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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WALTER ROSALES, et al., Plaintiffs, vs. AMY DUTSCHKE, et al., Defendants.	Case No. 2:15-cv-01145-KJM **TRIBALLY-RELATED DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS THIRD AMENDED COMPLAINT** Date: September 9, 2016 Time: 10:00 a.m. Judge: Hon. Kimberly J. Mueller

I. INTRODUCTION

The Third Amended Complaint ("TAC") must be dismissed because the Tribe is a required party but cannot be joined, plaintiffs fail to meet pleading standards or state a claim, and Mr. Meza has not been served.

II. DISCUSSION

A. Plaintiffs Effectively Concede that the Tribe is a Required Party that Cannot be Joined

The TAC explicitly argues that the Jamul Indian Village is not a federally recognized tribe and that its lands are not Indian lands. TAC ¶ 12. Plaintiffs' entire case depends on these claims, as explained extensively in the Motion, ECF 62-1 pp. 2-5. Yet plaintiffs and their attorney know, because several courts have so told them repeatedly, that they cannot raise these arguments unless the Tribe is a party to their lawsuit. The Tribe is immune from suit, however, and cannot be joined. *See* 81 Fed. Reg. 5019, 5021 ("[t]he listed Indian entities are acknowledged to have the immunities and privileges available to federally recognized Indian tribes..."). *See* Motion to Dismiss, ECF 62-1 at 2:3-6:6. Plaintiffs' Opposition does not contest the Tribe's indispensability nor does it argue against dismissal on this ground. In fact, though they had ample opportunity to do so, plaintiffs' Opposition ignored the issue, leaving unchallenged the argument that dismissal is warranted because the Tribe is a required party that cannot be joined.

B. Plaintiffs Fail to Meet Pleading Standards or State a Claim

The Motion argues that plaintiffs fail to meet pleading standards or state a claim. *See* ECF 62-1 pp. 9-19. In response, plaintiffs rely on their prior inadmissible declarations, ECF 40-1 & 40-2, to which Tribally-Related Defendants strenuously object in ECF 44, in an attempt to supplement the Complaint. But the TAC cannot be fixed by declaration when it fails to state a claim. Further, plaintiffs' declarations are unhelpful to them and, in any case, should be stricken.[1]

1. The Complaint Fails to Meet the Pleading Standards of Rule 8

Plaintiffs try to correct the TAC's unintelligibility by (a) referencing allegations made in their initial Complaint, ECF 1, which this Court dismissed for failure to meet pleading standards, and (b) asserting

[1] To the extent this Court elects to consider plaintiffs' declarations, ECF 41-1 and 41-2, which the Opposition references repeatedly, the Court should first rule on the pending objections to those declarations found at ECF 44. The declarations were drafted in complete disregard for the rules of evidence and consist almost entirely of legal argumentation and opinion testimony, and lack personal knowledge and foundation. *See* ECF 44.

new allegations in their Opposition. Both attempts fail. Plaintiffs first assert that their initial (now dismissed) Complaint listed "more than 46 separate actions" that are "summarized" in the TAC. Opp'n at 1:10-13. But plaintiffs cannot rely on the dismissed complaint to remedy the TAC's failures. Their attempt to do so is predestined to fail because the Court dismissed the first complaint for failure to meet pleading standards.

Plaintiffs next reference various new alleged facts not mentioned in the TAC to try to provide specificity and clarity to the TAC's allegations. Opp'n at 1:18-2:16. In so doing they again rely on their defective, dismissed first Complaint and on their self-serving, inadmissible declarations, which they neglected to reference or incorporate into their TAC. Opp'n at 2:16-27. Plaintiffs cannot remedy the TAC's deficiencies by re-stating their allegations, and making new ones, in an Opposition.

2. The Complaint Does Not Link the Tribally-Related Defendants to Any Specific Wrong that Would Entitle Plaintiffs to Redress

The TAC fails to ascribe any particular action to any particular defendant or to "link [the defendants] with [any] wrong" that would "entitle the plaintiff[s] to redress." *Sutton v. Eastern Viavi Co.,* 138 F. 2d 959, 960 (7th Cir. 1943). The TAC also does not specify any action that the individual Tribal defendants could have taken in an individual capacity. The Opposition's uncorroborated (and misleading) allegation that Defendant Meza's declaration filed in a different case links him to the issues raised in the Complaint, Opp'n at 1:18-2:15, does not remedy the TAC's insufficiency. Notwithstanding any declaration Mr. Meza may have filed elsewhere, the TAC remains vague, redundant, confusing and essentially unintelligible. Further, it does not allege that any defendant ever found any human remains, nor does it "contain a short and plain statement" of what each of the defendants is accused of doing. Fed. R. Civ. P. 8.

