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; SCOTT 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 ODONNELL; DAYNA PEARSON; KYLE PETERSON; SAM ROOK; ROBERT SAWYER; LES SCHMOLKE; CHARLES VIG; DENNIS WALKER; RONDA WEIZENEGGER, all in their individual and official capacities, *Defendants*.	Court File No.: 0:24-CV-01369-(JWB/LIB) **MEMORANDUM IN SUPPORT OF THE MLCV DEFENDANTS' MOTION TO DISMISS**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes, Rules & Regulations

Other Authorities

INTRODUCTION

This case is a media stunt that Running Aces filed to bully Minnesota's sovereign tribes into supporting (or not opposing) its effort to gain legislative approval to offer sports betting and slot-machine simulacrums—so-called "Historical Horse Racing"—at its card club. Those efforts failed. Now the Court is left with a lawsuit that has no basis in law, no basis in fact, and likely constitutes an abuse of process by Running Aces.

In its Amended Complaint ("Complaint" or "FAC"), Running Aces premises its suit as one brought by a "relatively modest casino" against "dominant casinos." FAC ¶ 2. This language is meant to create a picture of David versus Goliath. But it is a mirage. Running Aces is anything but modest. It is owned and operated by Black Diamond Capital Management; a ten-billion-dollar private equity firm run by billionaire Stephen Deckoff, one of the richest people on the planet.[1] And Running Aces has not sued any casinos, which as it will turn out is a fatal flaw in its lawsuit. Instead, it has sued forty-three individuals—made up of tribal members and hard-working, everyday casino employees.

Further, Running Aces is not a casino at all and by law it cannot be. Under Minn. Stat. § 240.30, it is a "card club" adjacent to a harness-racing track, and that

[1] *Stephen Deckoff*, Forbes, https://www.forbes.com/profile/stephen-deckoff/ (last visited Aug. 20, 2024).

racetrack is the only reason it is allowed to offer card games—which were intended to supplement and support racing. Running Aces considers this legislative choice unfair and believes it should have the same gaming rights as Minnesota's eleven federally recognized Indian tribes (i.e., the ability to turn its racetrack supported by a card club into a casino with a racetrack attached to it). The legislature has determined otherwise.

State legislative policy thus agrees with and furthers the intent of the Indian Gaming Regulatory Act ("IGRA"), see 25 U.S.C. § 2702(1)-(3), which is to "promot[e] tribal economic development, self-sufficiency, and strong tribal governments" and to "protect . . . gaming as a means of generating tribal revenue." But Minnesota law does not provide private equity companies seeking to maximize their return on investment any special consideration in conducting gambling operations.

Nevertheless, Running Aces filed suit alleging entitlement to relief that would change the legal landscape of Indian gaming in Minnesota that has existed for more than thirty years. The baseless Complaint, grounded in no recent changes in law, provides ample grounds for dismissal. First, the tribes and the State of Minnesota are sovereign entities that are necessary parties and cannot be sued. Second, Running Aces' claim is based on state laws that are preempted by IGRA and do not create a private action. Third, the individual defendants share the tribes' immunity. Finally, Running Aces has failed to state a valid RICO claim, including by failing to

allege any specific wrongdoing by any individual defendant and bringing the claim years too late.

It should go without saying, but Running Aces and its hedge fund owners are not federally recognized Indian tribes. They do not have the same rights as tribes under IGRA and there is nothing in this billionaire-funded "racketeering" lawsuit that can or should change that.

This case cannot get out of the starting gate. The Court should dismiss it with prejudice.

BACKGROUND[1]

Running Aces filed this lawsuit when Minnesota tribes opposed Running Aces' efforts to convince the legislature to allow it to offer Historical Horse Racing at its card club and receive a better deal on sports betting. In an opinion piece published in the *StarTribune* upon the filing of this lawsuit, Running Aces' CEO Taro Ito wrote that "our recent actions in federal court are merely a reaction to . . . defending two lawsuits brought on by a tribal casino and fighting legislators . . . ."[2]

[1] The memorandum provides the Court additional information for context, but the Complaint is defective on its face and the Court need go no further than the Complaint and the documents embraced by it to dismiss this lawsuit.

[2] Taro Ito, Sports Betting Push at Legislature Resorts to Punitive Leverage, *StarTribune*, April 17, 2024, https://www.startribune.com/sports-betting-push-at-legislature-resorts-to-punitive-leverage/600359674,

Using the courts and the political process to resolve differences are protected First Amendment activities. But as the Court considers this meritless complaint, it bears remembering why we are here: Running Aces is unhappy that the tribes have successfully petitioned the government for redress of grievances.

During the last legislative session, Minnesota's legislature banned racetracks from offering slot-machine clones called Historical Horse Racing and denied their' efforts to change the law to allow tracks to offer sports betting in their card clubs.[3] In an interview after Running Aces amended its complaint in this matter (Dkt. 12), its CEO told *PlayUSA* exactly why they did so:

> Following an unproductive meeting between representatives of tribes and horse racetracks Monday, Running Aces Casino and Racetrack has amended a lawsuit ***seeking additional leverage*** in Minnesota sports betting negotiations.[4]

I. MINNESOTA LAW ONLY PERMITS RUNNING ACES TO RUN A "CARD ROOM" ADJACENT TO A HARNESS-RACING TRACK

The Minnesota legislature has carefully addressed which persons and entities in the state can offer different types of gambling to their patrons. The legislature has limited the types of games that can be offered by Running Aces at its card club, as

---

[3] The other licensed horse racing track in the state, Canterbury Park, is not involved in this lawsuit.

[4] Matthew Kredell, *Racetrack Amends Lawsuit as Talks with Tribes Falter Ahead of Minnesota Sports Betting House Vote*, PLAY USA, May 16, 2024, https://www.playusa.com/tracks-tribes-far-apart-minnesota-sports-betting/ (emphasis added).

discussed here. It has also authorized the governor to enter into compacts with Indian tribes delineating the gaming permitted at tribal casinos, as discussed below.

In 1983, Minnesota passed legislation that permitted the Minnesota Racing Commission to issues licenses for horse racing in the state. The first of two available licenses was granted to Canterbury Downs in the early 1980s.[5]

In 2003, the North Metro Harness Initiative was formed,[6] and in December of that year, the original, local owner, Southwest Casino and Hotel Corporation, applied for a license.[7] The proponents of the project already had their eyes on a bigger prize: slots. "A second phase of the project, calling for a 'racino' with slot machines at the track, would require a change in state law and is vigorously opposed by many in the Indian gambling community."[8]

In April 2007, the owners of the North Metro Harness Initiative—rebranded as "Running Aces"—made a fateful decision; they borrowed $41.7 million from Black Diamond Commercial Finance.[9] The loan was payable over seven years; they would not get past the second. On April 3, 2009, one year after the first harness race at

---

[5] John Williams, GAMBLING IN MINNESOTA, A SHORT HISTORY 21 (2005), https://www.house.mn.gov/hrd/pubs/gambhist.pdf.
[6] Mark Nicklawske, *Lender takes over Running Aces ownership*, THE LOWDOWN, Oct. 31, 2008, https://www.presspubs.com/forest_lake/news/lender-takes-over-running-aces-ownership/article_6b8133c1-1399-5159-a190-f4af3d7b0907.html.
[7] Joe Kimball, *Application pending for harness racetrack*, STARTRIBUNE, Dec. 27, 2004, at A1.
[8] *Id.*
[9] *Company Roundup*, STARTRIBUNE, April 25, 2007, at D2.

