IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division

GLENDORA MANAGO, *et al.*, *Plaintiffs,* **v.** **CANE BAY PARTNERS VI, LLLP, *et al.*,** *Defendants.*	Case No. 1:20-cv-00945-LKG

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT UNDER RULE 12(b)(6)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION

Plaintiffs' claims in this case are premised entirely on their theory that Defendants engaged in a so-called "tribal lending scheme" to evade state usury laws. According to Plaintiffs, "[i]n a tribal lending scheme, the tribe sets up a company that purportedly makes the loans while entering into an agreement with a servicing or consulting company that *controls the entire business and retains the vast majority of the revenue from the scheme, leaving the tribe with one or two percent of the revenue*." Compl. ¶ 9 (emphasis added). But, noticeably missing from Plaintiffs' Complaint is a single well-pleaded factual allegation that would allow the Court to reasonably infer that Makes Cents' lending business was set up or is operated that way.[1] When Plaintiffs' conclusory assertions are stripped from the Complaint, the remaining factual allegations before the Court show that Makes Cents retained Cane Bay Partners VI, LLLP ("Cane Bay") to provide services for its lending business; Makes Cents has sole and absolute discretion over its essential functions and operations, its management team makes all major decisions for the business, and these functions and decisions have never been dictated or controlled by the Cane Bay Defendants. Against this backdrop, Plaintiffs' RICO claims and all of Plaintiff Manago's remaining claims necessarily fail.

Plaintiffs cannot plead a viable RICO claim against the Cane Bay Defendants.[2] Without facts indicating that Defendants engaged in something more than a routine contractual relationship for services, Plaintiffs' § 1962(c) claim must be dismissed. Plaintiffs' attempt to draw analogies to other tribal lending cases—which contained detailed allegations as to how the nontribal defendants funded, collected, and serviced the loans, controlled the lending business, and retained the lion's share of the profits—only highlight the inadequacies of Plaintiffs' Complaint. Plaintiffs' RICO § 1962(d) and Maryland conspiracy claims fails for the same reasons, and even if Plaintiffs had pleaded facts supporting an inference that Defendants engaged in a "tribal lending scheme," their claims would run headlong into the intracorporate conspiracy bar.

Plaintiff Manago's remaining claims against Defendants also fail. Plaintiff Manago's only

[1] Makes Cents, Inc. and Uetsa Tsakits, Inc. are collectively referred to herein as "Makes Cents."
[2] Plaintiffs admit the RICO claims against the Tribal Defendants must be dismissed. Opp. at 1.

remaining causes of action against the Tribal Defendants are not standalone claims for relief, and the Complaint cannot be read to assert a claim under the Maryland Consumer Loan Law ("MCLL") against the Tribal Defendants. Plaintiff cannot state a claim under the MCLL or the Maryland Consumer Protection Act ("MCPA") because the MCLL does not authorize private rights of action or provide for liability against those who did not issue or collect on her loans, and even if it did, Plaintiff does not allege the elements of a MCPA claim, much less with the requisite particularity. Plaintiff also fails to plausibly allege the Cane Bay Defendants have been unjustly enriched, as Makes Cents alone issued and collected on her loans, and Plaintiff does not plead any facts from which the Court could infer the Cane Bay Defendants collected or received any of *her* loan payments. For all these reasons, Plaintiffs' claims should be dismissed with prejudice.

II. PLAINTIFFS DO NOT PLAUSIBLY ALLEGE A "TRIBAL LENDING SCHEME"

To survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To assess the plausibility of a plaintiff's claims, courts must weed out bare conclusions that "are not entitled to the assumption of truth." *Id*. at 680. Allegations that are contradicted by documents attached to the complaint or incorporated therein are also disregarded. *E.g.*, *Am. Chiropractic Ass'n v. Trigon Healthcare, Inc.*, 367 F.3d 212, 233-35 (4th Cir. 2004). Only then should the court assess whether the well-pleaded facts, taken as true, "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

Applying these standards here, Plaintiffs have not stated any plausible claim for relief. Plaintiffs' claims rest entirely on formulaic recitations of the elements of their claims, "'naked assertion[s]' devoid of 'further factual enhancement[,]'" and generic allegations about unrelated purported lending "schemes." *See id*.; Compl. ¶¶ 1 ("[t]his is a case about a scheme"), 3-10 (generic allegations purporting to define structure and history of online offshore and tribal lending "schemes"), 11 ("Cane Bay Defendants[] ran the lender Makes Cents"), 83 (Defendants "entered into a tribal lending scheme"), 86 ("Makes Cents is merely a front" for Cane Bay Defendants'

businesses), 87 (Cane Bay Defendants "run the lending business, including securing funding, registering domains, designing the websites, marketing the business, underwriting and approving loans, and analyzing returns to adjust the lending algorithms[,]" and "[t]he MHA Nation has little meaningful involvement in the business"), 96 (Cane Bay Defendants "directed the operation of" Makes Cents' website"), 100 ("[d]iscovery will show that . . . [Makes Cents] serves as the nominal lender" and "the MHA Nation receives little financial benefit"), 109 ("Tribal Defendants are not involved in the day-to-day management and operations of [Makes Cents]" and instead "acquiesce[] in and facilitate[e]" the scheme), 110 (lending business was set up "to enable Cane Bay Defendants to exploit Tribal sovereign immunity" and shield loans from state and federal law).

These allegations are also directly contradicted by Plaintiffs' allegation that "[a]uthority and control over Makes Cents and its operations remain at all times with [its] executive staff, its Board of Directors, and the Tribal Business Council" and the sworn Declaration of Richard Mayer that was filed in support of the Cane Bay Defendants' Motion to Dismiss the original complaint under Rule 19, ECF No. 25-2 ("Mayer Decl.")—upon which Plaintiffs rely to support this allegation. Compl. ¶¶ 107-108 (citing Mayer Decl. ¶¶ 39-40).[3] In the paragraphs following the two Plaintiffs selectively quote, Mr. Mayer explained that Makes Cents, its operations, essential functions, and major decisions are exclusively subject to tribal control:

> 42. *Makes Cents has always had sole and absolute discretion over its essential functions, including setting its lending criteria and the terms of its loan agreements, approving loans*, executing loan documents, issuing payments on loans and receiving loan repayments, . . . *and reviewing and approving marketing materials and campaigns*. Makes Cents operates sole ownership and control over all of its

[3] Even in the Opposition, Plaintiffs inconsistently argue that the Cane Bay Defendants "control and operate" Makes Cents and that the Tribal Defendants "control" Makes Cents. *Compare* Opp. at 2-3 (Plaintiffs "alleged that the Cane Bay Defendants control and operate the lending entity"), 4 (Makes Cents "is operated through" the Cane Bay Defendants and their affiliates), 23 ("Defendants ignore Plaintiffs' detailed allegations that the Cane Bay Defendants control and operate the entity that makes the loans[,]" "Cane Bay Defendants are alleged to have a significant and controlling role throughout the life of the [allegedly] illegal loans[,]" and Makes Cents "is operated through Cane Bay Defendants"), 29 ("statements were made by the Cane Bay Defendants on behalf of [Makes Cents] and the Tribal Defendants while they ran and operated [Makes Cents]"), *with id*. at 2 ("Plaintiffs allege that the Tribe and [Uesta Tsakits] retained authority and control over Makes Cents"), 12 ("Defendants ignore allegations showing that Makes Cents is controlled by the Tribe and Uetsa Tsakits[], not the Cane Bay Defendants" and "[t]he tribal entities . . . maintain control over the lender itself") (citing Compl. ¶¶ 11, 86, 108).

