

PUBLIC COMMENT

TO THE

TRIBAL COURT STATE COURT FORUM

Submitted by James Acres

February 13, 2018

Dear Judge Abinanti and Justice Purless,

I write today to give public comment on the “Law Enforcement Collaborations and Agreements” presentation at the February 2018 meeting of the Tribal Court State Court Forum.

You may remember that I gave public comment last year regarding renewal of the TCCMJA, and particular due process concerns I had as a Californian with experience as a non-tribal defendant in Blue Lake Tribal Court.¹ Specifically, I asked the Forum to consider the problems of ensuring that the TCCMJA did not compel Californians to defend themselves within small courts entirely beholden to local interests.

As part of my experience in Blue Lake Tribal Court, I had the opportunity to review several years of Judge Marston’s billing records to Blue Lake. These records chronicled not only Judge Marston’s work as an attorney for Blue Lake’s Vice-Chair Arla Ramsey in the Humboldt Superior Court action *Blue Lake v. Shiimoto*, but also his work as a tribal court judge presiding over Ms. Ramsey’s petition for a civil restraining order in the Blue Lake Tribal Court action *Ramsey v. MacKay*.

In *Blue Lake v. Shiimoto*, Blue Lake brought an action to compel the DMV to recognize tribal court marriages for the purposes of name changes. Specifically, Ms. Ramsey had officiated at her son’s tribal marriage, and her new daughter-in-law wished to use her tribal marriage certificate to effectuate her name change. As Ms. Ramsey’s attorney in *Blue Lake v. Shiimoto*, Judge Marston acted as Ms. Ramsey’s attorney in a family matter of emotional significance, grounded in Ms. Ramsey’s identity both as a mother, and as a tribal leader.

Concurrent with his work as Ms. Ramsey’s attorney in this deeply personal state court action, Judge Marston presided over a petition by Ms. Ramsey to enjoin civil harassment in tribal

¹ My own case ended happily when the Honorable Justice James Lambden, formerly a member of this Forum, dismissed the fraud charge against me on summary judgment.

court. Indeed, Judge Marston’s billing records show that on November 6, 2015, he moved directly from presiding as judge over Ms. Ramsey’s restraining order hearing in tribal court to preparing Ms. Ramsey’s declaration in state court as her attorney.²

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	Hrs/Rate	Amount
11/6/2015 LJM	Court Appearance to hold the hearing on the petition to enjoin civil harrassment in Ramsey v. MacKay.	
LJM	Review and revise the declaration of Ramsey regarding the couple that wants to get married in Tribal Court and the final review of the memo to the Council regarding settlement of the case.	

Highlighted excerpt from Lester John Marston’s (LJM) billing records to Blue Lake.

California is engaged in a long-overdue process of recognizing the legitimacy of tribal governments. Part of that process is recognizing the legitimacy of tribal justice systems, and honoring tribal judgements as we do judgements from our sister states. Or even as one superior court recognizes the judgements of another superior court. As a Californian, I support this Forum’s work towards that end.

But also as a Californian, I believe that the legitimacy our justice system springs from the fact that our superior courts keep watch over each other, just as our appellate courts watch over the superior courts, and each of our sister states keep watch over our whole union.

² I attach Judge Marston’s billing records to Blue Lake from October and November of 2015, so that the records may be seen in their full context.

Many smaller tribes are as islands unto themselves, with no outsiders able to moderate the universal human vices of self-dealing and local bias. These vices are on full display in Blue Lake Tribal Court, where Judge Marston grants domestic restraining orders to a tribal leader who is also his client in his private practice.

For a judge to preside over his client's case against an adversary is too inimical to the Californian sense of justice for the spirit of comity to long survive. Yet this is the second time the span of a year I've brought such a happening to this Forum's attention. Unchecked, I fear these abuses will multiply, become generally known, and doom the project of weaving us all together in a single fabric of justice.

I do not have the answers to this problem, except to suggest as a first step that this Forum seems a wonderful place for tribal judges to help keep watch over one another's consciences, and for judges of all origins to cry foul when they see another judge fail to live up to the standards of their calling.

