

1 STUART G. GROSS (#251019)
sgross@gross-law.com
2 DANIEL C. GOLDBERG (#287923)
dgoldberg@gross-law.com
3 **GROSS LAW, P.C.**
4 The Embarcadero
Pier 9, Suite 100
5 San Francisco, CA 94111
t (415) 671-4628
6 f (415) 480-6688
7

JOSEPH R. SAVERI (#130064)
jsaveri@saverilawfirm.com
ANDREW M. PURDY (#261912)
apurdy@saverilawfirm.com
KEVIN E. RAYHILL (#267496)
krayhill@saverilawfirm.com
JOSEPH SAVERI LAW FIRM, INC.
505 Montgomery Street, Suite 625
San Francisco, CA 94111
t (415) 500-6800
f (415) 395-9940

8 *Attorneys for Plaintiffs the Paskenta Band of Nomlaki Indians*
9 *and the Paskenta Enterprises Corporation*

10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**

12 **PASKENTA BAND OF NOMLAKI INDIANS;**
13 **and PASKENTA ENTERPRISES**
14 **CORPORATION,**

15 **Plaintiffs,**

16 **v.**

17 **INES CROSBY; JOHN CROSBY; LESLIE**
18 **LOHSE; LARRY LOHSE; TED PATA; JUAN**
19 **PATA; CHRIS PATA; SHERRY MYERS;**
20 **FRANK JAMES; UMPQUA BANK; UMPQUA**
21 **HOLDINGS CORPORATION;**
22 **CORNERSTONE COMMUNITY BANK;**
23 **CORNERSTONE COMMUNITY BANCORP;**
24 **JEFFERY FINCK; GARTH MOORE;**
25 **GARTH MOORE INSURANCE AND**
26 **FINANCIAL SERVICES, INC.;**
27 **ASSOCIATED PENSION CONSULTANTS,**
28 **INC.; HANESS & ASSOCIATES, LLC;**
ROBERT M. HANESS; THE PATRIOT
GOLD & SILVER EXCHANGE, INC.; and
NORMAN R. RYAN,

Defendants,

QUICKEN LOANS, INC.; CRP 111 WEST
141ST LLC; CASTELLAN MANAGING
MEMBER LLC; CRP WEST 168TH STREET
LLC; and CRP SHERMAN AVENUE LLC,

Nominal Defendants.

Case No. 15-cv-00538-GEB-CMK

PLAINTIFFS' MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR A
PRELIMINARY INJUNCTION

Date: July 27, 2015
Time: 9:00 a.m.
Courtroom: 10
Judge: Hon. Garland E. Burrell, Jr.

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1 **INTRODUCTION**

2 Plaintiffs the Paskenta Band of Nomlaki Indians (the “Tribe”), together with its principal
3 business vehicle, the Paskenta Enterprises Corporation (“PEC,” collectively with the “Tribe,”
4 “Plaintiffs”) seek a preliminary injunction imposing an immediate freeze on the assets of
5 Defendants John Crosby, Ines Crosby, Leslie Lohse, and Larry Lohse (the “RICO Ringleaders”)
6 to prevent any further attempts by them to frustrate a future judgment in this action.

7 The RICO Ringleaders, who are former senior employees of the Tribe, stole millions of
8 dollars over the course of a well over decade-long conspiracy, during which they hid their thefts
9 from the Tribe through, *inter alia*, engaging in complex financial transactions to camouflage the
10 true character of their transactions, bribing and threatening Tribe members to keep them quiet,
11 and avoiding financial audits that would expose them. Further, after their termination from
12 employment, the RICO Ringleaders withdrew hundreds of thousands of dollars from Tribal bank
13 accounts, attempted to hide assets, liquidated their tribal retirement accounts, and otherwise
14 demonstrated their intent to transfer assets out of the reach and view of this Court. This past
15 conduct, much of which is admitted to, reveals also their fraudulent intent to dissipate assets
16 stolen from the Tribe.

17 An asset freeze is required to ensure that Plaintiffs have the opportunity to meaningfully
18 pursue their claims arising from the fraudulent scheme perpetrated by the RICO Ringleaders and
19 their co-conspirators. The Court should therefore grant immediate relief enjoining the RICO
20 Ringleaders from transferring or otherwise disposing of any assets in their possession, custody, or
21 control now or acquired in the future, with an allowance for reasonable living and legal
22 expenses.¹

23 ¹ Counsel for the RICO Ringleaders and their RICO Co-Defendant Frank James has indicated that
24 they may move for some type of stay of the instant action on fifth Amendment grounds in
25 connection with the criminal investigation that has been initiated by the Department of Justice
26 (“DOJ”) and Internal Revenue Service (“IRS”) concerning the events underlying the instant case,
27 Declaration of Stuart G. Gross in Support of Plaintiffs’ Motion for a Preliminary Injunction
28 (“Gross Dec.”), ¶¶ 3-4. Plaintiffs understand that the investigation focuses, in particular, on
embezzlement by the RICO Ringleaders and the cyber-attacks that the RICO Defendants
committed after the termination of their employment by the Tribe. Plaintiffs would oppose such
motion; however, in the event it was granted, Plaintiffs would seek a modification of the Freeze
Order to reduce the amount the RICO Ringleaders are allowed to spend on attorneys’ fees and
costs in this litigation. It is, furthermore, reasonable to assume that the RICO Ringleaders have

BACKGROUND

I. Factual Background

In Plaintiffs’ Opposition to Defendants’ Motion to Stay or in the Alternative Dismiss Pending Arbitration and Plaintiffs’ Counter Motion to Stay the Arbitration (“Plaintiffs’ Opp./Cntr. Motion”), Dkt. No. 67, Plaintiffs’ First Amended Complaint (“FAC”), Dkt. No. 30, and Plaintiffs’ Omnibus Opposition to Defendants’ Motion to Dismiss, filed herewith, Plaintiffs provide a detailed discussion of the background of the instant case to which Plaintiffs respectfully direct the Court and hereby incorporate by reference. In short, through this suit, Plaintiffs seek to hold responsible former Tribal employees who, with the substantial assistance of others, through a concerted and systematic program of fraud, coercion, intimidation, extortion, bribery and deception, stole and otherwise diverted tens of millions dollars in Tribal money for their own personal benefit, as well as for those who substantially assisted them in this scheme. That scheme is now the subject of an ongoing criminal investigation by the DOJ and IRS. Gross Dec., ¶ #.

Specifically, the RICO Ringleaders, along with those they eventually brought into the ambit of their scheme, Defendants Ted Pata, Juan “Jon” Pata, Chris Pata, Sherry Myers, and Frank James (collectively with the RICO Ringleaders, the “RICO Defendants”), abused their positions as senior employees of the Tribe in order to steal and embezzle from the Tribe with impunity. These individuals were terminated from employment by the Tribe in April 2014. See Gross Dec., Exs. A-D.

Upon their removal, Wilmer Cutler Pickering Hale and Dorr LLP (“WilmerHale”) was engaged by the Tribe, as part of a mediated process involving the RICO Ringleaders, to investigate, *inter alia*, allegations of financial mismanagement of Tribal assets and certain spending and operational irregularities of the Tribe. Declaration of Christopher Davies in Support of Plaintiffs’ Motion for a Preliminary Injunction (“Davies PI Dec.”), Ex. A (“WilmerHale

been required to pay large initial retainers to counsel representing them in the criminal investigation, resulting in the further dissipation of the funds stolen by them from the Tribe; therefore, it is Plaintiffs’ position that without a showing of good cause—in particular, including that such an initial retainer has not been paid—that the amount allocated to the RICO Ringleaders to pay for attorneys’ fees and costs not be increased as a result of the criminal investigation.

1 Report”)² at 3. On September 1, 2014, WilmerHale issued its Report of Findings and
2 Recommendations. *Id.* The WilmerHale Report found that the RICO Ringleaders had “fallen far
3 short of their legal and ethical obligations to the Tribe” and that the RICO Ringleaders had made
4 “unreasonable expenditures...including compensation of the [RICO Ringleaders] and extravagant
5 expenses” in addition to “irresponsible management of the Tribe’s financial assets.” *Id.* at 3. The
6 WilmerHale Report notes that during the RICO Ringleaders’ tenure, “of the \$191 million in
7 Tribal funds available...at least \$61 million – over 30 percent – was spent on Tribal
8 administration and overhead, including compensation paid to the [RICO Ringleaders].” *Id.* at 4.
9 The WilmerHale Report ultimately recommended that the Tribe pursue legal action. *Id.* at 6.

10 Between early 2001 and April 2014, the RICO Ringleaders controlled much, if not all, of
11 the Tribe’s financial operations. RICO Ringleader Ines Crosby became its Tribal Administrator
12 sometime in 1996. *See* Declaration of Christopher Davies in Support of Plaintiffs’ Opposition to
13 Defendants’ Motion to Stay (“Davies Stay Dec.”), ¶ 11.³ RICO Ringleader John Crosby left the
14 Federal Bureau of Investigation (“FBI”) in early 2001 to become the Tribe’s “Economic
15 Development Director.” *Id.*, ¶ 18(b). Mr. Crosby, who is Ines Crosby’s son, has a degree in
16 accounting and law and served in the FBI as a Special Agent in the FBI’s white-collar crime
17 division. *Id.* RICO Ringleader Leslie Lohse is Ms. Crosby’s sister and John Crosby’s aunt. Leslie
18 Lohse became the Tribe’s Treasurer in 1998, though she has also claimed to have been employed
19 as the Tribe’s “Political Director.” Davies PI Dec., Ex. A (WilmerHale Report) at 14. RICO
20 Ringleader Larry Lohse is Ms. Lohse’s husband and became the Tribe’s “Environmental
21 Director” in 2001; he does not claim to be a member of the Tribe. *Id.*

22 During their employment with the Tribe, the RICO Ringleaders used their control over the
23 Tribe’s financial operations to implement a concerted system of fraud, coercion, intimidation,

24 ² This report may and should be considered by the Court. *See Flynt Distrib. Co., Inc. v. Harvey*,
25 734 F.2d 1389, 1394 (9th Cir. 1984) (“The urgency of obtaining a preliminary injunction
necessitates a prompt determination...[t]he trial court may give even inadmissible evidence some
weight, when to do so serves the purpose of preventing irreparable harm before trial.”)

26 ³ Rather than resubmit Mr. Davies lengthy declaration, Plaintiffs’ respectfully direct the Court to
27 his declaration in Support of Plaintiffs’ Opposition to RICO Defendants’ Motion to Stay or in the
28 alternative Dismiss Pending Arbitration and Counter Motion to Stay Arbitration (“Plaintiffs’
Opp./Cntr-Mtn”). Plaintiffs’ have also provided the Court with a brief supplemental declaration
from Mr. Davies in support of the instant motion (“Davies’ PI Dec.”).

1 extortion, bribery and deception, with the purpose, and result of, stealing tens of millions of
2 dollars from the Tribe. The RICO Ringleaders scheme involved both direct thefts of millions of
3 dollars from Tribal bank accounts, some of which are detailed below,⁴ as well as the unauthorized
4 use of millions of dollars more for their own compensation and extravagant expenses.

