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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NAVAJO HEALTH FOUNDATION – SAGE
MEMORIAL HOSPITAL, INC. (doing
business as “Sage Memorial Hospital”); an
Arizona non-profit corporation,

Plaintiff,

vs.

RAZAGHI DEVELOPMENT COMPANY,
LLC; a Nevada limited liability company
(doing business as “Razaghi Healthcare”),
AHMAD R. RAZAGHI; individually,
TAUSIF HASAN; individually, DOES 1-10;
ROES A-Z;

Defendants.

Case No. 2:19-cv-0329-GMN-EJY

**PLAINTIFF’S RESPONSE TO
DEFENDANT’S PARTIAL OBJECTION
TO THE UNITED STATES
MAGISTRATE JUDGE’S ORDER AND
REPORT AND RECOMMENDATION
FILED JANUARY 15, 2021**

Pursuant to this Court's Local Rule IB 3-2 and 28 U.S.C. § 636, Plaintiff hereby responds to Defendants' "partial Objection"¹ to the United States Magistrate Judge's² January 15, 2021 Order and Report and Recommendation ("Report").³ Plaintiff previously filed its own timely Objection to the Magistrate Judge's January 15, 2021 filing on January 29, 2021. *See* ECF No. 120.⁴

I. PLAINTIFF'S RICO CLAIMS ARE PLED WITH SUFFICIENT PARTICULARITY

In her Report, the Magistrate Judge found that Plaintiff's "[a]llegations of email communications transmitted in interstate commerce are sufficient to establish the interstate requirement of a federal civil RICO claim." ECF No. 117, p. 11. She also found that "Plaintiff's proposed FAC [First Amended Complaint] sufficiently alleges mail fraud to establish the interstate requirement of the federal civil RICO statute." ECF No. 117, p. 13. However, she found that "[i]n contrast, Plaintiff's allegations regarding three telephone communications fail to establish interstate wire communications necessary to state a federal civil RICO claim." ECF No. 117, p. 14.

Notwithstanding the foregoing findings, the Defendants claim that they "agree with Magistrate Youchah that the proposed First Amended Complaint does not sufficiently plead the elements of federal RICO claims based on mail and wire fraud with particularity." ECF No.

¹ ECF No. 121.

² "Magistrate Judge."

³ ECF No. 117.

⁴ All of the arguments set forth in that document are incorporated by reference herein.

1 121, p. 6 (lines 19-22). Defendant's "agreement" with the Magistrate Judge is misplaced
2 because it's predicated upon a clear misreading of her actual findings.

3 Turning to the issue of the "telephone communications," as previously noted by
4 Plaintiff, the Magistrate Judge's finding on this issue simply ignores well-established principles
5 of tribal sovereignty that distinguish the Navajo Nation from a State. ECF No. 120, p. 5.⁵
6 Tellingly, Defendants do not even address this argument in their February 12, 2021 filing,
7 essentially acknowledging and implicitly conceding that the Navajo Nation is a separate
8 sovereign which means any communication in and out of its territory is presumptively
9 "interstate activity." Worcester v. Georgia, 31 U.S. 515, 557 (1832) (Indian nations are
10 "distinct political communities, having territorial boundaries, within which their authority is
11 exclusive").
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14 With respect to the issue of "invoice fraud," the acts supporting that claim are
15 sufficiently alleged with particularity to meet Federal Rule of Civil Procedure 9(b)
16 requirements. As noted in Plaintiff's January 29, 2021 Objection, "[t]he Magistrate Judge
17 correctly found the alleged fraud involving the termination fee meets the heightened pleading
18 requirements of Federal Rule of Civil Procedure 9(b)." The issue of particularity raised by the
19 Magistrate Judge and Defendants are addressed in detail in Plaintiff's previously filed Objection
20 (ECF No. 120, pp. 9-11) and need not be repeated here.
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22 Regarding failure to identify "location," the Defendants are not crediting the Plaintiff's
23 argument in its initial Objections, ECF 115, p. 7-8, that it has not alleged that mail fraud acts
24 cross state lines as only the use of the United States mail is required. See also revised
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28 ⁵ See McGirt v. Oklahoma, 140 S.Ct. 2452 (2020); Oklahoma Tax Commission v. Sac & Fox,
508 U.S. 114, 124 (1993).

1 Magistrate Report, ECF 117, p. 13-14, wherein the Magistrate Judge correctly states that
2 allegations of mail traveling in interstate commerce are sufficient to establish the interstate
3 requirement of a federal civil RICO claim.

