IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

LORI FITZGERALD, et al.,	)	Case No. 3:20-cv-00044-NKM-JCH
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
JOSEPH WILDCAT SR., et al.,	)	
	)	
Defendants.	)	

DEFENDANTS JOSEPH WILDCAT, SR., JOHN JOHNSON, GEORGE THOMPSON, JAMIE ANN ALLEN, JEFFREY BAUMAN, SR., WILLIAM STONE SR., LOUIS ST. GERMAINE, ERIC CHAPMAN, SR., RACQUEL BELL, GLORIA COBB, WILLIAM GRAVEEN, SARAH PYAWASIT, JESSI LORENZO, AND NICOLE REYNOLD'S REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS FOR FAILURE TO STATE CLAIM

The Lac du Flambeau Band of Lake Superior Chippewa Indians (the "Tribe") is a federally recognized Indian tribe. Plaintiffs purport to be consumers who received allegedly usurious loans from the Tribe. It is undisputed that the lenders are tribal lending arms[1] that are non-party tribal entities entitled to sovereign immunity. Because Plaintiffs cannot sue in federal court the Tribe or the tribal lending arms, Plaintiffs assert claims against Tribal Defendants[2] (individuals who did not make the alleged loans) by copying and pasting the Tribal Defendants' duties from the Tribe's laws and quoting contracts to which no Tribal Defendant was a party.

Tribal Defendants are not just guessing Plaintiffs' intent, Plaintiffs admitted it, stating: "Because the LDF Lending Entities *may* be entitled to immunity as arms of the Tribe, Plaintiffs

[1] The tribal lending arms that issued Plaintiffs' loans are Niizhwaaswi, LLC, Ishwaaswi, LLC, Niswi, LLC, Makwa, LLC and Ningodwaaswi, LLC.

[2] Joseph Wildcat, Sr., John Johnson, George Thompson, Jamie Ann Allen, Jeffrey Bauman, Sr., William Stone Sr., Louis St. Germaine, Eric Chapman, Sr., Racquel Bell, Gloria Cobb, William Graveen, Sarah Pyawasit and Joseph Wildcat Sr. (collectively "Tribal Council Defendants"), Jessi Lorenzo, and Nicole Reynolds (herein "Tribal Council Defendants" Ms. Lorenzo, and Ms. Reynolds are collectively "Tribal Defendants").

have sued" the Tribal Defendants. Doc. 155 at 5. But because the Tribal Defendants did not make the loans, there is little for Plaintiffs to say about the Tribal Defendants other than conclusory statements that do not state a plausible claim for relief. As a result, Plaintiffs lodge a shotgun pleading at the Tribal Defendants, hoping this Court will credit the volume of the allegations instead of the substance of them.

Even if the Court were to look past Plaintiffs' general pleading deficiencies, Plaintiffs' RICO theories fail. At bottom, Plaintiffs seek to elevate a contractual arrangement into a RICO conspiracy with fantastical and contradictory allegations about who actually controls the lending business. Such threadbare allegations fail to plead an enterprise, distinctiveness (Count I), or a conspiracy to violate RICO (Count II). Plaintiffs' state law claims (Count III) likewise fail because they either have no pendent jurisdiction without federal claims, or there is a mismatch between the state law upon which Plaintiffs rely (granting monetary relief) and the relief sought (injunctive relief). Without adequate allegations of state law violations, Plaintiffs' federal declaratory judgment claim (Count IV) fails, too.

For these reasons, Plaintiffs' claims against Tribal Defendants must be dismissed.

I. ARGUMENT

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

pleaded facts, taken as true, "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

A. Plaintiffs hardly defend their conclusory, shotgun allegations against the Tribal Defendants.

Tribal Defendants' opening brief describes how, despite Plaintiffs' 270 allegations, almost none concern the Tribal Defendants. The bulk of the allegations focus on other tribes' alleged lending schemes, non-tribal defendants, and non-party tribal arms. Only then do Plaintiffs lodge a few conclusory allegations that, in relation to the Tribal Defendants, either quote the Tribe's laws or describe in conclusory fashion general business activities. These types of unspecific and threadbare allegations are insufficient to state a RICO claim.

