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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHEEP RANCH (RANCHERIA) MIWOK
INDIAN TRIBE OF CALIFORNIA;
YAKIMA DIXIE (CHIEF); MELVIN
DIXIE; and ROCKY DIXIE,

NO. CIV. S-01-1389 LKK/DAD

Plaintiffs,

v.

ORDER

SILVIA BURLEY; TIGER BURLEY; and
RASHEL REZNOR,

Defendants.

Plaintiffs sue defendants for fraud and RICO violations based on the admission of two of the defendants as members of plaintiffs' tribe, their subsequent election to leadership positions, and use of tribal funds received from the U.S. government. Plaintiffs seek damages, an accounting, and declaratory relief. This case is before the court on defendants' motion to dismiss.

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I.

DISMISSAL STANDARDS UNDER FED. R. CIV. P. 12(b)(6)

On a motion to dismiss, the allegations of the complaint must be accepted as true. See Cruz v. Bero, 405 U.S. 319, 322 (1972). The court is bound to give the plaintiff the benefit of every reasonable inference to be drawn from the "well-pleaded" allegations of the complaint. See Retail Clerks Intern. Ass'n, Local 1625, AFL-CIO v. Schermerhorn, 373 U.S. 746, 753 n.6 (1963). Thus, the plaintiff need not necessarily plead a particular fact if that fact is a reasonable inference from facts properly alleged. See id.; see also Wheeldin v. Wheeler, 373 U.S. 647, 648 (1963) (inferring fact from allegations of complaint).

In general, the complaint is construed favorably to the pleader. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). So construed, the court may not dismiss the complaint for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim which would entitle him or her to relief. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). In spite of the deference the court is bound to pay to the plaintiff's allegations, however, it is not proper for the court to assume that "the [plaintiff] can prove facts which [he or she] has not alleged, or that the defendants have violated the . . . laws in ways that have not been alleged." Associated General Contractors of California, Inc. v. California State Council of Carpenters, 459 U.S. 519, 526 (1983).

1 In deciding whether to dismiss the court may consider only the
2 facts alleged in the pleadings, documents attached as exhibits or
3 incorporated by reference in the pleadings, and matters of which
4 the judge may take judicial notice. See Mullis v. United States
5 Bankr. Ct., 828 F.2d 1385, 1388 (9th Cir. 1987). The court has
6 discretion to consider extrinsic materials offered in conjunction
7 with a 12(b)(6) motion, however, in considering such materials the
8 court must treat the motion as one for summary judgment. See
9 Rosales v. United States, 824 F.2d 799, 802 (1987).

10 II.

11 **DEFENDANTS' MOTION TO DISMISS**

12 As an initial matter, the court may take judicial notice of
13 evidence that defendants Silvia Burley and Rashel Reznor are
14 recognized by the BIA as the sole members of the governing body of
15 the Sheep Ranch Rancheria of Me-Wuk Indians. See BIA July 12, 2000
16 Letter of Recognition, Burley Decl. Exh. C. The court may also
17 take judicial notice of evidence that there is no federally
18 recognized tribe known as the Sheep Ranch Rancheria of Miwok
19 Indians, which is alleged to be plaintiff here. See 65 Federal
20 Register 49 at 13301. Plaintiffs appear to argue that, given their
21 chosen spelling of their name, they are not a federally recognized
22 tribe and the court need not be concerned with issues of tribal
23 sovereignty that would otherwise defeat jurisdiction here. I
24 cannot agree.

25 Plaintiffs clearly allege in their complaint that they allowed
26 defendants Burley and Reznor to become members of their tribe, and

1 that defendants conspired to place Burley and Reznor in leadership
 2 positions and to take the federal funds directed to plaintiffs'
 3 tribe. Moreover, if plaintiffs did not belong to a tribe that was
 4 federally recognized, they would have no claim to the federal funds
 5 that defendants allegedly fraudulently obtained. Thus, it appears
 6 that this is a dispute regarding the proper leadership, membership,
 7 and use of funds in an Indian tribe.

