A156459
A158171
A158172
A158173
A159823

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION TWO

ROBERT FINDLETON,

Plaintiff and Respondent,

v.

COYOTE VALLEY BAND OF POMO INDIANS,

Defendant and Appellant.

APPEAL FROM THE SUPERIOR COURT FOR MENDOCINO COUNTY
NO. SCUK-CVG-12-59929
THE HONORABLE ANN C. MOORMAN

RESPONDENT ROBERT FINDLETON'S MOTION FOR SANCTIONS FOR APPELLANT'S FRIVOLOUS MOTION TO STRIKE; MEMORANDUM; DECLARATION OF DARIO NAVARRO; PROPOSED ORDER

DARIO NAVARRO (STATE BAR NO. 102575)
LAW OFFICE OF DARIO NAVARRO
3655 Memory Lane
South Lake Tahoe, CA 96150-4137
TEL (619) 751-7189 FAX (619) 374-7147
Email: navdar@gmail.com

Attorney for Plaintiff and Respondent ROBERT FINDLETON

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Cases Continued **Page**

Cases Continued **Page**

Cases Continued **Page**

Statutes, Rules of Court, Ordinances and Constitutional Provisions

Statutory Authority, Rules and Ordinances Continued

Other Authorities

A156459
A158171
A158172
A158173
A159823

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION TWO

ROBERT FINDLETON,

Plaintiff and Respondent,

v.

COYOTE VALLEY BAND OF POMO INDIANS,

Defendant and Appellant.

APPEAL FROM THE SUPERIOR COURT FOR MENDOCINO COUNTY
NO. SCUK-CVG-12-59929
THE HONORABLE ANN C. MOORMAN

RESPONDENT'S MOTION FOR SANCTIONS FOR APPELLANT'S FRIVOLOUS MOTION TO STRIKE

To the Honorable J. Anthony Kline, Presiding Justice, and the Honorable Associate Justices, James A. Richman and Therese M. Stewart, of the Court of Appeal of the State of California, First Appellate District, Division Two:

INTRODUCTION

Pursuant to California Rules of Court, rules 8.276(a)(3) & (4),[1] 8.492(a)(2), and the inherent authority of the reviewing court to control its own proceedings, Plaintiff-Respondent Robert Findleton ("Findleton") moves this reviewing court to impose the sanctions hereinafter specified on

1. All references to any "rule" or "Rule" shall be to a rule of the California Rules of Court, unless otherwise specified.

the Defendant-Appellant Coyote Valley Band of Pomo Indians ("Tribe") and its defense counsel, Little Fawn Boland, Esq. (SBN 240181) ("Boland") and Keith Anderson, Esq. (SBN 282975) ("Anderson"), for filing on June 14, 2021 their *frivolous and completely unmeritorious* putative Motion to Strike[2] in "unreasonable violation" of the California Rules of Court, especially including, but not limited to, rules 3.10, 3.1113(d), 8.4, 8.54(a)(3), and 8.204(e)(2). (Cal. Rules of Court, rules 3.10, 3.1113(d), 8.4, 8.54 ["Rule 8.54"], subd. (a)(3) [authorizing only the filing of an "opposition" in response to a motion, *not a motion to strike*]; 8.204 ["Rule 8.204"], subd. (e)(2) [authorizing the filing only of a motion to strike a "brief," not the *motion* of an opposing party]; 8.276 ["Rule 8.276"], subds. (a)(3) [authorizing a motion for sanctions against "a party or an attorney" by a party for "[f]iling a frivolous motion"], (a)(4) [authorizing a motion for sanctions against "a party or an attorney" by a party for "any other unreasonable violation of these rules"]; 8.492, subd. (a)(2) [authorizing motion for sanctions when a party or attorney commits an "unreasonable violation" of the California Rules of Court]; *Dana Commercial Credit Corp. v. Ferns* & *Ferns* (2001) 90 Cal.App.4th 142, 147 [holding reviewing court has inherent authority to sanction party for filing frivolous motion on appeal] ["*Dana*"].)

Pursuant to Rule 8.276(a)(3) & (4), Findleton seeks the following sanctions against the Tribe as well as attorneys Boland and Anderson:

---

2. Although the Tribe has denominated its improper filing, "Appellant's Notice of Motion to Strike 'Motion to Dismiss Appeals and Supporting Memorandum' and Request for Judicial Notice with Supporting Memorandum of Points and Authorities" ("MTS" or "Motion to Strike"), in the final section of the Motion to Strike the Tribe requests the reviewing court to strike the Respondent's Brief in Appeal No. A159823 (MTS 17:7-20), although that Respondent's Brief conforms to all the requirements of California Rules of Court, rule 8.54 ("Rule 8.54").

(1) an award of attorney's fees in the amount of **$35,490.00** by express order of the reviewing court as permitted by Rule 8.276(d)(2) and the reviewing court's decision in *Findleton v. Coyote Valley Band of Pomo Indians* (2018) 27 Cal.App.5th 565, 569-573 [permitting award of attorney's fees against the Tribe incurred in the enforcement of arbitration agreement] ["*Findleton II*"] assessed jointly and severally against the Tribe and its defense counsel Boland and Anderson, the authors of the frivolous motion to strike;

(2) an award of costs in the amount of **$189.50** as permitted by Rule 8.278 (Cal. Rules of Court, rule 8.278);

(3) an award of sanctions payable to the reviewing court based on the cost to the taxpayers of processing the frivolous motion in an amount to be determined by the court and assessed directly against defense counsel Boland and Anderson, or, alternatively, in an amount in no event less than **$5,000**;

(4) a sanctions order that either:

(a) treats the frivolous, completely meritless Motion to Strike as the Tribe's *oppositions* to Respondent's Motion to Dismiss[3] and Motion to Request Judicial Notice, [4] now due on or before August 13, 2021, since Rule 8.54(a)(3) only permits the filing of *one opposition* to each of Respondent's motions; or, alternatively,

(b) prohibits the Tribe from rearguing any legal claim raised in its frivolous Motion to Strike in both oppositions to Respondent's Motions to Dismiss and Motion to Request Judicial Notice as either **(i)** already having been decided

---

3. Respondent's Motion to Dismiss Appeals with Supporting Memorandum, Declarations, and Proposed Order (filed May 28, 2021) ("MTD" or "Motion to Dismiss").

4. Respondent Robert Findleton's Motion to Request Judicial Notice; Memorandum; Declarations; Proposed Order (filed May 27, 2021) ("MRJN" or "Motion to Request for Judicial Notice").

under the doctrine of law of the case or **(ii)** as an issue sanction imposed pursuant to the court's inherent power to control its own proceedings. (Code Civ. Proc., § 187; *Dana,* 90 Cal.App.4th at pp. 147-148 [holding such "inherent power" exists].)

(5) In the event that the appellate court determines that it must review the record before deciding whether the Tribe's Motion to Strike is frivolous, dilatory and otherwise in violation of the California Rules of Court, Findleton requests that this reviewing court expressly affirm on the merits the Order to Compel Production of the Mendocino Superior Court and order sanctions against the Tribe and its counsel of record as hereinabove specified in this Prayer for Relief at Part V.(1)-(4) pursuant to well-established legal authority. (*Portola Hills Community Assn. v. James* (1992) 4 Cal.App.4th 289, 294 ["*Portola*"], disapproved in part on other grounds in *Nahrstedt v. Lakeside Village Condominium* (1994) 8 Cal.4th 361, 385 ["*Nahrstedt*"].)

The imposition of sanctions is especially appropriate in response to the frivolous and unmeritorious Motion to Strike not only because that motion was devoid of any *supporting* legal authority and fatally bereft of any factual foundation whatsoever, but because it is alarmingly symptomatic of a long train of irresponsible, deliberately dilatory, legally untethered, factually groundless court filings by the Tribe and its defense counsel that is likely to continue unless the reviewing court makes clear that such meritless submissions are totally unacceptable by imposing appropriate sanctions in response to such abuse of the judicial process. (See discussion in Argument, Part IV.B, infra.)

As will be explained in greater detail in the accompanying Memorandum, the Tribe cites a total of only *six cases* in its Motion to Strike, *none of which offers any support whatsoever* for the bizarre, unprecedented arguments the Tribe has advanced. (MTS 10, 14, 16, 17.)

Further, the Tribe filed the MTS without any basis whatsoever in **(1)** the California Code of Civil Procedure, **(2)** the "Appellate Rules" or the "Rules Applicable to All Courts," as respectively set forth in Title 8 and Title 1 of the California Rules of Court, **(3)** the First District Court of Appeal Local Rules or **(4)** any extant California court decision, or **(5)** other legal authority. (Code Civ. Proc., §§ 435-437 [providing for motion to strike only certain pleadings filed in superior court]; Cal. Rules of Court, rules 8.1-8.1125, esp. 8.54 [no provision for motion to strike any other motion]; Ct. App., First Dist., Local Rules of Ct., rules 1-21 [no provision for motion to strike any other motion].)

Timeliness of Findleton's Motion for Sanctions. This Respondent's Motion for Sanctions for Appellant's Frivolous Motion to Strike ("Motion for Sanctions" or "MFS") is *timely*. Under Rule 8.276(b)(1), Findleton may, as authorized in Rule 8.276(a), serve and file a motion for sanctions against a party or its attorneys "before any order dismissing the appeal but no later than 10 days after the appellant's reply brief is due." (Cal. Rules of Court, rule 8.276, subds. (a) & (b)(1); 2 Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2018) § 11:128, p. 11-57 ["*Eisenberg*"].)

In response to the Tribe's June 21, 2021 application for an extension of time in which to file its Reply Brief in Appeal No. A159823, this reviewing court granted on June 22, 2021 an extension to the Tribe to file its Reply Brief until September 2, 2021. (Order issued June 21, 2021.) Ten (10) days after the Reply Brief is now due would fall on Sunday, September 12, 2021. By operation of Rule 1.10 of the Rules Applicable to All Courts, the Sunday due date must be excluded from calculation of the ten (10) day filing period specified in Rule 8.276(b)(1) with the result that the correctly calculated due date is **Monday September 13, 2021**. (Cal. Rules of Court, rule 8.10, subd. (a).)

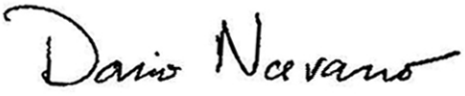
This MFS Distinct from MFS for Frivolous Appeal. This Motion for Sanctions is filed only with respect to the frivolous and improper Motion to Strike filed by the Tribe on June 14, 2021 and is not intended to constitute, nor should it be construed to constitute a motion to strike Appeal No. A159823 itself. In addition to this Motion for Sanctions for Appellant's Frivolous Motion to Strike, Findleton reserves his right to file a separate motion for sanctions for appellant's frivolous Appeal No. A159823 as he deems appropriate based on the facts and applicable law within the permissible filing period. (Cal. Rules of Court, rule 8.276, subds. (a) & (b)(1).)

Basis of Motion for Sanctions. This Motion for Sanctions for Appellant's Motion to Strike is based on **(1)** the accompanying Memorandum of Points and Authorities, **(2)** the supporting Declaration of Dario Navarro, **(3)** the May 27, 2021 Motion to Request Judicial Notice, **(4)** the May 28, 2021 Motion to Dismiss, **(5)** the three Respondent's Briefs filed in Appeal Nos. A156459, A158171, A158172, A158173, and A159823, **(6)** the June 26, 2021 Respondent's Opposition to Appellant's Motion to Strike (filed June 28, 2021) ("OMTS" or "Opposition") , and **(7)** the record and papers filed in the five pending appeals in this case.

Dated: **July 6, 2021**

Respectfully submitted,

LAW OFFICE OF DARIO NAVARRO



Dario Navarro
Attorney for Plaintiff and Respondent

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS AND RELEVANT PROCEDURAL HISTORY

On April 6, 2021, the reviewing court set May 28, 2021 as the deadline for Findleton's "single" "motion to dismiss" "addressing all appeals for which dismissal is requested (including, if appropriate, A159823)." (Order issued Apr. 6, 2021, p. 2:19-22.) In addition, the reviewing court ordered that "such motion and any opposition may cite the record filed in any of the appeals, identifying the record or records cited by appeal number." (*Id.,* p. 2:23-25.) The reviewing court further ordered that it "will take judicial notice of the records cited as appropriate" and the "parties may also submit evidence by declaration and request for judicial notice." (*Id*., at p. 2:25-27.) The April 6, 2021 order set no other deadline for any other motion, application, or brief.

On April 16, 2021, the reviewing court granted Findleton's unopposed March 29, 2021 motion to augment the record to include Plaintiff's Status Conference Statement and the reporter's transcript of the April 26, 2019 debtor's examination of Amanda Pulawa. (Order issued April 16, 2021.)

On May 27, 2021, Findleton filed his seven-volume Motion to Request Judicial Notice, which included all 266 pages of the initial March 16, 2021 response of the U.S. Department of Justice under the Freedom of Information Act (FOIA) to his August 1, 2019 FOIA request for information about grant funding for the Northern California Intertribal Court System ("NCICS"). The extraordinary length of the MRJN reflects both the Tribe's prior refusal to provide any documents whatsoever in response to the Order to Compel Production[5] and Findleton's decision to

5. Order Granting Plaintiff's Motion to Compel Responses to Plaintiff's Amended First Set of Requests for Production of Documents (Dec. 13, 2019), as amended on January 2, 2020 to specify monetary sanction in

share *all the documents* produced in response to his FOIA request in the interest of transparency and full disclosure.

On May 28, 2021, Findleton filed his Motion to Dismiss challenging, *inter alia,* the subject matter jurisdiction of the reviewing court to entertain the Tribe's extrajurisdictional appeals of three interlocutory orders in Appeal Nos. A158171, A158172, and A158173 and the improper appeal of the underlying nonappealable discovery order in Appeal No. A159823, and seeking dismissal of all five appeals under the disentitlement doctrine given the Tribe's flagrant and persistent violation of the April 24, 2017 Order to Compel Arbitration,[6] Order to Compel Production and other orders of the lower court.

On June 8, 2021, the Tribe filed an application for a 120-day extension of time in which to file opposition papers to Findleton's Motion to Dismiss and his Motion to Request Judicial Notice. The supporting declaration of defense counsel, Little Fawn Boland, Esq. (June 8, 2021 Boland Declaration"), *falsely stated* that Findleton has accused the "seven person [Coyote Valley] Tribal Council, the NCICS Judicial Council, the Hopland Band of Pomo Indians Tribal Council, the Manchester Band of Pomo Indians, the Cahto Indian Tribe, the Chief of the Coyote Valley Tribe, and present and former staff and officials of the foregoing bodies" of "coordinating a vast conspiracy against him." (Application for Extension of Time to File Opposition Papers (June 8, 2021), supporting June 8, 2021 Boland Declaration, p. 6 (p. 3 of the declaration), ¶ 1.) Findleton has never

---

the amount of $11,348.00 ("Order to Compel Production") (1CT 215-220, 295-297).

