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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JW GAMING DEVELOPMENT, LLC,
Plaintiff,
v.
ANGELA JAMES, et al.,
Defendants.

Case No. [3:18-cv-02669-WHO](#)

**ORDER DENYING STEVENSON,
TIMBERLAKE, WILLIAMS, STEELE,
AND MALDONADO MOTIONS FOR
JUDGMENT ON THE PLEADINGS**

Re: Dkt. Nos. 210, 211, 212

JW Gaming brings claims arising out of the contract it entered into with defendant Pinoleville Pomo Nation (“the Tribe”) in 2012 and the years of negotiations and investment that preceded the contract’s execution. The sixteen defendants associated with the Tribe changed counsel in April 2020, and before me now are motions for judgment on the pleadings by six of the individual defendants: Andrew Stevenson, Donald Williams, Veronica Timberlake, Cassandra Steele, Jason Steele, and Julian Maldonado. These defendants argue, more than two years after their initial motion to dismiss, that the fraud and Racketeering Influenced and Corrupt Organizations Act (“RICO”) claims against them cannot proceed because the Complaint fails to allege conduct that is specific to them as individuals. The allegations against these defendants, while thin, are plausible, and I will deny the motions.

BACKGROUND

JW Gaming initiated this case in state court on March 1, 2018, and the defendants removed it to federal court on March 7. *See* Complaint (“Compl.”) [Dkt. No. 1-1]. On October 5, 2018, I denied the defendants’ motions to dismiss and motion to strike. Order Denying Motion to Dismiss (“MTD Order”) [Dkt. No. 55]. On January 21, 2020, I granted JW Gaming’s motion for judgment on the pleadings of the breach of contract claim and denied the Tribal Defendants’ motion for

1 summary judgment. Dkt. No. 178. On April 3, 2020, I denied a second motion for summary
2 judgment by the Tribal Defendants on the fraud and RICO causes of action. Dkt. No. 196.

3 After changing counsel in mid-April, Stevenson, Williams, Timberlake, the Steeles, and
4 Maldonado raised their intention to file additional motions during a Case Management
5 Conference, and I reminded them that any subsequent motions should not re-tread ground already
6 covered in this case. *See* Dkt. No. 208. Until the motions before me now, the Tribe, the entities
7 associated with the Tribe, and all eleven individual tribal defendants have litigated this case as
8 one. In their initial motion to dismiss, they argued that the Complaint was barred by tribal
9 sovereign immunity, that JW Gaming lacked standing to pursue its RICO claims, and that the suit
10 was barred by the intra-tribal dispute doctrine. MTD Order 5–8. Their challenges to the
11 sufficiency of the pleadings were focused broadly on whether JW Gaming had alleged fraud with
12 particularity and predict acts for purposes of RICO. *See id.* at 8–11.

13 Now before me are three motions that adopt a different strategy. According to the
14 Complaint, Stevenson, Williams, and Timberlake are members-at large of the seven-member
15 Tribal Council. Compl. ¶¶ 66, 68, 70, 393. Cassandra Steele and Jason Steele, the adult children
16 of defendant Angela James, have served as the secretary and treasurer of the Tribal Council since
17 2011. Compl. ¶¶ 54–55, 57–58, 413. Julian Maldonado was an employee of the Tribe and the
18 live-in partner of defendant Angela James. Compl. ¶¶ 63–64. All six defendants argue that the
19 relatively few allegations in the Complaint about them are insufficient to keep them in this case.

20 LEGAL STANDARD

21 A motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c)
22 utilizes the same standard as a motion to dismiss for failure to state a claim under Federal Rule of
23 Civil Procedure 12(b)(6). *Cafasso, United States ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d
24 1047, 1055 n.4 (9th Cir. 2011). Under both provisions, the court must accept the facts alleged in
25 the complaint as true and determine whether they entitle the plaintiff to a legal remedy. *Chavez v.*
26 *United States*, 683 F.3d 1102, 1108 (9th Cir. 2012) (citation omitted). Either motion may be
27 granted only when it is clear that “no relief could be granted under any set of facts that could be
28 proven consistent with the allegations.” *McGlinchy v. Shull Chem. Co.*, 845 F.2d 802, 810 (9th

1 Cir. 1988) (citations omitted). Dismissal may be based on the absence of a cognizable legal theory
2 or the absence of sufficient facts alleged under a cognizable legal theory. *Robertson v. Dean*
3 *Witter Reynolds, Inc.*, 749 F. 2d 530, 534 (9th Cir. 1984).

