IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DANA DUGGAN, *individually and on behalf of persons similarly situated,*

Plaintiff,

v.

MATT MARTORELLO, *et al.*

Defendants.

No. 1:18-cv-12277-JGD

Leave to File Granted
on April 3, 2020 (Dkt. 142)

PLAINTIFF DANA DUGGAN'S SUR-REPLY IN OPPOSITION TO MATT MARTORELLO'S MOTION TO DISMISS

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I. INTRODUCTION

Defendant Martorello's Reply, (Dkt. 143), attempts to distort the Fourth Circuit's decision in *Williams v. Big Picture Loans, LLC*, 929 F.3d 170 (4th Cir. 2019), to advance a novel and unsupported theory that would undermine longstanding, black-letter law. Under controlling Supreme Court precedent: (1) Native American tribes doing business outside their reservations are subject to state law, *Montana v. U.S.*, 450 U.S. 544, 564–65 (1981); and (2) non-tribal members, like Martorello, cannot assert the jurisdictional defense of "sovereign immunity."[1] Numerous courts have denied motions to dismiss, sustaining usury and RICO claims against non-tribal members who orchestrated tribal lending schemes.[2] This Court should do the same. Equally important and consistent with state policy interests protecting consumers from predatory lending practices, the Court should deny Martorello's motion to dismiss based on the unconscionable and unenforceable choice-of-law provision.

The Court should also reject Martorello's challenge to personal jurisdiction because Dana Duggan has made a prima facia showing that Martorello substantially influenced and controlled the lending scheme targeting Massachusetts residents. *See Mullaly v. Sunrise Senior Living Mgmt., Inc.*, 224 F. Supp. 3d 117, 123 (D. Mass. 2016). Especially given that Martorello has offered no evidence to contravene Duggan's allegations, the detailed factual pleadings and documents

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[1] *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 796 (2014) (litigants can bring suit against "tribal officials or employees" for violations of state law that occur off the reservation); *see also Gingras v. Think Fin., Inc.*, 922 F.3d 112, 124 (2d Cir. 2019), *cert. denied*, 2020 WL 129562 (U.S. Jan. 13, 2020) (the tribe and its "officers are not free to operate outside of Indian lands without conforming their conduct in these areas to federal and state law"). *See also*, *infra*, footnote 2.

[2] *Hengle v. Asner*, No. 3:19cv250, 2020 WL 113496, *50 (E.D. Va. Jan. 9, 2020); *Gibbs v. Stinson*, No. 3:18cv676, 2019 WL 4752792, *31-33 (E.D. Va. Sept. 30, 2019); *Gibbs v. Haynes Investments, LLC*, 368 F. Supp. 3d 901, 929 (E.D. Va. 2019); *Solomon v. Amer. Web Loan*, No. 4:17cv145, 2019 WL 1320790, *5 (E.D. Va. March 22, 2019); *Gingras v. Rosette*, No. 5:15-cv-101, 2016 WL 29332163, *37 (D. Vt. May 18, 2016), *clarif'n denied*, 2016 WL 4442792 (D. Vt. Aug. 22, 2016), *aff'd*, 922 F.3d 112 (2d Cir. 2019).

attached to Duggan's Second Amended Class Action Complaint ("Complaint"; Dkt. 118) establish personal jurisdiction over Martorello. Accordingly, the Court should deny Martorello's Motion.

II. UPDATE TO PROCEDURAL HISTORY

Since the filing of Duggan's Opposition, (Dkt. 136), the Northern District of Texas Bankruptcy Court dismissed Eventide Credit Acquisitions, LLC's ("Eventide's") bankruptcy due to its "lack of good faith in filing and prosecuting the Bankruptcy Case," (*see* Dkts. 159, 159-1 at 56), and Martorello agreed in this case to dismissal of his motion to transfer venue as moot. (Dkts. 161, 163.) Also, Eventide has agreed to answer the Complaint. (Dkts. 161, 165.)

In *Williams* and *Galloway I*, the Eastern District of Virginia held an evidentiary hearing on July 21-22, 2020, to address alleged misrepresentations of facts underlying the Fourth Circuit analysis and related opinions of the Virginia court. The court has not issued its findings. In what is known as the *Galloway III* case, (No. 19-470 (E.D. Va.), Dkt. 98), the Eastern District of Virginia has set the final fairness hearing related to Duggan's and other plaintiffs' settlement with the Tribe-affiliated entities for hearing on December 15, 2020.

