

No 19 - \_\_\_\_

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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PINOLEVILLE POMO NATION, a federally-recognized Indian tribe;  
PINOLEVILLE GAMING AUTHORITY; PINOLEVILLE GAMING COMMISSION;  
PINOLEVILLE BUSINESS BOARD; PINOLEVILLE ECONOMIC DEVELOPMENT,  
LLC, a California limited liability company; ANGELA JAMES; LEONA L.  
WILLIAMS; LENORA STEELE; KATHY STALLWORTH; MICHELLE CAMPBELL;  
JULIAN J. MALDONADO; DONALD WILLIAMS; VERONICA TIMBERLAKE;  
CASSANDRA STEELE; JASON EDWARD RUNNING BEAR STEELE; and  
ANDREW STEVENSON,

Petitioners,

v.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA,  
Respondent,

and

JW GAMING DEVELOPMENT, LLC, a California limited liability company,  
Real Party in Interest.

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On Petition for a Writ of Mandamus to the United State District Court for the  
Northern District of California (No. 3:18-cv-02669-WHO)

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**PETITION FOR A WRIT OF MANDAMUS AND EMERGENCY MOTION FOR A  
STAY OF DISCOVERY UNDER CIRCUIT RULE 27-3**

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### **CIRCUIT RULE 27-3 CERTIFICATE**

Pursuant to Circuit Rule 27-3(a), I hereby certify that to avoid irreparable harm to petitioners Pinoleville Pomo Nation (a federally-recognized Indian tribe) (the “Tribe”), Pinoleville Gaming Authority, Pinoleville Gaming Commission, Pinoleville Business Board, Pinoleville Economic Development, LLC (a California limited liability company) (together with the Tribe, the “Tribal Entity Defendants”), Angela James, Leona L. Williams, , Lenora Steele, Kathy Stallworth, Michelle Campbell, Julian J. Maldonado, Donald Williams, Veronica Timberlake, Cassandra Steele, Jason Edward Running Bear Steele, and Andrew Stevenson, each an elected official or employee of the Tribe (the “Individual Tribal Defendants” and, together with the Tribal Entity Defendants, the “Petitioners”), relief is needed in less than 21 days’ time.

1. Regarding Circuit Rule 27-3(a)(1), Petitioners notified both the Clerk and counsel for the Real Party in Interest, JW Gaming Development, LLC (“JW Gaming” or “JW”), on Monday June 17, 2019, of its intent to file this mandamus petition and emergency motion. The just-finalized petition and motion are being served simultaneously with filing via email to the counsel’s below stated address.

2. Regarding Circuit Rule 27-3(a)(3)(i), counsel are as follows:

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3. Regarding Circuit Rule 27-3(a)(3)(ii), the facts showing the existence and nature of the claimed emergency are set forth in detail below in the Statement of the Facts (pp. 10 - 14) and in the Argument (pp. 24-26 and 30-31). In brief, Petitioners respectfully request emergency relief in this

matter because the erroneous discovery order in question, a ruling which orders discovery to proceed on claims which are on interlocutory appeal and thus subject to an automatic stay, was allowed to stand by the district court and Petitioners face impending deadlines to respond to extensive written discovery (June 26, 2019) and the depositions of numerous tribal officials which, if allowed to proceed, would constitute extra-jurisdictional discovery and a severe violation of the tribe's and tribal officials' sovereign immunity from suit.

4. Regarding Circuit Rule 27-3(a)(3)(iii), JW Gaming's counsel was notified through a telephone conference held on June 12, and further through an email sent on June 16, of Petitioners' intent to file this mandamus petition and emergency motion. Counsel is being served with the just-finalized petition and motion simultaneously with filing via email to counsel's above-stated address.

5. Regarding Circuit Rule 27-3(a)(4), as set forth in the Statement of Facts below (pp. 8-12), the Petitioners have sought—and been denied—relief from the district court. Magistrate Judge Robert Illman's ruling on June 4 that he would not revisit the district court's April 12 order—which means the erroneous decision will govern further discovery in this matter—is the

precipitating event for the filing of this petition and emergency motion.

Petitioners are simultaneously filing in the district court a Motion for a Stay

Pending a Petition for a Writ of Mandamus.

s/ Rudy E. Verner

Rudy Verner

Counsel for Petitioners

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## **I. Introduction**

This suit is an unprecedented attempt by disgruntled tribal members and their attorneys to use a private party's legal claim to leverage a takeover of a federally-recognized tribe in Northern California. As a consequence of a series of rulings by the district court in this case, plaintiff JW Gaming, a casino developer represented by an attorney with close ties to the rival faction, has been granted license to pursue discovery against the Tribe on claims that are currently on appeal to this Court and subject to an automatic stay. The district court not only lacks the requisite jurisdiction to permit such discovery, but its rulings permit JW Gaming and its attorneys to obtain thousands of confidential financial documents of the Tribe in clear violation of the Tribe's—and tribal officials'—sovereign immunity. The unlawful discovery and pointed violations of sovereign immunity will continue unless abated by this Court.

Petitioners, defendants in Case No. 1:18-cv-02669-WHO in the United States District Court for the Northern District of California, petition this Court to (1) issue a writ of mandamus directing the United States District Judge presiding in this case to vacate its Order on Discovery Dispute dated April 12,

2019 (“Discovery Order”)<sup>1</sup> pending resolution of the appeal presently before this Court in Case Number 18-17008 (the “Appeal”), which is scheduled for oral argument on August 7, 2019, and (2) order an emergency stay of all discovery in the district court until resolution of the Petition and, if the Petition is granted, until the Appeal is finally decided (collectively, “Petition”).

The Discovery Order must be vacated and all discovery stayed pending resolution of the Appeal for a number of compelling reasons. First, because the district court ordered discovery to proceed on JW Gaming’s fraud and RICO claims, which are the subject of the Appeal and thus automatically stayed and restricted to the exclusive jurisdiction of the Ninth Circuit, the district court acted outside its authority and jurisdiction.