6. Order on Hearing after Motion to Compel Mediation and Arbitration (signed Apr. 24, 2017; filed Apr. 25, 2017) ["Order to Compel Arbitration"] (4CCT 1137-1139). All references to the "Consolidated Clerk's Transcript" of Appeal Nos. A158171, A158172, and A158173 shall appear in the generic citation form, "[volume]CCT [page number]," for example, as in 9CCT 2495.

made any such accusation and the record is devoid of any evidence that he has. The accusation is a *complete fabrication* of defense counsel Boland.

On June 9, 2021, the reviewing court granted the Tribe only a 60-day extension in which to file opposition papers "to and including August 13, 2021." The reviewing court added that "[n]o further extensions of time will be granted." (Order issued June 9, 2021, p. 1, ¶ 1.)

On June 13, 2021, the Tribe filed a second application for an extension which it styled as an amendment to its June 8, 2021 application for an extension and purported to seek "clarification" from the reviewing court whether the August 13, 2021 extension deadline set for the opposition papers also applied to a hitherto unmentioned "Motion(s) to Strike." (Application for Extension of Time to File Opposition Papers (June 8, 2021), cover letter from defense counsel, p. 1, ¶ 1.) The June 13, 2021 application repeats the same *false statement* that Findleton has accused a large number of tribes, tribal agencies, tribal governmental bodies as well as their present and former staff of a "vast conspiracy against him." (*Id.,* at p. 7 [p. 3 of declaration], ¶ 1.)

On June 14, 2021, the Tribe filed its Motion to Strike without even waiting for the reviewing court to decide whether to grant its June 13, 2021 application for an extension of time in which to file that motion. On June 16, 2021, the reviewing court denied the Tribe's application for an extension "as moot since appellant has already filed the motion to strike." (Order of June 16, 2021.)

On June 21, 2021, the Tribe filed a third application for an extension in Appeal No. A159823 effectively seeking a 59-day extension in which to file its Reply Brief, then due on Monday, July 5, 2021 (not counting Sunday, July 4, 2021 per Rule 1.10(a)), or 20 days after Findleton filed his Respondent's Brief on June 14, 2021. The Tribe incorrectly listed the due date of the Reply Brief as "July 2, 2021" in its June 21, 2021 application

for an extension. (Application for Extension of Time to File Reply Brief (June 21, 2021) p. 1, item 1.)

On June 22, 2021, the reviewing court granted the Tribe's extension of time in which to file its Reply Brief to September 2, 2021.

ARGUMENT

I. THE REVIEWING COURT HAS AUTHORITY TO IMPOSE SANCTIONS AGAINST A PARTY AND ITS ATTORNEYS FOR FILING A *FRIVOLOUS MOTION* OR *COMMITTING ANY OTHER UNREASONABLE VIOLATION* OF THE CALIFORNIA RULES OF COURT.

A. The reviewing court may impose sanctions against a party and its attorneys for filing a *frivolous motion* pursuant to Rule 8.276(a)(3) and the inherent power of the reviewing court to control its own proceedings.

Rule 8.276(a)(3) expressly authorizes a "Court of Appeal" to "impose sanctions, including the award or denial of costs under rule 8.278, on a party or an attorney for . . . [f]iling a frivolous motion." (Cal. Rules of Court, rule 8.276, subd. (a)(3).) In addition to the authority expressly granted by Rule 8.276(a)(3), the reviewing court may impose sanctions on a party and its counsel for filing a frivolous motion by virtue of its "inherent power to control its own proceedings." (*Dana,* 90 Cal.App.4th 142, 147; *Styles v. Mumbert* (2008) 164 Cal.App.4th 1163, 1169-1170 ["*Styles*"]; *Bloniarz v. Roloson* (1969) 70 Cal.2d 143, 147-148 ["*Bloniarz*"]; *Warren v. Schecter* (1997) 57 Cal.App.4th 1189, 1198-1199 ["*Warren*"]; Code Civ. Proc., § 187 [authorizing reviewing court to "carry . . . into effect" by "all the means necessary" the "jurisdiction" conferred and "any suitable process or mode of proceeding" in "the exercise of such jurisdiction"].)

Both a party to the appeal and its counsel may be sanctioned by the reviewing court under such express and inherent powers. (*Dana,* 90

Cal.App.4th at p. 147; Cal. Rules of Court, rule 8.276, subd. (a)(3).) The sanctions may be imposed separately or jointly and severally on both the party and its counsel in the discretion of the reviewing court. (*Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 195; *Singh v. Lipworth* (2014) 227 Cal.App.4th 813, 830; *Marriage of Gong & Kwong* (2008) 163 Cal.App. 4th 510, 519-520 ["*Kwong*"]; *Pollock v. University of Southern California* (2003) 112 Cal.App.4th 1416, 1432 [ordering counsel and client to pay, jointly and severally, sanctions representing reasonable expense incurred by respondent in defending frivolous appeal, but counsel alone ordered to pay separate frivolous appeal sanction representing court's expense in processing frivolous appeal].)

B. The reviewing court may impose sanctions against a party and its attorneys for *committing any unreasonable violation of the California Rules of Court* pursuant to Rule 8.276(a)(4), Rule 8.492(a)(2), and inherent power of the reviewing court to control its own proceedings.

Rule 8.276(a)(4) expressly authorizes a "Court of Appeal" to "impose sanctions, including the award or denial of costs under rule 8.278, on a party or an attorney for . . . [c]ommitting any . . . *unreasonable violation* of these rules" in addition to the specific violations listed as grounds for sanctions in Rule 8.276(a)(1)-(3). (Cal. Rules of Court, rule 8.276, subd. (a)(4) [italics added]; *Huschke v. Slater* (2008) 168 Cal.App.4th 1153, 1163 [sanctioning appellant's counsel $6,000 payable to court under Rule 8.276(a)(4) for "unreasonable violation" of Rule 8.244 when counsel failed to notify the court of settlement 10 months earlier]; *Alicia T. v. County of Los Angeles* (1990) 222 Cal.App.3d 869, 885-886 [imposing on appellant's counsel $750 sanction payable to court clerk to compensate court under predecessor provision to Rule 8.276 for "the substantial additional time required to craft an opinion when the court rules are ignored as flagrantly as

they are herein"]; *Campagnone v. Enjoyable Pools* (2008) 163 Cal.App.4th 566, 570 ["unreasonable violation" of Appellate Rules sanctionable under Rule 8.276(a)(4)] ["*Campagnone*"].) Further, Rule 8.492(a)(2), also authorizes, on motion of a party or on the motion of the reviewing court, a "Court of Appeal" to "impose sanctions, including the award or denial of costs under rule 8.493, on a party or an attorney for . . . [c]ommitting any other *unreasonable violation* of these rules." (Cal. Rules of Court, rule 8.492, subd. (a)(2) [italics added].)

Although the *Dana* court did not specifically address the issue of whether a reviewing court had the inherent power to impose sanctions for an *unreasonable violation* of the California Rules of Court, precisely the same reasoning that led the *Dana* court to hold that it has the implied authority to impose sanctions for the filing of a frivolous appeal by virtue of its "inherent power to control its own proceedings" applies with equal, if not greater force, to the implied authority of an appellate court to impose sanctions for "unreasonable violations" of the California Rules of Court. (*Dana,* 90 Cal.App.4th at p. 147.) Such an inherent, implied power is necessary for a reviewing court to "control its own proceedings" and "preserve order in the court." (*Dana,* 90 Cal.App.4th at p. 147 [internal quotation marks omitted]; *Bloniarz,* 70 Cal.2d at pp. 147-148; Code Civ. Proc., § 187.)

C. The Tribe's appellate counsel should generally be held as deserving the greatest blame because of their *professional responsibility* not to file a frivolous, dilatory, or otherwise impermissible appellate motion.

"Appellate sanctions are primarily directed at deterring future similar conduct by the *blameworthy* party." (2 Eisenberg, § 11:123, pp. 11-54 – 11-55 [italics in original]; *Keitel v. Heubel* (2002) 103 Cal.App.4th 324, 342 ["*Keitel*"]; *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 31.) Given that

deterrent purpose, appellate counsel should be viewed as shouldering the greatest blame because of their *professional responsibility* not to file a frivolous motion "just because the client instructs him or her to do so" and, if so instructed, to withdraw from employment rather than engage in the requested abuse of the judicial process. (*Id.,* quoting *Kwong,* 163 Cal.App.4th at p. 521; *Keitel,* 103 Cal.App.4th at p. 342; *Simonian v. Patterson* (1994) 27 Cal.App.4th 773, 786; Rules Prof. Conduct, rule 1.16, subd. (b)(1).) The filing of a frivolous motion, unsupported by any legal authority and devoid of any factual basis, constitutes a technical act of pure obstruction and delay for which the Tribe's counsel should seemingly bear primary responsibility. (*Kwong,* 163 Cal.App.4th at p. 521.)

II. SINCE ANY REASONABLE ATTORNEY WOULD AGREE THAT THE TRIBE'S MOTION TO STRIKE *INDISPUTABLY HAS NO MERIT*, IT MUST BE TREATED BY THE REVIEWING COURT AS A *FRIVOLOUS MOTION*.

A. The applicable objective standard for determining whether the Tribe's motion to strike is frivolous is whether any reasonable attorney would agree that it is *totally and completely devoid of merit*.

When evaluating the appeal itself or a motion filed during the course of the appeal, the objective standard for frivolity is identical: whether "any reasonable attorney would agree" that the appeal or motion "indisputably has no merit" or, in other words, is "totally and completely devoid of merit." (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650 ["*Flaherty*"]; *Personal Court Reporters, Inc. v. Rand* (2012) 205 Cal.App.4th 182, 191 ["*Rand*"]; *Kwong*, 163 Cal.App.4th at p. 516; 1 *Eisenberg,* § 5:290, p. 5-102; 2 *Eisenberg,* §§ 11:101, 11:103, p. 11-40; 9 Witkin, California Procedure (5th ed. 2020) Appeal § 989 [discussing objective and subjective standards for, respectively, frivolity and dilatory motive].)

B. The Tribe's Motion to Strike *indisputably has no merit.*

The Tribe has deceptively entitled its Motion to Strike as if it were applicable to only Findleton's May 27, 2021 Motion to Request Judicial Notice and his May 28, 2021 Motion to Dismiss, but actually requests, apparently as an afterthought, that the reviewing court not only strike Findleton's two pending motions without citation to any *supporting* legal authority whatsoever, but also Findleton's June 14, 2021 Respondent's Brief in Appeal No. A159823, again without reference to any defective provision in that Respondent's Brief or citation to any legal authority that would even remotely authorize striking the Respondent's Brief. (MTS 4-18, esp. 17:8-10 [frivolously requesting the reviewing court to strike the RB and ordered a new brief filed that complies with the inapplicable *superior court* Rule 3.1113(d)].)

In the absence of any citation to any supporting legal authority whatsoever, as will be explained in greater detail in the following discussion, the entire rambling, disorganized, frequently incoherent Motion to Strike must be disregarded *en toto* and deemed *indisputably devoid of merit*. (*Dabney v. Dabney* (2002) 104 Cal.App.4th 379, 383 [noting that appellate court "need not consider an argument for which no authority is furnished"] ["*Dabney*"]; *People ex rel. 20th Century Ins. Co. v. Building Permit Consultants, Inc.* (2000) 86 Cal.App.4th 280, 284 ["*20th Century*"]; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 ["*Badie*"]; *Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 138 ["*Horowitz*"].) Each of the Tribe's utterly frivolous arguments will be examined separately and revealed to be so utterly groundless that "any reasonable attorney would agree" that the Motion to Strike "indisputably has no merit" or, in other words, is "totally and completely devoid of merit." (*Flaherty,* 31 Cal.3d at p. 650; *Rand*, 205 Cal.App.4th at p. 191.)

1. The Tribe's argument that the Respondent's Brief must comply with *superior court* Rule 3.1113(d) *indisputably has no merit.*

Shockingly, the Tribe argued that the Respondent's Brief must satisfy the "statutory criteria [sic]" of "CRC 3.1113(d)" (MTS 17:7-9), which contains a 15-page limit that applies only to certain legal memoranda filed in *superior court*. (Cal. Rules of Court, rule 3.1113, subd. (d).) The Tribe has thereby revealed that it is *inexcusably unaware* that Rule 3.10 of the California Rules of Court expressly limits the application of Rule 3.1113(d) and all other Civil Rules of Title 3 to "civil cases in superior court." (*Id.,* rule 3.10.) Further, the untethered assertion that the RB must comply with *superior court* Rule 3.1113(d) is unsupported by any citation to case law for the obvious reason that the proposition that Rule 3.1113(d) so self-evidently does not apply to any filing in a California Court of Appeal that "any reasonable attorney" or judge "would agree" that such a preposterous, obviously incorrect proposition "indisputably has no merit." (*Flaherty,* 31 Cal.3d at p. 650; *Rand*, 205 Cal.App.4th at p. 191.) In the absence of any citation to *supporting* case law for this conspicuously mistaken reliance of an obviously inapplicable *superior court* rule, this argument must be deemed incurably frivolous and disregarded by the reviewing court. (*Id.; Dabney*, 104 Cal.App.4th at p. 383.)

2. The Tribe's *perfunctory demand* that four important arguments in the Respondent's Brief be stricken *indisputably has no merit.*

Again, apparently as an afterthought, the Tribe requested the reviewing court to strike four arguments from the Respondent's Brief without any coherent legal argument and without any citation to legal authority. (MTS 17:10-12.) More specifically, the Tribe demanded that

"Respondent should be required to file the new brief with Arguments I(C)(2)-(5), II, III and IV all stricken." (MTS 17:10-12.)