III. ACCEPTING DUGGAN'S WELL-PLEADED FACTS, STATE LAW APPLIES TO MARTORELLO'S OFF-RESERVATION LENDING OPERATION.

Ignoring that for purposes of his 12(b)(6) Motion, this Court must accept as true Duggan's well-pleaded facts, *Sindi v. El-Moslimany*, No. 13-cv-10798-IT, 2014 WL 6893537 *1-2 (D. Mass. Dec. 5, 2014), Martorello incorrectly attempts to rely on an incomplete record from the Fourth Circuit's *Williams* opinion and his own characterizations of documents, which Duggan strongly disputes. Martorello also mistakenly attempts to turn *Williams*, which was limited to the *jurisdictional* defense of sovereign immunity, available only to Native American tribes, into a case about the substantive legality of off-reservation, usurious lending. As the Second Circuit recently confirmed, off-reservation usurious tribal lending remains illegal, regardless of whether

jurisdiction exists over the tribe, and non-tribal entities can be held liable in connection with tribal loans offered to borrowers outside the reservation over the Internet. *Gingras*, 922 F.3d at 124.

A. Duggan has pled detailed facts showing that Martorello's lending operation occurred off the reservation.

Martorello mistakenly relies on the *Williams* opinion to contend that the lending enterprise occurred on the Tribe's reservation. (Dkt. 143 at 8, 19, 22, 23, 29.) Actually, as detailed in the Complaint, almost all of the illegal lending operation occurred, and continues to occur, off the reservation.[3] Indeed, the only reservation-related activities that might involve a tribe member are perfunctory data entry about the loan and perhaps response to borrowers' email inquiries, if any. (Dkt. 118 ¶ 105.) Also, Martorello glosses over the fact that he is not a Tribe member, and substantially all his illegal conduct and participation in the scheme occurred off the reservation. (*id.* ¶¶ 1, 22.) Because almost all the lending scheme occurs off the reservation, state law, rather than the tribal regulatory authority, governs the subject loans.[4]

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[3] For example, lead generation, marketing, servicing, and debt collection occurred primarily in the U.S. Virgin Islands and then later in Atlanta, Georgia, but never on the reservation (Dkt. 118 ¶¶ 62, 65-66, 105; Dkt. 118-3 ¶¶ 2-10); borrowers apply for loans over the internet and never visit the reservation (Dkt. 118 ¶ 105); the telephone number on Big Picture's website rings to customer service centers in Mexico or the Philippines (*id.* ¶¶ 67, 104-05); the foreign service centers handle all telephonic inquiries about the lending process, assist with loan applications, and confirm loan approvals (*id.* ¶¶ 67, 105) no lending decisions are made by the Tribe or on the reservation, because loan approval is automated [*id.* ¶¶ 63, 105); banking deposits and electronic withdrawals are addressed in the foreign service centers (*id.* ¶ 179); loan advancement and payments are processed through off-site banking services (*id.*); Bellicose, and later Ascension, provides all lending services off the reservation and, in fact, has never employed a single Tribe member (*id.* ¶¶ 64-65, 102-03; Dkt. 118-3 ¶¶ 2-3); the lending operation was set up so that it would not involve participation by the Tribe (Dkt. 118 ¶¶ 63-64, 101-05; Dkt. 118-3).

[4] When tribal lenders reach beyond their reservations to make loans to state-resident consumers, courts have repeatedly held that they are doing business in the state where the consumers reside. *Gingras*, 922 F.3d at 121, 128 (holding that "[t]he Tribal Defendants here engaged in conduct outside of Indian lands when they extended loans to the Plaintiffs in Vermont"); *see also Quick Payday, Inc. v. Stor*k, 549 F.3d 1302, 1304 (10th Cir. 2008) (holding that Utah payday lender was subject to Kansas usury laws when it made loans to Kansas borrowers); *Hengle*, 433 F. Supp. 3d at 875-77 (holding that tribal online loans "constitute off-reservation conduct subject to

B. Martorello incorrectly claims that the Fourth Circuit's opinion in *Williams* protects him from suit.

Martorello mistakenly relies on the Fourth Circuit's analysis of tribal sovereign immunity in *Williams v. Big Picture Loans LLC*, 929 F.3d 170 (4th Cir. 2019), for the proposition that his role in the lending scheme was "blessed" by that court and "foreclosed" from reconsideration. (Dkt. 143 at 22, 30.) That is simply not the case. Based on the inaccurate and incomplete factual record available at that time, the Fourth Circuit merely held that Big Picture and Ascension cannot be sued in Virginia; the court made no findings about the legality of the lending operation.

