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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. GARY KOVALL, et al., Defendants.	No. CR 12-441A-MFW GOVERNMENT'S OPPOSITION TO DEFENDANT'S ALAN HESLOP'S MOTION TO DISMISS

Plaintiff United States of America, by and through its counsel of record, the United States Attorney's Office for the Central District of California, hereby responds to Defendant Alan Heslop's Motion to Dismiss. This response is based on the attached

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memorandum of Points and Authorities and any argument the court may request at the hearing on the motion.

Dated: January 24, 2014

Respectfully submitted,

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TABLE OF CONTENTS

PAGES

I. LITIGATION HISTORY.....1

A. THE INDICTMENT.....1

1. The Defendants.....1

2. Construction-Related Contracts.....1

3. Purchase of 47-Acres of Real Estate.....2

4. Charges Against Heslop.....2

B. DEFENDANTS' FIRST MOTION TO DISMISS.....3

C. GOVERNMENT'S MOTION TO DISMISS.....3

D. HESLOP'S SECOND MOTION TO DISMISS.....4

II. LEGAL STANDARDS.....4

III. ARGUMENT.....5

A. DEFENDANT'S MOTION SHOULD BE DENIED AS AN IMPROPER MOTION TO RECONSIDER.....5

B. HESLOP IMPROPERLY ASKS THIS COURT TO LOOK OUTSIDE OF THE INDICTMENT IN CONSIDERING HIS ARGUMENTS.....7

C. THE INDICTMENT PROPERLY ALLEGES THAT THESE WERE TRANSACTIONS OF THE TRIBE; IT IS NOW FOR A JURY TO DECIDE8

D. THE INDICTMENT PROPERLY ALLEGES THAT HESLOP WAS AN AGENT OF THE TRIBE AND NEED NOT ALLEGE THAT HESLOP INFLUENCED THE TRIBE; IT IS NOW FOR A JURY TO DECIDE WHETHER HE WAS AN AGENT.....15

IV. CONCLUSION.....17

TABLE OF AUTHORITIES

PAGES

Federal Cases

United States v. Boren,
278 F.3d 911, 914 (9th Cir. 2002).....7

United States v. Delaughter,
2009 WL 1424422, *2 (N.D. Miss. 2009).....11

United States v. Dransfield,
913 F. Supp. 702, 707 (E.D.N.Y. 1996).....11

United States v. Jenkins,
490 F.2d 868, 871 (2d Cir. 1973).....8

United States v. Jensen,
93 F.3d 667, 669 (9th Cir. 1996).....7

United States v. Mann,
517 F.2d 259, 267 (5th Cir. 1975).....7

United States v. Marra,
481 F.2d 1196, 1199-1200 (6th Cir.1973).....8

United States v. Nukida,
8 F.3d 665, 669 (9th Cir. 1993).....11

United States v. Pirro,
212 F.3d 86, 92 (2000).....8

United States v. Sampson,
371 U.S. 75, 78-79 (1962).....7

United States v. Woodruff,
50 F.3d 673, 676 (9th Cir. 1995).....5

United States v. Woodruff, 50 F.3d 673, 676 (9th Cir. 1995).....5

Federal Rules

Fed. R. Crim. P. 7(c)(1).....5

Local Rules

L.R. 7-18.....6, 16, 17

Federal Statutes

18 U.S.C. § 666.....passim

MEMORANDUM OF POINTS AND AUTHORITIES

I.

LITIGATION HISTORY

A. THE INDICTMENT

Defendant Alan Heslop, along with his codefendants Gary Kovall, Paul Bardos, and Peggy Shambaugh, are charged in the First Superseding Indictment (the "indictment") with conspiracy to commit bribery and with committing bribery. The indictment alleges that Heslop and Bardos made illicit payments to Kovall through Shambaugh in connection with transactions of the Twenty-Nine Palms Band of Mission Indians (the "Tribe").[1] The transactions at issue are: (1) construction-related contracts awarded by the Tribe; and (2) the Tribe's purchase of 47-acres of real estate.

