CASE NO. E078759

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION 2

CALIFORNIA CAPITALISM ASSOCIATES, LLC AND RAVI BENDAPUDI,
Appellants, Plaintiffs, and Cross-Respondents,

v.

LESTER J. MARSTON, DAVID J. RAPPORT, KOSTAN R. LATHOURIS, AND RAPPORT & MARSTON,
Respondents, Defendants, and Cross-Appellants,

Appeal from the Superior Court of California, County of San Bernardino
Superior Court Case No. CIVSB 2121814
(Hon. Judge Donald Alvarez)

APPELLANTS CALIFORNIA CAPITALISM ASSOCIATES, LLC AND RAVI BENDAPUDI'S OPENING BRIEF

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Certificate of Interested Entities or Persons

(Cal. Rules of Court, Rule 8.208)

Appellants disclose the following interested people and entities: Ravi R. Bendapudi an individual; California Capitalism Associates, LLC; Lester J. Marston, an individual; David J. Rapport, an individual; Kostan R. Lathouris, an individual; and the Law Firm of Rapport & Marston, a Partnership.

DATED:

October 17, 2022

RAVI R. BENDAPUDI, ESQ.

By: /S/ Ravi Bendapudi
Ravi R. Bendapudi, Esq.

Attorney for Appellant California Capitalism Associates, LLC and Appellant in Pro Se

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APPELLANTS' OPENING BRIEF

I. STATEMENT OF THE CASE/INTRODUCTION

Plaintiffs/Appellants California Capitalism Associates, LLC and Ravi Bendapudi ("Appellants" or "CCA" or "Bendapudi") appeal the trial court's order granting on Respondents/Cross-Appellants Lester Marston and his law firm ("Respondents" or "Marston")'s Motion to Quash Service of Summons and Motion to Dismiss for Lack of Subject Matter Jurisdiction ("Motion to Quash and Dismiss"). Appellants have also filed an appeal to challenge the trial court's award of attorney's fees to Marston under California Code of Civil Procedure ("CCP") §396b(b) as that requires Appellants to have selected venue in San Bernardino in bad faith and without any reasonable belief to support venue in that county.

1) the Trial court lost jurisdiction to hear or rule on Respondents' Motion to Quash & Dismiss, because more than a month earlier the trial court had previously granted Respondents' Motion to Transfer Venue ("Venue Motion"), ordering venue transferred to Superior Court in Mendocino County, and CCA already paid the transfer fee for said transfer;

2) Even if the trial court had not lost jurisdiction over the case, its ruling on Respondents' Motion to Quash & Dismiss was also erroneous and substantively defective because the trial court completely ignored the U.S. Supreme Court holding from *Lewis v. Clarke* which held that a defendant, even if an employee of a tribe, sued in their individual capacity cannot invoke a tribe's sovereign immunity, when the tribe is not the real party in interest.

CCA's Complaint seeks relief from Lester Marston for his acts of legal malpractice and for stealing money and fees from CCA. CCA has filed

a separate action involving the tribe, and not Marston, which has been proceeding in JAMS arbitration before Judge James Ware (Ret.).

3) CCA has not sued the Tribe, it is not seeking remedies against the tribe, and the tribe owes no professional duty to CCA as a lawyer therefore, the tribe is not a necessary party. As such, the trial court gravely erred in concluding that the Chemehuevi Indian Tribe (the "Tribe") is a necessary and indispensable party to this legal malpractice lawsuit. Moreover, Marston's agreement with the Tribe states he is an independent contractor and he also represented himself to CCA as an independent contractor who could take on representation of multiple clients at the same time. Furthermore, only licenses lawyers can be sued for legal malpractice.

4) Finally, the trial court erred when it ordered CCA's attorney, Ravi Bendapudi, to pay Marston's attorney's fees and costs under CCP §396b(b), even though Marston prevailed in the Venue Motion, Mr. Bendapudi had supporting facts and believed in good faith that CCA's attorney services agreement with Marston was an obligation that was performed in San Bernardino County within the meaning of CCP §395(b), and therefore Mr. Bendapudi did not file CCA's lawsuit in the incorrect venue in bad faith. Based on these reasons, the Court of Appeal should reverse the trial court's improper orders and remand to Mendocino County.

II. STATEMENT OF FACTS AND PROCEDURE

A. CCA Hired and Paid Marston and his Law Firm to Draft a *Joint* Venture Agreement.

In the lawsuit, CCA alleges that Marston undertook joint representation of CCA and the Tribe. (1 AA at 34). CCA and its owner Ravi Bendapudi paid Marston a retainer, by check and indicated on the check that the money was a retainer to be applied to Marston's attorney-client trust account, as CCA was the client. (1 AA at 35). Mr. Bendapudi avers that he also wrote a check in San Bernardino County and gave it to Marston in San Bernardino County. (1 AA at 37) When CCA received the attorney-client invoice statement, Marston's firm listed the joint clients, CCA and the Tribe on the invoice, albeit redacting entries relating to the Tribe. (2 AA at 420-428).

CCA asked Marston for a conflict waiver and an engagement letter, but Marston never did it. As alleged in the Complaint, Marston refused to provide CCA with a conflict-of-interest waiver or an engagement letter. (1 AA at 35, 38). Furthermore, at no time did Marston ever tell CCA that he did not also represent CCA in drafting the *joint* contract, since a lawyer may represent joint parties so long in a joint venture situation, so long as there are no actual, un-waived conflicts of interest. (1 AA at 37-38). Marston reassured CCA that he knew what he was doing, and that he had been practicing federal Indian "since before you were born," and that Appellants could trust him to get the job done, and that he was looking out for everybody's best interests. (1 AA at 36).

After the retainer was exhausted, Marston again requested payment from CCA. This request was made in San Bernardino County. Marston made

the remark that if he didn't get paid, then "you [CCA] don't get your deal." (a AA at 37).

The billing invoices from Marston to CCA were in the name of Marston's law firm only, with billing entries from the Respondent lawyers listed therein. (2 AA at 420-428). Appellants were not hiring Marston as the tribal attorney, and if so, Marston never represented to Appellants that he was not their lawyer or that he was only performing work as a tribal official, and he certainly never informed Appellants hat he intended to betray them and lie to them, nor did he ask CCA or Ravi Bendapudi to waive the fiduciary duties that Marston owed them.

