IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

NICOLAS A. MANZINI,

Plaintiff,

v.

TALBERT CYPRESS, and
LUCAS K. OSCEOLA,

Defendants.
_____/

CIVIL DIVISION

CASE NO. 24-CV-24670-RAR

DEFENDANTS' MOTION TO DISMISS

Defendants, by and through undersigned counsel and pursuant to Fed. R. Civ. P. 12(b)(1), (5), (6), and (7), and Fed. R. Civ. P. 19, hereby file this consolidated Motion to Dismiss the Amended Complaint filed by Plaintiff, Nicolas Manzini ("Manzini" or "Plaintiff"). As set forth below, Defendants respectfully request that this Court dismiss the Amended Complaint with prejudice on multiple, independent grounds.

Dated: February 5, 2025

Respectfully submitted,

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SUMMARY

There are at least six independent bases for dismissal of the Amended Complaint.

First, the Court lacks subject matter jurisdiction here because Defendants – both of whom are sued in their official capacity – are protected by Tribal sovereign immunity. Additionally, the Court lacks subject matter jurisdiction because Plaintiff has not and cannot allege the existence of either diversity or federal question jurisdiction. And although not expressly alleged, the Amended Complaint hints at – but does not assert – class action claims.[1] To the extent Plaintiff plans to bring claims on behalf of putative class, this Court lacks jurisdiction under the Class Action Fairness Act. Finally, Plaintiff's declaratory relief claim in Count II cannot confer federal question jurisdiction without an independent basis for subject-matter jurisdiction.

Second, Plaintiff has failed to state claims for relief under the IRGA or NIGC regulations because federal precedent makes clear that no private right of action exists under the IGRA or the attendant regulation. To the extent Plaintiff purports to bring Florida state-law claims[2] in Count I, the Amended Complaint fails to state a cognizable claim for relief.

Third, as set forth more particularly in Defendants' contemporaneously filed motion to quash, Plaintiff's service of process should be quashed because Defendants are not located outside of a judicial district in the United States, and therefore, alternative service is not available to Plaintiff, among other reasons.

Fourth, the Tribe is a necessary and indispensable party to this action and Plaintiff naming

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[1] For example, the Amended Complaint alleges that Mr. Manzini and "countless others" have been harmed by Defendants and that Mr. Manzini "brings this action to redress such harm." (D.E. 12, ¶ 28.) (*See also* D.E. 12, ¶¶1, 12, 33, 40, 46.)

[2] Count I is titled "Violation of IGRA and NIGC Regulations (FDUPTA, Conversion, Unjust Enrichment)."

each Defendant *in their official capacity* is nothing more than a thinly disguised and improper attempt to obtain relief ultimately against the Tribe, which is shielded by its sovereign immunity.

Fifth, the Complaint should be dismissed as an improper shotgun pleading.

FACTUAL BACKGROUND

The Miccosukee Tribe – which is not a party to this action – is a federally-recognized Indian tribe, headquartered on the Miccosukee Reserved Area in the geographic boundaries of Miami-Dade County, Florida (the "Tribe").

Consistent with traditional notions of sovereignty, the Tribal Constitution affirms the structural organization of the Tribe that predates federal recognition. Under the Tribal Constitution, the General Council serves as the primary legislative body of the Tribe and provides guidance to the Miccosukee Business Council, which directs day-to-day affairs between the quarterly General Council meetings consistent with the General Council's guidance. The General Council consists of all enrolled members who are 18 years or older. The Miccosukee Business Council is the Tribe's executive branch. It consists of five positions elected by the General Council and empowered to conduct its affairs: Chairman, Assistant Chairman, Secretary, Treasurer and Lawmaker. Here, Defendant Cypress is the Business Council Chairman while Defendant Osceola is the Assistant Chairman.

The Business Council administers more than 60 departments charged with ensuring the welfare of the Miccosukee Tribe, its citizens, and its interests, including but not limited to the Elderly Services Department, Housing Department, Miccosukee Indian Clinic, Wildfire Department, Emergency Management Department, Miccosukee Indian School, Daycare, Senior Center, Miccosukee Police Department, Miccosukee Fish & Wildlife Department, Water & Sewage Department, Wilderness Department, and, relevant here, its gaming operations.

The Tribe's gaming properties and operations are authorized pursuant to the Tribe's Resolution No. MBC 07-94, titled "Adoption of Model Class II Gaming Ordinance," dated December 13, 1993 (the "Gaming Ordinance"). A true and correct copy of the Gaming Ordinance is attached hereto as Exhibit 1.[3] The Gaming Ordinance was adopted pursuant to the Indian Gaming Regulations Act (the "IGRA"). *See* 25 U.S.C. §2701, *et seq.* As discussed more fully below, the IGRA established a statutory framework under which the Tribe (and other federally regulated Tribes) regulates its own gaming operations.

Under the IGRA, the Tribe's Gaming Ordinance must include certain guardrails for the Tribe's regulation of gaming on Tribal lands. *Id.* All such minimum requirements are included in the Tribe's Gaming Ordinance, which was approved by the National Indian Gaming Commission on or about January 14, 1994. (*See* Ex. 1 at 1.) Consistent with the IGRA and the NIGC's approval letter, all Tribal gaming properties and operations are located on Tribal lands.

Here, the Amended Complaint attempts to allege **the Tribe's** purported violations of the IGRA and NIGC regulations by asserting various state law claims against **the individual Defendants**. Not only is Plaintiff's theory of the case foreclosed under binding and established precedent discussed below, the exact allegations of Plaintiff's Amended Complaint have twice been dismissed for lack of jurisdiction. Indeed, the Amended Complaint is nothing more than a copy-and-paste of complaints filed – and dismissed – in two unrelated cases. *See Scheer v. MGM*

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[3] The Gaming Ordinance is incorporated by reference in the Amended Complaint. (*See* D.E. 12 at ¶27, n.4.) *See also Reed v. Royal Caribbean Cruises Ltd.*, 618 F. Supp. 3d 1346, 1355 (S.D. Fla. 2022) (citing *Aronson v. Celebrity Cruises, Inc.*, 30 F. Supp. 3d 1379, 1397 (S.D. Fla. 2014)) (". . . [A] document may be considered [on a motion to dismiss] – provided plaintiff refers to the document in its complaint, the document is central to plaintiff's claim, its contents are not in dispute, and the defendant attaches the document to its motion to dismiss.")

Resorts Int'l, Case No. 22-cv-258 (S.D. Miss.) and *Young v. Caesars Entm't, Inc.*, Case No. 22-5331 (W.D. La.). The plaintiffs in *Scheer* and *Young* brought the same state-law claims based on the same allegations as Plaintiff in this action, *i.e.*, that the (non-Tribal) casino defendants were liable for conversion and unjust enrichment because of alleged inadequate disclosures as to their respective coin-voucher systems.

