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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

**JW GAMING DEVELOPMENT, LLC**, a  
California limited liability company,

Plaintiff,

v.

**ANGELA JAMES; LEONA L. WILLIAMS;  
MICHAEL R. CANALES; MELISSA M.  
CANALES; JOHN TANG; PINOLEVILLE  
POMO NATION**, a federally-recognized Indian  
tribe; **PINOLEVILLE GAMING  
AUTHORITY; PINOLEVILLE GAMING  
COMMISSION; PINOLEVILLE BUSINESS  
BOARD; PINOLEVILLE ECONOMIC  
DEVELOPMENT, LLC**, a California limited  
liability company; **LENORA STEELE;  
KATHY STALLWORTH; MICHELLE  
CAMPBELL; JULIAN J. MALDONADO;  
DONALD D. WILLIAMS; VERONICA  
TIMBERLAKE; CASSANDRA STEELE;  
JASON EDWARD RUNNING BEAR  
STEELE; ANDREW STEVENSON;  
CANALES GROUP, LLC**, a California limited  
liability company; **LORI J. CANALES;  
KELLY L. CANALES**; and **DOES 1 through  
20**,

Defendants.

Case No. 4:18-cv-02669-HSG

**PLAINTIFF'S OPPOSITION TO  
TRIBAL ENTITIES' AND TRIBAL  
DEFENDANTS' MOTION TO DISMISS  
AND JOHN TANG'S NOTICE OF  
JOINDER**

Date: August 9, 2018  
Time: 2:00 p.m.

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## INTRODUCTION AND STATEMENT OF THE ISSUES

Plaintiff JW Gaming Development LLC (the “Company”) submits this opposition to the motion to dismiss filed by the “Tribal Defendants” and the “Tribal Entity Defendants.”<sup>1</sup> The motion seeks to dismiss most of the Company’s claims and limit the Company to whatever it can recover from the Tribe on the promissory note entered in 2012 under false pretenses.<sup>2</sup> The note, which was entered after the defendants took the Company’s \$5.38 million and wasted it, arguably only allows the Company to collect from the revenues of a gaming facility that is still non-existent, due in part to the effects of the defendants’ fraud. The defendants’ strategy, if successful, will further the ongoing schemes alleged in the complaint whereby the individual defendants defraud third parties and the Tribe for personal gain, shield themselves from personal liability by taking cover under the Tribe’s sovereign immunity and, in the end, shift liability to the Tribe, whose immunity is waived but whose assets the defendants have squandered.

The moving defendants wave away the complaint’s detailed allegations of fraud, looting, wire fraud, and money laundering. They instead seize on a purported acrimony between the Tribe and one of the Company’s attorneys, portraying the Company’s suit to redress the theft of \$5.38 million as an intra-tribal dispute over which this Court lacks jurisdiction. They also argue that the allegations of fraud and fraud-based RICO violations – the foundation of which is the sworn testimony of

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<sup>1</sup> The “Tribal Defendants” are Angela James, Leona L. Williams, Lenora Steele, Kathy Stallworth, Michelle Campbell, Julian J. Maldonado, Donald Williams, Veronica Timberlake, Cassandra Steele, Jason Edward Running Bear Steele, and Andrew Stevenson. The “Tribal Entity Defendants” are Pinoleville Gaming Authority, Pinoleville Gaming Commission, Pinoleville Business Board, and Pinoleville Economic Development, LLC. Although the Notice also states that the Pinoleville Pomo Nation (“Tribe”) is a moving party, the Tribe did not request relief in the motion. *See* Doc. 6 at 2.

This opposition brief also responds to defendant John Tang’s Notice of Joinder in the motion to dismiss, Doc. 7. The Company intends to respond separately to the Notice of Joinder filed by defendants Michael Canales, Melissa Canales, Kelly Canales, Lori Canales, and Canales Group, LLC, Doc. 15.

<sup>2</sup> This brief refers to the promissory note entered between the Company and the Tribe on or about July 10, 2012 as the “Company-Tribe 2012 Note,” the “note” or similar terms that make the reference clear in context.

defendants Leona Williams, Angela James, and Michael Canales – are insufficiently particularized and, with respect to the RICO claims, that the alleged violations did not proximately cause the Company’s \$5.38 million injury.<sup>3</sup>

As set forth below, the defendants’ arguments do not withstand scrutiny, and the Company’s causes of action are sufficient to overcome Defendants’ motion to dismiss.

## STANDARD FOR MOTION TO DISMISS

### I. Defeating a Rule 12(b)(1) Motion.

A defendant may invoke sovereign immunity from suit under Fed. R. Civ. P. 12(b)(1). *Pistor v. Garcia*, 791 F.3d 1104, 1111 (9th Cir. 2015). With a Rule 12(b)(1) motion, “the party asserting subject matter jurisdiction has the burden of proving . . . that immunity does not bar the suit.” *Id.* at 1111 (citations and quotations omitted). *But see People ex rel. Owen v. Miami Nation Enterprises*, 2 Cal.5th 222, 236, 243-44 (Cal. 2016) (party asserting tribal sovereign immunity, other than the tribe itself, bears the burden of showing it is entitled to immunity). In deciding such a motion where factual allegations are controverted by the defendants, “no presumptive truthfulness attaches to a plaintiff’s allegations . . . and the district court may hear evidence regarding jurisdiction and resolve factual disputes where necessary.” *Pistor*, 791 F.3d at 1111 (internal citations and quotations omitted). Defendants introduce new information, but do not controvert the facts alleged.

In ruling on a 12(b)(1) motion, a court will give the plaintiff the benefit of all favorable inferences that can be drawn from the proffered facts, and allegations are construed, when possible, to favor the plaintiff. *Thomas v. Principi*, 394 F.3d 970, 972 (D.C. Cir. 2005).

### II. Defeating a Rule 12(b)(6) Motion.

To defeat a Rule 12(b)(6) motion, a plaintiff must plead “enough facts to support a cognizable legal theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556

<sup>3</sup> Many of defendants’ citations to paragraphs of the complaint are incorrect (e.g., citations to the complaint at Doc. 6, pages 6, 10-11, 13-14), making it difficult to assess the accuracy of their characterizations of the complaint’s allegations.



1 U.S. 662, 667 (2009). Under Rule 12(b)(6), a court must accept all factual allegations as true and  
 2 construe all inferences in the light most favorable to the plaintiff. *Moyo v. Gomez*, 32 F.3d 1382,  
 3 1384 (9th Cir. 1994).

## 4 STATEMENT OF FACTS

### 5 I. The Company pays \$5.38 million.

6 For a period of about two years from 2009 to 2011, the Company made wire transfers to the  
 7 Tribe in the average amount of approximately \$190,000 per month. Compl. ¶¶ 163-64. The  
 8 payments were made into two bank accounts of the defendant Tribal Gaming Commission. Compl.  
 9 ¶¶ 165-166. At all relevant times, the Gaming Commission was chaired by Angela James, Compl. ¶  
 10 40, and the only signers on its accounts were Angela James and Leona Williams, Compl. ¶ 127. The  
 11 wire transfers followed two checks the Company wrote to John Tang (\$280,000) and Michael  
 12 Canales (\$100,000). Compl. ¶¶ 115-117. In the end, the Company paid the Tribe \$5.38 million.

13 The Company made the payments believing it was matching the Canales Group's investment  
 14 of \$5.352 million with the Tribe. Compl. ¶¶ 107-108, 110. Michael Canales and John Tang  
 15 represented that Michael Canales's Canales Group had previously invested over \$5 million with the  
 16 Tribe, and that the Company's matching investment was required to advance the casino project.  
 17 Compl. ¶¶ 106, 112, 114. The Company's auditors demanded that Michael Canales provide proof of  
 18 his initial \$5 million investment with the Tribe. Compl. ¶ 110. Weeks later, John Tang emailed the  
 19 Company a \$5.352 million promissory note between Canales Group as payee, and Pinoleville  
 20 Economic Development LLC as payor. Compl. ¶ 119; Ex. 5. Relying on these representations and  
 21 documentation, the Company funded the Tribe's gaming project. Compl. ¶¶ 124, 317, 327. After the  
 22 Company had fully funded \$5.38 million to the Tribe, the Tribe remained without a casino. Compl. ¶  
 23 269.