5 After the RICO Ringleaders were terminated from their employment with the Tribe their
6 criminal conduct continued. In an attempt to destroy evidence of their crimes, the RICO
7 Defendants launched three separate cyber-attacks, culminating in an attack which systematically
8 deleted all of the Tribe's primary storage locations of data for their principal business, the Rolling
9 Hills Casino (the "Casino"). *See* Declaration of Lance Heinle in Support of Plaintiff's Motion for
10 a Preliminary Injunction ("Heinle Dec."), ¶¶ 8, 9. The attack cost the Casino and the Tribe
11 hundreds of thousands of dollars. Declaration of Bruce Thomas in Support of Plaintiff's Motion
12 for a Preliminary Injunction ("Thomas Dec."), ¶ 13.

13 After the cyber-attacks, in a last ditch effort to maintain their control over the Tribe and its
14 money, the RICO Defendants sent hired thugs, armed with automatic weapons, to take control of
15 the Casino. There was a physical stand-off at the Casino involving approximately 50 Tribe
16 members. Davies PI Dec., Ex. A (WilmerHale Report) at 17. Ultimately, the Tehama County
17 Sheriff deployed deputies to the Casino in order to keep order; and on June 18, 2014, a restraining
18 order was obtained by the California State Attorney General from the U.S. District Court for the
19 Eastern District of California enjoining the RICO Defendants and anyone else from, among other
20 things, disturbing the status quo at the Casino (controlled by the Tribal Council constituted on
21 April 12 and May 10) and possessing firearms on Tribal properties. *Id.* at 17-18.

22 Since the WilmerHale Report was released, and despite the fact that discovery has just
23 begun, the Tribe has since found evidence, some of which is discussed below, confirming
24 WilmerHale's conclusions and indicating an even greater level of illegal conduct. Indeed, even
25 after their employment was terminated, the RICO Ringleaders continued to steal from the Tribe,
26 cashed out their Tribal retirement accounts, and looked to transfer assets overseas.

27 ⁴ Given the extent of Plaintiffs' allegations against the RICO Ringleaders, which involve
28 egregious theft and other illicit conduct spanning almost two decades, Plaintiffs' instant motion necessarily addresses only a small portion of this conduct.

1 **II. Procedural Background**

2 On March 15, 2015, Plaintiffs filed the original complaint in this action. *See* Dkt. No. 1.
3 On April 17, 2015, Plaintiffs filed the FAC. *See* Dkt. No. 30. On May 13, 2015, the RICO
4 Defendants filed a demand for arbitration against the Tribe pursuant to the Fraudulent
5 Employment Agreements with the American Arbitration Association (“AAA”), and, on May 15,
6 2015, the RICO Defendants filed their Stay Motion. *See* Dkt. No. 55. Plaintiffs filed their
7 Opposition to Defendants’ Motion to Stay or in the Alternative Dismiss Pending Arbitration and
8 Plaintiffs’ Counter Motion to Stay the Arbitration on June 16, 2015, which is incorporated by
9 reference herein in its entirety. *See* Dkt. No 67.

10 On May 15, 2015, various Defendants filed their Motions to Dismiss for Lack. *See* Dkt.
11 Nos. 45, 46, 50, 51, 52, 53, and 54. Plaintiffs’ filed an omnibus opposition to these motions to
12 dismiss concurrently herewith which is incorporated herein in its entirety.

13 On June 10, 2015, Plaintiffs’ counsel was informed by counsel for the RICO Defendants
14 that the FBI had raided the homes of the RICO Ringleaders in connection with a criminal
15 investigation related to suspected embezzlement and cyber-crimes by the RICO Ringleaders and
16 others. Gross Dec., ¶2-3.

17 **LEGAL STANDARDS**

18 Federal Rule of Civil Procedure 65 provides courts with authority to preliminarily enjoin
19 conduct by defendants prior to a full adjudication on the merits of a case. The purpose of a
20 preliminary injunction is “to preserve the status quo with provisional relief until the merits can be
21 sorted out.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2001).

22 A court’s authority to preserve the status quo in this manner includes issuance of a
23 preliminary injunction freezing a defendant’s assets to prevent a defendant from dissipating or
24 hiding those assets, so as to preserve preserve a plaintiff’s ability to attain a meaningful judgment.
25 *Johnson v. Couturier*, 572 F.3d 1067 (9th Cir. 2009); *see also, e.g., Republic of Philippines v.*
26 *Marcos*, 862 F.2d 1355, 1358 (9th Cir. 1988); *FTC v. Affordable Media, LLC*, 179 F.3d 1228,
27 1236-37 (9th Cir. 1999). This is true regardless of whether substantial money damages are sought
28 in addition to equitable relief. *See e.g., Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*,

1 321 F.3d 878, 881 (9th Cir. 2003); *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 730 (9th Cir.
2 1999).⁵

3 A preliminary injunction should issue if the plaintiff establishes: “[(1)] that he is likely to
4 succeed on the merits, [(2)] that he is likely to suffer irreparable harm in the absence of
5 preliminary relief, [(3)] that the balance of equities tips in his favor, and [(4)] that an injunction is
6 in the public interest.” *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052
7 (9th Cir. 2009), citing *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008). In
8 recognition that the purpose of preliminary injunction is “to preserve the *status quo* pending at
9 least some discovery and further hearing on the merits,” the Ninth Circuit has confirmed “the
10 ‘serious questions’ approach survives *Winter* when applied as part of the four-element *Winter*
11 test.” In other words, “serious questions going to the merits” and a hardship balance that tips
12 sharply toward the plaintiff can support issuance of an injunction, assuming the other two
13 elements of the *Winter* test are also met. *Alliance For The Wild Rockies v. Cottrell*, 632 F.3d
14 1127, 1132 (9th Cir. 2011).

15 ARGUMENT

16 **I. Plaintiffs Are Likely To Be Irreparably Harmed Absent A Freeze Order, As the** 17 **RICO Ringleaders Have Shown They Are Likely to Dissipate and/or Hide Assets** 18 **Stolen From the Tribe.**

19 The RICO Ringleaders consistent pattern of theft, fraudulent behavior, and attempts to
20 evade liability, make it likely Plaintiffs would suffer irreparable harm in the absence of an order
21 freezing the RICO Ringleaders’ assets. “A party seeking an asset freeze must show a likelihood
22 of dissipation of the claimed assets, or other inability to recover monetary damages, if relief is not
23 granted.” *Johnson*, 572 F.3d at 1085. Courts have routinely found irreparable harm (i.e., a
24 likelihood of dissipation of the claimed assets) where a defendant has demonstrated a pattern of

24 ⁵ Courts have repeatedly rejected the suggestion that the Supreme Court’s ruling in *Grupo*
25 *Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, (“*Grupo Mexicano*”) 527 U.S. 308
26 (1999) divests the Court of its equitable authority to freeze assets. The Supreme Court in *Grupo*
27 *Mexicano* concluded that federal courts do not have the inherent power to grant a preliminary
28 injunction freezing a defendant’s assets solely for the purpose of protecting the plaintiff’s ability
to collect a money judgment. However, this decision left untouched a district court’s authority to
issue such an injunction where, as here, equitable relief is sought. *Johnson*, 572 F.3d at 1083
(explaining that “by its very terms, the holding of *Grupo Mexicano* is limited to cases in which
only monetary damages are sought.”) see FAC, ¶¶ 751-763, pp. 185-186.

1 **theft, fraud, and subsequent attempts to evade liability.** These courts have found that such
2 conduct indicates that in the absence of an asset freeze, plaintiffs will not be afforded the potential
3 for relief. *See, e.g., In re Focus Media Inc. v. Pringle*, 387 F.3d 1077, 1086 (9th Cir. 2004)
4 (finding “the specter of irreparable harm” in part because of “evidence in the record that in the
5 past [the defendant] made away with [the bankrupt company’s] funds”); *Conn. Gen. Life*
6 *Insurance Co.*, 321 F.3d at 881 (affirming district court’s finding of a likelihood of dissipation
7 given the defendants’ “history of fraudulent intra-family transfers, their refusal to disclose asset
8 information in defiance of court order and their convenient divorce settlement”); *Affordable*
9 *Media, LLC*, 179 F.3d at 1236-37 (finding a likelihood of dissipation of assets “[g]iven the
10 [defendants’] history of spiriting their commissions away to a Cook Islands trust”); *Johnson*, 572
11 F.3d at 1067 (CEO’s theft of nearly \$35 million of company money showed he was likely to
12 place personal assets beyond the reach of a judgment, establishing “a likelihood that in the
13 absence of an asset freeze and accounting, Plaintiffs will not be able to recover the improperly
14 diverted funds and will thus be irreparably harmed.”); *Marcos*, 862 F.2d at 1358 (defendants’ past
15 fraudulent conduct warranted a preliminary injunction barring defendants from disposing of any of
16 their assets pending a trial on the merits of plaintiff’s constructive trust claim).

17 **A. The RICO Ringleaders Consistent Pattern of Fraud and Theft of Tribal**
18 **Resources, Even After Their Removal From Power, Make it Likely They Will**
19 **Dissipate Assets To Prevent Plaintiffs’ Recovery**

20 As detailed extensively in the FAC, and supported by evidence discovered thus far,
21 through a concerted and systematic program of fraud, coercion, bribery, and deception, the RICO
22 Ringleaders stole tens of millions of dollars from the Tribe over the course of nearly two decades.
23 They stole this money through clandestine and deceptive tactics aimed at hiding their conduct
24 from the Tribe.

25 The RICO Ringleaders were able to divert over thirty percent of the Tribe’s available
26 funds for their own personal use, largely undetected, by implementing a devious scheme to
27 conceal their theft.
28

1 **1. The RICO Ringleaders Orchestrated and Executed Complex**
2 **Fraudulent Transactions In Order to Hide Their Theft of the Tribe's**
3 **Money**

4 In order to hide their theft of Tribal money, the RICO Ringleaders engaged in elaborate,
5 complex financial transactions, the result of which was to divert the Tribe's money into their
6 pockets. Examples of these transactions include, loans of Tribal money that were personally
7 repaid to them; transfers of money from the Tribe's operating accounts into other accounts from
8 which their thefts would be less likely discovered; large checks written to each other from the
9 Plaintiffs' bank accounts; personal loans taken out on a luxury home paid for by Tribal money;
10 payment of personal credit card bills out of Tribal accounts they controlled; and cash withdrawals
11 structured to avoid federal reporting requirements.

12 **a. RICO Ringleader Ines Crosby Made Loans with Tribal Money**
13 **in Order to be Personally Repaid**

14 Exemplifying the measures the RICO Ringleaders took to avoid detection of their thefts
15 from the Tribe, in March 2013, RICO Ringleader Ines Crosby loaned approximately \$192,000 of
16 Tribal money to her future brother-in-law, arranging that he repaid her personally taking
17 measures to prevent evidence of the transaction from being recorded. *See* Davies PI Dec., ¶ 6(g),
18 (h), (i). Bank records from Umpqua Bank show that on January 15, 2013, Ms. Crosby withdrew
19 \$191,750 from the Tribe's account, *see* A. Rico Dec., Ex. A at p. 80 (Umpqua Bank records), and
20 that same day, Ms. Crosby loaned this money to Larry Tracy, her sister in law's future husband.
21 Davies PI Dec., ¶6(d); A. Rico Dec., Ex. B (loan agreement between Ms. Crosby and Mr. Tracy).

