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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ACRES BONUSING, INC., et al.,

Plaintiff,

v.

LESTER MARSTON, et al.,

Defendants.

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

**PLAINTIFF ABI'S OPPOSITION TO DEFENDANT,
JANSSEN MALLOY'S ANTI-SLAPP MOTION**

Date: April 15, 2020

Time: 2:00 p.m.

Judge: The Honorable
William H. Orrick

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I. INTRODUCTION

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

This memorandum opposes the Janssen Malloy faction's anti-SLAPP motion at docket 31. The Janssen Malloy faction consists of Defendants, Janssen Malloy, Megan Yarnall, and Amelia Burroughs. For the remainder of this Opposition, "Defendants" shall refer to "Janssen Malloy," collectively, or, "Defendants."

The Janssen Malloy anti-SLAPP motion raises arguments and issues nearly identical to arguments and issues already briefed in other motions. For this Opposition, ABI will adopt portions of its Opposition to the Janssen Malloy 12(b)(6) motion at docket 44, and portions of its Opposition to the Boutin Jones anti-SLAPP motion at docket 56.

II. SECTIONS II THROUGH V OF ABI'S OPPOSITION TO BOUTIN JONES' ANTI-SLAPP ARE ADOPTED IN FULL BECAUSE THE RELEVANT FACTS AND ISSUES ARE IDENTICAL

Defendants, along with Boutin Jones, are accused of wrongfully using civil proceedings in *Blue Lake v. ABI*. The relevant factual background for the two factions on the anti-SLAPP motions are identical. Both factions are identically absurd in arguing *Blue Lake v. ABI* was protected petitioning under California's anti-SLAPP statute. And the same authority, [*Planned Parenthood v. Center for Medical Progress* 890 F.3d 828, 833-835 \(9th Cir. 2018\)](#), determines what standards the Court will apply in evaluating both anti-SLAPP motions.

For these reasons, ABI adopts and incorporates by reference herein Sections II through V of its Opposition to the Boutin Jones anti-SLAPP motion.

III. DEFENDANTS CANNOT SURVIVE PRONG-ONE BECAUSE DEFENDANTS CANNOT SHOW *BLUE LAKE V. ABI* WAS A PETITIONING ACT PROTECTED BY THE UNITED STATES OR CALIFORNIA CONSTITUTIONS USING A 12(B)(6) STANDARD

As argued previously against the Boutin Jones anti-SLAPP, this Court cannot find on a 12(b)(6) motion the United States or California Constitutions protect petitioning in Blue Lake tribal court. Dkt. 56, pp11-14.

IV. ON PRONG-TWO DEFENDANTS CANNOT ESTABLISH THE ONE-YEAR STATUTE OF LIMITATIONS BARS THIS ACTION USING A 12(B)(6) STANDARD

Defendants argue California's special one-year statute-of-limitations for causes of action against attorneys providing professional services or California's litigation privilege bar relief on ABI's state-law causes of action. Because defendants bring no evidence to support their assertion, this Court evaluates Defendants' assertion using a 12(b)(6) standard. *Planned Parenthood*, 834.

Defendants' arguments are entirely duplicative of the arguments made on their 12(b)(6) motion. Dkt. 33, pp26-27 [section VI]. Defendants' 12(b)(6) motion has been fully briefed. Dkt. 44, pp19-23 [Opposition, section V]; Dkt. 47, pp8-9 [Reply, section VII]. Because the same standard applies on both motions, ABI adopts by reference its previous argument on these issues at Dkt 44, pp19-23 [section V].

Should this Court reach Defendants' statute of limitations argument on Prong-Two it cannot find the one-year statute of limitations applies using a 12(b)(6) standard because California authority is split on the issue.

**V. ON PRONG-TWO, DEFENDANTS CANNOT SHOW ABI'S WRONGFUL USE
CAUSES OF ACTION ARE DEVOID OF MERIT AND DO NOT EVEN
ATTEMPT TO DO SO**

Defendants argue they had reasonable grounds to pursue *Blue Lake v. ABI* against ABI because there were reasonable grounds for them to pursue the cause of action against Acres. Dkt. 31, pp17-22. The argument is irrelevant. Whether Defendants had reasonable grounds to pursue the Fraud Cause of Action against Acres has nothing to do with whether they had reasonable grounds to pursue other causes of action against ABI. Furthermore, Justice Lambden found the Fraud Cause of Action against Acres was devoid of merit. Dkt. 1-2, pp15-19.

**A. This Court Cannot Find for Defendants on Summary Judgment Because
Defendants Do Not Attempt to Attack the Merits of ABI's Cause of Action, and
Because There Has Been No Opportunity for Discovery.**

Defendants support their non-argument against ABI with a declaration from Yarnall, so a summary judgment standard applies. [*Planned Parenthood*, 834.](#)

Defendants do not even attempt to show ABI cannot succeed on its cause of action, and instead seem to rely on state-court procedural rules which would require ABI to justify each element of its cause of action. Dkt. 31, p17. But state-court procedural rules do not control anti-SLAPP motions in federal court, and this motion is resolved as any other motion for summary judgment. [*Planned Parenthood*, 834.](#)

It is axiomatic movants have the burdens of persuasion and proof on summary judgment. Defendants provide neither persuasion nor proof against ABI. Their motion must consequently be denied. Furthermore, there has been no opportunity for discovery, and a discovery dispute is pending. This Court cannot grant summary judgment prior to allowing discovery.

B. ABI Has Shown Reasonable Grounds Exist to Pursue the Wrongful Use Cause of Action Against Janssen Malloy.

For all the reasons ABI has reasonable grounds to pursue its Wrongful Use Cause of Action against Boutin Jones, it also has reasonable grounds to pursue its Wrongful Use Cause of Action against Janssen Malloy. ABI adopts its arguments on the merits of the Wrongful Use Cause of Action from its motion opposing the Boutin Jones anti-SLAPP motion. Dkt. 56, 15-22.

VI. CONCLUSION

Defendants' anti-SLAPP motion is offensive and without merit. ABI asks this Court to deny the anti-SLAPP motion in its entirety and order Defendants to answer the Verified Complaint within fourteen days. To the extent the motion cannot be denied, ABI asks this Court for leave to amend.

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Dated: March 18, 2020