Notably, both *Scheer* and *Young* were dismissed for a lack of jurisdiction. *See Scheer v. MGM Resorts International*, Case No. 22-cv-258, 2023 WL 2776675 (S.D. Miss. Apr. 4, 2023); *Young v. Caesars Entm't, Inc.*, Case No. 22-5331, 2023 WL 3295600 (W.D. La. May 5, 2023). The same conclusion is required here, albeit for different but equally (if not more) compelling reasons.

As discussed more fully below, these facts applied to the settled principles of law require dismissal of Plaintiff's Amended Complaint.

ANALYSIS

I. PLAINTIFF FAILED TO ALLEGE SUBJECT-MATTER JURISDICTION.

This Court lacks subject matter jurisdiction over this proceeding because Plaintiff has failed to satisfy the requirements under diversity jurisdiction and federal question jurisdiction. 28 U.S.C. §§1331-1332.

A. Tribal Sovereign Immunity Bars this Action.

1. Tribal Sovereign Immunity has not been waived.

Beginning with the Tribe, a non-party, it is indisputable that its sovereign immunity has not been waived or abrogated, and further, that such immunity operates as a jurisdictional bar to suit: "Sovereign immunity is jurisdictional in nature." *Everglades Ecolodge at Big Cypress, LLC v. Seminole Tribe of Florida*, 836 F. Supp. 2d 1296, 1307 (S.D. Fla. 2011) (quoting *F.D.I.C. v.*

Meyer, 510 U.S. 471, 475 (1994)). A native tribe "is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Id*. (quoting *Kiowa Tribe v. Mfg. Tech., Inc.*, 523 U.S. 751, 754 (1998)). Here, the Amended Complaint does **not** allege an express or implied waiver of sovereign immunity, nor has it joined the Tribe as a party.

Further, the IGRA does not abrogate the Tribe's sovereign immunity. *Cf. Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782 (2014) (noting that the IGRA "partially abrogates tribal sovereign immunity" by authorizing "**States** to sue a tribe to 'enjoin a **class III**[4] **gaming activity** located on Indian lands and conducted in violation of any Tribal-State compact") (emphasis added).

Here, the IRGA *does not* abrogate the Tribe's sovereign immunity because the Tribe operates class II gaming activity, and in any event, Plaintiff is not a state actor. *See Furry v. Miccosukee Tribe of Indians of Fla.*, 685 F.3d 1224 (11th Cir. 2012) (citing *Sanderlin v. Seminole Tribe of Fla.*, 243 F.3d 1282, 1285 (11th Cir. 2001)) (plaintiff bears burden to establish that the Tribe "expressly and unmistakably waived its right to sovereign immunity from suit"). Where, as here, sovereign immunity is neither waived nor abrogated, "it bars actions against tribes regardless of the type of relief sought." *Freemanville Water Sys., Inc. v. Poarch Band of Creek Indians*, 563 F.3d 1205, 1208 (11th Cir. 2009).

2. Tribal sovereign immunity extends to Defendants.

Tribal sovereign immunity extends to individual tribal officials and agents acting in their official capacity and within the scope of their authority. *See e.g., Tamiami Partners, Ltd. ex rel. Tamiami Dev. Corp. v. Miccosukee Tribe of Indians of Fla.*, 177 F.3d 1212, 1225 (11th Cir. 1999)

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[4] The Tribe operates a Class II gaming operation. *See* Exhibit 1. As the operator of a Class II gaming operation, the IGRA's limited waiver of sovereign immunity does not apply to the Tribe. Further, the Tribe is not required to enter into a compact with the State of Florida and, thus, did not waive sovereign immunity by entering into same.

("We begin with the proposition that tribal officers are protected by tribal sovereign immunity when they act in their official capacity and within the scope of their authority; however, they are subject to suit under the doctrine of *Ex parte Young* when they act beyond their authority"); *Contour Spa at the Hard Rock, Inc. v. Seminole Tribe of Florida*, 692 F.3d 1200, 1210 (11th Cir. 2012) (noting that sovereign immunity protects the Tribal chairman when acting in his official capacity and within his authority). Here, each Defendant is named in his official capacity and, thus, fits within the categories of protected tribal officers.

The *Ex parte Young* doctrine provides a **narrow exception** to sovereign immunity where Tribal officers act beyond their authority. Yet, Plaintiff fails to raise any allegations about what, when, where, or why the Defendants acted beyond their authority. Plaintiff wholly fails to allege any factual predicate to invoke this exception to sovereign immunity in a specious attempt to make the exception to sovereign immunity swallow the rule.

For example, in Count I, Plaintiff alleges that **the Tribe's** allegedly unlawful conduct was "carried out under the oversight of Defendants [] acting in bad faith and/or while exceeding the scope of their authority as tribal officers . . . ." (D.E. 12, ¶ 32.) Further, Plaintiff's attempt to respond to jurisdictional questions identified in the Order Show Cause was to add rote phrases, such as, "at Defendants' direction," "under Defendants' oversight," or "as guided by Defendant," without raising other factual allegations supporting these conclusory assertions. (*See* D.E. 12, ¶¶ 1, 11 12, 27-28.) Aside from these conclusory statements, the Amended Complaint fails to allege that Defendants actually did *anything* with respect to gaming operations generally or change-vouchers, and fails to provide a scintilla of substantive allegations suggesting that Defendants acted beyond their respective authority in their respective roles. Plaintiff does not seek relief against the individual Defendants; rather, Plaintiff alleges that "the Tribe is liable" for the relief

sought. (*See* D.E. 12 at ¶2.)

Plaintiff's conclusory allegations are insufficient to invoke the narrow exception under *Ex parte Young*. *See Jamul Action Comm. v. Simermeyer*, 974 F.3d 984, 996 (9th Cir. 2020) (holding that plaintiff failed to allege *Ex parte Young* claims where the complaint did "not explain what responsibility any of those individuals have or had for the acts it contends are unlawful" and even failed to "mention any of the named tribal officers"); *Terry v. Smith*, 2011 WL 4915167, at *7 (S.D. Ala. July 20, 2011) (plaintiff failed to state a claim against tribal officials because "the scant recitation of facts in the complaint do not permit the court to infer" that the tribal officials acted beyond their authority, to the extent they acted at all).

Contrary to law, Plaintiff seeks relief against the Tribe, asking this Court to "restore all monies that have been **acquired by the casino** . . . for distribution to the Tribe's patrons . . . ." (D.E. 12, ¶ 40.) However, "[s]uits to enjoin tribal officers acting in their official capacities are barred when the relief sought reveals that the suit is one against the sovereign[,]" *i.e.*, the Tribe and its gaming enterprise. *Contour Spa at the Hard Rock, Inc. v. Seminole Tribe of Florida*, 2011 WL 1303163, at *10 (S.D. Fla. Mar. 31, 2011), *aff'd*, 692 F.3d 1200 (11th Cir. 2012).

