

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 18-mc-\_\_\_\_00225

JENNIFER WEDDLE,

Movant,

v.

LULA WILLIAMS,  
GLORIA TURNAGE,  
GEORGE HENGLE,  
DOWIN COFFY, and  
MARCELLA P. SINGH,  
on behalf of themselves and all others similarly situated,

Respondents.

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**MOTION TO QUASH SUBPOENA**

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Plaintiffs in a class-action lawsuit in the U.S. District Court for the Eastern District of Virginia allege that certain consumer-lending companies owned by the Lac Vieux Desert Band of Lake Superior Chippewa Indians (the “Tribe”), which made small-denomination unsecured installment loans to Virginia consumers under Tribal law, have violated the Racketeer Influenced and Corrupt Organizations Act (“RICO”) by utilizing the services of non-Indian entities to carry out their lending activities. The gist of Plaintiffs’ allegations is that the non-Indian entities disguised themselves as Tribal entities and allowed Virginians to obtain credit at interest rates in excess of that allowed under Virginia law. Seeking discovery to support their claims, Plaintiffs issued a Subpoena to Colorado bar member and Indian law attorney Jennifer Weddle of Greenberg Traurig, LLP (“Greenberg Traurig”), demanding that she produce any and all documents and communications relating to “tribal lending,” Tribal and non-Tribal companies

that are Defendants or predecessors or affiliates of Defendants in their lawsuit, a bank, Tribal leaders, and the Tribe, as well as the Tribe's long-time counsel and other representatives.

For four reasons, the Subpoena fails to comport with discovery rules, and must be quashed. First, it explicitly seeks to compel a non-party attorney to turn over client communications and information that the attorney is prohibited from disclosing. Second, it seeks information that is within the clients' control and that Plaintiffs must request, if at all, from the clients themselves. Third, it demands information irrelevant to the factual issues of whether Defendants made loans and are in fact Tribal entities or whether the Tribal law choice of law provision in the underlying consumer contracts should be set aside, and that is thus disproportionate to the case's needs, especially because Defendants could produce any documents relevant to Plaintiffs' claims. And fourth, compliance with the Subpoena's demands would subject Ms. Weddle and Greenberg Traurig to undue burden. Ms. Weddle therefore moves the Court to quash the subpoena under Federal Rule of Civil Procedure 45(d)(3).

## **I. FACTUAL BACKGROUND**

Jennifer Weddle is a shareholder at Greenberg Traurig and is the Co-Chair of Greenberg Traurig's nationwide American Indian Law Practice. (Aff. of Jennifer Weddle in Support of Motion to Quash, attached as Ex. A, ¶ 2.) Ms. Weddle's eighteen-year practice has focused extensively on tribal economic development and complex regulatory and jurisdictional issues affecting tribal and non-tribal clients. (*Id.* ¶ 3.) Ms. Weddle has significant experience in, among other topics, representing American Indian tribes, tribal entities, and companies working with tribes in a wide variety of economic development contexts, including tourism, real estate development, gaming, minerals development, manufacturing, agriculture, and consumer lending.

(*Id.* ¶ 4.) The plaintiffs in a class-action lawsuit in the Eastern District of Virginia seek from Ms. Weddle discovery relating to her representation of certain consumer-lending entities, but their overly broad requests demand documents about the subject-matter of lending, which implicates dozens of unrelated Greenberg Traurig clients, dozens of Greenberg Traurig lawyers current and former, and indeed more than 100,000 documents spanning client interests and even bar association files. (*Id.* ¶¶ 5-7, 11, 13-15.)

The lawsuit, styled *Williams et al. v. Big Picture Loans, LLC et al.*, No. 3:17-cv-00461 (E.D. Va.) (the “*Williams* lawsuit”), alleges that Big Picture Loans, LLC (“Big Picture Loans”) and Ascension Technologies, Inc. (“Ascension”), both consumer-lending companies owned by the Tribe, wrongfully claim to be Tribal entities to shield themselves from the enforcement of Virginia usury laws. (*See generally* Docket No. 1.<sup>1</sup>) In particular, Plaintiffs allege that (1) Matt Martorello—one of Ms. Weddle and Greenberg Traurig’s clients—transferred his lending company, Bellicose Capital, LLC (“Bellicose Capital”), to the Tribe in order to evade legal liability, (2) the Tribe rebranded Bellicose Capital as Ascension, and (3) Ascension continues to operate with only limited involvement from the Tribe. (*See generally id.*) Based on these allegations, Plaintiffs assert class claims for declaratory judgment, unjust enrichment, and violations of RICO and Virginia usury laws against Big Picture Loans, Ascension, Martorello, and certain tribal officers. (*See id.*) Nowhere does Plaintiffs’ Complaint make any allegations regarding Greenberg Traurig, Ms. Weddle, or any other Greenberg Traurig attorney.

