UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

LORI FITZGERALD, *et al.*,

Plaintiffs,

v. **Civil Action No. 3:20-cv-00044-NKM-JCH**

JOSEPH WILDCAT SR., *et al.*,

Defendants.

DEFENDANTS WILLIAM CHENEY PRUETT AND SKYTRAIL SERVICING GROUP, LLC'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

Defendants William Cheney Pruett ("Pruett") and Skytrail Servicing Group, LLC ("Skytrail Servicing") (collectively, Pruett and Skytrail Servicing may be referred to herein as the "Skytrail Defendants"), by counsel, submit this Memorandum in Support of their Motion to Dismiss under Fed. R. Civ. P. 12(b)(2), 12(b)(6), and 12(b)(7).[1]

I. INTRODUCTION

This case involves a purported class action brought by five plaintiffs ("Plaintiffs") challenging certain loans made by entities that are arms of the Lac du Flambeau Band of Lake Superior Chippewa Indians, a federally recognized Indian Tribe (the "Tribe"). Plaintiffs are trying to avoid well-established sovereign immunity defenses that would be fatal to Plaintiffs' claims by not suing the Tribe or the Tribe's lending entities. Instead, Plaintiffs originally sued three

[1] The Skytrail Defendants have separately filed a Motion to Compel Arbitration and Stay Plaintiff Angela Maville's Claims Pending pursuant to Fed. R. Civ. P. 12(b)(3). They file this Motion in the alternative to the separately filed Motion.

individuals associated with the Tribe in their personal capacities and subsequently amended the complaint to add additional non-Tribe defendants, including Pruett and Skytrail Servicing.

Pruett and Skytrail Servicing are only tangentially connected to the harm the Plaintiffs allege. Neither of the Skytrail Defendants made a loan to any of the Plaintiffs, nor did any of the Plaintiffs make payments to Pruett or Skytrail Servicing. Indeed, the only Plaintiff to assert a claim against Pruett and Skytrail Servicing, Angela Maville ("Plaintiff" or "Maville"),[2] alleges that she obtained a loan from Ningodwaaswi, LLC d/b/a Sky Trail Cash ("Sky Trail Cash"), a tribal entity not named as a defendant. She repaid a portion of her loan to Sky Trail Cash. She does not allege she made any payments to the Skytrail Defendants or allege that she had any direct relationship with either Pruett or Skytrail Servicing.

Plaintiffs' Second Amended Complaint ("SAC") adds allegations regarding a Servicing Agreement between Skytrail Servicing and Sky Trail Cash, the tribal lending entity. The Servicing Agreement outlines the specific services that Skytrail Servicing provides to the lending entity and the financial arrangement between the two companies, but it does not change the fact that neither Skytrail Servicing nor Pruett made any loan to Maville or received any of the payments made under her loan with Sky Trail Cash. The Servicing Agreement simply outlines the business relationship between Skytrail Servicing and the lender it services. While Plaintiffs allege that this relationship is a "front," their characterization does not make it so, and it does not make Pruett or Skytrail Servicing liable.

Despite the Skytrail Defendants' tangential connection with Maville, she asserts a claim against each of them for violating the Racketeer Influenced and Corrupt Organizations Act

[2] This Memorandum also refers to "Plaintiffs" collectively when addressing the claims asserted against all the named defendants.

("RICO" or the "Act"), 18 U.S.C. §§ 1962(c) & (d), and under common law unjust enrichment. Her claims fail as a matter of law.

As a threshold matter, Plaintiffs' claims against the Skytrail Defendants should be dismissed under Fed. R. Civ. P. 12(b)(2) because this Court lacks personal jurisdiction over both Skytrail Servicing and Pruett. Plaintiffs will likely cite *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617 (4th Cir. 1997), for the proposition that personal jurisdiction is proper because Federal Rule of Civil Procedure 4(k)(1)(D) authorizes a court to exercise personal jurisdiction consistent with due process over any defendant who has been served with a summons as "authorized by a federal statute," and will then claim that 18 U.S.C. § 1965(d) authorizes nationwide service of summonses in RICO actions. Yet, for the reasons discussed more fully herein, the Court can – and should – disregard *ESAB* because: (1) the logic of *ESAB* is misguided and incomplete; and (2) the holding of *ESAB* is inconsistent with intervening Supreme Court precedent regarding due process.

Maville's claims against the Skytrail Defendants can also be dismissed for the independent reason that she failed to join Sky Trail Cash, which is a necessary party to this case under Fed. Rule Civ. P. 19. Maville is seeking to have her loan with Sky Trail Cash declared void. Sky Trail Cash, however, is a tribal entity immune from suit, and therefore, cannot be joined as a party to this lawsuit. Accordingly, Maville's claims should be dismissed under Rule 19.

Alternatively, even if the Court does exercise personal jurisdiction over both Skytrail Defendants, Maville's RICO claims should be dismissed on the merits because each is inadequate as a matter of law. First, neither of Plaintiff's alternative theories of a RICO association-in-fact enterprise are supported by sufficient facts. Second, the claims also fail because Plaintiff's

allegations, even taken as true, are inadequate for the Court to find the existence of a RICO enterprise distinct from the defendants.

Further, Maville's unjust enrichment claim must also be dismissed for failure to allege that she conferred any benefit upon Pruett or Skytrail Servicing directly.

Finally, to the extent the Court grants Pruett and Skytrail Servicing's Motion to Dismiss Maville's RICO claims pursuant to Rules 12(b)(6) or 12(b)(7), the Court should also dismiss the unjust enrichment claim under Rule 12(b)(2) because neither Pruett nor Skytrail Servicing have sufficient contacts with Virginia to allow the Court to exercise jurisdiction over them.