22 Thereafter, in September 2013, Mr. Tracy gave Ms. Crosby a \$192,000 cashier's check in
23 satisfaction of the loan. Davies PI Dec., ¶¶ 6(a), (b); *see* A. Rico Dec., Ex. B. Ms. Crosby cashed
24 the check at the Casino cage and walked out the front door with bags of cash. *See* Declaration of
25 Brandin Paya in Support of Plaintiffs' Motion for a Preliminary Injunction ("B. Paya Dec."), ¶ 5,
26 Ex. A (Notice of Revocation of Gaming License).

27 During this transaction, RICO Defendant Ted Pata, Ms. Crosby's brother, stood guard at
28 the door of the Casino cage where the check was cashed, and RICO Defendant Jon Pata, who
controlled the surveillance department, ensured that nothing was recorded on video. *See* B. Paya

1 Dec., ¶ 5, Ex. A. Jon Pata lost his gaming license as a result of this incident. B. Paya Dec., Ex. A.
2 During WilmerHale’s investigation, when challenged about the transaction Ms. Crosby
3 admitted to having loaned Mr. Tracy this money, claiming she did so pursuant to her line of credit
4 afforded her in her purported employment agreement. Davies PI Dec., ¶¶ 6 (d). As discussed
5 below, this purported employment agreement is void for a host of reasons. During her interview,
6 Ms. Crosby also admitted that she cashed the \$192,000 check from Mr. Tracy at the Casino cage.
7 Davies PI Dec., ¶¶6 (a), (b), (f). Ms. Crosby further explained that she and Ted Pata arranged a
8 specific time for her to cash the check at the Casino. *Id.*, ¶ 6 (h). She claimed that she didn’t just
9 cash the check at a bank or deposit the check because of “the state of the economy.” *Id.*, ¶ (6) (i).
10 Ms. Crosby’s explanations are not credible, rather, the far more reasonable explanation is that Ms.
11 Crosby engaged in this subterfuge in order to disguise and hide from discovery the fraudulent
12 character of the transaction.

13 **b. RICO Ringleader John Crosby Stole from The Tribe’s**
14 **Principal Investment Account at Cornerstone Bank, Where Mr.**
15 **Crosby was a Member of the Board of Directors, in Order to**
16 **Veil The Thefts as Investments and Business Expenses**

17 Further exemplifying the RICO Ringleaders’ fraudulent scheme and efforts taken by
18 them to hide it, RICO Ringleader John Crosby regularly transferred money from the operating
19 accounts of the Tribe to the accounts of PEC at Abettor Defendant Cornerstone Bank
20 (“Cornerstone Bank”) and then made large withdrawals from those PEC accounts for his personal
21 benefit. Again, like Ms. Crosby’s loan, these transactions were conducted so as to camouflage
22 their fraudulent nature.

23 The Tribe made the bulk of their investments through PEC, and using the PEC accounts at
24 Cornerstone Bank, where Mr. Crosby conveniently sat on the Board of Directors. Davies Stay
25 Dec., ¶ 18(ll). In this position, Mr. Crosby was free to withdraw money from the Tribe’s
26 Cornerstone accounts at will. Davies Stay Dec., ¶18(u) (Mr. Crosby admitting to having
27 withdrawn \$1.5 million - a significant underestimate - primarily from the Tribe’s PEC account at
28 Cornerstone). However, as the records from the Tribe’s accounts show, Mr. Crosby often
transferred money from Tribal operating accounts prior to a PEC account and then withdrew

1 money from the PEC account; he did so rather than simply withdrawing the money directly from
2 the Tribe's operating accounts, so as to disguise his thefts of Tribal funds as investments or
3 business expense by PEC. Mr. Crosby's seat on the Cornerstone Bank's Board of Directors,
4 conveniently allowed him to conduct these transactions with impunity. By way of example, these
5 transactions include:

- 6 • On August 18, 2010, \$1.2 million was transferred from a Tribal operating account to a
7 PEC account. A. Rico Dec., Ex. D. Mr. Crosby wrote a check to RICO Ringleader Larry
8 Lohse for \$50,000 from that PEC account that same day. *Id.*
- 9 • On April 13, 2011, \$300,000 was transferred from one of the Tribe's operating accounts
10 to a PEC account. A. Rico Dec., Ex. E. Two days later Mr. Crosby wrote a check for over
11 \$45,000 to Corning Ford from that PEC account for the purchase of a vehicle for himself.
12 *Id.*⁶
- 13 • In June 2011, a total of \$1.3 million was transferred from a Tribal operating account into
14 the PEC account. A. Rico Dec., Ex. F. During that month, Mr. Crosby made a total of over
15 \$1.2 million outgoing wire transfers from that PEC account for unspecified purposes. *Id.*
- 16 • On June 30, 2011, \$100,000 was transferred from a Tribal operating account into a PEC
17 account. A. Rico Dec., Ex. F. That same day a \$100,000 check posted from John Crosby
18 to Jack Stringer from that PEC account as payment for storage of the private jet the RICO
19 Defendants purchased with Tribal funds but used for personal purposes. *Id.* (memo of
20 check reads "Airport Hangar".)
- 21 • On August 9, 2012, \$1.7 million was transferred from a Tribal operating account into the
22 PEC account. A. Rico Dec., Ex. G. The following day, Mr. Crosby made an unauthorized
23 wire transfer of \$1.5 million from that PEC account. *Id.*
- 24 • On January 17, 2013, Mr. Crosby transferred \$250,000 from a Tribal operating account to
25 a PEC account. A. Rico Dec., Ex. H. Less than two weeks later, Mr. Crosby made a

26 _____
27 ⁶ Mr. Crosby admitted to purchasing at least three vehicles with Tribal funds, including a Boss
28 302 Mustang, a 650-horsepower Shelby, and a ZL1 Camaro, using money from PEC Tribal
accounts at Cornerstone, totaling approximately \$160,000 or \$170,000. Davies Stay Dec., ¶
18(u)(i).

1 checkless withdrawal of \$66,900 from that PEC account. *Id.*; and

- 2 • On May 16, 2013, \$200,000 was transferred from a Tribal operating account into the PEC
3 account at Cornerstone Bank. A. Rico Dec., Ex. I. The same day, John Crosby wrote a
4 check to RICO Ringleader Larry Lohse for \$63,410.84 from that PEC account. *Id.* Two
5 days prior, on May 14, 2013, John Crosby wrote himself a check for just over \$33,000
6 from that PEC account. *Id.*

7 These transactions make plain that Mr. Crosby's intention was to conceal his thefts by first
8 transferring money that he intended to steal from Tribal operating accounts into a PEC account.
9 Mr. Crosby acted to disguise such thefts as investments by the Tribe through PEC.

10 c. **RICO Ringleader John Crosby Disguised Large Thefts From**
11 **the Tribe Through the Purchase of a Luxury Home Which He**
12 **Used to Take Out Large Home Equity Loans**

13 With the aim of disguising what were, in reality, thefts of large loans of cash from the
14 Tribe, after using the Tribe's money, without authorization, to purchase a large luxury home for
15 himself, Mr. Crosby took the Tribe's money out of the home by encumbering it with home equity
16 loans that he used for his benefit. In January 2012, Mr. Crosby withdrew \$838,434.14 from a
17 Tribal PEC account for the purchase of a cashier's check of the same amount made out to the
18 escrow company to complete the purchase of a luxury home on Deer Hollow Court ("Deer
19 Hollow Property"). *See* A. Rico Dec., Ex. Q (bank record of Mr. Crosby's withdrawal); *see also*
20 Davies Stay Dec., ¶ 18(u)(iii)(in which Mr. Crosby admits to withdrawing approximately
21 \$800,000 of Tribal money for this purpose).

22 Approximately four months after purchasing the Deer Hollow Property, Mr. Crosby then
23 took out an approximately \$200,000 home equity loan from Cornerstone Bank secured by the
24 home. Gross Dec., Ex. I. Approximately 6 months later, Mr. Crosby effectively withdrew another
25 approximately \$417,000 in cash of the Tribe's money from the Deer Hollow Property by taking
26 out a second home equity loan from Quicken Loans, Inc. Gross Dec., Ex. K.

27 In short, Mr. Crosby purchased the Deer Hollow Property with the aim, in part, of using of
28 using the house as a vehicle to continue to steal from the Tribe via these home equity loans and
go undetected in the process: yet a further example of the RICO Ringleaders' rigorous efforts to

1 veil their thefts.

2 **d. RICO Ringleaders Wrote Each Other, and Themselves,**
3 **Sizeable Checks From the Plaintiffs' Bank Accounts**

4 As yet a further tactic to hide their fraudulent conduct, RICO Ringleaders wrote each
5 other large checks from the Plaintiffs' bank accounts, rather than simply withdraw the money
6 personally.

7 Because Mr. Crosby sat on the Board of Directors of Cornerstone Bank, he and his co-
8 conspirators had free reign over the accounts at the bank. Accordingly, Mr. Crosby and Mr. Lohse
9 repeatedly wrote each other large checks from those accounts, masking them as business or
10 investment expenses. Examples include:

- 11 • In August 2010, Larry Lohse wrote John Crosby a \$50,000 check from a PEC account; six
12 days later John Crosby returned the favor and wrote Larry Lohse a \$50,000 check from
13 the same account. A. Rico Dec., Ex. E;
- 14 • On December 2, 2010, Mr. Lohse wrote two separate checks to Mr. Crosby for \$50,000
15 each from a PEC account. Rico Dec., Ex. J. That same day Mr. Crosby wrote two
16 \$50,000 checks to Mr. Lohse from the same account. *Id.*;
- 17 • On December 21, 2010, Mr. Crosby wrote Mr. Lohse a check for \$42,790.60 from a PEC
18 account. A. Rico Dec., Ex., K.;
- 19 • On December 22, 2011, Mr. Crosby wrote Mr. Lohse a check for \$13,972.50 from a PEC
20 account. A. Rico Dec., Ex., N.;
- 21 • On December 20, 2012, Mr. Crosby wrote Mr. Lohse a check for over \$75,000 from a
22 PEC account. A. Rico Dec., Ex., L.;
- 23 • On December 20, 2012, John Crosby wrote himself a check for \$47,682.50 from a PEC
24 account. A. Rico Dec., Ex., M.;
- 25 • On May 14, 2013, John Crosby wrote himself a check for just over \$33,000 from a PEC
26 account. A. Rico Dec., Ex., I; and
- 27 • On May 16, 2013, Mr. Crosby wrote a check to Mr. Lohse for \$63,410.84 from a PEC
28 account. A. Rico Dec., Ex. I.

