UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

NORTH METRO HARNESS INITIATIVE LLC d/b/a RUNNING ACES,

Plaintiff,

v.

KEITH ANDERSON; MICHAEL BEATTIE; CRAIG BEAULIEU; RAYMOND BRENNY; SHELLEY BUCK; CONSTANCE CAMPBELL; MICHAEL CHILDS, JR.; LORI COLLING; ASHLEY CORNFORTH; REBECCA CROOKS-STRATTON; DON DAMOND; LEANA DEJESUS; LEE DILLARD; ALISON FOGARTY; TIM GENIA; IAN GORRIE; SCHOTT HANSON; MICHAEL HEAVNER; ANGELA HEIKES; ROXANNE HEMMING; MICHAEL JANKOVIAK; GRANT JOHNSON; JOHNNY JOHNSON; RONALD JOHNSON; DUSTIN GOSLIN; NOAH HIRSCH; KYLE KOSSOL; RYAN MCGRATH; KEVIN MCNAIR; VALENTINA MGENI; COLE MILLER; JOE NAYQUONABE, JR.; SHAWN O'KEEFE; LON O'DONNELL; DAYNA PEARSON; KYLE PETERSON; SAM ROOK; ROBERT SAWYER; LES SCHMOLKE; CHARLES VIG; DENNIS WALKER; RONDA WEIZENEGGER,

Defendants.

Court File No. 0:24-cv-01369 (JWB/LIB)

MEMORANDUM OF DEFENDANTS SHELLEY BUCK, CONSTANCE CAMPBELL, MICHAEL CHILDS, JR., MIKE HEAVNER, MICHAEL JANKOVIAK, GRANT JOHNSON, JOHNNY JOHNSON, RONALD JOHNSON, KEVIN MCNAIR, AND VALENTINA MGENI IN SUPPORT OF THEIR MOTION TO DISMISS FIRST AMENDED COMPLAINT

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INTRODUCTION

For over three decades, Minnesota's Indian tribes and the State have co-regulated class III tribal government gaming on Indian lands under the framework of the Indian Gaming Regulatory Act. They have overseen the development of a diverse market offering well-regulated effective gaming and related entertainment and amenities. Tribal gaming is an economic engine creating thousands of jobs and billions of dollars of impact in largely rural areas without any financial investment by the State. It is by far the most successful economic development program in the State.

Running Aces ("RA"), a harness racing track offering State-authorized card games, has tried and failed for nearly twenty years to compete with tribal casinos. This lawsuit is a last-ditch effort to accomplish through frivolous litigation what it could not achieve with lawful competition. RA's lawsuit interferes with lawful tribal gaming, would usurp federal, State, and tribal policymaking, and attempts to seize enforcement powers even a state does not possess. RA wants this Court to toss aside the comprehensive regulatory framework that has successfully and effectively regulated tribal gaming for decades.

As explained below, there are numerous independent grounds for dismissal, including preemption by the Indian Gaming Regulatory Act ("IGRA," 25 U.S.C. § 2701, et seq.) immunity, lack of standing, failure to join necessary parties, and failure to state a claim.

BACKGROUND

I. The Community and its Gaming Enterprise

The Prairie Island Indian Community ("Community") is a federally recognized Indian tribe. Amended Complaint (ECF No. 12 ("AC")) ¶177; 89 Fed. Reg. 944, 946 (Jan. 8,

2024). Treasure Island Resort Casino ("TIRC") is located on the Community's Indian lands and is owned and regulated by the Community government. AC ¶¶ 178-79, 196-198, 202 (claims are directed at gaming "within the Reservation"), 206 (citing Community Gaming Ordinance, which, and alleging that TIRC operates under the Gaming Ordinance,[1] which regulates gaming on the Community's Indian land[2]), 208-210 (alleging that TIRC is subject to IGRA, which applies only to gaming on "Indian lands," 25 U.S.C. § 2703(4)). TIRC provides "funding for Tribal government operations and programs, and programs for the general welfare of the Community." PIIC Gaming Ordinance § 102(H). All government gaming revenue must be used to: "(i) to fund tribal government operations or programs; (ii) to provide for the general welfare of the Indian tribe and its members; (iii) to promote tribal economic development; (iv) to donate to charitable organizations; or (v) to help fund operations of local government agencies." 25 U.S.C. § 2710(d)(1)(A)(ii), (b)(2)(B).

II. Regulation of Indian Gaming

A. The Impetus for IGRA: States Have No Regulatory Authority over Gaming in Indian Country

Indian tribes are "distinct, independent political communities," *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978), with the right to "make their own laws and be ruled by them." *Williams v. Lee*, 358 U.S. 217, 220 (1959). Tribal inherent sovereignty predates the United States, and is not limited by the Constitution. *Santa Clara Pueblo*, 436 U.S. at 56–57. Only express action by Congress may constrain the powers of a tribe. *Id*. at 56, 60.

[1] At https://prairieisland.org/uploads/Gaming-15-01-09-03.pdf.
[2] Gaming Ordinance §§ 108, 106(G), 107(A), 200(A).

Even when it has acted to constrain tribal power, Congress has consistently affirmed the sovereignty of tribes and their right to self-government. *See id*. at 62-63. Subject to exceptions recognized under federal law, state law has "no role to play within the reservation boundaries." *McClanahan v. Ariz. State Tax Comm'n*, 411 U.S. 164, 168 (1973).

In 1953, Congress enacted Public Law 83-280 (67 Stat. 588), section 2 of which is codified at 18 U.S.C. § 1162 and authorizes state criminal jurisdiction over Indians on Indian reservations within Minnesota (except Red Lake and Bois Forte) and several other states. In the early 1980s, California asserted that § 1162 authorized application of state laws to tribal gaming on the Cabazon Band of Mission Indian's Reservation. The Band sued to stop California's enforcement efforts. In 1987, the Supreme Court confirmed the right of tribes, including in Public Law 280 states like California and Minnesota (absent complete prohibition of gaming in the state), to conduct and regulate gaming on their reservations and that state law did not apply. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

The Court held that § 1162 gave California the authority to apply its criminal laws to Indians on Indian reservations but did not authorize the application of state civil law. *Id*. at 211-12. The Court explained that "when a State seeks to enforce a law within an Indian reservation under [§ 1162], it must be determined whether the law is criminal in nature"—in which case it is "fully applicable"—or whether the law is "civil in nature"—in which case it is not. *Id.* at 208. Simply because "an otherwise regulatory law is enforceable by criminal as well as civil means does not necessarily convert it into a criminal law within the meaning of [§ 1162]." *Id*. at 211. California law permitted some gaming, prohibited

other forms, and imposed criminal penalties for certain violations. *Id*. Thus, California did "not prohibit all forms of gambling;" instead it regulated "gambling in general," and its gaming laws were civil in nature and not enforceable in Indian country. *Id*. The Court similarly held that 18 U.S.C. § 1955 does not allow states to enforce their gaming laws in Indian country. *Id*. at 214.

And In light of the "compelling federal and tribal interests supporting" the regulation of tribal gaming activities, the Court rejected the argument that the State had sufficient interests in enforcing gambling laws to "justify the assertion of state authority," holding that the extension of "State regulation would impermissibly infringe on tribal government." *Id.* at 222.