Running Aces, Black Diamond foreclosed on the loan.[10] By August 2009, according to the *StarTribune*, the track was "[s]olely run by Connecticut-based Black Diamond Commercial Finance."[11]

In 2012, *MinnPost* reported that "John Derus, the former Hennepin County commissioner who serves on the Running Aces board of directors, said the track's ownership group—Connecticut-based Black Diamond Commercial Finance, L.L.C.—is determined to hang on until the state Legislature passes racino legislation that would permit slot machines at racetracks."[12]

In April 2024, Running Aces persuaded the Minnesota Racing Commission to approve so-called Historical Horse Racing machines at its racetrack. Notwithstanding their name, Historical Horse Racing machines look, act, and operate like slot machines:

[10] MTR Gaming Group, Inc. (Form 10-K at 9) (Dec. 31, 2010), *available at* https://www.sec.gov/Archives/edgar/data/834162/000104746911002237/a2202743z10-k.htm.
[11] Paul Levy, *Talk of pending demise nags Running Aces harness track*, STARTRIBUNE, Aug. 23, 2009, at B1.
[12] Pat Borzi, *Running Aces Harness Park still in the race, even without racino*, MINNPOST, (Aug. 7, 2012), https://www.minnpost.com/sports/2012/08/running-aces-harness-park-still-race-even-without-racino/.

13

The Shakopee Mdewakanton Sioux Community filed a certiorari appeal in the Minnesota Court of Appeals challenging the Commission's decision, and Running Aces filed this lawsuit shortly thereafter. In May, the Minnesota legislature passed a bill banning Historical Horse Racing and Governor Walz signed the bill into law.[14]

The legislature did not pass a law approving sports betting.

II. TRIBAL CASINOS, IGRA, AND TRIBAL-STATE COMPACTS

IGRA was passed in 1987 to "promot[e] tribal economic development, self-sufficiency, and strong tribal governments," to "shield [tribes] from organized crime and other corrupting influences," and "to ensure that the Indian tribe is the primary

[13] See Grover Gaming, Historical Horse Racing, at https://grovergaming.com/hhr/.
[14] https://www.revisor.mn.gov/bills/bill.php?b=senate&f=sf2219&ssn=0&y=2024.

beneficiary of the gaming operation."[15] This regulatory scheme is explicitly designed to "protect . . . gaming as a means of generating tribal revenue."[16]

IGRA enabled states to enter into compacts with federally recognized tribes to permit class III gaming (which includes slots and blackjack) on their lands and made clear that tribes, as separate sovereigns, could operate class I and class II games (including bingo) without state involvement. 25 U.S.C. § 2710(a), (d)(1)(C). Immediately following passage of IGRA, the Minnesota legislature mandated that the governor "negotiate in good faith a tribal-state compact regulating the conduct of class III gambling" with any tribe requesting such a compact. Minn. Stat. § 3.9221, subd. 2. At the time that mandate was passed, Minnesota law permitted video games of chance. Minn. Laws 1990 c. 590, art. 1 § 4-9.

The Mille Lacs Band of Ojibwe ("Band") is a federally recognized tribe with a reservation located in Mille Lacs County in Minnesota. FAC ¶122; 89 Fed. Reg. 944, 945 (2024). The Band owns and operates two tribal casinos located on Indian lands, Grand Casino Hinkley and Grand Casino Mille Lacs (collectively, the "Grand Casinos"). FAC ¶¶ 2, 123-127. The Band operates these casinos through its wholly owned economic development corporation, Mille Lacs Corporate Ventures ("MLCV"), in accordance with the Mille Lacs Gaming Ordinance, IGRA, and two

[15] 25 U.S.C. § 2702(1)-(2).
[16] 25 U.S.C. § 2702(1)-(3).

tribal-state gaming compacts, one for video games of chance and one for blackjack, that it entered into with the State of Minnesota in 1990 and 1991 respectively.[17] FAC ¶¶ 123-127, 139–142, 145–146.

Since the compacts were executed over thirty years ago, the Band has offered video games of chance. FAC ¶ 127 ("Both casinos opened in the early 1990s."). The Band has also offered blackjack, and a variety of other card games at its two tribal casinos, some of which Running Aces alleges were illegally operated as class III card games. *See* FAC ¶¶ 149, 152, 163, 166. Specifically, Running Aces focuses on the Band offering side bets on blackjack as well as Mississippi Stud, Three Card Poker, Four Card Poker, Let It Ride, and Ultimate Texas Hold'em (collectively, "Carnival Games"). FAC ¶¶ 71, 152, 166. Notably, in all those years, no enforcement action by the State of Minnesota, for alleged compact violations, nor the National Indian Gaming Commission or the Department of Justice, for alleged violations of IGRA for offering these games, has occurred.

III. RUNNING ACES CONTINUES ITS CAMPAIGN AGAINST THE TRIBES

Since losing Historical Horse Racing and sports betting issues in the legislature, Running Aces has escalated its disputes with Minnesota tribes. It amended its Complaint as the legislative session was winding down to use RICO to

[17] Mille Lacs' tribal-state compacts have been amended several times since 1990, including just this year to allow for class III card games.

challenge the operation of video games of chance at the Grand Casinos, Mystic Lake, Little Six, and Treasure Island—squarely targeting IGRA. FAC. According to Running Aces CEO, Taro Ito, "[w]hat people don't understand about IGRA was the intent was never to give tribes a monopoly on video games of chance or any sort of gambling." [18] As he continued, "We'll take [our] chances in [the] Eighth [Circuit]."[19] According to Ito, this lawsuit is "certainly a big gamble for [tribes] because the downside risk is their monopoly of a multibillion-dollar industry."[20]

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). Under Rule 12(b)(6), "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Court accepts well-pleaded factual allegations as true but should disregard conclusory allegations. *Iqbal*, 556 U.S. at 678. A complaint must allege "more than a sheer possibility that a defendant has acted unlawfully." *Id.* If the plaintiff fails to "raise a right to relief above the speculative level," then dismissal is warranted. *Twombly*, 550 U.S. at 555. Under Rule

[18] Kredell, *supra* note 4.
[19] *Id.*
[20] *Id.*

12(b)(7) a party may move to dismiss a complaint for "failure to join a party under Rule 19." Fed. R. Civ. P. 12(b)(7); *Omega Demolition Corp. v. Hays Grp., Inc.*, 306 F.R.D. 225, 227 (D. Minn. 2015).

ARGUMENT

Running Aces alleges little more than job titles and job descriptions related to each of the MLCV Defendants.[21] FAC ¶¶ 124, 131-33. How the MLCV Defendants were allegedly involved in any RICO scheme is unclear, as Running Aces has not alleged a single specific action taken by any MLCV Defendant related to the alleged RICO violations. Instead, Running Aces focuses its allegations on the Grand Casinos' actions and tacks on conclusory, general allegations about the MLCV Defendants' personal involvement. *See, e.g.*, FAC ¶¶ 149-176.