1. The Defendants

According to the indictment: (a) Kovall acted as the general counsel for the Tribe; (b) Heslop was an advisor to the Tribe and was an officer of Echo Trail Holdings, a company set up by the Tribe at Kovall's advice to purchase real estate for the Tribe; (c) Bardos performed construction work for the Tribe as a general contractor and oversaw other construction projects on behalf of the Tribe; and (d) Shambaugh was a real estate agent who was in a romantic relationship with Kovall.

2. Construction-Related Contracts

The indictment alleges that Kovall and Heslop introduced Bardos to the Tribe to act as its "owner's representative" in connection

[1] The First Superseding Indictment alleges additional violations against Heslop's codefendants. Kovall is also charged with wire fraud, while Bardos is also charged with tax offenses.

with construction work planned by the Tribe. (Indictment at ¶ 6.) Thereafter, Kovall steered certain Tribe construction projects and oversight work to Bardos. (Id. at ¶ 10(c).) In exchange for these contracts, Bardos allegedly provided money to Heslop, who acted as a middle-man and paid kickbacks to Kovall through Shambaugh. (Id. at ¶ 10(e).)

3. Purchase of 47-Acres of Real Estate

The indictment alleges that Kovall persuaded the Tribe to authorize Heslop to purchase 47-acres of land through Echo Trail Holdings. (Id. at ¶ 24(a).) Additionally, Kovall allegedly steered the real estate commission of several hundred thousand dollars to Shambaugh and her real estate agency while concealing his relationship with Shambaugh from the Tribe. (Id. at ¶ 24(d).) According to the indictment, after the seller of the property refused to pay a commission to Shambaugh and her agency, Kovall caused the Tribe to increase its offer in order to pay the commission. (Id. at ¶ 10(c).) According to the indictment, a month after the Tribe paid $31.7 million for the land, Shambaugh provided a $10,000 kickback to Heslop. (Id. at ¶ 27.)

4. Charges Against Heslop

The indictment originally charged Heslop with: (a) conspiring with Kovall, Bardos, and Shambaugh to commit bribery related to the construction contracts (Count One); (b) accepting bribes from Bardos as an agent of the Tribe related to the construction contracts (Counts Ten through Seventeen); (c) providing bribes to Kovall, who was an agent of the Tribe, related to the construction contracts (Counts Eighteen through Twenty-Four); (d) accepting a bribe from Shambaugh as an agent of the Tribe related to the Tribe's purchase

of the 47-acres and Shambaugh's commission payment (Count Thirty-Five); and (e) money laundering (Counts Thirty-Seven, Forty-Two, Forty-Four, Forty-Seven, Forty-Eight, Fifty, and Fifty-Two).

B. DEFENDANTS' FIRST MOTION TO DISMISS

On February 5, 2013, defendants filed a comprehensive motion to dismiss, arguing that: (1) the indictment insufficiently alleged in the conspiracy and bribery counts that Heslop was an agent of the Tribe, including in the counts related to the 47-acres; (2) the indictment insufficiently alleged in the bribery counts that Kovall was an agent of the Tribe; (3) the indictment failed to allege in the bribery counts that there was a quid pro quo; (4) the indictment failed to allege in its bribery counts that the transactions were not "bona fide"; (5) the indictment's bribery counts were multiplicitous; (6) the indictment's conspiracy count was duplicitous; and (7) the indictment's forfeiture allegations failed because the substantive offenses did as well.

The Court heard oral arguments on March 25, 2013. At the hearing, defendants added an argument that the indictment was flawed because it failed to allege that Heslop or Kovall committed official acts in the bribery counts. The Court denied defendants' motion to dismiss in its entirety. R. 115.

C. GOVERNMENT'S MOTION TO DISMISS

The government has filed a motion to dismiss Counts Ten through Seventeen (alleging that Heslop received bribes as an agent of the Tribe related to the construction contracts) and Counts Thirty-Six through Fifty-Two (money laundering against all defendants). The government has informed defendants that the government is not pursuing a theory at trial that Heslop acted as an agent of the

Tribe with respect to the construction contracts. The government further informed defendants that it is still pursuing allegations that Heslop acted as an agent of the Tribe with respect to the 47-acre purchase.

