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

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

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PASKENTA BAND OF NOMLAKI INDIANS; and **PASKENTA ENTERPRISES CORPORATION**,

Plaintiffs,

v.

INES CROSBY; **JOHN CROSBY**; **LESLIE LOHSE**; **LARRY LOHSE**; **TED PATA**; **JUAN PATA**; **CHRIS PATA**; **SHERRY MYERS**; **FRANK JAMES**; **UMPQUA BANK**; **UMPQUA HOLDINGS CORPORATION**; **CORNERSTONE COMMUNITY BANK**; **CORNERSTONE COMMUNITY BANCORP**; **JEFFERY FINCK**; **GARTH MOORE**; **GARTH MOORE INSURANCE AND FINANCIAL SERVICES, INC.**; **ASSOCIATED PENSION CONSULTANTS, 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. 2:15-cv-00538-GEB-CMK

PLAINTIFFS' REPLY IN FURTHER SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION

Date: July 27, 2015
Time: 9:00 AM
Dept.: Courtroom 10, 13th Floor
Judge: Hon. Garland E. Burrell, Jr.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

Plaintiffs the Paskenta Band of Nomlaki Indians and Paskenta Enterprises Corporation submit this reply in further support of their Motion for a Preliminary Injunction seeking the imposition of an immediate freeze on the assets of the RICO Ringleaders (Dkt. 72, "PI Motion") and in response to the RICO Ringleaders' arguments set forth in their Opposition to Plaintiffs' Motion for Preliminary Injunction (Dkt. 87, "Opposition").[1]

I. THE COURT HAS SUBJECT MATTER JURISDICTION OVER PLAINTIFFS' CLAIMS AND PLAINTIFFS ARE NOT REQUIRED TO MAKE ANY EVIDENTIARY SHOWING HERE TO ESTABLISH JURISDICTION

Invoking an issue already extensively briefed in connection with the RICO Ringleaders' pending Rule 12(b)(1) Motion to Dismiss the First Amended Complaint ("RICO Defendants' MTD")—and concerning which the Court has already arguably indicated its resolution by entry of its July 10, 2015 Order denying the RICO Ringleaders' motion for a stay and granting Plaintiffs' counter-motion to stay (Dkt. 79, "Stay Motion Order")[2]—the Ringleaders now argue that Plaintiffs' PI Motion must "set forth . . . evidentiary facts demonstrating a probability of [their] ultimate success on the question of [the Court's subject matter] jurisdiction." *See* Opp. at 8. Claiming that Plaintiffs have not met this purported evidentiary burden, the Ringleaders assert that the PI Motion should be denied. The Ringleaders are wrong for several reasons, and their attempt to effectively transmute the *facial* challenge to the Court's subject matter jurisdiction made in the RICO Defendants' MTD into a *factual* challenge—which they do not support with any evidence, *cf. Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (describing the initial evidentiary burden of a defendant making a factual challenge to subject matter jurisdiction)—in their Opposition is an implicit concession of their facial challenge's lack of

---

[1] Unless otherwise indicated, Plaintiffs incorporate by reference herein all terms defined in their Memorandum of Points and Authorities in Support Motion for a Preliminary Injunction (Dkt. 72-10). Additionally, as used herein, "Rule __" will refer to the Federal Rules of Civil Procedure; "¶ __" will refer to paragraph(s) in Plaintiffs' First Amended Complaint (Dkt. 30); "PI Mot." is Plaintiffs' Memorandum of Points & Authorities ISO Motion for Preliminary Injunction (Dkt. 72-10); and "Opp." is Defendants' Opposition (Dkt. 87).

[2] As this Court held in a different case, the "existence of subject matter jurisdiction goes to the very power of the district court to issue . . . rulings." *City of Palmdale v. Cal. High-Speed Rail Auth.*, No. 2:11-cv-01808-GEB-GGH, 2011 U.S. Dist. LEXIS 85489, * 4 (E.D. Cal. Aug. 3, 2011).

merit.

As discussed in Plaintiffs' Opposition to Defendants' MTDs at 13-14, because ***Plaintiffs bring seven causes of action against the RICO Defendants under two federal statutes***, including the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 *et seq.*, as well as the Federal Computer Fraud and Abuse Act (the "FCAA"), 18 U.S.C. § 1030, and the Tribe is a federally recognized Indian tribe, the Court has both ***general federal question jurisdiction*** under 28 U.S.C. § 1331 and ***more specific federal question jurisdiction*** under 28 U.S.C. § 1362 and 18 U.S.C. § 1964(a). "[J]urisdictional dismissals in cases premised on federal-question jurisdiction are exceptional," essentially requiring that the defendant show the federal law claims against it are frivolous and/or made solely for the purposes of attaining federal court jurisdiction. *Safe Air for Everyone*, 373 F.3d at 1039 (internal quotations omitted). As discussed in Plaintiffs' Opposition to Defendants' MTDs, the RICO Ringleaders and their co-RICO Defendants do ***not*** challenge the plausibility of any of the federal law claims made against them—let alone aver that any such claims are frivolous. Rather, the RICO Defendants aver—based almost exclusively on a single case from the Southern District of Florida—that the Court should ignore its unflagging obligation to hear Plaintiffs' federal law claims on the grounds that such claims touch on a past intra-tribal dispute and would require the Court to interpret and apply some limited amount of tribal law in the course of their resolution.

The RICO Ringleaders raise ***no*** new challenge to the Court's jurisdiction in their Opposition, but rather merely incorporate their briefing on their MTD by reference. *See* Opp. at 7–8. In addition to lacking any merit, their MTD briefing explicitly makes only a *facial* challenge to the Court's jurisdiction, rather than a factual one. *See* RICO Defendants' MTD (Dkt. 52-1 at 7 (describing the jurisdictional challenge made therein as a "facial attack . . . pursuant FRCP 12(b)(1)").

> In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction. By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction.

Safe Air for Everyone, 373 F.3d at 1039. As indicated by this articulation, a plaintiff has ***no***

obligation to present any evidence in refutation of a facial challenge; rather, "[t]he factual allegations of the complaint are presumed to be true, and the motion is granted only if the plaintiff fails to allege an element necessary for subject matter jurisdiction." *Westlands v. NRDC*, 276 F. Supp. 2d 1046, 1049 (E.D. Cal. 2003); *see also Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). A plaintiff only has an obligation to present evidence supporting its assertion of the court's subject matter jurisdiction when a defendant, with the support of its own evidence, makes a *factual* challenge to the court's subject matter jurisdiction. *See Safe Air for Everyone*, 373 F.3d at 1039. There is no basis for the RICO Ringleaders' suggestion that by incorporating by reference their *facial* challenge to the Court's jurisdiction into their Opposition, the standards for these two types of jurisdictional challenges have been flipped, and Plaintiffs now—by virtue of some sort of procedural alchemy—are required to present evidence refuting that facial challenge. Accordingly, the Ringleaders' assertion that the Motion should be denied because Plaintiffs omitted such evidence should be denied.[3]

There is also no support for the Ringleaders' suggestion that where, as here, no factual challenge to the existence of federal subject matter jurisdiction has been made, a plaintiff must independently submit evidence showing the existence of such jurisdiction to prevail on a preliminary injunction. The RICO Ringleaders erroneously purport to derive such a requirement from two out-of-circuit authorities and an unpublished opinion from the Central District of California that address challenges to *personal jurisdiction* made by parties opposing motions for preliminary injunctions. *See* Opp. at 5; *cf. Enterprise Int'l, Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 471 (5th Cir. 1985) (finding the district court wrongly issued a preliminary injunction when it postponed determination of a factual challenge to personal jurisdiction pending jurisdictional discovery); *Visual Sciences, Inc. v. Integrated Commc'ns, Inc.*, 660 F.2d 56, 58-59 (2nd Cir. 1981) (finding, in the context, again, of a dispute over the facts

[3] In point of fact, Plaintiffs *did* submit in support of their Motion, voluminous evidence supporting their likely success on their causes of action brought under RICO and the FCAA, *see* Dkt. 72-1 to 72-8—the causes of action which form the bases for Plaintiffs' assertion of the Court's subject matter jurisdiction—the great bulk of which Defendants do not refute, purportedly because they lacked sufficient time to do so, *see* Opp. at 7, n. 5.

allegedly giving rise to personal jurisdiction, the court was required to make factual findings regarding personal jurisdiction prior to ruling on a preliminary injunction motion); *Leo Servs., Inc. v. Gabon Airlines*, EDCV 08-134-VAP, 2008 WL 4723241, 2008 U.S. Dist. LEXIS 89524, at *7 (C.D. Cal. Oct. 23, 2008) (denying a motion for preliminary injunction, in the context of a facial challenge to personal jurisdiction, on the ground that the "Plaintiff has alleged no facts that Defendant" was subject to the court's personal jurisdiction.). *Enterprise* and *Visual Sciences* both address ***factual challenges*** to personal jurisdiction, challenges which if supported by evidence submitted by the challenger (like factual challenges to subject matter jurisdiction), require a plaintiff to submit evidence in response. *See Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001); *cf. Safe Air for Everyone*, 373 F.3d at 1039. Because, again, the Ringleaders make no factual challenge to the Court's subject matter jurisdiction in their Opposition, but rather only incorporate by reference their *facial* challenge, these cases are doubly inapposite; they support, at best, the unremarkable proposition that if the Ringleaders had made a factual challenge to the Court's subject matter jurisdiction, Plaintiffs would be required to have presented evidence in response. *Leo Servs.* provides, if possible, even less support for the Ringleaders' argument that Plaintiffs were independently required to submit evidence supporting the existence of the Court's subject matter jurisdiction, as the court in *Leo Servs.* denied the motion for preliminary judgment ***not*** based on a failure of proof supporting the existence personal jurisdiction, but *rather insufficient allegations* of personal jurisdiction.

As to the *facial* challenge to the existence of the Court's subject matter jurisdiction that the RICO Defendants in their MTD and on which the Ringleaders exclusively rely in their Opposition, as discussed at length in Plaintiffs' MTD Opposition (Dkt. 73 at 13-33)—which was incorporated by reference in Plaintiffs' Motion and is so again herein—the arguments based on which the RICO Defendants claim the Court should ignore its unflagging obligation to hear Plaintiffs' federal law claims are wholly without merit. As discussed, the doctrine based on which the RICO Defendants ask the Court to do so has no application where, as here, the case sought to be dismissed was brought by an Indian tribe itself or where, as here, the case does not ask the Court to intervene into and resolve a live dispute over tribal governance or membership. In their

reply in support of their MTD (Dkt. 88) ("RICO Defendants' MTD Reply")—which the Ringleaders incorporate by reference into their Opposition—the RICO Defendants seek to avoid this result with more hand waving and the suggestion that a decision by a Southern District of Florida Court in *Miccosukee Tribe of Indians v. Cypress* ("*Miccosukee I*"), 975 F.Supp.2d 1298 (S.D. Fla. 2013), trumps the binding Ninth Circuit and Supreme Court authority discussed by Plaintiffs.

