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Attorneys for Tribal Defendants  
 [Listed on Signature Page]

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,  
 PINOLEVILLE GAMING AUTHORITY,  
 PINOLEVILLE GAMING  
 COMMISSION, PINOLEVILLE  
 BUSINESS BOARD, AND PINOLEVILLE  
 ECONOMIC DEVELOPMENT, LLC'S  
 NOTICE OF MOTION AND MOTION  
 TO QUASH OR MODIFY SUBPOENA  
 TO WESTAMERICA MANK AND FOR  
 ATTORNEY'S FEES AND COSTS;  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES AND DECLARATION  
 OF EDUARDO G. ROY IN SUPPORT**

**[PROPOSED ORDER SUBMITTED  
 HEREWITH]**

Date: June 16, 2021  
 Time: 2:00pm  
 Courtroom 2, 17th Floor  
 Hon. William H. Orrick

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**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on June 16, 2021, at 2:00 p.m., or as soon thereafter as the matter can be heard, in Courtroom 2 of the above-entitled Court, before the Honorable William H. Orrick, defendants and judgment debtors Pinoleville Pomo Nation (“Tribe”) and Pinoleville Gaming Authority (“Gaming Authority”) (collectively, “Debtors”), and Pinoleville Gaming Commission (“Gaming Commission”), Pinoleville Business Board (“Business Board”), and Pinoleville Economic Development, LLC (“PED”) (collectively, “Non-Debtors”) will, and hereby do, respectfully move the Court, pursuant to Rule 45 of the Federal Rules of Civil Procedure,<sup>1</sup> to quash or modify the Subpoena attached hereto as Exhibit “B” and award attorney’s fees and costs to the moving parties on the following specific grounds:

1. A complete copy of the Subpoena was not served on all parties whose records are being sought prior to service on WestAmerica Bank (“Bank”);
2. The Subpoena seeks records regarding parties against whom there is no writ or execution;
3. The Subpoena is overbroad and seeks confidential, privileged, and private financial banking records from the Non-Debtors as supposed affiliates and subordinates of Tribe even though such allegations against them were dismissed with prejudice;
4. The Subpoena is overbroad and seeks privileged, confidential, and private financial banking records regarding all of the moving parties for a period of five years, which is not reasonably calculated to evidence current assets of the Debtors; and
5. Plaintiff and their counsel did not take reasonable steps to avoid imposing undue burden and expense on the moving parties through their shotgun Subpoena that seeks highly sensitive, private, confidential and privileged banking records from dismissed Non-Debtors, non-parties, and irrelevant records going back an inordinate period of time, which has resulted in the moving parties incurring attorney’s fees and costs that should be awarded by the Court.

This motion, which is brought following unsuccessful meet and confer efforts of counsel for the parties, will be based on this Notice of Motion, the arguments, authorities, and evidence more particularly set forth in the Memorandum of Points and Authorities and Declaration of Eduardo G. Roy hereinbelow, the attached exhibits, the proposed order submitted herewith, and on such other and further evidence, arguments and authorities as may be submitted to the Court prior to ruling hereon.

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<sup>1</sup> All further references herein to “Rule(s)” will be to the Federal Rules of Civil Procedure.

Respectfully Submitted,

PROMETHEUS PARTNERS L.L.P.

Dated: April 26, 2021

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

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

In this highly contentious action, Plaintiff and their counsel have issued and caused to be served on the Tribe's bank a Subpoena that violates Rule 45 and any remote notion that protection was extended to the moving parties to avoid undue burden and expense. For those reasons that follow, the Subpoena should be quashed in its entirety due to numerous infirmities. Minimally, it should be significantly modified if Plaintiff and its counsel can demonstrate they complied with Rule 45 and that they are only seeking documents of the Tribe that are relevant to its current assets. In either case, the moving parties should be awarded their attorney's fees and costs incurred in obtaining the relief requested.

### **II. STATEMENT OF ISSUES TO BE DECIDED**

Tribal Defendants submit that there are six primary issues to be resolved by the Court in deciding this motion, each of which should be answered in the affirmative, including:

1. Whether a complete copy of the Subpoena was served on all parties prior to service on WestAmerica Bank;
2. Whether Plaintiff can obtain privileged, confidential and private banking records regarding parties against whom there is no writ of execution.
3. Whether the Subpoena is overbroad and seeks confidential, privileged, and private financial banking records from the Non-Debtors as supposed affiliates and subordinates of Tribe even though such allegations against them were dismissed with prejudice;

4. Whether the Subpoena is overbroad and seeks privileged, confidential and private financial banking records regarding all of the moving parties for a period of five years, which is not reasonably calculated to evidence current assets of the Debtors;
5. Whether Plaintiff and their counsel took reasonable steps to avoid imposing undue burden and expense on the moving parties through their shotgun Subpoena that seeks records from dismissed Non-Debtors and records going back an inordinate period of time.
6. Whether the moving parties should be awarded their attorney's fees and costs in obtaining the relief requested therein.