Running Aces' real beef is not with the defendants but with tribes that it cannot sue. The Complaint should be dismissed with prejudice because (1) Running Aces cannot join necessary and indispensable parties; (2) IGRA preempts Running Aces' claims; (3) the individual defendants are immune from suit; (4) Running Aces

[21] The MLCV Defendants include Michael Beattie, Craig Beaulieu, Leanna Dejesus, Dustin Goslin, Scott Hanson, Ryan McGrath, Joe Nayquonabe, Jr., Shawn O'Keefe, Lon O'Donnell, Dayna Pearson, Robert Sawyer, Les Schmolke, and Ronda Weizenegger. Undersigned counsel do not represent Raymond Brenny and Roxanne Hemming, who Running Aces alleges are associated with MLCV, and are unaware if they have been served.

has failed to state a valid claim under RICO; and (5) Running Aces has no standalone private right of action under Minnesota criminal laws.

I. THE COMPLAINT MUST BE DISMISSED BECAUSE REQUIRED PARTIES CANNOT BE JOINED TO THE SUIT

By requesting a declaration that the operation of video games of chance by MLCV at the Grand Casinos is illegal, Running Aces effectively seeks to void the video games of chance compact between the State and the Band. FAC at 64–65; *Kickapoo Tribe of Indians of Kickapoo Reservation in Kan. v. Babbitt*, 43 F.3d 1491, 1495 (D.C. Cir. 1995) (holding that sovereigns that are party to a compact have "an interest in the validity of a compact to which it is a party"). But Running Aces did not name either party to the tribal-state compact (the Band or the State) in its lawsuit.

Separately, Running Aces seeks to prohibit the Band—the sole proprietor and entity responsible for conducting gaming on the Mille Lacs Reservation[22]—and MLCV from offering Carnival Games at the Grand Casinos by having such games declared illegal. FAC at 64–65. Despite the harm threatened to these nonparties

[22] Mille Lacs Band Stat. 15, Chap. 1 § 103(b) ("The Band has the sole proprietary interest in and responsibility for the conduct of any gaming enterprise or gaming operation."); § 201 ("The Band shall have the sole proprietary interest in and responsibility for conducting any class II and class III gaming activities authorized by this chapter . . . ."), available at https://millelacsband.com/government/tribal-register/constitution-and-band-statutes/title-15-independent-agencies/chapter-1-gaming-regulatory-act.

from a favorable ruling in this case for Running Aces, Running Aces brought this lawsuit only against the MLCV Defendants in their official and individual capacities, presumably to evade the sovereign immunity of the Band, the State, and MLCV.

For the reasons stated in the briefs filed on behalf of the Shakopee Defendants and the Prairie Island Defendants (collectively, "Codefendants")—which equally apply in the context of the Band's gaming operations and which the MLCV Defendants adopt and incorporate here—Rule 19 of the Federal Rules of Civil Procedure precludes this sort of end run round the real parties in interest. Running Aces' inability to join the required, indispensable parties that are entitled to sovereign immunity requires dismissal. *Virginia Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 253 (2011) ("States entered the Union with their sovereign immunity intact"); S*anta Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) ("Indian tribes have long been recognized as possessing the common law immunity from suit traditionally enjoyed by sovereign powers."); *see Two Shields v. Wilkinson*, 790 F.3d 791, 798 (8th Cir. 2015) (quoting *Republic of the Philippines v. Pimentel*, 553 U.S. 851, 867 (2008)) (explaining that "in the specific context of an immune sovereign entity that is a required party not amenable to suit . . . the action must be dismissed if the claims of sovereign immunity are not frivolous and 'there is a potential for injury to the interests of the absent sovereign").

II. THE STATE LAWS THAT RUNNING ACES RELIES ON DO NOT APPLY TO GAMING ON INDIAN LANDS

For reasons stated in the Prairie Island Defendants' brief, again adopted and incorporated here by the MLCV Defendants, Running Aces' RICO claims fail because they are impermissibly predicated on state laws, viz. Minn. Stat. §§ 609.75, 609.755, and 609.76, which do not apply to gaming on Indian lands. FAC ¶¶ 59, 156, 165, 167, 170. Such laws, and the entirety of Running Aces' claims, are preempted by—and not permitted under—IGRA. *State ex rel. Nixon v. Coeur D'Alene Tribe*, 164 F.3d 1102, 1108 (8th Cir. 1999) (explaining that, in *Gaming Corp. of America v. Dorsey & Whitney*, 88 F.3d 536 (8th Cir. 1996), the Eighth Circuit concluded "that Congress had completely preempted the field of regulating gaming activities on Indian lands.").

In any event, state gaming laws that are otherwise preempted can only be enforced on Indian lands if they are adopted through a tribal-state compact—and even then, they can only be enforced by the compacting state through suit under IGRA. *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 785-86 (2014) (citing 25 U.S.C. § 2710(d)(7)(A)(ii)); *Dewberry v. Kulongoski*, 406 F.Supp.2d 1136, 1146 (D. Or. 2005) ("[N]o private cause of action exists to enforce a gaming compact under IGRA."). Likewise, there is no general private right of action to bring claims under IGRA. *In re Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Casino Litig.*, 340 F.3d 749, 766 (8th Cir. 2003).

III. THE MLCV DEFENDANTS ARE IMMUNE FROM SUIT

Sovereign immunity is a jurisdictional question that must be addressed before the merits of any case. *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163, 171 (2009); *Amerind Risk Mgmt. Corp. v. Malaterre*, 633 F.3d 680, 684 (8th Cir. 2011). "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 Oklahoma v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998). Sovereign immunity applies equally to wholly owned businesses of a tribe that operate the tribe's casino. *Reuer v. Grand Casino Hinckley*, 2010 WL 3384993, at *9 (D. Minn. July 12, 2010) (applying sovereign immunity to the Corporate Commission of Mille Lacs, the prior name for MLCV).

Tribal officers and employees are also entitled to immunity when sued in their official capacities because "[a] suit against a governmental actor in his official capacity is treated as a suit against the government entity itself." *Brokinton v. City of Sherwood, Ark.*, 503 F.3d 667, 674 (8th Cir. 2007); *see also Cook v. AVI Casino Enters., Inc.*, 548 F.3d 718, 727 (9th Cir. 2008) (applying tribal sovereign immunity to casino employees and holding that "a plaintiff cannot circumvent tribal immunity by the simple expedient of naming an officer of the Tribe as a defendant, rather than the sovereign entity"); *Chayoon v. Chao*, 355 F.3d 141, 143 (2d Cir. 2004) (applying sovereign immunity to casino employees); *Cadet v. Snoqualmie Casino*, 2020 WL 4569659, at *4 (W.D. Wash. Aug. 7, 2020) (same).

Running Aces does not allege that MLCV or the MLCV Defendants waived their immunity. Thus, unless an exception to immunity applies, Running Aces' claims must fail.

The MLCV Defendants presume that Running Aces will argue that (1) the MLCV Defendants can be enjoined in their official capacities under the doctrine of *Ex Parte Young*, 209 U.S. 123 (1908), and (2) Running Aces can sue the MLCV Defendants in their individual capacities regardless of their immunity for official acts.

Running Aces' claims for injunctive relief fail because (1) Running Aces has not pleaded that the MLCV Defendants have the power to stop the operation of Carnival Games or Video Games of Chance at the Grand Casinos in their individual capacities (because they cannot) and (2) *Ex Parte Young* does not apply here.

