IN THE UNITED STATES COURT FOR
THE WESTERN DISTRICT OF MICHIGAN

KEWADIN CASINOS GAMING AUTHORITY,
A duly authorized entity created under the laws of the Sault Ste. Marie Tribe of Chippewa Indians,

Plaintiff,

v.

HONORABLE JOYCE DRAGANCHUK, District Judge, State of Michigan, Ingham County Circuit Court, in her Individual and Official Capacities, JLLJ DEVELOPMENT, LLC, a Michigan Limited Liability Company, and LANSING FUTURE DEVELOPMENT II, LLC, a Michigan Limited Liability Company,

Defendants.

Case No. 2:22-cv-00027

Hon. Hala Y. Jarbou

PLAINTIFF'S BRIEF IN SUPPORT OF ITS MOTION TO AMEND ITS COMPLAINT

ORAL ARGUMENT REQUESTED

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INTRODUCTION

Plaintiff Kewadin Casinos Gaming Authority ("Kewadin') is a tribal entity wholly owned by the Sault Ste. Marie Tribe of Chippewa Indians (the "Tribe"). The Sault Ste. Marie Tribe is a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act, 25 U.S.C. § 5123, under a Constitution approved by the United States Secretary of the Interior.[1] Kewadin is currently being sued in a Michigan state court by Defendants JLLJ Development, LLC and Lansing Future Development II, LLC ("Developers"), *JLLJ Development, LLC et al. v. Kewadin Casinos Gaming Authority*, Ingham County Circuit Court, case number 21-189 ("Michigan state court suit").

The Honorable Joyce Draganchuk ("Judge Draganchuk") is the presiding judge in the Michigan state court suit, and she is a named defendant in this federal lawsuit.

Kewadin instituted this federal suit to vindicate its rights under federal law and to establish that the Michigan state court lacks subject matter jurisdiction over Developers' state court claims. Kewadin now moves to amend its complaint in order to supplement its complaint with additional new facts that have arisen since Kewadin's initial complaint was filed on February 4, 2022. PageID.1-193. These include discussion of the *dispositive* decision that the alleged contracts between Kewadin and the Developers are void *ab initio* based upon the Sault Ste. Marie Gaming Commission's order, issued under that body's exclusive jurisdiction to regulate gaming on the Tribe's Reservation. Kewadin also seeks to allege additional facts and additional legal grounds for establishing that (*i*) the Michigan state court lacks subject matter jurisdiction over both the Sault Ste. Marie Tribe's federal property and the Developers' claims against Kewadin; (*ii*) that federal

[1] The Tribe's Constitution is available at https://www.saulttribe.com/images/downloads/history%20and%20culture/story%20of%20our%20people/CONST%202010%20Amendment%20II.pdf.

law both preempts state court jurisdiction over Developers' state court suit and provides for federal question jurisdiction under 28 U.S.C. § 1331; and (*iii*) to establish factually that there are no compelling grounds for federal court abstention in this case.

The Defendants have filed separate motions to dismiss Kewadin's complaint. The "Developers" motion was filed on February 25, 2022, PageID.631-634, and Judge Draganchuk's motion was filed on March 2, 2022. PageID.679-680. On April 13, 2022, Kewadin filed its responses to those motions to dismiss. PageID.761. As discussed in Kewadin's response, the Defendants motions to dismiss both argue as if Kewadin only raised a claim of sovereign immunity in its Complaint, but Kewadin's initial complaint pled multiple other federal questions. These included complete preemption, the federal question of whether state action infringes on the separate sovereignty of a tribe, violation of tribal property rights, and other grounds for lack of state court subject matter jurisdiction which are wholly independent and separate from immunity. Kewadin's amended complaint adds additional discussion of those independent and separate claims regarding jurisdiction.

LEGAL ARGUMENT

Under Federal Rule of Civil Procedure 15(a)(2), "The court should freely give leave [to amend] when justice so requires." The purpose of Rule 15(a) is "to reinforce the principle that cases 'should be tried on their merits rather than the technicalities of pleadings.' " *Moore v. City of Paducah,* 790 F.2d 557, 559 (6th Cir. 1986) (quoting *Tefft v. Seward,* 689 F.2d 637, 639 (6th Cir. 1982)).

As stated in *Foman v. Davis*, 371 U.S. 178 (1962):

> If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure

> deficiencies by amendments previously allowed undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be 'freely given.'

Id at 182. In determining what constitutes prejudice, the court considers whether the assertion of a new claim would require the opponent to expend significant additional resources to conduct discovery and prepare for trial, or significantly delay the resolution of the dispute. *Phelps v. McClellan*, 30 F.3d 658, 662-63 (6th Cir. 1994).