Plaintiffs' opposition brief repeats the same errors. While Tribal Defendants' opening brief focused on the deficiencies in the allegations in the complaint, this reply brief will focus on the specific allegations and facts highlighted by Plaintiffs in their opposition brief. Indeed, given the opportunity to highlight specific allegations against each Tribal Defendant—presumably Plaintiffs' "best" and most specific allegations—Plaintiffs still fail to articulate plausible claims for relief against each Tribal Defendant.

First, Plaintiffs incorporate certain "facts" and argument from their brief in opposition to the non-tribal defendants' motion to dismiss. *See* Doc. 155 at 7 (incorporating arguments from Doc. 153 at 14-19). As one would expect, however, that portion of the brief simply describes allegations about the non-tribal defendants—not the Tribal Defendants. *See* Doc. 153 at 14-19. Second, Plaintiffs quote the Tribe's Constitution. *See* Doc. 155 at 7. But legal conclusions have never been sufficient to state a claim. *Democratic Party of Virginia v. Brink*, 599 F. Supp. 3d 346, 354 (E.D. Va. 2022) (holding that a court "need not accept legal conclusions couched as facts"). Third, Plaintiffs cite certain consumer loan agreements as evidence of the Tribal Defendants'

involvement. Doc. 155 at 8. Yet those loans agreements contradict the notion of any personal involvement of the Tribal Defendants, as they are purportedly between Plaintiffs and non-party tribal arms (not the Tribal Defendants). *See* Doc. 135-11, -12, -13, -14, and -15. Fourth, Plaintiffs claim certain Tribal Defendants (Reynolds and Lorenzo) were "delegated the day-to-day responsibilities" of overseeing and managing non-party tribal entities. Doc. 155 at 8. But "speculative and conclusory allegations" that a person was involved in "day-to-day business operations" do not survive a motion to dismiss. *Demastes v. Midwest Diversified Mgmt. Corp*, No. 319CV00065RJCDCK, 2020 WL 1490741, at *3 (W.D.N.C. Mar. 24, 2020) (dismissing FLSA claim for the same reason).

Stripping away any allegations that are either conclusory, contradicted in other places, or aimed at other entities or individuals, Plaintiffs have not stated any plausible claim for relief. Plaintiffs' claims rest entirely on formulaic recitations of the elements of their claims, "'naked assertion[s]' devoid of 'further factual enhancement[,]'" and generic allegations about unrelated purported lending "schemes" or conduct of people or entities other than Tribal Defendants. *Iqbal*, 556 U.S. at 678.

No case cited by Plaintiffs blesses their vague and indefinite allegations. *United States v. Oreto* did not concern a 12(b)(6) motion. 37 F.3d 739 (1st Cir. 1994). There, a criminal defendant challenged a criminal jury instruction on the basis that, no matter his involvement, he was a "mere employee" so he could not be guilty under RICO. *Id.* at 751. Tribal Defendants do not argue that their status as "foot soldiers" defeats otherwise meritorious RICO claims, as was rejected in *Oreto*, but simply that there are insufficient allegations to establish liability in the first place.

Plaintiffs' citation to *United States v. Pepe* fares no better and, on a close reading, *Pepe* shows that Plaintiffs' vague allegations are far afield from the facts typically sufficient to establish

a RICO claim. In *Pepe*, the government proved that the defendant personally extended a loan, collected "that loan through extortion," traveled to "New York City for" a meeting for an unlawful purpose, and attempted to collect another loan through extortionate means at that particular meeting. *Id.* at 661. Plaintiffs' Complaint is devoid of any facts describing that level of personal involvement by any Tribal Defendant.

Finally, Plaintiffs' reliance on *Commonwealth of Pennsylvania v. Think Finance, Inc.* to excuse their shotgun pleading is misplaced. No. 14-cv-7139, 2016 WL 183289 (E.D. Pa. Jan. 14, 2016). The group (or shotgun) pleading barely allowed in *Think Finance* is inapposite to the type of shotgun pleading Plaintiffs filed here. In *Think Finance*, the complaint alleged that certain entity defendants, which were all controlled by a single individual, undertook illegal activity. *See id.* at *1. The separation of the legal entities was allegedly illegitimate and, indeed, the entities' legal separation was a feature of "the alleged scheme." *Id.* at *12. Against that backdrop, the district court (in a non-precedential opinion) found certain "group" allegations against the *entity* defendants compliant with Rule 8.