Running Aces' individual capacity claims for monetary damages fail because (1) MLCV and the Band are the real parties in interest, not the MLCV Defendants and (2) the MLCV Defendants are nevertheless entitled to qualified immunity.

A. Running Aces Cannot Obtain the Injunctive Relief It Seeks

Sovereign immunity extends to tribal officials and employees "who act within the scope of the tribe's lawful authority." *Kodia Oil & Gas (USA) Inc. v. Burr*, 932 F.3d 1125, 1131 (8th Cir. 2019). But tribal employees can be subject to suit ***only*** for prospective, injunctive relief if (1) the employees have the ability to enforce such an

injunction and (2) the *Ex Parte Young* framework applies. *Id.* at 1131-32; *see Okpalobi v. Foster,* 244 F.3d 405, 426–27 (5th Cir.2001) (holding that a court cannot enjoin a defendant "to act in any way that is beyond [the defendant's] authority]"); *Little Earth of United Tribes, Inc. v. U.S. Dep't of Hous. & Urb. Dev.*, 584 F. Supp. 1301, 1303 (D. Minn. 1983) ("Since all defendants are sued in their official capacity, such monetary damages are barred by sovereign immunity."); *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.,* 506 U.S. 139, 146 (1993) (holding that *Ex Parte Young* exception does "not permit judgments against [officials] declaring they violated federal law in the past"). Here, neither predicate holds true.

1. The MLCV Defendants Are Powerless to Prohibit the Operation of Carnival Games or Video Games of Chance

Running Aces seeks to enjoin the continued operation of the Carnival Games and video games of chance. FAC at 64–65. As a threshold matter, Running Aces must "demonstrate standing for each claim [it] seeks to press and for each form of relief that is sought." *Davis v. Fed. Election Comm'n,* 554 U.S. 724, 734 (2008). To establish standing, Running Aces needs to show that it has suffered an injury-in-fact that is likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61 (1992). The "redressability" element examines the "causal connection between the alleged injury and the judicial relief requested." *Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton,* 422 F.3d 490, 495 (7th Cir. 2005).

When seeking an injunction against a defendant, a plaintiff "must demonstrate that the defendant to be enjoined has the authority to effectuate the injunction." *McDaniel v. Bd. of Educ. of City of Chicago*, 956 F. Supp. 2d 887, 892–93 (N.D. Ill. 2013); *see also Digital Recognition Network, Inc. v. Hutchinson,* 803 F.3d 952, 957–58 (8th Cir. 2015) ("[T]he causation element of standing requires the named defendants to possess the authority to enforce the complained-of provision."); *Bronson v. Swensen*, 500 F.3d 1099, 1111 (10th Cir. 2007) ("The redressability prong is not met when a plaintiff seeks relief against a defendant with no power to enforce a challenged statute."). As the United States Court of Appeals for the Tenth Circuit put it, the question of redressability is, "Could these Defendants, enjoined as [plaintiff] has requested, remedy [plaintiff's injury]?" *Turner v. McGee*, 681 F.3d 1215, 1218–19 (10th Cir. 2012). Here, the answer is no.

Running Aces has failed to plead that the MLCV Defendants have the authority to enforce the injunctions that Running Aces seeks stopping the operation of video games of chance or Carnival Games at the Grand Casinos. Without such an allegation, and actual authority on behalf of the MLCV Defendants to enforce such an injunction (which they do not have), Running Aces' claims for injunctive relief against the MLCV Defendants must be dismissed under the redressability prong of Article III standing doctrine. *Haaland v. Brackeen*, 599 U.S. 255, 294, 143 S. Ct. 1609, 1640, 216 L. Ed. 2d 254 (2023) (holding that redressability requires the party be able

to exercise power related to the grievance). Ultimately, the Band—as the federally recognize tribe that can conduct gaming on the Mille Lacs reservation—is the entity that decides and controls what games are or are not operated at the Grand Casinos. *See supra* at Section I.

Regardless, assuming Running Aces' theory that the MLCV Defendants cannot continue to operate the Carnival Games because the Band lacked a class III card game compact was accurate, that is no longer the case. The Band's compact with the State was amended effective April 22, 2024, just after this suit was filed, to allow for the operation of class III card games. *See* Ex. A, Addendum to Tribal-State Compact for Control of Class III Blackjack on the Mille Lacs Band of Chippewa Reservation in Minnesota for Class III Card Games (Apr. 22, 2024). Running Aces' request for an injunction prohibiting the operation of Carnival Games must be dismissed as moot.

2. *Ex Parte Young* Does Not Apply Here

Running Aces seeks to enjoin the MLCV Defendants from "illegally offering in the future any class III video games of chance or non-compact class III card games in violation of Minnesota law and federal law[.]" FAC at 65. It has sued the MLCV Defendants in their official capacities only in Count 4, its claim under Minnesota criminal laws. FAC at 55. But the MLCV Defendants, as tribal employees allegedly involved in offering the games at issue on Indian lands, cannot be enjoined to follow

a state law. *Alabama v. PCI Gaming Auth.*, 801 F.3d 1278, 1290 (11th Cir. 2015) ("[T]ribal officials may be subject to suit in federal court for violations of state law under the fiction of *Ex parte Young* ***when their conduct occurs outside of Indian lands.***" (emphasis added)); *Gingras v. Think Finance, Inc.*, 922 F.3d 112, 121 n.1 (2d Cir. 2019) (same) (quoting *PCI Gaming Auth.*, 801 F.3d at 1290). Thus, *Ex Parte Young* relief is not available to Running Aces.

B. Running Aces' Individual Capacity Claims Fail Because MLCV and the Band Are the Real Parties in Interest

To determine if sovereign immunity bars a claim, courts ask whether lawsuits brought against officers or employees of an immune entity "represent only another way of pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). The Supreme Court has stressed that "courts should look to whether the sovereign is the real party in interest to determine whether sovereign immunity bars the suit." *Lewis v. Clarke*, 581 U.S. 155, 161-62 (2017). "In making this assessment, courts may not simply rely on the characterization of the parties in the complaint, but rather must determine in the first instance whether the remedy sought is truly against the sovereign." *Id.*

"[T]he general criterion for determining when a suit is in fact against the sovereign is the effect of the relief sought." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 107 (1984). Thus, "[a] suit is against the sovereign if the judgment sought would expend itself on the public treasury or domain, or interfere

with the public administration, or if the effect of the judgment would be to restrain the Government from acting or to compel it to act." *Id.* at 102, n.11 (quotation omitted). When actions are in essence the tribe's own actions, the nominal individual defendants are immune from suit. *Genskow v. Prevost*, 825 Fed. Appx. 388, 391 (7th Cir. 2020) (holding that tribal police officers were immune from individual-capacity suits); *see also Mestek v. Lac Courte Oreilles Community Health Center*, 2022 WL 1568881, at *6 (W.D. Wisc. May 18, 2022), *aff'd*, 72 F.4th 255 (7th Cir. 2023) (dismissing claims against individual tribal defendants where the allegations were about actions of a tribal entity and the officials were only acting within the scope of their employment).

