UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NICOLAS A. MANZINI,

Plaintiff,

vs.

CASE NO.: 1:24-cv-24670-RAR

TALBERT CYPRESS, individually and in his official capacity as Chairman of the Miccosukee General Council a/k/a Miccosukee Business Council and the Miccosukee Gaming Agency, and LUCAS K. OSCEOLA, individually and in his official capacity as Assistant Chairman of the Miccosukee General Council a/k/a Miccosukee Business Council and the Miccosukee Gaming Agency,

Defendants.
_____/

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Pursuant to S.D. Fla. Local Rule 7.1(c), pro se Plaintiff Nicolas A. Manzini files this memorandum of law in opposition to Defendants Talbert Cypress and Lucas K. Osceola's consolidated *Motion to Dismiss* [ECF No. 21].

For the reasons that follow, the motion should be denied in all respects.

Preliminary Statement

Plaintiff's *Amended Complaint* [ECF No. 12] contains two counts seeking:

1) money damages and declaratory and injunctive relief against two elected officials of the Miccosukee Tribe of Indians of Florida ("the Tribe") for violations of Florida's Unfair and Deceptive Trade Practices Act and common law claims of conversion and unjust enrichment that are actionable as a result of the individual Defendants' unlawful conduct, to-wit, their acts in breach of discrete

provisions of the Indian Gaming Regulatory Act (IGRA, repeatedly misspelled as "IRGA" throughout Defendants' motion) and regulations of the National Indian Gaming Commission (NIGC), actions that were taken by them in bad faith vis-à-vis Plaintiff and went beyond the scope of their authority as tribal officials; and

2) declaratory and injunctive relief pursuant to the Federal Declaratory Judgment Act against the same two elected officials of the Tribe for actions taken by them under color of their authority as tribal officials but in excess of said authority and in bad faith vis-à-vis Plaintiff, a member of the gaming public, to compel them to comply with discrete provisions of IGRA and NIGC regulations.

The *Amended Complaint* seeks, inter alia, to enjoin the named Defendants from continuing to exceed their authority by shutting down Plaintiff's report of IGRA and NIGC violations of the Tribe's gaming practices, i.e., their manipulation of change vouchers at the ubiquitous money change machines or kiosks inside the Tribe's casino that deceptively do not dispense coin change to casino patrons or direct them to the casino cashier which is the only place where exact change can be obtained. The *Amended Complaint* alleges that this deceptive practice yields a windfall for the Tribe and the Defendants of tens of thousands of dollars per year in unredeemed change vouchers that are routinely discarded by patrons and often litter the casino floor.[1]

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[1] At pages 5-6 of their motion, Defendants disingenuously but falsely suggest that Plaintiff's *Amended Complaint* is a "cut-and-paste" version of the class action complaints filed in two now dismissed actions, to-wit, Scheer [sic] v. MGM Resorts Int'l, Case No. 22-cv-258 (S.D. Miss) and Young v. Caesar's Entm't. Inc., 22-cv-5331 (W.D. La). Scherer (correct spelling) alleged state law claims and was dismissed without prejudice for lack of subject matter jurisdiction because

Defendants have moved to dismiss the complaint *with prejudice* under Rules 12(b)(1), 12(b)(5), 12(b)(6), 12(b)(7) and 19 of the Federal Rules of Civil Procedure. The motion is disjointed, however, because (with the exception of Rule 19) it does not tie any of the issues that it raises to those specific rules.

The motion is also difficult to parse from a procedural standpoint because it is replete with statements of "fact" that directly contradict allegations in the *Amended Complaint* and for which Defendants have provided zero evidentiary support.

As explained in the "standard" section below, all of the rules Defendants cite require the Court to accept the allegations in the *Amended Complaint* as true