24 At the Company's request, the defendants provided an accounting of the Tribe's expenditure  
 25 of the loan proceeds. Compl. ¶ 328. The accounting was prepared by an outside CPA using  
 26 accounting spreadsheets provided by the Tribe. Compl. ¶ 334. Each page of the accounting  
 27 spreadsheets bears the heading "Pinoleville Pomo Nation; Transaction Detail By Account,"  
 28

1 indicating that it was a product of information from the Tribe's accounting department. Compl. ¶  
2 333.

3         Shortly after providing the accounting to the Company, the Tribe, under the signature of  
4 Leona Williams and Angela James sent a notice to the Company asserting that the Company was in  
5 default under a since-dissolved development agreement with the Tribe. Compl. ¶¶ 210-15. The  
6 notice asserted that unless the Company provided additional funding to the Tribe, the Tribe was  
7 going to terminate the agreement with the Company because the Company "has put this [casino]  
8 project in jeopardy." Compl. ¶¶ 212-13.

9         The Company requested a short extension of the notice of default, which the Tribe granted.  
10 Compl. ¶¶ 232-233. The Company then submitted a written proposal to fund the Tribe an additional  
11 \$850,000 in exchange for more control over the project and a greater equity interest in the  
12 development company. Compl. ¶ 216. Melissa Canales rejected the Company's proposal in a  
13 scathing email citing the Canales Group's \$5.352 million investment, asserting that the Company, not  
14 the Tribe, violated the development agreement, that the Tribe "really holds all the cards" and "is  
15 better off without [the Company]"; expressing surprise that the Tribe is giving the Company an  
16 opportunity to cure after stopping funding; and asserting that the Company "must recognize its lack  
17 of leverage and make a realistic offer to the Tribe (taking into account that Pinoleville has not  
18 violated the agreement at all and that after a year of failure to fund, its goodwill is likely used up)."   
19 Compl. ¶¶ 218-229.

20         The Tribe, Tang, Canales Group, and the Company eventually agreed to resolve the Tribe's  
21 notice of default by dissolving the development company, with the Company and Canales Group  
22 entering separate promissory notes with the Tribe for the capital each had invested with the Tribe.  
23 Compl. ¶ 235. For its investment of \$5.38 million, the Company entered a promissory note with the  
24 Tribe and Pinoleville Gaming Authority. Compl. ¶240; Ex. 26. Under that note, the Company's  
25 investment began bearing interest prospectively from date of execution. Compl. Ex. 26, p. 2. The  
26 note also provides that the Company's recourse for breach is limited to the revenues of a gaming  
27 facility. Compl. Ex. 26, p. 3. However, the note also provides that the note becomes due and payable  
28 on July 10, 2015 if the Tribe has not constructed a casino by that time. Compl. Ex. 26, p. 2.

After the Company executed its note, it was provided a copy of the note that Canales Group had separately negotiated with the Tribe for the \$5.352 million it had previously invested. Compl. ¶ 370. Unlike the interest provisions in the Company note, the Canales note provides that its \$5.352 million investment began to accrue interest back-dated to May 30, 2008. Compl. ¶ 262; Ex. 29, p. 1. Also unlike the Company note, the Canales note does not limit Canales Group's recourse for the Tribe's breach of the note, instead making the Canales note a full recourse obligation of the Tribe recoverable against all assets of the Tribe. Compl. Ex. 29. That note becomes due and payable on July 10, 2019, four years after maturity of the Company's note. Compl. ¶ 264; Ex. 29.

Following execution of the Canales and Company notes, the Company cooperated with Canales and the Tribe to bring in other partners to the Tribe to develop a casino. Compl. ¶ 267. The Tribe was unsuccessful in developing a casino, with Michael Canales opining at one point that the senior debt on the project (the notes to the Company and Canales) was too risky for investors. Compl. ¶¶ 269-270 ("We have informed [prospective developers] that the Tribe would be paying the debt out [of] their revenues. So far no one is buying that scenario or wants to get involved with any notes on the facility.").

## **II. The information uncovered by Forster-Gill, Inc., a plaintiff in a different suit against the Tribe**

In December of 2016, Forster-Gill, Inc. commenced suit against the Tribe, PED, Canales Group, Michael Canales, Leona Williams, and others seeking more than \$1.5 million for fraud and breach of various agreements related to defendants' joint lease/purchase of a restaurant/bar/hotel. *Forster-Gill, Inc. v. Pinoleville Pomo Nation, et al.*, Mendocino County Superior Court case no. SCUK-CVG16-68514. Declaration of Tim Gill in Support of Plaintiff's Opposition to Motions to Dismiss ("Gill Decl.") ¶ 11. Forster-Gill's first suit against the defendants in 2012 was resolved with a promissory note, Gill Decl. ¶ 10, but Forster-Gill sued again in December 2016 after defendants breached the promissory note, Gill Decl. ¶ 11.<sup>4</sup>

<sup>4</sup> Canales Group LLC was originally a joint lessor-purchaser along with the Tribe, but was released from the transaction as part of a settlement negotiated with the Tribe through the Tribe's then-counsel, Melissa Canales. Gill Decl. ¶ 10.

1 In response to Forster-Gill's suit, the Tribe asserted it was shielded from suit by sovereign  
 2 immunity, Gill Decl. ¶ 11, and the parties engaged in contentious discovery regarding whether there  
 3 was a valid waiver of immunity, Gill Decl. ¶ 13. In discovery, the Tribe was ordered to produce all  
 4 Tribal Council resolutions from 2009 to 2016, and all contracts it had entered between 2009 and 2016  
 5 that contained a waiver of the Tribe's sovereign immunity, Gill Decl. ¶ 14. The Tribe's production  
 6 contained virtually no meaningful resolutions, and only a handful of inconsequential contracts. Gill  
 7 Decl. ¶ 15.

8 Forster-Gill began conducting its own investigation into the defendants. Gill Decl. ¶ 16.  
 9 Forster-Gill collected approximately six contracts to which the Tribe was party, but which the Tribe  
 10 had not produced in discovery. Gill Decl. ¶ 17. Forster-Gill also collected at least six resolutions  
 11 which were not produced by the Tribe in discovery. Gill Decl. ¶ 18. Among the many contracts that  
 12 Forster-Gill collected in its investigation was the note between the Company and the Tribe. Gill  
 13 Decl. ¶ 19.

14 As part of jurisdictional discovery, Forster-Gill took depositions of Leona Williams, Angela  
 15 James, and Michael Canales. Gill Decl. ¶ 20. For the most part, Leona Williams and Angela James  
 16 recalled very little about any matters involving the Tribe. Gill Decl. ¶ 21. When asked whether the  
 17 Tribe had borrowed money from the Company, Leona Williams testified: "I don't remember." Leona  
 18 Williams Depo. Vol. I, at 182:12-15.<sup>5</sup> However, Leona Williams testified unequivocally that the  
 19 Tribe did not have any contracts with Canales Group. Compl. ¶ 322. Michael Canales testified that  
 20 Canales Group had never loaned money to the Tribe. Compl. ¶ 320.

---

22 <sup>5</sup> When presented with a copy of the Company-Tribe 2012 Note, Leona Williams did not remember:  
 23 the note itself (184:21-185:3), whether the note was discussed with the tribal council (185:4-7); why  
 24 the Tribe had not produced to Forster-Gill tribal council resolutions associated with the note (185:11-  
 25 13); why the Tribe had not produced to Forster-Gill tribal council meeting minutes referencing the  
 note (185:8-10); and why the Tribe had produced no minutes or resolutions for the time period  
 between May 16, 2012 and July 18, 2012 (186:1-5).

26 When Angela James was presented with the Company-Tribe 2012 Note, she acknowledged her  
 27 signature on the note (61:6-10), but did not recall, among other things: why the Tribe did not produce  
 28 any resolutions associated with the note (61:16-18); whether there was a resolution approving the  
 document or if the resolution was missing (62:9-11); or whether she had received any kind of blanket  
 authority to sign the note (62:6-8).

