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APACHE TRIBE OF OKLAHOMA, Plaintiff,

v.

Betsy Ann BROWN, Foshee & Yaffe Law Firm, Law Offices of Brown & Cullimore, John H. Graves, Yancy Redcorn, Alonzo Chalepah, Mary Rivera a/k/a Mary Prentiss, and Wells Fargo National Bank, Defendants.

No. CIV-10-646-D. Feb. 22, 2011.

#### Attorneys and Law Firms

Bryan J. Nowlin, Jon E. Brightmire, Doerner Saunders Daniel & Anderson-Tulsa, Tulsa, OK, William David McCullough, Jr., Doerner Saunders Daniel & Anderson-OKC, Oklahoma City, OK, for Plaintiff.

Chad E. Ihrig, Melissa A. Salling, Robert W. Nelson, Nelson Roselius Terry O'Hara & Morton, Amy J. Pierce, George S. Corbyn, Jr., Corbyn Hampton PLLC, Carole L. Houghton, Kevin R. Donelson, Fellers Snider Blankenship Bailey & Tippens-OKC, David Alan Cheek, Cheek & Falcone PLLC, Oklahoma City, OK, Rick D. Moore, A & T Corporation Office of Solicitor General, Liberty Corner, NJ, for Defendants.

#### Opinion

##### ORDER

TIMOTHY D. DeGIUSTI, District Judge.

\*1 Before the Court is Defendant Betsy Ann Brown's Motion to Stay Pending Resolution of Appeal [Doc. No. 54], which is joined by Defendant Law Offices of Brown & Cullimore. Other defendants have filed separate motions [Doc. Nos. 55, 57, 61], which also join in the Motion and adopt the supporting brief. Plaintiff opposes the Motion, which is fully briefed and at issue.<sup>1</sup> For the reasons stated herein, the Court finds that a stay is warranted.

##### Factual Background

Plaintiff Apache Tribe of Oklahoma (the "Tribe") asserts in its Complaint that the individual defendants engaged in a conspiracy to gain control of the Apache Business Committee, which transacts business and acts on behalf of the Tribe in matters within its authority. Plaintiff alleges that the conspirators managed through various means—which include purporting to remove a committee member from the tribal membership roll, improperly seating an appointee in his place, ousting other elected members, preparing invalid resolutions, and utilizing false documents—to consummate a loan transaction with Wells Fargo Bank that generated exorbitant legal and consulting fees for the attorney and law-firm defendants. The conspirators also allegedly hired a private security firm to take control of the tribal complex. Based on these alleged facts, Plaintiff claims that Defendants violated the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* ("RICO"), and committed various common law torts, including fraud, conversion, and civil conspiracy. The Complaint also alleges that the attorney defendants committed legal malpractice, breach of contract, and breach of fiduciary duty.

Defendants ask the Court to stay this case during the pendency of an action brought by Defendant Alonzo Chalepah, formerly elected Chairman of the Tribe, and other incumbents against the United States Department of the Interior, *Chalepah v. Salazar*, Case No. 10-cv-1324-PLF, in the United States District Court for the District of Columbia (the "Appeal").<sup>2</sup> The plaintiffs in that case seek judicial review of administrative decisions made by the Bureau of Indian Affairs (the "BIA") concerning tribal elections and recognition of tribal leaders.<sup>3</sup> Because a successful challenge of these decisions may affect the Tribe's leadership, Defendants contend this case should be held in abeyance so that the right to make necessary decisions concerning it are preserved. Defendants argue there is a high probability of success in the Appeal and, if Mr. Chalepah and others prevail and are recognized as tribal leaders, this action would become "moot" because they would dismiss it. In Defendants' view, this action was wrongly initiated by persons without valid authority to act on behalf of the Tribe, even though the suit is nominally brought in the Tribe's name.

Plaintiff strongly disagrees with these contentions, particularly Defendants' assessment of their likelihood of success in the Appeal. However, Plaintiff admits the resolution authorizing this lawsuit was passed at a Tribal Council meeting held on June 19, 2010, which is at issue in the Appeal. Plaintiff further admits the crux of the Appeal is an intra-tribal dispute regarding leadership of the Tribe and control of its Business Committee. Plaintiff nevertheless argues that Defendants have failed to justify a stay and that Plaintiff would be severely prejudiced by any further delay in bringing suit against Defendants to uncover and remedy their alleged fraud and wrongdoing.

\*2 The parties agree that a federal district court has discretionary authority to stay a proceeding pending before it. "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936); see *Pet Milk Co. v. Ritter*, 323 F.2d 586, 588 (10th Cir.1963) (stating this principle as "well settled"). The utilization of this power "calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Landis*, 299 U.S. at 254-55. A party seeking to stay litigation until a separate controversy is concluded "must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else." *Landis*, 299 U.S. at 255; see also *Commodity Futures Trading Comm'n v. Chilcott Portfolio Mgmt., Inc.*, 713 F.2d 1477, 1484 (10th Cir.1983) ("where a movant seeks relief that would delay court proceedings by other litigants he must make a strong showing of necessity

Return to the case because the relief would severely affect the rights of others"). The court of appeals has provided guidance regarding appropriate factors for consideration:

In assessing the propriety of a stay, a district court should consider: whether the defendants are likely to prevail in the related proceeding; whether, absent a stay, the defendants will suffer irreparable harm; whether the issuance of a stay will cause substantial harm to the other parties to the proceeding; and the public interests at stake.

*United Steelworkers of America v. Oregon Steel Mills, Inc.*, 322 F.3d 1222, 1227 (10th Cir.2003).

#### A. Likelihood of Success

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The Appeal challenges a written decision issued July 1, 2010, by the Regional Director of the Southern Plains Regional Office of the BIA, as well as an interlocutory order issued June 25, 2010, by the Assistant Secretary-Indian Affairs of the Department of the Interior. The interlocutory order delegated to the Regional Director the authority to decide whether action taken at a Tribal Council meeting on June 19, 2010, "was a valid act," whether the BIA should recognize the winners of a disputed election as leaders of the Tribe, and whether a pending administrative appeal was moot. See Def.'s Motion to Stay, Ex. 1 [Doc. No. 54-1] at 40 (Complaint in *Chalepah v. Salazar*, Ex. I). The Assistant Secretary-Indian Affairs had previously assumed jurisdiction pursuant to 25 C.F.R. § 2.20 (c) and 43 C.F.R. § 4.332(b) over the appeal, by which the Apache Election Board challenged the Regional Director's decision in May, 2010, to recognize the putative winners of an election held in March, 2010, as interim leaders of the Tribe. When assuming jurisdiction, the Assistant Secretary-Indian Affairs announced that the May, 2010, recognition decision was stayed and "the Department of the Interior will continue to recognize the incumbent members of the Apache Tribe of Oklahoma Business Committee as the Tribe's governing body." See *id.* at 38 (Complaint in *Chalepah v. Salazar*, Ex. G). In subsequently exercising the authority delegated by the interlocutory order, the Regional Director decided that the June 19 meeting of the Tribal Council, although it "may not have conformed perfectly to the Tribe's Constitution," resulted in a certification of the winners of the contested election as the Business Committee and warranted the BIA's recognition of those persons as tribal leaders. See *id.*, Ex. 1 at 45 (Complaint in *Chalepah v. Salazar*, Ex. J). The Regional Director declared his decision "immediately effective and final for the Department" and the Election Board's appeal to be moot. See *id.*

\*3 Mr. Chalepah, other incumbents ousted at the June 19 meeting, and a member of the Election Board filed the pending federal court action at issue (the Appeal) on August 6, 2010. They claim the Assistant Secretary-Indian Affairs lacked authority to delegate decision-making power over the Election Board's administrative appeal to the Regional Director after jurisdiction was assumed pursuant to 25 C.F.R. § 2.20(c). The appellants note that the Assistant Secretary-Indian Affairs effectively returned to the Regional Director the putative authority to resolve an appeal of his prior decision. They also claim the Regional Director's decision was contrary to the Tribe's constitution, which requires meetings of the Tribal Council to be conducted by the chairman or vice-chairman of the Tribe. The June 19 meeting was conducted by the individual who was elected chairman in the disputed March election, Louis Maynahonah, even though he was neither sworn into office nor recognized by the BIA at that time. The complaint alleges Mr. Chalepah was absent from the June 19 meeting due to a medical condition and the vice-chairman was prevented from performing her duties by Mr. Maynahonah and his supporters, who took control of the meeting and passed resolutions to recognize themselves as tribal leaders. The appellants claim the Regional Director's decision to validate the actions taken at the June 19 meeting and recognize persons who were not properly elected to office as tribal leaders is contrary to the Tribe's constitution and election ordinance, and is based on mistaken factual and legal assumptions.