First, the Tribe *impossibly requested* that arguments that appear in the Motion to Dismiss be stricken from the Respondent's Brief. This claim is, therefore, *utterly incoherent* and, therein, *incurably frivolous*. The Respondent's Brief contains no argument section "I(C)(2)-(5)," but Respondent's Motion to Dismiss does. (Compare RB 24-25 with MTD 32-43.) The Tribe, thus, requested that arguments be stricken from the Respondent's Brief that actually appear in the Motion to Dismiss. (Compare RB 24-25 with MTD 32-43.) The Tribe's argument is fatally incomprehensible. When contentions are asserted without intelligible argument or supporting legal authority, the "absence of cogent legal argument or citation to authority" allows the reviewing court "to treat the contentions as waived." (*Trinity Risk Management, LLC. v. Simplified Labor Staffing Solutions*, *Inc.* (2021) 59 Cal.App.5th 995, 1008 ["*Trinity*"] quoting *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830 ["*Falcone*"]; *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 [same] ["*Cahill*"]; *Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448 [same] ["*Collins*"]; *In re S.C.* (2006) 138 Cal.App.4th 396, 408 [internal quotation marks omitted] quoting *Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647 ["*Atchley*"]; *Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1117 ["failure of appellant to advance any pertinent or intelligible legal argument . . . constitute[s] an abandonment of the [claim of error]"] ["*Berger*"]; *Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 891, fn. 1 [noting that where appellant has presented "no argument or authority," the appellate court "will not develop appellants' arguments for them"] ["*Dills*"]; *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546 [emphasizing that it is not the function of the reviewing court "to serve as

[appellant's] backup appellate counsel"] ["*Mansell*"].) Hence, the Tribe's incoherent, conclusory, totally unsupported arguments must be deemed *objectively and indisputably devoid of merit*. (*Flaherty,* 31 Cal.3d at p. 650; *Rand*, 205 Cal.App.4th at p. 191; *Dabney*, 104 Cal.App.4th at p. 383.) (Similarly, the Tribe's irrelevant reliance on *Hawran v. Hixson* offers absolutely no support for any of the mistaken, unprecedented arguments in its Motion to Strike. (MTS 17:2-7, citing *Hawran v. Hixson* (2012) 209 Cal. App. 4th 256, 268, *to no effect*.)

Second, the argument is presented with absolutely no citation to a single supporting decision and no legal authority other than *superior court* Rule 3.1113(d) which manifestly is inapplicable to any appellate court filing under Rule 3.10 and Rule 8.4. (MTS 17.) (Cal. Rules of Court, rules 3.1113, subd. (d); 3.10 & 8.4 [expressly providing that the Appellate Rules of Title 8 apply to "[a]ppeals from the superior court" and that the Appellate Rules apply to "motions . . . in the Courts of Appeal].) This argument is *indisputably devoid of merit* and the party and its counsel responsible should be sanctioned. (*Trinity,* 59 Cal.App.5th at p. 1008; *Badie,* 67 Cal.App.4th at pp. 784-785; *Dabney*, 104 Cal.App.4th at p. 383; Cal. Rules of Court, rule 8.276, subd. (a)(3).)

3. The Tribe's argument that its groundless Motion to Strike is the proper "[r]emedy" to address alleged defects in the MTD and MRJN *indisputably has no merit.*

An appellate motion to strike is an extraordinary remedy that is only available to strike a defective *brief* under Rule 8.204(e)(2). There is no legal basis for filing a motion to strike the *motion* of an opposing party in the California Rules of Court or otherwise. The only response permitted by the Appellate Rules to a motion to dismiss or a motion to request judicial notice is an "opposition." (Cal. Rules of Court, rule 8.54, subds. (a)(3) & (c); 1 Eisenberg, § 5:246 – 5:251, pp. 5-95 – 5-96.) The Appellate

Rules only permit a motion to strike a defective *brief,* not the *motion* of an opposing party. (*Id.,* rule 8.204, subd. (e)(2); *C.J.A. Corporation v. Trans-Action Financial* (2001) 86 Cal.App.4th 664, 673 [motion to strike applied to *brief*] ["*CJA Corporation*"]; 1 *Eisenberg*, § 5:194 – 5:202, pp. 5-74 – 5-75; 1 California Civil Appellate Practice (Cont.Ed. Bar 3d ed. 2019) §§ 11.61 – 11.62, pp. 11-41 – 11-43 ["*CEB*"].)

The term "briefs" is defined in Rules 8.200 and 8.10(7) to mean only an appellant's opening brief, a respondent's brief, a reply brief, petitions for rehearing, petitions for review, and answers to such petitions. (Cal. Rules of Court, rules 8.200, subds. (a)(1)-(3) & 8.10, subd. (7).) *Motions are not briefs* and the rules applicable to briefs are not applicable to motions as evident from the wording of the rules themselves. Rule 8.54 is the primary appellate rule that applies to appellate motions. (*Id.,* rule 8.54.) Rule 8.54 is open-ended, flexible, yet "prescribes the general formality for motions in a reviewing court." (1 *Eisenberg,* § 5:44, p. 5-23; see also *id.,* §§ 5:238 – 5:261.5, pp. 5-93 – 5-98.) Again, Rule 8.54(a)(3) only permits the party opposing an appellate motion to file an "opposition," but makes no mention of, and does not permit the filing of, a *motion to strike* the motion of the opposing party. (Cal. Rules of Court, rule 8.54, subd. (a)(3).) Thus, the Tribe's Motion to Strike Findleton's two pending motions was both *indisputably devoid of merit* under Rule 8.276(a)(3) and an "unreasonable violation" of Rule 8.54(a)(3) and Rule 2.204(e)(2) under Rule 8.276(a)(4). (Cal. Rules of Court, rules 8.54, subd. (a)(3), 2.204, subd. (e)(2) & 8.276, subd. (a)(4); *Campagnone,* 163 Cal.App.4th at p. 570.)

Further, the single case that the Tribe mistakenly cites in support of its argument that the "Motion to Strike is the Proper Remedy to Address the Defects in Respondent's MTD and [M]RJN," the subheading in Part I.A of its MTS, provides absolutely no support whatsoever for that untenable claim. (MTS 10:11-12.) In *CJA Corporation*, the reviewing court granted

"a motion seeking to strike several passages in appellants' opening brief on the ground they refer to evidence that is not a part of the record." (86 Cal.App.4th at p. 673 [italics added].) *CJA Corporation* literally says *absolutely nothing* about the use of a *motion to strike* filed under Rule 8.204(e)(2) as a permissible "[r]emedy" (MTS 10:11) to address defects in the *motions* of an opposing party. (86 Cal.App.4th at pp. 664-674.) In sum, *CJA Corporation* is *totally irrelevant* to the Tribe's mistaken claim in Part I.A of its MTS and does not even concern the issue frivolously raised by the Tribe. (MTS 10.) Thus, the Tribe's argument in MTS, Part I.A (MTS 10), should be disregarded *en toto* to the same extent as if the Tribe had cited no legal authority whatsoever and treated as an argument *indisputably devoid of merit*. (*Badie,* 67 Cal.App.4th at pp. 784-785; *Trinity,* 59 Cal.App.5th at p. 1008; *Flaherty,* 31 Cal.3d at p. 650; *Rand*, 205 Cal.App.4th at p. 191; *Dabney*, 104 Cal.App.4th at p. 383.)

4. The Tribe's argument that the length, substance, and even case citations of Findleton's MTD and MRJN must somehow create a fatal defect in his Respondent's Brief *indisputably has no merit.*

The Tribe appears to be arguing that the length, substance and even case citations in Findleton's Motion to Dismiss and Motion to Request Judicial Notice must somehow create a defect in the subsequently filed Respondent's Brief that requires the reviewing court to strike the Respondent's Brief. (MTS 6-18, esp. 9-16.) Astonishingly, the Tribe has gone to *great and pointless lengths* to show that there is substantial similarity between some of the arguments in Findleton's respondent's briefs and his MTD and MRJN (MTS, Boland Declaration, pp. 19-20), as if such similarity were some kind of impermissible and unfair form of argument, as if Findleton were under some kind of implicit duty to raise an argument in one and only one filing in these appeals and nowhere else, as if

this reviewing court were required to restrict its review of each of Findleton's filings in complete isolation from every other filing. (MTS 6, ¶ 1:3-8; 8, ¶ 3:10-20; 9:1-21; 10:1-9, 10:21-23; 11-13:12-17.) This argument reveals such an egregious misunderstanding of the appellate review process as to beggar belief and must be deemed frivolous and unmeritorious in the extreme. More specifically, the Tribe takes meritless exception to the similarity of arguments in Findleton's three Respondent Briefs and his Motion to Dismiss and argues that any mention of the issues the Tribe specifically raises must be arbitrarily confined to only one of the Respondent's Brief or somehow Findleton will have made an impermissible "surreply." (MTS 10-13.) Without a doubt, "any reasonable attorney" or judge "would agree" that such a preposterous, obviously incorrect proposition "indisputably has no merit." (*Flaherty,* 31 Cal.3d at p. 650; *Rand,* 205 Cal.App.4th at p. 191.)

First, the Tribe, once again, fails to cite a single case, a single rule of civil procedure or a single rule of court in support of its bizarre theory and all of its arguments should, on that basis alone, be disregarded by the reviewing court and treated as *indisputably devoid of merit*. (MTS 6-18; *Flaherty,* 31 Cal.3d at p. 650; *Dabney,* 104 Cal.App.4th at p. 383; *Badie,* 67 Cal.App.4th at pp. 784-785.)

Second, *apparently ignoring* that the April 6, 2021 order of this Court expressly authorizing Findleton to file a motion to dismiss all five appeals, "including, if appropriate, A159823," the Tribe made the utterly frivolous argument in its MTS that Findleton's Motion to Dismiss must be stricken because it addresses arguments that "relate solely to discovery topics" in Appeal No. A159823. (Order issued Apr. 6, 2021, p. 2:19-22; MTS 9:8-12; 12:11-15.) The Tribe's claim that an argument that the reviewing court has expressly authorized Findleton to make is somehow impermissible and must be stricken, even assuming, *en arguendo,* there were any legal basis

for the Tribe's misplaced effort to have Findleton's two pending motions stricken, must be regarded as a contention so indefensibly groundless as having achieved the very apotheosis of being *indisputably devoid of merit*. (*Flaherty,* 31 Cal.3d at p. 650; *Dabney,* 104 Cal.App.4th at p. 383; *Badie,* 67 Cal.App.4th at pp. 784-785.)

Third, all of the arguments[7] which the Tribe incorrectly claims may be mentioned only once in a Respondent's Brief *may be robustly argued and should be robustly argued* in the three respondent's briefs and Findleton's Motion to Dismiss. The specific arguments identified by the Tribe in its MTS fall into three categories of issues: **(1)** the reviewing court's *lack of subject matter jurisdiction* to hear the appeals (MTS 11), **(2)** Findleton's request that the reviewing court exercise its discretion to dismiss all five appeals under the disentitlement doctrine arising from the Tribe's obstructive litigation misconduct in violation of the April 24, 2017 Order to Compel Arbitration (4CCT 1137-1139) and other lower court orders (MTS 11-13), and **(3)** the Tribe's waiver of any claim that the law of

---

7. The specific arguments that the Tribe *falsely claims* may not be mentioned both in a respondent's brief and motion to dismiss are as follows: **(1)** preemption or supersession of tribal court jurisdiction and tribal law by the Federal Arbitration Act ("FAA"), at MTD, Argument Part I.C.2, pp. 36-37, **(2)** preclusion of tribal court jurisdiction by mandatory equitable rules of issue preclusion or collateral estoppel, at MTD, Argument Part I.C.3, pp. 37-40, **(3)** the Tribe's fatal failure to file a mandatory *Hurtado* choice-of-law determination motion in the lower court, MTD, Argument Part I.C.5, pp. 43-44, **(4)** lack of jurisdiction of reviewing court to review interlocutory appeals, MTD, Argument Part. II, pp. 44-47, **(5)** lack of jurisdiction of reviewing court to hear appeals from non-parties tribal corporations, CEDCO and CVEE, MTD, Argument Part IV, p. 48, **(6)** lower court's discretion to ignore foreign tribal court orders based on foreign tribal law prohibiting post-judgment discovery in the lower court, MTD, Argument Part I.C.4, pp. 40-43, **(7)** lack of jurisdiction of the reviewing court to review that part of Appeal No. 159823 which contests the merits of the underlying Order to Compel Production, MTD, Argument Part III, pp. 47-48. (MTS 10-13.)

a foreign tribal jurisdiction should displace California and federal law in the lower court by having conspicuously failed properly to raise that issue in a *Hurtado* choice-of-law determination motion. (MTS 11; *Hurtado v. Superior Court* (1974) 11 Cal.3d 574, 581.)

The Tribe failed to understand, as reflected in its mistaken arguments regarding the similarity of various points in Findleton's Motion to dismiss and respondent's briefs (MTS 10-13), that Findleton quite properly and in full compliance with all applicable legal authority presented such points for *different purposes* in his MTD and his respondent's briefs.

Subject Matter Jurisdiction. It is *absolutely elementary* that arguments establishing the reviewing court's lack of *subject matter jurisdiction* may be argued in both the respondent's brief in connection with the underlying merits and in a motion to dismiss, where lack of subject matter jurisdiction is a primary legal basis for dismissal. (*Sequoia Park Assocs. v. County of Sonoma* (2009) 176 Cal.App.4th 1270, 1276 [commending counsel for thorough "attention" paid to "jurisdictional issues"]; *Marbury v. Madison* (1803) 5 U.S. 137, 175-180 [holding the high court lacked "original jurisdiction," after a thorough consideration of the merits, to issue a writ of mandamus ordering U.S. Secretary of State James Madison to deliver certain judicial commissions because the statute authorizing such original jurisdiction was unconstitutional]; 1 *CEB,* § 11.6, p. 11-9 [grounds for motion to dismiss]; 1 *Eisenberg,* §§ 5:9 – 5:37, pp. 5.2 – 5-22 [same].)

Further, contrary to the Tribe's idiosyncratic view of "common sense" (MTS 13:22), it is only to be expected that issues relating to subject matter jurisdiction and a long litany of misconduct triggering the application of the disentitlement doctrine should consume more space in a motion to dismiss than in a respondent's brief because such topics constitute the limited permissible bases for dismissal, whereas a respondent's brief must *also*

address the wide range of other issues raised, misrepresented or omitted in an appellant's opening brief. (1 *CEB,* § 11.6, p. 11-9 [grounds for motion to dismiss]; 1 *Eisenberg,* §§ 5:9 – 5:37, pp. 5.2 – 5-22 [same]; 2 *Eisenberg,* §§ 9:65 – 9:74, pp. 9-22 – 9-25 [discussing breadth of subject matter in respondent's brief].)

