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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Kyle Welsh, Estate of Jill Welsh, and WW Young Money, LLC d/b/a Flame on Indian Smoke Shop, Plaintiffs, v. Rebecca Loudbear, Amelia Flores, John Yackley, John Does I-XX, And Jane Does I-XX, Defendants.	No. 2:25-cv-001159 DEFENDANTS REBECCA LOUDBEAR, AMELIA FLORES AND JOHN YACKLEY'S MOTION TO DISMISS COMPLAINT

Defendants Rebecca Loudbear, Amelia Flores, John Yackley, John Does I-XX, and Jane Does I-XX ("Tribal Defendants") move to dismiss Plaintiffs Kyle Welsh, Estate of Jill Welsh, and WW Young Money, LLC d/b/a Flame on Indian Smoke Shop ("Plaintiffs") Complaint under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and Rule 12(b)(7) for failure to join a required and indispensable party. The Tribal Defendants further move to dismiss the Complaint under Rule 12(b)(6) for failure to state a claim.

The Court should dismiss the Complaint because Plaintiffs have failed to join the Colorado River Indian Tribes ("Tribe" or "CRIT"), which is a required party that cannot be joined due to its sovereign immunity. The Court should also dismiss Counts I and II of the Complaint because Plaintiffs have failed to state a claim under the Racketeer Influence and Corrupt Organizations Act ("RICO"). Plaintiffs rely on inadequately pled RICO claims in an attempt to manufacture federal court jurisdiction where none exists.

FACTUAL BACKGROUND

This case arises from a dispute over the Tribe's lawful termination of a lease agreement for Plaintiffs' smoke shop in the Moovalya Plaza in Parker, Arizona, on the CRIT Reservation. Compl. at ¶¶ 2, 3, 10. The Tribal Defendants are all current or former tribal employees who acted in their official capacities. Defendant Loudbear is the Tribe's Attorney General; Defendant Flores is its Chairwoman; and Defendant Yackley formerly managed the CRIT-owned Moovalya Plaza. *Id.* at ¶ 4–7. Plaintiffs entered into a lease agreement on March 1, 2015, with CRIT for occupancy of space at Moovalya Plaza in Parker, Arizona. *Id*. at ¶ 10. The lease term was five years, ending on February 28, 2020. *Id.* Plaintiffs renewed their lease for an additional five-year term, expiring on February 28, 2025. *Id.* at ¶ 11. On April 8, 2021, the Tribe terminated the lease, citing non-payment of rent, abandonment, and damage to CRIT property. *Id.* at ¶ 17; Ex. 3.

LEGAL STANDARDS

A. Rule 12(b)(1)

A motion to dismiss on tribal sovereign immunity grounds is brought under Rule 12(b)(1). *Lewis v. Norton*, 424 F.3d 959, 961 (9th Cir. 2005). When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court normally considers the Rule 12(b)(1) motion first. *Potter v. Hughes*, 546 F.3d 1051, 1056, n.2 (9th Cir. 2008).

A motion to dismiss under Rule 12(b)(1) is a challenge to the court's subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). "Federal courts are courts of limited jurisdiction," and it is "presumed that a cause lies outside this limited jurisdiction." *Kokkonen v. Guardian Life Ins. of*

Am., 511 U.S. 375, 377 (1994). The party invoking the jurisdiction of the federal court bears the burden of establishing that the court has the authority to grant the relief requested. *Id.*

A challenge pursuant to Rule 12(b)(1) may be facial or factual. *See White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). In this facial attack, the jurisdictional challenge is confined to the allegations pled in the complaint. *See Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004), overruled on other grounds by *Munoz v. Superior Ct. of L.A. Cnty.*, 91 F.4th 977 (9th Cir. 2024). The challenger asserts that the allegations in the complaint are insufficient "on their face" to invoke federal jurisdiction. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). The court assumes that the allegations in the complaint are true and draws all reasonable inferences in favor of the party opposing dismissal. *See Wolfe*, 392 F.3d at 362.

