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9
10 IN THE UNITED STATES DISTRICT COURT
11
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13

14 JW GAMING DEVELOPMENT, LLC,
Plaintiff,

15 v.

16 ANGELA JAMES et. al.,
Defendants.

No. 3:18-cv-02669-WHO

DEFENDANTS CASSANDRA STEELE
AND JASON STEEL NOTICE OF
MOTION AND MOTION FOR
JUDGMENT ON THE PLEADINGS;
SUPPORTING MEMORANDUM OF
POINTS AND AUTHORITIES

Date: June 17, 2020

Time: 2:00

Department: Courtroom 2

Judge: William Orrick

Reservation No*:

Date Action Filed: March 12, 2018

Trial Date: Not Set

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Motion

TO PLAINTIFF JW GAMING DEVELOPMENT, LLC, AND THEIR
COUNSEL OF RECORD, AND TO ALL OTHER PARTIES AND THEIR COUNSEL
OF RECORD:

1 PLEASE TAKE NOTICE that, on June __, 2020, at __ a.m., in Courtroom __
2 of the above-entitled court, located at 450 Golden Gate Avenue, San Francisco,
3 defendants Cassandra Steele and Jason Steele will ask the Court for an order granting
4 them judgment on the pleadings, on the ground that the complaint fails to state a cause
5 of action upon which relief can be granted against them. These individual defendants'
6 motion is made under [Federal Rules of Civil Procedure 12\(c\)](#) and [12\(h\)\(2\)\(B\)](#), and it
7 seeks entry of judgment in their favor and against plaintiff on the second, third, fourth,
8 fifth, and sixth causes of action in the complaint. Their motion is based on the ground
9 that the complaint lacks sufficient factual allegations linking these two defendants to
10 any cause of action asserted against them in their individual capacity. These
11 defendants' motion is based on this notice of motion and motion, the supporting
12 memorandum of points and authorities, the pleadings and papers on file in this case,
13 and any other matter that may be presented at the hearing on the motion.

14
15 Prometheus Partners

16 Respectfully submitted,

17 Dated: May 11, 2020

By: /s/ Eduardo Roy

18 EDUARDO G. ROY

19 Attorney for Defendant Cassandra
20 Steele and Jason Steele
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22
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Memorandum of Points and Authorities

INTRODUCTION

Plaintiff JW Gaming’s lengthy 76-page, 563-paragraph complaint seeks to hold defendants Cassandra Steele and Jason Steele personally liable for millions of dollars in damages based almost exclusively on a few allegations that each of these individuals is a member of the Tribal Council of the Pinoleville Pomo Nation, a federally-recognized Indian tribe that is one of the complaint’s principal targets, and the adult children of defendant Angela James. (Complaint, p. 6, ¶¶ 53–55, 56–58.) The complaint does not allege that defendants Cassandra and Jason Steele are members of any of the tribal groups identified with inflammatory labels, such as the “Principal Fraudsters” (Complaint, p. 38, ¶ 305) or the “Financial Fixers” (Complaint, p. 41, ¶330). The complaint does not allege that either of these two Steele defendants¹ participated in negotiations for the contract with plaintiff, that they were parties to that contract, or that their conduct created or contributed to an alleged breach of that contract.

Instead, plaintiff apparently seeks to hold these two defendants liable simply because of their family relationships to other defendants who are featured more prominently in the lengthy complaint, namely Angela James, their mother, and Leona Williams, their grandmother, the unfortunate targets of many of the complaint’s caustic claims. The few allegations against these two Steele defendants identify Cassandra as secretary of the Tribal Council and Jason as its treasurer (Complaint, p. 6, ¶¶ 54, 57),

¹ Lenora Steele is also a defendant. She is an aunt of Cassandra and Jason Steele. (Complaint, p. 6, ¶¶ 55, 58.)

1 positions they have held since about 2011 (Complaint, pp. 51–52, ¶ 413).² The
 2 complaint, however, is empty of factual allegations that Cassandra or Jason Steele
 3 participated in any predicate act critical to plaintiff’s civil RICO causes of action. The
 4 complaint does not adequately allege that either Cassandra or Jason conducted or
 5 participated in the conduct of a RICO enterprise. And conclusory statements about the
 6 Tribal Council’s approval of tribe decisions cannot fill the factual hole. Simply put, the
 7 complaint lacks sufficient factual allegations to state cognizable fraud or federal civil
 8 RICO causes of action against Cassandra or Jason Steele based merely on their Tribal
 9 Council membership or officer positions.

