IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

OZETTA HARDY, Plaintiff, v. IGT, et al., Defendants.	CIVIL ACTION NO. 2:10-cv-901-WKW-SRW

DEFENDANT MULTIMEDIA GAMES, INC.'S
BRIEF IN SUPPORT OF MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED CLASS ACTION COMPLAINT

Defendant Multimedia Games, Inc. ("Multimedia"), pursuant to Federal Rules of Civil Procedure 12(b)(6), 12(b)(7), and 19, moves this Court to dismiss the complaint for failure to state a claim upon which relief can be granted, for failure to join a party under Federal Rule of Civil Procedure 19, and/or because the claims are preempted by federal statute.

INTRODUCTION

The plaintiff and the putative class members she purports to represent (hereinafter "Plaintiffs") are repeat patrons of casinos operated by the Poarch Band of Creek Indians (the "PCI") in Escambia, Montgomery, and Elmore Counties, where they voluntarily wagered on electronic bingo machines. (Compl. 2.) In Plaintiffs' First Amended Complaint ("complaint"), however, Plaintiffs contend

that electronic bingo, as played at the PCI facilities, is illegal under both Alabama law and the Indian Gaming Regulatory Act ("IGRA"). Notwithstanding their individual decisions to put their own money at risk and play "illegal" electronic bingo, Plaintiffs contend that their patronage at PCI casinos entitles them to recover the money they allegedly lost playing electronic bingo. Plaintiffs try to accomplish this result by claiming that Multimedia and the other defendants are due to pay Plaintiffs money under Alabama Code § 8-1-150.

Plaintiffs' complaint is due to be dismissed, however, because (i) Plaintiffs do not, and cannot, allege that any contract exists between Plaintiffs and Multimedia – a prerequisite for recovery under Ala. Code § 8-1-150; (ii) Plaintiffs failed to join a necessary and indispensible party – the PCI – to this action; and (iii) Plaintiffs' claims are preempted by IGRA.

ARGUMENT

I. PLAINTIFFS HAVE NO CLAIMS AGAINST MULTIMEDIA UNDER ALA. CODE § 8-1-150 BECAUSE THEY HAVE NO CONTRACT WITH MULTIMEDIA.

The sole cause of action asserted by Plaintiffs is based on Alabama Code § 8-1-150. Plaintiffs seek to recover "all monies they lost playing the electronic bingo machines" at the facilities operated by the Poarch Band of Creek Indians. (Compl. ¶ 36.) Plaintiffs' claim fails, however, because they have no contract with Multimedia, which is a prerequisite to recovery under Ala. Code § 8-1-150.

A. The Statutory Construction of Ala. Code § 8-1-150 Makes Clear That a Contract is a Prerequisite to Recovery Under the Statute.

Alabama Code § 8-1-150 appears in Chapter 1, entitled "Contracts," of Title 8, entitled "Commercial Law and Consumer Protection," of the Alabama Code. The heading of the chapter intimates that Section 8-1-150 pertains to contracts. *See, e.g.*, *Jordan v. Reliable Life Ins. Co.*, 589 So. 2d 699, 702 (Ala. 1991) ("[T]he title of an act may serve as an aid to statutory interpretation."). Subsection (a), upon which Plaintiffs' claim is based, states as follows:

> All contracts founded in whole or in part on a gambling consideration are void. Any person who has paid any money or delivered any thing of value lost upon any game or wager may recover such money, thing, or its value by an action commenced within six months from the time of such payment or delivery.

Subsection (a) contains two sentences. The first sentence provides that gambling contracts are void. The second sentence then creates a cause of action through which one who has been damaged as a result of a void gambling contract can be made whole. Under Alabama law, this Court "must consider the statute as a whole and must construe the statute reasonably so as to harmonize the provisions of the statute." *McRae v. Security Pacific Housing Services, Inc.*, 628 So. 2d 429, 432 (Ala. 1993). When read as a whole, it is clear that the remedy of the second sentence is to be pursued against – and only against – the other party to the illegal gambling contract made void by the first sentence. To read the second sentence

without regard to the first would create an abstract cause of action, allowing recovery against an entity that was not a party to the underlying illegal gambling contract. Such a construction would be unworkable and unjust and cannot be the intent of the legislature. *Karrh v. Board of Control of Employees Retirement Sys.*, 679 So. 2d 669, 671 (Ala. 1996) ("If a statute is susceptible of two constructions, one of which is workable and fair and the other unworkable and unjust, the court will assume that the legislature intended that which is workable and fair.").