Although Plaintiff argues that the Appeal lacks merit, its argument fails to address the critical issue of whether the actions taken at the June 19 meeting are valid under the Tribe's constitution and laws. The Regional Director admitted that the meeting did not conform to the constitution but, without any legal analysis or cited authority, determined that the actions taken at the meeting should nevertheless be given effect. The Regional Director characterized Mr. Chalepah's absence "as a bad faith attempt ... to undermine the meeting," without stating any factual basis for such a conclusion, and assumed that Mr. Maynahonah could properly conduct the meeting. See Pl.'s Resp. Br., Ex. 2 [Doc. 69-2] at 3. The Regional Director also assumed that certification of election results, which the Election Board had determined to be faulty, was a proper subject of business at the meeting conducted by the putative winner. His decision seemed to be based on "exigent circumstances" and expediency. See *id.*

Without reaching any conclusion about the merits of the Appeal, the Court finds the appellants' challenge to the Regional Director's decision to be founded on the Tribe's constitution and laws, while the Regional Director provides sparse legal support for his decision. Therefore, based solely on the arguments presented in the parties' briefs in this case, the Court finds a likelihood of success in the Appeal sufficient to support the requested stay.

#### B. Harm to Defendants Without a Stay

\*4 The Court further agrees with Defendants that denying a stay would likely result in substantial harm to them, particularly the incumbent tribal leaders. Defendants would be forced to bear the burden and expense of defending a complex RICO case prior to a final determination of the validity of the actions taken at the June 19 meeting, including the authorization of this suit.<sup>4</sup> Further, although the Tribe is the named plaintiff, the Tribe can act and make decisions concerning this lawsuit only through its Business Committee. Presumably, the Business Committee retained the attorneys who represent the Tribe in this case and authorized the filing of the federal complaint on June 22, 2010.<sup>5</sup> These events occurred before any decision had been made by the Regional Director concerning the validity of the June 19 meeting or whom the BIA would recognize as members of the Business Committee. By permitting this case to proceed without a resolution of these issues, the Court would subject Defendants to suit based on unclear authority and uncertain representation of the Tribe.

#### C. Harm to Plaintiff With a Stay

Plaintiff argues that it "would be faced with severe prejudice if it continues to be delayed in bringing its claims against these Defendants, claims they [sic] have had for some time but which have been successfully delayed by Defendants' control over the Tribe." See Pl.'s Resp. Br. [Doc. 69] at 6. This argument is based on the fact that the injury allegedly suffered by the Tribe occurred in connection with a loan from Wells Fargo Bank that closed in June, 2008. Plaintiff's allegation of prejudice from further delay is conclusory and unsupported by any factual allegations of potential prejudice. Accordingly, the Court is not persuaded that any real prejudice, other than delay itself, will occur if a stay is granted.<sup>6</sup>

#### D. Public Interest

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The Court recognizes the existence of a strong federal policy of tribal sovereignty and self-government. See *Wheeler v. United States Dep't of Interior*, 811 F.2d 549, 551 (10th Cir.1987); see also *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143-44 (1980). The Court believes this policy is best-served by the orderly resolution of disputes concerning the control and recognition of a tribal government. Defendants argue persuasively in their briefs in support of a stay, as well as separate briefs regarding motions to dismiss, that this case is a product of an ongoing intra-tribal dispute in which federal courts should not interfere. While expressing no opinion about the motions to dismiss, the Court agrees that a federal complaint for damages, treble RICO damages, and punitive damages should not serve as a vehicle for tribal in-fighting to be played out. Rather, the public interest is better served by permitting a resolution of the dispute regarding tribal government before the Tribe is allowed to move forward with this case. Accordingly, the Court finds that a stay of limited duration should be granted, to permit a federal district court to review the BIA's July 1 decision to accept the actions taken at the June 19 meeting and to recognize Mr. Maynahonah and his supporters as the current leaders of the Tribe.

#### Conclusion

\*5 For the reasons stated above, the Court finds that Defendants' request for a stay of this case should be granted, as set forth herein.

IT IS THEREFORE ORDERED that Defendants' Motions to Stay [Doc. Nos. 54, 55, 57 and 61] are GRANTED. The Court orders a stay of this action pending the disposition of the Appeal, that is, the entry of a judgment or other final order in *Chalepah v. Salazar*, currently pending as Case No. CIV-11-99-M (W.D.Okla.).

IT IS FURTHER ORDERED that Defendants' Motions to Dismiss [Doc. Nos. 52, 53, 56 and 60] are DENIED without prejudice to resubmission after the stay is lifted.

IT IS SO ORDERED.

#### Footnotes

- 1 Defendant Foshee & Yaffe Law Firm filed a reply brief [Doc. 79], and with permission, Plaintiff filed a supplemental brief [Doc. 93], to which Defendants Betsy Brown and Brown & Cullimore responded [Doc. 96].
- 2 The Court notes that the case was recently transferred to this district upon the unopposed motion of the federal defendants and assigned Case No. CIV-11-99-M. The case was received in this district on February 3, 2011, and the defendants in that case answered the complaint on February 17, 2011.
- 3 As discussed below, one issue is the validity of a Tribal Council meeting held in June, 2010, at which resolutions certifying election results and authorizing this lawsuit were passed.
- 4 The Court notes from the case record that Mr. Chalepah and the other tribal leader named as a defendant, Mary Rivera (or Prentiss) have been served with process but have neither answered nor otherwise responded to the Complaint. These defendants are therefore currently in default, and Plaintiff would be within its legal rights to seek a default judgment against them in the event this litigation is reopened.
- 5 A copy of a resolution allegedly adopted at the June 19 meeting directed the Business Committee to execute a fee agreement with the law firm of record and to "work with legal counsel to cause legal action to be initiated." See Pl.'s Resp. Br., Ex. 1[Doc. 69-1] at 2.
- 6 Plaintiff refers generally to the potential that evidence will become stale or disappear during the pendency of a stay. In this regard, the Court cautions all parties to take reasonable steps to ensure that relevant documentary and other evidence be preserved for the duration of the stay.

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IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

(1) APACHE TRIBE OF OKLAHOMA,

Plaintiff,

v.

(2) BETSY ANN BROWN,  
(3) FOSHEE & YAFFE LAW FIRM,  
(4) LAW OFFICES OF BROWN &  
CULLIMORE, (5) JOHN H. GRAVES,  
(6) YANCY REDCORN, (7) ALONZO  
CHALEPAH, (8) MARY RIVERA a/k/a  
MARY PRENTISS, and  
(9) WELLS FARGO NATIONAL BANK,

Case No. \_\_\_\_\_

Defendants.

**COMPLAINT**

Plaintiff Apache Tribe of Oklahoma, for its claims for relief against Defendants, alleges and states the following:

**Parties**

1. Plaintiff Apache Tribe of Oklahoma is a sovereign, federally recognized Indian tribe with its tribal headquarters located in Anadarko, Caddo County, Oklahoma.
2. Defendant Betsy Ann Brown is an individual who resides in Oklahoma County, Oklahoma.
3. Defendant Foshee & Yaffe Law Firm is a law firm with offices located in Oklahoma County, Oklahoma.

4. Defendant Law Offices of Brown & Cullimore is a law firm with offices located in Cleveland County, Oklahoma.

5. Defendant John H. Graves is an individual who, upon information and belief, resides in Cleveland County, Oklahoma.

6. Defendant Yancy Redcorn is an individual who, upon information and belief, resides in Cleveland County, Oklahoma.

7. Defendant Alonzo Chalepah is an individual who resides in Caddo County, Oklahoma.

8. Defendant Mary Rivera is an individual who resides in Caddo County, Oklahoma. She is also known as Mary Prentiss.

9. Defendant Wells Fargo National Bank is a national banking association doing business in Oklahoma.

#### **Jurisdiction and Venue**

10. This Court has subject matter jurisdiction over this action under 28 U.S.C. §1331, 18 U.S.C. §1964(a), and 28 U.S.C. §1367.