10 Defendants Cassandra and Jason Steele are performe aware that all tribal entity
 11 and individual defendants made an earlier motion to dismiss under [Rule 12\(b\)\(1\)](#) and
 12 [12\(b\)\(6\)](#). They submit that those defendants’ joint [Rule 12\(b\)\(6\)](#) dismissal motion
 13 collectively sought more expansive relief – dismissal of the complaint in its entirety –
 14 based on broader attacks on the complaint’s factual support for its civil RICO claims
 15 against all defendants. These Steele defendants do not quarrel with the Court’s ruling
 16 that the complaint adequately alleged fraud and civil RICO claims generally. Instead,
 17 these defendants contend that the complaint does not sufficiently allege facts to make
 18 them individually liable for the alleged fraud or civil RICO violations. Because the
 19 earlier [Rule 12\(b\)\(6\)](#) motion did not specifically challenge the complaint’s ability to
 20

21
 22 ² The complaint’s allegation that Cassandra and Jason Steele became members of the
 23 Tribal Council in 2011 belies the allegation that they were secretary and treasurer,
 respectively, “at all relevant times,” since their time on the council began after
 execution of the so-called “Sham 2008 Canales Note,” a major component of the fraud
 and civil RICO causes of action.

1 state cognizable claims against defendants Cassandra and Jason Steele individually,
 2 they now seek judgment on the pleadings in their favor and against plaintiff JW
 3 Gaming.

4 These Steele defendants do not make this motion for any improper purpose, such
 5 as delay. Rather, defendants seek to promote judicial economy and to simplify any
 6 potential trial, by eliminating from the extensive list of defendants those persons not
 7 sufficiently linked to the acts that allegedly form the bases of plaintiff's multiple
 8 claims.³

9 ARGUMENT

10 11 **I. PLAINTIFF'S SECOND CAUSE OF ACTION FOR FRAUD AND** 12 **DECEIT DOES NOT ALLEGE FACTS SUFFICIENT TO STATE A** 13 **COGNIZABLE CLAIM AGAINST DEFENDANTS CASSANDRA AND** 14 **JASON STEELE.**

15 This Rule 12(c) motion for judgment on the pleadings is “fundamentally
 16 identical” to a [Rule 12\(b\)\(6\)](#) motion to dismiss for failure to state a claim upon which
 17 relief can be granted and, thus, the same legal standards apply. *Cafasso v. Gen,*
 18 *Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 n. 4 (9th Cir. 2011). To test the factual
 19 sufficiency of plaintiff's complaint against these two defendants, this Court may
 20 identify the complaint's statements that are legal conclusions, even if purportedly
 21 presented as factual allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Those
 22 statements are not entitled to any presumption of truth. *Id.* The Court may then

23 ³ Four other individual defendants, Andrew Stevenson, Donald Williams, Veronica
 Timberlake, and Julian Maldonado also seek judgment on the pleadings. Success on
 this and the other defendants' motions would pare the list of tribal defendants, making
 trial and the consideration of the defendants' liability, if any, more manageable.

1 presume the truth of the remaining “well-pleaded factual allegations” and decide
 2 whether those allegations and reasonable inferences support a claim for relief. *Id.* at
 3 679–680. Plaintiff must allege “enough facts to state a claim to relief that is plausible
 4 on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). A facially plausible
 5 claim pleads facts that “allow the court to draw the reasonable inference that the
 6 defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, at 678 (citation
 7 omitted). Plaintiff’s second cause of action simply does not admit of any inference that
 8 defendants Cassandra and Jason Steele should be liable for the alleged fraud.

9 Additionally, plaintiff’s second cause of action does not satisfy the requirement
 10 to plead fraud with particularity against these Steele defendants. *Fed. R. Civ. Proc.*
 11 *9(b)*. The allegations do not include the required “time, place, and specific content of”
 12 these defendants’ allegedly false representations. *Schreiber Distrib. v. Serv-Well*
 13 *Furniture*, 806 F.2d 1393, 1401 (9th Cir. 1986). Instead, the complaint merely lumps
 14 multiple defendants together, failing to inform defendants Cassandra and Jason Steele
 15 “separately of the allegations surrounding [their] alleged participation in the fraud.”
 16 *Swartz v. KPMG LLP*, 476 F.3d 756, 764–765 (9th Cir. 2007) [citation omitted]. The
 17 complaint fails to identify each of these defendants’ roles in the fraud scheme. *Id.*
 18 Accordingly, the complaint fails to state a cognizable fraud claim against the Steele
 19 defendants. *Id.* at 765.