II. PLAINTIFF'S ALLEGATIONS

Plaintiff Maville is a resident of Florida who obtained a single loan from non-party Sky Trail Cash. (SAC ¶ 189.) The loan agreement informed Plaintiff that Sky Trail Cash is an "economic development arm of, instrumentality of, and a limited liability company wholly-owned and controlled by, the Lac du Flambeau Band of Lake Superior Chippewa Indians." *See* Declaration of W. Cheney Pruett ("Pruett Decl."), Exh. A. It further informed Plaintiff that the "Tribe is a federally-recognized Indian tribe." *Id.* In signing the loan contract, Plaintiff agreed that the contract and disputes related to it would be governed by Tribal law. *Id*.

Despite knowingly agreeing that the loan would be governed by Tribal law, Plaintiff nevertheless alleges that her loan is void and usurious under Florida law. Further, despite the crux of her argument being that the loan is illegal under Florida law, Maville has not sued her tribal lender—Sky Trail Cash—or the Tribe that created and owns Sky Trail Cash—the Lac du Flambeau Band of Lake Superior Chippewa Indians.

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)). But while the Court must accept factual allegations as true at this stage, it need not accept as true "a legal conclusion couched as a factual allegation," *Papasan v. Allain,* 478 U.S. 265, 286 (1986); conclusory allegations devoid of any reference to actual events, *United Black Firefighters of Norfolk v. Hirst,* 604 F.2d 844, 847 (4th Cir. 1979); or "allegations that are merely conclusory, unwarranted deductions of fact or unreasonable inferences." *Veney v. Wyche,* 293 F.3d 726, 730 (4th Cir. 2002); *see also Doe v. Va. Polytechnic Inst. & State Univ.,* No. 7:21-cv-00378, 2022 U.S. Dist. LEXIS 134267, at *8 (W.D. Va. July 28, 2022). In addition, a heightened pleading standard applies where the plaintiff's claim sounds in fraud. *Spaulding v. Wells Fargo Bank, N.A.*, 714 F.3d 769, 781 (4th Cir. 2013).

The Court may consider "documents attached to the complaint," *see* Fed. R. Civ. P. 10(c), as well as those that are not attached, but "integral to the complaint." *Philips v. Pitt Cnty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009). "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. ARGUMENT

A. This Court lacks personal jurisdiction over Skytrail Servicing and Pruett.

As a threshold matter, the Court should dismiss this case pursuant to Fed. R. Civ. P. 12(b)(2) as neither Pruett nor Skytrail Servicing are subject to this Court's personal jurisdiction. Plaintiff

acknowledges as much in Paragraph 115 of the SAC by alleging that the activities in which Pruett and Skytrail Servicing allegedly engage "take place predominantly in Texas where Pruett and his companies are located." (SAC ¶ 115.)

"Under Rule 12(b)(2), a defendant must affirmatively raise a personal jurisdiction challenge, but the plaintiff bears the burden of demonstrating personal jurisdiction at every stage following such a challenge." *Grayson v. Anderson*, 816 F.3d 262, 267 (4th Cir. 2016) (citation omitted). The Due Process Clause of the Fourteenth Amendment requires a defendant to "have certain minimum contacts with [the forum] such that the maintenance of a suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington,* 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945).[3] Those minimum contacts vary based on the type of personal jurisdiction that plaintiffs seek to impose over a defendant: general or specific. *Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408, 414-15 (1984). General personal jurisdiction exists when a defendant has "continuous and systematic contacts with the forum state, such that a defendant may be sued in that state for any reason, regardless of where the relevant conduct occurred." *CFA Inst. v. Inst. of Chartered Fin. Analysts of India,* 551 F.3d 285, 292 n.15 (4th Cir. 2009). Specific personal jurisdiction exists if a defendant's minimum contacts with the forum state form the basis for the claims in question. *Mitrano v. Hawes,* 377 F.3d 402, 406 (4th Cir. 2004).

[3] Determining whether a court may exercise personal jurisdiction generally requires a court to determine if jurisdiction comports with the state's long-arm statute, and only if it answers in the affirmative does the court undertake the constitutional analysis. *See Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co., Ltd.,* 484 U.S. 97, 105 (1987). However, Virginia's long-arm statute extends personal jurisdiction to the maximum extent permitted by the Fourteenth Amendment Due Process Clause. As such "the statutory inquiry necessarily merges with the constitutional inquiry, and the two inquiries become one." *Stover v. O'Connell Assocs.,* 84 F.3d 132, 135-36 (4th Cir. 1996).

1. There are no facts alleged to support general or specific jurisdiction.

Here, Plaintiffs do not specifically allege the basis for the Court's jurisdiction over either of the Skytrail Defendants, and they have alleged no facts to support either general or specific personal jurisdiction over either Pruett or Skytrail Servicing. The Supreme Court has explained that a defendant must be effectively at home in a jurisdiction to be subjected to general personal jurisdiction. *Daimler AG v. Bauman,* 134 S. Ct. 746, 762 (2014); *see also ESAB Group, Inc*, 126 F.3d at 623-24 (citing 4 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1067, at 295-98 (1987)); *Sportrust Assocs., Int'l, Inc. v. The Sports Corp.*, 304 F. Supp. 2d 789, 792 (E.D. Va. 2004) ("courts typically exercise general jurisdiction only over nonresidents who are essentially domiciled within the forum state."). Maville does not allege any facts supporting a claim that Pruett or Skytrail Servicing are effectively domiciled in Virginia, nor could she. Pruett is a resident of Texas, and Skytrail Servicing is a limited liability company formed under the laws of Texas. Neither is alleged to be a resident of Virginia, neither is alleged to conduct business in Virginia, Skytrail Servicing is not alleged to have an office in Virginia, and Skytrail Servicing is not alleged to have any employees in Virginia. Indeed, the SAC expressly pleads that the activities in which Pruett and Skytrail Servicing participate "take place predominantly in Texas." (SAC ¶ 115.) Therefore, there is no general jurisdiction over Pruett or Skytrail Servicing.

