

Honorable John C. Coughenour

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

MARGRETTY RABANG, OLIVE OSHIRO,
DOMINADOR AURE, CHRISTINA PEATO,
and ELIZABETH OSHIRO,

Plaintiffs,

v.

ROBERT KELLY, JR., RICK D. GEORGE,
AGRIPINA SMITH, BOB SOLOMON,
LONA JOHNSON, KATHERINE CANETE,
RAYMOND DODGE, ELIZABETH KING
GEORGE, KATRICE ROMERO, DONIA
EDWARDS, and RICKIE ARMSTRONG,

Defendants.

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

**DEFENDANT CHIEF JUDGE
RAYMOND DODGE’S MOTION TO
DISMISS AND MEMORANDUM IN
SUPPORT THEREOF**

**NOTE ON MOTION CALENDAR:
MARCH 24, 2017**

Defendant Nooksack Tribal Court Chief Judge Raymond G. Dodge, Jr. (“Judge Dodge”) hereby respectfully moves the Court to dismiss this action with prejudice pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

Despite plaintiffs’ artful pleading, the claims against Judge Dodge are little more than a chilling attack on routine judicial conduct. This case is a blatant misuse of the Racketeer Influenced and Corrupt Organizations Act (“RICO”). *PMC, Inc. v. Ferro Corp.*, 131 F.R.D. 184, 187 (C.D. Cal. 1990) (“... this Court is legitimately concerned about the misuse of civil

1 RICO. . .”); *Midwest Grinding Co. v. Spitz*, 976 F.2d 1016, 1025-26 (7th Cir. 1992) (“The
2 widespread abuse of civil RICO stems from the fact that all modern business transactions entail
3 use of the mails or wires – giving plaintiffs a jurisdictional hook— and the fact that RICO offers
4 a far more generous compensation scheme than typically available in state court.”). Dismissal
5 with prejudice is appropriate for either of the following reasons: (1) Judge Dodge is entitled to
6 judicial immunity depriving this Court of subject matter jurisdiction as to claims against him;
7 and (2) plaintiffs have failed to state a RICO claim against Judge Dodge.

8 This motion is supported by the memorandum below, and the Declaration of Judge
9 Dodge and the exhibits attached thereto and [Proposed] Order filed herewith.

10 STANDARDS OF REVIEW

11 A. Federal Rule Civil Procedure 12(b)(1)

12 On a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, the party
13 asserting jurisdiction bears the burden of establishing subject matter jurisdiction. *See*
14 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *In re Dynamic Random*
15 *Access Memory (DRAM) Antitrust Litig.*, 546 F.3d 981, 984–85 (9th Cir. 2008). The Court
16 should dismiss the case for lack of subject matter jurisdiction if the complaint, on its face, fails to
17 allege facts sufficient to establish subject matter jurisdiction. *See In re (DRAM) Antitrust Litig.*,
18 546 F.3d at 984-85.

19 B. Federal Rule of Civil Procedure 12(b)(6)

20 Rule 12(b)(6) “[d]ismissal can be based on the lack of a cognizable legal theory or the
21 absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police*
22 *Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege “enough facts to state a
23 claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
24 (2007). Labels, conclusions, formulaic recitations of the elements of a cause of action, and
25 naked assertions devoid of factual enhancement will not pass muster under Rule 12(b)(6).
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1 *Lassetter v. Brand*, No. C11-0482-JCC, 2011 WL 4712188, at *1 (W.D. Wash. Oct. 4, 2011)
2 (Coughenour, J.) (*quoting Twombly*, 550 U.S. at 555, 557).

3 **C. Federal Rule of Civil Procedure 9(b)**

4 The heightened pleading requirement of Rule 9(b) applies to fraud-based predicate acts
5 alleged as the basis of a RICO claim. *Perkumpulan Investor Crisis Ctr. Dressel-WBG v. Regal*
6 *Fin. Bancorp, Inc.*, 781 F. Supp. 2d 1098, 1108 (W.D. Wash. 2011) (Coughenour, J.). Rule 9(b)
7 mandates that a party alleging fraud “must state with particularity the circumstances constituting
8 fraud.” Fed. R. Civ. P. 9(b). A plaintiff must “state the time, place, and specific content of the
9 false representations as well as the identities of the parties to the misrepresentation.”
10 *Perkumpulan*, 781 F. Supp. 2d at 1108. Rule 9(b) raises the bar of Rule 12(b)(6), imposing a
11 higher standard by which the fraud-based elements of a plaintiff’s RICO claim will be reviewed
12 on a motion to dismiss; under Rule 9(b), a plaintiff’s allegations must “do more than plausibly
13 state a claim entitling the plaintiff to relief.” *Id.* at 1109 (emphasis added).