B. Rule 12(b)(7)

A motion under Rule 12(b)(7) seeks dismissal based on the failure to join a required party under Rule 19. Fed. R. Civ. P. 12(b)(7). A Rule 12(b)(7) motion to dismiss requires the court to accept the allegations in the complaint as true, but the court may consider extrinsic evidence. *Camacho v. Major League Baseball*, 297 F.R.D. 457, 460–61 (S.D. Cal. 2013) (citing *McShan v. Sherrill*, 283 F.2d 462, 464 (9th Cir. 1960)). The movant bears the burden of demonstrating that the absent party is a required and indispensable party that must be joined. *Id.*

C. Rule 12(b)(6)

A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of a claim. *Cook v. Brewer*, 637 F.3d 1002, 1004 (9th Cir. 2011). A complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

ARGUMENT

I. The Tribal Defendants are Protected by CRIT's Sovereign Immunity

As sovereigns, Indian Tribes are generally immune from suit. *Lewis v. Clarke*, 581 U.S. 155, 161 (2017). Tribal sovereign immunity extends to tribal officers when "the sovereign is the real party in interest." *Id.* "In making this assessment, courts may not simply rely on the characterization of the parties in the complaint, but rather must determine in the first instance whether the remedy sought is truly against the sovereign." *Id.* at 162; *see also Maxwell v. County of San Diego*, 708 F.3d 1075, 1089 (9th Cir. 2013). "In any suit against tribal officers, [courts] must be sensitive to whether 'the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration, or if the effect of the judgment would be to restrain the [sovereign] from acting, or to compel it to act.'" *Maxwell*, 708 F.3d at 1088. The critical question is whether "any remedy will operate . . . against the sovereign." *See Pistor v. Garcia*, 791 F.3d 1104, 1113 (9th Cir. 2015).

Immunity bars a suit for damages against an officer, in his individual capacity, when a suit interferes with tribal self-government. *See, e.g., Hardin v. White Mountain Apache Tribe*, 779 F.2d 476 (9th Cir. 1985) (holding tribal sovereign immunity "extends to individual tribal officials acting in their representative capacity and within the scope of their authority" when the tribal officials excluded plaintiff from tribal lands).

Here, Plaintiffs seek damages for alleged RICO claims against the Tribal Defendants in their alleged "individual" capacities based on the Tribe's act of terminating Plaintiffs' lease agreement for a smoke shop located on the CRIT Reservation. Compl. at ¶ 17. Despite Plaintiffs' attempt to circumvent sovereign immunity, the pleaded facts show Plaintiffs seek to hold the Tribal Defendants liable for actions taken in their official capacities under tribal law. *Cook v. AVI Casino Enters., Inc.*, 548 F.3d 718, 727 (9th Cir. 2008) ("a plaintiff cannot circumvent tribal immunity 'by the simple expedient of naming an officer of the Tribe as a defendant, rather than the sovereign entity.'")

Importantly, Plaintiffs signed their lease agreement with the Tribe—not the individual Tribal Defendants. Compl. at Ex. 2 (letter on Tribal letterhead signed by Mr. Yackley in his official capacity); *id.* at Ex. 3 (letter on Tribal letterhead signed by Chairwoman Flores in her official capacity). These are Tribal actions, not actions of the Tribal Defendants in their individual capacity. The monetary damages Plaintiffs seek would therefore interfere with the Tribe's self-governance because the Tribe terminated the lease under tribal law. Compl. at ¶ 26; *see also* CRIT Property Code Section 1-301(a)(b)(d). Indeed, the Tribe's lease termination expressly cites three tribal law provisions Plaintiffs violated as the basis for terminating the lease and provided Plaintiffs with seven days from the date of notice to retrieve any personal belongings. *Id.* at ¶¶ 26-27; Ex. 3. The actions Plaintiffs allege constituted conversion were also taken under tribal law. *Id.* at ¶ 39; Ex. 4. Because the Tribal Defendants were following tribal law, any judgment would interfere with the Tribe's ability to administer its laws.