B. The Complaint Alleges No Contract Between Plaintiffs and Multimedia.

The Complaint fails to allege the existence of any contract between Plaintiffs and Multimedia. Thus, Plaintiffs have not stated a claim for relief under Ala. Code § 8-1-150(a). *See Osborn v. Pointer*, 41 Ala. App. 271 (Ala. Ct. App. 1961) ("The burden is on one asserting that a contract was violative of the statute making void contracts based on gaming consideration to establish such defense."); *Macon County Greyhound Park, Inc. v. Knowles*, No. 1080466, 2009 Ala. LEXIS 273, *16 (Nov. 20, 2009) (citing Ala. Code § 8-1-150 in discussing the impediments to enforcement of gambling contracts in Alabama); *Alabama Bank & Trust Co. v. Jones*, 213 Ala. 398 (Ala. 1925) ("Under our statute all contracts founded in whole or in part on a gambling consideration are void.) (emphasis added).

Plaintiffs make the conclusory, and false, allegation that "Defendants, through their operation of the electronic bingo machines, engage in gambling with

customers at the Poarch Band Indian Casinos in the State of Alabama," (Compl. ¶ 18), but this assertion does not require the Court to accept at the pleading stage that a contract exists between Plaintiffs, who allege that they are casino patrons, and a machine manufacturer, such as Multimedia. *See, e.g.*, *Iqbal*, 129 S. Ct. at 1949 ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." (emphasis added)). To the contrary, the Alabama Supreme Court has recognized a gaming contract to exist only as between the patron and the casino. *Knowles*, 2009 Ala. LEXIS 273 at *19 ("the rules of the wager provide the terms necessary to form an enforceable contract between Victoryland and its patrons;" "the general rule is that casino-style wagering is essentially an adhesion contract between the casino and its patrons . . . .") (emphasis added) (citations and quotations omitted).

C. Alabama Law Recognizes That a Wagering Contract Is Between Patron and Casino, Not Patron and Manufacturer.

The Alabama Supreme Court's recognition of any contractual relationship as being between the patron and the casino only is in accord with other authorities relied on by the court in *Knowles*. *See* Griggs Smith & Jason Nabors, *Beating the House*, 40 Trial 42 (June 2004) ("Jackpot disputes involve contract law. Gambling necessarily involves a contractual agreement, which includes offer, acceptance, and consideration. For example, with a slot machine, the patron accepts the

casino's offer [not the slot machine manufacturer's offer] to gamble by inserting a coin into the machine. The coin is the consideration. The casino's obligation [not the slot machine manufacturer's obligation] to pay is contingent on the reel combination at the end of the game.") (emphasis and bracketed material added); Anthony Cabot & Robert Hannum, *Advantage Play and Commercial Casinos*, 74 Miss. L.J. 681, 683 (2005) ("In the context of casino play, the casino promises to pay the patron a predetermined sum if certain conditions are met. In turn, the patron agrees to place the sum of the wager at risk if those certain conditions are not met.") (emphasis added); *Id.* at 725 ("The patron is giving up a certain amount of money for the chance to win a prize. Therefore, the consideration constitutes this exchange between the casino and the patron.") (emphasis added)).

Machine manufacturers, such as Multimedia, do not enter into any contract with the patrons, and Plaintiffs do not plead any factual content to the contrary. Machine manufacturers simply sell or lease their machines to operators such as the PCI to facilitate the operators' contracts with patrons. Plaintiffs acknowledge this arrangement between the defendants and the PCI in their Complaint – "It is the customary arrangement within the gaming industry for such vendors to place the 'electronic bingo' machines in casinos . . . this was the arrangement between the Poarch Band Indian Casinos and the Vendor Defendants . . . ." (Compl. ¶ 18) (emphasis added). *See also* (Compl. ¶ 17) ("The Poarch Band Indians operate . . .

electronic bingo gaming facilities . . . ."). Because Multimedia was not a party to any contract with the patrons, including Plaintiffs, Plaintiffs have no claim against Multimedia under Ala. Code § 8-1-150.

