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JW Gaming Development, LLC

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

**PLAINTIFF'S OPPOSITION TO
PINOLEVILLE POMO NATION *ET*
AL.'S MOTION TO QUASH OR
MODIFY SUBPOENA TO
WESTAMERICA BANK**

Hearing Date: May 25, 2021
Time: 1:00 p.m.

Magistrate Judge Robert Illman

INTRODUCTION

Plaintiff and Judgment Creditor JW Gaming Development LLC (“JW Gaming”) served a post-judgment subpoena for bank records, from 2016 to present, (the “Records”) to aid JW Gaming in executing its \$8.5 million judgment entered by the district court. The day before the bank (Westamerica) was required to respond—and about 17 days after Westamerica had notified the Defendant and Judgment Debtor Pinoleville Pomo Nation (“Tribe”) of Westamerica’s receipt of the subpoena—the Tribe filed a scattershot motion to quash the subpoena. Dkt. 324 (the “MTQ”).

Meanwhile, Westamerica Bank had already produced the Records to JW Gaming before the MTQ was filed.

The Court referred the MTQ, along with the Tribe’s pending claim of exemption (Dkt. 308-2) to Magistrate Judge Illman. Order, Dkt. 332, at 1. As that Order notes, JW Gaming represented at the initial hearing on the claim of exemption—and JW Gaming represents again here—that the Records contradict the earlier-submitted sworn statement of the Tribe’s Chief Financial Officer regarding the source and nature of approximately \$190,000 that JW Gaming levied from the Tribe’s accounts on March 11, 2021. *See id.* at 7:28-8:2 (“Finally, JW Gaming revealed at the hearing [on the claim of exemption] that documents it obtained from Westamerica via subpoena call into question the truth of PPN’s representations. That evidence has not yet been submitted. These documents underscore the need for further development of the record.”).

Furthermore, beyond the Records’ relevance to the claim of exemption, JW Gaming intends to utilize them in other ways to aid in executing the judgment. For example, JW Gaming intends to rely on the Records to show the Tribe evading collection by, among other things, diverting assets into newly-formed bank accounts in Denver, Colorado. JW Gaming further intends to rely on the Records

1 to show the Tribe moving monies to and from accounts it controls in the name of Pinoleville Pomo
 2 Nation Circle of Nations Lending Authority (“Circle of Nations”).¹
 3

4 As explained below, the MTQ provides no grounds for the Court to disturb the subpoena.
 5 Therefore, the MTQ should be denied.

6 BRIEF FACTUAL AND PROCEDURAL BACKGROUND

7 The Order referring this dispute to Judge Illman recounts much of background immediately
 8 pertinent to this post-judgment discovery issue. *See* Order, Dkt. 332, at 2. Additional background of
 9 the litigation may be found in other recent orders. *See, e.g.*, Order on Motions for Leave to File Mtn.
 10 for Recon., for Leave to Amend, and to Enter Jgmt., Dkt. 278. As such, only a brief summary of the
 11 facts and procedural background is set forth here.
 12

13 A. The \$8.5 million judgment in favor of JW Gaming.

14 On January 21, 2020, the Court awarded JW Gaming judgment on its breach of contract
 15 claim, without limitation on recourse. *See* Order on Mtn. for Sum. Jgmt., etc., Dkt. 178.

16 About one year later, JW Gaming moved for entry of final judgment on its contract claim.
 17 Dkt. 253. That motion also conditionally requested dismissal of JW Gaming’s unresolved claims. *Id.*
 18 The motion was granted (Dkt. 278), and Judgment was entered on January 22, 2021 (Dkt. 279).
 19

20 B. JW Gaming’s enforcement of the judgment.

21 Following Judgment, JW Gaming sought and obtained from the clerk of the court an abstract
 22 of judgment. Dkt. 281. The abstract identified the judgment debtors as the Tribe (including its dbas
 23

24 ¹ Circle of Nations has been described in class-action litigation as “a wholly-owned arm of the
 25 Pinoleville Pomo Nation” and signatory to a “March 21, 2017 . . . Term Sheet and Letter of Intent
 26 with an entity called Receivables Funding LLC and/or Basepoint Capital LLC to refinance the
 27 unlawful tribal lending scheme alleged [t]herein in an amount of \$175 million, with the option to
 28 increase financing up to \$250 million upon written request.” *Gingras v. Victory Park Capital
 Advisors, LLC, et al.*, No. 5:17-cv-00233 (Dist. Vt.) at Dkt. 1, ¶ 16.

