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11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

13 **PASKENTA BAND OF NOMLAKI INDIANS;**
14 **and PASKENTA ENTERPRISES**
15 **CORPORATION,**

16 **Plaintiffs,**

17 **v.**

18 **INES CROSBY; JOHN CROSBY; LESLIE**
19 **LOHSE; LARRY LOHSE; TED PATA; JUAN**
20 **PATA; CHRIS PATA; SHERRY MYERS;**
21 **FRANK JAMES; UMPQUA BANK; UMPQUA**
22 **HOLDINGS CORPORATION;**
23 **CORNERSTONE COMMUNITY BANK;**
24 **CORNERSTONE COMMUNITY BANCORP;**
25 **JEFFERY FINCK; GARTH MOORE;**
26 **GARTH MOORE INSURANCE AND**
27 **FINANCIAL SERVICES, INC.;**
28 **ASSOCIATED PENSION CONSULTANTS,**
INC.; HANESS & ASSOCIATES, LLC;
ROBERT M. HANESS; THE PATRIOT
GOLD & SILVER EXCHANGE, INC.; and
NORMAN R. RYAN,

Defendants,

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

Nominal Defendants.

Case No. 15-cv-00538-GEB-CMK

MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF TRIBAL
DEFENDANTS' MOTION TO
DISMISS PURSUANT TO FRCP
12(B)(1) FOR LACK OF
SUBJECT MATTER
JURISDICTION

Date: July 27, 2015

Time: 9:00 a.m.

Courtroom: 10

Hon. Garland E. Burrell, Jr.

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1 **INTRODUCTION**

2 **I. PRELIMINARY STATEMENT**

3 Fundamentally, this case is a governance dispute internal to the Paskenta Band of Nomlaki
4 Indians, and, therefore, one over which this Court lacks subject matter jurisdiction. This point is
5 perhaps best conveyed by the First Amended Complaint which readily admits that the alleged
6 wrongdoings in this case could never have occurred had the Paskenta Tribal Council “diligently
7 demanded compliance” with Paskenta Tribal law. First Amended Complaint (FAC) ¶ 110 (“If, as it
8 is now, the Tribal Council was occupied by persons that diligently demanded compliance with the
9 requirements of the Tribal Constitution, the RICO Ringleaders could never have achieved the thefts
10 they accomplished”). Put another way, the allegations in this case are the direct result of the Paskenta
11 Tribal Council (only one of which is a defendant here) allegedly failing to comply with Paskenta
12 Tribal law.
13
14

15 **II. OVERVIEW OF THE CASE**

16 This is an action filed by the current leadership (hereinafter the “Freeman Council”) of the
17 Paskenta Band of Nomlaki Indians and its wholly-owned business entity, Paskenta Enterprises
18 Corporation (collectively referred to hereinafter as the “Tribe,” or “Paskenta Tribe”), against the
19 Lohse Administration¹ and Paskenta Consultants,² which together comprise the former elected
20 officials, executives, and staff of the Paskenta Tribe, and their consultants. The allegations in the
21
22

23 ¹ For convenient reference, the Lohse Administration is loosely defined here to include: the Paskenta
24 Tribe’s former Treasurer, Leslie Lohse; former Environmental Director, Larry Lohse; former
25 Economic Development Director, John Crosby; former Administrator, Ines Crosby, former secretary
26 Sherry Myers, former Paskenta Gaming Commissioners Ted and Juan Pata, and former IT
27 technicians Chris Pata and Frank James.

28 ² For convenient reference, the Paskenta Consultants is loosely defined here to include the financial
29 institutions, advisors, and consultants to the Paskenta Tribe which are named defendants in this
action.

1 First Amended Complaint are premised entirely on the alleged actions of the Lohse Administration,
2 as facilitated by the Paskenta Consultants during the Lohse Administration's time leading the Tribe.

3 At their core, the Freeman Council's claims arise from an intra-tribal dispute. That dispute
4 stems from political animosity between supporters of the Lohse Administration and the Freeman
5 Council. It also stems from divergent interpretations and application of Paskenta Tribal law, such as
6 election procedures, access to information, compensation of Paskenta Tribal officials, and
7 investments of Paskenta Tribal funds. Thus, while the Freeman Council asserts claims under federal
8 and state law, those claims are inextricably intertwined with internal Paskenta Tribal governance and
9 the interpretation and application of Paskenta Tribal law.
10

11 This Court lacks subject matter jurisdiction to decide matters arising under tribal law. It is
12 inconsequential that the Freeman Council cloaks those claims in federal- and state-law causes of
13 action. This matter remains, at its core, a dispute internal to the Paskenta Tribe. For this reason, the
14 Lohse Administration respectfully requests that this Court dismiss this action in its entirety.
15

16 **FACTS**

17 **I. FACTUAL BACKGROUND**

18 **A. The Tribal Government**

19 The Tribe is a federally recognized Tribe headquartered in Tehama County, California.
20 Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian
21 Affairs, 80 Fed. Reg. 1942 (Jan. 14, 2015). The Tribe exercises powers of self-governance under the
22 Constitution of the Paskenta Band of Nomlaki Indians approved by the Secretary of the Interior
23 pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. § 461, *et seq.*
24

25 The governing body of the Tribe is the Tribal Council. It is comprised of a Chairperson,
26 Vice-Chairperson, Secretary, Treasurer, and one member at large. Constitution of the Paskenta Band
27

1 of Nomlaki Indians (hereinafter cited as “Paskenta Const.”), art. III, § 1. The five positions are filled
2 by persons elected from the General Council. Paskenta Const., art. III, § 1. The General Council
3 consists of all adult members of the Tribe, and it exercises its powers “through election of a Tribal
4 Council, referendum, initiative, amendment and such other powers as may be reserved to them by
5 th[e] Constitution.” Paskenta Const., art. III, § 2.
6

7 **B. Abbreviated History of the Tribe**

8 The Paskenta Band has lived in the foothills near the town of Paskenta, California from
9 historical times. (H.R. Rep. No. 103-801, at 1 (1994).) In 1954 its federal recognition was
10 terminated pursuant to the California Rancheria Act.
11

12 The Tribe was restored to federal recognition under the Paskenta Band Restoration Act in
13 1994. (See 25 U.S.C. § 1300m et seq.) Among other things, the Act: extended federal recognition to
14 the Tribe (§ 1300m-1(a)); directed the Secretary of the Interior to accept land into trust on behalf of
15 the Tribe (§ 1300m-3); and set out the criteria for establishing membership of the Tribe (§ 1300m-4).
16

17 On April 18, 1998, the Paskenta Tribe organized under the Indian Reorganization Act through
18 the adoption of a constitution subsequently approved by the Secretary of the Interior. In late 2000,
19 the Tribe acquired into trust its initial reservation. The Paskenta Tribe opened its Rolling Hills
20 Casino (hereinafter, the “Casino”) in 2002.
21

22 **C. The Lohse Administration’s Role In The Tribe’s Restoration and Governance Efforts**

