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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JW GAMING,  
*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 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*

No. 3:18-cv-02669-WHO

**JOINT REPLY OF DEFENDANTS  
STEVENSON, WILLIAMS, TIMBERLAKE,  
STEELE, STEELE, AND MALDONADO TO  
PLAINTIFF'S OMNIBUS OPPOSITION TO  
DEEFENDANTS' MOTIONS FOR  
JUDGMENT ON THE PLEADINGS**

Date: June 17, 2020  
Time: 2:00  
Department: Courtroom 2  
Judge: William H. Orrick  
Reservation No\*:  
Date Action Filed: March 1, 2018  
Trial Date: Not Set

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**REPLY****INTRODUCTION**

Because of their different statuses and the varied nature of the allegations against them, six individual defendants in this breach of contract, fraud, and civil RICO action filed three separate motions for judgment on the pleadings on the fraud and RICO claims. Defendants Andrew Stevenson, Donald Williams, and Veronica Timberlake, who are apparently sued solely because they are at-large members of the defendant Pinoleville Pomo Nation's Tribal Council, jointly filed one motion. Defendants Cassandra and Jason Steele, siblings who are sued largely because they are the adult children of defendant Angela James and because they are, respectively, secretary and treasurer of the Tribal Council, filed the second motion. The third motion was filed by defendant Julian Maldonado, who seemingly is sued because of his long-term cohabitation relationship with defendant Angela James, the Tribal Council's vice-chairperson and daughter of Leona Williams, the Tribal Council's chairperson. Each motion openly acknowledged an earlier joint dismissal motion by all the tribal defendants, entities and individuals, and the order denying that motion, but asserted these six defendants' entitlement to rulings on the sufficiency of the allegations against them individually under [Federal Rules of Civil Procedure, rule 12\(c\) and 12\(h\)\(2\)\(B\)](#).

Rather than risk further exposure of the factual holes in the allegations against these six defendants by responding to their specific contentions, plaintiff elects the dubious strategy of filing a single opposition to the three motions, for the apparent purpose of lumping all individual tribal defendants together and depriving these six defendants of the right to know the specific fraud and civil RICO factual allegations against them, especially as plaintiff seeks more than \$15 million in damages from them. And plaintiff erroneously argues that its pending partial summary judgment motion or the law of the case doctrine should preclude consideration of these six defendants' motions for judgment on the pleadings.

But plaintiff's omnibus opposition is more notable for what it does not do or even try to do. Plaintiff does not identify the allegations that specify each of these defendants' role in the fraud.<sup>1</sup> Plaintiff fails to point out the allegations that set forth the time, place, and specific content of these defendants' purportedly false representations. Plaintiff does not acknowledge, much less discuss, the case law requiring those allegations in a fraud claim. Most importantly, and most tellingly, despite plaintiff's ineffective efforts to link these defendants' actions to the underlying civil RICO predicate acts with conclusory statements, plaintiff does not even try to identify the specific factual allegations needed to show that these six defendants conducted or participated in the conduct of an unlawful enterprise's offenses. Because those and other necessary factual allegations are missing from the complaint, these six individual tribal defendants' motions should be granted.

## ARGUMENT

### **I. NEITHER THE PENDING PARTIAL SUMMARY JUDGMENT MOTION NOR THE LAW OF THE CASE DOCTRINE PRECLUDES CONSIDERATION AND RESOLUTION OF THE MOTIONS FOR JUDGMENT ON THE PLEADINGS.**

Without ever specifically identifying these six individual defendants' allegedly fraudulent misrepresentations or participation in unlawful racketeering offenses, plaintiff first contends that the "voluminous evidence" submitted in support of its pending partial summary judgment motion shows the individual tribal defendants' involvement in fraud and a civil RICO enterprise. But plaintiff typically tosses out conclusory claims that "the Tribe, through the individual defendants," or the "individual defendants, acting through the Tribe or in concert with each other" (Plaintiff's Omnibus Opp. P. 4:8–10), to support its contention, even though there are eleven individual tribal defendants. Those conclusory statements are not sufficient to specify these six defendants' actions subjecting them to fraud or civil RICO liability. And the supposedly supporting evidence would not be sufficient to prove fraud and civil RICO claims against these defendants.<sup>2</sup>

<sup>1</sup> Defendant Julian Maldonado is not identified as a defendant in plaintiff's fraud claim, its second cause of action.