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<sup>1</sup> This Motion cites filings in two federal district court dockets. For clarity’s sake, filings in the *Williams* lawsuit are cited using the convention “Docket No. [#],” and filings in the *Cumming* lawsuit are cited using the convention “ECF No. [#].”

Nonetheless, on November 29, 2018, Plaintiffs delivered to a secretary at Greenberg Traurig's Denver office a subpoena duces tecum (the "Subpoena"), demanding that Ms. Weddle produce documents and communications covering a broad range of subject-matters. (*See* Subpoena to Produce Documents, Information or Objects Issued to Jennifer Weddle, attached as Ex. B.) Specifically, the Subpoena demands production of six categories of documents and communications, without any date limitations whatsoever, relating broadly to tribal lending and more specifically to Ms. Weddle and Greenberg Traurig's representation of certain clients:

1. All communications between Ms. Weddle and Mr. Martorello pertaining to tribal lending, Big Picture Loans, Red Rock Tribal Lending, LLC, Ascension, or the Tribe;
2. Any documents provided to Ms. Weddle by Mr. Martorello that pertain to tribal lending, Big Picture Loans, Red Rock, Ascension, or the Tribe;
3. Any communications between Ms. Weddle and any employee, officer, or agent of Bellicose Capital, Sourcepoint VI, LLC, Eventide Credit Acquisitions, LLC ("Eventide") (another Greenberg Traurig client), Kairos Holdings, LLC, Liont, LLC, Gallant Capital, LLC, or Gallant PR LLC pertaining to tribal lending, Big Picture Loans, Red Rock, or the Tribe;
4. Any documents in Ms. Weddle's possession that pertain to tribal lending, Big Picture Loans, Red Rock, or the Tribe;
5. Any documents in Ms. Weddle's possession that pertain to the sale of Bellicose and Sourcepoint to the Tribe; and
6. Any communications between Ms. Weddle and Scott Merrit, Craig Mansfield, Van Hoffman, Rick Gerber, Karrie Wichtman, Rob Rosette, or Chippewa Valley Bank pertaining to tribal lending, Big Picture Loans, Red Rock, Ascension, or the Tribe.

(Ex. B, at 6-7.)

These demands seek much more than vast amounts of information supposedly related to the claims in the *Williams* lawsuit. They implicate Ms. Weddle and Greenberg Traurig's work in dozens of matters, many not involving Mr. Martorello or any of his entities, and involving

dozens of other Greenberg Traurig attorneys, current and former. (Ex. A ¶¶ 5-6, 11, 13, 15.) They also implicate Greenberg Traurig’s representation of Mr. Martorello in another pending class-action lawsuit. (*Id.* ¶¶ 7, 16.) In that lawsuit, styled *Cumming et al. v. Big Picture Loans, LLC et al.*, No. 5:18-cv-03476 (N.D. Cal.) (the “*Cumming* lawsuit”), the plaintiffs allege that Big Picture Loans, Ascension, and Mr. Martorello created a payday-lending operation that associates with the Tribe to shield itself from the enforcement of state and federal usury laws. (*See generally* ECF No. 6.) As in the *Williams* lawsuit, the plaintiffs in the *Cumming* lawsuit assert claims for declaratory judgment, unjust enrichment, and violations of RICO and state usury and consumer-finance laws. (*See generally id.*) Plaintiffs’ subpoena thus demands information from Greenberg Traurig relating to its representation of a client in active litigation.

## II. LEGAL STANDARD

Federal Rule of Civil Procedure 26(b)(1) permits discovery “regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Discovery is relevant for purposes of Rule 26 if it tends to make a fact of consequence “more or less probable” than it otherwise would be. *Infinity Home Collection v. Coleman*, No. 17-mc-00200-MSK-MEH, 2018 WL 1733262, at \*2 (D. Colo. April 10, 2018) (quoting Fed. R. Evid. 401). To determine whether discovery is proportional to a case’s needs, courts analyze, among other factors, “the parties’ relative access to relevant information, . . . the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

A subpoena served on a non-party under Federal Rule of Civil Procedure 45 is subject to these same standards—“it must seek relevant information and be proportional to the needs of the

case.” *Infinity Home Collection*, 2018 WL 1733262, at \*2. A court further “must” quash or modify a subpoena that either “requires disclosure of privileged or other protected matter, if no exception or waiver applies,” or “subjects a person to undue burden.” Fed. R. Civ. P. 45(d)(3)(A)(iii), (iv). Indeed, a subpoena that is “overbroad, irrelevant, unnecessary, and . . . a fishing expedition,” served not for purposes of the litigation for which it is served but for another purpose, is an abuse of Rule 45. *Gen. Steel Domestic Sales, LLC v. Chumley*, No. 13-cv-00769-MSK-KMT, 2014 WL 3057496, at \*1 (D. Colo. July 7, 2014).