II. THE COMPLAINT SHOULD BE DISMISSED PURSUANT TO RULE 19.

The application of Rule 19, Fed. R. Civ. P., involves a two-part test for determining whether a case should be dismissed because of the absence of a party necessary for adjudication. *Laker Airways v. British Airways*, 182 F.3d 843, 847 (11th Cir. 1999). "First, the court must determine whether the [party] in question should be joined. *Id.*; Fed. R. Civ. P. 19(a). If the person should be joined, but cannot for some reason be joined, the court must analyze the factors outlined in Rule 19(b) to determine whether "in equity and good conscience the action should proceed among the parties before it, or should be dismissed." Fed. R. Civ. P. 19(b); *see also Laker Airways*, 182 F.3d at 847 (applying the two-part analysis set out in Rule 19).

"[F]ailure to join a party under Rule 19" of the Federal Rules of Civil Procedure is properly raised in a motion to dismiss. Fed. R. Civ. P. 12(b)(7). For the reasons that follow, the absence of the PCI from this action compels the dismissal of the complaint under Rule 19.

A. The Poarch Band of Creek Indians is a Required Party Under Rule 19(a)(1).

The PCI is a "required" party under Fed. R. Civ. P. 19(a), because complete relief cannot be accorded Plaintiffs without the PCI, Fed. R. Civ. P. 19(a)(1), and nonjoinder of the PCI would impair its protectable interest, Fed. R. Civ. P. 19(a)(1)(B).

1. Rule 19(a)(1)(A): This Court Cannot Accord Complete Relief.

Under Rule 19(a)(1)(A), Fed. R. Civ. P., "a Court must determine if complete relief may be accorded to the parties already named in an action if the absent person is not joined." *In re Crutchfield*, 2004 Bankr. LEXIS 1139, at *8 (Bankr. S.D. Ala. Jan. 28, 2004); *Ohio Nat'l Life Assur. Corp. v. Langkau*, 353 Fed. Appx. 244, 251 (11th Cir. 2009).

In the complaint, Plaintiffs seek "to recover from the Defendants all monies they lost playing the electric-bingo machines within the six months preceding the commencement of this action." (Compl., ¶ 33) (emphasis added). Plaintiffs allege that the Defendants received only "a portion and/or percentage of the money lost playing the electric-bingo machines by customers of the Casinos, including [Plaintiffs]." (Compl., ¶ 18) (emphasis added). Plaintiffs, in other words, allege that Defendants are jointly liable for all of their losses even though the Defendants purportedly received, if anything, only "a portion and/or percentage of the money lost," and even though Plaintiffs failed to join the only party with which they had a

contract – the PCI (Section I.B., *supra*) – and which presumably has the *remaining* portion of money lost.

The most fundamental problem with Plaintiffs' claim, however, is that Plaintiffs cannot recover their money jointly from multiple defendants. *See Motlow v. Johnson*, 39 So. 710, 711 (Ala. 1905) ("the plaintiff was not entitled to maintain the action against the defendants jointly"); *see also* Memorandum Op. at 23, *Wright v. Dept. of Alabama Veterans of Foreign Wars*, CV-07-S-2071-NE (N.D. Ala. March 24, 2010) (citing *Motlow* and holding "[t]here is no joint and several liability" under § 8-1-150). The Alabama Supreme Court in *Motlow* stated that the purpose of Ala. Code § 8-1-150 was to "put the parties in *status quo* as to all money won or lost." *Motlow*, 39 So. at 711 (discussing the predecessor to Ala. Code § 8-1-150). The court accordingly stated "that to hold that plaintiff may recover of the defendants jointly the whole amount lost would be allowing the plaintiff to recover of Motlow money that never was received by him, and such a judgment would not place or leave Motlow in *statu quo*." *Id.*

Thus, even taking Plaintiffs' allegations as true (*i.e.*, that Defendants "collected" a "portion" of Plaintiffs' losses), Plaintiffs cannot recover from the named Defendants, including Multimedia, "all monies they lost playing the electric-bingo machines within the six months preceding the commencement of this action." This is particularly true given that the PCI is the only party against

which Plaintiffs can maintain a claim under Ala. Code § 8-1-150. Accordingly, complete relief (*i.e.*, recovery of "all monies lost playing electric-bingo machines") cannot be accorded to Plaintiffs if the PCI is not joined as a defendant in this action. Fed. R. Civ. P. 19(a)(1)(A). The PCI clearly is a "required" party.

