UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

MONSTER TECHNOLOGY GROUP, LLC **3708 Las Vegas Boulevard** **Suite 2102W** **Las Vegas, Nevada 89109** **Plaintiff,** **v.** **GARRETT A. ELLER, JUDGE** **TRIBAL COURT** **IOWA TRIBE OF OKLAHOMA** **335588 East 750 Road** **Perkins, Oklahoma 74059** **Defendant.**	)	**Case No.** CIV-21-879-J

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action to vindicate the general prohibition against Tribal Courts exercising jurisdiction of claims against non–Indian persons and entities.

I. JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, in that whether a Tribal Court has the power to entertain claims against a non-Indian presents a federal question. *National Farmer's Union Insurance Co. v. Crow Tribe*, 471 U.S. 945, 852 (1985).

3. Venue lies pursuant to 28 U.S.C. § 1391(e), in that events giving rise to the claim occurred in this judicial district.

II. PARTIES

4. Plaintiff Monster Technology Group ("MTG") is a non–Indian corporation organized under the laws of the State of Nevada and headquartered in Las Vegas. Plaintiff is successor in interest to Universal Entertainment Group ("UEG"), a non–Indian Florida corporation whose extraordinary efforts laid the requisite technical foundation for Indian gaming to be offered online.

5. Defendant Garrett A. Eller is a trial judge of the Tribal Court of the Iowa Tribe of Oklahoma ("Tribe"), a federally recognized Tribe headquartered in Perkins, Oklahoma.

6. The Iowa are the first American Tribe to conduct online Indian gaming: Thanks do the efforts of UEG, which developed the requisite software, technical aids and other assets, the Tribe has offered online gaming to an exclusively international market from operations licensed and based in the Isle of Man. However, it has repudiated commitments to share in revenues with Plaintiff MTG, the successor in interest to UEG.

7. The Tribe has also repudiated a commitment to submit the dispute to arbitration before the American Arbitration Association ("AAA"), a contractual breach nonetheless upheld by Judge Eller, who acted to enjoin an arbitration proceeding from going forward despite lacking subject matter jurisdiction of the controversy, or personal jurisdiction of non–Indian entities Monster and AAA.

8. Plaintiff names Defendant Eller in his official capacity, for purposes of securing declaratory relief, as well as prospective injunctive relief against any continued exercise

of jurisdiction of claims against Plaintiff in the Iowa Tribal Courts, pursuant to the authority of *Ex Parte Young*, 209 U.S. 123 (1908) and its progeny.

Upon information and belief Plaintiff alleges the following:

III. FACTS

A. TRIBAL COURTS HAVE LIMITED JURISDICTION TO ENTERTAIN CLAIMS AGAINST NON–INDIANS

9. Indian Tribes are "distinct, dependent political communities, qualified to exercise many of the powers and prerogatives of self–government." *Plains Commerce Bank v. Long Family Land & Cattle Co.* 554 U.S. 316, 327 (2008). However, Tribal "sovereignty ... is of a unique and limited character, ... center[ing] on the land held by the tribe and tribal members within a reservation." *Id.*

10. Thus the "exercise of tribal power beyond what is necessary to protect tribal self–government or to control internal relations is inconsistent with the dependent status of tribes, and ... cannot survive without express congressional delegation." *Montana v.United States*, 450 U.S. 544, 564 (1981). "[T]he inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." *Id.* at 565. *See also, Plains Commerce Bank, supra*, 544 U.S. at 330 ("efforts by a tribe to regulate nonmembers, especially on non–Indian fee land, are presumptively invalid.").

11. The "*Montana* rule" is subject to two narrow exceptions: First, a "tribe may regulate, through taxation, licensing, or other means, the activities of non–members who enter consensual relationships with the tribe or its members, through commercial dealing,

contracts, leases, or other arrangements...." (citations omitted). *Montana*, *supra*, 450 U.S. at 565. However, as the Supreme Court later made clear, "even then, the regulation must stem from the tribe's inherent authority to set conditions on entry, preserve tribal self–government, or control internal relations." *Plains Commerce Bank, supra*, 544 U.S. at 337. Second, "[a] tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe...." (citations omitted). *Montana*, *supra,* 450 U.S. at 565.

12. Moreover, a litigant challenging a Tribal court's exercise of jurisdiction in federal court need not exhaust remedies before the Tribal court in circumstances plainly present here, including "where an assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith"; "where the tribal court action is patently violative of express jurisdictional prohibitions"; and "when it is clear that the tribal court lacks jurisdiction so that the exhaustion requirement would serve no purpose other than delay." *Burrell v. Armijo*, 456 F.3d 1059, 1068 (10th Cir. 2006).

