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' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS THE OUT-OF-STATE PLAINTIFFS' CLAIMS FOR LACK OF PERSONAL JURISDICTION AND IMPROPER VENUE

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Defendants Cane Bay Partners VI, LLLP, David Johnson, and Kirk Chewning (collectively, the "Cane Bay Defendants"), Richard Mayer, Karen Rabbithead, David Blacksmith, and Wesley Scott Wilson[1] (collectively, the "Makes Cents Defendants"), and Mark Fox, Cory Spotted Bear, Sherry Turner-Lone Fight, Mervin Packineau, V. Judy Brugh, Fred Fox, and Monica Mayer (collectively, the "Tribal Council Defendants")[2] move to dismiss Plaintiffs' First Amended Class Action Complaint as to the claims brought by Plaintiffs Karen Peterson, Diana Costa, Colleen Hunter, Sharon Davis, Leslie Turner, Camilla Vernon, and LaShaunya Morris (collectively, the "Out-of-State Plaintiffs," and collectively with Glendora Manago, "Plaintiffs") under Federal Rule of Civil Procedure 12(b)(2) and 12(b)(3), and 28 U.S.C. § 1406(a).[3]

I. INTRODUCTION

This putative class action was initially filed by one Maryland borrower, Glendora Manago, seeking to invalidate two loans issued to her by non-party lender Makes Cents, Inc. d/b/a MaxLend ("Makes Cents"), a Tribal corporation and instrumentality of the sovereign, federally-recognized Mandan, Hidasta, and Arikara Nation (hereinafter, the "Nation" or "Tribe"), that engages in consumer lending pursuant to Tribal law. The original complaint alleged the loans were "void from inception" because they were not issued by a lender licensed under the Maryland Consumer Loan Law ("MCLL") and provided for interest that exceeded the MCLL's usury cap. The original

[1] Defendant Wesley Scott Wilson's last name was misspelled as "Eilson" in the First Amended Class Action Complaint.

[2] The Tribal Council Defendants and the Makes Cents Defendants are referred to herein together as the "Tribal Defendants." The Tribal Council Defendants, the Makes Cents Defendants, and the Cane Bay Defendants are collectively referred to as "Defendants".

[3] Defendants also are contemporaneously filing a Motion to Dismiss under Rule 12(b)(6). In the event this case is not dismissed in its entirety on these initial motions, Defendants expressly reserve the right to file additional motions (i) to dismiss for lack of subject matter jurisdiction based on sovereign immunity, (ii) to dismiss for failure to join a necessary and indispensable party, (iii) to compel arbitration, (iv) for judgment on the pleadings, and (v) to dismiss or strike the class allegations. Defendants do not waive and expressly reserve their right to file such motions. *See, e.g., Va. Dep't of Corr. v. Jordan*, 921 F.3d 180, 187 (4th Cir. 2019) (immunity can only be waived affirmatively and defense can be raised at any time).

complaint sought monetary damages and unspecified injunctive relief under the MCLL, the Maryland Consumer Protection Act ("MCPA"), and the Federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), as well as common law claims for unjust enrichment and civil conspiracy. However, Ms. Manago did not seek this relief from Makes Cents—the entity that indisputably issued and collected on her loans. Instead, she named a third-party service provider, Cane Bay Partners VI, LLLP ("Cane Bay"), and two of its owners and officers (*i.e.*, the Cane Bay Defendants), as the sole defendants.

In response to various motions the Cane Bay Defendants filed in response to the original complaint, Plaintiffs filed a First Amended Complaint ("Complaint") in which they make two amendments. First, the Complaint adds officers and directors of Makes Cents,[4] as well as members of the Nation's Tribal Business Council, as individual Tribal defendants sued in their "official capacities[.]" Second, the Complaint adds seven Out-of-State Plaintiffs who assert their loans are also void and usurious under the laws of six additional states: Florida, Texas, North Carolina, Oregon, Michigan, and South Carolina. For the reasons discussed herein and in the concurrently-filed Motion to Dismiss under Rule 12(b)(6) (hereinafter, the "Motion to Dismiss"), neither amendment saves the Complaint.

The Out-of-State Plaintiffs' claims against Defendants should be dismissed for lack of personal jurisdiction and improper venue. It is well settled that each named plaintiff in a putative class action must independently establish that the Court has personal jurisdiction over, and that venue is proper for, each defendant as to each claim alleged against that defendant. The Out-of-State Plaintiffs cannot do so here.

[4] The Nation formally transferred ownership of Makes Cents' "MaxLend" loan portfolio, from which Plaintiffs obtained their loans, to Uetsa Tsakits in 2019. Compl. ¶ 103. For ease of reference and unless noted, Makes Cents and Uetsa Tsakits are referred to herein together as "Makes Cents."

As a preliminary matter, Maryland's long-arm statute does not authorize personal jurisdiction over the Out-of-State Plaintiffs' claims. Defendants are not subject to general personal jurisdiction in Maryland. None resides in Maryland or has sufficient continuous and systematic contacts with Maryland to be considered at home in this state. Nor are Defendants subject to specific personal jurisdiction in Maryland as to the Out-of-State Plaintiffs' claims. The Complaint is clear that each of the Out-of-State Plaintiffs applied for their underlying loans from their home states, not Maryland. And no Defendant took any action with respect to the loans issued to the Out-of-State Plaintiffs in or directed toward Maryland.[5] Accordingly, with respect to the Out-of-State Plaintiffs' claims, the traditional grounds for establishing personal jurisdiction are not present here.

Instead, to establish personal jurisdiction in this Court over Defendants for the Out-of-State Plaintiffs' claims, Plaintiffs appear to be relying on the common law doctrine of pendent personal jurisdiction. Under that doctrine, a federal claim that provides a basis for personal jurisdiction over a non-resident can serve as an "anchor" federal claim and extend personal jurisdiction over other claims that arise from a common nucleus of operative facts.

Although Plaintiffs do not allege any statutory basis for personal jurisdiction over the Out-of-State Plaintiffs' claims, it appears that Plaintiffs rely on the Fourth Circuit's holding in *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 622, 628 (4th Cir. 1997) ("*ESAB I*"), that § 1965(d) of RICO authorizes the exercise of personal jurisdiction over any RICO defendant in any district court in which the defendant transacts business, and permits courts to exercise pendent personal

[5] In fact, Plaintiffs concede that the Tribal Council Defendants were not involved in the day-to-day lending operations. Instead, Plaintiffs allege that the Tribal Council acted, pursuant to tribal law, to establish the lending entities and the Board of Directors that oversaw them.

jurisdiction over those defendants for state law claims that arise from the same nucleus of operative facts.[6]

ESAB I does not control here, however, because Plaintiffs' RICO claims—the anchor federal claims on which the Out-of-State Plaintiffs rely to establish personal jurisdiction in this Court over all of their claims—must be dismissed, for multiple reasons. Plaintiffs' RICO claim against the Tribal Defendants fails as a matter of law because, as the Fourth Circuit recently confirmed in *Hengle v. Treppa*, 19 F.4th 324, 353-57 (4th Cir. 2021), RICO does not provide a private right of action for equitable relief, the sole form of relief Plaintiffs seek as to the Tribal Defendants. Plaintiffs' RICO claims also fail as to all Defendants because Plaintiffs do not adequately plead an enterprise, an essential element of their RICO claims. Plaintiffs' RICO conspiracy claims fail for the additional reason that they are barred by the intracorporate conspiracy doctrine, and Plaintiffs fail to adequately plead the requisite elements to establish a RICO conspiracy.