<sup>2</sup> Plaintiff apparently confuses the volume of documents with evidence's authenticity, admissibility, and efficacy, as all eleven tribal defendants have shown in their joint opposition to plaintiff's pending partial summary judgment motion.

Curiously, plaintiff has not expressly asked the Court to consider these matters outside the pleadings under Rule 12(d), presumably because that request would necessarily complicate this proceeding and require that defendants be given a reasonable opportunity to present opposing evidence, a task mostly performed in the Tribal Defendants' joint opposition to the pending partial summary judgment motion. The six defendants, however, request that all other matters be excluded here, so that their motions remain motions for judgment on the pleadings.

And the Court should reject any suggestion that judgment on the pleadings is no longer available because of the parties' participation in some discovery or the pending partial summary judgment motion. [Federal Rule of Civil Procedure 12\(h\)\(2\)\(C\)](#) allows a defendant to raise the failure to state a claim defense at trial. In most cases, trial, of course, follows the completion of discovery and resolution of pretrial motions, including motions to dismiss and summary judgment motions. Plaintiff's contrary suggestion also misses an important point here. If the complaint does not adequately allege fraud and civil RICO claims against these six defendants, they should not have been forced to defend a summary judgment motion, and they should not be forced to continue their defense through trial, with its attendant expense and time requirements. Fundamental fairness dictates that these six defendants be relieved of the need to defend themselves further if the complaint fails in the first instance to state cognizable claims against them.

Plaintiff also mistakenly argues that the law of the case doctrine bars these six defendants' motions, because the Court earlier denied motions to dismiss filed by all the Tribal entity and individual defendants. (Plaintiff's Omnibus Opp., p. 6:1–12.) That doctrine does not apply here. "The doctrine simply does not impinge upon a district court's power to reconsider its own interlocutory order provided that the district court has not been divested of jurisdiction over the order." [City of Los Angeles v. Santa Monica Baykeeper](#), 254 F.3d 882, 888 (9th Cir. 2001). As the Ninth Circuit makes clear, "[a]ll rulings of a trial court are subject to revision at any time before the entry of judgment." *Id.* (emphasis in original). That reconsideration power derives from common law, not the Federal Rules of Civil Procedure. *Id.* at 886.

In any event, these six defendants do not ask the Court to revisit its earlier decision that the complaint may state fraud and civil RICO claims against some defendants. Even though the complaint

may state some generally cognizable legal theories, these defendants should still be entitled to dismissal if the complaint does not sufficiently and specifically allege facts against them. *Balisteri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

**II. PLAINTIFF’S SECOND CAUSE OF ACTION FOR FRAUD DOES NOT ALLEGE FACTS SUFFICIENT TO STATE COGNIZABLE CLAIMS AGAINST DEFENDANTS STEVENSON, WILLIAMS, TIMBERLAKE, STEELE, AND STEELE.**

Although the five individual defendants named as defendants in plaintiff’s second cause of action for fraud filed two separate motions for judgment on the pleadings, they made the same attacks on the sufficiency of the complaint’s allegations against them. The common, fatal flaw in plaintiff’s second cause of action was its failure to plead with particularity the “time, place, and specific content of” these defendants’ allegedly false representations. *Schreiber Distrib. V. Serv-Well Furniture*, 806 F.2d 1393, 1401 (9th Cir. 1986). The complaint failed to inform all five individual defendants separately of the allegations showing their participation in the alleged fraud. *Swartz v. KPMG LLP*, 476 F.3d 756, 764–765 (9th Cir. 2007). Although the complaint may have been “shot through with general allegations that the ‘defendants’ engaged in fraudulent conduct,” it did not attribute specific misconduct to these individual defendants. *Id.* at 765.<sup>3</sup>

Plaintiff’s opposition does not persuasively address the factual holes in its fraud claim. Instead, plaintiff again lumps these five defendants in with more general allegations against Angela James and Leona Williams, the complaint’s two main Tribal targets. Plaintiff incorrectly contends that boilerplate allegations about the need for Tribal Council approval of certain tribal actions or agreements is enough to subject these defendants to liability for fraud. *See In Re Toyota Motor Corp. Unintended Acceleration Mktg.*, 785 F.Supp.2d 883, 911 (C.D. Cal. 2011). And plaintiff does not explain how or why defendants Stevenson, Williams, and Timberlake, the Tribal Council’s at-large members, can be liable for fraud based on alleged acts that likely occurred before their council

<sup>3</sup> As noted earlier, plaintiff did not even acknowledge, much less cite and discuss, any of the case law defendants used to support their arguments.



