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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ACRES BONUSING, INC., a Nevada Corporation,
and, **JAMES ACRES**, an individual,

Plaintiffs,

v.

LESTER MARSTON, an individual; **ARLA RAMSEY**,
an individual; **THOMAS FRANK**, an individual;
ANITA HUFF, an individual; **RAPPORT AND**
MARSTON, an association of attorneys; **DAVID**
RAPPORT, an individual; **ASHLEY BURRELL**, an
individual; **COOPER DEMARSE**, an individual;
DARCY VAUGHN, an individual; **KOSTAN**
LATHOURIS, an individual; **BOUTIN JONES, INC.**, a
California corporation; **MICHAEL CHASE**, an
individual; **DANIEL STODER**, an individual; **AMY**
O'NEILL, an individual; **JANSSEN MALLOY LLP**,
an association of attorneys; **MEGAN YARNALL**, an
individual; **AMEILIA BURROUGHS**, an individual;
and **DOE DEFENDANT NO. 1** through **DOE**
DEFENDANT NO. 20,

Defendants.

Case No.:

VERIFIED COMPLAINT FOR:

- 1) WRONGFUL USE OF CIVIL PROCEEDINGS**
- 2) AIDING AND ABETTING WRONGFUL USE OF CIVIL PROCEEDINGS**
- 3) CONSPIRACY TO COMMIT WRONGFUL USE OF CIVIL PROCEEDINGS**
- 4) BREACH OF FIDUCIARY DUTY**
- 5) AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**
- 6) CONSTRUCTIVE FRAUD**
- 7) AIDING AND ABETTING CONSTRUCTIVE FRAUD**
- 8) RICO VIOLATION**

DEMAND FOR JURY TRIAL

INTRODUCTION

1. From January 2016 through July 2017, Blue Lake Rancheria (“Blue Lake”) and its confederates sued Acres Bonusing, Inc. (“ABI”) and James Acres (“Mr. Acres”), individually, within Blue Lake’s tribal court.¹ Blue Lake and its confederates sought ruinous judgments, within a court they controlled, before a judge they suborned, on conjured claims of fraud and breach of contract. Mr. Acres brought two federal lawsuits to enjoin Blue Lake from pursuing its meritless suit within its tribal court. As a consequence of that federal litigation, Blue Lake’s suborned Chief Judge Lester Marston was replaced with the Honorable Justice James Lambden (Ret.), from the California Court of Appeal. Mr. Acres filed a motion to dismiss the tribal action which, *sua sponte*, Justice Lambden transformed into a motion for summary judgement. Justice Lambden found “reasonable minds could come to only one conclusion,” and dismissed the case against Mr. Acres on the merits and with prejudice. ABI then demanded a bill of particulars from Blue Lake, whereupon Blue Lake immediately dismissed the case in its entirety and with prejudice.

JURISDICTION, VENUE, RIPENESS, AND PARTY ALLEGATIONS

2. This Court has original jurisdiction over the eighth cause of action under 18 USC 1964(c), and supplemental jurisdiction over all other causes of action under 28 USC 1367.

3. Venue is proper in the Northern District of California as Judge Marston and several other defendants are resident here.

4. This case is related to *Acres v. Blue Lake I* (3:16-cv-02622-WHO) and *Acres v. Blue Lake II* (3:16-cv-05391) because it involves substantially the same parties and series of events as those two cases. Intradistrict assignment to the San Francisco Division is proper as assignment of the case to Judge Orrick under Civil L.R. 3-12 seems likely.

5. Several causes of action relate to the civil proceeding *Blue Lake v. ABI*. A true copy of the summons and complaint in *Blue Lake v. ABI* is attached as Exhibit 1. In July 2017 Justice Lambden issued an Order granting Mr. Acres summary judgment and dismissing him from *Blue Lake v. ABI*

¹ *Blue Lake Casino & Hotel v. Acres Bonusing Inc., and James Acres*. Blue Lake Tribal Court Case No. C-15-1215JRL. Hereinafter referred to as “*Blue Lake v. ABI*.”

(“Justice Lambden’s Order”). A true copy of Justice Lambden’s Order is attached as Exhibit 2. On August 31, 2017, Justice Lambden issued a judgment of dismissal dismissing *Blue Lake v. ABI* in its entirety. A true copy of the judgment of dismissal in *Blue Lake v. ABI* is attached as Exhibit 3. Blue Lake tribal law requires any notice of appeal to be filed within thirty days, and no notice of appeal was ever filed or served on ABI. ABI’s claims for wrongful use of civil proceedings are therefore ripe, and the statute of limitations has not expired.

6. Several claims for relief relate to a breach of fiduciary duty by Judge Marston against ABI. Allegations of fact underpinning these claims describe conduct of a non-judicial nature extending until at least January 2017. A claim for breach of fiduciary duty is therefore still within the statute of limitations.

7. Plaintiff ABI is a Nevada Corporation.

8. Plaintiff Mr. Acres is, and at all times relevant was, an employee of ABI as well as its owner.

9. Blue Lake is a federally recognized Indian Tribe in Humboldt County, California, and is organized under the Constitution of the Blue Lake Rancheria. Blue Lake comprises approximately sixty members and approximately ninety acres of land. In each of 2015, 2016, and 2017 Blue Lake received over \$10,000.00 in federal grants.² Blue Lake is not currently named as a Defendant to this action and is identified here merely for convenience.

10. Under Blue Lake’s constitution, the Blue Lake Business Council is the executive political arm of Blue Lake. The Blue Lake Business Council is not currently named as a Defendant to this action and is identified here merely for convenience.

11. The Tribal Court of the Blue Lake Rancheria (“Blue Lake Tribal Court”) was established by the Blue Lake Business Council through its enactment of Ordinance No. 07-01, and under “its inherent sovereign authority to establish and operate its own judicial system.” The Blue Lake Tribal Court is not a Defendant to this action. The Blue Lake Tribal Court is as an enterprise as defined in 18 USC §1961(4), and was used by defendants to affect interstate commerce through a pattern of racketeering

² Because of these grants, significant acts of conduct by defendants described in this complaint were illegal as a matter of law under 18 USC § 666.

1 activity.

2 12. The Blue Lake Casino & Hotel (“Blue Lake Casino”) is an economic enterprise owned and
3 operated by Blue Lake. According to a gaming ordinance enacted by the Blue Lake Business Council,
4 profits from gaming at the casino are deposited directly in Blue Lake’s general treasury. Blue Lake
5 Casino was the plaintiff in *Blue Lake v. ABI*. Blue Lake Casino is not currently named as a Defendant to
6 this action, and is identified here merely for convenience.

7 13. Defendant Arla Ramsey (“Ms. Ramsey”) was the CEO of Blue Lake Casino during *Blue Lake v.*
8 *ABI*. Ms. Ramsey also served as Blue Lake’s Tribal Administrator, as a judge of Blue Lake’s Tribal
9 Court, and as the vice-chair of Blue Lake Business Council. In her role as Tribal Administrator, Ms.
10 Ramsey was responsible for the day to day business affairs of the tribal government, and supervised the
11 work of the tribal court clerk. On information and belief, Ms. Ramsey is a resident of Humboldt
12 County, California, and is named as a defendant in her individual capacity.

13 14. Defendant Thomas Frank (“Mr. Frank”) has sworn statements describing his employment in
14 various executive roles for Blue Lake over the past 15 years, including as a Blue Lake Casino executive
15 (until 2009) and as Director of Business Development for Blue Lake Rancheria (from 2010 until at least
16 2015). On information and belief, Mr. Frank is a resident of Newcastle, Wyoming and is named as a
17 defendant in his individual capacity.

18 15. Defendant Anita Huff (“Clerk Huff”) was the Clerk of the Blue Lake Tribal Court during *Blue*
19 *Lake v. ABI*. According to Clerk Huff’s LinkedIn page, while acting as Clerk, Clerk Huff was also
20 employed by Blue Lake in various other roles, some of which, like “Grants and Contracts Manager,”
21 included generating grant income for Blue Lake within her responsibilities. On information and belief,
22 Clerk Huff is a resident of Humboldt County, California. Clerk Huff is named as a defendant in her
23 individual capacity.

24 16. According to Blue Lake Tribal Court documents, Defendant Lester John Marston (“Judge
25 Marston”) has been the Chief Judge of Blue Lake Tribal Court since at least 2002, and was the original
26 presiding judge *Blue Lake v. ABI*. Judge Marston is also a named attorney at Rapport and Marston, and
27 has represented Blue Lake and its interests as an attorney since at least 1983. During the autumn 2014,

1 Judge Marston wrote a demand letter to the California DMV on Rapport and Marston letterhead in his
2 capacity as Chief Judge of Blue Lake Tribal Court. In January 2015, Judge Marston wrote a memo to a
3 lobbyist on Rapport and Marston letterhead in his capacity as Blue Lake's "Tribal Attorney." Judge
4 Marston is a member of the California State Bar, No. 81030. On information and belief, Judge Marston
5 is a resident of Mendocino County, California, and is named as a defendant in his individual capacity.
6 While Judge Marston enjoys absolute judicial immunity from suit for any conduct that was essentially
7 judicial in nature, Judge Marston is not immune from suit for conduct that was not essentially judicial in
8 nature.

9 17. Defendant Rapport and Marston is an association of attorneys located in Mendocino County,
10 California. Rapport and Marston appears to hold itself out as a law firm in state and federal court, shares
11 work between attorneys, allows attorneys to sign court filings for each other, and bills work by multiple
12 attorneys on a single invoice. However, Rapport and Marston does not appear to be registered with the
13 State Bar Association as a law firm, or as an entity with the California Secretary of State, and Mr.
14 Rapport and Judge Marston deny Rapport and Marston is a firm at all. ABI will amend this complaint to
15 name Rapport and Marston in the proper capacity once that capacity is discovered.

16 18. Defendant David Rapport ("Mr. Rapport") is the other named attorney at Rapport and Marston.
17 Mr. Rapport has provided attorney services to Blue Lake and its interests alongside Judge Marston since
18 at least 1983. Mr. Rapport is a member of the California State Bar, No. 54384. On information and
19 belief, Mr. Rapport is a resident of Mendocino County, California. Mr. Rapport is named as a defendant
20 in his individual capacity.

21 19. Defendant Ashley Rose Burrell ("Ms. Burrell") is an associate judge of the Blue Lake Tribal
22 Court, and an attorney associated with Rapport and Marston. Ms. Burrell is a member of the California
23 State Bar, No. 289255. On information and belief, Ms. Burrell is a resident of Mendocino County,
24 California. Ms. Burrell is named as a defendant in her individual capacity.

25 20. Defendant Cooper Monroe DeMarse ("Mr. DeMarse") is an associate judge of the Blue Lake
26 Tribal Court, and an attorney associated with Rapport and Marston. Mr. DeMarse is a member of the
27 Arizona State Bar. On information and belief, Mr. DeMarse is a resident of the State of Arizona. Mr.