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the district court found that Mississippi law required that all gambling-related claims be brought before the Mississippi Gaming Commission, not federal court. Young was also dismissed without prejudice for lack of diversity jurisdiction because the titular plaintiff alleged he had been shortchanged by the casino on a few occasions for amounts up to $0.99 each time, so the jurisdictional amount was not met. Plaintiff's *Amended Complaint* contains no such limiting language. Indeed, at paragraph 38, Plaintiff's *Amended Complaint* alleges that his damages are *"a sum that is capable of being determined through the database that tracks all expired (unredeemed) change vouchers which is part of the casino's monitoring system"* (emphasis added). Plaintiff has requested this information via an "early" Fed. R. Civ. P. 34 document request [ECF No. 20] which is expressly authorized by Rule 26(d)(2). Unlike in Scherer and Young, actions that were based solely on diversity jurisdiction, Plaintiff here has alleged a dual – and equally valid -- basis for subject matter jurisdiction: federal question (under IGRA and the NIGC regulations). Just as importantly, the dismissals of Scherer and Young were in no sense because the district courts found the plaintiffs had not sufficiently alleged causes of action for conversion and unjust enrichment but rather for lack of subject matter jurisdiction. Moreover, unlike Plaintiff's *Amended Complaint*, the class action complains in Scherer and Young did ***not*** seek declaratory and injunctive relief that defendants were engaging or enabling an unfair and deceptive trade practice in violation of state and federal statutes as Plaintiff has done here. In sum, for purposes of diversity jurisdiction, the jurisdictional amount is irrelevant to the equitable relief requested in this case.

and to draw all reasonable inferences in favor of Plaintiff. Accordingly, the Court should ignore the numerous "facts" stated in the motion that are not directly supported by express allegations in the *Amended Complaint*. When the motion is stripped of unsubstantiated and procedurally inappropriate factual assertions, it boils down to four simple, and incorrect, legal arguments:

1. The Court lacks subject matter jurisdiction.
2. The *Amended Complaint* does not state a cognizable cause of action.
3. The Tribe must be joined as a necessary party.
4. The *Amended Complaint* is a "shotgun pleading" (which is ironic in light of the disjointed nature of Defendants' own motion).

As succinctly explained below, the Court should reject all four arguments.[2]

Standard

As previously explained, Defendants' motion invokes various rules but (with the exception of Rule 19) does not explain which rules apply to which grounds. The standards applicable to each rule vary in some respects. See Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys., Inc., 524 F.3d 1229, 1232-33 (11th Cir. 2008). Since Defendants cannot rely on evidence outside of the *Amended Complaint*, however, each rule requires the Court to assume that all facts alleged in *Amended Complaint* are true.

[2] Defendants' other argument, namely, that service of process was improper, was already dispositively addressed in *Plaintiff's Opposition to Defendants' Motion to Quash* [ECF No. 26].

To the extent Defendants seek dismissal under Rule 12(b)(6), "the Court [3]must view the allegations of the complaint in the light most favorable to Plaintiff, consider the allegations of the complaint as true, and accept all reasonable inferences therefrom." Omar ex rel. Cannon v. Lindsey, 334 F.3d 1246, 1247 (11th Cir. 2003).[4]

"Furthermore, the Court must limit its consideration to the pleadings and written instruments attached as exhibits thereto." Id. (citing Fed R. Civ. P. 10(c)) (other citations omitted). To the extent Defendants seek dismissal under Rule 12(b)(1), the Court must first determine whether Defendants are making a "facial or factual attack" on the Court's jurisdiction. Stalley ex rel. U.S., 524 F.3d at 1232-33. A "factual attack" relies on evidence that is "extrinsic from the pleadings, such as affidavits or testimony." Id. Although the motion to dismiss contains assertions of "fact" that contradict the *Amended Complaint*, Defendants filed a single exhibit in support of their alternative "facts": the Tribe's gaming ordinance referenced at paragraph 6 of the *Amended Complaint* which Plaintiff alleges Defendants have failed to implement and enforce. Therefore, the Court should treat Defendants' Rule 12(b)(1) motion as a facial attack.

"When defending against a facial attack, the plaintiff has safeguards similar to those retained when a Rule 12(b)(6) motion" is at issue. Stalley ex rel U.S.,

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[4] Plaintiff acknowledges that Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) and Ashcroft v. Iqbal, 556 U.S. 662 (2009) added a "plausibility" requirement to factual averments in a pleading seeking relief. His *Amended Complaint* satisfies this requirement.

524 F.3d at 1233. Thus, "the allegations in [the] complaint are taken as true[.]" Id. (quotation omitted).

Finally, "[t]he Court is not limited to the facts alleged in the pleadings when considering a motion to dismiss for failure to join an indispensable party under Fed. R. Civ. P. 12(b)(7)." Rook v. First Liberty Ins. Corp., 591 F. Supp. 3d 1178, 1179 (N.D. Fla. 2022) (citations omitted)). That said, however, "the court must assume the truth of the factual allegations in the complaint" even though "the parties may present evidence outside the pleadings[.]" Id. (citations omitted).

