UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DENIS BERUBE JR., individually and on behalf of all others similarly situated,

Plaintiff,

v.

THE ORIGINAL BAND OF SAULT STE. MARIE CHIPPEWA INDIANS AND THEIR HEIRS d/b/a KEWADIN CASINOS,

Defendant.

Case No. 2:25-cv-00061-RJJ-MV

Hon. Robert J. Jonker

BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PURSUANT TO FED R CIV P 12(b)(1)

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

Plaintiff has sued a federally recognized Indian tribe without alleging how any court has subject matter jurisdiction to hear this matter. As this Court is aware, Indian tribes and their wholly owned entities enjoy sovereign immunity from suit unless expressly waived by each tribe or Congress. There is no allegation, nor can there be, that either the Sault Tribe or Kewadin have waived sovereign immunity. Nor has there been an express act of Congress for Plaintiff to show the necessary Congressional waiver of that immunity. Without such express and unequivocal waivers, Plaintiff cannot maintain suit against the Sault Tribe or any of its entities.

In order for Plaintiff's state law claims to proceed, Plaintiff must show that the Sault Tribe clearly and expressly waived its sovereign immunity. For Plaintiff's claims based on the Federal Trade Commission Act (the "FTC Act"), Plaintiff must show both: 1) that the FTC Act authorizes a private cause of action; and 2) Congress unequivocally waived the Sault Tribe's sovereign immunity in the clear language of the FTC Act. Plaintiff can show neither. As such, Plaintiff's Complaint should be dismissed.

It is not lost on Defendant that it recently removed this case pursuant to 28 U.S.C. § 1331, claiming that this Court has subject matter jurisdiction under its federal question jurisdiction, and now, only a week later, asserts that this Court does not have subject matter jurisdiction based on sovereign immunity. Although at first potentially seeming counterintuitive, these issues are separate and distinct. To be clear, it is Defendant's position that this Court would have jurisdiction to hear this matter if the Sault Tribe did not enjoy sovereign immunity. But, because the Sault Tribe and its

entities enjoy sovereign immunity, this Court lacks subject matter jurisdiction to hear this matter even though it would otherwise have subject matter jurisdiction pursuant to 28 U.S.C. § 1331 for the reasons stated in Defendant's Notice of Removal. ECF No. 1, which Defendant stands ready to expound upon in light of the Court's Order, ECF No. 3.

The following will show that this matter should be dismissed because the Sault Tribe enjoys tribal sovereign immunity to suit that has not been waived.

II. RELEVANT STATEMENT OF FACTS

The Sault Ste. Marie Tribe of Chippewa Indians (the "Tribe") is a federally recognized Indian Tribe. Indian Entities Recognized by and Eligible to Receive Services, 89 Fed. Reg. 99899, 99901 (December 11, 2024).[1] The Tribe's Constitution designates a board of directors as its governing body (the "Board"). Sault Ste. Marie Chippewa Tribal Const. Art. IV, § 1. The Tribe's Constitution also authorizes the Board to enact resolutions, ordinances, and a tribal code (the "Tribal Code"). *Id*. at Art. VII, § 1.

Chapter 44 of the Tribal Code provides for the Tribe's sovereign immunity and the steps that must be taken for the Tribe, through the Board, to waive that immunity. Sault Ste. Marie Chippewa Tribal Code § 44.105. Such a waiver can only be found in a written resolution passed by the Board. *Id*. at § 44.104, § 44.105. Without such a waiver, the Tribe is immune from suit. *Id*.

Chapter 94 of the Tribal Code authorizes the creation of the Sault Ste. Marie Tribal Gaming Authority, to be known as Kewadin Casinos Gaming Authority

[1] *See also*, https://www.michigan.gov/mdhhs/inside-mdhhs/tribal-government-services-and-policy/native/overview/federally-recognized-tribes-in-michigan (last visited on 04/17/2025).