DeMarse is named as a defendant in his individual capacity.

21. Defendant Darcy Catherine Vaughn (“Ms. Vaughn”) is an associate judge of the Blue Lake Tribal Court, and an attorney associated with Rapport and Marston. Ms. Vaughn is a member of the California State Bar, No. 269907. On information and belief, Ms. Vaughn is a resident of Mendocino County, California. Ms. Vaughn is named as a defendant in her individual capacity.

22. Defendant Kostan Lathouris (“Mr. Lathouris”) is an attorney associated with Rapport and Marston. Mr. Lathouris is a member of the Nevada State Bar Association, No. 13905. On information and belief, Mr. Lathouris is a resident of the State of Nevada. Mr. Lathouris is named as a defendant in his individual capacity.

23. Defendant Boutin Jones, Inc. (“Boutin Jones”) is a law firm located in Sacramento, California. Boutin Jones attorneys filed the complaint in *Blue Lake v. ABI* and prosecuted the case for over a year. Boutin Jones also represented Blue Lake Casino in both related federal actions initiated by Mr. Acres to enjoin *Blue Lake v. ABI*. Boutin Jones also represents Blue Lake in *Blue Lake v. Lanier*³, an approximately twenty-million dollar employment tax dispute currently on appeal before the Ninth Circuit.⁴ Boutin Jones represents Blue Lake in *Lanier* alongside Rapport and Marston. Boutin Jones is registered as a law corporation with the State of California, with the Secretary of State File Number C1946487, and is named as a defendant in that capacity.

24. Defendant Michael Chase (“Mr. Chase”) is Vice-President and a shareholder attorney at Boutin Jones. Mr. Chase personally appeared on behalf of Blue Lake Casino in *Acres v. Blue Lake I* and *Acres v. Blue Lake II*. When appearing in *Acres v. Blue Lake II*, Mr. Chase stated he had personal knowledge of the internal affairs of Rapport and Marston. Alongside Mr. Rapport, Mr. Chase is a named attorney for Blue Lake in *Blue Lake v. Lanier*. Mr. Chase is a member of the California State Bar, No. 214506. On information and belief, Mr. Chase is a resident of Sacramento County, California. Mr. Chase is named defendant in his individual capacity.

25. Defendant Dan Stouder (“Mr. Stouder”) is Vice-President and a shareholder attorney at Boutin

³ *Blue Lake v. Lanier*, (2:11-cv-01124-JAM-JFM, E.D. Cal., 2015).

⁴ *Blue Lake v. Lanier*, USCA Case No. 15-16340 (9th Cir.).

Jones. Mr. Stouder was an attorney of record representing Blue Lake Casino in *Blue Lake v. ABI*, and *Acres v. Blue Lake I and II*, and personally appeared in federal court on Blue Lake Casino's behalf in *Acres v. Blue Lake II*. Mr. Stouder is a member of the California State Bar, No. 226753. On information and belief, Mr. Stouder is a resident of Sacramento County, California. Mr. Stouder is named defendant in his individual capacity.

26. Defendant Amy O'Neill ("Ms. O'Neill") was an attorney at Boutin Jones. Ms. O'Neill was an attorney of record representing Blue Lake Casino in *Blue Lake v. ABI*, and personally appeared in Blue Lake Tribal Court on Blue Lake Casino's behalf. Ms. O'Neill was also an attorney of record for Blue Lake Casino in *Acres v. Blue Lake I* and *Acres v. Blue Lake II*. Ms. O'Neill is a member of the California State Bar, No. 294458. On information and belief, Ms. O'Neill is a resident of Sacramento County, California. Ms. O'Neill is named defendant in her individual capacity.

27. Defendant Janssen Malloy LLP ("Janssen Malloy") is a law firm located in Humboldt County, California. In February 2017, Janssen Malloy replaced Boutin Jones as attorneys for Blue Lake Casino in *Blue Lake v. ABI* and *Acres v. Blue Lake II*. While Janssen Malloy holds itself out as an LLP, it does not appear to be registered with the California Secretary of State. ABI is unsure under what capacity to name Janssen Malloy as a defendant and will amend this complaint when the true nature of Janssen Malloy's corporate status is discovered.

28. Defendant Megan Yarnall ("Ms. Yarnall") is a partner at Janssen Malloy. She was an attorney of record for Blue Lake Casino in both *Blue Lake v. ABI* and in *Acres v. Blue Lake II*, and Ms. Yarnall personally appeared on Blue Lake Casino's behalf in both actions. Ms. Yarnall is a member of the California State Bar, No. 275319. On information and belief, Ms. Yarnall is a resident of Humboldt County, California. Ms. Yarnall is named defendant in her individual capacity.

29. Defendant Amelia Burroughs ("Ms. Burroughs") is an attorney at Janssen Malloy. She was an attorney of record for Blue Lake Casino in *Blue Lake v. ABI*. Ms. Burroughs is described as a partner of Janssen Malloy on Janssen Malloy's website. Ms. Burroughs is a member of the California State Bar, No. 221490. On information and belief, Ms. Burroughs is a resident of Humboldt County, California. Ms. Burroughs is named defendant in her individual capacity.

30. Plaintiffs do not know the true names and capacities of defendants sued in the complaint as Doe 1 through Doe 20. Plaintiffs will amend this complaint to allege the true names, capacities, and culpabilities of the Doe Defendants when they are uncovered.

31. The Honorable Justice James N. Lambden (“Justice Lambden”) is retired from the California Court of Appeal. Justice Lambden now works as a private judge for ADR Services in San Francisco. Justice Lambden replaced Judge Marston as the presiding judge in *Blue Lake v. ABI*. Justice Lambden is not named as a defendant and is identified only for convenience.

32. In July 2018 Mr. Acres sued the above named defendants in *Acres v. Marston et al.*⁵ on causes substantially similar to causes one through seven below. Defendants successfully brought a motion to quash for tribal sovereign immunity in that case, and Mr. Acres appeals that ruling.⁶ However, defendants also brought evidence in *Acres v. Marston* which undergird the eighth claim for racketeering below. Because defendants also brought anti-SLAPP motions in *Acres v. Marston*, freezing the state-court complaint, this is Mr. Acres’ first opportunity to seek relief for defendants’ racketeering conduct, and he joins this complaint only to seek relief on the eighth cause of action for racketeering.

33. The General Fact Allegations below make references to Judge Marston’s “Billing Records” (the “Billing Records”). In December 2016 the Honorable William H. Orrick of the United States District Court for Northern California ordered Judge Marston to provide Mr. Acres with Judge Marston’s Billing Records to Blue Lake. Judge Marston provided the Billing Records to Mr. Acres in January 2017. The Billing Records are in the form of monthly invoices. Each invoice is from “Lester J. Marston” at “Rapport and Marston” and are invoiced to “Blue Lake Rancheria ... Attn: Anita Huff,” and bear the legend “In Reference To: INVOICE FOR LEGAL SERVICES.” The Billing Records begin on January 1, 2012 and end on December 31, 2016. Each entry in the Billing Records contained a date on which a piece of work was performed, initials identifying which attorney performed the work, and a short description of the work performed. In the allegations below, the capitalized past tense verb “Billed” is sometimes used as an explicit reference to work described in the Billing Records.

⁵ Sacramento Superior Court Case No. 2018-34-00236929.

⁶ California Court of Appeal, Third District, Case No. C089344.

GENERAL FACT ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

34. On January 12, 2016, the Billing Records show Judge Marston reviewed the complaint in *Blue Lake v. ABI*. The complaint was signed by Mr. Stouder and Ms. O'Neill. Under Blue Lake Tribal Court Rule⁷ 5, the administrative decision of whether to preside over the case himself, or to assign the case to another judge, fell to Judge Marston.

35. At the time, Judge Marston had been serving for over a year as attorney of record for Blue Lake and Ms. Ramsey in the state court lawsuit *Blue Lake v. Shiimoto*.⁸ Ms. Ramsey's son, Jason Ramos, a senior official at Blue Lake's casino regulatory agency, had recently married. Ms. Ramsey officiated at her son's Blue Lake Tribal Court wedding in her role as Blue Lake Tribal Court Judge. When the California DMV refused to issue Ms. Ramsey's new daughter-in-law, Jennifer Ramos, a driver's license based on her tribal court marriage by Ms. Ramsey, Judge Marston sued the DMV in state court on behalf of Blue Lake, Ms. Ramsey, and Ms. Ramos.

36. According to the Billing Records, from March 2015 through February 2016 Judge Marston was also Billing Blue Lake for legal advice on gaming compact renegotiations with the state of California. Blue Lake's gaming compact was set to expire at the end of the decade, and without a new compact, Blue Lake Casino would be unable to continue to offer "Las Vegas style" gaming. In August 2015, Judge Marston wrote on his personal Facebook page that helping tribes negotiate gaming compacts was part of a "warrior's song," and "a continuation of the struggle" that gives life meaning.

37. At the same time Judge Marston represented Ms. Ramsey as her attorney in *Blue Lake v. Shiimoto*, he presided over *Blue Lake v. ABI*. Ms. Ramsey was the CEO of Blue Lake Casino, the plaintiff in *Blue Lake v. ABI*.

38. Ms. Yarnall stated at a *Blue Lake v. ABI* hearing that Blue Lake's "main business" is Blue Lake Casino. Under Blue Lake's Tribal Gaming Ordinance, all of Blue Lake Casino's gaming profits are deposited into Blue Lake's general treasury.

⁷ Formally known as the "Rules of Pleading, Practice and Procedure for the Blue Lake Rancheria Tribal Court" and shortened here as "Blue Lake Tribal Court Rules."

⁸ *Blue Lake Rancheria et al., v. J. Shiimoto et al.* (Super. Ct. Humboldt County, Case No. CV140799).

39. Under judicial conduct rules established by Judge Marston,⁹ a Blue Lake Tribal Court judge should not preside over a case if:

- a. “The judge has any bias or prejudice concerning a party;”
- b. “Any party to a proceeding before the court, except the Business Council of the Tribe as part of a judicial services contract, has been a source of income to the judge within the preceding twelve months, other than the tribe paying the judge for work as a judge;” or
- c. “The Judge knows or has reason to know that he ... has a financial interest ... or has any other interest that could be substantially affected by the proceedings.”

40. Instead of assigning *Blue Lake v. ABI* to another judge, Judge Marston retained it for himself. The Billing Records show that on January 13, 2016, Judge Marston emailed Clerk Huff to acknowledge his receipt of various filings in *Blue Lake v. ABI*.

41. Clerk Huff issued a summons to serve on ABI and Mr. Acres. Blue Lake Tribal Court Rule 15 requires defendants be given thirty days to respond to a summons. The summons issued by Clerk Huff, and which Mr. Stouder and Ms. O’Neill caused to be served on ABI and Mr. Acres, demanded an answer within five-days, under pain of default.

