

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**DANIEL S. PENNACHIETTI,**

Plaintiff,

v.,

**CRAIG MANSFIELD,**

Defendant.

No. 17-02582-GJP

**Order**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2017, it is ordered that defendant's motion to dismiss complaint is DENIED. Defendant is ordered to file an answer to the complaint in 14 days.

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GERALD J. PAPPERT, J.

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL S. PENNACHIETTI,

Plaintiff,

v.,

CRAIG MANSFIELD,

Defendant.

No. 17-02582-GJP

**Plaintiff Requests An  
Opportunity for  
Oral Argument**

**Daniel S. Pennachietti's Response in  
Opposition to Motion to Dismiss Complaint**

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## Introduction

The United States Supreme Court's new decision in *Lewis v. Clarke*, 137 S. Ct. 1285 (2017), establishes that individuals are not protected by tribal immunity from personal liability arising in the course of tribal employment. Mr. Mansfield ignores the issue, but *Lewis* changed the law. *Lewis* overruled all of the decisions that had protected tribal employees acting within the scope of their employment, including the decisions this court relied upon in the *Bynon* case. The court in *Lewis* accepted the arguments previously advanced by Ms. Bynon, while rejecting the arguments previously advanced by Mr. Mansfield. Ms. Bynon had argued that Mansfield was the real party in interest because her complaint sought a monetary judgment solely against him, and the Supreme Court has now accepted that position as law.

Mr. Pennachietti's complaint seeks a monetary judgment exclusively against Mr. Mansfield. The primary basis for seeking personal liability against Mr. Mansfield is under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c). RICO imposes personal liability on individuals who operate or conspire to operate an enterprise that collects unlawful debt. *Id.* Mr. Mansfield operated Sovereign Lending Solutions, LLC ("SLS"), as co-manager through the collection of unlawful debt, and conspired with others to collect unlawful debt through several corporate entities who serviced or received assignment of loans originated by SLS. Under these circumstances, where liability is sought only against Mr. Mansfield, tribal immunity is not implicated.

With respect to due process, it is fair for Mr. Mansfield to face justice in Pennsylvania. Mr. Mansfield admits that he was in charge of day-to-day operations of SLS during a period in which SLS recorded 371 liens on vehicles with the Pennsylvania Department of Transportation. Exhibit P-2 ¶¶ 6-7; Exhibit P-6 at 3. Under Mr. Mansfield's supervision, SLS had continuous and systematic contacts with the Commonwealth by engaging in asset based lending with hundreds of Pennsylvania borrowers, including Mr. Pennachietti. These are more than sufficient contacts to support personal jurisdiction.

For these reasons, as explained more fully below, Mr. Mansfield's motion to dismiss should be denied.

### **Background**

The plaintiff is Daniel S. Pennachietti, a citizen of Pennsylvania residing at 4516 E. Stiles St., Philadelphia, PA 18134. Craig Mansfield is an individual believed to be a citizen of Wisconsin residing at 6350 Timber Trail Lane, Land O' Lakes, Wisconsin 54540. Mr. Mansfield is named as a defendant in his individual capacity meaning that the complaint seeks a judgment personally against him, and no one else. Mr. Mansfield is a member of the Lac Vieux Desert Band of Lake Superior Chippewa Indians ("LVD"). LVD incorporated SLS to make auto title loans. From 2011 through 2014, Mr. Mansfield was a co-manager of SLS. Exhibit 2 ¶¶ 6 & 7.