Specific jurisdiction is far more limited. A Court may exercise specific jurisdiction over a defendant only if: (1) the defendant purposefully availed itself of the privileges of conducting activities in the forum, thereby invoking the benefits and protections of its laws, or purposely directed conduct at the forum that has effects in the forum; (2) the claim arises out of the defendant's forum-related activities; and (3) the exercise of jurisdiction comports with fair play

and substantial justice. *See Mitrano v. Hawes*, 377 F.3d 402, 406-07 (4th Cir. 2004); *see also Burger King, Corp. v. Rudzewicz*, 471 U.S. 462, 472-76 (U.S. 1985).

Plaintiffs have not alleged facts that meet any of those required prongs. There are simply no facts alleged in the SAC connecting Pruett or Skytrail Servicing – or even the loan in question – to Virginia. Rather, Maville alleges only that:

- Pruett is resident of Texas. (SAC ¶ 32.)
- Skytrail Servicing is a limited liability formed under the laws of Texas. (SAC ¶ 33.)
- These activities "take place predominantly in Texas." (SAC ¶ 115.)
- "Upon information and belief, the money loaned to borrowers (including Plaintiff Maville) was transferred from a bank account owned and operated or controlled by Defendants Skytrail Servicing Group and Pruett . . . ." (SAC ¶ 117).
- "Upon information and belief, Defendants Pruett and unnamed entity STC Finance, LLC provided millions of dollars in capital to fund loans, and entered into an agreement with the Tribe . . . ." (SAC ¶ 118)."Defendants, together with others not yet known to Plaintiffs, marketed, initiated, and collected usurious loans throughout the country, including in Virginia, Georgia, Maryland, Florida, as well as other states with similar laws." (SAC ¶ 149.)

None of these allegations point to any activity or contact that Pruett or Skytrail Servicing, rather than the activity of the other named Defendants, had with Virginia in relation to the Maville loan, or for that matter, any other loans. And, once again, Maville could not do so because Pruett and Skytrail Servicing do not currently conduct business in Virginia and never have conducted business in Virginia. Further, Sky Trail Cash is also not alleged to have conducted business in

Virginia, and, in fact, has never conducted business in Virginia. There is simply no nexus, alleged or otherwise, between Pruett and Skytrail Servicing, on the one hand, and Virginia, on the other.

2. RICO jurisdiction is inappropriate.

RICO jurisdiction also does not save Plaintiffs' claims. Rule 4(k)(1)(D) authorizes a court to exercise personal jurisdiction consistent with due process over any defendant who has been served with a summons as "authorized by a federal statute." Plaintiffs will argue that 18 U.S.C. § 1965(d) authorizes nationwide service of summonses in RICO actions. To support that position, Plaintiffs will likely cite *ESAB Group, Inc.*, 126 F.3d 617 (4th Cir. 1997), wherein the Fourth Circuit held that § 1965(d) authorizes nationwide services of summonses on defendants and thus authorizes the exercise of personal jurisdiction, subject to other due process constraints under the Fifth Amendment, which the Fourth Circuit also held were satisfied. *Id.* at 626–27.

However, The *ESAB* court's interpretation of § 1965(d) is inconsistent with that provision's plain language and cannot alone provide the threshold basis for seeking to subject a defendant to jurisdiction in an improper forum, as has been attempted here.

Subsection 1965(d) only provides for nationwide service of process with respect to those types of process that are not authorized by other provisions of § 1965: "*All other process* in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides . . . ." 18 U.S.C. § 1965(d) (emphases added). Thus, the section necessarily does not refer to subsections (a)-(c). However, §§ 1965(a) and 1965(b) each independently provide for service of summonses, which precludes any contention that § 1965(d) can be validly used to serve a summons. First, § 1965(a) expressly provides that personal jurisdiction is proper, and thus that a summons may be properly served, only in those districts in which a defendant has minimum contacts: "Any civil action or proceeding under this chapter

against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs." 18 U.S.C. § 1965(a). Second, § 1965(b) further provides for nationwide service of "summonses" on "other parties"—*i.e.*, after service has been perfected on one defendant under the minimum contacts standard of § 1965(a), nationwide service of process is permitted for "other parties" under § 1965(b). 18 U.S.C. § 1965(b) (emphasis added). Accordingly, because § 1965(d) concerns only the types of process not otherwise set forth in the statute, and because §§ 1965(a) and (b) each specifically provide for service of a summons, § 1965(d) cannot be read to authorize nationwide service of a summons on a defendant.

This logic is underscored by the litany of decisions to disagree with *ESAB* based on the plain language of § 1965 and its numerous subparts. Other federal circuit courts and federal district courts that have considered the issue have disagreed with the Fourth Circuit's analysis. For instance, the Second Circuit held that § 1965(d) only provides for service of *non-summons* process, and not the type of process that would require a party to litigate in the chosen forum. *PT United Can Co. v. Crown Cork & Seal Co.*, 138 F.3d 65, 72 (2d Cir. 1998). Other federal circuit and district courts have now uniformly lined up behind the Second Circuit. *See, e.g.*, *Cory v. Aztec Steel Bldg., Inc.*, 468 F.3d 1226 (10th Cir. 2006); *Nutrimost, LLC v. Werfel*, No. 2:15-cv-531, 2016 WL 5107730, at *6 (W.D. Pa. Mar. 2, 2016); *FC Inv. Grp. LC v. IFX Markets, Ltd.*, 529 F.3d 1087 (D.C. Cir. 2008); *Rolls-Royce Corp. v. Heros, Inc.*, 576 F. Supp. 2d 765, 779 (N.D. Tex. 2008). As the courts point out, the Fourth Circuit "interpret[s] Section 1965(d) as conferring personal jurisdiction over any RICO defendant—including in civil RICO actions—so long as personal jurisdiction exists over another RICO codefendant in the forum, *without need for inquiry into the ends of justice*." *Dispensa v. Nat'l Conf. of Catholic Bishops*, 2020 U.S. Dist. LEXIS 89570, *24-

25 (D. N.H. May 21, 2020) (emphasis added). This interpretation effectively renders the provisions of § 1965(b) superfluous, which is improper. *See, e.g., Duncan v. Walker*, 533 U.S. 167, 174 (2001) ("a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant").