Indeed, the Fourth Circuit expressly noted that "the potential merit of the borrowers' claims against Big Picture and Ascension – and the lack of a remedy for those alleged wrongs – does not sway the tribal immunity analysis." *Williams*, 929 F.3d at 185 (emphasis added). In other words, a tribe's immunity "limits how states can enforce their laws against tribes or arms of the tribes, but… it does not transfigure debts that are otherwise unlawful under RICO into lawful ones." *United States v. Neff*, 787 Fed.App'x 81, 92 (3d Cir. 2019) (emphasis added). The Tribe's immunity from suit does not shield individuals, including even Tribal council members, much less, non-tribal third parties such as Martorello, from suit.[5]

C. Incidental federal policy interests benefitting the Tribe do not insulate Martorello from liability for his role in the lending enterprise.

Martorello predicates most of the arguments in his Reply on a novel and unsupported theory that federal law somehow preempts the application of state law to tribal lending operations. (Dkt. 143 at 2 n.2.) However, Martorello cites no case that has ever preempted state regulation of

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nondiscriminatory state regulation"); *Otoe-Missouria Tribe*, 974 F. Supp. 2d at 356 (denying Red Rock's request for a preliminary injunction, finding that the "undisputed facts demonstrate[d]" that the illegal activity was "taking place in New York, off of the Tribes' lands").

[5] There are a "panoply of tools" available to "shutter, quickly and permanently" tribes' unlawful conduct. *Bay Mills*, 572 U.S. at 796; *see also Gingras*, 922 F.3d at 124.

tribal lending.[6] In fact, courts have consistently held the opposite: off-reservation activity directed at non-tribe members is subject to state law.[7] *Otoe-Missouria*, on which Martorello mistakenly attempts to rely, (Dkt. 143 at 3-5), actually upheld the denial of an injunction requested by tribes to stop New York's regulation of loans to New York residents; the court found that the tribe had failed to meet its burden to prove that its lending took place on the reservation. *Otoe-Missouria,* 769 F.3d at 113.[8] In short, nothing in *Williams* supports dismissal of Duggan's claims against non-Tribe member Martorello for his role in the collection of usurious interest from non-Tribal consumers, especially where, as here, Duggan has pled detailed facts showing that the lending occurred off the reservation.

[6] Martorello's reliance on *Bracker* and *Cabazon Band* is misplaced. (Dkt. 143 at 5 n.2, 7-8.) Both *Bracker* and *Cabazon Band* stand for the proposition that state law does not apply to regulate on reservation activity by non-Tribe members. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) (addressing on-reservation gambling); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980) (addressing on-reservation timber hauling).

[7] *Bay Mills*, 572 U.S. at 795 ("Unless federal law provides differently, Indians going beyond reservation boundaries are subject to any generally applicable state law."); *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 330 (2008) (generally, "the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe"; efforts by a tribe to regulate nonmembers, especially on non-Indian fee land, are "presumptively invalid."); *Gingras*, 922 F.3d at 124 (holding that Indian tribes acting off-reservation have an obligation to comply with generally applicable state laws; meanwhile, the state has an "important interest in enforcing its own laws," and the federal government has a "strong interest in providing a neutral forum"); *Otoe-Missouria Tribe of Indians v. N.Y. State Dep't of Fin. Servs.*, 769 F.3d 105, 114 (2d Cir. 2014) (holding "a tribe has no legitimate interest in selling an opportunity to evade state law").

[8] Duggan's Complaint and supporting documents addressed the *Otoe Missouria* case, its impact on the lending operation, and Martorello's resulting interests in restructuring the enterprise. (Dkt. 118 at ¶¶ 69, 71, 74; Dkts. 28-12, 118-3, 118-7, 118-12, 118-13.)

