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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

**PLAINTIFF, ABI'S OPPOSITION TO THE RAPPORT
& MARSTON/BLUE LAKE ANTI-SLAPP MOTION**

Date: April 15, 2020

Time: 2:00 p.m.

Judge: The Honorable
William H. Orrick

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I. INTRODUCTION

In late 2015 Blue Lake Rancheria ("Blue Lake") sued Plaintiffs, Acres Bonusing, Inc. ("ABI") and James Acres ("Acres"), individually, in Blue Lake's tribal court. The case was styled as *Blue Lake Casino & Hotel v. Acres Bonusing, Inc.* ("*Blue Lake v. ABI*"). The details are by now familiar to the Court and have been recounted at length several times.

This memo opposes the Rapport & Marston/Blue Lake ("RMBL") faction's anti-SLAPP motion at docket 50. Because most of the issues and arguments are by now familiar to the Court ABI will adopt arguments it has previously made by reference.

II. THE RMBL ANTI-SLAPP MOTION MUST BE DENIED AT PRONG-ONE

Lawsuits by Blue Lake in Blue Lake tribal court are not petitioning acts protected by the United States or California Constitutions. Even if tribal court lawsuits were protected, *Blue Lake v. ABI* was not good-faith petitioning, but rather a show-trial orchestrated by RMBL. The RMBL anti-SLAPP Motion fails at the outset.

A. ABI Adopts Its Existing Prong-One Arguments.

ABI adopts and incorporates by reference in full the arguments it made on its Rule 11(b) motion and its Opposition to the Boutin Jones anti-SLAPP motion. Dkts. 38, 46, 56.

B. Rapport & Marston Advised Blue Lake While *Blue Lake v. ABI* Was Underway That the "Bill of Rights Does Not Apply to Indian Tribes."

While *Blue Lake v. ABI* was underway, Judge Marston and his associates advised Blue Lake on an employee dispute at its casino. From entries in Judge Marston's billing records it is evident the dispute involved religious accommodation. Dkt. 1, ¶¶78-79.

On September 19, 2016, after Judge Marston lied from the bench and declined to disqualify himself from *Blue Lake v. ABI*, Defendant Burrell noted in a billing record that the "bill of rights does not apply to Indian tribes." Dkt. 35-1, p217 [see next page for reproduction].

Burrell cited Talton v. Mayes, 163 US 376 (1896) to support her conclusion. See also Nevada v. Hicks 533 US 353, 383 (2001) [Justice Scalia summarizing *Talton* as holding the Bill of Rights does not apply to tribes].

Fig. 1 – Excerpt from Billing Records

9/16/2016	LJM	Review and revise the memo to the Council re: the status of the DMV case.
	LJM	Final proofing of the order after hearing in the Acres case.
	LJM	Final review of the Order after hearing in Acres.
9/19/2016	CMD	Preparation of (continued) memorandum re: reasonable accommodation and free exercise of religion.
	AB	Legal Research re: provisions in tribal law re: religious freedom accommodation, including but limited to the compact, gaming ordinance, ordinance prohibiting discrimination in the workplace, constitution, and employment law in Indian country handbook, bill of rights does not apply to Indian tribes (<i>Talton v. Mayes</i>).

The RMBL Defendants know *Blue Lake v. ABI* was not protected petitioning under the Constitution because they know tribal governments are not restrained by the Bill of Rights, and because they take advantage of that fact for their own commercial benefit.

C. Judge Marston Concealed From This Court He Was a Compact Negotiator for Blue Lake the Entire Time He Presided Over *Blue Lake v. ABI*.

On November 8, 2016 Judge Marston declared to this Court:

Fig. 2 - Excerpt from Acres v. Blue Lake II, Dkt. 22 [Marston Decl.]

12		4. I do not represent, nor am I paid by, the Tribe or the Blue Lake Casino &	
13		Hotel with respect to renegotiating tribal-state gaming compacts.	

