

---

20-15959  
IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

**ACRES BONUSING, INC., et al.,**

*Plaintiffs and Appellants,*

**v.**

**LESTER MARSTON, et al.,**

*Defendants and Appellees.*

On Appeal from the United States District Court  
for the Northern District of California  
No. 3:19-cv-05481-WHO  
The Honorable William H. Orrick, Judge

---

**Appellants' Reply Brief**

---

**Ronald H. Blumberg**

141 N. Acacia

Solana Beach, CA 92075

[rhb@blumberglawgroup.com](mailto:rhb@blumberglawgroup.com)

858-509-0600

*Attorneys for Acres Bonusing, Inc.*

**James Acres**

1106 2<sup>nd</sup> #123

Encinitas, CA 92024

[james@kosumi.com](mailto:james@kosumi.com)

541-760-7503

*Plaintiff/Appellant in pro per*

## Table of Contents

<b>Table of Contents</b>	<b>2</b>
<b>Table of Authorities</b>	<b>5</b>
<b>Introduction</b>	<b>7</b>
<b>Issues on Reply</b>	<b>9</b>
<b>Arguments in Reply</b>	<b>10</b>
I. The RICO cause of action is an individual capacity cause of action as a matter of law.	10
A. Appellees cannot, and do not, argue sovereign immunity can bar a RICO cause of action and thereby concede the issue.	10
B. Government employees may be individually sued for RICO even where all their alleged conduct was “performed within the scope of their official duties.”	11
C. The district court did not reach the 12(b)(6) challenge to the RICO cause of action and this Court cannot find ABI and Acres failed to state a RICO cause of action in the first instance.	12
D. Appellees’ RICO conduct encompassed more than a “single frivolous lawsuit” and sprawled across several years, courts, and victims.	13
E. The verified complaint can serve as a declaration and in any event, if a declaration was required, the opportunity to conduct discovery should have been allowed.	14
F. Payments to Judge Marston for his advocacy work were corrupt payments because the payments “disqualified” him from being judge.	15
G. ABI and Acres do not concede JM was absent from the RICO conspiracy.	16

- II. Sovereign immunity cannot bar causes of action for individual money damages as a matter of law. 17
- A. Appellees concede *ABI v. Marston* only seeks individual money damages from individual defendants and thus concede sovereign immunity cannot bar the suit. 17
  - B. There is no evidence the complained of conduct occurred within the scope of Appellees’ employment and it would not matter if there was. 18
  - C. Adopting Appellees arguments necessarily means this Court is finding BLTC does not provide due process. 19
  - D. *ABI v. Marston* does not challenge tribal court authority. 21
  - E. The proper vehicle to express concern remedies against Appellees operate against non-party Blue Lake is a motion under Rule 12(b)(7). 22
  - F. The entity Appellees concede they are not arms-of-the-tribe and therefore cannot be entitled to sovereign immunity. 23
  - G. *Great Western Casinos* is a pre-*Lewis* and pre-*Maxwell* state court case which applied the defunct “scope of employment” test instead of the required “remedy sought” test and is therefore inapplicable. 25
  - H. Contrary to RMBL’s assertion, the Ninth Circuit does not rely on *Imperial Granite* and *Hardin* to perpetuate the “scope of employment” test forbidden by *Lewis* and *Maxwell*. 26
  - I. Appellees’ argument BLTC has sole jurisdiction over *ABI v. Marston* fails because the verified complaint alleges violations of state and federal law. 27
- III. Judicial immunity cannot protect conduct Judge Marston concedes was unrelated to the exercise of judicial power over ABI. 29
- A. Judicial immunity cannot protect conduct RMBL concedes was harmful and unrelated to presiding over *BLC v. ABI*. 29
  - B. RMBL does not explain how judicial immunity can protect RMBL’s employment decisions. 30
  - C. Judge Marston does not explain how judicial immunity can protect his assignment of *BLC v. ABI* to himself. 31

IV. The Anti-SLAPP motions were frivolous and should not be renewed on remand. 31

V. Appellees' statute of limitations argument is not properly before this Court and, in any event, requires further factual development prior to resolution. 33

**Conclusion** 35

## Table of Authorities

<i>Abcarian v. Levine</i> , No. 19-55129 at 14-15 (9th Cir. Aug. 25, 2020).....	11, 12
<i>Barona v. Duffy</i> , 694 F.2d 1185 (9 <sup>th</sup> Cir. 1982).....	29
<i>Bertero v. National General Corp.</i> , 13 Cal.3d 43 (Cal. 1974) .....	28
<i>Brown v. Garcia</i> , 17 Cal.App.5 <sup>th</sup> 1198 (Cal. Ct. App. 2017) .....	21, 22
<i>Bryan v. Itasca</i> , 426 US 373 (1976) .....	29
<i>Chevron v. Donziger</i> , 833 F.3d 74 (2d Cir. 2016).....	13, 14
<i>Connelly v. Bornstein</i> 33 Cal.App.5 <sup>th</sup> 783 (Cal. Ct. App. Dist. 1 2019) .....	33
<i>Dennis v. Sparks</i> , 449 US 24 (1980).....	31
<i>EEOC v. Peabody W. Coal</i> , 610 F.3d 1070 (9 <sup>th</sup> Cir. 2010).....	23
<i>Forrester v. White</i> , 484 US 219 (1988) .....	30, 31
<i>Guessous v. Chrome Hearts</i> , 179 Cal.App.4 <sup>th</sup> 1177 (Cal. Ct. App. 2009) .....	32
<i>Hafer v. Melo</i> , 502 U.S. 21 (1991) .....	11, 17, 23
<i>J.W. Gaming v. James</i> , No. 18-17008 (9 <sup>th</sup> Cir. 2019).....	17
<i>Kim v. Kimm</i> , 884 F.3d 98 (2d Cir. 2018) .....	13
<i>Lee v. Hanley</i> , 61 Cal. 4 <sup>th</sup> 1225 (Cal. 2015).....	34, 35
<i>Lopez v. Smith</i> , 203 F.3d 1222, (9 <sup>th</sup> Cir. 2000). .....	14
<i>McGary v. City of Portland</i> , 386 F.3d 1259 (9th Cir. 2004).....	12, 16
<i>Meek v. County of Riverside</i> , 183 F.3d 962 (9 <sup>th</sup> Cir. 1999) .....	29, 30