Violations of Lower Court Orders. The Tribe's frivolous mischaracterization of certain arguments in Findleton's Motion to Dismiss as an impermissible "surreply" reveals a fundamental misunderstanding of the purpose and meaning of the arguments raised in the respondent's briefs and the Motion to Dismiss. (MTS 10-13.) In the Motion to Dismiss, Findleton expressly challenged the Tribe's improper, repeated resort to two different putative tribal courts as instances of obstructive litigation misconduct in overt violation of the April 24, 2017 Order to Compel Arbitration (4CCT 1137-1139) and other lower court orders, thereby triggering the application of the disentitlement doctrine. (MTD 7-12, 14-25, 28-44.) As a means of establishing that the Tribe's repeated resort to two different putative tribal courts was improper and constituted unjustifiable litigation misconduct, Findleton expressly argued in Part I.C.1-5 of his Motion to Dismiss that the putative tribal courts had no jurisdiction or that the Tribe's resort to those tribal courts was otherwise abusive and impermissible. (MTD 34-44.) Those arguments did not constitute an impermissible surreply to any issue on the merits *per se*, but, rather, were framed as grounds for applying the disentitlement doctrine. (MTD 34-44.)

Findleton raised similar arguments challenging the validity and relevance of the putative tribal court orders in his Respondent's Brief in Appeal A159823 (RB 29-36), but not to show intentional obstructive litigation misconduct. Instead, such arguments in the RB were intended to show that the putative tribal court orders and recently enacted tribal law in

no way eliminated, restricted or impaired the Tribe's "possession, custody, or control" of the requested documents and constituted "absolutely *no legal bar* to compliance with the Order to Compel Production" (1CT 215-220) by the Tribe, its attorneys of record and the two tribal subsidiaries, CEDCO and CVEE. (MTD 29-37, at 29:7-11.) There was nothing improper in raising similar arguments concerning the conspicuous lack of enforcement jurisdiction of the two putative tribal courts over the arbitration agreement for two different purposes:

(1) to show that resort to the two putative tribal courts was *completely unjustifiable* and must, therefore, be considered *obstructive litigation misconduct* in violation of lower court orders to arbitrate and submit to post-judgment discovery (MTD 29-37); and

(2) to show that **(a)** any putative tribal court orders resulting from such illicit forum shopping, as well as any tribal laws on which such putative orders were supposedly based, presented *absolutely no legal bar to tribal compliance* with the Order to Compel Production and **(b)** such putative tribal laws and orders must be treated as legally void or without legal effect in a state superior court, and, consequently, should be ignored by California state courts. (RB 29-37.)

Consequently, the Tribe's claim that the similarity of these two sets of arguments, presented for two entirely *different purposes,* was somehow impermissible and constituted grounds for having the RB, MTD, and MRJN stricken is *indisputably devoid of merit.* (*Flaherty,* 31 Cal.3d at p. 650; *Dabney,* 104 Cal.App.4th at p. 383; *Badie,* 67 Cal.App.4th at pp. 784-785.)

Tribal Failure to File Required *Hurtado* Motion. Findleton offered his argument that the Tribe's conspicuous failure to properly raise its choice-of-law claim in a required *Hurtado* choice-of-law determination motion in the lower court in support of *two discrete points of law* in his

Motion to Dismiss and his Respondent's Brief. (*Hurtado v. Superior Court* (1974) 11 Cal.3d 574, 581.) In his Respondent's Brief, Findleton argued that the Tribe's failure to file the required *Hurtado* motion established that the putative tribal court order and related tribal law did not lawfully bar compliance with the Order to Compel Production because the Tribe waived its choice-of-law challenge by failing to file the required *Hurtado* motion in the lower court (RB 32-33). In Findleton's Motion to Dismiss, Findleton argued that the Tribe's failure to file the required *Hurtado* motion was further evidence of obstructive litigation misconduct that triggered the application of the disentitlement doctrine. By failing to file the required *Hurtado* motion, the Tribe had never properly brought before the state court its choice-of-law challenge and, thus, any subsequent reliance on tribal law or putative tribal court orders to disrupt lawfully convened judicial proceedings constituted unjustified obstruction in violation of the Order to Compel Arbitration (4CCT 1137-1139) and other superior court orders. (MTD 34, 43-44.) The Tribe's misplaced argument is so egregiously groundless as to be *indisputably devoid of merit*. (*Flaherty,* 31 Cal.3d at p. 650; *Dabney,* 104 Cal.App.4th at p. 383; *Badie,* 67 Cal.App.4th at pp. 784-785.)

5. The Tribe's argument that the *timing* of Findleton's MTD and MRJN was improper or unfair is indisputably devoid of merit.

The Tribe has untenably argued to this reviewing court that Findleton filed his MTD at a "disfavored time," without any coherent explanation, and falsely asserted that he "used 21 months between the time he first raised the disentitlement doctrine" and the date on which he filed his MTD and MRJN to prepare those motions. (MTS 7-8.)

First, this untenable argument (MTS 7-8) fatally ignores the incontrovertible fact that the timing of both Findleton's motion to dismiss

and his motion to request judicial notice was reviewed, approved and ordered by the reviewing court in its order of April 6, 2021 following Findleton's duly noticed April 5, 2021 Motion to Continue Date for Oral Argument. (Order issued Apr. 6, 2021, p. 2:19-27; Respondent Robert Findleton's Motion to Continue Date for Oral Argument (Apr. 6, 2021) pp. 2-13.) Thus, the Tribe may not be heard to complain (MTS 7-8) about a filing schedule with respect to which it had an opportunity to object, failed to object, and which shortly thereafter became the subject of court order. (Order issued Apr. 6, 2021, p. 2:19-27.) The Tribe must be held to have waived any right it might have had to object to the timing of the filing schedule by sitting on its rights and failing to make any timely response to duly noticed continuance motion. (Cal. Rules of Court, rule 8.54(c) (providing that the "failure to oppose a motion may be deemed a consent to the granting of the motion"].) On this basis alone, the Tribe's obscure claim that it was somehow prejudiced by the timing of the MTD and MRJN must be treated as *indisputably devoid of merit*. (*Flaherty,* 31 Cal.3d at p. 650; *Dabney,* 104 Cal.App.4th at p. 383; *Badie,* 67 Cal.App.4th at pp. 784-785.)

Second, the Tribe failed to a cite a single legal authority—not a case, nor a rule of civil procedure, nor a rule of court—that provided any legal grounds whatsoever in support of its argument that the timing of Findleton's motions or briefs constitutes a basis for striking any of Findleton's briefs or motions in this appeal and should be disregarded for want of any supporting legal authority alone. (*Dabney,* 104 Cal.App.4th at p. 383; *20th Century,* 86 Cal.App.4th at p. 284; *Badie,* 67 Cal.App.4th at pp. 784-785; *Horowitz,* 79 Cal.App.3d at p. 138.) Further, what scant authority the Tribe does cite, *it inexcusably and egregiously misrepresents*. The Tribe falsely and misleadingly presents the following string citation in support of the proposition that "there is a strong policy preference to hear

motions to dismiss as early in the appellate process as possible." (MTS 16:14-16.) That quoted description is a gross misrepresentation of both *Wende* and *Sade*:

> See, e.g., *People v. Wende* (1979) 25 Cal. 3d 436, 443, (disapproved on other ground[s] [sic] by, *In re Sade C*. (1996) 13 Cal. 4th 952) ("Once the record has been reviewed thoroughly, little appears to be gained by dismissing the appeal rather than deciding it on its merits.")

Unfortunately for the Tribe, nowhere in *Wende* or *Sade* does either court state such a "strong policy preference" to hear motions to dismiss as early as possible in the appellate process. (*People v. Wende* (1979) 25 Cal.3d 436, 436-447 ["*Wende*"].) That is a *complete fabrication* of defense counsel. Further, the above parenthetical quotation from *Wende* is precisely the basis on which the California Supreme Court did, in fact, disapprove of *Wende,* making the explanatory phrase in the Tribe's citation of subsequent history that *Wende* was "disapproved on other ground[s] [sic]" equally *false and misleading*. (*In re Sade C.* (1996) 13 Cal.4th 952, 994, fn. 22 ["*Sade*"].*)* Further, *Wende* concerned a technical point of *appellate criminal procedure* that *Sade* and the California appellate courts have held to be inapplicable to *civil appeals.* (*Sade,* 13 Cal.4th at pp. 978-983; *People v. Smith* (2005) 127 Cal.App.4th 896, 899; *Wende,* 25 Cal.3d at p. 440; *In re Olsen* (1986) 176 Cal.App.3d 386, 389-392; *Berger,* 163 Cal.App.3d at p. 1117, fn. 2; MTS 6-18.) The failure to cite supporting case law and the Tribe's egregious misrepresentation of the scant authority cited would lead "any reasonable attorney" to "agree" that such an unsupported misrepresentation of those two cases "indisputably has no merit." (*Flaherty,* 31 Cal.3d at p. 650; *Rand,* 205 Cal.App.4th at p. 191; *Badie,* 67 Cal.App.4th at pp. 784-785.)

Third, Findleton has offended no extant California decision, no rule of civil procedure, no rule of court in filing his motion to dismiss and

motion to request judicial notice when he filed them in full compliance with the April 6, 2021 court order. (Order issued Apr. 6, 2021, p. 2.) As a leading treatise on California appellate procedure has emphasized, unless otherwise ordered by the court, there "is no prescribed time period for filing a motion to dismiss" and that California appellate courts may prefer to "defer a decision" on a motion to dismiss to permit a full understanding of the relevance of the merits to the dismissal decision. (1 *Eisenberg*, §§ 5:39, 5:42, pp. 5-22, 5-23; *Ferraro v. Southern California Gas Co.* (1980) 102 Cal.App.3d 33, 40, superseded by statute on other grounds as stated in *Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1336-1337 [reviewing court deferred ruling on respondent's motion to dismiss based on argument by party that required "delving into the record and the merits of the appeal"]; *Stockton Theaters, Inc. v Palermo* (1952) 109 Cal.App.2d 616, 619, disapproved in part on other grounds in *Stockton Theatres, Inc. v. Palermo* (1956) 47 Cal.2d 469, 475 [same]; *CEB,* §§ 11.7, 11.82, pp. 11-91 – 11-10 [motion to dismiss], 11-56 – 11-57 [motion to request judicial notice].) Again, the Tribe's timing argument is "totally and completely devoid of merit." (*Flaherty,* 31 Cal.3d at p. 650; *Rand*, 205 Cal.App.4th at p. 191.)

Fourth, the Tribe's timing argument conveniently overlooks the telling fact that the Tribe had essentially the same amount of time to prepare a response to Findleton's disentitlement argument as Findleton had to prepare it in the first instance given that Findleton had so transparently placed the Tribe on notice of his intention to pursue that legal theory "21 months" prior to filing his MTD. (MTS 7-8.) Thus, the Tribe, far from being disadvantaged by Findleton's early revelation of his appellate legal strategy, had the same opportunity to research and develop a defense to the disentitlement argument as Findleton had to research and develop the original argument. The Tribe's *unsupported* timing arguments are completely meritless and must be deemed *indisputably devoid of merit*.

(*Flaherty,* 31 Cal.3d at p. 650; *Rand,* 205 Cal.App.4th at p. 191; *Badie,* 67 Cal.App.4th at pp. 784-785; *Dabney,* 104 Cal.App.4th at p. 383.)

6. The Tribe's *mistaken*, *impermissible opposition* argument that Findleton's Motion to Dismiss depends on a consideration of the merits must be deemed *indisputably devoid of merit*.

Confusingly, the Tribe cites two cases, *Williams* and *Johnson,* in support of its untenable argument that there "should be" a rule restricting the word count and page length of appellate motions and memoranda. (MTS 13-14, citing *Williams v. Duffy* (1948) 32 Cal.2d 578 ["*Williams*"], cert. den. (1948) 335 U.S. 840 [93 L.Ed. 391, 69 S.Ct. 57] and *Johnson v. Sun Realty Co.* (1932) 215 Cal. 382 ["*Johnson*"].) Unfortunately for the Tribe, neither *Williams* nor *Johnson* says anything whatsoever about restricting the word count and page length of appellate motions and memoranda. (*Williams,* 32 Cal.2d at pp. 578-583; *Johnson,* 215 Cal. at pp. 382-383.) Thus, for the proposition for which *Williams* and *Johnson* are cited, they are totally inapposite and offer no support whatsoever. (MTS 13-14, citing *Williams,* 32 Cal.2d at pp. 578-583; *Johnson,* 215 Cal. at pp. 382-383.) Thus, as the Tribe mistakenly uses these two cases in the arguments in which they are cited, such arguments must be deemed lacking any citation to *supporting* legal authority and treated as *indisputably devoid of merit*. (*Flaherty,* 31 Cal.3d at p. 650; *Rand,* 205 Cal.App.4th at p. 191; *Badie,* 67 Cal.App.4th at pp. 784-785; *Dabney,* 104 Cal.App.4th at p. 383.)

Elsewhere in the Tribe's rambling, disorganized MTS, the Tribe makes two similar untethered, false and misleading assertions: **(1)** Findleton's Motion to Dismiss "either invites or requires an examination of the entire record" (MTS 12:4-5), and **(2)** his MTD "either invites or requires an examination of the entire record for Appeal A159823" (MTS 13:12-13). No legal authority whatsoever is cited in support of either claim

in the context in which they are made in the MTS nor does the Tribe make any reference to *Johnson, Williams,* or *CJA Corporation* in support of those claims. (*Williams,* 32 Cal.2d at pp. 578-583; *Johnson,* 215 Cal. at pp. 382-383; *CJA Corporation* 86 Cal.App.4th at p. 673.) Consequently, these two untethered claims must be treated as completely unsupported by any legal authority in context as the appellate court may "not develop" appellant's arguments for it nor "serve as [appellant's] backup appellate counsel." (*Dills,* 28 Cal.App.4th at p. 891, fn. 1; *Mansell,* 30 Cal.App.4th at pp. 545-546.) Without more, this argument must be treated as *indisputably devoid of merit*. (*Flaherty,* 31 Cal.3d at p. 650; *Rand,* 205 Cal.App.4th at p. 191; *Badie,* 67 Cal.App.4th at pp. 784-785; *Dabney,* 104 Cal.App.4th at p. 383.)

