

Ronald H. Blumberg, Esq. (CSB No. 130557)  
 e-mail: rhb@blumberglawgroup.com  
 Lauren N. Romans, Esq. (CSB No. 326846)  
 e-mail: lnr@blumberglawgroup.com  
**BLUMBERG LAW GROUP LLP**  
 137 North Acacia Avenue  
 Solana Beach, California 92075  
 Phone 858.509.0600  
 Fax 858.509.0699

Attorneys for Plaintiff, Acres Bonusing, Inc.

**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'NEIL, an individual; JANSSEN MALLOY  
 LLP, an association of attorneys; MEGAN  
 YARNALL, an individual; AMELIA  
 BURROUGHS, an individual, and DOES 1-20,  
 inclusive,

Defendants.

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

**MOTION FOR SANCTIONS [RULE 11,  
 STRIKING ANTI-SLAPP]**

**Assigned For All Purposes To:  
 The Honorable William H. Orrick**

Action Filed : August 28, 2019  
 Trial Date : Not Set

Hearing Date : March 11, 2020  
 Hearing Time : 2:00 p.m.

///

///

///

///

1 PLEASE TAKE NOTICE on March 11, 2020 at 2:00 p.m., or as soon thereafter as the matter  
2 may be heard at the above-entitled Court, Plaintiff, Acres Bonusing, Inc. ("ABI") will and hereby does  
3 move the Honorable Judge William H. Orrick to strike the motions at Dockets 30 and 31 and to award  
4 ABI its costs and attorneys fees on this motion as sanctions.

6 **BLUMBERG LAW GROUP LLP**

8 Dated: February 3, 2020

9   
10 \_\_\_\_\_  
11 Ronald F. Blumberg, Esq.  
12 Attorneys for Plaintiff, Acres Bonusing, Inc.

11 **BLUMBERG LAW GROUP LLP**  
12 137 North Acacia Avenue, Solana Beach, CA 92075  
13 Office (858) 509-0600 Facsimile (858) 509-0699

**TABLE OF CONTENTS**

I. FACTUAL BACKGROUND ..... 5

II. ARGUMENT ..... 5

    A. Defendants’ Anti-SLAPP Motions are Unwarranted in Law Because Neither the United States nor California Constitutions Provide a Right to Petition Tribal Governments. .... 5

        1. Tribes are not parties to the United States Constitution. .... 6

        2. Tribes are not subject to state constitutions..... 6

        3. California’s anti-SLAPP statute does not protect petitioning tribal governments. .... 6

    B. The Anti-SLAPP Motions Should be Struck. .... 6

III. CONCLUSION ..... 6

**BLUMBERG LAW GROUP LLP**  
 137 North Acacia Avenue, Solana Beach, CA 92075  
 Office (858) 509-0600 Facsimile (858) 509-0699

**TABLE OF AUTHORITIES**

**Cases**

*Guessous v. Chrome Hearts, LLC* (2009) 179 Cal.App.4th 1177.....6

*Kiowa Tribe v. Mfg. Techs.* (1988) 523 U.S. 751.....6

*Navellier v. Sletten* (2002) 29 Cal.4th 82.....5

*People ex rel. Owen v. Miami Nation* (2016) 2 Cal.5th 222.....6

*Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49.....6

**Statutes**

Code of Civil Procedure Section 425.16.....5

**Rules**

Federal Rule of Civil Procedure 11.....6

**BLUMBERG LAW GROUP LLP**  
 137 North Acacia Avenue, Solana Beach, CA 92075  
 Office (858) 509-0600 Facsimile (858) 509-0699

## I. FACTUAL BACKGROUND

In December 2015 Blue Lake Casino & Hotel (“BLCH”) sued ABI in the Blue Lake Tribal Court (“BLTC”) action *Blue Lake Casino & Hotel v ABI and James Acres* (the “Tribal Court Action”). BLTC is organized under the constitution of the Blue Lake Rancheria. ABI sues Defendants for conduct related to the Tribal Court Action. Compl.

Several Defendants<sup>1</sup> bring motions to strike ABI’s state-law causes of action under California’s Anti-SLAPP statute (the “Anti-SLAPP Motions”). Dkts. 30, 31.

ABI asks this Court to sanction Defendants under FRCP 11 because the Anti-SLAPP Motions are unwarranted under any, even liberal, interpretation of California law. On January 7, 2020 ABI served a copy of this motion for sanctions on Defendants. More than twenty-one days later ABI filed this motion for sanctions with the Court’s CM/ECF system. (Blumberg Decl., ¶¶2-3.)

