authority in California; (iii) allows BLC&H to
9 credit points to player-club accounts for coin-in played on the iSlot System (though BLC&H
10 understands this may be a manual process performed daily by their staff).” (Agreement,
11 page 7).

12 “In the event that ABI provides the iSlot system in at [sic] timely fashion and BLC&H
13 elects not to involve the system or elects to use the iSlot system to serve fewer than 20
14 simultaneous gaming devices, then any remaining advance fee shall be forfeit [sic].”
(Agreement, page 4).”

15 “In the unlikely and unfortunate event that ABI cannot deliver the iSlot System, then some
16 Acres Family controlled entity shall make strenuous efforts to refund the deposit or make
17 some other restitution to the satisfaction of BLC&H.” (Agreement, page 7).

18 The Agreement also provided that BLCH would purchase and maintain certain third party
19 components, including terminals and kiosks. The “Monthly Lease-Fee” was described as
20 follows: “BLC&H shall pay a monthly lease-fee equal to the lesser of 15% of Theoretical
21 Net Win of all play on the iSlot System for the month or the Maximum Monthly Fee
22 [calculated according to the described formula including a Maximum Daily Fee of \$60
23 adjusted for inflation]. (Agreement, page 6).

24 BLCH's affidavits and evidence establish that the tribe is a federally recognized Indian
25 tribe, and that the tribe conducts gaming operations at its wholly owned and operated “Blue Lake

1 Casino and Hotel". BLCH also showed that its facilities are located entirely on the Blue Lake
2 Rancheria, including the restaurant in which negotiations took place, and that the Rancheria is
3 owned by the United States in trust for the tribe. (Declarations of Thomas Frank and Megan
4 Yarnell). The Agreement provided that the iSlot software to be used by the tribe was developed
5 by the TALO Inc., a Nevada corporation². Evidence submitted by Acres showed that iSlot
6 components were shipped from Nevada.

7 Acres came to the Rancheria on multiple occasions to oversee installation, maintenance
8 and repair of the iSlot System. Other members of the ABI team, including Mark Daily, Dwayne
9 Lamb and Stephen O'Brien came to the Rancheria on multiple occasions to assist with the
10 implementation of the system. (Declaration of Robert Pollard). The agreement provided that
11 BLCH was to provide hotel rooms and other accommodations for ABI personnel visiting the
12 casino on business matters related to the Agreement (Frank declaration). Both Acres and the ABI
13 team stayed at the hotel and were provided accommodations by BLCH on multiple occasions
14 (Pollard Declaration). Acres coordinated and attended these meetings and generally worked with
15 other ABI personnel and BLCH to implement the system (Pollard Declaration). ARGUMENTS

16 ABI and Acres repeatedly assert that the tribe cannot establish jurisdiction over ABI and
17 Acres because "tribal jurisdiction is cabined by geography" (*Philip Morris USA v. King*
18 *Mountain Tobacco*, 569 F. 3d 932, 938 (9th Cir. 2009)); and they argue that BLCH's
19 jurisdictional allegations cannot survive a facial challenge because they are "flatly pled legal
20 conclusions" that are "implausible." ABI contends that paragraph 4 of the complaint is patently
21 insufficient to establish jurisdiction because it only alleges as follows: "[The Blue Lake Tribal
22 Court] has jurisdiction over this action because the contract upon which the dispute was founded
23 was signed on Blue Lake Rancheria tribal property; was to be performed on Blue Lake
24 Rancheria tribal property; and at least one party to the contract is an entity owned by Blue Lake
25 Rancheria a federally recognized Indian tribe." (ABI Reply to BLCH Opposition, p. 4).

² Public records disclose that James Acres is the only listed officer of Acres Bonusing Inc., a Nevada corporation with an office in Carson City. TALO Inc. is also a Nevada corporation with an office in Las Vegas; and its officers are John and Joann Acres. No alter-ego cause of action has been pleaded.

1 ABI also concedes that this Court “may look beyond the pleadings in an Un-Enumerated
2 [FRCP] 12(b) motion” (ABI Reply to BLCH Opposition, n. 3, page 4). Indeed, no party disputes
3 that the purpose of the instant countermotions is to examine the factual and legal underpinnings
4 of the complaint, as well as the jurisdiction of the Tribal Court. The motions before the Court
5 have at various junctures been styled as: motions to dismiss, motions to strike, motions for
6 judgment on the pleadings, motions for summary judgment and Un-Enumerated 12(b) motions.

7 DISCUSSION

8 The facts before the Court fatally undermine defendants’ efforts to bring this dispute
9 within the jurisdictional limitations imposed by *Big Horn County Electric Coop. v. Adams*, (9th
10 Cir. 2000) 219 F. 3d 944. The *Big Horn* case involved the Crow tribe’s attempt to tax Big
11 Horn’s property consisting of easements granted by the federal government for utility
12 transmission lines. The Court of Appeals analyzed whether Big Horn’s property was the
13 “equivalent of non-Indian fee land” where the tribe’s jurisdiction over “non-member conduct on
14 non-Indian fee land would be “extremely limited”. Defendant’s argument that BLCH’s land
15 must be evaluated as fee land because BLCH is “open to the public” and because BLCH “shares
16 regulatory authority over the Casino” is not supported by *Big Horn*. ABI is correct, however,
17 when it points out that the Tribal Court’s jurisdiction over non-tribal members is strongest on
18 trust land. The evidence here establishes significant conduct on tribal trust land.

19 Defendants’ reliance on *Montana v. United States* ((1981) 450 U.S. 544) is also
20 unavailing because the Ninth Circuit has held that applying *Montana* to cases arising on
21 reservation trust land “would impermissibly broaden *Montana*’s scope beyond what any
22 precedent requires and restrain tribal sovereign authority despite Congress’s clearly stated
23 federal interest in promoting tribal self government.” *Knighton v. Cedarville Rancheria of N,*
24 *Paiute Indians* (E.D. Cal 2017) 2017 U.S. Dist. LEXIS 21604*17 quoting *Water Wheel Camp*
25 *Recreational Area Inc. v. Larance*, (9th Circ. 2011) 642 F.3d 802, 809. The activities alleged in
this complaint (including negotiation of the Agreement, installation, maintenance and use of the
iSlot System) did not occur on non-Indian fee land. The evidence shows that the conduct
occurred on the Blue Lake Rancheria, which is land owned by the United States in trust for the
Tribe. It follows that jurisdiction is presumed under the holding of *Water Wheel*, (Id. at 812).

1 BLCH's counter argument is founded on the inherent sovereignty of Indian Country.
2 "Tribes maintain considerable authority over the conduct of both tribal members and non-
3 members on Indian land, or land held in trust for a tribe by the United States." *McDonald v.*
4 *Means* (9th Cir. 2002) 309 F.3d 530, 536. The law provides that in order to exercise this
5 inherent civil authority over a defendant, a tribal court must have both subject matter jurisdiction
6 and personal jurisdiction. *Water Wheel Camp Recreational Area Inc. v. Larance*, supra at 809.

7 BLCH asserts Tribal Court jurisdiction under Article V, Section 5 of the Tribe's
8 Constitution, which authorizes the Tribe's Business Council to enact laws for the welfare, health
9 and safety of the members of the Blue Lake Rancheria. Pursuant to this authority the Business
10 Council created the Tribal Court and described the ambit of its jurisdiction in Ordinance 07-01
11 entitled "Ordinance of the Blue Lake Rancheria Establishing a Tribal Court."