Plaintiffs' shotgun pleading is the reverse of *Think Finance*. Here, the actual lenders are non-party tribal lending arms entitled to sovereign immunity. Yet to avoid those entities' sovereign immunity, Plaintiffs attempt to re-assign those entities' alleged liability to a slew of natural *individuals* with conclusory allegations of "oversight."

In other words, *Think Finance* dealt with a natural, individual defendant attempting to hide his liability behind a series of entities. Whereas Plaintiffs here attempt to hide from tribal lending entities' sovereign immunity by lodging conclusory allegations against a series of natural individuals. *Think Finance* is thus distinguishable in a meaningful way, and the situation here is more akin to the typical tactic of Plaintiffs who conflate their "bald legal conclusions and

threadbare allegations against 'Defendants' generally with factual allegations of misconduct sufficient to plausibly rise to" an individual's "liability specifically." *Japhet v. Francis E. Parker Mem'l Home, Inc.*, No. CIV.A. 14-01206 SRC, 2014 WL 3809173, at *2 (D.N.J. July 31, 2014).[3]

At the end of the day, it is well established that a pleading—particularly in a RICO case—which "fails to distinguish between [certain] defendants mandates dismissal under both Rule 9(b) and 8(a)"). *In re Platinum & Palladium Commodities Litig.*, 828 F. Supp. 2d 588, 602 (S.D.N.Y. 2011) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Young*, 1994 WL 88129, at *20 (S.D.N.Y. Mar. 15, 1994)). This is not just a legal technicality; it leads to practical problems in understanding Plaintiffs' specific critique of each Tribal Defendant. For example, Plaintiffs argue that "Skytrail Servicing . . . handles every material component of Ningodwaaswi's lending process *from start to finish*," Doc. 155 at 5 (emphasis in original), only to then claim that Tribal Defendants Reynolds and Lorenzo "over[see] and manage[]" the lending scheme. *Id.* at 3. Which is it? And what about the other Tribal Defendants? It is hard to tell, particularly since Plaintiffs go on to allege that "Defendants . . . marketed, initiated, and collected usurious loans through the country[.]" Doc. 135 ¶ 149 (emphasis added). And "Defendants knew the loans were illegal[.]" *Id.* ¶ 150 (emphasis added). And an unidentified "[t]hey" charged "astronomical interest rates that far exceed rates allowed by applicable state laws." *Id.* ¶ 151 (emphasis added). And it is unlawful for "Defendants, LDF Holdings [a non-party], or any of their affiliates to collect or receive any principal, interest or charges whatsoever on said loans[.]" *Id.* ¶ 153 (emphasis added).

Nothing in Plaintiffs' complaint provides each Tribal Defendant fair notice of the specific wrongdoing they are charged with. Plaintiffs fail to state a claim against each Tribal Defendant.

[3] *Think Finance* cited and distinguished this case, noting that the complaint in *Japhet* was "more generally deficient" than just "group pleading." So too here, for the reasons described in this section. Plaintiffs' allegations fail at every turn; the group pleading is just further indicia that Plaintiffs' claims against individual Tribal Defendants are implausible.

B. Setting aside Plaintiffs' general pleading deficiencies, the RICO claims fail as a matter of law.

1. Plaintiffs fail to plead adequately an enterprise or distinctiveness, which is fatal to their 1962(c) claim.

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

As Tribal Defendants described in their opening brief, Plaintiffs use a bait-and-switch to create the impression they have pleaded an enterprise. Section E of the Second Amended Complaint purports to set forth the "RICO Enterprise(s)." *See* Doc. 135 ¶¶ 120-148. In the beginning of that section, Plaintiffs set forth general case law related to RICO enterprises. *Id.* ¶¶ 120-125. And then Plaintiffs use a clever pleading tactic: In paragraph 126, Plaintiffs allege "As detailed above, Defendants created an array of different companies for the purpose of making usurious loans . . . ." Doc. 135 ¶ 126 (emphasis added). But "detailed above" were *other* alleged tribal lending "schemes"—not ones allegedly undertaken by Tribal Defendants. *See id.* ¶¶ 63-99. Plaintiffs do not address this pleading deficiency at all. *See* Doc. 155 at 9.