The Tribe is therefore the real party in interest and the Tribe's sovereign immunity protects the Tribal Defendants from suit. *See Yashenko v. Harrah's NC Casino Co., LLC*, 446 F.3d 541, 553 (4th Cir. 2006) ("any judgment . . . would threaten 'to impair the [Tribe]'s contractual interests, and thus, its fundamental economic relationship with' the private party, as well as 'its sovereign capacity to negotiate contracts and, in general, to govern' the reservation") (internal citation omitted). Plaintiffs have failed to meet their burden of establishing federal subject matter jurisdiction and the Court should dismiss Plaintiffs' Complaint. *Kokkonen*, 511 U.S. at 376–78.

II. The Tribe is a Required Party that Cannot be Joined

A party may move for dismissal of a complaint under Rule 12(b)(7) for "failure to join a party under Rule 19." Fed. R. Civ. P. 12(b)(7). Rule 19 requires a three-step inquiry. *Klamath Irrigation Dist. v. U.S. Bureau of Reclamation*, 48 F.4th 934, 943 (9th Cir. 2022). First, the Court must determine whether the absent party is "required" under Rule 19(a). *Id*. If the absent party is required, the Court must "determine whether joinder of that party is feasible." *Id.* If joinder is infeasible, the Court must then "determine whether, in equity and good conscience, the action

should proceed among the existing parties or should be dismissed." *Id.* (quoting Fed. R. Civ. P. 19(b)). CRIT is a required party that cannot be joined and without which the action cannot proceed in equity and good conscience. Dismissal is therefore required.

A. The Tribe is a Required Party under Rule 19(a) and Joinder is not Feasible

Rule 19(a) provides that a party is "required" if: (A) in that person's absence, the court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest. Fed. R. Civ. P. 19(a)(1); *Maverick Gaming LLC v. United States*, 123 F.4th 960, 972 (9th Cir. 2024). CRIT is a required party under Rule 19(a)(1)(B)(i) because the Tribe has a legally protected interest that may be impaired or impeded in the Tribe's absence.

The Tribe is a required party because the Tribe—not the Tribal Defendants—issued and terminated Plaintiffs' lease agreement. Indeed, the Ninth Circuit has "repeatedly held that '[n]o procedural principle is more deeply imbedded in the common law than that, in an action to set aside a lease or a contract, all parties who may be affected by the determination of the action are indispensable.'" *E.E.O.C. v. Peabody W. Coal Co.*, 610 F.3d 1070, 1082 (9th Cir. 2010) (internal quotation marks omitted); *see also Dawavendewa v. Salt River Project Agr. Imp. & Power Dist.*, 276 F.3d 1150, 1157 (9th Cir. 2002) ("[A] party to a contract is necessary, and if not susceptible to joinder, indispensable to litigation seeking to decimate that contract."); *Manybeads v. United States*, 209 F.3d 1164, 1166 (9th Cir. 2000) (where plaintiff sought to undo agreements to which tribe was a party, tribe "qualifie[d] as a necessary party under both parts of Rule 19(a)"). The Tribe is thus a required party under Rule 19(a)(1)(B).

Although the Tribe is a required party, it cannot be joined because Indian tribes have sovereign immunity from suit unless they consent to be sued, or Congress has expressly abrogated

immunity. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978); *Burlington N. R.R. Co. v. Blackfeet Tribe*, 924 F.2d 899, 901 (9th Cir. 1991), *cert. denied*, 505 U.S. 1212 (1992). Here, CRIT has not consented to the suit, and Congress has not acted. Accordingly, joinder is not feasible, and the Court must proceed to the Rule 19(b) analysis.

B. This action cannot proceed in equity and good conscience without the Tribe

When a required party cannot be joined, Rule 19(b) directs the Court to decide whether "in equity and good conscience" the case should proceed without the absent party. Rule 19(b); *Maverick Gaming LLC*, 123 F.4th at 972. To make this determination, courts consider: "(i) potential prejudice, (ii) possibility to reduce prejudice, (iii) adequacy of a judgment without the required party, and (iv) adequacy of a remedy with dismissal." *Klamath Irrigation*, 48 F.4th at 947 (citing Fed. R. Civ. P. 19(b)).