12 Section 11.1.1.030 (a)(3) of the Tribal Court Ordinance grants the Tribal Court
13 jurisdiction in civil actions over: "(d) persons or legal entities who have entered contracts with
14 the Tribe or its wholly owned entities; (e) persons or entities doing business within the territorial
15 jurisdiction of the Tribal Court; and (k) all other individuals whose conduct threatens or have
16 direct effect on the political integrity, the economic security or the health and welfare of the
17 tribe." BLCH thus argues that the Tribal Court has personal jurisdiction over ABI because there
18 is no dispute that both ABI and BLCH are parties to the agreement; and the Tribal Court
19 Ordinance provides for tribal "jurisdiction over persons or legal entities who have entered into
20 contracts with the tribe or its wholly owned entities." ABI is also subject to personal jurisdiction
21 under the Tribal Court ordinance because it is an entity "doing business" within a territorial
22 jurisdiction of the Tribal Court.

23 BLCH argues there is personal jurisdiction over James Acres pursuant to the Tribal Court
24 Ordinance because Acres did business within the territorial jurisdiction of the Tribal Court and
25 because his conduct threatened and had a direct effect on the economic security of the tribe.
BLCH also argues that federal law allows courts to exercise personal jurisdiction over employees
or corporate officers based on: (1) where the corporation is the agent or alter ego of the
individual defendant; or (2) by virtue of the individual's control of and direct participation in the
alleged activities. For this proposition BLCH cites *Trans Go, Inc. v. AJAC Transmission Parts*

1 Corp., (9th Cir. 1985) 768 F.2d 1001, 1021 which states: A corporate officer is in general
2 personally liable for all torts which he authorizes or directs or in which he participates
3 notwithstanding that he acted as an agent of the corporation and not on his own behalf.”

4 BLCH also cites *Davis v. Metro Products Inc.* (9th Cir. 1989) 885 F.2d 515, 524 fn. 10
5 which states: “Cases which have found personal liability on the part of corporate officers have
6 typically involved incidences where the defendant was the ‘guiding spirit’ behind the wrongful
7 conduct.” Although DLS BLCH points to several statements in their supporting declarations
8 which indicate that James Acres negotiated the agreement and was the primary communicator
9 with BLCH, the only alleged claim against James Acres is that he “fraudulently induced BLCH
10 to enter the agreement via negotiations that took place on the Rancheria.” BLCH has not
11 pleaded any other cause of against Acres and there are no allegations asserting alter ego liability.

12 BLCH argues there is jurisdiction over the defendants not only because of the Tribal
13 Court Ordinance which provides for jurisdiction over contracting parties, but also because of the
14 evidence that Acres and other representatives of ABI traveled to the Rancheria to negotiate the
15 contract and install, troubleshoot and otherwise implement the iSlot System under the terms of
16 the Agreement. Accordingly, the causes of action against both ABI and James Acres regard the
17 enforcement and interpretation of the Agreement, which arose and was to be implemented on the
18 Rancheria. There is no significant dispute over the fact that the United States owns the land in
19 trust for the Tribe. The limitations on jurisdiction imposed by *Montana v. United States*, ((1981)
20 450 U.S. 544) do not apply; and it is long settled that “Tribal authority over activities of non-
21 Indians on reservation land is an important part of tribal sovereignty.” (*Iowa Mutual Insurance*
22 *Co. v. LaPlante*, (1987) 480 U.S. 9, 18). The inherent powers and attributes of sovereignty that
23 are not divested by the federal government remain in place where Congress has been silent.
24 (*Merrion v. Jicarilla Apache Tribe*, (1982) 455 U.S. 130, 149). Accordingly, where there is no
25 evidence of Congressional intent to limit jurisdiction and no conflict with federal interests in
promoting tribal self-government, the jurisdiction of the Tribal Court is presumed. (*Water*
Wheel, supra at 812-814).

ABI argues that jurisdiction cannot attach because the wire transfer of the deposit was a
precondition of the completion of the Agreement and the transfer was received in Nevada. Acres

1 argues that he has evidence (a receipt from a sandwich shop in Petaluma) showing that he had
2 left the Rancheria before signing the Agreement on July 7, 2010. Neither ABI nor Acres cited
3 authority that would bar the Tribal court's exercise of jurisdiction based on those facts; and in
4 any event, the analysis of jurisdiction requires consideration of more than simply where the
5 contract was signed.

6 Here the evidence shows that the relevant conduct by the parties, including the
7 negotiation of the agreement, the alleged misrepresentations by James Acres, the installment and
8 troubleshooting of the gaming system, as well as the use of the gaming system by BLCH's
9 patrons, all occurred on the Rancheria. The Rancheria, including the BLCH restaurant has been
10 shown by the evidence to be on land owned by the United States in trust for the Tribe.
11 Accordingly, Tribal Coast jurisdiction is presumed under *Water Wheel* (642 F.3d at 812). The
12 jurisdiction of the Tribal Court also extends to include civil authority over non-members under
13 these circumstances. "A tribe may regulate through taxation, licensing or other means, the
14 activities of non-members who enter consensual relationships with the tribe or its members,
15 through commercial dealing, contracts, leases, or other arrangements." (*Montana v. United*
16 *States*, supra at 565-566).

17 Even if the jurisdictional limitations imposed by *Montana* applied (and they do not) the
18 result would be the same. "A tribe may also retain inherent power to exercise civil authority
19 over the conduct of non-Indians on fee lands within its reservation when the conduct threatens or
20 has some direct effect on the political integrity, the economic security, or the health or welfare of
21 the tribe." (*Montana*, supra at 566). Accordingly, even if the conduct occurred on fee land, the
22 first Montana exception recognizes that as a sovereign nation, the Tribe has the power to enter
23 into contractual relationships with non-member individuals and entities for work on reservation
24 property whether Indian-owned or not; and the Tribe may place conditions on those contracts.
25 (*Soaring Eagle Casino and Resort v. NLRB* (6th Cir. 2015) 791 F.3d 648, 668). Moreover, the
Montana exception applies to "private individuals who voluntarily submitted themselves to tribal
regulatory jurisdiction by the arrangement that they (or their employers) entered into." (*Montana*,
supra, citing *Nevada v. Hicks*, (2001) 533 U.S. 353 372). The law thus recognizes that when a
non-member voluntarily enters into a commercial relationship with a tribe, the general principles
of jurisdiction apply to the tribe as a sovereign, unless otherwise expressly limited. Moreover,

1 the Tribe may itself choose to impose conditions—such as jurisdiction in the Tribal Court—on its
2 contractual relationships with those entities.

3 James Acres speculates “based on his experience in other casinos” that the restaurant
4 where negotiations took place might not have been located on trust land. Acres he did not sign
5 the Agreement until after he left the Rancheria; but this assertion has only limited significance
6 among the facts to be considered. The evidence showed that the Agreement between ABI and
7 BLCH was negotiated by Acres on land owned by the United States in trust; and, most
8 significantly, performance of the Agreement called for the maintenance and installation of the
9 gaming system to take place on trust land. ABI personnel visited the BLCH Casino on numerous
10 occasions to work on the iSlot System and the Agreement expressly provided for their
11 accommodations while they worked there. Indeed, under the terms of the Agreement, the system
12 was intended for use only in the casino and could be played by users only while at the casino.
13 The iSlot System was not something ordered online and simply delivered by UPS; it was a
14 system installed entirely within the jurisdiction of the Tribal Court under an Agreement that was
15 negotiated, and to be performed, on tribal land.