42. In February 2016, Mr. Acres spoke to Clerk Huff on the phone and asked her why the summons served in *Blue Lake v. ABI* required answer within five-days, instead of thirty days as required by tribal court rules. Clerk Huff responded she had no explanation. Later, in federal court, Clerk Huff swore under penalty of perjury she had inadvertently issued the summons form used for unlawful detainers. Clerk Huff attached the Blue Lake Tribal Court Rules to her declaration as an exhibit, and those rules do not provide for the issuance of a five-day summons for any reason whatsoever.

43. In *Blue Lake v. ABI*, Blue Lake Casino demanded \$249,250.00, plus interest, costs, fees, punitive damages, and exemplary damages. At trial, any jury would be composed entirely of Blue Lake residents.

44. *Blue Lake v. ABI* centered around a 2010 “iSlot Agreement” between ABI and Blue Lake

⁹ The “Rules of Judicial Conduct Governing the Conduct of Judges of the Tribal Court of the Blue Lake Rancheria,” which, by Order of Judge Marston dated April 1, 2007, govern the conduct of all judges in all proceedings.

Casino. The iSlot Agreement was signed in July 2010, and under it, Blue Lake Casino purchased iSlot, a novel iPad based gaming platform, from ABI, for \$250,000.00. Beginning in October 2010, Blue Lake Casino used iSlot to serve 56 Las Vegas style slot machine games to its patrons. In 2011, Blue Lake Casino increased this to 88 Las Vegas style slot machine games.

45. During 2011 and 2012, Blue Lake initiated negotiations with ABI to obtain nation-wide distribution rights to the iSlot platform. As part of these negotiations Blue Lake employed its attorneys to draft a proposed distribution agreement. ABI is informed and believes that attorneys from Boutin Jones drafted this proposed distribution agreement. ABI did not accept Blue Lake's proposal and the negotiations came to an end.

46. While negotiations between Blue Lake and ABI were ongoing, ABI obtained several other iSlot customers. One of these customers was Win-River Casino in Redding, California. Blue Lake represented to ABI that Blue Lake had performed significant work in causing Win-River to obtain iSlot under the belief that the negotiations between Blue Lake and ABI would be successful, and that Blue Lake was entitled to a portion of any revenue derived by ABI from iSlot at Win-River. In the spirit of good-faith, ABI paid Blue Lake a portion of the revenue ABI received for iSlot from Win-River.

47. In early 2013, Blue Lake Casino indicated to ABI iSlot had been "in mothballs" for some time because of personnel changes. Blue Lake Casino indicated it wished to make iSlot available to its patrons again and asked for technical support from ABI to accomplish this. Even though the iSlot Agreement expired in October of 2012, and no new agreement had been concluded between the parties, ABI agreed to provide Blue Lake Casino with the requested support. Blue Lake Casino did not avail itself of ABI's offer to provide iSlot support, and ABI heard nothing more from any Blue Lake entity about iSlot, or anything else, for several years.

48. On August 17, 2015 Mr. Stouder sent a letter to ABI demanding ABI pay \$320,678.90 to Blue Lake Casino in order to avoid "further legal action" regarding iSlot ("the Letter"). Mr. Stouder indicated Mr. Frank was copied on the Letter.

49. Upon receiving the Letter, Mr. Acres promptly phoned Mr. Stouder and asked him if he had read the iSlot Agreement. Mr. Stouder replied he had "a copy of the Agreement right in front of [him]."

50. Mr. Acres then drew Mr. Stouder's attention to the portion of the iSlot Agreement stating the \$250,000.00 advanced deposit would be refunded "if, and only if" iSlot was not made available to Blue Lake Casino by October 1, 2010. Mr. Stouder opined "if, and only if" was a construction that "contains a lot of ambiguity."

51. Justice Lambden's Order found the "if, and only if" construction was an "express and strict limitation on the circumstances under which the deposit can be recovered."

52. Blue Lake Casino and ABI exchanged correspondence through their attorneys for the remainder of 2015. Ultimately, Blue Lake served ABI with its five-day summons in January 2016. At no point did Blue Lake Casino indicate it was considering taking legal action against Mr. Acres, or indicate it believed Mr. Acres had engaged in fraudulent conduct. Instead, Mr. Stouder expressly stated Blue Lake Casino was not considering legal action against Mr. Acres because Mr. Acres was not a party to the iSlot Agreement.

53. Despite Mr. Acres not being a party to the iSlot Agreement, Blue Lake nevertheless sued him individually in *Blue Lake v. ABI*. Justice Lambden's Order stated Blue Lake Casino's inclusion of Mr. Acres in *Blue Lake v. ABI* was an "attempt[] to conjure a personal warranty" by Mr. Acres to supplement its action against ABI.

54. On January 17, 2016 at around 8:00am, ABI and Mr. Acres were served at Mr. Acres' home with the complaint and five-day summons in *Blue Lake v. ABI*. Curious, Mr. Acres' children asked who had come to the door so early on a Sunday morning. On learning of the suit filed by Blue Lake Casino in Blue Lake Tribal Court, Mr. Acres' children were instantly reduced to tears, and Mr. Acres' eight-year old daughter cried out, "but if it's their court that means you'll lose for sure!"

55. Civil money judgments from tribal courts are presumptively enforceable in California Superior courts under the Tribal Court Civil Money Judgement Act (the "TCMJA") which was enacted in January 2015. ABI quickly learned Blue Lake sponsored the legislation which led to the TCMJA's enactment. Indeed, Judge Marston, in his role as Blue Lake lobbyist, worked throughout 2013 and 2014 to secure passage of the TCMJA. The TCMJA as originally passed contained a sunset provision. While presiding over *Blue Lake v. ABI*, Judge Marston Billed Blue Lake for work to secure legislative

1 action to remove the sunset provision and make the TCMJA permanent. In this way, Judge Marston
2 simultaneously Billed Blue Lake for presiding over *Blue Lake v. ABI*, and for working to ease Blue
3 Lake's burden in collecting any judgement which might arise from *Blue Lake v. ABI*.

4 56. In 2012, Mr. Acres suffered a heart attack, a fact of which Blue Lake Casino personnel were
5 aware. As a result, Mr. Acres suffers from chronic chest pain when faced with extreme stress. The
6 stress of needing to answer Blue Lake Casino's five-day summons, for what Justice Lambden found to
7 be a meritless personal fraud claim, within Blue Lake's own tribal court, and on pain of a default
8 judgment enforceable under legislation Blue Lake itself sponsored, caused Mr. Acres to experience
9 extreme chest pain indistinguishable from the pain caused by a heart attack, and necessitated an
10 emergency room visit.

11 57. Mr. Acres stated in his opposition to Blue Lake Casino's first motion to dismiss *Acres v. Blue*
12 *Lake I*¹⁰ that he believed Blue Lake Casino's tribal court action against him to be wrongful, and that it
13 was causing him to suffer chest pain so intense as to require emergency medical attention. Blue Lake
14 Casino acknowledged in its reply briefing its awareness Mr. Acres "suffered pain and went to the
15 hospital ... after being served with the complaint in the Tribal Court Action." Nevertheless, defendants
16 persisted in pursuing the *Blue Lake v. ABI* claim against Mr. Acres.

17 58. Mr. Acres is a key employee of ABI. Throughout the pendency of *Blue Lake v. ABI*, ABI's
18 business was harmed because of the stress placed on Mr. Acres by defendants' tortious conduct.

19 59. ABI is informed and believes that defendants were aware that Mr. Acres is a key employee of
20 ABI.

21 60. On January 22, 2016 ABI and Mr. Acres made special appearances challenging Blue Lake Tribal
22 Court jurisdiction, and the ability of the Blue Lake Tribal Court to provide due process, before the
23 expiration of the five-day summons. Mr. Acres represented both himself and ABI in the special
24 appearance and noted in an email accompanying the filings that the submissions were made without
25 benefit of counsel because of the arbitrary five-day summons.

26 61. On January 25, 2016, Clerk Huff used her discretion to reject the special appearance filings for
27

¹⁰ *Acres v. Blue Lake et al.* (3:16-cv-02622-WHO, N.D. Cal., 2016).

1 failing to substantially conform Blue Lake Tribal Court Rule 12 dealing with the “form, size, and
2 duplication of papers.”

3 62. The five-day period having expired, ABI feared a default would be issued. On January 26, 2016
4 ABI fixed the most grievous error it could find and resubmitted its special appearance. In an email
5 accompanying ABI’s re-submission, Mr. Acres pointed out Blue Lake Tribal Court Rules only required
6 rejection of papers which failed to “substantially conform,” and that Clerk Huff’s issuance of a five-day
7 summons was a substantial non-conformance with Blue Lake Tribal Court Rule 15 requiring defendants
8 be given thirty-days to respond to complaints against them. Mr. Acres also pointed out ABI was making
9 a good-faith effort to comply with the summons and make a timely submission, despite the summons’
10 variance from Rule 15.

11 63. Concurrent with her work as Clerk of the Blue Lake Tribal Court, Clerk Huff was also employed
12 by Blue Lake as its Director of Emergency Services, its Grants and Contracts Manager, as well as
13 having some responsibilities related to tribal realty. In some of this work, Clerk Huff reported directly
14 to Blue Lake Casino CEO Ms. Ramsey.

15 64. Judge Marston responded to these good-faith efforts on February 16, 2016 with a tribal court
16 order threatening to sanction Mr. Acres should he continue to “flout tribal court rules” (the “Flouting
17 Order”). According to the Billing Records, Ms. Vaughn drafted the Flouting Order for Judge Marston on
18 February 11-12, 2016. Also according to the Billing Records, in October and November 2015, Ms.
19 Vaughn assisted Judge Marston in representing Blue Lake and Ms. Ramsey in *Blue Lake v. Shiimoto*.

20 65. In February 2016, in addition to Billing Blue Lake for the Flouting Order, Judge Marston also
21 Billed Blue Lake for non-judicial work, including:

- 22 a. Work as a lobbyist to secure the legislative reauthorization of the TCMJA;
- 23 b. Work as attorney representing Blue Lake and Ms. Ramsey in *Blue Lake v. Shiimoto*; and,
- 24 c. Work as an attorney advising Blue Lake on prospective litigation related to casino gaming
25 compact renegotiations with the State of California.

26 66. The Flouting Order also required ABI and Mr. Acres to file answers or other responsive
27 pleadings in *Blue Lake v. ABI* within thirty days pursuant to Blue Lake Tribal Court Rule 30. Rule 30,
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however, is entitled “Dismissal of Actions” and deals with dismissals through plaintiff stipulation or failure to prosecute.

67. Not understanding how one could file an answer or responsive pleading pursuant to a rule regarding plaintiff dismissals, and threatened with sanctions should he fail to do so properly, on March 9, 2016, Mr. Acres filed *Acres v. Blue Lake I* in federal court, seeking protection from Blue Lake Tribal Court.¹¹ Unable to afford representation in federal litigation, ABI had no choice but to observe Mr. Acres’ suit and “hope for the best.”

68. On March 14, 2016, Judge Marston Billed for a “Conference with David Rapport regarding how he is going to respond to the lawsuit filed against the court.”