Reviewing the materials accompanying the presentation on "Law Enforcement Collaborations and Agreements," I was disappointed that the issue of guarding against local bias and self-dealing in tribal courts was not addressed. Especially since Judge Marston is presenting, and this is a danger on which he could speak from personal experience.

I hope this Forum can find time to address local bias and self-dealing in tribal courts, as these problems undermine the legitimacy of any justice system.

Respectfully,



James Acres
james@kosumi.com

BILLING RECORDS

FROM JUDGE MARSTON TO BLUE LAKE

OCTOBER AND NOVEMBER OF 2015

Lester J. Marston

Rapport and Marston, 405 West Perkins Street, Ukiah, CA 95482

707-462-6846

Invoice submitted to:

BLUE LAKE RANCHERIA

428 Chartin Rd.
Attn: Anita Huff
Blue Lake, CA 95525

November 2, 2015

In Reference To: INVOICE FOR LEGAL SERVICES

Invoice # 135

Professional Services

Hrs/Rate Amount

10/2/2015 SLJ Legal Research
re: standard for motion for summary judgment and
preparation of a draft stipulated judgment in Blue Lake
Rancheria v. Shiotomo.

10/5/2015 LJM Final proofing of
the letter to Young regarding settling the DMV case.

SLJ Review and revise
the proposed stipulation between the plaintiffs and the state
re: settlement of Ramos v. Shiomoto, review of tribal
documents related to marriages under tribal law, including
all marriage certificates issued since 2002, the Tribal
Marriage Ordinance and Amendments, legal research re:
whether marriage certificates issue by State/counties include
name change provision; conference with Marston re: same;
phone conference with Anita Huff re: same; modification of
form marriage license and certification.

AB Draft
memorandum of decision and order denying Kernan
Construction's motion for partial summary judgment.



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judgement.

10/13/2015 LJM Phone Conference with Huff regarding setting the hearing on the application for TRO to enjoin civil harrassment.

10/14/2015 LJM Phone Conference with Huff regarding preparation of the order after hearing in the Ramsey hearing to enjoin civil harassment.

LJM Preparation of the order after hearing in the Ramsey Application to enjoin Civil Harassment.

NM Final proofing of Final proof of BLR TC amendment to rules of pleading, practice and procedure--adoption of Rule 41(w).

10/15/2015 LJM Final proofing of the order issuing a restraining order in the Ramsey case.

LJM Review and revise the memorandum of decision on approval of the good faith settlement for A&I Roofing and Wright.

NM Review and revise the temporary restraining order in joining civil harassment in Ramsey v McKay.

10/16/2015 LJM Phone Conference with Anita regarding the enforcement of the Ramsey order.

10/19/2015 LJM Final proofing of the memorandum of decision of the Good faith settlement of the A&I roofing claims.

LJM Review and revise the memo to the Council regarding the adoption of a new Rule 41 (w) regarding good faith settlements and the

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proposed rule.

10/20/2015 LJM Final proofing of the memo to the Council regarding adoption of a new Rule 41 (w) of the Court's RPPP and of the Resolution authorizing the adoption of the Rule.

NM Review and revise
Revise Resolution amending PPP, Rule 41(w) and Memo to Business Council re: approval and adoption of Rule 41(w)

10/21/2015 LJM Review of the email from Huff regarding the filing of an amended cross complaint and summons in the Wright Development case and whether notification of substitution of attorneys should be filed or stamped received and preparation of an email in response.

10/22/2015 LJM Phone Conference with Chris Young regarding settlement of the case.

10/23/2015 LJM Review of the email and the proposed changes to the settlement stipulation from Chris Young the attorney for the Department of Motor Vehicles and preparation of an email in response and then preparation of the changes to the Stipulation to incorporate the states changes.

LJM Phone Conference with Chris Young to attempt in good faith to settle the motion for summary judgment and the DMV case.

10/26/2015 LJM Review of the application for admission to practice submitted by Barfield and the motion substituting fictitious names in the Wright Development case.

AB Draft memorandum re: settlement; review settlement for the drafting of a memorandum to the Council regarding whether

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the tribe wants to accept the settlement.