B. Marston Committed Professional Negligence, Legal Malpractice and other Torts in San Bernardino County.

Unbeknownst to Appellants, while Marston cashed their checks and collected money for the legal services that he performed for them, Marston was also flying down to San Bernardino County, where we went around maliciously spreading slanderous lies and rumors about CCA and Ravi Bendapudi, including telling people in the Tribe and others in San Bernardino County that he scammed CCA and drafted the joint venture agreement ("JVA") in a wat that CCA would never be able to enforce it, even though to Mr. Bendapudi's face Marston repeatedly told him to trust him and believe him that he was looking out for everybody's best interests. (1 AA at 40-41; 2 AA at 417-418). As alleged, Marston has an office and a residence (through a former spouse) in San Bernardino County. (2 AA at 417). Marston also submitted numerous declarations from key witnesses, all of whom are located in San Bernardino County. (1 AA at 176; 2 AA at 200).

Appellants were under the impression that an experienced lawyer such as Marston would comply with his ethical duties and not harm his clients behind their back. Professional duties, such as duty of loyalty, duty of candor, and duty of competence, were owed to Appellants, unless Marston obtained CCA's informed written consent saying otherwise. Initially CCA was not concerned about conflicts since it is common for a single attorney to represent both contracting parties in a joint venture, and because CCA and the Tribe's goals were aligned due to the nature of the project. (1 AA at 34).

Marston prepared a draft JVA, even though Bendapudi is a licensed lawyer, albeit not one in practice for several years. (1 AA at 35). CCA entrusted Marston would draft the best contract for them, because the Tribe was an important client of his, and because Marston was one of the very few attorneys in California who was familiar with the Tribe's laws and regulations. (1 AA at 34). CCA also believed that if they hired and paid Marston, that he would owe them professional duties, and that would prevent him from colluding with other parties in the future to undermine CCA's business. (1 AA at 36).

C. Marston Repeatedly Assured CCA that he Knew What he was Doing, and He Also Agreed to Hand-Deliver the JVA Contract to CCA in San Bernardino County.

On or about April 16, 2018, Marston sent the first draft of the JVA to Mr. Bendapudi for his comments. (1 AA at 35). In his April 16th email, Marston stated that he would have the remainder of the JVA documents ready by the end of the month so that the tribe could also review it and sign and approve everything by the end of May 2018. (1 AA at 35).

Despite this representation, Marston did not keep his word, and several months went by without Marston making any further progress. (1 AA at 35). Appellants were frustrated, and they continued to call and e-mail Marston multiple times a week to remind him to work on their paperwork. (1 AA at 35).

In October 2018, Marston and CCA made arrangements to meet in person to finalize all of the joint venture documents, and Marston requested a $2,500 retainer. (1 AA at 35). Not wanting to delay things any further, CCA promptly paid the retainer deposit, writing in the check memo line that the funds were for the "*Rapport & Marston client trust account*." (1 AA at 35). (emphasis added). Ravi Bendapudi also instructed Marston to prepare a formal engagement letter and a conflicts waiver, "before we forget." (1 AA at 35). Marston did not state that there was no engagement or no attorney-client relationship, but only responded with an ambiguous answer to the effect of, don't worry about it. (1 AA at 35).

Marston went on to assure Appellants that he was drafting an excellent contract for them. CCA explained to Marston that their primary concern was that the JVA waiver of sovereign immunity be "airtight," because that would be the only way for CCA to enforce the JVA against the Tribe. (1 AA at 36). Marston assured CCA that the waiver of tribal sovereign immunity was "clear and unequivocal," and that Mr. Bendapudi should just trust Marston to do his job, because "I've been doing this since before you were born, trust me, this is how you want it." (1 AA at 36). Trusting the "expert" lawyer they had hired, CCA allowed Marston to continue his work, and Marston kept reassuring CCA that he was looking out for everyone's best interests. (1 AA at 36). At no point in time did Marston tell CCA that he only not representing

joint parties in the joint venture agreement, and at no time did Marston disclaim that he was not representing CCA's best interest as a client and that he intended to betray them. (1 AA at 36).

While Marston continued to do work, Marston gave CCA the invoices to be paid and continued to accept CCA's payment for his legal services. (1 AA at 37). Marston and Lathouris were paid by CCA, and both were listed as billing attorneys on Marston's law firm's invoices sent to CCA for payment. Throughout October and November of 2018, Marston and CCA made arrangements to finalize the JVA contract in San Bernardino County. (2 AA at 416; 5 AA at 1199-1200). Bendapudi and Marston agreed, on the phone and in e-mail confirmations, that Marston would fly down to San Bernardino County and complete the JVA papers with everyone present. At the meeting, CCA met with Marston and the Council to review what Marston had drafted and to address any last-minute issues before the JVA parties signed their agreement. (5 AA at 1200; 7 AA at 1553-1554). This was done on December 21, 2018. (5 AA at 1200).

D. Marston Kept Demanding More Money from CCA, but Continued to Refuse to Give CCA a Written Fee Agreement or a Conflicts Waiver.

In San Bernardino County, both parties to the JVA signed it on December 21, 2018. (1 AA at 97). However, the parties agreed that CCA would not pay the Tribe its Franchise Fee until the NEDCO[1] Board of Directors ("NEDCO Board") was reestablished and fully-functional. (1 AA at 36-37). This was a process that took months and was not complete until April 27, 2019, the day that the Tribe held its annual meeting. (1 AA at 37; 1 AA at 97). On April 27, 2019, the Tribal Council appointed Mr. Bendapudi to the NEDCO Board, and the NEDCO Board elected Mr. Bendapudi to serve as the company's interim president. (1 AA at 37). On behalf of CCA and NEDCO, Mr. Bendapudi executed the JVA in San Bernardino County and then handed the Tribal Chairman a cashier's check to pay for CCA's right to use the Tribe's land. (1 AA at 37).

Shortly after CCA paid the Tribe, Marston approached him and demanded to be paid for his legal services. (1 AA at 37). Marston told Mr. Bendapudi that CCA still owed him $6,021.61 in unpaid legal fees. (1 AA at 37). Mr. Bendapudi told Marston that he could not pay him right that minute, because he ran out of company checks. (1 AA at 37). Mr. Bendapudi again asked Marston to prepare the conflicts waiver and the written fee agreement

[1] NEDCO (or the Nuwuvi Economic Development Company) is the Tribe's economic development company. NEDCO is a federally-chartered Section 17 company. Under the terms of the JVA contract, NEDCO was to be the parent holding company for the joint venture project. NEDCO was also one of three parties to the JVA, but the company was inactive prior to 2019, and the board of directors had to be reconstituted before the joint venture Project could formally commence.

that he had been asking for, and stated that CCA would pay Marston after it received those documents. (1 AA at 37). Marston became agitated and screamed and said ***"f*ck you Ravi. I am so sick of you always trying to get out of paying for things. Either you pay your bill today, or you don't get your deal!"*** (1 AA at 37).

