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 REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

Defendants William Cheney Pruett[1] and Skytrail Servicing Group, LLC (collectively the "Skytrail Defendants"), by counsel, respectfully 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).

I. INTRODUCTION

Plaintiff's Opposition Brief cannot change the core allegations that doom the SAC as to the Skytrail Defendants: (1) neither Skytrail Servicing nor Pruett has any connection to the Eastern District of Virginia; (2) there is no relationship between the Skytrail Defendants and any other lending entity affiliated with the Tribe, including Defendants who serviced those lending entities; (3) there is no distinction between Sky Trail Cash, which made Plaintiff's loan, Skytrail Servicing, which provides services to Sky Trail Cash, and Pruett, who owns Skytrail Servicing sufficient to constitute a distinct RICO enterprise; and (4) Plaintiffs fail to allege that they provided any benefit

[1] All terms defined in Defendants William Cheney Pruett and Skytrail Servicing Group, LLC opening memorandum shall have the same definitions in this reply brief.

on Skytrail Defendants *directly*, as required by Florida law. For these reasons, Plaintiff's Second Amended Complaint should be dismissed with prejudice.

II. ARGUMENT

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

At the outset, 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. They do not reside, are not found, have no agents, and do not transact any affairs in the Commonwealth of Virginia. And, as Skytrail Defendants explain in their opening brief, 18 U.S.C. § 1965(d) does not authorize nationwide service of process for any violation of the RICO statute. Rather, it applies only to situations in which the RICO provisions at issue *are silent* as to how service may be made—which §§ 1965(a) and (b) are not. Dkt. 147 at 9. To the extent Plaintiffs rely on *ESAB Grp., Inc. v. Centricut, Inc.*, 126 F.3d 617 (4th Cir. 1997), its logic has been rejected by almost every other Court to consider the issue as incompatible with the plain language of the statute, as explained in Skytrail Defendants' opening brief.[2] Dkt. 147 at 10.

In addition, if the Court finds that Plaintiff failed to adequately plead its claims under RICO and dismisses those claims pursuant to Federal Rule of Civil Procedure 12(b)(6), the parties agree that it must also dismiss Plaintiff's unjust enrichment claims for want of personal jurisdiction. (*See* Dkt. 153 at 7 n.5) (conceding that absent Plaintiffs' RICO claim the Court would lack jurisdiction over Skytrail Defendants).

[2] Furthermore, *ESAB* did not decide any issue related to venue. *ESAB*, 126 F.3d at 627. As further set forth in the concurrent motion to compel arbitration, venue in this Court is improper and the correct venue for any of Plaintiff's surviving claims is in arbitration.

B. Plaintiff's allegations that the Tribal Officials effectively control the Tribe and Tribal Lending entities cannot be squared with her allegations that the Skytrail Defendants effectively control the Tribal lending entity.

Plaintiff argues that the Tribe and Sky Trail Cash—the Tribal Lending Entity that actually contracted to offer a loan to the Plaintiff—are not necessary parties to this litigation by citing *Hengle v. Asner,* 433 F. Supp. 3d 825 (E.D. Va. 2020) for the proposition that "if successful on the merits of their claims, Plaintiffs will enjoin the Tribal Officials who, by virtue of their positions on the Tribe's Executive Council, *control* the Tribal Lending Entities, rendering the Tribal Lending Entities unnecessary to accord complete relief." *Id.* at 871 (emphasis added). Plaintiff continues by arguing that the "Tribal Officials—the very people that *retain control of the lending entities*—are parties to this litigation and share identical interests to the absent entities." (Dkt. 153 at 12.) In other words, Plaintiff contends that the Tribal Officials effectively control the Tribal Lending Entities including Sky Trail Cash. Plaintiff's support for those arguments is found in her allegations that the *Tribal Council* has the power to manage lending activities for the Tribe. (SAC ¶¶ 131-137.) According to Plaintiff, the *Tribal Defendants* delegated agents or entities to manage those lending businesses. (*Id.* at ¶ 103.) Indeed, Plaintiff acknowledges that the Tribe's Bylaws designate the Tribal Council as its "governing body" and specifically assign it with the duty to manage "*all economic affairs and enterprises of the Tribe*." (SAC ¶ 4 (quoting Ex. 2 of SAC at Art. VI(f))) (emphasis added). Consequently, Plaintiff seeks injunctive relief against the Tribal Officials in their official capacities. (SAC ¶ 245) ("Plaintiffs seek a declaratory judgment that the loan agreements are invalid and the loans are uncollectable. Plaintiffs also seek to enjoin *the Tribal Council, in their official capacity, from allowing collection on the loans*.") (emphasis added). In contrast, she does not seek injunctive relief against Pruett or Skytrail Servicing seeking that they cease collection of the loans—a tacit recognition that the Skytrail Defendants lack any such authority.