IV. THE COURT HAS PERSONAL JURISDICTION OVER MARTORELLO.

A. Martorello is subject to this Court's jurisdiction because Big Picture and Ascension's acts should be attributed to Martorello for jurisdictional purposes based on Duggan's uncontroverted allegations that Martorello controlled the lending enterprise.

Under First Circuit law, an entity's jurisdictional contacts should be attributed to parties who exercise "substantial influence" and control, as Duggan has alleged here. *Donatelli v. Nat'l Hockey League*, 893 F.2d 459, 469 (1st Cir. 1990); (*see* Dkts. 118 ¶ 87, 118-29, 118-30, and 118-31.) Martorello's Reply does not address *Donatelli*, but instead cites the out-of-circuit tribal-lending case *Gingras v. Rosette*, No. 5:15-cv-101, 2016 WL 2932163 (D. Vt. May 18, 2016), attempting to analogize Martorello to tribal officials that the *Gingras* court found were not subject to personal jurisdiction. (*See* Dkt. 143 at 14–15.) Actually, *Gingras* held that (unlike tribal officials, who acted merely as corporate directors) the alleged mastermind of the tribal loan operation and his company—most analogous to Martorello and Eventide here—*were* subject to personal jurisdiction. *Id.* at *11.

In an effort to distinguish *Gingras* and similar cases, Martorello's Reply repeatedly denies Duggan's allegations that he controlled the lending enterprise, but does not cite to any affidavits, declarations, or documentary evidence that would controvert her allegations. (Dkt. 134 at 13–16.) For purposes of the jurisdictional analysis, this Court therefore "must accept the uncontroverted allegations in the plaintiff's complaint as true." *TomTom, Inc. v. Norman IP Holdings, LLC*, 890 F. Supp. 2d 160, 164 (D. Mass. 2012). Contrary to Martorello's misplaced reliance on *Williams*, Duggan has provided compelling facts with supporting evidence that demonstrate—based on subsequent discovery not available to the court in *Williams*—that Martorello exercised pervasive

control over the lending enterprise.[9] Duggan has made a "prima facie showing" of jurisdiction, so the Court should deny Martorello's jurisdictional motion. *TomTom*, 890 F. Supp. 2d at 164.

B. Personal jurisdiction is also proper under 18 U.S.C. § 1865(b).

RICO, 18 U.S.C. § 1865(b), provides for jurisdiction where (1) the court has personal jurisdiction over one defendant in an alleged RICO conspiracy and (2) "the ends of justice" require that such defendants be brought before the court. *See Kalika, LLC v. Bos. & Maine Corp.*, No. 15-cv-14043, 2018 WL 1093496, *7 (D. Mass Feb. 28, 2018). Martorello's Co-Defendant Eventide has now admitted jurisdiction, satisfying the first prong of *Kalika's* test. (*See* Dkts. 161, 165.)[10] Regarding the second, "ends of justice" prong, Martorello's Reply argued that justice does not require jurisdiction here because the Northern District of Texas, where Eventide had filed for bankruptcy, provided an alternative forum. (Dkt. 143 at 17–18.) With dismissal of Eventide's bankruptcy and Martorello's abandonment of his motion to transfer venue, this argument fails.

Finally, the Court should disregard Martorello's assertion that Duggan has not alleged a single nationwide conspiracy. (Dkt. 125 at 11.) As detailed in the Complaint, Martorello's re-branding of the lending operation from "Red Rock" to "Big Picture" did not change the business's structure or Martorello's continuing control over the enterprise. (Dkt. 118 ¶¶ 59-105.) The Court should therefore also deny the Motion due to jurisdiction under 18 U.S.C. § 1865(b).

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[9] As detailed in the Complaint, Martorello had a significant role in the creation and operation of Red Rock, Big Picture, and Ascension. (*See, e.g.*, Dkts. 118, 118-3, 118-4, 118-5, 118-6). He restructured the lending operation to address his acknowledged risks of legal liability. (*See, e.g.*, Dkts. 118-3, 118-7, 118-9.) Martorello negotiated for the nominal sale of his business with expectations he would retain control and all profits from the business for the foreseeable life of the business. (Dkt. 118-3; Dkt. 118-14 at 1.) The intent of the lending operation and its convoluted structures was "to extend the Tribe's sovereign immunity from suit." (Dkt. 118-15 at 2.)