B. Congress Enacted IGRA as the Comprehensive Framework for Regulation of Indian Gaming

1. IGRA Constitutes a Careful Balance of Tribal, State, and Federal Interests

Congress enacted IGRA in "response" to the *Cabazon* decision that "states are powerless to regulate gaming on Indian lands." *W. Flagler & Assocs., Ltd. v. Haaland*, 71 F.4th 1059, 1062 (D.C. Cir. 2023). IGRA "balance[s] state, federal, and tribal interests" and implements federal policies of "promoting tribal economic development" and "self-sufficiency," "ensur[ing] that the Indian tribe is the primary beneficiary of the gaming operation," and "shield[ing] [tribes] from organized crime and other corrupting influences[.]" *Id.* (citing 25 U.S.C. § 2702). IGRA creates a role for states in Indian gaming where none previously existed. *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 58 (1996). But that role exists only where "a tribe affirmatively elects to have State laws and State jurisdiction

extend to tribal lands" under a tribal-state compact. S. REP No. 100-446 at 5-6 (1988). "In no instance, does [IGRA] contemplate the extension of State jurisdiction or the application of State laws for any other purpose." *Id*. at 6.

IGRA accommodated the interests of tribes, states, and the United States. The non-Indian gaming industry lobbied for "protection of their own games from a new source of economic competition." *Id*. at 33. But policy makers were focused on tribal gaming as a critical source of government funding for tribes, *id*., and IGRA provides no role or rights to the non-Indian gaming industry.

2. The IGRA Framework

Under IGRA, gaming is divided into three classes. "Class I" is social gaming and regulated exclusively by tribes. "Class II" includes Bingo and similar games of chance. It is regulated by tribes, subject to National Indian Gaming Commission ("NIGC") oversight. "Class III" includes all other gaming and is regulated by tribal-state compact. 25 U.S.C. § 2703(6)-(8).

When a state permits class III gaming, and a tribe requests that the state enter compact negotiations for such gaming on tribal lands, the state is obligated to negotiate. A compact may address jurisdictional agreements and other subjects directly related to the operation of compacted gaming activities. 25 U.S.C. § 2710(d)(3)(C). A compact must be reviewed by the Secretary of the Interior for compliance with IGRA and is valid upon Secretarial approval. Additionally, tribes must enact a gaming ordinance, effective upon review and approval by NIGC. 25 U.S.C. § 2710(d)(2).

3. IGRA Remedies and Enforcement Mechanisms

IGRA provides a detailed framework for remedies and enforcement.

- Tribes are the primary regulators of gaming on their lands under a NIGC-approved gaming ordinance. 25 U.S.C. §§ 2710(b), (d)(1)(A).
- The NIGC has the exclusive authority to fine a tribe, or close a tribal gaming facility if it finds a tribe has conducted class III gaming on Indian lands without a compact. 25 U.S.C. §§ 2713(a)(1), (b).
- IGRA authorizes states—but no one else—to sue in federal court to enjoin "class III gaming activity located on Indian lands" that is "conducted in violation of any Tribal–State compact." *Id*. § 2710(d)(7)(A)(ii). No remedy other than an injunction is permitted. *Id*.; *Michigan v. Bay Mills Indian Cmty*, 572 U.S. 782, 796 (2014).
- States may negotiate for compact provisions providing additional remedial, civil and criminal enforcement jurisdiction related to class III gaming. 25 U.S.C. § 2710(d)(3)(C).
- The federal government has exclusive authority to bring criminal prosecutions when class III gaming is conducted on Indian land in violation or in the absence of a tribal-state compact. 18 U.S.C. § 1166(d).
- IGRA permits judicial review under the Administrative Procedures Act of certain final actions by the Secretary of Interior and NIGC. 25 U.S.C. § 2714.

C. The Community's Gaming Compacts

After IGRA was enacted, the Minnesota tribes requested compact negotiations for slot machines and blackjack. In 1989, the Minnesota governor was mandated by statute to

"negotiate in good faith a tribal-state compact regulating the conduct of class III gambling" with any tribe requesting a compact. Minn. Stat. § 3.9221, subd. 2. The legislature authorized class III gaming under compacts in the broadest possible terms—authorizing "all forms of gaming that are not class I gaming or class II gaming." *Id*. (quoting 25 U.S.C. § 2703(8)).

Minnesota allowed video games of chance ("VGC") at that time and entered a VGC compact with the Community in 1989. AC, Ex. 3.[3] In 1992, the general law permitting VGC was repealed, but gaming by Indian tribes under approved compacts was still expressly permitted. 1990 Minn. Laws, ch. 590, art. 1, §§ 4-9; Minn. Stat. § 349.61, subd. 2. In 2012, Minnesota again legalized some VGC gaming. Minn. Stat. § 349.11, *et seq*.

In 1991, the State and the Community entered a blackjack compact following settlement by consent decree of a lawsuit regarding the State's duty to compact under IGRA. *Lower Sioux Indian Com'ty. v. Minnesota*, 4:89-cv-00936-DEM-FLN (D. Minn. 1990).

The Department of the Interior approved the VGC and blackjack compacts and published them in the Federal Register on April 2, 1990 and October 3, 1991 respectively. AC Exs. 6, 7. The NIGC approved the Community's Gaming Ordinance. AC ¶ 206.

[3] Though not necessary for purposes of compacting under IGRA, the Minnesota VGC law provided that VGC gaming under tribal-state compacts was not subject to the regulation applicable to VGC gaming on state land. 1989 Minn. Laws ch. 334, art. 6, § 14.

III. RA's Claims

A. RA Sues Community Officials—Not the Community or TIRC

RA is a private company that "owns and operates a casino, [harness] horse racetrack, and restaurant" in Columbus, Minnesota. AC ¶ 12. RA does not name the Community or any of its enterprises as defendants. Instead, RA alleges that "many people" are involved in running the enterprises and names as defendants seven current or former members of the Community Council, the Constitutional governing body of the Community, and three individuals who are allegedly executives or officers of TIRC—"the PIIC Defendants." AC ¶¶ 44-54, 184-93. [4]

RA alleges that current and former Council Members are "responsible for business strategy, financing, and operations at Treasure Island Resort & Casino," as well as financial and marketing functions. AC ¶¶ 184-90. RA further alleges that other current and former Community officials are responsible for "strategic planning" and financial and marketing functions. AC ¶¶ 191-93.

These are the sum of the allegations against the PIIC Defendants. RA does not allege any specific act by any individual PIIC Defendant.

B. Allegations Regarding Gaming at TIRC

Notwithstanding the Community's DOI-approved Gaming Compacts with the State—in effect for more than 30 years (AC ¶¶ 195-98)—RA alleges that TIRC's conduct

[4] RA names a fourth TIRC-executive defendant, "Ian Gorrie", who has never been an officer or employee of TIRC or the Community and appears to be drawn from a fictitious profile on zoominfo.com.

of video games of chance, blackjack, and other card games in Indian country violate IGRA and Minnesota law.

RA alleges that "[s]ince 2020," TIRC offered "class III video games of chance" that violate Minnesota criminal law and IGRA. AC ¶¶ 207-09. RA further alleges that, "[s]ince 2020," TIRC offered "class III card games" that "were not authorized by the Prairie Island tribal-state gaming compacts until October 4, 2023" and were "subject to Minnesota law under IGRA." AC ¶ 210-11. RA alleges a list of game names but nothing further; not even characteristics of play that purportedly render those games "unauthorized," much less class III versus class II card games. *Id*.

C. RA's Alleged Injury and Causes of Action

RA alleges that it was "harmed . . . financially" because TIRC "used [its allegedly] illegal class III video games of chance and card games" to compete with RA. AC ¶ 226. RA alleges that, if TIRC had not done so, then "anyone considering playing class III card games other than blackjack" in the "area" (which RA does not define) "would likely have patronized" RA. *Id*. On that basis, RA claims standing to challenge the legality of the Community's gaming operations on "Reservation" or "tribal land." AC ¶¶ 4-5, 195-96, 198, 202, 206.

