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U.S. DISTRICT COURT
N.D. OF ALABAMA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

NORMAJEAN WEIDLEY and ELLEN OKRZESIK,

Plaintiff,

v.

AANIIIH NAKODA FINANCE, LLC d/b/a BRIGHT LENDING, et al.,

Defendants.

Case No. 5:22-cv-00905-LCB

DEFENDANT TRIBAL OFFICIALS' REPLY IN SUPPORT OF MOTION TO DISMISS SECOND AMENDED COMPLAINT

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Even with the benefit of jurisdictional discovery, Plaintiffs persist in pursuing claims against Defendants Evan Azure, Geno LaValdo, Derek Azure, Brian Wing, Curtis Horn, and Steve Fox ("Tribal Officials"), all of whom had absolutely no involvement with the lending activities of Aaniiih Nakoda Finance, LLC ("ANF") that serve as the basis for Plaintiffs' claims and alleged injuries. Now with Plaintiffs' much needed clarification of the nature of their claims against the Tribal Officials on record, it is apparent that the Court lacks subject matter jurisdiction over Plaintiffs' claims, and otherwise lacks personal jurisdiction over the Tribal Officials. In short, Plaintiffs have sued the wrong individuals, and none of Plaintiffs' arguments can reverse that fatal mistake.

A. THE COURT LACKS SUBJECT MATTER JURISDICTION

1. The RICO Claim (Count V) Is Implausible And Plaintiffs Lack RICO Standing

Plaintiffs clarify that their RICO claims are personal capacity claims against the Tribal Officials. Dkt. 123 at 21-22. By acknowledging they do not allege official capacity RICO claims against the Tribal Officials, Plaintiffs have eliminated the only way they could have possibly maintained RICO claims against these Tribal Officials who never participated in the alleged predicate act. Because Plaintiffs bring personal capacity RICO claims against the Tribal Officials, the Court only possesses subject matter jurisdiction over Plaintiffs' RICO claims if those claims are plausible and if Plaintiffs have RICO standing. Plaintiffs can

demonstrate neither. The Court must therefore dismiss Plaintiffs' RICO claims for lack of subject matter jurisdiction.

Federal courts lack subject matter jurisdiction over implausible RICO claims. *See Rep. of Panama v. BCCI Holdings (Lux.) S.A.*, 119 F.3d 935, 941 (11th Cir. 1997); *see also Hagans v. Lavine*, 415 U.S. 528, 536-37 (1974); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998). The requirement "that a claim not be 'wholly immaterial or insubstantial' is merely a method of expressing the necessity that a court have subject matter jurisdiction, [so] it makes perfect sense that standing should be examined along with the other elements of a RICO claim since standing is a necessary core component of subject matter jurisdiction." *Noble Sec., Inc. v. Miz Engr., Ltd.*, 611 F.Supp.2d 513, 550 n.23 (E.D. Va. 2009) (citing *ESAB Grp., Inc. v. Centricut, Inc.*, 126 F.3d 617 (4th Cir. 1997); *Marshall v. Meadows*, 105 F.3d 904, 906 (4th Cir. 1997); *Allen v. Wright*, 468 U.S. 737, 751 (1984)).

For the Court to exercise subject matter jurisdiction over Plaintiffs' personal-capacity RICO claims, Plaintiffs must be able to prove that the named Tribal Officials' personal-capacity commission of the alleged predicate act of collecting unlawful debt was the proximate and direct cause of Plaintiffs' alleged injuries. *Bivens Gardens Office Bldg., Inc. v. Barnett Banks of Fla., Inc.*, 140 F.3d 898, 906 (11th Cir. 1998); *see also* 18 U.S.C. § 1964(c) ("Any person injured in

his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court[.]") The but-for and legal showing that Plaintiffs were injured by reason of the Tribal Officials' alleged RICO violations are standing requirements. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496-97 (1985); *Holmes v. Sec. Investor Prot. Corp*., 503 U.S. 258, 268 (1992). As is the case here, the causation requirement "is especially warranted where the immediate victims of an alleged RICO violation can be expected to vindicate the laws by pursuing their own claims." *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 460-61 (2006). Plaintiffs cannot show that their RICO claims are plausible or that they possess standing to pursue their RICO claims against the Tribal Officials they elected to sue.