Judge Marston concealed his role as compact negotiator for Blue Lake from this Court. From June of 2015 to July of 2019 Judge Marston attended twenty-one in-person compact negotiation sessions where he negotiated against the State of California on Blue Lake's behalf. RJN at Dkt. 55-7. Five of these sessions occurred while Judge Marston presided over *Blue Lake v. ABI*. Id., pp35-92. One of these sessions took place on October 19, 2016, just three weeks before Judge Marston made his false declaration in *Acres v. Blue Lake II*. Id., pp65-74.¹

Judge Marston continues to maintain before this Court he did not represent Blue Lake at these negotiation sessions. Dkt. 32-4, ¶27. This is directly contrary to representations Judge Marston made in *Chicken Ranch et al. v. California*.² In *Chicken Ranch*, Judge Marston states any statements made in compact negotiations were made on behalf of all the negotiating tribes, including Blue Lake. RJN at Dkt. 55-5, pp3-4 [Blue Lake belonged to a group negotiating tribes]; Dkt. 55-6, p3 [negotiator statements are made on behalf of all negotiating tribes].

None of Judge Marston's negotiation sessions appear in the billing records. However, Blue Lake is a plaintiff in the *Chicken Ranch* case, and the billing records do show Judge Marston advised Blue Lake on suing the state for bad-faith compact negotiations. Dkt 1, ¶¶36, 65, 77. Judge Marston will no doubt reply he is not Blue Lake's attorney in *Chicken Ranch* and that Blue Lake is represented in *Chicken Ranch* David Dehnert. However, Judge Marston previously named Dehnert to be a Blue Lake tribal court judge - without even informing Dehnert of the fact. Dkt. 1, ¶¶85-86. There will be no reason to believe Judge Marston if he claims he is not Blue Lake's attorney in *Chicken Ranch*.

¹ George Forman also appears as a tribal negotiator alongside Judge Marston.

² Case No. 1:19-24-AWI-SKO in the United States District Court for Eastern California.

D. *Blue Lake v. ABI* Was a Show-Trial, Not A Protected Petitioning Activity.

Judge Marston and his associates were attorneys working for Blue Lake the entire time they presided over *Blue Lake v. ABI*. Blue Lake knew it. Blue Lake paid for it. Dkt. 36, p4. Blue Lake's purpose was to provide a simulacrum of due-process and thereby convince a United States or California court to enforce its fraudulent judgments.

RMBL's behavior was outrageous. RMBL made sure *Blue Lake v. ABI* was outside the protection of the California and United States Constitutions. This Court cannot find RMBL's conduct was protected by the anti-SLAPP statute.

III. THIS COURT CANNOT GRANT RMBL SUMMARY JUDGMENT BECAUSE THERE HAS BEEN NO OPPORTUNITY FOR DISCOVERY

The RMBL Defendants explicitly state their anti-SLAPP motion "includes evidence outside of the [Verified] Complaint" and is therefore a "substantive motion rather than an attack on the sufficiency of the pleadings." Dkt. 52, p4. Because RMBL chose to make a "substantive motion" supported by evidence, the anti-SLAPP must be evaluated as a motion for summary judgment. This Court cannot grant RMBL summary judgment because ABI has not had the opportunity to conduct discovery. [*Planned Parenthood v. Center for Medical Progress* 890 F.3d 828, 833-835 \(9th Cir. 2018\)](#). Furthermore, ABI's Opposition to RMBL's other pending motion (Dkt. 45), as well as RMBL's own declarations (Dkts. 32-2 to 32-6) provide ample grounds for the Court to deny RMBL's motion under any standard.

IV. CONCLUSION

Defendants sued ABI in Blue Lake tribal court where they knew ABI would be bereft of Constitutional protections. Defendants willfully misled this Court to further their goals. ABI

1 should not be facing an anti-SLAPP motion. Defendants should be facing United States
2 Attorneys.

3 The motion must be denied.

4 **BLUMBERG LAW GROUP LLP**

5 Dated: March 18, 2020

6 /s/ Ronald H. Blumberg

7 Ronald H. Blumberg
8 Attorneys for Plaintiff, Acres Bonusing, Inc.
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