Count 7 alleges violation of Minn. Stat. §§ 609.755, 609.76 subd. 1. RA alleges that TIRC's "offering of class III video games of chance on Indian lands in Minnesota is illegal because Minnesota law does not 'permit[] such gaming for any purpose by any person,' 25 U.S.C. § 2710(d)(1)." AC ¶ 262. RA alleges that TIRC's "offering of class III card

games not included in a tribal-state gaming compact on Indian lands in Minnesota is illegal because Minnesota law prohibits such gaming activity." *Id*.

Count 8 alleges the PIIC Defendants violated the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. § 1962(c), through two alleged RICO enterprises: "PI Commercial Enterprises" (the Community's businesses) and Treasure Island Resort & Casino." AC ¶¶ 265-67. RA alleges the PIIC Defendants "participated in" TIRC's "affairs" through "at least two acts of racketeering." AC ¶ 269. RA asserts the "acts of racketeering" are conducting, financing, or otherwise supporting "the illegal gambling business" at TIRC. *Id*.

Count 9 alleges the PIIC Defendants violated 18 U.S.C. § 1962(d) by conspiring among themselves to violate 18 U.S.C. § 1962(c). AC ¶ 272.

LEGAL STANDARD

A motion to dismiss based on sovereign immunity is analyzed under Rule 12(b)(1). *Hagen v. Sisseton-Wahpeton Cmty. Coll.*, 205 F.3d 1040, 1043 (8th Cir. 2000). RA "bears the burden" of proving subject matter jurisdiction. *Herden v. United States*, 726 F.3d 1042, 1046 (8th Cir. 2013). Courts may look to evidence outside the pleadings. *Buckler v. United States*, 919 F.3d 1038, 1044 (8th Cir. 2019).

To survive a Rule 12(b)(6) motion, plaintiff must plead facts—not conclusory allegations or legal conclusions—to state a claim of relief that is plausible and rises above the speculative level. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009).

A party may seek dismissal under Rule 19 through a Rule 12(b)(7) motion where a complaint fails to name a necessary party. A party "must be joined" if the person has an

interest "relating to the subject of the action" and disposing of the action in their absence may impair the person's ability to protect the interest. Fed. R. Civ. P. 19(a)(1). If such party cannot be joined, then then action may be dismissed. Fed. R. Civ. P. 19(b).

ARGUMENT

I. RA's Claims are Based on Alleged Violations of IGRA and Must be Dismissed Because IGRA Allows No Private Right of Action and RA Cannot Circumvent That Limitation by Invoking State Law or RICO

RA asserts a private right of action—directly and through RICO—against the Community's conduct of gaming on its lands. AC ¶¶ 4-7, 207-09. But IGRA preempts state law claims and allows no private action, even if styled as a RICO claim. "Everything—literally everything—in IGRA" provides for "regulat[ing] gaming on Indian lands.'" *W. Flagler Assocs.*, 71 F.4th at 1065. That leaves no room for any private cause of action directed at tribal gaming on Indian lands. *Casino Res. Corp v. Harrah's Entm't*, 243 F.3d 435, 438 (8th Cir. 2001).

A. IGRA Preempts RA's State Law Claims

In Count 7, RA alleges the PIIC Defendants violated State gaming laws—Minn. Stat. §§ 609.755, 609.76 subd. 1—while operating TIRC on the Community's Reservation. But IGRA preempts state law claims that interfere with tribal gaming.

IGRA confines state authority over tribal gaming on Indian land to the "carefully crafted compact-based solution" that requires "consent" of the regulated tribe. *Bay Mills,* at 795 n.6; *Gaming Corp. of America v. Dorsey & Whitney*, 88 F.3d 536, 547 (8th Cir. 1996) ("state regulation of gaming take[s] place within [IGRA's]' carefully defined structure"). The Eighth Circuit has long held that IGRA "established the preemptive balance

between tribal, federal, and state interests in the governance of gaming operations on Indian lands," and it naturally follows that "causes of action that would interfere with the tribe's ability to govern gaming fall within IGRA's complete preemption of state law." *Casino Resource Corp.*, 243 F.3d at 438 (citation omitted). IGRA is one of the few federal laws with "the requisite extraordinary preemptive force necessary" to establish "complete preemption" of state law. *Gaming Corp.*, 88 F.3d at 547. RA cannot invoke state law to challenge the Community's operation or regulation of gaming in Indian country. *Gaming Corp.*, 88 F.3d at 549; *State of Missouri v. Coeur D'Alene Tribe*, 164 F.3d 1102, 1108 (8th Cir. 1999) (IGRA preempts claims "interfering with tribal gaming" on Indian lands").

Even if RA could establish the operation of class III gaming with no valid compact—and it cannot—its attempt to assert a state law claim is preempted. AC ¶¶ 208-10. If a tribe operates class III gaming on Indian lands without a valid compact, "only the Federal Government can enforce the law" by proceeding under 18 U.S.C. § 1166. *Bay Mills*, 572 U.S. at 795 n.6. Even the State has no regulatory authority, and no remedy, in that circumstance. *Id.*; *State ex rel. Nixon v. Coeur D'Alene Tribe*, 164 F.3d 1102, 1109 (8th Cir. 1999) ("If the Tribe's lottery is being conducted on its lands"—even without a compact—"then the IGRA completely preempts the State's attempt to regulate or prohibit.").

RA suggests that 18 U.S.C. §§ 1162 and 1166 allow state law claims against gaming on the Community's land. AC ¶¶ 208-11. To the contrary, § 1166 is one of the several IGRA[5] provisions that *limit* state jurisdiction over tribal gaming. It incorporates provisions

[5] 18 U.S.C. § 1166 was enacted as IGRA § 23. Pub. L. No. 100-497, § 23, 102 Stat. 2467, 2487 (1988).

of state law into federal law, but "makes a State's gambling laws applicable 'in Indian country' *as federal law*" that "only the federal government can enforce." *Bay Mills*, 572 U.S. at 793 n.5, 795 n.6. And, even assuming that *Cabazon* did not foreclose § 1162 as a means of applying State regulation to tribal gaming, § 1162 would not help RA's case because, for purposes of gaming, it was "impliedly repealed by section 1166(d)." *Sycuan Band of Mission Indians v. Roache*, 54 F.3d 535, 540 (9th Cir. 1994). But, even if § 1162 provided another "route making that same state law applicable in Indian country, the Federal government's right to enforce *that law* is still exclusive" under § 1166. *Id.* RA's claims also fail because § 1162 provides no private right of action, as explained in the following section.

B. RA Has No Private Right of Action

Count VII fails even if characterized as a direct IGRA claim because "IGRA provides no general private right of action." *In re Sac & Fox Tribe of the Mississippi in Iowa / Meskwaki Casino Litigation*, 340 F.3d 749, 766 (8th Cir. 2003).

RA's assertion that a federal statute was violated and it was allegedly harmed does not give it a private cause of action. *Wolfchild v. Redwood Cnty.*, 91 F. Supp. 3d 1093, 1101 (D. Minn. 2015) (citing *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979)). A private right of action exists only if Congress "created an individual right and [gave] private plaintiffs the ability to enforce it." *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 86 F.4th 1204, 1209 (8th Cir. 2023) (citing *Alexander v. Sandoval*, 532 U.S. 275, 288-89 (2001)). IGRA's "carefully crafted compact-based solution to" the question of state authority on Indian land encompasses remedies for allegedly unlawful

gaming—and "suing tribal officials or employees" to enjoin gaming is a power that even the State "does not possess (absent consent) in Indian territory." *Bay Mills*, 572 U.S. at 795, n.6, 795-96.