Second, because Petitioners raised sovereign immunity as a defense to the fraud and RICO claims in the district court, and the validity of that defense is currently on appeal, the obligation of the district court to maintain the status quo regarding those issues renders Petitioners’ sovereign immunity in full force and effect with respect to those claims unless and until the Ninth Circuit rules otherwise. In allowing discovery to proceed on the fraud and

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<sup>1</sup> Appendix in Support of Petition, Volume II at pp. 337-38. Subsequent cites to the appendix will cite the volume, the appendix (“App.”), and then the page number, *i.e.*, 2 App. 337-38.

RICO claims, despite the automatic stay and the Ninth Circuit's sole jurisdiction over the matter, the district court violated Petitioners' sovereign immunity and governing federal law holding that tribal sovereign immunity is inviolate unless Congress authorizes suit or there is an express written waiver of that immunity. This patent violation of the Tribe's and tribal officials' sovereign immunity will continue if the Discovery Order is allowed to stand and govern the scope of future discovery in this case.

Third, the district court erroneously permitted JW Gaming to pursue discovery relating to fraud and RICO, claims brought against the Individual Tribal Defendants, when the only claim on which discovery is currently permitted in the district court is a claim for breach of contract against the Tribe. In doing so, the district court permitted JW Gaming to surreptitiously circumvent both the automatic stay governing the tort claims and Petitioners' sovereign immunity. In ordering discovery on this flawed basis, the district court acted outside its authority and jurisdiction.

Fourth, in issuing the Discovery Order under the circumstances and with the effects described above, the district court has forced Petitioners into an untenable position whereby they are compelled to either comply with the Discovery Order and risk waiving their sovereign immunity, or to pursue—as

they have—repetitive appeals on the issue to the district court, the magistrate judge and this Court regarding the permissible scope of discovery. This defeats the fundamental purpose of tribal sovereign immunity, which is to protect against the costs and burdens associated with litigation involving nonconsensual claims, and the purpose of the automatic stay required by this Circuit’s precedents. This transgression is only enhanced by the fact that Petitioners have already pursued an appeal in this Court on the very claims and defenses at issue in this Petition.

Finally, because the district court (1) has demonstrably failed to enforce the distinction between the contract claim against the Tribe (which is not subject to the stay) and the fraud and RICO claims against the Individual Tribal Defendants (which are subject to the stay); (2) failed to abide by the automatic stay with respect to claims and defenses on appeal—namely, JW Gaming’s fraud and RICO claims and Petitioners’ sovereign immunity defense to those claims—or respect this Court’s exclusive jurisdiction over those claims pending resolution of Petitioners’ Appeal; and (3) issued an erroneous order which governs the scope of future discovery in the action; this Court should order an immediate stay of all discovery in the district court pending resolution of this Petition and, if the Petition is granted, until resolution of the

Appeal.

Accordingly, the Writ should issue.

## **II. Statement of Subject Matter Jurisdiction**

This Court has jurisdiction over this Petition pursuant to the All Writs Act, 28 U.S.C. § 1651 and Rule 21 of the Federal Rules of Appellate Procedure.

## **III. Relief Sought**

Petitioners respectfully request that this Court rule that the district court's Discovery Order (a) exceeded the district court's jurisdiction by requiring continued litigation of JW Gaming's fraud and RICO claims and Petitioners' corresponding sovereign immunity defense, thus violating the automatic stay and this Court's exclusive jurisdiction with respect to those issues; (b) violated Petitioners' sovereign immunity, which remains effective until a final appellate order rules otherwise; and (c) should therefore be vacated.

Petitioners also respectfully request that this Court issue an immediate stay of all discovery in the district court, including discovery on JW Gaming's contract claim, pending the determination of this Petition and, if the Petition is granted, until such time that the Appeal is decided.



#### **IV. The Issues Presented**

A. Whether the district court exceeded its jurisdiction and violated Petitioners' sovereign immunity by subjecting affiliates of a federally-recognized Indian tribe to discovery demands that pertain to JW Gaming's fraud and RICO claims, which are stayed pending review by this Court in the Appeal, and thus subject to this Court's exclusive jurisdiction.

B. Whether the district court acted outside its authority and jurisdiction by imposing a discovery order that merged JW Gaming's fraud claim and asserted relief against the Individual Tribal Defendants—for which sovereign immunity has not been waived and is subject to the Appeal—with JW Gaming's contract claim against the Tribe, thus allowing JW Gaming and the district court to usurp this Court's sole jurisdiction over claims and defenses on Appeal and violate Petitioners' sovereign immunity.

C. Whether the district court acted outside its authority and jurisdiction, and contrary to federal law, by forcing Petitioners into a legal position that compels them to waive their sovereign immunity in order to comply with the district court's Discovery Order.

**V. Statement of Facts Necessary To Understand the Issues Presented by the Petition**

JW Gaming filed this suit in 2018 against the Petitioners, alleging six claims for relief arising from its investment in the Tribe's planned casino development. 1 App. 10-85. The first claim is against the Tribe and the Tribal Entity Defendants for breach of a note in favor of JW Gaming for \$5.38 million (the "2012 Note"). 1 App. 45-47. The second claim is for fraud, 1 App. 47-56, and the third through sixth claims are for violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 ("RICO"). 1 App. 56-84. The second through sixth causes of action are brought against the Individual Tribal Defendants only.

After removal from state court, Petitioners moved to dismiss the claims against the Individual Tribal Defendants pursuant to Fed. R. Civ. P. 12(b)(1) on the basis of tribal sovereign immunity. 1 App. 109. Petitioners contended that the Tribe was the real party in interest and its immunity from suit applied to bar the claims against the tribal officials and employees. *Id.* The district court denied the motion on October 5, 2018. 1 App. 135-47. Petitioners thereafter filed the Appeal on February 21, 2019.

The filing of Petitioners' Appeal automatically divested the district court of jurisdiction over those aspects of the case on appeal. *See Griggs v. Provident*

*Consumer Discount Co.*, 459 U.S. 56, 58 (1982). In the context present here of an interlocutory appeal of a defense based on immunity from suit, the Ninth Circuit holds that the district court is divested of jurisdiction unless it finds Petitioners' claim of immunity is frivolous or has been waived, and certifies such in writing. *See Chuman v. Wright*, 960 F.2d 104, 105 (9th Cir. 1992); *see also Alaska v. United States*, 64 F.3d 1352, 1354-55 (9th Cir. 1995) ("Without such certification, the trial is automatically delayed until disposition of the appeal."). The district court made no such certification, expressly ruling that any appeal of the sovereign immunity issue by Petitioners would not be frivolous and that the district court "will be divested of jurisdiction in the event that [Petitioners] file an appeal of this denial of the sovereign immunity defense." 1 App. 146.