Further, since the Tribe fatally failed to cite any page or portion of Findleton's Motion to Dismiss, now a part of the appellate record, in which the disposition of the MTD "invites or requires" an examination of the "*entire record,*" fatally pretermitted any elucidating analysis or discussion (MTS 12:4-5 [italics added]; 13:12-13), the reviewing court should disregard the untethered claims and treat them as *indisputably devoid of merit* as a Court of Appeal is "not required to search the record to ascertain whether it contains support for [appellant's] contentions." (*Mansell,* 30 Cal.App.4th at p. 545; *Central Valley Gas Storage, LLC v. Southam* (2017) 11 Cal.App.5th 686, 694-695 [same]; *Inyo Citizens for Better Planning v. Inyo County Board of Supervisors* (2009) 180 Cal.App.4th 1, 14 [same]; *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16 [same]; *Green v. Green* (1963) 215 Cal.App.2d 31, 35 [same]; *Flaherty,* 31 Cal.3d at p. 650; *Badie,* 67 Cal.App.4th at pp. 784-785.)

Finally, the Tribe's improper, unsupported argument that the disposition of Findleton's motion to dismiss requires a consideration of the merits is an *impermissible opposition argument*, not a judicially cognizable argument about format and word count, actually only applicable to *briefs*,

for an equally impermissible motion to strike the motion of an opposing party. (Cal. Rules of Court, rule 8.204, subds. (b), (c) & (e) [applicable by its terms only to *briefs,* but mistakenly invoked by the Tribe to apply to motions]; *Ferraro*, 102 Cal.App.3d at p. 40 [discussing opposition to motion to dismiss when consideration of merits required]; 1 *Eisenberg,* § 5:42, at pp. 5-22 – 5-23.) Thus, while falsely accusing Findleton on attempting to take a "second bite at the apple" in his MTD, the Tribe *actually does* improperly and impermissible raise opposition arguments to the motion to dismiss in its equally improper and impermissible MTS in a transparent effort to file two oppositions to the MTD, instead of the one and only opposition allowed by Rule 8.54(a)(3). (Cal. Rules of Court, rule 8.54, subd. (a)(3); Application for Extension of Time to File Motion to Strike (June 13, 2021), supporting June 8, 2021 Boland Declaration, p. 6:14, ¶ 3 (p. 2:14 of declaration), ¶ 3.)

Consequently, Findleton respectfully requests that this reviewing court impose as a sanction that the Tribe be barred by court order from filing any further opposition to his MTD or MRJN on August 13, 2021 pursuant to the reviewing court's power to control its own proceedings and preserve order, or, alternatively, Findleton respectfully requests that, at the very least, this reviewing court bar the Tribe from rearguing the same *meritless claims* it has presented its MTS in its opposition papers to Findleton's MTD and MRJN due August 13, 2021. (*Dana,* 90 Cal.App.4th at p. 147; *Styles,* 164 Cal.App.4th at pp. 1169-1170; *Bloniarz,* 70 Cal.2d at pp. 147-148; *Warren,* 57 Cal.App.4th at pp. 1198-1199; Code Civ. Proc., § 187; *Flaherty,* 31 Cal.3d at p. 650; *Badie,* 67 Cal.App.4th at pp. 784-785.)

///

///

///

III. SINCE THE FILING OF THE MOTION TO STRIKE BY THE TRIBE AND ITS COUNSEL OF RECORD UNDER RULES 8.276(a)(4) AND 8.492(a)(2) CONSTITUTES AN "UNREASONABLE VIOLATION" OF RULES 3.10, 3.1113(d), 8.4, 8.54(a)(3), AND 8.204(e)(2), THE REVIEWING COURT SHOULD SANCTION THE TRIBE AND ITS COUNSEL OF RECORD.

First, two different rules of the California Rules of Rules of Court, rules 8.276(a)(4) and 8.492(a)(2), jointly authorize this Motion for Sanctions in response to the Tribe's "unreasonable violations" of the California Rules of Court as embedded in its frivolous Motion to Strike. (Cal. Rules of Court, rules 8.276, subd. (a)(4) & 8.492, subd. (a)(2); *Kim v. Westmoore Partners, Inc.* (2012) 201 Cal.App.4th 267, 290-291 [finding "unreasonable violation" after discovery that counsel's professed need for time extension was feigned].) Undoubtedly, an "appellate court has the authority to impose sanctions to ensure that the purposes of its rules of court are achieved and to discourage the future violations of court rules." (*Campagnone,* 163 Cal.App.4th at p. 570; *Dana,* 90 Cal.App.4th at p. 147; Code Civ. Proc., § 187.)

Second, the Tribe has unreasonably and egregiously violated *five rules* of court by filing its meritless, dilatory, obstructive Motion to Strike:

(1) **Rules 3.10 and 3.1113(d)**, by their express terms, only apply to a "[m]emorandum in support of motion" (Rule 3.1113(a)) filed in "civil cases in the superior courts . . . unless otherwise provided by a statute or rule in the California Rules of Court" (Rule 3.10). Thus, under both 8.276(a)(4) and 8.492(a)(2), the Tribe's filing of its groundless MTS is an "unreasonable violation" of Rule 3.1113(d) when the Tribe frivolously based its motion of its alleged violation and falsely asserted Findleton violated Rule 3.1113(d) when it knew or should have known that such rule did not apply to appellate memoranda under rule 3.10. (MTS 3-6, 15-18; Cal. Rules of Court, rules 3.10 & 3.1113, subds. (a) & (d).)

(2) **Rules 8.4 and 8.204(e)(2),** by their express terms, only apply to an *appellate* motion to strike a *brief* of an opposing party, not the *motion* of an opposing party (Rule 8.204(e)(2)) in "[a]ppeals from the superior courts" (Rule 8.4). Thus, under both 8.276(a)(4) and 8.492(a)(2), the Tribe's filing of its groundless MTS is an "unreasonable violation" of Rule 8.204(e)(2) because a *motion to strike* is not an authorized filing under Rule 8.204(e)(2) against the *motion* of an opposing party and the Tribe knew or should have known that Rule 8.204(e)(2), by its express terms, did not permit the Tribe to file a *motion to strike* the *motion* of another party. (MTS 3-6, 10, 16, 17; Cal. Rules of Court, rules 3.10 & 3.1113, subds. (a) & (d).)

(3) **Rules 8.4 and Rule 8.54(a)(3),** by their express terms, only permit a party to file an "opposition" to a *motion, not a motion to strike* (Rule 8.54(a)(3)), and that the express reference to an "opposition" in the single rule of court, i.e., Rule 8.54, devoted primarily to "Motions," excludes any other response, such as a motion to strike, not expressly authorized as a permissible response to a *motion* filed by an opposing party under the venerable canon of construction, "*expressio unius est exclusio alterius,*" which the California Supreme Court has defined to mean, "[t]he expression of some things in a statute [or rule of court or contract] necessarily means the exclusion of other things not expressed." (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852 [applying the canon to hold that "expression of preclusion by an *acquittal* excludes preclusion in other regards not expressed"] [italics in original]; *Dyna-Med, Inc. v. Fair Employment Housing Commission* (1987) 43 Cal.3d 1379, 1391, fn. 13; *Henderson v. Mann Theatres Corp.* (1976) 65 Cal.App.3d 397, 403.) Thus, when the Tribe filed a motion to strike, when Rules 8.4 and 8.54(a)(3) only authorized it to file a single "opposition," such filing constituted an "unreasonable violation" of those two rules under the prohibition embodied in both 8.276(a)(4) and 8.492(a)(2). (MTS 3, 14, 15; Cal. Rules of Court, rules 8.4, 8.54, subd. (a)(3), 8.276, subd. (a)(4) & 8.492, subd. (a)(2).)

Third, this reviewing court should not hesitate to **sanction both the Tribe and defense counsel Boland and Anderson** given that by filing such

a groundless Motion to Strike in the context of their history of flagrant, repeated dilatory bad faith litigation misconduct (see Part IV.B., *supra*), they have committed a blatantly "unreasonable violation" of the *five* above-referenced California Rules of Court under Rules 8.276(a)(4) and 8.492(a)(2). Their reckless or deliberate violation of these rules of court: **(1)** inexcusably disrupts and delays the appellate proceedings in bad faith, **(2)** unnecessarily increases Findleton's appellate litigation costs by requiring him to file an "opposition" in response or risk being deemed to have consented to the Tribe's groundless Motion to Strike under Rule 8.54(c), **(3)** irresponsibly increases the costs to the taxpayers and the Court of Appeal arising from the processing of the Tribe's frivolous Motion to Strike, and **(4)** vexatiously taxes the limited human, material and financial resources of the Court of Appeal, Findleton and his counsel with an utterly pointless Motion to Strike that any reasonable attorney would agree is *indisputably devoid of any merit whatsoever*. (*Flaherty,* 31 Cal.3d at p. 650; *Badie,* 67 Cal.App.4th at pp. 784-785; Cal. Rules of Court, rules 187, 8.276, subd. (a)(4), 8.492, subd. (a)(2); *Dana,* 90 Cal.App.4th at pp. 146-147; *Styles,* 164 Cal.App.4th at pp. 1169-1170; *Campagnone,* 163 Cal.App.4th at p. 570 ["unreasonable violation" of Appellate Rules sanctionable under Rule 8.276(a)(4)].)

IV. SINCE THE TRIBE'S MOTION TO STRIKE ITSELF CONSTITUTES *CLEAR AND CONVINCING EVIDENCE* THAT IT WAS FILED FOR *THE SOLE PURPOSE OF CAUSING UNNECESSARY DELAY*, THE REVIEWING COURT SHOULD SANCTION THE TRIBE AND ITS COUNSEL OF RECORD FOR DILATORY LITIGATION MISCONDUCT.

A. The Court of Appeal possesses inherent authority to impose sanctions against a party and its counsel where a frivolous motion is filed solely for purposes of delay.

Although Rule 8.276(a)(1) only expressly mentions as grounds for a motion for sanctions against a party and its counsel of record the act of "appealing solely to cause delay," and does not expressly mention *delay* as

grounds for a motion for sanctioning a "[f]rivolous motion" in Rule 8.276(a)(3), the statutory and California case law is clear that a Court of Appeal retains the inherent power to sanction a motion filed *solely to cause delay* without authorization from a rule of court as an integral aspect of its inherent power to "control its own proceedings" and "preserve order in the court." (*Dana,* 90 Cal.App.4th at p. 147 [internal quotation marks omitted]; *Styles,* 164 Cal.App.4th at pp. 1169-1170; *Bloniarz,* 70 Cal.2d at pp. 147-148; *Warren,* 57 Cal.App.4th at p. 1199; Code Civ. Proc., § 187.)

B. Clear and convincing evidence appears both *on the face of the Tribe's Motion to Strike* and in the Tribe's *pattern of litigation misconduct* that it was filed *solely for purposes of delay*.

Although the Tribe's Motion to Strike is misleadingly entitled as if it were intended to apply only to Findleton's Motion to Dismiss and Motion to Request Judicial Notice, the Tribe revealed for the first time in Part IV of its MTS, entitled "Relief Requested" (MTS 17 [original capitalized in boldface]), that "the Respondent's Brief should be stricken with Respondent required to file a new brief that meets the *statutory requirements* [sic] for memoranda under CRC 3.1113(d)." (MTS 17:7-9, ¶ 2 [italics added].) Such a request is, of course, indisputably devoid of merit on its face, as has already been established (see Argument, II.B.1., *supra*), since *superior court* Rule 3.1113(d) obviously does not provide a legal basis for striking an *appellate brief* and rules of court obviously do not create "statutory requirements" (MTS 17:8, ¶ 2) because such court rules are lexically subordinate to statutes and are themselves not statutes under the California Constitution. (Cal. Const., art. VI, § 6, subd. (d*); California Court Reporters v. Judicial Council of California* (1995) 39 Cal.App.4th 15, 21-22, 33-34.)

In the very next sentence of the MTS the Tribe asserts with *incontestable dilatory intent* that "the Respondent should be required to file

the new brief with Arguments I(C)(2)-(5), II, III and IV all stricken." (MTS 12-10-12, ¶ 2.) The Tribe is *apparently* referencing four arguments that it has mistakenly claimed appear in the Respondent's Brief for Appeal No. A159823, but there is not section "I(C)(2)-(5)" in that Respondent's Brief, rendering the request incoherent. (*Compare* RB 24-25 *with* MTD 32-43.) Essentially, insofar as this confused request can be rationally deciphered, the Tribe essentially asked that the Respondent's Brief be stricken because of some imaginary defect the Tribe thinks it has discovered in Findleton's MTD and MRJN. (MTS 17.) The only effects of pointlessly striking the Respondent's Brief and requiring its refiling *unchanged* is to cause an *unreasonable delay the appeal* and an *unreasonable increase in Findleton's appellate litigation expenses.*

Additional clear and convincing evidence that the Tribe's frivolous Motion to Strike was filed *solely for purposes of delay* is revealed in its unprecedented request that the reviewing court "should assert its discretion to find the MTD and combined [M]RJN are excessive" and strike them both, without any violation of any applicable legal authority, and require Findleton to refile those two motions with an unspecified "sensible amount of pages/words" consistent with the Tribe's idiosyncratic sense of the "spirit and intent of motion practice." (MTS 17:19-21, ¶ 2.) This is self-evidently an illicit appeal to enlist the reviewing court's assistance in causing *unnecessary delay* without any basis in law or fact.

The Tribe did not specify any legally required, concrete correction that must be made, but rather, just asked, in effect, for *delay.* Tellingly, the Tribe did not recommend to the reviewing court that it merely "[d]isregard" any alleged "noncompliance" under Rule 8.204(e)(2)(C), but rather insisted on the harshest, most time-consuming remedy under Rule 8.204(e)(2)(B) for redressing an alleged defect in a "brief," not a motion: striking "the brief and filing a new brief within a specified period of time." (Cal. Rules

of Court, Rule 8.204, subd. (e)(2)(B) & (C); MTS 17, ¶ 2.) This frivolous invocation of an inapplicable rule of court limited to *briefs* was animated *solely by an intent to cause unnecessary delay*, to prolong the appeal as long as possible with the hope of causing maximum expense and vexation to Findleton and his counsel, as has been characteristic of the Tribe's filings throughout this litigation. (See examples cited in the following paragraph.)

The record of these five appeals reveals a *relentless effort to delay court proceedings and abuse the judicial process* by filing utterly frivolous, groundless, procedurally improper papers in the trial and appellate courts:

(1) Impermissible Response to Notice of New Authority. As recently as July 2, 2021, while this motion for sanctions was being prepared, the Tribe and defense counsel Boland submitted to the reviewing court *yet another illicit, impermissible response* (July 2, 2021 Boland Letter) to Findleton's entirely proper June 23, 2021 letter advising the reviewing court of "significant new authority . . . that was not available in time to be included in the last brief that the party filed or could have filed" pursuant to California Rules of Court, rule 8.254, and First District Local Rule 16. (Cal. Rules of Court, rule 8.254; Ct. App., First Dist., Local Rules of Ct., rule 16, New Authority Prior to Oral Argument ["Local Rule 16"].)

