

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

**GLENDORA MANAGO, et al., individually
and on behalf of all others similarly situated,**

Plaintiffs,

v.

**CANE BAY PARTNERS VI, LLLP, et
al.,**

Defendants.

Case No. 1:20-cv-00945-LKG

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION
TO DISMISS THE OUT-OF-STATE PLAINTIFFS' CLAIMS
FOR LACK OF PERSONAL JURISDICTION AND IMPROPER VENUE**

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I. INTRODUCTION

Defendants'¹ Motion to Dismiss the Out-of-State Plaintiffs'² Claims for Lack of Personal Jurisdiction and Improper Venue (ECF No. 90 (“Rule 12(b)(2) Motion” or “Mot.”)) should be granted as to the Tribal Defendants but denied as to the Cane Bay Defendants because Plaintiffs have stated a viable RICO claim against the Cane Bay Defendants. Plaintiffs’ viable RICO claims against the Cane Bay Defendants make it appropriate for the Court to exercise both pendent jurisdiction and pendent venue as to the Cane Bay Defendants and warrant the denial of the Cane Bay Defendants’ Motion.

In *Hengle v. Treppa*, 19 F.4th 324, 353-57 (4th Cir. 2021), the Fourth Circuit decided that RICO does not provide a private right of action for equitable relief, the only form of relief Plaintiffs may seek as to the Tribal Defendants under *Ex parte Young*, 209 U.S. 123 (1908). 19 F.4th at 353-57. In light of *Hengle*’s determination that claims such as Plaintiffs’ anchor federal RICO claims against the Tribal Defendants are infirm, the Court cannot exercise pendent jurisdiction over Out-of-State Plaintiffs’ claims against the Tribal Defendants and those claims must be dismissed. However, *Hengle* did nothing to affect the viability of Plaintiffs’ RICO claims against the Cane Bay Defendants. Defendants’ Rule 12(b)(2) Motion as to the Cane Bay Defendants is entirely premised on the flawed argument that Plaintiffs have failed to state a RICO claim against the Cane Bay Defendants. (*See, e.g.*, ECF 90-1 at 4 (“*Absent a viable RICO claim*, the Court cannot exercise pendent personal jurisdiction over Defendants as to the Out-of-State Plaintiffs’ claims.”))

¹ “Defendants” include Cane Bay Partners VI, LLLP, David Johnson, and Kirk Chewning (collectively, the “Cane Bay Defendants”), Richard Mayer, Karen Rabbithead, David Blacksmith, Wesley Scott, Mark Fox, Cory Spotted Bear, Sherry Turner-Lone Fight, Mervin Packineau, V. Judy Brugh, Fred Fox, and Monica Mayer (collectively, the “Tribal Defendants”).

² The “Out-of-State Plaintiffs” are Karen Peterson, Diana Costa, Colleen Hunter, Sharon Davis, Leslie Turner, Camilla Vernon, and LaShaunya Morris.

(emphasis added), 14.) For reasons set forth in Plaintiffs’ contemporaneously filed opposition to Defendants’ 12(b)(6) Motion, Out-of-State Plaintiffs’ RICO claims against the Cane Bay Defendants are both plausible and viable on the merits. Therefore, the Court may exercise supplemental jurisdiction over the state law claims of the Out-of-State Plaintiffs against the Cane Bay Defendants. The grounds for the Court’s personal jurisdiction over each Defendant as to each claim by each Plaintiff can be summarized as follows:

	RICO	Plaintiff Manago’s Maryland Law Claims ³	Out-of-State Plaintiffs’ State Law Claims
Tribal Defendants	None	Md. Code Ann., Cts. & Jud. Proc. § 6-103; U.S. Const. amend. XIV, § 2.	None
Cane Bay Defendants	18 U.S.C. § 1965(d)	Md. Code Ann., Cts. & Jud. Proc. § 6-103; U.S. Const. amend. XIV, § 2.	Pendent Personal Jurisdiction (<i>ESAB Grp., Inc. v. Centricut, Inc.</i> , 126 F.3d 617, 628 (4th Cir. 1997))

The Cane Bay Defendants’ venue challenge also stands and falls with the merits of the Out-of-State Plaintiffs’ RICO claims. Thus, venue in this Court is proper as to Out-of-State Plaintiffs’ state law claims against the Cane Bay Defendants for the same reasons that jurisdiction is proper.