8 "Indian tribes retain elements of sovereign status, including
 9 the power to protect tribal self government and to control internal
 10 relations." Smith v. Babbitt, 100 F.3d 556, 558 (8th Cir. 1996)
 11 (citing Montana v. United States, 450 U.S. 544, 564 (1981)).
 12 Although Indian tribes have been divested of some sovereignty,
 13 divestiture has occurred only in areas "involving the relations
 14 between an Indian tribe and nonmembers of the tribe"
 15 Montana, 450 U.S. at 564. That is not to say that the court has
 16 jurisdiction here simply because plaintiffs allege that defendants
 17 belong to a different tribe. Rather, "Indian tribes retain their
 18 inherent power to determine tribal membership, to regulate domestic
 19 relations among members, and to prescribe rules of inheritance for
 20 members." Montana, 450 U.S. at 564. Nor can plaintiffs avoid the
 21 issue of tribal sovereignty simply by couching their fraud
 22 allegations in RICO terms. See Smith v. Babbitt, 100 F.3d 556, 558
 23 (8th Cir. 1997) (RICO allegations were attempt to move dispute,
 24 over which court would not otherwise have jurisdiction because of
 25 tribal sovereignty, to federal court).

26 ////

1 On a final note, plaintiffs have already taken their complaint
2 regarding defendants' alleged fraud to the Bureau of Indian
3 Affairs, which directed plaintiffs to first exhaust their tribal
4 remedies. See BIA letter of February 4, 2000, Burley Decl. Exh.
5 D. Plaintiffs had the option of obtaining review of this agency
6 decision. See 25 C.F.R. § 2.8. However, by coming to court
7 instead, plaintiffs essentially seek judicial review of the
8 agency's action or inaction. BIA decisions are not "final so as
9 to constitute agency action subject to judicial review under
10 5 U.S.C. § 704, unless made effective pending decision on appeal
11 by order of the Board." 43 C.F.R. § 4.314.

12 Thus, by virtue of tribal sovereignty and the fact that
13 plaintiffs did not exhaust their administrative remedies, it
14 appears that this court lacks jurisdiction over plaintiffs'
15 claims.¹

16 Accordingly, the court hereby ORDERS as follows:

- 17 1. Defendants' motion to dismiss is GRANTED;
18 2. Plaintiffs' claims are dismissed with leave to file an
19 amended complaint not later than thirty (30) days from the date of
20 this order; and

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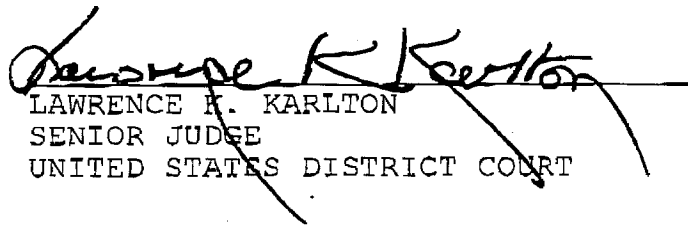
24 ¹ The court is in receipt of the Declaration of James Askew
25 filed by plaintiffs on Friday, January 11, 2002. However, this
26 declaration and the attached documents do not demonstrate that
there is no tribal sovereignty nor that plaintiffs have exhausted
their administrative remedies with the BIA.

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3. The Status Conference, currently set for January 28, 2002
is CONTINUED to March 25, 2002 at 4:00 p.m.

IT IS SO ORDERED.

DATED: January 23, 2002.


LAWRENCE R. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

ndd

United States District Court
for the
Eastern District of California
January 24, 2002

* * CERTIFICATE OF SERVICE * *

2:01-cv-01389

Sheep Ranch Miwok

v.