> bank accounts and Automated Clearing House (ACH) financial transaction accounts. *Makes Cents' operations have never been dictated or controlled by [the Cane Bay Defendants], or any other outside entity or person.*
>
> 43. . . . *Together with Makes Cents' management team, and subject to the Board's approval when appropriate, I make all major decisions for Makes Cents, including,* for example, *determining our marketing strategies, underwriting criteria, and loan terms,* approving and managing vendor contracts, and managing personnel issues, as well as conducting and implementing auditing procedures and yearly reports. *These decisions have always been made by Makes Cents' management team, subject to the Board's approval when appropriate, and have never been dictated or controlled by [the Cane Bay Defendants], or any other outside entity or person.*
>
> 44. *The management team for Uetsa Tsakits, subject to the Board's approval when appropriate, similarly makes all major decisions for Uetsa Tsakits,* which will include, when it becomes operational, determining marketing strategies, [and] underwriting criteria [.] . . . *These decisions have never been dictated or controlled by [the Cane Bay Defendants], or any other outside entity or person. . . .*
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> 47. Like nearly every other corporation, Makes Cents utilizes various service providers in its operations. One such provider is Cane Bay, which was retained to provide services in connection with Make Cents' MaxLend portfolio. *As a service provider for Makes Cents, Cane Bay provides primarily data and analytics services to Makes Cents and exercises no authority or control over Makes Cents or its operations. Authority and control over Makes Cents, its operations, and its lending decisions instead remain at all times with Makes Cents' executive staff and Board of Directors, as well as the Tribal Business Council.*
>
> 48. *Neither Cane Bay, the individual defendants in this action, nor any other entity or person, has any ownership interest in or control over Makes Cents.*

Mayer Decl. ¶¶ 42-44, 47-48 (emphasis added). None of these facts have been, or could be, plausibly rebutted. Similarly, Plaintiffs' allegations that the Cane Bay Defendants made and collected on their loans (*e.g.*, Compl. ¶¶ 11, 155, 157, 173-174, 246; Opp. at 23, 25, 30, 32), are refuted by their own allegations and their loan agreements, which confirm Makes Cents alone issued and collected on their loans. *E.g*, Compl. ¶¶ 114-116; Declaration of Richard Mayer Authenticating Plaintiffs' Loan Documents, ECF No. 92 ("Loan Decl.") ¶¶ 11-21, Exs. A-O.[4]

[4] Nor is Plaintiffs' allegation that Cane Bay has been involved in the so-called "scheme" since its inception "evidenced by" the Tribal Business Council's 2011 consideration of a "non-disclosure agreement between Makes Cents and 'Cain Bay.'" Compl. ¶¶ 88, 91. The tribal meeting minutes upon which Plaintiffs rely reflect that no agreement was approved by the Tribe at that time. *See* Meeting Minutes of MHA Tribal Business Council (Dec. 14, 2011) ¶ 40, https://www.mhanation.com/2011-minutes.

When all of Plaintiffs' conclusory, misleading,[5] and irrelevant[6] allegations are discarded, the Court cannot reasonably infer that Defendants engaged in a "tribal lending scheme." To the contrary, the facts properly before the Court show that (i) Makes Cents issued and collected on Plaintiffs' loans; (ii) ownership, authority, and control over Makes Cents have remained at all times with the Nation and the Tribal Defendants; (iii) Makes Cents has always had sole and absolute discretion over its essential functions; (iv) Makes Cents' major decisions have always been made by Makes Cents' management team and/or executive staff; (v) Cane Bay was retained to provide primarily data and analytics services to Makes Cents; and (vi) the Cane Bay Defendants exercise no authority or control over Makes Cents or its operations. *E.g.*, Compl. ¶¶ 84, 93-95, 98, 101-108, 114-116; Mayer Decl. ¶¶ 39-40, 42-44, 47-48; Loan Decl. ¶¶ 11-21, Exs. A-O.

III. PLAINTIFFS' RICO CLAIMS MUST BE DISMISSED

A. Plaintiffs Fail To Adequately Plead A § 1962(c) Claim

To state a claim based on an association-in-fact enterprise under § 1962(c), a plaintiff must plausibly allege "a [common] purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose" and that the defendant "person" is distinct from the alleged "enterprise." *Nunes v. Fusion GPS*, 531 F. Supp. 3d 993, 1006 (E.D. Va. 2021). Plaintiffs fail to adequately plead each of these critical elements.

Plaintiffs' conclusory allegations that Defendants engaged in a "tribal lending scheme" for the "common purpose of profiting off the collection on unlawful debt" (Opp. at 2, 8 (citing Compl. ¶¶ 79, 83, 96, 110, 151)) do not suffice to plead the RICO's purpose element. *See* Section II, *supra*. Plaintiffs' naked assertions that the Cane Bay Defendants "direct" and "run the lending business"[7]

[5] *E.g., CACI Int'l, Inc. v. St. Paul Fire & Marine Ins. Co.*, 566 F.3d 150, 156 (4th Cir. 2009) (where plaintiff "selectively quot[es] documents in the complaint without providing their full context . . . courts can prevent such manipulation by considering the documents in their entirety when presented by the defendant"); *Cozzarelli v. Inspire Pharms. Inc.*, 549 F.3d 618, 625 (4th Cir. 2008) (consideration of document plaintiff "quotes selectively from" in complaint without challenging authenticity "is undoubtedly proper").

[6] Plaintiffs' conclusory allegations about the Cane Bay Defendants' purported history in online lending, purpose, funding source, and affiliation with other financial services providers are neither well-pleaded, nor relevant to whether Defendants engaged in a purported "tribal lending scheme." Compl. ¶¶ 12, 77-82, 97.