Indeed, even the U.S. Department of Justice, the federal agency responsible for criminal enforcement of the RICO Act, has publicly rejected the *ESAB* court's interpretation of § 1965(d) when considering the other subsections:

> Some courts have indicated that 18 U.S.C. § 1965(d) provides for nationwide service of a *summons* against defendants." *Id.* (citing *ESAB*). *However, that position arguably cannot be reconciled with the text of Section 1965 or its legislative history.* As the Second Circuit stated in *PT United Can Co. Ltd.*, 138 F.3d at 71-72, because Section 1965(b) refers to the service of a summons and Section 1965(c) refers to the service of a subpoena, Section 1965(d)'s reference to the service of "[a]ll other process," "means process other than a summons of a defendant or subpoena of a witness." Moreover, as noted above, the Senate Report regarding Section 1965 states that "[s]ubsection (b) [of 1965] provides nationwide service of process on parties," and not subsection (d).

U.S. Dept. of Justice, Criminal Division, Organized Crime & Racketeering Section, *Civil RICO: A Manual for Federal Attorneys*, at 94 n.81 (Oct. 2007), *available at* https://www.justice.gov/criminal/foia/docs/2007civil-rico.pdf (emphases added).

For those reasons, this Court should follow the plain text of § 1965 and reject any interpretation that seeks to authorize nationwide service of a summons on the Skytrail Defendants, as Plaintiffs have attempted here to try and ground jurisdiction against the Skytrail Defendants.[4]

[4] Even if the Court decides that § 1965(d) provides a proper basis for personal jurisdiction, the Court should nevertheless dismiss Plaintiffs' Second Amended Complaint for lack of personal jurisdiction because Plaintiffs do not have a colorable RICO claim. As noted herein, Plaintiffs do not have a colorable RICO claim. Accordingly, the RICO Act does not, in any event, provide a proper basis for the Court to exercise personal jurisdiction over the Skytrail Defendants, and the claim must be dismissed.

Independent from the plain text analysis of § 1965(d) set forth above, the 1997 decision in *ESAB* is also now significantly outdated, having come before numerous, intervening Supreme Court decisions, all of which hold that an assertion of general personal jurisdiction over a defendant is inconsistent with due process absent extensive contacts with the forum.[5]

For instance, in the 2014 decision in *Daimler AG v. Bauman*, the Supreme Court addressed "the authority of a court in the United States to entertain a claim brought . . . against a foreign defendant based on events occurring entirely outside the United States." 134 S. Ct. at 750. The Court noted that the exercise of personal jurisdiction must "compor[t] with the limits imposed by federal due process." *Id.* at 753. Invoking those due process principles, the Court held that general jurisdiction was improper because the defendant was not incorporated in the state in issue and did not have its principal place of business there. *Id.* at 761. Indeed, the Court noted that any other general-jurisdiction rule would be problematic: "Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." Id. at 761–62 (citation and quotation marks omitted).

The Supreme Court has since gone on to reaffirm these due process principles in multiple other cases. *See Bristol-Myers Squibb Co. v. Superior Court of Ca.*, 137 S. Ct. 1773, 1781 (2017) ("What is needed – and what is missing here – is a connection between the forum and the specific claims at issue."); *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549, 1554 (2017) ("Our precedent . . . explains that the Fourteenth Amendment's Due Process Clause does not permit a State to hale an

[5] For the reasons noted above, there can be no possible basis for an assertion of specific jurisdiction, as this case does not arise out of any contact by the Skytrail Defendants and Virginia.

out-of-state corporation before its courts when the corporation is not 'at home' in the State the episode-in-suit occurred elsewhere.").

Notably, the existence of these intervening and binding authorities has been identified by courts within the Fourth Circuit as rejecting claims of personal jurisdiction based on nothing more than service of process under the RICO statute. In *Gibson v. Confie Ins. Group Holdings, Inc.*, No. 2:16cv02872, 2017 U.S. Dist. LEXIS 105702 (D.S.C. July 10, 2017), for instance, the court considered a putative class action alleging that the plaintiffs were defrauded by defendants in the purchase of automobile insurance policies from the defendant and/or its subsidiaries. *Id.* at *3–4. The plaintiffs alleged that defendants conspired together to double charge consumers who missed the deadline to make a monthly payment on their automobile policies. *Id.* at *4–6. Plaintiff asserted, among other counts, violations of RICO. *Id.* at *6. The defendant moved to dismiss for lack of personal jurisdiction. In dismissing the case, the court held:

> [E]ven after an effective service of process, personal jurisdiction must still comport with due process. As explained above, the court finds that Confie's relationship as a corporate parent to the various wholly owned subsidiaries that operate retail locations within South Carolina does not rise to the level of 'considerable control' as outlined in *Daimler AG*, and therefore, the court cannot exercise personal jurisdiction over Confie.

Id. at *16–17 (internal citations omitted). The same result must be reached here, where the Skytrail Defendants have no contacts with Virginia, let alone the type of substantial contacts that were still deemed insufficient to ground personal jurisdiction over the defendants in cases such as *Daimler*.

These Supreme Court decisions affirm a principle of eminent common sense. Service of process is what requires a defendant to respond to a lawsuit; it cannot itself ground jurisdiction. Rather, regardless of the asserted basis for jurisdiction, due process requires that the defendant

have purposefully availed itself of the forum. There is no such purposeful action here by any of the Skytrail Defendants; nor do Plaintiffs allege as such. Hence, they must be dismissed.

B. All claims against Pruett and Skytrail Servicing must be dismissed under Rule 19 because the Tribe and Sky Trail Cash are indispensable parties that cannot be joined.