D. HESLOP'S SECOND MOTION TO DISMISS

On January 6, 2014 (before the government moved to dismiss certain charges), Heslop filed a second motion to dismiss (the "Second Motion to Dismiss"). In light of the government's decision to dismiss certain counts, some of defendant's arguments are moot.[2] The remaining issues are: (1) whether Counts One and Eighteen through Twenty-Four, which are the conspiracy to commit bribery and the bribery counts against Heslop related to the construction contracts, should be dismissed because those transactions were not the Tribe's transactions; (2) whether Count Thirty-Five, which alleges that Heslop received a bribe with respect to the purchase of the 47-acres, should be dismissed because it insufficiently alleges that Heslop influenced the Tribe or was an agent of the Tribe with respect to that transaction.

II.

Legal Standards

As the Court noted in its prior Order, the Sixth Amendment provides that a defendant has the right "to be informed of the

[2] The moot issues raised in Heslop's Second Motion to Dimiss are: (a) whether, as alleged in Counts Ten through Seventeen, Heslop was an agent of the Tribe with respect to the construction contracts; and (b) whether the money laundering counts failed to state a federal offense. Because the government has filed a motion to dismiss these counts, the Court need not decide whether the indictment was sufficient as to these allegations (although the Court previously found that the indictment had sufficiently pled these charges).

nature and cause of the accusation" against him. R. 115 at 2 (quoting U.S. Const. Amend. VI). The accusation against defendants comes in the form of an indictment, which "must be a plain, concise and definite written statement of the essential facts constituting the offense charged." Fed. R. Crim. P. 7(c)(1). An indictment that "sets forth the elements of the charged offense[s] so as to ensure the right of the defendant not to be placed in double jeopardy and to be informed of the offense charged" is sufficient. United States v. Woodruff, 50 F.3d 673, 676 (9th Cir. 1995).

III.

ARGUMENT

A. DEFENDANT'S MOTION SHOULD BE DENIED AS AN IMPROPER MOTION TO RECONSIDER

Heslop's Second Motion to Dismiss fails for at least four reasons: (1) it does not and cannot meet the limited standards of a motion to reconsider; (2) the motion improperly goes beyond the four corners of the indictment in an effort to attack the sufficiency of the allegations; (3) the allegations in the indictment are sufficient; and (4) it violates Rule 12(b) by asking the Court to find facts of the general issue that are reserved for a jury.

Heslop's Second Motion to Dismiss is nothing more than an attempt to have the Court revisit its prior ruling that the indictment adequately alleged the crimes against Heslop and his codefendants.

Pursuant to Local Rule 7-18, a motion for reconsideration can only be made in limited circumstances.[3] The movant must show:

> (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision; (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

Heslop does not discuss Local Rule 7-18 let alone explain how his Second Motion to Dismiss meets the standards of Local Rule 7-18. As addressed below, the facts are the same because, just as before, the Court can only look at the four corners of the indictment on Heslop's motion to dismiss. Further, Heslop cannot contend that any evidence he raises now was not and could not have been known to him with the exercise of reasonable diligence. Indeed, Heslop cannot claim that his recent switch in attorneys (his third set) constitutes a reason for the Court to reconsider its ruling that the indictment is sufficiently pled. "Holding to the contrary would allow for motions for reconsideration whenever counsel change and would result in a loss of judicial economy." Pulido-Estrada, 2013 WL 1498888 at *3. Because he cannot meet these standards, and

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[3] Local Rule 7-18 applies equally to criminal cases as it does to civil cases. See, e.g., United States v. Flores, 2013 WL 4832709 (C.D. Cal. 2013) (applying Local Rule 7-18 to attempt to reconsider sentence imposed); United States v. Herrera, No. CR 02-00531-RSWL-1, 2013 WL 4012625 (C.D. Cal. Aug. 2, 2013) (motion to dismiss based on jurisdictional challenge treated as motion to reconsider prior ruling); United States v. Pulido-Estrada, No. CR 12-00032-DDP, 2013 WL 1498888 (C.D. Cal. April 11, 2013); United States v. Mendez, No. CR-07-00011-MMM, 2008 WL 2561962, at *2 (C.D. Cal. June 25, 2008) (Local Rule 7-18 is applicable to criminal cases).

indeed does not even try to meet them, Heslop's Second Motion to Dismiss should be denied.