("Kewadin"). *Id.* at § 94.101. Kewadin is thus an instrumentality—or arm—of the Tribe. *Id.* at § 94.105(1)-(2). Kewadin vests its power in a Management Board. *Id.* at § 94.108. Kewadin's Management Board, as with the Tribal Board, is granted the power to waive Kewadin's sovereign immunity in the same manner the Board is able waive the Tribe's immunity. *Id.*, § 94.111(1). To waive Kewadin's immunity, the Management Board must pass a written resolution that complies with Chapter 44 of the Tribal Code. *Id.,* § 94.111(1)-(3). No resolution, from either the Tribe or Kewadin, exists here. Nor does any express waiver by Congress.

Plaintiff has alleged four counts against the Tribe or Kewadin:[2] Count I, Negligence; Count II, Negligence *Per Se*; Count III, Breach of Implied Contract; and Count IV, Unjust Enrichment. On its face, Plaintiff's Complaint fails to allege a waiver of sovereign immunity, either by the Tribe, Kewadin, or Congress. Plaintiff's Complaint must be dismissed.

III. STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(1) requires a claim to be dismissed for lack of subject-matter jurisdiction. Fed. R. Civ. P. 12(b)(1). A court may only exercise subject matter jurisdiction over a matter if it has been granted the proper authority to do so.

[2] If Plaintiff intends to sue Kewadin, it has named the wrong party, which will be explained further herein. Although Kewadin is an arm of the Tribe, it remains a separate and distinct legal entity. Plaintiff therefore cannot sue the Tribe doing business as Kewadin; he would instead need to sue either the Tribe or Kewadin. This does not preclude the Court from ruling on this matter, though, because the analysis would not change. This is because both the Tribe and Kewadin, as an arm and a wholly owned entity of the Tribe, enjoy sovereign immunity from suit. Thus, any amendment by Plaintiff would be futile, as regardless of whether Plaintiff wishes to sue the Tribe, Kewadin, or both, the Tribe's sovereign immunity bars either.

United States v. Cotton, 535 U.S. 625,630 (2002). When subject matter jurisdiction is challenged, the plaintiff has the burden of proving jurisdiction to survive the motion. *Moir v. Greater Cleveland Regl. Transit Auth.,* 895 F.2d 266, 269 (6th Cir. 1990). This Court has the power to resolve factual disputes when subject matter jurisdiction is challenged. *Id.*; *citing to Rogers v. Stratton Industries, Inc.*, 798 F.2d 913, 915 (6th Cir. 1986). Finally, if a Tribe "enjoys tribal-sovereign immunity, [the Court] not need address the issues of diversity jurisdiction and federal-question jurisdiction." *Memphis Biofuels, LLC v. Chickasaw Nation Indus., Inc.*, 585 F.3d 917, 919-20 (6th Cir. 2009).

IV. LAW & ARGUMENT

A. This Court Lacks Subject Matter Jurisdiction Because Both The Tribe And Kewadin Enjoy Sovereign Immunity From Suit.

"As 'domestic dependent nations,' Indian tribes exercise 'inherent sovereign authority' that is subject to plenary control by Congress." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 782 (2014); quoting *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 509, (1991). "Among the core aspects of sovereignty that tribes possess—subject to congressional action—is the 'common-law immunity from suit traditionally enjoyed by sovereign powers.'" *Id.*; quoting *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 58 (1978). The Sault Ste. Marie Tribe of Chippewa Indians is one such Indian tribe that enjoys sovereign immunity from suit.

This Court is uniquely familiar with the standard of tribal sovereign immunity from suit. *See*, *Lesperance v. Sault Ste. Marie Tribe of Chippewa Indians*, 259 F. Supp. 3d 713, 717-18 (W.D. Michigan 2017). For a party to bring a claim against a sovereign tribal nation, Congress must *unequivocally* state in the federal law that tribal sovereign

immunity is abrogated, and private parties may file suit against the tribes. *Bay Mills*, 572 U.S. at 782-83 (emphasis added). Similarly, a tribe may waive its immunity only if its intentions are clear. *Id.* at 789; citing *Kiowa Tribe of Okla.* v. *Manufacturing Technologies, Inc.*, 523 U.S. 751, 756 (1998). In summary, an Indian tribe can only be sued if: 1) the defendant-tribe waives its sovereign immunity with clear and express language; or 2) Congress abrogates a tribe's immunity with unequivocal language.