Following Petitioners' Appeal to this Court, Petitioners filed in the district court a motion to stay the case pending resolution of the Appeal. 1 App. 148-64. At the outset, Petitioners reminded the district court that JW's fraud and RICO claims were automatically stayed pending the Appeal. 1 App. 155. JW acknowledged this fact. 1 App. 177. As such, the district court had an obligation to preserve the status quo, which included Petitioners' right to sovereign immunity unless and until this Court denies Petitioners' Appeal.

Anticipating the difficulty in distinguishing between the contract and tort claims in discovery, Petitioners also requested that the district court exercise its discretion to stay all proceedings related to JW's breach of contract claim, which is the only claim not subject to the Appeal or automatic stay. 1 App. 155. Petitioners argued their strong likelihood of success on appeal of their tribal sovereign immunity defense by pointing out that this Court is not likely to allow JW to bypass Petitioners' sovereign immunity from suit simply by naming tribal officials in an individual capacity on its fraud and RICO claims, for which JW seeks no separate damages from the alleged breaches of those tort and statutory duties, and where an additional remedy sought—the appointment of a receiver over all tribal affairs—would operate against the Tribe as opposed to the individual tribal officials. 1 App. 157-59. Such a result would extinguish the sovereign immunity rule and its protections, which is for Congress alone to limit. *Id.*

Additionally, Petitioners explained that they face a possibility of irreparable injury absent a stay of all proceedings in that all money spent defending the underlying action prevents Petitioners from dedicating its already limited financial resources to the health and welfare of its tribal members, creating a very real potential for human suffering. 1 App. 161-62.

Furthermore, while a stay would have imposed zero harm on JW, the stay would have actually served the public interest in preserving the limited jurisdiction of federal courts where the basis for jurisdiction is so attenuated. 1 App. 162-64. Finally, Petitioners reasoned with the district court that efficiency is not served by allowing discovery to proceed when (1) the district court will be forced to closely referee discovery on the contract claim where it must be carefully separated out from the fraud and RICO claims; and (2) the district court may ultimately be deprived of its jurisdiction over certain claims. 1 App. 191. After a hearing, the district court denied Petitioners' motion for stay. 1 App. 204.

Subsequently, on March 11, 2019, JW Gaming served third-party subpoenas on seven different entities with which the Tribe does business, seeking production of vast amounts of financial records spanning more than a decade.<sup>2</sup> 2 App. 213-336. Petitioners sought to quash the subpoenas because they were irrelevant to the one claim pending in the district court (breach of contract) and instead pertained to the fraud and RICO claims which were on appeal and therefore stayed in the district court. 2 App. 205-12. For the first time, JW asserted that the documents sought in the subpoenas were relevant

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<sup>2</sup> This was the third set of document subpoenas JW Gaming had issued, having previously issued subpoenas of a similar nature to 14 other third parties.

to an equitable remedy it intended to pursue for reformation of contract, which applied to the alleged “fraud or mistake at the time of contracting,” and was therefore applicable to its breach of contract claim. 2 App. 210.

To Petitioners’ detriment, and despite its cautioning on the necessity of preventing JW’s distinct claims from blending together, the district court allowed just that by failing to distinguish in any way between JW’s fraud and contract claims. It also failed to appreciate JW Gaming’s blatant subterfuge in now asserting that the *Tribe* had fraudulently induced JW Gaming to enter the 2012 Note, when in fact the claim for fraudulent inducement is against the Individual Tribal Defendants only. 1 App. 47-56. On April 12, 2019, the court ruled that JW Gaming could proceed with discovery relating to its “reformation of contract remedy,” allowing it to perform an improper end-run around the automatic stay of its fraud claim and access materials related to that precise claim under the guise of a contract-related remedy. 2 App. 337-338.

Petitioners immediately objected to the Discovery Order. 2 App. 340-41 (requesting that the district court reconsider its ruling on the discovery dispute). Petitioners alerted the district court to the fact that JW Gaming never alleges that the *Tribe* fraudulently induced it to enter the contract, but

rather that the Individual Tribal Defendants did so. *Id.* This pleading decision was designed to avoid the reality that the Tribe did not waive sovereign immunity with respect to any fraud claims and thus, this claim would likely have been dismissed on that ground. *Id.* Only in the context of the discovery dispute did JW Gaming for the first time allege that the Tribe, rather than the Individual Tribal Defendants, fraudulently induced it to enter the contract, so as to connect its fraud claim with its contract claim against the Tribe. *Id.*

The district court chose not to address this brazen maneuver to skirt Petitioners' sovereign immunity and the automatic stay, but instead referred the issue to the magistrate judge. The parties once again briefed the issue for the magistrate on June 4, 2019. 2 App. 374-79. Rather than addressing the parties' arguments, the magistrate judge simply ruled that he could not overturn the district court judge's prior Discovery Order and ordered the parties to confer on modifying the third party subpoenas. 2 App. 369. As a result, the district court's Discovery Order permitting JW Gaming to demand production of information relating to its fraud claim still stands.

JW Gaming immediately attempted to capitalize on this erroneous ruling, issuing discovery and seeking to take the depositions of witnesses whose testimony relates only to the fraud and RICO theories. For example, in

requests for admission issued to the Tribe, JW Gaming asks the Tribe to “[a]dmit that YOU did not receive an investment of cash (or cash equivalent) of more than \$5 million as consideration for the SHAM CANALES Note.” 2 App. 352-54 (RFAs 50, 51-63). And in another request, it asks the Tribe to “[a]dmit that YOU intended JW Gaming Development LLC to rely on the representation that Michael Canales (personally or through any company in which he had an ownership interest) had invested over \$5 million with YOU in JW Gaming Development LLC’s decision to enter the COMPANY-TRIBE 2012 NOTE.” 2 App. 355 (RFA 78). These requests for admission, and numerous others posed to the Tribe,<sup>3</sup> relate to JW Gaming’s allegations that the Individual Tribal Defendants fraudulently induced JW Gaming to invest in the casino project by representing that another business partner had previously invested \$5 million in the casino, and producing notes that evidenced that investment. 1 App. 50 (¶¶ 326-27). In other words, they relate exclusively to the fraud and RICO claims. No credible argument exists that they relate to the breach of contract claim, which requires proof of straightforward elements of liability and damages.