Plaintiffs now assert that the TAC includes a "summary" of actions that each of the Tribally-Related Defendants allegedly committed. Opp'n at 1:11. But pages 8-10 of the TAC contain only a mixture of legal conclusions and vague general allegations; they do not explain how any of the defendants are specifically connected to the actions alleged. Plaintiffs cite the Meza declaration at Opp'n 1:18-2:15 as though it supports their argument and fixes their complaint. It does not. That declaration explicitly states that to Meza's knowledge *no Toggery or Rosales family remains were ever scattered at the site of the Tribe's construction*, and, more importantly, that in his close monitoring of the excavation *no remains*

were ever found. ECF 32 at 28 note 5. Meza's declaration undermines plaintiffs' position and, in any case, does not ameliorate the Complaint's failure to state a claim.

3. Plaintiffs Concede that the Complaint Fails to State a Claim under the U.S. and California Constitutions and under AIRFA, RFRA, RLUIPA and CEQA

The Motion asserts that the Complaint fails to state a claim under the U.S. and California Constitutions and under AIRFA, RFRA, RLUIPA and CEQA. *See* ECF 62-1 at 11:16-27, 13:22-15:1 and 15:2-24. The Opposition does not dispute this. In fact, it expressly concedes CEQA does not apply on Tribal lands. Opp'n at 11:26. Accordingly, plaintiffs concede they fail to state a claim under the U.S. and California Constitutions and AIRFA, RFRA, RLUIPA and CEQA.

4. Plaintiffs Fail to State A Claim under NAGPRA

The Opposition asserts the same NAGPRA-based arguments previously made in the TAC and string cites various cases to show that NAGPRA provides a private right of action. Opp'n at 3:17-4:22. But NAGPRA's private right of action is not in dispute. What *is* in dispute is plaintiffs' defective argument that NAGPRA applies even when, as here, no identifiable remains exist. Plaintiffs provide no support for their theory. Further, NAGPRA does not authorize an award for monetary damages. *Castro Romero v. Becken,* 56 F.3d 349 (5th Cir. 2001).

Plaintiffs cite several *Yankton Sioux Tribe* cases in arguing that NAGPRA applies here. Opp'n page 5:25-28. These cases are unhelpful to plaintiffs. In each of them readily-observed skeletal remains were discovered while defendants conducted activities such as reduction of water levels in a dam and construction. The courts held that the readily-identifiable skeletal remains were "inadvertently discovered" under 43 C.F.R. § 10.2(g)(4), (even though, in the 2002 case, the entity performing construction had previous notice that burial sites existed in the area), and that, in light of the actual (though inadvertent) discovery of items that were identifiable as remains, NAGPRA's provisions relating to inadvertent discovery of remains applied. *See Yankton Sioux Tribe v. U.S. Army Corps of Engineers,* 83 F. Supp. 2d 1047 (D.S.D. 2000); *Yankton,* 209 F. Supp. 2d 1008 (D.S.D. 2002); *Yankton,* 258 F. Supp. 2d 1027 (D.S.D. 2003). The important factor in the *Yankton Sioux* cases was the *actual discovery* of remains. That discovery triggered the statute's application. Unlike those cases, however, no remains were ever found here. Pinto Dec. ¶ 27; Meza Dec. filed as an exhibit in related case *JAC v. Chaudhuri,*

No. 2:13-cv-01920, ECF 83-2 Ex. A., p. 5 ¶¶ 12-20 ("Meza Dec."). The TAC does not allege otherwise. In fact, it fails to make any allegation at all as to the nature or existence of purported remains. Instead, it implies that ashes were scattered years ago and that plaintiffs had so notified some of the defendants, *but it does not allege that defendants found any items actually identifiable as human remains*. The fact that plaintiffs may have notified defendants in advance that ashes *may* be present is immaterial. *Yankton Sioux*, 209 F. Supp. 2d at 1019; *Rosales v. U.S.*, 2007 WL 4233060 at *9.[2] The TAC thus fails to state a NAGPRA claim.