Rather than explain why under binding Ninth Circuit and Supreme Court law articulated in *Lewis v. Norton*, 424 F.3d 959, 963 (9th Cir. 2005) and other decisions their argument has any merit, the RICO Defendants claim that this law does not apply because *Lewis* and these other cases cited by Plaintiffs addressed the sovereign immunity of Indian tribes. *See* RICO Defendants' MTD Reply at 2–4. However, as explained in Plaintiffs' MTD Opposition at 16–22, it is precisely because the doctrine based on which the RICO Defendants claim the Court has no subject matter jurisdiction is a component of tribal sovereign immunity that this doctrine has ***no*** applicability to the instant case brought by an Indian tribe itself. *See Lewis*, 424 F.3d at 963 (explaining it invoked the doctrine even though an Indian tribe was not itself named as a defendant in order to prevent an "end run around tribal immunity."); *Cook v. AVI Casino Enters.*, 548 F.3d 718, 725 (9th Cir. 2008) (explaining that tribal sovereign immunity "protects Indian tribes" and can only be invoked by them). The RICO Defendants cannot sidestep this binding law through a semantic slight of hand, in which they avoid using the language the Ninth Circuit has used to define the doctrine they seek to invoke.

Also unavailing is the RICO Defendants' effort to sidestep the various cases—many of which were cited by them in their MTD—that ground the courts' decisions not to hear claims before them (none of which involved claims brought by an Indian tribe itself) on the fact that the claims asked the court to intervene in and resolve a *live* dispute over tribal membership and governance. As explained in Plaintiffs' MTD Opposition at 22–28, such grounding reflects the doctrine's purpose in preventing plaintiffs from doing an end run around tribal sovereignty by seeking resolution by federal courts of live disputes concerning tribal governance or membership that Indian tribes hold the sovereign right to resolve. The RICO Defendants do not address these

authorities. Rather, they (oddly) assert in a section heading that—contrary to the allegations of the FAC, *cf. Safe Air for Everyone*, 373 F.3d at 1039—there is such a live dispute but provide no argument in support of that assertion, and argue that, nonetheless, the law does not distinguish between live and past disputes in this context. *See* RICO Defendants' MTD Reply at 6–7. The only authorities cited by the RICO Defendants in support of this argument are *Miccosukee I* and *Attorney's Process & Investigation Servs. v. Sac & Fox Tribe* ("*API*"), 609 F.3d 927 (8th Cir. 2010). However, *Miccosukee I*, as discussed at length in Plaintiffs' MTD Opposition, was wrongly decided and is inconsistent with binding Ninth Circuit law. And the decision in *API* did not turn on any determination by the court that it, or the district court, could not entertain a case that touched on a past dispute over tribal governance or membership, but rather its finding that a tribal court's previous assertion of jurisdiction, which the plaintiff in *API* challenged, was appropriate under *Montana v. United States,* 450 U.S. 544 (1981). *See API*, 609 F.3d at 934-941.[4]

Similarly meritless is the RICO Defendants' effort to avoid Ninth Circuit precedent explicitly sanctioning the application and interpretation of tribal law when necessary to resolve claims or defenses brought under federal law. *See* Plaintiffs' MTD Opposition at 28 (discussing *inter alia* the Ninth Circuit's decisions in *Alto v. Black*, 738 F.3d 1111, 1122-1124 (9th Cir. 2013) and *Ortiz-Barraza v. United States*, 512 F.2d 1176, 1179 (9th Cir. 1975)). According to the RICO Defendants, this law does not apply here because the federal law causes of action that formed the basis for federal question jurisdiction under 28 U.S.C. § 1331 in *Alto* were brought under the Administrative Procedures Act ("APA"), rather than the two federal laws under which Plaintiffs bring seven causes of actions in the instant action. *See* RICO Defendants' MTD Reply at 7–8. Not only does this argument completely ignore the Ninth Circuit's decision in *Ortiz-Barraza*, it is based entirely on a distinction without substance: there is no legal support for the proposition that special rules apply to determining whether federal question jurisdiction exists when the claims on which it is based are brought under the APA, as opposed to another federal law. *Cf. See Alto*, 738

[4] The language from *API* quoted by the RICO Defendants not only does not deal with this issue, to the extent it stands for the proposition that federal courts lack jurisdiction to adjudicate claims that would require them to apply or interpret tribal law, it is directly contrary to the Ninth Circuit law in this regard. *See* Plaintiffs' MTD Opposition at 28–30.

F.3d at 1114 ("The federal question for § 1331 purposes is whether the BIA violated the APA; that it is claimed to have done so in a case involving application of tribal law does not matter, any more than it would matter to § 1331 jurisdiction over an APA case involving an issue of state law.").

Finally, the RICO Defendants' overarching suggestion that the decision by a Southern District of Florida Court in *Miccosukee I* trumps the binding Ninth Circuit and Supreme Court authority discussed in Plaintiffs MTD Opposition at 13–33 is, of course, meritless. *Cf.* RICO Defendants MTD Reply at 4 (arguing that Plaintiffs' authorities "do not displace [*Miccosukee I*]"). *Miccosukee I* is not a previous decision of equal precedential weight to those decisions cited by Plaintiffs; it is a subsequent decision by an out-of-circuit district court concerning which an appeal is pending. The Court cannot, as the RICO Defendants ask it do, *see* RICO Defendants MTD Reply at 4-5, choose to ignore the binding Ninth Circuit and Supreme Court authority cited by Plaintiffs and apply *Miccosukee,* instead.[5]

The U.S. Attorney's Office for the Eastern District of California and the Internal Revenue Service are currently conducting an investigation into the RICO Ringleaders' actions regarding matters that appear to be substantially similar to the wrongdoing attributed to the Ringleaders in the FAC and which it is based *inter alia* on suspected criminal violations of the FCAA and 18 U.S.C. § 1163, a federal statute specifically criminalizing embezzlement from Indian tribes. *See* S. Gross Decl. (Dkt. 72-8) at ¶ 3. The Federal Bureau of Investigation ("FBI") has already conducted raids on the homes of each of the RICO Ringleaders and their co-RICO Defendant Frank James pursuant to search warrants issued by a court of this district. *See id*. at ¶ 3. The district court that issued these warrants will have the subject matter jurisdiction necessary to adjudicate any federal criminal charges brought based on this investigation—irrespective of any hand waving by the RICO Ringleaders regarding the relationship between their criminal conduct and past issues of tribal governance or the need for the court to interpret or apply tribal law to

[5] The fact that RICO Defendants were forced to resort to a discussion of an unpublished minute order from a California State Superior Court in support of their assertion that *Miccosukee I* "is not an outlier or wrong," RICO Defendants' MTD Reply at 5, n. 2, does nothing to help their argument in this regard.

determine their guilt under these and/or other federal criminal statutes.[6] Here too, the Court will have, and has now, the subject matter jurisdiction necessary to resolve Plaintiffs' federal law claims against the RICO Ringleaders and their co-RICO Defendants, as well as the state law claims ancillary thereto. The RICO Ringleaders' suggestion that in order for Plaintiffs to prevail on this Motion—which has as its purpose ensuring that the Court is able to award Plaintiffs meaningful relief based on those claims—Plaintiffs were required to do anything more than demonstrate the fallacy of the facial attack that the RICO Defendants have made to the Court's subject matter jurisdiction is baseless.

II. THE RICO RINGLEADERS HAVE NEITHER THE LAW NOR THE EVIDENCE ON THEIR SIDE TO JUSTIFY THEIR PRE-APRIL 12, 2014 CONVERSION OF TRIBAL MONEYS

Underlying each of Plaintiffs' 20 claims for relief against the RICO Ringleaders is the allegation that the Ringleaders used their control over the Tribe's finances and influence over the Tribal Council to take control of and access Tribal bank accounts—both those of the Tribe and PEC—and to convert tens of thousands of dollars from those accounts for their own use, almost as if Plaintiffs were the Ringleaders' own personal ATM. *See* ¶¶ 3, 5–10, 165–174, 277–327. For nearly two decades, the Ringleaders took whatever actions necessary to ensure that their personal use of and access to the Tribe's money was not revealed, restricted or questioned. *See* ¶¶ 128–164, 333–334. Once they were ousted from power, the RICO Ringleaders pursued any and all means necessary to assume control over those Tribal accounts once again. *See* ¶¶ 393–418**.**

The RICO Ringleaders' Opposition, however, makes clear that, when faced with Plaintiffs' claims, the Ringleaders cannot submit any justification, entitlement or defense for their use and conversion of these Tribal moneys prior to their April 12, 2014 ouster from power without perpetrating a fraud upon the Court.

From the start of the Wilmer Hale investigation, in May 2014, until July 10, 2015, the RICO Ringleaders have repeatedly claimed that the Tribe gave each of them $5 million

[6] Indeed, it is virtually impossible to conceive of charges brought under 18 U.S.C. § 1163, which criminalizes embezzlement from an Indian tribe, the adjudication of which would not touch on past issues of tribal governance or require the interpretation and application of tribal law.

forgivable lines of credit ("LOC") as part of their Fraudulent Employment Agreements, and they have used the LOCs to attempt to justify their spending of Tribal moneys—drawn from the Tribe and PEC's bank accounts—to pay for their lavish personal expenses. *See* C. Davies Decl. (Dkt 67-1) at 3–4, 6, 9–10, 15–16, 18, 24, 80–81, 90. The Court's July 10, 2015 Stay Motion Order, however, put an end to the Ringleaders' ability to defend their pre-April 12, 2014 personal use of Tribal moneys as an employment perk. The Court did more in the Stay Motion Order than just derail the RICO Ringleaders' efforts to compel arbitration by finding that they (1) failed to submit any evidence to raise a reasonable inference that the signatures on the Fraudulent Employment Agreements purportedly dating from January 25-26, 2001 were authentic, and thereby failed to challenge Plaintiffs' evidence showing that the signatures were forged, and (2) failed to submit any authorities showing that federal common law permits ratification of forged agreements, which the Ringleaders claimed occurred on September 8, 2014 (Dkt. 79 at 4). In fact, the Court effectively put into doubt the validity and legal effect of each of the RICO Ringleaders' Fraudulent Employment Agreements in their entirety. As part of the Fraudulent Employment Agreements, the $5 million forgivable LOCs are presumed to have been procured through forgery and, barring evidence to the contrary, are a nullity.