20 Curiously, the second cause of action heading identifies Cassandra and Jason
 21 Steele as defendants. (Complaint, p. 38.) But not one of the 79 paragraphs in that
 22 section of the complaint (pp. 38–47) mentions or even alludes to them. Nor does the
 23 second cause of action specify any Tribal Council action purportedly relevant to

1 plaintiff's fraud and deceit claim, which is largely based on three allegedly fraudulent
 2 acts – the so-called Sham 2009 Canales Note that occurred in 2008 and 2009
 3 (Complaint, pp. 38–41, ¶¶ 305–327), the “Falsified 2011 Accounting” (Complaint, pp.
 4 41–46, ¶¶ 328–367), and the “Sham 2012 Canales Note” (Complaint, pp. 46–47,
 5 ¶¶ 368–382.) Yet, plaintiff seeks to hold these individual defendants liable for fraud
 6 allegedly committed by other parties, simply because of their Tribal Council
 7 membership status beginning in 2011.

8 Plaintiff may contend that its complaint more generally alleges these defendants'
 9 liability by asserting the need for Tribal Council approval of relevant tribal business
 10 transactions. For example, plaintiff alleges that the Tribe is “governed by its seven-
 11 member board.” (Complaint, p. 3, ¶ 9.) Plaintiff also alleges that the Tribal Council
 12 created the Business Board, which is a named defendant while the Tribal Council is
 13 not. (Complaint, pp. 4–5, ¶¶ 24–33.) As in *Swartz v. KPMG LLP*, plaintiff's complaint
 14 “is shot through with general allegations that the ‘defendants’ engaged in fraudulent
 15 conduct, but attributes specific misconduct only to” other named defendants. *Swartz v.*
 16 *KPMG LLP*, 476 F.3d at 765. The complaint's conclusory allegations about purported
 17 Tribal Council approval of other defendants' actions, without any specific factual
 18 bases, are not sufficient to make these two Tribal Council members liable on the second
 19 cause of action for fraud. *Id.* Plaintiff cannot rest on boilerplate allegations about Tribal
 20 Council approvals, even if cast as factual allegations. *In re Toyota Motor*
 21 *Corp..Unintended Acceleration Mktg.*, 785 F.Supp.2d 883, 911 (C.D. Cal. 2011).
 22 Accordingly, the Court should grant these defendants' motion for judgment on the
 23 pleadings on plaintiff's second cause of action.

II. PLAINTIFF’S CIVIL RICO CAUSES OF ACTION DO NOT ALLEGE FACTS SUFFICIENT TO STATE COGNIZABLE CLAIMS AGAINST DEFENDANTS CASSANDRA AND JASON STEELE.

Defendants Cassandra and Jason Steele contend that plaintiff’s civil RICO claims, the third, fourth, fifth, and sixth causes of action, contain the same defect as the second cause of action – the failure to allege facts sufficient to state claims against these individual defendants. Noticeably lacking in the complaint’s 563 paragraphs are specific factual allegations connecting these defendants individually to the multiple RICO claims. Instead, as plaintiff’s recent motion for summary judgment tacitly admits, these two defendants’ RICO liability is purportedly predicated on their status as members on the Tribal Council. (Plaintiff’s Motion for Summary Judgment filed March 23, 2020, p. 18:2–8.) But that status, alone, is not a sufficient factual basis for making these defendants liable to plaintiff on its civil RICO claims.

Before turning to the specific factual deficiencies in plaintiff’s complaint against defendants Cassandra and Jason Steele, they submit that certain controlling principles should guide the Court’s assessment of the adequacy of plaintiff’s allegations. The RICO statutes are criminal laws. Those statutes are contained in Title 18 of the United States Code, entitled “Crimes and Criminal Procedure.” More specifically, the RICO statutes are in Part I of Title 18, the part that defines federal crimes. The asserted basis for plaintiff’s civil RICO claims, [section 1962](#), is a criminal statute, as made plain by the applicable definition of “racketeering activity” in [section 1961\(1\)\(B\)](#). That statutory

1 definition says that “‘racketeering activity’ means . . . (B) any act which is *indictable*
 2 under any of the following provisions of title 18, United States Code:” 18 U.S.C. §
 3 1961(1)(B)(emphasis added).

4 Because RICO is a criminal law, civil RICO liability requires wrongful acts and
 5 criminal intent. *Morrisette v. United States*, 342 U.S. 246, 274 (1952). So, a cognizable
 6 civil RICO claim must contain allegations of both a defendant’s allegedly unlawful
 7 conduct and the required state of mind. Plaintiff’s complaint lacks factual allegations
 8 sufficient to satisfy either requirement for a valid civil RICO cause of action against
 9 these Steele defendants.