Absent a viable RICO claim, the Court cannot exercise pendent personal jurisdiction over Defendants as to the Out-of-State Plaintiffs' claims. The Out-of-State Plaintiffs cannot establish personal jurisdiction over Defendants under any other federal statute or state law, and exercising personal jurisdiction over Defendants in these circumstances would not comport with due process. Therefore, the Out-of-State Plaintiffs' claims must be dismissed for lack of personal jurisdiction.

[6] Defendants do not concede that the Fourth Circuit's interpretation of § 1965(d) is correct. Indeed, it is the minority approach among the federal courts of appeals. Defendants believe that, in *ESAB I*, the Fourth Circuit wrongly interpreted § 1965(d) to permit nationwide service of process without first establishing personal jurisdiction over at least one defendant. *See, e.g.*, *PT United Can Co. Ltd. v. Crown Cork & Seal Co., Inc.*, 138 F.3d 65, 71 (2d Cir. 1998) (finding that personal jurisdiction is proper on a nonresident in a civil RICO action under § 1965(d) only "where personal jurisdiction based on minimum contacts is established as to at least one defendant"). Defendants hereby preserve, and do not waive, the right to seek further review of the issue before the Fourth Circuit or before the United States Supreme Court.

The same general principles apply to venue. Each Plaintiff must establish that venue is proper in this District as to each Defendant for each claim. Absent a viable RICO claim, any claim to pendent venue as to the Out-of-State Plaintiffs' claims is lost, and the Out-of-State Plaintiffs cannot independently establish that venue is proper in this District. Thus, the Out-of-State Plaintiffs' claims should also be dismissed for improper venue.[7]

II. FACTUAL BACKGROUND[8]

Plaintiffs are residents of seven states who applied for loans from Makes Cents, d/b/a MaxLend, over the internet from their residences and received the loan proceeds in their home states. Compl. ¶¶ 117-134. Only Plaintiff Manago is a resident of Maryland, and she is the only named Plaintiff alleged to have applied for and received the proceeds of her loan from Makes Cents in Maryland. Compl. ¶¶ 17-24, 114-116. The Out-of-State Plaintiffs applied for loans from Makes Cents and received the proceeds of their loans in their respective home states:

- Karen Peterson: two loans from her residence in Florida, Compl. ¶¶ 117, 119;
- Diana Costa: two loans from her residence in Florida, Compl. ¶¶ 120, 122;
- Colleen Hunter: two loans from her residence in Texas, Compl. ¶¶ 123, 125;
- Sharon Davis: one loan from her residence in North Carolina, Compl. ¶ 126;
- Leslie Turner: one loan from her residence in Oregon, Compl. ¶ 128;
- Camilla Vernon: one specific loan and "additional" unspecified loans from her residence in Michigan, Compl. ¶¶ 130, 132; and
- Lashuanya Morris: one loan from her residence in South Carolina, Compl. ¶ 133.

None of the Out-of-State Plaintiffs assert that any action taken by any of them, or any Defendant, occurred in Maryland or claims their loans have any relationship to Maryland.

[7] On February 12, 2021, the Court issued an order authorizing Defendants to file a memorandum of up to 35 pages in support of their motion to dismiss for lack of personal jurisdiction and improper venue. ECF No. 79.

[8] Defendants accept Plaintiffs' well-pleaded allegations as true for the purposes of this Motion only.

Plaintiffs' loan agreements are with Makes Cents, d/b/a MaxLend. Compl. ¶ 89; Declaration of Richard Mayer Authenticating Plaintiffs' Loan Documents ("Mayer Loan Decl."), Exs. A-O. The Nation formally transferred ownership of Makes Cents' "MaxLend" loan portfolio, from which Plaintiffs obtained their loans, to Uetsa Tsakits in 2019. Compl. ¶ 103. Makes Cents and Uetsa Tsakits are economic development arms of, instrumentalities of, and wholly-owned and controlled by the Nation, a federally-recognized sovereign American Indian tribe and are "licensed and regulated by the Tribe." Compl. ¶¶ 89, 103, 105-106; Declaration of Richard Mayer in support of Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue ("Mayer Decl."), ¶¶ 5, 6. The Nation, which is also known as the Three Affiliated Tribes of the Fort Berthold Reservation, is a federally-recognized tribe included on a list of tribes promulgated by the United States Department of the Interior Bureau of Indian Affairs. *See Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs*, 84 Fed. Reg. 1200, 1204 (Feb. 1, 2019). The Nation is located "in a remote area of North Dakota." Compl. ¶ 83.

Plaintiffs have not, however, sued Makes Cents, Uetsa Tsakits, or the Nation. Rather, they have brought their claims against (i) Mr. Johnson and Mr. Chewning and "their company" Cane Bay, a third-party service provider, who, as Plaintiffs acknowledge, has contracted with Makes Cents to "provide 'management consulting, service provider analysis, and risk management services[,]'" *id*. ¶¶ 25-27, 95; and (ii) officers and directors of Makes Cents, as well as members of the Nation's Tribal Business Council, as individual tribal defendants sued in their "official capacities[.]" *Id*. ¶¶ 28-38, 103.

No Defendant is a resident of Maryland. Each of the Tribal Defendants (including the Makes Cents Defendants) is a member of the Nation and a resident of North Dakota. *Id*. ¶¶ 28-

38.[9] Plaintiffs assert their claims against the Tribal Defendants (including the Makes Cents Defendants) "in [their] official capacity only" as officers of Uetsa Tsakits, *id*. ¶ 28, members of the MHA Nation Tribal Business Council, *id*. ¶¶ 29-35, or members of the Board of Directors of Uetsa Tsakits, *id*. ¶¶ 36-38.

Cane Bay is a limited liability limited partnership formed and based in the U.S. Virgin Islands. *Id*. ¶ 27; Declaration of Kirk Chewning in support of Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue ("Chewning Decl."), ¶¶ 4, 9, 10; Declaration of David Johnson in support of Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue ("Johnson Decl."), ¶ 4. Mr. Chewning and Mr. Johnson are both residents of the U.S. Virgin Islands. Compl. ¶¶ 25, 26; Chewning Decl., ¶ 2; Johnson Decl., ¶ 2.

Notably, Plaintiffs do not allege that Defendants took or directed any actions with respect to the Out-of-State Plaintiffs in Maryland. Compl. ¶¶ 114-134. Makes Cents is not alleged to have taken any actions with respect to the Out-of-State Plaintiffs' loans in or directed to Maryland. Plaintiffs allege that Mr. Johnson and Mr. Chewning organized Cane Bay in the Virgin Islands, and that Cane Bay entered into an agreement with the Tribe, which is located in North Dakota, to provide services to Makes Cents. *Id*. ¶¶ 78, 95. And Plaintiffs concede that the Tribal Council Defendants were not involved in the day-to-day operation or management activities of Makes Cents or Uetsa Tsakits and did not have any involvement with Plaintiffs' loans, and instead, simply allege that the Tribal Council Defendants took actions on the Nation's Fort Berthold Reservation

[9] *See also* Mayer Decl., ¶¶ 1, 2; Declaration of Karen Rabbithead in support of Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue ("Rabbithead Decl."), ¶¶ 1, 2; Declaration of David Blacksmith in support of Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue ("Blacksmith Decl."), ¶¶ 1, 2; Declaration of Wesley Scott Wilson in support of Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue ("Wilson Decl."), ¶¶ 1, 3; Declaration of Tyra Wilkinson in support of Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue ("Wilkinson Decl."), ¶ 3.

to establish the lending entities and the Board of Directors which oversaw them, pursuant to and in accordance with tribal law. *Id*. ¶¶ 101-104, 109.