The Court can also independently dismiss the case because Plaintiffs have failed to name indispensable parties that cannot be joined. The Tribe is the real party in interest in this case and Plaintiffs' purposeful omission of Sky Trial Cash or the Tribe should result in dismissal. In an effort to avoid the Fourth Circuit's holding in *Williams v. Big Picture Loans, LLC*, 929 F.3d 170. 174 (4th Cir. 2019), that tribal lending entities that are arms of a tribe are entitled to tribal immunity, Plaintiffs seek prospective, injunctive relief against the Tribal Defendants[6] in their official and individual capacities instead of naming the Tribe or any lending entity. (SAC ¶¶ 245, 258.)

While Maville may argue that the Tribe and its entities are not the real parties in interest, a review of the claims and relief they seek in the SAC contradict that position. Here, Maville specifically, alleges that she received a usurious loan that violated Florida's licensing and usury laws, and that the loans are null and void under Florida law. (SAC ¶ 266.) Maville seeks to recover from Skytrail Servicing "all amounts repaid on any loans from Sky Trail Cash." (*Id.* at ¶ 270.) Maville and the other Plaintiffs also seek a declaratory judgment that the loan agreements are invalid, and that the loans are uncollectable. (*See e.g.*, *id.* at ¶ 158.) They further seek to enjoin the Tribal Defendants from collecting on the loans. (*Id.*) These remedies hinge on

[6] Plaintiffs' SAC names Joseph Wildcat Sr., Nicole Chapman-Reynolds, Jessi Phillips Lorenzo, George Thompson, Jamie Ann Allen, Jeffrey Bauman Sr., Louis St. Germaine, Racquel Bell, William Graveen and Sarah Pyawasit in their official and individual capacities.

Maville's contention that the loans, issued by the Tribe through the Tribe's lending entities, are void and unenforceable under state law. Therefore, the rights of the Tribe and its lending entities, including Sky Trail Cash, under the loan agreements are at issue in this case, which makes them indispensable parties under Rule 19. *See, e.g., Yashenko v. Harrah's NC Casino Co., LLC,* 446 F.3d 541, 552-53 (4th Cir. 2006) (finding that a tribe was a necessary party under Rule 19 because "any judgment on such a claim would threaten to impair the [Tribe]'s contractual interests"); *Acres Bonusing, Inc. v. Marston,* No. 19-cv-05418-WHO, 2020 WL 1877711, at *7 (N.D. Cal. Apr. 15, 2020 (holding that "entertaining [this] suit would require the court to adjudicate the proprietary of the manner in which tribal officials carried out an inherently tribal function.").

The Tribe and its lending entities are the real party in interest in this suit. They made the loans at issue, and accordingly, their interests are "so situated that the disposition of the action in [their] absence [will] (i) as a practical matter impair or impede [their] ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest." Fed. R. Civ. P. 19(a)(1)(B). It cannot be disputed, however, that the Tribe and its lending entities have tribal immunity and thus cannot be made parties to this suit. Therefore, the claims against Pruett and Skytrail Servicing should be dismissed under Rule 19. *See Yashenko*, 446 F.3d at 553 ("Although the Tribe is a necessary party, because of its status as a sovereign nation, *Kiowa Tribe,* 523 U.S. at 753-55, the Tribe cannot feasibly be joined as a party to the action."); *Jamul Action Committee v. Simermeyer*, 974 F.3d 984, 998 (9th Cir. 2020) (finding that "[t]he balancing of equitable factors under Rule 19(b) almost always favors dismissals when a tribe cannot be joined due to tribal sovereign immunity").

In the interest of preserving judicial economy, and as permitted by Fed. R. Civ. P. 10(c), Pruett and Skytrail Servicing adopt and incorporate by reference arguments for dismissal under Rule 19 made by the Tribal Defendants.

C. Plaintiffs' RICO claims are inadequately pleaded as to Pruett and Skytrail Servicing.

1. Maville impermissibly fails to specify which complained-of conduct was undertaken by Skytrail Servicing or Pruett.

Maville's § 1962(c) RICO claim lumps all Defendants together without articulating what specific misconduct each is alleged to have engaged in. This impermissible "group pleading" alone is sufficient grounds to dismiss the claim. *See Hill v. Stryker Sales Corp.*, No. 4:13-cv-0786-BHH, 2014 WL 4198906, at *2 (D.S.C. Aug. 20, 2014); *McCrea v. Wells Fargo*, No. CV RDB-18-2490, 2019 WL 2513770, at *7 (D. Md. June 17, 2019), *motion for relief from judgment denied*, No. CV RDB-18-2409, 2019 WL 4962022 (D. Md. Oct. 8, 2019); *Hirsch v. Ensurety Ventures, LLC*, No. 3:17-cv-1215-J-39JBT, 2019 WL 8370863 (M.D. Fla. Aug. 6, 2019), *aff'd,* 805 F. App'x 987 (11th Cir. 2020).

While the SAC includes 270 paragraphs, a close review reveals that the factual allegations specific to Pruett and Skytrail Servicing are sparse. Instead, Plaintiffs lean on general allegations as to how the "Defendants" operated and what "Defendants" knew. For example, Maville alleges that:

- Defendants, together with others not yet known to Plaintiffs, marketed, initiated, and collected usurious loans throughout the country, including in Virginia, Georgia, Maryland, Florida, as well as other states with similar law." (SAC ¶ 149.)
- "Defendants knew the loans were illegal . . . ." (*Id.* at ¶ 150.)
- "They" allegedly "charged astronomical interest rates that far exceeded the rates allowed by applicable state laws." (*Id.* at ¶ 151.)