23 Members of the Lohse Administration have served the Paskenta Tribe since before the Tribe
24 was restored to Federal recognition in 1994. Leslie Lohse, Ines Crosby, and John Crosby all
25 volunteered in the Tribe’s restoration efforts in the early 1990s. Leslie Lohse was elected to
26 Treasurer in 1998, where she has served until the current dispute. Larry Lohse, the non-Tribal
27 husband of Leslie Lohse, left his agricultural career to join the Tribe in 2001 as its Environmental
28

1 Director. Mr. Lohse's role expanded to the business side of the Tribe. Ines Crosby, sister of Leslie
2 Lohse, was hired as Tribal Administrator in 1996 where she has served until this dispute. John
3 Crosby, son of Ines Crosby, became the Tribe's Economic Development Director in late 2000, where
4 he served until this dispute. Ted, Juan, and Chris Pata (brothers to Leslie Lohse and Ines Crosby)
5 have served in various capacities with the Tribe and Casino.
6

7 The landscape was grim for Indian gaming, and even grimmer for the Paskenta Tribe, when
8 the Lohse Administration began volunteering in the early 1990s. The Tribe was not recognized by
9 the federal government, Indian gaming was prohibited under the California Constitution, and State of
10 California refused to negotiate with federally recognized tribes for Class III slot machines. But
11 eventually, the Paskenta Tribe did what few others would: with the help of Leslie Lohse, Ines Crosby
12 and others, it secured Congressional legislation restoring its federal recognition and directing that
13 land be taken into trust on its behalf.
14

15 **D. The Paskenta Tribe's Government**

16 Since opening the Casino in 2002, the Tribe has achieved financial success. The Casino
17 profits allow the Tribe to provide healthcare, monthly profit distributions, and education assistance to
18 each of the Tribe's approximately 350 members.
19

20 As with any political body, the Tribe has had its share of political animosity.

21 **E. The Leadership Dispute Within the Paskenta Tribe**

22 Political tensions climaxed at a General Council meeting on April 12, 2014. There, Chairman
23 Andrew Freeman and his supporters purported to strip the descendants of Ida L. Henthron-Pata of
24 their Tribal citizenship. Many descendants, including four members of the Tribal Council, exited the
25 meeting to avoid imminent conflict. At that time, Chairman Freeman purported to remove Council
26 members David Swearinger, Leslie Lohse, Geraldine Freeman, and Allen Swearinger (this group is
27

1 referred to in this section only as the “Lohse Council”) from their elected seats under the guise of
2 Paskenta Tribal law. The Lohse Council did not recognize the removal.

3 The Tribe was fractured and its leadership uncertain. Both the Lohse and Freeman Councils
4 held themselves out as the lawful Tribal Council. Banks and vendors were left to determine for
5 themselves which group had the authority to access Tribal funds, perform contracts, and legally
6 obligate the Tribe. Perhaps most controversially, both Councils purported to direct operations at the
7 Casino.
8

9 The latter led to a clash, in June 2014, of two armed security forces both purporting to be
10 taking control of the Casino on behalf of the lawful Tribal Council. In response, the State of
11 California filed suit alleging breach of the Class III gaming compact. The State argued that the
12 activity threatened the health and welfare of the Casino’s patrons. The Court agreed and temporarily
13 enjoined the Tribe from, among other things, disturbing the status quo at the Casino. *See State of*
14 *California v. Paskenta Band of Nomlaki Indians*, Eastern District California Case No. 2:14-cv-01449-
15 KJM-CMK, Docket # 18 (Temporary restraining order).
16

17 **F. Execution of the MSA and SIA**

18 On July 3, 2014, the Freeman and Lohse Councils attempted to resolve their differences
19 through a Mediated Settlement Agreement (hereinafter, the “MSA”). Among other things, the MSA
20 contained steps to ensure a “unified election” free from undue influence such as disenrollments.
21

22 On August 5, 2014, the Parties executed a Settlement Implementation Agreement (hereinafter,
23 “SIA”) to implement the MSA. The SIA established protocols for the September 13, 2014 election.
24 It also provided that Wilmer Cutler Pickering Hale and Dorr, LLP (“WilmerHale”) and Fulcrum
25 Financial Inquiry, LLP (“Fulcrum”) would perform the financial investigation provided for in the
26 MSA.
27

1 **G. The September 13, 2014 Election And The Freeman Council’s Bad Acts**

2 The Paskenta Tribe held its September 13, 2014 election, whereby the Freeman Council was
3 elected to office.

4 On September 15, 2014, Defendants resumed their efforts to disenroll the Lohse Council
5 (excepting Larry Lohse), their children, and their supporters. On November 5, 2014, the Freeman
6 Council finalized the disenrollments.

7 On September 26, 2014, the Lohse Council and their supporters initiated arbitration
8 proceedings before the AAA alleging, *inter alia*, that the disenrollments violated the MSA. During
9 the pendency of the AAA proceedings, the Freeman Council filed the instant action. On April 27,
10 2015, the AAA Panel determined it lacked jurisdiction over the claims.

11 **II. FACTS AS ALLEGED IN THE COMPLAINT**

12 For purposes of this facial attack of the First Amended Complaint pursuant to FRCP 12(b)(1),
13 the facts as alleged in the complaint are assumed true. While the facts above provide necessary
14 background to this case, the facts below derive directly from the First Amended Complaint.

15 **A. The Lohse Administration’s Volunteerism and Illegal Enrollment**

16 The Lohse Administration allegedly took control of the Tribe “using racketeering means.”
17 First Amended Complaint (hereinafter “FAC”) at 15.

18 The Pata family was allegedly not included on the first official post-restoration roll. FAC ¶
19 82. Subsequent applications submitted by the Pata family for enrollment in the Tribe were denied
20 several times. FAC ¶ 82. In a scheme to gain enrollment, the Lohse Administration began
21 volunteering with the Tribe. FAC ¶ 83. By doing so, the Lohse Administration “ingratiated
22 themselves with Tribal leaders, and by doing so, intimately involved themselves in the Tribe’s
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1 affairs.” FAC ¶ 83. This was all a scheme by the Lohse Administration to position themselves “to
2 wrongfully convert moneys earned by the Tribe from a casino operation.” FAC ¶ 83.

3 The opportunity was soon presented by which the Lohse Administration could execute its
4 alleged takeover of the Tribe. In 1996, the Ines Crosby and Leslie Lohse “parlayed their knowledge
5 of, and involvement in, Tribal affairs into paying jobs with the Tribe.” FAC ¶ 84. Then in 1998,
6 Tribal enrollment was open for a one-month period. FAC ¶ 85. “In circumstances that appear
7 irregular at best,” the Pata family was listed on the official Tribal roll. FAC ¶ 85.

