UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
CIVIL MINUTES

Case Title: Jason Diven

Case No.: 20-24311 - E - 13
Docket Control No. TBG-1
Date: 07/01/2021
Time: 10:30 AM

Matter: [84] - Motion/Application for Sanctions for Violation of the Automatic Stay [TBG-1] Filed by Debtor Jason Diven (tsef)

Judge: Ronald H. Sargis
Courtroom Deputy: Nancy Williams
Reporter: Diamond Reporters
Department: E

APPEARANCES for:
Movant(s):
(by phone) Debtor's Attorney - Bonnie Baker; (by phone) Debtor's Attorney - Daniel J. Griffin
Respondent(s):
(by phone) Creditor's Attorney - Jack Duran; Atty Valery Loumber

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CIVIL MINUTES

Motion Granted

See Findings of fact and conclusions of law below

The chambers will issue an order.

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 27, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Sanctions for Violation of the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final

hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Motion for Sanctions for Violation of the Automatic Stay is granted, and the court awards $7,291.00 in attorney's fees damages pursuant to 11 U.S.C. § 362(k) against NUMA Corporation a.k.a. the Cedarville Rancheria of Northern Paiute Indians. All other relief requested is denied.

INTRODUCTION

A matter of interesting legal issues, application of Bankruptcy Code provisions not routinely addressed by the Bankruptcy Court judges or District Court judges concerning bankruptcy cases, and professional oral argument was presented to the court. Whether the counsel advocating for their respective client agreed with the court's analysis and points, they focused on the legal issues in helping the court in reaching its decision.

As addressed below, as provided by Congress in 11 U.S.C. § 106(a)(1) and established by the Ninth Circuit Court of Appeals, sovereign immunity for a Native American Tribes has been partially abrogated by Congress for specific provisions of the Bankruptcy Code. While the Cedarville Rancheria of Northern Paiute Indians and its counsel are wrong that the decision of the Ninth Circuit should not be followed, such is definitely not the prerogative of a bankruptcy judge or district court judge.

Fortunately, though acting in violation of the automatic stay, this has been in a contained, limited circumstance environment. The 11 U.S.C. § 362(k) damages are not substantial. Additionally, NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians and the Cedarville Rancheria of Northern Paiute Indians DBA NUMA Corporation have a clear path for seeking the appropriate relief as provided by Congress in 11 U.S.C. § 362(d) if they desire to proceed in the Tribal Court while the Chapter 13 case is pending.

As discussed at the hearing, it is interesting to note which provisions that Congress has selectively abrogated Sovereign Immunity for the Native American Tribes. In connection with this Chapter 13 case and most relevant to the matter now before the court, these include: 11 U.S.C. §§ 105 (Power of the Court and Issuance of Orders to Enforce the Provisions of the Bankruptcy Code, Rules, and Order of the Court); 106 (Abrogation of Sovereign Immunity); 108 (Extensions of Non-Bankruptcy Statutes of Limitations and Other Deadlines); 362 (Automatic Stay); 502 (Allowance of Claims and Adjudication of Objections Thereto); 1301 (Co-Debtor Stay); 1303 (Powers of Chapter 13 Debtor); and 1327 (Effect of Confirmation of Chapter 13 Plan). In general, the abrogation relates to the property of the bankruptcy estate, recovery of property of the estate and preferences/fraudulent conveyances/post-petition transfers, claims to be presented in the bankruptcy case, confirmation and effectiveness of bankruptcy plans, and for Chapter 11 and 12 cases, the effect of confirmation providing for a discharge of debt (11 U.S.C. § 1141 and 1227). However, with respect to Chapter 13 cases, Congress abrogates Sovereign for the effect of confirmation of the Chapter 13 Plan (11 U.S.C. §1327) but not for the 11 U.S.C.

§ 1328 Chapter 13 discharge following completion of the plan. Thus, it appears that some of the abrogation of Sovereign Immunity issues may be even more complex for the parties and their counsel.

REVIEW OF MOTION

The present Motion for Sanctions for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by Jason Diven ("Movant"). The claims are asserted against Numa Corp., aka Cedarville Rancheria of Northern Paiute Indians and its counsel, Jack Duran, Esq.

In reviewing the file, this "aka" designation is how Numa Corporation and Cedarville Rancheria of Northern Paiute Indians present themselves to this court. Examples of such are:

A. Proof of Claim 6-1 filed by "Numa Corp AKA Cedarville Rancheria of No. Paiute Indians." POC 6-1 Part 1, ¶ 1. It then directs notices be sent to this creditor at "Cedarville Rancheria." Proof of Claim No. 6-1 is signed by Jack Duran, Jr., who identifies himself as "General Counsel" to Cedarville Rancheria of No. Paiute Indians." POC 6-1, Part 3.

B. The Opposition to the current Motion is stated as being filed by "Numa Corporation a.k.a. Cedarville Rancheria of Northern Paiute Indians." Opposition, p. 1:24-25; Dckt. 109. However, in the body of the opposition, the a.k.a. of Cedarville Rancheria of Northern Paiute Indians is stated to own Numa Corp.

C. Provided as Exhibit A in support of the Motion, Dckt. 88, is a copy of the "Request for Status Conference" in the Tribal Court, in which the Plaintiff is identified as "Cedarville Rancheria of Northern Paiute Indians DBA Numa Corporation." Exhibit E, Request for Status Conference, p. 1:6-7, 11-13.

D. Exhibit D, Dckt. 88, is a copy of an Order After hearing by Chief Judge Patricia Lenzi before whom the Tribal Court action is pending. In her order, Mr. Duran is identified as counsel for "Cedarville Rancheria of Norther Paiute Indians," with no reference to a dba of Numa Corp. Order, p. 1:10-11.

E. In Jack Duran, Jr.'s Declaration, Dckt. 110, filed in this Contested Matter, he, as counsel, identifies his client as "Numa Corp. (owned and operated by Cedarville Rancheria of Northern Paiute Indians." Duran Dec., p. 1:4-6.

1. In his declaration he states that he represents "NUMA Corp. a.k.a. Cedarville Rancheria of Northern Paiute Indians, a federally recognized Indian Tribe. NUMA Corp. is a section 17 chartered corporation, wholly owned and operated by the Tribe. " *Id*., ¶ 2.

The Internal Revenue Services has a Tribal Business Structure Handbook on its website that describes a Section 17 corporation:

> 2. Section 17 Corporations
>
> Many tribes conduct their commercial activities through federally-chartered corporations formed under Section 17 of the Indian Reorganization Act (IRA).4 To form a Section 17 Corporation, a tribe must petition the Secretary of the Interior for issuance of a corporate charter. A Section 17 corporation provides a framework by which a tribe can segregate tribal business assets and liabilities from the assets and liability of tribal governmental assets. It also preserves the integrity of the decision-making process of tribal governmental officials by separating business decisions. The charter defines the powers of the corporation which can include the power to buy and sell real and personal property and to conduct such further powers as may be incidental to the conduct of corporate business. Several courts have held that tribal sovereign immunity applies to the business activities conducted by a Section 17 Corporation; other courts have found a waiver of sovereign immunity in the "sue and be sued" clause of the corporate charter. Tribal corporations formed under Section 17 of the IRA have the same tax status as the tribe and are not subject to federal income taxes for income derived from on or off reservation activities.

https://www.irs.gov/pub/irs-tege/tribal_business_structure_handbook.pdf.

Black's Law Dictionary provides the definition for the term "a.k.a." to be "Also known as." Black's Law Dictionary (11th ed. 2019). The term "DBA" is defined as, "precedes a person's or business's assumed name <Paul Smith d/b/a Paul's Dry Cleaners>. It signals that the business may be licensed or incorporated under a different name." *Id*. Thus, the question arises whether NUMA Corporation and Cedarville Rancheria of Northern Paiute Indians affirmatively state that they are the same entity, and not a corporation separate from the Tribe.

Because everyone in this matter has used the term NUMA Corp, a.k.a. Cedarville Rancheria of Northern Paiute Indians (and the court did not catch this common identification statement by NUMA Corp. and the Cedarville Rancheria of Northern Paiute Indians so as to address it with counsel at the hearing), the court will use the identifier used by the two, or three, Parties for the person whose conduct is at issue in this Contested Matter.

Legal Standard

A request for an order of contempt by a debtor, United States Trustee, or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. FED. R. BANKR. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283–85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to willful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award

damages for violation of the automatic stay (a Congressionally-created injunction) pursuant to its inherent power as a federal court. *Sternberg v. Johnston*, 595 F.3d 937, 946 (9th Cir. 2009). [FN.1].

FN.1. Bankruptcy courts have jurisdiction and authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548–49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *see In re Lehtinen*, 564 F.3d at 1058.

Attorneys' fees may be recovered for work involved in bringing about an end to the stay violation and for pursuing an award of damages. *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095, 1101 (9th Cir. 2015). A monetary penalty may not be imposed on a creditor unless the conduct occurred after the creditor receives notice of the order for relief as provided by § 342. 11 U.S.C. § 342(g)(2).

The automatic stay imposes an affirmative duty of compliance on the non-debtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151–52 (9th Cir. 1996). A party who acts in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191–92 (9th Cir. 2003).

In addition, Congress provides in 11 U.S.C. § 362(a) & (k) additional relief for violation of the automatic stay, which may be requested by an individual debtor.

Grounds and Relief in Motion

In asserting this claim pursuant to 11 U.S.C. § 362(a) & (k), Movant states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds for relief:

A. The request is made pursuant to 11 U.S.C. § 362(k) based on NUMA Corp.'s and Cedarville Rancheria of Northern Paiute Indians' actual knowledge of the Chapter 13 petition filed.

B. NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians has continued legal proceedings in tribal court case no. CEO-CI-2019-002 by requesting a status conference and briefing schedule to determine the scope of the automatic stay in the Tribal Court.

C. The case has been continued despite Debtor's attempt to meet and confer, and the stipulation to file any request for relief in the bankruptcy court.