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<sup>3</sup> See, e.g., 2 App. 350, 352 (RFAs 27, 42-49).



In interrogatories issued to the Tribe, JW Gaming asks the Tribe to identify facts which, again, are potentially relevant only to the fraud and RICO claims. In interrogatory No. 13, it asks the Tribe to “[i]dentify the dates, nature, and amount of all consideration provided to YOU, or for YOUR benefit, as consideration for the SHAM 2012 CANALES NOTES and SHAM 2008 CANALES NOTE.” 2 App. 364. Again, discovery requests such as this relate to JW Gaming’s theory of fraudulent inducement—i.e., that the Tribe’s note to its business partner Michael Canales was a ruse intended to induce JW to invest— not a claim based on failure to pay an amount due under a contract. The Tribe’s responses to JW Gaming’s requests for admission and interrogatories are presently due on June 26, 2019.

Finally, under the guise of “noticing depositions on the first cause of action,” JW Gaming has requested to take the depositions of each of the thirteen Individual Tribal Defendants, including individuals who were not on the Tribal Council during the relevant time period, and individuals who hold no official position within the Tribe. 2 App. 367-68. For instance, it seeks to take the deposition of Julian Maldonado, who, according to the Complaint, is an employee of the Tribe and cohabitating partner of defendant Angela James. 1 App. 15. He had absolutely no involvement in the negotiation, execution or

performance of the 2012 Note. 1 App. 10-85. Julian Maldonado and other Individual Tribal Defendants are named in the case because JW Gaming claims they possess knowledge of fraud and racketeering, not because they have knowledge relevant to the contract claim.

## **VI. Reasons Why the Writ Should Issue**

Petitioners understand that “mandamus is an extraordinary remedy that has traditionally been used in the federal courts only to confine an inferior court to a lawful exercise of its prescribed jurisdiction.” *Taiwan v. U.S. Dist. Court for the Northern Dist. of Cal.*, 128 F.3d 712, 717 (9th Cir. 1997) (internal quotations marks omitted). However, even the Supreme Court has not hesitated to grant writs of mandamus in the context of discovery when the district court’s construction and application of a rule of law amounts to a usurpation of power. *See, e.g., Schlagenhauf v. Holder*, 379 U.S. 104, 111-12 (1964); *La Buy v. Howes Leather Co.*, 352 U.S. 249, 256 (1957). Significantly, this Court is even more likely to grant a writ of mandamus when the district court’s exercise of power outside its jurisdiction tramples a party’s sovereign immunity rights. *See, e.g., Compania Mexicana De Aviacion, S.A. v. Dist. Court for Cent. Dist. of California*, 859 F.2d 1354 (9th Cir. 1988); *Taiwan v. U.S. Dist. Court for the Northern Dist. of Cal.*, 128 F.3d 712 (9th Cir. 1997); *In re*

*Philippine National Bank*, 397 F.3d 768 (9th Cir. 2005). Thus, this case constitutes a classic example where the remedy of mandamus is appropriate.

In determining whether to issue a writ of mandamus, this Court must balance the following five “Bauman” factors: “(1) whether petitioner has no other adequate means . . . to attain the relief desired; (2) whether petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the district court’s order is clearly erroneous as a matter of law; (4) whether the district court’s order is an oft repeated error or manifests persistent disregard for the federal rules; and (5) whether the district court’s order raises new and important problems or issues of law of first impression.” *Id.* It is not a requirement that all five factors be satisfied, but the third factor, existence of clear error, is dispositive. *Id.* As such, Petitioners address each factor below, beginning with the third Bauman factor.

**A. The District Court’s Discovery Order Is Clearly Erroneous as a Matter of Law.**

As previously stated, Petitioners have not challenged the waiver of sovereign immunity with respect to JW Gaming’s breach of contract claim. But they did *not* waive sovereign immunity with respect to any of JW Gaming’s other claims, including fraud or RICO. As to those claims, the district court rejected Petitioners’ sovereign immunity defense. However, that decision was

appealed to this Court on February 21, 2019. As such, it is clear and undisputable that the filing of the Appeal “vested exclusive jurisdiction” in the Ninth Circuit and “divested the district court of jurisdiction to proceed” with respect to all claims, and matters and proceedings related to those claims, appealed. *United States v. Claiborne*, 727 F.2d 842, 844 (9th Cir. 1984); *Hoffman v. Beer Drivers & Salesmen’s Local Union No. 888*, 536 F.2d 1268, 1276 (9th Cir. 1976) (“The general rule is that an appeal to the circuit court deprives a district court of jurisdiction as to any matters involved in the appeal.”).

Moreover, it is clear and undisputable that until the Ninth Circuit rules on the viability of Petitioners’ sovereign immunity defense, the “status quo” as it pertains to Petitioners’ sovereign immunity rights is maintained and not waived, entitling Petitioners to its protection in the district court with respect to those claims appealed. *See N.L.R.B. v. Sav-on Drugs, Inc.*, 704 F.2d 1147, 1149 (9th Cir. 1983) (“Stays are commonly used to maintain the status quo during an appeal and the status quo very obviously should have been maintained in this case.”); *Azurin v. Von Raab*, 792 F.2d 914, 915 (9th Cir. 1986) (where district court writ directing release of assets in question was appealed, Ninth Circuit granted a stay pending appeal so that “the status quo

will be maintained and there will be no danger of dissipation of the assets”); *Kiowa Tribe of Oklahoma v. Manufacturing Techs., Inc.*, 523 U.S. 751, 754 (1998) (“As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived immunity.”); *see also Miller v. Wright*, 705 F.3d 393, 923-24 (9th Cir. 2013) (“waivers of tribal sovereign immunity must be explicit and unequivocal.”).

Finally, a district court may not “implement or enforce the judgment or order” appealed where a stay is in place. *In re Rains*, 428 F.3d 893, 904 (9th Cir. 2005). For all these reasons, set forth in more detail below, it is undeniable that the district court’s Discovery Order is clearly erroneous as a matter of law.