2. Rule 19(a)(1)(B): Nonjoinder of the PCI Would Impair Its Protectable Interest.

Rule 19(a)(1)(B), Fed. R. Civ. P., "mandates joinder, if feasible, of an absentee who claims an interest relating to the subject of the action if that absentee is so situated that nonjoinder will threaten harm either to the absentee or to an extant party." 4 *Moore's Federal Practice*, § 19.03[3][a] (Matthew Bender 3d ed.) (internal quotations and emphasis omitted). The absentee's "interest must be legally protected, not merely a financial interest or interest of convenience." *Id*. at § 19.03[3][b] (internal quotations omitted). "[T]he 'impair or impede' clause deals with the joinder to avoid impairment of the absentee's interest, while the 'multiple liability' clause addresses joinder to avoid putting an extant party at risk of inconsistent obligations or multiple liability." *Id*. at 19.03[4][a].

The PCI has a significant, protected interest relating to the subject of the instant litigation, namely its contracts with the Defendants regarding the use and operation of the electronic bingo machines at PCI's facilities. As evident from the complaint, in order for Plaintiffs to succeed on their claims against the Defendants, such as Multimedia, the Court would have to make a finding that "the electric-

bingo machines are illegal gambling devices under [Alabama law] . . . [and] violate the restrictions of the Indian Gaming Regulatory Act ("IGRA") . . . ." (Compl., ¶ 20). Consequently, a judgment in Plaintiffs' favor necessarily would affect and impair, as a practical matter, the interests of the PCI and the Defendants, as parties to the aforementioned contracts. *See United States ex. rel Hall v. Tribal Development Corp.*, 100 F.3d 476, 478-79 (7th Cir. 1996) (where plaintiffs in *qui tam* action sought rescission of contracts between merchants who supplied Indian tribes with goods and services for the tribes' gaming operations and a refund of monies paid thereunder based on allegation that contracts violated IGRA, the court found that the tribe satisfied the Rule 19(a)(1)(B)(i) criteria because declaration of validity of the contracts affected as a practical matter the interests of both parties to the contract); *Wilbur v. Locke*, 423 F.3d 1101, 1112 (9th Cir. 2005) ("Here, the Wilburs must establish the illegality of the Compact in order to succeed on the merits of any claims. Because the Tribe has an interest in retaining the rights granted by the Compact, the requirement of a "legally protected" interest is satisfied.") (citing *Dawavendewa v. Salt River Project Agric. Improvement & Power Dist.*, 276 F.3d 1150, 1156-57 (9th Cir. 2002)).

Although Plaintiffs here do not specifically seek a declaratory judgment regarding the legality of the electronic-bingo machines, a judgment in their favor, which would require such a determination, would have the practical effect of

rendering the aforementioned contracts between the PCI and the Defendants illegal and void, thus impairing the PCI's interest in the contracts and effectively shutting down the PCI's bingo facilities in Alabama. *See American Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1204 (9th Cir. 2002). In *Hull*, racetrack owners sued the governor over his negotiating new gaming compacts with Indian tribes and renewing existing ones. 305 F.3d at 1018. After denying the governor's motion to dismiss on the grounds that the tribes were indispensable parties, the district court granted the plaintiff's requested relief. *Id*. On appeal, the Ninth Circuit reversed and held that the tribes were indispensable parties. *Id*. The Ninth Circuit held that the tribes had a substantial, legally protected interest arising from the terms in the bargained contracts, and the tribes were entitled to be heard on the issue. 305 F.3d at 1023-24. The *Hull* court recognized that, while the tribes were not bound by the ruling under *res judicata* or collateral estoppel, the lack of preclusive effect did not by itself excuse the tribes' absence as necessary parties. 305 F.3d at 1024. The tribes' interests could, nevertheless, be affected as a practical matter by the judgment, because the sovereign power of the tribes to negotiate compacts would be impaired by the judgment and enforcement authorities may be compelled to act against the tribes. *Id.* The same reasoning should apply here, compelling the conclusion that the PCI has an interest that almost certainly would be impaired by an adverse judgment in this action.