The Opposition falsely and misleadingly alleges, at 4:25-5:6 and 7:11-7:13, that defendants have "confessed" to the actual discovery and identification and removal of both skeletal and cremated remains. This allegation is irrelevant since the TAC itself fails to make any allegation as to the existence of purported remains. Moreover, the allegation is ***patently false***. None of the defendants have ***ever*** said any such thing. To the contrary, defendants have declared under oath that they ***never*** discovered any human remains. *See* Pinto Dec. ECF ¶ 17; *see also* Meza Dec. ¶¶ 15-20. In making its demonstrably false statement the Opposition references all of the paragraphs in Rosales and Toggery's inadmissible declarations, ECF 41-1 and 41-2, which as stated above should be stricken. Yet even these declarations, with all of their inappropriate and unsubstantiated content, ***do not make the allegations attributed to them in the Opposition***. Plaintiffs and their attorney know, because they have been told, their statements in the present opposition are false. ECF 43 at 17:19-18:5. Inclusion of such fraudulent statements in the Opposition further evidences plaintiffs' patent disregard for the truth.

In short, most of the Opposition's rhetoric with regard to NAGPRA merely repeats the Complaint's arguments but does not refute the fact that the TAC fails to state a NAGPRA claim. It also does not overcome the fact that plaintiffs are estopped from re-litigating their NAGPRA and other statutory claims, all of which these plaintiffs raised and lost in previous suits, under California's "primary rights" doctrine. *South Sutter LLC v. LJ Sutter Partners, LP,* 123 Cal. Rptr. 3d 301, 322 (2011).

[2] *San Carlos Apache Tribe v. U.S.,* 272 F. Supp. 2d 860 (D. Ariz. 2003), cited at Opp'n 4:20-2, 5:28, defeats plaintiffs' arguments. That court held that where, as here, the primary activity at issue is undertaken for purposes like construction and not with the intent to remove archaeological items, NAGPRA is not triggered unless human remains are actually discovered. The plaintiffs failed to show that remains had actually been discovered, and accordingly the court held they failed to establish a claim under NAGPRA. *Id.* at 894. The same outcome is warranted here.

4. Plaintiffs Fail to State a Claim under the California Health and Safety, Public Resources and Penal Codes

The Motion sets out numerous reasons why plaintiffs fail to state a claim under the California Health and Safety, Public Resources, and Penal Codes. *See* ECF 62-1 at pp. 15:2-18:19. Plaintiffs address only one of these arguments in detail, thereby effectively conceding the rest.

Plaintiffs acknowledge that under longstanding Supreme Court case law, state civil regulatory law does not apply to Indian tribes on their federal Indian trust land in California. *See, e.g., Cabazon,* 480 U.S. at 208; *Bryan v. Itasca County,* 426 U.S. at 390; 28 U.S.C. § 1360(b). Attempting an end run around this bar, plaintiffs argue that some of the California Health and Safety Code and Public Resources Code provisions they cite are not civil/regulatory in nature, but rather criminal in nature, since they include criminal sanctions. Opp'n at 7:23-8:10. Plaintiffs also imply that the California regulatory statutes apply because plaintiffs' ancestors' alleged "remains" are allegedly now located on State lands. Opp'n at 7:15-16, 11:27-28. Both claims are wrong.

Plaintiffs misrepresent the regulatory/prohibitory distinction. Public Law 280 grants states "jurisdiction over offenses" and provides that state "criminal laws" have the same force and effect in Indian country as they do elsewhere in the State. 18 U.S.C. § 1162. Judicial interpretations have narrowed this jurisdictional grant. In *Cabazon* the Supreme Court distinguished between state laws that are "prohibitory" and those that are "regulatory," holding that the latter are not included in PL 280's authorization of state jurisdiction. *Cabazon,* 480 U.S. at 210. If a law is fundamentally regulatory in nature, it may not be applied in Indian country even if it contains criminal penalties. *Id.* at 211. The Court explained that "if the intent of a state law is generally to prohibit certain conduct," it falls within PL 280's grant of state jurisdiction, but "if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory" and thus falls outside PL 280's grant of state jurisdiction. *Id.* at 209. In *Cabazon* the Supreme Court undertook this inquiry in regard to California's attempt to ban high-stakes bingo and certain card games in Indian country, and concluded that the State did not entirely ban such activity; it simply regulated it. *Id*. at 211. Accordingly, California could not prohibit the games in issue, operated by the tribes in Indian country. *See also Confederated Tribes of the Colville Reservation v. Washington,* 938 F.2d 146, 149 (9th Cir. 1991).