That is not the end of the story, however. As the Skytrail Defendants pointed out in their opening brief, 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). The Court noted that the phrase "conduct or participate," as used in the RICO statute, requires a role in directing the enterprise's affairs. *Id.* The Fourth Circuit has properly recognized this limitation. *United States v. Norton*, 17 F. App'x 98, 101 (4th Cir. 2001) (overturning conviction because jury was not instructed that a defendant must direct the enterprise's affairs). As Plaintiff concedes, the purpose of the *Reves* limitations is to exclude mere agents providing professional services to a RICO enterprise. (Dkt. 153 at 30-31.)

Faced with that standard, Plaintiff's claims related to control of the Tribal Lending Entities alchemize into something different entirely. Gone are the claims that the Tribal Officials have complete authority to manage the Sky Trail Cash, absolving them from having to join either entity as a Defendant. Instead, Plaintiff implies that the Skytrail Defendants are "*running* a rent-a-tribe enterprise." (Dkt. 153 at 30).[3] Plaintiff describes, at length, various precedents in which defendants were held to meet the standard when they "were not mere passive investors in the lending scheme but *possessed significant authority and influence* over the alleged enterprise," (Dkt.153 at 31 (citing *Hengle*, 433 F. Supp. 3d at 897)); maintained "control over underwriting, origination, marketing, and servicing the loans," (*Id.* (citing *Smith*, 2021 WL 1257941 at *21));

[3] Notably, Plaintiff's brief does not cite to even a single paragraph in the SAC containing allegations parallel to those in the cases Plaintiff cites, likely because Plaintiff does not make allegations specific to the Skytrail Defendants, but instead relies on impermissible group pleading (as explained in Skytrail Defendants' opening memorandum, Dkt. 147 at 16-17). Plaintiff appears to be hoping that the Court will accept that if plaintiffs in other tribal lending cases alleged damning facts, the Court will assume that Plaintiff here did as well. The Court should not do so.

or "intentionally and willfully dominated and still dominate the operations" of the tribal lending entity. (*Id.* at 31 (citing *Gingras*, 2016 WL 2932163, at *31)).

Plaintiff cannot have it both ways. If the Tribal Officials effectively control Sky Trail Cash, the Skytrail Defendants do not control the affairs of the alleged RICO enterprise, mandating dismissal. If the Skytrail Defendants effectively control the affairs of Sky Trail Cash, the Tribal Officials cannot control the Lending Entity and it is a necessary party to the litigation that has not been joined, again mandating dismissal.

In any event, Maville seeks to recover from the Skytrail Defendants "all amounts repaid on any loans *from Sky Trail Cash*." (*Id.* at ¶ 270.) (emphasis added). Maville and the other Plaintiffs also seek a declaratory judgment that the loan agreements between them and Sky Trail Cash are invalid, and that the loans offered by Sky Trail Cash are uncollectable. (*See e.g., id.* at ¶ 158.) They further seek to enjoin *the Tribal Defendants* from collecting on the loans. (*Id.*) (emphasis added). Those remedies hinge on Maville's contention that the loans, issued through the Tribe's Lending Entity Sky Trail Cash, are void and unenforceable under state law. The rights under a loan contract between Plaintiff and Sky Trail Cash are the heart of the issues in this case, which makes it an indispensable party under Rule 19.