10/27/2015 SLJ Review

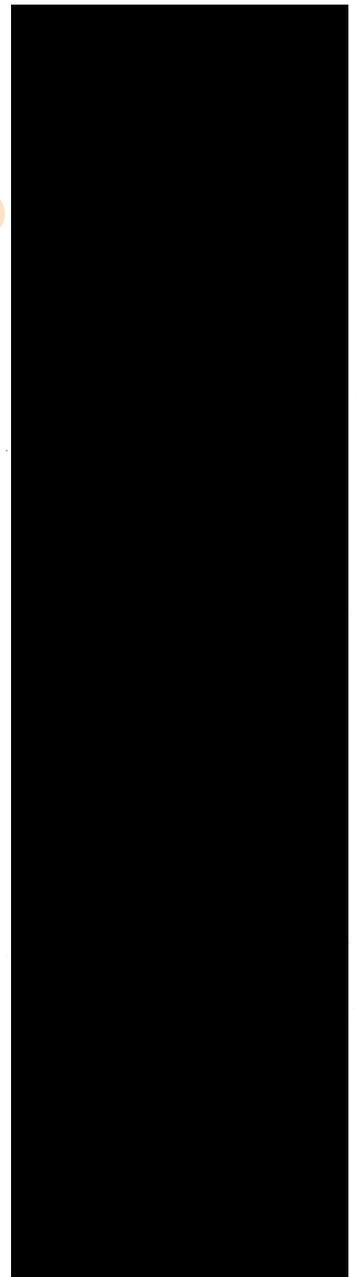
LJM Conference
with Johnson regarding what arguments need to be made in the brief in reply to the state's opposition to the motion for summary judgment in the DMV license case.

AB Draft
memorandum re: proposed settlement in BLR, et al., v. Shiomoto, et al.; review terms and conditions of proposed settlement; conference with SLJ re: recovery of attorney's fees in BLR v. Shiomoto and SLJ/LJM communication with attorney for DMV Christopher Young halting settlement.

CMD Draft
California rule governing right to collect attorneys' fees for memorandum regarding settlement of DMV lawsuit; legal research re: right to recover fees under Cal. Code of Civil Procedure Section 1021; legal research re: procedure to amend the complaint in the DMV litigation.

10/28/2015 SLJ Review
of pleadings in the DMV case. including the DMV's opposition documents and the complaint and documents supporting the motion for summary judgment and legal research re: amendment of pleadings, and preparation of initial arguments for reply brief.

CMD Draft
(continued) California rule governing right to collect attorneys' fees for memorandum regarding settlement of DMV lawsuit; legal research re: the same.



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		<u>Hrs/Rate</u>	<u>Amount</u>
10/29/2015	SLJ	Preparation of the first draft of the reply to the opposition to the motion for summary judgment.	
	CMD	Draft (continued) California rule governing right to collect attorneys' fees for memorandum regarding settlement of DMV lawsuit; legal research re: the same.	
10/30/2015	DV	Phone Conference with Scott Johnson regarding whether our motion for summary judgment in the DMV case can use factual arguments in which the facts arose after the complaint was filed or whether we must file an amended complaint including these facts in our plea for relief.	
	DV	Legal Research on whether our motion for summary judgment in the DMV case can use factual arguments in which the facts arose after the complaint was filed or whether we must file an amended complaint including these facts in our plea for relief.	
	DV	Phone Conference with Scott Johnson regarding the results of legal research on whether our motion for summary judgment in the DMV case can use factual arguments in which the facts arose after the complaint was filed or whether we must file an amended complaint including these facts in our plea for relief.	
	DV	Review defendant's opposition to the Tribe's motion for summary judgment, objections to evidence presented in support of the Tribe's motion for summary judgment, and evidence presented by the Tribe in support of their motion for summary judgment for DMV case; phone conference with Scott Johnson regarding interpretation of theses pleadings.	
	SLJ	Preparation of the initial draft of the reply to the opposition to the Motion for Summary Judgment: response to DMV's legal	

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arguments and challenges to Plaintiffs' allegations of fact.