Mr. Mansfield was a conspirator with others including William McKibbin, III, Kevin Cronin, and Mark Edward Weiner. Complaint ¶ 9.<sup>1</sup> Together

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<sup>1</sup> A word processing error caused the complaint to begin on paragraph number seven. Paragraphs 1 to 6 are not missing; the paragraphs are just misnumbered. Exhibits P-1 to 5 were

with these individuals, Mr. Mansfield made or participate in making auto title loans on-line to consumers across the United States including the Commonwealth of Pennsylvania. (The whereabouts of McKibbin, Cronin, and Weiner are unknown.) *Id.* Mr. Mansfield together with his co-conspirators operated or participated in the operation of several companies, including but not limited to SLS, Auto Loans, LLC, Car Loans, LLC, Liquidation, LLC, Loan Servicing Solutions, LLC, Management Solutions, LLC, and RS Financial Management, LLC, among others. All of these companies functioned as corporate vehicles through which Mr. Mansfield and his co-conspirators operated a single on-going usurious lending scheme. *Id.* ¶ 10. These companies are referred to collectively as “the Lending Enterprise.” The Lending Enterprise has become a known entity, and its activities have come to be documented in several court proceedings and news reports. Exhibit P-9.

The Lending Enterprise made many of its loans through a website operated under the trade name Title Loan America. *Id.* ¶ 11. Screen shots of that website are attached to the complaint as Exhibit P-1. The website in the screen shots states that the lender is SLS. Mr. Mansfield was formally employed as co-manager of SLS. *Id.* ¶ 12. In that capacity, Mr. Mansfield admits to overseeing day-to-day operations of the company. Exhibit P-2 at 2 ¶ 7. Those day-to-day activities included making, servicing, collecting, and assigning loans between the various corporate entities that comprised the Lending Enterprise. Complaint ¶ 12.

On or about June 24, 2015, the Lending Enterprise was ordered to cease lending to citizens of Pennsylvania by the Pennsylvania Department of

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filed with the complaint. Exhibits P-6 to 9 are being filed with this response.

Banking. Complaint ¶ 14; Exhibit P-3. The Lending Enterprise was ordered to repay usurious interest to Pennsylvania borrowers, but never did. Complaint ¶ 14. The Lending Enterprise has never repaid usurious interest to Mr. Pennachietti. *Id.* ¶ 14. Among the allegations leveled by the Department of Banking was that borrowers often never saw their alleged loan agreements. Exhibit P-3. Whether or not borrowers were shown loan agreements, there is no dispute that loans were made and that borrowers repaid enormous sums under threat of their vehicles being repossessed. Exhibit P-3 & P-9.

In 2013, Mr. Pennachietti was the owner of a 2008 Ford Expedition Limited 4 Door Sports Utility vehicle (the “Vehicle”). Complaint ¶15. The Vehicle was titled, registered and kept in Pennsylvania. *Id.* ¶ 16. Mr. Pennachietti used the Vehicle for personal transportation for himself and his family. *Id.* ¶ 17. Mr. Pennachietti is prepared to testify that during or about the month of July 2013, he applied for a loan from the lending Enterprise through the Title Loan America website which he can identify from Exhibit P-1. *Id.* ¶ 18. On or about July 9, 2013, the Lending Enterprise gave Mr. Pennachietti a loan for \$5,050, for personal, family, and household purposes. *Id.* ¶ 19; Exhibit P-4. Mr. Pennachietti took out the loan over the internet from his computer in Philadelphia, Pennsylvania. Complaint ¶ 20. The loan was supposedly memorialized by a written contract, but the Lending Enterprise did not provide Mr. Pennachietti with a copy, and Mr. Pennachietti does not recall seeing or accepting any particular set of terms and conditions when he took out the loan. *Id.* ¶ 21. Attached to the complaint as Exhibit P-5 is a sample loan agreement the Lending Enterprise produced for

another borrower showing an interest rate of 247.65% A.P.R. Exhibit P-5. The sample loan agreement purports to have been accepted on behalf of the Lending Enterprise by Mr. Mansfield. Exhibit P- 5 at 4.

Similar to the loan in Exhibit P-5, the Lending Enterprise scheduled Mr. Pennachietti to repay his loan in a series of 11 payments of interest followed by a 12th and final balloon payment of principal and interest. Complaint ¶ 24. Over the course of the next year, Mr. Pennachietti made payments to the Lending Enterprise totaling \$6,301.68. Exhibit P-4 at 1 & 2. Mr. Pennachietti was late making the final balloon payment and at that point the Lending Enterprise repossessed Mr. Pennachietti's vehicle. Complaint ¶ 26.