Nothing in IGRA's "detailed enforcement and administrative review system" even suggests a private right of action. *In re Sac & Fox*, 340 F.3d at 756. IGRA confers rights and responsibilities on tribes, states, and the federal government, and gives those entities means to enforce their rights. It does not do so for individuals or private companies. *See*, Background Part II.B.3, above. IGRA's silence on private enforcement is significant because "[u]nder a test that requires Congress to 'create' causes of action, silence is not golden for the plaintiffs." *Ark. NAACP*, 86 F.4th at 1210 (citing *Sandoval*, 532 U.S. at 287). Federal courts consistently, and without exception, foreclose private actions under IGRA, as well as state actions outside the scope expressly provided in IGRA. *Stewart v. Coffey*, No. CIV-09-780-W., 2009 WL 10695065, at *5 (W.D. Okla. Oct. 5, 2009), *aff'd*, 368 F. App'x 924 (10th Cir. 2010); *Hein v. Capitan Grande Band of Diegueno Mission Indians*, 201 F.3d 1256, 1260 (9th Cir. 2000); *Florida v. Seminole Tribe of Fla.)*, 181 F.3d 1237, 1245-49 (11th Cir. 1999).

IGRA's preclusion of private actions encompasses § 1166 because it "lacks any language explicitly creating a federal cause of action for a state"—much less a private party—"to sue to enforce [state] laws" and, therefore, "does not create an express right of action." *Alabama v. PCI Gaming*, 801 F.3d 1278, 1294 (11th Cir. 2015). And § 1166 contains no rights-creating language that might imply a cause of action. *Id.* at 1297. Allowing additional rights of action "would undermine IGRA's careful balance of federal, state, and

tribal interests." *Id*. at 1299-1300 (citation omitted). Congress "intended to preclude other enforcement mechanisms—like an implied right of action," unless a compact expressly provides otherwise. *Id.* at 1299 (quoting *Sandoval*, 532 U.S. at 290).

RA's misplaced reliance on § 1162 does not change the result. Even assuming IGRA did not supersede it, § 1162 confers criminal jurisdiction on states, not individuals, with no mention of private rights. Indeed, where, as here, "the sole object of the suit is to enforce a criminal statute, courts will not exercise equity jurisdiction." *State v. Red Owl Stores, Inc.*, 253 Minn. 236, 244 (1958); *H.J., Inc. v. Northwestern Bell Corp.*, 420 N.W.2d 673, 675 (Minn. Ct. App. 1988). Doing so would deprive defendants of the substantive and procedural rights they would be entitled to in a criminal matter and usurp the government's criminal jurisdiction. *Red Owl*, 253 Minn. at 244.

C. IGRA's Detailed Remedial Scheme Precludes RA's RICO Claims

In Counts VIII and IX, RA attempts to use RICO to circumvent IGRA's exclusive remedial structure. But IGRA's detailed remedial scheme forecloses private RICO claims against gaming on Indian land to the same extent as claims invoking IGRA directly. *See Torres v. Vitale*, 954 F.3d 866, 875 (6th Cir. 2020) (holding that for matters covered by the FLSA's 's detailed remedial scheme, RICO claims are precluded). If IGRA precludes a private action for damages, then there can be no argument that a RICO claim for treble damages may proceed. *Danielsen v. Burnside–Ott Aviation Training Center*, 941 F.2d 1220, 1229 (D.C. Cir. 1991).

Supreme Court precedent "[i]n a variety of contexts" provides that "a precisely drawn, detailed statute pre-empts more general remedies." *EC Term of Years Trust v.*

United States, 550 U.S. 429, 433 (2007); *Block v. North Dakota ex rel. Board of Univ. and School Lands*, 461 U. S. 273, 284–286 (1983) (Quiet Title Act); *Stonite Products Co. v. Melvin Lloyd Co.*, 315 U. S. 561 (1942) (patent statutes). If the precisely drawn statute "limits relief in ways that [the other cause of action] does not," then it "precludes resort to the general cause of action." *Rancho Palos Verdes v. Abrams*, 544 U. S. 113, 122–123 (2005) (Telecommunications Act). IGRA is a "precisely drawn, detailed statute" that precludes more general remedies, including RICO claims. *See*, Background, Part II.B.3, above.

IGRA's "extensive administrative scheme," careful allocation of criminal jurisdiction, limitation on civil penalties, and the absence of a private right of action, all support the conclusion that Congress did not intend for an alleged IGRA violation to be the basis for a private civil RICO action. *See Ayres v. Gen. Motors Corp.*, 234 F.3d 514, 522 (11th Cir. 2000) (the design of remedies under the Traffic Safety Act, especially "the absence of a private right of action," made "clear that Congress" foreclosed a "private civil RICO action"). When Congress omits a private right of action in a statutory framework—as it did with IGRA—the limitation "controls" and precludes a RICO claim. *Arruda v. Curves Int'l, Inc.*, 861 F. App'x 831, 835 (5th Cir. 2021) (FTC Act); *see also McCulloch v. PNC Bank Inc.*, 298 F.3d 1217, 1226-27 (11th Cir. 2002) (Higher Education Act).

The primary jurisdiction doctrine further supports the conclusion that a private RICO action is precluded here because governmental agencies of the Community, State, and United States are in a better position to redress alleged violations of complex regulatory law within their respective statutory and compact mandates. *See, e.g., Hemi Grp., LLC v.*

City of New York, N.Y., 559 U.S. 1, 11-12 (2010) (determining state is better situated than city to remedy alleged tax evasion). IGRA is not just a careful blend of administrative and judicial powers, but also a balancing of tribal, federal, and state interests. RA's RICO claims would upset both balances—injecting the industry interests that were deliberately excluded from IGRA—wreaking havoc on federal and state policy and tribal sovereignty, all to serve RA's private, pecuniary interests.

RA's complaint asserts claims that are squarely in the scope of IGRA. Any dispute under IGRA is a matter for Community, State, and federal government to resolve. The claims should be dismissed under Rule 12(b)(6). *Adams v. Eureka Fire Prot. Dist.*, 352 F. App'x 137, 138 (8th Cir. 2009); *Casino Res. Corp., 243 F.3d at 437*.

II. RA's Claims are Barred by Sovereign and Personal Immunities

The Community possesses the "common-law immunity from suit traditionally enjoyed by sovereign powers." *Bay Mills*, 572 U.S. at 788. "As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe of Okla. V. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998). Tribal officials and employees are protected by sovereign immunity and the personal immunities of government agents. *Lewis v. Clarke*, 581 U.S. 155, 161-62 (2017). These immunities mandate dismissal of RA's claims for three distinct reasons.

First, RA's claims attack the interests of the Community and other sovereigns—the State and United States—such that the sovereigns are necessary parties that cannot be joined. This requires dismissal of the entire action. Second, RA cannot circumvent sovereign immunity by suing the Community's officials or employees because their official

capacity claims are barred by the sovereign immunity of the Community as the real party in interest. Finally, RA does not adequately allege any personal capacity claims against the PIIC Defendants—but even if it had, such claims would be barred by the doctrines of official and legislative immunity.

A. RA' Action Cannot Proceed Because the State, the Community and the United States are Necessary Parties—but are Immune from Suit and Cannot Be Joined

RA's Complaint implicates important Community interests in its gaming compacts and gaming operations. Those interests are sufficient to make the Community a necessary party and, because it cannot be joined due to sovereign immunity, require dismissal of the action. Similar reasoning applies to the State and United States. The Court should dismiss the Complaint pursuant to Rule 19.

Any entity that claims a "legally protected interest" in a proceeding is a necessary party. *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1024 (9th Cir. 2002). The "basic consideration" under Rule 19 is whether an unjoined party's "absence would render a judgment infirm, defective, or unfairly prejudicial in some fashion." *Fairview Health Services v. Armed Forces Office of Royal Embassy of Saudi Arabia*, 679 F. Supp. 3d 811, 116 Fed. R. Serv. 3d 149 (D. Minn. 2023). If so, the action may be dismissed if the absent party cannot be joined. *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d at 1027.