A simple example shows why the Tribal Lending Entity is an indispensable party. If Plaintiffs were to obtain an injunction in this case, it would not bind the Tribe or Sky Trail Cash, which are not named as Defendants. Sky Trail Cash would therefore be free to later sue Plaintiff to enforce the terms of its loan agreements in the Eleventh Circuit, where Plaintiff is located. Any such suit could leave Plaintiff subject "to the double-bind of a judgment in this case [rendering the loan agreements unenforceable] and a judgment in another case ordering that the same [contracts] be enforced." *Teamsters Local Union No. 171 v. Keal Driveaway Co.*, 173 F.3d 915, 918-19 (4th

Cir. 1999); *EEOC v. Peabody Western Coal Co.*, 610 F.3d 1070, 1078 (9th Cir. 2010) (if a plaintiff were "victorious . . . but the Nation has not been joined, the Nation could possibly initiate further action to enforce" a contractual provision, putting the plaintiff "between the proverbial rock and a hard place") (internal citation omitted). Thus, the Tribe and its lending entities are necessary parties to this lawsuit. Because there is no dispute that they cannot be made parties due to their sovereign immunity, Plaintiff's claims against Pruett and Skytrail Servicing should be dismissed under Rule 19.

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

The RICO allegations in the SAC fail to allege facts sufficient to state a claim against either Pruett or Skytrail Servicing. As an initial matter, and despite this being Plaintiffs' third complaint, they utilize impermissible "group pleading" and fail to attribute specific conduct to each named Defendant in the context of their RICO claims. As the Skytrail Defendants explained in their opening brief, this alone is sufficient grounds to dismiss the RICO claims. (Dkt. 147 at 16-17). However, even if Plaintiffs are permitted to plead allegations against a group of Defendants without attributing particular conduct to each Defendant, the SAC still fails to adequately allege a RICO claim. Plaintiff's allegations also cannot support the existence of a single enterprise as a matter of law, fail to allege facts sufficient to show the Skytrail Defendants controlled any such enterprise, and also fails to allege the necessary distinctiveness. *See Myers v. Lee,* No. 1:10-cv-131 (AJT) (JFA), 2010 WL 3745632, at *3 (E.D. Va. Sept. 21, 2010) (dismissing RICO claims under Sections 1962(c) and 1962(d) for failing to allege an enterprise distinct from the defendants).

1. Plaintiff fails to allege the existence of a single, "all Defendant enterprise."

To state a RICO claim based on an association-in-fact enterprise under Section 1962(c), a plaintiff must plausibly allege "a [common] purpose, *relationships among those associated with*

the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose" and that the defendant "person" is distinct from the alleged "enterprise." *Nunes v. Fusion GPS*, 531 F. Supp. 3d 993, 1006 (E.D. Va. 2021) (emphasis added).

Plaintiff alleges two alternative enterprise theories. Under the first theory, all *the named Defendants* formed an "association in fact" enterprise. (SAC at ¶ 126). But the Skytrail Defendants cannot be parties to the alleged enterprise between *all* Defendants. As Plaintiff notes in the SAC, "[a]n association-in-fact enterprise" requires "relationships among those associated with the enterprise." (SAC at ¶ 123). But Plaintiff fails to allege any relationship between the various Defendants other than the mere fact that each is affiliated with the Tribe. With respect to the Skytrail Defendants, they are only a vendor of Sky Trail Cash—not to any other Tribal Lending Entity. There are no alleged agreements between Skytrail Servicing and any other tribal official. There are no alleged agreements between Pruett and any other lending entity or tribal official. Skytrail Defendants' only connection to the allegations in this case are through their business with Sky Trail Cash. No other Defendants are alleged have any connection with Sky Trail Cash, except through the Tribe. And Plaintiff does not allege that the Tribe constituted the RICO entity, because doing so would necessarily raise issues of sovereign immunity. As a result, there are simply no allegations showing any relationship among those associated with the alleged RICO entity.