Nor could Plaintiffs plead, much less prove, that Defendants took or directed any actions with respect to the Out-of-State Plaintiffs in Maryland. The Out-of-State Plaintiffs applied for and took out their loans from their home states. *Id*. ¶¶ 114-134. No Defendant made or directed any communications to the Out-of-State Plaintiffs in Maryland.[10] And no Defendant conducted any activity in or directed to Maryland with respect to the loans issued by Makes Cents to the Out-of-State Plaintiffs.[11]

III. THE COURT LACKS PERSONAL JURISDICTION OVER DEFENDANTS AS TO THE OUT-OF-STATE PLAINTIFFS' CLAIMS

The Out-of-State Plaintiffs cannot establish any basis upon which the Court may exercise personal jurisdiction over any of their claims against Defendants.

A. Legal Standard Applicable to Personal Jurisdiction

1. Each Plaintiff must establish personal jurisdiction over each Defendant as to each claim.

"The plaintiff . . . has the burden to establish that personal jurisdiction exists over the out-of-state defendant." *Young v. New Haven Advocate*, 315 F.3d 256, 261 (4th Cir. 2002). This burden must be met as to each defendant and as to each claim. *See Finley Alexander Wealth Mgmt., LLC v. M&O Mktg., Inc.*, No. GJH-19-1312, 2020 WL 1322948, at *4 (D. Md. Mar. 20, 2020); *North Carolina Mut. Life Ins. Co. v. McKinley Fin. Serv., Inc.*, 386 F. Supp. 2d 648, 656 (M.D.N.C. 2005) ("A plaintiff must establish the court's jurisdiction with respect to *each* claim asserted." (quoting *Sunward Elecs., Inc. v. McDonald*, 362 F.3d 17, 24 (2d Cir. 2004)) (emphasis

[10] Mayer Decl., ¶ 7; Rabbithead Decl., ¶ 7; Blacksmith Decl., ¶ 7; Wilson Decl., ¶ 8; Wilkinson Decl. ¶ 5; Chewning Decl., ¶¶ 7, 12; Johnson Decl., ¶ 7.

[11] Mayer Decl., ¶ 8; Rabbithead Decl., ¶ 8; Blacksmith Decl., ¶ 8; Wilson Decl., ¶ 9; Wilkinson Decl., ¶ 6; Chewning Decl., ¶¶ 8, 13; Johnson Decl., ¶ 8.

in original); *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 351 F. Supp. 2d 334, 350 (D. Md. 2004) ("The plaintiffs bear the burden of establishing personal jurisdiction for each defendant individually.").

This is equally true in putative class actions, such that each *named* plaintiff must establish personal jurisdiction as to each defendant and each claim in the complaint. *See Richards v. NewRez LLC*, No. ELH-20-1282, 2021 WL 1060286, at *16 (D. Md. Mar. 18, 2021) ("As a named plaintiff . . . [the California plaintiff] must demonstrate his own 'connection between the forum [i.e., Maryland] and the specific claims at issue.") (quoting *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1781 (2017)); *Lincoln v. Ford Motor Co.*, No. JKB-19-2741, 2020 WL 5820985, at *5 (D. Md. Sept. 29, 2020) ("In keeping with the majority of federal courts to address this issue, this Court will require each named plaintiff in a class action suit to demonstrate personal jurisdiction over a defendant.").[12]

"When a court's personal jurisdiction is properly challenged under Federal Rule of Civil Procedure 12(b)(2), the jurisdictional question thereby raised is one for the judge, with the burden on the plaintiff ultimately to prove grounds for jurisdiction by a preponderance of the evidence." *Mylan Labs., Inc. v. Akzo, N.V.*, 2 F.3d 56, 59–60 (4th Cir. 1993) (citations omitted). A Rule 12(b)(2) motion to dismiss may be decided by the court "solely on the basis of motion papers,

[12] *See also, e.g.*, *Mussat v. IQVIA, Inc.*, 953 F.3d 441, 447 (7th Cir. 2020) ("named representatives must be able to demonstrate either general or specific personal jurisdiction, but the unnamed class members are not required to do so"); *Molock v. Whole Foods Mkt., Inc.*, 297 F. Supp. 3d 114, 125 (D.D.C. 2018) ("[U]nlike the injuries alleged by the other Plaintiffs, the injuries alleged by [the out-of-state named plaintiffs] do not 'arise out of or relate to' Defendants' contacts with the forum of the District of Columbia."); *Napoli-Bosse v. Gen. Motors LLC*, No. 3:18-cv-1720 (MPS), 2020 WL 1677089, at *3 (D. Conn. Apr. 6, 2020) ("I therefore join the majority of district courts to consider the issue and conclude that, because the non-resident [named] Plaintiffs have failed to allege that their claims arise out of [the defendant's] contacts with Connecticut, *Bristol-Myers* precludes this Court from exercising personal jurisdiction over their claims."); *Sloan v. Gen. Motors LLC*, No. 16-cv-07244-EMC, 2019 WL 6612221, at *9 (N.D. Cal. Dec. 5, 2019) ("The overwhelming majority of federal courts have held that *Bristol-Myers* applies to claims brought by named plaintiffs in class actions.").

supporting legal memoranda, affidavits, and the allegations in the complaint." *Burt v. Maasberg*, No. ELH–12–0464, 2013 WL 1314160, at *37 (D. Md. Mar. 31, 2013) (citing *Consulting Eng'rs Corp. v. Geometric Ltd.*, 561 F.3d 273, 276 (4th Cir. 2009)). But if the defendant "provides evidence which denies facts essential for jurisdiction, the plaintiff must, under threat of dismissal, present sufficient evidence to create a factual dispute on each jurisdictional element which has been denied by the defendant and on which the defendant has presented evidence." *New Venture Holdings, L.L.C. v. DeVito Verdi, Inc.*, 376 F. Supp. 3d 683, 689 (E.D. Va. 2019) (citation and quotation marks omitted); *see also Hyun Woo Rhee v. Cent. Coll., Inc.*, No. GLR-18-2502, 2019 WL 5683797, at *2 (D. Md. Apr. 11, 2019) ("The Court may consider evidence outside the pleadings when resolving a Rule 12(b)(2) motion."). "In ruling on a motion to dismiss for lack of personal jurisdiction, the allegations of the complaint, except insofar as controverted by the defendant's affidavit, must be taken as true." *Wolf v. Richmond Cnty. Hosp. Auth.*, 745 F.2d 904, 908 (4th Cir. 1984) (quoting *Black v. Acme Markets, Inc.*, 564 F.2d 681, 683 n.3 (5th Cir. 1977)).

2. Pendent personal jurisdiction does not apply when a plaintiff fails to state an anchor federal claim.

Where a federal claim establishes personal jurisdiction over the defendants, a court generally may exercise pendent personal jurisdiction over other state law claims that arise under a "common nucleus of operative fact" as the federal claim, even if the court would otherwise not have personal jurisdiction over the other state law claims. *United States ex rel. Fadlalla v. DynCorp Int'l LLC*, 402 F. Supp. 3d 162, 178 (D. Md. 2019). This common law doctrine is known as pendent personal jurisdiction. *See ESAB I*, 126 F.3d at 628-29 (recognizing doctrine of pendent personal jurisdiction whereby "a district court which has obtained personal jurisdiction over a defendant by reason of a federal claim [has the power] to adjudicate state claims . . . so long as the facts of the federal and state claims arise from a common nucleus of operative fact" and as "long

as the federal claim is not wholly immaterial or insubstantial"). Under the pendent personal jurisdiction doctrine, the federal claim establishing personal jurisdiction is commonly referred to as the "anchor federal claim." *See Taylor v. Bettis*, 976 F. Supp. 2d 721, 751 (E.D.N.C. 2013), *aff'd*, 693 F. App'x 190 (4th Cir. 2017).