9 **B. The Lohse Administration’s Ascendance to Power**

10 The Freeman Council contends the enrollment of the Pata family in 1998 set the stage for the
11 Lohse Administration’s takeover of the Tribe. The FAC alleges that their enrollment immediately
12 gave the Pata family 35% of the vote in the Tribe. FAC ¶ 87. In an election in September 1998,
13 Leslie Lohse was elected Treasurer. FAC at 22-23. She won with 50 votes, “30 of which presumably
14 came from her family members who had been newly added to the Tribal roll with her assistance.”
15 FAC ¶ 88. The Lohse Administration knew that Leslie Lohse—“and by extension the rest of
16 them”—would have “exceptional access to the Tribe’s money once a casino was built.” FAC ¶ 86.

17 Once in power, the Lohse Administration allegedly denied Tribal members any means,
18 “constitutionally mandated or otherwise,” by which to hold the Lohse Administration accountable.
19 FAC ¶ 62. The Lohse Administration curtailed members’ access to copies of the Tribal Constitution
20 and to the Tribe’s finances. FAC ¶ 62. This resulted in Paskenta Tribal members’ ignorance of “the
21 powers and rights afforded them under their Constitution[.]” FAC ¶ 62. It also resulted in their
22 ignorance of “the duties owed by the Tribe’s Treasurer to provide an accounting of the Tribe’s
23 moneys and annual audit.” FAC ¶ 62.

1 The Freeman Council alleges the Lohse Administration maintained its control through
2 coercion, among other means. FAC ¶ 63. The Lohse Administration threatened political opponents
3 with suspension, disenrollment, and loss of financial distributions. FAC ¶ 63. Those opponents
4 “lived in constant fear” that they would be disenrolled and stripped of Tribal benefits. FAC ¶ 63.
5

6 **C. The Lohse Administration’s Appointment of Political Allies**

7 The Lohse Administration also allegedly cultivated loyalty throughout the Tribe by appointing
8 “select individuals” to key positions. FAC ¶ 63. After Leslie Lohse was elected Treasurer in 1998,
9 she and Ines Crosby “used their influence over the Tribal Council” to convince the Tribe it needed to
10 hire more employees. FAC ¶ 90.

11 Leslie Lohse and Ines Crosby “orchestrated” a number of key hirings in the early 2000s. In
12 2000, they orchestrated the hiring of John Crosby as the Tribe’s Economic Development Director.
13 FAC ¶ 91. The position was created specifically for John Crosby, and no other candidates were
14 interviewed for the position. FAC ¶ 92. While serving in this position, John Crosby claimed to have
15 complete discretion to use Tribal money as he deemed fit. FAC ¶ 93. Plaintiffs oppose such a claim
16 as being “in direct contravention to explicit limitations in the Tribal Constitution.” FAC ¶ 93
17 (emphasis added).
18

19 Around the same time, Leslie Lohse and Ines Crosby “orchestrated” the hiring of Larry Lohse
20 as the Tribe’s Environmental Director. FAC ¶ 94. The position was created specifically for Larry
21 Lohse, and no other candidates were interviewed for the position. FAC ¶ 95. Following construction
22 of the Casino, Larry Lohse had few duties attributable to an environmental director. FAC ¶ 96. His
23 hiring was instrumental, however, because he was given check writing authority over certain
24 accounts. FAC ¶ 96. According to the Freeman Council, such authority was “in contravention of the
25 *Tribal Constitution.*” FAC ¶ 96 (emphasis added).
26
27

1 Neither of the positions filled by John Crosby and Larry Lohse “were roles the Tribe needed
2 filled at the time[.]” FAC ¶ 97.

3 Through the hirings, Leslie Lohse and Ines Crosby “essentially created an extra-legal
4 executive committee in the Tribe’s governing structure[.]” FAC ¶ 98. That extra-legal committee
5 “controlled the Tribe’s money [and] was occupied by themselves and their close family members.”
6 FAC ¶ 98. Over the next thirteen years, the Lohse Administration would use the positions of Leslie
7 Lohse, Ines Crosby, John Crosby, and Larry Lohse to “enrich themselves and defend their control
8 from scrutiny and attack.” FAC ¶ 98.

10 **D. The Lohse Administration’s Consolidation and Maintenance of Their Control**
11 **Over the Tribe and Its Non-Casino Business Ventures**

12 The Freeman Council contends Leslie Lohse, Ines Crosby, John Crosby, and Larry Lohse
13 soon began “concertedly and systematically . . . eliminating any impediments that would stand in the
14 way of them being able to achieve the purpose of their unlawfully enterprise: to convert Tribal
15 moneys for their own personal use.” FAC ¶ 108. They did so through: rigging the Tribal electoral
16 process, tightly controlling the flow of information, buying the loyalty of others, and intimidating and
17 threatening Tribal members with “loss of their livelihoods.” FAC ¶ 108. The latter is alleged to
18 constitute, at least in part, “a pattern of racketeering activity.” FAC ¶ 373.

20 The Lohse Administration allegedly employed a number of means to rig the electoral process.
21 They allegedly assigned numbers to voter ballots such that the voter was identifiable. FAC ¶ 119.
22 This was done despite the “explicit requirement of secret balloting to choose Tribal Council
23 members.” FAC ¶ 119. Leslie Lohse also falsely proclaimed that candidates were required to post a
24 \$1 million bond to run for Treasurer. FAC ¶ 121. Plaintiff contends there is no basis for such a bond
25 “in the Tribal Constitution, Tribal law, or any Tribal Council resolutions[.]” FAC ¶ 122.
26 Additionally, the Lohse Administration oversaw the elections, counted the ballots, and certified
27

1 election results. FAC ¶ 119. Plaintiffs contend such involvement “usurp[ed] the constitutional
2 authority of the Tribe’s Election Committee.” FAC ¶ 119.

3 The Lohse Administration also allegedly “[kept] the Tribe’s members in the dark about their
4 rights under the Tribal Constitution and the duties that the Tribal Council’s officers owed them.”
5 FAC ¶ 125. Access to the Tribal Constitution was limited to physical copies housed in the Tribe’s
6 offices. FAC ¶ 126. According to Plaintiff, if they did not, Tribal members might learn that “the
7 Tribal Constitution states . . . anyone can run for a position on the Tribal Council, including
8 Treasurer.” FAC ¶ 124. Or they might learn that “the Tribal Constitution requires that both the
9 Treasurer and the Chairman sign every [check].” FAC ¶ 124. They might also learn that “the Tribal
10 Constitution requires the Tribe’s books be audited annually[.]” FAC ¶ 124.
11

12 The Lohse Administration also allegedly employed several other tactics to bolster their
13 control and conceal their scheme. They kept no records or accounting of Tribal accounts. FAC ¶
14 130. This omission despite “[f]inancial transparency [being] one of the cornerstones of the Tribal
15 Constitution.” FAC ¶ 129. They also structured the Tribe’s federal funding so as to avoid triggering
16 federal audit requirements, (FAC ¶ 143), although Plaintiffs “ha[ve] no indication . . . any of the
17 [Defendants] improperly administered the [federal] moneys,” (FAC ¶ 148).
18

