Honorable **JAMES L. ROBART**
Noted: Friday, March 25, 2016

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SNOQUALMIE INDIAN TRIBE, a federally-recognized Indian Tribe, et al., Plaintiffs, v. CITY OF SNOQUALMIE; et al., Defendants.	NO. 2:15-cv-10936 JLR **DEFENDANTS' MOTION TO DISMISS PURSUANT TO RULE 12(B)(6)** NOTE ON MOTION CALENDAR: **Friday, March 25, 2016**

I. INTRODUCTION

Pursuant to Rule 12(b), Defendant City of Snoqualmie and its elected officials and staff named as "official capacity" defendants (collectively, "the City") respectfully submit this Rule 12(b) motion to dismiss.

At its core, this case is a garden-variety, municipal utilities dispute, governed by state law, and concerning a contract between the City of Snoqualmie and the Snoqualmie Casino ("Services Agreement"). Under the Services Agreement, the City provides fire, emergency medical services ("EMS") and sanitary sewer service to the Snoqualmie Casino. In an effort to garner sympathetic media coverage, bootstrap their way into federal court, and leverage more favorable terms for a contract extension, Plaintiffs have "played the race card" by clothing its utilities dispute in allegations of intentional race discrimination in violation of 42 U.S.C. § 1981. Plaintiffs' § 1981 claims are based primarily on the allegations that the City increased its rates for sanitary sewer service, and stated in a letter to the Tribe that the City is not inclined to continue providing sewer services to the Casino beyond the November 30,

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2016 expiration of the current, one-year extension to the Services Agreement – an extension that Tribe itself proposed.

Plaintiffs' Complaint utterly fails to meet the basic pleading elements required by federal law: A plaintiff must make plausible factual allegations with specificity sufficient to satisfy each of the elements its cause of action, and may not rely upon vague or conclusory statements. Simply put, Plaintiffs have not alleged any specific facts that would, if true, satisfy the requirement that Plaintiffs demonstrate *intentional* race discrimination or racial animus by the City or individual Defendants. This failure means that Plaintiffs have failed to state a claim upon which relief may be granted, and requires dismissal. And, because all of Plaintiffs' remaining claims are *state* law claims which rely upon the exercise of this Court's supplemental jurisdiction under 28 U.S.C. § 1367, dismissal of Plaintiffs' § 1981 claim requires concurrent dismissal of Plaintiffs' state law claims, too.

II. STATEMENT OF FACTS

A. Background and the Services Agreement

In 2004, the City of Snoqualmie and plaintiff Snoqualmie Indian Tribe ("SIT") entered into a lengthy, detailed agreement concerning the development of what is now known as the Snoqualmie Casino. That document, titled "Agreement Between the City of Snoqualmie and the Snoqualmie Indian Tribe For the Provision of Police, Fire, and Emergency Medical Services to the Snoqualmie Hills Project and Sanitary Sewer Service to the Tribe's Initial Reservation dated April 26, 2004 ("Services Agreement"), is at the heart of this case. The Services Agreement is described in detail in Plaintiffs' First Amended Complaint, Dkt. #15 at ¶32-61, and a copy is attached to Defendants' Answer to First Amended Complaint and Counterclaims, Dkt #18, as Exhibit A.[1]

[1] In considering this motion, the Court also may properly take into account the Services Agreement, even though Plaintiffs declined to attach it to their Complaint. Plaintiffs' Complaint refers to that document in detail. Dkt. 15 at 7-11, ¶¶32-61. Where a plaintiff's complaint relies on, necessarily embraces or predicates its claims upon certain documents, a defendant may rely on those same documents in support of a Rule 12 motion, without converting the motion into a motion for summary judgment. *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1403 n.4 (9th Cir. 1996); *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998), *superseded by statute on other*

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By way of historical context, although a signatory to the 1855 Treaty of Point Elliott, the Snoqualmie Tribe was not granted a reservation. Dkt. #18, Ex. A (Services Agreement) at 1, recital 1; *United States v. Washington*, 476 F.Supp. 1101, 1108-09 (W.D. Wash. 1979). Instead, Snoqualmie Tribe members dispersed to the Tulalip Reservation and became members of the Tulalip Tribe, enrolled in other tribes, or lived individually in the Snoqualmie Valley, *U.S. v. Washington*, 476 F.Supp. at 1108, which resulted in the loss of the Tribe's claim to treaty fishing rights as well as federal recognition. *Id.* at 1110-11. The Snoqualmie Tribe did not receive federal recognition until 1999. Final Determination to Acknowledge the Snoqualmie Tribal Organization, 62 Fed.Reg. 45,864 (Aug. 29, 1997). The Snoqualmie Tribe reservation was not declared until 2006. 71 Fed. Reg. No. 209, at 63,347.

Thus, at the time of execution of the Services Agreement in 2004, the Snoqualmie Tribe had neither a reservation nor its or own property. The Tribe sought to develop a 150,000 square-foot casino, restaurant and entertainment complex "to serve as the foundation of the tribal economy and provide a path to tribal self-sufficiency," and to "fund [the Tribe's] health, education, housing, social service, government, economic development and other programs" for tribal members. Dkt. 18, Ex. A at Tribal Resolution No. 77-2004; Services Agreement at 1. To support the Tribe's efforts, the City agreed to provide nearly the full range of municipal services: police, fire and emergency medical services ("EMS"), and sanitary sewer collection and treatment for the Casino, despite the fact that the proposed site for the Casino complex was outside the corporate limits of the City of Snoqualmie. Services Agreement at ¶¶ 1.7, 2.2, 2.3 and 2.6. Due to the Tribe's limited bonding and borrowing capacity, the City also agreed to an extraordinary step: to make available to the Tribe the City's ability to issue

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grounds as recognized in Abrego v. The Dow Chem. Co., 443 F.3d 676, 681 (9th Cir. 2006); *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001) (documents "necessarily embraced by the complaint" are not matters outside the complaint and do not convert Rule 12 motion into one for summary judgment), *overruled on other grounds by Galbraith v. County of Santa Clara, 307 F.3d 1119, 1125-26 (9th Cir. 2002).* The Court may therefore consider the Services Agreement (Dkt. #18, Ex. A) as well as the two amendments to the Services Agreement and various letters also referenced throughout the Complaint without converting this motion to dismiss into a summary judgment motion, because the Services Agreement and the other documents are "necessarily embraced" by Plaintiff's Complaint.