**1. The District Court Lacks Jurisdiction to Proceed with Litigation of Matters on Appeal and the District Court Did Exactly That, Including Violating Petitioners’ Sovereign Immunity.**

The only claim over which the district court currently has jurisdiction is JW Gaming’s breach of contract claim. The fraud and RICO claims, and Petitioners’ corresponding sovereign immunity defense, are currently pending appellate review and thus, are presently outside the jurisdiction of the district court. *Claiborne*, 727 F.2d at 844, 850 (when a claim is considered immediately appealable, “the district court loses its power to proceed from

the time the [party] files its notice of appeal until the appeal is resolved.”).

Petitioners have not waived their sovereign immunity to the fraud and RICO claims and unless and until there is a final ruling by this Court that Petitioners are not entitled to such immunity, the status quo of affording Petitioners protection against the burdens of litigation remains in effect. *See N.L.R.B.*, 704 F.2d at 1149; *Azurin*, 792 F.2d at 915; *Kiowa Tribe of Oklahoma*, 523 U.S. at 754; *see also Miller*, 705 F.3d at 923-24. As explained below, the district court has disregarded this long-standing doctrine of tribal sovereign immunity, as well as its own lack of jurisdiction, by accepting JW Gaming’s new theory of relief intended to bypass the automatic stay of its fraud and RICO claims.

In its pleadings, JW Gaming carefully distinguished between allegations against the Tribe and allegations against the Individual Tribal Defendants. Relevant to this Petition, JW Gaming alleged that the *Individual Tribal Defendants*, not the Tribe, fraudulently induced it to enter the contract. It further alleged that *the Tribe* breached the contract by failing thus far to repay the loan. This pleading decision was intentionally calculated to avoid the fact that while the Tribe may have waived sovereign immunity with respect to the contract claim, it had not waived immunity with respect to any fraud claims, thus avoiding a potential dismissal of such a claim aimed at the

Tribe. After the district court ruled against Petitioners' sovereign immunity defense to the alleged fraud, JW Gaming reversed its position and for the first time in the underlying discovery dispute alleged that it was *the Tribe* that fraudulently induced JW to enter the contract. 2 App. 210. The clear purpose of this strategy was to connect JW Gaming's stayed fraud claim with its still active contract claim against the Tribe, thereby allowing JW Gaming to furtively pursue discovery on the fraud claim, outside the district court's jurisdiction and in stark violation of Petitioners' sovereign immunity.

In its Discovery Order, the district court erroneously adopted JW Gaming's theory as to why it was entitled to discovery pertaining to fraud, despite Petitioners' sovereign immunity. Specifically, JW argued that the discovery pertained to its (newly-devised) equitable remedy for reformation of contract, a remedy it never pleaded in its Complaint or mentioned in prior pleadings. In its Discovery Order, the district court overtly conflated JW Gaming's breach of contract claim with its fraud claim, stating "JW Gaming alleges that the Tribe fraudulently induced its assent to the parties' contract by representing that it was matching an investment from the Canales Group, when no such investment had actually been made. Because the reformation remedy is based on 'fraud . . . at the time of contracting,' JW Gaming is entitled

to discovery of financial documents up until the time that it invested in the casino project.” 2 App. 337-38. In doing so, the district court conflated the tort cause of action for fraud as it pertains to the contract, with the contract cause of action for breach of contract.

As an initial matter, simply because fraudulent inducement may occur at the time of contracting (1) does not make it a contract-based claim, and (2) does not make it any less of a tort claim. *See Bell v. Federal Home Loan Mortgage Corp.*, No. 11-CV-2514-MMA, 2012 WL 4576584, at \*3 (S.D. Cal. Oct. 1, 2012) (“The *tort of fraudulent inducement* to enter a contract, also known as promissory fraud, is a ‘subspecies of the action for fraud and deceit’ and lies ‘where a defendant fraudulently induces a plaintiff to enter into a contract.’” (emphasis added) (quoting *Lazar v. Superior Court*, 909 P.2d 981, 985 (Cal. 1996))). The district court conflated the two unique causes of action in a way that allowed the district court and JW Gaming to bypass Petitioners’ sovereign immunity with respect to the fraud claim by morphing it into a contract-based claim—the only claim on which discovery presently may be sought. By ordering discovery related to the fraud claim despite Petitioners’ asserted sovereign immunity, the district court effectively and improperly (1) “adjudicate[d] [Petitioners’] substantial right[ ] directly involved in the



appeal” and (2) sought to enforce its order rejecting Petitioners’ sovereign immunity, despite the automatic stay. *Johnson v. B.H. Liquidation Corp.*, 17 F.3d 394, 1994 WL 41116, at \*3 (9th Cir. Feb. 10, 1994) (“Generally, the filing of a notice of appeal divests the district court of jurisdiction over the matters appealed. Thus, although the district court retains the right to decide matters necessary to preserve the status quo while the case is pending on appeal, ‘it may not finally adjudicate substantial rights directly involved in the appeal.’” (quoting *McClatchy Newspapers v. Central Valley Typographical Union*, 686 F.2d 731, 734, 735 (9th Cir. 1982))); *Pyrodyne Corp. v. Pyrotronics Corp.*, 847 F.2d 1398, 1403 (9th Cir. 1988) (same); *In re Rains*, 428 F.3d at 904. Contrary to the district court’s action, the only orders district courts are permitted to make regarding an issue on appeal are those “orders appropriate to preserve the status quo while the case is pending in the appellate court.” *U.S. v. El-O-Pathic Pharmacy*, 192 F.2d 62, 79 (9th Cir. 1951). The Discovery Order undoubtedly disrupts the status quo and effectively enforces the district court’s ruling regarding the claims and defenses on Appeal.

Petitioners will not repeat their pending appellate arguments as to why they are entitled to sovereign immunity on JW Gaming’s fraud and RICO claims. However, it is vital in this Petition to address the history and

importance of the doctrine of sovereign immunity that was violated by the district court.

