IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Appellant, v. MIAMI NATION ENTERPRISES, *et al.*, Defendants and Respondents.	Case No. S216878

Court of Appeal, Second Appellate District, Division 7
Case No. B242644
Superior Court of California, County of Los Angeles
Case No. BC373536
Yvette M. Palazuelos, Judge

DEFENDANTS AND RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

In *People of the State of California v. Miami Nation Enterprises, et al.* (2014) 223 Cal.App.4th 21 (hereinafter *"Miami Nation Enterprises"*), Division 7 of the Second District Court of Appeal produced an opinion that is consistent with, and also clarifies and harmonizes, existing case law setting forth California's approach to tribal sovereign immunity jurisprudence. In its faithful adherence to both California law and federal Indian law, *Miami Nation Enterprises* was decided correctly and does not conflict with any decision of another Court of Appeal. Hence, review of this decision is not "necessary to secure uniformity of decision," nor is it necessary "to settle an important question of law." (Cal. Rules of Court, Rule 8.500 (b)(1).)

The California Department of Business Oversight's ("State") Petition for Review ("Petition") makes the manifestly false claim that *Miami Nation Enterprises* formulated a new arm-of-the-tribe test and creates conflict between the Courts of Appeal. The State mischaracterizes *Miami Nation Enterprises,* as well as *American Property Management Corp. v. Superior Court* (2012) 206 Cal.App.4th 491 (hereinafter "*American Property*") and *Trudgeon v. Fantasy Springs Casino* (1999) 71 Cal.App.4th 632 (hereinafter "*Trudgeon*"), in a misguided effort to obtain review of an appropriate result that the State simply does not like. But the State has not set forth any proper grounds for review by this Court pursuant to California Rule of Court 8.500(b). Therefore, the State's Petition should be denied.

II. STATEMENT OF THE CASE

A. Initial Trial Court Proceedings

The State initiated the underlying action when it sued various trade names utilized by SFS, Inc. ("SFS") and Miami Nation Enterprises ("MNE") (collectively "Tribal Entities") alleging violations of the California Deferred Deposit Transaction Law. (*Miami Nation Enterprises*, *supra*, 223

Cal.App.4th at p. 25.) The Tribal Entities appeared specially and moved to quash the suit for lack of subject matter jurisdiction based on tribal sovereign immunity. (*Ibid.*) MNE is a governmental subdivision of the Miami Tribe of Oklahoma, a federally-recognized Indian tribe. SFS is a governmental subdivision of the Santee Sioux Nation, also a federally-recognized Indian tribe. (*Id.* at pp. 24, 30.) The trial court denied the motion to quash on the erroneous grounds that tribal sovereign immunity does not apply to off-reservation commercial activity. (*Id.* at p. 26.)

B. The Tribal Entities' Petition for Writ of Mandate

The Tribal Entities petitioned the Second District Court of Appeal for a writ of mandate on the issue of tribal sovereign immunity, which Division 7 summarily denied. (*Miami Nation Enterprises, supra*, 223 Cal.App.4th at p. 26 fn. 4.) This Court granted review and transferred the case back to the Court of Appeal with directions to vacate its order denying writ of mandate and to issue an alternative writ. (*Ibid.*) On January 14, 2009, the Court of Appeal issued an order granting in part and denying in part the Tribal Entities' petition for writ of mandate. (*Ameriloan v. Superior Court* (2008) 169 Cal.App.4th 81, 89 (hereinafter "*Ameriloan*").) Relying upon *Kiowa Tribe of Okla. v. Manufacturing Technologies, Inc.* (1998) 523 U.S. 751 (hereinafter "*Kiowa*"), the Court of Appeal concluded that the trial court had erred in ruling as a matter of law that the doctrine of tribal sovereign immunity did not apply to the Tribal Entities' off-reservation commercial activities. (*Ameriloan, supra*, at pp. 89-90.) The Court of Appeal therefore directed the trial court to vacate its order denying the Tribal Entities' motion to quash and to apply the principles expressed in *Trudgeon, supra*, 71 Cal.App.4th 638 and *Redding Rancheria v. Superior Court* (2001) 88 Cal.App.4th 384 (hereinafter "*Redding Rancheria*") to determine whether the Tribal Entities constitute arms of their respective tribes for purposes of

tribal sovereign immunity. (*Ameriloan*, *supra*, at pp. 97-98.) To this end, the Court of Appeal directed the trial court to conduct limited discovery "directed solely at matters affecting the trial court's subject matter jurisdiction." (*Id.* at pp. 98-99.)