14 **ARGUMENT**

15 **A. Judge Dodge is Immune from Suit**

16 1. *Judge Dodge, Like all Jurists, Has Absolute Immunity for Actions Taken*
17 *in His Judicial Capacity*

18 Judges have long enjoyed absolute immunity from personal capacity claims and liability
19 in damages for their judicial or adjudicatory acts. *Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d
20 1140, 1156 (10th Cir. 2011); *Forrester v. White*, 484 U.S. 219, 219 (1988) (judges have absolute
21 immunity in order to protect judicial independence). Like other forms of official immunity,
22 judicial immunity is an immunity from suit, not just from ultimate assessment of damages.
23 *Mireles v. Waco*, 502 U.S. 9, 11 (1991). Tribal court judges are entitled to the same absolute
24 judicial immunity that shields state and federal court judges. *Penn v. United States*, 335 F.3d
25 786, 789 (8th Cir. 2003).

1 Judicial immunity “is not for the protection or benefit of a malicious or corrupt judge, but
2 for the benefit of the public, whose interest it is that the judges should be at liberty to exercise
3 their functions with independence and without fear of consequences.” *Bradley v. Fisher*, 80 U.S.
4 335, 349 (1871). Importantly, disagreement about a judge’s actions does not warrant depriving
5 him of his immunity, and the fact that “tragic consequences” can ensue from the judge’s action
6 also does not deprive him of his immunity. *Stump v. Sparkman*, 435 U.S. 349, 350 (1978) (judge
7 was absolutely immune from suit by woman forcibly sterilized at age 15). Indeed, the fact that
8 the issue before a judge is a controversial one is “all the more reason that he should be able to act
9 without fear of suit.” *Id.*

10 Plaintiffs have sued Judge Dodge in his personal capacity for actions taken while he was
11 serving as Chief Judge of the Nooksack Tribal Court. Dkt. No. 7 ¶ 22. Specifically, plaintiffs
12 allege that Judge Dodge: (1) failed to convene a *pro se* lawsuit for Plaintiff Rabang (*id.* ¶ 40);
13 (2) caused an “Amended Notice of Hearing” regarding an eviction to be mailed (*id.* ¶ 45); (3)
14 convened a lawsuit in response to a Complaint for Unlawful Detainer filed by the Nooksack
15 Indian Housing Authority (*id.* ¶ 53); and (4) issued orders related to the eviction of Plaintiffs
16 Oshiro and Rabang (*id.* ¶¶ 67–68, 88). Each of these actions is alleged to have occurred after
17 Judge Dodge was appointed Chief Judge. *Id.* ¶ 39. Accordingly, Judge Dodge is immune from
18 both suit and liability for any and all such actions taken in his judicial capacity while presiding as
19 Chief Judge of the Nooksack Tribal Court.

20 2. *Plaintiffs Have Failed to Establish That an Exception Applies to*
21 *Overcome Judicial Immunity*

22 Judicial immunity can be overcome in only two limited sets of circumstances. *Mireles*,
23 502 U.S. at 11. First, a judge is not immune from liability for nonjudicial actions—i.e., actions
24 not taken in a judicial capacity. To determine whether an act taken by a judge is “judicial” for
25 purposes of conferring judicial immunity, the court will look at factors which relate to the nature
26 of the act itself (whether it is a function normally performed by a judge) and the expectation of
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1 the parties (whether they dealt with the judge in his judicial capacity). *Stump*, 435 U.S. at 350.
2 The court must look beyond whether the action he took was in error, was done maliciously, or
3 was in excess of his authority. *Gross v. Rell*, 585 F.3d 72, 83 (2d Cir. 2009). Courts have found
4 conduct to be nonjudicial in nature and declined to find judicial immunity in only rare
5 circumstances. *Archie v. Lanier*, 95 F.3d 438 (6th Cir. 1996) (no judicial immunity where a
6 judge stalked and sexually assaulted a litigant); *Gregory v. Thompson*, 500 F.2d 59 (9th Cir.
7 1974) (justice of the peace accused of forcibly removing a man from his courtroom and
8 physically assaulting him not absolutely immune).