(a) Neither Rule 8.254 nor Local Rule 16 authorize the opposing party to file a response letter to a letter properly submitted pursuant to Rule 8.254, nor does any extant California judicial decision. (*Id.*) Indeed, "Rule 8.254 does not provide for any response to a notice of new authority" and, if any response is desired, the opposing party "must request permission to file a supplemental brief responding to the new authority." (Simms, Keeping the Court Informed of New Authority While Your Appeal is Pending (Dec. 2019) (13:12) *Plaintiff* at pp. 7, 8, 10, 12, 14, 16, esp. at p. 12, cols. 1-2.)

(b) Rule 8.254 expressly provides that "[n]o argument or other discussion of the authority is permitted in the letter." (Cal. Rules of Court, rule 8.254, subd. (b).) Local Rule 16 contains a virtually identical prohibition. (Ct. App., First Dist., Local Rules of Ct., rule 16, New Authority Prior to Oral Argument.) Despite these express prohibitions, the Tribe and defense counsel Boland included in their impermissible response letter, filed without leave of the court, extensive legal argument and discussion, including a 378-word block quotation from *Santa Ana Hospital Medical Center v. Belshe* (1997) 56 Cal.App.4th 819, 830–31. (July 2, 2021 Boland Letter, pp. 1-2.) Thus, the Tribe and counsel Boland wrongfully arrogated unto themselves the exclusive right to engage in otherwise forbidden legal argument despite its clear prohibition. (Cal. Rules of Court, rules 8.254, subd. (b), 8.276, subd. (a)(4) & 8.492, subd. (a)(2).)

(c) Compounding its violation of Rule 8.254, the Tribe and counsel Boland requested the reviewing court, without citation to any legal authority whatsoever, to "either strike or disregard" Findleton's notice of new authority. (July 2, 2021 Boland Letter, p. 2, ¶ 6.) This rogue request made *without seeking prior leave* is itself real time evidence of a continuing pattern illicit litigation misconduct of the Tribe and counsel Boland, the only purposes of which are to cause unnecessary delay, confusion, vexation, avoidable expense, and attempt to secure unfair adversarial advantage.

(2) Groundless Amended Motion for Clarification. On March 13, 2019, the Tribe, through its counsel Boland, filed a self-styled, so-called "Amended Motion for Clarification" ("AMC") (7CCT 1898-1906), *without any basis in statutory authority whatsoever,* requesting, incredibly, despite the name of the filing, the revision of four previously adjudicated and issued superior court orders to add surplusage limiting "recourse" to "casino assets" (7CCT 1899:10-11) as part of a scheme to prohibit Findleton from

asking any questions about non-casino assets. (See discussion in A158173, RB 20-21.) The Tribe then frivolously appealed the order (8CCT 2390-2394) denying the AMC although the AMC was *a nonappealable interlocutory order* and lacked *ab initio* any statutory basis whatsoever. (Notice of Appeal filed June 25, 2019; 9CCT 2602.)

(3) Groundless Motion for Exemption. On February 11, 2021, the Tribe, through its counsel Boland, filed an *objectively improper and uncognizable* "Motion for Exemption from Enforcement of a Money Judgment" ("MFE") (6CCT 1642-1659) in *overt violation* of Section 708.120 of the Code of Civil Procedure which only authorizes such an MFE after the judgment debtor has **(a)** initiated a third party debtor's examination process by personal service of an order to appear for examination on both the judgment debtor and the third party "[n]ot less than 10 days prior to the date set for the examination," which had not occurred when the MFE was filed, and **(b)** the judgment debtor then eligible to apply for exemption files the MFE "with the court" and personally serves "the judgment creditor not later than three days before the date set for the examination," although no date for a third party examination had then been set or even requested by the judgment creditor. (Code Civ. Proc., § 708.120, subds. (a)-(b); 6 Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2018) § 6:1351, p. 6G-26; A158173, RB 32-33.) Despite the Tribe's obvious and egregious error, it filed a frivolous notice of appeal (9CT 2603) of the order (8CCT 2385-2389) denying its improper MFE on June 25, 2019. (A158173, RB 14.)

(4) Improper Submission of Letters to Trial Court Judge. On or around June 19, 2019, non-parties CEDCO and CVEE, through their own attorney, Sara Dutschke Setshwaelo, Esq., who has never filed any notice of appearance in this case as attorney to CEDCO and CVEE, sent two almost identically worded personal letters, not filed with the superior court clerk, to Superior Court Judge John A. Behnke, which contested the "general

jurisdiction," by which was clearly meant the *subject matter jurisdiction*, of the lower court, and asserted a generalized claim that the lower court has violated the due process rights of CEDCO and CVEE. (2CT 303-304, 322-323 [discussing numerous state and federal cases concerning tribal sovereign immunity from assertions of subject matter jurisdiction and making due process claim].) These letters clearly sought relief on a basis other than a motion to quash for lack of personal jurisdiction and so must be deemed to constitute a general appearance. As non-party corporations represented by an attorney who had failed to file a notice of appearance on their behalf, the letters were not judicially cognizable. (Code Civ. Proc., § 1014; *CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1145; *United States v. High Country Broadcasting Co.* Inc. (9th Cir. 1993) 3 F.3d 1244, 1245.) These two letters were later improperly filed under Rule 3.1312(a) with the lower court by the Tribe's defense counsel, Glenn W. Peterson, Esq., as unmarked exhibits (2CT 300:13-16, 303-305, 322-324, 354) to the frivolous Tribe's January 6, 2020 *so-called* Notice of Disapproval (2CT 299-341), later rejected by the lower court *sua sponte* as time-barred. (2CT 354-360; Cal. Rules of Court, rule 3.1312, subd. (a).)

(5) Impermissible Notices of Unavailability. The Tribe's defense counsel Boland, Anderson, and Peterson deliberately delayed the lower court proceedings further by each serving on Findleton an improper, invalid, so-called *notice of unavailability* (9CCT 2592-2594, 2595-2597, 2598-2600) which they mistaken suggested was authorized by their misreading of *Tenderloin Housing Clinic, Inc. v. Sparks* (1992) 8 Cal.App.4th 299, 307 ("*Tenderloin*"), long after the Court of Appeal had decided in *Carl v. Superior Court* (2007) 157 Cal.App.4th 73, 74-76, that "[n]othing in *Tenderloin* . . . expressly condones the practice [of filing notices of unavailability] that has grown up around its name. *It has simply been made up*." (*Id.,* at p. 76 [italics added].) Indeed, *Carl* concluded that "a 'notice of unavailability' is ***not a***

fileable document under the rules of court and will be returned to counsel." (*Id.,* at p. 77 [emphasis added].)

(6) Tribe's History of Filing False Declarations. On October 24, 2019, the day before the scheduled reconvening of the *first* debtor's examination in this case that Findleton attempted to hold on April 26, 2019, later described by the lower court as a "sham" (8RT 667:18), the Tribe served and filed, *inter alia,* four boilerplate declarations (11CCT 3190-3252) falsely stating under penalty of perjury that the designated tribal witnesses had been served with *unsigned* orders to appear for examination, although the two registered process servers who served those orders attested in their proofs of service or "returns" and in subsequent declarations that they had served signed orders. (1CT 19:26-28, 20:1-19, 27:11-28, 28:1-24, 31:9-28, 32-1-28, 33:1-27.) The lower court expressly declined to rule on whether the Tribe's declarations were false, thereby leaving in place the *unrebutted presumption that the facts stated in the proof of service or "return" signed by the registered process servers are correct* under Evidence Code Section 647. (Evid. Code, § 647; *Palm Property Investments, LLC v. Yadegar* (2011) 194 Cal.App.4th 1419, 1428; 5RT 375:11-12; 6RT 493:10-19.) The Tribe has previously filed a false declaration in the lower court, as this reviewing court has itself pointed out. (*Findleton v. Coyote Valley Band of Pomo Indians* (2016) 1 Cal.App.5th 1194, 1207, fn. 7 [noting false, uncorrected statement in declaration of the Tribe's former appellate counsel Lester J. Marston, Esq.] ["*Findleton I*"]) In addition, in her declaration of October 31, 2013 (2CCT 316-319), Tribal Secretary Candice Lowe falsely stated that the 1998 Tribal Claims Ordinance had never been repealed. (2CCT 318, ¶ 8, lines 5-8.) (Findleton's Motion to Augment the Record on Appeal, Exh. 1 [Plaintiff's Status Conference Statement] (Nov. 4, 2019) pp. 1-13, at p. 2, ¶ (3), & p. 4, ¶ (4); Findleton's MRJN, vol. 7, Exh. 20-A, pp. 1248-1252, Exh. 20-B, pp. 1253-1260, and 20-C, pp. 1261-1265.)

(7) Groundless Notice of Disapproval. On January 6, 2020, the Tribe, through its defense counsel Glenn W. Peterson, Esq., *erroneously filed,* pursuant to Rule 3.1312(a), a *time-barred, meritless* Defendant's Notice of Disapproval and Objection to Proposed Order Granting Motion to Compel ("Notice of Disapproval") (2CT 299-341) in a transparent attempt to relitigate the December 13, 2019 Order to Compel Production (1CT 215-220) with arguments it failed to raise in its December 2, 2019 opposition (7CCT 170-175) to Findleton's Motion to Compel (1CT 61-169) and in its December 19, 2019 reply and objections (not in record) to Findleton's claimed costs and fees. (1CT 221-249, 250-294; see RB 21-22 [discussion of events, filings and rulings on January 6, 2020]; Cal. Rules of Court, rule 3.1312(a) [permitting party only to notify opposing party of disapproval, *not file disapproval with the court*, and only where the court has not otherwise made an order varying the review procedure and the disapproving party has not waived its right to disapprove, both of which occurred here]; 8RT 670:8-12, 671-672:1-16 [Tribe's express consent to alternate review procedure and waiver]; 8CCT 670:3-25, 671-672:1-16 [lower court ordered alternative review procedure]; (2CT 354-360, at 354:20-23 [lower court rejects Tribe's disapproval as time-barred and Tribe failed to appeal that order].)

In light of this reprehensible procedural history of inexcusable dilatory tactics, the Tribe's and its counsel's latest experiment in obstructive, legally unauthorized filing, as reflected in its Motion to Strike, must be seen as part of an *egregious pattern of litigation misconduct undertaken solely for purposes of delay*. Unless the Tribe and its legal counsel are held accountable for its indisputably meritless Motion to Strike, their frivolous dilatory tactics will likely continue unabated and cause more unnecessary delay, expense, confusion, vexation, obstruction, and inexcusable abuse of the judicial process. (Cal. Rules of Court, rules 8.254, subd. (b), 8.276, subd. (a)(4) & 8.492, subd. (a)(2).)

V. THE RESPONDENT'S BRIEF FULLY COMPLIES WITH THE CONTENT, WORD COUNT AND FORMAT REQUIREMENTS OF RULE 8.204.

Since the Respondent's Brief in Appeal No. A159823 fully complies with all applicable requirements of Rule 8.204 of the California Rules of Court, there is *absolutely no legal basis* to strike it and the Tribe's Motion to Strike must be found to be completely without merit and frivolous in the extreme under Rule 8.276(a)(3). (Cal. Rules of Court, rules 8.204, 8.276, subd. (a)(3).) Even the Tribe's defense counsel has expressly conceded that she personally "verified" that the word count of "13,876 words" (RB 58) presented in Findleton's Certificate of Compliance (RB 58) and found it to be exactly correct. (MTS, Boland Declaration, p. 20, ¶ 5:15-16.) So, there is no violation of the 14,000 word count limit of Rule 8.204(c)(1) and no grounds to strike the Respondent's Brief on that basis. (Cal. Rules of Court, rule 8.204, subd. (c)(1).)

VI. PRAYER FOR RELIEF

WHEREFORE, Respondent Robert Findleton respectfully requests that this reviewing court impose sanctions against Appellant Coyote Valley Band of Pomo Indians and its counsel of record, Little Fawn Boland Esq., and Keith Anderson, Esq., as follows:

(1) an award of attorney's fees in the amount of **$35,490.00** by express order of the reviewing court as permitted by Rule 8.276(d)(2) and the reviewing court's decision in *Findleton II,* 27 Cal.App.5th at pp. 569-573 [permitting award of attorney's fees against the Tribe incurred in the enforcement of arbitration agreement] assessed jointly and severally against the Tribe and its defense counsel Boland and Anderson, the authors of the frivolous motion to strike;

(2) an award of costs in the amount of **189.50** as permitted by Rule 8.278 (Cal. Rules of Court, rule 8.278);

(3) an award of sanctions payable to the reviewing court based on the cost to the taxpayers of processing the frivolous motion in an amount to be determined by the court and assessed directly against defense counsel Boland and Anderson, or, alternatively, in an amount in no event less than $5,000;

(4) a sanctions order that either:

(6) treats the frivolous, completely meritless Motion to Strike as the Tribe's *oppositions* to Respondent's Motion to Dismiss[8] and Motion to Request Judicial Notice, [9] now due on or before August 13, 2021, since Rule 8.54(a)(3) only permits the filing of *one opposition* to each of Respondent's motions; or, alternatively,

(7) prohibits the Tribe from rearguing any legal claim raised in its frivolous Motion to Strike in both oppositions to Respondent's Motions to Dismiss and Motion to Request Judicial Notice as either **(i)** already having been decided under the doctrine of law of the case or **(ii)** as an issue sanction imposed pursuant to the court's inherent power to control its own proceedings. (Code Civ. Proc., § 187; *Dana,* 90 Cal.App.4th at pp. 147-148 [holding such "inherent power" exists].)

(5) In the event that the appellate court determines that it must review the record before deciding whether the Tribe's Motion to Strike is frivolous, dilatory and otherwise in violation of the California Rules of Court, Findleton requests that this reviewing court expressly affirm on the merits the Order to Compel Production of the Mendocino Superior Court and order sanctions

---

8. Respondent's Motion to Dismiss Appeals with Supporting Memorandum, Declarations, and Proposed Order (filed May 28, 2021) ("MTD" or "Motion to Dismiss").