Here, Plaintiff fails to allege that either the Tribe or Kewadin has waived immunity from suit. Plaintiff similarly fails to point to any language in the text of the FTC Act—or any other applicable statute—showing that Congress expressly intended to abrogate sovereign immunity for Indian tribes. The reason is simple: no such waivers exist. The following will show that this matter should be dismissed because this Court does not have subject matter jurisdiction to adjudicate the same.

i. The Tribe enjoys sovereign immunity from suit, and Plaintiff has failed to show a waiver of that immunity.

Indian Tribes are "separate sovereigns pre-existing the Constitution." *Bay Mills Indian Community*, 572 US at 788; quoting *Santa Clara Pueblo,* 436 U.S. at 56. As "'domestic dependent nations,' Indian tribes exercise 'inherent sovereign authority' that is subject to plenary control by Congress." *Id.* at 788. This broad sovereign immunity from suit remains unless "unequivocally" abrogated by Congress or expressly waived by the tribe. *Id.* at 790; citing *C & L Enterprises, Inc. v. Citizen Band Potawatomi Tribe of Okla.,* 532 U.S. 411, 418; (2001).

Any waiver of sovereign immunity "is strictly construed and applied in accordance with any conditions or limitations on the waiver." *Sault Ste. Marie Tribe of*

Chippewa Indians v. Bouschor, No. 276712, 2008 Mich. App. LEXIS 2266, *32 (Ct. App. Nov. 18, 2008). In other words, to subject either the Tribe or Kewadin to suit, Plaintiff must show an express waiver of sovereign immunity by the Tribe or Kewadin.

In order to determine whether the Tribe or Kewadin has waived their sovereign immunity, it is necessary to understand the process required to effectuate the same. The Tribe's Constitution vests the Tribe's power and authority in a Board of Directors. Article VII, §1(j) of the Tribe's Constitution authorizes the Board to "adopt resolutions, ordinances, and a code". The Tribal Code was thus created pursuant to Article VII of the Tribe's Constitution. Chapters 44 and 81 of the Tribal Code speaks as to the Tribe's sovereign immunity. Pursuant to these Chapters, the Tribal Code only authorizes claims against the Tribe if there is an express waiver of its sovereign immunity. Sault Ste. Marie Chippewa Tribal Code §§ 44.104, 44.105, 81.103, 81.104.

Chapter 44 of the Tribal Code promulgates the requirements necessary for the Tribe to waive its sovereign immunity, to wit:

> **44.104 <u>Sovereign Immunity of Tribe.</u>**
>
> The sovereign immunity of the Tribe, including sovereign immunity from suit in any state, federal or tribal court, is hereby expressly reaffirmed unless such immunity is waived in accordance with '44.105 or '44.108. A "sue and be sued" clause or other authorization for a Tribal entity to waive its own sovereign immunity shall not constitute authorization for waiver of the immunity of the Tribe itself. Except for a charter provision expressly authorizing a Tribal entity to waiver the sovereign immunity of the Tribe itself, such as that contained in the Economic Development Commission Charter, Tribal Code '40.108, nothing in a Tribal entity charter shall be deemed or construed to be a waiver of the sovereign immunity of the Tribe or the consent of the Tribe to suit in any forum.

> **44.105 Waiver of Sovereign Immunity of Tribe.**
>
> (1) The sovereign immunity of the Tribe may be waived:
> (a) by resolution of the Board of Directors expressly waiving the sovereign immunity of the Tribe and consenting to suit against the Tribe in any forum designated in the resolution; provided, that such waiver shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds of the Tribe subject to the waiver, court having jurisdiction and applicable law. Such waiver shall be strictly construed and shall be effective only to the extent expressly provided and shall be subject to any conditions or limitations set forth in the resolution; or
> (b) by a Tribal entity exercising authority expressly delegated to such entity in its charter or specially by resolution of the Board of Directors; provided, that such waiver shall be made in strict conformity with the provisions of the charter or resolution governing such delegation.
>
> (2) No express waiver of sovereign immunity by resolution shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the Tribe other than the property specifically pledged, assigned or identified in the resolution.

