

THE HONORABLE JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

MARGRETTY RABANG, *et al.*,

Plaintiffs,

v.

ROBERT KELLY, JR., *et al.*,

Defendants.

Case No. 2:17-cv-00088-JCC

**RESPONSE TO MOTION OF
DEFENDANTS KELLY, GEORGE,
SMITH, SOLOMON, JOHNSON,
CANETE, GEORGE, ROMERO,
EDWARDS, AND ARMSTRONG TO
DISMISS PURSUANT TO F. R. CIV.
P. 12(B)(1) AND F. R. CIV. P. 12(B)(6)**

I. PROCEDURAL POSTURE

As described in Plaintiffs' Rule 56(d) Motion to Continue, Dkt. # 43, Rule 12(d) provides that "[i]f, on a motion under Rule 12(b)(6) . . . matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12(d). Here, because Defendants have presented hundreds of pages of extrinsic evidence in support of their dismissal motion, Dkt. ## 35-36, the Court must either exclude that extrinsic evidence or consider their motion under Rule 56. *Id.* And because Defendants have filed their motion "so early in the litigation before a party has had any realistic opportunity to pursue discovery relating to its theory of the case," the Court must grant Plaintiffs' Rule 56(d) motion to continue "fairly freely." Dkt. # 43; *Burlington N. Santa Fe R.R. Co. v. Assiniboine & Sioux Tribes of Fort Peck Reservation*, 323 F.3d 767, 773 (9th Cir. 2003).

II. ARGUMENT IN OPPOSITION TO DISMISSAL MOTION

If the Court does not grant Plaintiffs' Motion to Continue, the Court must nonetheless deny Defendants' Rule 12(b)(1) and 12(b)(6) motions.¹ Plaintiffs most certainly allege facts supporting "plausible" Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1964, claims. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

Under Rule 12(b)(6), a court must accept all factual allegations as true and construe all inferences in the light most favorable to the Plaintiffs. *Moyo v. Gomez*, 32 F.3d 1382, 1384 (9th Cir. 1994). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 667 (2009). "And, of course, a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." *Twombly*, 550 U.S. at 556 (quotation omitted).

Plaintiffs' RICO claims also satisfy Rule 9(b) because they have stated their 36-pages of claims "with particularity." *Moore v. Kayport Package Exp.*, 885 F.2d 531, 541 (9th Cir. 1989).

A. This Court Possesses Subject Matter Jurisdiction.

Defendants fundamentally misunderstand, or misconstrue, Plaintiffs' claims. Plaintiffs have not named the "Holdover NITC," the NITC, or the Tribe as defendants. Dkt. # 7 at ¶¶ 10-22. Rather, Plaintiffs allege that the Tribe and the NITC are RICO enterprises. *Id.* at ¶¶ 76-77. Argument that "Plaintiffs' RICO Claim Against the Tribal Government Fail as a Matter of Law" is a distraction—Plaintiffs have not brought claims against "Tribal Government." Dkt. # 34 at 15.

¹ In addition, the Court must not consider Dkt. ## 35-36 in deciding the motion. *Young v. City of Visalia*, 687 F. Supp. 2d 1141, 1151 (E.D. Cal. 2009).