For professional services rendered

Additional Charges :

10/30/2015 LJM Lexis
for month of Sept. 2015

Total additional charges

Total amount due for legal services

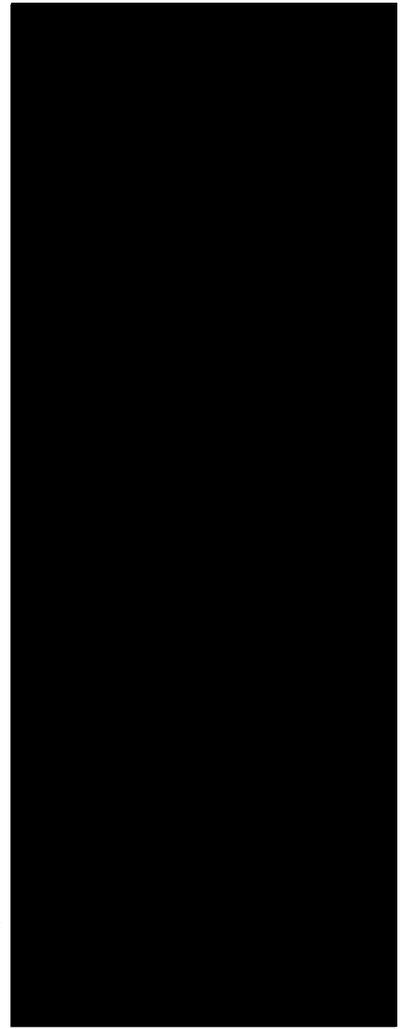
Previous balance

Accounts receivable transactions

10/30/2015 Payment - Thank You. Check No. 2143.

Total payments and adjustments

Balance for this invoice



Lester J. Marston

Rapport and Marston, 405 West Perkins Street, Ukiah, CA 95482

707-462-6846

Invoice submitted to:

BLUE LAKE RANCHERIA

428 Chartin Rd.

Attn: Anita Huff

Blue Lake, CA 95525

December 1, 2015

In Reference To: INVOICE FOR LEGAL SERVICES

Invoice # 136

Professional Services

Hrs/Rate Amount

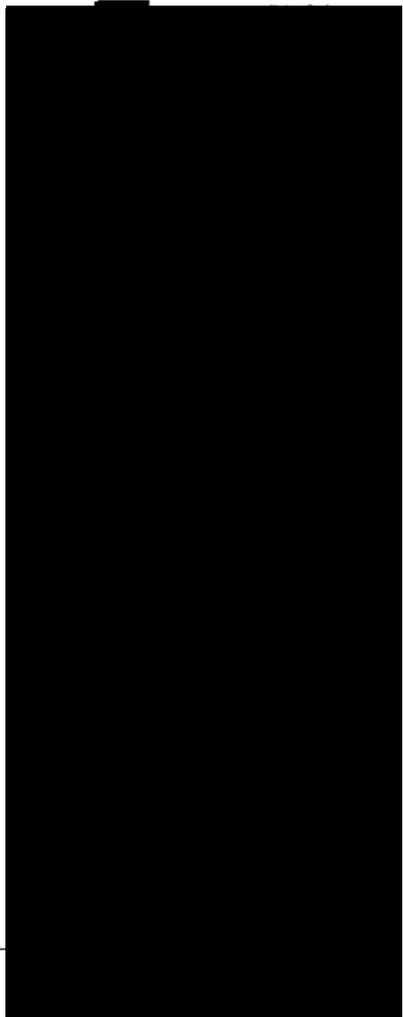
11/2/2015 DV Phone Conference with Scott Johnson regarding review of evidentiary objections and the implications of defendant's failure to introduce any evidence to dispute the Tribe's evidence in DMV case.

SLJ Preparation of the reply to the opposition to the motion for summary judgment: arguments re: lack of supporting evidence, lack of merit of evidentiary objections, lack of merit of analysis of the legal issues.

DV Legal Research on the procedure for responding to and grounds for responding to defendant's evidentiary objections in the DMV case.

DV Phone Conference with Scott Johnson regarding what to review in Defendant's separate statement of facts and objections to the Tribe's declarations and how to respond to these objections in preparation for reply brief in DMV case.