Debtor requests the following relief:

1. An award actual damages of attorney's fees totaling $9,579;

2. An award for emotional distress damages of $2,657;

3. An award for punitive damages in an amount necessary to punish the willful acts of NUMA Corp., Cedarville Rancheria of Northern Paiute Indians and its counsel, and to deter any further action without further order from this Court.

Motion, Dckt. 84.

Review of the Memorandum of Points and Authorities

In the Memorandum of Points and Authorities, Debtor argues that violations of the automatic stay are actionable against not only the client, but the attorney for that client that willfully violates the automatic stay on behalf of that client; pointing the court to *In re LeGrand*, 612 B.R. 604, 612 (Bankr. E.D. Cal. 2020) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 396–97 (1993); *Link v. Wabash R. Co.*, 370 U.S. 626, 633–34 (1962); *Smith v. Ayer*, 101 U.S. 320, 325–26 (1879)).

Debtor alleges that NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians and their counsel violated the automatic stay and are thus subject to damages by continuing litigation in the Tribal Case, despite actual knowledge of the bankruptcy proceedings.

Moreover, Debtor argues that NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians is not entitled to raise sovereign immunity as a defense where courts have found that Indian Tribes cannot assert sovereign immunity in bankruptcy actions and the filing of a proof of claim constitutes a waiver of sovereign immunity with respect to the entity's claim.

Evidence Presented

Movant has provided the Declaration of Jason Diven in support of the Motion. Dckt. 90. In his Declaration, Debtor testifies under penalty of perjury that he has spent $2,657.00 on mental health care due to NUMA Corp. a.k.a, Cedarville Rancheria of Northern Paiute Indians' efforts at the Tribal Court; adding that he is "stressed, losing sleep, and ha[s] anxiety as a direct result of [NUMA Corp. a.k.a, Cedarville Rancheria of Northern Paiute Indians]'s efforts to continue litigation" against him. *Id.*

Movant has also provided the Declarations of Daniel J. Griffin and Bonnie Baker in support of the Motion. Dckts. 86, 87. In their declarations, Counsels Griffin and Baker testify under penalty of perjury as to the attorney's fees and costs incurred to meet and confer, file pleadings in the tribal court case to preserve Debtor's rights and in connection with the instant motion, and appearances at the trial court.

Continuance and Appearances at May 11, 2021 Initial Hearing

Daniel Griffin, Esq., and Bonnie Baker, Esq., counsel for Debtor, and Jack Duran, Jr., Esq., counsel for NUMA Corp., owned and operated by Cedarville Rancheria of Northern Paiute Indians, and the Rancheria (specially appearing) appeared at the May 11, 2021 hearing. The respective counsel agreed that a threshold issue to address is the question of sovereign immunity for NUMA Corporation, the Rancheria, and its counsel, and if such exists, whether it was waived.

For Phase 1 of this Contested Matter, the Parties agreed to the following briefing schedule on the issues of sovereign immunity, waiver, and the effect of Proof of Claim No. 6-1 filed in this case identifying the creditor as "NUMA Corp AKA Cedarville Rancheria of No. Paiute Indians" (POC 6-1, Part 1, § 1):

1. On or before June 4, 2021, NUMA Corporation and the Cedarville Rancheria of Northern Paiute Indians shall file and serve opposition pleadings relating to the issues of sovereign immunity, waiver of sovereign immunity, and the effect of Proof of Claim 6-1 filed in this case.

2. On or before June 18, 2021, Debtor shall file and serve Reply, if any, pleadings.

3. The continued hearing on the above issues shall be conducted at 10:30 a.m. on July 1, 2021.

The Parties also agreed on the record that a stipulation to stay the proceeding in the Tribal Court that are the subject of this Contested Matter, with the stipulation to be prepared by counsel for NUMA Corporation and the Rancheria. The judge in the Tribal Court has requested that the parties address the issue of that court's jurisdiction in light of the bankruptcy case.

Supplemental Pleadings

Creditor NUMA Corp. and
Cedarville Rancheria of Northern Paiute Indians

NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians filed an Opposition on June 4, 2021. Dckt. 109. The same day, NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians filed an Amended Opposition. Dckt. 111. The court summarizes the Amended Opposition under the assumption that it replaces the one filed earlier the same day. NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians argues that they are not in violation of the stay on the following grounds:

A. The stay does not apply to proceedings before foreign tribunals such as the Tribal Court in this case. Specifically in this case, the automatic stay does not apply because the dispute involves the construction of a building on Tribal land with tribal funds and it is the Tribal Court who has jurisdiction to solve this dispute. Referring the court to *In re Artimm, S.r.l.*, 278 B.R. 832, 841 (Bankr. C.D. Cal. 2002), Movant

argues that even if the automatic stay applied, it is up to the Tribal Court to determine whether it is subject to the automatic stay.

B. The Tribal Court system is protected by the Tribe's sovereign immunity because the proceeding is one where the tribe is seeking to resolve an intra-tribal dispute within its own system and the stay cannot preclude the tribe from seeking to administer justice on local disputes through their own systems. NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians points the court to *In re Nat'l Cattle Cong.*, 247 B.R. 259, 268 (Bankr. N.D. Iowa 2000) arguing that the Tribe did not waive its sovereign immunity when it filed the proof of claim, which included a waiver disclaimer that for some reason was not docketed within the proof of claim.

As the court addressed with the Parties at the hearing, the question is not whether the automatic stay has a federal judge running a Tribal Court, but whether NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians is violating the automatic stay, rendering their actions void and subject to sanctions and damages) and if they seek to get an order or judgment in violation of the stay, then that judgement or order being void in the United States.

C. The Tribe's request for a Status Conference and Briefing Schedule did not violate the automatic stay because these actions did not infringe on this Court's authority or violate any rights of Debtor under the Bankruptcy Code. The Tribal Court also stayed the proceeding even though the case had been in litigation for close to a year by the time Debtor filed its bankruptcy petition. NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians requesting the Tribal Court to examine its own jurisdiction is not a violation of the stay.

D. The Ninth Circuit case, *Krystal Energy Co. v. Navajo Nation*, 357 F.3d 1055, 1060–61 (9th Cir.2004), cert. denied, 543 U.S. 871 (2004), does not apply in this case because that case involved an inter-tribal matter (matter outside of the tribe's affairs) brought before a non-tribal court (the bankruptcy court). Here, the issue is whether a tribe can be precluded from seeking to resolve an intra-tribal matter in its own tribal court, within the exclusive jurisdiction of the Tribe. Applying *Krystal Energy* to this case is asserted to be an egregious encroachment into the internal affairs of NUMA Corp and Cedarville Rancheria of Northern Paiute Indians. If this court chooses to impose the stay over the internal affairs of the Tribe, the court would destroy principles of Tribal sovereignty, including the Tribe's ability to administer justice in local, intra-tribal disputes through its own court system. The imposition of the stay over the NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians goes against Supreme Court decisions recognizing Tribal sovereignty and Tribal authority over activities on reservation lands, citing to *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9 (1987), where the

Supreme Court lists several cases decided by that court directly addressing tribal sovereignty.

E. Thus, the court must determine that the automatic stay does not prevent the Tribal Court from assessing its own jurisdiction nor does it prevent the Tribe from resolving the dispute with Debtor pending before the Tribal Court.

Debtor's Supplemental Response

Debtor filed a Reply on June 18, 2021 in further support of its Motion and addressing certain points raised by NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians:

A. Allegations made in the Opposition regarding the merits of the underlying dispute should not be addressed by the court where a claim objection has not yet been filed.

B. NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians has failed to present evidence that it is entitled to sovereign immunity where NUMA Corp. is a corporation formed by a tribe and has failed to present evidence that meets the "subordinate economic entity test." Movant points the court to *In re Whitaker*, 474 B.R. 687 (B.A.P. 8th Cir. 2012), which discusses the six factors test most commonly applied to determine whether a related organization is sufficiently close to the tribe to assets its sovereign immunity:

1) The method of creation of the economic entities;

2) Their purpose;

3) Their structure, ownership, and management, including the amount of control the tribe has over the entities;

4) The tribe's intent with respect to sharing of its sovereign immunity;

5) The financial relationship between the tribe and the entities;

6) The policies underlying tribal sovereign immunity and its connection to tribal economic development, and whether these policies are served by granting immunity to the economic entities.

In re Whitaker at 696–97.

C. NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians fails to meet the factors test because they have not explained the purpose of its formation; additional information is needed regarding NUMA Corp. a.k.a Cedarville Rancheria of Northern Paiute Indians' management, structure, or the Tribe's control over the entity; and no information is provided on the financial relationship between the NUMA Corp. and Cedarville Rancheria of Northern Paiute Indians or how its receipt of non-tribal funds from HUD preserves its status as a purely tribal entity. Thus, NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians. should not be allowed to claim this affirmative defense.

D. NUMA Corp.'s and Cedarville Rancheria of Northern Paiute Indians' claim to sovereign immunity was abrogated by Congress through 11 U.S.C. § 106 because it specifically states that "notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in [§ 362]." Citing to *In re Russell*, 293 B.R. 34, 40 (D. Ariz. 2003), a governmental unit for purposes of this section includes Indian Tribes as they are domestic governments. Movant further arguing that when applying the appropriate tools of statutory interpretation Indian governments would be included in the list of government types in § 101(27). Applying the following shows that Indian government bodies and proceedings must be automatically stayed from collection activity by § 362(a): principle of *ejusdem generis*; courts should not create exceptions in addition to those specified by Congress; the purpose rule; and the cannon of constructions that lead to absurd or unreasonably harsh results are disfavored.