Argument

I. The Court Has Subject Matter Jurisdiction

a. Tribal Sovereign Immunity Does Not Bar This Action

First, Defendants argue that Plaintiff's claims are barred by sovereign immunity. To the contrary, it is a matter of binding precedent that "tribal immunity does not bar … a suit for injunctive relief against *individuals*, including tribal officers, responsible for unlawful conduct." Michigan v. Bay Mills Indian Cmty., 572 U.S. 782, 796 (2014) (emphasis in original) (citation omitted).

Apropos officials of this particular Tribe, it was decided by the Eleventh Circuit 30 years ago that tribal immunity does not bar a suit against individuals, including tribal officers, who act in bad faith and exceed the scope of their authority as Defendants here have done. Tamiami Partners, etc. v. Miccosukee Tribe of Indians of Florida, 63 F. 3d 1030, 1055-6 (11th Cir. 1995).

In his *Amended Complaint,* Plaintiff seeks in part an order requiring Defendants to comply with IGRA and the NIGC regulations relating to the fair and

honest operation of the Tribe's casino. Tamiami Partners, 63 F. 3d 1030 at 1055-6. See also paragraph 6 and footnote 4 of *Amended Complaint.*[5]

Courts have recognized that a private right of action is available to non-Indians under certain circumstances. Contour Spa at the Hard Rock, Inc. v. Seminole Tribe of Fla., 692 F.3d 1200, 1209 (11th Cir. 2012) (citing Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes, 623 F.2d 682, 685 (10th Cir. 1980)).

In sum, there is no sovereign tribal immunity available to the individual Defendants for the claims alleged in Plaintiff's *Amended Complaint.*

b. The Court Has Federal Question Jurisdiction

The *Amended Complaint* expressly calls for the Court to interpret a federal statute, Title 29 U,S,C. section 2702 (b) (IGRA), and federal regulation, 25 C.F.R section 552.2 (e) (NIGC), as they apply to Defendants, individual tribal officials who have engaged in unlawful conduct under color of their authority that was taken in bad faith and exceeded the scope of that authority vis-à-vis Plaintiff.

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[5] Title 29 U.S.C. section 2702 (b) (IGRA) expressly d declares that among the Act's purposes is ***"to assure that gaming is conducted fairly and honestly by both the operator [Tribe] and players."*** (emphasis added) Moreover, 25 C.F.R section 552.2 (e) (NIGC's regulations) expressly states that ***"Tribe's gaming ordinance must describe procedures for resolving disputes like this one between a member of the gaming public and the Tribe"*** (emphasis added) Plaintiff alleges that as tribal officers Defendants breached their duties to him by violating both the spirit and the letter of the statute and regulations and failed to implement and enforce the Tribe's gaming ordinance attached to Defendants' motion as exhibit "1", i.e., they flatly refused his demand for restitution of sums converted. In this regard, the Court must accept Plaintiff's allegations and all reasonable inferences therefrom as true. Omar ex rel. Cannon, 334 F.3d at 1247.

In this connection, Plaintiff commends to the Court exhibits "1," "2" and "3" to the *Amended Complaint* consisting of Defendants' pre-suit correspondence to Plaintiff which should be read in pari materia with his allegations of ultimate fact.

That correspondence illustrates the fact, after Plaintiff initially complained to Defendants that the subject practices at the Tribe's casino were unfair and deceptive, Defendants attempted to make modifications of said practices which fell woefully short of accepted industry standards in South Florida; far from applying *"procedures for resolving disputes"* like the present one between a member of the gaming public and the Tribe as required by IGRA and the NIGC's regulations, Defendants opted for an abjectly punitive stance toward Plaintiff that included trespass and threatened arrest and court sanctions.

Plaintiff is cognizant that dicta from the district court's opinion in Harris v. Sycuan Band of Diegueno Mission Indians, 2009 WL 5184077 (S.D. Cal. 2009) suggests that allegations of IGRA are, by themselves, insufficient to confer federal question jurisdiction where no private cause of action exists and the claim does not require interpretation of the statute (IGRA and NIGC regulations).