11. Venue is appropriate in this Court under 28 U.S.C. §1391 and 18 U.S.C. §1965 because Defendants reside in this District and/or transact their affairs in this District, and Defendants engaged in substantial conduct relevant to Plaintiff's claims within this District and have caused harm to Plaintiff within this District.

## **Background Facts**

### **A. The Apache Tribal Government.**

12. The Apache Tribe of Oklahoma is governed by a Constitution (the “Apache Tribal Constitution”).

13. Under Article III of the Apache Tribal Constitution, “[t]he supreme governing body of the Apache Tribe of Oklahoma shall be the Tribal Council.” (The Tribal Council is also sometimes referred to as the General Council.) The Tribal Council consists of all members of the Apache Tribe 18 years of age and older.

14. The Apache Tribal Constitution provides in Article V that there shall be a five member Business Committee consisting of a Chairman, Vice-Chairman, Secretary/Treasurer, and two others. The Business Committee has such powers as may be delegated to it by appropriate resolutions of the Tribal Council, and, within such delegated authority, may transact business and otherwise speak or act on behalf of the Tribe in all matters on which the Tribe is empowered to act.

15. Article V also provides that the officers and members of the Business Committee are elected for a period of two years and “until a successor is elected and certified.” In addition, Article VII, Sec. 2 provides that “[t]he elected officers shall take office immediately upon certification of their election. They shall serve until their successors are elected and certified.”

16. Article VI of the Apache Tribal Constitution provides for meetings to be held by the Tribal Council and the Business Committee.

- a. The Constitution provides that “[a]nnual meetings of the Apache Tribal Council shall be held on 3rd third Saturday in June each year for the purpose of receiving reports and transacting any other business which may come regularly before the Apache Tribal Council.” Special meetings of the Tribal Council may be called at the discretion of the Chairman, and shall be called by the Chairman upon written request of fifty members of the Tribal Council or written request of the majority of the Business Committee.
- b. The Constitution provides that the Business Committee shall meet regularly once every month on the third Saturday unless a quorum of the Business Committee shall decide to meet on another day of the month. Special meetings of the Business Committee may be called by the Chairman at his discretion, and shall be called by the Chairman at the written request of three members of the Business Committee.

17. Article XV of the Apache Tribal Constitution provides that 50 members of the Apache Tribal Council shall constitute a quorum to transact business at any meeting, and 3 members of the Business Committee shall constitute a quorum to transact business at any meeting.

**B. The opening of the Silver Buffalo Casino in Anadarko in May 2006, and the opportunity to open a much larger, much more profitable casino near the Red River.**

18. In May 2006, the Apache Tribe opened the Silver Buffalo Casino across the street from the Apache Tribal complex in Anadarko.

19. In addition to opening the Silver Buffalo Casino, the Apache Tribe was exploring the possibility of acquiring land near the Red River north of Wichita Falls, Texas (the “Kosope Land”) for purposes of constructing and operating another casino. The casino proposed for the Kosope Land was expected to be much larger and generate much more revenue than the Silver Buffalo Casino in Anadarko.

**C. The elections of May 2006 and the involvement of Betsy Brown, Foshee & Yaffe, John Graves, and Yancy Redcorn with the Apache Tribe in 2006.**

20. In 2006, Redcorn was a business associate of Kevin Kean. Kean is a businessman from Las Vegas, Nevada, who has various business interests related to Indian gaming and casinos. One of Kean's business interest was KAGD, LLC, a Nevada limited liability company that leases gaming machines to Indian casinos. Kean and Redcorn became involved with the Apache Tribe's casino operations.

21. Upon information and belief, Redcorn, who was a law-school classmate of Brown, introduced Brown to Chalepah, and arranged for Brown and Foshee & Yaffe to provide legal representation to the Apache Tribe.

22. In accordance with the Apache Tribal Constitution, an election was held in 2006 to determine the membership of the Apache Business Committee. The election results were disputed. Brown and Foshee & Yaffe represented Chalepah, Rivera, and others who claimed they were elected to the Business Committee.

23. In June 2006 Brown prevailed upon Betty Tippeconnie, then superintendent of the Anadarko Agency of the Bureau of Indian Affairs, to swear in Chalepah, Rivera, Jimmy Komardley, and Leonard Chalepah. She later swore in Louis Maynahonah, Sr. Tippeconnie swore in these members even though elections results had not been certified, as required under the Apache Tribal Constitution.

24. In order to put in place a gaming board and commission they could control, Brown, Redcorn, and Graves applied great influence to the Apache Business Committee to oust former gaming managers and investors in late 2006 and early 2007.

25. Led by the efforts of Brown, Graves, and Redcorn, a casino board consisting of Graves, Kirk Garton, and Sam Caruso was created, and it was arranged for Graves to head the board. (Garton was Redcorn's roommate at the time.) The gaming board did not have any Apache Tribal members nor any local business owner, as required by the gaming ordinance. Moreover, none of the members of the gaming board had any gaming industry experience.

26. In addition to creating the gaming board, the original gaming commissioners were ousted without receiving the due process required under the Indian Gaming Regulatory Act ("IGRA"). A new gaming commission was appointed which consisted of Gene Big Soldier, Janelle Horse, and Paul Killsfirst. Big Soldier, who was appointed chairman of the commission, was a law school classmate of Brown and Redcorn.

27. Brown, Redcorn, and Graves arranged for Kean to obtain a lucrative interest in the Silver Buffalo Casino with the opportunity for a more lucrative interest in the proposed Red River Project. Brown and Redcorn did not disclose Redcorn's business relationship with Kean to the Apache Tribe.

**D. The Tribal Council's termination of Betsy Brown and Foshee & Yaffe, and its declaration they are undesirable and unworthy to enter Apache Tribal lands.**

28. The actions of Brown, Graves, and Redcorn caused great consternation among many members of the Apache Tribe.

29. The Tribal Council, which under the Apache Tribal Constitution is the supreme governing body of the Apache Tribe, held a special meeting on June 2, 2007. At the June 2, 2007 special meeting, the Tribal Council passed Resolution No. SP-TC-07-06-01. This resolution provided, among other things, the following:

WHEREAS, Betsy Ann Brown of the law firm of Foshee & Yaffe of Oklahoma City, OK was hired by Alonzo Chalepah as tribal attorney to give legal advice to the Business Committee, and

WHEREAS, the Tribe's Silver Buffalo Casino was operating professionally and profitable until the Business Committee politically interfered in the casino's operation with the guidance of Betsy Brown, and

WHEREAS, Betsy Brown wrongfully interfered in tribal affairs by influencing the Business Committee beyond giving legal advice which adversely effected the Tribe by creating an atmosphere of distrust and a sense of lost honesty and integrity, and

THEREFORE BE IT RESOLVED that, the Apache Tribal Council, in the best interest of the Tribe, hereby terminates the employment and/or contract of Betsy Brown and the law firm of Foshee & Yaffe of Oklahoma City, OK, with the Apache Tribe of Oklahoma including any employment or contracts with the Tribe's Silver Buffalo Casino.

BE IT FURTHER RESOLVED that, the Tribal Council believes that the conduct of Betsy Brown and any attorneys from the law firm of Foshee & Yaffe of Oklahoma City, OK, were contrary to the best interests of the Apache Tribe of Oklahoma, and that Betsy Brown and the law firm of Foshee & Yaffe shall be declared undesirable in the tribal community and unworthy to enter the properties and jurisdiction of the Apache Tribe of Oklahoma.

The Resolution was adopted by a vote of 49-2.

30. On Saturday June 16, 2007, the Apache Tribal Council held its constitutionally mandated annual meeting. At the June 16, 2007 annual meeting, the Tribal Council, among other things, passed a resolution ratifying the June 2, 2007 special

Tribal Council meeting, including Resolution SP-TC-07-06-01. The Resolution ratifying the June 2, 2007 special Tribal Council meeting was adopted by a vote of 84-48.

