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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-SPL

**RESPONSE TO
MOTION TO DISMISS**

(Oral Argument Requested)

Comes Now Plaintiffs who hereby Respond to Defendants' Motion to Dismiss pursuant to Fed. R. Civ. Proc. 12 (b)(6) and hereby request it be denied. The accompanying Memorandum of Points and Authorities is set forth below.

DATED this 8th day of July 2025.

/s/ Dennis I. Wilenchik

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MEMORANDUM OF POINTS AND AUTHORITIES

I. The Tribal Defendants Acted Outside the Scope of their Authority and Are Therefore Not Protected by CRIT's Sovereign Immunity.

Defendants argue that Plaintiffs' Complaint attempts an "end run" around sovereign immunity. Not so. To be clear, Plaintiffs are not seeking any relief from the Colorado River Indian Tribes (hereinafter "CRIT" or "the Tribe"). Plaintiffs have not named the Tribe as a Defendant. Nor have Plaintiffs asserted that the Tribe is responsible for wrongfully shutting down the Flame on Indian Smoke Shop. Rather, the Complaint states unambiguously that Plaintiffs seek relief against the individual Defendants Rebecca Loudbear, Amelia Flores, and John Yackley. And "in a suit brought against a tribal employee in his individual capacity, the employee, not the tribe, is the real party in interest and the tribe's sovereign immunity is not implicated." *Lewis v. Clarke*, 581 U.S. 155, 158 (2017).

Plaintiffs sued Defendants Loudbear, Flores, and Yackley because they acted outside the scope of their authority in shutting down Plaintiffs' smoke shop. They used pretextual explanations to conceal the impropriety of their conduct, and that conduct caused damage to Plaintiffs. For example, Plaintiff Kyle Welsh timely paid the smoke shop's regular rent payment, as he always did. Yackley received the check. But the check was never negotiated. This and other actions by Defendants *in their individual capacity* were part of a concerted plan to shut down Plaintiffs' smoke shop. Defendants did so for their own pecuniary gain, not the Tribe's. Defendants conduct was driven by their own *individual* greed and their own *individual* jealousy. Plaintiffs have alleged as much, and it must be accepted as true at this point.

Loudbear subsequently authored a letter "in her capacity" purporting to terminate Plaintiffs' smoke shop lease for nonpayment of rent. This letter was signed in concurrence by Amelia Flores, the CRIT Council Chairwoman, wherein she also acted outside the scope of her authority and for personal reasons. Ms. Flores was only authorized to sign legislative matters approved by the CRIT Tribal Council. The Tribal Council never took any action against Plaintiffs and more importantly never authorized the termination of Plaintiffs' lease or the shutting down of

1 the smoke shop. This did not prevent Loudbear and Flores conspiring with Yackley (who did
2 receive Plaintiffs' rent payment) in their causing termination of Plaintiffs' lease.

3 Anytime Kyle Welsh attempted to seek remedies through official tribal avenues, his actions
4 were met with violence by the CRIT tribal police at Defendant Loudbear's involvement. To be
5 clear, Plaintiffs are not asserting any claims against the CRIT tribal police or its individual police
6 officers. They, however, acted at the behest of Loudbear. For this reason, Mr. Welsh fears
7 returning to Arizona and intends to continue residing in Texas.

8 Even though Kyle Welsh and Jill Welsh signed the lease *with CRIT*, Plaintiffs are not
9 seeking relief under the lease which Defendants caused to be terminated by their actions. Nor are
10 they seeking money damages from CRIT. It is highly doubtful that any judgment rendered against
11 Loudbear, Flores or Yackley for their individual actions would interfere with CRIT's self-
12 governance but equally irrelevant to a proper Motion to Dismiss. And the mere fact that
13 Defendants held positions of trust with the Tribe does not protect or immunize them from their
14 individual torts. Their positions do not immunize them from liability caused by their tortious or
15 criminal conduct. This is "simply a suit against [individual Defendants] to recover for [their]
16 personal actions, which 'will not require action by the sovereign or disturb the sovereign's
17 property.'" *Lewis*, 581 U.S. at 163 (quoting *Larson v. Domestic and Foreign Commerce Corp.*,
18 337 U.S. 682, 687 (1949)).

