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 THEIR MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT UNDER RULE 12(b)(6)

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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 under Federal Rule of Civil Procedure 12(b)(6).[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.[4] The original complaint alleged the loans were "void from inception" because they were not issued by a lender licensed under the Maryland Consumer

[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 the Out-of-State Plaintiffs' Claims for Lack of Personal Jurisdiction and Venue (hereinafter, the "Personal Jurisdiction and Venue Motion"). Although Defendants have and will, if necessary, assert additional defenses to each of Plaintiffs' causes of action, to streamline and narrow the issues before the Court, in this Motion, Defendants only move to dismiss the claims that are (i) directly relevant to their concurrently-filed Personal Jurisdiction and Venue Motion, and (ii) the claims asserted by Plaintiff Manago—the sole Maryland Plaintiff.

If 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 the 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).

[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."

Loan Law ("MCLL"), and provided for interest that exceeded the MCLL's usury cap. The original complaint sought monetary damages and 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, as the sole defendants in her original complaint.

The Cane Bay Defendants moved to dismiss the original complaint on multiple grounds, including, *inter alia*, because Make Cents, as the counterparty to the loan agreements Plaintiff Manago seeks to void, is a paradigm necessary and indispensable party to the suit, but cannot be joined because it is entitled to sovereign immunity as an arm of the Nation, and Plaintiff Manago failed to state any viable federal or state law claim against the Cane Bay Defendants.

Rather than responding to the Cane Bay Defendants' motions, Plaintiff Manago, along with seven non-Maryland 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"), filed a First Amended Complaint ("Complaint" or "Compl."), asserting the loans Makes Cents issued to them are void and usurious under the laws of their respective, home states (Maryland, Florida, Texas, North Carolina, Oregon, Michigan, and South Carolina), and seeking monetary damages and/or injunctive relief under theses states' lending and consumer protection statutes, and common law claims for unjust enrichment and civil conspiracy.

Plaintiffs still did not, however, sue Makes Cents. Instead, apparently conceding that

Makes Cents cannot be sued because of its sovereign immunity, Plaintiffs add three causes of action seeking declaratory and/or injunctive relief against officers and directors of Makes Cents and members of the Nation's Tribal Business Council in their "official capacities" ostensibly in an attempt to bring their claims within the *Ex parte Young* exception to sovereign immunity.

Plaintiffs' attempt to dramatically expand the scope of this suit and manufacture jurisdiction still falls short, as the Complaint remains deficient for multiple reasons.

First, all of Plaintiffs' RICO claims must be dismissed. Plaintiffs' RICO claim against the Tribal Defendants [Count 19] must be dismissed because, as the Fourth Circuit recently confirmed, 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 v. Treppa*, 19 F.4th 324, 353-57 (4th Cir. 2021); Compl. ¶ 265. Plaintiffs' RICO claims against the Cane Bay Defendants [Counts 1 and 2] must also be dismissed because Plaintiffs do not adequately plead the existence of an enterprise, an essential element of their RICO claims. Plaintiffs' RICO conspiracy claim against the Cane Bay Defendants fails for the additional reason that it is barred by the intracorporate conspiracy doctrine, and, even if it were not barred, Plaintiffs fail to plead facts to adequately allege the requisite elements of a RICO conspiracy.

As explained in Defendants' concurrently-filed Personal Jurisdiction and Venue Motion, absent viable RICO claims, the Out-of-State Plaintiffs' other claims against Defendants [Counts 5-18, 20-21] must be dismissed for lack of personal jurisdiction and improper venue.[5]

[5] For this reason and to simplify the issues currently before the Court, Defendants do not specifically challenge the sufficiency of the Out-of-State Plaintiffs' remaining claims against them in this Motion. Defendants, nevertheless, expressly reserve the right to challenge the Out-of-State Plaintiffs' claims, by a motion for judgment on the pleadings and otherwise, if their claims are not dismissed as a result of the pending motions.

The Out-of-State Plaintiffs' claims suffer the same deficiencies as the claims of Plaintiff Manago, the sole Maryland named plaintiff, and/or are subject to additional grounds for dismissal. By way of example only, the usury statutes in Oregon and Michigan, like the MCLL, do not authorize private rights

The only claims that could possibly remain against Defendants in this suit—those asserted by Plaintiff Manago, *the sole Maryland named plaintiff*—also fail as a matter of law. Plaintiff Manago's remaining claims against the Tribal Defendants, under the Declaratory Judgment Act [Count 20] and "Violations of State Law" [Count 21], fail because they are remedies, not standalone claims for relief, and she cannot state an independent cause of action against the Tribal Defendants under the MCLL.

Plaintiff Manago's state law claims against the Cane Bay Defendants fare no better:[6]

- The claim under sections 12-302, 12-306, and 12-314 of the MCLL [Count 3] fails as a matter of law because the statute does not authorize a private right of action for such claims, and does not apply to or provide for liability against, third-party service providers like the Cane Bay Defendants, who did not issue or collect on Plaintiff Manago's loans.
- The claim under the MCPA [Count 4] fails because (i) alleged violations of the MCLL cannot alone support a MCPA claim; (ii) the purported failure to disclose the alleged illegality of Makes Cents' loans is not actionable under the MCPA, as the statute only prohibits the omission of a material *fact*; and (iii) Plaintiff Manago does not and cannot

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of action, *e.g.*, *Crisman v. Corbin*, 128 P.2d 959, 965 (Or. 1942); *Craven v. Litton Loan Servicing, LP*, No. 1:04-cv-428, 2005 WL 2333585, at *6 (W.D. Mich. Sept. 23, 2005); the usury laws in Oregon and Texas exempt Plaintiffs' loans, *e.g.*, Or. Stat. §§ 725.045(1), 725.370; Tex. Bus. & Com. Code § 274.002; *see also Cabazon Band of Mission Indians v. Smith*, 388 F.3d 691, 698-700 (9th Cir. 2004) (state may not enforce a regulation against a tribe that does not apply to other sovereigns); the consumer protection acts of Florida, Texas, and Michigan exempt Plaintiffs' loans, *e.g.*, Fla. Stat. § 501.212(1); *Riverside Nat'l Bank v. Lewis*, 603 S.W.2d 169, 173-74 (Tex. 1980); MICH. COMP. LAWS §§ 445.903(1), 445.904(1)(a); *Smith v. Globe Life Ins. Co.*, 597 N.W.2d 28, 38 (Mich. 1999); and the North Carolina and South Carolina consumer protection statutes are inapplicable to service providers like the Cane Bay Defendants, *e.g.*, *In re Tetterton*, 379 B.R. 595, 596, 598 (Bankr. E.D.N.C. 2007); *Harris v. Option One Mortgage Corp.*, 261 F.R.D. 98, 106 (D.S.C. 2009).

[6]Although Defendants believe that Plaintiffs' loan agreements are governed by Tribal law, Defendants assume for the purposes of this Motion only that Plaintiffs' state laws apply. Defendants expressly reserve the right to challenge the application of state law to Plaintiffs' claims, should the case proceed.

allege that the Cane Bay Defendants were required to make any representations to her, or that she relied on and was harmed by any such omission.

- The Complaint fails to plausibly state a claim for unjust enrichment under Maryland law [Count 17], as it does not plead any facts suggesting that the Cane Bay Defendants collected or received any portion of Plaintiff Manago's loan payments, or received any compensation from Makes Cents that exceeded the value of the services they provided to Makes Cents; and
- The Maryland conspiracy claim [Count 18] fails because it is barred by the intracorporate conspiracy doctrine, and Plaintiff Manago does not and cannot adequately plead the requisite elements to establish a conspiracy under Maryland law.

For all these reasons, Defendants respectfully request that the Complaint be dismissed with prejudice.[7]

II. PLAINTIFFS' ALLEGATIONS[8]

Plaintiffs are residents of Maryland, Florida, Texas, North Carolina, Oregon, Michigan, and South Carolina, who applied for loans from Makes Cents over the internet from their residences and received the loan proceeds in their home states. Compl. ¶¶ 117-134; Declaration of Richard Mayer Authenticating Plaintiffs' Loan Documents ("Mayer Loan Decl."), Exs. A-O.

Makes Cents was organized by the Mandan, Hidatsa, and Arikara Nation" (the "Nation" or "Tribe") in December 2011 and is owned entirely by the Nation through one of its-wholly owned subsidiaries. Compl. ¶¶ 11, 84, 89, 93, 106. 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

[7] On February 12, 2021, the Court issued an order authorizing Defendants to file a memorandum of up to 55 pages in support of their motion to dismiss for failure to state a claim. ECF No. 79.

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

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).