**E. Brown and Foshee & Yaffe ignore the Tribal Council's Resolution terminating their services and declaring them undesirable and unworthy to enter their properties, and prevail upon Chalepah to grant them a new contract for legal services.**

31. On June 18, 2007, just two days after the Tribal Council ratified its actions of June 2, 2007, and expressed its widespread displeasure with Brown and Foshee & Yaffe, Brown and Foshee & Yaffe entered into a Contract for Legal Services with the Apache Tribe. The contract was signed on behalf of the Apache Tribe by Chalepah. That contract acknowledged that Brown and Foshee & Yaffe were terminated by the Tribal Council, as it stated:

[T]he Apache Business Committee hereby states that the prior contract with Foshee & Yaffe Law Firm was extinguished by the General Council. However, the General Council did not forbid the Business Committee from entering into new contracts with an attorney or law firm and did not remove the Business Committee to act on all matters on behalf of the General Council pursuant to Resolution 73-1.

32. Upon information and belief, no minutes or resolutions exist authorizing Chalepah to enter into the June 18, 2007 Contract for Legal Services.

33. Brown, Foshee & Yaffe, and Chalepah recognized the legitimacy of the Tribal Council resolution terminating Brown and Foshee & Yaffe's legal services. However, by entering into a new contract just two days later, Brown, Foshee & Yaffe, and Chalepah completely circumvented the Tribal Council's action, and completely ignored that part of the Tribal Council's resolution that the conduct of Brown and Foshee

& Yaffe were contrary to the best interests of the Apache Tribe, and that Brown and Foshee & Yaffe were declared undesirable in the Apache Tribal community and unworthy to enter the properties and jurisdiction of the Apache Tribe.

34. Upon information and belief, Brown and Foshee & Yaffe did not advise Chalepah or the Apache Business Committee to seek independent legal advice as to whether the Apache Business Committee could even enter into the June 18, 2007 Contract For Legal Services in light of the actions by the Apache Tribal Council.

35. In the Contract For Legal Services, Brown and Foshee & Yaffe stated: "By signing this agreement, you understand that it is the goal of the undersigned attorney to act in the best interests of the Apache Tribe of Oklahoma and at the direction of the Apache Business Committee. In performing this duty, counsel is obligated to defend members of the Business Committee when defense of actions instituted against each of them or all of them as an entity is in the best interests of the Apache Tribe of Oklahoma according to the legal opinion of counsel."

36. The contract for legal services further provides: "It is the understanding of the Apache Business Committee that counsel's loyalty is to the Apache Tribe of Oklahoma, their prosperity, legal standing and welfare. Counsel agrees to disclose any conflict of interest that may exist and affirmatively states that no conflict exists at this time."

37. The contract for legal services further states: "By signing this document, you agree to grant the attorney sole discretion to select, employ or otherwise use other attorneys or legal assistants, auditors, investigators, and/or consultants in this matter,

when in attorney's opinion, such is beneficial to representation of the tribe." Part of the "matters and services" covered by the contract for legal services included "review and legal analysis of any and all contracts for services including vendors, service contractors and subcontractors, gaming consultants, gaming investors, gaming management companies, and any other persons or entities wishing to enter into a contractual relationship with the Apache Tribe of Oklahoma," as well as other matters and services relating to gaming and the operation of the casino.

38. The contract for legal services further provides that "by signing this agreement, you agree to fully cooperate with the above-named attorney and her staff in connection with all matters described herein."

39. The contract for legal services provided that Brown's time would be billed at \$200 per hour. At the time the contract was entered into, Brown had been out of law school for four years.

40. (Brown, Foshee & Yaffe, Brown & Cullimore, and Graves would be terminated several more times by resolutions passed by the Tribal Council and the Business Committee, but none of the terminations deterred them from continuing their relationship with the Tribe.)

**F. The negotiations for a loan from Wells Fargo.**

41. The Silver Buffalo Casino proved to be very profitable after it opened, netting to the Tribe anywhere from \$250,000 to over \$500,000 a month. The proposed Red River Casino looked to be much more profitable.

42. Brown, Foshee & Yaffe, Graves, and Redcorn devised a way to obtain money from the Apache Tribe's gaming operations by pledging the tribe's property and assets, including gaming revenues, to secure a loan the proceeds of which would fund, in part, their exorbitant attorney and consulting fees. To aid them in this effort they enlisted the assistance of Kean.

43. Kean's business, KAGD, had a troubled loan with Wells Fargo, which had financed certain gaming machines which were no longer being used.

44. Through Kean, the Apache Tribe began negotiating for a loan from Wells Fargo. Brown, Graves, and Redcorn were all influential in negotiating for the loan.

45. The loan's proceeds were ostensibly for acquiring the Kosope Land, development related to the proposed Red River casino, remodeling of the Silver Buffalo Casino, and acquiring land adjacent to the Silver Buffalo Casino.

46. Kean proposed a budget for the loan proceeds of the following:

Building bridge loan used to purchase Kosope Land	\$1,150,000
Retire Valiance Sports Bar and pre-development fee loan	\$1,000,000
Casino and travel plaza remodeling and expansion reimbursement	\$875,000
Casino and travel plaza remodeling and expansion (uncompleted)	\$610,000
Anadarko 80 acres (contiguous to casino and complex)	\$475,000
Outside legal fees (UCC, constitution, etc.)	\$50,000
KAGD FSA fee	\$125,000
<b>TOTAL</b>	<b>\$4,285,000</b>

47. Brown, however, disagreed with Kean's proposed budget because it did not include enough proceeds for "legal and consulting fees," i.e., fees for her and her law firm and cronies Graves and Redcorn. To this end, Brown sent Kean an email with a

“wish list budget” for the Wells Fargo loan funds. In her budget, Brown listed “legal and consulting fees” of \$65,000 a month, for a total of \$780,000 a year, which covered the legal and consulting fees of Brown, Foshee & Yaffe, Graves, and Redcorn. Brown stated in the email: “Please discuss this with me and do not pass along to Wells until we have amended as necessary.”

48. Among the conditions Wells Fargo required to make the loan was that the Apache Tribe enter into an Equipment Lease Agreement with Kean’s Company, KAGD, and that the Equipment Lease Agreement be assigned by KAGD to TGS Anadarko. The machines the Silver Buffalo Casino was required to use under the Lease Agreement required by Wells Fargo were older machines that were of inferior quality, and the casino’s payout under the lease was at above-market rates.

49. KAGB was to receive a fee of \$125,000 out of the loan proceeds.

50. As a result of Brown’s efforts, her father, Moe Brown, was to be hired as the contractor the remodeling of the casino, the funds for which was to be paid out of the Wells Fargo loan proceeds.

**G. The election of 2008, and the conspiracy carried out by Brown, Graves, Redcorn, Chalepah, and Rivera to subvert the Apache Tribal government and control the Apache Business Committee through a minority of its members.**

51. Although Brown, Graves, and Redcorn were successful in making their exorbitant legal and consulting fees part of the budget for the Wells Fargo loan, they could not get the loan closed prior to the 2008 election that was held in May.

52. As a result of the May 2008 election, the following individuals were elected to the Apache Business Committee:

Alonzo Chalepah – Chairman

Mary Rivera – Vice Chairman

Marquita Carratini - Secretary/Treasurer

Ronald Ahtone - Member

Richard Banderas – Member.

53. Brown, Graves, and Redcorn had a problem: Chalepah and Rivera were now a minority of the Apache Business Committee, and they knew the three new members would not support obtaining a loan from Wells Fargo and pledging the Tribe's property and assets as collateral for the loan. Even though Carratini, Ahtone, and Banderas were duly elected members of the Business Committee (and a majority at that), Brown, Graves, Redcorn, Chalepah, and Rivera did not reveal to them the existence of the loan negotiations or loan documents, or anything having to do with obtaining a loan from Wells Fargo and pledging the Tribe's property and assets as security for the loan. Further, Brown, Graves, Redcorn, Chalepah, and Rivera told others not to tell Carratini, Ahtone, or Banderas anything about the negotiations for a loan from Wells Fargo.

54. Brown, Graves, Redcorn, Chalepah, and Rivera embarked on a conspiracy to gain control of a majority of the Business Committee. (These five individuals will be referred to collectively as the "Co-Conspirators"). First, they tried to remove Ahtone from the tribal membership roles, and claimed that Ahtone was not eligible for election to the Business Committee. These actions, taken upon the advice of Brown and Graves,

were not only a personal attack on an elected leader and a member of a committee to whom Brown and Graves had an attorney-client relationship and owed fiduciary duties, but if successful it would have removed Ahtone from the Tribal roles and denied him the numerous entitlements and services he receives as a member of the Tribe, including medical care, social services, and educational assistance. The grave consequences to Ahtone resulting from the actions of the Co-Conspirators showed the depths to which the Co-Conspirators would go to control the Business Committee.