<i>People ex rel. Owen v. Miami Nations Enterprises</i> , 2 Cal.5 <sup>th</sup> 222 (Cal. 2016).....	25
<i>Miccosukee v. Cypress</i> , 814 F.3d 1202 (11 <sup>th</sup> Cir. 2015).....	22
<i>Program Engineering v. Triangle Publications</i> , 634 F.2d 1188 (9 <sup>th</sup> Cir. 1980).....	15
<i>Roger Cleveland v. Krane</i> , 223 Cal.App.4th 660 (Cal. Ct. App. Dist. 2 2014) .....	34
<i>Sinibaldi v. Redbox Automated Retail, LLC</i> , 754 F.3d 703 (9 <sup>th</sup> Cir. 2014).....	34
<i>U.S. v. Frega</i> , 179 F.3d 793 (9 <sup>th</sup> Cir. 1999).....	14
<i>Usher v. City of Los Angeles</i> , 828 F.2d 556 (9 <sup>th</sup> Cir. 1987) .....	12, 16
<i>White v. Univ. of California</i> , 765 F.3d 1010 (9 <sup>th</sup> Cir. 2014).....	23
<i>Wilson v. Marchington</i> , 127 F.3d 805, 810 (9 <sup>th</sup> Cir. 1997) .....	20
<i>Yee v. Cheung</i> , 220 Cal.App.4th 184 (Cal. Ct. App. Dist. 4 2013) .....	33

## Introduction

The salient facts are undisputed.

*Blue Lake Casino v. Acres Bonusing, Inc.* ended when the Blue Lake Tribal Court (“BLTC”) found the cause of action against Acres had been conjured and Blue Lake Casino (“BLC”) dismissed the causes of action against Acres Bonusing, Inc. (ABI) rather than supply a bill of particulars to substantiate its common count causes of action. ER019 ¶1; ER029 ¶53; ER041 ¶113.

Judge Marston and his associates at Rapport & Marston (“RM”) were attorneys working for BLC and its CEO the entire time they presided over *BLC v. ABI*. ER026 ¶36; ER043-044 ¶¶124-128; ER119-123 ¶20, ¶¶25-27. Judge Marston lied in the tribal court to conceal these facts. ER038 ¶89. When Acres brought federal actions to escape Judge Marston’s jurisdiction, Judge Marston lied in the district court, too. Judge Marston withdrew after Acres proved Judge Marston was working as an attorney for BLC’s CEO in a state-court family-law matter. ER039-040 ¶¶99-104; ER119-122 ¶¶19-20.

Boutin Jones (“BJ”) originally represented Blue Lake Casino in *BLC v. ABI*. BJ and RM have been associated as counsel for Blue Lake since 2012 in a dispute with the state of California worth tens of millions of dollars which is currently on appeal before this Court. ER023 ¶23; ER033 ¶74. To help conceal Judge Marston’s attorney-client relationship with BLC and its CEO, BJ filed papers

ghostwritten by RM in the district court. ER033 ¶¶73; ER039 ¶¶98; ER115-116 ¶¶7-10. BJ withdrew from *BLC v. ABI* after Acres brought evidence to the district court showing BJ was filing papers ghostwritten by RM. ER041-042 ¶¶110-111.

Janssen Malloy (“JM”) replaced BJ in *BLC v. ABI* and pursued the case through summary judgment, where BLTC found JM misstated evidence in pursuit of the “conjured” claim against Acres. ER041-042 ¶¶111, 117; ER097.

Below, ABI brought causes of action for wrongful use of civil proceedings and breach of fiduciary duty. Both ABI and Acres brought a RICO cause of action. The only remedies sought are money damages against the individual defendants. Appellees resisted with motions to dismiss and brought anti-SLAPP motions. ABI moved to strike the anti-SLAPP motions as frivolous. ER001-002; ER046-055. Appellees refused to co-operate with discovery requests and, tellingly, failed to produce evidence Blue Lake approved of their conduct or wished to shield Appellees with its sovereign immunity. ER003 fn.6.

The district court granted Appellees’ 12(b)(1) motions to dismiss finding sovereign immunity barred the action. The district court also found judicial immunity barred the causes of action against tribal court personnel. The district court declined to reach the remaining 12(b)(6) arguments, however, then vacated the outstanding discovery dispute, and mooted the anti-SLAPP motions as well as the motions to strike the anti-SLAPP motions. ER001-002.



## Issues on Reply

Considering the opening and answering briefs collectively, five questions are before the Court:

- I. Can sovereign immunity bar a RICO cause of action? (*Independent Review.*)
- II. Can sovereign immunity bar individual money damages? (*Independent Review.*)
- III. Can judicial immunity protect conduct unrelated to the exercise of judicial power? (*Independent Review.*)
- IV. Is it frivolous to argue the United States or the California constitution guarantees a right to petition a tribal court? (*Abuse of Discretion.*)
- V. Can this Court reach a California statute of limitations argument in the first-instance when California's Supreme Court would hold factual development is required to determine whether the statute applies? (*Not Properly Before the Court.*)

## Arguments in Reply

### **I. The RICO cause of action is an individual capacity cause of action as a matter of law.**

#### **A. Appellees cannot, and do not, argue sovereign immunity can bar a RICO cause of action and thereby concede the issue.**

ABI and Acres argue the district court erred in finding sovereign immunity barred the RICO cause of action because sovereign immunity can never bar a RICO cause of action. AOB 22-23.<sup>1</sup> This Court has previously explained plainly unlawful conduct is always individual conduct which cannot be protected by sovereign immunity. [\*Maxwell v. San Diego\*, 708 F.3d 1075, 1089 \(9<sup>th</sup> Cir. 2013\)](#).<sup>2</sup> It is therefore impossible for sovereign immunity to bar a RICO cause of action because pleading RICO requires pleading conduct that is plainly unlawful and therefore purely individual. No Appellee contests this core argument to explain how RICO can be barred by sovereign immunity.

Instead, Appellees shift focus, and argue this Court should affirm on the alternative grounds that 1) Appellees were always acting within the scope of their employment (BJ 27)<sup>3</sup>; 2) ABI and Acres fail to state a valid RICO claim (JM 26-

---

<sup>1</sup> AOB is the Appellants' Opening Brief. All page citations are to the ECF generated page numbers.

<sup>2</sup> *Maxwell* was withdrawn and re-issued after petitions for rehearing were denied. The AOB cited to the withdrawn opinion twice. The language cited by the AOB is in the re-issued opinion.