Not wanting to fight with Marston, Mr, Bendapudi went to his car and returned with a personal check made out to the Law Firm of Rapport and Marston in the amount of $6,021.61. (1 AA at 37). As he handed the check over to Marston, Mr. Bendapudi said ***"you know that I've asked you multiple times to give me a conflicts waiver, it's for your own good, but for whatever reason you won't do it. Here's your money, but don't forget that you work for me now too, you drafted this agreement for me, so don't even think about trying to screw me over, Lester. And next time you don't need to freak out and scream at me in front of the whole Tribe, since when have I not paid you on time?"*** (1 AA at 38). Marston did not respond; instead, he snatched the check from Mr. Bendapudi's hand, and walked away. (1 AA at 38).

Marston never told CCA, either in writing or verbally, that he did not owe CCA a duty of loyalty, that CCA should not trust him, and he also never disclosed to CCA that he intended to represent parties directly adverse to CCA and that he would disavow the validity and enforceability of the very same contract that CCA had just paid him to draft. (4 AA at 1040, 1045-1046).

Over the next few months CCA worked with its subtenants to prepare the land for farming, yet they kept running into obstructions and barriers at every turn. (1 AA at 38). Nevertheless, CCA continued to invest substantial

time and resources into the Project, including investments into preparing all of the documents and records required under the terms of the JVA, such as numerous site plans, subdivision maps and other documents, hiring of engineers and other professionals, dealing with land and water issues, and other land related issues. (1 AA at 38).

E. Respondents Betrayed CCA and Spread Slanderous Lies About CCA and Advocated for the Tribe to Terminate the JVA.

After collecting money from CCA, on or about February 13, 2020, Marston proceeded to send CCA, a "Notice of Violation and Intention to Terminate" ("NOV" or "Notices"). (1 AA at 38). In the NOV, Marston cited 28 different purported reasons why CCA was allegedly in breach of the JVA, and that if the violations were not cured, the contract "would be deemed terminated." (1 AA at 38). Marston told Mr. Bendapudi that CCA would be given a "fair opportunity to cure all the violations, and if they can't be reasonably cured in 30 days, you just have to commence curing in good faith, Ravi…most of these violations are really easy to cure." (1 AA at 38). However, while Marston was telling Mr. Bendapudi that they would be easy to cure, he was also slandering CCA and the JVA deal to the Tribe, including telling the Tribe that Mr. Bendapudi had bribed a tribal council member. (1 AA at 135-136, 181-185).

While not knowing what Marston had been saying around town in San Bernardino about them, Appellants still believed and expected that Marston would advocate for them, or at least be neutral enough that he would not undo the deal that they had paid him to set up. (1 AA at 38). CCA waited for a response from Marston, but months went by without any word. (1 AA at 38).

In the meantime, CCA's project languished in limbo and CCA and its subtenants incurred huge monthly costs to pay for business expenses. (1 AA at 38).

CCA kept submitting documents in a good faith attempt to show the Tribe that CCA was not in violation of any of its JVA contractual obligations. Indeed, CCA could only cure the "violations" within its control, but the other ones were wholly under the control of the Tribe, or were could not be completed without input or cooperation from the Tribe. (1 AA at 103-125).

In April 2020, when he was supposed to be "helping" CCA cure the "violations" in good faith, Marston circulated a private memo to the Tribal Council outlining "criminal charges" that should be brought against Mr. Bendapudi under the Federal RICO statute. (1 AA at 181-185). In another revealing admission, Marston and Kostan Lathouris, advised the Council that "[d]uring the 45-day cure period, the Tribe [should] immediately issue a cease-and-desist order…so that CCA will not be able to move materials onto the site or construct anything on the project site." (1 AA at 135). Marston and Lathouris said this to the Council even though they knew that at least three of the "violations" that CCA was being asked to cure required CCA to do construction work at the Project site. (1 AA at 100).

Appellants were left puzzled as to how could a licensed lawyer take money from clients and then go behind their back to sabotage the work for which these lawyers were paid to undertake by CCA. Shortly after termination in August 2020, Marston dropped all pretenses of being fair and neutral, and he began to actively attack CCA; Marston even insisted that the sovereign immunity waiver in the JVA contract that he himself had drafted did not exist and/or was not valid. (4 AA at 1022-1023). Marston was

essentially saying that the contract that he drafted for CCA, contrary to his prior representations and contrary to the intentions of the JVA parties, was completely unenforceable.

F. Procedural History.

Plaintiffs/Appellants filed their verified Complaint (the "Complaint") in San Bernardino County Superior Court on July 27, 2021. (1 AA at 29). On September 29, 2021, Defendants filed a Motion for Change of Venue, along with numerous declarations and related exhibits. (1 AA at 61). At some point Defendants attempted to file a combined Motion to Quash Service of Process and a Motion to Dismiss for Lack of Subject Matter Jurisdiction (aka the "Motion to Quash & Dismiss"), but on October 5, 2021 the court rejected the filing because Defendants failed to reserve a hearing date prior to filing their motion. Defendants successfully filed their Motion to Quash and Dismiss on October 15, 2021, along with numerous declarations and related exhibits. (1 AA at 143).

Plaintiffs filed a timely Opposition to Defendants' Motion for Change of Venue on October 21, 2021, along with evidentiary objections to the declarations of Lester Marston and Kostan Lathouris. (2 AA at 403-432; 2 AA at 433-456).

On October 27, 2021 Defendants filed their reply brief to CCA's Opposition to the Motion for Change of Venue, along with numerous additional declarations and exhibits as well as Defendants' responses to CCA's evidentiary objections. (2 AA at 458-473; 3 AA at 476-764; 4 AA at 766-877). On October 27, 2021, Defendants also filed a separate objection to the declaration of Ravi Bendapudi. (4 AA at 878-891).

On November 3, 2021, the Honorable Donald Alvarez, the trial court below, heard Defendants' Motion for Change of Venue and took the matter under submission. Shortly thereafter, on November 17, 2021, Plaintiffs filed their Opposition to Defendants' Motion to Quash & Dismiss. (4 AA at 912-929). Defendants filed a reply to Plaintiffs' Opposition on November 30, 2021. (4 AA at 999-1010). On December 1, 2021 Plaintiffs filed an objection to Defendants' Reply brief, because Defendants dumped additional declarations and evidence into the record without giving Plaintiffs an opportunity to review or respond to the materials. (4 AA at 1028-1031).