Indeed, in their Opposition, the RICO Ringleaders have conceded that the LOCs have no legal effect. See Opp. at 20 ("Defendants are not challenging the Court's ruling."). The Ringleaders have taken a head-in-the-sand approach to Plaintiffs' allegations regarding their pre-April 12, 2014 use of Tribal moneys to pay for luxury homes and vehicles, ostentatious home improvements, exorbitant credit card bills, and personal loans, among other things (PI Mot. at 8-15; ¶¶ 335–349). Instead of simply coming clean, the Ringleaders—*none of whom deny they controlled the Tribe's finances for nearly two decades*—claim to have insufficient information, knowledge or time to explain the purposes for the highlighted transactions. *See* Opp. at 4 (fn. 3), 23. Further, the RICO Ringleaders rely on declarations from the former Tribal Council members that purportedly ratified the Fraudulent Employment Agreements ***over thirteen years after they were purportedly executed and seven days after the WilmerHale issued its investigation report to the entire Tribe*** to limply claim that they each would still vote to approve the Agreements

"regardless of any issues surrounding their authenticity"—thereby essentially conceding their fraudulent origins—because the Ringleaders were "worth every penny of the $5 million lines of credit" entirely responsible for the Tribe's economic success. *See* Opp. at 20-21; A. Swearinger Decl. (Dkt. 87-2) at ¶ 7; D. Swearinger Decl. (Dkt. 87-3) at ¶ 21; G. Freeman Decl. (Dkt. 87-4) at ¶ 14; C. Davies Decl. (Dkt. 72-4) at ¶ 3.

The Court's Stay Motion Order and these circumstances bode well for the likelihood of Plaintiffs' success on the merits of their claims against the RICO Ringleaders. Now, short of perjuring themselves or perpetrating fraud upon the Court, it is unclear how the Ringleaders could offer any argument or evidence in this case to avoid liability for their pre-April 12, 2014 personal transactions using Tribal moneys.

III. THE RICO RINGLEADERS' FACTUAL ADMISSIONS, CONCESSIONS AND, AT TIMES, SILENCE REGARDING THE PATTERN OF THEFT, FRAUD, AND ATTEMPTS TO EVADE LIABILITY SET FORTH IN THE PI MOTION BOLSTER THE LIKELIHOOD THAT THEY WILL DISSIPATE ASSETS

Plaintiffs' moving papers draw from the FAC a number of examples of the RICO Ringleaders' "concerted and systematic program of fraud, coercion, bribery and deception" through which the Ringleaders stole tens of millions of dollar of the Tribe's money over nearly two decades. *See* PI Mot. at 7. The Ringleaders respond by submitting a number of self-serving declarations and documents that attempt to refute, defuse or obfuscate Plaintiffs' showing of their deceitful pattern that necessitates the freezing of their assets during the course of this action. As set forth below, certain parts of Ringleaders' purported supporting evidence, coupled with their absolute silence on certain issues, actually serve to bolster Plaintiffs' assertion that the RICO Ringleaders' are likely to dissipate their assets—practically all of which are proceeds of or flow from their looting of Tribal accounts—in order to frustrate any judgment in this case.

A. The RICO Ringleaders Lied to Both WilmerHale and the Court About the Validity of Their Respective Fraudulent Employment Agreements

The PI Motion identified the Fraudulent Employment Agreements as a *post hoc* effort for the RICO Ringleaders to justify their misconduct that "demonstrate [their] willingness to go to

any and all lengths to avoid liability and the likelihood they will take actions to frustrate any meaningful judgment in this action." *See* PI Mot. at 22-23. This assertion has received some validation since Plaintiffs filed their arguments on June 29, 2015 with the Court.

As noted above, the Court's Stay Motion Order has effectively rendered the Fraudulent Employment Agreements—including their $5 million forgivable LOCs and their arbitration provisions—legally ineffective. Unchallenged claims of fraud and forgery led to the Agreements becoming a legal nullity, the Following the Plaintiffs' submission of an expert declaration opining that the signatures on the Agreements were forged , the RICO Ringleaders did not and have not rebutted this evidence. The Opposition makes the Agreements an afterthought, and raises the $5 million forgivable LOCs only to put a price tag on what they believe their services to the Tribe have been worth. *See* Opp. at 20–21; *see also* Opp. at 20 (acknowledging that they will not challenge the Court's ruling).

The RICO Ringleaders used the Fraudulent Employment Agreements as both a sword (*i.e.*, to initiate arbitration in order to frustrate this action)[7] and a shield (*i.e.*, to defend their exorbitant personal spending of Tribal moneys)[8]. Accordingly, the Ringleaders' abandonment of these Agreements after July 10, 2015 and their total silence on the issue in their Opposition papers raises serious questions. Specifically, what did the Ringleaders know about the Agreements' creation? Did they know that the Agreements were forged? Were they? For how long did they know? Did they know they Agreements were forged when they relied upon their $5 million forgivable LOCs to justify to WilmerHale their spending of Tribal moneys? Did they knowingly rely on these forged documents containing legally ineffective arbitration provisions when they moved the Court to stay or dismiss this case pending the conclusion of unlawfully

[7] The RICO Defendants' Memorandum of Points and Authorities in support of their Motion to Stay or Alternatively to Dismiss Pending Arbitration (Dkt. 55-1) relied heavily on the RICO Ringleaders' Fraudulent Employment Agreements' arbitration provisions to support their arguments. *See id.* While the RICO Defendants did include in their briefing each Ringleaders' Fraudulent Employment Agreements, oddly they were attached not to declarations from the Ringleaders themselves, but to that of interested former Tribal Council member Geraldine Freeman. *See* Dkt. 55-2 at Ex. 4.

[8] *See* C. Davies Decl. (Dkt. 72-4) at ¶ 3, Ex. A at 32–38 (report section on the Fraudulent Employment Agreements).

initiated arbitration proceedings?

Assuming the Fraudulent Employment Agreements are, indeed, fraudulent as WilmerHale surmised and as Plaintiffs know as fact, the fact that the RICO Ringleaders would lie to investigators, to the Court, and to the entirety of the Tribe in order to conceal their unlawful actions makes it clear that they would do anything to protect their interests and frustrate any judgment against them.

B. Until July 10, 2015, the RICO Ringleaders Attempt to Justify Their Pre-April 12, 2014 Spending of Tribal Moneys and Sought to Force Plaintiffs into Arbitration By Fraudulently Relying on Their Fraudulent Employment Agreements

As noted above, in conjunction with the parties' cross-motions on the RICO Ringleaders' motion seeking a stay to push Plaintiffs into arbitration pursuant to the Fraudulent Employment Agreement's arbitration provisions (*see* Dkts.), Plaintiffs submitted the declaration of a handwriting expert that opined that the Tribal Council signatures on the Agreements were likely forgeries. *See* Decl. of Linton Mohammed in Support of Plaintiffs' Opp. to RICO Defs' Mot. to Stay (Dkt. 67-7) at ¶ 2. The Court's Stay Motion Order denied the Ringleaders' efforts to move this litigation into arbitration due to the RICO Ringleaders' failure to submit evidence creating a reasonable inference that the signatures on the Agreements were authentic.

C. The RICO Ringleaders Do Not and Cannot Deny They Fraudulently and Deceptively Procured For Their Personal Use Tens of Millions of Dollars Obtained From Tribal Accounts Prior to April 12, 2014

The PI Motion identifies numerous instances and opportunities through which the RICO Ringleaders engaged in complex, deceptive or discrete transactions, transfers or withdrawals from Tribal Accounts that clearly were not intended to be discovered. *See* PI Mot. at 8-15. Without being able to rely on their purported $5 million forgivable LOCs as a cover for their actions, the Ringleaders cannot deny or explain away as legitimate most of these transactions or other uses of Tribal money to cover lavish personal expenses.[9] Indeed, the Ringleaders say little in their Opposition about these "[u]nexplained [f]inancial [t]ransactions," other than to grouse

[9] *See* C. Davies Decl. (Dkt 72-4) at Ex. A, 35 ("The Senior Tribal Administrators claim to have spent at least $4 million, collectively, from their lines of credit to fund personal expenses.").

about not having the time or access to the Tribe's banking records sufficient to explain away their transactions.[10] *See* Opp. at 23-24. While both John Crosby and Ines Crosby assert that some of the transactions set for the PI Motion appear to be valid business or banking transactions (Opp. at 23-24), their statements are problematic. That is, they confirm that the Ringleaders were intentionally and deceptively commingling funds or, even worse, wholly disregarding the distinction between the Tribe's business and operational assets and the moneys they believed they were entitled to for their personal expenses.

The Ringleaders' overwhelming silence regarding their transactions and purchases conducted with money drawn from Tribal accounts that speaks volumes. John Crosby does not deny he withdrew money from PEC's bank accounts to buy himself nearly $200,000 worth of sports cars and a house costing over $800,000, but he does not explain why he believed he should have been able to so. *See* PI Mot. at 10-11.[11] Similarly, Ines Crosby does not deny she personally loaned to others money drawn from Tribal accounts—approximately $192,000 in one instance—and keep for herself the proceeds from the loan when it was repaid, but she does not explain why she believed she was not required to pay the money back to the Tribe. *See* PI Mot. at 8-9; Opp. at 13.[12] Further, none of the Ringleaders deny that they collectively used money drawn from Tribal accounts to pay approximately $3 million to cover their American Express bills between 2003 and 2015, but they do not explain why they believed they should have been able to do so. PI Mot. at 13-14.

These transactions, as set forth in the PI Motion, clearly establish the RICO Ringleaders'

[10] The Ringleaders complain that PEC "board meeting minutes or resolutions [could discuss] the expenditures in question," but Mr. Crosby and others fail to make clear whether PEC's Board would have approved his purchases of sport cars and a luxury home with money obtained from its accounts. *See* PI Mot. at 10-11.

[11] Mr. Crosby also fails to address why he took out approximately $617,000 in home equity loans on his home within months of using Tribal moneys to purchase it. *See* PI Mot. at 11-12.