1 Similarly, RICO Ringleader Ines Crosby had Leslie Lohse write sizable checks to her
2 from the bank account of the Tribe at Abettor Defendant Umpqua Bank, rather than simply
3 withdrawing the money personally, in order to avoid detection. Mr. Crosby referred to this
4 account at Umpqua as an account as an “account on the side” of Ines Crosby. Davies Stay Dec.,
5 ¶18(v). Examples of these include:

- 6 • On January 18, 2013, Ms. Lohse wrote Ms. Crosby a check for \$5,842.75 from a Tribal
7 account at Umpqua Bank. A. Rico Dec., Ex. A at 54.;
- 8 • On February 28, 2013, Ms. Lohse wrote Ms. Crosby a check for \$3,410.40 from a Tribal
9 account at Umpqua Bank. A. Rico Dec., Ex. A at 48;
- 10 • On March 10, 2013, Ms. Lohse wrote Ms. Crosby a check for \$5,341.16 from a Tribal
11 account at Umpqua Bank. A. Rico Dec., Ex. A at 48;
- 12 • On April 1, 2013, Ms. Lohse wrote Ms. Crosby a check for \$6,500 from a Tribal account
13 at Umpqua Bank. A. Rico Dec., Ex. A at 45;
- 14 • On September 10, 2013, Ms. Lohse wrote Ms. Crosby a check for \$2,010.50 from a Tribal
15 account at Umpqua Bank. A. Rico Dec., Ex. A at 31;
- 16 • On October 30, 2013, Ms. Lohse wrote Ms. Crosby a check for \$3,417.62 from a Tribal
17 account at Umpqua Bank. A. Rico Dec., Ex. A at 25; and
- 18 • On March 2, 2014, Ms. Lohse wrote Ms. Crosby a check for \$3,175.16 from a Tribal
19 account at Umpqua Bank. A. Rico Dec., Ex. A at 13.

20 These transactions plainly demonstrate that the RICO Ringleaders structured these transactions
21 under the guise of business-related payments when, in fact, they were simply stealing from the
22 Tribe by writing each other checks payable with the Tribe’s money, with the aim of hiding these
23 transactions from the Tribe.

24 e. **The RICO Ringleaders Used Tribal Money to Pay Personal**
25 **Credit Card Bills, Rather Than Spend Money Directly From**
26 **Tribal Accounts, So As to Hide These Thefts**

27 Additionally, the RICO Ringleaders caused the Tribe to pay their personal credit card
28 bills. Again, the RICO Ringleaders did so as a means to disguise their thefts, rather than pay for
these expenses straight from Tribal accounts, with the aim of avoiding their detection.

1 Approximately \$3 million was paid from the Tribal accounts for this purpose. This
2 amount includes, \$2,394,386 in payments to American Express during the period of 2003 through
3 a portion of 2014 from a Tribal account at Umpqua Bank. *See* A. Rico Dec., Ex. A (Umpqua
4 Bank records). In fact, for just the period of February 2013 through March 2014, the RICO
5 Ringleaders caused \$472,981.14 in American Express bills to be paid via a Tribal checking
6 account at Umpqua Bank, *Id.*, at pp.10-49, which Mr. Crosby referred to as an “account on the
7 side” of his mother. *Davies Stay Dec.*, ¶ 18(v).

8 In structuring their conduct in this way, the RICO Ringleaders obscured for what and
9 when they were using the Tribe’s money in order to disguise their theft of Tribal assets and avoid
10 liability.

11 **f. The RICO Ringleaders Transferred Funds Between the Tribe’s**
12 **Accounts at Tri Counties Bank Immediately Before**
 Withdrawing Large Sums of Money

13 The RICO Ringleaders further covertly stole money from the Tribe by transferring large
14 funds between Tribal bank accounts at Tri Counties Bank, and then withdrawing large sums of
15 money. In 2011 and 2013, the RICO Ringleaders engaged in a series of transactions, in which
16 they deposited hundreds of thousands of dollars in the Tribe’s bank accounts at Tri Counties Bank
17 and then within a matter of days caused hundreds of thousands of dollars of those deposits to be
18 paid to the RICO Ringleaders. *See* A. Rico Dec., Ex. S (Tri Counties Bank statements). There
19 was no legitimate reason for these transactions; rather, they were done with the purpose and effect
20 of hiding the RICO Defendants’ theft of over **\$1.5 million** from the Tribe.

21 The first of these fraudulent transactions began on or about November 21, 2011, when the
22 RICO Ringleaders caused a deposit of \$900,000 to be made into one of the Tribe’s accounts at
23 Tri Counties Bank branch in Chico, California. *See id.* The same day, the RICO Ringleaders
24 transferred \$737,200 from that Tribal account to another Tribal account at Tri Counties Bank. *See*
25 *id.* Then, on or about November 23, 2011, the RICO Ringleaders caused the remaining
26 \$2,165,760.12 of Tribal funds in one account at Tri Counties Bank to be transferred to another
27 Tribal account at the bank. *See id.* Then, on or about November 25, 2011, the RICO Ringleaders
28 closed the original account causing \$791,602.24, the balance of the Tribe’s money, to be paid to

1 the RICO Ringleaders. *See id.*

2 Then, in November and December of 2013, the RICO Ringleaders engaged in a similar
3 series of transactions at Tri Counties Bank. On or about November 25, 2013, the RICO
4 Ringleaders caused \$760,000 to be deposited in a Tribal account at Tri Counties Bank; and then,
5 on the same day, withdrew the same amount. *See id.* Approximately one month later, on or about
6 December 20, 2013, the RICO Ringleaders did the exact same thing, causing \$760,000 of the
7 Tribe's money to be deposited in an account at Tri Counties Bank; and then, on the same day,
8 withdrew that same amount. *See id.*

9 There was no legitimate reason for this series of transactions. Rather, the maneuvers were
10 conducted for the purpose, and with the resulting effect of, obscuring the RICO Ringleaders' theft
11 of approximately of over \$1.5 million from the Tribe. *See id.*

12 **2. RICO Ringleader Ines Crosby Structured Unauthorized Withdrawals**
13 **to Avoid Federal Reporting Requirements**

14 While at times, especially after their termination, the RICO Ringleaders were brazen in
15 their thefts from the Tribe's bank accounts, at other times, in order to avoid detection, the RICO
16 Ringleaders withdrew money from Tribal accounts in amounts structured to avoid Currency
17 Transaction Reporting ("CTR") requirements, which require banks to report any cash transaction
18 over \$10,000. 31 U.S.C. § 5311. RICO Ringleader Ines Crosby was aware of this requirement
19 given her son, John Crosby's, experience as a former accountant and FBI special agent focusing
20 on white-collar crime. Davies Stay Dec., ¶ 18(b).

21 For example, between January 15, 2013, and April 7, 2014, RICO Ringleader Ines Crosby
22 wrote 15 checks out to cash for exactly \$7,500, and five additional checks made out to cash for
23 between \$1,000 and \$6,500 from one of the Tribe's accounts at Umpqua Bank. A. Rico Dec., Ex.
24 A at pp. 7-54. The structure of these withdrawals are significant: the consistent deceptive pattern
25 of the RICO Ringleaders, paired with Mr. Crosby's knowledge of federal reporting requirements
26 is strongly probative of Ms. Crosby having intentionally structured these transactions so no single
27 withdrawal was above the \$10,000 threshold, to avoid CTR reporting requirements.

1 In sum, the RICO Ringleaders didn't just steal enormous amounts of money from the
2 Tribe, they did so with the evident intent of concealing their thefts. This conduct evinces the
3 likelihood that these individuals will continue such behavior by dissipating and/or hiding funds to
4 frustrate any potential future judgment. *Accord Johnson*, 572 F.3d at 1085 (affirming district
5 court's finding of a likelihood of dissipation of assets in light of the fact that "in the mere five
6 years that [defendant] served as CEO, [he] somehow convinced his fellow directors and trustees
7 to consent to diverting nearly \$ 35 million ... into his personal bank account. Such an individual
8 is presumably more than capable of placing assets in his personal possession beyond the reach of
9 a judgment.").

10 **3. The RICO Ringleaders Bribed and Suspended Tribe Members to**
11 **Conceal Their Conduct From the Tribe**

12 In order to conceal their thefts and avoid responsibility for them, the RICO Ringleaders
13 also resorted to bribing or suspending Tribe members who discovered their wrongdoings, in order
14 to keep them quiet.

15 For example, in or about September 2011, RICO Defendants, Jon Pata and Ted Pata, who
16 were members of the Tribe's Gaming Commission discovered that the RICO Ringleaders had
17 caused the Tribe to purchase a multi-million dollar private jet. *See Thomas Dec.*, ¶ 5. In
18 September 2011, Ted Pata approached Bruce Thomas, the CEO of the Casino, and asked if Mr.
19 Thomas was aware that the Tribe had purchased a private jet and certain properties in Florida. *Id.*
20 Approximately two weeks later, Mr. Thomas observed Ted and Jon Pata driving brand new
21 luxury pickup trucks. *Id.*, ¶ 6. Two months later, Messrs. Pata had different brand new luxury
22 pickup trucks. *Id.* Neither Ted nor Jon Pata ever mentioned the plane to Mr. Thomas again. *Id.*, ¶
23 7. These trucks were intended as bribes from John Crosby to prevent Messrs. Pata from revealing
24 this to information to the rest of the Tribe.

25 The RICO Ringleaders also publicly and swiftly suspended Tribal members who
26 threatened to expose their financial misconduct causing them immense financial hardship.⁷ For

27 ⁷ Suspended members lose their rights to per capita payments on which most depend for their
28 survival. *See Declaration of Kimberly Freeman in Support of Plaintiffs' Motion for Preliminary
Injunction ("K. Freeman Dec.")*, ¶.

1 example, Kimberly Freeman was suspended from the Tribe for a 10-year term after publicly
 2 inquiring into the RICO Ringleaders' spending habits. *See* K. Freeman Dec., ¶ 5. In 2013, Ms.
 3 Freeman learned that the RICO Ringleaders' had bought a private jet and that Mr. Crosby's wife
 4 had made political contributions with Tribal money. *Id.*, ¶ 2. At the next Tribal meeting, Ms.
 5 Freeman stood up and publicly asked the RICO Ringleaders about these purchases. *Id.*, ¶ 3. She
 6 was swiftly reprimanded. Shortly after she asked her questions, Mr. Crosby came to her and told
 7 her that "he had been waiting for her to say this stuff" and that she was "done." *Id.*, ¶ 4. Soon
 8 thereafter, Ms. Freeman was notified that she had been suspended from the Tribe for a term of 10
 9 years. *Id.*, ¶ 5. Per the terms of her suspension, her monthly per capita payments – upon which
 10 she depended for basic living expenses – were revoked. *Id.* Further, she was informed that if she
 11 stepped foot on Tribal property she would be immediately arrested. *Id.*

12 These tactics of bribery, and suspension and intimidation of Tribe members exhibit the
 13 RICO Ringleaders' pattern of evading liability for their thefts at all costs.