Indian tribes are domestic dependent nations that exercise inherent sovereign authority. [T]hey remain separate sovereigns pre-existing the Constitution. Thus, unless and until Congress acts, the tribes retain their historic sovereign authority. Among the core aspects of sovereignty that tribes possess—subject [ ] to congressional action—is the common-law immunity from suit traditionally enjoyed by sovereign powers. That immunity . . . is a necessary corollary to Indian sovereignty and self-governance. [A]n enduring principle of Indian law [is] . . . courts will not lightly assume that Congress in fact intends to undermine Indian self-government.

*Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 788-90 (2014) (internal quotation marks and citations omitted); *see Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55-58 (1978) (as “distinct, independent political communities, retaining their original natural rights in matters of local self-government . . . Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers.”). Based on the above principles, “[t]ribal sovereign immunity protects Indian tribes from suit absent express authorization by Congress or a clear waiver of the tribe. . . . [T]he settled law of [the Ninth Circuit] is that tribal corporations acting as an arm of the tribe enjoy the same sovereign immunity granted to the tribe

itself.” *Miller v. Wright*, 705 F.3d 393, 923-24 (9th Cir. 2013). Moreover, “waivers of tribal sovereign immunity must be explicit and unequivocal.” *Id.*; *Kiowa Tribe of Oklahoma v. Manufacturing Techs., Inc.*, 523 U.S. 751, 754 (1998) (“As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived immunity.”). Tribal sovereign immunity also “extends to tribal officials when acting in their capacity and within the scope of their authority.” *Id.* at 928. Finally, “sovereign immunity is an immunity from trial and the attendant burdens of litigation, and not just a defense to liability on the merits.” *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1127 (9th Cir. 2010).

Although the district court disregarded these clear, longstanding principles in initially rejecting Petitioners’ sovereign immunity defense to the fraud and RICO claims, once the validity of this defense was on appeal, not only was the district court divested of its jurisdiction over the relevant claims, the status quo of Petitioners’ sovereign immunity was preserved unless and until such time as this Court rules otherwise. *See N.L.R.B.*, 704 F.2d at 1149; *Azurin*, 792 F.2d at 915. Because Petitioners’ sovereign immunity was in tact at the time the district court issued its Discovery Order, that order granting JW Gaming discovery rights on its fraudulent inducement claim was a blatant

violation of Petitioners' sovereign immunity.

In addition, the Discovery Order was a clear violation of the automatic stay and this Court's exclusive jurisdiction over the claims and defenses on appeal. *Claiborne*, 727 F.2d at 844, 850. Moreover, the district court has put Petitioners in an untenable position whereby compliance with the Discovery Order or the pending discovery requests directed to the Tribe may constitute an unintended waiver of Petitioners' sovereign immunity with respect to JW Gaming's fraud claim. For all these reasons, the district court undeniably acted outside its jurisdiction and authority and its Discovery Order is clearly erroneous as a matter of law.

**B. Petitioners Have No Other Adequate Means to Relief and Petitioners Will Be Damaged and Prejudiced In a Way Not Correctable on Appeal.**

Petitioners have no other adequate means to attain the relief sought by this Petition and will be irreparably damaged and prejudiced without this Court's intervention. Petitioners already have sought reconsideration of the Discovery Order in the district court by means of a requested stay of all claims pending resolution of the Appeal as well as written arguments to both the district court and the magistrate judge on the discovery dispute and corresponding Discovery Order. The district court denied all of Petitioners'

attempts to preserve the status quo, its sovereign immunity, the automatic stay and this Court's jurisdiction. *See* 1 App. 204; 2 App. 337-38. The magistrate judge simply upheld the district court's Discovery Order without consideration on the merits. 2 App. 369. Once these attempts to require court compliance with federal tribal law, jurisdictional law and the automatic stay failed, Petitioners' hands became tied.

First, the Discovery Order is effectively unreviewable on appeal from a final judgment in the district court because review at that stage would be wholly insufficient to protect Petitioners' sovereign immunity. After a final judgment, no court can undo the disclosure of documents produced in accordance with the erroneous Discovery Order. Moreover, production of such documents could be viewed as an unintended but potentially effective waiver of sovereign immunity as to JW Gaming's fraud claim, which could then irreparably prejudice Petitioners by negating their defense on Appeal.

Second, no court can undo the costs and burdens of litigation if Petitioners are forced to continue to litigate claims against which it should be protected by sovereign immunity. *See In re Papandreou*, 139 F. 3d 247, 251 (D.C. Cir. 1998) ("petitioners' immunity claim has special characteristics . . . . The infliction of [litigation] burdens may compromise it just as clearly as

would an ultimate determination of liability”). As it stands, the time and money Petitioners have expended litigating this “discovery” dispute have hampered them in the task of governing on tribal matters. These are the very burdens which tribal sovereign immunity is intended to avoid. This harm will only increase should Petitioners be forced to continue to litigate claims subject to their sovereign immunity and/or Appeal.

Finally, an alternative method to relief under which Petitioners disobey the Discovery Order and subject themselves to a subsequent, appealable contempt order is an unacceptable position in which to put a sovereign entity. *See id.* (appealing a contempt order is “not good enough” for an immunity claim). This Petition is the Petitioners’ last resort.

**C. The District Court’s Discovery Order Manifests Persistent Disregard for the Federal Rules.**

For the reasons set forth in Section VI.A above, the district court’s order demonstrates a disregard for the federal rules and in particular the automatic stay imposed as a matter of law. As an initial matter, in denying Petitioners’ motion to dismiss, the district court evinced a lack of appreciation for the doctrine of tribal sovereign immunity. The district court then disregarded the federal rules of civil procedure by permitting JW Gaming to reconstruct its original fraud allegations to align them with its breach of

contract claims so as to circumvent Petitioners' sovereign immunity and seek discovery on matters subject to an automatic stay and outside the court's jurisdiction. Even more detrimentally, the district court then adopted JW Gaming's theory devised through gamesmanship, which either neglected or dismissed the clear legal lines between tort and contract causes of action by conflating JW Gaming's claim which is outside the district court's jurisdiction (fraud), with JW's claim which is subject to the district court's jurisdiction (breach of contract). This allowed JW Gaming to bypass the impediments to proceeding with litigation on its fraud claim and continue to pursue broad and intrusive discovery in contravention of Petitioners' sovereign immunity. Additionally, requiring discovery on a claim and defense subject to appeal, which in turn has required the filing of this Petition, defeats the purpose of the automatic stay "to hold the matter under review in abeyance because the appellate court lacks sufficient time to decide the merits," *Leiva-Perez v. Holder*, 640 F.3d 962, 967 (9th Cir. 2011), "to minimize expense to the parties and to avoid the duplication of work and time expended by this [C]ourt," and to maintain the status quo of the parties' rights until resolution of the Appeal. *Town of North Bonneville, Wash. V. U.S. Dist. Court, Western Dist. of Washington*, 732 F.2d 747, 749 (9th Cir. 1984); see *N.L.R.B.*, 704 F.2d at 1149; *Azurin*, 792