[10] The question of whether Big Picture and Ascension (which Plaintiff has voluntarily dismissed pursuant to a settlement pending approval in the E.D. Va.) should be considered "other parties" subject to personal jurisdiction, (*see* Dkt. 143 at 16–17), is therefore moot.

V. DUGGAN HAS PROPERLY PLEADED THAT THE CHOICE-OF-LAW PROVISION IS UNENFORCEABLE; THEREFORE, THE COURT SHOULD NOT DISMISS HER CLAIMS BASED ON AN APPLICATION OF TRIBAL LAW.

Duggan has properly pled that the choice-of-law provision in conjunction with other unconscionable terms of the loan agreement and the Tribal regulatory code are an unconscionable and unenforceable prospective waiver of consumers' legal rights.[11] These provisions are part of an integrated scheme to deprive consumers of a fair opportunity to adjudicate their disputes.

As addressed above, this Court should reject Martorello's effort to misapply the *Williams* opinion to choice-of-law issues that were not before that Court and his unprecedented argument that federal policy supports application of tribal law to off-reservation usurious loans. (Dkt. 143 at 22-26; *see supra* III.(A) and (B).) Duggan identified state interests in protecting consumers from predatory lenders as well as the unenforceability of substantively and procedurally unconscionable contracts (Dkt. 136 at 23-25, 27-28), against which Martorello cites no authority. (Dkt. 143 at 22, 24.) By Martorello's reasoning, any onerous contract, regardless of its terms, would be deemed enforceable so long as the Tribe received a small interest in the inequitable agreement. Based on the important state policy interests and because Duggan has pled facts supporting unconscionability, the Court should decline to find the choice-of-law provision enforceable.

Duggan has also pled that the doctrine of prospective waiver invalidates the choice-of-law and forum selection clauses, particularly when read in the context of the Tribal regulatory code. (Dkts. 118 ¶¶ 119-34, 136 at 24-25.) Martorello incorrectly claims that because the loan agreement includes the phrase "applicable federal law," prospective waiver does not apply. (Dkt. 143 at 8-9.) To the contrary, courts have repeatedly found that loan agreements referencing applicable federal

[11] Although Martorello claims otherwise, Duggan accurately addressed the terms of the loan agreement and Tribal regulatory code in her Complaint and also in Opposition to the subject Motion. (Compare Dkt. 143 at 5-6 to Dkts. 118 ¶¶ 119-132; 136 at 22-28.)

law should be invalidated as a prospective waiver of consumer rights due to the ambiguity of the term and/or the waivers of rights in other parts of the agreement.[12] Here, the agreement disclaims state law, and the regulatory code omits RICO as an applicable federal law.

Also, as detailed in the Complaint (Dkt. 118 ¶¶ 119-134), the choice-of-law provision, forum selection clause, and Tribal regulatory code effectively eliminate consumers' rights to make claims.[13] Because the loan agreement and regulatory code combine to offer no remedy to Duggan, the Court should sustain Duggan's first cause of action for declaratory and/or injunctive relief that the choice of tribal law provision is unenforceable.

VI. DUGGAN'S CAUSES OF ACTION ARE WELL-FOUNDED AND SHOULD NOT BE DISMISSED FOR FAILURE TO STATE A CLAIM.

Duggan has provided compelling factual and legal support for her RICO, Massachusetts law, and unjust enrichment causes of action. In Reply, Martorello attempts to raise fact disputes, which the Court may not consider at the pleading stage, and again asserts his novel and

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[12] *Haynes*, 967 F.3d at 340-45 (finding a prospective waiver of consumers' rights even though agreement included reference to "federal laws as applicable," because terms conflicted and did not include RICO); *Solomon*, 375 F. Supp. 3d at 672 (prospective waiver despite "such federal law as is applicable"); *Brice v. Plain Green, LLC*, 372 F. Supp. 3d 955, 970 (N.D. Cal. 2019).