### **III. ARGUMENT**

Each of the Subpoena’s demands seeks information that is protected by the attorney-client privilege and Colorado Rule of Professional Conduct 1.6. And because the information is under Ms. Weddle’s clients’ control, Plaintiffs may demand it, if at all, from the clients themselves. Issues of privilege and control aside, the Subpoena seeks information that is irrelevant to Plaintiffs’ claims and disproportionate to the needs of the case. And compliance with these demands would impose an undue burden on Ms. Weddle and Greenberg Traurig. For these reasons, the Court must quash the Subpoena.

#### **A. The Subpoena Impermissibly Seeks Information that is Protected by the Attorney-Client Privilege and Colo. RPC 1.6**

The attorney-client privilege prohibits the disclosure of “confidential matters communicated by or to the client in the course of obtaining counsel, advice, or direction with respect to the client’s rights or obligations.” *People v. Trujillo*, 144 P.3d 539, 542 (Colo. 2006) (quoting *People v. Madera*, 112 P.3d 688, 690 (Colo. 2005)). The privilege “inures to the benefit and protection of the client, [allowing the] client to gain counsel, advice, or direction.” *Evanston Ins. Co. v. Aminokit Labs., Inc.*, No. 15-cv-02665-RM-NYW, 2018 WL 1566835, at \*3 (D. Colo.

March 30, 2018). For that reason, “the privilege is held by the client and may be waived only by the client.” *Trujillo*, 144 P.3d at 542.

An attorney’s duty of confidentiality is even more expansive. In Colorado, a lawyer “*shall not* reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by [certain circumstances inapplicable here].” Colo. RPC 1.6(a) (emphasis added). This rule of confidentiality “applies not only to matters communicated in confidence by the client but also to *all information* relating to the representation, whatever its source.” *Id.* cmt. 3 (emphasis added).

The Subpoena demands that Ms. Weddle produce “all” or “any” communications with certain clients and non-client entities and persons, and “any” documents in her possession relating to client and non-client entities and “tribal lending.” (*See* Ex. B, at 6-7.) These demands invade both the attorney-client privilege and Ms. Weddle’s duty of confidentiality to her clients. Ms. Weddle has represented Mr. Martorello and his companies, and Greenberg Traurig currently represents Mr. Martorello in the *Cumming* lawsuit and Eventide in other matters. (Ex. A ¶¶ 5-7.) Ms. Weddle cannot disclose her communications with clients without violating the attorney-client privilege. *Trujillo*, 144 P.3d at 542; (Ex. A ¶¶ 9, 16). And she cannot disclose her communications with non-client persons and entities if the purpose of those communications was “to carry out the representation” of her clients, which it was. Colo. RPC 1.6. Because the subpoena seeks disclosure of privileged material, the Court must quash it. Fed. R. Civ. P. 45(d)(3)(A)(iii).

**B. Even if the Attorney-Client Privilege Did Not Apply, the Communications and Documents Sought Are in the Client's Control and Must Be Requested from the Client if at all**

Even when an attorney physically possesses documents relating to the representation of a client, that possession is subject to the client's control—"clients control case files in their attorneys' hands." *XTO Energy, Inc. v. ATD, LLC*, No. CIV 14-1021 JB/SCY, 2016 WL 1730171, at \*23 (D. N.M. April 1, 2016). Due to its control, a client who is a party "may be required to produce a document that it has turned over to its attorney when the document relates to the attorney's representation of that client on a specific matter." *Id.* at \*24.

And a party should not subpoena a non-party custodian where it can obtain the information sought from a party to the litigation: "If documents are available from a party, it has been thought preferable to have them obtained pursuant to Rule 34 rather than subpoenaing them from a nonparty witness." *Sherrill v. DIO Transp., Inc.*, 317 F.R.D. 609, 615 (D. S.C. 2016) (quoting 8A Charles Alan Wright, et al., *Federal Practice and Procedure* § 2204, at 365 (2d ed. 1994)). This is particularly true where the non-party custodian is an attorney, because, with limited exceptions, the attorney's file belongs to the client—not to the attorney. *See Colo. RPC* 1.16(d) (requiring that an attorney surrender, upon termination of representation, "papers and property to which the client is entitled"). So it is the client, rather than the client's attorney, to whom discovery requests are properly addressed, and the requesting party "lacks authority to compel [an attorney] to disclose documents provided to [the attorney] in confidence by another of [the attorney's] clients." *Makaneole v. Solarworld Indus. Am., Inc.*, No. 3:14-CV-1528-PK, 2015 WL 13681326, at \*6 (D. Or. June 25, 2015).