4 A plaintiff’s complaint must allege facts to state a claim for relief that is plausible on its
5 face. *See Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). A claim has “facial plausibility” when the
6 party seeking relief “pleads factual content that allows the court to draw the reasonable inference
7 that the defendant is liable for the misconduct alleged.” *Id.* Although the court must accept as
8 true the well-pleaded facts in a complaint, conclusory allegations of law and unwarranted
9 inferences will not defeat an otherwise proper motion. *See Sprewell v. Golden State Warriors*,
10 266 F.3d 979, 988 (9th Cir. 2001). “[A] plaintiff’s obligation to provide the ‘grounds’ of his
11 ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the
12 elements of a cause of action will not do. Factual allegations must be enough to raise a right to
13 relief above the speculative level.” *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
14 (citations and footnote omitted).

15 **DISCUSSION**

16 Before addressing the specific bases of the defendants’ challenges, I address two of JW
17 Gaming’s counterarguments because they relate more generally to the appropriateness of the
18 pending motions. First, JW Gaming argues that I already addressed the sufficiency of the
19 pleadings when denying the Tribal Defendants’ collective motion to dismiss the Complaint.
20 *Oppo*. 5–6. While that motion did raise the sufficiency of the pleadings, it did so on behalf of an
21 undifferentiated group of eleven Individual Tribal Defendants.¹ Here, by contrast, Stevenson,
22 Timberlake, Williams, the Steeles, and Maldonado challenge their individual inclusion as
23 defendants by isolating the allegations that specifically refer to them. I do not agree that these
24 motions re-tread ground; to the extent they do, I exercise my inherent authority to reconsider the
25 issue.

26 Second, JW Gaming argues that it is improper to consider the adequacy of the pleadings at

27 _____
28 ¹ There is at best one sentence that refers to a list of individuals with “more minor roles in the
alleged scheme.” Dkt. No. 6 at 18.

1 this late stage in the case when significant discovery has been conducted and it has a pending
2 motion for summary judgment, including against these defendants. These motions are late, but a
3 motion for judgment on the pleadings is not procedurally improper at this stage. If there were
4 truly no plausible allegations against these defendants, it would be in the interest of justice to
5 dismiss them from the case. As explained below, however, the allegations are sufficient.

6 **A. Fraud**

7 Rule 9(b) of the Federal Rules of Civil Procedure requires plaintiffs to plead fraud with
8 particularity. Fed. R. Civ. P. 9(b). The complaint must identify “the circumstances constituting
9 fraud so that the defendant can prepare an adequate answer from the allegations.” *Bosse v.*
10 *Crowell Collier & MacMillan*, 565 F.2d 393, 397 (9th Cir. 1973). The information should include
11 “the time, place, and specific content of the false representations as well as the identities of the
12 parties to the misrepresentation.” *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d
13 1393, 1401 (9th Cir. 1986). While allegations of specific falsities by each defendant are not
14 necessary, the plaintiff must identify each one’s role in the scheme. *Swartz v. KPMG LLP*, 476
15 F.3d 756, 764–65 (9th Cir. 2007); *see also In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales*
16 *Practices, & Prod. Liab. Litig.*, 295 F. Supp. 3d 927, 973 (N.D. Cal. 2018) (“In the context of a
17 fraud suit involving multiple defendants, a plaintiff must, at a minimum, identify the role of each
18 defendant in the alleged fraudulent scheme.”).