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municipal revenue bonds. Services Agreement at 5-6, ¶¶ 1.12 – 1.16; at 13-16, ¶¶ 2.5.3 – 2.5.4. The Tribe agreed that the City's financial assistance in this regard had "significant monetary value" to the Tribe. *Id.* at ¶ 1.15.

Typically, municipalities do not provide governmental services outside their boundaries. The City entered into the Services Agreement with the Tribe, even though the Tribe's reservation (and now, the Casino) are located *outside* of the City, because "*the City desires to support the Tribe* in the construction and operation of the [Casino] Project. . . ." Services Agreement at 2, ¶ 1.5 (emphasis added). The parties agreed that the City was "the most logical jurisdiction to provide the Services to the Project, and that it was "in the best interest of the Tribe and the City" for the City to provide all of the Services to the Casino, rather than have the City offer an "a la carte" menu. *Id*.

The City's desire to support the Tribe was not unlimited, but expressly conditioned upon the Tribe's construction of the Casino substantially as the Tribe had represented to the City, and so long as there was no financial subsidy to the project by City taxpayers or City utility ratepayers. *See, e.g.,* Service Agreement at paras. 1.5, 1.6. In addition, the Services Agreement expressly limited the amount of City services that would be provided. For police, fire and EMS services, the City agreed that it would provide services in response to requests for service (but not routine police patrols or Fire Marshal or Fire Code Enforcement services), and would provide service without guarantee of response time or priority, in the same manner that it would provide service within the corporate limits of the City. *Id*. at ¶¶ 2.2.1, 2.2.3, and 2.3.1 – 2.3.3. For sewer services, the City agreed to provide 360 Equivalent Residential Units ("ERUs")[2] of sewer capacity. *Id*. at¶ 2.6.1. The Agreement also provided that "the Tribe may request additional treatment capacity from the City. However, the City shall not have any obligation to honor the Tribe's request unless the City has additional overall capacity to

[2] An "Equivalent Residential Unit" is defined by both the rate of flow (gallons per day) and by the chemical composition of the effluent, measured by the pounds-per-day of Biochemical Oxygen Demand ("BOD"). One ERU is equivalent to one-half pound per day of BOD and 180 gallons of flow per day. Dkt. #18, Ex. A, at 7, para. 1.17.

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meet the Tribe's request," with "the cost to the Tribe of any additional ERUs shall be determined by future agreement . . . ." *Id.* at 17, ¶ 2.6.4.

In order to ensure that the Casino (and not City taxpayers) would bear the full cost of City services to the Casino, the Services Agreement attempted to allocate to the Casino the full, actual costs of the Services. For example, for police and fire / EMS services, the Services Agreement required payment of startup and "fully loaded" (*i.e.*, salary plus benefits) costs for a specified number of police or firefighter personnel plus vehicles and equipment.[3] For sewer utility services, the Services Agreement applied the same approach typically used to charge for utility services for new development; that is, it required payment for: (1) on-site and off-site sewer improvements (to alleviate then-existing City sewer infrastructure deficits that would prevent service to the Casino); (2) the *capital* cost of existing reserving for the Casino existing sewer treatment plant and sewer system conveyance capacity; and (3) the ongoing operation and maintenance costs for wastewater treatment.[4]

The Services Agreement had an initial term of seven years, commencing upon the opening of the Casino. *Id.* at 26, para. 2.19; Dkt. 15 at 8, para. 40. While the Agreement provided for automatic renewal for five additional terms of seven years' each, the Agreement also provided that *either* party could prevent automatic renewal by sending the other a written notice of termination at least six months prior to expiration of the initial term or renewal term, as applicable. *Id.*

The "package deal" and "full cost recovery" concepts were also evident as parties began to implement and modify the Services Agreement. For example, in 2008, the parties executed the First Amendment to the Services Agreement ("First Amendment"). Dkt. #18,

[3] *Id.* at ¶ 2.2.4 (requiring payment of startup costs plus the fully loaded cost of one police officer, along with one vehicle and equipment); ¶ 2.3.4 (requiring payment of startup plus fully loaded cost of two firefighters plus a two-fifths share of a ladder truck).

[4] Services Agreement at 2.4.1 (On-Site Improvements); at 2.5.1 and Ex. E (Off-Site Improvements); at 2.6.2 (capital "latecomer" charge for wastewater treatment capacity due for 360 ERUs at rate of $3,529 per ERU); at 2.6.6 (rate for ongoing wastewater treatment is "the then-current rate established at any time by the City Council for sewer service for one residence multiplied by the number of ERUs actually flowing through the City-owned facilities. . . .").

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Ex. B. The First Amendment deleted sections requiring the City to provide police services. *Id*. at ¶ 2.1. This had the effect of decreasing revenue to the City by approximately $100,000 annually. To offset this, Section 2.5 of the First Amendment included the parties' agreement that "during the initial term of the [Services] Agreement required the Tribe, at the request of the City, the Tribe shall cast its vote relating to disbursal of the impact mitigation fund under the [Casino] Compact to permit disbursal in an amount not to exceed $100,000 annually to the City to be used in the City's discretion for human services purposes."

Similarly, the First Amendment also removed the City's obligation to provide a fire ladder truck (and deleted the Tribe's obligation to pay for it), after "the Tribe and the City [had] obtained the agreement of the Eastside Fire & Rescue agency to provide EF&R's fire ladder truck instead when necessary. *Id.* at 2, ¶ 2.2.1. The First Amendment also added a new section to the Services Agreement, allowing the Tribe to terminate that portion of the Services Agreement relating to fire and EMS, to facilitate the Tribe's desire to eventually provide those services itself. *Id.* at 2.2.1, 2.2.3. To mitigate financial impact to the City, however, the First Amendment mandated that such a termination could not occur until at least three and one-half years after opening of the Casino, and only "upon no less than one year's prior written notice to the City." *Id*.