Instead, Plaintiffs cite disparate sections of their Second Amended Complaint in an effort to stitch together an association-in-fact enterprise. At best, the allegations suggest that the Tribe "entered into 'a routine contractual combination for the provision of financial services'" with non-tribal defendants, which is "insufficient to plead the existence of an association-in-fact enterprise." *Zamora v. FIT Int'l Grp. Corp.*, 834 F. App'x 622, 625-26 (2d Cir. 2020).

Plaintiffs' naked and contradictory assertions that the Tribe "controls" its lending subsidiaries, *see* Doc. 135 ¶ 4, while simultaneously asserting that non-tribal defendants are a "front" for the lending subsidiaries that "handles all material aspects of the lending business," *id.* ¶ 33, do not establish a plausible claim of an association-in-fact enterprise or elevate a routine contractual arrangement into a RICO enterprise. *Nunes v. Fusion GPS*, 531 F. Supp. 3d 993, 1007 (E.D. Va. 2021) ("rote allegations that Defendants 'operated' and 'conducted the business of the enterprise' . . . unsupported by any specific facts" are "not sufficient"); *Wilson v. Miner*, No. 5:11-CT-3151-F, 2013 WL 486788, at *1, n.1 (E.D.N.C. Feb. 7, 2013) (rejecting "self-contradictory allegations" in complaint); *Am. Chiropractic Ass'n v. Trigon Healthcare, Inc.*, 367 F.3d 212, 232-35 (4th Cir. 2004) (dismissing RICO claim where remainder of document selectively quoted in complaint precluded claim).

With no association-in-fact adequately pleaded, Plaintiffs attempt to rely on a one-line alternative theory of an enterprise in paragraph 209: "Alternatively, each one of the LDF Lending Entities constitutes an enterprise as they are legally distinct entities." Plaintiffs offer no legal authority for the notion that a one-line reference to a tribal entity adequately pleads an enterprise for a RICO claim under Section 1962(c). This half-hearted effort should be rejected.

For the same reasons, Plaintiffs fail the distinctiveness prong. The crux is Plaintiffs must establish a *distinct* enterprise, so Plaintiffs must show that Defendants "joined together to create a *distinct* entity for purposes" of the allegedly wrongful activity. *Peters v. Aetna, Inc.*, No. 15-00109, 2016 WL 4547151, at *9 (W.D.N.C. Aug. 31, 2016) (emphasis added); *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); *c.f. Mitchell Tracey v. First Am. Title Ins. Co.*, 935 F. Supp. 2d 826, 844 (D. Md. 2013) (allegations consistent with ordinary business functions in contractual

arrangement did not plead distinctiveness). "Courts have overwhelmingly rejected attempts to characterize routine commercial relationships as RICO enterprises[,]" finding that such allegations fail to plead the required common purpose, relationship, and distinctiveness elements. *Gomez v. Guthy-Renker, LLC*, No. 14-01425, 2015 WL 4270042, at *8-11 (C.D. Cal. July 13, 2015) (citing cases). 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).

Plaintiffs in no way plead a "RICO enterprise that operates or functions in a way distinct from the defendants themselves." *Myers v. Lee*, No. 1:10CV131 AJTJFA, 2010 WL 3745632, at *4 (E.D. Va. Sept. 21, 2010). The "sum total of the allegations" cannot merely allege "that the defendants associated themselves for the purpose of conducting" their "business affairs through entities created for that purpose." *Id.* at *5. Yet as explained in Tribal Defendants' opening brief, that is the sum total of Plaintiffs' allegations: a series of agency relationships to conduct the parties' business affairs. *See* Doc. 135 ¶¶ 131, 136-37. But that simply means "[t]here is a complete overlap between the defendants, their alleged agents, and the enterprise." *Myers*, at *4.