As explained in Plaintiffs' loan agreements, Makes Cents is an "economic development arm of, instrumentality of, and [is] wholly-owned and controlled by the Mandan, Hidatsa, and Arikara Nation, a federally-recognized sovereign American Indian tribe," and is "licensed and regulated by the Tribe." Mayer Loan Decl., Exs. A-O. The agreements also clearly state they are governed by Tribal law. *Id*.

In 2019, the Nation's Tribal Business Council, which "has the power to 'manage all economic affairs and enterprises of the [Tribe]'" transferred ownership of the MaxLend portfolio to a new tribal corporation, Uesta Tsakits. Compl. ¶¶ 102-103. "The Nation is the sole owner of Uesta Tsakits, and it is a commercial arm and subordinate economic instrumentality of the Nation." *Id*. ¶ 105.

Plaintiffs, nevertheless, allege that their loans are void and usurious under their home states' laws, and bring this suit on behalf of themselves and eight purported classes. Compl. ¶¶ 13, 135-142. Plaintiffs have not, however, sued Makes Cents, Uetsa Tsakits, or the Nation. Instead, they (i) seek "to recover damages and penalties under state and federal law" under RICO and state statutory and common law claims against 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, 149-250; and (ii) seek declaratory and injunctive relief under RICO, the Declaratory Judgment Act, and for "Violation of State Laws" against the officers and directors of Makes Cents, as well as members of the Nation's Tribal Business Council, all of whom are sued

in their "official capacities[,]" *id*. ¶¶ 28-38, 103.

III. LEGAL STANDARD

"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)). Where the plaintiff's claim sounds in fraud, the allegations also are subject to the heightened pleading standards of Rule 9(b). *Spaulding v. Wells Fargo Bank, N.A.*, 714 F.3d 769, 781 (4th Cir. 2013). Moreover, the Court may only "accept as true all well-pleaded allegations [in] the complaint . . . and reasonable inferences drawn therefrom[.]" *Schultz v. Braga*, 290 F. Supp. 2d 637, 646 (D. Md. 2003). In other words, "a plaintiff must sufficiently plead specific facts to support a claim for relief," and may not simply rely on "legal conclusions or unwarranted deductions of fact." *Id.*

The Court must also consider facts shown in "documents attached to the complaint, *see* Fed. R. Civ. P. 10(c), as well as those attached to the motion to dismiss, so long as they are integral to the complaint and authentic." *Philips v. Pitt Cnty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009); *accord Sposato v. First Mariner Bank*, No. CCB-12-1569, 2013 WL 1308582, at *2 (D. Md. Mar. 28, 2013). "If a conflict exists 'between the bare allegations of the complaint and any exhibit attached,' then the 'exhibit prevails.'" *David v. Winchester Med. Ctr.*, 759 F. App'x 166, 168 (4th Cir. 2019) (quoting *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 165-66 (4th Cir. 2016)).

IV. PLAINTIFFS' RICO CLAIMS MUST BE DISMISSED

All of Plaintiffs' claims under §§ 1962(c) and 1962(d) of RICO fail as a matter of law.

A. Plaintiffs Cannot Assert RICO Claims Against The Tribal Defendants

Plaintiffs' RICO claim against the Tribal Defendants must be dismissed because the Fourth Circuit recently held that RICO does not authorize private plaintiffs to sue for equitable relief—

the *only* form of relief Plaintiffs here seek from 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); Compl. ¶ 265. As the court 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." *Hengle*, 19 F.4th at 354. Because RICO does not afford Plaintiffs the right to sue for equitable relief, Count 19 of the Complaint must be dismissed with prejudice.

B. Plaintiffs Fail To Adequately Plead Viable RICO Claims Against The Cane Bay Defendants

Plaintiffs' RICO claims require the existence of an "enterprise." 18 U.S.C. § 1962(c), (d). Plaintiffs' RICO claims against the Cane Bay Defendants fail because they do not adequately plead the requisite structural features of an association-in-fact enterprise or an enterprise distinct from Defendants.

1. Plaintiffs merely recite conclusory elements of a RICO enterprise.

Plaintiffs fail to adequately plead the existence of an enterprise. Plaintiffs allege Defendants had an "association in fact" enterprise, i.e., that Defendants "associated for the common purpose of profiting off of the collection on unlawful debt by offering and collecting on loans to consumers throughout the United States through the online lender [Makes Cents]." Compl. ¶¶ 151, 164, 254. "[A]n association-in-fact enterprise must have at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose." *Boyle v. U.S.*, 556 U.S. 938, 946 (2009).

Plaintiffs fail to plead facts sufficient to show these requisite structural features. Instead, Plaintiffs simply state:

> The Enterprise, consisting of each named Defendant and the unnamed officers, executives, and other employees of Cane Bay, [Makes Cents], and Cane Bay Defendants' other companies involved in the scheme, is in fact an "enterprise" as that term is defined in 18 U.S.C. § 1961(4), associated for the common purpose of profiting off of the collection on unlawful debt by offering and collecting on loans to consumers throughout the United States through the online lender [Makes Cents].
>
> The Enterprise had an ongoing organization with an ascertainable structure, and functioned as a continuing unit with separate roles and responsibilities.

Compl. ¶¶ 151-152; *see also id*. ¶¶ 164-165, 254-255. Plaintiffs do not allege any facts that would allow the Court to plausibly infer the alleged participants in the purported enterprise engaged in the allegedly common purpose, or to identify the roles and responsibilities of any of the alleged participants. Without more, such "'vague allegations of a RICO enterprise . . . lacking any distinct existence and structure' will not survive dismissal." *Mitchell Tracey v. First Am. Title Ins. Co*., 935 F. Supp. 2d 826, 843 (D. Md. 2013) (citation omitted); *see also Grant v. Shapiro & Burson, LLP*, 871 F. Supp. 2d 462, 473 (D. Md. 2012) (dismissing RICO claim that "contain[ed] no factual averments regarding the relationships between or among Defendants, much less how they functioned as a continuing unit"); *Adolphe v. Option One Mortg. Corp.*, No. 3:11-cv-418, 2012 WL 5873308, at *5 (W.D.N.C. Nov. 20, 2012) (dismissing RICO claim where "Plaintiff failed to aver any factual allegations that demonstrate the individual roles played by each Defendant, much less how those roles combined to form a continuing unit, or 'enterprise'"); *Nunes v. Fusion GPS*, 531 F. Supp. 3d 993, 1007 (E.D. Va. 2021) (holding that Plaintiff's "rote allegations that Defendants 'operated' and 'conducted the business of the enterprise' . . . unsupported by any specific fact[,]" and "mere conclusory language that Defendants and supposed enterprise participants operated as a RICO enterprise" fails to satisfy the requirements of Rule 12(b)(6) to plead an enterprise under RICO).

2. Plaintiffs fail to allege an enterprise distinct from Defendants.

Plaintiffs also fail to plead that Defendants are separate and distinct from the alleged enterprise. Because RICO refers separately to the "person" and the "enterprise," this language has been interpreted "to require some distinctness between the RICO defendant and the RICO enterprise." *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 162 (2001) (citation omitted); 18 U.S.C § 1962(c) ("It shall be unlawful for any *person* employed by or associated with any *enterprise* . . .") (emphasis added).[9] The "enterprise" cannot be the "'person' referred to by a different name." *Cedric Kushner*, 533 U.S. at 161; *see also Busby v. Crown Supply, Inc.*, 896 F.2d 833, 840-41 (4th Cir. 1990).

Because Plaintiffs allege that the enterprise consists of each named Defendant, and unnamed officers, executives, and other employees of Cane Bay, Makes Cents, and the Cane Bay Defendants' other companies (Compl. ¶¶ 151, 164, 254), they cannot satisfy this distinctiveness requirement for two reasons. First, Defendants cannot be treated as distinct under RICO from other companies they allegedly control. *Bailey v. Atl. Auto. Corp.*, 992 F. Supp. 2d 560, 583 (D. Md. 2014) (complaint failed to allege distinct person and entity where it alleged parent "owns and operates" the dealerships and they "operate jointly," despite each entity being "separately incorporated" and having "their own business location and employees"). Plaintiffs allege that Makes Cents "is merely a front for Johnson's and Chewning's business which is operated through . . . Cane Bay Partners and other non-tribal companies associated with Johnson and Chewning[,]" and that the Tribal Defendants "acquiesce[] in and facilitat[e]" the allegedly illegal lending enterprise. Compl. ¶¶ 86, 109-110. Thus, like Defendants' "other companies" alleged to be part of the enterprise, Makes Cents is alleged to be under Defendants' control. *See Inetianbor v.*

[9] A "person" is defined as "any individual or entity capable of holding a legal or beneficial interest in property[.]" 18 U.S.C. § 1961(3).