B. Sewer Rates

The Casino was constructed and opened in November, 2008. Dkt. # 15 at para. 40. At that time, the applicable City ordinance governing sewer rates provided that the then-current rate for residences outside the City "established by contract shall be as set forth in the applicable contract." Ord. 994, Section 1(C). *Declaration of Bob C. Sterbank in Support of Motion to Dismiss* ("Sterbank Decl.") at Exhibit A (Ord. 1133).[5] The Services Agreement is

[5] As explained above, documents that are "necessarily embraced" by a plaintiff's complaint maybe considered on a motion to dismiss without converting the motion to one for summary judgment. *See* n. 1, *supra*, and authorities cited therein. The Complaint "necessarily embraces" Ord. 1133 by predicating Plaintiff's § 1981 claims on Ord. 1133's rate adjustments. Dkt. #15 at ¶¶ 48-50 and 88. Further, when considering a motion to dismiss, the Court may properly take judicial notice of adopted municipal ordinances. *Newcomb v. Brennan*, 558 F.2d 825, 829 (7th Cir. 1977)(court takes judicial notice of city charter and ordinances on motion to

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silent as to the amount of any rate, or as to the issue of "in City" or "outside the City." Dkt. 15 at 9, para. 46. Because there was no separate rate specified in the Services Agreement for service outside the City, per Ord. 994 and SMC 13.08.010(A) and (C), at the time of Casino opening the Tribe was charged the same rate per ERU that the City was then charging per residence located inside the City. In June, 2014 the City Council adopted Ordinance No. 1133. Dkt. 15 at 9, ¶ 48; *Sterbank Decl*. at Ex. B (Ord. 1133). Ordinance 1133 was prompted by the City's planning for much-needed overhaul of its aging water, sewer and stormwater utility infrastructure in historic downtown. The capital improvements required a significant rate adjustments for all three utilities in order to pay the costs of the necessary capital improvements. *Id*. at 1-2 (ordinance recitals). In 2014, the City commissioned a rate study from FCS Group to determine a rate structure sufficient to pay the costs of upgrading the City's utility infrastructure. *Id.* Ordinance 1133 modified sewer rates by, *inter alia*, prescribing that "rates for properties located outside the [City's] corporate boundaries shall be 1.5 times the rates within the City limits." *Id*. at 3, § 2 (adopting new SMC 13.08.010(D)). Ordinance No. 1133[6] affected water and sewer customers located outside of the City equally. *Id.* at 3, § 2; at 7-10, § 4(A) – (D)(setting "within city" and "outside City" rates for various classes of water service). The Complaint admits that there are other commercial City sewer customers located outside of the City, but does *not* allege (nor could it) that the Casino is the only entity paying "outside City" rates subsequent to Ord. 1133.[7]

C. <u>Negotiations Concerning Extension of Services Agreement</u>

Due to the SIT's significant and continuing exceedance of the 360 ERU limit, and concern over the fire / EMS portion of the agreement, beginning in 2013 the City attempted

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dismiss); *Santa Monica Food Not Bombs v. Santa Monica*, 450 F.3d 1022, 1025 n. 2 (9th Cir. 2006) (court takes judicial notice of city ordinances).

[6] Significantly, Plaintiffs' lawsuit does not make any challenge to Ord. 1133, either facially or as-applied. Plaintiffs similarly request no declaratory, injunctive or other relief regarding or arising out of Ord. 1133.

[7] Dkt. #15 at ¶ 50 ("The Casino is one of few businesses located outside City limits, and within the UGA, that is connected to the City's sewer system."

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on numerous times to meet with the SIT, and negotiate amendment and renewal of the Services Agreement. On September 18, 2013, Mayor Larson e-mailed SIT Chair Carolyn Lubenau, and enclosed with the e-mail a proposed Restated Service Agreement that provided for a new term of seven (7) years, with automatic renewal for four (4) additional terms of seven years each. Dkt. #15 (First Am. Complaint) at ¶ 55; Dkt. #18, Ex. E. The proposed Restated Services Agreement carried forward the clear limitation on City sewer service to 360 ERUs per month, unless the City agreed to accept additional quantity. In his transmittal e-mail, Mayor Larson wrote that

> the main benefit for the both the Tribe and the City. . . is certainty in our relationship going forward so the Tribe can count on uninterrupted services to the Casino for the long term, and the City can plan effectively to provide those services. If the Tribe has proposed additions or changes, we would welcome an opportunity to meet to discuss them.

Id.

SIT Chair Lubenau responded to Mayor Larson's letter on, September 20, 2013, indicating that she had introduced the City's proposal to the Tribal Council, and that the SIT "have set a time for the middle of October to have a reply back to you." When the SIT did not respond, Mayor Larson e-mailed Chair Lubenau on November 5, 2013, asking that she provide an update on the Tribal Council's discussion of the Restated Services Agreement. Chair Lubenau responded on November 7 that the SIT would not respond to the City's proposal for at least another two months, "until after the first of the year." *Id.*; Dkt. #19 at ¶ 3.17. Ultimately, the SIT did not respond in writing to the proposed Restated Services Agreement tendered in September, 2013 by Mayor Larson.

Thereafter, City Administrator Larson and Executive Assistant Tiah Branson made numerous attempts in 2014 and 2015 to arrange a meeting with the SIT to discuss the Services Agreement and its amendment and/or renewal. Dkt. #19 (Plaintiff's Answer to Counterclaim) at ¶ 3.18. The meetings requested by Mr. Larson and Ms. Branson did not occur.

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Eventually, on September 22, 2015_the SIT tendered its own proposed Second Amendment to the Services Agreement, which was a one-year extension only, through November 30, 2016. Dkt. #18, Ex. M. The SIT's proposed Second Amendment expressly kept all other provisions of the Services Agreement and First Amendment in place. *Id.* at Ex. P, p. 2, ¶ 2.2.1. The City requested some changes to the SIT's proposal. *Id*. at Ex. N. The SIT rejected some of the provisions, but accepted others in modified form, *e.g*., by agreeing to meet with City representatives at least once per month in person or by telephone "to explore, in good faith, a long-term, mutually beneficial solution to issues identified concerning sewer utility service." *Id*. at Ex. O, P (Second Amendment executed by SIT).