1 In December 2017, one year after Forster-Gill filed suit against the Tribe and others, the State  
 2 Superior Court rejected the Tribe's defense of sovereign immunity, allowing Forster-Gill's suit to  
 3 proceed. Gill Decl. ¶ 25. Thereafter, Tim Gill contacted the Company informing it of Forster-Gill's  
 4 ongoing litigation with the Tribe, that Forster-Gill had obtained a copy of the Company-Tribe 2012  
 5 Note, and of the testimony of Leona Williams, Angela James, and Michael Canales with respect to  
 6 the Tribe's note with the Company. Gill Decl. ¶¶ 25-27. Forster-Gill requested that the Company  
 7 provide Forster-Gill any records to aid in Forster-Gill's prosecution of its case against the Tribe. Gill  
 8 Decl. ¶ 25. The Company provided Forster-Gill with the accounting the Tribe had provided the  
 9 Company in 2011, which reflects a significant sum of money having been paid to Forster-Gill. Gill  
 10 Decl. ¶ 25. With the 2011 accounting in hand, Forster-Gill reviewed its records for 2009 and  
 11 determined that the 2011 accounting overstated payments to Forster-Gill in the amount of \$116,900  
 12 for the approximately one-year period from December 18, 2008 through December 5, 2009. Compl.  
 13 ¶ 346, and Ex. 32 (declaration of T. Gill). Forster-Gill's records also showed that the Falsified 2011  
 14 Accounting double accounted for payments to him in 2009 for an additional \$208,000. Compl. ¶  
 15 347-354. Forster-Gill's records therefore showed that the Falsified 2011 Accounting had concealed  
 16 \$324,900 (116,900 + 208,000) in purported payments to Forster-Gill for the year 2009 alone. Tim  
 17 Gill informed the Company of Forster-Gill's findings. Gill Decl. ¶ 32.<sup>6</sup>

18 The Company inquired whether Tim Gill could recommend legal counsel in Northern  
 19 California, Gill Decl. ¶ 33, and Tim Gill referred the Company to Fredericks Peebles & Morgan LLP,  
 20 a firm that specializes in federal Indian law, Gill Decl. ¶ 34. Tim Gill had located one of the firm's  
 21 attorneys, Greg Narvaez, through the internet during Forster-Gill's independent investigation into the  
 22 defendants. Gill Decl. ¶ 34.

23  
 24  
 25 <sup>6</sup> The Mendocino County Superior Court entered a Stipulated Judgment and Order on May 17, 2018,  
 26 in favor of Forster-Gill, and against the Tribe and PED, in the amount of \$1.4 million. The Company  
 27 requests that the Court take judicial notice of the judgment, a copy of which is submitted herewith,  
 28 pursuant to Fed. R. Evid. 201. Under the judgment, a \$100,000 payment is due to Forster-Gill by  
 May 15, 2018, followed by payments of \$15,000 per month beginning June 15, 2018 and continuing  
 until June 15, 2023 at which time the entire amount of the judgment, including principal and 10%  
 interest, is due and payable in full. The stipulated judgment does not reference Forster-Gill's claims  
 against Michael Canales or Canales Group, both of whom remain defendants in the action.

### III. The facts underlying the Company's fraud and RICO claims.

The Company's allegations underlying its fraud claim and RICO claims are mostly the product of the information uncovered by Forster-Gill.

The Company was fraudulently induced into loaning the Tribe \$5.38 million. Compl. ¶ 326. Michael Canales and Leona Williams manufactured the Sham 2008 Canales Note obligating Pinoleville Economic Development LLC (in which Angela James and Leona Williams have an ownership interest) to pay Canales Group \$5.352 million. Compl. ¶ 325. They knew that Canales Group had never loaned \$5.352 million or an amount close to it. Compl. ¶ 320-322. Nonetheless, they intended for the Company to rely on the Sham 2008 Canales Note as evidence that Canales Group had made such loan. Compl. ¶ 325.

The defendants diverted a substantial part of the Company's loan to their personal uses. Compl. ¶¶ 3, 356, 555. Angela James and Leona Williams were the sole authorized signers on the two Gaming Commission accounts into which \$5 million was deposited. Compl. ¶¶ 170 (Wells Fargo account), 174 (Chase account). Over a six-month period, \$94,454.76 was paid to Julian Maldonado, the longtime romantic partner of, and co-parent with, Angela James. Compl. ¶¶ 555. At least \$400,000 was paid to PED, the entity formed for Angela James and Leona Williams and in which they hold a collective fifty percent (50%) ownership interest. Compl. ¶¶ 16-23, 350, 499, 556. Monies were also paid to Michael Canales (\$165,240.60), Melissa Canales (\$14,000), Canales Group (\$844,184.10), and John Tang (\$68,000). This is all in addition to the \$324,900 that Forster-Gill's review found was concealed under the accounting through purported payments to Forster-Gill for 2009 alone.

The notice of default sent on behalf of the Tribe by Angela James and Leona Williams was in furtherance of their fraud. Compl. ¶ 210. It falsely claimed that the Company had put the casino project in default by not providing adequate funding to the Tribe. Compl. ¶ 212. It also directed the Company to pay additional monies to the Tribe to cure the Company's alleged default. Compl. ¶ 213-24.

The Sham 2012 Canales Note was fraudulent as to the Company *and* the Tribe. As to the Company, the Sham 2012 Canales Note concealed from the Company that Michael Canales had not

invested \$5.352 million with the Tribe as reflected in the Sham 2008 Canales Note. Compl. ¶ 374. The Sham 2012 Canales Note was also presented to prospective casino development partners as debt on the casino project, hindering the potential for the Tribe to secure permanent financing and develop the casino to repay the Company. Compl. ¶¶ 269-270. As to the Tribe, the Sham 2012 Canales Note obligates the Tribe to pay Canales Group approximately \$10 million when it matures on July 10, 2019, all for a loan the Tribe never received. Compl. ¶¶ 264-265. The Sham 2012 Canales Note is a full recourse debt of the Tribe, enforceable against all assets and resources of the Tribe. Compl., Ex. 29 (Sham 2012 Canales Note).

The Company is the victim of a pervasive and ongoing pattern of conduct consisting of at least two schemes in which each of the individual defendants participates and benefits. Compl. ¶ 539. Under the first scheme, the individual defendants obtain money from third parties like the Company and convert it to their personal uses. Compl. ¶ 429. Under the second scheme, the individual defendants loot the Tribe of its resources for their personal benefit. Compl. ¶ 441. These schemes are further discussed below. The role of each of the Individual Defendants in all of these activities, all of which is outlined in section II.B.1.a below, is supported by reliable information, most of which is testimony and documents given under penalty of perjury.

## ARGUMENT

### **I. The Court has subject matter jurisdiction over the Company's fraud and RICO claims.**

#### **A. The Company's fraud claim and RICO claims do not implicate Tribal sovereign immunity.**

"[I]n a suit brought against a tribal employee in his individual capacity, the employee, not the tribe, is the real party in interest and the tribe's sovereign immunity is not implicated." *Lewis v. Clarke*, 137 S.Ct. 1285, 1288 (2017). "That an employee was acting within the scope of his employment at the time the tort was committed is not, on its own, sufficient to bar a suit against that employee on the basis of tribal sovereign immunity."<sup>7</sup> *Id.*

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<sup>7</sup> In *Lewis*, an individual employee of an Indian tribal gaming authority, who was sued in his individual capacity, did not have tribal sovereign immunity in a negligence action arising from a



1 In suits against tribal employees (like suits against state and federal employees), courts  
 2 determine the “real party in interest” by determining “whether the remedy sought is truly against the  
 3 sovereign.” *Lewis* at 1290, 1291. “In an official-capacity claim, the relief sought is only nominally  
 4 against the official and in fact is against the official’s office and thus the sovereign itself.” *Id.* at  
 5 1291. “Personal-capacity suits, on the other hand, seek to impose *individual* liability upon a  
 6 government officer for actions taken under color of state law[, and o]fficers sued in their personal  
 7 capacity come to the court as individuals[.]” *Id.* (internal quotation marks omitted, emphasis by  
 8 *Lewis*).