It is clear that Plaintiff named the Defendants in this action as an improper and thinly veiled attempt to circumvent the Tribe's sovereign immunity. "[A] suit may sometimes be dismissed for want of jurisdiction where the alleged claim under the Constitution or federal statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous." *Bell v. Hood*, 327 U.S. 678 U.S. 682-83 (1946).

Even after this Court correctly inquired about jurisdictional issues in its Order to Show Cause, Plaintiff has not and cannot plead the requisite facts to invoke the narrow *Ex parte Young*

exception necessary for him to overcome their immunity from suit. Accordingly, the Amended Complaint should be dismissed with prejudice.

B. Diversity jurisdiction is lacking.

Diversity jurisdiction is lacking for two reasons.

First, Plaintiff failed to allege that the amount in controversy exceeds the sum or value of $75,000. (*See* D.E. 12 at ¶7.) Moreover, it is highly improbable that Plaintiff could allege such an amount at issue because Plaintiff alleges that the **Tribe** (not Defendants) shortchanged Plaintiff by "essentially robbing its customers **a few cents at a time**, on millions of transactions." (*Id*. at ¶20) (emphasis added.) However, for Plaintiff to reach the $75,000 amount in controversy, he would need at least 75,576 maximum value ($0.99) change vouchers **for himself** during a period of nearly three years – approximately 56 maximum value change vouchers every day for 1399 days.

Second, Plaintiff incorrectly alleges that "[d]iversity jurisdiction arises from the fact that Plaintiff is a United States citizen and a resident of the State of Florida while Defendants Cypress and Osceola as members of a federally recognized Indian tribe are citizens of a sovereign nation and foreign defendants so that true diversity of citizenship is deemed to exist as between the parties . . . ." (D.E. 12, ¶ 7.)

However, "Tribal members are treated as citizens of the state where they reside for the purpose of establishing diversity jurisdiction under 28 U.S.C. § 1332 . . . ." *Gilmore v. Salazar*, 748 F. Supp. 2d 1299, 1314 (N.D. Okla. 2010), *aff'd sub nom. Gilmore v. Weatherford*, 694 F.3d 1160 (10th Cir. 2012) (citing *Richardson v. Malone,* 762 F. Supp. 1463, 1466 (N.D.Okla.1991)).

Federal case law is "clear" that Tribal members are considered citizens of the state in which they reside for the purpose of establishing diversity jurisdiction. *Ward v. Mortimer*, 2010 WL 3761906, at *1 (E.D.N.Y. Sept. 16, 2010) ("Plaintiff apparently believes that, for diversity

purposes, a Native American residing on a reservation is only a citizen of an Indian Tribe, and not a citizen of the state where the reservation is located. Plaintiff is wrong. The law is clear that, for diversity purposes, Native Americans residing on reservations are citizens of the state where the reservation is located.").

Consequently, Defendants – who reside in Miami-Dade County, *see e.g.*, (D.E. 5) (Plaintiff listing Defendants' addresses in Miami-Dade County) *and* (D.E. 12, ¶4) (alleging that the "Tribe's lands are situate primarily within the boundaries of Miami-Dade and Broward Counties, Florida") – are citizens of the State of Florida for purposes of establishing diversity jurisdiction. *See also Richardson v. Malone*, 762 F. Supp. 1463, 1466 (N.D. Okla. 1991) ("Plaintiff assumes that because the Defendants are members of the Osage Indian Tribe, the Defendants are therefore foreign citizens. This clearly is not so. A Native American residing within the borders of a state is a citizen of that state (*Deere v. New York,* 22 F.2d 851 (D.C.N.Y.1927)), and thus is not a foreign citizen."); *Schantz v. White Lightning*, 502 F.2d 67, 68, 70 (8th Cir. 1974) ("neither the elements of diversity or federal question jurisdiction are present" where "the parties were involved in a motor vehicle collision within the exterior boundaries of the Standing Rock Indian Reservation" and "Appellees were both residents of the North Dakota portion of the Standing Rock Indian Reservation at the time of the accident. Appellants are non-Indian residents of North Dakota, residing outside the boundaries of the reservation."); *McAlpine v. McAlpine*, 2010 WL 474643, at *2 (N.D. Okla. Feb. 2, 2010) ("plaintiff is a resident of Oklahoma for diversity jurisdiction purposes, regardless of the legal status of the Osage Reservation or the Grayhorse Indian Village.[2] Defendants are also residents of Oklahoma. Therefore, this Court does not have diversity jurisdiction over plaintiff's claims."); *Peck v. Dep't of Hous. & Urban Dev.*, 2021 WL 100506, at *5 (D. Utah Jan. 12, 2021) ("Further, to the extent Plaintiffs believe Peck's membership in the Cherokee Nation makes him a

foreign citizen, they are mistaken because '[a] Native American residing within the borders of a state is a citizen of that state' for diversity jurisdiction purposes . . . the court concludes that Plaintiffs have not met their burden to establish diversity jurisdiction."); *Taguma v. Benton*, No. 19-CV-199-BBC, 2019 WL 1877171, at *1 (W.D. Wis. Apr. 26, 2019) ("Although plaintiff alleges that she and both defendants are Native American, diversity jurisdiction does not exist because all of the parties live in Hayward, Wisconsin."); *Pais v. Sinclair*, 2006 WL 3230035, at *5 (W.D. Tex. Nov. 2, 2006) ("Nor are the elements of diversity jurisdiction present. Indian tribes are deemed to be citizens of the state in which they are located for purposes of jurisdiction."); *Tribal Smokeshop, Inc. v. Alabama-Coushatta Tribes of Texas ex rel. Tribal Council*, 72 F. Supp. 2d 717, 718 n.1 (E.D. Tex. 1999) ("In any event, there is no diversity jurisdiction in the present case. Indian tribes are deemed to be citizens of the state in which they are located for purposes of jurisdiction."); *Harvey v. Horton*, 2024 WL 3326415, at *3 (D.S.C. May 15, 2024), *R&R adopted*, 2024 WL 3023596 (D.S.C. June 17, 2024) ("Here, Plaintiff and Defendants all appear to be citizens of South Carolina. Plaintiff asserts she is a tribal member. However, she has alleged no facts to indicate she is a citizen of any state other than South Carolina."); *Romanella v. Hayward*, 933 F. Supp. 163, 166 (D. Conn. 1996), *aff'd*, 114 F.3d 15 (2d Cir. 1997) ("As *Grover v. Holmgren*, 2021 WL 1406022, at *1 (W.D. Wis. Apr. 14, 2021) (same); Tribe members residing in Connecticut, Hayward and Libby are citizens of Connecticut."); *Bresette v. Buffalo-Reyes*, 2006 WL 3017256, at *1 (W.D. Wis. Aug. 7, 2006) (same); *Larson v. Martin*, 386 F. Supp. 2d 1083, 1086 (D.N.D. 2005) (same).

Consequently, Plaintiff has failed to allege, and cannot allege, diversity jurisdiction.