The conduct at issue in the statutory provisions plaintiffs cite is – like the gaming activity at issue in

Cabazon – regulatory in nature. Each and every one of the provisions of the Health & Safety and Public Resources Codes plaintiffs cite aims at *regulating* the handling of cemeteries and human remains. None of these provisions intends to prohibit, as a matter of California public policy, all such handling. *See, e.g.,* H.S.C. §§ 7050.5(a) (expressly stating who may and who may not handle remains and the circumstances for doing so), 7052 (same), 7054 (same); P.R.C. §§ 5097.5 (same), 5097.98 (same). In other words, handling remains is legal in California, subject to civil regulation. Accordingly, under *Cabazon*, these provisions are regulatory in nature and do not apply (and may not be enforced) on Indian lands. The fact that some of these provisions may contain criminal penalties for violations is immaterial. "[T]hat an otherwise regulatory law is enforceable by criminal as well as civil means does not necessarily convert it into a criminal law within the meaning of Pub.L. 280." *Cabazon*, 480 U.S. at 211. *See also Confederated Tribes of the Colville Reservation,* 938 F.2d at 149.

Plaintiffs' citation to 25 CFR 1.4(b) and 30 F.R. 8722, Opp'n 7:26-28 is irrelevant. As explained in an opinion of the DOI Office of the Solicitor discussing these sources:

> "both the language of Public Law 280 and its legislative history make quite clear that it was not intended to invest the states with jurisdiction over trust property. This Department consistently has held that the statute furnishes no basis for the application of state or local zoning, construction, or other land use laws, regulations, or standards to trust property. Authority with respect to such property is reposed exclusively in the Federal and tribal governments. See 25 CFR 1.4 and 30 F.R. 8722 (No. 131, July 9, 1965)."

DOI Office of Solicitor, 78 Interior Dec. 27 (DOI), 1971 WL 18465. State regulatory law does not apply.

As for plaintiffs' implication that California regulatory law applies because their ancestors' alleged ashes are now allegedly CalTrans property, under CalTrans jurisdiction, and present on State lands, the argument is misplaced and, in any case, fails to state a claim. CalTrans is not a defendant here and the people and entities who are defendants have no jurisdiction over CalTrans land or property. Moreover, plaintiffs already brought -- and lost -- these claims against CalTrans. *See Rosales v. CalTrans*, 2016 WL 124647 (2016). Further, the TAC makes no allegations as to actions taken on State land. In fact, it expressly alleges that the actions it details were taken on the Tribe's federal Indian trust land. As explained above, however, state regulatory law does not apply on Indian lands. The Opposition's argument that state law applies because the remains are now CalTrans property is irrelevant, lacks coherence and support, and is precluded by prior litigation. *Id*.

As to Penal Code §§ 457, 487 and 622.5, plaintiffs do not even attempt to defend their applicability,

nor can they do so. Plaintiffs fail to allege any of the facts necessary under these provisions. For this reason, and others described in the Motion at ECF 62-1 at 18:20-19:1, plaintiffs fail to state a claim.

As to the Health and Safety Code, plaintiffs merely repeat their allegations that the statute applies. But plaintiffs fail to address the Motion's specific arguments at ECF 62-1 pp. 15:25-17:8 that no right of action exists under the statute's own terms. Those arguments also demonstrate that none of the individual provisions plaintiffs cite apply under the present circumstances. *Id.*

Plaintiff's only new argument as to the Health and Safety and Public Resources Codes is that the codes apply because – the Opposition now misleadingly asserts – plaintiffs have alleged facts, which "must be presumed to be true on a motion to dismiss," that "cremated and skeletal human remains" were actually identified and removed. Opp'n 7:9-13. But the TAC fails to allege the existence of any remains, or that remains were in fact identified, nor are skeletal remains mentioned in either of the inadmissible Rosales or Toggery declarations. And, in any case, neither the Opposition nor the TAC actually alleges that the *defendants* ever identified or discovered any identifiable remains. Absent such an allegation in the TAC, the provisions plaintiffs cite do not and cannot apply and the TAC fails to state a claim.

