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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

WILLIAMS & COCHRANE, LLP; *and* **FRANCISCO AGUILAR**, **MILO BARLEY**, **GLORIA COSTA**, **GEORGE DECORSE**, **SALLY DECORSE**, *et al., on behalf of themselves and all those similarly situated*;

(All 28 Individuals Listed in ¶ 13)

Plaintiff,

vs.

QUECHAN TRIBE OF THE FORT YUMA INDIAN RESERVATION, *a federally-recognized Indian tribe*; **ROBERT ROSETTE**; **ROSETTE & ASSOCIATES, PC**; **ROSETTE, LLP**; **RICHARD ARMSTRONG**; **KEENY ESCALANTI, SR.**; **MARK WILLIAM WHITE II**, *a/k/a WILLIE WHITE*; *and* **DOES 1 THROUGH 100**;

Defendants.

Case No.: 17-CV-01436 GPC MDD

WILLIAMS & COCHRANE'S OPPOSITION TO QUECHAN DEFENDANTS' MOTIONS TO DISMISS PURSUANT TO FRCP 12(b)(1) and 12(b)(6) [DKT. NO. 50-1]

Date: June 8, 2018
Time: 1:30 p.m.
Dept: 2D
Judge: The Honorable Gonzalo P. Curiel

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INTRODUCTION

Williams & Cochrane ("Firm") hereby submits this opposition to the motions to dismiss filed by the Quechan Tribe of the Fort Yuma Indian Reservation ("Quechan" or "Tribe") and two individuals who may or may not be Councilmembers for the tribe ("Mr. Escalanti" and "Mr. White").[1] A more pervasively caustic and hostile motion would be difficult to find, with the varied iterations of the supporting brief filed by the Quechan defendants' counsel of record WilmerHale spending page after page bemoaning *ad nauseam* the "chutzpah" of Williams & Cochrane for making an "astounding and outrageous request" that tries to "shameless[ly]… squeeze" Quechan of the monies it had agreed to pay to the Firm for extricating the Tribe from a monumental predicament of its own making. *See, e.g.,* Dkt. No. 29-1, pp. 8, 32. The *ad hominem* attacks come out of just one side of the mouth of WilmerHale, however, as the firm has no interest in discussing its documented history of demanding fees well in excess of those at the heart of this case in exchange for sometimes abysmal results. *See, e.g., McAfee v. Wilmer, Cutler, Pickering, Hale and Dorr, L.L.P.,* No. 08-00160, Dkt. No. 19, ¶¶ 6-7 (E.D. Tex. June 26, 2008) (alleging the firm charged more than $12 million to represent a corporate officer in a single criminal action that ultimately resulted in a conviction).[2]

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[1] Shortly after the service of the original complaint in this matter, the general membership of Quechan initiated a series of recall elections to remove certain Tribal Councilmembers from office. *See* Dkt. No. 39, ¶ 235 & nn.50-51. The outcome of these recalls was that the general membership voted to oust Keeney Escalanti and Willie White by votes of 147-80 and 209-102, respectively. *See id.* (citing, *e.g.*, Blake Herzog, *Results of Quechan Tribe's recall vote thrown out,* Yuma Sun, Jan. 28, 2018). However, as the title of the foregoing article probably makes clear, both individuals have apparently refused to relinquish their seats in the aftermath of these votes. *See id.*

[2] In this case, WilmerHale charged Quechan $118,877.60 in fees during the month of February 2018 alone. *See* accompanying Declaration of Cheryl A. Williams, ¶ 2 & Ex. A. The case activity for this period involved WilmerHale filing its original responsive motions on February 9th and Williams & Cochrane then trying to file its First Amended Complaint as of right under Rule 15(a)(1)(B) on March 2nd. *See* Dkt. Nos. 29-30, 39. Thus, according to WilmerHale, charging $118,878 for nine days of basic and ultimately-mooted motion practice is perfectly acceptable while receiving $400,000 for more than

The truth of the matter is that Williams & Cochrane actually got results – not just the results Quechan asked for when negotiating the contract but results well beyond that. Yet, breathing life into the maxim that no good deed goes unpunished, turning the spectre of a terminated compact into an entirely new compact that removed in excess of $112 million in revenue sharing payments over the next twenty-eight (28) years simply led a segment of the Quechan Tribal Council to fire Williams & Cochrane just days before the agreement was to be signed. The parties took different moral paths in the aftermath of this event, with Williams & Cochrane taking the high road, turning over its incalculably value work product in order to ensure the State of California could not backtrack from the central terms of the final draft compact. Conversely, Quechan took the low road and refused to pay *any* outstanding fees under the Attorney-Client Fee Agreement – the final month of the base monthly fee, the contingency fee, or any reasonable fee in lieu thereof – while all the while making, and now following through on, threats to ruin the reputation of the Firm in an attempt to deter any possible redress of what is arguably the most insidious of contract breaches.

Thus, remove the distracting hyperbole from the underlying motions and any number of perplexing realities come to the surface, including "Quechan" hiring one of the Nation's preeminent law firms that could *easily* charge tens of millions of dollars so the Tribe can try and avoid a $6.2 million liability. The stilted logic in this decision should raise a lot of question and also hopefully draw the Court's attention to two monumental and oftentimes interconnected problems in the field of federal Indian law that are at play in this case. The first is the dark side of sovereign immunity, in which tribes, or more aptly individual officers of tribes, assume they are beyond the reach of the law and can do whatever they want, whether they have an actual basis for believing that or not. The second is perhaps the single biggest problem in Indian Country today – and that is the unsettling of tribes by unscrupulous individuals who arrive through indirect if not altogether

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eight months of high-stakes compact work that changed Quechan financial fortunes by hundreds of millions of dollars is somehow "exorbitant." *See* Dkt. No. 50-1, 7:20-21.

discreet means and then upend established governmental structures in the pursuit of untold and untoward personal profits. *See* Dkt. No. 39, ¶¶ 211-36. These all-too-real policy considerations certainly deserve more attention than the easily-dismissed legal arguments in the brief filed by WilmerHale, a document that seems altogether more concerned with simply creating an alternate factual reality in which to argue the case.

All of this new evidence, mind you, is not really designed to defend Quechan from any of the initial contract-related claims in the First Amended Complaint, but is instead focused upon protecting the two now-recalled Councilmembers who were in league with Mr. Rosette – the same individual who seemingly called on the "true professionals" of WilmerHale, with whom he has a beneficial "co-counsel" relationship in other cases, to represent the interests of the "Tribe" in this litigation. *See* Dkt. No. 39, ¶ 238. The eight-plus declarations and more than 1,500 pages of supporting evidence strategically filed by the opposing counsels could easily muddy the waters, and that is all the more reason why it is crucial to stay focused upon the evidence-backed allegations in the First Amended Complaint at this formative stage of the proceeding rather than some self-serving and uncorroborated statements by interested parties that exist outside of the pleadings.