Even if Ms. Weddle were in possession of the communications and documents that the Subpoena seeks, she does not control them and acts only as their custodian. The communications and documents are in her clients' control, and to the extent Plaintiffs can lawfully demand them, they must do so from Ms. Weddle's clients themselves. *Sherrill*, 317 F.R.D. at 615; *Makaneole*, 2015 WL 13681326, at \*6.

**C. The Subpoena Must Be Quashed Because it Seeks Information that is Irrelevant to Plaintiffs' Claims and Disproportionate to the Case's Needs**

To be enforceable, a subpoena served on a non-party "must seek information that is relevant to a party's claims or defenses and proportional to the needs of the case." *Frappied v. Affinity Gaming Black Hawk, LLC*, No. 17-cv-01294-RM-NYW, 2018 WL 1899369, at \*3 (D. Colo. April 20, 2018). A request is relevant if it seeks information that would tend to make a fact of consequence more or less probable. *Infinity Home Collection*, 2018 WL 1733262, at \*2. But "[w]hen the relevance of a particular topic is not apparent from its face, the party seeking the information bears the burden of first establishing the relevance of the information." *Frappied*, 2018 WL 1899369, at \*4. That party cannot satisfy its burden when the complaint lacks allegations tying the person from whom discovery is sought to the allegedly unlawful conduct. *See Church Mut. Ins. Co. v. Coutu*, No. 17-cv-00209-RM-NYW, 2017 WL 4236318, at \*6 (D. Colo. Sept. 25, 2017) (concluding that a subpoena requesting documents from an attorney and law firm, both non-parties, sought irrelevant discovery where no allegation in the complaint linked the attorney or law firm to the alleged conspiracy).

In addition to relevance, "[t]he proper scope of discovery is further bounded by the principles of proportionality." *Gebremedhin v. Am. Family Mut. Ins. Co.*, No. 1:13-cv-02813-CMA-NYW, 2015 WL 4272716, at \*4 (D. Colo. July 15, 2015). "Rule 26(b)(2)(C) allows a

court to limit discovery on motion or on its own if it determines that,” among other reasons, “the discovery sought is unreasonably cumulative or duplicative, or may be obtained from some other source that is more convenient, less burdensome, or less expensive.” *Id.*

The Subpoena’s demands fail under both requirements. Plaintiffs allege that Defendants made loans that were usurious under Virginia law, (Docket No. 1 ¶ 54), and that Defendants cannot claim entitlement to tribal immunity because they are in fact non-tribal entities run by non-tribal persons, (*id.* ¶¶ 5 n.4, 47). It is not apparent why communications and documents in Ms. Weddle’s possession would tend to make facts establishing that Defendants made usurious loans and operated under the guise of a tribal entity more or less probable. Rather, it seems more likely that Defendants themselves would possess documents about the loans that they allegedly made, their corporate structures, and their relations to the Tribe. Absent allegations tying Ms. Weddle to the allegedly unlawful conduct, Plaintiffs cannot say that the Subpoena requests relevant discovery. *See Church Mut. Ins. Co.*, 2017 WL 4236318, at \*6. Plaintiffs likewise cannot claim proportionality, because all documents relating to Defendants’ alleged loans and corporate structure should be within Defendants’ possession, and it would be more convenient and less burdensome for them—rather than non-party Ms. Weddle—to produce the documents. *Gebremedhin*, 2015 WL 4272716, at \*4.

Because the Subpoena’s demands are neither relevant nor proportional, they are improper under Rule 26.

**D. Compliance with the Subpoena Would Unduly Burden Ms. Weddle and Greenberg Traurig**

A court must quash or modify a subpoena that “subjects a person to undue burden.” Fed. R. Civ. P. 45(d)(3)(A)(iv). Plaintiffs’ Subpoena does exactly that. To comply with its demands,

Ms. Weddle would have to comb through communications and documents from her 18-year Indian law practice, searching for “any” communication or document relating to certain consumer-lending companies, the Tribe, and “tribal lending” generally. (Ex. A ¶ 3.) Being that she has significant experience in sovereign models for consumer-lending entities, the Subpoena’s requests for documents relating to “tribal lending” would encompass a significant portion of her law practice for the past 18 years. (*Id.* ¶¶ 3-4.) And even if the phrase “tribal lending” were interpreted more narrowly (for example, by imposing a date restriction), it still would require her to analyze numerous “tribal lending” communications and documents to separate out those that might arguably relate to issues in the *Williams* lawsuit from those she accumulated while representing other clients on unrelated matters. (*Id.* ¶ 5-7.) She would also have to separate communications and documents relating to many other clients’ matters involving the Tribe. (*Id.* ¶ 13.)