1. The Community is a Necessary Party

The Community-State gaming compacts are legally protected Community interests for purposes of Rule 19. *Maverick Gaming, LLC v. U.S.*, 658 F.Supp.3d 966, 971 (W.D. Wa. 2023) (citing *Am. Greyhound Racing*, 305 F.3d at 1023). RA's demanded relief would

"amount[] to a declaratory judgement that the present gaming conducted by the [Community under its compacts] is unlawful." *Am. Greyhound Racing*, 305 F.3d at 1024. Therefore, the Community's interests are implicated. *Id*.

RA's claims are based on TIRC's "offering of class III video games of chance" and "card games." AC ¶¶ 262, 269, 272. These claims require adjudication of:

- the legality of the Community's gaming compacts, which are agreements entered between the Community and the State, and approved by DOI;
- the validity of the PIIC Gaming Ordinance, adopted by the Community and approved by NIGC, and regulatory decisions made under that Ordinance by the PIIC Gaming Commission with respect to game classification and licensing; and
- the legality of operations by a Community's governmental department—TIRC—that exists to generate revenue for government services delivered to Community members. *See* Background Part I, above.

Adjudication of these issues threatens the Community's ability to raise revenue for government operations and deliver services to its members. Gaming "income often means the difference between an adequate governmental program and a skeletal program that is totally dependent on Federal funding." S. Rep. No. 446, 100th Cong., 2nd Sess., 2-3 (1988). Gaming revenues fund critical tribal government services and economic development programs. *See* 25 U.S.C. 2710(b)(2)(B); PIIC Gaming Ordinance § 102(H).

By seeking "a declaratory judgment that the present gaming conducted by the tribes is unlawful," RA's claims implicate the "sovereign power" of the Community even if not named as party. *Amer. Greyhound*, 305 F.3d at 1024. Even the RICO claims "amount to"

requests for declaratory judgments that infringe on the Community's sovereign interest because they require adjudication of the legality of the Community's gaming operations and regulatory structure. *Id*. A judgment on RA's claims, even if nominally confined to the named individuals, would have obvious and direct consequences on the Community's sovereign interests. And that is RA's intent: to enjoin "class III video games of chance or [alleged] non-compact class III card games" at TIRC. AC, Prayer for Relief a, c. Permitting RA to litigate any of these issues would be an extraordinary invasion into the Community's sovereign right to self-government. *See Santa Clara Pueblo*, 436 U.S. at 59–60 (adjudicating matters of federal law relating to tribal governance without clear waiver of immunity "constitutes an interference with tribal autonomy and self-government"). Where such tribal sovereign interests are implicated, the tribe is a required party under Rule 19(a). *E.g., Maverick*, 658 F.Supp. 3d at 971; *see U.S. ex rel. Hall v. Creative Games Tech., Inc.*, 27 F.3d 572 (8th Cir. 1994).

2. The State and United States are Necessary Parties

The State also has a legal protected interest in defending the validity of its gaming compacts. *E.g., Pueblo of Sandia v. Babbitt*, 47 F. Supp. 2d 49, 51 (D.D.C. 1999); *Keweenaw Bay Indian Cmty. V. United States*, 940 F. Supp. 1139, 1143 (W.D. Mich. 1996); *Kickapoo Tribe of Indians of Kickapoo Rsrv. In Kansas v. Babbitt*, 43 F.3d 1491, 1494 (D.C. Cir. 1995). The State is a party to the compacts and they are integral to regulation of gaming. Minn. Stat. 3.9221, subd. 2.

And the United States is a necessary party because RA's claims "indirectly attack its administrative decisions." *Two Shields v. Wilkinson*, 790 F.3d 791, 796 (8th Cir. 2015);

Nichols v. Rysavy, 809 F.2d 1317, 1333 (8th Cir. 1987) (U.S. necessary to defend the validity of federal patents). RA *directly* attacks the federal government's decision that the Community's compacts are valid. AC Exs. 6, 7; 25 U.S.C. § 2710(d)(8).

3. The Action Must be Dismissed Because the Necessary Parties Cannot be Joined

The Community, State, and the United States are immune from suit and cannot be joined, which is grounds for dismissal. *Spirit Lake Tribe v. North Dakota*, 262 F.3d 732, 746 (8th Cir. 2001) *abrogated on other grounds by Wilkins v. United States*, 598 U.S. 152, 156 (2023). When "the absent parties are Indian tribes invested with sovereign immunity," the presumptive outcome is "to dismiss under Rule 19, regardless of whether a remedy is available." *White v. Univ. of Cal.*, 765 F.3d 1010, 1028 (9th Cir. 2014).[6]

B. RA's Official Capacity Claims are Barred by Sovereign Immunity

Tribal sovereign immunity applies to the Community's officials and employees acting in their official capacities. *Lewis v. Clarke*, 581 U.S. 155, 161–62 (2017). A tribal government—like a state or federal government—can only act through its officers, and tribal sovereign immunity extends to officers when they act in their official capacity and within the scope of their authority. *Tamiami Dev. Corp. v. Misccosukee Tribe of Indians of Fla.*, 177 F.3d 1212, 1225 (11th Cir. 1999); *see, e.g., Native Am. Distributing v. Seneca-Cayuga*

[6] Rule 19 does not require consideration of whether an "interest is adequately represented by existing parties." *W. Bend Mut. Ins. Co. v. Prairie Senior Cottages, LLC*, No. 04-4482 ADM/AJB, 2006 WL 777204, at *2 (D. Minn. Mar. 27, 2006). But none of the defendants can adequately represent Community, State, or federal interests. They are faced with defending their personal livelihoods and reputation; it would be unfair to burden them with representing the sovereign interests of the Community—not to mention the State or United States. Indeed, such a duty could be at odds with their personal interests.

Tobacco Co., 546 F.3d 1288, 1296 (10th Cir. 2008) ("[T]he interest in preserving the inherent right of self-government … is equally strong when suit is brought against individual officers … as when brought against the tribe itself"). Count VII is characterized as an official and individual capacity claim. Sovereign immunity bars any official capacity claims against tribal officials. *Lewis*, 581 U.S. at 161-62.

Any attempt by RA to invoke *Ex parte Young* as an exception to the rule against official capacity claims fails. The doctrine does not allow any action to enjoin tribal officials from gaming on Indian land. *Bay Mills*, 572 U.S. at 796 (*Young* only applies to tribal officials gaming on state land); *see Santee Sioux Tribe of Nebraska v. State of Neb.*, 121 F.3d 427, 431 (8th Cir. 1997). And Count 7 is based on State law, and "the *Young* doctrine rests on the need to promote the vindication of *federal* rights"—not State law rights. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 105 (1984) (emphasis added).

C. RA Does Not Allege any Viable Personal Capacity Claim

1. RA's Purported "Personal Capacity" Claims are Barred by Sovereign Immunity Because the Community is the Real Party in Interest

To avoid sovereign immunity, RA characterizes Counts 7 (in part), 8, and 9 as "individual capacity" claims, but does not allege any personal conduct of the PIIC Defendants that purportedly caused injury. The Court "may not simply rely on [RA's] characterization of the parties in the complaint;" rather, it "must determine in the first instance" whether the claims are personal or official capacity claims. *Lewis*, 581 U.S. at 162. When the "sovereign is the real party in interest," the claims are official capacity claims. *Id*. at 161-63. If "the relief sought is only nominally against the official and in fact is against the official's

office," then it is an official-capacity claim barred by sovereign immunity. *Id*. at 162. And even if an individual is the named defendant, the "suit is against the sovereign if the judgment sought would expend itself on the public treasury or domain, or interfere with public administration, or if the effect of the judgment would be to restrain the Government from acting, or compel it to act." *Dugan v. Rank*, 372 U.S. 609, 620 (1963); *Alltel Communications, LLC v. DeJordy*, 675 F.3d 1100, 1102 (8th Cir. 2012).