9 The Ninth Circuit similarly focused on the *remedy* in this context even before *Lewis v. Clarke*.  
 10 *See, e.g., Pistor v. Garcia*, 791 F.3d at 1112-14; *Maxwell v. County of San Diego*, 708 F.3d 1075,  
 11 1088 (9th Cir. 2013). “‘Normally, a suit like this one – brought against individual officers in their  
 12 individual capacities – does not implicate sovereign immunity. The plaintiff seeks money damages  
 13 not from the [Tribal] treasury but from the officers personally. Due to the essential nature and effect  
 14 of the relief sought, the sovereign is not the real, substantial party in interest.’” *Pistor* at 1113  
 15 (quoting *Maxwell* at 1087-88). “So long as any remedy will operate against the officers individually,  
 16 and not against the sovereign,” “it remains ‘the general rule that individual officers are liable when  
 17 sued in their individual capacities.’” *Pistor* at 1113 (quoting *Maxwell* at 1089).

18 These decisions foreclose defendants’ suggestion that sovereign immunity extends to tribal  
 19 officials whenever they “‘act in their official capacity and within the scope of their authority.’” Doc.  
 20 6 at 10 (quoting *United States v. Oregon*, 657 F.2d 1009, 1013, fn.8 (9th Cir. 1981)).<sup>8</sup> *Pistor v.*  
 21 *Garcia* explains: “The question whether defendants were acting in their official capacities under color  
 22 of state or under color of tribal law is wholly irrelevant to the tribal sovereign immunity analysis. By  
 23 its essential nature, an individual or personal capacity suit against an officer seeks to hold the officer  
 24 personally liable for wrongful conduct taken in the course of her official duties.” *Pistor* at 1114. “As  
 25

26 motor vehicle collision that occurred while the employee was driving a tribe-owned limousine  
 27 carrying patrons of the tribe-owned casino. 137 S.Ct. at 1289-90.

28 <sup>8</sup> The language quoted from *Oregon* is dictum that has been abrogated by later decisions. *See Lewis*  
 at 1290-91; *Pistor* at 1114.



1 the officer *personally* is the target of the litigation, she may not claim sovereign immunity – and that  
 2 is so regardless whether she was acting under color of tribal or state law at the time of the wrongful  
 3 conduct in question.” *Id.* (emphasis in original); *see also Hafer v. Melo*, 502 U.S. 21, 28 (1991).

4 Defendants also rely on *Cook v. AVI Casino Enterprises, Inc.*, 548 F.3d 718 (9th Cir. 2008),  
 5 *see* Doc. 6 at 10, but as *Cook* explained, the plaintiff there sued individual tribal employees “in name  
 6 but seeks recovery from the Tribe[.]” *Cook* at 727. *Cook* “is consistent with the remedy-focused  
 7 analysis” required by *Lewis*, and it does not provide that the “scope of authority” is an alternative  
 8 method for ascertaining the real party in interest. *Maxwell*, 708 F.3d at 1088. “The ‘scope of  
 9 authority’ and ‘remedy sought’ principles are [not] coextensive in individual capacity claims.” *Id.* at  
 10 1089. None of the defendants’ “scope of authority” argument is relevant to sovereign immunity.

11 Here, the Company sued the individuals in their individual capacities, not their official  
 12 capacities.<sup>9</sup> *See* Compl. ¶¶ 34, 38, 46, 50, 53, 56, 59, 62, 65, 67, 69. More importantly, the Company  
 13 seeks a remedy against the individual defendants personally for their fraudulent conduct. *See* Compl.  
 14 Prayer for Relief ¶ 3.<sup>10</sup> There is no allegation that the Tribe is vicariously liable for any individual  
 15 defendant’s wrongdoing. Under these circumstances, a judgment against the individual Tribal  
 16 Defendants “will not operate against the Tribe, ... require action by the sovereign, or disturb the  
 17 sovereign’s property.” *Lewis*, 137 S.Ct. at 1291; *see Kentucky v. Graham*, 473 U.S. 159, 167-68  
 18 (1985). Therefore, the individuals are the real parties in interest, not the Tribe, and, as a result, the  
 19 fraud claim and RICO claims do not implicate tribal sovereign immunity.

## 20 **B. The Company Alleges that the RICO Violations Proximately Caused Its** 21 **Injury**

22 Relying chiefly on *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006) and *Platten v. HG*  
 23 *Bermuda Exempted Ltd.*, 437 F.3d 118 (1st Cir. 2006), defendants argue that “[the Company’s]  
 24 injuries were not caused by criminal racketeering activity, but from the Tribe’s alleged breach of the  
 25 [Company-Tribe 2012 note].” Doc. 6 at 14.

26 <sup>9</sup> The “addition of the words ‘in his individual capacity’ to the complaint” is not a “mere pleading  
 27 device.” *Porter v. Jones*, 319 F.3d 483, 491 (9th Cir. 2003); *see Hafer v. Melo*, 502 U.S. at 27.

28 <sup>10</sup> Damages are also separately sought against the Tribe and Tribal Entities, but based on the breach  
 of contract claim, not the fraud or RICO claims. *See id.* at 36 (first cause of action).

1 Defendants' argument is essentially that the individual defendants can fraudulently induce the  
2 Company to pay the Tribe \$5.38 million using a sham promissory note, convert those funds to their  
3 personal uses, conceal all of this from the Company via a falsified accounting and a second sham  
4 promissory note, cause the Tribe to give the Company an I.O.U. for the money, and, in the end, the  
5 individual bad actors are immune from liability and the Company's recourse is limited only to the  
6 I.O.U. because the proximate cause of the harm to the Company arises solely from the Tribe's non-  
7 payment of the I.O.U. The cases defendants cite do not support this proposition. The racketeering  
8 alleged in *Anza* was tax avoidance by the plaintiff's business competitor, which defrauded the State  
9 of New York but harmed the plaintiff only indirectly, if at all. *Anza*, 547 U.S. at 457-60. In *Platten*,  
10 the proximate cause was insufficiently alleged because the plaintiffs' complaint did not claim any  
11 reliance on the defendants' misrepresentations, so their injuries could not have been caused by the  
12 misrepresentations. *Platten*, 437 F.3d at 132.

13 Unlike the circumstances of *Anza* and *Platten*, the defendants' fraudulent racketeering activity  
14 was the direct and singular cause of the Company paying more than \$5 million to Tribal accounts  
15 controlled by the Defendants. "It was a foreseeable and natural consequence" of defendants' scheme  
16 to obtain and misuse the Company's money that the Company would suffer the loss of that money.  
17 *See Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639, 658 (2008). Unlike *Anza*, the Company,  
18 not a third party, is "the immediate victim[]" of the alleged RICO violations, *Anza* at 460, and unlike  
19 *Platten*, it was the Company's reliance on the defendants' lies that caused the Company to part with  
20 its money and later agree to the Company-Tribe 2012 Note. The fact that the written agreement was  
21 ultimately breached does not extinguish the fraudulent racketeering activity as a proximate cause of  
22 the Company's losses. *See Oki Semiconductor Co. v. Wells Fargo Bank, N.A.*, 298 F.3d 768, 773  
23 (9th Cir. 2002) ("proximate cause is not the same thing as the sole cause," but "is a substantial factor  
24 in the sequence of responsible causation") (internal quotation marks omitted). The Company  
25 therefore has standing to assert its fraud claim and RICO claims against the Defendants.  
26  
27  
28

**C. The Company's fraud and RICO claims are the product of information uncovered by Forster-Gill – not the result of an intra-Tribal dispute.**

Defendants assert that the fraud claim and RICO claims amount to an intra-tribal dispute based on a theory that plaintiff's counsel has enlisted the Company as a proxy to assert these claims to "defame" the defendants and push them from their positions in the Tribe. The facts set forth herein belie this theory and make clear this is a case of pervasive and organized fraud that damaged the Company in the amount of at least \$5.38 million.

The fraud claims and RICO claims are supported by sworn testimony of Leona Williams, Michael Canales, and Angela James given in a lawsuit by Forster-Gill (which also alleged fraud), not an invention of the Company or its counsel. The individuals named in the fraud claim and RICO claims were named as a result of this testimony and documentary evidence, much of which is attached to the complaint.