As to that, the principal allegations in the First Amended Complaint that underlie the conspiracy claim against the two now former Quechan Councilmembers are rather straightforward. The story, as expected, begins with Robert Rosette, an attorney with a long history of coming into tribes through discreet means and causing significant strife in his wake. *See, e.g.,* Dkt. No. 39, ¶¶ 132-34. 219-27. Sometimes this strife results from the removal of legal oversight so Mr. Rosette can set up payday lending operations that direct the lion's share of the profits to persons or entities other than the operating tribe. *See id.* at ¶ 227. Other times it results from Mr. Rosette instructing a tribe – or some faction of it – to breach a significant commercial contract and then hide behind its sovereign immunity in the hopes of avoiding *any* liability. *See id.* at ¶¶ 132-33. The First Amended Complaint documents three such instances of tortious contractual breaches, and the accompanying request for judicial notice describes a fourth one that just became public the other

week with the filing of another complaint in this District. *See* Request for Judicial Notice, Ex. A; *Outliers Collective v. Santa Ysabel Tribal Dev. Corp.,* No. 18-00834 JAH KSC, Dkt. No. 1 (S.D. Cal. Apr. 30, 2018) (detailing how the Rosette-represented Santa Ysabel tribe allegedly breached a contract with a company hired to start a medical marijuana growing operation, causing more than $20,000,000 in damages as a result).

As for his beginnings at Quechan, the First Amended Complaint details how Mr. Rosette had a preexisting relationship with Willie White, an individual who ran for the Quechan Tribal Council during the fall of 2016 on the platform that he had an attorney "friend" who could bring the Tribe into the payday lending fold. *See* Dkt. No. 39, ¶ 191. From there, Mr. White and his fellow Councilmember Keeny Escalanti, Sr., met with Mr. Rosette during the spring of 2017 to discuss payday lending and presumably what to do about the delicate compact negotiations that Williams & Cochrane was handling. *See id.* at ¶¶ 191-92. Both of the allegations have evidentiary support, as the *ex parte* motion to exclude or continue includes proof that Mr. White was interested in pursuing a tribal banking enterprise even before his time on the Tribal Council, and then, along with Mr. Escalanti, met with Mr. Rosette while at a governmental consultation in Phoenix, Arizona during the first week of April 2017. *See, e.g.,* Dkt. No. 62-1, ¶ 10. Nevertheless, both Mr. White and Mr. Escalanti have defiantly testified before this Court that they first met Mr. Rosette on June 16, 2017, which, as they then knew, was just two days after Williams & Cochrane had conducted its final compact negotiation session with the California Office of the Governor and precisely two weeks before the Tribal Council was scheduled to sign and execute the resultant compact. *See* Dkt. No. 39, ¶¶ 104-08.

The other curious thing about the uncorroborated testimony about the first meeting between Mr. Rosette and the putative Quechan Councilmembers is that the date of June 16, 2017 is also ten days after June 6, 2017 – the date of the Quechan monthly General Council meeting at which [redacted]. *See* Dkt. No. 39, ¶ 109. Despite this,

just three days before Quechan was supposed to execute the negotiated compact, Mr. Escalanti sent a letter to Williams & Cochrane – via an e-mail on which no other Councilmembers were carbon copied – to inform the Firm that it had been "terminat[ed]… effectively immediately upon…receipt of this letter." Dkt. No. 39-4. This termination letter then requested that Williams & Cochrane turn over its work product to Rosette, LLP, but warned the Firm – after threatening to ruin its reputation – to not talk with *anyone* in the Tribe about what happened, whether that person or entity was an "employee, officer, or official… or any subdivision, agency, or enterprise of the Tribe." Dkt. No. 39-4.

The act of a tribe terminating its legal counsel right on the cusp of the conclusion of multi-hundred-million-dollar compact negotiation was just as surprising to the State of California as it was to Williams & Cochrane, the principal attorney general for whom exclaimed after hearing the news, "This has never happened before and we don't know what to do." Dkt. No. 39, ¶ 111. Figuring out what to do was not quite as difficult for Mr. Escalanti and Mr. White, who used threats of legal action to obtain Williams & Cochrane's incalculably value work product and then soldiered on with Mr. Rosette – despite their inability to produce a resolution hiring him for the work to the State of California, when requested, or to the General Council of the Tribe so the general membership could exercise its "popular veto" power and terminate Mr. Rosette's contract. *See* Dkt. Nos. 39, ¶¶ 119-25; 39-39, p. 644 (describing the "popular veto," which gives "[t]he members of the Tribe… the power [to] veto any ordinance or resolution of the [Tribal] Council").

After the service of the complaint in this case, the outcome of this course of conduct was *not* the Quechan General Council lauding the Tribal Council with praise for supposedly saving the tribe some money, but rather initiating a series of recalls to remove Mr. Escalanti and Mr. White from office. *See* Dkt. No. 39, ¶ 235. The end result of the recall elections was Mr. Escalanti and Mr. White losing their bids to remain on the Tribal Council by James Cox-esque proportions (*i.e.*, about as badly as anyone can ever lose in a general election). *See id.*; Wikipedia, *United States presidential election, 1920, available at* https://en.wikipedia.org/wiki/United_States_presidential_election,_1920 (last visited

May 7, 2018). Yet, these two individuals have refused to step down in the aftermath of the votes, and their counsel are now trying to coax the Court into disposing of a case that has only been active for about five months by complaining that the mere existence of the suit is messing up their clients' chances to legitimate their positions on the Tribal Council through the elections this fall. *See, e.g.,* Dkt. No. 66, 3:16-4:4 (asking the Court to quickly resolve the case because it has become "a lightning rod in Quechan tribal politics" and a quick win is the only way to "heal these political fractures, and move forward"). Could it be that this case is such a "lightning rod" and has caused such self-described "political fractures" precisely because the two individual Quechan defendants acted outside the scope of their authority and did so predominantly for their own personal benefit?