E. Ninth Circuit courts have rejected attempts by Indian Tribes to assert sovereign immunity in bankruptcy actions. *Krystal Energy Co. v. Navajo Nation*, 357 F.3d 1055, 1060–61 (9th Cir. 2004); *In re Brown*, 2006 WL 6810938 * (B.A.P. 9th Cir.); *Jamestown S'Klallam Tribe v. McFarland*, 579 B.R. 853, 857–58 (Bankr. E.D. Cal. 2017). Other courts have found that tribal sovereign immunity defense was abrogated by § 106. *In re Platinum Oil Properties*, LLC, 465 B.R. 621, 642–44 (D.N.M. 2011) (finding tribe could not assert sovereign immunity after participating in the bankruptcy case and having its claim determined through a confirmed Chapter 11 plan); *In re Sandmar Corp.*, 12 B.R. 910 (D.N.M. 1981); *see generally In re Russell*, 293 B.R. 34 (Bankr. Ariz. 2003).

F. NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians waived the defense of sovereign immunity by filing a proof of claim, which both admit did not include the sovereign immunity disclaimer or any language related to it, and by engaging in significant participation in the bankruptcy. Movant points the court to several cases including the

Ninth Circuit and the Supreme Court for the argument that filing a proof of claim constitutes waiver of sovereign immunity with respect to the entity's claim. *In re White*, 139 F.3d 1268, 1271 (9th Cir. 1998) (citing *Gardner v. New Jersey*, 329 U.S. 565 (1947); *In re Death Row Records, Inc.*, 2012 WL 952292 (B.A.P. 9th Cir. 2012) (citing *Gardner v. State of New Jersey*, 329 U.S. at 573); *In re Barrett Refining Corp.*, 221 B.R. 795, 811 (Bankr. W.D. Ok. 1998).

G. A review of *In re National Cattle Congress*, the case cited by NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians, shows that the case does not apply to the instant situation. In that case, when a tribal creditor both filed a proof of claim and asserted sovereign immunity, the court stated:

> The posture of this case causes a conundrum for the Court. The Tribe asserts its sovereign immunity as a jurisdictional bar to this Court allowing Debtor to extinguish its lien through its Chapter 11 Plan. By filing the Proof of Claim, however, the Tribe appears to be "participating" in Debtor's reorganization. Having now acknowledged the Tribe's sovereign immunity, the Court concludes that continuing to maintain a Proof of Claim in this case would contradict the Tribe's assertion of immunity.
>
> The Tribe must now make an election between withdrawing its Proof of Claim or asserting an unqualified claim by removing the Waiver Disclaimer from the Proof of Claim as filed. Under Fed.R.Bankr.P. 3006, a creditor may withdraw a proof of claim as a matter of right unless an objection has been filed to the claim, the creditor has accepted or rejected a plan, or the creditor has otherwise significantly participated in the case.

In re National Cattle Congress, 247 B.R. 259, 268–69 (N.D. Iowa 2000); *In re Barrett Refining Corp.*, 221 B.R. 795, 810 (Bankr W.D. Ok. 1998).

NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians has not withdrawn their claim. Instead, they have chosen to participate by filing to dismiss the case; filing a proof of claim; failing to object to the proposed Chapter 13 plans; failing to object to or appeal the confirmation of the plan and will receive payment through the plan. Thus, NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians should not be rewarded for delay in asserting the sovereign

immunity defense. *Stryker International, Inc. v. Resource Technology Corp.*, 2004 WL 609332 *3 (N.D. Ill.).

H. Counsel for NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians is separately liable in committing willful violations of the stay when it assisted NUMA Corp., a.k.a. Cedarville Rancheria of Northern Paiute Indians in continuing litigation despite knowledge of the stay and the court's order confirming the Chapter 13 plan. Attorneys can be held liable when they are responsible for the client's violation of the stay as stated in *In re LeGrand*, 612 B.R. 604, 612 (Bankr. E.D. Cal. 2020) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 396–97 (1993); Link v. Wabash R. Co., 370 U.S. 626, 633–34 (1962); *Smith v. Ayer*, 101 U.S. 320, 325–26 (1879)). The court has the power to issue sanction against individuals violating the stay. *Goldberg v. Ellett*, 254 F.3d 1135, 1146–47 (9th Cir. 2001).

I. Counsel cannot assert the defense of sovereign immunity, has a separate and affirmative duty not to violate the stay, and cannot continue an action or proceeding without obtaining an order granting relief from the automatic stay.

DISCUSSION AND DECISION

Although Debtor's motion is bare in details encompassing only two pages, Debtor has pleaded with sufficient particularity that NUMA Corp. a.k.a, Cedarville Rancheria of Northern Paiute Indians has violated the automatic stay by continuing litigation in a tribal court. Moreover, the declaration properly authenticated the documents filed at the tribal court showing that the litigation continues and that orders have been issued by the Tribal Court while Debtor is under the protection of this bankruptcy court.

A review of the court's docket for this case shows that NUMA Corp. a.k.a, Cedarville Rancheria of Northern Paiute Indians filed a Motion to Dismiss requesting an order from this court to grant relief from the automatic stay on the basis of the court's lack of subject matter jurisdiction over NUMA Corp. a.k.a, Cedarville Rancheria of Northern Paiute Indians. See Dckt. 10. However, after the court rejected the proposed order and provided instructions for counsel to follow for filing a new, noticed motion, NUMA Corp. a.k.a, Cedarville Rancheria of Northern Paiute Indians did not file any new pleadings. See Dckt. 21. Thus, NUMA Corp. a.k.a, Cedarville Rancheria of Northern Paiute Indians has not been granted relief so that they may pursue the Tribal Court case.

At the previous hearing the parties agreed to continue the hearing and submit additional supplemental pleadings addressing the issues related to sovereign immunity, and the effect of Proof of Claim 6-1.

Determination of Statutory Waiver of Sovereign Immunity
and

Whether Sovereign Immunity Was Waived By Filing Proof of Claim 6-1

Here, NUMA Corp. a.k.a, Cedarville Rancheria of Northern Paiute Indians made the decision to file Proof of Claim 6-1 on November 19, 2021, and subjected the NUMA Corporation (and the Cedarville Rancheria of Northern Paiute Indians if they are aka, DBA, one and the same) to the jurisdiction of this federal court for such claim. NUMA Corporation and the Cedarville Rancheria of Northern Paiute Indians knowingly and intentionally filed Proof of Claim 6-1 to assert and enforce the claim therein in this federal court, thereby waiving Sovereign Immunity with respect to such claim. By coming into this court, NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians sought to have the benefits of the federal court jurisdiction that exists to obtain payment on an alleged obligation.

Beginning with 11 U.S.C. § 106, Congress expressly provides for a waiver of sovereign immunity for specified provisions of the Bankruptcy Code:

> § 106. Waiver of sovereign immunity
>
> (a) Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following:
>
> > (1) Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524, 525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of this title.
>
> . . .
>
> (b) A governmental unit that has filed a proof of claim in the case is deemed to have waived sovereign immunity with respect to a claim against such governmental unit that is property of the estate and that arose out of the same transaction or occurrence out of which the claim of such governmental unit arose.

Established law in the Ninth Circuit addresses this issue concerning the statutory waiver of Sovereign Immunity by Native American Tribes, stating:

> **Tribal sovereign immunity is not absolute**, however. **Congress may abrogate it** and thereby authorize suit against Indian tribes. *Santa Clara Pueblo*, 436 U.S. at 58 (citing *United States v. Testan*, 424 U.S. 392, 399, 47 L. Ed. 2d 114, 96 S. Ct. 948 (1976)). Such an abrogation must be "unequivocally expressed," id., in "explicit legislation," *Kiowa Tribe*, 523 U.S. at 759. Abrogation of tribal sovereign immunity may not be implied. *Santa Clara Pueblo*, 436 U.S. at 58 (citing *Testan*, 424 U.S. at 399).
>
> Identical language is used by courts in determining whether Congress has abrogated the sovereign immunity of states. *Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 55, 134 L. Ed. 2d 252, 116 S. Ct. 1114 (1996) ("In order to determine

whether Congress has abrogated the States' sovereign immunity, we ask[,] . . . first, whether Congress has 'unequivocally expressed its intent to abrogate the immunity' " (citations omitted)); *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 73, 145 L. Ed. 2d 522, 120 S. Ct. 631 (2000) (same); *see also Osage Tribal Council v. United States Dep't of Labor*, 187 F.3d 1174, 1181 (10th Cir. 1999) ("Conceding potential differences between tribal and state sovereign immunity, we note that courts have often used similar language in defining the requirements for waiver of [Eleventh Amendment state sovereign immunity]."); *Fla. Paraplegic, Ass'n v. Miccosukee Tribe of Indians*, 166 F.3d 1126, 1131 (11th Cir. 1999) (equating the standards applied in determining whether Congress abrogated "federal and state governments' protection from suit" and tribal sovereign immunity). While there are additional constraints on Congress's power to abrogate state sovereign immunity, we may look to state sovereign immunity precedent to help determine how "explicit" an abrogation must be, and do so in deciding the issue before us.

. . .

[S]ection 106(a) explicitly abrogates the sovereign immunity of all "governmental units." The definition of "governmental unit" first lists a sub-set of all governmental bodies, but then adds **a catch-all phrase, "or other foreign or domestic governments."** 11 U.S.C. § 101(27). Thus, **all foreign and domestic governments, including but not limited to those particularly enumerated in the first part of the definition, are considered "governmental units" for the purpose of the Bankruptcy Code, and, under § 106(a),** are subject to suit.

Indian tribes are certainly governments, whether considered foreign or domestic (and, logically, there is no other form of government outside the foreign/domestic dichotomy, unless one entertains the possibility of extra-terrestrial states). The Supreme Court has recognized that Indian tribes are "'domestic dependent nations' that exercise inherent sovereign authority over their members and territories." *Potawatomi*, 498 U.S. at 509 (citing *Cherokee Nation v. Georgia*, 30 U.S. 1, 5 Pet. 1, 17, 8 L. Ed. 25 (1831)); *see also, Blatchford v. Native Village of Noatak*, 501 U.S. 775, 782, 115 L. Ed. 2d 686, 111 S. Ct. 2578 (comparing Indian tribes to states and foreign sovereigns, and concluding that both states and Indian tribes are "domestic" sovereigns). So the category "Indian tribes" is simply a specific member of the group of domestic governments, the immunity of which Congress intended to abrogate.

