UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN S. MACDONALD,	:	
	:	Civil Action No. 2:16-cv-02781-MCA-SCM
Plaintiff,	:	
v.	:	
CASHCALL, INC.; WS FUNDING, LLC; DELBERT SERVICES CORP.; and J. PAUL REDDAM,	:	**Oral Argument Requested**
Defendants.	:	
	x	Motion Date: December 5, 2016

DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR MOTIONS TO COMPEL ARBITRATION OR ALTERNATIVELY, TO DISMISS

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Defendants CashCall, Inc. ("CashCall"), WS Funding, LLC ("WS Funding"), Delbert Services Corporation ("Delbert"), and J. Paul Reddam ("Reddam") (collectively "Defendants") respectfully submit this Reply Brief in Support of their Motions to Compel Arbitration or Alternatively, to Dismiss. For the reasons set out in their principal brief and as further provided herein, the Court should compel arbitration or dismiss Plaintiff's claims, with prejudice.

ARGUMENT

I. PLAINTIFF'S CHALLENGES TO THE ARBITRATION CLAUSE IN THE LOAN AGREEMENT MUST BE DECIDED BY THE ARBITRATOR.

Plaintiff attempts to avoid the Arbitration Clause despite its plain language, which requires that issues "concerning the validity, enforceability, or scope of this loan or the Arbitration agreement" must be arbitrated. Compl. Ex. 3 at 9, 11-12. Given the governing principles favoring arbitration, the Court should compel arbitration and allow an arbitrator to resolve Plaintiff's challenges to the Arbitration Clause, which are, in any event, meritless.

First, Plaintiff is wrong that the arbitration forum is unavailable. Opp'n. 7. Plaintiff fails to offer any evidence of unavailability, and relies instead on "citations to other cases where the forum has been found to be unavailable in lieu of providing his own evidence." *Chitoff v. CashCall, Inc.*, 2014 WL 6603987, at *1 (S.D. Fla. Nov. 17, 2014). Moreover, unlike the arbitration clause deemed unenforceable in *Jackson v. Payday Fin., LLC*, 764 F.3d 765 (7th Cir. 2014), which required arbitration to occur with the Tribe before Tribal elders or members ("Tribal Elder Version"), the Arbitration Clause here ("AAA/JAMS Version") provides Plaintiff with the option of choosing AAA, JAMS, or any other arbitration organization agreed upon by the parties to administer[1] the arbitration in accordance with its own rules and procedures. Compl.

[1] Plaintiff's distinction between "administering" and "conducting" an arbitration is meritless. Opp'n. 11-13. Courts must enforce arbitration agreements whenever possible, not ignore them *(cont'd)*

Ex. 3 at 8-10. Indeed, ***nearly a dozen*** arbitrations have proceeded before AAA or JAMS pursuant to this exact AAA/JAMS Version. *See, e.g.*, Reply Cert. of Andrew Muscato, Ex. A.

Defendants acknowledge that certain courts have found the AAA/JAMS Version to be invalid. Most recently, the Eleventh Circuit issued a *per curiam* opinion affirming the denial of arbitration involving the AAA/JAMS Version. *See Parnell v. Western Sky Fin., LLC*, No. 16-11369 (11th Cir. Nov. 21, 2016). But these decisions are incorrect and misinterpret the explicit language in the AAA/JAMS Version that allows Plaintiff to choose arbitration before the AAA, JAMS, or any other forum agreed upon by the parties. Their interpretations, Defendants submit, were improperly affected by cases analyzing the Tribal Elder Version, which is not at issue here. Indeed, six other federal courts have compelled arbitration based on this same AAA/JAMS Version. *See, e.g.*, *Banks v. CashCall, Inc.*, 2016 WL 3021749 (M.D. Fla. May 26, 2016) (to be published in F. Supp. 2d). This Court is required to interpret the Arbitration Clause in a way that favors arbitration. *See Gilmer*, 500 U.S. at 26. If the references to a Cheyenne River Sioux Tribe ("CRST") arbitrator or CRST consumer dispute rules trouble this Court, it can sever such references while preserving arbitration. And this Court may also appoint a substitute arbitrator under § 5 of the Federal Arbitration Act when the arbitration forum or rules designated by the agreement cannot be used, for whatever reason. *See* 9 U.S.C. § 5; *Khan v. Dell Inc.*, 669 F.3d 350, 357 (3d Cir. 2012).