19 Stevenson, Williams, Timberlake, and the Steeles argue that the fraud allegations, set forth
20 in paragraphs 304–82 of the complaint, are insufficient as a matter of law. According to the
21 Complaint, Stevenson, Williams, and Timberlake are members-at large of the seven-member
22 Tribal Council. Compl. ¶¶ 66, 68, 70, 393. The Complaint does not allege dates associated with
23 their tenure on the Tribal Council, including, as relevant here, whether they were members from
24 2008 to 2012. *See* Stevenson, Williams, Timberlake MJP 3. The Complaint identifies Cassandra
25 Steele as the secretary of the Tribal Council and Jason Steele as the treasurer, positions they have
26 held since 2011. Compl. ¶¶ 54, 57, 413.

27 Stevenson, Williams, Timberlake, and the Steeles are named nowhere in the fraud
28 allegations other than the header. They are not included in the group of “Principal Fraudsters” or

1 “Financial Fixers,” and they are not alleged as responsible for any actions related to the Sham
2 2008 Canales Note, the Falsified 2011 Accounting, or the Sham 2012 Canales Note. *See* Compl.
3 ¶¶ 305, 307, 328–30, 371. The Complaint alleges individual actions, knowledge, and intent of
4 various individuals including the Principal Fraudsters and Financial Fixers, but none by
5 Stevenson, Williams, or Timberlake. *See id.* ¶¶ 314–15, 357, 361, 373, 377–81.

6 JW Gaming argues that Stevenson, Williams, Timberlake, and the Steeles are proper
7 defendants to the fraud claim because the Tribal Council must approve the decision to waive
8 sovereign immunity, which the Tribe did for purposes of executing the 2012 contract with JW
9 Gaming. *Oppo.* 6–7; *see* Compl. ¶¶ 256, 420. According to JW Gaming, this approval
10 requirement shows that these defendants must have known about or participated in fraudulent
11 Sham 2008 and 2011 Canales Notes, which included such a waiver. *Oppo.* 6–7. Further, the
12 Complaint alleges that the Tribal Council reviews the Tribe’s financial report at each meeting.
13 Compl. ¶¶ 419, 421. JW Gaming argues that this fact permits the inference that they were aware
14 of and approved the Falsified 2011 Accounting, which grossly misrepresented various aspects of
15 the Tribe’s finances.

16 Especially at this late stage of the case, I conclude that the facts alleged are sufficient to
17 plausibly plead a fraud claim against these five defendants. Although other names surface much
18 more frequently in the Complaint, there are allegations that permit an inference that the Tribal
19 Council reviewed and approved of fraudulent acts that are at the center of this case.

20 **B. RICO**

21 To plausibly allege a RICO claim, JW Gaming must plead that the defendants
22 “conduct[ed] or participate[d], directly or indirectly, in the conduct of [an] enterprise’s affairs
23 through a pattern of racketeering activity.” 18 U.S.C. § 1962(c). The elements of a RICO claim
24 are: (i) the conduct of (ii) an enterprise that affects interstate commerce (iii) through a pattern (iv)
25 of racketeering activity or collection of unlawful debt. *Id.*; *see Eclectic Props. E., LLC v. Marcus*
26 *& Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014). “Like co-conspirators, knowing participants
27 in the scheme are legally liable for their co-schemers’ use of the mails or wires.” *United States v.*
28 *Stapleton*, 293 F.3d 1111, 1117 (9th Cir. 2002). “RICO’s purpose is to reach all involved in the

1 scheme of organized crime, whether they are generals or foot soldiers.” *Tatung Co., Ltd. v. Shu*
2 *Tze Hsu*, 217 F. Supp. 3d 1138, 1153 (C.D. Cal. 2016) (internal quotation marks and citation
3 omitted).

4 Stevenson, Williams, Timberlake, the Steeles, and Maldonado characterize their challenge
5 as follows:

6 Although these defendants do not challenge plaintiff’s allegation of
7 an association-in-fact enterprise generally, they contend that the
8 complaint lacks plausible factual allegations showing their conduct or
9 participation in the conduct of the enterprise. Their motion raises the
10 question whether the particular allegations about them are sufficient
11 to subject them to liability for conducting the affairs of the enterprise.