9 Second, a judge is not immune from actions, though judicial in nature, where they are
10 taken in the “complete absence of all jurisdiction.” *Mireles*, 502 U.S. at 12. A judicial officer
11 acts in the clear absence of jurisdiction only if he “knows that he lacks jurisdiction, or acts
12 despite a clearly valid statute or case law expressly depriving him of jurisdiction.” *Mills v.*
13 *Killebrew*, 765 F.2d 69, 71 (6th Cir. 1985) (citing *Rankin v. Howard*, 633 F.2d 844, 849 (9th
14 Cir.1980)). The scope of a judge’s jurisdiction is construed broadly where judicial immunity is
15 at stake. *Penn*, 335 F.3d at 789–90. Thus, courts have held that judges enjoy judicial immunity
16 even when there are procedural defects in their appointment where they are “discharging the
17 duties of that position under the color of authority.” *White by Swafford v. Gerbitz*, 892 F.2d 457,
18 462 (6th Cir.1989); *see also Wagshal v. Foster*, 28 F.3d 1249, 1254 (D.C. Cir. 1994).

19 Here, plaintiffs have failed to allege that the actions taken by Judge Dodge were outside
20 the scope of his judicial capacity or taken in the clear absence of all jurisdiction. Each of the acts
21 Judge Dodge is alleged to have taken is an unremarkable, commonly executed judicial task well
22 within the scope of a Tribal Court Judge’s authority. *See Exs. A-C to Dodge Decl.* (filed
23 herewith).¹ There are few actions more routinely judicial than issuing orders. *See Jenkins v.*

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25 ¹ The Court may freely consider these orders which are incorporated by reference in the First
26 Amended Complaint. A court’s consideration of documents attached to a complaint, or
27 incorporated by reference, or a matter of judicial notice will not convert a motion to dismiss into
a motion for summary judgment. *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003).

1 *Kerry*, 928 F.Supp.2d 122, 134 (D.D.C. 2013) (“[A] judge acting in his or her judicial capacity—
 2 i.e., performing a function normally performed by a judge—is immune from suit on all judicial
 3 acts.”) (citations and quotations omitted).

4 Plaintiffs have also failed to allege that Judge Dodge acted in spite of the knowledge that
 5 he lacked jurisdiction or in spite of a clearly valid statute or case depriving him of jurisdiction.²
 6 In fact, plaintiffs admit that the Nooksack Tribal Court “exists separate and apart from the
 7 pattern of racketeering activity for the legitimate governmental purpose of providing a forum for
 8 the Tribal community to resolve disputes” and that Judge Dodge, “ha[s] had and do[es] have
 9 legitimate governmental business” outside the alleged racketeering activity. Dkt. No. 7 ¶ 78. It
 10 simply does not stand to reason that Judge Dodge properly exercises jurisdiction to resolve
 11 certain disputes in Nooksack Tribal Court, while simultaneously lacking jurisdiction to issue
 12 routine orders in an eviction matter in that same court as to these plaintiffs.

13 Judge Dodge is entitled to the absolute defense of judicial immunity, and this lawsuit
 14 should be dismissed with prejudice pursuant to Rule 12(b)(1).

15 **B. Plaintiffs’ Civil RICO Claims Fail and Should Be Dismissed With Prejudice**

16 Plaintiffs fail to state a RICO claim, and their complaint as to Judge Dodge is nothing
 17 more than a bald effort to manufacture federal jurisdiction to collaterally attack Tribal Court
 18 eviction orders with which they disagree.³ There are three primary defects with the claim. First,
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20 ² Plaintiffs vaguely allege that Judge Dodge “fraudulently replaced” former Chief Judge
 21 Alexander, but provide no further basis in law or fact for this conclusory allegation. Dkt. No. 7
 22 ¶ 39.

23 ³ Courts take a dim view of tribal law disputes couched in terms of RICO violations. *Sac and*
 24 *Fox Tribe of the Mississippi in Iowa v. Bear*, 258 F.Supp.2d 938, 942–44 (N.D. Iowa 2003) *aff’d*
 25 *sub nom. In re Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Casino Litig.*, 340 F.3d 749
 26 (8th Cir. 2003) (“this Court does not have jurisdiction [under RICO] to determine which Tribal
 27 Council is properly in place under the Tribal Constitution. This is an intra-tribal dispute over
 which this Court has no subject matter jurisdiction.”); *see also Smith v. Babbitt*, 100 F.3d 556,
 559 (8th Cir. 1996) (affirming dismissal of the RICO action on the grounds that it was an attempt
 to appeal the tribe’s membership determinations and, thus, “[did] not belong in federal court,”
 reasoning, “Federal court jurisdiction does not reach this matter simply because plaintiffs
 carefully worded their complaint”).