On December 2, 2021, the trial court heard Defendants' Motion to Quash & Dismiss. The court did not issue a tentative ruling, but took the matter under submission. On January 5, 2022, the trial court granted Defendants' Motion for Change of Venue. (5 AA at 1058-1062). Approximately one month later, on February 4, 2022, Defendants filed a Motion for Attorney's Fees, seeking $74,704.39. (5 AA at 1083-1085). On January 25, 2022, Plaintiffs paid the court's venue transfer fees by sending two checks to the San Bernardino County Superior Court in the amounts of $435 and $50. (5 AA at 1076-1078).

On February 7, 2022, although the trial court had already transferred venue to another court, Judge Alvarez issued an order purportedly granting Defendants' Motion to Quash & Dismiss. (5 AA at 1178-1187). Notice thereon was mailed to the parties, but Plaintiffs did not find out about it until they were informed about it at the Trial Setting Conference on February 14, 2022. (02/14/2022 Transcript at 43:14-22). At the Trial Setting Conference, counsel for CCA objected to the court's ruling on the grounds that it was

procedurally defective ruling, but the trial court refused to vacate either of its rulings. (*Id*. at 44:23 to 46:12).

On March 24, 2022, CCA filed its Opposition to Defendants' Motion for Attorney's Fees. (5 AA at 1189-1220). Defendants filed their Reply brief on April 1, 2022. (5 AA at 1244-1253). The trial court heard Defendants' Fee Motion on April 7, 2022, and on May 9, 2022 the court awarded Defendants $9,019.50 in fees and costs, far below what the Defendants had sought. (7 AA at 1561-1570).

III. STATEMENT OF APPEALABILITY

The trial court's February 7, 2022 Order Granting Defendants' Motion to Quash and Dismiss is an appealable order under California Code of Civil Procedure ("CCP") §904.1(3). CCP §904.1(3) states that an appeal may be taken from "an order granting a motion to quash service of summons."

Further, the trial court's May 9, 2022 Order on Defendants' Motion for Attorney's Fees is appealable under CCP §904.1(11). CCP §904.1(11) states that an appeal may be taken from "an interlocutory judgment directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000). Because the trial court ordered CCA's counsel to pay $9,019.50 in attorney's fees and costs, the order is appealable under CCP §904.1(11).

IV. STANDARD OF REVIEW

The standard of review for an order granting a motion to dismiss based on sovereign immunity is de novo review. (*See*, *People v. Miami Nation Enterprises* (2016) 2 Cal.5th 222, 250 ("*Miami*") *"Whether tribal immunity bars suit is a question of law that we review de novo (citation omitted)"*).

Furthermore, the standard of review for the trial court's order granting Defendants' Motion for Attorney's Fees is the abuse of discretion standard, which is the same standard of review that is applied to the underlying Motion for Change of Venue. (*See*, *Fontaine v. Superior Court* (2009) 175 Cal.App.4th 830, 837 ("*Fontaine*")).

V. ISSUE #1—THE TRIAL COURT SHOULD NOT HAVE RULED ON DEFENDANTS' MOTION TO QUASH & DISMISS BECAUSE THE COURT LOST JURISDICTION OVER THE CASE FOLLOWING ITS ORDER TO TRANSFER VENUE TO MENDOCINO COUNTY.

The trial court committed reversible error by ruling on the Motion to Quash & Dismiss because under California law, a transferor court **automatically loses all jurisdiction over a case the moment it grants a motion for change of venue**. (*See*, *London v. Morrison* (1950) 99 Cal.App.2d 876, 879 ("*London*")). As the London court explained, "the order of transfer had divested the [transferring] court of jurisdiction to take any other step in the action" except for dismissal after one year, if the costs and fees for the transcript were not paid. (*Ibid.*; *see also*, *Moore v. Powell* (1977) 70 Cal.App.3d 583, 587-588 ("*Moore*") "*When a motion for change of venue has been granted by the transferor court, but the transferee court has not yet assumed jurisdiction, the transferor court has limited powers. The court may,*

upon proper motion, vacate its previous order granting the change of venue. … Also, the court may dismiss the action if the transfer fees are not paid within the time provided. … Outside of these limited powers, the court is said to be without jurisdiction.")

In the present matter, the trial court in San Bernardino County granted Defendants/Respondents' Venue Motion and ordered the case to be transferred to Superior Court in Mendocino County on January 5, 2022. (5 AA at 1058). This means that the San Bernardino County Superior Court did not have jurisdiction over this case to hear or rule on the subsequent Motion to Quash & Dismiss on February 7, 2022, under the rule discussed in *London* and *Moore*, *supra*. Under the law, the transfer is effective when the court issues its order (*See*, *Western Greyhound Lines v. Elizabeth Ritchie* (1958) 165 Cal.App.2d 216, 218 ("*Ritchie*") *"The minute order of the court was a final judgement from which an appeal could have been taken*."). CCA also paid the venue transfer fees on January 25, 2022, which was several days before the trial court ruled on the Motion to Quash & Dismiss. (*See*, *Id*. at 218 "*It was the obligation of the plaintiff to pay the costs and fees of the transfer if it was in fact made*.") (5 AA at 1076).

Counsel for CCA, Mr. Ravi Bendapudi, was not even aware that the trial court had granted Defendants' Motion to Quash & Dismiss until he was informed about it at the Trial Setting Conference on February 14, 2022. (02/14/2022 Transcript 43:14-22). Upon learning about the court's ruling, Bendapudi asked the court "Your Honor, how can the Court rule on the motion to dismiss [and] the motion to quash after it's already granted the motion to transfer venue? The Court loses all jurisdiction, seriously." (*Id*. at 4:23-26). No corrective action was taken to remedy the aforementioned

procedural defect, and the trial court essentially told CCA to go file an appeal. (*Id*. at 4:18).

VI. ISSUE #2—THE TRIAL COURT'S RULING ON THE MOTION TO QUASH & DISMISS WAS ALSO SUBSTANTIVELY ERRONEOUS BECAUSE THE COURT IGNORED CONTROLLING U.S. SUPREME COURT AUTHORITY IN *LEWIS V. CLARKE*, WHICH HELD THAT INDIVIDUAL DEFENDANTS ARE NOT PROTECTED BY A TRIBE'S SOVEREIGN IMMUNITY.

Respondents argued that "[t]he Court should quash service and dismiss the Complaint, because specially-appearing Defendants are officials of the Chemehuevi Indian Tribe…a federally-recognized Indian Tribe, that enjoy [sic] sovereign immunity from suit and cannot be sued absent the Tribe's express consent." (1 AA at 152).

The trial court agreed and ordered CCA's lawsuit to be dismissed, because "[a]s officers and employees of the Tribe, the Defendants enjoy sovereign immunity from suit, absent the Tribe's consent, which has not been given." (5 AA at 1184).