[12] The Ringleaders offer discovery responses from Ms. Crosby's brothers Jon and Ted Pata—both tribal gaming commissioners at the time this transaction took place—to refute Plaintiffs' assertion that they instructed the Casino's surveillance staff, whom they supervised, not to surveil Ms. Crosby with regard to this transaction. *See* Opp. at 13. In response, Plaintiffs file concurrently with this reply the declarations of Deana Drake and Dan Largent—the two surveillance staff members Jon Pata instructed not to surveil Mr. Crosby in connection with this transaction. *See generally* D. Drake Decl.; D. Largent Decl.

propensity for effecting significant transactions, transfers or withdrawals solely for their own benefit out of Tribal accounts, as well as their facility for doing so without regard for the formalities between the Tribe's accounts and their own. These undisputed transactions weigh in favor of freezing the Ringleaders' assets.

D. The RICO Ringleaders Admit That They Cashed Out Well Over a Million Dollars in Unlawfully Obtained Retirement Funds to Fund Their Post-April 12, 2014 Efforts to Take Back Control of the Tribe

Plaintiffs assert that RICO Ringleaders unlawful obtained exorbitant retirement benefits and cashed them out on or about April 16, 2014. The Ringleaders acknowledge this, but assert that they used this money to fund their efforts to retake the Tribe. Indeed, they admit using this money to pay for armed guards, a captured Tribal Court, legal fees and other things. While the Ringleaders claim that they contributed money in order to protect the interests of their purported Tribal government, they did not act out of altruism. Namely, the Ringleaders, as well as Messrs. Swearinger and Ms. Freeman all paid for their war chest by issuing themselves a promissory note, the terms for which provide for a 105 per annum interest over a 60 month term. The note—written in an amount of $2 million—would pay them a 50% return, which they would then pay themselves from Tribal coffers if they were to retake control of the Tribe.

E. The RICO Ringleaders' Cyber-Attacks on the Casino's Computer System Show the Lengths They Will go to in Order to Conceal Their Enterprise and Their Total Disregard for the Well-Being of the Tribe

The RICO Ringleaders admit that Leslie Lohse was among those that approved the cyber-attacks of the Tribal Casino's computer system. Opp. at 18. These attacks show the lengths the RICO Ringleaders and those in their camp were willing to go to in order to conceal their illicit activities. In addition to covering the RICO Ringleaders' tracks, the cyber-attacks caused extensive damage to the casino's computer system, and impaired the casino's ability to conduct gambling activities. ¶ 396. The Tribe's members largely depend on income from the casino's operations to survive. ¶ 10, 79-81. The RICO Ringleaders' willingness to steal from the Tribe and then endanger the viability of the only source of income for most Tribe members just to cover their own tracks underscores the dangerous possibility that the RICO Ringleader will attempt to dispose of their ill-gotten gains and reinforces the need for a preliminary injunction and the

freezing of the Ringleaders' assets.

F. The RICO Ringleaders Concealed the Purchase of a Multi-Million Dollar Airplane from the Tribe's Members

Plaintiffs claim that the RICO Ringleaders bought a jet airplane without the knowledge of the Tribe's members, and that the Ringleaders sought to conceal their actions. *See* PI Mot. at 17. Kim Freeman's declaration makes clear that the plane was not common knowledge among Tribe members like her, and she suffered serious repercussions—a 10 year suspension and loss of her per capita payments—for calling Mr. Crosby and others on the carpet about it before the Tribe's members. *See id.*; K. Freeman Decl. (Dkt. 72-6) at ¶¶ 2-5.[13] Though the Ringleaders go to distracting lengths in their Opposition and supporting declarations to set out whom from the Tribal Council and at the Casino knew about and even rode on the jet (Opp. at 9-12), not of this ultimately matters.

What really matters for purposes of Plaintiffs' motion is the fact that this big ticket purchase—bought for the Ringleaders' convenience and use—was hidden from the members of this relatively small Tribe, and they sought to punish those who challenged them. *See* K. Freeman Decl. (Dkt. 72-6) at ¶¶ 2-5. Indeed, the Ringleaders fail to offer any evidence or argument to refute the fact that the Tribe's broader membership—*i.e.*, those members not involved in Tribal government, but who are supposed to be served by it—had no clue millions of dollars in Tribal money was spent on a plane that would only be reserved for use by a select few. *See* Opp. at 10-12 (asserting only that business and Casino executives and certain Tribal Council members knew

[13] In their Opposition, the Ringleaders disproportionately attack Ms. Freeman personally –as well as her statements—because they apparently touch a nerve. *See* Opp. at 11. Given the significant questions raised herein about Mr. Crosby's veracity, his statements regarding his confrontation of Ms. Freeman should be given little weight. Similarly, though the Ringleaders' other declarants state that they did not see Mr. Crosby confront Ms. Freeman (*see* Opp. at 11, n. 7), this does not mean that the confrontation did not happen at all. Further, because Messrs. Swearinger and Ms. Freeman have a financial interest in the RICO Ringleaders' efforts to retake control of the Tribe, their declarations should be given little weight. Ultimately, the RICO Ringleaders do not deny that soon after the events in question, Ms. Freeman was suspended by the RICO Ringleaders and the Tribal Council members in their camp for a 10 year period and denied her per capita payments—together, an effective social and financial death sentence. None of the Ringleaders' declarants, all of whom have questionable veracity, dare explain the bases for her suspension. Their failure to do so seriously undercuts any weight their declarations may still hold.

about the jet); *see also, e.g.*, ¶ 328 (discussing the RICO Ringleaders' personal use of the plane and their family members, *e.g.*, Ms. Lohse's professional baseball player son, Kyle Lohse).

The Ringleaders' purchase of the jet unbeknownst to the Tribe's rank and file members and their efforts to punish those—specifically Ms. Freeman—who brought the purchase to light demonstrate deceptive, self-interested behavior that weighs in favor of freezing the Ringleaders' assets, especially those of John Crosby.

G. The RICO Ringleaders Made Clear Their Hostility Toward the WilmerHale Investigation into Their Actions

Tellingly, Mr. Crosby and the other Ringleaders do not refute the WilmerHale report's discussion of their refusal between July and August 2014 to provide the firm's investigating attorneys with access to Tribal bank records or authorize the banks to provide WilmerHale access to the accounts in question. *See* PI Mot. at 23-24; Opp. at 22. Because the Ringleaders essentially had exclusive control of the Tribe's finances for nearly two decades, access to the Tribe's bank accounts and records was necessary for the investigating attorneys finish their investigation into the Ringleaders' actions. *See* C. Davies Decl. (Dkt. 72-4) Ex. A at 10 ("We did not have access to the important records in certain Tribal accounts, specifically account statements with cancelled checks for Butte Community Bank, Tri Counties Bank, and most importantly, US Bank and Umpqua Bank—accounts that were at least partially used to fund personal expenses of some or all of the four Senior Tribal Administrators."). Certain of the bank accounts at issue—*e.g.*, Tri Counties Bank and Umpqua Bank—were used by the Ringleaders to execute the suspect and evasive transactions and high-dollar cash withdrawals Plaintiffs identifiy, as well as to pay the RICO Ringleaders' American Express credit cards. *See* PI Mot. at 12-15. This lack of access to the Tribe's banking records was a significant hindrance to the investigation and restricted WilmerHale's ability to "to fully analyze and document how those accounts were funded and how funds from those accounts were spent." *See id.* In response to Plaintiffs' unchallenged claim that the Ringleaders hindered WilmerHale's investigation, they defensively reply that the current

Tribal leadership should have "compelled [their] cooperation" through an "enforcement mechanism" in an agreement between the parties. Opp. at 23. Simply put, the RICO Ringleaders' secretive maintenance of and control over the Tribe's bank accounts prior to their ouster and their defensiveness on the issue after their ouster and even now weighs in favor of freezing their assets.

H. John Crosby Admits That He Has Ongoing and Active Business Interests Overseas

Mr. Crosby admits that he traveled to the Philippines last year, where he is considering starting a call center business and where he has relatives (though he claims not to know them). *See* J. Crosby Decl. ¶ 11. Mr. Crosby does not specify whether his trip overseas was before or after he was ousted from the tribal leadership. Starting a new call center business would require a large amount of capital, and moving to the Philippines could potentially put Mr. Crosby beyond the reach of United States justice. Given that he is under indictment and has been actively stealing money and hiding the transactions from the Tribe for nearly twenty years (¶¶ 256-266, 274, 287-288, 318-323, 328, 335-341, 344-346, 359) the risk that he might transfer his ill-gotten gains to the Philippines or some other overseas location is too great to allow.[14]

I. John Crosby Admits He Has Attempted to Dispose of Certain of His Assets After Being Caught Doing So

While John Crosby admits that he has recently attempted to sell his luxury home in Redding, and Plaintiffs caught him within two days of the PI Motion's trying to sell one of the many high-end sports cars he owns, he claims that he was simply trying to reduce his personal expenses. *See* Opp. at 17; J. Crosby Decl. (Dkt. 78-1) at ¶¶ 2-6. Given his failure over nearly two decades to draw any distinction between his personal funds and those of the Tribe when paying for his personal expenses, this is not a surprising statement. Because he has had no job other than working for the Tribe in the last 10 years, Crosby assets are practically all proceeds from his looting of Tribal assets. For example, his current home was bought and improved by hundreds of thousands of dollars he obtained from PEC bank accounts. *See* PI Mot. at 11, 12. The same goes

[14] For further evidence regarding Mr. Crosby's interests in the Philippines, *see* J. Crosby Decl.

for the Mustang he recently tried to sell. *See* PI Mot. at 10, n. 6. Mr. Crosby's recent actions, and his pervasive looting of Tribal assets to build for himself a life of luxury he can no longer afford, makes him a threat to dissipate assets and frustrate any judgment in this case.

J. The RICO Ringleaders All Admit That They Conducted Tribal Business on Their Personal Email Rather Than By Using Their Tribal Email Accounts

Plaintiffs assert that after their ouster, the RICO Ringleaders wiped their work email accounts clean as part of the cyber-attacks. *See* PI Mot. at 21. The Ringleaders all assert that they did no such thing and, in fact, only used their personal email addresses—and not their work email addresses to conduct business. *See* Opp. at 19; J. Crosby Decl. ¶ 9; I. Crosby Decl. ¶ 9; Larry Lohse Decl. ¶ 4; Leslie Lohse Decl. ¶ 14. Given the questions raised herein about the Ringleaders' veracity, their disclaiming and refutation of Lance Heimle's declaration must be given little weight. *See* PI Mot. at 21. Aside from that, however, the Ringleaders' respective (though uniform) response raises more issues for them than it solves. That is, in addition to violating a fundamental best business practice by blurring the boundary between personal activities and business, it amounts an admission that the RICO Ringleaders conducted Tribal business privately and with non-Tribal records. The Ringleaders' effective and intentional withholding of Tribal business from the Tribe's records and their concealment of this fact until now weighs heavily in favor of freezing their assets.