<sup>3</sup> Citations to JM, BJ and RMBL refer to that faction's answering brief. All page citations are to the ECF generated page number.

33, BJ 25, RMBL 51-53); 3) ABI and Acres failed to oppose the motions to dismiss with evidence (RMBL 47-48); 4) all payments made to Judge Marston were “*bona fide*” (RMBL 48-40); and, 5) ABI and Acres admit JM did not commit RICO (JM 28). Each argument fails.

**B. Government employees may be individually sued for RICO even where all their alleged conduct was “performed within the scope of their official duties.”**

In *Abcarian v. Levine* this Court explicitly held government officers may be sued as individuals for civil RICO, even if all the conduct alleged in a complaint “relies upon actions [the government officer] performed within the scope of their official duties.” [Abcarian v. Levine, No. 19-55129 at 14-15 \(9th Cir. Aug. 25, 2020\) for publication](#). In so holding, this Court relied on the Supreme Court’s analysis in [Hafer v. Melo, 502 U.S. 21 \(1991\)](#).

Hafer, an elected state official, argued government officers were not subject to individual capacity §1983 actions for conduct “within the official’s authority and necessary to the performance of governmental functions.” [Id., 28](#). The Supreme Court rejected Hafer’s argument because government officials are “personally liable for acts done in the course of their official duties.” [Id.](#) In *Abcarian*, this Court found the logic of *Hafer v. Melo* analogizes to impose individual liability on government officers in a RICO context just as it does in a §1983 context. [Abcarian, 14](#).

Lewis v. Clarke, 137 S. Ct. 1285, 1292 (2017) holds the sovereign immunity available to tribal employees is no greater than the sovereign immunity available to state employees. Therefore, *Abcarian* means tribal officers are personally liable in RICO for actions “performed within the scope of their official duties” because state officers are so liable.

**C. The district court did not reach the 12(b)(6) challenge to the RICO cause of action and this Court cannot find ABI and Acres failed to state a RICO cause of action in the first instance.**

Appellees’ remaining RICO challenges argue RICO was not properly plead. The district court, however, never reached Appellees’ 12(b)(6) RICO challenge and never allowed discovery. ER002-003. Appellees are therefore asking this Court to find, in the first instance, RICO has not been properly pled.

In evaluating a Rule 12(b)(6) motion courts “presume all factual allegations of the complaint are true and draw all reasonable inferences in favor of the nonmoving party.” *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). Furthermore, “Rule 12(b)(6) dismissals are especially disfavored in cases where the complaint sets forth a novel legal theory that can best be assessed after factual development.” *McGary v. City of Portland*, 386 F.3d 1259, 1270 (9th Cir. 2004).

Given the novel audacity of the wrongdoing alleged in the verified complaint, had the district court reached the 12(b)(6) motions *Usher* and *McGary* would

require it to deny them. *Usher* and *McGary* likewise preclude this Court from affirming dismissal on the alternate ground ABI and Acres fail to state a valid RICO claim. At the very least, under *McGary*, the case must be remanded to allow for factual development.

**D. Appellees’ RICO conduct encompassed more than a “single frivolous lawsuit” and sprawled across several years, courts, and victims.**

Appellees rely on Second Circuit [\*Kim v. Kimm\*, 884 F.3d 98, 104 \(2d Cir. 2018\)](#) to argue no RICO cause of action lies against them because “allegations of frivolous, fraudulent, or baseless litigation activities, without more, cannot constitute a RICO predicate act.” JM 28-29; BJ 25; RMBL 52. *Kim*, however, specifically limited its holding to cases where a plaintiff only alleges “a single frivolous, fraudulent, or baseless lawsuit.” [\*Id.\*, 105](#). Furthermore, the Second Circuit has found a civil-RICO action lies where litigation conduct includes extrinsic fraud coupled with obstruction of justice. [\*Chevron v. Donziger\*, 833 F.3d 74, 131-134 \(2d Cir. 2016\)](#).

Unlike *Kim*, *ABI v. Marston* specifically alleges Appellees’ conduct in *BLC v. ABI* amounted to extrinsic fraud, and alleges Appellees obstructed justice in two separate district court cases in an attempt to conceal their extrinsic fraud. ER056-057 ¶¶200, 208. Furthermore, *ABI v. Marston* specifically names four other victims of Appellees’ RICO enterprise, wholly unrelated to ABI or Acres, and a pattern of conduct spreading from 2011 to 2016. ER032 ¶69; ER044-046 ¶¶129-

133; ER057 ¶¶204, 207. Even if this Court needed to look to the Second Circuit for authority, *ABI v. Marston* is far more akin to *Donziger* than to *Kim*.

Regardless, this Court need not consult out-of-circuit authority. In [\*U.S. v. Frega\*, 179 F.3d 793, 797 \(9<sup>th</sup> Cir. 1999\)](#) this Court affirmed RICO and mail-fraud convictions against an attorney and several judges for “conducting the affairs of [San Diego] Superior Court through a pattern of RICO activity.”<sup>4</sup>

**E. The verified complaint can serve as a declaration and in any event, if a declaration was required, the opportunity to conduct discovery should have been allowed.**

Below, RMBL did not attack the RICO cause of action. Instead, RMBL limited its motion to dismiss to arguments on sovereign, judicial, prosecutorial, and testimonial immunity. FER001-002.<sup>5</sup> RMBL now argues on appeal that, because RMBL supported its motion to dismiss with evidence, ABI and Acres were bound to bring declarations to support their RICO cause of action. RMBL 47. The argument fails for at least three reasons. First, RMBL did not challenge the RICO cause of action. Second, Acres verified the complaint. ER103. Verified complaints carry the same evidentiary weight as declarations. [\*Lopez v. Smith\*, 203 F.3d 1222, 1132 fn.14 \(9<sup>th</sup> Cir. 2000\)](#). Third, the sufficiency of a RICO cause of

---

<sup>4</sup> While the substantive RICO and mail-fraud convictions were affirmed, several RICO conspiracy convictions in *Frega* were reversed because of confusing jury instructions. Nothing in the reversal limited the circumstances under which suborning a court can give rise to RICO. [\*Frega\*, 808-811.](#)

<sup>5</sup> The “Further Excerpts of Record” submitted alongside this brief.

action is challenged on Rule 12(b)(6). Where a defendant brings extrinsic evidence to support a 12(b)(6) motion, the motion becomes one for summary judgment, and plaintiffs should be given the opportunity to conduct discovery before the motion can be granted. [\*Program Engineering v. Triangle Publications\*, 634 F.2d 1188, 1193 \(9<sup>th</sup> Cir. 1980\)](#). This Court should reverse and remand if for no other reason than because ABI and Acres had no chance to conduct discovery, even though RMBL concedes it brought relevant evidence below and refused to comply with discovery requests.