Dismissal naturally follows when a required party cannot be joined due to sovereign immunity. *See, e.g., Dine Citizens Against Ruining Our Env't v. Bureau of Indian Affs.*, 932 F.3d 843, 857 (9th Cir. 2019) ("[T]here is a 'wall of circuit authority' in favor of dismissing actions in which a necessary party cannot be joined due to tribal sovereign immunity . . . ."); *Jamul Action Comm. v. Simermeyer*, 974 F.3d 984, 998 (9th Cir. 2020) ("The balancing of equitable factors under Rule 19(b) almost always favors dismissal when a tribe cannot be joined due to tribal sovereign immunity."). Because the Tribe is a required party that cannot be joined due to sovereign immunity, the Court need proceed no further to order dismissal under Rule 19. However, should the Court apply the Rule 19(b) factors, the result is the same.

The first Rule 19(b)(1) factor considers possible prejudice to the absent parties as well as to the current parties. *Maverick Gaming LLC*, 123 F.4th at 980. This factor involves the same considerations discussed in concluding that the Tribe is a required party under Rule 19(a). *See Am. Greyhound Racing, Inc. v. Hull,* 305 F.3d 1015, 1024–25 (9th Cir. 2002) ("[T]he first factor of prejudice, insofar as it focuses on the absent party, largely duplicates the consideration that made a party necessary under Rule 19(a)"). Any judgment will prejudice the Tribe's sovereign interests

in enacting its own laws, negotiating contracts under those laws, and interfere with the public administration of those laws. The first factor favors dismissal.

As to the second factor, this is not a case where the prejudice caused by a party's absence can be mitigated by the presence of a party capable of representing the absent party's interest. As an elected body responsible for representing the Tribe, only the CRIT Tribal Council as a whole retains exclusive authority to represent the Tribe's interests. None of the individual Tribal Defendants in their personal capacities possess the authority to unilaterally enact or modify CRIT Tribal law or Tribal contracts. The second factor favors dismissal.

The third Rule 19(b)(3) factor considers whether any judgment rendered in the Tribe's absence would be adequate. It would not. The concern underlying Rule 19(b)(3) is not the Plaintiffs' interest but that "of the courts and the public in complete, consistent, and efficient settlement of controversies." *Provident Tradesmens Bank & Tr. Co. v. Patterson*, 390 U.S. 102, 111 (1968). The foundation of Plaintiffs' claims is the allegation that the Tribal Defendants' actions *in carrying out* tribal law and a tribal resolution constitute racketeering activity. A judgment rendered in the Tribe's absence would not be binding on the Tribe and would not address the underlying alleged tribal government activity. The third factor favors dismissal.

Last, although Rule 19(b)(4) may weigh against dismissal insofar as dismissal under Rule 19 could potentially leave Plaintiffs without an adequate remedy, this is an insufficient basis for disregarding the Tribe's sovereign immunity. A lack of remedy is an inevitable result of sovereign immunity, and courts have uniformly held that "the tribal interest in immunity overcomes the lack of an alternative remedy or forum for the plaintiffs." *Maverick Gaming LLC*, 123 F.4th at 981.

The Tribe is a required party that cannot be joined due to its sovereign immunity. The Court should therefore dismiss the Complaint for failure to join a required party under Rule 19.

III. The Complaint Fails to State a Claim Against the Tribal Defendants

A. 18 U.S.C. § 1962(c)

A RICO claim under § 1962(c) requires Plaintiffs to allege that the Tribal Defendants participated, directly or indirectly, in the "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as 'predicate acts') (5) causing injury to plaintiff's business or property." *Living Designs, Inc. v. E.I. DuPont de Nemours Co.,* 431 F.3d 353, 361 (9th Cir. 2005). Plaintiffs' barebone allegations fail to meet the pleading standards required for a civil RICO claim.

