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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PASKENTA BAND OF NOMLAKI
INDIANS; and PASKENTA
ENTERPRISES CORPORATION,

Plaintiffs,

v.

INES CROSBY; JOHN CROSBY;
LESLIE LOHSE; LARRY LOHSE;
TED PATA; JUAN PATA; CHRIS
PATA; SHERRY MYERS; FRANK
JAMES; UMPQUA BANK; UMPQUA
HOLDINGS CORPORATION;
CORNERSTONE COMMUNITY BANK;
CORNERSTONE COMMUNITY
BANCORP; JEFFERY FINCK; GARTH
MOORE; HARTH MOORE INSURANCE
AND FINANCIAL SERVICES, INC.;
ASSOCIATED PENSION
CONSULTANTS, INC.; HANESS &
ASSOCIATES, LLC; ROBERT M.
HANESS; THE PATRIOT GOLD &
SILVER EXCHANGE, INC. and
NORMAN R. RYAN,

Defendants,

SILVER QUICKEN LOANS, INC.;
CRP 111 WEST 141ST LLC;
CASTELLAN MANAGING MEMBER
LLC; CRP WEST 168TH STREET
LLC; and CRP SHERMAN AVENUE
LLC,

Nominal
Defendants.

No. 2:15-cv-00538-GEB-CMK

**ORDER DENYING DEFENDANTS' MOTION
FOR A STAY, OR IN THE
ALTERNATIVE, DISMISSAL OF
PLAINTIFFS' AMENDED COMPLAINT
PENDING ARBITRATION; AND
GRANTING PLAINTIFFS' COUNTER-
MOTION TO STAY ARBITRATION**

1 Defendants Ines Crosby, John Crosby, Leslie Lohse, and
2 Larry Lohse (collectively, the "Employee Defendants"), and Ted
3 Pata, Juan Pata, Chris Pata, Sherry Myers, Frank James, The
4 Patriot Gold and Silver Exchange, Inc., and Norman R. Ryan
5 (collectively with Employee Defendants, "Defendants") move for an
6 order staying further proceedings in this case, or in the
7 alternative for dismissal of Plaintiffs' First Amended Complaint
8 ("FAC") pending arbitration of Plaintiffs' claims under the
9 Federal Arbitration Act ("FAA"). The Employee Defendants
10 initiated an arbitration against Plaintiff Paskenta Band of
11 Nomlaki Indians (the "Tribe"), in which they assert the Tribe
12 breached the terms of each Employee Defendant's Executive
13 Employment Agreement ("EEA") by terminating each Employee
14 Defendant's employment with the Tribe; Defendants argue that
15 since each EEA contains an arbitration clause, the FAA requires
16 Plaintiffs to arbitrate the claims in their FAC.

17 Plaintiffs oppose Defendants' motion and filed a
18 counter-motion to stay the arbitration, in which Plaintiffs argue
19 no arbitration agreement exists between the Tribe and the
20 Employee Defendants because the signatures on the EEAs were
21 forged, and therefore the purported EEAs are nullities.
22 Plaintiffs support their forgery argument citing, inter alia, a
23 declaration in which a purported EEA signee named Andrew Freeman
24 declares he did not sign the EEA purporting to bear his
25 signature. (A. Freeman Decl. ¶ 5, ECF No. 67-5.) Plaintiffs also
26 present the opinion of a handwriting expert who determined each
27 individual whose name appears on an EEA "probably did not write"
28 the purported signature. (Mohammed Decl. Ex. A, ECF No. 67-7.)

1 Defendants respond that Plaintiffs' signature
2 authenticity assertions need not be resolved because this dispute
3 has been rendered moot since the Tribe agreed to arbitration with
4 the Employee Defendants when it adopted Tribal Resolution No.
5 2014-9-8 ("the Resolution"), which states: "the Tribal Council
6 hereby ratifies, confirms, approves and adopts all existing
7 Executive Employment Contracts between the Tribe and John Crosby,
8 Ines Crosby, Larry Lohse, and Leslie Lohse, respectively." (G.
9 Freedman Decl. Ex. 3.) Defendants support this argument with the
10 declarations of three former Tribal Council members who each
11 declare that on September 8, 2014, "four of the five members of
12 the Tribal Council duly passed [the Resolution]." (G. Freeman
13 Decl. ¶¶ 7-8; D. Swearinger ¶¶ 7-8, ECF No. 55-3; A. Swearinger
14 ¶¶ 7-8, ECF No. 55-4.)

15 Plaintiffs disagree, arguing the Resolution could not
16 create an arbitration agreement between the Tribe and the
17 Employee Defendants because under federal common law, which
18 Plaintiffs contend governs the dispute concerning whether an
19 arbitration agreement exists, a forged agreement cannot be
20 ratified. Plaintiffs cite in support of their position Samuel
21 Williston, 12 Williston on Contracts, which states, "[a]lthough
22 there is some authority that a principle may ratify an instrument
23 forged by an agent, the great weight of authority at common law
24 denied the possibility of ratification of a forgery." § 35:29
25 (4th ed.).

26 Defendants argue federal common law "does not speak to
27 the issue of whether a forged agreement can be validly ratified"
28 and because of "the dearth of federal common law on the topic,

1 California law applies" to the question whether the Resolution
2 ratified each EEA. Defendants contend under California law a
3 principal can ratify a forged agreement. (Defs.' Reply 2:19, ECF
4 No. 70.)

5 Defendants have not shown what principles govern
6 determination of what constitutes federal common law, nor that
7 federal common law is silent on the issue of whether the
8 Resolution renders irrelevant a claim that the purported
9 signatures on the EEAs are forgeries. See GECCMC 2005-C1 Plummer
10 St. Office Ltd. P'ship v. JPMorgan Chase Bank, Nat'l Ass'n, 671
11 F.3d 1027, 1033 (9th Cir. 2012) (holding that "[u]nder federal
12 common law, [courts] look[] to 'general principles for
13 interpreting contracts'"); and Fleming v. U.S. Postal Serv. AMF
14 O'Hare, 27 F.3d 259, 260 (7th Cir. 1994) (recognizing Williston
15 on Contracts as one recognized source of "general principle[s] of
16 contract law"); see also U.S. v. Cal., 507 U.S. 746, 756 (1993)
17 (favorably citing Williston). The party seeking arbitration "has
18 the burden of proving the existence of an agreement to arbitrate
19 by a preponderance of the evidence." Knutson v. Sirius XM Radio
20 Inc., 771 F.3d 559, 565 (9th Cir. 2014). Defendants have not
21 satisfied this burden since they have not presented any evidence
22 from which a reasonable inference could be drawn that the EEA
23 signatures are authentic, and have not shown that the Resolution
24 resolves this dispute.

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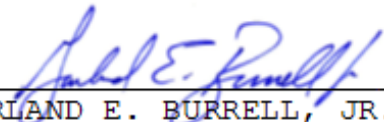
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1 For the stated reasons, Defendants' motion for a stay
2 pending arbitration is DENIED and Plaintiffs' counter-motion to
3 stay the arbitration is GRANTED.

4 Dated: July 9, 2015

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GARIAND E. BURRELL, JR.
Senior United States District Judge