19 The non-executives in the Lohse Administration allegedly served important roles. FAC ¶ 150.
20 Sherry Myers, a secretary, managed Tribal moneys “at the instruction of [her superiors within the
21 Lohse Administration],” managed payments to employees and government officials, and assisted in
22 the “resolution of membership issues.” FAC ¶ 151. Jon and Ted Pata were hired as the Casino’s
23 Gaming Commissioners upon “John Crosby’s command.” FAC ¶ 153. They “lacked the skills
24 necessary to effectively serve in these positions.” FAC ¶ 153. Notwithstanding, they “were just
25 given the jobs . . . , receiving salaries substantially more than that paid to the third gaming
26
27

1 commissioner employed at the Casino.” FAC ¶ 153. They were “to serve as [the] eyes and ears in
2 the one Tribal business with which [the Lohse Administration] had limited influence—the Casino—
3 and ensure that those eyes and ears did not expose the [Lohse Administration’s] illegal scheme.”
4 FAC ¶ 154. The hiring of Chris Pata was “orchestrated” to design and manage the Casino’s entire IT
5 infrastructure. FAC ¶ 156. At the time, “he had never completed a project as complicated as building
6 out a casino’s IT infrastructure[.]” FAC ¶ 156. Chris Pata was instrumental in the “cyber attack” that
7 “crippled the Casino’s business operations” and also destroyed electronically stored information.
8 FAC ¶ 157. To execute the attack, Chris Pata recruited Frank James. FAC ¶ 157.

9
10 **E. The Lohse Administration’s Expenditure Misappropriation of Tribal funds**

11 The Freeman Council contends the Lohse Administration’s goal since the early 1990s was “to
12 place themselves in a position to misappropriate millions of dollars earned by the Tribe from the
13 Casino.” FAC ¶ 165. They “understood that their conversion of Tribal moneys . . . was unauthorized
14 and illegal *under [the] Tribal Constitution.*” FAC ¶ 133 (emphasis added).

15
16 The Freeman Council relies heavily upon the September 1, 2014 report by Wilmer Cutler
17 Pickering Hale and Dorr LLP (that report is referred to hereinafter as the “WilmherHale Report”).
18 FAC ¶ 171. The crux of the WilmerHale Report is that the Lohse Administration made substantial
19 “unauthorized” financial transactions and “[r]egularly ignored and frequently violated the Tribe’s
20 laws and governance rules.[.]” FAC ¶ 171. The Freeman Council alleges that over a twelve-year span
21 under the Lohse Administration, approximately \$61 million is unaccounted for, “most” of which is
22 believed to have been misappropriated[.]” FAC ¶ 174.

23
24 The alleged misappropriations are alleged to have taken various forms, including: wages,
25 retirement compensation, direct cash payments, and goods and services for personal consumption.

26 ///

1 **1. Wages**

2 According to the First Amended Complaint, wages were allegedly paid to the Lohse
3 Administration both directly from the Tribe and also indirectly through business either owned by the
4 Tribe or with whom the Tribe had close ties.

5 **a. Direct wages**

6 The First Amended Complaint also alleges the Lohse Administration caused the Tribe to
7 directly pay them wages that were “grossly excessive and not properly authorized by the Tribe.”
8 FAC ¶ 179. The wages were grossly excessive because there was “little indication that the [Lohse
9 Administration] did much of anything that could be considered governmental or administrative
10 service for the Tribe.” FAC ¶ 177. The wages were allegedly “not authorized by the Tribal Council,”
11 but no specific defect in authorization is provided. FAC ¶ 182.

12 Plaintiffs contend that the Lohse Administration lacked the qualifications to justify their
13 wages. John Crosby “lacked the [necessary] training or expertise[.]” FAC ¶ 189. Likewise, Ines
14 Crosby “was a hairdresser” and “had no skills, expertise or experience that could justify [her]
15 excessive and unauthorized compensation[.]” FAC ¶¶ 196, 197. Larry Lohse “had very little training
16 or expertise applicable to the job of Environmental Director[.]” FAC ¶ 203. Finally, Leslie Lohse’s
17 “experience as a bookkeeper” did not justify her compensation. FAC ¶ 210.

18 Plaintiffs further contend that the track record of the Lohse Administration did not justify the
19 wages paid them. For example, the Tribe’s investments made under John Crosby have thus far
20 resulted in net losses. FAC ¶ 187. Similarly, the wages paid to Ines Crosby as Tribal Administrator
21 were “excessive” because “there was little for Ms. Crosby to oversee” due to the “extremely limited
22 operations of the Tribal government during the relevant period.” FAC ¶ 193. The wages paid to
23 Larry Lohse were excessive because “there was little to be done in the way of environmental work”
24

1 after completion of the Casino and golf course in 2002. FAC ¶¶ 201-03. Finally, the excessiveness
2 of the wages paid to Leslie Lohse is demonstrated by the political contributions that “[t]he Tribe had
3 little to no need to make[.]” FAC ¶¶ 205, 211.

4 In an attempt to further demonstrate the excessiveness of the wages paid to the Lohse
5 Administration, the Freeman Council notes that the vacancies created by each of their removals either
6 remain vacant or were filled at a fraction of the wage. FAC ¶¶ 190, 195, 204, 209.

8 **b. Indirect wages**

9 The Lohse Administration also allegedly received wages through entities both owned by, and
10 affiliated with, the Tribe (hereinafter, “Tribe-Affiliated Businesses”). FAC ¶ 252. The Lohse
11 Administration allegedly caused the Tribe to invest significant capital into Tribe-Affiliated
12 Businesses, which businesses in turn compensated the Lohse Administration for services performed
13 on behalf of those businesses. FAC ¶ 252.

14 The Freeman Council alleges the indirect payments were not justified, “especially given the
15 consistently poor performance of [the] businesses.” FAC ¶¶ 257 (John Crosby), 266 (Larry Lohse),
16 269 (Leslie Lohse), 271-72 (Ines Crosby).

18 **2. Retirement Compensation**

19 The Freeman Council contends that the Lohse Administration “prepared for their post-scheme
20 lives by causing the Tribe to pay them enormously excessive sums in retirement compensation.”
21 FAC ¶ 213. Nearly all of the investment was in two retirement plans: a defined benefit plan (“Tribal
22 Pension”) and 401(k) (“Tribal 401(k)”) (the Tribal Pension and Tribal 401(k) are collectively referred
23 to as the “Tribal Retirement Plans”). FAC ¶ 214. The only participants in the plans were John and
24 Ines Crosby, Leslie and Larry Lohse, and Sherry Myers. FAC ¶ 214.