Certainly, this story is at least plausible given the wealth of allegations in the First Amended Complaint. What is not plausible, though, is the summary of allegations section in the underlying motion that tries to take the Court's attention off of the central facts by casting the allegations in the First Amended Complaint in a light *somewhat* favorable to Quechan. *See* Dkt. No. 50-1, 10:10-12:9. For instance there is the statement that suggests Quechan actually honors its contractual obligations because it paid Williams & Cochrane all "outstanding amounts under the monthly flat fee" (*see id.* at 12:1-2), but this is not even true because the Tribe also never paid the pro-rated flat fee for the month of June 2017 that Mr. Escalanti explained the Tribe would honor in his June 26, 2017 termination letter. *See* Dkt. No. 39-4, p. 012. Then, there is the statement that insinuates eight months is too long for compact negotiations – a remark that conveniently fails to mention how (1) a group of thirty-plus California tribes have been in compact negotiations for more than five years now, or how (2) Mr. Rosette has yet to conclude a compact with the State of Arizona for his client the Tonto Apache Tribe in negotiations that began during the fall of 2016. *See, e.g.,* Dkt. No. 39, ¶¶ 39, 188-89. Finally, there is the comment that Williams & Cochrane needed the help of an outside lobbyist to lobby the California legislature to ratify the compact once signed. *See* Dkt. No. 50-1, 11:18-19. With respect to this charge, all we will say is that California tribes routinely use lobbyists to obtain the legislative rat-

ification of executed tribal/State gaming compacts, Quechan previously did this in connection with its 2006 Amendment, and we intend to prove it did so again with respect to the compact at the heart of this dispute given the stringent lobbying rules in the State of California. *See* California Fair Political Practices Commission, *Lobbyist Rules, available at* http://www.fppc.ca.gov/learn/lobbyist-rules.html (last visited May 7, 2018). "Proof" is really the key concept at this juncture. Quechan would like the Court to dump this case based upon an impromptu value judgment derived from misrepresented information. Yet, perhaps a better course of action is to allow this case to proceed to discovery so certain parties will have to start arguing about the facts rather than the fabrications *du jour*.

LEGAL STANDARD

Federal Rule of Civil Procedure 8(a)(2) relies on a minimal notice pleading standard that simply requires the plaintiff to provide a short and plain statement showing an entitlement to relief in order to survive a motion to dismiss. *See ESG Capital Partners, LP v. Stratos*, 828 F.3d 1023, 1032 (9th Cir. 2016). "Specific facts are not necessary; the statement need only 'give the defendants fair notice of what the… claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citation omitted). As for those grounds, a complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face" (*see O'Brien v. Welty*, 818 F.3d 920, 933 (9th Cir. 2016) (citation omitted)), "such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." *See Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). When analyzing the merits of a motion to dismiss, the court "must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Warth v. Seldin,* 422 U.S. 490, 501 (1975). If a claim does not satisfy the plausibility standard, a district court should freely grant leave to amend when justice so requires. *See Ariz. Students' Ass'n v. Ariz. Bd. of Regents*, 824 F.3d 858, 871 (9th Cir. 2016) (citing. FED. R. CIV. P. 15(a)(2)). "Dismissal of a complaint without leave to amend is only proper when… it is clear that the complaint could not be saved by *any* amendment." *Id*. (citing *Thinkjet Ink Info. Res.,*

Inc. v. Sun Microsys., Inc., 368 F.3d 1053, 1061 (9th Cir. 2004)) (emphasis added).

ARGUMENT

I. SOVEREIGN IMMUNITY DOES NOT PROTECT EITHER QUECHAN OR THE ONE-TIME TRIBAL COUNCILMEMBERS WHO ACTED OUTSIDE THE SCOPE OF THEIR AUTHORITY TO TERMINATE THE ATTORNEY-CLIENT FEE AGREEMENT JUST DAYS BEFORE THE SCHEDULED CONCLUSION OF THE COMPACT NEGOTIATIONS

The sovereign immunity argument in the underlying motion raises two primary issues, the first of which is that the waiver of sovereign immunity in the Attorney-Client Fee Agreement by Quechan cannot reasonably be construed as extending to "tort" claims like, apparently, "promissory estoppel and the breach of the covenant of good faith and fair dealing." Dkt. No. 50-1, 15:10-12.[3] The crux of this argument seems to be that counsel for Quechan can put forward *any* interpretation of the waiver of sovereign immunity and the Court must accept it since such waivers must be "construed narrowly and in favor of the sovereign." *Id.* at 13:24-25. This statement of the law lacks nuance, however, and certainly overlooks the fact that courts often balance the strict construction rule against other canons of interpretation. *Cf. Richlin Security Ser. Co. v. Chertoff,* 553 U.S. 571, 589 (2008). Thus, this interpretive rule favoring the sovereign exists alongside one other that seeks to ensure the parties act in good faith. *See* Restatement (Second) of Contracts § 205 (1981) (listing the duty of good faith and fair dealing among all the interpretive rules for contracts). Similarly, other rules of interpretation also play a role in the analysis, like the one that suggests a court preferably "choos[e] among the reasonable meanings of a promise or agreement or a term thereof, a meaning that serves the public interest." Restatement (Second) § 207 (1981). Given this, a court has an entire toolbox of interpretive rules for

[3] Williams & Cochrane reserves the right to contest the continued viability of tribal sovereign immunity in commercial transactions with private parties. *See* Supreme Court of the United States, *Argument Transcripts: Upper Skagit Tribe v. Lundgren* at p. 6, *available at* https://www.supremecourt.gov/oral_arguments/argument_transcripts/2017/17-387_8njq.pdf (last visited Mar. 22, 2018) (setting forth comments from Justice Breyer that indicate he is second guessing his vote in *Kiowa Tribe of Okla. v. Mfg. Technologies, Inc.,* 523 U.S. 751 (1998), an opinion "saying there was a broad sovereign immunity" for Indian tribes that even covers business transactions).

construing the language of the waiver on summary judgment or at trial when it ascertains the understanding of the *parties* at the time of execution, not the understanding of *WilmerHale* when it advances some one-off in a brief nearly a year and a half after the fact.

With that said, at this stage, one can at least plausibly read the text of the waiver of sovereign immunity in the Attorney-Client Fee Agreement as permitting all the contract-esque claims in the First Amended Complaint, including those concerning the breach of the implied covenant of good faith and fair dealing and promissory estoppel. The sentence in the wavier that Quechan latches on to as creating a problem states that

> Client [*i.e.*, Quechan] hereby expressly and irrevocable waives its sovereign immunity (and any defense based thereon) from any suit, action or proceeding or from any legal process with respect to any claims the Firm may bring seeking payment under the terms of the agreement, provided that this waiver of Client's sovereign immunity shall not be construed to permit the alienation of Client's interest in trust lands in a manner which would violate applicable federal law.