B. ONLINE INDIAN GAMING DIRECTED TO AN EXCLUSIVELY INTERNATIONAL MARKET

1. FACTUAL BACKGROUND

13. UEG formerly partnered with the Cheyenne and Arapaho Tribes of Oklahoma ("CNA") in an extraordinarily complex effort to develop software and related technical aids – together with the legal framework – necessary for creating a website devoted to

online Indian gaming, in compliance with existing State and federal law. The CNA called the project *pokertribes.com* ("*Pokertribes*").

14. The CNA eventually invested significant funds in *Pokertribes*. However, the investment was dwarfed by reported development costs incurred by UEG; and was modest as against economic projections for a successful venture: A study of the world-wide online gaming market concluded that *Pokertribes* could bring $132 million in gross annual revenue to the CNA by the year 2018, assuming its website was attracting just 2% of the market worldwide.

15. However, *Pokertribes* became a controversial subject during a CNA Tribal election season and the sitting Governor lost her position. Her opponent had supported *Pokertribes,* until a law firm seeking to represent the CNA lied to Tribal officials about the legitimacy of the project and its implications for existing Tribal operations.

2. IOWA TRIBE PICKS UP THE *POKERTRIBES* EFFORT

16. In September 2015, the Iowa Tribe entered a "Software Licensing Agreement" ("Licensing Agreement") with the CNA's former partner UEG relating to assets including "software, translations, and modifications, support materials and documents ...", *id.*, § 1.2, all plainly necessary for any viable project to bring online Indian gaming to an international market.

17. A "Delivery and Acceptance Testing" section of the Licensing Agreement affirmed in part that "[t]he Licensed Software has been tested by Licensee to determine

that the program performs according to Licensor's general descriptions of its capabilities." *Id.*, § 3.2.

18. A "Termination" section of the Licensing Agreement said in part that "Licensee may terminate this Agreement by intentionally destroying the Licensed Software and documentation and all copies thereof, or by returning the same to Licensor." *Id.*, 7.1.

19. The Tribe agreed to a "License Issue Fee" of $500,000, *id.*, § 4.1; and to "Sales–based Royalties" of "Twenty-Nine Percent (29%) of the net revenues received by the Licensee in the business operation ...." *Id.,* § 4.2.

20. Armed with software, legal and technical aids, numerous trade secrets and other assets under license from UEG, all demonstrating that online Indian gaming was indeed a viable enterprise, the Tribe sought arbitration before the AAA of a "dispute" between the Tribe and the State of Oklahoma (which actually supported the Tribe's efforts) as to the legality of an Oklahoma Tribe conducting online gaming directed to an exclusively international market.

21. The Tribe prevailed in arbitration. In April 2016, the U.S. District Court for the Western District of Oklahoma ("Western District") confirmed the arbitration award, thereby freeing the Iowa Tribe to continue the effort towards offering online gaming directed to an exclusively international market.

B. CREATION OF A TRIBAL ENTITY DESIGNED TO REAP ALL THE BENEFITS OF ONLINE GAMING; PURCHASE OF ASSETS LICENSED FROM UEG; SUBSEQUENT RECOUPMENT OF CASH OUTLAY AND OTHER CONSIDERATION FOR THE PURCHASE; AND REPUDIATION OF ANY OBLIGATION TO SHARE IN REVENUES

1. CREATION OF TRIBAL ENTITY DESIGNED TO REAP ALL THE BENEFITS OF ONLINE GAMING

22. In January 2016, while litigation to confirm the arbitration award was still underway in the Western District, the Tribe incorporated the "Ioway Internet Gaming Enterprise Limited" pursuant to Tribal law; and enacted the Iowa Tribe of Oklahoma Ioway Gaming Enterprise Act ("Ioway Gaming Enterprise Act" or "Act") through a Resolution of the Tribe's Business Committee adopted January 27, 2016.

23. Section 8 of the Act, "Ownership and Revenues", provided in part as follows:

> (a) *Ownership.* The Enterprise and all personal property assets used in the operation of the Enterprise and **the revenues generated by the Enterprise shall be and continue to be owned by the Tribe** but shall be administered for the Tribe by the Enterprise for the benefit of the Tribe .... (emphasis added).