Second, Plaintiff has not shown that application of CRST law would deprive him of any federal statutory rights. An agreement to arbitrate is unenforceable only when it provides for the

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simply because they fail to include some magic word. *See Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991). Moreover, AAA and JAMS arbitrators have accepted disputes without regard to whether their activities in doing so are labeled "conducting" or "administering" arbitration. *See, e.g.*, Reply Cert. of Andrew Muscato, Ex. A.

"prospective waiver of a party's *right to pursue* statutory remedies," such as where the agreement "forbid[s] the assertion of certain statutory rights." *Am. Express Co. v. Italian Colors Rest.*, 133 S. Ct. 2304, 2310 (2013) (internal citation omitted). But this doctrine is not triggered where, as here, Plaintiff has not shown that he will be precluded from asserting federal statutory rights or from receiving comparable adequate protections through the application of foreign law, *i.e.*, CRST law. *See Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer*, 515 U.S. 528, 540-41 (1995) (holding that arbitration agreement was enforceable despite plaintiff's contention that agreement's choice of Japanese law precluded plaintiff from asserting its federal statutory rights); *Aggarao v. MOL Ship Mgmt. Co., Ltd.*, 675 F.3d 355, 373 (4th Cir. 2012) (holding that arbitration agreement applying law of the Philippines was enforceable notwithstanding plaintiff's argument that application of law of the Philippines would violate prospective waiver doctrine).[2]

Finally, contrary to Plaintiff's unfounded assertions, Defendants have not waived their arguments regarding the "delegation" provision. In their principal brief, Defendants clearly stated that the Arbitration Clause requires arbitration of issues "concerning the validity, enforceability, or scope of this loan or the Arbitration agreement," and that "all of Plaintiff's claims, *including his challenges to the enforceability* of the Arbitration Clause, are subject to arbitration." Mot. 5, 8 (emphasis added).[3] Under Plaintiff's reasoning, Defendants must make Plaintiff's arguments for him. Not so. By his own admission, Plaintiff, not Defendants, bears the

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[2] Plaintiff cites to *Hayes v. Delbert Servs. Corp.*, 811 F.3d 666 (4th Cir. 2016), but this is an erroneous decision that this Court should not find persuasive. Contrary to that decision, application of CRST law does not make the agreement a "choice of no law." *Id.* at 675. Any claim that Plaintiff may have regarding whether his rights are adequately protected can be made in arbitration; it is not proper to speculate regarding the arbitration proceedings before they have taken place. *See* 9 U.S.C. § 10; *Vimar*, 515 U.S. at 540.

[3] Plaintiff's citation to *Anspach v. City of Phila.*, 503 F.3d 256, 258 n.1 (3d Cir. 2007)—which addresses whether a *plaintiff* adequately raised a separate *violation* in a brief—is irrelevant and inapposite.

burden of arguing that this delegation provision is unenforceable. Opp'n. 14. And despite Plaintiff's claims, his purported challenges to the delegation clause are insufficient to avoid it. *Id.* 15; Compl. ¶ 32. Plaintiff has raised no objection to the delegation provision substantively distinct from his challenge to the Arbitration Clause. Plaintiff's failure to do so runs afoul of binding Supreme Court precedent underlining the severability of the delegation provision. *See Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 70-72 (2010). Plaintiff must support his challenge on grounds unique to the delegation provision, which he has failed to do. Purported delegation challenges must be rejected when they involve a "'defense to arbitrability' as a whole, rather than a specific challenge to the delegation clause." *See Chatman v. Jimmy Gray Chevrolet, Inc.*, 2016 WL 5745697, at *4 (N.D. Miss. Sept. 30, 2016) (citation omitted).[4]

II. PLAINTIFF'S NEW JERSEY CLAIMS MUST BE DISMISSED.[5]

A. The Contractual Choice-of-Law Provision Is Fully Enforceable.

The choice-of-law provision in the Loan Agreement unambiguously states that CRST law applies. Plaintiff fails to demonstrate why this choice-of law provision should not be followed as fundamental principles of contract law require. As the Supreme Court recently held, parties are free to enter into and be bound by agreements that are governed by foreign law. *See DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463, 468 (2015). This Court should honor that choice.