In addition, a judgment in this action against the Defendants, in the absence of the PCI, could leave the Defendants subject to a substantial risk of incurring inconsistent obligations relating to their contracts with the PCI. *See* Fed. R. Civ. P. 19(a)(1)(B)(ii). On the one hand, the Defendants would subject themselves to future liability to Plaintiffs by continuing to perform their obligations under their contracts with the PCI, while on the other, the Defendants would subject themselves to liability to the PCI (which would not be bound by the Court's judgment) by failing to perform their obligations under those same contracts.

Based on the foregoing, the PCI is a "required party" under Rule 19(a).

B. Joinder of the Poarch Band of Creek Indians Is Not Feasible Under Rule 19(b).

After applying the factors of Rule 19(a), the court must determine whether a party who is required to be joined if feasible cannot be joined. *Laker Airways*, 182 F.3d at 847; Fed. R. Civ. P. 19(b). The PCI cannot be joined in this action because of tribal sovereign immunity.

The PCI possesses tribal sovereign immunity (*i.e.*, "the common-law immunity from suit traditionally enjoyed by sovereign powers"), which "bars actions against tribes regardless of the relief sought." *Freemanville Water System, Inc. v. Poarch Band Indians*, 563 F.3d 1205, 1207-08 (11th Cir. 2009). By electing to engage in gaming under IGRA, the PCI has not waived its tribal sovereign immunity. *State of Florida v. Seminole Tribe of Florida*, 181 F.3d 1237,

1242-43 (11th Cir. 1999). Given that its tribal sovereign immunity has not been waived, the PCI cannot be joined as a party defendant in this action. *See, e.g.*, C*onfederated Tribes of the Chehalis Indian Reservation v. Lujan*, 928 F.2d 1496, 1499 (9th Cir. 1991) (while recognizing that a necessary, non-party will be joined as a party, the court found that the Quinault Nation could not be joined where it had not waived sovereign immunity); *Dawavendewa*, 276 F.3d at 1159.

C. This Action Should Not Proceed Without the Poarch Band of Creek Indians.

Finally, "[i]f, after applying the factors of Rule 19(a), the court finds that the party should be joined but cannot be…then the court must inquire whether, applying the factors enumerated in Rule 19(b), the litigation may continue." *Davis v. CDA, Inc.*, 2010 U.S. Dist. Lexis 11412, at *5 (M.D. Ala. Feb. 10, 2010) (Watkins, J) (citations and quotations omitted). Rule 19(b) provides:

> If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:
>
> (1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;
>
> (2) the extent to which any prejudice could be lessened or avoided by:
>
> (A) protective provisions in the judgment;
>
> (B) shaping the relief; or
>
> (C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

Fed. R. Civ. P. 19(b). "While some courts have held that sovereign immunity forecloses in favor of tribes the entire balancing process under Rule 19(b), [other courts] have continued to follow the four factor process even with immune tribes." *American Greyhound Racing, Inc*., 305 F.3d at 1025; *Republic of the Philippines*, 553 U.S. 851, 867 (2008) (following the four-factor process, but recognizing prior cases involving joinder and sovereign immunity that held "[a] case may not proceed when a required-entity sovereign is not amenable to suit. …[W]here sovereign immunity is asserted, and the claims of the sovereign are not frivolous, dismissal of the action must be ordered where there is potential for injury to the interests of the absent sovereign.") In any event, the four factors set out in Rule 19(b), addressed separately herein, weigh in favor of dismissal.

1. A Judgment Rendered in the PCI's Absence Might Prejudice the PCI or the Existing Parties.

The Rule 19(b)(1) factor involves the same considerations that were addressed in deciding whether the PCI is a "required party" under Rule 19(a)(1). *See United States ex. rel Hall v. Tribal Development Corp*., 100 F.3d at 479; *Dawavendewa*, 276 F.3d at 1162. As explained above, a judgment against the Defendants would effectively invalidate all contracts between the Defendants and

the PCI and would shut down gaming operations at the PCI's casinos. In addition, a judgment against the Defendants would subject the Defendants to inconsistent obligations regarding their respective contracts with the PCI. The prejudice to the PCI and Defendants in the event of a judgment against the Defendants in this action would be enormous. The Seventh Circuit has held that "[n]o procedural principle is more deeply imbedded in the common law than that, in an action to set aside a lease or contract, all parties who may be affected by the determination of the action are indispensible." *United States ex. rel Hall*, 100 F.3d at 479. As such, this factor weighs heavily in favor of dismissal.