[7] As the Supreme Court explained in *Reeves v. Ernst & Young*, "'conduct' means to lead, *run*, manage, or *direct*" and thus to "conduct or participate, directly or indirectly, in the conduct of [an] enterprise's affairs" under § 1962(c), a defendant must have played "some part in directing the enterprise's affairs" by

while "the Tribal Defendants maintain control over" Makes Cents, which serves as the "nominal lender" (Opp. at 8-9 (citing Compl. ¶¶ 11, 28-38, 87, 103, 105-108, 110)) are unsupported by any facts and are thus equally insufficient to adequately allege the relationship element of their RICO claim. *See* Section II, *supra*; *Am. Chiropractic*, 367 F.3d at 233-35 (dismissing RICO claim where remainder of document selectively quoted in complaint precluded claim); *Nunes*, 531 F. Supp. 3d at 1007 ("rote allegations that Defendants 'operated' and 'conducted the business of the enterprise' . . . unsupported by any specific facts" are "not sufficient").

Contrary to Plaintiffs' argument, the fact that *other* courts have found that *other* defendants in *other* cases functioned as associated-in-fact enterprises in "tribal lending schemes" does not permit the Court to infer that Defendants must have done so too. Opp. at 9. Indeed, the detailed allegations in those other cases—showing that the lending businesses were deliberately set up to appear to be tribally owned and controlled, but instead were entirely controlled and operated by nontribal defendants—only serve to highlight the glaring inadequacies of Plaintiffs' Complaint:

- *MacDonald* v. *CashCall, Inc.*, No. 16-2781, 2017 WL 1536427, at *1-2, *12, *14 (D.N.J. Apr. 28, 2017): Held detailed allegations, decisions of federal courts as to same defendants (including factual findings after trial in a related case), and a cease desist order, adequately pled that lending company incorporated by a Tribal member—not a Tribe—issued loans that were funded entirely by nontribal defendants, and assigned the loans within days of issuance to nontribal defendants, who then performed all servicing and collection on the loans, and received the vast majority of the profits.[8]
- *Gibbs v. Haynes Inv., LLC*, 368 F. Supp. 3d 901, 909-10, 927-28, 933 (E.D. Va. 2019), *aff'd*, 967 F.3d 332 (4th Cir. 2020): Held detailed allegations and supporting documentation adequately pled that nontribal defendants funded the loans and played an integral role in

"participat[ing] in the operation or management of the enterprise." 507 U.S. 170, 177 (1993) (emphasis added). Plaintiffs' bare claim that the Cane Bay Defendants "ran," "run," or "directed" Makes Cents' business are thus nothing more than "formulaic recitation[s]" of this element of their claim. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

[8] *See also* Compl. ¶¶ 18-20, 22-23, *MacDonald v. CashCall, Inc*., No. 16-2781 (D.N.J. May 17, 2016), ECF No. 1; *id*. ¶ 25 (vast majority of profits generated on loans flowed to nontribal defendants), ¶ 35; *id*. ECF No. 1-1 (Order to Cease and Desist against Defendants).

securing bank to process loan payments, other nontribal third parties provided infrastructure to run lending operations and purchased loans from tribal-incorporated lender, and thereby collectively controlled lending business.[9]

- *Solomon v. American Web Loan*, No. 17-145, 2019 WL 1320790, at *3-5, *7-10 (E.D. Va. Mar. 22, 2019): Held detailed allegations sufficiently pled that nontribal defendants funded the loans and purchased the loans from tribal lending entity within 14 days of issuance, engaged in extensive monitoring and oversight of the lending business, and exercised de facto control over the lending operations, while Tribe enacted laws and created businesses to shield scheme from federal and state law in exchange for 1% of the lending proceeds.[10]
- *Hengle v. Asner*, 433 F. Supp. 3d 825, 840-41, 897-98 (2020): Held detailed allegations sufficiently pled that nearly all activities of the lending business were performed by nontribal third parties owned by a nontribal defendant, nontribal defendants possessed significant authority and influence over lending operations, and tribal lending entities distributed vast majority of profits to nontribal defendant's companies.[11]

Plaintiffs here plead none of these threshold facts. They *do not even allege* that the Cane Bay Defendants' directed the formation of Makes Cents, funded or purchased its loans, received the lion's share of its profits, or controlled its bank accounts. And Plaintiffs do not and cannot plead that the Cane Bay Defendants direct and control Makes Cents' lending business or collected on its loans. Section II, *supra*; Mayer Decl. ¶¶ 39-40, 42-44, 47-49; Loan Decl. ¶¶ 11-21, Exs. A-O. Without such facts, the Court cannot reasonably construe Makes Cents' contractual service agreement with Cane Bay as a RICO enterprise. At best, the allegations suggest only that Cane Bay "entered into 'a routine contractual combination for the provision of financial services'" with

[9] *See also* Compl. ¶¶ 2, 13, 32-117, *Gibbs v. Haynes Inv., LLC*, No. 18-00048 (E.D. Va. Jan. 22, 2018), ECF No. 1; *see also id*., ECF No. 1-1 (term sheet), 1-5 (flow of funds).

[10] *See also* Am. Compl. ¶¶ 14-21, 25-29, 35-36, 43, 51-52, 81-11, 115-126, *Solomon v. Am. Web Loan*, No. 17-00145 (E.D. Va. Mar. 9, 2018), ECF No. 41; *id*. ¶ 17 (nontribal defendant Curry served on boards of tribal lending entities), ¶ 90 (former vice chairman of tribe who was "in charge" of lending business reportedly stated tribe "didn't have any control at all" and was "just a pawn"); ¶ 116 (Commissioner of Connecticut Department of Banking finding that lending entities were not arms of the Tribe).

[11] *See also* Am. Compl. ¶¶ 2-5, 55-104, *Hengle v. Asner*, No. 19-00250 (E.D. Va. July 12, 2019), ECF No. 54.

Makes Cents, which is "insufficient to plead the existence of an association-in-fact enterprise." *Zamora v. FIT Int'l Grp. Corp.*, 834 F. App'x 622, 625-26 (2d Cir. 2020).

For the same reason, Plaintiffs fail to adequately plead distinctiveness. "Courts have overwhelmingly rejected attempts to characterize routine commercial relationships as RICO enterprises[,]" finding that such allegations fail to plead the required common purpose, relationship, and distinctiveness elements. *Gomez v. Guthy-Renker, LLC*, No. 14-01425, 2015 WL 4270042, at *8-11 (C.D. Cal. July 13, 2015) (citing cases). "Without an indication that 'the cooperation in this case exceeded that inherent in every commercial transaction,'" Plaintiffs cannot show that Defendants "joined together to create a distinct entity for purposes" of the allegedly wrongful activity. *Peters v. Aetna, Inc.*, No. 15-00109, 2016 WL 4547151, at *9 (W.D.N.C. Aug. 31, 2016); *see also Crichton v. Golden Rule Ins. Co.*, 576 F.3d 392, 399 (7th Cir. 2009) (allegations defendant acted as service provider insufficient to plead distinctiveness); *cf Mitchell Tracey v. First Am. Title Ins. Co.*, 935 F. Supp. 2d 826, 844 (D. Md. 2013) (allegations consistent with ordinary business functions in contractual arrangement did not plead distinctiveness). As the Fourth Circuit has repeatedly advised, courts "must exercise caution to ensure that RICO's extraordinary remedy does not threaten the ordinary run of commercial transactions." *US Airline Pilots Ass'n v. Awappa, LLC*, 615 F.3d 312, 317 (4th Cir. 2010). Without facts indicating that Defendants engaged in something more than a standard services agreement, Plaintiffs' § 1962(c) claim must be dismissed.