2. PURCHASE OF ASSETS LICENSED FROM UEG, AND MISLEADING ASSURANCE OF A CENTRAL ROLE, AND RIGHTS IN, ANY ONLINE GAMING OPERATION

24. In or about November 2016 the Tribe entered an "Intellectual Property and Other Assets Purchase Agreement" ("November 2016 Agreement") with UEG relating to "Online Gaming Assets" and "Online Gaming Intellectual Property", including "any and all copyright, trademarks, and patents either owned by or applied for on behalf of UEG." *Id.*, ¶ 1.b. (Exhibit 1 hereto). The November 2016 Agreement called for the Tribe to make payments over time totaling $10 million to UEG, including an immediate payment

of $1,650,000, in exchange for 51% of the "Online Gaming Assets." *Id.*, ¶ 2. It also provided for arbitration under the rules of the American Arbitration Association of **"[a]ny dispute or difference arising out of or in connection with this Agreement ...**." *Id.* § 8.e. (emphasis added).

25. The parties' agreement to application of the rules of the American Arbitration Association meant the AAA would have authority to decide whether a dispute arising from the Agreement of November 2016 was subject to arbitration. *Nitro-Lift Technologies, LLC v Howard.*, 568 U.S. 17, 133 S.Ct. 500, 503, 184 L.Ed. 2d 328 (2012) "[W]hen parties commit to arbitrate contractual disputes, it is a mainstay of the [Federal Arbitration] Act's substantive law that attacks on the validity of the contract, as distinct from attacks on the validity of the arbitration clause itself, are to be resolved 'by the arbitrator in the first instance, not by a federal or state court.'...." (citations omitted))

26. The Tribe made payments to UEG totaling $1,950,000, and agreed to pay the balance of the purchase price from eventual revenues of the gaming operation. This purported commitment was plainly at odds with the Ioway Gaming Enterprise Act's provision that "revenues generated by the Enterprise shall be and continue to be owned by the Tribe ...." *Id.*, § 8.

27. Subsequent events also make clear that the Tribe never intended to honor commitments made to UEG in the Agreement of November 2016.

28. In December 2016, the Tribe organized Iowa Tribe Online Gaming Software LLC under the laws of Oklahoma ("Oklahoma LLC") , designating the Tribe and UEG its sole members.

29. In January 2017, the Tribe and UEG transferred to the Oklahoma LLC their respective interests in any "Online Gaming Assets" – defined by the Intellectual Property and Other Assets Purchase Agreement of November 2016 – while agreeing that the LLC would be entitled to recover the balance of the $10 Million purchase price from any eventual revenues, together with royalties in the amount of 49% of eventual revenue.

30. However, the Tribe never intended for the Oklahoma LLC to recover the balance of the purchase price, or royalties from any eventual gaming revenue: At the end of the initial registration period, the Tribe allowed the Oklahoma LLC to become "inactive" and essentially defunct.

31. In February 2017, the Tribe also made application for a gaming license in Isle of Man on behalf of the Ioway Internet Gaming Enterprise Limited, the wholly owned corporation organized under Tribal law in January 2016, whose revenues were to be "owned by the Tribe ...." Ioway Gaming Enterprise Act, § 8(a)(2).

3. RECOUPMENT OF CASH OUTLAY AND OTHER CONSIDERATION GIVEN FOR TRIBE'S PURCHASE OF UEG ASSETS

32. In September 2017, the Tribe, UEG and the Oklahoma LLC signed onto an "Intellectual Property and Other Assets Purchase Agreement" ("September 2017

Agreement") providing in part that the Tribe convey to UEG the 51% interest in "Online Gaming Assets" the Tribe had acquired from UEG in November 2016. *Id.* at 1.

33. The transfer meant the sole member of the LLC would be UEG. *Ibid*. As for purchase price, the agreement called for UEG to repay to **the Tribe** $1,650,000, the amount UEG received from the Tribe under the November 2016 Agreement.

34. On the same day, and as additional consideration for UEG's payment of $1,650,000 to the Tribe and agreement to recover the balance of the purchase price from eventual gaming revenues, the Tribe also agreed that UEG would be also entitled to an increase in the percentage of any net gaming revenue from 29% to 49%.

35. The September 2017 Agreement also purported to supersede and replace the Agreement of November 2016 between the Tribe and UEG, and purported to void any assignment of rights under the Agreement of November 2016.