Cashcall, Inc., No. 13-cv-60066, 2016 WL 4250644, at *5-6 (S.D. Fla. Apr. 5, 2016) (finding no distinctiveness under Florida RICO statute where "central thrust" of complaint was that tribal lender "was merely a 'front' for" non-tribal entity, that non-tribal entity "controlled and supported" the tribal lender, and that activities of the tribal lender should be attributed to non-tribal entity).[10] Simply put, Plaintiffs have done "no more than allege that the defendants associated with themselves for the purpose of conducting [their] business affairs through entities created for that purpose[,]" which is insufficient to satisfy the distinctiveness requirement and, therefore, fatal to their RICO claims. *Myers v. Lee*, No. 1:10cv131, 2010 WL 3745632, at *5 (E.D. Va. Sept. 21, 2010).

Second, "[t]he distinctiveness requirement may not be avoided by alleging a RICO enterprise that consists merely of a corporation defendant associated with its own employees or agents carrying on the regular affairs of the defendants." *Khurana v. Innovative Health Care Sys.*, 130 F.3d 143, 155 (5th Cir. 1997), *vacated on other grounds*, *Teel v. Khurana*, 525 U.S. 979 (1998); *see also Ray v. Spirit Airlines, Inc.*, 836 F.3d 1340, 1357 (11th Cir. 2016) (no distinctiveness where the enterprise is comprised of "a corporate defendant and its agents or employees acting *within the scope of their roles for the corporation*") (emphasis added). Instead, the enterprise must be "'more than' an association of individuals conducting the corporation's normal business functions." *Mitchell Tracey*, 935 F. Supp. 2d at 844 (quoting *R.R. Brittingham v. Mobil Corp.*, 943 F.2d 297,

[10] Defendants recognize that some courts have found sufficient allegations of distinctiveness in certain tribal lending cases. Those cases are distinguishable because they contained significantly more detailed allegations about the relationships between the different entities and the distinct roles they played in operating the enterprise. For example, in *Solomon v. Am. Web Loan*, No. 4:17cv145, 2019 WL 1320790 (E.D. Va. Mar. 22, 2019), the court held that the plaintiffs adequately pleaded that the defendants were "distinct entities" with detailed allegations that two of the defendants "serve[d] as the nominal lender of the illegal loans"; another group of defendants "provided [the] financial backing to grow the illegal lending scheme . . . [and] direct[ed] the scheme through weekly calls . . . , frequent interaction with management, and board meeting attendance"; and the non-party tribe "served to enact and maintain certain tribal laws and create tribal business organizations . . . to help shield the illegal lending scheme from federal and state law." *Id.* at *6-7.

301 (3d Cir. 1991)). Plaintiffs fail to allege that the "the unnamed officers, executives, and other employees" of the entities within the alleged enterprise do anything other than conduct Cane Bay's and the other entities' normal business functions. Thus, the Complaint fails to sufficiently allege distinctiveness.

C. Plaintiffs Do Not And Cannot Allege A Viable RICO Conspiracy Claim Against The Cane Bay Defendants

As an initial matter, Plaintiffs' RICO conspiracy claim fails because, as discussed above, 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) ("Because the pleadings do not state a substantive RICO claim under § 1962(c), Plaintiffs' RICO conspiracy claim fails as well.") (citations omitted); *Myers*, 2010 WL 3745632, at *6 (dismissing RICO conspiracy claim where plaintiff failed to plead an enterprise).

Even if Plaintiffs adequately plead a substantive RICO claim, Plaintiffs' RICO conspiracy claim against the Cane Bay Defendants still must be dismissed because it is barred by the intracorporate conspiracy doctrine, and Plaintiffs do not adequately plead a RICO conspiracy.

1. The intracorporate conspiracy doctrine bars Plaintiffs' RICO conspiracy claim.

Plaintiffs' RICO conspiracy claim rests on Plaintiffs' theory that the Cane Bay Defendants "conspired amongst themselves and with other actors to violate state usury and lending laws[.]" Compl. ¶ 249; *see also id*. ¶¶ 164, 254 (defining RICO enterprise as the Cane Bay Defendants, the Tribal Defendants, and the unnamed officers, executives, and other employees of Makes Cents and the Cane Bay Defendants' other companies). As a result, their RICO conspiracy claim must fail because Defendants are not legally capable of engaging in a civil conspiracy with each other.

Pursuant to the intracorporate conspiracy doctrine, a business entity "cannot conspire with its employees, and its employees, when acting in the scope of their employment, cannot conspire

among themselves." *Balt.-Wash. Tel. Co. v. Hot Leads Co., LLC*, 584 F. Supp. 2d 736, 744 (D. Md. 2008). This is because the "acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy." *Id.*; *see also Walters v. McMahen*, 795 F. Supp. 2d 350, 358 (D. Md. 2011) ("[T]he Fourth Circuit has consistently found that the intracorporate conspiracy doctrine can be broadly applied to conspiracy cases, including civil RICO claims."). The doctrine extends not only to a company's employees, but also to its subsidiaries, sister companies, and other corporate affiliates. *Bailey*, 992 F. Supp. 2d at 568.

The intracorporate conspiracy doctrine squarely applies here. Plaintiffs allege that Cane Bay conspired with Mr. Johnson and Mr. Chewning, its co-founders and officers, Makes Cents, and the "unnamed officers, executives, and other employees" of their other companies. Compl. ¶¶ 27, 151, 164, 249, 254. But Plaintiffs do not allege that any of the individual defendants or unnamed individuals ever acted outside the scope of their employment with Cane Bay, any of the Cane Bay Defendants' other companies, or Makes Cents. And the central theory of Plaintiff's case is that Makes Cents "is merely a front for Johnson's and Chewning's business which is operated through non-tribal entity Cane Bay Partners and other non-tribal companies associated with Johnson and Chewning" which, according to Plaintiffs "run the lending business." *Id.* ¶¶ 86-87. Thus, Plaintiffs' own allegations run them headlong into the intracorporate conspiracy bar.

2. Plaintiffs fail to adequately plead an agreement to violate RICO.

A RICO conspiracy requires "the knowing agreement to participate in an endeavor which, if completed, would constitute a violation of the substantive statute." *United States v. Mouzone*, 687 F.3d 207, 218 (4th Cir. 2012) (quotations and citations omitted). "[T]o prove a RICO conspiracy, two things must be established: '(1) that two or more people agreed to commit a substantive RICO offense and (2) that the defendant knew of and agreed to the overall objective

of the RICO offense.'" *Solomon*, 2019 WL 1320790, at *11 (quoting *United States v. Posada-Rios*, 158 F.3d 832, 857 (5th Cir. 1998)).

Plaintiffs fail to adequately plead an agreement to violate RICO. Plaintiffs simply assert, in conclusory fashion, that the Cane Bay Defendants "agreed to participate in the scheme . . . that allowed the Enterprise to make and collect unlawful debt[.]" Compl. ¶ 166. Absent well-pled facts showing how, when, and where the alleged agreement occurred, the RICO conspiracy claim fails. *See, e.g., Rojas v. Delta Airlines, Inc.*, 425 F. Supp. 3d 524, 538 (D. Md. 2019) ("That Defendants reached an express or tacit agreement to fraudulently collect the [purportedly unlawful] Tax is conclusory, and Plaintiffs fail to provide any specific allegations as to how, when, or where this agreement actually occurred or who made what communications to bring the agreement about.").

For these reasons, Counts 1 and 2 of the Complaint must be dismissed with prejudice.

V. PLAINTIFF MANAGO'S REMAINING CLAIMS MUST BE DISMISSED

All of Plaintiff Manago's remaining claims against Defendants fail as a matter of law.

A. Plaintiff Manago's Declaratory Judgment Act And "Violations Of State Law" Causes Of Action Must Be Dismissed

Plaintiff Manago's causes of action against the Tribal Defendants under the Declaratory Judgment Act [Count 20] and for "Violations of State Law" [Count 21] fail because they are not standalone claims for relief. Rather, these purported causes of action are remedies. *Artis v. T-Mobile USA, Inc.*, No. PJM 18-2575, 2019 WL 1427738, at *5 (D. Md. Mar. 29, 2019) ("[B]oth a declaratory judgment and an injunction are remedies, not independent claims themselves. . . ."); *Young v. Ditech Fin., LLC*, No. PX 16-3986, 2017 WL 3066198, at *8 (D. Md. July 19, 2017)

(court cannot issue declaratory judgment under 28 U.S.C. § 2201 or injunction under Federal Rule of Civil Procedure 65 "unless an independent valid cause of action survives challenge").[11]

Absent an independent valid cause of action against the Tribal Defendants, Plaintiff Manago's claims against them under the Declaratory Judgment Act and for "Violations of State Law" must also be dismissed. *See, e.g.*, *Eseni v. RIMSI Corp.*, No. AW-07-2384, 2007 WL 9782599, at *4 & n.4 (D. Md. Dec. 6, 2007) (dismissing request for injunctive relief where it was unavailable under statutes providing alleged causes of action); *Hauk v. LVNV Funding, LLC*, 749 F. Supp. 2d 358, 368-69 (D. Md. 2010) (dismissing count for declaratory and injunctive relief, noting "[t]he principal deficiency with the plaintiffs' argument is that the amended complaint does not cite any federal or state statutes that independently entitle the plaintiffs to declaratory or injunctive relief"); *Artis*, 2019 WL 1427738, at *5 ("Since declaratory and injunctive relief are remedies unavailable to plaintiffs under both the [Maryland Consumer Protection Act] and the [Maryland Consumer Debt Collection Act] . . . there is no basis for the Court to grant his request for declaratory and injunctive relief.").[12]

[11] The rule that an injunction is not a standalone claim is embodied in the requirement that a plaintiff seeking an injunction must plead facts demonstrating "a real probability that [he or she] will succeed on the merits" of the cause of action underpinning the request for injunctive relief. *Maloof v. State*, 767 A.2d 372, 378 (Md. Ct. App. 2001).