B. Plaintiffs Fail To Adequately Plead A RICO Conspiracy Claim

Plaintiffs' RICO conspiracy claim fails because Plaintiffs do not adequately allege an underlying RICO violation. *GE Inv. Priv. Placement Partners II v. Parker*, 247 F.3d 543, 551 n.2 (4th Cir. 2001). Moreover, because Plaintiffs' allegations show only that Makes Cents retained Cane Bay as a service provider, Sections II, III.A, *supra*, they cannot support a plausible inference that Defendants agreed to engage in a conspiracy. *Solomon*, 2019 WL 1320790, at *12 (dismissing RICO conspiracy claim against defendant acting within scope of services). As the cases Plaintiffs cite confirm, *far* more detailed allegations are required to plead a conspiracy claim under RICO and Maryland law. Opp. at 14 (citing *Hengle*, 433 F. Supp. 3d at 898 ("multiple business

arrangements between defendants and other entities in the alleged enterprise, including revenue sharing, operation and merger agreements" plausibly alleged agreement to violate RICO); *Day v. DB Cap. Grp., LLC*, No. 10-1658, 2011 WL 887554, at *7 (D. Md. Mar. 11, 2011) (complaint detailing "specific instances when [defendants] met with and communicated with other members of the alleged conspiracy[,]" "signed contracts [as straw purchasers] of plaintiff's properties at the request of [and] submitted false documentation to [co-conspirator]," and were paid for their participation, plausibly alleged Maryland conspiracy claim)).

In addition, even if Plaintiffs' bare assertions that Defendants engaged in a "tribal lending scheme" could adequately state an agreement to conspire, their RICO conspiracy claim would, nevertheless, be barred by the intracorporate conspiracy doctrine. Courts in the Fourth Circuit have "consistently found that the intracorporate conspiracy doctrine can be broadly applied to . . . civil RICO claims." *Walters v. McMahen*, 795 F. Supp. 2d 350, 358 (D. Md. 2011) (citing cases), *aff'd* 684 F.3d 435 (4th Cir. 2012).[12] The intracorporate conspiracy doctrine is also not, as Plaintiffs assert, limited to formal "agency or subsidiary" relationships. Opp. at 15. The Supreme Court has rejected such a formalistic approach, and "recommended that courts consider whether the affiliated corporate entities have a complete unity of interest rather than focus on mere corporate form." *Advanced Health-Care Servs., Inc. v. Radford Cmty. Hosp.*, 910 F.2d 139, 146 (4th Cir. 1990) (citing *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 769 (1984)). Because Plaintiffs' claims rest on the theory that Defendants engaged in a "tribal lending scheme" in which "the Cane Bay Defendants control and operate" Makes Cents, Opp. at 3, 4, 23,[13] their RICO

[12] Plaintiffs' cited cases do not suggest otherwise. Opp. at 14 n.3 (citing *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 160 (2001) (analyzing enterprise requirement under § 1962(c)); *Kirwin v. Price Commc'ns Corp.*, 391 F.3d 1323, 1326 (11th Cir. 2004) (rejecting intracorporate conspiracy doctrine but acknowledging circuit split on doctrine's applicability to § 1962(d) and that doctrine likely viable in Fourth Circuit)).

[13] Plaintiffs cannot have it both ways. If "the Cane Bay Defendants control and operate Makes Cents" then "authority and control over Makes Cents" cannot "remain in tribal entities that are distinct from the Cane Bay Defendants. *Compare* Opp. at 3, *with id.* at 12 (citing Compl. ¶¶ 107, 108). "[W]hen a complaint contains inconsistent and self-contradictory statements, it fails to state a claim." *Hosack v. Utopian Wireless Corp.*, No. 11-0420, 2011 WL 1743297, at *5 (D. Md. May 6, 2011).

conspiracy claim runs squarely into the intracorporate conspiracy bar.[14]

IV. PLAINTIFF MANAGO'S REMAINING CLAIMS MUST BE DISMISSED

A. Plaintiff Manago's Declaratory And Injunctive Relief Causes Of Action Against The Tribal Defendants Fail

Plaintiff claims, without any authority, that her Declaratory Judgment Act and "Violations of State Law" "claims" are "proper under state law[,]" but she does not and cannot dispute that these are *remedies*, not standalone claims for relief. *E.g.*, *Artis v. T-Mobile USA, Inc.*, No. 18-2575, 2019 WL 1427738, at *5 (D. Md. Mar. 29, 2019); *Hauk v. LVNV Funding, LLC*, 749 F. Supp. 2d 358, 368-69 (D. Md. 2010). Nor does Plaintiff cite any authority for her assertion that the Court should assume her individual state law claims are alleged against the Tribal Defendants, despite such claim being alleged only "against the Cane Bay Defendants."[15] *See, e.g.*, Compl. at 29 (Third Cause of Action); *Joy v. MERSCORP, Inc.*, 935 F. Supp. 2d 848, 860 n.6 (E.D.N.C. 2013) (plaintiff cannot amend complaint via opposition). Likewise, despite Plaintiff's suggestion to the contrary, "*Ex parte Young* . . . does not supply a right of action by itself." *Mich. Corr. Org. v. Mich. Dep't of Corr.*, 774 F.3d 895, 906 (6th Cir. 2014). Counts 20 and 21 must be dismissed.

B. Plaintiff Manago Cannot State A Claim Under The MCLL

Plaintiff's MCLL claim fails as a matter of law because (i) the relevant MCLL provisions do not provide a private right of action, and (ii) Plaintiff does not state a viable MCLL claim.

1. The MCLL does not authorize private rights of action.

Plaintiff concedes that the MCLL does not expressly authorize a private right of action for violations of sections 12-302, 12-306, and 12-314. Opp. at 16. Instead she wrongly argues that a right of action must be implied because, she claims, (i) certain of the statute's provisions suggest

[14] *Commonwealth of Pennsylvania v. Think Fin., Inc.*, does not hold otherwise. No. 14-7139, 2016 WL 183289, at *18 (E.D. Pa. Jan. 14, 2016) (rejecting Think Defendants' argument that the claims were barred by intracorporate conspiracy doctrine because Think Defendants were "affiliated entities" *of each other*, and plaintiffs had alleged a conspiracy involving Think Defendants, state bank, and Tribes).