## II. ARGUMENT

### A. Defendants’ Anti-SLAPP Motions are Unwarranted in Law Because Neither the United States nor California Constitutions Provide a Right to Petition Tribal Governments.

California’s anti-SLAPP statute subjects causes of action arising from petitioning acts under “the United States Constitution or California Constitution” to special motions to strike. (California Code of Civil Procedure 425.16(b)(1) (the “Anti-SLAPP Statute”).)

Special motions to strike under the Anti-SLAPP Statute are resolved using a two-prong test. In the first prong, the moving party must show the complained of activity arose from a lawful exercise of petitioning or speech rights under the United States or California constitutions.<sup>2</sup> (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89.)

Here, Defendants fail on the first-prong because the tribal court action took place in a tribal court and neither the United States nor California constitutions govern tribal court proceedings. In this light it is essentially axiomatic actions in a tribal court cannot be, by definition, subject to the Anti-

---

<sup>1</sup> Defendants, Boutin Jones, Michael Chase, Daniel Stouder, Amy O’Neill, Janssen Malloy, Meghan Yarnall and Amelia Burroughs.

<sup>2</sup> On the second-prong a plaintiff must make a *prima facie* showing with admissible evidence for each element of each cause of action. ABI would succeed on the second-prong, but the point of this sanctions motion is that analyzing the second prong is unnecessary because the Defendants’ contentions on the first-prong are, so blatantly legally unwarranted and, therefore, dispositive.

1 SLAPP Statute.

2 **1. Tribes Are Not Parties to the United States Constitution.**

3 Tribes were not at the constitutional convention and are not parties to the United States  
4 Constitution. (*Kiowa Tribe of Okla. v. Manufacturing Technologies* (1998) 523 U.S. 751, 756.) Instead  
5 of having rights and responsibilities as parties to the United States Constitution, tribes are subject to the  
6 plenary authority of Congress. (*Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 56.)

7 **2. Tribes Are Not Subject to State Constitutions.**

8 It is an elementary tenet of Indian law that tribes are not subject to state constitutions. (*People*  
9 *ex rel. Owen v. Miami Nation* (2016) 2 Cal.5th 222, 233.)

10 **3. California's Anti-SLAPP Statute Does Not Protect Petitioning Tribal Governments.**

11 Petitioning the French government in a French court is not protected by the Anti-SLAPP Statute  
12 because neither the United States nor the California constitutions provide a right to petition foreign  
13 governments. (*Guessous v. Chrome Hearts* (2009) 179 Cal.App.4th 1177, 1185.) This rule applies not  
14 only to foreign governments but also to sovereign Indian tribes.

15 As such, Petitioning a tribal government in a tribal court is not protected by the Anti-SLAPP  
16 Statute because neither the United States nor the California constitutions provides a right to petition a  
17 tribal government.

18 **B. The Anti-SLAPP Motions Should be Struck.**

19 When an attorney files a motion with this Court the attorney certifies the legal contentions in the  
20 motion are legally warranted. Attorneys who fail to withdraw a legally unwarranted motion after  
21 twenty-one days' notice by an opposing party are subject to sanctions. (Federal Rule of Civil  
22 Procedure 11.)

23 The Anti-SLAPP Motions are legally unwarranted because the Anti-SLAPP Statute does not  
24 protect petitioning tribal governments. ABI provided Defendants with a copy of this sanctions motion  
25 more than twenty-one days before filing it. Because Defendants have failed to withdraw their legally  
26 unwarranted Anti-SLAPP Motions, this Court should strike them.

27 **III. CONCLUSION**

28 Forcing ABI to oppose and fight against the legally unwarranted Anti-SLAPP Motions would

1 impose significant expense upon ABI because ABI would be required to address prong-2 and marshal  
2 admissible evidence to support each element of each cause of action against each defendant. Avoiding  
3 such legally unwarranted waste is precisely why Rule 11 exists. The Anti-SLAPP Motions cannot meet  
4 the requisite Prong 1: Blue Lake is an Indian Tribe and petitions to it are not protected by either the  
5 U.S. or California's constitution. Without either constitutional protection, the Anti-SLAPP statute  
6 simply, and obviously, does not apply.

7 This Court should strike the unwarranted anti-SLAPP motions and award ABI its costs on this  
8 sanctions motion.

9  
10  
11 Dated: January 7, 2019

**BLUMBERG LAW GROUP LLP**

  
\_\_\_\_\_  
12 Ronald H. Blumberg, Esq.  
13 Attorneys for Plaintiff, Acres Bonusing, Inc.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28