Burley

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on January 24, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

James A Askew
Askew and Archbold
1776 West March Lane
Suite 350
Stockton, CA 95207-6450

SJ/LKK

David J Rapport
Rapport and Marston
PO Box 488
405 West Perkins Street
Ukiah, CA 95482

Jack L. Wagner, Clerk

BY: 
Deputy Clerk

1 ASKEW & ARCHBOLD,
2 A PROFESSIONAL CORPORATION
3 JAMES A. ASKEW - SBN 60469
4 RICHARD M. ARCHBOLD - SBN 87784
5 1776 West March Lane, Suite 350
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8 Attorneys for Plaintiffs SHEEP RANCH
9 (RANCHERIA) MIWOK INDIAN TRIBE
10 OF CALIFORNIA; YAKIMA DIXIE,
11 MELVIN DIXIE, and ROCKY DIXIE

FILED
MAR 21 2002
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY
DEPUTY CLERK

LODGED

8 UNITED STATES DISTRICT COURT
9 MAR 15 2002 EASTERN DISTRICT OF CALIFORNIA

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

11 ~~DEPUTY CLERK~~ SHEEP RANCH (RANCHERIA) MIWOK)
12 INDIAN TRIBE OF CALIFORNIA;)
13 YAKIMA DIXIE (CHIEF), MELVIN)
14 DIXIE, and ROCKY DIXIE,)

CIV. S-01-1389 LKK DAD

**NOTICE OF VOLUNTARY
DISMISSAL**

13 Plaintiffs,

14 vs.

15 SILVIA BURLEY, TIGER BURLEY; and
16 RASHEL REZNOR,

17 Defendants.

19 NOTICE IS HEREBY GIVEN that pursuant to Fed.R.Civ.Pro. 41(a), plaintiff voluntarily
20 dismisses the above-captioned action without prejudice.

23 DATED: March 14, 2002

ASKEW & ARCHBOLD
A PROFESSIONAL CORPORATION

25 By *James A. Askew*
26 JAMES A. ASKEW
27 Attorneys for Plaintiffs SHEEP RANCH
28 (RANCHERIA) MIWOK INDIAN TRIBE OF
CALIFORNIA; YAKIMA DIXIE; MELVIN
DIXIE, and ROCKY DIXIE

IT IS SO ORDERED

James A. Askew

3/20/02 24

NOTICE OF VOLUNTARY DISMISSAL

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PROOF OF SERVICE

I, declare under penalty of perjury that:

I am a citizen of the United States and am employed in the County of San Joaquin. I am over the age of eighteen years and not a party to the within action. My business address is 1776 W. March Lane, Suite 350, Stockton, CA 95207-6450.

On the date set forth below, I caused the attached **NOTICE OF VOLUNTARY DISMISSAL** to be served on the parties to this action as follows:

BY MAIL.

I placed a true copy thereof, enclosed in sealed envelope with postage thereon fully prepaid, in the United States mail at Stockton, California, addressed to the parties as set forth on the attached service list. C.C.P. §§1013(a), 2015.5.

BY COURIER SERVICE.

I retained, to personally serve a true copy thereof on the parties as set forth on the attached service list. C.C.P. §§1011, 2015.5.

BY FEDERAL EXPRESS.

I retained **Federal Express** to personally serve a true copy thereof on January 11, 2002 to the parties as set forth on the attached service list. C.C.P. §§1013(c), 2015.5.

BY FACSIMILE TRANSMISSION.

I am readily familiar with this law firm's business practices for collection and processing of documents by way of facsimile. I telefaxed a true copy thereof at said facsimile number(s) as set forth on the attached service list. C.C.P. §§1013(e), 2015.5 and C.R.C. §2008.

BY PERSONAL SERVICE.

I personally served a true copy thereof on the parties as set forth on the attached service list at Stockton. C.C.P. §1101, 2015.5.

Executed on March 14, 2002 at Stockton, California.



CELIA I. LAZO

NOTICE OF VOLUNTARY DISMISSAL

SERVICE LIST

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David J. Rapport
Rapport and Marston
P.O. Box 488
405 West Perkins Street
Ukiah, CA 9548

NOTICE OF VOLUNTARY DISMISSAL

ndd

United States District Court
for the
Eastern District of California
March 21, 2002

* * CERTIFICATE OF SERVICE * *

2:01-cv-01389

Sheep Ranch Miwok

v.

Burley

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on March 21, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

James A Askew
Askew and Archbold
1776 West March Lane
Suite 350
Stockton, CA 95207-6450

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SC 3/25/02 VAC

Jack L. Wagner, Clerk

BY: 
Deputy Clerk