1 Pinoleville Pomo Nation, California; Pinoleville Rancheria of Pomo Indians of California; and
 2 Pinoleville Band of Pomo Indians) and Pinoleville Gaming Authority. *Id.* JW Gaming also obtained
 3 a writ of execution. Dkt. 288. The Court denied two motions by the Tribe to reconsider and vacate
 4 the judgment and the Tribe's motion to quash the writ of execution. Dkt. 306 and 312.

6 **C. The Tribe's claim that \$190,000 is exempt from execution.**

7 After the U.S. Marshal on March 11, 2021 levied six bank accounts of the Tribe at
 8 Westamerica Bank containing approximately \$190,000 in all, the Tribe on March 17 filed a claim of
 9 exemption, which JW Gaming opposed and which the Court on May 4 referred to Judge Illman for
 10 further proceedings. Dkt. 332. The Tribe's claim of exemption "contends that the Subject Accounts
 11 only contain funds that come from federal, state, and local government grant programs that are not
 12 subject to collection to satisfy the judgment debt." Dkt. 332 at 3. The Court noted that this
 13 contention presents both a legal dispute – whether such funds can be used to satisfy the judgment –
 14 and a factual dispute – "whether the Subject Accounts actually contain such funds and, if so, to what
 15 extent." *Id.* The Court observed that the Tribe had "not provided any documentary evidence in
 16 support of its argument that the accounts only contain exempt funds," other than a declaration of the
 17 Tribe's Chief Financial Officer Kathy Redhorse. *Id.* at 7. Such evidence might include grant
 18 documents as well as "receipts of inflows into the accounts, and records of spending." *Id.* The Court
 19 also noted JW Gaming's representation that "documents it had obtained from Westamerica via
 20 subpoena call into question the truth of [the Tribe's] representations," and that "[t]hese documents
 21 underscore the need for further development of the record." *Id.* at 7-8. The Court "ordered the
 22 hearing continued for the production of other evidence, oral or documentary," in accordance with
 23 California Code of Civil Procedure section 703.580(c). *Id.* at 8.

D. JW Gaming's post-judgment discovery.

Meanwhile, on April 6, JW Gaming served the Tribe with a Notice of Intent to Serve Subpoena. Dkt. 324-1. The Notice informed the Tribe that JW intended to have a subpoena served upon Westamerica Bank on April 9, 2021, or thereafter, for the production of documents. The Notice included a copy of the subpoena to be served on Westamerica. *Id.* at 3-7. The subpoena indicated that Westamerica was to produce the requested documents by April 27, 2021. *Id.* at 3. It requested records relating to the Tribe's deposit accounts and credit lines from 2016 to the date of response. *Id.* at 7. According to the Tribe's filings, JW Gaming caused the subpoena to be served upon Westamerica Bank on April 9, and Westamerica notified the Tribe of the subpoena on the same date, April 9. Dkt. 324 at 7, ¶ 4. Westamerica Bank again notified the Tribe by letter of April 10 that the subpoena had been served, including with its notice a copy of the subpoena as served. Dkt. 324-2.