However, Respondents' argument and the trial court's conclusions were completely incorrect, because the U.S. Supreme Court in *Lewis v. Clarke* already held that individual tribal defendants who are being sued in their *individual* capacity are *not* entitled to invoke the tribe's sovereign immunity. (*See*, *Lewis v. Clarke* (2017) 581 U.S. ___; 137 S. Ct. 1285, 1294 ("*Lewis*")). Therefore, the trial court erred when it held that "[a]s officers and employees of the Tribe, the Defendants enjoy sovereign immunity from suit,

absent the Tribe's consent, which has not been given." (5 AA at 1184). Whether Marston and his law firm were officers or employees of the Tribe, or whether they "functioned as an arm of the Tribe" or not, is not relevant in this instance, because the *Lewis* court ruled that only the *sovereign* (e.g. the Tribe itself or a qualifying Tribal corporation) is protected by *sovereign* immunity, and that individual defendants being sued in their personal capacity cannot invoke an immunity that belongs to the sovereign. In *Lewis*, the defendant was not only an enrolled member of the tribe, but he was also employed full-time by the tribe as a driver for the tribe's casino, and the *Lewis* defendant was driving a tribally-owned vehicle, during work hours when the car accident at issue in the lawsuit happened. (Lewis at 1289). Despite all of those facts, the Supreme Court unanimously held that an individual tribal defendant could not invoke the tribe's sovereign immunity. (Id. at 1294).

This court should also take note that Lester Marston is *not* an elected official or an employee of the Chemehuevi Indian Tribe. (2 AA at 323). Marston's legal services agreement with the Tribe specifically states that he and the law firm of Rapport & Marston are "independent contractors and not employees, joint venturers, or partner[s] of the Tribe for any purpose whatsoever." (2 AA at 323). CCA hired and paid the law firm of Rapport and Marston, it did not hire or pay the Office of the Tribal Attorney. (4 AA at 993-994). Indeed, it is unclear how CCA could have hired and paid the Office of the Tribal Attorney in the first place, since most government departments do not accept money from outside third parties to perform legal work for them.

The Real Party in Interest Test for Sovereign Immunity

The *Lewis* court held that for the purposes of invoking a tribe's sovereign immunity that:

> "courts should look to whether the sovereign is **the real party in interest** to determine whether sovereign immunity bars the suit. In making this assessment, courts may not simply rely on the characterization of the parties in the complaint, but rather must determine in the first instance whether the remedy sought is truly against the sovereign. [citation omitted]." (emphasis added) (*Lewis* at 1290).

The *Lewis* court further held that:

> "The distinction between individual and official-capacity suits is paramount here. In an official-capacity claim, the relief sought is only nominally against the official and in fact is against the official's office and thus the sovereign itself… Personal-capacity suits, on the other hand, seek to impose individual liability upon a government officer for actions taken under color of state law…[O]fficers sued in their personal capacity come to court as individuals and the real party in interest is the individual, not the sovereign." (Id. at 1291).

The *Lewis* court was very clear that individual defendants cannot invoke sovereign immunity, and that a remedies-based analysis must be applied to determine whether a tribe is the "real party in interest" or not. (Id. at 1291) Appellants cited this authority to the trial court in their opposition papers and thoroughly analyzed the *Lewis* decision. (4 AA at 916-918). The trial court never applied the rule from *Lewis*; it completely ignored the controlling Supreme Court precedent and simply concluded that Marston "functioned as an arm of the Tribe," and then it automatically extended the Tribe's sovereign immunity to Marston and his co-defendants. (5 AA at

1186). In its ruling, the trial court did not even mention *Lewis* once, despite the fact that it is good law that CCA had invoked. (5 AA at 1178-1187).

CCA's lawsuit is clearly an individual capacity lawsuit against Marston and his co-defendants, because not only are they the named defendant parties, but CCA is also not seeking any remedies against the Tribe. CCA's remedies "will not require action by the sovereign or disturb the sovereign's property." (*Lewis* at 1291). Indeed, CCA has no remedies vis-à-vis the Tribe based on the claims asserted in the instant action, because CCA entered into the legal services agreement with Marston, not the Tribe, and CCA paid Marston directly for the work that he performed, so the Tribe does not owe CCA any ethical duties under the California Rules of Professional Conduct, nor was the Tribe contractually bound to provide any legal services to CCA. In fact, it is fundamental to CCA's theory against Marston and the other Respondents that they were not acting in any tribal capacity when they violated CCA's rights; if they were acting as tribal attorneys, then they could not have undertaken to represent CCA as private clients, and conversely, since CCA alleges that Respondents had undertaken to act as their private counsel and violated the duties owed thereby, this theory cannot involve acts of Respondents acting in an official capacity. Therefore, the Tribe is not the real party in interest.

VII. ISSUE #3—THE TRIAL COURT ALSO ERRED WHEN IT RULED THAT THE TRIBE IS A "NECESSARY AND INDISPENSABLE" PARTY. THIS LAWSUIT HAS NOTHING TO DO WITH THE TRIBE OR ITS ASSETS; CCA IS NOT SUING THE TRIBE, CCA IS SUING MARSTON, THE INDIVIDUAL, FOR LEGAL MALPRACTICE.

In their Motion to Quash and Dismiss, Marston argued that the Tribe is a necessary and indispensable party, because CCA's legal malpractice action in state court against Marston would somehow "preclude Defendants [Marston] from representing the Tribe in an arbitration action concerning the same transaction as the [malpractice lawsuit]," and that "Plaintiffs [CCA] seek to disqualify Defendants [Marston] from acting as the Tribal Attorney based on the instant litigation." (1 AA at 159). Marston further argued that CCA's "unfounded allegations are a ploy to prevent the Tribal Attorney from representing the Tribe in the arbitration action [thereby disadvantaging] the Tribe," because the Tribe "has a legal interest in protecting its attorney services contract [with Marston] and ensuring access to its Tribal Attorney of choice in the related arbitration." (1 AA at 159-160). Marston then went on to argue that because of the aforementioned reasons, the Tribe was a necessary and indispensable party in CCA's lawsuit against Marston, and that since the Tribe had not been joined and cannot be joined due to its sovereign immunity, that the trial court must dismiss CCA's lawsuit in its entirety. (1 AA at 161).