10 The elements of a civil RICO claim are: “(1) conduct (2) of an enterprise (3)
 11 through a pattern (4) of racketeering activity (known as ‘predicate acts’) (5) causing
 12 injury to the plaintiff’s ‘business or property.’” *Grimmett v. Brown*, 75 F.3d 506, 510
 13 (9th Cir. 1996). This Court has already determined that the complaint pleads wire fraud
 14 and money laundering as predicate acts for plaintiff’s RICO claims. (Order Denying
 15 Defendants’ Motion to Dismiss, Etc. filed October 5, 2018, p. 10.) That determination
 16 allowed plaintiff’s complaint to survive a global challenge by all tribal defendants, but
 17 it should not permit plaintiff’s RICO claims to continue against defendants Cassandra
 18 and Jason Steele in the absence of specific factual allegations connecting them to those
 19 acts.

20 The wire fraud claim requires three elements: (1) the formation of a scheme to
 21 defraud; (2) the use of the mails or wires in furtherance of that scheme; (3) the specific
 22 intent to defraud. *Eclectic Props. E., LLC v. Marcus & Millchap Co.*, 751 F.3d 990, 997
 23 (9th Cir. 2014). Although this Court earlier found “[t]he complaint provides dates,

1 excerpts from email correspondence, and amounts of transactions” to support the claim
 2 that “defendants” were part of a scheme to defraud plaintiff (Order filed October 5,
 3 2018, p. 10: 11–16), the complaint does not connect defendants Cassandra and Jason
 4 Steele to any of the wire fraud elements. There are no allegations about these
 5 defendants’ participation in a scheme to defraud. There are no allegations linking either
 6 of these defendants to the relevant email correspondence. In short, the complaint does
 7 not meet plaintiff’s burden of alleging the role of these defendants in the alleged fraud.
 8 *Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397, 405 (9th Cir.
 9 1991), cert. denied 502 U.S. 1094 (1992). And even detailed allegations about other
 10 defendants’ roles in the fraud scheme do not fix the failure to specify these defendants’
 11 involvement in that scheme. See *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531,
 12 541 (9th Cir. 1989).)

13 Plaintiff’s money laundering claim against defendants Cassandra and Jason
 14 Steele is even more factually deficient. The four elements of that claim include: (1)
 15 defendant’s knowing engagement in a monetary transaction; (2) knowledge that the
 16 transaction involved criminal property; (3) property valued at more than \$10,000; (4)
 17 the property’s derivation from a specified criminal activity. *United States v. Rogers*,
 18 321 F.3d 1226, 1229 (9th Cir. 2003). Although this Court earlier ruled that the
 19 complaint states a claim for money laundering, the Tribal defendants’ original joint
 20 motion challenged that claim on the sole ground that plaintiff had not pleaded a specific
 21 unlawful activity. The Court found that plaintiff had adequately alleged defendants’
 22 misappropriation of funds for individual purposes. (Order Denying Defendants’ Motion
 23 to Dismiss, Etc., filed October 5, 2018, p. 10: 22–27.) Though the complaint may

1 generally allege a money laundering claim against some defendants, it lacks specific
2 factual allegations to establish the four elements of that claim against defendants
3 Cassandra and Jason Steele.

4 The complaint does not allege these defendants' participation in a monetary
5 transaction. They are not parties to any disputed contract. They did not sign any
6 contracts. There are no factual allegations establishing their knowledge that any tribal
7 transaction involved criminal property. The complaint does not allege that either Steele
8 defendant controlled or had access to tribal funds or bank accounts. Instead, the
9 complaint, without any factual basis, asserts the conclusion that the Tribal Council
10 members "vote on and approve resolutions they know, or reasonably should know, will
11 be used . . . to perpetrate frauds against third parties" (Complaint, p. 60, ¶481.)
12 Absent the required factual support, the complaint utterly fails to identify each of these
13 defendant's role in the alleged scheme. *Swartz v. KPMG LLP*, 476 F.3d at 765.