See Dkt. No. 39-2 at 006. The interpretation put forward in the underlying motion tries to run the operative language together, but the bifurcated structure of this sentence very specifically identifies both the pursuable claims and the obtaining remedies. First, the claim language within the sentence is open-ended and explains that Williams & Cochrane may pursue "any claim" against the Tribe. *See* Dkt. No. 39-2 at 006. After that, the remedies language then conditions the foregoing text somewhat by saying such claim must "seek[] payment under the terms of the agreement." *Id.*

Thus, contrary to Quechan's interpretation, a claim other than a standard breach of contract cause of action is still viable so long as it provides Williams & Cochrane with the ability to obtain "payment under the terms of the agreement." The breach of the implied covenant of good faith and fair dealing claim is one such claim since it meets the "any claim" standard and the implied covenant is universally perceived as constituting a "term" of a contract. *See, e.g., Chodos v. West Publ'g Co.,* 292 F.3d 992, 997 (9th Cir. 2002) ("California law, like the law in most states, provides that a covenant of good faith and fair dealing is an implied *term* in every contract."); *Dunnigan v. Metro. Life Ins. Co.,*

99 F. Supp. 2d 307, 324 (S.D.N.Y. 2000) ("It is well-settled that the common law duty of good faith and fair dealing is an implied *term* in every contract."). The same can be said of the promissory estoppel claim since it, again, qualifies as a claim and "generally entitles a plaintiff to the same damages available on a breach of contract claim." *State Ready Mix, Inc. v. Moffat & Nichol,* 232 Cal. App. 4th 1227, 1233 (2d Dist. 2015); *see, e.g., U.S. Ecology, Inc. v. California,* 129 Cal. App. 4th 887, 903 (4th Dist. 2005) ("Cases have characterized promissory estoppel as being basically the same as contract actions, but only missing the consideration element,… [and thus] [t]here appears to be no rational basis for distinguishing the two situations in terms of the damages that may be recovered… ." (citation omitted)). Moreover, to the extent the argument in the underlying motion seeks to limit exposure to just certain monetary remedies on certain claims, it is worth noting that the waiver of sovereign immunity section of the Attorney-Client Fee Agreement makes it clear that Williams & Cochrane can obtain non-monetary remedies from Quechan on any successful claim – like the attachment of property – so long as it does not lead to the "alienation of Client's interest in trust lands in a manner which would violate applicable federal law." *See* Dkt. No. 39-2 at 006.

Perhaps the central question to consider while analyzing a tribal waiver of sovereign immunity is whether the language was so unclear that it "might have hoodwinked an unsophisticated Indian negotiator into giving up the tribe's immunity from suit without realizing that he was doing so." *Sokaogon Gaming Enter. Corp. v. Tushie-Montgomery Assocs.,* 86 F.3d 656, 660 (7th Cir. 1996) (Posner, J.). The extrinsic evidence shows anything but, though, as the agreement was signed by a Chairman who had been in power for going on two decades. *See Wright v. Univ. Mar. Sev. Corp.,* 525 U.S. 70, 80 (1998) (permitting extrinsic evidence to determine the clarity of a waiver). During his tenure, the Quechan tribe had employed *numerous* attorneys and had been involved in *numerous* largescale federal lawsuits, the sort that almost always incur rather significant attorney's fees. *See, e.g., Quechan Indian Tribe v. United States,* No. 02-01096 JAH MDD (S.D. Cal. filed on June 7, 2002)*; Quechan Tribe of Fort Yuma Indian Reservation v. U.S.*

Dep't of Interior, No. 10-02241 LAB BGS (S.D. Cal. filed on Oct. 29, 2010); *Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dep't of Interior,* No. 12-01167 GPC PCL (S.D. Cal. filed on May 14, 2012). The allegations in the First Amended Complaint, thus, plausibly show that Quechan was well-versed with attorney-client fee agreements, and nothing in the contract at issue or corroborating resolution evidences any sign of deception. Quite to the contrary, the resolution shows that Quechan knew exactly what it was getting into, as it explains the Tribe was agreeing to pay "a flat fee in the amount of fifty thousand dollars and no cents ($50,000.00) per month for services under this agreement," had further agreed to pay a contingency fee if the representation obtained successful results, and had formally approved the Attorney-Client Fee Agreement after reviewing the document [redacted] (*see* Dkt. No. 39 at ¶ 80)). *See* Dkt. No. 39-4 at 010-011.

As for the second and final issue in the sovereign immunity argument, counsel for Quechan contends that the named tribal member defendants should also share in the Tribe's sovereign immunity. However, the Supreme Court of the United States recently clarified how sovereign immunity applies in actions against tribal officers and employees, explaining that the question of applicability turns upon the targeted recovery by the plaintiff. *See Lewis v. Clarke,* 581 U.S. __, 137 S. Ct. 1285, 1292 (2017). On the one hand, "[i]n an official-capacity claim, the relief sought is only nominally against the official and in fact is against the officials' office and thus the sovereign itself." *Id.* (citing, *e.g.*, *Will v. Mich. Dep't of State Police,* 491 U.S. 58, 71 (1989)). "Personal capacity suits, on the other hand, seek to impose individual liability upon a government officer for actions taken under color of state [or tribal] law." *Id.* (citing, *e.g., Hafer v. Melo,* 502 U.S. 21, 25 (1991)). Thus, a personal capacity action can lie against Tribal Councilmembers for taking actions outside of the scope of their lawful authority. *See Rabang v. Kelly,* 2017 U.S. Dist. LEXIS 63515, *19 (W.D. Wash. 2017) (permitting a RICO action to proceed against Tribal Councilmembers of the Nooksack Indian Tribe). This rule is beyond peradventure at this point, as *Lewis v. Clarke* just represents a recent clarification of a

long-held understanding that individual officers of a tribe cannot hide behind the cloak of sovereign immunity if they act outside the scope of their authority. *See Leelanau Transit Co. v. Grand Traverse Band of Ottawa & Chippewa Indians,* 1994 U.S. Dist. LEXIS 2220, *18-*19 (W.D. Mich. 1994) (allowing a personal-capacity suit to proceed against a Tribal Chairman for acting outside the scope of his authority); *Trump Hotels & Casino Resorts Dev. Co., LLC v. Rocow,* 2005 Conn. Super. LEXIS 1215, *12 (2005) (also letting a suit go forward where a tribal defendant was accused of participating in a fraudulent scheme).

Here, the First Amended Complaint overflows with allegations that Mr. Escalanti and Mr. White did not act in a lawful, governmental manner with respect to the termination of the Attorney-Client Fee Agreement. The allegations in the First Amended Complaint discuss at length how Mr. White has a preexisting relationship with Robert Rosette, whom he secretly hoped would bring to Quechan one of his payday loan franchises that directs the lion's share of the revenue to unknown entities rather than the government of the tribe at large. *See* Dkt. No. 39 at ¶¶ 191 & 211-36. The pursuit of these payday loan profits then led Mr. White and Mr. Escalanti to go rogue and have at least one more covert meeting with Mr. Rosette during the spring of 2017. *Id.* at ¶ 192. Yet, as this was happening, the actual governing bodies of the Tribe were officially dealing with the issue of wrapping up the California compact negotiations. As to that, the Quechan Tribal Council met with the general membership of the Tribe for its monthly meeting on or about June 6, 2017, and the discussion that ultimately ensued [redacted] *See id.* at ¶ 268. During the ensuing weeks, point persons for both the Tribal Council and the casino [redacted]. *See id.*