To do all this would require much more than a simple electronic search. Ms. Weddle has represented many clients engaged in tribal lending, and she also has represented clients in matters involving the Tribe in numerous matters over a period of many years. (*Id.* ¶ 13.) The likelihood of finding relevant information in this veritable haystack of information would be low, while the cost of searching would be prohibitively high. Indeed, Ms. Weddle has worked on more than 70 matters relating to tribal lending, and she has worked on approximately 8 matters involving the Tribe. (*Id.*) Ms. Weddle reviewed a sample of her matters relating to tribal lending or the Tribe, and they contain thousands if not tens of thousands of documents each. (*Id.*) Even if Ms. Weddle and her colleagues could review one document per minute for purposes of identifying relevant documents and producing a privilege log, it would take months to review all

documents that might involve tribal lending or the Tribe, and they could not do so without hiring an e-discovery vendor. (*Id.*) This means that Ms. Weddle, along with dozens of other Greenberg Traurig attorneys, paralegals, and support staff who have worked on matters implicated by the Subpoena, would incur a cost of at least several hundred thousand dollars to comply with the Subpoena's demands. (*Id.*) This is a burden far too great for a non-party. *See Layman v. Junior Players Golf Acad., Inc.*, 314 F.R.D. 379, 386 (D. S.C. 2016) (concluding that the plaintiff's subpoena to the defendant's non-party accountant was unduly burdensome where the plaintiff did not seek to obtain the demanded financial documents from the defendant in discovery).

In addition to Ms. Weddle's other valid objections, compliance would impose an undue burden on her, and so the Court must quash the Subpoena for that alternative reason. Fed. R. Civ. P. 45(d)(3)(A)(iv).

#### IV. CONCLUSION

For the reasons stated, Ms. Weddle respectfully requests that the Court quash Plaintiffs' Subpoena.

Dated: December 13, 2018

Respectfully submitted,

s/ William D. Hauptman

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 13, 2018, I electronically filed the foregoing **MOTION TO QUASH SUBPOENA** with the Clerk of Court by emailing it to newcases@cod.uscourts.gov and served the same upon counsel as follows:

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*s/ William D. Hauptman*

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# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

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JENNIFER WEDDLE,

Movant,

v.

LULA WILLIAMS,  
GLORIA TURNAGE,  
GEORGE HENGLE,  
DOWIN COFFY, and  
MARCELLA P. SINGH,  
on behalf of themselves and all others similarly situated,

Respondents.

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**AFFIDAVIT OF JENNIFER WEDDLE IN SUPPORT OF MOTION TO QUASH**

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Jennifer Weddle, being duly sworn, states as follows:

1. My name is Jennifer Weddle. I am above the age of eighteen years and am competent to testify to the matters stated in this affidavit.

2. Since 2000, I have been a member of the Colorado bar, Attorney No. 32068. I am also admitted to practice in tribal courts, before the U.S. Supreme Court and before this District Court and the Tenth Circuit, as well as the Fourth, Sixth, Eighth, Ninth, and DC Circuits. I am a shareholder in the Denver office of Greenberg Traurig, LLP (“Greenberg Traurig”) and the Co-Chair of Greenberg Traurig’s nationwide American Indian Law Practice, a role I have held since I joined the firm in 2009.

3. My eighteen-year practice has focused extensively on tribal economic development and complex regulatory and jurisdictional issues affecting tribal and non-tribal



clients. This work includes U.S. Supreme Court and other federal appellate litigation, corporate and transaction work, and advice on regulatory matters, including advocacy before federal and state agencies.

4. I have significant experience representing American Indian tribes, tribal entities and companies working with tribes in a wide variety of economic development contexts including but not limited to tourism, real estate development, gaming, minerals development, manufacturing, agriculture and consumer lending.

5. The Subpoena issued to me in *Williams et al. v. Big Picture Loans, LLC et al.*, No. 3:17-cv-00461 (E.D. Va.) implicates my and Greenberg Traurig's representation of not only named Defendants in the Complaint in that case, but also Greenberg Traurig's work in dozens of other matters, many not involving named Defendants at all, but nonetheless involving dozens of Greenberg Traurig attorneys, current and former. This Subpoena was never served on me or Greenberg Traurig. A process server handed the Subpoena to a Denver office secretary, who is not my secretary, on November 29, 2018 when I was out of state on client business. No one contacted me or Greenberg Traurig regarding any authorization to accept service.

6. Since 2011, Greenberg Traurig has represented, with respect to a variety of different matters, entities with respect to which Mr. Matt Martorello is or was a principal, including Bellicose Capital, LLC ("Bellicose Capital"), SourcePoint VI, LLC, ("SourcePoint") and Eventide Credit Acquisitions, LLC. Over an eight-year period, Greenberg Traurig has been retained on 11 different matters involving entities in which Mr. Martorello is or was a principal, nine of which were multi-year representations, each involving numerous Greenberg Traurig attorneys, in all more than two dozen attorneys, current and former.