Defendants' mere assertion that this case is politically-driven does not convert this case into an intra-tribal dispute. The identity of one attorney in the Company's law firm, and his purported motivations, do not change the purely commercial origins and purpose of the suit. The Company's discussion of Defendants' scheme to loot the Tribe is relevant to show, among other things, one of the purposes for which defendants are an association-in-fact under RICO. *See Boyle v. United States*, 556 U.S. 938, 946 (2009). Additionally, given defendants' history, the Company's request for a receiver has the very practical purpose of ensuring that the defendants do not cause the Tribe to dissipate assets to their own benefit in order to avoid any judgment the Company may obtain in this action.<sup>11</sup>

"[J]urisdiction over an otherwise justiciable RICO claim does not fail merely due to the suggestion that an issue of tribal law may arise," based on defendants' dubious inferences and false assumptions. *Miccosukee Tribe of Indians v. Cypress*, 814 F.3d 1202, 1210 (11th Cir. 2015); *see also Paskenta Band of Nomlaki Indians v. Crosby*, 122 F.Supp.3d 982, 988 (E.D. Cal. 2015) (defendants'

<sup>11</sup> Receivers are a rare remedy imposed within the Court's discretion. *Canada Life Assur. Co. v. LaPeter*, 563 F.3d 837, 844 (9th Cir. 2009).

1 assertion that plaintiff's claims were "inextricably intertwined with internal issues of [tribal]  
 2 governance and the interpretation and application of [tribal] law" insufficient to show court was  
 3 deprived of subject matter jurisdiction).<sup>12</sup> "Instead, to trigger the intra-tribal dispute doctrine, a case  
 4 must present a genuine and non-frivolous question of tribal law." *Miccossukee* at 1209. This case  
 5 presents no material issues of tribal law, and the fact that individuals allegedly engage in fraud and  
 6 racketeering under a tribal umbrella does not implicate genuine issues of tribal law.

7 Even if defendants did raise a genuine issue of Tribal law regarding whether the defendants'  
 8 alleged acts of fraud, embezzlement, and self-dealing were within the scope of their authority, "it is  
 9 not necessarily the type of question the court is categorically precluded from addressing," such as  
 10 "membership disputes, active disputes between competing factions claiming current leadership  
 11 power, domestic relations, or inheritance rules."<sup>13</sup> *Miccossukee* at 1210. "Rather, it presents a  
 12 potential scope-of-authority question [the courts] previously have examined in the context of suits  
 13 against Tribal officials." *Id.* (citation omitted). This court has subject matter jurisdiction over the  
 14 fraud and RICO claims.

15  
 16  
 17 <sup>12</sup> Unlike in this case, where the plaintiff's only connection to the Tribe is its business relationship,  
 18 *Miccossukee* and the other cases cited in defendants' motion relating to the intra-tribal dispute doctrine  
 19 all contain parties closely affiliated with the tribe. Doc. 6 at 15-17 (citing *Santa Clara Pueblo v.*  
 20 *Martinez*, 436 U.S. 49 (1978) (action by member of Santa Clara Pueblo related to enrollment of  
 21 children); *Smith v. Babbitt*, 875 F. Supp. 1353 (D. Minn. 1995) (action by prospective members  
 22 against tribe and officials related to their distribution of gaming proceeds to other members); *Runs*  
 23 *After v. U.S.*, 766 F.2d 347 (8th Cir. 1985) (action by tribal members against tribal officials and  
 24 United States asserting violation of civil rights); *In re: Sac & Fox Tribe of the Miss. In Iowa /*  
 25 *Meskwaki Casino Lit.*, 340 F.3d 749 (8th Cir. 2003) (action between rival tribal councils).

26 <sup>13</sup> In *Miccossukee*, for example, the tribe brought suit against a former tribal administration for  
 27 allegedly taking \$26 million in cash and services from the tribe, and the Eleventh Circuit found that  
 28 federal question jurisdiction existed and the case at the pleading stage "d[id] not . . . involve a  
 genuine dispute as to a non-justiciable intra-tribal issue[.]" 814 F.3d at 1210. Courts in this Circuit  
 have found subject matter jurisdiction in cases stemming from actions taken by defendants largely  
 under color of tribal law. See, e.g., *Rabang v. Kelly*, No. C17-0088-JCC, 2017 WL 1496415, \*5  
 (W.D. Wash., Apr. 26, 2017) (denying 12(b)(1) motion made by defendant tribal officials on grounds  
 that case was "nothing more than an intra-tribal dispute inartfully pled as a RICO suit"), *appeal*  
*voluntarily dismissed*, 2018 WL 2299252; *Paskenta Band of Nomlaki Indians v. Crosby*, *supra*  
 (denying challenge to court's subject matter jurisdiction over RICO claims against tribal officials);  
*Stillaguamish Tribe of Indians v. Nelson*, No. 10-0327, Doc. 407 (W.D. Wash., Apr. 17, 2013)  
 (denying motion to dismiss RICO claims against tribal officials).

## II. The fraud claim and RICO claims state claims for relief.

The complaint alleges one fraud claim and four RICO claims. The fraud claim is based largely on the fraudulent notes and falsified accountings. The RICO claims incorporate the allegations in the fraud claim, but are also broader and encompass facts to satisfy the broader elements of RICO. These claims satisfy even the most stringent pleading requirements, and all elements of each cause of action are abundantly pled.

### A. Fraud is pled with particularity.

Under Rule 9(b), allegations of fraud must be made with specificity. *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986). “[I]ntent, knowledge, and other conditions of a person’s mind may be alleged generally,” and are sufficiently pled if the Court can infer the requisite mental state from the facts plausibly alleged. Fed. R. Civ. P. 9(b); *Eclectic Properties East, LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014); *see Mai Ngoc Bui v. Ton Phi Nguyen*, 712 Fed.Appx. 606, 609 (9th Cir. 2017). “[T]here is no absolute requirement that where several defendants are sued in connection with an alleged fraudulent scheme, the complaint must identify *false statements* made by each and every defendant.” *Swartz v. KPMG LLP*, 476 F.3d 756, 764-65 (9th Cir. 2007) (emphasis in original). “Participation by each conspirator in every detail in the execution of the conspiracy is unnecessary to establish liability, for each conspirator may be performing different tasks to bring about the desired result.” *Id.* at 764 (quoting *Beltz Travel Serv., Inc. v. Int’l Air Trans. Ass’n*, 620 F.2d 1360, 1367 (9th Cir. 1980)). “In the context of a fraud suit involving multiple defendants, a plaintiff must, at a minimum, identify the role of each defendant in the alleged fraudulent scheme.” *Id.* at 765 (quoting *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 541 (9th Cir. 1989)).

Here, the Company’s fraud claim is detailed over approximately nine pages. *See* Compl. pp. 38-47, ¶¶ 304-382. These allegations describe in particular the two fraudulent promissory notes and the falsified accounting, the amounts fraudulently reported in the accounting, the emails in which the false documents were presented to the Company, and the sworn testimony of Leona Williams and Michael Canales demonstrating the falsity of the documents and the associated representations. The

1 complaint specifically alleges the dates that the fraudulent instruments were presented to the  
2 Company and by whom.

3 The complaint alleges the roles of the defendants in the fraudulent scheme. Compl. ¶¶ 388  
4 (all individuals and Canales Group); 393 (Tribal Council defendants); 408 (Michelle Campbell and  
5 Kathy Stallworth); 414 & 418 (Tribal Council defendants); 432 (Canales defendants); 432 (Angela  
6 James and Leona Williams); 451-454 (Angela James and Julian Maldonado); 464-469 (Michelle  
7 Campbell and Kathy Stallworth); 478-480 (Lenora Steele); 481-483 (Tribal Council defendants);  
8 488-498 (Canaleses and John Tang). These circumstances of the fraud constitute the heart of both the  
9 Company's fraud claim and RICO claims.

10 Although the Company alleges every particular of the two false promissory notes and the  
11 false accounting, defendants argue the complaint is insufficient for failing to allege specific instances  
12 of where the Defendants converted loan proceeds to their personal uses. Doc. 6 at 18.