. . .

Section 106(a) does not simply "authorize suit in federal court" under the Bankruptcy Code -- it specifically abrogates the sovereign immunity of governmental units, a defined class that is largely made up of parties that could claim sovereign immunity. So to recognize is not, as the Navajo Nation suggests, to imply an abrogation that is not explicit in the statute. Instead, **reading § 106(a)'s express abrogation as reaching Indian tribes simply interprets the statute's reach in accord with both the common meaning of its language and the use of similar language by the Supreme Court**. No implication beyond the words of the statute is necessary to conclude that **Congress "unequivocally expressed" its intent to abrogate Indian tribes' immunity.**

> Finally, we also note that, were Indian tribes not "governmental units" for the purpose of § 106(a), a tribe that voluntarily proceeded in federal court under the Code would not be a "governmental unit" under the other sections of the Bankruptcy Code, either. The sections applicable to "governmental units" are myriad, and include § 523 -- Exceptions to discharge -- which states: "A discharge under [certain sections] of this title does not discharge an individual debtor from any debt . . . to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than [certain] tax "penaltiest." 11 U.S.C. § 523. **Thus, although Indian tribes' sovereign immunity is abrogated by § 106(a), Congress has also provided certain special treatment to Indian tribes as governmental units within the Bankruptcy Code.**

Krystal Energy Co. v. Navajo Nation, 357 F.3d 1055, 1056, 1057-58, 1060 (9th Cir. 2004) (emphasis added). While several other Circuits disagree with the established law in the Ninth Circuit, the Ninth Circuit Court of Appeals has not revisited the ruling in *Krystal Energy*.

Additional Cases Identified by NUMA Corp. a.k.a the Cedarville Rancheria of Northern Paiute Indians at the Hearing

At the hearing, NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians identified and requested the court to consider two other case decisions on the question of the 11 U.S.C. § 106 abrogation of Sovereign Immunity for Native American Tribes. The first is *Landres v. Cambridge Land Co. II, LLC (In re Cambridge Land Co. II, LLC)*, 626 B.R. 319 (B.A.P. 9th Cir. 2021). Though after the Ninth Circuit Decision in *Krystal Energy*, that Decision is not included in the *Landres* Bankruptcy Appellate Panel Decision.

The appeal in Landes was taken to a decision by the bankruptcy court to allow the debtor to reopen the bankruptcy case and add previously undisclosed asset - a malpractice claim. The appellants sought to have the “bankruptcy court” administer the previously undisclosed asset rather than “merely” reclosing the file after the amended schedules were filed. The appeal was dismissed due to the appellants (the malpractice defendants).

NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians directs the court to the concurring opinion of a judge on the Bankruptcy Appellate Panel for *Landres*. In writing the concurrence, the judge states, “I join the majority decision and write separately to transcend our formal analysis in the interest of fostering informed communication with state courts by explaining the distinction between "closing" and "dismissing" a bankruptcy case in terms that might be helpful in future cases.” *Landres v. Cambridge Land Co. II, LLC (In re Cambridge Land Co. II, LLC)*, 626 B.R. 319, 325 (B.A.P. 9th Cir. 2021). It is asserted that this concurrence states the high regard that the bankruptcy court should give to other courts to adjudicate issues. In reading this section, it appears to state the opposite, with the concurring judge writing:

> We do not wish to chill the laudatory instinct of state courts to order parties to clear up uncertainties about bankruptcy issues — such as property of the estate or the applicability of the automatic stay — in bankruptcy court, especially when the validity of activity in the state court is uncertain. Sometimes the result is that the bankruptcy court rules there is no bankruptcy issue impeding the state court, which is a helpful and perfectly satisfactory outcome for the state court.

Id., 327. It tells non-bankruptcy courts to not just blunder forward on assuming that the Bankruptcy Code does not apply, but to direct the parties back to the Bankruptcy Court to have that federal court provide a ruling on a question of federal Bankruptcy Law. "In any event, the state court now has a formal determination that amending the schedules after the dismissals of this cases is of no legal consequence from the standpoint of bankruptcy." *Id*.

The second case is a 1994 bankruptcy court decision, *Costa v. Welch (In re Costa)*, 172 B.R. Bankr. E.D. Cal. 1994). In this case, the debtor, though knowing of the debt and reviewing it with his bankruptcy attorney, the debtor and his attorney intentionally did not include a creditor on its schedules or the Master Mailing List for the bankruptcy case. The creditor did not have knowledge of the bankruptcy case or the debtor getting a discharge, and three weeks after the bankruptcy case was filed, the creditor obtained a judgment for $1,408 in the State Court. Long after the debtor obtained his discharge and the bankruptcy case was closed, the creditor of execution and levied on debtor's bank account.

Debtor then engaged new counsel and then incorrectly asserted that the levy violated his bankruptcy discharge. Debtor then reopened his case and sought to enforce the discharge injunction, though the debtor made no effort to amend the schedules to list the creditor. The bankruptcy judge then goes through a detailed discussion of when bankruptcy schedules need to be amended and the application of Ninth Circuit law relating to discharge of debts as stated in *Beezley v. California Land Title Co. (In re Beezley)*, 994 F.2d 1433 (9th Cir. 1993).

The bankruptcy judge phrased the issue before the court as, "What is a law-abiding bank to do? It obeyed state law and froze $ 541 when served with a facially valid writ of execution. Now the debtor demands that the bank pay $ 10,000 in punitive damages on the theory that honoring a writ of execution violated the bankruptcy discharge injunction with respect to a debt that the debtors had intentionally omitted from their bankruptcy schedules." *Costa v. Welch*, 172 B.R. at 957.

The bankruptcy judge then discussed the use of a bankruptcy discharge in a state court action as an affirmative defense. In such situations, the state court judge would then determine the effect of the asserted federal law discharge. No reopening of the bankruptcy case is required. Alternative, the debtor could affirmatively file an action, in the nature of declaratory relief, in either state or federal court to have the effect of the asserted discharge determined with respect to a debt at issue. However, the bankruptcy judge noted:

> The choice between state and federal court ultimately is a matter over which the bankruptcy court has some discretion because provisions relating to removal, remand, and abstention apply . . . And, in a legislative exception to the common

> law doctrine that a court must hear any matter over which it has jurisdiction, the bankruptcy court may abstain from hearing a dischargeability action in the interest of justice or comity with state courts or respect for state laws. 28 U.S.C. § 1334(c)(1); Fed. R. Bankr. P. 5011(b); . . . ."

Id., 962-963. The bankruptcy judge cited to the bankruptcy law authority by which a state court could determine, after the bankruptcy case was closed and the discharge was being raised as a defense to the debt being enforced, whether that debt had been discharged.

In the end, the bankruptcy judge in *Costa* concluded that no right to a private right of action for an alleged violation of the discharge injunction existed and that such violations were addressed as contempt proceedings in federal court.

While both of these decisions recognize that concurrent jurisdiction exists, they do not state that *carte blanche* authority is given to non-federal bankruptcy courts to determine what rights and issues may arise under the Bankruptcy Code. The later case notes that if chosen, it is the bankruptcy court that makes the decision even if the case had previously been closed and one of the parties would prefer to have a non-federal bankruptcy court determine the effect of bankruptcy law issues.

Here, the Debtor prefers the federal bankruptcy court to determine the issue.

Additionally, in the above cases, the situations being addressed are ones in which the bankruptcy cases have been closed. Here, the court has an active Chapter 13 case with a confirmed Chapter 13 Plan in place, and the issue being how does federal law arising under the automatic stay (for which the bankruptcy court has original jurisdiction) apply to the Native American Tribe for which Sovereign Immunity has been specifically abrogated by Congress. These cases do not support NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians assertion that they can choose to have the Tribal Court determine the application of Bankruptcy Law for the matter now before the court.

Sovereign Immunity Has Been Abrogated By Congress With Respect to 11 U.S.C. § 362 and Taking Action in the Tribal Court Violated the § 362 Automatic Stay

NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians first question whether the Ninth Circuit Court of Appeals was correct in the *Krystal Energy* Decision. Though NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians question such correctness, it is not the prerogative of a federal trial court to "reverse" the decision of a Circuit Court of Appeals.

While NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians correctly notes the respect to be given for intra-tribal matters, the Supreme Court Decision cited, *Iowa Mutual Insurance Company v. LaPlante*, 480 U.S. 9 (1987), it does not hold that Congress is prevented from abrogating Sovereign Immunity with respect to intra-tribal matters, but recognizes that tribal court jurisdiction may exist, that does not exclude parties from laws enacted by Congress. This is similar to how a state court may have jurisdiction for a matter,

while at the same time a federal bankruptcy court has jurisdiction as granted by Congress pursuant to 28 U.S.C. § 1334.

Here, the provisions of 11 U.S.C. § 106(a) do not purport to strip a tribal court of its jurisdiction, but "merely" abrogates Sovereign Immunity for specific, limited provisions of the Bankruptcy Code, including 11 U.S.C. § 362 - the Automatic Stay. With respect to Chapter 13 cases, the abrogation of Sovereign Immunity is applicable to sections including 11 U.S.C.:

§ 502 - Allowance of Claims or Interests and Objections to Claims

§ 503 - Allowance of Administrative Expenses

§ 505 - Determination of Tax Liability

§ 506 - Determination of Secured Claim Status

§ 1301 - Co-Debtor Stay

§ 1303 - Rights and Powers of a Chapter 13 Debtor (to exercise specified bankruptcy rights and powers given a trustee)

§ 1305 - Filing and Allowance of Post-Petition Claims

§ 1327 - Effect of Confirmation of a Chapter 13 Plan

Notably, Sovereign Immunity has not been abrogated for some very significant provisions of the Bankruptcy Code. This selective abrogation is described in *Collier on Bankruptcy* as follows:

> [1] Scope of Abrogation
>
> Rather than entirely eliminating the sovereign immunity of governmental units under the Bankruptcy Code, section 106(a)(1) constitutes a selective, though broad, abrogation provision. The selection of the 59 enumerated provisions expressly made applicable to governmental units shows that Congress chose to limit the abrogation of sovereign immunity to bankruptcy causes of action. Thus, it permits suits against governmental units to recover preferences and fraudulent transfers, avoid liens, enforce the automatic stay and discharge injunction, and determine the dischargeability of a debt, among other actions. Congress excluded, however, section 541 from the abrogation list, as a result of which government defendants (absent a waiver) are still permitted to assert sovereign immunity in proceedings brought by the estate to enforce a prepetition cause of action. Congress apparently did not want to allow the happenstance of a debtor's bankruptcy to permit the estate to obtain a recovery against a governmental unit that would not have otherwise been available outside of bankruptcy because of sovereign immunity.