[13] For example, (1) the agreement's resolution procedure expressly disclaims any rights for recovery, because a consumer complaint "does not create any binding procedural or substantive rights for a petitioner" (Dkts. 118 ¶¶ 126, 129; 118-1 at 5); (2) the loan agreement requires claims to be filed according to the regulatory code with no right of litigation or an arbitration (Dkts. 118 ¶ 127; 118-1 at 4-5); (3) the code did not permit consumers to challenge the illegality of the loan under laws "outside the jurisdiction of the Tribe" (Dkts. 32-11 at § 1.1(B)(4)(b); 118 at ¶ 131); (4) the code only allows the presiding authority figure to "resolve the dispute in favor of the consumer upon a finding that the Licensee has violated a law or regulation of the Tribe," not state or federal law (Dkt. 32-11 at § 1.1(B)(4)(c)); (5) the code did not "grant the consumer an opportunity be heard" if the only allegation is that the loan "is illegal in a jurisdiction outside the jurisdiction of the Tribe" (Dkt. 32-11 at § 1.1(B)(4)(b)); (6) the code does not confer jurisdiction over non-member Martorello (Dkt. 28-6 at § 8.1(d)); (7) the tribal resolution procedure only addresses claims related to licensees such as Big Picture, not Martorello (Dkts. 28-6 at § 9, 32-11 at § 1.1); (8) consumers have no right on appeal to challenge federal law, only Tribal law (Dkt. 28-6 at § 9.4(f)); (9) the consumer complaint procedure makes no reference to federal law (*id*. at (B)(1)(a)).

unsupported preemption theory. (Dkt. 143 at 25-28.) As previously stated, there is simply no precedent for preempting state usury law for tribal entities operating outside the reservations. (*See supra*, n. 1, 2.) Accordingly, the Court should not dismiss Duggan's causes of action.

Also, regarding the RICO claim, the Court should reject Martorello's assertion that his wrongful conduct is not a direct cause of Duggan's injuries. As addressed in *Hemi Group, LLC v. City of New York, N.Y.*, 559 U.S. 1, 12 (2010), on which Martorello attempts to rely, the advancement of a RICO claim requires a direct connection between the misconduct and the injury, and Duggan is the person most directly harmed by Martorello's wrongful conduct. (Dkt. 143 at 28.) Here, there is a direct connection between Martorello's misconduct and Duggan's injuries: Martorello created the enterprise, he and his cohorts operated it, Martorello structured the operations in an attempt to evade state law, and he received all of the net profits from the operation.[14] As a result of Martorello's efforts, the enterprise has systemically amassed proceeds from unlawful debt in violation of state and federal law that directly harmed Duggan.[15]

VII. CONCLUSION

The Court should therefore deny Martorello's Motion to Dismiss (Dkt. 124).

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[14] As detailed throughout the Complaint, Martorello was a "significant, active, and independent[] participant in the misconduct." *Smithfield Foods, Inc. v. United Food & Commercial Workers Int'l Union*, 633 F. Supp. 2d 214, 230 (E.D. Va. 2008). See also *U.S. v. Pepe*, 747 F.2d 632, 661 n.48 (11th Cir. 1984) (need not collect the debt); *Hengle*, 2020 WL 113496, at *51 (same enterprise despite restructure); *Gingras*, 2016 WL 2932163, at *36.

[15] *Gingras*, 2016 WL 2932163, at *29 ("The conduct at issue includes the alleged marketing and collection of usurious interest rates. The injury is the alleged payment of interest at excessive rates. That is a sufficiently direct relationship to satisfy proximate cause."); *see also Gibbs*, 368 F. Supp. 3d at 933 (plaintiffs stated a RICO claim where defendant allegedly "helped design and implement the Tribal lending business," including funding and securing a method for collecting the loans); *MacDonald v. CashCall, Inc.*, No. 16-2781, 2017 WL 1536427, at *14 (D.N.J. Apr. 28, 2017); *Brice*, 372 F. Supp. 3d at 983 (proximate cause sufficiently pled where injury was "expressly contemplated, and allegedly designed and specifically intended" by the defendants).

Dated: September 11, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2020, this document was filed electronically via the Court's ECF system and thereby served on all counsel of record.

/s/ John B Scofield, Jr.
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