13 As a threshold matter, the complaint alleges Defendants' conversion of loan proceeds to their  
14 personal use. The complaint alleges that Leona Williams and Angela James were the sole signors on  
15 the two bank accounts into which the loan proceeds were deposited. Compl. ¶¶ 170, 174. They  
16 therefore controlled how the loan proceeds were spent. Comp. ¶ 358. The complaint alleges they  
17 paid Angela James' longtime cohabitating partner, Julian Maldonado, about \$95,000 over a six-  
18 month period. Compl. ¶ 555. The specific transfers comprising this amount are detailed in the  
19 Falsified 2011 Accounting. Compl. Exs. 16-17. The complaint also details at least \$400,000 that  
20 was paid to PED. Compl. Ex. 17. The dates and amounts of those transfers to PED were broken out  
21 in the Falsified 2011 Accounting. Compl. Ex. 17. As alleged in the complaint, Angela James and  
22 Leona Williams have personal ownership interests in PED, it was formed for them, and they were its  
23 members when it was created. Compl. ¶¶ 16-23 & 555.

24 The Falsified 2011 Accounting also details over \$1 million in payments to Michael Canales,  
25 Melissa Canales, John Tang, and Canales Group, each of whom is an insider of the RICO enterprise.  
26 Compl. ¶ 555. Given the documented close relationship between Leona Williams, Angela James, and  
27 Canales Group, it is not improper for the Court to infer that Canales Group was a vehicle for kicking  
28 loan proceeds back to Angela James and Leona Williams. *See Mai Ngoc Bui*, 712 Fed. Appx. at 609.



1 These allegations of defendants' diversion of loan proceeds back to themselves contravene  
 2 defendants' assertion that the complaint ignores such activities.

3 **B. The elements of RICO are sufficiently alleged.**

4 "The RICO statute prohibits four types of activities: (1) investing in, (2) acquiring, or (3)  
 5 conducting or participating in an enterprise with income derived from a pattern of racketeering  
 6 activity or collection of an unlawful debt, or (4) conspiring to commit any of the first three types of  
 7 activity." Manual of Model Civil Jury Instructions, Ninth Cir. Ct. App. (2017), § 8 Civil RICO  
 8 (citing 18 U.S.C. § 1962(a)-(d), respectively). The Company alleges four RICO causes of action, one  
 9 for each prohibited act.

10 A RICO plaintiff "must prove (1) conduct [or acquisition or maintenance], (2) of an  
 11 enterprise, (3) through a pattern, (4) of racketeering activity (known as 'predicate acts'), (5) causing  
 12 injury to the plaintiff's 'business or property' by the conduct constituting the violation." Manual of  
 13 Model Civil Jury Instructions, Ninth Cir. Ct. App. (2017), § 8 Civil RICO (citing *Living Designs, Inc.*  
 14 *v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005); *Sedima S.P.R.L. v. Imrex Co.*,  
 15 473 U.S. 479, 496 (1985). The complaint's allegations must make recovery plausible. *Bell Atlantic*,  
 16 550 U.S. at 566; *American Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1294 (11th Cir. 2010).

17 Defendants argue that the "complaint is deficient because it fails to allege a pattern of  
 18 racketeering activity or any viable predicate acts in support of such racketeering." Def. Br. at 19-20  
 19 (emphasis added).

20 **1. The Complaint alleges racketeering activity.**

21 "To constitute racketeering activity, the relevant conduct must consist of at least one of the  
 22 indictable predicate acts listed in 18 U.S.C. § 1961." Manual of Model Civil Jury Instructions, Ninth  
 23 Cir. Ct. App. (2017), § 8 Civil RICO (citing *Sedima*, 473 U.S. at 495 ("'[R]acketeering activity'  
 24 consists of no more and no less than commission of a predicate act.'")). The complaint alleges  
 25  
 26  
 27  
 28

1 conduct by the Defendants that constitutes multiple instances of predicate offenses of wire fraud and  
 2 money laundering.<sup>14</sup>

3 **a. Wire fraud.**

4 Wire fraud includes “any scheme to deprive another of money or property by means of false  
 5 or fraudulent pretenses, representations, or promises” using wire or wireless transmissions.

6 *Carpenter v. United States*, 484 U.S. 19, 27 (1987); 18 U.S.C. § 1343.

7 The Sham 2008 Canales Note was presented to the Company by email from John Tang (cc’d  
 8 to Michael Canales and Melissa Canales) dated January 30, 2009. Compl. ¶¶118-119, Ex. 5. The top  
 9 margin of the Sham 2008 Canales Note bears markings of what appear to be a facsimile machine,  
 10 indicating that the Sham 2008 Canales Note was faxed between locations before being scanned and  
 11 emailed to the Company. Compl. Ex. 5. Both before and after the Company was presented with the  
 12 Sham 2008 Canales Note, it was represented to the Company that Canales Group had invested  
 13 approximately \$5 million with the Tribe. Compl. ¶¶ 112 (email from Tang), 113-114 (another email  
 14 from Tang), 129-130 (another email from Tang); 224-225 (email from Melissa Canales).

15 The Sham 2012 Canales Note was presented to the Company in an email from Melissa  
 16 Canales dated November 1, 2012. Compl. ¶ 370. The note bears markings at the top of each page  
 17 indicating it had previously been faxed from the Tribe’s facsimile machine to a third party. Compl. ¶  
 18 259, Ex. 29. There are additional emails sent and received by Michael Canales, Melissa Canales,  
 19 Leona Williams, and Angela James, or on which they were copied, that transmitted or referenced the  
 20 Sham 2012 Canales Note. Compl. ¶ 515.

21 Additionally, the complaint alleges many independent acts where one or more Defendants  
 22 utilized interstate wire communications to aid in perpetration of their scheme or artifice to defraud the  
 23 Company out of \$5.38 million:

24  
 25  
 26 <sup>14</sup> The Company concedes that its allegations do not support bank fraud as a predicate act under  
 27 applicable authorities, since it is not alleged that any of defendants’ false statements ever went to a  
 28 financial institution. *See Loughrin v. United States*, 134 S.Ct. 2384, 2394 (2014); *Shinde v.*  
*Nithyananda Foundation*, No. EDCV 13-363, 2015 WL 12732434, \*8-9 (C.D. Cal. Feb. 23, 2015).  
 The absence of this predicate does not affect the validity of the RICO claims.



- 1 • 2/21/09 email from Michael Canales providing wiring instructions of Tribal Gaming  
2 Commission account into which Company Loan was to be deposited. Compl. ¶ 127.
- 3 • 3/7/09 email from John Tang agreeing that no fees would be paid to Canales Group or John  
4 Tang without the unanimous consent of the Company, Canales Group, and John Tang.  
5 Compl. ¶ 132.
- 6 • 11/21/11 email from CPA Ramos to Michael Canales and Leona Williams attached to which  
7 was the Falsified 2011 Accounting that the CPA had prepared from records provided by  
8 theTribe. Compl. ¶ 181.
- 9 • 11/23/11 email from Melissa Canales furnishing the Company with the Falsified 2011  
10 Accounting. Compl. ¶¶ 177.
- 11 • 11/28/11 email from Michael Canales (cc'd Melissa Canales, Leona Williams, et al.)  
12 providing CPA contact information to the Company to obtain further detail on Falsified 2011  
13 Accounting. Compl. ¶¶ 192-93.
- 14 • 11/28/11 email from Michael Canales (cc'd Melissa Canales, Leona Williams, et al.)  
15 authorizing CPA to disclose information regarding Falsified 2011 Accounting to Company  
16 representatives. Compl. ¶ 194-96.
- 17 • 11/28/11 email from CPA to Company representatives (cc'd Leona Williams, Michael  
18 Canales) providing detail on four categories in Falsified 2011 Accounting. Compl. ¶ 198.
- 19 • 1/10/12 email from CPA Ramos to Company representatives (cc'd Michael Canales, Leona  
20 Williams) providing detail on one additional category in Falsified 2011 Accounting. Compl.  
21 ¶ 202-04.
- 22 • 1/30/12 email from Melissa Canales furnishing Tribal notice of default – dated January 24,  
23 2012 and signed by Leona Williams and Angela James – which falsely represented that the  
24 Company had put the casino project in jeopardy by ceasing funding to the Tribe and inducing  
25 the Company to pay additional capital into the Tribe. Compl. ¶ 211.
- 26 • 2/27/12 email from Leona Williams granting a 10-day extension on Tribal notice of default.  
27 Compl. ¶ 233.