1
2 **1. The Court Possesses Jurisdiction Over Plaintiffs' RICO Claims.**

3 Defendants appear to challenge the Court's subject matter jurisdiction by claiming "RICO
4 violations are inapplicable to tribal disputes." Dkt. # 34 at 13. This assertion is contrary to law.
5 *See, e.g., Paskenta Band of Nomlaki Indians v. Crosby*, 122 F. Supp. 3d 982, 988 (E.D. Cal.
6 2015) (denying challenge to court's subject matter jurisdiction over RICO claims against tribal
7 officials); *Stillaguamish Tribe of Indians v. Nelson*, No. 10-0327, Dkt. # 407 (W.D. Wash. Apr.
8 17, 2013) (order denying in part motion for summary judgment on RICO claims against tribal
9 officials); *S.W. Casino and Hotel Corp. v. Flyingman*, No. 07-0949, Dkt. # 43 (W.D. Okla. Oct.
10 27, 2008) (order denying motion to dismiss RICO claims against tribal officials). Defendants
11 have cited no authority that bars this Court from adjudicating Plaintiffs' RICO claims. In fact,
12 federal law specifically vests this Court with subject matter jurisdiction. 18 U.S.C. § 1964(c);
13 Dkt. # 7 at ¶ 23. That Defendants' illegal conduct took place while masquerading as a tribal
14 government² does not divest this Court of jurisdiction. *Paskenta*, 122 F. Supp. 3d at 988.

15
16 Defendants cite *In re Sac & Fox Tribe of Mississippi Iowa/Meskwaki Casino Litigation*,
17 340 F.3d 749 (8th Cir. 2003). There, two separate tribal councils both claimed to be the tribe's
18 legitimate governing body and brought claims against each other pursuant to the Indian Gaming
19 Regulatory Act ("IGRA"), 25 U.S.C. § 2701, and RICO. *Id.* One of the tribal councils also asked
20 the court directly to enjoin the competing tribal council. *Id.* at 751. Here, unlike *In re Sac & Fox*,
21 **the Federal Government already has made a final agency decision regarding the status of**
22 **the NITC.** Dkt. # 7 at ¶¶ 50, 56, 59. Plaintiffs are not asking this Court to resolve such an
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² It is not clear what Defendants mean by a "tribal dispute." Assuming that Defendants are referring to the existence of some internal issues of Nooksack tribal governance or the interpretation and application of Nooksack tribal law, this does not deprive a federal court of subject matter jurisdiction over a RICO suit. *Paskenta* 122 F. Supp. 3d at 988.

1 internal tribal dispute. *See id.* at 35-36, ¶¶ 1-8. Instead, Plaintiffs have asked this Court to
 2 resolve their federal RICO claims against Defendants personally. *Id.*

3 Defendants also cite to *Smith v. Babbitt*, 875 F. Supp. 1353 (D. Minn. 1995), which is
 4 similarly unavailing. There, the district court evaluated IGRA, Indian Civil Rights Act (“ICRA”),
 5 25 U.S.C. § 1301, and RICO claims concerning gaming per capita payments to tribal members,
 6 ultimately dismissing the RICO claims because they were based on tribal law. *Id.* Here, unlike
 7 *Smith*, **Plaintiffs’ RICO claims are rooted in a final federal agency decision**—not tribal law.
 8 Dkt. # 7 at ¶¶ 50, 56, 59.³ Plaintiffs’ allegations are actionable per RICO; Defendants’ qualms
 9 with the final agency decisions of the Federal Government are being taken up elsewhere.⁴

11 2. Tribal Sovereign Immunity Does Not Bar Plaintiffs’ RICO Claims.

12 Defendants encourage the Court to ignore Ninth Circuit and in-District precedent and hold
 13 that tribal sovereign immunity bars Plaintiffs’ personal-capacity suit. Dkt. # 34 at 14-15. Clearly,
 14 however, tribal sovereign immunity protects only tribal employees sued in their official
 15 capacities, which is not the case here, even *if* the Defendants were acting in the course and scope
 16 of their employment. *Maxwell v. Cty. of San Diego*, 708 F.3d 1075, 1089 (9th Cir. 2013); *Pistor*
 17 *v. Garcia*, 791 F.3d 1104, 1112 (9th Cir. 2015); *Pearson v. Dir. of the Dep’t of Licensing*, No. 15-
 18 0731, 2016 WL 3386798, at *4 (W.D. Wash. June 20, 2016). Plaintiffs do not at all allege that
 19 the Tribe is vicariously liable for Defendants’ actions, and any recovery from this Court will not
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24 ³ Throwing mud at the wall, Defendants also cite irrelevant cases in support of their argument that the court cannot
 25 exercise jurisdiction. Dkt. # 34, at 11-13. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), involved an ICRA
 corpus claim. *Montana v. United States*, 450 U.S. 544 (1981), involved a question of *tribal* court jurisdiction over
 non-members. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9 (1987), involved the exhaustion of *tribal* court remedies.
United States v. Turtle Mtn. Housing Authority, 816 F.2d 1273 (8th Cir. 1987), involved a trespass action.