Accordingly, the Court should deny Defendants’ Rule 12(b)(2) and Rule 12(b)(3) Motion to Dismiss as to the Cane Bay Defendants and find that (a) the Court has jurisdiction over the Cane Bay Defendants as to the Out-of-State Plaintiffs’ state law claims; and (2) venue is proper in this Court for those claims.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(2) governs motions to dismiss for lack of personal jurisdiction. If the Court considers the complaint and the parties’ motions and affidavits but does

³ Defendants do not move to dismiss Plaintiff Manago’s Maryland state law claims under Rule 12(b)(2) or Rule 12(b)(3).

not conduct an evidentiary hearing, then “the burden on the plaintiff is simply to make a prima facie showing of a sufficient jurisdictional basis in order to survive the jurisdictional challenge.” *In re Celotex Corp.*, 124 F.3d 619, 628 (4th Cir. 1997) (quoting *Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir. 1989)); *see also Consulting Eng’rs Corp. v. Geometric Ltd.*, 561 F.3d 273, 276 (4th Cir. 2009). In taking this approach, a court “must construe all relevant pleading allegations in the light most favorable to the plaintiff, assume credibility, and draw the most favorable inferences for the existence of jurisdiction.” *Mylan Labs., Inc. v. Akzo, N.V.*, 2 F.3d 56, 62 (4th Cir. 1993). In a class action, each named plaintiff must establish personal jurisdiction as to each defendant and each claim in the complaint. *See Richards v. NewRez LLC*, No. ELH-20-1282, 2021 WL 1060286, at *16 (D. Md. Mar. 18, 2021); *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1781 (2017). “A motion to dismiss under Rule 12(b)(3) requires a similar inquiry to that of Rule 12(b)(2).” *Seidel v. Kirby*, 296 F. Supp. 3d 745, 748 (D. Md. 2017) (quotations and citations omitted).

III. THE COURT HAS JURISDICTION OVER THE OUT-OF-STATE PLAINTIFFS’ STATE LAW CLAIMS AGAINST THE CANE BAY DEFENDANTS.

It is well established, and Defendants do not disagree, that where a federal claim establishes personal jurisdiction over the defendants, a court may exercise pendent personal jurisdiction over state law claims that arise under a “common nucleus of operative fact” as the federal claim, even if the court would not otherwise have personal jurisdiction over the defendants as to the other state law claims. *United States ex rel. Fadlalla v. DynCorp Int’l LLC*, 402 F. Supp. 3d 162, 178 (D. Md. 2019). This common law doctrine is known as pendent personal jurisdiction. *See ESAB*, 126 F.3d at 628-29. (Mot. at 10.)

Here, Out-of-State Plaintiffs’ state law claims arise from the same scheme that supports the RICO claims, and therefore the claims arise from a common nucleus of operative fact. (*See*

ECF No. 40, First Amended Complaint (“FAC”) ¶¶ 192, 199, 206, 212, 219, 223, 228, 232, 236, 239-40, 244, 246, 249.) Courts have exercised pendant personal jurisdiction over similar state law usury claims where plaintiffs assert a federal claim based on the same conduct. *See Hamilton v. York*, 987 F .Supp. 953, 956–57 (E.D. Ky. 1997) (exercising supplemental jurisdiction over state usury claims against check cashing establishment where federal RICO and Truth In Lending Act (“TILA”) claims were asserted, even where state court had not previously ruled on whether state statutes applied to the transactions at issue); *Arrington v. Colleen, Inc.*, No. AMD 00-191, 2000 WL 34001056, at *4 (D. Md. Aug. 7, 2000) (“because the RICO, TILA, and [Maryland Consumer Loan Law] inquiries overlap to a significant degree, I am satisfied that the state law issues should not substantially predominate over the federal claims); *Turner v. E-Z Check Cashing of Cookeville, TN*, 35 F. Supp. 2d 1042, 1052 (M.D. Tenn. 1999) (denying summary judgment for defendant as to TILA claims and exercising supplemental jurisdiction over state consumer protection act claims in case against payday lenders).

In Plaintiffs’ Opposition to Defendants’ Rule 12(b)(6) Motion (ECF No. 99 at 7-16), Plaintiffs sets forth in detail the viability of the Out-of-State Plaintiffs’ RICO claims against the Cane Bay Defendants. Those arguments are incorporated by reference here. In short, however, the RICO claims are viable because the First Amended Complaint alleges a RICO enterprise and the Cane Bay Defendants’ and Tribal Defendants’ respective roles in the enterprise (along with the unnamed officers, executives, and other employees of Cane Bay, MaxLend, and Cane Bay Defendants’ other companies involved in the scheme). (FAC ¶¶ 11, 28–38, 79, 83, 87, 96, 103, 105–06, 110.) Plaintiffs have alleged that the purpose of the enterprise was to “profit[] off of the collection on unlawful debt by offering and collecting on loans to consumers throughout the United States through the online lender MaxLend.” (*Id.* ¶ 151.) Several courts have held that allegations