However, that decision is inapposite for the following three reasons: first, because the federally recognized Indian tribe in Harris was the sole defendant in that case and no individual tribal officials were joined as defendants as here; second, because Tamiami Partners, 63 F. 3d 1030, and Michigan v. Bay Mills Indian Cmty, 572 U.S. 782, amply recognize that a private cause of action exists against individual tribal officials who engage in unlawful conduct; and third, because Plaintiff's *Amended Complaint* expressly requires that the Court

interpret discrete provisions of IGRA and the NIGC regulation insofar as the individual Defendants' unlawful conduct is concerned.

In sum, the Court has federal question jurisdiction over this case.

c. The Court Has Diversity Jurisdiction

As comprehensively explained in footnote 1 above at pages 2-3, for purposes of Plaintiff's equitable claims for declaratory and injunctive relief, the jurisdictional amount of the diversity jurisdiction statute is irrelevant. It is nonetheless true that Plaintiff's *Amended Complaint* does not contain any limiting language from which the Court can conclude that his prayer for money damages falls below the jurisdictional amount. Plaintiff is not just suing Defendants for actual and/or nominal damages or restitution for unjust enrichment; he is also suing for compensable damages for conversion (theft) and the use of deceptive business practices that he believes violate IGRA's explicit requirement that games at Indian casinos be *"conducted fairly and honestly by the operator [Tribe]"* (emphasis added). See Title 29 U.S.C. section 2702(b). Moreover, be is suing Defendants for their unlawful threats against him.

It has been the law of the land since St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283 (1938) that the standard for dismissing a complaint for lack of meeting the amount in controversy for diversity jurisdiction is a high one as established by the "legal certainty test" articulated in that opinion which is still used today. Measured by that standard, it cannot be said to a legal certainty that Plaintiff's *Amended Complaint* does not satisfy that test.

At page 10 of their motion, Defendants cite Gilmore v. Salazar, 748 F. Supp. 2d 1299 (N.D. Okla. 2010) for the proposition that tribal members are treated as citizens of the state where they reside for purposes of establishing diversity of citizenship under 28 U.S.C. section 1332. This is very perplexing because Plaintiff has scoured that district court's order and opinion and failed to find the language Defendants rely upon.

On the contrary, what Plaintiff did find in the Gilmore trial court opinion was the following precise language that appears to contradict Defendants' argument:

> **"Plaintiffs do not invoke the Court's jurisdiction under 28 U.S.C. section 1332 and the complaint contains no allegations that would support the exercise of diversity jurisdiction."**

(emphasis added) Gilmore, 748 F. Supp at 1306.

What is resoundingly clear is that neither the United States Supreme Court nor the Eleventh Circuit nor any district court within the Eleventh Circuit having controlling or persuasive authority over this Court has ever ruled that for purposes of diversity jurisdiction, members of a federally recognized Indian tribe like the individual Defendants who claim tribal sovereign immunity are deemed citizens of the state where they reside. If such case law existed, it certainly would have been cited in Defendants' motion.

Finally, this is expressly ***not*** a class action. Plaintiff's *Amended Complaint* makes no allegations in support of class action representation and clearly does not seek class action certification. Indeed, as Defendants likely already know, a pro se plaintiff – even a self-represented attorney -- is not qualified to represent a putative class in a class action. Doyle v. Fla. Health Sol. Inc., 2018 U.S. Dist.

LEXIS 148340 (D.N.J. Aug. 29, 2018). Therefore, the Class Action Fairness Act patently does not apply to this action and neither does CAFA's amount in controversy requirement.

In sum, the Court also has diversity jurisdiction over this case.

II. The Amended Complaint States A Cause Of Action

a. IGRA/NIGC Regulations

At page 18 of their motion, Defendants make the sweeping assertion that IGRA and the NIGC regulations do not create a private right of action against *them*, citing Tamiami Partners, 63 F. 3d 1030. Defendants are wrong.

That portion of the Eleventh Circuit's holding in the Tamiami Partners case pertained to *the Tribe*, not the elected tribal officials who were sued individually, as Plaintiff has done here, for their unlawful conduct.

In regard to those tribal officials alone, the Eleventh Circuit expressly noted that plaintiffs had sued them in their official capacities for declaratory and injunctive relief, to-wit, ***"for an order requiring them to comply with the provisions of IGRA and the NIGC regulations ..."*** (emphasis added) Tamiami Partners, 63 F. 3d at 1053. Apropos *that* claim, the Eleventh Circuit ***affirmed*** the district court's order that denied the tribal officials' motion to dismiss, id. at 1055, and thereby recognized that the cause of action for equitable relief against the tribal officials under IGRA and the NIGC was viable.