55. After declaring that Ahtone was not a properly elected member of the Business Committee, the Co-Conspirators declared his seat vacant and appointed Leonard Chalepah to take his place. The Co-Conspirators knew that Leonard Chalepah could be counted on to vote with Alonzo Chalepah and Rivera, therefore giving them a quorum of the Business Committee, because Leonard Chalepah is Alonzo Chalepah's nephew.

56. The Co-Conspirators were so desperate to get a third member on the Business Committee to push through the Wells Fargo loan that they completely ignored Article VIII of the Apache Tribal Constitution. Article VIII provides that vacancies in any elective office, except that of the Chairman, shall be filled for the unexpired term at a special election unless the vacancy was created within six months of the next scheduled election. Thus, not only was Ahtone improperly removed as a member of the Business Committee, but Leonard Chalepah was improperly seated on the Business Committee.

**H. The closing of the loan with Wells Fargo.**

57. The Co-Conspirators had drafted a Resolution approving loan documents between the Apache Tribe and Wells Fargo. The Resolution, which is dated June 23, 2008, states that it was adopted at a duly called meeting of the Apache Business Committee by a vote of 3-0. Neither Carratini, Ahtone, nor Banderas were given notice of a June 23, 2008 meeting, and none of them attended any such meeting. (As will be seen in ¶81, *infra*, the BIA determined in a January 29, 2009 decision that all three were members of the Business Committee on June 23, 2008.)

58. The third purported member of the Business Committee (besides Alonzo Chalepah and Rivera) who voted in favor of the resolution approving the loan was Leonard Chalepah, who the Co-Conspirators improperly put on the committee in place of Ahtone by the Co-Conspirators. Any resolution adopted on June 23, 2008, by a vote of 3-0 with Leonard Chalepah as one of the voters was invalid, of no effect, and was not an official act of the Apache Tribe.

59. Despite the invalid Resolution, the Wells Fargo Loan Agreement was closed June 23, 2008.

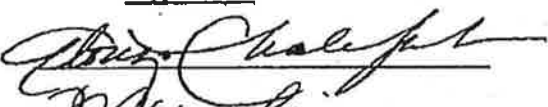

60. In connection with the Wells Fargo Loan Agreement, Brown and Foshee & Yaffe gave a legal opinion to Wells Fargo. Among other things, Brown and Foshee & Yaffe stated that the June 23 Resolution authorizing the Apache Tribe to enter into the loan with Wells Fargo was validly adopted by the Business Committee, and the Apache Tribe was duly authorized to enter into the loan agreements with Wells Fargo. Specifically, Brown and Foshee & Yaffe opined:

The Business Committee members who have authorized, executed and delivered the applicable loan documents on behalf of the borrower are the duly elected and appointed officers of the borrower, and possess full authority to authorize, execute and deliver the applicable loan documents and to bind the borrower thereto.

Brown and Foshee & Yaffe further stated that all security interests given by the Apache Tribe to Wells Fargo as security for the loan were properly authorized by the Apache Business Committee.

61. Attached to the opinion letter of Brown and Foshee & Yaffe was a schedule of documents. One of the documents attached is a Closing Certificate dated June 23, 2008. Paragraph 11 of the Closing Certificates states:

The following named individuals are duly appointed, qualified and acting officers of the borrower, authorized to sign any loan document on behalf of the borrower and as of the closing date each holds the office of the borrower set forth opposite his/her name and the signature set forth opposite their respective names are their genuine signatures:

<u>Name</u>	<u>Office</u>	<u>Signature</u>
<u>Alonzo Chalepah</u>	Chairman	
<u>Mary Rivera</u>	Vice Chairman	
<u>Marquita Carratini</u>	Secretary/Treasurer	<u>NOT AUTHORIZED SIGNER</u>
<u>Richard Banderas</u>	Committee Member	<u>NOT AUTHORIZED SIGNER</u>
[TBD]	Committee Member	_____

62. Thus, the closing certificate listed two of the Co-Conspirators, Chalepah and Rivera, as the only authorized signers, and more importantly did not even list a fifth committee member. Upon information and belief, "TBD" stands for "To Be Determined," as the Co-Conspirators apparently had not yet improperly appointed

Leonard Chalepah to the purported vacant seat when the draft was prepared, and they sloppily failed to insert his name for "TBD" in their haste to get the loan closed. The closing certificate was signed by Chalepah.

63. Brown and Foshee & Yaffe also opined that neither the loan agreement nor any other loan documents constitute management contracts within the meaning of the Indian Gaming Regulatory Act.

64. In connection with inducing Wells Fargo to make the loan, Brown and Foshee & Yaffe told Wells Fargo that a loan the Apache Tribe had with Integrity Gaming was a management contract and therefore was unenforceable. Brown and Foshee & Yaffe failed to inform Wells Fargo that the NIGC had determined that the Integrity transaction did not constitute a management contract.

65. The loan closed June 23, 2008, and was funded shortly thereafter.

**I. The constitutional Tribal Council meeting of June 21, 2008.**

66. The annual Tribal Council meeting for 2008 took place on June 21. Among other things, a motion was made to reaffirm a previously approved resolution to terminate Betsy Brown and John Graves. The motion passed on a vote of 59-0.

**J. The Co-Conspirators devise a scheme to deprive Carratini and Banderas of their elected positions.**

67. Not content with declaring Ahtone off the Committee, the Co-Conspirators devised a further way to oust Carratini and Banderas. Under the Apache Tribal Constitution, a member of the Business Committee who misses three regular or special meetings in succession, without an excuse from the Business Committee, automatically

loses offices. The Co-Conspirators allegedly had special meetings called three days in a row in July and August 2008 without providing adequate notice of the meetings to Carratini or Banderas. Thereafter, the Co-Conspirators made fraudulent claims to the federal government that Carratini and Banderas automatically lost their office because they missed three meetings in a row despite being provided with adequate notice, and called for an election to fill the vacancies.

**K. The BIA's recognition of Carratini, Ahtone, and Banderas as duly elected members of the Apache Business Committee, which the Co-Conspirators ignore.**

68. Despite the Co-Conspirators efforts, the Anadarko Agency of the Bureau of Indian Affairs continually recognized Carratini, Ahtone, and Banderas as members of the Apache Business Committee through at least January 29, 2009. In letters dated June 20, July 24, September 12, and October 22, 2008, the BIA confirmed that Carratini, Ahtone, and Banderas were recognized members of the Apache Business Committee.

69. The Co-Conspirators continually ignored the Anadarko Agency's recognition of Carratini, Ahtone, and Banderas, and failed to recognize them as members of the Business Committee.

70. The Co-Conspirators, using tribal funds, hired Ietan Consulting and Wilson Pipestem to "lobby" on their behalf with the Department of Interior in Washington, D.C. The Co-Conspirators used tribal funds to pay themselves for legal services rendered, travel expenses to Washington to lobby the federal government, and other expenses in connection with their attempt to subvert the Apache Tribe's government and continue to

exercise control over the Apache Tribe through Chalepah and Rivera. Ietan Consulting and Pipestem were put on notice that they were not properly engaged by the Apache Tribe, yet they accepted substantial monies from the Co-Conspirators that came from Apache Tribal funds, and continued to aid and abet the Co-Conspirators in their conspiracy to control the Apache Tribe and continue receiving monies funded through the Wells Fargo loan proceeds.

**L. The special Tribal Council meeting of September 6, 2008.**

71. On September 6, 2008, the Tribal Council met. By a resounding vote of 74-0, the Tribal Council removed Chalepah and Rivera from their positions on the Business Committee.

**M. The Co-Conspirators hire a private security firm to break in to the tribal complex.**

72. The Co-Conspirators, however, refused to recognize the Tribal Council's action. Due to the Co-Conspirators' actions, the Silver Buffalo Casino was shut down on the evening of Monday, September 8, 2008.

73. Graves and the Casino head of security, Rick McKee, expressed great disgust at the closure of the casino. Both made repeated threats of reprisal against Carratini, Ahtone, and Banderas, as well as against the Tribal Council. Carratini, Ahtone, and Banderas, as well as additional tribal members, chose to remain in the Tribal Complex in shifts 24 hours a day, in order to protect the Apache property from the threats of Graves and McKee.

