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5 Attorneys for Appellant Numa Corp.,
6 Cedarville Rancheria of Northern Paiute Indians

7 **UNITED STATES COURT OF APPEALS**
8 **FOR THE NINTH CIRCUIT**
9

10 In re

11 JASON DIVEN

12 Debtor.
13

Ninth Circuit Case No. _____

District Court Case No. 2:21-CV-01242-
KJM

14 Bankruptcy Court Case No. 20-24311-E-13
Chapter 13

15
16 NUMA CORPPORATION,
CEDARVILLE RANCHERIA OF
17 NORTHERN PAIUTE INDIANS,

18 Appellant,

19 vs.

20 JASON DIVEN,

21 Appellee.
22

**JOINT PETITION FOR PERMISSION TO
APPEAL DIRECTLY TO THE NINTH
CIRCUIT COURT OF APPEALS UNDER 28
U.S.C. § 158(d)(2)(A)**

23 Appellant Numa Corp., Cedarville Rancheria of Northern Paiute Indians (“Appellant”) and
24 Appellee Jason Diven (“Appellee”), respectfully request that this Ninth Circuit Court permits appeal to
25 this Court under 28 U.S.C. § 158(d)(2)(A), which states that

26
27 The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence
28 of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel
involved, acting on its own motion or on the request of a party to the judgment, order, or decree

described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—

(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

Here, both Appellant and Appellee certified jointly before the United States District Court for the Eastern District of California (“District Court”), where an appeal from an order¹ by the United States Bankruptcy Court (“Bankruptcy Court”) was pending, that direct review by this Court (Ninth Circuit Court of Appeals) is warranted under 28 U.S.C. § 158(d)(2)(A)(iii). The joint certification before the District Court is attached hereto as Exhibit A. Given this joint certification, the hanging sentence of § 158(d)(2)(A) now gives the prerogative to this Court to decide whether to authorize such direct review before itself.²

The parties agree that this Court should authorize such direct review before itself because there is a pending Tribal court proceeding raising issues of law pertaining to the federal statutory injunction under 11 U.S.C. § 362(a) as it relates to that pending court proceeding.

Appellant contends that it is a Section 17 tribal corporation, owned and operated by the Cedarville Rancheria of Northern Paiute Indians, a federally recognized Indian Tribe. A contractual dispute arose between Appellant and Appellee involving construction work Appellee was performing

¹ The Bankruptcy Court’s order that is appealed here was entered on July 7, 2021. That order is attached to and is part of Exhibit A hereto.

² The Parties inquired with the Clerk for the Ninth Circuit Court of Appeals before filing this Petition.

1 on Appellant's tribal land. Appellant initiated a suit against Appellee in Appellant's Tribal Court on
2 September 13, 2019, seeking to recover damages from Appellee involving their dispute. On September
3 11, 2020, Appellee filed the underlying chapter 13 bankruptcy case with the Bankruptcy Court.
4 Appellant asked the Tribal Court to hold a status conference hearing in the Tribal Court litigation, and
5 requested a briefing schedule on whether the federal injunction under 11 U.S.C. § 362(a) enjoins the
6 proceedings in the Tribal Court. Appellee filed a motion for sanctions for violation of the automatic
7 stay. The Bankruptcy Court granted that motion in part, entering the order being appealed here.
8

9 Appellant represents that the Bankruptcy Court's order contains legal questions of substantial
10 importance, including:

- 11 1. Whether Appellant, as a foreign government, and whether the tribal court, as a foreign court,
12 are subject to the automatic stay provisions of the Bankruptcy Code?
- 13 2. Whether Appellant's sovereign immunity precludes the Bankruptcy Court from holding
14 Appellant liable for violation of the automatic stay?
- 15 3. Whether Appellant's sovereign immunity was waived for purposes of enforcement of the
16 automatic stay?
- 17 4. Whether a foreign government, like Appellant, asking a foreign court to determine whether
18 that court is subject to the automatic stay injunction, violated the automatic stay?

19 The above characterization of the issues is proffered by Appellant. Appellee explicitly reserves
20 the right to contest this characterization of the issues and factual summary in his brief.

21 Most important, Appellant and Appellee both agree that an immediate appeal to this Court, from
22 the Bankruptcy Court's order, will materially advance the progress of the underlying bankruptcy
23 proceedings, and it will address substantial questions of law involving a pending Tribal court proceeding
24 and the statutory federal injunction under 11 U.S.C. § 362(a) as it pertains to that pending court
25 proceeding.