16 Blue Lake Rancheria Tribal Court Ordinance 07-01, Section 11.1.1.060 provides that
17 where there is no tribal law on point, the Court will look to California and federal law as well as
18 the laws of other tribal jurisdictions. Here there is no statutory or precedential law indicating
19 whether the filing of an answer in the Blue Lake Tribal Court constitutes a general appearance
20 and thereby waives personal jurisdiction. Under California law an appearance and assertion of
21 affirmative defenses constitutes a waiver of the ability to challenge personal jurisdiction
22 (California Code of Civil Procedure Section 1014. See also *Roy v. Superior Court of County of*
23 *San Bernardino* (2005) 127 Cal. App. 4th 337, 344-345). Federal law is in accord: “a motion to
24 dismiss is normally considered to constitute an appearance”. (*Sun Bank of Ocala*, (5th Cir. 1989)
25 874 F 2d 274, 277). Acres points out that federal law may require a different outcome under
Federal Rule of Civil Procedure 12(b): “A defendant may raise objections to personal
jurisdiction along with any other defenses without being deemed to have waived the
jurisdictional objection. A defendant may also choose to proceed by motion before answering or
simply state the lack of personal jurisdiction in his responsive pleading as a defense.” (*Roy*, *supra*
at 342). However, despite his care in labeling all of his numerous submissions to the Court as

1 “special appearances” Acres has gone beyond the ambit of a limited appearance by arguing the
2 merits in his motions to strike and dismiss the action. Ordinarily arguments on the merits,
3 including arguments supporting motions to dismiss or to strike (such as the numerous and
4 variously labeled motions on the merits submitted by Acres) are treated as a general appearance.
5 This provides additional grounds for finding jurisdiction over Acres as an individual.

6 Tribal Court jurisdiction over both ABI and Acres arises directly from the consensual
7 relationship established through the Agreement and commercial negotiations between James
8 Acres, ABI and BLCH and is not limited by the authorities cited by the Defendants. The facts
9 submitted by the parties establish that all claims in the action arose on tribal trust land and are
10 thus subject to the Tribal Court’s sovereign jurisdiction. The Tribal Court has jurisdiction over
11 ABI and James Acres. James Acres has waived his objections by arguing on the merits.

12 MOTION FOR SUMMARY JUDGMENT

13 During the case management conference that took place on May 11, 2017 the Presiding
14 Judge instructed both parties to answer two questions in their briefs before the jurisdictional
15 hearing set for June 2, 2017: First, whether James Acres had waived his objections to general
16 jurisdiction and generally appeared by arguing the merits of the case. And second, whether
17 Acres might be entitled to summary judgment based on any of the arguments he raised on the
18 merits. At the conclusion of the hearing on June 2, 2017, the Presiding Judge reserved ruling on
19 the jurisdiction issues and indicated that the Court would deem the aggregate of the motions to
20 dismiss and strike, etc., filed by James Acres as a motion for summary adjudication of the cause
21 of action alleging fraudulent inducement, which is the only count alleged against Acres
22 individually. The parties were directed to supplement their briefs to comply with the Tribal
23 Court and FRCP rules applicable to summary judgment. A briefing schedule was set; and
24 hearing of arguments was scheduled for June 30, 2017. The Presiding Judge indicated that the
25 summary judgment motion would be based on all the pleadings, affidavits and other evidence
filed in the case, including the extensive briefs and declarations previously served, as well as the
supplementary materials served in preparation for the June 30 hearing.

1 The Tribal Court rules provide for unusually wide discretion in the granting of motions
2 for dismissal and summary judgment. Rule 30 (b) provides in part: "After the plaintiff has
3 completed the presentation of ... evidence, defendant, without waiving it's right to offer evidence
4 in the event the motions are not granted, may move for a dismissal on the ground that upon the
5 facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then
6 determine them and render judgment against the plaintiff, or may decline to render any judgment
7 until the close of all evidence". Rule 35(b) provides: "A party against whom a claim or
8 counterclaim is asserted or a declaratory judgment is sought *may, at any time, move with or
9 without supporting affidavits for a summary judgment in his/her favor as to all or any part
10 thereof.* (Emphasis added) Rule 35 goes on to state in subparagraph (c): "the judgment sought
11 shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and
12 admissions on file, together with the affidavits, if any, show there is no genuine issue as to any
13 material fact and that the moving party is entitled to a judgment as a matter of law".

14 Pursuant to Federal Rule of Civil Procedure 56(c), summary judgment is proper where
15 "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there
16 is no genuine issue as to any material fact and that the [moving party] is entitled to judgment as a
17 matter of law." FRCP. 56(c). On issues where the moving party does not have the burden of
18 proof at trial, the moving party is required only to show that there is an absence of evidence to
19 support the nonmoving party's case. See *Celotex Corp. v. Catrett*, (1986) 477 U.S. 317, 326.
20 Upon such showing, the court may grant summary judgment "on all or part of the claim." FRCP
21 56(a)-(b).

22 To defeat a summary judgment motion, the non-moving party may not merely rely on its
23 pleadings or on conclusionary statements. FRCP 56(e). Nor may the non-moving party merely
24 attack or discredit the moving party's evidence. (*Nat'l Union Fire Ins. Co. v. Argonaut Ins. Co.*,
25 (9th Cir.1983) 701 F.2d 95, 97). The non-moving party must affirmatively present specific
evidence sufficient to create a genuine issue of material fact for trial. (See *Celotex Corp.*, 477
U.S. at 324). The materiality of a fact is determined by whether it might influence the outcome of
the case based on the contours of the underlying substantive law. (*Anderson v. Liberty Lobby,*
Inc., (1986) 477 U.S. 242, 248). Disputes over such facts amount to genuine issues only if they
are pertinent and a reasonable jury could resolve them in favor of the nonmoving party. *Id.*

1 Federal Rule of Civil Procedure (FRCP) Number 56 has traditionally been more liberal in
2 the granting of summary judgments than California State Court. Indeed it permits the court to
3 consider a summary judgment motion on its own motion. The California Supreme Court has
4 recently clarified that the purpose of the most recent amendments to the California Code of Civil
5 Procedure Section 437 (c) (the summary judgment statute in California) was to “liberalize the
6 granting of summary judgment motions”. In California summary judgment is no longer called a
7 “disfavored” remedy. In line with federal law, summary judgment is now seen in California as a
8 particularly suitable means to test the sufficiency of the plaintiff’s case. (*Perry v. Bakewell
Hawthorne, LLC* (2017) 2 Cal.5th 536, at page 542)

9 The stack of variously titled motions filed by Mr. Acres is unruly almost to the point of
10 incoherence. In response to the presiding Judge’s request for briefing on the issue of summary
11 judgment Acres repeated his jeremiad regarding the recusal of the chief judge of the Tribal
12 Court, Lester Marston. Acres repeats his arguments that all prior orders in the action are void
13 and that the Court Clerk and the Presiding Judge are “disqualified”. He also repeats (in the
14 context of the summary judgment motion) all of his arguments regarding jurisdiction. Even
15 though Acres has been unsuccessful in disputing jurisdiction, he has pointed to facts and raised
16 arguments sufficient to suggest that BLCH does not have sufficient evidence of an essential
17 element of its fraud claim to carry its burden of persuasion at trial. (See *Nissan Fire & Marine
Ins. Co. v. Fritz Cos. Inc.*, (9th Cir. 2000) 210 F3d. 1099, 1202).