DV Review of Defendant's separate statement of facts and objections to the Tribe's declarations in preparation for reply brief in



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		<u>Hrs/Rate</u>	<u>Amount</u>
	DMV case; draft responses to the allegations/objections in Defendant's separate statement of facts.		
11/2/2015 LJM	Preparation of a letter to the Council regarding whether the Tribe should take the DMV's settlement offer in this case (continued) and conference with Johnson regarding how to respond to the state's argument in opposition to the motion for summary judgment that the case is moot because the DMV issued its inter office memorandum and that there are material issues of fact in dispute.		
11/3/2015 DV	Phone Conference with Scott Johnson regarding how to respond to DMV's separate statement of facts and objections to evidence submitted by the Tribe in support of their motion for summary judgment.		
SLJ	Review and revise the initial draft of the reply to the opposition to the Plaintiff's Motion for Summary judgment in Tribe v. Shiomoto.		
DV	Draft responses to DMV's separate statement of facts and objections to evidence submitted by the Tribe in support of their motion for summary judgment; review exhibits cited by Defendants in their separate statement of facts to determine whether these serve as evidence for Defendants' arguments.		
DV	Phone Conference with Scott Johnson regarding how to respond to DMV's separate statement of facts and objections to evidence submitted by the Tribe in support of their motion for summary judgment. (Continued.)		
11/4/2015 DV	Draft responses to DMV's separate statement of facts and objections to evidence submitted by the Tribe in support of their motion for summary judgment. (Continued.)		

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	<u>Hrs/Rate</u>	<u>Amount</u>
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11/4/2015 LJM	Phone Conference with Johnson regarding the response to the state's objections.	
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LJM	Phone Conference with Aggi Ramos and the Scott Johnson regarding what needs to go into Aggi's new declaration regarding the form of the marriage certificate.	
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DV	Draft additions and amendments regarding evidentiary objections to Section II of the reply to Defendant's opposition to the motion for summary judgment.	
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LJM	Final proofing of the memo to the Council regarding settlement of the DMV case.	
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NM	Final review of the Finalized Memo to Business Council re: proposed settlement in Shiomoto.	
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SLJ	Review and revise the reply to the DMV's opposition to the Tribe's motion for summary judgment: arguments re: failure to provide support for factual allegations, evidentiary objections, the Administrative message demonstrates DMV accepts tribal marriage certificates.	
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11/5/2015 DV	Phone Conference with Scott Johnson regarding final preparations to submit the DMV reply brief.	
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DV	Draft declarations of Jennifer Ramos and Les Marston in support of the reply brief to defendants' opposition to motion for summary judgment in the DMV case.	
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LJM	Review and revise the plaintiffs response to the states objections to the Tribe's, Ramos and Ramsey's Statement of Undisputed Facts and the	
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<u>Hrs/Rate</u>	<u>Amount</u>
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Memorandum of Points and Authorities in Support of the Opposition to the Objections.

11/5/2015 LJM Phone Conference with Johnson regarding the declaration for Ramos and a declaration for Marston responding to Young's objections.

NM Review and revise the Revised Reply to Defendants' Separate Statement of Additional Facts & Evidence in Support of Opposition to Plaintiff's MSJ in Shiomoto.

DV Review and revise the reply brief to defendants' opposition to motion for summary judgment in the DMV case.

NM Review and revise the Revised and finalized Reply to Evidentiary Objections in Shiomoto and LJM Declaration in Support of Reply to Opposition to MSJ.

SLJ Review and revise the reply to the opposition to the Tribe's motion for summary judgement: arguments re DMV self-contradictory arguments, and the argument that issues restricted to marriage certificate; insertion and cross checking of citations.

LJM Final review of the Marston declaration and the memorandum of points and authorities in reply to the opposition to the motion for summary judgment.

11/6/2015 LJM Court Appearance to hold the hearing on the petition to enjoin civil harrassment in Ramsey v. MacKay.

LJM Review and revise the declaration of Ramsey regarding the couple that wants to get married in Tribal Court and the final review of the memo

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to the Council regarding settlement of the case.