C. Diversity jurisdiction is also lacking under the Class Action Fairness Act.

To the extent Plaintiff seeks to invoke diversity jurisdiction under the Class Action Fairness Act ("CAFA") pursuant to Section 1332(d), the Amended Complaint also fails to allege a sufficient

basis for diversity jurisdiction.

First, the CAFA amount in controversy requirement is $5 million dollars. *See* 28 U.S.C. 1332(d)(2). However, Plaintiff has not alleged any amount in controversy. (*See generally* D.E. 12). Moreover, such an amount in controversy is highly implausible because, again, Plaintiff alleges the Tribe shortchanges customers by a "few cents at a time." (*See* D.E. 12 at ¶20).

Here, Plaintiff has failed to allege the amount in controversy, let alone, plausibly allege an amount sufficient to reach the $5 million threshold. *See Anderson v. Wilco Life Ins. Co.*, 943 F.3d 917, 925 (11th Cir. 2019) (quoting *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014) ("A defendant seeking to remove a case to federal court must file a notice of removal that includes 'a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.'")

To reach the $5 million threshold, it would require that every single change voucher carried a maximum value of $0.99 and more than 3,610 vouchers per day for 1,399 days between January 1, 2021 to October 17, 2024. (*See* D.E. 12 at ¶¶27-29.) Thus, the Amended Complaint fails to allege any basis, let alone a plausible one, for CAFA diversity jurisdiction under Section 1332(d).

D. Federal question jurisdiction is lacking.

In the Order to Show Cause (D.E. 9), this Court correctly identified binding precedent that forecloses Plaintiff's attempt to invoke federal question jurisdiction under the IGRA:

> However, it is not clear that this Court has jurisdiction, given the precedents set by *Ex Parte Young*, 209 U.S. 123 (1908); *Tamiami Partners By & Through Tamiami Dev. Corp. v. Miccosukee Tribe of Indians of Fla.*, 63 F.3d 1030 (11th Cir. 1995); and *Florida v. Seminole Tribe of Fla.*, 181 F.3d 1237 (11th Cir. 1999). *See also Harris v. Sycuan Band of Diegueno Mission Indians*, No. 08CV2111-WQH-AJB, 2009 WL 5184077, at *7–8 (S.D. Cal. Dec. 18, 2009) (determining IGRA allegations were "insufficient to confer federal question jurisdiction" where no private right of action exists and where a claim did not require interpretation of IGRA);

> *Tamiami Partners ex rel. Tamiami Dev. Corp. v. Miccosukee Tribe of Indians of Fla.*, 177 F.3d 1212, 1225 (11th Cir. 1999) ("[T]ribal officers are protected by tribal sovereign immunity when they act in their official capacity and within the scope of their authority; however, they are subject to suit under the doctrine of *Ex parte Young* when they act beyond their authority.").

(D.E. 9, at 1-2.)

Rather than substantively respond to the Order Show Cause, Plaintiff filed his Amended Complaint with minimal revisions. The Amended Complaint failed to address any of this Court's concerns identified in the Order to Show Cause. Instead, Plaintiff summarily alleged that federal question jurisdiction exists by citing to *Tamiami Partners*, 63 F.3d at 1055-6[5] and *Ex Parte Young*, 209 U.S. 123. (*See* D.E. 12 at ¶6, n 1.) Merely re-citing the authorities cited in the Court's Order to Show Cause is not sufficient for Plaintiff to establish federal question jurisdiction.

Moreover, *Tamiami Partners* and *Ex Parte Young*, among other precedent, establish that this Court lacks federal question jurisdiction over Plaintiff's claims.

As pertinent here, in *Tamiami Partners*, the Eleventh Circuit determined that the plaintiffs brought claims arising under the laws of the United States because the plaintiffs had a written agreement with the Tribe that "incorporates – by operation of law if not by reference – the provisions of the IGRA and the NIGC's regulations that govern [the parties' gaming] operations" and "Tamiami's claims that the Tribe has an obligation under IGRA and the NIGC's regulations—which the Agreement incorporates—to process an application for a license in good faith and that the Tribe has breached that obligation are claims arising under federal law; hence the district court had subject matter jurisdiction over Tamiami's breach of contract claim against the Tribe." 63 F.3d at 1047.

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[5] The *Tamiami Partners* decision ends at page 1051. To the extent pages 1555 and/or 1556 exist, they are not part of the decision.

In contrast, in this action, Plaintiff does not allege a written agreement between himself and Defendants, let alone the Miccosukee Tribe of Indians of Florida, incorporating the IGRA or NIGC, such that federal question jurisdiction would exist.

Perhaps even more critically, Plaintiff does not identify a single provision in the IGRA or NIGC that has been violated, provides Plaintiff with a right of action, or provides Plaintiff with a remedy. As a result, Plaintiff has not alleged any basis that would ask this Court to interpret or construe any portion of the IGRA or NIGC to confer federal jurisdiction.

Moreover, the Eleventh Circuit cited *Bell v. Hood*, 327 U.S. 678 U.S. 682-83 (1946) for the proposition that a Court may dismiss an action for want of jurisdiction where a claimant cites a federal statute for frivolous purpose of obtaining jurisdiction: "[A] suit may sometimes be dismissed for want of jurisdiction where the alleged claim under the Constitution or federal statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous." *Cf. Tamiami Partners*, 63 F.3d at 1047 n.62 ("Tamiami's IGRA claims are not 'immaterial and made solely for the purpose of obtaining jurisdiction'; nor are they 'wholly insubstantial and frivolous.'") (quoting *Bell*).

Analogous to the circumstances in *Harris v. Sycuan Band of Diegueno Mission Indians*, 2009 WL 5184077, at *7 (S.D. Cal. Dec. 18, 2009), here, Plaintiff does not allege a cause of action arising from "any of the express remedies in the IGRA." Instead, Plaintiff's singular citation to the IGRA is section "2702 (b) [sic],"[6] which is merely a declaration of the "purpose of this chapter". Plaintiff fails to allege any other portions of the IGRA have been violated or entitle Plaintiff to relief. Under similar circumstances, the Court in *Harris* "conclude[d] that the allegations in the [complaint] related to the IGRA are insufficient to confer federal question jurisdiction." *Id*.

[6] There is no subsection (b) in section 2702 of the IGRA.