⁴ The Holdover Council component of the RICO Defendants in this action, masquerading as the “Nooksack Tribe,”
 filed a Complaint against the United States, challenging the Federal Government’s determination. *See Nooksack*
Indian Tribe v. Zinke, No 2:17-cv-219, Dkt. # 1 (W.D. Wash. Feb. 13, 2017).

run against the Tribal treasury. *Pearson*, 2016 WL 3386798, at *4; *Cook v. AVI Casino Enters., Inc.*, 548 F.3d 718, 727 (9th Cir. 2008). Tribal sovereign immunity does not bar this suit.⁵

B. Plaintiffs Have Adequately Pled Their RICO Claims.

Defendants generally contend: “Plaintiffs have not pled, and cannot establish, elements of RICO claim.”⁶ Plaintiffs address each of Defendants’ challenges in turn.

1. Plaintiffs Satisfy RICO’s “Conduct” Element.

Defendants seem to argue that Plaintiffs have failed to adequately plead “conduct.” Dkt. # 34 at 16. RICO requires proof that each defendant did “conduct or participate, directly or indirectly, in the conduct of [the] enterprise’s affairs.” 18 U.S.C. § 1962(c). Defendants must have some part in directing the affairs, or participating in the operation, of the enterprise. *Reves v. Ernst & Young*, 507 U.S. 170, 185 (1993). Questions relevant to this inquiry include whether the defendant “occupies a position in the chain of command,” or “knowingly implements [the enterprise’s] decisions.” *Walter v. Drayson*, 538 F.3d 1244, 1248-49 (9th Cir. 2008).

As a threshold matter, Plaintiffs allege that the Tribe, the NTC, NIHA, NED, NIHD, and NEdD, as each are defined in the Complaint, are entities subordinate to or otherwise under the control of the NITC. Dkt. # 7 at ¶¶ 15, 17-20, 26. Therefore, Holdover Council Defendants participate in the operation or management of, and occupy a position in the chain of command of, these entities. *Reves*, 507 U.S. at 185; *Walter*, 538 F.3d at 1248-49. Plaintiffs therefore allege facts that satisfy the conduct requirement with regard to the Defendants as follows:

- Plaintiffs allege facts sufficient to show that Defendant Kelly did direct the affairs, or participate in the conduct or management of the Tribe, NITC, NTC, NIHA, NED, NIHD, and NEdD (collectively, “RICO Enterprises”). Dkt. # 7 at ¶¶ 11, 26, 39-43, 47, 49, 51-55, 57, 59, 60-

⁵ Indeed, in his dismissal motion, Defendant Raymond Dodge does not even raise sovereign immunity. Dkt. # 30.

⁶ Initially, Defendants argue that Plaintiffs have failed to plead 18 U.S.C. § 1962(a) adequately. Dkt. # 34 at 21-22. Plaintiffs make no claim pursuant to 18 U.S.C. § 1962(a), however. Dkt. # 7.

62, 65-66, 70-71. Kelly occupies a position in the chain of command within the RICO Enterprises. *Id.* at ¶¶ 11, 26; *Walter*, 538 F.3d at 1248-49.

- Plaintiffs allege fact sufficient to show that Defendant George did direct the affairs, or participate in the conduct or management of the RICO Enterprises. Dkt. # 7 at ¶¶ 12, 26, 39-43, 47, 49, 51, 53-55, 57, 59, 60-62, 65-66, 70-71. George occupies a position in the chain of command within the RICO Enterprises. *Id.* at ¶¶ 12, 26; *Walter*, 538 F.3d at 1248-49.