IV. PLAINTIFFS' REQUEST TO FREEZE THE RICO RINGLEADERS' ASSETS IS WELL SUPPORTED BY THE LAW AND WARRANTED BASED ON THE FACTS HERE

A. The RICO Ringleaders' Authorities are Inapposite

The RICO Ringleaders rely on only four cases to support their conclusory assertion that Plaintiffs' PI Motion should be denied. The import of each case can only be divined from the Ringleaders' brief parentheticals noting their respective courts' denials of asset freeze requests in each case because plaintiffs failed to show defendants' likelihood of dissipation of assets. The facts underlying each of these cases, however, show that these cases are readily distinguishable from the present one.

- In *F.T.C. v. John Beck Amazing Profits, LLC,* 2:09-cv-4719-FMC-FFMx, 2009 U.S. Dist.

LEXIS 130923 (C.D. Cal. Nov. 17, 2009), the Federal Trade Commission ("FTC") sought an asset freeze against individual and corporate defendants accused of misleading consumers in their advertising and sale of "wealth creation systems" and personal coaching services. *See id.* at *7. The court denied the FTC's asset freeze request because "the only evidence in support of an asset freeze is Defendants' misleading marketing practices" and that "[i]f this were sufficient to support an asset freeze, one would issue in every deceptive advertising case." *See id.* at *46. Unlike in *John Beck*, Plaintiffs here have set forth in Section III, *supra*, ample evidence of the RICO Ringleaders' pattern of theft, fraud, and evasion of liability that, together, demonstrate a likelihood of dissipation were the Court not to freeze the Ringleaders' assets.

- In *F.T.C. v. Evans Products Co.,* 775 F.2d 1084 (9th Cir. 1985), the Ninth Circuit affirmed the lower court's denial of an asset freeze sought by the FTC in an unfair and deceptive advertising practices case, noting that defendant's "alleged misrepresentations ceased in 1982 long before the FTC's complaint was filed on January 11, 1985" and that "Evans' status as a debtor in Chapter 11 [bankruptcy] limits its ability to transfer assets to the disadvantage of potential judgment creditors." *See id.* at 1088-89. Unlike in *Evans*, the RICO Ringleaders' wrongdoing at issue was perpetrated over nearly two decades and only recently concluded. The injurious effects of the Ringleaders' wrongdoing—largely caused by the massive amounts of money that was looted from Tribal coffers under the Ringleaders' watch—is still very evident to the Tribe's members even today. Also unlike in *Evans*, without an asset freeze order, the Ringleaders will face no limitation in their ability to dissipate the Tribal assets they have converted for their own use.
- In *S.E.C. v. ABS Manager, LLC,* 13cv319-GPC(JMA) 2013 U.S. Dist. LEXIS 39098 (S.D. Cal., March 20, 2013), the SEC sought an asset freeze against defendants' business and personal assets in an enforcement action regarding his misleading statements pertaining to certain mutual funds. The defendant consented to a "freeze of the Funds' assets" but the court was called on to decide whether to impose an asset freeze on all assets of ABS Manager and the Funds and Price's personal assets. *See id.* at **13-14. Denying the freeze

on the individual defendants' personal assets, the court explained that the defendant had been cooperating with the SEC's ongoing investigation into him for over a year, and the SEC failed to offer any evidence that the defendant was likely to dissipate any of the assets in question. *See id.* at **16-17. Moreover, defendants had already consented to one asset freeze. *See id.* Unlike in *ABS Manager*, Plaintiffs here have set forth in Section III, *supra*, ample evidence of the RICO Ringleaders' pattern of theft, fraud, and evasion of liability that, together, demonstrate a likelihood of dissipation were the Court not to freeze the Ringleaders' assets. Also unlike in *ABS Manager*, the Ringleaders have not cooperated in any way with either WilmerHale, counsel retained by the entire Tribe in connection with its 2014 internal investigation, or the Tribe in any other way. *See* PI Mot. at 23-24. Indeed, the Ringleaders and the interested Tribal Council members in their camp readily admit that they have actively sought to frustrate the Tribe's operations in retaliation for their ouster and to gain leverage in negotiations. *See* Opp. at 18-20 (*e.g.*, hiding the jet they purchased from the new Tribal leadership; Leslie Lohse authorizing the cyber-attack on the Casino's computers).

- In *Allstate Insurance Co. v. Baglioni,* 2011 U.S. Dist. LEXIS 129112 (C.D. Cal., Nov. 8, 2011), the court denied Allstate's asset freeze request because, in support of the request, it "point[ed] only to the fact that [the defendant] transferred title of his house to his mother . . . ." *See id.* at *5. The court stressed that "this single transfer of a primary residence to a co-resident, immediate relative, and prior owner is not enough to demonstrate [defendant] is likely to dissipate any other assets he may have to avoid a potential judgment." *See id.* at **5-6. Unlike in *Allstate*, Plaintiffs here have set forth in Section III, *supra*, ample evidence the RICO Ringleaders' pattern of theft, fraud, and evasion of liability that, together, demonstrate a likelihood of dissipation were the Court not to freeze the Ringleaders' assets.

These four cases illustrate that courts are hesitant, for good reason, to issue an asset freeze in the face of single or limited instances of unlawful behavior. Plaintiffs, however, have demonstrated in the record the Ringleaders' nearly two decades' long pattern of theft and fraud

pertaining to Tribal assets and moneys and their evasion of liability for this wrongdoing. As set forth above in Section III, Plaintiffs' showing has been largely uncontroverted—and has, in fact, been bolstered—by the RICO Ringleaders' briefing and evidentiary submissions to the Court. Accordingly, these four cases in no way instruct that Plaintiffs' have failed to demonstrate that the freezing of the RICO Ringleaders' assets is warranted.

B. The RICO Ringleaders Fail to Distinguish Plaintiffs' Authorities

The RICO Ringleaders attempt—but fail—to factually distinguish certain of the authorities upon which Plaintiffs rely to support their request for the freezing of the Ringleaders' assets by framing them as extreme or factually inapposite to this case. For example:

- The RICO Ringleaders assert that *Johnson v. Couturier,* 572 F.3d 1067 (9thCir. 2009) is factually dissimilar from this case and thus distinguishable. Opp. at 25. This superficial analysis ignores how comparable the enormity of the defendant company president's diversion of his company's assets to his personal bank account over a lengthy period of time is to the RICO Ringleaders' diversion of over 30% of the Tribe's available funds to their personal use. *See id.* at 1085 ($35 million—nearly a third of the company's value—over five years); *see also* PI Mot. at 7. Further, they overlook the similarities between the untruthful, manipulative and concealing means by which the defendant in *Johnson* and the Ringleaders were able to facilitate their wrongful diversions. *See id*.; PI Mot. at 4, 9–18.[15] The district court in *Johnson* granted an asset freeze (572 F.3d at 1086), and the same outcome is warranted here.
- The RICO Ringleaders brand the *Republic of Philippines v. Marcos*, 862 F.2d

[15] The RICO Ringleaders' further assert that *Johnson* is distinguishable because "no comparison can be drawn between corporate governance, and what, if any duties are owed to Indian Tribes by Tribal Councils and executives." Opp. at p. 26. They cite no legal authorities to support this statement. *See id.* To the contrary, the fiduciary duty owed by senior employees to a sovereign entity is above and beyond that found in the corporate world. *See, Ste. Marie v. Bouschor,* 2008 Mich. App. LEXIS 2266, at *59 (Mich. Ct. App. Nov. 18, 2008) (chairperson of tribe "may be liable for a breach of his fiduciary duty if the jury finds that payments made were for his benefit instead of these payments being for the benefit of the Tribe").

1355 (9th Cir. 1988) as an extreme and inapposite case, but again ignore the comparable pattern of fraud and secretive financial dealings the Ninth Circuit recognized in affirming the district court's asset freeze. *See id.* at 1362–63 (*e.g.*, deceptive use of bank accounts to transfer money). Among other acts, the court found persuasive evidence that the Marcoses had a checking account used to make payments to aliases for defendants; and evidence of false tax returns, substantially undervaluing their assets. Plaintiffs have set forth the Ringleaders' similar use of secretive and deceptive financial tactics (i.e., the use of multiple bank accounts in order to hide their thefts) as well as their actions to conceal their theft. *See id.* The facts here, as in *Marcos*, warrant an asset freeze.

- The Ringleaders also label as "extreme" *Connecticut General Life Ins. Co. v. New Images of Beverly Hills,* 321 F.3d 878 (9th Cir. 2003). In affirming the district court's asset freeze, the Ninth Circuit emphasized the Defendant's "family's history of fraudulent intra-family transfers, their refusal to disclose asset information in defiance of court order and their convenient divorce settlement [which vested all the family's significant assets with defendant]." Similarly, the RICO Ringleaders have transferred money between family members regularly, and have gone to great lengths to avoid disclosing financial information. *See* PI Mot. at 15-16 (discussing Ms. Crosby's successful attempts to avoid Currency Transaction Reporting requirements, which the RICO Ringleaders do not refute in their Opposition); id. at pp. 12–13 (unexplained payments between Mr. Crosby and Mr. Lohse); *see also* J. Willis Decl. (Dkt. 72-5) at ¶ 3–4 (explaining methods by which contracts for the receipt of federal funds were structured so as to avoid an audit).