The allegations in the Complaint directed toward the individual MLCV defendants are exclusively about their alleged state of residence and their job titles at the Grand Casinos. FAC ¶¶ 124, 131-33. There are zero non-conclusory allegations about any individual undertaking any specific action in furtherance of the alleged predicate acts or RICO violations, and no conduct outside the scope of employment is alleged. *See, e.g.*, FAC ¶ 171 ("In violation of 18 U.S.C. § 1955(a), each ML Gaming Leader, ***pursuant to their employment responsibilities*** during their tenure since 2020, has continually conducted, managed, supervised, and directed all or part of Grand Casino Mille Lacs' illegal gambling business." (emphasis added)). Such allegations contrast with those found in the Supreme Court's decision in *Lewis v.*

Clarke, where the individual tribal employee-defendant was alleged to have negligently driven a limo involved in an accident that caused serious harm to the plaintiffs. 581 U.S. at 159-60; *see also Genskow*, 825 Fed.Appx. at 391 (distinguishing *Lewis* on the same grounds).

Instead, the following allegations show that the Band and MLCV, which own and operate the Grand Casinos, are the real parties in interest:

- "Defendants' casinos have been offering class III video games of chance, such as slots." FAC ¶ 6.
- "The two Grand Casinos have been offering not only blackjack . . . but also class III card games . . . which are not covered by their tribal-state gaming compacts." FAC ¶ 7.
- "Since 2020, Grand Casino Hinckley has continuously offered various class III video games of chance . . . ." FAC ¶ 149; *see also* FAC ¶ 163 (same allegation for Grand Casino Mille Lacs).
- "Grand Casino Hinkley's offering of class III video games of chance violates Minnesota law and in turn violates IGRA because . . . ." FAC ¶ 151; *see also* FAC ¶ 165 (same allegation for Grand Casino Mille Lacs).
- "Since 2020, Grand Casino Hinckley has continuously offered various class III card games." FAC ¶ 152; *see also* FAC ¶ 166 (same allegation for Grand Casino Mille Lacs).

- "Grand Casino Hinckley has promoted its illegal class III gaming activities through the mail or facilities in interstate commerce." FAC ¶ 154; *see also* FAC ¶ 168 (same allegation for Grand Casino Mille Lacs).
- "Grand Casino Hinckley obtains gaming devices, equipment and other materials from suppliers in other States." FAC ¶ 155; *see also* FAC ¶ 169 (same allegation for Grand Casino Mille Lacs).

Here, "the tribe is the real party in interest because the [MLCV Defendants'] actions 'in essence' were the tribe's own. In carrying out the [Band's or MLCV's] directive, the officers were acting merely as 'an arm or instrumentality' of the tribe." *Genskow*, 825 Fed.Appx. at 391 (quoting *Lewis*, 137 S.Ct. at 1291).

Further, Running Aces seeks relief that runs against Mille Lacs and MLCV and would, if enforced, constrain their sovereign operations. Running Aces seeks a declaration that the offering of Carnival Games and class III video games of chance at the Grand Casinos was and is illegal. FAC at 64. Because Running Aces' alleged entitlement to that relief is based on the allegation that the Grand Casinos offer those games (see FAC ¶¶ 149, 151, 163, 165), as opposed to the individuals illegally offering the games out of (for example) off-reservation residences outside the scope of their employment responsibilities, the decision is intended to adversely affect Mille Lacs' ability to offer those games to patrons.

Running Aces also seeks an injunction to stop the operation of, or at least make it much more difficult to operate, Carnival Games and class III video games of chance at the Grand Casinos. FAC at 65. An injunction that would have the effect of restraining the Band from offering certain types of games would directly interfere with the tribe's administration of its gaming operations, its property, as well as potentially restrain the government from acting—all indicia that the Band is the real party in interest, not the individuals. *See Pennhurst*, 465 U.S. at 102.

Because the Band and MLCV are the real parties in interest and both are immune from suit, all claims against the MLCV Defendants must be dismissed as well based on tribal sovereign immunity.

C. Plaintiff's Individual Capacity Claims Also Fail Because the MLCV Defendants Are Entitled to Qualified Immunity

Assuming *arguendo* that the MLCV Defendants are the real parties in interest, and thus tribal sovereign immunity does not bar claims against them, they are nonetheless entitled to qualified immunity.

"[P]ersonal immunity defenses may protect tribal governmental officials." *Acres Bonusing, Inc. v. Ramsey*, 2022 WL 17170856, at *14 (N.D. Cal. Nov. 22, 2022) (applying qualified immunity to casino employees); *see also Hester v. Redwood Cnty.*, 885 F. Supp. 2d 934, 946 (D. Minn. 2012) (holding that tribal officer had qualified immunity for actions reasonably taken in his law-enforcement role); *cf. Armstrong v. Mille Lacs Cnty. Sheriffs Dept.*, 228 F. Supp. 2d 972, 990 (D. Minn. 2002)

("In Minnesota, governmental employees are entitled to immunity when they are performing discretionary functions."). Qualified immunity is one such personal immunity defense. *See Acres Bonusing*, 2022 WL 17170856, at *14. If qualified immunity applies to the officials in question, the claim must be dismissed. *Northland Baptist Church of St. Paul, Minnesota v. Walz*, 530 F. Supp. 3d 790, 807 (D. Minn. 2021); *Glow In One Mini Golf, LLC v. Walz*, 37 F.4th 1365 (8th Cir. 2022) (granting motion to dismiss for claims against state official that were based on official actions taken as part of role as elected official).

"Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions." *Acres Bonusing*, 2022 WL 17170856, at *16. Qualified immunity applies if the conduct of the individuals entitled to the immunity "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at *15 ("Liability generally turns on the 'objective legal reasonableness' of the action, assessed in light of the legal rules that were 'clearly established' at the time it was taken.") (internal citations omitted); *see also Armstrong* 228 F. Supp. 2d at 990 ("As government employees, they are accorded near complete immunity for their actions in the course of their official duties, so long as they do not exceed the discretion granted them by law."). "Under the doctrine of qualified immunity, a court must dismiss a complaint against a government official in his individual capacity that fails

to state a claim for violation of clearly established statutory or constitutional rights of which a reasonable person would have known." *Hager v. Arkansas Dept. of Health*, 735 F.3d 1009, 1013 (8th Cir. 2013) (quotations omitted).

First, as employees of MLCV, a tribal governmental entity, the MLCV Defendants are entitled to qualified immunity. *Acres Bonusing*, 2022 WL 17170856, at *15 ; *Hester*, 885 F. Supp. 2d at 946. Second, Running Aces' claims against the MLCV Defendants depend on discretionary acts they allegedly took "pursuant to their employment responsibilities during their tenure since 2020[.]" FAC ¶¶ 171-76. Finally, Running Aces has failed to allege that any such acts were taken contrary to "clearly established" legal rules of which a reasonable person would have known or that any relevant actions were taken by the MLCV Defendants outside of their employment responsibilities. Without such allegations, which Running Aces cannot make because all of the challenged games have been operated without legal challenge from state or federal authorities during the relevant time period since 2020 alleged by Running Aces (and in fact for years longer), the MLCV Defendants are entitled to qualified immunity and Running Aces' claims must be dismissed.

