

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

NOV 22 2022

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U.S. COURT OF APPEALS

<p>NUMA CORPORATION; CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS,</p> <p style="text-align: center;">Appellants,</p> <p>v.</p> <p>JASON DIVEN,</p> <p style="text-align: center;">Appellee.</p>
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No. 22-15298

D.C. Nos. 2:20-bk-24311  
2:21-cv-01242-KJM

MEMORANDUM\*

Appeal from the United States Bankruptcy Court  
for the Eastern District of California  
Ronald H. Sargis, Bankruptcy Judge, Presiding

Submitted November 18, 2022\*\*  
San Francisco, California

Before: S.R. THOMAS and BENNETT, Circuit Judges, and DORSEY,\*\*\* District  
Judge.

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision  
without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Jennifer A. Dorsey, United States District Judge for  
the District of Nevada, sitting by designation.

NUMA Corporation and Cedarville Rancheria of Northern Paiute Indians (“Tribe”), a federally recognized Indian tribe, appeal the bankruptcy court’s order imposing sanctions under 11 U.S.C. § 362(k)(1) for violation of the automatic stay in the chapter 13 bankruptcy proceedings of debtor Jason Diven. The parties jointly certified the appeal for direct review from the district court. We have jurisdiction pursuant to 28 U.S.C. § 158(d)(2)(A).

We review de novo whether a Native American tribe possesses sovereign immunity, *Deschutes River All. v. Portland Gen. Elec. Co.*, 1 F.4th 1153, 1158 (9th Cir. 2021), and whether Congress has abrogated a tribe’s sovereign immunity, *Krystal Energy Co. v. Navajo Nation*, 357 F.3d 1055, 1056 (9th Cir. 2004). We also review de novo the bankruptcy court’s conclusions of law. *See In re Brace*, 979 F.3d 1228, 1232 (9th Cir. 2020). We affirm.<sup>1</sup> Because the parties are familiar with the factual and procedural history of the case, we need not recount it here.

Indian tribes are “separate sovereigns pre-existing the Constitution” and possess common-law sovereign immunity. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56–58 (1978). “[A]n Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.” *Kiowa Tribe of Okla.*

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<sup>1</sup> We grant the National Consumer Bankruptcy Rights Center and National Association of Consumer Bankruptcy Attorneys’ motion for leave to file an amicus brief in support of appellee (Docket No. 19).

*v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998). Congressional abrogation must be “unequivocally expressed.” *Santa Clara Pueblo*, 436 U.S. at 58 (citation omitted).

Section 106(a) of the Bankruptcy Code abrogates the sovereign immunity of a “governmental unit” with respect to, as relevant here, the Code’s automatic stay provision. 11 U.S.C. § 106(a). The statute’s definition of “governmental unit” includes any “foreign or domestic government.” 11 U.S.C. § 101(27). In *Krystal Energy*, we held squarely that the definition of “governmental unit” includes tribes and that section 106(a) of the Bankruptcy Code unequivocally abrogates tribal sovereign immunity. 357 F.3d at 1057–58.

*Krystal Energy* controls here. Because Congress abrogated tribal sovereign immunity with respect to the automatic stay provision, the Tribe cannot assert sovereign immunity to avoid sanctions for violation of the automatic stay.

We need not and do not decide whether the Tribe waived its sovereign immunity by filing a proof of claim in this instance.

**AFFIRMED.**

## United States Court of Appeals for the Ninth Circuit

Office of the Clerk  
95 Seventh Street  
San Francisco, CA 94103

### Information Regarding Judgment and Post-Judgment Proceedings

#### Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

#### Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

#### Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

#### Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

#### (1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ▶ A material point of fact or law was overlooked in the decision;
  - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

#### B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

**(2) Deadlines for Filing:**

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

**(3) Statement of Counsel**

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

**(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))**

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- A response, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or response must be accompanied by a Certificate of Compliance found at Form 11, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

### **Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)**

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.

### **Attorneys Fees**

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms* or by telephoning (415) 355-7806.

### **Petition for a Writ of Certiorari**

- Please refer to the Rules of the United States Supreme Court at [www.supremecourt.gov](http://www.supremecourt.gov)

### **Counsel Listing in Published Opinions**

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send an email or letter **in writing within 10 days** to:
  - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista ([maria.b.evangelista@tr.com](mailto:maria.b.evangelista@tr.com)));
  - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
Form 10. Bill of Costs**

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**9th Cir. Case Number(s)**

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The Clerk is requested to award costs to (*party name(s)*):

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