The collection of allegedly unlawful debt from Plaintiffs, which serves as the alleged predicate act of Plaintiffs' RICO claims, occurred between 2020 and 2021. Specifically, Plaintiff Weidley received her loan from ANF on or about November 5, 2020, and made payments on her loan until November 27, 2020. Second Azure Decl. ¶2; Dkt. 113 at 7; Dkt. 83 at 13. Following an extended period of non-payment, ANF waived, eliminated, and forgave Plaintiff Weidley's outstanding debt in July of 2022. Second Azure Decl. ¶2; *see also* Dkt. 113 at 7. ANF has not made any efforts to collect on Plaintiff Weidley's loan since December 12, 2020. Second Azure Decl. ¶2. Plaintiff Okrzesik received her first

loan from ANF on or about October 15, 2021, and made payments until she fully repaid the loan on October 20, 2021. Second Azure Decl. ¶3; Dkt. 113 at 7; Dkt. 83 at 15. Plaintiff Okrzesik received her second loan from ANF on October 22, 2021, and made payments on her loan until about November 12, 2021. Second Azure Decl. ¶3; Dkt. 113 at 7; Dkt. 83 at 13. Following an extended period of non-payment, ANF waived, eliminated, and forgave Plaintiff Okrzesik's outstanding debt on her second loan in July of 2022. Second Azure Decl. ¶3; Dkt. 113 at 7. ANF has not made any efforts to collect on Plaintiff Okrzesik's loan since December 30, 2021. Second Azure Decl. ¶3.

Tribal Officials LaValdo, Derek Azure, Wing, Horn, and Fox were not appointed to the Island Mountain Development Group ("IMDG") Board of Directors—and thus were not involved in ANF's lending activities—until January of 2023. Dkts. 108-112. Tribal Official Evan Azure was not appointed IMDG Chief Executive Officer—and thus was not involved in ANF's lending activities—until April of 2023. Dkts. 108-113. Following extensive jurisdictional discovery and the filing of the now-uncontroverted Tribal Official declarations, Plaintiffs do not meaningfully dispute that the Tribal Officials were not personally involved in ANF's lending activities before 2023. Critically then, under no set of facts can Plaintiffs prove that the Tribal Officials committed the alleged predicate acts in their personal capacities, much less that they caused Plaintiffs' asserted injuries.

The Tribal Officials simply have not been involved in any collection of debt from Plaintiffs. In other words, Plaintiffs have brought their RICO claims against the wrong individuals. Plaintiffs' personal capacity RICO claims against the named Tribal Officials are therefore implausible, and Plaintiffs lack RICO standing. Accordingly, the Court should dismiss Plaintiffs' RICO claims for lack of subject matter jurisdiction.[1]

At this juncture, the Court also should critically examine Plaintiffs' RICO claims in light of the Congressional intent underlying the RICO statute: "protecting legitimate businesses from infiltration by organized crime." *United States v. Porcelli*, 865 F.2d 1352, 1362 (2d Cir.), *cert denied.*, 493 U.S. 810 (1989). As demonstrated by Plaintiffs' Second Amended Complaint, RICO has metastasized from its original intent. *See* Dkt. 83. Although Congress enacted RICO as a tool for combating organized crime, civil RICO is routinely invoked in "everyday fraud cases brought against respected and legitimate enterprises." *Sedima*, 473 U.S. at 499, 504 (Marshall, J., dissenting) ("RICO is out of control not only because it is so easy to claim grounds for a suit, but because the appeal of treble damages plus legal fees has proved irresistible for plaintiffs and their lawyers."). Civil RICO is uniquely prone to abuse. RICO is notorious for its elasticity and for enabling

[1] The Court has the power to dismiss for lack of subject matter jurisdiction based on "the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *McElmurray v. Consol. Gov't of Agusta-Richmond Cnty.*, 501 F.3d 1244, 1251 (11th Cir. 2007).