69. Rapport and Marston have a long history of working together and on Blue Lake’s behalf, including, but by no means limited to, when:

- a. In 1983 when Mr. Rapport and Judge Marston gained federal recognition for Blue Lake as an Indian Tribe as its attorneys in *Tillie Hardwick v. United States* (C 79-1710SW, N.D. Cal. 1983);
- b. In 2008 when Judge Marston and Mr. Rapport worked with Blue Lake on a tribal ordinance;
- c. In 2009 and 2010 when Judge Marston presided over unlawful detainer actions in Blue Lake Tribal Court in which Mr. Rapport represented Blue Lake as plaintiff;
- d. In 2011 when Mr. Rapport represented Judge Marston and Blue Lake Tribal Court in two separate federal actions in which the United Contractors Insurance Company and Admiral Insurance Company sought to escape Blue Lake Tribal Court jurisdiction¹²; and,
- e. In 2013 when Judge Marston Billed Blue Lake for a “Conference with Rapport about whether the Tribal Court would have ancillary jurisdiction to impose sanctions on Admiral Insurance company if it failed to appear for oral argument.”

70. On March 29, 2016 Judge Marston Billed Blue Lake for a “conference with Rapport regarding

¹¹ *Acres v. Blue Lake et al.* (3:16-cv-02622-WHO, N.D. Cal., 2016).

¹² *United Contractors v. Blue Lake Tribal Court, et al.*, (CV-11-10161-JHK-SH, C.D. Cal., 2012) and *Admiral Insurance v. Blue Lake Tribal Court, et al.*, (5:12-cv-01266-LHK, N.D. Cal., 2012).

the status of the filing of the Tribe's brief in federal court."

71. On March 30, 2016 Judge Marston Billed Blue Lake to "Review and revise the brief [to be] filed in support of the Tribe's motion to dismiss in the Acres federal court case."

72. On April 6, 2016, about a week after Judge Marston reviewed and revised Blue Lake Casino's motion to dismiss *Acres v. Blue Lake I* in consultation with Mr. Rapport, the motion was filed in federal court by Mr. Stouder and Ms. O'Neill, Blue Lake Casino's attorneys at the firm Boutin Jones.

73. In a December 2018 declaration filed in *Acres v. Marston*, Mr. Rapport stated that these filings were drafted by Mr. DeMarse, and that Mr. Rapport provided them to Boutin Jones for use in *Acres v. Blue Lake I*. Mr. Rapport also stated that he and Mr. DeMarse continued to provide drafts to Boutin Jones throughout *Acres v. Blue Lake I* and *Acres v. Blue Lake II*.

74. The law firms of Rapport and Marston and Boutin Jones have a significant history of collaboration:

- a. Since June of 2011, Boutin Jones and Rapport and Marston have been associated as counsel for Blue Lake in *Blue Lake v. Lanier*,¹³ a dispute between Blue Lake and the State of California involving approximately twenty-million dollars and currently on appeal before the Ninth Circuit;¹⁴
- b. In 2013, and according to publicly available documents, Mr. Rapport referred approximately \$200,000.00 of billing with the City of Ukiah to Boutin Jones, noting he had worked with Boutin Jones on "several cases pending in state and federal court."
- c. In December of 2016 Mr. Chase appeared for Blue Lake at an *Acres v. Blue Lake* hearing and claimed to have personal knowledge about "the whole Rapport and Marston thing."

75. ABI and Mr. Acres are informed and believe Mr. Chase and Mr. Rapport worked together to coordinate the despicable conduct of their respective firms towards ABI and Mr. Acres.

76. *Acres v. Blue Lake I* continued through July 2016. Throughout the action, Blue Lake Casino argued Mr. Acres enjoyed a "full and fair opportunity" to be heard within the tribal court. Judge

¹³ *Blue Lake v. Lanier*, (2:11-cv-01124-JAM-JFM, E.D. Cal., 2015).

¹⁴ *Blue Lake v. Lanier*, USCA Case No. 15-16340 (9th Cir.).

1 Marston joined in all these arguments, even though he continued to represent Blue Lake and Ms.
2 Ramsey as their attorney in the *Shiomoto* action, and he continued to advise Blue Lake Casino on its
3 legal affairs.

4 77. During April and May 2016 Mr. Lathouris drafted a memorandum of decision whether Blue
5 Lake Tribal Court could exercise jurisdiction over ABI and Mr. Acres, under the supervision of Judge.
6 In February 2016, Mr. Lathouris aided Judge Marston both in *Blue Lake v. Shiomoto*, and in advising
7 Blue Lake on whether or not it should sue the State of California for bad faith gaming compact
8 negotiations.

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78. On August 30, 2016, Judge Marston Billed Blue Lake for work on four separate matters:
- a. Reviewing discovery filings by Jean Shiomoto and her co-defendants in the state court *Blue Lake v. Shiomoto* litigation, in which Judge Marston was Blue Lake and Ms. Ramsey's attorney; and,
 - b. Reviewing a draft of an order written by Ms. Burrell in *Blue Lake v. ABI*, in which Judge Marston presided over Blue Lake Casino's action against ABI and Mr. Acres; and,
 - c. Preparing an email to request the Executive Director of California Indian Legal Services aid Judge Marston in lobbying for the renewal of the TCMJA; and,
 - d. Reviewing and preparing a response to an email from Jack Norton, Human Resources Manager of Blue Lake Casino, regarding an employment dispute with an employee at the casino.

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		Hrs/Rate	Amount
	him in contempt.		
8/29/2016 AB	Legal Research re: violation of tribal, state or federal rules to identify Acres's particular violation of law when he left offensive voicemail for Clerk.		
AB	Legal Research state and tribal decisions holding defendant in contempt for the purpose of drafting opinion resulting from Acres offensive conduct.		
8/30/2016 LJM	Review of the answers to interrogatories filed by Ann Gieger, Mary Galvan and Jean Shiomoto in the DMV license case.		
LJM	Review of the order denying request to appear by telephone in the Acres case on the motion to strike answer and for judgment on the pleadings.		
LJM	Preparation of an email to the Executive Director of CILS requesting CILS's contact list to send the letter and survey to attorneys that practice in Tribal Court to complete the survey in support of SB 406.		
LJM	Review of the email from Norton regarding religious discrimination and preparation of an email in response.		

Figure 1: Excerpt from September 2016 Invoice from Rapport and Marston to Blue Lake, "LJM" is the billing code for defendant "Lester John Marston."

79. Judge Marston's Billing Records show Judge Marston continued to Bill Blue Lake for work in all four matters for the remainder of 2016, and that he shared this work with Ms. Burrell, Ms. Vaughn, Mr. DeMarse, and Mr. Lathouris. Concurrent with aiding Judge Marston in these matters, Mr. DeMarse was drafting filings for Boutin Jones to use in *Acres v. Blue Lake II*.

80. On September 9, 2016 Judge Marston presided over a *Blue Lake v. ABI* hearing on Mr. Acres' motion to disqualify Judge Marston; the motions by ABI and Mr. Acres for judgment on the pleadings; and Blue Lake's motion to strike ABI's filings and require ABI to retain counsel (the "September 9 Hearing").

81. Ms. O'Neill appeared on behalf of Blue Lake at the September 9 Hearing, and Mr. Acres appeared on behalf of himself and ABI. After Mr. Acres and Ms. O'Neill were seated, but before the hearing began, Clerk Huff gave Mr. Acres and Ms. O'Neill copies of Judge Marston's tentative ruling on Mr. Acres' motion to disqualify Judge Marston which, according to the Billing Records, Ms. Burrell drafted. Around the same time, Clerk Huff also gave Mr. Acres a copy of Blue Lake's Code of Judicial Conduct. Also before the hearing began, Judge Marston placed a call on his cell phone and was connected office manager to Ms. Burrell by Rapport and Marston's. Ms. Burrell then Billed Blue Lake to take notes for Judge Marston.

82. The circumstances under which the September 9 Hearing took place caused Mr. Acres to feel nervous and physically threatened because:

- a. The September 9 Hearing was held in a windowless conference room of Blue Lake Casino's hotel, which is attached to the casino;
- b. Of the seven individuals present at the September 9 Hearing, six were employed by Blue Lake, and three of them carried firearms;
- c. Mr. Acres was vigorously searched by an armed Blue Lake employee before being allowed to enter the hotel conference room, whereas all of Blue Lake's employees were allowed to enter the hotel conference room unmolested;
- d. Two of Blue Lake's armed employees maintained positions blocking the only two exits from the hotel conference room throughout the September 9 Hearing, and it was unclear to Mr.

Acres whether he was free to leave the September 9 Hearing;

e. A third armed Blue Lake employee maintained a position directly behind Mr. Acres for most of the September 9 Hearing, and;

f. Before entering the hotel conference room, Judge Marston engaged in a loud discussion with one of Blue Lake's armed employees about Blue Lake's ability to detain non-Indians.

83. Were Judge Marston to find he was disqualified, there were at least two separate lists of possible tribal court replacement judges. Both lists were styled "Tribal Court of the Blue Lake Rancheria General Order No. 5," and both were signed by Judge Marston. According to the Billing Records, Ms. Burrell drafted both orders.

84. The first "General Order No. 5" was dated July 18, 2016, and was available on the tribal court portion of Blue Lake's website for a week or two, after which time it disappeared. The first General Order No. 5 named Ms. Burrell, Ms. Vaughn, and Mr. DeMarse as judges "to be called upon to hear cases in the event of disqualification of a judge."

85. The second "General Order No. 5" was dated August 29, 2016. It was not available on Blue Lake's tribal court website and was given to Mr. Acres by Clerk Huff on September 9, 2016. The second "General Order No. 5" made no mention of the first General Order No. 5 and named four individuals "to be called upon to hear cases in the event of disqualification of a judge." These individuals were Mr. Anthony Cohen, Mr. David Dehnert, Ms. Burrell, and Ms. Vaughn.

86. Mr. Cohen and Mr. Dehnert are attorneys licensed to practice in California, however they do not appear to be associates at Rapport and Marston. Mr. Acres subsequently telephoned both Messrs. Cohen and Dehnert, and both denied any knowledge of being named to the Blue Lake Tribal Court as Associate Judges.

87. Immediately after being told of the second General Order No. 5 by Mr. Acres, Mr. Cohen emailed Clerk Huff stating he was never informed of his appointment as a Blue Lake Tribal Court Judge, and that he would not serve as a Blue Lake Tribal Court Judge.

88. When Mr. Acres asked Clerk Huff to explain the difference between the two General Orders No. 5, Clerk Huff responded that the first General Order No. 5 contained "typographical errors."

89. At the September 9 Hearing Judge Marston declined to disqualify himself from presiding over *Blue Lake v. ABI*. In both his written opinion, and orally during argument, Judge Marston stated since he had no relationship with Blue Lake other than being a judge hearing cases, there was no need for him to disqualify himself. Judge Marston further stated nothing under tribal law, or federal law, required his disqualification.