To take advantage of pendent personal jurisdiction, a plaintiff must first establish that he or she has a *colorable* anchor federal claim. *See Sadighi v. Daghighfekr*, 36 F. Supp. 2d 267, 271 (D.S.C. 1999). An anchor federal claim is not colorable when it is "implausible, insubstantial, or frivolous." *Hardwire, LLC v. Ebaugh*, No. CV JKB-20-0304, 2021 WL 3809078, at *4 (D. Md. Aug. 26, 2021). A claim *is* colorable where it is "arguable and nonfrivolous, whether or not it would succeed on the merits." *Davis v. Featherstone*, 97 F.3d 734, 737-38 (4th Cir. 1996). If a plaintiff cannot establish a colorable anchor federal claim, the plaintiff must establish an independent basis for personal jurisdiction over the otherwise pendent claims. *See Sadighi*, 36 F. Supp. at 271, 274-75.

In addition, "where a court finds that the [anchor federal] claim is colorable but deficient under Rule 12(b)(6) . . . [the plaintiff] must establish a basis for the exercise of personal jurisdiction over defendants, unrelated to [the anchor federal claim].'" *Hardwire*, 2021 WL 3809078, at *4 (internal citation omitted) (dismissing plaintiff's RICO claim under Rule 12(b)(6) and plaintiffs' remaining claims for lack of personal jurisdiction); *Taylor*, 976 F. Supp. 2d at 751-52 (declining to exercise pendent personal jurisdiction over remaining claims against defendants, where plaintiffs failed to state a claim under RICO).[13]

[13] *See also United States v. Botefuhr*, 309 F.3d 1263, 1274 (10th Cir. 2002) (finding district court abused its discretion by retaining jurisdiction over remaining claims after it dismissed, early in the litigation, the anchor federal claim); *Int'l Union, United Mine Workers of Am. v. CONSOL Energy, Inc.*, 465 F. Supp. 3d 556, 579–82 (S.D. W.Va. 2020) (declining to exercise pendent personal jurisdiction over remaining claims where plaintiffs failed to state an ERISA claim); *Burt*, 2013 WL 1314160, at *2 n.5 (holding that if "federal claims are dismissed, personal jurisdiction is governed by the requirements of Maryland's long-

B. The Court Lacks Personal Jurisdiction Over Defendants As To The Out-Of-State Plaintiffs' Claims

The Court cannot exercise personal jurisdiction over Defendants as to the Out-of-State Plaintiffs' claims because the RICO claims fail as a matter of law, thereby eliminating any basis for exercising personal jurisdiction over the Out-of-State Plaintiffs' remaining claims.

A court must have both a statutory basis and a constitutional basis for the exercise of personal jurisdiction over defendants. *ESAB I*, 126 F.3d at 622 (court may exercise personal jurisdiction only "to the degree authorized by Congress" and as permitted by constitutional due process); *Perdue Holdings, Inc. v. BRF S.A.*, 45 F. Supp. 3d 514, 516 (D. Md. 2014) ("A federal court sitting in diversity has personal jurisdiction over a non-resident if (1) an applicable state long-arm statute confers jurisdiction and (2) the assertion of that jurisdiction is consistent with constitutional due process.") (quoting *Nichols v. G.D. Searle & Co.*, 991 F.2d 1195, 1199 (4th Cir. 1993)). Federal Rule of Civil Procedure 4(k)(1) provides that service of a summons "establishes personal jurisdiction over a defendant: (A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located; . . . or (C) when authorized by a federal statute." Fed. R. Civ. P. 4(k)(1). Thus, Plaintiffs must either establish that a federal statute confers personal jurisdiction over Defendants, or that personal jurisdiction is authorized through Maryland's "long-arm" statute, and show that the exercise of jurisdiction comports with constitutional due process.

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arm statute and constitutional due process"); 4A Wright & Miller, Fed. Prac. & Proc. Civ. § 1069.7 (4th ed. 2020) ("Of course, if the only jurisdictionally sufficient claim is dropped or dismissed, particularly if that occurs early in the litigation, the pendent claim should be dismissed as well [for lack of personal jurisdiction]."); *cf. Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 351 n.7 (1988) ("In the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine–judicial economy, convenience, fairness, and comity–will point toward declining to exercise jurisdiction over the remaining state-law claims."); *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966) ("Certainly, if the federal claims are dismissed before trial, even though insubstantial in a jurisdictional sense, the state claims should be dismissed as well.").

Although Plaintiffs have not alleged any statutory basis for personal jurisdiction, it appears that Plaintiffs rely on the Fourth Circuit's holding in *ESAB I*, 126 F.3d at 622, 628, that § 1965(d) of RICO authorizes the exercise of personal jurisdiction over any RICO defendant in any district in which the defendant transacts business and permits courts to exercise pendent personal jurisdiction over those defendants for any state law claims that arise from the same nucleus of operative facts as the RICO claim.

However, RICO cannot authorize personal jurisdiction over Defendants as to the Out-of-State Plaintiffs' claims here because their RICO claims fail as a matter of law. Once the anchor RICO claims are dismissed, the Out-of-State Plaintiffs must independently establish personal jurisdiction over Defendants with respect to their remaining claims. Because they cannot do so, the Out-of-State Plaintiffs' remaining claims must be dismissed.

1. <u>The Out-of-State Plaintiffs cannot establish personal jurisdiction over any Defendant under RICO.</u>

Plaintiffs' RICO claims cannot provide the statutory basis for personal jurisdiction over Defendants as to the Out-of-State Plaintiffs' claims, because Plaintiffs do not and cannot state a viable RICO claim against any Defendant.

a. ***Plaintiffs' RICO claim against the Tribal Defendants fails as a matter of law.***

Plaintiffs' RICO claim against the Tribal Defendants fails as a matter of law, and thus cannot serve as a basis for the Court to exercise personal jurisdiction over the Out-of-State Plaintiffs' claims against the Tribal Defendants. As the Fourth Circuit recently confirmed in *Hengle*, RICO does not provide a private right of action for equitable relief, the sole form of relief Plaintiffs seek as to the Tribal Defendants. *Hengle*, 19 F.4th at 354-57 (affirming dismissal of RICO claim against tribal official defendants sued in their official capacities, who allegedly participated in the affairs of a purported tribal lending enterprise engaged in the collection of

unlawful debt). As the Fourth Circuit explained, "Congress's use of significantly different language to create the governmental right of action in Section 1964(b) and the private right of action in Section 1964(c) compels us to conclude by negative implication that, although the government may sue for prospective [equitable] relief, private plaintiffs may sue only for treble damages and costs[.]" *Id.* at 354; *see also* Motion to Dismiss, Section IV.A.

b. ***Plaintiffs fail to state a viable RICO claim against the Cane Bay Defendants.***

Plaintiffs' RICO claims against the Cane Bay Defendants also cannot serve as a basis for the Court to exercise personal jurisdiction over the Out-of-State Plaintiffs' claims against the Cane Bay Defendants, because Plaintiffs fail to state *any* viable RICO claim. In particular, Plaintiffs fail to adequately plead an enterprise, an essential element of their RICO claims. *See* Motion to Dismiss, Section IV.B. Plaintiffs' RICO conspiracy claim fails for the additional reason that it is barred by the intracorporate conspiracy doctrine, and Plaintiffs fail to adequately plead the requisite elements to establish a RICO conspiracy. *See id.*, Section IV.C.