1 judicial immunity extends to RICO claims. Second, plaintiffs have not alleged facts establishing
2 standing to bring a RICO claim. Plaintiffs have failed to allege (1) a concrete injury to business
3 or property, and (2) a direct and proximate causal relationship between any alleged predicate act
4 by Judge Dodge and an injury cognizable under the statute. Instead, plaintiffs seek to impose the
5 harsh penalties of RICO (*e.g.*, treble damages) based on vague and conclusory allegations and no
6 fixed harm. Third, each alleged predicate criminal act as to Judge Dodge is insufficiently pled as
7 a matter of law to establish a “pattern of racketeering activity”.

8 *1. Judicial Immunity Extends to RICO Claims*

9 Courts have specified that RICO claims are barred under the doctrine of judicial
10 immunity. *See Van Beek v. AG-Credit Bonus Ptnrs*, 316 Fed. Appx. 554, 555-56 (9th Cir. 2008)
11 (affirming dismissal of RICO claims based on judicial immunity); *Blackburn v. Calhoun*, No.
12 207CV166, 2008 WL 850191, at *21 (N.D.Ala. Mar. 4, 2008); *Stone v. Baum*, 409 F.Supp.2d
13 1164, 1175 (D.Ariz. 2005) (judges who issued rulings were entitled to absolute judicial
14 immunity from liability in subsequent action alleging RICO violations); *Rolfes v. MBNA*
15 *America Bank N.A.*, 416 F.Supp.2d 745, 749 (D.S.D. 2005) (state court judge was entitled to
16 absolute immunity from plaintiff's claims for monetary damages under RICO based on judge's
17 entry of judgment against her). In *Blackburn*, the court explained that “RICO claims must be
18 denied if they simply constitute another way of attacking a judge's rulings,” and that judicial
19 immunity “applies where the RICO-challenged acts are judicial in nature.” *Id.* at *21.

20 Plaintiffs' RICO claims alleging a pattern of racketeering activity are predicated on the
21 allegation that Judge Dodge committed federal criminal mail and wire fraud through four purely
22 judicial acts. Dkt. No. 7 ¶¶ 88(h) (mailing an “Amended Notice of Hearing”); 88(i) (mailing an
23 eviction order), 88(j)(mailing the same eviction order to someone else), and (v) (mailing an
24 “Order Following Show Cause Hearing”). While plaintiffs' attempts to circumvent the judicial
25 immunity doctrine by asserting RICO claims against Judge Dodge in his so-called personal
26 capacity (*id.* ¶ 25), the actions plaintiffs challenge were performed within the scope of Judge
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1 Dodge’s normal judicial duties. This is clear from elsewhere in the complaint where plaintiffs
2 allege that the “RICO Defendants carried out their scheme to defraud Plaintiffs, *through their*
3 *official positions*....” *Id.* ¶ 3 (emphasis added). Thus, because the acts underlying the RICO
4 claims are “judicial in nature,” they are protected by the judicial immunity doctrine. *See Sisk v.*
5 *U.S.*, No. 06-2396, 2007 WL 1963000, at *3 (W.D. La. June 4, 2007) (“[A] judicial act does not
6 become less judicial by virtue of an allegation of malice, corruption or conspiracy . . . [n]either
7 does the fact that a RICO violation is alleged change the fact of judicial immunity,” as long as
8 the acts “were judicial in nature.”).

9 There is nothing more judicial in nature than issuing orders as part of a case, and Judge
10 Dodge’s actions are protected from RICO liability.