1 The Freeman Council contends the Tribal Retirement Plans were “not authorized by the Tribal
2 Council” and “thus violated Tribal law[.]” FAC ¶ 215. Sherry Myers assisted by allegedly “making
3 the necessary arrangements to ensure its payment as demanded by [her superiors within the Lohse
4 Administration].” FAC ¶ 217. Co-defendant Moore, Hanes and APC allegedly facilitated the
5 funding of the Tribal Retirement Plans[.]” FAC ¶ 218.
6

7 The Freeman Council further contends that the Tribal Retirement Plans “were set up and
8 administered as though the Tribe was the [Lohse Administration’s] wholly owned small business[.]”
9 FAC ¶ 220. This was accomplished through: the exclusion of all other Tribal officials and employees
10 from participating in the Tribal Retirement Plans in violation of Treasury Regulation 26 C.F.R. §
11 1.401-1(b)(3) (¶ 221), establishing and modifying the Tribal Retirement Plans “without requiring
12 proof of any Tribal Council authorization” (¶ 222); knowingly structuring and administering the
13 Tribal Pension Plan “as a short-term . . . mechanism to divert a huge amount of Tribal money” in
14 violation of the IRS’s Internal Revenue Manual (¶ 223); and structuring and administering the Tribal
15 401(k) with the “overriding purpose of benefitting the [Lohse Administration] rather than all Tribal
16 employees and officials . . . as IRS regulations require” (¶ 224).
17

18 The primary contention is that the proceeds from the Tribal Retirement Plans were “excessive
19 and unreasonable,” (¶ 261), and “simply outrageous,” (¶ 236).
20

21 **3. Direct and indirect cash payments**

22 The Freeman Council also contend that the Lohse Administration used its control over the
23 Tribe’s bank accounts to impermissibly access cash. FAC ¶ 277. Alleged are myriad transactions
24 whereby the Lohse Administration either wrote checks, cashed checks, withdrew cash, purchased
25 cashiers checks, or transferred money from Tribal bank accounts. See FAC ¶¶ 277-294. The
26 Freeman Council submits that “[t]he Tribe did not authorize or consent to” the transactions. FAC ¶
27

1 281 (Umpqua Bank), 287 (Cornerstone Bank), 288 (same), 290 (US Bank); 293 (Rabobank); 294
2 (Premier West Bank).

3 **4. Goods and services for personal consumption**

4 The Freeman Council further contends that the Lohse Administration used Tribal bank
5 accounts to purchase goods and services for non-Tribal purposes. FAC ¶ 324. The Lohse
6 Administration allegedly purchased a jet plane on behalf of the Tribe and incurred millions in travel
7 expenses, “the great bulk of which was for their own personal benefit.” FAC ¶ 328. The Lohse
8 Administration also allegedly used Tribal money to purchase and renovate personal residences, FAC
9 ¶¶ 335-343, purchase luxury vehicles for themselves and their associates, FAC ¶ 344, attend several
10 high-profile sporting events, FAC ¶ 351, and “pay for millions more in other personal expenses for
11 themselves and their families, which they falsely claimed they were entitled to do pursuant to the
12 fictional \$5 million lines of credit[.]” FAC ¶ 352. The Freeman Council submits the expenses “were
13 unauthorized and unconsented to by the Tribe.” FAC ¶ 352.

14 **F. The post-April 12,2014 activities**

15 The Freeman Council alleges the Lohse Administration took certain unauthorized acts after
16 the April 12, 2014 meeting of the Paskenta General Council wherein the Lohse Administration was
17 purportedly removed as officials of the Paskenta Tribe.

18 The Freeman Council alleges that on or around May 15, 2014, the Lohse Administration
19 remotely accessed electronic databases stored at the Casino. FAC ¶ 395. The result of such access
20 was a “shut down of data servers for the Casino and other Tribal enterprises and resulted in the
21 permanent destruction of a substantial amount of data.” FAC ¶ 395. The Freeman Council alleges
22 the Lohse Administration remotely accessed the databases “without authorization and by exceeding
23 authorized access” in violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 (FAC ¶¶
24
25
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1 503-505) and “without permission” in violation of the California Comprehensive Computer Data
2 Access and Fraud Act, Cal. Penal Code § 502 (FAC ¶¶ 510-515).³

3 The Freeman Council further alleges that on June 9, 2014 the Lohse Administration sent
4 armed security to take control of the Casino. FAC ¶ 413. The Freeman Council alleges the armed
5 security were “thugs” who “falsely” claimed to be Tribal Police. FAC ¶ 414. The Freeman Council
6 further contends that “no such institution exist[ed].” FAC ¶ 414.
7

8 **III. THE FREEMAN COUNCIL’S CLAIMS FOR RELIEF**

9 The First Amended Complaint states 35 claims for relief, which are comprised of causes of
10 action grounded in both federal and state law. FAC ¶¶ 431-763. The federal claims against the
11 Lohse Administration sound in RICO and the Federal Computer Fraud and Abuse Act. The state
12 claims against them sound in conversion, fraud, breach of fiduciary duties and other similar claims
13 stemming from the allegations set forth above.
14

15 The claims for relief against the remaining defendants sound in RICO and state law for their
16 alleged facilitation of the alleged acts by the Lohse Administration.

17 **ARGUMENT**

18 **I. THIS COURT LACKS SUBJECT MATTER JURISDICTION TO ADJUDICATE THE** 19 **UNDERLYING ISSUE IN THIS ACTION: THE TRIBAL LEADERSHIP DISPUTE**

20 This Court lacks subject matter jurisdiction over this case because it is an internal matter of
21 Paskenta Tribal governance.⁴ Resolution of the claims here would require this Court to determine the
22 scope of the Lohse Council’s authority under the Constitution, ordinances, and policies of the Tribe.
23 It would further require this Court to determine the permissibility, under Tribal law, of the Lohse
24

25 ³ During this entire time, the Lohse Administration was recognized by the federal government as the
26 Tribe’s Tribal Council.

27 ⁴ Plaintiffs do not assert diversity or any other law as a basis for this Court’s subject matter
28 jurisdiction.

1 Council's actions while employed by the Tribe. These pervasive and contested issues of Tribal law
2 are apparent from the face of the First Amended Complaint, which contains myriad references to
3 alleged acts by the Lohse Administration which were "extra-legal" and "unauthorized" under
4 Paskenta Tribal law and its Constitution. Additionally the Freeman Council alleges that had the
5 Paskenta Tribe complied with its own laws, the alleged unauthorized activities could not have
6 occurred.
7

8 **A. Legal Standard**

9 **1. Motion To Dismiss**

10 A jurisdictional attack under Rule 12(b)(1) may be either facial or factual *Safe Air for*
11 *Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (citing *White v. Lee*, 227 F.3d 1214, 1242
12 (9th Cir. 2000). "In a facial attack, the challenger asserts that the allegations contained in a complaint
13 are insufficient on their face to invoke federal jurisdiction." *Id.* "By contrast, in a factual attack, the
14 challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal
15 jurisdiction." *Id.*
16

17 Where the attack is a facial one, as it is here, the court must determine if the complaint
18 sufficiently alleges a basis of subject matter jurisdiction. *Garcia v. Copenhagen, Bell & Associates,*
19 *M.D.'s, P.A.*, 104 F.3d 1256, 1261 (11th Cir. 1997). For purposes of the court's determination, "the
20 allegations in [the] complaint are taken as true[.]" *Id.* (citations and quotations omitted).
21