[15] Plaintiff concedes that only her MCLL claim forms the basis of the alleged "violation of state law" claim against the Tribal Defendants. Opp. at 34. And even if the MCPA claim could be read to support the claim, it fails for the same reasons the MCLL claim against the Tribal Council Defendants fails: Plaintiff does not and cannot plead that the Tribal Council Defendants issued and collected on her loans and concedes that the Tribal Council Defendants are not involved in the day-to-day operations. *See* Section IV.B.2.

that the Legislature intended to provide a right of action, (ii) the statute's long history makes it "unsurprising" that no express right of action was included, and (iii) some courts have assumed, without deciding, that the MCLL contains a right of action. *Id.* at 17-22.

a. The MCLL does not create the type of rights in favor of Plaintiff that would allow a private right of action to be implied.

Defendants do not concede, as Plaintiff claims, that the first factor in the implied right of action analysis—whether the MCLL was enacted for the "special benefit" of a "class of particular persons"—favors Plaintiff.[16] In the Opposition, Plaintiff contends that it does because "[t]he purpose of the MCLL is to protect borrowers from the ills caused by unregulated small-dollar, high interest lenders[.]" Opp. at 17. But the MCLL was enacted for a *dual* purpose: (i) to protect borrowers; *and* (ii) to "enable" the "business of lending small sums of money upon security that is not acceptable to ordinary financial institutions" to "continu[e] under proper supervision." *Liberty Fin. Co. v. Catterton*, 158 A. 16, 17-18 (Md. 1932) (quoting preamble to Small Loan Law of 1918 (MCLL predecessor)) (finding "examination of the act permits no reasonable conclusion other than that its purpose and effect are to regulate the 'business' of making small loans").

The question under the first factor is whether the "statute create[s] a[] right in favor of the plaintiff[.]" *Hayes v. State*, 963 A.2d 271, 279 (Md. 2009). Accordingly, this factor is answered, not by assumptions as to why or for whom a statute was enacted, but instead by "looking to the language of the statute itself," *Cannon v. Univ. of Chicago*, 441 U.S. 677, 689 (1979), "for 'rights-creating language' . . . that 'explicitly confer[s] a right directly on a class of persons that include[s] the plaintiff.'" *In re Miller*, 124 F. App'x 152, 154 (4th Cir. 2005) (quoting *Cannon*, 441 U.S. at 690 n. 13). Where a statute is "focus[ed] on the person regulated rather than the individuals protected[,]" a right of action cannot be implied. *Alexander v. Sandoval*, 532 U.S. 275, 289 (2001); *see also Gabelli Glob. Multimedia Tr. Inc. v. W. Inv. LLC*, 700 F. Supp. 2d 748, 758 (D. Md. 2010).

Here, rather than containing an "unmistakable focus on the benefited class," the MCLL

[16] In their Motion, Defendants acknowledged that application of the first factor may "arguably weigh[] in favor of implying private right of action" and focused on the remaining factors. Mot. at 18 n.14.

was "written . . . simply as a ban on [lenders'] conduct."[17] *Cannon*, 441 U.S. at 690–91. Under these circumstances, no private right of action can be implied.

b. Neither the MCLL's statutory text nor its legislative framework imply a private right of action.

Plaintiff also argues a private of action must be read into the MCLL because (i) section 12-314 "declar[es] that loans that violate the law are 'void and unenforceable'" and provides that "lenders may not retain any compensation with respect to such a loan[,]" and (ii) "other sections of the MCLL expressly empower the courts to order a refund of such monies directly to a borrower[.]" Opp. at 16. None of this language supports finding an implied right of action.

Plaintiff relies on *Transamerica Mortgage Advisors, Inc. (TAMA) v. Lewis*, 444 U.S. 11 (1979), in which the Supreme Court found that § 215 of the Investment Advisers Act of 1940 implied a limited right of action for "rescission or for an injunction against continued operation of the contract, and for restitution[.]" Opp. at 19. *TAMA* is readily distinguishable for at least two reasons. First, § 215 provided that contracts whose formation or performance violated the Act "shall be void . . . *as regards the rights of*" the violator, 15 U.S.C. § 80b-15(b), meaning that the contract is merely 'voidable' *at the innocent party's option*." *Wisniewski v. Rodale, Inc.*, 510 F.3d 294, 305 & n.32 (3d Cir. 2007) (emphasis added); *see also Mills v. Elec. Auto–Lite Co.*, 396 U.S. 375, 387 (1970) (similar language in § 29(b) of the Securities Exchange Act means that a contract is "merely voidable *at the option of the innocent party*" and "establishes that the guilty party is precluded from enforcing the contract against an unwilling innocent party") (emphasis added). Thus, the language at issue in *TAMA* expressly contemplated that it would be invoked by private individuals to enforce their rights, thereby implying a private right of action.[18] No such language appears in the MCLL, which simply provides that certain loans are "void and unenforceable[.]"[19]

[17] *See* MD. CODE, COM. LAW §§ 12-302, 12-303(b), 12-304(a), 12-305, 12-306(a), 12-311(b), 12-314.

[18] *Oxford Univ. Bank v. Lansuppe Feeder, LLC*, 933 F.3d 99, 105 (2d Cir. 2019), does not suggest otherwise (provision rendering contracts that violate § 47(b) of the Investment Company Act of 1940 "unenforceable by either party" meant that "*party sued* for failure to perform under such a contract *may invoke the illegality of the contract as a defense*") (emphasis added).

[19] Indeed, at least one Maryland court has recognized that a statute providing that a particular act is "void" does not imply a private right of action. *Sugarloaf Citizens Ass'n, Inc. v. Gudis*, 554 A.2d 434, 437 (Md. Spec. App. 1989), *aff'd*, 573 A.2d 1325 (Md. 1990).

Second, the legislative scheme at issue in *TAMA* did not provide an administrative enforcement mechanism for determining whether the contracts at issue were void. *See* 15 U.S.C. §§ 80b-1–80b-21. As such, the Court implied a right of action into the statute to allow the "issue of voidness under its criteria [to] be litigated somewhere." *TAMA*, 444 U.S. at 18. The MCLL does not require a similar implied right, because it contains *extensive* administrative enforcement procedures for the Maryland Commissioner of Financial Regulation, including by way of recession and restitution, the missing remedies in § 215 the Supreme Court found were required to declare a contract "void."[20] The MCLL's "express provision of one method of enforcing a substantive rule" confirms the Legislature's "inten[t] to preclude others." *Alexander*, 532 U.S. at 290.[21]

c. The MCLL's legislative history does not support finding a private right of action.

Contrary to Plaintiff's claim, the MCLL's long history cuts against implying a right of action. Opp. at 19-21. Given the numerous amendments to the MCLL and its predecessors (the Maryland Small Loan and Industrial Finance Laws), if the Legislature intended to impose a right of action, it would have expressly done so, just as it has done in other sections of the MCLL and other lending provisions of the Commercial Code.[22] Because "legislative bodies know how to 'salt the mine' for the enablement of implied private causes of action[,]" *Baker v. Montgomery Cnty.*, 50 A.3d 1112, 1126 (Md. 2012), these provisions confirm that the Legislature did not impliedly create private rights of action under the MCLL sections at issue. *See, e.g.*, *Clark v. Bank of Am.*, No. 18-3762, 2021 WL 4310957, at *8 (D. Md. Sept. 22, 2021); *Gabelli*, 700 F. Supp. 2d at 759.[23]

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[20] MD. CODE, FIN. INST. LAW § 2-116*; see also id.* §§ 11-215, 11-220, 11-222; MD. CODE, COM. LAW §§ 12-316, 12-316.1.