[12] Defendants anticipate Plaintiff Manago may argue that her declaratory and injunctive relief claims can stand because they are premised on an alleged violation of the MCLL. But Plaintiffs do not assert any MCLL or any other state law claims against the Tribal Defendants. The state law claims alleged in the Complaint [Counts 3-18] are asserted *only* against the Cane Bay Defendants. Compl. ¶¶ 170-250. Courts cannot impute a cause of action to a defendant where the defendant is not named in the claim. *See, e.g.*, *Joy v. MERSCORP, Inc.*, 935 F. Supp. 2d 848, 860 n.6 (E.D.N.C. 2013) (rejecting attempt to add defendants to claim through response to motion to dismiss). Moreover, as explained below, even if the Court could construe the Complaint to assert state lending law violations against the Tribal Defendants, dismissal of Plaintiff Manago's claims under the Declaratory Judgment Act and for "Violations of State Law" is still warranted, because Plaintiff Manago cannot state a claim under the MCLL against any Defendant.

The fact that Plaintiffs sue the Tribal Defendants in their official capacities in an effort to invoke the *Ex parte Young* exception to sovereign immunity does not change this analysis.[13] Plaintiff Manago cannot manufacture *Ex parte Young* claims by styling Declaratory Judgment Act claims and other procedural remedies as independent claims for relief. "*Ex parte Young* does not supply a right of action by itself. . . . *Ex parte Young* provides a path around sovereign immunity if the plaintiff already has a cause of action from somewhere else." *Michigan Corrections Org. v. Michigan Dep't of Corrections*, 774 F.3d 895, 902-07 (6th Cir. 2014) (finding *Ex parte Young* did not apply to private plaintiffs' Declaratory Judgment Act claim against state officials alleging violation of Fair Labor Standards Act because statute precluded private party injunction actions);

[13] In *Ex parte Young*, the Supreme Court held that the Eleventh Amendment did not bar a suit in federal court seeking to enjoin a state official from enforcing a statute claimed to violate the Fourteenth Amendment. *Ex parte Young*, 209 U.S. 123, 159-60 (1908). The Court reasoned that when a state official is alleged "to use the name of the state to enforce an unconstitutional act" the official is treated as if he "proceed[ed] without the authority of state in its sovereign or governmental capacity" and, thus, is "stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct." *Id*. at 159. That is because, the Court concluded, "[t]he state has no power to impart [the state official] any immunity from responsibility to the supreme authority of the United States." *Id*. at 160.

Ex parte Young, thus "rests on the premise—less delicately called a 'fiction'—that when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes[,]" but is the State for the purpose of finding state action to which the Constitution applies. *Virginia Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 255 (2011) (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 114 n.25 (1984)).

Despite the *Ex parte Young* doctrine's genesis as an instrument to uphold the supremacy of *federal* law, last year, the Fourth Circuit held that the Supreme Court's decision in *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782 (2014), extended the *Ex parte Young* doctrine to provide an exception to tribal sovereign immunity in suits against tribal officials seeking prospective injunctive relief to enjoin alleged violations of *both* federal and state law. *Hengle*, 19 F.4th at 354.

It is unclear at the time of this filing whether the *Hengle* Appellants' petition for a writ of certiorari from the United States Supreme Court will challenge this ruling. *See Hengle v. Treppa*, Case Nos. 20-1062 (L), 20-1063, 20-1358, 20-1359, Motion for Stay of Mandate Pending Petition for Certiorari, Doc. No. 83 at 1, 8 n.2 (Nov. 30, 2021). Defendants do not concede that the Fourth Circuit's holding on this issue is correct and expressly reserve the right to challenge this issue and move to dismiss the claims against the Tribal Defendants for lack of subject matter jurisdiction, if Plaintiffs' claims against the Tribal Defendants are not dismissed on the pending motions. However, the Court need not address whether the *Ex parte Young* doctrine applies to the Tribal Defendants on the pending motions. Furthermore, Defendants reserve the right to file a motion to dismiss for lack of subject matter jurisdiction based on sovereign immunity should this Court deny the two motions to dismiss currently before the Court.

Spiteri v. Russo, No. 12-cv-2780, 2013 WL 4806960, at *19 & n.30 (E.D.N.Y. Sept. 7, 2013) (assuming without deciding that defendants could be sued for declaratory and injunctive relief under *Ex parte Young*; holding requests for injunctive and declaratory relief should be dismissed because plaintiff failed to state an underlying claim for relief); *Harris v. Florida*, No. 8:16-cv-12-T-27MAP, 2016 WL 656977, at *2 (M.D. Fla. Jan. 12, 2016) (noting that Declaratory Judgment Act "does not provide an independent cause of action for determination of the constitutionality of a statute" and that "[a]n appropriate way for Plaintiff to challenge the constitutionality of the state laws at issue (if indeed he can go forward notwithstanding the Eleventh Amendment's jurisdictional bar) is under the federal civil rights statute, 42 U.S.C. § 1983"); *Springsteen v. Combs*, No. A-13-CV-427, 2013 WL 5305312, at *4 (W.D. Tex. Sept. 19, 2013) ("The Declaratory Judgment Act is insufficient by itself to establish a federal cause of action sufficient to qualify for the *Ex Parte Young* exception to immunity that requires that [plaintiff] make out a federal claim."). Because Plaintiff Manago fails to plead any independent cause of action against the Tribal Defendants that would entitle her to declaratory or injunctive relief, her claims under the Declaratory Judgment Act [Count 20] and for "Violations of State Law" [Count 21] must be dismissed.

B. Plaintiff Manago Cannot State A Claim Under The MCLL Against Any Defendant

The MCLL does not provide a private right of action for alleged violations of the MCLL provisions under which Plaintiff Manago sues. And even if it did, Plaintiff Manago could not state a viable MCLL claim.

1. <u>The MCLL does not authorize private rights of action.</u>

Plaintiffs contend that the Cane Bay Defendants violated sections 12-302, 12-306, and 12-314 of the MCLL by "making and collecting" on usurious loans without a license. Compl. ¶ 173.

But the MCLL does not expressly authorize a private right of action for violations of these subsections. Nor can one be implied "simply because a claim is framed that a statute was violated and a plaintiff or class of plaintiffs was harmed by it." *Baker v. Montgomery Cnty.*, 50 A.3d 1112, 1122 (Md. 2012) (citation omitted). "Under Maryland law, the test for an implied cause of action is an exacting one." *Clark v. Bank of America*, No. SAG-18-3672, --- F. Supp. 3d ---, 2021 WL 4310957, at *7 (D. Md. Sept. 22, 2021) (holding that MD. CODE, COM. LAW § 12-109 does not confer a private right of action). Indeed, Maryland courts generally are "reluctant to find an implied grant of a private cause of action" under statutes that do not expressly provide for one. *Magan v. Med. Mut. Liab. Ins. Soc'y of Md.*, 629 A.2d 626, 631 n.4 (Md. 1993) (citation omitted).