19 **I. CRIT's Joinder Is Not Necessary.**

20 **A. Plaintiffs Are Not Seeking Any Relief from CRIT**

21 Defendants have the burden of suing the Tribe for coverage or indemnity should they
22 choose to do so. Plaintiffs have no such requirement based on the allegations against the
23 individuals in their individual capacities. Defendant cite a handful of irrelevant cases in which
24 Indian tribal interests were asserted, or contractual remedies were being sought thereby requiring
25 joinder of the Indian tribe in question. *See, e.g., Maverick Gaming LLC v. U.S.*, 123 F.4th 960
26 (2024) (Indian tribe intervened on a limited basis in support of motion to dismiss to protect tribal
27 interests); *E.E.O.C. v. Peabody Western Cal Co.*, 610 F.3d 710 (9th Cir. 2010) (action to set aside
28 coal mining lease); *Dawavendewa v. Salt River Project Agr. Imp. & Power Dist.*, 276 F.3d 1150

(9th Cir. 2002) (attempt to invalidate application of Indian tribal hiring preference laws). In each of these cases, the Tribes were deemed to have legally protected interests, which required their joinder. This is not the case here.

“In determining whether the [an Indian tribe] is necessary under Rule 19, we consider whether, in the absence of the [tribe], complete relief can be accorded to [the Plaintiff].” *Dawavendewa*, 276 F.3d at 1155. Here, because Plaintiffs are not seeking any remedies against CRIT, complete relief as requested by Plaintiffs can be accorded in the absence of CRIT. Plaintiffs are satisfied that its remedies are sufficient and will require no official action by CRIT to award liability to Plaintiffs.

B. CRIT Is Not An Indispensable Party

Even if CRIT is determined to be a required party that cannot be joined due to sovereign immunity, this action can still proceed in equity and good conscience without CRIT. Plaintiffs are not seeking any relief from CRIT. CRIT’s governing officials would still be able to execute sovereign powers of government within the bounds of federal and tribal law, which would not be intruded upon or interfered with by any judgment that might be entered in this action.

Dawavendewa set forth four factors to be balanced when determine whether an action can proceed without an Indian tribe’s joinder. They are: (1) prejudice to any party or to the absent party, (2) whether relief can be shaped to lessen prejudice, (3) whether an adequate remedy, even if not complete, can be awarded without the absent party, and (4) whether there exists an alternative forum. *Dawavendewa*, 276 F.3d at 1161-62. All of these factors militate in favor of proceeding without CRIT even if it is determined to be a necessary party.

First, no party will suffer prejudice in the absence of CRIT in this lawsuit. CRIT’s sovereign authority and powers of government are not being questioned. Plaintiffs are not seeking *any relief* from CRIT. It is difficult to fathom how CRIT’s absence would prejudice the Defendants particularly where Plaintiffs here seek relief from the named Defendants and their to be identified co-conspirators.

Second, relief can certainly be shaped to lessen any prejudice. The Complaint, as drafted, already limits relief to the individual Defendants only.

1 Third, an adequate remedy can certainly be awarded without CRIT. Plaintiffs desire to hold
2 the individual Defendants accountable, not CRIT.

3 Fourth, no alternative forum exists. CRIT would be able to assert sovereign immunity in a
4 state or tribal court proceeding.

5 For the above reasons, the action in equity and good conscience can proceed without CRIT
6 even if CRIT is determined to be a necessary party.

7 **II. Plaintiff Seeks Civil RICO Liability For the Statute's Intended Purpose.**

8 Defendants' conduct resulted in Welsh's incarceration. So this is hardly a "run-of-the mill
9 lease dispute." Plaintiffs seek to impose civil RICO liability for the very purposes for which RICO
10 was enacted. They include (1) the eradication of organized crime's economic influence, (2)
11 protection of victims and deterrence of criminal behavior, and (3) addressing the infiltration of
12 legitimate businesses. *UI\T4less, Inc. v. FedEx Corp.*, 157 F. Supp. 3d 341 (2016) (eradication of
13 organized crime and to address infiltration of legitimate businesses by organized crime); *Epstein*
14 *v. Epstein*, 159 F.R.D. 420 (1994) (protection of victims and deterrence). Each of these concerns
15 are applicable here. Again and of significant note, Plaintiffs seek no contractual remedies
16 whatsoever from CRIT.

17 Defendants' argument that Plaintiffs' RICO claim lacks the necessary "interstate
18 commerce" fails because there is no per se rule that intra-state conduct cannot result in federal
19 RICO liability. Further, RICO is to read broadly and liberally construed to effectuate its remedial
20 purposes. *Marshall v. Goguen*, 604 F. Supp. 3d 980, 993 (D. Mont. 2022). A plaintiff need only
21 demonstrate that alleged the enterprise involved in racketeering activity is engaged in or has a
22 non-incidental effect on interstate commerce, even if the predicate acts themselves do not have an
23 interstate effect. *Musick v. Burke*, 913 F.2d 1390, 1395 (9th Cir. 1990). Here, Plaintiffs allege,
24 without limitation, Defendants' use of U.S. Mail and FedEx, false statements to federal law
25 enforcement officers, successive federal felonies, and improper procurement of federal criminal
26 judicial processes resulting in Welsh's incarceration in a federal holding facility.