None of these are specific to either Pruett or Skytrail Servicing. Indeed, it is clear that *Pruett* did not market, initiate, or collect loans throughout the country, and *Pruett* certainly did not individually charge any interest rate. He also did not collect or receive the principal, interest, or charges from any loan, including any amount paid by Maville or any other named Plaintiff. Plaintiffs' allegations that Pruett received loan proceeds via the Servicing Agreement or any other separate loan agreement between a separate entity and the Tribe does not change the undisputed fact that neither *Pruett nor Skytrail Servicing* are the lenders in this case. Because the facts on which Plaintiffs base their RICO claims unquestionably do not apply to Pruett, and because Plaintiffs fail to plead any other specific conduct by Pruett on which those claims could rest, Maville's claims against Pruett should be dismissed. *See Jackson v. Warning*, No. CVV PJM 15-1233, 2016 WL 7228866, at *4 (D. Md. Dec. 13, 2016) (quoting *Iqbal*, 556 U.S. at 663).

Similarly, Plaintiffs allege that Sky Trail Cash made the loan and received the principal, interest, and charges from the loan—not Skytrail Servicing. (SAC ¶¶ 189-90.) Skytrail Servicing is not alleged to have either charged an interest rate or received payments from any loan, including any amount paid by Maville or any other named Plaintiff. Although Skytrail Servicing may have provided administrative services to Sky Trail Cash related to Sky Trail Cash's loan business, the allegations of wrongdoing that substantiate the RICO claim are not alleged to have been undertaken by, or apply to, Skytrail Servicing. Indeed, just as a company collecting debt on behalf of an original creditor will be paid pursuant to a servicing agreement, such is the same for Skytrail Servicing. Just because it services certain loans and is paid in return does not mean that Skytrail Servicing is the lender. As Plaintiffs have offered no allegations specific to Skytrail Servicing, the RICO claims against it must also be dismissed.

2. Maville fails to sufficiently allege the existence of a RICO enterprise.

Maville's RICO claims against Pruett and Skytrail Servicing also fail for the independent reason that Maville has not adequately alleged the existence of a RICO enterprise, a required element of the claim. *Myers v. Lee*, No. 1:10-cv-131 (AJT) (JFA), 2010 WL 3745632, at *3 (E.D. Va. Sept. 21, 2010). To plead a claim under RICO, a plaintiff must allege the existence of an enterprise (known as the "RICO enterprise") that is corrupted by the wrongful conduct of defendants (known as "RICO persons."). A "RICO person must be distinct from the RICO enterprise." *Myers*, 2010 WL 3745632, at *3. "[R]ote 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 Rule 12(b)(6) pleading standards. *Nunes v. Fusion GPS*, 531 F. Supp. 3d 993, 1007 (E.D. Va. 2021)

Here, Maville alleges that all the named Defendants formed an "association in fact" enterprise, which the Supreme Court has recognized as "a group of persons associated together for a common purpose of engaging in a course of conduct." *Boyle v. United States*, 556 U.S. 938, 946 (2009). An 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." *Id.* Specifically, Maville alleges that the "Defendants" have established "one or more enterprises for one or more association-in-fact enterprises for the purpose of collecting unlawful debts." (SAC ¶ 124.) Alternatively, Maville alleges that "each one of the LDF Lending Entities (such as Ningodwaaswi) are separate enterprises as they are distinct legal entities. (*Id.* at ¶ 125.)

Maville fails to allege those fundamental elements to show an enterprise existed. Instead, she alleges only that "*[a]s detailed above,* Defendants created an array of different companies for the purpose of making usurious loans" (SAC ¶ 126 (emphasis added).) But contrary to the emphasized text, the only details Plaintiffs offer are that one tribal lending entity (Sky Trail Cash) entered into a Servicing Agreement with Skytrail Servicing, a fact that is not in dispute. In fact, Plaintiffs do not allege any of the three core structural features identified by the Supreme Court. With regard to the relevant relationships, Plaintiffs offer a lengthy exposition about *other* tribal lending "schemes" that did not involve Pruett, Skytrail Servicing, the Tribe, or any other Defendant named in this case. (*See, e.g.*, SAC ¶¶ 63-99.) Plaintiff cannot simply rely on allegations about the structure of other tribal lending businesses and ask the Court to assume that the Tribe utilized the same business structure. Plaintiff similarly relies on recitations of why other tribes, rather than the Tribe here, engage in lending activities in their attempt to allege a common purpose between the Tribe and Defendants here.

Because Plaintiffs do not offer factual allegations related to the structure of the RICO enterprise they claim exists *in this case*, and because they utilize impermissible group pleading, as detailed above, they necessarily fail to allege what roles each individual played in the claimed enterprise between the "Defendants". That, too, renders their pleadings inadequate as a matter of law. *See Manago v. Cane Bay Partners VI, LLLP,* No. 20-CV-0945-LKG, 2022 WL 4017299, at *6 (D. Md. Sept. 2, 2022) ("[T]here are no facts in the amended complaint to show . . . what 'roles and responsibilities' the Cane Bay Defendants had in maintaining the alleged RICO enterprise."); *Adolphe v. Option One Mortg. Corp.,* No. 3:11-cv-418, 2012 WL 5873308, at *5 (W.D.N.C. Nov. 20, 2012) ("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'").

Indeed, Plaintiffs allege that the *Tribal Council* has the power to manage lending activities for the Tribe, and that the purportedly illegal enterprise was merely the delegated agents of the Tribe managing those lending activities. (SAC ¶¶ 131-137.) Plaintiffs also allege that the *Tribal Defendants* delegated agents or entities to manage those lending businesses. (*Id.* at ¶ 103.) In other words, there is a "complete overlap between the defendants, their alleged agents, and the enterprise." *Myers,* 2010 WL 3745632, at *4. And each of the alleged RICO persons—the Tribe, its Tribal Council, its subsidiaries, and non-tribal agents Pruett and Skytrail Servicing—has done nothing other than conduct their normal business functions for each separate lending entity that has separately associated with the Tribe. Ultimately, the relevant allegations are nothing more than a claim "that the defendants associated with themselves for the purpose of conducting [their] business affairs through entities created for that purpose." But those facts are insufficient because there are no facts to suggest that neither Skytrail Servicing nor Pruett were involved with any other lending entity or servicing agreement between the Tribe and any other entity. Further, there are no facts to suggest that Skytrail Servicing or Pruett had any agreements with any of the Tribe's other lending entities. As such, neither Skytrail Servicing nor Pruett could have been part of any type of "global" association-in-fact enterprise involving any of the other named Defendants. And even if Plaintiffs had facts to support the "global" association-in-fact enterprise, those allegations would still be insufficient to satisfy the distinctiveness requirement and, therefore, fatal to their RICO claims. *Id.* at *5.