Whether such a statute implies a private right of action "is a matter of statutory construction." *Baker*, 50 A.3d at 1122. To make this determination, courts apply the multi-factor test set forth in *Cort v. Ash*, 422 U.S. 66, 78 (1975). *Fangman v. Genuine Title, LLC*, 136 A.3d 772, 779 (Md. 2016). This test requires consideration of (i) whether the plaintiff is part of a class of particular persons for whose special benefit the statute was enacted; (ii) whether the legislature evinced an intent to create a private right of action; and (iii) whether recognizing such a right would be consistent with the statute's scheme and underlying purposes. *Id.* Here, these factors—particularly the second and third factors—do not support recognizing an implied private right of action under sections 12-302, 12-306, and 12-314 of the MCLL.[14]

[14] Although the relevant sections of the MCLL are "framed as a general prohibition" that were enacted to benefit the general public, rather than any class of particular persons, *Fangman*, 136 A.3d at 779, Defendants acknowledge that application of the first *Cort* factor arguably weighs in favor of implying a private right of action. Defendants therefore focus on the second and third factors, which comprise the "central inquiry" in deciding whether a statute implies a private right of action—namely, whether the legislature "intended to create [one]." *Touche Ross & Co. v. Redington*, 442 U.S. 560, 575-76 (1979); *see also Baker*, 50 A.3d at 1124 (emphasizing that even if a statute benefits a particular subgroup, that does "not require the implication of a private damages action in their behalf"); *Forest Cap., LLC v. BlackRock, Inc.*, 658 F. App'x 675, 680 (4th Cir. 2016) (noting that "members of the class for whose benefit a statute was enacted may still lack a private right of action") (citing *Baker*).

Defendants also acknowledge that a handful of courts in Maryland appear to have *assumed* that

a. The Maryland legislature has evinced no intent to create a private right of action under sections 12-302, 12-306, or 12-314.

If the Maryland legislature intended to create a private right of action under the MCLL sections at issue here, it would have done so explicitly—just as it did in numerous other sections of the MCLL and other lending provisions within Subtitle 1 of Title 12 of the Maryland Commercial Code.[15] For example, section 12-312(e)(3) of the MCLL provides that a "violation of this subsection or of subsection (c)(1)[,]" which govern the insurance requirements that lenders may impose in connection with certain loans subject to the MCLL, "shall entitle the borrower to seek (i) An injunction . . . ; (ii) Reasonable attorney's fees; and (iii) Damages directly resulting from the violation." MD. CODE, COM. LAW § 12-312(e)(3). The same language appears in section 12-124(b)(1), which provides nearly identical requirements for loans subject to Subtitle 1. *Id.* § 12-124(b)(1). Section 12-125(e), which defines the requirements for mortgage-related financing agreements, likewise expressly entitles aggrieved borrowers "to bring a civil suit for damages . . . against the lender." *Id.* § 12-125(e). Notably, Subtitle 1—unlike the MCLL—also includes a standalone section that outlines the "Remedies available" for borrowers of Subtitle 1 loans (including "forfeit[ure] to the borrower [of] the greater of . . . [t]hree times the amount of [excess]

private plaintiffs may pursue private actions under the MCLL. *See Liberty Fin. Co., Inc. v. Catterton*, 158 A. 16 (Md. 1932); *Fisher v. Bethesda Discount Corp.*, 157 A.2d 265 (Md. 1960); *Pac. Mortg. and Inv. Grp., Ltd.*, 641 A.2d 913 (Md. Ct. Spec. App. 1994); *Price v. Murdy*, 198 A.3d 798 (Md. 2018). Yet, because none of those courts actually considered or in any way addressed whether the MCLL in fact implies a private right of action, they are not authoritative. *See United States v. Norman*, 935 F.3d 232, 241 (4th Cir. 2019) (stressing that "courts often decide 'particular legal issues while assuming without deciding the validity of antecedent propositions,'" and that any such "unchallenged and untested assumption is simply not a holding that binds future courts") (citations omitted); *Schmidt v. Prince George's Hosp.*, 784 A.2d 1112, 1121 (Md. 2001) (explaining that stare decisis applies only "[w]hen a question of law is raised properly by the issues in a case and the Court supplies a deliberate expression of its opinion upon that question").

[15] Subtitle 1 of Title 12 governs "Interest and Usury" for certain loans in Maryland, including loans for an amount of $25,000 or less *that are not subject to Subtitle 3* (which, together with the Maryland Consumer Loan Law – Licensing Provisions, MD. CODE, COM. LAW § 11-201, *et. seq.*, is referred to as the MCLL). MD. CODE, COM. LAW §§ 12-101.1(c), 12-302, 12-317.

interest and charges collected or . . . $500"), and expressly imposes a six-month statute of limitations on "action[s] for usury." *Id.* §§ 12-114(b)(1), 12-111(b). Together, these provisions demonstrate that the legislature did not intend to impliedly create private rights of action under sections 12-302, 12-306, and 12-314. *See Clark*, 2021 WL 4310957, at *8 (finding absence of private remedy in § 12-109 "particularly conspicuous" when compared to explicit provision of private remedies in §§ 12-111(b) and 12-114(b)(1) of Subtitle 1).

"[L]egislative bodies know how to 'salt the mine' for the enablement of implied private causes of action." *Baker*, 50 A.3d at 1126. The legislature made no effort to do so here, despite doing so in numerous other sections of the MCLL. Nor should the Court construe the statute to create one. *Sugarloaf Citizens Ass'n, Inc. v. Gudis*, 554 A.2d 434, 438 (Md. Ct. Spec. App. 1989) ("[A]n elemental canon of statutory construction [is] that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it."); *Gabelli Glob. Multimedia Tr. Inc. v. W. Inv. LLC*, 700 F. Supp. 2d 748, 759 (D. Md. 2010) ("[The] explicit provision of a private right of action to enforce one section of a statute suggests that the omission of an explicit private right of action to enforce other sections was intentional.") (citation omitted).

Moreover, nothing in the MCLL's legislative history indicates that the legislature intended to create an implied private right of action under sections 12-302, 12-306, or 12-314. This "[s]ilence . . . reinforce[s] the decision not to find such a right implicitly." *Baker*, 50 A.3d at 1125; *see also Fangman*, 136 A.3d at 790 (noting that where there is "nothing in [a statute]'s legislative history from which [a court] can glean any intent on the General Assembly's part to create an implied private right of action," the "legislative history fails to demonstrate that an implied right of action exists"); *Scull v. Groover, Christie & Merritt, P.C.*, 76 A.3d 1186, 1191-92 (Md. 2013) (finding no implied private right of action where "nothing in the text of the [relevant statute]

suggests that the Legislature believed that it was creating a new cause of action," and the legislative history was "devoid of any mention of an intent to create [one]"); *Clark*, 2021 WL 4310957, at *7 ("The silence of the legislative record, although not determinative, weighs against recognizing a private right of action.").

b. Finding an implied private right of action for the provisions at issue here would be inconsistent with the MCLL's purpose and scheme.

The MCLL clearly envisions that sections 12-302, 12-306, and 12-314 will be enforced through an administrative and regulatory scheme by the Maryland Commissioner of Financial Regulation (the "Commissioner"), not through private lawsuits. Indeed, multiple provisions of the MCLL make clear that the Commissioner (and upon referral, State's Attorneys) are empowered to enforce sections 12-302, 12-306, and 12-314. *See, e.g.*, MD. CODE, COM. LAW §12-316.1 (authorizing the Commissioner "to order a refund to a borrower of moneys collected in violation of this subtitle"); MD. CODE, FIN. INST. LAW § 11-215 (authorizing the Commissioner to "order a licensee or any other person to cease and desist from a course of conduct [that] results in an evasion or violation of the [MCLL]"); *id.* § 11-220 (requiring the Commissioner to report alleged criminal violations of the MCLL to State's Attorneys); *id.* § 11-222 (unlicensed lenders may be found "guilty of a misdemeanor and on conviction [] subject to a fine . . . or imprisonment"). These provisions further indicate that the legislature did not intend to authorize private claims. *See Fangman*, 136 A.3d at 792-93 (finding no implied private right of action under a statute whose "purpose . . . was criminal in nature," and enforcement and penalty provisions served to "prevent[] practices that could increase the costs of . . . and limit competition among providers of [the] services [at issue]").[16]

[16] Decisions issued by the Commissioner reinforce this conclusion. *See, e.g., In re Future Income Payments, LLC*, No. CFR-FY2016-0027, 2018 WL 4051338, at *2 (Md. Comm. Fin. Reg. July 11, 2018)

Allowing individual borrowers to enforce the licensing and usury provisions of the MCLL would be inconsistent with the comprehensive administrative and regulatory scheme that the legislature established to authorize the Commissioner to oversee lenders that make loans under $25,000, and to punish and deter lending practices inconsistent with that scheme. Permitting private plaintiffs to sue under the MCLL would be inefficient, and also would risk hindering the Commissioner's enforcement activities (for example, by creating the possibility of private actions resulting in different and potentially conflicting applications and interpretations of the statute).

Accordingly, the Court should dismiss Count 3 and thereby confirm the Commissioner's sole authority to resolve Plaintiffs' complaints. *See Flynn v. Everything Yogurt*, No. HAR92-3421, 1993 WL 454355, at *6-7 (D. Md. Sept. 14, 1993) (finding no implied private right of action in Maryland Franchise Disclosure Law (except where private claims were explicitly created), since such a right would be inconsistent with a legislative scheme that left enforcement to the Commissioner and Attorney General).