The Lending Enterprise demanded payment of \$7,000 for the return of the vehicle. Exhibit P-4 at 4. Mr. Pennachietti made the payments in installments of \$4,000 in August, 2014, and \$3,015 in October 2014. Exhibit P-4 at 4-7. In total, Mr. Pennachietti paid over \$13,000 on a \$5,000 loan in 14 months and had his vehicle repossessed. Complaint ¶ 28. The legal interest rate an unlicensed lender may charge in Pennsylvania is 6% per annum. 41 P.S. § 201. The \$13,000 Mr. Pennacheitti paid the Lending Enterprise represents an annual interest rate in excess of 100%. In addition to paying money for the return of his vehicle, the Lending Enterprise asked Mr. Pennachietti to sign a release. Exhibit P-4 at 4. The release specifically identifies SLS as one of the released parties. *Id.*

Mr. Mansfield managed SLS and in that capacity directed SLS to make secured loans to citizens of Pennsylvania at rates of interest many times in excess of Pennsylvania's usury law. Exhibit P-2 ¶¶ 6-7. As a result of the Pennsylvania



Supreme Court's decision in *Cash America Net v. Commonwealth of Pennsylvania*, 607 Pa. 432, 8 A.3d 282, 295 (2010), Mr. Mansfield was on notice that making high interest loans on-line to Pennsylvania borrowers violated the Commonwealth's usury laws, but Mr. Mansfield and his co-conspirators directed the Lending Enterprise to make and collect such loans. Complaint ¶ 30.

Mr. Mansfield specifically directed the Lending Enterprise to record liens on vehicles with the Pennsylvania Department of Transportation. *Id.* ¶ 13. The Pennsylvania Department of Transportation reports that 371 liens were recorded against automobile titles in the name of Sovereign Lending Solutions, LLC, and another 163 liens were recorded in the name of Autoloans, LLC. Exhibit P-6 at 3. As a direct and proximate result of Mr. Mansfield's actions, the Lending Enterprise entered into a loan transaction with Mr. Pennachietti at a usurious rate of interest, recorded a lien with the Pennsylvania Department of Transportation, collected usurious interest from Mr. Pennachietti, and repossessed his Vehicle. Complaint ¶ 33.

On or about April 8, 2014, SLS executed an assignment of its loans to another entity in the Lending Enterprise named Management Solutions, LLC. Exhibit P-7. Following the assignment, borrowers such as Mr. Pannecheitti began receiving communications from yet another participant in the Lending Enterprise named Car Loan, LLC. Exhibit P-4. Mr. Mansfield redacted the signatures on the assignment, but the assignment was likely signed by Mr. Mansfield and the other unnamed co-manager of SLS. To this day, Mr. Mansfield refuses to disclose the

identities of the individuals who executed the assignment, reflecting his continued participation in the Lending Enterprise conspiracy. Exhibit P-8.

Mr. Pennachietti's complaint contains three causes of action directed personally against Mr. Mansfield. The first cause of action is under RICO for operating an enterprise through the collection of unlawful debt. 18 U.S.C. § 1962(c). The factual basis for the cause of action is that Mr. Mansfield was co-manager of SLS, a corporate entity that made and collected usurious loans to citizens of Pennsylvania. This cause of action imposes liability on the persons who operate the enterprise (Mr. Mansfield), and not the enterprise itself (SLS). Similar claims were upheld against the managers of repossession companies who collected usurious automobile title loans in Pennsylvania. *Goldenstein v. Repossessors, Inc.*, 815 F. 3d 142 (3d Cir. 2016); *Gregoria v. Total Assets Recovery, Inc.*, 2015 WL 115501 (E.D. Pa. 2015).