B. HESLOP IMPROPERLY ASKS THIS COURT TO LOOK OUTSIDE OF THE INDICTMENT IN CONSIDERING HIS ARGUMENTS

In both of his arguments -- that the transactions were not those of the Tribe and that Heslop neither influenced nor was an agent of the Tribe -- Heslop attempts to make his arguments look fresh by referencing documents outside of the indictment. But this is improper. "In ruling on a pre-trial motion to dismiss an indictment for failure to state an offense, the district court is bound by the four corners of the indictment." United States v. Boren, 278 F.3d 911, 914 (9th Cir. 2002) (reversing district court decision to dismiss indictment after evidentiary hearing). "The indictment either states an offense or it doesn't. There is no reason to conduct an evidentiary hearing." Id.

At this stage, the court must accept the truth of the allegations in the indictment in analyzing whether a cognizable offense has been charged. United States v. Jensen, 93 F.3d 667, 669 (9th Cir. 1996); see also United States v. Sampson, 371 U.S. 75, 78-79 (1962) ("Of course, none of these charges have been established by evidence, but at this stage of the proceedings the indictment must be tested by its sufficiency to charge an offense."). Accordingly, "[a] defendant may not properly challenge an indictment, sufficient on its face, on the ground that the allegations are not supported by adequate evidence." Jenson, 93 F.3d at 669 (quoting United States v. Mann, 517 F.2d 259, 267 (5th Cir. 1975)).

In essence, Heslop is asking the Court to grant summary judgment, which of course is not available to criminal defendants. "A motion to dismiss the indictment cannot be used as a device for a summary trial of the evidence ... The Court should not consider evidence not appearing on the face of the indictment." Jensen, 93 F.3d at 669 (quoting United States v. Marra, 481 F.2d 1196, 1199-1200 (6th Cir.1973)).

The cases defendant relies upon do not support of his position. In United States v. Pirro, 212 F.3d 86, 92 (2000), the court looked only at the allegations contained in the indictment -- and no extrinsic evidence -- in determining that it had omitted an essential element of the charge. In United States v. Jenkins, 490 F.2d 868, 871 (2d Cir. 1973), the district court dismissed the indictment after hearing facts during a bench trial. The appellate court merely found, unsurprisingly, that jeopardy had attached and that the defendant could not be re-tried.

Even if it were proper to look at evidence outside of the indictment, defendant does not explain how there are new facts that he was unaware of or could not become aware of prior to his first motion to dismiss. For these reasons, the Court should ignore Heslop's factual assertions in considering the Second Motion to Dismiss.

C. THE INDICTMENT PROPERLY ALLEGES THAT THESE WERE TRANSACTIONS OF THE TRIBE; IT IS NOW FOR A JURY TO DECIDE

Heslop argues that the construction-related contracts and the purchase of the 47-acres were not transactions of the Tribe. Heslop essentially argues that evidence outside of the indictment support his contention that the transactions were with distinct legal

entities and not with the Tribe. This should be rejected for several reasons.

First, the four corners of the indictment sufficiency allege that these were transactions of the Tribe. The indictment alleges the following:

Construction Contracts

- The Tribe owned Twenty-Nine Palms Enterprises Corp. (Indictment ¶ 2.)
- The Tribe operated the Spotlight 29 Casino through Twenty-Nine Palms Enterprises Corp. (Id.)
- Kovall advised the Tribe's council to enter into contracts with Bardos. (Id. at ¶¶ 3, 10(d).)
- Kovall persuaded the Tribe to have Bardos act as the Tribe's "owner's representative," (id. at ¶ 3), construct a temporary parking lot and access road, (id. at ¶ 11(4)), clear an 80-acre parcel of land as a fire abatement measure, (id. at ¶ 11(8)), perform oversight of the construction of a co-generation power plant, (id. at ¶ 11(12)), build a shell for the power plant, (id. at ¶ 11(16)), conduct bathroom renovation work, and build a casino addition. (Id.)
- Heslop and Bardos corruptly paid Kovall, through Shambaugh, to influence and reward him in connection with transactions of the Tribe, namely, the awarding of the Tribe's construction-related contracts. (Id. at ¶¶ 5, 14, 18.)