Furthermore, there is no federal question jurisdiction because Plaintiff "is not bringing a cause of action created by federal law" nor has he "establish[ed] that its right to relief necessarily depends on resolution of federal law." *Jefferson State Bank v. White Mountain Apache Tribe*, 2011 WL 5833831, at *2 (D. Ariz. Nov. 21, 2011) (quoting *Peabody Coal Co. v. Navajo Nation,* 373 F.3d 945, 949 (9th Cir. 2004)). To the contrary, Plaintiff alleges violations of the IGRA and NIGC by expressly asserting the right to relief **under state law**, to wit, "FDUPTA, Conversion, Unjust Enrichment" in his "First Cause of Action." (*See* D.E. 12 at p. 12.) Since Plaintiff expressly alleges entitlement to relief under state law, it follows that federal question jurisdiction does not exist. *See also JLLJ Dev., LLC v. Kewadin Casinos Gaming Auth.*, No. 1:20-CV-231, 2021 WL 1186228, at *4 (W.D. Mich. Mar. 30, 2021). In *JLLJ*, like here, the plaintiff alleged "routine state law claims" while asserting the IGRA as a basis for federal question jurisdiction. *Id*. at *9. In its analysis of whether federal question jurisdiction existed, the district court noted: "This is not a case involving a contract to manage an actual tribal gaming operation. Actual gaming management contracts may well arise under federal law." *Id*. at *8. (citing 25 U.S.C. § 2711(a); 25 C.F.R. §§ 533.7, 535.1(f); and *Tamiami Partners*, 63 F.3d at 1047). Again, and contrary to *Tamiami Partners*, Plaintiff does not allege a written agreement incorporating the IRGA executed between Plaintiff and Defendants, let alone the Tribe.

Ultimately, even if Plaintiff had alleged a violation of the IGRA, Plaintiff's Amended Complaint is still insufficient to confer jurisdiction because Plaintiff has not presented a substantial question of federal law: "A claim arises under federal law, for purposes of federal-question jurisdiction, when the cause of action is (1) created by a federal statute or (2) presents a substantial question of federal law." *Miller v. Bruenger*, 949 F.3d 986, 991 (6th Cir. 2020). Here, Plaintiff's Amended Complaint fails to present any question of federal law, let alone a substantial one, and,

as discussed in greater detail in section II.A., Plaintiff does not have a right of action under the IGRA. *See e.g. Tamiami Partners* 63 F.3d at 1048.

E. Plaintiff's declaratory relief claims fail to confer federal question jurisdiction.

Without establishing subject-matter jurisdiction on an independent basis, Plaintiff's claim for declaratory relief pursuant to the Federal Declaratory Judgment Act is insufficient to confer federal question jurisdiction. *See e.g. Emmanuel v. Charter Bank, NA, LLP*, 2017 WL 4271666, at *3 (M.D. Fla. July 31, 2017), *report and recommendation adopted sub nom. Emmanuel v. Charter Bank, NA*, 2017 WL 4242392 (M.D. Fla. Sept. 22, 2017) ("Ms. Emmanuel's claim for declaratory relief does not provide a basis for exercise of federal question jurisdiction in this case. Even if Ms. Emmanuel intended to bring that claim under the federal Declaratory Judgment Act, 28 U.S.C. § 2201(a), that Act does not provide an independent basis for federal question jurisdiction . . . Before declaratory relief is available pursuant to the Act, an independent basis for federal jurisdiction must be established.") (citing *See Wendy's Int'l, Inc. v. City of Birmingham*, 868 F.2d 433, 435 (11th Cir. 1989)); *Antares Underwriting Ltd. v. E&D Mainstreet Corp*, 2021 WL 6298666, at *1, n.1 (M.D. Fla. Oct. 21, 2021) ("The Court notes that Plaintiff brings the Complaint for declaratory judgment pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, but the Act does not provide an independent basis for federal question jurisdiction."). As a result, Plaintiff's second claim for relief fails to confer subject-matter jurisdiction over this action.

II. PLAINTIFF FAILED TO STATE A CLAIM.

Plaintiff failed to state a claim for relief, and as a result, dismissal is required.

A. No private right of action exists under the IRGA or NIGC.

Dismissal with prejudice is warranted because federal law is clear – and repetitively so – that there is no private right of action under the IRGA or NIGC. Yet, contrary to a robust body of jurisprudence, Plaintiff alleges, "Both IGRA and the NIGC's regulations provide and/or imply a

right of action by Plaintiff as a member of the gaming public against Defendants . . . .” *See* (D.E. 12) at ¶33.

In *Tamiami Partners By & Through Tamiami Dev. Corp. v. Miccosukee Tribe of Indians of Fla.*, 63 F.3d 1030, 1048 (11th Cir. 1995), where a plaintiff “alleg[ed] violations of IRGA and the NIGC’s regulations[,]” the Eleventh Circuit “dispose[d] of that claim on the separate ground that, because IGRA provides Tamiami no right of action, Tamiami has failed to state a claim for relief.” “Furthermore, after examining the IGRA regulatory scheme, **we find nothing in the statute's language, or in the legislative history, to indicate that Congress implied the right of action** Tamiami presents as its second claim for relief.” *Id*. at 1049 (emphasis added). “Accordingly, we decline Tamiami's invitation to read into IGRA the right of action Tamiami asserts as its second claim.” *Id*.

Moreover, the Tribe is not a party to this action. With respect to IGRA-related claims against individual Tribal-member defendants, the Eleventh Circuit noted that the plaintiff in that cases “pointed to nothing in IGRA’s language that would give it the right to bring this claim against the individual defendants.” *Id*. at 1046 (citing *Davids v. Coyhis,* 869 F.Supp. 1401, 1410 (E.D.Wis.1994) (“Even assuming that the defendants acted in violation of the IGRA and therefore outside the scope of their authority, plaintiffs cannot sue the defendants for violations of the IGRA unless such a cause of action is implicit in the IGRA.”) Accordingly, Plaintiff has no private right action against the Defendants (or the Tribe) under the IGRA and dismissal with prejudice is warranted.

Numerous federal courts agree with *Tamiami Partners*. *See e.g., Sac & Fox Tribe of Mississippi in Iowa v. Bear*, 258 F. Supp. 2d 938, 942 (N.D. Iowa 2003), *aff'd sub nom. In re Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Casino Litig.*, 340 F.3d 749 (8th Cir. 2003)

(collecting cases) (". . . IGRA does not provide a general private right of action."); *Hein v. Capitan Grande Band of Diegueno Mission Indians*, 201 F.3d 1256, 1260 (9th Cir.2000) (" . . . where IGRA creates a private cause of action, it does so explicitly. . . . The existence of such explicit provisions authorizing suits persuaded the Eleventh Circuit that plaintiffs could not sue for every violation of IGRA by direct action under the statute. We agree with the Eleventh Circuit's conclusion.").

B. Plaintiff Fails to State a Claim under FDUPTA.

To state a claim under the FDUTPA, a plaintiff must allege three elements: "(1) a deceptive act or unfair trade practice; (2) causation; and (3) actual damages." *Dolphin LLC v. WCI Communities, Inc.*, 715 F.3d 1243, 1250 (11th Cir. 2013) (citing *Rollins, Inc. v. Butland*, 951 So.2d 860, 869 (Fla. Dist. Ct. App. 2006)). Here, the Amended Complaint fails to allege that Plaintiff suffered actual damages or that Defendants engaged in a deceptive act or unfair trade practice.