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[4] Plaintiff argues that the Arbitration Clause is unconscionable. Opp'n. 15-16. Not only is this an issue for the arbitrator, but there is also no serious argument that arbitration before such well-known organizations like the AAA or JAMS could possibly render the Arbitration Clause unconscionable. And Plaintiff omits that the Arbitration Clause (1) has an opt-out provision, (2) requires Defendants to pay for all filing fees and any costs/fees of the arbitrator, and (3) allows Plaintiff to have arbitration occur within thirty miles of his residence. Compl. Ex. 3 at 9-10. These terms are hardly unconscionable, and differ significantly from the "loser pays" provision and other terms at issue in *Alexander v. Anthony Int'l, L.P.*, 341 F.3d 256, 266-70 (3d Cir. 2003).

[5] As Defendants asserted in their principal brief, the Court should enforce the Loan Agreement's forum selection clause, which selects the CRST Court as the proper venue for any disputes not otherwise subject to arbitration, or at least permit tribal exhaustion. Mot. 10-12. Should this action proceed here, however, this Court must apply CRST law.

First, Plaintiff has not demonstrated that the CRST lacks a substantial relationship to the parties and transaction. Western Sky was an operating company headquartered on the CRST reservation and owned by a CRST member. *See* Compl. ¶ 16. The substantial relationship standard is therefore satisfied. *See Instructional Sys., Inc. v. Comput. Curriculum Corp.*, 614 A.2d 124, 133 (N.J. 1992) (substantial relationship standard satisfied when a party is headquartered in the chosen state). There was also a reasonable basis for the choice of CRST law because Plaintiff executed a Loan Agreement that made clear he was engaging in commerce with a tribal member that would be consummated on the Reservation. Compl. Ex. 3 at 3, 8.

Plaintiff relies on the ruling in *CFPB v. CashCall, Inc.*, 2016 WL 4820635 (C.D. Cal. Aug. 31, 2016), where the court declined to enforce the choice-of-law provision. *Id.* at *6-7. That decision does not, and should not, affect this Court's analysis of the claims here. The decision's choice-of-law analysis relied on a flawed "true lender" test that threatens to disrupt the well-established and financially significant secondary loan market. This same "true lender" test was recently rejected by another federal court in the same district. *See Beechum v. Navient Sols., Inc.*, 2016 WL 5340454, at *8 (C.D. Cal. Sept. 20, 2016) (granting defendants' motions to dismiss and noting that it looked "only to the face of the transactions at issue when assessing whether plaintiffs' loans are exempted from the usury prohibition"). The CFPB decision was also decided pursuant to federal law and based on evidence not before this Court.[6]

Second, Plaintiff maintains that the CRST "has no interest in this matter" and that the "existence" of New Jersey usury and licensing statutes demonstrates "a fundamental public

[6] Plaintiff cites *Lehman Commercial Paper, Inc. v. Karagjozi*, 2008 WL 5451051 (D.N.J. Dec. 30, 2008), where, unlike here, two separate guaranty agreements for commercial real estate loans contained conflicting choice-of-law provisions. The court's offhand remarks regarding predecessors-in-interest do not diminish the well-established principle that "an assignee of a contract occupies the *same legal position* under a contract as did the original contracting party[.]" *CardioNet, Inc. v. Cigna Health Corp.*, 751 F.3d 165, 178 (3d Cir. 2014).

policy" against usury. Opp'n. 20-21. But, given the abject poverty on tribal reservations and the history of economic exclusion of tribal entities, the CRST and its tribal members have a strong interest in promoting tribal entrepreneurship with the certainty that contractual choice-of-law provisions applying CRST law will be honored. Moreover, "not every statutory provision constitutes a fundamental policy of a state." *Volvo Constr. Equip. N. Am. Inc. v. CLM Equip. Co.*, 386 F.3d 581, 607 (4th Cir. 2004) (citation omitted). "If every [statute] expressed a state's fundamental policy, contracting parties would be entitled to apply the law of another state under the Second Restatement *only* when the law of the chosen state was the same as that of the state where the contract was made." *Id.* at 607 n.25 (emphasis added). Instead, "[i]n assessing whether a . . . statute expresses a state's fundamental policy," a court must parse through the "language of the statute, relevant court decisions, and pertinent legislative history." *Id.* at 607. Accordingly, without more, Plaintiff fails to demonstrate that New Jersey has a strong public policy against usury that would override a clear contractual choice-of-law provision.[7]

Finally, Plaintiff claims that choice-of-law provisions using "governed by" phrasing do not apply to non-contract claims, mistakenly relying on *Bd. of Educ. of the Twp. of Cherry Hill, Camden Cty. v. Human Res. Microsys., Inc.*, 2010 WL 3882498 (D.N.J. Sept. 28, 2010). Opp'n. 22. There, the court simply noted that it was "premature to rule out [the] possibility" that a law different from the choice-of-law provision "may plausibly apply." *Microsys.*, at *4. In any event, here, all of Plaintiff's claims sound in contract.[8] Plaintiff claims that the terms of the Loan

[7] Plaintiff cites to *Networld Commc'ns, Corp. v. Croat. Airlines, D.D.*, 2014 WL 4662223 (D.N.J. Sept. 18, 2014), but, unlike here, the non-usury statute at issue in that case explicitly voided any contractual provision "purporting to waive any provision of this act" through a "provision stipulating that the contract is subject to the laws of another state." *Id.* at *3.