11 2. *Plaintiffs Have Not Pled Facts Supporting RICO Standing*

12 Even if judicial immunity does not bar the RICO claims against Judge Dodge, the RICO
13 claims still fail.

14 “To have standing under § 1964(c), a civil RICO plaintiff must show: (1) that his alleged
15 harm qualifies as injury to his business or property; and (2) that his harm was ‘by reason of’ the
16 RICO violation, which requires the plaintiff to establish proximate causation.” *Canyon Cnty. v.*
17 *Syngenta Seeds, Inc.*, 519 F.3d 969, 972 (9th Cir. 2008). Under the first requirement, “[a] civil
18 RICO ‘plaintiff only has standing if, and can only recover to the extent that, he has been injured
19 in his business or property by the conduct constituting the violation.’” *Id.* at 975 (emphasis
20 added) (quoting *Sedima, S.P.R.I. v. Imrex Co.*, 473 U.S. 479, 496 (1985)); *see also Portfolio*
21 *Invs., LLC v. First Svgs. Bank*, No. C12-104-RAJ, 2013 WL 1187622, at *4 (W.D. Wash., Mar.
22 20, 2013) (“To satisfy the first prong, a plaintiff must identify both a concrete financial loss and
23 a specific business or property interest.”) (citing *Canyon Cnty.*)).

24 The second requirement, causation, arises from the “by reason of” language of section
25 1964(c). *Aviva USA Corp. v. Vazirani*, No. CV 11-0369-PHX-JAT, 2012 WL 1648419, at *5
26 n.5 (D. Ariz. May 10, 2012) (“[T]he U.S. Supreme Court has interpreted the ‘by reason of’
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1 language in section 1964(c) to imply a causation standing requirement for civil RICO actions.”).
2 A RICO predicate act must be not only the “but for” cause of a plaintiff’s injury, but the
3 proximate cause as well. *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 9 (2010).
4 Importantly, RICO demands “a direct causal connection’ between the predicate offense and the
5 alleged harm, not a connection that is ‘too remote,’ ‘purely contingent,’ or ‘indirec[t]’. [T]he
6 central question [a court] must ask is whether the alleged violation led directly to the plaintiff’s
7 injuries.” *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461 (2006) (internal citations and
8 quotation marks omitted). That the alleged harm was foreseeable is not enough; there must also
9 be a direct relationship between the RICO violation and the alleged harm. *Couch v. Cate*, 379 F.
10 App’x 560, 566 (9th Cir. 2010) (noting that the Supreme Court in *Hemi* “definitively foreclosed
11 RICO liability for consequences that are only foreseeable without some direct relationship.”); *see*
12 *also Hemi*, 559 U.S. at 12. As explained below, plaintiffs have not pled the necessary concrete
13 injury resulting from Judge Dodge’s alleged RICO violations.

14 *a. Plaintiffs Have Not Pled Facts Supporting A Concrete Injury*

15 Plaintiffs generally state that “Plaintiffs were injured in their money and property by
16 reason of RICO Defendants’ violation” and that the violations “proximately injured Plaintiffs.”
17 Dkt. No. 7 ¶¶ 94-95. This bare recitation of the law of RICO is woefully inadequate to plead
18 injury. *See United Brotherhood of Carpenters & Joiners of Am. v. Bldg. & Constr. Trades*
19 *Dep’t*, 911 F. Supp. 2d 1118, 1125 (E.D. Wash. 2012) (“[G]eneralized statements of harm do not
20 suffice. The property injury must flow directly from the substantive racketeering activity.”). For
21 example, while plaintiffs allege that “efforts to defraud Ms. Rabang of her HUD MHOP home
22 remain ongoing” and that Judge Dodge (among others) “continue[s] to aggressively pursue Ms.
23 Rabang in NTC”, there is no allegation that Ms. Rabang has actually lost her home. Dkt. No. 7
24 ¶ 71; *see also id.* ¶¶ 45-46 (same as to Ms. Oshiro). Not only is Judge Dodge’s judicial conduct
25 not actionable in its own right, it does not rise to the level of RICO as there is no concrete
26 financial loss alleged. *Diaz v. Gates*, 420 F.3d 897, 898 (9th Cir. 2005) (“RICO does not provide
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1 a cause of action for all types of injury to property interests, but only for injuries resulting in
2 ‘concrete financial loss.’”). At best, plaintiffs plead only a prospective injury that they may lose
3 their homes, which is insufficient for RICO standing. *Izenberg v. ETS Services, LLC*, 589 F.
4 Supp.2d 1193, 1204-05 (C.D. Cal. 2008) (holding plaintiff could not rely on prospective injuries
5 to establish RICO standing).