Nothing has transpired since Tamiami Partners to modify or erode the Eleventh Circuit's pertinent holding in that case. It is still being used today and it should be applied here.

b. Florida's Unfair And Deceptive Trade Practices Act

Just as Section 2702(b) of IGRA requires that Indian casino operators conduct business "fairly and honestly" and the NIGC's regulations mandate that Indian casino operators have "procedures for resolving disputes," see footnote 5 above at page 7, Florida's Unfair Deceptive Trade Practices Act (FUDTPA) is a state statute that expressly prohibits "unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." See § 501.202, Fla. Stat (2024).

Such practices are, by definition, unfair and dishonest acts that violate IGRA and have resulted in a dispute between the gaming public and the Tribe that NIGC regulations require the Tribe under Defendants' control to resolve.

The Florida supreme court has defined an unfair practice as: "[O]ne that offends established public policy and one that is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." PNR, Inc. v. Beacon Property Management, 842 So. 2d 773, 778 (Fla. 2003) (concluding that FDUTPA applies to private causes of action arising from single unfair or deceptive acts in the conduct of any trade or commerce, even if it involves "only a single party, a single transaction, or a single contract").

As crafted and delivered by Defendants, the Tribe's peremptory response to Plaintiff's pre-suit complaint about its deceptive and unfair practices was that Plaintiff's complaint was "without merit," see exhibit "1" to the *Amended Complaint,* even while acknowledging that it had implemented limited signage at its casino kiosks as a direct and proximate result of Plaintiff's complaint. Under

Defendants' oversight, the Tribe is attempting to avoid the monetary impact of its decision to implement the signage which is the reimbursement of all aggregate sums that it has converted and/or stolen from its gaming patrons between 2021, when the change voucher practice was first implemented, and October, 2024, when Defendants first installed the limited signage at the tribal casino.

In addition to actual damages, FDUTPA affords litigants like Plaintiff civil private causes of action for both declaratory and injunctive relief. § 501.211(1), Fla. Stat. (2024). Just as the plaintiff in Tamiami Partners, 63 F. 3d 1030, Plaintiff here seeks an order requiring Defendants to comply with the provisions of IGRA and the NIGC regulations that require them to conduct gaming operations at the tribal casino "fairly and honestly" and provide "procedures for resolving disputes" in a manner consistent with the precepts of FUDTPA.

Defendants make the bogus manifold argument that Plaintiff first, has not pled actual damage under FUDTPA; second, has not alleged actionable conduct under FUDTPA; and third, has not complied with a purported safe harbor provision under FUDTPA. Defendants are wrong on all three scores.

First, at paragraph 10 of his *Amended Complaint,* Plaintiff unequivocally demands "*actual and compensatory damages*" (emphasis added).

Second, all of the elements of a FUDTPA claim and sufficient ultimate facts to support it are encyclopedically alleged at paragraphs 10-30 and 32-41 of the *Amended Complaint.* The facts alleged are "plausible" as required by U.S. Supreme Court precedent. See footnote 4 above at page 5.

Third and last, the so-called safe harbor provision under FUDTPA does not apply to Plaintiff's claim against Defendants. Defendants portend that the Tribe's change voucher program implemented under their personal supervision is authorized by § 551.121, Fla. Stat. (2024) which states that *"[a]* ***slot machine*** *located within a facility shall accept only tickets or paper currency … and return or deliver to payouts to the player in the form of tickets …"* (emphasis added)

Presumably, Defendants (and their counsel) understand that Plaintiff's subject claim has *absolutely nothing* to do with the cashout vouchers that are routinely spit out by casino *slot machines* but rather arises from the change vouchers that are dispensed by casino ***money change machines or kiosks*** in lieu of coin change to the detriment of unwitting casino patrons. It is *that* practice (which is neither sanctioned nor condoned by statute, rule, custom or industry standard) that offends and violates FUDTPA and is contrary to the relevant provisions of IGRA and the NIGC's regulations.

In sum, the *Amended Complaint* sufficiently alleges a FUDTPA claim.

c. Conversion/Unjust Enrichment

Next, Defendants challenge Plaintiff's claims for conversion and unjust enrichment.