90. At the September 9 Hearing Ms. O'Neill echoed she saw "no valid reasons" Judge Marston should disqualify himself.

91. At the moment Ms. O'Neill stated there were "no valid reasons" Judge Marston should recuse himself her firm, Boutin Jones, was representing Blue Lake in *Blue Lake v. Lanier* alongside Rapport and Marston, and had done so continuously for more than five years.

92. In the months preceding Ms. O'Neill's statements that there were "no valid reasons" Judge Marston should recuse himself, Boutin Jones had received papers drafted by attorneys working at Judge Marston's law firm which Boutin Jones then filed in *Acres v. Blue Lake I*.

93. In a December 2018 *Acres v. Marston* declaration Judge Marston stated he "would have disqualified [him]self" from *Blue Lake v. ABI* if he had remembered he was Blue Lake's attorney in *Blue Lake v. Shiimoto*.

94. According to the Billing Records, on September 16, 2016, immediately prior to finalizing the *Blue Lake v. ABI* order declining to disqualify himself, Judge Marston wrote a memo updating Blue Lake on the status of *Blue Lake v. Shiimoto*.

95. After declining to disqualify himself, Judge Marston then continued to hear argument on the ABI and Acres motions for judgment on the pleadings, which Judge Marston declined to grant.

96. Judge Marston also heard argument on Blue Lake's motion to strike the ABI filings, and require ABI to retain an attorney to represent it in Blue Lake Tribal Court. Judge Marston granted Blue Lake's motion, despite the fact that Blue Lake Tribal Law specifically allows for parties to be represented by non-attorney "spokespersons."

97. An hour or so before the September 9 Hearing began, Mr. Acres and Judge Marston chanced to meet face to face in Blue Lake's tribal government building. Mr. Acres stretched out his arm, offering

to shake Judge Marston's hand. Judge Marston refused the gesture and walked away. After the September 9 Hearing, but before the participants left the conference room in which the hearing was held, and by way of explaining the refused handshake, Judge Marston stressed he would not have any communication whatsoever with either Mr. Acres or Ms. O'Neill unless both parties were present.

98. After Judge Marston made his September 9, 2016 statement explaining he would refuse to engage in ex-parte communication with litigants outside of court:

- a. Judge Marston continued to represent Blue Lake and Ms. Ramsey in the *Shimoto* action as their attorney of record;
- b. Rapport and Marston continued to represent Blue Lake together with Boutin Jones in the *Lanier* action, in which Judge Marston Billed for the preparation of documents, and;
- c. Rapport and Marston and Boutin Jones continued to collaborate in the preparation of filings in *Acres v. Blue Lake II*¹⁵.

99. On November 8, 2016 Judge Marston submitted a sworn declaration in *Acres v. Blue Lake II* (the "November 8 Declaration"). Judge Marston swore he was submitting the November 8 Declaration in order to "correct for [the federal court's] record numerous misrepresentations made by [Mr. Acres] ... regarding [Judge Marston's] working relationship with [Blue Lake], which directly attack[ed Judge Marston's] personal integrity."

100. Judge Marston also swore in the November 8, 2016 federal declaration, among other things:

- a. "I do not act on behalf of [Blue Lake] in any capacity other than as the Chief Judge of the Tribal Court;" and,
- b. [Blue Lake] does not compensate me, directly or indirectly, for any services other than the services I provide under my judicial services contract;" and
- c. "I am not [Blue Lake's] attorney [and] do not represent [Blue Lake]."

101. Court records and the Billing Records reveal, however, among other things:

- a. Judge Marston was Blue Lake's attorney in *Blue Lake v. Shimoto* from at least December 3, 2014 until May 24, 2017; and,

¹⁵ *Acres v. Blue Lake et al.*, (3:16-cv-02622-WHO, N.D. Cal., 2017).

b. Judge Marston Billed Blue Lake for his work as its attorney in the *Shiomoto* matter; including when,

c. Judge Marston performed his “Final proofing of the answers to requests for admission served on [Blue Lake] by the State in [*Blue Lake v. Shiomoto*],” a mere eleven days before making his November 8 federal declaration denying his attorney-client relationship with Blue Lake.

102. Shortly after Judge Marston swore the November 8 Declaration, Mr. Acres learned of Judge Marston’s work as Blue Lake’s attorney in *Blue Lake v. Shiomoto* and informed the federal court.

103. In early December 2016 Judge Orrick, presiding over *Acres v. Blue Lake II*, ordered Judge Marston to provide Mr. Acres with the Billing Records, and then to sit for a deposition by Mr. Acres.

104. On December 28, 2016, Judge Marston Billed for a “Phone Conference with David Rapport regarding the production of his records in the Acres case.” The very next entry in the Billing Records show Judge Marston beginning work on his *sua sponte* “Recusal Order.” The next day the Billing Records show Ms. Burrell proofed the Recusal Order. Clerk Huff emailed the Recusal Order to Mr. Acres as an unsigned and unstamped Microsoft Word document from bluelakerancheriatribalcourt@gmail.com.

105. Judge Marston’s Recusal Order denied any wrongdoing on Judge Marston’s part, and explained Judge Marston only recused himself because a possible appearance of bias might affect the public’s confidence in Blue Lake Tribal Court.

106. On January 3, 2017 Mr. Rapport informed Mr. Acres he would not be producing his own billing records to Blue Lake as his legal practice was separate from Judge Marston’s, and they did not share income or clients. Mr. Rapport further explained he had a separate legal obligation to defend the attorney-client privilege on Blue Lake’s behalf. Mr. Rapport informed Mr. Acres of all this via a letter on “Rapport and Marston” letterhead. The letterhead prominently displayed the names “David J. Rapport,” “Lester J. Marston,” and “Darcy Vaughn.”

107. Notwithstanding Mr. Rapport’s assertion on Rapport and Marston letterhead that Rapport and Marston shared neither clients nor income, the Billing Records describe multiple consultations between Judge Marston and Mr. Rapport. This includes an entry on June 15, 2016, when Judge Marston Billed

Blue Lake for a “Phone Conference with Brad Johnson regarding a breach of warranty case and transfer of Brad’s issue to David Rapport for a response.” According to LinkedIn, on June 15, 2016, Brad Johnson was the CFO of Blue Lake Casino.

108. From around 2015 and thereafter, the California Nations Indian Gaming Association formed a Compact Tribes Steering Committee (the “CTSC”). Many tribes had gaming compacts expiring in 2019 and they formed the CTSC to co-ordinate their compact re-negotiation efforts with the state. Federal law required California to renegotiate Blue Lake’s gaming compact in good faith. Judge Marston and Mr. Lathouris advised Blue Lake on compact negotiations and the possibility of suing California for renegotiating Blue Lake’s gaming compact in bad faith. ABI is informed and believes Mr. Rapport represented Blue Lake at CTSC meetings.

109. Following his recusal, on January 10, 2017, Judge Marston appointed Justice Lambden to preside over *Blue Lake v. ABI*. ABI is informed and believes Justice Lambden’s appointment to *Blue Lake v. ABI* was brokered by the California Judicial Council’s Tribal-Court State-Court Forum.

110. In early February 2017, Mr. Acres filed evidence in *Acres v. Blue Lake II* showing a single author had created documents filed by Judge Marston, Ms. O’Neill, and Mr. Stouder across both *Acres v. Blue Lake I and II* and *Blue Lake v. ABI*.¹⁶

111. In mid-February 2017, Ms. O’Neill, Mr. Stouder and Boutin Jones all withdrew from *Acres v. Blue Lake II* and *Blue Lake v. ABI*. Ms. Ramsey, in her capacity as Blue Lake Casino CEO, appointed Ms. Burroughs, Ms. Yarnall and the firm Janssen Malloy as Blue Lake’s attorneys in both actions.

112. In late February 2017, Judge Orrick held with the recusal of Judge Marston and the appointment of Justice Lambden, a finding of bad faith against Blue Lake Tribal Court could not be supported, and dismissed *Acres v. Blue Lake II*.

113. On July 18, 2017 Justice Lambden dismissed Mr. Acres from *Blue Lake v. ABI* on summary judgment. A few weeks later, ABI demanded Blue Lake Casino provide a bill of particulars to support its common counts against ABI. The next day, Ms. Yarnall communicated Blue Lake’s intention to dismiss its claims against ABI. *Blue Lake v. ABI* was then dismissed in its entirety.

¹⁶ Mr. Rapport indicated in his *Acres v. Marston* declaration that the common author was Mr. DeMarse.

1 114. During their time as Blue Lake's attorneys, Ms. Burroughs, Ms. Yarnall and Janssen Malloy LLP
2 vigorously prosecuted *Blue Lake v. ABI*.

3 115. While prosecuting *Blue Lake v. ABI*, attorneys from Boutin Jones and Janssen Malloy prepared
4 and filed many documents with the tribal court. These documents contained proofs of service, which
5 contained sworn averments under penalty of perjury of the laws of the State of California. All attorneys
6 from both firms also prominently displayed their California State Bar numbers on tribal court filings.

7 116. While prosecuting *Blue Lake v. ABI*, attorneys from Boutin Jones and Janssen Malloy prepared
8 and filed several declarations with the tribal court. These declarations, including declarations made by
9 Ms. O'Neill and Ms. Yarnall, were made under penalty of perjury under the laws of the State of
10 California.

11 117. Justice Lambden's Order noted papers filed by Janssen Malloy, Ms. Burroughs, and Ms. Yarnall
12 on Blue Lake's behalf "misstate[d] the evidence" in an "attempt[] to find direct evidence" to establish
13 the scienter element of the *Blue Lake v. ABI* claim against Mr. Acres.

14 118. Justice Lambden presided over two hearings in *Blue Lake v. ABI*. Both hearings took place in
15 conference rooms in Oakland, California. No portion of Oakland is within the Blue Lake Rancheria.
16 ABI is informed and believes Ms. Yarnall drove approximately 1,000 miles on California State
17 highways to attend *Blue Lake v. ABI* hearings.

18 119. Blue Lake failed to secure a space in which to hold the second of the Oakland based hearings.
19 The hearing was only able to take place because ABI had hired a court reporter, and the court reporter's
20 firm allowed the hearing to take place in one of its conference rooms.

21 120. According to his judicial services contract with Blue Lake, Judge Marston's primary place of
22 business is in Ukiah, California. No portion of Ukiah is within the Blue Lake Rancheria. ABI is
23 informed and believes Judge Marston drove approximately 350 miles on California State highways to
24 attend a *Blue Lake v. ABI* hearing.

25 121. ABI is informed and believes Ms. O'Neill's primary residence and place of business is in
26 Sacramento, California. No portion of Sacramento is within the Blue Lake Rancheria. ABI is informed
27 and believes Ms. O'Neill drove approximately 600 miles on California State highways to attend a *Blue*
28

1 *Lake v. ABI* hearing.