The Tribe filed its MTQ on April 26, seventeen days after the subpoena was served on the bank and twenty days after JW Gaming served notice on the Tribe.²

E. Other recent developments.

On May 6, JW Gaming moved for a temporary restraining order enjoining the Tribe from proceeding further with a purported lawsuit the Tribe had filed in its own purported tribal court against JW Gaming and its legal counsel herein. Dkt. 333. As JW Gaming explained in that motion, the tribal court complaint alleges that the abstract of judgment and writ of execution entered by this

² JW Gaming served written postjudgment discovery on the Tribe on April 8. On May 7, the Tribe responded with blanket objections and refused to provide *any* substantive answers or documents. *See* Tribe Responses to Document Requests and to Interrogatories, attached as Exhibits A and B, respectively, to the Declaration of Gregory M. Narvaez filed concurrently herewith. The Tribe's stonewalling—even after Judge Orrick emphasized the importance of developing the record on the Tribe's claim of exemption [Dkt. 332], and after Judge Orrick's repeated holdings that the Judgment is without limitation on recourse [Dkt. 178, 306, 312]—underscores the importance of JW Gaming obtaining full and complete third-party records, like the WestAmerica bank records at issue here.

1 federal court are “invalid and void,” and on that basis the complaint seeks, among other things, to
 2 hold JW Gaming liable for no less than \$11 million in compensatory and punitive damages for
 3 “enforcing [this federal court’s judgment] against Tribal Assets other than gaming revenues[.]” *Id.* at
 4 6. JW Gaming provided further evidence calling into question whether the purported tribal court
 5 even exists. *Id.* at 11-12. In a minute order of May 7, Judge Orrick “underscore[d] the serious
 6 nature of the allegations in [JW Gaming’s] motion,” set the matter for hearing on preliminary
 7 injunction, and accepted the Tribe’s counsel’s representation that no action (aside from the Tribe’s
 8 possible filing of an amended complaint) would be taken in the tribal court “for 60 days . . . so that
 9 the status quo can be maintained pending a ruling on injunctive relief.” Dkt. 336.
 10
 11

12 Separately, six individuals who control the Tribe have filed suit in Sacramento County
 13 Superior Court against JW Gaming, two of its representatives (Donna Winner and Jack Campbell),
 14 and its law firm and attorneys of record in this action. Dkt. 314-1. That suit alleges JW Gaming and
 15 its counsel maliciously prosecuted the fraud and RICO claims before this court. *Id.*
 16

17 **LEGAL STANDARD**

18 Under Rule 69 of the Federal Rules of Civil Procedure, “In aid of the judgment or execution,
 19 a judgment creditor . . . may obtain discovery from any person – including the judgment debtor – as
 20 provided in these rules or by the procedure of the state where the court is located.” Fed. R. Civ. P.
 21 69(a)(2).
 22

23 “The rules governing discovery in postjudgment execution proceedings are quite permissive.”
 24 *Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. 134, 139 (2014). Postjudgment, the purpose of
 25 discovery is “to identify assets that can be used to satisfy a judgment” and “to discover concealed or
 26 fraudulently transferred assets,” among other things. *Ryan Inv. Corp. v. Pedregal de Cabo San*
 27 *Lucas*, No. C 06-3219 JW (RS), 2009 WL 5114077, *1 (N.D. Cal. Dec. 18, 2009) (internal quotation
 28

marks omitted); *see Baker v. Limber*, 647 F.2d 912, 920 (9th Cir. 1981) (“The purpose of a Rule 69 proceeding is to identify assets from which judgment might be satisfied”). “The judgment creditor must be given the freedom to make a broad inquiry to discover hidden or concealed assets of the judgment debtor. ... Further, due to its broad scope, a party is free to use any means of discovery allowable under the Federal Rules of Civil Procedure.” *Ryan Inv. Corp.* at *1 (internal quotation marks omitted). Postjudgment discovery in aid of execution is not precluded by the filing of an appeal. *Brae Asset Funding, L.P. v. Applied Financial, LLC*, No. C 05-02490 WHA, 2006 WL 3497876, *3 (N.D. Cal. Dec. 4, 2006). “As several federal courts have noted, Rule 69 discovery can indeed resemble the proverbial fishing expedition, but a judgment creditor is *entitled* to fish for assets of the judgment debtor.” *Ryan Inv. Corp.* at *3 (internal quotation marks omitted). “The presumption should be in favor of full discovery of any matters arguably related to the creditor’s efforts to trace the debtor’s assets and otherwise to enforce the judgment.” *Ceinorius v. Franco*, No. 19-mc-80070-JSC, 2020 WL 3487805 (N.D. Cal. June 26, 2020) (internal quotation marks and alterations omitted).