**F. Payments to Judge Marston for his advocacy work were corrupt payments because the payments “disqualified” him from being judge.**

RMBL argues [18 USC 666](#) cannot supply RICO predicates because any payments Judge Marston received were “*bona fide*” salary payments and therefore not corrupt under §666. RMBL 48-49. The argument is a red-herring. The verified complaint does not invoke Appellees’ violations of §666 as RICO predicates because violations of §666 are not enumerated as racketeering activities in [18 USC 1961](#). Instead, the verified complaint alleges the corrupt payments to Judge Marston were illegal as a matter of law under §666 and therefore not protected by California’s anti-SLAPP statute. ER058 ¶211. The verified complaint also alleges mail-fraud and wire-fraud predicates were created on a monthly basis as Judge Marston sent invoices and received checks related to the corrupt payments. ER025 ¶33; ER057 ¶¶203-207.

And make no mistake. The payments made to Judge Marston for his advocacy work were corrupt. Judge Marston concedes the work “disqualified” him as judge and “raised questions about [his] ability to impartially preside.” ER121-122 ¶25; RMBL 62-63. Payments for work that destroys a judge’s ability to impartially preside over a case are, by definition, corrupt.

**G. ABI and Acres do not concede JM was absent from the RICO conspiracy.**

JM argues because ABI does not sue JM for aiding and abetting Judge Marston in breaching his fiduciary duties, ABI concedes JM was not part of the RICO conspiracy. JM 28. Not so. ABI and Acres allege JM joined a RICO conspiracy in progress and worked to further the conspiracy. The tribal court went out of its way to note JM misstated evidence in pursuit of the conjured cause of action against Acres. ER042 ¶¶114-117. Under *Usher* and *McGary* it is reasonable to infer at this stage JM joined *BLC v. ABI* knowing it was a RICO conspiracy, and that JM joined to further the conspiracy. This reasonable inference is, at this stage of the proceedings, sufficient to sustain the RICO cause of action against JM.

//  
//  
//  
//  
//  
//  
//  
//  
//



## **II. Sovereign immunity cannot bar causes of action for individual money damages as a matter of law.**

### **A. Appellees concede *ABI v. Marston* only seeks individual money damages from individual defendants and thus concede sovereign immunity cannot bar the suit.**

Appellees concede *ABI v. Marston* only seeks remedies from the individual Appellees. BJ 20, RMBL 40. As shown in the opening brief, under *Lewis v. Clarke* and the Supreme Court's broader sovereign immunity jurisprudence, this is dispositive, and Appellees must be denied sovereign immunity. AOB 27-34. This is because "sovereign immunity does not erect a barrier against suits to impose individual and personal liability." [\*Lewis v. Clarke\*, 137 S. Ct. 1285, 1291\(2017\)](#) (internal quotations marks omitted); citing [Hafer at 30-31](#). See, also, this Court's recent [J.W. Gaming v. James, No. 18-17008 \(9<sup>th</sup> Cir. 2019\)](#) [tribe not real-party in interest where only remedy sought is individual money damages].<sup>6</sup>

*ABI v. Marston* is a suit to impose individual liability. Under longstanding, controlling, and recently affirmed Supreme Court authority, suits to impose individual liability cannot be barred by sovereign immunity. Consulting this

---

<sup>6</sup> At oral argument in *JW Gaming v. James* No. 18-17008 (9<sup>th</sup> Cir. Oct. 2, 2019) when counsel for tribal defendants admitted the case only sought money damages from individuals, this Court asked rhetorically, "[Aren't you conceding your point?](#)" and, "[How can the individual defendants invoke the tribe's sovereign immunity?](#)" Links are to the 1m46s mark and 4m45s mark.

Court's precedent yields the same result: A "general rule that individual [tribal] officers are liable when sued in their individual capacities." [Maxwell, 1089.](#)

This Court is bound by both its own rulings and Supreme Court precedent to reverse the district court's finding sovereign immunity bars *ABI v. Marston*.

**B. There is no evidence the complained of conduct occurred within the scope of Appellees' employment and it would not matter if there was.**

Appellees repeat throughout their answering briefs that all the conduct of which *ABI v. Marston* complains occurred within the scope of their employment.

Preliminarily, there is no evidence to substantiate this claim. But, even if Appellees were acting within the scope of their employment, it would not matter.

As Appellees point out (BJ 18), this Court explained why in [Maxwell at 1088](#):

The general bar against official-capacity claims ... does not mean that tribal officials are immunized from suits *arising out of* actions they took in their official capacities ... Rather, it means tribal officials are immunized from suits brought against them *because of* their official capacities – that is, because the powers they possess in those capacities enable them to grant the plaintiffs relief on behalf of the tribe. (emphasis in original, internal citations removed.)

Under this Court's clear precedent, cited by Appellees themselves, tribal officials are only protected by sovereign immunity if their power to grant the prayed for relief flows from their official powers. *ABI v. Marston* only seeks money damages from Appellees' own pockets. Sovereign immunity cannot protect Appellees from the causes of action in *ABI v. Marston* because Appellees' access to their individual pockets is independent of their employment by Blue Lake.

**C. Adopting Appellees arguments necessarily means this Court is finding BLTC does not provide due process.**

Consider the following facts:

- 1) Judge Marston and his associates worked as attorneys for Blue Lake Casino and its CEO while they presided over *BLC v. ABI*.
- 2) Judge Marston and his associates lied repeatedly in the tribal court and the district court to conceal these attorney-client relationships.
- 3) The final judgment in *BLC v. ABI* found the BJ and JM attorneys “conjured” a personal fraud cause of action and misstated evidence in pursuit of that claim.