Id. at §§ 44.104, 44.105. Chapter 81, governing Kewadin's sovereign immunity, incorporates the same waiver requirements in Chapter 44:

> **81.104 Sovereign Immunity.**
>
> Nothing contained herein shall constitute a waiver of the sovereign immunity enjoyed by the Tribe, any Tribal entity, officer, employee or agent. Any such waiver must be made pursuant to Chapter 44 of the Tribal Code.

Id. at § 81.104. As such, in order to maintain his suit, Plaintiff here must show an "express" action of the Tribe's Board in accordance with § 44.105. *Bay Mills Indian Cmty.*, 572 U.S. at 790 (citing *C & L Enterprises,* 532 U.S. at 418).

In summary, the only method for the Tribe to waive its sovereign immunity is a resolution passed by its Board in accordance with Chapter 41 of the Tribal Code. Plaintiff has not and cannot allege that such a waiver exists. As a result, Plaintiff cannot maintain an action against the Tribe or Kewadin, as the latter enjoys the same sovereign immunity as does the Tribe.

ii. Kewadin is cloaked in the Tribe's sovereign immunity.

Kewadin, as a wholly owned entity of the Tribe, is entitled to the same sovereign immunity as Tribe. *See*, e.g., *Kiowa Tribe v. Mfg. Techs.*, 523 U.S. 751, 758 (1998); *Memphis Biofuels, LLC v. Chickasaw Nation Indus., Inc.*, 585 F.3d 917, 918 (6th Cir. 2009); *Cook v. AVI Casino Enters.*, 548 F.3d 718, 725 (9th Cir. 2008) ("Tribal sovereign immunity protects Indian tribes from suit absent express authorization by Congress or clear waiver by the tribe. This immunity applies to the tribe's commercial as well as governmental activities.") (internal citations omitted).

It is well established that a tribe's commercial activities are protected by its sovereign immunity. In *Kiowa Tribe v. Mfg. Techs.*, the United States Supreme Court recognized that tribal enterprises include a variety of commercial activities both on and off Indian reservations. *Kiowa*, 523 U.S. at 758. In deciding whether to abrogate tribal sovereign immunity for commercial activities involving non-Indians, the Supreme Court held:

> Tribal enterprises now include ski resorts, gambling, and sales of cigarettes to non-Indians. See *Mescalero* v. *Jones*, 411 U.S. 145, 36 L. Ed. 2d 114, 93 S. Ct. 1267 (1973)*; Potawatomi, supra*; *Seminole Tribe of Fla.* v. *Florida,* 517 U.S. 44, 134 L. Ed. 2d 252, 116 S. Ct. 1114 (1996). In this economic context, immunity can harm

> those who are unaware that they are dealing with a tribe, who do not know of tribal immunity, or who have no choice in the matter, as in the case of tort victims. These considerations might suggest a need to abrogate tribal immunity, at least as an overarching rule. Respondent does not ask us to repudiate the principle outright, but suggests instead that we confine it to reservations or to noncommercial activities. *We decline to draw this distinction in this case, as we defer to the role Congress* may wish to exercise in this important judgment.

Id. (emphasis added). Precedent is clear: sovereign immunity applies to entities owned and chartered by a tribe, including for commercial activities on or off a tribal reservation.

In *Cook v. AVI Casino Enters.*, the Ninth Circuit was tasked to decide whether Avi Casino Enterprises, Inc. ("ACE"), a tribal corporation, enjoyed the Fort Mojave Tribe's sovereign immunity. *Cook v. AVI Casino Enters.*, 548 F.3d at 725. The plaintiff argued that "tribal corporations competing in the economic mainstream should not enjoy the same immunity from suit given to Indian Tribes themselves", as it would be "unfair to allow tribes to create commercial corporations that can compete in the marketplace while enjoying immunity from the legal liability that all other corporations must face". *Id.* Citing the Supreme Court's decision in *Kiowa*, the Ninth Circuit disagreed, holding that ACE was an "arm of the Fort Mojave Tribe" and thus enjoyed its sovereign immunity from suit. *Id.* at 725-26. The Sixth Circuit has held the same.