The trial court should never have granted the Motion to Quash and Dismiss on those grounds. Firstly, Marston's arguments make absolutely no sense. CCA's claims against Marston are for legal malpractice and for breach

of Marston's legal services agreement with CCA, because CCA hired and paid Marston and Marston promised to perform legal services for CCA in good faith, and as CCA's attorney Marston also owed CCA ethical duties which Marston breached by committing numerous acts of disloyalty. (1 AA at 47-48). Therefore, CCA's lawsuit against Marston has nothing to do with Marston's legal services agreement with the Tribe, and it is unclear how this lawsuit could even conceivably impact Marston's separate agreement with the Tribe. At no point in time has CCA ever attempted to enforce, modify or repudiate Lester Marston's legal services agreement with the Chemehuevi Indian Tribe. Indeed, CCA has no standing to sue under that contract because CCA is not a party to that contract, nor is it a third-party beneficiary. (2 AA at 313-325). Marston's convoluted argument makes no sense and it certainly is not sufficient to justify the trial court's finding that the Tribe is a necessary and indispensable party in CCA's lawsuit against Marston.

Second, Marston's necessary and indispensable party argument fails to allege any facts that satisfy the statutory test for necessary or indispensable parties under CCP §389(a) and (b). CCP §389(a) governs the joinder of necessary parties. It states, in pertinent part, that:

> (a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent

> obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

Once again, the trial court completely ignored CCA's pleadings and, without justification, concluded that CCA's legal malpractice lawsuit against Marston was really an attempt to enforce the JVA against the Tribe, and therefore the Tribe is a necessary and indispensable party. (5 AA at 1186). The trial court concluded that "the Complaint depends entirely on the immunity waiver being invalid and unenforceable, requiring this Court to interpret the sufficiency and enforceability of a provision of the JVA," and "[b]ecause the Tribe is a party to the JVA and its immunity waiver is at issue here, clearly the terms, meaning and merits implicate paramount tribal interests." (5 AA at 1186).

However, as CCA explained at length in this brief and in the trial court, CCA is not suing the Tribe here, nor is it suing the Office of the Tribal Attorney. Furthermore, CCA is not seeking any remedies from or against the Tribe in this action, and CCA's lawsuit also does not seek to compel or enjoin the Tribe from acting in any way, not even through nominal action. (4 AA at 924). Simply put, the Tribe has absolutely no interest in the outcome of this lawsuit. Furthermore, at the trial court level Marston never demonstrated how the outcome of this lawsuit could possibly impact the Tribe, its property or its policies. Marston simply concludes that CCA's lawsuit is a "ploy" to disqualify him from representing the Tribe in CCA's arbitration against the Tribe to enforce the JVA, and that it somehow impairs the Tribe's rights under its legal services agreement with Marston. (1 AA at 159-160). However, not only is that completely illogical, but it's also patently untrue. Nothing in Marston's contract with the Tribe says that a lawsuit by CCA will

change any of the rights or obligations of those contracting parties. (2 AA at 313-325). In fact, the reason why Marston would be disqualified from representing the Tribe in an action by CCA to enforce the JVA is because CCA paid Marston to draft the JVA contract for them, and CCA has not consented to that conflict of interest.

Furthermore, and contrary to the trial court's ruling, CCA's complaint does not "depend entirely" on whether the JVA waiver of sovereign immunity is invalid or not. The trial court appears to have completely misinterpreted this argument. CCA raised the issue of the controversy surrounding the JVA waiver of sovereign immunity as merely one example of Marston's acts constituting legal malpractice, disloyalty, and breach. (1 AA at 44). CCA paid Lester Marston to provide the company with legal services and legal advice. (1 AA at 34). Marston had previously assured CCA that he was qualified, competent, "very experienced," and that Marston knew how to draft an "airtight" waiver of sovereign immunity so that CCA could protect its investments and its rights. (1 AA at 36). Marston then went and inserted himself into the middle of CCA's dispute with the Tribe[2] and he told the Tribe, CCA, and CCA's clients that the underlying joint venture deal documents were fatally-flawed, because the JVA waiver of sovereign immunity, that he was paid to draft, was in fact invalid and unenforceable. (1 AA at 44-45).

Regardless of whether the JVA waiver of sovereign immunity proves to be enforceable or not, the mere fact that the attorney "expert" that CCA

[2] There is also evidence to suggest that Marston may have even fomented the dispute between CCA and the Tribe in order to profit from the ensuing legal dispute. (1 AA at 134).

hired and relied upon to draft the agreement came back and completely repudiated the soundness and legitimacy of his work product was, on its own, extremely damaging to CCA and its business. Marston knew that CCA's entire business depended on people's ability to trust and have confidence in the strength of its JVA contract with the Tribe. (1 AA at 36). Marston knew full well that in order for CCA to have a viable business, the Tribe and CCA's subtenants all had to believe that the underlying JVA contract was rock-solid, enforceable and prepared by the highest quality, most experienced attorney. (1 AA at 36). When Lester Marston came out and intentionally repudiated what was arguably the most fundamental clause in the entire JVA contract, he did so in order to harm CCA and undermine its business. (1 AA at 45).

The trial court did not need to even read[3], let alone interpret, the terms of the JVA to appreciate that what Marston did was highly damaging and disruptive to CCA's business. The Tribe is not a necessary party in this lawsuit, because regardless of what the Tribe said or did, Marston and his co-defendants owed ethical and contractual duties to CCA by virtue of the fact that they took CCA's money in exchange for drafting a contract for CCA.

[3] Indeed, CCA did not even attach the JVA contract to its Complaint, because CCA is not alleging a breach of the JVA contract, nor is it seeking to enforce any part of the JVA contract against Marston. The JVA contract was submitted by Marston in an attempt to mislead the trial court into thinking that this lawsuit was really about the JVA. CCA objected to the introduction of this evidence, because it falls outside the scope of CCA's complaint. (2 AA at 435).

The Tribe is not a Necessary Party, nor is it an Indispensable Party, Because Full Relief can be Granted Without any Involvement by the Tribe

CCP §389(b) governs the joinder of "indispensable" parties, but even under this analysis, there is no reason to join the Tribe, because full relief can be granted without the presence of the Tribe, as, once again, CCA does not seek anything or any action from the Tribe, and no Tribal interests will be prejudiced, and the Court can reach a judgment on all of the legal issues without having to join the Tribe as a party.

Not only can full relief be granted without the Tribe's presence, but by attempting to join the Tribe to this action, Respondents are actually denying relief to CCA, because they know that the Tribe cannot be joined due to its sovereign immunity as such CCA's entire lawsuit would have to be dismissed due to its inability to join the Tribe. And that would prejudice CCA because CCA would have no opportunity to pursue its claims against Marston. (*See*, *The People ex rel. Daniel E. Lungren v. Community Redevelopment Agency for the City of Palm Springs* (1997) 56 Cal.App.4th 868 ("Palm Springs")).