7. The Subpoena also implicates Greenberg Traurig's current representation of Mr. Martorello individually in *Cumming et al. v. Big Picture Loans, LLC et al.*, No. 5:18-cv-03476 (N.D. Cal.), a class-action lawsuit with allegations nearly identical to those that the issuers of the Subpoena assert in their Eastern District of Virginia litigation.

8. While the Subpoena indicates it is issued to me, the cover letter accompanying it indicates the issuers would "like to review [my] company's records relevant to this action." Regardless of whether the Subpoena is intended to be personal to me or to be a subpoena upon my law firm, I have no responsive documents that are personal or unrelated to my employment by Greenberg Traurig.

9. I could not comply with the Subpoena's demands without divulging information that is protected by the attorney-client privilege or by my duty of confidentiality to certain clients.

10. In addition, compliance with the Subpoena would impose an undue burden on me, dozens of current and former attorneys at Greenberg Traurig, and Greenberg Traurig support staff.

11. First, without date limitations whatsoever, the Subpoena demands six categories of documents "pertaining to tribal lending" without defining "tribal lending" in any manner. The vast majority of the hundreds of matters I have worked on in my 18-year career involve monies borrowed by or lent to tribes and tribal entities, ranging from multi-million-dollar casino financings to housing construction contracts to environmental studies associated with multistate energy infrastructure.

12. But even if Greenberg Traurig were to assume from the context of the Subpoena issuers' Complaint that they seek the firm's production of documents related to tribal consumer lending, meaning tribes' economic development involving offering consumer credit of any sort, that too would be unduly burdensome.

13. Specifically, I have worked on more than 70 different matters relating to tribal consumer lending (many of which are also multi-year representations involving dozens of Greenberg Traurig lawyers from offices across the United States, as well as international offices). I have worked on approximately eight matters involving the Lac Vieux Desert Band of Lake Superior Chippewa Indians, ("the Tribe), the owner of the corporate defendants listed in the Complaint. Half of those matters do not involve Mr. Martorello or entities with respect to which he is or was a principal in any way, but do involve dozens of Greenberg Traurig lawyers from across the country and indeed, numerous international office attorneys as well. Because demand for production No. 4 of the Subpoena requests any documents in my possession "pertaining to tribal lending," I reviewed a sample of these dozens of matters, and they contain thousands of documents each, and some, tens of thousands of documents each. Even if my colleagues and I could review one document per minute for purposes of assessing relevance and preparing a privilege log, it would take months to review all of the documents and it would be impossible to do without hiring an e-discovery vendor, as most files are electronic. And it would cost Greenberg Traurig at least several hundred thousand dollars to accomplish, based on the numerosity of our files and our experience with e-discovery vendors handling similarly gargantuan projects for litigation clients. Most of these documents from firm files belong to

dozens of different clients not associated with Mr. Martorello or any with which he is or was associated or any entities named in the Subpoena or the Complaint.

14. In addition to the more than 100,000 documents in client files that would be responsive to the Subpoena, documents I have as a result of my participation in volunteer bar activities would also be implicated, and require further burden on additional third-party organizations. Specifically, and for example, I served as President of the National Native American Bar Association (“NNABA”) in 2016-2017 and otherwise as a NNABA officer and board member for many years prior to and subsequent to my term as President. I was also the President of the National Native American Bar Association Foundation. I also served as Chair of the 800+-member Federal Bar Association Indian Law Section from 2011-2013 and likewise as an officer and board member thereof for many years prior and subsequently to my two terms as Chair. I also served as President of the Colorado Indian Bar Association from 2009-2012, and was otherwise an officer thereof for an additional eight years. With all of those bar association capacities, I have thousands of communications “pertaining to tribal lending,” whether understood broadly or narrowly under the Subpoena, and likewise communications with Indian law practitioners named in demand for production No. 6 of the Subpoena. This includes communications relative to continuing legal education activities I organized, chaired or presented at, articles I wrote or edited for professional publications and bar association board and membership communications. In addition, I have been a frequent speaker on tribal consumer lending, including as an adjunct professor for the University of Colorado School of Law and guest lecturer or speaker at numerous law school classes at Harvard Law School, the University of Denver Sturm College of Law, Arizona State University Law School, as well as other law

schools, CLE events of the American Bar Association and other bar and legal education organizations, industry conferences and inter-tribal association gatherings. Another example of the overbreadth of the Subpoena is that, by demanding production of documents for basically the subject-matter of a significant portion of my career (and that of many other lawyers), it implicates confidential peer reviews of federal judicial nominees which I have as a result of my service as the Tenth Circuit Representative on the American Bar Association Standing Committee in the Federal Judiciary (e.g., involving nominees who adjudicated tribal consumer lending matters or represented litigants in tribal consumer lending cases). Simply put, demand for production No. 4 of the Subpoena encompasses many thousands of additional documents broadly “pertaining to tribal lending” in my possession which are not my documents or Greenberg Traurig’s documents; they are confidential bar association documents I have as a result of my professional activities.

