UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case No. 12-CV-22439-Cooke

MICCOSUKEE TRIBE OF INDIANS
OF FLORIDA, a sovereign nation and
Federally recognized Indian tribe,

Plaintiff,

vs.

BILLY CYPRESS, DEXTER WAYNE
LEHTINEN, ESQUIRE MORGAN STANLEY
SMITH BARNEY, JULIO MARTINEZ,
MIGUEL HERNANDEZ, GUY LEWIS,
ESQUIRE, MICHAEL TEIN, ESQUIRE
AND LEWIS TEIN, PL, A PROFESSIONAL
ASSOCIATION.

Defendants.
_____/

MICCOSUKEE TRIBE'S RESPONSE IN OPPOSITION TO DEFENDANT DEXTER LEHTINEN'S MOTION TO DISMISS SECOND AMENDED COMPLAINT

COMES NOW Plaintiff, the Miccosukee Tribe of Indians of Florida (hereinafter, the "Miccosukee Tribe"), by and through its undersigned counsel, and hereby responds to Defendant Dexter Lehtinen's Motion to Dismiss Second Amended Complaint. In addition, the Miccosukee Tribe hereby incorporates by reference, adopts, and realleges as set forth fully herein the arguments made in the Miccosukee Tribe's Responses in Opposition to all Defendants' Motions to Dismiss.

INTRODUCTION

This case is about a group of Defendants who owed a legal and fiduciary duty to the Miccosukee Tribe but instead violated these duties. The Miccosukee Tribe brings this suit against Defendants for federal RICO, conspiracy to commit federal RICO, civil theft, fraud, aiding and abetting fraud, Florida RICO, Florida RICO conspiracy, embezzlement, breach of fiduciary duty, and fraudulent misrepresentation, whom conspired with each other and

specifically with Defendant Cypress to aid, abet, create, advance and perpetrate a complex scheme through which Defendant Cypress and the other Defendants participated, facilitated and/or assisted in stealing, diverting, converting, using, misappropriating, and laundering millions of dollars that belonged to the Miccosukee Tribe and which were in the care, possession, control, and supervision of the Defendants.

Defendant Lehtinen, as well as the other named Defendants, had a fiduciary and legal duty to the Miccosukee Tribe which they violated when they facilitated and joined Defendant Cypress in cheating, lying and stealing these funds from the Miccosukee Tribe. Without each of these Defendants, particularly Defendant Lehtinen, who conspired with each other and Defendant Cypress, to participate, facilitate, and/or assist in stealing, diverting, converting, using, misappropriating, and laundering millions of dollars that belonged to the Miccosukee Tribe, the fraudulent scheme against the Miccosukee Tribe would have been impossible. Each Defendant, particularly Defendant Lehtinen, was a critical player in the fraudulent scheme.

Defendant Lehtinen was not only the General Counsel and main attorney to the Miccosukee Tribe for more than eighteen (18) consecutive years, but he controlled all the legal and lobbying work of the Miccosukee Tribe, was the political and legal mentor and confidant to Defendant Cypress during those eighteen (18) consecutive years. As lead attorney representing the Miccosukee Tribe and Defendant Cypress in all the matters alleged in the Second Amended Complaint, including, but not limited to, reviewing all the financial records relevant to this case, it is implausible to believe that Defendant Lehtinen was not aware of the wrongful activities described herein or that he was not actively assisting Defendant Cypress and the other named Defendants in committing these offenses.

Defendant Lehtinen had a fiduciary and legal duty towards the Miccosukee Tribe (Second Amended Complaint[1] at ¶302). Defendant Lehtinen, as main attorney for the Miccosukee Tribe, examined and reviewed all the relevant financial transactions and records subject to this lawsuit (¶301). Defendant Lehtinen, was fully aware of the illegal activities of Defendants (¶302), but willfully and purposefully failed to inform the Miccosukee Tribe of these illegal activities. Furthermore, Defendant Lehtinen assisted Defendant Cypress and the other named Defendants in those illegal activities (¶304). The purposeful misrepresentations and

[1] Hereinafter, all references to paragraphs in the Second Amended Complaint, D.E. No. 75, will be designated by ¶ followed by the relevant paragraph number.

omissions by Defendant Lehtinen, coupled with the Miccosukee Tribe's reasonable reliance on Defendant Lehtinen's legal advice, resulted in the loss of millions of dollars to the Miccosukee Tribe. In return, Defendant Lehtinen received millions of dollars in legal fees, perks, and other personal benefits for his protection of Defendant Cypress (¶311).

MEMORANDUM OF LAW

I. STANDARD FOR MOTION TO DISMISS

Defendant Lehtinen has facially attacked the Second Amended Complaint in his Motion to Dismiss. The Eleventh Circuit has explained that when a complaint is facially attacked on a Rule 12(b)(1) motion to dismiss the court is required "to look and see if [the] plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion. *Lawrence v. Dunbar*, 919 F.2d 1525, 1528-1529 (11th Cir. 1990). With a facial attack, "a plaintiff is afforded safeguards similar to those provided in opposing a Rule 12(b)(6) motion-the court must consider the allegations of the complaint to be true." *Id.* at 1529.

II. THE COURT HAS SUBJECT MATTER JURISDICTION OVER THE MICCOSUKEE TRIBE'S SECOND AMENDED COMPLAINT

This Court has subject matter jurisdiction over this case as alleged in the Second Amended Complaint. This case is about whether Defendant Cypress' abuse of tribal authority and Defendants Lehtinen, Martinez, Hernandez, Lewis, Tein, Lewis Tein P.L. and Morgan Stanley's actions in concert with Defendant Cypress and each other, constitute a violation of RICO, conspiracy to commit RICO, civil theft, fraud, aiding and abetting fraud, Florida RICO, Florida RICO Conspiracy, embezzlement, breach of fiduciary duty, and fraudulent misrepresentation. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1362. There are no issues presented by the Second Amended Complaint that are outside this Court's jurisdiction.