14 And allegations about the Tribal Council's votes creating the Business Board and
15 empowering it to open bank accounts do not cure the complaint's defects against
16 defendants Cassandra and Jason Steele. (Complaint, p. 60, ¶ 482.) These defendants are
17 not members of the Business Board. (Complaint, p. 6, ¶¶ 26–31.) They were not
18 authorized signers on the Business Board's short-lived checking account, which was
19 only open for four months. (Complaint, p. 36, ¶¶ 274–276.) Although plaintiff asserts
20 that the Tribal Council Defendants delegated certain authority to the Business Board
21 (Complaint, p. 60, ¶ 483), there is not any allegation that the Steele defendants
22 participated in, directed, controlled, or even had input into any Business Board decision
23 or action, despite the complaint's conclusory assertion that Tribal Council members

1 “actively participated in the management and direction of the association-in-fact
2 enterprise.”⁴ (Complaint, p. 52, ¶ 414,). That conclusory statement, even though offered
3 as a factual allegation, is not sufficient to satisfy plaintiff’s obligation to allege the
4 factual bases for its civil RICO claims. *In re Toyota Motor Corp..Unintended*
5 *Acceleration Mktg.*, 785 F.Supp.2d at 911.

6 To state cognizable civil RICO claims against Cassandra and Jason Steele,
7 plaintiff must specifically allege that they conducted or participated, directly or
8 indirectly, in the conduct of the unlawful enterprise’s offenses. 18 U.S.C. § 1962(c).
9 Although these two defendants do not challenge plaintiff’s allegation of an association-
10 in-fact enterprise in this motion, they contend that the complaint lacks plausible factual
11 allegations showing their conduct or participation in the conduct of an enterprise. Their
12 motion raises the question whether the particular allegations about them are sufficient
13 to subject them to liability for conducting the affairs of an enterprise. *Walter v.*
14 *Drayson*, 538 F.3d 1244, 1247 (9th Cir. 2008). That question should be answered in the
15 negative.

16 For these Steele defendants to be properly subject to civil RICO liability, they
17 must have had some part of directing its affairs. *Walter v. Drayson*, 538 F.3d at 1249.
18 Their mere involvement in the enterprise is not enough. *Id.* Even if Cassandra and
19 Jason Steele are alleged to be part of an association-in-fact enterprise, their alleged
20 performance of services for the enterprise would not be enough to make them liable.
21
22

23 ⁴ This conclusory statement should be disregarded, as it is not entitled to any
presumption of truth. *Ashcroft v. Iqbal*, 556 U.S. at 679.

1 They can be part of an enterprise without having any role in its management or
2 operation. *Id.* And some element of direction is necessary to subject them to liability.
3 *Id.*

4 The complaint does not allege facts about these Steele defendants' purported
5 conduct or participation in the conduct of any association-in-fact enterprise. The few
6 factual allegations about them do not even raise any inference that they tried to conduct
7 the enterprise's affairs. The complaint does not allege that they directed any of the
8 enterprise's activities. At best, the complaint alleges their mere performance of
9 unspecified services for the enterprise. Thus, the complaint fails the test for plausible
10 allegations that Cassandra and Jason Steele conducted or participated in the conduct of
11 the enterprise, and, for that reason, it necessarily fails to state cognizable civil RICO
12 claims against them.

13 Shorn of its conclusory statements about the Tribal Council and the numerous
14 so-called Non-Governmental Defendants, and examined only for its specific factual
15 allegations against defendants Cassandra and Jason Steele, plaintiff's complaint shows
16 gaping factual holes in its attempt to state cognizable claims against these two
17 defendants. Seemingly, plaintiff tries unsuccessfully to base its claims against
18 Cassandra and Jason Steele on mere assumptions apparently arising from their family
19 relationships to other prominent tribal defendants, notably their mother Angela James,
20 their grandmother, Leona Williams, and an aunt, Lenora Steele. But any semblance of a
21 claim against Cassandra and Jason Steele is an illusion, created by superficial
22
23

1 suppositions about the Tribal Council and these defendants' family relationships,
2 unsupported conclusions that stand in stark contrast to plaintiff's factual allegations
3 detailing at exhaustive length the alleged misdeeds of other defendants.

4 For this reason, the Court's earlier ruling that the complaint may sufficiently
5 state civil RICO claims against some of those defendants should not be any bar to entry
6 of judgment on the pleadings for defendants Cassandra and Jason Steele. These two
7 defendants are entitled to dismissal based on the absence of sufficient facts alleged
8 against them, even though the complaint may state cognizable legal theories. *Balisteri*
9 *v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

10 CONCLUSION

11
12 For the stated reasons, defendants Cassandra and Jason Steele respectfully
13 submit that the Court should grant their motion for judgment on the pleadings and enter
14 judgment in their favor and against plaintiff JW Gaming.

15
16 Prometheus Partners

17 Respectfully submitted,

18 Dated: May 11, 2020

By: /s/ Eduardo Roy

19 EDUARDO G. ROY

20 Attorney for Defendant Cassandra
21 Steele and Jason Steele
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23