74. The threats of Graves and McKee, and the actions of the other Co-Conspirators, were taken seriously by the Apache citizenry because examination of bank account statements, and ongoing meetings with federal investigators, revealed that several improper and illegal acts had been performed by casino personnel. There were numerous money wire transfers made out of state to multiple accounts. At the time, it was believed that over \$200,000 may have been illegally diverted from the Apache Tribe by certain individuals in the casino. Carratini, Ahtone, and Banderas, who the BIA recognized in September 2008 as three duly elected officials on the Apache Business Committee, were trying to safeguard financial and other documents so it could be determined if money had been illegally diverted, and if so, how much and to whom.

75. Around 6:00 a.m. on Tuesday, September 9, 2008, the Co-Conspirators caused a large number of non-Indian, professionally trained personnel from Able Security Investigations, LLC, dressed in body armor and armed with shotguns and handguns to arrive at the Tribal Complex door, falsely announce they were from the Caddo County Sheriff Department, utilize a battering ram to gain access to the complex, and assault Apache Complex security personnel and several Apache citizens. The individuals perpetrating the assault also used dogs. Apache Tribal members were handcuffed, held at gunpoint, and threatened with serious bodily harm, including death. Graves participated in the break-in and assault, and Brown and Redcorn were also in the area during the break-in and assault. The Co-Conspirators worked in concert to plan and organize the break-in and assault.

76. Thereafter, the Co-Conspirators refused Carratini, Ahtone, and Banderas access to the Tribal Complex, including the very office they were to occupy as members of the Business Committee recognized by the BIA. The Co-Conspirators kept armed guards from Able Security on watch 24 hours a day for several weeks after the break-in utilizing Tribal funds to ensure they could keep themselves in power.

77. (As a result of the actions of the Co-Conspirators, a civil action has been filed against Able Security in state court in Caddo County, Oklahoma.)

**N. The BIA's decision in January 2009.**

78. On September 5, 2008, Carratini, Ahtone, and Banderas appealed an August 13, 2008 decision from the Anadarko Agency of the BIA not to recognize the recall of Chalepah and Rivera at the annual Tribal Council meeting of June 21, 2008.

79. On January 29, 2009, the Department of Interior decided the appeal. The Department of Interior held that the attempt to recall Chalepah and Rivera at the June 21, 2008 meeting was invalid.

80. The Department of Interior, however, went beyond deciding the September 5 appeal filed by Carratini, Ahtone, and Banderas. The Department of Interior purported to "review [ ] the administrative record provided to me by the Anadarko and Southern Plains Region Offices," and then took it upon itself to announce the makeup of the Apache Business Committee. The Department of Interior stated the Business Committee consisted of the following:

Chairman: Alonzo Chalepah

Vice-Chairman: Mary Rivera

Secretary/Treasurer: Beverly Mattice

Member: Henry Kostzuta

Member: Ron Ahtone

81. The Department of Interior found that Ahtone was an enrolled member of the Apache Tribe and therefore eligible for election to the Business Committee. However, the Department found that Carratini and Banderas lost their seats by missing three consecutive meetings in July-August.

82. Prior to the January 2009 decision, some or all of the Co-Conspirators made multiple trips to Washington, D.C. to lobby the Department of Interior and to engage in ex parte communications with those who would have input into the January 2009 decision. In addition, the Co-Conspirators engaged Ietan Consulting and Pipestem to aid and abet their cause, and paid Ietan Consulting and Pipestem with tribal funds. The Co-Conspirators made misrepresentations to federal government officials in their attempt to have the Department of Interior declare that Carratini, Ahtone, and Banderas were not proper members of the Business Committee.

**O. The Co-Conspirators try to subvert the constitutional Tribal Council meeting of June 2009.**

83. On June 20, 2009, the Apache Tribe held its annual constitutional Tribal Council meeting. The Co-Conspirators attempted to subvert the Tribal Council from meeting and conducting business by putting into place a plan in which Chalepah would

call the meeting to order, and when members of the Tribal Council attempted to bring issues before it, Chalepah would adjourn the meeting and walk out. The Co-Conspirators would then take the position that any business conducted after Chalepah walked out was invalid.

84. The Tribal Council, however, followed proper procedures after Chalepah tried to adjourn the meeting. A motion was made to adjourn the meeting which did not pass, and the Tribal Council continued to conduct the important business of the Apache Tribe.

85. In an effort to subvert the functioning of the Tribal Council, the supreme governing body of the Apache Tribe, the Co-Conspirators have refused to recognize resolutions passed by the Tribal Council at its June 20, 2009 constitutional meeting.

**P. The Co-Conspirators try to subvert the Business Committee election of March 2010.**

86. On March 20, 2010, the Apache Tribe held its elections. The Apache Election Board certified the election was conducted in a fair and equitable manner and certified the results. The Apache Election Board made the following certification:

APACHE TRIBE  
Beverly Mattice, Secretary/Treasurer  
Telephone office: 480-214-2469

APACHE TRIBE  
APACHE TRIBE  
APACHE TRIBE

APACHE BUSINESS COMMITTEE  
Beverly Mattice, Secretary/Treasurer  
Bobby Lee, Tribal Administrator  
Fax: 480-214-2469



### CERTIFICATION

We hereby certify that the Apache Tribe General Election of March 20, 2010 for Apache Business Committee Members has been conducted in a fair and equitable manner and the count is correct as tallied by the Apache Election Board Members and Candidate Representatives. The results are as follows:

	<b>CHAIRMAN:</b>
Alonzo Chalepoh	<u>78</u>
Nghia Nga	<u>99</u>
Louis Archuta Mayashonah	<u>143</u>
DeLorna Strong	<u>104</u>
	<b>VICE-CHAIRMAN</b>
Gloria Komardley Redbird	<u>152</u>
Homer Flute	<u>114</u>
Mary Prentiss	<u>115</u>
Paul Killsfirst	<u>40</u>
	<b>SECRETARY/TREASURER:</b>
Marquita Carattini	<u>173</u>
Beverly Mattice	<u>105</u>
Apache Jim K. Wetselline	<u>145</u>



**BUSINESS COMMITTEE MEMBERS (2):**

Karon Redbone Heminokely	<u>175</u>
Ruth Wetselfine	<u>110</u>
Dewayne Tartsah	<u>103</u>
Christopher J. Chalepah	<u>115</u>
Richard Banderas	<u>156</u>
Jimmy Komardley	<u>85</u>

**HOUSING COMMISSIONER 3 (2 year terms):**

Nathan W. Tseele	<u>186</u>
Raymond Tseele	<u>322</u>
Thompson Flute Jr.	<u>149</u>
Hugh Sam Redbone	<u>252</u>
Adrian Smith	<u>171</u>

Respectfully submitted this date of March 20, 2010

Carol Wildes  
Carol Wildes

Linda Marquez  
Linda Marquez

Reuben Prentiss  
Reuben Prentiss

Clara Clift  
Clara Clift

Sandy Jay  
Sandy Jay

Sanut-te Bussneus  
Sanut-te Bussneus

87. Therefore, the following individuals were elected and certified to comprise the Business Committee:

Louis Maynahonah – Chairman

Gloria Redbird – Vice-Chairperson

Marquita Carratini – Secretary/Treasurer

Karen Herninokey – Business Committee Member

Richard Banderas – Business Committee Member

88. The Co-Conspirators, however, were not done. Sensing that Chalepah and Rivera would be defeated at the polls and the Co-Conspirators would lose control of their hold on the Apache Tribe, prior to the election the Co-Conspirators concocted a scheme to challenge the election results. The Co-Conspirators decided that if they lost control of the Business Committee through the election, they would claim the election was invalid due to a problem with absentee ballots prior to the election, and claim that a new election must be called. (Of course, the Co-Conspirators would then take the position that it is up to the Chairman to call a new election, and if Chalepah were still Chairman he would simply never call a new election.)

89. The Co-Conspirators ran into a snag, however: despite the supposed problem with absentee ballots prior to the election, the election results were certified. (Not only were the results certified, but the Apache Election Board certified the election was fair and equitable.) Under the Apache Tribal Constitution, “The elected officers shall take office immediately upon certification of their election. They shall serve until their successors are elected and certified.” Because the election results were certified,

under the Apache Tribal Constitution the newly elected Business Committee were automatically entitled to be seated, despite any appeals of the election results.