47-Acres

- On the advice of KOVALL, the Tribe created Echo Trail Holdings, a limited liability company. (Id. at ¶ 3.)
- The Tribe was the sole member of Echo Trail Holdings. (Id.)
- It was created to purchase real estate on behalf of the Tribe. (Id.)
- Heslop was the manager of Echo Trail Holdings. (Id. at ¶ 5.)
- The Tribe sought to purchase a 47-acre parcel of land on behalf of the Tribe and Echo Trail Holdings. ¶ 22(a).
- The Tribe engaged Kovall to negotiate the price of the land. (Id.)
- Heslop corruptly solicited, demanded, accepted, and agreed to accept $10,000 from Shambaugh intending to be influenced and rewarded in connection with a transaction and series of transactions of the Tribe, namely Echo Trail Holding's purchase of a 47-acre parcel of land for $31.7 million on behalf of the Tribe and the awarding of a commission payment to Shambaugh. (Id. at ¶ 27.)

These allegations, along with the context that the indictment tracks the statutory language of the violations, are more than sufficient to meet the elements of the offense. The indictment clearly alleges that both the construction contracts and the purchase of the 47-acres were transactions of the Tribe.

Second, the Court should not consider the extrinsic evidence on this issue because it is for a jury to decide whether these were

transactions of the Tribe.[4] Jensen, 93 F.3d at 669 (finding that the district court committed error by considering documents provided by the defendants in connection with their motion to dismiss); United States v. Delaughter, 2009 WL 1424422, *2 (N.D. Miss. 2009)(refusing to consider a challenge to the sufficiency of the evidence in a 666 bribery case because "the government is entitled to put on its proof at trial").

Defendant points out that the court in United States v. Dransfield, 913 F. Supp. 702, 707 (E.D.N.Y. 1996), held an evidentiary hearing to determine whether it had jurisdiction in a Section 666 case. Based on Ninth Circuit precedent, the Court should not follow Dransfield and hold an evidentiary hearing. See United States v. Nukida, 8 F.3d 665, 669 (9th Cir. 1993) (recognizing that a "court may make preliminary findings of fact necessary to decide legal questions" presented by a motion, but "when a statutory offense contains a jurisdictional element, the issue should be determined at trial").

Nukida, like defendant's motion, involved a claim that the government lacked subject-matter jurisdiction because the government had yet to (and, according to defendant, would be unable to) satisfy

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[4] See 18 U.S.C. § 666(a)(1)(B); United States v. Cicco, 938 F.2d 441, 444 (3d Cir. 1991) (government must show defendant intended to be "influenced in connection with any transaction of a local government or organization receiving at least $10,000 in federal funds"); Fed. Jury Instr. 5th Cir. 2.37B (government must prove defendant intended "to be influenced in connection with any transaction of such Indian tribal government"); Fed. Crim. Jury Instr. 7th Cir. 666(a)(1)(B)[1] (2013 ed.)("defendant . . . inten[ded] to be influenced or rewarded in connection with some transaction of the [tribe]"); Model Crim. Jury Instr. 8th Cir. 6.18.666B (2011)(payments must be "in connection with a transaction"); Fed. Crim. Jury Instr. 11th Cir 24.2 (2013 ed.) ("defendant intended to be influenced or rewarded for a transaction or series of transactions of the [tribe]").

the jurisdictional language of the charged statute. The statutory offense at issue required proof that the defendant tampered with consumer products affecting commerce. The court in Nukida explained that the jurisdictional element could be satisfied by proof that the medications at issue were "in commerce" when the tampering occurred or that the tampering had an "actual economic impact on interstate commerce." Id. at 670-71. It ruled that the question was one of "fact" intertwined with the "general issue," to be determined by the jury, and therefore it was not appropriate for resolution on a pre-trial motion to dismiss. Id. at 670-72. The "jurisdictional facts" at issue in Heslop's Second Motion to Dismiss, like in Nukida, are intertwined with the "general issue" of guilt or innocence that must be determined by the jury.

Moreover, the issue in Dransfield – whether or not the entity received in excess of $10,000 in federal funding (it either did or did not) – is far different than a factual determination of whether the transactions at issue can be attributed to the Tribe. Further, Dransfield is ultimately not helpful to defendant in that the court held that an organization's indirect receipt in federal funding can give rise to jurisdiction under Section 666. 913 F. Supp. at 708-09.