22 **2. Subject matter jurisdiction over intra-tribal matters**

23 Federal courts lack jurisdiction over intra-tribal disputes, particularly disputes involving
24 Tribal governance. *Ransom v. Babbitt*, 69 F.Supp.2d 141, 150 (D.D.C. 1999); *Alturas Indian*
25 *Rancheria v. Salazar* 2011 WL 587588, at *2 n.1 (E.D. Cal., Feb. 9, 2011). This is because "Indian
26 tribes retain elements of sovereign status, including the power to protect tribal self government and to
27

1 control internal relations.” *Smith v. Babbitt*, 100 F.3d 556, 558 (8th Cir. 1996) (citing *Montana v.*
2 *United States*, 450 U.S. 544, 564 (1981). And “an intra-tribal dispute is one that affects matters of
3 tribal self-government and sovereignty.” *Miccosukee Tribe of Indians of Florida v. Cypress*, 975
4 F.Supp.2d 1298, 1306 (S.D. Fla. 2013) (citing *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 53
5 (1978)).
6

7 Couching an intra-tribal matter in federal and state causes of action does not create federal
8 subject matter jurisdiction. *Miccosukee Tribe of Indians of Florida v. Cypress*, 975 F.Supp.2d 1298
9 (S.D. Fla. 2013) (court lacked subject matter jurisdiction over federal and state causes of action which
10 would require court to determine scope of former Chairman’s authority under tribal law), *appeal filed*
11 *May 13, 2014; Smith v. Babbitt*, 100 F.3d 556 (8th Cir. 1996) (court lacked subject matter jurisdiction
12 to adjudicate federal claims, including RICO, where it would require the court to adjudicate tribe’s
13 membership determinations); *In re Sac & Fox Tribe of Miss. In Iowa / Meskwaki Casino Litigation*,
14 340 F.3d 749 (8th Cir. 2003) (RICO claims dismissed where they would require court to determine
15 which Council properly represented the Tribe). Plaintiffs bear the burden of establishing the
16 existence of subject matter jurisdiction. *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th
17 Cir. 1980).
18
19

20 **B. This Court Lacks Subject Matter Jurisdiction Over This Intra-Tribal Dispute**

21 The face of the First Amended Complaint alleges a classic intra-tribal dispute requiring the
22 interpretation and application of Tribal law. The essence of the allegations is that the Lohse
23 Administration improperly gained membership into, and political power within, the Tribe through
24 feigned volunteerism and surreptitious enrollment, maintained that power by intimidating Tribal
25 members and denying them access to information and Tribal laws; leveraged that power to create
26 political allegiances throughout the Tribe and Casino by, among other things, appointing political
27

1 allies; and ultimately leveraged that power to make ill-advised investments, unauthorized purchases,
2 and self-serving compensation and benefits, all in violation of the Tribe's laws and Constitution.

3 While the culmination of these acts is alleged to violate various state and federal laws, each
4 individual act is inextricably intertwined with issues of Tribal governance over which this Court lacks
5 subject matter jurisdiction.
6

7 1. The *Miccosukee* Case

8 This Court's lack of subject matter jurisdiction over this case is demonstrated by *Miccosukee*
9 *Tribe of Indians of Florida v. Cypress*, 975 F.Supp.2d 1298 (S.D. Fla. 2013), *appeal filed* May 13,
10 2014. The heart of the suit was alleged personal use of Tribal funds by the former chairman, Billy
11 Cypress. From 2005 to 2010, Cypress was alleged to have made over \$3 million in unauthorized
12 charges on tribe-issued credit cards, in addition to withdrawing over \$11.5 million from automated
13 teller machines (ATMs) linked to five financial management accounts belonging to the Miccosukee
14 Tribe. 975 F.Supp.2d at 1302. Cypress used the funds for personal expenses and activities, such as
15 gambling, real estate investments, purchasing luxury vehicles, jewelry, fine dining, and luxury
16 vacations. *Id.*
17

18 The remaining defendants were accused of facilitating Cypress's actions and reaping benefits
19 for their cooperation. Certain defendant attorneys were alleged to have represented Cypress in
20 personal matters while being paid with Miccosukee tribal funds. *Id.* at 1302. They also allegedly
21 "kickbacked" a portion of the fees to Mr. Cypress. *Id.* Defendant Morgan Stanley Smith Barney, the
22 Miccosukee Tribe's financial institution, allegedly allowed suspicious financial transactions to occur
23 without enforcing or complying with applicable banking regulations and safeguards. *Id.* at 1303.
24 Two other defendants, the Tribe's Chief Financial Officer and the Director of the Finance
25 Department, allegedly advised Cypress regarding his use of the ill-gotten proceeds, and prepared his
26
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1 personal income tax returns. *Id.* at 1303. They also were aware of irregularities in the Tribe's
2 finances but never notified the Miccosukee Business Council or the Miccosukee General Council. *Id.*

3 Combined, the defendants' actions were alleged to have violated the federal Racketeer
4 Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c), conspiracy to commit
5 federal RICO, civil theft, fraud, aiding and abetting fraud, Florida Racketeer Influenced and Corrupt
6 Organization, Fla. Stat. 895.01, *et seq.* ("Florida RICO"), Florida RICO conspiracy, embezzlement,
7 breach of fiduciary duty, and fraudulent misrepresentation. *Miccosukee*, 975 F.Supp.2d at 1301-02.

8
9 The *Miccosukee* court disagreed. It held that the Miccosukee tribe's claims, at their essence,
10 concerned allegations that the Defendants exceeded their authority under the Miccosukee tribe's laws.
11 *Id.* at 1306. That quarrel, which would necessarily involve interpretation of the Miccosukee tribe's
12 constitution, was intra-tribal. *Id.* (citing *Sac & Fox Tribe of Mississippi in Iowa v. Bear*, 258
13 F.Supp.2d 938 (N.D. Iowa 2003), *aff'd sub nom. In re Sac & Fox Tribe of Mississippi in*
14 *Iowa/Meskwaki Casino Litig.*, 340 F.3d 749 (8th Cir. 2003)).

15
16 The court likened the suit to shareholders suing its company's officers. *Id.* at 1307. The
17 crucial distinction is that applicable law permits shareholder suits, but "the same open courthouse
18 door policy is not afforded sovereign Indian nations when the dispute arises within its domain." *Id.*
19 (citing *Longie v. Spirit Lake Tribe*, 400 F.3d 586, 588-89 (8th Cir. 2005)). The *Miccosukee* court
20 further held that the simple fact that all defendants to the suit were not tribal members did "not defeat
21 the determination that this is an intra-tribal dispute where the issue concerns 'the political integrity,
22 the economic security, or the health or welfare of the tribe.'" *Id.* (quoting *Montana v. U.S.*, 450 U.S.
23 544, 566 (1981)).