At page 23 of their motion, Defendants argue the Amended Complaint does not state a claim of conversion because *"Plaintiff does not allege that he demanded … the return his property (i.e., the value of the change voucher)"* (emphasis added). This assertion taxes one's credulity.

A cursory glance at the *Amended Complaint* puts the lie to this assertion. By way of example only, paragraph 27 alleges that after Plaintiff complained about the deceptive practice, Defendants *"made no amends and/or adjustments for the sums that [they have] retained in unredeemed change vouchers for the more than three-year period from 2021 until October, 2024."* (emphasis added). All other elements of conversion are properly alleged.

Next, Defendants challenge Plaintiff's claim for unjust enrichment because they claim the *Amended Complaint* does not sufficient allege the "elements" of such a claim. Defendants are wrong.

Paragraphs 10-30 and 32-41 of the *Amended Complaint* comprehensively allege ultimate facts that abundantly support each of the elements of unjust enrichment: 1) a benefit conferred by Plaintiff on Defendants; 2) Defendants' voluntary acceptance thereof; and 3) circumstances that show it would be inequitable for Defendants to retain the benefit without reimbursing Plaintiff for its value. Virgilio v. Ryland Grp., Inc., 680 F 3d 1329, 1337 (11th Cir. 2012).

In sum, the *Amended Complaint* states claims for conversion and unjust conversion.

III. The Tribe Is Not A Necessary Party

There is only one reason why Defendants argue that the Tribe is a necessary party to this action: they cynically try to lull Plaintiff into joining a party whom they know is absolutely protected by the doctrine of tribal sovereign immunity so that they may then seek a summary disposition of all claims alleged in this action.

But as elected tribal officials who have engaged in unlawful conduct, Defendants' actions stand *separate and apart* from the Tribe's status as a sovereign (the Tribe's status has been protected and recognized since the Indian Reorganization Act of 1934, 25 U.S.C. sections 461 et seq.). See Michigan v. Bay Mills Indian Cmty., 572 U.S. 782; and Tamiami Partners, etc. v. Miccosukee Tribe of Indians of Florida, 63 F. 3d 1030.

As the Eleventh Circuit expressly acknowledged in the Tamiami Partners case, a plaintiff's claims against individual tribal officials who acted unlawfully could continue even after the Tribe was dismissed from the case.

Defendant Talbert Cypress is the Chairman of the General Council a/k/a Business Council and the Gaming Agency of the Tribe in question. Defendant Lucas K. Osceola is the Assistant Chairman of the General Council a/k/a Business Council and the Gaming Agency of the Tribe in question. Plaintiff's *Amended Complaint* pertinently alleges in its introductory paragraph that both Defendants are responsible for overseeing the tribal gaming operations, however, their personal actions in relation to Plaintiff, a member of the gaming public, were taken in bad faith and/or fall outside the scope of their lawful authority as tribal officials in fact and/or under IGRA. As such, they are individually answerable to Plaintiff under controlling legal precedent even if the Tribe itself is not.

In sum, Defendants' argument that the Tribe is a necessary party to this action is misplaced and not worthy of belief.

IV. The Amended Complaint Is Not A "Shotgun Pleading"

Citing Weiland v. Palm Beach County Sheriff's Office, 792 F. 3d 1313 (11th Cir. 2015), Defendants argue that Plaintiff's *Amended Complaint* is a shotgun pleading that *is "replete with conclusory, vague and immaterial facts not obviously connected to any particular cause of action"* that fails to *"separate into a different count each cause of action or claim for relief."* (emphasis added) See page 28 of Defendants' motion.

True to form, Defendants are long on diatribe but short on specifics. They do, however, assert that Plaintiff has conclusorily alleged that Defendants "oversaw" or "guided" the Tribe's unlawful conduct without explaining how Defendants Cypress and Osceola are actually involved in the Tribe's scheme.