1. Failure to Allege Actionable Conduct

Under FDUTPA, "[a]n unfair practice is one that offends established public policy and one that is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." *PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003). A deceptive act occurs when there is "a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment." *Millennium Comms. & Fulfillment, Inc. v. Office of the Attorney Gen.*, 761 So. 2d 1256, 1263 (Fla. 3d DCA 2000). To satisfy federal notice pleading standards, the Amended Complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Marrache v. Bacardi U.S.A., Inc.*, 17 F.4th 1084, 1099 (11th Cir. 2021) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)).

Thus, the question is whether Plaintiff pled conduct that is "unfair or deceptive as judged by controlling case law." *PNR*, 842 So. 2d at 777, fn.2. "This standard requires a showing of 'probable, not possible, deception' that is 'likely to cause injury to a reasonable relying consumer." *Piescik v. CVS Pharmacy, Inc.*, 576 F. Supp. 3d 1125, 1132 (S.D. Fla. 2021) (citing *Millennium Commc'ns & Fulfillment, Inc.*, 761 So.2d at 1263). Finally, FDUTPA does not require actual reliance or subjectivity; rather, an "objective test is used to determine whether 'the alleged practice was likely to deceive a consumer acting reasonably in the same circumstances.'" *Id.* (quoting *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 983-84 (11th Cir. 2016)).

Here, the Amended Complaint fails to allege that Defendants engaged in an unfair act or deceptive conduct *vis-à-vis* the Tribe's coin voucher program. To the contrary, Plaintiff alleges that the Tribe provided notice to patrons via an "electronic message which was displayed by the kiosk ***after*** a patron had inserted his or her cashout voucher: 'This kiosk does not dispense coins.'" (D.E. 12, ¶ 23) (emphasis in original). The Amended Complaint further alleges that change-vouchers can be redeemed at the casino cashier or "cage," (*see id*. at ¶22), which allegation is confirmed by the Tribe's letter to Mr. Manzini attached to the Amended Complaint as Exhibit 1. (*See* D.E. 12-1, at 1) ("[T]he change remaining on all redeemed tickets at the Kiosks may be cashed out by simply proceeding to the cashier cage to retrieve said change in coins . . . .")

These allegations demonstrate that, in context, reasonable gaming patrons had more than sufficient information to discern that change-vouchers must be redeemed elsewhere, *i.e.*, the casino cashier or "cage" where all prizes can be redeemed for cash. *See Piescik*, 576 F. Supp. 3d at 1132–33 (citing *Bell v. Publix Super Markets Inc.*, 982 F.3d 468, 477 (7th Cir. 2020)) ("[W]here Plaintiffs base deceptive advertising claims on unreasonable or fanciful interpretations or labels or other advertising, dismissal on the pleadings may well be justified."); *Moore v. Trader Joe's Co.*, 4 F.

4th 874, 882 (9th Cir. 2021) ("[T]he information available to a consumer is not limited to the physical label [or advertising] and may involve contextual inferences regarding the product itself and its packaging.").

2. FDUTPA Safe Habor Provision

Additionally, FDUTPA includes a safe harbor provision that exempts alleged deceptive or unfair conduct that is otherwise permitted by state or federal law. Specifically, Fla. Stat. §501.212(a) provides that FDUTPA does not apply to "[a]n act or practice required or *specifically permitted by federal or state law*." (Emphasis added). "Thus, an act specifically permitted by [state or] federal law cannot serve as the basis for a FDUTPA claim." *Marrache*, 17 F.4th at 1098–99.

Here, the Tribe's change voucher program is authorized by Fla. Stat.§551.121 and, therefore, falls within the FDUTPA safe harbor provision. Specifically, Fla. Stat. §551.121(6) provides that "[a] slot machine located within a licensed facility shall accept only tickets or paper currency or an electronic payment system for wagering **and return or deliver payouts to the player in the form of tickets that may be exchanged for cash, merchandise, or other items of value.**" (emphasis added). While the allegations in the Amended Complaint are largely conclusory, Plaintiff does make detailed allegations about the slot machines at the Tribe's casino, including the machines issue a "change voucher" to winning patrons, (*see* D.E. 12 at ¶21), the "change voucher" only has value inside the Tribe's casino, (*id*. at ¶22), the change voucher can be redeemed "at the main cashier's window, commonly referred to as the casino 'cage'" (*id*.), and the change vouchers can be redeemed "for exact change at the cage." (*Id*. at ¶23.) These allegations describe a practice that is expressly permitted by Fla. Stat. §551.121(6) and, therefore, cannot serve as the basis for Plaintiff's purported FDUTPA claim.

Thus, even if Plaintiff had alleged actual damages or any deceptive or unfair conduct by

Defendants themselves, FDUTPA's safe harbor provision precludes his purported claim based on the Tribe's change voucher program that is expressly authorized by Florida law.

3. Failure to Allege Actual Damages

Florida courts and the Eleventh Circuit define "actual damages" under FDUTPA as "the difference in the market value of the product or service in the condition in which it was delivered and its market value in the condition in which it should have been delivered according to the contract of the parties." *Rollins, Inc. v. Heller*, 454 So. 2d 580, 585 (Fla. 3d DCA 1984). *See also HRCC, Ltd. v. Hard Rock Cafe Int'l (USA), Inc.*, 703 Fed. Appx. 814, 816 (11th Cir. 2017) (citing *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 986 (11th Cir. 2016)) ("[T]his Court has adopted the *Rollins* definition of actual damages.) Notwithstanding the fact that Plaintiff failed to allege that he suffered any amount damages, the Amended Complaint does not allege that the Tribe's coin voucher program diminished or otherwise affected the value of change vouchers issued to patrons.

To the contrary, Plaintiff has plainly alleged that coin vouchers were redeemable at the casino cashier for a period of thirty days after issuance. (*See* D.E. 12 at ¶¶22-23, 25, 27.) The Tribe's letter to Plaintiff attached as Exhibit 1 to the Amended Complaint confirms that change vouchers could have been redeemed at the casino cashier. (*See* D.E. 12-1.) Thus, even if Plaintiff's claims were not barred by FDUTPA's safe harbor provision, he has not and cannot allege actual damages because, as Plaintiff expressly admits, change vouchers could be redeemed for "exact change" by the casino cashier. (*See* D.E. 12 at ¶¶22, 23.) For these reasons, dismissal with prejudice is appropriate.

C. Plaintiff Cannot State a Claim for Conversion.

"To state a claim for conversion, a plaintiff must allege a right to property, a demand for the return of that property, and the defendant's refusal to return the property." *Intertech Trading*

Corp. v. JP Morgan Chase Bank, N.A., 2017 WL 7792705, at *4 (S.D. Fla. Aug. 28, 2017). The Amended Complaint demonstrates that Plaintiff cannot bring a claim for conversion. For one, Plaintiff alleges that players can redeem change vouchers by visiting the casino cashier or "cage." (D.E. 12 at ¶¶22, 23.) Importantly, Plaintiff does not allege that he demanded the Tribe, let alone Defendants, return his property (*i.e.* the value of the change voucher) and cannot allege that the Tribe or Defendants refused to redeem a change voucher belonging to Plaintiff or any other casino patron. Indeed, Plaintiff has not alleged that he ever obtained a change-voucher after gaming at the Tribe's casino.