2. <u>Without a viable RICO claim, the Out-of-State Plaintiffs cannot rely on pendent personal jurisdiction to establish personal jurisdiction as to any of their other claims.</u>

Absent a viable RICO claim, any pendent personal jurisdiction over the Out-of-State Plaintiffs' remaining claims is lost. Accordingly, following dismissal of the RICO claims, unless the Out-of-State Plaintiffs can independently establish jurisdiction as to each of their remaining claims against each Defendant, the Court must also dismiss the remaining claims for lack of personal jurisdiction. *See, e.g.*, *Taylor*, 976 F. Supp. 2d at 751 (citing cases holding that a district court abuses its discretion if it retains pendent personal jurisdiction over remaining claims after dismissal of anchor federal claim); *Swarey v. Desert Capital REIT, Inc.*, No. DKC 11-3615, 2012 WL 4208057, at *15 n.14 (D. Md. Sept. 20, 2012) ("Because the RICO count will be dismissed,

there also will no longer be a basis for exercising pendent personal jurisdiction over [] Defendants as to the state law claims, necessitating an analysis of personal jurisdiction under Maryland's long-arm statute.").

Moreover, even if the Court were to only dismiss the RICO claims against the Tribal Defendants, any remaining RICO claims against the Cane Bay Defendants cannot create pendent personal jurisdiction over the Tribal Defendants. Pendent personal jurisdiction does not extend to claims against *additional* parties who are not party to the pending federal claim. *See, e.g.*, *Morley v. Cohen*, 610 F. Supp. 798, 822-23 (D. Md. 1985) (concluding that exercising pendent personal jurisdiction over non-resident defendants who were not named in RICO claim "would impermissibly enable a plaintiff to haul a pendent party defendant into a foreign jurisdiction with which he has no contacts . . . [and thus] violate the principles of due process"); *Al Seraji v. Wolf*, No. 19-2839 (RBW), 2020 WL 7629797, at *6 (D.D.C. Dec. 22, 2020), *aff'd*, No. 21-5007, 2021 WL 5537735 (D.C. Cir. Nov. 16, 2021) (pendent personal jurisdiction applies only where "court has personal jurisdiction over one claim against the defendant, and then exercises personal jurisdiction over any remaining claims against the same defendant and it is not a vehicle for asserting personal jurisdiction over additional parties where no such jurisdiction would otherwise lie" (quotation omitted)).[14]

[14] *See also, e.g.*, *In re BitConnect Sec. Litig.*, No. 18-cv-88086, 2019 WL 9104318, at *5 (S.D. Fla. Aug. 23, 2019) (citing *Morley* and declining to exercise pendent personal jurisdiction over defendant where plaintiff alleged securities fraud claims only against other defendants); *Famular v. Whirlpool Corp.*, No. 16 CV 944 (VB), 2017 WL 2470844, at *6 (S.D.N.Y. June 7, 2017) ("Pendent jurisdiction traditionally refers to the joinder of a state-law claim by a party already presenting a federal question claim against the same defendant." (citation omitted)); *Get In Shape Franchise, Inc. v. TFL Fishers, LLC*, 167 F. Supp. 3d 173, 194 (D. Mass. 2016) (finding that "doctrine of pendent personal jurisdiction allows a court to exercise personal jurisdiction over additional claims against a single defendant, not over additional defendants"); *Gill v. Three Dimension Sys., Inc.*, 87 F. Supp. 2d 1278, 1284 (M.D. Fla. 2000) (citing *Morley* and finding that plaintiff must plead sufficient facts to establish personal jurisdiction over non-resident plaintiffs notwithstanding pending Securities Exchange Act claims against other defendants).

Accordingly, because Plaintiffs' RICO claims should be dismissed, the Out-of-State Plaintiffs must independently establish personal jurisdiction as to each of their remaining claims against each Defendant. As shown below, they cannot.

3. The Out-Of-State Plaintiffs cannot establish that the Court has personal jurisdiction over their remaining claims under any other federal statute or state law.

The Out-of-State Plaintiffs do not allege and cannot establish any independent statutory or constitutional basis that would permit the Court to exercise personal jurisdiction over Defendants as to their non-RICO claims.

Plaintiffs do not cite to any federal statute in the Complaint beyond RICO that could establish personal jurisdiction over Defendants. The federal Declaratory Judgment Act does not provide an independent basis for personal jurisdiction. *See, e.g.*, *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1070 (10th Cir. 2008) (Declaratory Judgment Act does not provide for nationwide service of process and therefore personal jurisdiction is dependent on state law).[15] Neither does the Class Action Fairness Act ("CAFA"). *See, e.g.*, *Lincoln*, 2020 WL 5820985, at *1 n.1, *4 (finding CAFA requirements met, but dismissing claims by named New Mexico-domiciled plaintiff for lack of personal jurisdiction); *Story v. Heartland Payment Sys., LLC*, 461 F. Supp. 3d 1216, 1226 n.12 (M.D. Fla. 2020) ("[N]othing in CAFA excuses the requirement that the Court have personal jurisdiction over a defendant vis-à-vis claims of named plaintiffs.").[16]

[15] *See also, e.g.*, *Accessories Ltd. of Maine, Inc. v. Longchamp U.S.A.*, 170 F. Supp. 2d 12, 14 n.3 (D. Me. 2001) (holding personal jurisdiction dependent on state long-arm statute since Declaratory Judgment Act does not authorize nationwide service of process); *Smith v. S&S Dundalk Eng'g Works, Ltd.*, 139 F. Supp. 2d 610, 616 (D.N.J. 2001) (noting that Declaratory Judgment Act does not establish nationwide or worldwide service of process).

[16] *See also, e.g.*, *Chufen Chen v. Dunkin' Brands, Inc.*, No. 17-CV-3808 (CBA) (RER), 2018 WL 9346682, at *4 (E.D.N.Y. Sept. 17, 2018), *aff'd*, 954 F.3d 492 (2d Cir. 2020) (CAFA does not permit nationwide service of process and therefore does not provide an independent basis for personal jurisdiction); *Daniel v. Tootsie Roll Indus., LLC*, No. 17 Civ. 7541 (NRB), 2018 WL 3650015, at *9 (S.D.N.Y. Aug. 1, 2018) ("CAFA vests federal district courts with subject matter jurisdiction, not personal jurisdiction.").

Nor can the Out-of-State Plaintiffs establish personal jurisdiction over Defendants under Federal Rule of Civil Procedure 4(k)(1)(A), which authorizes a federal court to exercise personal jurisdiction over a defendant in accordance with the law of the state in which the district court is located. *See Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 396 (4th Cir. 2003). The Maryland long-arm statute authorizes personal jurisdiction over a person who engages in certain types of business or activities in Maryland. Md. Code Ann., C.J. § 6-103(b). The statute "limits specific jurisdiction to cases where the cause of action 'aris[es] from any act enumerated' in the statute itself." *MyKey Tech., Inc. v. TEFKAT, LLC*, No. 12–cv–01468–AW, 2012 WL 3257655, at *2 (D. Md. Aug. 7, 2012). The Maryland long-arm statute is co-extensive with the due process clause of the Fourteenth Amendment. *See Carefirst*, 334 F.3d at 396-97. Consequently, under the Maryland long arm statute, the statutory and constitutional inquiries merge. *Id.*; *MyKey Tech.*, 2012 WL 3257655, at *2.