90. The only means of protesting an election is to request a recount upon payment of \$1,000. No recount has ever been requested, and no payment of \$1,000 has ever been made. Therefore, no proper protest has been lodged against the results of the March 2010 election.

91. However, the Co-Conspirators desperately continue to assert that those who were on the Business Committee prior to the March 2010 elections continue to comprise the Committee. The Co-Conspirators have caused an appeal to be lodged in protest of the election results as they pertain to the Business Committee, and refuse to acknowledge that those elected and certified at the March 2010 elections constitute the proper Business Committee.

92. (Tellingly, even though the individuals elected as Housing Commissioners were elected in the same election and by the same process, the Co-Conspirators have never claimed that the individuals who received the most votes and were certified as the winners of the election are not properly members of the Housing Commission.)

**Q. The Co-Conspirators' failure to turn over power to the duly elected committee.**

93. Despite the clear language of the Apache Tribal Constitution, the Co-Conspirators refused to turn over power to the duly elected and certified members of the Business Committee.

94. Brown, Brown & Cullimore, and Graves continue to provide legal advice to Chalepah and Rivera that is both wrong and not in the best interest of the Apache Tribe, but only in the best interest of the Co-Conspirators.

**R. The decision of the BIA is to who constitutes the duly elected Business Committee.**

95. By letters dated May 19, 2010 and May 25, 2010, the Regional Office of the BIA has recognized the five duly elected and certified members of the Business Committee – Maynahonah, Redbird, Carratini, Herninokey, and Banderas. The Co-Conspirators, however, continue to refuse to recognize the decision of the BIA.

96. Due to the Co-Conspirators' actions, on June 8, 2010, the Regional Director of the Southern Plains Regional Office of the BIA issued a letter reiterating that the decisions dated May 19 and May 25, 2010 advised that the tribal election would be recognized and the successful candidates in that election would represent the Apache Tribe in conducting business with the BIA. The Regional Director recognized that the Co-Conspirators' actions were causing damage to the Apache Tribe, as the Regional Director stated:

It has come to our attention that the situation at the Apache Tribal Office continues to be uncertain and that programs operated by the Tribe may be in jeopardy, which would deprive tribal members of essential services such as Indian Child Welfare, child protection, and welfare assistance. The reduction or disruption of these services would put at risk children and families. Also, the Apache Tribal Chairman and two business committee members are representatives to the Kiowa-Comanche-Apache Inter-Tribal Land Use Committee (KCAILUC), which is responsible for the leaseings and use of KCA trust lands. Without the Apache Tribe represented on the KCAILUC, this committee could not conduct business relating to jointly-held tribal lands. This would not only impact the Apache Tribe but the

Kiowa and Comanche Tribes' trust resources. It is also noted that the uninterrupted operation of the Tribe's economic enterprises, including its casino, is necessary to the sustained welfare of the tribal community.

In order to assure the safety of children and to protect the Apache Tribe's trust resources, as well as that of the Kiowa and Comanche Tribes in the Kiowa-Comanche-Apache jointly held lands, we are making the decision dated May 19, 2010, effective immediately pursuant to 25 Code of Federal Regulations §2.6(a)

- S. The Co-Conspirators use backdated resolutions to withdraw Apache Tribe operating and casino accounts from one bank and deposit them in another bank in an effort to deny duly elected officials of the Apache Business Committee access to the Apache tribal funds.**

97. After the BIA's letter of May 19, 2010 recognizing those elected and certified in March 2010, the Co-Conspirators had a problem: they were about to lose control of bank accounts holding tribal operating and casino funds from which they were paying themselves and others (like Ietan Consulting and Pipestem) to fight the results of the March 2010 election. The Co-Conspirators also faced substantial risk that those elected to the Business Committee would have the resources to investigate the conduct of the Co-Conspirators and hold them accountable for their actions.

98. On May 20, 2010, the former members of the Business Committee held a meeting. Purporting to continue to exercise tribal authority, the minutes of the meeting reveal that they passed resolutions opening bank accounts at First Bank & Trust in Norman, backdated the resolutions to May 14, and authorized signature cards that would make it difficult, if not impossible, for the members of the elected Business Committee (recognized a day earlier by the BIA) to exercise control over the funds. Then the Co-Conspirators, using the backdated resolutions, withdrew tribal funds from tribal bank

accounts at one bank and fraudulently attempted to deposit them in First Bank & Trust under signature cards that permitted limited access, all in order to remain in control of the funds.

99. On May 21, 2010, two days after the BIA decision, the Co-Conspirators caused the funds to be transferred to First Bank & Trust.

100. Due to the Co-Conspirators' action, First Bank & Trust refuses to release the funds to the duly elected and certified Business Committee. As of the date of the filing of this Complaint, the Co-Conspirators continue to attempt to assert control over the Apache tribal funds, and are refusing to acknowledge the Business Committee.

**T. The undated letter from the Department of Interior.**

101. The annual constitutional meeting of the Apache Tribal Council was set to occur on June 19, 2010. Late in the afternoon of Friday, June 18, an undated letter was faxed from the Department of Interior purportedly signed for Assistant Secretary Larry Echo Hawk. The undated letter from the Department of Interior states: "Following tribal law, the Department of the Interior will continue to recognize the incumbent members of the Apache Tribe of Oklahoma Business Committee as the Tribe's governing body."

102. Tribal law, of course, has to refer to the Apache Tribe's law. Under Article V of the Apache Tribal Constitution, members of the Business Committee hold office until "a successor is elected and certified." Because the March 20 election was certified, under Apache tribal law all prerequisites for the seating of those receiving the

most votes at the March 20 election occurred, and under Apache tribal law they are the proper members of the Business Committee.

103. Moreover, the Department of Interior's letter states "it will continue" to recognize the incumbent members of the Business Committee as the Tribe's governing body. As noted above, the BIA has consistently taken the position, in letters dated May 19, May 25, and June 8, 2010, that Chairman Maynahonah and the others who were elected March 20, 2010 constitute the Business Committee. By stating that it would "continue" to recognize incumbent members, the Department of Interior had to refer to Chairman Maynahonah and the other members of the Business Committee elected March 20, 2010.

104. In addition, the letter from the Department of Interior refers to "the incumbent members" of the Business Committee. The "incumbent members" are those who were last elected and certified, those being Chairman Maynahonah and the other members of the Business Committee elected and certified on March 20, 2010.

105. Finally, the letter from the Department of Interior recognized the Apache Tribe was attempting to resolve election disputes through its tribal processes. The Tribal Council is the supreme governing body of the Apache Tribe, and as such is the only body that can decide election disputes. The Department of Interior was probably aware that there was a constitutionally mandated tribal council meeting scheduled for June 19, 2010, and that the election dispute might be resolved at the June 19 meeting.

**U. June 19, 2010 Tribal Council meeting.**

106. The Constitutional Tribal Council meeting took place June 19, 2010. At that meeting the Tribal Council, the supreme governing body of the Apache Tribe, resolved any election dispute. In a resolution adopted by a vote of 87-5, the Tribal Council determined that the winners of the March 20, 2010 elections for the Business Committee of the Apache Tribe of Oklahoma were those who received the most votes and were certified, those being:

Louis Maynahonah, Chairman

Gloria Redbird, Vice Chairman

Marquita Carratini, Secretary/Treasurer

Karen Heminkey, Committee Member

Richard Banderas, Committee Member

The Tribal Council therefore resolved any and all protests concerning the March 20, 2010 election.

**V. The Co-Conspirators still attempt to control the funds of the Apache Tribe.**

107. Despite the May 19, May 25, and June 8, 2010 letters from the BIA; despite the undated letter from the Department of Interior; and despite the decisions of the Tribal Council, the supreme governing body of the Apache Tribe, the Co-Conspirators refuse to permit the banks holding the funds of the Apache Tribe to allow the Business Committee to utilize those funds. The Co-Conspirators are attempting to cover up their own wrongful conduct, and trying to prevent being held accountable for it. However, the

effect of their actions is to prevent the Apache Tribe's government from properly functioning, to prevent the casino from running properly, and to prevent the Apache Tribe being able to pay for essential services for its members and to meet payroll.