"innovative lawyering" to convert ordinary civil disputes into federal racketeering claims. Petra J. Rodrigues, The Civil RICO Racket: Fighting Back with Federal Rule of Civil Procedure 11, 64 ST. JOHN'S L. REV. 931, 936-37 (1990). "Once a clever lawyer can characterize an opponent's actions as constituting one or two of the myriad of predicate acts, it takes little imagination to deem those actions RICO violations." Robert K. Rasmussen, Introductory Remarks & a Comment on Civil RICO's Remedial Provisions, 43 VAND. L. REV. 623, 626 (1990). Simply put, the "danger of vexatiousness" is off the charts in civil RICO suits. *Int'l Data Bank, Ltd. v. Zepkin*, 812 F.2d 149, 153 (4th Cir. 1987); *see also Anza*, 547 U.S. at 471-72 (2006) (Thomas, J., dissenting) ("Judicial sentiment that civil RICO's evolution is undesirable is widespread."); William H. Rehnquist, Remarks of the Chief Justice, 21 ST. MARY'S L.J. 5, 13 (1989) (inviting "amendments to civil RICO to limit its scope to the sort of wrongs that are connected to organized crime, or have some other reason for being in federal court"). What Plaintiffs cast as a RICO violation in this case is hardly organized crime infiltrating legitimate business; rather, Plaintiffs complain solely of the economic development efforts of a Tribally owned and operated entity that seeks to improve the welfare of the people of the Fort Belknap Indian Reservation. In short, allowing Plaintiffs' thin RICO claims to proceed against the Tribal Officials will unleash onto the federal courts a tidal

wave of new RICO claims and force personal capacity defendants into coercive settlements.

The Court should decline to exercise supplemental jurisdiction over the remaining state law claims given the necessary dismissal of the RICO claim for lack of subject matter jurisdiction.[2] *Raney v. Allstate Ins. Co.*, 370 F.3d 1086, 1089 (11th Cir. 2004) ("We have encouraged the district courts to dismiss any remaining state claims when, as here, the federal claims have been dismissed prior to trial."); *Carnegie-Mellon Univ. Cohill*, 484 U.S. 343, 350 n.7 (1988) ("[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors… will point toward declining to exercise [supplemental] jurisdiction."); *Silas v. Sheriff of Broward Cnty. Fla.*, 55 F.4th 863, 866 (11th Cir. 2022) ("A district court, exercising its already broad discretion, will rarely err by declining supplemental jurisdiction after the federal claims that supported its jurisdiction are dismissed.").

2. Plaintiffs Lack Standing To Pursue ALSA (Count I), Conspiracy (Count II), And State Law *Ex parte Young* (Count IV) Claims

In light of Plaintiffs' clarification that they do not invoke *Ex parte Young*[3] to bring their Alabama Small Loans Act ("ALSA"), and conspiracy claims against the

[2] Not only are Plaintiffs prohibited from seeking monetary damages or declaratory relief for their implausible RICO claim for which they lack standing to pursue, they also cannot seek prospective injunctive relief under RICO as private plaintiffs. *See Hengle v. Treppa*, 19 F.4th 324, 356 (4th Cir. 2021) ("Section 1964 does not authorize private RICO plaintiffs to sue for prospective injunctive relief.").

[3] Plaintiffs completely ignore and fail to disclaim the Tribal Officials' observation that Plaintiffs seek retrospective declaratory and monetary relief in Count IV that is not permitted by *Ex parte*

Tribal Officials in their official capacities and the uncontroverted declarations of the Tribal Officials regarding the timing of their involvement with ANF's lending activities, it is evident that Plaintiffs lack standing to bring these state law claims against the Tribal Officials in their personal capacities.[4] The Court should therefore dismiss Counts I and II for lack of subject matter jurisdiction based on standing. *Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Serv., Inc*., 524 F.3d 1229, 1232 (11th Cir. 2008); *see also Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005) (The standing doctrine "stems directly from Article III's 'case or controversy' requirement" and "implicates our subject matter jurisdiction.").