A. The Complaint Does Not Present An Intra-Tribal Dispute

The focal point of the Second Amended Complaint is not, as Defendant Lehtinen claims, a tribal dispute with Defendant Cypress for acts allegedly performed during the time Defendant Cypress was its Chairman. D.E. No. 92 at 4. By authorizing the filing of this cause of action, the Miccosukee General Council, acting in its official and lawful capacity as the governing body of the Miccosukee Tribe, has already decided that this is not an "intra-tribal dispute," but a well organized and orchestrated theft of their property by Defendant Cypress with the willful,

intentional, and purposeful assistance and approval of Defendant Lehtinen and the other named Defendants. On July 1st, 2010, the Miccosukee General Council, acting in its official capacity, at an official meeting, passed General Council Resolution No. MGC- 03-10, attached herein as Exhibit 1, where it determined that Defendant Cypress' use of tribal funds was "improper and unauthorized." The resolution states in relevant part:

> Whereas, the Miccosukee Tribe conducted a review of its financial records and found improper and unauthorized use of Tribal funds by former Chairman Billy Cypress while a member of the Miccosukee Business Council. Whereas, the Miccosukee Tribe finds former Chairman Billy Cypress' conduct detrimental and harmful to the welfare of the Miccosukee Tribe and its members. Whereas, former Chairman Billy Cypress, shall reimburse the Miccosukee Tribe all unauthorized and improperly used funds. Whereas, former Chairman Billy Cypress, is forever barred of holding political office or a position in the Miccosukee Business Counsel. Whereas, the terms of this Resolution shall apply to any current or future member of the Miccosukee Tribe that engaged in unauthorized or improper use of Tribal funds.

Contrary to Defendant's assertion, this case does not present an intra tribal dispute. In accordance with the General Council Resolution, the Miccosukee Tribe alleged repeatedly in its Second Amended Complaint that Defendant Cypress' actions were not authorized by the Miccosukee Tribe and without the knowledge and consent of the Miccosukee Tribe. *See* ¶¶ 29, 34, 35(c), 49, 106, 108(e), 108(i), 125, 127(e), 127(i), 140, 142(e), 142(i), 161, 196, 197, 441, 458(c).

Defendant Lehtinen and the other named "professional" Defendants, knowingly and willfully, and by the wrongful acts described in the Second Amended Complaint, simply converted their professional licenses as lawyers, accountants, and financial advisors into licenses to steal and plunder millions of dollars from the Miccosukee Tribe. The monthly bank statements depicting the **11 million dollars in cash advances from ATM machines** by Defendant Cypress for his personal use is a not a mere "intra-tribal dispute" as Defendant Lehtinen wants this Court to believe. These **11 million dollars** belonged to the Miccosukee Tribe. The Miccosukee Tribe, in seeking redress before this forum have already decided that this colossal theft of their property is not an "intra-tribal dispute."

An intra tribal dispute is that which involves a matter of tribal self governance and relates to the control of internal relations. *Montana v. United States*, 450 U.S. 544, 564 (1981). "Jurisdiction to resolve internal tribal disputes and to interpret tribal constitutions and laws lies

with the Indian tribes and not the district courts." *United States v. Wheeler*, 435 U.S. 313, 323–36, (1978). This case does not present a matter of tribal self governance and does not relate to the control of internal relations. Courts have found the following to be intra-tribal disputes: issues regarding tribal membership and membership requirements (*Martinez v. Southern Ute Tribe of Southern Ute Reservation*, 249 F. 2d 915 (10th Cir. 1957), *Prairie Band of Pottawatomie Tribe of Indians v. Udall*, 355 F. 2d 364 (10th Cir. 1966), *Wopsock v. Natchees*, 279 Fed. Appx. 679, 2008 Wl 2152435 (10th Cir. May 23, 2008); issues regarding an internal controversy among Indians over tribal government (*Motah v. United States*, 402 F. 2d 1 (10th Cir. 1968)); issues regarding the right to vote in tribal elections (*Harjo v. Kepple*, 420 F. Supp. 1110, 1117 (D.C. Dist. 1976); issues regarding which tribal council is rightly in place under the tribal constitution (*Sac and Fox Tribe of the Mississippi in Iowa v. Bear*, 258 F.Supp.2d 938 (N.D. Ia. 2003); and criteria to determine if someone is of Indian blood (*Groundhog v. Keeler*, 442 F. 2d 674 (10th Cir. 1971). Finally, a district court has already decided that the issue of alleged individual misconduct by the defendant tribal officials in the application of tribal funds presented in the Plaintiffs, Tribe's, Complaint is a not a political question. *Cheyenne–Arapaho Tribes Of Okla. v. Beard*, 554 F. Supp. 1 (D.W. Okla. 1980).

Defendant Lehtinen's characterization of this well-orchestrated thievery as a mere "intra-tribal dispute" along the lines of a dispute regarding the authority of a council to act as the governing body of a tribe (D.E. No. 92 at 5) is perplexing because he fails to provide a case that defines what an intra tribal dispute is. Defendant Lehtinen cites one case in support of his proposition that because this case presents an intra tribal dispute, this Court lacks subject matter jurisdiction. The case cited by Defendant, *In re Sac and Fox Tribe of Miss. in Iowa/Meskwaki Casino Litig.*, 340 F. 3d 749 (8th Cir. 2003), is inapposite to the case before this court because in *In Re Sac and Fox Tribe of Miss. in Iowa/Meskwaki Casino Litig.*, the court dismissed the RICO claim because the underlying acts revolved around which council was properly authorized to act on behalf of the tribe, the elected council or the appointed council, pursuant to and under the tribal constitution. The court found this to be an intra tribal dispute centered on an internal dispute regarding the tribe's governance and its constitution including interpretation thereof. *Id.* at 753. The district court concluded that the acts of the defendant could "only qualify as predicate acts if the court first determined that the defendant lacked authority under tribal law." D.E. No. 92 at 5 (citing *In re Sax and Fox Tribe of Miss.*, 340 F. 3d at 753.). Since The

Miccosukee Tribe filed this action after it determined, through its legislative body, that Defendant Cypress had misappropriated tribal funds without the authorization of the Miccosukee Tribe, there is no jurisdictional conflict. Consequently, this Court has subject matter jurisdiction over this action for it does not present an intra tribal dispute.

Furthermore, even if the Court finds that there is an intra tribal issue involved in this case, this suit is not purely an intra tribal dispute because the majority of the unauthorized and illegal conduct of the Defendants took place in outside Indian country and the majority of the Defendants are non Indian. *See Goodface v. Grassrope*, 708 F. 2d 335 (8th Cir. 1983) (not an intra-tribal dispute because there were non Indian defendants and it involved the review of agency action by the federal government).

