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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 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. 3:18-cv-02669-WHO (RMI)

PINOLEVILLE POMO NATION'S SUPPLEMENTAL BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT RE PROPER INTEREST CALCULATION

Date: December 16, 2020
Time: 2:00pm
Courtroom 2, 17th Floor
Hon. William H. Orrick

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I. INTRODUCTION

The Pinoleville Pomo Nation ("Tribe") submits this supplemental opposition to Plaintiff's Motion for Entry of Judgment to specifically address the proper amount of interest accrued under the subject July 9, 2012 Promissory Note ("Note").[1] For the reasons to follow, the Tribe submits that (1) the Note calls for simple interest not compounded interest; and (2) the proper interest accrual date is July 9, 2015 not July 9, 2012. Therefore, the proper interest calculation under the Note through December 21, 2020 is $2,109,844.38.[2]

II. BRIEF PROCEDURAL BACKGROUND

Plaintiff previously moved for partial judgment on the pleadings ("MPJOP") as to the breach of contract claim against the Tribe only. MPJOP [Dkt. 136]. In its MPJOP, Plaintiff also moved the Court for entry of judgment on the contract claim pursuant to Fed. R. Civ. Proc. 54(b), however, Plaintiff did not seek to adjudicate the issue of the proper interest calculation. *Ibid.* Following the Tribe's opposition to Plaintiff's MPJOP [Dkt No. 145], the Court issued its Order which, among other things, granted Plaintiff's MPJOP on the first cause of action for breach of contract as to the $5.38M Note but declined to enter judgment in favor of Plaintiff under Fed. R. Civ. P. 54 nor award any interest. Order [Dkt. No. 178].

In response to the Tribal Defendants' Amendment & Reconsideration Motion [Dkt. No. 251], Plaintiff moved for entry of judgment in the amount of $9,623,462.05 [Dkt. No. 253]. This sum included $4,243,462 of compounded interest from the date of the making of the Note on July 9, 2012. The Tribe filed an opposition to the entry of judgment [Dkt. No. 256] including evidentiary objections to the declaration filed in support of Plaintiff's footnote only request for interest. *Id*. at 6:22-8:6. The Tribe also objected to and moved to strike Plaintiff's reply papers [Dkt. No. 258] with an alternative request for supplemental briefing in the event the Court determined to consider the new reply arguments regarding interest. Motion to Strike [Dkt. No. 259].

At the December 16 hearing on the parties' cross-motions, the Court granted the parties an opportunity to file supplemental papers regarding the interest issue. Minute Order [Dkt. No. 271]. Thereafter, Plaintiff filed a supplemental brief [Dkt. No. 267] proposing alternative damages claim of $9,594,635.31 with compounded interest, or $8,501,312.06 with simple interest, through December 21,

[1] This supplemental brief is submitted on behalf of the Tribe only since it is the only named party liable under the Note.
[2] The Tribe submits these interest calculations with a full reservation of its rights, claims and defenses respecting Tribal Defendants' Amendment & Reconsideration Motion [Dkt. No. 251] which the Court took under submission following the December 16 hearing. If that motion is granted, the interest issue would be moot at this time.

2020. Plaintiff is therefore now seeking $4,214,635.31 of compounded interest or $3,121,312.06 of simple interest on top of the $5.38M Note. The Court subsequently granted the Tribe additional time to file its supplemental papers, including the desired expert declaration, through December 31, 2020.[3] This brief therefore follows.

III. SUPPLEMENTAL ARGUMENTS REGARDING THE PROPER INTEREST CALCULATION

A. The Note Allows for Simple not Compounded Interest.

When a contract is silent regarding the type of interest to be applied, simple as opposed to compound, the interest applied is simple interest absent an explicit agreement by the parties to use compound interest. Here, the Note does not "clearly provide" for compound interest and Plaintiff has not identified anywhere in the Note where the parties have agreed to use compound interest. In fact, Plaintiff admits in the following discussion that compounded interest is impermissible except where clearly specified by contract:

> *See Firstsource Solutions USA, LLC v. Tulare Reg'l Med. Ctr.*, 2019 WL 2725336, at *12 [sic] (E.D. Cal. July 1, 2019) ("Courts typically do not award compound interest unless the contract "clearly specif[ied] that the interest would be compounded."), quoting *U.S. ex rel. Ramona Equip. Rentals, Inc. v. Carolina Cas/ Ins. Co.*, No. 08-cv-1685-H (MDD), 2011 WL 6934452, at *2 (S.D. Cal. Dec. 30, 2011), and citing *Fitz Fresh, Inc. v. Mondragon*, No. C-08-02407 RMW, 2008 WL 4811457, at *2 (N.D. Cal. Nov. 5, 2008) ("[T]he interest charged is simple interest absent an explicit agreement by the parties to use compound interest."); *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, 172 Cal. App. 3d 914, 961 (9185) ("As a general rule, compound interest is impermissible unless specifically authorized by statute or by stipulation of the parties."); *cf. Great Am. Ins. Co. v. Wexler Ins. Agency, Inc.*, No. CV 97-9397 MMM (BQRx), 2000 WL 36732271, at *3 (C.D. Cal. Apr. 19, 2000) (noting an exception to the rule in favor of simple interest where a breach of fiduciary duty "results in secret profit").

See Plaintiff's Reply in Support of Motion for Entry of Judgment ("Reply") [Dkt. No. 258] at 5 n.2.[4]

In *Firstsource*, quoted by Plaintiff above, the court expressly held that "[H]ere, the agreement does not specifically reference 'compound' interest, but instead provides for a monthly 1.5 percent—or 18 percent annual—service fee on the invoice balance not paid after thirty days. (Doc. No. 1-1 at 2.) Because the parties' agreement does not clearly specify compound interest, the court will award simple interest on the unpaid invoice amounts in the amount of $380,302.00." *Firstsource Sols. U.S., LLC v. Tulare Reg'l Med. Ctr.*, at *22.

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[3] The Order references briefing only, however, Mr. Roy's declaration in support of the requested extension of time [Dkt. No. 268] was specific regarding his desire to obtain a necessary expert declaration.

[4] Prejudgment interest on a state law claim, including a breach of contract claim, is determined by state law. *Fresh v. Mondragon*, No. C-08-02407 RMW, at *4 n.2 (N.D. Cal. Nov. 5, 2008) (citing *In re Banks*, 225 B.R. 738, 750 (Bankr. C.D. Cal. 1998) (explaining *Unies v. Kroll Linstrom*, 957 F.2d 707, 714 (9th Cir. 1992)).

Similarly, while Plaintiff suggests that the Note requires compounded interest (Reply at 5 n. 2), the critical fact remains that the Note nowhere specifically references that "compound" or "compounded" interest was to be charged to the Tribe. And if that had been the mutual intention of the parties, it would have indeed been a simple matter to have used these terms to manifest such intent. The absence of a simple and unequivocal statement of "compound(ed)" interest in the Note belies Plaintiff's position.[5] Plaintiff therefore seeks an excessive award of compounded interest. In addition, the Court is requested to review the accompanying declaration of Daniel Quintero, Jr. ("Quintero Dec") which reveals the following: (1) Mr. Quintero is an expert in the field of finance and accounting; and (2) in his expert opinion, the language in the Note denotes simple not compounded interest. Quintero Dec ¶¶ 3-8, 9(i); Exhibit "A". Mr. Quintero asserts that the language in the "Interest Rate" section of the Note on page 2 would be customarily used and understood by persons in his field to denote simple interest since there is no specific language referencing that a compounded interest rate is to be utilized. Mr. Quintero identifies the difference between simple interest and compound interest as what amount the rate is applied to, not the rate itself, or whether that rate is fixed or variable. He asserts that you can have variable monthly interest rates applied as simple interest. Having a variable interest rate itself is not evidence that a compound interest calculation will be used. Consequently, since Plaintiff has not offered an expert opinion to support its interest calculation, the weight of the evidence militates against compounded interest under the law cited by Plaintiff to the Court.