Yet, all of this process and discourse fell by the wayside when Mr. Escalanti – with the assistance of Mr. Rosette – sent a letter to counsel for Williams & Cochrane on June

27, 2017 explaining that he was terminating the firm just days before the anticipated conclusion of the compact negotiations and that the members of the firm had to refrain from disclosing the contents of this letter or any other "matter that was the subject of your engagement" to anyone associated with the Tribe save for one "Robert A. Rosette" – a prohibition that covered every "employee, officer, or official of the Tribe or any subdivision, agency, or enterprise of the Tribe." *See* Dkt. No. 39-4 at 013. The across-the-board forewarning within the June 27th letter should remove any doubt about whether the termination letter arose out of proper channels. Should it not, an allegation that should tip the scale is the one explaining that, just days later, Mr. Rosette was unable to provide the principal attorney general representing the Office of the Governor in the California compact negotiations with a copy of any authorizing resolution from Quechan either terminating Williams & Cochrane or naming Rosette, LLP as the replacement. *See* Dkt. No. 39, ¶¶ 118-23. Thus, the entire body politic of Quechan moved in one direction while Mr. Escalanti and Mr. White splintered off and went the other way, using perceived prior restraints and legal and reputational threats to cover their tracks. This course of conduct has nothing to do with governmental action, which is why the conspiracy to commit RICO claim alleged against Mr. Escalanti and Mr. White seeks damages from those individuals personally and not from the tribal treasury. *See* Dkt. No. 39, 113:24-116:15 & 120:24-26.

The underlying motion pulls an artful ruse by completely ignoring the allegations in the complaint in favor of revising history through the use of self-serving declarations and evidence that was likely created after the fact. The present state of affairs highlights the problem with affording a party an opportunity to present evidence of often questionable veracity as definitive proof of a certain matter before such evidence is subjected to the refinement of discovery. For instance, the declaration submitted in support of the accompanying motion to exclude and/or continue raises a serious question as to whether the testimony supplied by Mr. Escalanti and Mr. White concerning the how and when of their respective introductions to Mr. Rosette is actually accurate. Given this, the Court should treat the declarations and other evidence submitted by the opposing parties with

great circumspection and either exclude the material or postpone the consideration of it until *after* Williams & Cochrane can obtain discovery from the defendants in a manner that will fact check the dubious statements they have put forward to date.

A final consideration on the topic of individual immunity that should be kept in mind is what happened after the general membership of Quechan learned that Mr. Escalanti and Mr. White [redacted] interfered with the Attorney-Client Fee Agreement. This discussion is largely set forth in Section IV of the First Amended Complaint, and begins with Williams & Cochrane delaying the service of the initiating documents in this case until mid-December so as to not impede the execution of the Quechan compact. *See* Dkt. Nos. 22-28. The immediate response from the Quechan Tribal Council to the receipt of the complaint was to try and keep news of the lawsuit under wraps. *See* Dkt. No. 39, ¶ 234. However, word of the lawsuit began to quickly spread amongst the general membership of the Tribe and soon thereafter Quechan staged two recall elections to remove certain Tribal Councilmembers from office. *See id*. at ¶¶ 234-35. The ultimate outcome of this process was that the general membership of Quechan overwhelmingly voted to remove both Mr. Escalanti and Mr. White from office, with Mr. Escalanti receiving more negative votes than he received positive votes when running for the position of President, and Mr. White receiving more negative votes than *any* candidate received as positive votes during the general election of 2015. *See id.* at ¶ 235. What these votes signify is that these two individuals are immensely unpopular within Quechan from a political perspective, and it is at least plausible to assume on the basis of the allegations in the First Amended Complaint that this palpable disapproval relates in large part to them harming the interests of the Tribe by acting outside the scope of their authority in terminating the Attorney-Client Fee Agreement.

II. THE EXPRESS TERMS OF THE ATTORNEY-CLIENT FEE AGREEMENT EXPLAIN THAT THE CONTINGENCY FEE ATTACHES BEFORE THE SIGNING OF THE COMPACT IF QUECHAN HAS BEEN "FURNISHED WITH THE PROPER GROUNDS FOR SEEKING" A "REDUCTION IN FUTURE COMPACT PAYMENTS TO THE STATE"

To the extent we comprehend it, the contingency fee argument advanced by Que-

chan suggests that Williams & Cochrane would have plausibly pled an entitlement to said fee if the contract could be read holistically rather than having to focus on Section 5 in isolation. However, this suggested process of contract interpretation is anathema to the standard global approach, as "a cardinal principle of contract interpretation under California law is that the 'whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.'" *Wahl v. Am. Sec. Ins. Co.,* 2009 U.S. Dist. LEXIS 51182, *16 (N.D. Cal. 2009) (citing Cal. Civ. Code § 1641); *see Serv. by Air, Inc. v. Phoenix Cartage & Air Freight, LLC,* 77 F. Supp. 3d 852, 862 (N.D. Ill. 2015) (explaining that ascertaining the parties' intent demands "reading the contract holistically rather than reading its provisions piecemeal").

In this case, Section 5 of the Attorney-Client Fee Agreement is part of the analysis, but it contains just two of the three provisions that this Court must read together to understand the functionality of the contingency fee. The first important language is that contained within the subpart of Section 5 identifying the amount of the contingency fee and the general point when, "for purpose of [that] subsection… alone," said fee attaches:

> Firm's contingency fee will be calculated as follows if the representation matter is resolved through settlement or negotiations:
>
> (a) If the matter is resolved before the filing of a lawsuit or within 12 months thereof, then Firm's contingency fee will be fifteen percent (15%) of the net recovery.
>
> (b) For purposes of subsection (a) any time-period during litigation in which the parties stay the case for purposes of discussing settlement shall be excluded from the 12-month period described in subsection (a) above.
>
> (c) For purposes of subsection (a) alone, the matter is resolved at the point in time that the Client signs a successor compact (whether new or amended), which subsequently obtains the requisite State and federal approvals and takes effect under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq*.
>
> (d) The contingency fee rate above is higher than the formative rates for resolving the case through court action set forth in the ensuing subsection below based upon the Client's express request after consultation and

> stated need to resolve the situation in as effective and expeditious a manner as possible.

See Dkt. No. 39-2 at 003. Thus, this portion of Section 5 lays out the basic situation in which the contingency fee normally attaches, "[f]or purposes of [this]… section alone," at the point in time when Quechan signs the negotiated compact.