There is no evidence any of these actions occurred within the scope of Appellees’ employment. Indeed, such evidence could easily come in the form of an official statement by Blue Lake’s government that:

- 1) Blue Lake judges and law-clerks are expected to work as attorneys on behalf of parties over which they preside.
- 2) Blue Lake judges and law-clerks are expected to lie in court to conceal their advocacy work on behalf of parties before them.
- 3) Blue Lake attorneys are expected to conjure meritless causes of action and mislead courts on behalf of their clients.

If Blue Lake’s government were to make such a statement the consequences for Blue Lake’s court would be catastrophic. A court in which judges are expected to

advocate for litigants, and to lie to avoid detection, is clearly not a court that provides due process. United States courts are forbidden to enforce judgments arising from courts which do not provide due process. [\*Wilson v. Marchington\*, 127 F.3d 805, 810 \(9th Cir. 1997\)](#).

Likewise, California's Tribal Court Money Judgment Act forbids recognizing judgments arising from courts which do not provide due process. [CCP 1737\(b\)\(3\)](#). It is a gross usurpation of sovereignty for a United States court to determine, without evidence from the sovereign, that the sovereign's employment policies render the sovereign's courts incapable of providing due process. This is especially true in Blue Lake's case, given that Blue Lake sponsored California's Tribal Civil Money Judgment Act. ER029 ¶55.

Furthermore, attorneys have affirmative duties not to conjure meritless causes of action or willfully mislead courts. Appellees worry if they can be held liable for breaching these duties Blue Lake might find it difficult to obtain counsel in the future. But if this Court determines Blue Lake expects its attorneys to conjure causes of action and willfully mislead courts, then this Court does Blue Lake the far greater harm of inhibiting Blue Lake's access to attorneys who are unwilling to risk being mistaken for dishonest scofflaws.

//

//

**D. *ABI v. Marston* does not challenge tribal court authority.**

JM argues that if the district court hears causes of action related to conduct in the tribal court the district court “necessarily asserts control” of the tribal court because it “determines what pleadings are appropriate” in the tribal court. JM 26.

Appellees misstate the nature of the case. The tribal court itself found the cause of action against Acres was “conjured.” ER097. The tribal court itself issued a judgment of dismissal for ABI after BLC decided to abandon its case to avoid having to produce a bill of particulars. ER041 ¶113; ER101. Neither ABI nor Acres seeks to disturb the judgment of the tribal court. Instead, ABI and Acres embrace both the record and the judgment of the tribal court.

JM builds its argument from [\*Brown v. Garcia\*, 17 Cal.App.5<sup>th</sup> 1198 \(Cal. Ct. App. 2017\)](#) which JM chides the opening brief for failing to address. JM 25-26. *ABI v. Marston*, however, is nothing like *Brown*. The *Brown* plaintiffs were tribal members who tribal officials determined had committed misdeeds meriting disenrollment under tribal law. The *Brown* plaintiffs disagreed with that determination and brought a libel action in state court against the tribal officials. [\*Id.\*, 1200-1201](#). Thus, at its core, *Brown* asked a state court to overrule tribal authority as to what constituted misdeeds meriting disenrollment and, therefore, qualifications for tribal membership. Put another way, in addition to the remedy of money damages, the *Brown* plaintiffs sought an antecedent remedy in the form of

declaratory relief finding the plaintiffs had not committed misdeeds meriting disenrollment under tribal law. The *Brown* court could not provide this antecedent remedy because it would “require[] an impermissible analysis of Tribal law and constitute[] a determination of a non-justiciable inter[nal]-tribal dispute.”<sup>7</sup> [\*Id.\*, 1206-1207.](#)

*Brown v. Garcia* and *ABI v. Marston* are thus utterly unlike. To sustain their causes of action the *Brown* plaintiffs needed a California court to overrule findings of tribal law made by a tribal authority. ABI and Acres only ask the district court to take the judgment of the tribal court at face value.

**E. The proper vehicle to express concern remedies against Appellees operate against non-party Blue Lake is a motion under Rule 12(b)(7).**

Appellees argue the specter of money damages levied against tribal employees might hamper Blue Lake’s efforts to obtain peak performance from its officers. JM 21; BJ 17; RMBL 41-42. The argument fails. While the Supreme Court recognizes “imposing personal liability on state officers may hamper their performance of public duties” it nonetheless holds “such concerns are properly

---

<sup>7</sup> Using a remedy-focused analysis, *Brown* is better understood as an internal-tribal dispute case rather than as a sovereign immunity case. Had the *Brown* plaintiffs sought injunctive relief requiring tribal officials to find disenrollment was improper, *Brown* would be a classic sovereign immunity case in which the remedy sought was the compulsion of an official action. Instead, *Brown* sought to supplant a tribal determination of tribal law with a state court determination of tribal law. This remedy was impermissible under the internal tribal dispute doctrine. [\*Miccosukee v. Cypress\*, 814 F.3d 1202, 1208 \(11<sup>th</sup> Cir. 2015\).](#)

addressed [by] our personal immunity jurisprudence.” [Hafer, 31](#). Furthermore, *Lewis* explicitly rejected the argument that tribal indemnification of tribal employees transforms a tribe into the real party in interest. In Justice Sotomayor’s pithy phrasing, “[t]he critical inquiry is who may be legally bound by the court’s adverse judgment, not who will ultimately pick up the tab.” [Lewis, 1292-1293](#).

Despite this clear and contrary weight of precedent, if Appellees wish to argue Blue Lake has a vital interest in *ABI v. Marston* the concern should be raised on a Rule 12(b)(7) motion for failure to join a party under Rule 19. Such a motion would require Appellees to show Blue Lake is both necessary and indispensable to *ABI v. Marston*. If Appellees meet that burden, any harm that might flow to Blue Lake from remedies awarded ABI or Acres would be balanced against the harm suffered by ABI and Acres were they to be deprived of any remedy. [EEOC v. Peabody W. Coal, 610 F.3d 1070, 1077 \(9<sup>th</sup> Cir. 2010\)](#). Because the issue was unaired here or below, this Court cannot affirm on the alternative ground that Blue Lake is a necessary and indispensable party.

**F. The entity Appellees concede they are not arms-of-the-tribe and therefore cannot be entitled to sovereign immunity.**

As discussed in the opening brief, an entity can only share in a tribe’s sovereign’s immunity if that entity is an “arm-of-the-tribe.” AOB 41-42. A five-factor test is used to determine whether an entity is an arm-of-the-tribe. [White v. Univ. of California, 765 F.3d 1010, 1025 \(9<sup>th</sup> Cir. 2014\)](#). No Appellee disputes

*White* provides the proper test to determine whether an entity qualifies as an arm-of-the-tribe.