Accordingly, the Amended Complaint fails to allege any element of Plaintiff's purported claim for conversion. However, dismissal with prejudice is warranted because Plaintiff has not and cannot allege that Defendants, as tribal officers, obtained and subsequently refused to return any of Plaintiff's property.

D. Plaintiff Cannot State a Claim for Unjust Enrichment.

In Florida, a plaintiff must plead the following elements to allege a claim for unjust enrichment: "(1) the plaintiff has conferred a benefit on the defendant; (2) the defendant voluntarily accepted and retained that benefit; and (3) the circumstances are such that it would be inequitable for the defendants to retain it without paying the value thereof." *Piescik v. CVS Pharmacy, Inc.*, 576 F. Supp. 3d 1125, 1135 (S.D. Fla. 2021) (citing *Virgilio v. Ryland Grp., Inc.*, 680 F. 3d 1329, 1337 (11th Cir. 2012)). Plaintiff does not even allege a conclusory recitation of these elements in his Amended Complaint.

Specifically, Plaintiff has not alleged that he conferred any benefit on Defendants nor could he. Even if the Amended Complaint alleged that Plaintiff lost money because he failed to timely redeem change vouchers, which it does not, Plaintiff still cannot show that he conferred a "direct

benefit" on Defendants themselves. Further, Plaintiff's failure to allege a deceptive or unfair practice by Defendants precludes his purported claim for unjust enrichment. *See Piescik*, 576 F. Supp. 3d at 1135 ("Plaintiff has not pled facts that establish any deception or misleading advertising [under FDUTPA]. Thus, because Plaintiff has not adequately alleged any deceptive act, it follows that it is not unjust for Defendant to retain any benefit it purportedly received."). For these reasons, dismissal with prejudice is appropriate.

E. Plaintiff Cannot State a Claim for Declaratory Relief.

Count II in the Amended Complaint seeks a declaratory judgment stating that "the practices comprehensively detailed elsewhere in this complaint by Defendants Cypress and Osceola are unenforceable because they violate equity's conscience and constitute an otherwise unconscionable, deceptive, or unfair business practice that violate IGRA and the NIGC's regulations." (D.E. 12 at ¶44.) However, the Amended Complaint fails to make any specific factual allegations that Defendants engaged in unfair or deceptive conduct. *See Marrache*, 17 F.4th at 1099 (11th Cir. 2021) (affirming dismissal of FDUTPA claim where, as here, because the plaintiff failed to allege sufficient factual allegations to satisfy Rule 8 in support of a purported FDUTPA claim). To the extent Defendants are able to discern Plaintiff's purported claim for declaratory relief, it appears to be co-extensive with his purported FDUTPA claim. Because Plaintiff cannot state a claim under FDUTPA and that the IGRA and NIGC regulations provide no private right of action to him, Plaintiff cannot state a claim for declaratory relief.

F. Plaintiff violates Rules 8 and 10 by combining separate claims for relief in a single count and failing to allege a showing of entitlement to relief.

In count I, Plaintiff alleges a "Violation of IGRA and NIGC Regulations (FDUPTA, Conversion, Unjust Enrichment." (*See* D.E. 12, Count I, at p.12.) Yet, Plaintiff does not allege or identify a single statutory provision, regulation, or any subsection of the IGRA or NIGC that has

been violated or otherwise entitles Plaintiff to relief.

Rule 8(2) requires a pleading to contain "a short and plain statement of the claim showing that the pleader is entitled to relief[.]" Moreover, Rule 10(b) requires a party to "state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. . . . If doing so would promote clarity, each claim founded on a separate transaction or occurrence--and each defense other than a denial--must be stated in a separate count or defense."

Plaintiff runs afoul of these fundamental rules by incorporating multiple claims for relief into a single count, while failing to plead several, if not all, the elements necessary to demonstrate entitlement to relief on each of these combined claims for relief. As a result, dismissal is required.

III. DISMISSAL IS PROPER FOR INSUFFICIENT SERVICE OF PROCESS.

As set forth more particularly in Defendants' contemporaneously filed motion to quash, dismissal is proper for insufficient service of process. Plaintiff obtained leave to serve process by alternative means pursuant to Rule 4(f)(3). However, Rule 4(f)(3) only applies to service "at a place not within any judicial district of the United States."

Here, Defendants reside in Miami-Dade County, as evidenced by Plaintiff's summonses listing Defendants' addresses in Miami-Dade County. Moreover, Plaintiff alleges that the Tribe's[7] lands are located in Miami-Dade and Broward Counties. (*See* D.E. 12 at ¶4). And further, under Florida law,[8] substituted service is only available after exercising due diligence, *see* Fla. Stat. §48.161, which requires numerous "attempts" to serve process on a defendant, among other requirements. Whereas, here, Plaintiff admitted that he only made one attempt to serve each of the

[7] Again, the Tribe is not a party to this lawsuit and reserves all rights and waives none, including sovereign immunity.

[8] Rule 4(e)(1) provides that an individual may be served in a judicial district of the United States by "following state law . . . ."

Defendants. Therefore, Plaintiff has not demonstrated entitlement to substituted service of process under Rule 4(f)(3) and has not complied with the requirements to effectuate substituted service under Florida law. As a result, dismissal is proper for insufficient service of process.

IV. THE MICCOSUKEE TRIBE OF INDIANS OF FLORIDA IS A NECESSARY AND INDISPENSABLE PARTY UNDER RULE 19.

The Tribe is both a "necessary" party under Rule 19(a) and "indispensable" under Rule 19(b).[9] The courts employ a two-part inquiry in determining whether a party is both necessary and indispensable:

> Rule 19 states a two-part test for determining whether a party is indispensable. First, the court must ascertain under the standards of Rule 19(a) whether the person in question is one who should be joined if feasible. If the person should be joined but cannot be (because, for example, joinder would divest the court of jurisdiction) then the court must inquire whether, applying the factors enumerated in Rule 19(b), the litigation may continue.

Focus on the Family v. Pinellas Suncoast Transit Authority, 344 F.3d 1263, 1279-80 (11th Cir. 2003) (citing *Challenge Homes, Inc. v. Greater Naples Care Ctr., Inc.,* 669 F.2d 667,669 (11th Cir.1982)). Under Rule 19(a) a party is "necessary" if "in the person's absence complete relief cannot be accorded among those already parties," or if "that person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may . . . as a practical matter impair or impede the person's ability to protect that interest." Fed. R. Civ. P. 19(a)(l)&(2). Under Rule 19(b), determining whether a party is "indispensable" involves a determination of "whether in equity and good conscience, the action should proceed among the existing parties or should be dismissed."