15. With respect to demand for production No. 6, the issuers seek communications between myself and two attorneys active in the Indian Law space, Ms. Karrie Wichtman and Mr. Rob Rosette. I have engaged in very frequent communications with both attorneys throughout the course of my career on numerous matters “pertaining to tribal lending,” again whether understood broadly or narrowly under the Subpoena, but the vast majority of those communications relate to other firm clients not including Mr. Martorello or any of the entities named in the Subpoena or the Complaint. The vast majority of responsive documents in my possession have nothing whatsoever to do with the Subpoena issuers’ litigation.

16. Greenberg Traurig has been instructed by the holder of the privileged documents which might have anything do to with the Subpoena issuers’ litigation not to produce privileged

documents. Any production under the Subpoena would require us to violate Colorado Rule of Professional Responsibility 1.6. That includes but is not limited to Greenberg Traurig's ongoing litigation defense of Mr. Martorello in *Cumming*.

FURTHER AFFIANT SAYETH NOT.

Jennifer Weddle  
Jennifer Weddle

STATE OF Colorado

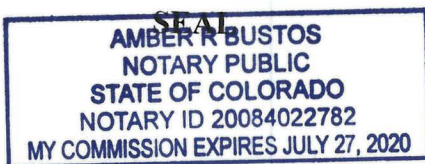
)

) ss:

COUNTY OF Denver

)

SUBSCRIBED and sworn to before me on this 12<sup>th</sup> day of December, 2018  
by Jennifer Weddle.



Amber R. Bustos  
Notary Public

My commission expires: July 27, 2020

# EXHIBIT B



# TERRELL | MARSHALL

LAW GROUP PLLC

Jennifer R. Murray  
jmurray@terrellmarshall.com

Our File No. 2087-004.G

November 16, 2018

## ***VIA SERVICE OF PROCESS***

Jennifer Weddle  
GREENBERG TRAURIG, LLP  
1200 17th Street, Suite 2400  
Denver, Colorado 80202

Re: *Williams, et al. v. Big Picture Loans, et al.*  
U.S.D.C. Eastern District of Virginia– Case No. 3:17-cv-00461 REP  
Subpoena to Produce Documents, Information, or Objects

Dear Ms. Weddle:

We represent the Plaintiffs in a lawsuit against Big Picture Loans, LLC, Ascension Technologies, Inc., Matt Martorello, Daniel Gravel, James Williams, Jr., Gertrude McGeshick, Susan McGeshick, and Giiwegiizhigookway Martin. As part of the discovery process, we would like to review your company's records relevant to this action. Please find enclosed a Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action directed to your attention.

The subpoena requires you to produce the records described in the subpoena at the time and place specified. We are willing to work with you regarding both the scope of the documents to be produced and the timing in order to minimize any burden. We would prefer to receive documents electronically (via email or uploaded to Sharefile via a link we will send to you) to minimize shipping and copying costs. **Please confer with my paralegal, Jodi Nuss, regarding the form of any electronic production before gathering or processing electronically stored information. She can be contacted by telephone at (206) 816-6603 or by email at jnuss@terrellmarshall.com.**

Please produce the requested records no later than **December 14, 2018**. Documents produced to us in response to the subpoena should be emailed to jmurray@terrellmarshall.com and jnuss@terrellmarshall.com or by other agreed upon means. Please contact us to confer.

Jennifer Weddle  
GREENBERG TRAURIG, LLP  
November 16, 2018  
Page 2

We look forward to your response. Thank you for your prompt attention to this matter.

Very truly yours,

TERRELL MARSHALL LAW GROUP PLLC

A handwritten signature in blue ink that reads "Jennifer R. Murray". The signature is written in a cursive, flowing style.

Jennifer R. Murray

JRM/bkk

Enclosures

cc: David N. Anthony  
Timothy J. St. George  
Hugh M. Fain, III  
M.F. Connell Mullins, Jr.  
John M. erbach  
Richard L. Scheff  
Jonathan P. Boughrum  
David F. Herman  
Michael C. Witsch  
Craig T. Merritt  
Harrison M. Gates  
Anna Marek Bruty  
Justin Alexander Gray  
Leonard A. Bennett  
Elizabeth W. Hanes  
Craig C. Marchiando  
Kristi C. Kelly  
Andrew J. Guzzo  
E. Michelle Drake  
John G. Albanese  
Beth E. Terrell  
Elizabeth A. Adams  
Matthew Wessler

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

## UNITED STATES DISTRICT COURT

for the

Eastern District of Virginia

LULA WILLIAMS, et al.

Plaintiff

v.