28 Each email was utilized in defendants' scheme to defraud the Company, either by transmitting  
a fraudulent instrument, making a false representation, facilitating wire transfers, or otherwise aiding  
the scheme. These specific allegations are the basis for the allegation highlighted by defendants in  
paragraph 512 of the complaint that defendants utilized email to carry out their scheme.

The signatures of Leona Williams, Angela James and Michael Canales are on the Sham 2012  
Canales Note. Compl. ¶ 259, Ex. 29 at 4. Melissa Canales and John Tang emailed the Sham 2012  
Canales Note and Sham 2008 Canales Note, respectively, to the Company. Compl. ¶ 266. Julian  
Maldonado – Angela James' longtime partner, co-parent, and conduit to kick funds back to Angela

James – received about \$95,000 from the Company Loan over a period of six months. Compl. ¶ 555. According to a grant application submitted under penalty of perjury by Lenora Steele on the Tribe’s behalf to Department of Education, Kathy Stallworth, Michelle Campbell, and Lenora Steele are responsible for the Tribe’s financial and accounting activities. Compl. ¶¶ 406-412, 464-470, 478-480.<sup>15</sup> Therefore, each of them, at least presumptively, had a prominent role in the preparation and concealment of the Falsified 2011 Accounting, Sham 2008 Canales Note, and Sham 2012 Canales Note on the books and records of the Tribe. Compl. ¶¶ 377-381. Additionally, as the persons in charge of the fiscal and accounting heart of the Tribe, each of them necessarily has a prominent role of the ongoing Tribal looting scheme and its concealment. Compl. ¶¶ 377-381. Jason Steele submitted a sworn declaration in the Forster-Gill action stating “[w]hen any type of contract or agreement comes in front of the Tribal Council asking for a waiver of sovereign immunity, there is an in-depth discussion on the topic.” Compl. ¶ 420, Ex. 33. Therefore, according to his sworn testimony, he, Donald Williams, Veronica Timberlake, Cassandra Steele, and Andrew Stevenson, had an in-depth discussion on the Sham 2012 Canales Note and Company-Tribe 2012 Note, both of which contain waivers of tribal sovereign immunity. Jason Steele also testified that he works closely with the fiscal department, which is comprised of Michelle Campbell and Kathy Stallworth. Compl. ¶ 419. The specific conduct of those involved in the scheme demonstrates the intent of each participant to fraudulently mislead the Company. *See Mai Ngoc Bui*, 712 Fed.Appx. at 609.

**b. Money laundering.**

The Company also alleges Defendants committed predicate acts of money laundering as prohibited by 18 U.S.C. § 1957. Defendants correctly note that the elements of a violation of § 1957 are that: (1) the defendant engage in a monetary transaction; (2) he knew the transaction involved criminal property; (3) the property’s value exceeded \$10,000; and (4) the property was derived from

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<sup>15</sup> According to the grant application, Kathy Stallworth is responsible for the Tribe’s “cash management,” “financial reporting,” “cash management,” and “accounting policies and procedures.” Compl. ¶ 409 (citing DOE app. at e253). The grant application also indicates that Lenora Steele “oversees all departments [and] budgets,” Compl. ¶ 406, which would include the fiscal department in which Kathy Stallworth and Michelle Campbell serve. According to the organization chart the Tribe submitted with the application, the position of Fiscal Director, which Michelle Campbell occupies, is the head of all of the Tribe’s accounting and finances.

1 a “specified unlawful activity.” *United States v. Rogers*, 321 F.3d 1226, 1229 (9th Cir. 2003). The  
 2 phrase “specified unlawful activity” encompasses a laundry list of activities set forth at § 1956(c)(7),  
 3 including those offenses listed in § 1961(1), among which is wire fraud. *See* 18 U.S.C. §  
 4 1956(c)(7)(A).

5 The Company alleges all of the elements of money laundering. The complaint alleges that the  
 6 Defendants “engaged in monetary transactions in property derived from ‘specified unlawful  
 7 activity[.]’” Compl. ¶ 524. The complaint alleges that the criminally obtained property was the  
 8 “proceeds of the fraudulently-obtained Company Loan[.]” Compl. ¶ 525. Throughout the complaint,  
 9 the Company details the instances of wire fraud through which the Defendants obtained the \$5.38  
 10 million Company Loan. Although the complaint does not reallege all of those instances in the  
 11 paragraphs pertaining to money laundering, the complaint read as a whole sufficiently details the  
 12 “specified unlawful activity,” and for this reason the complaint sufficiently alleges predicate acts of  
 13 money laundering.

## 14 **2. The complaint alleges a pattern of racketeering activity.**

15 “A pattern is defined as ‘at least two acts of racketeering activity’ within ten years of each  
 16 other.” Model Jury Instructions, Ninth Cir. Ct. App. (2017), § 8 Civil Rico (quoting 18 U.S.C. §  
 17 1961(5)). “To establish a ‘pattern of racketeering activity,’ the predicate acts must be both ‘related’  
 18 and ‘continuous.’” Model Jury Instructions, Ninth Cir. Ct. App. (2017), § 8 Civil Rico (citing *H.J.,*  
 19 *Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 238 (1989); *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529 (9th  
 20 Cir. 1992)).

21 Here, the complaint alleges a pattern of racketeering activity that is related and continuous.  
 22 The allegations of “racketeering activity” – including many acts of wire fraud and money laundering  
 23 – were largely for the purpose of defrauding the Company out of \$5.38 million and later concealing  
 24 that fraud. At a minimum, this “racketeering activity” occurred with respect to the Sham 2008  
 25 Canales Note (which induced the Company to invest \$5.38 million); Falsified 2011 Accounting  
 26 (which concealed diversion of loan proceeds); and the Sham 2012 Canales Note (which concealed  
 27 that Canales had not invested \$5 million as represented). As outlined in complaint and this brief, the  
 28 “racketeering activity” spanned over multiple years.

1 The crux of defendants' argument is that the Company fails to allege a pattern of racketeering  
 2 activity because "JW Gaming is the only alleged victim here" and "there is only but one scheme."  
 3 Def. Br. at 20-21. Defendants assert that "cases which allege only one scheme, perpetrated on one  
 4 victim, are usually insufficient to establish a pattern." Def. Br. at 20 (citing *Sever v. Alaska Pulp Co.*,  
 5 978 F.2d at 1535 and *Jarvis v. Regan*, 833 F.2d 149, 153-54 (9th Cir. 1987)).

6 The Company is not the only victim alleged to have been impacted by Defendants'  
 7 "racketeering activity," however. The Company alleges that another entity, Intrepid Gaming, is the  
 8 victim of defendants' scheme and was defrauded out of \$175,000. Compl. ¶¶ 530-33. Additionally,  
 9 defendants' scheme to defraud the Company simultaneously victimized the Tribe. The Sham 2012  
 10 Canales Note obligates the Tribe to pay Canales Group approximately \$10 million (with interest) for  
 11 no consideration. Compl. ¶ 265. Additionally, the Tribe is obligated to the Company under the  
 12 Company-Tribe 2012 Note for the full amount of the Company Loan, even though defendants  
 13 diverted much of the proceeds of that loan from the Tribe's bank accounts for their personal uses.  
 14 Compl. ¶¶ 328-367 (discussing Falsified 2011 Accounting), 552-556 (discussing payments to  
 15 insiders).