Thus, Maville is left only with her alternative theory that each one of the LDF Lending Entities is a separate enterprise. Under this theory, Skytrail Servicing, Sky Trail Cash, and Pruett would conceivably make up the alleged association-in-fact enterprise.

However, if that is the operative RICO theory, then Plaintiffs fail to allege that particular enterprise is distinct from the Defendants themselves. "The 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). Thus, "liability depends on showing that the defendants conducted or participated in the conduct of the 'enterprise's affairs,' not just their own affairs." *Id.* (citing *Reves v. Ernst & Young*, 507 U.S. 170, 185 (1993)). Because the Second Amended Complaint fails to sufficiently allege any distinction between the RICO persons and the RICO enterprise, regardless of which theory under which Plaintiff proceeds, it must be dismissed.

3. Maville does not plausibly allege that Pruett or Skytrail Servicing conducted or controlled the affairs of any enterprise.

The Supreme Court has held that "[m]ere participation in the activity of [an] enterprise is insufficient" to impose liability under Section 1962. *Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993). Similarly, liability will not attach based on a defendant's "mere participation in a racketeering act." *D'Addario v. D'Addario*, 901 F.3d 80, 103 (2d Cir. 2018). And "[a] defendant does not 'direct' an enterprise's affairs under § 1962(c) merely by engaging in wrongful conduct

that assists the enterprise." *Redtail Leasing, Inc. v. Bellezza*, No. 95-5191, 1997 WL 603496, at *5 (S.D.N.Y. Sept. 30, 1997)). For example, performing "consulting services," and providing "important and indispensable . . . services," does not result in RICO liability. *University of Maryland at Baltimore v. Peat, Marwick, Main & Co.*, 996 F.2d 1534, 1539 (3d Cir.1993). Evidence showing that a defendant provided advice to the enterprise, performed services, and specifically failed to stop illegal activity is also insufficient to impose liability. *Walter v. Drayson*, 538 F.3d 1244, 1248-49 (9th Cir. 2008). Even a defendant's "substantial persuasive power to induce the alleged enterprise to take certain actions" is insufficient. *Morin v. Trupin*, 835 F. Supp. 126, 135–36 (S.D.N.Y. 1993). As is perhaps most relevant here, "simply performing services for an enterprise, even with knowledge of the enterprise's illicit nature, is not enough to subject an individual to RICO liability under § 1962(c); instead, the individual must have participated in the operation and management of the enterprise itself." *Goren v. New Vision Int'l*, 156 F.3d 721, 728 (7th Cir. 1998).

With respect to Plaintiffs' theory that the "Defendants" established one or more association-in-fact enterprises, the SAC does not sufficiently allege that either Pruett or Skytrail Servicing operated or managed that enterprise. Indeed, the SAC alleges only that Pruett and Skytrail Servicing provided services as an agent for Sky Trail Cash and that each profited indirectly from the enterprise. The SAC does *not* allege that either Skytrail Servicing or Pruett had any other involvement with any other lending entity or that Skytrail Servicing serviced any other lender. Absent facts showing that Skytrail Servicing or Pruett were involved with anything *beyond the servicing agreement for Sky Trail Cash*, Plaintiffs have no facts to support that either Skytrail Servicing or Pruett controlled any larger, "global" enterprise involving the Tribe or any other

lending entity. None of the allegations constitute the type of control necessary to impose civil liability under Section 1962(c). The Section 1962(c) claims must therefore be dismissed.

4. Maville's RICO conspiracy claim is barred under the intra-corporate conspiracy doctrine and because Plaintiff fails to plausibly allege Pruett or Skytrail Servicing acted knowingly.

RICO's conspiracy provision, 18 U.S.C. § 1962(d), makes it unlawful to conspire with others to violate any substantive provision of the RICO statute. To adequately allege a conspiracy under § 1962(d) the plaintiff must allege facts showing "(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 v. Am. Web Loan*, No. 4:17-cv-145, 2019 WL 1320790, at *11 (E.D. Va. Mar. 22, 2019) (citing *United States v. Posada-Rios*, 158 F.3d 832, 857 (5th Cir. 1998); *see also Hecht v. Commerce Clearing House, Inc.*, 897 F.2d 21, 25 (2d Cir. 1990) ("Because the core of a RICO civil conspiracy is an agreement to commit predicate acts, a RICO civil conspiracy complaint must, at the very least, allege specifically such an agreement."); *Walters v. McMahen*, 795 F. Supp. 2d 350, 355 (D. Md. 2011); *Proctor v. Metro. Money Store Corp., et al.*, 645 F. Supp. 2d 464, 477 (D. Md. 2009) (quoting *United States v. Pryba*, 900 F.2d 748, 760 (4th Cir. 1990)).

The first element requires that the agreement must be between "two or more people." *Solomon*, 2019 WL 1320790, at *11. However, longstanding RICO jurisprudence holds that a business entity "cannot conspire with its employees — and employees, when acting within the scope of their employment, cannot conspire amongst themselves." *Walters*, 795 F. Supp. 2d at 358. In other words, if the alleged RICO agreement is intra-corporate, the agreement requirement cannot be met because the corporation is considered a single entity. The doctrine applies here because Plaintiffs allege that the Tribe conspired only with its own lending arm and vendor agents

acting on behalf of that lending entity. There are no allegations that Pruett or Skytrail Servicing acted outside the scope of that agency relationship—which requires dismissal of the conspiracy claim.