Rapport & Marston, the entity, disavows any relationship with Blue Lake. RMBL 14, fn.3.<sup>8</sup> An entity which has no relationship with a tribe is perforce not an arm of that tribe. *Id.* By disavowing any relationship with Blue Lake, Rapport & Marston necessarily concedes it does not share in Blue Lake's sovereign immunity.

Boutin Jones, the entity, argues that when attorneys work for clients they do not do so "o[f] their own volition for their own benefit." BJ 24. Barring evidence the firm Boutin Jones was compelled to represent BLC against the firm's will, and without pay,<sup>9</sup> attorneys choose to work for clients and benefit from being paid. The argument fails on its face, and cannot overcome Boutin Jones' concessions that 1) it was not created by Blue Lake; 2) it is an "outside private law firm not controlled by [Blue Lake];" 3) it's financial relationship with BLC was that of a service provide being paid for services; and 4) there is no explicit grant of immunity from Blue Lake to Boutin Jones. BJ 23-24.

---

<sup>8</sup> RMBL claims Rapport & Marston is not a firm. However, before this Court, Judge Marston introduces himself as ["Les Marston ... with the law firm Rapport & Marston."](#) (Link is to the 9m48s mark of oral argument in Case No. 18-15309.)

<sup>9</sup> As noted, BJ and RM represent Blue Lake in *Blue Lake v. Lanier*, Case No. 15-16340 before this Court. *Lanier* concerns tens of millions of dollars. ER023 ¶23. Even if BJ felt "compelled" to behave as it did in *BLC v. ABI* because it was threatened with the loss of contingent fees in *BLC v. Lanier*, BJ would still be making a choice of its own volition for its own benefit.



Janssen Malloy, the entity, does not attempt to argue it is an arm-of-the-tribe, conceding the point. *See generally* [\*Miami People ex rel. Owen v. Miami Nations Enterprises\*, 2 Cal.5<sup>th</sup> 222, 244 \(Cal. 2016\)](#) [holding entities bear burden under *White* to show they are an arm of a tribe because the entities possess the relevant facts].

Because none of the entity Appellees are arms of Blue Lake, none of them can share in Blue Lake’s sovereign immunity. Even if employees of California corporations are immune from liability when providing “torts-for-hire” to a tribe, there is no good reason to extend that immunity to California employers who willfully profit from paying their employees to tort on a tribe’s behalf.

**G. *Great Western Casinos* is a pre-*Lewis* and pre-*Maxwell* state court case which applied the defunct “scope of employment” test instead of the required “remedy sought” test and is therefore inapplicable.**

JM chides the opening brief for failing to address [\*Great Western Casinos v. Morongo\*, 74 Cal.App.4<sup>th</sup> 1407 \(Cal. Ct. App. 1999\)](#). JM 19. Appellees argue *Great Western* establishes that whenever attorneys work for tribes they are automatically protected by the tribe’s sovereign immunity. *Great Western*, however, is a decades-old state court case which found sovereign immunity “extend[s] to tribal officials when they act in their official capacity and within the scope of their authority.” [\*Id.\* 1411](#). Thus, not only does *Great Western* fail to apply the “remedy sought” test required by [\*Lewis\* \(1290\)](#) and [\*Maxwell\* \(1087-1088\)](#), it

uses the “course and scope” test explicitly rejected by both [\*Lewis\* \(1291-1292\)](#) and [\*Maxwell\* \(1088-1089\)](#).

JM uses *Great Western* to express concern *ABI v. Marston* will result in Blue Lake’s relationships with its attorneys being explored in an “unrestricted fashion.” JM 21. The concern is a red-herring. All three law-firms bring declarations describing their relationships with Blue Lake, and each other, in surprising detail. ER104-133; BLSER001-258. Any further exploration will be restricted by the limits on discovery federal law imposes on all litigants, including limits imposed by the attorney-client privilege.

**H. Contrary to RMBL’s assertion, the Ninth Circuit does not rely on *Imperial Granite* and *Hardin* to perpetuate the “scope of employment” test forbidden by *Lewis* and *Maxwell*.**

RMBL argues [\*Imperial Granite v. Pala\*, 940 F.2d 1269 \(9<sup>th</sup> Cir. 1991\)](#) and [\*Hardin v. White Mountain Apache\*, 779 F.2d 476 \(9<sup>th</sup> Cir. 1985\)](#) continue to be cited post-*Lewis* to “uphold the immunity of tribal officials sued for acts committed in their official capacities and within the scope of the Tribe’s authority.” RMBL 39. RMBL’s statement is false and misrepresents this Court’s use of *Imperial Granite* and *Hardin*.

Post-*Lewis*, this Court has cited *Imperial Granite* in three cases<sup>10</sup> and *Hardin* only once.<sup>11</sup> None of these cases involved suits against tribal officials, much less espoused the “scope of employment” test in determining whether tribal officials are protected by sovereign immunity.

Regardless, this Court does not (and cannot) rely on *Imperial Granite* or *Hardin* to perpetuate the “scope of employment” test explicitly rejected by [Lewis \(1291-1292\)](#) and [Maxwell \(1088-1089\)](#).

**I. Appellees’ argument BLTC has sole jurisdiction over *ABI v. Marston* fails because the verified complaint alleges violations of state and federal law.**

JM argues, without authority, that “[Blue Lake] Tribal Court alone should be the only [c]ourt to determine whether any actions before it were a “wrongful use” of its [c]ourt.” JM 23. JM would cast a wrongful use of civil proceedings cause of action<sup>12</sup> as turning on what behavior a sovereign believes is appropriate within its

---

<sup>10</sup> [Coeur D’Alene v. Hawks](#), 933 F.3d 1052, 1056 (9<sup>th</sup> Cir. 2019) cited *Imperial Granite* on tribal court jurisdiction; [Mitchell v. Tulalip Tribes](#), No. 17-35959 at 2 (9<sup>th</sup> Cir. 2019) and [Quinault Indian Nation v. Pearson](#), No. 15-35263 at 6 (9<sup>th</sup> Cir. 2017) cited *Imperial Granite* as authority that sovereign immunity bars unconsented suit against tribes (as opposed to tribal employees).