II. THE COURT HAS SUPPLEMENTAL JURISDICTION OVER DEFENDANT LEHTINEN.

Pursuant to 28 U.S.C. §1367, this Court has supplemental jurisdiction over "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." This court has supplemental jurisdiction over the claims against Defendant Lehtinen. "[U]nder the doctrine of pendent personal jurisdiction, where a federal statute authorizes nationwide service of process and the federal and state claims 'derive from a common nucleus of operative fact' ... the district court may assert personal jurisdiction over the parties to the related state law claims." *Koch v. Royal Wine Merchants, LTD.*, 847 F. Supp. 2d 1370, 1374 (S.D. Fla. 2012). Defendant Lehtinen argues that there is no supplemental jurisdiction concerning Count IX and Count X because there must be a common nucleus of operative facts. D.E. 92 at 3. Count IX and Count X both form part of the same case or controversy as the rest of the claims as they are part and parcel to the grand scheme of illicit actions conducted by Defendant Lehtinen and the other named Defendants against the Miccosukee Tribe.

In Count IX, for breach of fiduciary duty, it is alleged, as part of the same case and controversy as the other claims, that Defendant Lehtinen abused his position as professional attorney by improperly engaging in the simultaneous legal representation of Defendant Cypress, whose legal interests were directly adverse to the legal interests of the Miccosukee Tribe, and who provided the I.R.S. with information to protect Defendant Cypress, for the sole purpose of shielding and concealing the fraudulent activities of Defendant Cypress, to maintain the millions

of dollars in attorneys' fees and other benefits he was receiving to the detriment of the Miccosukee Tribe. ¶¶457-458.

Defendant Lehtinen was representing the Miccosukee Tribe on a tax audit by the I.R.S. as far back as 2005. In 2005, Defendant Lehtinen was made fully aware by the I.R.S. through I.R.S. Summons served upon Defendant Cypress and the Miccosukee Tribe that Defendant Cypress was stealing from the Miccosukee Tribe in cash withdrawn from ATM machines and made unauthorized payments on tribal issued credit cards. Summons Attached herein as Exhibit 2. Defendant Lehtinen was representing the Miccosukee Tribe for this purpose. Moreover, on January 11, 2006, after a secret meeting held on December 29, 2005, between Defendants Lehtinen, Cypress, Lewis and Tein and representatives of the I.R.S., which Defendant Lehtinen attended as the legal representative for the Miccosukee Tribe for this particular purpose, Defendant Lehtinen was informed by the I.R.S. that Defendant Cypress was under investigation for these matters and that these matters were separate and apart from the issues involving the tax audit of the Miccosukee Tribe and its members. Letter Attached herein as Exhibit 3. Nevertheless, from January 11, 2006, through and including May 2010, and during each of the specific dates listed by the Miccosukee Tribe in the Second Amended Complaint (¶¶ 305-306), Defendant Lehtinen, in collusion with Defendant Cypress and the other named Defendants, purposely misrepresented and concealed from the Miccosukee Tribe the nature of the I.R.S. investigation of Defendant Cypress, as well as Defendant Cypress' theft, by knowingly preparing and presenting legal and financial statements that did not include this particular information, masquerading Defendant Cypress' tax issues as the same as that of other Tribal Members (¶¶301-311). This was a key component of the scheme to defraud.

During each of the specific dates listed by the Miccosukee Tribe in their Complaint (¶¶305-306) and specifically for the relevant period of 2005 to 2010, Defendant Lehtinen in collusion with Defendants Lewis and Tein, who were also simultaneously engaged in the legal representation of Defendant Cypress and the Miccosukee Tribe in the I.R.S. tax audit, orchestrated and directed the legal representation of Defendant Cypress on his personal I.R.S. issues by using the Miccosukee Tribe as a shield to protect Defendant Cypress at the expense and detriment of the Miccosukee Tribe. From 2005 through 2012, Defendant Cypress was the person who held the purse that distributed the millions of dollars in legal work that benefited Defendant Lehtinen and Defendants Lewis and Tein. Consequently, these "professional" attorneys made the

conscious decision that the protection and survival of Defendant Cypress was vital to their personal economic interest and acted accordingly to the detriment of the Miccosukee Tribe.

In light of this record, Defendant Lehtinen's assertion that "there is no correlation between the alleged ATM withdrawals/credit card charges and tax advice" (D.E. No. 92 at 4) is disingenuous. Defendant Cypress' ATM withdrawals/credit card charges were always at the heart of the tax issues and directly related to the advice and purpose of Defendant Lehtinen for representing the Miccosukee Tribe during this specific time. As the main attorney for the Miccosukee Tribe for this specific purpose, it would have been impossible for Defendant Lehtinen to properly represent and defend the Miccosukee Tribe in connection with the tax audit by the I.R.S. from 2005 to 2010, without access, knowledge, and review of the financial records subject to this lawsuit because these same financial records, as well as, Defendant Cypress' theft, were at the heart of the I.R.S. tax audit. Defendant Lehtinen's breach of fiduciary duty was part of the "common nucleus of operative fact" because his breach played a critical part in allowing the scheme to survive for as long as it did. *See Koch,* 847 F. Supp. 2d 1370.

Similarly, Count X, for fraudulent misrepresentation, is part of the same case or controversy because it exemplifies the fraudulent assertions made to the Miccosukee Tribe by Defendant Lehtinen to amass and preserve wealth for Defendant Cypress and himself. For example, the Miccosukee Tribe was told by Defendant Cypress and Defendant Lehtinen that $20,000,000.00 were put in reserve (¶463) to ease tribal members' concerns over their tax liability when there was in fact no such "separate designated account." Defendant Lehtinen knowingly made this misrepresentation because Tribal Members had began to question his legal advice, which dated back to 1993-1995; to the Miccosukee Tribe and Tribal Members that the monies they received in distributions was not income subject to federal taxation. These representations by Defendant Cypress and Defendant Lehtinen were part of their well-orchestrated scheme to lie, mislead, and defraud the Miccosukee Tribe. ¶471. Defendant Lehtinen's fraudulent misrepresentations to the Miccosukee Tribe are also part of the "common nucleus of operative fact" because Defendant Lehtinen had to appease the Tribal Members to secure his position within the Miccosukee Tribe in order to continue aiding and concealing the scheme perpetuated against the Miccosukee Tribe. *See Koch,* 847 F. Supp. 2d 1370. Thus, this Court has supplemental jurisdiction over Defendant Lehtinen.