However, if the Court is unpersuaded in terms of the parties' intention at the time the Note was made, based on the conflicting evidence and interpretations of the Note, there would be an ambiguity in the language of the Note that may not be resolved against the Tribe without a trial on the interest issue due to the triable issue of fact. *See, e.g., State Farm Mut. Auto. Ins. v. Fernandez*, 767 F.2d 1299, 1301 (9th Cir. 1985). Therefore, Plaintiff's request for compounded interest should be denied or, minimally, the issue set for trial.

B. Interest Should be Calculated From July 9, 2015 not 2012 Under the Terms of the Note.

Plaintiff's interest calculation also improperly includes accrued interest from the date of the Note (July 9, 2012) rather than the required three years from its making or July 9, 2015. Importantly, Plaintiff has provided no analysis whatsoever for its accrual date, nor has it even mentioned the critical maturity

[5] For example, the parties could have easily included a definition of compounded interest in the three pages of definitions if this were truly intended.

date language in the Note. Motion for Entry of Judgment [Dkt No. 253] at 8 n. 10; Reply [Dkt. No. 258] at 3:10-5:2; Supplemental Reply [Dkt. No. 267] at 3:4-23.

The Note specifically states: "Interest Rate: The principal balance of the Interim Tribal Loan shall bear interest, adjusted as of the first day of each month to a rate equal to the prime rate or reference rate last reported from time to time in the 'Money Rates' section of the Wall Street Journal, plus three (3) percent **payable when all principal on the Interim Tribal Loan is payable**. *See* Note attached as Exhibit "B" to Quintero Dec, p. 2 (emphasis added). The date of payment and accrual of interest are set forth in the next "Maturity Date and Payment of Promissory Note" section of the Note which provides that "[I]f the Tribe fails to open a casino or other gaming facility within three years (3) of the date listed above, at the outset of this Promissory Note, then this Promissory Note will be immediately due and payable." *Ibid*.

Given that it is undisputed that the Tribe did not open a casino/gaming facility, the Note provides that interest would be payable after three years of the date of the Note.[6] Conversely, the Note does not specifically state that interest accrues from the date of its making or three years before it was payable. The Tribe's interpretation is again supported by Mr. Quintero's expert opinion. *See* Quintero Dec, ¶ 11(ii). Mr. Quintero therefore calculated simple interest from July 9, 2015 through December 21, 2020 in the amount of $2,109,844.38. *Id*. at 11(iii); Exhibit "C".[7] This is the proper calculation of interest under the terms of the Note.[8]

[6] Among many unfortunate discrepancies in the Note which Plaintiff wants summarily and finally adjudicated based on its MPJOP, the date of its making on the first page is blank for the day in June. The Tribe has therefore used the signature date on page "10 of 9" of July 9, 2012. Plaintiff's calculations appear to use the same date.

[7] Once again, based on the conflicting interpretations of the Note, minimally, there would be an ambiguity in the language of the Note that may not be resolved against the Tribe without a trial on the interest issue due to the triable issue of fact. *See, e.g., State Farm Mut. Auto. Ins. v. Fernandez*, 767 F.2d at 1301. Therefore, Plaintiff's request for accrued interest from July 9, 2012 should be denied or the issue set for trial.

[8] Alternatively, at Mr. Roy's request, Mr. Quintero calculated compounded interest from July 9, 2015 through December 21, 2020 to be in the amount of $2,573,979.58 so the Court would at least have this figure. Quintero Dec ¶11(iv); Exhibit "D".

IV. CONCLUSION

Based on the foregoing, in the event the Court determines to enter judgment at this time, it is respectfully requested to award simple interest under the Note in the amount of $2,109,844.38.

Respectfully Submitted,

Dated: December 31, 2020

PROMETHEUS PARTNERS L.L.P.

By: __/s/___Eduardo G. Roy_____

Eduardo G. Roy,

Attorneys for Tribal Defendants Leona Williams, Angela James, Lenora Steele, Kathy Stallworth, Michelle Campbell, Julian J. Maldonado, Donald Williams, Veronica Timberlake, Cassandra Steele, Jason Edward Running Bear Steele, Andrew Stevenson, Pinoleville Pomo Nation, Pinoleville Gaming Authority, Pinoleville Gaming Commission, Pinoleville Business Board, and Pinoleville Economic Development, LLC