1. This is a contract dispute, not a RICO action

This case is nothing but a run-of-the-mill lease dispute taking place entirely within Arizona masquerading as RICO to manufacture federal jurisdiction where none would otherwise exist.[1] This case is a gross misuse of RICO. *Midwest Grinding Co. v. Spitz*, 976 F.2d 1016, 1025-26 (7th Cir. 1992) ("The widespread abuse of civil RICO stems from the fact that . . . RICO offers a far more generous compensation scheme than typically available in state court."). Indeed, this lease dispute lacks an obvious interstate nexus, as it concerns property located in Arizona and involves parties that were both based in Arizona. *Musick v. Burke*, 913 F.2d 1390, 1398-99 (9th Cir. 1990) (a core element of RICO is that the purported RICO enterprise is "engaged in, or having an effect on, interstate commerce"); *LaComba v. Eagle Home Loans and Inv., LLC*, 2024 WL 418646, at *3 (E.D. Cal. Feb. 5, 2024) (finding that "it is unclear how two California entities engaged in lending activities within California are engaged in or affect interstate commerce"). Nothing in the Complaint alleges that the actions of the purported enterprise, or even the predicate acts as pleaded, had the necessary effect on interstate commerce for jurisdiction under the RICO statute. *See United States v. Bagnariol*, 665 F.2d 877, 892-94 (9th Cir. 1981).

[1] Plaintiffs make some confusing allegations about "diversity". Compl. at ¶ 8. There cannot be diversity because one of the Plaintiffs is an Arizona entity (WW Young Money, LLC) and Plaintiffs are suing Arizona residents. It is also unclear whether the amount in controversy exceeds the statutory requirement of $75,000.

2. Plaintiffs fail to adequately plead predicate acts that meet the pattern of racketeering activity as required under RICO

Racketeering activity requires predicate acts. *Eclectic Properties E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014). RICO enumerates specific acts that satisfy the "racketeering activity" element, such as "any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical . . ." 18 U.S.C. § 1961(1). To establish a pattern, Plaintiffs must "show that the racketeering predicates are related [to each other], and that they amount to or pose a threat of continued criminal activity." *H.J. Inc. v. Northwestern Bell Telephone Co.,* 492 U.S. 229, 239 (1989).

Plaintiffs allege five predicate acts: (1) mail and wire fraud (18 U.S.C. §§ 1341 and 1343); (2) obstruction of justice (18 U.S.C. §§ 1510 and 1503); (3) interference with commerce by robbery, extortion, threats, and violence (18 U.S.C. § 1951); (4) theft (18 U.S.C. § 661); and (5) obstruction of a criminal investigation (18 U.S.C. § 1510). Compl. at ¶ 52. All five predicate acts are inadequately pleaded.

i. Failure to allege mail and wire fraud

"The mail and wire fraud statutes are identical except for the particular method used to disseminate the fraud, and contain three elements: (A) the formation of a scheme to defraud, (B) the use of the mails or wires in furtherance of that scheme, and (C) the specific intent to defraud." *Eclectic*, 751 F.3d at 997. The "scheme to defraud" element is "treated like conspiracy in several respects." *United States v. Stapleton*, 293 F.3d 1111, 1117 (9th Cir. 2002) (quoting *United States v. Lothian*, 976 F.2d 1257, 1262 (9th Cir. 1992)).

Federal Rule of Civil Procedure 9(b) requires fraud to be pled with particularity. The allegations of fraud must be "specific enough to give defendants notice of the particular misconduct so that they can defend against the charge." *Vess v. Ciba–Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal quotation marks omitted). This requires Plaintiffs to identify "the who, what, when, where, and how" of the alleged misconduct. *Id.* "The only aspects of wire

fraud that require particularized allegations are the factual circumstances of the fraud itself." *Odom v. Microsoft Corp.*, 486 F.3d 541, 554 (9th Cir. 2007) (en banc). "In the context of a fraud suit involving multiple defendants, a plaintiff must, at a minimum, identify the role of each defendant in the alleged fraudulent scheme." *Swartz v. KPMG LLP*, 476 F.3d 756, 765 (9th Cir. 2007) (internal quotation marks omitted).