18 Acres’ effort to dispute even irrelevant facts initially suggests that there must be factual
19 disputes that would prevent summary judgment. Acres disputes when, where, and how
20 negotiations took place; and Acres essentially denies that he made any assurances or
21 representations regarding the iSlot system. He even disputes the fundamental purpose of the
22 purpose of the agreement, at least as it is asserted by BLCH. More on point, Acres denies that
23 there was any “royalty repayment scheme” as alleged by BLCH. Accordingly, it might appear
24 that there must be disputable issues of fact to prevent summary adjudication or summary
25 judgment. Indeed BLCH argues, “[n]early every fact material to the cause of action against
Acres is disputed”. (BLCH Opposition, p. 6).

1 However, most of Acres' disputation pertains to tangential and irrelevant matters.
2 Neither party disputes the operative terms of the written agreement including the fact that the
3 "royalty repayment scheme" at the center of BLCH's fraud claim is actually an express provision
4 of the Agreement. The Agreement provides for monthly lease payments following the initial
5 advance deposit. It also provides that a portion of the monthly lease payments will be credited
6 towards "extinguishment" of the initial deposit. In other words, the parties do not dispute that
7 monthly "lease" payments by BLCH to ABI would be reduced in this fashion. In practice this
8 meant that BLCH would pay a reduced amount of the base "lease" payment provided by the
9 agreement.³

10 Despite Acres' efforts to dispute every single fact, his elaborate, disjointed and confusing
11 motions have revealed an issue with the potential for summary adjudication: the question of
12 whether there Mr. Frank could have reasonably relied upon misrepresentation allegedly made by
13 Acres. This issue must be examined in view of the terms of the contract, the mathematical
14 certainties involved in the repayment schedule, and the sophistication, experience of the person
15 asserting reasonable reliance. Based on the assumption that all disputed facts are interpreted in
16 BLCH's favor, the question is whether it was reasonable for Mr. Frank to rely on the
17 representation alleged in paragraph 4 of his declaration that "...the royalty repayment scheme
18 would repay the entire \$250,000 advance deposit...". This representation followed Frank's
19 expression of uncertainty that the "iSlot System would be profitable". (Frank Declaration,
20 paragraph 3).

21 Mr. Frank's declaration offers his own opinion that it was "not unreasonable to believe"
22 that the system would be profitable enough to cover the deposit "during the initial two-year term
23 of the Agreement". Frank bases that opinion on his more than 12 years of experience in casino
24 management. No other declaration of a witness has been provided beyond Mr. Frank's
25

24 ³ The parties variously call these payments "lease payments" and "royalty payments"; and
25 BLCH alleges that this provision of the Agreement is the fraudulent "royalty repayment
scheme". As a matter of legal interpretation the Agreement more closely resembles a licensing
agreement than either a lease or an agreement for payment of royalties.

1 declaration although Mr. Sallati was apparently involved in the negotiations and signed that
2 Agreement. Between them, Sallati and Frank have decades of experience in casino management.
3 Especially as to Mr. Frank, the expertise he touts in his declaration that his reliance was
4 “reasonable” cuts both ways. His career in casino management necessarily involves substantial
5 knowledge and experience regarding the calculation of payouts and probabilities. The
6 management of casinos also involves evaluation of the popularity with the public of different
7 devices and games. The question is whether a man of Frank’s experience and expertise could
8 have reasonably relied upon the representation that the gaming system would be “profitable”
9 enough to “pay back” the advance deposit during the initial two-year term.

10 Several points make this a questionable proposition:

- 11 • First, the terms of the agreement do not describe a “scheme”. The express terms of
12 the agreement describe a reduction of monthly payments under a formula best
13 characterized as a discount of the initial \$250,000.
- 14 • Second, BLCH’s ability to calculate the efficacy of that discount by simple
15 mathematical calculations is beyond dispute. The parties apparently agree that the
16 total aggregate sum of \$3.333 million in “theoretical net win” calculations would be
17 required to “extinguish” the advance payment. It is also undisputed that BLCH
18 would be required to pay monthly lease payments in an amount at least equal to the
19 discount.
- 20 • Thirdly, the essence of the misrepresentation alleged by BLCH was that “ the iSlot
21 System would repay the entire advance deposit and that the iSlot System would be
22 profitable” (Frank Declaration, Paragraph 6). The Complaint and the Agreement do
23 not describe any time frame for the recoupment of the deposit; Frank’s declaration
24 implies that he was assured by Acres that sufficient profits would be recovered within
25 two years, which was the initial term of the agreement. However, it has been not
been alleged or shown that the two-year time frame was a part of the Acres
representation; and the express term of the Agreement regarding the “repayment”
discount is open-ended. Thus, the alleged misrepresentation did not indicate a time
frame. The alleged misrepresentation at the heart of the fraud claim was not that the
system would work, or that the iSlot System would be popular or that the

1 maintenance of gaming licenses would be assured. According to Frank the
2 misrepresentation was not only that “the iSlot System would be profitable”, but also
3 by implication that it would be profitable enough to repay the entire advance payment
4 of the license fee and implicitly within two years. (Frank Declaration, paragraphs 6
and 10).

- 5 • Frank and Salatti have between them accrued decades of experience in casino
6 management. As such, their ability to reasonable rely on representation by others
7 pertaining to the areas of the their own expertise is circumscribed. If the conduct of
8 plaintiff BLCH’s managers and advisors (examined in the light of their own
9 intelligence and information) was manifestly unreasonable, recovery may be denied.
10 (*Gray v. Don Miller & Associates, Inc.*, (1984) 35 Cal.3d 498, at p. 503 [“the issue is
whether the person who claims reliance was justified in believing the representation
in the light of his own knowledge and experience”].)
- 11 • The essence of the alleged fraud was Acres’ assurance that the System would be
12 quickly profitable. Frank states that he was uncertain that the system would be
13 profitable and that he relied on Acres’ assurance that it would be profitable. This is
14 akin to asserting there was a warranty that the system would work and that it would
15 be popular enough to be profitable. (See *American Jurisprudence Proof of Facts 3d*
16 *AMJUR POF 3d 329*). However, the Agreement contains no warranties either
expressed or implied with reference to the operation of the system.
- 17 • Indeed the Agreement affirmatively states that the advance deposit against payments
18 shall be “refunded if, and only if,” ABI did not deliver the system by October 1, 2010.
- 19 • Acres’ alleged assurance that the gaming public would use the system enthusiastically
20 enough to generate 3.333 millions of dollars in profits with in a short time can only be
21 viewed as an opinion. This is because it is predictive of third party behavior. Such
22 statements cannot support an action for fraud because the general rule is that an action
23 for fraud must be based on statements of fact, not opinion, and that statements as to
24 future actions by third parties are deemed non-actionable opinions. (*Nibbi Brothers,*
25 *Inc. v. Home Federal Sav. & Loan Assn.* (1988) 205 Cal.App.3d 1415, 1423; *San*
Francisco Design Center Associates v. Portman Companies (1995) 41 Cal.App.4th
29, 43–44.; 5 Witkin, *Summary of Cal. Law, supra*, *Torts*, § 774, p. 1137

1 Accordingly, the terms of the Agreement are inconsistent with reasonable reliance by
2 BLCH. Both the complaint and Mr. Frank's limited declaration regarding the alleged
3 representation are conclusionary. Without any apparent conscious irony Frank opines based on
4 his own extensive casino experience that his reliance was reasonable. However, there was no
5 royalty repayment "scheme" as alleged by the complaint. The Agreement does not provide any
6 promise to repay the deposit; it expressly promises only a discount of the initial payment stream.
7 The Agreement also contains an express and strict limitation on the circumstances under which
8 the deposit can be recovered other than by the discount of monthly payments. The open-ended
9 Agreement does not indicate any time frame within which the deposit would eventually be
10 recouped by the discounted payments.

