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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ACRES BONUSING, INC., et al.,

Plaintiff,

v.

LESTER MARSTON, et al.,

Defendants.

Case No.: 3:19-cv-5418-WHO

ABI'S REPLY TO DEFENDANTS' OPPOSITION TO ABI'S MOTION FOR SANCTIONS

Date: April 15, 2020
Time: 2:00 p.m.
Judge: The Honorable William H. Orrick

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Table of Contents

Table of Cases

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Memorandum in Reply

Plaintiff, Acres Bonusing, Inc. ("ABI") rests its entire motion for sanctions on but a single and, quite simple, argument: Defendants' anti-SLAPP motions are frivolous because California's anti-SLAPP statute does not protect petitions made to tribal governments. Defendants' have not refuted that argument and the motion should be granted.

I. The anti-SLAPP Statute Only Protects Petitioning Rights Conferred by the United States or California Constitutions.

ABI's argument is grounded in the plain language of the statute which explicitly limits itself to petitioning rights conferred by the United States or California constitutions. California Code of Civil Procedure 425.16. The only court to consider whether petitioning activities outside a United States or California constitutional framework are protected by the anti-SLAPP statute found such petitioning was NOT protected. *Guessous v. Chrome Hearts,* 179 Cal.App.4th 1177, 1185 (2009).

II. Defendants' Argument the Indian Civil Rights Act Created a Constitutional Right to Petition Tribal Governments is Frivolous.

Defendants do not argue California's constitution provides a right to petition Blue Lake's government for redress. Defendants only argue for a federal constitutional right.

The First Amendment to the United States Constitution provides that "Congress shall make no law … abridging the right of the people … to petition the Government for a redress of grievances." Congress passed the Indian Civil Rights Act ("ICRA") because tribal sovereigns are "unconstrained" by the Bill of Rights or the Fourteenth Amendment. *Santa Clara Pueblo v. Martinez* 436 US 49, 56 (1978). Because tribes are "unconstrained" by the Bill of Rights, the First Amendment cannot confer a Constitutional right to petition tribal governments.

Defendants argue ICRA acts as a 'tribal Fourteenth Amendment,' incorporating the Bill of Rights against tribal governments. Dkt. 40, ECF p4. The argument is frivolous. Congress

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cannot create Constitutional rights or obligations through mere statute. Nothing Defendants present even remotely fills this rather obvious void.

ICRA was not a grant of Constitutional rights. Instead, ICRA was an exercise of Congress' "plenary authority to limit, modify or eliminate the powers of local self-government which the tribes otherwise possess." *Santa Clara,* 56. In the past, Congress has wielded its plenary authority over tribes to abolish tribal courts through statute. See *Murphy v. Royal,* 875 F.3d 896, 934 (10th Cir. 2017) [Congress abolished Creek tribal courts with Curtis Act of 1898].

Congress' power to limit, modify or eliminate tribal courts through statute is further proof Defendants' assertion of a Constitutional right to petition tribal governments in tribal courts is frivolous. Congress cannot eliminate Constitutional rights through mere statute.

III. This Court Should Grant the Sanctions Motion to Prevent a Frivolous Appeal.

When Acres sought relief from tribal jurisdiction in this Court, Defendants relied on *Santa Clara* to establish there is no federal guarantee of due process in tribal court. *Acres v. Blue Lake I,* Dkt. 15, ECF p7 [and attached as Exhibit 1]. Defendants now argue they had a Constitutional right to sue ABI in a forum where ABI had no federal guarantee of due process. Because Defendants' position is neither Acres nor ABI were guaranteed a federal right of due process in tribal court, it is an absurd affront to the Constitution for Defendants to argue Blue Lake had a Constitutional right to sue ABI in tribal court.

If this Court denies the anti-SLAPP motions on their merits Defendants will have the right to take a frivolous appeal from that ruling. Striking the motions is appropriate to avoid frivolous appeals.

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Dated: February 20, 2020

/s/ Ronald H. Blumberg
Ronald H. Blumberg
Attorneys for Acres Bonusing, Inc.