[21] *See also Peck v. U.S. Dep't of Lab.*, 996 F.3d 224, 233 (4th Cir. 2021), *cert. denied*, 142 S. Ct. 902 (2022); *Qwest Commc'ns Corp. v. Maryland-Nat'l Cap. Park & Plan. Comm'n*, No. 07-2199, 2010 WL 1980153, at *5 (D. Md. May 13, 2010); *Flynn v. Everything Yogurt*, No. 92-3421, 1993 WL 454355, at *6-7 (D. Md. Sept. 14, 1993); *Roco Worldwide, Inc. v. Constellation Nav., Inc.*, No. 79-1633, 1980 WL 128330, at *4 (D. Md. Sept. 17, 1980), *aff'd*, 660 F.2d 992 (4th Cir. 1981); *Fangman v. Genuine Title, LLC*, 136 A.3d 772, 792-93 (Md. 2016).

[22] Mot. at 19-20 (citing MD. CODE, COM. LAW §§ 12-312(e)(3), 12-124(b)(1), 12-125(e), 12-114(b)(1), 12-111(b)).

[23] Indeed, other states with consumer lending statutes originally modeled on the Uniform Small Loan Law (like the MCLL), expressly provide for private rights of action. *See, e.g.*, W. Va. Code Ann. § 46A-5-101(2); Va. Code Ann. § 6.2-1542; Ga. Code Ann. § 7-3-50; Miss. Code. Ann. § 75-67-119.

Although some Maryland courts have *assumed* private plaintiffs may pursue private actions under the MCLL, no decisions are authoritative or binding on this point, and Plaintiff does not cite any Maryland case expressly finding that the sections at issue here contain a private right of action. *See, e.g., United States v. Norman*, 935 F.3d 232, 241 (4th Cir. 2019). In preparing this Reply, however, Defendants discovered that a Maryland Governor's Commission to Revise the Annotated Code in 1975 took the view that the addition of the word "retain" in 1975 revisions to the MCLL's statutory language providing that a "lender may not receive or retain any principal, interest, charges, or compensation with respect to" a loan that violated the statute "ma[de] no substantive change with regard to the right of the borrower to recoup by judicial action payments made on a void loan[.]"[24] In so noting, the Governor's Commission cited a Municipal Court of Appeals for the District of Columbia case finding that a borrower could recover, *in a lender's action to recover delinquent payments*, money paid on the loan under a provision of the Maryland Small Loan Law providing that if unlawful interest or other amounts were charged, "the contract of loan shall be void and the licensee shall have no right to collect, or receive any principal, interest or charges whatsoever." *Credit Fin. Serv. v. Able*, 227 A. 2d 396, 397 (D.C. Mun. App. 1956). However, the Commission also cited two Maryland cases in support of this view, neither of which held that the statute implied a right of action. Instead, both cases recognized that the relevant statutory language is intended "*not as a matter of compensation to the borrower, but, . . . as an aid to the enforcement of the law*[.]" *Beneficial Fin. Co. of Landover v. Adm'r of Loan L.*, 272 A.2d 649, 653 (Md. 1971) (emphasis added); *Fisher v. Bethesda Discount Corp.*, 157 A.2d 265, 268 (Md. 1960) (noting that a "strict construction is applied" to this statutory language because "*these provisions are intended as enforcement measures only and are not intended to be compensatory*") (emphasis added).

Defendants respectfully believe the Governor's Commission's view is contrary to the express statutory language (and the Maryland cases upon which it relied) and thus cannot be read

[24] Commission Report No. 1975-1 at 19-20 (Jan. 10, 1975), https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/014000/014115/unrestricted/20111017e.pdf. Defendants did not locate this information until preparing to respond to Plaintiffs' Opposition (which also did not cite it).

to imply a right of action under section 12-314.[25] *See, e.g.*, *Garcia v. United States*, 469 U.S. 70, 75 (1984) (when statutory language unambiguous, the "judicial inquiry is complete, except in rare and exceptional circumstances[.]"); *Erie Ins. Co. v. Chops*, 585 A.2d 232, 237 (Md. 1991) ("Although the presence or absence of an indication of legislative intent to create a private remedy is a very important factor . . . , it is not the only factor."). In the absence of clear legislative intent suggesting otherwise, "courts may not create [a private right of action], no matter how desirable that might be as a policy matter, or how compatible with the statute." *Alexander*, 532 U.S. at 286–87. As the Fourth Circuit has explained,

> It is axiomatic that we will not recognize an implied right of action under a statute "where the text and structure of [the] statute provide no indication that Congress intend[ed] to create new individual rights." To create a private right of action, Congress must "speak[ ] with a clear voice," and the statute must "unambiguously," express the intent "to create not just a private right but also a private remedy[.]"

Clear Sky Car Wash LLC v. City of Chesapeake, Va., 743 F.3d 438, 443–44 (4th Cir. 2014). As the MCLL does not unambiguously express an intent to create a right of action, one cannot be implied.

2. Plaintiff Managó cannot state a viable MCLL claim.

Plaintiff concedes that she seeks to hold Defendants liable under the MCLL only to the extent they are considered "lenders" under the statute, and that her claim is not "premised on aiding or abetting liability[.]" Opp. at 23-25. Instead, Plaintiff makes the novel and confusing argument that a "lender" is not "strictly limited to the entity that *makes* the loans," and "may" include any person that "play[s] *any role*" in the lending process. *Id.* This interpretation is plainly foreclosed by the statute, which provides that "'Lender' means a licensee or a person *who makes a loan* subject to this subtitle." MD. CODE, COM. LAW § 12-301(c) (emphasis added).[26]

[25] This view is consistent with other Maryland decisions recognizing that statutes prohibiting a regulated person from charging, collecting, or retaining funds do not imply a private right of action. *See Scull v. Groover, Christie & Merritt, P.C.*, 76 A.3d 1186, 1192 (Md. 2013); *Aleti v. Metro. Baltimore, LLC*, 254 A.3d 533, 544 (Md. Spec. App.), *cert. granted*, 261 A.3d 240 (Md. 2021); *but see Staley v. Americorp Credit Corp.*, 164 F. Supp. 2d 578, 581 n.2 (D. Md. 2001) (noting, in dicta, that Financial Institution Code section 11-523(b) provides a private right of action against unlicensed lenders); *Thrasher v. Homecomings Fin. Network, Inc.*, 838 A.2d 392, 396 (Md. Spec. App. 2003) (same).