The second cause of action is under RICO for conspiring to operate an enterprise through the collection of unlawful debt in violation of 18 U.S.C. § 1962(d). The factual basis for this cause of action lies in the recognition that Mr. Mansfield did not act alone. The Lending Enterprise involved multiple individuals operating together to coordinate lending and collection among several corporate entities including SLS, Car Loans, LLC, Auto Loans, LLC, and Management Solutions, LLC, among others. The coordinated action reflects the existence of an agreement among the actors, including Mr. Mansfield, to conduct the business of the Lending Enterprise. The April 8, 2014, assignment is an express agreement with the

assignees to collect usurious interest on loans originated by SLS under Mr. Mansfield.

The third cause of action is for usury and is brought against Mr. Mansfield under the participation theory of personal liability. An individual can be personally liable for wrongdoing by a corporate entity if the person participated in the wrong doing himself directly or as a supervisor. *Corbett v. Manson*, 903 A.2d 69, 73 (Pa. Cmwlth. 2006) (discussing participation theory of liability for corporate actors); *see also Wicks v. Milzoco Builders, Inc.*, 503 Pa. 614, 621-22, 470 A.2d 86, 90 (1983) (corporate officer who directs wrongful conduct is participant).

### **Argument**

#### **I. MR. MANSFIELD IS NOT PROTECTED BY TRIBAL IMMUNITY.**

In *Lewis v. Clarke*, 137 S. Ct. 1285 (2017), the Court held that tribal immunity does not protect an individual from personal liability arising in the course of tribal employment. The case arose from an automobile accident. Defendant William Clark collided with a car carrying Brian and Michelle Lewis. At the time of the accident, Mr. Clarke was employed by the Mohegan Sun Casino driving customers to and from the venue. The casino was owned by an Indian tribe. The Lewises filed suit against Mr. Clarke seeking entry of a money judgment against him personally. The Lewises sought no relief against the casino or the tribe.

Mr. Clarke claimed he was protected by tribal immunity. The arguments that followed mirror the positions previously asserted before this court in the *Bynon* case. Mr. Clarke argued that he was immune because he was acting within the scope of his employment. Mr. Clarke complained that by seeking a

personal judgment against him for actions arising from tribal employment, the Lewises were attempting to improperly circumvent tribal immunity. The Lewises countered that Mr. Clarke was the real party in interest because their complaint sought nothing from the tribe.

The Supreme Court agreed with the Lewises. Citing *Hafer v. Melo*, 502 U.S. 21 (1991), a case upon which Ms. Bynon also relied, the court explained that the contours of tribal immunity were no broader than the common law immunity available to state and federal government employees. *Lewis*, 137 S. Ct. at 1290-91. Tribal governments and related entities are immune from suit, but tribal officials may be held personally liable for actions taken in their official capacity. *Id.* As long as liability is limited to the official, rather than the government, the official is the real party in interest. *Id.* at 1290 (courts “must determine in the first instance whether the remedy sought is truly against the sovereign”).

“Personal-capacity suits, on the other hand, seek to impose *individual* liability upon a government officer for actions taken under color of state law.” *Hafer*, 502 U. S., at 25 (emphasis added); . . . “[O]fficers sued in their personal capacity come to court as individuals,” *Hafer*, 502 U. S., at 27, and the real party in interest is the individual, not the sovereign.

. . .

[S]overeign immunity “does not erect a barrier against suits to impose individual and personal liability.” *Hafer*, 502 U. S., at 30–31 (internal quotation marks omitted). . . .

*Lewis*, at 1291 (emphasis in original); *Alden v. Maine*, 527 U.S. 706, 757 (1999) (“Even a suit for money damages may be prosecuted against a state officer in his individual capacity for unconstitutional or wrongful conduct fairly attributable to

the officer himself, so long as the relief is sought not from the state treasury but from the officer personally”); accord *Maxwell v. Cnty. of San Diego*, 708 F.3d 1075, 1088-1091 (9th Cir., 2013) (tribal actor subject to suit for personal liability).