4 Moreover, regarding the wire fraud acts, as argued in depth at ECF 115, p. 9-15, any
5 focus on the physical location of the Defendant/sender and receivers is simply the wrong
6 analysis. The correct consideration is whether wire communications cross state lines. *United*
7 *States v. Laedeke*, 2016 WL 5390106, at *3 (D. Mont. Sept. 26, 2016) (citing cases). Here,
8 Plaintiff sufficiently alleged interstate transmissions occurred because during time periods
9 relevant to the [proposed First Amended Complaint], Sage Memorial's email was hosted on
10 Microsoft Office 365's global email system and before that, Sage Memorial's email was hosted
11 on Google's global Gmail servers. Plaintiff further asserted that given the technology and
12 locations used both Microsoft and Google to process e-mail, any invoices e-mailed by someone
13 at RH to Sage Memorial would have crossed state lines,⁶ thereby satisfying the interstate
14 transmission requirement for wire fraud. See also ECF No. 95, p. 7-8.

15 The foregoing argument, case authority, and supporting factual materials were accepted
16 by the Magistrate Judge in her revised Report and Recommendation (ECF 117, p. 11- 13)
17 wherein she recognized, correctly, that Plaintiff's allegations regarding e-mail communications
18 transmitted in interstate commerce are sufficient to establish the interstate requirement of a
19 federal civil RICO claim. Defendants' arguments in contradiction to these points and findings
20 are simply misplaced.

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28 ⁶ See ECF No. 115-2 (Declaration of Dr. Joseph Greenfield); incorporated by reference herein.

II. DEFENDANTS' ARGUMENTS CHALLENGING THE MAGISTRATE JUDGE'S FINDINGS THAT PLAINTIFF PROPERLY ALLEGED FACTS SUFFICIENT TO PUT DEFENDANTS ON NOTICE REGARDING THE \$10.8 MILLION TERMINATION FEE ARE WITHOUT MERIT

Defendants dedicate approximately 8-pages (ECF No. 121, pp. 8-16) to presenting what are essentially factual disagreements in challenging that portion of the Magistrate Judge's Report pertaining to the legal sufficiency Plaintiff's claims centered upon the \$10.8 million "termination fee" fraud. Specifically, Defendants claim that they "challenge Magistrate Youchah's finding that the proposed First Amended Complaint alleges sufficient facts to demonstrate a scheme to defraud that resulted in damages in the full amount of the purportedly 'illegally imposed' \$10.8M termination fee." ECF No. 121, p. 8 (lines 20-23).

In making their Objection, Defendants ignore wholesale the sufficiently alleged facts in the proposed FAC (ECF No. 76-1, p. 14-22) showing that the Defendants engaged in a scheme to defraud the Plaintiff of \$10.8 million, characterized by Defendants as a "termination fee," when they (1) presented an unconscionable contract to Plaintiff's Board of Directors ("BOD") which the BOD had no meaningful opportunity to adequately review and (2) unilaterally took (i.e. stole) \$10.8 million under the false pretense of a "contract dispute." The detailed allegations set forth in the FAC, as correctly noted by the Magistrate Judge, are more than sufficient to show that the so-called "termination fee" monies were taken pursuant to a purported scheme to defraud. Defendants' self-serving and selective arguments that the appropriation of the monies was a mere contract dispute is without merit and ignores the notice pleading standards required to be applied by the Court at this stage. Defendants are free to make their arguments in a motion for summary judgment but they are premature at this juncture.

1 **III. THE MAGISTRATE JUDGE’S POSITION REGARDING PLAINTIFF’S**
 2 **NEVADA CIVIL RICO CLAIMS EXCEEDS WHAT IS REQUIRED**
 3 **UNDER THE FEDERAL RULES OF CIVIL PROCEDURE**

4 Although Federal Rule of Civil Procedure 15 clearly and plainly provides that a court
 5 should “freely give leave [to amend] when justice so requires,” the Magistrate Judge
 6 recommends “denying Plaintiff’s Motion for Leave to File its FAC with leave to amend its
 7 [Nevada] civil RICO and civil RICO conspiracy claims.” ECF No. 117, p. 21 (lines 24-25).
 8 Respectfully, this is an inflexible position that exceeds what the rules of procedure require and,
 9 upon that basis, Defendants encouragement that the District Judge adopt this position should be
 10 rejected.