Plaintiffs ignore many of defendants' arguments that the Public Resources Code does not apply, thereby conceding their validity. *See* Motion, ECF 62-1 at 15:25-18:6. Plaintiffs do, however, address the argument that the PRC does not confer any private right of action. Relying on two cases, one of which is completely irrelevant,[3] plaintiffs assert that no private right of action is necessary for them to be able to rely on the P.R.C. Opp'n at 9:1-5. Citing *Quechan Ind. Tr. v. United States,* 535 F. Supp. 2d 1072, 1106 (S.D. Cal. 2008), they argue that they may sue under statutes such as the PRC as "next of kin" even if such statutes do not provide them with a private right of action and even if they, rather than the Attorney General, file suit. Opp'n at 9:4-6, 13:15-22. But *Quechan* involved the particular – and distinguishable – circumstance of a lawsuit filed against the federal government under the Federal Tort Claims Act. *Quechan* held that for purposes of suits filed under that Act, plaintiffs suing the United States could sue under the FTCA (not under general tort law) and, in so doing, could rely on duties imposed in statutes such as the PRC even if those statues do not include private rights of action. *Id.* at 1104-1106. But

[3] Plaintiffs' citation to *Palmquist v. Standard Acc. Ins. Co.*, 3 F. Supp. 358 (S.D. Cal. 1933) is misleading. Opp'n at 9:6-8. Plaintiffs state the case finds a "private right of action for per se negligence in violation of California law, including PRC 5097.9..." *Id*. But *Palmquis*t does not deal with the Public Resources Code or hold that a private right of action exists under it. Plaintiffs' citation and description are flatly misleading.

plaintiffs' action here is not an FTCA action against the federal government. *Quechan* -- which establishes a right of action under the FTCA, not under the PRC -- is wholly irrelevant.

5. Plaintiffs Lack Article III Standing

Responding to the Motion's argument that plaintiffs lack Article III standing, ECF 62-1 at 19:23-20:14, plaintiffs argue that, as next of kin to individuals whose human remains were allegedly disturbed, they are within the "class of individuals to be protected" by statutes such as NAGPRA and H.R.C., and therefore have standing. Opp'n at 10:15-14:3. Plaintiffs also argue that they have something they call "common law standing," which concept they fail to explain but which appears to mean nothing more than that they believe they have prudential standing. Opp'n at 14:4-15:8. Plaintiffs cite various cases they think support their arguments.

Once again, however, plaintiffs miss the point. Plaintiffs' arguments address *prudential* standing. *See Lexmark Int'l Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1386 (2014). But the Motion did not challenge plaintiffs' prudential standing; it challenged Article III standing.

In order to establish Article III standing plaintiffs must allege an injury "likely to be redressed by a favorable judicial decision." *Id*. The order plaintiffs seek here, enjoining the defendants from taking action on the Tribe's federal Indian trust lands (TAC at 16:23-25) and/or taking action with regard to CalTrans lands and property (where plaintiffs allege their ancestors' ashes are currently located) (TAC at 17:1-13) would not redress plaintiffs' alleged injuries because the Tribe's authority to perform construction and related activities on its lands would remain intact, as would CalTrans's authority to take action with regard to its property and lands. The Tribe – which is not a defendant here – could proceed with such activity regardless of any order the Court might issue to Tribally-Related Defendants. The same is true for CalTrans. Nor can the Tribally-Related Defendants "repatriate" any alleged remains on the Tribe's Reservation – as plaintiffs now ask them to do at Opp'n 14:19; only the Tribe may do that. Moreover, remains would first have to have been found, identified and moved in order to be repatriated. That has not happened here, as explained above and in the moving papers. Accordingly, plaintiffs' injury is unlikely to be redressed and they therefore lack Article III standing.

C. Tribal Officials Are Immune From Suits Relating to Actions Taken In their Official Capacity and Authority

Plaintiffs allege the individual defendants "fail to deny ... that they violated state and federal law in

excess of their official authority, and therefore have no sovereign immunity." Opp'n at 16:7-8. This is patently untrue. The defendants argued the matter extensively. *See* Motion at ECF 7:1-9:5.

Plaintiffs erroneously assert that if a Tribal government official takes action that turns out to have violated an applicable statute then, by definition, that action cannot have been taken by the official in his or her official capacity. They claim that because the actions at issue here allegedly violated federal and/or state laws, the Tribal officials cannot, by definition, have taken them within their official capacities. The officials, plaintiffs argue, are thus not immune from suit with regard to such actions. Opp'n at 35:21- 36; 31: 4-8. Plaintiffs' argument is wrong and has been explicitly rejected by the courts. *See, e.g, Larson v. Domestic & Foreign Commerce Corp.,* 337 U.S. 682, 693-695 (1949).