2. Prejudice Cannot Be Lessened or Avoided.

There is no way for the Court to shape relief that would lessen the potential prejudice to the PCI, because a judgment in favor of Plaintiffs necessitates a finding that the contracts between the Defendants and the PCI violate Alabama law and IGRA. There is "no middle ground." *United States ex. rel Hall*, 100 F.3d at 480. This factor weighs in favor of dismissal.

3. Judgment Rendered in the PCI's Absence Would Be Inadequate.

As explained above, a judgment rendered in the PCI's absence would be inadequate because Plaintiffs seek to recover "all monies" lost playing electronic-bingo machines at the PCI's casinos from Defendants that received, if anything, only a portion of those monies. Alabama law makes clear that Plaintiffs cannot

recover more money from any particular Defendant than that particular Defendant received from Plaintiffs. *Motlow*, 39 So. at 711. Plaintiffs acknowledge in the complaint, however, that the PCI received money from the Plaintiffs and paid only a portion of that money to Defendants. Accordingly, this Court cannot accord Plaintiffs full relief even if the case is not dismissed.

4. Tribal Sovereign Immunity Overcomes the Lack of an Alternative Remedy.

There is admittedly no alternative remedy or forum for the claims of Plaintiffs. The PCI's interest in sovereign immunity, however, overcomes the lack of an alternative remedy or forum. *Republic of the Philippines*, 553 U.S. at 872 ("Dismissal under Rule 19(b) will mean, in some instances, that plaintiffs will be left without a forum for definitive resolution of their claims. But that result is contemplated under the doctrine of foreign sovereign immunity."); *American Greyhound Racing, Inc.*, 305 F.3d at 1025; *United States ex. rel Hall*, 100 F.3d at 480-81. Accordingly, this factor weighs in favor of dismissal.

Based on the foregoing, "in equity and good conscience," this action cannot proceed in the absence of the PCI, and, therefore, should be dismissed. Rule 19(b), Fed. R. Civ. P.

III. PLAINTIFFS' CLAIM IS PREEMPTED BY THE INDIAN GAMING REGULATORY ACT

IGRA, 25 U.S.C. §§ 2701-2721, is "a comprehensive statute governing the operation of gaming facilities on Indian lands." *Tamiami Partners, LTD. v. Miccosukee Tribe of Indians*, 63 F.3d 1030, 1032 (11th Cir. 1995). One of the purposes of the legislation was "to provide for extensive federal oversight of all but the most rudimentary forms of Indian gaming." *Id.* at 1033.

At least one federal court of appeal has held that IGRA completely preempts state laws affecting the regulation of Indian gaming. *See Gaming Corp. of Am. v. Dorsey & Whitney*, 88 F.3d 536, 544 (8th Cir. 1996) ("Examination of the text and structure of IGRA, its legislative history, and its jurisdictional framework likewise indicates that Congress intended it completely preempt state law. There is a comprehensive treatment of issues affecting the regulation of Indian gaming.").

Because Plaintiffs' claim based on Ala. Code § 8-1-150 requires this Court to make a determination regarding the legality of the Defendants' bingo machines and thus the permissibility of the PCI's bingo operations, Plaintiffs' claim necessarily attempts to regulate gaming activity on the PCI's tribal land. As a result, Plaintiff's claim is preempted by IGRA. *See Gaming Corp. of Am*, 88 F.3d at 550 ("Those causes of action which would interfere with the [Indian] nation's ability to govern gaming should fall within the scope of IGRA's preemption of state law."). Congress has instructed that, because IGRA preempts efforts to

regulate gaming activities on Indian lands, "Federal courts should not balance competing Federal, State, and tribal interests to determine the extent to which various gaming activities are allowed." *Fla v. Seminole Tribe*, 181 F.3d 1237, 1248, fn. 16 (quotations omitted).

Because Plaintiffs' claim is preempted by IGRA, Plaintiffs have not stated a cause of action upon which relief can be granted, and the complaint is due to be dismissed.

CONCLUSION

Based on the foregoing, Multimedia is entitled to a dismissal of the complaint for failure to state a claim against Multimedia upon which relief can be granted and for failure to join the PCI as a party under Rule 19, Fed. R. Civ. P. Accordingly, Multimedia's Motion to Dismiss should be granted.

Respectfully submitted this the 14th day of December, 2010.

/s J. Eric Getty
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following via CM/ECF on this the 14th day of December, 2010:

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