9. Respondent Robert Findleton's Motion to Request Judicial Notice; Memorandum; Declarations; Proposed Order (filed May 27, 2021) ("MRJN" or "Motion to Request for Judicial Notice").

against the Tribe and its counsel of record as hereinabove specified in this Prayer for Relief at Part V.(1)-(4) pursuant to well-established legal authority. (*Portola,* 4 Cal.App.4th at p. 294, disapproved in part on other grounds in *Nahrstedt,* 8 Cal.4th at p. 385; *Leslie v Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121; *City of Bell Gardens v. County of Los Angeles* (1991) 231 Cal.App.3d 1563, 1573-1574; 1 *CEB,* § 11.26, p. 11-23 [discussing the power of the appellate court to affirm on the merits with sanctions].)

CONCLUSION

The *indisputably meritless* Motion to Strike inexcusably filed by the Tribe and its counsel Boland and Anderson *compellingly illustrates* in real time the *obstructive, dilatory, bad faith tactics* that have transformed a simple action to enforce an arbitration agreement into a protracted, marathon litigation now entering its *tenth year*. Although the Tribe has been sanctioned twice by the lower court for litigation misconduct and continues contumaciously to disregard the law of the case as decided by this reviewing court, the Tribe and its counsel brazenly continue to file meritless, even prohibited papers in this reviewing court and below that have absolutely no colorable basis in law and cause nothing but unnecessary delay, expense, confusion, and vexation to the California judicial system and Findleton.

The *completely improper, prejudicial* July 2, 2021 filing by the Tribe and counsel Boland of an impermissible argumentative letter attempting to dispute Findleton's June 23, 2021 notice of significant new authority indicates that the Tribe and counsel Boland will continue to make a mockery of the judicial process and ignore appellate procedure unless they are sanctioned for such unabashed, continuing litigation misconduct. Thus, Respondent Robert Findleton respectfully requests that the reviewing court

impose the requested sanctions to deter future abuse of the judicial process in violation of the California Rules of Court by the Tribe and its counsel of record.

Date: July 6, 2021

Respectfully submitted,

LAW OFFICE OF DARIO NAVARRO

Dario Navarro
Attorney for Plaintiff and Respondent

DECLARATION OF DARIO NAVARRO, ESQ.

I, Dario Navarro, declare:

1. I am an attorney at law duly admitted to practice before all the courts of the State of California and the attorney of record herein for Plaintiff-Respondent Robert Findleton ("Findleton"). I hold an LL.M. from the Yale Law School in New Haven, Connecticut, a J.D. from the Northwestern University School of Law in Chicago, Illinois, an M.P.A. from Princeton University in Princeton, New Jersey, and a B.A. from Marquette University in Milwaukee, Wisconsin.

2. The facts stated in this declaration are true of my own personal knowledge, except as to any matters stated on information and belief, and as to those matters, I am informed and believe them to be true. If called as a witness in this matter, I could and would competently testify to the matters set forth below.

3. I make this declaration pursuant to California Rules of Court, rule 8.276(b)(1) which requires that this Motion for Sanctions "must include a declaration supporting the amount of any monetary sanction sought . . . ." (Cal. Rules of Court, rule 8.276, subd. (b)(1).)

Averments Supporting Amount of Monetary Sanction Sought

$35,490 in Attorney's Fees as Monetary Sanction

4. Hourly Rate. The hourly rate that I charge Findleton is **three hundred dollars ($300.00)** pursuant to a March 11, 2019 written fee contract, which remains attorney-client privileged notwithstanding such disclosure of the hourly rate for the limited purposes of this declaration. Further, with respect to such written fee contract, absolutely no waiver of attorney-client privilege is hereby made nor should be construed as having been made pursuant to Business and Professional Code ("BPC") sections 6068(e) and 6149 as well as Evidence Code section 952. (Bus. & Prof. Code §§ 6068, subd. (e) [providing that it is the duty of an attorney to

"maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client"] & 6149 [providing that a "written fee contract shall be deemed to be a confidential communication within the meaning of subdivision (e) of Section 6068 and of Section 952 of the Evidence Code."]; Evid. Code § 952 [defining "confidential communication between client and lawyer"].)

5. Total Hours. Conservatively estimated, as documented in a true and correct copy of my Billing Statement for the period from June 14, 2021 to July 6, 2021, attached hereto and made an integral part hereof as **Exhibit 1,** I spent a total of **118.3 hours** researching and drafting the following two filings in response to the "Appellant's Notice of Motion to Strike 'Motion to Dismiss Appeals and Supporting Memorandum' and Request for Judicial Notice with Supporting Memorandum of Points and Authorities" ("MTS" or "Motion to Strike") served and filed by the Appellant Coyote Valley Band of Pomo Indians ("Tribe") on June 14, 2021:

(1) Respondent's Opposition to Appellant's Motion to Strike; Memorandum; Proposed Order (electronically served and submitted to the appellate court via TrueFiling on June 26, 2021; accepted for filing on June 28, 2021) ("Opposition"); and

(2) Respondent Robert Findleton's Motion for Sanctions for Appellant's Frivolous Motion to Strike; Memorandum; Declaration of Dario Navarro; Proposed Order (served and planned for filing on July 6, 2021) ("MFS" or "Motion for Sanctions").

6. Hours Expended on Opposition. As itemized in detail in the time entries for June 15, 2021 through June 26, 2021 as recorded in **Exhibit 1,** I spent **68.5 hours** researching and drafting Findleton's June 26, 2021 Opposition.

7. Hours Expended on MFS. As itemized in detail in the time entries for June 27, 2021 through July 6, 2021 as recorded in **Exhibit 1,** I

spent **49.8 hours** researching and drafting Findleton's July 6, 2021 Motion for Sanctions.

8. Monetary Sanction for Attorney's Fees. At three hundred dollars per hour ($300.00), the total amount of sanctions requested in attorney's fees is **118.3 hours ● $300 = $35,490 or thirty-five thousand four hundred and ninety dollars**, conservatively estimated.

9. Thus, Findleton seeks monetary sanctions for attorney's fees totaling **thirty-five thousand four hundred and ninety dollars ($35,490).**

$189.50 in Filing Costs as Monetary Sanction

10. Express Network Filing Costs. As itemized in detail in the June 30, 2021 invoice of the Express Network Company, a true and correct copy of which is attached hereto and made an integral part hereof as **Exhibit 2,** for charges arising from the service on the Mendocino Superior Court of **(1)** Findleton's notice of significant new authority filed on June 23, 2021, and **(2)** Findleton's June 26, 2021 Opposition, Findleton incurred costs totaling **one hundred thirty-seven ($137.00)** for which Findleton seeks reimbursement as a sanction. The invoice from the Express Network Company does not include charges for service of Findleton's July 6, 2021 Motion for Sanctions.

11. TrueFiling Costs. As itemized in detail in the set of June 27, 2021 receipts from TrueFiling for the charges incurred in the filing of the June 26, 2021 Opposition, a true and correct copy of which is attached hereto and made an integral part hereof as **Exhibit 3,** Findleton incurred costs totally **fifty-two dollars and fifty cents ($52.50)** for which Findleton seeks reimbursement as a sanction. The invoice from the TrueFiling does not include charges for service of Findleton's July 6, 2021 Motion for Sanctions.

12. Total Filing Costs as Monetary Sanction. Thus, total filing costs for which Findleton seeks monetary sanction are calculated as

follows: **$137.00 + 52.50 = $189.50**, excluding filing costs associated with Findleton's Motion for Sanctions.

Additional Monetary Sanction Payable to Reviewing Court

13. Costs to Taxpayers. Findleton also seeks an award of monetary sanction payable to the reviewing court based on the cost to the taxpayers for the processing and disposition of the Tribe's frivolous Motion to Strike in an amount to be determined by the court based on actual costs incurred and assessed directly against defense counsel Boland and Anderson, or, alternatively, in an amount no less than **five thousand dollars ($5,000)**.

Total Amount of Monetary Sanction Sought

14. Total Monetary Sanction Calculation. The calculation of the total amount of monetary sanction sought by and payable to Findleton can be expressed as follows:

$35,490 for attorney's fees + $189.50 for costs = $35,679.50

15. Monetary Sanction Sought Payable to Findleton. Thus, the total amount of monetary sanction sought by and payable to Findleton is **thirty-five thousand six hundred seventy-nine dollars and fifty cents ($35, 679.50).**

16. In addition, Findleton also seeks an award of monetary sanction *payable to the reviewing court* based on the *cost to the taxpayers* for the processing and disposition of the Tribe's frivolous Motion to Strike in an amount to be determined by the court based on actual costs incurred and assessed directly against defense counsel Boland and Anderson, or, alternatively, **in no event less than five thousand dollars ($5,000).**

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

Executed this 6th day of July 2021 in South Lake Tahoe, California.

Dario Navarro

Dario Navarro

Exhibit 1

Billing Statement for Legal Services Rendered by Respondent's Counsel of Record Dario Navarro (June 14, 2021 to July 6, 2021)

BILLING STATEMENT

(June 14, 2021 through July 6, 2021)

Legal Services Rendered Related to Respondent Robert Findleton's (1) Opposition to Appellant's Motion to Strike and (2) Motion for Sanctions for Appellant's Frivolous Motion to Strike

Date	Description of Legal Services Rendered	Hours
14-June-2021 Monday	Appellant Coyote Valley Band of Pomo Indians ("Tribe") served and filed "Appellant's Notice of Motion to Strike 'Motion to Dismiss Appeals and Supporting Memorandum' and Request for Judicial Notice with Supporting Memorandum of Points and Authorities" ("MTS")	0
15-June-2021 Tuesday	Dario Navarro ("DN"), sole appellate counsel of record to Respondent Robert Findleton ("Findleton"), notified Findleton by email and telephone of Tribe's frivolous MTS; preliminary review and evaluation of Tribe's MTS; began legal research for opposition.	2.5
16-June-2021 Wednesday	DN continued preliminary review of Tribe's MTS and continued opposition legal research, including preliminary review of relevant California Rules of Court and related California decisions.	3.6
17-June-2021 Thursday	DN continued opposition legal research; read and reviewed all 6 cases cited by Tribe in MTS; research concerning related authority construing cases cited in MTS; continued research relating to California Rules of Court, appellate procedure, and related case law; research concerning propriety of arguing jurisdictional issues in both respondent's brief and motion to dismiss; began drafting opposition papers.	4.5
18-June-2021 Friday	DN continued opposition legal research; continued analysis of all 6 cases cited by Tribe in MTS, with special focus on Tribe's extreme misrepresentation of *People v. Wende* (1979) 25 Cal.3d 436, 440 ["*Wende*"] and *In re Sade C.* (1996) 13 Cal.4th 952, 994, fn. 22 ["*Sade*"] in MTS; research related authority construing cases cited in MTS; continued research relating to California Rules of Court and related case law; continued research of propriety of arguing jurisdictional issues in multiple appellate filings; continued drafting opposition papers, including memorandum of points and authorities.	6.2

Date	Description of Legal Services Rendered	Hours
19-June-2021 Saturday	DN continued opposition legal research; continued drafting opposition papers, including introduction, statement of facts, and memorandum of points and authorities; researched evidentiary issues arising from inadmissible supporting Declaration of Little Fawn Boland, Esq. ("Boland Declaration") attached to MTS, including especially her obvious misuse of scientific statistical terminology and improper speculation and opinion testimony.	8.5
20-June-2021 Sunday	DN completed preliminary draft of opposition to MTS with several major sections still incomplete or in need of substantial revision; shared preliminary draft with Findleton for review and feedback; continued work on draft opposition after receiving feedback from Findleton.	6.8
21-June-2021 Monday	DN continued opposition legal research, especially concerning evidentiary issues relating to use of statistical terminology by non-expert witness and improper expert testimony by appellate counsel of record in such counsel's own appellate case; continued drafting, revision, updating and correction of opposition to Tribe's MTS.	5.5
22-June-2021 Tuesday	DN continued drafting, revising and correcting the opposition with additional legal research on Tribe's obligation to cite relevant case authority in connection with each argument presented, its duty to present organized coherent arguments, and the court's authority to *sua sponte* on its own motion under Cal. Rules of Court, rules 187 & 8.276, subd. (a)(3)-(4) to impose sanctions on the Tribe for filing a frivolous motion in "unreasonable violation" of the California Rules of Court.	6.2
23-June-2021 Wednesday	DN continued drafting, revising and correcting the opposition, including especially developing arguments in the memorandum of points and authorities; checked subsequent history of all case cited in memorandum; continued opposition legal research.	4.8
24-June-2021 Thursday	DN continued drafting, revising and researching Findleton's opposition with special focus on evidentiary challenge to the inadmissible Boland Declaration as well as the final content and structure of memorandum of points and authorities.	8.5

Date	Description of Legal Services Rendered	Hours
25-June-2021 Friday	DN shared a near final draft of opposition with Findleton; after receiving comments and suggestions from Findleton, DN completed section of memorandum concerning evidentiary challenge to inadmissible Boland Declaration and drafted conclusion; continued revision and proofreading of opposition; drafted proposed order.	6.2
26-Jun-2021 Saturday	Final proofing, revision and completion of service and filing copies of "Respondent's Opposition to Appellant's Motion to Strike; Memorandum; Proposed Order;" opposition was electronically served at 6:33 PM and filed via TrueFiling at 6:42 PM.	5.2
27-June-2021 Sunday	Began legal research on planned motion for sanctions ("MFS") for Appellant's frivolous MTS researching legal standards defining "frivolous motion" and an "unreasonable violation" of the California Rules of Court in Cal. Rules of Court, rule 8.276, subds. (a)(3)-(4).	2.5
28-June-2021 Monday	Legal research concerning "frivolous motion," dilatory motion and "unreasonable violation" of the California Rules of Court under the inherent power of the appellate court to control its own proceedings and preserve order as well as under Cal. Rules of Court, rule 8.276, subds. (a)(3)-(4); read and analyzed initial cases; began outline of MFS and began drafting MFS. [Note: nonbillable review of file-stamped copy of Findleton's opposition to Tribe's MTS.]	5.8
29-June-2021 Tuesday	Continued research on planned MFS with special focus on responsibility of counsel of record to abstain from filing indisputably meritless motion; continued drafting MFS.	7.5
30-June-2021 Wednesday	Continued researching MFS with special focus on relevance of proof of subjective intent of party and counsel of record to file motion for the sole or primary purpose to cause delay in addition to objective proof of lack of merit such that a reasonable attorney would agree that the filing is indisputably devoid of merit; continued drafting MFS.	9.2
01-July-2021 Thursday	Continued researching cases exemplifying the type of filings found to have been indisputably devoid of merit for comparison to the Tribe's frivolous MTS; continued drafting MFS.	3.8