Thus, Plaintiffs' Count I should be dismissed.

2. Plaintiffs fail to plead adequately that Tribal Defendants conspired to violate RICO under 1962(d).

As an initial matter, Plaintiffs' RICO conspiracy claim fails because Plaintiffs do not adequately allege an underlying RICO violation. *GE Inv. Priv. Placement Partners II v. Parker*, 247 F.3d 543, 551 n.2 (4th Cir. 2001).

Assuming Plaintiffs had pleaded an underlying RICO violation, Plaintiffs simply fail to plead that Tribal Defendants—each one, individually—agreed to participate in any alleged conspiracy. When confronted with this argument, Plaintiffs: (1) cite to a servicing agreement (to

which Tribal Defendants are not parties), Doc. 155 at 12, (2) cite to lending agreements (to which Tribal Defendants are not parties), *id.*, and (3) cite to one allegation made "Upon information and belief" against one Tribal Defendant (Lorenzo) that is contradicted by Plaintiffs' theory of the case. *Id.* at 14; *but compare* Doc. 135 ¶ 146 (alleging on information and belief certain activities of Tribal Defendant Lorenzo in support of lending activity) *with* Doc. 155 at 5 (arguing non-tribal defendants handle all material aspects of lending activity).

Even if that one allegation (asserted on information and belief and contradicted by Plaintiffs' theory of the case) against Tribal Defendant Lorenzo were adequate, Plaintiffs' RICO conspiracy claim would, nevertheless, be barred by the intracorporate conspiracy doctrine. Courts in the Fourth Circuit have "consistently found that the intracorporate conspiracy doctrine can be broadly applied to . . . civil RICO claims." *Walters v. McMahen*, 795 F. Supp. 2d 350, 358 (D. Md. 2011) (citing cases), *aff'd* 684 F.3d 435 (4th Cir. 2012). To that end, a corporate officer cannot conspire with the corporation or other employees of a corporation. *Id.* Plaintiffs expressly allege that Tribal Defendant Lorenzo undertook such actions as a corporate officer of a non-party tribal lending entity, Doc. 135 ¶ 137, and never allege that she took actions outside the scope of her authority. *See generally* Doc. 135. This is fatal to Plaintiffs' conspiracy claim.

The intracorporate conspiracy doctrine is not, as Plaintiffs assert, limited to conspiracies amongst entities (as opposed to individuals and entities). *See* Doc. 136 at 36 (arguing that a corporation and individual are "legally different" so the intracorporate conspiracy bar does not apply). In fact, the Fourth Circuit, even post-*Cedric Kushner*,[4] has "continued to apply the intracorporate conspiracy doctrine" in conspiracy cases between individuals and entities. *Walters*, 795 F. Supp. 2d 350 at 359. The question is whether the corporate officer's actions were either

[4] 533 U.S. 158 (2001).

motivated by "an independent personal stake in achieving the illegal objectives of the corporation" or whether the "agent's acts [were] unauthorized." *Id.* at 358. Plaintiffs make no attempt to describe individual personal motivations of each Tribal Defendant, nor do Plaintiffs allege any acts which were unauthorized by the Tribe. Plaintiffs allege in conclusory fashion the opposite—that Tribal Defendants were authorized to oversee tribal lending activities pursuant to the Tribe's Constitution and Bylaws and that the actions were in furtherance of the Tribe's official activities. *See* Doc. 135 ¶¶ 18-31.

Plaintiffs' attempt to avoid this doctrine by arguing that, regardless of the relationship of the Tribe, the non-tribal entities and the Tribe are technically "unaffiliated." Doc. 153 at 35. But the Supreme Court has rejected such a formalistic approach to this doctrine, and "recommended that courts consider whether the affiliated corporate entities have a complete unity of interest rather than focus on mere corporate form." *Advanced Health-Care Servs., Inc. v. Radford Cmty. Hosp.*, 910 F.2d 139, 146 (4th Cir. 1990) (citing *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 769 (1984)). Taking Plaintiffs' theory of the case at face value—that Defendants engaged in a "tribal lending scheme" in which the non-tribal defendants handled all aspects of the tribal lending business for the Tribe pursuant to a services agreement—that simply supports the proposition that, despite any legal separation as a matter of form, there was a unity of interest as a matter of substance. In any event, Plaintiffs cannot stretch RICO to reach a normal agreement for services amongst entities. *Solomon*, 2019 WL 1320790, at *12 (dismissing RICO conspiracy claim against defendant acting within scope of services).