The City then executed the Second Amendment in *exactly* the form the SIT proposed – as the SIT admits. Dkt. #18, Ex. Q (fully executed Second Amendment); Dkt. #19, ¶ 3.26 (SIT Answer to Def. Counterclaims). The City transmitted the executed Second Amendment via a letter from Mayor Larson. Dkt. #18, Ex. Q. The letter explained that the City's execution of the Second Amendment meant that the City would provide fire, EMS and sanitary sewer to the Casino as described in the Services Agreement and First and Second Amendments, through the Second Amendment's stated *and agreed-upon* termination date of November 30, 2016. Dkt. #18, Ex. Q at 1. Mayor Larson's letter explained, however, that for a number of specific business reasons, the City Council was not interested in continuing to provide municipal services to the SIT beyond the Second Amendment's November 30, 2016 termination date because: (a) "it is important to the City that the services be provided as part of a package"; (b) the City had learned that the Tribe was preparing to contract with Eastside Fire & Rescue for fire and terminate its agreement with the City;[8] (c) the Tribe had obtaining engineering design services for the SIT's own, on-site wastewater treatment/disposal; (d) the Tribe was completing design of a building to house it; (e) the SIT

[8] Consistent with the City's information, the SIT then did enter into an agreement with EF&R, and attempted to unilaterally attempt to terminate the fire / EMS portion of the Services Agreement with the City. Dkt. #18, Ex. U.SIT admits this. Dkt. #19 at 9, ¶ 3.33.

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was pursuing a fee-to-trust application with the Bureau of Indian Affairs the purpose of which, it appeared to City officials, was to allow the SIT to proceed with its own wastewater disposal without complying with legal or environmental review requirements; and (f) the SIT was continuing to decline to meet with the City, and the SIT's outside counsel had declined to respond to the City Attorney's multiple requests for meeting dates and times. Dkt. # 18, Ex. Q at 1-2.

Proving that no good deed goes unpunished, the SIT response to the City's execution of SIT's own proposed Second Amendment was to: (1) attempt to unilaterally terminate the fire / EMS portion of the Services Agreement on only 30 days' notice, rather than the 1 full year it had agreed to and which the Second Amendment required;[9] and (2) commence this action. Plaintiff's Complaint asserts that it is Mayor Larson's October 15 letter "that triggers this action separate and apart from the [Second Amendment to the Services] Agreement." Dkt. #15 at 11, ¶ 61.

III. STATEMENT OF ISSUES

A. Under Fed. R. Civ. P. 12(b)(6), the Court shall grant a motion to dismiss if Plaintiffs can prove no set of facts in support of their claims that would entitle them to relief. A claim for violation of 42 U.S.C. S 1981 requires allegations of facts demonstrating intentional race discrimination and/or intentional racial animus. **Issue**: Should the Court dismiss Plaintiffs' federal civil rights claim alleging that the City's approval of the one-year extension of the Services Agreement in the form requested by the SIT violated 42 U.S.C. Section 1981, where Plaintiffs have failed to allege any specific facts demonstrating intentional race discrimination? **Answer**: Yes.

B. When all federal claims have been dismissed before trial, the interests promoted by supplemental jurisdiction are no longer present. 28 U.S.C. § 1367(c). **Issue**: Where the Court has dismissed the only federal law claim in the case, Plaintiffs' 42 U.S.C. Section 1981 racial discrimination claim, should the Court decline supplemental jurisdiction over and

[9] Dkt. #18, Ex. U; Dkt. #19 at 9, ¶ 3.33.

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dismiss the remaining state law claims (for violation of RCW 35.67.310 and tortious interference)? **Answer**: Yes.

IV. EVIDENCE RELIED UPON

Defendants rely on the First Amended Complaint, Exhibits to the Defendants' Answer and Counterclaim, the Sterbank Declaration, and the pleadings filed herein.

V. ARGUMENT

A. Standard of Review

1. Standard for Claims Under 42 U.S.C. Section 1981

Plaintiffs' Complaint asserts a violation of their right to contract under 42 U.S.C. Section 1981. Dkt. #15 at ¶¶ 82, 84-87 and *passim*. Section 1981 provides in pertinent part that "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . ." 42 U.S.C. S 1981(a). It is well-established that a claim for race discrimination in violation of 42 U.S.C. § 1981 requires proof of *purposeful* racial discrimination. *See, e.g., Gen'l. Bldg. Contractors Ass'n. v. Pennsylvania*, 485 U.S. 375, 383-391, 102 S.Ct. 3141, 3146-50 (1982). In enacting 42 U.S.C. § 1981, the "immediate evils" with which Congress was concerned "simply did not include practices that were "neutral on their face, and even neutral in terms of intent, but that had the incidental effect of disadvantaging blacks to a greater degree than whites. *Id.*, *quoting Griggs v. Duke Power Co.*, 401 U.S. 424, 430, 91 S.Ct. 849, 853, 28 L.Ed.2d 158 (1971). As the Ninth Circuit has summarized, "§ 1981, like the Equal Protection Clause, *prohibits only purposeful discrimination and therefore does not permit claims of disparate impact*." *Doe v. Kamehameha Schools*, 470 F.3d 827, 839 (9th Cir. 2006) (emphasis added), *citing Gen'l. Bldg. Contractors*, 458 U.S. at 389, 102 S.Ct. 3141.

2. Standard for Motions Under Federal Rule 12(b)(6)

Fed. R. Civ. P. 12(b)(6) provides that the defense of failure to state a claim for which relief may be granted may be presented by motion. Federal courts recognize two distinct

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types of motions to dismiss under Rule 12(b)(6): (1) the lack of a cognizable legal theory; and (2) the absence of sufficient facts under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1970), *overruled on other grounds, Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007); *Sweet v. Hinzman*, 634 F.Supp. 1196, 1200 (W.D. Wash. 2008)(Robart, J.). This motion is the second type: Plaintiffs' claims under 42 U.S.C. S 1981 must be dismissed, because Plaintiffs have failed to allege sufficient facts to demonstrate a violation of Section 1981.