6 Plaintiffs are not injured within RICO because they have failed to concretely identify a
7 tangible financial loss. Accordingly, plaintiffs lack standing to bring this RICO claim; *see*
8 *Canyon Cnty., Inc.*, 519 F.3d at 975, and the RICO claims as to Judge Dodge should be
9 dismissed with prejudice.

10 *b. Plaintiffs Have Failed to Allege Causation*

11 Plaintiffs also lack standing and their RICO claim should be dismissed because plaintiffs
12 fail to plead facts demonstrating causation as to Judge Dodge. There is nothing that directly ties
13 Judge Dodge’s alleged predicate acts as Chief Judge to any cognizable injury suffered by
14 plaintiffs. The causation requirement functions as a central limitation on the harsh remedies
15 available under RICO. *See Hemi*, 559 U.S. at 17 (noting that RICO’s “reach is limited by the
16 ‘requirement of a direct causal connection’ between the predicate wrong and the harm.”).

17 A conclusory allegation that an injury occurred as a result of defendants’ racketeering
18 acts will not survive a motion to dismiss. *See Martinelli v. Petland, Inc.*, No. CV-09-529-PHX-
19 DGCI, 2010 WL 376921, at *5 (D. Ariz. Jan. 26, 2010). Rather, RICO requires a direct causal
20 connection between the predicate criminal acts allegedly committed and the plaintiffs’ injury for
21 many reasons, including the reason that “the less direct an injury is, the more difficult it becomes
22 to ascertain the amount of a plaintiff’s damages attributable to the violation, as distinct from
23 other, independent, factors.” *Pillsbury, Madison & Sutro v. Lerner*, 31 F.3d 924, 928 (9th Cir.
24 1994) (internal quotation marks omitted) (citing *Holmes v. Secs. Investor Protection Corp.*, 502
25 U.S. 258, 269 (1992))). Yet, conclusory allegations are all plaintiffs offer.

1 Plaintiffs have alleged a vague injury from an ongoing eviction, but have not alleged any
2 facts showing how that injury was directly and proximately caused by any of the purported
3 predicate acts by Judge Dodge. *See, e.g.*, Dkt. No. 7 ¶¶ 71, 85-92. Rather, plaintiffs simply
4 allege that there was a direct injury. *Id.* ¶¶ 95-96. This allegation is insufficient, as the fact that
5 Judge Dodge may have “caused” an order to issue fails to demonstrate the required direct
6 causation of plaintiffs’ alleged injury. *E.g., id.* ¶¶ 46-46. After all, an eviction order is not self-
7 executing; Judge Dodge’s issuance of an order is one or two steps of causation removed from the
8 act of eviction. *Id.* ¶ 88.

9 Here, the Court should look beyond plaintiffs’ general allegation to focus on the criminal
10 conduct alleged in the complaint. *Hemi*, 559 U.S. at 14. Judge Dodge’s routine judicial conduct
11 does not constitute a crime that directly caused a concrete injury. Dkt. No. 7 ¶ 88. Plaintiffs
12 have not alleged any concrete injury suffered to their business or property, much less that such
13 property injury flowed directly from solely Judge Dodge’s alleged racketeering activity.
14 Plaintiffs lack standing to bring a RICO claim against Judge Dodge.

15 3. *Plaintiffs Have Not Pled (And Cannot Plausibly Plead) Predicate Acts*
16 *Sufficient to Establish a Pattern of Racketeering Activity by Judge Dodge*

17 A civil RICO complaint “must set forth facts alleging that the [] defendants (1)
18 conducted (2) an enterprise (3) through a pattern (4) of racketeering activity.” *Portfolio Invs.,*
19 *LLC*, 2013 WL 1187622 at *4; *see also* 18 U.S.C. § 1962(c). Plaintiffs allege two RICO
20 predicate acts as to Judge Dodge: mail and wire fraud, and money laundering. Dkt. No. 7 ¶¶ 88,
21 92. As explained below, plaintiffs’ allegations completely fail to state a claim as to Judge Dodge
22 because his routine judicial actions do not constitute racketeering activity.
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1 a. *Plaintiffs Fail to Sufficiently Plead Mail and Wire Fraud*

2 Plaintiffs allege that Judge Dodge committed federal criminal mail and wire fraud
3 through four judicial acts. Dkt. No. 7 ¶¶ 88(h) (mailing an “Amended Notice of Hearing”);⁴
4 88(i) (mailing an eviction order), 88(j)(mailing the same eviction order to someone else), and (v)
5 (mailing an “Order Following Show Cause Hearing”). None of these judicial acts constitute mail
6 or wire fraud, and Plaintiffs fail to connect the act of using the mails to an intent to defraud.