As shown in part II.A.1, above, in describing the Community's interest in the litigation, the purported "individual" claims attack acts of the sovereign, not the individual defendants. Holding members of a tribal council—or subordinate tribal officers—liable for tribal council decisions "would interfere with the tribe's internal governance" and "attack[] the very core of tribal sovereignty." *Pistor v. Garcia*, 791 F.3d 1104, 1113 (9th Cir. 2015) (quotations omitted) (citing *Hardin v. White Mountain Apache Tribe,* 779 F.2d 476, 478 (9th Cir. 1985); *see also Genskow v. Prevost*, 825 F. App'x 388, 391 (7th Cir. 2020) (claim against tribal officer for acting at Chairman's direction is a suit against the tribe); *Allen v. Smith*, 597 F.'App'x 442, 443 (9th Cir. 2015) (claims against members of tribe's governing body relating to enrollment was a suit against the tribe because it "would interfere with the Tribe's public administration" and require court to adjudicate liability under the tribe's laws); *Great W. Casinos, Inc. v. Morongo Band of Mission Indians*, 74 Cal.App.4th 1407, 1422 (1999) (damages suit against individual council members was against the tribe because conduct alleged was "collective action by the tribal council").

2. RA Fails to Allege the Personal Conduct Required to Establish Personal-Capacity Claims

RA's claims cannot plausibly be characterized as personal capacity claims for the additional reason that RA fails to allege any personal conduct by the PIIC Defendants, much less personal conduct that is unlawful. A personal capacity claim seeks relief against an individual official and must be based on "particularized allegations," *Garden State Elec. Inspection Servs. Inc. v. Levin*, 144 F. App'x 247, 251–52 (3d Cir. 2005), that the named official caused harm by "personal, allegedly tortious conduct," *Acres Bonusing, Inc. v. Marston*, 17 F.4th 901, 909 (9th Cir. 2021). RA must allege "individual liability" based on each individual's actions. *Lewis*, 581 U.S. at 155 (citing *Hafer v. Melo*, 502 U.S. 21, 25 (1991)). This requires "alleg[ing] conduct which is illegal" by the individual defendant, and "[i]f [Plaintiff] does not, he has not stated a cause of action," and "the suit must fail even if [Plaintiff] alleges that the [official of the sovereign] acted beyond statutory authority or unconstitutionally." *Larson*, 337 U.S. at 693.

RA does not allege any specific act by any individual PIIC Defendant, much less demonstrate individual liability for any purported injury. RA only asserts that the individuals are liable for the Community's actions "by virtue of their related responsibilities." AC ¶¶ 262, 269. That fails the basic *Iqbal* standard for alleging liability. And the collective actions of government officials are not sufficient to establish any personal capacity claim in any event. *Runs After v. U.S.*, 766 F.2d 347, 354 (8th Cir. 1985) ("members of the Tribal Council . . . cannot conspire when they act together with other tribal council members in taking official action on behalf of the Tribal Council").

3. RA's Personal Capacity Claims Are Barred by the Personal Immunities of Tribal Officials

Even assuming RA's allegations were sufficient to state personal capacity claims against the PIIC Defendants, the claims would still be barred by the personal immunities available to tribal government officials. The personal common law immunities that developed for state and federal government officials apply equally to tribal officials to protect sovereign government decision-making and the functions of government. *Penn v. U.S.*, 335 F.3d 786, 789 (8th Cir. 2003) (applying absolute immunity to tribal officials because "long-standing federal policy" supports the exercise of tribal self-government and self-determination). "Tribal officials, like federal and state officials, can invoke personal immunity defenses." *Acres Bonusing, Inc. v. Marston*, 17 F.4th 901, 915 (9th Cir. 2021) (citing *Lewis,* 581 U.S. at 163). The personal defenses of legislative immunity and official immunity are independent grounds for dismissing RA's claims under Rule 12(b)(6). *Young v. Mercer Cnty. Comm'n*, 849 F.3d 728, 731 (8th Cir. 2017).

a. Official Immunity Requires Dismissal of all Claims

Federal common law official immunity is a personal immunity, developed to protect the effective administration of government, that applies when an official's allegedly wrongful actions are 1) discretionary, and 2) within the scope of the official's authority. *Westfall v. Erwin*, 484 U.S. 292, 295-98 (1988); *see also Midland Psych. Assc., Inc.* v. *U.S.,* 145 F. 3d 1000, 1005 (8th Cir. 1998) (applying official immunity under *Westfall* to shield Medicare carrier from liability because it was "governmental agent" performing discretionary functions). Both elements are satisfied here.

RA's allegations against the PIIC Defendants are premised on the Defendants' carrying out the duties of their office or employment—oversight or operation of TIRC. AC ¶¶ 178, 191, 192.j, 193.i. RA alleges responsibilities that involve discretionary acts—strategy and budgeting. AC ¶¶ 191-93. And the operation of TIRC is inherently intertwined with the Community's self-governance and governmental programs and services. As RA acknowledges, the PIIC Defendants are responsible for administering an essential governmental program. AC ¶¶ 178; 191-94. As such, they are entitled to *Westfall* immunity when sued for those actions. *Midland,* 145 F.3d at 1005; *Beebe v. Washington Metropolitan Area Transit Authority*, 129 F.3d 1283, 1287 (D.C. Cir. 1997) (when official action is "grounded in social, economic, or political goals," official immunity applies).

b. Legislative Immunity Requires Dismissal of All Claims Against the Community Council Members

The Community Council is the legislative governing body of the Community. It has the power, among others, to pass ordinances. PIIC Const. art. V, § 1.[7] Indeed, Council acts through the fundamentally legislative means of voting—it acts as a body, requiring a majority vote for Council action under parliamentary procedures. PIIC Bylaws art. IV. Federal courts recognize that tribal councils with similar functions are the legislative bodies of the tribal governments. *See Sac and Fox Tribe of Miss. in Iowa v. Bear*, 258 F. Supp. 2d 938, 942-44 (N.D. Iowa Apr. 15, 2003); *Goodface v. Grassrope*, 708 F.2d 335, 337 (8th Cir. 1983).

[7] The PIIC Constitution and Bylaws are available at https://prairieisland.org/uploads/Documents/Current_Constitution_and_Bylaws_as_Amended_02-22-2017.pdf

Community Council members have "absolute legislative immunity" for "official acts taken when acting in a legislative capacity." *Runs After*, 766 F.2d at 354 (collecting cases). The legislative capacity includes the "hallmarks of legislation," such as making policy decisions and voting to take government action, as well as governmental budgeting and financial management. *Church v. Missouri*, 913 F.3d 736, 751 (8th Cir. 2019) (citing *Bogan v. Scott-Harris*, 523 U.S. 44 54–56 (1998)). In short, "actions reflecting a discretionary, policymaking decision implicating budgetary priorities" of the government "fall within the sphere of legislative activity." *Carter v. Quam*, 2019 WL 3357772, at *3 (D. Minn. May 20, 2019). Thus, all claims against Community Council members are barred by absolute legislative immunity because they concern legislative acts of policy making and budgeting, including: entering into compacts with the State, AC ¶ 196; adopting gaming ordinances to permit and regulate gaming at TIRC, AC ¶ 204; establishing the Gaming Commission, AC ¶ 205; and, making strategy, financing, and operational decisions for TIRC, a department of the government, AC ¶¶ 192-94.