When considering a motion to dismiss, "the court must accept all well-pleaded facts as true and draw all reasonable inferences in favor of the plaintiff." *Sweet v. Hinzman*, 634 F.Supp.2d at 1200. In order for factual allegations to be considered to be "well-pleaded," however, the plaintiff must plead factual allegations with specificity; vague or conclusory allegations, or those that lack "facial plausibility," fail to state a claim for relief**.** *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678-80, 129 S.Ct. 1937, 173 L.Ed. 2d 868 (2009). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678. As the Supreme Court summarized, this requirement

> demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. (Citations omitted). A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement."

Iqbal, 556 U.S. at 678, *quoting Twombly*, 550 U.S. at 555, 557 (citations omitted). A claim meets the requirement for "facial plausibility" only when "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Where a complaint pleads facts that are "merely consistent with" a

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defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.' *Id*. In order to survive a motion to dismiss, factual allegations must be enough to raise a right to relief above a speculative level . . .[and cross the line] between possibility and plausibility of entitlement to relief." *Twombly*, 550 U.S. at 555-57.

In cases involving claims of intentional discrimination, the requirement that factual allegations be specific, rather than speculative, has particular force:

> Under extant precedent purposeful discrimination requires more than "intent as volition or intent as awareness of consequences." It instead involves a decisionmaker's undertaking a course of action " 'because of,' not merely 'in spite of,' [the action's] adverse effects upon an identifiable group." It follows that, *to state a claim based on a violation of a clearly established right, respondent must plead sufficient factual matter to show that petitioners adopted and implemented the detention policies at issue not for a neutral, investigative reason but for the purpose of discriminating on account of race. . . .*

Iqbal, supra. 556 U.S. at 676-77 (emphasis added) (citations omitted). To state a claim against individual governmental-official defendants, a complaint must allege facts showing that each defendant, through the defendant's own individual actions, committed acts of intentional or purposeful discrimination. *Iqbal*, 556 U.S. at 676; *Starr v. Baca*, 652 F.3d 1202, 1206 (9th Cir 2011). Allegations of discrimination by a governmental official must therefore include "factual allegation[s] sufficient to plausibly suggest [that defendant's] discriminatory state of mind." *Iqbal*, 557 U.S. at 683. Race discrimination claims under Section 1981 that fail to meet these requirements, because they fail to allege facts demonstrating intentional race discrimination, are properly dismissed on motion. *Peters v. Lieuallen*, 746 F.2d 1390, 1393 (9th Cir. 1984); *De Horney v. Bank of America*, 879 F.2d 459, 468 (9th Cir. 1989); *Massbaum v. WNC Management*, 361 Fed.Appx. 904, 905 (9th Cir. 2010).

The Supreme Court has outlined a two-pronged approach to measuring a complaint's facial plausibility and, therefore, legal sufficiency. First, allegations that are in actuality legal

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conclusions couched as factual allegations are not entitled to an assumption of truth. *Iqbal*, 556 U.S. at 679-681; *Twombly*, 550 U.S. at 555. The same is true for conclusory allegations of the elements of a discrimination claim; *i.e.*, "bald assertions of impermissible motive" will not suffice. *Iqbal*, 556 U.S. at 680-81; *Moss v. U.S. Secret Service*, 572 F.3d 962, 969-70 (9th Cir. 2009) (bald assertion of impermissible motive was conclusory and not entitled to assumption of truth). Such allegations are disregarded when determining whether a complaint alleges sufficient well-pleaded facts to survive a motion to dismiss. *Id.* In the second prong, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. *Id*.

B. Plaintiffs' Claimed Section 1981 Violations are Merely Conclusory, Lack "Facial Plausibility," and Should Therefore Be Dismissed

Based on the standards described above, it is clear that Plaintiffs' § 1981 claim in this case lacks legally sufficient, plausible factual allegations demonstrating purposeful or intentional race discrimination. Instead, the Complaint's only allegations of intentional race discrimination are vague, conclusory, and clearly lack the required facial plausibility and factual basis sufficient to survive dismissal. Therefore, Plaintiffs' § 1981 claim fails as a matter of law on these grounds, even accepting as true the sporadic well-pleaded facts set forth in the Complaint. Plaintiffs' § 1981 cause of action should be dismissed.

Starting with the first prong of the Supreme Court's two-pronged approach discussed in *Iqbal*, it is clear that most of Plaintiffs' allegations must be disregarded as either conclusions of law or as merely conclusory. For example, the following allegations from Plaintiffs' Complaint are actually legal conclusions, not factual allegations:

> "Defendants' actions complained of herein will result in a denial of Plaintiff's Constitutional right to be free from race discrimination, to make and enforce contracts, and the right to a full and equal benefit of all laws as codified by 42 U.S.C. § 1981." Dkt. #15, ¶ 17.

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> "Defendants' decision to refuse to continue to provide sewer services violates Plaintiff's substantive rights pursuant to Section 1981." *Id.* at ¶ 84.
>
> "Defendants' decision to refuse sewer services to Plaintiff denies Plaintiff a basic utility service that the City holds out and offers to non-Indians within the City of Snoqualmie and within its UGA." *Id.* at 87.[10]
>
> "On information and belief, the City is overcharging the Tribe for sewer services." *Id.* at ¶ 88.
>
> "Defendants' refusal to provide sewer services intentionally and unconstitutionally excludes Plaintiff from the benefit of services available under RCW 35.67.310." *Id*. at ¶ 90.
>
> "Defendants have together acted and continue to act together in a manner that will deny Plaintiff its right under federal law to enjoy the full and equal benefit of the law pursuant to 42 U.S.C. § 1981." *Id*. at 95.

Because these allegations are merely legal conclusions, not factual allegations, they are not entitled to be assumed to be true, and can therefore be disregarded. *Iqbal*, 556 U.S. at 678-79. Moreover, none mentions race, let alone demonstrates that the City purposefully or intentionally discriminated against SIT members *because of* their race.