IV. RUNNING ACES HAS FAILED TO STATE A VALID RICO CLAIM

RICO was passed as "an act designed to prevent 'known mobsters' from infiltrating legitimate businesses." S. Rep. 91-617, at 76 (1969). RICO creates a private cause of action for "[a]ny person injured in his business or property by reason of a

violation of [18 U.S.C. § 1962]." 18 U.S.C. § 1964(c). Section 1962(c), in turn, makes it "unlawful for any person employed by or associated with any enterprise . . . to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity," while Section 1962(d) makes it unlawful "to conspire to" engage in such activity. "Racketeering activity" is defined to include various state and federal predicate crimes. *Id.* § 1961(1). Thus, for a Running Aces to obtain relief under RICO's private cause of action it must prove: (1) a violation of Section 1962; (2) an injury to its business or property; and (3) that the defendants' violation of Section 1962 caused its injury. *See RJR Nabisco, Inc. v. European Cmty.*, 136 S.Ct. 2090, 2096 (2016). Running Aces' Complaint has failed to satisfy any of those three elements. And even if it had, such claims are time barred.

A. The Band's Gaming Operations are Legal

Setting aside the fact that IGRA preempts the state laws upon which Running Aces relies—thus dooming Running Aces' RICO claims—Running Aces has failed to allege predicate acts that violate Section 1962. Running Aces sets forth two theories for how the MLCV Defendants violated state gaming laws. The first is that the Carnival Games are being operated as class III house-banked card games. FAC ¶ 152. Running Aces has not alleged how the games offered by the Grand Casinos are class III games; instead, Running Aces relies only on conclusory allegations that are insufficient to survive a Rule 12 motion. FAC ¶¶ 152 ("Grand Casino Hinckley has

also continuously offered various class III card games."), 166 (same with regard to Grand Casino Mille Lacs); *Hager v. Arkansas Dept. of Health*, 735 F.3d at 1013 ("Courts should dismiss complaints based on labels and conclusions, and a formulaic recitation of the elements of a cause of action." (quotation omitted)).

The second theory is that video games of chance were (or are) prohibited under Minnesota law when the tribal-state compacts were executed, so the compacts are invalid and the offering of video games of chance is and has been illegal. FAC ¶ 150. This theory has no basis in law and displays a lack of knowledge of the history of Minnesota gaming law, which a Google search could have found.[23]

As detailed more fully in the Co-Defendants' briefs, "video games of chance" were legal before the compacts were entered into—that is why the compacts are called "video games of chance" compacts. Minn. Laws 1984, ch. 653, art. 3. Further, after IGRA was passed, the Minnesota Legislature specifically directed the governor to enter into class III tribal-state compacts with the tribes in Minnesota. Minn. Stat. § 3.9221, subd. 2. Finally, the tribes' operation of video games of chance was excepted from the Legislature's later-passed prohibition of video games of chance as an exception to the law against possessing and operating such games. Laws 1990, ch. 590, art. 1, § 48; Minn. Stat. § 349.61. Thus, video games of chance were never prohibited such that they could not be operated by tribes under IGRA; indeed, just

[23] *See, e.g.*, https://www.house.mn.gov/hrd/pubs/gambhist.pdf, cited *supra* in fn. 5.

the opposite. They were permitted, which prompted the tribes and the state to negotiate the compacts.

In sum, even if the Court were inclined to look at the merits of Running Aces' claims, they fail. Both Counts 5 and 6 (RICO and RICO conspiracy claims) against the MLCV Defendants should be dismissed.

B. Running Aces Lacks Statutory Standing to Bring a RICO Claim Against the MLCV Defendants

Running Aces lacks statutory standing to bring a claim under RICO, because it has failed to allege both (1) injury, and (2) causation. Separate from Article III standing, "statutory standing [under RICO] requires the determination that 'Congress . . . has accorded *this* injured plaintiff the right to sue the defendant to redress [the plaintiff's] injury.'" *Subramanian v. Tata Consultancy Servs. Ltd.*, 352 F. Supp. 3d 908, 916 (D. Minn. 2018) (quoting *Miller v. Redwood Toxicology Lab., Inc.*, 688 F.3d 928, 934 (8th Cir. 2012)).

Congress provided limited standing to those persons injured in their business or property by reason of a RICO violation. 18 U.S.C. § 1964(c); *Hamm v. Rhone-Poulenc Rorer Pharms., Inc.*, 187 F.3d 941, 951 (8th Cir. 1999) ("[T]he two requirements for RICO standing are (1) an injury to 'business or property' (2) caused 'by reason of' a RICO violation."). The alleged injury must be real, tangible, and not speculative. *UMB Bank, N.A. v. Guerin*, 89 F.4th 1047, 1053 (8th Cir. 2024). RICO specifically requires a plaintiff to suffer a "concrete financial loss," and "injury to a

valuable intangible property interest does not confer standing." *Subramanian*, 352 F. Supp. 3d at 917 (quoting *Gomez v. Wells Fargo Bank, N.A.*, 676 F.3d 655, 660 (8th Cir. 2012)). In addition to alleging a financial loss that is real and non-speculative, Plaintiffs must allege that the relevant injury was proximately caused by reason of a defendant's RICO-violating conduct. *Subramanian*, 352 F. Supp. 3d at 917; *see also Anza v. Ideal Steal Supply Corp.*, 547 U.S. 451, 460 (2006) ("A RICO Plaintiff cannot circumvent the proximate cause requirement simply by claiming that the defendant's aim was to increase market share at a competitor's expense.").

Running Aces has failed to adequately allege either element. First, the allegation that Running Aces is injured because patrons "likely would have patronized Running Aces" is too speculative to support statutory standing and based on a series of unsteady inferences. FAC ¶ 226. And second, the Complaint fails to adequately allege facts demonstrating that the alleged RICO violations have proximately caused Plaintiff's purported harm.

1. The Complaint Fails to Plausibly Allege a Concrete Injury to Plaintiff's Business or Property

The Eighth Circuit has repeatedly confirmed that standing under Section 1964(c) requires a concrete financial loss on the part of the Plaintiff, which is "not easily met." *UMB Bank, N.A. v. Guerin*, 89 F.4th at 1053. "Injury to mere expectancy interests or to an 'intangible property interest' is not sufficient to confer RICO standing." *Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 607 (5th Cir. 1998); *see also In*

re Taxable Mun. Bond. Sec. Litig., 51 F.3d 518, 522 (5th Cir. 1995) ("[A plaintiff's] contention that he has sustained a lost 'opportunity' . . . is too speculative to constitute an injury.").

Running Aces alleges two potential forms of injury: (1) lost revenue and profits from persons who "likely would have patronized Running Aces," and (2) an illegal and unfair competitive advantage on the part of the Grand Casinos against Running Aces. FAC ¶¶ 225-228. Neither are sufficiently concrete to show an actual injury to Running Aces within the ambit of RICO.