### **Claims for Relief**

#### **First claim for relief: Violation of 18 U.S.C. §1962(c) – Conducting the Affairs of the Enterprise Through a Pattern of Racketeering Activity (“RICO”) (Against the Co-Conspirator Defendants)**

108. The Co-Conspirator Defendants are each a liable “person” within the meaning of §§1961(3) and 1962(c) of RICO.

109. The Co-Conspirator Defendants committed at least two predicate acts of “racketeering activity” as that term is defined in 18 U.S.C. §1961(1). The predicate acts include, among other things, mail fraud in violation of 18 U.S.C. §1341, wire fraud in violation of 18 U.S.C. §1343, and financial institution fraud in violation of 18 U.S.C. §1344.

110. The predicate acts of “racketeering activity” committed by the Co-Conspirator Defendants constituted a “pattern of racketeering activity” within the meaning of 18 U.S.C. §1961(5).

111. Each Co-Conspirator Defendant directly or indirectly participated in the conduct of an “enterprise” as that term is defined in 18 U.S.C. §1961(4).

112. The activities of the “enterprise” affected interstate commerce.

113. The Co-Conspirator Defendants conducted their enterprise through an ongoing, open ended pattern of racketeering activity.

114. The above described racketeering activities amount to a common course of conduct intended to deceive and harm Plaintiff. Each racketeering activity is related, has similar purposes, involves the same or similar participants and methods of commission, and has similar results affecting similar victims, Plaintiff Apache Tribe and its members.

115. Each Co-Conspirator Defendant conducts the affairs of the enterprise because they participated in the enterprise.

116. Plaintiff has been and continues to be injured by the Co-Conspirator Defendants' violations.

117. Plaintiff's injuries are directly and proximately caused by the Co-Conspirator Defendants' racketeering activity as described above.

118. Plaintiff requests an accounting of all funds taken and expended by Defendants in furtherance and as a result of their racketeering activity.

119. By virtue of their violations of 18 U.S.C. §1962(c), the Co-Conspirator Defendants are jointly and severally liable to Plaintiff for three times the damages Plaintiff has sustained, punitive damages, and the cost of this suit, including reasonable attorney's fees.

**Second claim for relief: Common Law Fraud  
and Deceit**

**(Against Brown, Graves, Redcorn, Chalepah, and Rivera)**

120. The acts and conduct described above constitute common law fraud and deceit.

121. Brown, Graves, Redcorn, Chalepah, and Rivera made false representations to Wells Fargo, the federal government, and others concerning material facts (for instance, the membership of the Business Committee) in an effort to obtain the Wells Fargo loan and to keep control of the Apache Tribal government.

122. Brown, Graves, Redcorn, Chalepah, and Rivera made the misrepresentations with the knowledge they were false or in reckless disregard of the truth.

123. Brown, Graves, Redcorn, Chalepah, and Rivera made the misrepresentations with the intention of causing Wells Fargo, the federal government, and others to act on such misrepresentations so they could obtain money by false pretenses and keep control of the Apache Tribe's government.

124. Wells Fargo, the government, and others relied on the misrepresentations to Plaintiff's detriment.

125. Plaintiff is entitled to recover the damages it has incurred as a result of the fraud and deceit committed by Brown, Graves, Redcorn, Chalepah, and Rivera, as well as punitive damages and the costs of this action.

**Third and Fourth claims for relief: Legal Malpractice  
and  
Breach of Contract  
(Against Brown, Foshee & Yaffe, Brown & Cullimore, and Graves)**

126. Defendants Brown, Foshee & Yaffe, Brown & Cullimore, and Graves (the "Lawyer and Law Firm Defendants") had an attorney client relationship with Plaintiff.

127. The Lawyer and Law Firm Defendants owed a duty to Plaintiff to protect the rights of Plaintiff, to provide competent and sound legal advice to Plaintiff, and to not take actions to injure Plaintiff.

128. Lawyer and Law Firm Defendants breached their duty by engaging in the conduct described above, and breached their contract with Plaintiff.

129. As a result of the breach of their duty and their contract, Lawyer and Law Firm Defendants have caused Plaintiff to suffer damages.

**Fifth claim for relief: Breach of Fiduciary Duty/  
Duty of Loyalty**

**(Against Brown, Foshee & Yaffe, Brown & Cullimore, and Graves)**

130. The Lawyer and Law Firm Defendants owed Plaintiff, their client, a fiduciary duty which involves the integrity and fidelity of the attorney.

131. The Lawyer and Law Firm Defendants breached their fiduciary duty/duty of loyalty by obtaining improper benefits for themselves and their cronies. Lawyer and Law Firm Defendants have engaged in self-dealing, deception, and misrepresentations in their purported representation of Plaintiff, and have placed their personal interests over the interests of Plaintiff.

132. As a result of Lawyer and Law Firm Defendants' breach of their fiduciary duty/duty of loyalty, Plaintiff has suffered damages.

**Sixth claim for relief: Negligent Training  
and Supervision**

**(Against Foshee & Yaffe)**

133. Brown was employed as an associate by Foshee & Yaffe from 2006 until sometime in 2009.

134. Foshee & Yaffe failed to properly train and supervise Brown, permitting Brown to engage in the wrongdoing described in this Complaint.

135. As a result of Foshee & Yaffe's negligent training and supervision of Brown, Plaintiff has suffered damages.

**Seventh claim for relief: Civil Conspiracy**

**(Against Brown, Foshee & Yaffe, Brown & Cullimore,  
Graves, Chalepah, and Rivera)**

136. The Co-Conspirators engaged in a civil conspiracy to injure Plaintiff by engaging in the tortious and unlawful acts described in this Complaint.

137. As a result of the civil conspiracy by the Co-Conspirator Defendants, Plaintiff has been damaged, for which the Co-Conspirators are jointly and severally liable.

**Eighth claim for relief: Conversion**

**(Against Brown, Brown & Cullimore, Graves, Chalepah, and Rivera)**

138. Brown, Brown & Cullimore, Graves, Chalepah, and Rivera have converted property belonging to the Apache Tribe to their own use and control.

139. The actions by these Defendants have damaged Plaintiff.

**Ninth claim for relief: Violation of the Bank  
Holding Company Act  
(Against Wells Fargo)**

140. Under 12 U.S.C. §1972, a bank may not condition the extension of credit on the requirement that the borrower provide an additional credit, property, or service to the bank, other than those related to and usually provided for in connection with a loan.

141. Wells Fargo conditioned the extension of the loan to Plaintiff on the Plaintiff's leasing of gaming machines from KAGB. This condition by Wells Fargo was an additional service or credit Plaintiff was required to provide to Wells Fargo in violation of §1972.

142. Wells Fargo's violation of §1972 has caused Plaintiff damages, for which Wells Fargo is liable.

**Tenth claim for relief: Declaratory Judgment.  
(Against Wells Fargo)**

143. The Wells Fargo loan agreement constitutes a management contract, for which approval from the NIGC was not given.

144. Because the Wells Fargo loan agreement constitutes a management contract, this Court should declare the loan agreement void and unenforceable.

**Eleventh claim for relief: Unjust Enrichment  
(Against All Defendants)**

145. The conduct described in this Complaint constitutes unjust enrichment. All of the Defendants were unjustly enriched at the expense of Plaintiff.

**Relief Requested**

146. Plaintiff prays for judgment against Defendants for actual damages in an amount in excess of \$5,000,000; treble damages for the violations of RICO and the Bank Holding Company Act; punitive damages in an amount in excess of \$5,000,000; disgorgement of all legal and consulting fees paid to Defendants or caused by Defendants to be paid to others; an accounting of all monies paid to Defendants or paid to others at the request of Defendants; interest; costs of this action, including a reasonable attorney fee; and such other relief requested above or to which Plaintiff is entitled at law or in equity.

DOERNER, SAUNDERS, DANIEL  
& ANDERSON, L.L.P.

By: s/Jon E. Brightmire  
Jon E. Brightmire, OBA No. 11623  
David M. McCullough, OBA No. 10898  
Bryan J. Nowlin, OBA No. 21310  
320 South Boston Avenue, Suite 500  
Tulsa, Oklahoma 74103-3725  
Telephone (918) 582-1211  
Facsimile (918) 591-5360

Attorneys for Plaintiff

**JURY TRIAL DEMANDED**

**ATTORNEY LIEN CLAIMED**