> Section 106(a) does include section 542 among the provisions for which sovereign immunity is abrogated. This inclusion prevents a governmental unit from frustrating efforts to consolidate estate property in the bankruptcy court by holding onto it and asserting sovereign immunity as a shield against suit. Section 542, however, also provides that an entity that owes a debt that is property of the estate shall pay the debt to the trustee (or debtor). Because there is an uncertain line between suits under section 541 on a prepetition cause of action and a turnover suit under section 542 for the payment of a prepetition debt, a governmental unit's ability to defend on the ground of sovereign immunity may depend on how the court characterizes the suit.

2 COLLIER ON BANKRUPTCY P 106.04 (16TH 2021).

At issue in this matter now before the court is "only" the application of the automatic stay for which Congress has expressly, and without limitation, abrogated Sovereign Immunity. It may well be that the tribal court is the proper forum of choice to litigate the issues concerning the alleged liability. Bankruptcy courts are often presented with such request and will defer to such determinations being made in the courts of other sovereigns, such as state court or tribal courts. As the court discussed with the Parties at the hearing, Congress has not abrogated Sovereign Immunity for Native American Tribes with respect to 11 U.S.C. § 1328 - Discharge in a Chapter 13 case.

NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians violated the Automatic Stay by intentionally choosing to proceed in the Tribal Court to seek a determination in that court of the effect of 11 U.S.C. § 362 for which Congress has abrogated the Tribe's Sovereign Immunity. As addressed here, this does not mean that NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians cannot seek to have the stay modified or this court abstain from determining the issue in favor of a non-bankruptcy court, but NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians unilaterally deciding that they had the right and power to determine whether this matter was currently the province of the United States Federal Courts is incorrect.

Asserted Waiver of Sovereign Immunity By
NUMA Corp. a.k.a the
Cedarville Rancheria of Northern Paiute Indians

The court has also been presented with the alternative grounds that by voluntarily choosing to file Proof of Claim No. 6-1, NUMA Corp. a.k.a the Cedarville Rancheria of Northern Paiute Indians voluntarily waived Sovereign Immunity. As discussed above, Congress has abrogated Sovereign Immunity with respect to claims and objections thereto (11 U.S.C. § 502). By filing Proof of Claim 6-1 NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians figuratively "put its hand out and said, we are in this case and pay us under the applicable federal bankruptcy laws."

The Ninth Circuit Court of Appeals has discussed waivers of Sovereign Immunity, noting that such waivers are not something that happens nonchalantly, "Waivers of tribal sovereign

immunity must be explicit and unequivocal. *See Burlington N. & Santa Fe Ry. Co. v. Vaughn*, 509 F.3d 1085, 1091 (9th Cir. 2007)." *Maxwell v. County of San Diego*, 708 F.3d 1075, 1087 (9th Cir. 2013).

In discussing the waiver of Sovereign Immunity by a state by voluntarily participating in litigation, 17A Moore's Federal Practice - Civil § 123.41 (2021) provides the following with respect to other governmental units waiving Sovereign Immunity (emphasis added):

> [2] Participating in Litigation
>
> [a] Voluntary Invocation or Acceptance of Federal Court Jurisdiction
>
> **A state may waive its immunity by actively participating in litigation and not asserting** Eleventh Amendment **immunity**. However, a state **does not waive its immunity by appearing in federal court to protest federal jurisdiction**. Stated differently, a state **waives its sovereign immunity by voluntarily invoking the jurisdiction of the federal courts or by conduct during the litigation that clearly manifests acceptance of the federal court's jurisdiction** or is otherwise incompatible with an assertion of Eleventh Amendment immunity. When the state **voluntarily invokes federal jurisdiction, the waiver extends not only to the cause of action, but also to any relevant defenses or counterclaims**. It also extends to the federal rules and procedures that govern litigation in federal court. Whether a particular set of state laws, rules, or activities amounts to a waiver is a question of federal law.
> The focus of the **inquiry is whether the state's action in litigation clearly invokes the jurisdiction of the federal court and not on the state's intention to waive immunity**. For example, a state waives its immunity by insisting that the state's position is identical to that of a non-state entity co-defendant, or by engaging in extensive discovery and inviting the district court to enter judgment on the merits without ever asserting the Eleventh Amendment. On the other hand, the Tenth Circuit held that a state that engaged in some discovery in the early stages of litigation but continued to assert its Eleventh Amendment immunity did not waive that immunity. The First Circuit held that the Commonwealth of Puerto Rico did not waive its Eleventh Amendment immunity by participating in years of litigation over Medicaid payments to health centers, because throughout the litigation, the Commonwealth's Secretary of Health repeatedly asserted the Commonwealth's Eleventh Amendment rights to litigate certain matters in its own courts or otherwise to protect its coffers from imposition of liability.

In this case, NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians invoked the jurisdiction of this federal court by filing Proof of Claim 6-1, which then results in that asserted obligation to be deemed allowed and to be paid, unless the debtor or trustee objects thereto. 11 U.S.C. § 502(a).

At the hearing, counsel for NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians stated that while he filed Proof of Claim No. 6-1 he was not, and is not, authorized

to waive Sovereign Immunity for his two clients. Also, he states that he could not figure out how to state on the Proof of Claim form, or to add a page to Proof of Claim No. 6-1 which stated "Filing of This Proof of Claim is Not a Waiver of Sovereign Immunity by Claimants."

On the one hand, the act of filing the proof of claim is consistent with the Congressional waiver of Sovereign Immunity in 11 U.S.C. § 502, which is waived for filing a proof of claim (whether by the creditor or debtor) and adjudicating an objection to claim. Electing to waive sovereign immunity, to the extent it was not abrogated by Congress in 11 U.S.C. § 106, by filing a proof of claim is limited to expressly waiving for the claim and adjudication of the claim issues. Such is not a general waiver of Sovereign Immunity for all purposes. As stated by the Ninth Circuit Court of Appeals, "Waivers of tribal sovereign immunity must be explicit and unequivocal." *Maxwell v. County of San Diego*, 708 at 1087.

Debtor has cited the court to the Ninth Circuit Court of Appeals Decision Confederated Tribes of the *Colville Reservation Tribal Credit v. White (In re White)*, 139 F.3d 1268, 1271 (9th Cir. 1998), in which the Ninth Circuit states:

> The Supreme Court made clear in *Gardner v. New Jersey*, 329 U.S. 565, 91 L. Ed. 504, 67 S. Ct. 467 (1947), that when a sovereign files a claim against a debtor in bankruptcy, the sovereign waives immunity with respect to adjudication of the claim. [The Supreme Court concluding that filing a claim is 'using a traditional method of collecting a debt"] . . .
> . . .
> It follows from *Gardner* that [the Native American Tribe's] actions waived its immunity respecting the adjudication of its claim to recover White's debts. Like New Jersey, [the Native American Tribe] sought to collect its debt by actively participating in the reorganization court. It acknowledged that it had a claim, objected to confirmation of White's plan of reorganization because it thought it was entitled to more than the plan would have allowed, and it sought relief from the bankruptcy court in the form of an order denying confirmation. It twice voted against plans of reorganization. Having done this, [the Native American Tribe] (like New Jersey) "waived any immunity which it otherwise might have had respecting the adjudication of the claim."

As stated by the Ninth Circuit, the waiver of Sovereign immunity is for the claim filed (the Ninth Circuit stating in Footnote 1 that the issue of whether 11 U.S.C. § 106 applied to the Native American Tribe was not before the court), and not a general waiver of Sovereign Immunity.

Here, the issue before the court is not whether Sovereign Immunity has been waived by filing Proof of Claim 6-1, but the application of the automatic stay to NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians. Therefore, the court does not determine a waiver of Sovereign Immunity based on the filing of Proof of Claim 6-1, but instead bases this decision express abrogation of Sovereign Immunity by Congress for the provisions of 11 U.S.C. § 362 and § 502 (the automatic stay, and proofs of claim and objections to proofs of claim) and the existing Circuit law of *Krystal Energy Co. v. Navajo Nation*. [FN. 2.]

FN. 2. The filing of Proof of Claim 6-1 in this case is not merely an academic or technical exercise. The Chapter 13 Trustee reports that under the terms of the Plan NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians will receive a dividend of not less than 21% of the $200,000 claim filed. This would be at least $42,000, not an insignificant sum. This is also advantageous to the Debtor, who, if unable to discharge the debt, has a positive card to play with this creditor in trying to find a mutually agreeable resolution to the obligation.

Scope of Violation of Stay and
11 U.S.C. § 362(k) Damages

This Contested Matter presents an interesting dispute. The alleged conduct violating the automatic stay is "[r]equesting a status conference and briefing schedule to determine the scope of the automatic stay in the tribal court. . . ." Motion, p. 2:1-2; Dckt. 84. On the one hand this demonstrates that NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians was aware of the issue and were seeking a determination of federal Bankruptcy Law by a judicial tribunal. At the hearing, Debtor argued that this was not merely seeking such a determination, but an active enforcement of the debt which NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians asserts to exist (which asserted debt is shown by Proof of Claim 6-1 it filed).