Regardless, the Court should not conduct its own fact-finding on the issue, as shown by United States v. Shortt Accountancy Corp, 785 F.2d 1448 (9th Cir. 1986), one of the cases that Heslop relies upon. In Shortt, the court found that while "a district court may make preliminary findings of fact necessary to decide the questions of law presented by pre-trial motions," it may not do so if this process would "invade the province of the ultimate finder of fact."

Id. at 1452. The "unavailability of Rule 12 in determination of general issues of guilt or innocence ... helps ensure that the respective provinces of the judge and jury are respected...." Nukida, 8 F.3d at 670. Because the issue is not "entirely segregable" from the evidence to be presented at trial, the Court should not make any factual inquiries on the issue. Shortt, 785 F.2d at 1452. As stated above, there is no such thing as summary judgment in criminal cases.

Third, while the Court should not consider the extrinsic evidence supplied by defendant, this evidence does nothing to show that the indictment's allegations are insufficient. Defendant argues that the Tribe was not engaged in the transactions at issue in the indictment because corporations wholly owned by the Tribe entered into those transactions. Defendant claims that because Twenty-Nine Palms Enterprises Corp. issued checks to Bardos's company, the transaction could only have been that of Twenty-Nine Palms Enterprises Corp and not that of the Tribe. Similarly, defendant argues that the purchaser of the 47-acres was Echo Trail Holdings. That the transactions may be viewed as transactions of the Tribe's subsidiary companies does not exclude the possibility that they were also those of the Tribe. In other words, the transactions can be both the Tribe's transactions and the subsidiary companies' transactions. This is the same reasoning as the Court used to find that Heslop can both be an agent of Echo Trail Holdings and of the Tribe. R. 115 at 5 (Heslop's authority to act as manager of Echo Trail Holdings "may, in fact, make him an agent of the Tribe"); see also United States v. Agostino, 132 F.3d 1183, 1194 (7th Cir. 1997) (finding that defendant could be an employee of the

Toll Road Division as well as the Department of Transportation); United States v. Moeller, 987 F.2d 1134 (5th Cir. 1993) (finding that employees of Texas Federal Inspection Service were also agents of Texas Department of Agriculture).

Fourth, this is a factual issue disputed by the parties. The government believes that facts introduced at trial will establish that these are properly viewed as transactions of the Tribe.[5]

Fifth, Heslop points to no material change in law and, in fact, relies on a case, United States v. Wyncoop, 11 F.3d 119, 121 (9th Cir. 1993), that he previously relied upon, the government distinguished, and the Court considered in its order. (See R. 160 at 9; R. 92 at 11-12; R. 98 at 10; R. 115 at 5.) In Wyncoop, the facts (significantly, these facts were established at trial) showed that the college "receive[d] no federal funds" and that jurisdiction rested solely on students' use of bank loans guaranteed by the federal government. That is a far different situation than here, where the Tribe itself received in excess of $10,000 and where the

[5] For example, with respect to the construction contracts, the government believes that the evidence will show that: (a) the Tribe itself engaged Bardos to act as its owner's representative; (b) Bardos wrote at least one proposal to the Tribe to hire him to oversee the construction of the co-generation plant; (c) the Tribe's council voted to award the construction contracts to Bardos; (d) Bardos has admitted to being employed by the tribe, (e) the Tribe itself owned the land on which the improvements were being made; (f) the Tribe was the sole owner of Twenty-Nine Palms Enterprises Corp.; and (g) the profits from Twenty-Nine Palms Enterprises Corp. flowed to the Tribe.

Regarding the 47-acres, the government believes that the evidence will show that: (a) the Tribe created Echo Trail Holdings for the sole purpose of purchasing land for the Tribe; (b) the Tribe was the sole owner of Echo Trail Holdings; (c) the 47-acres was always intended to be Tribal land (and it is today); (d) the Tribe's council voted to authorize Heslop to pay $31.7 million for the land; (e) the Tribe obtained financing to purchase the property; and (f) the purchase affected the amount of money the Tribe received that year.

transactions were authorized by the Tribe and materially affected the Tribe.