Rule 45, which concerns subpoenas, provides that before a party serves on the person to whom it is directed a subpoena for the production of documents, “a notice and a copy of the subpoena must be served on each party.” Fed. R. Civ. P. 45(a)(4).

The Tribe bears the burden as the moving party to persuade the Court to quash the subpoena. *IPCom GMBH & Co. KG v. Apple Inc.*, 61 F.Supp.3d 919, 922 (N.D. Cal. 2014).

DISCUSSION

The Tribe’s motion lists five “specific grounds” for the motion (Dkt. 324 at 2), its brief identifies “six primary issues” (*id.* at 3-4) and its argument claims to identify “seven violations of Rule 45” (*id.* at 6). Nothing the Tribe presents satisfies its burden to justify granting its motion.

1 First, JW Gaming served a copy of the subpoena to JW Gaming three days before serving the
 2 document upon Westamerica Bank, in accordance with Rule 45(a)(4). The notice to the Tribe was
 3 signed and dated, but the advance copy of the subpoena provided had not yet been signed and dated.
 4 Apart from the date and signature, however, the subpoena served on April 9 to Westamerica Bank
 5 was identical to the document provided on April 6 to the Tribe. The Tribe fails to cite any authority
 6 in support of its contention that the April 6 notice was technically insufficient because the advance
 7 copy of the subpoena lacked a signature. Even if the Tribe did, however, any technical error was
 8 harmless, as the movants received actual notice of the subpoena's content from JW Gaming and from
 9 Westamerica Bank. *Reno-Tahoe Specialty, Inc. v. Mungchi, Inc.*, No. LA 16-cv-00663-GKH-AGR,
 10 2018 WL 6267820, *4 (C.D. Cal. Jan. 19, 2018). In fact, it was reasonable for JW Gaming to
 11 provide an unsigned, undated copy of the subpoena along with the April 6 notice, in case it became
 12 necessary to make changes before finalizing the document with a signature. Ultimately, no changes
 13 were needed, none were made, and JW Gaming served the exact subpoena it notified the Tribe of
 14 three days earlier. Nothing about this procedure prejudiced the Tribe or Westamerica Bank or
 15 imposed an undue burden or expense upon either of them. There are no grounds to quash the
 16 subpoena on this basis.

17 Second, the April 6 notice was served on Eduardo Roy and Padraic McCoy, who at the time
 18 were counsel of record for all the tribal defendants. (Since then, the Court granted Mr. McCoy's
 19 motion to withdraw from the case. *See* Order Granting Motion to Withdraw, Dkt. 331). They were
 20 (and Mr. Roy still is) counsel for the Tribe, the Pinoleville Gaming Authority, Pinoleville Gaming
 21 Commission, Pinoleville Business Board, and Pinoleville Economic Development LLC. The Tribe
 22 contends that "all parties whose accounts are being subpoenaed should have been served." Dkt. 324
 23 at 6. They were.

For its third, fourth and fifth points, the Tribe argues the subpoena improperly sought the bank records of persons other than the Tribe, when a writ of execution has only been issued with respect to the Tribe and only the Tribe and Pinoleville Gaming Authority are judgment debtors. Dkt. 324 at 6. Again, no authority is cited in support of this limitation, beyond a bare citation to Rule 69. That rule permits postjudgment discovery “from any person” whether or not the person is the judgment debtor. Fed. R. Civ. P. 69(a)(2). As part of its right to locate assets that may be used to satisfy the judgment against the Tribe and Pinoleville Gaming Authority, JW Gaming is permitted to seek and obtain the pertinent records of persons other than the debtors themselves, including their affiliates and subordinate entities. *Ryan Inv. Corp.*, at *3 (postjudgment discovery “may be permitted where the relationship between the judgment debtor and nonparty is sufficient to raise a reasonable doubt about the bona fides of the transfer of assets”). Thus, JW Gaming is entitled to the information of entities such as the Pinoleville Business Board and Pinoleville Economic Development, where the available evidence reveals significant intermingling of the Tribe’s assets and those of these entities, and the Records therefore likely contain information concerning the debtors’ assets. The subpoena is not overbroad on this basis.