The Out-of-State Plaintiffs do not and cannot establish that Defendants are subject to either general or specific jurisdiction in Maryland.

a. ***Defendants are not subject to general jurisdiction in Maryland.***

A court may assert "general jurisdiction" over foreign defendants "when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). It is insufficient that a defendant's contacts are "continuous and systematic" if such contacts do not meet that standard. *See Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014); *see also Fidrych v. Marriott Int'l, Inc.*, 952 F.3d 124, 134 (4th Cir. 2020) (finding Marriott's systematic and continuous contacts in South Carolina were not substantial enough to "render it essentially at home in the forum State[,]" as "there is nothing that would distinguish Marriott's relationship with South Carolina from its relationship with any of the other states where it does business but where it is

not incorporated or headquartered"). "'For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is the equivalent place, one in which the corporation is fairly regarded at home.' With respect to a corporation, the place of incorporation and principle place of business are 'paradig[m] . . . bases for general jurisdiction.'" *Daimler*, 571 U.S. at 137 (quoting *Goodyear*, 564 U.S. at 924); *see also Lincoln*, 2020 WL 5820985, at *4.

Plaintiffs do not and cannot establish any basis to support the exercise of general personal jurisdiction over any Defendant in Maryland as to the Out-of-State Plaintiffs' Claims. No Defendant resides in Maryland. Compl. ¶¶ 25-38.[17] No Defendant was served with process in, organized under the laws of, or maintains a principal place of business in Maryland. *See id.* ¶¶ 25-27 (Cane Bay Defendants domiciled and based in Virgin Islands); *id.* ¶ 83 (Nation located on Fort Berthold Reservation in North Dakota); Doc. Nos. 7, 50-60 (summonses on Cane Bay and Tribal Defendants).[18] Accordingly, there is no basis for the Court to exercise general personal jurisdiction over any Defendant as to the Out-of-State Plaintiffs' claims.

b. ***Defendants are not subject to specific jurisdiction in Maryland as to the Out-of-State Plaintiffs' claims.***

Plaintiffs do not and cannot identify any basis to support exercising specific personal jurisdiction over any Defendant as to the Out-of-State Plaintiffs' claims. Specific jurisdiction applies when a lawsuit "arise[s] out of or relate[s] to the defendant's contacts with the forum." *Daimler*, 571 U.S. at 118 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984)). "In other words, there must be 'an affiliation between the forum and the

[17] *See also* Mayer Decl., ¶¶ 2, 3; Rabbithead Decl., ¶¶ 2, 3; Blacksmith Decl., ¶¶ 2, 3; Wilson Decl., ¶¶ 3, 4; Wilkinson Decl., ¶ 3; Chewning Decl., ¶¶ 2, 5, 9; Johnson Decl., ¶¶ 2, 5.

[18] *See also* Mayer Decl., ¶ 4; Rabbithead Decl., ¶ 4; Blacksmith Decl., ¶ 4; Wilson Decl., ¶ 5; Wilkinson Decl., ¶ 8; Chewning Decl., ¶¶ 4, 6, 10, 11; Johnson Decl., ¶¶ 4, 6.

underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.'" *Bristol-Myers*, 137 S. Ct. at 1780 (quoting *Goodyear*, 564 U.S. at 919). "For this reason, 'specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.'" *Id.* (quoting *Goodyear*, 564 U.S. at 919). The "primary concern" when applying personal jurisdiction is "the burden on the defendant." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

The Fourth Circuit employs a three-prong test to determine whether the exercise of specific jurisdiction comports with the requirements of due process: "(1) the extent to which the defendant purposefully availed itself of the privilege of conducting activities in the forum state; (2) whether the plaintiff's claims [arose] out of those activities; and (3) whether the exercise of personal jurisdiction is constitutionally reasonable." *Universal Leather, LLC v. Koro AR, S.A.*, 773 F.3d 553, 559 (4th Cir. 2014) (quoting *Tire Eng'g & Distrib., LLC v. Shandong Linglong Rubber Co.*, 682 F.3d 292, 302 (4th Cir. 2012)). The exercise of personal jurisdiction is constitutionally reasonable if the defendant's activities or contacts with the forum are such that he would "reasonably anticipate being haled into court" in the forum state. *World-Wide Volkswagen*, 444 U.S. at 297.

The Out-of-State Plaintiffs cannot show that Defendants are subject to specific jurisdiction in Maryland. The Out-of-State Plaintiffs' claims do not arise out of Defendants' purported contacts with Maryland. Plaintiffs do not allege any conduct that took place in Maryland as to the Out-of-State Plaintiffs' claims. Compl. ¶¶ 101-134. Nor could they. Defendants did not conduct any activity in Maryland relating to the Out-of-State Plaintiffs' loans. No Defendant made or

directed any communications to the Out-of-State Plaintiffs in Maryland.[19] And no Defendant conducted any activity in or directed to Maryland with respect to the loans issued by Makes Cents to the Out-of-State Plaintiffs.[20] Notably, the Tribal Council Defendants are not even alleged to have engaged in the day-to-day operations of the lending business. Compl. ¶¶ 101-104, 109. It is well settled that the type of arms-length involvement alleged by the Tribal Council Defendants is not sufficient to establish personal jurisdiction. *See, e.g.*, *Saudi v. Northrop Grumman Corp.*, 427 F.3d 271, 276 (4th Cir. 2005) ("It is generally the case that the contacts of a corporate subsidiary cannot impute jurisdiction to its parent entity.").

All of the alleged interactions between the Out-of-State Plaintiffs and Makes Cents took place outside Maryland. Compl. ¶¶ 114-134. None of the Out-of-State Plaintiffs have alleged that they have any connection to Maryland or that they would have felt the effects of any of Defendants' alleged actions in Maryland. Defendants could not reasonably have anticipated being haled into court in Maryland by the Out-of-State Plaintiffs.

Because the Out-of-State Plaintiffs cannot establish any independent statutory and constitutional basis for the Court to exercise personal jurisdiction over Defendants as to their non-RICO claims, dismissal of their remaining claims is also required.

IV. VENUE IS IMPROPER OVER THE OUT-OF-STATE PLAINTIFFS' CLAIMS ABSENT A VIABLE RICO CLAIM

The Out-of-State Plaintiffs also cannot establish that venue is proper in this Court. In the Complaint, two venue statutes are alleged: the general venue statute, 28 U.S.C. § 1391(b), and the RICO venue statute, 18 U.S.C. § 1965(a). Compl. ¶ 16. The Out-of-State Plaintiffs are not able

[19] Mayer Decl., ¶ 7; Rabbithead Decl., ¶ 7; Blacksmith Decl., ¶ 7; Wilson Decl., ¶ 8; Wilkinson Decl., ¶ 5; Chewning Decl., ¶¶ 7, 12; Johnson Decl., ¶ 7.

[20] Mayer Decl., ¶ 8; Rabbithead Decl., ¶ 8; Blacksmith Decl., ¶ 8; Wilson Decl., ¶ 9; Wilkinson Decl., ¶ 6; Chewning Decl., ¶¶ 8, 13; Johnson Decl., ¶ 8.

to establish that venue is proper in this Court for their claims under either of these statutes, or otherwise.