III. THE COMPLAINT CONFORMS TO PLEADING REQUIREMENTS.

A. The Complaint Complies With Pleading Standards.

"When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). The facts in the Miccosukee Tribe's Complaint have been well-plead, which the Court should assume as true and infer that there has been misconduct by all named Defendants, particularly Defendant Lehtinen, for which the Miccosukee Tribe is entitled to relief for this egregious behavior. Since the allegations in the Complaint are not conclusory, the Court must assume that they are true. Once this assumption is made, there is in fact a plausible suggestion of an entitlement to relief. Furthermore, there is no alternative explanation for Defendant Lehtinen's behavior, regardless of what he has argued.

Defendant Lehtinen's feeble attempt to classify the Miccosukee Tribe's allegations as being "evasive and skeletal", D.E. No. 92 at 5, is undermined by the Miccosukee Tribe's plethora of allegations contained in its Complaint. Contrary to Defendant Lehtinen's arguments, the Second Amended Complaint details, with specificity, the duties owed, documents reviewed, knowledge known, fraudulent assertions and omissions made, motives, and benefits received. Thus, Defendant Lehtinen's argument that the assertions in the Second Amended Complaint are vague is wholly inaccurate and the Second Amended Complaint fully complies with pleading standards.

B. The Complaint is Not a Prohibited "Shotgun Pleading."

Defendant Lehtinen's argument that the Second Amended Complaint should be dismissed because it is a "Shotgun Pleading" is without foundation. The case which Defendant Lehtinen cites for its description of a shotgun complaint, *Strategic Income Fund, LLC v. Spear, Leeds & Kellogg Corp.*, 305 F. 3d 1293, 1295 (11th Cir. 2002), is factually dissimilar to this case. In *Strategic Income Fund*, the Court states that the "typical shotgun complaint contains several counts, each one incorporating by reference the allegations of its predecessors, leading to a situation where most of the counts (i.e., all but the first) contain irrelevant factual allegations and legal conclusions." *Id.* Unlike in *Strategic Income*, the facts alleged in the Second Amended Complaint are not irrelevant to the counts alleged nor does each count incorporate by reference every paragraph that precedes it. *See generally* D.E. No. 75. Defendant also cited to *Pelletier v. Zweifel*, 921 F. 2d 1465, (11th Cir.1991), which describes "quintessential shotgun pleadings," complete with "rambling recitations" and "factual allegations that could not possibly be

material," that force the "district court [to] sift through the facts presented and decide for [itself] which were material to the particular cause of action asserted." This is not the case before this court. The Second Amended Complaint states in clear language the material facts and relevant allegations against Defendants. References to other portions of the Complaint are necessarily made for efficiency in subsequent counts but they are far from "rambling recitations" as Defendant suggests. Such practice is allowed by Federal Rule of Civil Procedure 10(c) which states "A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion." *Pelletier* was a case in which the Court found that the suit was made purely to harass the defendant and the plaintiff was found not to have any justification for presenting its claims to the district court. 921 F. 2d at 1517. The Miccosukee Tribe has provided ample justification for its claims in its detailed Complaint and provided facts which show the scope of injury caused to them by the actions of the Defendants.

Similarly, Defendant cites *Cramer v. Florida* & *Strategic Income Fund, LLC.*, 117 F. 3d 1258, 1263 (11th Cir. 1997), which included "virtually indecipherable complaints" which was found to be disorganized and so ambiguous that it was "almost impossible to discern precisely" what the appellant was claiming. The Miccosukee Tribe's Complaint does not fit that description, as the paragraphs that are re-alleged are organized and only re-alleged as to the relevant Defendants. However, if this Court were to find the Complaint defective, Plaintiff requests the opportunity to amend the Complaint. *See Alley v. Resolution Trust Corp*., 984 F. 2d 1201, 1207 (D.C. Cir. 1993) ("When a plaintiff has imperfectly stated what may be an arguable claim, leave to amend is ordinarily in order.").

IV. THE MICCOSUKEE TRIBE'S PLEADING SUPPORTS ITS THEORY AGAINST DEFENDANT LEHTINEN.

The Miccosukee Tribe's allegations against Defendant Lehtinen are for knowingly making fraudulent misrepresentations and omissions while under a legal duty as the Miccosukee Tribe's General Counsel and main attorney, and as a professional attorney to act otherwise. Defendant Lehtinen's asserts that there is no allegation that he had any involvement with the ATM and credit card transactions which form the "crux" of the Second Amended Complaint. Apparently, Defendant Lehtinen is reading the Second Amended Complaint too narrowly and is ignoring all reasonable inferences there from. The Miccosukee Tribe did in fact allege that Defendant Lehtinen willfully and knowingly made fraudulent misrepresentations and omissions,

while under a duty to inform by knowingly preparing and presenting legal and financial statements, that did not include Defendant Cypress' ATM and credit card transactions and or masquerading Defendant Cypress' tax issues as the same as those of other tribal members. (¶¶301-311). Regardless, the ATM and credit card transactions are not the "crux" of the Second Amended Complaint. The true crux is the combined fraud, deceit, conspiracy, and theft by each of the Defendants which allowed such actions to be perpetrated upon the Miccosukee Tribe.

Defendant Lehtinen narrowly focuses on the specific allegation that he examined and reviewed the financial transactions and records subject to this suit and seeks this Court's dismissal of all claims on the assertion that the exhibit referenced by the Miccosukee Tribe to support that allegation does not actually support that he reviewed such documents. D.E. No. 92 at 9.

Defendant Lehtinen argues that the hearing transcript attached to the Second Amended Complaint negates the Miccosukee Tribe's claims against Defendant Lehtinen citing *Crenshaw v. Lister,* 556 F. 3d 1283, 1292 (11th Cir. 2009). "When the exhibits contradict the general and conclusory allegations of the complaint, the exhibits govern." *Id.* In *Crenshaw,* the plaintiff made allegations against officers and then attached the officers' police reports to the complaint to support its contention; however, the report contradicted the plaintiff's allegation. *Id.* This line of reasoning by Defendant Lehtinen is inapposite because the transcript citations in the Second Amended Complaint do not negate or directly contradict any allegations in the Second Amended Complaint. At best, Defendant Lehtinen could have argued that the transcript does not support or strengthen the allegations. The transcript supports the Miccosukee Tribe's claims because Defendant Lehtinen states that he did attend Business and General Council meetings. In those meetings, Defendant Lehtinen presented legal reports which included a financial section and other relevant financial reporting that he knew was not accurate or truthful. It is a reasonable inference from the allegations in the Second Amended Complaint that Defendant Lehtinen could not have drafted and discussed his legal and financial reports without first examining and reviewing the relevant financial documents subject to this lawsuit. *See Magluta v. Samples,* 375 F. 3d 1269, 1274 (11th Cir. 2004) (district court must take all reasonable inferences in favor of the plaintiff). Hence, the exhibit attached does not contradict or refute the allegations contained in the Second Amended Complaint and does not govern. *See Crenshaw,* 556 F. 3d 1283. This transcript attached to the Complaint neither negates the statement that "During his tenure as

General Counsel and main attorney for the Miccosukee Tribe, Defendant Lehtinen did examine and review the financial transactions and records subject to this lawsuit" nor does it require that the claims be dismissed.