In this connection, Plaintiff respectfully directs the Court's attention to his *Amended Complaint.* At paragraph 1, Plaintiff pertinently has alleged:

"***At the direction of the Defendants***, the Miccosukee Tribe of Indians of Florida (hereinafter the "Tribe") has made false and misleading statements to deceive Plaintiff, a reasonable consumer and member of the gaming public as defined by IGRA ..." (emphasis added)

Moreover, at paragraph 2, Plaintiff has alleged:

"***As a result of Defendants' actions***, the Tribe is liable to thousands of its casino players for shortchanging them." (emphasis added)

At paragraph 4, Plaintiff has alleged:

"***Defendants Cypress and Osceola*** are the chief officers of the tribal Business Council and Gaming Agency and are responsible for guiding tribal business policies and overseeing tribal gaming operations." (emphasis added)

At paragraph 12, Plaintiff has alleged:

"***Under Defendants' oversight***, the casino sets the rules and the players agree to those rules when they change their money, spin the wheel, roll the dice or ante up." (emphasis added)

At paragraph 20, Plaintiff has alleged:

"***Since on or about 2021 and under Defendants' oversight***, the casino has been keeping the change off of hundreds of thousands of gaming vouchers, essentially robbing its customers a few cents at a time, on millions of transactions." (emphasis added)

At paragraph 27, Plaintiff has alleged:

"... ***As guided by Defendants***, the Tribe has made no amends and/or adjustments for the sums that it has retained in unredeemed change vouchers for the more than three-year period from 2021 until October, 2024." (emphasis added)

At paragraph 29, Plaintiff has alleged:

"***On October 31, 2024, Defendant Osceola*** in his official capacity as Assistant Chairman of the Miccosukee Gaming Agency, replied to Plaintiff's report of the Tribe's violation to the NIGC by advising that, despite the above-described subsequent remedial measures taken as a direct and proximate result of Plaintiff's complaint, said complaint was "without merit." A copy of Defendant Osceola's letter to Plaintiff is attached hereto and marked as Exhibit "1." ***Defendant Osceola's disingenuous rejection of Plaintiff's complaint violates both IGRA's mandate that tribal gaming must be conducted in a fair and honest manner and the NIGC's regulation that requires the Tribe to have procedures in place to resolve disputes between the gaming public like Plaintiff and itself***..." (emphasis added)

Lastly, at paragraph 30, Plaintiff has alleged:

"Moreover, on October 14, 2024, shortly after he complained to the Tribe about its deceptive and unfair change voucher policy, ***the Tribe through Defendant Cypress in his capacity as Chairman of the Miccosukee General Council a/k/a the Miccosukee Business council sent tribal police officers to Plaintiff's home in West Miami, Florida to deliver a letter informing him that he is permanently banned from the Tribe's facilities and territories and to threaten Plaintiff with arrest if he trespassed onto tribal land. Defendant Cypress' action was in obvious retaliation for Plaintiff engaging in the protected activity of complaining about the Tribe's unfair and dishonest acts in violation of IGRA and the NIGC's regulations*** as comprehensively described elsewhere in this complaint. Copies of Defendant Cypress' letters to Plaintiff are attached hereto and marked as Exhibit "2" and "3"" (emphasis added)

These allegations are contained within Plaintiff's *Amended Complaint* and comprehensively show how Defendants were involved in the Tribe's scheme and are therefore responsible for it through their personal unlawful conduct. The allegations are sufficient to state a claim for relief in the manner required by Fed R. Civ. P. 8(a)(2) because they are "plausible" (see footnote 4 above at page 5) and they fully apprise Defendants of the claims against them.

In any event, Defendants have not moved for a more definite statement of Plaintiff's claims but rather for their dismissal *"with prejudice,"* a result that is untenable under the circumstances of this case where Defendants essentially challenge the Court's jurisdiction and the technical sufficiency of the claims alleged in the *Amended Complaint*

The remainder of Defendants' objections based upon Weiland have been addressed elsewhere in this response and merit no additional comment Suffice to say, however, that Weiland held that a pleading is permissible as long as it does not "materially increase[] the burden of understanding the factual allegations underlying each count." Id. at 1324-26.

Indeed, the Eleventh Circuit in Weiland held that the trial court abused its discretion by dismissing the complaint. Defendants in this case cannot reasonably argue that the two counts in the *Amended Complaint* are unclear.

In ironic contrast to Defendants' motion which is disjointed and rife with half-truths, Plaintiff's *Amended Complaint* is not a shotgun pleading at all because it tells a single, cohesive story and asserts two narrow claims that differ

only in that they seek separate forms of relief based on the same single set of facts. Weiland, 792 F.3d at 1324-25.

In sum, the *Amended Complaint* is not a shotgun pleading.