[8] If this Court determines that Plaintiff has pled non-contract claims, then Count IV should be dismissed. *See Wiatt v. Winston & Strawn, LLP*, 2011 WL 2559567, at *14 (D.N.J. June 27, *(cont'd)*

Agreement are void because of allegedly usurious interest rates under New Jersey law, and this allegation forms the basis for all other claims. *See generally* Compl. Also, here, unlike in *Microsystems*, the Loan Agreement contains broader language that covers non-contract claims. *See* Compl. Ex. 3 at 3 ("you are voluntarily availing yourself of the laws of the Cheyenne River Sioux Tribe" and "[n]either this Agreement nor Lender is subject to the laws of any state").

B. Plaintiff's New Jersey Claims Fail On The Merits.

Plaintiff concedes that his claim under the Consumer Finance Licensing Act fails. So too his claims must fail based on New Jersey's usury statutes, the Consumer Fraud Act ("CFA"), and unjust enrichment.[9] These claims fail because CRST law, and not New Jersey law, applies to the loan. Moreover, Plaintiff's lone and conclusory allegation of "knowing, deliberate, intentional, and willful" conduct, Compl. ¶ 56, is not sufficient to plead "unlawful or corrupt intent." *Altman v. Altman*, 72 A.2d 536, 540 (N.J. Super. Ct. Ch. Div. 1950). Plaintiff makes no allegation that he was coerced into entering the Loan Agreement or that the terms were misleading; the applicable interest rate and CRST law were clearly disclosed. *See* Compl. Ex. 3 at 2, 3.

Moreover, Plaintiff's claims under the CFA fail to satisfy Rule 9(b)'s pleading standard and should be dismissed. Plaintiff's reliance on an anomalous bankruptcy court decision should

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2011) ("New Jersey does not recognize unjust enrichment as an independent tort cause of action") (citation omitted).

[9] Plaintiff wrongly asserts that Defendants waived any challenge to the unjust enrichment claim. Defendants made clear that this claim, and the other state law claims, fail because "they depend on the incorrect premise that New Jersey's interest rate limits apply to Plaintiff's loan." Mot. 12; *see also* Mot. 18. Since the usury and CFA claims fail, it follows that the unjust enrichment claim fails. *See Va. Sur. Co. v. Macedo*, 2009 WL 3230909, at *11 (D.N.J. Sept. 30, 2009) (dismissing an unjust enrichment claim because the complaint "failed to plead the underlying fraud, which serve[d] as the basis for [the] unjust enrichment claim"). Plaintiff's citation to *Sportscare of Am., P.C. v. Multiplan, Inc.*, 2011 WL 589955 (D.N.J. Feb. 10, 2011)—involving a *plaintiff* who did not respond to a motion to dismiss for lack of personal jurisdiction—is irrelevant. *Id.* at *1.

not distract from the "well-established" requirement that "NJCFA claims must meet the heightened pleading requirements of Fed. R. Civ. P. 9(b)." *Lieberson v. Johnson & Johnson Consumer Cos.*, 865 F. Supp. 2d 529, 538 (D.N.J. 2011). The Complaint's conclusory allegations do not meet this heightened requirement, particularly regarding each Defendant's alleged role in the enterprise. Indeed, Plaintiff emphasizes that "Defendants operated as a single, integrated entity," Compl. ¶ 23, and includes only cursory references to WS Funding and Delbert.