V. THE FRAUD CLAIM AGAINST DEFENDANT LEHTINEN DOES NOT FAIL.

The Miccosukee Tribe has sufficiently alleged the elements of fraud against Defendant Lehtinen for failure to disclose to the Miccosukee Tribe what he knew as a result of his representation of Defendant Cypress: Cypress was withdrawing millions of dollars from the ATM machines. ¶27. The essential elements for a claim sounding in fraud are (1) a material misrepresentation or **omission**, (2) reasonable reliance thereon, and (3) damages. *Degirmenci V. Sapphire–Fort Lauderdale, LLLP*, 693 F. Supp. 2d 1325, (S.D. Fla. 2010) (citing *AutoNation, Inc. v. GAINSystems, Inc.*, Case No. 08–61632–CIV, 2009 WL 1941279, at *9 (S.D.Fla. July 7, 2009) (Emphasis added).

Defendant Lehtinen cited *Garfield v. NDC Health Corp*., 466 F. 3d 1255, 1262 (11th Cir. 2006), for the proposition that fraud requires identifying particulars of who, what, where, when, and how. As already discussed, the Miccosukee Tribe has made those allegations with respect to Defendant Lehtinen's participation in the fraud (¶¶ 292-311). The Miccosukee Tribe alleged the who, the what, the where, and the when regarding its Fraud claim. For example, in alleging the who in paragraph 302 the Miccosukee Tribe alleged that Defendant Lehtinen as a professional attorney for the Miccosukee Tribe had a legal and fiduciary duty to protect the legal and proprietary interests of the Miccosukee Tribe. In paragraphs 303 and 304 the Miccosukee Tribe alleges the element of scienter. Further evidence of the scienter element is the fact that Defendant Cypress by and through Defendant Lehtinen and Defendants Lewis Tein's representation espoused the outrageous explanation to the I.R.S. that the $11,508,304.71 withdrawn from ATM machines at various casinos across the United States were withdrawn to provide Defendant Cypress with funds to test the operation of the Class II machines. Tr. of Lucky Jerry Cypress Decl., 45-46, Sept. 26, 2012, attached herein as Exhibit 4. In alleging what was omitted in paragraphs 304 and 305, the Miccosukee Tribe alleged the failure to disclose the wrongful and unlawful acts of the Defendants in this case. In paragraphs 308, 310 and 311 alleged that the concealment of the wrongful and unlawful conduct by Defendant Lehtinen was done for the purpose of reaping financial benefits. The Miccosukee Tribe also alleged the when in paragraphs 305 and 306 where the specific dates of Business and General Council meetings which

Defendant Lehtinen attended and presented a legal report are set out. By providing such specific details the Miccosukee Tribe meets the heightened pleading standard of Fed.R.Civ.P. Rule 9(b).

Defendant Lehtinen, however, narrowly argues that since the specific documents reviewed were allegedly not described in detail, the Miccosukee Tribe's whole claim of fraud fails. The fraud alleged in the Second Amended Complaint was a result of actions and omissions by Defendant Lehtinen meant to deceive the Miccosukee Tribe with knowledge attained from examining financial records amongst other forms of acquiring knowledge throughout his representation of the Miccosukee Tribe. Courts recognize that if the alleged fraud occurred over an extended period of time and the acts were numerous, the specificity requirements are less stringently applied. *Bill Buck Chevrolet, Inc. v. GTE Florida, INC.*, 54 F. Supp.2d 1127, 1137 (M.D. Fla.1999); *Anthony Distributors, Inc. v. Miller Brewing Co.,* 904 F. Supp. 1363, 1366 (M.D. Fla.1995). This relaxed requirement is applied where "strict application of Rule 9(b) could result in substantial unfairness to private litigants who could not possibly have detailed knowledge of all the circumstances surrounding the alleged fraud." *NCR Credit Corp. v. Reptron Elecs., Inc.*, 155 F.R.D. 690, 692 (M.D. Fla. 1994). The Miccosukee Tribe alleged reliance in the repeated instances of omissions by Defendant Lehtinen and the detriment resulting from that reliance, namely that the Miccosukee Tribe was unable to put a stop to the fraudulent scheme to steal and conceal the theft and fraud being committed upon the Miccosukee Tribe's legal and proprietary interests. ¶¶ 307, 308, 309. Finally, the Miccosukee Tribe alleged the damaged it suffered as a direct result of Defendant Lehtinen's repeated omissions. ¶¶ 309, 311. These detailed allegations in the Second Amended Complaint meet the elements for fraud by concealment as described and cited by Defendant Lehtinen in *Greenberg v. Miami Children's Hospital Research Institute*, 264 F. Supp. 2d 1064, 1073 (S.D. Fla. 2003). All of these well plead factual allegations, accepted as true, and taking inferences there from in the light most favorable to the plaintiff meet the plausibility and the Rule 9(b) standard.

VI. THE DESCRIPTION OF FACTS ALLEGING DEFENDANT LEHTINEN'S AIDING AND ABETTING FRAUD CLAIM WAS SUFFICIENTLY PLED

The Miccosukee Tribe has sufficiently alleged the elements of aiding and abetting fraud against Defendant Lehtinen. Specifically, paragraphs 322 through and including 332 describe in sufficient detail Defendant Lehtinen's actions giving rise to the aiding and abetting claim. In order to properly plead a claim of aiding and abetting fraud, a plaintiff must establish that: (1) an

underlying fraud existed; (2) the defendant had knowledge of the fraud; and (3) the defendant provided substantial assistance to advance the commission of the fraud. *See ZP No. 54 Ltd. Partnership v. Fidelity & Deposit Co. of Md.*, 917 So. 2d 368, 372 (Fla. 5th DCA 2005).