2 122. During *Blue Lake v. ABI*, Mr. Frank verified Blue Lake Casino's discovery responses to ABI and
 3 Mr. Acres, and made several sworn declarations. Some of Mr. Frank's verifications and declarations in
 4 *Blue Lake v. ABI* were made "under penalty of perjury under the laws of the State of California."
 5 Frank's discovery responses and declarations were caused to be served on ABI and Mr. Acres by Blue
 6 Lake Casino's attorneys with proofs of service that included declarations "under penalty of perjury
 7 under the laws of the State of California."

8 123. During *Blue Lake v. ABI*, most of the orders issued by Blue Lake Tribal Court were served on the
 9 parties by Clerk Huff. Most of these Blue Lake Tribal Court orders contained proofs of service that
 10 included declarations under penalty of perjury under the laws of the State of California.

11 124. From August 2015 through December 2016, the Billing Records show at least 229 entries from
 12 Judge Marston to Blue Lake for "Legal Services." This includes at least forty-eight entries in which
 13 Judge Marston performed work as an attorney for Blue Lake Casino or its CEO Ms. Ramsey. On at
 14 least five occasions, Judge Marston Billed Blue Lake for work as Ms. Ramsey's or Blue Lake Casino's
 15 attorney on the same day he Billed Blue Lake for his work as presiding judge in *Blue Lake v. ABI*.

16 125. From August 2015 through December 2016, the Billing Records show at least 86 entries from
 17 Ms. Burrell to Blue Lake for "Legal Services." This includes at least five entries in which Ms. Burrell
 18 Billed for work providing Blue Lake Casino with legal advice on employment disputes, at least eight
 19 entries in which Ms. Burrell performed work as an attorney representing Blue Lake or Ms. Ramsey, and
 20 at least 32 in which Ms. Burrell Billed for work assisting Judge Marston in presiding over *Blue Lake v.*
 21 *ABI*. On at least two occasions, Ms. Burrell Billed for work as Blue Lake Casino's attorney on the same
 22 day she Billed for work assisting Judge Marston in presiding over *Blue Lake v. ABI*.

23 126. From August 2015 through December 2016, the Billing Records show at least 56 entries from
 24 Ms. Vaughn to Blue Lake for "Legal Services." This includes at least nineteen entries in which Ms.
 25 Vaughn performed work as an attorney for Blue Lake and Ms. Ramsey in *Blue Lake v. Shiimoto*, and at
 26 least three in which Ms. Vaughn Billed for work assisting Judge Marston in presiding over *Blue Lake v.*
 27 *ABI*. Ms. Vaughn Billed for work as Blue Lake and Ms. Ramsey's attorney in *Blue Lake v. Shiimoto*

less than three months before she Billed for work assisting Judge Marston in presiding over *Blue Lake v. ABI*

127. From August 2015 through December 2016, the Billing Records show at least three dozen entries from Mr. Lathouris to Blue Lake for “Legal Services.” Of these, approximately two dozen entries were related to helping Judge Marston or Ms. Burrell with work related *Blue Lake v. ABI*. The balance of the entries included work on *Blue Lake v. Shiimoto*, advising Blue Lake on gaming compact litigation, research on the legality of arming tribal employees, and on enforcing tribal court domestic violence restraining orders outside the reservation. Mr. Lathouris performed his work advising Blue Lake on *Shiimoto* and gaming compact litigation around two months before he began his work in *Blue Lake v. ABI*.

128. From August 2015 through December 2016, the Billing Records show at least 36 entries from Mr. DeMarse to Blue Lake for “Legal Services.” Mr. DeMarse assisted Judge Marston both in presiding over *Blue Lake v. ABI*, and in defending against *Acres v. Blue Lake II*. The Billing Records show Mr. DeMarse assisted Judge Marston in preparing Judge Marston’s November 8, 2016 declaration, in which Judge Marston denied he performed work for Blue Lake as an attorney. In September and October of 2016, Mr. DeMarse Billed Blue Lake on at least ten occasions for assisting Judge Marston in providing Blue Lake, Blue Lake Casino, or Ms. Ramsey with services as an attorney. Significantly, the Billing Records do not disclose Mr. DeMarse’s work in preparing filings for Boutin Jones in *Acres v. Blue Lake I or II*.

129. While Blue Lake Casino prosecuted *Blue Lake v. ABI*, a Blue Lake entity¹⁷ also prosecuted the case *Blue Lake v. Wright Construction, et al.*, also in Blue Lake Tribal Court. In *Blue Lake v. Wright*, a Blue Lake entity sued several companies involved with the construction of Blue Lake Casino’s hotel, ABI is informed and believes Blue Lake extracted at least \$1,000,000.00 in settlement payments from defendants in *Blue Lake v. Wright*. Judge Marston presided over *Blue Lake v. Wright*, and Ms. Burrell, Ms. Vaughn, and Mr. DeMarse all assisted Judge Marston in presiding over *Blue Lake v. Wright*.

¹⁷ Mr. Acres has not been able to ascertain whether Blue Lake, Blue Lake Casino, or some third Blue Lake entity was the plaintiff in the *Blue Lake v. Wright* action.

According to its website, Wright Construction is a firm engaged in interstate commerce with locations in Vancouver, WA and Las Vegas, NV.

130. During the time Blue Lake Casino was preparing to file *Blue Lake v. ABI*, Blue Lake Casino's CEO Ms. Ramsey was seeking an "order to enjoin civil harassment" in the Blue Lake Tribal Court case *Ramsey v. McKay*. Judge Marston presided over *Ramsey v. McKay*.

131. On November 6, 2015, Judge Marston presided over a tribal court hearing on Ms. Ramsey's

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		Hrs/Rate Amount
11/6/2015 LJM	Court Appearance to hold the hearing on the petition to enjoin civil harassment in Ramsey v. MacKay.	
LJM	Review and revise the declaration of Ramsey regarding the couple that wants to get married in Tribal Court and the final review of the memo to the Council regarding settlement of the case.	

Fig 2: Highlighted Excerpt from Marston's Billing Records to Blue Like, arranged to remove page break.

petition to enjoin civil harassment in *Ramsey v. McKay*. Later that day, Judge Marston, in his role as Ms. Ramsey's attorney, "reviewed and revised" a declaration by Ms. Ramsey to be submitted in the *Blue Lake v. Shiimoto* state court action, and performed a "final review" of a memo to Ms. Ramsey regarding settlement of *Blue Lake v. Shiimoto*. In a single day Judge Marston presided as judge over Ms. Ramsey's family law TRO (*Ramsey v. McKay*), and then acted as her attorney in another family law matter (*Blue Lake et al. v. Shiimoto*).¹⁸

132. The conduct of each of the defendants described in the General Allegations above was part of a pattern of despicable behavior, rife with malice, oppression and fraud in which they wrongfully used civil proceedings in Blue Lake Tribal Court for their own individual benefit. The Billing Records show this pattern of despicable conduct was continuous from at least January 2013 until at least December

¹⁸ Ms. Ramsey is a named plaintiff in *Blue Lake v. Shiimoto*, as is her daughter-in-law. Both Ms. Ramsey and her daughter-in-law are represented by Judge Marston in *Blue Lake v. Shiimoto*.

2016. The Billing Records also show ABI and Mr. Acres were not the only victims of the defendants' despicable conduct.

133. Throughout the pendency of *Blue Lake v. ABI*, Mr. Acres continued to ask defendants to recognize their conduct was wrongful, and to cease the conduct.

**FIRST CAUSE OF ACTION BY ABI
WRONGFUL USE OF CIVIL PROCEEDINGS**

AGAINST EACH OF MS. RAMSEY, MR. FRANK, BOUTIN JONES, MR. STODER, MS. O'NEILL, JANSSEN MALLOY LLP, MS. BURROUGHS, AND MS. YARNALL (THE "WRONGFUL USE DEFENDANTS").

134. All of the General Allegations above are re-alleged in full. ABI alleges each defendant is independently liable for their own tortious conduct, regardless of whether relief is available from their co-defendants.

135. ABI claims the Wrongful Use Defendants wrongfully brought or maintained a lawsuit against ABI.

136. The Wrongful Use Defendants were each materially involved in bringing or continuing *Blue Lake v. ABI*, which included several causes of action against ABI. ABI was a defendant in *Blue Lake v. ABI* for over a year and a half.

137. Blue Lake's dismissal of ABI from *Blue Lake v. ABI* immediately after ABI demanded a bill of particulars is a favorable termination for ABI.

138. The Wrongful Use Defendants could not have reasonably believed there were reasonable grounds to bring or maintain *Blue Lake v. ABI* against ABI.

139. The Wrongful Use Defendants brought or continued the *Blue Lake v. ABI* claim against ABI for reasons other than succeeding on the merits of the claim.

140. ABI was harmed by the Wrongful Use Defendants.

141. The Wrongful Use Defendants substantially contributed to ABI's harm because each engaged in conduct wrongfully bringing or maintaining *Blue Lake v. ABI* against ABI.

142. The harm inflicted on ABI by the Wrongful Use Defendants' conduct was easily foreseeable.

143. The Wrongful Use Defendants' conduct harmed ABI in an amount to be proven at trial, but in no

1 event less than \$1,000,000.00.

2 144. The Wrongful Use Defendants' conduct towards ABI was despicable, and rife with malice,
3 oppression and fraud. ABI is entitled to an award of exemplary and punitive damages in an amount to
4 be proven at trial.

5 145. This cause of action does not arise from an act in furtherance of any person's right of petition or
6 free speech under the United States Constitution or the California Constitution in connection with a
7 public issue. This cause of action encompasses conduct that was illegal as a matter of law under 18
8 USC 666.

9
10 **SECOND CAUSE OF ACTION – BY ABI**
AIDING AND ABETTING WRONGFUL USE OF CIVIL PROCEEDINGS

11 AGAINST EACH OF RAPPORT AND MARSTON, JUDGE MARSTON, DAVID RAPPORT, CLERK HUFF, MS.
12 BURRELL, MR. DEMARSE, MS. VAUGHN, MR. LATHOURIS AND MR. CHASE (THE "WRONGFUL USE
13 ABETTORS").

14 146. All of the General Allegations above are re-alleged in full, as are the allegations from the First
15 Cause of Action. ABI alleges each defendant is independently liable for their own tortious conduct,
16 regardless of whether relief is available from their co-defendants.

17 147. ABI claims the Wrongful Use Abettors aided and abetted the Wrongful Use Defendants in the
18 tortious conduct described in the first cause of action.

19 148. The Wrongful Use Abettors each knew the Wrongful Use Defendants were wrongfully using
20 civil proceedings against ABI because, among other reasons:

- 21 a. The Wrongful Use Abettors were aware of the wrongful nature of the *Blue Lake v. ABI*
22 claims against ABI;
- 23 b. The Wrongful Use Abettors were aware Blue Lake was simultaneously employing Judge
24 Marston as an attorney for Blue Lake, Blue Lake Casino, or Ms. Ramsey, in addition to
25 employing Judge Marston as the presiding judge over *Blue Lake v. ABI*; and,
- 26 c. The Wrongful Use Abettors all assisted Judge Marston in managing or maintaining *Blue*
27 *Lake v. ABI* against ABI.