- Plaintiffs allege facts sufficient to show that Defendant Smith did direct the affairs, or participate in the conduct or management of the RICO Enterprises. Dkt. # 7 at ¶¶ 13, 26, 39-43, 47, 49, 51, 53-55, 57, 59, 60-62, 65-66, 70-71. Smith occupies a position in the chain of command within the RICO Enterprises. *Id.* at ¶¶ 13, 26; *Walter*, 538 F.3d at 1248-49.

- Plaintiffs allege facts that satisfy the conduct requirement with regard to Defendant Solomon. Plaintiffs allege facts sufficient to show that Defendant Solomon did direct the affairs, or participate in the conduct or management of the Tribe, NITC, NTC, NIHA, NED, NIHD, and NEdD. Dkt. # 7 at ¶¶ 14, 26, 39-43, 47, 49, 51, 53-55, 57, 59, 60-62, 65-66, 70-71. Solomon occupies a position in the chain of command. *Id.* at ¶¶ 14, 26; *Walter*, 538 F.3d at 1248-49.

- Plaintiffs allege facts sufficient to show that Defendant Johnson did direct the affairs, or participate in the conduct or management of the RICO Enterprises. Dkt. # 7 at ¶¶ 15, 26, 39-43, 47, 49, 51-55, 57, 59, 60-62, 65-66, 70-71. Johnson clearly occupies a position in the chain of command within the of the RICO Enterprises and implements the NIHD's decisions. *Id.* at ¶¶ 15, 26, 61, 65-66; *Walter*, 538 F.3d at 1248-49.

- Plaintiffs allege facts sufficient to show that Defendant Canete did direct the affairs, or participate in the conduct or management of the RICO Enterprises. Dkt. # 7 at ¶¶ 16, 26, 39-43, 47, 49, 51-55, 57, 59, 60-62, 65-66, 70-71. Canete clearly occupies a position in the chain of command within the RICO Enterprises. *Id.* at ¶¶ 16, 26; *Walter*, 538 F.3d at 1248-49.

1 • Plaintiffs allege fact sufficient to show that Defendant King George did direct the
2 affairs, or participate in the conduct or management of the NED. Dkt. # 7 at ¶¶ 18, 42. King
3 George clearly occupies a position in the chain of command and implements the NED's
4 decisions. *Id.* at ¶¶ 18, 42; *Walter*, 538 F.3d at 1248-49.

5 • Plaintiffs allege facts sufficient to show that Defendant Romero did direct the affairs, or
6 participate in the conduct or management of the NIHA. Dkt. # 7 at ¶¶ 19, 43-44, 47-48, 53, 71.
7 Romero clearly occupies a position in the chain of command and implements the NIHA's
8 decisions. *Id.* at ¶¶ 19, 43-44, 47-48, 53, 71; *Walter*, 538 F.3d at 1248-49.

9 • Plaintiffs allege facts sufficient to show that Defendant Edwards did direct the affairs,
10 or participate in the conduct or management of the NED. Dkt. # 7 at ¶¶ 20, 70. Edwards
11 clearly occupies a position in the chain of command and implements the NED's decisions. *Id.*
12 at ¶¶ 18, 42; *Walter*, 538 F.3d at 1248-49.

13 • Plaintiffs allege facts sufficient to show that Defendant Armstrong did direct the affairs,
14 or participate in the conduct or management of the Tribe, NITC, NTC, and NIHA. Dkt. # 7 at ¶¶
15 21, 43, 45, 53, 71. Armstrong clearly implements the decisions of the Tribe, NITC, NTC, and
16 NIHA. *Id.* at ¶¶ 21, 43, 45, 53, 71; *Walter*, 538 F.3d at 1248-49. Defendants incorrectly contend
17 "Plaintiffs' claims against defendant Armstrong . . . fail as a matter of law because attorneys
18 cannot be held liable under Civil RICO for the performance of legal services." Dkt. # 34 at 16-
19 17. To the contrary, courts must "not shrink from finding an attorney liable [under RICO] when
20 he crosses the line between traditional rendition of legal services and active participation in
21 directing the enterprise," which is precisely what Plaintiffs have alleged here. *Handeen v.*
22 *Lemaire*, 112 F.3d 1339, 1349 (8th Cir. 1997), *see, e.g.*, Dkt # 7 at ¶¶ 76-83.