14 **4. The RICO Ringleaders Prevented Any Financial Audits For Fear that**
 15 **Their Thefts Would Be Exposed**

16 Another means by which the RICO Ringleaders sought to hide their scheme from
 17 discovery, was by using their senior positions with the Tribe to prevent any and all audits of the
 18 Tribe's finances.

19 For example, sometime in 2006 or 2007, the Internal Revenue Service ("IRS") attempted
 20 to conduct an audit of the Tribe's finances. Thomas Dec., ¶7. However, the RICO Ringleaders
 21 refused to cooperate. *Id.* John Crosby rebuffed any attempt by the IRS to review the Tribe's
 22 financial records and as a result no audit ever took place. *Id.*, ¶7.⁸

23 The RICO Ringleaders also intentionally structured certain contracts for the receipt of
 24 federal funds so that the payments were below the threshold that would have required the Tribe to
 25 perform and submit a financial audit. Under the Indian Self-Determination and Education
 26 Assistance Act of 1975, Pub. L. No. 93-638, 88 Stat. 2203, Indian tribes are allowed to acquire
 27 increased control over the management of federal programs that impact their members, resources

28 ⁸ The IRS along with the DOJ is currently investigating Mr. Crosby, as well as other RICO Ringleaders, for suspected violations of federal law. Gross Dec., ¶ 5.

1 and governments, through contracts providing for the payment of federal funds. These
2 agreements are referred to as “638 contracts.” Any Tribe accepting federal money under a 638
3 Contract must keep sufficient records to account for the use of those funds and make available to
4 the Bureau of Indian Affairs (“BIA”) full audits of the Tribe’s finances. 25 U.S.C. § 450(c).
5 These accounting and record-keeping requirements, however, can be avoided if the amounts paid
6 under the 638 Contract are beneath a certain dollar amount threshold.⁹ *Id.*

7 In order to avoid the requirement that the Tribe maintain records and account for these
8 federal funds, each of the Tribe’s 638 Contracts that the RICO Ringleaders caused the Tribe to
9 enter into during their tenure were structured to keep the payment amounts requested underneath
10 the \$500,000 amount that triggered audits. Declaration of Jim Willis in Support of Plaintiffs’
11 Motion for a Preliminary Injunction (“Willis Dec.”), ¶ 4.

12 By evading any meaningful review of the Tribe’s finances by the IRS, BIA, or any other
13 entity or individual, the RICO Ringleader so as to ensure their thefts would go undiscovered. This
14 behavior further demonstrates the lengths to which RICO Ringleader will go to escape liability.

15 **B. Realizing They Would Lose Access to Tribal Resources, After Their Removal**
16 **From Power, The RICO Ringleaders Immediately Stole Large Amounts of**
17 **the Tribe’s Money, Hid Assets, Destroyed Evidence, and Impeded Any**
18 **Investigations Into Their Conduct**

19 Each of the RICO Ringleaders acknowledged that their employment with the Tribe was
20 terminated on **April 16, 2014**. Gross Dec, Exs. A-D. However, even after their employment was
21 terminated, the RICO Ringleaders continued their fraudulent conduct: they liquidated their Tribal
22 retirement accounts, withdrew hundreds of thousands of dollars from the Tribe’s banks accounts,
23 moved assets out of the reach of the Tribe, destroyed critical evidence, and impeded the
24 investigation into their conduct.

25 **1. Upon Realizing They Would Lose Access to Tribe’s Money, The RICO**
26 **Ringleaders Emptied Out Their Retirement Accounts**

27 Part of the RICO Ringleaders scheme to defraud the Tribe included causing the Tribe to
28 pay them enormously excessive and unauthorized sums in retirement compensation. The RICO
29 Ringleaders diverted for themselves almost all of the millions of dollars that they caused the Tribe

⁹ In 2003, the mandatory audit threshold was set at \$500,000.00. OMB Circular A-133.

1 to invest in two retirement plans, a defined benefit plan (“Tribal Pension”) and 401(k) (“Tribal
2 401k”) that the RICO Ringleaders caused the Tribe to establish (collectively, “Tribal Retirement
3 Plans”).

4 Between June 27, 2014 and June 30, 2014 each of the RICO Ringleaders liquidated their
5 Tribal 401(k) accounts. A. Rico Dec., Exs. A-D. In fact, so as to avoid efforts by the Tribe to
6 track and locate the funds, the RICO Ringleaders took the extraordinary step of withdrawing the
7 money in cash, and thus incurring significant tax penalties. IRS Notice 402(f).

8 **On each of their withdrawal forms, April 16, 2014 is stated as the effective date of**
9 **separation from employment.** Gross Dec., Exs. A-D. Accordingly, any action taken after this
10 effective date of separation indisputably was not in their capacity as an employee of the Tribe.

11 **2. RICO Ringleader Ines Crosby Withdrew Hundreds of Thousands of**
12 **Dollars from the Tribe’s Umpqua Bank Account After Her**
13 **Employment Ended**

14 Notwithstanding their termination from employment with the Tribe, the RICO
15 Ringleaders continued to steal from it. Between April 17, 2014 and May 27, 2014, RICO
16 Ringleader Ines Crosby helped herself to over \$660,000 of the Tribe’s money. For example, on
17 April 17, 2014, five days after her removal, RICO Ringleader Ines Crosby wrote a \$10,000 check
18 out to “Cash” from a Tribal account at Umpqua Bank. A. Rico Dec., Ex. A. Then, on May 5,
19 2014, she made a checkless withdrawal of **\$250,000** from a Tribal account at Umpqua Bank. A.
20 Rico Dec., Ex. A. One day later, on May 6, 2014, she wrote a **\$300,000** check made out to “NPI”
21 from a Tribal account at Umpqua. A. Rico Dec. The Tribe has not yet discovered the identity of
22 “NPI.”

23 Ms. Crosby stole this money, well after **April 16, 2014**, the date she acknowledged that
24 her employment with the Tribe ended. As such, she could not have had any reasonable belief that
25 she was authorized to this money.

26 **3. RICO Ringleader John Crosby Put the Deer Hollow Property Up For**
27 **Sale**

28 _____ In hopes of impeding the Tribe’s ability to recover, John Crosby listed the residence he
purchased with Tribal funds for sale. This house, on Deer Hollow Court, in Redding, California

1 (“Deer Hollow Property”), was paid for by Tribal funds withdrawn by Mr. Crosby from the PEC
2 account. Davies Stay Dec., ¶ 18(u)(iii). On November 6, 2014, RICO Ringleader John Crosby
3 listed the Deer Hollow property for sale at an asking price of \$1,300,000. *See* Gross Dec., Ex. E.
4 The listing was removed on February 27, 2015, only after Plaintiffs initiated a quiet title action
5 with respect to the Deer Hollow Property against Mr. Crosby. *See id.*

6 **4. The RICO Ringleaders Took Extraordinary Actions to Destroy**
7 **Evidence In An Attempt to Avoid Liability, Including Launching**
8 **Cyber-Attacks and Deleting All Non-Spam Emails in Their Accounts**

9 In May 2014, in a further attempt to avoid liability, the RICO Defendants conducted
10 multiple cyber-attacks on the Casino, which shut down data servers for the Casino and other
11 Tribal enterprises, and resulted in the permanent destruction of a substantial amount of data and
12 (likely incriminating) evidence. ***The RICO Ringleaders took credit for these cyber-attacks.***

13 On May 9, 2014, the Casino suffered its first cyber attack involving a malicious attempt
14 deny access of the Casino’s network to employees and other intended users. Heinle Dec. RICO
15 Ringleader Leslie Lohse took credit for the May 9 cyber-attack in the local media, explaining that
16 she “did remotely shut down the casino’s gaming server on May 9.” Gross Dec., Ex. F.

17 Less than a week later, on May 14, 2014, approximately forty Casino employees received
18 a fake email containing a malicious hyperlink, which contained a “Cryptowall” virus, which
19 works by encrypting files on the compromised computer, and then asks the user to pay to have the
20 files decrypted. Heinle Dec., ¶ 7. About ninety minutes later, a second spoofed email was sent to
21 the same Casino employees. *Id.* This email contained a malicious password-protected file and was
22 opened by one recipient before the email was administratively deleted by the Casino’s
23 Information Technology (“IT”) Department. *Id.*

24 The RICO Defendants launched a third and this time successful attack on May 15, 2014.
25 *Id.*, ¶#. That day, Casino personnel began to notice servers going offline and quickly confirmed
26 that all of their virtualized servers were missing and the backups had been erased. *Id.* During this
27 attack, the RICO Defendants were connected to the Casino’s network three times for a total of
28 approximately three hours. Heinle Dec. A forensic analysis showed that the cyber-attack was
launched from RICO Defendant Frank James’ workstation. *Id.* Mr. James’ residence was recently

1 raided by the FBI in connection with the criminal investigation of the DOJ and IRS. Gross Dec.

2 In the course of the attack, the RICO Defendants systematically deleted all of the Tribe's
3 primary datastorage locations. *Id.* In addition to the uncalculated cost of the lost data, the May 15,
4 2014 attack has cost the Casino and the Tribe hundreds of thousands of dollars to mitigate the
5 damage caused to their computer systems, in addition to the lost revenues from the period during
6 which the Casino and its servers were shut down. Thomas Dec., ¶13

7 RICO Ringleader Leslie Lohse took credit for these attacks stating they were done “to
8 remotely disrupt operations at the casino in an attempt and force a sit-down to resolve the issue.”
9 Gross Dec. Moreover, during the WilmerHale investigation, Ms. Lohse admitted to her
10 participation in the attack but incredibly claimed that “they never intended to destroy data.”
11 Davies PI Dec.

12 As senior employees of the Tribe, each of the RICO Ringleaders were issued Tribal
13 employee email addresses. Heinle Dec., ¶13. Once their employment was terminated, the RICO
14 Ringleaders wiped the server clean, deleting all of their email, in a further attempt to cover their
15 tracks and avoid liability. *Id.*

16 **5. The RICO Ringleaders Absconded With The Tribe's Plane**

17 In yet another underhanded act, after the Rico Ringleaders were terminated from their
18 positions with the Tribe and consequently lost access to the private jet they had caused the Tribe
19 to purchase for their benefit, they had the plane held hostage in Idaho. *See* Thomas Dec. The
20 RICO Ringleaders' apparently intended to use the plane as a bargaining chip in their negotiations
21 with the Tribe concerning their separation from employment.

22 Normally, the private jet was housed in a hanger in Redding, California; however,
23 sometime in or about June 2014, Gary Pohrman, the regular pilot for the RICO Ringleaders'
24 private jet flights, flew the plane to Idaho at the direction of the RICO Ringleaders. Thomas Dec.,
25 ¶ 9. As evidence of the RICO Ringleaders' facilitation of this scheme, on May 1, 2014,
26 approximately two weeks after the RICO Ringleaders' employment was terminated, RICO
27 Ringleader Ines Crosby wrote the following checks from a tribal account at Umpqua Bank: (1) a
28 \$6,700 check to Adaptation Aviation, LLC; (2) a \$3,500 check to Julie Mason, the regular co-

1 pilot on the RICO Ringleaders' private jet flights; and (3) what looks to be a \$12,111.15 check
2 made out to Gary Pohrman. *See* A. Rico Dec., Ex. A at p. 6.