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2. The *Smith* Case

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2 The *Miccosukee* court found “highly persuasive” the case of *Smith v. Babbit*, 100 F.3d 556,
3 558 (8th Cir. 1996), which “identif[ied] an intra-tribal dispute masked in a federal claim.” *Id.* at
4 1306. There, members and nonmembers of the Shakopee Mdewakanton Sioux (Dakota) Community
5 sued both tribal and federal officials under RICO, other federal statutes, and the tribal constitution.
6 *Id.* They alleged that ineligible persons were receiving monies, and certain eligible persons were
7 being denied payments. *Id.* The *Smith* court determined that the conflict was an intra-tribal dispute,
8 despite alleged violations of RICO and other federal statutes. *Id.* In dismissing the action, the *Smith*
9 court held that the action was one “properly left to tribal authorities.” *Id.* (quoting *Smith*, 100 F.3d at
10 559). It further held that “[f]ederal court jurisdiction does not reach this matter simply because the
11 plaintiffs carefully worded their complaint.” *Id.* (quoting *Smith*, 100 F.3d at 559).
12
13

14 The *Miccosukee* court found that *Smith* was directly analogous to the case before it, and
15 therefore compelled dismissal. As in *Smith*, the *Miccosukee* court found that the claims before it
16 were an “attempt to move [the intra-tribal] dispute, over which [the] court would not otherwise have
17 jurisdiction, into federal court[.]” *Id.* at 1306 (quoting *Smith*, 100 F.3d at 559). Specifically, the
18 dispute “involve[ed] the Miccosukee Tribe and the alleged abuse of power granted to its former
19 chairman under its tribal constitution.” *Id.* In the court’s view, the Miccosukee Tribe was
20 “bootstrapping” its discontent with prior leadership onto federal claims. *Id.*
21

3. The *Sac & Fox* Case

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23 The *Miccosukee* court also relied extensively on *Sac & Fox Tribe of Mississippi in*
24 *Iowa/Meskwaki Casino Litigation*, 340 F.3d 749 (8th Cir. 2003). In *Sac & Fox*, the Eighth Circuit
25 concluded that RICO did not provide a basis for federal question jurisdiction in a dispute between
26 rival tribal councils. *Id.* at 767. *Sac & Fox* reasoned that the alleged misconduct by the defendant
27

1 tribal council could not qualify as predicate violations of RICO unless the Court first concluded that it
2 was not the lawful governing body of the Sac & Fox Tribe. *Id.* It concluded that issue was an intra-
3 tribal matter over which federal courts lacked jurisdiction. *Id.* For that reason, the Eighth Circuit
4 affirmed the district court's dismissal of the action for lack of subject matter jurisdiction. *Id.*
5

6 Relying on *Sac & Fox*, the *Miccosukee* court held that it lacked subject matter jurisdiction
7 over the case before it. 975 F.Supp.2d at 1307. It reasoned that, like *Sac & Fox*, the Miccosukee
8 Tribe was asking the court to decide that Cypress and his co-defendants exceeded their authority as
9 officers and agents of the Miccosukee Tribe when they engaged in behavior the Miccosukee Tribe
10 contended was not in its best interest. *Id.* at 1307.

11 C. DISCUSSION

12 The case at hand is virtually indistinguishable from *Miccosukee* and should therefore be
13 dismissed for lack of subject matter jurisdiction. The claims in both cases assert that tribal funds
14 were converted to personal use by officials and agents charged with acting in the best interests of the
15 Tribe. The alleged conversions in both cases were made through personal purchases on tribe-issued
16 credit cards, and withdrawals of large amounts of cash from Tribe-owned financial accounts. Like
17 Cypress, each member of the Lohse Administration is alleged to have misappropriated millions of
18 dollars for non-tribal purposes.
19

20 The alleged wrongful acts by the Paskenta Consultants and certain individuals in the Lohse
21 Administration is like those alleged against Cypress's co-defendants. As in *Miccosukee*, the Freeman
22 Council alleges that they participated in the Lohse Administration's activities through concealment
23 and other assistance. They were alleged to have facilitated the Lohse Administration's transactions
24 primarily through concealment (e.g., cyber attack, diverting surveillance, withholding information),
25 just as Cypress's co-defendants were alleged to have done in *Miccosukee* (e.g., knowingly approving
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1 allegedly fraudulent invoices, knowingly failing to disclose irregularities to appropriate bodies,
2 preparing individual tax returns, and knowingly issuing payment of tribal funds for personal credit
3 card purchases). Even the financial institutions in both cases allegedly managed the tribes' financial
4 accounts in a manner that allowed suspicious activity in contravention of applicable banking
5 regulations and safeguards.
6

7 But just as in *Miccosukee*, the allegations against the co-defendants in this case raise the same
8 underlying issue over which this Court lacks subject matter jurisdiction: whether the former tribal
9 administration had authority under tribal law to engage in the conduct. Indeed, the face of the First
10 Amendment Complaint alleges the co-defendants carried out the commands of the leadership of the
11 Paskenta Tribe. For example, lower level employees and agents of the Tribe were allegedly
12 “involved in depositing and transferring Tribal moneys among the various bank accounts opened by
13 the [Lohse Administration] at the instruction of the [Lohse Administration]” (FAC ¶ 151 (Sherry
14 Myers) (emphasis added)); withholding information about the Lohse Administration’s purchase of a
15 jet, at the instruction of John Crosby, (FAC ¶ 287 (John and Ted Pata)); and remotely accessing the
16 Casino’s computer servers, at the instruction of the Lohse Administration (FAC ¶ 156 (Chris Pata and
17 Frank James)). Each of the alleged acts was allegedly done pursuant to instruction of the apparent
18 leadership of the Tribe. It mirrors the circumstances in *Miccosukee*, where the Miccosukee Tribe’s
19 Chief Financial Officer, Director of the Finance Department, and attorneys allegedly carried out the
20 instructions of Cypress through, among other means, not reporting irregularities in the Tribe’s
21 finances, and representing Cypress’s personal interests while being paid with tribal funds. 975
22 F.Supp.2d at 1302-03. As *Miccosukee* held, for this Court to determine whether the Lohse
23 Administration lacked such authority would require resolution of contested issues of Paskenta Tribal
24 law—subject matter over which this Court lacks jurisdiction.
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1 Also apt here is *Miccosukee*'s reasoning that: "This quarrel, which necessarily involves
2 interpretation of the Tribal Constitution, is intra-tribal." The First Amended Complaint paints a
3 picture of concealment and mystery, but Chairman Freeman of the Freeman Council knew, or
4 reasonably should have known, about all of the affairs of the Paskenta Tribe. He served alongside the
5 Lohse Administration dating back to at least 2001. FAC ¶ 91. He has held multiple positions on the
6 Tribal Council, including Chairperson and Vice-Chairperson. FAC ¶ 91. Thus, during his 15 years
7 on the Tribal Council, Andrew Freeman reasonably could have discovered and disclosed the Lohse
8 Administration's alleged activities. And he could have done so with little fear of political retribution
9 because the Freeman and Simmons families accounted for 65% of the Tribe's eligible voting
10 members in 1998. FAC ¶ 87. That stands in stark contrast to the Pata family's 35%. FAC ¶ 87. The
11 fact that he did not further demonstrates that this matter is not one of racketeering, but one of Tribal
12 law and politics. Despite being couched in federal claims, those allegations simply raise issues of
13 Paskenta Tribal law.