11 While it is true that fraud in the context of contracts usually presents triable issues of fact,
12 this case presents circumstance where the evidence presented by the plaintiff is not sufficient to
13 establish the element of justifiable reliance. Counsel for BLCH is correct that circumstantial
14 evidence is usually a matter of factual dispute because fraudulent inducement turns upon the
15 state of mind of the inducer. However, this is a case where the exception proves the rule.
16 Assuming the facts in the light most favorable to BLCH and also assuming that the narrowly
17 framed "assurance" by Acres was delivered precisely as described by Frank, reasonable minds
18 can come to only one conclusion: A person with the knowledge, experience and education
19 possessed by Thomas Frank⁴ could not have reasonably relied on what was essentially an
20 opinion offered by Acres regarding the future gaming behavior of third party customers. He
21 could not reasonably have believed there was a "scheme" that was inconsistent with the *express*
22 language of the Agreement. He needed only to invoke his own knowledge and experience, read
23 the Agreement and do the math, to discern that Acres' assurance of profitability was a chimera.
24 Viewed in the context of the contradictory terms of the Agreement, an early motion for judgment
25 on the pleadings or a demurrer might well have been successful if not for the cloud of persistent
procedural confusion generated by a hyperbolic defendant appearing *pro se*.

23 BLCH has not shown sufficient evidence to establish reasonable reliance by a highly
24 experienced casino manager such as Mr. Frank. There is no evidence to show that there was any
25 "royalty repayment scheme" outside the four-corners of the Agreement itself; and the Agreement

⁴ And by extension, BLCH; no other witness offered evidence for BLCH regarding reliance.

1 contains no express warranties or breaches of contract enforceable against James Acres. The
2 alleged false representation was essentially a salesman's opinion that the iSlot System would be
3 "profitable" based on a prediction of future customer behavior.

4 There was no circumstantial evidence sufficient to show the required element of scienter
5 on the part of Acres. BLCH attempts to find direct evidence to show Acres' state of mind on
6 page 15 of his Unenumerated Motion to Dismiss: "it is now clear that Acres did not believe
7 deposit could be repaid as he disputes the ability to collect \$3.3 million [within the time frame
8 expected by BLCH]". This misstates the evidence not least because the contract contains an
9 open-ended provision for automatic extensions of the initial two-year term. No time period was
10 specified for the repayment of the deposit and straightforward mathematical calculation could
11 have shown that it was unlikely that the system would generate that amount of cash within a
12 short time period.

13 Assuming the assurance was precisely as described by Thomas Frank, it could only have
14 been Acres' opinion that BLCH would profit from the conduct of customers rather than an
15 actionable misstatement of the facts regarding the performance of the iSlot System. BLCH has
16 attempted to conjure a personal warranty by Acres to supplement its other causes of action
17 against ABI based on the "complete failure of the system" asserted by Thomas Frank. BLCH
18 cannot prove the required element of reasonable reliance with reference to the fraud cause of
19 action. THEREFORE,

20 Summary judgment is GRANTED in favor of James Acres individually. Mr. Acres is
21 dismissed from the action and is no longer a party. To the extent his other motions have not
22 already been denied by previous orders those motions are moot.

23 Dated: July 18, 2017

24 
25 Hon. James Lambden (Ret.)

PROOF OF SERVICE

State of California
County of San Francisco

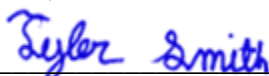
I certify that I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 100 First Street, 27th Floor, San Francisco, California 94105.

On July 18, 2017, I served the foregoing document described as the **ORDER REGARDING PARTIES' FRCP § 12 (b) MOTIONS RE JURISDICTION AND JAMES ACRES MOTIONS TO STRIKE AND FOR DISMISSAL, DISQUALIFICATION AND VOIDANCE OF ORDERS; ORDER RE SUMMARY JUDGMENT; and PROOF OF SERVICE** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

- ☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address tyler@adrservices.org to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- ☒ **BY U.S. MAIL:** I caused such envelope with postage thereon to be placed in the United States mail at San Francisco, California.
- ☐ **BY FACSIMILE:** I caused such to be faxed to the attorneys on July 18, 2017
- ☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the attorneys on July 18, 2017.
- ☒ **STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☐ **FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 18, 2017 at San Francisco, California



Tyler Smith



SERVICE LIST

RE: BLUE LAKE CASINO & HOTEL v. ACRES BONUSING, INC., ET AL.
ADRS Case No. 17-0767-JL
Court Case No. C-15-1215-JRL

Amelia F. Burroughs, Esq.
Megan A. Yarnall, Esq.
JANSSEN MALLOY LLP
730 Fifth Street
P.O. Drawer 1288
Eureka, California 95501
aburroughs@janssenlaw.com
myarnall@janssenlaw.com

Attorneys for Blue Lake Casino &
Hotel,

James Acres
1106 2nd Street, #123
Encinitas, California 92024
james@acresbonusing.com

IN PROPRIA PERSONA

Ronald H. Blumberg, Esq.
BLUMBER LAW GROUP LLP
137 North Acacia Avenue
Solano Beach, California 92075
rhb@blumberglawgroup.com

Attorneys for Acres Bonusing, Inc.,

Exhibit 1

Summons and Complaint in Blue Lake v. Acres

BLUE LAKE RANCHERIA TRIBAL COURT

BLUE LAKE CASINO & HOTEL,
a tribally owned entity of Blue Lake Rancheria,
a federally recognized Indian tribe

Plaintiff,

SUMMONS IN A CIVIL CASE

v.

Case Number: C-15-1215LJM

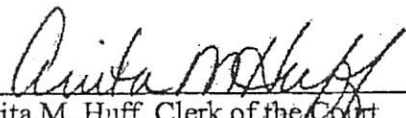
ACRES BONUSING, INC.,
a Nevada Corporation; and
JAMES ACRES, an individual,
Defendants.

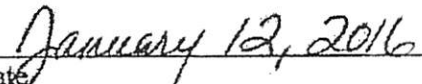
TO: ACRES BONUSING, INC., a Nevada Corporation;
and JAMES ACRES, an individual

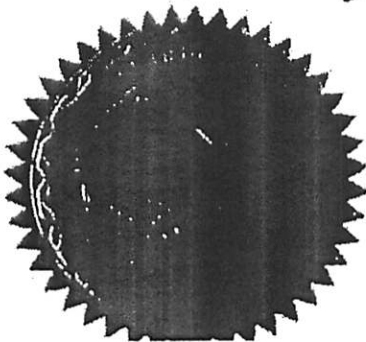
YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S
ATTORNEY(S) (name and address)

Daniel S. Stouder
Amy L. O'Neill
Boutin Jones Inc.
555 Capitol Mall, Suite 1500
Sacramento, CA 95814-4603

An answer to the complaint which is herewith served upon you, within five (5) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of the Court within a reasonable period of time after service.