Here, Plaintiffs allege the Tribal Defendants collectively committed mail and wire fraud when they sent the lease termination letter to Plaintiffs. Compl. at ¶ 21. This type of "lumping together" of defendants is exactly what Rule 9 prohibits. Plaintiffs also claim the following tribal law provisions, cited in the lease termination letter, are "false and fraudulent:"

> (1) "OCCUPATION OF THE PREMISES WITHOUT PERMISSION OR AGREEMANT [sic], FOLLOWING A REASONABLE DEMAND BY A PERSON IN AUTHORITY OVER THE PREMISIS [sic] TO LEAVE."
>
> (2) "NONPAYMENT OF RENT UNDER AN AGREEMENT FOR THE LEASE OF THE PREMISES WHEN SUCH PAYMENTS ARE NOT MADE AFTER (10) CALENDER [sic] DAYS OF THE AGREEMENT DATE FOR PAYMENT."
>
> (3) "NUISSANCE [sic], WASTE, INTENTIONAL OR RECKLESS DAMAGE, DESTRUCTION OR INJURY TO THE PROPERTY OF THE LANDLORD OR TENANTS."

Compl. at ¶¶ 31–33. But the single paragraph of the Complaint that supposedly supports this assertion does not show fraud, much less with the specificity required by Rule 9(b). *Id*. at ¶ 30.

Indeed, Plaintiffs' broad allegation says nothing about which party made what representations. And an alleged illegal termination of lease notification is insufficient to state a plausible entitlement to relief. *See Eclectic Props. E., LLC*, 751 F.3d at 997 ("Plaintiffs' fraud theory requires them to show more than a business deal gone bad for economic and non-fraudulent reasons."). Plaintiffs' "faint sketch of fraud is insufficient," and the Complaint fails to comply with the particularity requirement of Rule 9(b). *See Siegel v. Shell Oil Co.*, 480 F. Supp. 2d 1034, 1043 (N.D. Ill. 2007) (dismissing complaint lacking "any of the particulars surrounding . . . fraud").

ii. Failure to allege obstruction of justice

The obstruction of justice claim is also inadequately pleaded. The only "obstruction" Plaintiffs identify is that CRIT investigator Charles Solano traveled to Florence, Arizona, to allegedly harass and intimidate Plaintiff Welsh and to obstruct a federal investigation and that, as a result, Plaintiff Welsh continued to be detained in Florence, Arizona. Compl. at ⁋ 29. Plaintiffs make no attempt to show how this would be obstruction of justice under 18 U.S.C. § 1503, which generally requires the manipulation of a tribunal be done "corruptly." *See* 18 U.S.C. § 1503. Even if § 1503 had been implicated, Plaintiffs standalone allegation that Defendant Loudbear "falsely claimed that Plaintiff Welsh had contacted CRIT about selling his business, when, in fact, Defendants had conspired to seize the business" is woefully deficient. Compl. at ⁋ 28. The allegation provides no specific facts supporting the assertions and Plaintiffs cannot rely on conclusory allegations to avoid dismissal for failure to state a claim.

iii. Failure to allege interference with commerce by extortion

Although the predicate act of extortion does not require the heightened pleading standards of Rule 9(b), it does require establishment of specific statutory elements. The interference with commerce claim is inadequately pleaded. Plaintiffs allege Defendant Loudbear "attempted to extort money from Plaintiffs under the guise of recovering their own property, demanding $18,720.00 to allow Plaintiffs access to their property." Compl. at ⁋ 22. Plaintiffs say Defendant Loudbear emailed Attorney Odin Smith with a copy of the lease balance showing that $18,720.00 was the total balance owed. *Id.* at ⁋ 40. Plaintiffs claim this balance was false. *Id.* Plaintiffs fail, however, to show how an email that contained their remaining lease balance, without any evidence of violent or fear-inducing activities, amounts to extortion under 18 U.S.C. § 1951. "Warnings and notices" of actions by a defendant who may lawfully take those actions do not constitute extortion. *Rothman v. Vedder Park Mgmt.*, 912 F.2d 315, 318 (9th Cir. 1990). Plaintiffs' conclusory allegation that Defendant Loudbear's email was extortion is plainly insufficient.