Indeed, even Plaintiff's brief in opposition fails to identify the relationships between the Defendants. Instead, Plaintiff merely asserts that the SAC "provides extensive details regarding the relationships between the members of this enterprise." (Dkt. 153 at 23 (citing SAC ¶¶ 2, 3,63-79). But tellingly, the "extensive details" Plaintiff cites relate not to *this* Tribe, or *this* business model. Instead, Plaintiff herself explains they relate to "the creation of the tribal lending business model," (Dkt. 153 at 23), as if all Tribal lending was fungible. But that is not true. Plaintiff cannot

carry her pleading burden for every Tribal lender in the country simply by claiming that there is only a single Tribal lending model rendering all other facts irrelevant. There is not a single model, and the facts relating to the structure of the model matter. Plaintiffs' allegations relating to *other tribal lending business models* are categorically irrelevant. Finally, Plaintiff's allegations regarding the alternative single-lender enterprise cannot show the relationships between lenders necessary to establish that all the Tribal Lenders associated with the Tribe constitute a single enterprise. As a matter of law, Plaintiff has not alleged any relationship between Skytrail Defendants and any other lending entity defendants sufficient for the Court to find a single association in fact.

2. Plaintiff fails to allege the existence of a "Sky Trail Cash" enterprise separate from Sky Trail Cash.

In the alternative to her allegation that all the unconnected Tribal Lenders constituted a single enterprise, Plaintiff alleges that each Tribal Lending Entity constituted a separate enterprise for RICO purposes. (SAC at ¶ 125). Plaintiffs also allege that the *Tribal Defendants* delegated agents or entities to manage those lending businesses. (*Id.* at ¶ 103.) As relevant to the Skytrail Defendants, Plaintiffs allege the RICO enterprise was Sky Trail Cash. In other words, under Plaintiff's alternative theory Skytrail Servicing, Sky Trail Cash, and Pruett make up the entirety of the alleged association-in-fact enterprise. (*Id.*) This theory creates a "complete overlap between the defendants, their alleged agents, and the enterprise." *Myers,* 2010 WL 3745632, at *4.

That theory is fatally flawed, however, because it is black-letter law that a "RICO person must be distinct from the RICO enterprise." *Myers,* 2010 WL 3745632, at *3; *New Beckley Min. Corp. v. Int'l Union, United Mine Workers of Am.*, 18 F.3d 1161, 1163 (4th Cir. 1994) (upholding dismissal of RICO claims because the alleged RICO persons were not distinct from the alleged RICO enterprise that employed them). "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).

Indeed, "Courts have overwhelmingly rejected attempts to characterize routine commercial relationships as RICO enterprises[,]" finding that such allegations fail to plead the common purpose, relationship, and distinctiveness elements required under RICO. *Gomez v. Guthy-Renker, LLC*, No. EDCV 14-01425, 2015 WL 4270042, at *8-11 (C.D. Cal. July 13, 2015) (citing cases). As the Fourth Circuit has repeatedly advised, courts "must exercise caution to ensure that RICO's extraordinary remedy does not threaten the ordinary run of commercial transactions." *US Airline Pilots Ass'n v. Awappa, LLC*, 615 F.3d 312, 317 (4th Cir. 2010). In making this determination, the U.S. Supreme Court has instructed "that courts consider whether the affiliated corporate entities have a complete unity of interest." *Advanced Health-Care Servs., Inc. v. Radford Cmty. Hosp.*, 910 F.2d 139, 146 (4th Cir. 1990) (citing *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 769 (1984)).