C. Proceedings in the Trial Court on Remand

As directed by the Court of Appeal in *Ameriloan*, the trial court on remand allowed limited discovery to proceed on the issue of its subject matter jurisdiction over SFS and MNE. Specifically, discovery was limited to the issue of whether SFS and MNE are arms of their respective tribes and thus protected by the Tribes' sovereign immunity from the State's suit. (*Miami Nation Enterprises*, *supra*, 223 Cal.App.4th at pp. 28-32.) Three years after remand, the trial court held an evidentiary hearing on the Tribal Entities' renewed motion to quash and, based upon evidence relevant to controlling arm-of-the-tribe jurisprudence, found that the Tribal Entities are sufficiently related to their respective Indian tribes to benefit from tribal sovereign immunity. (*Id.* at p. 31.) The trial court rejected the State's attempt to overcome the Tribal Entities' clear and unequivocal proof that they were arms of their respective Indian tribes with evidence that the Tribal Entities employed third parties to assist them with day-to-day operations and that third parties benefited from the Tribal Entities' lending operations, as well as the State's unsupported allegations that the Tribal Entities had violated tribal law. (*Id.* at pp. 31-32.) The State appealed.

D. The Court of Appeal's Decision in *Miami Nation Enterprises*

As here, in the Court of Appeal, the State urged application of the six-factor *American Property* arm-of-the-tribe test derived from the Tenth Circuit's analysis in *Breakthrough Management Group, Inc. v. Chukchansi Gold Casino and Resort* (10th Cir. 2010) 629 F.3d 1173 (hereinafter "*Breakthrough*"). (See Opening Brief, at pp. 16-35.) The Tribal Entities argued, on the other hand, that the Court of Appeal should disregard the *American Property* test in favor of an arm-of-the-tribe analysis derived primarily from *Trudgeon* as directed by the Court of Appeal in *Ameriloan*, as *Ameriloan* constituted the law of the case. (See Respondent's Brief, at pp. 10-30.) Both *American Property* and *Trudgeon* are decisions of the Court of Appeal for the Fourth District, yet their analyses are facially comprised of different factors. And although both the State and the Tribal Entities acknowledged that *Trudgeon* and *American Property* overlap analytically and share similarities, each side urged the Court of Appeal to apply one set of factors primarily.

The Court of Appeal wisely rejected the notion that it must choose one analysis to the exclusion of the other. Indeed, it explicitly ruled against the Tribal Entities' law-of-the-case argument and chose not to disregard *American Property* in favor of the *Trudgeon-Redding Rancheria* analysis. (*Miami Nation Enterprises, supra*, 223 Cal.App.4th at pp. 37-38.) The Court of Appeal further refused to rely solely on the factors in *American Property*—factors which the State itself admits are "non-exhaustive." (Petition, at p. 9). Rather, the Court of Appeal discussed both *Trudgeon* and *American Property*, as well as an arm-of-the-tribe test articulated by the Colorado Supreme Court in *Cash Advance and Preferred Cash Loans v. Colo.* (Colo. 2010) 242 P.3d 1099, 1107-08, 1109 (hereinafter "*Cash Advance*"), finding that all of these tests are comprised of "nonexclusive, overlapping factors. .

.," that ultimately reach the same relevant inquiry: "Are the tribal entities sufficiently related to their respective tribes to be protected by tribal sovereign immunity?" (*Miami Nation Enterprises*, *supra*, at p. 38.) The Court of Appeal, analyzing the underlying principles guiding each of these tests and ***without rejecting or disregarding any underlying factor***, astutely distilled them into their most elemental form, holding:

> Absent an extraordinary set of circumstances . . ., a tribal entity functions as an arm of the tribe if it has been formed by tribal resolution and according to tribal law, for the stated purpose of tribal economic development and with the clearly expressed intent by the sovereign tribe to convey its immunity to that entity, and has a governing structure both appointed by and ultimately overseen by the tribe.