In substance, going to the Tribal Court even if just to seek a determination whether the automatic stay applied to NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians, it were seeking the relief from the wrong tribunal. Congress placing questions of bankruptcy core and non-core matters in the federal bankruptcy court, unless the federal judge determines that abstention is proper to have an issue determined in another forum. 28 U.S.C. § 1334(b), (c), (d), which provides (emphasis added):

> (b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, **the district courts** [the bankruptcy judges being a unit of the district court, 28 U.S.C. § 157(a), with referred to them as provided in 28 U.S.C. § 157(a)] **shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11**.
>
> (c)
>
> > (1) Except with respect to a case under chapter 15 of title 11, **nothing in this section prevents a district court** [to which the bankruptcy judges are a unit**] in the interest of justice,** or in the interest of comity with State courts or respect for State law, from abstaining **from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11**.

> (2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.
>
> (d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians may seek to have this court abstain and seek to have the automatic stay modified "in the interests of justice." In this case NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians specially appeared and filed an *Ex Parte* Motion to Dismiss this bankruptcy case. Dckt. 10. The Court's Order thereon addressed several deficiencies in the Motion and that multiple types of relief were requested. Dckt. 21. The court rejected the proposed order on the *Ex Parte* Motion, and rather than "denying" the *Ex Parte* Motion, the court extended the opportunity for NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians to file an amended motion. *Id*. This order was entered on September 30, 2020. No amended motion or new motion(s) seeking relief from the court have been filed by NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians.

Debtor provides a copy of the Motion for Status Conference that NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians (using the name Cedarville Rancheria of Northern Paiute Indians DBA NUMA Corporation) as Exhibit A in support of the Motion. Dckt. 88 at 3-4. The Request is dated March 26, 2021, and does request a hearing regarding the Tribal Court's stay based on the bankruptcy filing. NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians asserts that based on further investigation of the law and citing two cases (both from outside of the Ninth Circuit), there can be no stay of NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians pursuing its matter in the Tribal Court and requests a briefing schedule on the matter.

Exhibit C filed by Debtor is Debtor's Response to the Request For Status Conference filed in the Tribal Court. Debtor states Ninth Circuit law on 11 U.S.C. § 106 abrogation and an assertion that the filing of Proof of Claim 6-1 constitutes a waiver of Sovereign Immunity. *Id.* at 42-46.

Exhibit D filed by Debtor is the Tribal Court's ruling from the April 12, 2021 hearing. In it the Tribal Court Judge "[c]oncludes that all parties should more thoroughly brief the issues and facts as
they relate to this case to state whether the authority cited should apply." Exhibit D, Tribal Court Order, p. 1:26-27; Dckt. 88. Additional briefing was ordered and the hearing to lift the Tribal Court Stay was continued to May 12, 2021. It appears that hearing was scheduled to June 20, 2021, (it appears that the original Scheduling Order contained a typographical error regarding the hearing date).

On April 27, 2021 the present Motion For Sanctions For Violation of the Automatic Stay was filed, well in advance of the briefing schedule (April 23, 2021, for NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians, and May 12, 2021 for Debtor) in the Tribal Court proceeding.

A Stipulation dated May 18, 2021, to Continued the hearing in the Tribal court to lift that court's stay of its proceeding is included as Exhibit 2 by NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians. Dckt. 110 at 27. In it NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians and Debtor agree to the Tribal Court vacating its order for a June 20, 2021 hearing.

NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians has violated the automatic stay by proceeding in the Tribal Court with actual knowledge of this bankruptcy case and Debtor's counsel having asserted the automatic stay. Relief is also sought from counsel for NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians for his part in violating the automatic stay in continuing in efforts to prosecute the action in the Tribal Court. As discussed below, while such a violation exists for him personally, given the very modest amount of damages, the court will award them only against NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians so as to avoid creating confusion and not foster merited, but economically less than reasonable enforcement proceedings.

Request for Punitive Damages

The Motion also seeks to have the court award punitive damages "s in an amount necessary to punish the willful acts of Creditor and its counsel, and to deter any further action without further order from this Court." Motion, prayer for relief, p. 2:9-12; Dckt. 84. In the Points and Authorities, Debtor asserts that NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians, and its counsel "based on their flagrant disregard for this bankruptcy court's exclusive jurisdiction over the scope and application of the automatic stay, Creditor and its counsel should be punished for their willful acts and attempting to obtain a void, unenforceable order in the tribal court." P&As, p. 6:12-16; Dckt. 86.

A discussion of the award of punitive damages relating to a violation of the automatic stay was made by this court in *Sillman v. Walker (In re Sillman)*, 2014 Bankr. LEXIS 292, *42-44 (Bankr. E.D. Cal. 2014), *Affrm., Walker v. Sillman (In re Sillman)*, 2015 U.S. Dist. LEXIS 35310 (E.D. Cal. 2015), which includes:

An individual injured by any willful violation of a stay provided by this section may, in addition to compensatory damages, also be awarded punitive damages.[46] Although 362(k) permits the recovery of such damages "in appropriate circumstances," the Ninth Circuit has cautioned that punitive damages are only appropriate if there has been some showing of reckless or callous disregard for the law or rights of others.[47] The bankruptcy court has considerable discretion in granting or denying punitive damages under 362(k).[48] Punitive damages are properly awarded to punish unlawful conduct and deter its repetition.[49]

A debtor entitled to actual damages does not automatically qualify under § 362(k)(1) to recover punitive damages. The court must decide whether the circumstances of each case warrant punitive damages.[50] When considering an award for damages, the court should consider the gravity of the offense and set the amount to assure that it will both punish and deter.[51] A creditor's good faith or lack thereof is relevant to sanctions under § 362(k)(1).[52] The rule in both the Ninth Circuit and California is that punitive damages must be proportional; they must be reasonably related to compensatory damages.[53] However, there is no fixed ratio or formula for determining the proper proportion between the two.[54] In determining the appropriate amount of punitive damages, the court usually considers the following factors: (1) the nature of the defendants' acts; (2) the amount of compensatory damages awarded; and (3) the wealth of the defendants.[55]

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46. 11 U.S.C. § 362(k)(1); *see also Drnavich v. Cavalry Portfolio Service, LLC*, No. 05-10222005, U.S. Dist. LEXIS 38686, 2005 WL 2406030 (D. Minn. Sept. 29, 2005).

47. *Bloom*, 875 F.2d at 228

48. Id.

49. *See BMW of N. Am. v. Gore*, 517 U.S. 559, 568 (1996); *Cooper Indus. v. Leatherman Tool Group*, 532 U.S. 424, 432 (2001).

50. *Henry v. Assocs. Home Equity Servs. (In re Henry)*, 266 B.R. 457, 481-83 (Bankr. C.D. Cal. 2001).

51. *Id.*

52. *See Walls v. Wells Fargo Bank (In re Wells)*, 262 B.R. 519, 529 (Bankr. E.D. Cal. 2001).

53. *Hudson v. Moore Business Forms, Inc.*, 836 F.2d 1156, 1162-63 (9th Cir. 1987).

54. *Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1024-25 (9th Cir. 1985).

55. *Bauer v. NE Neb. Fed. Credit Union (In re Bauer)* No. EC-09-1281, 2010 Bankr. LEXIS 5096, (B.A.P. 9th Cir. Apr. 8, 2010).

It is not an "easy" bankruptcy punitive damages award, but one subject to the same standards and requirements if sought in an adversary proceeding or action filed in the District Court. Here, NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians, and their counsel were not only aware of the bankruptcy case, but they participated not only with the filing of Proof of Claim 6-1, but a prior motion that sought dismissal of the case, relief from the automatic stay, a determination of Sovereign Immunity, and a determination that the federal court lacked subject matter jurisdiction. Dckts. 10, 11. This relief was requested *ex parte* and no correct hearing on the motion was set by NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians. No certificates of service were filed documenting service of the Motion having been made by NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians.

On September 30, 2020, this court entered an order re the Motion to Dismiss, addressing some of the procedure and legal issues relating to the Motion and the relief requested. Order, Dckt. 21. The court did not deny the Motion, but made Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 applicable for a contested matter, authorizing NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians to join multiple claims for different types of relief in one motion. The court also addressed the pleading requirements set forth in the Federal Rules of Bankruptcy Procedure concerning motions. This Order didn't open the door for NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians, but it did provide a nice "invitation" to get the matter before this federal court and basic road map so they could have their concerns addressed in the bankruptcy court.

Apparently counsel for NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians obtained advice from other counsel about decisions outside the Ninth Circuit and decided to push forward with the position that Congress had not selectively abrogated Sovereign Immunity in 11 U.S.C. § 106 and that the Tribal Court, and not the United States District and Bankruptcy Courts (the bankruptcy judges being a unit of the district court) as the court of original jurisdiction to determine federal bankruptcy law. This was not an accurate decision of established law by the Ninth Circuit Court of Appeals.

Fortunately, NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians's actions did not go beyond requesting the Tribal Court lift its stay of proceedings. The Tribal Court conducted one hearing and set the parties off to further brief the issues. NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians then stipulated to vacate the scheduling order in the Tribal Court before the briefs were due in that proceeding, and to present the issue first to this bankruptcy court.

Debtor getting the matter before this court by filing the Motion for Sanctions, and "dragging" NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians, and their counsel into this federal court to address the issues before prior to the briefing schedule deadlines in Tribal Court proceeding avoided multiple, overlapping proceedings.

While making a mistake, and in Debtor's counsel's view forcefully arguing in support of a position that this court finds not to be consistent with the rulings of the Ninth Circuit Court of

Appeals, there were not significant actions taken or threats made by NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians.

By virtue of this conduct, NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians has the "privilege" of paying $7,291.00 in damages to Debtor. The choice of conduct is not going unaddressed financially.

The conduct of NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians was to seek to have the issues addressed, but just in the wrong forum. It's not as if NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians had a default judgment entered, started garnishing the Debtor's wages, had foreclosure agents pounding on his door, and purported to have taken title to his property.