<sup>11</sup> [Tavares v. Whitehouse](#), 851 F.3d 863, 876 (9<sup>th</sup> Cir. 2017) cited *Hardin* as authority that tribes retain authority to exclude non-members.

<sup>12</sup> In contemporary usage, the California Civil Jury Instructions distinguish malicious [criminal] prosecution from wrongful use of civil proceedings. The torts have different elements and different lines of precedent and should not be conflated.

courts. This misapprehends the cause of action, which protects substantive individual rights.

California law imposes a general civil obligation on all Californians to refrain from wrongfully using civil proceedings to pursue a meritless cause of action. California's Supreme Court explained Californians who ignore this obligation may be held liable in tort not only because they "threaten[] the efficient administration of justice" but also because their victims are "subject[ed] to the panoply of psychological pressures most civil defendants suffer" and the "additional stress of attempting to resist a suit commenced out of spite or ill will, often magnified by slanderous allegations." The cause of action is made available to individual victims "[i]n recognition of the wrong done the victim. . . ." [\*Bertero v. National General Corp.\*, 13 Cal.3d 43, 50-51 \(Cal. 1974\)](#). On its face, the cause of action is not limited to regulating the behavior of Californians towards any specific court or tribunal, but instead explicitly regulates the behavior of Californians towards their fellows, and provides a mechanism for victims to seek redress.

The verified complaint alleges Appellees wrought their wrongful use from locations hundreds of miles away from the Blue Lake Rancheria. ER021-024 ¶¶16-29; ER042 ¶¶118-121. But even if Appellees' misconduct took place entirely within the Blue Lake Rancheria jurisdiction would still lie in this Court. Public Law 280 extends the reach of state laws "that are of general application to private

persons” to conduct within Indian Country and vests jurisdiction over private legal disputes arising therefrom in state courts. [\*Bryan v. Itasca\*, 426 US 373, 384 \(1976\)](#). This explicitly includes disputes arising in tort. [\*Id.\*, fn. 10](#). And, Public Law 280 applies to California. [\*Barona v. Duffy\*, 694 F.2d 1185, 1187-1188 \(9<sup>th</sup> Cir. 1982\)](#). Because *ABI v. Marston* is a private legal dispute between private persons Public Law 280 vests original jurisdiction over *ABI v. Marston* in state court and RICO vests pendant jurisdiction in federal court.

### **III. Judicial immunity cannot protect conduct Judge Marston concedes was unrelated to the exercise of judicial power over ABI.**

RMBL and ABI agree [\*Meek v. County of Riverside\*, 183 F.3d 962 \(9<sup>th</sup> Cir. 1999\)](#) provides the test to determine whether a particular act is protected by judicial immunity. RMBL 59; AOB 44. Judicial immunity only protects 1) a normal judicial function; 2) occurring in a judge’s chambers; 3) centered around a case pending before the judge; and 4) arising directly and immediately out of a confrontation with the judge in the judge’s official capacity. [\*Meek\*, 967](#).

#### **A. Judicial immunity cannot protect conduct RMBL concedes was harmful and unrelated to presiding over *BLC v. ABI*.**

Judge Marston concedes the work he and his associates performed as advocates for BLC and its CEO was “unrelated to *Blue Lake [Casino] v. [ABI]*” and concedes it “raised questions about [his] ability to impartially preside” over the case. RMBL 62-63.

By working as an attorney for BLC, Judge Marston (and his associates) caused BJ and BLC to believe Judge Marston would be biased in their favor, and this in turn emboldened them to pursue meritless causes of action. Thus, from Judge Marston’s own admissions, ABI was harmed by conduct wholly unrelated to his exercise of judicial power. This was not a judicial harm entitled to judicial immunity. It was an actionable tort that just “happen[s] to have been done by a judge[.]” [\*Forrester v. White\*, 484 US 219, 227 \(1988\)](#).

**B. RMBL does not explain how judicial immunity can protect RMBL’s employment decisions.**

Judge Marston admits he “contracted” with his associates at RM to help him preside over *BLC v. ABI*, even though those associates were all attorneys advocating for BLC. ER124 ¶35; ER043-044 ¶¶124-128. Circuit and Supreme Court authority holds these types of employment decisions are not protected by judicial immunity. [\*Meek\*, 967, fn.2](#) [collecting non-immune employment cases]; [\*Forrester\*, 229](#) [broadly holding employment decisions are administrative acts not entitled to judicial immunity]. A judge hiring a litigant’s attorneys to help preside over that litigant’s own case might reasonably cause that litigant to believe the judge will be biased in their favor, and embolden the litigant and their attorneys to pursue a meritless cause of action. RMBL does nothing to explain how this corrupt contracting is anything other than actionable employment activity under *Meek* and *White*.

And even if Judge Marston somehow enjoyed immunity for these corrupt hiring practices, no one else involved in the transaction could, because judicial immunity does not protect those who persuade judges to “exercise [their] jurisdiction corruptly.” [\*Dennis v. Sparks\*, 449 US 24, 27 \(1980\)](#).

**C. Judge Marston does not explain how judicial immunity can protect his assignment of *BLC v. ABI* to himself.**

Judge Marston assigned *BLC v. ABI* to himself even though he was an attorney working for BLC. AOB 46; ER026-027 ¶¶34-40.

Case assignment is not a judicial act. Some courts use clerks to assign cases. Others use computer programs. If a clerk or programmer accepted money to cause a case to be assigned to a disqualified judge<sup>13</sup> it would be an actionable corrupt administrative act; it could not enjoy the defense of judicial immunity. RMBL spends eleven pages discussing judicial immunity. RMBL 53-64. RMBL, however, never explains how a corrupt administrative act becomes less actionable just because it “happen[s] to have been done by a judge[.]” [\*Forrester\*, 227](#).

**IV. The Anti-SLAPP motions were frivolous and should not be renewed on remand.**

No Appellee argues Blue Lake is bound to honor rights guaranteed by the United States or California Constitutions. Yet Appellees brought anti-SLAPP

---

<sup>13</sup> Judge Marston concedes he was disqualified from presiding over *Blue Lake Casino v. ABI*. ER122-123 ¶25.

motions even though California's anti-SLAPP statute explicitly limits itself to protecting rights guaranteed by the United States or California Constitutions.

*Guessous v. Chrome Hearts*, 179 Cal.App.4<sup>th</sup> 1177, 1185 (Cal. Ct. App. 2009).