Anita M. Huff, Clerk of the Court


Date



SUMMONS IN A CIVIL CASE

BLUE LAKE RANCHERIA TRIBAL COURT

BLUE LAKE CASINO & HOTEL,
a tribally owned entity of Blue Lake Rancheria,
a federally recognized Indian tribe

Plaintiff,

SUMMONS IN A CIVIL CASE

v.

Case Number: C-15-1215LJM


ACRES BONUSING, INC.,
a Nevada Corporation; and
JAMES ACRES, an individual,
Defendants.


TO: ACRES BONUSING, INC., a Nevada Corporation;
and JAMES ACRES, an individual

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S
ATTORNEY(S) (name and address)

Daniel S. Stouder
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Anita M. Huff, Clerk of the Court


Date



SUMMONS IN A CIVIL CASE

1 **BOUTIN JONES INC.**

2 Daniel S. Stouder, SBN 226753; Admitted to Tribal Court on November 19, 2015

3 dstouder@boutinjones.com

4 Amy L. O'Neill, SBN 294458; Admitted to Tribal Court on November 19, 2015

5 aoneill@boutinjones.com

6 555 Capitol Mall, Suite 1500

7 Sacramento, CA 95814-4603

8 Telephone: (916) 321-4444

9 Facsimile: (916) 441-7597

10 Attorneys for Blue Lake Casino & Hotel

ENDORSED-FILED

JAN 12 2016

CLERK OF TRIBAL COURT
BLUE LAKE RANCHERIA
[Signature]

11 **TRIBAL COURT OF THE TRIBE BLUE LAKE RANCHERIA**

12 BLUE LAKE CASINO & HOTEL, a tribally
13 owned entity of Blue Lake Rancheria, a federally
14 recognized Indian tribe,

15 Plaintiff,

16 vs.

17 ACRES BONUSING, INC., a Nevada
18 Corporation; and JAMES ACRES, an individual,

19 Defendants.

Case No.:

**COMPLAINT FOR BREACH OF
CONTRACT; TORTIOUS BREACH
OF IMPLIED COVENANT OF GOOD
FAITH AND FAIR DEALING;
UNJUST ENRICHMENT; MONEY
HAD AND RECEIVED;
FRAUDULENT INDUCEMENT**

20 Plaintiff BLUE LAKE CASINO AND HOTEL alleges:

21 **JURISDICTION AND VENUE**

22 1. Plaintiff BLUE LAKE CASINO AND HOTEL ("BLC&H") is a tribally owned
23 entity of Blue Lake Rancheria, a federally recognized Indian tribe with its principal place of
24 business in the County of Humboldt, California.

25 2. On information and belief, defendant ACRES BONUSING, INC. ("ABP") is a
26 corporation organized under the laws of the State of Nevada with its principal place of business
27 in Carson City, Nevada.

28 3. On information and belief, defendant JAMES ACRES ("Acres") is an individual
residing in Carson City, Nevada.

4. This Court has jurisdiction over this action because the contract upon which the
dispute is founded was signed on Blue Lake Rancheria tribal property; was to be performed on

1 Blue Lake Rancheria tribal property; and at least one party to the contract is an entity owned by
2 Blue Lake Rancheria, a federally recognized Indian tribe.

3 5. The amount in controversy in this matter is more than \$75,000.00 exclusive of
4 interest and fees.

5 GENERAL ALLEGATIONS

6 6. On or about July 7, 2010, BLC&H and ABI entered into an i SLOT Lease
7 Agreement (the "Agreement") whereby ABI would develop gaming software for online gaming
8 that BLC&H could use at its casino. A true and correct copy of the Agreement is attached
9 hereto as Exhibit A and incorporated herein by reference. During the term of the Agreement,
10 ABI was required to service, support, maintain, and upgrade the iSlot gaming system. In fact,
11 Acres promised, and the Agreement specifically provides the following:

- 12 a. "The lease fee includes all server hardware and spare components and all
13 software updates." (Agreement, p.2.)
- 14 b. "[ABI] and TAL shall work to improve the iSlot System and [ABI] shall
15 provide such improvements to BLC&H at no additional cost."
16 (Agreement, Exhibit A, p.1.)
- 17 c. The initial installation of the iSlot System, or a future upgrade of the
18 iSlot System shall incorporate basic W-2G compliance functionality."
19 (Agreement, Exhibit A, p.2.)

20 7. BLC&H agreed to pay ABI an initial \$250,000.00 advance deposit, which ABI
21 would pay back to BLC&H over time through reduced lease payments as calculated per the
22 Agreement based on receipts from use of the iSlot games provided by ABI ("the royalty
23 payment scheme"). Once the software was installed, BLC&H would forfeit the deposit only if
24 it failed to install the iSlot devices, or failed to maintain the requisite number of gaming
25 devices. The iSlot system was installed and maintained on more than 20 devices throughout the
26 period of the Agreement.

1 8. The iSlot system provided by ABI was a failure, and the iSlot gaming devices
2 generated virtually no income. Operating costs incurred by BLC&H outweighed any income
3 generated by the iSlot System and devices.

4 9. BLC&H is informed and believes that ABI and Acres knew the iSlot System
5 would fail and that the deposit amount would never actually be paid back through the royalty
6 payment scheme as contemplated under the Agreement because the system could never
7 satisfactorily perform.

8 10. Rather than upgrade and improve the iSlot system or provide upgraded and/or
9 new, more successful games to BLC&H as required by the Agreement and as promised by
10 Acres (and as was needed so that the deposit could be repaid through the royalty payment
11 scheme as contemplated by the Agreement), ABI and Acres focused their attention on other
12 projects, including the development of a new gaming system, V2.0, which BLC&H could not
13 use. V2.0 was a "wide area" server-based system hosted on an out-of-state server in Nevada,
14 and was not formally approved and authorized by Indian Gaming Regulatory Act or the
15 National Indian Gaming Commission. Use of an unauthorized system could put BLC&H's
16 entire casino and gaming operations at risk; a fact which BLC&H discussed with ABI and
17 Acres on numerous occasions.

18 11. At the earliest opportunity, and after failing and refusing to provide BLC&H
19 with an adequate system that would allow it to recover its advanced deposit as contemplated by
20 the Agreement, ABI terminated the Agreement. ABI then refused, and continues to refuse, to
21 return the advance deposit which was not recovered or recoverable through the royalty payment
22 scheme.

23 12. During the life of the Agreement, only \$750 of the \$250,000.00 advance was
24 ever repaid to BLC&H by ABI by way of the royalty payment scheme. Therefore, exclusive
25 any interest which has accrued in connection with the amount owed, ABI is liable to BLC&H in
26 an amount not less than \$249,250.00.

1 **FIRST CLAIM FOR RELIEF**

2 **(Breach of Contract – Against Defendant ABI)**

3 13. BLC&H repeats and realleges all allegations as if fully set forth herein.

4 14. BLC&H and ABI entered into an Agreement whereby ABI would develop
5 gaming software for online gaming that BLC&H could use at its casino. During the term of the
6 Agreement, ABI would service, support, maintain, and upgrade the iSlot gaming system.

7 15. BLC&H paid ABI a \$250,000.00 deposit as required by the Agreement, installed
8 the software developed by ABI within the requisite time period, and maintained the software on
9 at least 20 gaming machines at all times.