2. Even if the MCLL provided a private right of action, Plaintiff Manago could not state a viable MCLL claim against the Cane Bay Defendants.

Plaintiff Manago cannot possibly state a viable claim under the MCLL against the Cane Bay Defendants, because the statute applies only to lenders or other persons engaged in the business of making or collecting on loans. For example, the MCLL provides that a person "engage[d] in the business of *making loans*" must be licensed in the state; that "a *lender* may charge interest on a loan at a rate not more than" the applicable cap; that a "person may not *lend* $25,000 or less" if the interest rate exceeds the cap; and that a person may not collect or receive amounts on any unlawful loans. MD. CODE, COM. LAW §§ 12-302, 12-306, 12-314 (emphases

(citing § 12-316.1 to support a mandatory refund to Maryland consumers as part of a cease and desist order issued pursuant to § 11-215); *In re Greenpoint Cap.*, No. CFR-FY2012-174, 2013 WL 652678, at *6 (Md. Comm. Fin. Reg. 2013) (same).

added).[17] The "meaning of 'makes a loan' is clear: a person who 'makes' a loan creates the loan itself." *Flournoy v. Rushmore Loan Mgmt. Servs., LLC*, No. 8:19-cv-00407, 2020 WL 1285504, at *5 (D. Md. Mar. 17, 2020). So if a person did "not play any role in *making* the loan . . . , all theories of liability predicated on [that person's] status as lender must be dismissed." *Id.*

Dismissal is thus warranted here, as Plaintiff Manago does not and cannot plausibly allege that the Cane Bay Defendants made her loans, charged her any interest, or collected any of her loan payments. Plaintiff Manago concedes she "applied for and took out [her] loan[s] with [Makes Cents] over the internet." Compl. ¶¶ 114-116. And both her allegations and her loans agreements confirm that Makes Cents collected on her loans. *Id.* ¶ 121; Mayer Loan Decl., Exs. A, B at 4.

Plaintiffs' unfounded theory that Makes Cents "is merely a front" for the Cane Bay Defendants does not save the MCLL claim. Compl. ¶ 86; *see also id.* ¶ 11 (summarily alleging that the Cane Bay Defendants "ran the lender Makes Cents"); *id.* ¶ 79 (asserting, without any factual support, that "Johnson and Chewning organized Cane Bay for the purpose of evading state usury laws, and collecting illegal interest on short-term loans").[18] Even if true, Plaintiffs' allegations do not provide any basis to assert an MCLL claim against the Cane Bay Defendants, as the MCLL does not provide for aiding or abetting liability. *See, e.g.*, *Petry v. Wells Fargo Bank, N.A.*, 597 F. Supp. 2d 558, 565 (D. Md. 2009) (explaining that although aider and abettor civil liability may be available against "those who actively participate . . . in the *commission of a tort*,"

[17] Other "compensation" under section 12-314 of the MCLL means the receipt of specific fund that either were "paid by the borrower" or "directly concern the borrower." *Price*, 198 A.3d at 805.

[18] Plaintiffs' attempt to substantiate their naked accusations about the Cane Bay Defendants' purported operation of Makes Cents with allegations about "tribal lending schemes" generally (*see, e.g.*, Compl. ¶¶ 5-10, 78-79) plainly is insufficient, as Plaintiffs allege no *facts* that actually connect Defendants to any such "schemes." The same goes for the wholly speculative suggestion that the Cane Bay Defendants' alleged affiliate, non-party Hong Kong Partners, was "shut down after Operation Chokepoint," and that Defendants thereafter "transitioned to tribal lending schemes." *Id.* ¶¶ 5, 80. Plaintiffs do not identify any *facts* that support these unreasonable and irrelevant inferences.

courts do not "extend[] the scope of" such liability under statutes that "do[] not expressly impose this additional avenue of liability," and stressing that the "legislature '[knows] how to impose aiding and abetting liability when it [chooses] to do so'") (citations omitted). Count 3 must be dismissed.

3. Likewise, even if the MCLL provided a private right of action, Plaintiff Manago could not state a viable MCLL claim against the Tribal Council Defendants.

As with the Cane Bay Defendants, Plaintiff Manago does not – and cannot – contend that the Tribal Council Defendants made her loans, charged her any interest, or collected any of her loan payments. Again, Plaintiff Manago concedes she "applied for and took out [her] loan[s] with [Makes Cents] over the internet." Compl. ¶¶ 114-116. And both her allegations and her loans agreements confirm that Makes Cents collected on her loans. *Id.* ¶ 121; Mayer Loan Decl., Exs. A, B at 4. Under the MCLL it is clear that the Tribal Council Defendants are not "engaged in making loans" and are certainly not lenders. Thus, the Tribal Council Defendants cannot possibly have violated the MCLL. *Petry*, 597 F. Supp. 2d at 565.

C. Plaintiff Manago Cannot State A Claim Under The MCPA

Plaintiff Manago alleges that the Cane Bay Defendants engaged in unfair or deceptive acts and practices under the MCPA by (i) engaging in the alleged "lending scheme in violation of "Maryland law[,]" and (ii) "omitting that Defendants loans are illegal" under state law. Compl. ¶¶ 181-182.[19] Both theories fail as a matter of law.

1. The alleged lending scheme cannot support a claim under the MCPA.

As an initial matter, the Cane Bay Defendants cannot be liable under the MCPA because the statute applies only to lenders or other persons engaged in the business of making or collecting

[19] Plaintiffs assert a MCPA claim only against the Cane Bay Defendants. Compl. ¶¶ 178-184.

on loans—and Makes Cents indisputably made and collected on their loans. *See* Section V.B.2, above. Plaintiff Manago cannot sidestep this fundamental defect in her claims by relabeling her alleged violation of the MCLL as a MCPA claim. The Cane Bay Defendants cannot be liable under the MCPA for alleged violations of the MCLL, when they cannot have violated the MCLL as a matter of law. *See, e.g., Adle-Watts v. Roundpoint Mortg. Servicing Corp.*, No. CCB-16-40, 2016 WL 3743054, at *5 (D. Md. July 13, 2016) (holding that since the plaintiff could not plead a plausible violation of the Maryland Consumer Debt Collection Act, her MCPA claim "based on [that] alleged violation" could not survive dismissal either).

In addition, the alleged "lending scheme" is not actionable against any Defendant under the MCPA, because the MCPA cannot be used to enforce the MCLL. The MCPA prohibits "any unfair, abusive, or deceptive trade practice, [including] in: . . . [t]he extension of consumer credit." MD. CODE, COM. LAW § 13-303. Unfair, deceptive, or abusive trade practices are defined in the MCPA to include the "[f]ailure to state a material fact if the failure deceives or tends to deceive" and enumerated violations of certain Maryland statutes, but the MCLL is not one of them. *Id.* § 13-301(3), (14); *see also Sucklal v. MTGLQ Investors LP*, No. WDQ-10-1536, 2011 WL 663754, at *4 (D. Md. Feb. 14, 2011) (dismissing MCPA claim where plaintiff alleged defendants committed usury violations, but had "not shown that the defendants made representations that misled or deceived her").

2. <u>Alleged omissions regarding the legality of Makes Cents' loans are not actionable under the MCPA.</u>

Plaintiff Manago contends that the Cane Bay Defendants violated section 13-301(3) of the MCPA "[b]y omitting that Defendants' loans are illegal in Maryland." Compl. ¶ 182. But the MCPA prohibits only omissions of material *fact*, not conclusions of law, as alleged here. Plaintiff Manago also fail to plead that the Cane Bay Defendants owed her any duty to disclose or to identify

any facts, much less with the requisite particularity, to support the other necessary elements of her MCPA claim.

a. The alleged omission is not actionable under the MCPA.

The MCPA prohibits omissions of material fact. *See* MD. CODE, COM. LAW § 13-301(3); *Hoffman v. Stamper*, 843 A.2d 153, 191 (Md. Ct. Spec. App. 2004), *rev'd in part on other grounds and remanded*, 867 A.2d 276 (Md. 2005) (under MCPA, omission is actionable only where defendant knowingly conceals or omits material fact). The Cane Bay Defendants cannot be liable for the claimed omission here, since whether Makes Cents' loans violate (or are even subject to) state lending statutes indisputably concern matters of *law*. A representation about "the legality of the [conduct or transaction] at issue is a conclusion of law, not fact," and thus is not actionable under consumer protection acts. *Cabrejas v. Accredited Home Lenders*, No. AW-06-0975, 2006 WL 3613753, at *1 (D. Md. Dec. 5, 2006) (citing *Miller v. Pac. Shore Funding*, 224 F. Supp. 2d 977, 989 (D. Md. 2002)); *see also In re Pittman*, 165 B.R. 586, 589 (Bankr. D. Md. 1994) (rejecting plaintiff's argument that the defendant-lender made a "deceptive . . . omission of a material fact" under the MCPA by failing to disclose that certain charges it collected on his loan were "prohibited by law").