26 Appellant contends that the issues are of paramount importance because they arise uniquely in
27 the context of a government continuing legal proceedings, before its own courts, to resolve its own intra-
28

1 tribal matters. Further, Appellant will argue that neither the Supreme Court nor the Courts of Appeals
2 have addressed whether the Bankruptcy Court may hold Appellant liable for violation of the automatic
3 stay (federal injunction under 11 U.S.C. § 362(a)), where Appellant employed a Tribal court and
4 requested briefing in the Tribal court to question the applicability of the automatic stay to that court.

5 WHEREFORE, Appellant and Appellee respectfully request certification for direct appellate
6 review by the Ninth Circuit Court of Appeals.
7

8 DURAN LAW OFFICE
9

10 Date: January 14, 2022

11 Jack Duran, Jr., Esq.
12 Attorneys for Appellant Numa Corp.,
13 Cedarville Rancheria of Northern Paiute
14 Indians

15 THE BANKRUPTCY GROUP, P.C.

16 Date: January 21, 2022

17 /s/ Daniel Griffin
18 Daniel Griffin, Esq.
19 Attorney for Appellee Jason Diven
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In re JASON DIVEN, Debtor.

NUMA CORPORATION, CEDARVILLE RANCHERIA OF
NORTHERN PAIUTE INDIANS, Appellant,

District Court Case No. 2:21-CV-01242-KJM

Bankruptcy Court Case No. 20-24311-E-13

vs.

JASON DIVEN, Appellee.

Certification to Court of Appeals by All Parties

A notice of appeal having been filed in the above-styled matter on 07/14/21 [Date], Numa Corp., Cedarville Rancheria of Northern Paiute Indians, and Jason Diven, [names of all the appellants and all the appellees, if any], who are all the appellants [and all the appellees] hereby certify to the court under 28 U.S.C. § 158(d)(2)(A) that a circumstance specified in 28 U.S.C. § 158(d)(2) exists as stated below.

Leave to appeal in this matter:

- ☐ is required under 28 U.S.C. § 158(a)
☒ is not required under 28 U.S.C. § 158(a).

This certification arises in an appeal from a final judgment, order, or decree of the United States Bankruptcy Court for the Eastern District of California entered on 07/07/21 [Date].

The underlying facts on this appeal are undisputed. The bankruptcy court's order that is appealed here contains legal questions of substantial importance, including:

1. Whether Appellant, as a foreign government, and whether the tribal court, as a foreign court, are subject to the automatic stay provisions of the Bankruptcy Code?
2. Whether Appellant's sovereign immunity precludes the bankruptcy court from holding Appellant liable for violation of the automatic stay?
3. Whether Appellant's sovereign immunity was waived for purposes of enforcement of the automatic stay?
4. Whether a foreign government, like Appellant, asking a foreign court to determine whether that court is subject to the automatic stay injunction, violated the automatic stay?

Appellee reserves the right to dispute the characterization of the issues presented in its brief.

Appellant and Appellee both agree that an immediate appeal from the order entered by the bankruptcy court will materially advance the progress of the underlying proceedings, given the legal issues raised by the facts of this case, the conflicting case law in other circuits, the pending bankruptcy and tribal court cases, and the involvement of a tribal court determining whether it is subject to a federal statutory injunction. See 28 U.S.C. § 158(d)(2)(A) (iii).

Official Form 424 continued
(12/15)

[The parties may include or attach the information specified in Rule 8006.]

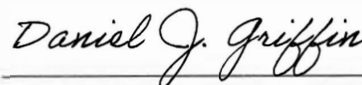
Signed: *[If there are more than two signatories, all must sign and provide the information requested below. Attach additional signed sheets if needed.]*

Attorneys for Appellant and
Appellee (or Appellant and
Appellee, if not represented
by an attorney):

Printed names of signers:



Jack Duran



Dan Griffin

Addresses:

Duran Law Office

4010 Foothills Blvd., Ste. 103

Roseville, CA 95747

NewPoint Law Group, LLP

3300 Douglas Blvd., Ste. 100

Roseville, CA 95661

Telephone numbers:

(916) 779 - 3316

(800) 358 - 0305

Date:

10 / 18 / 2021
MM / DD / YYYY

10 / 18 / 2021
MM / DD / YYYY

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re)	Case No. 20-24311-E-13
JASON DIVEN,)	Docket Control No. TBG-1
)	
Debtor.)	