Article III standing requires that the Plaintiffs "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). Plaintiffs cannot show that the injuries alleged in Counts I and II, which occurred between 2020 and 2022, are in any way traceable to the personal capacity actions of the Tribal Officials, who did not

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Young. *See* Dkt. 123 at 20-22. The Court should dismiss any official capacity claims for retrospective or monetary relief as inconsistent with the *Ex parte Young* doctrine.

[4] The Tribal Officials have mounted a factual attack challenging the existence of subject matter jurisdiction. Thus, the Court may consider and weigh extrinsic evidence and need not accept Plaintiffs' allegations as true or view the facts in the light most favorable to the Plaintiffs. *Kennedy v. Floridian Hotel, Inc.*, 998 F.3d 1221, 1230 (11th Cir. 2021); *Gardener v. Mutz*, 962 F.3d 1329, 1340 (11th Cir. 2020); *Huston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1336 (11th Cir. 2013).

become involved with ANF's lending operations until 2023. Again, Plaintiffs have simply sued the wrong individuals.

Plaintiffs allege in Count I that the Tribal Officials "collected, received, and retained" loan payments from them in violation of Section 5-18-4(a) of the ALSA—activities that collectively began in 2020 and ended in 2021. Dkt. 83 at 21; Dkt. 113 at 7; Second Azure Decl., ¶¶2-3. Plaintiffs allege in Count II that the Tribal Officials conspired and agreed to make and collect Plaintiffs' loans, and otherwise participated in the lending activities of ANF that caused Plaintiffs' alleged injuries, which again occurred between 2020 and 2021. Dkt. 83 at 21-22; Dkt. 113 at 7; Second Azure Decl. ¶¶2-3. The uncontroverted evidence demonstrates, however, that Tribal Officials LeValdo, Derek Azure, Wing, Horn, and Fox were not appointed to the IMDG Board of Directors until January of 2023, and Tribal Official Evan Azure was not appointed as IMDG Chief Executive Officer until April of 2023. Dkts. 108-113. The Tribal Official declarations, which Plaintiffs do not dispute or challenge, as well as the absence of contrary evidence from Plaintiffs based on their jurisdictional discovery, lead only to one conclusion: the alleged personal capacity actions that form the basis of Counts I and II all occurred well before the Tribal Officials became involved with ANF's lending activities, thus the Tribal Officials could not have taken, directed, or otherwise been involved with those actions.

Plaintiffs seem to argue that they have standing to bring their official capacity *Ex parte Young* claim, which is predicated on state law, for prospective injunctive relief because ANF has merely "charged off" their outstanding debt. Dkt. 123 at 18. Plaintiffs are incorrect. First, Plaintiffs' authorities are all Fair Credit Reporting Act, 15 U.S.C. 1681, *et seq*. ("FCRA"), cases under which the term "charged off" is a term of art representing a delinquency describing a bank's internal accounting mechanism by which the creditor stops carrying the debt as a receivable. *Butnick v. Experian Info. Sols., Inc.*, 2021 WL 395808, at *4 (E.D.N.Y. Feb. 4, 2021); *Ostreicher v. Chase Bank USA, N.A.*, 2020 WL 6809059, at *4 (S.D.N.Y. Nov. 19, 2020); *Artemov v. TransUnion, LLC*, 2020 WL 5211068, at *3-4 (E.D.N.Y. Sept. 1, 2020). These FCRA cases and the use of "charged off" in the credit reporting context are irrelevant here; a "charge off" for the purposes of evaluating a bank's internal accounting mechanisms for FCRA compliance is a far cry from the meaning of the term as used in the context of ANF's tribal lending operations. Rather, "written off" as used by ANF in this context means the complete waiver, elimination, and forgiveness of Plaintiffs' debt. Second Azure Decl. ¶¶2-3. None of ANF's internal accounting mechanisms currently reflect Plaintiffs' owing a remaining or past due balance. *Id*. Plaintiffs owe ANF nothing, and ANF will not lend again to either Plaintiff in the future. *Id*.; Dkt. 113 at 7. As of July 2022, ANF has completely waived, eliminated, and forgiven Plaintiffs'