28 149. The Wrongful Use Abettors all gave substantial assistance or encouragement to the Wrongful

1 Use Defendants in the wrongful civil proceedings against ABI when, among other actions, they;

- 2 a. Assisted Judge Marston, Blue Lake, and Blue Lake Casino in concealing the fact Judge
- 3 Marston performed work as an attorney for Blue Lake, Ms. Ramsey, and Blue Lake Casino
- 4 concurrent with Judge Marston's presiding over *Blue Lake v. ABI*; and when they,
- 5 b. Assisted Judge Marston in managing and maintaining *Blue Lake v. ABI*.

6 150. Each of the Wrongful Use Abettors engaged in conduct that was a substantial factor in causing
7 harm to ABI, among other reasons, because:

- 8 a. The Wrongful Use Abettors assisted Judge Marston in managing or maintaining *Blue Lake v.*
- 9 *ABI*;
- 10 b. The Wrongful Use Abettors assisted Judge Marston, Blue Lake, and Blue Lake Casino in
- 11 concealing the fact Judge Marston performed work as an attorney for Blue Lake, Ms.
- 12 Ramsey, and Blue Lake Casino concurrent with Judge Marston's presiding over *Blue Lake v.*
- 13 *ABI*;
- 14 c. The Wrongful Use Abettors partook in the tortious confederacy arrayed against ABI, and this
- 15 confederacy included five judges, three law firms, nine attorneys, a sovereign nation, and its
- 16 entire justice system required ABI devote a substantial portion of its resources toward
- 17 repelling this confederacy.

18 151. The Wrongful Use Abettors' conduct harmed ABI in an amount to be proven at trial, but in no
19 event less than \$1,000,000.00.

20 152. The Wrongful Use Abettors' conduct towards AB I was despicable, and rife with malice,
21 oppression and fraud. ABI is entitled to an award of exemplary and punitive damages in an amount to
22 be proven at trial.

23 153. This cause of action does not arise from an act in furtherance of any person's right of petition or
24 free speech under the United States Constitution or the California Constitution in connection with a
25 public issue. This cause of action encompasses conduct that was illegal as a matter of law under 18
26 USC 666.

27 //

THIRD CAUSE OF ACTION – BY ABI
CONSPIRACY TO COMMIT WRONGFUL USE OF CIVIL PROCEEDINGS

AGAINST EACH OF RAPPORT AND MARSTON, JUDGE MARSTON, DAVID RAPPORT, CLERK HUFF, MS. BURRELL, MR. DEMARSE, MS. VAUGHN, MR. LATHOURIS AND MR. CHASE (THE “WRONGFUL USE CONSPIRATORS”).

154. All of the General Allegations above are re-alleged in full, as are the allegations from the First Cause of Action. ABI alleges each defendant is independently liable for the tortious conduct, regardless of whether relief is available from their co-defendants.

155. ABI claims the Wrongful Use Conspirators conspired with the Wrongful Use Defendants to undertake the tortious conduct described in the first cause of action.

156. The Wrongful Use Conspirators each knew the Wrongful Use Defendants planned to subject ABI to a wrongful use of civil proceedings because, among other reasons:

- a. Each of the Wrongful Use Conspirators were aware of *Blue Lake v. ABI*;
- b. Each of the Wrongful Use Conspirators was at all relevant times a sophisticated legal actor;
- c. Each of the Wrongful Use Conspirators knew that Blue Lake brought *Blue Lake v. ABI* for some reason other than succeeding on the merits, and;
- d. Each of the Wrongful Use Conspirators was aware Judge Marston was concealing from ABI the fact Judge Marston was employed as an attorney for Blue Lake, Blue Lake Casino, or Ms. Ramsey, while Judge Marston presided over *Blue Lake v. ABI*.

157. The Wrongful Use Conspirators all intended ABI should be subjected to a wrongful use of civil proceedings. Each of the Wrongful Use Conspirators co-operated with the Wrongful Use Defendants in bringing or maintaining *Blue Lake v. ABI* against ABI, or in helping Judge Marston to conceal the fact Judge Marston was Blue Lake's, Blue Lake Casino's, or Ms. Ramsey's attorney while Judge Marston presided over *Blue Lake v. ABI*.

158. The Wrongful Use Conspirators' conduct harmed ABI in an amount to be proven at trial, but in no event less than \$1,000,000.00

159. The Wrongful Use Conspirators' conduct towards ABI was despicable, and rife with malice, oppression and fraud. ABI is entitled to an award of exemplary and punitive damages in an amount to

1 be proven at trial.

2 160. This cause of action does not arise from an act in furtherance of any person's right of petition or
3 free speech under the United States Constitution or the California Constitution in connection with a
4 public issue. This cause of action encompasses conduct that was illegal as a matter of law under 18
5 USC 666.

6 **FOURTH CAUSE OF ACTION – BY ABI**
7 **BREACH OF FIDUCIARY DUTY**
8 **AGAINST JUDGE MARSTON.**

9 161. All of the General Allegations above are re-alleged in full.

10 162. ABI claims Judge Marston breached his fiduciary duty to ABI.

11 163. Judges are fiduciaries to the general public, and to the litigants before them. (*United States v.*
12 *Holzer*, 816 F.2d 304, 307 (7th Cir. 1987).) Judge Marston assumed a fiduciary duty to ABI when Judge
13 Marston became the presiding judge in *Blue Lake v. ABI*. Among the fiduciary duties Judge Marston
14 owed ABI were the duties of utmost good faith, confidentiality, and disclosure.

15 164. Judge Marston breached his fiduciary duties to ABI on many occasions, including, but not
16 limited to, when:

- 17 a. Judge Marston declined to assign *Blue Lake v. ABI* to another judge even though, at the time,
18 Judge Marston was performing, and being compensated for non-judicial work for Blue Lake,
19 Blue Lake Casino, or Ms. Ramsey;
- 20 b. Judge Marston continued to perform work of a non-judicial nature for Blue Lake, Blue Lake
21 Casino, or Ms. Ramsey while presiding over *Blue Lake v. ABI*;
- 22 c. Judge Marston continued to be compensated for the non-judicial work he performed for Blue
23 Lake, Blue Lake Casino, or Ms. Ramsey;
- 24 d. Judge Marston failed to disclose to ABI he was performing work of a non-judicial nature for
25 Blue Lake, Blue Lake Casino, or Ms. Ramsey while presiding over *Blue Lake v. ABI*;
- 26 e. Judge Marston failed to disclose to ABI he was being compensated for work of a non-judicial
27 nature for Blue Lake, Blue Lake Casino, or Ms. Ramsey while presiding over *Blue Lake v.*

1 *ABI*;

2 f. Judge Marston engaged in conduct which tended to conceal from ABI he was performing
3 work of a non-judicial nature for Blue Lake, Blue Lake Casino, or Ms. Ramsey while
4 presiding over *Blue Lake v. ABI*;

5 g. Judge Marston engaged in conduct which tended to conceal from ABI he was being
6 compensated for work of a non-judicial nature for Blue Lake, Blue Lake Casino, or Ms.
7 Ramsey while presiding over *Blue Lake v. ABI*;

8 h. Judge Marston informed Blue Lake, Blue Lake Casino, or Ms. Ramsey he was performing
9 work of a non-judicial nature for them, and informed them he was concealing this fact from
10 ABI;

11 i. Judge Marston had ex-parte communication regarding *Blue Lake v. ABI* with individuals
12 Judge Marston knew to be attorneys doing work for Blue Lake, Blue Lake Casino, or Ms.
13 Ramsey; and when,

14 j. Judge Marston allowed individuals he knew to be attorneys doing work for Blue Lake Casino
15 to provide him with ex-parte memos and draft orders regarding *Blue Lake v. ABI*.

16 165. ABI was proximately damaged by Judge Marston's breach of fiduciary duty for many reasons,
17 including:

18 a. Judge Marston's failure to assign *Blue Lake v. ABI* to a different judge at the case's inception
19 prolonged *Blue Lake v. ABI* by at least one year;

20 b. Being subject to a presiding judge who fails to disclose he is performing non-judicial work
21 for an opposing litigant is in and of itself harmful; and,

22 c. Being subject to a presiding judge who conceals he is performing non-judicial work for an
23 opposing litigant is in and of itself harmful; and,

24 d. ABI is informed and believes that *Blue Lake v. ABI* would never have been brought against
25 him but for Judge Marston's willingness to breach his fiduciary duty towards ABI on behalf
26 of Blue Lake and Ms. Ramsey.

27 166. Judge Marston's breach of his fiduciary duty to ABI constituted constructive fraud.

167. Judge Marston's breach of his fiduciary duty to ABI harmed ABI in an amount to be proven at trial, but in no event less than \$1,000,000.00.

168. Judge Marston's conduct towards ABI was despicable, and rife with malice, oppression and fraud. ABI is entitled to an award of exemplary and punitive damages in an amount to be proven at trial.

169. In exchange for breaching his fiduciary duty to ABI, Judge Marston received compensation from Blue Lake, Blue Lake Casino, or Ms. Ramsey. ABI is entitled to a disgorgement of any such compensation, in an amount to be proven at trial, but in no event less than all compensation received by Judge Marston from Blue Lake, Blue Lake Casino, Ms. Ramsey, and any related entity, after August 1, 2015.

170. This cause of action does not arise from an act in furtherance of any person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue. This cause of action encompasses conduct that was illegal as a matter of law under 18 USC 666.

**FIFTH CAUSE OF ACTION – BY ABI
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**

AGAINST EACH OF JUDGE MARSTON, MS. RAMSEY, MR. FRANK, CLERK HUFF, RAPPORT AND MARSTON, MR. RAPPORT, MS. BURRELL, MR. DEMARSE, MS. VAUGHN, MR. LATHOURIS, BOUTIN JONES, MR. CHASE, MR. STODER, AND MS. O'NEILL (THE "MARSTON BREACH ABETTORS")

171. All of the General Allegations above are re-alleged in full, as are all the allegations in the fourth cause of action. ABI alleges each defendant is independently liable for the tortious conduct, regardless of whether relief is available from their co-defendants.

172. ABI claims the Marston Breach Abettors aided and abetted Judge Marston in breaching his fiduciary duty to ABI.

173. The Marston Breach Abettors each knew Judge Marston was breaching his fiduciary duties to ABI because each of the Marston Breach Abettors knew of a substantial portion of Judge Marston's conduct described in the fourth cause of action.

174. The Marston Breach Abettors each engaged in conduct that was a substantial factor in causing at least \$1,000,000.00 in harm to ABI because each Breach Abettor provided substantial assistance or

encouragement to Judge Marston when Judge Marston engaged in the conduct described in the fourth cause of action.