2. Plaintiffs Satisfy The Enterprise—Interstate Commerce Nexus Requirement.

Defendants claim that Plaintiffs have not shown “a nexus of the enterprise to interstate or foreign commerce.” Dkt. # 34 at 17. The specific bases for Defendants’ nexus contentions remain unclear, however, as they only offer this conclusory allegation. *Id.*

To be clear, the RICO Enterprises all affect interstate commerce per 18 U.S.C. § 1962(c). Only a “slight” effect on interstate commerce is required, *United States v. Beasley*, 72 F.3d 1518, 1526 (11th Cir. 1996), and the requisite nexus need only be “minimal,” *United States v. Rone*, 598 F.2d 564, 573 (9th Cir. 1979). Plaintiffs allege that Defendants used an instrumentality of interstate commerce, the U.S. Postal Service, to execute their fraudulent scheme. Dkt. # 7 at ¶¶ 84-89. These facts provide the requisite link with interstate commerce required by RICO. *R.A.G.S. Couture, Inc. v. Hyatt*, 774 F.2d 1350, 1352 (5th Cir. 1985). What is more, the RICO Enterprises all receive funding from the United States government. *Nooksack Indian Tribe*, Dkt. # 1-1, Ex. A (W.D. Wash. Feb. 13, 2017). This also is sufficient to establish the minimal interstate commerce requirement. *United States v. Jinian*, 725 F.3d 954, 964 (9th Cir. 2013).

3. Plaintiffs Satisfy The Predicate Racketeering Acts Requirement.

Without again citing legal authority, Defendants argue, “Plaintiffs’ FAC fails [sic] to satisfy plaintiffs’ burden to allege facts sufficient to plausibly allege such violations, much less with the specificity required under Rule 9(b).” Dkt. # 34 at 18. Defendants are mistaken; Plaintiffs allege that Defendants defrauded them via multiple acts of mail and wire fraud. Dkt. # 7 at ¶ 84.

Defendants also contend that Plaintiffs must establish reliance on Defendants’ misrepresentations. Dkt. # 34 at 18-19. The Ninth Circuit has, however, explicitly declined “to announce a black-letter rule that reliance is the only way plaintiffs can establish causation in a civil RICO claim predicated on mail or wire fraud.” *Living Designs, Inc. v. E.I. Dupont De Nemours and Co.*, 431 F.3d 353, 363 (9th Cir. 2005).

Next, Defendants appear to argue that Plaintiffs failed to plead the specific intent necessary to establish mail and wire fraud. Dkt. # 34 at 19. Plaintiffs have alleged, however, Defendants' specific intent to defraud Plaintiffs, Dkt. # 7 at ¶¶ 85, 87, 89, 91, which satisfies the specific intent requirement under the federal mail and wire fraud statutes. *Schreiber Distrib. Co. v. Serv-Well Furniture Co., Inc.*, 806 F.2d 1393, 1400 (9th Cir. 1986).

Finally, Defendants imply that Plaintiffs have not satisfied Rule 9(b)'s heightened pleading requirement. Dkt. # 34 at 5-6. Plaintiffs' claims set forth the time, date, places and other circumstances constituting the mail and wire fraud. Dkt. # 7 at ¶¶ 41-45, 47-48, 51, 54-55, 57, 60-62, 65-66, 68, 70, 88(a)-(w). This is all that is required by Rule 9(b). *Ebeid ex rel. United States v. Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010).