36. However, several weeks earlier, UEG **transferred** its 49% interest in any "Online Gaming Assets" to Monster. Monster was not party to the subsequent Agreement of September 2017: Monster's claims deriving from UEG's rights under the Agreement of November 2016, including the right to arbitration of any dispute, thus survived notwithstanding the Agreement of September 2017 between the Tribe and UEG.

4. REPUDIATION OF ANY OBLIGATION TO SHARE IN REVENUES DERIVED FROM ONLINE GAMING OPERATIONS MADE POSSIBLE BY UEG

37. Some time after September 2017, the Iowa Tribe obtained the requisite licensure for its wholly owned corporation Ioway Internet Gaming Enterprise Limited to begin conducting online gaming operations directed to an international market from the Isle of Man.

38. The Tribe then repudiated any obligation to share in revenues with UEG or any successor in interest, on false grounds that the software, technical aids and other assets created by UEG were somehow inadequate to the purpose, and that the Tribe was therefore compelled to acquire the requisite software and technical aids from another developer.

39. Yet the Tribe signed on to a Licensing Agreement in September 2015 affirming in part that "[t]he Licensed Software has been tested by Licensee to determine that the program performs according to Licensor's general descriptions of its capabilities." *Id.*, § 3.2.

40. Moreover, the Tribe never invoked the "Termination" section of the Licensing Agreement providing that "Licensee may terminate this Agreement by intentionally destroying the Licensed Software and documentation and all copies thereof, or by returning the same to Licensor." *Id.*, 7.1.

41. The Tribe thus never intended to adhere to the terms of the Agreement of November 2016; but rather, planned (a) to secure the return of the $1,650,000 paid thereunder; (b) to

allege the software, technical aids and other assets acquired from UEG were somehow defective; and finally, © to repudiate commitments to pay the balance of the purchase price from online gaming operations, and 49% of any net revenues derived from the same operations going forward.

C. CLAIMS IN ARBITRATION

42. In December 2020 Plaintiff brought a proceeding against the Tribe before the American Arbitration Association, claiming under the Agreement of November 2016 as follows:

> 41. In Oklahoma "[e]very contract ... implies an implied duty of good faith and fair dealing." *Wathor v. Mutual Assurance Adm'rs, Inc*., 87 P.3d 559, 561(Okla. 2004). A party held in violation is liable in damages for breach of contract. *Ibid.*
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> 42. Events both prior and subsequent to the November 2016 Agreement between the Tribe and UEG – providing in most relevant part that UEG sell the Tribe a 51% stake in the assets of the venture for $10,000,000, including an immediate payment of $1,650,000, in exchange for an increased percentage of the eventual revenue stream – show the Tribe never intended to abide by the terms, in fundamental breach of the implied duty of good faith and fair dealing inherent in the November 2016 Agreement.
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> 43. In January 2016, the Iowa Tribe organized a wholly owned corporation to secure licensure outside the United States, which would enable online gaming operations to take place through a Tribal corporation that was to have exclusive rights to any eventual revenues.
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> 44. In very short order the Tribe recovered the $1,650,000 paid over to UEG in November 2016, induced UEG to defer recovery of the $8,050,000 balance of the purchase price, on purported promises (a) that a single member Oklahoma LLC – with UEG as sole member – would have ownership of "Online

> Gaming Assets" necessary for online Indian gaming to take place; and (b) that the percentage of net revenue from any e eventual gaming operation to UEG would increase from 29% to 49%.
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> 45. Yet the Oklahoma LLC lapsed into inactive status immediately after its initial registration period ended. The Tribe gained licensure in the Isle of Man of its wholly owned Tribal corporation, without regard to UEG's interest in any eventual gaming operation; and then repudiated any and all contractual obligations to UEG and its successor in interest Monster, all without legal justification or excuse, and all consistent with a scheme (a) to acquire the assets necessary to conduct online gaming, and then (b) to repudiate any contractual obligations by reference to false assertions that the software, technical aids and other assets were somehow defective.
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> 46. The Tribe breached the implied duty of good faith and fair dealing inherent in the November 2016 Agreement, as a direct and proximate result of which Petitioner has suffered (a) injury in the amount of $10,000,000, the purchase price for software; and (b) injury for the continuing failure to pay Petitioner the agreed percentage of net revenue derived from online gaming operations made possible by UEG.

First Amended Petition, AAA Case No. 01-20-0019-3927 (January 20, 2019) (Exhibit 2).