III. THE RICO CLAIM MUST BE DISMISSED.

Plaintiff seeks to have this Court impose the "drastic remedies" of the RICO Act on Defendants. *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 233 (1989). These efforts are misguided. *See U.S. Airline Pilots Ass'n v. Awappa, LLC*, 615 F.3d 312, 317 (4th Cir. 2010) ("RICO . . . 'does not cover all instances of wrongdoing'") (citation omitted). In any event, the Complaint fails to state a RICO claim under §§ 1962(c) and (d).[10]

First, Plaintiff has not pled sufficient facts to demonstrate the collection of "unlawful debt" under § 1962(c). The Loan Agreement's choice-of-law provision precludes the application of New Jersey law. Without more, Plaintiff has failed to allege "unlawful debt." Additionally, Defendants' activities here—enforcing the terms of the Loan Agreement at issue—is not the type of severe conduct that typically underlies a RICO claim, in contrast to the "unlawful lending racket" and "loansharking activities" in *U.S. v. Eufrasio*, 935 F.2d 553, 562 (3d Cir. 1991) and the "fraudulent representations and transactions" in connection with mortgage foreclosure rescue services in *Proctor v. Metro. Money Store Corp.*, 645 F. Supp. 2d 464, 471 (D. Md. 2009).

Second, Plaintiff does not plead adequate facts to show that Defendants each conducted or participated in the alleged "Western Sky Enterprise." Courts will not impose § 1962(c)

[10] Defendants acknowledge that Plaintiff asserts only the "collection of unlawful debt" and not a "fraud-based RICO claim," as Defendants previously asserted. Mot. 21.

liability "on one who merely 'carries on' or 'participates' in an enterprise, but rather, in order to be liable, 'one must have some part in directing those affairs.'" *Nicholas v. Saul Stone & Co. LLC*, 1998 WL 34111036, at *23 (D.N.J. 1998) (citations omitted). In *Crete v. Resort Condos. Int'l, LLC*, 2011 WL 666039 (D.N.J. Feb. 14, 2011), the court dismissed a § 1962(c) claim because plaintiffs "provided little information" as to the "management and control that [defendants] took *individually* with respect to the enterprise." *Id.* at *10. Similarly, Plaintiff fails to allege how Defendants each directed the Western Sky Enterprise and instead presents only general allegations that attempt to describe Defendants' *roles* in the Enterprise. *See, e.g.*, Compl. ¶ 22 (Delbert as the "collection agent"); *id.* ¶ 15 (WS Funding is "subject to the ultimate control and direction of Reddam"). Indeed, Plaintiff alleges that only Reddam directed the Western Sky Enterprise as the "architect" and "central figure." *See id.* ¶¶ 13, 15.[11]

Third, Plaintiff's allegations do not distinguish between Defendants and the alleged Western Sky Enterprise, and therefore fail to satisfy the distinctiveness requirement under § 1962(c). *See N.J. Reg'l Council of Carpenters v. D.R. Horton, Inc.*, 2011 WL 4499276, at *9 (D.N.J. Sept. 27, 2011) (under § 1962(c), a plaintiff "must allege the existence of two distinct entities: (1) a 'person'; and (2) an 'enterprise' that is not simply the same 'person' referred to by a different name"). Plaintiff asserts that he has pled "two distinct entities" because the Complaint defines the Western Sky Enterprise "to include each individual Defendant **and** non-party Western Sky Financial." Opp'n. 29. This argument misses the point. The Complaint claims that Western Sky Financial was a "front for CashCall," "the sham 'front' for this Enterprise," and that Reddam "was the architect of the sham corporate structures that facilitated the unlawful

[11] Unlike in *U.S. v. Parise*, 159 F.3d 790 (3d Cir. 1998), Plaintiff has not alleged that CashCall, WS Funding, or Delbert were "deeply involved in—and integral to—the operation of" the alleged Western Sky Enterprise. *Id.* at 797.

Western Sky Enterprise." Compl. ¶¶ 13, 18, 21. Indeed, Plaintiff admits in his factual allegations *and in the RICO count* that the Western Sky Enterprise was the "alter ego" of Reddam and CashCall. Compl. ¶¶ 23, 82.[12] Plaintiff therefore treats Defendants as indistinguishable from both Western Sky Financial and the alleged Western Sky Enterprise.[13]

The *Inetianbor* court dismissed a similar claim under the Florida RICO statute, which is nearly identical to § 1962. Omnibus Order on Mot. to Dismiss, *Inetianbor v. CashCall, Inc.*, No. 13-60066 (S.D. Fla. Apr. 5, 2016) (Opp'n. Ex. A). The court noted that "the central thrust" of the complaint, as here, was that "Western Sky was merely a 'front' for CashCall," and that "CashCall 'controlled and supported' Western Sky." *Id.* at 12 (citations omitted). The court dismissed the RICO claim because "CashCall cannot engage in an illegal enterprise with itself," and the plaintiff "failed to plead facts sufficient to establish the distinctiveness requirement." *Id.*

Finally, Plaintiff's conspiracy claim fails because he does not allege a substantive RICO violation under § 1962(c). *See In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 383 (3d Cir. 2010). Among other things, he does not distinguish Defendants from the alleged Western Sky Enterprise. *See Nordberg v. Trilegiant Corp.*, 445 F. Supp. 2d 1082, 1090 (N.D. Cal. 2006) ("'[An] individual cannot associate or conspire with himself.'") (citations omitted).