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16 As it was in *Miccosukee*, the *Smith* case is also persuasive here. As *Smith* reaffirms,
17 membership issues, even if framed as state or federal causes of action, are matters of internal tribal
18 governance. *Miccosukee*, 975 F.Supp.2d at 1306 (quoting *Smith*, 100 F.3d at 559 (membership
19 questions are "properly left to tribal authorities").) Thus, the allegation that the Lohse
20 Administration's scheme to defraud the Tribe began with their "illegitimate and coercive" enrollment
21 in the Paskenta Tribe is beyond the jurisdiction of this court. FAC at 21. In fact, pages 21 through 25
22 of the FAC are dedicated to discussing the Pata family's scheme to enroll themselves in the Paskenta
23 Tribe and take over with their 30% voting bloc. FAC ¶¶ 82-98. The Freeman Council contends the
24 acts were part of the Lohse Administration's alleged "associate[ion] together in fact for the common
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1 purpose of carrying out an ongoing criminal enterprise,” in violation of RICO. FAC ¶ 434. These
2 allegations further demonstrate the internal nature of this suit, which *Smith* held mandate dismissal.

3 Also persuasive here is *Smith*'s reasoning that “careful examination of the complaint[]” can
4 demonstrate the internal nature of a dispute. 100 F.3d at 559 (cited by *Miccosukee*, 975 F.Supp.2d at
5 1306). In this case, the First Amended Complaint demonstrates the internal nature of the dispute
6 through its almost innumerable references to Paskenta Tribal law, and the ways in which the Lohse
7 Administrated violated same. For example, pages 18 through 20 outline provisions of the Paskenta
8 Tribal Constitution, noting that “the Tribal Constitution functions as the primary law of the Tribe.”
9 FAC ¶¶ 75-75. The First Amended Complaint also outlines the Constitutional duties of the Tribal
10 Council (FAC ¶ 124) in an attempt to show why the Lohse Administration deemed it “necessary to
11 keep the [Paskenta] Tribe’s members in the dark about their rights under the Tribal Constitution and
12 the duties that the Tribal Council’s officers owed them,” (FAC ¶ 125). The First Amended
13 Complaint further outlines the duties of the Treasurer of the Tribal Council (FAC ¶ 89) to
14 demonstrate that Leslie Lohse “fail[ed] to perform her constitutional duties as Treasurer,” (FAC ¶
15 132). The First Amended Complaint is pervaded with characterizations of the Lohse
16 Administration’s alleged activities as “unauthorized,” (FAC ¶ 100); “extra-legal,” (FAC ¶ 98); “in
17 direct contravention to explicit limitations in the Tribal Constitution,” (FAC ¶ 93); having “no basis
18 in the Tribal Constitution, Tribal law, or any Tribal Council resolutions,” (FAC ¶ 122); “directly
19 contrary to requirements in the Tribal Constitution,” (FAC ¶ 124); “not authorized by the Tribal
20 Council,” (FAC ¶ 215); among many other similar references to Paskenta Tribal law. But perhaps the
21 most telling statement in the First Amended Complaint is the Freeman Council’s allegation that no
22 allegedly unapproved activity could have occurred “[i]f . . . the Tribal Council was occupied by
23 persons that diligently demanded compliance with the requirements of the Tribal Constitution[.]”
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1 FAC ¶ 110. As in *Smith*, the face of the First Amended Complaint demonstrates that this suit is an
2 attempt to move an internal tribal dispute into federal court.

3 The *Sac & Fox* case is also persuasive here as it was in *Miccosukee*. The *Miccosukee* court
4 relied on *Sac & Fox* for the principle that it lacked jurisdiction to determine whether the *Miccosukee*
5 defendants unlawfully exceeded their authority as officers and agents of the Miccosukee Tribe. The
6 same principal applies here. The Freeman Council is asking this Court to determine whether the
7 Lohse Administration acted within the scope of its authority for the acts alleged in the First Amended
8 Complaint. In the context of RICO, the *Smith* court determined that it lacked jurisdiction to
9 determine the existence of an “enterprise” under 18 U.S.C. § 1962(c) without “first hav[ing] to
10 conclude that the [defendant council] does not, in fact, represent the [Sac & Fox] Tribe.” 340 F.3d at
11 767. So too here, this Court cannot resolve Plaintiff’s RICO claims – or any of its remaining claims –
12 without determining whether the alleged acts exceeded the Lohse Administration’s authority under
13 Paskenta Tribal law.

14 Also arising from the internal Paskenta Tribal dispute are the alleged actions by the Lohse
15 Administration following the April 12, 2014 General Council meeting at which they were purportedly
16 stripped of their positions in the Tribe. The First Amended Complaint alleges three primary actions
17 by the Lohse Administration during such period: the withdrawal of funds from Paskenta Tribal
18 financial accounts; a remote “cyber-attack” on the Tribe’s computer systems; and an attempted
19 Casino takeover by an armed security force. These events, even if accepted as true, are all internal
20 governance issues over which this Court lacks subject matter jurisdiction. That is, to determine the
21 propriety of each event would first require resolution of which Tribal Council – the Lohse Council or
22 the Freeman Council – was authorized to access the Paskenta Tribal bank accounts (in the case of the
23 withdrawals); access the Paskenta Tribe’s computer databases (in the case of the cyber-attack); and
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1 control and operate the Casino (in the case of the armed security takeover). This Court again lacks
2 the jurisdiction to make that determination.

3 Due to the patently internal nature of this governance dispute, this Court should dispose of the
4 causes of action here in the same fashion as the *Miccosukee* court did there. There, the court
5 dismissed the federal RICO claims after holding that they did not raise a federal question. With the
6 only federal claims dismissed, the *Miccosukee* court declined to exercise supplemental jurisdiction
7 over the remaining state law claims. 975 F.Supp.2d at 1308 (citing 28 U.S.C. § 1367(c)(3)).
8

9 This Court should similarly dispose of the RICO and Federal Computer Fraud and Abuse Act
10 claims because they raise internal governance issues under Paskenta Tribal law. With the only
11 federal claims dismissed, this Court should decline supplemental jurisdiction over the remaining state
12 law claims because they too raise the same internal governance issues as the federal claims, which
13 this Court is without jurisdiction to resolve.
14

15 CONCLUSION

16 The Lohse Administration respectfully requests that this Court dismiss this action because it
17 seeks to litigate matters of self-governance and politics internal to the Paskenta Tribe.
18

19 Respectfully submitted,

20 Dated: May 15, 2015

LIBERTY LAW, APC

21
22
23 By: /s/ John Murray

John Murray

Attorneys for Defendants
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