7 Claims of wire fraud and mail fraud under 18 U.S.C. §§ 1341 and 1343 require three
8 elements: (i) the formation of a scheme to defraud, (ii) the use of the mails or wires in
9 furtherance of that scheme, and (iii) the specific intent to defraud. *Eclectic Props. E., LLC v.*
10 *Marcus & Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014). “[T]he term ‘scheme to defraud’
11 connotes some degree of planning by the perpetrator, [and] it is essential that the evidence show
12 the defendant entertained an intent to defraud.” *Atlas Pile Driving Co. v. DiCon Fin. Co.*, 886
13 F.2d 986, 991 (8th Cir. 1989) (alterations in original) (quoting *United States v. McNeive*, 536
14 F.2d 1245, 1247 (8th Cir. 1976)). These claims are subject to Rule 9(b)’s heightened pleading
15 requirements. *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 557-58 (9th Cir. 2010).

16 Plaintiffs generally allege a scheme to defraud involving “depriving Plaintiffs of their
17 Tribal membership by means of false or fraudulent pretenses and representations.” Dkt. No. 7
18 ¶ 85. The four alleged mail and wire frauds involving Judge Dodge, however, do not relate to
19 this scheme. Rather, Judge Dodge’s acts of the Court’s mailing an Amended Notice of Hearing,
20 and his issuance of an eviction order, and an order following a show cause hearing all involve

21 _____
22 ⁴ Plaintiffs impermissibly lump together two of the defendants, Judge Dodge and Mr. Armstrong
23 as to the fraud allegation of mailing an Amended Notice of Hearing. Dkt. No. 7 ¶ 88(h). When
24 pleading mail or wire fraud, “[a] plaintiff may not simply lump together multiple defendants
25 without specifying the role of each defendant in the fraud.” *In re Toyota Motor Corp.*, 78 F.
26 Supp. 2d 883, 919 (C.D. Cal. 2011) (citing *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir.
27 2007) (finding plaintiffs had failed to plead predicate acts to RICO claim with requisite
particularity)); *ITI Internet Servs., Inc. v. Solana Capital Partners, Inc.*, No. C05-2010Z, 2006
WL 1789029, at *8 (W.D. Wash., June 27, 2006) (“[A]llegations [of mail or wire fraud] must
define the specific involvement of the individual defendants.”). Failure to identify the specific
action taken and the role each defendant played is fatal.

1 eviction proceedings. *Id.* ¶ 88(h), (i), (j), and (v). There is nothing that ties these judicial acts
2 related to an *eviction* to the alleged scheme to defraud plaintiffs of *Tribal membership*.

3 Moreover, there is no alleged false representation. *See Edwards v. Marin Park, Inc.*, 356
4 F.3d 1058, 1066 (9th Cir. 2004) (affirming dismissal of RICO claim where plaintiff had failed to
5 identify misrepresentation); *Anatian v. Coutts Bank (Switzerland) Ltd.*, 193 F.3d 85 (2d Cir.
6 1999) (affirming dismissal of RICO claim for failure to plead how the statements were
7 fraudulent). Nothing Judge Dodge did is fraudulent on its face nor do the judicial acts
8 demonstrate the requisite intent to defraud. *See, e.g., McLaughlin v. Anderson*, 962 F.2d 187,
9 192 (2d Cir. 1992) (“The mail fraud statute requires some element of deception.”). This is clear
10 from a review of each of the mailings at issue.

11 First, there is nothing about the Amended Notice of Hearing (predicate act ¶ 88(h)) that is
12 fraudulent. In fact, Judge Dodge’s name is nowhere on the notice. Ex. A to Dodge Decl.
13 Second, there is nothing fraudulent about the Writ of Restitution and Order of Eviction
14 (predicate acts ¶¶ 88(i) & (j)). Ex. B to Dodge Decl. And, third, there is nothing about the Order
15 Following Show Cause Hearing (predicate act ¶ 88(v)) that is fraudulent. Ex. C to Dodge Decl.
16 Rather, the two orders resemble any order one would expect to see from a court. They also have
17 absolutely nothing to do with the alleged scheme to defraud Tribal membership.