A. Legal Standard Applicable to Dismissal for Improper Venue

1. Each named plaintiff must establish that venue is proper as to each defendant for each claim.

When challenged, a plaintiff has the burden of establishing proper venue. *Bartholomew v. Virginia Chiropractors Ass'n, Inc.*, 612 F.2d 812, 816 (4th Cir. 1979), *abrogated on other grounds, Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119 (1982)). Each named plaintiff in a putative class action must also establish venue as to each defendant for each claim. *See Newbauer v. Jackson Hewitt Tax Serv. Inc.*, No. 2:18-cv-679, 2019 WL 1398172, at *8 (E.D. Va. Mar. 28, 2019) ("[T]he law is clear that in determining whether venue for a putative class action is proper, courts are to look only at the allegations pertaining to the named representatives." (quoting *Murdoch v. Rosenberg & Assocs., LLC*, 875 F. Supp. 2d 6, 11 (D.D.C. 2012)); *Hickey v. St. Martin's Press, Inc.*, 978 F. Supp. 230, 240 (D. Md. 1997) ("[I]n a case involving multiple defendants and multiple claims, the plaintiff bears the burden of showing that venue is appropriate as to each claim and as to each defendant.").[21]

"A motion to dismiss under Rule 12(b)(3) requires a similar inquiry to that of Rule 12(b)(2). The burden on establishing proper venue is on the plaintiff[.]" *Seidel v. Kirby*, 296 F. Supp. 3d 745, 748 (D. Md. 2017) (quotations and citations omitted). To survive a motion to dismiss for

[21] *See also, e.g.*, *Magic Toyota, Inc. v. Se. Toyota Distributors, Inc.*, 784 F. Supp. 306, 316 (D.S.C. 1992) ("In a case with multiple claims, plaintiffs have the burden of establishing that venue is proper as to each claim. Additionally, plaintiffs must establish that venue is proper as to each defendant." (citation omitted)); *Quarles v. Gen. Inv. & Dev. Co.*, 260 F. Supp. 2d 1, 13 (D.D.C. 2003) ("It is therefore logical that plaintiffs who are named as representatives of a class action be required to satisfy the venue requirements of the statute because they are the parties who have brought themselves before the court and are the persons over whom the court must have jurisdiction."); *Abrams Shell v. Shell Oil Co.*, 165 F. Supp. 2d 1096, 1107 n.5 (C.D. Cal. 2001) ("Notwithstanding the relaxation of venue and personal jurisdiction requirements as to unnamed members of a plaintiff class, it is by now well settled that these requirements to suit must be satisfied for each and every named plaintiff for the suit to go forward.").

improper venue, a plaintiff must make a prima facie showing that venue is proper in the district pursuant to a federal statute. *See Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 365-66 (4th Cir. 2012); *CareFirst, Inc. v. Taylor*, 235 F. Supp. 3d 724, 732 (D. Md. 2017) (citing *Mitrano v. Hawes*, 377 F.3d 402, 405 (4th Cir. 2004)). However, a motion to dismiss for improper venue "allows the court to freely consider evidence outside the pleadings[.]" *Rakowski v. Best Buy Stores, L.P.*, No. ELH-20-1107, 2020 WL 6485085, at *8 (D. Md. Nov. 3, 2020) (citation omitted). "[C]ourts 'consider to be true any well-pleaded allegations that bear on venue, unless contradicted by defendant's affidavit evidence.'" *Symbology Innovations, LLC v. Lego Sys., Inc.*, 282 F. Supp. 3d 916, 924-25 (E.D. Va. 2017) (quoting 14D Wright & Miller, Fed. Prac. & Proc. Juris. § 3826 (3d ed.)).

2. Pendent venue does not apply following the dismissal of an anchor federal claim.

Similar to pendent personal jurisdiction, pendent venue is a common law theory by which a court may exercise its discretion to find proper venue as "to claims that arise out of a common nucleus of operative facts, after considering factors such as judicial economy, convenience, and the avoidance of piecemeal litigation." *D'Addario v. Geller*, 264 F. Supp. 2d 367, 393 (E.D. Va. 2003); *see also Miller v. Asensio*, 101 F. Supp. 2d 395, 409 (D.S.C. 2000) (noting pendent venue "has been applied to assert venue over pendent state-law claims or another federal claim after venue has been established as to the principal federal law claim, so long as all the claims arise from the same nucleus of operative fact" (citation omitted)). Where venue is proper with respect to the anchor federal claim, pendent venue permits a court to exercise venue over other claims in which venue is improper. *Id.*

However, as with pendent personal jurisdiction, if the anchor federal claim is dismissed, courts must dismiss pendent claims for which there is not an independent basis for venue. *See,*

e.g., *Cameron v. Thornburgh*, 983 F.2d 253, 257 (D.C. Cir. 1993) (finding that venue was improper as to a *Bivens* claim against federal officers where all of the actions alleged in the complaint occurred in a different venue and the anchor federal claim for injunctive relief had become moot due to the plaintiff having been provided the relief requested); *Walsh v. Bank of Am. NA*, 113 F. Supp. 3d 108, 114 (D.D.C. 2015) (dismissing remaining claim for improper venue where anchor federal claim was dismissed and noting that "a court . . . may not exercise pend[e]nt venue based on a claim that has been dismissed").[22]

B. The Out-Of-State Plaintiffs Cannot Establish That Venue Is Proper As To Their Claims Under RICO

Venue for a RICO claim is proper in any district where a defendant "resides, is found, has an agent, or transacts his affairs." 18 U.S.C. § 1965(a). But Plaintiffs' RICO claims cannot form the basis for venue over the Out-of-State Plaintiffs' claims because Plaintiffs do not and cannot state a viable RICO claim against any of the Defendants. *See* Section III.B.1., *supra*; Motion to Dismiss, Section IV.

If the RICO claims are properly dismissed as to all Defendants, any pendent venue that could possibly have applied as to the Out-of-State Plaintiffs' remaining claims is lost. *See Sadighi*, 36 F. Supp. 2d at 278 (finding venue over RICO claim improper despite venue being proper over state law claim, noting that "the case law does not support an assertion of venue over the principal, federal law claim pursuant to the doctrine of 'pendent venue' based upon a finding of proper venue

[22] *See also, e.g.*, *Tuck v. Pro Football, Inc.*, No. 89–2681, 1990 WL 102792, at *2 (D.D.C. July 10, 1990) (declining to exercise pendent venue over Title VII claim—over which the court did not have independent venue—involving allegations of racial harassment where the court had dismissed the plaintiff's § 1981 claim, which would have otherwise made venue proper); *Alco Standard Corp. v. Tenn. Valley Auth.*, 448 F. Supp. 1175, 1182 (W.D. Tenn. 1978) (dismissing federal patent claim for failure to state a claim and improper venue and accordingly finding that state law claim for unfair competition should also be dismissed for improper venue because to allow the state law claim to proceed would not advance the purpose of avoiding piecemeal litigation).

over the pendent state law claims"); *United States v. Trucking Mgmt, Inc.*, No. 74-453, 1979 WL 278, at *11 (D.D.C. July 17, 1979) ("The doctrine of pendent venue is applied sparingly and usually in cases in which common law claims are jurisdictionally pendent to federal claims."). Accordingly, absent a viable RICO claim, the Court cannot apply pendent venue to the Out-of-State Plaintiffs' remaining claims. Instead, the Out-of-State Plaintiffs must establish venue independently as to each of their remaining claims against Defendants.