The Miccosukee Tribe sufficiently established that an underlying fraud existed by describing how Defendant Lehtinen's failure to disclose to the Miccosukee Tribe what he knew as a result of his representation of Defendant Cypress. Namely, that Defendant Cypress was misappropriating millions of dollars of tribal funds. D.E. No. 75 at ¶ 329. In addition, The Miccosukee Tribe sufficiently alleged Defendant Lehtinen's knowledge of the underlying fraud. *See* ¶¶ 322 – 332. Specifically, due to Defendant Lehtinen's position, he was privy to a plethora of confidential information, including the illegal Defendant Cypress' illegal transactions. Furthermore, the Miccosukee Tribe sufficiently established that Defendant Lehtinen provided substantial assistance to advance the commission of the aforementioned fraud by describing how Defendant Lehtinen used his position and his representation of the Miccosukee Tribe to conceal the fraud and theft being committed by Defendant Cypress. ¶ 328.

Moreover, this case is distinguishable from *Fidelity* because Defendant Lehtinen had a fiduciary duty to his client, the Miccosukee Tribe. *See* 917 So. 2d at 374. As a result of this duty, the Miccosukee Tribe was entitled to rely on Defendant Lehtinen's representation. All of these sufficiently detailed factual allegations, accepted as true and taking inferences there from, in the light most favorable to the Miccosukee Tribe, meet the plausibility standard as well as the Rule 9(b) heightened pleading standard required to establish not only the underlying fraud allegations, but also the aiding and abetting claims with regards to Defendant Lehtinen.

VII. THE BREACH OF FIDUCIARY DUTY CLAIM SURVIVES

The Miccosukee Tribe has sufficiently alleged its breach of fiduciary duty against Defendant Lehtinen. It is of relevance that Florida law governs the adjudication of this claim. As such, the Supreme Court of Florida set forth the elements needed in order to establish a claim for breach of fiduciary duty in *Gracey v. Eaker*, 837 So. 2d 348, 353 (Fla. 2002), which include: (1) existence of a fiduciary duty; (2) breach of fiduciary duty; and (3) showing of damage proximately caused by the breach. The Miccosukee Tribe sufficiently established each of these elements throughout its Second Amended Complaint.

A "fiduciary duty" is defined as "a duty of utmost good faith, trust, confidence, and candor owed by a fiduciary (such as a **lawyer**…) to the beneficiary (such as a **lawyer's**

client…); a duty to **act with the highest degree of honesty** and loyalty…**in the best interests of the other person**." BLACK'S LAW DICTIONARY 545 (9th Ed. 2009) (emphasis added). In light of this definition, it is clear that the Miccosukee Tribe sufficiently established the existence of a fiduciary duty owed by Defendant Lehtinen during his tenure representing the Miccosukee Tribe, the beneficiary owed this duty, as a professional attorney. ¶ 449. In addition, the Miccosukee sufficiently described Defendant Lehtinen's breach of this fiduciary duty through his actions and omissions. *See* ¶¶ 443 – 461. The Miccosukee Tribe specifically describes these actions, including Defendant Lehtinen's disclosure of confidential information, in paragraph 458 (D.E. No. 75). Furthermore, the Miccosukee Tribe sufficiently described how Defendant Lehtinen's breach of his fiduciary duty proximately caused the resulting damage. *See* ¶ 461. Specifically, the Miccosukee Tribe's reliance on Defendant Lehtinen's misrepresentations as to other Defendants, led to the loss of millions of dollars, which were wrongfully misappropriated. All of these sufficiently detailed factual allegations, accepted as true and taking inferences there from, in the light most favorable to the Miccosukee Tribe, sufficiently establish the breach of fiduciary duty claim with regards to Defendant Lehtinen.

VIII. THE FLORIDA RICO CLAIM DOES NOT FAIL

The Miccosukee Tribe sufficiently pled the elements of a violation of the Florida RICO Act. The Miccosukee Tribe has sufficiently alleged that Defendant Lehtinen committed fraud in violation of § 817, Fla. Stat. (2012), which constituted criminal activity within the definition of criminal activities in § 772.102(1)(a)(20), Fla. Stat.(2012).

A. RICO ELEMENTS

The Miccosukee Tribe has sufficiently established the essential requirements of a RICO claim: a RICO enterprise and a pattern of racketeering activity. *Jackson v. Bellsouth Telecommunications*, 372 F. 3d 1250, 1264 (11th Cir. 2004).

1. RICO Enterprise

A RICO enterprise "exists 'where a group of persons associates, formally or informally, with the purpose of conducting illegal activity. *Jackson v. Bellsouth Telecommunications*, 372 F. 3d 1250, 1264 (11th Cir. 2004). A RICO enterprise under Florida law is "any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and the term includes illicit as well as licit

enterprises and governmental, as well as other, entities." §772.102(b)(3). The Miccosukee Tribe alleged a violation of Florida RICO against all named Defendants in the Second Amended Complaint, which included Defendant Lehtinen. In paragraphs 335, the Miccosukee Tribe alleged the description of the enterprise. Additionally, the Miccosukee Tribe re-alleged in paragraph 334 the allegations in paragraphs 18-22, which by reference includes the allegations that Defendant Lehtinen is a member of the enterprise, not the enterprise itself and as a Defendant is a liable person. As a result, Defendant Lehtinen's argument that the Miccosukee Tribe did not include Defendant Lehtinen in the definition of the Florida RICO enterprise is meritless. The title of Count VI in the Second Amended Complaint is "Florida Civil Rico as to All Defendants." D.E. No. 75 at 281. More importantly, in paragraph 335, the Miccosukee Tribe alleged that "all named Defendants associated in fact …" All named Defendants certainly includes Defendant Lehtinen.

2. Pattern of Racketeering Activity

The Miccosukee Tribe alleged a pattern of racketeering activity, by alleging that: (1) the Defendants committed two more or more predicate acts within a ten year time span; (2) the predicate acts were related to one another; and (3) the predicate acts demonstrated criminal conduct of a continuing nature. *Jackson*, 372 F. 3d at 1264. "Pattern of criminal activity" is defined in § 772.102(4) Fla. Stat. as "at least two incidents of criminal activity that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents; provided that the last of such incidents occurred within 5 years after a prior incident of criminal activity. …" Criminal activity is in turn defined as "to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit: (a) Any crime that is chargeable by indictment or information under the following provisions: (22) Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes." § 772.102(1)(a)(22) Fla. Stat.