Second, "Liability [under § 1962(d)] only attaches to '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). Plaintiff's allegations are devoid of facts as to Pruett or Skytail Servicing's knowledge. Instead of pointing to a specific agreement between Defendants, Plaintiffs instead only offer the conclusory allegation that the harm they allege was "facilitate[ed] [by] a series of agreements" between Defendants. (SAC ¶ 231.) However, other than the Servicing Agreement between Skytrail Servicing and Ningodwaaswi, LLC, Plaintiffs do not explain how, when, or where any agreement between the named Defendants was reached (or even that an agreement was reached), and Plaintiffs fail to explain what it means to facilitate an agreement 'designed to' violate other sections of the RICO statute.

5. Pruett and Skytrail Servicing incorporate Tribal Defendants' arguments.

In the interest of preserving judicial economy, and as permitted by Fed. R. Civ. P. 10(c), Pruett and Skytrail Servicing adopt and incorporate by reference arguments for dismissal of Plaintiffs' claims under RICO made by the Tribal Defendants.

D. Maville's unjust enrichment claim fails because she conferred no direct benefit on either Pruett or Skytrail Servicing.

To state a claim for unjust enrichment under Florida law, a plaintiff must plead facts sufficient to show "a benefit conferred upon a defendant by the plaintiff, the defendant's appreciation of the benefit, and the defendant's acceptance and retention of the benefit under circumstances that make it inequitable for him to retain it without paying the value thereof." *Fla.*

Power Corp. v. City of Winter Park, 887 So. 2d 1237, 1241 n.4 (Fla. 2004) (citing *Ruck Bros. Brick, Inc. v. Kellogg & Kimsey, Inc.,* 668 So. 2d 205, 207 (Fla. 2d DCA 1995)). In addition, Florida requires that, in order to recover, the plaintiff must have conferred the benefit on the defendant directly. *Pain Clinic of Northwest Fl. v. Allscripts Healthcare Solutions,* No. 12-4937I-CA-40, 2014 Fla. Cir. LEXIS 52409, at *2 (Fla. Cir. Ct. July 28, 2014); *CFLB P'ship, LLC v. Diamond Blue Int'l, Inc.,* 47 Fla. L. Weekly 1812 (Dist. Ct. App. 2022); *see also, Johnson v. Catamaran Health Sols., LLC,* 687 F. App'x 825, 830 (11th Cir. 2017) (dismissing unjust enrichment claim under Florida law because membership fees paid to one entity did not constitute a direct benefit to another entity even though they accrued to the second entity's benefit).

Maville's unjust enrichment claim fails to allege that she *directly* conferred any benefits on either Pruett or Skytrail Servicing. Maville admits that she took out a loan from Sky Trail Cash, and paid interest and fees to Sky Trail Cash. (SAC ¶¶ 189-90; *see also* Pruett Decl., Exh. A.) She does not allege that she ever transacted directly with either Skytrail Servicing or Pruett.

Those allegations are akin to the circumstances in *Extraordinary Title Servs., LLC v. Fla. Power & Light Co.,* 1 So. 3d 400, 404 (Fla. Dist. Ct. App. 2009). In that case, the plaintiff transacted with the Florida Power and Light Co. However, it also brought an unjust enrichment claim against Florida Power and Light Group, the parent company of Florida Power and Light Co. The court dismissed that claim on the grounds that the plaintiff had contracted with Florida Power and Light and paid Florida Power and Light. It had "absolutely no relationship with [Florida Power and Light] Group" and had "not conferred a direct benefit upon Group." *Id.* Absent a direct relationship, Florida's "direct benefit" requirement could not be met. *Id.* So too here. Maville does not allege any direct relationship with Pruett or Skytrail Servicing—merely that they provided services to Sky Trail Cash and profited indirectly from the loan she received from Sky Trail Cash.

In fact, the Second Amended Complaint and Maville's loan agreement make clear that the deficiency is not merely a failure of pleading. Rather, no direct relationship existed.

Alternatively, if Plaintiff's RICO claims are dismissed, her state law unjust enrichment claim should also be dismissed for lack of pendent jurisdiction. *See, e.g., Alexandria Resident Council, Inc. v. Alexandria Redevelopment & Hous. Auth.,* 11 F. App'x, 283, 287 (4th Cir. 2001).

E. If the Court dismisses Plaintiffs' RICO claims, Pruett and Skytrail Servicing should be dismissed as parties for lack of personal jurisdiction.

Finally, even if this Court follows *ESAB*, Pruett and Skytrail Servicing should be dismissed as parties if this Court dismisses the RICO claims against them. There simply is no basis to exercise personal jurisdiction over either Skytrail Defendant in the absence of the RICO claims, which precludes Plaintiffs from relying on § 1965 as a basis for jurisdiction. To that end, Skytrail Servicing and Pruett incorporate their arguments regarding personal jurisdiction that were asserted in section A, *supra*. Furthermore, in the absence of the RICO claims, this Court should decline jurisdiction over Maville's unjust enrichment claim and dismiss it. *See, e.g., United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966) ("It has consistently been recognized that pendent jurisdiction is a doctrine of discretion, not of plaintiff's right . . . . [I]f the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well.").

V. CONCLUSION

For the reasons set forth above, Skytrail Defendants William Cheney Pruett and Skytrail Servicing Group LLC ask that Plaintiffs' Second Amended Complaint be dismissed based on lack of personal jurisdiction and for failure to state a claim.

WILLIAM CHENEY PRUETT and
SKYTRAIL SERVICING GROUP, LLC

By: */s/David N. Anthony*

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February 2023, I caused the foregoing document to be filed with the Clerk of Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

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