175. The Marston Breach Abettors' conduct towards ABI was despicable, and rife with malice, oppression and fraud. ABI is entitled to an award of exemplary and punitive damages in an amount to be proven at trial.

176. While aiding Judge Marston in breaching his fiduciary duties to ABI, the Marston Breach Abettors received compensation from Blue Lake, Blue Lake Casino, or Ms. Ramsey. ABI is entitled to a disgorgement of any such compensation, in an amount to be proven at trial, but in no event less than all compensation received by the Marston Breach Abettors from Blue Lake, Blue Lake Casino, Ms. Ramsey, and any related entity, after August 1, 2015.

177. This cause of action does not arise from an act in furtherance of any person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue. This cause of action encompasses conduct that was illegal as a matter of law under 18 USC 666.

SIXTH CAUSE OF ACTION – By ABI
CONSTRUCTIVE FRAUD
AGAINST JUDGE MARSTON

178. All of the General Allegations above are re-alleged in full, as are all the allegations in the fourth cause of action.

179. At all relevant times Judge Marston and ABI conducted most of their affairs in parts of California outside the Blue Lake Rancheria.

180. A fiduciary relationship existed between Judge Marston and ABI upon which ABI justifiably relied to its detriment. This fiduciary relationship was created when Judge Marston became ABI's presiding judge in *Blue Lake v. ABI*. Pursuant to said duty, Judge Marston owed ABI a duty to disclose all material information Judge Marston knew or could reasonably obtain regarding Judge Marston's relationship with Blue Lake, Blue Lake Casino, Ms. Ramsey, and any related parties.

181. Judge Marston accepted ABI's reliance on the fiduciary relationship.

182. Judge Marston breached the fiduciary duty owed to ABI by failing to disclose the required material facts about his providing legal services to Blue Lake, Blue Lake Casino, Ms. Ramsey, and any related parties.

183. Judge Marston knew or should have known the above referenced material facts were unknown to ABI, and despite such knowledge failed to disclose such material and important facts.

184. As a direct and proximate result of Judge Marston's breach of fiduciary duty to disclose these material facts to ABI, ABI was damaged in an amount to be proven at trial, but in no event less than \$1,000,000.00.

185. Judge Marston's conduct towards ABI was despicable, and rife with malice, oppression and fraud. ABI is entitled to an award of exemplary and punitive damages in an amount to be proven at trial.

186. While breaching his fiduciary duty to ABI, Judge Marston was unjustly enriched by compensation from Blue Lake, Blue Lake Casino, Ms. Ramsey, or related entities. ABI is entitled to a disgorgement of any such compensation, in an amount to be proven at trial, but in no event less than all compensation received by defendants from Blue Lake, Blue Lake Casino, Ms. Ramsey, and any related entity, after August 1, 2015.

187. This cause of action does not arise from an act in furtherance of any person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue. This cause of action encompasses conduct that was illegal as a matter of law under 18 USC 666.

SEVENTH CAUSE OF ACTION – BY ABI

AIDING AND ABETTING CONSTRUCTIVE FRAUD

AGAINST EACH OF MS. RAMSEY, MR. FRANK, CLERK HUFF, RAPPORT AND MARSTON, MR. RAPPORT, MS. BURRELL, MR. DEMARSE, MS. VAUGHN, MR. LATHOURIS, BOUTIN JONES, MR. CHASE, MR. STODER, AND MS. O'NEILL (THE "MARSTON FRAUD ABETTORS")

188. All of the General Allegations above are re-alleged in full, as are all the allegations in the fourth and sixth causes of action. ABI alleges each defendant is independently liable for the tortious conduct, regardless of whether relief is available from their co-defendants.

189. At all relevant times Rapport and Marston, Mr. Rapport, Ms. Burrell, Ms. Vaughn, Boutin Jones,

Mr. Chase, Mr. Stouder, Ms. O'Neill were domiciled in the State of California, and conducted most of their affairs in portions of California outside the Blue Lake Rancheria.

190. At all relevant times, Ms. Ramsey, Mr. Frank, Clerk Huff, Mr. DeMarse, and Mr. Lathouris conducted a substantial portion of their affairs within the State of California.

191. ABI claims the Marston Fraud Abettors aided and abetted Judge Marston in committing constructive fraud against ABI.

192. The Marston Fraud Abettors each knew Judge Marston was committing constructive fraud against ABI because each of the Marston Fraud Abettors knew of a substantial portion of Judge Marston's conduct described in the sixth cause of action.

193. The Marston Fraud Abettors each engaged in conduct that was a substantial factor in causing at least \$1,000,000.00 in harm to ABI because each Marston Fraud Abettor provided substantial assistance or encouragement to Judge Marston when Judge Marston engaged in the conduct described in the sixth cause of action.

194. The Marston Fraud Abettors' conduct towards ABI was despicable, and rife with malice, oppression and fraud. ABI is entitled to an award of exemplary and punitive damages in an amount to be proven at trial.

195. While aiding Judge Marston in breaching his fiduciary duties to ABI, the Marston Fraud Abettors received compensation from Blue Lake, Blue Lake Casino, or Ms. Ramsey. ABI is entitled to a disgorgement of any such compensation, in an amount to be proven at trial, but in no event less than all compensation received by the Marston Fraud Abettors from Blue Lake, Blue Lake Casino, Ms. Ramsey, and any related entity, after August 1, 2015.

196. This cause of action does not arise from an act in furtherance of any person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue. This cause of action encompasses conduct that was illegal as a matter of law under 18 USC 666.

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EIGHTH CAUSE OF ACTION – BY ABI AND MR. ACRES

OPERATING OR MANAGING A RACKETEERING ENTERPRISE (18 USC 1964(c))

AGAINST EACH OF MS. RAMSEY, MR. FRANK, CLERK HUFF, RAPPORT AND MARSTON, JUDGE MARSTON, MR. RAPPORT, MS. BURRELL, MR. DEMARSE, MS. VAUGHN, MR. LATHOURIS, BOUTIN JONES, MR. CHASE, MR. STODDER, MS. O'NEILL, JANSSEN MALLOY, MS. BURROUGHS, AND MS. YARNALL

197. All of the General Allegations above are re-alleged in full. ABI alleges each defendant is independently liable for the tortious conduct, regardless of whether relief is available from their co-defendants.

198. The Blue Lake Tribal Court is an enterprise as defined in 18 USC 1961(4).

199. Each defendant engaged in conduct to operate or manage the Blue Lake Tribal Court in a scheme to obtain money by means of false pretenses. This conduct includes, but is not limited to:

- a. Subjecting ABI and Mr. Acres to a wrongful use of civil proceedings in *Blue Lake v. ABI*, and;
- b. Working to ensure that judicial power in *Blue Lake v. ABI* would be exercised by attorneys working for Blue Lake, and;
- c. Working to conceal that judicial power in *Blue Lake v. ABI* was being exercised by attorneys working for Blue Lake, and;
- d. Falsely representing that Blue Lake Tribal Court was operating as an impartial tribunal.

200. Defendants intended to use their extrinsic fraud to manufacture a tribal court judgement against ABI that would be enforceable in state or federal court, or to extort settlement money from ABI or Mr. Acres.

201. Each defendant was personally enriched through their participation in the tortious scheme against ABI and Mr. Acres.

202. Blue Lake Tribal Court rules require all filings by litigants be served via postal mail on Blue Lake Tribal Court. During 2016 and 2017, dozens of filings were made in *Blue Lake v. ABI*, with proofs of service indicating the filings were served via postal-mail. Each of these filings was a separate

instance of a continuous and related use of the mails to further defendants' scheme to obtain money by means of false pretenses from ABI or Mr. Acres in violation of 18 USC 1341.

203. The mails were also used on multiple other occasions to further defendants' scheme to obtain money by false pretenses from ABI or Mr. Acres.

204. The mails were also used by defendants on multiple occasions to further other schemes to obtain money or property by means of false pretenses from other parties subjected to other proceedings in Blue Lake Tribal Court.

205. Blue Lake Tribal Court rules require all filings by litigants be served via email on Blue Lake Tribal Court. During 2016 and 2017, dozens of filings were made in *Blue Lake v. ABI*, with proofs of service indicating the filings were served via email. Each of these filings was part of a continuous and related use of the wires to further defendants' scheme to obtain money by means of false pretenses from ABI or Mr. Acres and in violation of 18 USC 1343.

206. The wires were also used on multiple other occasions to further defendants' scheme to obtain money by means of false pretenses from ABI or Mr. Acres.

207. The wires were also used by defendants on multiple occasions to further other schemes to obtain money or property by means of false pretenses from other parties subjected to other proceedings in Blue Lake Tribal Court.

208. During *Acres v. Blue Lake I* and *Acres v. Blue Lake II* several defendants undertook conduct to corruptly influence, obstruct, or impede the due administration of justice in a court of the United States in violation of 18 USC 1503. This conduct includes, but is not limited to:

- a. Attorneys from Rapport & Marston ghostwriting papers filed by Boutin Jones which were intended in part to convince the district court that Judge Marston was a neutral decision-maker; and
- b. Mr. DeMarse drafting, and Judge Marston filing, a false declaration with the district court in which Judge Marston denied having any relationship with Blue Lake other than being a judge of its court.

209. ABI was proximately harmed by defendants' scheme to obtain money by means of false pretenses in an amount to be determined at trial because, among other reasons, ABI was compelled to spend money to defend itself against the tribal court action.

210. Mr. Acres was proximately harmed by defendants' scheme to obtain money by means of false pretenses in an amount to be determined at trial because, among other reasons, Mr. Acres was compelled to spend money to defend himself against the tribal court action, and to seek medical treatment.

211. This cause of action does not arise from an act in furtherance of any person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue. This cause of action encompasses conduct that was illegal as a matter of law under 18 USC 666.

PRAYER FOR RELIEF

1. ABI respectfully prays this Court to grant:

- a. Compensatory damages to be proven at trial, but no less than \$1,000,000.00.00 for Cause 1, \$1,000,000.00 for Causes 2 or 3, \$1,000,000.00 for Cause 4 or Cause 6, and \$1,000,000.00 for Cause 5 or Cause 7, for a total of at least \$4,000,000; and,
- b. Disgorgement of all compensation received by defendants from Blue Lake, Blue Lake Casino, Ms. Ramsey, and any related entity, after a date to be determined at trial, but in no event later than August 1, 2015; and,
- c. Triple the actual damages proven at trial for Cause 8; and,
- d. Costs of suit and attorney's fees; and,
- e. Punitive and exemplary damages in an amount to be proven at trial; and,
- f. Any other relief the court deems necessary or proper.

2. Mr. Acres respectfully prays this Court to grant:

- a. Triple the actual damages proven at trial for Cause 8; and,
- b. Costs of suit and attorney's fees; and,
- c. Any other relief the court deems necessary or proper.

ABI AND MR. ACRES DEMAND A JURY TRIAL FOR ALL ISSUES TRIABLE BY JURY.

BLUMBERG LAW GROUP

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

JAMES ACRES

/s/ James Acres
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