BIG PICTURE LOANS, LLC, et al.

Defendant

Civil Action No. 3:17-cv-461

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Jennifer Weddle, Greenberg Traurig, LLP, 1200 17th Street, Suite 2400, 1200 17th Street, Suite 2400,  
Denver, Colorado 80202

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

SEE EXHIBIT A

Place: Stevens-Koenig Reporting  
700 17th Street, Suite 1750  
Denver, Colorado 80202

Date and Time:

12/14/2018 12:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/16/2018

CLERK OF COURT

OR

/s/ Jennifer R. Murray

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiffs  
, who issues or requests this subpoena, are:

Jennifer R. Murray, Terrell Marshall Law Group PLLC, 936 N. 34th St., Ste. 300, Seattle, WA 98103, 206-816-6603

## Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:17-cv-461

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
 \_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

LULA WILLIAMS, GLORIA TURNAGE,  
GEORGE HENGLE, DOWIN COFFY, and  
FELIX GILLISON, JR., on behalf of  
themselves,

Plaintiffs,

v.

BIG PICTURE LOANS, LLC; MATT  
MARTORELLO; ASCENSION  
TECHNOLOGIES, INC.; DANIEL  
GRAVEL; JAMES WILLIAMS, JR.;  
GERTRUDE MCGESHICK; SUSAN  
MCGESHICK; and  
GIIWEGIIZHIGOOKWAY MARTIN,

Defendants.

Case No. 3:17-cv-00461-REP-RCY

**JURY TRIAL DEMANDED**

**EXHIBIT “A” – SUBPOENA TO PRODUCE DOCUMENTS,  
INFORMATION OR OBJECTS ISSUED TO JENNIFER WEDDLE**

Please take notice that on or before December 14, 2018, at 12:00 noon, pursuant to Rule 45 of the Federal Rules of Civil Procedure, Jennifer Weddle shall produce documents identified below in accordance with the attached subpoena.

**DOCUMENTS TO BE PRODUCED**

1. All communications between Jennifer Weddle (“Ms. Weddle”) and Matt Martorello (“Martorello”) pertaining to tribal lending, Big Picture Loans, LLC (“Big Picture”), Red Rock Tribal Lending, LLC (“Red Rock”), Ascension Technologies, Inc. (“Ascension”), and/or the Lac Vieux Desert Band of Lake Superior Chippewa Indians (“LVD”).

2. Any documents provided to Ms. Weddle by Martorello pertaining to tribal lending, Big Picture, Red Rock, Ascension, and/or the LVD.

3. Any communications between Ms. Weddle and any employee, officer, or agent of Bellicose Capital, LLC (“Bellicose”), Sourcepoint VI, LLC, (“Sourcepoint”) Eventide Credit Acquisitions, LLC, (“Eventide”), Kairos Holdings, LLC (“Kairos”), Liant, LLC (“Liant”), Gallant Capital, LLC (“Gallant Capital”) or Gallant PR LLC (“Gallant PR”) pertaining to tribal lending, Big Picture, Red Rock, Ascension Technologies and/or the LVD.

4. Any documents in Ms. Weddle’s possession pertaining to tribal lending, Big Picture, Red Rock, and/or the LVD.

5. Any documents in Ms. Weddle’s possession pertaining to the sale of Bellicose and Sourcepoint to the LVD.

6. Any communications between Ms. Weddle and Scott Merritt, Craig Mansfield, Van Hoffman, Rick Gerber, Karrie Wichtman, Rob Rosette or Chippewa Valley Bank pertaining to tribal lending, Big Picture, Red Rock, Ascension Technologies and/or the LVD.

DATED this 16th day of November, 2018.

TERRELL MARSHALL LAW GROUP PLLC

By: /s/ Jennifer Rust Murray, Pro Hac Vice  
Beth E. Terrell, *Admitted Pro Hac Vice*  
Email: bterrell@terrellmarshall.com  
Jennifer Rust Murray, *Admitted Pro Hac Vice*  
Email: jmurray@terrellmarshall.com  
Elizabeth A. Adams, *Admitted Pro Hac Vice*  
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Facsimile: (206) 319-5450

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*Attorneys for Plaintiffs and Proposed Classes*



CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2018, I electronically transmitted the foregoing to the following:

David N. Anthony, Virginia State Bar #31696  
Email: david.anthony@troutmansanders.com  
Timothy J. St. George, Virginia State Bar #77349  
Email: tim.stgeorge@troutmansanders.com  
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1001 Haxall Point  
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*Attorneys for Defendants Big Picture Loans, LLC and Ascension Technologies, LLC*

DATED this 16th day of November, 2018.

TERRELL MARSHALL LAW GROUP PLLC

By: /s/ Jennifer Rust Murray, Pro Hac Vice  
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*Attorneys for Plaintiffs and Proposed Classes*