As demonstrated above, courts look to patterns of fraudulent and deceptive behavior when determining whether to order an asset freeze. Here, as in *Johnson*, *Marcos, and Connecticut General Life*, the RICO Ringleaders have gone to great lengths to take millions of dollars of the money of others for their own personal use, and to hide or otherwise conceal their actions. *See* PI Mot. at 7; ¶¶ 373–412. The RICO Ringleaders' deceptive acts here, and the harm done to the

Tribe, are no less "extreme" than that set forth in the preceding cases, and the defendants' assets were frozen in each case. It is the pattern of unlawful conduct shown in these cases that is analogous—and instructive—here.[16]

C. The RICO Ringleaders Submit No Legal Argument Sufficient to Challenge Plaintiffs' Likelihood of Success on any of Their 20 Claims for Relief Against Them

The RICO Ringleaders offer only cursory argument targeting the likelihood of success of Plaintiffs' claims for relief based on (1) civil RICO; (2) conversion and money had and received, (3) fraud and breach of fiduciary duty claims, (4) state and federal cyber-crime laws, (5) civil conspiracy, and (6) constructive trust and accounting. *See* Opp. at 32-33. While Plaintiffs need only demonstrate a likelihood of success on the merits for at least one of their claims against the RICO Ringleaders, the authorities they cite do nothing to weaken Plaintiffs' claims.

a. Civil RICO

While the RICO Ringleaders correctly state the holding of *Religious Tech. Ctr. V. Wollersheim*, 796 F.2d 1076, 1088 (9th Cir. 1986), they overlook that Plaintiffs have alleged much further wrongdoing against the Ringleaders than just their six separate civil RICO causes of action. *See, e.g.*, ¶¶ 519-564 (claims for relief against the RICO Ringleaders and the other RICO defendants for fraudulent concealment, fraudulent misrepresentation, intentional interference with prospective economic relations; breach of the fiduciary duties of loyalty and reasonable care; and aiding and abetting). *Religious Tech.* therefore does not frustrate Plaintiffs' asset freeze request.

b. Conversion and Money Had and Received

The RICO Ringleaders contend that Plaintiffs' claims for conversion and money had and received are in doubt because: (1) they are actions at law for which an equitable remedy is

[16] *F.T.C. v. Affordable Media, LLC,* 179 F.3d 1228 (9th Cir. 1999) and *Walczak v. EPL Prolong, Inc.,* 198 F.3d 725 (9th Cir. 1999), both cited by Plaintiffs, are also instructive regarding the types of patterns sufficient to show a likelihood of dissipation that warrant an asset freeze. *See* PI Mot. at 6, 17, 24. The RICO Ringleaders point out that *Walczak* refrained from calling the preliminary injunction an asset "freeze" because the injunction "does not completely prohibit Appellants from taking any action with regard to their assets." 198 F.3d at 730. It nonetheless offered an identical remedy and enjoined defendants "from consummating the exchange of [a] stock swap…and from liquidating EPL Prolong Inc. or its patent rights in any fashion until further notice from this court or until a final judgment on the merits is reached in this litigation as to all parties." *Id.*

unavailable, and, (2) based upon *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc., ("Grupo Mexicano")*, 527 U.S. 308 (1999) federal courts "cannot exercise their equitable powers to freeze assets when the claim arises in law and there is no other equitable claim allowing the exercise of equitable remedies." *See* Opp. at p. 33. The Ringleaders are wrong for two reasons. ***First***, equitable remedies—including constructive trust—are available in actions for conversion. *See ST Ventures, LLC v. KBA Assets & Acquisitions LLC*, 1:12-cv-01058 LJO SMS 2012 U.S. Dist. LEXIS 119922 (E.D. Cal. Aug. 23, 2012) (citing *Burlesci v. Petersen*, 68 Cal. App. 4th 1062, 1069 (1998) (a claim for conversion may serve as the basis for imposing a constructive trust)).[17] ***Second***, as Plaintiffs assert in the PI Motion, *Grupo Mexicano* did not affect a district court's authority to issue an injunction where, as here, equitable relief is sought. *See* PI Mot. at 6, n.5. *See also 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.").

c. Fraud and Breach of Fiduciary Duty Claims

Without citing any authority, the RICO Ringleaders assert that they did not owe the Tribe any fiduciary duties. *See* Opp. at p.32. This argument lacks merit. Each of the Ringleaders were senior level employees of the Tribe—or in Mrs. Lohse's case, the Tribal Treasurer and a member of the Tribal Counsel—and clearly owed the Tribe a fiduciary duty. *See Thomas Weisel Partners LLC v. BNP Paribas*, No. C 07-6198 MHP, 2010 U.S. Dist. LEXIS 32332, at *16 (N.D. Cal., April 1, 2010) (quotation omitted) ("an employer is entitled to its employees' 'undivided loyalty'" during the term of employment). "The duty of loyalty is breached . . . when the employee takes action which is inimical to the best interests of the employer." *Id.* (quotation omitted); *see also Sequoia Vacuum Sys. v. Stransky*, 229 Cal. App. 2d 281, 287 (1967) (holding that a fiduciary duty existed where the defendant was a "managerial employee and director of the . . . corporation").

[17] The case law cited by the RICO Ringleaders, *see* Opp. at p. 33, addresses the common count of money and received *only*. *See Mains v. City Title Ins. Co.,* 34 Cal.2d 580 (1949). Plaintiffs refrain from addressing this assertion in light of the law clearly allowing for equitable relief for conversion.

d. State and Federal Cyber-Crimes Claims

The RICO Ringleaders argue that Plaintiffs' claims based on the Federal Computer Fraud and Abuse Act ("CFAA"), and the California Comprehensive Computer Data Access and Fraud Act (collectively "Cyber-Crime Claims") fail because "the Tribe's lawful governing body authorized those actions." *See* Opp. at 33.

As an initial matter, there were ***three*** separate cyber-attacks on the Casino: the first on May 9, 2014, the second on May 14, 2014, and the third on May 15 2014. *See* L. Heinle Decl. (Dkt. 72-7) at ¶¶ 6–8. The RICO Ringleaders appear to claim the ousted Tribal Council (including Mrs. Lohse) "authorized" and facilitated only the May 9, 2014 attack. *See* Opp. at p. 33. The Ringleaders, however, fail to address who is responsible for the other two attacks anywhere in their papers. That being said, a reasonable inference can be drawn that the Ringleaders or those working at their direction were responsible because Mr. Crosby, as well as his fellow RICO Defendants Frank James and Chris Pata have all refused to respond on Fifth Amendment grounds to Plaintiffs' interrogatories regarding the May 9 and May 15 cyber-attacks. *See* A. Purdy Decl. at Exs. A (J. Crosby's interrogatory responses), B (F. James' interrogatory responses) and C (C. Pata's interrogatory responses).

While the Ringleaders' silence regarding their involvement in the three separate cyber-attacks mentioned above is difficult to understand (especially when their Opposition and supporting declarations so explicitly carved all of them, save Mrs. Lohse, out of responsibility), it is even more difficult to comprehend the RICO Ringleaders' argument that they are not liable for the hundreds of thousands of dollars and destruction of data their cyber-attacks caused the Casino because they claimed to have "authorized" the "disrupt[ion] [of the Tribe's] business operations." Opp. at 33. This argument should be given no weight for two reasons. ***First***, the Ringleaders' argument is wholly unsupported by any authority. By asserting that the cyber-attacks were somehow cloaked with the authority of the Tribal Council—the same justification they offer for Mrs. Crosby's post-April 12, 2014 withdrawal of Tribal moneys (Opp. at 15)—the Ringleaders are simply trying to color this dispute as an inter-tribal matter to avoid the Court's subject matter jurisdiction and ultimate liability for the injurious attacks on the Casino's network.

See L. Heinle Decl. (Dkt. 72-7) at ¶¶ 6–9; C. Davies Decl. (Dkt. 72-4) at Ex. A ¶¶ 7–8. ***Second***, even if the RICO Ringleaders could plausibly claim they had authority to damage the Tribe's property, they lost the authority once they acted to the detriment of the Casino. *See, e.g., Int'l Airport Ctrs., L.L.C. v. Citrin*, 440 F.3d 418, 420-21 (7th Cir. 2006) (finding that authorized access to a company computer under the CFAA terminated once an employee acted with adverse interests and against the duty of loyalty imposed on an employee in an agency relationship with his or her employer or former employer).

e. Civil Conspiracy

The RICO Ringleaders argue that (1) civil conspiracy claim is not a cause of action, and (2) state law cannot be used by federal courts in the exercise of their discretion to freeze assets. *See* Opp. at 32. These arguments both fail.

First, "[c]onspiracy is a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration." *AREI II Cases*, 216 Cal.App.4th 1004,1021–1022 (2013) (quotation omitted). A civil conspiracy "must be activated by the commission of an actual tort." *Id.* (quotation omitted). Plaintiffs have submitted ample evidence, the majority of which the RICO Ringleaders fail to challenge, demonstrating, among other things, the RICO Ringleaders' tortious acts of conversion, fraud, and breach of fiduciary duty and their joint efforts to commit those torts. *See, e.g.*, PI Mot. at 25–30; ¶¶ 519–546; 554–564.

Second, a federal court has inherent power – and does not need statutory or other authority – to grant an asset freeze order for the purpose of preserving the federal court's ability to grant effective final equitable relief. *Reebok International, Ltd. v. Marnatech Enterprises, Inc.*, 970 F.2d 552, 559 (9th Cir. 1992) ("[T]he injunction is authorized by the district court's inherent equitable power to issue provisional remedies ancillary to its authority to provide final equitable relief . . . "); *see also USACO Coal Co. v. Carbomin Energy, Inc.,* 689 F.2d 94 (6th Cir. 1982) (preliminary injunction authorized by court's inherent equitable powers in an action asserting claims for treble damages under RICO, breach of fiduciary duties, common law fraud, and breach of contract).

Accordingly, Plaintiffs' civil conspiracy claim is likely to succeed.

f. Constructive Trust and Accounting

The RICO Ringleaders argue that Plaintiffs are not likely to succeed on their claims seeking an accounting or constructive trust because the Tribal Council, at the time the wrongdoing Plaintiffs allege against the Ringleaders took place, was "completely indifferent" to the RICO Ringleaders' thefts and "wanted to give Defendants each $5 million forgivable lines of credit." *See* Opp. at 33. While this is simply the best argument the Ringleaders can advance following the Stay Motion Order (*see* Section III, *supra*), the Ringleaders say nothing about why either accounting or constructive trust—neither of which require any qualitative assessment of the former Tribal Council's intent regarding the Ringleaders' compensation to be performed—will have no likelihood of success in this case. Indeed, they offer no legal authorities to support this argument. *See* Opp. at 33. The assertions that the previous Tribal Council—all of whom are interested declarants in this action and reside firmly in the RICO Ringleaders' camp—were indifferent or wanted to reward the Ringleaders ultimately has no import and fails to cure the Ringleaders many personal transactions with Tribal moneys over nearly two decades. *See* Section III, *supra*.

An accounting is necessary because the Tribe is ignorant as to the extent of the RICO Ringleaders' theft and there are still large sums for which are unaccounted. *See* A. Rico Decl. (Dkt. 72-1) at ¶ 24; *Ginocchi v. Grand Home Holdings, Inc*., No. 10cv2115-L(BGS) 2011 U.S. Dist. LEXIS 88108 (S.D. Cal., August 9, 2011) (quoting *Civic W. Corp. v. Zila Indus., Inc.*, 66 Cal. App. 3d 1, 14 (1977) (an accounting is appropriate "'where the accounts are so complicated that an ordinary legal action demanding a fixed sum is impracticable.'"). Additionally, courts have permitted separate causes of action for constructive trust where there is fraud, breach of duty, or any other act that entitles the plaintiff to some relief. *Clifford v. Concord Music Group, Inc.*, No. C-11-2519 EMC 2012 U.S. Dist. LEXIS 14084 (N.D. Cal., February 6, 2012) (citation omitted). Because the RICO Ringleaders hold assets wrongfully taken from the Tribe, a constructive trust should be imposed. *Holstrom v. Mullen*, 84 Cal. App. 1, 4 (1927) (constructive trusts are the creatures of equity formed for the purpose of preventing the perpetration of fraud.).