The Miccosukee Tribe alleged several violations of § 817 by Defendant Lehtinen, more than two predicate acts, which constitute the pattern of racketeering criminal activity within a five (5) year span. ¶ 409, 410. The essential elements for a claim sounding in fraud under Florida law are: (1) a material misrepresentation or **omission**, (2) reasonable reliance thereon, and (3) damages. *DeGirmenci V. Sapphire–Fort Lauderdale, LLLP*, 693 F.Supp.2d 1325, 1353 (S.D.

Fla. 2010) (citing *AutoNation, Inc. v. GAINSystems, Inc.*, Case No. 08–61632–CIV, 2009 WL 1941279, at *9 (S.D.Fla. July 7, 2009) (Emphasis added). The Miccosukee Tribe sufficiently pled the who, what, when and where of Defendant Lehtinen's repeated violations of fraud, constituting the predicate acts for Florida RICO. *See* ¶¶ 292-311.

Due to the nature of the scheme to defraud alleged by the Miccosukee Tribe and Defendant Lehtinen's role in the overall scheme, reinvestment in the enterprise was made by way of silence, which allowed the enterprise to maintain its operation for years and to the detriment of the Miccosukee Tribe in millions of dollars. This is reasonably inferred from the allegations in the Second Amended Complaint regarding fraud and breach of fiduciary duty.

Despite Defendant Lehtinen's argument to the contrary, his untraditional legal services constitute operation and management of the Florida Rico Enterprise. It is correct that "courts following *Reves v. Ernst and Young*, 507 U.S. 170 (1993) have generally held that the provision of traditional legal services does not constitute the operation and management of an enterprise for purposes of RICO liability." *Kelly v. Palmer, Reifler and Associates, P.A.*, 681 F. Supp. 2d 1356, 1380-31 (S.D. Fla. 2010). It is also clear that while the provision of common legal services will not give rise to RICO liability under the statute, there is no *"per se* rule that one cannot operate or manage an enterprise via the provision of legal services." *Al-Rayes v. Willingham*, No. 06 Civ. 362, 2007 WL 788401 * 2 (M.D. Fla. 2007) (citing *Thomas v. Ross & Hardies*, 9 F. Supp. 2d 547, 554 (D. Md. 1998). "For that reason, when 'the professional services provided strike at the very core of the enterprise,' it can be said that the lawyer is managing or operating the enterprise." *Id.* Finally, although courts have held that "due to the similarity of the Florida and federal RICO Acts, under Florida law a court can look to federal courts' interpretations of the federal RICO Act for guidance and persuasive authority in construing the Florida RICO Act," *Horace-Manasse v. Wells Fargo Bank, N.A*, No. 10 Civ. 81623, 2012 WL 1232016 at * 2 (S.D. Fla. April 12, 2012) (citing *Lugo v. State*, 845 So. 2d 74, 96 n. 39 (Fla. 2003); *Gross v. State*, 765 So. 2d 39, 42 (Fla. 2000); *Palmas y Bambu, S.A. v. E.I. Dupont De Nemours & Co., Inc.*, 881 So. 2d 565, 570 n. 1 (Fla. 3d DCA 2004), the language of the Florida Rico statute "may render the analysis in *Reves* inapplicable to the Florida RICO Act." *Horace-Manasse*, 2012 WL 1232016 at * 5.

The Miccosukee Tribe's allegations, accepted as true, and inferences there from, taken in the light most favorable to the plaintiff, clearly show that Defendant Lehtinen did not merely

provide run of the mill legal services. The Miccosukee Tribe has pled sufficient facts to show that Defendant Lehtinen provision of legal services "strike at the very core of the enterprise" and as a result, it can be said and inferred that Defendant Lehtinen was managing or operating the enterprise.

In an action under the Florida RICO Act, the plaintiff must show that "his **injury** was caused by, that is, his damage was 'by reason of,' the predicate fraud acts. *Palmas Y Bambu, S.A. v. E.I DuPont de Nemours & Co.,* 881 So. 2d 565, 570 (Fla. 3d DCA.2004) (holding,"); *Anthony Distrib., Inc. v. Miller Brewing Co.,* 941. F. Supp. 1567, 1576-77 (M.D. Fla.1996) (holding, in an action under section 772.11, that "damages in the context of civil theft normally correspond to the value of the property stolen by the defendant."). But for Defendant Lehtinen's fraud by omission, the Miccosukee Tribe would have been able to stop the hemorrhaging of millions of dollars that resulted from the scheme to defraud.

Finally, the Miccosukee Tribe sufficiently pled a claim for Florida RICO Conspiracy. A RICO conspiracy claim can be established by a plaintiff in two ways: (1) by showing that the defendant agreed to the overall objective of the conspiracy; or (2) by showing that the defendant agreed to commit two predicate acts. *United States v. Church*, 955 F. 2d 688, 694 (11th Cir. 1992), *cert.denied*, 506 U.S. 881, 113 S. Ct. 233 (1992). "The RICO agreement need not be established by direct evidence; it may be inferred from the conduct of the participants." *Republic of Panama v. BCCI Holding (Luxembourg) S.A.*, 119 F. 3d 935, 950 (11th Cir. 1997) (citing *Church*, 955 F. 2d at 695). The Miccosukee Tribe's allegations through the Second Amended Complaint, accepted as true, and reasonable inferences there from, taken in the light most favorable to the Plaintiff, show conduct by the participants of the scheme to defraud from which the Court can infer that Defendant Lehtinen both agreed to the overall objective of the conspiracy. Defendant Lehtinen's conspiratorial role is stated in paragraphs 292 through 308, 417, as well as paragraphs 406 through 410.

IX. THE FRAUDULENT MISREPRESENTATION CLAIM AGAINST DEFENDANT LEHTINEN DOES NOT FAIL

The Miccosukee Tribe has complied with Rule 9(b) of the Federal Rules of Civil Procedure, which is "the proper legal standard by which to judge the sufficiency of Plaintiff's Amended Complaint." D.E. No. 55 at 3. Under Rule 9(b) and per the Court's Order, the Miccosukee Tribe is required to allege, as to each defendant's participation, "(1) the precise statements, documents, or misrepresentations made; (2) the time, place, and person responsible

for the statement; (3) the content and manner in which these statements misled the Plaintiffs; and (4) what the defendants gained by the alleged fraud." *American Dental Ass'n v. CIGNA Corp,* 605 F. 3d 1283, 1291 (11th Cir. 2010). The court in *Bill Buck Chevrolet, Inc. v. GTE Florida, Inc.* stated that:

> Nevertheless, courts recognize that if the alleged fraud occurred over an extended period of time and the acts were numerous, the specificity requirements are less stringently applied. *Anthony Distributors, Inc. v. Miller Brewing Co.*, 904 F.Supp. 1363, 1366 (M.D.Fla.1995). This relaxed requirement is applied where "strict application of Rule 9(b) could result in substantial unfairness to private litigants who could not possibly have detailed knowledge of all the circumstances surrounding the alleged fraud." *NCR Credit*, 155 F.R.D. at 692. This does not negate the plaintiff's duty to adequately plead the contents of the alleged fraudulent representations and the places where the activity was to have occurred, however. *Anthony Distributors*, 904 F. Supp. at 1366.