outstanding debt, and will not make any further attempts to collect the now-forgiven balances or extend any further loans to Plaintiffs—and Defendants would be judicially estopped from doing so. Second Azure Decl. ¶¶2-3; Dkt. 113 at 7. Thus, there exists no chance that Plaintiffs will experience future injury from ANF's lending activities, which is necessary to establish standing under *Ex parte Young* for the purposes of enjoining ANF's future lending activity in Alabama. *See Hengle v. Asner*, 433 F. Supp. 3d 825, 888-90 (E.D. Va. 2020). And, given the dispositive status of Plaintiffs' debt, they cannot invoke *Ex parte Young* to enjoin any of ANF's ongoing lending activities because no ongoing violations exist as to their non-existent debt. *Nicholl v. Attorney General Georgia*, 769 Fed.Appx. 813, 815 (11th Cir. 2019) ("The Ex parte Young doctrine applies only when a violation of federal law by a state official is ongoing as opposed to cases in which federal law has been violated at one time or over a period of time in the past.").

B. FAILURE TO STATE A CLAIM

Plaintiffs claim—without citation to any authority—that the ASLA provides them with a private right of action against the Tribal Officials in their individual capacities for the purposes of Count I. Dkt. 123 at 16, 21. Plaintiffs' failure to cite any authority for this assertion is understandable, however, because none exists. The ASLA provides Plaintiffs no private right of action for the claims brought in Count I, and authorizes no monetary or injunctive relief for private plaintiffs. *See*

Ala. Code § 5-18-4(d). Rather, the ASLA only imposes criminal penalties for violations of Section 5-18-4 of the Act, and otherwise merely voids the loans that violate Section 5-18-4(a) and prohibits the lender from collecting, receiving, or retaining any principle, interest, or charges related to the void loan. *Id*. Thus, Plaintiffs' ASLA-based claims are not legally cognizable, and Plaintiffs have failed to state a claim in Count I. *See, e.g., Bennick v. Boeing Co.*, 2009 WL 10657386, at *1 (N.D. Ala. Apr. 24, 2009).

C. THE COURT LACKS PERSONAL JURISDICTION

Plaintiffs acknowledge that the Court may not rely on RICO's nationwide service provision to establish personal jurisdiction over the Official Defendants if Plaintiffs' RICO claims are implausible.[5] *See* Dkt. 123 at 4. As explained above, Plaintiffs' RICO claims are implausible and Plaintiffs lack RICO standing because none of the Tribal Officials were affiliated with ANF at the time Plaintiffs sustained their alleged injuries, and thus could not have caused Plaintiffs' alleged injuries. Plaintiffs' RICO claims therefore should be dismissed for lack of subject matter jurisdiction, and the Court cannot rely on the RICO's nation-wide service provision of RICO to establish personal jurisdiction over the Tribal Officials. *See Rep. of Panama*, 119 F.3d at 941-42. In the event the Court decides to exercise

[5] Plaintiffs also claim that *Hengle*, 19 F.4th 324, *Gingras v. Think Finance*, 922 F.3d 112 (2d Cir. 2019), and *Williams v. Martorello*, 59 F.4th 68 (4th Cir. 2023), support the Court's exercise of personal jurisdiction over the Tribal Officials pursuant to the nation-wide service provision of RICO. Dkt. 123 at 4. None of these cases address personal jurisdiction predicated on RICO. *See Hengle*, 19 F.4th at 356; *Gingras*, 922 F.3d at 125; *Williams*, 59 F.4th at 90.

supplemental jurisdiction over Plaintiffs' state law claims in the absence of the federal RICO claim, the Court lacks personal jurisdiction over the Tribal Officials for the purposes of Plaintiffs' state law claims.

Plaintiffs grossly misconstrue the Tribal Officials' position on the personal jurisdiction issue. The Tribal Officials do not contend they "directed the wrongful activities of ANF from afar," Dkt. 123 at 5; rather, the Tribal Officials make clear that they were not involved with ANF's lending activities at the time Plaintiffs allegedly sustained their injuries, a fact which remains uncontroverted by the evidence and outright ignored by Plaintiffs. Dkt. 108-113. More importantly, the Tribal Officials explain that the Court's exercise of personal jurisdiction related to the state law claims—including the *Ex parte Young* claim predicated on state law—would violate the Fourteenth Amendment to the U.S. Constitution because the Tribal Officials lack any contacts with Alabama. *See* Dkt. 107-1 at 8-15. Plaintiffs' attempts to conjure up constitutionally sufficient contacts are unavailing.