(*Ibid.*) The Court of Appeal further explicitly adopted *American Property's* conclusion that "the tribe's method and purpose for creating the economic entity are the most significant factors in determining whether it is protected by a tribe's sovereign immunity and should be given predominant, if not necessarily dispositive, consideration." (*Id.* at p. 39 [citing *American Property*, *supra*, 206 Cal. App. 4th at p. 501].)

Consistent with **both *Trudgeon* and *American Property***, the Court of Appeal then applied the *American Property* factors *and* "other elements of the various tests appearing in the case law" to the evidence in the record. (*Miami Nation Enterprises*, *supra*, 223 Cal.App.4th at p. 39.) (emphasis added). Relying upon the objective facts pertinent to these factors, the Court of Appeal held that the Tribal Entities are arms of their respective tribes for purposes of sovereign immunity from the State's suit. (*Id.* at p. 42.)

III. ARGUMENT

The State's Petition represents a transparent attempt to dress-up the Court of Appeal's solid, well-reasoned, and precedentially consistent opinion as some judicial aberration worthy of this Court's review simply because the

State is disgruntled with the result of *Miami Nation Enterprises*—not because there is any flaw in the opinion itself. The State shows its desperation on page one of the Petition in its inflammatory statement of the "issues presented," which is wholly unconnected to any legal definition of tribal sovereign immunity or the arm-of-the-tribe test. As set forth fully below, it is clear that, far from disrupting uniformity of decision, *Miami Nation Enterprises* adds to the stability and clarity of California's tribal sovereign immunity jurisprudence. Likewise, the federal Indian law issues at play here are well-settled and do not require further review by this Court. As such, the Tribal Entities respectfully request that the State's Petition for Review be denied.

A. Miami Nation Enterprises Applied all Six Factors of the Arm-of-the-Tribe Test Set Forth in *American Property.*

In its effort to obtain Supreme Court review under California Rule of Court 8.500(b)(1), the State attempts to fabricate a conflict or ambiguity between *Miami Nation Enterprises* and *American Property* by mischaracterizing both cases. Primarily, the State accuses the Court of Appeal in *Miami Nation Enterprises* of "adopting" a new test that is in competition with the *American Property* test (Petition at p. 3), and also "narrower," "more formalistic" (*id.* at p. 11) and "in material conflict" with *American Property* (*id.* at p. 12). The State's claims are clearly and unequivocally refuted by a plain reading of *Miami Nation Enterprises*.

American Property, decided in 2012, adopted a six-part test derived from a decision of the Tenth Circuit Court of Appeals, *Breakthrough, supra*, 629 F.3d 1173: "(1) method of creation; (2) purpose; (3) structure, ownership, and management, including the amount of control the tribe has over the entities; (4) whether the tribe intended for the entities to have tribal sovereign immunity; (5) the financial relationship between the tribe and the entities; and (6) whether the purposes of tribal sovereign immunity are served

by granting immunity to the entities." (*American Property*, *supra*, 206 Cal.App.4th at p. 501.) Contrary to the State's assertions, the Court of Appeal in *Miami Nation Enterprises* actually applied each of these factors to MNE and SFS, as follows:

1) Method of Creation

The Court of Appeal expressly found, based on undisputed evidence, that MNE "was created directly under the Miami Tribe's tribal law as a subordinate unit of the tribe itself." (*Miami Nation Enterprises*, *supra*, 223 Cal. App. 4th at p. 38.) With regard to SFS, the Court found that, "SFS is a wholly owned corporation organized under tribal law." (*Id.* at p. 40).

2) Purpose

The Court of Appeal further found that MNE's purpose is to "provide for [the Miami Tribe's] economic development" (*Miami Nation Enterprises*, *supra*, 223 Cal. App. 4th at p. 38), and that SFS's purpose is "furthering the tribe's sovereign interest in economic development." (*Id.* at p. 40.)