In *Memphis Biofuels, LLC v. Chickasaw Nation Indus., Inc.*, 585 F.3d 917, 918 (6th Cir. 2009), the Sixth Circuit was tasked with determining whether Chickasaw Nation Industries, Inc. ("CNI"), a wholly owned tribal corporation incorporated under the Oklahoma Indian Welfare Act, enjoyed the Chickasaw Nation's sovereign immunity. *Memphis Biofuels*, 585 F.3d at 918. The court noted that CNI was "wholly owned by the

Chickasaw Nation tribe but is an entity separate and distinct from the Chickasaw Nation." *Id.* Nonetheless, the Sixth Circuit, also citing *Kiowa*, held that CNI was an "'arm of the tribe'" that enjoys the same sovereign immunity as the tribe. *Id.* at 921.

Similarly, in *Spurr v. Pope*, 936 F.3d 478 (6th Cir. 2019) the plaintiff sued, amongst others, the Nottawaseppi Huron Band of the Potawatomi Indians and its Supreme Court. *Id.* at 482. Citing *Memphis Biofuels*, the Sixth Circuit held that the Nottawaseppi Tribe's Supreme Court was an arm of the tribe, was thus cloaked by the tribe's sovereign immunity, and was immune from suit. *Id.* at 483. The same is true of Kewadin, here.

In this case, the Indian Gaming Regulatory Act ("IGRA") authorizes gaming on Indian lands. 25 U.S.C. § 2702. In accordance with IGRA, chapter 94 of the Tribal Code authorizes the creation of the Sault Ste. Marie Tribal Gaming Authority, to be known as Kewadin Casinos Gaming Authority. Sault Ste. Marie Chippewa Tribal Code § 94.101. Kewadin is thus an instrumentality—or arm—of the Tribe in the same way that ACE, CNI, and the Nottawaseppi Tribe's Supreme Court were in *Cook*, *Memphis Biofuels,* and *Spurr*, respectively. Sault Ste. Marie Chippewa Tribal Code §§ 94.101, 94.105(2) ("For purposes of taxation, civil jurisdiction and regulatory jurisdiction, the Authority shall be deemed a subordinate arm of the Tribe and shall be entitled to all of the privileges and immunities of the Tribe.").

But further, the grant of sovereign immunity to gaming entities such as Kewadin has been explicitly considered by our Supreme Court. See *Kiowa*, 523 U.S. at 758 ("Tribal enterprises now include ski resorts, ***gambling***, and sales of cigarettes to non-Indians.")

(emphasis added). There can be no doubt that Kewadin, as an arm of the Tribe, enjoys tribal sovereign immunity. Plaintiff has failed to allege any waiver of this immunity by either Kewadin or the Tribe. Plaintiff has also failed to allege a waiver of that immunity by Congress.

B. Congress Has Not Abrogated Sovereign Immunity Under The FTC Act.

In addition to failing to show that the Tribe or Kewadin expressly waived their sovereign immunity, Plaintiff has also failed to allege that Congress has unequivocally abrogated sovereign immunity relevant to his claims. "[W]ithout congressional authorization, the Indian Nations are exempt from suit." *Bay Mills,* 695 F.3d at 413-14. Congress may abrogate tribal immunity only if its intentions are "unequivocally expressed." *Santa Clara Pueblo*, 436 U.S. at 58 (1978). Courts require intentional and unequivocal language in order to find an abrogation of tribal sovereign immunity by Congress.

When the language of a federal statute does not include "Indian tribes" in its definitions of the parties subject to suit, does not specifically assert jurisdiction over "Indian tribes," or does not include intentional and encompassing language meant to include Indian tribes, courts have found the statute insufficient to express an unequivocal Congressional abrogation of tribal sovereign immunity. *Bassett v. Mashantucket Pequot Tribe*, 204 F.3d 343, 356-57 (2d Cir. 2000). The principle is simple, without clear language, a tribe's long-standing sovereign immunity cannot be abrogated. *Santa Clara Pueblo*, 436 U.S. at 58; *Bay Mills*, 572 U.S. at 789-90; *Memphis Biofuels, LLC*, 585 F.3d at 920-21.