4. Plaintiffs Satisfy RICO's Pattern Requirement.

Once again without citation to any binding authority, Defendants allege that Plaintiffs "cannot establish a pattern" in satisfaction of 18 U.S.C. § 1961(5). Dkt. # 34 at 20-21. To the contrary, Defendants' alleged predicate acts establish a "pattern"—they are related, and they are continuous. *H.J. Inc. v. N.W. Bell Tel. Co.*, 492 U.S. 229, 239 (1989). "[A]t least two acts of racketeering activity" that are related and continuous and occur within a ten-year period represent a "pattern." 18 U.S.C. § 1961(5). "Related" means that the acts "share similar purposes, participants, victims, methods, or other distinguishing characteristics." *Howard v. Am. Online, Inc.*, 208 F.3d 741, 749 (9th Cir. 2000). All of Plaintiffs' alleged predicate acts advanced Defendants' scheme to defraud Plaintiffs' of money and property. Dkt. # 7 at ¶¶ 42-45, 47-48, 51, 54-55, 57, 61-62, 65-66, 68, 70. All of the predicate acts are "related" because they share the same (a) purpose—to defraud Plaintiffs of money and property; (b) victims—Plaintiffs; and, (c) participants—Defendants. *Howard*, 208 F.3d at 749.

1 The U.S. Supreme Court has observed that either a showing of closed or open-ended
 2 continuity satisfies RICO's continuous "pattern" requirement. *H.J. Inc.*, 492 U.S. at 241-42.
 3 Plaintiffs have adequately plead open-ended continuity. *Id.* at 242. For instance, Plaintiffs have
 4 pled that "efforts to defraud Ms. Rabang of her HUD MHOP home remain ongoing," Dkt. # 7 at ¶
 5 71, and that the "RICO Defendants' fraudulent activities remain ongoing." *Id.* at ¶ 72; *Allwaste,*
 6 *Inc.*, 65 F.3d at 1528. No evidence exists that Defendants will cease taking actions that defraud
 7 Plaintiffs' of money and property. *Ikuno v. Yip*, 912 F.2d 306, 309 (9th Cir. 1990). In fact,
 8 Holdover Council Defendants, masquerading as "the Tribe," have filed suit against the U.S. in an
 9 effort to have the Court condone their *coup d'état* so, in turn, they can continue to defraud
 10 Plaintiffs and over 265 other tribal members. *Nooksack Indian Tribe*, No. 17-0219 (W.D. Wash.).

11 Further, contrary to Defendants' claims, Dkt. # 34 at 20, this Circuit has rejected a bright-
 12 line rule regarding duration of the pattern. *Allwaste, Inc.*, 65 F.3d at 1529. In fact, courts
 13 frequently find that predicate acts that fall within a twelve or thirteen-month period satisfy
 14 RICO's "pattern" requirement. *Sun Sav. and Loan Ass'n v. Dierdorff*, 825 F.2d 187, 194 (9th Cir.
 15 1987) (four predicate acts in two month period sufficient); *Ikuno*, 912 F.2d at 308 (two predicate
 16 acts in twelve month period sufficient); *Ticor Title Ins. Co.*, 937 F.2d 447 (three predicate acts in
 17 thirteen month period). Accordingly, Plaintiffs' allegations of **at least 35 predicate acts**
 18 committed by Defendants within a twelve-month period satisfy RICO's "pattern" requirement.
 19 Dkt. # 7 at ¶¶ 42-45, 47-48, 51, 54-55, 57, 61-62-66, 68, 70.

20 **5. Plaintiffs Satisfy The Injury To Business Or Property.**

21 Defendants claim that Plaintiffs have not adequately pled a concrete financial loss. Dkt. #
 22 34 at 22-23. Plaintiffs must allege both a financial loss and an injury to a property interest valid
 23 under state law in order to bring a RICO claim. *Diaz v. Gates*, 420 F.3d 897, 900 (9th Cir. 2005).