Miller and *Cabrejas* are instructive here. One of the plaintiffs in *Miller* claimed that the defendant-lender violated the MCPA "by failing to state 'the material fact that [his] loan was governed by the [Maryland Secondary Mortgage Lender Law ("SMLL")].'" *Miller*, 224 F. Supp. 2d at 989. In dismissing the MCPA claim, the Court held that "[t]he material 'fact' that [plaintiff] claims [the defendant] suppressed, however, is not fact at all—it is material *law*." *Id.* Similarly, the plaintiffs in *Cabrejas* claimed that the defendant-lender violated the MCPA by failing to disclose that certain fees it charged on their loans were "illegal and excessive" in violation of the SMLL. 2006 WL 3613753, at *1. The Court dismissed the MCPA claim, holding that even "if

the fees are illegal," the plaintiffs "alleged no misstatement, omission, or misrepresentation of any *fact*, and therefore have failed to state a cognizable [MCPA] claim." *Id.* For the same reason, the Cane Bay Defendants thus cannot be liable under MCPA for failing to state that the loans are "illegal" under state law.

b. Plaintiff Manago cannot show the Cane Bay Defendants had a legal duty to disclose.

The law is well settled under the MCPA that the "failure to disclose a material fact does not constitute fraud" unless the "alleged failure [was] accompanied by a legal duty to disclose." *Castle v. Cap. One, N.A.*, No. WMN-13-1830, 2014 WL 176790, at *5 (D. Md. Jan. 15, 2014). Such a duty arises "when one party is in a fiduciary or confidential relationship with the other . . . [or] makes a partial and fragmentary statement of fact." *Waterhouse v. R.J. Reynolds Tobacco Co.*, 270 F. Supp. 2d 678, 685 (D. Md. 2003) (citation omitted). But Plaintiff Manago 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.

Dismissal of the MCPA claim is particularly warranted given that even Makes Cents—the entity that issued Plaintiff Manago's loans—did not owe her any duty to disclose. Under Maryland law, a lender does not owe fiduciary or confidential duties to a borrower. *See, e.g., Parker v. Columbia Bank*, 604 A.2d 521, 532 (Md. Ct. Spec. App. 1992). Nor does a party to an arm's-length contract owe such duties to its counterparty (absent extraordinary circumstances not alleged or present here). *See, e.g., Md. Env't Tr. v. Gaynor*, 803 A.2d 512, 516 (Md. 2002). And Plaintiff Manago cannot possibly contend that an omission by Makes Cents could be attributed to the Cane Bay Defendants. *See, e.g., Todd v. XOOM Energy Md., LLC*, No. GJH-15-154, 2016 WL 727108, at *11 (D. Md. Feb. 22, 2016) (dismissing MCPA claim where plaintiffs "failed to allege with particularity" why the "alleged misrepresentations and fraudulent omissions" underpinning the

claim—which were made by third parties—could properly be attributed to the defendants); *Adams v. NVR Homes, Inc.*, 193 F.R.D. 243, 250 (D. Md. 2000) (factual predicate for agency relationship must be pled with particularity).

c. Plaintiff Manago fails to allege other necessary elements of her MCPA claim.

Plaintiff Manago also fails to allege facts supporting the other elements of her MCPA claim. To state an omission claim under the MCPA, a plaintiff must show that (i) the defendant made a material omission of fact that deceived or tended to deceive the plaintiff, (ii) the plaintiff reasonably relied on the omission, and (iii) the omission caused plaintiff damages. *Bank of Am., N.A. v. Jill P. Mitchell Living Tr.*, 822 F. Supp. 2d 505, 534-34 (D. Md. 2011); *Castle*, 2014 WL 176790, at *7; *Willis v. Green Tree Servicing, LLC*, No. WMN-14-3748, 2015 WL 1137681, at *4 (D. Md. Mar. 12, 2015). Plaintiff must plead facts supporting each element of her omission claim with particularity. *Amenu-El v. Select Portfolio Servs.*, No. RDB-17-2008, 2017 WL 4404428, at *3 (D. Md. Oct. 4, 2017).

To establish that she relied on the alleged omission, Plaintiff Manago must plead that it is substantially likely she would have made a different choice had the omitted information been disclosed. *Jill P. Mitchell Living Tr.*, 822 F. Supp. 2d at 535 (explaining that to establish reliance on an omission for purposes of the MCPA, the plaintiff must plead and prove that "it is substantially likely that [he or she] would not have made the choice in question had the [defendant] disclosed the omitted information"). Because she does not even attempt to plead such facts, her MCPA claims fail. *Castle*, 2014 WL 176790, at *7 (plaintiff did "not state[] a claim under the MCPA" because she identified no facts indicating "that she was substantially induced in any manner by Defendant's failure to disclose . . . or that she would have been likely to do anything differently had she known" the omitted information); *accord Willis*, 2015 WL 1137681, at *5.

Plaintiff Manago also has not pleaded a sufficient causal nexus between the purported omission and her alleged injury. The MCPA authorizes private actions only "to recover for injury or loss sustained . . . *as the result of* a [prohibited] practice[.]" MD. CODE, COM. LAW § 13-408(a) (emphasis added). However, Plaintiff Manago "seeks to recover damages . . . for the *usurious interest and fees*." Compl. ¶¶ 13, 183. In other words, her alleged damages flow from the Cane Bay Defendants' purported involvement in running Makes Cents, and not from the claimed omission. Plaintiff Manago thus has "fail[ed] to plead a causal connection between the alleged [statutory] violation and the injury suffered." *Fangman v. Genuine Title, LLC*, No. RDB-14-0081, 2015 WL 8315704, at *10 (D. Md. Dec. 9, 2015) (citing *Petry*, 597 F. Supp. 2d at 566 (dismissing MCPA claim based on purported misrepresentations regarding the use of a sham lender and kickback scheme, since the allegations clearly showed plaintiffs' damages—i.e., the payment of "artificially inflated [] fees and interest"—resulted from the "illegal kickback scheme . . . and not the alleged misrepresentations")); *see also Castle*, 2014 WL 176790, at *6 ("Although Plaintiff has surely pled damage . . . [,] she has not reasonably related that damage causally to any omission made by the Defendant."); *Willis*, 2015 WL 1137681, at *5 (dismissing MCPA claims because plaintiff "failed to allege facts to show that Defendants' . . . omissions . . . caused his actual harm"). Plaintiff Manago's failure to plead facts supporting these essential elements requires dismissal of her MCPA claim.

For these reasons, Count 4 must be dismissed.

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

Plaintiff Manago contends that the Cane Bay Defendants "have been, and continue to be, unjustly enriched as a result of charging and collecting illegal, usurious interest rates from

Plaintiffs[.]" Compl. ¶ 246.[20] To state a claim for unjust enrichment under Maryland law, a plaintiff must plead facts reasonably indicating that: (i) the plaintiff conferred a benefit on the defendant, (ii) the defendant knew or appreciated the benefit, and (iii) the defendant's acceptance or retention of the benefit would be inequitable under the circumstances "without the paying of value in return." *Benson v. State*, 887 A.2d 525, 546 (Md. 2005). Plaintiff Manago fails to plead sufficient facts to state an unjust enrichment claim.

The first element requires proof that the Cane Bay Defendants hold *Plaintiff Manago's* money specifically. *See Mehul's Inv. Corp. v. ABC Advisors, Inc.*, 130 F. Supp. 2d 700, 709 (D. Md. 2001) (dismissing unjust enrichment claim where the plaintiff "allege[d] neither that it conferred an actual benefit [on defendant], nor that [defendant] obtained and refused to return [plaintiff's] funds"); *Klassou v. Ejtemai*, No. 1162, 2017 WL 4271674, at *10 (Md. Ct. Spec. App. Sept. 26, 2017) (holding that the plaintiff "failed to state a claim for unjust enrichment" because he "only included conclusory allegations . . . and failed to allege with particularity" how he conferred a benefit on the defendant). Plaintiff Manago has not alleged any facts plausibly suggesting that the *Cane Bay Defendants* collected or received any portion of her loan payments. In fact, the Complaint, and documents incorporated by reference therein, make clear that *Plaintiff Manago made all her payments to Makes Cents*. Compl. ¶¶ 114-116; Mayer Loan Decl., Exs. A, B. The Court must, therefore, reject her contradictory and unsupported allegation that the Cane Bay Defendants have been unjustly enriched by "charging and collecting" purportedly usurious interest from her. *Compare id. with* Compl. ¶ 246; *Goines*, 822 F.3d at 166-67 (documents incorporated by reference "prevail[]").