3 After the Tribe discovered the private jet had been taken, Bruce Thomas, CEO of the
4 Casino, contacted Mr. Pohrman and demanded that the private jet be returned to the Tribe.
5 Thomas Dec., ¶9. Ultimately, the Tribe was forced to negotiate with Mr. Pohrman, and was
6 forced into paying a total of \$35,000 for the return of their jet. *Id.*

7 **6. The RICO Ringleaders Fabricated Employment Agreements In Order**
8 **to Justify Their Theft**

9 As discussed in detail in Plaintiffs' Opp./Cntr-Mtn, Dkt. No. 67, which is incorporated
10 herein by reference, in the wake of the RICO Ringleaders' terminations, and in the face of
11 accusations of their financial misconduct, the RICO Ringleaders began to claim that any money
12 they took was authorized pursuant to lines of credit ("LOCs") contained in purported employment
13 agreements each had allegedly entered into with the Tribe, dated January 25-26, 2001
14 ("Fraudulent Employment Agreements"). *See* Davies ISO Opp./Cntr-Mtn Dec., ¶¶6(g), 18(h),
15 20(l), 22(f). However, overwhelming evidence supports the conclusion that the Fraudulent
16 Employment Agreements were fabricated. Such evidence includes: (1) direct evidence that the
17 purported signatures of the Tribal Council members on the documents are forgeries; (2) the terms
18 of the Fraudulent Employment Agreements, which, themselves, are inconsistent with the Tribe's
19 reality in 2001; (3) the manner in which the RICO Ringleaders claim the Tribe entered into the
20 Fraudulent Employment Agreements; (4) negotiations by John Crosby and the Tribe in 2003, to
21 revise a contract entered into by the Tribe and Mr. Crosby on January 1, 2001—twenty-four days
22 prior to the date on which his Fraudulent Employment Agreement was purportedly executed—in
23 which terms substantially less favorable than those in Mr. Crosby's Fraudulent Employment
24 Agreement were proposed, without apparent objection from Mr. Crosby, and in which the
25 existence of Mr. Crosby's Fraudulent Employment Agreement was never mentioned or discussed;
26 (5) conduct by the RICO Ringleaders between 2001 and their removal from control that is
27 inconsistent with the Tribe having given each of them a \$5 million LOC; and (6) the lack of any
28 evidence of the Fraudulent Employment Agreements' existence prior to their "revelation" by the

1 RICO Ringleaders after their removal from control, as well as the circumstances of that
2 “revelation”. *See* Plaintiffs’ Opp./Cntr-Mtn.

3 The RICO Ringleaders efforts to manufacture these Fraudulent Employment Agreements
4 in a *post hoc* effort to justify their misconduct, and their consistent claims that these purported
5 agreements are authentic, further demonstrate the RICO Ringleaders willingness to go to any and
6 all lengths to avoid liability and the likelihood they will take actions to frustrate any meaningful
7 judgment in this action.

8 **7. RICO Ringleader John Crosby Looked Into Moving Money Overseas**

9 The danger that the RICO Ringleaders will dissipate assets is further exemplified by Mr.
10 Crosby’s expressed intent to transfer assets to the Philippines. In an email dated October 14,
11 2014, Chad Jones, a member of Mr. Crosby’s family, states that Mr. Crosby was “in the
12 Philippines looking to invest in different ventures.” A. Rico Dec., Ex. R. Mr. Crosby’s maternal
13 grandfather is from the Philippines. Davies Stay Dec., ¶ 18(a). The potential that he will hide the
14 Tribe’s money overseas, out of the reach of this Court, is real and imminent.¹⁰

15 **8. The RICO Ringleaders Have Impeded Investigations Into Their**
16 **Conduct**

17 The RICO Ringleaders’ acts to impede the investigation of Tribal management is a further
18 factor weighing in favor of an asset freeze. *See SEC v. Manor Nursing Centers, Inc.*, 458 F.2d
19 1082, 1106 (2nd Cir. 1972) (explaining the continued failure to furnish the information necessary
20 to a complete understanding of the current situation justified extension of the temporary freeze).

21 Here, as discussed, in the wake of the RICO Ringleaders’ dismissal, WilmerHale was
22 retained to conduct an internal investigation into the state of the Tribe’s finances and investments.
23 However, this investigation was substantially impeded by the RICO Ringleaders. The
24 WilmerHale Report notes that the RICO Ringleaders, *inter alia*, denied investigators access to
25 “important records in certain Tribal accounts.” Davies PI Dec., Ex. A. at 10. The WilmerHale
26 Report states in this regard:

27 ¹⁰ Plaintiffs have further discovered bank records showing a link between a bank in Sudan and
28 payments made from a PEC account at Cornerstone Bank from which Mr. Crosby regularly stole
money, further warranting concern as to RICO Ringleader John Crosby’s intent to move assets
overseas. *See* Gross Dec.

1 We first requested that Mr. Crosby provide us with access to these bank accounts
2 in July 2014, and we have repeated that request, in August 2014, after the [RICO
3 Ringleaders] together had engaged counsel in connection with our inquiry.
4 Although the [RICO Ringleaders] initially indicated that they would provide us
5 with access to the bank records, their counsel informed us on August 22, 2014, that
6 they would not authorize the banks to share the account records with us. As a
7 result, we were unable to fully analyze and document how those accounts were
8 funded and how funds from those accounts were spent.

9 *Id.*

10 The RICO Ringleaders not only failed to cooperate with WilmerHale's investigation, but
11 rather, they intentionally impeded that investigation. Such conduct weighs in favor of issuing an
12 asset freeze order. *See Manor Nursing Centers, Inc.*, 458 F.2d at 1106.

13 In sum, the RICO Ringleaders have demonstrated an ongoing pattern of theft, fraud,
14 concealment, and unwavering attempts to evade liability. There is no reason to believe such
15 conduct will cease absent the requested injunction. Consequently, there is a substantial likelihood
16 that they will dissipate Tribal assets to frustrate any potential judgment. Accordingly, Plaintiffs
17 respectfully request that the Court issue a preliminary injunction freezing their assets, with the
18 exception of reasonable living and legal expenses.

19 **II. Plaintiffs are Likely to Succeed on the Merits of Each of Their Claims Against the**
20 **RICO Ringleaders.**

21 While Plaintiffs contend that they are likely to succeed on all of their claims, in the
22 interests of efficiency, Plaintiffs will not specifically address each of the 25 causes of action
23 alleged in the FAC. Indeed, in their motion to dismiss, the RICO Defendants have not challenged
24 the plausibility or adequacy of any of the claims against them, rather they have challenged only
25 this court's subject matter jurisdiction. *See* Defendants' Motion to Dismiss, Dkt. No. 52-1. This
26 challenge lacks merit as set forth in Plaintiffs' opposition thereto, incorporated herein by
27 reference.

28 The current criminal investigation by the DOJ and IRS related to the embezzlement and
cyber-crime committed by the RICO Ringleaders and others further evidences the merit of
Plaintiffs' claims against the RICO Ringleaders. Moreover, while the WilmerHale Report
indicates that it is preliminary, this report is additionally demonstrates that the Plaintiffs' are

1 likely to succeed on the entirety of their claims.¹¹

2 **A. Plaintiffs Are Likely to Prevail on Their RICO, Civil Conspiracy, and Fraud**
3 **Claims**¹²

4 Plaintiffs' first through sixth causes of action allege violations of the Racketeer Influenced
5 and Corrupt Organizations Act ("RICO") 18 U.S.C. § 1962 (FAC, ¶¶ 431-501); Plaintiffs'
6 sixteenth claim for relief alleges civil conspiracy (FAC, ¶¶ 569-574); and Plaintiffs' tenth and
7 eleventh claims for relief allege fraudulent concealment and fraudulent misrepresentation,
8 respectively (FAC, ¶¶ 526-546). Plaintiffs are likely to succeed, or at the very least have raised
9 serious questions on the merits, on each of these claims.

10 **1. RICO Violations**

11 Plaintiffs allege violations of 18 U.S.C. § 1962(a), (b), (c), and (d). FAC, ¶¶ 431-501.
12 Section 1962(a) prohibits "any person who has received any income derived, directly or
13 indirectly, from a pattern of racketeering activity to use or invest, directly or indirectly, any part
14 of such income, or the proceeds of such income, in acquisition of any interest in, or the
15 establishment or operation of, any enterprise." Section 1962(b) prohibits the acquiring or
16 maintaining of an interest in, or control of, any enterprise engaged in interstate commerce using
17 funds from racketeering activity. *See* 18 U.S.C. § 1962(b). Section 1962(c) prohibits "any person
18 employed by or associated with any enterprise to conduct or participate, directly or indirectly, in
19 the conduct of such enterprises affairs through a pattern of racketeering activity or collection of
20 unlawful debt." Section 1962(d) provides a cause of action for conspiring to violate any of the
21 provisions in subsections (a), (b), or (c). *All World Prof'l Travel Servs. v. Am. Airlines, Inc.*, 282
22 F. Supp. 2d 1161, 1172 (9th Cir. 2003).

23 "Racketeering activity" under RICO includes: mail fraud, wire fraud, theft,
24 embezzlement, money laundering, bribery, and obstruction of justice – all of which have been

25 ¹¹ As noted, the WilmerHale Report can and should be considered by the Court. *See Flynt Distrib.*
26 *Co., Inc.*, 734 F.2d at 1394 ("The urgency of obtaining a preliminary injunction necessitates a
27 prompt determination...[t]he trial court may give even inadmissible evidence some weight, when
28 to do so serves the purpose of preventing irreparable harm before trial.")

¹² Plaintiffs' RICO allegations are based upon nearly two decades of conduct by the RICO
Ringleaders. While Plaintiffs contend they are likely to succeed on each of their RICO claims,
due to space constraints, Plaintiffs have addressed only some of those claims.

1 alleged against the RICO Defendants. *See* 18 U.S.C. § 1962; *see* FAC at 121-141. In this context,
2 “money laundering” includes the intentional act to “conceal or disguise the nature, the location,
3 the source, the ownership, or the control of the proceeds of specified unlawful activity.” 18
4 U.S.C. § 1962. “Wire fraud” and “mail fraud” include the use of mail or wire in furtherance of
5 any scheme to defraud, or for obtaining money or property by means of false or fraudulent
6 pretenses. 18 U.S.C §§ 1341, 1343.

7 As set forth above, the RICO Ringleaders, and other RICO Defendants, conspired with the
8 purpose of controlling the Tribes’ finances and ultimately stealing from them. *See, e.g.*, A. Rico
9 Dec., Ex. A , Exs. C-Q(bank records demonstrating concerted thefts); B. Paya Dec., ¶, Ex. A;
10 Davies PI Dec. This enterprise was directed by, and chiefly benefited, RICO Ringleaders John
11 Crosby, Leslie Lohse, Ines Crosby, and Larry Lohse.