10 16. All conditions required by the contract for ABI's performance of the contract
11 occurred.

12 17. Within the last four years, ABI failed and refused to provide upgrades and
13 improvements to the system sufficient to make the system successful. Instead, ABI dedicated its
14 time and attention to a system which was not usable by BLC&H.

15 18. BLC&H was harmed by ABI's failure to perform its duties as required by the
16 Agreement, which, among other consequences, prevented BLC&H from earning down the
17 advanced royalty payments. Further, ABI never returned the deposit following its termination
18 of the Agreement. Therefore, BLC&H was harmed in an amount to be proven at trial, but in no
19 event less than \$249,250.00.

20 **SECOND CLAIM FOR RELIEF**

21 **(Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing – Against**
22 **Defendant ABI)**

23 19. BLC&H repeats and realleges all allegations as if fully set forth herein.

24 20. ABI's conduct as described above was unreasonable, including, but not limited
25 to, failing and refusing to upgrade or improve the iSlot system provided to BLC&H so that
26 repayment of the deposit as anticipated by the Agreement could occur; dedicating its resources
27 to an alternative system it knew BLC&H could not use; and then failing to return the advance
28

1 deposit when it terminated the Agreement, thereby preventing any future prospect of upgrading
2 the system and repaying the deposit by way of the royalty repayment scheme.

3 21. Implied in the every contract is a covenant of good faith and fair dealing
4 pursuant to which, among other things, each party is required to deal fairly, in good faith, and
5 openly with each other. By engaging in the conduct described herein, ABI unfairly interfered
6 with BLC&H's right to receive the benefits of the contract and in doing so, ABI breached the
7 duty of good faith and fair dealing.

8 22. BLC&H was harmed by ABI's breach of the implied covenant of good faith and
9 fair dealing and is entitled to recover all damages proximately caused by such breach, which is
10 equal to an amount to be proven at trial, but in no event less than \$249,250.00.

11 THIRD CLAIM FOR RELIEF

12 (Unjust Enrichment – Against Defendant ABI)

13 23. BLC&H repeats and realleges all allegations as if fully set forth herein.

14 24. Defendants received from BLC&H a \$250,000.00 advance deposit which the
15 parties agreed would be paid back by way of the royalty payment scheme from money
16 generated by use of the iSlot machines provided by Defendants.

17 25. During the initial term of the Agreement, the iSlot machines generated such
18 miniscule revenue so as to preclude repayment of the advance deposit. Defendants then
19 terminated the Agreement at the earliest opportunity so as to prevent any future possibility of
20 repayment of the advance deposit by way of the royalty payment scheme. Defendants then
21 failed and refused to return the advance deposit which had not been repaid.

22 26. Defendants have wrongfully maintained and benefited from the advance deposit
23 which was not returned to BLC&H after termination of the Agreement and which was not
24 repaid (e.g. earned) by way of the royalty payment scheme prior to the termination of the
25 Agreement.

26 27. Defendants' failure to return the unearned advanced deposit after termination of
27 the Agreement injured BLC&H. Defendants have been unjustly enriched in an amount not less
28 than \$249,250.00, exclusive of interest.

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FOURTH CLAIM FOR RELIEF

(Money Had and Received – Against Defendant ABI)

28. BLC&H repeats and realleges all allegations as if fully set forth herein.

29. Defendants received a \$250,000.00 advance deposit from BLC&H that was intended by the Parties to be repaid to BLC&H through a royalty payment scheme.

30. The advance deposit was not used for the benefit of BLC&H.

31. Defendants did not repay the advance deposit as anticipated and have failed and refused to return the remainder of the advance deposit since terminating the Agreement, despite BLC&H's demands that they do so.

32. Defendants' failure to repay or return the advanced deposit injured BLC&H by an amount not less than \$249,250.00, exclusive of interest and fees.

FIFTH CLAIM FOR RELIEF

(Fraudulent Inducement against Defendant Acres)

33. BLC&H repeats and realleges all allegations as if fully set forth herein.

34. Defendant Acres represented to BLC&H at the time the Agreement was entered into that ABI would improve and provide upgrades to the iSlot system. Acres also represented that the advanced deposit would be repaid to BLC&H by way of the royalty payment scheme.

35. At the time Acres made these representations, Acres did not intend for ABI to provide the upgrades and maintenance necessary to make the iSlot system successful. Moreover, Acres did not intend for the advanced deposit to be repaid to BLC&H by way of the royalty payment scheme.

36. Acres intended for BLC&H to rely on his promises that ABI would maintain and upgrade the iSlot system and that ABI would repay the advanced deposit by way of the royalty payment scheme.

37. BLC&H reasonably relied on these promises when entering into the Agreement and paying Defendants a \$250,000.00 advanced deposit for the iSlot system.

38. ABI did not provide upgrades to the iSlot system as promised by Acres and did not repay the advanced deposit by way of the royalty payment scheme.

Exhibit A

iSLOT LEASE AGREEMENT

Parties and Purpose

This agreement is between Acres Bonusing, Inc. (ABI), a Nevada Corporation and Blue Lake Casino & Hotel (BLC&H), a tribally owned entity of the Blue Lake Rancheria. This agreement describes the operation of the iSlot System at BLC&H. The iSlot System is developed by Talo, Inc. (TAL), a Nevada Corporation. TAL retains all intellectual property rights in the iSlot System. ABI is the licensed representative of TAL in California.

iSlot System Components

The iSlot System consists of five components:

- i) a central server or servers which can host multiple simultaneous slot machines or gaming devices (Server);
- ii) several patron terminals which can connect to the Server (Terminals);
- iii) various gaming and non-gaming programs that can be used by patrons on the Terminals (Applications);
- iv) a secure wireless network connecting the Server with the Terminals (Network);
- v) a system of electronic kiosks provided by third-party suppliers used by players to add and remove funds from their accounts (Kiosks).

How the iSlot System Functions

In order to play the iSlot System, patrons will need to register for an iSlot account. This allows the casino to ensure only patrons of legal age may play on the iSlot System.

Once a patron is registered with an iSlot account, he may check out a Terminal. When a patron checks out a Terminal, that specific Terminal is linked to a specific virtual slot machine and the patron's iSlot account on the Server. The patron may then use Applications on the Terminal to play the linked gaming device on the Server. The Terminal connects to the Server via the Network, which is constructed such that the Network is not available outside of the casino. When the patron is finished with the Terminal, he checks the Terminal back in.

Patrons will be able to cash-in and cash-out through interactions with BLC&H staff, or alternatively, through the use of Kiosks linked to the iSlot System.

The foregoing is a simplified version of how the iSlot System will approximately function. BLC&H shall be responsible for determining exact procedures for checking-in and checking-out Terminals, as well as cash-in and cash-out. ABI shall assist in developing these procedures at BLC&H's request.

iSlot System Standard Lease Terms

Server

The lease fee includes all server hardware and spare components and all software updates.

BLC&H shall provide weekly remote access to the server for the purpose of retrieving accounting data, including net-win for each game. Such access shall be compliant with BLC&H MICS.

BLC&H understands that a greater level of system access may be necessary to perform system upgrades and maintenance. All such access shall be negotiated by the parties over time, and shall be compliant with BLC&H MICS.

BLC&H is responsible for performing maintenance tasks such as replacing failed cards.

BLC&H understands that the ability to perform remote maintenance and monitoring is dependant on the level of remote access permissible under the MICS.