D. SUIT IN IOWA TRIBAL COURT TO ENJOIN ARBITRATION

43. Rather than address the allegations or otherwise participate in arbitration, the Tribe instead turned to its own courts for injunctive relief against the arbitration going forward, doing nothing to address the basis for such relief against a non–Indian corporation whose predecessor in interest – also a non–Indian entity – contracted to render services nowhere near Tribal lands, in connection with operations to take place outside the United States.

44. Defendant Eller granted the request almost immediately. *See* Preliminary Injunction (District Court of the Iowa Tribe), Case No. CIV–21–02 (April 13, 2021) (Exhibit 3).

45. Plaintiff had challenged the jurisdictional basis for the Tribe's claims at some length. The extent of Judge Eller's treatment of the jurisdiction issue was as follows: "The Court has subject matter jurisdiction of the above–styled action." *Id.*, ¶ 1.

46. The basis for the claim in arbitration was plainly the Agreement of November 2016 between the Tribe and Plaintiff's predecessor in interest UEG. *Infra*, ¶ 42. Yet Judge Eller proceeded to find that "Monster initiated an arbitration ... [in which it] alleges breaches of **the [September] 2017 Asset Purchase Agreement**." (emphasis added). *Id.* ¶ 4, and so enjoined arbitration on the basis of a purported agreement to which Plaintiff was not a party.

47. On April 21, 2021 Plaintiff took an interlocutory appeal to the Tribal Supreme Court. The Office of the Clerk has represented to undersigned counsel that at present just one appellate judge is serving, which renders the Tribal Supreme Court unable to schedule or entertain briefing or oral argument. The appeal could well languish for some time to come.

IV. CLAIMS

A. COUNT I
(DECLARATORY JUDGMENT)

48. Plaintiff incorporates paragraphs 1 through 47 herein by reference.

49. Plaintiff is entitled to judgment pursuant to 28 U.S.C. § 2201 at this juncture declaring (a) that the Iowa Tribal Courts lack jurisdiction to entertain claims against a non-Indian entity; and (b) that arbitrability of a claim pursuant to the parties' Agreement of November 2016 is a determination for the American Arbitration Association, not for the Iowa Tribal or any other court(s).

B. COUNT II
(INJUNCTIVE RELIEF)

50. Plaintiff incorporates paragraphs 1 through 49 herein by reference.

51. Defendant Eller has exceeded his legal authority as a judge of the Iowa Tribal Court by entertaining a claim against non–Indian entity; and enjoining the American Arbitration Association from determining whether a claim under the parties' Agreement of November 2016 is indeed subject to arbitration, and proceeding with an arbitration if and as an arbitrator holds it appropriate to do so.

52. Plaintiff is entitled to preliminary and permanent injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining Defendant Eller, and any other judge(s) of the Iowa Tribal Court, from exercising jurisdiction of claims against MTG or the American Arbitration Association, or continuing to enjoin an arbitration proceeding going forward.

53. Plaintiff will suffer irreparable harm absent injunctive relief: Among other things, it will be forced to expend additional time and resources before Iowa Tribal Courts that plainly lack jurisdiction.

54. Plaintiff is substantially likely to prevail on the merits: The Iowa Tribal Courts plainly lack jurisdiction of the controversy, and the non–Indian parties. Moreover, any determination as to arbitrability is plainly for the American Arbitration Association to make, not the courts of the Iowa Tribe of Oklahoma.

55. The harm Plaintiff confronts – the time and expense of continued litigation before a Tribal Court that plainly lacks jurisdiction – far outweighs any harm Defendant Eller is likely to suffer upon entry of injunctive relief.

56. Injunctive relief would not be adverse to the public interest. Indeed, the public interest is best served by restraining the Iowa Tribal court from exercising jurisdiction of claims against non–Indian entities, with respect to a claim the parties have agreed should be decided by the American Arbitration Association.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court grant the following:

A. A judgment that the Iowa Tribal Courts lack jurisdiction to entertain claims against Plaintiff deriving from its efforts to enforce the Agreement of November 2016 in arbitration before the American Arbitration Association.

B. Preliminary and permanent injunctive relief against any further purported exercise of jurisdiction by the Iowa Tribal Courts.

C. An award of attorney fees and costs; and

D. Such other relief as the Court may deem just and proper.

Respectfully submitted this 7th day of September, 2021,

/s/ Richard J. Grellner
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VERIFICATION

The factual allegations in the foregoing Complaint is true and correct to the best of my knowledge, information and belief.

Dated: June 7, 2021

/s/ Richard J. Grellner
Richard J. Grellner