In *Hafer*, the court allowed a state employee to sue Pennsylvania’s auditor general for a civil rights violation under 42 U.S.C. § 1983. The plaintiff alleged that his civil rights were violated when he was subjected to a politically motivated firing from state government by Hafer acting in her capacity as auditor general. The hiring and firing of government employees was an undeniably official act, but the court ruled that Ms. Hafer was the real party in interest because the complaint sought a money judgment against Ms. Hafer personally. The court recognized that the capacity in which Ms. Hafer acted was distinct from the capacity in which she was sued. *Hafer*, 502 U.S.at 27.

Part of the Court’s decision in *Hafer* concerned the definition of “person” in section 1983. Section 1983 does not impose liability on government units that violate civil rights; it imposes liability on persons acting under color of state law. The statute imposes personal liability for action taken on behalf of the government. RICO has an analogous structure. RICO imposes liability on persons who operate an enterprise for unlawful purposes, but not on the enterprise itself. 18 U.S.C. § 1962(c)&(d). The liability Mr. Mansfield faces under RICO is distinctly personal as a matter of the substantive law. Mr. Pennachette is not merely naming Mr. Mansfield as a substitute for SLS; he is suing Mr. Mansfield under a statute specially designed to impose personal liability on Mr. Mansfield for his roll managing an enterprise. Even if there was no such thing as tribal immunity, Mr.

Pennachietti would bring the same RICO claim against Mr. Mansfield (and perhaps also against the yet unnamed co-manager of SLS). Mr. Mansfield engaged in a unique form of liability creating conduct for which no one else can be substituted, and the substitution of anyone else would allow Mr. Mansfield to escape liability.

Mr. Mansfield's argument in the present case is the same as his argument in *Bynon*. Mansfield continues to conflate the personal capacity in which he is being sued with the official capacity in which he acted. Mansfield's argument was rejected in *Hafer* and rejected again in *Lewis*.

In ruling that Clarke was immune from this suit solely because he was acting within the scope of his employment, the [Connecticut Supreme C]ourt extended sovereign immunity for tribal employees beyond what common-law sovereign immunity principles would recognize for either state or federal employees. *See, e.g., Graham*, 473 U.S., at 167–168, 105 S.Ct. 3099. The protection offered by tribal sovereign immunity here is no broader than the protection offered by state or federal sovereign immunity.

*Lewis*, 137 S. Ct. at 1291-92.

Tribal immunity does not pose a barrier to a suit seeking to impose personal liability on Mr. Mansfield arising from his official actions as an employee of Sovereign Lending Solutions, LLC. For this reason, Mr. Mansfield's reliance upon tribal immunity is misplaced, and Mr. Pennachietti's case should be allowed to proceed.

## **II. IT IS FAIR FOR MR. MANSFIELD TO FACE JUSTICE IN PENNSYLVANIA.**

Sovereign Lending Solutions, LLC, recorded 371 liens on vehicle titles with the Pennsylvania Department of Transportation on Mr. Mansfield's watch,

Exhibit P-6 at 3, but Mr. Mansfield claims to have no minimum contacts with the Commonwealth. In reality, Mr. Mansfield has extensive contacts in Pennsylvania, and it is more than fair for him to face justice here.

Pennsylvania's long arm statute permits personal jurisdiction over persons who conduct business within the Commonwealth, 42 Pa.C.S. § 5322(a)(1), cause harm or tortious injury in the Commonwealth by acts beyond its borders, *id.* § 5322(a)(4), or file applications with units of government in the Commonwealth for certificates, licenses, permits, registrations or similar instruments. *Id.* § 5322(a)(9). Courts within the Commonwealth are permitted to exercise personal jurisdiction over nonresidents to the full extent permitted under the due process clause in the Constitution. 42 Pa.C.S. § 5322(b).