Applications

The lease fee includes the entire Class II and Class III library of iSlot games.

The lease fee also includes certain standard Non-Gaming Applications that are common to many casinos. If BLC&H requests a special Application be developed for its exclusive use, additional fees may apply.

Network

BLC&H shall purchase and maintain all Network hardware. ABI and TAL shall provide advice on the Network's construction and maintenance, however responsibility for the Network's operation and maintenance shall lie with BLC&H.

Terminals

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BLC&H shall purchase and maintain all Terminals -- currently WiFi enabled iPod Touches and iPads.

Kiosks

BLC&H shall be responsible for purchasing and maintaining third-party kiosks compatible with the iSlot System.

Monthly Lease Fee

BLC&H shall pay ABI a monthly lease-fee equal to the lesser of 15% of Theoretical Net Win of all play on the iSlot System for the month or the Maximum Monthly Fee.

The Maximum Monthly Fee under the lease shall be computed as follows:

- i) taking the greatest number of gaming devices available on the iSlot System during any day of the month as "Max Games";
- ii) multiplying Max Games by the number of days in the month to obtain "Game Days";
- iii) multiplying Game Days by the Maximum Daily Fee to yield the Maximum Monthly Fee.

The Maximum Daily Fee shall be equal to \$60 in constant, July 1st, 2010 dollars. ABI, TAL or BLC&H may require at any time the Maximum Daily Fee be adjusted to account for inflation or deflation since July 1st, 2010.

BLC&H shall pay ABI the lease fee monthly, net 30 days.

Number of Gaming Devices Deployed

BLC&H may use the iSlot System to deploy any number of simultaneous Gaming Devices it desires.

Term

BLC&H shall have the right to lease the iSlot System on these terms for two years from the date of installation, so long as BLC&H remains current in all payments and BLC&H uses the system to deploy at least twenty simultaneous gaming devices. BLC&H's right to lease the iSlot System shall be binding on all successors to ABI and TAL.

At the end of the first term, and for each term thereafter, the agreement shall automatically be extended for one year unless either party notifies the other of their desire to terminate the agreement. Notification to terminate the agreement must be given at least three months before the beginning of the new term.

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Regulatory Compliance

All equipment and software leased under this agreement shall pass all applicable GLI standards, and conform to all tribal, local, state, and federal laws and regulations.

Advanced Deposit

In order to cover localization costs of the iSlot System, BLC&H shall pay ABI an advanced deposit against royalties of \$250,000.

Once the iSlot System is installed one-half of each month's lease fee shall be applied against the advanced deposit until it is extinguished.

The deposit shall be refunded if, and only if, ABI does not make an iSlot System available to BLC&H for installation by October 1st, 2010 which:

- i) Has received GLI certification;
- ii) Has been approved by at least one tribal gaming authority in California;
- iii) Allows BLC&H to credit points to player-club accounts for coin-in played on the iSlot System (though BLC&H understands this may be a manual process performed daily by their staff).

In the event that ABI provides the iSlot System in at timely fashion and BLC&H elects not to install the iSlot System, or elects to use the iSlot System to serve fewer than twenty simultaneous gaming devices, then any remaining advance fees shall be forfeit.

Hotel Rooms and Reasonable Meals

BLC&H shall provide hotel rooms and reasonable meals for ABI and TAL staff visiting BLC&H on business matters related to this lease.

Inclusion of "Exhibit A" in Agreement

The contents of Exhibit A below shall be included in this agreement.

Execution

This is a time sensitive project, and ABI's ability to deliver the iSlot System in a timely fashion may be dependant on when BLC&H accepts this agreement.

Therefore, this agreement shall not be valid until executed by both parties and ABI accepts BLC&H's payment of advanced royalties.

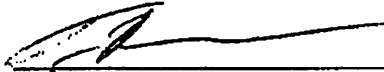
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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

Acres Bonusing, Inc
1106 2nd St #104
Encinitas, CA 92024

Blue Lake Casino and Hotel

By:



Name: James Acres

Title: President

Date: 7/7/2010

By:



Name: Steve Salatti

Title: CFO

Date: 7/7/2010

EXHIBIT A

Purpose of Exhibit A

This exhibit clarifies points of discussion between ABI and BLC&H. Items are placed in this exhibit purely to facilitate ease of review by the parties and should not be considered to be more or less important than items in the main body of the agreement.

Limited Exclusivity

BLC&H shall enjoy a limited exclusivity to the iSlot System until either the end of the term of this agreement, or until all advanced royalties have been earned out.

BLC&H may, at its election, purchase an additional term of exclusivity for an additional \$250,000 advance on royalties. This additional deposit must be received in the month that the exclusivity expires.

The additional term of exclusivity shall last either for one year, or until all additional advanced royalties have been earned out.

This exclusivity shall extend to Bear River Casino and Cher-Ae Heights Casino.

Minimum Functionality of Initial Delivery

It is understood by all parties that the iSlot System shall be delivered in a minimally functional state in order to meet the October 1st deadline.

ABI and TAL shall work to improve the iSlot System and ABI shall provide such improvements to BLC&H at no additional cost. However, should BLC&H request that special work be done on its behalf, applicable only to BLC&H, then additional fees may apply.

System Integration

ABI and TAL shall use their best commercially reasonable efforts to integrate iSlot Accounting with BLC&H's current accounting system, and to maintain that integration.

BLC&H shall use their best commercially reasonable efforts to assist ABI and TAL in this integration, including obtaining communications protocols and table structures from their system vendor and keeping ABI and TAL apprised of changes to their back-end system.

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ABI and TAL shall provide BLC&H documentation on and access to all data tables in the iSlot System to allow BLC&H to reconcile player-tracking and accounting databases until such a time as automated integration is possible.

Manual Cash-In and Cash-Out

ABI shall provide a methodology for cage or floor staff to add or remove credits from patron iSlot accounts. This shall be provided at no additional charge.

Kiosks

The iSlot System contemplates the use of Kiosks for player cash-in and cash-out. ABI and TAL shall work with BLC&H's kiosk vendor to provide compatibility between that vendor's kiosks and the iSlot System.

ABI and TAL shall do this work at no additional charge to BLC&H. However, ABI and TAL can not be responsible for any fees charged to BLC&H by their kiosk vendor.

W-2G Compliance

The initial installation of the iSlot System, or a future upgrade of the iSlot System shall incorporate basic W-2G compliance functionality. This functionality shall be provided at no additional charge.

System Maintenance

BLC&H shall not incur any additional fees for standard maintenance performed by ABI or TAL under this agreement. However, nothing in this provision absolves BLC&H of their responsibilities for maintenance described in the main agreement above.

Refund of Deposit in the Event of the Dissolution of ABI

It is understood that BLC&H's deposit may be used by ABI and TAL to fund their operations, and that there is no specific collateral securing the deposit and guaranteeing its refund.

That said, the Acres Family has a long history in the Gaming Industry, and is very aware that the failure to return the deposit in the event it is owed will be damaging to their reputation. Therefore, in the unlikely and unfortunate event that ABI cannot deliver the iSlot System, then some Acres Family controlled entity shall make strenuous efforts to refund the deposit, or make some other restitution to the satisfaction of BLC&H.

CS

Nothing in this provision is intended as or should be interpreted as a personal guarantee of any sort, or as a withdrawal or lessening of ABI's Corporate Veil.

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