With this benchmark in place, what happens then if Quechan decides to terminate Williams & Cochrane right before signing the compact or after being positioned to obtain the fruits of the Firm's work? That situation is dealt with in the "discharge and withdrawal" provisions of Section 11. The beginning of this section first lays out the typical grounds for parting ways, but then turns to discuss the repercussion of terminating the Firm *before* the signing of the resultant compact but *after* Quechan becomes "entitled to any… monetary amount constituting the 'net recovery' as described in paragraph 5 of this Agreement." Dkt. No. 39-2 at 005. The key to reading this provision is to insert definitions for the words "entitled" and "net recovery." The latter term is described with more specificity in Section 5, which explains that "net recovery" in the context of negotiation or settlement "shall include any credit, offset or other reduction in future compact payments to the State in a successor compact (whether new or amended) as a result of the excess payments made under client's tribal/State compact amended in 2006 in lieu of or in addition to a monetary 'net recovery.'" *Id*. at 002. As for the former term "entitled," that is generally understood to mean "furnish[ing] with the proper grounds for seeking or claiming something." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 758 (2002).

Thus, substitute in the definitions for these two terms "net recovery" and "entitled" into the relevant sentence of Section 11 and suddenly Quechan has to pay the contingency fee if the Tribe was "furnished with the proper grounds for seeking or claiming" "any credit, offset or other reduction in future compact payments to the State in a successor compact (whether new or amended)." This is precisely what happened once Williams & Cochrane obtained the first draft compact from the State on December 7, 2017 that erased the preexisting revenue sharing structure that required payments of 10% of net win and

replaced it with one that simply asked Quechan to cover the State's reasonable costs of regulatory gaming each year. *See, e.g.,* Dkt. No. 39, ¶ 90. This revised revenue sharing structure carried over to the ultimate Quechan compact, the recitals for which acknowledge the new arrangement "reduces the Tribe's revenue sharing obligations by approximately four million dollars ($4,000,000) per year" and "is intended to alleviate the financial hardships the Tribe experienced while operating under the 2006 Amendment." Dkt. No. 39-41 at 661. Thus, Williams & Cochrane accomplished precisely what it was hired to do (and then some), which means Quechan is therefore liable in damages for, amongst other amounts,[4] the full amount of the contingency fee – *i.e.*, [redacted].

III. THE BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING CLAIM IS NOT COEXTENSIVE WITH THE BREACH OF CONTRACT CLAIM AND CAN THUS STAND ON ITS OWN

The assertion that the breach of contract and breach of the implied covenant of good faith and fair dealing claims are undifferentiated may take into account some shared allegations and damages, but it completely overlooks the distinct factual predicates for each of the claims. The implied covenant of good faith and fair dealing imposes obligations on each of the contract parties that aim to protect the "reasonable expectations of the other party regarding the fruits of the contract." *Centex Corp. v. United States,* 395 F.3d 1283, 1304 (Fed. Cir. 2005) (citing, *e.g.*, Restatement (Second) of Contracts § 205 (1981)). These imposed obligations are "fairly inferable from the express terms of th[e] contract." *JPMorgan Chase Bank, N.A. v. IDW Group, LLC,* 2009 U.S. Dist. LEXIS 9207, *12 (S.D.N.Y. 2009) (citing *Interallianz Bank AG v. Nycal Corp.,* 1994 U.S. Dist. LEXIS 5954 (S.D.N.Y. 1994)). The term "good faith" is what is known as an "excluder phrase,"

[4] The remark "[Williams & Cochrane] is not entitled to another penny from the Tribe" is just empty bluster seeing that Quechan has also never paid – at a minimum – the prorated base monthly fee for June 2017. This is the same prorated fee that Mr. Escalanti indicated Quechan *would* pay in his June 26, 2017 termination letter. *See* Dkt. No. 39-4 at 012 (explaining that "[t]he Tribe will consider all its obligations to the Firm satisfied upon payment of a pro-rated fee for your services as of the date of this letter").

which is "without general meaning of its own and serves to exclude a wide range of heterogeneous forms of bad faith." *Taldan Inv. Co. v. Comerica Mortg. Corp.,* 1990 U.S. Dist. LEXIS 19951, *47 (N.D. Cal. 1990) (citing, *e.g.*, *Price v. Wells Fargo Bank,* 213 Cal. App. 3d 465, 479 (1st Dist. 1989)). Given the nature of the concept of good faith, devising "[a] complete catalogue of bad faith is impossible, but the following types are among those which have been recognized in judicial decisions: evasions of the spirit of the bargain,… and interference with or failure to cooperate in the other party's performance." Restatement (Second) of Contracts § 205 cmt. d (1981). Thus, a "plaintiff [can] adequately state[] an implied covenant claim by alleging conduct that subverts the contract's purpose without violating its express terms." *JPMorgan Chase Bank, N.A. v. IDW Group, LLC,* 2009 U.S. Dist. LEXIS 9207, *16 (S.D.N.Y. 2009).

All of this talk about subversion and interference should draw focus to the fact that the implied covenant serves a very important and unique function in the event that Quechan really did believe at the time of executing the Attorney-Client Fee Agreement that the contingency fee only attached upon the signing of the compact. *See True N. Composites, LLC v. Trinity Indus. Inc.,* 191 F. Supp. 2d 484, 516 (D. Del. 2002) (looking "at the time of contract formation [to] determine the reasonableness of the challenged conduct"). The ability to produce credible evidence that the tribal signatory believed this to be the case could then raise a question about the interpretation or enforceability of the premature termination provision in Section 11 of the Agreement. In the off chance the Court ruled against Williams & Cochrane on this issue, then the implied covenant would step in where the breach of contract claim left off and say that terminating a contingently-paid party right upon the effective completion of the work in order to avoid an impending payment obligation subverts the spirit of the bargain. Thus, both breach claims have a different factual predicate based upon the perceptions of the contracting parties. The factual predicate for the breach of contract claim is the termination of Williams & Cochrane after the contingency fee attached under Section 11 of the Attorney-Client Fee Agreement. Conversely, the factual predicate for the breach of the implied covenant of

good faith and fair dealing claim is the termination of Williams & Cochrane upon the completion of the work but before Quechan reasonably believed that the contingency fee attached under Section 5 of the agreement.

What this discussion shows is that the two breach claims are complimentary rather than being duplicative. It simply cannot be stressed enough the importance of the implied covenant in situations like this; allowing a contracting party to try and avoid paying a contingency fee by simply terminating the party one step before the completion of work would shake the very foundation of contract law, calling into question any number of existing agreements while invalidating a very important form of contracting going forward. A decision with such enormous legal and policy ramifications should not come lightly, and certainly not before the summary judgment stage when the Court has the benefit of a fully-formed factual record. *See Johnson v. Regents of Univ. of Cal.,* 2010 U.S. Dist. LEXIS 63963, *21 (N.D. Cal. 2010).