### III. FACTUAL/PROCEDURAL BACKGROUND

The Complaint in this case [Dkt. No. 1-1] contained six state law causes of action, including the first for breach of contract, the second for fraud, and the third through sixth for civil RICO violations. Plaintiff also alleged that the Non-Debtors were liable under the breach of contract cause of action as successors and assignees of the Tribe. *Id.* at ¶¶ 283, 286-89, 293-301.

On January 22, 2021, the Court entered the final Judgment in favor of Plaintiff as to the first cause of action for breach of contract against the Tribe and Gaming Authority only and dismissed all of Plaintiff's remaining claims, including the second cause of action for fraud and the third through sixth causes of action for RICO violations against all parties including the Non-Debtors.

On February 23, at Plaintiff's request, the Court entered a Writ of Execution against the Tribe only [Dkt. No. 288]. **The Writ is not entered against the Gaming Authority or the Non-Debtors.**

On April 6, 2021, Plaintiff's counsel caused a Notice of Intent to Serve Subpoena ("Notice") to be served upon moving parties counsel on behalf of Debtors only. *See* Declaration of Eduardo G. Roy ("Roy Decl." hereinbelow at ¶3, Exhibit "A". However, **Mr. Roy was not served on behalf of the Non-Debtors.** The subpoena attached to the Notice was **unsigned and undated.** *Ibid.*

On April 9, 2021, the Bank was served with the Subpoena attached hereto as Exhibit "B". Roy Decl. at ¶ 4, Exhibit "B". However, this Subpoena is signed and dated, **unlike the one attached to the Notice.** *Ibid.* The Subpoena seeks financial banking records for the "TRIBE" which is defined to include the Gaming Authority and the Non-Debtors. It also includes other alleged names of the Tribe including the "Pinoleville Band of Pomo Indians, Pinoleville Rancheria, and Pinoleville Band of Pomo Indians of California," **none of whom are Debtors.** *Ibid.* It also seeks records going back to January 1, 2016, nearly five and a half years ago. It also specifically demands:

**YOU are directed to produce the following, for the period from January 1, 2016 through the date of YOUR response to this subpoena:**

1. **ALL RECORDS RELATING TO** each and every deposit account, line of credit, mortgage, loan, investment account, and other matter of, or for the benefit of, the **TRIBE**. Such RECORDS include, but are not limited to: **signature cards, resolutions, meeting minutes, and governing documents of the TRIBE; account statements; and copies of checks, money orders, cashier checks, and items deposited.** This request includes, but is not limited to, **all RECORDS RELATING TO the following accounts:**

Pinoleville Pomo Nation 203-11818-7

Pinoleville Pomo Nation 203-11885-6

Pinoleville Pomo Nation 203-11866-6

Pinoleville Pomo Nation 203-11819-5

Pinoleville Pomo Nation 203-11886-4

Pinoleville Pomo Nation 203-11820-3

Pinoleville Pomo Nation 90-4021-1211

**Pinoleville Business Board 0203123351.”**

2. **“All RECORDS RELATING TO any and every line of credit, credit card, or credit or debit of the TRIBE.** Such RECORDS include, but are not limited to, all credit applications of the TRIBE, and all financial statements of the TRIBE submitted to obtain credit or anything of value from YOU.”

*Ibid.*; emphasis added.

On April 27, 2021, Mr. Roy sent a meet and confer letter to which Plaintiff’s counsel has not responded as of the filing of this motion. Roy Decl. at ¶ 5.

#### IV. LEGAL ARGUMENT

##### A. Rule 45 Requires Plaintiff and Its Counsel to Protect all Those Named in the Subpoena From Undue Burden or Expense.

Rule 45(d) provides:

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

Fed. R. Civ. P. 45(d).

##### B. Plaintiff and Its Counsel Violated Rule 45(d) in Numerous Respects.

Plaintiff and its counsel failed to protect the moving parties from undue burden and expense, including:

1. They served the Notice with an unsigned and undated Subpoena in violation of Rule 45(a)(4) which requires a copy of the actual Subpoena to be served on the parties in advance of being served on a third party.

2. They served the Notice on the Debtors only through counsel not any of the Non-Debtors, though all parties whose accounts are being subpoenaed should have been served under Rule 45(a)(4).

3. They are seeking to subpoena bank records without a Writ of Execution having been issued against any of the moving parties except the Tribe. Therefore, they are improperly seeking to enforce the Judgment without having obtained a proper writ of execution except as to the Tribe. All other parties listed in the Subpoena are not subject to a writ of execution and enforcement of the Judgment. *See* Rule 69.

4. They have included in the definition of the “Tribe” several names/parties that are not parties to this case and against whom the Judgment was not entered, and are thereby seeking records from non-parties, including the “Pinoleville Band of Pomo Indians, Pinoleville Rancheria, and Pinoleville Band of Pomo Indians of California,” making the Subpoena overbroad.

5. They are seeking records regarding a Bank account in the name of the Business Board which is not a Debtor and is therefore improper.

6. They are seeking Bank records going back almost five and a half years now even though the Judgment they are seeking to enforce was just entered on January 22, 2021 as to current assets, rendering the categories impermissibly overbroad.