[26] In contrast to the MCLL's definition of "lender," the Mortgage Lender Law defines "[m]ortgage lender" as *both* a person who "[m]akes a mortgage loan" *and* a "mortgage servicer[,]" which the statute defines as a person who "(1) Engages in whole or in part in the business of servicing mortgage loans for others; or (2)

Plaintiff fails to cite a single case finding that anyone other than the entity that makes the loan (or its assignee) is liable under the MCLL, let alone any authority suggesting that *all* agents (including any directors or employees) and independent contractors of a lender are liable. Plaintiff's cited cases do not support her boundless, atextual interpretation, and her reading of *Flournoy v. Rushmore Loan Mgmt. Servs., LLC*, 19-cv-00407, 2020 WL 1285504 (D. Md. Mar. 17, 2020), borders on nonsensical. *Flournoy* held that defendants who "*acquire*[d] . . . *service*[d] . . . and *maintain*[ed] the loan, but [did] not play any role in *making* the loan" do not qualify as "lenders" under the statutory definition at issue here, finding that "a person who 'makes' a loan creates the loan itself." *Id.* at *4-5. The court did not establish (or suggest) that a defendant who plays *any* role in the lending process *is* a lender. Plaintiff's reliance on *Nationstar Mortgage LLC v. Kemp*, 258 A.3d 296 (Md. 2021), is likewise unavailing, as the case merely applied the "common law rule" that a loan assignee "succeeds to the same rights and obligations under the loan agreement" as the original lender. *Id.* at 299.

The additional statutory provisions on which Plaintiff relies similarly undermine her interpretation. For example, Plaintiff argues that because section 12-308 establishes a lender's duties when a "loan is made" or a "lender receives a payment," and "after full repayment," lenders must include more than "the entity that makes the loan[s]," Opp. at 23, but ignores that the statute dictates only a "lender's duties." Plaintiff's broad interpretation also makes no practical sense: If a "lender" included any entity that played "any role" in the lending process, every such entity would (for example) be required to deliver to the borrower a timely "billing statement" or "receipt" for "each payment," flooding the borrower with duplicative documents. *See* MD. CODE, COM. LAW § 12-308(b)(3).[27]

Section 12-301(f)'s definition of a "[p]erson," which includes "two or more persons having a joint or common interest" also does not expand the statute's reach. That two or more persons

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Collects or otherwise receives payments on mortgage loans directly from borrowers for distribution to any other person." MD. CODE, FIN. INST. § 11-501(j)(1), (n). Had the Legislature intended "lender" in the MCLL to extend beyond a person making a loan, it would have done so. *See, e.g.*, *Baker*, 50 A.3d at 1126.

[27] For this reason, Plaintiff's unsupported argument that giving the word "lender" its ordinary (and express statutory) meaning "would have perverse consequences," Opp. at 24, also fails.

with a joint or common interest can issue a loan as a "lender," does not mean that anyone that contracts with a lending entity is also a lender. In the context of legal and commercial entities, the word "interest" is understood to mean a "legal share in something; all or part of a legal or equitable claim to or right in property." *See Interest*, BLACK'S LAW DICTIONARY (9th ed. 2009). Plaintiff's unexplained assumption that anyone involved in Makes Cents' lending business therefore has a "joint or common interest" in the business ignores this accepted definition. And given that Maryland law uses the same definition across commercial contexts, *see Davidson v. Microsoft Corp.*, 792 A.2d 336, 340 (Md. 2002); *Rogers Refrigeration Co., Inc. v. Pulliam's Garage, Inc.*, 505 A.2d 878, 881 (Md. 1986), Plaintiff's interpretation would collapse distinct business entities without shared legal interests into one "person" and lead to absurd results.

Nor can Plaintiff plausibly allege that the Cane Bay Defendants are "lenders" under the MCLL. Plaintiff "applied for and took out [her] loan[s] with [Makes Cents] over the internet." Compl. ¶¶ 114-116. And her loan agreements confirm that Makes Cents collected on her loans. *Id.* ¶ 121; Loan Decl., Exs. A, B.

Likewise, even if the Complaint could be construed to allege a MCLL claim against them, Plaintiff's argument that the Tribal Council Defendants are "part of the legal entity that comprises Make[s] Cents," Opp.at 25, is both unsupported and nonsensical. The Tribal Council Defendants are not legally part of nor alleged to have involvement in the day-to-day operations of Makes Cents. Compl. ¶ 109. Plaintiffs' loan documents and own pleading confirm that Makes Cents, not the Tribal Council Defendants, was the lender. *Id.* ¶¶ 114-116, 121; Loan Decl., Exs. A, B.

C. Plaintiff Manago Fails To Plead A Viable MCPA Claim[28]

Plaintiff does not dispute that she fails to plead essential elements of her MCPA claim: reliance and a sufficient causal nexus between the alleged act or omission and her injury. *See Castle v. Cap. One, N.A.*, No. 13-1830, 2014 WL 176790, at *6-7 (D. Md. Jan. 15, 2014); *Fangman v. Genuine Title, LLC*, No. 14-0081, 2015 WL 8315704, at *10 (D. Md. Dec. 9, 2015). Her MCPA

[28] Nor does Plaintiff lodge a MCPA claim against the Tribal Council Defendants. Opp. At 34. Even if she did, it would fail. *See* fn. 15, *supra*.

claim fails for this reason alone. *See Clemestine C. v. Berryhill*, No. 17-2314, 2019 WL 296705, at *3 (D. Md. Jan. 23, 2019).

Moreover, the MCPA claim is based exclusively on the conclusory allegations that the Cane Bay Defendants (i) "engag[ed] in a lending scheme in violation of Maryland law"; and (ii) omit[ed] that Defendants' loans are illegal in Maryland[.]" Compl. ¶¶ 181, 182. Yet, Plaintiff concedes that the MCLL, upon which she bases the alleged "violation of Maryland law[,]" is not one of the enumerated statutes supporting an MCPA claim, MD. CODE, COM. LAW § 13-301(14), and fails to cite any authority suggesting that an MCLL violation can nonetheless support an MCPA claim. It cannot. Mot. at 25. Plaintiff's argument that her conclusory allegations regarding Defendants' purported lending scheme (Compl. ¶¶ 1-2, 173) are sufficient to state a claim under subsections 1, 2, and 3 of section 13-301 is likewise without merit. Opp. at 27. Subsection 3 requires an omission (see below); subsections 1 and 2 require an affirmative representation. MD. CODE, COM. LAW § 13-301. Plaintiff fails to identify any such representation,[29] let alone plead the "time, place and contents of the false representation, . . . the identity of the person making the misrepresentation and what was obtained thereby" required to state an MCPA claim. *Green v. Wells Fargo Bank, N.A.*, 927 F. Supp. 2d 244, 249 (D. Md. 2013), *aff'd*, 582 F. App'x 246 (4th Cir. 2014).