iv. Failure to allege theft

The theft claim is inadequately pleaded. Plaintiffs broadly allege "[o]n information and belief [that] Defendants may have provided Plaintiffs' property to others not fully known at this time, who assisted in the conversion and sale of Plaintiffs' goods and property Defendants unlawfully stole from Plaintiffs." Compl. at ⁋ 24. This conclusory and speculative allegation free of any factual detail as to each Tribal Defendant is insufficient to state a plausible claim.

v. Failure to allege obstruction of criminal investigation

The obstruction of a criminal investigation is inadequately pleaded. Plaintiffs allege "Defendant Loudbear and other defendants coordinated their efforts in a conspiracy to seek the false imprisonment of Plaintiff Kyle Welsh by providing false information to federal law enforcement authorities, which resulted in the issuance of a federal warrant and the prosecution of fictitious criminal charges against Kyle Welsh which damaged his reputation and caused him severe harm and emotional distress." Compl. at ⁋ 25. Again, Plaintiffs' conclusory allegations that Defendant Loudbear—and other unspecified defendants—coordinated their efforts to seek Plaintiffs' false imprisonment, without more, is plainly insufficient to state a predicate act.

3. Plaintiffs fail to adequately allege the existence of a RICO enterprise

Plaintiffs' RICO claim against the Tribal Defendants must be dismissed because the Complaint fails to allege the existence of a RICO "enterprise." An enterprise is "a group of persons associated together for a common purpose of engaging in a course of conduct." *United States v. Turkette,* 452 U.S. 576, 583 (1981). Plaintiffs must plead that the enterprise has a common purpose, relationships among those associated with the enterprise, and longevity necessary to accomplish the purpose. *Boyle v. United States,* 556 U.S. 938, 946 (2009).

Plaintiffs allege the Tribal Defendants are associated in fact to form "the Running Man Criminal Organization" and have the common purpose of "conspiring to damage Plaintiffs and take over their business enterprise through the use of one or more felonies[.]" Compl. at ¶¶ 15, 51. The Complaint merely recites this alleged purpose without any factual allegations about the

structure, organization, or continuity of the alleged enterprise. There are no details on how the Tribal Defendants coordinated or what relationships, if any, existed among them beyond conclusory assertions. The Complaint is void of specific factual allegations relating to the individual conduct of each Tribal Defendant. *See Doan v. Singh*, 617 Fed. App'x 684, 686 (9th Cir. 2015) (finding plaintiff failed to allege a RICO enterprise because "it is not clear what exactly each individual did, when they did it, or how they functioned together as a continuing unit").

What the Complaint does contain is a handful of broad allegations concerning the Tribal Defendants collectively. *See*, *e.g.*, Compl. ⁋ 12 (alleging that "[a]ll Defendants individually or by virtue of their participation in the conspiracy formed against Plaintiffs were aware of the lease and or its terms."). Even if this collective approach to asserting a RICO claim against an individual defendant were permitted, the allegations fail because of their vague and speculative nature. *See Swartz*, 476 F.3d at 764 ("Rule 9(b) does not allow a complaint to merely lump multiple defendants together but require[s] plaintiffs to differentiate their allegations …").

Moreover, all the alleged acts referred to in the Complaint amount to nothing more than the Tribal Defendants carrying out their official duties to enforce the Tribe's lease agreement. Plaintiffs do not allege facts demonstrating that the Tribal Defendants were acting in any organized manner distinct from those official roles. Nor do Plaintiffs allege an ongoing association or structure that operated beyond the routine functions of tribal governance. Critically, the Complaint fails to allege any facts showing how the Tribal Defendants operated as a continuing unit, or that there was any organization, hierarchy, or decision-making process that would transform a group of individuals executing their official duties into a RICO enterprise. A RICO enterprise requires "a truly joint enterprise where each individual entity acts in concert with the others to pursue a common interest." *Bible v. United Student Aid Funds, Inc.*, 799 F.3d 633, 655–56 (7th Cir. 2015). No such enterprise exists or is pleaded. The Complaint fails to allege an enterprise.