Respondents relied heavily on the case of *Dawavendewa v. Salt River Project Agricultural Improvement and Power District* to support their contention that the Tribe is a necessary and indispensable party. (*Dawavendewa v. Salt River Project Agricultural Improvement and Power District* (2002) 276 F.3d 1150 ("*Dawavendewa*")). However, the facts of CCA's lawsuit are completely different from the *Dawavendewa* facts, and the two cases are not comparable. In *Dawavendewa* the plaintiff sued a third-party, non-tribal electric utility company (Salt River Project, or "SRP") that

was renting land from the Navajo Nation. SRP's lease with the Navajo Nation required them to give employment preference to citizens of the tribe. Plaintiff *Dawavendewa*, who was not a Navajo, sued SRP, but not the tribe, because SRP allegedly did not hire him due to the Navajo employment preference provision of their lease. The *Dawavendewa* plaintiff sought injunctive relief against SRP to stop SRP from complying with that lease provision. The Ninth Circuit Court of Appeals held that the tribe was an indispensable party in that case, but since it could not be joined due to sovereign immunity, the court had to dismiss plaintiff's lawsuit. (See, *Dawavendewa*.).

The *Dawavendewa* Court found that the tribe was an indispensable party under FRCP Rule 19(a) because an injunction in plaintiff's favor would impair the tribe's legally protected interest in enforcing its lease agreement with SRP, including the employment preference provision. (*Id*.) The court also found that there was a high risk of inconsistent or multiple obligations, because defendant SRP could find itself in a position where compliance with a court-ordered injunction would have forced it to breach its lease agreement with the tribe and vice-versa. (*Id*.).

Unlike *Dawavendewa*, there are no legally protected tribal interests or risks of inconsistent outcomes in CCA's lawsuit. And unlike the *Dawavendewa* case, the court here is not being asked to interpret or rule on any tribal laws or policies. Respondents allege that CCA's lawsuit impairs the Tribe's legal services agreement with Marston, because Marston will be forced to recuse himself from representing the Tribe in the arbitration, but that is completely untrue. As explained above, Marston is conflicted from representing the Tribe in the arbitration to enforce the JVA, because CCA

hired Marston to draft the JVA contract for them, and CCA has not waived that conflict of interest. However, CCA's lawsuit against Marston has nothing to do with his legal services agreement with the Tribe, and it also does not affect his ability to represent the Tribe in other matters. Furthermore, CCA's lawsuit for legal malpractice against Marston is narrowly-focused on the ethical duties that Marston owes to CCA, and the outcome of this lawsuit will have no effect on CCA's arbitration action against the Tribe to enforce the JVA.

The necessary and indispensable party argument is just a red herring that is predicated on assumptions about CCA's lawsuit that are emphatically untrue (e.g. CCA's lawsuit seeks to enforce the JVA contract against Marston), and caselaw that does not actually support Respondents' argument.

VIII. ISSUE #4—THE TRIAL COURT ERRED WHEN IT ORDERED RAVI BENDAPUDI TO PAY MARSTON'S ATTORNEY'S FEES UNDER CCP §396b(b), BECAUSE MR. BENDAPUDI DID NOT ACT IN BAD FAITH WHEN HE FILED CCA's LAWSUIT IN SAN BERNARDINO COUNTY.

The trial court erred when it ordered Ravi Bendapudi to pay Marston's attorney's fees and costs as the prevailing party in the Motion for Change of Venue, because Mr. Bendapudi had good faith cause to believe that CCA's legal services contract with Marston was a legal obligation to be performed in San Bernardino County within the meaning of CCP §395(a), therefore venue was proper in San Bernardino County.

CCP §395(a) states, in pertinent part, that:

> Subject to subdivision (b), if a defendant has contracted to perform an obligation in a particular county, the superior court in the county where the obligation is to be performed, where the contract in fact was entered into, or where the defendant or any defendant resides at the commencement of the action is a proper court for the trial of an action founded on that obligation, and the county where the obligation is incurred is the county where it is to be performed, unless there is a special contract in writing to the contrary.

CCP §395(a) must be read in conjunction with CCP §396b(b) which gives a trial court the discretion to award attorney's fees to the prevailing party in a venue motion if two factors are satisfied. CCP §396b(b) states, in pertinent part, that:

> (b) In its discretion, the court may order the payment to the prevailing party of reasonable expenses and attorney's fees incurred in making or resisting the motion to transfer whether or not that party is otherwise entitled to recover his or her costs of action. In determining whether that order for expenses and fees shall be made, the court shall take into consideration (1) whether an offer to stipulate to change of venue was reasonably made and rejected, and (2) whether the motion or selection of venue was made in good faith given the facts and law the party making the motion or selecting the venue knew or should have known. As between the party and his or her attorney, those expenses and fees shall be the personal liability of the attorney not chargeable to the party.

The CCP §396b(b) test is a two factor "and" test, which means that both factors have to be satisfied in order for the court to award attorney's fees. There is no dispute with respect to the first factor. Marston's counsel, Frank Lawrence, asked Mr. Bendapudi to stipulate to transfer venue from San Bernardino County to Mendocino County, but Mr. Bendapudi declined to do so. However, the trial court erred in with respect to the second factor under CCP §395(b), because Mr. Bendapudi did not act in bad faith when he decided to file CCA's lawsuit in San Bernardino County. Mr. Bendapudi had a reasonable and good faith reason to believe that venue was proper in San Bernardino County, because not only did CCA allege that its legal services agreement with Marston was an agreement to be performed in San Bernardino County, but Marston's own admissions also confirm that he traveled to San Bernardino County to hand-deliver the JVA documents to CCA at the special meeting in late December 2018. (6 AA at 1343; 2 AA at 416; 5 AA at 1191, 1200). While the trial court ultimately decided to transfer venue to Mendocino County, that does not automatically mean that Bendapudi was not acting in good faith.

As the trial court noted, "after considering the facts and applicable law, if an attorney has an honest and reasonable belief that his client has a tenable contention and he can establish the existence of those facts to support the venue choice, then good cause exists (citing *Metzger v. Silverman* (1976) 62 Cal.App.3d Supp. 30 ("*Metzger*"))." (7 AA at 1564). The trial court also noted that "[t]he Court is to review the factual and legal presentation by the losing party, and if it finds that 'no reasonable attorney would have honestly chosen such a forum, and that the forum appears to have been selected to

impair defendant's right to defend, an award of attorney fees would be entirely proper. (7 AA at 1564).