Plaintiffs' allegation of "lost revenue" due to patrons that "***likely*** would have patronized Running Aces," is based upon a series of unsupportable inferences. Plaintiff states that consumers would have played at Running Aces absent the Grand Casinos offering the games at issue. FAC ¶¶ 10, 226. But Running Aces does not account for other variables, such as player choice. Rather, the Complaint merely assumes, without well-pled allegations, that *all* consumers would have gambled at Running Aces but for the Grand Casinos' decision to "illegally" offer card games and video games of chance. FAC ¶ 226 ("And if those casinos did not illegally offer class III card games, anyone considering playing class III card games other than blackjack in the area would not have patronized those casinos but would likely have patronized Running Aces."). Certainly, no customer desiring to play slots could be diverted from the Grand Casinos to Running Aces, as Running Aces cannot under

current law offer slots. Even for blackjack, consumers may choose other card rooms—such as the one at Canterbury Park—other casinos, or to not gamble at all for a myriad of reasons, including that they each offer different amenities in addition to gambling. *See, e.g.*, FAC ¶ 130 ("Both Grand Casinos solicit and accept patrons for gaming, lodging, and entertainment.").

Finally, Plaintiff does not actually allege decreased revenues, nor does the Complaint connect alleged actual losses or decreases in revenue with the onset of the Grand Casinos offering the complained-of card games and video games of chance (the latter of which were being offered by the Grand Casinos before Running Aces existed). In short, Running Aces' assumption that "all consumers" would have—or even could have—elected to play at its card room absent the Band or MLCV's conduct is logically unsound and too speculative to support RICO standing. *Cf. Anza*, 547 U.S. at 459.

Plaintiff's claim is not saved by its allegation that the alleged illegal conduct gave the Grand Casinos an unfair competitive advantage. Such an allegation is insufficient as a matter of law to state a RICO claim. *See id.* 458-60 ("Businesses lose and gain customers for many reasons, and it would require a complex assessment to establish what portion of [plaintiff]'s lost sales were the product of" a defendant's

alleged RICO scheme). Because neither of Plaintiff's alleged injuries are concrete, financial injuries, Plaintiff lacks standing to pursue its RICO claims.[24]

2. The Complaint Fails to Plausibly Allege Injury Caused "by Reason of" the MLCV Defendants' Purported RICO Violations

Running Aces' claim also fails because it does not plausibly allege that the purported violations of RICO directly led to Running Aces' alleged injury. Rather, as the Supreme Court noted in *Beck v. Prupis*, to possess RICO standing under Section 1964(c), a plaintiff must allege both causation and injury from "an act that is independently wrongful under RICO." 529 U.S. 494, 505-06 (2000). This means that the alleged injury must be caused by "the underlying substantive violation [of the RICO statute] the defendant is alleged to have committed." *Id.* at 506; *accord Regions Bank v. J.R. Oil Co., LLC*, 387 F.3d 721, 728 (8th Cir. 2004) ("To have standing to bring a civil RICO claim, a plaintiff must have suffered injury 'by reason of' a RICO violation.").

Courts have confirmed that the language "by reason of" used in § 1964(c) is akin to a proximate causation requirement. *Regions Bank*, 387 F.3d at 728. Proximate causation requires a "direct relation" between the injury and racketeering activity. *Hamm*, 187 F.3d at 952. To demonstrate the requisite "direct relation," a plaintiff

[24] Because Running Aces lacks standing to assert a substantive RICO violation, it also lacks standing to assert a RICO conspiracy claim. *See Bowman v. W. Auto Supply Co.*, 985 F.2d 383, 388 (8th Cir. 1993).

must establish that it "is within the class the statute sought to protect and that the harm done was one that the statute was meant to prevent." *Id.*, 187 F.3d at 953 (quoting *Abrahams v. Young & Rubicam, Inc.*, 79 F.3d 234, 237, n.3 (2d Cir. 1996)); *see also Anza*, 547 U.S. at 456-57. Relatedly, where a plaintiff is "not the intended target[] of the alleged racketeering, they d[o] not have standing to bring a civil RICO suit." *Hamm*, 187 F.3d at 952.

Running Aces cannot establish the required "direct relation." There is no evidence that the alleged predicate acts and underlying statutes Running Aces seeks to enforce were designed to protect competition among casinos and card clubs or ensure that they compete. FAC ¶¶ 245–248 (raising allegations of illegal gambling based on violation of state law). Instead, Minnesota regulates gambling to protect Minnesota consumers from illegal gambling by preventing its commercialization, ensuring integrity of the operations, to provide for the use of net profits only for lawful purposes. Minn. Stat. § 349.11. Thus, even taking as true Plaintiff's allegations that consumers would have chosen to play at Running Aces but for the Grand Casinos' scheme of offering illegal card games and video games of chance, such harm is derivative and incidental to the harm the Grand Casinos' patrons would suffer were the games at issue actually illegal. *See Hamm*, 187 F.3d at 953-54 (no RICO standing for employees of defendant engaged in fraudulent scheme promoting off-label drug use where "direct injuries were those suffered by hospitals, physicians,

and other medical personnel" that were defrauded); *Newton v. Tyson Foods, Inc.*, 207 F.3d 444, 445-47 (8th Cir. 2000) (finding cattle producers lacked RICO standing where scheme to "provid[e] illegal payments to [USDA]" to avoid compliance with strict regulations allowed Tyson to lower cost of poultry, leading to decreased demand for beef because "[t]he individuals who are most properly considered the 'targets' of Tyson's alleged bad acts are poultry consumers").

C. Running Aces Has Failed to Plead Sufficient Facts Regarding Specific Actions Taken by the MLCV Defendants to Support a RICO Claim

The Complaint fails to allege how any MLCV Defendant engaged in any prohibited act under RICO and the Court should dismiss both the substantive RICO and RICO conspiracy claims. For substantive RICO claims under Section 1964(c), the Eighth Circuit has held that each element of the claim "must be established as to each individual defendant." *Craig Outdoor Adver., Inc. v. Viacom Outdoor, Inc.*, 528 F.3d 1001, 1027–28 (8th Cir. 2008). A RICO claim asserted against multiple defendants must allege at least two predicate acts by ***each*** defendant. *Crest Constr. II, Inc. v. Doe*, 660 F.3d 346, 358 (8th Cir. 2011) (affirming the dismissal of a RICO claim that failed to allege "two specific predicate acts for each Defendant"); *McLaughlin v. Anderson*, 962 F.2d 187, 192 (2d Cir. 1992) (affirming dismissal of a RICO claim for failure to plead the pattern of racketeering activity of an individual defendant); *Kerrigan v. ViSalus, Inc.*, 112 F. Supp. 3d 580, 605–09 (E.D. Mich. 2015)

(dismissing a RICO claim because the complaint failed to allege that each defendant committed two predicate acts).

It is not enough for a complaint to allege the elements of a RICO claim against a specific defendant by lumping several defendants into collective allegations. *See Santana v. Adler*, 2018 WL 2172699, at *6 (S.D.N.Y. Mar. 26, 2018) (dismissing a RICO claim because the complaint failed to "sufficiently allege involvement in two predicate acts by any individual Defendant"); *Raineri Constr., LLC v. Taylor*, 63 F. Supp. 3d 1017, 1031 (E.D. Mo. 2014) (dismissing a RICO claim against the individual defendants because the supporting allegations "focus[ed] on the collective activities of the members of the enterprise, rather than the individual patterns of racketeering activity engaged in by each defendant").