D. The RICO Ringleaders Make Practically No Factual Showing of Actual or Potential Hardship Should the Court Freeze Their Respective Assets

The RICO Ringleaders completely fail to respond to Plaintiffs' authorities and arguments regarding the hardship they would suffer were the Court not to freeze the Ringleaders' assets, and they submit in opposition practically no evidence of any real or potential financial hardship that would befall them were their assets frozen. *See* Opp. at 32–33. In fact, Ringleaders Ines Crosby, Larry Lohse, and Leslie Lohse each fail to make even a single statement in their respective declarations about how the proposed injunction—which would provide each of them reasonable living and legal expense allowances as determined by the Court—would cause them any financial hardship. *See generally* Ines Crosby Decl. (Dkt. 87-5), Larry Lohse Decl. (Dkt. 87-7), Leslie Lohse Decl. (Dkt. 87-8).

Only Ringleader John Crosby explicitly claims potential hardship regarding tuition payments for his children and the need for "infusions of capital" for his new retail business. *See* Opp. at 29-30. These arguments certainly ring hollow considering the lavish lifestyle he has built for himself over nearly two decades by spending the Tribal money as if it were his own, as well as his failure to provide any truthful justification for his actions—much less an explanation about where the millions of dollars he has taken has gone. *See* PI Mot. at 9–12 (listing Mr. Crosby's spending and withdrawals of the Tribe and PEC's money); ¶¶ 256–261, 287–288, 318–323, 328, 335–341, 344–346, 359, Ex. B (Mr. Crosby's spending and withdrawals of the Tribe and PEC's money; pictures of Mr. Crosby's multi-million dollar home in Redding); Opp. at 23 (failing to address or explain essentially of his pre-April 12, 2014 transactions the PI Motion highlights); John Crosby Decl. generally (no explanation of bank records submitted with Ambrosia Rico's Declaration (Dkt. 72-1)). Mr. Crosby's efforts to paint his $1 million "loan" to the former Tribal Council allied with the Ringleaders as an unexpected hardship (Opp. at 29–30; J. Crosby Decl. (Dkt. 87-6) ¶¶ 12, 17) should be given no weight. Mr. Crosby essentially bankrolled the Ringleaders' efforts to take back control of the Tribe and—as memorialized by the Note—intended to pay himself a 50% return on investment if the RICO Ringleaders came out on top. *See* G. Freeman Decl. (Dkt. 87-4) at 13, Ex. 2.

The likelihood of Mr. Crosby's alleged expenses is no reason to deny outright Plaintiffs' requested freezing of Mr. Crosby's assets as a hardship on him. Asset freeze orders can be crafted by the Court to account for reasonable expenses, and the Court has the ultimate discretion in determining the legitimacy and reasonableness of allowances for living and other expenses. *See SEC v. Private Equity Mgmt. Group*, 2009 U.S. Dist. LEXIS 64724, at *9 (C.D. Cal. July 9, 2009) ("Courts regularly hold that they have discretion to modify the asset freeze to release funds to pay living expenses"); *CFTC v. Noble Metals Int'l*, 67 F.3d 766, 775 at fn. 8 (9th Cir. Nev. 1995) (lower court froze defendants' assets but allowed them to expend funds "for ordinary, reasonable, and necessary living expenses"). As long as a preliminary injunction is sufficiently limited such that it does not freeze personal funds to cover reasonable living expenses, the balance of equities tips in a plaintiffs' favor. *See Fid. Nat'l Title Ins. Co. v. Ca*stle, No. C 11-00896 SI, 2011 U.S. Dist. LEXIS 135316, * 24 (N.D. Cal. Nov. 23, 2011). *See also Johnson v. Couturier*, 572 F.3d 1067 (9th Cir. 2009) (finding that where an asset freeze permitted defendant to cover normal living expenses and legal fees, the district court correctly concluded that a narrowly tailored asset freeze would prejudice defendant less than a denial of relief would prejudice plaintiffs). Should the Court grant Plaintiffs' asset freeze request, Mr. Crosby will have sufficient opportunity to submit for the Court's consideration his potential expenses. Plaintiffs' certainly do not oppose, and in fact specifically requested, reasonable living expenses for the Ringleaders to be carved out of their asset freeze request.[18]

Though the RICO Ringleaders express concerns whether an aggregate $10,000 a month for legal expenses is sufficient to defend against this action (and likely the currently ongoing federal criminal investigation into them), they have not substantiated those concerns. *See* Opp. at

[18] The RICO Ringleaders rely on *Securities and Exchange Commission v. ABS Manager, LLC* apparently to support Mr. Crosby's argument that a family man with expenses should not be subject to an asset freeze. *See* Opp. at 30. *ABS Manager* does not stand for that proposition. *See* Section IV.A., *supra*. No aspect of the Court's decision was reliant on the individual defendant's status as a family man. Aside from distinguishing the case from this one because of its regulatory context, Plaintiffs have sufficiently demonstrated the likelihood that Mr. Crosby would dissipate the Tribal moneys he used to build his lavish lifestyle if he could. *See supra* Section III; PI Mot. at 9–11.

30-31. They offer neither statements in support of this argument, nor any evidence addressing their current or projected legal expenses. Regardless, the sufficiency of the legal expenses allowance Plaintiffs propose is simply no basis to deny outright the freezing of the Ringleaders' assets.

As is the case with living expenses, the Court also has discretion to forbid or limit payment of legal expenses out of frozen assets. *See FSLIC v. Ferm*, 909 F.2d 372, 375 (9th Cir. 1990) (approving limitation on attorney's fees); *see also F.T.C. v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989) (observing that "courts regularly have frozen assets and denied attorney fees or limited the amount for attorney fees"). Indeed, a court may restrain a defendant from using disputed funds to pay for attorney's fees before a final judgment on the merits has been rendered. *United States v. Monsanto*, 491 U.S. 600, 615 (1989). "These decisions recognized the importance of preserving the integrity of disputed assets to ensure that such assets are not squandered by one party to the potential detriment of another." *Ferm*, 909 F.2d at 374.

At bottom, the RICO Ringleaders offer no argument, evidence or reason why a deliberately drawn asset freeze order by the Court cannot also achieve Plaintiffs' aims in moving the Court (*i.e.*, protecting against the dissipation of assets) while permitting the Ringleaders to pay their reasonable living and legal expenses during the pendency of this action.

E. The RICO Ringleaders Fail to Address Plaintiffs' Public Interest Arguments

Rather than address the Plaintiffs' authorities and arguments regarding the clear public interest in tribal economic development and self-sufficiency that would be furthered by the requested preliminary injunction (PI Mot. at 33), the RICO Ringleaders bizarrely respond by asserting that their "dedicated" and "tireless" efforts alone are responsible for the Tribe's current economic prosperity. *See* Opp. at 31. The assertion here appears to be that the Tribe's members somehow owe the RICO Ringleaders for their prosperity and that only a Tribal "vendetta"—and not the public interest—is served by freezing their assets.[19] *See id*. Aside from wholly failing to

[19] The RICO Ringleaders assert that the Tribe's disenrollment of the entire Pata family—the family of which the RICO Ringleaders are part—resulted in the increase of Tribal per capita payments. *See* Opp. at 31, n. 15. The Ringleaders do not and cannot offer any evidence to support this statement because it is not true.

address Plaintiffs' arguments, the Ringleaders' misplaced attempt to reframe this action as a tribal dispute should be afforded no weight by the Court for at least three reasons.

First, Plaintiffs claims are grounded in law and fact, not vendetta. To date, the RICO Ringleaders have submitted nothing other than histrionics and a subject matter jurisdiction argument to challenge the plausibility of the Plaintiffs' claims or their likelihood of success on the merits. *See* Opp. at 7–8, 32–33. As set forth in Section III above, the RICO Ringleaders' continued efforts to explain away Plaintiffs' claims as an inter-tribal matter only further substantiate the bases underpinning Plaintiffs' claims for relief as well as this motion. The law affords plaintiffs relief for the claims Plaintiffs have pleaded, and it is Plaintiffs' intention through this action to advance the Tribe's self-sufficiency and self-determination by pursuing these claims before the Court. *See* 28 U.S.C. 1362.

Second, to the extent the Court entertains any of the RICO Ringleaders' arguments, their laudatory personal mythologies are not grounded in any factual allegations or evidence on the record and should be given no weight. To be blunt, the Ringleaders want to take credit for the Tribe's economic prosperity. The Ringleaders' implicit argument here—made by their repeated assertion that Messrs. Swearinger and Ms. Freeman believe that the Ringleaders were entitled to substantial compensation and benefits and that they had no concerns about what the Ringleaders were receiving (A. Swearinger Decl. (Dkt. 87-2) at ¶¶ 7–8; D. Swearinger Decl. (Dkt. 87-3) at ¶¶ 22–24; G. Freeman Decl. (Dkt. 87-4) at 14–15)—is that the Ringleaders were entitled to what they took from Plaintiffs. However, simple common sense, along with Plaintiffs' allegation, show that the Rolling Hills Casino—and not the RICO Ringleaders' "dedicated" and "tireless efforts"—has been the engine propelling the economic prosperity of both the Tribe and its members since the Casino opened its doors in 2002. *See* ¶¶ 99–107; PI Mot. at 3, 31; Opp. at 20–21. None of the RICO Ringleaders claim that they have ever been employed by the Rolling Hills Casino or played any role at any time in the Casino's construction, development or management. *See* ¶¶ 99–107. Indeed, none of the Ringleaders have any experience in the gaming industry. *See* ¶¶ 103. The Casino's success is largely the result of the Tribe's engagement of Indian gaming consultants with years of experience in Casino construction, development and management. *See*

¶¶ 104–107. An impartial, fact-based—and strikingly different—evaluation of the RICO Ringleader's impact on the Tribe's finances is set forth in the WilmerHale Report. *See* C. Davies Decl. (Dkt. 72-4) generally and Ex. A at 5 (finding that the Tribe's money—largely managed by John Crosby and Larry Lohse—was invested "almost exclusively in alternative, illiquid investments" based on "no coherent investment policy or strategy" that had provided "little return on the Tribe's investments," resulting in the likely loss of a "very significant portion" of the $93 million the Tribe had to invest over the prior 12 years).