Moreover, even if the Court were to only dismiss the RICO claims against the Tribal Defendants, the RICO claims against the Cane Bay Defendants cannot create pendent venue over the Out-of-State Plaintiffs' claims against the Tribal Defendants. Pendent venue, like pendent personal jurisdiction, does not extend to claims against *additional* parties who are not party to the pending federal claim. *See Gamboa v. USA Cycling, Inc.*, No. 2:12–cv–10051–ODW, 2013 WL 1700951, at *4 (C.D. Cal. Apr. 18, 2013) (rejecting the notion of "pendent-party venue"); *Philadelphia Metal Trades Council v. Allen*, No. 07–145, 2007 WL 1875791, at *4 (E.D. Pa. June 26, 2007) ("[T]he 'novel concept' of pendent venue 'is generally applied when the causes of action have identical parties and proofs.'") (quoting *Lomanno v. Black*, 285 F. Supp. 2d 637, 641 n.7 (E.D. Pa. 2003)).[23]

Accordingly, because Plaintiffs' RICO claims should be dismissed, the Out-of-State Plaintiffs must independently establish that venue is proper as to each of their remaining claims against each Defendant. As shown below, they cannot.

C. The Out-Of-State Plaintiffs Cannot Establish Venue Over Defendants Under 28 U.S.C. § 1391

The only other venue statute that Plaintiffs plead—and the only other one that could

[23] *See also, e.g.*, *Lomanno*, 285 F. Supp. 2d at 641 & n.7 (finding pendent venue did not apply to differing claims made against multiple defendants); *Schultz v. Ary*, 175 F. Supp. 2d 959, 964 (E.D. Mich. 2001) (same).

possibly apply to the Out-of-State Plaintiffs' non-RICO claims—is the general federal venue statute, 28 U.S.C. § 1391(b).[24] Under § 1391(b), venue is proper (1) in the district where all defendants reside; (2) in any district in which a substantial part of the events or omissions giving rise to the claim occurred; or (3) if there is no district that otherwise provides venue, in any district in which any defendant is subject to the court's personal jurisdiction. 28 U.S.C. § 1391(b).

The Out-of-State Plaintiffs do not and cannot establish that venue as to the non-RICO claims is proper in this District under § 1391(b). No Defendant resides in Maryland—and therefore § 1391(b)(1) cannot support venue here. 28 U.S.C. § 1391(c)(1) (individual defendant's residence is where the defendant is domiciled); Compl. ¶¶ 25-26 (Chewning and Johnson domiciled in the U.S. Virgin Islands); *id*. ¶ 27 (Cane Bay Partners VI, LLLP based in U.S. Virgin Islands); *id*. ¶¶ 28-38 (Tribal Defendants are members of the MHA Nation); *id*. ¶ 11 (MHA Nation located in North Dakota).[25]

The Out-of-State Plaintiffs also cannot establish that a substantial part of the events or omissions giving rise to their individual claims occurred in Maryland—and therefore § 1391(b)(2) cannot support venue here either. As Plaintiffs acknowledge in the Complaint, the events giving rise to their claims occurred either (i) in the states where Plaintiffs' reside or (ii) where Defendants reside. Indeed, in Paragraph 16 of the Complaint, Plaintiffs admit that the only claim for which a substantial part of the alleged events giving rise to any claims occurred in Maryland is that of

[24] Plaintiffs cite CAFA in support of the Court's jurisdiction, but CAFA "does not specifically designate a particular venue for a class action; CAFA is only designed to confer diversity jurisdiction over class actions that satisfy certain criteria." 127 Am. Jur. Proof of Facts 3d 141 (2012) (citing 28 U.S.C. § 1332(d); *Mendoza v. Microsoft, Inc.*, 1 F. Supp. 3d 533 (W.D. Tex. 2014)). Plaintiffs also bring a federal declaratory judgment cause of action, but it too is subject to the general venue statute. *See Finch v. Weigh Down Workshop Ministries, Inc.*, No. 2:18cv284, 2019 WL 1243729, at *2 (E.D. Va. Mar. 18, 2019) ("[B]ecause this a declaratory judgment action, the general venue statute applies.").

[25] *See also* Mayer Decl., ¶¶ 2, 3; Rabbithead Decl., ¶¶ 2, 3; Blacksmith Decl., ¶¶ 2, 3; Wilson Decl., ¶¶ 3, 4; Wilkinson Decl., ¶ 3; Chewning Decl., ¶¶ 2, 5, 9, 10; Johnson Decl., ¶¶ 2, 5.

Plaintiff Manago. Compl. ¶ 16 ("[A] substantial part of the events giving rise to *Plaintiff Manago's* claims occurred in Maryland, including in this District and Division." (emphasis added)). The Out-of-State Plaintiffs do not allege that any activity related to their claims, on their part or Defendants', occurred in Maryland. In fact, Defendants are all alleged to have acted from outside Maryland. Compl. ¶¶ 78, 83. Each of the Out-of-State Plaintiffs alleges that they applied for and received the proceeds of their loans in their home states, not Maryland. Compl. ¶¶ 114-142. No Defendant made or directed any communications to the Out-of-State Plaintiffs in Maryland.[26] And no Defendant conducted any activity in or directed to Maryland with respect to the loans issued by Makes Cents to the Out-of-State Plaintiffs.[27] Therefore, there is no basis on which to find that a substantial part of the events or omissions giving rise to the Out-of-State Plaintiffs' claims occurred in Maryland.

Finally, § 1391(b)(3) does not apply here because this is not a case where no district would otherwise have proper venue. Venue would be proper in the District of North Dakota for all Defendants and all claims, as Makes Cents, the Tribe, and the Tribal Defendants (including the Makes Cents Defendants) are based in North Dakota, and the Cane Bay Defendants are alleged to have provided services to Makes Cents in North Dakota. *E.g.*, Compl. ¶ 83. Moreover, even if no other district could provide venue, the District of Maryland still would not be a proper venue under § 1391(b)(3), because venue would be proper only in a district in which any defendant is subject to the court's personal jurisdiction and here, *none* of the Defendants is subject to personal jurisdiction in Maryland as to the Out-of-State Plaintiffs' claims. *See* Section III.B.3, *supra*.

[26] Mayer Decl., ¶ 7; Rabbithead Decl., ¶ 7; Blacksmith Decl., ¶ 7; Wilson Decl., ¶ 8; Wilkinson Decl., ¶ 5; Chewning Decl., ¶¶ 7, 12; Johnson Decl., ¶ 7.

[27] Mayer Decl., ¶ 8; Rabbithead Decl., ¶ 8; Blacksmith Decl., ¶ 8; Wilson Decl., ¶ 9; Wilkinson Decl., ¶ 6; Chewning Decl., ¶¶ 8, 13; Johnson Decl., ¶ 8.

Venue as to the Out-of-State Plaintiffs' claims therefore is improper in this Court under § 1391(b), and the Court should dismiss their claims. 28 U.S.C. § 1406(a) ("The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.").

V. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court dismiss the Out-of-State Plaintiffs' claims for lack of personal jurisdiction and/or improper venue. Alternatively, if the Court only dismisses the RICO claim as to the Tribal Defendants, the Tribal Defendants request that all of the Out-of-State Plaintiffs' claims against them be dismissed for lack of personal jurisdiction and/or improper venue.

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Respectfully submitted,

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