Running Aces alleges only job titles and descriptions of each MLCV Defendant. FAC ¶¶ 124, 131–33. When Running Aces tries to allege the elements of the RICO claims, it focuses on Grand Casinos' actions—not any specific conduct by each MLCV Defendant. *See, e.g.*, FAC ¶¶ 149–76. At best, Running Aces merely lumps the MLCV Defendants together based on their job title and makes conclusory allegations about their conduct. *See, e.g.*, FAC ¶ 157 ("In violation of 18 U.S.C. § 1955(a), *each ML Gaming Leader*, pursuant to their employment responsibilities during their tenure since 2020, has continually conducted, managed, supervised, and directed all or part of Grand Casino Hinckley's illegal gambling business.")

(emphasis added). These allegations are insufficient to establish the elements of a RICO claim against any individual MLCV Defendant. *See Lima LS PLC v. PHL Variable Ins. Co.*, 2013 WL 3327038, at *11 (D. Conn. July 1, 2013) (dismissing RICO claims when "the complaint lack[ed] specific allegations as to actual acts specific to each of the Individual Defendants" and solely "rel[ied] upon the corporate positions of the Individual Defendants to indicate their ability to direct or manage the enterprise"). Accordingly, the Court should dismiss the Section 1962(c) claims against the MLCV Defendants.

Because the individual Section 1962(c) RICO claims fail as to the MLCV Defendants, the conspiracy claims under Section 1962(d) fail as well. *See Blodgett v. Hanson*, 2012 WL 7807607, at *8 (D. Minn. Sept. 19, 2012) (collecting cases); *Grubbs v. Sheakley Grp., Inc.*, 807 F.3d 785, 805–06 (6th Cir. 2015) ("To state a claim for RICO conspiracy, one must 'successfully allege all the elements of a RICO violation, as well as . . . the existence of an illicit agreement to violate the substantive RICO provision.'") (internal quotation omitted). The Section 1962(d) claim also fails because Plaintiff has only made conclusory allegations about whether each MLCV Defendant had the requisite knowledge and agreement for a conspiracy claim. *See* FAC ¶ 258; *Abbott Laby's v. Adelphia Supply USA*, 2017 WL 57802, at *9 (E.D.N.Y. Jan. 4, 2017) (dismissing RICO conspiracy claim because the underlying RICO claims were deficient and because the complaint contained only conclusory allegations of

each defendant's knowledge and agreement). In sum, the Court should dismiss the substantive RICO and RICO conspiracy claims against the MLCV Defendants for failure to state a claim.

D. The RICO Claims Are Time-Barred

The Court should dismiss the RICO claims as untimely because the limitations period has lapsed. Civil RICO claims have a four-year statute of limitations, which accrues "when the plaintiff discovers or should have discovered the injury." *Schreier v. Drealan Kvilhaug Hoefker & Co. P.A.*, 992 F.3d 674, 681 (8th Cir. 2021); *see Healy v. Fox*, 572 F. Supp. 3d 730, 748–49 (D.S.D. 2021) (dismissing RICO claims because the plaintiff could have exercised reasonable diligence to discover its injury when the relevant information was either publicly available or available directly to the plaintiff). The four-year limitations period for a RICO claim has long since run.

It has been public knowledge that the Grand Casinos have offered video games of chance since 1990 as detailed in the Compact between Mille Lacs and the State. *See* Dkt. No. 12-5 (Exhibit 4 to the FAC); *see also Prairie Island Indian Cmty. v. Minn. Dep't of Pub. Safety*, 658 N.W.2d 876, 879 (Minn. Ct. App. 2003) ("In 1989 and 1990, respectively, Prairie Island and Mille Lacs entered into compacts with the State for Class III video games of chance."); Irl Carter, *Gambling with their Lives: American Indians and the Casinos*, Vol. 22 No. 2 Univ. of Minn. Cura Reporter, Aug. 1992, at 2,

available at https://conservancy.umn.edu/server/api/core/bitstreams/208333dd-d3ec-4382-a595-449527585546e/content (listing the number of video machines in operation at the Grand Casinos).[25] The Grand Casinos have advertised their machines and Carnival Games such as Hold'em on their website as early as 2008. *See* Grand Casino, Casino Games (Sept. 6, 2008) https://web.archive.org/web/20080906184140/http:/grandcasinomn.com/Casino%20Games/CasinoGames.aspx; *see Valdez v. Scottsbluff Operations LLC*, 2024 WL 2092038, at *2 n.4 (D. Neb. May 9, 2024) (taking judicial notice of the contents of a website archived by the WayBack Machine). In sum, Running Aces should have discovered its purported injuries from these games well before 2020 because it was public information that the Grand Casinos were offering them. *See Healy*, 572 F. Supp. 3d at 748–49.

V. PLAINTIFF HAS FAILED TO STATE A VALID CLAIM FOR VIOLATION OF A MINNESOTA CRIMINAL LAW ASSUMING IT COULD BRING ONE

As discussed above, supra Section II, Minnesota's gaming laws regarding the Carnival Games and video games of chance do not apply to gaming conducted on Indian lands by Mille Lacs, MLCV, or the MLCV Defendants. But assuming they did,

[25] The Court may take judicial notice of prior cases and news reports to show what knowledge was reasonably available at the time. *See Stutzka v. McCarville*, 420 F.3d 757, 760-61 n.2 (8th Cir. 2005) (court cases); *Klossner v. IADU Table Mound MHP, LLC*, 565 F. Supp. 3d 1118, 1123 (N.D. Iowa 2021) (recognizing that "[c]ourts may properly take judicial notice of newspapers and other publications as evidence of what was in the public realm at the time").

by failing to include any specific allegations with regard to any of the MLCV Defendants, Running Aces has failed to state a claim for violation of Minn. Stat. §§ 609.755 or 609.76, subd. 1; *see, e.g.*, FAC ¶¶ 124, 131-33.[26]

Further, there is no private right of action to enforce the Minnesota criminal laws cited by Running Aces. "A criminal statute gives rise to a civil cause of action only if it appears by express terms or clear implication to have been the legislative intent." *H.J., Inc. v. Northwestern Bell Corp.*, 420 N.W.2d 673, 675 (Minn. App. 1988). No such expression or intent exists in Minn. Stat. § 609.755 or 609.76. Again, Count 4 should be dismissed under Fed. R. Civ. P. 12(b)(6).[27]

CONCLUSION

For the reasons stated above, the claims against the MLCV Defendants should be dismissed with prejudice.

[26] The same is true with respect to allegations pertaining to the SMSC Defendants and the PIIC Defendants. FAC ¶¶ 229–232, 261–264.

[27] The same is true of Counts 1 and 7, which are directed against other defendants.

DATED: August 20, 2024

Respectfully submitted,

Faegre Drinker Biddle & Reath LLP

By: */s/Joshua T. Peterson*
Richard A. Duncan, (#0192983)
Joshua T. Peterson, (#0397319)
Allison J. Mitchell, (#0402134)
Richard.duncan@faegredrinker.com
Josh.peterson@faegredrinker.com
Allison.mitchell@faegredrinker.com
2200 Wells Fargo Center
90 South Eighth Street
Minneapolis, MN 55402
Phone: 612.766.7000

Attorneys for Defendants Michael Beattie, Craig Beaulieu, Leana DeJesus, Dustin Goslin, Scott Hanson, Ryan McGrath, Joe Nayquonabe, Jr., Lon O'Donnell, Shawn O'Keefe, Dayna Pearson, Robert Sawyer, Les Schmolke, and Ronda Weizenegger