18 At bottom, plaintiffs simply do not like Judge Dodge’s rulings in these eviction actions.
19 But, something more than the use of the mail and wire services is required to establish fraud,
20 conspiracy or an act under RICO, particularly in light of the fact that the use of mail and wire
21 services by judges is a legal and acceptable means to communicate legal business. The fact that
22 plaintiffs appear to dispute the outcome of the eviction case does not mean that routine judicial
23 communications are acts of conspiracy or fraud. Routine judicial conduct is not a basis for a
24 RICO suit, and the mail and wire fraud is not sufficiently pled.

1 b. *Plaintiffs Fail to Sufficiently Plead Money Laundering*

2 The RICO predicate act of money laundering is also insufficiently pled. Again, plaintiffs
3 offer a bare conclusory allegation – this time in a single paragraph – alleging that all the “RICO
4 Defendants” have engaged in money laundering. Dkt. No. 7 ¶ 92. This completely fails to
5 satisfy Rule 9(b)’s heightened pleading requirement. *In re Toyota Motor Corp.*, 785 F. Supp. 2d
6 883, 918 (C.D. Cal. 2011) (noting that laundering of monetary instruments in violation of
7 18 U.S.C. § 1956 is a predicate act “grounded in fraud” and “[a]ccordingly, the pleading
8 requirements of Rule 9(b) apply to the alleged predicate act[]”); *Stewart v. Wachowski*, No.
9 CV 03-2873 MMM, 2004 WL 2980783, at *4 (C.D. Cal. Sept. 28, 2004) (“Most courts have
10 held that allegations of money laundering must also satisfy Rule 9(b)’s requirements, since
11 money laundering involves an element of fraud.”).

12 A money laundering claim must allege that the defendant: “(1) engaged in a financial
13 transaction which involved proceeds from specified illegal activity [as set forth in section
14 18 U.S.C. § 1961(a)], (2) knew the proceeds were from illegal activity, and (3) intended the
15 transaction either to promote the illegal activity or to conceal the nature, source, or ownership of
16 the illegal proceeds.” *United States v. Marbella*, 73 F.3d 1508, 1514 (9th Cir. 1996). None are
17 present. There is no allegation anywhere of any financial transaction involving Judge Dodge.
18 All Judge Dodge did, and is accused of doing, was hold Court and issue rulings. Not only is
19 there no financial transaction alleged, plaintiffs have failed to plead with particularity “the
20 specific unlawful activity from which the monies were allegedly produced, the actions of each
21 defendant in the money laundering scheme, or the specific intent of each defendant.” *Lagos v.*
22 *Monster Painting, Inc.*, No. 2:11-CV-00331-LRH-GWF, 2011 WL 6887116, at *5 (D. Nev.
23 Dec. 29, 2011) (finding that plaintiffs failed to plead money laundering scheme with particularity
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1 and dismissing RICO claim). There are simply no facts supporting the existence of any money
2 laundering claim.⁵

3 For all the forgoing reasons, plaintiffs’ RICO claim as to Judge Dodge should be
4 dismissed with prejudice. *Albrecht v. Lund*, 845 F.2d 193, 195 (9th Cir. 1988) (holding that if
5 “the allegation of other facts consistent with the challenged pleading could not possibly cure the
6 deficiency, then . . . dismissal without leave to amend is proper.”) (internal quotation, citation
7 omitted). Plaintiffs have already amended their complaint once, and they still cannot state a
8 claim as to Judge Dodge. Plaintiffs’ harms, if any, arise out of actions separate and distinct from
9 the alleged RICO predicate acts of Judge Dodge. Allowing further amendment of these claims
10 would be futile.

11 **CONCLUSION**

12 For the foregoing reasons, Judge Dodge respectfully requests that this case be dismissed
13 with prejudice.

14 DATED this 27th day of February, 2017.

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26 ⁵ As a result, plaintiffs’ RICO Section 1962(c) claim also fails. Dkt. No. 7 ¶¶ 117-133; *Howard v.*
27 *Am. Online Inc.*, 208 F.3d 741, 751 (9th Cir. 2000) (“[T]he failure to allege substantive
violations [of RICO] precludes their claim that there was a conspiracy to violate RICO.”).

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CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2017, I electronically filed the foregoing **DEFENDANT CHIEF JUDGE RAYMOND DODGE’S MOTION TO DISMISS AND MEMORANDUM IN SUPPORT THEREOF** 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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DATED this 27th day of February, 2017.

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