7. They are seeking every conceivable Bank record of Debtors and Non-Debtors, including debts, loans, credit lines, etc., even though they are not reasonably calculated to reveal current assets of the Tribe, making the two categories impermissibly overbroad.

### **C. The Court Should Quash or Modify the Improperly Issued/Served Subpoena.**

Plaintiff and its counsel have improperly issued and served a Subpoena commanding the production of bank records that should be quashed or modified. Rule 45(d) provides:

**(3) Quashing or Modifying a Subpoena. (A) When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that: **(i)** fails to allow a reasonable time to comply; **(ii)** requires a person to comply beyond the geographical limits specified in Rule 45(c); **(iii) requires disclosure of privileged or other protected matter**, if no exception or waiver applies; or **(iv) subjects a person to undue burden.**

Fed. R. Civ. P. 45(d)(3); emphasis added. *See also* Rule 45(d)(3)(B) re permissive quashing or modification of subpoenas.

The foregoing seven instances of violations of Rule 45 reveal a Subpoena that was not properly served on each party whose records are being sought. It also seeks privileged and federally protected banking records of parties who are not judgment debtors and against whom there is no writ of execution. It seeks confidential and privileged federal banking records for five and a half years which is beyond

reason and constitutes an improper fishing expedition. It seeks an overbroad category of every record in the Bank's possession regarding the Debtors and Non-Debtors without regard to their relevance and relation to current assets of the Tribe and the only party against whom the Writ was entered. The Subpoena should therefore be quashed in its entirety or significantly modified to require nothing more than relevant Bank records of the Tribe only that would reveal current Tribe assets only.

**D. The Court Should Award the Moving Parties Their Fees and Costs in Obtaining Relief.**

In addition, the Court should award attorney's and costs incurred by the moving parties to be determined by way of a noticed motion therefor. Those costs and fees are not yet fully determined since the moving parties do not yet know how much more time their counsel will be spending on this motion.

**V. CONCLUSION**

Based on the foregoing, the Court is respectfully requested to quash or significantly modify the Subpoena and award the moving parties their attorney's fees and costs by way of a separate motion.

Respectfully Submitted,

Dated: April 26, 2021

PROMETHEUS PARTNERS L.L.P.

By: /s/ Eduardo G. Roy

Eduardo G. Roy, Attorneys for Tribal Defendants

**DECLARATION OF EDUARDO G. ROY**

I, Eduardo G. Roy, declare as follows:

1. I am counsel of record for the Tribal Defendants herein, though all but the Pinoleville Pomo Nation and Pinoleville Gaming Authority ("Debtors") have been dismissed with prejudice from this action.
2. This declaration is based on my own personal knowledge and, if called upon, I could and would competently testify to the following.
3. On April 6, 2021, Plaintiff's counsel caused a Notice of Intent to Serve Subpoena ("Notice") to be served upon me on behalf of the Debtors only, a true and accurate copy of which is attached hereto as Exhibit "A". However, I was not served on behalf of any other parties named in the Subpoena according to the Proof of Service attached to the Notice. The subpoena attached to the Notice was also unsigned and undated.



4. On April 9, 2021, WestAmerica Bank notified my client, who immediately notified me, that it was served with the Subpoena attached hereto as Exhibit “B”. However, this Subpoena is signed and dated, unlike the one attached to the Notice I had received. The Subpoena seeks private, confidential, and privileged financial banking records for the “TRIBE” which is defined to include the Gaming Authority and other former Defendants who are now dismissed from this action with prejudice and who are not judgment debtors. It also includes other alleged names of the Tribe including the “Pinoleville Band of Pomo Indians, Pinoleville Rancheria, and Pinoleville Band of Pomo Indians of California,” none of whom are judgment debtors. It also seeks records going back to January 1, 2016, nearly five and a half years ago. It also specifically demands:

YOU are directed to produce the following, for the period from January 1, 2016 through the date of YOUR response to this subpoena:

1. All RECORDS RELATING TO each and every deposit account, line of credit, mortgage, loan, investment account, and other matter of, or for the benefit of, the TRIBE. Such RECORDS include, but are not limited to: signature cards, resolutions, meeting minutes, and governing documents of the TRIBE; account statements; and copies of checks, money orders, cashier checks, and items deposited. This request includes, but is not limited to, all RECORDS RELATING TO the following accounts:

Pinoleville Pomo Nation 203-11818-7  
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 Pinoleville Pomo Nation 90-4021-1211  
 Pinoleville Business Board 0203123351.”

2. “All RECORDS RELATING TO any and every line of credit, credit card, or credit or debit of the TRIBE. Such RECORDS include, but are not limited to, all credit applications of the TRIBE, and all financial statements of the TRIBE submitted to obtain credit or anything of value from YOU.”

5. On April 27, 2021, I sent a meet and confer letter to which Plaintiff’s counsel has not responded as of the filing of this motion.

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1 I declare under penalty of perjury under the laws of the United States that the foregoing is true  
2 and correct, and that this declaration was executed on April 26, 2021 at San Francisco, California.

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4 /s/ Eduardo G. Roy  
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