The Sixth Circuit, later affirmed by the Supreme Court, has explicitly addressed this issue. In *Bay Mills*, the state of Michigan brought federal and state law claims against the Bay Mills Indian Community related to its operation of a casino. *Bay Mills Indian Cmty.*, 695 F.3d at 415-19; aff'd, 572 U.S. 782 (2014). The Sixth Circuit dismissed the claim for lack of subject matter jurisdiction, holding that none of the applicable federal laws mentioned "anything about abrogation of tribal immunity much less expressly authorizing a State to sue a tribe." *Id.* at 415. The Sixth Circuit was clear that "[i]t takes more than inferential logic to abrogate tribal immunity . . . it takes is an 'unequivocal expression' of Congress." *Id.* Important to the Sixth Circuit's decision—and ultimately the Supreme Court's affirmation—was that "neither § 1166(a) nor the cited sections of Michigan law say anything about suing Indian tribes in particular." *Id.* The same is true here.

Santa Clara Pueblo is also instructive. There, the Supreme Court was tasked with determining whether the Indian Civil Rights Act ("ICRA") "impliedly" authorized civil actions against an Indian tribe or its officers. *Santa Clara Pueblo,* 436 U.S. at 52. Of particular importance, the ICRA did in fact abrogate tribal sovereign immunity in the plain language of the act, ***but only*** for limited purposes of petitions based on a writ of habeas corpus to "test the legality of his detain by order of an Indian tribe." *Id.* at 51. The underlying issue, though, was not related to the express abrogation related to habeas corpus, but instead whether the ICRA allowed a civil suit against an Indian tribe for laws it promulgated that allegedly discriminated against persons based on their sex. *Id.* The Tenth Circuit held it did. *Id.* at 55 ("[T]he Court of Appeals apparently concluded

that because the classification was one based upon sex it was presumptively invidious and could be sustained only if justified by a compelling tribal interest"). The Supreme Court disagreed, holding:

> Nothing on the face of Title I of the ICRA purports to subject tribes to the jurisdiction of the federal courts in civil actions for injunctive or declaratory relief. Moreover, since the respondent in a habeas corpus action is the individual custodian of the prisoner, see, *e. g.*, 28 U. S. C. § 2243, the provisions of § 1303 can hardly be read as a general waiver of the tribe's sovereign immunity. In the absence here of any unequivocal expression of contrary legislative intent, we conclude that suits against the tribe under the ICRA are barred by its sovereign immunity from suit

Id. at 59.

In so holding, the Court emphasized the importance of courts not finding a waiver of sovereign immunity unless Congress's intent was clear and unequivocal, to wit:

> As we have repeatedly emphasized, Congress' authority over Indian matters is extraordinarily broad, and the role of courts in adjusting relations between and among tribes and their members correspondingly restrained. See *Lone Wolf* v. *Hitchcock*, 187 U.S. 553, 565 (1903). Congress retains authority expressly to authorize civil actions for injunctive or other relief to redress violations of § 1302, in the event that the tribes themselves prove deficient in applying and enforcing its substantive provisions. But unless and until Congress makes clear its intention to permit the additional intrusion on tribal sovereignty that adjudication of such actions in a federal forum would represent, we are constrained to find that § 1302 does not impliedly authorize actions for declaratory or injunctive relief against either the tribe or its officers.

Id. at 72. Put simply, Congress must make a clear an unequivocal waiver of tribal sovereign immunity to subject an Indian tribe to suit. No such waiver can be implied. Applying *Santa Clara Pueblo* and *Bay Mills* to the FTC Act, it is clear that Congress did

not abrogate tribal sovereign immunity within that act.

The FTC Act is silent as to its abrogation of tribal sovereign immunity. Pursuant to *Bay Mills* and *Santa Clara Pueblo*, to determine whether Plaintiff can bring a claim against the Tribe, this Court must first examine whether Congress expressly abrogated tribal sovereign immunity in the express language of the FTC Act. There can be no question that Congress chose not to abrogate tribal sovereign immunity in the FTC Act.