The nature of NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians, Cedarville Rancheria of Northern Paiute Indians DBA NUMA Corporation, and their counsel may have violated the stay, but it was in a more benign way, seeking to have the issue of Sovereign Immunity and ability to proceed notwithstanding Congress' abrogation of Sovereign Immunity in 11 U.S.C. § 106 and the provisions of federal law in the specified Bankruptcy Code sections.

The amount of compensatory damages is modest. While the stay was violated, there were not major damages created by NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians.

Third, the court does not know the wealth of NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians. Though the court could bifurcate the proceedings to have the punitive damages phase conducted after further discovery and hearings, in light of the more "benign nature" of the conduct, such is not warranted in this Contested Matter. [Fn.3.]

FN. 3. Though the court is confident that NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians, the Cedarville Rancheria of Northern Paiute Indians DBA NUMA Corporation, and their counsel would not read the above as an indication that the potential for punitive damages is not real, or that if punitive damages were awarded they would be some discounted "bankrupt amount," the court notes the following. One only need to go to another violation of stay decision in this District by another one of our bankruptcy judges (the one who issued the decisions that NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians directed the court to at the hearing) to see that it can be a serious, big money situation. In *Sundquist v. Bank of America, N.A. et al.*, 566 B.R. 563 (Bankr. E.D. Cal. 2017), the judge awarded the debtor $1,074,581.50 in actual damages and $45,000,000 in punitive damages. Though the punitive damages were forty-five times the actual damages, the court determined that such amount was necessary to have the deterrent effect on the defendant and similarly situated persons. (So that debtor would not get a windfall, the judge also ordered that the debtor disburse $40,000,000 of the punitive damages to various law schools and programs that provided legal services to consumers and would help in deterring such violations of the stay in the future by the defendant and other similar persons.) The parties in Sundquist were able to enter into a post-judgment, pre-appeal settlement that resolved the dispute, "adjusted" the amount of actual and punitive damages, and no appeal was prosecuted.

Computation of Damages

Having violated the automatic stay, the next questions of what damages may be recovered by Debtor. Congress provides in 11 U.S.C. § 362(k) that "[a]n individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

The evidence of these actual damages to Debtor is provided in the following declaration and documentary evidence.

Declaration of Daniel Griffin, Esq., Counsel for Debtor
Dckt. 87

Mr. Griffin Testifies in his Declaration to the following with respect to the damages in this Contested Matter:

A. He authenticates Exhibit A (Dckt. 88) as the Request for Status Conference filed by counsel for NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians, who identified his client in the Tribal Court as the Cedarville Rancheria of Northern Paiute Indians DBA NUMA Corporation in the Tribal Court. Dec. ¶ 3. In the Request, counsel for NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians states that the Tribal Court previously stayed proceeding in light of the bankruptcy case, and then makes the following arguments:

1. "As stated previously, counsel does not believe that the BK Court can stay a tribal court proceeding due to the tribe having not waived immunity to federal court process. Nor does counsel believe the BK Court can discharge a tribally owed debt a bankruptcy proceeding."

The phrasing of this is interesting and does not represent the issues before the court. The bankruptcy court is not moving to "stay a tribal court." Rather, the question is has Congress stayed, as provided in 11 U.S.C. § 362, NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians and the Cedarville Rancheria of Northern Paiute Indians DBA NUMA Corporation from taking action by virtue of 11 U.S.C. § 106(a) abrogation of Sovereign Immunity with respect to the automatic stay.

Second, the question is not whether the tribe has waived their Sovereign Immunity, but whether Congress has selectively abrogated it with respect to specific provisions of the Bankruptcy Code.

Third, the issue of dischargeability is not before the court. Additionally, the question is not whether a "bankruptcy court" can discharge a debt, but whether Congress has provided for the discharge of the debt under the Bankruptcy Code.

2. Counsel for NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians states, "Additionally, the most recent authority on the sovereign immunity waiver issue held that the BK Code is not

applicable to Indian Tribes. *In a* (Feb. 26, 2019) (See attached). I have also attached a 2020 decision in which the BK court dismisses a motion to enforce an automatic stay against an Indian Tribe. *In Re Brian W. Coughlin* (Dist. Mass Eastern Division October] 9, 2020)

The Sixth Circuit Court of Appeals Decision, *Buchwald Capital Advisors, LLC v. Sault Ste. Marie Tribe of Chippewa Indians et al*, 971 F.3d 451, 462 (Sixth Circuit 2019), concludes (contrary to the Ninth Circuit in *Krystal Energy*) that Congress did not unequivocally waive Sovereign Immunity for Native American Tribes in 11 U.S.C. § 106. The Sixth Circuit notes that it is disagreeing with the law as stated by the Ninth Circuit Court of Appeals.

The second case is *In re Couglhlin*, 622 B.R. 491 (Bankr. Mass. 2021), in which the bankruptcy judge concludes that he does not find 11 U.S.C. § 106 unequivocally abrogate Sovereign Immunity for Native American Tribes, and he disagrees with the Ninth Circuit Court of Appeals.

While judges in other Circuit can choose to not follow the rulings of the Ninth Circuit Court of Appeals, the federal judges that are and will be involved in this case here in the Ninth Circuit cannot just disagree and then not following the rulings of the Ninth Circuit Court of Appeals.

B. Mr. Griffin authenticates Exhibit B (Dckt. 88), a meet and confer letter dated April 7, 2021, to counsel for NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians asserting the violation of the automatic stay. Dec. ¶ 4. This letter details the automatic stay and the damages consequences of 11 U.S.C. § 362(k). It also states the grounds by which Debtor asserts Sovereign Immunity has been waived and abrogated by Congress (11 U.S.C. § 106), and expressly cites the *Krystal Energy* case. (Interestingly, counsel for NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians, appearing for the Cedarville Rancheria of Northern Paiute Indians DBA NUMA Corporation does not mention the controlling Ninth Circuit law in *Krystal Energy* in the request for the Tribal Court to get the litigation started back up.)

C. Mr. Griffin authenticates Exhibit C (Dckt. 88), the Debtor's Status Report to the Tribal Court for the April 12, 2021 hearing. Dec. ¶ 5. In it counsel for Debtor provides the Tribal Court with citation to and analysis of applicable Ninth Circuit law.

D. Mr. Griffin authenticates Exhibit D (Dckt. 88), the Tribal Court's ruling from the April 12, 2021 hearing. Dec. ¶ 6. The Tribal Court ordered further briefing on the issue.

E. In Paragraph 7 of his Declaration Mr. Griffin testifies that his firms legal fees relating to addressing the violation of the stay total $4,599.00. $4,270 is his time, $240 for another attorney in his office, $20 for a paralegal, and $69 for administrative. No detailed time records are provided for the legal fees sought as damages.

F. In Paragraph 8, Mr. Griffin provides a task billing category totals for time spent for specific service areas: [a] 7.9 hours for "draft motion, tribal status report, meet and confer letter;" [b] 3.8 hours for "calls and emails with co-counsel and client, in-office meetings;" [c] 1 hours for research; and [d] 0.8 hours for "administrative tasks (proof of service, notice of association of counsel)."

Declaration of Bonnie Baker, Esq., Counsel for Debtor
Dckt. 89

The second Declaration is provided by Bonnie Banker, Debtor's main bankruptcy counsel. As it relates to the alleged violation of the automatic stay, Ms. Baker's testimony includes:

A. That a stipulation was entered into in the Tribal Court in at the September 24, 2020 hearing to stay the Tribal Court proceedings and for NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians NUMA Corporation, appearing for Cedarville Rancheria of Northern Paiute Indians DBA NUMA Corporation in the Tribal Court to come to the bankruptcy court to have the automatic stay modified. Dec. ¶ 5.

B. The motion for the Tribal Court to lift its stay was made without first seeking modification of the automatic stay, which Ms. Baker asserts is in violation of the stipulation by NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians and the Cedarville Rancheria of Northern Paiute Indians DBA NUMA Corporation to first seek such relief from the bankruptcy court. Dec. ¶ 6.

C. Though not seeking relief from the automatic stay, Ms. Baker states that counsel for NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians, as counsel for the Cedarville Rancheria of Northern Paiute Indians DBA NUMA Corporation filed a brief with the Tribal Court citing 139 cases supporting a position that NUMA Corporation and the Cedarville Rancheria of Northern Paiute Indians did not need to seek relief in the Federal Court before proceeding further in the Tribal Court. Dec. ¶ 7.

Presumably this is the brief filed by counsel for NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians pursuant to the 2021 briefing schedule in the Tribal Court proceeding. While filed in that proceeding, the Declaration does not attest to having to prepare, file, and then litigate such brief in the Tribal Court. In substance, because of the April 27, 2021 Stipulation to stay the Tribal Court proceeds to lift the stay in that court, the "brief" was effectively a long, detailed letter from counsel stating why he believed the stay should not apply.

D. Ms. Baker includes in her Declaration a chart listing $4,920 (16.4 hours at $300 an hour) in attorney time and $6 (0.8 hours at $75 an hour) in paralegal time spent for the following legal service categories: [a] 2.8 hours to "prepare declaration and billing;" [b] 5.5 hours for "review of opposition documents;" [c] 2.6 hours for "review of co counsel proposed docs;" [d] 2.3 hours for "calls;" 2.8 hours for "research;" and 1.2 hours for "administrative." Dec., p. 3:12-23. No detailed billing statements are provided.

Declaration of Debtor Jason Diven
Dckt. 90

The Debtor provides his testimony in support of the Motion. Debtor testifies in support of the Motion:

A. "I have spent $2,657.00 on mental health care as a direct result of Creditor NUMA Corp's efforts to continue litigation against me." Dec. ¶ 3.

B. "I am stressed, losing sleep over, and have anxiety as a direct result of Creditor NUMA Corp's efforts to continue litigation against me." Dec. ¶ 4.