III. RA's Claims Must be Dismissed Because RA does Not Adequately Allege Standing

A. RA Does Not Establish Constitutional Standing

A party invoking federal jurisdiction has the burden of establishing standing. *Schanou v. Lancaster County Sch. Dist.,* 62 F.3d 1040, 1045 (8th Cir.1995). This requires that RA establish three essential elements: (1) injury in fact; (2) causal connection between the alleged injury the alleged unlawful act; and (3) an injury that is redressable.

Whitmore v. Arkansas, 495 U.S. 149, 155 (1990). RA fails to demonstrate these factors and its Complaint must be dismissed for lack of standing.

The alleged injury—"likely" lost business—is inadequate to establish standing because it is conjectural and hypothetical. *Id*. RA cannot identify any business it actually lost to TIRC. Instead, RA speculates that some customers may have been drawn to TIRC by the specific games referenced in its complaint. But given the wide range of factors at play—geographic separation of the businesses and the superior (by RA's admission, AC ¶¶ 180, 221) non-gaming amenities offered at TIRC—RA cannot show that the alleged injury is "factually and proximately caused" by the PIIC Defendants. *Newton v. Tyson Foods, Inc.*, 207 F.3d 444, 446-47 (8th Cir. 2000).

RA also fails to demonstrate redressability. *Schanou,* 62 F.3d at 1044-45. RA alleges an injury caused by the Community, the State, AC ¶¶ 209-211, and the United States, AC ¶¶ 6, 207-210, who collectively authorized, approved, and regulated the games RA challenges here. But they are not parties and would not be bound by any judgment entered in this action and could continue the challenged gaming.

B. RA Does Not Allege RICO Standing

RICO standing requires an even more stringent showing of injury and causation. RA must plead an injury to its "business or property" that is "by reason of a violation" of RICO's substantive restrictions. 18 U.S.C. § 1964(c). This applies to § 1962(c) and §1962(d). *Beck v. Prupis*, 529 U.S. 494, 505 (2000). The injury must be proximately caused by the predicate acts. But-for causation is not enough. *Holmes v. Sec. Inv. Prot. Corp*., 503 U.S. 258, 268 (1992). Standing cannot be based on business competition alone because

"[b]usinesses lose and gain customers for many reasons," and where it would require a "complex assessment to establish what portion of [a plaintiff's] lost sales were the product of [a defendant's]" conduct, private RICO claims are not permitted. *Anza v. Ideal Steel Supply Corp*., 547 U.S. 451, 459-60 (2006).

Courts apply these principles to foreclose RICO suits like this one—where a gaming establishment sues its competitors for gaming in violation of state law. *Club One Casino, Inc. v. Sarantos*, No. 1:17-cv-00818-DAD-SAB, 2018 WL 4719112, at *6 (E.D. Cal. Sept. 28, 2018) (finding no standing based on "decrease in the number of people who frequent [a] casino"); *see also Doug Grant, Inc. v. Greate Bay Casino Corp*., 3 F.Supp.2d 518, 534 (D. N.J. 1998) (alleged loss of "gambling income is far too speculative to constitute compensable injury to business or property."); *Los Angeles Turf Club, Inc. v. Horse Racing Labs, LLC*, CASE NO.: CV 15-09332, 2016 WL 6823493, at *4 (C.D. Cal. May 2, 2016) (dismissing for lack of proximate cause where plaintiffs "fail to account for the other reasons why customers may place wagers somewhere other than at a race track").

RA alleges nothing more than vague competitive disadvantage. It asserts defendants' conduct has "given defendants' casinos illegal and unfair competitive advantages over [RA]." AC, ¶ 10. RA does not even try to substantiate this flight of fancy. RA's inferior competitive standing can "readily be attributed to several factors unrelated to defendants' alleged actions." *Club One Casino*, 2018 WL 4719112 at *6. For one thing, TIRC serves a different geographic market, more than fifty miles away from RA. *See* AC, ¶ 12 (RA located in Columbus, MN); ¶ 179 (Treasure Island Resort and Casino located in Welch, MN, 59 miles from RA). RA acknowledges myriad reasons why customers,

regardless of games offered, would prefer TIRC—it "is the second largest casino in Minnesota with the second-largest hotel, several restaurants and bars, a water park, a convention center, an amphitheater, a 137-slip marina, a 95-spot RV park, a 125-passenger cruise yacht, a 24-lane bowling alley, and an arcade, and attracts nationally known entertainers" and offers other amenities. AC ¶ 177-80. RA's speculative injury is precisely the type that the RICO proximate cause requirement is meant to weed out.[8]

Finally, proximate cause is lacking because the presence of multiple defendants—***forty-two*** individuals affiliated with three Indian tribes—"require[s] evaluating the relative causal roles" of each. *Club One Casino*, 2018 WL 4719112 at *6; *see also Hemi Grp., LLC*, 559 U.S. at 11. RA lumps all the Defendants and the casinos together and does not explain how each individual defendant's actions directly caused harm. *E.g.*, AC, ¶¶ 10, 11, 226. RA lacks standing to bring a private cause of action under RICO.

IV. RA Does Not Allege any Plausible Claim for Relief

A. RA Does Not Plausibly Allege any Gaming at TIRC in Violation of Law or Compact

RA's claims are premised on the conclusory allegations that TIRC's operation of video games of chance and certain card games is unlawful. The allegations are inadequate as a matter of law, and RA's claims cannot proceed.

[8] RA also lacks standing because it fails to allege that any defendants' alleged predicate acts were *directed at* RA specifically, or that RA's alleged competitive harm is the mischief the IGRA sought to avoid. *Hamm v. Rhone-Poulenc Rorer Pharmas, Inc.*, 187 F.3d 941, 953 (8th Cir. 1999).

1. The Class III Card Game Allegations are Speculative and Conclusory

RA alleges that TIRC offered "class III card games not included in a tribal-state gaming compact." AC ¶ 262. The allegation is nothing more than a conclusory assertion—a list of game names without detail. AC ¶¶ 210, 212 (alleging TIRC offered "[s]lots" and "[t]able [g]ames"). RA does not adequately allege that the named games, if played at TIRC, were class III card games. *Id*.

The classification of a game is not determined by its name, but by the nature of the game—that is, how it is played—and the laws of the state in which it will be played. 25 U.S.C. § 2703(7)(A)(ii). Class II includes card games that "are explicitly authorized by" state law, or "not explicitly prohibited by" state law. *Id*. Class II does not include "banking card games, including baccarat, chemin de fer, or blackjack (21)." *Id.* § 2703(7)(B)(i). But even games that are *called* "baccarat, chemin de fer, or blackjack" are only class III games "if played as house banking games." 25 C.F.R. § 502.4(a)(1). A "house banking game" is one "played with the house as a participant in the game, where the house takes on all players, collects from all losers, and pays all winners, and the house can win." 25 C.F.R. § 502.11. If a game is called "blackjack" or "baccarat" but not played as a "house banking game," then it may be a class II game notwithstanding the name. *See* NIGC Classification Letter re: Tournament Blackjack[9], 3-4 (April 23, 2003) (tournament blackjack is class II because it is not played as a house banked game).

[9] At https://www.nigc.gov/images/uploads/game-opinions/tournamentblackjack042303.pdf.

RA does not allege TIRC conducted any "house banking card games" or the details of play for the named games that would allow the conclusion they were played as house banking games. RA's allegations are consistent with the lawful conduct of TIRC offering class II card games. The Counts premised on alleged offering of "class III card games not included in a tribal-state gaming compact" must be dismissed.