Here, no grounds exist for denying Kewadin's motion to amend. Insofar as this lawsuit is still pending preliminary motions to dismiss, there has been no undue delay, nor bad faith or dilatory motive on the Kewadin's part.

A district court has discretion in determining whether justice requires that an amendment be allowed. *Moore,* 790 F.2d at 559. Generally, an appellate court reviews a district court's denial of a motion to amend for abuse of discretion. *Id.* However, if the district court based its decision on a legal conclusion that the proposed amendment would not survive a motion to dismiss, an appellate court reviews the decision *de novo. Greenberg v. Life Ins. Co. of Virginia*, 177 F.3d 507, 522 (6th Cir. 1999) (reversing a district court's "blanket dismissal of all" of the litigant's claims) (citing *LRL Properties v. Portage Metro Housing Auth.,* 55 F.3d 1097, 1104 (6th Cir. 1995)).

Here, there are no grounds for determining that Kewadin's proposed amendments would be futile. Kewadin's amended complaint included added discussion of complete preemption. The Indian Gaming Regulatory Act ("IGRA") provides that unless a tribe expressly consents to an exercise of state civil power in a gaming compact between a state and a tribe, the state lacks civil or criminal jurisdiction over tribal gaming, and thus, state regulatory or adjudicatory jurisdiction is completely preempted. *E.g.*, U.S.C. § 2701(5); 25 U.S.C. § 2709(d)(3)(C)(i-ii) S. Rep. 100–446, at 5–6, *reprinted in* 1988 U.S.C.A.N. at 3075 (IGRA "provides that in the exercise of its sovereign rights, unless a tribe affirmatively elects to have State laws and State jurisdiction extend

to tribal lands, the Congress will not unilaterally impose or allow State jurisdiction on Indian lands for the regulation of Indian gaming activities. The mechanism for facilitating the unusual relationship in which a tribe might affirmatively seek the extension of State jurisdiction and the application of state laws to activities conducted on Indian land is a tribal-State compact."); *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

The amended complaint also includes additional discussion of why that complete preemption and the Tribe's sovereign and exclusive right to interpret and enforce its gaming regulations must be respected by foreign courts, i.e. why its decision under tribal law is binding and dispositive.

The amended complaint also includes additional discussion of why, even separate from the gaming regulatory issue, this case is nearly identical to the case at bar, the Tenth Circuit Court of Appeals ruled in favor of an Indian tribe and its tribal entity, finding *inter alia*, that the State of Utah lacked subject matter jurisdiction to adjudicate claims against the Indian tribe and its tribal entity, that federal law preempted the state law claims and made abstention in that case improper. *Ute Indian Tribe of the Uintah and Ouray Reservation v. Lawrence*, 875 F.3d 539, 541-48 (10th Cir. 2017). In another Tenth Circuit case, then-Circuit Judge—now Supreme Court Justice—Neil Gorsuch authored a decision reversing the district court's denial of injunctive relief against a state court's illegal assertion of state court adjudicatory jurisdiction:

> The Tenth Circuit has "repeatedly stated that ... an invasion of tribal sovereignty can constitute irreparable injury." *Wyandotte Nation v. Sebelius,* 443 F.3d 1247, 1255 (10th Cir. 2006). In *Wyandotte Nation* itself, this court upheld a preliminary injunction preventing Kansas from enforcing state gaming laws on a tract of tribal land because of the resulting infringement on tribal sovereignty. *Id.* at 1254–57; *see also Prairie Band of Potawatomi Indians v. Pierce,* 253 F.3d 1234, 1250–51 (10th Cir. 2001). And we can divine no reason or authority that might justify a different result here, where the invasion of tribal sovereignty is so much greater.

Ute Indian Tribe of the Uintah and Ouray Reservation v. Utah, 790 F.3d 1000, 1005 (10th Cir. 2015). These two Tenth Circuit decisions establish that Kewadin's proposed amendments to its

complaint allege legitimate claims for relief under federal law.

Moreover, in the Sixth Circuit there is similar precedent for the proposition that state courts in Michigan likewise lack adjudicatory jurisdiction over Indian tribes, tribal members, and tribal entities. *United States v. Michigan*, 471 F. Supp. 192, 264-274 (W.D. Mich. 1979) (holding that federal and tribal law preempts the State of Michigan's regulatory and adjudicatory authority over Indian fishing rights), *order modified*, 653 F.2d 271 (6th Cir. 1981), *cert denied*, 454 U.S. 1124 (1981). In view of this controlling legal precedent, Kewadin's proposed amendments to its complaint can hardly be characterized as futile.

WHEREFORE, Kewadin respectfully requests that this Honorable Court grant Kewadin's Motion to file its First Amended Complaint, and grant Kewadin such other and further relief as may be required.

Respectfully submitted this 9th Day of May, 2022.

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