27 The balance of Defendants' RICO arguments are hyper-focused on factual pleading
28 technicalities, such as supposed failures to comply with Rule 9(b) or supposed failures to identify

specific acts by specific defendants.¹ Such alleged pleading defects can be cured through amendment and leave to amend should be permitted. *Navajo Health Found. - Sage Mem'l Hosp., Inc. v. Razaghi Dev. Co., LLC*, No. 219CV00329GMNEJY, 2021 WL 1397229, at *10 (D. Nev. Jan. 15, 2021), report and recommendation adopted, No. 219CV00329GMNEJY, 2021 WL 961746 (D. Nev. Mar. 15, 2021) (“[B]ecause this pleading failure is potentially remedied and does not render the action before the Court futile, the Court recommends Plaintiff’s Motion for Leave to File First Amended Complaint (ECF No. 76) be denied without prejudice, with leave to amend.”).

III. Plaintiffs Have Adequately Plead Their Claim

A. Mail and Wire Fraud

Plaintiffs agree that the predicate acts of mail and wire fraud (18 U.S.C. §§ 1341 and 1343) alleged in the Complaint must be plead with particularity, and the Complaint satisfies this requirement.

Paragraphs 17 through 21 and 31 through 33 of the Complaint contain the allegations of mail and wire fraud. They sufficiently indicate the identity of individual Defendants who mailed false and fraudulent communications through the U.S. Mail and who received rent payment checks sent by Kyle Welsh to John Yackley via FedEx.

Paragraph 43 alleges the use of e-mail by Defendant Loudbear on March 30, 2022, in communicating with the FBI concerning Mr. Welsh’s whereabouts with respect to bogus unspecified federal charges initiated by Defendant Loudbear against Mr. Welsh for which he was held in federal custody for nearly a year.

¹ Defendants’ LRCIV 12.1(C) certificate recites the requisite language in the Rule. But Plaintiffs disagree with the precision of the certificate when taken in appropriate context. As LRCIV 12.1 does not necessarily allow for a “Counter-Certificate,” Plaintiffs will state this. The meet and confer did occur on June 19, 2025. It was cordial and professional. Plaintiffs’ counsel asserted the obvious: it was not possible or practical to fully address possible amendments to cure pleading deficiencies without first seeing the motion to dismiss in full. Defendants then filed their motion six days later. Having now seen the motion in full, Plaintiffs can and do assert that amendments can cure the deficiencies above, as set forth in this response.

1 The “who, what, when and where” are sufficiently plead to state a claim for mail fraud and
2 wire fraud. These communications represent at least three occasions where the Defendants
3 participated in the predicate acts of mail fraud and wire fraud sufficient to sustain a civil RICO
4 violation.

5 **B. Obstruction of Justice**

6 Obstruction of justice codified at 18 U.S.C. § 1503 provides in relevant part:

7 Whoever . . . corruptly or by threats or force, or by any threatening letter or
8 communication, influences, obstructs, or impedes, or endeavors to influence,
9 obstruct, or impede, the due administration of justice, shall be punished as provided
in subsection (b) [providing for 10 years of imprisonment, a fine or both].

10 The Complaint sufficiently alleges at paragraphs 26 through 29 that Defendant Loudbear
11 communicated false information to the FBI for the purpose of arresting and imprisoning Mr.
12 Welsh without any federal charges having been brought. Mr. Welsh ultimately served nearly one
13 year in a federal detention facility in Yuma, Arizona.

14 **C. Remaining Plead Predicate Acts**

15 Plaintiffs assert the position in this response that the remaining predicate acts are
16 sufficiently plead for present purposes. To the extent the Court agrees with Defendants that certain
17 allegations with respect to the RICO predicate acts are insufficient, Plaintiffs request leave to
18 amend its Complaint.

19 For the foregoing reasons, Plaintiffs request that Defendants’ Motion to Dismiss be denied.

20 **DATED** this 8th day of July 2025.

21 **WILENCHIK & BARTNESS, P.C.**

22 /s/ Dennis I. Wilenchik

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2025, a copy of the foregoing was filed electronically. Notice of this filing will be sent by email to all parties through the court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the court's CM/ECF system.

/s/ W. Denetsosie