54 F. Supp. 2d 1127, 1137 (11th Cir. 1994).

The allegations of fraudulent misrepresentation were specifically described in paragraphs 462 through 477 of the Second Amended Complaint. In order to assert a claim for fraudulent misrepresentation, the following elements must be alleged: "(1) a false statement concerning a material fact; (2) the representor's knowledge that the representation is false; (3) an intention that the representation induce another to act on it; and, (4) consequent injury by the party acting in reliance on the representation." *Johnson v. Davis*, 480 So. 2d 625, 627 (Fla. 1985). Defendant Lehtinen informed the Miccosukee Tribe that the Miccosukee Tribe was not subject to withholding requirements but that in the event that in the future the Miccosukee Tribe was found liable for taxes, the reserve account would be used to satisfy the tax liability. ¶464. This representation made by Defendant Lehtinen to the Miccosukee Tribe demonstrates the precise misrepresentation/false statement made in regards to a material fact. These representations were made to the Miccosukee Tribe at General Council meetings that took place over the course of several years. *See* ¶¶305 and 465 through 467. It can be reasonably inferred that Defendant Lehtinen knew his representations to the Miccosukee Tribe were false when he tried justifying his statements in a public comment he made to a newspaper publication, the Miami Herald. *See* ¶473. Based on Defendant Lehtinen's position of trust with the Miccosukee Tribe, the Miccosukee Tribe was induced into acting upon it. Thus, the consequent injury to the Miccosukee Tribe is the fact there was no reserve account in existence for the Miccosukee Tribe to use. These allegations and the reasonable inferences there from, when accepted as true, show

that Defendant Lehtinen fraudulently misrepresented to the Miccosukee Tribe a material fact regarding the existence of the reserve account. Based on his position of trust and the representations made, the Miccosukee Tribe was induced to act upon it by pursuing a course of action, which resulted in the Miccosukee Tribe sustaining a material economic injury. Therefore, Defendant Lehtinen's arguments to the contrary are wholly unfounded, because the Miccosukee Tribe has clearly complied with Rule 9(b) of the Federal Rules of Civil Procedure, as shown by the detailed allegations contained in the Second Amended Complaint for Fraudulent Misrepresentation.

X. PRAYER FOR RELIEF MUST NOT BE STRICKEN

Defendant Lehtinen challenges the Miccosukee Tribe's relief requested; however it is important to note that Defendant Lehtinen's challenges are based on the First Amended Complaint and not the Seconded Amended Complaint, which is the relevant one. Nonetheless, Defendant Lehtinen argues that the Miccosukee Tribe is not entitled to the pre-judgment relief requested stating that "Plaintiff seeks the appointment of a receiver and the seizure of "all assets" of all Defendants." D.E. No. 92 at 20. Defendant Lehtinen erroneously argues that the Miccosukee Tribe is seeking "seizure of all assets of all Defendants." D.E. No. 92 at 20. However, he is mistaken as to this assumption. The Miccosukee Tribe is seeking to have this Court issue an "Order freezing the assets of all Defendants which are related to this litigation and which are the proceeds of the illegal activity." D.E. No. 75 at 309. However, the Miccosukee Tribe would like to clarify that the asset freeze requested only applies to Defendants Cypress, Lewis, Tein, and Lewis Tein P.L., who are the ones in possession of the proceeds of the illegal activity alleged in this case, and because upon information and belief, they are the only Defendants that are attempting to dispose of their assets. Lastly, the Miccosukee Tribe is seeking relief that far exceeds what is provided for, instead the Miccosukee Tribe is respectfully seeking all of the relief that is necessary to repair the harm caused by the Defendants.

XI. LEAVE TO AMEND COMPLAINT IS PROPER SHOULD THIS COURT FIND THE COMPLAINT DEFECTIVE

If this Court finds that the Miccosukee Tribe's Second Amended Complaint is defective, the appropriate remedy is to allow the Miccosukee Tribe to file a Third Amended Complaint. "When a plaintiff has imperfectly stated what may be an arguable claim, leave to amend is ordinarily in order." *Alley v. Resolution Trust Corp.*, 984 F. 2d 1201, 1207 (D.C. Cir. 1993).

Therefore, should this Court find that the Miccosukee Tribe's Second Amended Complaint is insufficient, in the interest of justice, as well as according to relevant and binding authority, the Court should grant the Miccosukee Tribe leave to amend its Second Amended Complaint.

CONCLUSION

For the reasons described above, the Miccosukee Tribe respectfully requests that Defendant Lehtinen's Motion to Dismiss be DENIED or in the alternative, the Miccosukee Tribe requests this Honorable Court grant the opportunity for Leave to Amend the Complaint.

Respectfully submitted this 14th day of January 2013.

/s/Bernardo Roman III
Bernardo Roman III, Esquire
Fla. Bar No. 0002739
Tribal Attorney, Miccosukee Tribe of Indians of Florida
P.O. Box 440021, Tamiami Station
Miami, Florida 33144
Tel: (305) 894-5214
Fax: (305) 894-5212
E-mail: bromanlaw@bellsouth.net

/s/Yinet Pino
Yinet Pino, Esquire
Fla. Bar No. 085272
Attorney for the Miccosukee Tribe of Indians of Florida
1250 SW 27th Avenue, Suite 506
Miami, Florida 33135
Telephone: (305) 643-7993
Facsimile: (305) 643-7995
E-mail: yinet@bromanlaw.com

/s/Yesenia Rey
Yesenia Rey, Esquire
Fla. Bar No. 89577
Attorney for the Miccosukee Tribe of Indians of Florida
1250 SW 27th Avenue, Suite 506
Miami, Florida 33135
Telephone: (305) 643-7993
Facsimile: (305) 643-7995
E-mail: yesenia@bromanlaw.com