The court may exercise general jurisdiction over a nonresident defendant who maintains systematic and continuous contacts with the forum state. *Martin v. Godwin*, 499 F.3d 290, 296 (3d Cir. 2007). These contacts must be so systematic and continuous as to render the defendant essentially at home within the forum state. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

The court may exercise specific jurisdiction over a defendant who has contacts with the forum state related to the case before it. The defendant must have purposely directed his activities to the forum. *Martin*, 499 F.3d at 296. The plaintiff's claim must arise out of those specific contacts. *Id.* And the court may take account of additional factors that ensure the assertion of jurisdiction is consistent with notions of fair play and substantial justice. *Id.*

Mr. Mansfield has systematic and continuous contacts with Pennsylvania. Mr. Mansfield admits to being a co-manager in charge of day-to-day operations at SLS from 2011 to 2014, Exhibit P-2 ¶¶ 6-7, meaning that he ran the business from about the time it was created to the date it assigned its loan portfolio to Management Solutions, LLC. Under Mansfield's supervision, SLS recorded 371 liens with the Pennsylvania Department of Transportation. Exhibit P-6 at 3. That means Mr. Mansfield supervised SLS through 371 loans to Pennsylvania residents. He oversaw transfers of loan funds to 371 Pennsylvania bank accounts; he supervised the receipt of payments from hundred of Pennsylvania borrowers, and he authorized the repossession of vehicles in the Commonwealth from borrowers who did not pay. Many of those vehicles were likely stored and auctioned at facilities within Pennsylvania. As a manager, Mr. Mansfield would not be expected to know the names and account details of all 371 borrowers, but he knows that he authorized the loans, the liens, the repossessions, and the assignment of loans to others for collection. After authorizing 371 secured loans to Pennsylvanians, it is more than fair for Mr. Mansfield to be hailed into court in Pennsylvania to answer for his actions. Mr. Mansfield's contacts with Pennsylvania are purposeful and planned, not random or fortuitous.

Mr. Pennachietti paid the Lending Enterprise over \$7,000 in illegal interest in addition to having his vehicle repossessed. Mr. Mansfield authorized all of the actions that caused Mr. Pennachiette to be injured. Mr. Mansfield authorized the collection of unlawful debt from Mr. Pennachiette whether is occurred under



SLS or successor entities operated by co-conspirators to whom Mr. Mansfield assigned the loan.

Because Mr. Mansfield was responsible for SLS entering into 371 loans in Pennsylvania, minimum contacts exists for this court to exercise personal jurisdiction over him.

**III. MR. PENNACHIETTI'S COMPLAINT STATES PLAUSIBLE CLAIMS FOR RELIEF WHETHER OR NOT MR. PENNACHIETTI HAS A WRITTEN LOAN AGREEMENT.**

Mr. Pennachietti does not need a copy of a loan agreement to prove his case. Mr. Pennachietti will testify that he signed up for a loan from Sovereign Lending Solutions, LLC, through its Title Loan America website which he will identify. Exhibit P-1. The website states that the lender is SLS. *Id.* Mr. Pennachietti's bank records illustrate the amount of money he received and paid. It is self evident that paying \$13,000 to satisfy a \$5,000 loan over a period of 14 months reflects an interest rate in excess of 100% A.P.R. Mr. Pennachietti can likely obtain from his bank further documentation of the origin and destination of funds he received and paid, if necessary. The Lending Enterprise, moreover, is a known entity. Its lending activities have been chronicled in multiple lawsuits and media reports, Exhibit P-9, and everything that happened to Mr. Pennachietti is consistent with the other cases. The Pennsylvania Department of Banking observed that borrowers frequently failed to receive loan documents. Exhibit P-3 at 7 ¶ 24. The allegations in Mr. Pennachietti's complaint are well supported and consistent with the experiences reported by borrowers across the country.

### **Conclusion**

Mr. Mansfield's motion to dismiss plaintiff's complaint should be denied together with any other relief that is just and appropriate.

Respectfully submitted,



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**Certificate of Services**

I, Robert F. Salvin, Esq., certify that a true and correct copy of the foregoing document will be served on the defendant through the court's electronic filing system or I will serve a hard copy of the document by first class mail upon:

Justin Gray, Esq.  
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25344 Red Arrow Hwy  
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Respectfully submitted,



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