As a general matter, the courts have long recognized that Indian tribes have a sovereign

[9] That being said, if the Tribe is added as a party, it would be shielded from litigation and liability under its sovereign immunity.

right not to have their legal rights and obligations judicially determined without their consent. *See Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 58 (1978).[10] Here, Plaintiff alleges that "the [Tribe] has made false and misleading statements to deceive Plaintiff . . . and has otherwise used and continues to use deceit or trick and/or other wrongful conduct to cause Plaintiff and countless others to act to their disadvantage." (D.E. 12, ¶ 1.) Plaintiff further alleges that the Tribe's "false and misleading representations are the result of deceptive and unfair business practices that violate the letter and spirit of IGRA and [NIGC] regulations . . . ." (*Id*.) As to relief, Plaintiff plainly alleges that he is seeking relief only against the Tribe and not Defendants: "As a result of Defendants' actions, **the Tribe is liable** to the thousands of its casino players for shortchanging them." (*Id*. at ¶ 2.) (Emphasis added.)

These allegations make clear that the Tribe is a necessary and indispensable party under Rule 19. This Court cannot accord complete relief without the Tribe included in this action.

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[10] *See also Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015 (9th Cir. 2002) (racetrack owners brought suit to enjoin Arizona governor from entering new, renewed, or modified gaming compacts with absent Indian tribes); *Dawavendewa v. Salt River Project Agr. Imp. & Power Dist.*, 276 F.3d 1150, 1157 (9th Cir. 2002), 276 F.3d 1150 (Indian Tribe was an indispensable party when employee brought Title VII action against employer to challenging employment preferences required by employer's lease with Indian Tribe); *Davis v. United States*, 192 F.3d 951 (10th Cir. 1999) (certain bands of absent tribe brought action against the Secretary of the Interior challenging Secretary's exclusion of bands from Judgment Fund Programs and refusal to issue Certificates of Degree of Indian Blood to members of the bands, absent tribe was found to be an indispensable party); *Clinton v. Babbitt*, 180 F.3d 1081, 1089-90 (9th Cir. 1999) (Navajo tribe members brought suit against Secretary of the Interior to challenge Secretary's approval of leases with absent Hopi Tribe and the action was dismissed because the Hopi Tribe was an indispensable party, among other reasons); *Cherokee Nation v. Babbitt*, 117 F.3d 1489 (D.C. Cir. 1997) (Tribe sued Secretary of the Interior challenging Secretary's decision to recognize a non-party Tribe, the non-party Tribe was an indispensable party); *Kescoli v. Babbitt*, 101 F.3d 1304 (9th Cir. 1996) (non-party Tribe was indispensable party in suit where individual Tribal member challenged Secretary of the Interior's approval of settlement agreement between non-party Tribe and coal mining company); *United States ex rel. Hall v. Tribal Dev. Corp*., 100 F.3d 476 (7th Cir. 1996) (non-party Tribe was indispensable party in action to invalidate sales and lease contracts for gambling equipment and supplies provided to non-party Tribe); *Pit River Home & Agric. Coop. v. United States*, 30 F.3d 1088 (9th Cir. 1994) (non-party Tribe was indispensable party in action where plaintiffs challenged Interior Secretary's decision to grant beneficial ownership of real property to the non-party Tribe).

Further, the Tribe has a sovereign right not to have their legal rights and obligations judicially determined without their consent. *See Santa Clara Pueblo,* 436 U.S. at 58. Accordingly, the Tribe is an indispensable party because the Court properly cannot determine the Tribe's rights and obligations in its absence. For these reasons, the Amended Complaint must be dismissed.

In virtually all cases in which courts have declared an absent tribe a necessary party, the courts have also declared the tribe indispensable and dismissed the action based on the Tribe's sovereign immunity. *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015 (9th Cir. 2002); *Dawavendewa*, 276 F.3d at 1163; *Clinton v. Babbitt*, 180 F.3d 1081, 1089-90 (9th Cir. 1999); *Kescoli*, 101 F.3d at 1311; *Pit River*, 30 F.3d at 1103; *Lomayaktewa*, 520 F.2d at 1325 ("No 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 indispensable."); *Tewa Tesuque v. Morton*, 498 F.2d 240, 242-43 (10th Cir. 1974).

Moreover, dismissal with prejudice is appropriate here because the Tribe's sovereign immunity shields it from suit. Indeed, Plaintiff naming the individual Defendants as parties to this action is a thinly veiled attempt to avoid the Tribe's sovereign immunity. (*See above* §I.)

V. THE COMPLAINT IS AN IMPROPER SHOTGUN PLEADING.

The Eleventh Circuit has identified four types of improper "shotgun" pleadings that properly must be dismissed. One such category is a complaint "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *Weiland v. Palm Beach Cnty. Sheriff's Office*, 792 F.3d 1313, 1323 (11th Cir. 2015). Another type of impermissible shotgun pleading is one that fails to "where has clearly defined an impermissible shotgun pleading to include a complaint that fails to "separate[e] into a different count each cause of action or claim for relief." *Id*. The Amended Complaint runs afoul of these basic pleading requirements.

For example, the Amended Complaint contains no factual allegations that explain how Defendants engaged in any unlawful conduct. Instead, Plaintiff makes conclusory assertions that Defendants "oversaw" or "guided" the Tribe's allegedly unlawful conduct without explaining how Defendants are actually involved in the purported change voucher scheme. Additionally, Count I purports to bring at least 3 sets of claims: violations of the IGRA and NIGC; state law claims for conversion, unjust enrichment, and FDUTPA violations; claims for violations of both federal and state law; or some combination of federal and state law claims. Count II also includes multiple claims for relief because it is coextensive with Plaintiff's purported FDUTPA, IGRA, and NIGC claims in Count I. (*See* D.E. 12, ¶ 44) ("Plaintiff seeks a permanent declaratory judgment that the practices comprehensively detailed elsewhere in this complaint by Defendants Cypress and Osceola are unenforceable because they violate equity's conscience and constitute an otherwise unconscionable, deceptive, or unfair business practice [*i.e.*, violate FDUTPA] that violate IGRA and the NIGC's regulations.") These pleading deficiencies fail to satisfy Rule 8, fail to apprise Defendants of the claims that are actually before the Court and, thus, preclude Defendants from preparing a complete defense.

CONCLUSION

For the reasons stated above, Defendants respectfully request that this Court enter and order dismissing the Plaintiff's Complaint with prejudice or, in the alternative, ordering Plaintiff to fully exhaust its tribal remedies.

Dated: February 5, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 5, 2025 a true and correct copy of the foregoing was filed via the CM/ECF filing system and thereby furnished to counsel of record via email in the service list below.

By: /s/ *Christopher Ajizian*
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