**ORDER GRANTING MOTION FOR SANCTIONS FOR
VIOLATION OF THE AUTOMATIC STAY**

The Motion for Sanctions for Violation of the Automatic Stay ("Motion") by Jason Diven, Debtor ("Movant"), having been presented to the court; Findings of Fact and Conclusions of Law being stated in the Civil Minutes for and orally on the record at the July 1, 2021 hearing on this Motion; upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and it is determined that NUMA Corporation aka the Cedarville Rancheria of Northern Paiute Indians, and Jack Duran, Jr., Esq., its counsel and counsel for the Cedarville Rancheria of Northern Paiute Indians DBA NUMA Corporation in the Tribal Court proceeding relating to NUMA Corporation, aka Cedarville Rancheria of Northern Paiute Indians' claim (Proof of Claim 6-1) in this case, have violated the automatic stay provisions of 11 U.S.C. § 362(a).

IT IS FURTHER ORDERED that damages in the amount of \$7,291.00 are awarded pursuant to 11 U.S.C. § 362(k)(1) against NUMA Corporation aka the Cedarville Rancheria of Northern Paiute Indians. No damages are awarded against Jack Duran, Jr., Esq.

This Order constitutes a judgment (Federal Rule of Civil Procedure 54(a) and Federal Rules of Bankruptcy Procedure 7054 and 9014) and may be enforced pursuant to the Federal Rules of Civil

1 Procedure and the Federal Rules of Bankruptcy Procedure (including Federal Rule of Civil
2 Procedure 69 and Federal Rules of Bankruptcy Procedure 7069 and 9014).

3 **IT IS FURTHER ORDERED** that the Clerk of the Bankruptcy Court shall serve a copy of
4 this order and the Civil Minutes for the July 1, 2021 hearing (the court having provided additional
5 discussion regarding cases and points advanced in oral argument that are not included in the court's
6 posted tentative ruling) on the following persons:

7 Jack Duran Jr., Esq.
8 Counsel for NUMA Corporation, aka
9 the Cedarville Rancheria of
10 Northern Paiute Indians and
11 Counsel for Cedarville Rancheria of
12 Northern Paiute Indians DBA NUMA
13 Corporation
14 4010 Foothills Blvd. S-103, #98
15 Roseville, CA 95747

Bonnie Baker, Esq.
Counsel for Jason Diven
P.O. Box 991471
Redding, CA 96001

Daniel J. Griffin, Esq.
Counsel for Jason Diven
3300 Douglas Blvd., Ste. 100
Roseville, CA 95661

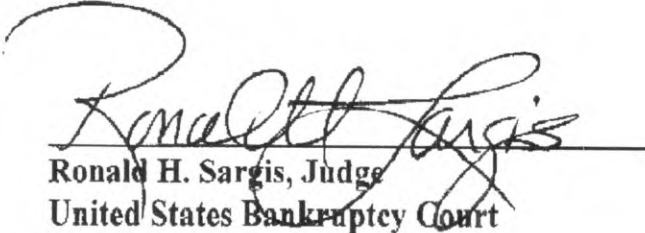
12 NUMA Corporation aka the Cedarville
13 Rancheria of
14 Northern Paiute Indians
15 300 W. 1st Street
16 Alturas, CA 96101

Mr. Jason Diven
P.O. Box 3553
Lake City, CA 96115

15 Cedarville Rancheria of
16 Northern Paiute Indians DBA NUMA
17 Corporation
18 300 West 1st Street
19 Alturas, CA 96101

20 **Dated:** July 07, 2021

By the Court

21 
22 Ronald H. Sargis, Judge
23 United States Bankruptcy Court
24
25
26
27
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Instructions to Clerk of Court

Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked _____, via the U.S. mail.

Debtor(s)	Attorney(s) for the Debtor(s)
Mr. Jason Diven P.O. Box 3553 Lake City, CA 96115	Bonnie Baker, Esq. Counsel for Jason Diven P.O. Box 991471 Redding, CA 96001 Daniel J. Griffin, Esq. Counsel for Jason Diven 3300 Douglas Blvd., Ste. 100 Roseville, CA 95661
Bankruptcy Trustee David Cusick P.O. Box 1858 Sacramento, CA 95812	Office of the U.S. Trustee Robert T. Matsui United States Courthouse 501 I Street, Room 7-500 Sacramento, CA 95814
Attorney(s) for Trustee (if any)	Jack Duran Jr., Esq. Counsel for NUMA Corporation, aka the Cedarville Rancheria of Northern Paiute Indians and Counsel for Cedarville Rancheria of Northern Paiute Indians DBA NUMA Corporation 4010 Foothills Blvd. S-103, #98 Roseville, CA 95747
NUMA Corp. and the Cedarville Rancheria of Northern Paiute Indians 300 W. 1st Street Alturas, CA 96101	Cedarville Rancheria of Northern Paiute Indians DBA NUMA Corporation 300 West 1st Street Alturas, CA 96101