3) Structure, Ownership, and Management, Including the Amount of Control the Tribe has Over the Entities

The Court of Appeal engaged in a thorough analysis in considering this third *American Property* factor. With regard to MNE, the Court summarized the evidence as follows:

> MNE's initial board of directors consisted of the members of the Tribal Business Committee; the chief of the Miami Tribe appointed all successor members of the MNE board with the approval of the Tribal Business Committee; the current members of the board are members of the Miami Tribe; and the initial officers of MNE were hired by the Tribal Business Committee, including its current chief executive officer. MNE Services, Inc. is a wholly owned subsidiary of MNE, created in 2008 pursuant to the Amended Miami Nation Enterprises Act. MNE Services, Inc. processes and approves loan applications pursuant to underwriting criteria approved by MNE. MNE/MNE Services, Inc. transact Internet lending

> under the trade names Ameriloan, U.S. Fast Cash and United Cash Loans. Their lending activities are subject to tribal laws governing interest rates, loans and cash advance services.
>
> * * *
>
> As discussed, MNE's initial board of directors consisted of the Miami Tribe's business committee, and the chief of the tribe has appointed all successor members of the MNE board in consultation with the business committee; all five members of the board are members of the Miami Tribe.

(*Miami Nation Enterprises*, *supra*, 223 Cal. App. 4th at pp. 28-29, 39). With regard to SFS, the Court of Appeal stated:

> SFS's articles of incorporation mandate that the board of directors of SFS, which consists of the members of the Tribal Council, manage SFS; and the Tribal Council appointed the tribe's business manager as the chief executive officer of SFS.
>
> According to the declaration of Robert Campbell, an enrolled member of the Santee Sioux Nation, a member of the Tribal Council and the treasurer of SFS, "the loan transactions are approved and consummated in Indian lands and within the jurisdiction of the Santee Sioux Nation."
>
> * * *
>
> Pursuant to SFS's articles of incorporation, its board of directors consists of the members of the Tribal Council, who manage SFS; and the Tribal Council appointed the tribe's business manager as the chief executive officer of SFS.

(*Id.* at pp. 29-30; 40). Further, with regard to both MNE and SFS, the Court of Appeal concluded:

> Yet the Commissioner necessarily concedes, as the evidence demonstrated, under the management agreements MNE and SFS have final decision making authority to approve or disapprove any loans; advance instructions or approval parameters are established by them to allow the third-party managers to function on a quick-turnaround basis. Indeed, the

> agreements expressly provide that the tribal entities have "the sole proprietary interest in and responsibility for the conduct of the business" and that NMS's day-to-day management of the operations is "subject to the oversight and control of" MNE and SFS, respectively.
>
> In other words, MNE and SFS are not merely passive bystanders in the challenged lending activities.

(*Id.* at p. 41). Thus, contrary to the State's mischaracterization, the Court of Appeal clearly applied the third *American Property* factor.

4) Whether the Tribe Intended for the Entities to have Tribal Sovereign Immunity

The State acknowledges that the Court of Appeal applied the fourth factor from *American Property* to both Tribal Entities. With regard to MNE, the Court stated, "The Miami Tribe expressly provided MNE would enjoy all privileges and immunities of the tribe itself, including 'the right of sovereign immunity from unconsented civil suit'" (*Id.* at 29), and "unlike the Sycuan Band's relationship to U.S. Grant, LLC (see *id.* at p. 505, 141 Cal.Rptr.3d 802), the Miami Tribe expressly intended for MNE to be covered by tribal sovereign immunity." (*Miami Nation Enterprises*, *supra*, 223 Cal. App. 4th at p. at 38).

With regard to SFS, the Court observed, "SFS's articles of incorporation expressly state it enjoys the tribe's sovereign immunity from suit," (*Miami Nation Enterprises*, *supra*, 223 Cal. App. 4th at p. 30), and "As with MNE, and again unlike the California limited liability company evaluated in *American Property*, SFS is a wholly owned corporation organized under tribal law and expressly protected from suit by the tribe's immunity." (*Id.* at p. 40).