Conclusion

The Court should deny Defendants' *Motion to Dismiss* [ECF No. 21] in all respects and direct Defendants Talbert Cypress and Lucas K. Osceola to answer Plaintiff's *Amended Complaint* [ECF No. 12].

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 19, 2025 the foregoing was conventionally filed with the Court and true and correct copies served upon all counsel and unrepresented parties through emails generated by the CM/ECF filing system's service list.

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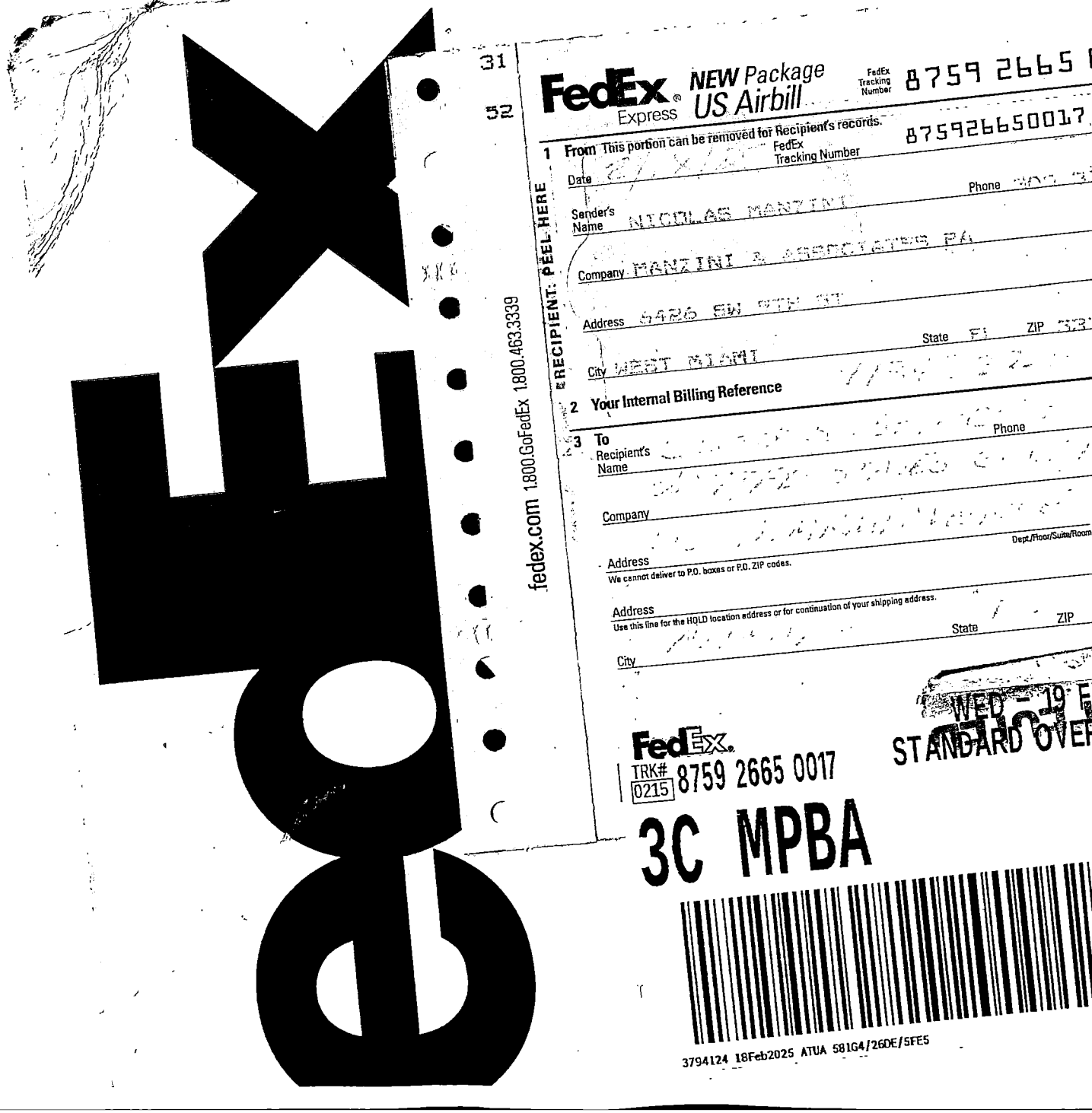
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