For these reasons, Count II should be dismissed.

C. Plaintiffs' state law and declaratory judgment claims should likewise be dismissed.

Once the RICO claims are dismissed, only state law claims would remain, and those would have to be dismissed because it would be an abuse of discretion to exercise pendent jurisdiction

over such claims. *Alexandria Resident Council, Inc. v. Alexandria Redevelopment & Hous. Auth.*, 11 F. App'x 283, 287 (4th Cir. 2001). Plaintiffs argue otherwise, claiming that CAFA jurisdiction obviates the need for them to rely on pendent jurisdiction. Doc. 155 at 16-17. Regardless of whether that is true for in-state plaintiffs,[5] it is not true for out-of-state plaintiffs,[6] who will be subject to dismissal if a class is certified, if ever. *Molock v. Whole Foods Mkt. Grp., Inc.*, 952 F.3d 293, 298 (D.C. Cir. 2020) (holding that out-of-state putative class members subject to dismissal only upon certification).

Even for in-state plaintiffs, however, the state law claims should still be dismissed. As Tribal Defendants noted in their original brief, no state *licensing* laws provides a private right of action. Plaintiffs claim Tribal Defendants are "wrong" about that position but cite no statute providing for a private right of action simply for Tribal Defendants' failure to obtain a license. Instead, Plaintiffs rely solely on the portion of state statutes prohibiting the collection of usurious interest rates. *See* Va. Code Ann. § 6.2-1541.[7] And while Plaintiffs' Second Amended Complaint lacks any specificity about which portion of Virginia law upon which they rely, Plaintiffs clarify the same in their opposition papers: the portion of Section 6.2-1541 that provides "any principal or interest paid on the loan shall be recoverable by the person by or for whom payment was made." Doc. 155 at 18.[8] This portion of the statute, which authorizes the recovery of monetary relief, is in direct contradiction to the narrow relief sought in Plaintiffs' complaint, which seeks only injunctive relief. Indeed, Plaintiffs expressly acknowledge that they seek only "prospective relief" through an injunction, only to rely solely on the portion of Virginia law that authorizes monetary

[5] The Fitzgeralds and Singleton.

[6] Maville and Williams.

[7] Certain state laws permit charging otherwise impermissible interest rates if a license is obtained.

[8] Plaintiffs cite language from *Hengle* that relied on a different portion of that Virginia statute. At this stage, and particularly given Plaintiffs continue to withhold which portions of state law upon which they rely in their pleading, they should be held to their choice in their opposition papers.

recovery. The mismatch in Plaintiffs' legal authority (allowing monetary relief) and requested relief (prospective injunctive relief) requires dismissal, particularly because Plaintiffs cannot obtain monetary relief from the Tribal Defendants in their official capacity, given they are entitled to sovereign immunity (as argued more fully in Tribal Defendants 12(b)(1) motion). Count III should therefore be dismissed.

Lastly, Plaintiffs' manufactured federal declaratory judgment claim must be dismissed. No case cited by Plaintiffs permitted a federal declaratory judgment action based on alleged violations of state law when Plaintiffs failed to independently plead a violation of state law. The weight of the authority counsels the exact opposite. *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.").

Count VI should therefore be dismissed.

II. CONCLUSION

Plaintiffs are now on their Second Amended Complaint. While they have increased the volume of their allegations, they have not increased the specificity of such allegations against the Tribal Defendants. After many opportunities to amend, Plaintiffs still allege in conclusory and shotgun fashion that Tribal Defendants committed wrongs or participated in wrongs without

providing the detail necessary to state a legal claim against each individual Tribal Defendant. Plaintiffs' claims against the Tribal Defendants should therefore be dismissed, with prejudice.

Dated: March 22, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2023, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record registered to receive electronic service by operation of the court's electronic filing system.

/s/ John E. Komisin
John E. Komisin