1 membership. Presumably, plaintiff cannot supply that explanation, since the complaint only alleges  
 2 that these three defendants are currently council members, not that they were members at “all relevant  
 3 times.”

4 Plaintiff’s conclusory assertions and assumptions about Tribal Council actions are not an  
 5 adequate substitute for the specific allegations needed to state a cognizable fraud claim against these  
 6 individual defendants. Instead of being required to defend themselves further against plaintiff’s  
 7 insufficient fraud cause of action and being exposed to millions of dollars in damages, these  
 8 defendants should be granted judgment on the pleadings, with dismissal of plaintiff’s fraud claim  
 9 against them.

10 **III. PLAINTIFF’S CIVIL RICO CAUSES OF ACTION DO NOT ALLEGE FACTS**  
 11 **SUFFICIENT TO STATE COGNIZABLE CLAIMS AGAINST DEFENDANTS**  
 12 **STEVENSON, WILLIAMS, TIMBERLAKE, STEELE, STEELE, AND**  
 13 **MALDONADO.**

14 In part because plaintiff’s opposition conflates its responses to the challenges to its fraud and  
 15 civil RICO claims (Plaintiff’s Omnibus Opp., pp. 5–10), it is difficult to discern plaintiff’s responses  
 16 to these six defendants’ multi-pronged attacks on the factual sufficiency of the civil RICO causes of  
 17 action. Again, plaintiff does not even acknowledge the case law supporting defendants’ arguments.  
 18 Instead, plaintiff seemingly contends that its purportedly plausible fraud claim immunizes its civil  
 19 RICO claims from challenges based on a lack of sufficient factual allegations against these six  
 20 individual defendants. (Plaintiff’s Omnibus Opp. pp. 9:13–10:2.) Despite plaintiff’s muddled response  
 21 to the attacks on its civil RICO claims, its opposition makes one critical omission crystal clear: the  
 22 failure to counter these defendants’ argument that the complaint lacks sufficient allegations about  
 23 their conduct or participation in the conduct of an unlawful enterprise’s offenses. That failure lessens  
 24 or obviates the need for extended discussion about the complaint’s other notable civil RICO  
 25 deficiencies, such as the lack of specific links between these defendants and the alleged predicate acts  
 26 underlying the civil RICO claims, the wire fraud and money laundering offenses.

27 Regardless of the nature of the alleged racketeering activity, a cognizable civil RICO claim  
 28 must specifically allege that each of these six defendants conducted or participated, directly or

indirectly, in the conduct of an unlawful enterprise's offenses. 18 U.S.C. § 1962(c). The allegations must show that each defendant had some part in directing the enterprise's affairs. *Walter v. Drayson*, 538 F.3d 1244, 1249 (9th Cir. 2008). An individual defendant's mere involvement is not enough. *Id.* Nor is an individual defendant's performance of services for an enterprise enough to make her liable under civil RICO. A person can be part of an enterprise without having any role in its management or operation. Some element of direction is necessary to subject any of these defendants to liability. *Id.*

These six defendants have previously explained in detail the complaint's failures to allege their conduct or participation in the conduct of a racketeering enterprise's offenses. Contrary to plaintiff's mistaken characterization of defendants' argument (Plaintiff's Omnibus Opp., p. 9, fn. 5), they do not contend that the complaint "must allege their direct personal involvement in some or all of the RICO enterprise's fraudulent interactions with third-parties ...." (Plaintiff's Omnibus Opp., p. 9:19–20.) Rather, because RICO is a criminal law and requires both wrongful acts and criminal intent, *Morrisette v. United States*, 342 U.S. 246, 274 (1952), these six defendants contend that the complaint lacks the factual allegations sufficient to show their conduct or participation in the conduct of an enterprise's allegedly unlawful acts. Those acts, alone, are not a sufficient basis for subjecting these defendants to civil RICO liability.