11 As noted in Plaintiff’s previously filed Objection, the proposed First Amended
 12 Complaint can be further amended to satisfy the Magistrate Judge’s more exacting standard
 13 which exceeds the requirements of FRCP 15. *See* ECF No. 120, pp. 14-15 (incorporated by
 14 reference herein). In this case where Plaintiff is alleging several million dollars’ worth of fraud
 15 against a vulnerable population, “justice” requires the Court to apply the liberal amendment
 16 standards of FRCP 15.

17 **IV. DEFENDANTS’ OBJECTIONS TO THE MAGISTRATE JUDGE’S**
 18 **FINDINGS REGARDING COMMON LAW CLAIMS SHOULD BE**
 19 **REJECTED**

20 Defendants object to the Magistrate Judge’s findings regarding Plaintiff’s common law
 21 claims. She correctly found that Plaintiff’s allegations in its First Amended Complaint are
 22 sufficient to (1) “state a claim of conversion,” (2) “state a civil conspiracy claim,” (3) a “tortious
 23 interference with contract claim,” (4) a claim for common law fraud and (5) aiding and abetting.
 24 ECF No. 117, pp. 22-25.

Defendants' Objections to the Magistrate Judge's findings regarding the common law claims are without merit because they rest upon factual conclusions urged by Defendants themselves. For example, notwithstanding that Plaintiff has alleged that Defendants stole \$10.8 million of its money, Defendants counter that this allegation does not constitute the "serious interference" required for a conversion claim. See ECF No. 121, p. 17 (lines 24-26). Whether it does or not is a question for a jury and not this Court at this early juncture.

All of Defendants' objections to the Magistrate Judge's findings pertaining to Plaintiff's common law claims are misplaced because they focus upon the wrong issue. The proper question at this juncture is whether Plaintiff has met its minimal burden under the notice pleading standard of FRCP 8 ("pleadings must be construed so as to do justice"). The answer is clearly "yes," as correctly determined by the Magistrate Judge. Defendants, on the other hand, simply seek to argue counter-facts which they urge demonstrate error on the part of the Magistrate Judge. Defendants are simply wrong and the manner in which they conflate issues is improper (e.g. relying upon the District Judge's denial of a preliminary injunction to argue in favor of dismissal of the tortious interference with contract claim).

V. DEFENDANTS' ALLEGATION THAT THIS LAWSUIT IS STIGMATIZING IS IRRELEVANT AND MISDIRECTED

Defendants argue that "the mere assertion of a RICO claim consequently has an almost inevitable stigmatizing effect on those named as defendants" and that in "fairness to innocent parties" the Court should "strive to flush out frivolous RICO allegations at an early stage of the litigation." ECF No. 121, p. 6 (lines 8-12) (*quoting Figueroa Ruiz v. Alegria*, 896 F.2d 645, 650 (1st Cir. 1990)).

1 In Sedima S.P.R.L. v. Imrex Company et. al., 473 U.S. 479, 499 (1985), the United
 2 States Supreme Court held that civil RICO cases are to be liberally construed:

3 Instead of being used against mobsters and organized criminals, it has
 4 become a tool for everyday fraud cases brought against “respected and
 5 legitimate ‘enterprises.’ ” *Ibid.* Yet Congress wanted to reach both
 6 “legitimate” and “illegitimate” enterprises. *United States v. Turkette*,
 7 *supra*. The former enjoy neither an inherent incapacity for criminal
 8 activity nor immunity from its consequences. The fact that § 1964(c) is
 9 used against respected businesses allegedly engaged in a pattern of
 10 specifically identified criminal conduct is hardly a sufficient reason for
 assuming that the provision is being misconstrued. Nor does it reveal
 the “ambiguity” discovered by the court below. “[T]he fact that RICO
 has been applied in situations not expressly anticipated by Congress
 does not demonstrate ambiguity. It demonstrates breadth.”

11 See also Rotella v. Wood, 528 U.S. 549, 557 (2000) (the object of civil RICO is thus not merely
 12 to compensate victims but to turn them into prosecutors, “private attorney generals,” dedicated
 13 to eliminating racketeering activity).

14 While Defendants may believe this lawsuit is stigmatizing, Plaintiff has a right under the
 15 well-established law to seek justice for the theft of its \$10.8 million, and the millions more
 16 siphoned through the invoice fraud scheme, and then hold accountable those that carried out the
 17 racketeering activity that injured its business.
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CONCLUSION

Based on the foregoing, Plaintiff requests that this Court reject Defendants' Objections.

Respectfully submitted,

/s/ Kathleen Bliss

/s/ Paul S. Padda

/s/ David J. Stander

/s/ Douglass A. Mitchell

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