Sixth and Seventh, neither the subpoena’s five-year timeframe, nor the nature of the records requested therein, is overbroad. The Tribe once again cites no authority to support its position. Records of the Tribe’s bank accounts going back to January 1, 2016 will aid JW Gaming in ascertaining the location of the Tribe’s current assets, and whether those assets may be reached to satisfy the judgment. The timeframe, and records requested, will permit JW Gaming to, among other things, examine the how the Tribe may have disposed of its assets before being sued by JW Gaming and compare that with any dispositions after this suit was commenced and after judgment was entered, which may help JW Gaming identify potentially fraudulent transfers and assets the Tribe

1 may be concealing. The timeframe, and records requested, will further permit JW Gaming to identify
 2 transmutation of assets, for example by the Tribe utilizing liquid assets to accrue equity in real
 3 property. In this regard, postjudgment discovery going back eight years has been found reasonable
 4 and warranted. *Patriot Rail Corp. v. Sierra Railroad Co.*, No. 2:09-cv-0009 TLN AC, 2016 WL
 5 492702, *6-7 (E.D.Cal. Feb. 9, 2016). Indeed, to the extent the Tribe seeks to limit postjudgment
 6 discovery to the time from the entry of judgment, its attempt has “no basis in law or logic ... given
 7 the broad and permissible nature of discovery under Rule 69.” *Int’l Petroleum Products and*
 8 *Additives Co. v. Black Gold*, No. 19-cv-03004-YGR (RMI), 2020 WL 4673947, *5 (N.D. Cal. Aug.
 9 12, 2020) (rejecting attempt to limit Rule 69 discovery to the time following the arbitration award).

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 11
 12 Additionally, any claim that the subpoena imposed an undue burden on WestAmerica is not a
 13 basis to quash or modify the subpoena. The Tribe “lacks standing to object that the subpoenas
 14 impose an undue burden on third parties due to overbreadth.” *Raymond James & Assoc., Inc. v.*
 15 *Terran Orbital Corp.*, No. 8:19-cv-01916-DOC-KESx, 2020 WL 6083433, *4 (C.D. Cal. June 10,
 16 2020). Westamerica never claimed to be unduly burdened, and the Tribe never specifies how
 17 Westamerica’s production imposes an undue burden on the Tribe.

18
 19 Finally, the Tribe also vaguely asserts the Records are “privileged and federally protected,”
 20 and that they are “confidential and privileged.” Dkt. 324 at 6. But the Tribe has failed to specify the
 21 privileged or confidential information contained in the Records. The Tribe’s mere assertion does not
 22 clearly demonstrate that the Records are entitled to any protection. Moreover, even if the Records
 23 contained such protected information, “discovery in aid of execution under Rule 69 permits inquiry
 24 into otherwise confidential information regarding the judgment debtor’s assets,” and JW Gaming is
 25 entitled to obtain discovery of the information. *1st Technology LLC v. Rational Enterprises Ltd*, No.
 26 2:06-cv-01110-RLH-GWF, 2007 WL 5596692, *5 (D. Nev. Nov. 13, 2007).

CONCLUSION

The Tribe's motion provides no basis to quash or recall the subpoena, which appropriately seeks discovery in aid of the judgment or execution. The subpoena was properly noticed and properly targeted to discover information that would allow JW Gaming to identify assets that can be used to satisfy its judgment, including by uncovering concealed assets or unlawful transfers. Responsive information is directly relevant to the issues raised in the Tribe's claim of exemption, and about which the Tribe itself is unwilling to supply any information. JW Gaming respectfully requests the Court deny the Tribe's motion in its entirety.

Dated: May 10, 2021

PEEBLES KIDDER BERGIN & ROBINSON LLP

By /s/ Gregory M. Narvaez

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 JW Gaming Development LLC