Plaintiffs' Complaint's allegations that do mention race are conclusory and therefore must be similarly discounted, as "bald assertions of impermissible motive" that likewise are not entitled to an assumption of truth. These include the following:

> "On information and belief, the City targeted its rate increase and changed its treatment of the Tribe from "in-City" to "outside-City" *with the intent of eliciting additional money from only the Tribe."* Dkt. #15, ¶ 50 (emphasis added).
>
> "The City is trying to choke out the Tribe *on the basis of race*." *Id.* at ¶ 71 (emphasis added).

[10] As a matter of state law and City code, City sewer service is not generally available to persons in the Urban Growth Area, but is available only if the person enters into a contract with the City on such terms and conditions specified by the City Council. RCW 35.67.310; SMC 13.04.290 and .320 - .350.

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> "Defendants' refusal to provide sewer services, *which is analogous to racially-motivated red lining*, constitutes official City policy or custom under 42 U.S.C. § 1981." *Id.* at ¶ 91 (emphasis added).
>
> "Defendants' refusal to provide sewer services constitutes an improper purpose or improper means, and is made in bad faith *based on the Plaintiff's status*." *Id*. at ¶ 93 (emphasis added).
>
> "No individual Defendant has taken action to stop the City's *discriminatory treatment*." *Id*. at 94 (emphasis added).
>
> "Plaintiff *has suffered and will continue to suffer discrimination* as a result of *Defendants' intentional decision* to deny basic utilities offered by the City *on the basis of race* that will force the Casino to close and will immediately and significantly diminish the Tribe's ability to provide governmental operations, programs and services." *Id.* at 96 (emphasis added).

These allegations are not accompanied by any factual allegations that would demonstrate any actual City consideration of race, let alone that the decisions complained of were "because of" intentional race discrimination. Plaintiffs' allegations are nothing more than same type of "bald assertions of impermissible motive" that the Supreme Court held in *Iqbal* were not entitled to an assumption of truth. *Iqbal*, 556 U.S. at 680-81; *see also Moss*, 572 F.3d at 969-70. In *Iqbal*, the plaintiff alleged that government officials "knew of, condoned, and willfully and maliciously agreed to subject [him]" to harsh conditions of confinement "as a matter of policy, solely on account of [his] religion, race, and/or national origin and for no legitimate penological interest." These were, the Supreme Court held, "bare assertions," that "amount to nothing more than a 'formulaic recitation of the elements' of a constitutional discrimination claim," that were "conclusory" and "not entitled to be assumed true." 556 U.S. 681. The same is true of each of the examples of Plaintiffs' allegations quoted above, as well as others peppered throughout the Complaint.

The Court should "next consider the factual allegations in. . .[Plaintiffs'] complaint to determine if they *plausibly* suggest an entitlement to relief." *Id.* (Emphasis added). In

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order for allegations of discrimination to be plausible, they must demonstrate that the City's course of action was "because of, not merely 'in spite of,' the action's adverse effects upon an identifiable group." *Id*. at 677. In other words, in order for Plaintiffs' Complaint to state a § 1981 claim, it "must plead sufficient factual matter to show that [the City] adopted and implemented" its decisions at issue "not for a neutral. . . reason *but for the purpose of discriminating on account of race*. . . ." *Id.* (Emphasis added). Plaintiffs' Complaint badly fails this test. Assuming *arguendo* that there are any facts pleaded in Plaintiffs' Complaint, they can only include (giving Plaintiffs the benefit of the doubt) the following:[11]

> "The City has told the Tribe and third parties that it has no intention of providing sewer services to the Tribe, will oppose any effort for the Tribe to connect to another municipality's sewer service, and is opposing the Tribe's efforts to take land into trust that the City believes could be used for a waste water treatment plant." Dkt. #15 at ¶ 71.
>
> "On information and belief, the City has not terminated or threatened termination of sewer utility service of any other paying customer within City limits and the City's UGA." *Id.* at 89.

Even assuming these allegations to be true, they do not plausibly suggest an entitlement to relief, because they do not show that the City made decisions "not for a neutral. . .reason but for the purpose of discriminating on account of race. . . ." *Iqbal,* 556 U.S. at 677. None of the above allegations – nor any others in the Complaint -- indicate that the City or individual governmental official took any action or engaged in any consideration on the basis of race. The allegations are thus legally implausible, and factually insufficient, on their face. In addition, just as in *Iqbal* and *Twombly*, each of Plaintiffs' allegations here is actually more compatible with a parallel, *lawful* business purpose, rather than purposeful discrimination.

[11] Some of these allegations also include conclusions of law and conclusory statements, *e.g.*, "City holds out and offers [sewer service] to non-Indians within the City of Snoqualmie and within its UGA," because the terms under which the City offers sewer service are governed by adopted City code that requires entry into contracts (see SMC 13.04.290 and .320-.360) and because the allegation does not allege any facts showing that the City does offer sewer service to any particular customer(s). Under *Iqbal*, such allegations also are not entitled to an assumption of truth. 556 U.S. at 681. The City includes them here in an abundance of caution.

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For example, the allegation (Complaint, ¶ 71) that "the City has told the Tribe and third parties that it has no intention of providing sewer services to the Tribe" does *not* allege that the City has ever actually stopped providing sewer service; in fact, the Complaint admits that the City executed the one-year *extension* of the Services Agreement.[12] Nor does the Complaint allege that the Tribe has ever affirmatively requested that it receive sewer service beyond November 30, 2016 (the Services Agreement's termination date). In fact, the Tribe's demand that the Second Amendment be limited to a one-year term only (Dkt. #15 at ¶ 61; Dkt. #18, Ex. M, O and P) demonstrates the opposite. And, the Complaint's allegations do not make any reference to SIT members' race. *Id.* at ¶ 71. Plaintiffs' reference to the City's statements (*i.e.*, "the City has told") actually refers to Mayor Larson's October 15, 2015 letter.[13] Mayor Larson's October 15, 2015 letter, however, contains simple, race-neutral business justifications: (a) "it is important to the City that the services be provided as part of a package"; (b) the City had learned that the Tribe was preparing to contract with Eastside Fire & Rescue for fire and terminate its agreement with the City;[14] (c) the Tribe had obtaining engineering design services for the SIT's own, on-site wastewater treatment/disposal; (d) the Tribe was completing design of a building to house it; (e) the SIT was pursuing a fee-to-trust application with the Bureau of Indian Affairs the purpose of which, it appeared to City officials, was to allow the SIT to proceed with its own wastewater disposal without complying with legal or environmental review requirements; (f) the SIT continued to decline to meet with the City and the SIT's outside counsel had declined to respond to the City Attorney's multiple requests for meeting dates and times; and (g) "a majority of the City Council agreed that provision of City services to the Tribe should come to an end," and "voted in favor of the Second Amendment so that an orderly transition to other services can be