5) The Financial Relationship Between the Tribe and the Entities

Contrary to the State's mistaken assertions, the Court of Appeal applied the fifth *American Property* factor and analyzed the financial relationship between the Tribe and the Tribal Entities. With regard to MNE, the Court of Appeal observed:

> [P]rofits from MNE/MNE Services, Inc. "directly or indirectly enable the Miami Tribe to fund critical governmental services to its members, such as tribal law enforcement, poverty assistance, housing, nutrition, preschool, elder care programs, school supplies and scholarships.... The cash advance business is a critical component of the Miami Tribe's economy and governmental operations."
> * * *
> Profits earned by MNE are utilized by the Miami Tribe to fund critical governmental services to its members including tribal law enforcement, poverty assistance, preschool and elder care programs. In addition, any tribal funds and other resources used to create, capitalize and operate MNE are necessarily at risk in its business operations.

(*Miami Nation Enterprises*, *supra*, 223 Cal. App. 4th at pp. 29, 39). Similarly, with regard to SFS, the Court summarized the evidence in the record as follows:

> All profits earned by SFS go to the Santee Sioux to help fund its government operations and social welfare programs.... The Santee Sioux reservation is a severely economically depressed region, and the profits generated by SFS are essential to maintaining a functioning government that is able to provide the essential government services to its members.
> * * *
> All profits earned by SFS are used by the Santee Sioux to help fund its government operations and social welfare programs, furthering the tribe's sovereign interest in economic development. Indeed, the evidence before the trial court was, because the reservation is in a severely depressed region, those profits are essential to maintaining a functioning tribal government able to provide necessary services to the tribe's members.

(*Id.* at pp. 30, 38.) Thus, this factor also weighs in favor of the Court of Appeal's holding that SFS and MNE are arms of their respective Indian tribes.

6) *Whether the Purposes of Tribal Sovereign Immunity are Served by Granting Immunity to the Entities*

The Court of Appeal also squarely addressed the sixth *American Property* factor, noting that the trial court ruled that "federal policies intended to promote tribal autonomy were furthered by extension of immunity to MNE and SFS." (*Miami Nation Enterprises*, *supra*, 223 Cal. App. 4th at p. 31). The Court of Appeal cited evidence in the record showing that revenues generated by SFS and MNE are "critical" to their respective Tribes' "economy and governmental operations" (*id.* at p. 29) and "essential to maintaining a functioning government that is able to provide the essential government services to its members." (*Id.* at p. 30). Lastly, the Court of Appeal expressly held that, "extension of immunity to [MNE] *plainly* furthers federal policies intended to promote tribal autonomy," (*id.* at p. 40 [emphasis added]), and "extension of immunity to [SFS] *substantially* promotes tribal autonomy." (*Ibid.* [emphasis added].).

Thus, the Court of Appeal in *Miami Nation Enterprises* did not adopt a new "competing test" as the State claims. (Petition at p. 3.) Instead, it considered the entire body of authorities that control and inform the California arm-of-the-tribe landscape including, *American Property*; *Trudgeon; Redding Rancheria*; *Allen v. Gold Country Casino* (9th Cir. 2006) 464 F.3d 1044; *Breakthrough*; *Gavle v. Little Six Inc.* (Minn. 1996) 555 N.W.2d 284, and *Cash Advance*. (*Miami Nation Enterprises*, *supra*, at pp. 34-38.) Indeed, the Court of Appeal ultimately applied each and every factor in *American Property* and went even *further* to analyze the evidence in the

record to conclude that "other elements of the various tests appearing in the case law support the trial court's arm-of-the-tribe conclusion." (*Id.* p. at 39.)

The so-called "competing test" about which the State complains here appears in the conclusion of the Opinion below and is merely a summary of what the State admits are "non-exhaustive" factors analyzed in *American Property* and other cases. That the Court of Appeal appropriately and accurately summarized the "non-exhaustive" and "overlapping" factors succinctly in its conclusion is not a basis for granting review.