11/6/2015 NM Final review of the Supplemental Declaration of Arla Ramsey in Support of Reply to Opposition to MSJ.

LJM Final review of the responses to the DMV's request for production of documents.

NM Final review of the Memo to Business Council re: proposed settlement in Shiomoto.

SLJ Review and revise the memorandum re: proposed settlement agreement for DMV case; phone conference with Arla Ramsey re: tribal marriages and how many people changed their names, and request that Arla preside over another wedding; legal research re: legal effect of DMV "administrative message."

11/9/2015 LJM Final review of the letter to the Council regarding settlement.

SLJ Preparation of arguments and materials for oral argument in motion for summary judgment.

LJM Conference Johnson regarding what arguments we will present to the Judge at oral argument on the MSJ.

11/10/2015 LJM Travel time from Ukiah to Eureka and back to attend the court hearing on the MSJ against the DMV and attendance at the hearing.

11/12/2015 LJM Review of the email from Jenny Walter regarding the sunset provision in the Tribal Court Money Judgment Act and

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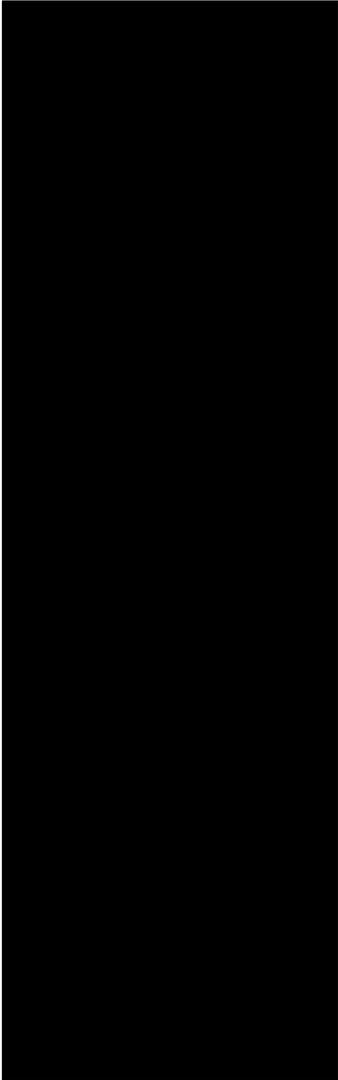
		<u>Hrs/Rate</u>	<u>Amount</u>
	preparation of an email in response.		
11/16/2015 LJM	Review of the emails from Huff transmitting attorney applications and review of the applications; approval of the applications and preparation of emails to Huff regarding the approval of the applications.		
11/17/2015 LJM	Review of the email from Walters regarding providing the Tribal Court with access to the Judicial Resources Network.		
11/23/2015 LJM	Phone Conference with Huff regarding the access to the Judicial Council research data base for the Court.		
LJM	Phone Conference with CILS and the Tribal Court Judges of the Judicial Forum regarding forming a Statewide Tribal Court Judges association.		
KL	Letter to client re Blue Lake Rancheria, et al. v. Shiomoto, et al., Superior Court of the State of California, County of Humboldt, Case No. CV 140799; conference with Lester J. Marston about pertinent documents and court information; review pleadings.		
11/24/2015 LJM	Review and revise the memo to the Tribe on the status of the DMV case.		
KL	Letter to client (cont'd) re Blue Lake Rancheria, et al. v. Shiomoto, et al., Superior Court of the State of California, County of Humboldt, Case No. CV 140799; complete draft letter.		

For professional services rendered

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Additional Charges :

		<u>Qty/Price</u>	<u>Amount</u>
11/10/2015	LJM	Mileage from Ukiah to Eureka and back to attend the court hearing on the MSJ against the DMV.	
	LJM	Meal per diem for lunch to attend the court hearing on the MSJ against the DMV.	
11/30/2015	LJM	Lexis Research done in October	
Total additional charges			
Total amount due for legal services			
Previous balance			
Accounts receivable transactions			
11/20/2015	Payment - Thank You. Check No. 8322		
Total payments and adjustments			
Balance for this invoice			