12 Stevenson, Williams, Timberlake MJP 12; *see also* Steele MJP 12; Maldonado 10.² They assert
13 that although I have already determined that JW Gaming properly pleaded wire fraud and money
14 laundering predicate acts, they cannot be liable “in the absence of specific factual allegations
15 connecting them to those acts.” *Id.* at 20. They rely on the “operation or management” test in
16 *Reves v. Ernst & Young*, 507 U.S. 170 (1993) to argue that they did cannot be liable under RICO
17 without allegations that they had a role in directing the enterprise.

18 In *Reves*, the Supreme Court determined, “In order to ‘participate, directly or indirectly, in
19 the conduct of such enterprise’s affairs,’ one must have some part in directing those affairs.” *Id.* at
20 179. The Court noted that this test does not limit liability to “those with primary responsibility for
21 the enterprise’s affairs” or “those with a formal position in the enterprise.” *Id.* It further clarified
22 that “[a]n enterprise is ‘operated’ not just by upper management but also by lower rung
23 participants in the enterprise who are under the direction of upper management.” *Id.* at 184. Some
24 courts have understood the *Reves* test to clarify the difference between lower-rung members of the
25 enterprise who are inside the “chain of command”—and thus can be liable—with those who fall
26 outside the chain of command entirely.” *See, e.g., MCM Partners, Inc. v. Andrews-Bartlett &*
27 *Assocs., Inc.*, 62 F.3d 967, 978 (7th Cir. 1995); *United States v. Oreto*, 37 F.3d 739, 750 (1st Cir.
28 1994) (noting that while certain individuals may not have had a role in decision-making, they
“were plainly integral to carrying out the collection process”); *see also Jaguar Cars, Inc. v. Royal*

² The language in the Steele and Maldonado motions is nearly identical.

1 *Oaks Motor Car Co.*, 46 F.3d 258, 266 (3d Cir. 1995) (noting that the holding in *Reves* was based
2 on the fact that the individuals at issue were independent of the enterprise). “[S]imply performing
3 services for the enterprise,’ or failing to stop illegal activity, is not sufficient.” *In re Volkswagen*
4 “*Clean Diesel*” *Mktg., Sales Practices, & Prod. Liab. Litig.*, No. MDL-2672-CRB, 2017 WL
5 4890594, at *16 (N.D. Cal. Oct. 30, 2017) (quoting *Walter v. Drayson*, 538 F.3d 1244, 1248–49
6 (9th Cir. 2008)) (concluding that a company’s role was sufficiently alleged where its “final-
7 approval right made it ‘indispensable to achievement of the enterprise’s goals,’ and provided it
8 with a position in the ‘chain of command’ of the enterprise”).

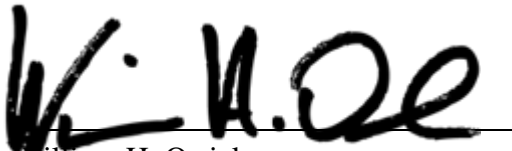
9 JW Gaming alleges that the defendants were part of an illegal enterprise that fraudulently
10 obtained millions of dollars from outsiders and diverted the Tribe’s cash and other assets for their
11 personal use. The late challenge by the six defendants before me rests too narrowly on distancing
12 themselves from the specific actions that comprise the elements of wire fraud and money
13 laundering. They need not have committed these specific acts to have had role in the enterprise
14 and been part of the chain of command. According to JW Gaming, the Tribal Council reviewed
15 and approved the fraudulent Canales Notes and the Tribe’s finances along with directing the
16 alleged government shell. *See* Compl. ¶¶ 414–22. Finally, according to JW Gaming, Maldonado
17 has served as a conduit for over a quarter million dollars of laundered money. *See* Compl. ¶¶ 448–
18 55. These allegations are enough to state a RICO claim.

19 **CONCLUSION**

20 While the defendants before me raise legitimate weaknesses regarding the specific
21 allegations against them, those weaknesses are not enough for judgment in their favor on the
22 pleadings alone. The motions are DENIED.

23 **IT IS SO ORDERED.**

24 Dated: July 6, 2020

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27 William H. Orrick
United States District Judge
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