IV. THE CLAIMS AGAINST REDDAM MUST BE DISMISSED.

Plaintiff does not sufficiently allege any act by Reddam showing he had "minimum contacts" with New Jersey. The allegations purporting to connect Reddam to New Jersey seek to

[12] Plaintiff claims that his RICO claims "are pled as an alternative to the 'alter ego' theory," but his scattered and sparse references to "alter ego" do not constitute a pleading. Opp'n. 30. "A plaintiff must affirmatively plead both the factors of alter-ego liability and the factual underpinnings supporting those factors with respect to each individual defendant." *Richmond v. Lumisol Elec. Ltd.*, 2014 WL 1405159, at *4 (D.N.J. Apr. 10, 2014).

[13] Plaintiff's cases are inapposite. For example, Plaintiff fails to allege that Defendants and the Western Sky Enterprise "at all times maintained separate identities" as in *Jacobson v. Cooper*, 882 F.2d 717, 720 (2d Cir. 1989). In fact, Plaintiff alleges the opposite.

impute the acts of the corporate defendants to Reddam. But imputing those actions to Reddam requires overcoming the "corporate shield" doctrine, and Plaintiff has not alleged the factual prerequisites to invoke such an extraordinary exception to the legal separateness of corporations and their owners. Reddam's affidavit confirms that he never *personally* participated in the conduct at issue. Mot. Ex. 4. And even Plaintiff's own allegations are that the acts purportedly undertaken by Reddam were in his *corporate capacity*. The corporate shield doctrine precludes this Court from exercising personal jurisdiction on that basis alone.[14] This Court should follow the reasoning in *Chitoff v. CashCall, Inc.*, 2014 WL 6603985 (S.D. Fla. Nov. 7, 2014), which concluded that the court lacked personal jurisdiction over Reddam because "[u]nder Florida law, an owner of a corporation . . . is not subject to personal liability in Florida merely because, on behalf of the corporation, he or she transacted business in the state." *Id.* at *1; *see also* Op. and Order at 11, *N.C. ex rel. Cooper v. Western Sky Fin., LLC.*, No. 13 CVS 16487 (N.C. Super. Ct. Div. Wake Cty. Aug. 27, 2015) (dismissing Reddam for lack of personal jurisdiction).

And, because Plaintiff's RICO claim should be dismissed, RICO cannot be a basis for personal jurisdiction. *See Pop Test Cortisol, LLC v. Univ. of Chi.*, 2015 WL 3822237, at *5 (D.N.J. June 18, 2015). Plaintiff claims that Reddam has "acknowledge[d]" that RICO supplies personal jurisdiction. Opp'n. 33. In fact, Reddam has argued that, if the RICO claim is not dismissed, personal jurisdiction is proper only if it does not create "extreme inconvenience or unfairness," in violation of due process, an inquiry not yet before the Court. Mot. 28.

[14] Plaintiff relies on *Mendelsohn, Drucker & Assoc. v. Titan Atlas Mfg., Inc.*, 885 F. Supp. 2d 767 (E.D. Pa. 2012), but there the corporate officer was determined to have minimum contacts because he *personally exchanged* "extensive and substantive communication[s]" with the state resident, which formed the basis for the fraud action. *Id.* at 787. Here, Plaintiff has not—and cannot—identify any personal contacts with New Jersey by Reddam.

CONCLUSION

For all of the foregoing reasons, Defendants respectfully request that the Court grant their motion to compel arbitration or alternatively, their motion to dismiss.

Dated: November 23, 2016

Respectfully submitted,

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: s/ Andrew Muscato
Andrew Muscato

CERTIFICATION OF SERVICE

I hereby certify that on November 23, 2016, I caused a copy of the within Defendants' Reply Brief in Support of Their Motions To Compel Arbitration or Alternatively, to Dismiss to be served by e-filing upon counsel for Plaintiff John S. MacDonald listed below by ECF.

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Dated: November 23, 2016

s/ Andrew Muscato