Here, the trial court should have deferred to CCA's allegations, because under California law there is a presumption that the Plaintiff has selected the proper venue for his lawsuit. (*Fontaine* at 836). In its moving papers CCA clearly alleged that its legal services agreement with Marston was a contract that was to be performed in San Bernardino County. (1 AA at 33; 2 AA at 416; 5 AA at 1191, 1200). In the Declaration of Ravi Bendapudi that was filed on April 1, 2022, in response to the Declaration of Lester Marston, Mr. Bendapudi stated that "one of the material terms of their legal services agreement with Marston required him [Lester Marston] to hand-deliver the JVA contract to Plaintiffs on location in San Bernardino, and for Marston to be present when Plaintiffs and the Tribe finalized and signed the JVA contract." (5 AA at 1200). In his declaration, Mr. Bendapudi also stated that CCA and Marston agreed that Marston would fly down from Mendocino County to the Chemehuevi Reservation in San Bernardino County to hand-deliver the finished JVA contract to CCA and the Tribe and attend the special meeting that the Council scheduled to take place on December 21, 2018. (5 AA at 1200). The JVA signature page also confirms that the contract was signed by the Tribe and CCA on December 21, 2018 in San Bernardino County. (7 AA at 1559). Furthermore, the evidence that Marston attached to his own declaration also confirms Mr. Bendapudi's account of the facts: Marston attached three years of his billing records to one of his declarations, and the records confirm that between December 20th and December 22nd of

2018[4], Marston flew from Ukiah to Las Vegas and then drove to San Bernardino County where he met with Bendapudi and attended a special Council meeting to "review the Casden Documents." (6 AA at 1343).

In its ruling, the trial court noted that "the issue is not where the underlying agreement between Plaintiffs and the Tribe was entered, formed, executed and performed. *The issue is where the alleged agreement for Defendants to provide legal services was formed and performed*." (emphasis added) (7 AA at 1565). While the trial court correctly identified that the issue is where CCA's contract with Marston was to be performed, it failed to recognize Plaintiffs' facts and Defendants' own admissions all point to the same thing—that the legal services contract between CCA and Marston was indeed performed in San Bernardino County, because, as agreed, Marston flew down to the Reservation to deliver the JVA documents to CCA and to attend the special meeting. The JVA signature page and Marston's own admissions confirm a material term of Defendants' legal services agreement was performed in San Bernardino County on December 21, 2018.

Furthermore, CCA should not need a "special contract in writing" to prove that its legal services agreement with Defendants was "an obligation to be performed in San Bernardino County," because the uncontested evidence confirms that the agreement was indeed performed in San Bernardino county. The nature of and the place of performance for the legal services contract is no different than if CCA had contracted with Marston to

[4] Marston's records indicate that the special meeting took place on December 22, 2018, however this appears to be a typographical error, because the meeting took place on December 21.

hand deliver two dozen widgets to CCA on location at the Chemehuevi Reservation on a pre-arranged delivery date. In that instance, there would be no doubt that the contract was performed in San Bernardino County, and it would not matter where the widgets were manufactured or the route they took to reach their final destination. Marston was successful in his efforts to confuse the issues, by emphasizing that he drafted the JVA from his office in Mendocino County, and that he also had telephone conversations with CCA from Mendocino County. (6 AA at 1258). However, for the purposes of CCA's legal services agreement with Marston, it is completely irrelevant which county Marston happened to be in when he took CCA's calls, or where he sat while he physically typed up the JVA papers. CCA did not care about any of those things, because CCA did not contract with Marston to type their agreement in Mendocino County, CCA paid Marston to prepare all of their deal papers and to fly down to Southern California to hand deliver those papers to CCA and to attend the December 21, 2018 special council meeting. Marston could have typed the JVA from any location on earth, and it would have had no material effect on CCA's legal services agreement with Defendants, what mattered is that Marston had everything completed and ready to go when he met with CCA and the Tribe on December 21, 2018 in San Bernardino County.

No Evidence of Bad Faith

As the trial court points out, "if an attorney has an honest and reasonable belief that his client has a tenable contention and he can establish the existence of those facts to support the venue choice, then good cause exists" (quoting from *Metzger*). (7 AA at 1564). As demonstrated above, it was perfectly reasonable for Mr. Bendapudi to conclude that CCA had a tenable and legitimate reason to file its lawsuit in San Bernardino County.

IX. CONCLUSION

The Court of Appeal should reverse the trial court's rulings on Respondents' Motion to Quash and Dismiss and Respondents' Motion for Attorney's Fees, because the rulings were erroneous and not supported by the facts or the law, and to leave the rulings in place would be a terrible miscarriage of justice and highly prejudicial to Appellants.

CERTIFICATE OF WORD COUNT

I certify that the text of this brief, as counted by Microsoft Word, consists of 9,453 words (including footnotes, but excluding the table of contents, table of authorities, this certificate, the certificate of interested parties, signature blocks, and the attached proof of service).

DATED:
November 12, 2021

RAVI R. BENDAPUDI, ESQ.

By: /S/ Ravi Bendapudi
Ravi Bendapudi, Esq.

Attorney for Appellant California Capitalism Associates, LLC and Ravi Bendapudi in Pro Se

PROOF OF SERVICE
VIA TRUEFILING OF OPENING BRIEF AND APPENDIX

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

(California Capitalism Associates, LLC et al v. Lester J. Marston et al. B312831

(Superior Court Case No. CIVSB 2121814)

I, Ravi Bendapudi, declare that:

I am employed in the County of San Bernardino, State of California. I am over the age of eighteen (18). My business address is 12600 Havasu Lake Road, Havasu Lake, CA 92363. On October 18, 2022 I served the foregoing documents described as:

(1) APPELLANTS OPENING BRIEF

(2) APPELLANTS' APPENDIX, VOLUMES I-VII (0001-1653)

on all parties or their counsel of record through: 1) the TrueFiling's Electronic system if they are registered users or, if they are not, by serving a true and correct electronic to the Email addresses set forth below, and 2) by US mail to the addresses listed below:

TRUEFILING and VIA EMAIL TO: frank@franklawrence.com Law Office of Frank Lawrence 578 Sutton Way #246 Grass Valley, CA	TRUEFILING Supreme Court of California 350 McAllister St. Room 1295 San Francisco, CA 94102

U.S. MAIL Superior Court of California Clerk's Office Judge Donald Alvarez 247 West 3rd Street San Bernardino, CA 92415	

To the extent documents were served by U.S. Mail as set forth herein, this was done by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Los Angeles, California addressed as set forth above. I am readily familiar with the practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 18, 2022 at Los Angeles, California.

/S/ Ravi Bendapudi