[12] Dkt. #15 at ¶ 61 ("On October 15, 2015, the City responded by signing the version of the second amendment to the Agreement proposed by the Tribe renewing the Agreement for a period of one year.").
[13] Dkt. #15 at 11, ¶ 61 ("[A]ccompanying the signed amendment was another letter from Mayor Larson that triggers this action separate and apart from the Agreement.") (emphasis added) and Dkt. #15 at 12, ¶¶ 63, 69.
[14] As the Complaint admits, the SIT did in fact attempt to unilaterally terminate the fire / EMS portion of the Services Agreement, just as the City had anticipated. Dkt. #18, Ex. U; Dkt. #19 at 9, ¶ 3.33.

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arranged during the one-year transition period." Dkt. # 18, Ex. Q at 1-2. None of these statements indicate *any* consideration of SIT members' race, or purposeful discrimination.

Likewise, the Complaint's allegation (¶ 71) that the City "will oppose any effort for the Tribe to connect to another municipality's sewer service," also does not indicate any consideration of SIT members' race. That statement, too, has a legal, *non*discriminatory basis, as the Complaint itself admits: "Pursuant to Washington State's Growth Management Act and King County Code, *the Tribe cannot presently connect to the sewer of the next closest city*, North Bend, *because public sewer services are prohibited from crossing rural areas or natural resource lands*."[15]

The third allegation contained in the Complaint, ¶ 71 is that the City is "opposing the Tribe's efforts to take land into trust that the City believes could be used for a waste water treatment plant. Dkt. #15 at ¶ 71. Again, not only does this allegation fail to reference any City consideration of race, the allegation is actually more indicative of a valid, *non*discriminatory governmental justification. As explained in the Mayor's October 15, 2015 letter, the City does not oppose conveyance of tribal property into trust in general, but only specifically where the "effect would be to allow sewer and water facilities to avoid important legal and environmental requirements." Dkt. #18, Ex. Q at 3. The reason for the City's concern is that 25 CFR § 1.4(a) states that "none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property . . . belonging to any Indian or Indian tribe . . . that is held in trust by the United States. . . ." The City's opposition to fee-to-trust stems from its concern that the conversion will allow the land surface discharge of wastewater to escape environmental review, as both the Mayor's

[15] Dkt. #15, ¶66 (emphasis added); *see also Thurston County v. Cooper Point Road Ass'n.*, 148 Wn.2d 1, 8-16, 57 P.3d 1156 (2002) ("County's proposal to extend a sewer line from an urban treatment plant to rural Cooper Point is subject to and violates the development restrictions imposed by RCW 36.70A.110(4).").

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October 15 letter and the City's letter to the BIA explained. Dkt. #18, Ex. Q at 3; *Sterbank Decl.* at Ex. C, pp. 6-8.[16] And these letters are the only "statements" described as the basis for the Complaint's allegations.

As for the Complaint's allegations (¶¶ 87 and 89) to the effect that the City is denying a utility service that the City holds out and offers to non-Indians, and that the City has not terminated or threatened termination of sewer utility service to any other paying customer, these are nothing more than speculative and conclusory allegations of disparate treatment. But allegations of disparate treatment, even if assumed to be true,[17] are insufficient to state a claim under § 1981. *Doe v. Kamehameha Schools*, 470 F.3d at 839 ("§ 1981. . . prohibits only purposeful discrimination *and therefore does not permit claims of disparate impact*.") (emphasis added). To state a valid claim for violation of 42 U.S.C. § 1981, Plaintiffs must allege facts demonstrating *purposeful or intentional* race discrimination. *Id.*, *see also De Horney v. Bank of America*, 879 F.2d at 468. Plaintiffs' allegations about other utility customers contain no facts showing that SIT members' race was considered or played any factor in the City's decisions.

Not only do Plaintiffs' "naked assertions" here lack facial plausibility, in that they fail to add up to a plausible claim of intentional race discrimination, they are also implausible in the context of the parties' lengthy contracting relationship detailed in Plaintiffs' Complaint. The City entered into the Services Agreement in 2004, when the then-only-recently-recognized SIT had few to no resources: No Reservation, no Casino, and no established commercial income stream. To enable the Tribe to change that, the City committed in the Services Agreement to provide to the SIT nearly the full panoply of urban services, including police, fire, EMS and sanitary sewer services. Dkt. #18, Ex. A at ¶¶ 1.7, 2.2, 2.3 and 2.6. In

[16] The City's November 2, 2015 letter to the Bureau of Indian Affairs is expressly discussed in Plaintiffs' Complaint, at ¶ 66, and is necessarily embraced by it. The Court may therefore consider the letter on a motion to dismiss appropriate. *See* note 1, *supra*, and authorities cited therein.

[17] The City denies the Complaint's allegations of disparate treatment. As a matter of law, the City may not generally make sewer service available outside its boundaries, but instead may provide service only by contract pursuant to terms approved by the City Council. RCW 35.67.310; SMC 13.04.290 and .310-.350.

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an extraordinary step, the City even agreed to make available its municipal bonding capacity, which the Tribe agreed "had significant monetary value." *Id.* at ¶¶ 1.12, 1.15. The City did all of this because, as the Services Agreement states, "*the City desires to support the Tribe* in the construction and operation of the [Casino] Project. . . ." *Id.* at 2, ¶ 1.5 (emphasis added). Now, according to Plaintiffs, after the City executed the limited, one-year extension of the Services Agreement the SIT itself proposed, suddenly "the City is trying to choke out the Tribe on the basis of race"? The allegations are implausible on their face. The allegations are all the more implausible when considered in the context of the parallel allegation that "the City is overcharging the Tribe for sewer services" (Dkt. #15, ¶ 88). The financial benefits flowing from alleged overcharging would indicate an incentive to *continue* providing sewer service, not to terminate it based on race.