Of course, that is all Plaintiff alleges—that Sky Trail Cash is a business that exists solely to provide loans, she took out what she alleges to be an illegal loan from Sky Trail Cash,[4] and that

[4] Although Plaintiff alleges that Skytrail Defendants functionally made the loan to Plaintiff, that argument is contradicted by the Servicing Agreement Plaintiff attached to the Complaint, under which Sky Trail Cash makes and owns its loans. *See* Dkt. 135 Ex. 3 ¶ 1.5. As such, the Court need not credit the allegations as true. *Jeffrey M. Brown Assocs., Inc. v. Rockville Ctr. Inc.*, 7 F. App'x 197, 202 (4th Cir. 2001) (we need not accept as true . . . allegations in the complaint that are contradicted by the attachments); *Fayetteville Investors v. Commercial Builders, Inc.*, 936 F.2d

Skytrail Servicing and Pruett contracted with Sky Trail Cash to facilitate that allegedly illegal loan. Plaintiff's SAC merely describes a corporate entity, associated with contracted agents, carrying out the regular (and indeed, exclusive) affairs of the corporation. But longstanding RICO jurisprudence holds that a business entity cannot conspire with its employees or agents, and that employees and agents, when acting within the scope of their employment and agency, cannot conspire amongst themselves. *Walters v. McMahen,* 795 F. Supp. 2d 350, 358 (D. Md. 2011). "Without an indication that 'the cooperation in this case exceeded that inherent in every commercial transaction,'" Plaintiffs cannot show that Defendants "joined together to create a distinct entity for purposes" of the allegedly wrongful activity. *Peters v. Aetna, Inc.*, No. 1:15-CV-00109-MR, 2016 WL 4547151, at *9 (W.D.N.C. Aug. 31, 2016); *see also Crichton v. Golden Rule Ins. Co.*, 576 F.3d 392, 399 (7th Cir. 2009) (allegations defendant acted as service provider insufficient to plead distinctiveness); *cf Mitchell Tracey v. First Am. Title Ins. Co.*, 935 F. Supp. 2d 826, 844 (D. Md. 2013) (allegations consistent with performance of ordinary business functions in contractual arrangement insufficient to plead distinctiveness).

Thus, under Plaintiff's Sky Trail Cash enterprise theory, there is no distinction between the RICO persons (Sky Trail Cash, Skytrail Servicing, and Pruett) and the RICO enterprise (same). Absent a distinction, Plaintiff's single-lender theory against the Skytrail Defendants fails to state a claim under RICO and must be dismissed. *See New Beckley Min. Corp.* 18 F.3d at 1163.

3. Plaintiff fails to allege that the Skytrail Defendants controlled any enterprise.

To be liable under 18 U.S.C. § 1962(c), a Plaintiff must control or direct the RICO enterprise. *See Shapiro v. Shellpoint Mortg. Servicing,* No. DLB-22-1024, 2023 U.S. Dist. LEXIS

1462, 1465 (4th Cir.1991) ("[I]n the event of conflict between the bare allegations of the complaint and any exhibit attached pursuant to Rule 10(c) . . . the exhibit prevails.").

16048, at *9 n.3 (D. Md. Jan. 30, 2023) ("Shapiro offers no allegations that indicate that [Defendant], through racketeering activity, acquired interest or control of an enterprise."). "Mere participation in the activity of [an] enterprise is insufficient" to impose liability under Section 1962 as is "mere participation in a racketeering act." *Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993); *see also D'Addario v. D'Addario*, 901 F.3d 80, 103 (2d Cir. 2018). "[S]imply 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)." *Goren v. New Vision Int'l*, 156 F.3d 721, 728 (7th Cir. 1998).

As explained *supra*, under Plaintiff's "all Defendant enterprise" theory, the *Tribal Council* has the power to manage lending activities for the Tribe. (SAC ¶¶ 131-137). These allegations state that (1) "the Tribal Council directs, controls, and oversees 'all economic affairs and enterprises of the Tribe,' including each of its lending subsidiaries" (SAC ¶¶ 4, 131) and (2) Nicole Chapman-Reynolds and Jessi Phillips Lorenzo – two members of the Tribal Council – "directly oversee and control the Tribe's involvement in the lending scheme" (SAC ¶ 5).