The State goes so far as to baldly misstate *Miami Nation Enterprises* in order to fabricate a so-called "material conflict" regarding the weight that should be applied to the *American Property* arm-of-the-tribe factors. (Petition at p. 11.) This argument is nonsensical, as *Miami Nation Enterprises* explicitly relies upon *American Property* to determine that the method of a tribal entity's creation and the purpose for creating it "are the most significant factors" in the arm-of-the-tribe analysis. (*Miami Nation Enterprises*, *supra*, 223 Cal.App.4th at pp. 38-39 [quoting *American Property*, *supra*, 206 Cal.App.4th at p. 501 [stating that a number of court decisions "have considered creation of an entity under tribal law as a factor weighing significantly in favor of a conclusion that the entity shares in the tribe's sovereign immunity"]].) The State cannot carve out some distinction by implying that *Miami Nation Enterprises* treated "method of creation" as dispositive. (Petition at p. 11.) The Court of Appeal's extensive analysis of many arm-of-the-tribe factors other than "method of creation"—including each and every factor analyzed in *American Property*—could not be clearer. (*Miami Nation Enterprises*, *supra*, at pp. 38-42.)

B. Supreme Court Review Is Not Necessary to Settle Important Issues of Law

The "important legal question" that the State insists merits this Court's review has actually been long-settled by the United States Supreme

Court and is not susceptible to further interpretation or review. In *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, *supra*, 523 U.S. 751, the United States Supreme Court clearly held that tribal sovereign immunity protects tribal entities engaged in ***off-reservation commercial activity***. (*Id.* at p. 756.) Further, *Kiowa* confirmed that tribal sovereign immunity "is a matter of federal law and is not subject to diminution by the States." (*Id.* at p. 755; accord *Trudgeon*, *supra*, 71 Cal.App.4th at p. 636.)

Nevertheless, the State claims that this Court must settle the question of whether "the arm-of-the-tribe test applied in California's courts [should] place ***reasonable limits on the extension of tribal sovereign immunity to businesses***. . . ." (Petition at p. 13 [emphasis added].) The State urges this Court to reject binding Supreme Court precedent and limit the extension of sovereign immunity to tribal commercial enterprises. The State further urges this Court to disregard undisputed, authenticated tribal organizational documents and resolutions relied upon by every arm-of-the-tribe case in the canon and to focus instead on paternalistic allegations or opinions regarding the role of third parties in the tribal entities' business. The State even proposes that state courts may make decisions about alleged violations of tribal law. (*Id.* at pp. 13-14.)

As the Court of Appeal in *Miami Nation Enterprises* correctly concluded, such considerations are clearly contrary to *Kiowa*, controlling federal precedent, and California precedent. (*Miami Nation Enterprises*, *supra*, 223 Cal.App.4th at pp. 39-42 [citing *Kiowa*, *supra*, 523 at p. 756; *Native American Distributing v. Seneca-Cayuga Tobacco* (2008) 546 F.3d 1288 at p. 1294; *Cabazon Band of Mission Indians v. County of Riverside* (1986) 783 F.2d 900 at p. 901; *Ameriloan*, *supra*, 169 Cal.App.4th at p. 93].) It is well-settled that "tribal immunity is a matter of federal law and is not subject to diminution by the States." *Kiowa*, *supra*, at p. 756 [citing *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering*

(1986) 776 U.S. 877, 891; *Washington v. Confederated Tribes of the Colville Reservation* (1980) 447 U.S. 134, 154].) This Court must reject the State's suggestion that this Court turn a blind eye to this directive.

The State's true motivation for this Petition is not any legitimate concern with the uniformity of decisions or that truly important questions of law are presented. Rather, the State is simply unhappy with the ***result*** reached in *Miami Nation Enterprises* and wants this Court to provide a different ending. Indeed, the State openly suggests throughout its Petition that it should be allowed to regulate arms of sovereign Indian tribes that offer short term internet loans, notwithstanding the clear dictates of federal Indian law generally, and California arm-of-the-tribe jurisprudence specifically. But California Rule of Court 8.500 places no weight whatsoever on a party's displeasure with the result of a Court of Appeal's decision. As the California Practice Guide states, "mere disgruntlement with the court of appeal's decision . . . itself is *not* a ground for review." Jon B. Eisenberg, et al., *California Practice Guide: Civil Appeals and Writs* Ch. 13-B, § 13.75 (2014). That the losing party does not like the consequences of an otherwise sound decision does not justify this Court's review.