12 The RICO Defendants furthered their scheme through a pattern of criminal racketeering
13 activity, including: bribing RICO Defendants Ted Pata and Jon Pata with luxury automobiles
14 when they learned of the private jet (*see* Thomas Dec, ¶); stealing from Tribal bank accounts at
15 will, *see* A. Rico Dec., transferring money between Tribal accounts so as to hide their thefts, *see*
16 *id.*, making withdrawals just below federal reporting requirements, *see id.*, and paying each other
17 with sizable checks from Tribal accounts, *see id.*, all with the purpose of concealing or disguising
18 the nature of their theft from the Tribe. This conduct constitutes money laundering, *see* 18 U.S.C.
19 § 1956 (“money laundering” includes the intentional act to “conceal or disguise the nature, the
20 location, the source, the ownership, or the control of the proceeds of specified unlawful
21 activity.”), and, in many cases, involved wire fraud. *See* 18 U.S.C. § 1343. This enterprise was
22 conducted in interstate commerce in that it involved, *inter alia*: international wire transfers from
23 the PEC account at Cornerstone Bank to foreign and out-of-state bank accounts, including that of
24 Marcus Evans, Inc. in England, *see* A. Rico Dec., Ex. R at 3, interstate emails, and interstate
25 credit card payments, *see* A. Rico Dec., Ex. A (Umpqua Bank records).

26 Accordingly, Plaintiffs have set forth sufficient evidence demonstrating that they are
27 likely to succeed, on their claims under 18 U.S.C. § 1962 (a), (b), (c), and (d), and this likelihood
28 is increased by the existence of the ongoing criminal investigation by the DOJ into the conduct on

1 which it is based.

2 **2. Civil Conspiracy**

3 Plaintiffs' sixteenth claim for relief alleges civil conspiracy (FAC, ¶¶ 569-574). To
4 support a conspiracy claim, Plaintiffs must allege: "(1) the formation and operation of the
5 conspiracy, (2) wrongful conduct in furtherance of the conspiracy, and (3) damages arising from
6 the wrongful conduct." *AREI II Cases*, 216 Cal.App.4th 1004, 1022 (2013) (citations omitted). A
7 "conspiracy" in this context is "an agreement by two or more persons to commit a wrongful act."
8 CACI 3600; *Wyatt v. Union Mortgage Co.*, 24 Cal.3d 773, 784 (1979) ("As long as two or more
9 persons agree to perform a wrongful act, the law places civil liability for the resulting damages on
10 all of them, regardless of whether they actually commit the tort themselves.")(internal citations
11 omitted). As set forth in detail herein, the RICO Ringleaders agreed to, and did, steal millions of
12 dollars from the Tribe. *See* A. Rico Dec., Exs. A, C-Q. As such, Plaintiffs are likely to prevail on
13 this claim.

14 **3. Fraud**

15 Plaintiffs' tenth and eleventh claims for relief are for fraudulent concealment and
16 fraudulent misrepresentation, respectively. (FAC, ¶¶ 526-546). California Civil Code section
17 1709 provides: "One who willfully deceives another with intent to induce him to alter his position
18 to his injury or risk, is liable for any damage which he thereby suffers." The elements of an action
19 for fraud and deceit based on a concealment are: (1) the defendant must have concealed or
20 suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to
21 the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the
22 intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not
23 have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the
24 concealment or suppression of the fact, the plaintiff must have sustained damage." *Boschma v.*
25 *Home Loan Center, Inc.*, 198 Cal.App.4th 230, 248 (2011).

26 As discussed *supra*, the RICO Ringleaders went to great lengths to conceal their egregious
27 theft from Plaintiffs. As senior employees of the Tribe, the RICO Ringleaders were under a
28 fiduciary duty to act in the best interests of the Tribe; instead, they stole millions of dollars and

1 went to great lengths to hide these thefts. *See* Davies Stay Dec., ¶¶ 6(b), 17(c), 19, and 22(a).
 2 Because of the RICO Ringleaders’ continued misrepresentations, their theft was not discovered
 3 for nearly two decades. The Tribe would have acted if it had knowledge of the RICO
 4 Ringleaders’ misconduct, and as a result the Tribe has suffered loss of millions of dollars. As
 5 such, Plaintiffs are likely to prevail on this claim as well.

6 **B. Plaintiffs Are Likely to Prevail on Their Claims for Violations of State**
 7 **and Federal Cyber Crimes**

8 Plaintiffs’ seventh (FAC 141-142) and eighth claims for relief (FAC, ¶¶ 502-518) are for
 9 violations of the Federal Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C. § 1030,¹³ and the
 10 California Comprehensive Computer Data Access and Fraud Act, Cal. Penal Code § 502
 11 (collectively “Cyber-Crime Claims”). The CFAA holds any person liable that “intentionally
 12 accesses a protected computer without authorization, and as a result of such conduct, causes
 13 damage and loss.” 18. U.S.C. § 1030(a)(5)(C). Under this section, a “protected computer” is one
 14 “which is used in or affecting interstate or foreign commerce...”. 18. U.S.C. § 1030(e)(2)(B);
 15 *United States v Kim*, 677 F.Supp.2d 930 (2009, S.D. Tex) (explaining that transmitting
 16 information via internet constitutes interstate commerce under the CFAA). The California
 17 counterpart holds individuals liable that: “[k]nowingly and without permission disrupts or causes
 18 the disruption of computer services or denies or causes the denial of computer services to an
 19 authorized user of a computer, computer system, or computer network.” Cal. Penal Code § 502.

20 **RICO Ringleader Leslie Lohse admits to participating in the cyber-attacks at the**
 21 **Casino**. *See* Davies PI Dec., ¶ 8; *see also* Gross Dec., Ex. F, G. In the attacks, which occurred
 22 after the RICO Ringleaders admitted termination from employment with the Tribe, *see* Gross
 23 Dec., Exs. A-D, the RICO Ringleaders systematically hacked into the Trib’s computer systems
 24 and deleted all of the Tribe’s primary data storage locations and destroyed a significant amount of
 25 evidence. Heinle Dec., ¶#. As former employees of the Tribe, the RICO Ringleaders were not

26 ¹³ The FAC, Plaintiffs inadvertently cites to 18 U.S.C. § 1030(a)(3). Rather, Plaintiffs’ claims fall
 27 under 18 U.S.C. §§ 1030(a)(2)(C), (4), and (5). While the Tribe regrets the error, it does not bear
 28 on the Court’s decision. *See McCalden v. Cal. Library Ass’n*, 955 F.2d 1214, 1223 (9th Cir. 1990)
 (a plaintiff “is not required to state the statutory or constitutional basis for his claim, only the facts
 underlying it”). For purposes of brevity, Plaintiffs have addressed their claim under 1030(a)(5)(C)
 only.

1 authorized to access the Casino's network. *Id.*, ¶#. However, even assuming *arguendo*, they did
2 have such authorization, they lost this authority once they acted to the detriment of the Tribe. *See*,
3 *e.g.*, *Int'l Airport Ctrs., L.L.C. v. Citrin*, 440 F.3d 418, 420-21 (7th Cir. 2006) (finding
4 that authorized access to a company computer under the CFAA terminated once an employee
5 acted with adverse interests and against the duty of loyalty imposed on an employee in an agency
6 relationship with his or her employer or former employer); *Hanger Prosthetics & Orthotics, Inc.*
7 *v. Capstone Orthopedic, Inc.*, 556 F. Supp. 2d 1122, 1131 (E.D. Cal. 2008) (same). Furthermore,
8 the CFFA law imposes liability on not just those who act "without authorization" but also those
9 who have "exceeded their authorization." *United States v Nosal*, 676 F3d 854 (9th Cir. 2012). The
10 RICO Defendants certainly exceeded any conceivable authority they may have had when they
11 deleted evidence of their illegal conduct and other data contained on the Tribe's computer
12 systems.

13 The DOJ investigation into these cyber-crimes is further indication of the likelihood that
14 Plaintiffs will prevail on these claims. *See* Gross Dec., ¶2-3. Accordingly, there is substantial
15 support for Plaintiffs' Cyber-Crime Claims and they are likely to succeed on their merits.

16 **C. Plaintiffs Are Likely to Prevail on Their Conversion, and Money Had and**
17 **Received Claims Against the RICO Ringleaders.**

18 Plaintiffs ninth and fifteenth claims for relief are for conversion (FAC, ¶¶ 519-525), and
19 money had and received (FAC, ¶¶ 565-568), respectively. Plaintiffs are likely to succeed on the
20 merits of these claims.

21 With respect to Plaintiffs' conversion claim, Plaintiffs need show only: (1) Plaintiffs
22 ownership of property; (2) the RICO Ringleaders' wrongful act interfered with the Plaintiffs'
23 possession; and (3) resulting damages. *See PCO, Inc. v. Christensen*, 150 Cal.App.4th 384, 524
24 (2007). Conversion is a strict liability tort. *Los Angeles Federal Credit Union v. Madatyan*, 209
25 Cal.App.4th 1383, 1387 (2012).

26 Plaintiffs' money had and received claim requires that Plaintiffs similarly show: (1) the
27 RICO Ringleaders received money that was intended to be used for the benefit of Plaintiffs; (2)
28 that money was not used for the benefit of Plaintiffs; and (3) that the RICO Ringleaders have not

1 given this money to Plaintiffs. CACI No. 370; *Mains v. City Title Ins. Co.*, 34 Cal.2d 580, 586
 2 (1949) (“Although such an action is one at law, it is governed by principles of equity. It may be
 3 brought wherever one person has received money which belongs to another, and which in equity
 4 and good conscience, or in other words, in justice and right, should be returned.”) (internal
 5 citations omitted.)

6 At their core, these causes of action hold responsible persons who wrongfully take the
 7 property of another for their own benefit. Here, as set forth in detail in the FAC, and examples of
 8 which are provided above, the RICO Ringleaders took tens of millions of dollars from the Tribe,
 9 *see* A. Rico Dec., Exs. A-Q, and used that money to buy, *inter alia*, luxury houses, cars, and jets
 10 for their personal benefit. *See* Davies Stay Dec., ¶¶ 6(k), 18(u), 20(n), 22(f). In fact, each of the
 11 RICO Ringleaders admit that they helped themselves to millions of dollars of the Tribe’s money
 12 for their personal benefit. *See id.* While they claim they were authorized to take this money
 13 pursuant to written employment agreements, each containing \$5 million lines of credit, as
 14 discussed *supra*, and set forth in detail in Plaintiffs’ Opp./Cntr-Mtn, these agreements are
 15 fraudulent and thus void.

16 Moreover, once again, the DOJ investigation into the RICO Ringleaders suspected
 17 embezzlement demonstrates the strength of Plaintiffs’ claims. Accordingly, Plaintiffs are likely to
 18 prevail on their conversion and money had and received claims against the RICO Ringleaders.