4. Even if Plaintiffs alleged a RICO enterprise, Plaintiffs fail to state a plausible claim that any of the Tribal Defendants participated in the enterprise

The final element Plaintiffs must prove to support their § 1962(c) RICO claim is that each Defendant "conduct[ed] or participate[d], directly or indirectly, in the conduct of [the] enterprise's affairs." 18 U.S.C. § 1962(c). This means Plaintiffs must allege "*some* part in directing the enterprise's affairs . . .." *Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993). "'[S]imply performing services for the enterprise,' or failing to stop illegal activity, is not sufficient." *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, and Prods. Liab. Litig.* ("*VW Franchise Dealers*"), 2017 WL 4890594, at *16 (N.D. Cal. Oct. 30, 2017) (internal quotation marks omitted).

Predictably, Plaintiffs broadly allege that '[a]ll Defendants individually or by virtue of their participation in the conspiracy formed against Plaintiffs were aware of the lease and or its terms." Compl. at ¶ 12. Putting aside Plaintiffs' blatant failure to allege that *each* defendant operated or managed the purported enterprise, Plaintiffs are left with the allegation that the Tribal Defendants participated in the RICO enterprise because they "were aware of the lease and or its terms." *Id.*

This threadbare allegation does not satisfy RICO's requirement that each Tribal Defendant have operated or managed the enterprise. Plaintiffs' apparently attempt to explain the Tribal Defendants' participation by noting that "Plaintiffs' smoke shop was fully compliant and licensed with CRIT and the Arizona Department of Revenue for tax-exempt tobacco sales on the CRIT Reservation and all Defendants knew this by virtue of their participation in the conspiracy alleged herein." *Id.* at ¶ 13. But how this purported knowledge of the lease agreement rises to the level of operating and/or managing the alleged racketeering enterprise is unclear.

Because the Complaint fails to include any non-speculative facts, the Complaint's vague allegation that the Tribal Defendants "led . . . an ongoing organization, association, or group of individuals associated in fact for the purpose of conspiring to damage Plaintiffs and take over their business enterprise through the use of one or more felonies in proximity to one another" should be viewed as a mere recital of one of the § 1962(c) elements that does not suffice for Rule 12(b)(6)

purposes. Compl. at ¶ 51. Plaintiffs have failed to plausibly support that each Tribal Defendant took some part in directing the enterprise's affairs. *Reves*, 507 U.S. at 179.

B. 18 U.S.C. § 1962(d)

Section 1962(d) makes it unlawful "for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section." 18 U.S.C. § 1962(d). Because Count I fails to allege a violation of § 1962(c), Count II must be dismissed as well. *See Religious Tech. Ctr. v. Wollersheim*, 971 F.2d 364, 368 n.8 (9th Cir. 1992).

CONCLUSION

This case boils down to a factually and legally flawed attempt to repudiate the Tribe's lawful termination of Plaintiffs' lease agreement in federal court. For these reasons, the Complaint should be dismissed in its entirety, with prejudice and without leave to amend.[2]

DATED this 24th day of June, 2025.

By: */s/ Alexander Mallory*

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[2] The Court should consider Rule 11 sanctions *sua sponte*. "A claim is frivolous if it is both baseless and made without a reasonable and competent inquiry. A frivolous claim is one that is legally unreasonable, or without legal foundation." *In re Grantham Bros.*, 922 F.2d 1438, 1442 (9th Cir. 1991) (citations and internal quotation marks omitted). "Rule 11's deterrence value is particularly important in the RICO context, as the commencement of a civil RICO action has 'an almost inevitable stigmatizing effect' on those named as defendants." *Katzman v. Victoria's Secret Catalogue*, 167 F.R.D. 649, 660 (S.D.N.Y. 1996).

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CERTIFICATION PURSUANT TO LR 12(c)

The Tribal Defendants certify that they consulted with counsel for Plaintiffs Kyle Welsh, Estate of Jill Welsh, and WW Young Money, LLC d/b/a Flame on Indian Smoke Shop regarding the deficiencies raised above on June 19, 2025. Counsel for Plaintiffs declined to propose any amendments to the Complaint. The parties were therefore unable to agree the pleading was curable in any part. Because no resolution could be reached, the Tribal Defendants filed the instant motion.