D. THE INDICTMENT PROPERLY ALLEGES THAT HESLOP WAS AN AGENT OF THE TRIBE AND NEED NOT ALLEGE THAT HESLOP INFLUENCED THE TRIBE; IT IS NOW FOR A JURY TO DECIDE WHETHER HE WAS AN AGENT

Heslop argues that the indictment is defective in its Section 666 allegations as to Heslop's agency for two reasons. First, Heslop contends that the indictment does not allege that he "influenced" the Tribe with respect to the hiring of Shambaugh as its real estate agent. (R. 160 at 18.) Second, Heslop claims that the indictment fails to allege that he was an agent of the Tribe. (Id.) Both arguments fail at the outset because of the law of the case doctrine. Under this doctrine, "a court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case." United States v. Alexander, 106 F.3d 874, 876 (9th Cir. 1997) (citing Thomas v. Bible, 983 F.2d 152, 154 (9th Cir.1993)).

As to the "influence" issue, this is nothing more than an argument that the indictment does not allege that Heslop performed any official acts.[6] Heslop has raised this issue before. In its

[6] Defendant confuses the statute's use of the word "influence." Section 666(a)(1)(B) prohibits an agent of a government from "corruptly solicit[ing] or demand[ing] . . . anything of value . . . intending to be influenced or rewarded in connection with any . . . transaction" of that government. The statute does not state that the agent must influence the process, only that he himself intended to be influenced. In other words, the statute's use of the word goes to defendant's state of mind: whether he intended to be influenced. The issue is not whether he exerted influence over the transaction. Further undermining Heslop's argument that the indictment must allege his influence is the statute's use of the conjunctive. Defendant is guilty of the crime even if he did not intend to be influenced so long as he intended to be rewarded.

prior ruling, the Court noted that counsel argued that the indictment needed to allege a link between payments and "official acts." (R. 115 at 9.) The Court rejected this argument, stating that "Section 666 does not require as much. Indeed, Section 666 does not even include the words 'official act.'" (Id.) Heslop has not explained why the Court should reconsider its prior ruling on this issue. Indeed, it should not reconsider the ruling because defendant has run afoul of Local Rule 7-18, which states that "[n]o motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion."[7]

Defendant's contention that he was not an agent of the Tribe similarly fails. Whether Heslop was an agent of the Tribe is a question of fact for the jury. Harris v. Itzhaki, 183 F.3d 1043 (9th Cir. 1999). Therefore, the Court should once again only look at the four corners of the indictment.

With respect to the indictment's agency allegations, the Court has already found them to be sufficient. As the Court found, "while Dr. Heslop's title as 'manager' of Echo Trail Holdings does not automatically make him an agent of the Tribe, his alleged authority to act in that role – and on behalf of the Tribe – may, in fact, make him an agent of the Tribe. (R. 115 at 5.) The Court held that "[p]ractically speaking, the Indictment alleges that Dr. Heslop was the Tribe's agent with respect to its purchase of real estate –

[7] Further, Heslop claims that the transaction at issue is only the payment of a real estate commission to Shambaugh. The indictment clearly alleges that the transaction is also the "purchase of a 47-acre parcel of land for $31.7 million on behalf of the Tribe." (Indictment ¶ 29.) Heslop does not contend that he had no influence over this purchase.

irrespective of the allegation that this agency relationship arose through his role as manager of Echo Trail Holdings. In this regard, the allegations in the Indictment are sufficient." (Id.) Again, the law of the case doctrine and Local Rule 7-18 bar reconsideration of the issue.

The only "new" fact that defendant raises is that "the Tribe did not pay Heslop," but Echo Trail Holdings did. (R. 160 at 22.) This, however, was just one of several factors considered by the Court. Defendant does not contest the Court's finding that the indictment was sufficient by alleging that:

> Dr. Heslop was authorized to manage assets, borrow money, sign contracts, and employee individuals (Indictment ¶ 5). Although the Indictment alleges that this authority arose with respect to "the company" pursuant to the Operating Agreement of Echo Trail Holdings, the Tribe was the sole member of the company, which was created to purchase real estate on behalf of the Tribe. (Indictment ¶¶ 3, 5).

R. 115 at 5. Further, defendant does not explain how this fact was not and could not have been known to him before the Court's earlier decision.

IV.

CONCLUSION

For the reasons stated herein, defendant Heslop's Second Motion to Dismiss should be denied.