2. The Allegation that the Community's VGC Compact is Not Valid Fails as a Matter of Law

Minnesota permits and regulates video games of chance and its VGC compact with the Community is valid under IGRA. 25 U.S.C. § 2710(d)(1)(B). Minnesota allowed video games of chance from 1984-1992. 1984 Minn. Laws ch. 652, art. 3, § 91, *repealed by* 1990 Minn. Laws ch. 590, art. 1, § 48. In 1989, the legislature confirmed the law could not be construed to prohibit the State from agreeing to a compact for video poker or video black-jack "currently operated by Indian tribes in this State." 1989 Minn. Laws ch. 334 art. 6, § 14. And with repeal of the VGC law in 1992, Minnesota enacted a law expressly provid-ing that Tribes are permitted to conduct such gaming under compacts. Minn. Stat. § 349.61, subd. 2. That law remains in effect. When a form of class III gaming is otherwise "illegal throughout [a] state" a compact and related provisions of state law may allow a tribe "the exclusive right to offer [that form of Class III gaming in] the state." *W. Flagler*, 71 F.4th at 1063.

B. RA's RICO Claims Fail as a Matter of Law

To state a claim under § 1962(c), a plaintiff must establish: "(1) the existence of an enterprise; (2) conduct by the defendants in association with the enterprise; (3) the

defendants' participation in at least two predicate acts of racketeering; and (4) conduct that constitutes a pattern of racketeering activity." *In re Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Casino Litig.*, 340 F.3d 749, 767 (8th Cir. 2003). Under § 1962(d), it is "unlawful to conspire to violate" § 1962 (a)-(c). A plaintiff cannot maintain a § 1962(d) claim without a viable substantive RICO claim. *See Wanna v. Relx Grp. PLC*, No. 23-CV-1769 (PJS/JFD), 2024 WL 1345176, at *8 (D. Minn. Mar. 29, 2024). RA's RICO claims fail as a matter of law.

1. RA Fails to Allege the Required RICO Predicate Acts

The "requirements of § 1962(c) must be established *as to each individual defendant*"—RA cannot just "the collective activities of the members of the enterprise." *Craig Outdoor Adver., Inc. v. Viacom Outdoor, Inc.*, 528 F.3d 1001, 1027-28 (8th Cir. 2008) (emphasis added). Each defendant must have committed at least two predicate acts of racketeering. 18 U.S.C. § 1962(c); *In re Sac & Fox*, 340 F.3d at 767. RA's allegations fail to meet this standard.

First, as explained in Argument Part II.C.2, RA has failed to identify a single "act" by any of the PIIC Defendants. Second, RA does not adequately allege that any of the gaming it references violates applicable law. *See* Argument Part IV.A, above. Moreover, a RICO claim for violation of 18 U.S.C. § 1955 cannot proceed because gaming on a tribe's reservation does not violate state law. *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 n.5 (9th Cir. 1990). And 18 USC § 1952 applies to conduct related to "unlawful activity," which means, as RA alleges is relevant here, a "business enterprise involving gambling . . . in violation of the laws of the State in which they are committed or of the

United States." The rationale for foreclosing § 1955 claims applies to § 1952 claims based on State law, and the only "laws of . . . the United States" that RA alleges are violated are IGRA provisions, namely 18 U.S.C. § 1166 and 25 U.S.C. § 2710(d)(1). As such, RA cannot allege a violation of § 1952.

2. The RICO Claims are Barred by the Statute of Limitations

A court may find a claim barred by the statute of limitations if the complaint itself establishes that the claim is time-barred. *Illig v. Union Elec. Co.*, 652 F.3d 971, 976 (8th Cir. 2011). Civil RICO claims are subject to a four-year statute of limitations. *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 146 (1987). The RICO "limitations period begins to run when the facts constituting the injury were discovered or, by reasonable diligence, should have been discovered." *Hope v. Klabal*, 457 F.3d 784, 790 (8th Cir. 2006). RA filed the original complaint in this action on April 16, 2024, making April 16, 2020, the furthest possible reach of the limitations period.

By RA's admission, TIRC opened in 1991 and the Community compacted to offer video games of chance in 1990. AC ¶¶ 180, 196-97, Ex. 6. TIRC offered video games of chance, blackjack, and the card games at issue here well before 2020; indeed, before RA opened in 2008. AC ¶ 221; *see $50 million Expansion Planned for Treasure Island Resort & Casino, Red Wing, Minnesota*, Hotel Online, May 22, 2007, https://www.hotel-online.com/archives/archive-20836/ (TIRC "features over 2,500 slots, 44 table games, 10-table poker room"); *2018 Gaming Guide*, Minnesota Monthly, May 16, 2018, https://www.minnesotamonthly.com/travel-recreation/2018-gaming-guide (TIRC offers "video poker and keno machines; blackjack; poker; bingo; and specialty table games like

Fortune Pai Gow, free bet blackjack, and TriLux").[10] Thus, TIRC's offered games are public information and RA knew, or reasonably should have known, about its alleged injury long before April 2020.

Even based on the face of the amended complaint, RA alleges that TIRC has been offering the video games of chance and the subject card games "[s]ince 2020." AC ¶¶ 207, 210. Even if TIRC only began offering the challenged games starting in 2020, RA would have, or reasonably should have, discovered "the facts constituting the injury" before April 16, 2020, four years before the complaint was filed.

The related laches doctrine also bars RA's claims. It applies when there is an inexcusable delay in asserting a right or a claim that causes undue prejudice to the party against whom the claim is asserted. *Roederer v. J. Garcia Carrion, SA*, 569 F. 3d 855, 858-59 (8th Cir. 2009). RA opened in 2008, more than 15 years *after* TIRC was offering the games that RA challenges. AC ¶¶ 221, 76, 127, 180. RA never had a viable claim and certainly does not have one now.

3. RA's § 1962(d) Conspiracy Claim Fails as a Matter of Law

To state a RICO conspiracy claim under § 1962(d), "[t]he defendant must have objectively manifested an agreement to participate directly or indirectly, in the affairs of an enterprise through the commission of two or more predicate crimes." *United States v.*

[10] The court may consider "materials embraced by the pleadings, exhibits attached to the pleadings, and matters of public record." *Illig v. Union Elec. Co.*, 652 F.3d 971, 976 (8th Cir. 2011). Judicially noticed facts—including those generally known and readily determined from reliable sources—may be considered. *Bauer v. AGA Serv. Co.*, 25 F.4th 587, 591 (8th Cir. 2022).

Bennett, 44 F.3d 1364, 1374 (8th Cir. 1995); *see Salinas v. United States*, 522 U.S. 52, 65 (1997). A plaintiff can establish a RICO conspiracy "by proving either that a defendant personally agreed to commit two predicate acts in furtherance of the enterprise or that a defendant agree[d] to participate in the conduct of the enterprise with the knowledge and intent that other members of the conspiracy would commit at least two predicate acts in furtherance of the enterprise." *United States v. Henley*, 766 F.3d 893, 908 (8th Cir. 2014).

RA alleges that, "[b]y virtue of being employed by or associated with" TIRC, the PIIC Defendants "have agreed among themselves to further the violations of 18 U.S.C. § 1962(c)." AC ¶ 274. Thus, RA fails to sufficiently allege the requisite predicate acts or any agreement by the PIIC Defendants to carry out unlawful gambling or to participate in the enterprise with the "knowledge and intent" that others would carry out unlawful predicate acts. To the contrary, RA admits that the challenged gaming was conducted under comprehensive Community, State, and federal regulation, and thus the Defendants had every reason to believe—correctly—that their conduct is, and was, lawful.

CONCLUSION

For all of the foregoing reasons, RA's claims should be dismissed.

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