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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIACHRISTINE CUMMING, et al.,
Plaintiffs,

v.

BIG PICTURE LOANS, LLC, et al.,
Defendants.

Case No. 18-cv-03476-EJD (NC)

**ORDER RE DISCOVERY
DISPUTE**

Re: Dkt. No. 114

On June 12, 2019, the Court held a hearing on the parties' discovery dispute. See Dkt. Nos. 107, 112. The Court denied Plaintiffs' request to extend the discovery deadline and the deadline for their deposition of Chairman James William Jr. See Dkt. No. 112. The Court also ordered the parties to file a joint statement as to whether there is any remaining dispute as to documents produced by defendants regarding Rosette LLP. *Id.* The parties submitted their joint status update on June 13, 2019. See Dkt. No. 114.

The joint update presents two issues: (1) Plaintiffs' request to produce Rosette-related documents not previously produced in *Williams, et al. v. Big Picture Loans, LLC*, Case No. 3:17-cv-0461 (E.D. Va.) and (2) financial documents held by the Lac Vieux Desert Band of Lake Superior Chippewa Indians (the "Tribe"). See *id.* at 2–4.

As to the first issue, the parties have still not identified with any specificity what Rosette-related documents have not yet been produced. Plaintiffs parrot their prior

1 submissions with no additional detail and Defendants continue their fixation on documents
2 produced in Williams. Williams-related production is no longer at issue. Defendants are
3 required to produce:

- 4 • Documents relating to the agreement by Big Picture’s predecessor, Red
5 Rock, to pay a 50% “broker fee” to Tribal Loan Management, LLC, which is
6 owned by Robert Rosette, the managing partner of Corporate Defendant’s
7 counsel’s law firm; and
- 8 • Documents relating to the development and drafting of LVD’s consumer
9 financial services regulations by the Rosette law firm.

10 This production is required regardless whether those documents were produced in
11 Williams if not protected by privilege. The fact that Rosette never served Defendants with
12 non-Williams documents in those two categories is irrelevant. Rosette is among
13 Defendants’ counsel; Defendants have control over those documents. Accordingly, the
14 Court ORDERS Defendants to produce all non-privilege documents responsive to those
15 two categories by **June 17, 2019**.

16 As to the second issue, the Court DENIES Plaintiffs’ request. In the Court’s May
17 17, 2019, order, the Court ordered production of “non-privileged tribal documents that are
18 responsive to Plaintiffs’ RFPs and that relate to the statements made in the declarations
19 submitted by LVD tribal council Chairman Williams” See Dkt. No. 102. Defendants
20 represent that they do not possess any such tribal documents and Plaintiffs do not
21 meaningfully rebut Defendants’ assertion. See Dkt. No. 107 at 5.

22 The Court will not order Chairman Williams and the Tribe to turn over those
23 documents. Neither Chairman Williams nor the Tribe are parties to this case. And
24 Plaintiffs have not served third-party subpoenas on either Chairman Williams or the Tribe.
25 Moreover, even though Defendants’ assertions of tribal sovereign immunity are open
26 questions before the trial judge in this case, the Tribe and its officers (i.e., Chairman
27 Williams) certainly have a colorable claim of tribal sovereign immunity that may defeat
28 such subpoenas.

1 The Court will not extend discovery- or deposition-related deadlines despite
2 ordering additional production by Defendants for two reasons. First, Plaintiffs have not
3 been diligent in seeking relief. The Court issued its first order regarding jurisdictional
4 discovery on March 13, 2019, setting a June 7, 2019 discovery deadline. See Dkt. No. 64.
5 In that order, the Court granted Plaintiffs leave to move for further, non-Williams
6 jurisdictional discovery. See *id.* at 3. Yet Plaintiffs did not raise any issue regarding
7 discovery related to tribal sovereign immunity until May 6, 2019—one month before the
8 discovery deadline. See Dkt. No. 87. Second, the parties have already engaged in
9 substantial discovery. Defendants have already produced, at a minimum, relevant
10 documents from Williams. Such production is sufficient for Plaintiffs to proceed with their
11 currently noticed deposition of Chairman Williams.¹

12 No fees or costs are awarded in connection with this order.

13 **IT IS SO ORDERED.**

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15 Dated: June 13, 2019

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18 NATHANAEL M. COUSINS
19 United States Magistrate Judge
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28 ¹ The Court also notes that Chairman Williams’s deposition was not even scheduled until the end of May. See Dkt. Nos. 104, 105, 106.