With respect to the alleged omission, Plaintiff does not dispute that, because the MCPA prohibits only omissions of material fact, not conclusions of law, her claim that the Cane Bay Defendants violated the statute by allegedly omitting that Makes Cents' loans "are illegal in Maryland" is not actionable under the MCPA as a matter of law. Opp. at 26-29. Instead, Plaintiff manufactures in her opposition an entirely new basis for her MCPA claim: that the Cane Bay Defendants "fail[ed] to disclose that Defendants were *unlicensed*[.]" *Id*. at 28. But this "license" theory is not alleged in the Complaint. *See id*. (citing Compl. ¶¶ 156-157, 182). Plaintiff "cannot amend [her] complaint[] through briefing[.]"[30] *S. Walk at Broadlands Homeowner's Ass'n, Inc. v.*

[29] Plaintiff vaguely argues that the Cane Bay Defendants made statements "on behalf of MaxLend and the Tribal Defendants" (Opp. at 29), but does not allege any such statements in the Complaint.

[30] Even if Plaintiff had alleged the Cane Bay Defendants somehow omitted that Makes Cents was not licensed, such an omission would not save her claim, as she does not and cannot plead reliance or causation,

OpenBand at Broadlands, LLC, 713 F.3d 175, 184 (4th Cir. 2013).

Plaintiff likewise does not dispute that she does not and cannot allege that the Cane Bay Defendants owed her a duty to disclose, and instead argues that an omission-based MCPA claim does not require such a duty. Plaintiff fails to cite any authority supporting such a deviation from the well-established rule that a duty to disclose is an element of all omission-based claims, including the MCPA, and that such a duty arises out of a "fiduciary or confidential relationship" or "a partial and fragmentary statement of fact."[31] *Waterhouse v. R.J. Reynolds Tobacco Co.*, 270 F. Supp. 2d 678, 685 (D. Md. 2003). Because Plaintiff does not and cannot contend that she shared a fiduciary or confidential relationship with the Cane Bay Defendants, or that the Cane Bay Defendants made any representations to her at all, her MCPA claim fails as a matter of law.

D. Plaintiff Manago Fails To State A Claim For Unjust Enrichment

Plaintiff's unjust enrichment claim must be dismissed because she fails to plead any *facts* suggesting that the Cane Bay Defendants collected or received *her* loan payments. Plaintiff's conclusory allegations that the Cane Bay Defendants (or Defendants, collectively) collected on her loans (Opp. at 30, 32; Compl. ¶¶ 155-157, 173-174, 246), are refuted by her own allegations and loan agreements, which confirm Makes Cents alone issued and collected on her loans. Compl. ¶¶ 114-116; Loan Decl. ¶¶ 11-21, Exs. A-B; Section II, *supra*. Plaintiff acknowledges that an unjust enrichment claim cannot survive without allegations that defendants "obtained and refused to return *plaintiff's funds*." Opp. at 32 (emphasis added).[32] Plaintiff's cited cases do not suggest otherwise. *E.g.*, *Hengle*, 433 F. Supp. 3d at 896 (plaintiffs alleged "sufficient facts to support the inference that [defendants] owned and operated companies that received a substantial portion of

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given her loan documents clearly indicate Makes Cents is licensed under tribal law. Loan Decl., Exs. A, B.

[31] Plaintiff conflates the duty to disclose with materiality (Opp. at 27), yet the two are distinct requirements. *Castle*, 2014 WL 176790, at *5. *Green v. H&R Block, Inc.*, 735 A.2d 1039, 1059 (Md. 1999) does not suggest otherwise (finding MCPA omission claim did not require a duty to disclose premised solely on a fiduciary relationship).

[32] Defendants did not argue that either privity or a direct relationship is required to state an unjust enrichment claim. *Compare* Mot. at 30, *with* Opp. at 31. Maryland law requires pleading and ultimately proof that a defendant hold *plaintiff's* money. *Mehul's Inv. Corp. v. ABC Advisors, Inc., 130 F. Supp. 2d 700, 709 (D. Md. 2001).*

the revenues from the Tribe's lending businesses);[33] *Gibbs*, 368 F. Supp. 3d at 909 (plaintiffs attached term sheets to complaint detailing percentage of loan revenue nontribal defendants received from lending business); *Bank of Am. Corp. v. Gibbons*, 918 A.2d 565, 567 (Md. Spec. App. 2007) (defendant received misappropriated funds from husband belonging to plaintiff bank).[34]

E. Plaintiff Manago Fails To Plead A Conspiracy Claim Under Maryland Law[35]

If the Court concludes that Plaintiff fails to state a claim under the MCLL, the Maryland civil conspiracy claim must likewise fail. Mot. at 32. But even if the MCLL claim survives, it too fails because the intracorporate conspiracy doctrine bars Plaintiff's civil conspiracy claim for the same reasons it bars her RICO conspiracy claim, *see* Section III.B, *supra*,[36] and Plaintiff fails to adequately allege an agreement to conspire. The case Plaintiff cites (Opp. at 33) makes clear that *any* civil conspiracy claim must "set forth more than just conclusory allegations of the agreement" and instead must "provide an indication of when and how the agreement was brokered and how each of the defendants specifically were parties to the agreement." *Chambers v. King Buick GMC, LLC*, 43 F. Supp. 3d 575, 611 (D. Md. 2014). The Complaint and the documents upon which it relies confirm Makes Cents retained Cane Bay as a service provider. Section II, *supra*. Lacking are any well-pleaded allegations of an *agreement* to violate Maryland's lending law. *Id.*; *Chambers*, 43 F. Supp. 3d at 608 (dismissing conspiracy claim where complaint offered "no details regarding when . . . an agreement was entered into or the contours of any such agreement").

V. CONCLUSION

Defendants respectfully request that the Court grant their Motion to Dismiss with prejudice.

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[33] *See also Hengle* Am. Compl. ¶¶ 70-72 (detailing amount and date of funds distributions).

[34] *Hill v. Cross Country Settlements, LLC*, 936 A.2d 343, 353 (Md. 2007), is inapposite (holding plaintiff can confer "benefit" on defendant for purpose of unjust enrichment by satisfying debt held by defendant).

[35] Plaintiff concedes that she does not allege a conspiracy claim against the Tribal Defendants. Opp. at 32. Even if Plaintiff had alleged such a claim, it would fail, as the Tribal Council Defendants only established the lending entities and empowered them to operate, and are not involved in the day-to-day operations, the making of loans, or other specifics to the loan process. *E.g.*, Compl. ¶¶ 101-103, 105-106, 109.

[36] The intracorporate conspiracy doctrine bars Maryland conspiracy claims even in the absence of a formal subsidiary relationship between the entities. *Addi v. Corvias Mgmt.-Army, LLC*, No. 19-3253, 2020 WL 5076170, *20-21, *46 (D. Md. Aug. 27, 2020).

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