Moreover, Plaintiff Manago's allegations indicating that Cane Bay contracted to perform

[20] Plaintiffs assert an unjust enrichment claim only against the Cane Bay Defendants. Compl. ¶¶ 246-247.

various professional services for Makes Cents are likewise insufficient to show that Plaintiffs "conferred a benefit" on the Cane Bay Defendants through her loan payments. *See, e.g., In re Zinn*, No. 13-14270-LSS, 2017 WL 218417, at *9 (Bankr. D. Md. Jan. 18, 2017) (dismissing unjust enrichment claim resting solely on plaintiffs' "conclusory allegation that all of the defendants 'reaped profits at the expense of the plaintiffs'"); *Klassou*, 2017 WL 4271674, at *10.[21]

Count 17 therefore must be dismissed as to Plaintiff Manago.

E. Plaintiff Manago's State Law Conspiracy Claim Fails

As an initial matter, Plaintiff Manago's Maryland conspiracy claim against the Cane Bay Defendants[22] is barred by the intracorporate conspiracy doctrine, for the reasons stated in Section IV.C.1, above. *Balt.-Wash. Tel. Co.*, 584 F. Supp. 2d at 744; *Bailey*, 992 F. Supp. 2d at 568; *Walters*, 795 F. Supp. 2d at 358-59. But even if her conspiracy claim could survive this well-established bar, Plaintiff Manago's conspiracy claim fails for multiple, additional reasons.

"Under Maryland law, civil conspiracy is defined as the 'combination of two or more persons by an agreement or understanding to accomplish an unlawful act or to use unlawful means to accomplish an act not in itself illegal, with the further requirement that the act or the means employed must result in damages to the plaintiff.'" *Jones v. Pohanka Auto N., Inc.*, 43 F. Supp. 3d 554, 564 (D. Md. 2014) (citing *Hoffman v. Stamper*, 867 A.2d 276, 290 (Md. 2005)). "In addition to proving an agreement, '[t]he plaintiff must also prove the commission of an overt act, in furtherance of the agreement, that caused the plaintiff to suffer actual injury' and 'the legal capacity of the conspirators to complete the unlawful conduct.'" *Id*.

Plaintiff Manago does not and cannot plead a viable conspiracy claim against the Cane Bay

[21] For the same reasons, Plaintiff Manago's allegations are insufficient to show that the Cane Bay Defendants voluntarily accepted and/or knew about receiving any benefit from her loan payments.

[22] Plaintiffs assert a state law conspiracy claim only against the Cane Bay Defendants. Compl. ¶¶ 248-250.

Defendants.

1. The Cane Bay Defendants cannot be liable for conspiracy to violate the MCLL.

For the reasons discussed in Section V.B, above, Plaintiff Manago does not and cannot adequately plead a viable MCLL claim, and as a result, her conspiracy claim necessarily fails. Because civil conspiracy claim is not an independent tort, a plaintiff must adequately allege the underlying unlawful act or tortious activity on which the conspiracy claim is based. *Sucklal v. MTGLQ Investors LP*, No. WDQ-10-1536, 2011 WL 663754, at *5 (D. Md. Feb. 14, 2011) (citation omitted); *see also Ark. Nursing Home Acquisition, LLC v. CFG Cmty. Bank*, No. RDB-19-3632, 2020 WL 2542165, at *15 (D. Md. May 19, 2020). Likewise, a plaintiff must plead and prove her damages flowed from the "unlawful act . . . [committed] in furtherance of the agreement," and not merely from the agreement itself. *Lawley v. Northam*, No. ELH-10-1074, 2011 WL 6013279, at *23 (D. Md. Dec. 1, 2011); *see also Shenker v. Laureate Educ., Inc.*, 983 A.2d 408, 428 (Md. 2009) ("[C]ivil conspiracy lies in the act causing the harm; the agreement to commit the act is not actionable on its own[.]") (citations omitted). Absent a viable MCLL claim, Plaintiff Manago's conspiracy claim requires dismissal.

Moreover, the Cane Bay Defendants cannot be liable for civil conspiracy under Maryland law for allegedly conspiring to violate Maryland "usury and lending laws", Compl. ¶ 249, for the additional reason the Cane Bay Defendants are not legally capable of having violated the MCLL with respect to Plaintiff Manago's loans. To establish a claim for civil conspiracy under Maryland law, a plaintiff must plead and ultimately prove that the alleged co-conspirators are legally capable of committing the allegedly unlawful act. *E.g.*, *Jones*, 43 F. Supp. 3d at 564-65 (holding that since defendants were not acting as creditors in connection with the transaction underlying the parties' dispute, they were not legally capable of violating the Maryland Credit Grantor Closed End Credit

Provisions and thus could not be liable for conspiring to violate those provisions); *see also Shenker*, 983 A.2d at 429 (holding "in Maryland, liability for civil conspiracy based on the underlying tort of breach of fiduciary duty (were it recognized) would require proof that the defendant, although not committing personally the underlying tort, was legally capable of committing the underlying tort"). As discussed in Section V.B.2, above, the MCLL applies only to lenders or other persons engaged in the business of making or collecting on loans, and Plaintiff Manago concedes, as she must, that Makes Cents made and collected on her loans. Compl. ¶¶ 114-116, 121; Mayer Loan Decl., Exs. A, B at 4.[23] Thus, Plaintiff Manago cannot show that the Cane Bay Defendants are legally capable of violating the MCLL.[24]

2. Plaintiff Manago fails to adequate plead the elements of a conspiracy.

Even if Plaintiff Manago could show that the Cane Bay Defendants were legally capable of violating the MCLL as to her loans, the scant factual allegations in the Complaint are insufficient to plead a conspiracy.

"The key question in assessing whether a conspiracy theory has been adequately pled is whether there is adequate factual support for the existence of an agreement to conspire." *Chambers v. King Buick GMC, LLC*, 43 F. Supp. 3d 575, 611 (D. Md. 2014) (citations omitted). Because a conspiracy claim sounds in fraud, the factual support must be pleaded with particularity. *Hill v.*

[23] Plaintiff Manago also cannot assert a viable conspiracy claim based on the Cane Bay Defendants' alleged violation of the MCPA, because the Cane Bay Defendants cannot have violated the MCLL as a matter of law. *See* Section V.C, above. Nor can Plaintiff Manago base her civil conspiracy claim on her unjust enrichment claim, as Maryland law does not "recognize[] a cause of action for civil conspiracy for . . . unjust enrichment." *Todd v. XOOM Energy Md., LLC*, No. GJH-15-154, 2017 WL 667198, at *9 (D. Md. Feb. 16, 2017).

[24] Likewise, the alleged violation of the MCLL also cannot underpin the civil conspiracy claim, because the MCLL does not provide for a private right of action. *See* Section V.B.1 above; *Alexander & Alexander, Inc. v. B. Dixon Evander & Assocs., Inc.*, 596 A.2d 687, 701 (Md. Ct. Spec. App. 1991) (noting out-of-state authority for the proposition that that a civil conspiracy cannot rest solely upon the violation of a statute that creates no private right of action); *see also Adams v. Alcolac, Inc.*, 974 F.3d 540, 545 (5th Cir. 2020) (alleged violation of Export Administration Act cannot form basis of civil conspiracy claim under Texas law because the statute does not provide a private right of action).

Brush Engineered Materials, Inc., 383 F. Supp. 2d 814, 823-24 (D. Md. 2005). Thus, "a plaintiff must set forth more than just conclusory allegations of the agreement," and instead must identify facts indicating "when and how the agreement was brokered and how each of the defendants specifically were parties to the agreement." *Chambers*, 43 F. Supp. 3d at 611 (citation omitted).

Plaintiff Manago summarily asserts that "Defendants conspired amongst themselves to violate state usury and lending laws[.]" Compl. ¶ 249. But the only support she offers are conclusory assertions about Defendants using Makes Cents as a "front," *id.* ¶ 36, which are insufficient to plead a conspiratorial agreement. *AGV Sports Grp., Inc. v. Protus IP Sols., Inc.*, No. RDB 08-3388, 2009 WL 1921152, at *6 (D. Md. July 1, 2009); *see also Chambers*, 43 F. Supp. 3d at 611 (dismissing conspiracy claim where the plaintiff merely alleged that defendants "conspired among themselves, by agreement or understanding, . . . [to withhold] the written disclosures required by Maryland law," but "provide[d] no details as to when such an agreement was reached or [its] contours"); *Jones*, 43 F. Supp. 3d at 566 (conclusory assertion that defendants "conspired among themselves . . . to implement a fraudulent scheme" reasonably alleged "concerted action" only, and not "a true conspiracy").

Count 18 must be dismissed as to Plaintiff Manago.

VI. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant their Motion to Dismiss Plaintiffs' Complaint with prejudice.

Dated: February 4, 2022

Respectfully submitted,

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