An inquiry into tribal official sovereign immunity does not begin, as plaintiffs suggest, with a determination of whether the official's action was lawful. Rather, it begins with an inquiry into the *capacity* in which the official took the action. When a tribal official acts within her official authority that official is immune from suit relating to such action *even if the action turns out to have been unlawful*. *See, e.g., Larson*, 337 U.S. at 695; *Linneen v. Gila River Indian Community,* 276 F.3d 489, 492 (9th Cir. 2002); *Boiseclair v. Superior Court,* 51 Cal. 3d 1140, 1157 (1990).

Here, the Tribal official defendants are under attack for actions relating to construction of the tribe's federally-authorized gaming facility. The Tribal officials could not have taken these actions in their personal capacities because the actions are actions of the Tribe. When the Tribal official Defendants took these actions they were acting in their representative capacities and within their authority as officers of the Tribe. The statutes that authorized these actions, discussed extensively in the Motion at ECF 62-1 pp. 7:27-8:28, expressly permitted the Tribe's Officials to take them. When, as here, tribal officials act within their official capacity and authority, they are immune from suit relating to such actions. *Miller v. Wright,* 705 F. 3d 919, 927-28 (9th Cir. 2012); *Cook v. AVI Casino Ent., Inc.,* 548 F. 3d 718, 727 (9th Cir. 2008).

Plaintiffs' citation to *Ex Parte Young,* 209 U.S. 123 (1908) and its progeny is misplaced. Opp'n 16:12-28. The narrow exception to immunity established in *Young* does not apply where, as here, plaintiffs request monetary relief and where the injunctive relief sought actually runs against the tribal government and not just the government official. *Rounds v. Or. State Bd. Of Higher Ed.,* 166 F.3d 1032, 1036 (9th Cir. 1999); *Shermoen v. U.S.,* 982 F.2d 1312, 1320 (9th Cir. 1992). Suits that are actually against

the government, not just a government official, are not permitted under *Ex Parte Young.* "[A] suit is against the sovereign if judgment would ... interfere with the public administration, or if the effect of the judgment would be to restrain the Government from acting, or to compel it to act." *Shermoen*, 982 F.2d at 1320. In other words, "if the relief sought will operate against the sovereign, the suit is barred." *Dawavendewa v. Salt River Project,* 276 F.3d 1150, 1160 (9th Cir. 2002). Here, plaintiffs' requested relief, including the determinations the TAC would require the Court to make about the Tribe's status and the status of Tribal lands, TAC ¶ 12, would run against the Tribe, "restrain the [Tribal] Government from acting" with respect to its sovereign interests and Indian lands and "interfere with the [Tribe's] public administration" of its Indian lands and the laws related thereto. *Shermoen,* 982 F.2d at 1320. Tribal governmental authority is contingent on a Tribe's being federally-recognized, and is inextricably intertwined with and dependent on the Tribe having federal Indian lands over which the Tribe exercises governmental authority. Here, because "the relief sought will operate against the sovereign, the suit is barred." *Dawavendewa,* 276 F.3d at 1160.

D. Plaintiffs Fail to State a Claim for Conversion

The Opposition discusses conversion extensively, Opp'n 17:8-19:13, but fails to identify, or even allege the existence of, any *specific* property, with *reasonable accuracy*, that could have been the subject of conversion, as required under applicable law. *See* Motion at ECF 62-1 p. 19:2-22. The claim fails.

E. Plaintiffs Failed to Serve Kenny Meza Despite this Court's Order that They Do So

This Court granted plaintiffs a "short extension" and explicitly ordered that "[s]ervice on Kenny Meza ... and [individual federal defendants] in their personal capacities ... shall be completed within seven days of the date any amended complaint is filed, if those persons are again named as defendants." ECF 49 p.6:6, 6:18-20. Plaintiffs brazenly ignored the Court's order and again neglected to serve, or even try to serve, Mr. Meza (though they did try to serve the individual federal defendants as ordered). Mr. Meza has not been served. The Complaint against him should be dismissed with prejudice.

IV. CONCLUSION

For all of these reasons, Tribally-Related Defendants respectfully request that the Court grant their motion to dismiss with prejudice.

Dated: September 2, 2016

Law Office of Frank Lawrence

By: /s/

Frank Lawrence

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