Plaintiff argues that because the Tribal Council has the exclusive power to manage the lending activities and is independently capable of ensuring Sky Trail Cash complies with any injunction this Court may issue, neither the Tribe nor the lending entities themselves need be named and are not necessary parties under Fed. R. Civ. P. 19. If that is the case, then the Skytrail Defendants certainly could not have controlled any enterprise predicated on the Tribe's lending activities.

Although Plaintiff goes out of her way to characterize it as more, the Court need not credit Plaintiff's characterizations. Instead, it should review the Service Agreement itself, which Plaintiff attached as an exhibit to the SAC. *See Jeffrey M. Brown Assocs., Inc. v. Rockville Ctr. Inc.*, 7 F.

App'x 197, 202 (4th Cir. 2001) (we need not accept as true . . . allegations in the complaint that are contradicted by the attachments); *Fayetteville Investors v. Commercial Builders, Inc.*, 936 F.2d 1462, 1465 (4th Cir.1991) ("[I]n the event of conflict between the bare allegations of the complaint and any exhibit attached pursuant to Rule 10(c) . . . the exhibit prevails."). That agreement makes clear that Skytrail Servicing provided only services at the direction of the Tribal Lending Entity, Sky Trail Cash. Without facts indicating that Defendants engaged in something more than a standard services agreement, Plaintiffs' Section 1962(c) claim must be dismissed.

4. Plaintiff's RICO conspiracy claim under 18 U.S.C. § 1962(d) fails because Plaintiff does not allege that Pruett or Skytrail Servicing acted knowingly.

To adequately allege a conspiracy under Section 1962(d), "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) (emphasis added). But Plaintiff's allegations contain yet another fatal disconnect. On the one hand, she contends that the allegedly illegal loans offered to her and others by Sky Trail Cash constitute the RICO predicate acts. But neither Skytrail Servicing nor Pruett was a party to those loans or knowingly agreed to participate in offering illegal loans.

On the other hand, the only agreement that Skytrail Servicing and Pruett entered into is the Servicing Agreement, which provides that Skytrail Servicing will provide legitimate services to Sky Trail Cash, the lender who actually makes and owns the loans at issue. (*See* Servicing Agreement, ¶ 1.5.) Those services, if completed, do not constitute a violation of the RICO statute. The services Skytrail Servicing offers to Sky Trail Cash are no different than those offered in the mortgage servicing industry. *See, e.g., Cervantes v. Countrywide Home Loans, Inc.,* 656 F.3d 1034, 1039 (9th Cir. 2011) ("The servicer of the loan collects payments from the borrower, sends payments to the lender, and handles administrative aspects of the loan."). Of course, participating

in a loan servicing relationship does not constitute knowing agreement to a RICO violation.

Plaintiff attempts to distract from that disconnect by claiming that the Skytrail Defendants had to know their conduct violated RICO. There are no allegations that the loans offered by Sky Trail Cash violated the laws of every state, that the Skytrail Defendants knowingly agreed to having Sky Trail Cash make the loans in states where the loans would arguably be illegal, or knew that plaintiffs would contend that state usury laws might be argued to apply to the loans at all—especially since the Loan Agreements in question contain choice of law provisions in which both parties agree to be governed by Tribal law.

Instead, Plaintiff offers only the bare legal conclusion that Skytrail Defendants entered into an agreement 'designed to' violate other sections of the RICO statute. These allegations cannot be substituted for facts supporting a "*knowing agreement.*"

D. Maville cites to no Florida law suggesting that her unjust enrichment claim is viable when no *direct* benefit was conferred upon the Skytrail Defendants.