1 Plaintiffs have adequately alleged facts sufficient to show that Defendants caused them concrete
2 financial losses. *Canyon Cty. v. Syngenta Seeds, Inc.*, 519 F.3d 969, 972 (9th Cir. 2008).

3 Plaintiffs allege, for instance, that Margretty Rabang and Elizabeth Oshiro suffered a
4 financial loss in the form of their investments in their homes and federal funds. Dkt. # 7 at ¶¶ 44-
5 47. Plaintiffs also allege that Plaintiff Elizabeth Oshiro was defrauded of financial healthcare
6 benefits. *Id.* at ¶ 65. Plaintiffs allege that Plaintiffs Dominador Aure and Christina Peato suffered
7 financial losses in the form of TANF monies, financial healthcare benefits, and federal
8 educational monies for their children. *Id.* at ¶¶ 60-62, 66, 70. Plaintiffs also allege that
9 Defendants caused injury to their property rights. *Id.* at ¶¶ 44, 46-47, 60-62, 65-66, 70. Plaintiffs
10 allege Defendants harmed and continue to harm to their intervening legal entitlement to benefits,
11 which caused additional financial losses. *Id.* at ¶¶ 2, 43-48, 53, 58, 60-68, 70-71; *see also, e.g.,*
12 *Miller v. York Risk Servs. Group*, No. 13-1419, 2013 WL 6442464, at *4 (D. Ariz. Dec. 9, 2013).
13
14

15 **6. Plaintiffs Adequately Pled Conspiracy To Violate RICO.**

16 Defendants argue “Plaintiffs have not alleged any facts to render the actual existence of a
17 conspiracy plausible.” Dkt. # 34 at 23. Defendants state “[t]here is not a single fact alleged
18 anywhere in plaintiffs’ FAC to establish that (1) that two more people agreed to violate Section
19 1962(c), and (2) any defendant knew of and agreed to the overall goal of the violation.” *Id.*
20

21 Defendants are mistaken. A RICO conspiracy will exist even if a conspirator does not
22 agree to commit or facilitate each and every part of the substantive offense. *Salinas v. United*
23 *States*, 522 U.S. 52, 63 (1997). “One can be a conspirator by agreeing to facilitate only some of
24 the acts leading to the substantive offense.” *Id.*, at 65. “The interplay between subsections (c)
25 and (d) [of RICO] does not permit [the court] to excuse from the reach of the conspiracy
provision an actor who does not himself commit or agree to commit the two or more predicate
acts requisite to the underlying offense. *Id.* Plaintiffs’ allegations only need to raise an inference

1 of an agreement that is at least plausible. *In re Park W. Galleries, Inc. v. Marketing and Sales*
 2 *Practices Litig.*, No. 09-1177, 2010 WL 2640254, at *5 (W.D. Wash. June 25, 2010). Here,
 3 Plaintiffs allege that the Defendants conspired together to defraud Plaintiffs **on at least 24**
 4 **separate occasions**. Dkt. # 7 at ¶¶ 31, 35-36, 38-39, 41-43, 45, 49, 51, 53-55, 57, 59-62, 65-66,
 5 70-72. Plaintiffs' allegations raise an inference of an agreement that is at least plausible. *In re*
 6 *Park W. Galleries, Inc.*, 2010 WL 2640254, at *5. Accordingly, Plaintiffs have pled facts
 7 sufficient to establish a conspiracy pursuant to 18 U.S.C. § 1962(d).
 8

9 II. CONCLUSION

10 Plaintiffs respectfully request that the Court deny Defendants' Motion to Dismiss.

11 DATED this 20th day of March, 2017.

12 GALANDA BROADMAN PLLC

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Plaintiffs,

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CERTIFICATE OF SERVICE

On March 20, 2017, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF System, which will send electronic notification of such filing to the following parties:

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5 Signed under penalty of perjury and under the laws of the United States this 20th day of
6 March, 2017.
7

8 
9 Bree R. Black Horse