In part for this reason, plaintiff's discussion of a purportedly rejected argument in footnote 5 on page 9 of its opposition is unnecessary and misplaced. The first few cited cases are also not applicable here, because they either concern the elements of mail and wire fraud, *e.g.*, *In Re Chrysler-Dodge-Jeep Ecodiesel Mktg.*, 295 F.Supp.3d 927, 972 (N.D. Cal. 2018), or vicarious criminal liability for mail and wire fraud, *e.g.*, *United States v. Stapleton*, 293 F.3d 1111, 1113 (9th Cir. 2002); *United States v. Lothian*, 976 F.2d 1257 (9th Cir. 1992). And the cited Ninth Circuit cases are not civil RICO decisions.

But one of plaintiff's authorities is helpful here – to the defendants. *Tatung Co. v. Shu Tze Hsu*, 217 F.3d 1138, 1152 (C.D. Cal. 2016) confirms that, to be liable under RICO, defendants must have had some part in directing the enterprise's affairs. To be liable under 18 United States Code

1 section 1962(c), “one must participate in the operation or management of the enterprise itself.” *Reves*  
 2 *v. Ernst Young*, 507 U.S. 170, 185 (1993). The complaint fails to allege these defendants’ knowing  
 3 participation in the conduct of the alleged association-in-fact enterprise.

4 Plaintiff cannot meet its burden of alleging defendants’ required knowledge with claims that,  
 5 under certain circumstances, a defendant “knew or should have known” about a racketeering  
 6 enterprise or its unlawful offenses. That language erroneously suggests that defendants can be subject  
 7 to civil RICO liability for negligence. “Knowledge” is the applicable standard for such liability. *See*  
 8 *Rehaif v. United States*, 139 S.Ct. 2191, 2194 [\_\_ U.S. \_\_] (2019). The complaint fails to satisfy that  
 9 standard.

10 Plaintiff also misplaces any reliance on conspiracy cases to suggest that these six individual  
 11 defendants can be sufficiently linked to the conduct of a racketeering enterprise simply by their  
 12 association with other Tribe members who are more prominent targets of the complaint. Plaintiff  
 13 cannot properly rely, however, on the generous evidentiary rules for co-conspirator declarations or  
 14 vicarious criminal liability without first alleging a conspiracy – a requirement that plaintiff has not  
 15 met and cannot meet. Conspiracy requires a showing of knowledge of the scope of a plan and intent to  
 16 join it. Without factual allegations establishing each of these six defendants’ knowledge of some  
 17 conspiracy and their intent to join it – facts that the complaint entirely lacks – none of these  
 18 defendants can be a member of an alleged conspiracy. *See United States v. Zemek*, 634 F.2d 1159,  
 19 1170–1171 (9th Cir. 1980); *see also United States v. Elliott*, 571 F.2d 880, 906–907 (5th Cir.  
 20 1978)(minor player in drugs had insufficient “knowledge” of the scope of the association-in-fact  
 21 engaging in crimes, diversified well beyond drugs) .

22 And, to the extent that plaintiff makes the insidious suggestion that any Tribe member can be  
 23 liable for the alleged acts of another member or Tribal Council member, defendants need only to note  
 24 that status liability is not available. It is also unconstitutional. *Robinson v. California*, 370 U.S. 660,  
 25 666 (1969).

26 Plaintiff’s opposition fails to compensate for or to fill the factual holes in its fraud and civil  
 27 RICO causes of action against these six defendants. Those defendants should no longer be exposed to  
 28

1 millions of dollars in damages based on the thin and legally insufficient allegations, not conclusory  
2 statements, in the complaint. Their motions for judgment on the pleadings should be granted.

3 **CONCLUSION**

4  
5 For the reasons stated here and in these six defendants' three motions for judgment on the  
6 pleadings, defendants Andrew Stevenson, Donald Williams, Veronica Timberlake, Cassandra Steele,  
7 Jason Steele, and Julian Maldonado submit that that they should be granted judgment on the pleadings  
8 and that the complaints against them should be dismissed.

9  
10 Prometheus Partners

11 Respectfully submitted,

12 Dated: June 3, 2020

13 By: /s/ Eduardo G. Roy

14 Eduardo G. Roy

15 Attorney for Individual Tribal Defendants  
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