Beginning with the Debtor and his emotional distress damages stated to be $2,657.00 for mental health care, actual damages for violation of the automatic stay include emotional distress damages. *Dawson v. Wash. Mut. Bank (In re Dawson)*, 390 F.3d 1139, 1148 (9th Cir. 2004). For a debtor to state a claim for emotional distress damages, the individual must (1) suffer significant harm, (2) clearly establish the significant harm, and (3) demonstrate a causal connection between the significant harm and the violation of the automatic stay. *Id.* at 1149. Medical evidence of emotional distress is not required; the testimony of family members, friends, and co-workers is sufficient to establish an emotional distress claim. *Id*. At 1149 citing *Varela v. Ocasio (In re Ocasio)*, 272 B.R. 815, 821-22 (B.A.P. 1st Cir. 2002), (holding that testimony of debtor's wife was sufficient to support an award of medical damages without medical testimony). In some cases no corroborating evidence is required. An example cited in Dawson is where the egregious conduct was the creditor pretending to hold a gun to the debtor's head. *Dawson*, 390 F.2d at 1149 (citing *Wagner v. Ivory (In re Wagner)*, 74 B.R. 898, 905 (Bankr. E.D. Pa. 1987)). Additionally, the court in *Dawson* stated that even when the conduct was not egregious, the court could award emotional distress damages where the circumstances make it obvious that a reasonable person would suffer emotional harm, such as the emotional distress of having to cancel a child's birthday party because the debtor's checking account was frozen. *Dawson*, 390 F.2d at 1149 (citing *United States v. Flynn (In re Flynn)*, 185 B.R. 89, 93 (S.D. Ga. 1995) ($5,000.00 award of emotional distress damages because 'it is clear that the appellee suffered emotional damages' when she was forced to cancel her son's birthday party because her checking account was frozen)); see also *Sternberg*, 595 F.3d at 943.

Here, while the Debtor says he suffers emotional distress, it is because of "Creditor NUMA Corp's efforts to continue litigation against me." That is the distress every party to a legal action or proceeds faces, and suffers. NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians can continue to enforce the debt in the bankruptcy court through Proof of Claim 6-1. NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians can seek to have the automatic stay modified to have the Tribal Court determine Debtor's obligation. It may be that Debtor will face NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians continuing to try and enforce the debt after the plan has been completed given the selection abrogation of sovereign immunity.

Based on the evidence presented, the court determines that there are no emotional distress damages for Debtor relating to the violation of the stay by NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians in the Tribal Court hearing to lift its stay of the Tribal Court action. That his attorneys have called NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians to task in this court and have the stay enforced is Debtor's action to

enforce his rights. That he is "distressed" that NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians have in this Contested Matter asserted opposing arguments and authorities, such is the normal "stress" of litigation.

The court awards no emotional distress damages.

Computation of Legal Fees Damages
For Violation of the Automatic Stay

For the legal fees, the court has been provided with group billing dollar amounts, not the detailed time billing necessary for a lodestar computation as is normally done in the Ninth Circuit. *See, In re Manoa Financial Co.*, 853 F.2d 687, 691 (9th Cir. 1988), discussing general lodestar computation of legal fees in federal court. Fortunately, the time period involved and the scope of the services are within a contained framework. The court can make a proper determination of the reasonable legal fees that are recoverable pursuant to 11 U.S.C. § 362(k) as actual damages in connection with the violation of the stay.

Attorney Daniel Griffin testifies his firm having billed Debtor $4,510 attorney's fees (0.6 at $400/hr and 12.2 at $350/hr), $20 for paralegal (0.1 hours at $200/hr), and $69 for administrative services (0.1 hours at $240/hr and 0.5 hours at $90/hr) relating to this issue. This does not include the hearing conducted on July 1, 2021. Attorney Bonnie Baker testifies to having billed $4,920 attorney's fees (16.4 hrs at $300/hr) and $6 paralegal fees (0.8 hours at $75/hr).

The hourly rates for the attorneys are reasonable, with all but 0.6 hours being at either $350 or $300 an hour. Without the detailed task billing, one of the issues for the court to determine is whether time spent conferring with and reviewing the work of co-counsel is proper. While this was not a simple issue as to the legal points, the factual ones are relatively simple. It effectively is a "one attorney job." As discussed below, it appears that the two attorneys have partially adjusted for this in the fees being requested.

Beginning with the $69 for administrative staff for proofs of service and notice of association of counsel, such clerical services are included in the attorney's hourly rate. These are ordinary costs of an attorney doing business in supporting the attorney's hourly billing rate. The court does not award this as actual damages pursuant to 11 U.S.C. § 362(k).

For the paralegal expense of $26, the court does award it as actual damages. While one might look more closely at the tasks done by a paralegal charging $200 an hour, here there is only 0.10 hours billed. This indicates it was a very specific task, and one likely that the paralegal under billed. The court awards paralegal fees of $26.00 as damages.

7.90 hours of Mr. Griffin's time is billed for "Draft motion, tribal status report, meet and confer letter." This totals $2,765.00. While the motion is a bit "brief," the six page Points and Authorities (Dckt. 86) provides not only the law, but the "grounds stated with particularity" which are required in a motion (Fed. R. Bankr. P. 9013). There are also Mr. Griffin's Declaration and the Exhibit Document (Dckts. 87, 88). For attorney's fees to get the motion, supporting declaration, and exhibits, put together, the law researched, and prepared for oral argument is reasonable, the court awards legal fees relating to the drafting of the motion and related documents of $2,765.00 as damages.

Mr. Griffin then has 1 hour billed for research, which then equals $350. As discussed below, this is addition to Ms. Baker's 2.8 hours of research, which totals $840.

Ms. Baker has 2.8 hours, which equals $640 for the preparation of her declaration and billing.

She then has 5.5 hours to review the opposition documents, which total $1,650. Mr. Griffin does not bill any time for reviewing the opposition documents. In addition, Ms. Baker bills for 2.8 hours of research, which totals $840, plus Mr. Griffin's 1 hour of research.

With respect to the 2.8 hours for preparation of Ms. Baker's Declaration and billing information, that seems a little steep. For the preparing of Ms. Baker's Declaration and billing information, the court awards legal fees for the preparing of the Declaration and billing information $480 as damages.

For the review of the opposition documents, not including research, the court awards $840.00 as damages.

The research for these issues and authorities cited by NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians was not simple. For the research, the court awards $1,190 as damages.

With respect to Ms. Baker's reviewing Mr. Griffin's documents, it is not clear that this was not anything more than duplicating Mr. Griffin's review of his pleadings included in his 5.5 hours billed. It may be that this provided the Debtor with some additional peace of mind which he gladly pays for (and which may be allowable for Ms. Baker as part of her legal fees in the bankruptcy case), but that does not translate to damages awardable as actual damages. Given Ms. Baker's involvement in the Tribal Court proceeding, the court allows some time for her "double checking" the information in the pleadings relating For Ms. Baker's time in reviewing Mr. Griffin's documents, the court awards $240.00 in damages.

The next category of fees is "calls and emails with co-counsel and client, in-office meetings" which Mr. Griffin billed 3.8 hours for $1,330, and the "calls" for which Ms. Baker billed 2.3 hours, which totals $690. Clearly some of this is two attorneys talking about the one task - the Motion for violation of the stay and 11 U.S.C. § 362(k) damages. Some of it is for communications with the client, and possibly communications with the opposing counsel. However, without the detailed billing records, one does not know for sure.

Fortunately, the two counsel for Debtor have been very efficient in their billings and this revolves around a narrow area of time. The court awards damages for 3.5 of the 6.1 hours billed, with that time billed at a combined average rate of $325 an hour, for legal "communications and calls" the court awards $1,225.00 as damages.

The damages awarded for the pre-hearing legal fees are $6,766.00. This is 71% of the $9,525.00 total requested by Debtor.

In addition Debtor counsel was in attendance and actively participated in the oral argument at the July 1, 2021 hearing. For the attorney's fees for Daniel Griffin appearing for Debtor at and participating in the July 1, 2021 hearing, the court award legal fees of $525.00 ($350.00 an hour for 1.5 hours) as damages.

The total attorney's fees awarded as damages pursuant to 11 U.S.C. § 362(k) are $7,291.00.

The court awards the $7,291.00 in damages against NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians.

Damages Not Awarded Against
Counsel for NUMA Corp. a.k.a. the
Cedarville Rancheria of Northern Paiute Indians

Debtor also requests that the damages also be awarded against Jack Duran, Jr., Esq., for his conduct in orchestrating and conducting the conduct that is in violation of the stay. Debtor is correct and the court could order such against counsel personally.

However, the court awards the damages against only NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians. This is done for several reasons. First, NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians presents entities with resources to pay the damages, Debtor also has the ability to offset the damages against the payments being made on its claim, with the projected distributions being at least $42,000.

This easy enforcement mechanism, if NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians refuses to fulfill their obligation ordered by the court. Additionally, it will avoid any "side show argument"s over enforcing the damages against counsel and the parties wasting time and money for a fight to "just do what's right." Additionally, counsel has to work going forward with his clients, NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians and the Cedarville Rancheria of Northern Paiute Indians DBA NUMA Corporation, so it isn't as if he just slips away into the night on this issue.

Finally, the $7,291.00 is a "reasonable amount," and hopefully has everyone back on track to address not just the legal, but the economic factors in going forward. Debtor has to take into account the Sovereign Immunity being abrogated (under Ninth Circuit Court of Appeal decisional law) for only specific provisions of the Bankruptcy Code. NUMA Corp. a.k.a. the Cedarville Rancheria of Northern Paiute Indians, as well as the Cedarville Rancheria of Northern Paiute Indians DBA NUMA Corporation, need to take into account that Congress has abrogated sovereign immunity (again, as based on established Ninth Circuit Court of Appeal law) with respect to 11 U.S.C. § 502 (claims and adjudication of claims), that they need to come into the United States to enforce under United States law any obligation they assert against Debtor, and Debtor's ability to pay and how they get him to do that.

It appears that both parties have substantial reasons to sit down with their counsel and each other to address possible economic resolutions of the underlying claim/debt dispute.