We must presume this was a deliberate choice on the part of California's legislature, and therefore petitioning activity not guaranteed by the United States or California Constitutions lies outside the anti-SLAPP statute. For instance, Oregon's anti-SLAPP statute does not begin by limiting itself to protecting rights guaranteed by the United States or California Constitutions. Or. Rev. Stat. §31.150.

All that aside, on this issue ABI and Acres appeal from the district court's decision not to strike the anti-SLAPP motions as a sanction. Sanctions motions are reviewed for abuse of discretion and this Court may be loath to find the district court abused its discretion by dismissing a sanctions motion as moot. On the other hand, the issue has been met by RMBL. RMBL 64-70. And so, even if this Court does not wish to find the district court abused its discretion, it could still do so using language which would foreclose renewal of the anti-SLAPP motions should the Court agree the motions were frivolous.

//

//

//



**V. Appellees' statute of limitations argument is not properly before this Court and, in any event, requires further factual development prior to resolution.**

Both JM and BJ argue ABI's wrongful use of civil proceedings cause of action is barred by California's special one-year statute of limitations governing actions against attorneys for wrongful acts or omissions arising in the performance of professional services. JM 33-35; BJ 28-30. The argument is not properly before this Court. JM and BJ made the statute of limitations argument as part of their 12(b)(6) motion which the district court mooted. ER001-002. Therefore, this Court cannot find the one-year statute of limitations bars the single wrongful use cause of action without enlarging the rights of JM and BJ under the judgment below. This Court cannot enlarge the rights of BJ or JM because those parties failed to cross-appeal.

Even if the issue were before this Court, Appellees cannot win dismissal on the special one-year statute of limitations at this phase. California Courts of Appeal are split on whether the special one-year statute of limitations governs wrongful use of civil proceedings, and the California Supreme Court has not considered the issue. [\*See Connelly v. Bornstein\* 33 Cal.App.5th 783, 789-793 \(Cal. Ct. App. Dist. 1 2019\)](#) comparing [\*Yee v. Cheung\*, 220 Cal.App.4th 184 \(Cal. Ct. App. Dist. 4 2013\)](#) [finding the one-year limitation applies to wrongful use causes of action] against [\*Roger Cleveland v. Krane\*, 223 Cal.App.4th 660 \(Cal. Ct. App. Dist. 2](#)

[2014](#)) [declining to apply one-year limitation to wrongful use causes of action to avoid absurd results]. This Court, therefore, would proceed by attempting to determine how the California Supreme Court would rule. [Sinibaldi v. Redbox Automated Retail, LLC](#), 754 F.3d 703, 706 (9<sup>th</sup> Cir. 2014).

Most helpful is [Lee v. Hanley](#), 61 Cal. 4<sup>th</sup> 1225 (Cal. 2015), the leading California Supreme Court case on the one-year statute of limitations. The *Lee* court held the special one-year statute of limitations does not apply where an attorney violates “some generally applicable nonprofessional obligation.” [Id.](#), 1238.

The history in *Lee* is instructive. Lee advanced Hanley a retainer to act as her attorney. When the matter concluded Hanley failed to return the remaining balance of the retainer. More than a year later, Lee sued Hanley to get her money back. Hanley demurred, arguing the special one-year statute of limitations barred Lee’s claim. [Id.](#), 1230.

California’s Supreme Court overruled Hanley’s demurrer because whether the special statute barred Lee’s suit turned on **why** Hanley refused to return Lee’s money. If Hanley kept the funds because of an accounting error or unconscionable fee agreement, Hanley might have failed in a professional obligation and the special statute might apply to bar the action. But if Hanley simply “decided to keep [Lee’s money] for no good reason” the special statute would not apply because

everyone shares a general civil obligation to refrain from “the wrongful exercise of dominion over the property of another.” Id., 1240.

Lee makes clear factual development is required to determine whether the statute applies. The same is true of ABI’s wrongful use cause of action. If BJ and JM did not understand what the law required to prove a common count cause of action the one-year statute of limitations might apply. If, on the other hand, BJ and JM hung their hopes for victory on suborning Judge Marston, misstating evidence, or physically intimidating Acres to obtain a settlement unrelated to the merits, the special one-year statute of limitations would not apply. Under *Lee*, this Court cannot find the one-year statute of limitations bars ABI’s wrongful use cause of action because the necessary factual development has not taken place.

### **Conclusion**

To bewilder with lies is a tactic common to fraudsters. Here, as always, we must seize some thread on which to pull and pull till the whole confusing tangle unravels.

Appellee Marston lied to the district court. Neither sovereign nor judicial immunity protects those who lie to a district court, just as no one can lie to a district court in a judicial capacity. Instead, lying to a district court is obstruction of justice. Where the lies told to a district court are calculated to conceal a fraudulent scheme whose operation spanned years, ensnared diverse and unrelated

victims, and affected interstate commerce, the lies become RICO predicates. And those RICO predicates, plausibly pled, grant federal jurisdiction over the underlying fraudulent scheme.

For all the lies, this case is simple. Appellees overwhelmed a small, out-of-the-way court to make sure they themselves could secretly preside over any cases their client might choose to bring. Appellees were caught. Had Appellees corrupted a court on the Hana Coast or the Columbia Plateau no one would ever dream the sovereign dignity of Hawaii or Nevada required the case be dismissed. Instead, the case would be seen as a vindication of the RICO statute's role in preserving public institutions from private corruption.

That the case arose in Indian Country changes nothing.

This Court must reverse and remand.

**BLUMBERG LAW GROUP LLP**

Dated: 11/13/2020

*/s/ Ronald H. Blumberg*

---

Ronald H. Blumberg  
Attorneys for Acres Bonusing, Inc.

Dated: 11/13/2020

*/s/ James Acres*

---

James Acres  
Self-represented plaintiff

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s)

I am the attorney or self-represented party.

This brief contains  words, excluding the items exempted

by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

- ☒ complies with the word limit of Cir. R. 32-1.
- ☐ is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- ☐ is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- ☐ is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- ☐ complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
  - ☐ it is a joint brief submitted by separately represented parties;
  - ☐ a party or parties are filing a single brief in response to multiple briefs; or
  - ☐ a party or parties are filing a single brief in response to a longer joint brief.
- ☐ complies with the length limit designated by court order dated .
- ☐ is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)

## **Certification**

I certify the foregoing brief is identical to the brief submitted electronically.

/s/ James Acres – November 13, 2020