In first looking to the text of the statute, the FTC is "empowered and directed to prevent ***persons, partnerships, or corporations*** . . . from using unfair methods of competition in or affecting commerce an unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a)(2). Persons and partnerships are not defined in the act, meaning they receive their ordinary meanings. *See United States v. Zabawa,* 719 F.3d 555, 559 (6th Cir. 2013). Corporations are defined in section § 44 of the FTC Act as follows:

> "Corporation" shall be deemed to include any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members, and has shares of capital or capital stock or certificates of interest, and any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members.

15 U.S.C. § 45. Indian tribes are not mentioned in the definition of "corporation". It is thus clear that Congress did not intend for a private cause of action against an Indian tribe under the FTC Act. *Santa Clara Pueblo,* 436 U.S. at 72. In fact, the FTC Act does not even allow a private cause of action at all.

The FTC Act is silent with respect to any Congressional authorization of private lawsuits, much less on against an Indian tribe. Similarly, nowhere in the FTC Act does it mention tribal immunity from suit, much less an express and unequivocal abrogation of tribal immunity for private lawsuits. *See* 15 U.S.C. §§ 41-58. Because Plaintiff cannot allege an express and unequivocal waiver of tribal sovereign immunity by either the Tribe, Kewadin, or by Congress, both the Tribe and Kewadin enjoy tribal sovereign immunity from suit. This Court thus lacks subject matter jurisdiction to hear this matter, and it must be dismissed.

V. CONCLUSION AND REQUEST FOR RELIEF

The Sault Ste. Marie Tribe of Chippewa Indians is a federally recognized Indian tribe that enjoys common law sovereign immunity from suit. This immunity can only be waived in one of the following ways: 1) a resolution passed by the Tribe's Board that contains an express waiver of its immunity pursuant to Chapter 44 of the Tribal Code; 2) a resolution passed by the Management Board that contains an express waiver of Kewadin's immunity pursuant to Chapter 44 of the Tribal Code; or 3) an unequivocal abrogation of tribal immunity by Congress. None of those exist here.

Plaintiff has not and cannot provide or allege a waiver of sovereign immunity by either Kewadin or the Tribe. Similarly, Plaintiff has not alleged, nor can he, that the FTC Act contains an abrogation of tribal sovereign immunity. Kewadin and the Tribe thus enjoy their sovereign immunity. Thus, this Court lacks subject matter jurisdiction and this matter should be dismissed with costs and fees to Defendant.

Respectfully submitted,

DATED: April 17, 2025

BUTZEL LONG, P.C.

/s/ Daniel V. Barnett

Daniel V. Barnett (P82372)
BUTZEL LONG, P.C.
Attorneys for Defendants
300 Ottawa Avenue, NW, Suite 620
Grand Rapids, Michigan 49503
(616) 988-5600
barnett@butzel.com

CERTIFICATE OF COMPLIANCE

I hereby certify that this Motion and Brief in Support was created using Microsoft Word, and that the combined Motion and Brief in Support contain 4,583 words in the text and footnotes exclusive of the case caption, cover sheets, table of contents, table of authorities, signature block, attachments, exhibits, and this certificate.

Respectfully submitted,

DATED: April 17, 2025

BUTZEL LONG, P.C.

/s/ Daniel V. Barnett
Daniel V. Barnett (P82372)
BUTZEL LONG, P.C.
Attorneys for Defendants
300 Ottawa Avenue, NW, Suite 620
Grand Rapids, Michigan 49503
(616) 988-5600
barnett@butzel.com

CERTIFICATE OF SERVICE

On April 17, 2025, I e-filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send electronic notice to all attorneys of record.

Respectfully submitted,

DATED: April 17, 2025

BUTZEL LONG, P.C.

/s/ Daniel V. Barnett
Daniel V. Barnett (P82372)
BUTZEL LONG, P.C.
Attorneys for Defendants
300 Ottawa Avenue, NW, Suite 620
Grand Rapids, Michigan 49503
(616) 988-5600
barnett@butzel.com