Courts in the Western District have not hesitated to grant a motion under Rule 12(b)(6) when the factual allegations are legally insufficient to state a claim. *See, e.g.*, *Block v. Snohomish County*, United States District Court Cause No. Case 2:14-cv-00235-RAJ, Dkt. # 61, 89. In so doing, Courts have not hesitated to reject claims that are implausible on their face. *Block v. Snohomish County*, No. 2:14-cv-002235 (2016) at Dkt. #107 (Order Awarding Attorneys' Fees) at n. 4.[18] This Court has also previously rejected discrimination claims made by *these same Plaintiffs*[19] and their current legal counsel, for failing to meet the same "because of, and not merely in spite of" legal test *Iqbal* prescribes for claims of intentional discrimination. *Sweet v. Hinzman*, 2009 WL 1175647(unreported) at *6 - *7, No. C08-844JLR (W.D. Wash. 2009).[20]

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[18] ("Plaintiff still does not provide a plausible reason for why an employee who committed "domestic terrorism" and embezzled city funds would be paid off for remaining silent – invoking the Watergate scandal does nothing to clarify her reasoning. The Watergate burglars' activities could directly implicate political figures while no such connection exists for Plaintiff's alleged conspiracy.").

[19] Petitioners in *Sweet v. Hinzman* included Carolyn Lubenau, Sharon Frelinger and Lois Sweet Dorman; their legal counsel was Rob Roy Smith and Stephen J. Kennedy. Ms. Lubenau is now the Chair of the Snoqualmie Tribal Council, and Ms. Frelinger and Ms. Sweet Dorman are members of the Tribal Council. See http://www.snoqualmietribe.us/Council. Mr. Smith is again their legal counsel.

[20] ("The court has struggled to understand the legal theory under which Petitioners claim that Respondents violated Petitioners' rights to equal protection. . . . Even if Petitioners had been able to demonstrate that they

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Accordingly, the Court should summarily dismiss Plaintiffs' § 1981 claims as unsupported by the requisite, well-pleaded, facially plausible facts. Plaintiffs' allegations are legal conclusions or conclusory, "bald assertions" and therefore not required to be assumed to be true, and the few properly-pleaded facts are insufficient to establish that the City's disinterest in providing *future* sanitary sewer service to the Casino on the terms demanded by the SIT is *purposefully* or *intentionally* based on tribal members' race. Plaintiffs fail to meet the same standard they failed to meet in *Sweet v. Hinzman*: They have not alleged any well-pleaded, non-conclusory facts demonstrating that the City "selected or reaffirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group." *Iqbal*, 556 U.S. at 676-77; *Sweet v. Hinzman*, 2009 WL 1175647 at 7. Plaintiffs' Complaint also fails to allege any specific facts pertaining to any specific, individually-named City of Snoqualmie official or City Council member sufficient to demonstrate that the named individual took any specific action with a discriminatory state of mind. Plaintiffs' Complaint merely indicates that the individual defendants have authority to or do take actions in their official capacities; all other references are to "the City" or the plural, "Defendants," without any reference to any specific Defendant's action or statements. Dkt. #15 at ¶¶ 6-15, and generally at ¶¶ 32-96. Plaintiffs' §1981 claims are nothing more than "naked assertions" and a "formulaic recitation of the elements." *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969. They should be dismissed.

C. The Remainder of Plaintiffs' Complaint Involves only State Law Claims that Should be Dismissed for Lack of Supplemental Jurisdiction

Plaintiffs' Second and Third causes of action involve only state law claims (a claim for violation of RCW 35.67.310 (¶¶ 97-105) and a tort claim of tortious interference with a business expectancy). Dkt. #15 at ¶¶ 97-105 and 98-116, respectively. These claims depend upon the Court's supplemental jurisdiction, assuming that the Court has jurisdiction over

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were similarly situated to the named individuals, they have not shown that Respondents selected or reaffirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group.").

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Plaintiffs'' federal law claim for violation of 42 U.S.C. § 1981. Dkt. #15 at ¶ 20 (plaintiffs' claims "are state law claims cognizable under this Court's supplemental jurisdiction."). Federal courts have supplemental jurisdiction under 28 U.S.C. § 1367(a) to consider state-law claims when they are "so related" to the federal claims that they "form part of the same case or controversy." "The exercise of supplemental jurisdiction is designed to promote "judicial economy, convenience, fairness, and comity." *Carnegie–Mellon University v. Cohill*, 484 U.S. 343, 350 n. 7, 108 S.Ct. 614, 98 L.Ed.2d 720 (1988). When all federal claims have been dismissed before trial, the interests promoted by supplemental jurisdiction are no longer present. 28 U.S.C. § 1367(c); *Carnegie–Mellon*, 484 U.S. at 350 n. 7, 108 S.Ct. 614. Here, because Plaintiffs' Section 1981 claim must be dismissed for failure to state a claim, Plaintiffs' state law claims should also be dismissed, because the interest to be promoted by supplemental jurisdiction no longer exists.

VI. CONCLUSION

Plaintiffs have raised serious allegations of race discrimination in violation of 42 U.S.C. § 1981. Plaintiffs not only attack the City as a municipal corporation, they impugn each individual City Council member, the elected Mayor, and two other senior City officials (the City Administrator and the Parks/Public Works Director). Plaintiffs, however, have failed to allege specific, non-conclusory and facially plausible allegations of intentional or purposeful race discrimination. Because Plaintiffs have made factual allegations that are merely conclusory and lack facial plausibility, Plaintiffs' 42 USC § 1981 (and dependent §1988 claim for attorneys' fees) should be dismissed. And since Plaintiffs' federal law (42 U.S.C. § 1981) claim lacks merit and must be dismissed, the Court should decline supplemental jurisdiction and dismiss Plaintiffs' state law claims for violation of RCW 35.67.310 and tortious interference.

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DATED this 3rd day of March, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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