The Florida Supreme Court has recently confirmed the requirement that to state a claim for unjust enrichment under Florida law, "the plaintiff must *directly* confer a benefit to the defendant." *Kopel v. Kopel*, 229 So. 3d 812, 818 (Fla. 2017) (emphasis added); *see also CFLB P'ship, LLC v. Diamond Blue Int'l, Inc.*, 352 So. 3d 357, 359 (Fla. Dist. Ct. App. 2022), *reh'g denied* (Nov. 21, 2022) (dismissing unjust enrichment claims under Florida law because benefit was not conferred by plaintiff on defendant directly); *Salinas v. Mobarak*, 219 So. 3d 948 (Fla. Dist. Ct. App. 2017) (same); *Johnson v. Catamaran Health Sols., LLC,* 687 F. App'x 825, 830 (11th Cir. 2017) (same); *Harvey v. Fla. Health Scis. Ctr., Inc.*, No. 17-14406, 2018 WL 1388523, at *8 (11th Cir. Mar. 20, 2018) (same); *John C. Nordt, III, M.D. & Assocs., P.A. v. Colina Ins. Ltd.*, No. 17-21226-CIV, 2018 WL 2688793, at *4 (S.D. Fla. Apr. 13, 2018) (same).

Plaintiff is silent as to that requirement of Florida law. Instead, she points to a litany of cases applying the unjust enrichment law of states other than Florida. *See* Dkt. 153 at 39 (citing *Smith v. Martorello*, 2021 WL 1257941, at *1 (D. Or. Jan. 5, 2021) (applying Oregon law); *Solomon v. Am. Web Loan*, 2019 WL 1320790, at *16 (E.D. Va. Mar. 22, 2019) (applying Virginia law); *Duggan v. Martorello*, 596 F. Supp. 3d 158, 165, 194 (D. Mass. 2022) (applying Massachusetts law); *Williams v. Big Picture Loans, LLC*, 2021 WL 3072462, at *57 (E.D. Va. July 20, 2021) (applying Virginia law); *Gibbs v. Stinson*, 421 F. Supp. 3d 267, 313 (E.D. Va. 2019) (applying Virginia law); *Hengle v. Asner,* 433 F. Supp. 3d 825, 893 (E.D. Va. 2020) (applying Virginia law). And although Plaintiff describes those cases as a "long line of persuasive authority," it is anything but. Because none of the cases apply Florida law, they can provide no authority, persuasive or otherwise, regarding the clear requirements of Florida law as laid out by the Florida Supreme Court in 2017. *See Kopel*, 229 So. 3d at 818.

That is the end of the story. Plaintiffs allege they signed a loan with Skytrail Cash, not with Skytrail Servicing or Pruett. They alleged that all the money that changed hands did so pursuant to that contract. Indeed, they allege that they paid money directly to Sky Trail Cash. The Contract provides that Sky Trail Cash is the lender, and it is legally entitled to the receipts. Acting as an agent of Sky Trail Cash by facilitating *physical* collection of those payments—which remain legally owned by Sky Trail Cash pursuant to the Loan Agreement—and managing accounts to process those payments, as Skytrail Servicing was admittedly paid by Sky Trail Cash to do, does not create a "direct" relationship between Skytrail Servicing and Plaintiff, much less justify ignoring the corporate form and imputing a "direct" relationship through Sky Trail Cash to Skytrail Servicing to Pruett. The only "direct" relationship was with Plaintiff's contract counterparty, because the only benefits Plaintiff conferred on anyone were payments made

pursuant to the contract. Because there are no allegations that the Skytrail Defendants *directly benefitted* from Maville's loan at issue, the unjust enrichment claim under Florida law fails and must be dismissed.

E. 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.

III. CONCLUSION

For the reasons set forth above, Skytrail Defendants William Cheney Pruett and Sky Trail 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
SKY TRAIL SERVICING GROUP, LLC

By: */s/David N. Anthony*

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of March 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.

/s/ David N. Anthony
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