C. The State's Petition References Improper Evidence That Should Not Weigh In This Court's Consideration

The State, in its desperate attempt to concoct a basis for Supreme Court review, cites evidence that is not properly before this Court and, therefore, must be disregarded. The State relies heavily on ***its own appellate briefs*** from the Court of Appeal proceeding below, as opposed to record evidence or even the *Miami Nation Enterprises* opinion. Tellingly, these unsupported "facts" are the most specious and sensational allegations contained in the Petition: that the Tribal Lenders "used threats and other unlawful techniques to collect loans" (Petition at p. 4) and that the Tribal Entities "violated the tribes' own laws" (*id.* at p. 7).

None of these hotly-contested allegations were proven below, nor did the trial court make any such findings, as such unfounded and false accusations are unquestionably outside the scope of the limited inquiry at hand—whether the state court has subject matter jurisdiction over MNE and SFS. The State's injection of these unproven and irrelevant allegations is improper and inflammatory. The State's arguments about alleged violations of tribal law are equally unfounded and were wholly refuted both by the evidence and at oral argument. (Clerk's Transcript Vol. 17, pp. 4025, 4091; Transcript of Oral Argument, Jan. 10, 2014, at pp. 26-27.)

The State's brazen citation of preliminary rulings by courts in other proceedings in other jurisdictions is likewise wholly improper. Even the State must recognize that a non-final, initial ruling of a magistrate judge in a separate matter does not provide any evidentiary basis for the State's accusations here. (Petition at p. 4 fn. 3 [citing *Federal Trade Com. v. AMG Service, et al.* (D.Nev., Jan. 28, 2014, No. 2:12-cv-00536-GMN-VCF) 2014 WL 584781].) Likewise, the State cannot possibly believe that the U.S. Supreme Court's grant of certiorari in a case arising out of the Indian Gaming Regulatory Act, with only the most attenuated significance to general tribal

sovereign immunity principles, should have any place in this proceeding. (Petition at p. 12 [citing *Michigan v. Bay Mills Indian Community* (6th Cir. 2012) 695 F.3d 406, cert. granted June 24, 2013, No. 12-515, ___ U.S. ___].)

If anything, the State's liberal disregard for the norms of citation is in keeping with its inaccurate portrayal of the record below.

IV. CONCLUSION

Miami Nation Enterprises is the most clear and precedentially consistent articulation of California's arm-of-the-tribe jurisprudence across the various Court of Appeal Districts. It is based upon and derived from controlling California authorities and has closely adhered to the governing principles of federal Indian law. It has not broken new ground, nor has it unsettled the existing legal landscape. As this Court's review is not necessary to secure uniformity of decision or to settle an important question of law, the Tribal Entities respectfully request that this Court deny the State's Petition for Review pursuant to California Rule of Court 8.500.

Dated: March 24, 2014

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CERTIFICATE OF COMPLIANCE

Pursuant to Cal. Rule of Ct. 8.204(c)(1), I certify that the attached Petition for Review contains 4,547 words (excluding the cover, tables, certificates, signature blocks, and attachments), according to the count of the computer program used to prepare the brief.

March 24, 2014

John Nyhan

People of the State of California, et al. v. MNE d/b/a Ameriloan, et al.
California Supreme Court Case No. S216878
Second Appellate District, Div. Seven, Case No. B242644
L.A. County Superior Court Case No. BC373536

CERTIFICATE OF SERVICE

I declare I am employed in the County of Sacramento, State of California. My business address is: 2020 L Street, Suite 250, Sacramento, California 95811. I am over the age of eighteen (18) years and not a party to the within action.

On **March 24, 2014**, I served the within:

DEFENDANTS' AND RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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Telephone: (213) 576-7586

One (1) copy

X **By overnight delivery** service by placing a true copy thereof in an overnight delivery envelope and placing the envelope in a Federal Express drop box at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **March 24, 2014**, at Sacramento, California.

Suzanne Balluff

Suzanne Balluff