IV. PROMISSORY ESTOPPEL HAS LONG APPLIED IN THE CONTRACT CONTEXT TO PROTECT PARTICULARLY PRONE PARTIES PERFORMING ON THE PERIPHERY OF PROMISES FROM PREJUDICE

Concerns about morally repugnant acts that animate in the implied covenant analysis also apply in the context of promissory estoppel. The underlying motion goes to great lengths to try and persuade the Court that the promissory estoppel doctrine is inapplicable in situations involving negotiated contracts. *See* Dkt. No. 50-1, 21:24-22:16. California appellate courts, however, have long held otherwise in connection with at-will employment contracts, especially when a particularly vulnerable employee (or service provider) is either starting up or winding down his assigned work. *See, e.g., Sheppard v. Morgan Keegan & Co.,* 218 Cal. App. 3d 61, 67 (1st Dist. 1990) (applying promissory estoppel to protect an at will employee who was fired while moving across the country for the job, "before the ink [was] dr[y] on his new lease, [and] before he... had a chance to demonstrate his ability to satisfy the requirements of the job").

A perfect illustration of this principle is in the case *Moncado v. West Coast Quartz*

Corporation, 221 Cal. App. 4th 768, 772 (6th Dist. 2013), which dealt with the joint shareholders/officers of a company promising certain longtime employees "bonus[es]… that would be sufficient for them to retire" if they stayed with the company through a distant planned sale. These promises borne out of the self-interest of corporate officers who "did not want any of the employees of the company to quit during the sale process" ultimately went unfulfilled, as employees who stayed with the company for upwards of five additional years idly watched on as the corporate officers sold the company for $30 million and then flatly refused to "pay… the promised bonuses." *Id.* In analyzing the situation, the California court of appeal found that the promise to pay bonuses not only constituted a binding contract but also formed the basis for a promissory estoppel claim. *Id.* at 777-80. As explained by the court, the allegations in the amended complaint made out a valid promissory estoppel claim because "[a]s discussed… in regard to the breach of contract cause of action, the promise was sufficiently clear and definite" in addition to inducing detrimental reliance on the part of the plaintiffs. *See id.* at 779-80.

The instant situation is remarkably similar to the one in *Moncado* despite the twist involving rogue officials acting outside of the governmental structures of the Tribe. It is important to remember the context in which the promises were made. Quechan had come out of a rough patch in which the State was first leery of negotiating because of tribal infighting and then making serious overtures to hold the Tribe in material breach of its compact on account of its delinquent revenue sharing payments. *See* Dkt. Nos. 39 at ¶ 97, 39-15, & 39-16. Yet, Williams & Cochrane was able to successfully navigate Quechan through these troubled waters and then actually better the Tribe's position by obtaining a slew of new compact rights – [redacted] during the twenty-eight year life of the compact. *See* Dkt. No. 39, ¶ 107. Thus, the last thing the members and officers of Quechan wanted was Williams & Cochrane to depart before the conclusion of the matter and thereby expose the Tribe to potential adverse actions by the State. In fact, point persons

for both the Quechan Tribal Council and casino [redacted]. *See id.* at ¶¶ 104 & 195. The implication of these statements was that – like the officers in *Moncado* – Quechan was definitively conveying that it would pay some definite sum (*i.e.*, the contingency fee) so long as Williams & Cochrane did not exercise its right under its contract to walk away from what was, in this case, a difficult representation for a difficult client who was exceptionally far behind in paying fees that were already due under the agreement. *See* Dkts. Nos. 39 at ¶ 113 & 39-2 at P004.

The conflicting positions concerning the point of attachment for the contingency fee undercuts the primary authority cited by Quechan and shows that the promissory estoppel claim should go forward. There may be *some* merit to the argument that a promissory estoppel claim is unnecessary when the alleged damages are available under a breach of contract claim. Yet, the very position taken by counsel for Quechan in this case is that the contingency fee would not attach until the signing of the resultant compact, which means that Williams & Cochrane is "not entitled to another penny from the Tribe." Dkt. No. 50-1, 18:24-26. Thus, the independent promise at the center of this claim carries added significance when viewed through the skewed lens of the opposing party because it shows that Quechan offered something up without consideration (*i.e.*, the promise to not terminate Williams & Cochrane and thereby commit to paying the contingency fee), and that promise induced both reliance and forbearance on the part of the Firm. The position taken by opposing counsel regarding the accrual of the contingency fee will not suddenly change at any point in the litigation – as reversing course would be an acknowledgement that Quechan breached the contract – which means promissory estoppel fills a very crucial gap by acting as an alternative remedy to deal with the situation "where [during the litigation] there may be a dispute about the terms or validity of the alleged contract." *See Rowland v. JPMorgan Chase Bank, N.A.,* 2014 U.S. Dist. LEXIS 32284, *19-*20 (N.D. Cal. 2015) (citing, *e.g.*, *Wigod v. Wells Fargo,* 673 F.3d 547, 566 & n.8 (7th Cir. 2012)).

Quite simply, the independent promises in this case are the epitome of the sort that a court sitting in equity should enforce in the event the foregoing contractual breach claims do not fully resolve the present dispute as to Quechan *the tribe*. *See* Restatement (Second) of Contracts § 90 (1981) (defining promissory estoppel as "[a] promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee… and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise"). As stated, California courts regularly apply this doctrine in connection with the start and end of at-will employment contracts where an employer has either induced action or failed to fulfill a promise for action previously taken, respectively. Disallowing a promissory estoppel claim in circumstances such as these would essentially empower defendants with deceitful intentions or stilted interpretations of contracts to use the dead letter of the law to suck all the vitality out of equitable principles. Yet, the fall of equity would drag down the law as well, as the contingent promise inherent in the exchange of promises that comprises the foundation for a large part of the contract world would become meaningless. Consequences like this are why the California courts are prone to so often repeat the mantra that equitable doctrines like promissory estoppel are a necessary stopgap to "do right and justice" and "meet the needs of every case" even when such cases involve novel situations or "new kinds of wrongs:"

> The object of equity is to do right and justice. It does not wait upon precedent which exactly squares with the facts in controversy, but will assert itself in those situations where right and justice would be defeated but for its intervention. It has always been the pride of courts of equity that they will so mold and adjust their decrees as to award substantial justice according to the requirements of the varying complications that may be presented to them for adjudication. … Equity acts in order to meet the requirements of every case, and to satisfy the needs of a progressive social condition, in which new primary rights and duties are constantly arising, and new kinds of wrongs are constantly committed.

Toscano v. Greene Music, 124 Cal. App. 4th 685, 693-94 (4th Dist. 2004) (citing, *e.g.*, *Hirshfield v. Schwartz,* 91 Cal. App. 4th 749, 770-71 (2d Dist. 2001)). Quite simply, equity exists to reign in liars and cheats, and the promissory estoppel claim in this case

should accordingly at least plausibly plead an alternative theory of recovery for the contingency fee and other monies.