F.2d at 915. Finally, the district court's Discovery Order had the effect of adjudicating Petitioners' substantial rights as well as seeking to enforce its order that is the subject of the Appeal, neither of which are permissible under federal law. *Johnson v. B.H. Liquidation Corp.*, 17 F.3d 394, 1994 WL 41116, at \*3 (9th Cir. Feb. 10, 1994); *In re Rains*, 428 F.3d 893, 904 (9th Cir. 2005).

The district court's refusal to reconsider such serious violations of federal law—including tribal sovereign immunity, federal appellate jurisdiction and the district court's own resultant lack of jurisdiction over the claims for which it now orders discovery—shows that it has disregarded federal law in the circumstances of this case.

**D. The District Court's Discovery Order Raises New and Important Problems or Issues of Law of First Impression.**

Upon information and belief, the district court's Discovery Order raises issues of law of first impression in the Ninth Circuit. At the very least, it raises important problems regarding extra-judicial proceedings and violations of federal law, including tribal sovereign immunity, warranting Ninth Circuit intervention through a writ of mandamus.

Historically, the Ninth Circuit has issued writs of mandamus where the district court erroneously denied Petitioners their rights to foreign sovereign immunity. *See, e.g., Compania Mexicana De Aviacion, S.A. v. Dist.*



*Court for Cent. Dist. of California*, 859 F.2d 1354 (9th Cir. 1988); *Taiwan v. U.S. Dist. Court for the Northern Dist. of Cal.*, 128 F.3d 712 (9th Cir. 1997); *In re Philippine National Bank*, 397 F.3d 768 (9th Cir. 2005). However, Petitioners are unable to identify a single case in which the Ninth Circuit has ruled on tribal sovereign immunity, or a district court's consequent lack of jurisdiction, in the context of a tribe's writ of mandamus petition. In cases outside of this context, this Court expressed a clear understanding of how crucial it is for a tribe to maintain its sovereign immunity. *See e.g., Pit River Home and Agr. Co-op Ass'n v. U.S.*, 30 F.3d 1088 (9th Cir. 1994) (dismissing case where tribal council could not be joined as an indispensable party due to its sovereign immunity and holding that to force intervention would require waiver of sovereign immunity and the tribal council's interest in maintaining sovereign immunity outweighed other party's interest in litigating its claims).

As such, the district court's circumvention of Petitioners' tribal sovereign immunity—both presently valid and subject to this Court's exclusive jurisdiction—by way of merging in a Discovery Order a tort claim subject to an appellate stay with a contract claim not subject to the stay, certainly presents a unique fact pattern, tribal sovereign immunity issues and other jurisdictional issues of law of first impression in this Court. At the very

least, the situation facing Petitioners as a result of the Discovery Order presents meaningful problems regarding Petitioners' ability to exercise their tribal sovereign immunity to claims they have already appealed, as well as the jurisdictional and procedural chaos that the district court has created by removing any certainty that claims subject to the automatic stay and this Court's unshared jurisdiction will be safeguarded from litigation pending resolution of Petitioners' Appeal.

**VII. All Discovery in the District Court Should Be Stayed Pending Resolution of This Petition.**

Petitioners also asks this Court to invoke its authority under the All Writs Act, 28 U.S.C. § 1651, to immediately stay all discovery while it considers this mandamus petition. *See also* 9th Cir. General Order 6.8(a) (motions panel "may also issue a stay or injunction pending further consideration of the application"). Whether to issue a stay is "an exercise of judicial discretion . . . to be guided by sound legal principles," *Nken v. Holder*, 556 U.S. 418, 433-34 (2009) (internal quotation marks omitted), based on four factors: (1) applicant's likely success on the merits; (2) irreparable injury to the applicant absent a stay; (3) substantial injury to the other parties; and (4) the public interest. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *see also* *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (*Nken* requires a

showing of irreparable harm, but applies a balancing test showing “that irreparable harm is probable and either: (a) a strong likelihood of success on the merits and that the public interest does not weigh heavily against a stay; or (b) a substantial case on the merits and that the balance of hardships tips sharply in the petitioner’s favor”). Each of these factors counsels in favor of a stay.

The arguments set out above show that Petitioners have a strong likelihood of success in obtaining mandamus. Absent a stay, Petitioners will be irreparably harmed by being forced to proceed with burdensome discovery that was (i) propounded in the absence of jurisdiction, (ii) in violation of the automatic stay, and (iii) in contravention of Petitioners’ sovereign immunity. Most immediately, Petitioners must serve responses to 96 requests for admission and 14 interrogatories, a large number of which seek information relating to the claims on appeal, by June 26. 2 App. 345-59; 360-66. JW Gaming has also requested to take the depositions of the Individual Tribal Defendants in violation of the automatic stay and those officials’ and employees’ sovereign immunity. 2 App. 367-68.

A stay of proceedings during the pendency of this mandamus petition is not likely to appreciably harm JW Gaming. The Appeal has not yet been

decided and no trial date is set. Finally, the public interest strongly favors a stay, because absent such relief the Petitioners, including members of the governing tribal council of the Tribe, will be subject to continued unlawful discovery and forced to divert substantial resources away from their essential government functions. Given the impending discovery deadlines, Petitioners respectfully request an expedited ruling from this Court on this request for a stay and an immediate administrative stay while the Court considers the Petitioners' stay request.