16 Furthermore, the individual defendants' scheme to loot the Tribe is not isolated to their  
 17 actions with respect to the Company but is instead pervasive and long-running. They transferred  
 18 hundreds of thousands of dollars from the Tribe to their pet company, PED, Compl. ¶ 350, and  
 19 caused the Tribe to pay approximately \$200,000 in rent payments from federal HUD funds to the  
 20 landlord of Angela James and Julian Maldonado since approximately 2006, Compl. ¶¶ 448-454. By  
 21 grant deed dated April 15, 2016, Leona Williams caused the Tribe to transfer improved real property  
 22 (valued at \$1.3 million) to PED, in which she and Angela James have a personal ownership interest.  
 23 Compl. ¶ 458. Only months before the transfer, two straw-bale homes had been constructed on the  
 24 property, using approximately \$800,000 in federal funding. Compl. ¶ 457. Public record also  
 25 reflects that between April 2014 and April 2015, Leona Williams caused the Tribe to take out  
 26 \$736,000 in hard money loans against five homes built with federal grants and owned by the Tribe.  
 27 Compl. ¶ 459. During the two-month period from June 2017 to August 2017, Leona Williams and  
 28 Angela James caused the Tribe to pay \$14,950.00 for rental payments to the landlord of Angela

1 James and her partner Julian Maldonado. Compl. ¶ 450. The Company does not seek redress for  
 2 these victims, but they demonstrate that the Company's injuries in this case are not the result of an  
 3 isolated incident but that the Company is one of many victims of individual defendants' broader  
 4 scheme to enrich themselves at the expense of third-parties and the Tribe.

5 Even if the Company were the only alleged victim of Defendants' scheme, the complaint  
 6 would sufficiently allege a pattern of racketeering activity. This Circuit does not always require more  
 7 than one victim in order to sufficiently allege a pattern of racketeering activity. *Sun Sav. And Loan*  
 8 *Ass'n v. Dierdorff*, 825 F.2d 187, 194 (9th Cir. 1987) (in action by savings and loan against former  
 9 president, pattern sufficiently alleged where, "even though a single scheme was involved, the  
 10 predicate acts . . . occurred separately over time, and they are not isolated or sporadic events because  
 11 they posed a threat of continuing activity.") *Alaska Pulp* and *Jarvis* are distinguishable from  
 12 *Dierdorff* and the case at bar. Unlike in this case and *Dierdorff*, a pattern was not sufficiently  
 13 demonstrated in *Alaska Pulp* and *Jarvis* because the predicate acts there were committed in an  
 14 isolated context over a short period of time with a discrete victim. *Alaska Pulp*, 978 F.2d at 1535  
 15 (defendant's alleged conduct of firing plaintiff and blackballing him from local employment "is in a  
 16 sense a single episode . . . rather than a series of separate, related acts"); *Jarvis*, 833 F.2d at 153  
 17 (predicate offenses of mail fraud and wire fraud during course of misrepresenting defendants-  
 18 applicants' intended use of a Special Needs Grant were "isolated and presented no threat of  
 19 continuing" and therefore insufficient to constitute a "pattern of racketeering activity."). The  
 20 Company properly alleges a "pattern" of racketeering activity.

### 21 **III. The Tribal Entity Defendants are proper parties to the claim for breach of** 22 **contract.**

23 Defendants incorrectly assert that "the Tribe is the only party to the Note with JW Gaming."  
 24 Doc. 6 at 24. In fact, the Note was executed by the Tribe and the Gaming Authority, along with JW  
 25 Gaming, Canales Group, and Tang. *See* Compl. Ex. 26 at 10-11. The "Loan Terms" section of the  
 26 Note begins: "The Tribe and/or the Gaming Authority promises to pay JWG, the Interim Tribal Loan,  
 27 together with interest thereon in accordance with the following terms[.]" *Id.* at 2; *see* Compl. ¶ 281.  
 28 The Note also provides that it "is a legal, valid, and binding obligation of the Gaming Authority,

1 enforceable against the Gaming Authority in accordance with its terms[.]” Compl. Ex. 26 at 3. Thus,  
2 the Gaming Authority is expressly obligated to the Company under the Note.

3 The Note defines the Gaming Authority as “an unincorporated authority or enterprise formed  
4 by the Tribe under the laws of the Tribe to operate a gaming facility on behalf of the Tribe, together  
5 with its successors and assigns.” Compl. Ex. 26 at 7; *see* Compl. ¶ 282. The Gaming Authority’s  
6 “successors and assigns” include the Gaming Commission, the Business Board, and PED. *See*  
7 Compl. ¶ 283. The Gaming Commission is a wholly-owned entity of the Tribe, created in 2004  
8 under Tribal law. Compl. ¶¶ 13-14. At the instruction of Michael Canales, and confirmed by John  
9 Tang, the Company deposited \$5 million into two Gaming Commission bank accounts. Compl. ¶¶  
10 126-127, 159, 165, 167-173, 289. The Gaming Commission’s chairperson is Angela James. Compl.  
11 ¶¶ 15, 290. Its authorized bank account signers are Angela James and Leona Williams. Compl. ¶  
12 291. The Tribe formed the Business Board, a wholly-owned entity of the Tribe, under Tribal law in  
13 approximately 2014. Compl. ¶¶ 24-25, 271. It is responsible for developing the Tribe’s casino  
14 project and, by extension, ensuring the satisfaction of the Tribal parties’ obligations to the Company.  
15 Compl. ¶¶ 32, 272, 286-287, 482-483. The Business Board’s members include Michael Canales,  
16 Leona Williams, Kathy Stallworth and Scott Walker. Compl. ¶¶ 26-31, 273. The Business Board’s  
17 authorized bank account signers are Michael Canales, Leona Williams and Kathy Stallworth. Compl.  
18 ¶ 275. Finally, PED is a limited liability company formed by Michael Canales under California law  
19 “for Angela James and Leona Williams.” Compl. ¶ 499 (quoting Canales Depo., 36:19-22). PED’s  
20 members are Angela James, Leona Williams, and “Pinoleville Band of Pomo Indians.”<sup>16</sup> Compl. ¶¶  
21 16-23, 294-295. PED received at least \$400,000 of the loan proceeds, transferred to it by the Gaming  
22 Commission. Compl. ¶ 297. PED was a party to the Sham 2008 Canales Note. Compl. ¶¶ 119-124,  
23

24  
25 <sup>16</sup> Based on deposition testimony of Leona Williams, the identity of “Pinoleville Band of Pomo  
Indians” is unclear, and it is possibly distinct from the Tribe, which is the Pinoleville Pomo Nation.

26 Question from attorney for Forster-Gill: “[W]ho in 2006 does the Pinoleville Band  
27 of Pomo Indians refer to?”

28 Answer from Leona Williams: “In 2006 – I can’t answer that.”

Deposition of Leona Williams, Vol. I, Sept. 26, 2017, 72:15-17.



296, 311-313. According to Tribal representations, PED expended funds in furtherance of the Tribe's casino project. Compl. Ex. 17. PED's receipt of substantial proceeds from the loan whose purpose was "solely" Tribal casino development, Compl. ¶ 114, indicates that PED was responsible, at least in part, for development of the Tribe's casino project and, by extension, ensuring the repayment of the Tribal parties' obligations to the Company. Compl. ¶ 299. As "successors and assigns" of the Gaming Authority, each of these entities is bound by the Note just as the Gaming Authority is.

Contrary to the defendants' assertion, *see* Doc. 6 at 24, the entities have waived their sovereign immunity. The Note "irrevocably waives the sovereign immunity of all Tribal Parties and their Affiliates (including, without limitation, the Gaming Authority and the Gaming Commission), and all defenses based thereon," for the "adjudication and enforcement of Claims" in this Court (among other venues). Compl. Ex. 26 at 3; *see* Compl. ¶ 249. "Tribal Parties" means the "Tribe or the Gaming Authority." Compl. Ex. 26 at 8. "Claim" means "any dispute between any Tribal Party or JW Gaming Development that is related to" the Note. Compl. Ex. 26 at 6; *see* Compl. ¶ 249. An "affiliate" is, "with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person." Compl. Ex. 26 at 6.

Thus, the Note expressly waives the immunity of the Tribe, the Gaming Authority, the Gaming Commission. With the application of the Note's definitions, it also waives the immunity of the Business Board and of the PED (if these entities even possess immunity, which defendants have asserted without evidence or argument, *see* Doc. 6 at 11), both because they are "successors and assigns" of the Gaming Authority and therefore treated as the Gaming Authority itself, and because they are "Affiliates" under the control of, or common control with, the Tribe and the Gaming Authority.

## CONCLUSION

For all the foregoing reasons, the Company respectfully requests that the Court deny in its entirety the Tribal Defendants' motion to dismiss as joined by John Tang.

1 Dated: May 29, 2018

**FREDERICKS PEEBLES & MORGAN LLP**

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