19 **D. Plaintiffs Are Likely to Prevail on Their Breach of Fiduciary Duty Claims**

20 Plaintiffs’ thirteenth and fourteenth claims for relief are for breach of the RICO
 21 Ringleaders’ fiduciary duties to the Tribe of: (1) undivided loyalty and (2) reasonable care. FAC,
 22 ¶¶ 554-564. A cause of action for breach of fiduciary duty requires the existence of a fiduciary
 23 relationship, its breach, and damage proximately caused by that breach.” *Knox v. Dean*, 205
 24 Cal.App.4th 417, 432 (2012) A fiduciary relationship is “any relation existing between parties to
 25 a transaction wherein one of the parties is duty bound to act with the utmost good faith for the
 26 benefit of the other party.” *Cleveland v. Johnson*, 209 Cal.App.4th 1315, 1338 (2012) (citations
 27 omitted). A fiduciaries’ duty of reasonable care obligates that individual to act as a reasonably
 28 careful person would under similar circumstances. *See Kangarlou v. Progressive Title Co., Inc.*,

1 128 Cal.App.4th 1174, 1178 (2005). The duty of loyalty requires that the fiduciary not undertake
2 or participate in activities adverse to the interests of his principal. *See Sequoia Vacuum Systems v.*
3 *Stransky*, 229 Cal.App.2d 281, 287 (1964).

4 As senior employees of the Tribe, the RICO Ringleaders had fiduciary obligations of
5 loyalty and reasonable care. Davies Stay Dec., ¶¶ 6(b), 17(c), 19, and 22(a) (establishing the
6 RICO Ringleaders' senior positions with Tribe.) Despite these obligations, they used their
7 positions to enrich themselves at the expense of the Tribe. *See* Davies Stay Dec., ¶¶ 6(k), 18(u),
8 20(n), 22(f); Davies PI Dec., ¶¶ 6(a); A. Rico Dec., Exs. C-Q; This is a clear breach of their
9 fiduciary duties to act reasonably and in the best interests of the Tribe. As such, Plaintiffs are
10 likely to succeed on their breach of fiduciary duty claim.

11 **E. Plaintiffs Are Likely to Prevail on Their Equitable Claims for Constructive**
12 **Trust and Accounting**

13 Plaintiffs' thirty-fourth and thirty-fifth claims for relief are for equitable relief:
14 constructive trust (FAC, ¶¶ 755-759), and accounting (FAC, ¶¶ 760-763). Plaintiffs are likely to
15 succeed, or at the very least have raised serious questions on the merits of their claims, that due to
16 the wrongful acts of the RICO Ringleaders the Tribe is entitled to a constructive trust and an
17 accounting.

18 Constructive trusts are the creatures of equity formed for the purpose of preventing the
19 perpetration of fraud. *Holstrom v. Mullen*, 84 Cal. App. 1, 4 (1927). "One who gains a thing by
20 fraud ... the violation of a trust, or other wrongful act, is, unless he or she has some other and
21 better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who
22 would otherwise have had it." Cal. Civ. Code § 2224. A constructive trust may be imposed where
23 the following three conditions are satisfied: "(1) the existence of a *res* (property or some interest
24 in property); (2) the *right* of a complaining party to that *res*; and (3) some *wrongful* acquisition or
25 detention of the *res* by another party who is not entitled to it." *Communist Party v. 522 Valencia,*
26 *Inc.*, 35 Cal.App.4th 980, 990 (1995)(emphasis in original). Additionally, an accounting is
27 warranted where: (1) the nature of the relationship is one that requires an accounting; and (2) that
28 some balance is due the plaintiff. *Stilwell v. Trutanich*, 178 Cal.App.2d 614, 620 (1960).

1 Here, there is substantial evidence in support of Plaintiffs' claim for a constructive trust:
 2 (1) the Tribe attained assets through a diversity of Tribal enterprises, including operation of the
 3 Casino, *see* B. Thomas Dec., ¶¶ #; (2) this property belonged to the Tribe collectively; and (3) the
 4 RICO Ringleaders took this property through the deceitful and malicious conduct discussed
 5 above. Moreover, an accounting is appropriate because the Tribe is ignorant as to the extent of the
 6 RICO Ringleaders theft and there are still large sums for which are unaccounted. A. Rico Dec.,
 7 ¶#; *Huong Que, Inc. v. Luu*, 150 Cal.App.4th 400, 418 (2007) (extreme difficulty in ascertaining
 8 damages is a factor favoring injunctive relief.)

9
 10 Plaintiffs need only demonstrate success on the merits of one of their claims against the
 11 RICO Ringleaders. This showing has been satisfied.

12 **III. The Balance of the Hardships Tip Sharply in Plaintiffs' Favor**

13 In issuing a preliminary injunction, “[t]he court balances the harm that the injunction
 14 might cause the defendant with the plaintiff’s threatened injury. But the balance of hardships
 15 tipping in favor of plaintiff is not a prerequisite to awarding preliminary injunctive relief.” *QBAS*
 16 *Co. v. C Walters Intercoastal Corp.*, No. SACV 10-0406 AG U.S. Dist. LEXIS 143945 (C.D.
 17 Cal. December 16, 2010)(citation omitted). The court needs only consider the balance, and it may
 18 grant preliminary relief even if “neither party has a clear advantage” if the Plaintiff is likely to
 19 succeed on the merits of one or more of its claims and the other conditions are met. *Id. Cf.*
 20 *Alliance For The Wild Rockies*, 632 F.3d at 1132. Here the balance of the hardships tip sharply in
 21 Plaintiffs’ favor.

22 Absent an injunction, Plaintiffs would suffer a hardship because they are at risk of “not
 23 be[ing] paid monies that are justly owed” as restitution for the myriad of harms the RICO
 24 Ringleaders illegal conduct has caused them. *Quantum Corporate Funding, Ltd. v. Assist You*
 25 *Home Health Care Services of Va.*, 144 F. Supp. 2d 241, 249 (S.D.N.Y. 2001) (“Preliminary
 26 injunctions” are “appropriate to thwart a defendant from making a judgment uncollectible.”)

27 By contrast, Defendants would suffer little to no cognizable prejudice if their assets are
 28 frozen. The RICO Ringleaders have no right to use the profits of their illegal enterprise for their

1 personal use. *See Apple Inc. v. Psystar Corp.*, 673 F. Supp. 2d 943, 950 (N.D. Cal. 2009) (“Since
2 [defendant] does not (and cannot) claim any legitimate hardships as a result of being enjoined
3 from committing unlawful activities, and Apple would suffer irreparable and immeasurable harms
4 if an injunction were not issued, this factor weighs strongly in favor of Apple’s motion.”)

5 The RICO Ringleaders have amassed extravagant riches and have led very comfortable
6 lives at the Tribe’s expense. Whereas Plaintiffs may be deprived of any meaningful redress for
7 the RICO Ringleaders’ illicit conduct in the absence of an injunction, the RICO Ringleaders will
8 suffer little to no conceivable hardship if the Court freezes their ill-gotten gains. The balance of
9 hardships tips decidedly in Plaintiffs’ favor and an asset freeze of all the RICO Ringleaders’
10 assets in their entirety would be appropriate here; however, Plaintiffs are not requesting such an
11 order be issued. Plaintiffs request provides the RICO Ringleaders funds for reasonable living
12 expenses, and a collective allowance of \$10,000 in attorneys’ fees and costs. This should relieve
13 any potential apprehension the Court may have as to any hardship on the Defendants. In fact, the
14 Ninth Circuit has found zero hardship under similar circumstances. *Marcos*, 862 F.2d at 1358
15 (finding “zero evidence of hardship” because “the district court stipulated in the injunction that
16 the Marcoses may use their assets to cover normal living expenses and legal fees.”)

17 The proposed injunction would merely preserve the status quo, freezing the RICO
18 Ringleaders’ assets until this litigation is resolved. If the judgment is less than the RICO
19 Ringleaders’ remaining total assets, the injunction will be lifted and the remaining assets unfrozen
20 for the RICO Ringleaders’ use.

21 **IV. Issuing Plaintiffs’ Requested Preliminary Injunction Would Serve the Public**
22 **Interest**

23 Public policy considerations weigh in favor of issuing a preliminary injunction. The
24 Supreme Court has consistently expressed the view that the federal government is firmly
25 committed to the goal of promoting tribal economic development and self-sufficiency. *New*
26 *Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983)(expressing Congress’ desire to promote
27 the goal of tribal economic development); *Oklahoma Tax Com’n v. Citizen Band Potawatomi*
28 *Indian Tribe of Oklahoma*, 498 U.S. 505 (1991) (same).

1 To that end of economic self-sufficiency, Tribe members began receiving benefits and per
2 capita payments in March 2003. A. Rico Dec, ¶23. In or around 2005, the median income of
3 Tribe members was approximately \$13,000 and the unemployment rate for Tribe members was
4 approximately 46%. Willis Dec, Ex. A (Tribal demographic study). During that same time, the
5 benefits the Tribe provided its members (*e.g.*, per capita distributions, health and education
6 benefits) kept members above the poverty line, but the vast majority of members had low or very
7 low incomes relative to other residents in the area. *Id.* Today, the Tribe's current per capita
8 payments to its members—approximately \$50,000 a year—continues to keep members above the
9 poverty line. *Id.*

10 The RICO Ringleaders have dealt a substantial blow to the Tribe's economic
11 independence and stability. The acts of the RICO Ringleaders have undone a significant amount
12 of affirmative progress as a Tribe towards achieving economic self-sufficiency. The Tribe is now
13 working towards piecing together the financial ruins left behind by the RICO Ringleaders. In light
14 of the federal government's interest in perpetuating the goal of the Tribe's economic
15 development, the intentional encroachment on these concerns should be punished. If the Court
16 considers the question to be otherwise a close one, public policy concerns counsel in favor of
17 granting relief to freeze the RICO Ringleaders' assets and prevent them from further profiting off
18 of their illegal enterprise.

19 The public interest would further be served by ordering the injunction, in light of
20 Congress's specific intent that federal courts make themselves available as forums in which
21 Indian tribes can seek relief for injuries suffered as result of violations of federal law. *See* 28
22 U.S.C. § 1362. The public interest would be further served, as there is a strong federal policy in
23 favor of encouraging self-government and self-determination by Indian tribes. *See Alvarez v.*
24 *Tracy*, 773 F.3d 1011, 1013 (9th Cir. 2014). The decision to file the instant action by the Tribe is
25 an expression of such self-government and self-determination. To allow the RICO Ringleaders to
26 frustrate that choice and the will of Congress that Indian tribes be able to seek redress in federal
27 court for the harms they suffer as the result of federal law would be directly contrary to the public
28 interest.

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CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that their Motion for Preliminary Injunctive Relief be granted.¹⁴

Dated: June 29, 2015

GROSS LAW, P.C.

By: /s/ Stuart G. Gross
STUART G. GROSS

¹⁴ Pursuant to Local Rule 231(d), Plaintiffs intend to present oral argument at the hearing on the instant motion but do not intend to present live witness testimony. Plaintiffs anticipate that approximately thirty (30) minutes will be required for the hearing on this motion.

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