Third, the declarations by Allen Swearinger, David Swearinger and Geraldine Freeman are conclusory and tainted by the declarants' financial interest in the RICO Ringleaders taking control of the Tribe again. Each declarant states that the Tribe experienced "unprecedented financial success" as a result of the RICO Ringleaders' "service," but these statements are unsupported by any factual allegations or evidence now before the Court. *See* Opp. at 20; A. Swearinger Decl. (Dkt. 87-2) at ¶ 7; D. Swearinger Decl. (Dkt. 87-3) at ¶ 22; G. Freeman Decl. (Dkt. 87-4) at ¶ 15. While the RICO Ringleaders repeatedly attempt to give weight to the declarants' statements by asserting that they are "disinterested parties" and purportedly impartial (*e.g.*, Opp. at 1, 4, 12, 21), this is a fraud on the Court evinced by the declarants' own documents. Specifically, as noted in Section III above, the declarants—along with RICO Ringleaders Ines Crosby, John Crosby and Leslie Lohse—are all payees under the Note to which the declarants and Ms. Lohse (claiming to act as the Tribal Council) obligated the Tribe. Though the declarants omit any reference in their respective declarations to their status as payees under the promissory note—and, in fact the copies of the note submitted as exhibits to David Swearinger and Geraldine Freeman's respective declarations do not include the signature pages identifying the payees under the note[20]—it appears that together they contributed approximately $500,000 to the RICO Ringleaders' war chest through this less than arms-length transaction. *See supra* Section III; D. Swearinger Decl. (Dkt. 87-3) at ¶ 20; G. Freeman Decl. (Dkt. 87-4) at ¶ 13. Setting aside

[20] On July 15, 2015, the RICO Ringleaders filed a Notice of Errata and Corrected Declaration of David Swearinger (Dkt. 90), but the corrections did not include the inclusion of a signature page for the payees of the Note attached thereto, and to Mr. Swearinger's previously filed declaration, as Exhibit 5.

argument regarding the Note's legal efficacy, the 10% per annum interest on Note would cause the declarants to recover principal and interest totaling $750,000—a 50% return on investment—from the Tribe's coffers if the ousted leadership were to retake control of the Tribe within five years. *See id*.

V. THE STRONG LIKELIHOOD OF PLAINTIFFS' SUCCESS ON THE MERITS, AND THE NATURE OF THE REQUESTED ASSET FREEZE BOTH WARRANT DISPENSING WITH DEFENDANTS' BOND REQUEST

The RICO Ringleaders request that the Court require from Plaintiffs a "substantial bond" should the Court grant the requested injunctive relief, though the Ringleaders fail to say what that "substantial" amount should be. *See* Opp. at 34. Rule 65 makes the granting of injunctive relief conditional on the posting of security "in the amount the court considers proper . . . ." Fed. R. Civ. P. 65(c). The bond requirement's primary purpose is to safeguard Defendants from any costs and damages incurred as a result of a preliminary injunction improvidently issued. *Roul v. Geo*rge, 2:13-cv-01686-GMN-CWH, 2013 U.S. Dist. LEXIS 153539, *12 (D. Nev. Oct. 25, 2013). Rule 65, however, does not make the requirement of a bond mandatory for injunctive relief to be granted. A district court has wide discretion in setting the amount of the bond, and can even waive the requirement of its posting. *See Van de Kamp v. Tahoe Reg. Planning*, 466 F.2d 1319, 1326 (9th Cir. 1985). A district court can waive the bond requirement if a plaintiff demonstrates an overwhelming likelihood of success on the merits. *See id.* ("when the party seeking the injunction has a high probability of succeeding on the merits," the court may dispense with the bond requirement). The bond amount also may be reduced to zero if there is no evidence the defendants against whom the injunction issues will suffer damages from the injunction. *See Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 733 (9th Cir. 1999); *Gorbach v. Reno*, 219 F.3d 1087, 1092 (9th Cir. 2000). *See also Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003) ("The district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.") (quoting *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999)).

As set forth above, the RICO Ringleaders' admissions and concessions in the record thus far in this action only serve to bolster the likelihood of Plaintiffs' success on the merits of their claims

for relief. The RICO Ringleaders' Opposition offers neither facts nor argument sufficient to justify or explain away, among other things, their looting of Tribal assets over nearly two decades, their operation of a RICO enterprise to facilitate the looting of the Tribe's finances and politics, and their criminal acts and breaches of the fiduciary duties owed the Tribe's members throughout the period they together ran their enterprise. *See* ¶¶ 16, 108–164; PI Mot. at 24–31; Opp. at 3–4, 8–18. The FBI and IRS's current investigation into the Ringleaders' actions, which appears to concern actions by the RICO Ringleaders substantially similar to Plaintiffs' allegations here, only gives further credence to Plaintiffs' claims. *See* Gross Decl. (Dkt. 72-8) at ¶ 2–3. Further, because Plaintiffs' requested asset freeze keeps the status quo—*i.e.*, refrain from spending, using or transferring their assets save reasonable allowances or determined by the Court for living and legal expenses—the RICO Ringleaders cannot seriously claim a reasonable likelihood that they will suffer damages resulting from the injunction that necessitate Plaintiffs to post a "substantial bond." As noted above, should the requested injunction issue, any potential or actual prejudice or injury to the RICO Ringleaders can be substantially mitigated by the Ringleader's right to petition the Court at any time for consent to an asset transfer or disposal.

Because the assets targeted for freezing are the proceeds of the RICO Ringleaders' unlawful actions, along with the reasons set forth above, Plaintiffs respectfully request that the Court not require them to post any bond. Should, however, the Court decide that Plaintiffs must post a bond in order for the preliminary injunction to issue, Plaintiffs respectfully request that the Court make the bond nominal in amount. *See, e.g., Roul*, 2013 U.S. Dist. LEXIS 153539 at *12 (ordering plaintiffs to post $100 nominal bond where alleged defendants allegedly misappropriated nearly $1 million).

VI. CONCLUSION

For the reasons set forth above and in their moving papers, Plaintiffs respectfully request that the Court grant Plaintiffs' Motion for Preliminary Injunction and immediately freeze the RICO Ringleaders' respective assets. Plaintiffs further request that the Court not require them to post any bond—or, alternatively, a nominal bond—in order for the asset freeze order to issue.

Dated: July 20, 2015

JOSEPH SAVERI LAW FIRM, INC.

By: /s/ *Andrew M. Purdy*
Andrew M. Purdy

Joseph R. Saveri (State Bar No. 130064)
Andrew M. Purdy (State Bar No. 261912)
JOSEPH SAVERI LAW FIRM, INC.
505 Montgomery Street, Suite 625
San Francisco, CA 94111
Telephone: (415) 500-6800
Facsimile: (415) 395-9940
jsaveri@saverilawfirm.com
apurdy@saverilawfirm.com

Dated: July 20, 2015

GROSS LAW, P.C.

By: /s/ *Stuart G. Gross* (authorized July 20, 2015)
Stuart G. Gross

Stuart G. Gross (State Bar. No. 251019)
Daniel C. Goldberg (State Bar No. 287923)
GROSS LAW, P.C.
The Embarcadero
Pier 9, Suite 100
San Francisco, CA 94111
Telephone: (415) 671-4628
Facsimile: (415) 480-6688
sgross@gross-law.com
dgoldberg@gross-law.com

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

CERTIFICATE OF SERVICE

I, Stuart G. Gross, am over 18 years old and am not a party to the below-referenced case. My business address is Gross Law, P.C., The Embarcadero, Pier 9, Suite 100, San Francisco California, 94111. On July 20, 15, I served the following document(s) in the manner described below:

- **PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

X **VIA EMAIL**: My email address is sgross@gross-law.com. I am readily familiar with this firm's practices for causing documents to be served via email. Following that practice and pursuant to agreement of the parties, I caused file-endorsed copies of the foregoing document(s) to be emailed to the address(es) below.

LIBERTY LAW, A.P.C. John M. Murray john@libertylawapc.com sue@libertylawapc.com	*Attorneys for Defendants INES CROSBY, JOHN CROSBY, LESLIE LOHSE, LARRY LOHSE, TED PATA, JUAN PATA, CHRIS PATA, SHERRY MYERS, FRANK JAMES, THE PATRIOT GOLD & SILVER EXCHANGE, INC., and NORMAN R. RYAN*
BOUTIN JONES, INC. Tod Fogarty Mike Kuzmich Trisha Doyle tfogarty@boutinjones.com MKuzmich@boutinjones.com TDoyle@boutinjones.com	*Attorneys for Defendant QUICKEN LOANS, INC.*
DOWNEY BRAND Kevin M. Siebert Becky Stockman Avalon Johnson kseibert@downeybrand.com bstockman@DowneyBrand.com ajohnson@downeybrand.com	*Attorneys for Defendants HANESS & ASSOCIATES, LLC, AND ROBERT M. HANESS*
MURPHY, PEARSON, BRADLEY, & FEENEY William Munoz Robert Lucas Crystal Roberts wmunoz@mpbf.com rlucas@mpbf.com croberts@mpbf.com	*Attorneys for Defendant ASSOCIATED PENSION CONSULTANTS, INC.*
KLINEDINST Natalie P. Vance Nancy Vanderhorst Kristin Blake NVance@KlinedinstLaw.com nvanderhorst@klinedinstlaw.com KBlake@Klinedinstlaw.com	*Attorneys for Defendants GARTH MOORE, AND GARTH MOORE INSURANCE AND FINANCIAL SERVICES, INC.*
REED SMITH LLP	*Attorneys for Defendants UMPQUA*

Scott H. Jacobs Curtis Kasey shjacobs@reedsmith.com KCurtis@ReedSmith.com	*BANK, AND UMPQUA HOLDINGS CORPORATION*
KRAFT OPICH, LLP John McCardle jmccardle@kraftopich.com MOpich@kraftopich.com	*Attorneys for DEFENDANTS CORNERSTONE COMMUNITY BANK, CORNERSTONE COMMUNITY BANCORP, AND JEFFERY FINCK*
SHEIK LAW Mani Sheik mani@sheiklaw.us	Attorneys for Defendants CRP 111 WEST 141ST LLC, CASTELLAN MANAGING MEMBER LLC, CRP WEST 168TH STREET LLC, CRP SHERMAN AVENUE LLC

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, California, on July 20, 15.

/s/ *Stuart G. Gross*
Stuart G. Gross