V. THE MYRIAD OF RICO ARGUMENTS FAIL WITHOUT EVEN LOOKING AT THE NEW MATERIAL IN THE SUPPLEMENTAL COMPLAINT/ REQUEST FOR JUDICIAL NOTICE

The RICO argument in the underlying motions to dismiss takes a scattershot approach to try and knock out the conspiracy claim, raising a litany of technical arguments to contest each and every conceivable element of a viable claim – from not "explaining how the defendants associated together," to "fail[ing] to allege an organizational structure," to not showing "the alleged RICO activity… cause[d] actual harm to the business or property of the RICO plaintiff." *See* Dkt. No. 50-1, 24:18-20. This sort of "everything *and* the kitchen sink" approach to arguing makes it easy to lose sight of the forest for the trees, but it is important to remember that RICO is an "aggressive initiative" that federal courts must read broadly and apply liberally in order to combat objectionable conduct even when engaged in by seemingly "respected businesses." *See Sedima v. Imrex Co.,* 473 U.S. 479, 498-99 (1985). The breadth of the statute cannot be overstated, as it even applies in commercial civil disputes upon a simple showing of just two allegations of wire and mail fraud. *See Religious Tech. Ctr. v. Wollersheim,* 796 F.2d 1076, 1080 (9th Cir. 1986) (citing *Sedima,* 473 U.S. at 483-84). Thus, business deals gone bad *do* fall under the ambit of RICO if there was a specific intent to defraud. *See Eclectic Props. v. Marcus & Millichap Co.,* 751 F.3d 990, 997 (9th Cir. 2014). Contrary to the argument in the underlying motion, the answer to that inquiry largely turns upon "common sense" rather than an "abstract analysis" of each element of the claim. *See, e.g., Boyle v. United States,* 556 U.S. 938, 946 (2009).

As to that, the First Amended Complaint contains a wealth of allegations showing that the termination of Williams & Cochrane did not occur pursuant to lawful government action – an event secretly planned well in advance to safely dispose of both a contract and a firm that might contest the creation of a discreet payday lending franchise that is operated solely for the benefit of its select few overseers. *See* Dkt. No. 39 at ¶¶ 108-

252. If these allegations do not suffice, the supplemental complaint contains more recent allegations showing that that the individual defendants in this case are *still* trying to neutralize Williams & Cochrane and consequently remove the harsh glare of the public spotlight by intentionally disseminating the un-redacted and sealed version of the First Amended Complaint throughout one of the tribal communities that Williams & Cochrane represents. *See* accompanying First Supplemental Complaint. All of this talk of payday lending enterprises and discreet profits should not distract from the fact that there is an even more basic RICO conspiracy in play – something that is discussed in the First Amended Complaint and further proven through the breach-of-contract complaint attached to the accompanying request for judicial notice. *See* Request for Judicial Notice, Ex A. And that is, the individual Quechan defendants hired an attorney with a well-documented history of advising tribes to outright breach significant commercial contracts so they could do just that – defraud the other contracting party by obtaining the fruits of the contract and then breaching at the last possible moment with the intention of hiding behind sovereign immunity. Thus, no matter how one spins the fact pattern, this case is not about a simple breach of contract, but a breach done specifically to try and deprive the other party of its ability to collect the monies to which it is entitled.

Turning to the motions, the scattershot arguments therein require little more than scattershot answers. The claim that the First Amended Complaint must intricately detail an organizational structure for the alleged enterprise overlooks the fact that the definition of the term enterprise is "not very demanding" and covers any "union or group of individuals associated in fact." *Odom v. Microsoft Corp.,* 486 F.3d 541, 548 (9th Cir. 2007). The association-in-fact enterprise that Quechan acknowledges is alleged in the complaint "does not require any particular organizational structure, separate or otherwise" (*see id.* at 551), and is often proven by just commonsensically looking at "what [the association] does." *Boyle,* 556 U.S. at 946. In other words, did the "core members of the larger enterprise… facilitat[e] [or simply conspire to facilitate] illegal transactions?" *MH Pillars Ltd. v. Realini,* 2018 U.S. Dist. LEXIS 37645, *14 (N.D. Cal. 2018). The First Amended Com-

plaint shows just this, as the two individual Quechan defendants had Mr. Rosette waiting in the wings to help them defraud Williams & Cochrane and also remove *all* legal oversight so they could start up one of his payday lending franchises that circumvent the Truth in Lending Act and state usury laws, and are akin to the ones that just landed a Rosette competitor named Scott Tucker in prison for fifteen years on fourteen counts of racketeering and related offenses. *See, e.g.,* Dkt. No. 39, ¶¶ 229-36.

As for the incredible claim that Williams & Cochrane could not possibly have been injured by this conduct, just like the enterprise element, there is a "relatively low threshold for plaintiffs to adequately plead a 'concrete' RICO injury." *In re Chrysler-Dodge-Jeep EcoDiesel Mktg.,* 2018 U.S. Dist. LEXIS 42971, *82 (N.D. Cal. 2018). An injury of this nature can come via "direct harm flowing from a defendant's conduct" or "indirect harms such as 'competitive injury'" as well. *Wilcox v. First Interstate Bank, N.A.,* 815 F.2d 522, 529 (9th Cir. 1987) (citing, *e.g.*, *Sedima,* 473 U.S. at 519). Since a plaintiff has a "legal entitlement to business relations unhampered by schemes prohibited by RICO predicate statues," a competitive injury in turns includes "interference with [said person's] business relations." *Diaz v. Gates,* 420 F.3d 897, 899 (9th Cir. 2005). Thus, in the event the tortious breach of a contract does not constitute a harm in and of itself, the conspiracy to commit RICO claim has any number of other indirect harms, from the damage to Williams & Cochrane's relationship with the Office of the Governor to the interference with the Firm's representation of other tribal clients. The underlying motion goes to great lengths to minimize the role the two individual Quechan defendants played in this saga, but the First Amended Complaint and now the supplemental complaint set forth plenty of personalized predicate acts, and the whole crux of a conspiracy or scheme to defraud is that "acts and statement of co-conspirators [or co-participants] are admissible against other conspirators." *United States v. Stapleton,* 293 F.3d 1111, 1117 (9th Cir. 2002). With that, this section should address Quechan's key arguments; if any were missed, Williams & Cochrane borrows a line from WilmerHale and "incorporate[s] by reference" the corresponding section from the other Rule 12 opposition brief. *See* Dkt. No. 50-1, 9:22-25.

CONCLUSION

For the foregoing reasons, Williams & Cochrane respectfully requests that the Court deny the underlying motions to dismiss by Quechan in their entirety. Should the motions to dismiss have any merit, then Williams & Cochrane respectfully requests leave to amend the First Amended Complaint in order to correct any deficiencies.

RESPECTFULLY SUBMITTED this 11th day of May, 2018

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By: */s/ Kevin M. Cochrane*

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