describing nearly identical tribal lending schemes state claims under RICO. *Hengle v. Asner*, 433 F. Supp. 3d 825, 897–98 (E.D. Va. 2020), *aff'd sub nom. Hengle v. Treppa*, 19 F.4th 324 (4th Cir. 2021); *Gibbs v. Haynes Invs., LLC*, 368 F. Supp. 3d 901, 932-33 (E.D. Va. 2019), *aff'd*, 967 F.3d 332 (4th Cir. 2020); *Solomon v. Am. Web Loan*, No. 17-145, 2019 WL 1320790, at *6–7 (E.D. Va. Mar. 22, 2019); *MacDonald v. CashCall, Inc.*, No. 16-2791, 2017 WL 1536427, at *13–14 (D.N.J. Apr. 28, 2017). These allegations are not barred by the intercorporate conspiracy doctrine because the Cane Bay Defendants and the Tribal Defendants are distinct from each other. *Hengle v. Asner*, 433 F. Supp. 3d at 897–98 (tribal and non-tribal entities were distinct). Given that Out-of-State Plaintiffs have a viable federal law claim against the Cane Bay Defendants to anchor their state law claims, and given the common nucleus of operative fact shared between the anchor claims and the Out-of-State Plaintiffs’ state law claims, the Court has pendent personal jurisdiction over each of the Out-of-State Plaintiffs’ state law claims asserted against the Cane Bay Defendants. *See D’Addario v. Geller*, 264 F. Supp. 2d 367, 387 (E.D. Va. 2003) (“Because *in personam* jurisdiction over defendants . . . is established pursuant to RICO’s nationwide service provision, the court may exercise pendent personal jurisdiction over all the claims against these defendants.”).

IV. VENUE IS PROPER IN THIS COURT AS TO THE OUT-OF-STATE PLAINTIFFS’ STATE LAW CLAIMS AGAINST THE CANE BAY DEFENDANTS.

Just as with pendent personal jurisdiction, a court may exercise its discretion to find pendent venue as “to claims that arise out of a common nucleus of operative facts, after considering factors such as judicial economy, convenience, and the avoidance of piecemeal litigation.” *D’Addario*, 264 F. Supp. 2d at 393; *see also Miller v. Asensio*, 101 F. Supp. 2d 395, 409 (D.S.C. 2000) (noting pendent venue “has been applied to assert venue over pendent state-law claims or another federal claim after venue has been established as to the principal federal law claim, so long

as all the claims arise from the same nucleus of operative fact” (citation omitted)). The Court may exercise its discretion to find pendent venue as to the Out-of-State Plaintiffs’ state law claims against the Cane Bay Defendants.

Venue for a RICO claim is proper in any district where a defendant “resides, is found, has an agent, or transacts his affairs.” 18 U.S.C. § 1965(a). As described in Plaintiffs’ Opposition to Defendants’ Rule 12(b)(6) Motion (ECF No. 99 at 7-16), Out-of-State Plaintiffs have asserted viable RICO claims against the Cane Bay Defendants in this Court and the Out-of-State Plaintiffs’ state law claims are factually related to the RICO claims. (*See supra* p. 4.) Judicial economy and the convenience of the parties favor litigating each of the Plaintiffs’ claims in a single jurisdiction, rather than litigating Plaintiffs’ state law claims and RICO claims separately, piecemeal, on a plaintiff-by-plaintiff basis in courts around the country. *See D’Addario*, 264 F. Supp. 2d at 393 (finding pendent venue where maintaining state law claims in same court was “in the interest of judicial economy” and would “avoid piecemeal litigation”); *Miller*, 101 F. Supp. 2d at 409 (finding venue proper as to state law causes of action where venue had been established under federal law and the state law claims arise from the same nucleus of operative fact).

Defendants do not contend that venue would be improper in this Court as to the Out-of-State Plaintiffs’ state law claims if the RICO claims are not dismissed, instead resting all of their arguments on the purported infirmity of the RICO claims against the Cane Bay Defendants and raising no objections to venue in this Court based on the convenience of the parties or other prudential concerns. (*See Mot.* at 23-24 (“If the RICO claims are properly dismissed as to all Defendants, any pendent venue that could possibly have applied as to the Out-of-State Plaintiffs’ remaining claims is lost.”).) Pendent venue as to the Out-of-State Plaintiffs’ state law claims against the Cane Bay Defendants is therefore also proper in this Court.

V. CONCLUSION

For the reasons set forth herein, the Court should deny Defendants' Rule 12(b)(2) and Rule 12(b)(3) Motion to Dismiss as to the Cane Bay Defendants and find that (a) the Court has pendent personal jurisdiction over the Cane Bay Defendants as to the Out-of-State Plaintiffs' state law claims; and (2) venue is proper in this Court as to the Out-of-State Plaintiffs' state law claims against the Cane Bay Defendants under the doctrine of pendent venue.

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