Plaintiffs first contend that the alleged tortious conduct of the Tribal Officials is alone sufficient to establish personal jurisdiction. Dkt. 123 at 6. The Eleventh Circuit has held that alleged tortious conduct must have been individually targeted at and calculated to cause injury to Plaintiffs in Alabama to confer constitutionally sufficient personal jurisdiction. *Licciardello v. Lovelady*, 544 F.3d

1280, 1287-88 (11th Cir. 2008). The Tribal Officials' uncontroverted declarations conclusively establish that the Tribal Officials could not have intentionally targeted any of the alleged tortious conduct towards Plaintiffs because the Tribal Officials did not participate in any of ANF's lending practices at the time Plaintiffs applied for, received, and made payments on their respective loans, which is the basis for their alleged injuries in Counts I and II. Dkts. 108-113. Thus, the Tribal Officials did not and could not have directed any of the now-discounted alleged tortious conduct at Plaintiffs as necessary to establish personal jurisdiction.

Plaintiffs' contention that the fiduciary-shield doctrine does not apply under these circumstances is equally ineffective, as examination of their cited authority shows. In both *Ex parte Sekeres*, 646 So. 2d 640, 641-42 (Ala. 1994), and *Ex parte Kohlberg Kracis Roberts & Co., L.P.*, 78 So. 3d 959, 976-77 (Ala. 2011), the courts found the fiduciary-shield doctrine unsuitable and the exercise of personal jurisdiction appropriate because the defendants had personally visited Alabama and participated in the alleged tortious conduct. The corporate-shield doctrine therefore remains applicable to the Tribal Officials because none of the Tribal Officials have ever visited Alabama, and they did not and could not have participated in the alleged tortious conduct that purportedly injured Plaintiffs years before the Tribal Officials became affiliated with ANF. *See* Dkt. 107-1 at 9-15. Tellingly, Plaintiffs have failed to meaningfully counter the dispositive record evidence and extensive

federal authority the Tribal Officials cited in support of their argument that the Court lacks personal jurisdiction for the purposes of the state law claims. *Compare id. with* Dkt. 123 at 5-7.

D. THE COURT SHOULD DISMISS FOR FAILURE TO JOIN AN INDISPENSABLE PARTY UNDER FED. R. CIV. P. 19

The Fort Belknap Indian Community ("Tribes") is a required party under Rule 19 that cannot be joined due to tribal sovereign immunity. *See* Dkt. 103 at 29-32. Plaintiffs do not dispute that their claims could potentially prejudice the Tribes' interests or that the Tribes cannot be joined. Instead, they argue that dismissal under Rule 19 would be improper because (1) ANF, and the Tribal Officials and Tribes' President Jeffrey Stiffarm (as sued in their official capacities) adequately represent the Tribes' interests, and (2) dismissal would leave Plaintiffs without an adequate remedy. *See* Dkt. 121 at 16-19. ANF is an arm of the Tribe that shares in the Tribes' immunity, and the official capacity claims against the Tribal Officials and President Stiffarm must be dismissed for lack of subject matter and personal jurisdiction, or alternatively, for failure to state a claim. Thus, the Tribes' interests are left wholly unrepresented. And, it is well-settled that lack of an adequate remedy standing alone is not enough to prevent dismissal of a case under Rule 19, particularly where, as here, the absent party cannot be joined due to sovereign immunity. Accordingly, the personal capacity claims against the Tribal Officials and the non-tribal entity defendants should be dismissed pursuant to Rule 12(b)(7).

Respectfully submitted this 6th day of October, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of October 2023, I electronically filed the foregoing Defendant Tribal Officials' Brief in Support of Motion to Dismiss Second Amended Complaint with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Alfred F. Smith, Jr.
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