Date	Description of Legal Services Rendered	Hours
02-July-2021 Friday	Continued legal research relevance of subjective dilatory intent and how to prove such intent filings and pattern of misconduct; continued drafting MFS.	3.5
03-July-2021 Saturday	Continued drafting, revising, updating and correcting MFS; reviewing case authority relating to objective standard of frivolity; consultation with Findleton.	2.6
04-July-2021 Sunday	Continued drafting, revising and proofreading MFS; researched and revied procedural and content requirements of MFS.	2.5
05-July-2021 Monday	Drafted final sections of MFS, including argument concerning pattern of dilatory, frivolous, bad faith filings of the Tribe and its counsel of record and conclusion; preparation of exhibits to declaration; began drafting declaration and preparing billing statement in support of request for attorney's fees and costs; final revisions to MFS text.	6.6
06-July-2021 Tuesday	Final drafting, review and completion of MFS; completed supporting declaration and related exhibits with proof of costs incurred; proofread MFS; prepared final electronic service and filing copies.	5.8
	TOTAL BILLABLE HOURS	**118.3**
	HOURLY RATE	**$300**
	TOTAL DUE	**$35,490**

Exhibit 2

Invoice of Express Network Company for Service Charge of $137.00 for Notice of New Authority and Opposition to Motion to Strike on Mendocino Superior Court (June 30, 2021)

EXPRESS | NETWORK
A Legal Support Network Company

INVOICE

Remit To: **LEGAL SUPPORT NETWORK**
P.O. BOX 861057
Los Angeles, CA 90086-1057
(888) 232-6077

DARIO NAVARRO, LAW OFFICES of
ACCOUNTS PAYABLE
3655 MEMORY LANE
S. LAKE TAHOE, CA. 96150

ACCOUNT DARNALT
INVOICE # SF-37948
DATE 06/30/21
TOTAL 137.00

DATE Q.C.#	Type of Service	Origin Placed by	Destination Received By	Ref. / Case # Case Name / Docs	Charge Item	Amount
06/23/21	AH WEFILE	EXPRESS NETWORK	MENDOCINO SUPERIOR C	6/23/21 Letter	Base :	50.00
I0155277	Court Srvc.			ATTORNEY AT LAW	*Other :	28.00
		OAKLAND, CA.	MENDOCINO		Wait :	.00
		*caller:*Margaret Barnes	*signed:*COMPLETED		Weight :	.00
	*Other = *Convenience Fee:* 12.00 *Document Formatting:* 16.00				Total:	**78.00**
06/27/21	WE FILE	EXPRESS NETWORK	MENDOCINO SUPERIOR A	Findleton v Coyote Val	Base :	29.00
I0155385	Court Srvc.			LAW OFFICE OF DARIO	*Other :	30.00
	(weekend)	OAKLAND, CA.	MENDOCINO	IN THE COURT OF APPEAL OF	Wait :	.00
		*caller:*Margaret Barnes	*signed:*COMPLETED	MEMORANDUM; PROPOSED ORDE	Weight :	.00
	*Other = *Convenience Fee:* 14.00 *Document Formatting:* 16.00			R	Total:	**59.00**

page: 1 INVOICE TOTAL: **137.00**

ACCOUNT CODE	INVOICE #	INVOICE DATE	INVOICE TOTAL
DARNALT	SF-37948	06/30/21	137.00

Exhibit 3

TrueFiling Receipt for Service Charges Totaling $52.50 for Findleton's Opposition to Tribe's Motion to Strike (June 27, 2021)

TrueFiling Receipt

AUTHORIZATION DATE
06-27-2021

RECEIPT #
677314078535

AUTHORIZATION CODE
026060

MATTER NUMBER
FINDELTON

COURT	CASE NUMBER	CASE TITLE
CA 1st District Court of Appeal	A158171	Findleton v. Coyote Valley Band of Pomo Indians

PAYMENT ACCOUNT ID	PAYMENT ACCOUNT NUMBER	PAYMENT EXPIRATION DATE
359158e5-f35a-4e62-09a8-08d8186e7173	XXXX-XXXX-XXXX-1448	06-01-2024

DOCUMENT TITLE	FILING TYPE	FILING FEE
FINAL-Respondent's-Opposition-to-Appellants-Motion-to-Strike-26-Jun-2021	RESPONSE - RESPONSE	$0.00
	SERVICING FEE	$10.50
	TOTAL	**$10.50**

TrueFiling Receipt

AUTHORIZATION DATE
06-27-2021

RECEIPT #
177045278398

AUTHORIZATION CODE
026867

MATTER NUMBER
FINDLETON

COURT	CASE NUMBER	CASE TITLE
CA 1st District Court of Appeal	A158172	Findleton v. Coyote Valley Band of Pomo Indians

PAYMENT ACCOUNT ID	PAYMENT ACCOUNT NUMBER	PAYMENT EXPIRATION DATE
359158e5-f35a-4e62-09a8-08d8186e7173	XXXX-XXXX-XXXX-1448	06-01-2024

DOCUMENT TITLE	FILING TYPE	FILING FEE
FINAL-Respondent's-Opposition-to-Appellants-Motion-to-Strike-26-Jun-2021	RESPONSE - RESPONSE	$0.00
	SERVICING FEE	$10.50
	TOTAL	**$10.50**

TrueFiling Receipt

AUTHORIZATION DATE
06-27-2021

RECEIPT #
677684078293

AUTHORIZATION CODE
026764

MATTER NUMBER
FINDLETON

COURT	CASE NUMBER	CASE TITLE
CA 1st District Court of Appeal	A158173	Findleton v. Coyote Valley Band of Pomo Indians

PAYMENT ACCOUNT ID	PAYMENT ACCOUNT NUMBER	PAYMENT EXPIRATION DATE
359158e5-f35a-4e62-09a8-08d8186e7173	XXXX-XXXX-XXXX-1448	06-01-2024

DOCUMENT TITLE	FILING TYPE	FILING FEE
FINAL-Respondent's-Opposition-to-Appellants-Motion-to-Strike-26-Jun-2021	RESPONSE - RESPONSE	$0.00
	SERVICING FEE	$10.50
	TOTAL	**$10.50**

TrueFiling Receipt

AUTHORIZATION DATE
06-27-2021

RECEIPT #
677353078170

AUTHORIZATION CODE
026243

MATTER NUMBER
FINDELTON

COURT	CASE NUMBER	CASE TITLE
CA 1st District Court of Appeal	A156459	Findleton v. Coyote Valley Band of Pomo Indians

PAYMENT ACCOUNT ID	PAYMENT ACCOUNT NUMBER	PAYMENT EXPIRATION DATE
359158e5-f35a-4e62-09a8-08d8186e7173	XXXX-XXXX-XXXX-1448	06-01-2024

DOCUMENT TITLE	FILING TYPE	FILING FEE
FINAL-Respondent's-Opposition-to-Appellants-Motion-to-Strike-26-Jun-2021	RESPONSE - RESPONSE	$0.00
	SERVICING FEE	$10.50
	TOTAL	**$10.50**

TrueFiling Receipt

AUTHORIZATION DATE
06-27-2021

RECEIPT #
177965278003

AUTHORIZATION CODE
026489

MATTER NUMBER
FINDLETON

COURT	CASE NUMBER	CASE TITLE
CA 1st District Court of Appeal	A159823	Findleton v. Coyote Valley Band of Pomo Indians

PAYMENT ACCOUNT ID	PAYMENT ACCOUNT NUMBER	PAYMENT EXPIRATION DATE
359158e5-f35a-4e62-09a8-08d8186e7173	XXXX-XXXX-XXXX-1448	06-01-2024

DOCUMENT TITLE	FILING TYPE	FILING FEE
FINAL-Respondent's-Opposition-to-Appellants-Motion-to-Strike-26-Jun-2021	RESPONSE - RESPONSE	$0.00
	SERVICING FEE	$10.50
	TOTAL	**$10.50**

[PROPOSED] ORDER

Procedural History and Factual Background

One June 14, 2021, Appellant Coyote Valley Band of Pomo Indians ("Tribe") filed a motion it denominated as "Appellant's Notice of Motion to Strike 'Motion to Dismiss Appeals and Supporting Memorandum' and Request for Judicial Notice with Supporting Memorandum of Points and Authorities" ("MTS" or "Motion to Strike") in which the Tribe requested the reviewing court to strike not only Findleton's two motion then pending, but also Respondent's Brief in Appeal No. A159823.

On June 28, 2021, Respondent's Opposition to Appellant's Motion to Strike ("Opposition") was accepted for filing after Findleton had electronically submitted his Opposition on June 26, 2021. Findleton urged the reviewing court on its own motion to "consider imposing sanctions" for what he deemed was a frivolous motion filed in unreasonable violation of the California Rules of Court. (Opposition 8:6-10, 28:8-21.)

On July 6, 2021, Findleton filed his Motion for Sanctions for Appellant's Frivolous Motion to Strike in which he sought a monetary sanction for costs and attorney's fees in the amount of **$35,679.50** pursuant to California Rules of Court, rules 187 and 8.276, subdivision (a)(3)-(4) (Cal. Rules of Court, rules 187 & 8.276, subd. (a)(3)-(4)**.)**

In addition, Findleton also sought an award of monetary sanction payable to the reviewing court based on the cost to the taxpayers for the processing and disposition of the Tribe's frivolous Motion to Strike in an amount to be determined by the court based on actual costs incurred and assessed directly against defense counsel Boland and Anderson, or, alternatively, in no event less than five thousand dollars ($5,000).

Due Process Guaranteed Parties Subject to Possible Sanction

Pursuant to Rule 8.276, subdivision (c), this reviewing court must give notice in writing to the Tribe and its counsel of record, Little Fawn Boland,

Esq., and Keith Anderson, Esq., the three parties subject to possible sanction, that the reviewing court is considering imposing sanctions against them. (Cal. Rules of Court, 8.276, subd. (c).) Within 10 days after the reviewing court sends such notice, a party or attorney may serve and file an opposition, but failure to do so will not be deemed consent. (*Id.*, at subd. (d).) An opposition may not be filed by the Tribe unless the court sends such notice. (*Id.*) Unless otherwise ordered by the reviewing court, oral argument on the issue of sanctions must be combined with oral argument on the merits of the appeal. (*Id.*, at subd. (e).)

Compliance with Required Procedures

On _____ ____, 2021, the reviewing court sent notice to the Tribe and its counsel of record, Little Fawn Boland, Esq., and Keith Anderson, Esq., the three parties subject to possible sanction, that the reviewing court is considering imposing sanctions against them. (Cal. Rules of Court, 8.276, subd. (c).) On _____ ____, 2021, within 10 days after the reviewing court sent such notice, the party and its attorneys served and filed an opposition.

[*The reviewing court has two options regarding the scheduling of oral argument provided it decides to consider imposing sanctions*.]

[Option One for Scheduling Oral Argument]

☐ Having provided the parties subject to possible sanctions with the requisite notice that the reviewing court is considering imposing sanctions against them and the grounds therefor, and having given those parties an opportunity to file an opposition within 10 days following the date on which the reviewing court sent the requisite notice, **IT IS HEREBY ORDERED** that oral argument on the issue of sanctions shall be combined with oral argument on the merits of Appeal No. A159823 on such date as may be ordered by the reviewing court.

[Option Two for Scheduling Oral Argument]

☐ Having provided the parties subject to possible sanctions with the requisite notice that the reviewing court is considering imposing sanctions against them and the grounds therefor, and having given those parties an opportunity to file an opposition within 10 days following the date on which the reviewing court sent the requisite notice, **IT IS HEREBY ORDERED** that, for good cause shown, oral argument on the issue of sanctions shall be set for _____ ____, 2021.

IT IS SO ORDERED.

DATED: _____

_____
PRESIDING JUSTICE

CERTIFICATE OF SERVICE

RESPONDENT ROBERT FINDLETON'S MOTION FOR SANCTIONS FOR APPELLANT'S FRIVOLOUS MOTION TO STRIKE; MEMORANDUM; DECLARATION OF DARIO NAVARRO; PROPOSED ORDER

Case Name: ***Findleton v. Coyote Valley Band of Pomo Indians***
Appellate Case Nos: A156459, A158171, A158172, A158173, A159823
Superior Court Case Number: SCUK-CVG-12-59929

1. At the time of service, I was at least 18 years of age and not a party to this action. I am a resident of or employed in the county where the mailing took place. My residence or business address is 3655 Memory Lane, South Lake Tahoe, CA 96150-4137. My electronic service address is **mbarnes@terrecon.net**.

2. I served a copy of ***RESPONDENT ROBERT FINDLETON'S MOTION FOR SANCTIONS FOR APPELLANT'S FRIVOLOUS MOTION TO STRIKE; MEMORANDUM; DECLARATION OF DARIO NAVARRO; PROPOSED ORDER*** ("said document") on the persons identified below as hereinafter specified:

☑ **BY E-FILE SERVICE:** I electronically uploaded a true and correct copy of said document in Portable Document Format (PDF) to Express Network (a service provider for Odyssey eFileCA, as designated by the Mendocino County Superior Court), for E-Filing to the Honorable Ann C. Moorman, Presiding Judge, Mendocino County Superior Court, as listed in paragraph 3; and

☑ **BY ELECTRONIC MAIL:** I electronically served and sent by email a true and correct copy of said document in Portable Document Format (PDF) to the persons listed in paragraph 4 of this Certificate of Service at each of their respective email addresses as listed in paragraph 4.

3. Said document was sent by E-File Service, via Express Network, to

Honorable Ann C. Moorman
c/o Superior Court Clerk
100 North State Street
Ukiah, CA 95482

On *(date)*: **July 6, 2021**

4. Electronic service address of each person served:

Little Fawn Boland, Esq.
Counsel of Record, Defendant-Appellant Coyote Valley Band of Pomo Indians
Email: littlefawn@ceibalegal.com

Keith Anderson, Esq.
Counsel of Record, Defendant-Appellant Coyote Valley Band of Pomo Indians
Email: keith@ceibalegal.com and attorneykeithanderson@gmail.com

Glenn W. Peterson, Esq.
Counsel of Record, Defendant-Appellant Coyote Valley Band of Pomo Indians
Email: gpeterson@petersonwatts.com

Sara Dutschke Setshwaelo, Esq.
Counsel to Coyote Economic Development Corporation (CEDCO) and Coyote Valley Entertainment Enterprises (CVEE) (both non-parties)
Email: ssetshwaelo@kaplankirsch.com

On *(date)*: **July 6, 2021**

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

Executed in **Placerville, California** on the date indicated below:

Date: July 6, 2021

Margaret Barnes