### **VIII. In the Alternative, This Petition Should Be Treated as a *Cohen* Appeal**

Should this Court conclude that a writ of mandamus should not issue, Petitioners respectfully request this Petition be treated as an appeal of the Discovery Order under *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949) ("*Cohen*"). This Court has converted petitions for writ of mandamus into appeals in the past. *See, e.g., Compania Mexicana De Aviacion, S.A. v. U.S. Dist. Court for Cent. Dist. of California*, 859 F.2d 1354, 1357 (9th Cir. 1988) ("Although mandamus normally may not substitute for an appeal, [the Ninth Circuit Court of Appeals has] sometimes construed petitions for writ of mandamus as notices of appeal." (citing cases)). Moreover, there is meaningful overlap in the requirements for a writ of mandamus and those of a *Cohen*

appeal. To qualify for immediate appeal under *Cohen*, (1) “the order must conclusively determine the disputed question,” (2) “resolve an important issue completely separate from the merits of the action,” and (3) “be effectively unreviewable on appeal from a final judgment.” *In re Cement Antitrust Litigation*, 673 F.2d 1020, 1022 (9th Cir. 1981) (quoting *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 375 (1981)). This standard is easily satisfied here.

**A. The District Court’s Discovery Order Conclusively Determines the Disputed Question.**

The disputed question in the discovery dispute in the district court is whether JW Gaming is entitled to discovery relevant to its reformation of contract remedy. The Discovery Order rules that it is. 2 App. 337-38. Because the magistrate declined to disturb this ruling, the order conclusively determines that JW is entitled to discovery on its fraudulent inducement claim, and JW has proceeded to issue discovery in conformity therewith.

**B. The District Court’s Discovery Order Resolves an Important Issue Separate From the Merits of the Action.**

The Discovery Order resolves a discovery issue and creates jurisdictional issues, which are distinct from the merits of the action. The discovery issue is important because of its implicit results. As noted in Section

V, *supra*, the erroneous ruling has emboldened JW Gaming to issue broad and intrusive written discovery relating to the fraud and RICO claims. It has also prompted JW Gaming's counsel to seek the deposition testimony of each of the Individual Defendants when only a limited number of those defendants have relevant knowledge of the contract claim. Further, because the fraud claim is subject to an automatic stay pending resolution of Petitioners' Appeal, the results of the Discovery Order raise crucial jurisdictional issues, including (1) circumvention of Petitioners' sovereign immunity by implicitly ruling for a second time that Petitioners are not entitled to such immunity on JW Gaming's fraud claim—the very ruling subject to the Appeal, (2) a tacit, but apparent, ruling that the fraud claim is jurisdictionally linked to the contract claim, thus negating Petitioners' Appeal, (3) violation of the automatic stay and this Court's exclusive jurisdiction over matters on appeal, and (4) the scope of discovery on a claim within the district court's jurisdiction while related claims are on appeal and thus outside its jurisdiction. *See* Section VI.A, *supra*. While these may not have been the intended issues to be “resolved” by the district court, the consequences of the Discovery Order are inescapable absent intervention by this Court.

**C. The District Court's Discovery Order is Effectively Unreviewable on Appeal from a Final Judgment.**

For all the reasons set forth in Section VI.B, *supra*, the Discovery Order is effectively unreviewable on appeal from a final judgment.

**IX. Conclusion**

For all the foregoing reasons, Petitioners respectfully request that this Court grant their petition for a writ of mandamus, or in the alternative, grant Petitioners' *Cohen* appeal; direct the district court to vacate its Discovery Order; and issue a stay of all discovery in the district court pending the determination of this Petition and, if the Petition is granted, until such time that the Appeal is decided.

Respectfully submitted this 17th day of June, 2019.

BERG HILL GREENLEAF RUSCITTI LLP

*s/ Rudy E. Verner*

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Counsel for Petitioners

### **STATEMENT OF RELATED CASES**

There is one related case within the meaning of Circuit Rule 28-2.6, namely, Defendants' prior Appeal from the Judgment of the United States District Court for the Northern District of California: JW Gaming Development, LLC v. Angela James, et al. (9<sup>th</sup> Cir. 2018) (No. 18-17008).



**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 17. Statement of Related Cases Pursuant to Circuit Rule 28-2.6**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form17instructions.pdf>*

**9th Cir. Case Number(s)** 18-17008

The undersigned attorney or self-represented party states the following:

- ☐ I am unaware of any related cases currently pending in this court.
- ☐ I am unaware of any related cases currently pending in this court other than the case(s) identified in the initial brief(s) filed by the other party or parties.
- ☒ I am aware of one or more related cases currently pending in this court. The case number and name of each related case and its relationship to this case are:

Case No. 18-17008; JW Gaming Development, LLC v. Angela James; Leona L. Williams; Michael R. Canales; Melissa M. Canales; John Tang; Pinoleville Pomo Nation; Pinoleville Gaming Authority; Pinoleville Gaming Commission; Pinoleville Business Board; Pinoleville Economic Development, LLC; Lenora Steele; Kathy Stallworth; Michelle Campbell; Julian J. Maldonado; Donald D. Williams; Veronica Timberlake; Cassandra Steele; Jason Edward Running Bear Steele; Andrew Stevenson; Canales Group, LLC; Lori J. Canales; Kelly L. Canales; and Does 1 through 20

**Signature** s/ Rudy E. Verner, Esq.

**Date** Jun 17, 2019

*(use "s/[typed name]" to sign electronically-filed documents)*

### **CERTIFICATE OF COMPLIANCE**

I am the attorney for Petitioners.

This brief contains 7,790 words in compliance with the word limit set forth in Fed. R. App. P. 21(d)(1), excluding the items exempted by Fed. R. App. P. 21(a)(2)(C) and Fed. R. App. P. 32(f). The brief's type and size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

*s/ Rudy E. Verner*

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Rudy E. Verner

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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19-

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- ☒ complies with the word limit of Cir. R. 32-1.
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  - ☐ a party or parties are filing a single brief in response to multiple briefs; or
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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on June 17, 2019.

I further certify that on June 17, 2019, a notice of the filing of the foregoing (including a complete copy of the foregoing) will be filed in underlying proceeding in the United State District Court for the Northern District of California in compliance with Federal Rule of Appellate Procedure 21(a)(1), and that all parties to the proceeding will be served with that notice through the district court's CM/ECF system. In addition, a courtesy copy of the foregoing has been provided via e-mail to the following counsel for Plaintiff.

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DATED: June 17, 2019

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